1. INTRODUCTION

Restorative justice is easily and indisputably the most exciting and fascinating recent development in the criminological field. As a self consciously new way of doing justice, it has captured the imagination and won the approval of large numbers of criminal justice analysts and practitioners who see in restorative justice a practicable and promising solution to the international crisis of criminality.\(^1\) One discerns a collective sense of relief and belief that finally, after so many false starts and blind alleys, there is a real possibility that the answer to one of the most intractable problems of our contemporary society has been discovered.\(^2\) Indeed, if the proponents of the restorative justice are to be believed, their findings may hold the key to solving all the serious socio-economic problems of our time. Certainly, restorative justice has rapidly acquired an imposing presence in and dramatic influence upon the world of criminal justice, and therefore, this is the era of restorative justice.\(^3\)

Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender. Restorative justice processes can be adapted to various cultural contexts and the needs of different communities. Through them, the victim, the offender and the community regain some control over the process. Furthermore, the process itself can often transform the relationships between the community and the justice system as a whole.

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\(^3\) *Ibid.*
A commonly accepted definition used internationally is: “Restorative justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future.”

The primary objectives of restorative justice are:

- to attend fully to victims’ needs - material, financial, emotional and social (including those who are personally close to the victim and may be similarly affected);
- to prevent re-offending by reintegrating offenders into the community;
- to enable offenders to assume active responsibility for their actions;
- to recreate a working community that supports the rehabilitation of offenders and victims and is active in preventing crime;
- to provide a means of avoiding escalation of legal justice and the associated costs and delays.

These all might also be said to be objectives of the current criminal justice system, but that system only achieves such aims partially and haphazardly. It is not centrally concerned with victims and does not address most of their needs. Only limited action is taken to encourage the reintegration of offenders, and the evidence is that this is largely unsuccessful. It requires only the passive acquiescence of offenders, who are not expected to take the initiative in making good what they have done, but only to suffer their punishment. It is distant from the community and does little to encourage any role for the latter in the prevention of crime. Despite various programs intended to divert offences from the full process and reduce costs and delays, these have had only a minor effect and also encourage the criticism that much crime is not taken sufficiently seriously.

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5 Ibid.

Restorative justice is based on the following assumptions\(^7\):-

- that crime has its origins in social conditions and relationships in the community;
- that crime prevention is dependent on communities taking some responsibility (along with local and central governments’ responsibility for general social policy) for remedying those conditions that cause crime;
- that the aftermath of crime cannot be fully resolved for the parties themselves without allowing their personal involvement;
- that justice measures must be flexible enough to be able to respond to the particular exigencies, personal needs and potential for action in each case;
- that partnership and common objectives among justice agencies, and between them and the community, are essential to optimal effectiveness and efficiency;
- that justice consists of a balanced approach in which a single objective is not allowed to dominate the others.

Restorative justice is concerned centrally with ‘restoration’: restoration of the victim, restoration of the offender to a law-abiding life, restoration of the damage caused by crime to the community. Restoration is not solely backward-looking; it is equally, if not more, concerned with the construction of a better society in the present and the future.\(^8\) To achieve the restorative outcome,\(^9\) there are numerous restorative justice programs\(^10\) introduced at international levels which are applicable at domestic levels.

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\(^7\) *Supra* note 4 at 32.

\(^8\) *Ibid.*

\(^9\) A “restorative outcome” is an agreement reached as a result of a restorative process. The agreement may include referrals to programs such as reparation, restitution and community services, “aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.”

\(^10\) “Restorative justice programs” means any program that uses restorative processes and seeks to achieve restorative outcomes.
The following are the features of restorative justice programs:11

- A flexible response to the circumstances of the crime, the offender and the victim, one that allows each case to be considered individually;
- A response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities;
- A viable alternative in many cases to the formal criminal justice system and its stigmatizing effects on offenders;
- An approach that can be used in conjunction with traditional criminal justice processes and sanctions;
- An approach that incorporates problem solving and addressing the underlying causes of conflict;
- An approach that addresses the harms and needs of victims;
- An approach which encourages an offender to gain insight into the causes and effects of his or her behavior and take responsibility in a meaningful way;
- A flexible and variable approach which can be adapted to the circumstances, legal tradition, principles and underlying philosophies of established national criminal justice systems;
- An approach that is suitable for dealing with many different kinds of offences and offenders, including many very serious offences;
- A response to crime which is particularly suitable for situations where juvenile offenders are involved and in which an important objective of the intervention is to teach the offenders some new values and skills;
- A response that recognizes the role of the community as a prime site of preventing and responding to crime and social disorder.

**COMMON ATTRIBUTES OF RESTORATIVE JUSTICE PROGRAMS**

<table>
<thead>
<tr>
<th>Crime Victims are provided with an opportunity to:</th>
<th>Offenders are provided with an opportunity to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Be directly involved in resolving the situation and addressing the consequences of the offence.</td>
<td>• Acknowledge responsibility for the offence and understand the effects of the offence on the victim.</td>
</tr>
<tr>
<td>• Receive answers to their questions about the crime and the offender.</td>
<td>• Express emotions (even remorse) about the offence.</td>
</tr>
<tr>
<td>• Express themselves about the impact of the offence.</td>
<td>• Receive support to repair harm caused to the victim or oneself and family.</td>
</tr>
<tr>
<td>• Receive restitution or reparation.</td>
<td>• Make amends or restitution / reparation.</td>
</tr>
<tr>
<td>• Received an apology.</td>
<td>• Apologize to victims.</td>
</tr>
<tr>
<td>• Restore, when appropriate, a relationship with the offender.</td>
<td>• Restore their relationship with the victim, when appropriate.</td>
</tr>
<tr>
<td>• Reach closure.</td>
<td>• Reach closure.</td>
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Best practices and a careful consultation process should inform all the decisions made in developing a program. It is also often the case that the introduction of restorative programs in a particular social, legal or cultural setting must be accomplished progressively or even iteratively, starting with more modest initiatives that have the potential to create the experience of success, strengthen community resources, conquer remaining hesitations within the criminal justice system and prepare everyone for some more challenging initiatives.

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2. PARTICIPANTS IN THE PROCESS OF RESTORATIVE JUSTICE PROGRAM

There are many differences in the situation and motivation of the various participants in the process of restorative justice program. Restorative justice practices provide for different levels of participation and this must be factored into the design of new programs or existing traditional programs whose restorative elements can be enhanced and strengthened. The following diagram illustrates the relationship of the key stakeholders in the process of restorative justice program.

The following discussion examines the role of key participants in a restorative justice program. Note that some of the participants discussed below may not be relevant or present, depending upon the specific program/model of restorative justice and or the specific context within which the program is operating. All participants need to be informed of their role in the process, as well as the role of all other participants.
In all restorative justice programs, it is important to protect the interests of the victim(s) and to ensure that re-victimization does not occur. This may require that a considerable amount of preparatory work be undertaken with the victim(s) prior to any encounter with the offender.\textsuperscript{13} This may take weeks, months, or, in the case of very serious offences that have resulted in the incarceration of the offender, years.\textsuperscript{14} This pre-meeting preparation is designed to ensure that the victim is emotionally and psychologically prepared to engage in a dialogue with the offender. The process of restorative justice program should be used only with the free and voluntary consent of the victim and further, that the victim should be able to withdraw such consent at any time during the process.\textsuperscript{15}

Consideration must be given to support victims, both during and after the process. Victims must be allowed to tell their story. This may require that victims speak first in any forum in order to avoid an imbalanced focus on the offender’s issues. Where possible, victims should be accompanied by, and have ongoing support from, family members and friends, and, where available, victim support agencies.

One should remember that many crimes do not have an individual victim and that others are committed against legal persons (e.g. a firm or company, a school). Sometimes it may be possible to find a person who can represent the organization or the legal person for the purposes of the restorative process. This often referred to as a “surrogate” victim. Victims may also include the survivors of a homicide victim.


\textsuperscript{14} Ibid.

\textsuperscript{15} The Basic Principles of restorative justice enumerated by the United Nations (para. 8) states that restorative justice processes should be used only with the free and voluntary consent of the victim and further, that the victim should be able to withdraw such consent at any time during the process.
It is important that the victims not be coerced into participating in the restorative justice process and that they be informed of their right to legal advice, when available, and to withdraw from the process at any time.\textsuperscript{16}

In cases involving child-victims particular care must be taken to protect them and ensure that their consent is truly voluntary.\textsuperscript{17} In some restorative process involving child victims, or other vulnerable groups (e.g. illegal immigrants, or a mentally challenged individuals), legal counsel is provided to the victim with the express purpose of ensuring that they fully understand the process that they are invited to participate in, that their consent is informed and given freely, and that they are aware that they are free to withdraw from the process at any given point in time.\textsuperscript{18}

(ii) OFFENDER(S)

Many observers argue that, in the conventional criminal justice system, offenders are not required to confront the full consequences of their decisions and their actions. In many systems, an offender can be processed through the entire justice system, from arrest, detention, trial, sentencing, and perhaps incarceration, without speaking more than a few sentences.\textsuperscript{19} The Basic Principles of restorative justice enumerated by the United Nations (para. 7) recommends that restorative processes should only be used where there is sufficient evidence to charge the offender and with the free and voluntary consent of the offender, who should be able to withdraw such consent at any time during the process. Offenders also require access to legal advice and/or information.


\textsuperscript{18} Ibid.

\textsuperscript{19} Supra note 12 at 61.
For the offender the process is far from over with the conclusion of an agreement with other parties. Fulfilling the commitment that he or she has made as part of the agreement is, perhaps, even more important. This second aspect is one which must engage the offenders directly. This is where they must demonstrate that they have accepted responsibility for their conduct and are prepared to be accountable for it in a very real and practical way.

(iii) POLICE

The police role in the restorative process will differ significantly depending on the type of restorative program/model considered. In some of them, the police have virtually no role to play, in others they can participate fully in the intervention. In some instances, police officers can act as a facilitators or conveners of the process and may even help participants reach decisions and resolutions consistent with community views. Care should be taken to ensure that the role of the police is balanced and that the statutory requirements of their position do not compromise the restorative process. It is important to point out that the police enjoy greater discretionary powers in some jurisdictions than in others.

Viable options for police involvement in restorative programs include:\(^{20}\)

- Serving as a referral source to restorative programs;
- Explaining the restorative justice process to victims, offenders and other participants;
- Participating among many others in a community-based process;
- Facilitating restorative justice processes;
- Conducting restorative justice sessions and conferences;
- Using restorative approaches for resolving disputes and conflict at street level;
- Playing a role in monitoring the execution of restorative agreement and reporting breaches.

\(^{20}\) Ibid.
Legislation can provide the framework within which the police can become more extensively involved in restorative policing practices, although the specific nature of this involvement has yet to emerge. In Canada, for example, the *Youth Criminal Justice Act* has specifically increased the involvement of the police as front-end referral agents to restorative programs, and in police sponsored restorative practices, marks a return to the original role of the police as peacekeepers.

The use of restorative practices by police officers can represent a logical step in community policing and police reform generally. It can, under the right circumstances, contribute to the improvement of police-community relations.\(^\text{21}\) This may be particularly important when the police, through their participation in restorative justice programs, are entering into new relations with minority groups with whom they must interact and whom they must serve and protect. New participatory programs can encourage a form of direct accountability of the police to the community they purport to serve. Police forces can apply the principles of restorative justice to develop sustainable collaborative partnerships with the community and thereby increase the effectiveness and efficiency of their efforts to prevent and respond to crime and social disorder.\(^\text{22}\)

Within the framework of community policing, police officers can also utilize a variety of restorative practices outside a programmatic framework. For example, a police officer can mediate conflicts between youths in school by bringing together the offending parties and their parents for an informal conference. The potential for the use of restorative practices in policing on the street is limited only by the imagination and skill sets of the officers who must be given the discretion by their supervisions to decide how to proceed with such matters. Normally, the police officer still retains the right to take further action should the efforts to resolve the conflict through restorative means prove unsuccessful.


\(^{22}\) Ibid.
In some jurisdictions, e.g. Thames Valley Police, officers are trained to conduct restorative conferences that may involve the offender and the victim, their family and support persons and, potentially, community residents.

In some situations, police corruption or the lack of public confidence in the police may seriously compromise the ability of the police to participate in restorative justice programs. Yet, restorative justice can be also used in cases of alleged police misconduct.

(iv) PROSECUTORS

In most jurisdictions, prosecutors play a key role in the operation of restorative justice programs and, in the absence of legislation or other guidelines; they exercise considerable discretion in determining which cases are suitable for a particular restorative process. In both common law and civil law countries, prosecutors are able to refer cases to restorative processes, the latter role having more recently emerged with the enactment of legislation in a number of jurisdictions. While the use of restorative processes at the post charge stage is within the discretionary purview of the prosecutor in common law countries, in civil law countries, referral at this stage has generally remained within the purview of judges. Many jurisdictions now include prosecutor-level referral processes for both juveniles and adults.

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23 The Thames Valley Police Force, a largest non-metropolitan force in the United Kingdom, uses the flexibility and creativity of restorative justice to reform certain police practices; build a stronger community; and establish new ways of thinking about resolving conflicts in all areas of life. The tasks of the Thames Valley Police Force include restorative cautioning, conferencing, restorative approaches to internal and external complaints, and promotion of restorative principles. See C Hoyle (2001), “Restorative Justice in the Thames Valley: Changes in the Complaints and Discipline Process” Vol. 133 Prison Service Journal, p-37.


25 Ibid.


27 Ibid.
In establishing restorative processes in a jurisdiction, it is imperative that prosecutors be involved in discussions from the outset and that training and information be provided to prosecutors so they can both understand the principles of restorative justice and appreciate the potential advantage of the use of this option for juveniles and adults.\textsuperscript{28}

\textbf{(v) DEFENCE LAWYERS}

Defense lawyers are a potential source of referrals of offenders to restorative justice programs. Such referrals can assist in ensuring that the conflicts are addressed in an expeditious manner and can help reduce the backlog of cases scheduled for court appearance. Defense lawyers can play an important role in explaining to offenders the potential benefits of participating in a restorative justice process.\textsuperscript{29} They can help ensure that the rights of the offender are protected and that avenues of appeal remain available. They can also play a significant role in cases involving juvenile offenders by ensuring that their consent to participate in a restorative justice process is informed and freely given.\textsuperscript{30}

\textbf{(vi) JUDICIARY}

Judges and magistrates also play a critical role in the potential success of restorative justice processes. However, they can be a most challenging group in terms of securing their interest and participation in, and support for, restorative schemes. The legal training of judges and magistrates does not always expose them to the principles and practices of restorative justice. They will welcome further training and the opportunity to participate directly or indirectly in various restorative justice approaches.

\textsuperscript{28} \textit{Id.} at 181.


\textsuperscript{30} \textit{Ibid.}
The involvement of judges in restorative justice processes varies considerably, depending upon the specific program considered. In both common law and civil law jurisdictions, members of the judiciary can play a key role in referring cases to a restorative forum, participating themselves in the restorative process, and/or monitoring the agreements that are reached.\(^{31}\) Even in situations where an offender has entered a guilty plea or has been found guilty of an offence, the judge may suspend the imposition of a sentence pending the outcome of a restorative process.\(^{32}\) In common law jurisdictions, one way to bring this to their attention is through a pre-sentence report. If, in the view of the judge, an appropriate agreement is reached, then no further action may be taken, or the agreement may be incorporated into the sentence that is imposed on the offender.\(^{33}\)

(VII) CORRECTIONAL DEPARTMENT

In recent years there has been increasing use of restorative processes in corrections and throughout the various stages of the execution of the offenders’ sentence.\(^{34}\) Restorative justice process, including victim offender mediation, can be utilized for offenders who are on probation or who are under other types of supervision in the community.\(^{35}\) Restorative processes can also be utilized for offenders who are currently in custody in order to provide them an opportunity, when appropriate, to meet with the victim of their crime and/or the victim’s family.\(^{36}\)

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32 Ibid.
33 Ibid at 173.
The use of restorative practices can extend to parole. Parole boards can consider the participation of offenders in a restorative process as a potentially positive factor in making release decisions. Parole officers can facilitate mediations as part of the conditions of parole or refer offenders to a restorative program. In some countries, the Ministry of Justice adopted a policy to integrate the victims in the management of prisons. In Belgium, this was accomplished by appointing a restorative justice advisor in each prison.

Restorative processes can also be used within correctional institutions to mitigate the more negative attributes of life inside correctional institutions, including providing forums for inmates to resolve their differences peacefully and to create an alternative means of conflict resolution.

(viii) **COMMUNITY MEMBERS**

Many restorative justice approaches provide for an expanded role for community members in the resolution of conflict and in constructing agreements to be adhered to by offenders and sometimes also by other parties. It has been noted that ‘community involvement’ can designate very individualistic modes of collaboration or a powerful or national lobby. There is considerable variability in the nature and extent of community involvement in the various restorative justice approaches. For example, in victim-offender mediation (VOM) the community is absent and the process consists of a mediator, the offender and the victim. In circle sentencing, on the other hand, the process is open to all members of a local neighborhood, village or indigenous group.

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38 *Id* at 173.
39 *Supra* note 36 at 73.
Many members of the community are likely at first to view restorative justice processes as more lenient and less effective at preventing crime than the traditional criminal justice system and its reliance on punishment. An innovative program may be seen to allow the offender to get off “lightly”, particularly when a more serious offence is involved. It is therefore always important to develop materials and design initiatives to educate the community about the principles and practices of restorative justice and the potential role that community members can play.\textsuperscript{42}

\textbf{(IX) SOCIAL WORKERS}

Restorative justice and social work share a number of principles and goals, as they both seek to stem violence and to address the pain associated with harm.\textsuperscript{43} Many of the processes used by restorative justice practitioners are based on indigenous practices that facilitate peacemaking, victim healing and reparation, and reengagement of offenders. As a method for transforming conflict, restorative justice can be viewed as a theory, a principle, a practice, and a skill set. Each of these components has the ability to inform and strengthen social work practice and restorative practices can be enhanced by the knowledge, practice modes, and interdisciplinary interaction pioneered by social work.\textsuperscript{44}

During restorative practices, social workers examine the ways through which they can contribute and explore more benefits of restorative justice in the areas of school settings, communities, domestic violence, homicide, prisons, child welfare, and gerontology.\textsuperscript{45} Social workers can act as restorative justice practitioners, outlining specific intervention approaches and practice principles that integrate the strengths of each approach in cases ranging from the commonplace contradiction of punishing public school students for behavioral problems by depriving them of the opportunity to learn from their mistakes.\textsuperscript{46}

\textsuperscript{42} Id at 48.


\textsuperscript{44} Ibid.

\textsuperscript{45} Id at 63.

\textsuperscript{46} Ibid.
Innovative and forward thinking, Social Workers while promoting Restorative Justice present a synergistic practice model that will improve the effectiveness of social workers as restorative justice practitioners who seek to bring about healing and recovery in families and communities.47

(x) **NGOs**

Non-governmental organizations (NGO’s) have played a major role in the development and implementation of restorative justice programs worldwide. Their effectiveness in creating restorative forums stems, in large measure, from their being closer to the communities than criminal justice personnel usually are.48 Similarly, NGOs may have more credibility in some cases than the police, public prosecutors and judges and be held in higher regard.49

In many countries, NGOs are also free from the taint of patronage and corruption and this gives further legitimacy to their programmatic initiatives.50 This legitimacy is very important for restorative programs, many of which rely on the involvement of community residents and, in particular, assurance on the part of the victims of crime that their case will be handled fairly with little chance of re-victimization.51

NGOs may also partner with government, but in doing so, should assure themselves that doing so will not compromise the integrity of the program or introduce political or other agendas into the process.52

47 Ibid.
49 Ibid.
51 Ibid.
52 Id at 126.
3. **RESTORATIVE PRACTICES TYPOLOGY**

McCold and Wachtel\(^ {53} \) have given the restorative practices typology applicable in the process of restorative justice. This typology distinguishes between various types of restorative practices for the direct stakeholders, affected by a specific offence, as shown in figure given below.

The above diagram reflects that where social discipline approaches deal with only one group of direct stakeholder’s needs without involvement of the other direct stakeholders, such as with crime compensation for victims, the process is 'partly restorative'. Where a process like victim-offender mediation includes the principal stakeholders but excludes their communities of care, the process is 'mostly restorative'. Only when all three sets of direct stakeholders are involved, such as in conferences or circles, is a process 'fully restorative'. The most restorative processes involve the active participation of all three sets of direct stakeholders.

According to McCold and Wachtel, the fully restorative programs involve the active participation of all three sets of direct stakeholders such as victim(s), offender(s) and community. According to them, there are three fully restorative program/model which ensures the active participation of all the three sets of direct stakeholders. What they all have in common is that they seek to put right the harm for the actual victims of the crime concerned. These models can be seen in the following diagram.

All the models are underpinned by a restorative ethos, and aim to restore the harm caused by crime. None of them are ‘cast in stone’ and they can be used with each other as appropriate. Each of them has been developed to serve a particular purpose, and all are in current use somewhere in the world. There may be more models than the models mentioned below, as new ones are being invented all the time.

(i)a Peace Circles;
(i)b Family Group Conferencing;
(i)c Community Conferencing.
(I)a  PEACE CIRCLES

Peace Circle is an updated version of the traditional sanctioning and healing practices of aboriginal peoples in Canada and American Indians in the United States.\(^{54}\) Peace circles sometimes called peacemaking circles or circle sentencing - were resurrected in 1991 by judges and community justice committees in the Yukon Territory and other northern Canadian communities. Peace Circle or Circle Sentencing has been developed most extensively in Saskatchewan, Manitoba, and the Yukon and has been used occasionally in several other communities.\(^{55}\) Its use spread to the United States in 1996, when a pilot-project was initiated in Minnesota. Peace Circle has been used for adult and juvenile offenders, for a variety of offences, and in both rural and urban settings.\(^{56}\)

Peace Circle is a holistic reintegrative strategy designed not only to address the criminal and delinquent behavior of offenders but also to consider the needs of victims, families, and communities. Within the 'circle', crime victims, offenders, family and friends of both, justice and social service personnel, and interested community residents speak from the heart in a shared search for an understanding of the event. Together they identify the steps necessary to assist in healing all affected parties and prevent future crimes.\(^{57}\) The significance of the circle is more than symbolic: all circle members police officers, lawyers, judges, victims, offenders, and community residents participate in deliberations to arrive at a consensus for a sentencing plan that addresses the concerns of all interested parties.\(^{58}\)


\(^{55}\) *Ibid.*

\(^{56}\) *Id.* at 130.


\(^{58}\) *Ibid.*
Peacemaking Circles are rooted in aboriginal experience and tradition, and are based on the belief that the primary responsibility for addressing the problems of crime lies in the community and not just with those directly impacted by the crime and their immediate families. Peacemaking circles, be they healing circles or community circles or sentencing circles, also have at their core, the belief that it is important to address not only the presenting criminal problem but also to build community. These circles focus on trying to uncover the underlying problems, and to restore balance where possible. Discussions in these types of circles often explore wider issues of local crime and prevention issues, going beyond just the situation at hand.

Peacemaking Circles can be Healing Circles where ceremonies intended to bring conflict to a close, allow the participants to express their feelings, and indicate that the offender and victim have undergone personal healing.

Peacemaking Circles can be Sentencing Circles where the victim, offender, family, and community members, meet with a judge, lawyers, police, and others to recommend to the judge what type of sentence an offender should receive. The victim and the community have the opportunity to express them, address the offender, and may also take part in developing and implementing a plan relating to the offender’s sentence.

It is important to note that the victim’s role within the circle can vary quite substantially from one province to another. In British Columbia, community-assisted hearings and releasing circles have been taking place for a number of years. All participants in the circle are able to speak freely, and thus victims who are involved are not limited to reading from a prepared victim impact statement. They can discuss the impact of the crime directly with the members of the circle, including the offender.

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60 Ibid.
PROCEDURES AND GOALS

Peace Circle or circle sentencing typically involves a multi-step procedure that includes:

1) application by the offender to participate in the circle process;
2) a healing circle for the victim;
3) a healing circle for the offender;
4) a peace circle or sentencing circle to develop consensus on the elements of a sentencing plan, and
5) follow-up circles to monitor the progress of the offender.

In addition to commitments by the offender, the sentencing plan may incorporate commitments by the justice system, community, and family members. Goals of the circle process vary from community to community and are designed locally to fit community needs and culture.

Goals of peacemaking circle include the following:

- 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 voice and a shared responsibility in finding constructive resolutions.
- Addressing the underlying causes of criminal behavior.
- Building a sense of community and its capacity for resolving conflict.
- Promoting and sharing community values.

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61 Jane Dickson Gilmore and Carol La Prairie (2005), *Will the Circle be Unbroken?: Aboriginal Communities, Restorative Justice, And the Challenges of Conflict and Change*, University of Toronto Press, p-68.

CONSIDERATIONS IN IMPLEMENTATION

The success of the peacemaking circle process depends to a large extent on a healthy partnership between the formal juvenile justice system and the community.\(^{63}\) Participants from both sides need training and skill building in the circle process and in peacemaking and consensus building.\(^{64}\) It is critically important that the community's planning process allow sufficient time for strong relationships to develop between justice professionals and community members. Implementation procedures should be highly flexible, because, the circle process will evolve over time based on the community's knowledge and experience. As it gains experience, the community can customize the circle process to fit local resources and culture.\(^{65}\)

In many communities that have implemented the peacemaking circle concept, direction and leadership have come from a community justice committee that decides which cases to accept, develops support groups for the victim and offender, and helps to conduct the circles. In most communities, circles are facilitated by a trained community member, who is often called a keeper.\(^{66}\)

Although circles have been used as a response to serious and violent crimes, peacemaking circle or circle sentencing is not an appropriate response to all offences. Key factors in determining whether a case is appropriate for the circle process include the offender's character and personality, sincerity, and connection to the community; the victim's input; and the dedication of the offender's and victim's support groups.\(^{67}\)

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\(^{64}\) *Ibid.*

\(^{65}\) *Id* at 15.

\(^{66}\) *Supra* note 40 at 63.

\(^{67}\) *Ibid.*

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In addition to this, circles are often labor intensive and require a substantial investment of citizen’s time and effort; circles should not, therefore, be used extensively as a response to first offenders and minor crime.\footnote{Kay Pranis, Barry Stuart and Mark Wedge (2003), \textit{Peacemaking Circles: From Crime to Community}, St. Paul, MN: Living Justice Press, p-82.}

The capacity of the circle to advance solutions capable of improving the lives of participants and the overall well-being of the community depends on the effectiveness of the participating volunteers.\footnote{Ibid.} To ensure a cadre of capable volunteers, the program should support a paid community based volunteer coordinator to supply logistical support, establish linkages with other agencies and community representatives, and provide appropriate training for all staff.\footnote{Kay Pranis (2005), \textit{The Little Book of Circle Processes: A New/Old Approach to Peacemaking}, USA: Good Books, p-24.}

Very little research has been conducted to date on the effectiveness of peacemaking circle. One study conducted by Judge Barry Stuart in Canada in 1996 indicated that recidivism was less likely among offenders who had participated in circles than among offenders who were processed traditionally.\footnote{Supra note 57 at 203.} Those who have been involved with circles report that circles empower participants to resolve conflict in a manner that promotes sharing of responsibility for outcomes, generates constructive relationships, enhances respect and understanding among all involved, and fosters enduring, innovative solutions.\footnote{Ibid.}
Family group conferencing is based on centuries-old sanctioning and dispute resolution traditions of the Maori of New Zealand. In its modern form, the model was adopted into national legislation in New Zealand in 1989, making it the most systemically institutionalized of any of the fully restorative program/model.\textsuperscript{73}

In South Australia, family conferencing is now widely used in modified form as a police-initiated diversion approach known as the Wagga Wagga model. (Developed by the Wagga Wagga Police Department, this model uses police officers or school officials to set up and facilitate family conferencing meetings).\textsuperscript{74}

Conferencing is also being used in US cities in Minnesota, Montana, Pennsylvania, Vermont, and several other States and in parts of Canada. (The Wagga Wagga model is the primary approach that has taken hold in North America). A variety of offences have been resolved through family group conferencing, including theft, arson, minor assaults, drug offences, vandalism, and, in a number of States, child maltreatment cases. In New Zealand, conferencing is used in the disposition of all but the most violent and serious delinquency cases.\textsuperscript{75}

Family group conferencing involves the community of people most affected by the crime - the victim, the offender, and the family, friends, and key supporters of both - in deciding the resolution of a criminal or delinquent incident. The affected parties are brought together by a trained facilitator to discuss how they and others have been harmed by the offence and how that harm might be repaired.\textsuperscript{76}


\textsuperscript{74} Ibid.


\textsuperscript{76} Ibid.
**PROCEDURES AND GOALS**

The conference facilitator contacts the victim and offender to explain the process and invite them to the conference. The facilitator also asks the victim and offender to identify key members of their support systems, who also will be invited to participate. The conference typically begins with the offender describing the incident. The other participants then describe the impact of the incident on their lives. Some argue that it is preferable to allow the victim to start the discussion, if he or she wishes to do so.

Through these narrations, the offender is faced with the impact of his or her behavior on the victim, on those close to the victim, and on the offender's own family and friends, and the victim has the opportunity to express feelings and ask questions about the incident. After a thorough discussion of impacts, the victim is asked to identify desired outcomes from the conference.

In this way, the victim can help to shape the obligations that will be placed on the offender. All participants contribute to the problem-solving process of determining how the offender might best repair the harm he or she has caused. The session ends with participants signing an agreement that outlines their expectations and commitments.

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78 Ibid.


80 Ibid.


82 Ibid.
Goals of family group conferencing include the following:-

- Providing an opportunity for the victim to be directly involved in the discussion of the offence and in decisions regarding appropriate sanctions to be placed on the offender.
- Increasing the offender's awareness of the human impact of his or her behavior and providing the offender an opportunity to take full responsibility for it.\(^\text{83}\)
- Engaging the collective responsibility of the offender's support system for making amends and shaping the offender's future behavior.\(^\text{84}\)
- Allowing both offender and victim to reconnect to key community support systems.

**CONSIDERATIONS IN IMPLEMENTATION**

The family group conferencing process has been implemented in schools, police departments, probation offices, residential programs, community mediation programs, and neighborhood groups. Conferencing is most often used as diversion from the court process for juveniles but can also be used after adjudication and disposition to address unresolved issues or determine specific terms of restitution. Conferencing programs have been implemented within single agencies and developed collaboratively among several agencies. After completing a training course, either volunteers or paid employees can serve as conference facilitators.

Participation by all involved in conferences is voluntary. In addition to the victim and offender and their family members, a conference might involve teachers, other relatives, peers, special adult friends, and community resource people.


\(^\text{84}\) Ibid.
To date, two studies have been conducted to assess the impact of family group conferencing with young offenders. One study (Maxwell and Mori is, 1993)\textsuperscript{85} assessed the impact of New Zealand's mandating the widespread use of conferencing. It found that the families of offenders in conferencing programs are more frequently and actively involved in the justice process than are families of offenders whose cases are handled by standard procedures.\textsuperscript{86} It also found that offenders, victims, and their families described the conference process as helpful.\textsuperscript{87} Preliminary evaluations of conferencing programs in the United States also indicate high levels of victim satisfaction with the conference process and high rates of offender compliance with agreements reached during conferences (Fercello and Umbreit, 1999).\textsuperscript{88}

Practitioners involved in family group conferencing programs observe a reduction in fear for many victims. When used as a diversion from court, conferencing can provide a much speedier and more satisfying resolution of incidents than would otherwise be the case.\textsuperscript{89} Family group conferencing also builds community skills in conflict resolution and participatory decision-making.\textsuperscript{90}

\textsuperscript{85} Supra note 75 at 113.
\textsuperscript{86} Ibid.
\textsuperscript{87} Ibid.
(l)c. **COMMUNITY CONFERENCING**

Community Conferencing has developed from what is called Family Group Conferencing deep rooted in the Maori culture in New Zealand which has quickly become a generic term for processes that seek to bring together victim, offender and others. Other names which are also in use for very similar processes include; Victim-Offender Conferencing, (Community) Accountability Conferencing, Community Conferencing, Small and Large Group Conferencing, Restorative Conferencing, Diversionary Conferencing, Family Conferencing etc.\(^91\)

The original model, which has been adapted to Community Conferencing, not only includes the involvement of family but also those in the larger community who have been affected by the conflict.\(^92\) The functions and the scope of the latest development of community conferencing are larger and broad than that of the family group conferencing. In Canada this model has been adapted to include not only the notion of family involvement but also the participation of both the offender's and the victim's supporters who may or may not be family.\(^93\)

Community Conferencing is a process in which the victim, offender and affected community members come together in a safe setting with an impartial facilitator to discuss the facts and impact of a particular crime. During this process the victim can ask questions and express directly to the offender how the crime has impacted his or her life.\(^94\)

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Conferencing provides a victim greater access to and voice in the criminal justice process. Conferencing also humanizes the incident more directly for the offender so that he or she may better understand the real human consequences of his or her wrongdoing.  

Referrals to the Community Conferencing Program (CCP) may come from prosecutors, defense attorneys, victim-witness advocates, judges, law enforcement, probation officers, or from victims who wish to speak directly with the offenders. Violent crimes and cases involving drugs or guns will not be accepted.

After a referral is received, the offender is contacted through his/her attorney or, directly, if he or she has no attorney, to determine whether the offender is appropriate for the program. Factors to be considered when making this decision include: acceptance of responsibility for the act, the type of crime, degree of remorse, prior record and the offender’s general attitude about meeting with the victim.

If the offender is appropriate, the victim will be contacted to see whether he or she would consider participating. If the victim does not wish to participate in the community conferencing program, the case is processed through other criminal justice procedures.

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\footnote{95 \textit{Ibid.}}
Critical Characteristics of Community Conferencing

**Critical Values**
- Primacy of victims, offenders, and communities of care
- Collective responsibility
- Social justice
- Cultural flexibility

**Critical Processes**
- Inclusion – participation of victims, offenders, and communities of care in processes and decisions
- Increased understanding on the part of victims, offenders, and communities of care
- Respect – the avoidance of stigmatic shaming
- Cultural relevance

**Critical Outcomes**
- Acknowledgement of responsibility through making amends-apologizing to victims, repairing the harm, and completing task.
- Acceptance of outcomes as appropriate by offenders, victims, and communities of care.

**Critical Objectives**
- Restoring connectedness and reintegration: feeling good about process, outcome, self, and life prospects
- Reducing reoffending
- Healing victims' hurt

Source: Dennis Sullivan and Larry Tift, "Handbook of Restorative Justice"
In order to understand the details relating to community conferencing and its impact, it is necessary to have the analysis of attributes as follows:

**PRIMACY OF VICTIMS, OFFENDERS AND COMMUNITIES OF CARE**

The key participants at restorative conferences are the offender(s), the victim(s), and their communities of care. In addition, in most jurisdictions, a representative of the police is usually present and a specific individual acts as the facilitator of the process. In some jurisdictions, the police also act as the facilitator. The key issue for restorative conferencing is not who is the facilitator but who are the decision makers and the extent to which the state (through its representatives) exercises a veto over the decision reached. However, some curtailment of the power of criminal justice or social welfare professionals is essential for conferences to be restorative. Thus, in New Zealand, the police cannot prosecute a young offender unless he or she has first been referred to a conference and the conference recommends a prosecution.\(^{96}\)

**COLLECTIVE RESPONSIBILITY**

For responsibility to be collective requires an acceptance that we, as members of a particular community of care, have played a role in the genesis of the particular crime and have, therefore, some responsibility both to prevent its recurrence (through, for example, ameliorating those conditions that give rise to it in the first place) and to address its consequences (through, for example, providing services to the victims of crime or developing programs aimed at reintegrating offenders).

**SOCIAL JUSTICE**

The majority of the young people who come into the criminal justice system categorized themselves as offenders are characterized by poverty and disadvantage. The need to redress these inequities, to respond to unmet needs, and to assist children and young people in developing their full potential constitutes part of the community conferencing. To achieve this, however, requires action and the allocation of resources by the state.

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INCLUSION IN PROCESSES

Inclusion means that offenders are expected to participate directly in the process, to speak about their offending and matters associated with it, to interact with the victim, to express their remorse about what has occurred, to apologize for what they have done, and to contribute to decisions about eventual outcomes. From all this, offenders are expected to have a better understanding of their offending and its consequences and to become accountable for it. The contribution made by offenders in all of this should be acknowledged and valued.

INCREASED UNDERSTANDING ON THE PART OF VICTIM, OFFENDER AND COMMUNITIES OF CARE

The conference provides opportunity to the ‘victim’ and ‘communities of care’ with a voice in determining appropriate outcomes and also the opportunity to meet the offender and the offender's family face-to-face so that they could assess their attitude, understand more why the offense had occurred, and assess the likelihood of it recurring.97 Acknowledging responsibility for the harm done is an integral part of restorative conferencing, and most offenders involved in conferencing accept this.

RESPECT – THE AVOIDANCE OF STIGMATIC SHAMING

In Braithwaite's analysis, shame is a necessary part of the process of reintegration.98 Stigmatic shaming is a recognized part of the criminal justice system; many of its rituals serve to signify the separation and segregation of offenders from the society. In “reintegrative shaming” at least in theory, the offense rather than the offender is condemned and the offender is reintegrated with respect, rather than rejected by the society.99

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97 Ibid.
99 Ibid.
ACKNOWLEDGEMENT OF RESPONSIBILITY THROUGH MAKING ‘AMENDS’

Most young offenders in Maxwell and Morris's research were held accountable for their offenses and made amends to their victims: they apologized in terms of acknowledgement accepting 'responsibility' for hurting the victim by his/her actions.\textsuperscript{100} They apologized in terms of 'affect' going beyond acknowledgement of guilt to remorse or shame by the offender for what he/she has done. They apologized in terms of 'vulnerability' giving control to the victim, who can decide whether or not to accept the apology. The offender cannot know what the victim will do before offering the apology. In offering the apology, the offender cedes to the victim the control and power over himself/herself.\textsuperscript{101}

ACCEPTANCE OF OUTCOMES AS APPROPRIATE BY OFFENDERS, VICTIMS, AND COMMUNITIES OF CARE

Most of the community conferencing resulted in an agreed outcome (Maxwell, Morris, and Umbreit).\textsuperscript{102} As noted previously, these outcomes usually take the form of apologies to victims and community work (either for the victim or for an organization nominated by the victim) rather than direct reparation to victims (because of the limited resources of most offenders). Certainly, victims appear to be more satisfied when they are involved in a process with offenders in contrast to conventional court processes.

Before concluding this section, it is worth reflecting briefly on Tyler's (1990) suggestion that citizens treated with respect and listened to were likely to see the law as fair; conversely, when they were treated without respect and were not listened to, they saw the law as unfair. He thus distinguished between "process control" and "outcome control" and concluded that "having a say" was more important than determining the outcome of the decision.\textsuperscript{103}

\textsuperscript{100} Supra note 75 at 112.

\textsuperscript{101} Ibid.


\textsuperscript{103} Tyler, T. (1990), Why People Obey the Law, New Haven, CT: Yale University Press, p-10.
RESTORING CONNECTEDNESS AND REINTEGRATION

Restoring connectedness is a difficult objective to measure. Maxwell and Morris describe handshakes and hugs between offenders and victims, victims extending invitations to offenders to share a meal with them, and victims attending court with offenders to provide them with support. There are also examples of victims arranging for "their" offender to live with one of their family for a while.

Reintegration is also a difficult objective to measure. Maxwell and Morris attempted to explore this for offenders through a composite variable based on two separate questions that they called "feeling good about oneself and one's life." The particular events identified as indicative of reintegration into the community were: (1) gaining educational qualifications and vocational skills, (2) developing close and positive relationships with family, friends, and partners, and (3) settling into a stable lifestyle.

REDUCING REOFFENDING

The major aspects of conferencing processes contributed to lessening the chance of reoffending even when key factors identified by the literature on reoffending (such as adverse early experiences and previous offense history) were taken into account.

HEALING VICTIMS' HURTS

It is alluded fact that many victims feel better as a result of participating in conferences, that fewer fear re-victimization, and that many would recommend conferencing to others. It is difficult to express quantitatively the extent to which victims feel reintegrated after conferencing or on the longer-term effects of conferencing on victims. But we all know from victims’ perspectives that for many victims the effects of crime are long-lasting. We need; therefore, to know from longer-term follow-ups with victims whether the positive short-term effects of conferencing remain over time.
<table>
<thead>
<tr>
<th><strong>Criminal Courts</strong></th>
<th><strong>Community Conferencing</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The conflict is the crime.</td>
<td>The criminal incident is regarded as a small part of a larger dynamic/conflict.</td>
</tr>
<tr>
<td>The sentence resolves the conflict.</td>
<td>The sentence is a small part of the solution.</td>
</tr>
<tr>
<td>Focus on past conduct.</td>
<td>Focus on present and future conduct.</td>
</tr>
<tr>
<td>Take a narrow view of behavior.</td>
<td>Take a larger, holistic view.</td>
</tr>
<tr>
<td>Receive an apology.</td>
<td>Focus on social conflict.</td>
</tr>
<tr>
<td>Avoid broader concern with social conflict.</td>
<td>Result is least important – the process is most important, as the process shapes and sometimes heals the relationships among all parties.</td>
</tr>
<tr>
<td>Result (i.e. the sentence) is most important.</td>
<td>Empowers the ‘community of Care’.</td>
</tr>
<tr>
<td>Relies on professionals.</td>
<td>Relies on outcomes derived from the conferencing based on ‘collective responsibility’ of victim(s), offender(s) and communities of care.</td>
</tr>
</tbody>
</table>
Conferencing is a mechanism for making decisions about how best to deal with a young person's criminal behavior. To the extent that the young person, the victim, and their respective communities of care are involved in this decision, are treated with respect, and are not made to feel bad about them, then conferencing processes can be described as restorative.

Outcomes from conferencing may (and often do) include putting things right for victims and offenders. For example, the young person or his or her family may make reparation to the victim or the young person may perform some work either for the victim or for an organization or person nominated by the victim. The young person, as a result, may feel that he or she has made amends not only to the victim but to society. In addition, the young person may agree to participate in a drug or alcohol program or employment training. To this extent, conferencing outcomes may also be described as restorative for both victims and offenders.

In combination, restorative processes and outcomes may result in meeting restorative objectives: that is, to change the hearts and minds of offenders through reducing the probability of reoffending, of victims through healing their hurt, and of both by reintegration within their communities. This research on conferencing signifies the potential of conferencing to impact in significant and positive ways. Community conferencing offers a new way forward from the failures of the past.


105 Ibid.


107 Ibid.

108 Ibid.

109 Supra note 75 at 138.

110 Ibid.
According to McCold and Wachtel, Where a process like victim-offender mediation includes the principal stakeholders but excludes their communities of care, the process is 'mostly restorative'. According to them, there are six mostly restorative program/model which ensures the active participation of direct stakeholders but excludes their communities of care. What they all have in common is that they seek to put right the harm for the actual victims of the crime concerned. These models can be seen in the following diagram.

Each restorative program/model mentioned in the diagram has been developed to serve a particular purpose, and all are in current use somewhere in the world. There may be more models than the models mentioned in the diagram, as new ones are being invented all the time.
In 1972 a group of people in Bristol, including some members of the National Association for the Care and Resettlement of Offenders (now NACRO) along with others from the police and probation service, decided that something needed to be done to help victims.\(^{111}\) They created the very first Victim Support Circle to find out more about how victims were affected by crime. As well as learning a lot about the problems victims faced, they realized that there was little or no help on offer.\(^{112}\)

In 1974, the very first Victim Support Circle was set up in Bristol. Other groups soon followed around the UK with local people deciding they needed to do something to help victims too. In 1979 all the circles around the country got together to create an ‘umbrella body’ – the National Association of Victims Support Schemes.\(^{113}\)

The Crown Court Witness Service which is funded by the Ministry of Justice was launched in 1994.\(^{114}\) The Witness Service gives help and information to people going to court. In 2007, members of Victim Support from across England and Wales voted at an extraordinary general meeting to create a single national charity to replace the existing federation. In 2008 all local charities merged to create one national organization covering England and Wales. In 2010-2011 it offered help to around 1.5 million victims and almost 268,000 witnesses.\(^{115}\) The ultimate purpose of the victim support circle is to create an environment supportive to victims of crime.\(^{116}\)


\(^{112}\) \textit{Ibid.}

\(^{113}\) \textit{Id.} at 152.


\(^{115}\) \textit{Ibid.}

\(^{116}\) \textit{Id.} at 95.
OBJECTIVES OF VICTIM SUPPORT CIRCLES

Following are the objectives of victim support circles:

- To facilitate and contribute towards the restoration of victims of crime.\(^{117}\)

- To enhance, promote and rebuild community spirits and pride and develop ways that community can once again share its problems and arrive at resolutions that are mutually agreeable.

- To enhance, promote and rebuild community safety by increasing community capacity to use such Circles to break down barriers and to facilitate access to knowledge, skills and resources related to victims of crime.\(^{118}\)

- To identify a diverse group of community members who can play a leadership role and support role to victims of crime.

- To deliver Circles training to a diverse group within the community specified so that they can become Circle Keepers and Circle Trainers.

A community-based Victim Support and Healing Circle provide a place for crime victims to receive the on-going support of the community as they passed through such bad events that have happened to them. Such a Circle considers the rights of the victims and provides a place for the victims of crime to come together and to create an environment supportive and friendly to victims of crime.

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\(^{117}\) *Id.* at 105.

The term ‘therapeutic community’ is usually used in the UK to describe small cohesive communities where patients in the prison (often referred to as residents) have a significant involvement in decision-making and the practicalities of running the unit. Based on ideas of collective responsibility, citizenship and empowerment, therapeutic communities are deliberately structured in a way that encourages personal responsibility of offenders towards the society and victims of crime and avoids unhelpful dependency on professionals.

In the USA, the term ‘therapeutic community’ is more often used to describe user-run communities for substance misuses with: a hierarchical structure; a reward system; fierce encounter groups; and a simple explanatory model of addiction and its treatment. These are referred to as ‘concept’ or ‘behavioral’ therapeutic communities, as opposed to ‘democratic’ therapeutic communities.

In the UK, this model is currently being developed within the prison service. In common with democratic therapeutic communities, the primary mechanism by which these units aim to alter behavior is by encouraging residents (i.e., offenders in the prison) to take responsibility for themselves and for others (i.e., for the victims of crime and the community).

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Victim Restitution

Restorative justice underscores the need for victims’ harms to be repaired to the extent possible. Compensation and restitution are two ways this may be done. Victims of crime may suffer financial stress that is as devastating as their physical injuries and emotional trauma. Crime victim compensation is a direct reimbursement to or on behalf of a crime victim for a wide variety of crime-related expenses, including medical costs, funeral and burial costs, expenses for mental health counseling, and lost wages or loss of support. Every state administers a crime victim compensation program that provides crucial financial assistance to victims of crime.

A Victim’s Right to Restitution

The Victims’ Bill of Rights Act in the California Constitution includes the right to restitution among its many provisions:

“All persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.”

“Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.”

So when tragedy strikes, it can be a frightening and traumatic experience that often carries with it great physical, emotional, or financial harm. Many victims have questions about whom they can turn to and where they can go for help. When it comes to financial assistance, the California Victim Compensation Program (CalVCP) may provide needed compensation to help cover treatment and other support services for victims and their families. With the victim in mind, the aim is to provide valuable resources to ensure victims are supported through this critical time.

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The victim-offender mediation process offers victims an opportunity to meet offenders in a safe, structured setting and engage in a mediated discussion of the crime. With the assistance of a trained mediator, the victim is able to tell the offender about the crime's physical, emotional, and financial impact; receive answers to lingering questions about the crime and the offender; and be directly involved in developing a restitution plan for the offender to pay back any financial debt to the victim.\textsuperscript{124}

The victim-offender mediation process is different from mediation as practiced in civil or commercial disputes, because the involved parties are in agreement about their respective roles in the crime. Also, the process should not be primarily focused on reaching a settlement although most sessions do, in fact, result in a signed restitution agreement. Because of these fundamental differences, the terms 'victim offender meeting', 'conferencing', and 'dialog' are becoming increasingly popular to describe variations from standard mediation practices.\textsuperscript{125}

Although still unfamiliar to many mainstream juvenile and criminal justice audiences and marginal to the court process in some jurisdictions where they do operate, victim-offender mediation programs — referred to in some communities as 'victim—offender reconciliation programs' and, increasingly as 'victim-offender dialog programs' - have a respectable 20-year track record in the United states, Canada, and Europe. Currently, there are approximately 320 victim-offender mediation programs in the United States and Canada and more than 700 in Europe. Several programs in North America currently receive nearly 1,000 case referrals annually from local courts. Although the greatest proportion of cases involves less serious property crimes committed by young people, the process is used increasingly in response to serious and violent crimes committed by both juveniles and adults.\textsuperscript{126}


Table: Common Characteristics of the Prototypical VOM

<table>
<thead>
<tr>
<th>Stage in the criminal justice process</th>
<th>Diversion, pre-court, post-process adjudication, post-sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinds of cases</td>
<td>Initially minor crimes; increasingly more serious and violent crimes</td>
</tr>
<tr>
<td>Role of facilitator(s)</td>
<td>Create safety, guide process</td>
</tr>
<tr>
<td>Participants</td>
<td>Initially, one victim, one offender and mediator(s). Now may also be multi-party to include victim(s), offender(s) and possibly family members and supporters</td>
</tr>
<tr>
<td>Preparation</td>
<td>In-person strongly recommended</td>
</tr>
</tbody>
</table>

**PROCEDURES AND GOALS**

Cases may be referred to victim-offender mediation programs by judges, probation officers, victim advocates, prosecutors, defense attorneys, and law enforcement. In some programs, cases are primarily referred as a diversion from prosecution (assuming that any agreement reached during the mediation session is successfully completed).\(^{127}\) In other programs, cases are usually referred after a formal admission of guilt has been accepted by the court, with mediation being a condition of probation or other disposition (if the victim has volunteered to participate). Some programs receive case referrals at both stages.\(^{128}\)

During mediation sessions, victims explain how the crime affected them and are given the opportunity to ask questions about the incident and help develop a plan for restoring losses. Offenders are given the opportunity to tell their stories and take direct responsibility through making amends in some form.\(^{129}\)

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\(^{129}\) *Id.* at 68.
The goals of victim-offender mediation include the following:

- Supporting the healing process of victims by providing a safe, controlled setting for them to meet and speak with offenders on a strictly voluntary basis.
- Allowing offenders to learn about the impact of their crimes on the victims and take direct responsibility for their behavior.
- Providing an opportunity for the victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime.

**CONSIDERATIONS IN IMPLEMENTATION**

In implementing any victim-offender mediation program, it is critically important to maintain sensitivity to the needs of the victim. First and foremost, the mediator must do everything possible to ensure that the victim will not be harmed in any way. Additionally, the victim's participation must be completely voluntary. The offender's participation should also be voluntary.

Offenders are typically given the option of participating in mediation or dialogue as one of several dispositional choices. Although offenders have no absolute choice, yet they should never be coerced into meetings with victims.

The victim should also be given choices, whenever possible, about procedures, such as when and where the mediation session will take place, who will be present, and who will speak first. Cases should be carefully screened regarding the readiness of both victim and offender to participate. The mediator should conduct in person pre-mediation sessions with both parties to clarify the issues to be resolved. The mediator should also make follow-up contacts and monitor any agreement reached.

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130 Supra note 124 at 81.
132 Supra note 127 at 78.
134 Ibid.
A large multisite study of victim offender mediation programs with juvenile offenders (Umbreit, 1994) found the following:  

- In cases referred to the four study-site programs during a 2-year period, 95 per cent of mediation sessions resulted in a successfully negotiated restitution.  
- Victims who met with offenders in the presence of a trained mediator were more likely to be satisfied with the justice system.  
- After the meeting, victims were significantly less fearful of being re-victimized.  
- Offenders who met with victims were far more likely to successfully complete their restitution obligation.  
- Recidivism rates were lower among offenders who participated in mediation.  

Multisite studies (Coates and Gehm, 1989; Umbreit, 1994) also found that although restitution was an important motivator for victim participation in mediation sessions, victims consistently viewed actual receipt of restitution as secondary to the opportunity to talk about the impact of the crime, meet the offender, and learn the offender's circumstances. The studies also found that offenders also appreciated the opportunity to talk to the victim and felt better after doing so.  

A recent statewide survey of victim service providers in Minnesota found that 91 per cent believed that victim-offender mediation should be available in every judicial district because it represents an important victim service. The American Bar Association recently endorsed victim-offender mediation and recommends its use throughout the United States. 

137 Ibid.  
139 Ibid.
Restorative practice is a new field of study that has the potential to positively influence human behavior and strengthen civil society around the world.\(^{140}\)

The fundamental premise of restorative practices is that people are happier, more cooperative and productive, and more likely to make positive changes when those in authority do things with them, rather than to them or for them.\(^{141}\)

The field of restorative practices has significant implications for all aspects of society — from families, classrooms, schools and prisons to workplaces, associations, governments, even whole nations — because restorative practices can develop better relationships among these organizations’ constituents and help the overall organization function more effectively.\(^{142}\) For example, in schools, the use of restorative practices has been shown to reliably reduce misbehavior, bullying, violence and crime among students and improve the overall climate for learning.\(^{143}\) Everyone who finds themselves in positions of authority — from parents, teachers and police to administrators and government officials — can benefit from learning about restorative practices.\(^{144}\)

\(^{140}\) *Supra* note 48 at 63.


\(^{142}\) *Ibid*.


(ii) VICTIMLESS CONFERENCES

On occasion there may in fact be no identifiable victim. Under these circumstances, provided the individual responsible for the crime/behavior fulfills all the other necessary criteria, he or she may participate in a victimless conference. The process involved in a victimless conference is entirely the same as for a full conference. Represented at this meeting will be the person responsible for the crime/behavior, significant members of his or her family and affected members of the community.\(^{145}\)

what is the role of the Facilitator?

All victimless conferences are administered by a trained facilitator. The role of the facilitator is to assess all relevant persons who may take part in the conference process as to their suitability. The facilitator will make all necessary arrangements and notify the appropriate people as to the time and venue for the proposed conference. The choice of facilitator will rest with the affected parties.

what happens at a Restorative Conference?

During a conference the facilitator will guide all those persons present through a pre-defined process. Each participant will be asked a number of questions designed to highlight what actually happened, who they felt at the time and how they feel at the present.

Both the affected community representatives will have the opportunity to say what is required to put things right. Any agreement reached in respect of reparation or restitution will be entirely voluntary and cannot be legally enforced. The fulfillment of any agreement reached will however be monitored and a record made of its completion or otherwise.\(^{146}\)

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\(^{146}\) Ibid.
PARTLY RESTORATIVE PROGRAM

According to McCold and Wachtel, where social discipline approaches deal with only one group of direct stakeholder’s needs without involvement of the other direct stakeholders, such as with crime compensation for victims; the process is 'partly restorative'. According to them, there are eight partly restorative program/model which ensures the active participation of one side of direct stakeholders but excludes the other side of direct stakeholders and communities of care. What they all have in common is that they seek to put right the harm for the actual victims of the crime concerned. These models can be seen in the following diagram.
A primary principle of restorative justice is that crime causes injuries and justice should repair those. Victim assistance is a way of both limiting and beginning to repair those injuries.\footnote{Joanne Wemmers and Tinneke Van Camp, (2011) \textit{The Offer of Restorative Justice to Victims of Violent Crime: Should it be Protective or Proactive}? Montreal, Canada: Montreal University Press, p-10.}

Victim services programs provide services to victims as they recover from the crime and proceed through the criminal justice process. Attempts to meet victims’ needs have been forged on two fronts: victims’ rights advocates lobby for and assert the rights of victims to have a primary role in the administration of justice\footnote{Ibid.} while community support groups attempt to address the personal crises that may follow from victimization.\footnote{“European Commission’s Victims’ Package: Consultation on taking action on rights, support and protection of victims of crime and violence” available at: http://ec.europa.eu/justice/index_en.htm (accessed on March 25th, 2012).}

A number of purposes of victim services programs have been suggested:

- to provide legal representation to victims of crime, so that victims are not re-victimized by the system's neglect of them;\footnote{Ibid.}
- to meet victims’ physical and psychological needs;\footnote{Dominic Casciani (2010), “Crime victims treated like the “poor relation” available at: BBC.co.uk (accessed on March 27\textsuperscript{th}, 2012).}
- and ultimately;
- to provide compensation to the victims of crime for the injuries suffered.
- to give victims an opportunity to successfully reintegrate into society as restored individuals.\footnote{Ibid.}
(iii)b  YOUTH AID PANELS

The Youth Aid Panel (YAP) process is an innovative diversionary program designed to effectively address the juvenile offender. The panels are comprised of community volunteers who act as an important voice for their community. The program goals include offender accountability, victim participation and reparation, as well as community involvement.153

The panels assist in providing a means to increase the accountability and responsibility of youths for their actions, while attempting to meet the needs of the victim. This process strives to achieve two important goals: first, to prevent the youth from becoming more deeply involved in delinquent behaviors and the juvenile justice system; secondly, to hold the juvenile responsible to both the victim and the community through completion of panel imposed obligations.

How Does a Youth Aid Panel Work?

Juvenile offenders who admit their involvement in an eligible first-time offense are offered the opportunity to go in front of the Youth Aid Panel. At a panel meeting, juvenile offenders and their families meet formally with trained community volunteer panelists. The panelists decide an appropriate resolution to hold the juvenile accountable for his/her criminal actions. The juvenile and his parents sign a contract for the juvenile to complete educational activities, community service, restitution, victim apologies and/or other requirements. If the juvenile successfully completes the resolution, he/she will not have a criminal record.

What are the benefits of the Youth Aid Panel?

The juvenile offenders who successfully complete their resolution are offered a "second chance," as they will not have an official court record.

- The juvenile is able to become more connected to the community.
- Personal responsibility is taught.
- The program saves taxpayers court-related costs, as the panel system is less costly to the public.
- The juvenile and his/her family are helped to understand that they live in a community that cares and that expects responsible resolutions for criminal behavior.
- Awareness of local community resources is increased.

153 Ibid.
CRIME COMPENSATION

Compensation can be provided to the victims of crime who have been injured by an act of violence, such as assault, a robbery, domestic violence or sexual assault, etc. Different countries provided different compensation package. For instance, if such a crime event took place in New South Wales (NSW), the victim of crime may be eligible for an award of compensation between $7,500 and $50,000.\(^\text{154}\)

Compensation can also be claimed in NSW if such victim of crime injured as a result of witnessing an act of violence or if he or she is injured while trying to prevent someone from committing an act of violence. Parents or guardians of children who are injured as a result of learning about the act of violence can also claim compensation.\(^\text{155}\)

Likewise, the Criminal Injuries Compensation Scheme is a UK Government funded scheme that allows blameless victims of violent crime to get a financial award. Under the Scheme, each type of injury is given a value. The values together form a list that we call ‘the tariff’. The award can never fully compensate for all the injuries suffered, but is recognition of public sympathy for the blameless victim. The minimum tariff payment is £1,000 and the maximum tariff payment for a single injury is £250,000. In certain circumstances you may also be entitled to additional payments for loss of earnings and special expenses (see Appendix 4 for more details). The maximum overall award is £500,000 — this is when we have added an award for injury to an award for loss of earnings or special expenses. The Scheme is for people injured in England, Wales and Scotland (‘Great Britain’). Northern Ireland has its own Scheme, as do many other countries.\(^\text{156}\)


\(^{155}\) Ibid.

(iii)d RELATED COMMUNITY SERVICE

Community service, often incorporating mediation and other restorative processes, has been adopted nationally as an alternative to imprisonment.\textsuperscript{157} Community service is work performed by an offender for the benefit of the community as a formal or informal sanction.\textsuperscript{158} Just as neighborhoods and communities are harmed by criminal and delinquent activities, they can be at least partially restored by meaningful service that contributes to their improvement.\textsuperscript{159}

For community service to be restorative, all affected parties need to have the opportunity to participate in determining what community service is done and the work agreed to is connected to the offense to the extent possible.\textsuperscript{160} Additionally, it needs to be specified on how the agreed community service will be monitored by the community. Community service offers one way an offender can be held accountable to repair some of the harm caused by his or her criminal actions.\textsuperscript{161}

The goals of community service are to:

\begin{itemize}
  \item Hold offenders accountable for the harm they have caused to the community.
  \item Provide communities with human resources that can improve the quality of life in public environments, business, and even individual residences.
  \item Help offenders develop new skills through supervised work activities.
  \item Allow victims a voice and occasionally some direct benefit by recommending the type of community service performed.
\end{itemize}


\textsuperscript{158} Ibid.


\textsuperscript{160} Ibid.

\textsuperscript{161} Supra note 92 at 107.
IMPLEMENTATION OF COMMUNITY SERVICE

Successful community service programs require a true public-private partnership. Residents in a community can enhance efforts of the criminal and juvenile justice systems by providing meaningful work experiences, volunteering to supervise offenders sentenced to community service, and serving as mentors for adjudicated youth in community service capacities. Examples of community service include: public work programs that beautify a community's environment such as park and roadside clean-up efforts or graffiti removal. Truly restorative community service offers crime victims the opportunity to provide input into the types of community service they would like to see the offender perform, including activities that directly benefit the victim or a charity or project of the victim's choice. Community service can also benefit victim service organizations, for example, by providing bookkeeping services to a rape crisis center or other valuable support, as described in the example below.

Adult and juvenile offenders, under the supervision of the Department of Community Corrections in Deschutes County, Oregon, have accomplished a number of human service and public works tasks, including the construction of a homeless shelter and domestic abuse crisis center. Offenders raised the money to pay for the building materials, as well as provided the construction labor. This type of community service provides offenders an opportunity for skill development and interaction with positive role models, as well as learning about the needs of others and helping to create something of lasting benefit to the community.

163 Ibid.
164 Carole La Prairie and Jane Dickson Gilmore, (2005), Will the Circle be Unbroken? Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change, University of Toronto Press, p-42.
165 Ibid.
OFFENDER FAMILY SERVICES

Every offender is a part of a family. Incarceration is often a difficult time not only for the offenders, but also for their family and friends. Separation from a loved one due to incarceration can be emotionally, spiritually, and economically overwhelming. For these reasons, the department of corrections of various countries adopted fair and humane system for preserving the behavior of adjudicated offenders for their families.\(^{166}\)

Likewise, the mission of the North Carolina Department of Correction, division of prison, is to promote public safety by the administration of a fair and humane system, which provides reasonable opportunities for adjudicated offenders to develop progressively responsible behavior.\(^{167}\)

A major goal of the Division of Prisons is to encourage inmates to change those behaviors that contributed to their arrest and imprisonment. Self-improvement programs such as Anger Management, Character Education, Think Smart, Life Skills, and Thinking for a Change are some of the programs inmates can attend to help them make better decisions, improve their self worth, and learn effective problem solving skills.\(^{168}\)

The Division of Prisons recognizes the importance of family. A number of classes are offered that assist inmates in being better parents by helping them to recognize the needs of their children, and responsibilities to them. These programs help inmates work to maintain and improve relationships with their children and family during this difficult time and upon their release. Some of the parenting programs offered are Motheread, F.A.T.H.E.R. (Fathers Acting to Heal, Educate and Reconnect), Father Accountability, STEP (Systematic Training for Effective Parenting), and Prison MATCH (Mothers and Their Children). Parenting programs are offered at various prisons. The MATCH Program is only offered at the North Carolina Correctional Institution for Women in Raleigh.

\(^{166}\) North Carolina Department of Correction, Division of Prisons, (2010), *Handbook for Family and Friends of Inmates*, available on the department of correction website at: www.doc.state.nc.us (accessed on March 31\(^{st}\), 2012)

\(^{167}\) Ibid.

\(^{168}\) Id. at 17.
In the process of restorative justice, each aspect of victimization and victim sensitivity are recognized so as to provide maximum restorative impact on the victims of crime. Training of professionals in victim sensitivity is essential. Best practices should be learned by the facilitators or restorative practitioners regarding victims’ rights i.e., safety, security, restitution, restoration, etc. The directive must ensure minimum standards on the basis of which a facilitator can provide the protection for victims.\textsuperscript{169}

In training of practitioners, special attention should be paid to vulnerable victims and to avoiding further suffering the proceedings may cause to the victim. Specialist training should be provided for those who come into contact with vulnerable victims, such as children or victims of sexual or domestic violence.\textsuperscript{170}

Certain victims are in a vulnerable situation because of the nature of the offence or because of their relationship with the suspect, such as victims of domestic violence, sexual offences or human trafficking. In addition to legal assistance, they may also need mental support and psychological assistance during the proceedings.\textsuperscript{171}

In order to keep the child victims from further traumas, there should be more use of different technologies so that the child victim does not have to face the suspected person. In hearing of child victims and victims with mental disabilities video recordings could be used to reduce repetitive questioning. The video-recording may be used as evidence in court if the suspect of the offence has been allowed to put questions to the victim.

Measures to protect a victim’s privacy are needed in cases which involve particularly sensitive information about an individual’s private life. When necessary to protect the victim’s privacy, the court should be able to order the hearing to be held “in camera” or order certain documents contained in the case-file to be kept secret. This sort of situation is utmost reliable in rape cases.\textsuperscript{172}


\textsuperscript{170} Ibid.

\textsuperscript{171} \textit{Id. at} 87.


161
Restorative Justice facilitates family centered social work. Its potent instrument, Community based processes emerged in the restorative justice movement offer hope that in the response to family violence a larger group of parties can be engaged to influence the offender, to create safety nets for victims and to stimulate a larger community discussion about the origin of such behavior.\textsuperscript{173}

In the restorative justice framework the community is responsible for rallying around victims, facilitating responsible resolutions to harmful behavior, supporting offenders in making amends, establishing appropriate norms of behavior for all members and addressing underlying causes of harmful behavior.\textsuperscript{174} Each of these community responsibilities is important in resolving family violence.

Restorative justice has at its core the concept of mutual responsibility and interdependence.\textsuperscript{175} Individuals are responsible for their impact on others and on the larger whole of which they are a part. Communities are responsible for the good of the whole, which includes the wellbeing of each member. Because all parts of the community are interdependent, harm to one is harm to all; good for one is good for all. The wellbeing of the collective is the responsibility of each individual and the wellbeing of each individual is the responsibility of the collective.\textsuperscript{176}


\textsuperscript{176} \textit{Ibid.}
REPARATIVE BOARDS

The community reparative board is a recent version of a much older and more widespread community sanctioning response to youth crime, generally known by such terms as youth panels, neighborhood boards, or community diversion boards.\(^{177}\)

These panels or boards have been in use in the USA since the 1920s, and their contemporary counterparts, reparative boards, have been in use since the mid-1990s, primarily in Vermont.\(^{178}\) There, the boards are primarily used with adult offenders convicted of nonviolent and minor offences; more recently, the boards have also been used with juvenile offenders.\(^{179}\)

Reparative boards typically are composed of a small group of citizens, prepared for their function by intensive training, who conduct public, face-to-face meetings with offenders ordered by the court to participate in the process.\(^{180}\) The boards develop sanction agreement with offenders, monitor compliance, and submit compliance reports to the court.\(^{181}\)


\(^{179}\) Reparative boards are highly localized models, and information on them is sketchy. Here we are using the Vermont reparative boards as a prototype and case study. As noted above, Vermont has used the boards primarily with adult offenders but more recently has begun to use them with juvenile offenders too. Substantial information is available on the operating procedures of the Vermont boards, and the Vermont model can serve as a new prototype for the board/panel-based approach to youth crime.


PROCEDURES AND GOALS

During reparative board meetings, board members discuss with the offender the nature of the offence and its negative consequences. Then board members develop a set of proposed sanctions, which they discuss with the offender until an agreement is reached on the specific actions the offender will take within a given time period to make reparation for the crime. Subsequently, the offender must document his or her progress in fulfilling the terms of the agreement. After the stipulated period of time has passed, the board submits a report to the court on the offender's compliance with the agreed-upon sanctions. At this point, the board's involvement with the offender ends.\(^{182}\)

The goals of community reparative boards include the following:\(^{183}\)

- Promoting citizens' ownership of the criminal and juvenile justice systems by involving them directly in the justice process.
- Providing an opportunity for victims and community members to confront offenders in a constructive manner about their behavior.
- Providing opportunities for offenders to take personal responsibility and be held directly accountable for the harm they caused to victims and communities.
- Generating meaningful community-driven consequences for criminal and delinquent actions, thereby reducing costly reliance on formal justice system processing.\(^{184}\)

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\(^{182}\) Ibid.

\(^{183}\) Supra note 47 at 54..

\(^{184}\) Supra note 92 at 61.
CONSIDERATIONS IN IMPLEMENTATION

The Vermont Department of Corrections implemented its Reparative Probation Program in 1995, in response to a 1994 public opinion survey (conducted by John Doble and Associates) in which citizens indicated broad support for programs with a reparative emphasis and active community involvement.

The program's reparative boards are part of a mandated separation of probation into community corrections service units (designed to provide supervision for more serious cases) and court and reparative service units (which coordinate and provide administrative support to reparative boards).

Based on Vermont's experience, the following factors have been identified by the Vermont Department of Corrections as important in implementing community-driven reparative board programs.


The 1994 study found that Vermonters' had low public confidence in virtually the entire criminal justice system. Ninety-four percent favored a concept that the Department of Corrections had on the "drawing board," i.e., the establishing of a statewide network of community-based reparative boards. By May 1999, 44 reparative boards composed of over 300 citizen volunteers had been established throughout Vermont. To date, these boards have handled more than 3,000 cases. Upon conviction and referral by a judge, offenders must meet with their local reparative board to review their offense and learn how it harmed the community; they must then accept the terms of what is usually a multifaceted, community-based sanction. The current study used field visits; 4 focus groups; 25 in-depth interviews with reparative board members, crime victims, and offenders; and a 25-minute telephone survey of 601 randomly selected Vermonters. Findings show that Vermonters have more confidence in the criminal justice system than they did in 1994. In three cases, the public's assessment improved by a statistically significant margin of seven percentage points. Still, Vermonters' assessment of the job being done by the criminal justice system remains mixed, with 46 percent saying the system does a good job and 51 percent saying its performance is no better than fair. Abstract courtesy of National Criminal Justice Reference Service, www.ncjrs.org. (accessed on April 2nd, 2012)
Marketing the program effectively to the justice system (to judges, prosecutors, and defense attorneys).

Having a commuted, well-trained staff.

Working with victim organizations and ensuring that victims are represented and provided adequate opportunity to participate.\textsuperscript{186}

Processing cases expeditiously and in a manner that is easy for community members to understand.

Facilitating a positive experience for the board members.

Providing quality training for the boards.

Supporting the program with adequate resources (e.g. space, time, and staff).

Striving for successful outcomes for offenders, victims, and community participants in the board's initial cases.

Getting support from judges in limiting the time the offender is in the program and on probation.

Only limited quantitative data have been collected on the effectiveness of community reparative boards. There is growing concern that evaluations of reparative board programs should consider measures beyond the standard offender-focused measure of recidivism. Additional measures should include responsiveness to victim and community needs, victim and community satisfaction, and impact on the community (including physical improvements resulting from board-imposed community work sanctions and indicators of healthy relationships among citizens). At this point, experiential and anecdotal information indicates that reparative boards show much promise as an effective response to nonviolent crime.

\textsuperscript{186} As noted earlier, reparative boards are intended to provide an opportunity for victims and community members to confront offenders in a constructive manner. In practice thus far, however, these opportunities have proved better suited to community input than victim involvement. Because of this relatively weak involvement, some suggest that reparative boards are not pure examples of restorative justice.
### 4. Families of Restorative Processes Applicable in Different Restorative Programs Discussed Earlier

1. **Indirect dialogue**
   - Victim and offender interact indirectly (shuttle diplomacy, letters, videos etc.)
   - More settlement driven than process driven
   - Examples: Some VOM programs in Europe; programs that assist victim and offender dialogue in crimes of severe violence; situations of severe power imbalances where in-person dialogue is not possible

2. **Facilitate dialogue between victims and offenders**
   - Dialogue between victims and offenders
   - Facilitator creates safe environment, prepares parties and writes up agreement
   - Examples: VOM

3. **Facilitated dialogue between victims, offenders, supporters and government officials**
   - Dialogue expands to include supporters of victim and offender, government officials may also participate.
   - Discussion tends to expand beyond specific incident to underlying issues of victims and offenders.
   - Examples: Family group conferencing; community conferencing

4. **Facilitated dialogue between victims, offenders, supporters, government officials and community members**
   - Dialogue expands to include community members (who may or may not know the other parties).
   - Discussion tends to expand beyond specific incident and underlying victim and/or offender issues to community issues as well.
   - Examples: Some sentencing circles; some peacemaking circles.

5. **Directed dialogue between victims, offenders and other parties**
   - This could take place in any of the three models above, either as a substitute for the methods described or as one of the several methods used in a particular process.
   - Victim and offender, at least, are present; any of the others may be as well as the role of the facilitator changes from facilitation to more directive and settlement oriented.
   - Examples: VOM or conferencing if facilitated in a civil mediation fashion; some sentencing circles; some peacemaking circles.

6. **Arbitrated dialogue between victims, offenders and other parties**
   - Victim and offender, at least, are present; any of the other may be as well the facilitator(s) organize conversion among the parties, but in the end the facilitator(s) the decision.
   - Examples: Some reparative boards; some tradition or customary practices of aboriginal groups.

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Source: United Nations’ Handbook of Restorative Justice
Restorative justice programs complement rather than replace the existing criminal justice system. A restorative intervention can be used at any stage of the criminal justice process, although in some instances amendments to existing laws may be required. Generally speaking, there are within a criminal justice system four main points at which a restorative justice process can be successfully initiated: (a) at the police level (pre-charge); (b) prosecution level (post-charge but usually before a trial), (c) at the court level (either at the pre-trial or sentencing stages; and, (d) corrections (as an alternative to incarceration, as part of or in addition to, a non-custodial sentence, during incarceration, or upon release from prison. In some countries, restorative interventions are possible in parallel to the prosecution. In Belgium, for example, mediation can also be offered when the public prosecutor has already decided to prosecute the suspect. At any one of these points, an opportunity can be created for officials to use their discretionary powers and refer an offender to a restorative justice program. This can be understood with the help of the following diagram:-

![Restorative Justice Programmes and the Criminal Justice System Diagram](source-url)
A restorative process can also be initiated in some cases instead of bringing a particular crime or conflict to the attention of the criminal justice system in the first place.\(^{187}\) This is the case, for instance, in school-based programs using mediation or other restorative processes to deal with minor behavioral problems that take place within the school community.\(^{188}\) Restorative programs can also operate in neighborhood mediation centers.

Finally, police officers can often also informally incorporate restorative justice principles into their decision-making when they are called upon to intervene on the street, in situations of minor disorder or conflict or in specific contexts, such as schools.\(^{189}\)

Generally, cases involving more serious incidents are referred to the restorative justice process later in the criminal justice system.\(^{190}\) A comprehensive approach to the implementation of restorative justice programs within a national system would normally provide a range of programs designed for referrals from different points within the criminal justice process.\(^{191}\)


\(^{188}\) Ibid.


6. CONCLUSION

The ultimate approach of restorative justice system is to hold offender(s) accountable in meaningful and constructive ways, can contribute to a more satisfying experience of justice for victims and communities. Both victims and offenders have high levels of satisfaction with the process and the outcomes. It is suggested that offenders are more likely to follow through with restitution or community service, and that there is some reduction in repeat offending.

With the benefit of this evidence, and increasing dissatisfaction with the rising costs of prisons, restorative justice offers the entire world, a 21st-century alternative response to the challenge of crime in a free society.