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"Perhaps one of the greatest harms the criminal justice system has done is persuaded us that we do not know how to solve the problems that arise between and amongst us." – Danielle Sered

Chittenden County State's Attorney's Office (CCSAO) Referrals to Restorative Justice Programs: Policy Overview & Summary Sheet

In CCSAO's Bill of Values, value IV affirms that "we divert cases pre-charge *and* post-charge, whenever treatment, healing, accountability, and safety for all involved parties can be accomplished outside of the court system." This summary sheet outlines what this value looks like in practice: what programs and pathways are available for referral and diversion, the criteria and considerations for referrals, and when and how prosecutors should consider a restorative process in lieu of or in parallel with a criminal case.

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Preliminary Considerations with Restorative Justice (RJ)

- RJ is not a one-size-fits-all: restorative processes embrace a “more context- and stakeholder-dependent view” of a case and how to respond to a crime.¹ Therefore, RJ can take on various forms and intercept at different points in the life of a case.
- RJ is more effective and beneficial when it is used in lieu of a conviction: First, it avoids many adverse collateral consequences to the affected parties and depletion of resources that arise from the court system.² Second, victims “consistently report higher satisfaction with restorative justice programs than traditional prosecutions” and, when given the option, tend to opt for a restorative process.³ Third, although RJ program success rates may vary, restorative processes are more effective at reducing recidivism than incarceration.⁴
 - Even in instances where a prosecutor concludes that a conviction is still necessary, an RJ process can still be valuable and provide healing for the involved parties if they show willingness and interest in participating (as RJ should never be a coerced or forced process).
- A victim may not know that RJ is even an option: Although victims are not a monolithic group, and might feel conflicted about what they want, Daniel Sered notes survivors express common themes: they want answers, they want their voices heard, they want a sense of control relative to what happened to them, and last, they don’t want the person to hurt them or anyone else ever again.⁵ A restorative process can be better equipped to address these needs than the legal process is. Therefore, consider suggesting a restorative process if a victim is:
 - Seeking answers for “why” this crime happened to them, or other questions that only the person charged can answer.
 - Wanting to express to the person charged how the crime has impacted them.
 - Indicating they want to talk to the person charged (“I want to tell them ____”).
 - Wanting to know that the crime won’t happen again.
 - Expressing curiosity about the person charged (wondering about their family, their story, etc).

RJ Programs in Chittenden County: A Brief Overview

- **Success Rate**: Every town in Chittenden County is covered by one of the four Community Justice Centers (CJC): Burlington, South Burlington, Essex, and Williston. The CJCs report a high success rate for program completion. For example, Essex CJC reported this year that:

¹ Kate E. Bloch, *Virtual Reality: Prospective Catalyst for Restorative Justice*, 58 Am. Crim. L. Rev. 285, 294 (2021).

² Miriam Krinsky & Taylor Phares, *Accountability and Repair: The Prosecutor's Case for Restorative Justice*, 64 N.Y.L. Sch. L. Rev. 31, 49 (2020) (Collateral consequences include “loss of employment, government assistance, housing, and parental rights, and saves governments money”).

³ Danielle Sered, *Accounting for Violence: [How to Increase Safety and Break our Failed Reliance on Mass Incarceration](#)*, Vera Inst. of Just. 16 (2017) (“[a]mong victims of crime in the United States who have taken part in restorative processes, 80 to 90 percent have reported being satisfied with the process and its results”); *See also* Miriam Krinsky & Liz Komar, “*Victims' Rights*” and *Diversion: Furthering the Interests of Crime Survivors and the Community*, 74 SMU L. Rev. 527, 551 (2021) (“90% of survivors of serious felonies choose the Common Justice approach over the traditional criminal legal process, and as of 2018, Common Justice had a remarkable recidivism rate of only 6%”).

⁴ *Supra* note 1 at 287–299 (comparing the 83% recidivism rate of formerly incarcerated persons in the US with several meta-analyses on restorative justice programs that report notable decreases in recidivism rates); *See also*, Hannah Goodman, *Anti-Carceral Futures: A Comparative Perspective of Restorative and Transformative Justice Practices in the United States and New Zealand*, 44 Fordham Int'l L.J. 1215, 1243 (2021) (noting that after New Zealand broadened availability of restorative justice conferences, individuals who participated “had a thirty-two percent lower imprisonment rate within two years of their sentence”).

⁵ *Supra* note 3 (Sered) at 12–13.

- “Of the cases that entered into a restorative process and completed during the fiscal year, 90% successfully completed (85% in FY22) meaning the responsible party took accountability for their actions, had a discussion on the impact of the incident, and completed a plan for repair and skill building.”⁶
- **Community Justice Center (CJC) programs:** CCSAO can refer a case to a CJC at any point during the life of a case (as an alternative to incarceration or with/without/after probation). Although the CJs across Chittenden County may vary slightly on the programs and resources offered, their programming generally includes:
 - **Restorative Panels:** Panels are made up of teams of 3-5 trained volunteers who meet with parties, to address the harm caused by the crime. The goal is to hold the responsible party accountable for the effects of their actions on others, and accountability will look differently depending on the case. A victim liaison makes every attempt to contact the impacted parties to explain the process and support their participation to whatever extent they are comfortable. The panel discusses the circumstances and impact of the crime, ways the responsible party can avoid this conduct in the future, and creates an agreement of what the person charged must do to repair the harm. While agreements are individualized to each participant, some may include restitution, apology letters, referrals to other community support agencies, or other actions.⁷
 - **Restorative Circles and Conferences:** serve similar purposes as Restorative Panels, but provide a more versatile approach that can also be used proactively to develop relationships in addition to responding to conflict, especially when multiple parties were involved in a common situation.⁸
 - **Victim Support & Services:** CJs provide “parallel justice” (providing information, resources, and support to people who experienced crime), victim liaisons to support an affected party throughout a restorative process, and can facilitate victim-offender dialogues if that is of interest to the involved parties.⁹
 - **Victim-Offender Dialogue:** a process in which the victim of a crime and the person charged meet face-to face with a skilled facilitator to discuss what happened and repair (to the extent possible) the harm caused by the offense.¹⁰
 - **Education Programs:** ranging from [Youth Substance Awareness and Safety Program](#) (YSASP), [Safe Driving Program](#), Life Skill Classes, Internet Safety, Bullying, and more.
- **AGO’s Diversion Program:** Although Tamarack and Adult Diversion are categorized separately, these programs are collaborative under Burlington’s CJC and can be transferred amongst staff if needed.
 - **Adult Diversion:** undergoes a similar process as a restorative panel described above. However, people are only eligible for adult diversion if they have no or little criminal history.
 - **Tamarack:** assists adults charged with a crime, *regardless of their criminal history*, who have a substance use or mental health treatment need. “Tamarack Coordinators quickly connect participants with substance use, mental health, and other community-based support services, with the aim of improving the person's health and reducing future adverse involvement in the justice system.” Participants must be willing to take responsibility for their actions and when appropriate, participate in a restorative process

⁶ Essex Community Justice Center, *FY23 Restorative Justice Panel Survey Data* (2023).

⁷ Burlington Community Justice Center, [Restorative Justice Panels](#) (2023).

⁸ Memorandum of Understanding between Essex Police Department and the Essex Community Justice Center.

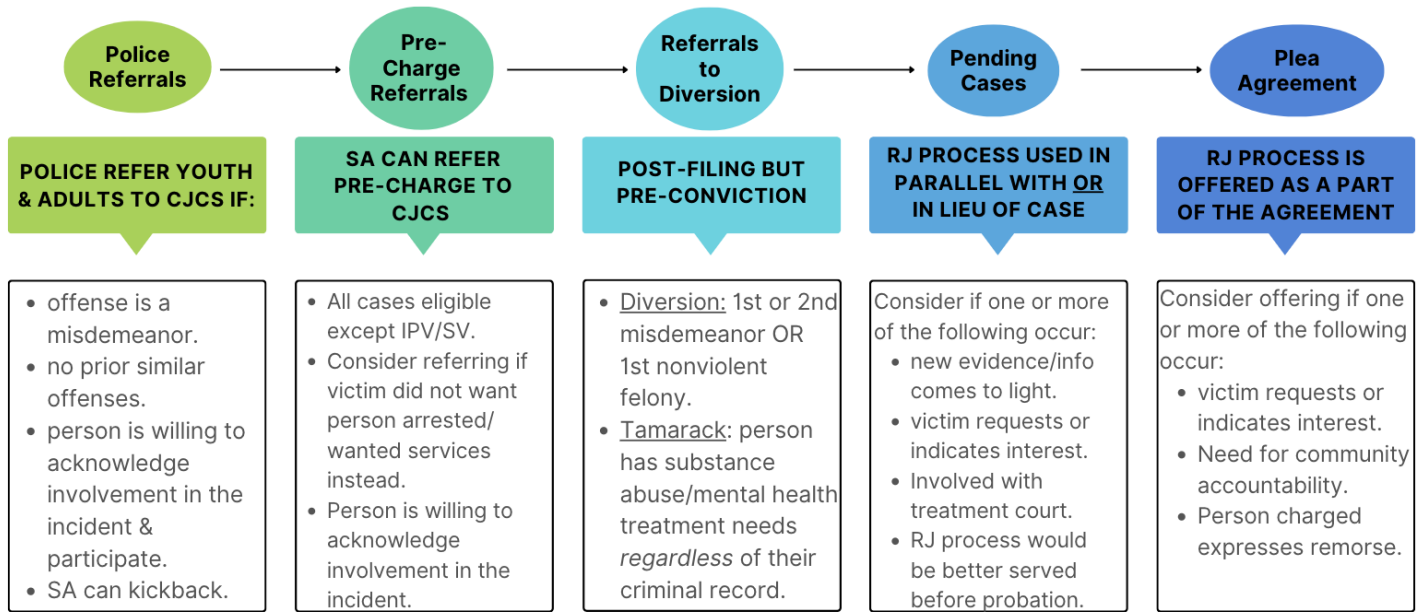
⁹ [Victim Support and Services](#) is offered in all Chittenden County Community Justice Centers.

¹⁰ See, Toran Hansen & Mark Umbreit, [State of Knowledge: Four Decades of Victim-Offender Mediation Research and Practice: The Evidence](#), 36 CONFLICT RESOL. Q. 99, 100 (2018), (meta-analysis of victim-offender research demonstrating that “victims and offenders are more satisfied with the process and outcomes than with the courts, they are more likely to draft and complete restitution agreements, they derive psychosocial benefits, the process is less expensive, crime victims are more likely to receive apologies from offenders, and offenders are less likely to recidivate”).

aimed at repairing the harm caused by their crime. Service needs related to the charge are also addressed in the agreement.¹¹

- **Juvenile Diversion and BARJ:** Youth services operate separately from other programs.
 - **Juvenile Diversion:** Generally, a case will be referred to juvenile diversion (which is managed by BCJC for Chittenden cases) after finding probable cause but still pre-adjudication. Diversion can include a variety of responses, such as impact meetings, harm circles, group conferences, educational programming and workshops. A case can be referred back to CCSAO if parents are uncooperative, the young person does not take accountability or responsibility, or if there is unresponsiveness/no follow-through on the process.
 - **Balanced and Restorative Justice (BARJ) Program:** BARJ seeks to support young people who are either involved in, or are at risk of becoming involved in, the juvenile justice system, and is operated by DCF.¹² Referrals to BARJ are done after conducting a [Youth Assessment and Screening Instrument \(YASI\)](#). Cases that are screened as “high-risk” are referred to BARJ, and are mostly cases that involve probation. Most BARJ programs provide various restorative interventions, including: circles, panels, family group conferences, and restorative and skills-development classes.

RJ Intercepts throughout the Life of a Case



Law Enforcement Referrals for Youth and Adults

All towns in Chittenden County can have cases referred to one of the CJs. The CJs in Burlington, South Burlington, Essex, and Williston have created MOUs with their respective police departments; all four CJs advise law enforcement (LE) to directly refer a case to a CJC when:

- The person (either juvenile or adult) has no prior similar offenses, or depending on the circumstances, is deemed an “appropriate referral” by LE and the CJC.¹³
- The offense is a misdemeanor.

¹¹ Burlington Community Justice Center, [Tamarack/Treatment Diversion](#) (2023).

¹² Ping Showalter, *State-Funded Restorative Justice in Vermont*, Vermont Law School 6 (2022); *See also* Vermont Agency of Human Services, [Balanced and Restorative Justice \(BARJ\)](#) (2023).

¹³ Memorandum of Understanding between Burlington Community Justice Center and Burlington Police Department.

- This includes, but is not limited to: retail theft, simple assault, domestic assault (non-IPV), petty larceny, unoccupied burglary, excessive speed, unlawful mischief, false personation/pretenses, disorderly conduct (including by electronic means), false reports, unlawful trespass, etc.
- **Voluntariness:** Person charged takes responsibility for their involvement in the incident and is willing to participate in the CJC program.
- **CJCs might refer a case back to LE if:** person charged is not willing to take responsibility, there is a history of IPV with victim, if person charged is unreachable or refuses to participate, or if the process could be harmful for person charged with offense, harmed parties, or community members.
- **SA Kickbacks:** CCSAO should return cases that meet the criteria described above (or appear to be an overcharge) to LE if LE sent a case to the office first instead of a CJC.

Pre-Charge Referrals: CJC Restorative Processes

- CJCs are equipped to work with anyone who has committed a crime (except IPV, SV, and stalking).¹⁴
- **Consider a pre-charge referral when one or more of the following occur:**
 - When there is a victim and/or community impact that can be addressed and repaired.
 - When there are ongoing fights or similar incidents with the same involved parties.
 - When the person charged would not be eligible for diversion (due to their criminal history) or tamarack (no apparent substance abuse or mental health treatment need).
 - When the victim did not want the person arrested, and/or wanted services instead of arrest.
 - When the person charged acknowledges involvement (e.g., affidavit mentions the person admitting to the offense).

Diversion and Tamarack

- Diversion intercepts the traditional court process by providing prosecutors the opportunity to formally divert individuals charged with an offense *after* a judicial finding of probable cause. Upon such finding, a person can be diverted before, at, or after appearing at arraignment or any subsequent hearings.¹⁵ Therefore, a case goes through the diversion process post-charge but pre-conviction. If a participant completes diversion successfully, their charges will be dismissed and their record expunged.
 - Eligibility for **adult diversion:** first or second misdemeanor or first nonviolent felony.
 - Eligibility for **tamarack:** if the person charged needs substance abuse or mental health treatment, regardless of their criminal history (except if a person charged is with a listed crime under 13 V.S.A. § 5301(7)).
 - Tamarack cases might get referred back to CCSAO for various reasons, but the program cannot disclose why a case is being sent back due to a confidentiality agreement.
- **Re-referrals:** While the Diversion program is completely open to re-referrals, the program requests 30 days of engagement through pretrial service orders before accepting a re-referral. DUI cases however, cannot be re-referred.

¹⁴ Memorandum of Understanding between Chittenden County Community Justice Centers and Chittenden Superior Criminal Court (July 2020) (IPV and SV cases will soon be eligible for CJC referral, based on legislative changes mentioned on page 7).

¹⁵ *Supra* note 11.

- **DUI #1 & DLS Diversion Programs:** CCSAO adopted two policies for referrals of certain driving offenses.
 - **Direct Referral to DLS Diversion for OSC and NL cases:** all Chittenden County law enforcement agencies are authorized to refer all violations of Operating after Suspension of a License (23 V.S.A. § 674(a)(2)) or No License (§ 601(g)) to the DLS Diversion program in lieu of filing criminal charges. If these violations end up in the office, make sure to refer them to diversion.
 - **DUI #1 Diversion Program:** eligibility criteria for this referral includes:
 - No prior criminal convictions or one (1) prior misdemeanor conviction.
 - Person charged must admit to the Civil Suspension before referral.
 - There are no victims (i.e., no one else involved in an accident).
 - No previous referral to the DUI Diversion program, and it cannot be re-referred.
- **New Restitution Agreement:** Vermont Restitution Unit (RU) can now assume collection of restitution from Diversion participants in certain circumstances.¹⁶ The participant must sign a repayment agreement after determination that the Diversion case would remain open for more than six months due only to the participant’s limited ability to pay restitution. These cases may include restitution that may not be advanced from the Restitution Fund (business loss, amounts over \$5,000.00, cash, jewelry, precious metals, and undocumented losses).
 - After six months, if the participant has completed all other items on their Diversion contract and made regular payments of restitution, the Diversion case will be closed as successful, and the RU will take over collection of any restitution balance greater than \$45.00.
 - Crimes that might involve restitution: property crimes (theft, burglary, robbery, or vandalism), fraud or financial crimes (identity theft, bad checks, fraudulent schemes), personal injury crimes, and driving offenses.

RJ Process in Pending Charges & Plea Agreements

- Although it is rare to offer a restorative process while a case is pending or as part of a plea agreement, consider suggesting a restorative process in lieu of or in parallel with a criminal case under specific circumstances.
 - **For pending cases,** consider offering a restorative process if one or more of the following occur:
 - New information or evidence comes to light that suggests RJ would be a good option.
 - If the person charged agrees to treatment court.
 - If the victim requests or demonstrates an interest in engaging in a victim-offender dialogue (e.g., victim has questions that only the person charged can answer, expresses curiosity about the person charged, wants to share how the crime has impacted them (“I want to tell them _____”), wants to know it won’t happen again).
 - Restorative process would be better served in lieu of probation (e.g., sentence can result in a fine without probation if the person charged completes the restorative process).
 - **For a plea agreement,** consider offering a restorative process if one or more of the following occur:
 - If the victim requests or demonstrates an interest in engaging in a victim-offender dialogue (see examples listed above for pending cases).
 - Person charged is feeling remorse.
 - There is a need for community accountability (e.g., convictions against a police officer).

¹⁶ Vermont Attorney General’s Office & Center for Crime Victim Services, *New Diversion Agreement with the Vermont Restitution Unit Memorandum* (July 2023).

Next Steps and Future Considerations

H. 41 (Act No. 11): Future DV, SV, and IPV referrals to CJs

This year, Vermont's legislature passed [Act No. 11](#), which allows domestic violence and sexual violence cases to be referred to a local CJC. The act requires that the respective CJC has a memorandum of understanding with a local member organization of the Vermont Network and is reviewed for compliance by the Community Justice Unit of the Attorney General's Office.

Even though the act ordered the Attorney General's Community Justice Unit to create a guidance for memorandums of understanding within the next year, CCSAO can still consider ways the office would like to discern and refer these cases to CJs. One suggestion would be for CCSAO to use risk assessment tools like [ODARA](#) or the [Lethality Screening](#) to assess victims' safety before referring cases.

Consider Observing a Restorative Process

The best way to understand restorative justice is to observe a process first-hand. For example, the Office of the Attorney General for the District of Columbia encourages its prosecutors to observe their juvenile restorative justice process as a way to shift their understanding on policies and improve victim assistance.¹⁷ CCSAO encourages staff to experience a restorative process to better understand its efficacy and what it can provide for the person charged, those impacted by crime, and the community at large.

Embodying Restorative Practices in the Workplace

As we recognize the harm our criminal legal system inflicts and promote restorative practices to address crime, it is equally as important for us to embody restorative practices within our work culture. Howard Zehr notes that one of the underlying values in restorative justice is respect:

"Respect for all—even those who are different from us, even those who seem to be our enemies. Respect reminds us of our interconnectedness, but also of our differences. Respect insists we balance concerns for all parties. Respect can help us to recognize and address unjust hierarchies of power. *If we pursue justice as respect, we will do justice restoratively.*"¹⁸

The effectiveness, credibility, and promise of referring cases to restorative justice programs depend on our ability to work with community partners, victims, witnesses, defense counsel, judges, and coworkers, in a way that cultivates respect, healing, and accountability. If we are willing to find ways to heal the individual and systemic harm amongst us, we become living examples of what we espouse.

[Finalized August 18, 2023]

¹⁷ *Supra* note 2 at 49. See also, Carrie Johnson, [D.C. Prosecutors, Once Dubious, Are Becoming Believers In Restorative Justice](#), NPR (July 2019).

¹⁸ Howard Zehr, *The Little Book of Restorative Justice*, The Little Books of Justice & Peacebuilding 47 (2015).