

# RSI SPECIAL TOPICS

## RESTORATIVE JUSTICE



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This Special Topic on Restorative Justice looks at how courts use it to heal the harm that crime and conflict can cause to individuals and communities. Along with a description of Restorative Justice, this Special Topic provides examples of court-based Restorative Justice and selected resources.

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## WHAT IS RESTORATIVE JUSTICE?

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Restorative justice, or RJ, is a philosophical approach to justice that is focused on healing the harm that crime and conflict causes to individuals and communities. [As Prof. Carrie Menkel-Meadow has said](#), “Restorative justice is more of an idea, philosophy, set of values, or sensibility than a single concrete and uniform set of practices or processes.”

Unlike the traditional juvenile or criminal justice system in which the two parties are the state and the person charged with committing an offense, restorative justice involves the victim, the responsible party and the community. In RJ practices, all three are important. RJ attempts to reach beyond punitive measures, such as incarceration, probation and home confinement to meet the needs of all those involved.

Restorative justice programs, although diverse in practice, follow three guiding pillars.

- **Restorative justice recognizes and addresses the harm to each person or entity involved in and impacted by the harmful act and what these individuals need. These people and entities typically include the responsible party, the victim, any family members, and the community.**  
RJ seeks to meet the harmed party’s need to gain more information, tell their story, feel re-empowered, and ultimately seek restitution. It meets the responsible party’s needs by providing accountability to address the specific harms caused, giving the encouragement necessary to address those harms, recognizing that responsible parties struggle with harms to them, and encouraging re-integration into the community. RJ also recognizes the importance of involving the community, which has needs that arise from the commission of a crime. Examples of needs felt by a community include physical and emotional rebuilding after the harm, assurance from the responsible party that they will not cause more harm, and recognition of the impact of the harm on the community.
- **Restorative justice encourages the participants to identify and fulfill their obligations to right the wrong caused by the harmful act.**  
This not only includes the responsible party’s obligation to make amends but can also include the community’s obligation to offer support and encouragement to both the victim and the responsible party.
- **Restorative justice involves engaging the participants in the process.**  
This typically includes an encounter in which the victim has the opportunity to confer (directly or indirectly) with the responsible party and the community, tell their story in a significant setting, and receive symbolic and/or concrete restitution.

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## HOW COURTS USE RESTORATIVE JUSTICE

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Restorative justice is used in myriad settings in the US and around the world. These include, for example, courts, schools, communities, houses of worship, prisons, medical settings and workplaces. Because Resolution Systems Institute works with court alternative dispute resolution (ADR) programs, this special topic focuses on RJ in courts.

Court use of Restorative justice in North America began in the 1970s in Canada when a judge agreed with a youth probation officer's request to have two youth convicted of vandalism meet with their victims in a mediation. Early experiments with victim-offender mediation – often in programs called Victim-Offender Reconciliation Programs (VORP) – do not align exactly with the three pillars discussed above, but they did pave the way for today's restorative justice.

Restorative justice can be used before, during and after the judicial process. RJ is often used in the legal system as a diversion process operated by a prosecuting attorney's office (or similar entity) that occurs before a case gets to court. RJ programs operated by courts are most often seen in juvenile cases, but are also used in child protection, probate and family cases, as well as some adult criminal matters. Additionally, RJ can be used post-conviction as part of rehabilitation efforts and to meet other goals.

### BENEFITS OF RESTORATIVE JUSTICE

When a court implements a restorative justice program, the court and other program partners typically expect some or all of the following benefits:

- Reduced recidivism
- An opportunity to make the situation right
- Increased safety for the community
- A stronger community
- Empowerment of all participants
- Cost effectiveness for the court
- Meaningful dialogue

### HESITANCY TO USE RESTORATIVE JUSTICE

Courts and community partners may be hesitant to implement a restorative justice program for reasons such as:

- A perspective of crime and punishment that values punishment as a deterrent to future wrongdoing and/or as retribution
- Concern that people may plead guilty to get out of court, even if they are not guilty
- Reluctance to put victims through the trauma of facing their offender

- Concern that victim and/or offender will not be sufficiently prepared to participate in RJ in an effective manner
- Lack of funding to implement and maintain an effective program

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## HOW RESTORATIVE JUSTICE AND ALTERNATIVE DISPUTE RESOLUTION COMPARE

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Each form of restorative justice and alternative dispute resolution has its own strengths and appropriate uses. There are factors that are similar in RJ and ADR, and there are factors that differ. To illustrate this point, it is helpful to compare a common ADR approach, civil mediation, which does not incorporate the three pillars of RJ, with an RJ approach, peacemaking circles.

### SIMILARITIES

There are some similarities between civil mediation and peacemaking circles. Both provide opportunities to consider issues beyond the court case that are important to the parties. Neither confers authority on the neutrals to dictate the terms of any agreement, instead looking to the parties to determine any path forward. Both seek durable outcomes. But there are also many differences between restorative justice practices and civil mediation.

### DIFFERENCES

#### Responsibility

The concept of responsibility is handled very differently in civil mediation as compared to peacemaking circles. In a civil mediation of an employment discrimination case, for example, the parties may reach an agreement without the employer taking any responsibility for what occurred – or even agreeing that particular acts took place. This can happen even when the mediator helps the parties engage in a deep conversation about discrimination in which the parties come to better understand one another’s perspectives and experiences.

On the other hand, responsibility is at the core of the restorative justice pillars. The first pillar involves recognizing and addressing the harm to each person or entity involved in and impacted by the harmful act.

#### Role of the Neutral

In civil mediation, the role of the mediator is to be impartial to the parties and the outcome while helping create and maintain the structure of the mediation. The mediator sets the rules for the mediation, and the parties are expected to follow those rules. Peacemaking, on the other hand, encourages circle keepers to share their own experiences and opinions while monitoring the integrity of the circle. The rules are not set by the circle keeper, but rather the circle participants and circle keeper make the rules together by consensus.

## Participants

The parties involved in civil mediation are typically those directly involved in the court case and their attorneys, if they are represented. In some instances, the participants might also include a spouse, a support person, or the individual with authority to settle the case.

Peacemaking circles, on the other hand, would also include community members, additional family members, and sometimes professionals relevant to the harm (e.g., social workers).

One goal is for *all* members of the circle to understand the conflict, not just those involved in the court process. While some civil mediations may result in healing relationships, repairing harm and reintegrating the responsible party into the community, those are not usually the central goals of civil court mediation programs.

## EXAMPLES OF RESTORATIVE JUSTICE PRACTICES

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Restorative justice is an ever-evolving philosophy with a broad range of applications, as are the RJ models used by courts. RSI's search for court-related RJ programs in 2021 found 92 programs – which are either court-annexed or court-partnered with a community center that offers restorative programs – that work with clients charged with a crime. Usually, the program involves some kind of circle or group conference where the client takes responsibility for the harm caused and meets with the harmed party and members of the community. Other models used by courts include community conferencing and victim-offender mediation. For all models, the charging entity usually either drops the charge or, less frequently, engages in an expungement process upon completion of the program.

There are many other restorative justice models seen in courts, e.g., dialog circles, justice circles, etc. For the purposes of this special topic, two RJ approaches are described: peacemaking circles and victim-offender conferences.

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### PEACEMAKING CIRCLES

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Peacemaking circles in the US were started in 1996 and derive from traditional Native American forms of justice that focus on healing and restoration. Peacemaking focuses on healing relationships between the participants to create long-lasting harmony. Circles typically have two peacemakers, or circle keepers, who remain impartial while they facilitate the discussion and monitor the integrity of the circle. The peacemaking circle process also encourages them to speak about their own experiences and opinions. The circle participants and the peacemakers set the rules and the agenda for the meeting by consensus based on pre-meeting preparation work.

One peacemaker typically begins the discussion by asking participants questions about their relationships to each other, the impact of the dispute, how the harm may be repaired, how healing may occur, and the final resolution. All participants may have a chance to speak uninterrupted using a “talking piece,” or object that signifies it is that person's turn to speak. Especially with juvenile cases, multiple sessions are often necessary to meet the final goal: repairing the harm, healing relationships, reintegrating the responsible party back into the community, and settling the case whenever possible.

The Red Hook Peacemaking Program, located in Brooklyn, NY, and launched in 2013, sought to integrate Native peacemaking practices into a non-tribal setting and design a process conducive to the state court system. Consistent with the pillars of restorative justice, the program outlined the following goals: heal relationships harmed by a crime, give victims a voice, hold participants accountable for the harm they have caused, and empower

the community to take an active role in addressing conflict and repairing harm. The diversity of cases arraigned at the Red Hook community center – including felony and misdemeanor cases for youth and adults – coupled with the close-knit culture of the surrounding community, made Red Hook a prime location for a peacemaking pilot program. Since beginning operations, the Red Hook program has grown, and now accepts case referrals from multiple criminal courts, public housing managers, school officials, and police officers.

The Red Hook Peacemaking Program actively recruits peacemakers within the community and offers to train them for free. This ensures that the peacemakers share similar socio-economic backgrounds with the participants, which in turn fosters feelings of familiarity, relatability and accessibility. Additionally, peacemakers receive yearly instruction from Native American peacemaking trainers on the history, heritage and traditional practices of peacemaking. Through this, the program remains true to the origins of peacemaking and strengthens the relationship between the tribal community and the urban community.

### *How it Works*

First, a defendant is referred by a local court to the Red Hook program with the agreement of the judge and attorneys, and the consent of the victim, if applicable. If the defendant meets all eligibility criteria, they have the choice to participate in peacemaking. Central to peacemaking – and restorative justice generally – is taking accountability for harm caused to others. Thus, participating in peacemaking programs can be recommended and encouraged, but it is ultimately a defendant's choice. Similarly, victims have a choice to either participate directly in the peacemaking program or allow someone else to represent their interests during sessions.

Family members, friends, and community members are next invited to join in the peacemaking process. All present parties are permitted to speak freely, including the peacemakers, who are encouraged to share their own stories and experiences. The main topics include potential actions to heal harmed relationships, provide restitution, or avoid future conflicts. Such actions may take the form of apology letters, volunteer work, impulse control, abstaining from illegal activity, or resume writing. Once a peaceful resolution is agreed upon by all participants and peacemakers – which usually takes multiple sessions – the case is sent back to the court for dismissal or other arrangement decided upon by the peacemaking circle.

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## **VICTIM-OFFENDER CONFERENCING**

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Victim-Offender Conferencing (VOC) began in the late 1980s and is based on a practice of the Maori in New Zealand. VOC is a process that offers victims an opportunity to meet responsible parties in a safe, structured setting and engage in a facilitated discussion of the



crime. The primary focus is supporting the healing process, encouraging mutual understanding and empathy between parties, and providing closure to both victim and offender. Reaching a settlement is not the primary focus of VOC. However, restitution agreements are often a by-product of a productive conferencing session.

Unlike peacemaking circles, which emphasize the role of the community within the circle, victim-offender conferences focus primarily on the harmed party (victim) and responsible party (offender). Where peacemaking circles value the stories of all parties, including the facilitators themselves, VOC focuses on the importance of the harmed party's story. Trained facilitators help victims explain how the crime has impacted them physically, emotionally, and/or financially; ask questions about the crime and the offender; and may be involved in designing a restitution plan. In turn, offenders can take direct responsibility for the harm, understand the full impact of their behavior, and take part in developing their own restitution plan. Often, the "community" role is filled by the family members or close friends of the parties, acting as a micro-community of individuals who support the primary parties and have been indirectly impacted by the crime. When present, support persons may also be granted the opportunity to express their concerns and be involved.

The referral process to victim-offender conference programs varies. For some programs, a formal admission of guilt accepted by the court is required before conferencing can proceed. In others, cases are referred as a diversion from prosecution. Referrals can come from judges, probation officers, victim advocates, prosecutors, defense attorneys or police. VOC is primarily used in juvenile settings.

### *How it Works*

Nebraska, for example, developed a Victim Youth Conferencing (VYC) program, which operates out of Nebraska's Office of Dispute Resolution (ODR). The program started as a pilot in 2015 after the Office of Dispute Resolution received a grant to create a VYC program focused on young offenders. After expanding statewide in 2018, the VYC program developed further due to the Nebraska legislature amending the Dispute Resolution Act in 2019 to include both youth and adult restorative justice. This provided statutory authorization to divert juvenile offenders to victim-offender mediation and conferencing as an alternative to traditional court processes. As a result of this support, the Nebraska Office of Dispute Resolution was able to develop a [policy for approving RJ facilitators](#) and [standards of practice for RJ facilitators](#).

The project prioritized increasing awareness and accountability among youth involved with wrongdoing, increasing satisfaction and confidence within the justice system, and externally evaluating the impacts of the program on the juvenile, the victim and the community. The long-term goals of the initiative include reducing youth recidivism, increasing community safety, promoting awareness about VYC, and sustaining statewide VYC services.

Referrals to the program come from schools, law enforcement, county attorneys, courts and probation. Cases are referred to one of the six mediation centers coordinated by the ODR. After notifying both parties (youth and victim), preparation meetings begin with the youth and their parent(s), and the impacted party. Victims have full discretion as to whether they want to participate in conferencing. Should a victim choose not to meet with the youth, a trained victim surrogate and members of the community may assume the role for purposes of the process. Next, the parties meet for a conference meeting, discuss the impact of the crime, and mediate a reparation agreement. Once the reparations are underway and/or completed, the case information is sent back to the partner agency that referred the case.

The 2021 [final evaluation of the VYC pilot program](#) found that of the 871 cases referred, 677 resulted in a victim-youth conference, and of those 677, 99.6% resulted in a mutually agreed reparation plan. Of the 668 with a reparation plan, 88.8% successfully fulfilled all (546 of 668) or at least more than half (47 of 668) of the plan conditions. The vast majority of participants (91.12%) expressed satisfaction with the conferences, and 93.2% of participants reported they would recommend VYC for others. The [recidivism report](#) found that 99% of youth who participated in a VYC did not reoffend within one year.

## SELECTED RESOURCES

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The following resources are recommended in addition to those discussed above.

### [\*Restorative Justice in the Criminal Justice System\*](#)

Part of the County Health Rankings and Roadmaps put out by the University of Wisconsin Population Health Institute in March 2017, this resource provides a quick introduction to restorative justice.

### [\*The Little Book of Restorative Justice\*](#)

By Howard Zehr and Ali Gohar, this resource provides a primer on restorative justice. It is available from Good Books and was published October 2003.

### [\*Restorative Justice: What Is It and Does It Work?\*](#)

This scholarly article by Carrie Menkel-Meadow for the Annual Review of Law and Social Science in 2007 explores the literature about restorative justice.

### [\*Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue\*](#)

Developed by Mark S. Umbreit and Jean Greenwood for the University of Minnesota, School of Social Work in April 2000, this resource is an example of good guidelines on how to implement and practice restorative justice.

### [\*The Centre for Justice & Reconciliation, Restorative Justice Library\*](#)

This website provides many more resources on restorative justice.