

Criminal Mediation

- Victim Offender Mediation -



Supreme Prosecutors
Office of Korea



1. VICTIM-OFFENDER MEDIATION - INTRODUCTION
2. HISTORY OF CRIMINAL MEDIATION IN KOREA
3. OVERVIEW OF CRIMINAL MEDIATION
4. BEST PRACTICE
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1. Victim Offender Mediation (VOM)

A. Term

- “Victim Offender Mediation(VOM)” is a process that provides victims with the opportunity to meet their offender in a safe and structured setting, and engage in a mediated discussion of the crime.
- VOM is a part of Restorative Justice(RJ).
- Forms of RJ : Mediation Model, Conference Model
- VOM can be categorized into the mediation model.

2. History and Background of Criminal Mediation in Korea

A. Before adopting the Criminal Mediation

- Crime Victim Support Center has carried out the Mediation process
- Conditional non-booking for juveniles who voluntarily reported their crimes to the police on their own

B. Background of adopting the Criminal Mediation

- Permanent settlement of disputes
- Direct restitution of damages
- Reducing the burden on the justice system
- Reconciliation between the offender and the victim

2. History of Criminal Mediation in Korea

B. Background of adopting the Criminal Mediation

- Special process is needed for early settlement of disputes at the Prosecution.
 - In 2016, accusation accounts for 20%(410K cases) among all criminal cases(2,020K).
- Victims of property crimes such as fraud, embezzlement and negligence of duty want to restore quickly from damages through accusation.
- The structure of criminal mediation is similar to that of ADR(Alternative Dispute Resolution).

2. History of Criminal Mediation in Korea

C. Adoption of the Criminal Mediation

- 2006. Criminal Mediation was adopted as a provisional operation
- 2007. Implementation by the Prosecutors' Office was throughout the nation
- 2009. Mediation Committee was subordinated to the Prosecutors' Office
- 2010. "Crime Victim Protection Act" was revised to support the system
- 2012. Adoption of "Suspension of prosecution with time limit" in Mediation

2. History of Criminal Mediation in Korea

C. Adoption of the Criminal Mediation

- 2014. The Supreme Prosecutors' Office implemented "Comprehensive measures to activate criminal mediation."
 - For the parties' convenience, on-site mediation, mediation at night or on holidays, mediation on the same day, etc.
- 2015. Help recovery from damages & settlement of civil-criminal disputes through notorization
- 2017. An early mediation system on accusation cases
 - For fast recovery from damages and settlement of disputes, criminal mediation is preferentially implemented in accusation cases(On the premise of the party's consent)

3. Overview of Criminal Mediation

A. Crimes which can be subject to Criminal Mediation

- Fraud, Embezzlement, Defamation, Trespassing, Infringement on intellectual property, overdue wages, defamation, not serious battery etc.
- Other cases which the prosecutor may find appropriate for Criminal Mediation
- Criminal Mediation does not limit its scope to cases which are commenced by the accusation of the victim.
- It can be commenced by the decision of the prosecutor without the accusation.

3. Overview of Criminal Mediation

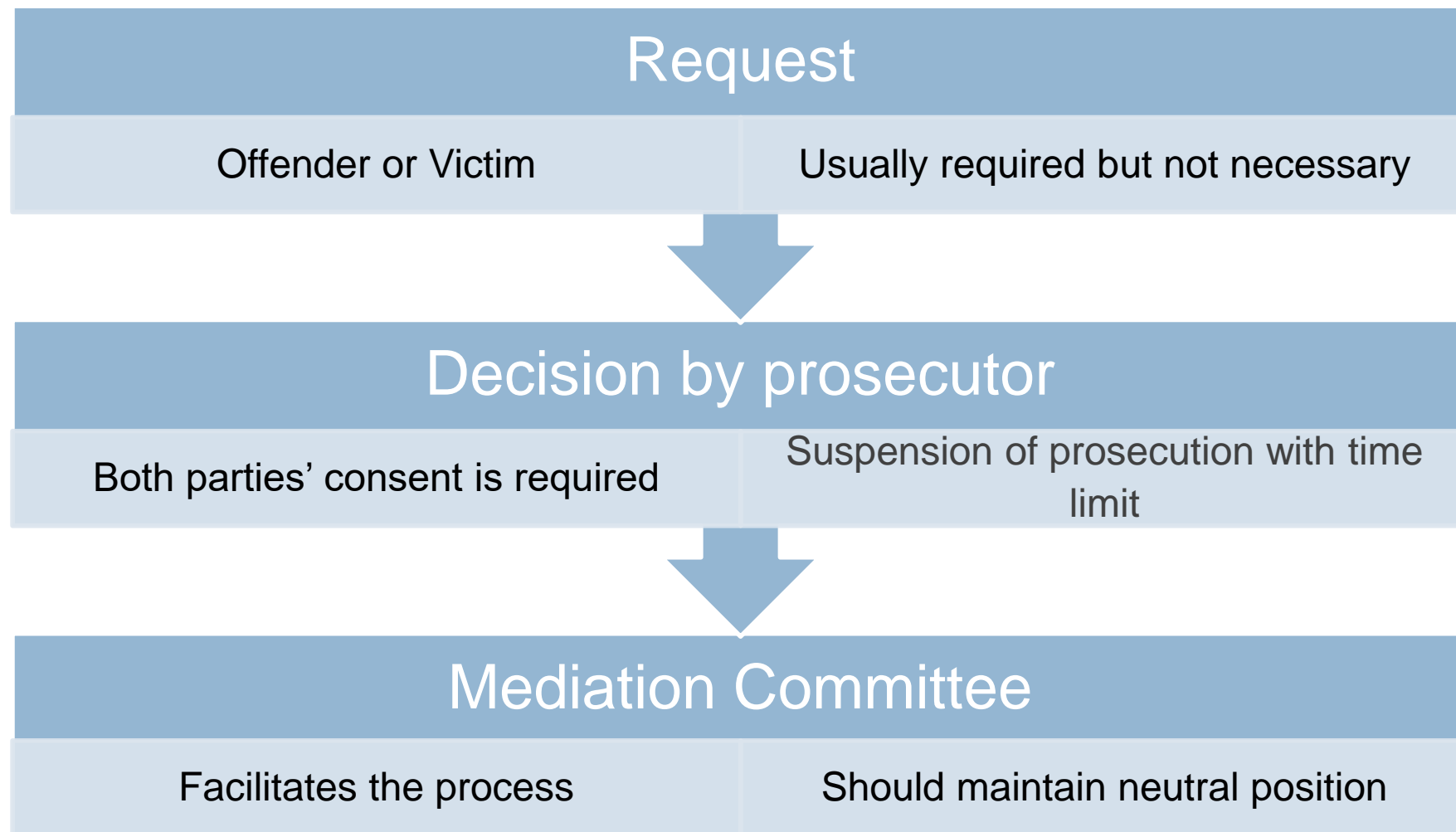
A. Crimes which can be subject to Criminal Mediation

- The following cases **cannot** be subject to the procedure:
 - Cases where there is a risk or concern that the criminal might flee or destroy the evidence;
 - Cases where the statute of limitation has run its course; and
 - Cases where it is evident that the act does not consist of a crime.



3. Overview of Criminal Mediation

B. Procedure



3. Overview of Criminal Mediation

B. Procedure

- Request / Decision by prosecutor
 - Under the guidelines, prosecutors decide on whether to refer to criminal mediation through two ways: 1. parties apply for criminal mediation in advance; 2. if parties agree on criminal mediation after they are explained about criminal mediation.
 - In practice, a prosecutor classifies cases for criminal mediation after they are assigned to the prosecutor. The prosecutor confirms it upon the parties' consent and then refer to criminal mediation. No. 2 is mainly used.

3. Overview of Criminal Mediation

B. Procedure

- Refer to the Criminal Mediation Committee
 - The chief member of the Committee appoints 2 or 3 members to consist of the respective mediation committee by case.
 - The chief member of the Committee sends the mediation application form, written accusation or copy of the police's opinion to the members in charge.
 - In practice, criminal investigators on behalf of the Chief send the mediation application form and the relevant documents to the committee members.

3. Overview of Criminal Mediation

B. Procedure

- Summons of parties
 - When the date on criminal mediation is set, the victim and offender are to be notified and summoned to appear on the assigned date.
 - In practice, criminal investigators usually notify victim and offender of the summon, but sometimes members of the Committee sometimes do notify them.
 - In case that the party is in a long distance and hard to appear, long-distance mediation method such as telephone is used.

3. Overview of Criminal Mediation

B. Procedure

- Mediation date
 - Relevant parties appear on the date
 - Mediators & VOM are explained
 - The parties propose their opinions
 - Mediation on the opinions are implemented
 - Settlement between the parties is reached
 - The mediation proceeds without the intervention of a prosecutor and is controlled by mediators and parties.
 - Criminal mediation procedures take place usually in Special rooms in the prosecutors' building

3. Overview of Criminal Mediation

C. Case Settled

- If the settlement is made, it will be publicly recorded.
- The content of the settlement and the course of action of the settlement will be recorded.
- Then the case will be sent to the prosecutor.
- The prosecutor will dispose the case accordingly :
Dismiss the case / Proceed the prosecution with reduced charges



3. Overview of Criminal Mediation

C. Case Settled

- The contents of the settlement
 - A heartfelt apology by the criminal
 - A promise by the criminal to make restitution/compensation to the victim
 - A voluntary dismissal of the civil suit by the victim in exchange for the restitution
 - An agreement not to make further disputes regarding the matter – dropping the accusation

3. Overview of Criminal Mediation

D. Case not Settled

- The case will be sent to the prosecutor.
- A prosecutor will handle the case in the ordinary and usual manner
 - Indictment, Dismissal, etc.

3. Overview of Criminal Mediation

E. Mediation Committee

- Subordinated to District Prosecutors' Office(DPO)
- At least 2 Mediators
- Mediators
 - Appointed by Chief prosecutor of relevant District Prosecutors' Office(or relevant branch of DPO)
 - 2-year term, reappointment is possible
 - Respected people in the field of law, education, medicine, entrepreneur, religion or press, counselors, psychologists, labor consultant, accountant, etc.
 - Disqualified : Criminal, Conflicts of interests, Incompetency, etc.

3. Overview of Criminal Mediation

F. Specialized Training system

- SPO provides basic training for the Criminal Mediation Committee members
 - They give basic theory on criminal mediation system, criminal justice procedure, psychology of the parties, etc.
 - Mediation technique-focused training such as mediation role play, conflict analysis, communication skills, etc.
- DPOs train the members on their own through workshops and meetings, etc.
- CMC shares cases and mediation techniques through its seminars and meetings, etc.

4. Best Practices

Case 1 : Resolving noise complaint in an apartment

- Suspects A & B lived directly above victim C in an apartment. As victim C fought over inter-floor noise, C made bad words to and attacked A's daughter. In the process, both A&B pulled C's hair and hit C with hands and feet.
- Apartment is the most popular dwelling type in Korea. However, such dwellings are vulnerable to noise complaints, leading to criminal cases due to physical attack.



4. Best Practices

Case 1 : Resolving noise complaint in apartment

- Busan DPO assigned 2 mediators who had resolved similar inter-floor noise complaints a lot.
- For 4 hours, the mediators had one-on-one meetings with the suspects and victim, respectively, and in group meetings.
- In particular, the mediators explained to them about the outcomes of similar cases and benefits including recovered neighbor relationships through criminal mediation.
- As a result, the victim recovered from his emotional loss and accepted the apology by the suspects. They understood one another and came to a settlement.

4. Best Practices

Case 2 : Eradicating the cause of traffic accident with local community

- As Suspect A crossed the central line of a road to turn left, A crashed into B's baggage truck, injuring B and fellow passengers C & D. This resulted in required 10 weeks of further medical treatments for the victims.
- The prosecutor in charge submitted the case to Criminal Mediation Committee with the parties' consents.
- The victims talked about the damages while the suspect blamed the accident of on-the-road signs saying that they led to a disturbance to his eyesight while driving.

4. Best Practices

Case 2 : Eradicating the cause of traffic accident with local community

- After the case was submitted, mediators identified the cause of the accident at the site, which turned out to be the milepost.
- Mediators helped the victim understand the problem at the accident site while letting the suspect compensate the victim. Both reached a settlement.
- Besides, by proposing translocation of the milepost to City hall and a police station, the mediators eliminated the future probable cause of accident in the community.



Before
(시야확보 불가)



After
(시야확보 가능)

5. The Present and Future of Criminal Mediation

A. The Number of Cases Submitted to Criminal Mediation

- With the growing recognition of the effectiveness of Criminal Mediation, **5.5%** of total criminal cases were submitted to Mediation and the numbers continue to rise.
- As of **2016**, a total of **111,012** cases were submitted to mediation and settlement rates have risen to **60.0%** from 49.7% in 2011.
- Since Jan. 2015 when criminal mediation notarization was implemented and the notarization fee was subsidized, mediators helped notarize what parties agree on the compensation if they want. And the notarization fee is subsidized through a special government budget fund for victims.

B. Recognition of Positive Effects

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- According to research outcome of 2015, into 2014 approximately \$ 2.4 mil. was invested in criminal mediation and more than \$110 mil. was estimated as being recovered from criminal damages.
 - With \$44 per case on average, apporixmately more than \$2,000 was recovered from damages.
 - There is a 45-fold effect compared to input
 - The effectiveness of input is big enough to see the recovery from criminal damages.

B. Recognition of Positive Effects

- According to research outcome of 2015, criminal mediation led to much faster resolution of disputes compared to the criminal justice system.
 - In financial damage cases, criminal mediation required approximately 35.4 days vs. formal trials which required 208.7 days to resolve the case (Summary indictment trials required 122 days)
 - In physical damage cases, criminal mediation required 20.1 days vs. formal trials required 197.8 days to resolve the case (Summary indictment trials required 92.2 days)
 - The positive effect of criminal mediation is that the parties can be free from criminal justice procedure at an early stage.

B. The Positive Effects of Criminal Mediation

- Helps both parties "bury the hatchet"
 - A more fundamental solution to the dispute
- The course of settlement is voluntary and self-regulated
 - Settlement terms are more likely to be performed
- Higher victim satisfaction : shifting the focus of criminal procedure from perpetrator punishment to victim compensation. (i.e. not serious battery, defamation, embezzlement, fraud)
- Reduction of burden for the prosecution offices and courts.

C. Improvement Plans

- Ensuring the neutrality of mediators
- Appointing mediators with expertise capable of mediating complicated issues efficiently
- Making sure the parties adhere the agreement
 - By vesting executory power in the mediation result (making it possible to enforce the agreement without additional civil litigation)

5. The Present and Future of Criminal Mediation

D. In Connection with the IAP

- The UN has already adopted an “UN Convention on Justice and Support for Victims of Crimes and Abuse of Power”
- Keep up with the trend – Core of criminal justice has shifted from Retribution to Restorative Justice
- Share experience through IAP forum - Restorative Justice
- Distribute the results - similar case : Asset Recovery Handbook

A photograph of a bright blue sky filled with large, white, fluffy cumulus clouds. The clouds are scattered across the frame, with some appearing more prominent than others. The overall scene is bright and clear.

Thank You