



WASHTENAW COUNTY

OFFICE OF THE PROSECUTING ATTORNEY

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POLICY DIRECTIVE 2021-16: POLICY REGARDING RESTORATIVE JUSTICE

I. Introduction and Background

A. An Adversarial, Punishment-Oriented Justice System Sidelines Victims—and Ultimately Leads to More Crime

For centuries, America has largely pursued an adversarial, one-size-fits-all approach to criminal justice. When a crime occurs, the State—through the local prosecutor—files charges, and seeks to impose punishment. The punishment imposed can vary, ranging from probation to fines to jail or prison time. But the State’s exclusive jurisdiction over a case means that crime survivors are often sidelined. As courts have emphasized, violations of criminal law are “offenses against the state.”¹ “[P]rosecution,” the Michigan Court of Appeals has starkly explained, “is *not for the benefit of the injured party*, but for the public good.”²

There are good reasons for criminal prosecutions to be brought by the State, not by victims. “Public prosecution” theoretically places “the criminal justice machinery in the hands of professionally trained prosecutors who are qualified to make impartial evaluations of evidentiary sufficiency and public necessity.”³ Public prosecution, moreover, “reduce[s] the burden upon crime victims to expend their own funds and energy.”⁴ But prosecution by the State has also made “the victim a peripheral actor in the prosecution of the crime.”⁵ Indeed, multiple commentators have observed that “the crime victim” is effectively “forgotten . . . [in] the American criminal justice system.”⁶

These observations are not merely academic. “Many victims describe their experience in the criminal-justice system as fundamentally re-traumatizing.”⁷ “Their questions are unanswered, their voices excluded, their input legally not required . . . and their preferences frequently disregarded.”⁸ Many survivors, moreover, want the person who harmed them to take

¹ *People v. Williams*, 244 Mich. App. 249, 252–53, 625 N.W.2d 132, 135 (2001).

² *Id.* (emphasis added).

³ Juan Cardenas, *The Crime Victim in the Prosecutorial Process*, 9 Harv. J.L. & Pub. Pol’y 357, 371 (1986).

⁴ *Id.*

⁵ *Id.* at 372.

⁶ *See id.*

⁷ Danielle Sered, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*, Vera Institute of Justice (2017) at 11, available at <https://d3n8a8pro7vhmx.cloudfront.net/commonjustice/pages/82/attachments/original/1506608259/accounting-for-violence.pdf?1506608259> (“*Accounting for Violence*”)

⁸ *Id.*

responsibility for their actions.⁹ But America’s adversarial, punishment-oriented justice system disincentivizes that outcome. After all, the moment defendants accept responsibility, they are admitting guilt—and subjecting themselves to potential punishment by the State.

Given the inherently traumatizing nature of the criminal justice system, many victims opt not to report crimes. According to the United States Department of Justice, over *half* of the violent crimes in America go unreported.¹⁰ The “most common” reason victims opt not to report crimes is “a decision to handle the victimization another way, such as reporting it to someone else or addressing it privately.”¹¹ Dissatisfaction with the adversarial justice system, in other words, often leads survivors to eschew the justice system entirely. And that makes it far less likely that crimes will be reported in the first place.

In particular, many crime survivors oppose the blunt instrument of incarceration. Nearly 70% of victims prefer “holding people accountable through options beyond prison, such as rehabilitation, mental health treatment, drug treatment, community supervision, or community service.”¹² Even when victims do seek incarceration, they are often disappointed by what it delivers. Research has demonstrated that “many survivors seek incarceration only to find later that it did not make them safe and did not heal them in the way they had anticipated.”¹³ Indeed, a 2016 poll of crime survivors found that roughly 52 percent of crime victims “believe that time in prison makes people *more* likely to commit another crime rather than less likely.”¹⁴

Crime survivors’ intuitive belief that incarceration often undermines public safety is borne out by research. A study from University of Michigan economics professor Michael Mueller Smith concluded that “each year in prison *increases* the odds that a prisoner would reoffend by 5.6% a quarter.”¹⁵ Not only does prison increase the risk that a person will re-offend, it also increases the severity of subsequent offenses. Those who are sentenced to prison for “lesser crimes” wind up “committing more serious crimes subsequently, the more time they spent in prison.”¹⁶ “Any benefit from taking criminals out of the general population,” in short, “is more than off-set by the increase in crime from turning small offenders into career criminals.”¹⁷

There are a number of reasons why incarceration is ultimately likely to *increase* crime. Incarceration disrupts a person’s economic trajectory, and makes it less likely that they will get a

⁹ See *id.* at 17.

¹⁰ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Victimizations Not Reported to the Police, 2006- 2010* (Washington, DC: BJS, 2012, NCJ 238536) at 1, available at <https://perma.cc/7SDL-AHXX>.

¹¹ *Id.* at 5.

¹² Sered, *Accounting for Violence*, *supra* n. 7, at 14.

¹³ *Id.*

¹⁴ Alliance for Safety and Justice, *Crime Survivors Speak: The First-Ever National Survey of Victims’ Views on Safety and Justice* (Oakland: Alliance for Safety and Justice, 2016) (emphasis added), available at <https://perma.cc/W4XWNQB8>

¹⁵ Allison Schragger, *In America, Mass Incarceration Has Caused More Crime Than It’s Prevented*, Quartz (July 22, 2015), available at <https://qz.com/458675/in-america-mass-incarceration-has-caused-more-crime-than-its-prevented/>.

¹⁶ *Id.*

¹⁷ *Id.*

job in the future.¹⁸ It imposes trauma. And “[j]ail and prison” offer “prime networking opportunities” with others who may be involved in crime.¹⁹

At the end of the day, the State-directed, one-size-fits-all approach to justice system often does not work. Crime survivors report serious dissatisfaction with the process. They are frequently reluctant to report crime in the first place. A punishment-oriented approach, moreover, does little to prevent recidivism, and often makes our communities *less* safe in the long run. These outcomes, it bears emphasis, are not simply a result of individual actors in the justice system. The problem is the justice system itself. The American justice system too frequently sidelines victims, and seeks punishment as the end goal.

That is a systemic recipe for failure.

B. Restorative Justice Empowers Survivors, and Makes Communities Safer

But—at least in many cases—there is a better way. Survivor-centered restorative justice offers victims of crime an opportunity to direct the outcome of the case. Rather than focusing on punishment for punishment’s sake, restorative justice focuses healing and repairing the harm that was done. And restorative justice is far from a new concept. Restorative justice has been practiced by indigenous people for centuries.²⁰

Restorative justice is fundamentally a survivor-driven model for addressing harm. If—*and only if*—survivors opt for restorative justice, the survivor and the person who committed harm work together with trained mediators to reach an individualized solution for how the survivor can be made whole. The precise mechanisms by which restorative justice can be carried out vary. Restorative justice, however, consists of three primary elements:

- The person who committed harm **acknowledges the harm done and takes responsibility.**
- The person who committed harm, and the person harmed, voluntarily work together and agree to a plan in which **amends can be made.**
- The person who committed the harm, and all affected parties who desire to do so, work together to determine the root causes of the harm and develop a **plan to ensure that the harm will not reoccur.**

Victim-offender mediation—also known as victim-offender conferencing—is the most widely used restorative-justice approach. Victim-offender mediation is defined as “a process through which willing participants have the opportunity to meet face-to-face in a structured and safe setting with the assistance of a third-party mediator,” with the goal of holding the offender directly accountable for their actions while providing the victim with the opportunity to have

¹⁸ *Id.*

¹⁹ Seema Jayachandran, *Unable to Post Bail? You Will Pay for That for Many Years*, The New York Times, (Mar. 1, 2019), available at <https://www.nytimes.com/2019/03/01/business/cash-bail-system-reform.html>.

²⁰ Carol A. Hand, Judith Hanks, and Toni House, *Restorative Justice: The Indigenous Justice System*, Contemporary Justice Review 15, no. 4 (2012): 449–67, available at <https://doi.org/10.1080/10282580.2012.734576>

their voice heard.²¹

Because crime often adversely affects communities more broadly, other restorative-justice models widen participation in the process. Community-centric models include “group conferencing” or “circles.”²² Such circles may involve (1) the victim and the offender, (2) family or support persons for the involved parties, (3) a facilitator, and (4), when appropriate, other participants from the community. Group conferencing and circles place a strong emphasis on family involvement and participation. Under a group conferencing or circle model, the family or community of individuals affected by a crime are brought together to discuss the harm caused and work together to resolve and repair that harm. In a conference led by a trained facilitator, all parties involved in the conference discuss the crime and the impact it had on them.²³

Whatever form restorative justice takes, its benefits are clear. Studies have repeatedly shown that victims of crime experience greater benefits from a restorative justice approach than from the adversarial justice system. A meta-analysis of ten academic studies, for example, showed that crime survivors who participate in restorative justice “express higher satisfaction in the handling of their cases”—and suffer from less residual trauma—than victims whose cases go through the traditional justice system.²⁴ Another study concluded that victims involved in restorative justice reported (1) improved perceptions of fairness, (2) greater satisfaction, (3) improved attitudes toward the offender, (4) greater willingness to forgive the offender, (5) a heightened sense that the outcome was just.²⁵

In addition, studies have demonstrated that restorative justice significantly reduces the risk of recidivism. The same meta-analysis referenced above showed that offenders who participate in restorative justice commit “significantly less [future] crime than their counterparts randomly assigned to the standard criminal justice system.”²⁶ That reduction in future crime, of course, promotes public safety. It also protects taxpayers. Especially when compared to a costly jail, prison, or probationary sentence, restorative justice is a “highly cost effective” intervention.²⁷

Restorative justice also better ensures that the victim of a crime is made whole. The restorative justice model eschews a one-size-fits-all approach to victim restitution. Instead, it empowers the crime survivor to identify an individualized way in which the person who committed harm can make amends. Those “amends” may include monetary restitution. But they might also include a promise by the person who committed harm to obtain treatment for underlying issues, finish school, enroll in a workforce-development program, or engage in

²¹ *Id.*

²² “Group conferencing” can include such variations as family group conferencing, and community group conferencing; “circles” can include variations such as peace circles and sentencing circles.

²³ David B Wilson, Ajima Olaghere, and Catherine S Kimbrell. “Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta- Analysis,” n.d., 145. <https://www.ncjrs.gov/pdffiles1/ojjdp/grants/250872.pdf>

²⁴ Heather Strang et. al. “Restorative justice conferencing (RJC) using face-to-face meetings of offenders and victims: effects on offender recidivism and victim satisfaction.” 2013. <https://campbellcollaboration.org/better-evidence/restorative-justice-conferencing-recidivism-victim-satisfaction.html>

²⁵ Wilson, *supra* n. 23.

²⁶ Strang, *supra* n. 24.

²⁷ *Id.*

community service. This individualized approach to making amends works. Research has demonstrated that those who participate in restorative justice are significantly more likely to complete restitution than those who do not.²⁸

Most fundamentally, on-the-ground experience demonstrates that survivors of crime overwhelmingly prefer restorative justice—if only the option is presented to them. Perhaps the most prominent restorative justice program in the nation is the Common Justice program in New York City. Under that model, survivors of a crime are presented with a choice: engage in restorative justice, or move through the traditional adversarial criminal-justice system. The results are staggering. “[A] full 90 percent” of survivors who are “given the choice” to engage in restorative justice in New York City opt for the Common Justice program, rather than the possibility of incarceration.²⁹

The Washtenaw County Prosecutor’s Office takes seriously its obligations to promote public safety, reduce recidivism, and keep the needs of crime survivors front-and-center. The data conclusively demonstrates that restorative justice, in many cases, offers a promising alternative to achieving these goals. As outlined above, those who complete a restorative-justice process are statistically less likely to re-offend. Victims obtain greater satisfaction from the process than from the traditional justice system. And—perhaps most importantly—giving survivors the *option* of restorative justice re-centers victims, by giving them agency over how their case may proceed.

At the end of the day, respecting survivors means listening to them. Accordingly, the Washtenaw County Prosecutor’s Office will henceforth offer survivors of crime the option to engage in restorative justice. The Prosecutor’s Office is pleased to partner with the Dispute Resolution Center in facilitating this model.

As outlined below, restorative justice will be pursued, as an alternative to traditional prosecution, if, before the case has been charged (1) the survivor and would-be defendant affirmatively opt for restorative justice, and (2) there is no obvious risk to public safety.

These points bear emphasis: **Restorative justice will be used *only* if the survivor of a crime affirmatively opts for that approach.** It will not be offered as an option in *any* cases where there is a risk to public safety, or where there is the potential for coercion to be used against the survivor of a crime (e.g., intimate-partner violence, sexual assault, etc).

This Policy is being put into place to re-center crime survivors, provide them options, and to foster rehabilitation and healing. Restorative justice will be offered as an alternative to the traditional criminal legal system, however, only where it can be done consistent with the Prosecutor’s overarching mission to ensure public safety.

²⁸ Latimer, Jeff, Craig Dowden, and Danielle Muise. “The Effectiveness of Restorative Justice Practices: A Meta-Analysis.” *The Prison Journal* 85, no. 2 (June 2005): 127–44. <https://doi.org/10.1177/0032885505276969>.

²⁹ Sered, *Accounting for Violence*, *supra* n. 7, at 16.

II. Policy Directive

A. Pre-Charge Evaluation and Deflection

1. **Pre-Charge Evaluation:** When a charge involving a crime survivor is referred to the Prosecutor's Office by law enforcement, the Prosecutor's Office will, *before filing charges*, assess whether the case is appropriate for deflection into a restorative justice process.

The Prosecutor's Office will allow any case involving a crime survivor³⁰ to be deflected, pre-charge, into a restorative justice process, so long as the following criteria are met:

- a. **The crime survivor and the person who committed harm both affirmatively express a desire to pursue restorative justice** in lieu of the traditional, adversarial justice system.
- b. **The crime does not involve intimate-partner violence, sexual assault, a child who has allegedly been victimized by an adult³¹, or a case in which the person who committed harm was in a supervisory role or other position of authority over the victim.** Such factual circumstances raise the potential for coercive control to be exercised over the victim—which, in turn, means that the victim's consent to restorative justice may not have been voluntary. The Prosecutor's Office will consider expanding this program to situations involving the above-mentioned circumstances if assurances can be obtained that the consent of the victim is voluntary. Until further notice, however, cases involving such circumstances are ineligible for pre-charge deflection into restorative justice under this Policy.
- c. **The factual circumstances of the case do not indicate a threat to public safety, or identifiable persons.** A murder case, for example, will be categorically ineligible for pre-charge restorative justice under this Policy. So, too, would cases involving the firing of a firearm—particularly if those cases involve feuds or gang violence. There may, however, be cases in which restorative justice might be appropriate, if the crime survivor affirmatively expresses a wish to pursue restorative justice, even for a case involving a firearm.³² Home Invasions, Assault with Intent to do Great Bodily Harm,

³⁰ Restorative justice is fundamentally a survivor-centered approach to justice. It is therefore not appropriate for “contraband” charge—such as possession of a controlled substance or carrying a concealed weapon—that do not directly involve a victim. The inapplicability of restorative justice to such offenses does not mean that other deflection/diversion options (e.g. Washtenaw County's Law Enforcement Diversion and Deflection (LEADD) program, drug court) are not available for such offenses.

³¹ For purposes of this Policy, a child-adult relationship is meant to capture a relationship in which there is significant potential for coercive control. It does not cover situations, for example, in which a 19-year-old (a legal adult) is accused of a crime against a 17-year-old (a legal minor). Absent, e.g., a dating relationship, or another relationship indicating the potential for coercion, the survivor and the person who committed harm in such a circumstance are likely to be peers—and restorative justice should be provided to the survivor as an option.

³² That a case is inappropriate for pre-charge deflection to a restorative justice process does not mean that it would be inappropriate for restorative practices to be used *in addition* to the traditional criminal legal system—for example

and other serious felony offenses are not categorically excluded from this program and will be viewed on a case-by-case basis.

This program is available to both juveniles and adults. There are no categorical screening criteria relating to criminal history that will render a person ineligible for participation in restorative justice; both people with and without criminal records are eligible for participation. That said, a fulsome criminal history involving crimes against persons or property may factor into the Prosecutor's determination that the factual circumstances of a case indicate a threat to public safety.

For purposes of identifying whether a crime has a discernible "crime survivor," it should be borne in mind that *the survivor of a crime may be the community at large*. In Bucks County, Pennsylvania, for example, six local college-aged men set fire to an historic wooden covered bridge. Although there was no individual "victim" of that crime, the young men were nevertheless diverted into a restorative conference with members of the community.³³ Such an outcome would be appropriate under this Policy.

2. **Survivor Outreach:** Prior to filing charges in any case that could potentially meet the above criteria, a Victim Advocate from the Prosecutor's Office will contact the victim and explain: (a) the restorative justice process; and (b) the traditional adversarial justice process. The Victim Advocate will explain both processes in a neutral, unbiased fashion, and will provide the victim a choice as to whether restorative justice will be pursued.
3. **Referral to Dispute Resolution Center (DRC):** If the survivor opts for restorative justice, the case will be referred to the Dispute Resolution Center (DRC), and the charges will be placed on "hold" pending the outcome of the restorative process. If the survivor opts for the traditional adversarial justice process, the Prosecutor's Office will move forward with charges where the evidence dictates, and where charges are in the interest of justice.
4. **Outreach to Would-Be Defendant:** If the survivor opts for restorative justice, the DRC will contact the person who committed harm (or, if known, that person's attorney). The DRC will explain: (a) the restorative justice process; and (b) the traditional adversarial justice process. The DRC will explain both processes in a neutral, unbiased fashion, and will provide the person who committed harm a choice as to whether restorative justice will be pursued.

If the person who committed harm opts for a restorative process, the DRC will inform the Prosecutor's Office, and will begin a process involving restorative circles. The Prosecutor's Office will "hold" the charges (i.e., not file the charges) pending completion of the restorative justice process.

(at the survivor's initiation) while a person is incarcerated. The Prosecutor's Office will support post-charge and post-conviction restorative practices to the best of its ability, and on a case-by-case basis. Such practices, however, are outside the scope of this Policy.

³³ See Justicia Restaurativa en Linea, *Burning Bridges*, available at <http://www.justiciarestaurativa.org/mount/www.restorativejustice.org/articlesdb/articles/6601>.

If the person who committed harm is unwilling or unable to participate in a restorative justice process, the Prosecutor's Office will move forward with charges where the evidence dictates, and where charges are in the interest of justice.

5. **Timeframe for Outreach to Would-Be Defendant:** The DRC will have 30 days, from the date of referral from the Prosecutor's Office, to contact the person who committed harm. A shorter time period may be requested by the Prosecutor's Office where appropriate.

If the DRC is unable to contact the person who committed harm within 30 days of referral from the Prosecutor's Office, the Prosecutor's Office will, in its discretion, move forward with charges where the evidence dictates, and where charges are in the interest of justice. Upon request by the DRC, the Prosecutor's Office may, in its discretion, grant a longer time period in which to contact the person who committed harm.

6. **New Arrests or Citations:** The Prosecutor's Office is fully committed to providing restorative justice as an alternative to the traditional adversarial justice system. That commitment, however, must be balanced with the Prosecutor's Office's duty to keep the community safe. As a result, if the person who committed harm is accused of a *new* crime against persons or property at any time while the restorative-justice process is ongoing, the Prosecutor's Office may opt to move forward with charges on the initial case.

Those who committed harm should be informed that any new arrests or citations could jeopardize their participation in the restorative-justice process.

B. Post-Charge Diversion Program

1. **Same Exclusions Apply:** The post-charge diversion model of this program will include the same types of case exclusions listed above.
2. **Defendant Requested Restorative Justice:** At any stage of proceeding up to 60 days before trial, the Defendant, through their attorney, may request that the Defendant be allowed to participate in the Restorative Justice Program. The Defense Attorney should fill out the Defendant's Referral Form and send the form to the APA handling the case. At that point, the APA will contact the Victim Advocate assigned to the case, and the Victim Advocate will contact the Survivor to discuss the Restorative Justice Program. If the Survivor affirmatively chooses to participate in the Restorative Justice Program, the APA will prepare the Memorandum of Understanding. If the victim opts for the traditional adversarial justice process, the Prosecutor's Office will move forward with prosecution, and will send an email to defense counsel to inform them of the victim's wishes.
3. **Survivor Requested Restorative Justice:** The first time the Victim Advocate reaches out to the Survivor, the Advocate will explain the Restorative Justice Program. If the Survivor affirmatively chooses to participate in the Restorative Justice Program, then the

APA will reach out to the Defendant's attorney to inquire whether the Defendant would be interested in participating. The Defendant will have 30 days to decide whether they want to participate in the program. If the Defendant chooses to participate, the APA will prepare the Memorandum of Understanding. If the Defendant chooses not to participate, the case will proceed with prosecution.

If the Survivor and Defendant both want to participate in restorative justice, but the APA is concerned for the safety of the community or believes the case is not appropriate for restorative justice, the APA or defense counsel should contact First Assistant Christina Hines at hinesc@washtenaw.org and Victoria Burton-Harris at burtonharrisv@washtenaw.org.

4. **Memorandum of Understanding:** The WCPO, the Defendant, and the Defendant's attorney will sign a Memorandum of Understanding of the rights and obligations of each party during the Restorative Justice Process.
5. **Referral to Dispute Resolution Center:** Once the MOU is executed, the case will be referred to the Dispute Resolution Center (DRC), and the case will be adjourned pending the outcome of the restorative process. The case will be adjourned for a three-month period to provide time for the DRC to begin the restorative process.

C. **Restorative Process and Communication**

1. **Restorative Justice Facilitation by DRC:** If both the victim and the person who committed harm opt for restorative justice, the DRC will take over, and facilitate, the restorative justice process. The restorative process will seek to achieve three primary outcomes:
 - a. The person who committed harm **acknowledges the harm done and takes responsibility.**
 - b. The person who committed harm, and the person harmed, voluntarily work together and agree to a plan in which **amends can be made.**
 - c. The person who committed the harm and all affected parties who desire to do so, work together to determine the root causes of the harm and develop a **plan to ensure that the harm will not reoccur.**

There are no set factors which must be included in "making amends." Amends can and should be individualized based on the parties' wishes. Making amends and ensuring non-reoccurrence may overlap and involve the same requirements. For example, a survivor of a crime may request, as part of the "amends," that the person who committed harm not engage in any further activity that will harm others.

Amends may also include, for example, restitution, community service, or a commitment by the person who committed harm to continue their education, obtain counseling, or enter a workforce-development program. The DRC will work with appropriate

community entities to address root causes of the harm, ensure non-reoccurrence, support healing between the parties and facilitate the rehabilitation and integration of the offender into the community. Integral to the process should be a recognition of the impact of the harm not only on the immediate parties but also the importance of healing on the families involved and on the broader community.

2. **Permanent Dismissal of Charges/18-Month Waiting Period:** The Prosecutor's Office is committed to declining all charges where the harm done has been adequately addressed by the restorative justice process. And, as noted above, the Prosecutor's Office does not seek to dictate the amends that must be made by the parties.

The Prosecutor's Office, however, is institutionally committed to ensuring long-term public safety and welfare. Accordingly, **as a pre-condition for any charges to be permanently declined**, the person who was accused of a crime must not be accused of any new crimes against persons or property for **at least 18 months after the date on which a case was deflected to the DRC for resolution**.

3. **Commitment Not to Use Evidence Obtained Through Restorative Justice Process:** The Prosecutor's Office will not be directly involved in the restorative-justice process. What is more, the Prosecutor's Office will commit not to using any statements that are made during the restorative-justice process against a defendant in court. If the restorative-justice process fails, and the Prosecutor's Office proceeds with charges, it will proceed without any evidence that may come to light during the restorative-justice process (such as an acceptance of responsibility by the person who committed harm). This is consistent with Local Administrative Order 2022-05.

Facts that come to light during the restorative-justice process may, however, be used in a subsequent prosecution *if the Prosecutor's Office has an independent source for those facts*. For example: if the person that committed harm admits that s/he stole clothes from a business during the restorative justice process, that statement will not be directly used as evidence. But nothing prohibits the Prosecutor's Office from independently proving that the defendant stole those clothes (e.g., by putting on store surveillance footage), or from using a separate admission (e.g., an admission given to police officers investigating the theft).

4. **"Holding"/Adjournment While Restorative Justice Process is Ongoing:**
 - a. For Deflection, or pre-charge cases, the Prosecutor's Office will continue to "hold" the relevant charges so long as the parties are participating, in good faith, in the restorative-justice process. There is no time limit on how long the restorative process can take. The Prosecutor's Office may, however, opt to immediately file the relevant charges if the person who committed harm is accused of committing a new crime against persons or property.
 - b. For pending, or post-charge cases, the DRC will an update to the Prosecutor's Office, and Defense Attorney every three months to inform the parties that the

restorative process is continuing. During this time, the court case will continue to be adjourned while the process is continuing.

5. **Survivor/Would-be Defendant's Failure Participate in Restorative Justice Process:** If the person who committed harm misses two scheduled restorative sessions without explanation, the DRC will inform the Prosecutor's Office, who may then opt to move forward with charges. If the victim misses three scheduled restorative sessions without explanation, the DRC will inform the Prosecutor's Office, who may then opt to move forward with charges after attempting to contact the victim through a Victim Advocate.
6. **Failure of Restorative Justice Process:** If the restorative-justice process fails—for example, because the person who committed harm is unwilling to take responsibility, or because the parties cannot come to an agreement as to how amends can be made—the DRC will immediately inform the Prosecutor's Office, which may then opt to move forward with charges. In the event that the person who caused harm has committed a new offense or has been arrested on new charges, the APA overseeing the case must immediately inform First Assistant Prosecuting Attorney Christina Hines and Chief Assistant Prosecuting Attorney Victoria Burton-Harris. No case should be removed from the Restorative Justice Program without prior approval from either the First Assistant or Chief Assistant.
7. **Amends—Tracking and Accountability:** If the restorative-justice process is successful (i.e., the person who committed harm takes responsibility, acknowledges the harm done, and both parties agree on a plan to make amends), the DRC will immediately inform the Prosecutor's Office, in writing, of the parties' agreed-upon plan to make amends. The DRC will also inform the Prosecutor's Office of a plan to ensure that the parties are abiding by their agreement—including, where appropriate, mandatory reporting that certain milestones have been reached (e.g., payment of restitution).

The DRC will *immediately* inform the Prosecutor's Office if the parties' agreed-upon plan to make amends has been seriously breached. If that plan is breached, the Prosecutor's Office may opt to move forward with charges.

8. **Successful Completion of Restorative Justice Process—Reporting:** If the restorative-justice program is successfully completed—that is, if the agreed upon amends have successfully been made—the DRC should immediately inform the Prosecutor's Office. The Prosecutor's Office, through a Victim Advocate, may follow up with the victim to ensure that amends have successfully been made.
9. **Successful Completion of Restorative Justice Process—Denial of Charges:** If (1) the restorative-justice program is successfully completed, (2) the person who committed harm has not been accused of any new crimes against persons or property, and (3) it has been more than 18 months since the case was deflected to the DRC, the Prosecutor's Office will immediately deny the underlying charges, and will commit not to bringing those charges in the future.

If the restorative-justice program is successfully completed, and it has been less than 18 months since the case was deflected to the DRC, the Prosecutor’s Office will deny the underlying charges once the 18-month milestone has passed—assuming that the person who committed harm was not accused of any new crimes against persons or property during that time period.

10. **Commission of a New Crime—Option to File Charges:** If the person who committed harm is accused of a new crime against persons or property during the 18 months after the case was deflected to the DRC, the Prosecutor’s Office may, in its discretion, opt to file the underlying charges.
11. **Relationship to Other Charging Policies:** The vast majority of this Office’s general charging policies—which require denial of certain charges—do not cover cases involving “crime survivors,” and thus are not amenable to restorative justice.³⁴ *See supra* II.1. Limited aspects of other charging policies, however, do cover cases involving crime survivors. Of the charging policies enacted to date:
 - **Policy Directive 2021-04** (*Policy Regarding Resisting and Obstructing*) covers cases in which a police officer was the victim of a crime; and
 - **Policy Directive 2021-11** (*Policy Regarding Juvenile Charging*) precludes charges (1) “as a mechanism for dealing with simple—and common—school-based offenses,” or (2) charges “relating to offenses between similarly aged peers outside of school property, that would otherwise be declined by the Prosecutor’s Office if they took place in a school setting.”

That Policy specifically notes, as examples of charges that should not be authorized against juveniles, a schoolyard fight without an injury, and a minor theft from a classmate’s backpack. The Juvenile Charging Policy also provides that this Office maintains “a strong presumption against filing a delinquency petition against a young person where there is reason to believe that young person’s behavior was a manifestation of a diagnosed disability or behavioral disorder.”

This Office’s general charging policies take precedence over this Policy. In other words, if this Office’s general charging policies mandate denial of a particular charge, APAs should simply deny those charges—not explore deflection into restorative justice. By way of example, if an APA concludes that a requested resisting-and-obstructing charge does not meet the criteria for charging outlined in Policy Directive 2021-04, the APA should simply deny that charge, not explore deflection into restorative justice. Similarly, if a requested petition involving a juvenile involves, e.g., a schoolyard fight

³⁴ Specifically, Policy Directive 2021-05 (*Policy Regarding Cannabis and Marijuana*); Policy Directive 2021-06 (*Policy Regarding Entheogenic Plants*); Policy Directive 2021-07 (*Policy Regarding Buprenorphine*); Policy Directive 2021-08 (*Policy Regarding Sex Work*); and Policy Directive 2021-10 (*Policy Regarding Driver’s License-Related Offences*) all involve charges in which there is no identifiable “crime survivor.” Similarly, Policy Directive 2021-09 (*Policy Regarding Pretext Stops*) covers only “possession of contraband” charges, not charges against persons or property.

without injury, the APA should simply deny that charge pursuant to Policy Directive 2021-11—not explore deflection into restorative justice.

The restorative-justice process outlined in this Policy should be explored *only* if a charge would otherwise be authorized by this Office under its general charging policies, and if the circumstances meet the criteria previously outlined in this Policy.

12. **Charges Should Be Supported by Evidence and in the Interests of Justice:** Nothing in this Policy shall be interpreted to mandate or encourage the filing of charges that are not covered by this Policy. If an Assistant Prosecuting Attorney believes that filing charges other than those covered by this Policy are not supported by the evidence, or are not in the interest of justice, the Assistant Prosecuting Attorney should not file those charges.
13. **New Charges:** Nothing in this Policy should be interpreted to preclude or discourage Assistant Prosecuting Attorneys from authorizing new charges against a participant in restorative justice, if those charges are supported by the evidence and are in the interest of justice. This Policy provides that the underlying charges can be filed by the Prosecutor’s Office if the person who committed harm is accused of an additional crime against persons or property within an 18-month period. For avoidance of doubt, those underlying charges may be filed *in addition* to the new charges. In addition, if a participant in restorative justice is accused of a crime that is not a crime “against persons or property” during that 18-month period (for example, a possession-of-contraband charge) nothing in this Policy precludes or discourages those charges from being authorized.
14. **Exceptions Allowed:** Cases may be accepted into the program, declined or denied at the discretion of the Prosecutor’s Office.
15. **No Substantive Rights Created:** This Policy is an exercise of discretion by the Washtenaw County Prosecuting Attorney’s Office. Nothing in this Policy purports to affect the legality or propriety of any law enforcement officer’s actions. Nothing in this Policy shall be interpreted to create substantive or enforceable rights.



Eli Savit
Prosecuting Attorney, Washtenaw County
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