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CRITERIA FOR VICTIM-SENSITIVE MEDIATION & DIALOGUE WITH OFFENDERS

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Purpose of Victim Offender Mediation

The purpose of Victim Offender Mediation and Dialogue is to provide:

- 1) A restorative conflict resolution process which actively involves victim and offender in an effort to repair the emotional and material harm caused by a crime;
- 2) An opportunity for victim and offender to discuss the offense, get answers to their questions, express their feelings, and gain a greater sense of closure;
- 3) An opportunity for victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime.

Underlying Principles of Victim Offender Mediation

- 1) Human beings possess untapped inner resources that, under the right circumstances, can be accessed and utilized to address issues and resolve problems of importance to them.
- 2) Appropriate structure (e.g. neutral third party facilitation, procedural guidelines, ground rules, intentional seating plan) can neutralize status and power, and provide an environment conducive to meaningful dialogue, even in emotionally intense contexts.
- 3) The use of specific techniques and strategies by the mediator must serve the larger goals of creating a safe, respectful environment in which a mediated dialogue can occur.
- 4) The “personal” is powerful - genuine stories of people’s experience can be evocative of empathy, insight, and learning. The telling and hearing of these stories can be empowering, healing, and transformative for both storyteller and listener.
- 5) The mediator’s “presence” plays an important role in facilitating a genuine dialogue in which the parties are actively engaged and doing most of the talking. “Presence” may arise through the mediator’s non-verbal and verbal communication, tone of voice, openness, empathy, and authentic connectedness with each party.
- 6) Presenting choices to the parties whenever possible (i.e. when to meet, where to meet, etc.) maximizes their opportunities to feel empowered by the process.
- 7) The role of the mediator is critical for the purpose of mediation to be realized. Because direct conversation between the parties is at the core of what may be experienced by the parties as transformative, it is important for mediators “to get out of the way” when the parties are engaged in meaningful dialogue. Mediators should use caution in intervening too frequently.
- 8) Individual differences and conflicts can elicit creativity and a sense of possibilities otherwise unknown. The mediation process may be adapted to more effectively meet the needs of the particular parties so that they feel safe and comfortable enough to engage in a genuine dialogue. Continual attention needs to be paid to differences in communication style and meaning.

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- 9) Discovering underlying information, needs, interests can enhance a collaborative effort and encourage more satisfying results.
 - 10) Well-written agreements guide and focus behavior, thereby eliciting and enhancing results. Written agreements, however, are secondary in importance to the dialogue between the victim and offender about the crime and its impact on their lives. Some mediated dialogue sessions may satisfy the needs of the parties but not result in a written agreement.

Overview of Criteria For Victim-Sensitive Mediation

1. Victim Safety
2. Victim Choice
 - a) Participation
 - b) Support
 - c) Schedule for Mediation Session
 - d) Mediation Site
 - e) Seating
 - f) First Speaker
 - g) Termination of Session
 - h) Restitution
3. Pre-Mediation Session with Victim, Conducted in Person by Mediator
 - a) Listen
 - b) Provide Information and Answer Questions
 - About the mediation program
 - About oneself as mediator
 - About the mediation process
 - About the judicial system
 - About victims' rights
 - About resources available to them
 - About the offender
 - c) Discuss Risks/Benefits and Assist Victim in Decision-Making
4. Careful, Extensive in Person Victim Preparation by Mediator
 - a) Reality Testing Victim Expectations
 - b) Assessment of Losses and Needs
 - c) Restitution Possibilities
5. Careful Screening of Cases
6. Meeting First with Offender
7. Offender Choice to Participate
8. Offender Support

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9. Pre-Mediation Session with Offender, Conducted in Person by Mediator
 10. Careful, Extensive in-Person Offender Preparation by Mediator
 - a) Reality-Testing Offender Expectations
 - b) Assessment of Losses and Restitution Possibilities
 11. Use of Victim Sensitive Language
 12. Use of Humanistic/Transformative Model of Mediation
 - a) Perspective of the Mediator
 - b) Relaxed, Positive Atmosphere
 - c) Dialogic Focus
 - d) Guidelines
 - e) Feedback from Participants
 - f) Option of Follow-up Session
 13. Follow-up after the Mediation Session
 - a) Completion of Agreement
 - b) Notification of Victim Regarding Status of Agreement
 - c) Scheduling Additional Sessions if Needed
 - d) Phone Contact with Parties
 - e) Evaluation
 14. Training for Mediators in Victim Sensitivity

Description of Guidelines

1. Victim Safety

A fundamental guideline for Victim Offender Mediation programs is the safety of the victim. The mediator must do everything possible to ensure that the victim will not be harmed in any way. At every point in the mediation process, the mediator needs to ask, "does this pose a threat to the safety and well-being of the victim?" Maintaining rapport with the victim is essential for the mediator, as well as attending to verbal and nonverbal communication, and requesting feedback from the victim as the process unfolds. If the victim feels unsafe, the mediator needs to be prepared to act immediately, to provide options, to terminate a mediation, to provide an escort for the victim leaving mediation.

To ensure the safety of the victim, the mediation should be conducted in a location that feels safe to the victim, and the victim should be encouraged to bring along a support person or two. The mediator may also wish to bring in an additional mediator, if co-mediation is not generally practiced by the program. In addition, victims may find it reassuring to have input on the arrangement of the room and the seating of the parties, and to have the freedom to introduce themselves in the manner they choose, e.g. using first name only.

An important safeguard for victims is knowing the Victim Offender Mediation program has credibility. That credibility needs to be reinforced in writing, with an informative letter of introduction and program brochure. Victims may also need reassurance that the program is not offender-focused. In programs utilizing volunteers, victims need to be assured that staff work closely with volunteers, that victims may contact staff if they have questions or concerns, and that referrals are screened by staff with safety issues in mind.

2. Victim Choice:

Following a crime, many victims experience vulnerability and feelings of powerlessness. Add to that the victim's experience with the criminal justice system, which is focused clearly on the offender. Victims are excluded from the process, rarely being offered an opportunity to tell of their experiences or express their needs. It is not surprising that in the wake of a crime, victims often express a lack of control in their lives, which can intensify their fear and anxiety. The presence of choices and options for the victim in the mediation process can contribute to a sense of power. Empowerment is conducive to healing, the capacity to move through and integrate difficult and painful experiences. The mediator provides information and support for the victim engaged in decision-making, but is careful not to apply any pressure or impose expectations on the victim. It is also important that victims have sufficient time to make decisions, without the pressure of arbitrary time constraints. Choices should continually be presented to victims throughout the mediation process, as a variety of decisions need to be made, including the following:

a) Participation

The victim must always have the right to say "no" to mediation, refusing to participate, and to have that decision honored and respected. The victim did not choose to be a victim of a crime. It is crucial then that victims experience the power of choice in deciding to participate in the mediation process. Victims must always be invited to participate, encouraged to consider mediation but never pressured. The mediator should give accurate information about mediation, describing the process itself and the range of responses for victims who have participated in mediation, along with research findings on client satisfaction. The mediator then encourages the victim to consider the possible benefits and risks of mediation before a decision is made. Victims may also wish to consult with a respected friend, relative, clergyperson, or victim advocate before making a final decision. It is important that the victim participate on the basis of "informed consent."

b) Support

Another important option for victims is the choice of support persons to accompany them to the mediation session. The presence of a friend or relative can enhance the victim's sense of comfort and safety, even though the support person will typically have little or no speaking role. It is helpful for the mediator to meet or phone support persons as well, to prepare them for the mediation session.

c) Schedule for Mediation Session

The mediation session should be scheduled at a time that is convenient for the victim. The victim's schedule needs to be a priority, again, so that the victim can retain a sense of power in the situation and find comfort in the deference extended, even as the needs of others are not ignored.

d) Mediation Site

Site selection is an important ingredient in the mediation process. Victims need to know the range of possibilities available in the situation (e.g. private room in a community center, library, church, office building, city hall) and to be asked what they prefer. What setting would feel safe, neutral, comfortable, and convenient for them? Occasionally a victim chooses a more personal setting, such as a home, or an institutional setting, such as a detention center where the offender is being held. Victims should be encouraged to consider the advantages and disadvantages of particular settings. The final decision, however, should be the victims.

e) Seating

Generally the parties are seated across from each other, allowing them to establish direct eye contact with each other as dialogue between them develops. The use of a table may increase the victim's sense of safety and enhance an aura of decorum. Mediators then are typically seated at the ends of the table, while support persons sit off to the side of each party. While this arrangement, or a variation of it, is generally thought to be useful, if victims find it uncomfortable, their wishes should be given serious consideration. Occasionally a victim will choose to sit closest to the door, at a greater distance from the offender, or will request that support persons sit on the other side of the table, so as to be visible to the victim. Various cultural traditions may also suggest a different arrangement. Whatever the seating, it should be conducive to dialogue and comfortable for all parties.

f) First Speaker

Victims should have the opportunity to choose whether they speak first during the initial narrative portion of the mediation session, or whether they speak last. This displays a bit of deference to their position as victims of crime, largely ignored by the justice system once the complaint has been filed. Often victims will find it empowering to begin, telling offenders first what they experienced and how it has impacted them. At times, however, victims feel "put on the spot" and request that the offender go first, initiating the story and accepting accountability. Some victims find it healing to hear an offender's spontaneous words of regret or remorse, not elicited by the victim's story. The mediator must make sure, however, that whatever the order, both parties' complete stories are heard, that, for instance, the victim's emotional content is not compromised by any remorse the offender may express, and that the young offender does not retreat into silence in the face of the victim's emotional intensity.

In some cases, a judgment call may be required by the mediator as to who should speak first, based on the age, needs and communication styles of the parties. The mediator may find that it is most helpful to the dialogue process in a particular case if the victim or the offender initiates the conversation. In such cases, it is important that the mediator discuss the decision and the rationale privately with both parties, prior to the mediation session. Creating a safe place where both parties feel comfortable enough to engage in a genuine dialogue to the extent of their ability is ultimately the most important principle, regardless of who speaks first.

g) Termination of Session

An extension of the victim's choice to participate in mediation is the right also to exit the process at any point. The victim should be informed that mediation remains a voluntary process to the end. If the victim feels uncomfortable or unsafe, the mediator may caucus first with both parties and then conclude the mediation session for the time being or terminate the process altogether.

h) Restitution

Victims have the right to select what kind of restitution would most fit their needs. In addition to out-of-pocket expenses, victims may request community service (a public service of their choice), personal service, a letter of apology, offender treatment, or other creative options. While the final restitution plan will be negotiated with the offender, it is important that victims understand that they can request the compensation they choose, within any legal limitations that may exist.

3. Pre-Mediation Session with Victim, Conducted in Person by Mediator

The mediator makes a face-to-face visit with the victim, at a time and place most convenient to the victim. Mediators will usually offer to come to the home, at the same time offering alternatives if the victim prefers another setting. The purpose of the visit is to establish credibility and rapport with the victim, and to accomplish these tasks: to hear the victim's experiences, offer information and answer questions, and assist the victim in considering mediation as an option. The mediator should ask victims whether they would rather begin by telling their story or whether they would prefer to learn first about the mediation program.

a) Listen

A critical task for the mediator is to attend to the victim, listening carefully, patiently, and empathetically out of a genuine desire to hear the victim's experience. Effective listening will give the victim a chance to vent and experience the validation of feelings. Attentive listening on the part of the mediator will also help to build trust with the victim and give the message that the victim is a priority. Occasional informal paraphrasing or summarizing by the mediator will assure the victim that the mediator is indeed paying attention and valuing what is being said.

b) Providing Information and Answering Questions

- About the mediation program

The mediator needs to give thorough and accurate information about the program itself (orally and in writing), its goals, its history, the population it serves, and any costs involved, if any, for participants.

- About oneself as mediator

Mediators should offer a few brief words about their work as mediator, their training and experience, and about themselves personally, as deemed appropriate. Giving information about oneself helps to build rapport and trust with the victim.

- About the mediation process and its purpose

The victim will also need to know, in some detail, what the mediation process looks like, the role of participants, and overall purposes.

- About the judicial system

Victims will typically want to know what has happened so far to the offender, and what might occur if they proceed with mediation or if they decline. Mediators need to be attentive to ongoing questions that may arise, even following the mediation.

- About victims' rights

Helpful information to leave with the victim is a summary of the rights granted to victims in that state.

- About resources available to them

Mediators must be attentive to needs expressed by victims, and contact staff, offer resources, or make referrals as requested to local, state and national organizations or agencies.

-About the offender

As victims begin to consider their decision about mediation, they may find it helpful to know something about the offender's state of mind and circumstances. Mediators must first get permission from the offender before sharing this kind of information.

c) Discuss Risks/Benefits and Assist Victim in Decision-Making

Having given victims the necessary information, the mediator now needs to assist the victim in considering the risks and benefits of mediation in their particular situation.

4. Careful, Extensive in-Person Victim Preparation by Mediator

After victims have made a decision to proceed with mediation, mediators will need to prepare them for what lies ahead. This can be done in the initial meeting or in additional sessions. It is important that the mediation session not be scheduled until victims feel ready.

a) Reality Testing Victim Expectations

At times, victims may develop inflated expectations of the mediation process, e.g. reconciliation with the offender, complete healing or peace of mind for themselves, rehabilitation of the offender, total repair of the damage done. While victims generally experience very positive outcomes, as do offenders, these cannot be guaranteed. Mediators themselves need to be realistic with victims, providing accurate information about possible outcomes and the kinds of results that are most typical, with strong caution that each mediation is unique and cannot be predicted.

b) Assessment of Losses and Needs

Victims may appreciate assistance in identifying losses experienced in the crime and present needs related to the crime. This can include material and out-of-pocket monetary losses, and less tangible losses, such as a sense of safety, and feelings of connection and community.

c) Restitution Possibilities

Mediators should engage victims in preliminary brainstorming about the ways their losses and needs might be addressed, i.e. what would it take to repair the harm done, as much as possible. This is intended to spark the victim's ideas about possibilities for restitution, which culminates in the victim's decisions during the actual mediation session when an agreement is negotiated. Victims should also be informed of any public funds dedicated to reimbursing victim losses.

5. Careful Screening of Cases

Each mediation program will have its set of criteria for case selection, e.g. types of crime, age of offender (juvenile or adult), first time offense or multiple offenses. In addition to program

criteria, staff and/or mediators will also exercise discretion as each case is developed and at each step in the process, asking themselves if this case is appropriate and should proceed to mediation.

In general, it is important in the mediation process that offenders take responsibility for their participation in the crime and proceed willingly to mediation. If mediators have any doubts about moving ahead with the process, they should talk with the victim, explaining the situation, sharing information about the offender (with the offender's permission), and inquire about the victim's desire to proceed. Victims may choose to proceed even if the offender is inarticulate or less than remorseful, simply because they wish to be heard, or victims may decide not to mediate in such a situation.

It is important also that mediators consider the readiness of both parties to participate in mediation, noting particularly victims' ability to represent their interests and express their needs.

6. Meeting First with Offender

Mediators will generally need to meet first with the offender, prior to contacting the victim. Then if the offender is willing to participate in mediation, the victim can be contacted and a meeting arranged as desired. If the mediator meets first with victims, however, gaining their consent to participate, and then later discovers that the offender will not participate, victims may feel revictimized, having their hopes raised for some resolution to the crime, only to be denied that opportunity. If, however, contacting the offender results in a significant delay for the victim, the mediator needs to talk to the victim about the situation, explaining the importance of voluntary participation on the part of the offender.

7. Offender Choice to Participate

It is important that offenders participate voluntarily in mediation, throughout the entire process. Even when there exist certain pressures from the court system to participate, it must be made clear to offenders that they may, in fact, decline. If offenders mediate involuntarily, victims may experience the mediation as unsatisfactory and even harmful. The offender's attitude or insincerity may constitute an additional offense in the eyes of the victim.

8. Offender Support

Offenders may also choose to have a friend or relative accompany them to the mediation session. The presence of support people can reinforce the seriousness of the mediation process. In addition, these supporters may in the future serve as reminders to the offender of the commitments made and as "coaches" who can encourage the offender in the completion of the agreement. Creating a humane environment for the offender also makes for a better mediation, which benefits victims and offenders, and our communities.

9. Pre-mediation Session with Offender, Conducted in Person by Mediator

In the initial meeting with the offender, the mediator seeks to establish credibility and rapport, and to accomplish these tasks: to hear the offender's experiences, offer information and answer questions, and assist the offender in considering mediation as an option. As described above

(#3), the mediator, as attentive listener, gains an understanding of the offender's experiences and feelings relative to the crime, provides information, and responds to the offender's questions. Offenders need to know about the mediation program and the mediator, about the process itself and its relationship to the judicial system, about their rights, and resources available to them. They may also have questions about the victim. Again the mediator needs to gain permission before reporting what the victim has said. With all the information, the mediator assists the offender in making a decision about participating in mediation. It is important that offenders consider the risks and benefits of the process in their particular situation. Having a well-informed, willing offender increases the chances that the mediation session will be beneficial for all parties involved.

10. Careful, Extensive in-Person Offender Preparation by Mediator

After the offender has decided to go ahead with mediation, the mediator will need to prepare the offender for the session. It is important that offenders feel ready to proceed before the mediation session is scheduled. They need a chance to reflect on the crime and their feelings about it, a chance to work through the kinds of things they may wish to say to the victim. In order to help offenders understand the victim's experience, the mediator may invite offenders to recall their own experiences of being a victim, and then consider what the victim of their crime might be feeling and might want from them. Mediators may ask offenders what they would like to do for the victim as well as what they wish to accomplish for themselves.

a) Reality Testing Offender Expectations

Offenders may need assistance in maintaining realistic expectations of mediation. Some offenders may expect that an apology will automatically diffuse the intensity of the victim's emotions, or that one mediation session will erase the harm caused by the crime. The offender's disappointment that such expectations were not met can be detrimental to the victim, who may experience guilt or anger as a result.

b) Assessment of Losses and Restitution Possibilities

Mediators should assist offenders in thinking about the victim's needs and possible losses a victim may have experienced, both tangible and intangible, and then engage offenders in preliminary brainstorming about the ways the needs and losses might be addressed, i.e. what would it take to repair the harm done, as much as possible. The mediator should discuss with the offender resources that might be used in addressing the losses, including present income, potential additional jobs that might be available, and other types of skills that might be offered to the victim. Offenders should be encouraged to continue thinking of restitution ideas and resources, in preparation for the mediation session.

11. Use of Victim Sensitive Language

Mediators need to be careful in their use of language. Certain words and phrases can imply judgment or convey expectation. For example, if a mediator says or implies "you should," neutrality is lost, rapport and credibility may be damaged, and a victim may well feel pressured, and experience a diminished sense of power. The mediator must provide information, present the options, and then encourage victims to make the best decision for themselves. Most people

are accustomed to seeing professionals or trained volunteers as experts with answers. Mediators must be vigilant in guarding the choices, i.e. the autonomy, of the parties.

It is also important that mediators avoid the use of words such as "forgiveness" or "reconciliation." Again, such words pressure and prescribe behavior for victims. In addition, it is vital that mediators try to avoid raising expectations that cannot be fulfilled in a particular case. For example, using words such as "healing," "restoration," "being made whole" to describe possible outcomes for mediation may elevate victims' hopes unrealistically. Some victims may experience something of reconciliation, but it must occur spontaneously, without a directive from the mediator. In fact, it is more likely to occur if the mediator avoids directives. Forgiveness also may be expressed during the mediation session but if the mediator so much as uses the word "forgiveness" it may be destructive to the victim. Victims may, for instance, feel guilty if they fail to feel very forgiving. They may resent the suggestion and shut down to the point that they miss the opportunity to truly express how the crime has impacted them, typically a healing piece in a victim's journey.

12. Use of Humanistic/Transformative Model of Mediation

The mediation session itself will be guided by a humanistic approach to the process, which includes the following:

a) Perspective of the Mediator

The mediator brings a non-judgmental attitude, a positive, hopeful demeanor, and conveys a sense of personal integrity and sensitivity to the needs of the parties.

b) Relaxed, Positive Atmosphere

The mediator needs to put the parties at ease, as much as possible, renew the connection developed earlier, and establish an informal yet dignified atmosphere that will be conducive to dialogue, constructive problem-solving, and mutual benefit. It is the mediator's responsibility to be present in a calm, centered manner.

c) Dialogic Focus

As the session proceeds, it is important that plenty of time be allowed, not just for personal narratives but for interaction as well. Silence must be honored. Time pressures or a focus on reaching agreement can detract from the benefits of thorough dialogue, questions and answers.

d) Guidelines

The mediator will need to discuss with participants guidelines that will shape the process. These guidelines help to establish a safe, structured setting and respectful conversation that encourages acknowledgment and recognition of the other, and elicits the strengths of the participants. Each party is assured the opportunity to speak without interruption, after which the mediator assumes a more non-directive role as guardian of the process.

e) Feedback from Participants

The mediator needs to maintain continued attentiveness to the parties, watching for nonverbal cues and listening for unacknowledged feelings, as well as directly requesting feedback and

caucusing with the parties as needed to get further information in private. It is helpful for the mediator to check in with each party before and after the mediation session.

f) Option of Follow-up Session

The mediator needs to mention the possibility of an additional session. Some parties find it useful to meet again, for example, to conclude the conversation, allowing for additional thoughts, feelings, or questions to arise, to negotiate further details regarding restitution, or to acknowledge fulfillment of the agreement.

13. Follow-up after the Mediation Session

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It is vital that the mediator follow through with commitments and details arising out of the mediation session. Dependability is of utmost importance to victims and offenders.

a) Completion of Agreement

The agreement needs to be carefully monitored. It is helpful for the mediator to check-in with the offender periodically to reinforce what was accomplished in the mediation session and to assist with any problems that may arise.

b) Notification of Victim Regarding Status of the Agreement

The victim should be notified when the agreement has been fulfilled, or if circumstances have changed that may suggest alterations in the agreement.

c) Scheduling Additional Sessions if Needed

If another meeting is desired by either victim or offender, the mediator should contact the parties and negotiate an additional session.

d) Phone Contact with Parties

It is helpful if the mediator maintains phone contact with both parties for a period of time following the mediation session, whether or not the agreement has already been completed. A brief check-in is all that may be required. The mediator can serve as a continuing source of information and referral. If the case is not mediated, it may be beneficial, nonetheless, for the mediator or victim support staff to maintain phone contact with the victim for a period up to six months.

e) Evaluation

It is important for victim offender mediation programs to establish procedures for evaluation of all mediations. Victims and offenders need to be surveyed regarding their satisfaction with the mediation process and the outcomes.

14. Training for Mediators in Victim Sensitivity

The initial training of mediators, as well as continuing education, should contain information on the experiences of victims of crime, referral sources, appropriate communication skills for mediators, victims' rights, and guidelines for victim sensitive mediation. It is helpful for trainees to hear from victim advocates and victims themselves.

