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Crime Seriousness and Participation in Restorative Justice:

The Role of Time Elapsed since the Offense

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### Abstract

Restorative justice policies and programs aimed at facilitating victim-offender mediation (VOM) are part of many criminal justice systems around the world. Given its voluntary nature and potential for positive outcomes, the appropriateness and feasibility of VOM after serious offenses is subject to debate in the literature. In light of this discussion, this study firstly aimed to unravel the prevalence of serious offenses in cases registered for VOM, and examined whether crime seriousness predicts whether mediated contact is reached between victims and offenders. Secondly, it tested the hypothesis that victims of increasingly serious, harmful crimes are more willing to participate when *more* time has elapsed since the offense – in contrast to victims of less serious, harmful crimes. We analyzed 199 cases registered for VOM in the Netherlands, and coded the perceived wrongfulness, harmfulness, and average duration of incarceration of an offense as three distinct indicators of crime seriousness in these cases. The findings revealed that cases registered for VOM (a) are, in terms of the incarceration duration, on average more serious than all offenses in the population, and (b) resulted in mediated contact (or not) independently of the three seriousness indicators. In addition, empirical support was found for the hypothesis that victims' willingness to participate in VOM *increased* over time after more harmful offenses, whereas it decreased when offenses inflicted less harm. These findings suggest that when VOM programs operate irrespectively of the time elapsed after crime, mediated contact between parties may be as likely after minor and serious offenses.

*Keywords:* crime seriousness, participation, restorative justice, time elapsed, victim-offender mediation

*Word count:* 249

## Crime Seriousness and Participation in Restorative Justice:

## The Role of Time Elapsed Since the Offense

Criminal justice systems around the world have adopted restorative policies and programs that offer victims, offenders and communities the opportunity to repair (im)material damage through voluntary forms of contact, under the supervision of trained mediators (e.g., victim-offender mediation (VOM) or conferencing; Larsen, 2014; Umbreit, Coates, & Vos, 2007; Wenzel, Okimoto, Feather, & Platow, 2008). Rooted in restorative justice, a common goal of such programs is to facilitate "...a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible" (Zehr, 2002; p. 37). Scholars seem to agree that, compared to cases handled solely by the judiciary, these programs offer both victims and offenders better means to fulfil the needs they may have after a crime (e.g., Christie, 1977; Johnstone, 2002; Kuo, Longmire, & Cuvelier, 2010; Marshall, 1999; but see Daly, 2004 for limits to VOM).

A growing number of studies demonstrate the beneficial outcomes VOM and conferencing can have for victims and offenders in terms of how both parties feel treated, their emotional restoration, and a reduced risk of reoffending (e.g., Latimer, Dowden, & Muise, 2005; Shapland et al., 2008; Umbreit, Coates & Vos, 2004; for important inhibitory factors see Choi, Bazemore, & Gilbert, 2012; Saulnier & Sivasubramaniam, 2015). More specifically, previous research shows that victims who voluntarily participated in face-to-face contacts with the offender were less vengeful afterwards than victims who did not participate (Sherman et al., 2005) and reported reduced feelings of fear and anger towards offenders (Strang et al., 2006). In addition, the strongest evidence for a recidivism effect currently available comes from a meta-analysis of 10 randomized-controlled trial studies (conducted in the USA, UK and

Australia), in which offenders and victims who had consented to meet, were randomly assigned to a face-to-face exchange or to a control group of criminal cases (Sherman, Strang, May-Wilson, Woods & Ariel, 2015). These 10 studies concerned victim-offender exchanges in a wide range of offense categories and were organized before, during or after sentencing. Findings indicated that offenders assigned to a face-to-face exchange displayed a “modest but highly cost effective reduction” (Sherman et al., 2015; p. 1) in the rate of re-offending compared to those in the control group. Sherman and colleagues also observed that the reduction in re-offending tended to be larger for studies that focused on violent compared to property offenses. This led them to infer that face-to-face victim-offender exchanges might be more effective for more serious, violent offenses, although they did not empirically assess crime seriousness as a predictor of re-offense rates in their meta-analysis.

Importantly, these beneficial outcomes are typically observed among victims and offenders who agreed to participate to begin with, as voluntary participation is a key feature of VOM and conferencing (Sherman et al., 2015; Umbreit et al., 2004). Given this voluntariness and potential for positive outcomes, a debate exists in the literature about whether VOM and conferencing are appropriate and feasible after minor as well as serious offenses (e.g., Larsen, 2014; Richards, 2009; Waltman-Spreha, 2013). Notably, victims of serious offenses—who experience high levels of suffering—are often thought to be unlikely to engage in mediated contact with offenders, certainly shortly after such offenses (e.g., Lens, Pemberton & Bogaerts, 2013; Winkel, 2007). An important question therefore is whether and how crime seriousness affects willingness to participate in VOM.

To make a substantive, empirical contribution to the above debate, the current paper firstly aims to develop a reliable method to assess the seriousness of offenses handled in VOM. Secondly, the goal is to establish the prevalence of serious offenses in

cases that are registered for VOM and to examine whether crime seriousness predicts if mediated contact is reached after registration. Thirdly, we investigate whether victims' willingness to participate is dependent on the seriousness of the offense involved and the time elapsed since the offense. Achieving these goals will help to better understand which (and when) victims and offenders are likely to participate in VOM and thus, subsequently, may experience the beneficial outcomes reported in the literature.

The question whether the seriousness of offenses affects the process of referral to and further course of VOM is not clearly answered yet in the existing literature (e.g., Larsen, 2014; Umbreit et al., 2004). On the one hand, for (Anglo-Saxon) societies that have successfully incorporated restorative programs such as VOM in the criminal justice system (e.g., Australia, New-Zealand, and North America), several authors have argued that mediation predominantly occurs at the "lower end"—among juvenile offenders and for relatively minor offenses (notably Weijers, 2012; see also Kirkwood, 2010; Umbreit et al., 2004). This implies that the more serious offenses are more often dealt with in court without any opportunity for mediation. Weijers (2012) as well as Van Garsse (2012) postulate that such practices are often the result of judicial parties' tendency to employ mediation instrumentally, as counterweight against a predominantly 'harsh' criminal justice system.

On the other hand, there is research showing that restorative justice programs such as VOM are particularly suited for more serious cases. For instance, a recent study focusing on the current restorative justice programs embedded in the criminal justice system in Australia (Larsen, 2014), revealed that in recent years an 'upwardly directed' development has taken place: mediation is increasingly offered to adult offenders as well as after serious offenses (e.g., murder, sexual violence, or family violence). In addition, Morris (2002) concludes that restorative justice programs in New Zealand are used especially for problematic, persistent juvenile offenders, and adult offenders who

commit serious offenses (e.g., aggravated assaults, threats to kill, or burglaries; see Maxwell and Morris, 1993; Maxwell et al., 1999). Morris (2002) argues that such a focus on serious cases is what many advocates of restorative justice propose: given the positive impact mediation can have and the often scarce resources available to organize it, it should especially be offered after more serious offenses.

From the perspective of victims however, VOM is often considered to be less sensible for individuals dealing with high levels of harm after offenses. For example, Daly (2004) examined youth justice conferences in South-Australia and showed that victims who experienced many problems after a crime (health problems, sleeplessness, fear), evaluated their participation in a conference less positively compared to victims who experienced fewer problems. These victims also displayed fewer signs of emotional recovery after mediation (feelings of anger and fear did not decrease), and they expressed more negative attitudes towards the offender (see also Daly, 2006).

Similarly, Pemberton (2012) also reasons that victims who suffer strongly after an offense, will initially have a stronger desire for vengeance than for a reorientation on the criminal act and offender through VOM. This implies that victims who are heavily affected are unlikely to opt for mediated contact with the offender—certainly shortly after such harmful offenses. Relatedly, Kirkwood (2010) argues that victims participate in VOM because they anticipate psychological benefits: the possibility of communication with the offender and the (re)construction of a narrative of the offense. For victims who experience relatively low levels of harm, these psychological benefits are likely to be salient relatively shortly after the offense, but this may decrease over time when they come to consider the offense too distant in time and/or too trivial (Richards, 2009; Umbreit et al., 2004). However, if the offense is too serious, victims' concerns about personal safety and fear of revictimization may outweigh these

perceived benefits and victims will then be unlikely to participate shortly after the offense (see also Gehm, 1998; Orth, 2003).

Finally, Wyrick and Constanzo (1999) showed empirically that the chance that mediated contact was established between victims and offenders *increased* with time after personal offenses, but decreased over time after property offenses. These findings may be supportive of the victim-oriented arguments above, although the level of harm that these offenses imposed on victims was unknown in this study, as was victims' willingness to participate in mediation when mediated contact was *not* established (i.e. when the offender refused to participate).

Given these considerations and findings, we hypothesized that victims' willingness to opt for and engage in mediated contact with the offender depends on two factors: the level of seriousness of, and the time elapsed after, an offense. Specifically, whereas for victims of less serious, harmful offenses the willingness to participate in VOM will *decrease* over time, we predict that for victims of more serious, harmful offenses (that inflicted high levels of suffering) the willingness to participate will *increase* over time after the offense—when retributive needs and concerns about revictimization may have weakened. We thus predict an interaction effect between the level of harm inflicted by the offense and the time elapsed on victims' willingness to participate.

The present study focused on a VOM program in the Netherlands which bears many similarities with other VOM programs around the world, in terms of set-up and being primarily dialogue-driven (rather than settlement-driven; Umbreit et al., 2004). The program is run by a government-funded, national agency ('Slachtoffer in Beeld' [Victim in Focus]) which organizes voluntary, direct (face-to-face meetings), and indirect (letter exchange or shuttle) forms of VOM under the supervision of professional mediators (van Burik et al., 2010). The VOM program is supplemental to the court

process: VOM can be initiated before or after the court trial, and is explicitly not intended to influence or replace the court process. Thus, detailed information about mediated contact that took place before a trial can be sent to the judiciary, but only if both parties explicitly agree to do so (van Burik et al., 2010).

Importantly, both victims and offenders can initiate VOM in this program; organizations working with victims (e.g., the national victim support agency) and offenders (e.g., youth services, probation organizations, or penitentiaries) inform parties about this possibility and refer victims and offenders to the agency if they are willing. Mediators follow what Umbreit et al. (2004) label a humanistic model of mediation (p. 280): their primary role is to facilitate dialogue and aid both parties, using a nondirective style and without taking sides. They follow a standard procedure in establishing (initial) contact with both parties to examine the possibility and feasibility of VOM (irrespective of offense type and seriousness; van Burik et al., 2010). If one of both parties indicates to be unwilling to participate in VOM at any point during the preparation phase, the mediator stops the preparation process immediately and informs the other party. The case is then closed. If both parties are willing to participate, the preparation phase results in a direct or one of the indirect forms of VOM supervised by the mediator. The main objective of VOM at this agency is to facilitate a voluntary reorientation of both parties towards each other and the crime, which may help them both to recover from the offense (van Burik et al., 2010; see also Umbreit et al., 2004). Arrangements about material reparation are typically not set up in this VOM program.

Previous research into this Dutch VOM program suggests that its outcomes are in line with the international literature on VOM and conferencing (e.g., Sherman & Strang, 2007; Umbreit et al., 2004). That is, victims and offenders in this program reported similarly high levels of satisfaction with the mediation process and outcomes (Laxminarayan, Lens & Pemberton, 2015; Zebel, 2012). In addition, concurrent with

research findings in Australia and the UK (Sherman et al., 2005; Strang et al., 2006), victims who participated in face-to-face VOM in the Dutch context displayed significant reductions in feelings of fear and anger towards the offender (compared to victims who did not participate; Zebel, 2012). As indicated earlier, it should be noted that these beneficial outcomes were observed in the context of voluntary participation in the program. This underscores the need to examine if and how crime seriousness predicts whether parties are likely to participate in VOM and thus, subsequently, may experience these beneficial outcomes.

### **Methods for Assessing the Seriousness of Offenses in VOM**

Previous work from van Burik and colleagues (2010) provided a first indication of the seriousness of crimes referred to VOM in the Netherlands. In this government-funded evaluation of VOM, offenses were categorized as either relatively minor (violence without injury, theft, vandalism) or relatively serious (violence with injury, burglary) in terms of the assumed impact on victims (Van Burik et al., 2010). This study showed that the majority of the Dutch cases handled at the national VOM agency consisted of relatively serious offenses. However, the impact of offenses on victims is only one of multiple dimensions through which the seriousness of offenses can be assessed (see Stylianou, 2003 for an overview). In addition, Van Burik's (2010) classification was based on assumptions about the general impact different offense types may have on victims, rather than on an assessment of the impact of each offense on its specific victim(s) in the actual VOM cases that were studied. Therefore, to gain a more reliable and elaborate insight into the seriousness of offenses referred to VOM, the current research considers three distinct indicators of the seriousness of offenses in specific VOM cases.

Several methods exist in the literature to operationalize the seriousness of offenses (e.g., Cozijn et al., 2000; [Lynch and Danner, 1993](#); [Stylianou, 2003](#); [Warr,](#)

1989). In the current research we firstly aimed to achieve an as objective as possible indication of crime seriousness, and therefore chose to use the factual, average duration of incarceration imposed for specific offenses in criminal cases in the Netherlands. This crime seriousness measure is derived from the Recidivism Monitor group (hereafter RMG) of the Research and Documentation Centre (hereafter WODC) of the Ministry of Justice and Security in the Netherlands (Wartna, Blom & Tollenaar, 2011). The WODC has access to the judicial information of all criminal cases in the Netherlands since 1996. Based on these cases, the RMG can calculate for all types of offenses that suspects in the Netherlands were accused of (a) the proportion of suspects with a specific offense that was incarcerated and (b) the average duration of these prison sentences. Using these data, the RMG can assign a seriousness score for each offense present in Dutch criminal cases based on the product of (a) and (b). This score reflects the average duration of incarceration imposed on offenders with a criminal case who committed a specific offense. This incarceration score thus comprises an indication of the seriousness of the offense in the population. RMG has applied this approach to international research into recidivism rates of offenders: the incarceration score was used to correct for differences in the seriousness of the offenses that offender groups in different countries committed (Wartna, Knowles, Morton, Alma, & Tollenaar, 2012). These incarceration seriousness scores are used in the present study to derive a population-based indication of the seriousness of offenses in VOM cases in the Dutch context.

In addition, it is essential to include more case-based indicators of crime seriousness as well. That is, ascribing an average duration of incarceration imposed for a specific offense type in the national population to a single mediation case offers no guarantee that this will correspond properly with the perceived seriousness of the offense in that particular case. An offense in a specific mediation case could be (much)

more or less serious than its average seriousness in the population, for example due to the harm inflicted upon the victim in this particular mediation case. For this reason, more case-sensitive indicators of crime seriousness may also be more predictive of victims' willingness to participate in mediated contact in a particular case than population-based indicators of crime seriousness. Therefore, the present study also includes two case-based indicators of perceived crime seriousness.

In the last decades several studies in the literature have examined how uninvolved, third parties appraise the seriousness of offenses (see Stylianou, 2003 for an overview). Important foci in these studies are (a) the dimensions along which third parties come to determine how serious they perceive an offense to be and (b) consensus: to what extent individuals and groups converge in their seriousness perceptions (e.g., [Alter et al., 2007](#); [Cozijn et al., 2000](#); [Lynch and Danner, 1993](#); [Rossi, Waite, Bose, & Berk, 1974](#); [Rossi & Berk, 1985](#); [Warr, 1989](#)). Stylianou (2003) indicates that conceptualization differences and the often large number of offenses examined make it difficult to compare and generalize across studies. Two empirical findings are robust however, the first being that *relative consensus* (i.e., agreement across groups on the rank order of offenses in terms of their seriousness) is "one of the most persistent findings in crime seriousness research" ([Stylianou, 2003](#); p. 43; see also Cullen, Link, Travis, & Wozniak, 1985; Rossi & Henry, 1980).

Secondly and most relevant here, the crime seriousness literature shows that perceived seriousness is a function of two independent dimensions: the normative evaluation of offenses (labelled 'perceived wrongfulness'), and evaluations of the degree of (material and immaterial) harm inflicted upon victims (labelled 'perceived harmfulness'; e.g., [Blum-West, 1985](#); [O'Connell & Whelan, 1996](#)). Warr's (1989) work in this respect is particularly influential: it indicated that participants used both dimensions in determining how serious they perceived an offense to be; depending on

the nature of the offense, one dimension could influence the perceived seriousness more heavily than the other (e.g., wrongfulness as dominant dimension of an attempt to injure somebody without success).

The present study thus firstly aimed to construct three indicators of the seriousness of offenses in VOM cases: population-based, average incarceration scores for an offense in each mediation case, and the perceived wrongfulness and harmfulness of the offense in each mediation case. As the average incarceration scores for all offenses in the national population were also available in this study, the second goal was to map the seriousness of offenses in the VOM cases by comparing the incarceration scores for these offenses with the incarceration scores of all offenses in the national population. In addition, based on all three indicators of crime seriousness, we investigated whether there was a relation between crime seriousness and the type of mediation parties chose for. Finally, we tested the hypothesis that for victims of less serious, harmful offenses the willingness to participate in VOM *decreased* over time, whereas for victims of more serious, harmful offenses this willingness *increased* over time after the offense.

## **Method**

### **Sample**

The current study was based on a randomly selected sample of 200 VOM cases (anonymized for analyses) from the registration database of the Dutch VOM agency Victim in Focus. All procedures in this study were in accordance with the ethical standards of the ethics committee of the Faculty of Behavioural, Management and Social Sciences of the University of Twente.

Using the G\*Power program (version 3.1.9.2; [Faul, Erdfelder, Buchner, & Lang, 2009](#)), we assessed, *a posteriori*, whether this sample size was sufficient to acquire the preferred level of power in our study. The expected effect size was difficult to estimate

however, because few previous studies have examined the relationship between crime seriousness indicators and establishing mediated contact between victims and offenders. Closest to our work are the findings of Wyrick and Constanzo (1999): they observed a medium effect size ( $R^2 = .135$ ;  $f^2 = .16$ ; see p. 260) for their logistic regression model including the predicted interaction-effect between time elapsed and type of offense on reaching mediated contact between parties. Thus, we assumed a medium effect size for our study. Given an  $\alpha$  – level of .05, two-tailed test, preferred level of power of .95 and multiple predictors in the logistic regression analyses to test our hypothesized interaction effect, the required sample size was 144 cases. The larger sample size of 200 cases we chose in this study thus seems sufficient to test the predicted interaction effect.

One of the 200 cases was omitted because it contained no information; in that particular case, it was unclear whether the victim or offender initiated VOM, after which Victim in Focus had to end the case. The remaining 199 cases were registered either in 2011 (24.2 %), 2012 (25.6 %) or 2013 (50.3 %), and concerned cases that resulted in one form of mediated contact (direct contact: face-to-face meetings [21.6 %]; indirect contact: letter exchange [11.1 %] or shuttle mediation [8.0 %]) or that did not result in contact ('attempts' [42.7 %] or 'terminations' [15.6 %]). An 'attempt' indicates either that the mediator succeeded in contacting both parties, but that one of them was unwilling to participate, or that one of both parties did not respond to the mediator's attempt for contact; a 'termination' signals that the mediator observed contra-indications during the preparatory phase (i.e., offenders who deny the offense, victims who desire to avenge the offender), and therefore stopped the mediation process. In 22.6 % of the 199 cases victims initiated VOM; in 76.9 % offenders did (in 1 case [0.5 %] this information was missing). A small majority of the victims was male (56.2 % male; 40.7 % female; 7.0 % missing); offenders consisted of a larger majority of males (84.4 % male; 11.6 % female; 4.0 % missing). Victims were on average 29 years of age ( $M =$

29.26;  $SD = 17.30$ ; 22.6 % missing), offenders 21 years of age ( $M = 21.03$ ;  $SD = 12.54$ ; 22.1 % missing). The average amount of time between the offense and the date of registration for VOM was 352 days ( $M = 352.64$ ;  $SD = 912.04$ ; 11.6 % missing).

As becomes clear from these case characteristics, a considerable number of cases in the sample contained missing values (in total 120 out of 199 cases contained complete information on these characteristics). We therefore decided to exclude the age and gender of victims and offenders as independent variables from the analyses reported in this paper, (a) to retain as many cases as possible for the current research purposes (i.e. 176 of 199 cases contained information about initiating party and the amount of time elapsed since the offense), and (b) because age and gender did not predict significantly any of the outcome variables examined in this paper, all  $ps > .070$ .

As an indication of the representativeness of this sample we compared four case characteristics (i.e., initiating party, type of mediated contact, youth / adult ratio of offenders and victims) with the characteristics of all cases that were registered during 2011-2013 at this agency (the agency's population). Comparisons were based on the descriptives that were available at the time of data collection for the population (from the agency's annual reports online, Victim in Focus, 2011, 2012, 2013). Non-parametric tests revealed that the sample did not differ significantly on initiating party (binomial test  $p = .19$ ) and type of mediated contact ( $\chi^2(4) = 7.92, p = .094$ ) from the population of VOM cases. However, the sample did consist of significantly less adult offenders (binomial test  $p < .001$ ) and more adult victims than the population (binomial test  $p = .003$ ). We will further reflect on these diversions in the Discussion; at this point it is important to note however that both the age of offenders and victims were unrelated to the outcome measures examined in this study (see above).

### **Assigning Population-Based, Incarceration Seriousness Scores**

For each offense in a mediation case in the sample, an incarceration seriousness score was determined using a list that the RMG of the WODC had set up for the purpose of this study. This list contained all offenses for which a criminal case served and was finalized in the Netherlands between 2009 and 2012, including the corresponding seriousness score (i.e., average duration of incarceration imposed for that specific offense in criminal cases; see above). To optimize that these seriousness scores provided an unobtrusive indication of the seriousness of each specific offense, the list was restricted to criminal cases of first offenders who were accused of committing one single offense. In this way, the confounding impact of the criminal history of and/or other offenses that the offender committed in a criminal case was filtered out of the seriousness scores. A seriousness score of 10 for a specific offense thus indicated that for (first) offenders who committed that offense, the average duration of incarceration was 10 days.

The resulting list contained 325 different offense types (identified through the law sections present in the judicial case information), based on 169,871 criminal cases. The seriousness scores of the offenses in this list ranged from 0 to 2678.33 days of incarceration; the average incarceration (weighted for the prevalence of each offense in the population) was  $M = 11.28$  days ( $SD = 0.33$ ). In 57.5 % of the offense types the seriousness score was 0, thus indicating that none of the first offenders convicted for one of these offenses received a prison sentence between 2009 and 2012. However, they may have received another sentence for this offense (e.g., a monetary fine or community sanction); such sanctions were not included in the WODC offense seriousness approach at the time of data collection.

To assign an incarceration seriousness score from this list to each offense in the mediation cases in the present sample, we set up coding instructions based on an initial

examination of a small minority of mediation cases (all coding instructions are available on request from the first author). Then a first coder matched the offense description in each of the 199 mediation cases to an offense type in the RMG list using (and fine-tuning) the coding instructions. Generally, it is recommended that the subsample used to determine the reliability of the first coder's matching should not be less than 50 units or 10-20 percent of the total sample ([Neuendorf, 2002](#)). In accordance, a second coder also matched 60 randomly selected mediation cases (30.2%) from the sample to the RMG list using the coding instructions. This second coder was unaware of the aims of the current study. In addition, to prevent any reference to differences in the seriousness of the offenses, the seriousness scores were removed from the RMG list for both coders and the offenses in this list were ordered alphabetically based on their law section description. Using Cohen's Kappa formula, the interrater-agreement for the 60 cases that both coders handled was  $\kappa = .63$ ,  $p < .001$ , 95% CI [.49, .76], which is an fair to good level of agreement beyond chance ([Banerjee, Capozzoli, McSweeney & Sinha, 1999](#); [Landis & Koch, 1977](#)). Accordingly, the incarceration seriousness scores that corresponded to the offense types from the RMG list were assigned to each mediation case based on the 199 codings of the first coder.

### **Assigning Case-Based Seriousness Scores: Perceived Wrongfulness and Harmfulness**

For each of the 199 mediation cases the first coder also scored the seriousness dimensions 'perceived wrongfulness' and 'perceived harmfulness', based on all information present in each case (e.g., description of the offense, information gathered by the mediator during the preparation phase [e.g., consequences of the crime for parties], information about the mediated contact itself). Two items were constructed for the two coders to rate the perceived wrongfulness of the offense in the mediation cases (based on the work of [Alter et al., 2007](#); [Blum-West, 1985](#); [Warr, 1989](#)): 'To what

extent is the offense morally reprehensible?’ and ‘To what extent did the offender mean to or intended to commit this offense?’. Both these items were answered on 5-point scales ranging from 0 (*not at all*) to 4 (*very much*). The ratings of all 199 cases on these items correlated strongly and significantly with each other,  $r = .72$ ,  $p < .001$ , 95% CI [.62, .79], thus indicating good reliability for this scale (note: all further confidence intervals reported in this article are 95 % CIs).

For the perceived harmfulness, five items were constructed that tapped into the degree and type of harm inflicted (based on the work of [Alter et al., 2007](#); [Blum-West, 1985](#); [Cozijn et al., 2000](#); [Lynch & Danner, 1993](#); [Rossi et al., 1985](#); [Warr, 1989](#)). For example ‘What degree of emotional harm has this offense inflicted?’ and ‘To what degree has the victim suffered physical damage as a result of the offense?’. These items were also answered on 5-point scales ranging from 0 (*not at all*) to 4 (*very much*). The ratings on these five items on all 199 cases correlated significantly as well, all  $r_s > .40$ ,  $p_s < .001$ , CIs [.24, .90], and together formed a reliable scale (Cronbach’s alpha = .88). Importantly, the second coder also used these wrongfulness and harmfulness items to code the 60 mediation cases; ratings of both coders on all items correlated strongly and significantly,  $r_s > .69$ ,  $p_s < .001$ , CIs [.47, .98].

### **Determining Victims’ and Offenders’ Willingness to Participate in VOM**

The registration data of Victim in Focus allowed us to infer for every case in the sample whether each victim and offender was or was not willing to participate in VOM. That is, when a case resulted in a form of mediated contact, this indicated that both parties were *willing* to participate ( $n = 83$  cases). When a case resulted in an attempt, the reason for this attempt was also registered for that specific case in the database of Victim in Focus; we used this reason to infer whether the victim or the offender was *unwilling* to participate. Thus, when this reason read ‘no response of the victim’, ‘victim refuses contact’, ‘victim withdraws from mediation process’, or ‘victim’s social

network does not want contact', cases were coded as indicating that the victim was unwilling to participate ( $n = 83$  cases). When the reason indicated 'no response of offender', 'offender refuses contact', 'offender withdraws from mediation process' or 'offender's social network does not want contact' cases were labeled as unwillingness on part of the offender to participate ( $n = 22$  cases). Finally, when a case was terminated by the mediator ( $n = 10$  cases) or did not contain information about the outcome or reason of an attempt ( $n = 1$  case), we could not infer whether each party was or was not willing to participate. These cases were therefore labeled as missing value in terms of willingness to participate.

Thus, in total victims were willing to participate in 105 cases and unwilling to participate in 83 cases (52.5 % victim participation in total sample); in 166 cases offenders were willing and in 22 cases unwilling to participate (83.0 % offender participation in total sample).

## Results

### Descriptives and Construct Validity of Three Types of Seriousness Scores

The incarceration seriousness scores of the offenses in the 199 mediation cases varied between 0 and 1759.28 days of incarceration, with an average of 75.74 days ( $SD = 231.91$ ). The ratings of the perceived wrongfulness and harmfulness varied between cases (range 0 - 4 and 0.75 - 4 respectively); both indicators were on average above the midpoint of the scale ( $M = 2.81$ ;  $SD = 1.08$ ;  $M = 2.67$ ;  $SD = 0.93$  respectively). The time elapsed since the offense at registration for VOM was on average just below one year ( $M = 352.64$ ), with considerable variation ( $SD = 917.04$ ; range 0 to 7359 days [= 20.15 years]). To examine the construct validity of the three crime seriousness measures, their intercorrelations were analyzed (see Table 1). In addition, the correlations between the seriousness indicators and the time elapsed were examined.

Table 1

*Descriptives of and Pearson Correlations between the Incarceration Duration Scores, Perceived Wrongfulness, Perceived Harmfulness and Time Elapsed at Registration for VOM (in Days) of the Offenses in a Random Sample of Dutch VOM Cases (n = 199)*

	<i>M</i>	<i>SD</i>	Range	1	2	3	4
1. Incarceration duration	75.74	231.91	0 – 1759.28	--	<b>.23**</b> [.19, .33]	<b>.24***</b> [.14, .33]	.10 [-.01, .29]
2. Perceived wrongfulness	2.81	1.08	0 - 4		--	.01 [-.15, .21]	<b>.18*</b> [.06, .28]
3. Perceived harmfulness	2.67	0.93	0.75 - 4			--	<b>.30***</b> [.22, .39]
4. Time elapsed at registration	352.64	917.04	0 – 7359				--

Note. \*\*  $p < .01$  \*\*\*  $p < .001$ . Numbers between brackets represent 95 % confidence intervals.

Importantly, the incarceration duration scores correlated in a modestly positive and significant manner with the ratings of wrongfulness and harmfulness in the mediation cases. This indicates that larger incarceration seriousness scores for offenses in mediation cases were significantly associated with greater perceived wrongfulness of these offenses and more (physical and emotional) harm inflicted on victims. In line with Warr's work (1999), the perceived wrongfulness and harmfulness did not correlate significantly, indicating that these comprise two independent dimensions of seriousness. Together these intercorrelations underscore the construct validity of each seriousness indicator. Finally, the perceived wrongfulness and perceived harmfulness correlated in a modestly positive and significant manner with the time elapsed since the offense at registration: VOM cases that were registered after more time had elapsed thus contained offenses which were perceived to be more wrongful and harmful. The correlation between incarceration seriousness scores and time elapsed was weak and non-significant.

### **Comparison of Incarceration Seriousness Scores between VOM Sample and the Population**

To map the prevalence of serious offenses in the VOM cases, the incarceration seriousness scores of the offenses in the sampled cases were compared with those of the population of (single) offenses for which first offenders were sentenced in the Netherlands in the RMG list. However, the Dutch VOM agency only handles offenses that involve human victims. For this reason, we also compared the sampled offenses with a subset of offenses in the RMG list for which it was evident that human victims were involved. Examples of offenses without human victims that were omitted from this subset are: calling the emergency number without a necessity, possession of illegal drugs, driving without a valid driver's license and possession of illegal weapons. In this RMG subset of offenses with victims 164 different offense types remained (out of 325

offense types in the total RMG list); the range of incarceration seriousness scores was identical to the range in the RMG list with all (single, first time offender) offenses (0 to 2678.33 days of incarceration). The average incarceration (weighted for the prevalence of each offense type) in this subset was  $M = 7.39$  days ( $SD = 0.21$ ).

Comparing the incarceration duration scores revealed that the incarceration seriousness of the VOM sample ( $M = 75.74$  days of incarceration;  $SD = 231.91$ ) was significantly greater than the average seriousness score of the population of *all* offenses ( $M = 11.28$ ,  $SD = 0.33$ ),  $t(192) = 3.86$ ,  $p < .001$ ,  $M_{diff} = 64.46$ , CI [31.54, 97.39]. In addition, the incarceration seriousness of the VOM sample was significantly greater compared to the subset of offenses with human victims as well ( $M = 7.39$ ;  $SD = 0.21$ ),  $t(192) = 4.10$ ,  $p < .001$ ,  $M_{diff} = 68.35$ , CI [35.43, 101.28]. These comparisons indicate that the offenses in the sampled VOM cases are on average more serious than (a) the offenses in the population of criminal cases in which first offenders were accused of a single offense and (b) a subset of these cases that involved human victims.

To further illustrate the prevalence of different levels of incarceration seriousness in the VOM sample and the (subset of the) population, Table 2 displays the frequencies of cases in the three different datasets at increasing lengths of incarceration. In addition, to elucidate the type of offenses that occur, Table 2 also includes the three most prevalent offense types in each dataset at these different levels of incarceration.

Table 2

*Distribution of the Average Incarceration Duration Scores of Offenses in all Dutch Criminal Cases of First Offenders with a Single Offense between 2009-2012 (i.e. the 'Population'), all 'Offenses with Human Victims' from this Population, and a Random Sample of Cases from the Dutch National VOM Agency ('VOM Sample')*

<b>Prevalence of incarceration seriousness scores</b>  (i.e average duration of incarceration for an offense)	<b>Population</b>  <i>N</i> = 169,871  (3 most prevalent offenses)	<b>Offenses with human victims</b>  <i>n</i> = 84,072  (3 most prevalent offenses)	<b>VOM sample</b>  <i>n</i> = 199  (3 most prevalent offenses)
0 days	38.68 %  (Leaving the site of fatal traffic accident; drunk driving, first offense; drunk driving (> 220 mg alcohol in breath test)	10.40 %  (Leaving the site of fatal traffic accident; filing a fake police report; simple insult)	5.20 %  (intentional discrimination in workplace based on race; violent trespassing; sexual misconduct with own child)
0.01 to 1 day	40.97 %  (vandalism, assault, theft)	71.99 %  (vandalism, assault, theft)	35.08 %  (threatening with violence; vandalism; assault)
1.01 to 7 days	9.46 %  (group theft, possession of illegal goods, carrying weapons without a license)	12.11 %  (group theft, theft by breaking an entry, causing a (fatal) traffic accident)	22.80 %  (assault with severe physical injury; theft by breaking an entry; causing a (fatal) traffic accident)

Tabel 2

*Continued...*

7.01 days to 1 month	5.49 % (group burglary during the night; possession / dealing soft- or harddrugs)	3.39 % (group burglary during the night; aggravated assault; possession and/or distribution of images with sexual acts of minors)	7.80 % (sexual misconduct with powerless person; aggravated assault; theft with violence and severe physical injuries)
1.01 to 3 months	2.59 % (Forgery (travel documents); manufacturing / selling / shipping illegal substances)	0.50 % (arson; duress; sexual intercourse with minors 12 – 16 years of age)	3.10 % (arson; duress; pre-meditated aggravated assault)
3.01 to 6 months	0.35 % (Extortion, theft with violence, arson with aggravated (fatal) consequences)	0.54 % (Extortion, theft with violence, arson with aggravated (fatal) consequences)	11.90 % (theft with violence; extortion)
6.01 months to 1 year	2.21 % (group theft with violence; rape; possession, trading or smuggling hard drugs)	0.63 % (group theft with violence; rape; sexual intercourse with minors < 12 years of age)	10.40 % (group theft with violence; rape; pre-meditated, aggravated assault with death as a result)
1.01 year or more	0.24 % (manslaughter, murder, manufacturing / selling / shipping illegal substances)	0.45 % (manslaughter, murder, burglary and theft with violence)	3.10 % (manslaughter, murder, group theft during the night)

With respect to the proportion of offenses for which no to on average 1 day of incarceration was imposed in the Netherlands between 2009 and 2012 (e.g., vandalism, assault), this proportion was smaller in the VOM sample (40.28 %) than in the population (79.66 %) and subset of the population (offenses with human victims; 82.39 %). In addition, the proportion of offenses for which on average between 1.01 days and 3 months incarceration was sentenced (e.g., arson, aggravated assault), was higher in the VOM sample (33.70 %) compared to the population (17.54 %) and subset with offenses with victims (16.00 %). Finally, the VOM sample consisted of relatively more offenses (25.40 %) for which on average 3.01 or more months of incarceration was sentenced (e.g., extortion, manslaughter) compared to the population (2.80 %) and offenses with victims subset (1.62 %). These comparisons thus further illustrate how the VOM sample consists of relatively more serious offenses in terms of incarceration duration than the population of first offenders with a single offense (with or without victims).

### **The Relation between Crime Seriousness and the Type of Mediated Contact**

To examine whether the three seriousness indicators are predictive of the type of mediated contact parties chose for, a multinomial logistic regression analysis was conducted with type of mediated contact (1 = no contact,  $n = 112$ ; 2 = indirect contact [shuttle or letter exchange],  $n = 36$ ; and 3 = face-to-face meeting,  $n = 43$ ) as the dependent variable. The incarceration seriousness scores, perceived wrongfulness scores and perceived harmfulness scores were entered as independent variables.

Firstly, this analysis indicated that the model with the three predictors entered did not result in a significant model improvement compared to the model without any predictors,  $\chi^2(6) = 4.30$ ,  $p = .64$ , Nagelkerke  $R^2 = .027$ . In addition, the analysis indicated that the final model with all three predictors entered could not be improved by omitting one of the three seriousness scores, all three  $\chi^2(2) < 3.03$ ,  $ps > .22$ . Finally,

none of the three seriousness scores was a reliable predictor of the chance that a registration for mediation would result in direct contact (versus no contact), in indirect contact (compared to direct contact), or in no contact (versus indirect contact), all *Exp* (Bs) between 0.92 and 1.18,  $ps > .08$ , CIs [0.67, 2.10]. Thus, this analysis indicates that the type of mediated contact that emerges between victims and offenders after registration is not associated with differences in the incarceration, harmfulness and wrongfulness seriousness scores of the offenses in VOM cases.

### **Testing the Hypothesis**

Victims can indicate their willingness to participate in VOM through (a) taking the initiative for VOM after an offense (i.e., filing a request at the mediation agency), and (b) agreeing to actually participate in VOM after (their own or the offender's) initiative and preparatory phase with the mediator.

**The relation between crime seriousness and time elapsed among victims who initiated VOM.** When victims initiate VOM and thus indicate their (initial) desire for mediation, we expect that they do so longer after the offense when it concerns more serious and harmful offenses. We therefore examined whether crime seriousness is a positive predictor of the time elapsed since the offense for victims who initiate VOM (compared to when offenders initiate VOM). For this purpose, a hierarchical, multiple regression analysis was conducted with time since the offense (i.e., the number of days between the date of the offense and the date of registration at the VOM organization) as the dependent variable.<sup>7</sup> In the first step, the three indicators of crime seriousness and the initiating party (offender vs. victims) were entered as four centered predictors. In the second step, we entered the three two-way interaction effects between each indicator of crime seriousness and the initiating party, to examine whether the positive relation between the seriousness indicators and time since the offense is apparent when victims take the initiative for VOM.

Results indicated that after the first step, perceived harmfulness ( $B = 296.71$ ,  $SE = 82.39$ ;  $CI [134.02, 459.40]$ ) and perceived wrongfulness, ( $B = 153.42$ ,  $SE = 65.40$ ;  $CI [24.28, 283.57]$ ) emerged as positive, significant predictors of time elapsed since the offense ( $t(162) = 3.60$ ,  $p < .001$ , and  $t(162) = 2.35$ ,  $p = .020$ , respectively). Thus, VOM cases that are perceived as more harmful and wrongful are predictive of a greater timespan between the date of offense and the date of registration of these cases at the mediation agency. The incarceration seriousness scores ( $B = -0.05$ ;  $SE = .29$ ;  $CI [-0.63, 0.53]$ ) and initiating party ( $B = 127.53$ ;  $SE = 176.43$ ;  $CI [-476.93, 220.87]$ ) did not emerge as significant predictors, both  $ts(162) < .75$ ;  $ps > .40$ .

Results of the second step indicated that the two-way interaction effect was marginally significant between the perceived harmfulness and initiating party,  $B = 384.94$ ,  $SE = 216.03$ ,  $CI [-41.72, 811.59]$ ,  $t(162) = 1.78$ ,  $p = .077$ , but not between the other two seriousness indicators and initiating party, both  $Bs < 12.00$ ,  $ts(162) < 1.24$ ,  $ps > .20$ ;  $CI$ s  $[-279.92, 257.45]$ . We conducted further simple slope analyses of the marginal significant interaction between perceived harmfulness and initiating party. This revealed that perceived harmfulness was a positive predictor of the time span between the offense and registration date when *offenders* took the initiative for mediation,  $B = 218.97$ ,  $SE = 91.99$ ,  $CI [37.30, 400.65]$ ,  $t(162) = 2.38$ ,  $p = .018$ . As expected however, perceived harmfulness was a stronger positive predictor of this time span when *victims* took the initiative,  $B = 603.91$ ,  $SE = 195.47$ ,  $CI [217.86, 989.95]$ ,  $t(162) = 3.09$ ,  $p = .002$ . In Figure 1 we have plotted these two simple slopes at low levels of perceived harmfulness (1 *SD* below the mean) and high levels (1 *SD* above the mean). This Figure shows that when offenses are perceived to be increasingly harmful for victims (moving from -1 *SD* to + 1 *SD* in the Figure), a greater timespan between the offense and date of registration is predicted when victims initiate mediation compared to when offenders do so.

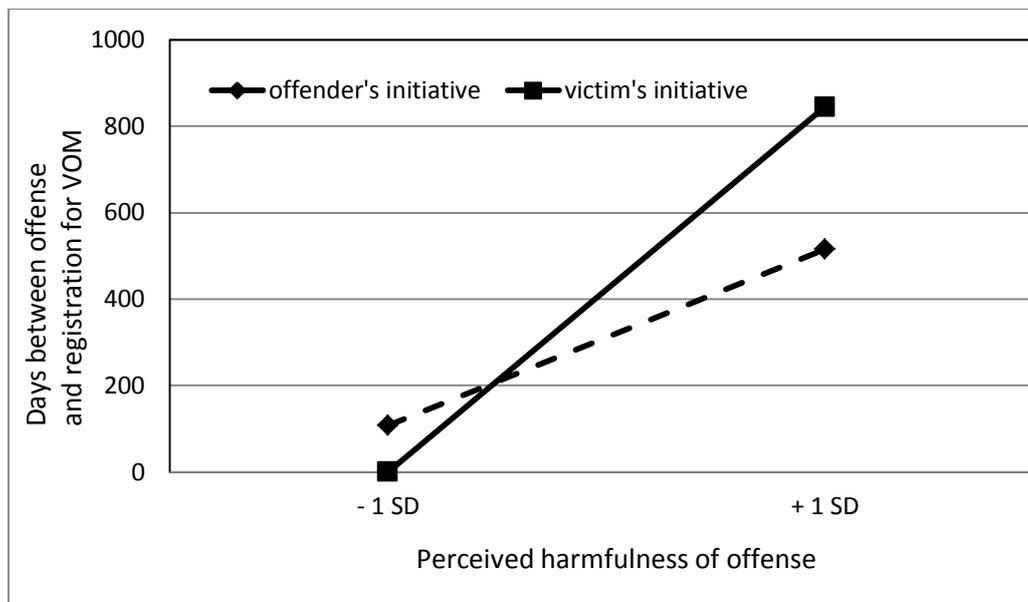


Figure 1. Coders' perceived harmfulness of offenses for victims in VOM cases ( $n = 199$ ) as a predictor of the number of days between the offense and filing a request for VOM, as a function of who initiated and filed the request (offender or victim).

**Predicting victims' willingness to participate in VOM.** To examine whether victims of less, serious, harmful crimes are *less* willing and victims of more serious, harmful crimes are *more* willing to participate in VOM with increasing time since the offense, a hierarchical, binary logistic regression analysis was conducted with victims' willingness to participate as the dependent variable (0 = unwilling to participate; 1 = willing to participate).

In the first step, the three indicators of crime seriousness and the time elapsed since the offense (in days) were entered as four centered predictors. This analysis indicated that the model with the four predictors entered did not result in a significant model improvement compared to the model without any predictors,  $\chi^2(4) = 5.66$ ,  $p = .23$ , Nagelkerke  $R^2 = .047$ . Only perceived harmfulness predicted victims' willingness in a significant manner,  $B = 0.44$   $SE = .20$ ,  $p = .027$ ,  $Exp(B) = 1.56$ ,  $CI [1.05, 2.30]$ , indicating that greater perceived harm of offenses in VOM cases was associated with

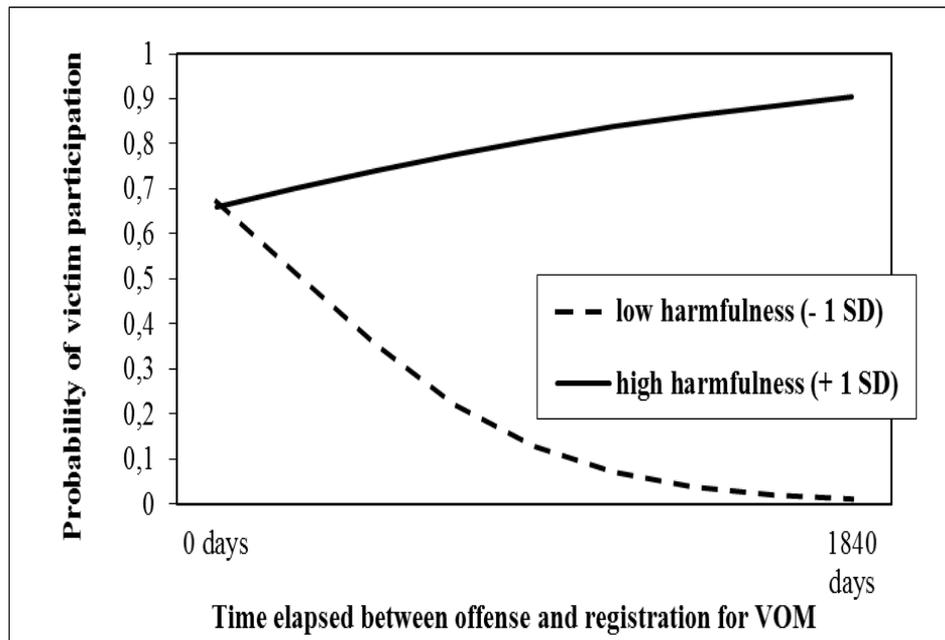
more willingness among victims to participate. The other three predictors were not significant,  $Bs < 0.07$ ,  $ps > .20$ , all  $Exp(Bs)$  between 0.99 and 1.07, CIs [0.77, 1.46].

In the second step, we entered three two-way interaction terms between each indicator of crime seriousness and the time elapsed since the offense, to examine whether victims of more serious, harmful crimes were indeed more likely to participate with an increasing timespan between the offense and the date of registration. Inclusion of these interaction terms resulted in a significant improvement of the model,  $X^2(3) = 13.26$ ,  $p = .004$ ; together with the four previous predictors the overall model was now significant,  $X^2(7) = 18.92$ ,  $p = .008$ , Nagelkerke  $R^2 = .15$ . Perceived harmfulness remained a significant positive predictor,  $B = 0.86$ ,  $SE = .32$ ,  $p = .007$ ,  $Exp(B) = 2.36$ , CI [1.26, 4.40], and the expected interaction between timespan and perceived harmfulness also emerged as a significant predictor,  $B = 0.002$ ,  $SE = .001$ ,  $p = .042$ ,  $Exp(B) = 1.002$ , CIs [1.000, 1.003]. (Note: this very small regression coefficient, standard error and  $Exp(B)$  are due to the scaling of time since the offense in days. If the time since the offense variable is converted from days to months, or to years, these interaction coefficients increase accordingly [months:  $B = .05$ ;  $SE = .03$ ;  $Exp(B) = 1.06$ ; years:  $B = .65$ ;  $SE = .32$ ;  $Exp(B) = 1.91$ ], while the pattern of results and significance level is identical). Finally, the other two interaction terms were not significant, nor were any of the other predictors,  $Bs < 0.34$ ,  $ps > .11$ , all  $Exp(Bs)$  between 0.70 and 1.01, CIs [0.32, 1.58].

Before examining the pattern of the significant interaction in more detail, we wanted to check whether this interaction was independent from whether the victim took the initiative for VOM, or was approached for VOM through the offender's initiative. Given that the above analyses indicated that when victims take the initiative a pronounced association exists between perceived harmfulness and timespan, we considered it essential to control for initiating party in this analysis. Thus, in a third step

we added initiating party as a predictor in the regression (0 = offender; 1 = victim); this resulted in a significant improvement of the model,  $X^2(1) = 5.96, p = .015$ . With initiating party in the analyses, the overall model with all predictors showed an improved fit,  $X^2(8) = 24.88, p = .002$ , Nagelkerke  $R^2 = .20$ . Initiating party predicted victims' willingness to participate in VOM in a significant and positive manner,  $B = 1.20, SE = .52, p = .021, Exp(B) = 3.32; CI [1.20, 9.21]$ . Thus, somewhat evidently, victims were significantly more willing to participate in VOM when they had taken the initiative for VOM themselves rather than the offender. In addition, perceived harmfulness remained a positive and significant predictor of victims' willingness to participate,  $B = 0.68, SE = .32, p = .035, Exp(B) = 1.96, CI [1.05, 3.67]$ . Most importantly, the interaction between timespan and perceived harmfulness also remained significant,  $B = 0.002, SE = .001, p = .049, Exp(B) = 1.002, CI [1.000, 1.003]$ ; all other (interaction) predictors did not reach significance,  $Bs < 0.31, ps > .13$ , all  $Exp(Bs)$  between 0.70 and 1.01, CIs [0.32, 1.68].

To illustrate the significant interaction, we have plotted the probability that victims participated in VOM (ranging from 0 to 1) against the timespan between the offense and registration date (in days), for low (-1 *SD*) and high (+1 *SD*) levels of perceived harmfulness (see Figure 2). The figure shows that as expected, for offenses in VOM cases that were perceived as relatively less harmful (-1 *SD*), the probability that victims would participate in mediated contact declined strongly when more time has elapsed since the offense. In line with expectations this was different for offenses that were perceived as relatively more harmful (+1 *SD*): the probability that victims would participate in VOM increased over time. This pattern of results thus supports the hypothesis. Importantly, this pattern holds for victims who initiated VOM themselves, as well as for cases in which the offender initiated VOM.



*Figure 2.* The probability that victims were willing to participate in VOM as a function of time elapsed between the offense and coders' perceived harmfulness of offenses for victims in VOM cases ( $n = 199$ ).

As an alternative explanation for this expected interaction pattern, an anonymous reviewer pointed out that victims of more serious, harmful offenses might only be willing to participate when they know that the offender was convicted and imprisoned for the offense. Unfortunately, we did not have information about the type of sentence imposed on offenders in this VOM sample. However, we did have information about whether VOM took place (or was declined, if a party was unwilling) before or after a sentencing decision was taken by the judicial authorities. If the alternative 'imprisonment' explanation is correct, victims of serious, harmful offenses should be unwilling to participate in VOM before a final sentencing decision is taken – at that point it is unclear whether the offender will be incapacitated or not (or remain incapacitated in case of detention on remand). To explore this possibility, we focused on the cases in which victims were willing to participate in VOM before sentencing and tested whether the perceived harmfulness of the offenses in these cases was lower than

those of victims who were willing to participate after sentencing. Thirty-four victims were willing to participate in VOM before sentencing; 59 victims after sentencing. Evidently, on average less time had been elapsed between the offense and date of registration for VOM in this before sentencing group ( $M = 148.36$ ;  $SD = 255.89$ ) than in the after sentencing group ( $M = 345.02$ ;  $SD = 637.68$ ),  $t(72, 704)$  [unequal variances] =  $-1.99$ ,  $p = .051$ ,  $M_{diff} = -196.66$ ,  $CI [-394.01, 0.70]$ , although there was considerable range in both groups (0-1496 and 6–3606 days respectively). Importantly, the perceived harmfulness of offenses in the before sentencing group ( $M = 2.81$ ;  $SD = 0.99$ ; range 1-4) was highly similar to those of the after sentencing group ( $M = 2.79$ ;  $SD = 0.96$ ; range 0.75 -4),  $t(92) = 0.08$ ,  $p = .936$ ,  $M_{diff} = 0.02$ ,  $CI [-0.40, 0.44]$ . Thus, victims of serious, harmful offenses seem equally likely to participate in VOM irrespective of whether the offender was sentenced (to imprisonment) or not.

Finally, offenders' willingness to participate in VOM was also analyzed in a binary logistic regression analysis using the same analytic procedure as for victims' willingness to participate. The only significant predictor that emerged in this analysis was initiating party: offenders were significantly more willing to participate when they had initiated VOM themselves rather than when their victim did so ( $B = -1.88$ ,  $SE = .57$ ,  $p = .001$ ,  $Exp(B) = 0.15$ ,  $CI [0.05, 0.47]$ ). None of the other predictors were significant, all  $Bs < 0.40$ ,  $ps > .18$ , all  $Exp(Bs)$  between 0.67 and 1.06,  $CI$ s  $[0.30, 2.26]$ , thus indicating that offenders' willingness is not contingent upon the crime seriousness indicators (and the time elapsed since the offense) that were examined in this study.

### Discussion

The current study was set up to contribute to the discussion regarding the appropriateness and feasibility of VOM after serious offenses in the literature (e.g., Larsen, 2014; [Morris, 2002](#); [Umbreit et al., 2004](#); [Waltman-Spreha, 2013](#)). In doing so, this study aimed to understand better which, and *when*, victims and offenders are likely

to participate in VOM and thus, subsequently, may experience the beneficial outcomes of participation reported in the literature (e.g., [Latimer et al., 2005](#); [Strang et al., 2006](#); [Shapland et al., 2008](#)). Accordingly, we examined the prevalence of serious offenses in VOM cases and tested the hypothesis that victims of more serious, harmful crimes are more willing to participate when more time has passed since the offense, whereas this willingness should decrease over time for victims of less harmful offenses.

The findings firstly indicated that the cases registered for VOM in the Netherlands involved offenses for which on average longer periods of incarceration were sentenced compared to the average incarceration imposed in the national population of criminal cases in which first offenders committed (a) a single offense (with and without victims), or (b) an offense that implicated human victims. This suggests at least that on average, the offenses for which victims or offenders want to initiate VOM are more serious in terms of the incarceration imposed than the offenses in this population of first offenders. The observed frequencies and prevalence of offense types illustrated this further. For example, the sample of VOM cases contained fewer cases involving vandalism and assault (on average 0 to 1 day of incarceration), and relatively more cases involving extortion or manslaughter than in the population of first offenders (on average more than 3 months of incarceration).

An interesting question that arises from this finding is whether it suggests that the most serious offenses (in terms of incarceration duration) can end up in VOM. It is noteworthy that, although on average the VOM sample had higher incarceration scores, the population contained offenses with a much larger period of incarceration than the offenses in the sample of VOM cases. However, inspection of the range differences revealed that the Dutch population (with or without victims) contained only three distinct, very rare offenses with higher incarceration scores than the offense with the highest score in the VOM sample; the prevalence of these three offenses together

comprised less than 0.001 per cent of all offenses that occurred in the population.

Although not conclusively so, this does suggest that the absence of these offenses with the highest incarceration scores in the VOM sample might be due mainly to their extremely low occurrence in the population, not necessarily because such offenses are unfit for VOM.

A limitation of our finding that the VOM cases contained more serious offenses than the population might be that we compared the offenses in the VOM sample with those of first offenders only in the population. It is likely that the VOM sample did not consist exclusively of first offenders (we had no information about this in this study). However, in a previous study (Schreurs, 2013), we compared a random sample of VOM cases ( $n = 100$ ) from the same Dutch agency to those of the population of all offenses (i.e., first *and* repeat offenders, and including criminal cases involving multiple offenses). In that study we observed a similar pattern of results: again the VOM sample contained offenses for which on average longer periods of incarceration were imposed than in the population. It seems therefore unlikely that comparisons between the sample in this study and the population of all offenses (of first *and* repeat offenders) would show a very different outcome. In addition, the current study's approach to use the incarceration scores for the offenses of *first* offenders only who were accused of a *single* offense, has the advantage that these scores are unaffected by the criminal history and other offenses an offender was accused of in a criminal case. In this way, the incarceration scores used in the current research provide a clearer and more direct indication of the crime seriousness of specific offense types in the population than in Schreurs' (2013) previous study.

A second important finding was the observation that the three indicators of crime seriousness in the sampled VOM cases did not predict *if* and *what kind of* mediated contact emerged. This finding echoes the meta-analytic observations of

Umbreit et al. (2004), who noted that crime seriousness “has yet to demonstrate any consistent pattern as a predictor of participation rates” (p. 286). The way in which VOM is organized may play a critical role here: the program is supplemental to the court process and is thus not a formal part of the criminal prosecution of offenders. Similar to other VOM programs in the US and abroad that are open to cases anywhere in the criminal justice process (Latimer et al., 2005; Umbreit et al., 2004), VOM in the program examined here can emerge anywhere between shortly after the offense (and before the court trial) to long after the offense occurred and a verdict was given in a criminal case (see Victim in Focus, 2015). This independence of the timing of VOM vis-à-vis the criminal prosecution may in our view explain why VOM is equally likely to occur after minor and more serious offenses. As we will further discuss below, VOM may need a different timing to occur depending on the perceived harmfulness of the offense, especially from the perspective of victims (see also Wyrick and Constanzo, 1999). When the organizational set-up of VOM accommodates such differences in timing, mediation may emerge to the same degree after serious compared to more minor offenses.

Can we conclude then from these findings that in the VOM program examined, VOM is not predominantly initiated (and established) after minor offenses (Kirkwood, 2010; Weijers, 2012) but occurs to a considerable degree after more serious offenses as well (Morris, 2002; see also Larsen, 2014)? The current findings seem to point in that direction. Although the assessment of the representativeness of the sampled VOM cases was necessarily limited to four case characteristics, the sample did not diverge from all cases registered at the national VOM agency in terms of the type of mediated contact reached and whether the victim or offender initiated mediation. The sample did consist of relatively more older victims and youthful offenders compared to all cases at the agency. However, the age of victims and offenders in the sample were unrelated to the

outcome measures examined in this study. Moreover, a different random sample of 100 cases from the same VOM agency in Schreurs' study (2013) showed a very similar pattern of incarceration seriousness scores. Thus, the current research suggests that the VOM program examined here accommodates mediated contact between victims and offenders of various offenses, which on average are more serious (in terms of incarceration) than offenses in the national population. We expect that this (and the other) finding(s) reported here also hold for other, existing VOM programs around the world that have a similar set-up, are dialogue-driven, supplemental to the court process and take VOM cases both before and (long) after sentencing just as in the VOM program in this study ([Latimer et al., 2005](#); [Umbreit et al., 2004](#)).

Finally, the findings of this study supported the hypothesis that victims of more serious, harmful offenses are more willing to engage in mediated contact with the offender after a greater time lapse, whereas the reverse holds for victims of less serious, harmful offenses. Importantly, this pattern held for victims who initiated VOM themselves, as well as among victims who were approached for VOM because of the offender's initiative. The observation that solely perceived harmfulness (and not wrongfulness and incarceration duration of the offenses) predicted victims' willingness to participate over time, in our view clearly points to the important role of (depleted) psychological resources in explaining why victims are less likely to initiate and engage in mediated contact shortly (rather than longer) after harmful offenses. That is, it seems likely that strong feelings of fear for the offender and concerns for safety can make VOM a less viable option shortly after serious, harmful offenses (Gehm, 1998; [Kirkwood, 2010](#)). In addition, victims may feel too angry and hostile after harmful offenses to consider and be open for a mediated dialogue with the offender ([Lens et al., 2013](#); [Orth & Wieland, 2006](#)). When time passes, such (very) strong feelings of fear and/or anger may weaken and normalize to some degree (e.g., Orth, Cahill, Foa &

Maercker, 2008; Pemberton, 2012). As a consequence, other needs (e.g., for information about the (motives of) the offender, for making him/her more aware of consequences; [Boom & Kuijpers, 2012](#); [Umbreit et al., 2004](#)) may come more in the forefront, making victims more readily initiate and participate in VOM.

Although plausible, these explanatory processes remain tentative as the current study did not empirically address the underlying psychological processes that affected victims' participation willingness over time. That said, an important alternative explanation - that victims of serious, harmful offenses participate after more time because they need to know the offender was imprisoned - seems less likely based on the current research. That is, comparison of the cases of victims who participated in VOM in the pre-sentencing phase (at which point it is unclear whether the offender will be sentenced to imprisonment or not) with those who participated after sentencing, revealed no differences in the prevalence of serious, harmful offenses. This suggests that certainty about a prison sentence for the offender might not be a prerequisite for victims of harmful offenses to participate in VOM. Future research may seek to identify empirically the underlying processes that explain why victims of harmful offenses are more likely to engage in VOM longer after the offense; we expect changes in fear and/or anger processes to be key.

In addition, future research may seek to examine whether the findings we observed can be replicated when victims and/or mediators involved in VOM cases themselves indicate their perceived harmfulness of the offense. Previous research seems to suggest that this is likely to be the case, as *relative consensus* about crime seriousness (i.e. agreement across groups on the rank order of offenses in terms of their seriousness) is one of the most persistent findings in crime seriousness research (see [Stylianou, 2003](#) for an overview). If the findings reported here would hold when victims and/or mediators during the preparation phase of VOM cases (self-) report the perceived

harmfulness of the offense (using a similar method as in this study), this may have an added practical value in the further development of the VOM case (together with assessing the time elapsed since the offense; see below).

### **Implications**

Firstly, the (judicial) positioning of the VOM program examined here (i.e., pre- or post- sentence, depending on parties' wishes) seems a key factor in explaining the current findings. The prevalence of serious offenses in the sampled VOM cases and the similar degree of contact established between minor and serious offenses may very well be associated with the extended timespan in which VOM can be initiated in this program. VOM (and other restorative justice) programs across the world are offered at various stages in the criminal justice system (e.g., Larsen, 2014; Mestitz, A. & Ghetti, 2005; [Umbreit et al., 2007](#)). The current findings suggest that to the extent that specific programs are confined to offering VOM relatively early at the pre-sentence stage (as a formal part of the criminal prosecution), this may pose an impediment for establishing mediated contact in (very) serious cases in which victims experience high levels of harm. Conversely, VOM programs operating at later, post-sentence stages only may be associated with lower levels of contact for offenses that inflicted relatively low levels of harm among victims: they may consider the offense too long ago and/or too trivial at that stage to participate (Richards, 2009; [Umbreit et al., 2004](#)).

These considerations also raise the question what the implications are of different entry points across VOM programs for the effectiveness of VOM for offenders, most notably in terms of reducing the rate of reoffending ([Latimer et al., 2005](#); [Shapland et al., 2008](#)). More specifically, if victims are willing to participate long after crime, is it still as effective for offenders as when contact is established shortly after crime (note that offenders' willingness to participate in this study was independent from time and crime seriousness)? Most relevant to this question is Sherman et al.'s

meta-analytic work (2015): the reduced rates of recidivism they found due to restorative justice conferences across 10 RCT studies did not indicate strong differences between programs operating pre- versus post-sentencing (i.e. in prison, pre-release or on probation). Thus, whereas our findings show differences in victims' willingness to participate as a function of time and crime seriousness, Sherman et al.'s recent and comprehensive findings suggest that time elapsed since the offense is unlikely to affect the positive impact face-to-face exchanges can have on reducing offenders' rates of reoffending.

To conclude, the current findings suggest that insight into the degree of harm that victims suffered and the time elapsed since the offense are important to understand and predict when victims might be more or less likely to participate in VOM. Merely assessing the offense type or category in this respect is not likely to be informative, as the same offense might inflict a (very) different level of harm between two victims depending on their individual and psychological characteristics ([Lens et al., 2013](#)). Rather, professionals working in the area of victim-offender mediation may assess the degree of (material and immaterial) harm experienced, for example based on the available information in a case file (as in the current study) and/or in conversations with the victim itself during victim support activities or during the preparatory phase of mediation. Together with knowledge about the time elapsed since the offense, professionals may then be in an improved position to accommodate and facilitate victims' needs and desires regarding contact with the offender(s). Thus, a combined appraisal of harm and time may add to their existing repertoire, and may perhaps contribute to prevent known pitfalls of VOM for victims such as too quick and pressured participation (e.g., Choi et al., 2012).

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