



Restorative Justice Practices and Sexual Assault Response *A Resource for Victim Advocates*

Introduction

In facilitating conversations regarding restorative justice, it is imperative that victim advocates, as well as other responders, have the same understanding of what this means and the different possible interpretations of the term. Throughout the victim advocacy field in Colorado, as well as nationally, advocates may often use the concepts of victim empathy, victim clarification, restitution, offender/victim mediation and restorative justice interchangeably. Sometimes restorative justice may be used to describe programs within corrections, taking place after the offender has been adjudicated within the criminal justice system. Other times, restorative justice refers to programs that are alternatives to the criminal justice system.

- Colorado state statute defines Restorative Justice in C.R.S. section 19-1-103 (94.1). Victim-Offender conferences in institutions under the control of Department of Corrections are understood as a part of the definition.
CRS 19-1-103(94.1) "Restorative justice" means those practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include, but need not be limited to, apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.
- The Colorado Legislature recently passed House Bill 1032: Concerning Restorative Justice. According to the Bill, if a defendant appears personally for arraignment, the court must inform the defendant of the possibility of restorative justice as a part of the sentence. The Bill also:
 - directs the Department of Corrections to establish policies and procedures to arrange victim-offender dialogues **if requested by the victim, agreed to by the offender, and the department determines it is safe;**
 - adds restorative justice to the options a court has when it imposes an alternative sentence if the defendant is suitable for restorative justice;
 - indicates that a suitable defendant may be required to participate in a restorative justice victim-offender conference as a part of a probation sentence;
 - mandates that juvenile diversion programs¹ include restorative justice practices (it is permitted but optional under current law);

¹A program designed to enable alleged offenders to avoid criminal charges and/or a criminal record. They include a variety of requirements as an alternative to court or police involvement or, if these institutions are already involved, further prosecution. Successful completion of program requirements will often will lead to charges being reduced or dropped, while failure may bring back or heighten the penalties involved.

- mandates the court to include information about restorative justice in juvenile advisements (again, it is permitted but optional under current law);
 - requires the district attorney to assess a juvenile's suitability for restorative justice prior to charging a juvenile for the first time with a misdemeanor or petty offense, and if suitable, allows the district attorney to offer the juvenile the opportunity to participate in restorative justice rather than charging the juvenile;
 - requires the court, prior to sentencing, to order the juvenile to participate in an evaluation to determine whether the juvenile would be suitable for participation in restorative justice victim-offender conferences that would be a part of the juvenile's sentence unless the juvenile was adjudicated for an offense that would make him or her ineligible for restorative justice;
 - encourages each school district in the state and the state charter school institute to implement restorative justice practices that each school in the district or each institute charter school can use in its disciplinary program; and
 - creates the right for a victim to be informed by the district attorney about the availability of restorative justice practices and the possibility of a victim-offender conference.
- **CCASA and the Colorado Coalition Against Domestic Violence (CCADV) worked to include language that defendants convicted of unlawful sexual behavior, domestic violence, stalking, or violation of a protection order are NOT eligible for restorative justice practices as defined in HB 1032.**
 - CCASA and CCADV's concern was that victims may be coerced or manipulated into confronting, participating, and even "forgiving" offenders through the use of restorative justice practices. Victims who are juveniles may be especially vulnerable to pressure to participate in such programs. Because of the high incidences of non-stranger sexual assault and unlawful sexual behavior occurring in the context of familial relations, there may be encouragement or pressure for a victim to participate before s/he is truly emotionally prepared for such interactions.

Considerations for Sexual Assault Victim Advocates, Responders, and Agencies

Sexual assault survivors are among the crime victims who may encounter restorative justice programs within the criminal justice system, either as part of an offender's adjudication process and sentence requirements or as an alternative to traditional sentences imposed by the court. It is therefore critical that victim advocacy agencies, both community- and systems-based, become informed about what restorative justice programs in their community entail prior to discussing it as an option with survivors, or prior to it arising as part of their court case. If there are questions your agency or staff has that are left unanswered, you are encouraged to contact CCASA to address restorative justice program options, concerns, and benefits on a community-by-community basis, as they vary across the state.

- It is CCASA's recommendation that if a sexual assault survivor **chooses** to participate in a victim-offender conference, it is best practice for the facilitator to be highly trained in sexual assault dynamics, perpetrator behavior, victim advocacy, crisis intervention, and trauma response.
- Specific attention should be paid to juvenile victims whose cases have entered into the criminal justice system, because their cases are often the result of a mandatory report. They may feel that their options and choices have already been limited or that decisions have been made

without their input or even completely out of their control. It is important to inform them that compliance in a restorative justice program is not mandatory and that they are allowed to be informed of the process and possible outcomes.

- Victims must also have safety planning regarding emotional safety following interactions they may have with the offender as part of a restorative justice program.
- Care should also be taken to ensure that restorative justice programs in your community are not a one-size-fits-all. They should be culturally responsive and inclusive of intersectional oppressions faced by survivors of sexual violence.
- Ultimately, restorative justice is intended to be an option for victims that facilitates healing and empowerment. With support of informed victim advocates, survivors can determine if this is a choice that fits what they need in their individual healing process following a sex crime.

Supplemental Research on the Topic

**Please note that this subject is controversial in the field of sexual assault response and many professionals cite varying research and hold diverse opinions on restorative justice practices and their appropriateness for, and potential effects on, sexual assault survivors.*

Wachtel, Joshua (2008). *Colorado Children's Code authorizes restorative justice conferences for adjudicated youth (Part 2 of 2)*. Restorative Practices E-Forum. 17 July.

From the Summary: It's no accident that Colorado is the first U.S. state to mandate that judges advise adjudicated youth of the possibility of participating in restorative justice (RJ) conferences or other programs if they become involved in the criminal justice system. For more than 10 years, Colorado communities, schools, nonprofits, RJ advocates, probation, police and human service departments, courts, youth rehabilitation facilities, universities and governments have been promoting restorative justice and restorative practices (RP).

Koss, Mary P.; Bachar, Karen J., Hopkins, C. Quince (2006). *Restorative Justice for Sexual Violence: Repairing Victims, Building Community, and Holding Offenders Accountable*. DOI: 10.1111/j.1749-6632.2003.tb07320.x

Abstract: Problems in criminal justice system response to date and acquaintance rape, and the nonpenetration sexual offenses are identified: (1) these crimes are often markers of a career of sexual offense, yet they are widely viewed as minor; (2) perpetrators of these crimes are now held accountable in ways that reduce their future threat of sex offending; and (3) current criminal justice response to these crimes disappoints and traumatizes victims and families. In response to these identified problems, we are implementing and evaluating RESTORE, an innovative victim-driven, community-based restorative justice program. Restorative justice views crime as harm for which the person responsible must be held accountable in meaningful ways. RESTORE uses a community conference to involve the victim, offender, and both parties' family and friends in a face-to-face dialogue directed at identifying the harm, and developing a plan for repair, rehabilitation, and reintegration into the community.

Daly, Kathleen (2004). *Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases*. Lecture presented by K. Daly, October and November 2004, to University of Cambridge (Institute of Criminology and the Socio-Legal Seminar Group), Oxford University, University of Strathclyde, and the London School of Economics. Revised December 2004. Downloaded 8 February 2005.

Summary: Are restorative justice conferences an appropriate way to respond to sexual violence? Or do court proceedings deliver greater justice for victims? There are just two jurisdictions in the world today, New Zealand and the Australian state of South Australia, which routinely use conferences in responding to youth sexual assault. In other jurisdictions, sexual offences have been excluded from the restorative justice (RJ) agenda: they are understood to be too sensitive or too serious to be handled by an RJ process. Critics of conferences for these offences assume that victims will suffer more from an informal, face-to-face encounter with an offender, than if the case goes to court. Further, it is assumed that if cases are diverted from court, it will appear that offenders are being treated too leniently and that offences not being taken seriously enough, what Donna Coker (1999: 85) terms the cheap justice problem. It's widely known that the criminal justice system is especially inept in prosecuting sexual violence. However, as Barbara Hudson (2002: 622) says, it remains an open question whether restorative justice offers better hope of redress for women and children. This paper presents the results of an archival study of the court and conference handling of youth sexual offence cases. It is the first study to provide empirical evidence on the comparative merits of court and conference for these cases. (excerpt)