

RESTORATIVE JUSTICE

A Different
Option For
Victims Of
Youth Crime

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 youth justice system professionals

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 will 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 may not be accepted for restorative justice if the youth has a long history of criminal behaviour or they 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 process.

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 police 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 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.

Before the meeting, victims are often unwilling to participate. Some are afraid of losing control or being too emotional. Some don't want to appear weak in front of the person who hurt them. Those who do decide to participate, however, usually find that the meetings are harder for the young people than for their victims. Being forced to face the full impact of their criminal actions is usually upsetting for young people. Facing their victims and the community they have harmed is often more frightening than facing a judge and the possibility of time in custody.

What do the participants do?

1 Discuss the offence and its impact

One of the purposes of the meeting is to allow the victim to speak directly to the young person who committed the crime against them. A victim often feels better when they can tell the person who hurt them how the crime has upset their life. Hearing what their victim has to say can also help the young person understand the emotional impact of what they have done.

A victim is encouraged to bring friends and family to the meeting. These supporters can give the victim moral support when they face the person responsible for the crime.

Friends and family are also often able to describe effects on the victim that the victim has been unaware of or unable to talk about. This, too, can help the young person understand the full impact of their offence.

The young person's family also participates and 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.

2 ~~Ask and answer~~ questions about the offence

A victim often feels the need to know:

- 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.

They can ask these questions at their meeting. Getting answers directly from the young person can ease a victim's mind.

3 ~~Decide how to repair the harm~~

When the participants have fully explored 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 into 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 their 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 it 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 the 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 at the meeting might become 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 have a youth court record.

What does restorative justice offer victims of youth crime?

Victims get the chance to ask questions and tell the young person who 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 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 that the 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.

Why is the process called restorative?

Restorative justice can begin to repair the relationships between the young person who committed the crime and the people who were harmed by it.

When the meeting and assignments are over, the victim and the young person may choose not to have a personal relationship. But any contact they do have will be eased by the understanding they developed in the restorative justice process.

The relationship between the young person and the community is also harmed by the young person's behaviour. Perhaps the young person never felt part of, or accepted by, the community. In restorative justice, the community has a chance to show the young person that they belong. In turn, the young person can start to behave as a responsible community member.

Restorative justice usually requires the young person to repair the specific harm they have done. This helps the victim but it also helps the young

person see that making a mistake does not make them a bad person. They can make up for the mistake and then move on. The process can restore or start to build positive feelings of confidence and self-esteem in the participants. The young person is not isolated from the community or given a criminal record. The young person has a chance to fix their mistakes and develop new relationships with the community.

How can I find it?

Restorative justice functions in 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 the Victim Assistance Program or Victim Witness Assistance Program in your area whether there is a restorative justice project in your community. You can also ask your local police, Crown's office, or youth court.

If there is a project in your area and you are a victim of a youth crime, you can let the police or the Crown attorney know that you might be interested in having your case decided in this way if the circumstances are suitable.

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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