

Policy of the Essex County State's Attorney

Pre-Charge/ Court Diversion/ Restorative Justice/ YSASP

Community Restorative Justice Center

Memorandum of Understanding and Policy of the State's Attorney

The parties of the memorandum of understanding (MOU) are as followed:

St. Johnsbury Community Restorative Justice Center and The States Attorney's Office of Essex County (EXSAO or SAO)

In signing this MOU, these parties confirm their adoption of this protocol.

A. Description and Purpose

1. The Diversion Programs operated by the CRJC provides community-based responses to wrongdoings that are rooted in the principles of restorative justice.
2. Diversion Programs and Restorative Justice is a response to offending that replaces prosecution in those cases that are successful.
3. Diversion Programs and Restorative Justice Programs allow those who hurt others (hereafter referred to as "individuals" or "participants") and their community the opportunity to repair harm that was caused by their actions. Generally, participants who complete a restorative process come to see the effect of their actions on their victims, which in turn becomes a motivator to not re-offend. At the same time, victims and others effected by wrongdoing report they feel more satisfied with the outcome because of the opportunity to learn more about the participant's actions and reasons for offending, while being provided an opportunity to convey the impact of the offense and request specific reparations.
4. Diversion and Restorative Justice Programs are one of the earliest interventions available to individuals and harmed parties within the community. There are several processes that may be used in this program – all have the same goals of participant accountability, greater understanding, and making amends where possible. Processes include restorative conferencing, restorative justice panels, or a combination of elements including meetings with CRJC staff, restitution, and letters of explanation/apology.
5. Participants actively participate in a process to learn about the effects of their actions on others and on their community, and to work with victims, affected parties, CRJC staff, and community volunteers to create and carry out a plan for making amends and for making better choices in the future.
6. The participant may not participate in the Diversion or Restorative Justice Programs if they have a prior record on file with the CASAO or the EXSAO (unless the CASAO/EXSAO directly refers to program for extenuating circumstances).
7. If the participant fails to complete the requirements of the program, they will be sent back to the referral source and a criminal justice proceeding may move forward.

A. Conduct concerning relevant Offense-types Which May Be Addressed by Diversion (including a referral prior to the filing of a criminal charge ["Pre-Charge"] or a petition under Title 33) and Restorative Justice Programs

Referrals will be for the following types of offenses, as deemed appropriate by the appropriate referral source:

- Noise Violations
- Unlawful Mischief Cases
- Simple Assault by Mutual Affray
- Petty Larceny under \$500
- Credit Card Fraud / Bad Checks / Insufficient Funds Under \$300
- Disorderly Conduct (including by phone/electronic means)

- Unlawful Trespasses that do not involve residences
- Civil Ordinance Violations
- Possession of Alcohol or Drugs (Ages 22 and up)
- Misdemeanor Driving Offenses
- False personation / pretenses
- False Reports (e.g., False Information to a Police Officer)
- Leaving the Scene of an Accident (where injuries didn't require medical attention and damages are \$3,000 or less)
- Unoccupied Burglary
- Possession of Stolen Property
- Theft of Services
- Weapons in School
- Careless and negligent operation
- Excessive Speed
- Other offenses subject to agreement by referral source and CRJC
- Police Departments may refer civil violations, and neighborhood/school conflicts as deemed appropriate
- Any other matter as deemed appropriate by the SAO on a case-by-case basis resulting from law enforcement contact.

YSASP Referrals:

The stated above Police/Sherriff's Departments can refer individuals to the YSASP Program for the following:

- Underage alcohol consumption/ possession (ages 16 to 20)
- Underage marijuana consumption/ possession (ages 16 to 20)
- Underage buprenorphine consumption/ possession (ages 16 to 20)

B. Criteria for Non-Acceptance

The CRJC Diversion and Restorative Justice Programs may return a case to the referral source when:

1. The offender does not acknowledge that he/she committed the offense. The CJRC does not offer a court process that determines innocence or guilt. If the offender denies the charge(s), they will be advised that the CRJC cannot be of assistance and that the Court is there to hear from anyone who believes they have been wrongly accused. The case will then be sent back to the referral source with an explanation of why the CRJC cannot accept the case.
2. A history of lack of success with prior referrals for restorative justice.
3. There has been a history of intimate violence between the offender and the victim.
4. Members of the CRJC Staff believe the process could be harmful to the victim, offender, panel members or the larger community. The CRJC will consider whether other restorative approaches may be more appropriate.
5. The offender refuses to participate in the process and/ or is unreachable (after repeated phone/text/email/mail attempts).
6. If, upon consultation with the SAO, the case should proceed through the formal, post-charge, court-controlled process (where conditions of release are needed or where the interests of justice weigh in favor of post-charge dispositional pathway).

C. Police/Law Enforcement Agency Referrals

1. Officer handles an offense, or related conduct, eligible for Restorative Justice and provides a CRJC business card with the CRJC RJ Panel Coordinator/ YSASP Coordinator's information to the offender so he/she can participate in the program. This must be documented in the officer's narrative – i.e. RJ

Program explained to suspect and business card provided. The alleged offender must inform the CRJC provider the source of the referral and the CRJC must maintain data reportable to the SAO, and other entities as needed, as to the number of referrals and the source of referrals each month.

2. Officer completes a narrative (that can become an affidavit if necessary) and the contact information for all of those involved. The paperwork must be completed at the earliest convenience of the officer. (Within 30 days – preferred).
3. The officer has supervisor, or the SAO, review the incident for referral. Once approved, the officer, prosecutor, or other law enforcement personnel will email the incident narrative and contact information to the CRJC with the RJ cover sheet (the RJ cover sheet shall be drafted and updated, in consultation with the SAO and law enforcement as needed, by the CRJC).
4. Offenders are encouraged to contact the CRJC within 2 days from the referral date to participate.
5. Upon completion of the RJ process, and earlier by request of the officer, the CRJC will forward case status report to the referring officer and the SAO (if needed)
6. If a YSASP referral, mail citations to the CRJC with cover letter.

D. Confidentiality of Police Referrals

All information provided to the CRJC by the Police Departments stated above is considered the responsibility of the CRJC and a redacted version may be shared with our trained panel members and participants, by request and upon approval of the CRJC staff.

CRJC staff, School Resource Officers, Support Center Staff, and Student Assistant Program Coordinators are able to collaborate on and freely communicate without a release about incidents that happen on campus that reach a civil or criminal level. Any notes as to the referral of a matter by the SAO shall be considered confidential (other than the fact that the SAO was in favor of the referral). Likewise, if the SAO wishes to remove the case from the CRJC, the investigating officer shall resume staffing of the case and work with the SAO on next steps).

E. State’s Attorney (SAO) Referrals

1. An individual being referred to the CRJC will be asked to sign the referral form completed by the SAO, or law enforcement, once signed by the participant the referral cover sheet and affidavit (or other factual summary) will be emailed to appropriate CRJC staff.
2. The SAO may refer any matter to the CRJC (the CRJC may choose not to accept). The SAO may also prohibit any matter from being referred to the CRJC where there has been a finding of probable cause or reasonable suspicion (by law enforcement).
3. The SAO may refer individuals to CRJC Programs for Pre-Charge related conduct (prior to arraignments or the filing of a charge or the filing of a petition) by emailing referral cover sheet and affidavit (or other factual summary, if needed) to appropriate CRJC Staff. No finding of probable cause is required by the SAO.
4. The SAO can refer individuals to CRJC Programs who are not present for arraignments, but are eligible for the RJ process, by emailing referral cover sheet with affidavit (or other factual summary, if needed) to appropriate CRJC Staff. SAO may also request that law enforcement refer the matter to the CRJC.

F. Completion Procedures

1. If offender does not call the CRJC or complete the RJ process, the case shall be referred back to the referral source for possible prosecution (likely returned to law enforcement agency). When referring a case back, the CRJC emails/mails a formal referral-back letter to the referral source. In case in which the referral source is a Police Officer/Law Enforcement Agency, their Assistant to the Officer in Charge

will forward the letter to the Records Department and notify the SAO for prosecution (or by whatever process needed according to the needs of the law enforcement agency and/or the SAO).

2. If the offender in YSASP cases does engage or complete the program, the YSASP Coordinator will send back the citation with a letter to the citing officer, as well as to the VJB, and the offender with an explanation of proceedings (if there is no citation letter, then the matter should be flagged for further investigation).
3. Upon successful completion the CRJC will email/mail a formal completion letter within 7 days to the referral source (could be both law enforcement and SAO). The referral source may then proceed as to any next steps so as to note that the matter was successfully resolved by the CRJC and maintain records as they see fit.

G. Amendment/Termination of Agreement

This agreement shall remain in effect from the date signed unless or until any party to the agreement requests amendment or termination in writing. It is recommended that this agreement be revisited annually.

In witness whereof, the Agreement has been executed and is effective as to each of the parties as herein provided.

Caledonia and Essex County Community Restorative Justice Center:

Neil Favreau, Executive Director

Date: _____

State's Attorney's Office, Essex County

Vincent Illuzzi, State's Attorney

Date: _____