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VICTIM OFFENDER MEDIATION: WHEN DIVERGENT PATHS AND DESTROYED LIVES COME TOGETHER FOR HEALING

Clynton Namuo*

INTRODUCTION

It was the first day of deer season in 1995—not long before Christmas—and Patrick Wall was fresh out of the Marine Corps, hot off a divorce, and ready to party.[1] Wall drank until he passed out and then his friends woke him up and he drank some more.[2] Eventually, he passed out again; only this time, he was driving his pickup truck down a Texas highway at ninety miles per hour.[3] The resulting crash was catastrophic.[4]

Kim Riles was in the other car.[5] At four feet eleven inches and ninety-five pounds, she was a speck of a woman.[6] The impact was so severe that her tiny body crumpled in on itself.[7] Jackie Riles can never unsee her daughter's face.[8] "It was round and flat. It looked like a deflated basketball," she said, adding, "You cannot imagine how much damage a vehicle can do to the human body."[9] A tidal wave of grief ensued.[10]

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* J.D. Candidate, 2016, Georgia State University College of Law. Graig: Your unwavering support has meant everything. Thank you for putting up with me. I love you. Mom and Dad: Thank you so much for your unyielding help and encouragement during this long journey.

1. Debby Schamber, *Promises Shattered in an Instant*, THE ORANGE LEADER, Nov. 9, 2009, 2009 WLNR 22455485.
2. *Id.*
3. *Id.*
4. *Id.* (explaining that three people died in the crash and a fourth was severely injured, though Wall survived).
5. *Id.* (explaining that Riles was riding shotgun in her friend Brenda Dean's Ford Festiva at the time of the crash).
6. *Id.*
7. Schamber, *supra* note 1 (explaining that Riles' mother said the crash had "broken every bone in her [daughter's] body").
8. *Id.*
9. *Id.*
10. *Id.* (explaining that "hundreds" of people attended Kim Riles' funeral and that the driver, Brenda Dean, left behind two children).

Eventually, Wall was convicted of three counts of manslaughter and sentenced to ten years in prison.[11] When he came up for parole, Jackie Riles fought to keep him incarcerated.[12] Years later, she still had questions; her heart was eviscerated when her daughter died, and she needed to know if the crash affected Wall as well.[13] So, she decided to meet him via a victim-offender mediation program.[14] The meeting signaled a turning point for both, as Wall promised he would not drink again and would work to discourage teens from drinking.[15] Jackie Riles did not protest when Wall came up for parole again.[16] She now regularly speaks to drunk driving offenders about the impact their actions may have, the lives they may destroy, and the families they may tear asunder,[17] stating, "I don't want to see another person go through what we have."[18]

Jackie Riles's experience highlights the transformative effect that victim-offender mediation (VOM) can have on the lives of victims and offenders. Her mediation occurred as a result of a pioneering Texas law that guarantees victims, even those of violent crimes, the opportunity to mediate their dispute with offenders.[19] VOM is much more than cathartic. Over fifty studies conducted during the last twenty-five years across North America and Europe found that VOM led to significantly lower recidivism rates,[20] both victims and

11. *Id.*
12. *Id.*
13. Schamber, *supra* note 1.
14. *Id.*
15. *Id.*
16. *Id.* Notably, Wall chose to serve out the remainder of his sentence and was released after ten years. *Id.*
17. *Id.*
18. *Id.*
19. TEX. CODE CRIM. PROC. ANN. art. 56.13 (West 2015) (making victim-offender mediation a right under Texas' Victim's Bill of Rights, though there are other statutes that lay out the specifics of how VOM will work).
20. William R. Nugent et al., *Participation in Victim-Offender Mediation and the Prevalence and Severity of Subsequent Delinquent Behavior: A Meta-Analysis*, 2003 UTAH L. REV. 137, 162 (2003) (explaining that a meta-analysis of VOM studies found "the reduction in reoffense may be as great as 26% relative to non-VOM participants"); *see also* Jeff Latimer et al., *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 85 PRISON J. 127, 138 (2005) (noting that a meta-analysis of studies found that restorative justice, including VOM, was "significantly more effective" at reducing recidivism compared to traditional criminal justice practices, such as incarceration); William R. Nugent et al., *Participation in Victim-Offender Mediation Reduces Recidivism*, VOMA CONNECTIONS, Summer 1999,

offenders walked away highly satisfied,[21] parties involved considered the process fair,[22] and offenders were more likely to follow through with restitution.[23]

During the last twenty years, Georgia's criminal justice system has focused on incarceration, rather than alternative criminal justice principles, leading to a doubling in the state's prison population and a corresponding increase in corrections spending.[24] For all the money

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at 1 (explaining that a study of 1,298 juveniles who participated in VOM found a 32% reduction in recidivism); Anne L. Schneider, *Restitution and Recidivism Rates of Juvenile Offenders: Results from Four Experimental Studies*, 24 CRIMINOLOGY 533 (1986) (explaining that in an examination of four studies of youth restorative justice programs, none of the participants had higher recidivism rates); Mark S. Umbreit et al., *The Impact of Restorative Justice Conferencing: A Multi-National Perspective*, 1 BRIT. J. OF CMTY. JUST. 21, 33–35, 39 (2002) [hereinafter *Restorative Justice*] (evaluating studies of VOM sites across Europe and America to conclude that VOM "on average, yielded reductions in recidivism compared to non-restorative approaches to criminal behavior"); Mark S. Umbreit et al., *The Impact of Victim-Offender Mediation: Two Decades of Research*, FED. PROBATION J., Dec. 2001, at 32 [hereinafter *Decades*] (evaluating a handful of studies across Europe and the United States and noting that youth who participate in VOM have lower recidivism rates); Mark S. Umbreit & Robert B. Coates, *The Impact of Mediating Victim Offender Conflict: An Analysis of Programs in Three States*, 43 JUV. & FAM. CT. J. 21 (1992); AUDREY EVJE & ROBERT C. CUSHMAN, A SUMMARY OF THE EVALUATIONS OF SIX CALIFORNIA VICTIM OFFENDER RECONCILIATION PROGRAMS 103 (2000), http://www.courts.ca.gov/documents/vorp.pdf (noting that participants in five VOM programs in California had recidivism rates 21% to 105% lower than non-participants); LANE CNTY. DEP'T OF YOUTH SERVS., EVALUATION OF THE RESTORATIVE JUSTICE PROGRAM 15 (2001), http://www.lanecounty.org/BCC_info/Meeting_Info/2001/OrderText/2001/7-24/W6a-Restorative.pdf (explaining that juveniles who met their offender had "significantly lower" recidivism rates within the first year compared to those who did not).

21. ROBERT C. DAVIS ET AL., MEDIATION AND ARBITRATION AS ALTERNATIVES TO PROSECUTION IN FELONY ARREST CASES: AN EVALUATION OF THE BROOKLYN DISPUTE RESOLUTION CENTER 56 (1980), http://www.vera.org/sites/default/files/resources/downloads/Mediation_and_Arbitration_as_Alternatives_to_Prosecution_of_Felony_Arrest_Cases.pdf (explaining that victims and defendants who participated in VOM were 20% and 10%, respectively, more satisfied than those who did not); *see also* EVJE & CUSHMAN, *supra* note 20, at 104 (noting that victim and offender satisfaction was "one of the strongest measures of success" for six California VOM programs with satisfaction rates uniformly over 90%); Mark S. Umbreit, *Victim Offender Mediation in Juvenile or Criminal Courts*, *in* ADR HANDBOOK FOR JUDGES 225, 228 (Donna Stienstra & Susan M. Yates eds., 2004); LODE WALGRAVE, RESTORATIVE JUSTICE, SELF-INTEREST AND RESPONSIBLE CITIZENSHIP 103–105 (2008) (explaining that "satisfaction is one of the most general and stable findings" and that victims and offenders overwhelmingly report being satisfied with VOM).

22. *Decades*, *supra* note 20, at 31; *Restorative Justice*, *supra* note 20, at 28.

23. Mark S. Umbreit et al., *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*, 89 MARQ. L. REV. 251, 280 (2005) (a meta-analysis of studies found that 80% to 90% of VOM restitution agreements were fulfilled); *see also* MARK S. UMBREIT & ROBERT B. COATES, VICTIM OFFENDER MEDIATION: AN ANALYSIS OF PROGRAMS IN FOUR STATES OF THE U.S. 129 (1992), https://www.ncjrs.gov/pdffiles1/Digitization/140263NCJRS.pdf (evaluating numerous VOM sites and finding that restitution agreements were completed in 81% of cases, compared to 58% of cases that did not include VOM); Umbreit, *supra* note 21, at 228.

24. GA. COUNCIL ON CRIMINAL JUSTICE REFORM, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL

spent, Georgia experienced little return on its investment.[25] In recognition of this problem, Georgia officials launched a series of reforms to the criminal justice system starting in 2011.[26] In particular, the reforms aimed to cut costs by reshaping Georgia's criminal justice and corrections systems and to reduce crime and recidivism by increasing community-based services.[27] The reforms focused on expanding accountability courts, which address issues like substance abuse and mental health while bolstering probation and parole supervision.[28] The reforms also included a broad array of other initiatives.[29] In 2014, Georgia officials announced a sweeping set of policy initiatives to help inmates better reintegrate into their communities upon leaving prison.[30]

Although Georgia has undergone a massive criminal justice overhaul in recent years, a critical component has been left out: adult VOM for criminal cases. Many levers of power have been pulled in

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JUSTICE REFORM 2 (2014) (explaining that "Georgia's prison population more than doubled to nearly 56,000 inmates" from 1990 to 2011 and that during the same time state spending on corrections grew from $492 million to more than $1 billion).

25. *Id.* In spite of the added money spent, Georgia's recidivism rate stayed at 30%. *Id.*

26. *Id.*

27. *Id.* at 7. The Special Council's mandate was to:

> Address the growth of the state's prison population, contain corrections costs and increase efficiencies and effectiveness that result in better offender management; Improve public safety by reinvesting a portion of the savings into strategies that reduce crime and recidivism; and Hold offenders accountable by strengthening community-based supervision, sanctions and services.

Id. Georgia defines recidivism as reconviction within three years of release from prison. *Standing Trends*, GEORGIA DEPARTMENT OF CORRECTIONS (2014), http://www.dcor.state.ga.us/Research/Standing_Trends.html. States define recidivism differently and may look at different time periods after release and whether the offender was arrested or convicted. THE SENTENCING PROJECT: RESEARCH AND ADVOCACY FOR REFORM, STATE RECIDIVISM STUDIES 3 (2010), http://sentencingproject.org/doc/publications/inc_StateRecidivismFinalPaginated.pdf.

28. GA. COUNCIL ON CRIMINAL JUSTICE REFORM, *supra* note 24, at 7. The reforms were expected to avert a projected 8% increase in the prison population, and a resulting savings of $22 million was reinvested in supporting the accountability courts, as well as probation and parole supervision. *Id.*

29. *Id.* at 9–11. Reforms included expanding electronic submissions of incarceration records, capping the amount of time offenders spent in probation detention centers, expanding sentencing options, and Max-Out Reentry Program that focused on ensuring that inmates released without parole did a better job of integrating into society. *Id.*

30. *Id.* at 16, 24–28. The Georgia Council on Criminal Justice Reform launched the Georgia Prisoner Reentry Initiative in November 2013, and in a report released in January 2014, it announced policy recommendations that included creating Transition Accountability Plans to create goals for each offender's reentry, facilitating access to stable housing for former inmates and helping former inmates find jobs. *Id.*

an effort to address burgeoning criminal justice problems, yet this key solution remains unused despite evidence that it leads to lower recidivism rates and higher satisfaction rates for victims and offenders.[31]

Georgia has long-supported alternative dispute resolution (ADR) processes, such as mediation, to resolve civil disputes as they were adjudicated.[32] Georgia has a comprehensive statutory scheme for the creation of court-connected, county-based ADR programs for civil disputes.[33] Under the law, counties can use local court fees to fund ADR programs.[34] After the law's creation, counties across Georgia established ADR programs.[35] The problem is that Georgia law does not accommodate VOM specifically.[36]

This Note will propose a way for Georgia to integrate adult VOM into its criminal justice system reforms. Part I will provide a brief history of VOM, discuss how VOM works, and explain why it is beneficial.[37] Part II will examine the establishment of VOM in Tennessee, a southern state that enacted a comprehensive statutory framework to create and support VOM programs statewide.[38] Part III will look at the establishment of VOM in Texas, a southern state that used a less strict statutory scheme to create its VOM programs.[39] Part

31. Umbreit, *supra* note 21, at 228.

32. DOUGLAS H. YARN & GREGORY TODD JONES, GEORGIA ALTERNATIVE DISPUTE RESOLUTION 481 (2014). In 1990, the Georgia Supreme Court created the Joint Commission on Alternative Dispute Resolution, which created a comprehensive statewide ADR plan that the court later adopted and implemented. *Id.*

33. O.C.G.A. § 15-23–12 (2012).

34. YARN, *supra* note 32, at 482. "The primary purpose of the ADR Act is to allow counties to establish funding mechanisms to run ADR programs." *Id.*

35. *Id.* at 487. "Almost all the more populated counties have court-connected ADR services available in one or more trial courts." *Id.*

36. *See* O.C.G.A. § 15-23–12 (2012).

37. *See infra* Part I.A–C.

38. *See infra* Part II.A–C; *see also* Elizabeth Lightfoot & Mark Umbreit, *An Analysis of State Statutory Provisions for Victim-Offender Mediation*, 15 CRIM. JUST. POL'Y REV. 418, 422 (2004). Tennessee is among seven states that the authors considered to have a "comprehensive VOM program," and it is the only one of the group from the South. *Id*.

39. *See infra* Part III.A–C. Texas is among seven states that the authors categorized as having only a "specific statutory provision for VOM" rather than a "comprehensive VOM program." Elizabeth Lightfoot & Mark Umbreit, *supra* note 38, at 422. Texas was also among the first states to establish VOM for severely violent offenses. Mark S. Umbreit et al., *Victim Offender Mediation: Evidence-Based Practice Over Three Decades*, *in* THE HANDBOOK OF DISPUTE RESOLUTION 455, 464 (Michael L. Moffit & Robert C. Bordone eds., 2005).

IV will propose how Georgia should enact adult VOM by integrating methods and statutory frameworks from Tennessee and Texas.[40]

I. BACKGROUND

This background section will examine how VOM developed in the United States, what the VOM process includes, and why VOM has continued to grow.

A. Victim Offender Mediation: A Brief History and the Basic Framework

Victim-offender mediation in North America began with a teenage crime spree and a creative judge in Kitchener, Ontario in 1974.[41] Faced with two young men who pleaded guilty to twenty-two counts of property damage, the judge took the remarkable step of having them meet with each of their victims.[42] Feelings were shared, restitution deals were made, and every victim was repaid within three months.[43] From there, VOM spread to the United States, where there are now more than 300 programs.[44]

Victim-offender mediation allows victims and their families to meet with offenders in a safe place with a trained mediator.[45] VOM most often includes a victim, an offender, and a single mediator.[46] The specifics for VOM can vary, but the process broadly follows four

40. *See infra* Part IV.A–C.

41. Patrick Glen Drake, Comment, *Victim-Offender Mediation in Texas: When "Eye for Eye" Becomes "Eye to Eye"*, 47 S. TEX. L. REV. 647, 657 (2006). This is considered to be the first documented instance of VOM in North America and triggered what was the first of many more programs in Canada and the United States. *Id.*

42. *Id.* The VOM was done in lieu of other sentencing when the judge stayed the proceedings and devised the VOM plan with the aid of probation officers. *Id.*

43. *Id.* The reason for VOM here was to show the offenders "the personal damage they had inflicted upon their victims, beyond the property damage, and to negotiate methods of repayment." *Id.*

44. Umbreit, *supra* note 21, at 228. There are more than 300 VOM programs in the United States and more than 1,200 more across Europe, Asia, Africa, South America and the South Pacific. *Id.*

45. Umbreit, *supra* note 39, at 456.

46. MARK UMBREIT & MARILYN PETERSON ARMOUR, RESTORATIVE JUSTICE DIALOGUE: AN ESSENTIAL GUIDE FOR RESEARCH AND PRACTICE 112 (2010). Sometimes two mediators will facilitate VOM, and there are times when they engage in "shuttle" mediation, where a mediator speaks with each party separately and then passes messages to the other side. *Id.*

phases: (1) referral and intake, when the case is referred to a mediation agency; (2) preparation for mediation; (3) mediation; and (4) follow-up.[47] Property and other minor crimes are the most common type of offenses referred to VOM, though violent offenses have been referred as well.[48]

Although most VOMs end with a restitution agreement that often serves as "the most tangible symbol of conflict resolution and a focal point for accountability," it is secondary to addressing the crime's emotional and practical impacts.[49] VOM focuses on opening a dialogue between a victim and an offender to promote victim healing and offender accountability.[50] Contrary to traditional mediation, which is driven by a desire to settle, VOM takes into account the unique emotional impact of a criminal act.[51]

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47. Umbreit, *supra* note 39, at 457–60. Referral and intake is when an offender is referred to a VOM program, which then determines whether to accept the case. *Id.* at 457. Preparation for mediation begins when a mediator starts working with victim and offender individually to prepare them for the mediation itself. *Id.* at 457–58. First, the mediator must meet the offender to hear their story, encourage their participation, explain VOM's benefits and assess their ability to pay restitution. *Id.* Second, the mediator must contact the victim to see if they will participate and, if they agree, to then prepare them for the meeting. *Id.* at 458–59. Mediation itself starts with the mediator discussing the process and outlining ground rules and then proceeds to both victim and offender talking about the impact the crime had on them. *Id.* Victims are given the opportunity to express their feelings and ask "lingering questions such as 'Why me?'" *Id.* at 459. Next the parties talk about losses and negotiate a restitution agreement. *Id.* The final phase is follow-up and contacting the victim periodically to ensure the restitution agreement is fulfilled and to see if additional victim-offender mediations may be necessary. *Id.* at 460.

48. *Id.* at 457; *see also* Christina L. Anderson, Comment, *Double Jeopardy: The Modern Dilemma for Juvenile Justice*, 152 U. PA. L. REV. 1181, 1204 (2004) (explaining that VOM is used for relatively minor juvenile crimes); Bruce L. Benson, *Let's Focus on Victim Justice, Not Criminal Justice*, 19 INDEP. REV. 209, 223 (2014) (explaining that "[w]hen first initiated, VOM was typically limited to juvenile crimes and non-violent property crimes," and the vast majority of crimes mediated involve "vandalism, theft, burglary, and minor assaults").

49. Umbreit, *supra* note 39, at 457; *see also* Ilyssa Wellikoff, Note, *Victim-Offender Mediation and Violent Crimes: On the Way to Justice*, 5 CARDOZO J. CONFLICT RESOL. 1, 7 (2003). "Overall, the victim-offender mediation process creates a more humanizing effect that the traditional criminal prosecution system cannot match." *Id. But see* Jennifer Gerarda Brown, *The Use of Mediation to Resolve Criminal Cases: A Procedural Critique*, 43 EMORY L.J. 1247, 1287 (1994) (critiquing the restitution process common in VOM as one that may be abused at the expense of offenders, who have less clout and need a process with more oversight).

50. Brown, *supra* note 49, at 1300; *see also* SUSAN L. MILLER, AFTER THE CRIME: THE POWER OF RESTORATIVE JUSTICE DIALOGUES BETWEEN VICTIMS AND VIOLENT OFFENDERS 22–36 (2011) (discussing the powerful impact that storytelling has on the parties of a victim-offender mediation and how that can help heal the parties involved).

51. *See* Umbreit, *supra* note 39, at 456 (explaining that VOM mediators use a humanistic model that facilitates dialogue and mutual aid).

B. Why Victim-Offender Mediation Works

From the outset of VOM, criminal justice officials have been skeptical about whether victims would actually want to meet offenders.[52] VOM is not appropriate for every victim or every offender.[53] Yet, after thousands of mediations conducted over more than twenty years, experience and data show that many victims want to participate in VOM—particularly for certain types of cases like property crimes.[54] Even victims of serious violent offenses, such as felony assault and surviving family members of murder victims, have shown a desire to participate in VOM.[55]

Deciding to participate in VOM for violent offenses may be a tough decision. It certainly was for Jill Schellenberg, the director of the Criminology and Restorative Justice Studies program at Fresno Pacific University and a member of the Mennonite Brethren Church—a denomination that "believes that 'believers seek to be agents of reconciliation in all relationships, to practice love of enemies as taught by Christ, and to be peacemakers in all

52. Mark S. Umbreit, *Victim Offender Mediation in Juvenile or Criminal Courts*, *in* ADR HANDBOOK FOR JUDGES 225, 227 (Gina Viola Brown ed. 2004).

53. *Id.* "Victim offender mediation is clearly not appropriate for all crime victims." *Id. See also* Umbreit et al., *Restorative Justice*, *supra* note 20, at 23 (evaluating studies from the United States and Europe). "It should be noted that forty to sixty per cent of persons offered the opportunity to participate in VOM refused." *Id.*

54. Umbreit, *supra* note 21, at 227–28. One Minnesota poll found that 82% of respondents would consider VOM if they were the victim of a property crime, and a separate four-state study of 280 victims who participated in VOM found that 91% felt their participation was totally voluntary. *Id.; see also* Umbreit et al., *Victim Offender Mediation: Evidence-Based Practice Over Three Decades*, *in* THE HANDBOOK OF DISPUTE RESOLUTION 455, 460 (Michael L. Moffit et al. eds., 2005) (reporting that a survey of numerous programs found that 40 to 60% of victims referred to VOM participated in the process); Robert B. Coates et al., *Why Victims Choose to Meet with Offenders*, 18 VOMA Connections 1, 11 (Fall 2004) (reporting that the most common reason victims participated in VOM in Washington County Minnesota was because they "hoped the offender/s would be helped by meeting with me").

55. MARK S. UMBREIT ET AL., FACING VIOLENCE: THE PATH OF RESTORATIVE JUSTICE AND DIALOGUE 306–07 (2003). A study surveyed forty victims of violent crime or their surviving family members who participated in VOM in Texas and Ohio and found that they participated to get answers, to show the impact of the crime, and to meet the offender face-to-face, among other things. *Id.* "The seriousness of the offense is not an accurate predictor of participation rates." Umbreit, *supra* note 39, at 461. One study found property crimes were more likely to be mediated than personal offenses, but also found "the time lapse between the crime and the referral was correlated differently with participation rates by type of offense." *Id.* Longer time lapses resulted in more mediations for personal offense cases. *Id.*

situations.'"[56] Schellenberg's VOM training and her deeply held reconciliation beliefs "went out the window" when a man viciously raped her disabled daughter.[57] Schellenberg knew she had to forgive once she realized she was obsessed with the crime and consumed with anger.[58]

VOM has also been suggested for cases of domestic violence where the victim wants to maintain a relationship with the offender.[59] One possible reason for requesting VOM is that victims and offenders who participate report overwhelmingly positive experiences.[60] Participants of VOM have also reported higher satisfaction rates compared to the traditional court system.[61] Multiple studies have also found that VOM reduces recidivism among offender participants.[62] One study of VOM programs in four states found that participating youth reoffended at a rate of 18% compared to 27% for non-participating youth.[63]

A growing number of officials are recognizing VOM's benefits.[64] VOM is the most widely used and researched form of restorative

56. Jill Schellenberg, *A Victim with Special Needs: A Case Study*, *in* THE PROMISE OF RESTORATIVE JUSTICE: NEW APPROACHES FOR CRIMINAL JUSTICE AND BEYOND 55, 56–58 (John P.J. Dussich and Jill Schellenberg eds., 2010).

57. *Id.* at 57 (explaining that even she was "shocked at the depth of [] hatred" she felt for her daughter's rapist).

58. *Id.* at 58.

59. Leigh Goodmark, Op-Ed., *Healthy Alternatives to Prosecution Can Help Victims*, N.Y. TIMES (Sept. 11, 2014, 11:39 AM), http://www.nytimes.com/roomfordebate/2014/09/10/going-after-abusers-like-nfl-player-ray-rice/healthy-alternatives-to-prosecution-can-help-victims.

60. Umbreit, *supra* note 39, at 461 ("Typically, eight or nine out of ten respondents who have participated in mediation are satisfied with the process and the resulting agreement."); *see also* UMBREIT ET AL., FACING VIOLENCE: THE PATH OF RESTORATIVE JUSTICE AND DIALOGUE 304 (2003) (detailing findings of a study in which of seventy-eight victims, or their surviving family members, and offenders who participated in VOM for serious violent crimes, all but one of them reported being satisfied with the process, and seventy-one reported being "very satisfied").

61. UMBREIT & ARMOUR, *supra* note 46, at 112 (pointing out that some have theorized that making the criminal justice process more personal leads to higher satisfaction rates, noting that although victims are often drawn to VOM by the possibility of restitution, they walk away with a deep appreciation of being able to talk to the offender).

62. *See* sources cited *supra* note 20.

63. Umbreit, *supra* note 39, at 463 (explaining that another study from Oregon found that 80% of youths who participated in VOM did not reoffend within a year, compared to 58% of those who did not participate); Mark Umbreit et al., *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*, 89 MARQ. L. REV. 251, 278, 278 n.133 (2005) [hereinafter *Restorative Justice in the Twenty-First Century*].

64. Umbreit, *supra* note 39, at 464, n.58.

justice worldwide with more than 1,500 programs across 17 countries.[65] Restorative justice is an alternative sanction that focuses on repairing the harm done, meeting the victim's needs, and holding the offender responsible for his or her actions.[66] A growing number of states within the U.S. are passing legislation that specifically allows for VOM, ranging from basic statutory provisions to comprehensive VOM programs.[67]

Georgia is among those states that used VOM prior to having any sort of statutory scheme.[68] While some juvenile courts in Georgia have mediation programs, they were "not used regularly for the resolution of delinquency cases."[69] As part of Georgia's comprehensive juvenile justice reform, state officials established a statutory scheme for VOM in juvenile cases.[70] Yet, Georgia has no law allowing VOM for adult offenders. Formal state recognition via legislation is necessary to ensure the success of VOM programs.[71] Tennessee is the only state in the Southeast that is considered to have

65. *Restorative Justice in the Twenty-First Century*, *supra* note 63 at 264.

66. CLIFFORD K. DORNE, RESTORATIVE JUSTICE IN THE UNITED STATES 3–4 (Vernon R. Anthony et al. eds., 2008). "Essentially, restorative justice is a philosophy of justice emphasizing the importance and interrelations of offender, victim, community, and government in cases of crime and delinquency." *Id. See also Restorative-Justice Sanction*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("Restorative-justice sanctions use a balanced approach, producing the least restrictive disposition while stressing the offender's accountability and providing relief to the victim. The offender may be ordered to make restitution, to perform community service, or to make amends in some other way that the court orders"); Britta Bannenberg & Dieter Rossne, *New Developments in Restorative Justice to Handle Family Violence*, *in* RESTORATIVE JUSTICE IN CONTEXT: INTERNATIONAL PRACTICE AND DIRECTIONS 51, 53–54 (Elmar G.M. Weitekamp & Hans-Jürgen Kerner eds., 2003) (stating "[a]cceptance of responsibility and victim compensation by the offender fulfill the goal of punishment through norm affirmation and victim rehabilitation, so that repressive measures become superfluous in the process of sanctioning").

67. UMBREIT & ARMOUR, *supra* note 46, at 116. As of 2010, thirty states had enacted some form of statutory provision for VOM. Of those, twenty-three had specific statutory provisions for VOM, while another six had VOM-type programs that allowed for dialogue between victims and offenders. *Id.*

68. J. Tom Morgan, Opinion, *Update State Juvenile Reform*, ATLANTA J.-CONST., Feb. 16, 2013, at 13A.

69. *Id.* The juvenile justice reform bill, which later became law, provided "a framework for expanding the use of mediation" and ensured that victims had a right to participate. *Id.*

70. H.B. 242, 152nd Gen. Assemb., Reg. Sess. (Ga. 2013) (codified as O.C.G.A. § 15-11-20(a)) ("At any time during a proceeding under this chapter, the court may refer a case to mediation."); O.C.G.A. § 15-11-20(d) ("Victims in a delinquency case referred to mediation may attend and participate in such mediation, but shall not be required to do so as a condition of such case being heard by the juvenile court.").

71. UMBREIT & ARMOUR, *supra* note 46, at 118 (noting that "[f]ormal state recognition benefits recipients in a number of ways, including the ability of restorative justice programs to withstand challenges from the criminal justice system").

a "comprehensive" VOM program enacted with a strong statutory scheme.[72] Texas was a VOM pioneer when it became the first state in the country to use VOM for serious violent offenses.[73] Some states that do not have statutory provisions still have VOM programs.[74]

II. THE TENNESSEE MODEL

VOM started in Tennessee in a small county outside of Knoxville[75] more than twenty years ago.[76] That VOM center in Anderson County opened less than ten years after Elkhart, Indiana established the first VOM program in the United States.[77] Anderson County's program was the first in Tennessee and helped spread VOM to other areas of the state.[78] By 1993, four other VOM programs had been established in Tennessee.[79]

Following the establishment of these VOM centers, Tennessee enacted a series of statutes in 1993 to formalize the VOM process

72. *Id.* at 117 (see Table 5.2 for states with a "[c]omprehensive VOM program"); TENN. CODE ANN. §§ 16-20-101 to -106 (2014).

73. Drake, *supra* note 41, at 654. "Although Texas holds an enormous amount of citizens in prison facilities, it also is the first state to have a statewide, in-system, victim-centered mediated dialogue program for victims of violent crime in the country." *Id.*

74. UMBREIT & ARMOUR, *supra* note 46, at 116–17. Pennsylvania has no statute allowing VOM, but "there is a general commitment to restorative justice within the Pennsylvania code, and indeed there are VOM programs in the state," indicating a commitment to the practice despite a lack of laws. *Id.*

75. U.S. CENSUS BUREAU, TENNESSEE POPULATION OF COUNTIES BY DECENNIAL CENSUS: 1900 TO 1990 (1995), http://www.census.gov/population/cencounts/tn190090.txt (displaying table showing that Anderson County had a population of 68,250 in 1990 out of a statewide population of 4,877,185).

76. Susan C. Taylor, *Victim-Offender Reconciliation Program—A New Paradigm Toward Justice*, 26 U. MEM. L. REV. 1187, 1188 (1996) (explaining that Anderson County, Tennessee, established a VOM center in 1986).

77. *Id.* (explaining that the first VOM program began in Elkhart, Indiana, in 1978 under the control of the probation department and was soon turned into a "community-based and community-funded program").

78. *About CMS*, COMMUNITY MEDIATION SERVICES, http://www.cms-tn.org/about (last visited Feb. 3, 2016) (explaining that Community Mediation Services was the first mediation center in Tennessee, that its first program was VOM, and that it helped establish other mediation centers throughout the state); *see also Sandy Snyder Recognized for Work with Crime Victims*, KNOXVILLE-NEWS SENTINEL, Feb. 18, 1996, at AC3, 1996 WLNR 6723443 (explaining that Anderson County VOM Executive Directory Sandy Snyder helped start VOM programs in Knox, Putnam, Cumberland, and Davidson counties).

79. Taylor, *supra* note 76, at 1188 (explaining VOM programs were established in Cumberland County and Putnam County in 1989, Davidson County in 1990, and Knox County in 1993).

and integrate it into its criminal justice system.[80] Those statutes laid out why Tennessee was enacting VOM legislation and how VOM should be conducted.[81] When Tennessee passed VOM legislation, it found that "felony, misdemeanor and juvenile delinquent" cases had become costly and combative, and VOM offered a less formal, less adversarial way to address these disputes.[82]

VOM enjoyed widespread support following its codification in Tennessee. This was evidenced by recognition and support from officials like the state attorney general[83] and financial support from the Tennessee Bar Association Foundation.[84] Anderson County's VOM program has been singled out for its work[85] and even received nationwide recognition for its VOM efforts.[86] In particular, Anderson County's VOM program was recognized because 97% of its restitution contracts were fulfilled, leading to nearly $47,000 worth of restitution paid and more than 900 hours of "offender work" provided to victims.[87] The Tennessee House of Representatives also honored Anderson County's VOM center.[88] The University of Tennessee College of Social Work conducted a study on VOM participants and found that they were "half as likely to commit further crimes as those who do not participate."[89]

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80. TENN. CODE ANN. §§ 16-20-101 to -106 (2009).

81. *Id.*

82. TENN. CODE ANN. § 16-20-101 (2009). In enacting VOM, the legislature explained that disputes had become "costly and complex in a judicial setting where the parties involved are necessarily in an adversarial posture and subject to formalized procedures." *Id.*

83. *Burson is Keynote Speaker*, KNOXVILLE-NEWS SENTINEL, Apr. 14, 1996, at AC5, 1996 WLNR 6723889 (explaining that Tennessee Attorney General Charles W. Burson would be the keynote speaker for the tenth anniversary celebration of Anderson County's VOM center).

84. *Bar Foundation Awards $142k to 11 Agencies*, NASHVILLE BANNER, Jan. 30, 1996, at B3 (noting that the bar foundation provided a $5,000 grant to the Victim Offender Reconciliation Program).

85. *Sandy Snyder Recognized for Work with Crime Victims*, *supra* note 78, at AC3 (explaining that Anderson County VOM Executive Director Sandy Snyder received an award from the East Tennessee Foundation).

86. Bob Fowler, *Anderson County Juvenile Program Vies for National Award*, KNOXVILLE NEWS-SENTINEL, June 4, 1995, at AC1, 1995 WLNR 6065109 (explaining that the Anderson County VOM program won a statewide award from the National Association of Attorneys General and was up for the national version of the same award).

87. *Id.*

88. *Community Mediation Services Effective; Golf Tourney Set*, THE OAK RIDGER, Mar. 12, 2013, at 6A, 2013 WLNR 612673.

89. *State Championship Team to be Part of Celebration Auction to Benefit Program*, KNOXVILLE-NEWS SENTINEL, Apr. 27, 1997, at AC4, 1997 WLNR 7546933.

State support for VOM programs solidified in the ensuing years as evidenced by the Tennessee Judiciary's Victim Offender Reconciliation Program Start-Up Project, which sought to expand VOM into communities statewide.[90] By 2001, there were eleven VOM centers in Tennessee,[91] up from just five when VOM legislation passed in 1993.[92] Those VOM centers enjoyed support from local judges,[93] and the Nashville VOM center was even operated by the Nashville Bar Association.[94] The Knoxville VOM center received support from the local bar, local judges, and the local law school.[95]

Furthermore, the Tennessee Judiciary lauded VOM centers for conducting more than 1,400 mediations—766 involving adults and 635 involving juveniles—with a resulting reduction in "minor criminal cases litigated in courtrooms," a drop in workloads for district attorneys, and an expected decline in recidivism rates for juveniles.[96] Tennessee's model has three main elements that make it successful: (1) local control,[97] (2) funding,[98] and (3) procedural VOM provisions.[99] This Note will examine each element separately to analyze the effectiveness of Tennessee's model.

A. Local Control

Tennessee enacted laws with the intention of giving local communities control of the process and administration of VOM

90. TENN. JUDICIARY, ANNUAL REPORT OF THE TENNESSEE JUDICIARY 5 (2001).

91. *Id.*

92. Taylor, *supra* note 76, at 1188 (explaining VOM programs were established in Anderson County in 1986, Cumberland County and Putnam County in 1989, Davidson County in 1990, and Knox County in 1993).

93. TENN. JUDICIARY, *supra* note 90, at 5 (explaining that the Blount County VOM center was "strongly supported by judges" in that judicial district).

94. *Id.*

95. Jill Richey Rayburn, Note, *Neighborhood Justice Centers: Community Use of ADR—Does it Really Work?*, 26 U. MEM. L. REV. 1197, 1220–21 (1996) (explaining that the Knoxville Bar Association's mediation service, which started at a local court that staffed the service using University of Tennessee College of Law volunteers, was "closely tied" to the local VOM center).

96. TENN. JUDICIARY, *supra* note 90, at 5.

97. *See infra* Part II.A.

98. *See infra* Part II.B.

99. *See infra* Part II.C.

centers.[100] To that end, VOM centers may be established as local nonprofits.[101] Those VOM centers may receive funding from the state of Tennessee[102] when their board of directors does not consist of a majority of people from a single profession[103]—this is presumably to ensure a broader spectrum of involved parties—and only when the VOM center receives support of criminal justice agencies to make referrals.[104] VOM centers are not considered state agencies or instrumentalities of the state, and their employees and volunteers are not considered employees of the state.[105] Additionally, VOM centers are required to use community facilities whenever possible.[106]

Local control is a hallmark of Tennessee's VOM programs, which are generally established to serve a specific community.[107] State law specifically notes that the legislature intends to replicate the community-based model throughout the state.[108] So far, that has occurred, as evidenced by community-based VOM centers established statewide.[109]

B. Funding

Tennessee law allows VOM centers to receive funding in three ways: private donations,[110] state funding,[111] and local taxes levied via court fees.[112] VOMs are allowed to raise funds from any public or

100. TENN. CODE ANN. § 16-20-101 (2009) (noting that the legislature's intent in establishing VOM was to encourage "community participation in the development, administration and oversight of local programs").

101. TENN. CODE ANN. § 16-20-102(a) (2009).

102. TENN. CODE ANN. § 16-20-106(b) (2009) (noting that a VOM center may be funded using up to 50% state money).

103. TENN. CODE ANN. § 16-20-102(a) (2009).

104. TENN. CODE ANN. § 16-20-102(d)(2)(E) (2009).

105. TENN. CODE ANN. § 16-20-102(g) (2009).

106. TENN. CODE ANN. § 16-20-102(f)(2) (2009).

107. *See* TENN. JUDICIARY, *supra* note 90, at 5 (noting that as of 2001 there were eleven county VOM centers and that the judiciary's goal was to support more such centers and expand the scope of the program).

108. *See* TENN. CODE ANN. § 16-20-101(b)(4) (2009).

109. TENN. JUDICIARY, *supra* note 90, at 5.

110. TENN. CODE ANN. § 16-20-106(a) (2009).

111. TENN. CODE ANN. § 16-20-106(a), (b) (2009).

112. TENN. CODE ANN. § 16-20-106(c), (d), (f), (g) (2009).

private source,[113] and there is evidence that VOM centers actively fundraise in the community and seek money via private grants.[114] For example, Anderson County's VOM center raised more than $24,000 in a single charity golf tournament, representing about one-third of its total budget.[115]

State funding is allocated by the administrative office of the courts in the Tennessee Judiciary and limited to 50% of total funding for any VOM center with an exception for the first three years of its existence.[116] State VOM grants are awarded based on a center's need,[117] which may fluctuate based on variables like operating costs and the number of participants served.[118]

C. Confidentiality, Immunity, and Choice

Tennessee guarantees that all work product for a VOM or communication made during a VOM is privileged and "not subject to disclosure in any judicial or administrative proceeding[,] unless all parties to the communication waive privilege" or a court or administrative tribunal determines that a participant submitted materials "for the purpose of avoiding discovery of the material in a subsequent proceeding."[119] Threats to another party in VOM are also not considered privileged.[120] VOM centers, as well as their board members, employees, and volunteers, are immune from civil suits based on VOMs, except for "willful or wanton misconduct by its

113. TENN. CODE ANN. § 16-20-106(a) (2009).

114. *Burson is Keynote Speaker*, *supra* note 83, at AC5 (explaining that Tennessee Attorney General Charles W. Burson would be the keynote speaker for the tenth anniversary celebration of, and fundraiser for, Anderson County's VOM center); *see also Bar Foundation Awards*, *supra* note 84, at B3 (noting that the bar foundation provided a $5,000 grant to the Victim Offender Reconciliation Program); *State Championship Team to be Part of Celebration Auction to Benefit Program*, KNOXVILLE NEWS-SENTINEL, Apr. 27, 1997, at AC4, 1997 WLNR 7546933.

115. INTERNAL REVENUE SERV., FORM 990: RETURN OF ORGANIZATION EXEMPT FROM TAX INCOME for Community Mediation Services (2012), http://www.guidestar.org/FinDocuments/2013/581/697/2013-581697179-0a0c2ece-9.pdf (showing that Community Mediation Services of Anderson County had expenses of $71,970 and raised $24,679 via a "golf tournament").

116. TENN. CODE ANN. § 16-20-106(b) (2009).

117. *Id.*

118. TENN. CODE ANN. § 16-20-102(d)(2) (2009).

119. TENN. CODE ANN. § 16-20-103(a) (2009).

120. TENN. CODE ANN. § 16-20-103(b) (2009).

employees or volunteers" or "official acts performed in bad faith by members of its board."[121] Anyone who participates in a VOM in Tennessee is allowed to withdraw from the process at any time without penalty or sanction.[122]

III. THE TEXAS MODEL

Texas law provides for VOM to be conducted in two ways: (1) via county-based courts or nonprofits that handle alternative dispute resolutions for civil cases and less serious criminal offenses[123] and (2) via the Texas Department of Criminal Justice for serious violent offenses.[124] This Part will examine how Texas handles VOM for serious violent offenses to contrast it with Tennessee's model.

Texas began conducting VOM for serious violent offenses in 1993 in the Victim Services Division of the Texas Department of Criminal Justice.[125] Texas started VOM to allow victims of violent crime to meet their offenders "in a secure, safe environment in order to facilitate a healing, recovery process."[126] As of 1997, the Victim Services Division had conducted six VOMs (each focusing on violent crimes), and there were 200 victims on a waiting list to participate in VOM.[127] Since then, the number of VOMs has steadily grown; 43 were conducted in the 2004 fiscal year.[128] In the 2013 fiscal year, 108 VOMs were initiated, 122 cases were assigned to a mediator, and 43 mediations took place.[129]

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121. TENN. CODE ANN. § 16-20-105 (2009).

122. TENN. CODE ANN. § 16-20-104 (2009).

123. TEX. CIV. PRAC. & REM. CODE ANN. §§ 152.003–152.004 (West 2011) (noting that county-based systems may not conduct VOM for crimes committed under TEX. CODE CRIM. PROC. ANN. art. 42.12(3g)(a)(1), which includes murder, aggravated sexual assault, and aggravated robbery, among other things).

124. TEX. CODE CRIM. PROC. ANN. arts. 56.02(a)(12), 56.13 (West 2006).

125. David Doerfler, *Victim Offender Mediation/Dialogue Program Victim Services, Tex. Dept. of Criminal Justice*, VOMA QUARTERLY, Spring 1997, at 1, http://www.voma.org/docs/vomasp97/vomasp97.pdf.

126. *Id.*

127. *Id.* at 3.

128. Drake, *supra* note 41, at 654–55 (noting that there were eight more VOMs in the 2004 fiscal year compared to the year prior).

129. TEX. DEP'T OF CRIMINAL JUSTICE, ANNUAL REVIEW OF 2013, at 44 http://tdcj.state.tx.us/documents/Annual_Review_2013.pdf.

Texas laws have been created and amended to accommodate the growth of VOMs for serious violent offenses.[130] The foundation was laid in 1985 when Texas passed a Crime Victim's Bill of Rights[131] that guarantees, among other things, a "victim, guardian of a victim, or close relative of a deceased victim" the right to be informed of relevant court proceedings,[132] the right to receive law enforcement protection for possible harms arising out of cooperating with prosecutors,[133] and the defendant's right to bail.[134]

In 1997, Texas passed a bill that formally integrated a series of VOM measures into existing state law.[135] The pardons and paroles division of the Texas Department of Criminal Justice now must assist a victim who wishes to participate in VOM, though the division cannot require the defendant to participate or offer any sort of reward for participation.[136] Courts may also facilitate VOM, upon a victim's request, prior to accepting a guilty or nolo contendere plea.[137] The laws "formalize[d]" and "[gave] added stature" to an "important program" that has been in place since 1993.[138]

In 2001, Texas took additional steps to formalize VOM via legislation.[139] The resulting series of statutory revisions helped transform VOM from a state service into a right by adding VOM to the state Crime Victims' Bill of Rights.[140] The new laws also modified the VOM process itself by having the Texas Department of Criminal Justice train outside volunteers to act as mediators for

130. *See infra* notes 132–34.

131. Act of May 23, 1985, ch. 588, 1985 Tex. Gen. Laws 2217–20 (codified at TEX CODE. CRIM. PROC. ANN. arts. 56.01–05).

132. TEX. CODE CRIM. PROC. ANN. art. 56.02(a)(3)(A) (West 2006).

133. TEX. CODE CRIM. PROC. ANN. art. 56.02(a)(1) (West 2006).

134. TEX. CODE CRIM. PROC. ANN. art. 56.02(a)(4) (West 2006).

135. H.R. 156, 75th Leg. (Tex. 1997).

136. TEX. GOV'T CODE ANN. § 508.324 (West 2012) ("The pardons and paroles division may not require the defendant to participate and may not reward the person for participation by modifying conditions of release or the person's level of supervision or by granting any other benefit to the person.").

137. TEX. CODE CRIM. PROC. ANN. art. 26.13(g) (West 2009).

138. H.R. HB 156 Bill Analysis, at 3 (Tex. 1997), http://www.lrl.state.tx.us/scanned/hroBillAnalyses/75-0/HB156.PDF.

139. H.R. 1572, 77th Leg. (Tex. 2001).

140. TEX. CODE CRIM. PROC. ANN. art. 56.02(a)(12) (West 2006); TEX. CODE CRIM. PROC. ANN. art. 26.13 (West 2009); TEX. CODE CRIM. PROC. ANN. art. 56.13 (West 2006).

VOM.[141] Prior to this, the state coordinator of the VOM program within the Texas Department of Criminal Justice conducted VOMs.[142] VOM was also classified as mediation under the state's alternative dispute resolution statute.[143] This designation made VOM confidential under the law.[144]

Texas's model has three main elements: (1) statewide control, (2) funding, and (3) procedural VOM provisions. Next, this Part will examine each element separately to analyze the effectiveness of Texas's model.

A. State Control

Like Tennessee, Texas's integration of VOM into state law codified an existing VOM system.[145] Texas's VOM for severely violent offenses rests entirely within the state's criminal justice system.[146] In fact, Texas was the first state in the country to have a "statewide, in-system, victim-centered mediated dialogue program for victims of violent crime."[147] Statewide control means that the VOM program has "authority and responsibility within all facets of the Texas Department of Criminal Justice, including probation, parole, [s]tate jails, and the world's largest prison system."[148] VOM for serious violent offenses has thrived because of its powerful position within the Texas criminal justice system and the ongoing support it has received.[149] However, a statewide system also presented a problem for Texas because of a lack of adequate staffing in the VOM program's early years apparently contributed to a lengthy VOM waiting list.[150] This issue may explain why legislators

141. TEX. CODE CRIM. PROC. art. 56.13 (West 2006).
142. Doerfler, *supra* note 125, at 3.
143. TEX. CIV. PRAC. & REM. CODE ANN. § 154.023 (West 2011).
144. H.R. HB 1572 Bill Analysis, at 3 (Tex. 1997), http://www.lrl.state.tx.us/scanned/hroBillAnalyses/77-0/HB1572.PDF.
145. *See infra* note 154.
146. Doerfler, *supra* note 125, at 1.
147. Drake, *supra* note 41, at 654.
148. Doerfler, *supra* note 125, at 1.
149. *Id.* (explaining that the victim services division of the Texas Department of Criminal Justice has grown from two staff members when VOM began in 1993 to twenty staff members in 1997).
150. *Id.* at 1, 3 (noting that three years after the VOM program began, the VOM State Coordinator

later allowed volunteers to conduct VOM for serious violent offenses.[151]

B. Funding

Texas did not include any substantial funding source, such as additional taxes or state grants, when it passed a series of reforms to criminal statutes to guarantee VOM for serious violent offenses.[152] This may have been a result of the small number of VOMs being performed at the time[153] or because the program was not expected to cost enough to require a statutory funding system.[154] Offenders who participate in VOM must pay a fee, but that amount only covers part of the cost and is used more as a "future commitment" than a way to pay for VOM.[155] The Texas Department of Criminal Justice has also secured outside grant funding to pay for mediators for VOM[156] and formed partnerships within the community with "benevolent individuals, churches, mosques, synagogues, civic organizations[,] local business[,] and corporations."[157]

C. Confidentiality and Choice

VOM conducted by the Texas Department of Criminal Justice is confidential and any documents or communications relating to the mediation "may not be used as evidence against the participant in any judicial or administrative proceeding."[158] Moreover, any third party who assists in the VOM, such as a mediator, also "may not be

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was the "only mediator working on cases," and there were more than 200 people on the waiting list to participate).

151. TEX. CODE CRIM. PROC. art. 56.13 (West 2006).

152. H.R. 1572, 77th Leg. (Tex. 2001).

153. Drake, *supra* note 41, at 654 (noting that 43 VOMs were conducted in the 2004 fiscal year).

154. Legis. Budget Bd. 77th Sess. (Tex. 2001), http://www.legis.state.tx.us/tlodocs/77R/fiscalnotes/html/HB01572I.htm (explaining that House Bill 1572, which codified numerous VOM procedures in Texas, would have "[n]o significant fiscal implication to units of local government.").

155. Doerfler, *supra* note 125, at 4.

156. TEX. DEP'T OF CRIMINAL JUSTICE, *supra* note 129, at 44, http://tdcj.state.tx.us/documents/Annual_Review_2013.pdf (noting that two grant-funded mediators were hired in fiscal year 2013 to "significantly" reduce the time waiting period for VOM).

157. Doerfler, *supra* note 125, at 4.

158. TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2011).

required to testify in any proceedings relating to or arising out of the matter in dispute."[159] Additionally, VOM is voluntary, no defendant or victim may be forced to participate, and either may withdraw at any time.[160] Unlike Tennessee, Texas has no immunity statute; however, such a statute may not exist because the VOM is a state entity and states already enjoy immunity for their employees and agents.

IV. GEORGIA'S WAY FORWARD

Georgia's criminal justice system has undergone seismic changes in recent years[161] to reduce the number of people sent to prison and lower costs.[162] First came juvenile justice reform, which passed in 2013.[163] The goal of juvenile justice reform was to "protect the community, impose accountability for violations of law, provide treatment and rehabilitation, and equip juvenile offenders with the ability to live responsibly and productively."[164] VOM helped further that goal and became one of the juvenile justice reforms.[165] Under Georgia law, VOM can be used to resolve a juvenile conflict without a criminal trial.[166] VOM provides an ideal resolution because it helps the victim and the offender.[167] Moreover, Georgia has already developed alternative dispute resolution rules that can apply to VOM, providing existing guidelines.[168]

When legislators moved to adult criminal justice reform, they shifted their focus to reintegrating offenders into the community.[169] Those reforms included helping offenders who leave prison find

159. *Id.*
160. TEX. GOV'T CODE ANN. § 508.324 (West 2012).
161. GA. COUNCIL ON CRIMINAL JUSTICE REFORM, *supra* note 24, at 2.
162. *Id.* at 7.
163. O.C.G.A. §§ 15-11-1 to -41 (2012).
164. O.C.G.A.§ 15-11-1 (2012).
165. O.C.G.A. § 15-11-20 (2012).
166. O.C.G.A. § 15-11-23 (2012). A court may stay proceedings once a case has been referred to VOM. *Id.*
167. Umbreit, *supra* note 21, at 225.
168. O.C.G.A. § 15-11-20(b) (2012). Cases referred to VOM must take into consideration Georgia Commission of Dispute Resolution guidelines for mediating cases of domestic or family violence. *Id.*
169. GA. COUNCIL ON CRIMINAL JUSTICE REFORM, *supra* note 24, at 24–28.

housing and get substance abuse treatment, among other things.[170] This recalibration of criminal justice reform left out a key stakeholder: victims. VOM helps offenders reintegrate back into the community and thus lowers recidivism rates.[171] Furthermore, it is difficult to fathom a better way to make a victim comfortable with an offender's re-entry into the community than VOM.[172] It is for this reason that Georgia should integrate VOM into its criminal justice reforms.

The Tennessee VOM model would be most appropriate for Georgia because it provides a foundational system that grassroots supporters can build upon.

A. Local Control is Best

Tennessee's VOM model succeeds because it requires continuing and strong community support.[173] VOM programs in Tennessee succeed because they only exist once community support is established.[174] Under the Tennessee model, the state may provide only limited funding.[175] This means county-based VOM programs need local officials to essentially carry the water, which is exactly what has happened there.[176] As founders and directors of these programs, county-based officials have the biggest stake in the programs' success and thus are more likely to work harder for the programs to thrive.[177] Tennessee's county-based VOM model

170. O.C.G.A. § 42-2-5.2(b) (2014).

171. *See* Nugent, et al., *supra* note 20.

172. Umbreit, *supra* note 23, at 46; *see also* UMBREIT ET AL., *supra* note 55 at 304.

173. TENN. CODE ANN. §§ 16-20-101 to -106 (2009). Tennessee law enables VOM via county-based centers that must get at least half of their funding from local taxes and fees or private fundraising and grants. *Id.*

174. TENN. JUDICIARY, *supra* note 90, at 5 (explaining that judges in Blount County strongly supported the VOM center there); *see also* Rayburn, *supra* note 95, at 1220–21.

175. TENN. CODE ANN. § 16-20-106(b) (2009) (limiting state funds to 50% of total funding except in the first three years of a VOM program's existence).

176. TENN. JUDICIARY, *supra* note 90, at 5.

177. *See Sandy Snyder Recognized for Work with Crime Victims*, *supra* note 78, at AC3 (explaining that Anderson County VOM Executive Director Sandy Snyder was recognized for her VOM work); *see also* Fowler, *supra* note 86, at AC1 (explaining that the Anderson County VOM program won a statewide National Association of Attorneys General award and was a contender for the national version of the same award).

expanded quickly once there was a critical mass of support, growing from 5 programs in 1993[178] to 11 programs in 2001.[179] This expansion led to a significant increase in the number of citizens covered and the number of mediations performed by the VOM centers.[180]

Contrast this with Texas, where mediations were slow to take off despite having the support of the Texas Department of Criminal Justice.[181] Texas's statewide VOM is restricted to serious violent offenses, which surely limits the number of crimes available for mediation.[182] Despite that, there was a huge waiting list of people who wanted to participate in VOM but were unable to do so.[183] Whereas a smaller, county-based VOM center may be more nimble, Texas' larger statewide system appeared slow to respond to demand.[184] For example, state law had to be changed to allow volunteers to conduct VOM as a way to fix an apparent staffing shortage.[185]

County-based programs may also act as incubators for new ideas and provide a model to other counties, similar to a state enacting legislation that is later adopted nationwide.[186] This system fosters expertise that can be exported to other programs.[187] By its very nature, a statewide model is unable to innovate on a smaller scale because a single agency directs a program that necessarily covers a broad, statewide population of varying characteristics.[188] Also, state officials may be more likely to support county-based VOM programs

178. Taylor, *supra* note 76, at 1188.

179. TENN. JUDICIARY, *supra* note 90, at 5.

180. *Id.*

181. Doerfler, *supra* note 125, at 3 (explaining that Texas completed just six VOMs four years after it began conducting VOM for serious violent offenses).

182. *See* TEX. CODE CRIM. PROC. ANN. art. 56.02(A)(12) (West 2006); TEX. CODE CRIM. PROC. ANN. art. 56.13 (West 2006).

183. Doerfler, *supra* note 125, at 3 (explaining that four years after VOM began there were 200 people on a waiting list to participate).

184. *Id.* (noting that three years after VOM began, only one mediator was working on cases).

185. TEX. CODE CRIM. PROC. ANN. art. 56.13 (West 2006).

186. *About CMS*, *supra* note 78 (explaining that Community Mediation Services was the first mediation center in Tennessee and helped other counties establish similar programs).

187. *Sandy Snyder Recognized for Work with Crime Victims*, *supra* note 78, at AC3.

188. TEX. CODE CRIM. PROC. ANN. art. 56.13 (West 2006). The Texas Department of Criminal Justice oversees VOM for all serious violent offenses in that state. *Id.*

because they allow officials to trumpet success without having to actually manage individual programs, which may be time consuming and require expertise they do not have.[189]

Georgia already has a comprehensive statutory scheme that supports a court-connected, county-based ADR system to resolve civil disputes.[190] Georgia law also allows counties to create nonprofit corporations to administer ADR programs.[191] This system is evidence that Georgia already supports local control of ADR processes to adjudicate cases.

B. Funding

Tennessee's three-pronged funding system is the best way to ensure adequate funding for VOM programs. The three prongs—private donations,[192] state support,[193] and local taxes levied via court fees[194]—place the primary funding responsibility on local officials who have the most at stake.[195] In Tennessee, the state may inject a VOM program with startup money but ultimately plays a supporting role in funding the program, because state money is limited to 50% of funding after the first three years.[196] As a result, the primary funding responsibility is placed on local officials.[197]

Local officials are better equipped to understand the needs of their individual programs and to respond quickly to changing circumstances. For example, local VOM centers may, and do, hold fundraisers to meet their budgets.[198] Those same centers could

189. *Burson is Keynote Speaker*, *supra* note 83, at AC5 (explaining that Tennessee state Attorney General Charles W. Burson keynoted a fundraiser for a local VOM center); *see also* TENN. JUDICIARY, *supra* note 90, at 5 (explaining that the Tennessee Judiciary launched a startup project to expand VOM into communities statewide).

190. YARN, *supra* note 32, at 481; O.C.G.A. § 15-23-1 to -12 (2012).

191. O.C.G.A. § 15-23-6(b) (2012).

192. TENN. CODE ANN. § 16-20-106(a) (2009).

193. TENN. CODE ANN. § 16-20-106(a), (b) (2009).

194. TENN. CODE ANN. § 16-20-106(c), (d), (f), (g) (2009).

195. *See* TENN. CODE ANN. § 16-20-106 (2009).

196. TENN. CODE ANN. § 16-20-106(a), (b) (2009).

197. *See id.*

198. *See Burson is Keynote Speaker*, *supra* note 83, at AC5; *see also Bar Foundation Awards $142k to 11 Agencies*, *supra* note 84, at B3; *State Championship Team to be Part of Celebration Auction to Benefit Program*, *supra* note 89, at AC4; INTERNAL REVENUE SERV., *supra* note 115.

increase or decrease their fundraising events depending on their needs and try new and creative methods to raise money.[199] Additionally, Tennessee VOM centers may be staffed with volunteers, saving money for the state.[200] In fact, a VOM center may operate without any paid staff members at all.[201]

The Texas model fails for two main reasons: (1) it lacks a specific funding mechanism for statewide VOM and (2) bureaucratic hurdles that necessarily accompany management by a statewide agency make the organization less nimble. When Texas codified VOM for serious violent offenses, state officials said the program would have "[n]o significant fiscal implication," and thus created no statutory funding scheme.[202] Without a guaranteed revenue stream, the program had trouble adapting when demand outstripped capacity.[203]

The Texas funding model has struggled to handle even a relatively small caseload.[204] Texas tried to fix a staffing shortage for VOM, but it was infeasible as a state agency for the entire department to be staffed by volunteers.[205] When Texas wanted to use volunteers for VOM like Tennessee—presumably to save money—it had to change the state law.[206] Simply put, a smaller, locally funded organization is better equipped to respond to rapidly changing market conditions than a larger bureaucratic organization.

Furthermore, Tennessee's model complements Georgia's desire to reduce the cost of criminal justice by shifting funding responsibility away from the state.[207] Georgia law already allows county-based

199. VOM centers have held gala fundraising dinners. *Burson is Keynote Speaker*, *supra* note 83, at AC5. VOM centers have pursued private grants. *Bar Foundation Awards $142k to 11 Agencies*, *supra* note 84, at B3. VOM centers have held auctions. *State Championship Team to be Part of Celebration Auction to Benefit Program*, *supra* note 89, at AC4. VOM centers have also held golf tournaments. INTERNAL REVENUE SERV., *supra* note 115.

200. TENN. CODE ANN. § 16-20-102(g) (2009).

201. INTERNAL REVENUE SERV., *supra* note 115 (showing that nearly everyone at Community Mediation Services of Anderson County is a volunteer, including its full-time executive director).

202. Legis. Budget. Bd. 77th Sess., *supra* note 154.

203. *See* Doerfler, *supra* note 125, at 3 (explaining that there was a waiting list of 200 people for VOM).

204. *Id.* ("It is humanly impossible for the State Coordinator to work with all these cases.").

205. *Id.*

206. TEX. CODE CRIM. PROC. art. 56.13 (West 2006).

207. *See* GA. COUNCIL ON CRIMINAL JUSTICE REFORM, *supra* note 24 at 7.

ADR programs to receive funding from court fees, which is one prong of the Tennessee funding model.[208] Georgia law allows volunteers to perform ADR.[209]

C. Confidentiality, Immunity and Choice Are Required to Make VOM Successful

Georgia should adopt confidentiality as a necessary component of VOM because it promotes a successful process by ensuring that participating parties have the opportunity to be completely honest with one another.[210] Tennessee law considers VOM confidential and does not allow communications during VOM to be used in any other legal proceedings.[211] Tennessee has a narrow exception to the confidentiality rule for threats to other parties, a policy exception likely meant to ensure the safety of everyone involved in the VOM process.[212] Texas agrees with Tennessee and also considers VOM confidential.[213] Moreover, Georgia also cloaks court-connected ADR processes in confidentiality except when there are "threats of imminent violence," when the mediator believes child abuse has occurred, or when a third person is in danger.[214]

Georgia should make VOM center officials immune from liability for facilitating the VOM process because it encourages participation. Tennessee provides immunity for all VOM center employees and volunteers, except in very limited circumstances.[215] Georgia also provides immunity for ADR neutrals, except for gross negligence

208. O.C.G.A. § 15-23-7 (2012).

209. O.C.G.A. § 15-23-11 (2012) (specifying how to compensate "nonvolunteer" neutrals who perform ADR, suggesting volunteers may perform ADR services in court-connected processes in Georgia).

210. Doerfler, *supra* note 125, at 6.

211. TENN. CODE. ANN. § 16-20-103(a) (2009).

212. TENN. CODE. ANN. § 16-20-103(b) (2009).

213. TEXAS CIV. PRAC. & REM. CODE ANN. § 154.073 (2011).

214. GA. SUP. CT. ALT. DISPUTE RESOLUTION R. VII B. "Any statement made during a court-annexed or court-referred mediation . . . is confidential, not subject to disclosure, may not be disclosed by the neutral or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding." *Id.* at VII A.

215. TENN. CODE ANN. § 16-20-105(c) (2011) (granting immunity except for "[w]illful or wanton misconduct by its employees or volunteers" and "[o]fficial acts performed in bad faith by members of its board").

with malice or "willful disregard of the safety or property of any party to the ADR process."[216]

VOM is not appropriate for every situation, so it is imperative that Georgia adopt a VOM model that makes participation completely voluntary.[217] Tennessee allows any party to withdraw from VOM at any time without penalty.[218] Texas does the same.[219] Similarly, under Georgia's ADR rules, a court may require parties to attend an ADR proceeding, but it may not force the parties to come to an agreement.[220]

CONCLUSION

VOM provides a holistic approach to criminal justice that helps victims and offenders move past a crime that knocked their lives into a tailspin. Victims heal by receiving answers to long-festering questions and confronting their offenders. Moreover, offenders learn the full impact of their crimes. As a result, high satisfaction rates and low recidivism rates show that each side benefits. Georgia is committed to improving the outcomes of its criminal justice system, as shown by a series of major reforms. These reforms followed comprehensive studies of best practices. Numerous studies across the globe prove VOM's benefits.

Tennessee's VOM is a success. Local VOM centers provide administrative and financial stability as well as adaptability of a smaller organization. Statutory funding via local taxes and fees makes local support necessary for the success of VOM centers and provides an incentive for robust community outreach. Additionally, ADR best practices of guaranteed immunity for neutrals, confidentiality of proceedings, and voluntary participation help facilitate the VOM process.

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216. GA. SUP. CT. ALT. DISPUTE RESOLUTION R. VII C.

217. *See* Umbreit, *supra* note 21, at 227.

218. TENN. CODE ANN. § 16-20-104 (2011).

219. TEXAS GOV'T CODE ANN. § 508.324 (West 2012).

220. YARN, *supra* note 32, at 494. "Georgia's ADR Rules provide that orders mandating attendance clearly state that compliance does not require settlement or acceptance of an arbitration award." *Id.*