

## **Restorative Justice and Alternative Sentencing**

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“Restorative Justice, from a policy point of view, stands on its own merits. But in addition, in these times of tight budgets, both with regional jails and in state corrections, it’s almost necessary.”

-Former Jefferson County Prosecutor, Michael Thompson  
*The West Virginia Lawyer*, July-September 2012

### **What is restorative justice?**

Restorative justice is another way of looking at harmful wrongdoing. With restorative justice we change our focus from looking at what law was violated into what wrong has occurred and how has that wrong caused harm. While restorative justice is often associated with specific practices such as a victim offender conference or circle sentencing, Howard Zehr, suggests that restorative justice may be best defined by a group of core values and principles. Those principles and values require an inclusive process that involves the stakeholders allowing for the identification of the harm and a collaborative effort to make right the wrongs. Zehr lists five basic principles that guide restorative practices: (1) Focus on the harm and consequent needs of the victim, community and offender, (2) Involve those with a stake in the outcome, (3) Address the obligations that result from the harms, (4) Use inclusive, collaborative processes, and (5) Seek to put right the wrongs. Adjunct and central to these principles are the core values of restorative justice that focus on respect and humility.

It is important to remember what restorative justice is not. Restorative justice is not mediation, it is not a specific program, nor is it a quick fix or a replacement for the legal system. Restorative Justice provides *an additional way* of addressing criminal wrongdoing by focusing on the harm resulting from the wrongdoing and determining what, if anything may be done to “make right the wrong.” These principles work together, guided by the critical values of restorative justice including respect and humility.

## **What are some restorative practices?**

Many specific practices are often identified as *restorative practices*. These include: an expanded sentencing process called Circle Sentencing; Family Group Decision Making and Family Group Conferences; Restorative Discipline in Schools; Crimes of Severe Violence Dialogues; and the Victim-Offender Conference. The first practice to be clearly associated with restorative justice is the victim offender dialog, also referred to as victim offender conference (VOC) or victim offender mediation (VOM).

The VOC is a dialogue process providing the opportunity for the victim and the offender to tell their stories, to have questions answered, to address the needs of the victim, to hold the offender accountable to the person they harmed, and to work together to make things as right as possible. The Victim-Offender Conference may occur at one of several different points in the system, from the early stages, perhaps as part of a diversion program or pre-adjudication, or later, during probation or parole and even while the offender serves a prison term.

A specific type of dialogue modeled after the Victim-Offender Conference is the Family Group Conference, which is most often used in juvenile cases. In the Family Group Conference a broad group of family, friends, communities of support and justice personnel gather to develop a plan for a family who has difficulties either due to a juvenile offense or a child abuse or neglect issues. The Family Group Conference has been included in New Zealand as an option in most juvenile offenses and child neglect matters.

In the United States, this model is incorporated in child abuse and neglect proceedings in several states and is identified as Family Group Decision Making. This process has garnered broad support from both the American Humane Society and the Casey Foundation, and is used to convene a dialogue where child abuse or neglect allegations are substantiated

## **A continuum of restorative practices**

Howard Zehr and Dan Van Ness suggest that most practices, rather than being entirely restorative may fall along a continuum with some practices being more consistent with restorative principles than others. Zehr cites to the examples of a victim impact panel. While some of the restorative principles are furthered with the panel, other aspects are inconsistent and the panels are not fully restorative or purely “restorative justice.”

Dan van Ness suggests that in examining the processes to determine how restorative they may be, we should consider four measures: (1) inclusive vs. exclusive, (2) balanced vs. single interest, (3) voluntary vs. coercion, (4) problem

solving vs. reprisal. Any process, whether it be a conventional jury trial closing statement or a victim offender conference could be evaluated with these measures to determine how consistent they are with restorative values and principles and therefore within the definition of restorative justice.

### **How could restorative justice be applied with an alternative sentence?**

If we define “alternative sentencing” broadly, to include anything other than incarceration, it is possible to see that a number of options could be more restorative, or more consistent with the principles and values of restorative justice. I have worked on one case and the outcome fell very high on the Van Ness continuum, in other words, the process was restorative.

The case involved a young victim who articulated to the prosecutor that she wanted the offender to apologize to her and explain why he had breached her trust. The defendant had sincere remorse. Both the victim and offender wanted to avoid the uncertainty of a trial since the case involved complicated factual issues.

The victim wanted the chance to confront the offender. The offender was willing to participate in this opportunity to accept responsibility to his victim, but hesitant if it did not provide him with a benefit in his plea and sentencing. The victim and offender each agreed to participate in a Victim-Offender Conference, which was then included in the plea agreement, that also included a period of probation, home confinement, and several other terms. In accord with the agreement, neutral facilitators were retained at the offender’s expense. The conference, guided by two trained and experienced facilitators, included the victim and her mother, and the offender.

Both the victim and offender reported to counsel and to the facilitators that the experience was beneficial to them. The defendant spoke to his psychologist, who reported that the conference “Allowed him to work on issues that he wanted to work on and at the same time prepared him to move on with his life...The meeting gave him the ability to apologize, and that step was an important part of him dealing with the psychological consequences of his actions.”

The attorney for the offender reported, “...(T)he defendant felt bad about what had happened. He wanted to apologize to the victim about everything and to let her know that his own life had been devastated since he was arrested,” The prosecutor indicated that “The victim wanted more than to be able to read a victim impact statement at sentencing. She wanted to look the offender in the eye and tell him how she had been harmed and ask him why he did it.”

This situation may have been more restorative due to the extensive preparations for the conference; one facilitator reported, "During the preparation period, the goal is to understand what the participants want and to work towards being able to communicate and to express themselves." Lewis also cites the preparation as being an important part of this conference and explained that he "...spent time counseling with him (the offender) on what to expect."

### References and Resources

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