

RESTORATIVE JUSTICE

A Different
Approach To
Youth Justice

What is restorative justice?

Restorative justice offers an alternative to the traditional criminal justice system. It aims to repair the community relationships that are damaged when a crime is committed.

Restorative justice can be used with people of all ages who are in conflict with the law. It can be adapted for use in many circumstances and at different stages of the criminal justice process. This booklet, however, deals mainly with restorative justice as an alternative to the court process for young people in trouble with the law.

Instead of simply punishing and labelling young people who have committed crimes, restorative justice gives them the opportunity to:

- take responsibility for their behaviour,
- understand the full impact of their actions on others, and
- repair the harm done to their victims.

Restorative justice is voluntary. Nobody has to take part unless they want to. However, for it to happen the young person and the victim (or someone personally representing the victim) must both be willing to participate.

In some circumstances, restorative justice can be used instead of charging a young person with a crime and sending them to court. It is used this way only when a young person admits they committed an offence. There is then no need for a trial. Instead of being dealt with by the authorities, the crime can be handled in the community where it took place, by the community members most affected by it. This is the use that is the focus of this booklet.

Restorative justice can also be used in other ways. It can be used as part of a sentence when an accused pleads guilty or is found guilty by the court. Or it can be used at the end of a sentence in custody, before a young person returns to the community. When used in this way, it can help a victim and a community prepare for a young person's release back into the community. It can also prepare a young person to live again in the community and help them face the people they harmed.

If restorative justice is not part of the traditional justice system, who runs it?

Restorative justice is a community-based program. It is started by the community and run by the community. It exists in communities where local individuals and groups have gotten together to organize it.

Volunteers from the local community form a committee to set it up and run it. This committee decides how the process will work.

Although all restorative justice projects are basically the same, there are many variations. Each community chooses the variation that works best for it.

What cases go to restorative justice?

Restorative justice programs work in co-operation with the justice system. The local Crown attorney, police, and other professionals in the youth justice system help the restorative justice committee decide what kinds of cases will qualify. One community may accept cases of minor theft, mischief, and causing a disturbance, but not assaults. Another community may accept assaults, but no offences involving drugs.

Even if the kind of offence is eligible, an individual case will be chosen for restorative justice only if the police or Crown attorney think it is suitable. When deciding, some of the things they consider are:

- the young person's history,
- the seriousness of the crime,
- the circumstances,
- the attitudes of the victim and the young person, and
- the willingness of both the young person and the victim to participate.

For example, although a community might consider restorative justice suitable for youthful break and entry offences, a young person who breaks into a vacant cottage might not be accepted for restorative justice if the youth has a long history of criminal behaviour or used younger children to help commit the crime.

Only young people who admit they committed an offence can be sent to restorative justice.

Even if a case is suitable, a victim might not want the crime against them dealt with by restorative justice. Not every victim of every crime will want to participate or to have somebody else represent them in the restorative justice

process. A victim always has the right to say they want their case handled by the traditional justice system.

How does restorative justice work?

Restorative justice can work in different ways. In one frequently used model, volunteers from the community are trained as facilitators. When a case is sent to restorative justice, a facilitator organizes a meeting of the people who have been most affected by the crime.

They are brought together in a comfortable setting to talk about what happened. They each talk about their own experience of the crime. Then they all decide together what the young person will do to repair the harm.

Participants include the victim, the young person, their families and supporters, and any other people directly affected by the offence. Some restorative justice programs ask the arresting officer to participate. Members of the volunteer committee might also be included in the meeting to represent the affected community.

At the meeting the participants speak for themselves, not through lawyers and witnesses. That way nothing gets in the way of the story each person has to tell. Restorative justice emphasizes the harm that was done to real people and to the community, not the law that was broken.

The victim and the young person each tell how they felt at the time of the crime and how it continues to affect them. Their families and supporters then add what they can. The friends and family of a victim are often able to describe effects on the victim that the victim has been unaware of or unable to talk about. The young person's family can help the other participants know the young person better. By describing their feelings about the crime, the young person's family can also help the young person understand how their behaviour has hurt the people closest to them.

The meeting can be very emotional. Participants may feel nervous and vulnerable. However, the facilitator is there to make sure that:

- everyone feels safe,
- everyone is listened to respectfully,
- participants have enough opportunity to express themselves, and
- the meeting stays focused.

When the participants have fully expressed their feelings about the offence and how it has affected all of them, they decide together what the young person will do to repair the harm that has been done. When they agree on what should be done, their agreement is put in writing and signed by all the participants.

In signing the agreement, the young person promises to perform whatever

tasks the group has agreed to. The group assigns someone to make sure the young person completes the tasks.

What is the young person asked to do?

One of the goals of restorative justice is to have a young person who committed a crime sincerely apologize to their victim. A personal apology is a necessary step in taking responsibility for their actions. An apology also helps to repair the young person's relationship with the victim and the community.

The participants decide together what else the young person should do. The young person may agree to:

- return or pay for stolen property,
- repair or pay for damaged property,
- do services for their victim,
- do volunteer work in the community,
- donate to charity,
- attend skills workshops,
- agree not to associate with certain people,
- obey a curfew,
- perform any other activity that the group thinks is fair.

The group decides the outcome, but the facilitator makes sure that the outcome is fair and appropriate for the offence.

Whenever possible, the young person is required to do something clearly related to the offence they committed. Most young people can then understand that their punishment is fair. For example, they might have to help care for a garden they have damaged or take a part-time job to pay for property they have stolen. Assignments like these also take the needs of victims into consideration.

How does the process end?

When a young person does everything they agreed they would do, their case usually ends there. If police arranged a restorative justice meeting instead of charging the young person, they will usually decide that no charges are necessary. If a charge was laid before the restorative justice process began, the Crown will withdraw the charge. The young person will not receive a youth court record.

In more serious cases, the agreement reached in the meeting might become a part of a probation order or might result in a shorter sentence.

Young people who do not do what they promised are usually sent back to the traditional justice system. They have to go to court. If they plead guilty, they are sentenced by the judge. If they plead not guilty, they have a trial. Their admission to the restorative justice meeting that they committed the crime cannot be used in court. If found guilty, they are sentenced and will have a youth court record.

What does restorative justice offer victims of youth crime?

Victims get the chance to tell the young person who has committed the crime against them how that crime has affected their lives. They can express their feelings of anger, fear, hurt, and confusion directly to the person who hurt them. This can help them regain a feeling of self-respect and control.

Victims can also ask the young person questions that have been troubling them. Victims often feel the need to understand:

- why they were chosen,
- whether they did anything to encourage or provoke the offence, and
- if they could have done anything to prevent the offence.

Getting answers from the young person can ease a victim's mind.

Victims have the chance to see the young person who committed the crime against them as a real person with strengths and weaknesses instead of a faceless monster. They see the young person with their family and friends. Victims can judge for themselves whether the young person really regrets what they did. Meeting the young person often helps victims feel safe again.

Victims tend to get lost in the traditional justice process. The guilt or innocence of the accused is the focus of that process

and it is the court that makes the decisions. In contrast, restorative justice recognizes victims are the ones who are most harmed by crime. Restorative justice gives them a meaningful role in the process and a voice in what happens to the young person.

One of the goals of restorative justice is to have young people who have committed a crime repair the harm done to their victims. Victims help decide how this will be done.

What does restorative justice offer young people who have committed crimes?

Hearing their victim describe how they have been harmed can be a very emotional experience for young people going through restorative justice. They see that a real human being was hurt by their actions. For the first time they may understand the human cost of their behaviour.

Hearing from their own family members and from the victim's family can help young people see that their actions have hurt many people in ways that they did not think about or intend. This new awareness can be the first step toward more responsible behaviour.

Young people going through restorative justice have to talk to the other participants. They have to talk about why they did what they did, what they

were thinking when they did it, and how they now feel about what they did. This is usually difficult for them. But it can help them better understand themselves and their relationship with the rest of the community. It also helps the other participants better understand the young people.

Restorative justice gives young people who have committed a crime the chance to repair the harm they have done. This helps them see that making a mistake does not make them a bad person. They can make up for the mistake they made and then move on.

Young people help decide what they will do to repair the harm they have caused. They are therefore more likely to see the punishment as fair and to complete the required tasks. This helps them avoid the cycle many young people in conflict with the law get into when they re-offend by disobeying what the court or their probation officer orders them to do.

Young people are not rejected by the community because they have committed an offence. They are accepted as part of the community and participate with it in deciding what the outcome of the process should be. Then, if they do what they promise, they have no court record to limit their future opportunities.

What does restorative justice offer the community?

The community that was harmed by the crime can actively participate in the justice process. That way, the community can make sure that the result is fair, and can see the justice of it.

A community can be safer and more secure when young people who have committed crimes are given the chance to succeed in that community instead of being rejected by it.

How can I find it?

Restorative justice functions in many different ways and has many names. The 3 main models are:

1 ~~The Conferencing Model~~

Some names you might see under this model are:

group conferencing,
family conferencing,
real justice conferencing,
restorative justice conferencing,
youth justice committee, or
youth justice circle.

2 ~~The Sentencing Circle Model~~

Some of the names this model is called are:

sentencing circle,
healing circle, or
community justice circle.

3 The Mediation Model

This is also called:

victim-offender reconciliation, or
victim-offender mediation.

You can find out from your local police, Crown's office, youth court, or Victim Assistance Program whether there is a restorative justice project in your community and how to find out more about it.

Why use restorative justice for young people who have committed crimes?

Adolescents are at a stage in their lives when their attitudes and self-images are still being formed. The people they come into contact with and the way they are treated will affect how they see themselves and their place in the world for a very long time. What they learn will determine the kinds of adults they become.

What they learn in the youth justice system is often negative:

- Sometimes they learn how to avoid responsibility for their crimes by taking advantage of technicalities or other peoples' mistakes.

- Sometimes they are let off with only a “slap on the wrist” and other times they are treated more harshly than adult offenders. From this they learn that the justice system is arbitrary and unfair.
- They often learn that once they have been labelled “young offenders” they are seen as “bad” and many options become closed to them.
- They often learn to fit in with the other youth in the justice system or the criminal adults they meet as they go through the system.

These are not lessons that are likely to produce responsible and law-abiding citizens.

Restorative justice tries to teach different lessons. It aims to connect actions to consequences. It is designed to help young people understand the full impact of their behaviour on everyone affected by it. It asks them to take responsibility for their actions, and to try to repair the harm they have done. It keeps them in the community, and treats them as full members of that community.

The young people who commit crimes today are going to be with us for a long time. We can punish them and even sentence them to custody. But they will soon be living in the community again. When possible, it is better to help them become responsible members of the community than to punish, label, and isolate them.

This pamphlet is part of a series produced by Community Legal Education Ontario (CLEO). CLEO has publications on other areas of law as well. Most are free. For an order form call **416-408-4420** or visit our Web site at **<www.cleo.on.ca>**.

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