

### III MEDIATION/DIALOGUE IN THE JUVENILE JUSTICE SYSTEM: A COMPARISON OF TWO JURISDICTIONS<sup>1</sup>

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#### **Abstract**

The purpose of this paper is to contribute to the growing literature regarding VOD programming by comparing two jurisdictions within the same state regarding functional characteristics as well as outcomes. A descriptive comparison is made, highlighting the unique administrative, population, and program characteristics of each locale. The two locations had significantly different demographics, general populations, and juvenile court populations. It appears that the size, composition, administrative structure and offender population have little to do with the successful implementation of a victim-offender dialogue program.

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## **Introduction**

The face of juvenile justice in America is changing. The juvenile justice system is undergoing a fundamental shift from the strictly treatment and punitive models toward a balanced and restorative justice model or BARJ (Katz & Bonham, 2007; Bazemore & Schiff, 2005). Victims and community members are joining with the juvenile justice system in a wide variety of restorative programs. A 2005 national inventory (Bazemore & Schiff, 2005) found that 94% of states have implemented at least one restorative juvenile justice program, and many have revised their statutes and codes to reflect this new philosophy. In one state, restorative justice programming increased 300% between 2000 and 2006 (Katz & Bonham, 2008). While there are numerous and unique restorative justice options, one of the most studied and documented is victim-offender mediation (or victim-offender dialogue; herein VOD).

The literature discussing the pros and cons of restorative justice in general and VOD in particular, its true definition, and the proper implementation strategy is extensive and covers a wide range of issues and opinions. In addition, there are numerous research evaluations into specific programs, documenting successes for victim satisfaction (for example, Umbreit & Bradshaw, 1997), recidivism (for example, Nugent & Paddock, 1995; Umbreit, 1994), and for various offenses (for example, Cossins, 2008; Urban & Burge, 2006). One weakness of all this literature is generalizability; it cannot be said for certain that a program that demonstrated success in one jurisdiction will show the same success in another. In addition, even though evaluation sites include locales as diverse as California, Indiana, Tennessee, Missouri, and Minnesota in the U.S. (as well as numerous other countries) this study seeks to offer insight into how two jurisdictions within the same state (with the same overarching state statutes and policies) handled the implementation of face to face dialogue between victims and juvenile offenders.

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jurisdictions within the same state regarding functional characteristics as well as outcomes. A descriptive comparison is made, highlighting the unique administrative, population, and program characteristics of each locale. Outcomes regarding program completion, recidivism, and participant satisfaction are also assessed and compared, and several policy implications are suggested.

The idea for this comparison was conceived only after both sites had individually evaluated their program; thus, methodologies and outcomes vary. Both sites conducted independent, quasi-experimental evaluations using currently available official data and resources. An ideal multi-site evaluation and comparison would contain identical sample selection strategies and outcome measures, but as noted, this comparison is far from perfect. Even with its flaws the current research will benefit practitioners in the juvenile justice field, as it points out real similarities and differences between the two sites.

## **Policies**

### **Site Description**

Site A is located approximately 40 miles from a major metropolitan city in the extreme western part of the state, in a mixed (suburban and rural) county of approximately 82,000 citizens. County residents have access to multiple retail, higher education, and health care resources. Construction, local government, and retail trade accounted for the largest shares of earned income, with a majority of residents (62%) commuting outside the county to their place of employment.

Site B is a major metropolitan city in the extreme eastern part of the state with approximately 348,000 residents, a number that increases substantially during the work day due to the presence of a large number of companies, several of which have a world headquarters in the city (see Table 1 for additional demographic comparisons). Health care, a major university, and federal government are among the largest employers located inside the city

limits. Less than half of residents commute outside of the city for work (42%).

**Table 1.** Comparison of Site A and Site B

Site	Population <sup>a</sup>	% of Pop. under age 18 years	Median income	% white	Poverty rate
Site A	82,000	26	\$55,000	95	6%
Site B	348,000	27	\$27,000	43	25%

Note: a = all figures are rounded for ease of comparison

The juvenile court at Site A is in a circuit that is made up of two counties. There is one juvenile division for the circuit, with offices in each county. Two juvenile judges split their time between the two counties (Site 1A is a mixed suburban and rural county, and the location of the current study; Site 2A is a rural community with a small detention facility, and other limited resources and programming). Administration consists of one Chief Juvenile Officer and one Chief Deputy Juvenile Officer, also splitting their time between the two counties. In the Site 1A county, the caseload is approximately 1,200 cases per year, not including the child abuse/neglect cases. Over one-third of those cases (about 400-500/year) are diverted to the First Offender Community Initiated Sanctions and Services (FOCISS) program. Approximately one-third of the total caseload (about 350-400/year) has an identifiable victim.

The juvenile court at Site B is comprised of the city itself, and is a Family Court. There is one juvenile division, with one main court building and two satellite probation offices. One circuit judge and two commissioners conduct hearings at the main court building. Administration consists of one Chief Juvenile Officer/Assistant Court Administrator, and two Chief Deputy Juvenile Officers; one oversees child protection (which handles abuse and neglect and informal referrals) and one oversees special services and delinquency offenses (including a number of specialized programs, including curfew

enforcement, truancy, gun, and drug courts). In 2007, over 4,300 juveniles were referred to Site B (over 1,600 were felony referrals), excluding abuse and neglect cases.

### **Program Description**

Several aspects of the program at both locations are similar, and in accordance with recommended and accepted restorative practice (for the most part). First, both locations screen juvenile cases for eligibility (Benedictus & Wood, 2002). Each site has different criteria for inclusion (discussed in the next section), but both engage in screening. Second, each site requires that participation of the juvenile is voluntary, as well as that all parties are allowed a support person during the mediation/dialogue. Third, both sites assess the juvenile's appropriateness and willingness to accept responsibility prior to contacting the victim to participate in the process (Site B contacts the victim first for certain petitioned cases, as the prosecutor and judge desire a course of action as soon as possible in the process). As noted, each site has implemented their victim-offender dialogue program in a unique way and these individual differences are listed here.

Site A developed a program based on the BARJ model that uses a combination of community and victim interactions to balance the three goals of accountability, competency development, and public safety. A "first offender community sanctioning program" works in conjunction with a victim/offender dialogue program, providing victim-centered services such as assistance with paperwork (crime victims' compensation, restitution requests, victim impact statements) and referral to support services as needed, as well as immediate sanctions for the juvenile. The juvenile office receives referrals from police, schools, and parents. The target population is low risk, non-violent juveniles, age 8 to 17 who have not been previously referred for a delinquency or status offense. All court referrals are screened, and cases that meet the criteria are forwarded to the appropriate program. The overarching first offender program accepts any referrals, including beyond parental

control and “behavior injurious to self” which may include curfew, drug possession, or fistfights, while the victim/offender dialogue program targets those cases with an identifiable victim and an issue that can be mediated such as property damage and fistfights. If the juvenile is willing but the victim is not, a surrogate victim may be used for the dialogue.

Site B adopted victim/offender mediation in 2002 (renamed victim/offender dialogue in 2007) as a first attempt at restorative justice programming. The mission of the victim/offender mediation program is to include victims in the court process, restore the health of the community, and give juveniles the opportunity to repair the harm that has been caused. The court has sought to increase the role of victims in all court proceedings, and to assist with any needs the individuals may have as a result of their victimization. All referrals for VOD are received from law enforcement, through official (petitioned) and unofficial referrals. Initially the program only accepted minor, nuisance-type offenses, but over time began to accept more serious felony offenses with situations that could be mediated, such as car theft. All court referrals are now screened for inclusion, using criteria similar to other mediation-type programs (Hughes & Schneider, 1989; Umbreit & Coates, 1993). These criteria include that the juvenile must have no prior adjudications, the case must be a situation that can be mediated such as a fistfight or property damage, and not be a sex or serious violent offense.

Both sites share many inclusion criteria, but had different evolutions. Site A created dialogue as an outgrowth of an existing first offender program that encompassed many minor offenses and a was one of a variety of sanction options, while Site B created dialogue as its own stand-alone program. Both sites target the low-risk, first time offender, although Site A requires the juvenile to be referral-free whereas Site B requires the juvenile to be adjudication-free. Both sites screen referrals for eligibility and make case-by-case decisions for inclusion.

### **Sample Selection**

Site A initiated the FOCISS diversion program in January 2006, and the victim-offender dialogue portion in January 2007. Thus, the comparison group consists of juveniles who participated in FOCISS only, and exited the program prior to December 2006 (N = 203); the experimental group consists of those juveniles who participated in the VOD portion of the program, between January and September 2007 (N = 167).

Site B has a more complicated sample selection, due to changes that took place in accepting referrals as the program evolved. VOD was first introduced in 2001, with all unofficial (non-petitioned) cases randomized into either the control or experimental group, which remained the procedure throughout data collection (N = 388). The decision to include petitioned cases was made in 2003, yet these cases were not subject to randomization due to their relatively low numbers. Thus, petitioned cases are included in the experimental group using only the criterion that all parties were agreeable (N = 108). Those cases where all parties were not agreeable were placed into the comparison group. Due to the case flow procedure set up by the court, there were actually three groups: those who completed mediation (N = 118), those who were interviewed by VOD staff but did not mediate (N = 389), and those who had no contact at all with VOD staff (N = 434). Site B has been in existence longer than Site A, with official records examined from December 2001 through April 2005.

### **Site Statistics**

Table 2 provides information regarding specific site characteristics. Not only are the physical descriptions of each area quite different, the demographic description of their juvenile court populations is also quite different. The sites are quite different on extra legal factors; site A contains a greater proportion of females, as well as a much smaller percentage of black juveniles. The sites are also

divergent on the type of offense referred. Site A has a larger proportion of status offenders, while Site A is predominantly property offenses.

**Table 2.** Demographic and Current Charge Comparison of the Two Sites

	Site A experimental	Site A comparison	Site B experimental	Site B comparison
% male	62.3 (N = 167) <sup>a</sup>	60.6 (N = 203)	74.8 (N = 490) <sup>b</sup>	86.5 (N = 429)
% black	6 (N = 167)	7 (N = 203)	90.8 (N = 469)	91.4 (N = 349)
Top 3 offenses	Status (31.7%) Property (25.1%) Person (20.4%)	Status (34.5%) Property (32.5%) Person (15.8%)	Property (59.9%) Person (38.7%) Status (1%)	Property (57.1%) Person (38.8%) Other (2.7%)

Notes: a = Neither site reported significant differences between groups for any variable  
 b = N for each group differs because of missing information in the original dataset

For Site A, the majority of status offenses were behavior injurious to self and included some behaviors that would be classified as misdemeanors in other jurisdictions. For Site B, the only status offense was curfew, and a majority of property offenses involved stolen vehicles. Person offenses ranged from fistfights (the modal category) to robbery.

### Outcomes

Common outcomes collected by both sites include program completion, participant satisfaction, and recidivism. For Site A, 167

juveniles were referred to the program, and 139 completed their mediation (83%). For Site B, 494 juveniles were referred to the program, 389 met with staff, and 118 completed a mediation (30% of those who were interviewed). Interestingly, juveniles with a petitioned case were more likely to complete mediation (60%) than those with unofficial cases (21%).

Participant satisfaction has been an outcome of concern for mediation programs since their inception. Both sites use standard Likert-type scales to assess victim, offender, parent, and community member satisfaction on items such as whether the participant felt like they were able to express their feelings, whether the process was fair, whether they would recommend the program to a friend or family member, and the like. For Site A, out of 139 mediations, eight victims returned satisfaction surveys (17%). This site changed its collection strategy after realizing that zero satisfaction surveys were returned when sent via postal mail. The new strategy involved requesting survey completion immediately following the mediation session, and proved more productive but not useful for the current examination. Of the eight victims, all responded “strongly agree” to all 10 questions.

For Site B, the strategy of satisfaction survey completion immediately following mediation had always been in place, but yielded similar results to Site A. Of the 118 mediations, 61 victims completed the survey (52%). Overall, the results were positive. In general, at least 80% of victims answered that they “agree” or “strongly agree” that the mediation was helpful, and that they would recommend mediation. The single “strongly disagree” response came from a participant that did not receive the amount of restitution they desired.

While many agencies and funding sources are beginning to recognize that there are other measures of “success” besides non-offending, recidivism is still a major public safety concern for many jurisdictions. Site A defined recidivism as a new referral for delinquency within 12 months of mediation. This site had the distinct advantage of access to a clear, well constructed data set that

captured specific dates of participation for juveniles. For this site, the recidivism rate was 8.4% (N = 14) for those juveniles who completed a mediation and 9.9% (N = 20) for the comparison group, not a significant difference. Site A was able to complete a survival analysis, however, that did yield statistically significant results. The survival rate for those who completed mediation was 150 days, compared to only 45 days for the comparison group.

Site B reports an interesting re-offense trend for those who participated in VOD compared to those who did not. This site defined recidivism as any new referral that would trigger court action (whether official, unofficial, status, or delinquency). For this jurisdiction, data indicates 27.1% (N = 23) of juveniles who completed a mediation, 34.6% (N = 111) of juveniles who met with staff, and 41.1% (N = 136) of juveniles in the comparison group that never met with staff had a subsequent court referral. Each of these differences is significant at the  $p > .05$  level.

### **Discussion and Conclusions**

Several conclusions can be drawn from the above comparison. First, each of these jurisdictions has significantly different demographics, general populations, and juvenile court populations. Second, Site A is significantly more successful at completing dialogues than Site B. Third, victim feedback is problematic for both sites, and fourth, regardless of any of these variables, the juveniles that participated in mediation were less likely to recidivate than those that had no contact with such a program.

These conclusions contribute to future research as well as inform important policy recommendations. First, while there are significant flaws in the research design, it appears that the size, composition, administrative structure and offender population have little to do with the successful implementation of a victim-offender dialogue program. There is hope for a successful VOD program in any jurisdiction, including small, large, rural, or urban locations. While

not officially documented, administrative support and employee buy-in are more likely to be influential in program success. It should be noted that these jurisdictions received federal funding for the program from different sources; one site found new funding to continue the program, while the other experienced an administration change and subsequently a change in support for the program.

Accepted practice is that VOD is most appropriate for first-time or low level offenders. This comparison shows that the program can be appropriate for a wide variety of offenders and offenses, both with petitioned and unofficial cases, as well as felony, misdemeanor, and status level behaviors. The fact that certain offenses labeled as “status” offenses in Site A were labeled as “unofficial misdemeanors” in Site B is interesting and warrants further study. Comparing the outcomes of specific behaviors would be more useful nationwide; for example, whether juveniles referred for fistfights in different jurisdictions have similar outcomes.

The fact that this comparison was a piecing-together of two already complete projects is a significant weakness that could be easily corrected in future research projects. It appears that VOD is a robust program that yields positive results no matter the research method, however. Site A used a significantly more stringent measure of recidivism (new delinquency referral), which most likely affected the significance of the results, as well as the overall recidivism percentages. In fact, the jurisdiction changed its definition to a much less stringent measure of “recidivism” and witnessed a substantial “increase” in recidivism percentages. Even with considerable definitional differences in measurement and offense category, the positive results regarding VOD seem to hold and support prior research. Another limiting factor is that this comparison looks only at the victim-offender dialogue program, which is but one of a wide variety of conflict resolution and juvenile court interventions.

Site A obviously demonstrated more success at completion of dialogues than Site B. The critical factor was the inclusion of surrogate victims. In Site B, if the victim did not desire to participate, the case was returned for “regular” court processing, which may

have included informal probation, or prosecution and formal probation, depending upon the offense. Site A provided juveniles with an option to remain in the dialogue program, but with a volunteer who had experienced a similar victimization. This result, combined with the information that juveniles in Site B who completed a dialogue were the least likely to reoffend, indicates that if the actual victim is not available or unwilling, that the use of surrogate victims should be implemented by any VOD programs.

Overall, it appears that victims find the process of mediation an acceptable solution to the juvenile's offending, but further research is definitely warranted. Likert-type scales fail to assess specifically why a participant was less-than-satisfied. Each site provided the option for open ended comments, but this feature was rarely used by the participants, and thus does not provide any insight. Redesigning participant satisfaction surveys to be more open-ended or perhaps interview format would be more difficult to analyze, but would provide much greater information than current Likert-type scales. There is significant research already in existence regarding victim satisfaction with VOD. The current study supports other research which notes high amounts of victim satisfaction regarding to both the process and the outcome.

The most important result is that VOD appears to be a program that is beneficial to the juveniles who participate. Whether recidivism is measured as any referral or a delinquency referral, whether the offense is a status or felony referral, juveniles tend to have less subsequent court contact after participation in a dialogue session. This is not to say that all cases and all juveniles should be referred to such programs, and dialogue is no panacea. The current trend in juvenile justice appears to be toward reducing formal contact with the juvenile court and recommending the use of community-based rather than institutional-based programs (Annie E. Casey Foundation, 2008). Victim-offender dialogue meets these criteria and has repeatedly shown benefits for the juveniles as well as other members of the community.

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