



FINAL DRAFT

Restorative Justice Practices Definitions and Models

Adopted September 19, 2014

Definitions:

Restorative Justice Practices *as legislated and (enhanced by State RJ Council 11/8/13)*

HB13-1254 SECTION 1. In Colorado Revised Statutes, 18-1-901, amend (3) as follows: 18-1-901.

Definitions. (3) (o.5) "Restorative justice practices" means practices that emphasize repairing the harm caused to victims and the community by offenses. Restorative justice practices include victim-offender conferences, family group conferences, circles, community conferences, and other similar victim-centered practices. Restorative justice practices are facilitated meetings (*facilitated by trained facilitators adhering to the Standards*) attended voluntarily by the victim or victim's representatives, the victim's supporters, the offender, and the offender's supporters and may include community members (and education stakeholders). By engaging the parties to the offense in voluntary dialogue, restorative justice practices provide an opportunity for the offender to accept responsibility for the harm caused to the victim and community, promote victim healing, and enable the participants to agree on consequences to repair the harm, to the extent possible, including but not limited to apologies, (meaningful) community service, reparation, restoration, and counseling. Restorative justice practices may be used in addition to any other conditions, consequences, or sentence imposed by the court. (*or may be used as a pre-file option by law enforcement or their approved partners.*)

(Restorative Discipline and Restorative Practices in Schools are included in the Colorado Restorative Justice Council's purview of Restorative Justice Practices however these are not covered by this statute.)

Restorative justice and restorative practices in schools: a philosophical approach to wrongdoing that focuses on the needs of the victims and the offenders, as well as the involved community. It is based on a [theory of justice](#) that considers crime and wrongdoing to be an offense against relationships, rather than the state or school. Restorative approaches involve working **WITH** the participants not prescribing or directing a response to wrongdoing. Restorative justice practices are not prescriptive and require training and support for facilitators so there may be flexibility and creativity within the framework. Yet fidelity to restorative justice principles must be adhered to regardless of the model deployed. These practices foster dialogue between victim and offender and often engage affected community members. Restorative justice practices show high rates of victim satisfaction and offender accountability. There are a wide variety of models within the scope of restorative justice practices. However, they all rest in a set of principles that are fundamental to any restorative justice practice.

See 5 Rs for the principles restorative justice practices defined.



Restorative Justice (RJ):

Rooted in the values and principles of restorative justice practices (see 5 R's document)

Contact is made with victims and offenders of a crime

Victims choose to be present, represented by a surrogate or other means and may provide an impact statement

Invite voluntary participation from directly impacted parties

All parties are willing for the incident to be handled restoratively and be represented or present.

Community is represented when appropriate

Facilitated by trained facilitators adhering to the Colorado Facilitator Code of Conduct and Standards of Practice

Be conducted in circles with no tables/barriers to the extent possible

Focus is repair of harm

Models and Processes:

(The restorative justice processes listed below do not comprise an exhaustive list of available models.)

Conference- (Community Group, Family Group, Victim/Offender, Community)

Circle- (Restorative, Mutual Responsibility, Peace, Reconciliation, *ReStore, *Rethinking Drinking and Drugs) *When victims and community are represented these would be considered RJ

Dialogue- (High Risk Victim Offender, Victim/Offender, Restorative Justice, Victim/Offender Mediation, Reconciliation)

Restorative Practices:

Restorative Practices are not restorative justice but should be aligned in the following ways:

Rooted in the values and principles of restorative justice practices (see 5 R's document)

These are restorative in nature but may not involve participation from all parties directly impacted by an incident.

May be type of crime or incident specific

Representatives may serve in expressing the voice of at least one party. (Either harmed party or person responsible for the harm)

Participation should be voluntary although may be a part of sentencing, disciplinary action or other procedural requirements

Facilitated by trained facilitators adhering to the Colorado Facilitator Code of Conduct and Standards of Practice

Be conducted in circles with no tables/barriers to the extent possible

These models range from prevention to intervention.

Models and Processes:

(The restorative practices listed below do not comprise an exhaustive list of available models.)

Circle- (Connection, Talking, Sentencing, ReEntry, Transition, Reintegration, Circle of Accountability and Support (COSA), Family Group Decision Making, Healing, Peacekeeper, Peacemaking,)

Panel/Board- (Community Justice Committee, Community Impact, Victim Impact, Impact of Crime, Restorative, Community Accountability,)



Crime Specific- (ReStore, ReThinking Drinking (And Drugs),

Dialogue- (Restorative Agreement, Restorative Conversation, Restorative Discipline)

Class- (Decision Making and other classes that educate participants on the 5 Rs and impact of harm with responsibility to repair that harm)

Pre-Conference/Circle Planning: Planning activities leading to a structured meeting that may include offenders, victims, both parties' families and friends, and/or other community members in which a facilitator meets with participating parties to explain the restorative process, understand what happened from each person's perspective and help people begin to think about how harm may best be repaired. Planning activities can include pre-conference/pre-circle meetings, interviews, phone conversations or other coordination activities.

This is an essential step for most restorative justice processes.

Restorative Repairs- These are potential agreement/contract items that are often included in restorative justice practices. They are neither restorative justice nor a restorative practice in and of themselves.

The possibilities for restorative repairs go well beyond this list. The repair of harm should be determined by a group that includes harmed parties, people responsible for harm and community representatives. In some restorative practices repairs may be categorically pre-determined to create efficiencies of process. In all cases, repairs should be specific to the incident and the person responsible, build on their strengths, and repair harm. If the repairs are punitive they are not restorative.

There include but are not limited to:

Restitution

Apologies

Meaningful/Restorative Community Service

Educational Opportunities

Confidentiality

Some restorative justice practices require participants to sign a confidentiality agreement. These agreements usually state that anything discussed in the conference will not be disclosed to non-participants. The rationale for confidentiality is that it promotes open and honest communication during the process. Facilitators may take notes in a process in which case it is recommended that those notes be destroyed post-process to protect the confidentiality of the participants.

Some process and model definitions:

Conference

A conference is a structured meeting between offenders, victims and both parties' select support people like family and friends and may involve affected community members, in which they deal address the harm of the crime and decide how best to repair it. Neither counseling nor a mediation process, conferencing is a victim-sensitive, straightforward problem-solving method that demonstrates how citizens can resolve their own problems when provided with a constructive forum to do so. (O'Connell, Wachtel, & Wachtel, 1999).



Conferences provide victims and others with an opportunity to confront the offender, express their feelings, ask questions and have a say in the outcome. Offenders hear firsthand how their behavior has affected people. Conferences hold offenders accountable while providing them with an opportunity to discard the "offender" label and be reintegrated into their community, school or workplace (Morris and Maxwell, 2001).

Participation in conferences is voluntary. An offender qualifies for a restorative process by taking responsibility for their part of an incident. After it is determined that a conference is appropriate and offenders and victims have agreed to attend, the conference facilitators invite others affected by the incident—the family and friends of victims and offenders and community members.

A restorative conference can be used in lieu of traditional disciplinary or justice processes, or where that is not appropriate, as a supplement to those processes.

The conference facilitator follows a set format or guide and keeps the conference on focus, but is not an active participant. In the conference the facilitator asks the offenders to tell what they did and what they were thinking about when they did it. The facilitator then asks victims and their family members and friends to tell about the incident from their perspective and how it affected them. The offenders' family and friends are asked to do the same.

Finally the victim is asked what he or she would like to repair the harm done by this incident. Everyone else at the conference has the opportunity to contribute ideas for repair of harm and learning. When agreement is reached, a simple contract is written and signed (O'Connell, Wachtel, & Wachtel, 1999).

The offender is then held accountable to completing the contract within the agreed upon time frame.

Dialogue

Dialogue, is usually a face-to-face meeting, between the victim of a crime and the person who committed that crime with the presence of a trained facilitator. In this restorative process, the facilitator ensures the safety of the dialog by setting ground rules for the process and holding all parties accountable to those ground rules. The basic dialog between the offender and victim may explore what happened, who was affected and how and gives voice to the most directly involved parties. These restorative processes are best done when victim initiated. (see 20 Essential Points doc)

Dialogue is only one option for people to respond to victimization or offense. This is an individual journey for the victim and the offender. Their reasons for dialogue are personal. The victims' and offenders' needs, expectations, level of support, level of honesty and openness determine what can be accomplished during the dialogue.

Victims have the opportunity to:

- Directly and constructively express to offenders current and repressed feelings such as fear, anger, anxiety, loss, pain, helplessness, hopelessness...
- Ask questions and receive answers and insights, which only offenders can provide.
- Have their voices be heard

Offenders have the opportunity to:

- Face the full human impact of their crime by hearing first-hand the depth of trauma experienced by the victim
- Express sincere remorse related to their offense and resulting impact
- Answer questions posed by the victim
- Reach greater accountability by obligating themselves to their victims and communities
- Restore to whatever extent possible, what has been wronged within the victims' physical, emotional, spiritual, financial and social dimensions of their everyday life.
- Offenders participating in dialogue will not have any benefit for the offender's status within the prison system.
 - The process is mutually voluntary. It can be stopped by either party or when deemed appropriate by the facilitator.
 - Confidentiality – mutual agreement of who can be told
- The average case takes 6 months from the initial request until the day of dialogue
- Two volunteers co-facilitate the dialogue. The role of the facilitator is to help the victim and offender through their dialogue process.
- Preparation generally consists in general of at least three individual meetings between the victim and facilitators and the offender and facilitators before the day of dialogue with the victim, offender and facilitators.
- The process involves preparing each party and managing expectations of the dialogue. As the process advances there are four phases that participants walk through.

High Risk Victim Offender Dialogue

In addition to the basic definition of Dialogue HRVOD has established protocols and procedures to ensure a safe, quality process for the dialogue. These may take place in prisons, detention centers or other locations where safety is potentially of concern.

Circle:

A restorative circle is a versatile restorative justice practice that fosters cooperation and responsibility in group situations with mutual responsibilities identified. A restorative circle often doesn't specify victims and offenders.

The circle is a process that brings together individuals who wish to engage in conflict resolution, or other activities in which honest communications, relationship development, and community building are core desired outcomes. Circles offer an alternative to contemporary meeting processes that often rely on hierarchy, win-lose positioning, and victim/rescuer approaches to relationships and problem solving (Roca, Inc.).

In a restorative circle, one person speaks at a time: The opportunity to speak moves around the circle, and people wait to speak until the person before them has finished speaking. The chance to speak continues moving around the circle as many times as necessary, until everyone has said what they need to say. A "talking piece" is often used to facilitate this process: Whoever is holding the talking piece has the "floor."



Both the restorative circle and the talking piece have roots in ancient and indigenous practices (Mirsky, 2004, April & May; Roca, Inc.).

Each person is encouraged to take responsibility for his or her part in what happened and co-create what will happen next. (Note: The process should not imply that the victim has responsibility in the crime committed against them. Victim blaming must be avoided at all costs).

Boards/Panels: A meeting where victim representatives and/or members of the community sit on a panel and speak to offenders about the impacts of crime on the community. Boards/Panels are typically composed of a small group of citizens, prepared for this function by intensive training, who conduct public, face-to-face meetings with offenders who have been sentenced by the court to participate in the process or who have been referred by police officers on a pre-charge basis or as part of a peripheral, extra-judicial process.

Victims of the offender are invited to participate in the process by meeting with the board and offender, or by submitting a written statement that is shared with the offender and the board. During a meeting, board members discuss with the offender, the nature of the offense, impact of the behavior, and negative consequences. Then board members discuss a set of actions with the offender, until they reach agreement on the specific actions the offender will take within a given time period to make reparation for the crime.

Subsequently, the offender must document his or her progress in fulfilling the terms of the agreement. After the stipulated period of time has passed, the board submits a report to the court on the offender's compliance or a written documentation to the referring police officer, with the agreed upon sanctions. At this point, the board's involvement with the offender is ended.

Class: A restorative class is based in and teaches the values and principles of restorative justice practices in order for participants to view their offense through a restorative lens and make better choices moving forward.

SOME SPECIFIC TYPES OF PROCESSES:

Sentencing Circles-

Sentencing circles use traditional circle ritual and structure to involve the victim, victim supporters, the offender, offender supporters, judge and court personnel, prosecutor, defense counsel, police, and all interested community members. Within the circle, people can speak from the heart in a shared search for understanding of the event, and together identify the steps necessary to assist in healing all affected parties and prevent future crimes.

Sentencing circles typically involve a multi-step procedure that includes: (1) application by the offender to participate in the circle process; (2) a healing circle for the victim; (3) a healing circle for the offender; (4) a sentencing circle to develop consensus on the elements of a sentencing plan; and (5) follow-up circles to monitor the progress of the offender.

Connection Circles -

Connection Circles are a relationship building process that can be used at any point along the spectrum of restorative practices. They are used to promote understanding, share experiences, build relationship and establish circle practice.

The role of the Connection Circle leader is:

- To introduce the connection circle and talking piece
- To identify and uphold the ground rules
- To ask the question that the round is based upon
- To listen actively while people are speaking and model the ground rules
- To close the circle and thank everyone for their participation

Restorative ReEntry Circles/Transition Circles-

Restorative ReEntry Circles/Transition Circles are provided for imprisoned individuals who are returning to a community. The person returning to life outside of incarceration will meet with community members, their families and friends in a group process to address their needs for a successful transition back into the community. One of the needs addressed is the need for reconciliation. A *Modified Restorative Circle* has also been developed and used in Hawaii for individual incarcerated people whose loved ones are unable or unwilling to attend full Restorative Reentry Circles. Instead other imprisoned friends sit in the Circle and are supporters in developing a transition plan that includes how the incarcerated individual having the Circle may reconcile with those harmed by the crime and/or imprisonment.

Circles of Support and Accountability-

Circles of Support and Accountability (CoSA) originated as a project of the "Welcome In," (a Mennonite church in Hamilton, Ontario). This innovation is now an internationally regarded, evidence-based practice with a demonstrated capacity to enhance the safe integration of otherwise high-risk sex offenders with their community. In Canada, some sex offenders are released to the community after serving their entire sentence.

These offenders have been judged too dangerous to be released on any form of conditional release (e.g. a parole certificate), and have therefore been "detained." Upon further reconviction (and therefore, further victimization), many of these offenders would likely be designated as a "Dangerous Offender," under current Canadian law.

Prior to 1994 many of these offenders were released without any form of meaningful community-based support or accountability network apart from police surveillance. Since 1994, CoSA has assisted with the integration of well over 120 such offenders by offering them support while holding them accountable. Research now indicates that surrounding a 'core member' with between 5 and 7 carefully selected and trained volunteer circle members significantly reduce sexual re-offence by upwards of 50%. Further, a



significant "harm reduction" effect has also been noted in those cases where sexual re-offence has occurred. Offences were less invasive and less brutal in nature than previous offences. CoSA projects now exist in every Canadian province and every major urban centre. CoSA projects are also operational in several U.S. states (California, Oregon, Ohio, Colorado, Vermont) as well as in the Thames Valley region of the United Kingdom.

Rethinking Drinking

This program uses a restorative circle approach to teach young offenders accountability, to develop an awareness of the impact their behavior has on their families and the community, and to take responsibility for their actions. In several jurisdictions, this program is offered as an alternative to a first minor in possession charge. The circle, which includes two 3-hour sessions, must be attended by the juvenile and two parents, guardians, or supportive adults. There are typically 4-5 youth/adult combinations in the circle. Additionally, there are 1-2 community member representatives in the circle to help raise awareness of the impact underage possession has on the community as a whole. Circles focus on raising awareness of the impact of alcohol or other substances on the developing brain, helping youth to identify where they could have made different decisions rather than drinking, and, ultimately, on the impact that their actions had on self, family and community. Following the circle sessions, each youth will have five weeks to complete a personalized action plan to further address the impact their decisions have on self, family, and community.

ReStore

A restorative justice group process designed to address the harm caused by shoplifting theft in a manner that:

- does not create unwanted pressure on victims
- supports education and accountability for offenders
- includes a strong community voice in defining the harm caused by shoplifting theft and the path forward to better choices
- allows RJ programs to manage large numbers of shoplifting cases

The RESTORE Program includes an intake and pre-session accountability interview with each offender, which includes referrals to community resources when appropriate. The offender and parent then attend (together) a 4-hour RESTORE session. The session includes: a victim/community impact panel, an RJ conference, and a supported conversation about the contract to repair the harm. The offender and parent then make choices in the accountability contract and sign up to return for a completion interview 1-2 months later. Each RJ circle should have at minimum: 2-4 offenders and parents (co-defendants are together), 1 trained RJ facilitator, 1 trained merchant representative, 1 trained RJ community member and 1 peer representative.

The RESTORE accountability contract provides a menu of choices for repairing the harm in the categories of giving back to the victim and community and giving back to the self and family. While there is a menu, the offender and family can make choices and/or create their own options in all areas of the contract. Circle participants give suggestions and input on the contract, but the offender and parent make the final choice. The RESTORE completion interview is held individually with each offender and support people by a team



of volunteers. When the offender completes successfully, the interview is a way for community to acknowledge success in making things right with the community. He/she is then encouraged to put the incident behind and move forward in life.

Family Group Decision Making

FGDM is a family centered process that recognizes the importance of involving family groups in decision making about children who need protection or care. FGDM can be initiated by child welfare agencies whenever a critical decision about a child is required. In FGDM processes, a trained coordinator who is independent of the case brings together the family group and members. The processes position the family group to lead decision making and the agency agrees to support family group plans that adequately address the agency's concerns for child safety, wellbeing, and permanency.

Restorative Discipline

An approach to school discipline that focuses primarily on relationships and secondarily on rules, gives voice to the person(s) harmed, gives voice to the person(s) who caused harm, engages in collaborative problem solving, enhances responsibility, empowers change and growth, and plans for restoration. Restorative Discipline models include: whole school training, reintegration meetings following suspensions or expulsions, class meetings, circles, conferencing, truancy mediation, and some bullying prevention approaches.

Restorative Community Service

Restorative Community Service is service done by the offender that is restorative in nature and intent. Restorative Community Service includes the offender in choosing what the repair/activity will be. It is not assigned without their consent. This service is typically service done for or at the request of the victim or another circle participant who was harmed by the incident and/or is community service that uses and strengthens the assets of the offender and is intended to benefit him/her in addition to benefitting the community.