

**Facing the enemy you
don't want to meet**

**Victim Offender Mediation/
Restorative Justice in
Sweden**

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Mediation is:

a step by step-by-step process
where impartial third parties help
disputants build their own
agreement.



Basic principles from mediation/RJ

Voluntary

Impartial mediator/facilitator

Confidential process



Aim of RJ/Mediation

Recognition

Empowerment

What is Mediation and what is Restorative Justice?

Definition of mediation: Mediation is a step-by-step process where impartial third parties help disputants build their own agreement.

Definition of Restorative Justice (RJ): Restorative justice is seen as a broad approach oriented towards repairing, as far as possible, the harm caused by crime or other transgressions. A core element of restorative justice is active participation by the victim, the offender and possibly other parties (the community).

Mediation/Restorative Justice

Three different questions:

What laws have been broken?	Who has been hurt?
Who did it?	What are their needs?
What do they deserve?	Whose obligations are these?

Mediation/Restorative Justice

Harms and needs

Obligations (to put right)

Engagement (of stakeholders)

Mediation/Restorative Justice

Five essential values:

Peaceful
Voluntary
Confidential
Reconciliatory
Facilitative



VOM/RJ in Sweden

Two paradigms that meet, humanistic and judicial



History of mediation & RJ

"Wise" people

Medieval county laws, Sweden

For example New Zealand, Canada, USA, Africa

Nils Christie "Conflicts as property" 1977

Late 80s - 2000

Council of Europe 1999

EU regulations 2012 and 2018

Fairly well developed in Scandinavia, intermittent in the rest of EU

Mediation and democracy

"The essence of democracy is not offered by referendum, but by conversation and dialogue, negotiation, by mutual respect and understanding, and by the growing sense of the interest of the whole." Hal Koch

The development in Sweden

Late 1980, early 1990 First trial services

1998-1999 Project trials with some services, The Agency for Crime Prevention

2003-2007 The Agency for Crime Prevention had the Governments commission to implement, train and evaluate VOM in Sweden at a national level.

As of 2008:

VOM/RJ governed by The Agency of the Social Services

Obligatory for municipalities to be able to offer VIM to all offenders under the age of 21.

Also offered to offenders under the age of 15.

The willingness to take part in VOM shall be taken into account by the prosecutor.

Now: VOM decreasing all over Sweden because a lack of organisation on a national level.

Mediation model

Introduktion

Guidelines

Set Agenda (What has happened? What are the consequences? How do I feel?)

Explore Issues

Create Options

Build Agreement

Closure

The Swedish Mediation Act 2002:445

**Victim Offender Mediation in Sweden
covers VOM and different forms of
conferencing**

Area of application and objectives of mediation

- 1 § This Act governs victim offender mediation arranged and managed by central government or by municipalities.
- 2 § In the context of the Act, the term victim offender mediation refers to a meeting between a victim of crime and an offender, at which the crime and its consequences are discussed in the presence of a mediator.
- 3 § Victim offender mediation is to take place in a way that serves the interest of both victim and offender. The goal is to reduce the negative consequences of the crime. The objective is for the offender to gain insight into the consequences of the offense for the victim and to provide the victim with the opportunity to work through his or her experience.
- 4 § The mediator should be a competent, honest, just and impartial person.

5 § Victim offender mediation must always be voluntary for both offender and victim.

The offenses must have been reported to the police and the offender must have acknowledged his or her guilt or participation in the criminal act.

Victim offender mediation may only take place if it is appropriate once all the circumstances have been taken into consideration. Where the offender is under twelve years of age, victim offender mediation may only take place in exceptional circumstances.

6 § Victim offender mediation should be conducted promptly.

If victim offender mediation is intended to take place prior to the conclusion of the criminal investigation, the mediator is to consult with the senior investigating officer. If victim offender mediation is intended to take place subsequent to this point, but prior to a court sentence going into the effect, the mediator is to consult with the prosecutor.

7 § The mediator is to inform both the offender and the victim as to what victim offender mediation involves and to otherwise prepare them sufficiently.

8 § The legal guardians of both offender and victim are to be given the opportunity to attend the mediation meeting, unless there are special reason as to why they should not attend. Other persons may also be given the opportunity to attend the mediation meeting if it serves the purpose of mediation and is otherwise deemed appropriate.

9 § At the mediation meeting, the victim is to be given ample opportunity to describe his or her experience of the crime and its consequences. The offender is to be given ample opportunity to describe why the crime was committed and to give his/her view of his/her situation. The victim may present a request for reparation and the offender may present an apology for his/her actions.

10 § The mediator may facilitate an agreement on reparations only if it is apparent that the content of this agreement is not unreasonable or excessive.

If it is found that the offender has not fulfilled an agreement made between the two parties, the mediator is to ensure that the prosecutor is informed immediately, unless it is deemed unnecessary.



Stages in Restorative Justice

1. The parties tell what happened
2. Apology
3. Reparations
4. Agreement

From reported crime to mediation

Police asks: Can the mediation service contact you?

If yes: Fills in form and sends to Social services and the Mediation service.

If no: Fills in form and sends to Social services. Social services puts the same question to offender. If yes sends to mediation service.

Mediations service contacts offender and has a meeting. If regretful and wanting to put things to right, mediator sends a letter to prosecutor informing them about the offenders attitude and willingness to put things right.

Mediator contacts victim and if they are willing meet with them.

If parties want to meet, they do. If they prepare an agreement during mediation, this is the parties responsibility to take to court, if mediation is prior to the courtheating.

If the probation is involved, they ask if the mediation service can get in contact. Same with prisons, victim organizations, offender and victim themselves, prosecutor or judge.



Organisation

Most mediation services are part of the Social services.

Both professional and voluntary mediators.

No national organisation at the moment.

Its the municipalities responsibility to make sure all offenders under the age of 21 are offered mediation.

Dialogue & Mediation after serious crime

A project aimed at adults, run between 2008-2012 by
Eleonore Lind & Lennart Nordin

Hosted by the Victim Support Association in Göteborg

Initially victim initiated, but later more offender
initiated.

Background and development.

Some findings on Mediators Style, RJ (VOM)

1. The competent mediation style not guided by values
2. The objective and agreement oriented mediation style with humanistic values
3. The fair and juste mediation style where morals and reconciliation is in focus
4. The soft mediation style where the human aspects are in focus

Den svenska medlingsmodellen, till nytta för brottsoffret. M. Jacobsson, L. Wahlin, T. Andersson 2013 ISBN: 978-91-40-68331-1

1. The competent mediation style not guided by values

Mediators describe themselves as impartial, attentive, neutral, directive, guiding, supportive, empathic, fair and juste, clear and competent in their self evaluation. But not righteous or virtuous.

It is of some importans to the mediators that the understanding between parties increase and that the offender gains more insight into the consequences of the crime and impact on victim. And that the victims feelings of shame decreases. Less important that the victims fear decreases.

This is the least clear style, but can be heard clearly in some recordings. A more pragmatic then ideological attitude.

2. The objective and agreement oriented mediation style with humanistic values

Mediators with this mediation style see themselves as impartial and in some instances neutral in their latest mediations. What is important in mediation is to increase the understanding between the parties, that the victim has seen the face of the offender and that the offender gains increased insight and that his/hers feelings of shame diminishes. Finally that a agreement is done between the parties.

This style is clear. A objective, structured, but humanistic appearance.

Integrated Adult ego-state

3. The fair and juste mediation style where morals and reconciliation is in focus

The mediator in this category describe themselves as neutral and fair and partly attentive. They think it is important that the parties reach an agreement, the offender apologizes, the victim accepts the apology and reconciliation between the parties. It is of **lesser** importance that the offender feels shame and guilt and that these feelings decrease, that the victim gets restitution/reparation or can or can get on with his/her life.

This style can be heard clearly. They are specifically concerned about being fair and juste with some moral and educative comments.

In TA language, shows a lot of Parent ego-state.

4. The soft mediation style where the human aspects are in focus

The mediator with this style thinks they are attentive, and empathic but not very guiding nor directorial. They think that increased understanding between parties is important, that the victim gets answers to his/her questions and that the feelings of fear, shame and guilt decreases. That the feelings of guilt decreases for the offender and both can get on with their lives.

This is clear in many recordings, but more as a part of rather than a pure way of mediating. They are attentive and listens actively.

Integrated Adult showing a lot of Child ego-state.

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