

## DIVERSION 101: THE ROLE OF VICTIMS AND VICTIM SERVICE PROVIDERS IN ESTABLISHING DIVERSION OPTIONS

In this series, we have examined what diversion is and what it is not, the four primary purposes of diversion, whether diversion contributes to public safety, how the “what works” research can be used to determine who should be considered for diversion, the key justice system decision points at which diversion can take place, the eight principles that should guide diversionary efforts, and the research pertinent to diversion. This article discusses the participation of victims and victim service providers in diversionary options.

Just as it is of principal importance to hear the voices of victims in the sentencing of cases, so too is it on the front end of the justice system, when the objective is to divert individuals away from either the criminal justice system altogether or from traditional case processing (wherein sentencing and victim impact considerations typically take place). Without express attention paid to victims’ rights and the welfare of victims, diversionary efforts run the risk of circumventing these very crucial interests.

### The Evolving Role of Victims in Criminal Justice

Victim service providers (VSPs)<sup>1</sup> are relatively new stakeholders in the criminal justice process (Office for Victims of Crime, 2018). In the late 1960s and early 1970s, VSPs worked outside the criminal justice system to advocate for justice and safety for crime victims. As part of early, grassroots domestic and sexual violence movements, they challenged the criminal justice system and lawmakers to ensure better outcomes for victims in individual cases and fought for changes to the law that would recognize victims’ rights and safety concerns. Those efforts resulted in, among others, President Ronald Reagan proclaiming the first National Crime Victims’ Rights Week to honor victims and their families (1981); the 1984 Victims of Crime Act, which established the Crime Victims Fund to support state victim compensation and local victim assistance programs;

the 1994 Violence Against Women Act; and, in the 1980s and 1990s, the establishment of several federal agencies serving victims and potential victims (the Office for Victims of Crime and the Office on Violence Against Women).

During this same period, there was an increase in both civil litigation on behalf of victims and attention to crime victims’ legislative rights. In 2004, Congress passed a federal law creating a victims’ bill of rights.<sup>2</sup> In 2008, California enacted Marsy’s Law, which stipulates 17 victims’ rights, including, among others, the right to: fairness and respect; protection from the defendant; victim safety considerations when setting bail and release conditions; prevention of disclosure of confidential information; an opportunity to provide information to the probation department and to receive pre-sentence reports; information about conviction, sentence, incarceration, release, and escape; restitution; notice of parole procedures and release on parole; and safety. Since the passage of Marsy’s Law in California, other states have followed suit.

As policy development in criminal justice progresses—and systems become more purposeful and collaborative—the role of victims and their service providers continues to evolve. Although perhaps not yet common practice, the role of VSPs in crafting diversion programs, and the role of victims in their administration, is critical.

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## The Role of Victim Service Providers in the Design of Diversion Programs and Services

At the policy level, it is important that VSPs have a seat, from the very start, at the program and policy design table. In some jurisdictions, this means identifying one or more VSPs from the prosecutor's office, although, ideally, community-based VSPs will also be included. While governmental and non-governmental VSPs often work very closely together, non-governmental VSPs may work more actively with members of marginalized communities that have a unique perspective on the justice system.

VSPs should be centrally involved in the process of understanding the different purposes of diversion; the decision point opportunities at which diversionary programs and services might be implemented; selection criteria and requirements for existing or planned diversion programs—including, in particular, the role of primary victims<sup>3</sup> in determining the appropriateness of an individual for placement in a diversion program, and the associated programmatic requirements; and the collection and evaluation of outcome data. Importantly, VSPs will bring to these discussions a fulsome understanding of federal and state statutory obligations related to victims' rights.

## The Role of Victim Service Providers and Victims in Individual Cases

Once diversion programs are implemented, VSPs—and primary (and perhaps secondary)<sup>4</sup> victims of crime—will have a significant, ongoing role to play in individual cases. Ideally, the following will be true:

1. Primary victims will be assigned a VSP to guide and support them throughout the processing of the case.
2. Primary victims will be consulted prior to a decision to divert. This may pose timing challenges for law enforcement officers who identify a circumstance under which diversion from the justice system altogether is appropriate, and for prosecutors who have limited time to file charges but believe pre-charge diversion may be appropriate. The ways in which victim consultation might occur in these instances is an important design consideration.
3. System actors will understand that the very act of considering victim input in diversion decisions—even though that input is not of a decision-making nature—provides an important sense of procedural fairness that supports victim wellness. In this way, the justice system honors victims by giving them opportunities to express what they want and by hearing what they know about the crime and the perpetrator.
4. Because it may not be inherently obvious why a diversion option is under consideration, VSPs, often working collaboratively with prosecutors, will provide information to victims about the benefits of diversion. These benefits may include, among others, acceptance of responsibility on the part of the perpetrator, more rapid placement in risk-reducing services, expedited restitution payments or community service, and other restorative justice benefits (more information about the concept of restorative justice can be found below).
5. Victims who know their perpetrators will be provided an opportunity to share information that may contribute to the formulation of a diversionary agreement. These insights may result in, among others, contact and/or geographic restrictions, information about specific treatment needs or history, and/or the identification of behavioral indicators that are important to monitor closely.
6. Victims should be provided with an opportunity to work with a VSP to document the harms they experienced from the offense—monetary and otherwise. Restitution worksheets and victim impact statements will ideally be completed prior to the development of a diversion agreement so that these matters can be fully considered in the formulation of diversion program requirements.
7. To adhere to the spirit, if not the strict requirements, of statutory guidelines, victims will be presented with options around their information rights. Victims might be presented with a checklist of opportunities for involvement in the case, including notification of court dates, alerts of infractions, opportunities to observe or participate in case conferences, and notifications of an individual's completion or non-completion of diversion. Victims may also be offered restorative justice services, if available. The opportunity to “opt out” of further contact should also be provided.

8. Decisions to divert, and the rationale for the decisions, should be conveyed to the victims and documented.<sup>5</sup> This provides a level of accountability for and to victims, perpetrators, and justice system decision-makers. Victims who “opt in” to ongoing communication are typically provided copies of these written diversion agreements.

## Restorative Justice

Restorative justice, broadly speaking, is a problem-solving approach that emphasizes the impact of crime on victims and communities and, in so doing, seeks to repair the harm done by bringing together those who are most affected by a crime and those who admit wrongdoing. In a process known as restorative justice conferencing, victims, family members, and communities have the opportunity to meet face to face with perpetrators to understand the circumstances of the crime, express their feelings, ask questions, and have a voice in the resolution of the case (Wachtel, 2016). Conferencing embraces a number of approaches, the most common among them being victim–offender mediation; family group counseling, wherein family members of both victims and offenders participate in the remediation process; and peacemaking circles which serve to proactively build relationships or reactively respond to conflicts in the community (Umbreit, Coates, & Vos, 2002; Wachtel, 2016).<sup>6</sup>

Victims choose to participate in conferencing for a variety of reasons, most often to learn more about the conditions that led to the crime; share with the perpetrator the harm they experienced; receive a formal apology; contribute to the process of holding the perpetrator accountable; discuss restorative needs (restitution, community services); and/or contribute to the individual’s acceptance of responsibility and engagement in a process of change (Strang et al., 2006; Umbreit et al., 2002).

Meta-analyses and randomized experimental studies have found that, as compared to traditional case processing, restorative conferencing markedly increases victim satisfaction with the justice process (Latimer, Dowden, & Muise, 2005; Strang et al., 2006; Strang, Sherman, Mayo-Wilson, Woods, & Ariel, 2013); supports emotional restoration (i.e., greater sense of safety, less anger toward the perpetrator, increased likelihood of receiving and interpreting an apology as sincere; Shapland et al., 2007; Strang et al., 2006; Strang et al., 2013); improves compliance with restitution (Latimer et al., 2005); and reduces repeat offending (Sherman, Strang, Mayo-Wilson, Woods, & Ariel, 2014; Strang et al., 2013).

## References

The following resources were cited in this paper. For resources pertinent to the entire series, see the last article in the series, *Additional Diversion Resources*.

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Wachtel, T. (2016). *Defining restorative*. Retrieved from International Institute for Restorative Practices: <https://www.iirp.edu/defining-restorative/restorative-conference>

## Notes

<sup>1</sup> Differences regarding a preferred title exist among those providing assistance to victims. Some prefer “advocate” to “victim service provider,” as a title that more appropriately portrays their active engagement with and on behalf of the victim (versus a less active role of “service provider”). For purposes of this article, we have elected to use the term “victim service provider” to refer to all individuals serving in a victim assistance/advocacy role.

<sup>2</sup> Section 3771 of Title 18 of the U.S. Code, Crimes and Criminal Procedure.

<sup>3</sup> “Primary victims” are those who have been directly harmed by a crime committed against them (Office for Victims of Crime, 2018).

<sup>4</sup> “Secondary victims” are those who are indirectly impacted either as a result of witnessing a crime or due to their relationship with the primary victim (e.g., family members, friends; Office for Victims of Crime, 2018).

<sup>5</sup> Some state statutes require prosecutors (rather than VSPs) to meet directly with victims to discuss diversion as a potential resolution for a case.

<sup>6</sup> Restorative justice programs may also involve victim impact panels. Victims—who are not associated in any way with the individuals in attendance—have the opportunity to speak about the impact of crime on their lives and on the lives of their families and friends. Attendees thus have the opportunity to hear first-hand from victims and learn about how their behavior may have affected the victim(s) in their case. More information can be found at the Centre for Justice & Reconciliation website: <http://restorativejustice.org/restorative-justice/rj-in-the-criminal-justice-system/victim-support-and-restorative-justice/victim-impact-panels/#sthash.cffC7o5d.dpbs>.

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## About This Article Series

This is the eighth in a series of papers that examine pre-conviction diversion options, provide clarity around their purposes, propose guiding principles, and explore their public safety and other benefits. The articles, which build upon one another, honor the foundational work that has been done by others and continue to advance our thinking and work in this area.

### Previous Articles in This Series

*What Is Diversion?*

*The Purposes of Diversion*

*Do Diversion Options Put Public Safety at Risk?*

*Using the “What Works” Research to Determine Who Should Be Considered for Diversion*

*Diversion Opportunities at Key Justice System Decision Points*

*The Guiding Principles of Diversion*

*A Synopsis of Pertinent Research*

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