

Implementing Restorative Justice in Texas' Juvenile Justice System

RESTORATIVE JUSTICE — WHAT IS IT?

In Texas, when a youth inflicts harm on others, the response is often driven by law enforcement and the larger criminal justice system: arrest, then place under supervision or warehouse in a corrections facility.

Restorative justice provides those harmed, those who inflicted the harm, and community members the opportunity to share their perspectives about what occurred, voice what they consider to be “justice” in their unique situation, and work together toward a resolution.²

The founding principle of restorative justice and its process is to repair the harm done and make whole those who have experienced the harm, hold the one inflicting the harm accountable, and mitigate the possibility of the behavior reoccurring.³ Through the reparation of these relationships, restorative justice aims to help the person responsible and the person harmed live successfully in their community.⁴

Restorative Justice Core Values ¹	
Voluntary Participation	Personal Accountability
Transformation	Healing
Inclusiveness	Fairness
Empowerment	Communication
Empathy	Honesty
Respect	Problem-Solving

RESTORATIVE JUSTICE — THE BENEFITS

Restorative justice benefits everyone involved by allowing all participants to take control of their lives.⁵

Benefits for people harmed: Research shows that restorative justice practices help those harmed to:

- understand what happened and experience less fear of revictimization;
- undergo a positive healing process through interaction with the person(s) responsible for their fear; and
- isolate the behavior of the person responsible from the person,⁶ thereby enabling them to feel safer in the community.

“The thing I like the very most about [restorative justice] is it addresses the harm without doing more harm.”

- Linda White

Linda White’s adult daughter was raped and murdered in 1986 by two teenage boys. Both were tried as adults and sentenced to over 50 years in adult prison for their crimes. Linda found healing in the process of meeting with one of the men responsible for her daughter’s death. She has since gone on to teach others about this form of intervention to foster healing.

Benefits for youth responsible for the harm: Restorative justice allows those who inflict harm to explore and address the root causes of their behavior.⁷ Identifying and understanding the reasons behind one’s actions is essential to rehabilitation and allows a person to focus on these issues and make real and lasting change.

Additionally, restorative justice practices can increase individuals' ability to be empathic, as they learn to consider how their actions impact others.⁸

Self-reflection and acknowledgment of another's feelings result in a higher rate of compliance with restitution agreements,¹¹ which require all restorative justice participants to agree to terms that facilitate a satisfactory resolution to the harm caused. Completing such a program often leads to a decrease in harmful behaviors,¹² encourages healthy relationships, and improves prosocial skills and self-esteem, in turn bettering interactions with others, such as conflict resolution.¹³

Benefits for the community: Restorative justice strategies for youth have shown to be efficient and cost-effective when compared to the costs incurred by taxpayers when a youth is placed in the juvenile justice system.¹⁴

Additionally, such strategies produce lower recidivism rates than alternative approaches, leading to greater public safety.¹⁵

CURRENT POLICY IMPLICATIONS

Texas laws and policies aimed at addressing youth misconduct often fail to address the underlying causes; instead, they isolate these youth from others rather than allowing them to work through their issues within their community and alongside their support systems.¹⁶ The negative impact of this approach is widespread.

Implications for healing: Excluding the people who are harmed from decisions on how to administer justice may leave some of them feeling disempowered¹⁷ and can lead to their needs not being considered, which negatively impacts their recovery process.¹⁸

“Tough on crime feels good at the time, but it is actually counterproductive.”
- Linda White

Implications for the juvenile justice system — and Texas taxpayers: Texas public schools are one of the sources funneling youth into the juvenile justice system. Police officers are increasingly¹⁹ ticketing youth for minor infractions or for status offenses (delinquent acts committed by youth that are not considered crimes when committed by an adult).²⁰ This increases the public's negative view of youth by unfairly labeling them as

criminals. It also transfers the responsibility for managing youth from teachers and counselors, who have invested time in them and can work more closely with them, to a resource-heavy law enforcement system that is unfamiliar with their history, less sensitive to their plight, and more likely to inflict harsher punishment.

As a consequence, youth continue to cycle in and out of the juvenile justice system, resulting in more tax dollars spent on probation and possibly confinement in a costly juvenile facility. Sadly, given the high recidivism rates among youth confined to a juvenile correctional facility,²¹ they face the risk of being fast-tracked into the adult criminal justice system without appropriate intervention.

Six-Month Cost Comparison for One Youth	
TJJD Confinement ⁹	\$81,302.46
Restorative Justice Diversion Program ¹⁰	\$2,348.46
Six Month Cost Savings per Youth	\$78,954.00

RECOMMENDATIONS

Implement restorative justice diversion programs in Texas counties to prevent youth from deeper entrenchment in the juvenile justice system. Youth could be diverted from the system without case proceedings or charges filed. Washington, D.C. and San Francisco currently have pilot programs that can serve as true diversionary models for Texas.

Survey Findings: What Do Crime Survivors Want?²²

- ✓ Rehabilitation over punishment
- ✓ Investment in preventative measures and treatment over more spending on correctional facilities

Washington, DC: Prosecutors in the Office of the Attorney General (OAG) have discretion to refer cases to their Alternatives to Court Experience (ACE) program.²³ In the initial stages of the program, prosecutors only referred youth charged with low-level offenses. Currently, youth with more serious offenses are being referred as prosecutors become more comfortable with restorative justice practices.

First, a prosecutor offers participation in ACE to the person harmed; if that person is willing to participate, the prosecutor offers participation to the youth responsible for inflicting the harm. In 2017, in a total of 65 cases, 75% of people harmed opted to participate in ACE.

The ACE program offers two tracks. For a lower-level offense, a youth does not have to accept a plea prior to entering the program. If the youth successfully complies with program requirements, the prosecutor will dismiss the case. In a more serious case, a youth may be required to accept a plea. Upon successful completion of the program by both parties, the prosecutor can withdraw the plea and dismiss the case. In both scenarios, no charges are filed.

The program can take up to six months to complete. Mediation-style conferences are held at neutral locations; to aid rehabilitation and reduce recidivism, wraparound services are offered to address the youth's underlying issues. **The most recent data shows that more than 80% of youth who have completed the ACE program have not been rearrested.**²⁴

It is important to note that ACE *began* in the prosecutors' office. Seema Gajwani, special counsel for juvenile justice reform at the OAG, asserts that prosecutors must think differently about prosecution to keep individuals out of confined facilities and to empower crime survivors. Having restorative justice as an option allows prosecutors to think through each unique case to determine how to help the person harmed feel less fearful and how to help the youth responsible for the harm learn from their mistakes.

“Prosecutors have to think hard about each case, changing the way they talk to victims and asking them what they want and what they need.”
- Seema Gajwani, OAG

As ACE has progressed, Ms. Gajwani has seen youth become more receptive to positive nudges from their support network and community. They come to realize encouraging statements to “behave better” are made out of compassion and come from those who care about them and their future.

San Francisco: The Impact Justice Restorative Justice Project (RJP) works with communities across the United States to address incidents of harm through restorative justice diversion programs instead of further juvenile

justice system involvement.²⁵ According to Jenny Poretz, RJP program associate, the approach is unique in that it targets over-policed communities and asks that cases deemed eligible for restorative justice diversion be randomly selected for participation to reduce racial and ethnic bias.

The RJP implements a grassroots approach rather than one led by professionals within the juvenile justice system. The program believes that coming into contact with the system results in further contact with the system, so the RJP uses community-based programs to facilitate restorative justice practices, which hold the program accountable to restorative justice values.

The RJP takes only pre-charge cases to ensure its programs are not used punitively. If a youth has already been charged, an apology is often viewed as an admission of guilt. Because accountability is essential for healing, the RJP believes it is necessary for those responsible for the harm to feel safe to speak openly, without fear that their statements may be used against them.

The RJP’s voluntary “Make It Right” program in San Francisco is a partnership between San Francisco’s district attorney (DA) and the juvenile justice system stakeholders to divert youth ages 13–17, who are facing potential charges, from the juvenile justice system.²⁶ Based on international studies showing that restorative justice results in better outcomes when applied to more serious crimes, the DA’s office only refers youth who have committed felonies to this program.²⁷

To remove the potential for bias, the DA’s office predetermined the criteria to make a case eligible for restorative justice. To increase the program’s “impact on reducing racial and ethnic disparities, the DA’s office purposely aligned eligibility criteria to include crimes for which youth of color are disproportionately arrested/charged/incarcerated.” If a case meets these requirements, a randomization process is used to send 70% of the cases to the Make it Right program, with the remaining 30% entering the typical juvenile justice system process.²⁸

Once in the program, two community-based programs work closely with the youth to fulfill their agreements: one program facilitates the conferences and the other connects the youth to community services. Thus, two professionals provide case support while focusing on their specific areas of expertise.

Youth are given six months to complete the program; upon successful completion, the case is dismissed.²⁹ **As of June 2017, preliminary data showed a recidivism rate of 5% per year after completing the program.**³⁰

Estimated Costs of a Restorative Justice Diversion Program		
Washington, D.C. ³¹		Total Expenditures per Month
Facilitator annual salary x 4	\$304,328	\$391.41 per case
\$15 snacks for meetings x 65	\$975	
Total for 65 cases per year	\$305,303	
Total for 65 cases per month	\$25,441.91	

BEST PRACTICES FOR CREATING AND IMPLEMENTING RESTORATIVE JUSTICE STRATEGIES

Implementation of restorative justice strategies must be based on the specific needs of the community being served.³² There are two different schools of thought on the execution of restorative justice. (1) Those who wish to impact the culture and current perspective argue for a program led by individuals in the legal system. (2) Advocates for a grassroots approach stress the importance of having outside community support on the ground to hold all stakeholders accountable and prevent further racial and ethnic disparity and net-widening, which often occurs when discretion is present within the legal system.

Buy in from key stakeholders is critical to the success of restorative justice strategies. Those with authority must be on board with shifting from a punitive model to one that emphasizes reparation of harm as an approach to accountability.³³ Implementing a new framework requires justice system stakeholders to take on different roles, shifting priorities and power from themselves to those involved in the offense and the community.³⁴

After accepting a shift toward restorative justice programs and strategies, leadership must understand the unique aspects of and obstacles to implementation, and practitioners must take the time to carefully develop them.³⁵ Dr. Marilyn Armour, director of the Institute of Restorative Justice and Restorative Dialogue, suggests starting with low-level offenses before expanding to more complex cases. This gives practitioners the opportunity to work out programmatic kinks and establish credibility prior to widening a program. Experts must also provide training to facilitators to ensure interventions are properly administered.

Evaluation is a key component of a successful restorative justice program. To continue restorative justice practices in any setting and demonstrate their value, a program must be supported by empirical data. An evaluation must gauge the satisfaction of participants, indicate whether rehabilitation and restoration have occurred through program completion and whether there has been a reduction in corrections-related spending based on using restorative justice practices, and provide answers to how and why restorative justice practices produce positive outcomes.³⁶

It is important to present successful programs in such a way that the community sees the value and embraces restorative justice.³⁷ In addition to showing cost savings, people must see how the program benefits the community. This requires ongoing community education to show that restorative justice is not “soft” on crime.³⁸ Dr. Mark Umbreit, director of the Center for Restorative Justice and Peacemaking, points out that neutralizing resistance is essential for people to approach a new way of thinking and responding without as much hesitation. It is also critical that community members understand the importance of their role and feel a sense of responsibility in the process.³⁹

Finally, there must be a sustainability plan. Funding for the program must be secured and providing empirical evidence from an evaluation helps support funding. There must also be a plan to keep the program running in the event of future leadership turnover.⁴⁰

CONCLUSION

It is crucial to implement restorative justice diversion strategies that benefit Texas youth, people who have been harmed, communities, and taxpayers. Texas has a tremendous opportunity to change its response to youth misconduct from strict punishment to restoration and accountability. Implementing restorative justice in Texas’ juvenile justice system will send a message to those harmed that Texas wants to right the wrongs done to them, and it tells youth that they deserve a chance to learn from their mistakes and make lasting changes to lead successful lives.

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