

Getting to grips with the practice of VOM in road traffic offences

Seminar 20 April Leuven
European Forum for Restorative Justice
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Own experience: 9 years, many mediation processes, many stories of victims and offenders...

Content

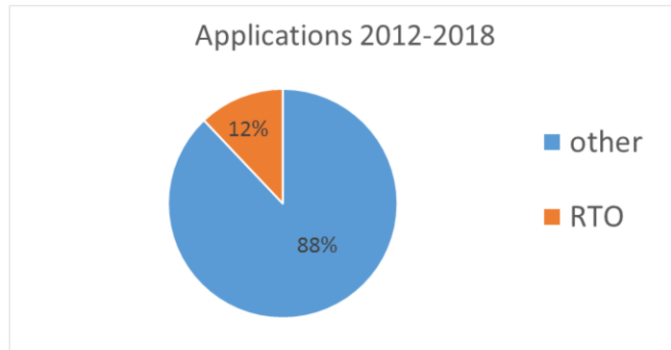
1. Some figures
2. Some typical cases
3. Similarities and differences
4. Methodological Issues



Some figures

- 10 years experience in Belgium (Flanders)
- VOM parallel to the criminal justice system
- Severe road crashes
- Figures from the last 6 years

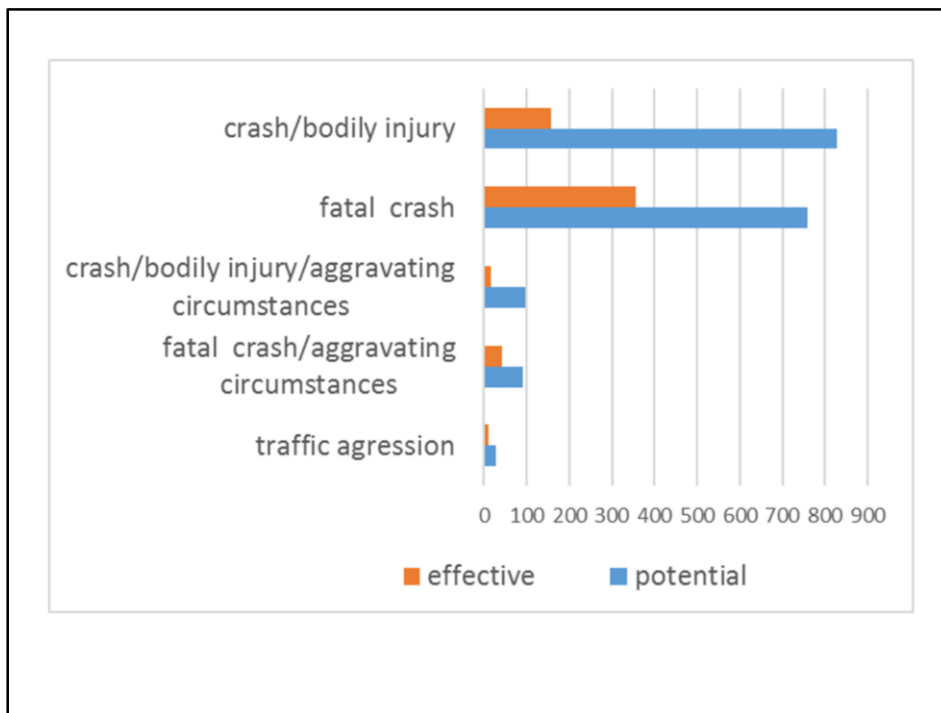
Some figures



Some figures

- +/- 250 cases/year
- 98% pre-sentence
- Most mediations in fatal crashes

No differences wether aggravating circumstances or not



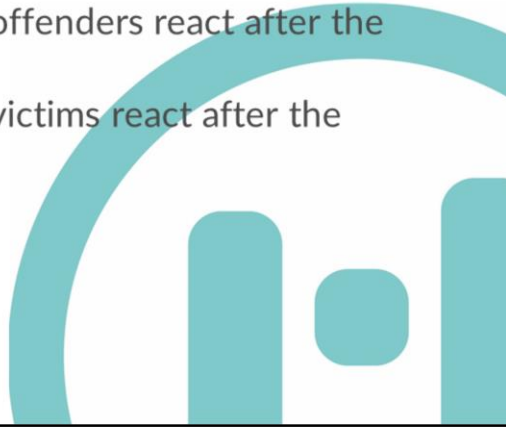
Difference effective/ potential

More response in fatal crashes, regardless aggravation circumstances.

Less response in crashes with bodily injury : focus is more on the rehabilitation proces

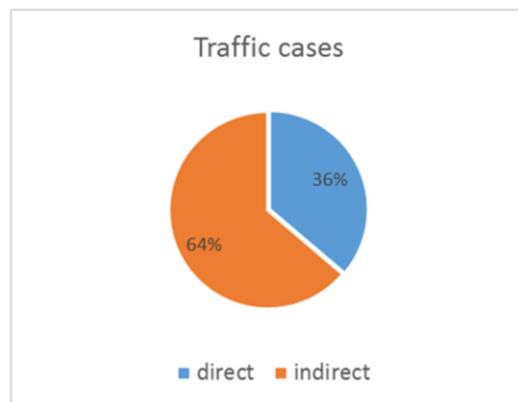
Some figures: referrals

- 80% of the cases applied after information letter from the prosecutor's office.
- 40% of all informed offenders react after the letter
- 36% of all informed victims react after the letter



Some figures:

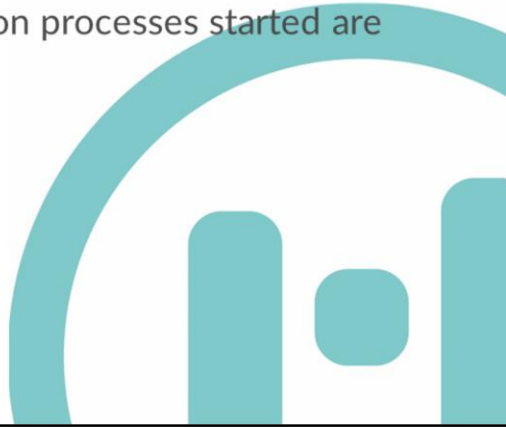
- Direct/indirect



Vgl andere misdrijven : 20% direct

Some figures: outcomes

- Few mediation agreements: between 6 and 17/year
- 75,5 % of all mediation processes started are completed entirely.



Vgl alle misdrijven : 61,7% : less drop out

Some figures: lessons

- More response from victims/offenders
- Most effective mediations in fatal crashes
- More willingness for F2F
- Less drop-out during mediation
- Focus is not on communication to judicial authorities



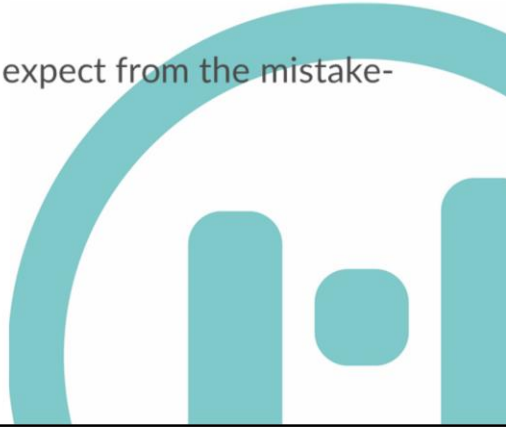
Regardless aggravating circumstances

Focus in on? Lets do a little exercise : since this is a interactive workshop...

What is the focus on?

Imagine yourself being damaged or harmed after someone's mistake:

- How do you feel?
- What do you need or expect from the mistake-maker?



Feelings:

- Being harmed, treated unjustly, angry, sad,....
- Needs: admitting mistake, apologize, restore, preventing future mistakes

What is the focus on?

Imagine you making a mistake that harmed someone?

- How do you feel?
- What do you need to make you feel better?

Feelings : guilty, shame, sad, fear

Needs: willing to apologize, need to restore the harm, support, knowing consequences for the other, forgiveness, ...

All those feelings, all those needs : things that we see and we are working on in the mediations in RTO.

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What is the focus on ?

Some typical cases



- Fatal crash with truck by night.
- Suddenly a drunk person crosses the road and is hit by the truck.
- Case was dismissed
- Indirect mediation
- Ex-partner and children participated in mediation because they wanted to give information to the truck driver.
 - Alcohol abuse
 - Several attempts to rehabilitate failed.
 - Telling him that they do not blame him, that he should not feel responsible.
- Driver: participated, but did not want F2F

No F2F : to close, to human. It helped him to go on with his life, that he had no good image of the victim. But it was helpful to hear the family did not blame him.

Some typical cases



- Fatal crash – hit and run, drug and alcohol abuse
- Young driver causes fatal crash, on a cross road next to his apartment. Victim is person of the same village. Driver under influence of drugs/alcohol. Does not remember crash, continues his ride. Got caught by police.
- When sober, realizes harm done. Apply for mediation after some time, when under custody.

Some typical cases



- Bereaved family wants to wait after trial to participate in mediation.
- After trial F2F with young widow and sister of the victim.
- Motivation victims: telling how the victim was, how to react in a sudden encounter, consequences,
- Motivation offender: showing remorse, asking questions, future intentions,...

- Questions : maintain the flowers that were put near the crossroad to commemorate the crash
- Future intentions: therapy, giving testimony of his experience to peers,...

Some typical cases



- Crash with motorcycle
- Severely injured, permanent incapacity
- Discussion about liability
- F2F with driver of the car
- Themes for the victim:
 - Financial consequences
 - Physical consequences
- Themes for the driver:
 - Answering questions
 - Telling his story
 - Promise to contact with his insurance company

- Police officer
- Between insurance companies
- Insurance company refused to pay advances until liability was proven.
- Fisical : sport, other job,...

Some (typical) cases



- Four friends are involved in a road crash. One of them is the driver, the other ones are passengers.
- No other car is involved.
- Driver survives, two passengers die, one is seriously injured. Alcohol involved.
- Referred to VOM by the police, day after the crash.
- Driver asks if he can go to the funeral of his friends.
- Mediator organised a Circle meeting with the driver, his mother, the parents of the deceased and injured victims.

Focus on the funeral

Focus on expressing how they feel about the loss of their children/friend. Sharing this with each other.

No focus on liability issues : that happened in a later phase of the mediation.

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Similarities

Topics:



**COMPENSATION
CLAIM**



The crash: the course, why?

The attitude towards the other party : feelings of guilt (offender), anger (victim), empathy (both)

The damage and the compensation by the offender/insurance company

The non-financial consequences of the crash (for oneself, family and surrounding)

The punishment: expectations

Similarities

Methodology:

- Information letter by prosecutor
- Reminder letter by mediation service
- Start indirect mediation
- F2F?
- Mediation-agreement
- Follow-up

First choice to the victim

Good preparation of the encounter is important

Follow-up of the mediation, not on the agreement. E.g. refer to lawyers, victim support, self-helpgroups

Differences

Position of victim and offender:

- Not always clear
- Can change
- Sometimes shared liability



In other offences : often clear positions of offender and victim. In road traffic offences positions are not fixed, can change during the procedure

- Take into account during mediation
- Stay out of liability discussion

Differences

Often unintentional offences

- Makes a difference for victims/offenders
- Inner struggle:

Offender

"I could not prevent the crash"

And

"I feel responsible for what I caused"

Victim/relatives

"He took the life of my child"

And

"He's a victim too"

differs in experience :

- More feelings of empathy toward the other : he's a victim too
- Differs from person to person : personality, former experiences, influence of family and context,...
- Inner struggle is important theme in the mediation. Sometimes matches between victims and offenders, sometimes not. That's something to respect

Differences

Role of insurance companies

- Are more prominent in RTO
- Often misunderstandings about mediation
- Discussions on liability influence mediation

Misunderstandings : about the purpose of VOM : they think the compensations will be handled in the mediation.

Differences

Judicial reaction to the offence

- Expectations of victims
- Preventing future offending
- Alternative sanctions
- Mediation can be used to communicate this the judge

RTO banalized, collateral damage, sanctions are often low,
Victims ask a powerfull sign

In most cases they do not want sanctions like imprisonment orextreme high fines.
They often want more “restorative” sanctions: vb. Helping in a rehabilitation hospital,
volunteering with Responsible Young Drivers, sensitizing peers,

Methodological issues

- Invest on good working relations
 - Information
 - Referrals
 - Training and coaching
 - Involvement in VOM
- Stay out of liability issues if necessary: judge and insurance
- Respect free choice of participants

Working relations with : police, prosecutors, victimsupport, victimassociations, self-helpgroups, insurance companies, health services,...

Free choice:

- Participation or not
- Timing
- topics