

Restorative Justice

Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. Practices and programs reflecting restorative purposes will respond to crime by 1) identifying and taking steps to repair harm, 2) involving all stakeholders, and 3) transforming the traditional relationship between communities and government in responding to crime. The goal of restorative justice is to bring together those most affected by the criminal act—the offender, the victim, and community members—in a nonadversarial process to encourage offender accountability and meet the needs of the victims to repair the harms resulting from the crime (Bergseth and Bouffard 2007). There are several models of restorative justice discussed below; however, they all share common features, including an emphasis on community-based sanctions, a nonadversarial and informal process, and decision-making by consensus (Bergseth and Bouffard 2007).

While most approaches to juvenile justice concentrate on punishing or treating delinquent youths, the restorative justice process seeks to repair the harm by involving the entire community in rehabilitating offenders and holding them accountable for their behavior. In the traditional juvenile justice system, professionals ask questions such as what laws have been broken or what punishment does the offender deserve? Under the restorative justice model, questions are framed differently, asking: What is the nature of the harm resulting from the crime? What needs to be done to repair the harm? (National Center for Mental Health Promotion and Youth Violence 2009). By bringing together victims, offenders, families, and other key stakeholders in a variety of settings, restorative justice helps offenders understand the implications of their actions and provides an opportunity for them to become reconnected to the community.

From a restorative justice perspective, rehabilitation cannot be achieved until the offender acknowledges the harm caused to victims and communities and makes amends (Bazemore and Umbreit 1997). Therefore, restorative justice programs are generally voluntary in nature and require offenders, if they are to participate, to admit responsibility for the illegal act. Some of the most common programs typically associated with restorative justice are mediation and conflict-resolution programs, family group conferences, victim-impact panels, victim-offender mediation, circle sentencing, and community reparative boards.

Family Group Conferences

Family group conferences (FGCs) are facilitated discussions that allow those most affected by a particular crime—the victim, the offender, and the family and friends of both—to discuss the impact of the crime and decide how the offender should be held accountable for it (Umbreit 2000). FGC originated in New Zealand as a way to address the failures of traditional juvenile justice. It

Suggested Reference: Development Services Group, Inc. 2010. "Restorative Justice." Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. https://www.ojjdp.gov/mpg/litreviews/Restorative_Justice.pdf
Prepared by Development Services Group, Inc., under cooperative agreement number 2013-JF-FX-K002. Points of view or opinions expressed in this document are those of the author and do not necessarily represent the official position or policies of OJJDP or the U.S. Department of Justice.

incorporates indigenous Maori values that emphasize the roles of family and community in addressing wrongdoing (McGarrell 2001). Australia subsequently adopted the concept and has implemented several FGC models. Today, FGC is used extensively as a formal juvenile sanction in New Zealand and Australia and to a lesser extent in the United States (Immarigeon 1999), including communities in Florida, Indiana, Maine, Minnesota, Montana, New Mexico, Pennsylvania, Vermont, and Virginia (McGarrell, Olivares, and Kroovand 2000).

Group conferencing follows principally from the theory of reintegrative shaming. It argues that people are generally deterred from committing crimes by two informal types of social control: conscience and fear of social disapproval (Braithwaite 1989). Braithwaite argues that the consequences imposed by family members, friends, or other individuals important to an offender are more meaningful and therefore more effective than those imposed by the legal system. As a result, the fear of being shamed by the people most intimate with an offender is the most significant deterrent to committing crime.

A typical conference begins when the victim, the offender, and the supporters of each are brought together with a trained facilitator to discuss the incident and the harm it has caused. It proceeds with the offender describing the incident and each participant describing the impact of the incident on his or her life. The purpose of this process is for the offender to face the human impact of his or her crime (Umbreit 2000). The victim then is presented with the opportunity to express feelings, ask questions about the offense, and identify desired outcomes from the conference. All participants may contribute to the process of determining how the offender might best repair the harm. By the end of the conference, the participants must reach an agreement on how the youth can make amends to the victim and sign a reparation agreement. The agreement typically includes an apology, and it often includes a requirement that some type of restitution be made to the victim. Some agreements require youth to perform community service or call for other actions such as improving school attendance, completing homework, or performing chores at home or school (McGarrell 2001).

Although the evidence to date is somewhat limited, the existing research supports the use of group conferences as an alternative to traditional juvenile justice practices. Three formal experiments of group conferences found promising results. In the United States, an evaluation of police-run conferences in Bethlehem, Pa., found high levels of victim satisfaction and some evidence of reduced reoffending for person offenses, but not property offenses (McCold and Wachtel 1998). In Canberra, Australia, an evaluation of the Reintegrative Shaming Experiments also reported high levels of victim satisfaction and showed positive changes in the attitudes of offenders (Strang et al. 1999), but the impact of group conferences on recidivism remains under investigation. Finally, the Indianapolis Restorative Justice Experiment found that group conferences produced high levels of satisfaction among participants and promising recidivism results. The evaluation found that youths participating in conferences were significantly less likely to have been rearrested 6 months after the initial incident. The rate of rearrest was 20 percent for conferenced youths compared with 34 percent for the control group. When limited to those youths who successfully completed the diversion program (conference or control group program), 12 percent of the youths involved in conferences had been re-arrested compared with 23 percent of the control group (McGarrell, Olivares, and Kroovand 2000). Similar findings were observed at 12 months for the total sample (McGarrell 2001).

Victim-Impact Panels

Victim-impact panels are forums for crime victims to explain the real-world impact of crime to offenders. Unlike group conferences, victim-impact panels do not involve direct personal contact between the offender and his/her victim. Instead, victim-impact panels generally use surrogate victims or family and friends of victims of similar experiences. The purpose of the panel is to help offenders

individualize and humanize the consequences of their crimes on victims and the community (Immarigeon 1999).

Today, there is a small but growing trend in the use of victim-impact panels as a sentencing option for a variety of offenses such as property crimes, physical assault, domestic violence, child abuse, and elder abuse. Panels have been used in prison and jail settings, with parolees, and in treatment programs, defensive driving schools, and youth education programs. Offender participation in these panels is generally court ordered. Panels typically involve three or four victim speakers, each of whom spends about 15 minutes communicating his or her story in a nonjudgmental manner. Victim service organizations generally either implement the program for the court or work in collaboration with justice personnel. They provide services such as screening potential panel members, moderating the panels, and record keeping.

Research on victim-impact panels is relatively limited and contradictory, but promising. Fors and Rojek (1999) compared the rearrest rates of 834 DUI offenders who attended a victim-impact panel as part of their sentence to those who did not. The authors found that rearrest rates were lower for individuals who participated in the victim-impact panels. Moreover, the authors argue that the panels can be a cost-effective way of reducing the probability of arrest in DUI offenders. By contrast, Polacsek and colleagues conducted a randomized field experiment with 813 DWI offenders in New Mexico and measured their progress through the stages of pretest, posttest, 1-year follow-up, and 2-year follow-up. The participants were randomly assigned to a DWI school or a DWI school plus a Mothers Against Drunk Driving victim-impact panel. The authors found no difference in recidivism between the groups (Polacsek et al. 2001).

Research on victim impact panels also suggests that they are promising in terms of victim satisfaction. One evaluation of victim panelists speaking to convicted drunk drivers collected 1,784 individuals who either participated in a victim impact panel or did not. The study found that panelists scored similar to nonvictims on measures of self-esteem, locus of control, hostility, and well-being. Moreover, the panelists were less angry at the offender compared with nonpanelists. These results suggest that panelists benefit from participation (Mercer, Lorden, and Lord 1994).

Victim–Offender Mediation

Victim–offender mediation is a process that provides victims the opportunity to meet their offenders in a safe and structured setting for dialog, negotiation, and problem solving (Umbreit and Greenwood 2000). The goal of this process is twofold. The first is to hold the offenders directly accountable for their behavior, learn the full impact of their actions, and develop plans for making amends to the person or persons they violated. The second goal is to foster a sense of empowerment for the victim. Overall, this process is designed to develop empathy in the offender (which can help prevent future criminal behavior) and address the emotional and informational needs of the victim.

Mediation programs have been used for more than 20 years for various conflict situations. Today there are more than 300 victim programs throughout the United States and more than 700 in Europe (Umbreit et al. 2000). Although these programs vary substantially, all victim–offender mediation programs share one unique feature: the purpose of victim–offender mediation is not to determine guilt (generally, guilt has already been determined in another forum), rather it is to teach the offender to accept responsibility and repair harm. The mediation session or sessions involve a dialog between the victim and the offender, facilitated by a professional mediator. The purpose of dialog is to actively involve the victim and the offender in repairing (to the degree possible) the emotional and material harm caused by the crime. It also provides

an opportunity for both victims and offenders to discuss offenses and express their feelings and for victims to get answers to their questions. Finally, the dialog presents an opportunity for victims and offenders to develop mutually acceptable restitution plans that address the harm caused by the crime. More than 95 percent of victim-offender mediation sessions result in a signed restitution agreement (Umbreit and Greenwood 2000). However, research has consistently found that the restitution agreement is less important to crime victims than the opportunity to express their feelings about the offense directly to the offenders (Umbreit and Greenwood 2000).

A considerable amount of research demonstrates that the victim-offender mediation process produces several positive effects for both victims and offenders. In general, victims who meet their offenders tend to be more satisfied with the process than victims whose cases are handled in the formal justice system (Umbreit 1994a, 1994b) and are less fearful of being revictimized (Umbreit and Roberts 1996; Umbreit and Coates 1993; Umbreit 1994a, 1994b). Similarly, offenders who meet their victims through mediation are far more likely to be held directly accountable for their behavior (Umbreit 1994a, 1994b; Marshall and Merry 1990), successfully complete their restitution obligations (Umbreit and Coates 1992), subsequently commit fewer and less serious crimes (Pate 1990; Nugent and Paddock 1995; Schneider 1986; Umbreit 1994a, 1994b), and are satisfied with both the process and outcome of victim-offender mediation (Coates and Gehm 1989; Marshall and Merry 1990; Umbreit and Coates 1993).

Circle Sentencing

Circle sentencing, sometimes called peacemaking circles or talking circles, originated as traditional sanctioning and healing practices of American Indians in the United States and aboriginal peoples in Canada. Circle sentencing is a holistic reintegrative approach that is designed to address the criminal and delinquent behaviors of offenders as well as the needs of victims, families, and communities (Bazemore and Umbreit 2001). The “circle” includes crime victims, offenders, family and friends of both, justice and social service personnel (including police officers, lawyers, and judges) and interested community residents. The members of the circle take turns discussing the event, trying to search for an understanding of what happened. Together they identify the steps needed to assist in the healing of all affected parties and prevent future crimes. All circle members participate in deliberations to arrive at a consensus for a sentencing plan that addresses the concerns of all interested parties (Bazemore and Umbreit 2001).

The goals of circle sentencing include promoting healing for all affected parties; providing an opportunity for the offender to make amends; empowering victims, community members, families, and offenders by giving them a chance to discuss the event and share responsibility in finding constructive resolutions; addressing the underlying causes of criminal behavior; and building a sense of community by promoting and sharing community values. Specifics of the circle process may vary from community to community and are designed to fit the local community needs and culture. In most communities, circles are facilitated by a trained community member, often called the keeper. Discussions in the circle usually involve the use of a talking piece. Only the person holding the talking piece is allowed to speak, while everyone else must be respectful as the speaker shares his or her experience of the incident (National Center for Mental Health Promotion and Youth Violence 2009). There may be a healing circle for the victim, a healing circle for the offender, a sentencing circle to develop a consensus on a sentencing plan, and follow-up circles to monitor the progress of the offender.

Circle sentencing may not be an appropriate response to all offenses. Circles have been used in response to serious and violent crimes, but circles are often labor intensive and require a substantial amount of time and effort from invested parties. Circles rely on several key factors, including the victim’s input to the process, the dedication of victim’s and offender’s support groups, and the offender’s character,

personality, sincerity, and connection to the community. Therefore, circles should probably not be used in response to first offenders and minor crimes. Also, because of the situation surrounding the perpetration of certain crimes, circle sentencing may not be an appropriate response. For example, in an ethnographic study of judicially convened sentencing circles, Cunliffe and Cameron (2007) argued that circle sentencing may be too simple a solution to a complex and longstanding problem of cases involving intimate partner violence of Aboriginal people in Canada.

There has been little research conducted on the effectiveness of circle sentencing. A study by Judge Barry Stuart in Canada found that recidivism was less likely among offenders who had participated in circle compared with offenders who were processed traditionally in the juvenile justice system (Stuart 1996). A qualitative study of peacemaking circles in Minnesota found that, despite initial discomforts, more than two thirds of circle participants reported feeling at ease speaking in the circle (Umbreit 2002). Effective circles depended on the use of a speaking piece, which guaranteed each participant uninterrupted speech, and on a skilled circle keeper who established and maintained ground rules. Most cases required several circle meetings and follow-up circles held after the offender made amends.

Community Reparative Boards

Community reparative boards have generally been used in response to adult offenders convicted of nonviolent and minor offenses, but recently some communities have begun to use the boards with juvenile offenders. A reparative board usually includes small groups of specially trained citizens who conduct public, face-to-face meetings with offenders who have been court-ordered to participate. The members of the board develop a sanction agreement with offenders, monitor compliance, and submit compliance reports to the court (Bazemore and Umbreit 2001).

During the meetings, board members discuss with the offender the nature of the offense and the negative consequences that resulted from the incident. Board members develop a set of proposed sanctions and discuss the options with the offender until an agreement is reached on specific actions the offender will take to make reparation for the crime. The offender is required to document his or her progress in fulfilling the terms of the agreement. The board submits a progress report to the court on the offender's compliance with the agreed-on sanctions. At this point in the process, the board's involvement with the offender ends.

The goals of community reparative boards include providing an opportunity for victims and community members to confront offenders in a constructive manner, providing opportunities for offenders to take personal responsibility and be held accountable for the harm they caused, and generating meaningful consequences for criminal and delinquent actions, thereby reducing reliance on formal juvenile justice system processing (Bazemore and Umbreit 2001).

Community reparative board programs are a controversial approach to the restorative justice model. Though victims of the offense are usually supposed to be a part of the restorative justice process, in practice reparative boards have proved better suited to community input than to victim involvement. Some suggest that, because of the weak involvement of victims, reparative boards are not a good example of restorative justice (Bazemore and Umbreit 2001).

There has been little research on the effectiveness of community reparative boards. Vermont has implemented the use of reparative boards, primarily with adult offenders, but recently has begun to use them with juvenile offenders. However, the state has not yet completed any published studies on their effectiveness with juvenile offenders.

Some programs may be designed to encompass more than one type of restorative justice program. For example, de Beus and Rodriguez (2007) evaluated the restorative justice program in Maricopa County, Ariz., known as Community Justice Communities (CJC), which includes program functions similar to family group conferencing and reparative boards. They found that youths who participated in CJC were significantly less likely than youths in the comparison group to recidivate.

There are several methodological limitations to the literature examining the effectiveness of restorative justice programming, including varying definitions of reoffense, the length of the follow-up time period, and various analytic strategies use to compare youths involved in restorative justice programs with those receiving other forms of processing. A recent study by Bergseth and Bouffard (2007) was designed to respond to the methodological limitations of previous studies, including some studies discussed above. The Bergseth–Bouffard study addressed several design issues through three steps:

1. It examined not only recidivism rates but also the number and seriousness of later official contacts, to broaden the definition of reoffense.
2. It examined multiple outcomes over a longer follow-up period, including up to four years past the referral.
3. It examined groups on the basis of the intervention they were originally referred to (using an intent-to-treat analysis), to eliminate the confounding influence of treatment motivation or offending propensity (youths who are more *motivated* to change are more *likely* to change).

While addressing the methodological issues from previous studies and meta-analyses, the authors still found that juveniles referred to restorative justice programming showed better results on each measured outcome compared with juveniles referred to traditional juvenile court processing, including prevalence, the number of later contacts, seriousness of later behavior, and time to first reoffense. The study showed that, even with several methodological weaknesses of previous studies taken into account and controlled for, juveniles referred to restorative justice programming had significantly positive outcomes compared with juveniles who go through traditional court processing.

Future research of restorative justice will need to examine whether the programming works similarly for different types of youth. For example, future research should look at the various effects of restorative justice referrals for older and younger youths, for males and females, and for youths with various offending histories. Research should also explore how community characteristics contribute and affect the restorative justice process (de Beus and Rodriguez 2007). In addition, future research is planned to study whether progression through various restorative justice stages (conferencing, consensus on sentencing agreement, completion of agreement) contribute to more positive outcomes, beyond the referral to the restorative process itself (Bergseth and Bouffard 2007).

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