

# Impact of Victim-Offender Mediation in Canada, England and the United States

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In more than 1,000 communities throughout North America and Europe, opportunities are available for victims to meet their offenders face-to-face, talk directly about the impact of the crime on their lives, express their concerns, and work out a restitution plan. Victim-offender mediation (VOM) has been around for more than two decades and is one of the best examples of restorative justice in action.

This article explains the difference between VOM and other types of mediation and reports on the first cross-national study of VOM in North America and Europe. The study draws upon data gleaned from 1,681 interviews with crime victims and offenders at program sites in four states in the U.S., four Provinces of Canada, and two cities in England.

## Mediation Brings Parties Together in Face-to-Face Dialogue

Victim-offender mediation is typically used by victims of property crimes and minor assaults. With the assistance of a trained mediator (usually a community volunteer) who facilitates a dialogue between the parties, the victim is able to let the offender know how the crime affected them, to receive answers to questions they may have, and to be directly involved in developing a restitution plan which holds the offender accountable for the losses resulting from the crime. The offender has an opportunity to take direct responsibility for their behavior, learn the full impact of their actions, and develop a plan for making amends to the person(s) they violated.

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Mediation Applies to Broad Range of Disputes. Mediation as a general practice is being applied to an increasing number of conflict situations, such as divorce and custody, community disputes, commercial disputes, and other civil court related conflicts. In such settings, the parties are called "disputants" — a term which reflects the assumption that both contribute to the conflict and therefore must compromise in order to reach a settlement. Often, mediation in these settings focuses heavily on reaching a settlement, with less emphasis on discussing the full impact of the conflict upon their lives. Victim-offender mediation, however, is different from other types of mediation.

Victim-Offender Mediation Does Not Involve Disputes. In victim-offender mediation, the parties are not "disputants." One has committed a criminal offense and has admitted doing so. The other clearly has been victimized. Therefore, the issue of guilt or innocence is not mediated. Nor is there an expectation that crime victims compromise and request less than what they need to address their losses. While many other types of mediation are largely "settlement driven," victim offender mediation is primarily "dialogue driven," with the emphasis upon victim healing, offender accountability, and restoration of losses. Victim-offender mediation is based on a "humanistic model" of mediation. (See Mark Umbreit, *Mediating Interpersonal Conflicts: A Pathway to Peace* (1995)). A humanistic model of mediation involves the following factors:

- Reframing the role of the mediator from being settlement driven to facilitating dialogue and mutual aid;
- Scheduling separate pre-mediation sessions with each party;
- Building rapport and trust with the parties prior to the mediation session without taking sides;
- Identifying the strengths of each party;
- Using a non-directive style of mediation that creates a safe space for dialogue and accessing the strengths of participants; and
- Recognizing the power of silence in the

process of mediation and dialogue.

Although the vast majority victim-offender mediation sessions result in a signed restitution agreement, several studies show that this formal agreement is less important to crime victims than the opportunity to talk directly with the offender about the crime. (See Mark Umbreit, *Mediating Interpersonal Conflicts, supra*; Mark Umbreit & Robert B. Coates, *Cross-Site Analysis of Victim Offender Mediation in Four States*, 39 (4) *Crime & Delinquency* 565-85 (1993); Robert B. Coates & J. Gehm, *An Empirical Assessment, Mediation & Crim. Just.* 251-63 (1989)). The interaction addresses the victim's emotional and informational needs that are central to healing and it fosters the offender's empathy with the victim which may decrease future criminal behavior.

Victim-Offender Mediation Referrals May Occur Before Prosecution or Post-Adjudication. Most cases are referred by officials involved in the juvenile justice system, although some programs also receive referrals from the adult criminal justice system. Judges, probation officers, victim advocates, prosecutors, defense attorneys, or police can make referrals to victim offender mediation programs. In some programs, cases are referred to VOM as a diversion from prosecution when the agreement is successfully completed. In other programs, cases are referred after a formal admission of guilt has been accepted by the court, with mediation a condition of probation (if the victim is interested). Some programs receive case referrals at both the diversion and post-adjudication levels. Most programs only accept cases in which the offender admits their guilt or some level of involvement in the offense, with offender participation being voluntary.

## Cross-National Study of Victim-Offender Mediation in North America and Europe

While other multi-site studies within England, Canada and the United States have taken place, no previous study examined victim-offender mediation practice

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across three countries and utilizing similar data collection instruments. (See Mark Umbreit & Ann W. Roberts, *Mediation of Criminal Conflict in England: An Assessment of Services in Coventry and Leeds*, Center for Restorative Just. & Mediation, Univ. of Minn. (1996) (England studies); Mark Umbreit, *Mediating Interpersonal Conflicts*, *supra* (Canadian studies); Mark Umbreit, *Victim Meets Offender: The Impact of Restorative Justice & Mediation* (1994) (United States studies); T.F. Marshall, & S. Merry, *Crime & Accountability* (1990) (England studies); Robert B. Coates & J. Gehm, *An Empirical Assessment*, *supra* (United States studies)).

**The Program Sites.** Four program sites working with the juvenile court were examined in the United States. The three primary sites were:

- The Victim Offender Mediation Program of the New Mexico Center for Dispute Resolution, Albuquerque, New Mexico;
- The Center for Victim Offender Mediation of the Minnesota Citizens Council on Crime and Justice, Minneapolis, Minnesota; and
- The Victim Offender Reconciliation Program of Catholic Charities, Oakland, California.

A fourth site, the Victim Offender Mediation Program of the Travis County Probation Department in Austin, Texas,

was added much later in the study and received a more limited range of analysis.

The three primary United States sites were operated by private non-profit community based organizations working closely with the juvenile court. Nearly all of the mediation cases were referred by the local juvenile court and probation staff. A relatively small number of cases were referred by the prosecuting attorney or police.

In Canada, four community-based non-profit organizations were examined. The organizations provided mediation services to clients referred by the criminal justice systems. The four sites were:

- The Victim Offender Reconciliation Program of the Frasier Region Community Justice Initiatives, Langley, British Columbia;
- The Youth Advocacy and Mediation Services Program of the John Howard Society in Calgary, Alberta;
- The Criminal Court Program of the Mediation Services agency, Winnipeg, Manitoba; and
- The Criminal Court Mediation Program of the Dispute Resolution Centre for Ottawa-Carleton, Ontario.

The sites offers a wide range of diversity in program design, community acceptance, caseload size, history, case management procedures and impact on the criminal justice system. The programs in Langley and Calgary worked primarily with juvenile offenders and received case referrals from probation staff and

judges, whereas the programs in Winnipeg and Ottawa worked nearly exclusively with adult offenders, nearly all of whom were referred by the prosecuting attorney's office. The Winnipeg program is the largest victim offender mediation program in Canada, with nearly 1,000 case referrals each year.

In England, two older and more developed programs participated in the study. Both programs were initiated with funding from the Home Office in 1985 as part of a major initiative to experiment with victim offender mediation and both are administered by the local probation service. The Coventry Reparation Scheme, established by the West Midlands Probation Service, was initially designed to work with adults, referred by the Magistrates Court after a guilty plea, who had not committed serious offenses. Within a year of its inception, the program began working with the local Juvenile/Youth Liaison Panel. By 1987, the project had begun accepting more serious adult referrals from the Crown Court.

**Client Satisfaction With Justice System Response.** The clients who participated in the mediation sessions — both victims and offenders — indicated relatively high rates of satisfaction with the manner in which the criminal justice system responded to their case (through referral to mediation) at nearly all the program sites in the study. However, victims involved in the two English programs indicated somewhat lower rates of satisfaction than those victims in the North American programs. Seventy-nine percent of victims participating in mediation at the combined four U.S. sites were satisfied with the justice system response to their case and 78% of victims in the combined four Canadian sites indicated satisfaction. This compared to 62% of victims involved in the two English mediation programs. Eighty-seven percent of the offenders at the combined U.S. sites and 74% at the combined Canadian sites were satisfied with the justice system response to their case. Seventy-nine percent of offenders in the two English programs were satisfied.

**Client Satisfaction With Mediation Outcome.** The outcome of the mediation process itself brought even higher levels of satisfaction. Clients in the United States and Canadian programs typically gained a better understanding of what actually happened when the crime was committed and how the crime affected everyone involved. They also negotiated an agree-

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ment for payment of financial restitution to the victim. Some agreements included community service or personal service for the victim. In the two English programs, negotiation of financial restitution was less common. Instead, the mediation focused on the clients' discussion of the crime and its impact on those involved.

At the eight North American sites, 90% of the clients were satisfied with the mediation outcome. In the two English programs, 84% of victims were satisfied with the mediation outcome and 100% of offenders were satisfied.

**Perceptions of Fairness.** When asked if they experienced fairness when their case was referred to mediation, the majority of victims and offenders at the U.S. and Canadian program sites responded favorably. At both the Canadian and U.S. sites, 80% of the victims indicated they experienced fairness compared to 59% of victims at the two English. Eighty-nine percent of offenders at the English and U.S. sites experienced fairness, while 80% of offenders at the Canadian sites did.

Tables 1 and 2 illustrate the success of the VOM process in the study sites.

**Victim-Offender Mediation Clients Experienced High Levels of Satisfaction**

The findings that emerged from this multi-site cross-national assessment of restorative justice practice through VOM are consistent with previous research on single programs or multiple sites within a country. High levels of client satisfaction with the mediation process and outcome has been consistently found over the years in studies throughout North America and Europe. (See Mark Umbreit, *Juvenile Offenders Meet Their Victims: The Impact of Mediation in Albuquerque, New Mexico*, 31 (1) Family & Conciliation Cts. Rev. 90-100 (1993); Mark Umbreit, *Minnesota Mediation Center Gets Positive Results*, Corrections Today J. 194-97 (Aug. 1991); J. Dignan, *Repairing the Damage*, Centre for Crim. & Leg. Res., University of Sheffield, U.K. (1990); Burt Galaway & J. Hudson, eds., *Crim. Just., Restitution, & Reconciliation* (1990); Gehm, *Mediated Victim-Offender Restitution Agreements: An Exploratory Analysis of Factors Related to Victim Participation*, Crim. Just., Restitution & Reconciliation 177-82 (1990); Mark Umbreit, *Victims Seeking Fairness, Not Revenge: Toward Restorative Justice*, Federal Probation (Sept. 1989);

**Table 1  
Immediate Outcomes (2 Year Period)  
1991-1992**

	Combined U.S Sites (4)	Combined Canadian Sites (4)	Combined English Sites (2)
Total referrals to programs	3,142	2,851	560
Total Mediations Conducted	1,131	1,162	294
Successfully negotiated restitution agreements	95%	92%	NA

**Table 2  
Comparison of American, Canadian and English Client Responses in VOM**

	Combined U.S Sites (4)	Combined Canadian Sites (4)	Combined English Sites (2)
Victim satisfaction with criminal justice system response to their case: referral to mediation	79% N=204	78% N=178	62% N=42
Offender satisfaction with criminal justice system response to their case: referral to mediation	87% N=181	74% N=157	79% N=29
Victim satisfaction with mediation outcome	90% N=204	89% N=177	84% N=19
Offender satisfaction with mediation outcome	91% N=181	91% N=152	100% N=15
Victim perceptions of fairness in criminal justice system response to their case: referral to mediation	83% N=204	80% N=174	59% N=34
Offender perceptions of fairness of criminal justice system response to their case: referral to mediation	89% N=178	80% N=156	89% N=27

Martin Wright & Burt Galaway, *Mediation and Criminal Justice* (1989); Burt Galaway, *Crime Victim and Offender Mediation As A Social Work Strategy*, 62 Soc. Serv. Rev. 668-83 (1988); L. Perry, T. Lajeunesse & A. Woods, *Mediation Services: An Evaluation*, Research, Planning & Evaluation Office of the Attorney General, Manitoba, Canada (1987); D.G. Fischer & R. Jeune, *Juvenile Diversion: A Process Analysis*, 28 Canadian Psych. 60-70 (1987)).

Some studies have also found higher

restitution completion rates, reduced fear among victims, and reduced future criminal behavior. (See W.R. Nugent & J.B. Paddock, *The Effect of Victim-Offender Mediation on Severity of Reoffense*, 12 (4) Mediation Q. 353-67 (1995) (reduced criminal behavior); Mark Umbreit, *Victim Meets Offender*, supra (reduced fear and criminal behavior); Robert B. Coates & J. Gehm, *An Empirical Assessment*, supra (satisfaction); J.A. Butts & H.N. Snyder *Restitution and Juvenile Recidi-*

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*vism*, Nat'l Center for Juv. Just. (1991) (reduced criminal behavior); Umbreit & Coates, *Cross-Site Analysis, supra* (reduced fear); A.L. Schneider, *Restitution and Recidivism Rates of Juvenile Offenders: Results from Four Experimental Studies*, 24 (3) *Criminology* 533-52 (1986) (reduced criminal behavior); J.P. Collins, *Evaluation Report: Grande Prairie Reconciliation Project for Young Offenders*, Ministry of the Solicitor General of Canada, Consultation Centre (Prairies) (1984) (satisfaction)).

While criticism of the mediation process did emerge at each site, this was typically related to one of the following isolated problems:

- Lack of preparation;
- The quality of the mediator;
- Attitude of the offender; or
- Lack of follow-up.

The overwhelming number of participating victims and offenders found the mediation and dialogue process to be helpful, fair and understandable.

#### **Favorable Response to VOM Bodes Well for Restorative Justice Movement But More Research Needed**

Mediation and dialogue in criminal conflicts is one of the most powerful expressions of restorative justice. Restorative justice emphasizes that crime is relational — not just against the state, that the role of victims in the justice process should be elevated, and that the focus of justice should be upon restoring emotional and material losses left in the wake of crime and building safer communities through active citizen participation (Howard Zehr, *Changing Lenses, A New Focus for Crime and Justice* (1990)).

The favorable response to VOM bodes well for the growing international restorative justice movement since victim

offender mediation programs are one of the strongest pillars of that movement. However, more rigorous research is required. Nearly all of the research on victim offender mediation to date, including this cross-national study, employed quasi-experimental designs (often with comparison groups) rather than true experimental designs with random assignment of subjects into the mediation process or a control group. Without more research, the findings of these studies, including this cross-national study cannot be broadly generalized to all other related programs in other countries.

This cross-national assessment of victim offender mediation and dialogue programs in the United States, Canada and England joins the ranks of a growing number of studies throughout North America and Europe that are providing strong, yet inconclusive, empirical grounding to the emerging practice theory of restorative justice. ■

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