

## **Information on Restorative Justice for Adult Court Stakeholders**

Prepared by Nina Balsam, J.D.  
Chair, Missouri Restorative Justice Coalition  
Director of Restorative Justice  
Center for Women in Transition  
7529 South Broadway  
St. Louis, MO 63111  
314.435.6537  
[nina@cwitstl.org](mailto:nina@cwitstl.org)  
[www.cwitstl.org](http://www.cwitstl.org)

### What is Restorative Justice

Restorative Justice is a set of principles that guide the justice process. These principles are put into practice through the use of various models. Restorative Justice has been defined as "...a process to involve, to the extent possible those who have a stake in a specific offences and to collectively identify and address harms, needs and obligations..."<sup>1</sup> The focus in Restorative Justice, as opposed to Retributive Justice, is on identifying and healing the harm to the victim, while also holding the offender accountable and providing for community involvement. Victims are only involved in these processes voluntarily.

### Models of Restorative Justice in the Criminal Justice Process

One of the most well-known and prevalent restorative justice models used in the Criminal Justice process is Victim/Offender Dialogue ("VOD"), where victims and offenders engage in facilitated discussion about the harm to the victim and how to repair the harm. The dialogue can occur at any point in the criminal justice process; pre-charge, pre-trial, post-adjudication but pre-disposition, disposition or sentencing. It can also occur during the probationary or parole stage, as well as when the offender is incarcerated. Another process used in the Adult Court context is Circle Sentencing, where victims and offenders and their family and supporters meet with members of the Criminal Justice System to identify the harm to the victim, decide how that harm will be addressed and how the offender will be held accountable.

### Utilization of RJ for Adult Courts in the United States

Approximately 325 programs in the United States facilitate VODs. Some programs handle only Juvenile cases, some handle only Adult cases, and some handle both. Some of the programs are housed in, and even administered by, prosecutors. States with programs that handle cases from Adult Courts include California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New York, Ohio, Oregon, Tennessee, Texas, Washington, and Wisconsin.<sup>2</sup> The state with the most programs handling adult cases is Indiana, which has six programs in various parts of the state that handled a total of 564 cases in 1999.<sup>3</sup> However, the state in which the most adult VOD cases were facilitated is Iowa, with four programs handling a total of 1,335 cases in 1999.<sup>4</sup> The reason for this is that in all cases from Polk Co., Iowa in Des Moines, the sentence includes a provision for the offender to engage in VOD.<sup>5</sup> Because the victim must be willing to participate, the numbers are limited only by victim participation.

---

<sup>1</sup> Howard Zehr, The Little Book of Restorative Justice (2002).

<sup>2</sup> Marc Umbreit, Jean Greenwood, Directory of Victim-Offender Mediation Programs in the United States (April 2000), available at [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/96521-dir\\_victim-offender/welcome.html](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/96521-dir_victim-offender/welcome.html)

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Interview with Fred Gay, Asst. Polk Co. Attorney, October 2006.

## Outcomes with Restorative Justice

Studies have consistently shown that roughly 90% of victims who participate in Restorative Justice processes are more satisfied with the process and outcome.<sup>6</sup> In comparison to victims who proceed through the regular criminal justice process, these victims perceive the Criminal Justice System as more fair and experience greater healing.<sup>7</sup> The reasons therefore are that victims are the focus of the process and are able to get their questions answered, to confront the offender with the harm caused, and to obtain the restitution they need to make them whole. Studies consistently show higher compliance with restitution agreements from offenders who have participated in VOD (e.g. 81% compared to 57% in the control group)<sup>8</sup>

Studies also consistently show that offenders who have participated in VOD have lower re-offense rates and, when they do engage in criminal activity, a less serious offense is involved.<sup>9</sup> While the majority of restorative justice research has been done in the juvenile arena, promising outcomes also exist for adult offenders:

- Wisconsin has three prosecutor based restorative justice initiatives in addition to a number of community-based restorative justice programs. Evaluation of cases in Milwaukee County's Community Conferencing program from August 2002 through July 2003 showed that 4.3 % of 47 offenders who participated were charged with another crime compared to 13.5 % of the 52 nonparticipating offenders. For 2002, 8.8 % of participating offenders with no prior convictions were rearrested for or charged with another criminal offense within one year of participation, compared to 27.6 % of non participating offenders in the control group;<sup>10</sup>
- A 2005 study of Bethlehem, Pennsylvania's Restorative Justice Policing Experiment showed that 10% of violent offenders who participated in a restorative conferences re-offended, compared to 36% of violent offenders who did not participate;<sup>11</sup>
- A 2002 study of restorative justice conferencing in Australia produced a reduction of 15 to 20% in re-offending across different offense type and regardless of gender, criminal history, age and ethnicity of offenders;<sup>12</sup>
- A 2001 study from West Yorkshire, England found 44% of those participating in VOD were reconvicted within two years compared with 56% of the control group. These statistics were based on VOD involving the most serious offenders with the greatest amount of victim involvement;<sup>13</sup>
- In a 2001 study in Austria, first time offender participating in restorative justice process re-offended less than half the amount of the control group. Those who were repeat offenders re-offended at a rate of two-thirds of the control group's re-offense rate;<sup>14</sup>
- In a 2001 study in Germany, research showed that with successful mediation cases, the average rate of re-offending was two thirds that of the control group;<sup>15</sup>
- A study of sentencing circles in Canada showed an 80% decrease in recidivism for those adult and juvenile offenders who participated in the circles.<sup>16</sup>

---

<sup>6</sup> Marc Umbreit, Robert Coates, Betty Voss, The Impact of Restorative Conferencing: A Review of 63 Empirical Studies in 5 Countries, Center for Restorative Justice and Peacemaking, 2001, at 3.

<sup>7</sup> Mark Umbreit, Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice. 53 Federal Probation 52 (1989).

<sup>8</sup> Umbreit, Coates, Voss, *supra* note 6, page 9.

<sup>9</sup> Umbreit, Coates, Voss, *supra* note 6, page 12.

<sup>10</sup> An Evaluation: Restorative Justice Programs Milwaukee and Outagamie Counties, Legislative Audit Bureau, State of Wisconsin, June 2004.

<sup>11</sup> Restorative Justice Consortium, The Positive Effect of Restorative Processes on Re-offending, London, March 2006 at 3(citing Hayes, "Assessing Re-offending in Restorative Justice Conferences,"2005).

<sup>12</sup> Restorative Justice Consortium, *supra* note 11, at 5 (citing Luke & Lind, "Reducing Juvenile Crime: Conferencing vs. Court," 2002).

<sup>13</sup> Restorative Justice Consortium, *supra* note 11, at 7 (citing Miers, et al, "An Exploratory Evaluation of Restorative Justice Schemes," 2001).

<sup>14</sup> Restorative Justice Consortium, *supra* note 11, at 7 (citing Miers, "An International Review of Restorative Justice," 2001).

<sup>15</sup> *Id.*

Use of Restorative Justice practices also lead to cost savings.

- A Missouri study found that it costs between \$232 and \$338 to provide VOD to a juvenile;<sup>17</sup>
- Genesee County in New York has been running a restorative justice program since 1981. Based on data compiled at the end of December 2004, the County estimates it saved over four million dollars by diverting offenders to “community service sentencing” versus placing them in jail;<sup>18</sup>
- In Henderson County, S.C., trials were reduced with the adoption of VOD by two-thirds, resulting in great cost savings;<sup>19</sup>
- In Cobb County, GA, the processing time for VOD cases was one-third of that required for trials;<sup>20</sup>
- In an Indiana-Ohio study, by comparing consequences for 73 youths and adults going through VOD programs with those of matched samples of those processed in the traditional manner, VOD offenders spent less time incarcerated and when they were incarcerated, they served county jail time instead of state prison time, resulting in substantial cost savings;<sup>21</sup>
- In a cost-benefit study of an adult felony drug court, researchers found that though the cost of probation for drug court participants was about \$1,400 more than for those who were not, there was a net savings and other financial benefits to the community that far outweighed the costs..<sup>22</sup>

### Missouri Statutes Authorizing Use of Restorative Justice by the Department of Corrections

Five Missouri statutes authorize the use of Restorative Justice. Two of those relate to the authority granted to the Department of Corrections. The first authorizes the Department to “establish a program of restorative justice within the departments’ correctional centers...”<sup>23</sup>. The second mandates the Department to administer a community corrections program to encourage the establishment of local sentencing alternatives for offenders, including restorative justice alternatives.<sup>24</sup> The statute states: “The program shall be designed implement and operate community-based restorative justice projects...”<sup>25</sup>

### Missouri Statutes Authorizing Use of Restorative Justice by Court

Three other Missouri statutes relate to the authority of the court to order Restorative Justice Practices in sentencing offenders. The first statute provides that at the circuit judge’s request, the Board of Probation and Parole will appoint a probation or parole officer to do a pre-sentence investigation in all felony and certain misdemeanor cases, and the report shall include alternatives to incarceration, including restorative justice alternatives.<sup>26</sup> A second statute provides for sentencing courts to sentence offenders and to “...order restorative justice methods when applicable”<sup>27</sup> A third statute provides “...the court may order such conditions as the court believes will serve to compensate the victim, any dependent of the victim....Such conditions may include restorative justice methods pursuant to section 217.777, RSMo, or any other method that the court finds just or

---

<sup>16</sup> Restorative Justice Consortium, *supra* note 11, at 10 (citing Mathews & Larkin, Guide to Community-Based Alternative for Juvenile Offenders, 1999)

<sup>17</sup> Joanne Katz, A DECADE OF RESTORATIVE JUSTICE IN MISSOURI’S JUVENILE COURTS: ACCOUNTABILITY, RESTITUTION AND TRANSFORMATION 46 (Missouri Department of Public Safety, 2006).

<sup>18</sup> Genesee Justice Project Report, <http://www.co.genesee.ny.us/frameset.html?/dpt/communityservices/progress.html&1> (last visited October 1, 2006).

<sup>19</sup> Umbreit, Coates, and Voss, *supra* note 6, at 16.

<sup>20</sup> *Id.*

<sup>21</sup> Roberts Coates & J. Gehm, Victim Meets Offender: An Evaluation of Victim Offender Reconciliation Programs, Valparaiso, IN: PACT Institute of Justice, (1985).

<sup>22</sup> A Cost-Benefit Analysis of the St. Louis City Adult Felony Drug Court, Institute of Applied Research. 2004. Link to study can be found at [www.mo.gov.osca](http://www.mo.gov.osca)

<sup>23</sup> MO. REV. STAT. § 217.440 (2006)

<sup>24</sup> MO. REV. STAT. § 217.767 (2006)

<sup>25</sup> MO. REV. STAT. § 217.777.2 (2006)

<sup>26</sup> MO. REV. STAT. § 217.770 (2006)

<sup>27</sup> MO. REV. STAT. § 558.019.7 (2006)

appropriate including, but not limited to..." restitution to the victims; the performance of a designated amount of free work for a public or charitable purpose; offender treatment programs; and community-based nonresidential programs.<sup>28</sup>

In addition to these statutes, a bill has been introduced in the Missouri General Assembly this legislative session that authorizes the Law Enforcement Restitution Fund to be used for restorative justice, and authorizes county commissions and sheriffs to develop restorative justice programs.<sup>29</sup>

#### Prosecutorial Discretion to Recommend Restorative Justice Disposition

The Missouri statutes provide for prosecutors to have complete discretion in dismissal of complaints, information, indictments in whole or in part, and in re-filing.<sup>30</sup> A Missouri Supreme Court Rule also permits the prosecutor to work with the defendant's attorney to reach an agreement. So long as the defendant enters a guilty plea to the charged ordinance violation or a lesser or related charge, the prosecutor can either: "(A) Dismiss other charges; or (B) Make a recommendation, or agree not to oppose the defendant's request for a particular sentence with the understanding that such recommendation or request shall not be binding on the judge; or (C) Agree that a specific sentence is the appropriate disposition of the case; or (D) Make a recommendation for, or agree on, another appropriate disposition of the case."<sup>31</sup> Given this statute and rule, and the fact that the sentencing judge is able to order restorative justice methods when applicable, presumably the prosecutor should be able to recommend restorative justice methods as an appropriate disposition.

---

<sup>28</sup> MO. REV. STAT. § 559.021.2 (2006)

<sup>29</sup> H.B. 207, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

<sup>30</sup> MO. REV. STAT. § 56.087 (2006)

<sup>31</sup> MO. SUP. CT. R. 37.58.