



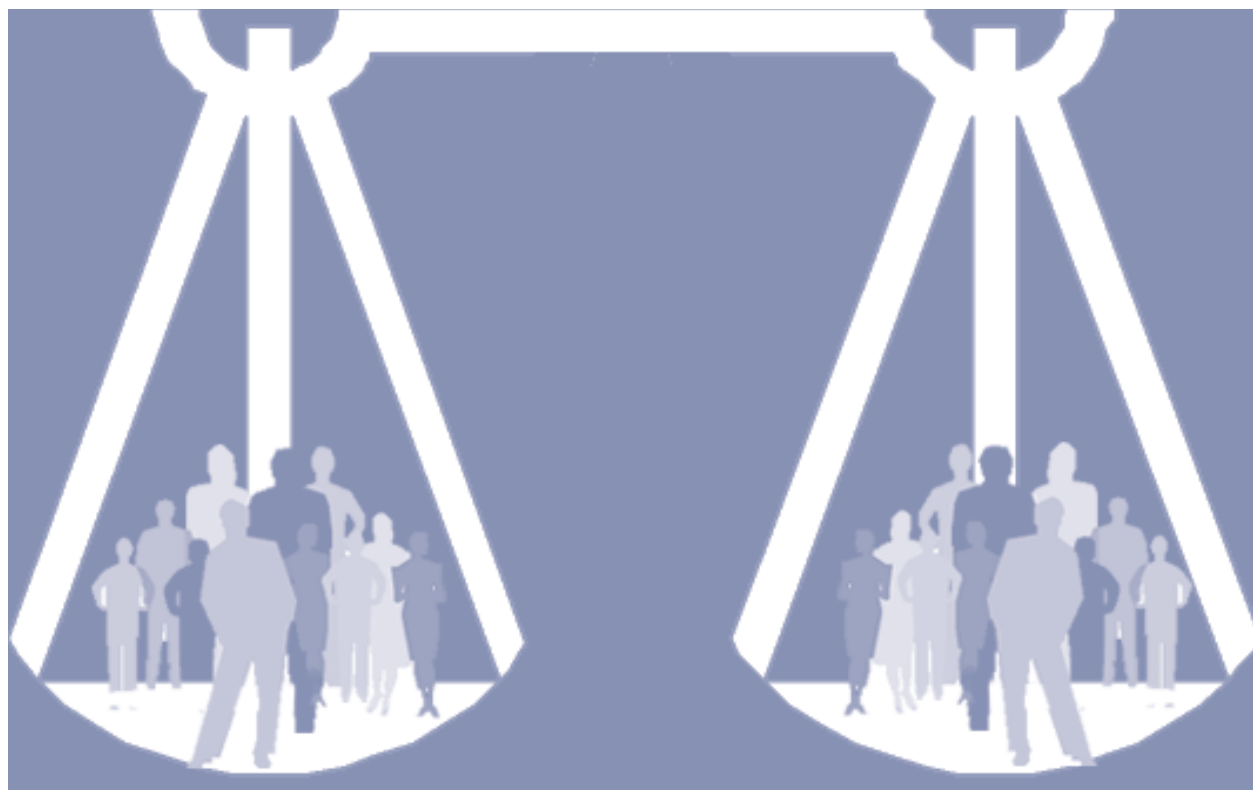
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TOOLBOX FOR IMPLEMENTING RESTORATIVE JUSTICE AND ADVANCING COMMUNITY POLICING

A GUIDEBOOK PREPARED FOR THE OFFICE OF COMMUNITY
ORIENTED POLICING SERVICES, U.S. DEPARTMENT OF JUSTICE



BY CAROLINE G. NICHOLL

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A guidebook prepared for the Office of Community Oriented Policing Services,
U.S. Department of Justice

By Caroline G. Nicholl

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Toolbox For IMPLEMENTING RESTORATIVE JUSTICE
AND **ADVANCING COMMUNITY POLICING**

Introduction to Toolbox

Introduction to Toolbox

Putting Restorative Justice into Action¹

Not too much has been written or said about police officers using their discretion to choose not to initiate criminal proceedings. It is done frequently . . . but when it comes to 'going formal,' our training and imagination for the most part starts and stops with the laying of criminal charges and going to court. We are seemingly locked into the court syndrome.

— Cleve Cooper, Commander
Royal Canadian Mounted Police

Restorative justice offers the hope of transforming the way the crime problem is addressed by encompassing community problem solving and citizen engagement. It affords citizens and communities opportunities to understand their role in controlling and reducing the incidence of crime. In addition, restorative justice is a means of promoting a healthy balance between formal and informal measures to address the causes and consequences of crime.

This *toolbox* aims to provide a practical guide to police departments interested in starting a new restorative justice program. It is not a definitive account of everything that restorative justice has to offer. Nor is it a training manual for facilitators of restorative justice processes. Facilitation requires specialized training and the supervision of those taking on this role. Starting up a program requires more than a few trained staff members. However, many issues need attention before a program can go *live*.

Remember that restorative justice is a new approach without a standard blueprint. Your program can benefit from what has been learned so far, but your program will be unique and will evolve over time. Across the world, as restorative justice continues to spread, new lessons are being learned all the time.

Our understanding of what is restorative to victims, offenders, and communities is still at an early stage of development. We are only beginning to explore the real capacity of lay communities to participate in justice decisionmaking through problem-solving solutions to crime. How to meet the needs of victims, and how to make offenders accountable without emphasizing punishment, are subjects that also require much more experiment and testing.

Restorative justice offers many rewards, but a couple of warnings need to be heeded. Be mindful that gaining acceptance of restorative justice in a retributive climate is likely to be thwarted unless the values and principles are understood and properly applied. It is easy for practitioners to rush into experimenting without having considered all of the principal elements that make up the necessary framework of restorative justice practice. Appropriate translation of the key values into a program requires considering a series of questions and issues that are relevant to the implementation and operation of restorative justice processes.

A poorly planned program may merely tinker with or replicate the traditional criminal justice system; this danger exists when the program is developed by practitioners accustomed to the rules and procedures of the courts who are not yet conversant with the new paradigm.

The overall aim is to introduce an effective program that restores victims and offenders to the community by repairing the harm and preventing further harm.



So be aware that in trying to introduce your program, there will be obstacles simply because restorative justice is so different from the traditional system.

Nevertheless, the dangers are offset by opportunities for learning—for finding out how we can meet the challenges of crime, victimization, and offending behavior in ways that promote a healthy, inclusive society. This is a goal for which all police officers can happily work.

All the good initiatives in restorative justice have evolved over time, in response to specific priorities, and have been custom-made for local circumstances.

No single implementation plan and no one model of restorative justice is right. In the development of community policing, the police are learning the importance of applying principles in ways that are sensitive to local issues. Restorative justice requires the same flexible approach, without losing sight of the values and ethos inherent in this new vision of justice. As with community policing, restorative justice demands thoughtful and careful planning that considers both the needs of today and the needs of the long term; there is no quick fix for either. Restorative justice has clear aims, but how you go about achieving them is critical to the success of your program. The processes of implementation are just as important as the goals and objectives.

This toolbox has been designed to help people avoid the dangers and avail themselves of the opportunities. The sections of the toolbox outline the basic ingredients needed to design and implement restorative justice, leaving plenty of leeway for creativity and local adaptation. The sections do not specifically distinguish between the three models outlined in the accompanying monograph: victim-offender mediation, family group conferencing, and circles. While these models represent the bulk of experiments to date, they are by no means the only ways to put restorative justice into practice. Do not be put off by all the ingredients you need to have. Developing restorative justice is something you should not try to do on your own. Get others on board to help you!

The basic ingredients of restorative justice (and Parts 1–7 of this toolbox) are:

In restorative justice, the basic ingredients are essential, but there is room to improvise.

1. Values of restorative justice
2. Addressing victims' needs
3. Holding offenders to account
4. Building community capacity
5. Developing a program
6. Benchmarks for evaluation
7. Unresolved issues

There may be no such thing as the perfect system but the restorative philosophy offers a way of bringing justice to the ideal.²

Restorative justice requires more than tinkering with existing practices and systems. It should bring transformations in thinking and understanding about crime, communities, and the role of policing. The aim of this toolbox is to bring justice closer to the ideal.

Part 1

Toolbox For IMPLEMENTING RESTORATIVE JUSTICE AND ADVANCING COMMUNITY POLICING

Part 1. Values of Restorative Justice

Part 1. Values of Restorative Justice

Introduction

Several basic values and principles need to be understood in the evolution toward a restorative justice response to crime. Talking and working through their meaning will help your department plan, design, and shape programs, processes, and working practices. Many police departments already have mission statements and objectives that reflect central elements of restorative justice. Community-oriented policing, problem solving, victim services, youth mentoring and education, diversionary schemes, and child abuse investigation teams, for example, reflect many of the features of restorative justice: concern for community problems, recognition of victim needs, communication with a large variety of people, opportunities for offenders to be reintegrated into society, and a focus on promoting safety and order in the community. As you know already, shaping how these initiatives develop depends largely on having clear goals and basic principles that guide practitioners.

The following pointers will help police departments to review existing approaches and to think about developing new ones, particularly in relation to their handling of reported crime. Restorative justice views crime as harm done to people—victims, offenders, and communities. If crime is essentially about harm, accountability is about learning to understand that harm and attempting to repair it—and this requires engaging the primary parties, who are given key roles in restorative justice processes.

Dialogue and Inclusiveness

Restorative justice builds on many features of community policing—including working in partnership and problem solving.

How can this be accomplished? You need these:

- ***Bring parties together.*** Instead of keeping the parties involved in crime separated, think about how people can be brought together in a safe environment to talk about the impact of a crime and about its consequences for both the victim and the offender. *Engage affected parties in a process that encourages collaboration and problem solving.*
- ***Safe environment.*** A safe environment means thinking about the right timing for such a meeting, preparing the participants who have been identified as having a stake, being clear about the purpose of the meeting, and ensuring that everyone is invited in a voluntary capacity. The location of the meeting should be a neutral place. *Bring people together in an environment that feels safe* and at an appropriate time. Sometimes this might be a few days after a crime. In other cases, it might be months later.

Dealing constructively with crime requires the participation of those people with a stake in the offense to work out what should be done, giving equal attention to the needs and interests of victims, offenders, and the community. Restorative justice promotes an inclusiveness approach to the problem and to harm identification and repair. No one person is seen as having all the necessary information, nor all the answers.



“The symposium gave me firsthand experience of the collaboration necessary for restorative justice to work.”

— feedback from a regional conference on restorative justice run by the U.S. Department of Justice, 1997

- **Focus on harms.** The focus of the meeting is on identifying the harms and:
 - Restoring the victim(s)—emotionally, materially, and relationally.
 - Encouraging the offender(s) to take active responsibility to repair the harm.
 - Identifying resources in the community to support both the victim and offender.
 - Taking steps to prevent further crime.
- **Several steps.** The process involves several steps. Typically such dialogues take about an hour and a half, including introductions and allowing all parties to express how they feel, to ask questions of each other about what they would like to do to address identified needs, and to work out agreed outcomes. *The emphasis is on listening, learning from one another, and working out what would best serve everyone’s interests. Focus on identifying and addressing people’s interests and needs.*
- **Skilled facilitator.** The meeting requires a skilled facilitator who explains the process and the ground rules, provides the parties an opportunity to speak openly about the crime and its full impact, to receive answers to questions they might have, and to follow up on insights as to how best the harm can be repaired. *The dialogue should be facilitated to enable parties to keep this focus.*
- **Respectful dialogue.** The meeting should be conducted with a respectful dialogue about the crime and with the purpose of promoting cooperative problem solving by the participants, including the offender. It should not be an adversarial process, even though people who attend my feel like adversaries. *Show respect for all parties who attend at all times.*

Be ready for these:

- **Powerful communication.** Communication in restorative justice processes is often experienced as being “powerful, difficult, frightening, devastating, exhilarating, euphoric.”³ Do not underestimate the power of the dialogue, which allows people to show their emotions as well as to exchange facts. *The process is a dynamic one, empowering all affected parties to respond to crime.*
- **Breaking down stereotypes.** The communication helps to shift people’s focus because the dialogue is meaningful to those present; this in itself begins to repair the harm done by the crime. The process breaks down stereotypes about victims, images of monster offenders, and assumptions about apathetic and uncaring communities. People are encouraged to see that others too have strengths and weaknesses—and are human. *The process is humanizing and promotes understanding.*
- **Obstacles.** The meeting may not replace the traditional criminal justice system if, for example, the offender is uncooperative or the victim does not volunteer to

participate (see “When Is Restorative Justice Appropriate?” in box). Recourse to the formal, adversarial system takes place when the dialogue fails. *Punishment may be an appropriate solution to address public safety and protection needs, but victim restoration can still take place.*

When Is Restorative Justice Appropriate?

Restorative justice is suitable for any offense, including cases where no offender is caught and so-called *victimless crimes* (e.g., drug dealing). Selection of cases, however, should be based on the value of the intervention to the parties concerned and to the wider community, as well as on the wishes of those involved. All restorative justice processes should be conducted on a *voluntary basis*, and some cases call for specific procedures that are highly sensitive to those involved, as in crimes involving serious violence.

It is advisable, therefore, to *choose restorative justice when there is support* for this kind of intervention, when there are *trained facilitators* equipped to run the dialogue, and when there are *opportunities for victim restoration, offender reintegration, and mobilizing community resources.*

- The dialogue affords a good opportunity for handling the impact of a crime that has already happened as well as for promoting crime prevention. Those present learn that crime does not happen in a vacuum: offenders are not born, they are created. *The avenues for prevention become clearer after such an open forum.*

As the key values of restorative justice are presented in this section, think through carefully what they mean for your program.

Crime: More than a Violation of Law

While laws invoke standards, restorative justice necessitates an understanding of the *particular consequences* following a crime. The idea is that you cannot repair harm unless you know what harm has been done. (See “Value of a Focus on Harms,” in box.)

Value of a Focus on Harms

A focus on harms will change the way you respond to crime and how those involved in the dialogue think about crime. This is important to deal with crime effectively as well as prevent future crime. Thus, restorative justice is a response to crime that includes prevention. Helping victims recover, reintegrating offenders into the community, and promoting care in the community will enhance public safety. Crime is no longer seen as an unresolved issue, and people learn from the dialogue. This learning promotes positive change.

While traditional systems of crime control have focused on the investigation of facts to identify evidence for a prosecution, restorative justice initiates an exploration of all those who might



VALUE: Crime is a violation of the law, but this is too abstract; restorative justice recognizes that each crime creates its own unique consequences for those affected and harms people materially, mentally, individually, and socially. The response to crime includes identifying the harm and finding out what can be repaired.

have been affected by a crime in any way. A property crime, for example, may provoke deep emotions for some people, making the crime harmful beyond material terms. Do not just think about the primary victim(s). There will be others who suffer consequences, including, for example, the offender's family and the victim's friends and colleagues. Bring together those people who can determine what harm has been done and how the harm can be addressed.

The theft of a piece of jewelry or a car, for example, is seldom only a matter of property loss. How the crime was conducted, on whom, by whom, and where, can have significant consequences not only for the victim, but for the offender and community as well. A standard response will inevitably be inappropriate. Only by exploring the facts and the feelings provoked by a crime can there be a full understanding of the impact that needs to be addressed in a response to crime.

Repairing Harms

Many victims of crime who go to court do not feel that their needs have been taken care of, even if they see their offender(s) convicted and sentenced. Some people call this the need for *healing*, which requires that all the injuries and harm are addressed. The traditional system forces us to think inside the box and shapes how we view the impact of crime. Restorative justice asks us to redefine crime beyond a breach of the law:

- ***Have a broad outlook.*** Harms come in many guises and require a broad outlook on how crime can and does affect people. The harms are dealt with through a mixture of:
 - Letting victims speak for themselves on how they have been harmed.
 - Distinguishing between the offender and his or her behavior: condemning the behavior, but not the offender.
 - Dialogue in which care and empathy prevail over anger and vengeance.
 - Recognizing that while the offender has obligations to repair the harm, these should not be harmful to him or her.
- ***Alleviate suffering.*** Some harms are not reparable, but restorative justice challenges us to be imaginative about what might alleviate a person's suffering. Even parents of a murdered child can experience some relief if attention is paid to the different feelings of despair that they have. They might feel guilty about not having done more to protect their child, or feel regret that their last conversation was too casual or involved a quarrel. Acknowledging these harms is important.

Example: The mother of two homicide victims attended court when the killers were given life sentences. She addressed the men in court: "The only thing that has kept me going without my boys is my hope and faith that one day I would see

you stand before God just before you burn in hell. And on that day you will tell me why you killed my sons.” A very natural response from a victim who is suffering deep pain. Notice however, the question she has—even after a court trial. “Tell me . . .” suggests that she has many unanswered questions as to why her sons were killed. The victim may benefit from a restorative justice process at some stage—when she is ready and if she is willing—to get answers that she will be struggling to understand for the rest of her life.

- **Be sensitive to every harm.** Even offenders experience harm. They might feel defensive or feel deep shame. It is not unusual, for example, for *lifers* to be emotional about their crimes many years after the event. *Offenders can feel isolated and scared.* (See “Harms Typically Experienced by Victims, Offenders, and/or Communities,” in box.)
- **Be aware of community harms.** A community also experiences harm and might change the way it behaves or relates. Fear might stop people from doing certain things or speaking to others. Anger might create tensions that never get resolved, with community members harboring distrust, suspicion, and resentment. Left to fester, these harms are counterproductive to social arrangements whereby people care for each other and are committed to harmony. *Consider what impact the crime has had on the community when convening a dialogue.*
- **Enable victims to tell their story.** The importance of victims being able to tell their story cannot be overemphasized. This experience satisfies part of their need to be listened to, to be vindicated, to be supported, and to move toward healing. *Victims should not be patronized but dealt with as key players in determining what should be included in the response to a crime.* The physical and emotional protection of the victim should be paramount considerations.

Example: An elderly woman who is the victim of a burglary might not be concerned with the property loss so much as the sentiments and feelings bound up in the stolen property—say, if the property used to belong to her recently departed husband. A monetary compensation for the property thus might not be what she needs. An acknowledgment by the offender that he has taken something precious from her, however, might be an important symbolic gesture that helps her to heal.

- **Acts of repair must be relevant to victims.** There will inevitably be direct victims—those against whom the crime was committed—as well as secondary victims, including families, neighbors, employers, friends, and the wider community. *Those who have suffered specific harm(s) should be encouraged to speak about their victimization so that no one assumes on his own what is needed.* Acts to repair the harm need to be relevant to the people who have been harmed.

VALUE: Victims of crime must be respected for what they might be going through, and this includes not assuming we know how they feel. Restorative justice processes need to involve the victim so that his or her needs and interests can be determined.



Harms Typically Experienced by Victims, Offenders, and/or Communities

Loss of trust	Physical injury, pain	Sense of aloneness/ isolation
Loss of a sense of safety/security	Feeling numb, disconnected	Remorse/ sorrow
Feeling angry/humiliated	Loss of control	Shame, guilt
Emotional trauma (that might continue for years)	Fear and anxiety, defensiveness, prone to attack	Post-traumatic stress disorder
Property damage or loss	Loss of dignity and/or respect	Sense of powerlessness
Betrayal, feeling of being abused	Loss of sleep or job, disrupted relationship	Inconvenience, court attendance, hospital/ insurance bills
Depression	Feeling of vengeance, hostility	Difficulty relating to people
Feeling of weakness	Death, loss of limb or senses	Memory losses, difficulty concentrating

VALUE: Offenders have obligations but are also seen as needing support—and respect. Their crimes are construed as being caused by circumstances or problems that need to be addressed. Their behavior is not excused, but an explanation is sought as to why they caused harm to others (and often to themselves).

- **Acts of repair should be meaningful and proportional.** The decisions about harm repair need to be fair, realistic, and closely related to the damage that has been done. The values of restorative justice require that the obligations to repair the harm should be meaningful to the parties involved, rather than imposed according to standard guidelines. Sentencing guidelines or minimum mandatory sanctions do not have a place under restorative justice. Obligations should be proportional, however, to the harms identified.

Example: A teenager was shot by a neighbor with an air rifle and required hospital treatment costing thousands of dollars. His mother was not so much worried about the money, however, as about confiscating the air rifle so that “my son can freely play in the yard without fear.” A process under restorative justice values is more likely to ensure that the neighbor agrees to surrender possession of a gun than is any court order under the traditional criminal justice system.

- **Distinguish the offense from the offender.** A pragmatic response to offending behavior is sought: the offender has done wrong (and harmed himself and others) but he or she ought not to be condemned as a person. Rather, the offender should be invited to take part in identifying the harm and how it can be repaired. The offender is seen as a valuable member of the community who has



to be held accountable for the wrongdoing without being isolated from those who might help to keep him away from further trouble.

- **Think “outside the box.”** Restorative justice demands that we think outside the box and learn what the real capacity for changing behavior is when care, respect, and support win over anger, fear, and hatred. (See “Educative Value of Restorative Justice,” in box.)

Educative Power of Restorative Justice

Approaching offending behavior through a restorative justice lens affords much more opportunity for reflection, introspection, and learning about what crime means, how it can be prevented, and how important social controls can be. This is true for the offender as well for others who participate in the dialogue. Restorative justice processes are educative processes, teaching us in ways that break down myths, assumptions, and stereotypes—building instead confidence, willingness to try new things, and learning from one another.

- **Accountability should be meaningful to the offender.** Restorative justice processes expose the offender to the harm done by his behavior; this exposure is critical to gaining the offender’s understanding of the link between actions and consequences and is a precursor to the development of empathy and willingness to change. The accountability for crime is thus more meaningful than simple punishment; and major life changes for offenders are not unknown. These might include addressing a drug or alcohol problem through treatment and counseling, learning skills for controlling anger or destructive behavior, finding employment, learning the impact of crime on victims and communities, or making a commitment to a plan that involves helping other people keep out of trouble. *Obligations may be difficult for the offender, but they should be achievable.*
- **Enable offenders to feel connected to others.** Addressing the offender’s needs and obligations—with support from the community—is likely to enable the offender to see that he is someone connected to people who care about him. The result is that offenders are more likely to feel genuine remorse for their crime toward the victim and community. It is often hard for offenders to apologize, but restorative justice processes are intensely powerful catalysts for changing hearts and minds. *Remorse or apologies should not be expected as a matter of course, but are more likely to come from offenders who have been shown care.*

VALUE: The offender is not isolated or banished from the community unless this is necessary. The community can exercise monitoring and supervision as well as provide support and encourage the offender’s restorative experience.

Involving and Strengthening the Community

The traditional criminal justice system applies power and force to control offenders. Restorative justice suggests that much can be done by way of cooperative arrangements between the com-



munity, the victim, and the offender (with the state's help) to see crime in a social context—and the need for informal social controls. *Restorative justice helps people learn from each other and promotes mutual respect.*

Communities experience crime as victims—they can be weakened by the impact of crime, including fear. Communities also bear the responsibility, however, of supporting the victim(s) and the offender(s), and they can be strengthened by this process:

VALUE: Restorative justice encourages a dialogue between victims, offenders, and communities to resolve crime in a way that leaves everyone in a better place. The focus is on making things right instead of being resigned to what has gone wrong.

- The community can play a vital role in determining how the offender should be held to account, as well as in helping the offender adhere to an agreed plan that addresses the victim's needs and the offender's own behavior. Social interventions are often necessary to stop further offending. This might involve punitive sanctions, but the focus is on enabling the offender to understand what is due to others from past behavior, as well as what he owes to reduce the likelihood of further offending. The community can help the offender develop a sense of obligation and a willingness to change. It is unlikely that this will come by itself from the sole effort of the offender. *Offenders should be supported by the community while being encouraged to take responsibility for their behavior.*
- The community can help the offender identify his or her positive strengths and work on building on these to change behavior. In this way the offender is encouraged to accept active responsibility for making good the harm without being banished from the community. Offenders who make amends with the support of the community are reintegrated into the community, which helps to prevent further crime. *Encourage collaboration and reintegration rather than isolating offenders.*

VALUE: Restorative justice promotes the peaceful resolution of crime by focusing on recovery and develops a spirit of cooperation and respect, seeking creative solutions for harmony.

- As harms and needs are identified through the dialogue involving the parties, the community, and justice agencies, it becomes clear that many of these require community resources. Communities can provide help and support to victims, instead of leaving them to feel alone and isolated. Communities can share information about the offender, which can lead to understanding which social issues need to be addressed by them, or with their support. *Communities can use their resources to promote repair of harms and prevent further harm.*
- Indirectly, these efforts become a learning process. Communities are likely to feel more committed to addressing the underlying causes of crime when exposed to a dialogue that reveals the links between cause and effect. *The community is thereby strengthened and less likely to be feeling powerless in the face of crime.*
- Restorative justice is about strengthening individuals and communities rather than about perpetuating weakness and failure. Victims are afforded opportunities to regain their sense of safety and trust. Offenders are given opportunities for learning the consequences of their behavior and making changes to avoid further criminal activity. Communities are given the opportunity to express care and concern for their members and to learn from one another what promotes safety and

freedom from crime. *Those who participate in restorative justice processes learn of the interdependency of people: that there is a need for sharing responsibility and caring for one another.*

- The shift from focusing on how to punish offenders to identifying how the consequences of their behavior has created harm is highly instrumental in encouraging an open dialogue among parties affected by crime. Instead of a “blame and nail ‘em” attitude, the objective is to help recovery and to decide what measures would be most conducive to preventing crime from happening again. Defining the harm increases awareness of needs and obligations that have arisen, rather than allowing ungrounded assumptions to determine sanctions. The dialogue provides insights as to how the crime has affected people and not just which laws have been broken. Victim empathy and offender responsibility develop as understanding about what has happened unfolds. Further harm is avoided. *The dialogue can be intense—at times, hostile and upsetting—but remarkably there usually is a sense of wanting to work toward a plan that is in everybody’s favor.*
- Society is not in a position to hand over the handling of crime to communities. Nor should we pretend that the formal, adversarial system is a sufficient response to the problem of crime. The state’s role is to seek a balance between the capacity of communities to respond to crime and its own ability to deliver public safety. Communities cannot decide culpability, and offenders can choose to be uncooperative. Some crimes have such broad impact that no single community could determine harm or the restoration required. Some victims do not wish to participate in restorative justice processes. *The state will always have a role, but the role needs to be shared.*
- The state needs to recognize that crime violates people and has repercussions for individuals and communities. Participatory problem solving is often better for reaching agreed outcomes than an adversarial contest conducted by professionals where one side wins, and another loses. Punishment is not always more important than reparation and reconciliation. *Engaging communities, rather than sidelining them, can promote informal social controls, an essential contribution to crime reduction and public safety.*

VALUE: The state has a role but its role is to support communities—to develop their capacity for resolving crime. The state’s role is to safeguard citizens from community prejudices and abuse of authority, and to deal with crimes in which the offenders deny responsibility.

Restorative justice involves the transfer of power and decisionmaking authority (principally that of the court) from the state to the community and engages victims and offenders as key participants.



Summary

Part 1 has covered the basic values of restorative justice that you need to think about. Other sections of this toolbox go into more depth about the way you should approach victims, offenders, and communities in designing your program—and the role of the state.

You need to:

- Involve all parties affected.
- Provide a safe environment.
- Focus on harms.
- Use a skilled facilitator.
- Promote respectful dialogue.

With special attention to:

- Particular consequences.
- Community resources.
- Giving victims a key role.

To foster dialogue that:

- Addresses needs of victims.
- Breaks down stereotypes.
- Encourages the offender to take responsibility.
- Distinguishes offender from offense.
- Builds on the offender's positive qualities.
- Prevents harms from growing.
- Finds causes of crime.
- Locates areas for social intervention.



Part **2**

Toolbox For IMPLEMENTING RESTORATIVE JUSTICE
AND ADVANCING COMMUNITY POLICING

Part 2. Addressing Victims' Needs

Part 2. Addressing Victims' Needs

Introduction

Victims experience an immediate disruption of their lives following crime, and may experience long-term trauma. The impact of crime on individual victims, as well as on communities and society at large, is not widely understood. The traditional criminal justice system has made efforts to listen to victims (through victim impact statements and panels, for example, and court-based victim services, which provide support to crime victims as well as provide valuable information in the court).

Although the traditional system has become more in touch with the needs of crime victims, it still regards any crime as *its case*. Victims are often perceived to be confused, unreliable, over-emotional, and incapable of making decisions. However, *victims should be given every opportunity to tell their story without the constraints often imposed by the rules of evidence and due process of law*.

Impact of Crime on Victims

Restorative justice processes need to be *victim-centered*, *victim-sensitive*, and *victim-empowering*. Restorative justice helps us to understand much more about victim trauma and to recognize the shortcomings of traditional attitudes toward victims. Restorative justice processes promote interventions that assist victim recovery. Crime is a sudden, unpredictable event for most victims and can provoke an emotional rollercoaster.

Ironically, as is the case with offenders, many victims face stereotyping and stigmatization. They can be isolated (often because their victimization increases other people's sense of vulnerability) and may be seen as being in some way responsible for what has happened to them. The isolation and blaming of victims can compound the harm that they already are suffering following the crime.

Victims can feel disoriented after a crime event has disrupted their life. They often endure conflict between a willingness to share what has happened to them and a desire to forget—or to deny—that the crime occurred at all. The denial can be powerful but is counterproductive for recovery and healing. Any denial or understatement of what has happened to the victims by others is also damaging. Remembering what happened and telling people about the crime are prerequisites for victim restoration.

Telling their story does not come easily to victims; they experience sudden changes of which they themselves might not be aware, or of which they cannot speak. They can be very emotional and thus thinking in a disorganized fashion. Recent research has revealed that serious crime victimization can have a physical impact on the brain, making memory retrieval more difficult. In some cases, the effects of crime on a victim can change the victim's entire life. Trying to rebuild one's life takes time and may require therapy or clinical treatment over the span of several years.



Victims suffer grief, for example, from the loss of a loved one, loss of trust, loss of property, or loss of feelings of safety. *Crime can provoke shock, rage, despair, detachment, depression, and fatigue.*⁴ *Remember that victims can experience these even when the offender is not caught.* Think about what can be done for victims in these cases as well.

“We are working toward restorative justice when we work toward the restoration of victims, empowering them and responding to their needs as they see them.”⁶

What Victims Need

“Victims of violent crime have ‘holes in their hearts’ that no amount of support, therapy, theology, self-talk and behavior modification seems to be able to fill. They need answers to their questions which only the offender can provide; they need the opportunity to express the full impact that their crime has had on their lives and the lives of others; they want to hear the offenders admit guilt, take responsibility, and be accountable beyond themselves to the victims and their community.”⁵

The suffering that victims experience can last for days, weeks, or even years. In some cases, the crisis will have an impact on those around the victim. For this reason, *the response to victimization is critical.* (Some maintain there is a need for medical attention as a matter of course, in addition to interventions relevant to justice; in Argentina, for example, in all cases of violence, a victim will be seen by a doctor as well as a lawyer or police officer.)

Restoring Victims

Restorative justice processes need to reflect the elements listed in “Key Stages in Victim Recovery” (in box) as much as possible and to give victims choices, time, information, the opportunity to be heard, support, a chance to hear and to understand why the crime happened to them, and influence over what action needs to be taken. *Above all, restorative justice processes must afford victims respect and ensure that provision is made to avoid further harm.*

Key Stages in Victim Recovery

- Establishing safety
- Reconstructing the crime—ventilation
- Acknowledgment from others—validation
- Supporting the victim: words of empathy or “I’m sorry”
- Providing information
- Maintaining good communication
- Reconnecting with people
- Help in reconstructing life to make sense of what happened after a crime
- Giving victims a role in making decisions for the justice process

Goal: *To lessen the immediate and long-term effects experienced by victims and to prevent future harm.*

The true involvement of victims as a key player will come only from building opportunities for victims of crime to be engaged fully in the planning, design, implementation, and operation of restorative justice programs. Think about involving crime victims as soon as you consider restorative justice for your department.

How Can This Be Accomplished?

- ***Involve victims of crime and/or victim support services in the planning of your program.*** It is important that victims be given opportunities to learn about restorative justice and about how it might help them. Their input will be invaluable, even if they have reservations about restorative justice. Experience to date suggests that crime victims can recognize that restorative justice offers benefits, but problems can arise in the course of its implementation. *These problems can be avoided if crime victims are at the table from the start.*
- ***Victims of crime should be invited to participate in restorative justice processes without coercion or the expectation that they must come.*** In theory, no crime is unsuitable for restorative justice intervention, but restorative justice is not suitable for all victims. Victims need to feel safe and should not be pushed into doing something that feels threatening. Give victims information on which to make decisions. *Good preparation before a restorative justice intervention can prove helpful in securing the voluntary attendance of crime victims.* In some cases, a telephone call might suffice. In most cases, however, only a personal visit by the facilitator can build trust and an understanding of what to expect from participation. In some cases, any meeting with their offender might not be appropriate for years after the crime.
- ***It is important to distinguish between affording victims of crime a choice to participate as active partners***—and allowing them to attend merely to help the process achieve outcomes unrelated to their restoration. *Using victims as props to make decisions about an offender is not only damaging and disrespectful to the victims, but will ultimately dissuade them from participating in restorative justice.*
- ***Victims of crime are willing to participate in restorative justice processes more often than is generally recognized,*** but one must ensure that they feel fully involved in all stages of the process and are included in decisionmaking, such as timing, location, identifying who else should be invited to participate, seating, and agreed plans for the offender and the community.



Focusing on material outcomes for the victim might seem appropriate, but this ignores the importance of the emotional needs left in the wake of crime.

International Focus on Victims

In November 1989, the General Assembly of the United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. It recommends measures to be taken on behalf of crime victims and has helped direct attention to the needs to victims internationally. A manual for enhancing victims' access to justice, fair treatment, restitution, and assistance is presently in circulation.

- ***Some victims (e.g., the young, the elderly, the ill) may require dedicated support*** if they are to participate in restorative justice. In certain cases, a parent or other guardian will suffice, but the victim might also enjoy a trusting relationship with a teacher, counselor, nurse, or someone else. *Ask the victim who should be invited to be with him or her at a preparatory meeting or any dialogue with the offender.*
- ***Victims of crime may feel anger toward their offender, and they need to know that it is legitimate for them to share their feelings.*** Letting victims vent their feelings helps to normalize what they are experiencing. Victims should be well prepared, however; they should be helped to understand that the restorative justice intervention seeks to create a safe environment for everyone, including the offender, to promote a dialogue that focuses on restoration. *Certain ground rules must be established, including the prohibition of any violence, threat of violence, and abusive language.*
- ***Understanding the impact and consequences of a crime on victims requires a different kind of dialogue than that allowed in the courts.*** Restorative justice does not seek to prove a case against the offender. It focuses on recovery from harm and reintegration. Ask victims how they feel, whether they feel safe (and if not, where they would feel safe), and *acknowledge their victimization*, for example, "I am sorry this has happened. It's not your fault. You're not going crazy."
- ***Victims of crime should not have their expectations raised unrealistically. It is important to be honest about what restorative justice may or may not achieve.*** In some cases, a single restorative justice intervention will not address any of the victim's needs. It might take several meetings over a period of months before the victim experiences any benefit. For example, some offenders will not exhibit remorse or fulfill the agreement to repair the harm. *These failures can further erode the victim's sense of trust of other people and can compound the victim's suffering.*
- ***It is important to be sensitive in your use of language:*** some victims do not like to perceive themselves as *victims*, believing that the label connotes some kind of failure. One should also recognize that words like *recovery*, *healing*, *reconciliation*, and *forgiveness* can provoke resentment. *A facilitator*

needs to be aware of the comfort zone of a victim and of cultural differences that can play a significant role. Alternative words less likely to evince a hostile reaction include *survivor, making right the harm (or wrong), support, assistance, holding the offender to account*; or use the person's name (this is often the safest) and define the harm or feeling as he or she would express it: e.g., "the loss of your gold watch," "the kidnapping of your daughter Mary," or "the fear that you have."

- ***Restorative justice processes are highly personal to those involved and entail people telling their story—as they see it.*** The dialogue should be open, nonadversarial, and allow the expression of fear, anxiety, pain, and hopes. *Restorative justice should provide opportunities for the victim to gain a better understanding and personalization of the crime's impact, to allow for recovery.*
- ***No one can fully understand the victim's feelings or experience. Thus, one must allow victims to speak from the heart and let them know that we are listening with the heart as well.*** They have things to say that we might not understand; they often need answers to irresolvable questions; and they have expectations that might not be met. We have to assume that what they say is important for us to hear and that we will learn from hearing it. Sometimes victims prove remarkably frank, blunt, or direct. *It is important to respect these exchanges and the victim who shares them.*
- ***The victim has the right to terminate his or her participation at any time.*** Sometimes, a victim may just need more information or the choice of having the dialogue another time. If an offender is being destructive, the facilitator should stop the process unless the victim chooses to continue. Even then, the facilitator has a responsibility to consider the best course of action in the circumstances. (The figure "Levels of Victim-Offender Communication" shows types of contact from lowest intensity to highest intensity communication.)
- ***Victims' feelings can be experienced with acute intensity,*** and it can be difficult to know what to say or how to respond. *Recognize the power of silence; it can help participants accept what is being said and allow time to absorb its meaning.*
- ***Restoring victims has different dimensions, in addition to giving victims opportunities to be heard.*** Restoration can include restoring safety, a sense of security, and the lack of fear, as well as recovering property or material losses. Regaining control, dignity, power, and a sense of fairness can also be restorative. *The critical element in restorative justice is that the victim determines which kind of restoration matters to him or her:* Some victims will prefer an apology from an offender rather than monetary compensation, for example. This preference must be respected, as it determines the sense of satisfaction and fairness experienced by victims who participate in restorative justice.



Levels of Victim-Offender Communication



SOURCE: Adapted from the Center for Restorative Justice and Mediation, University of Minnesota, in conjunction with the Minnesota Department of Corrections, the Balanced and Restorative Justice (BARJ) Project of the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Value of Victim-Offender Dialogue

In one victim-offender dialogue, between the father of a murdered daughter and the killer, the father talked openly about his love for his daughter and recounted huge chunks of her life. He said to the offender, "I am not doing this to hurt you. I just need you to know you took my baby . . . my little girl . . . my 'tomboy' . . . my teenager . . . a beautiful woman who was my daughter."⁷⁷

- ***Symbolic reparation can be very important to a victim***—for example, an offender indicating a willingness to respect the victim's needs by offering new information about the crime. It is also important for restoration agreements to be honored, and subsequent monitoring plays an important role in restorative justice. *The community needs to be active in the response to the needs of the victims.*



- ***An assessment of the current level of victim support in your jurisdiction is prudent and supports restorative justice processes.*** While the victim's informal social network can do much to provide support, sometimes a broader support system needs to be mobilized after the victim has had the opportunity to express his or her needs. *A balance must be struck between responsiveness by the community and oversight and provision of services by the state: victims might need a coordination of health services, emotional support, property repairs or recovery, assistance in security and in personal safety, financial support, and careful handling of their involvement in the justice intervention.* These needs require a partnership effort to ensure that community support and state services are coordinated and generated with consistency.
- ***Even when a crime is committed without the detection of the offenders, restorative justice can help by bringing victims together with community members and ex-offenders.*** The police still have an important role here to show commitment to supporting and serving the interests of the victims. Victim panels may afford victims a chance to share their story with inmates, community groups, schools, or criminal justice professionals, which can help promote understanding about victims' trauma and their need for support. *Some crime victims have moved into advocacy work following such experiences, and many report that this has aided their recovery.* (See "Long-Term Benefits to Victims," in box.)

Victims have a tremendous stake in how restorative justice is implemented. Without their support, involvement, and input to learning, restorative justice is likely to be a fragile alternative to traditional criminal justice processes.

Long-Term Benefits to Victims

Face-to-face meetings between victims and offenders carry potential risks and rewards. *Restorative justice is much more than a crisis intervention.* Victim support services can help victims reach the point where they feel less overwhelmed by their emotions. Restorative justice takes things one step further by enabling victims to overcome the offender's action by understanding why he or she did it. This understanding helps to balance emotions with cognitive thinking—which is conducive to putting the crime behind them. The hurt may not go away, but it changes over time. Some victims will require ongoing support through this process.

Victim participation in justice processes, either under the traditional criminal justice system or under restorative justice, is a relatively recent phenomenon, and too little is known about what victims truly gain from their involvement (or offer to the processes). *Feedback from crime victims from both kinds of processes is essential to learn what is beneficial and helpful.* This requires victim surveys, interviews, and research over many years. Think about how your program can contribute to this.

Part 6 of this toolbox explores how to evaluate restorative justice in relation to the victims of crime. These evaluation measures will help determine the shape and focus of your program.

We need to move away from the situation Zehr describes in which the victim's needs are sidelined in the traditional criminal justice system: "We may invoke [victims'] names to do all sorts



of things to the offender, regardless of what the victims actually want. The reality is that we do almost nothing directly for the victim, in spite of the rhetoric. We do not seek to give them back some of what they have lost. We do not let them help to decide how the situation should be resolved. We do not help them to recover. We may not even let them know what has transpired since the offense.”⁸ It is important to elevate victims to a preeminent place in justice decision-making.

The Role of Victim Advocates

The last 20 years have witnessed significant improvements in the awareness of victims’ needs, due largely to those who have worked in the victim’s movement. Their role has been critical in promoting rights of access to crime victims, securing better information for victims, encouraging justice professionals to be more victim sensitive, and generally increasing the involvement of victims in decisions during the criminal justice process. One potential clash lies between those who maintain the need for victims’ *rights* and those who hold that addressing the victims’ *needs* is the proper course of action. Some victim advocates might see restorative justice’s emphasis on needs as compromising their efforts to secure a more favorable balance of rights for victims, compared with the current emphasis on protections for offenders in adversarial criminal justice processes.

For this reason, it is important to maintain a dialogue with victims’ groups to understand the issues they seek to address and to work out satisfactory solutions to the tensions that may exist about restorative justice. This is particularly relevant in the case of domestic abuse and in other serious, violent crime cases.

Consistent with the ethos of restorative justice, however, one should not assume that victim representatives can always speak for crime victims. It is important for victims to be treated as individuals who have their own unique experiences and views.

Summary

Victims’ needs include:

- *Participation in planning.* Be prepared to give victims an active role, but don’t pressure them.
- *Sensitivity.* Be careful not to use words that carry condescending connotations for the victim. The facilitator should not allow violence or profanity.
- *Support.* Since expressing emotions is encouraged, the victim should have relatives or other trusted persons present.
- *Others’ listening.* The victim needs the opportunity to speak with emotional intensity. Allowing for silence also gives these words time to sink in.
- *Role in agreed outcome.* The victim’s participation helps determine what sort of restoration will be meaningful.
- *Conclusion.* The victim must be able to opt out at any time.



Part **3**

Toolbox For IMPLEMENTING RESTORATIVE JUSTICE
AND **ADVANCING COMMUNITY POLICING**

Part 3. Holding Offenders to Account

Part 3. Holding Offenders to Account

As a society we have been thinking that the only choice we have in responding to crime is to get meaner and meaner until we frighten people into behaving as we wish. But that is not the only choice we have for managing behavior, and fear is not the most powerful of measures.⁹

Introduction

Some say the criminal justice system is getting “meaner” because tougher sentencing is thought to be the only thing that works against crime. In the traditional view of crime fighting, offenders are different from law-abiding citizens, and public safety demands their segregation. This *us-versus-them* dichotomy is driving many crime control measures and is deep-seated in contemporary attitudes about crime:

Woe betide him who dares, even so faintly, to blur this elemental distinction.¹⁰

Restorative justice seeks not to blur the distinction so much as to expose it as a real obstacle to understanding crime and what can be done about its causes and consequences. *Restorative justice does not preclude the need for punishment, including incarceration; but punishment is not the focus*, nor is it seen as the last line of defense. The focus, instead, is on holding the offender accountable for his or her behavior in ways that are meaningful to the offender—as well as to the victim and the community. Meaningful means:

- *Making a clear distinction between the behavior and the offender.* Restorative justice condemns crime and wrongdoing; but it seeks to explore the reasons why a person behaved this way—not to excuse or justify the crime, but to find an explanation. The offender is treated with respect and dignity.
- *Involving the offender in the problem identification process.* He or she may hold valuable clues as to what past or current experiences might have contributed to the offense; offending behavior does not happen in a vacuum.
- *Encouraging the offender to learn that his or her actions have consequences and to take active responsibility for repairing the harm.*

Humiliating an offender makes it almost impossible for him or her to accept responsibility. But hearing directly from those who have been wronged encourages the offender to understand the consequences of his or her actions and to acknowledge that others have been harmed. It does so by tapping into normal shame about the wrongdoing. Shame plays a crucial role in relationships and social bonds.

The criminal justice system encourages offenders to avoid responsibility and to deny their offense, in the hope that they might get off. In families, such behavior would be considered dysfunctional. It should also be seen as dysfunctional in communities.¹¹



Role of Positive Shaming

Shame plays an important role in restorative justice; but it is important to distinguish between *stigmatizing* or *negative shame* and *reintegrative* or *positive shame*, which is more constructive. Positive shaming brings home to the offender the seriousness of the crime. Negative shaming humiliates and hardens an offender, thereby strengthening his or her defensiveness and rationalization of the behavior.

John Braithwaite's theory on reintegrative shaming developed from his observations of the socialization process in raising children and how regulatory processes for dealing with corporate crime can be effective. Neither laissez-faire parenting nor authoritarian methods are effective in child development, for example. Parents need to confront and disapprove of their children's misbehavior—but do so with reasoning. Similarly, in the corporate world, persuasion in lieu of enforcement has worked to promote adherence to safety and security negotiations.

In crime cases, the *offender's behavior must be disapproved within a continuum of respect for the offender* that includes helping him or her to understand the reasons why the behavior was wrong:

- ***One needs to exercise care when discussing shame*** because the word is laden with baggage suggesting that it means to *degrade*—rather than (as a verb) *to cause to feel regret or consciousness of guilt*. Shame is often hidden; but if victims share their story, the impact of the crime is likely to be accepted by the offender through understanding and empathy. *This acceptance helps the offender to think about taking responsibility to repair what harm has been done and to change his or her behavior.* (See “Keys to Positive Shame,” in box.) Crime creates obligations that offenders are encouraged to meet.

Keys to Positive Shame

- **Volition:** Offenders have a choice whether to participate.
- **Preparation:** Make clear the possible consequences and that it will not be an adversarial setting.
- **Atmosphere:** Let the offender and victim speak and listen freely; authorities must not lecture or admonish the offender in a way that will put him or her on the defensive.
- **Reparation:** The agreed reparations must be meaningful, achievable, and tailored to the parties involved.
- **Reconciliation:** Reconciliation is marked by a symbolic ceremony where the offender acknowledges the harm he has done to the victim and has the opportunity to become part of the community again.

- ***Although an offender may make material reparation to a victim, as part of an agreement to carry out obligations, symbolic reparation may be more meaningful*** to both the victim and the offender. The offender's willingness to show empathy or remorse may be the main contribution to a victim's recovery. The emotion of shame experienced by the offender is often visible and made known (for example, by crying, showing discomfort or embarrassment, looking at the victim and saying, "I'm sorry"). Victims can regain trust. *The expression or sharing of emotion allows the victim to see the offender as a human being.*
- ***For the offender, the expression of shame connects him or her to the victim as well as to others.*** Shame that is not shared tends to make a person feel isolated and inclined to repress the shame. Instead of hiding the shame, communicating shame enables the damage to the bond between the victim and offender to be repaired. *The offender can begin to move on by accepting responsibility for the crime and showing care for others.* The victim can also recover after learning the offender regrets his or her behavior.
- ***In dialogue involving friends and family, the shame might be experienced by people other than the offender*** (e.g., the offender's father, mother, sister). Sharing this shame can be done in positive ways that are respectful of the offender. Relentless finger-pointing or insulting the offender, however, is likely to provoke defensiveness and denial of shame in the offender. This interferes with the participants and the offender seeing one another as human beings.

Shame must be managed to avoid it becoming a humiliating experience that promotes hiding shame.¹²

Case Study

Humiliating Shame Can Be Counterproductive

In a case of school vandalism in which graffiti had been daubed on the walls with defamatory statements about the teachers, an offender who admitted to spray-painting one statement maintained he had no idea who else was involved. One of the teachers attending the conference, who seemed especially upset, launched into a verbal attack on the offender and accused him of being a coward. The conference did not lead to an agreement between the parties. The offender repressed his shame and, therefore, would not talk.

- ***Restorative justice promotes showing respect to all parties and seeing beyond the differences between the offender and others.*** Restorative justice processes help people to understand that offenders, too, have mothers, fathers, children, siblings, friends, and neighbors: they too have feelings, strengths, and weaknesses. They too are human. *When we see shame in an offender we are able to recognize that they are like us; but we need to learn how to view shame positively.*



How Can This Be Accomplished?

- **Only offenders who admit guilt and are willing to accept responsibility for the crime should participate.** Those denying their part in the crime should be dealt with by the formal justice system.
- **Offenders should be given the choice of whether or not to participate in restorative justice processes.** Coercion can be counterproductive if the victim is confronted with someone who is neither cooperative nor willing to engage in the dialogue. Coercion can make the offender defensive and emotionally closed. Coercion can also be construed as meaning only that the offender has an obligation to meet the victim if the victim is wanting a dialogue. If offenders feel they have no choice, what they say or do in the meeting may not be genuine.
- **Good preparation can help to overcome an offender's reluctance to participate.** Explaining the purpose of the dialogue, the process, who is likely to be there, and the possible outcomes can help an offender to see the benefits of participation. The offender might be encouraged to participate by learning that people who care about him or her can attend.
- **Some kind of risk assessment is required before approaching an offender about participating** in a restorative justice process. In the adversarial criminal justice process, these risks are seen to be related to the prior offending record and to the seriousness of the offense. *In restorative justice, the offender's attitude, capacity (e.g., level of verbal intelligence, psychological stability, honesty, and use/abuse of power), and willingness to cooperate in a dialogue are determinants.* Other determinants are the emotional risks for victims.
- **You need to think about the influence other people have on the offender.** In the traditional criminal justice system there is a presumption of innocence. Many legal representatives advise their clients not to admit guilt. This adversarial process can encourage offenders and their lawyers to minimize what they have done. *In restorative justice, the presumption of innocence is not as important as simply telling the truth.* Offenders should be informed that the process they will go through is entirely different from that of the adversarial criminal justice system. Their right to silence is transformed into an expectation that they will cooperate within the process.

Traditional criminal justice asks "who did what?"

Restorative justice asks "what really happened?"

I Wanted To Admit Guilt

A man who had served 19 years for his part in a kidnapping said, "For the first five years I was in prison I continued to deny what I had done. I wanted to admit guilt at the trial but my attorneys wouldn't have it." In his view, the criminal justice system helped to insulate him from reality, and the appeals system put off his coming to grips with the wrong that he had done.

- ***Offenders may be confused by other aspects of the criminal justice system.*** Plea bargaining is common in the traditional system, but it erodes the meaningful holding to account of offenders. *Restorative justice affords an opportunity to offenders to meet the victim in a controlled setting without the artificial rules, customs, and processes prevalent in court that can mitigate against offenders taking responsibility.*
- ***Offenders should be advised that the process enables them to be seen in their life context as human beings.*** The offender also has a choice about who he or she wishes to attend. Such choice supports the idea that restorative justice is about focusing on the harm committed by the offender—but in a way that shows concern for him or her.
- ***We need to create an atmosphere that encourages the offender to actively listen and to talk openly*** and honestly without fear. An offender may feel deeply embarrassed and ashamed; but if respect, care, and support are shown to the offender, he or she is likely to be able to participate in a constructive dialogue and learn from it. *The way the dialogue is conducted is likely to determine the extent to which it is experienced as restorative by the offender (and by the victim, too).*
- ***We need to give offenders the chance to explain themselves.*** They may be able to give reasons why they committed the crime. They might be able to respond to questions from the victims (and/or the community) and provide important answers that promote understanding about the crime and about their behavior and attitude. *This is an important part of problem solving following a crime.*
- ***We need to give offenders the opportunity to learn the consequences of their behavior in a cooperative atmosphere.*** Many offenders do not think through the likely impact of a crime on others. Offenders might be very anxious about meeting those who can confront them with the harm that has been done; but *this opportunity is critical to promoting their readiness to take responsibility.*
- ***Care must be taken to avoid focusing only on the offender.*** It is important for victims to have a key role in shaping the offenders' understanding of the harm that they have caused. If a crime is discussed only in factual terms—by someone who did not experience the harm—the offender is less likely to comprehend what he or she has done.

The meeting may be uncomfortable for offenders, but when they are encouraged to understand, accept, and carry out their obligations with the support of those they care about, then they feel less threatened.



Case Study

Victim's Expression of Harm Helps Offenders

In a Houston prison, victims met a group of inmates over a period of several weeks. The victims were motivated by wanting to help offenders change their behavior by getting them to understand what their crimes do to people. One inmate had killed the man who had raped his wife. He had rationalized his own behavior by believing he had been provoked. He did not understand why he should have been given a long sentence for something “any normal man would do.” One of the victims talked about her pain after her son had been killed in different circumstances. The inmate said only after hearing her did he realize his killing had taken a son from someone else. He understood, for the first time, how wrong his actions were.

Stigmatizing or negative shaming is counterproductive to the offender getting in touch with his own shame—a necessary precursor to victim empathy and taking responsibility for his actions.

You will find that a dialogue that brings an offender face-to-face with those who have been victimized is very powerful. The offender will not find it easy to ignore what is being said. This helps to get him or her to understand the obligations that arise following a crime. This is very different from the traditional justice process, which tends to insulate offenders from the damage they have done.

- ***Use a trained facilitator.*** The dialogue should be facilitated by someone who has been trained and understands restorative justice. Care needs to be taken to *avoid the dialogue being overtaken by a lecture to the offender about his or her behavior or by someone putting the offender down.* Police officers, for example, can readily slip into an authoritarian mode, particularly if the offender does not appear to be fully participating. For this very reason, it is a moot point whether or not officers who facilitate such meetings should wear uniforms. An arresting officer present at such meetings may find it hard to refrain from showing moral superiority.
- ***If the dialogue becomes very intense—and it often does—allow room for silence.*** This is particularly useful at the moment an offender expresses genuine shame and remorse. Giving time and space for these powerful expressions (and for people to receive them) is important. Emotions are encouraged, but they must also be channeled. Likewise excessive shaming of the offender can be balanced by a statement about the strengths of the offender (e.g., the offender has taken care of his or her sick mother or has volunteered to help the local charity).

It is also *important for an offender to recognize what the crime has done to him or her.* The dialogue should allow the offender time to say how he or she has been affected. This may involve feelings of shame, fear, sense of isolation, denial, confusion, or attacking or blaming someone else. Getting offenders to be in touch with what is going on for them can be useful to identify behavior and attitudes that need attention as part of a commitment to taking responsibility for the crime. The figure “Differences Between Traditional Criminal Justice and Restorative Justice” compares the goals and processes of the two approaches to justice.



Case Study

Victim's Expression of Care Affects Offender

An offender wanted to meet the person he had raped after forcing his way into her home. During the course of the rape, the victim had asked the offender what had happened to him to cause him to do this. "It burned my heart that she showed care," he said. "I did not realize until then what I was doing and nor did I see, until much later, that I did it because I felt inadequate."

Case Study

How Connected an Offender Feels Can Influence Behavior

Michael was a persistent young offender who had been in trouble with police since he was 9 years old. At the age of 15, after stealing scores of motor vehicles, he was asked what would it take to stop him. He said he didn't know, but said the only people who ever talked to him were people who were paid to talk to him like the police, the social workers, and the judge. He hung around the streets to find company, and stealing cars just relieved his boredom. Michael did not feel connected with anyone, let alone his victims.

Offender Accountability

Accountability means:

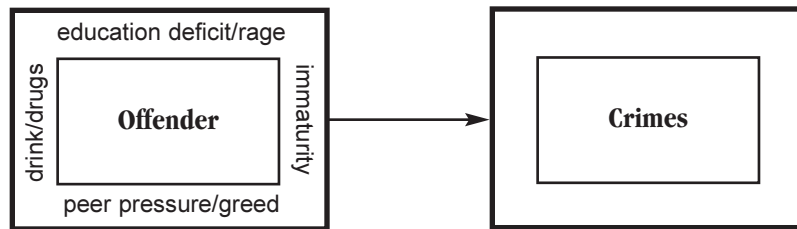
- An offender getting over his or her justification, denial, or self-rationalization and acknowledging responsibility.
- Hearing the victims tell their story.
- Developing genuine empathy toward the victim.
- Taking active steps toward changing behavior to become a responsible, law-abiding citizen.

Restorative justice holds offenders to account in ways that reflect modern wisdom about cognitive thinking. Cognitive therapies focus on the way people think, how they deal with problems and choices, and the extent to which they anticipate the consequences of their actions. Cognitive restructuring attempts to change the content of beliefs, values, and attitudes with a view to improving a person's thought processes. *Similarly, restorative justice processes involve learning about the importance of social norms, of talking about these norms, of interpersonal connections that make for orderly behavior, and of actions that threaten public safety.*

"The criminal justice system doesn't have a form of apology. It never requires people to apologize for their behavior. But that's the first and most important part of reparation."¹³



Differences Between Traditional Criminal Justice and Restorative Justice



Factor Compared	Traditional Criminal Justice	Restorative Justice
Goal in exploring incident	Determine guilt or innocence	Discover causes, consequences, gain understanding of <ul style="list-style-type: none"> - harm done - offender's problem - repair needed - behavior change required - support needed
Role of victim, offender, community	No role for victim, offender, community	<ul style="list-style-type: none"> - Offender asked why - Victim tells offender and community about the harm - Community engaged
Outcomes and possible consequences	Punishment imposed: <ul style="list-style-type: none"> - compensation - fine - imprisonment Punish and deter (but offender may feel isolated, victimized, more resentful)	Agreed plan establishes reparations to diminish/repair harm for all: e.g., service (to victim and/or community), compensation, actions to support behavior change (e.g., drug/alcohol treatment, counseling, training), other Learning, improved relationships, offender accountability, harm repaired, offender integrated into community, crime prevented, community strengthened

Inadvertently, the traditional, adversarial system stops people involved in a crime from learning these important elements of civil society. It is not uncommon for everyone in court except the offender to feel angry or upset about what has happened.



Be aware that the focus of the dialogue is on identifying the harm and repairing it (see “Restorative Justice Promotes Repairing Harm,” in box). Restorative justice rejects the concept of getting even with the offender (as in policies reflecting the *just desserts* theory). Instead, restorative justice calls for offenders to understand that their behavior has done harm, not by simply telling them that this is the case, but by *moral learning*. Hearing the victim tell how the crime has affected him or her is not necessarily, by itself, going to educate the offender as to what he should do to take responsibility. If, however, the victim speaks about how he or she wants the harm addressed or repaired, the offender will have a greater chance of learning how his actions have done wrong.

Be aware of the point in the dialogue when the offender can be reconciled. A critical element of offender accountability is *when the offender accepts responsibility for making good the harm and taking steps to change his behavior—because he recognizes why this is important*. It is then that reintegration into the community can begin. The likelihood of further offending behavior is reduced if the offender is supported by the community in fulfilling the obligations agreed at the meeting.

Where restorative justice has been evaluated, drops in recidivism and high levels of offenders fulfilling the terms of agreements are recorded. This is quite different from the experience with traditional criminal justice processes. Moral education requires explaining, not imposition of punishment in the hope that the offender will understand.

There is even a place in restorative justice processes for violent offenders, when victims are ready for a face-to-face dialogue. (See “Restorative Justice and Violent Offenders,” in the box.)

The reparation should be relevant to the victim and achievable by the offender. It should be reasonable, fair, and tailored to the parties. Such reparation is much more than a mere alternative to a punitive sanction by the court.

Restorative Justice Promotes Repairing Harm

The word reparation is often used interchangeably with restitution and compensation. Reparation can take many forms:

- Expressing full responsibility and making an apology
- Monetary payment to victims for property loss/damage
- Giving victims answers to questions they want answered about the crime (often the most important in cases of homicide survivors)
- Working directly for the victim or the community or undertaking work that is important to them
- Taking steps to obtain help to change behavior (e.g., drug treatment, counseling, education, finding work)
- Speaking to other offenders about what they learned through the restorative justice processes to prevent further victimization

The sentencing process attempts to force the offender to understand, but it is more likely to make him or her feel like a victim.

Some harms cannot be repaired. The important thing is that the offender responds to the obligations identified through the process. In some cases, not offending again may be the most meaningful accountability to the victim and the community.



Restorative Justice and Violent Offenders

Some might find it incomprehensible how violent offenders can be dealt with by way of restorative justice. However, James Gilligan, who has worked with violent offenders for more than 25 years, comments, “Human violence is complex and tragic; if we only see it as a criminal justice issue, we limit the discourse—distinguishing only between violent and nonviolent people and the sane and the insane.”¹⁴ Restorative justice allows a discourse that goes beyond the legal definition of violence and violent victimization. The reintegrative shame theory is relevant to violent crime; many violent offenders harbor deep shame, which they seek to repress and conceal. *Being sensitive to this is not condoning violence—it might help to break the vicious cycle of pathological shame.*

At the end of a restorative justice process, after a plan has been agreed to on how the offender should repair the harm, it is good practice to have a ceremony to allow people to release the tension experienced during the dialogue. In some cases, the *ceremony* occurs when reintegration of the offender, forgiveness of offenders, and apologies to the victim take place. What happens in this time out can be the most powerful symbolic reconciliation between the parties. The ceremony can take the form of a meal or a drink. In some processes, symbols are used (for example, a feather) to represent peace and are handed around the room.

Case Study

Restorative Justice Enables Offenders to Come to Terms With Their Crimes

Many offenders don't give their crime much thought. One drug dealer who believed he had merely been successful at running a business told of his realization that he had victims too. He heard a woman talk about the loss of her daughter in a road traffic accident involving a drunk driver. The drug dealer serving time said, “for the first time, I learned I had caused people to die (driving under the influence), to steal (to pay for the drugs), to live in poverty (to sustain the habit). Until that moment he had believed his crime was victimless.

The end of a dialogue should be seen as a beginning, not as an end. The balanced approach of restorative justice seeks to build an offender's competence to become a law-abiding citizen and to realize his or her potential to make a contribution to society.

Part **4**

Toolbox For IMPLEMENTING RESTORATIVE JUSTICE
AND ADVANCING COMMUNITY POLICING

Part 4. Building Community Capacity

Part 4. Building Community Capacity

“Restorative justice never denies the offender personal responsibility. But we must also recognize crime does not happen in a vacuum. There are environmental and sociological factors that are undeniable predictors of human behavior.”¹⁵

Introduction

Communities are the primary source and recipient of crime, fear, and disorder. The traditional criminal justice system focuses on individual responsibility (ascertaining who is guilty) and individual punishment (determining how an offender should pay for his or her crime). Restorative justice promotes the notion of individual accountability (identifying obligations on the part of an offender to repair the harm caused by the crime), but the emphasis is not on individual responsibility alone.

Restorative justice acknowledges that communities are victims of crime; it also asserts that communities have responsibilities to support crime victims as well as offenders in repairing the harms of crime—to restore victims and communities. Restorative justice seeks also to promote transformation of the conditions that contribute to crime and aims to encourage social remedies. In other words, *restorative justice does not focus on the weakness, sinfulness, or other deficiencies of individual offenders without addressing the role of the community and the social and structural forces that promote crime.*

Case Study

Community Has Responsibilities to Support Transformations

A 17-year-old youth robbed a man in his fifties at gunpoint. The youth was sent to a detention center after admitting his offense. It was proposed that both he and the victim should go through a healing circle. The victim agreed to participate and told of his fear of losing his life when the youth pointed the gun at him. The youth explained that he had himself been robbed earlier that day after dealing in drugs and had been angry about losing his gains.

The youth’s family was unaware he was involved in drugs and was shocked he had gained access to a gun. The youth admitted his life had gotten out of control and said his detention probably had saved his life.

Community members present at the circle asked what the visiting hours were at the detention center; they acknowledged that the youth and his family needed support if the youth was to make the necessary changes in his life. The victim told the youth he would have lunch with him when he got out of the center for the same reason: the offender needed to carry out his obligations but also needed support to keep away from guns, drugs, and bad company. The community, including the victim, was exercising violence prevention through informal social controls. The community also wants to do something collectively about the accessibility of firearms generally in the neighborhood.



The community, in relation to crime, occupies several roles:

- Community as **victim**
 - *weakened and harmed by crime*
- Community as **responsible** for its members
 - *victim and offender*
- Community as **stakeholder**
 - *in broader issues affecting its health*

How communities respond to these roles will have a significant impact on the health of communities and on public comity and order in the years to come.

Is the Dream of Regenerated, Cohesive Communities Utopian?

I see a large number of people find life so complex and overloaded that they are no longer participating in community life . . .

Experience shows that people are ready for new opportunities. The real challenge today is to learn how to act as though what we do can make a difference.¹⁶

These two quotations reflect disparate views about the reality of regenerating or promoting cohesion in community life. There are those who are bleakly pessimistic about the prospect of dynamic, healthy communities in light of withering family relationships, urbanization, technological advances, consumerism, the global economy, and mobilization of resources—all compounded by the speed of change and a sense of disempowerment. Anticipating the future with the trends of longer working hours, lower incomes, resource shortages, 20-million-person cities, the automobile culture, and global health problems can cause one to question the legitimacy of the very concept of community—is it fact or fiction?

A report published by a bipartisan group, the National Commission on Civic Renewal, deemed America dangerously near to being a nation of spectators in which “community spirit and community life are on the wane.”¹⁷

Others, however, share optimism that community life is not only alive, but—by virtue of people’s dismay at the problems of society and their hunger to think and work together in new directions—is being revitalized. These people are confident that new partnerships and coalitions can achieve social change; perhaps only bit-by-bit at first, but opening up new possibilities for broader change in the process.

Amitai Etzioni, the founder of the communitarian movement, suggests that communities have *centripetal* forces, those that pull toward collective action, including a commitment to shared values, norms, and standards of behavior—and *centrifugal* forces, those that pull towards individualism and autonomy and that undermine community bonds. *Communities must endeavor to balance these two forces.*¹⁸

What Is Community?

Can communities be enlivened to provide a collective response to crime? Defining community in the context of restorative justice might seem an awesome challenge for contemporary society unless we accept the following:

- ***A community is people.*** Most people belong to communities by way of shared interests, culture, family, neighborhood, work, friendships, school, or church and through associations, clubs, and support groups. There are also people who could be said to be excluded from communities, such as the homeless, gang members, prisoners, and illegal immigrants.
- ***Communities need to be active in some way.*** Neighbors can live next door to one another for years with no other connection besides geographic proximity. Triggers to activating dormant communities might be a crisis, a crime, a problem, a complaint, a leader, media attention, or a precipitative event that promotes dialogue, engagement, sharing ideas, developing goals, identifying common values, and ongoing interaction. Responsive communities characterize active communities.
- ***The whole community cannot be mobilized at once.*** Activating communities often takes time. A gathering of a few members is a start—they can participate in a shared event or engage in a dialogue that can precipitate further interest. Communities are made up of a web of relationships, which spread by activity.
- ***No one should assume who makes up the community or what the issues are— let the community tell you.*** Communities have different strengths, problems, and expectations at different times. A definition of *community*, therefore, must incorporate flexibility. Communities are amorphous and dynamic. They also can be in denial: e.g., “*they* have the problem,” “it’s got nothing to do with me/us,” “I am not interested,” “I haven’t the time,” “we can’t do anything.” It is here that government has a role to play—providing opportunities for activating communities.

Etzioni also says that community can be defined, even if the term is not readily definable. The concept of a chair seems much simpler to define than almost any sociological term, let alone community; however, what is a chair? A place on which to sit? So are benches and sofas. A piece of furniture that has four legs? Some chairs have three legs. And so on. Yet we have little difficulty with using such a term.

It is therefore important to be open-minded about the existence of community, who makes up the community, and what communities are capable of. In light of modern life, the notion of community might at first appear ludicrous—but not if

Although communities are hard to define and to pinpoint, this does not mean they do not exist.

When we learn a new word, or find a new street, it does not mean the word or street did not exist before. It’s just we hadn’t used them. Invisible is not the same as nonexistent.



we give communities a chance to show that they are not always apathetic, passive, uninterested, inhospitable, and lacking time.

- ***Communities can become active either by self-generating or external forces.*** Individual personalities, alliances, mutual care, religious or cultural customs, citizenship, or self-interest can stimulate communities. Outside forces such as accidents, crime, environmental threats, health problems, business activities, or outreach by organizations can also mobilize communities. Here are examples of such triggering events:
 - Police organizing *community meetings* to build interest in crime and public safety issues
 - Appointing community members to an *advisory board* or to become overseers of public policy implementation
 - *Volunteerism*, including the training of volunteers
 - Involving community members in *planning and decisionmaking*
 - Building community relationships through *mentoring and friendship programs*
 - Engaging the business community to provide *skills training or jobs* to promote crime prevention
 - *Providing information and inviting participation* at meetings of local issues of concern
 - Encouraging communities to be involved in *problem identification and problem solving*
 - *Holding forums* to listen to diverse views, explore shared values, and challenge assumptions

There is a tendency for professionals to plan without involving the community and for both professionals and the community to think of solutions in terms of professional services. Such thinking promotes an overdependence on professionals and weak, silent communities.

When Planning Community Meetings, Consider:

- Who has the right to be there?
- Who has a need to be there?
- Who has the energy to be there?
- Who needs help to be there?

In planning the implementation of restorative justice, you need to think about the following:

- The community *as a victim*
- The responsibilities of the community *toward the victim*
- The responsibilities of the community *toward the offender*
- The responsibilities of the community *toward itself*

Itself a victim, the community needs help to determine who has been affected by a crime, and how. Those affected may include all the community members or only some. Some may have been harmed more than others (e.g., a member who was away at the time may not be as affected as those who were nearby when the crime happened). During the preparation of a restorative justice process, efforts should be made to encourage everyone affected by a crime to participate in the dialogue.

Their participation, as with the victim and offender, should be voluntary. Such voluntary, direct participation promotes empowerment, shared ownership and responsibility, connections, and commitment to agreed goals.

Achieving such outcomes requires engaging in dialogue with those who can support people to attend and identifying those who might be excluded who should be invited to attend. Do not assume that you automatically know who should be participating or who has been affected by the crime.

Community participation is desirable, because the active involvement of community members in identifying the harm or damage caused by crime is itself helpful; it contributes to building a sense of togetherness within the community. “I” is replaced with “we.” Mutual care and respect are promoted. Members learn that no single person has the truth—or all the answers. Members begin to readily share a sense of responsibility for the well-being of others. They learn that cooperation and mutual support are essential. Perhaps most important, members are encouraged to speak from the heart, openly and honestly. *Community engagement provides the opportunity for exploring shared values, problems, aspirations, threats, and opportunities.* Such meaningful communication is likely to promote informal crime controls and to reduce crime.

Even if communities are expecting you to have all the answers, be straightforward with them about your capacity as well as your limitations. You can provide leadership, resources, and organizational skills. However, you cannot define the problem without their help. Without their involvement, you can identify neither solutions nor all the needed resources—nor can you deliver solutions that strengthen the community without opportunities for dialogue that promote learning, understanding, and seeking the whole picture.

Communities do not have to be dysfunctional, a breeding ground for individual and social irresponsibility. Like a living entity, with the right inputs, communities develop in positive ways.



Community Responsibilities

Communities have responsibilities toward both the victim of crime and the offender. Fulfilling responsibilities toward the victim is affected by:

- The availability of victim services.
- Channeling general community resources of care, help, funding, and shelter.

Restorative justice processes are powerful vehicles for boosting the availability of victim resources and for mobilizing the resources in appropriate channels. Victim services programs traditionally have had to work tirelessly to overcome obstacles to their survival. Community participation in restorative justice processes spreads awareness of how important these services are and what can be done to improve them.

Community members who directly participate in restorative justice dialogues also learn what they as individuals can do to help victim recovery and to repair the harm done. *Affording communities education about the needs of victims is one of your primary tasks*; it can be achieved by public presentations, media input, and circulating literature, in addition to running restorative justice programs.

Community responsibilities toward the offender include:

- Holding him or her accountable for the harm he or she has caused.
- Providing support to help the offender become a law-abiding citizen.

Community members can help to identify the obligations of an offender. In addition to hearing from victims how they have been harmed, communities can provide opportunities to the offender to work to repay victims. By providing these opportunities, the community is affording the offender a chance to make amends, to gain skills, and to build a sense of connection to others. Such opportunities should be worthwhile to the victim as well as to the community, and should be achievable by the offender. The work or service should be meaningful for gaining closure for the victim and for reintegrating the offender into the community. You and your agency can help the community develop a range of opportunities for community service.

Restorative Community Service

Community service can be restorative if it has the following characteristics:

- The work is *worthwhile* to the victim, community, and offender.
- The offender is seen as a *valuable resource*.
- The offender is able to learn the *consequence of his or her actions*.

- The work helps to *change the community's perceptions of the offender and vice versa* (he or she feels more invested in the community).
- The work *develops skills* for the offender that are likely to help him or her become a contributing and law-abiding citizen.
- The work *promotes relationships* that strengthen the community.
- The work allows the offender to *make amends or repair the harm done by the crime*.
- The work increases the offender's *sense of belonging*.
- The work provides *positive role models* for the offender.

Building Community Decisionmaking Capacity

Community decisionmaking capacity can be developed in many ways. Here are a few examples:

- ***Hennepin County, Minnesota.*** Children under 10 years old whose behavior is considered delinquent are dealt with by a coalition of police, YMCA, staff, prevention workers, parents, and the county attorney's office. A plan is developed for each child and monitored by community members and the partnership.
- ***Washington County, Minnesota.*** Conferencing processes, which are used for all types of offenses, most recently have been applied to racial tensions and school behavioral problems. Cases of harassment, assault, and threatening behavior are dealt with through large or small conferences involving community members.
- ***Vermont.*** Community reparative boards have been established throughout the State to develop agreements with offenders about the terms of their probation. The terms are based on restorative justice principles: repairing the harm to the victim and the community, teaching offenders the consequences of their behavior, and supporting the offenders to avoid further offending.
- ***Citizens Council Family Services.*** CCFS provides support to families of inmates to help them maintain ties with the offender and ties between the offender and the community while the offender is serving his or her sentence. The goal is reintegrating the offender back into the community on completion of the sentence.
- ***Bemidji, Minnesota.*** A community-response-to-crime program has been developed to inform offenders how their offense has affected the community and to work through an agreement that allows the offender to make amends with the support of the community.



- **Dakota County, Minnesota.** Crime repair crews offer the offender opportunities to repay the community and learn new skills to promote life changes. The offender can meet his or her victim and the community to discuss the impact of the offense, and some will join the offender in working to build facilities in the community.
- **Bend, Oregon.** Businesses provide work opportunities for youth offenders so that they can repay their victims for the victims' monetary losses.
- **Minnesota.** Communities in Minnesota are using circles to address communitywide problems, such as youth delinquency and child welfare cases, as well as to address special education students who are at risk of dropping out of school.
- **Newbury, Vermont.** Inmates pay back the community through community services that restore historic buildings and refurbish facilities that otherwise would have to close. This work is saving the state money, but it is more than free labor. Offenders feel they are part of the community, and the community frequently has cooked meals for the inmates. One offender describes the experience this way: "I was the type of person I did what I wanted when I wanted and it didn't matter if I hurt people. But just seeing these people are willing to give you a choice, it's shown me that other people have feelings too." Skepticism about whether the criminals would do a good job has eroded; initial awkwardness in the relationship between citizens and inmates has disappeared.

Achieving an actively involved community requires strategies to engage community members, not just placing services in the community. The community also has a responsibility toward itself—to promote crime prevention and crime controls. Without the participation of community, community protection is always fragile. The role of the government includes breaking down the myth that the state can achieve order and safety without citizen participation.

Community development—community capacity building—strengthens the following characteristics of member interactions and community life:

- Respect
- Relationships
- Involvement
- Learning
- Understanding
- Having a stake
- Empowerment
- Participation
- Problem solving
- Establishing standards
- Prevention
- Results

The table “Community-Placed vs. Community-Based Justice Processes/Services” compares aspects of the traditional processes and services (those merely “placed” in the community) with those in which community members are actively involved (community-based).

Community-Placed vs. Community-Based Justice Processes/Services

Community-Placed	Community-Based
<p><i>Narrow perspective</i></p> <ul style="list-style-type: none"> - Offenders viewed primarily as criminals - Individual characteristics of offenders viewed as primary cause of crime and, therefore, as primary target of change 	<p><i>Broad perspective</i></p> <ul style="list-style-type: none"> - Offenders viewed as fathers, daughters, drug addicts, employees - Individual characteristics, family dynamics, and community structure and organization viewed as contributors to crime and, therefore, as equally important targets of change
<p><i>Closed-system approach</i></p> <ul style="list-style-type: none"> - Relationship is between the offender and community corrections system - Restricts information from going to the community 	<p><i>Open-system approach</i></p> <ul style="list-style-type: none"> - Information is shared with community members and organizations - Information sharing expands the network of support for offenders; also protects the community
<p><i>Goal: offender reform</i></p> <ul style="list-style-type: none"> - Requires changes in the offender - Requires offender conformity to accepted community standards 	<p><i>Goal: offender reintegration</i></p> <ul style="list-style-type: none"> - Requires changes in the offender (e.g., attitudinal and behavioral) - Requires changes in the community (e.g., acceptance, support, opportunity)

SOURCE: Fulton, Betsy A. *Restoring Hope through Community Partnerships: The Real Deal in Crime Control. A Handbook for Community Corrections*. Lexington, KY: American Probation and Parole Association, 1996.

Actions You and Your Agency Need to Take

Actions you need to take to build community capacity and reduce public passivity include the following:

- Meet your community
- Learn about your community
- Identify needs and expectations
- Establish common goals
- Establish common values
- Promote shared activities
- Celebrate achievements together



The community must be engaged to provide—and to achieve—ongoing crime control and prevention. Indeed, the dominant role of the state should become unnecessary and be abandoned—but this will take time, adept leadership, and the will to cut back the power of the state. In some instances, resources are beginning to be redistributed from the state to communities; the establishment of justice councils in Burlington, Vermont, for example, has given the public a greater say in how resources are expended for justice.

Preparing the community to do its own work builds bonds as well as confidence that more work can be done by lay citizens. The transition from a state-dominant system of formal crime controls to a system in which a strong community is able to apply informal social controls may, however, have to progress through several stages.

Stages in Transition to Strong Informal Social Controls

“Stigmatizing and scapegoating of individuals and groups can occur even in functioning communities, but such social pathologies are more likely the more communities wash their hands of responsibility for care and control, and the more informal mechanisms have become defunct. . . Not only are communities gradually losing their capacity for local social control, they are learning the rationales and skills for actively avoiding it.”¹⁹

Stage 1:

- The justice system defines and “solves” the problem.
- Limited self-government by the community.
- Community dependent upon the professional system.
- Capacity of community to apply informal social controls undermined.
- System relies on use of force and coercion.

Justice system operates independently of community.

Stage 2:

- The justice system gives information to the community about what it does.
- Community learns its dependence on the professional system is misplaced.
- Community likely to seek more responsiveness from the professionals to meet their needs/expectations.

Justice system begins to heed community needs/view.

Stage 3:

- The justice system recognizes it cannot meet the needs and expectations of the community without its help.
- Tensions exist between the community (losing faith in the system) and the system (assuming that communities are incompetent).
- Partnerships might afford insights about what joint problem solving can achieve.

Justice system applies more force and coercion to keep the public confident, while trying to figure out what communities can do.



Stage 4:

- Justice system recognizes that the community needs to be engaged in activities that promote crime control and crime prevention.
- Contribution of the community is seen as valuable.
- Experiments demonstrate that the community has competence and can apply informal controls.
- Relationship between the justice system and community begins to turn toward a partnership rather than only a service provider-client relationship.

Justice system sees itself as a partner equal with the community.

Stage 5:

- Communities develop confidence in their own capacity for defining problems and coming up with solutions.
- Communities learn more about their role and responsibilities in relation to offenders and victims.
- Justice system loosens its authoritarian stance and promotes a range of responses—formal and informal—but always with the community role in mind.
- Communities develop responses that help improve crime prevention in families, schools, neighborhoods.

Justice system supports the community role in controlling and preventing crime.

Crime is in fact a community problem—not just a professional or system problem. In the past 20 to 30 years, we have tended to send community problems to professional systems and wait for professionals to fix the problems. It turns out that it doesn't work. Communities must be intimately involved in solving their own problems—with the help of professionals but with a much greater community hand in shaping and implementing solutions."²⁰

Your role as part of restorative justice is to facilitate a change in the relationship between government and the community, recognizing that the formal and informal systems of social control need to work together. Your role is one of enabling, supporting, coordinating, and providing resources for progress toward the engagement of citizens and communities. Your role also includes monitoring and oversight. We do not want oppressive communities, but the promotion of responsible citizenship. Despite these important roles, the community should be seen as an equal partner. The community has a responsibility to develop its social capital and to exert influence on those who seek continuing dependence on the formal system.

Communities can provide moral authority to their members. The state provides legal authority and should step in when the community's authority falters. The state must afford protection to individuals and invoke the formal system of controls for those who are a serious threat to public order and safety.



Case Study

Progressing Toward Community Engagement

The Central City Neighborhood Partnership (CCNP) in Minneapolis, Minnesota, provides an example of the steps needed to promote a healthy partnership between the formal state system and the informal community authority:

- 1994 Local community associations met to discuss issues of common concern. Quality-of-life crimes were earmarked as persistent problems for residents. Consensus emerged that the police and local government were not able to fully address these.
- 1994 - Research conducted in conjunction with the local university revealed 1996 bottlenecks in the criminal justice system that skewed its effectiveness in relation to offenders causing problems that contributed to the deterioration of community life. Shoplifters, prostitutes, vandals, and trespassers were being allowed to repeat their behavior over and over again. Courts did not give the matter serious attention, and there were weak lines of accountability.
- 1996 CCNP learned about the restorative justice vision and developed a local forum for resolving problems and conflicts. They established links with those in the formal system who were sympathetic. The local police chief, chief judge, and head of corrections, among others, supported the forum by arranging meetings in which information was exchanged on ideas, obstacles to change, level of support for change, and willingness to explore restorative justice.
- 1997 The attorney's office diverted misdemeanor crimes to the CCNP for conferencing. The police were asked to consider referring cases to the CCNP. About three restorative justice conferences a month were run. Community service projects were developed to support offenders in meeting their obligations toward victims.
- 1998 CCNP continues to develop with the support of the formal justice system. The system has supported training and technical assistance for the group. Confidentiality and data protection issues have been resolved. The introduction of sentencing circles is being explored. CCNP has been featured on local and national radio, securing public awareness of the group's work. Currently, many misdemeanors stay in the community for resolution without recourse to the formal justice system.

Summary

Keys to building community capacity:

- The state should *activate, not dominate*.
- Encourage the community to *support victims and offenders*.
- Let the *community set the priorities*.
- Keep an *eye out for the excluded*.
- Allow for *plenty of time and several stages*.
- *Participatory dialogue* is a must.

Part **5**

Toolbox For IMPLEMENTING RESTORATIVE JUSTICE
AND ADVANCING COMMUNITY POLICING

Part 5. Developing a Program

Part 5. Developing a Program

Introduction

Restorative justice requires vision, clarity of goals, and a commitment to its values and principles. Implementing restorative justice necessitates a new way of thinking about crime and offending behavior as well as shifts in roles. It also requires an understanding that community engagement, participation, and devolved decisionmaking are inherent characteristics of restorative justice.

Because restorative justice involves fundamental changes in the way crime is addressed, tensions can arise among agencies, between professional service providers and communities, between victim services and offender treatment providers, and between traditional subcultures and those seeking change. Restorative justice requires a commitment to working collaboratively, to including people, to open communications, and to step-by-step planning, as well as openness to learning the need to do things differently.

Outreach to the community and community engagement throughout the planning phase is important to develop a shared vision and sense of ownership for the program. *In particular, restorative justice thrives on consensus building and partnerships, and requires bringing to the table those who might otherwise be excluded.* For example, consider inviting youth representatives or ex-offenders to planning sessions. This will help to increase awareness of all the issues that your plan needs to incorporate. Planning meetings can be critical for ironing out problems and potential obstacles.

Some jurisdictions have chosen to develop a *task force* of different agencies and community representatives to build understanding of restorative justice and to promote a common vision. Such a task force can help widen the focus of the program to capture all the needs and interests in the community. Workshops in schools, community groups, service organizations, and youth clubs can also help to identify levels of support for innovation.

Gaining support for your program can take as long as *12–18 months*, depending on the size of your jurisdiction. Recognize that this time and effort is an important investment for the eventual success of your program. You will gain knowledge of issues that you might not have considered important. You will also be more confident that what you are doing will work.

Restorative justice is a learning process that seeks to bring together people who are willing to work toward common goals. Bear in mind throughout the planning process that the goals (and the means of achieving those goals) must be consistent with restorative justice values. Remember also that it is easy to stray from the path and get bogged down in isolated issues, rather than keeping an eye on the larger picture. *No program will be perfect on the first try.* The aim should be to develop changes that promote harm reduction, respect, and sensitivity. By listening to the views of others and working out common objectives, you can get there.

Developing a restorative justice program requires more than the desire to try something new. It requires sharing why you think change is necessary and inviting feedback.



Liaison with a wide variety of community groups is recommended. *Restorative justice processes need to be culturally sensitive so that people feel safe and comfortable.*

Requirements To Develop a Vision and Program for Restorative Justice

- Cultivate partnerships.
- Clarify your mission and goals.
- Develop training.
- Attract funding, resources, organization, and oversight.

The *primary objectives* should include healing the victim's harm, promoting social harmony, putting right the wrong, and preventing further crime.

Stages of Developing a Restorative Justice Program

The following are the key stages involved in developing and implementing a restorative justice program:

- ***Hold discussion forums*** to generate dialogue on restorative justice, explaining the values and principles. Sharing the restorative justice vision will help to highlight that restorative justice is more than a program. This stage is important for gaining willingness to experiment with restorative justice in a climate where the get-tough-on-crime attitude is prevalent.
- ***Identify who should be engaged*** in securing ownership and commitment for piloting restorative justice. This involves working with community representatives and community-based organizations (schools, churches, youth associations), victim services, criminal justice agencies, business groups, and the voluntary sector. This stage lays the groundwork for determining stakeholders' needs and interests.
- ***Develop a stakeholder coalition*** to develop a plan for implementing restorative justice. The multiagency and community-based partnership should work out the mission of any program, its goals, objectives, protocols, and resource needs—and identify barriers to implementation.
- ***Determine the model***—the kinds of crime problems to be addressed, the type of offender (e.g., adult, youth, violent, nonviolent), and the categories of victimization and/or disorder problem. The community in which the restorative justice pilot is to be implemented should have a say in this decisionmaking process, reflecting the principle that the proper locus of justice delivery is the community.

- **Develop a training and volunteer program**, including the dissemination of information materials on restorative justice, protocols, ground rules, supervision, and oversight.
- **Develop evaluation and monitoring processes.** These might include base surveys to gauge shifts in attitudes among communities, participants, and criminal justice professionals; victim and community levels of satisfaction; engagement in problem solving; changes in levels of crime, fear, and disorder; and the fulfillment of plans for holding offenders to account. These are the minimum measures that should be incorporated into program design.

The remaining sections of “Part 5. Developing a Program” should help you think through some of the general issues to be resolved through discussion with your partners. Plan your program step-by-step and you will be ready for your first case referral.

Gaining Public Support for Restorative Justice

Restorative justice can be mistaken for a *soft option*, and its goals can seem unrealistic. It is important to explain to the public what your intentions are and how you intend to accomplish them.

Ideally, *community representatives* should be invited to participate in the planning, design, and implementation of restorative justice. Media representation may also be helpful to ensure that the purpose and methods of your program are portrayed accurately. Community input may be very valuable in determining the path ahead.

Studies across the United States have shown that the public is less vindictive than often portrayed. In Vermont, Minnesota, Delaware, Oregon, Maryland, and North Carolina, surveys show that the public is in favor of restitution and community-based sanctions rather than imprisonment. The public has shown consistent support for public spending on education and job training. In Minnesota, 82 percent of survey respondents indicated that they would be interested in participating in a face-to-face mediation meeting with the offender.²¹ These findings lend support to the idea of expanding restorative justice. Consider conducting a local survey to find out the views of your community.

Support for restorative justice from other criminal justice practitioners and victim groups can be critical to the success of a program.

Case Referrals

How cases get referred to your program will depend on various decisions; for example, is your program going to run as a pre-adjudication diversion or as part of a sanctioning process after a finding of guilt by the court? What kinds of offender/crime categories will be included? Through liaison with those responsible for making the decision to refer a case to restorative

It is important to build new programs on a solid foundation that reflects the values of restorative justice.



The process of developing or sharing responsibility for justice not only requires the state to allow communities greater ownership, but also requires communities to take an active role, taking seriously the standards of human rights and acting within the law.

justice, you should make them aware of the rationale of the program and give them clear criteria on which to base their decisions. In addition, to secure as many referrals as is appropriate, ask those who are the referral source whether your program staff can select cases—after negotiation with them about the process. This will promote trust and confidence that people are working to the same ends, encouraging more referrals.

To receive more cases, a very assertive and cooperative communication strategy must be employed to help a large bureaucracy change the manner in which it understands and responds to crime. This is no easy task. One should never assume that good intentions and philosophical support for mediation means more referrals. . . . More often than not, the lack of referrals to victim-offender mediation programs has more to do with the program itself and the communication strategies it uses than it does with the larger system actively resisting the concept. If the program staff make it easy for the referral source to send cases and the referral source sees it in their interest to reduce their caseload, most internal sources will eventually send plenty of cases, sometimes even too many. . . . In the quest to receive more referrals, it is important to never lose touch with the underlying values of restorative justice.²²

Intolerant Communities

A major concern for anyone implementing restorative justice is the danger that the program might be a formal empowerment of intolerant and punitive views in a community.

The need for safeguards against vigilantism, bigotry, and infringements of individual rights requires that restorative justice programs have built-in checks, such as monitoring and oversight by broad-based groups. These groups should receive training in the values of restorative justice and develop systems for protecting the rights of minorities, human rights, and the right to privacy. These groups should also include members who have knowledge of the law and the formal justice system—to monitor the proportionality and fairness of agreements.

This work can be achieved, it is hoped, through a process of community development involving education and discussion. A community and an oversight board might choose to develop a local code of practice that reflects the values of restorative justice and can be used to gain commitment to working responsibly.

Obtaining Resources and Funding

A commitment to restorative justice will inevitably involve the need to identify dedicated resources to run programs, to coordinate community volunteers, to conduct monitoring and evaluation, and to keep other stakeholders and the public informed of what is going on. Equipment, telephone expenses, space, and vehicles may also be needed. These resources can come from redirecting existing resources (which may become easier down the line if dependence on the formal justice system declines). Otherwise, funding from other sources must be sought.

Although Federal and state government grants may help, it is also worth looking at *local resources* that might be available. There is merit in considering sponsorship from local organizations that are willing to make a contribution to community safety.

A key component of a restorative justice program is providing materials on restorative justice and giving presentations, training, and information. Technical assistance in the form of training facilitators and program management may be provided through collaboration with a local university or college that has an interest in restorative justice.

Restorative justice promotes community engagement, and the use of *volunteers*—such as retired people, part-time workers, parents, and youth workers—should be considered. These volunteers can assume roles in preparing and conducting meetings, writing letters and articles, maintaining records, and giving presentations.

Advisory Board

It is helpful to set up a board or advisory group to oversee the design, implementation, and evaluation of restorative processes. Ideally, the group should include the expertise and knowledge of a diverse range of people, including the medical profession, the church, academia, criminal justice agencies, community representatives, corrections facilities, counselors, and cultural minorities. The group should include males and females, young and old, and various religions. The role of the board is to provide oversight on the achievement of program goals, adherence to restorative justice values, resource management, and marketing. In particular, the board can help to ensure that program managers are equipped with the necessary skills, knowledge, and sensitivity to run restorative justice processes.

Bad practice will lead
to the disrepute of
restorative justice.

Developing Skills in Sensitivity to Victims

Those dealing with victims should possess good general knowledge of victims' issues, including victim trauma, counseling, interview techniques, the needs of special victim groups (e.g., victims of domestic abuse or of hate crimes, youth victims, elderly victims, child abuse victims), and how to provide appropriate support.

Cultural Sensitivity

It is important to implement restorative justice in ways that are sensitive to different cultures. Not everyone speaks English; not everyone is comfortable with certain kinds of practices or processes: some people are rather uncomfortable with direct confrontation with eye contact (in which cases, consider indirect mediation using proxies); some people are uneasy about sharing emotions; for some, saving face is more important than owning up to their own role in the crime; and some people are suspicious of anything that the state system does.

Awareness of these issues should be incorporated into your program. Do not take for granted that you understand the differences. Be respectfully curious and promote such curiosity in the dialogue. Take a broad view of *culture*, including differences in gender, sexual orientation, religion, age, class, etc. Cultural values affect how people interact and can have an influence on outcomes. It takes a skillful facilitator to be sensitive to these issues, and feedback on your pro-



gram should be encouraged to identify cross-cultural tensions. Cultural sensitivity can be difficult to manage for any agency used to standard operating processes in the criminal justice system. Attention to cultural differences can promote more informality than the agency itself is comfortable with, but this is an appropriate tension.

Key Role of Preparation Meetings

The program design should include resources for preparatory meetings to be held with victim and offenders before their face-to-face meeting and dialogue. These preparation meetings should be built into your program. Training for those conducting these preparatory meetings will be required. Those conducting the meeting should be advised to explain their role and their agency's role and the relationship with the other parties; to tell them how long a face-to-face meeting will take; and to give a telephone contact number to reinforce the message that they are important. The people who conduct these meetings may require victim-sensitivity and offender-awareness training, otherwise their contact might be counterproductive. Neither party attending a meeting should be confronted with surprises, such as an offender not being present when the victim expects him or her to be there.

Preparation meetings prior to the dialogue are essential to those who will conduct the meetings as well as other participants, to learn about the case in its entirety: who was victimized by the crime, the feelings of the people involved, and the appropriateness of referring the case. Preparation is also essential to secure the involvement of the parties and of the community.

Both the victim and offender should be prepared for their participation in a restorative justice process. Thus the facilitators need to explain the purpose of the dialogue, to clarify expectations and to help them understand the ground rules and the implications in relation to the criminal justice system (e.g., will victims be able to ensure that their losses are recovered? will the offender still be prosecuted?).

Preparatory meetings are an important part of a restorative justice process to encourage people to participate and to enable them, based on all the available information, to make a choice. Case referrals to restorative justice processes can often be thwarted when the parties are not adequately prepared.

Neutral Role of the Facilitator and Agency

An essential ingredient of restorative justice is that communities, victims, and offenders should have a greater say in the development and management of justice processes. However, since current resource distribution is stacked in favor of criminal justice professionals, it is easy for them to assume greater control over running those processes than is compliant with the ethos of restorative justice. *The role of the facilitator is to enable these other key players to arrive at decisions—not to dictate or control.*

It is incumbent on those running restorative justice programs to be aware of the danger of confusing their traditional roles with the new roles needed for restorative justice. *Their job descriptions, in most cases, will not fit the needs of restorative justice.* (See “Suggested Traits and Skills for Restorative Justice Workers,” in box.)

Suggested Traits and Skills for Restorative Justice Workers

Traits	Skills
Approachable	Communication
Compassionate	Conflict management
Consensus-builder	Letting go (sharing power)
Empathetic	Managing uncertainty
Energetic	Public speaking
Flexible	Reading body language
Nonjudgmental	Victim sensitivity
Organized	
Patient	
Positive attitude	
Responsive	
Sensitive to limitations	
Team player	
Walk the talk	

An important aim of restorative justice is to humanize the justice process. It is more about people than about systems.

Participation of Relatives

A victim’s wish to participate in a restorative justice process may not be supported by his or her family or friends. It is important to recognize that the victim’s willingness to meet an offender might seem odd to those around him or her. Friends and family members can feel especially protective toward a crime victim, to the point that they inadvertently impinge on the victim’s right to make decisions. A facilitator should prepare victims for this potential tension in addition to offering to provide information to those who might object to the victim meeting the offender.

In some cases, victims might be willing to have the preparatory meeting tape-recorded, which could then allow family members to listen to what happened in the process. This can help reduce the victim’s sense of isolation in making the decision to participate and help promote appropriate support of the victim after the meeting.



On the other hand, a facilitator might be wise to consider information from friends, family members, and others (e.g., therapist, counselor, colleagues) that might cast doubts on the capacity of a victim to go through a dialogue and meeting. In serious violent crime cases, or cases involving several abuses, a counselor should always be consulted as to the suitable timing and appropriateness of any meeting.

Resource Sharing

If justice is to become increasingly community-based, processes should engage ordinary citizens in decisions traditionally the preserve of justice system professionals. There will come a time when resource sharing is appropriate. If communities need to rely on professional agencies for their training, meeting venues, and program operation, community empowerment may be seriously eroded. One way of tackling this issue is to enable the community to have a greater say in how resources are distributed and to earmark funding specifically for restorative justice programs.

Restorative justice is not just another legal intervention: it is a humanistic approach to justice in which assessments are made by people about the interests and needs of others.

Accountability for Public Safety

What happens if an offender who has gone through a restorative justice process commits a crime that violates personal safety—and the victim (or victim’s family) wishes to sue for negligence? This is the ultimate clash of the two paradigms, and incidents are likely to occur as restorative justice continues to spread. Who, if anybody, should be held accountable? The agency that conducted the restorative justice process (even though it did so with community support and community involvement)? Or, is this an *acceptable risk* to be taken when deciding whether a case is suitable for this approach?

It would be regrettable if restorative justice were to become subject to bureaucratic protocols and rigid mandates in an effort to preclude the risk of such lawsuits.

While no restorative justice intervention should ever ignore the wider public safety issues inherent in any crime (or possibly associated with the offender), accountability should be based on a more holistic platform—as explained in “Part 6. Benchmarks for Evaluation.”

When Cases Need Specially Skilled Facilitation

The facilitation of restorative justice processes in serious crime cases is unsuitable for police officers unless they are specially trained in this intensive work. This is where volunteers with mediation skills can be useful. The preparation for such cases can take many hours (see the case study, in box).

Use of Victim/Offender Letter to Initiate a Process

In some cases an agency will be approached by either a victim or an offender wishing to meet face-to-face in a restorative justice dialogue. This is likely to become more common as publicity about victim-offender mediation and other restorative justice processes become widespread.

Case Study: Dialogue in Serious Crime Case Has Powerful Effect*

In one case of aggravated robbery, sexual assault, and murder of an 18-year-old girl, the facilitator spent many hours over a period of 13 months to reach a point where a meeting could take place between the victim's mother and the convict:

Meeting with victim	10 hours
Meeting with offender	9 hours
Telephone conversations with victim	20 hours
Telephone conversations with offender	0 hours
Conflicts with prison officials	12 hours
Total hours before actual meeting:	51 hours

The actual meeting between the victim and the prisoner was spread over two sessions; in the first session the victim focused more on her own feelings. In the second meeting, the victim's main concern was the accountability of her daughter's killer when she pressed him for answers to questions about the rape/murder. She was also able to turn her attention to his self-image, how he used his time in prison, and how to care for the offender's children.

The first meeting between this victim and offender took place several years after the crime.

Comments from the victim:

“[The mediation] changed my life—I feel like a new person.”

From the offender:

“I feel like I have made a difference.”

From a prison official:

“It was a great honor to be a part of it . . . very powerful.”

*These insights were provided by David Doerfler of the Texas Department of Criminal Justice.

In these cases an assessment of the case should be made based on what is known about the crime incident and the parties involved. It is also appropriate to suggest that the person requesting the meeting write a letter introducing his intention and outlining his motives in wanting to meet. The response of the recipient of the letter will be helpful in ascertaining the appropriateness of starting preparatory steps to arrange a meeting. Letters can also be used to clarify personal issues that either party might have, questions that one might have of others, and expectations. This kind of information exchange can contribute to the parties' decisions to participate in a face-to-face dialogue and will often contribute to the creation of a safe atmosphere. Uncovering information that might otherwise come as a surprise at the actual meeting is an important part of the preparation.



When One Victim Participates But Another Says No

There is no reason why one victim who chooses not to participate in a restorative justice process should obstruct another victim's choice to meet face-to-face with the offender. However, this requires sensitive handling by the facilitator. For example, the direct victim of a child abuse case might not have any desire to meet the perpetrator, but the parent(s) of the victim might feel very differently. Again, a tape recording of any dialogue might be useful to the other victim at some future stage.

Volunteers

The use of volunteers as facilitators or program coordinators can be a positive step toward sharing responsibility for the justice process with citizens.

Recruitment and training require identifying the needed personal qualities and skills. These include maturity, ability to listen, commitment, and good interpersonal skills. Volunteers can play a crucial part in developing community capacity but they need encouragement, support, and respect. Teamwork can help to provide ongoing supervision and support as well as avoid burnout. Teamwork can also provide a structure for working on all the logistics of preparing and conducting meetings, reporting agreements, and monitoring the program. *Volunteers should receive recognition for the important work they do*; their involvement makes a program more restorative by virtue of reducing the dependence on the formal system to resolve crime problems.

When community members do not feel they can impact social change through their participation . . . they often withdraw into their own worlds—not so much from apathy, but from helplessness. It is not that people do not want to contribute to the overall resolution of social problems in their neighborhoods—it is that we have not allowed them meaningful access to our social institutions which allow community mobilization to occur.²³

Matching Cases with the Skills and Experience of the Facilitator

The power of restorative justice dialogues and meetings is enormous. No meeting should be arranged unless there is an adequately trained facilitator who understands the process, understands the emotional risks involved for anyone who participates, and is capable of dedicating adequate time and attention to each of the participants—whether or not they choose to complete the process. Crimes should not be seen merely as cases to be processed through a system. The handling of all stages of any restorative justice dialogue and meeting requires sensibility, patience, and respect for the parties involved. It also requires an appreciation that the process can be easily derailed or co-opted by any failure to adhere to the values of restorative justice.

Should Restorative Justice Be Entirely Voluntary?

Many restorative justice experiments so far have included an element of coercion to secure the attendance of offenders. The willingness to cooperate with an organization running restorative

justice processes may be rare among certain categories of offenders, particularly if little preparatory work is done. Some commentators believe restorative justice is doomed to being applied only to minor crimes committed by young and infrequent offenders, rather than to more serious crimes committed by hard-core criminals—unless the voluntary element is buttressed by the coercive powers of the justice system.²⁴

The coercion suggested by some includes court referrals to a restorative justice process and the application of sanctions that are restorative in nature but enforceable by the courts.

These suggestions raise the specter of two systems of justice working on the same case, each with different goals and values. While it is possible for the formal system to adopt more of a restorative stance, it remains a moot point whether this dual-system approach would eventually water down the potential of restorative justice to achieve its balanced goals. The application of restorative justice to violent crime may, however, require such compromise to offset threats to public safety. Experiments on different approaches—and their evaluation—will, over time, reveal the full range of possibilities and problems.

Job Descriptions for Program Personnel

You will need to think about job descriptions for those tasked with coordinating or running a restorative justice program. It is unlikely that existing job specifications will match the qualities and skills required for restorative justice.

Summary

Keys to program development:

- Be clear about your goals.
- Work closely with key stakeholders in the design and implementation.
- Work out protocols and standards that protect people's rights.
- Think about the skills and training required.
- Step-by-step planning will prepare you for your first case referral.

Don't worry if you do not have all the answers at the outset. That would be virtually impossible—it takes time to adjust to a new way of thinking.

Restorative justice is a way of thinking. It is a fundamentally different framework for understanding and responding to crime and victimization in communities. Correctional systems adopting a restorative justice approach are no longer driven by offender concerns alone. Instead, they acknowledge the need for a three-dimensional response involving victims, offenders, and the community.²⁵



Part **6**

Toolbox For IMPLEMENTING RESTORATIVE JUSTICE
AND ADVANCING COMMUNITY POLICING

Part 6. Benchmarks For Evaluation

Part 6. Benchmarks for Evaluation

Introduction

Implementing restorative justice in the context of policing, either in partnership with other agencies or by a police department, requires more than a “hunch” that such change is desirable or needed. The judgment of police managers is important in assessing the merits of putting a new program in place; however, accountability to the public and stakeholders, before the program is implemented as well as after, is critical. Accountability is relevant for several reasons:

- The response to recorded crime is important to society and should address basic requirements of individual and public safety, fairness, effectiveness, and efficiency.
- The needs and expectations of different stakeholders should be assessed carefully and provided for to the extent practically possible.
- Benchmarks are key targets to be met in conducting activities essential for carrying out the mission and for meeting stakeholders’ expectations. Benchmarks help to steer implementation toward the vision and also promote the best practice.
- Record keeping is important for case management as well as for evaluation. Program monitoring tests the accomplishment of objectives and identifies areas needing improvement.

Accountability is important to test your thinking about what the goals of your program should be, how those goals should be met, and how much planning is required. Ideally, your structure for developing program accountability will include the following:

- ***Time for broad consultation with the public and all stakeholders.*** Their views and input should influence and shape your overall strategy.
- ***Time to reflect on the values of restorative justice and their meaning in terms of implementation.*** Programs can be more restorative or less restorative, depending upon the attention given to all the elements that are described in “Part 1. Values of Restorative Justice” in this toolbox.
- ***Time to gain support for what you want to do***—this includes political support as well as legal justification. You will need to work with the media and in other communications channels to open a dialogue about restorative justice and how it can be applied. You will need to collaborate with other criminal justice agencies to ensure that your program works in tandem with other justice interventions.



- ***Time to gain internal and external support and accrue resources for operating the program.*** Restorative justice can, initially at least, seem like an attempt to decriminalize offenses or appear “soft.” It can also appear threatening to those who are used to more traditional means of handling crime. Accountability includes listening to those who might be skeptical and working out ways to provide resources.

Accountability is also important during implementation of the program, to determine what the program achieves and what it fails to achieve.

For these reasons, accountability should be seen as something that is not only essential but highly desirable. Accountability teaches all of us.

Listed below are additional accountability factors that need to be considered when designing your program:

Restorative justice is still an emerging paradigm. There is much we do not know. Your program could provide useful lessons about what works well and what is problematic.

- Restorative justice promotes a balanced approach to crime and *requires a framework of performance indicators and benchmarks that reconcile and promote the needs of victims and offenders, as well as the community.* You will also need to consider how your program will account to the wider public, which has a right to know how justice is being delivered.
- Restorative justice promotes a new relationship between the justice system and the community. *It is important for the community to have a say in what accountability measures are incorporated in the program and how these measures are used.* An advisory board made up of different stakeholders in the community will provide added oversight and will promote shared ownership of the program. Think about the measures that could determine how the community is taking responsibility, e.g., the number of program volunteers, whether citizens offer support to victims, and whether communities monitor the offender’s fulfillment of agreements and obligations.
- Consider whether there is a demand for qualitative as well as quantitative measures of accountability. If so, this will influence the way you operate the program: *the style and manner in which you implement restorative justice will be important* and will require keeping more than numerical records. *Oversight by way of qualitative research (observation, surveys, face-to-face interviews) will be necessary.* In particular, qualitative measures will help to reveal training and development needs.
- Are there perceived risks to introducing restorative justice, and if so, how can these be assessed in the performance of your program? For example, victims’ services may fear that crime victims will not be adequately prepared to make an informed choice about whether to participate in the program. *Thought must be given to what measures could be introduced to minimize the risk of victims feeling coerced;* the voluntary participation of victims is a key value of restora-

tive justice theory. Feedback interviews from crime victims who have participated in a program will provide excellent insights into how sensitive your program staff are about what is required to allow victims to make a voluntary, informed choice.

- *Consider what specific benefits you hope to achieve* through the program and how these might be assessed. For example, if offender recidivism is important, then consideration must be given to developing a longitudinal record-keeping system to monitor all offenders coming into the program. This will undoubtedly call for *research assistance* to ensure that the information required for monitoring is included in your records from the start.
- *Consider whether comparisons are likely to be made* between what happens to cases dealt with by the traditional criminal justice process and those dealt with by the restorative justice program. Such comparisons would require *early consultation with other agencies* in the criminal justice system to ensure that separate records are kept for monitoring purposes.
- *Consider whether there are intangibles that you would like measured* in some way following the implementation of the program. If so, it is probably necessary to conduct a baseline survey before you start the program. For example, you may wish to assess the attitude of crime victims or your own staff toward offenders generally and monitor changes in attitudes during the lifetime of the program. *A baseline assessment might be invaluable to gauge how people's views are changing.*
- Is the program susceptible to challenge on account of resources and, if so, *what cost/ benefit analysis would be helpful?* For example, if some stakeholders perceive that restorative justice offers savings in police time, because officers do not have to attend court, how can the savings be measured vis-à-vis the expenditure needed to run the restorative justice program?
- *Are there particular crimes or offenders that stakeholders especially want dealt with* by restorative justice processes, and if so, how can case referrals be maintained? For example, many people support the use of restorative justice for nonviolent youth offenders but are skeptical of its suitability in other instances. *Your selection criteria may need to be clarified to ensure that your program meets the mandate you have.* In time, as the program evolves, other categories of offense/offender might be supported for referral to restorative justice; such change will necessitate altering the screening process. All this will have an impact on evaluation.
- Perhaps most important, *what measures will help to assess the extent to which the values of restorative justice are reflected in your program?* For example, an important element of restorative justice is showing respect to all parties. Can you think how to measure this to promote respectful behavior? You might

“Restorative justice is about redrawing the lines of accountability within the criminal justice arena, re-engaging the community, and reducing the focus on accountability to the abstract state. . . It seems consistent with these fundamental principles that the community accept responsibility for making the project work.”²⁶



achieve respectful behavior through good training of facilitators and sound preparation of all those who take part in the program. However, regular surveys or feedback from participants about how they felt during and after their involvement in the program could be valuable.

All these factors should help you think about the benchmarks that are needed as part of your program to test its desirability and, over time, its strengths, areas that need improvement, and how well it is meeting your objectives.

In addition to these factors, you might have a hunch that restorative justice will have an impact on the internal culture of the police department and that public support for restorative justice might lead to calls for changes in such areas as legislation, public policy, and expenditure on prevention.

There is nothing wrong with having these aspirations, but be careful that they are not the only driving force for initiating your program. It is important to understand the extent to which restorative justice will change things. You need to think through what these changes may be and consider how they can be measured. Documenting change is important for true accountability and to keep the program on track in a way that optimizes the benefits and minimizes the risks of applying restorative justice.

Core Aims and Related Benchmarks

The following are core aims of restorative justice for you to think about when introducing any restorative justice program. Some will require monitoring or assessment before you start referring cases to a restorative justice process.

Restorative justice:

- Seeks to redefine the meaning of crime.
- Involves victims, offenders, and the community.
- Seeks victim restoration.
- Seeks offender competency.
- Seeks community safety and connectedness.
- Seeks to learn how to prevent crime.

Benchmarks to reflect these aims of restorative justice will help to make your program more, not less, restorative. Some can be measured by statistical analysis of your cases, others will require qualitative research, including surveys. Each of the core aims is considered below, along with possible indicators or benchmarks.

1. Redefining the meaning of crime

The focus of the restorative justice process is more on the *harms* of crime and less on the violation of the law. Therefore, identification of the harm is a critical factor. After a few months, you should be able to come up with two lists of identified harms that victims and communities



experience following a crime. You will have one list for victim harms and another for community harms; some harms may appear on both lists.

Use these lists for training officers who respond to crime and create awareness among the public of the impact of crime. Over time more people will understand that crime requires investment in prevention if these harms are to be avoided.

2. Involving victims, offenders, and communities

The more that citizens are involved in your program, the more likely it is that the benefits of restorative justice will be achieved. As with problem-solving policing, the more engagement there is, the more information you receive to identify the real issue that needs to be tackled. Keep a record of who participates—as well as additional information that came from participants who added value to the restorative justice process. In time you might be able to discern how influential to the process and/or outcomes are family members, peers, friends, and non-familial guardians, as well as specific community groups. This information will help in planning future restorative justice meetings and dialogues.

There is nothing more powerful than stories about what happens in a restorative justice process. They convey what restorative justice focuses on, how crime can be resolved through collaboration and problem solving, and how victims, offenders, and communities can be positively affected by their participation. Keeping a record of your cases is an essential part of spreading learning about what restorative justice can achieve.

3. Restoring victims

Repairing the harm experienced by victims (and communities) is necessary to help victims recover and to hold offenders to account in meaningful ways. *Keep a record of how offenders have restored the losses or damage.* This includes making things right in relationships (e.g., a letter of apology, a showing of remorse, agreeing to work for the victim or help the victim in some way).

Victim involvement is a fundamental requirement of restorative justice. It is easy to assume that the victims feel involved simply because they were invited to participate. *You must check with the victims themselves about whether your program is meeting their needs and expectations.* This will often necessitate survey work or face-to-face interviews at some stage after their case was dealt with. You need to check:

- The extent to which *victims felt they were given ample information* for deciding whether or not to participate in a restorative justice process.
- The extent to which *victims felt they were free to choose whether to participate* or not—and to leave the process at any time (e.g., was it really voluntary).
- The extent to which *victims felt their role was central to the process*: did they, for example, feel their involvement was seen as important of itself—and not only to hold the offender accountable?



“Recidivism is only one of a range of issues to be measured. Program outcomes have more to do with the mutual needs of victims, communities, offenders, and government.”²⁷

- The *level of preparation victims felt was provided* prior to the restorative justice process. Were they, for example, confronted with surprises that ought to have been discussed or revealed during a preparatory meeting?
- The extent to which *victims felt able to express* how they had been harmed, and the extent to which they felt they had been heard.
- The extent to which *victims felt they had an influence* on the agreed plan to hold the offender accountable and to restore their losses.
- The extent to which *victims felt respected and dealt with sensitively* by the facilitator and other program staff.
- The extent to which *victims felt sufficiently protected*.
- The extent to which *victims' feedback was followed up* with program adjustments or improvement.

Evaluation of these items will help ensure that your program provides victim choice, offers victim empowerment, and takes victims' interests seriously.

4. Seeking offender competency

Those who commit crime also suffer harm; that is seldom acknowledged by the criminal justice system. *Identifying how offenders feel about their offenses is often the first step toward their reintegration into the community. Think about keeping a record of what offenders say about their crime*—the information will help to break down stereotype images of monster criminals. Such images are a barrier to reintegration.

The amount of harm repaired is a critical benchmark for any restorative justice program. The amount of restitution or community service completed by offenders should, therefore, be measured. The number of reparative agreements completed by offenders also should be monitored. The fulfillment of an agreement indicates that the offender understood the consequences of his or her behavior and wanted to change.

Offender competency development refers to the changes offenders are willing to make to reduce the likelihood of committing crime again and to increase their contribution to society as law-abiding citizens. Offenders completing drug treatment, counseling/ therapeutic programs, skills training, education courses, etc., are positive signs that restorative justice is supporting important life changes.

Recidivism is a traditional indicator of effectiveness and *will be a useful monitor of restorative justice programs*. The process itself may have a sufficiently powerful effect on an offender—or it might be the direct involvement of community members in monitoring or supporting the offender to complete the reparative agreement that influences the offender sufficiently to reduce recidivism.

Other measures of program effectiveness in promoting offender competency include the following:

- Are offenders given *the opportunity to participate and to make amends* to the victim? Does the program restrict the types of offenders dealt with by restorative justice?
- To what extent does the reparative agreement *address the needs of the offender and plan for his or her reintegration* into the community?

A balance should be struck between cases referred to restorative justice and those that require a formal justice response. Monitoring case referrals is a way of assessing whether the balance is right and identifying obstacles to using restorative justice processes.

5. Seeking community safety and connectedness

Restorative justice seeks to give primary responsibility for decisionmaking to victims, offenders, and the community, with the support of the state. Community empowerment and participation need to be monitored. Consider the following:

- Who is invited to participate? (This could indicate how much power is really being shared.)
- Are community concerns heard?
- Are community safety issues addressed?
- Does the community influence offender accountability and play a part in victim recovery?
- Is there a focus on training community volunteers to facilitate restorative justice processes?
- Are there changes that occur in the community after a restorative justice process or after a few months of program operation (e.g., community begins to solve its own problems by way of restorative justice processes, supports new victim services, or tackles crime prevention)?

Community involvement in restorative justice processes will promote stronger communities in which members actively participate in community life and support the well-being of those who live, work, and play there. Benchmarks of a successful program might include the following:

- *More dialogue about crime* and what can be done by the community to prevent crime.
- *More willingness to engage* in volunteer work or participate in partnership activities with public organizations.



- *Improved relationships* between different elements of the community.
- Support for more restorative justice processes to *address different kinds of conflict*, e.g., in schools, businesses, local government.
- *Less fear* of crime, more confidence in justice interventions.

Relationships should be strengthened by restorative justice process interventions, not weakened by them. A survey of participants will afford insights into the bonds that have been strengthened and the divisions that have been maintained.

6. Learning how to prevent crime

Community involvement in restorative justice processes promotes understanding of why crime happens and what would help to prevent offending behavior. To examine how fruitful this understanding is in your community, look for:

- A willingness to support and promote *local policies aimed at reducing crime that focus on prevention* rather than punishment.
- More reliance on *informal controls*, such as mentoring, youth assistance, support for the elderly to protect them against crime.
- The *scope of partnership activity* to address crime, fear, and disorder; for example, is there a citywide or community task force involving all kinds of groups (e.g., churches, youth, ethnic minorities, gays, businessmen, activists)?



Testing How Restorative Your Program Is

You can use a survey like the following to assess how restorative your program is:

Sample Survey

(5=Strongly agree 3=Neutral 1=Strongly disagree)

VICTIMS

Victims and their families receive support and assistance	5	4	3	2	1
Victims are made aware of the case throughout the entire process and are given choices	5	4	3	2	1
Victims are directly and actively involved in the justice process (from early stages to the end)	5	4	3	2	1
Victims are financially restored and restitution is given priority by the justice system	5	4	3	2	1
Victims have the opportunity to shape how the offender will repair the harm	5	4	3	2	1
Victims are satisfied with the justice process	5	4	3	2	1
Victims have the opportunity to offer guidance and feedback to justice professionals by serving on planning and advisory groups, and through other means	5	4	3	2	1

OFFENDERS

Offenders complete financial and other forms of restitution in a timely fashion	5	4	3	2	1
Offenders use their assets to give back to the community	5	4	3	2	1
Offenders are given opportunities to develop relationships with the community	5	4	3	2	1
Offenders face the personal harm caused by their crime	5	4	3	2	1
Offenders develop the ability to be empathetic for their victims and others	5	4	3	2	1
Offenders learn and practice competencies to reduce the likelihood of returning to crime	5	4	3	2	1
Offenders understand their obligation to their community and learn mutual responsibility	5	4	3	2	1
Offender's family or significant others are involved in similar programs as the offender	5	4	3	2	1



COMMUNITY

The community allows the offender to repair harm through meaningful work	5	4	3	2	1
Volunteers are recruited and trained to provide services to offenders, victims, and the community	5	4	3	2	1
The community provides mentors for the offenders and their significant others, and offers assistance to increase their skills	5	4	3	2	1
Community businesses provide training and work for offenders	5	4	3	2	1
The community allows the offender to repair harm through meaningful work	5	4	3	2	1
Community members have opportunities to offer guidance and feedback to justice professionals by serving on planning and advisory groups, and help set the goals of the justice system	5	4	3	2	1

JUSTICE SYSTEM

The system gives <i>balanced</i> attention to the victim, offender, and the community, and views each as equal	5	4	3	2	1
Policymakers allocate resources to meet objectives of safety, accountability, and competency development	5	4	3	2	1
Restoration of victim, offender, and community is given higher priority than cost savings, time saved, small caseloads	5	4	3	2	1
System outcome measures reflect restorative justice values	5	4	3	2	1
Measures of individual staff performance identify expectations	5	4	3	2	1
System has ongoing training and orientation sessions on topics central to restorative justice	5	4	3	2	1
System seeks to hire employees with values consistent with restorative justice	5	4	3	2	1
System provides ongoing training on victimology and victim sensitivity	5	4	3	2	1
System provides ongoing training on victimology and victim sensitivity	5	4	3	2	1



Think about these benchmarks too:

- Participants in restorative justice processes should, ideally, *perceive the process and outcomes as fair and satisfactory*. *Frequent surveys* will help you to assess the extent to which your program is perceived as fair and satisfactory by all parties affected by crime.
- You may wish to find out if the program has promoted *respect for the police and greater trust*. Again, surveys might be helpful to gauge whether there have been changes in police-community relations.
- Restorative justice processes provide a vehicle for citizens to be mobilized for problem solving and crime prevention. *A survey of police officers might help to ascertain how much confidence there is among officers in the capacity of lay communities* to engage in policing and justice delivery.
- *Fear is a useful barometer* of how successful an intervention is. *Surveys asking victims and the community about the precautions they have taken* since a crime was dealt with by the restorative justice process will help determine the extent to which public safety needs have been addressed.

The role of the state in restorative justice is one of supporting the parties through a process. The facilitators used in a program should be assessed in terms of:

- Making the parties feel *comfortable* and safe.
- Allowing them *plenty of time to speak* and to be listened to.
- Allowing the parties to work out an *agreement*.
- *Supporting the participants* throughout the preparatory and postmeeting stages.
- *Being fair* to reflect a balanced approach that addresses the needs of victims, offenders, and the community.

Restorative justice programs should contribute to reduced investment in prisons since restorative justice is measured not by how much punishment is given to offenders but by how much reparation is achieved. Restorative justice programs should also reduce the number of cases that must be dealt with by the criminal justice system. Both results would free up resources for early intervention and treatment of offenders, as well as other crime prevention tactics.

The table “Characteristics of the Most and Least Restorative Justice Systems” indicates the potential of fully implementing restorative justice—and the costs and dangers of limiting society’s response to crime to a victim- and punishment-oriented adversarial process.



Characteristics of the Most and Least Restorative Justice Systems

Most Restorative	Least Restorative
Justice response balanced between government and community.	Justice response dominated by the state and very costly—emotionally and financially.
Communities empowered to participate and contribute to health of all its members.	High fear in the community. Some communities feel angry and alienated.
Very low crime rate.	Very high crime rate.

Summary

When it comes to benchmarks . . .

- Pay attention to local conditions: every community is different.
- Focus on qualitative, as well as quantitative, measures.
- Don't forget the balanced approach—address the needs of victims, offenders, and the community.
- Figure out how to calculate the benefits to the state, but focus on benefits to society.



Part **7**

Toolbox For IMPLEMENTING RESTORATIVE JUSTICE
AND ADVANCING COMMUNITY POLICING

Part 7. Unresolved Issues

Part 7. Unresolved Issues

Introduction

Restorative justice is a simple idea:

- Recognize the harms of crime
- Repair the damage
- Heal relationships
- Teach civility
- Promote safety and harmony
- Promote strong communities

Who could disagree with these goals?

The implications of changing policy and practice to support these goals, however, are considerable. The difficulties are exacerbated by two factors: first, the traditional system of justice must be maintained; second, the new system has yet to be fully developed.

Restorative justice is a framework but has not got all the answers. It's a compass but not a map.²⁸

Threats to Guard Against

Restorative justice, while becoming more widespread and popular, has also become a journey of exploring the values and different processes without a full paradigm. In short, *restorative justice is still in the experimental stage of development with a number of unresolved issues and unanswered questions*. The transition can be a difficult challenge with a number of threats or problems:

- Co-optation of the new values and principles is a real danger, particularly because of the conflict between the values of retributive justice and restorative justice. *Restorative justice does not seek to advance the traditional goal—offender accountability through punishment. Its objectives are entirely different.*

I fear that we have not yet figured out how to avoid the introduction of paternalistic, discriminatory, and other attitudes and stances that are radically inconsistent with the loving and empowering values that should be at the heart of what is done in the name of restorative justice.²⁹

- The focus on developing familiarity with different restorative justice processes—such as victim-offender mediation, circles, and conferencing—*can divert attention from the need to examine the context and operating environment*



If there is a danger that we could be damaging people, we should limit activity until the model is properly developed.

in which these are being proposed. The implementation of restorative justice by an organization that retains assumptions and beliefs that are not in sync with those of restorative justice can seriously undermine the restorative goals of the effort. *Many agencies currently experimenting with restorative justice have failed to think through the contradiction between how they propose to deal with external conflict (between offenders, victims, and communities)—and their methods of tackling internal conflict, which are adversarial, blame fixing, and focused on punishment.*

- Change advocates must be aware that their reforms can go astray; the implementation of restorative justice involves *more than mere tinkering with the current system* of justice. It requires, in many cases, challenging the underlying assumptions of the appropriateness of criminal justice. As Howard Zehr writes, for example, “It will not do to promote alternative punishments. The concept of punishment itself must be questioned.”³⁰ Agents of change need to be aware that the values and assumptions of traditional criminal justice are deeply embedded in our thinking. It is easy to replicate that system; initial efforts to implement restorative justice, for example, can undermine the *balanced approach* (victim, offender, community) because the focus on offenders in the traditional system is so strong.
- In making choices about using traditional criminal justice and restorative justice, *more than individual discretion* is required. Police officers are used to exercising decisionmaking authority to pursue criminal charges or to divert cases outside the traditional court system; but *clear selection criteria need to be in place that respect and reflect the values of both systems, as well as allow flexibility for specific circumstances*. The criteria also ought to take into account the level of skills training that has been provided vis-à-vis different categories of offense. For example, although a victim of a serious violent crime might wish to meet face to face with his or her offender, it would be reckless to conduct such a dialogue unless there is an adequately trained facilitator to work with this kind of case. *The advice is to walk before you run*, despite the temptation to embrace restorative justice more fully when assigning cases. (The figure “Traditional Criminal Justice and Restorative Justice: Two Ways of Thinking and Working” provides a cautionary reminder of how different the two approaches are.)
- Maintaining consistency and equity, with which the criminal justice system has struggled, runs counter to the restorative justice principle that the process and outcomes should be tailored to individual and local needs. There will be an ongoing tension in accommodating both philosophies, particularly after the attention given to sentencing guidelines, to proportionality, and to mandatory minimum sanctions. How this tension will unfold depends in large part on:

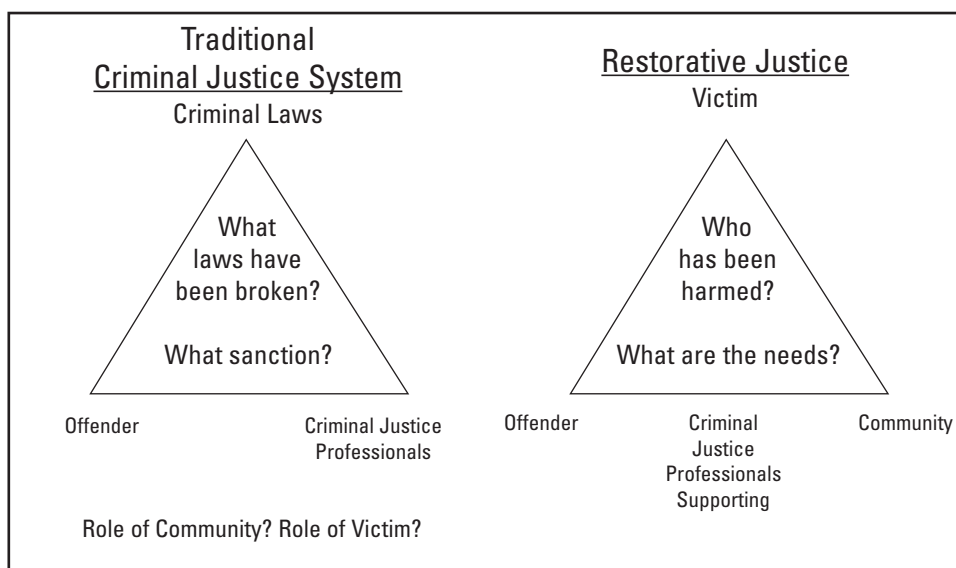
1. The extent to which the formal system is willing to share power, authority, and decisionmaking with the community through restorative justice processes.
2. How satisfactory the accountability of restorative justice processes and programs is with regard to reducing reoffending rates, to victim and community satisfaction, and to the percentage of agreements fulfilled following restorative justice.

The manner in which interventions are implemented is likely to determine the degree to which the interventions are actually experienced by victims and offenders as restorative. Interventions that appear to be intrinsically restorative may, in fact, not be. It is predictable that so-called 'restorative' interventions could easily be co-opted to meet primarily justice system bureaucratic needs rather than those most affected by crime . . . this could lead to the 'fast food' version . . .³¹

The questions about coercion require further experimentation and research. We have a sense of what the ideal situation would be (voluntary participation) and the countereffect of coerced participation.

How to steer an appropriate middle course will become clearer over time.

Traditional Criminal Justice and Restorative Justice: Two Ways of Thinking and Working



Confidentiality

Public accountability requires that records be kept of how crime is responded to, and with what results. *While the fact that a case has been dealt with by restorative justice should be made public, and the agreements (fulfilled or otherwise) should be on record, the substance of the dialogue in any restorative justice intervention should be kept confidential.* Without



the consent of the participants, no such information should be given out at any time. This necessary policy, however, minimizes the opportunities for broader sharing of lessons learned and thus limits the opportunities for gaining support for restorative justice. Balancing the needs of confidentiality with those of informing the public about restorative justice can be problematic.

All of the parties to a dialogue should be advised that there may be some information that is legally admissible in a court of law.

Coercion³²

A victim should never be forced or put under pressure to participate. Although coercion is inappropriate, it is incumbent on the facilitator to present to victims adequate information on which to base a decision. While this can be interpreted as persuasion, a skillful facilitator will encourage victims to consider fully the risks and benefits of restorative justice without exerting undue influence. Voluntariness is a basic principle of restorative justice: removing choice disempowers victims and is likely to reduce the sense of experiencing restorative justice as fair and beneficial.

For offenders, coercion is more problematic for several reasons. Although offenders ideally are invited to participate and their participation is voluntary, a fine line exists between:

1. The needs of victims, who wish to meet the offender, and the needs of an offender, who might not feel up to such a meeting.
2. The mere obligation of an offender, on the one hand, and ensuring that the offender meets the obligations in ways that are meaningful for the victims and the offender. Forcing an offender to participate may make any subsequent conversation or actions lack genuineness, thereby undercutting the learning process and restoration that are the aims of restorative justice.

If a restorative justice process is conducted subsequent to a finding of guilt in court, via probation or as a diversion court on condition that the offender completes an agreement, the voluntary nature of the offender's participation can be compromised. The use of state coercion can be counterproductive. Preparation can be helpful to overcome some of those problems, but great care should be taken not to assume that offenders will repair the harm or that they will alter their behavior in the future; and without these results, the program is unlikely to be experienced as restorative by either the victim or the offender.

Some programs insist that offenders participate but provide an option for offenders to leave the program.

In all cases, the offender cannot be involved in a voluntary capacity unless he or she freely accepts responsibility for the harm caused by the crime. Without this acceptance, the offender is entitled to be treated according to due process of law, starting with the presumption of innocence and the right to legal representation.

The state has an important function in restorative justice—to support the engagement of victims, offenders, and communities in identifying harms done and the obligations that arise from these harms; supporting harm repair and victim restoration; and promoting conditions that make further harm less likely.

If an offender refuses to cooperate with the victim's request for a meeting, *the victim should still be afforded the opportunity to receive restoration*, e.g., compensation from a victim fund, meeting other offenders to tell how they have been harmed, and support from the community.

Role of the State

Under the traditional criminal justice system, crime is seen as an act against the state. In restorative justice, crime is seen as harming *people*; the state still contributes to the justice process, but in different ways.

The state has a responsibility to provide opportunities for such engagement and to safeguard the correct application of procedures and individual legal rights.

The state also has a role in applying the formal system of crime control in cases where *public safety is threatened*, where the parties do not agree to participate, or where the voluntary agreements stemming from a restorative justice intervention are inadequate in some way. These assessments demand fine judgment to avoid ignoring behavior that is dangerous to restorative justice. Care is needed, however, to ensure that restorative justice is not used only in minor cases when it suits the state.

Restorative justice calls for maximizing the opportunities for community, victim, and offender engagement—and the state has the primary responsibility to *create the framework for distributing cases appropriately between the formal system of justice and restorative justice*. Even when it is deemed necessary to deal with a case by traditional criminal justice processes, the state has an obligation to seek ways of involving elements of restorative justice—to promote victim recovery, offender competency, and community safety.

A classic example of a clash between the formal adversarial system and restorative justice is the categorization of crime. Courts and the traditional criminal justice system attempt to define crimes either as *serious* or *not serious* (felony/misdemeanor), making the assumption that victims of crime experience a standard reaction to criminal behavior. This not only is a gross oversimplification of how crime is experienced, but also is at odds with what is being discovered in restorative justice experiments. (See the case study “Traditional Classification of Crime Can Be Inappropriate,” in box.)

The state has a role in *developing a vision of restorative justice, educating the public about restorative justice, and providing technical assistance for communities trying restorative justice*. The state also has a role in *promoting research* on restorative justice (as well as the adversarial criminal justice process), including *monitoring and evaluation of programs and processes*. This research, over time, will secure better understanding of what restorative justice can realistically achieve and how improvements can be made to existing practices.

The state needs to take care that it does not make assumptions about the seriousness of cases based on traditional criteria.



In all cases the police should work as much as possible with other agencies or volunteers, promoting a sense that it is the general community that is upholding standards of behavior and providing opportunities for restoration.

Case Study:

Traditional Classification of Crime Can Be Inappropriate

A 68-year-old man noticed two youths attempting to steal his car outside his house. He ran after them and collapsed in the street. His wife, who had seen him running, was desperately worried, as he had suffered a heart attack several months before. She managed to get her husband safely back into their house, and then she ran to a nearby park to let her son know what had happened. As she approached her 20-year-old son who was playing football, the wife had a heart attack. The traditional approach would have categorized this crime as a minor property crime: an attempted theft of a motor vehicle. In restorative justice, the full harm experienced by the victim and his whole family would be acknowledged. At the conference held 2 months later, the son, whose parents were now both suffering from heart problems, could not avoid showing his anger toward the youths who had tried to steal his father's car. An hour later, the same man was telling the offenders he would like them to call him any time they were tempted to get in trouble again, saying, "I'd do anything to help you not to do this again."

The offenders agreed and have not been in trouble since. A "property" crime can hide a multitude of consequences!

Relationship Between the Traditional Criminal Justice System and Restorative Justice

The police have to serve the traditional, adversarial criminal justice system as well as any restorative justice programs they implement. This raises difficult questions about the response of the police from the time a crime is reported. The first steps they take at the scene of a crime, or in response to a witness or victim, can be of critical importance to the criminal justice process in terms of gathering evidence. Police officers also have to think about restorative justice's requirements of problem solving, victim protection, and the engagement of those who might participate in the restorative justice process.

Since it is unlikely that a decision about the appropriate disposition of the case can be made at this early stage, the investigative process must still be conducted. *Only when the offender is identified and freely admits the crime can there be a cessation of the investigative process.*

In serious offenses, however, (e.g., child abuse, serious violence, domestic abuse, arson), it may be necessary to prepare for prosecution. In addition, the views of the victim, incidents involving multiple crimes and offenders, and the attitude and capacity of the offender, are factors that should be taken into account in deciding the course of an investigation.

In some cases, a restorative justice process might not be the appropriate means of handling the crime until several months after the crime—or after the case has been dealt with by the court. For example, victims of serious violence may not be ready to meet their offender for several years. In these cases, it is unlikely that the police department is the most appropriate agency to conduct a restorative justice process.

Two trends . . . are conflicting with one another. On the one hand there is a move towards a greater punitiveness and social exclusion in penal policy . . .

on the other hand, there are moves towards a more inclusive penal policy which attempts to promote social cohesion and safer communities through problem-solving policing, restorative justice, and the empowering of communities to tackle the causes and effects of criminal behavior.³³

Nonetheless, the police can develop processes to:

- ***Increase general awareness of harms*** done by crime (e.g., by victim impact panels, school programs, and sharing case studies).
- ***Encourage people to take responsibility*** for supporting victims and offenders through programs that, for example, promote victim recovery and offender competency.
- ***Foster community processes for holding offenders to account*** through community service and community reparative boards.

In some cases a prison sentence is appropriate to secure a sense of safety in the community, but there still are opportunities to implement restorative justice, such as prison inmates working on community projects, speaking to victims to learn the impact of their behavior, treatment and skills training that promote behavioral change, and providing information to the victim. These ideas can be implemented as part of a partnership response to the aftermath of crime, and there is no reason why police officers cannot be engaged in facilitating these efforts.

Police Role in Restorative Justice

If conference coordinators fall into more authoritarian leadership and communication patterns, the process actually could lead to offenders experiencing conferences as “shaming and blaming” or even as processes of “breaking down kids and then trying to build them up,” rather than as “reintegrative shaming” in which criminal behavior is denounced but offenders are treated with respect and feel safe enough in the presence of so many adults to grow up and express themselves.³⁴

The police involvement in restorative justice can be contentious, notwithstanding the benefits of dealing with crime in a restorative way. The police have exposure to victims, offenders, and communities as well as to the workings and flaws of the formal justice system. They are used to working in particular ways, however, and are trained as figures of authority. Making the leap from traditional police methods to restorative justice can be onerous because of the prevailing cultural views about crime fighting, relative inexperience with dealing with victims of crime, skepticism about the capacity of communities, and the police’s unique powers of arrest and of the use of force. Officers, by the very nature of their job, have to be able to work with “command and control.” Moving away from adherence to procedures and practices that made perfect sense under a different paradigm is not easy.

The police have a tendency to make assessments based on information and observations that might not be appropriate in a restorative justice setting. Some police officers will not find it easy



to move from being an active decision maker to a facilitator, enabling others to make decisions. The personnel makeup of a police department can also determine the likelihood of officers having the capacity for cultural sensitivity that is so often necessary in restorative justice.

How a department deals with its own internal conflict can also be a barrier to developing an appropriate environment for restorative justice. For example, many police departments are used to dealing with personnel, welfare problems, grievances, sexual harassment complaints, and poor performance through processes that are adversarial and steeped in hierarchical power distribution. Such processes are the antithesis of what restorative justice stands for: sharing power and decisionmaking in relation to wrongdoing, harm, needs, and interests to promote healing, competency building, problem solving, and harmony.

Police must avoid implementing a restorative justice program in isolation from other operational changes. The environment and context in which restorative justice is implemented can be a critical factor in determining how restorative the program is.

A police department wishing to take up the challenge of implementing restorative justice must recognize its own strengths and weaknesses in terms of being prepared to take on such a different approach; considerable training and development might be necessary to acquire the insights and skills base that support alternative methods of conflict resolution. How the selection and performance review of officers is conducted might determine how serious the department wishes to be about restorative justice: selecting officers who are only interested in traditional crime fighting, or assessing officers only on numbers of arrests, can send the wrong message.

Instead, a police department might promote the recruitment of people who already have experienced conflict resolution processes and might measure those indicators that suggest improved teamwork (e.g., staff sickness, staff turnover, and team problem solving or the number of grievances/complaints resolved informally).

Police officers must also be aware of how the public perceives them: restorative justice requires facilitators of programs to be neutral. *If the public sees the police as representing only the victim or an authority of the state, there may be problems in getting people to participate freely on the understanding that their input is a vital part of the decisionmaking process, not merely an adjunct to police decisionmaking.* It is easy for the public to look to the police to make decisions, and the facilitator should be clear from the start about the role that he or she plays in the program.

Restorative justice processes can broaden the powers of the police, compromising the separation of powers among legislative, executive, and judicial branches of government. Police officers can be guilty of dominating restorative justice processes and failing to accommodate and promote the empowerment of victims, offenders, and the community.

Nevertheless, citizens in Wagga Wagga, New South Wales, Australia, where police-based conferences were started, supported police officers acting as facilitators, claiming they added “gravity” to the proceedings.³⁵ *Police officers can also lend a presence that makes people feel safe.* One possible option, should a local community feel intimidated by the presence and role of the police, is to have co-mediators/facilitators who are community volunteers. *This can provide a natural balance to the dominance of the police.*

Some would also claim that an investigating officer should not facilitate a restorative justice process because of the inclination to dominate the proceedings when they know so much about

the case. *The police need to be sensitive to perceptions that they are investigator, prosecutor, judge, and jury all rolled into one.* Close monitoring of these issues is essential to avoid restorative justice becoming owned by one state agency. Opening restorative justice processes to outside observers might also help to dispel that perception. For the same reason, consider not holding restorative justice processes in police stations.

Proportionality Versus Tailored Program

In criminal justice there has been emphasis on *just desserts*—the idea that sanctions should be proportionate in their severity to the gravity of the offense.

This sense of proportionality runs deep in the retributive system, but its transferability to restorative justice is problematic. Restorative justice is not focused on punishment, and the assumption that crime is only or primarily a violation of law is challenged to encompass the notion that crime harms people. Harms are experienced differently by different people; so the question arises: “Can there be proportionality with regard to the obligations of an offender to repair the harm?”

A complication arises by virtue of the fact that the people who identify the obligations are not representatives of the state. Experience in restorative justice to date suggests that *participants in restorative justice processes properly focus on the needs emerging from the dialogue* and can be creative in deciding how these needs should be met, regardless of traditional sanctions. Restorative justice encourages the participants to negotiate what harms require reparation and how they should be repaired/restored—*without a fixed formula*. On the other hand, the facilitator has the responsibility to ensure that the agreement is relevant, fair, and realistically achievable. *In this way, restorative justice can be evaluated on whether an agreement appears to be proportionate when compared to other such agreements and when compared to traditional sanctions.* However, the goals of the two systems are entirely different, and restorative justice requires flexibility.

Communities with weak or nonexistent bonds present enormous challenges to restorative justice. They require unique leadership and a strong commitment to developing informal social controls that do not rely on being punitive or promote stigmatizing offenders.

What if the Offender Fails to Fulfill the Agreement?

Preparation of the victim is important, and failure of an offender to fulfill his or her agreement can be especially damaging to a victim who has participated in restorative justice. The courts can require extra reparation from the offender, but this suggests that the process is coercive more than voluntary. There is no ready answer to the problem of noncompliance. However, proper risk assessment as part of the preparation for a restorative justice meeting might help reduce the danger of lack of offender cooperation. (Related issues are considered in the “Coercion” section, earlier in “Part 7. Unresolved Issues.”)

Widening the Net

Restorative justice raises concerns about treating minor cases—those that would largely be ignored by the adversarial criminal justice system—as if they require interventions that go far beyond traditional expectations. On the other hand, concerns about widening the net (expanding the number of cases requiring time and resources) rubs up against the notion of supporting early intervention to reduce youth offending. A balance needs to be struck between the desirability of more formal state controls and that of informal community regulation.



Scope for Applying Restorative Justice in Inner Cities and Frustrated Communities³⁶

The involvement of the community is essential to restorative justice, yet many offenders (and victims, for that matter) lack family and community ties. Although we can be imaginative about the people who might be significant in the lives of the parties involved in crime, it is probably also fair to say that some communities have weak or nonexistent bonds, making their involvement unrealistic. Community in modern society is problematic—and not a synonym for virtue. Communities can be harsh, intolerant, and exclusionary. Some communities do not share values: social and economic divisions can make conflict resolution virtually impossible, for example, if there is no consensus on how crime should be defined. Many communities feel no shared interest. Some tolerate racism, sexism, and homophobia and are likely to replicate the punitive approach of the court system.

Case Study

Communities With Diverse Views Can Have Shared Values

Clementine Barfield-Dye is a mother whose sons were shot in Detroit. She began to make links with other victims' families—more than 400, which grew to well over 1,000. The families decided to build a memorial for all those children who had been killed. Some people, including the local police, suggested that those who had been responsible for the shootings should not have their names included on the wall. But the community overcame these objections and held up their memorial as teaching peace, not war.

Mentally Ill or Substance-Abusing Offenders

The issues of mental illness and drug addiction among offenders cannot be ignored in deciding whether or not to include a case in a restorative justice program. Both raise safety concerns for the victim and other participants. There is also the possibility that the offender is neither willing nor able to participate in an open dialogue in which the free expression of emotions can take place in an atmosphere conducive to problem solving. On the other hand, restorative justice can offer these offenders an opportunity to learn the consequences of their behavior, and it might be able to promote changes that reduce the likelihood of future offending. Great care is needed in identifying who should be invited to participate, including the consideration of psychiatrists, counselors, and other experts. Restorative justice also affords opportunities for the community to understand more about drug and alcohol addiction and mental health problems, which might foster less stereotyping and more compassion and care. *A person is still part of the community, even if he or she has health problems.*

The restorative justice movement also faces a number of important risks. Perhaps the greatest risk is that of 'window-dressing' in which criminal and juvenile justice systems redefine what they have always done with more professionally acceptable and humane language while not really changing the policies and procedures of their system. A few pilot programs may be set up on the margins . . . while the mainstream of business is entirely offender-driven and highly retributive with little victim involvement and services, and even less community involvement.³⁷

Issues for You to Resolve

As you plan for a restorative justice program, think about and discuss the following questions. Formulate the best answers you can for this stage of your experience and knowledge.

- How can your departmental environment exhibit restorative justice values?
- How should you balance confidentiality with the public's need for information?
- How can you bring offenders to the table without being coercive?
- When is state intervention needed before a restorative justice intervention?
- How can the police themselves represent to the public the values of restorative justice?
- How can you make the restoration fit the offense—in particular instances?
- What should you do with communities that promote hostile or clashing values?

Finally . . . remember the “Re” factor.

Each step or decision toward the implementation of restorative justice will need to be redone at some time. You will need to:

- Re . . . learn
- Re . . . plan
- Re . . . develop
- Re . . . evaluate
- Re . . . assess

And don't forget:

- Re . . . mind yourself of the restorative justice values.

Good Luck!



Toolbox For IMPLEMENTING RESTORATIVE JUSTICE
AND ADVANCING COMMUNITY POLICING

References and Notes

References and Notes

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