

# RESTORATIVE JUSTICE IN CRIMINAL PRACTICE

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Co-Presented by the  
Alternative Dispute Resolution Section,  
Criminal Law Section, and Government Lawyer Section  
of The Florida Bar, and the  
Florida Restorative Justice Association

**Friday, June 25, 2021**  
**1:00pm-4:00pm**

*A virtual CLE presentation  
via Zoom Webinar*

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The Alternative Dispute Resolution, Criminal Law, and Government Lawyer Sections of The Florida Bar, along with the Florida Restorative Justice Association, proudly present **Restorative Justice in Criminal Practice** -- a program intended to open hearts and minds and inspire transformational change in how we resolve criminal cases.

Through very personal case study, and frank discussion, some of the country's foremost scholars, judges, and practitioners will define the concept of restorative justice, explore its theory and origins, and discuss various models and the practical application of restorative justice practices in our criminal justice system.

## PROGRAM

1:00pm-1:05pm

Welcome

**Jacek Stramski**

Special Counsel, Florida Department of Revenue,  
Tallahassee

Immediate Past-Chair, Government Lawyer Section and  
Program Co-Chair

1:05pm-1:55pm

An Introduction to Restorative Justice

This panel will define the concept of restorative justice and explore its theory and origins. The panel will then discuss how restorative justice works -- its efficacy -- describing various models of applying restorative justice in the criminal justice system.

Moderator

**Edith Georgi**

Assistant Public Defender (ret.), Miami

University of Miami School of Law, Miami

St. Thomas University College of Law, Miami Gardens

Panelists

**Donna Coker**

University of Miami School of Law, Miami

**Justice Janine Geske (ret.)**

Marquette University Law School, Milwaukee, Wisconsin

**Aparna Polavarapu**

University of South Carolina School of Law, Columbia,  
South Carolina

1:55pm-2:05pm

Break

2:05pm-2:55pm

A Case Study

Moderator

**Kelly McGrath**

Kelly McGrath Law, Tallahassee

Panelists

**Kate and Andy Grosmaire**

**Julie and Michael McBride**

2:55pm-3:05pm

Break

3:05pm-3:55pm

Restorative Justice in Criminal Practice

This panel will discuss practical considerations in applying restorative justice practices to criminal cases.

Moderator

**H. Scott Fingerhut**

FIU College of Law and H. Scott Fingerhut, P.A., Miami  
Program Co-Chair

Panelists

**Michael Becker**

Assistant State Attorney, 8<sup>th</sup> Judicial Circuit, Gainesville

**Robert Burrs**

Executive Director, Conflict Solutions Center of Santa  
Barbara County, California

**Dean Galigani**

Gailgani Law Firm, Gainesville

**Hon. Steve Leifman**

County Judge, Eleventh Judicial Circuit

3:55pm-4:00pm

Program Close

**H. Scott Fingerhut**

FIU College of Law and H. Scott Fingerhut, P.A., Miami  
Program Co-Chair

## **Michael Becker**

Michael Becker is a parent, a Marine, a stoic, and a prosecutor, generally in that order. I'm funnier inside my head than when the attempt at humor escapes, but my wife of 21 years still smiles my way. To relax, I climb trees with a chainsaw.

History –

Prosecutor, 8<sup>th</sup> Circuit – 2000-present

2012 – present (Intake – thousands of search warrants & other court applications)

Santa Fe College, Police Academy – 2003, 2008-present

Guardian Program – 2019-present

Liaison with Drug Task Force – 2012-present

Drug Task Force Award for Prosecution – 2015-2018

Two 8<sup>th</sup> Circuit jury trial convictions for racketeering – 2019

Sexually Violent Predators (Jimmy Ryce Act) – 2007-2017

United States Marine Corps, Reserves – 1992-2000

Quotes –

Every day we go to work and push back the fall of civilization by one day.

The work is hazardous, our decisions can make it dangerous.

A society that doesn't protect children won't survive for long and doesn't deserve to.

There are too many mistakes to be made to waste time repeating them.

Assistant State Attorney

Office: 120 West University Ave.

Gainesville, FL 32601

Email: [beckerm@sao8.org](mailto:beckerm@sao8.org)

Education

1999 Juris Doctor, University of Florida

1996 Bachelor of Arts, University of Florida, Major in Economics

## **Robert Burrs**

Rob is an energetic and passionate community voice on restorative justice. He is a juvenile justice advocate, problem solving court professional, innovative program developer, restorative justice practitioner, non-profit executive, and lawyer. Rob's delivered addresses on criminal justice reform using restorative principles when he was an Advisor for Loyola Law School's Center for Conflict Resolution (LCCR) in Los Angeles in 2013. He was also a keynote panelist for Prison Fellowship® Justice that Reforms Conferences 2016, the School District 49 Rocky Mountain Restorative Practices Conference, and the Pikes Peak Community Colleges Courageous Conversation Series on Justice Reform in 2019. He has been at the forefront establishing restorative justice programs throughout the country in Victim Offender Mediations and Victim Advocacy programs. In Colorado Springs, CO implemented a \$2.5 million Department of Labor &

Justice grant initiative centered on placing offenders into high growth and high demand industries under a restorative justice approach. In Santa Barbara County, CA he led in the creation of the Restorative Justice Partnership Initiative linking victims of crime, their offenders, and the community in restorative dialogues designed to repair victims and address their needs, recover restitution, and make offenders accountable for their actions. In Brevard County Florida, Rob is a member of the Florida Restorative Justice Association. In March 2020 he established Restorative Justice Diversified Services, LLC (RJDS), a Restorative Justice development, implementation, and customized trainings for government agencies, schools, community based organizations, citizens, and neighborhood associations. Rob graduated with a Bachelor of Arts, in the Administration of Justice and Political Science from Howard University in Washington, DC in 1999 and received his Juris Doctor degree from the Southern California Institute of Law in Santa Barbara, CA in 2013. He completed the University of Northern Colorado Monfort College of Business in Executive Nonprofit Leadership in 2005. His greatest blessings are being the husband to his wife Bethany who serves our country in the US Air Force 114th Space Wing and as the father to their three children Kaleb, Evelynna, and Eliana.

## **Donna Coker**

Donna Coker's scholarship focuses on criminal law, gender and race inequality. She is a nationally recognized expert in intimate partner violence (IPV) law and policy. Her research concerns the connection between economic vulnerability and IPV; restorative justice responses to IPV and sexual harm; and the intersections of gender and race subordination in criminal law doctrine, policy, and application. Her research is interdisciplinary and influenced by scholarship in critical race feminism, restorative justice, public health, and criminology.

Professor Coker is a leading critic of the disproportionate focus on criminal justice responses that characterizes U.S. IPV policy. Her widely cited research illustrates the negative impact of this focus on women marginalized as a function of poverty, race, and immigration status. In 2014, she co-organized a national conference of more than 200 academics across disciplines, service providers, attorneys, activists, and students. The conference, Converge! Reimagining the Movement to End Gender Violence, furthered gender violence activism and policy that is anti-racist, supports alternatives to crime-centered approaches, and addresses structural inequality. In 2015, she was the co-investigator for a national survey of service providers regarding police response to domestic violence and sexual assault. With more than 900 respondents, the survey uncovered significant police bias on the basis of gender, race, class, immigration status, and LGBTQ identity.

Professor Coker's research regarding the use of restorative approaches to IPV and sexual harm has influenced work in the interdisciplinary fields of restorative justice and domestic violence in the United States and abroad. Her empirical study of Navajo Peacemaking use in domestic violence cases was one of the first empirical studies of

Peacemaking and the first to focus on domestic violence cases. Her recent work examines the use of restorative justice responses to campus sexual assault.

Her work on the nature of "heat of passion" doctrine uncovered gender related assumptions imbedded in criminal law doctrine. She continued to explore gender and racial bias in her Criminal Law Stories chapter on Wanrow, a self-defense case frequently cited as the first "women's self-defense" case. She co-edited Criminal Law Stories (2013) with Professor Robert Weisberg (Stanford Law).

Before attending law school, Professor Coker worked in the domestic violence field for 10 years. This work began in 1978 when she became the sole staff person for a newly opened battered women's shelter in Little Rock, Arkansas. In subsequent years she was the Coordinator of a community based battered women's project in Honolulu, Hawaii, overseeing advocacy and support for more than 100 women a year.

## **H. Scott Fingerhut**

Now in his 33rd year as a trial lawyer and 22nd year of full-time law teaching, H. SCOTT FINGERHUT is a three-time Professor of the Year and two-time Pioneer Award winner at FIU College of Law in Miami, where he teaches Trial Advocacy, Criminal and Civil Pretrial Practice, Criminal Procedure, and coaches the Trial Team. By Dean's appointment, Professor Fingerhut is also a Fellow of The Honors College at FIU and Pre-Law Faculty Advisor, teaching the two-part upper-level seminar Observing Ourselves: in fall, YOUiversity: A Legal Primer for Life After Honors, and in spring, The Gathering: Great Discussions About Contemporary Law in My America.

In court, Professor Fingerhut devotes himself to criminal defense and the defense of applicants seeking admission before the Florida Board of Bar Examiners and lawyers facing Florida Bar discipline. Rated AV Preeminent by Martindale-Hubbell, Professor Fingerhut is consistently ranked among the region's top criminal defense lawyers, including The Best Lawyers in America.

Beyond campus and the courthouse, Professor Fingerhut is a Florida Bar leader, earning the unique distinction to twice serve as chair of The Florida Bar Criminal Procedure Rules Committee, and also serving as chair of the Criminal Law Section of the Bar.

Currently, Professor Fingerhut is a member of The Bar's Professional Ethics Committee, the Code & Rules of Evidence Committee, the Criminal Law Section Executive Council, and serves as the Criminal Law Section CLE chair. Professor Fingerhut is also appointed to a State of Florida Eleventh Judicial Circuit Professionalism Panel. And most recently he has been selected to serve as a subject matter expert on the revision of the Florida Bar examination for the Florida Board of Bar Examiners' Practice Analysis Panel.

Professor Fingerhut has chaired the Dade County Bar Association Criminal Law Committee, served as president of the Florida Association of Criminal Defense Lawyers-

Miami Chapter (FACDL-Miami), and was the Dade County Bar Designee to the Miami-Dade County Mayor's Mental Health Task Force.

He has also served as a member of The Florida Bar Committee to Study the Decline in Jury Trials, The Bar's Committee on Student Education and Admission to the Bar, The Florida Supreme Court Criminal Court Steering Committee Workgroup on Post-Conviction Relief, the Editorial Board of The Florida Bar Journal and Florida Bar News, and, by appointment of the Chief Justice of the Florida Supreme Court, the Florida Innocence Commission.

A frequent writer, lecturer, and legal commentator on ethics, liberty, and justice matters, Professor Fingerhut's co-authored chapter, "Conflicts of Interest and Other Pitfalls for the Expert Witness," has been twice published in Springer Publishing's Handbook of Forensic Neuropsychology. Released in 2016 from LexisNexis is Professor Fingerhut's Practice Guide, Florida DUI Law, which he co-authors with the extraordinary Robert S. Reiff. And most recently, Professor Fingerhut is being invited to speak with lawyers across Florida – including the federal judiciary of the Eleventh Circuit -- on the need for our profession to "Take Back Truth in an Age of 'Literal Truthiness.'"

Professor Fingerhut received his undergraduate degree in American Government and Music from the University of Virginia in Charlottesville, and his law degree from Emory University in Atlanta, where he was a Moot Court Team member, softball captain, and proudly hosted the Law Follies.

Before entering private practice, Professor Fingerhut served as a prosecutor in Janet Reno's Miami-Dade County State Attorney's Office.

He is the recipient of the "Put Something Back" Pro Bono Award from the Dade County Bar, the Daniel S. Pearson-Harry W. Prebish Founders Award from FACDL-Miami, and the Steven M. Goldstein Criminal Justice Award from FACDL Statewide.

Six times Professor Fingerhut has been selected by the FIU College of Law graduating class to hood them at Commencement. And in 2019, the graduates chose him to deliver the inaugural "Last Lecture."

## **Edith Georgi**

Edith Georgi joins the adjunct faculty of St. Thomas University Law School in January of 2017. After 35 years in the Miami-Dade County Public Defender's Office litigating death penalty and other major crimes cases, she is looking forward to sharing her knowledge and practical experience with the students, especially as this is a critical time in the history of death penalty law in Florida.

After receiving her B.A. at Wellesley, she taught at the Chinese University of Hong Kong for several years while studying Chinese. She then received her Master's in Chinese

Studies from Indiana University. After working on a volunteer basis with children in abusive family relationships, Professor Georgi entered law school and received her J.D. from University of Miami Law School and chose to go directly to the Public Defender's Office. Within a few years, she was trying homicide cases, including capital cases. In the mid-1980's she was chosen to create and lead the office's Capital Litigation Unit, which has become a model unit in Florida as well as nationwide.

Professor Georgi has been honored for her work by the Dade County Bar Association, the Florida Association of Criminal Defense Attorneys, as well as the statewide Florida Public Defender's Association. She has been teaching in the Litigation Skills Department at University of Miami Law School for over 20 years and has recently been instructing there in the field of Death Penalty Litigation.

Professor Georgi believes in teaching theory with an emphasis on practical applications. "As we face the challenges of an ever complex world, our students need to be prepared to understand the rulings of the higher courts as well as to navigate as an advocate in our multi-disciplined society. The study of capital punishment is one example. It is as much a study of our religious, social, and cultural values as it is about our constitutional system."

## **Justice Janine P. Geske**

Justice Janine P. Geske served as a Distinguished Professor of Law at Marquette University Law School and Director of the Law School's Restorative Justice Initiative. She currently is a member of the Marquette University Board of Trustees. In the fall of 2011, she served as a Visiting Professor of law at the Catholic University of Leuven, Belgium in Restorative Justice at its Institute of Criminology. She served as interim dean of Marquette Law School from July 2002 to July 2003 and as interim Milwaukee County Executive from February 28 to May 6, 2002. She previously served on the Wisconsin Supreme Court from 1993-1998. From 1981-1993, she was a Milwaukee County Circuit Court judge. Prior to becoming a judge, she served as chief staff attorney for the Legal Aid Society of Milwaukee and then as clinical director and assistant professor of law at Marquette University.

She served as the Association of Marquette University Women Chair in Humanistic Studies, 2000 - 2001 and served as a member of the faculty of the National Judicial College in Reno, Nevada for over ten years.

In 2013, the St. Thomas More Lawyer's Association awarded her its Faithful Servant Award. In 2009, she received the Woman of Faith Award from the Sisters of the Divine Savior, the F.B.I. Director's Community Award and a Wisconsin State Bar Fellows Award in recognition for contributions to the Bar and the ideals of the American Bar Foundation. In 2008, she was inducted into the Wisconsin Academy of Science, Arts and Letters. In 2007, she was awarded the 2007 Thurgood Marshall College Fund Legacy Award, the 2007 American Inns of Court 7th Circuit Professionalism Award, the 2007 U.S. Postal Service Government Service/Law Award, the St. Norbert College

Ambassador of Peace Award, the SET Ministry Transformation Award, an honorary member of Phi Beta Kappa. In 2006, Justice Geske was awarded "The Woman of the Word Award from the Milwaukee Cathedral Place (a women and children's homeless shelter), The "Difference Maker Award" from the American Bar Association General Practice, Solo and Small Firm Division.

In 2003, Marion College in Fond du Lac, Wisconsin awarded Justice Geske an honorary doctor of law degree and Marquette University High School awarded her the Spirit of St. Ignatius Award. In 2002 the Milwaukee Archdiocese recognized her with the Vatican II Award in communication. In 1998, she received an honorary Doctor of Law degree from Marquette University and an honorary doctorate of humanities from Mount Mary College in Milwaukee. In that same year, the Wisconsin Newspaper Association selected her as the Newsmaker of the Year and the Milwaukee Press Club honored her by choosing her as the Milwaukee Headliner of the Year. In both 1994 and 2002, the Milwaukee Bar honored Justice Geske with its "Lawyer of the Year" award. Justice Geske was recognized by Marquette University as the 1993 Law School Alumnae of the Year and as the 1994 all university Alumnae of the Year. She was also honored with an alumni Service Award from Beloit College in 2002. She was granted a Special Achievement Award as a Wisconsin Leader in the Law that same year. The Friends of the Benedict Center gave Justice Geske their Justice Award in 2003.

She also has been recognized by receiving the Marquette University Criminology and Law Studies Program Veritas et Justitia Award, 1994 (for dedication to truth and justice), the Professional Dimensions' Sacajawea Award, 1994 (for exceptional community service and leadership), the Legal Aid Society's Equal Justice Award, 1992 and the Outstanding Citizen Award, Pi Lambda Theta, 1992.

Justice Geske has served as the commencement speaker at a number of college and university graduation ceremonies. She frequently teaches at judicial, legal and community conferences on mediation, restorative justice, sentencing, evidence, the courts, and spirituality and work. She is a member of the American Bar Association, State Bar of Wisconsin, Fellows of the American Bar, Fellows of the Wisconsin Bar, American Law Institute, Association of Conflict Resolution and the Wisconsin Association of Mediators.

Justice Geske is also a Fellow of the American College of Civil Trial Mediators, member of the Association for Conflict Resolution, member of the Alternative Dispute Resolution sections of the American and Wisconsin Bar Associations, member of the Standing Committee for Indigent Defense, Federal Public Defender's Office, and member of the Board of Trustees for the Greater Milwaukee Foundation, member of the Board of Directors for the Opus Prize ( an annual \$1 million humanitarian award), member of the Department of Corrections Victims Advisory Committee. She has previously served as the Dean of the Wisconsin Judicial College, member of the Board of Trustees for the International Centre on Healing and the Law, Chair of the Marquette University High School board of directors, former member of Inns of Courts-Madison, Inns of Court-Milwaukee, Mayor John Norquist's Task Force on Drugs/Crime in the Neighborhoods,

Wisconsin Equal Justice Task Force, Task Force on Victims' Rights Amendment, Milwaukee Homicide Advisory Panel, State Bar Commission on Delivery of Legal Services, Beloit College Board of Trustees, and Milwaukee Bar Association Board of Directors.

Justice Geske graduated from Beloit College with a Bachelor of Arts degree and a Masters of Arts in Teaching and received her J.D. from Marquette University Law School.

Special Recognitions: Selected for 2005 through 2015 as one of "The Best Lawyers in America" for her work in dispute resolution.

### **Andy Grosmaire**

Andy Grosmaire is the Chief of Enforcement with the Office of Financial Regulation for the State of Florida and a permanent deacon in the Catholic Church serving the diocese of Pensacola-Tallahassee.

### **Kate Grosmaire**

Kate Grosmaire is a Business Analyst with the Florida Department of Environmental Protection and is the author of "Forgiving My Daughter's Killer: A true story of Loss, Faith, and Unexpected Grace."

### **Judge Steve Leifman**

Judge Steve Leifman is the Associate Administrative Judge of the Miami-Dade County Court – Criminal Division. From 2007 – 2010, Judge Leifman served as Special Advisor on Criminal Justice and Mental Health for the Supreme Court of Florida. He currently chairs the Steering Committee on Problem Solving Courts for the Supreme Court of Florida and the Mental Health Committee for the Eleventh Judicial Circuit of Florida.

Judge Leifman is the co-chair of the American Bar Association Criminal Justice Mental Health Committee and co-chair of the Judges and Psychiatrists Leadership Initiative. He is also a gubernatorial appointment to the Florida Statewide Task Force on Opioid Abuse and a member of The National Institute on Drug Addiction's (NIDA) Justice Community Opioid Innovation Network. Judge Leifman is a lifetime member of the Group for the Advancement of Psychiatry (GAP), a Lecturer in Psychiatry at Columbia University Vagelos College of Physicians and Surgeons and a Voluntary Assistant Professor of Psychiatry and Behavioral Sciences at the University of Miami School of Medicine and on the Board of Directors of the Corporation for Supportive Housing. More recently, Judge Leifman was appointed to serve on the Conference of Chief Justices and Conference of State Court Administrators National Judicial Task Force to Examine State Courts' Response to Mental Illness and the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC) established by the 21st Century Cures Act.

In 2015, Judge Leifman received the William H. Rehnquist Award for Judicial Excellence. One of the nation's highest judicial honors presented by Chief Justice John G. Roberts Jr., the Rehnquist Award is presented annually to a state court judge who exemplifies judicial excellence, integrity, fairness, and professional ethics. Judge Leifman is also the first recipient to receive the Florida Supreme Court Chief Justice Award for Judicial Excellence (2015). He was named by New Times as one of Miami-Dade's most interesting people of 2017 and a 2016 Governing Magazine Public Official of the Year. More recently, Judge Leifman was awarded the 2020 Dade County Bar Association (DCBA) David W. Dyer Professionalism Award, the most prestigious honor bestowed by the DCBA, the 2018 Pardes Humanitarian Prize in Mental Health, the 2019 Yale-NAMI Mental Health Advocacy Award and a 2019 Presidential Commendation by the American Psychiatric Association.

Judge Leifman has been featured in many national and local television programs, radio programs, and articles regarding mental health and the criminal justice system. He has appeared as a guest on many Podcasts and has authored and published numerous articles and book chapters on mental illnesses and the criminal justice system. Judge Leifman is the subject of the Documentary, The Definition of Insanity which aired nationally on PBS on April 14, 2020.

The Definition of Insanity shows how one local judge's novel approach to solving the mental health crisis could be the model to tackle the much larger epidemic throughout America. [www.DOIFilm.com](http://www.DOIFilm.com)

## **Julie McBride**

Julie McBride has been teaching the joys of art for a number of years to children and college students in the Tallahassee community as an Elementary Art Instructor, and now as an Adjunct Professor.

## **Michael McBride**

Michael McBride is a Senior Database Administrator contracted with the Florida Department of Transportation.

## **Kelly McGrath**

Kelly is a Florida Supreme Court Certified Family Law Mediator, a Collaborative Law trained attorney, a Restorative Justice Facilitator, and a Conflict Coach.

I know that mediation is more powerful, less expensive, and less costly than a legal battle.

I help you settle legal disputes with peace and privacy, without putting you through the usual traumatic battle tactics or cold court procedures.

Bringing together 15+ years of experience and training in Restorative Justice, Trauma Informed Care, Non Violent Communication, and Conscious Contracts®, my goal is to help you bounce back from major life hardships, becoming even more deeply rooted in your sense of peace.

I want you to not only be legally secure, I want you to experience a mindset shift so you can heal, clear up any chaos that's holding you back, and begin to build a fresh future.

Since becoming a lawyer in 2004, I've gathered a deep and wide understanding of compassionate listening and mediation practices that are remaking the profession for the better.

As a member of J. Kim Wright's Integrative Law Movement, I'm part of a movement of lawyers around the country who stay out of court and help people resolve their conflicts using their values and strengths. Mediation is a way to do that and take control of your life.

## **Aparna Polavarapu**

Professor Polavarapu is an Associate Professor at the UofSC School of Law and the Executive Director and Founder of the South Carolina Restorative Justice Initiative. She has over a decade of experience working in human rights and rule of law, both domestically and abroad. She has significant expertise in the field of legal pluralism, with a particular research focus on informal, community-driven justice systems and how they work together with formal, state-centered systems. Her research has covered a wide range of topics, including legal innovations used by courts to expand access to constitutional justice, the use of restorative justice mechanisms to combat domestic violence in Uganda, and how customary and statutory law interact to govern land rights in sub-Saharan Africa. Much of her scholarship draws from her direct experience working with women's rights groups in sub-Saharan Africa and in the United States

As the Executive Director of the South Carolina Restorative Justice Initiative, she oversees the development of restorative justice education and programming and works with organizations seeking to develop and implement their own restorative practices.

In addition, Professor Polavarapu continues to work with practitioners on domestic and global women's rights and justice matters. She has instructed practitioners on international rule of law topics, including African customary law, legal pluralism, and strategies for promoting human rights in legally pluralist systems. She has authored or contributed to expert human rights reports for organizations such as the UN Foundation and the Center for Reproductive Rights. Locally, she has testified before the South Carolina Senate on legislation affecting women and conducted trainings on restorative justice.

Professor Polavarapu teaches courses in Restorative and Transformative Justice, Comparative Law, Rule of Law, Transnational Law, and International Human Rights Law. Prior to coming to South Carolina, Professor Polavarapu was a Teaching Fellow with Georgetown's International Women's Human Rights Clinic. Prior to that, she practiced law at Edwards Angell Palmer & Dodge LLP in Boston. She received an LLM and JD from Georgetown University Law Center, an MA in international affairs from The Fletcher School of Law and Diplomacy at Tufts University, and a BS from the Massachusetts Institute of Technology.

## **Jacek Stramski**

Jacek Stramski currently serves as Special Counsel with the Florida Department of Revenue, and is an adjunct faculty member at the Florida State University. Prior to joining the Department of Revenue, Mr. Stramski was the enforcement attorney for the Florida Office of the Attorney General, Consumer Protection Division, where he enforced injunctive and monetary awards in state and federal courts throughout Florida, including in bankruptcy, and created an interstate working group to facilitate the cross-border enforcement of consumer protection judgments obtained by the various states. He previously worked as an attorney with the Florida House of Representatives and the Florida Department of Financial Services.

Mr. Stramski obtained his J.D. and M.S. in Political Science from the Florida State University, and his B.A. in Political Science and International Relations at the University of California, San Diego.

## **Role of Restorative Justice in Resolving High Emotion Civil Cases**

**Justice Janine P. Geske (ret.)  
Distinguished Professor of Law (ret.)  
Marquette University Law School**

### **1.) The intersection of negotiation, mediation and restorative justice**

**In a high emotion case (regardless of what side you are on), the emotions are a barrier to a negotiated settlement. There are many resources available on creative strategies in resolving conflict. A good resource on mediation is The Mediation Process—Practical Strategies for Resolving Conflict 3<sup>rd</sup> Edition by Christopher W. Moore.**

**In these cases, it is helpful to understand the principles of restorative justice, a philosophical approach to harm based on some very old traditions. The three fundamental questions to be answered to designing a restorative approach are:**

- a.) Who has been harmed?**
- b.) What was the true nature of the harm?**
- c.) What needs to happen to help in repairing the harm?**

**A good simple primer on restorative justice is a book by Howard Zehr, The Little Book of Restorative Justice.**

**Traditional litigation and negotiations often do not adequately address these questions. The focus in litigation is primarily on the plaintiff (instead of his/her relationships with others), the harm that is measurable in damages and the solution which usually lies in a financial payment. The needs of someone who has been hurt are often much more complex.**

### **2.) First steps**

**If you are representing someone who is emotionally damaged because of the harm of another, you need to use patient active listening to that individual and even members of his or her family. Much of what you hear may not be relevant to a lawsuit but are critical to the individual.**

**Fundamental to creating a resolution to these cases is creating a safe space and audience for those who have been harmed to tell their full story of what happened and how it has impacted them. Whether that audience might include the specific perpetrator depends on the facts and circumstances of**

**the case and the desires of those who have been harmed as well as the potential defendants.**

### **3.)\_Selecting a mediator**

**When selecting a mediator for such a case you should know the style, philosophy and experience of the mediator you choose. You should also know the following information:**

**--is the mediator willing to handle the high emotional issues of the case (some mediators do not want to deal with the messiness of the emotional components of a case)**

**-is the mediator experienced in mediating these types of cases**

**-is the mediator able to promote creative problem solving to address the harm**

### **4.) Selecting and preparing the space for a restorative encounter**

### **5.) Different models of restorative approaches**

**a.) Victim/offender mediation/dialogue/negotiation**

**b.) Family group conferencing**

**c.) Community conferencing**

**d.) Circles**

**e.) Other individualized processes designed to meet the needs of addressing the harm**

**For an example see: Why Do I Teach Restorative Justice to Law Students?, 89 Marquette Law Review 327 (Winter 2005)**

### **6.) Preparation, preparation, preparation.**

### **7.) Process—See Cultivating Mindfulness**

## **CULTIVATING MINDFULNESS**

**To best serve as a mediator/facilitator/attorney with someone who has been through a seriously emotional or physical trauma, you must be personally peaceful and centered to be an effective listener and a creative problem solver. An important part of serving as an effective lawyer is physical and spiritual self-care. Before interacting with an emotional party, one should consider centering oneself by taking time to sit in silence, perhaps meditating, praying or practicing mindfulness. Only then can you peacefully enter into what will be a difficult conversation.**

**Professor Leonard Riskin's article is the seminal work on mindfulness. See Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers and their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002)**

**Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. LEGAL EDUC. 79, (2004).**

### **PREPARING FOR A MEDIATION**

**When you are working with victims and survivors of violence or severe emotional harm, it is critical that you spend time with the parties to properly prepare them before any face-to-face meeting at a mediation. The primary objective is to avoid revictimizing anyone during the process. You also must strive to create a process that creates a safe environment for the difficult conversation, whether it be a direct face-to-face process or through a mediator.**

#### **1) Planning With the Client**

**It is critical that the attorney has a full discussion with the client about his or her expectations, interests, objectives, and areas of concern. The client should fully understand the mediation process (and know about the style of the mediator) before going to the mediation.**

**A mediator who knows how to work with a highly emotional party should be retained for cases with very emotional parties. The client needs to trust the mediator in order to have a successful mediation.**

**See Mark S. Umbreit, *The Handbook of Victim Offender Mediation*, Jossey-Bass, 2001 for tips on preparing people for facilitated processes.**

#### **2) Planning for the Mediation by Attorney and the Mediator (facilitator)**

**The attorney should decide whether a face-to-face meeting between the parties would make sense. The first step is assessing whether the situation is appropriate for a meeting or a mediation. If there has not been a good opportunity for the client to tell the lawyer about his or her life, at the mediation preparation meeting, the attorney should listen carefully as the client describes his or her life, what happened during the event(s) and how the harm has impact him or her (and his or her family, colleagues, friends, etc.). The attorney should practice deep listening to absorb not only the words but also the emotions behind the story.**

**See, Eleanor Rosch, Professor of Psychology, Univ. of Cal., Berkley, Address at The American Psychological Association: What Buddhist Meditation Has to Tell The Psychologist About the Mind (Aug. 23, 2002), available at [http://www.cpsphd.edu/dp\\_rosch%20meditation-mind.htm](http://www.cpsphd.edu/dp_rosch%20meditation-mind.htm).**

### **3) Educating the Victim/Survivor's Support Network**

**Support network members can have a significant impact on the psychological or emotional state of the victim/survivor whether they are present at the face-to-face meeting or not. If support people (family members, therapists, friends, etc.) are going to be involved, the attorney should make early contact with those people in order to educate them about the purpose of the process, the risks and benefits, and to help them understand the importance of their supporting roles. These contacts will help facilitate the development of a good process. It is critical to stay attuned to the psychological needs of the parties and refer them for therapy to a professional in appropriate.**

### **4) Defendant (offender) Accountability**

**Usually, in face-to-face meetings, the offender should acknowledge some responsibility for his or her part in causing the harm. Without offender accountability, the risk of revictimization increases substantially. It is often harmful to have a face-to-face meeting between the victim and the offender on these issues. If the case is for civil damages, the mediator will have to play the role of the empathetic neutral who deeply listens and acknowledges the harm and the pain that has been caused, remaining neutral in terms of any outcomes.**

### **5) Mediator's Preparing Participants (for a face-to-face meeting)**

**In crimes or incidents involving severe violence, a mediator must allow enough to adequately prepare the participants and allow them enough time for reflection before the meeting. Deep and thoughtful reflection will help the face-to-face meeting be the best that it can be. It is helpful for the participants to write questions for the other person before the meeting. The face-to-face meeting will not be limited to those question but they serve as a roadmap for the conversation. The questions can be shared with the other participant through the mediator. The mediator should listen to the answers to the questions and even coach the responder how he or she can most effectively answer the question without needlessly causing harm.**

**6) The Mediator's Role in the Face-to-Face Meeting (to talk about what happened as opposed to settlement discussions)**

**During the actual conference, the mediator's role is usually to create a safe environment, open up the session, help people relax and get them going. In most circumstances, and unlike in traditional mediations, the mediator often becomes only an observer to a very intense dialogue. In the "storytelling" phase of the mediation, the lawyers should remain relatively passive and quiet. When and if there are proposals for settlements, the attorneys obviously will be more involved.**

**There should be opportunities for breaks for the parties to individually meet and check in with the mediator and/or their attorney.**

**7) The Issue of Forgiveness and Apology**

**Forgiveness is a very complex religious, legal and psychological issue. A true apology can be enormously helpful in healing parties but a contrived apology usually does more harm to the parties and to the likelihood of reaching any kind of resolution. The issue of forgiveness in these contests can be found addressed in a book by Mark Umbreit, "The Energy of Forgiveness" and in a You Tube video "Being With the Energy of Forgiveness."**

•

**Professor Donna Coker**  
[dcoker@law.miami.edu](mailto:dcoker@law.miami.edu)

### ***Introduction to Restorative Justice Resource List***<sup>1</sup>

Florida Restorative Justice Association at <https://www.floridarestorativejustice.com/>

sujatha baliga, *A different path for confronting sexual assault. What is restorative justice? A practitioner explains how it works*, VOX (Oct. 18, 2018) <https://www.vox.com/first-person/2018/10/10/17953016/what-is-restorative-justice-definition-questions-circle>

Office of Program Policy Analysis and Government Accountability (OPPAGA), *A Review of Restorative Justice in Florida and Other States* (January 2020) available at <https://oppaga.fl.gov/Products/ReportDetail?m=20-02>

Bailey Maryfield, Roger Przybylski, & Mark Myrent, *Research on Restorative Justice Practices*, <https://www.jrsa.org/pubs/factsheets/jrsa-research-brief-restorative-justice.pdf>

sujatha baliga, Sia Henry & Georgia Valentine, *Restorative Community Conferencing: A Study of Community Works West's Restorative Justice Youth Diversion program in Alameda County* at [https://impactjustice.org/wp-content/uploads/CWW\\_RJreport.pdf](https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf) (2021)

For a source list for Restorative Justice & Gender Violence, contact Professor Coker at [dcoker@law.miami.edu](mailto:dcoker@law.miami.edu).

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<sup>1</sup> Prepared for the *Restorative Justice in Criminal Practice* webinar, co-presented by the Alternative Dispute Resolution Section, Criminal Law Section, and Government Lawyer Section of The Florida Bar, and the Florida Restorative Justice Association, June 25, 2021.

## **Additional Resources**

**Home Page, South Carolina Restorative Justice Initiative**

**<https://scrji.org/>**

**From the South Carolina Restorative Justice Initiative,  
collected resources**

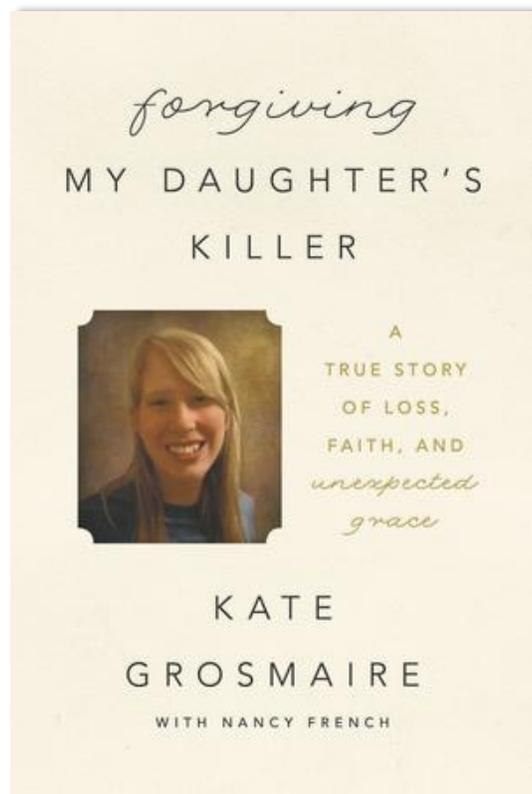
**[https://www.youtube.com/channel/UCThjoHVVRPjyME23yf  
PLufug](https://www.youtube.com/channel/UCThjoHVVRPjyME23yfPLufug)**

**Panel Discussion, Restorative Justice and Gender Based  
Violence, sponsored by the ABA Commission on Domestic  
and Sexual Violence and ABA Section of Civil Rights and  
Social Justice**

**<https://www.youtube.com/watch?v=JVy-5u17M08&t=493s>**

- “7th NACRJ Conference - Selection Page | Online Registration by Cvent.” n.d. Accessed May 7, 2019.  
<https://www.cvent.com/events/Register/ProdItems.aspx?rc=14833f5c-2de3-445c-a736-578f8d176e54&ra=b207befa-99b1-418d-a215-17ee691fb580>.
- “(334) Spiritual Roots of Restorative Justice -- Documentary - YouTube.” n.d. Accessed April 29, 2019. <https://www.youtube.com/watch?v=pLTlgDalDvk>.
- “2019 HNLRS Symposium on Restorative Justice.” 2019. *PON - Program on Negotiation at Harvard Law School* (blog). January 17, 2019.  
<https://www.pon.harvard.edu/events/2019-symposium-on-restorative-justice/>.
- “About RJ.” n.d. Florida Restorative Justice Association. Accessed April 18, 2019.  
<https://www.floridarestorativejustice.com/about-rj.html>.
- “Amazon.Com: Watch Restorative Justice - Documentary 2 Pack | Prime Video.” n.d. Accessed April 28, 2019.  
<https://www.amazon.com/Restorative-Justice-Documentary-2-Pack/dp/B00IMQPF86>.
- “Breaking Down the Walls.Docx.” n.d.
- “Columbine Massacre Victim’s Mum and Killer’s Mum BOND over Loss and Forgiveness - Mirror Online.” n.d. Accessed April 19, 2019.  
<https://www.mirror.co.uk/news/us-news/columbine-massacre-victims-mum-killers-14245192>.
- “EFRJ AGM & Symposium.” n.d. European Forum for Restorative Justice. Accessed March 21, 2019. <http://www.euforumrj.org/events/agmandsymposium/>.
- “EFRJ Symposium: Get to Know Our Speakers!” 2019. European Forum for Restorative Justice. February 26, 2019.  
<http://www.euforumrj.org/uncategorized/efrj2019-symposium-get-know-speakers/>.
- “Email Might Be Better! - Georgiedithlaw@gmail.Com - Gmail.” n.d. Accessed May 2, 2019.  
<https://mail.google.com/mail/u/2/#search/thaliagonzalez%40oxy.edu/KtbxLwGzcqKBqcqwKmcFsdWvXMvRtlNQIV>.
- “Fambul Tok - Google Search.” n.d. Accessed April 18, 2019.  
<https://www.google.com/search?client=firefox-b-1-d&q=Fambul+Tok>.
- “Florida Restorative Justice Association.” n.d. Florida Restorative Justice Association. Accessed April 18, 2019. <https://www.floridarestorativejustice.com/>.
- “Fwd: [Deathpenalty] Death Penalty News----TENN., WYO., ARIZ., NEV., CALIF., USA - Georgiedith@gmail.Com - Gmail.” n.d. Accessed May 7, 2019.  
<https://mail.google.com/mail/u/0/#inbox/FMfcgxwCgVbNLjWvpSLqzBdwknkIPMJM>.
- “How Restorative Justice Works | New Zealand Ministry of Justice.” n.d. Accessed April 24, 2019.  
<https://www.justice.govt.nz/courts/criminal/charged-with-a-crime/how-restorative-justice-works/>.
- Kilbride, Lindsey. n.d. “Amendment 6, Marsy’s Law, Passes; Victims’ Rights To Be Added to Florida’s Constitution.” Accessed May 20, 2019.  
<https://www.wlrn.org/post/amendment-6-marsy-s-law-passes-victims-rights-be-added-florida-s-constitution>.
- Kristof, Nicholas. 2019. “Opinion | Imprisoned for Trying to Save His Son.” *The New York Times*, May 6, 2019, sec. Opinion.  
<https://www.nytimes.com/2019/05/04/opinion/sunday/prison-mass-incarceration-trump.html>.

- Kunichoff, Yana. 2017. "Can This 'Restorative Justice' Court Keep Chicagoans Out of Jail?" *The Atlantic*. May 2, 2017.  
<https://www.theatlantic.com/politics/archive/2017/05/chicago-restorative-justice-court/524238/>.
- "Making a Case for Restorative Justice." n.d. Accessed April 26, 2019.  
[https://www.americanbar.org/groups/gpsolo/publications/gpsolo\\_ereport/2011/october\\_2011/making\\_case\\_restorative\\_justice/](https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2011/october_2011/making_case_restorative_justice/).
- March 7, and 2019. n.d. "Redressing Harm through Restorative Justice." *Harvard Law Today*. Accessed April 18, 2019.  
<https://today.law.harvard.edu/redressing-harm-through-restorative-justice/>.
- "Nova Scotia Human Rights Commission - Howling Pixel." n.d. Accessed April 18, 2019.  
[https://howlingpixel.com/i-en/Nova\\_Scotia\\_Human\\_Rights\\_Commission](https://howlingpixel.com/i-en/Nova_Scotia_Human_Rights_Commission).
- "Paralyzed Columbine Victim Pens Letter Forgiving Shooter's Mother." 2016. *Mail Online*. February 12, 2016.  
<https://www.dailymail.co.uk/news/article-3444538/Paralyzed-Columbine-victim-pens-letter-forgiving-shooter-Dylan-Klebold-s-mother.html>.
- Reporter, W. J. N. 2017. "One of the Biggest Towns in the UK Will Have No Police Cells from August." *World Justice News* (blog). June 14, 2017.  
<http://worldjusticenews.com/news/2017/06/14/one-biggest-towns-uk-will-no-police-cells-august/>.
- "Resource Library." n.d. Razia's Ray of Hope. Accessed April 26, 2019.  
<https://www.c4rj.org/what-is-restorative-justice/resource-library>.
- "Restorative Justice | Center for Court Innovation." n.d. Accessed April 26, 2019.  
<https://www.courtinnovation.org/areas-of-focus/restorative-justice>.
- "Restorative Justice Court Works to Change Lives in North Lawndale." n.d. *MSN*. Accessed April 26, 2019.  
<https://www.msn.com/en-us/news/us/restorative-justice-court-works-to-change-lives-in-north-lawndale/ar-BBTSXUw>.
- "Restorative-Times-Oct-Dec-2013.Pdf." n.d. Accessed April 18, 2019.  
<https://rjvictoria.files.wordpress.com/2011/08/restorative-times-oct-dec-2013.pdf>.
- Sep 14, Alison Crawford · *CBC News* · Posted:, 2016 6:40 PM ET | Last Updated: September 14, and 2016. 2016. "Justice Thomas Cromwell Bids Farewell to Supreme Court's Weight of Responsibility | *CBC News*." *CBC*. September 14, 2016.  
<https://www.cbc.ca/news/politics/supreme-court-justice-cromwell-retiring-1.3762237>.
- Stuntz, William J. 2011. *The Collapse of American Criminal Justice*. Cambridge, Mass.: Belknap Press of Harvard University Press.
- "The Greensboro Truth and Reconciliation Commission." n.d. Accessed April 18, 2019.  
<http://greensborotrc.org/>.
- Tullis, Paul. 2018. "Can Forgiveness Play a Role in Criminal Justice?" *The New York Times*, October 19, 2018, sec. Magazine.  
<https://www.nytimes.com/2013/01/06/magazine/can-forgiveness-play-a-role-in-criminal-justice.html>.
- "Twenty Years of Restorative Justice in New Zealand." n.d. *Tikkun*. Accessed April 24, 2019.  
<https://www.tikkun.org/twenty-years-of-restorative-justice-in-new-zealand>.



## FORGIVENESS IS POSSIBLE EVEN IN IMPOSSIBLE CIRCUMSTANCES.



*In a tragically beautiful testament to the liberating power of forgiveness, Kate Grosmaire tells the story of her daughter's murder-- and the stunning, deliberate compassion and support that Kate and her husband offered through the process of Restorative Justice to the young man who shattered their world.*

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## DEPARTMENT OF REVENUE v. JACKSON

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### Supreme Court of Florida.

DEPARTMENT OF REVENUE, Petitioner, v. Kelvin M. JACKSON, Respondent.

Department of Revenue, Petitioner, v. Morgan P. Tillery, Respondent.

Nos. SC01-913, SC01-914.

Decided: April 24, 2003

Charles J. Crist, Jr., Attorney General, and William H. Branch, Assistant Attorney General, Tallahassee, FL, for Petitioner. R. Mitchell Prugh of Middleton & Prugh, P.A., Melrose, FL, for Respondents.

We have for review Department of Revenue v. Jackson, 780 So.2d 342 (Fla. 5th DCA 2001), in which the court certified its holding to be in conflict with the decision of the Fourth District Court of Appeal in Mascola v. Lusskin, 727 So.2d 328 (Fla. 4th DCA 1999). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

#### Facts and Procedural History

The facts of these consolidated cases are virtually identical. In each, the father was initially ordered to pay child support with the payment having been later increased to address support payment arrearages. After entry of these support orders, each father was incarcerated for a crime unrelated to the support obligation, at which time the father filed a petition seeking the suspension or abatement of his child support obligation until his release from prison. The petitions were based upon allegations of the father's present inability to satisfy support obligations as a result of incarceration.

In each case, the trial court noted the interdistrict conflict with regard to the basic issue, but determined, as it was required to do, that the petition should be granted based upon the decision of the Fifth District Court of Appeal in Pickett v. Pickett, 709 So.2d 182 (Fla. 5th DCA 1998).

The Department of Revenue (Department) timely appealed each order, and requested that the Fifth District Court of Appeal reconsider its Pickett holding in light of the Fourth District's Mascola decision. The Fifth District declined, stating: "Although this panel might decide these cases differently than did the Pickett panel, we elect to adhere to the rule of Pickett and certify that our decisions are in conflict with Mascola." Dep't of Revenue v. Jackson, 780 So.2d at 343. The

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Department has sought review in connection with the certified conflict, which requires this Court to determine whether a court should permit a parent to have a preexisting support obligation modified or suspended based upon an inability to fulfill the financial support obligation during a period of imprisonment.

### Analysis

As the Fifth District recognized in its opinion below, two conflicting views have emerged from the decisions of the Florida district courts of appeal on the issue of the modification of child support payment obligations of persons while incarcerated based upon a diminution of income. In the instant action, the Fifth District determined that modification is appropriate and it should continue to adhere to its prior holding in *Pickett v. Pickett* rather than adopt the Fourth District's analysis outlined in *Mascola v. Lusskin*. See *Jackson*, 780 So.2d at 343. In *Pickett*, the district court held that the trial court erred in imputing income for purposes of calculating child support to a father who was scheduled for sentencing on federal criminal charges, where there was "no showing that the husband had the capability while he was in prison to earn the amount imputed to him." *Pickett*, 709 So.2d at 183 (quoting *Waugh v. Waugh*, 679 So.2d 1, 3 (Fla. 2d DCA 1996)). The court in *Pickett* remanded the case to the trial court for consideration under the principles enunciated by the Second District in its *Waugh* decision. See *id.*

In *Waugh*, the Second District reversed the terms of an original support decree that was entered by the trial court while the father was incarcerated. See *Waugh*, 679 So.2d at 3. The trial court had imputed the father's preincarceration income for purposes of calculating his child support payments. See *id.* The Second District deemed the income attribution erroneous because there was no showing that the father had the capability to actually earn the imputed amount while incarcerated. See *id.* Thus, while *Waugh* held only that a support decree entered when the father is in prison must include in its calculations the father's present ability to pay, the court in *Pickett* extended this reasoning and applied it to circumstances where a support decree had been entered prior to the obligor's incarceration, and modification was sought after the party had been imprisoned. See *Pickett*, 709 So.2d at 183.

In stark contrast to the decision of the court in *Pickett*, the Fourth District arrived at a contrary holding in *Mascola v. Lusskin*, 727 So.2d at 329. The *Mascola* court held that "child support obligations may not be modified where the current decrease in income results because the payor has been convicted for attempting to kill the mother in order to eliminate the support obligation." *Id.* at 333. Although the direct holding was expressed in terms limited to the specific facts, the reasoning of the court was constructed with broad statements directed to the principle that the commission of any crime is a voluntary action which the obligor knows may result in incarceration and unemployment, and any modification petition based upon this direct consequence should be rejected. See *id.* at 332. Although the Fourth District noted the conflict with extant Florida decisions to the contrary, it reasoned that the child support payments should not be modified based on the father's decreased income resulting from voluntary conduct which resulted in incarceration. See *id.* at 333. While the holding was expressed extremely narrowly, application of the underlying reasoning adopted by the Fourth District would produce far-reaching results. We granted review of the instant case to resolve the conflict between these decisions rendered by District Courts of Appeal, and now conclude that we must quash the decision under review and remand with instructions.

Section 61.13, Florida Statutes (2001), provides a court that has entered an order requiring a parent to pay child support with continuing jurisdiction to modify the original order upon a showing of necessity to further the supported child's best interest, when the child reaches the age of majority, or if there is a substantial change in the circumstances of the parties. See § 61.13(1)(a), Fla. Stat. (2001). Section 61.14, Florida Statutes (2001), contemplates that either party in the original action may seek modification of an order requiring the payment of support "as equity requires." See § 61.14(1)(a), Fla. Stat. (2001). It further provides that "any unpaid payment or installment of support which has accrued up to the time either party files a motion with the court to alter or modify the support order" may not be reduced by the court. § 61.14(6)(a)(3), Fla. Stat. (2001). However, any unpaid amount that accrues after the filing of a petition to modify may be reduced upon entry of an order on the

petition. See *id.* Moreover, although section 61.30, Florida Statutes (2001), provides presumptive amounts for child support payments based on the supporting parent's monthly income and the number of children, the trial court is vested with discretion to vary the support amount after considering all relevant factors, including, but not limited to, the needs of the child, age, station in life, standard of living, and the financial status and ability of each parent. See § 61.30(1)(a), Fla. Stat. (2001).

This statutory framework provides the parameters within which the resolution of the current conflict must be reconciled. Florida simply does not permit a retroactive reduction of accrued amounts due for support, even if such an approach were in the best interests of both the child in having some amount, albeit smaller, actually paid, and the obligor parent in making a manageable payment rather than being faced with the often unattainable and unrealistic expectation to satisfy large vested arrearages. Recognizing the competing policies and divergent circumstances presented in this arena, we must find an answer that is predicated upon the fundamental goal of solving the human problem before us, rather than exacerbating an already difficult situation.

The instant action requires that this Court consider and address a purported internal conceptual conflict between the provisions in section 61.13 that provide a basis for the trial court to modify a child support decree when it is necessary to the child's best interests, and those which allow modification when there is a substantial change in the parties' circumstances. It is abundantly clear that a substantial change in circumstances, such as the incarceration of an obligor, certainly may not produce a result that is in a child's best interests. Although the public policy considerations underpinning the arguments on either side have some compelling components, in the instant situation we believe that the child's interest in receiving his or her support monies must generally supersede the obligor parent's substantial change in circumstance resulting from incarceration.

The full and timely remitting of child support payments is certainly in the best interests of the supported child. Therefore, any abatement or waiver of support payments owed to the child would certainly harm the interests of the child. See *Imami v. Imami*, 584 So.2d 596, 598 (Fla. 1st DCA 1991) (“[C]hild support is a right which belongs to the child.”); see also *Cole v. Cole*, 70 Ohio App.3d 188, 590 N.E.2d 862, 865 (1990) (“While [the parent] is incarcerated, the needs of his children are not diminished. The only person to benefit if support is suspended would be [the parent].”).

Notwithstanding this logic, practical considerations weigh heavily here, and cannot be simply ignored. It is clear that a substantial change in circumstances will almost always occur when a parent becomes incarcerated and, as a result, is separated from the capacity to earn income. There are situations where earned income may not be a critical factor, but those cases are not the norm and our decision today is not directed to such circumstances. Moreover, a parent newly released from prison will, more likely than not, be without the means or ability to finance or satisfy a large accrued child support debt. Indeed, it is quite possible that he or she could never meet both the current payments and the debt that accrued during his or her imprisonment. See, e.g., *In re Marriage of Barker*, 600 N.W.2d 321, 323-24 (Iowa 1999) (holding that an incarcerated mother's reduction in income while in prison justifies a modification of support payments that takes into account inability for future payment of accumulating debt). The key is to find that structure that will most benefit the child entitled to support through a plan designed for realistic payments. Payments actually made are, most assuredly, more important than mere paper judgments. We find that the result attained by the New Jersey Superior Court in *Halliwell v. Halliwell*, 326 N.J.Super. 442, 741 A.2d 638 (App.Div.1999), is a just and fair approach for the resolution of the issues presented today. To be sure, this approach may not have the answer to absolutely all human situations, but it does provide a practical solution which recognizes the realities of child support and incarcerated parents.

The court in *Halliwell*, considering the question of whether incarcerated parents should be entitled to modify their child support payments, reasoned that the trial court should defer consideration of an incarcerated parent's motion for modification until the parent is released from custody. See *id.* at 646. Upon the parent's release, the trial court should then consider the motion in light of the contemporary circumstances of all the parties involved and enter a judgment appropriate at that time. See *id.*

Importantly, under New Jersey's equivalent of section 61.14, this method eliminates the problem of vesting ever-increasing arrearage amounts because any payments accruing after the motion is filed may be modified, based upon the circumstances revealed at the hearing after the obligor's release from prison. See *id.* This provides flexibility for the court to address all issues and construct a judgment that will both recognize the support obligation and provide a realistic plan for payment.

We conclude that the New Jersey court's logic and course of action is well-founded, and that it recognizes and accommodates the competing concerns and interests presented in this case. Therefore, pursuant to section 61.14(1)(a), a parent seeking modification of child support payments because he or she is unable to pay the installments due to incarceration may file a petition to modify with the trial court that entered the original child support order. Thereafter, the trial court shall hold the petition in abeyance and place the matter on its inactive calendar for the term of the obligor parent's incarceration. During this time, the petition is not subject to dismissal for failure to prosecute, and the relationship of the incarceration to support is good cause to delay activity. The support installments, although still outstanding according to the original payment schedule, do not accrue as a vested interest of the child to be reduced to judgment which cannot be altered.<sup>1</sup> While the petition remains on the inactive calendar, the matter is not subject to the guidelines for proper disposition of cases provided in the Florida Rules of Judicial Administration. See Fla. R. Jud. Admin. 2.085(d)(1)(C).

Upon the obligor's release, any party to the initial support arrangement may bring the original petition for modification to the trial court's attention for resolution. At that time, the trial court shall conduct a hearing on the matter. In reaching a conclusion with regard to the resolution of support matters, the trial court should consider all current facts and equitable factors to determine a realistic plan for the payment of meaningful support, both past and future. The amount of child support which has accumulated after the filing of the incarcerated parent's petition for modification generally should not be reduced. Rather, after the obligor's release from custody, the trial court should structure a schedule of prospective payments that, while possibly less than the payments originally decreed, is designed to enhance the probability that full reimbursement of the underlying amount will occur at some future time. In structuring the payment plan, the trial court should consider the contemporary circumstances of all parties concerned, while ultimately serving the best interests of the child in having all amounts ultimately paid in full if possible. To this end, the trial court should weigh the factors listed in section 61.30(1)(a), the length of the obligor's incarceration, the obligor's present and future employment possibilities, and the total outstanding unpaid amount, as well as any additional considerations touching upon the obligor's attempt, if any, to evade his or her child support obligations.

We reiterate that, in structuring the payment plan, the court must always be directed to designing an order that is in the best interests of the child, both technically and practically. Therefore, any accruals which vested prior to filing the petition to modify remain and clearly must be paid in full. See *Shufflebarger v. Shufflebarger*, 460 So.2d 982, 985 (Fla. 3d DCA 1984) ("Unpaid child support is a vested right not subject to modification."). Likewise, the total child support amounts which continue to increase after the filing of the obligor parent's petition generally should not be reduced, but may be restructured. Additionally, the court may modify the obligor's current child support obligations, along with adjusting the amount of the obligor's future payments of the unpaid support that has accumulated after the petition to modify was filed. See *McArthur v. McArthur*, 106 So.2d 73, 76 (Fla.1958) (holding that orders modifying child support payments that are effective as of the date of filing of the petition to modify, or anytime subsequent thereto, are not retroactive solely because they refer back to the date of filing). It is quite possible that the obligor's payments toward the amounts accumulated after the petition to modify was filed will continue beyond the time that the child support obligations would otherwise naturally terminate, for instance when the child reaches the age of majority. See § 61.13(1)(a), Fla. Stat. (2001). However, because the amount of the accumulated support payments adjudicated in connection with the petition for modification will have become due, the trial court may require the obligor to continue making payments toward his debt. See *Friedman v. Friedman*, 508 So.2d 781 (Fla. 4th DCA 1987).

The above policy will result in the most equitable and fair outcome for all concerned. Parents have a legal duty to support their children. See § 61.09, Fla. Stat. (2001); see also, e.g., *Cronebaugh v. Van Dyke*, 415 So.2d 738, 741 (Fla. 5th DCA 1982) (“A minor child has a legal right to support from both parents in keeping with its needs and the parents' ability.”). The paramount concern in this situation is to act in the best interests of the supported child. Cf. *Overbey v. Overbey*, 698 So.2d 811, 814-15 (Fla.1997) (holding that a motion to modify child support centers around a finding of the child's best interest). Undeniably, the child's interests are not served where the obligor parent is unable to fulfill his or her support obligations because there is no income while in prison. Under such circumstances, the child faces the hardship of simply not receiving the money he or she needs, regardless of whether the trial court modifies the incarcerated parent's obligations. After the parent is released, however, the child is in a much better position if there is at least the possibility that not only will current support payments resume, but payment for an accumulated amount will be met—even if under a restructured payment plan. To the contrary, if we permit trial courts to suspend an incarcerated parent's obligation to pay child support, the supported child will never receive the benefit of the support payments to which the child was entitled. Therefore, the child's interests are certainly best served when courts do not modify an obligor parent's child support payments simply because of the parent's incarceration.

Nevertheless, this Court is not unaware of the practical realities facing an obligor parent who is recently released from prison. We recognize that if support payments simply accumulate and become judgments for vested arrearages, the flexibility necessary for attempting to secure actual future payments may be inhibited or entirely lost. Aside from any other debts which may have accrued, the child support arrearages and current support payments may be quite significant. Further, former inmates often experience difficulty in finding meaningful employment. However, such difficulties do not diminish a parent's duty to support his or her child, nor do they outweigh the burdens faced by a minor child who must do without monetary support from the incarcerated parent. Our primary concern is that the child receives the support to which he or she is entitled. Of secondary concern are the parent's difficulties—largely self-inflicted—resulting from incarceration due to criminal conduct unrelated to the support obligations. Additionally, our opinion today should not be construed as changing the current law governing the modification of child support payments of parents incarcerated for criminal contempt charges stemming from refusal to fulfill those support payments initially. See *Betancourt v. Sanders*, 629 So.2d 272 (Fla. 1st DCA 1993) (holding that an order for child support cannot be modified based upon a motion for contempt); *Dep't of Health & Rehab. Servs. v. Porbansky*, 569 So.2d 815 (Fla. 5th DCA 1990) (same). Nor do we consider all conduct which results in incarceration as being of equal weight in the ultimate equation. Loss of freedom and the capacity to earn due to an attempt to eliminate either a parent or children to avoid support obligations may certainly be considered as a factor weighing against modification.

The ability to craft equitable and realistic payment schedules for obligors upon their release from incarceration does not exist under Justice Harding's preferred resolution of this action. The remedy Justice Harding suggests is illusory and is no remedy at all. Indeed, if arrearages “accumulate and vest as a matter of law” while obligors are incarcerated, as Justice Harding would establish, the sums owed would be irreversibly fixed, thus completely preventing trial courts from fashioning “the appropriate remedy for the payment of arrearage and future support as circumstances require” upon release of the parent from imprisonment. Concurring in part and dissenting in part op. at 501. Therefore, we conclude that the more just approach is to hold the petition to modify in abeyance until a time when a thorough evaluation of the obligor's ability to pay may be conducted, and a farsighted plan for payment may be established.

Secondly, Justice Harding's suggestion that the approach we adopt today in some way burdens the trial court is a hollow argument without substance. We have been presented no basis as to how a trial judge would be burdened by simply permitting a written petition to remain in a court file located in the clerk's office requiring no work or action on the part of anyone and independently we are unaware of any such burden. The filing of a petition requires no logistics or anything from a trial judge until the matter is scheduled for a hearing by the parties. The simple filing of a petition in a court file neither burdens the trial judge, nor does it even implicate logistics.

We believe that the procedures specified herein for permitting the extension of the time for payment of the child support, while the total debt for child support remains undiminished, strike the appropriate balance. It is essential that an obligor parent not be so discouraged by what he or she perceives as an insurmountable child support debt that he or she is tempted to forego paying both past amounts and the current support. Such an abandonment would only result in contempt charges filed against the obligor which could affect his or her credit report, result in additional financial hardship, or cause a return to incarceration. See § 38.23; § 61.14(6)(b)(1)d, (6)(d), Fla. Stat. (2001); see also *Russell v. Russell*, 559 So.2d 675, 676 (Fla. 3d DCA 1990) (holding that incarceration for civil contempt of court order to pay child support obligations must be based on a finding of the obligor's present ability to pay). The vicious circle of debt and crime must be broken. Therefore, we believe that consideration of all factors and making provision for extending the payment plan for child support amounts over a length of time to be determined by the trial court, even if the payments for past support during minority must continue beyond the child's age of majority, is the proper solution to the practical realities of this case. Our view is most closely aligned with that of the *Mascola* court, but we provide exceptions and a mechanism that will afford trial courts the ability to address accumulating support obligations without the problems associated with the vesting of interests in the increasing amounts and corresponding judgments.

For the foregoing reasons, we quash the decision of the Fifth District Court of Appeal in *Department of Revenue v. Jackson*, 780 So.2d 342 (Fla. 5th DCA 2001), and approve the Fourth District's holding in *Mascola v. Lusskin*, 727 So.2d 328 (Fla. 4th DCA 1999), to the extent that it provides that an incarcerated parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. We reject the per se rule that would permit incarceration to be utilized as a basis to modify support, which would be tantamount to authorizing a suspension or abatement of support obligations in disguise and provide the alternative—a flexible procedure designed to encourage and accommodate the payment of support obligations.

It is so ordered.

I concur in the decision to quash the decision from the Fifth District Court of Appeal and approve the decision in *Mascola v. Lusskin*, 727 So.2d 328 (Fla. 4th DCA 1999).

I do not join in the opinion. I believe that there are adequate procedures presently in place which will allow the circuit court to deal with the issues which are of concern to the majority. However, if the procedures need to be refined to deal with these issues, then specific concerns should be referred to the appropriate rules committee. I am opposed to creating special procedures in this Court's opinions because those procedures are not subject to public comment and often conflict in application with existing rules. I am concerned that this opinion will create many problems in administration.

I agree with the majority to the extent that it does not endorse a bright-line rule that a parent's incarceration and inability to earn an income while incarcerated is a per se change of circumstances necessarily requiring a reduction or suspension of a child support obligation. In other words, I agree that there should not be an automatic modification of child support obligations when a parent is incarcerated. However, I dissent in part because I do not endorse a per se rule that always requires a trial court to hold in abeyance a petition to modify while the parent is incarcerated.

I agree with the majority that in cases where the parent is incarcerated for a crime that resulted from the attempt to avoid his or her child support obligation, such as the outrageous circumstances in *Mascola v. Lusskin*, 727 So.2d 328 (Fla. 4th DCA 1999), neither equity nor our case law would support modifying a child support obligation. Because section 61.14, Florida Statutes (2002),<sup>2</sup> pronounces that equity is considered in any petition to modify, clearly there can be no equity in the reduction of a child support obligation of a parent who is incarcerated for a crime that resulted from the attempt to avoid his or her child support obligation. As the *Mascola* court stated:

To paraphrase what Judge Pearson said in *Waskin v. Waskin*, 484 So.2d 1277 (Fla.App. 3d DCA 1986), the clean hands doctrine should surely disabuse a court of equity from relieving a father of his obligation to pay child support where the decrease in his financial ability to pay has been brought about by his voluntary act of attempting to kill the other parent to escape the duty to pay the support. 484 So.2d at 1277. It is especially ironic in this case that reducing support because of the criminal conviction would allow the father to accomplish his very motive for committing his crime-to avoid having to support his children.

727 So.2d at 332. The situation presented in *Mascola* is very similar to the circumstance where the parent has become voluntarily unemployed in order to avoid a child support obligation and there is no question that the equities will not support a modification of child support. See, e.g., *Bokinsky v. Bokinsky*, 742 So.2d 809 (Fla. 2d DCA 1999).

However, the facts of the cases currently before the Court are in sharp contrast to the facts of a case such as *Mascola*, where the specific crime for which the husband was incarcerated, the attempted murder of his wife and unborn twins, was committed for the specific purpose of eliminating his child support payment. See *Mascola*, 727 So.2d at 329 n. 2. In *Department of Revenue v. Jackson*, 780 So.2d 342 (Fla. 5th DCA 2001), Jackson had been ordered to pay child support for his daughter. See *id.* at 342. His weekly obligation was \$32.25, which was later increased to \$58.24 per week due to an arrearage. He was "later incarcerated for dealing in stolen property and for drug possession, and he filed a motion to abate child support during his incarceration." *Id.* Jackson's sentence was imposed in May 1998 and his present release date is June 2003.

At the hearing on his motion to modify, Jackson testified that "all of the crimes that was [sic] committed was because of a drug addiction . because I was a drug addict and, therefore, the crime was committed by me." Accordingly, unlike *Mascola*, it does not appear that Jackson committed the crime for which he was incarcerated in order to avoid child support. The trial court entered an order abating child support, which specifically stated:

While the Defendant is incarcerated, he shall have no obligation to pay child support since he has no present ability to pay support and the imputation of income for child support purposes would be improper. Upon the Defendant being released from incarceration and/or obtaining employment through a work release program, the Plaintiff retains the right to reestablish child support obligations of the Defendant and also pursue child support arrearages, if any, by all lawful means.

Presumably, because the trial court abated the child support payments during incarceration, the ability to pursue arrearages refers to previously unpaid child support. Without the abatement of child support payments and presuming the \$58.24 per week amount and a sixty-month (five-year) incarceration, Jackson's arrearages during incarceration will total an additional \$3,494.40.

In the consolidated case of *Tillery*, the record does not identify the crime that led to *Tillery*'s incarceration, but does reflect that he was sentenced to 37.5 months' imprisonment. At the time *Tillery* filed his petition to abate, his child support obligation was \$82 weekly and he was already in arrears for \$15,501.59. Therefore, without abatement of the obligation while *Tillery* is incarcerated, he will be in arrears an additional \$12,300, making his total arrearages \$27,801.59.

In the recent case of *Holt v. Geter*, 809 So.2d 68 (Fla. 1st DCA 2002), the First District adopted a bright-line rule that child support should never be abated during incarceration. Although the First District agreed with the Fourth District's reasoning in *Mascola*, there is nothing in the First District's opinion indicating that *Holt*'s crime was related to an attempt to avoid his obligation to pay child support. The facts as alleged by *Holt* in his petition for modification indicate that he is serving a 72-month sentence received on June 20, 2000, that he did fully support his son from the time of his birth until 1999, and that he was remorseful that he could not continue to do so. Specifically, *Holt* stated:

Respondent would like noted that he is remorseful for being in the situation that he is in and not being able to fully support his son. Respondent did in fact fully support his son up until he was unable to due to his incarceration and has full plans of continuing this support after he is released back into society. [R]espondent is also remorseful that is is [sic] not present to be the father that his son will need in this very impressionable time of his life, respondent understands that no amount of support can take the place of his physical and mental support that a Father can give to his son.

As of November 2000, Holt had a total arrearage of \$6200 and was ordered to pay \$172 per month, even while incarcerated. Thus, by the time he is released in 2006, Holt's arrearage will total more than \$17,000.

When a parent like Jackson, Tillery, or Holt is incarcerated, and the underlying crime was not committed for the purpose of avoiding child support, the two polar views are that child support should never be modified because the criminal behavior that led to the incarceration was voluntary, or that child support should always be modified because incarceration is a change of circumstance leading to reduction in the ability to earn income. However, in my opinion a third view is that incarceration is simply one factor to consider when determining whether to grant a modification of child support.

The undeniable fact is that incarceration leads to a dramatic change of circumstances and financial ability. Thus, except for the cases where a parent is incarcerated for a conviction that resulted from an attempt to avoid the child support obligation, a trial judge should not be prohibited from either considering or even granting a petition to modify based solely on the fact of incarceration at the time the petition is filed. Thus, in those cases, I depart from the majority opinion's unbending rule of law that requires the trial court to hold a petition to modify in abeyance until the period of incarceration is over. See majority op. at 491. I see no reason to remove all discretion from the trial court to consider a petition to modify where there has been an undeniable change of circumstances due to a parent's incarceration.

In those cases in which the crime for which the parent is incarcerated is not related to an attempt to avoid child support, the trial court should be able to exercise its discretion. Some of the factors the trial court should apply when exercising that discretion include:

(1) the length of incarceration experienced for the current conviction and the anticipated remaining period of incarceration, (2) the earning potential of the incarcerated parent following release, (3) the amount of the existing child support award, and (4) the total amount of child support that will accumulate upon the incarcerated parent's discharge.

Oberg v. Oberg, 869 S.W.2d 235, 238 (Mo.Ct.App.1993). See also In re Marriage of Hamilton, 857 P.2d 542, 544 (Colo.Ct.App.1993) (finding that in addition to obligor's incarceration, the court must consider "the intentional nature of the crime, financial circumstances, likelihood of future income, and any possible intention to evade the support obligation"); Thomasson v. Johnson, 120 N.M. 512, 903 P.2d 254, 257-58 (Ct.App.1995) (holding that incarceration alone does not demonstrate an inability to pay support and that other factors including whether the parent has other assets or sources of income, the ability of the parent to earn income in the past and future, the length of the incarceration, the best interest of the child, and the unclean hands doctrine can all be considered in deciding whether modification is warranted). As the Oberg court stated:

The requirement to pay child support is not punitive but is an obligation imposed by parenthood to satisfy the needs of the parent's child as completely as the parent's circumstances reasonably permit. The courts must, therefore, exercise considerable discretion in this type of case just as they must in all cases in which the financial obligation of a parent to satisfy the needs of the parent's child is at issue.

869 S.W.2d at 238.

In dissenting from the majority's procedure, I am in no way minimizing the fact that it is the parent's criminal behavior that led to the parent's incarceration and inability to pay support. The reality is that by committing the crime, that parent has deprived the child of financial support as well as the parent's involvement in the child's life. The parent's incarceration, however, was the punishment for the parent's conduct imposed in a separate criminal proceeding. The fact of that incarceration should not be the sole basis for denying modification of child support in a civil proceeding. Instead, the court should look to the general principles governing child support modification.

Because "proceedings under chapter 61 are in equity and governed by basic rules of fairness as opposed to the strict rule of law," *Rosen v. Rosen*, 696 So.2d 697, 700 (Fla.1997), the clean hands doctrine may bar the downward modification of child support in those cases, like *Mascola*, where there was a finding that the parent's incarceration resulted from a crime that was committed in an attempt to avoid child support. See 727 So.2d at 333. This approach is consistent with equitable rules barring profit from wrongdoing. However, sound public policy militates against a categorical rule preventing the trial courts from considering petitions to modify filed by incarcerated parents on a case by case basis. There is no reason to require the trial courts to treat parents who become incarcerated after the initial child support award any differently than other parents who face a change in circumstances.

The Department of Revenue (DOR), which is the appellant in both of these actions, acknowledges that if the initial child support obligation is established at the time that the parent is incarcerated, then it would be error to impute income to that parent without showing an independent source of income. As the Second District in *Waugh v. Waugh*, 679 So.2d 1 (Fla. 2d DCA 1996), observed in reversing a child support order based on the amount that the father was earning prior to incarceration:

"A court may impute income to a party who has no income or is earning less than is available to him based upon a showing that the party has the capability to earn more by the use of his best efforts." Here, there was no showing that the husband had the capability while he was in prison to earn the amount imputed to him.

679 So.2d at 3 (citation omitted).

The DOR also agrees that after the parent is released from prison, a modification of future child support obligations may be appropriate. Further, the DOR acknowledges that where the parent, rather than being incarcerated for his or her criminal conduct, was placed on probation and thereafter suffered a reduction in earnings, a downward modification of the child support obligation would be appropriate. Regardless of whether the parent is incarcerated or on probation, it is the underlying criminal behavior that led to the ensuing reduction in income. I see no reason why a judge should be prevented from considering a petition to modify for a parent who is incarcerated when the trial judge would have discretion to consider the petition to modify if the parent were placed on probation for the same criminal behavior.

Similarly, a trial court has the discretion to modify child support payments if a parent's income is reduced because the parent lost hospital privileges necessary to practice his or her profession due to alcoholism or a drug addiction. See *Haas v. Haas*, 552 So.2d 252, 254 (Fla. 4th DCA 1989) (husband's loss of hospital privileges due to his alcoholism constituted sufficient change of circumstances to warrant reduction of alimony). Thus, I see no reason why we should prevent judges from considering petitions to modify filed by parents who are incarcerated for crime resulting from alcohol or drug addiction. The underlying issue is whether there has been a loss of the ability to earn income so that in fact the parent is unable to meet his or her present child support obligation. In response to Justice Harding's opinion concurring in part and dissenting in part, I do not agree that we should in all cases equate a loss of employment due to incarceration with cases where the parent becomes voluntarily unemployed to avoid child support.

Consider these hypotheticals. If a person drives while intoxicated, becomes involved in an accident, receives injuries and as a result loses the ability to earn an income, the trial court may reduce the child support obligation based upon that loss of income.

Similarly, if the person drives while intoxicated, becomes involved in an accident, is charged with DUI manslaughter, is sentenced to probation, and as a result loses the ability to earn an income, the trial court may reduce the child support obligation based upon that loss of income. However, if the person drives while intoxicated, becomes involved in an accident, is charged with DUI manslaughter, is sentenced to prison, and as a result loses the ability to earn an income, under the majority opinion the trial court will not be able to consider a reduction of the child support obligation based upon that loss of income until after the person is released from prison. I see no basis in the law for distinguishing the third example from the first two or for necessarily equating something like voluntary intoxication-or incarceration-with voluntary unemployment.

Although I believe that the trial judge should have the discretion to grant a petition to modify a child support obligation at the time it is filed by the incarcerated parent-unless the crime for which the parent is incarcerated is related to an attempt to avoid child support-I am not opposed to also giving the trial judge discretion to defer the petition to modify and to follow the procedures set forth by the majority. Factors that the trial court might consider in deciding whether to defer the petition include the length of the parent's incarceration, the anticipated remaining period of incarceration, the earning potential of the parent following release, and the obligor's prior record of timely payments. However, I also agree with Justice Wells that the matter should be referred to the appropriate rules committee to recommend how the deferral procedure should be implemented and to recommend factors for the trial courts to consider in deciding whether to grant the petition to modify or to hold it in abeyance.

Accordingly, although the majority is on the right track in its approach, in my view the majority goes too far in mandating that the trial court hold a petition to modify in abeyance in all cases of incarceration. I am unpersuaded that a per se rule that never allows for modification or that always requires deferral until incarceration is completed will actually benefit the child whose best interests we profess to protect, especially if the amount of the monthly child support obligation is significant and the incarceration lengthy. I would thus leave the matter in the trial court's discretion guided by the principles enunciated in this opinion.

The State asserts that it wants to act in the best interests of the child; however, as these cases make apparent, incarcerating a parent who has a child and who has a child support obligation usually does not serve the best interests of the child. Although there are many cases where incarceration is necessary, the reality that we must face as a society is that incarceration makes it difficult if not impossible for a parent to support his or her child either physically or emotionally, and places a greater burden on the State to provide the unpaid support. Thus, with the increasing length of sentences and the increasing numbers of parents incarcerated,<sup>3</sup> the fact that incarceration adversely affects a parent's ability to support a child both materially and emotionally, and the societal fallout from that failure, are factors that must be seriously considered when looking at alternative punishments for certain offenses. See *State v. VanBebber*, 805 So.2d 918 (Fla. 2d DCA 2001) (Altenbernd, Acting C.J., concurring) (writing separately "to encourage the legislature to consider authorizing more discretion for trial courts to impose adequate alternative punishments for DUI manslaughter"), review granted, 819 So.2d 139 (Fla.2002).

Alternatives to incarceration could embrace a balanced and restorative approach to criminal justice.<sup>4</sup> This approach requires the offender to be held accountable for his or her criminal actions by recognizing the harm done, including indirectly to his or her child, and by imposing a solution that would enable the offender to seek to repair the harm resulting from his or her criminal behavior, including the continued payment of child support. However, given that there are no such options available at this time, I would afford the trial courts as much discretion as possible in deciding when and whether a petition to modify should be granted.

In conclusion, I would quash the Fifth District's decision in Jackson to the extent it provides that a parent's incarceration is a change of circumstances that automatically requires a reduction or suspension of a child support obligation. Neither do I approve a bright-line rule, such as the one suggested by Justice Harding, that would require the trial court to deny the petition to modify without considering the fact of incarceration. I would provide the trial court with discretion to consider the petition to modify at the time the petition is filed so long as the underlying crime did not result from an attempt by the parent to avoid child support as in Mascola. I would further provide the trial court with discretion to defer consideration of the petition to modify based on the procedures outlined in the majority opinion. However, I do not agree with the majority that all discretion to grant the petition to modify at the time it is filed should be eliminated. I would thus quash the opinion in Jackson and remand for reconsideration of Jackson's petition by the trial court.

I appreciate the majority's effort to resolve a complex "human problem," majority op. at 490, regarding the often large arrearage accumulated while one required to pay child support is incarcerated. However, contrary to the majority, I would resolve the competing policy interests involved by following the reasoning of the Ohio Sixth District Court of Appeals in *Cole v. Cole*, 70 Ohio App.3d 188, 590 N.E.2d 862, 866 (1990). There, the court reasoned that

[the incarcerated parent] could and should be treated as any other noncustodial parent liable for any money owed on his child support obligation. [The parent's] inability to pay arose from circumstances which he could have reasonably anticipated. There are no guaranties of probation or other forms of disposition when convicted of a criminal offense. It is not "state action" which reduced his income, but his own willful acts. Thus, we find that incarceration, standing alone, does not warrant a finding of change of circumstances.

Thus, while one is incarcerated and does not pay support, I would allow any arrearage to accumulate and vest as a matter of law. After the obligor is released from incarceration, the trial court can fashion the appropriate remedy for the payment of arrearage and future support as the circumstances require. If payment on the arrearage cannot be made, the arrearage can be reduced to judgment. I find that this resolution brings more certainty and consistency than the New Jersey resolution of the issue, which the majority adopts, and more appropriately recognizes the benefit that should belong to the child rather than to the incarcerated parent.

Additionally, I am concerned that the procedure adopted by the majority will place an additional burden on already burdened trial judges and administrators. The logistics of managing a trial calendar with petitions filed by obligors who are incarcerated and who cannot be present for a hearing for a number of years will be difficult. A rule which would allow the arrearage to accumulate and vest as a matter of law while the obligor is incarcerated and permit the trial court, upon the obligor's release, to fashion the appropriate remedy under the circumstances existing at that time appears to me to be a more workable and practical rule for all concerned.

#### FOOTNOTES

1. We specifically note, however, that where an incarcerated obligor owns assets or otherwise has the financial ability to pay at the time he or she files the petition to modify his or her support obligations, trial judges may reduce child support arrearages to judgments to provide that the support obligations may be satisfied from these assets.
2. Section 61.14(1)(a), provides in pertinent part: Except as otherwise provided in s. 61.30(11)(c), the court may modify an order of support, maintenance, or alimony by increasing or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child. (Emphasis supplied.)

3. In August 2000, the U.S. Department of Justice, Bureau of Justice Statistics reported that in 1999 there were an estimated 667,900 fathers and 53,600 mothers of minor children in state and federal prisons. See Christopher J. Mumola, U.S. Dep't of Justice, *Incarcerated Parents and Their Children 2* (2000). Further, an estimated 1.5 million children had a parent in prison in 1999, an increase of more than 500,000 since 1991. See *id.*

4. A balanced and restorative justice approach views crime as “more than a violation of the criminal law” but also as a disruption “in a three-dimensional relationship of victim, community and offender.” See Leena Kurki, U.S. Department of Justice, *Incorporating Restorative and Community Justice Into American Sentencing and Corrections 2* (1999). It further recognizes that because crime “harms the victim and the community, the primary goals should be to repair the harm and heal the victim and the community.” *Id.* The goal of any case disposition should be to promote public safety, competency development and accountability. Further, sentencing that has been based on restorative justice principles has shown higher rates of compliance with payment of restitution amounts and in completion of community service. See generally Gordon Bazemore, *A Vision for Community Juvenile Justice*, *Juv. & Fam. Ct. J.*, Fall 1998, at 55.

LEWIS, J.

ANSTEAD, C.J., QUINCE, J., and SHAW, Senior Justice, concur. WELLS, J., concurs in part and dissents in part with an opinion. PARIENTE, J., concurs in part and dissents in part with an opinion. HARDING, Senior Justice, concurs in part and dissents in part with an opinion, in which WELLS, J., concurs.

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# STATE v. Paul VanBEBBER, Respondent.

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## Supreme Court of Florida.

### STATE of Florida, Petitioner, v. Paul VanBEBBER, Respondent.

No. SC01-2558.

Decided: May 08, 2003

Charles J. Crist, Jr., Attorney General, Robert J. Krauss, Senior Assistant Attorney General, Chief of Criminal Law, and Ronald Napolitano, Assistant Attorney General, Tampa, FL, for Petitioner. Joshua Faett and Rexford Darrow of the Law Offices of Casassa, Mangone, Miller and Faett, Naples, FL, for Respondent.

We have for review the decision in State v. VanBebber, 805 So.2d 918 (Fla. 2d DCA 2001), which certified conflict with the decision in State v. Warner, 721 So.2d 767 (Fla. 4th DCA 1998), approved on other grounds, 762 So.2d 507 (Fla.2000), on the issue of whether the mitigator in section 921.0026(2)(j), Florida Statutes (Supp.1998), is available to support a downward departure from a sentence for a driving under the influence (DUI) conviction. We have jurisdiction. See art. V, § 3(b)(4), Fla. Const. For the reasons explained below, we hold the mitigator in section 921.0026(2)(j) is available to support a downward departure from a sentence for a felony DUI conviction. Accordingly, we approve the Second District's decision in VanBebber, and disapprove Warner to the extent it conflicts with this decision.

#### BACKGROUND

The Second District summarized the facts of this case as follows:

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On May 29, 1999, Paul VanBebber was driving home after a party at which he had consumed sufficient alcohol that his reflexes were impaired. He failed to stop at a stop sign and collided with another vehicle that contained a family of six: two parents, a six-year-old son, a four-year-old daughter, a four-week-old daughter, and the father's brother who was visiting from Columbia. The three children suffered injuries and their uncle was killed in the crash. The State charged VanBebber with one count of DUI

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with property damage, three counts of DUI with personal injury, one of them with serious bodily injury, and one count of DUI/manslaughter. VanBebber, exhibiting extreme and sincere remorse while recognizing his fault, pleaded nolo to all offenses as charged.

At the sentencing hearing, the trial court heard from members of the victim's family as well as VanBebber's, including VanBebber himself. Each side outlined the devastating effect the accident has had on the families. Defense counsel argued for a downward departure from the guidelines sentence of 175.9 to 240 months based on the statutory mitigator of "offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse." § 921.0026(2)(j), Fla. Stat. (Supp.1998). The trial court agreed that the evidence fulfilled the requirements of section 921.0026(2)(j) and imposed a downward departure. It sentenced VanBebber to 200 months' incarceration for the counts of DUI/manslaughter and DUI with serious personal injury, but suspended it upon completion of fifteen years' probation with special conditions. The State does not dispute that the evidence presented at the sentencing hearing supported the mitigator, although the trial court did observe with some puzzlement that it was unsure how one would commit this crime in a sophisticated manner. The State objected to the downward departure, thus preserving this issue, which it then appealed.

VanBebber, 805 So.2d at 919 (footnotes omitted). The Second District affirmed the decision of the trial court and held the mitigator in section 921.0026(2)(j) is available to support a downward departure from a sentence for a DUI conviction, but certified conflict with Warner on this issue. See VanBebber, 805 So.2d at 921.

## DISCUSSION

Section 921.0026 is part of the Florida Criminal Punishment Code<sup>2</sup> and provides, in relevant part:

921.0026 Mitigating circumstances.-This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) A downward departure from the lowest permissible sentence, as calculated according to the total sentence points pursuant to s. 921.0024, is prohibited unless there are circumstances or factors that reasonably justify the downward departure.

Mitigating factors to be considered include, but are not limited to, those listed in subsection (2). The imposition of a sentence below the lowest permissible sentence is subject to appellate review under chapter 924, but the extent of downward departure is not subject to appellate review.

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

.

(j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

.

(3) The defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (2) and does not, under any circumstances, justify a downward departure from the permissible sentencing range.

§ 921.0026, Fla. Stat. (Supp.1998). In concluding that the mitigator in section 921.0026(2)(j) is available to support a downward departure from a sentence for a DUI conviction, the Second District reasoned: (1) section 921.0026 states unequivocally, "This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998," and (2) cognizant of the public policy against drunk driving, the Legislature still did not exempt DUI crimes from application of section 921.0026(2)(j). *VanBebber*, 805 So.2d at 920.<sup>3</sup>

We agree with the Second District's reasoning. Section 921.0026 plainly states, "This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998."<sup>4</sup> Because the mitigator in section 921.0026(2)(j) applies to any felony offense, except any capital felony, committed on or after October 1, 1998,<sup>5</sup> it is available to support a downward departure from a felony DUI conviction. The fact that the Legislature specifically exempted only capital felonies is further support for the conclusion that section 921.0026(2)(j) applies to felony DUI convictions. Legislative intent must be determined primarily from the language of the statute. See *Rollins v. Pizzarelli*, 761 So.2d 294, 297 (Fla.2000). "[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984).

The State argues this Court should resolve the certified conflict by adopting the Fourth District's decision in *Warner*. In *Warner*, the defendant pleaded guilty to three counts of driving under the influence arising out of one episode. See 721 So.2d at 768. The trial court accepted the plea and entered a downward departure sentence based on three mitigating factors in section 921.0016(4), Florida Statutes (1995).<sup>6</sup> One of the grounds for departure was that the offense was committed in an unsophisticated manner and was an isolated incident for which the defendant had shown remorse. On appeal, the Fourth District agreed with the State's assertion that there was an insufficient basis in the record to sustain the departure because the trial court based the downward departure on proffered evidence and erred in not taking evidence. *Warner*, 721 So.2d at 769.

The Fourth District also concluded that on remand, the mitigator of "the offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse" would not be available to support a downward departure of the defendant's sentence. *Id.*<sup>7</sup> As to this issue, the Fourth District stated:

Given the state's strong public policy against DUI, we conclude that this reason for departure is not available in this case. If this DUI could be considered an isolated incident, then all first DUI's by people having clean records could be considered such. Nor do we think that drunk driving can be "committed in an unsophisticated manner."

*Id.* See also *State v. Beck*, 763 So.2d 506, 508 (Fla. 4th DCA 2000) ("We also note that drunk driving cannot be committed in an unsophisticated manner.").

Although we fully recognize the State's strong public policy against DUI, we find that the issue in this case, whether the mitigator in section 921.0026(2)(j) is available to support a downward departure from a DUI conviction, is resolved by the clear and unambiguous statutory language of section 921.0026. Because the statute states that the mitigator in section 921.0026(2)(j) applies to any felony offense, except any capital felony, committed on or after October 1, 1998, we hold that the mitigator in section 921.0026(2)(j) is available to support a downward departure from a felony DUI conviction.

The State also argues, however, that to hold section 921.0026(2)(j) applicable to felony DUI convictions would create conflict with section 921.0026(3), which provides:

(3) The defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (2) and does not, under any circumstances, justify a downward departure from the permissible sentencing range.

We find that no conflict is created by holding section 921.0026(2)(j) applicable to felony DUI convictions. Under subsection (3), intoxication at the time of the offense cannot be used as a mitigating factor to support a downward departure from a sentence under the sentencing guidelines. There is no prohibition, however, against using the mitigators listed in section 921.0026(2) in cases where the offense is intoxication. In this case the trial court imposed a downward departure on the fact that VanBebber was remorseful for an isolated incident committed in an unsophisticated manner. Again, if the Legislature intended to specifically exempt felony DUI offenses from this statutory scheme this Court must presume that it would have explicitly done so in the statute. As the Second District noted, “we shall not judicially legislate and interpret the law to negate the clear language used by the legislature.” VanBebber, 805 So.2d at 920.

Finally, the State argues that the Second District improperly relied on *State v. Sachs*, 526 So.2d 48 (Fla.1988), to buttress its conclusion that section 921.0026(2)(j) is available in this case. In *Sachs*, the defendant pleaded guilty to two charges of DUI manslaughter and was sentenced to four years of community control, which was a downward departure from the guidelines recommendation. See *id.* at 49. The trial court gave five reasons for the downward departure, including that the defendant would continue to suffer a great deal of remorse and shame. This Court affirmed the reasons relied on by the trial court where they were supported by clear and convincing proof. See *id.* at 51. The State now argues that when this Court considered the reasons for departure in *Sachs*, it was looking at the possible lack of moral culpability in an otherwise strict liability criminal statute, not the “unsophisticated manner” in which the crime was committed. However, by relying on *Sachs*, the Second District merely intended to show that this Court previously found the same reasons for departure valid in a case involving a DUI offense, even before the reasons were codified as a mitigator in the Florida Statutes. Therefore we find that the Second District did not err by relying on *Sachs*.

## CONCLUSION

Section 921.0026 is clear and unambiguous and provides that the mitigators found therein are applicable to all felony offenses except capital felonies. The offense of DUI is a noncapital felony offense. Therefore, we hold that the mitigator in section 921.0026(2)(j) is available to support a downward departure from a sentence for a felony DUI conviction. We approve the decision of the district court of appeal and disapprove Warner to the extent it conflicts with this decision.

It is so ordered.

I write to express my agreement with the majority and elaborate on my reasons for concurring. Section 921.0026(2)(j), Florida Statutes (2002), allows the trial court to impose a downward departure sentence if the trial court finds that the offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse. If the dissent is correct that the departure reason is inapplicable, then the trial court in this case would have been required to impose a Criminal Punishment Code prison sentence of no less than 175.9 months (14.65 years) up to 240 months (20 years) in prison.

The evidence presented in the trial court establishes the basis for a downward departure pursuant to section 921.0026(2)(j): this was an isolated instance and the defendant exhibited “extreme and sincere remorse while recognizing his fault.” These facts are more fully detailed in Judge Altenbernd's concurrence:

Mr. VanBebber is twenty-five years old. At the time of this offense, he was employed as a plumber. He has a wife and an infant child. He has no criminal record. Mr. VanBebber has never previously been arrested for DUI. His driving record includes only a few minor traffic infractions. He had not had a drink for six months prior to the night of this accident. He had a blood alcohol level of about .16% at the time of the accident. He stopped at the scene and administered CPR to one of the victims. He pleaded guilty to these offenses with no promise as to the sentence he would receive. He is a religious man, who has repeatedly stated that he wishes that he could have been the person who died in this accident.

State v. VanBebber, 805 So.2d 918, 921 (Fla. 2d DCA 2001) (Altenbernd, A.C.J., concurring).

Section 921.0026(2)(j) appears to have been written exactly for a defendant such as VanBebber. Nothing in the wording of this statute indicates that the Legislature intended to preclude the trial court from using this subsection as a basis for exercising its discretion to impose a sentence less than the Criminal Punishment Code minimum in a case of DUI involving death or serious injury. As this Court explained recently in addressing a similar issue regarding whether the trial court was precluded as a matter of law from imposing a downward departure sentence:

There is no question that the Legislature has the authority to preclude a trial judge from imposing a downward departure sentence. Our role, however, is limited to determining whether the Legislature intended to do so. Accordingly, it is not this Court's function to substitute its judgment for that of the Legislature as to the wisdom or policy of a particular statute.

When construing a statutory provision, legislative intent is the polestar that guides the Court's inquiry. Legislative intent is determined primarily from the language of a statute. When faced with an unambiguous statute, the courts of this state are without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power. This principle is not a rule of grammar; it reflects the constitutional obligation of the judiciary to respect the separate powers of the legislature.

State v. Rife, 789 So.2d 288, 292 (Fla.2001) (citations and quotation marks omitted).

Regarding the position taken in the dissent that this mitigator is unavailable in this case because DUI cannot be committed in an unsophisticated manner and does not involve planning, there is no support for the view that the Legislature intended to give the trial courts discretion to depart downward only for crimes that are capable of being committed in a sophisticated manner. Instead, when all of the phrases of this statutory mitigator are read together, the more reasonable view is that unless the crime involves some sophistication, this mitigator may be used if the trial court finds that the offender has shown remorse and the offense was an isolated incident. Indeed, it is logical to conclude that the Legislature intended to withhold the benefit of this statutory mitigator from a defendant who, although he or she has demonstrated remorse for an offense that was an "isolated" incident, nonetheless committed the crime in a sophisticated manner either in its planning or execution. As the Second District succinctly stated in this case:

First, section 921.0026, which lays out certain mitigating circumstances, states unequivocally: "This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998." There is no exception provided for DUI offenses, as was done for a capital felony. Thus, the legislature did not preclude mitigation if the crime is DUI and was an isolated incident, committed in an unsophisticated manner, for which the defendant has shown remorse. We must, of course, strictly construe penal statutes.

VanBebber, 805 So.2d at 920.

Regarding the presumption under the Criminal Punishment Code that a lengthy prison term is appropriate for VanBebber's offenses, I concur in Judge Altenbernd's observations as to the sentencing discretion of the trial judge in a tragic case such as this:

I write to encourage the legislature to consider authorizing more discretion for trial courts to impose adequate alternative punishments for DUI manslaughter. The victim injury points that are automatically included in a scoresheet for this offense always result in a lengthy prison sentence. There are some occasions when it is not a wise expenditure of tax dollars to impose lengthy prison terms for this offense.

If Mr. VanBebber had run this stop sign with no other car in the intersection, the police would have arrested him for simple DUI. His likely penalty would have been a \$500 fine. See § 316.193(2)(a), Fla. Stat. (2000). He was not so fortunate. There is no denying that the tragedy for his victims cannot be described in words or measured by days in prison. But it is the injuries in this automobile accident alone that have caused his recommended penalty to jump from a \$500 fine to twenty years' imprisonment. Twenty years' imprisonment for this man would cost Florida's taxpayers nearly \$1,000,000. His wife and child would have no one to support them. Given that this crime is primarily the result of terribly bad judgment rather than an evil criminal mind, one questions whether this is the best way to deter future offenses or punish Mr. VanBebber.

The sentence actually imposed in this case will force Mr. VanBebber to spend 600 hours over the next fifteen years repeatedly telling teenagers how he killed Ivan Bjazevic. Over and over again, he will be forced to relive in his own words the awful consequences of his bad judgment. Without a driver's license, it seems highly unlikely that this religious man will ever drive intoxicated again. With some luck, maybe his story will encourage a few teenagers to avoid the conduct that created victims in this case.

I might prefer a system that allowed trial judges the option to imprison defendants like Mr. VanBebber every weekend for twenty years. The current system, however, incarcerates people who are not always dangerous to society. I suspect that the tax dollars that we are spending on incarceration due to mandatory victim injury points could be used more effectively in other programs addressing the very serious and real problem of DUI.<sup>8</sup>

I likewise urge the Legislature to examine whether a prison term under the guidelines must necessarily be imposed for this type of offense in the absence of one of the twelve grounds for a downward departure under section 921.0026. Not only would lengthy incarceration cost the State and its taxpayers upwards of one million dollars in this case, but the defendant's child would suffer both emotionally and financially from being denied a father.

I understand that there are those who might urge that in light of our State's strong public policy against drunk drivers, this defendant deserves a lengthy prison term. We cannot restore the life lost or heal the injuries suffered in the tragedy caused by the defendant's act, which I neither condone nor excuse. In this case, however, the trial court crafted an appropriately onerous penalty that retains the prospect for lengthy incarceration if at any time during the next fifteen years the defendant violates the terms and conditions of his probation.

VanBebber received 200 months' incarceration that will remain suspended only if he successfully completes fifteen years' probation with special conditions, including one year in the Collier County jail. The other special conditions are:

[N]o possession or use of any form of alcohol, controlled substance, or unprescribed medication; random drug and alcohol screens; forty hours of community service each year with groups involved in preventing teenage alcohol consumption; permanent loss of driver's license; restitution; court costs and fines; the costs of supervision were waived until the restitution and court costs were paid.

VanBebber, 805 So.2d at 920 n. 2. Thus, if the defendant violates any conditions of probation, including the special conditions, he may be incarcerated for up to 16.6 years, less credit for time previously served. He will be required as part of his forty hours of community service for the next fifteen years to speak to groups involved in preventing teenage drinking. What a powerful message VanBebber will be able to deliver based on what occurred in this case. Consequences that will remain in place for the rest of his life include the permanent loss of his driver's license. These substantial sanctions fashioned by the trial court are tailored to fit the crime and offender, and also serve in some way to attempt to repair the damage caused by his terrible act.<sup>9</sup>

For all these reasons, I agree with the majority's conclusion that the trial court in this case was permitted to use section 921.0026(2)(j) to support a downward departure sentence for a felony DUI conviction.

I disagree with the majority that because section 921.0026, Florida Statutes (Supp.1998), provides that the mitigators in that section are applicable to all felonies except capital felonies, that the mitigator in section 921.0026(2)(j) is applicable to the felony of driving under the influence (DUI). I would affirm the view espoused by the Fourth District in *State v. Beck*, 763 So.2d 506 (Fla. 4th DCA 2000), and *State v. Warner*, 721 So.2d 767 (Fla. 4th DCA 1998), that the mitigating factor in section 921.0026(2)(j) is not applicable to DUI convictions.

In *Beck*, the Fourth District reversed a trial court's downward departure from the sentencing guidelines. One of the reasons given for the departure was the section 921.0026(2)(j) mitigating factor. In rejecting that factor the court said:

The final ground for departure given by the trial court was that the offense was committed in an unsophisticated manner for which the defendant has shown remorse. In *State v. Warner*, 721 So.2d 767 (Fla. 4th DCA 1998), rev. granted, 732 So.2d 328 (Fla.1999), this court recognized that given the state's strong public policy against DUI, this reason for departure is not valid. We also note that drunk driving cannot be committed in an unsophisticated manner.

*Beck*, 763 So.2d at 508. I believe the Fourth District is correct in its reasoning because the crime of driving while under the influence is not capable of being committed in a sophisticated manner.

This mitigating factor contemplates that the crime that has been committed is one that can be done in at least two ways, sophisticated or unsophisticated. If the crime is one that is not capable of being committed in a sophisticated manner, then logically, it cannot be committed in an unsophisticated manner. As the Fourth District held, DUI is a crime which cannot be committed in a sophisticated or unsophisticated manner.

This reading of section 921.0026(2)(j) does not run afoul of the general provision that the mitigators in this section are applicable to all noncapital felonies. Even with that general principle as a guide, we must be ever mindful of the fact that not every mitigating factor can be applied to every noncapital felony. In determining whether a mitigating factor is applicable, the sentencing court must look at the facts and circumstances of the offense as well as the type of crime that was committed. When the facts and circumstances and the type of crime are considered in this case, I reach the conclusion that section 921.0026(2)(j) is not applicable to the crime of DUI.

#### FOOTNOTES

1. The State contends this is a slight misstatement. The mitigator at issue in this case has three parts-the offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse. See § 921.0026(2)(j), Fla. Stat. (Supp.1998). The State agreed that the offense was an isolated incident for which the defendant has shown remorse, but disputed whether the offense was committed in an unsophisticated manner.
2. §§ 921.002-921.0027, Fla. Stat. (Supp.1998).
3. The Second District buttressed its conclusion with *State v. Sachs*, 526 So.2d 48 (Fla.1988), where, before the current Florida Criminal Punishment Code was instituted, this Court found the manner of committing the offense, the fact that it was an isolated incident, and the fact that the defendant had shown remorse were valid reasons for a downward departure in a DUI case. See *VanBebber*, 805 So.2d at 920-21.
4. As noted above, section 921.0026(2)(j) is part of the Florida Criminal Punishment Code. See §§ 921.002-921.0027, Fla. Stat. (Supp.1998). The introduction to the Code also provides: "The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998." § 921.002, Fla. Stat. (Supp.1998).
5. The offense in this case was committed on May 23, 1999.

6. Section 921.0016(4) was repealed effective October 1, 1998, with the implementation of the Florida Criminal Punishment Code. See §§ 921.002-921.0026, Florida Statutes (1997). Section 921.0026 was enacted effective October 1, 1998. The mitigators listed in sections 921.0016(4) and 921.0026(2) are identical.

7. In Warner, it appears the Fourth District mistakenly cited 921.0016(3)(j) instead of 921.0016(4)(j), Florida Statutes (1995), when discussing this mitigator.

8. A very thoughtful recent law journal article urges the adoption of DUI drug courts, modeled on the highly successful drug courts that have been shown to substantially reduce recidivism. See Gail Sasnett-Stauffer & E. John Gregory, A Drug by any Other Name is Still a Drug: Why the Florida Judiciary Should Start Treating DUI as any Other Drug Offense, 13 U. Fla. J.L. & Pub. Pol'y 299 (2002). I agree that this idea has merit and I know of several county court judges who have attempted to incorporate the drug court model into DUI adjudications. This issue should be more fully explored jointly by all three branches of government since our experience with drug courts in Florida has shown that a cooperative approach has been most successful.

Other stakeholders should be brought into this discussion, including representatives of Mothers Against Drunk Driving (MADD), the public defenders and the state attorneys.

9. In this case, a lengthy prison term would satisfy only the goal of retribution. On the other hand, a balanced and restorative justice approach views crime as “more than a violation of the criminal law” but also as a disruption “in a three-dimensional relationship of victim, community and offender.” See Leena Kurki, U.S. Department of Justice, Incorporating Restorative and Community Justice Into American Sentencing and Corrections 2 (1999). It further recognizes that because crime “harms the victim and the community, the primary goals should be to repair the harm and heal the victim and the community.” Id. The goal of any case disposition should be to promote public safety, competency development, and accountability. Further, sentencing that has been based on restorative justice principles has shown higher rates of compliance with payment of restitution amounts and in completion of community service. See generally Gordon Bazemore, A Vision for Community Juvenile Justice, 49 Juv. & Fam. Ct. J. 55 (Fall 1998).

PER CURIAM.

ANSTEAD, C.J., PARIENTE and LEWIS, JJ., and SHAW, Senior Justice, concur. PARIENTE, J., concurs with an opinion, in which ANSTEAD, C.J., concurs. QUINCE, J., dissents with an opinion, in which WELLS, J., concurs.

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# A Review of Restorative Justice in Florida and Other States

Report No. 20-02

January 2020



# OPPAGA

Office of Program Policy Analysis and Government Accountability

# A Review of Restorative Justice in Florida and Other State

## EXECUTIVE SUMMARY

Restorative justice is a victim-centered process that typically includes repairing harm from a crime, holding offenders accountable, and stakeholder participation. In the criminal justice field, the literature supports positive impacts on victims after participation in restorative justice programming. Additionally, despite mixed results, the literature generally supports reduced recidivism among participants of restorative justice programming. There are important limitations to research in this area, including self-selection bias and a lack of randomized controlled trials.

Other states have implemented a variety of programs under the label of restorative justice, but, in general, states started their restorative justice programs with juvenile offenders who committed lower-level crimes. As confidence in the success of these programs was established, programs often expanded to include adult offenders and more serious crimes, with most states having victim-offender dialogue programs for adults in correctional settings. Colorado has the most comprehensive statutes relating to restorative justice, including the creation of a state Restorative Justice Council made up of 19 appointed representatives that provide guidance and technical assistance to restorative justice programs.

In Florida, there are few statutory provisions for restorative justice; however, there are some programs in the criminal justice system. The state has several organizations focused on the field, including the Florida Restorative Justice Association and the Restorative Practices Interagency Workgroup. There is some programming for youth at the local level and in residential services of the Florida Department of Juvenile Justice (DJJ). For adults, the Florida Department of Corrections (FDC) does not have a formal restorative justice program, but has a pilot program and a working group to develop guidelines for the agency. The Legislature could consider creating programs in FDC and DJJ and creating a council to guide and monitor restorative justice. Barriers for the development of restorative justice include a lack of guidelines, limitations on victim and offender contact due to no contact orders, logistical issues for face-to-face meetings when the victim and offender are far apart, funding, and staffing. The programs would also have to abide by Marsy’s Law and other victim rights laws, including keeping victims’ information confidential. Other states address these barriers through a variety of solutions.

### REPORT SCOPE

As directed by the Legislature, OPPAGA examined

- the outcomes of restorative justice programs, including the effect on the victim and recidivism, through a literature review;
- restorative justice programs in Florida and other states; and
- the effect of Marsy’s Law or other victims’ rights laws on restorative justice.

# INTRODUCTION

Restorative practices is a social science that studies how to build a network of relationships and achieve social discipline. Restorative practices have ancient roots in indigenous practices from all over the world, but became more modernized in the 1970s, due in part to multiple separate initiatives seeking to modify punitive justice systems.<sup>1</sup> Restorative justice, a subset of restorative practices, is a theoretical framework that views crimes as a violation of people and relationships. The ultimate goal is to repair the damage to those relationships by having the people directly impacted by a criminal offense (victim, offender, and the affected community) involved in deciding how to address the offense in a way that balances the needs of those involved. Main focal points of the restorative justice approach include remaining victim centered and requiring offenders to have direct confrontation with those harmed by their actions, including their own loved ones. Restorative justice is a state-supported response to criminal matters in Australia, Canada, New Zealand, and many European countries.

**Restorative justice is challenging to define.** Definitions for restorative justice vary but all contain common themes: the need to repair harm caused by a crime; the idea that offenders must be held accountable for their actions; and stakeholder participation is crucial for healing, reducing the potential for future harm, and restoring offenders back into society. In the literature, restorative justice is commonly defined as a paradigm and a set of practices that promotes, “...process[es] to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”<sup>2</sup> As the use of restorative practices has increased, so has the use of the label restorative to describe a wide range of programming, leading to ongoing debate about how to define restorative justice.

The debate has generally been purist versus maximalist. Purists adhere to a narrow definition, arguing that restorative justice is encounter oriented, involving key stakeholders to address the aftermath of crime. This view encompasses practices such as victim-offender mediation, conferencing, and circles. Maximalists argue that restorative justice is outcome oriented and should include any option that attempts to repair harms caused by crime. The primary aim is facilitating the delivery of reparation and making amends, whether to the direct victim or the community at large. Examples of practices under this definition would include reparation orders or community service.

**There are many types of restorative programs, which can be found in a variety of settings.** Since its inception, the use of restorative justice has become increasingly varied and is found in a wide range of settings. In addition to the criminal justice system, restorative principles are used in disciplinary procedures in schools, neighborhood conflicts, child welfare and protection matters, labor and business regulations, resolution of conflicts involving systemic political violence, social work, counseling, youth services, and faith communities. This report focuses on restorative justice in the criminal justice system in which programming can occur at any time, from pre-arrest to post-conviction. The most common restorative justice programs found in the criminal justice system include the following.

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<sup>1</sup> Restorative justice and its principles have been endorsed by several national organizations, including the American Bar Association, National Association of Community and Restorative Justice, National Council for Juvenile and Family Court Judges, National Council of Crime and Delinquency, National Organization for Victim Assistance, and Dignity in Schools. Internationally, the United Nations has encouraged the adoption of restorative justice and the Council of Europe has endorsed restorative justice policies and practices.

<sup>2</sup> Zehr, H. (2002) as cited in Sliva, S. M., “A tale of two states: How U.S. state legislatures consider restorative justice policies,” *Contemporary Justice Review*, 20 (2), 2017.

- **Victim-offender mediation or victim-offender conferencing:** As the oldest, most widely developed, and empirically grounded practice, this program has the most support and greatest popularity in the United States. In victim-offender mediation, an impartial mediator facilitates dialogue between offenders and victims with the goal of finding appropriate restitution to repair the harm caused by the offense. Both the victim and offender may have family and friends present. There are four distinct phases: referral/intake, preparation for mediation (individual pre-meeting with offender and victim), mediation, and follow-up. The most widespread use of this practice is in property crimes and minor assaults.
- **Victim-offender dialogue:** This confidential, post-conviction facilitated process is initiated only by crime victims and survivors. This practice is not mediation in the dispute-resolution sense or a process for creating any uninvited agreement or reconciliation between parties; it is a process centered on meeting the victim's and survivor's needs, including their desire to express strong feelings and the opportunity to have their questions answered. Although victim-offender dialogue is victim centered, it is also respectful of offenders' emotional needs and concerns.
- **Family group conferencing:** This practice began in New Zealand to address concerns of the native Maori people about the number of children being removed from their homes by the courts. These conferences are facilitated discussions that allow those most affected by a crime (victim, offender, family and friends of both) to discuss the impact of the crime and determine how to hold the offender accountable. After information regarding the case is presented, the family is left alone to come up with a plan for accountability. Plans are reviewed by professionals and monitored by both family members and professionals.
- **Circles:** Referred to as healing, peacemaking, talking, or sentencing circles, this practice originated with American Indians in the United States and aboriginal peoples in Canada. The circle members include crime victims, offenders, family and friends of both, justice and social service personnel (such as police officers, lawyers, judges), and interested community residents. Members take turns discussing the event to understand what happened and collectively identify the steps needed to heal the affected parties and prevent future crimes.
- **Victim-offender panels:** Also referred to as victim-impact panels, these are discussions between a group of victims or family and friends of victims and offenders who did not commit the offense. The victims share their experiences and explain the effects the crime has had in their lives. Offender participation in these panels is typically court ordered.

These examples all include crime victims (though as noted, impact panels do not involve victims and offenders directly involved with one another) and most include community members, placing them under the more narrow definition of restorative justice. Other practices that fall under the more broad definition of restorative justice do not typically involve the victim and focus on reparation. These can be practices such as teen courts, which are typically diversion programs that utilize teen peers in the judicial decision-making process to address the wrongdoing of other teens. They hold juveniles accountable for their actions and reach agreements to restore harms. Youth aid panels are another practice, which typically work with lower level offenders accused of misdemeanors. This process utilizes panels of community volunteers to review a case, question the offender, and come up with a contract for the youth to repair harms. One of the panelists is assigned to monitor the youth's progress towards completing the contract. Upon successful completion, the charges will not appear on their record. Community reparative boards have historically been used with adult offenders convicted of

non-violent and minor offenses, but have been increasingly used with juvenile offenders. Boards consist of a small group of specially trained citizens who conduct public, face-to-face meetings with offenders court-ordered to participate. The board develops a sanction agreement with the offender, monitors compliance, and submits compliance reports to the court.

Some practices within the correctional setting not directly involving victims are still restorative-justice oriented, such as victim impact classes and letter banks. The goals of such programs include offender empathy and remorse. Victim impact classes typically have a curriculum with topics ranging from property crime to homicide, take place over the course of several weeks, and may include the use of victim impact panels at the end of the course. Letter banks allow offenders to write apology letters to victims and victims choose whether to receive the letter and whether to have the offender notified that the victim has received the letter. Some prisons utilize restorative programming to make amends to the community. For example, the United Kingdom has The Inside Out Trust, which organizes projects linking charities and community organizations with specific needs to prisons and prisoners who can meet those needs. Canada has an annual giving back to the community event, during which prisoners perform work in the community, such as repairing wheelchairs or making park benches. Though much less common, prisons may also adopt a restorative philosophy to include restorative practices in the adjudication process, handle complaints or requests, develop anti-bullying strategies, encourage race relations, and handle staff disputes.

As indicated above, the term restorative is used to refer to many different practices occurring at various stages in the criminal process, and in varying locations. Practices viewed as the most restorative in nature involve active participation of all three groups of primary stakeholders. Exhibit 1 provides an overview of restorative practices from least to most restorative based on involvement of victims, offenders, and the community.

## Exhibit 1 Types of Restorative Practices in Criminal Justice

	Victim	Offender	Community
<b>Community Service</b> Typically occurs before adjudication during diversion programs	May require the offender to complete work for the victim	X	X
<b>Victim Impact Classes</b> Typically occurs after adjudication	May involve surrogate victim panels or videos, but typically not the direct victim	X	
<b>Letter Banks</b> Typically occurs after adjudication	Victim may decide to receive the letter; typically no direct contact with the offender	X	
<b>Community Boards</b> Typically occurs before adjudication during diversion programs	May involve the victim or victim surrogate	X	X
<b>Victim-Offender Panels</b> Typically occurs after adjudication	Uses surrogate victims who are unrelated to the crime of the participating offender	X	
<b>Circles</b> Can occur before adjudication during diversion programs or after adjudication	X	X	X
<b>Conferencing or Dialogues</b> Can occur before adjudication during diversion programs or programs after adjudication; victim-offender dialogues typically occur after adjudication once the offender is in prison	X	X	May involve community members

Source: OPPAGA analysis of interviews with restorative justice stakeholders and OPPAGA review of literature.

## FINDINGS

### Literature Review

OPPAGA reviewed several articles, which included juvenile and adult offenders with a broad range of criminal offenses engaged in a variety of restorative justice programming, though most focused on face-to-face meetings between victims and offenders. (See Appendices A and B for additional information on studies.) There are important limitations to research in this area, with the top concern being self-selection bias. Because restorative justice is a voluntary process, the kinds of victims and offenders who choose to participate may be substantially different from those who do not in ways that may predict their likelihood of satisfaction with the process and, for offenders, risk of recidivism regardless of participation in restorative justice programming. It is also difficult to orchestrate randomized controlled trials, as participation in restorative justice programs must be completely voluntary for both victim and offender; therefore, individuals cannot be assigned to a treatment group. Overall, our review found that participation in restorative justice programs generally has positive

results, including higher levels of victim and offender satisfaction with the process specifically and the criminal justice system generally and, in some instances, reduced rates of recidivism.<sup>3</sup>

**The literature supports positive impacts on victims after participation in restorative justice programming.** Victims whose cases were processed using restorative justice programs consistently expressed higher levels of satisfaction on a variety of measures than victims whose cases were processed using traditional court proceedings. For example, victims viewed the process as being fairer and felt the outcomes were more just. They were more likely to have improved attitudes toward and to forgive offenders, were less likely to express a desire for revenge against the offender, and had fewer post-traumatic stress symptoms. In addition, victims whose cases went through restorative justice programming were more likely to receive reparations, such as apologies they felt were sincere and higher amounts of monetary restitution.

While most research indicates positive victim impacts, some negative effects have been documented. Factors shown to result in negative outcomes for victims include inadequate preparation prior to face-to-face meetings, feeling pressured by facilitators to behave in a certain manner, and feeling intimidated by offenders and/or their family members. These issues are generally attributed to facilitators' poor adherence to restorative justice principles, namely victim sensitivity, and can be mitigated by adequate facilitator training. In addition, victims who were expecting the use of restorative justice for their cases but who did not ultimately receive the intervention (for reasons such as offender refusal to participate), reported more dissatisfaction with the process.

**Despite mixed results, the literature supports reduced recidivism among participants of restorative justice programming.** While there is debate regarding whether reduced recidivism is or should be an aim of restorative justice, numerous studies evaluate the impact of programs on recidivism. Results are mixed, but the overall trend is reduced recidivism rates among offenders who participate in restorative justice programs compared to those who do not. Of restorative justice participants who later reoffend, their offenses tend to be less severe. One factor in the variability of results across studies is how recidivism is defined. Some authors adopted a narrow definition, such as a guilty adjudication within one year of the original offense, while others adopted a broad definition, such as any contact with the criminal justice system.

Other factors influencing recidivism rates include the type of crime and offender and the type of restorative justice programming. The literature increasingly shows that restorative justice programming is more effective with adults and violent offenders than non-violent offenders, which is important because many restorative justice programs are aimed at young, first-time, misdemeanor offenders. Face-to-face meetings between victims and offenders appeared to have a greater impact on recidivism than processes that did not directly involve the victim. Among face-to-face type meetings, victim-offender mediation has demonstrated stronger efficacy than family group conferencing. Programs with preparation meetings prior to the main session tended to result in lower recidivism rates than those that did not.

## Restorative Justice in Other States

Many other states have restorative justice programs. OPPAGA interviewed 21 organizations in 15 states to learn more about these programs. We selected states with active restorative justice programs run by both state agencies and non-profit organizations. While states reported a wide range of

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<sup>3</sup> Reductions in recidivism were dependent on how the study defined recidivism, type of crime, and offender characteristics.

restorative justice programming, in general most states started with programs for juvenile offenders who committed lower level crimes. As confidence in the success of these programs was established, programs often expanded to include adult offenders and more serious crimes, with most states having victim-offender dialogue programs for adults in correctional settings. Some common themes from interviews with other states included the following.

- **Screening:** There is a great deal of screening to ensure that both victims and offenders are participating in restorative justice programs for the right reasons. Offenders must take responsibility for their crime and victims must be looking for healing. In Arizona, both victims and offenders must get mental health evaluations before being permitted to participate in victim-offender dialogue programs.
- **Program Standards:** Some states follow or have developed standards for restorative justice programs to ensure consistent, high quality program implementation. These standards address appropriate qualifications, ethical guidelines, and training for program facilitators; strict voluntary participation by victims and offenders who may opt out at any time in the process; and a strong focus on victim needs. The organization JUST Alternatives, a Maine-based nonprofit, in conjunction with several corrections-based victim offender dialogue programs, have developed *The 20 Essential Principles of Victim-Centered Victim Offender Dialogue*, which have also been adopted by the National Association of Victim Assistance in Corrections.<sup>4</sup> The Colorado Restorative Justice Coordinating Council has published a code of conduct and training standards for restorative justice program trainers and training organizations. However, not all states with restorative justice programs have adopted program standards and even for those who have, the standards are often voluntary rather than mandatory.
- **Training:** Training requirements for program facilitators are not standardized, but they tend to be extensive, with importance increasing in programs serving offenders that have committed more serious crimes. With more serious offenses, training becomes important to ensure that facilitators are able identify any potential triggers that may be used by the offender to harm the victim again during a meeting. Some states have based their program facilitator training on materials developed by Jon Wilson, the founder and director of JUST Alternatives in Maine and by Mark Umbreit at Center for Restorative Justice and Peacemaking.
- **Funding:** Financial support for restorative justice programs comes from a wide variety of sources, including federal Victims of Crime Act (VOCA) grants, state general revenue, court program funding, municipal funds, and private donations. In South Carolina, prisoners who earn a salary for working while they are in prison have part of their salary garnished to fund restorative justice programs.
- **Confidentiality:** States have various ways of providing confidentially protection for victims and offenders who participate in restorative justice programs. In some cases, state statute protects offenders who participate in mediation conferences, with a small number of specific exceptions. For example, mediators may have mandatory reporting requirements if they learn of self-harm, planned harm to others, or child abuse. These confidentially protections for mediation may be expanded to include restorative justice programs.

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<sup>4</sup> The standards workgroup from Just Alternatives and corrections-based victim offender dialogue programs worked under the National Association of Victim Services Professionals in Corrections VOD National Standards Subcommittee.

Exhibit 2 provides a summary of information on restorative justice programs in other states. See Appendix C for more detailed information about these programs, including referral mechanisms and participant eligibility requirements, funding sources, and program standards and training requirements.

## Exhibit 2 A Sample of Restorative Justice Programs in Other States

State	Program Overview
Arizona	Arizona Department of Corrections' Office of Victim Services offers a program, which started in 2018, that allows victims of crime to initiate a victim-offender dialogue with offenders who have been in the prison system for at least five years.
Colorado	The Colorado Department of Corrections offers three restorative justice programs, including a victim-initiated victim-offender dialogue, a letter bank that allows offenders to submit letters of apology in a manner that allows victims to decide whether to read the letters, and a 12-week Restorative Justice Education Group in which victims and inmates work together with trained facilitators through a program curriculum. Programs are for inmates not in restricted housing who have been in prison without any disciplinary actions for at least one year.
Kansas	The Kansas Department of Corrections offers three programs as part of their victims' services division. These programs include victim-offender dialogues, a letter bank repository for letters of apology by offenders, and a victim impact course for inmates. All adult inmates are eligible for these programs; however, candidates for victim-offender dialogues are screened based on their mental health and disciplinary records.
Massachusetts	The non-profit Communities for Restorative Justice works with police departments and prosecuting attorneys in the eastern part of the state for cases mainly involving juvenile offenders pre-trial. Their program uses restorative justice practices in lieu of court proceedings to hold offenders accountable for their criminal actions. To be eligible to participate in the program, juvenile offenders must not be accused of domestic violence or charges that include great bodily harm.
Minnesota	The Minnesota Center for Restorative Justice and Peacemaking works with both state agencies and non-profit organizations to provide training on how to accomplish victim-offender restorative dialogue work, including facilitator training and program manager training for restorative justice programs.
Missouri	The Missouri Department of Corrections coordinates restorative justice programs for all 21 state prisons with offerings that include an Impact of Crime on Victims course (often facilitated by former inmates), which provides inmates with an opportunity to learn about how criminal actions affect people and communities. In addition, inmates may participate in other reparative activities, including woodworking, quilt making, and producing coloring books for children. Inmates may also cultivate justice gardens to provide fresh food for needy state residents. All inmates are eligible to participate.
New Hampshire	The New Hampshire Department of Corrections offers a victim-offender dialogue program for victims of violent crimes who initiate procedures for a one-time face-to-face meeting with the offender within the prison facility. The victim-offender dialogue program is only for felons within the state prison system who are convicted of violent crimes.
New York	The New York State Unified Court System has a victim-offender dialogue program that works with prisoners in the state's prisons, in addition to programs in schools and with the state's juvenile justice system. No offender has been denied participation in the program when the victim requests a meeting; however, screening is done to ensure all case appeals have ended and there is not a court order of protection in place.
North Carolina	The non-profit North Carolina Piedmont Mediation Center has restorative justice programs for young offenders (ages 10 to 25). Restorative justice program offerings include victim-offender conferences, family conferences, teen court, and community service programs.
Ohio	The non-profit Franklin County Youth Education and Intervention Services works with youth ages 10 to 17 who are first-time misdemeanor offenders to develop restorative plans in lieu of a criminal sentence.
Oregon	The non-profit Center for Mediation and Dialogue works with the City of Beaverton to provide victim-initiated, victim-led dialogues for juvenile offenders who volunteer to participate in a restorative justice program potentially as an alternative to the criminal justice system.
South Carolina	The South Carolina Department of Corrections' Division of Victims' Services works with incarcerated adults to provide victim-offender dialogues (when requested by the victim) and a victim awareness program that allows offenders to hear the impact of their crimes from a victim's perspective (not the actual victim but speakers who were victims to explain how their lives were affected). All inmates are eligible to participate in the program.
Texas	The Texas Department of Corrections has a victim-offender dialogue program that allows victims to request meetings with offenders held in their facilities. All victims of violent offenses are allowed to request to participate.
Vermont	The Vermont Department of Corrections provides grant funding to community justice centers. These centers train community volunteers to implement restorative justice programs for low-level offenders in lieu of family court. The centers also implement Circles of Support and Accountability where volunteer mentors meet with high-risk released prisoners once per week for at least one year.
Wisconsin	The non-profit Justice Works has established the Volunteers in Probation program for adults who agree to plead guilty or no-contest and are paired with a volunteer mentor for two to six years; upon successful program completion participants do not have a criminal record. Eligible parolees are referred to the program by the Wisconsin Department of Corrections.

Source: OPPAGA interviews of restorative justice programs in other states.

Additionally, many state legislatures have adopted some form of statutory support for restorative justice in their statutes. Support varies from the inclusion of general provisions and intent, inclusions of eligibility criteria for programs, and the creation of restorative justice councils. Colorado has the most comprehensive statutory language for restorative justice across states. The Colorado statute includes several provisions, including definitions for restorative justice, the creation of a restorative justice council, and the creation of a state database of programs. Many entities, including schools, universities, government offices, correctional agencies, and community-based organizations, provide restorative justice programming across the state, with 69 organizations participating as of June 2019. In the criminal justice area, government providers of restorative justice programming include district attorney's offices, probation departments, the Division of Youth Services, and Department of Corrections.

Colorado statute has two definitions of restorative justice, one for adults and one for youth. The adult definition lists the types of programs that can be considered, including victim-offender conferences, circles, and other similar victim-centered activities.<sup>5</sup> Within the Colorado statute for restorative justice for youth, the definition is slightly different from the adult criminal code. One major difference is language that was added in a 2019 bill that includes confidentiality protections.<sup>6</sup>

Colorado statute also creates and staffs a State Restorative Justice Coordinating Council within the Colorado Office of the State Court Administrator.<sup>7</sup> The council's mandate is to provide training, technical assistance, and education related to restorative justice in Colorado; support the development of restorative justice programs; and serve as a repository of information for those programs. The council consists of 19 members from many areas of the restorative justice field, including a judge, public defender or designee, a district attorney with juvenile justice experience, a law enforcement representative, three restorative justice practitioners, a victim representative with restorative justice experience from the judicial department, and staff from the department of corrections, department of education, and division of youth services. Statute also requires the council to create a database of existing restorative justice programs in Colorado and to update the database annually.

Massachusetts recently passed restorative justice legislation, which includes a definition, types of offenses that are eligible, confidentiality language, and an advisory committee. The statute defines both community-based restorative justice programs and restorative justice. Community-based programs are voluntary programs that engage parties to develop a plan of repair and can include the victim, offender, supporters, or community members. It defines restorative justice as a voluntary process where the victim, offender, and community collectively identify harms and understand the

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<sup>5</sup> Colorado Revised Statute § 18-1-901 defines restorative justice for adults as restorative justice 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 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. By engaging the parties 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, 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.

<sup>6</sup> Colorado Revised Statute § 19-1-103 defines restorative justice for youth as practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include, but are not limited to, apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants. Any statements made during the restorative justice process are confidential and shall not be used against the juvenile, or as a basis for charging or prosecuting the juvenile, unless the juvenile commits a chargeable offense during the process.

<sup>7</sup> Colorado Revised Statute § 13-3-116.

effect of the crime, with the requirement that offenders accept responsibility for their actions.<sup>8</sup> Massachusetts statute also specifies that a person is not eligible to participate in a community-based restorative justice program prior to conviction or adjudication if the person is charged with certain sexual offenses, certain offenses against family or household members, or offenses resulting in serious bodily injury or death.<sup>9</sup> In addition, the statute specifies that the information from participation in a restorative justice program is confidential.<sup>10</sup> Finally, like Colorado, Massachusetts created a restorative justice council within statute. The restorative justice advisory committee is made up of 17 members from the fields of criminal justice, health and human services, restorative justice, and others. The committee is charged with monitoring and assisting community-based restorative justice programs, tracking the use of community-based restorative justice programs in conjunction with an educational institution, and making legislative, policy and regulatory recommendations. The committee must submit a report with its findings and recommendations to the governor and legislature by December 31 of each year.<sup>11</sup>

## Restorative Justice in Florida

**Florida law provides some guidance related to restorative justice programming for juveniles; programs for adults are limited.** In Florida, Ch. 960, *Florida Statutes*, enumerates victims' rights (e.g., right to a speedy trial) and services available to victims; included in this is the right for a victim to make an oral or written victim impact statement at the time a defendant is sentenced. Statute also assigns duties to the Department of Legal Affairs (Office of the Attorney General) to assist victims of crime.<sup>12</sup> In addition, in 2018, Florida voters passed an amendment to the Constitution, commonly known as Marsy's Law. The law is a victims' bill of rights that provides victims or their lawful representative, such as next of kin of homicide victims, the right to be informed, present, and heard when relevant, at all critical stages of criminal proceedings as long as these rights do not interfere with the rights of the accused.

While none of these victims' rights provisions speak specifically to restorative justice, Florida currently has some restorative justice programming across substantive areas, including criminal justice, and some statutory and rule language related to restorative justice programs for juveniles.<sup>13</sup> Within the criminal justice area, there is some programming available for youth at the local level and in residential services provided by the Florida Department of Juvenile Justice (DJJ). For adults, the Florida Department of Corrections (FDC) does not have restorative justice programming for incarcerated adults, but has participated in a pilot program and currently has a working group to develop guidelines for the agency. Barriers for the development of restorative justice in the state include a lack of guidelines, limitations on victim and offender contact due to no contact orders, logistical issues for face-to-face meetings when the victim and offender are far apart, and funding. Other states address

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<sup>8</sup> Massachusetts Part IV, Title II, Chapter 276B, Section 1.

<sup>9</sup> Massachusetts Part IV, Title II, Chapter 276B, Section 3.

<sup>10</sup> Massachusetts Part IV, Title II, Chapter 276B, Section 4 specifies that participation in a community-based restorative justice program shall not be used as evidence or as an admission of guilt, delinquency or civil liability in current or subsequent legal proceedings against any participant. Any statement made by a juvenile or adult defendant during the course of an assignment to a community-based restorative justice program shall be confidential and shall not be subject to disclosure in any judicial or administrative proceeding and no information obtained during the course of such assignment shall be used in any stage of a criminal investigation or prosecution or civil or administrative proceeding.

<sup>11</sup> Massachusetts Part IV, Title II, Chapter 276B, Section 5.

<sup>12</sup> Section 960.045, *F.S.*

<sup>13</sup> There are also restorative practice programs within education and social services. For example, educators in Orange County School District received training to lead restorative peer meetings among students. If an issue arises, such as a fight, the students involved may participate in a restorative peer meeting at school. These meetings are used in middle schools and high schools. Additionally, the Department of Children and Families employs a restorative practices specialist who trains foster care and group home staff on using restorative practice.

these barriers through a variety of solutions, which are discussed below. See Appendix C for more details on other states.

Florida also has organizations focused on restorative justice, including the non-profit Florida Restorative Justice Association and the Restorative Practices Interagency Workgroup. The Florida Restorative Justice Association was created in 2013 by restorative justice stakeholders to support and advance restorative justice within the state. Its members include restorative justice facilitators, public administrators, law enforcement, state agency staff, judges, attorneys, educators, and students. The association is currently developing statewide standards for restorative justice programming and practices in Florida. Florida and many other states do not have standards to define and guide restorative justice; however, as mentioned above, Colorado developed standards for training and practice. More recently in Florida, in 2018, staff at the Department of Children and Families created the Restorative Practices Interagency Workgroup to promote education, awareness, and capacity building of restorative practices in Florida government agencies. The working group includes representatives from the FDC, DJJ, Department of Education, Department of Children and Families, and the Office of the Governor.

Florida currently has some restorative justice programs for juvenile justice involved youth in the community. Specifically, s. 985.155, *Florida Statutes*, provides statutory authority for restorative justice boards.<sup>14</sup> The Ninth, Fifteenth, and Twentieth judicial circuits currently operate programs based on this statute.<sup>15</sup> In the Ninth Circuit, the board includes volunteer community members who receive training in the criminal justice system.<sup>16</sup> The program accepts first-time juvenile offenders who are referred to the program through the state attorney. Once a youth is referred, the board holds an accountability conference, which the youth and the victim have the right to attend. Together, the board, youth, and victim find the most effective method of restoring the victim and the community from the youth's offense.<sup>17</sup> The participants discuss how to repair the harm, and solutions include community service, restitution, letters of apology, and work for the victim.<sup>18</sup> Participants create a contract that outlines the requirements and timeline for the juvenile. If the juvenile completes the activities in the contract, then the board will recommend that that the juvenile's charges be dropped. In Fiscal Year 2018-19, 137 youth participated in the Ninth Circuit restorative justice program.

Florida also has other types of restorative justice programs in the community for youth involved in the juvenile justice system. Many of these programs bring the offender and victim together for in-person meetings, although some programs allow for unrelated victims or families of victims. Youth are referred to these programs through a variety of sources, including a DJJ juvenile probation officer, law enforcement, parents, or the state attorney's office. Eligibility for participation also varies, with some programs restricting eligibility based on age and others by type of offense. Many of the local youth restorative justice programs receive county and private funding, with one receiving funding through a

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<sup>14</sup> Section 985.155, *F.S.*, also allows for the creation of a neighborhood restorative justice center. The state attorney may establish a center in designated geographical areas of the county for operating a deferred prosecution program for first-time, nonviolent juvenile offenders.

<sup>15</sup> The Ninth Circuit includes Orange and Osceola counties, the Fifteenth includes Palm Beach County, and the Twentieth includes Charlotte, Collier, Glades, Hendry, and Lee counties.

<sup>16</sup> Statute establishes that the board be comprised of five volunteers of which two are appointed by the state attorney, two by the public defender, and one by the chief circuit judge. The board has jurisdiction to hear all matters involving first-time nonviolent juvenile offenders within their geographic area.

<sup>17</sup> Statute specifies that if a juvenile is referred to this program, the board must meet within 15 days and send a notice to the juvenile's parent or guardian, the victim, or the family of the victim. The juvenile offender, victim, and family members have the right to appear at the meeting and the victim, or the person representing the victim, may vote with the board.

<sup>18</sup> Statute also outlines sanctions the board may impose for the juvenile. These include requiring the juvenile to make restitution, perform work for the victim or the community, or other sanctions except for detention.

DJJ grant. Most of the programs have specific training requirements for program staff. (See Appendix D for more information about these programs.)

The Department of Juvenile Justice also provides restorative justice programming for youth who have committed crimes and been placed in a residential setting.<sup>19</sup> Florida administrative code requires that residential commitment programs provide restorative justice activities or instruction intended to increase youths' awareness of and empathy for crime victims and survivors and to increase personal accountability for criminal actions and harm to others.<sup>20</sup> Administrative code also allows DJJ's Impact of Crime Curriculum to be used to satisfy the restorative justice requirement. The purpose of the curriculum is to increase youth awareness and empathy for crime victims and survivors and to increase personal accountability for criminal actions and harm to others. While the curriculum does not allow for direct contact between the juvenile offender and the victim, it provides opportunities for victim speakers, videos about victims, victim impact statements, and scenarios. Juveniles are given the opportunity to write apology letters, perform community service, and receive help with any court ordered restitution. This curriculum is funded through general revenue and social services block grants. Finally, administrative code requires that DJJ direct care staff receive restorative justice training and a residential commitment program's mission statement to be consistent with the department's mission and principles of the restorative justice philosophy.<sup>21</sup>

Florida statutes and administrative rules do not have specific guidelines for restorative justice for adults, and existing programming is limited. For adults who are incarcerated with the Florida Department of Corrections, there are no restorative justice programs that bring together the victim and offender. However, FDC's faith and character programs do include a victim impact component.<sup>22</sup> In addition, the department recently participated in a restorative justice pilot project in conjunction with the River Phoenix Center for Peacebuilding in the Eighth Judicial Circuit.<sup>23,24</sup> Since 2018, eight pre-trial felony offenders on probation and victims met with a trained facilitator.<sup>25</sup> The meeting's purpose was to address the harm caused by the crime and develop ideas to prevent a similar crime from occurring again. The offender could earn court-ordered community service hours for participating if they were ordered by the court to complete community service.<sup>26</sup> Recently, FDC established a working group of department staff to research practices for restorative justice in institutions and community corrections and to develop guidelines and protocols for both areas.

## Considerations for Restorative Justice in Florida

The Legislature could consider creating restorative justice programs and entities within Florida. At the time of our review, 34 states had victim-offender dialogue programs within their department of

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<sup>19</sup> A youth who has been adjudicated for a violation of the law may be committed to a residential program by a judge. Private providers, under contract with and monitored by the Department of Juvenile Justice, operate all residential programs in Florida.

<sup>20</sup> Section 63E-7.105, *F.A.C.*

<sup>21</sup> Sections 63E-7.108, 63H-2.005, 63H-2.006, and 63H-2.007, *F.A.C.*

<sup>22</sup> Faith- and character-based programs are prison rehabilitative programs intended to change inmates' internal motivations and thereby alter their behavior. Section 944.803, *F.S.*, includes guidance for these programs.

<sup>23</sup> The River Phoenix Center for Peacebuilding in Gainesville is an organization that provides programs, trainings, events, and services within a peacebuilding model. The center has worked with police offices, sheriff's departments, state attorneys, public defenders, and victim advocates to provide information and training on restorative practices.

<sup>24</sup> The center received a \$3,000 grant from the National Association of Community and Restorative Justice to conduct restorative justice circles in the Eighth Judicial Circuit. Participation in the pilot program was voluntary and could be requested by the victim, offender, or the offender's defense attorney.

<sup>25</sup> Pretrial offenders who are in the pilot program entered into a formal agreement with the state attorney and are under FDC's supervision. Pretrial intervention refers to a program that diverts eligible offenders from traditional court to an immediate supervisory program that provides various services appropriate for the person participating in the program. Eligibility criteria are specified in s. 948.08, *F.S.*

<sup>26</sup> Community service hours must be ordered by the court and are not a standard condition of probation.

corrections and many states had restorative justice programs for youth in the community. However, there are barriers to implementing restorative justice, including a lack of guidelines, no contact orders between victims and offenders, logistical barriers, funding, staffing, and Marsy's Law compliance. There are options available from other states to overcome these barriers. The Legislature could also consider creating a restorative justice advisory council to monitor restorative justice in the state and offer recommendations for guidelines and training standards.

**Restorative justice programs have barriers to implementation, but other states offer solutions that Florida could consider.** Staff from both the Department of Corrections and Department of Juvenile Justice discussed potential challenges to further implementation of restorative justice programs. For example, Department of Corrections' staff reported that specific guidelines would be needed to implement a formal restorative justice program. Many other states with restorative justice programs, such as Colorado, address this by creating guidelines in statute or in agency rules. In addition, both FDC and DJJ staff reported that victim and offender contact is another potential barrier. A common court order in criminal cases is a prohibition of contact between offenders and victims.<sup>27</sup> In these cases, the court would need to lift the no contact orders before the victim and offender could participate in restorative justice programs. Other states reported that they requested the court lift no contact orders before proceeding with restorative justice programming on a case-by-case basis. For example, the New Hampshire Department of Corrections reported that they work with the state attorney's office to receive authorization for a one-time meeting if there is a no contact order. The Colorado Department of Corrections also requires any criminal protection orders or civil no contact orders issued by the court to be modified or rescinded for the limited purpose of the victim-offender dialogue before a face-to-face dialogue takes place.

Additionally, funding may be a barrier for restorative justice programming, and expansion of restorative justice within Florida may require additional funding resources. Some states, including Arizona, Kansas, New Hampshire, and Texas reported using federal Victims of Crime Act (VOCA) funding for these programs. For example, the New Hampshire Department of Corrections receives funding for its victim-offender dialogue program through a combination of VOCA and state funds. VOCA funding provides direct reimbursements to victims for crime-related expenses, such as medical costs and mental health counseling. The funding is also available for states to make awards to organizations to provide services such as crisis intervention, emergency shelter and transportation, counseling, and criminal justice advocacy to crime victims. Restorative justice is an allowable activity for which VOCA funds may be used. Federal guidelines state that the types of restorative justice that are allowable are those activities that support opportunities for crime victims to meet with perpetrators, if such meeting is requested or voluntarily agreed to by the victim. Guidelines also require that victims must always have the opportunity to withdraw from participation, and there must be a reasonably anticipated beneficial or therapeutic value to the victim. The state agency that administers the funds has the discretion to determine what restorative justice activities it wishes to fund and is responsible for monitoring and overseeing the program. To date, Florida has not used VOCA funding administered by the Florida Office of the Attorney General for restorative justice programs.

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<sup>27</sup> Section 921.244, *F.S.*, requires the court to establish a no contact order between the victim and offenders convicted of certain violent or sexual offenses. The order prohibits the offender from having any contact with the victim for the duration of the sentence imposed. The court may reconsider the order upon the request of the victim if the victim is at least 18 years of age. Additionally, s. 903.047, *F.S.*, allows the court to order no contact between the victim and offender as a condition of pretrial release. Thus, no contact orders could affect restorative justice programs both before and after adjudication.

Another consideration for restorative justice programs in Florida is program staffing. Other states use paid staff and volunteers to operate their programs. For example, the victim-offender mediation program within the Texas Department of Criminal Justice has seven full-time staff consisting of five mediators, one director, and one administrative assistant; two of these staff members are funded through VOCA funding. The Colorado Department of Corrections victim-offender dialogue program mostly uses volunteers as facilitators; however, they have also used parole officers who have system experience and are effective in working with offenders. Kansas has one staff member devoted to its victim-offender dialogue program. Other staff within the Kansas Victim Services Office are trained to assist and the program also uses volunteers.

In addition, the distance between the victim's location and the offender's incarcerated placement may be a logistical barrier to implementing face-to-face meetings. Other states addressed this by providing funding for victim travel, using technology to conduct the facilitated meeting between the victim and offender, or seeking other options for arranging face-to-face meetings. For example, Texas allows restorative justice program staff to request transfer an inmate to a facility that is closer to the victim for the in-person meeting. Kansas uses VOCA funds to provide up to \$500 for travel reimbursements, such as for hotels and flights, for victims to travel to the prison to complete the in-person meeting with the offender.

Marsy's Law is another important factor when establishing restorative justice programs. Due to a lack of a definition of restorative justice in Florida, it is difficult to determine how Marsy's Law or other victims' rights laws would affect the expansion of restorative justice programming. However, other states that adopted Marsy's Law do have restorative justice programs at the state or local level; these states include California, Georgia, Illinois, and North Dakota. Restorative justice in Florida would need to abide by Marsy's Law and other victims' rights laws. For example, Marsy's Law establishes the right to prevent the disclosure of victims' confidential or privileged information. Thus, the information from any restorative justice programming would need to be confidential.

Several states with restorative justice programming reported that they have policies or confidentiality agreements in place. For example, while Colorado has not adopted Marsy's Law, the state does have confidentiality language in state code and statute. The Colorado Department of Corrections administrative code states that all information shared during the victim-offender dialogue is confidential and not considered public record; the department has no authority to release the information without the expressed written authority of participants, except when it is used for departmental training, and the identities of the participants are not revealed. Colorado also has confidentiality language for restorative justice programs within the statutory definition of restorative justice for youth.

Another state that has not adopted Marsy's Law includes the right for a victim to request to participate in restorative justice in state law. The Texas Crime Victims' Rights includes the right of a victim to request victim-offender dialogue coordinated by the Texas Department of Criminal Justice. Article 56.13 of the Texas Code of Criminal Procedure requires the department's victim services division to train volunteers to act as mediators between victims, guardians of victims, close relatives of deceased victims, and offenders whose criminal conduct caused bodily injury or death to victims. The department must also provide dialogue services through a trained volunteer if the dialogue is requested by the victim, guardian of the victim, or close relative of a deceased victim. According to the Texas Department of Criminal Justice, creative alternatives to dialogue are also an option and typically include a letter written by the victim.

**The Legislature could also consider creating a restorative justice advisory council.** The council would monitor restorative justice in the state and offer recommendations for guidelines and training standards, similar to the approach used in Colorado and Massachusetts. While many states have restorative justice programs, the states have a wide variety of approaches to program operation and training standards. An advisory council could offer recommendations for program operation and training and take into account restorative justice resources that already exist within Florida, such as the Restorative Practices Interagency Workgroup, the pilot program with FDC, and DJJ's restorative justice curriculum. Moreover, due to the use of restorative justice in other fields (e.g., education and health and human services), an advisory council could incorporate restorative justice practices from these other areas. Like Colorado and Massachusetts, the council could include state agency representatives from FDC, DJJ, Office of the Attorney General, Department of Education, Department of Children and Families, the Office of the Governor, and other entities. The membership could also include law enforcement, judges, state attorneys, public defenders, restorative justice practitioners, and victim advocates

# APPENDIX A

## Meta-Analyses and Literature Review Summaries

Exhibit A-1 presents an overview of meta-analyses and literature reviews examining outcomes of different types of restorative justice programming, such as victim and offender satisfaction, recidivism, and restitution compliance. Studies are presented in chronological order.

### Exhibit A-1

#### Literature Reviews and Meta-Analyses of Restorative Justice Programming

Study	Studies Evaluated	Program Type	Measured Outcome	Methods	Findings
Jeff Latimer, Craig Dowden, and Danielle Muise, "The Effectiveness of Restorative Justice Practices: A Meta-Analysis," <i>Department of Justice Canada</i>	22 unique studies (published and unpublished) examining the efficacy of 35 individual restorative justice programs	Conferencing (8 studies) and victim-offender mediation (27 studies)  Juvenile and adult offenders	Victim and offender satisfaction (13 programs), restitution compliance (8 programs), and recidivism (32 programs)	Meta-analysis	<b>Satisfaction:</b> Victims and offenders reported higher satisfaction with restorative justice processes than traditional methods, though satisfaction was greater among victims than offenders. Satisfaction was lower for victims and offenders participating in a restorative justice program while the offender was incarcerated. <b>Restitution compliance:</b> Offenders who participated in restorative justice programming were significantly more likely to complete restitution agreements. <b>Recidivism:</b> On average, restorative justice programs resulted in reduced recidivism. Offenders who participated in restorative justice programs were significantly more successful during follow-up periods than offenders who did not.
Mark S. Umbreit, Robert B. Coates, and Betty Vos, "The Impact of Victim-Offender Mediation: Two Decades of Research," <i>Federal Probation</i> , Vol. 65, No. 3: 29-35, 2001	38 evaluation reports	Victim-offender mediation (includes studies using the terms victim-offender mediation, victim-offender dialogue, victim-offender conferencing, or victim-offender meetings)  Juvenile and adult offenders	Impact of victim-offender mediation programs, including client satisfaction, client perception of fairness, restitution, diversion, recidivism, costs, and victim-offender mediation and crimes of violence	Literature review	<b>Client satisfaction:</b> Satisfaction with the victim-offender mediation process was consistently high for both victims and offenders across sites, cultures, and seriousness of offenses. Victims and offenders going through victim-offender mediation were also more satisfied with the criminal justice system than those going through traditional court prosecution. <b>Fairness:</b> Over 80% of victim-offender mediation participants felt the process was fair to both sides and the resulting agreement was fair, which led to feelings that the overall criminal justice system was fair. <b>Restitution:</b> Across studies reviewing restitution, at least 90% of cases that reached a meeting generated a restitution agreement and approximately 80-90% of the agreements were completed. <b>Diversion:</b> Victim-offender mediation can be an effective tool for diverting juvenile offenders from further entry into the criminal justice system, but it may also be a means for widening the net, resulting in offenders experiencing more severe sanctions than if victim-offender mediation did not exist. <b>Recidivism:</b> Victim-offender mediation is as effective, if not more so, in reducing recidivism as traditional processes. Offenders who go through victim-offender mediation tend to recidivate at lower rates and have less serious offenses than offenders who do not participate in victim-offender mediation. <b>Costs:</b> Studies evaluating comparative costs have shown that victim-offender mediation could reduce or contain costs. Potential areas for cost savings include not just the per case cost but also savings due to

Study	Studies Evaluated	Program Type	Measured Outcome	Methods	Findings
					reductions of trials, incarceration time, and time needed to process cases. <b>Victim-offender mediation and crimes of violence:</b> Victim-offender mediation is often used as a diversionary option for less serious cases, but there is growing interest in using victim-offender mediation to work with victims and offenders involved in severely violent crime.
William R. Nugent, Mona Williams, and Mark S. Umbreit, "Participation in Victim-Offender Mediation and the Prevalence and Severity of Subsequent Delinquent Behavior: A Meta-Analysis," <i>Utah Law Review</i> , Vol. 2003, No. 1: 137-166, 2003	15 studies (6 studies published in peer-reviewed journals and books, 1 unpublished master's thesis, and 8 program evaluations)	Victim-offender mediation  Juvenile offenders	Effect of victim-offender mediation on subsequent delinquency among juveniles	Meta-analysis	<b>Recidivism:</b> Participation in victim-offender mediation resulted in lower rates of recidivism as compared to not participating in victim-offender mediation in 11 of the 15 studies; differences were statistically significant in 7 studies. Non-victim-offender mediation groups had lower rates of recidivism in four studies, but only one study demonstrated statistically significant differences. The definition of re-offense used in the studies was an important methodological factor for looking at prevalence outcomes. Definitions ranged from narrow (any offense for which a youth was adjudicated guilty during a one-year period) to broad (any official contact with a law enforcement agency; any subsequent court contact; or any record of re-arrest). Using a narrow definition of re-offense, victim-offender mediation participation may result in reduced recidivism. Among juveniles who reoffended, those who participated in victim-offender mediation tended to commit less serious offenses than those who did not participate in victim-offender mediation.
William Bradshaw and David J. Roseborough, "Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism," <i>Social Work Faculty Publications</i> , Vol. 69, No. 2: 15-21, 2005	19 studies	Victim-offender mediation and family group conferencing  Juvenile offenders	Effectiveness of victim-offender mediation and family group conferencing, and intervention effects between victim-offender mediation and family group conferencing on recidivism	Meta-analysis	<b>Recidivism:</b> Victim-offender mediation and family group conferencing contributed to a 26% reduction in recidivism, compared to 10% for traditional justice programs. Victim-offender mediation had a significantly greater effect than family group conferencing. There were no significant moderating effects by offense type, definition of re-offense, source of the study, or sample.
Mark S. Umbreit, Betty Vos, and Robert B. Coates, "Restorative Justice Dialogue: A Review of Evidence-Based Practice," <i>Offender Programs Report</i> , Vol. 9: 49-56, 2005	85 studies (53 mediation studies, 22 group conferencing studies, 5 circle studies, 2 studies of other dialogue programs, and 3 meta-analyses)	Victim-offender mediation, group conferencing, circles, other dialogue programs  Juvenile and adult offenders	Participation rates and reasons, participant satisfaction, participant perception of fairness, restitution and repair of harm, diversion, recidivism, and cost	Literature review	<b>Crime victim participation rates and reasons:</b> Participation rates ranged from 40-60%, but up to 90% was reported. Victims participated because they wanted to receive restitution, hold the offender accountable, learn more about why the crime occurred, share their pain with the offender, avoid court processing, help the offender change their behavior, or see the offender adequately punished. Specifically among victims of violent crimes, reasons for participation included seeking information, showing the offender the impact of their actions, and having some form of human contact with the person responsible for the crime. <b>Offender reasons for participation:</b> Offenders chose to participate to pay back the victim, put the experience behind them, impress the court, or apologize to the victim. Offenders of violent crime chose to participate to apologize, help victims heal, and do whatever would benefit victims, but they also hoped to benefit from the experience contributing to their own rehabilitation, changing how the victims viewed them, or having spiritual reasons for wanting to meet. <b>Participant satisfaction:</b> Victims and offenders tended to be highly satisfied with victim-

Study	Studies Evaluated	Program Type	Measured Outcome	Methods	Findings
					<p>offender mediation and group conferencing, and most participants would recommend those programs to others. Two circle studies both indicated positive effects of participation and high levels of satisfaction. <b>Fairness:</b> Participants in victim-offender mediation and group conferencing programs were more likely to view the process and resulting agreement as fair to both sides compared to those participating in traditional justice approaches. <b>Restitution and repair of harm:</b> Participation in restorative justice programming generally resulted in greater compliance with restitution agreements compared to traditional court processes. Victim presence in group conferencing had a positive effect on receiving reparation. <b>Diversion:</b> Victim-offender mediation programs in the United Kingdom were found to increase sanctions on offenders who otherwise would not have received sanctions through traditional processes, but U.S. studies found that victim-offender mediation programs successfully diverted offenders from court. Results were similarly mixed for group conferencing, with one study indicating no effect, one study reducing police interventions and court cases, one study reporting all of its cases were diversion, and one study reporting more sanctions for group conferencing than traditional court processing. Circles have shown diversion from court processing and significantly reduced behavioral referrals in a school system. <b>Recidivism:</b> Results of the impact of victim-offender mediation and group conferencing on recidivism have been mixed. Overall, these programs demonstrate reduced rates of recidivism and re-offenders tended to have less serious offenses in comparison to control groups. Variables affecting recidivism rates include face-to-face mediation, which resulted in lower recidivism than shuttle mediation (the facilitator delivers messages between victims and offenders), and offense type (violent offenders tended to have lower recidivism rates than non-violent offenders). Studies comparing recidivism rates of offenders before and after mediation show a reduction in offense rates after participation. Two circle studies indicated significant reductions in recidivism. <b>Cost:</b> Results are mixed. Studies of victim-offender mediation show it is less costly than other options in some instances but more costly in others. A California study showed significant cost reductions per case for victim-offender mediation. Costs were also reduced in terms of total incarceration time, place/cost of incarceration, reduction of trials, and reduction of time needed to process victim-offender mediation cases compared to non-mediated cases. One cost-benefit analysis of a circle program in Canada demonstrated significant savings to the provincial and federal governments.</p>

Study	Studies Evaluated	Program Type	Measured Outcome	Methods	Findings
Lawrence W. Sherman and Heather Strang, "Restorative Justice: The Evidence," <i>The Smith Institute</i> , 2007	15 studies	Victim-offender mediation, indirect communication through third parties, and restitution or reparation payments ordered by courts or referral panels  Juvenile and adult offenders	Impact of restorative justice indicated by repeat offending, effects on victims, and effects of diversion to restorative justice from prosecution on offenses brought to justice	Literature review	As compared to traditional criminal justice, restorative justice programs significantly reduced recidivism for some, but not all, offenders (effects were greater for violent crime); at least doubled the offenses brought to justice as diversion from criminal justice; reduced crime victims' post-traumatic stress symptoms and related health care costs; provided victims and offenders with higher levels of satisfaction; reduced crime victims' desire for revenge against their offenders; reduced the costs of criminal justice when used as diversion from criminal justice; and reduced recidivism more than prison for adults and as well as prison for youths. Restorative justice also resulted in greater compliance with court-ordered outcomes.
Jung Jin Choi, Gordon Bazemore, and Michael J. Gilbert, "Review of Research on Victims' Experiences in Restorative Justice: Implications for Youth Justice," <i>Children and Youth Services Review</i> , Vol. 34, No. 2012: 35-42, 2011	Unspecified; sample of published articles and books from 1989 – 2010	Victim-offender mediation, family group conferencing  Implications for juvenile offenders	Identification of commonalities in outlier findings of negative victim experiences in restorative justice	Literature review	Factors leading to negative victim experiences include inconsistencies between restorative justice principles and actual practice, such as when restorative justice programs were more offender-centered and less sensitive to victims' needs. Negative victim outcomes were also attributed to being inadequately prepared, feeling pressured in some way by practitioners or facilitators, or feeling intimidated in some way by offenders and/or their families. The authors suggest practitioner training that emphasizes restorative justice principles and values, thorough preparation for conferencing, and creating mutual empathy through sincere apology to achieve restorative outcomes.
Nuala Livingstone, Geraldine Macdonald, and Nicola Carr, "Restorative Justice Conferencing for Reducing Recidivism in Young Offenders (aged 7 to 21)," <i>Cochrane Database of Systematic Reviews</i> , No. 2, 2013	4 studies	Restorative justice conferencing  Juvenile offenders	Effect of restorative justice conferencing on recidivism	Meta-analysis	Results indicated no difference in recidivism rates for youth who participated in restorative justice conferences and youth who went through normal court proceedings. The groups did not differ in terms of sense of remorse, recognition of wrongdoing, self-perception, or satisfaction with their respective justice processes. Results did indicate victims who participated in restorative justice conferences may be more satisfied than victims whose cases went through court proceedings.
Heather Strang, Lawrence W. Sherman, Evan Mayo-Wilson, Daniel Woods, and Barak Ariel, "Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review," <i>Campbell Systematic Reviews</i> , Vol. 2013, No. 12, 2013	10 experiments	Face-to-face restorative justice conference  Juvenile and adult offenders	Effects of restorative justice conferences on recidivism and victim impact	Meta-analysis	On average, restorative justice conferences result in a modest but highly cost-effective reduction in recidivism and have substantial benefits for victims. On average, restorative justice conferences appear to be more effective in reducing recidivism among violent offenders and among adults (rather than juveniles) who committed offenses with identifiable victims present for conferencing (personal victims). Restorative justice conferences may also be more effective with serious offenders with long criminal records. Victim satisfaction with the way their case was handled was consistently higher for victims assigned to restorative justice conferences than normal criminal justice processing. Victims assigned to restorative justice conferences felt their offenders' apologies were more sincere than those who were court-ordered to apologize. Participation in restorative justice conferences also reduced victims' desire for revenge and post-traumatic stress symptoms.

Study	Studies Evaluated	Program Type	Measured Outcome	Methods	Findings
Lawrence W. Sherman, Heather Strang, Evan Mayo-Wilson, Daniel J. Woods, and Barak Ariel, "Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review," <i>Journal of Quantitative Criminology</i> , Vol. 31, No. 1: 1-24, 2015	10 experiments	Face-to-face restorative justice conferencing  Juvenile and adult offenders	Effects of restorative justice conferences on recidivism	Meta-analysis	On average, restorative justice conference appeared to work better for violent crimes than all crime types, but the difference was not statistically significant. Adult offenders with identifiable victims present for conferencing (personal victims) recidivated less than juvenile offenders. The authors suggest restorative justice conference may be more effective as a supplement to traditional justice processes than as a substitute for, or diversion from, traditional court proceedings. Overall, among the kinds of cases in which both offenders and victims were willing to meet, restorative justice conference seemed to reduce recidivism and cost of future crime.
David B. Wilson, Ajima Olaghere, and Catherine S. Kimbrell, "Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis," <i>George Mason University</i> , 2017	60 unique studies	Programs ranged from those with a meeting between offenders and victims/community representatives to teen courts, restitution, cautioning/diversion, and a mix of other programs having an element consistent with restorative justice principles  Juvenile offenders	Effectiveness of restorative justice programs and programs with restorative justice elements in reducing delinquency and non-delinquency outcomes of restorative justice programming	Meta-analysis	Victim-offender conferencing and family group conferencing, overall, had positive effects on delinquency, defined as any measure of criminal behavior, including both official and self-reported delinquency. Arbitration/mediation programs had a small overall effect. Circle sentencing programs had a moderate to small effect, but there were only two studies for this type of intervention. Restitution programs, teen courts, impact panels, and reparative boards had minimal effects. Cautioning and diversion programs showed the largest overall effect and may be particularly useful for low-risk and first-time youthful offenders. Programs with meetings before the main conference or mediation session tended to have better outcomes related to delinquent behavior than those that did not. Youth participating in restorative justice programming had greater perceptions of fairness, increased satisfaction with the process, less supportive attitudes towards delinquency, and were more likely to complete reparative actions (i.e., restitution, community service). Victims whose cases were processed through restorative justice programming had greater perceptions of fairness, greater satisfaction, and improved attitudes toward the offender, were more willing to forgive the offender, and were more likely to feel the outcome was just compared to victims whose cases were processed through traditional methods. Restorative justice programming did not result in consistent improvement of emotional well-being of victims or offenders compared to traditional processing.

Source: OPPAGA analysis of literature reviews and meta-analyses pertaining to restorative justice.

# APPENDIX B

## Program Review Summaries

The following table presents the results of studies evaluating the impact of various restorative justice programming and variables affecting outcomes of restorative justice programming. Studies are presented in chronological order.

### Exhibit B-1 Reviews of Restorative Justice Programs

Study	Program Type	Measured Outcome	Sample Size	Methods	Findings
Marilyn Peterson Armour, John Sage, Allen Rubin, and Liliane C. Windsor, "Bridges to Life: Evaluation of an In-Prison Restorative Justice Intervention," <i>Medicine and Law</i> , Vol. 24, No. 4: 831-852, 2005	A combination of victim impact panels, victim impact classes, and conferencing through Bridges to Life (a manualized, pre-release, ecumenical faith-based, three-month in-prison program using a restorative justice approach in Texas)	How the program facilitates change in offender behavior	879 adult offenders, 90 volunteer victims, and 52 facilitators; offenses were categorized as violent crime; drug offenses; burglary, theft, and shoplifting; white collar crime (forgery, credit card); driving while intoxicated; other non-violent offenses; aggravated assault; murder; driving while intoxicated with manslaughter; multiple violent offenses; and multiple non-violent offenses	This study used quantitative and qualitative analyses based on analysis of responses to an anonymous assessment survey (developed by Bridges to Life), administered by the executive director and regional coordinator at the end of each prison project. Four questions had a Likert scale for rating satisfaction level; three open-ended questions asked participants to describe what they received from the program; and two open-ended questions asked participants to suggest program improvements and recommendations for offering the program to other prisons in Texas.	Various change processes take place that impact offender behavior. Victim panels and victim stories minimize offenders' denial, self-centeredness, and ignorance; small groups establish trustworthy and corrective relationships. Offenders frequently commented that seeing the pain in a victim's eyes made them feel the pain they had caused and was a key factor for growth. Offenders also reported their increased awareness of the impact of crime on others made it impossible to continue lives of crime after release due to feelings of guilt, awareness of victims' pain, and increased sense of responsibility. All participants rated victim panels and small group meetings higher than topics and study materials. Victim panels evoked empathy and made an impact on offenders. Small groups helped offenders open up, express their feelings, experience self-acceptance, and feel optimistic.
Kimberly deBeus and Nancy Rodriguez, "Restorative Justice Practice: An Examination of Program Completion and Recidivism," <i>Journal of Criminal Justice</i> , Vol. 35: 337-347, 2007	A blend of family group conferencing and reparative boards known as Community Justice Committees (a diversion program based on restorative justice principles in Arizona)	Factors (diversion program type, offense type, poverty level, juvenile demographics) affecting program completion and recidivism rates	9,255 juvenile referrals eligible for diversion that were processed in either the Community Justice Committees program (N=4,198) or the standard cite-in diversion program (N=5,057) from January 1999 through June 2001	This study used a quasi-experimental design. Juveniles were assigned to Community Justice Committees or the standard diversion program through collaboration between juvenile probation officers and the county attorney's office. The researchers examined all juvenile referrals eligible for diversion that were processed in either Community Justice Committees or the standard diversion program. Individual-level	Overall, juveniles who completed their assigned diversion programs were more likely to be white, in school, have a history of fewer prior offenses, and have current charges related to status and person offenses. Status offenders (charges of running away, truancy, incorrigibility, and curfew violations) and property offenders (charges of burglary, possession of stolen property, theft, and motor vehicle theft) in the restorative justice program were less likely to recidivate than status and property offenders in the standard diversion group. Poverty level at the community level had a significant influence on both program completion and recidivism; juveniles living in poorer communities were less likely to successfully

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				data utilized in the analysis came from the Maricopa County Juvenile On-Line Tracking System data base and community-level data came from the 2000 U.S. Census data.	complete the programs. Juveniles from more affluent communities who completed the Community Justice Committees program had the lowest recidivism rates. However, juveniles from poorer communities who completed the Community Justice Committees program were also less likely to re-offend than similar juveniles in the standard diversion program. Although participation in the restorative justice program and completion of either diversion program individually reduced recidivism, there was no interactive relationship between restorative justice and program completion on recidivism.
Nancy Rodriguez, "Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism," <i>Crime &amp; Delinquency</i> , Vol. 53, No. 3: 355-379, 2007	A blend of family group conferencing and reparative boards known as Community Justice Committees (a diversion program based on restorative justice principles in Arizona)	The effect of Community Justice Committees on juvenile recidivism among offenders who complete their disposition, and the effect of the program on recidivism associated with legal (seriousness of offense and number of prior offenses) and extralegal (gender, race, ethnicity, and age) variables	4,970 juvenile offenders processed through the Maricopa County Juvenile Probation Community Justice Committees from January 1999 through June 2001; community justice committee group=1,708, control group=3,262	Descriptive statistics were used to identify differences between the restorative justice group and the control group. Logistic regression was used to predict recidivism, defined as the filing of a new juvenile court petition in a 24-month time period.	Although group composition varied across legal and extralegal factors, both the Community Justice Committees and control group showed similar rates of recidivism (34% and 36%, respectively). When legal and extralegal variables were controlled for, those in the Community Justice Committees group were less likely to recidivate after two years. Boys were more likely to recidivate than girls regardless of program type, though boys who went through the Community Justice Committees program had a lower probability of recidivating. Race was not a significant predictor of recidivism. Juveniles who committed crimes involving property offenses were less likely to recidivate than offenders who committed crimes against other people. Juveniles with a greater number of prior offenses were more likely to recidivate; however, juveniles in the Community Justice Committees program with two or more prior offenses were more likely to recidivate than juveniles in the control group. The county monitored offenders' cases at the court or at a neighborhood satellite center established by the juvenile court. The satellite centers were located throughout the county in schools, churches, social service agencies, and juvenile court community centers. The majority of juveniles in the restorative justice program had their cases processed in the satellite center, compared to about one-third of those in the standard program. Offenders who had their cases processed in neighborhood satellite centers were less likely to recidivate.

Study	Program Type	Measured Outcome	Sample Size	Methods	Findings
Kathleen Bergseth and Jeffrey A. Bouffard, "Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders," <i>International Journal of Offender Therapy and Comparative Criminology</i> , Vol. 57, No. 9: 1054-1075, 2012	Various restorative justice programming, including face-to-face victim offender dialogue, victim or community panels, and indirect mediation	Exploration of the possible moderating effects of age, gender, race/ethnicity, and prior offending behavior on recidivism among youth referred to restorative justice programming and traditional court processing	352 youth referred to a restorative justice program; 353 similar youth referred to traditional juvenile justice system	Cox regression analyses were used to examine the relationship between restorative justice participation and time to re-offense, as well as the potential differential impact of restorative justice referral on youth based on demographic- and offense-related variables. The study used an intention-to-treat design; those who were assigned to treatment (restorative justice) and comparison (traditional juvenile justice) groups remained in those groups based on referral to the groups regardless of whether they received the assigned intervention.	Juveniles referred to the restorative justice program remained offense-free significantly longer than comparable youth who received traditional processing, even when group differences were controlled. Youth age 14 and younger who were referred to the restorative justice program remained offense-free for significantly longer periods of time than similar youth in the control group; this difference was not significant for youth age 15 and older. Although males and females referred to restorative justice programming remained offense-free longer than males and females referred for traditional processing, this difference was only statistically significant for males. Both white and non-white youth referred to the restorative justice program remained offense-free significantly longer than the comparison group, but the difference was greater for white youth. Juveniles with no prior official contact with juvenile justice authorities who were referred for restorative justice processing remained offense-free significantly longer than youth in the control group. Those with one or more prior contacts in the restorative justice group also had longer periods of time offense-free as compared to the traditional court processing group, but the difference was not statistically significant. Offense type also had an effect on recidivism; those in the restorative justice group with property and violent offenses remained offense-free significantly longer than those in the comparison group, but those who were referred to restorative justice programming for other types of offenses, such as curfew violations, alcohol- or tobacco-related charges, drug possession, traffic offense, or disorderly conduct, recidivated more quickly than youth in the comparison group, though the difference was not statistically significant.

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Jung Jin Choi, Michael J. Gilbert, and Diane L. Green, "Patterns of Victim Marginalization in Victim-Offender Mediation: Some Lessons Learned," <i>Crime, Law and Social Change</i> , Vol. 59, No. 1: 113-132, 2013	Victim-offender mediation	Identification of factors that may lead to victim marginalization during restorative justice programming	8 juvenile offenders with cases involving misdemeanors and felony charges, unusually high restitution, and 1 violent felony; 8 parents, 8 adult victims, 10 mediators, 3 representatives of referral sources	This study used a naturalistic qualitative design of semi-structured interviews and victim-offender mediation observation.	Patterns of victim marginalization were observed, which were attributable to gaps between the guiding principles of restorative justice and actual practice, particularly victim-centeredness. The study showed that victim dissatisfaction occurred when victims were not appropriately prepared, felt pressured by mediators to behave in certain ways (such as not expressing any negative emotions and accepting apologies), and felt concerned for their safety or intimidated by offenders and/or their family members.
Mary Koss, "The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes," <i>Journal of Interpersonal Violence</i> , Vol. 29, No. 9: 1623-1660, 2014	Restorative justice conferencing program, RESTORE (a program for adults with misdemeanor and felony sexual assaults in Arizona)	Examination of the feasibility, fairness, and safety of RESTORE; comparison of participants' experiences with the program vision, review of service delivery to improve program implementation, and outcome evidence analysis to determine whether the program achieved its aims	Participants at intake/post-conference: offenders, n=20/20; victims, n=11/7; surrogate victims, n=11/11; minimal participation victims, n=15/13; offender family & friends, n=23/20; victim family and friends, n=19/18; volunteers, n=10/11	Offenders were referred to the program by county and city prosecutors according to referral criteria from March 2003 through August 2007. After referral, survivor victims were contacted for consent to participate. Data sources included clinical and research files and nonparticipant observation of conferences. Self-report measures were administered at intake and immediately post-conference, except for survivor victims and offenders, which were administered one week post-conference.	<b>Feasibility:</b> The program was feasible; most felony sexual assault survivors wanted to meet with their offenders face-to-face (most were romantic partners), but most misdemeanor sexual assault survivors did not want to meet with their offenders (all were strangers). Among those who accepted responsibility for their offenses, most felony offenders and all misdemeanor offenders were willing to participate in RESTORE. <b>Fairness:</b> Evaluations revealed disturbing racial trends. Caucasian offenders and victims were more likely to be referred to RESTORE than African Americans or Hispanics. <b>Safety:</b> The program appeared safe. There was one documented instance of victim re-abuse, which was addressed at the time of occurrence. Psychometric assessments of victim distress indicated many had symptoms of post-traumatic stress disorder (PTSD) at the beginning of the program, but symptoms did not increase during the program and fewer victims met PTSD criteria three months after the conference. <b>Participant experience compared to program vision:</b> One-third of victims did not elect to participate in order to put the incident behind them, but all indicated taking back their power was a major reason to participate; most also wanted to have input into the consequences for the offender. Service delivery was mostly determined by prosecutorial referral, but authors noted a high rate of police case closures, which was deemed problematic because it reduced the number of individuals referred to RESTORE. <b>Outcome evaluations:</b> 91% of consented cases (cases in which both victim and offender agreed to participate) had a completed conference. Two-thirds of felony and 91% of misdemeanor offenders fulfilled all terms of their re-dress plan and supervision and completed RESTORE successfully. Victims and their supporters who attended their conferences were the most satisfied participant groups.

Study	Program Type	Measured Outcome	Sample Size	Methods	Findings
Alana Saulnier and Diane Sivasubramaniam, "Effects of Victim Presence and Coercion in Restorative Justice: An Experimental Paradigm," <i>Law and Human Behavior</i> , Vol. 39, No. 4: 378-387, 2015	Examination of the restorative practice of apologizing in a conferencing-type of set up	Effects of coercion (coerced, not coerced) and victim presence (direct, surrogate, ambiguous) on offenders' subjective experiences of offering an apology and the quality of the apology	Introductory psychology students (N=101) at a midsized Canadian university (39 male, 62 female)	Participants were engaged in a deceptive, live paradigm designed to elicit a confession and apology for a transgression, in which coercion and victim presence were manipulated. Condition assignment was random. Victim conditions involved an actual victim, a surrogate (victim's representative), or were ambiguous (no victim). In the coercion conditions, participants were told they would receive an academic misconduct violation if they did not write an apology (coerced), or that there were no negative consequences for not writing an apology (not coerced). Participants self-reported the outcomes they experienced after apologizing, which were categorized as personal responsibility, transgression ramifications, accountability, apology impact, transgression finality, value consensus, procedural fairness, and outcome fairness. Twenty independent raters (also introductory psychology students) rated the objective quality of apologies on remorse, acceptance of guilt, and potential for dispute resolution.	Victim presence and coercion had a significant impact on the subjective perceptions of transgressors. Transgressors felt more accountable to direct victims than to ambiguous victims. Victim presence and coercion consistently affected the transgressors' apology quality. Victim presence affected remorse only when apologies were not coerced. Transgressors who were not coerced conveyed significantly more remorse to direct and surrogate victims than to ambiguous victims. Transgressors who were coerced to apologize conveyed less guilt and less potential for dispute resolution. Those in the surrogate condition conveyed more guilt than those in the ambiguous condition. Transgressors in the surrogate condition conveyed more potential for dispute resolution than those in the ambiguous or direct conditions.
Marilyn Armour and Shannon Sliva, "How Does It Work? Mechanisms of Action in an In-Prison Restorative Justice Program," <i>International Journal of Offender Therapy and Comparative Criminology</i> , Vol. 62, No. 3: 1-26, 2016	Surrogate victim-offender dialogue through Bridges to Life (a 12-week manualized faith-based intervention in a minimum security substance abuse therapeutic community	Identification of processes that produce change in an in-prison group substance abuse treatment program and how those processes affect change in offenders' self-concept and behavior	18 adult offenders, 4 victims, 2 facilitators; most crimes were drug related, but there were also property, violent, and other crimes	This study used a multi-method design, including qualitative components of participant observation, participant interviews, and field notes, and quantitative rating scales administered before, during, and after intervention.	Key elements of restorative justice processes and elements of group cohesion (feelings of solidarity with the group) supported offender behavioral changes in the Bridges to Life program, resulting in reduced recidivism. Program components that influenced changes in the offender and group cohesion included: values and beliefs associated with the Bridges to Life philosophy, which is rooted in restorative justice; expectations to attend and participate in group sessions; interacting on a human level and not having expectations about the program; honest

Study	Program Type	Measured Outcome	Sample Size	Methods	Findings
	for male, pre-release offenders in Texas)				sharing of stories and feedback; unearthing hidden truths or feelings of offenders and providing supportive interactions; internal reactions of participants to behaviors of other group members; changing how participants see themselves and finding new ways to act that were consistent with their new self-perception; and synchronicity, a belief in divine intervention or faith in the process of the program.
Michelle Butler and Shadd Maruna, "Rethinking Prison Disciplinary Processes: A Potential Future for Restorative Justice," <i>Victims &amp; Offenders</i> , Vol. 11, No. 1: 1-23, 2015	N/A	Exploration of whether restorative justice interventions could be used inside prisons as part of their disciplinary procedures	34 prisoners and 14 staff members (including prison officers and governor-level members of prison management) across four facilities	This was a mixed-method study of disciplinary practices, involving in-depth, semi-structured interviews with prisoners and staff, and observations of misconduct hearings in four United Kingdom prisons (two adult male prisons, one young offender center, and one female prison). Participants were identified using a stratified, purposeful sampling approach.	Nearly all interviewed inmates viewed disciplinary proceedings inside prisons as lacking legitimacy because they were always found guilty regardless of what was presented during the disciplinary hearing. Prison staff acknowledged the majority of inmates were likely to be found guilty but attributed that to accompanying evidence and also expressed skepticism about inmates' denials and self-exculpations in the hearings. Prison managers felt the amount of paperwork required to go through the hearing process was a sufficient deterrent to keep officers from abusing the system; however the data on types of charges brought against inmates indicated minor infractions were frequent. Both staff and inmates reported feeling dehumanized by those on the other side and trust was very poor. The authors concluded that prisons would greatly benefit from replacing their adjudication process with a restorative procedure in a collective, participatory, problem-solving manner guided by restorative theory.
Johanna B. Folk, Brandy L. Blasko, Rebecca Warden, Karen Schaefer, Patty Ferssizidis, Jeffrey Stuewig, et al., "Feasibility and Acceptability of an Impact of Crime Group Intervention With Jail Inmates," <i>Victims and Offenders</i> , Vol. 11, No. 3: 436-454, 2016	Victim impact class, Impact of Crime (a group intervention program that includes participants reading news stories and personal vignettes on crime and the associated impacts, completing workbook exercises, and listening to victims of crimes discuss how the crime has affected them and those around them)	Feasibility (facilitator adherence to the intervention, ability to recruit victim speakers, participant program retention) and acceptability (satisfaction with various aspects of the intervention) of a victim impact manualized group intervention	108 adult male jail inmates; offense type not specified	Inmates were randomly assigned to receive a one-session motivational interview followed by an eight-week, 16 session Impact of Crime intervention or a one-session motivational interview followed by treatment as usual.	Findings suggested significant participant engagement and overall satisfaction with the intervention. Most, 67.3%, offenders attended at least 75% of sessions and 93.3% of homework assignments were submitted on time. Most offenders reported victim speakers were the most important part of the program. The study showed the Impact of Crime intervention could be delivered with fidelity and it was acceptable to offenders.

Study	Program Type	Measured Outcome	Sample Size	Methods	Findings
Lynn Stewart, Jennie Thompson, Janelle N. Beaudette, Manon Buck, Renee Laframboise, and Tania Petrellis, "The Impact of Participation in Victim-Offender Mediation Sessions on Recidivism of Serious Offenders," <i>International Journal of Offender Therapy and Comparative Criminology</i> , Vol. 62, No. 12: 3910-3927, 2018	Face-to-face restorative justice mediation, The Restorative Opportunities program, implemented by the Correctional Service of Canada (involved facilitated face-to-face meetings between offenders and victims while offenders were still incarcerated or while in the community on conditional release)	Revocation rates of conditional release for adult, federally-sentenced offenders convicted of serious crimes (73% had been convicted of homicide, manslaughter, sexual assault)	122 adult offenders who received a face-to-face meeting with their victims prior to release (n=81) or while in the community (n=41), compared with a matched sample of 122 offenders who did not receive the Restorative Opportunities intervention	From a list of all offenders who had ever participated in Restorative Opportunities face-to-face meetings, only offenders who had been supervised in the community prior to the end of the study period (12/31/14) and who were successfully matched with non-program offenders were included in the study. Survival analyses were utilized to compare rates of revocation for offenders who participated in Restorative Opportunities to offenders who did not.	Restorative Opportunities participants had significantly fewer revocations of conditional release; 25% of participants were returned to custody compared to 46% of non-Restorative Opportunities participants. Reasons for revocation included new offenses and violations of conditional release, but only a few participants were returned to custody due to new charges (n=5 for participants, n=8 for controls). One participant had a violent offense; in the control group, two participants had violent offenses and one participant had a new sexual offense. Although re-offense rates were lower for participants who had the Restorative Opportunities intervention during incarceration and their matched controls, the difference was not statistically significant. However, the difference in revocation rates was statistically significant for participants who had the Restorative Opportunities intervention in the community and their controls; non-Restorative Opportunities offenders were 6 times more likely to have their conditional release revoked.
Joseph L. D. Kennedy, Antover P. Tuliao, KayLee N. Flower, Jessie J. Tibbs, and Dennis E. McChargue, "Long-Term Effectiveness of a Brief Restorative Justice Intervention," <i>International Journal of Offender Therapy and Comparative Criminology</i> , Vol. 63, No. 1: 3-17, 2019	Victim impact class with a single-session, eight-hour restorative justice intervention delivered by trained facilitators to help offenders understand the impact of their crime; primarily used victim impact statements (not derived from the actual victims). Offenders also had to complete three assignments after the class, including writing apology letters to their direct and indirect victims (which were not delivered)	Effectiveness of the intervention, measured by recidivism, and offenders' description of their experiences and what aspects they found valuable	Treatment group: 383 adult probationers who were required to complete the intervention as a supplement to their terms of probation; control group: 130 probationers who underwent standard probation procedures and were not enrolled in the restorative justice intervention	Probationers who completed the restorative justice intervention were compared to probationers receiving treatment as usual over a two- to six-year follow-up period. The study used a simultaneous multi-method design with quantitative (recidivism rates among treatment and control groups) and qualitative (anonymous survey of four questions about the restorative justice intervention class post-intervention) components.	Recidivism was defined as a re-arrest between restorative justice intervention completion and the last follow-up period or treatment as usual entry and the last follow-up. Those who received the intervention recidivated at a lower rate (33%) than those in the control group (68%); these differences were noted at the two-year follow-up and maintained over the six-year period. Among those who recidivated, those in the intervention group did so less frequently. Half of the probationers in the intervention group spontaneously reported an empathic understanding associated with participation.

Source: OPPAGA analysis of peer-reviewed articles pertaining to restorative justice.

# APPENDIX C

## Restorative Justice Programs in Other States

Many other states have restorative justice programs. OPPAGA interviewed 21 organizations in 15 states to learn more about these programs. We selected states with active restorative justice programs run by both state agencies and nonprofit organizations. Exhibit C-1 presents information from restorative justice programs in other states.

### Exhibit C-1

#### Summary of Interview Responses From Restorative Justice Program Leaders

Arizona Department of Corrections—Office of Victim Services	
<b>Overview</b>	Programs are victim-offender dialogues that occur in prisons. All dialogues are victim-initiated, which allows for face-to-face interaction between victims and adult offenders that would not otherwise be permitted by the state because of no contact orders. Facilitators are all paid staff members who conduct independent preparatory meetings with the victim and the offender to provide a way for a safe and secure environment for the dialogue. The program also has a program coordinator.  Program is statewide and operates in all 10 state prisons and 5 private prisons.
<b>Eligibility</b>	Victims—Must initiate dialogue and complete a mental health evaluation to ensure that a face-to-face meeting is appropriate.  Offenders—Must have at least five years in prison to ensure that they have fully adapted to the prison environment. They must be willing to admit and acknowledge their part in the crime prior to dialogue taking place and complete a mental health evaluation.
<b>Funding</b>	Federal—100% funded via Victims of Crime Act
<b>Standards/Protocols</b>	No overall program guidelines or standards; each case is unique.
<b>Training Requirements</b>	Facilitators are required to be trained using curriculum developed by an experienced advocate.
Colorado Department of Corrections	
<b>Overview</b>	Legislation in 2011 created restorative justice programs for adult offenders in the Colorado Department of Corrections. The first initiative was a pilot program of victim-offender dialogue. In addition to victim-offender dialogues, the department created a letter bank where offenders may send letters of apology. There is a newer program, called the Restorative Justice Education Group, which is a 12-week class that may become a year-long program beginning in 2020. Victim impact panels also take place; six to eight violent crime survivors created videos sharing the impact of their crimes, which are available on YouTube. Victims also volunteer to speak in prisons. The program operates in all prisons across the state.
<b>Eligibility</b>	Offenders cannot be in restricted housing and must be in prison for at least 12 months without any disciplinary actions within the last 12 months. State law also does not permit victim-offender dialogues for domestic violence, sexual assault, or stalking offenses. Any no contact orders must be rescinded for the victim-offender dialogue to take place.
<b>Funding</b>	State—Funding is used to pay for travel expenses for facilitators and victims to participate in victim-offender dialogues and preparatory meetings. The Colorado Department of Corrections provides staff support.

**Colorado  
Department of Corrections (Continued)**

<b>Standards/Protocols</b>	<p>The Colorado Department of Corrections has helped develop the 20 Essential Principals of Victim-Centered Victim Offender Dialogues, which specifies that the process</p> <ul style="list-style-type: none"> <li>▪ is only initiated by the victim;</li> <li>▪ is centered on the needs of the victim;</li> <li>▪ is completely voluntary and may be terminated by either party at any time;</li> <li>▪ strives to keep all risk of physical and emotional harm to the victim at an absolute minimum;</li> <li>▪ is conducted by facilitators trained in recognized crime victim issues;</li> <li>▪ is, from beginning to end, confidential for the victim, the offender, the facilitators, and any support persons; and</li> <li>▪ complies with all laws, policies, and procedures of the correctional facility or supervisory authority.</li> </ul> <p>Colorado also has a Restorative Justice Council that developed additional standards related to training programs and trainer qualifications for restorative justice programs.</p>
<b>Training Requirements</b>	Colorado requires at least 40 hours of facilitator training. Facilitators without training may be co-facilitators with trained facilitators to gain some experience before completing their required training.
<b>Other</b>	Victims are notified about the opportunity to participate in restorative justice programs. The Colorado Department of Corrections lists these programs on their website and the victims services unit may mail information about these programs to victims.

**Colorado  
Restorative Justice Council**

<b>Overview</b>	The 2007 Legislature established the Colorado Restorative Justice Council as an advisory body with primary functions to 1) provide training and education on restorative justice in Colorado; 2) provide technical assistance with programs to engage in restorative justice programming; and 3) act as a central repository for all restorative justice programs and resources in Colorado. The council meets for a full day once every two months. The council monitors restorative justice programs for the whole state, which are primarily for juvenile offenders. The council membership is specified in statute (C.R.S. 13-3-116) and includes representatives from the Department of Corrections, the district attorney's office, judges, victim advocates, restorative justice practitioners, and restorative justice advocates.
<b>Eligibility</b>	Per statute (C.R.S. 19-2-907) domestic violence and sex offenders may not participate in restorative justice programs sponsored by state agencies. However, nonprofit organizations can provide restorative justice programs to these offenders.
<b>Funding</b>	State—A \$10 surcharge on court fees statewide provides available funding of approximately \$1 million per year. Funding is used for travel reimbursement for council members as well as approximately \$100,000 for program evaluations.
<b>Standards/Protocols</b>	The Colorado Restorative Justice Council has developed statewide guidelines and standards of practice regarding trainer qualifications and training organizations for restorative justice programs, which are posted on the council's website at <a href="https://www.rjcolorado.org/restorative-justice/colorado-standards-of-practice">https://www.rjcolorado.org/restorative-justice/colorado-standards-of-practice</a>
<b>Training Requirements</b>	The council has a nonprofit organization that is working toward standardized training for restorative justice facilitators. The council is advisory, so they cannot force programs to follow any specific training standards.
<b>Other</b>	The council has a website ( <a href="https://www.rjcolorado.org/restorative-justice-practitioners/index.html">https://www.rjcolorado.org/restorative-justice-practitioners/index.html</a> ) where restorative justice programs and practitioners may upload directory information.

**Colorado  
Longmont Community Justice Partnership**

<b>Overview</b>	The program uses volunteer facilitators for face-to-face meetings between victims and with pre-trial youth (ages 10 and above) and adults referred by the municipal police department. Staff will screen the victims and offenders independently to assess their appropriateness for a face-to-face meeting to make sure they understand appropriate outcomes, and facilitators will then conduct a preparation meeting with each side before the face-to-face meeting. Community representatives are trained volunteers who also meet with offenders and represent how the community was harmed by the offender (breaking the social contract, costs to the community for law enforcement and the judicial system). Most cases are pre-trial, but the program also works with some people on probation who are recommended to the program. Initially piloted as a program for first-time juvenile offenders who had committed low-level crimes, it was expanded to include adults and other judicial stakeholders, including the district attorney's office, courts, and probation offices. In general, cases are resolved within eight weeks to avoid instances where participants move or are not otherwise available.
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**Colorado  
Longmont Community Justice Partnership (Continued)**

<b>Eligibility</b>	<p>Offenders—Must have not committed certain crimes (traffic violations, domestic violence, or sexual assault), acknowledge the harm and not minimize their offense, undergo a mental health and substance abuse evaluation to determine if there are any issues that impair offenders’ ability to participate in the process, and not have gone through the restorative justice process for the same crime.</p> <p>Victim—Must give permission for using the restorative justice process and not going to court, and be willing to participate in restorative justice meetings.</p>
<b>Funding</b>	<p>Local—City of Longmont (\$200,000)</p> <p>Other—Program charges a \$125 participation fee with a sliding scale; program also does fundraising events</p>
<b>Standards/Protocols</b>	<p>Program-established facilitator standards of conduct include the following.</p> <ul style="list-style-type: none"> <li>▪ All participation is voluntary</li> <li>▪ Pre-meeting assessments are conducted to ensure that there is a very low possibility of re-victimization</li> <li>▪ Impartiality by the facilitator toward all parties</li> <li>▪ No conflict of interest by the facilitator relative to any other participant in the process</li> <li>▪ Competency of facilitators through education and training to ensure a safe and restorative process</li> <li>▪ Respect for privacy of all participants and information obtained by the facilitator</li> <li>▪ High quality process standards for repairing the harm, meeting the needs of the victim, creating a safe space for all participants, accountability by the offender, honest and meaningful dialogue, and healing and understanding for all participants</li> </ul>
<b>Training Requirements</b>	<p>Colorado requires 40 hours of training for all facilitators. The program has required facilitator training standards, which include a 20-hour training program for new volunteers (2-hour orientation, 2-hour training on how to be a community member representative, and 16 hours of facilitator training). New facilitators are also required to work with experienced facilitators prior to becoming a lead facilitator.</p>
<b>Other</b>	<p>Pre-trial participants who successfully complete the program will not have a criminal record.</p>

**Kansas  
Department of Corrections**

<b>Overview</b>	<p>The Kansas Department of Corrections has restorative justice programs under the victim services division. The department operates three separate programs, including victim-offender dialogues, a letter bank of apology letters from offenders (both of which started in 2001), and victim impact classes (which began in 2011). These programs are available to adult offenders in Kansas prisons.</p>
<b>Eligibility</b>	<p>All adult offenders are eligible, but the department tries to ensure the offender is a good candidate for a victim-offender dialogue by having staff review the offender's mental health and disciplinary records. Program staff performs separate reviews of the offender’s disciplinary record to determine eligibility for the victim impact course.</p>
<b>Funding</b>	<p>State—State general revenue funds Department of Corrections staff.</p>
<b>Standards/Protocols</b>	<p>The Kansas Department of Corrections uses the national standards (<a href="http://www.navac.website/vod.html">http://www.navac.website/vod.html</a>) published by the National Association of Victim Assistance in Corrections, which are ethical standards for victim-offender dialogues. Kansas is creating its own restorative justice standards and hopes to have them in place by May 2020.</p>
<b>Training Requirements</b>	<p>The department has a 40-hour initial training for victim-offender dialogue facilitator volunteers, which consists of two days during one week and three days in the following week, with some homework in the interim period. There is also annual refresher training. For the victim impact courses, the coursework for volunteer facilitators is usually one six- to eight-hour training session. The department also uses inmate graduates of the course to co-facilitate future courses. Inmate co-facilitators go through a 20-hour training program over an eight-week period. There are about two to four of these co-facilitators at each state prison.</p>
<b>Other</b>	<p>The apology letter and victim-offender dialogue programs are initiated by the victim. Any contact between the victim and offender is victim-initiated. Victims may learn about the programs through the department’s website and from correctional facilities staff and parole officers. For the victim-offender dialogue, either the victim or the offender may withdraw at any point in the process.</p>

**Kansas  
Institute for Peace and Conflict Resolution**

<b>Overview</b>	The Institute for Peace and Conflict Resolution began offering restorative justice training in the late 1990s. The training program is affiliated with Bethel College and much of the training is provided for school systems in Kansas. The organization focuses on providing training in restorative justice programs for school systems and on coalition building. The organization also provides training on teen courts and alternative options for juvenile offenders.
<b>Eligibility</b>	This organization does not implement restorative justice programs; it provides training to school systems. All school systems in the state are eligible to receive this training.
<b>Funding</b>	Local—School systems pay for the training the Institute for Peace and Conflict Resolution provides.
<b>Standards/Protocols</b>	There are no current program standards for school-based restorative justice programs.
<b>Training Requirements</b>	A wide range of training programs are used. There are currently no benchmarks for training, especially in schools. The only official training requirements are related to mediator training.

**Massachusetts  
Center for Restorative Justice**

<b>Overview</b>	The Center for Restorative Justice, housed at Suffolk University, provides a combination of public education about restorative justice and professional development training, with a mission of capacity building. The center also works with a variety of programs, including diversion, pre-arraignment, re-entry, and incarceration programs. The center's work has been primarily with the K-12 education system, including handling issues within the school system before cases are referred to the court system, and the higher education system. The center also conducts training with district attorneys and law enforcement organizations (sheriffs' offices and Department of Corrections staff).
<b>Eligibility</b>	Any restorative justice program that needs training and can pay for it is eligible.
<b>Funding</b>	Other—The center's primary source of funding is through research grants; the center also receives fees for providing training and earns revenue from publication sales.
<b>Standards/Protocols</b>	Center staff reported that as restorative justice is an emerging field, they do not necessarily want to put restrictions on what needs to happen in the field by having standards in place that are limiting. The Massachusetts Restorative Justice Advisory Committee is working to create recommendations on criteria for participation in restorative justice programs, training guidelines, and best practices.
<b>Training Requirements</b>	The center provides similar facilitator training for both juvenile and adult case facilitators.
<b>Other</b>	The center is working to produce an inventory of restorative justice programs in Massachusetts. This work is being done to support work by the Massachusetts Restorative Justice Advisory Committee made up of 17 representatives specified in state statute (Part IV, Title II, Chapter 276B, Section 5).

**Massachusetts  
Communities for Restorative Justice**

<b>Overview</b>	The Communities for Restorative Justice program receives referrals from two district attorneys and over 25 police departments in eastern Massachusetts. Primarily focused on pre-arraignment diversion cases for juveniles and adults, the programs include opening, interim, and closing meetings to allow offenders to be accountable for their actions and to learn about the impact of their crime on victims and communities. Opening and closing meetings include the police officer and the victim (if the victim agrees). Interim meetings are just between the offender and volunteer facilitators. The program started in 2000 when the Concord Police Chief learned about restorative justice programs and wanted to start them in the area. Most (78%) cases are with juvenile offenders, but the program expects a larger percentage of older offenders in the future. Participants who successfully complete the program do not go to court and will not have a criminal record.
<b>Eligibility</b>	State statute does not allow domestic violence or great bodily harm offenders to participate. Both the referring agency and the offender must agree to participate and there is an intake process to ensure that the case is an appropriate fit. Continued participation is predicated on active participation, such as keeping appointments and completing assigned homework.
<b>Funding</b>	Other—Funding is mainly from individual donations and grants. The program charges a \$250 participation fee with a sliding scale; each participating police department also pays an annual membership fee.
<b>Standards/Protocols</b>	The program does have some best practices and a list of principles that are provided to facilitators. However, most decision making is case-specific as staff members meet with facilitators to problem solve and to find solutions in a collaborative manner.

**Massachusetts  
Communities for Restorative Justice (Continued)**

<b>Training Requirements</b>	The program provides training for all volunteer facilitators. The training is about 10 hours in duration and covers an introduction to restorative justice and the specific programs and the logistics of working with a restorative justice team. The program also has a second level of training for volunteers who have some experience and are ready to lead meetings.
<b>Other</b>	In 2010, the program did a recidivism study that examined cases from the first 10 years of the program and found a recidivism rate of 16%. The program is planning an additional study to see if the recidivism rate changes over an even longer period.

**Minnesota  
Center for Restorative Justice and Peacemaking at the University of Minnesota Duluth**

<b>Overview</b>	The center defines restorative justice as a community-based approach to justice that aims to hold offenders accountable in meaningful ways, to repair harm, and to engage victims and community members in the process. The center focuses on victim-offender restorative dialogue and works with a mix of state agencies and nonprofit organizations to provide both training and consultation to these groups to help them start and support restorative justice programs.
<b>Eligibility</b>	The center does not actually implement restorative justice programs, it provides training to restorative justice programs. Any restorative justice program that needs victim-offender dialogue training and can pay for it is eligible.
<b>Funding</b>	Other—Funding for the center comes from research grants, training fees, and private donations.
<b>Standards/Protocols</b>	For program standards, the center uses the 10 Sign Posts of Restorative Justice, which include <ul style="list-style-type: none"> <li>▪ focusing on the harms of the crime rather than the rules that have been broken;</li> <li>▪ showing equal concern for victims, offenders, and their families;</li> <li>▪ working toward restoration of victims and their families;</li> <li>▪ supporting offenders while encouraging them to understand the harm they have done; and</li> <li>▪ finding meaningful ways to involve the community and to respond to the community bases of crime.</li> </ul>
<b>Training Requirements</b>	The center provides two types of training—facilitator training that includes both the initial training (approximately 16 hours) for a new facilitator and a second training for facilitators with at least 1.5 years of experience. The center also provides training in program management on how to build, implement, and sustain a restorative justice program.

**Missouri  
Department of Corrections**

<b>Overview</b>	There are 21 Department of Corrections institutions in the state and all have programs with a restorative justice component. All adult offenders may take a class that educates offenders on the impact of their crime on victims and communities. Other programs include justice gardens that allow inmates to cultivate gardens to provide fresh food for needy state residents, quilt making, woodworking, and making coloring books for children.
<b>Eligibility</b>	All inmates are eligible to participate.
<b>Funding</b>	Other—Funding for restorative justice programming comes from donations and offender canteen funds.
<b>Standards/Protocols</b>	Department of Corrections staff reviews curriculum materials for the class.
<b>Training Requirements</b>	The department has a training program in place that trains offenders who have successfully completed the class to become facilitators for future classes.
<b>Other</b>	Inmates may be recommended to take the class as part of their diagnostic evaluation when they first enter the prison system. Inmates receive information about the restorative justice programs as part of facility orientation.

**New Hampshire  
Department of Corrections, Office of Victim Services**

<b>Overview</b>	This office within the New Hampshire Department of Corrections provides advocacy services to felony-level survivors of crime. Victims are entitled to restorative justice programs per the victim's bill of rights in state statute (NH Rev Stat Section 21-M:8-k). The department provides a victim-offender dialogue program and an accountability letter bank. Office staff reviews cases and meets with offenders to see if they will volunteer to participate. If there is a no contact order, staff works with the state attorney's office to get authorization for a one-time meeting. Department staff also serves as program facilitators.
<b>Eligibility</b>	All participants are convicted felons held in state Department of Correction's facilities or on parole. Programs are only offered for violent offenders and not for minor crimes; most cases are sexual assault, negligent homicide, or domestic violence.
<b>Funding</b>	Federal and state—Office of Victim Services staff and victim-offender dialogue staff are funded through federal Victim of Crime Act (VOCA) grant awards; staff who support both victim-offender dialogues and the letter bank are funded by both VOCA and state funds.
<b>Standards/Protocols</b>	No program standards are being used at this time.
<b>Training Requirements</b>	The three staff members who are facilitators for victim-offender dialogues are all trained using the 40-hour Just Alternatives training program.
<b>Other</b>	Victims normally learn about the opportunity to participate in victim-offender dialogues when they call the Office of Victim Services, but sometimes referrals come from the prosecuting attorney if they know the victim is interested in participating. The programs are entirely voluntary and the victim or offender may withdraw at any time for any reason. The victim may also choose at any time to re-initiate the dialogue.

**New Hampshire  
Grafton County Alternative Sentencing**

<b>Overview</b>	The Grafton County, New Hampshire Alternative Sentencing Program is a county government department that administers restorative justice programs in conjunction with the superior court. All programs use restorative justice practices with either victim involvement or community representative involvement. There are three programs available: drug court, mental health court, and juvenile restorative justice. The drug court program is 18 to 24 months long and is designed for first time felony offenders. The mental health and juvenile restorative justice programs have adult and juvenile diversion programs for first-time offenders. There is also a program for individuals on probation who require additional support services; the program provides mentoring for parolees who are transitioning back into the community. Adult diversion programs require 100 hours of community service as a way to give back to the community they have harmed. Juvenile programs have panels with community representatives to understand the circumstances for each individual and then work to develop a restorative agreement.
<b>Eligibility</b>	Grafton County residents may be referred by the superior court. Participants include first-time felons, adult and juvenile first-time offenders, and individuals on probation. Most are pre-trial, except for the probation reentry program, and the programs receive some mental health cases that are post-conviction. The organization also receives program referrals from school districts.
<b>Funding</b>	Local—Grafton County State—Some additional funding comes from the Bureau of Drug and Alcohol Services and an annual draw down from the New Hampshire Juvenile Court Diversion Network for juvenile screening and data collection
<b>Standards/Protocols</b>	The organization is not currently using any state, national, or international program standards.
<b>Training Requirements</b>	Facilitators provide training that covers ethics and boundaries, motivational interviewing, cognitive behavioral therapy training, and some basic group therapy training to best understand how to manage different behaviors.
<b>Other</b>	Juvenile and adult offenders who successfully complete the programs may have first-time misdemeanor or felony charges dropped so they will not have a criminal record.

**New York  
Peace Institute**

<b>Overview</b>	The New York Peace Institute is an organization that provides mediation, community dispute resolution, and restorative justice programs. It is one of several community dispute resolution centers in the state. Available in Brooklyn, the programs are available to juveniles and adults, pre- and post-disposition. For example, one program receives misdemeanor referrals (typically family assault cases) in which the parties involved may want to try a restorative justice conference approach to see if they can meet and reach agreement prior to trial. The judge still makes the final determination, but often cases are dismissed after successful program completion. As a condition of sentencing, the conflict coaching program requires a convicted offender to meet with a coach to address the issues that led to the incident and work to understand its impact on victims and communities. The institute has a new family court program, beginning November 2019, for youth ages 16-17 that will allow family circles.
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**New York  
Peace Institute (Continued)**

<b>Eligibility</b>	All participants are referred from the Brooklyn Court Office; eligibility varies by program.
<b>Funding</b>	Local—Mayor’s Office of Criminal Justice and the court system Other—Grants and private donations
<b>Standards/Protocols</b>	International Institute for Restorative Practices for training standards
<b>Training Requirements</b>	Volunteers attend a basic mediation training, approximately 40 hours, followed by a three-month apprenticeship, after which they receive two to three days of more advanced training. They then pair up with a criminal justice mediator before they can work on their own. Each community dispute resolution center can develop their own training curriculum, which is approved by the office of court administration. Trainers from Baltimore, Maryland and the International Institute for Restorative Practices have also provided training.
<b>Other</b>	People usually learn about restorative justice programs from their defense attorneys. In many cases, there is the potential to have their case dismissed if they successfully complete one of the programs. The programs work not just to resolve the case but also to resolve issues surrounding the case.

**New York  
Alternative Dispute Resolution, New York State Unified Court System**

<b>Overview</b>	The New York State Unified Court System programs for alternative dispute resolution include community building and restoring relationships, resolving community problems, assisting with classroom management, and resolving disputes involving more serious or more violent harm. The victim-offender dialogue program is for adult Department of Correction inmates statewide and is facilitated by two court staff. Statewide, only one to four victim-offender dialogues are completed each year, but there is a chance this will grow as restorative justice programs become better known. The court also works with schools and juvenile justice programs on restorative justice.
<b>Eligibility</b>	No offender has been denied participation in the victim-offender dialogue program when requested by the victim, unless there is an order of protection in place, the case is still in the appeals process, or the offender does not take responsibility for the crime.
<b>Funding</b>	Local, state, and other—Includes grants and private foundation funding
<b>Standards/Protocols</b>	Given the small number of cases per year and the small number of trained staff, there has not been a need for state-level program standards.
<b>Training Requirements</b>	Victim-offender dialogue facilitators have had extensive training from Concentric Journeys in Texas and Just Alternatives in Maine. One staff member has also received some additional training as a mediator.
<b>Other</b>	People usually learn about the restorative justice programs through the victim services agency in their county. All face-to-face victim-offender dialogue meetings take place within prison facilities, so the victim must be able to travel to a facility for the meeting.

**North Carolina  
Piedmont Mediation Center**

<b>Overview</b>	The North Carolina Piedmont Mediation Center is a nonprofit organization that works with young offenders, ages 10 to 25. Restorative justice programs include victim-offender conferences, family conferences, teen court, and community service programs. Most referrals are from the North Carolina Juvenile Justice Department after adjudication, but the center does not work with juvenile offenders who are in detention facilities. The programs are throughout Iredell County, North Carolina, but the center does provide some training in restorative practices to staff in nearby counties. Staff train volunteers who serve as program facilitators.
<b>Eligibility</b>	Young offenders not in detention facilities are eligible for participation.
<b>Funding</b>	State—Contract through the Department of Juvenile Justice Other—Center charges some clients a youth program fee of \$60
<b>Standards/Protocols</b>	Program standards are under development.
<b>Training Requirements</b>	The center uses the International Institute for Restorative Practices training materials as their primary source and two staff members are licensed trainers through the institute. The center has also modified some general mediation training to support the schedule for its volunteer facilitators.
<b>Other</b>	Participants who successfully complete the programs may have their charges dismissed or avoid having charges brought.

**Ohio  
Franklin County Youth Education and Intervention Services**

<b>Overview</b>	Franklin County, Ohio has implemented a community restorative justice program that works with juvenile offenders, ages 10 to 17, who have committed a first time, misdemeanor offense and have no felonies in their criminal record; juveniles are primarily referred from the prosecutor’s office. The organization offers programs that include restorative justice circles, teen court, and a traditional diversion program. All programs focus on building relationships with youth and determining the root cause of the problem (e.g., peer pressure rather than need in a shoplifting case). Programs use trained community volunteers to facilitate circles that include the offender, the offender's parents, the victims (when applicable and when the victim agrees), and community representatives. The youth's parents are expected to attend the initial and the final meetings.
<b>Eligibility</b>	State programs are limited to Franklin County, Ohio residents who are juvenile offenders, ages 10 to 17, who have committed a first time, misdemeanor offense.
<b>Funding</b>	State—Staff salary and training is funded by the court system Other—Initial award and on-going support from United Way; initial funding was for volunteer training and staff salary
<b>Standards/Protocols</b>	The program has not developed any written standards; programs are based on other states’ programs.
<b>Training Requirements</b>	Training is provided for community volunteer facilitators.
<b>Other</b>	If the youth successfully completes the program, there is no criminal record. Program data show an 80-82% successful program completion rate, which requires that the program completer has not committed another crime within 16 months of program completion.  The organization uses 360-degree satisfaction surveys for all participants and checks for recidivism 9 months, 12 months, and 16 months after program completion.

**Oregon  
Center for Mediation and Dialogue**

<b>Overview</b>	The City of Beaverton, Oregon works with county juvenile justice by bringing juvenile offenders and victims together for a victim-offender dialogue. The process is victim-initiated and victim-led. Most work is done pre-sentencing, but there is flexibility to work with some offenders post-sentencing. After being referred to the program from the Department of Juvenile Justice, offenders have an initial meeting, after which they decide whether to participate in the restorative justice programs offered.
<b>Eligibility</b>	Programs are limited to juveniles and almost all are pre-trial; cases involving sexual assault or domestic violence are not accepted.
<b>Funding</b>	Federal, state, and local—Department of Juvenile Justice provides funding on a per case basis.
<b>Standards/Protocols</b>	Oregon is in the process of setting restorative justice program standards using the Colorado standards as a model.
<b>Training Requirements</b>	There is a 40-hour training session for all facilitators. Training materials cover how to conduct a restorative justice circle, restorative justice principles, understanding the needs of crime victims, listening skills, understanding neutrality and impartiality, and how to develop a written dialogue agreement.

**South Carolina  
Department of Corrections, Division of Victim Services**

<b>Overview</b>	The South Carolina Division of Victim Services has several programs in place with restorative practices: (1) victim-offender dialogues if requested by the victim; (2) a victim awareness program that uses victim surrogates to learn about the impact of crime on others; and (3) a violence prevention program called Building Healthy Relationships that focuses on cultural differences and how, as a society, we have accepted things that are not acceptable.
<b>Eligibility</b>	Adult incarcerated offenders are eligible; the programs do not necessarily exclude sexual assault or domestic violence cases.
<b>Funding</b>	Other—A portion of proceeds from the department’s prison industries program, in which prisoners earn salaries for their work while in prison, funds some victim services staff.
<b>Standards/Protocols</b>	The victim-offender dialogue program uses guiding principles developed by the National Association of Victim Services Professionals in Corrections.
<b>Training Requirements</b>	The South Carolina training is based on a training program developed by the Center for Restorative Justice and Peacemaking. The five-day facilitator training discusses a variety of case scenarios, all done through videos and a role-play activity.
<b>Other</b>	South Carolina has a Victims Coordinating Council with members appointed by the state legislature to collaborate on victim advocacy issues. South Carolina eventually hopes to have trained volunteer facilitators, which is the model used in Ohio.

**Texas  
Department of Corrections**

<b>Overview</b>	The Texas Department of Corrections has a victim-offender dialogue program that started in 1993 and is staffed by five full-time mediators, a supervisor, and an administrative assistant. In Fiscal Year 2019, Texas had 85 cases initiated, 79 cases assigned (6 cases will be assigned in the next fiscal year), and conducted 28 victim-offender dialogues. Paid staff travel to meet with victims and offenders in prisons around the state.
<b>Eligibility</b>	The program is available statewide and is operated from the department's Victim Services Division. All cases are initiated by a victim's request to meet with an offender who is in a Texas Department of Corrections facility.
<b>Funding</b>	Federal—Victims of Crime Act funds State—Part of the state funding is used to meet the state's matching requirements for federal funds
<b>Standards/Protocols</b>	Texas uses the victim-offender dialogue program standards established by the National Association of Victim Services Professionals in Corrections.
<b>Training Requirements</b>	All facilitators are required to attend a week-long training program that includes topics such as victim sensitivity, criminogenic thinking, and the ability to hold an offender accountable. Training also includes talking about offenders' manipulative behaviors so the mediators can help victims meet their goals. The program supervisor is a licensed clinician who meets with mediators to provide clinical oversight. Training also includes a shadowing program where new mediators shadow experienced mediators when they meet with victims and offenders throughout the process. Once new mediators are ready for a case, they have one assigned and they have an experienced mediator shadow them, usually after they have been working for about six months.
<b>Other</b>	Texas has noted the strong impact this program has as a therapeutic process for victims.

**Texas  
Institute of Restorative Justice and Restorative Dialogue**

<b>Overview</b>	The Institute of Restorative Justice and Restorative Dialogue started out as part of the University of Texas-Austin but is now its own nonprofit organization. The institute's main function is to provide training and resources for other organizations (mainly K-12 school systems) working to implement restorative justice programs. The institute also depends on volunteers for much of the training.
<b>Eligibility</b>	The institute does not actually implement restorative justice programs; it provides training to restorative justice programs. Any restorative justice program that needs restorative justice training and can pay for it is eligible.
<b>Funding</b>	Other—Private and corporate donations. Groups pay for the institute to provide training. For example, school districts in Texas fund training to establish restorative justice programs in schools.
<b>Standards/Protocols</b>	The institute has developed a list of best practices related to restorative discipline in schools that include <ul style="list-style-type: none"> <li>▪ emphasizing system-wide interventions that value relationships;</li> <li>▪ working to change the school climate, not just respond to student behavior;</li> <li>▪ engaging parents, guardians, and caregivers as integral members of restorative conferences and circles;</li> <li>▪ emphasizing the harms, needs, and causes of student behavior, not just the breaking of rules; and</li> <li>▪ using data to analyze trends and inform early intervention.</li> </ul>
<b>Training Requirements</b>	The institute has developed its own training programs for restorative justice programs, mainly for use in K-12 schools.
<b>Other</b>	The institute is part of the National Association of Community and Restorative Justice.

**Vermont  
Department of Corrections**

<b>Overview</b>	The Vermont Department of Corrections has a portfolio of grants to award to city governments or nonprofit organizations to manage Community Justice Centers throughout the state; programs started in the late 1990s. Law enforcement may send offenders to the Community Justice Centers instead of family courts. Some of these centers have restorative panels with trained volunteers who meet with low-level offenders. The direct victim of the crime may be involved, depending on the victim's preference. The program is about 90 days long. Most of the people who run the programs are volunteers, and paid staff is mainly used for training. For high-risk post-release prisoner reintegration programs, Vermont uses Circles of Support and Accountability to reduce recidivism rates; released prisoners meet with a volunteer once per week for at least one year to help with adjustment to reentry.
<b>Eligibility</b>	Eligibility for program participants is determined locally by the Community Justice Centers. Participants are either low-level offenders who are pre-trial or high-risk parolees who are in the process of reentering the community after completing a prison sentence. Both juveniles and adults may receive services.

**Vermont  
Department of Corrections *(Continued)***

<b>Funding</b>	State—Funding is provided by state grant awards. There are separately funded programs for juveniles and adults. The Department of Children and Families manages the programs for juveniles and the Department of Corrections handles the programs for adults.
<b>Training Requirements</b>	The local Community Justice Centers may use grant funding to pay for training of volunteers who facilitate the Circles of Support and Accountability and the restorative justice programs within the community.

**Wisconsin  
Justice Works**

<b>Overview</b>	Created in 2009, Justice Works is a small nonprofit organization that runs a program called Volunteers in Probation, a diversion program for offenders who agree to plead guilty or no-contest prior to their trial. Offenders are assigned to the program for two to six years and they are paired with a mentor. Justice Works also has a program for people recently released from prison who have a high likelihood of returning to prison. They also have a bike shop that matches drug court offenders with a shop where they learn to become bike mechanics. Participants are mainly adults, but Justice Works also provides community services options for truant through the Boys and Girls Clubs and through its bike shop.
<b>Eligibility</b>	Eligibility varies by program and can be through referral or court order. Referrals are received from the Wisconsin Department of Corrections and from the state’s attorney general and the district attorney. Most program participants are residents of Portage County, Wisconsin.
<b>Funding</b>	State, local, and other—The program receives municipal funds (\$10,000 annually), as well as grant awards, user fees, and private donations (including support from the local United Way).
<b>Training Requirements</b>	Training is provided internally as on-the-job training, as well as through staff attending and hosting conferences on restorative justice.
<b>Other</b>	Participants in the Volunteers in Probation program who successfully complete their program may have their charges dropped and avoid having a criminal record.

Source: OPPAGA analysis of interviews with other states.

# APPENDIX D

## Examples of Community-Based Youth Restorative Justice Programs

Florida has different types of restorative justice programs within the criminal justice system. Many restorative justice programs operate at the local level throughout the state. There are also organizations that offer restorative justice training, such as the River Phoenix Center for Peacebuilding in Gainesville. This center has worked with police offices, sheriffs' departments, state attorneys, public defenders, and victim advocates to provide information and training on restorative practices. Exhibit D-1 contains examples of local restorative justice programs for youth involved in the juvenile justice system.

### Exhibit D-1

#### Examples of Community-Based Restorative Justice Programs for Youth Within Florida

Judicial Circuit	Program Name	Counties	Program Type	Victim Interaction Level	Program Start Date	Funding Type	Youth Eligibility Requirements	Referral Source	Program Staff Training Requirements
2	Community Connections	Leon	The program focuses on utilizing the restorative justice circles model to bring juvenile offenders, their victims, and their community members together to dialogue. Prevention and probation youth are eligible for the program.	Offender and related victim, and /or unrelated victim	Organization began in 2010, restorative justice principles added in 2017	Current DJJ contract (Title II Federal Funding) - City of Tallahassee	<ul style="list-style-type: none"> <li>Ages 5-17</li> <li>Prevention, diversion, and/or probation youth</li> <li>Admit guilt and show accountability</li> </ul>	School system; DJJ juvenile probation officer; Leon County Assistant State Attorney's Office; parents/legal guardians	Bachelor's degree; Non-Violent Communications certification
6	Victim Impact Panel	Pinellas	Youth attend a number of classes centered around the effects of victimization on individuals as well as the community. Guest speakers who were victimized by similar but unrelated crimes deliver messages pertaining to their experiences being victimized.	Offender and unrelated victim	2016	County funded	Program falls under same requirements as civil citation	All law enforcement agencies in the Sixth Judicial Circuit may refer youth	Bachelor's degree; in-house curriculum training
8	River Phoenix Center for Peacebuilding	Alachua	The curriculum is based on the restorative justice circles program. Offenders and their victims are brought together in circles to develop strategies to resolve conflict and educate the offender on victimization and restorative practices.	Offender and related victim	2012	Private funding network	Youth admit guilt and show accountability	Alachua County Assistant State Attorney's DJJ juvenile probation officer	Restorative justice model training via in-house certification

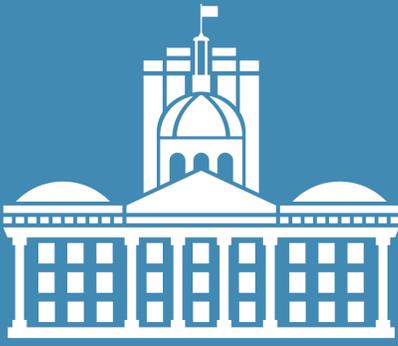
Judicial Circuit	Program Name	Counties	Program Type	Victim Interaction Level	Program Start Date	Funding Type	Youth Eligibility Requirements	Referral Source	Program Staff Training Requirements
9	Neighborhood Restorative Justice	Orange	In this 90-day, multi-step, program youth attend an intake followed by an accountability conference where the victim is able to provide an impact statement as well as input on potential sanctions. The offender signs a juvenile justice contract with all parties (including the victim). The offender is assigned a weekly check-in case manager, typically a law enforcement officer, to manage sanctions and timeframes. Sanctions vary but always involve some form of community service.	Offender and related victim or surrogate	2001	Orange County	<ul style="list-style-type: none"> <li>▪ Assistant state attorney's office determines eligibility</li> <li>• First-time offenders (not including civil citations)</li> <li>▪ Takes all case types except gang-related or sexual violence</li> </ul>	Orange County Assistant State Attorney's Office	<p>Volunteers—required to complete in-house training and shadowing prior to working</p> <p>Employees—bachelor's degree required and/or pre-trial program experience (substitute)</p>
11	Juvenile Weapons Offender Program	Dade	Offender may meet their victim, non-related victims, and/or the families of gun crime victims. Youth must complete 44 sessions, which takes an average of six months. Curriculum directly relates to the effects of gun crimes on victims and communities.	Offender and related victim, unrelated victims, or family of victim	1999	Contract via the Youth Crime Taskforce in Dade County	<ul style="list-style-type: none"> <li>▪ Diversion or probation youth</li> <li>▪ Weapon-related offense</li> </ul>	Assistant state attorney; DJJ juvenile probation officer	<p>Social workers (bachelor's degree);</p> <p>One licensed mental health professional;</p> <p>Mentors - youth who graduated from the program</p>
	S.O.U.L. Sisters Leadership Collective	Dade	Program involves community building; healing; conflict resolution; and face-to-face dialogue between offenders and victims. The program strictly abides by the Restorative Justice Circles curriculum while also providing (primarily) gender-specific programming for females.	Offender and related victim	Organization began in 2014 and added restorative justice principles in 2017	Open Society Foundation and NOVO Foundation	<ul style="list-style-type: none"> <li>▪ Youth younger than age 18</li> <li>▪ Female or gender non-conforming</li> <li>▪ Pre- and post-arrest</li> </ul>	Assistant state attorney	<p>Training on circles and restorative community conferencing; in-house core methodology training</p>

Judicial Circuit	Program Name	Counties	Program Type	Victim Interaction Level	Program Start Date	Funding Type	Youth Eligibility Requirements	Referral Source	Program Staff Training Requirements
15	West Palm Beach Neighborhood Accountability Board	Palm Beach	This program was initially developed due to the large number of property crimes in West Palm Beach. Impact of victimization is a large portion of the curriculum. Youth are given sanctions by the board members. Victim-offender dialogue is offered but is rarely utilized due to the types of lower-level crimes for which the youth are referred.	Offender and related victim	2014	West Palm Beach Department of Parks and Recreation	<ul style="list-style-type: none"> <li>Ages 12-18</li> <li>First time, non-violent misdemeanor</li> </ul>	West Palm Beach Police Juvenile Unit; assistant state attorney	The Neighborhood Accountability Board consists of board members who are all community volunteers from other organizations; no strict training requirements; volunteers must undergo a background screening
	Family Violence Intervention Program	Palm Beach	This program offers family therapy and counseling; offenders and their victims participate in conferencing sessions as well as restorative dialogue.	Offender and related victim or surrogate	1998-99	County	<ul style="list-style-type: none"> <li>Diversion only</li> <li>State attorney's office decides who gets referred</li> </ul>	Assistant state attorney	Bachelor's degree; Certified Mediator
17	Community Justice Program	Broward	The Community Justice Program focuses on utilizing the Restorative Justice Conferencing model to bring victims and offenders together to resolve conflicts. Offenders are assigned case managers who administer the conferencing in addition to other services when required. Offenders are educated on victimization and complete sanctions to restore balance to their victims and community.	Offender and related victim	2003	New Day Grant via the Children's Services Council	<ul style="list-style-type: none"> <li>No sex offenses or violent felonies</li> <li>Offender must be willing to actively participate</li> </ul>	Assistant state attorney; Office of Justice Services (civil citation); The Promise Program	Bachelor's degree in a related field and two years of case management experience Restorative justice conferencing training includes topics such as positive youth development, motivational interviewing, and formal case management and documentation

Judicial Circuit	Program Name	Counties	Program Type	Victim Interaction Level	Program Start Date	Funding Type	Youth Eligibility Requirements	Referral Source	Program Staff Training Requirements
20	Neighborhood Accountability Board	Lee	Offenders appear before the Neighborhood Accountability Board and victim (if they are comfortable doing so) and are asked to admit guilt and be accountable for their crime. The victim has an opportunity to provide a recommendation for sanctions. Case managers supervise offender progress and may also administer Moral Reconciliation Therapy.	Offender and related victim	2004	Board of County Commissioners and Lee County Sheriff's Office	<ul style="list-style-type: none"> <li>▪ Ages 8-17</li> <li>▪ Assistant state attorney initially decides eligibility</li> <li>▪ Victim must approve</li> <li>▪ Youth must admit guilt and be accountable</li> <li>▪ Youth must agree to actively participate</li> </ul>	Assistant state attorney	Bachelor's degree; five to six years of work experience may substitute for the degree; eight-hour in-house and restorative justice training; five-day Moral Reconciliation Therapy training
	Escaping Your Prison	Lee	Case managers conduct conferencing sessions with the offending youth and their victims using Moral Reconciliation Therapy. If the victim chooses not to attend, the case manager is still able to use the therapy to teach the offender about victimization and healing.	Offender and related victim	2012	Lee County Sheriff's Office	<ul style="list-style-type: none"> <li>▪ Ages 8-17</li> <li>▪ Assistant state attorney initially decides eligibility</li> <li>▪ Victim must approve</li> <li>▪ Youth must admit guilt and be accountable</li> <li>▪ Youth must agree to actively participate</li> </ul>	Assistant state attorney	Bachelor's degree; five to six years of work experience may substitute for the degree; eight-hour in-house and restorative justice training; five-day Moral Reconciliation Therapy training

Source: Department of Juvenile Justice.

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# Restorative Justice in the States: An Analysis of Statutory Legislation and Policy



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## Abstract

Two distinct models have guided justice systems in recent decades – individual treatment/rehabilitation and retributive justice. The organizational mission and goals of the justice system have become internally inconsistent as these systems attempt to satisfy competing goals, such as punishment, rehabilitation and community safety. As such, lawmakers and justice system administrators seek to clarify the aims of justice management and policy, while exploring possibilities for the future of the justice system.

Legislators and justice system administrators have reformed their juvenile justice agenda from punitive actions to a means that provides responses to crime and wrongful occurrences by developing and implementing restorative legislation and policies. Restorative justice seeks to balance the needs of the victim, offender and community by repairing the harm caused by delinquent acts. This research finds that a majority of states have incorporated restorative justice in statute or code that include general provisions and intent, practices, funding, and evaluation. The state of Colorado, which notably employs principles of restorative justice in legislation and practice, is also examined as a case study in this article. Future

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perspectives, including vision, degree of restorativeness, funding, and performance measures are also addressed.

## **Introduction**

Two distinct models have guided justice systems in recent decades – individual treatment/rehabilitation and retributive justice. The organizational mission and goals of the justice system have become internally inconsistent as these systems attempt to satisfy competing goals, such as punishment, rehabilitation and community safety. Confusion then exists over the relative importance given to punishment or treatment in order to protect the public. As such, lawmakers and justice system administrators seek to clarify the aims of justice management and policy, while exploring possibilities for the future of the justice system.

Legislators and justice system administrators have reformed their juvenile justice agenda from punitive actions to a means that provides responses to crime and wrongful occurrences by developing and implementing restorative legislation and policies. Restorative justice seeks to balance the needs of the victim, offender and community by repairing the harm caused by delinquent acts and wrongdoing and improving the prosocial competencies and accountability of the offender in response to the offense (Bazemore, 1997; Zehr, 1990; Zehr, 2015). This research finds that a majority of states have incorporated restorative justice in statute or code that include general provisions and intent, practices, funding, and evaluation (See also Pavelka, 2008; O'Brien, 1999).

The state of Colorado, examined as a case study in this article, has been on a progressive path to implement systematic reform integrating restorative justice in policies and practices. The legislature has comprehensively incorporated restorative justice in its Children's Code through its legislative intent and in its Victim's Rights Act. In addition, ideological principles and practices are further developed and expanded relating to youth, schools, adults, prisons. Future perspectives, including vision, degree of restorativeness, funding, and performance measures are also addressed.

### *Restorative justice movement*

A paradigm shift has occurred in the past two decades as punitive models no longer avail in present-day justice systems. Such a paradigm shift challenges traditional methods which hinder the possibility of solutions that articulate new values and goals in an effort to challenge, rethink, and refocus current systems,

policies, and practices (Zehr, 1990; Mika and Zehr, 2003; Wenzel et al., 2008). Mika and Zehr (2003) assert the need for clear articulation of the principles and values of restorative justice if it is to stay true to its vision and potential. The authors further contend that new measures must be developed to gauge the authenticity and impact of restorative justice, along with the implications for such critical dialogue. Reform efforts have been coupled with an interest toward restorative justice as a transitional strategy for innovation and change.

The restorative justice movement fosters a rethinking of the government and community relationships, built upon a comprehensive conceptual justice framework, while specifying the respective roles of community members and justice professionals in the response to crime (Bazemore, 1997; Bazemore and Washington, 1995). This collective approach generates distinctive roles and shared responsibilities for stakeholders, including, victims, offenders, justice professionals, and community members. In addition, performance objectives and essential support are provided in meeting the needs of the victims, offenders and community members. The role of justice professionals becomes facilitative and focuses on capacity building and community development rather than direct service and surveillance (Pavelka and Thomas, 2016; Maloney et al., 1988).

Restorative justice, realized in states and localities as a new framework, views and responds to wrongful occurrences and crime with a different lens. The alternative approach differs from the traditional justice model in the United States which views crime as a violation against the state. Conversely, restorative justice distinguishes crime as a violation of relationships between individuals. The ultimate goal of restorative justice is to repair the harm caused by the incident, while balancing the needs and roles of the victim, offender and community (Zehr, 1990). Further, Wenzel et al. (2008) assert that restorative justice seeks to a repair of justice through reaffirming a shared value-consensus in a bilateral process. At the core of this process lies the parties' understanding of their identity, specifically whether or not respondents perceive to share an identity with the offender. The philosophy emphasizes the need to provide opportunities for those most directly affected by crime (i.e., victims, communities, and offenders) to be directly involved in responding to the impact of crime and restoring the losses incurred by victims. Ultimately, this approach seeks to ensure public safety, address the needs of victims, while the offender is held accountable and develops competencies in order for the youth to become a better and productive citizen.

### *Advancement in policy endorsement*

In 1974, Congress created the Office of Juvenile Justice and Delinquency Prevention (OJJDP), under the auspices of the U.S. Department of Justice, to provide national leadership, coordination, and supplemental resources in preventing and responding to juvenile delinquency and victimization. The OJJDP further supports states and communities in their efforts to develop and implement effective and coordinated prevention and intervention programs and to improve the juvenile justice system in order to protect the public, hold justice-involved youth accountable, and provide treatment and rehabilitative services tailored to meet the needs of juveniles and their families. (Office of Juvenile Justice and Delinquency Prevention, 2016)

Two decades later, the Balanced and Restorative Justice (BARJ) Project, a national demonstration project funded by the OJJDP, worked with a number of state justice systems and stakeholders (i.e., Illinois, Minnesota, New York, Pennsylvania, and others) to provide technical assistance and training to key decision makers and stakeholders in states seeking juvenile justice reform. The BARJ Project facilitated dialogue that was focused on the implementation of restorative principles and practices (Bazemore and Umbreit, 1998).

Since that time, states across the country have expanded legislation and policy adoption to meet the needs of the significant challenges facing the justice system. State legislatures and local jurisdictions have implemented policies and legislation to advance their commitment to restorative justice and justice reform. Implementation expands to include restorative practices, application to schools, and criminal and juvenile justice continuums.

Further, national organizations, including the American Bar Association, National of Community and Restorative Justice, National Council for Juvenile and Family Court Judges, National Council of Crime and Delinquency, and National Organization for Victim Assistance have endorsed restorative justice and its principles. The United Nations has also encouraged member nations to adopt restorative justice in the wake of crime and violence. This international organization has endorsed the basic principles of restorative justice and the promotion of a culture favorable to the use of restorative justice among law enforcement, judicial and social authorities, as well as communities across the world (Beck et al., 2015).

## Methods

The research methodology utilized in this study includes a content analysis of state statutes and codes. The use of this method, commonly used for analyzing qualitative data, allowed the researcher to include large amounts of textual information and to systematically identify its properties (Krippendorff, 2004; Shields and Twycross, 2008; Lacy et al., 2015). A summative content analysis involved calculations and comparisons of the content followed by the interpretation of the underlying context was specific to this research. The researcher further delineated analytic procedures specific to this approach (Hsiu-Fang and Shannon, 2005).

Categorical key words and phrases were identified in order to further the research and content within the state statutes and codes. Specifically, restorative justice, balanced approach, balanced and restorative justice and related terms were explored as documentary evidence. In addition, restorative practices (e.g., victim offender mediation, community conferencing, circles, neighborhood accountability boards and reparative boards) were included in this search.

The LexisNexis data analytic was used for the legal research search. The database was significant in securing the up-to-date legal documents. LexisNexis electronically provided a valid and reliable means for accessing the necessary documentary evidence for this study.

### *Restorative principles articulated in state law*

The articulation of restorative justice varies generally in state statutes and codes, however, common language is pervasive cross-jurisdictions. A number of laws focus solely on the balanced approach mission, while others discern the restorative justice value context with or without reference to the balanced approach. The statute or code reference and type of reference for each state articulating restorative justice and/or balanced approach principles are referenced in Appendix A.

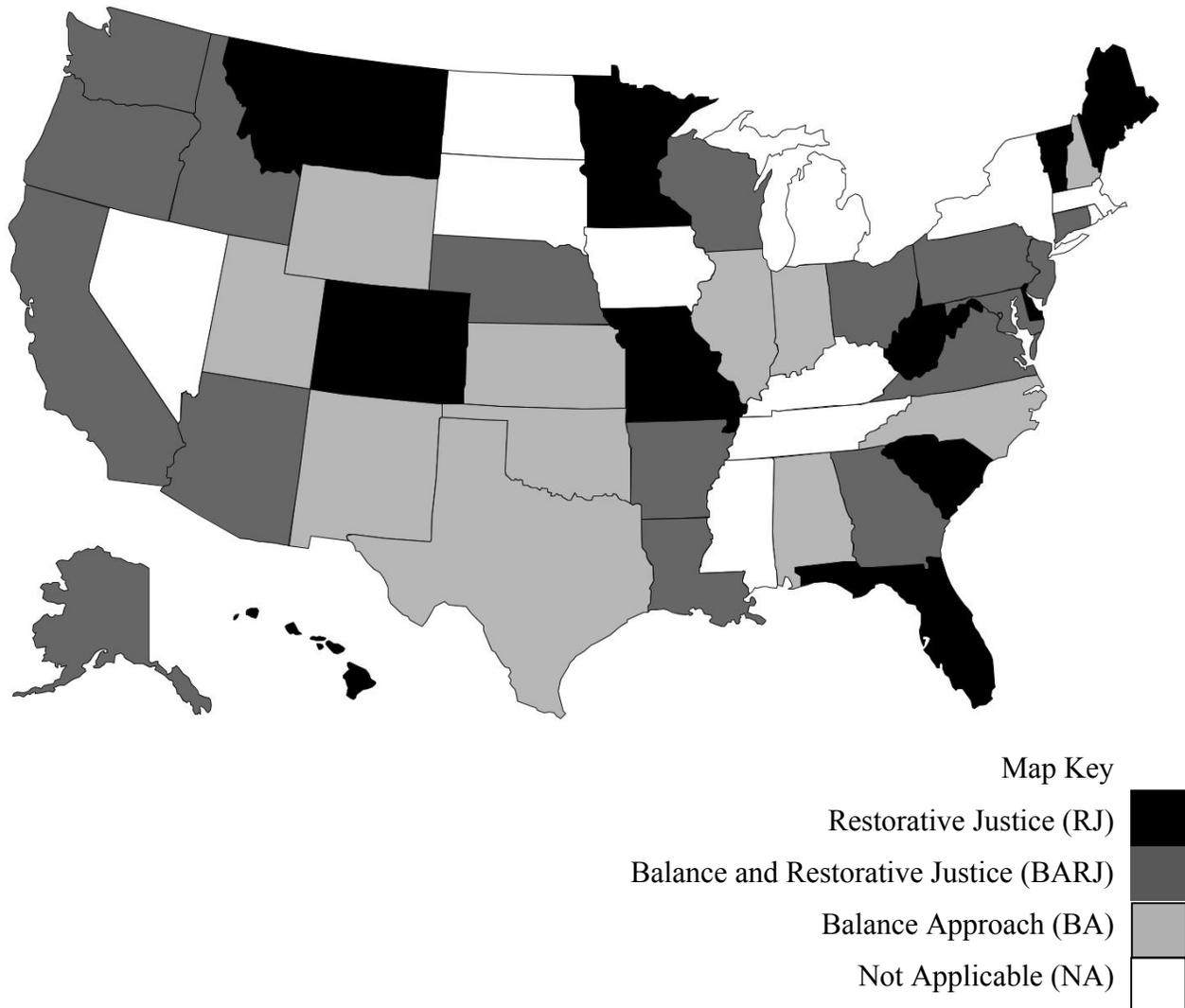
Restorative language (Bazemore, 1997) commonly used in many of these state declarations includes: holding juvenile offenders accountable for their offense, involving victims and the community in the justice process, obligating the offender to pay restitution to the victim and/or a victims' fund, improving the juvenile's ability to live more productively and responsibly in the community, and securing safer communities. Balanced approach terms (Maloney, et al., 1988) in statute or code denote offender accountability, community protection, and competency development. Balanced and restorative justice language comprehensively

addresses principles from each paradigm. It is important to note, however, that the interpretation of the language and extent to which statutes and codes incorporate restorative justice and/or the balanced approach differs across jurisdictions. States articulating these provisions are found in Figure 1.

### *Balanced and restorative justice*

Twenty states articulate balanced and restorative justice in statute or code reference. Oregon was one of the initial states to incorporate balanced and restorative justice in statute. The law seeks to “protect the public and reduce juvenile delinquency to provide the system is founded on the principles of personal responsibility, account, and reformation in context of public safety and restitution to the victim and community (Chapter 419C.001).” The juvenile justice system in Pennsylvania is distinctively guided by balanced and restorative justice principles (Juvenile Court Judges' Commission, 1997; Pennsylvania Commission on Crime and Delinquency, 2004): “the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care, and rehabilitation that provide balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable children to become responsible and productive members of the community (42 PA CSA Section 6301).” Alaska’s statute (Sec. 47.12.010) promotes “a balanced juvenile justice system in the state to protect the community, impose accountability for violations of the law, and equip juvenile offenders with the skills needed to live responsibly and productively.” In addition, the law incorporates a key principle of restorative justice - “restoration of community and victim.”

The New Jersey legislative statement (P.L. 2002 Title 2A:4A-21) specifically declares the Juvenile Justice Commission “to incorporate into the juvenile justice system the principles of balanced and restorative justice. The concept of restorative justice holds that an offender incurs an obligation to restore the victim of the offense and, by extension, the community to the state of well-being that existed prior to the offense. The principle of balance in connection with restorative justice suggests that the juvenile justice system should give equal weight to ensuring community safety, holding offenders accountable to victims, fostering reconciliation between the offender, victim and community, and providing competency development for offenders in the system so they can pursue legitimate endeavors after release.”

**Figure 1** State Statutes or Codes Incorporating Restorative Justice

### *Restorative justice*

Eleven states emulate restorative justice principles in statute or code reference. The legislative declaration of Colorado based on restorative justice (CRS 19-2-102) is to “protect, restore, and improve the public safety...provide the opportunity to bring together affected victims, the community, and juvenile offenders for restorative purposes.” Further, “while holding paramount the public safety, the juvenile justice system shall take into consideration the best interests of the juvenile, the victims, and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society.” California's statute (Welfare

and Institutions Code, Section 1700) includes compelling restorative justice language that seeks "to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses."

The Montana legislature established the Office of Restorative Justice, under MCA 2-15-2013, which promotes restorative justice throughout the state. A restorative justice fund (MCA 2-15-2014) has also been created. The legislation provides for training and technical assistance to jurisdictions and offers resources to communities for program implementation. A number of programs based on restorative principles are implemented across the state, including victim/offender mediation, family group conferencing, sentencing circles, the use of victim and community impact statements, restitution programs, victim awareness education, school expulsion alternatives, diversion programs and community panels.

### *The balanced approach*

Seven states communicate the balanced approach in statute or code reference. The Illinois Juvenile Court Act (ILCS 705 405/5-101) provides that the juvenile justice system "will protect the community, impose accountability for violations of the law and equip juvenile offenders with competence to live responsibly and productively." Connecticut (Section 46b-121h) incorporates the balanced approach with the goal of the juvenile justice system to "provide individualized supervision, care, accountability and treatment in a manner consistent with public safety to those juveniles who violate the law." Kansas maintains that "the primary goals of the juvenile justice codes are to promote public safety, hold juveniles accountable for their behavior, and improve their ability to live more productivity and responsibly in their community (§38-2301)." Idaho's policy for the juvenile corrections system is also based on the principles of the balanced approach (Title 20, Ch. 5, 20-501).

The balanced approach is clearly identified in the progressive sanction guidelines under Wyoming Statute (WSA 14-6-245). These measures specifically warrant that the juvenile offender incurs rehabilitation and consequences relating to the offense. The balance of public protection and offender accountability is also emphasized.

### *Restorative practices*

Restorative practices are increasingly being incorporated within state statutes and codes. Twenty states specifically address restorative practices, including victim offender mediation. Other related practices included in state statute or code include victim offender conferencing, victim offender dialogue, and victim offender reconciliation. Victim offender mediation is explicitly addressed in Minnesota's statute (Ch. 611A.775). The State of Oregon specifies a family decision making meeting as a facilitated intervention (ORS 417.365), facilitated conferencing in the juvenile justice system is mandated under the Nebraska Revised Statute (NRS 43-247.01), while Arizona offers victim reconciliatory services and family group decision making processes (ARS 8-1001).

Reparative Boards are established for adult probationers in Vermont (Title 28 910a). Community Reparative Boards are specified in the Maine State Statute (Title 17-A: 1204-A), Colorado (CRS 19-2-309.5), while Florida implements Neighborhood Accountability Boards (FS 985.155). Community Juvenile Accountability Programs are identified in Washington Code (RCW 13.40.500-13.40.540), which specifically address that "citizens and crime victims' need to be active partners in responding to crime in the management of resolution and in the disposition of decisions regarding juvenile offenders in the community. Involvement of citizens and crime victims increase offender accountability and build healthier communities, which reduce recidivism and crime rates in Washington State."

Hawaii (Ch. 353H-31) establishes the use of reentry courts to monitor offenders reintegrating into the community. These courts provide offenders with drug and alcohol testing and treatment and mental and medical health assessment services. Restorative justice practices within the state include family or community impact panels, family impact educational classes, victim impact panels, and victim impact educational classes are facilitated across the state.

In response to research on the school to prison pipeline and public awareness of increasing in- and out- of school suspension rates, six states have provided legislative revisions relating to restorative responses and positive interventions to school discipline (Skiba and Losen, 2015). This action refutes past, aversive zero tolerance policies. In addition, local school districts (e.g., Los Angeles, CA, Oakland, CA, Chicago, IL, Orange County, FL, and Lee County, FL) are increasingly taking the initiative to revise their codes of conduct to include restorative responses, training, and technical assistance to faculty, staff, and students (Pavelka, 2013).

## The Case of Colorado

The state of Colorado has been on a progressive path to implement systematic reform integrating restorative justice policies and practices. The legislature has comprehensively incorporated restorative justice in its Children's Code through its legislative intent and in its Victim's Rights Act. In addition, ideological principles and practices are further developed and expanded relating to youth, schools, adults, and prisons.

### *Legislative intent*

The legislative intent of the state's Children's Code is "to protect, restore and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law, and, in certain cases, will also provide the opportunity to bring together affected victims, the community and juvenile offenders for restorative purposes." The juvenile justice system considers the best interests of the youth, the victim and the community in order to provide the appropriate treatment. The code also prioritizes assisting youth with reintegration so as to become productive members of society and reducing recidivism rates while holding community safety paramount (CRS 19-2-102).

Further, restorative justice is clearly defined in Colorado's statute as "those practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include victim-offender conferences, attended voluntarily by the victim, a victim advocate, the offender, community members and supporters of the victim or the offender, for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include, but need not be limited to apologies, community service, restoration, and counseling. The selected consequences are incorporated into all agreement that sets time limits for completion of the consequences and is signed by all parties (CRS 19-1-103)."

### *Restorative justice coordinating council*

A state level Restorative Justice Coordinating Council was enacted by the General Assembly to provide local communities with education and technical assistance relating to restorative practices. Local juvenile justice planning committees are provided with the opportunity to include restorative practices in their plans. Committee members are comprised of representatives from specified jurisdictional

agencies. A \$10 court fee is applied to juveniles or adults who are adjudicated or convicted of a criminal offense. These funds are allocated to support the Commission's administrative costs and restorative programs across the state (CRS 19-2-213).

### *Division of Youth Corrections*

The state of Colorado has been expansive in its application of restorative justice within its Division of Youth Corrections (DYC). Key strategies at the core of DYC's continuum of care include: providing the right services at the right time, delivering services by quality staff, utilizing established practices, delivering services in a safe surrounding, and embracing restorative principles. These strategies reflect a significant change in the organization's culture.

A number of practices have been implemented in order to support the restorative strategies. Restorative dialogue, for example, is initiated by staff with youth on a regular basis and as needed. Staff facilitate a discussion with youth about the incident, responsibility and steps to make things right. Other practices that are implemented include: restorative chats, circles, restorative resolution or mediation, restorative conferences, and victim offender dialogue. Positive assessments, such as, accountability, competencies, volunteering, and repairing harm, are also in place as part of the facilitation of these practices and the review of the youth's status (Rubin, 2016).

### *Use of restorative practices*

Provisions within the law seek to increase the inclusion of restorative practices in the juvenile justice system. Juvenile diversion programs integrate restorative principles using victim offender conferences (CRS 19-1-103) to "promote juvenile offenders' accountability, recognize and support the rights of victims, heal the harm to relationships and the community caused by juvenile crime and reduce the costs within the juvenile justice system" (CRS 19-2-303). Other practices, as stated in Section 18-1-901, include family group conferences, circles, and community conferences. Youth who have been adjudicated for any delinquent sexual behavior (CRS 19-2-907) or domestic violence related incidence (CRS 19-2-925) are exempt from being ordered to these specific programs.

Legislation provides for pre-sentencing alternatives with a restorative process of accountability in which the juvenile agrees to repair the harm by completing an agreement which is signed by all parties and is monitored by a program officer;

reparation of the victim and community that includes input and transparency; and safety in which the victim's needs are met and a safe environment is provided. A judge may also order an offender to an intake session to determine appropriateness for participation in a victim offender conference (CRS 19-2-925).

Four district pilot projects have been funded to target first time juvenile offenders who have committed non-traffic misdemeanors or Class 3, 4, 5, and 6 degree felonies. The district attorney's office is charged with screening the potential participants. These pilot programs collect data, create a programmatic database, and use restorative practices where applicable.

The legislative statute promotes the use of restorative practices in schools to remedy misbehavior, such as, bullying, harassment, verbal and physical conflicts, theft, property damage, class disruption, tardiness, truancy, and internet victimization. School districts may implement education and training to ensure that school staff facilitates the restorative process as defined in statute. Charter schools may also be included in this initiative (CRS 22-32-142).

### *Longmont initiative*

The City of Longmont, Colorado is part of a self-funding, regional Restorative Justice Pilot Project. Adult and youth facilitators from schools and law enforcement are trained to facilitate programs under the auspices of the Longmont Community Justice Partnership. The recidivism rate as of January 2014 is 8 percent compared with local and national averages of up to 70 percent for programs that do not institute restorative justice processes. This project has also received federal funding to support continued success with its low recidivism rates (Rowan and Pavelka, 2014).

## **Future implications**

The implications for the future of restorative justice in the states includes vision, degree of restorativeness, funding, and performance outcomes. A vision for the future of justice system is essential for reform. The process of attaining a vision is typically collaborative, including leadership and strategic planning. While there is no blueprint for developing and implementing a vision for restorative justice, it is clear that collaboration of system stakeholders is essential in order to achieve desired goals and objectives.

Many restorative practices are identified as such; however, do not convey "restorativeness." This deficiency is a concern within the discipline. Often, this

means lack of respect for the victim, exclusion of a stakeholder, or omission of offender accountability. Inconsistent use of restorative approaches will not lead to the desired results. It is important to reinforce the inclusion of restorative values in the implementation of the restorative practices in order to achieve objectives, processes, and outcomes.

Funding is also critical to policy implementation. A sufficient resource base is considered essential for effective program and policy implementation. Adequate resources most often promise reasonable returns in pursuit of policy goals and successful practices. Funding is necessary in order to attain staffing resources for implementation. Adequacy may not always be attributed to additional money. Existing resources may be sufficient, however, new or realigned resources are essential for sustainable reform.

Measuring performance assists jurisdictions to determine what is needed to achieve intended juvenile justice system purpose and is progressively tied to funding. Performance measures provide an empirical basis for planning, assessing, and improving juvenile justice operations. Measures of juvenile justice system performance may be used to confirm relevancy of juvenile justice and to demonstrate system accountability. Further, performance measures help organizations to clarify goals and establish reasonable and meaningful objectives, thereby allowing the juvenile justice system to establish its own benchmarks and set its own agenda. Restorative justice provides a framework or paradigm for measuring and reporting juvenile justice outcome measures, thus facilitating accountability to the public (Pavelka and Thomas, 2016).

## **Conclusion**

The paradigm shift and trend to employ restorative approaches as alternatives to traditional justice continues to expand in the United States. The findings of this research study have significant implications for justice system stakeholders, practitioners, academics, and advocates. Restorative justice continues to evolve in communities and states across the United States as an emergent paradigm and alternative to the traditional form of justice. The articulation of restorative language is found in a majority of state statutes and codes. Restorative practices are also increasingly specified in law. However, the degree to which the policy and legislation is explicitly or implicitly applied varies. Further, few mandates and structure are inclusive to support systematic implementation with adequate and necessary funding mandates which are necessary for reasonable returns in pursuit of policy goals and successful practices. Legislators are therefore met with the

opportunity to seriously reform their state justice systems with a means to think about and do justice differently.

## References

- Alaska Code Chapter 47.12.010, Goals and purposes. (1998).
- Arizona Revised Statutes 8-1001, Family group decision making. (1998).
- Bazemore, Gordon. (1997). Balanced and restorative justice for juveniles: A framework for juvenile justice in the 21st century. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.
- Bazemore, Gordon and Mark Umbreit. (1998). Guide for implementing the balanced and restorative justice model. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.
- Bazemore, Gordon and Charles Washington. (1995). Charting the future of the juvenile justice system: Reinventing mission and management. *Spectrum: The Journal of State Government* 68(2), pp. 51-66.
- Beck, Elizabeth, Lewinson, Terry, & Kropf, Nancy P. (2015). Restorative justice with older adults: Mediating trauma and conflict in later life. *Traumatology: An International Journal* 21(3), pp. 219-226.
- Colorado Revised Statutes, C.S. 19-2-102, 19-1-103, 19-2-102, 19-2-303, 19-2-309.5, 19-2-907, 19-2-925, 22-32-142. (1999).
- Florida Statutes 985.155. (2014).
- General Statutes of Connecticut, Section 46b-121h, Goals of the juvenile justice system. (1995).
- Hawaii Revised Statute, Ch. 353H-31, Adult offender reentry programs and services. (2000).
- Hsiu-Fang, Hsieh and Sarah E. Shannon. (2004). Three approaches to qualitative content analysis. *Qualitative Health Research* 15(9), pp. 1277-1288.
- Juvenile Act, Pennsylvania State Statutes 42 PA CSA Section 6301, Ch. 419C.001. (1995).
- Juvenile Corrections Act, Idaho Statute, Title 20, Ch. 5, 20-501. (1995).
- Juvenile Court Act, Illinois Compiled Statute 705 405/5-101. (2012).

- Juvenile Court Judges' Commission. (1997). *Balanced and restorative justice in Pennsylvania: A new mission and changing roles within the juvenile justice system*. Harrisburg, PA: Author.
- Juvenile Justice and Delinquency Prevention Committee, Pennsylvania Commission on Crime and Delinquency. (2004). *Mission and guiding principles for Pennsylvania's juvenile justice system*. Harrisburg, PA: Author
- Kansas State Annotated 38-2301. (2007).
- Krippendorff, Klaus. (2004). *Content analysis: An introduction to its methodology*. 2<sup>nd</sup> ed. Thousand Oaks, CA: Sage.
- Lacy, Stephen, Brendan R. Riffe and Jennette Lovejoy. (2015). Issues and best practices in content analysis. *Journalism and Mass Communication Quarterly* 92(4), pp. 1-21.
- Maine State Statute, Title 17-A: 1204-A, Community reparative boards. (1998).
- Maloney, Dennis M., David Romig and Thomas Armstrong. (1988). Juvenile probation: The balanced approach. *Juvenile and Family Court Journal* 39(3), pp.1-62.
- Mika, Harry and Howard Zehr. (2003). A restorative framework for community justice practice, In Kieran McEvoy and Tim Newburn (Eds.), *Criminology, conflict resolution and restorative justice* (pp. 135-152). Basingstoke, Hampshire, UK and New York, NY: Palgrave MacMillan.
- Minnesota State Statute, Ch. 611A.775 Restorative justice code. (1998).
- Montana Code Annotated 2-15-2013, 2-15-2014. (2012).
- Nebraska Revised Statute 43-247.01. (2008).
- New Jersey Legislative Statement P.L. 2002 Title 2A:4A-21. (2012).
- O'Brien, Sandra. (1999). *Restorative juvenile justice policy development and implementation assessment: A national survey of states*, Balanced and Restorative Justice Project, Florida Atlantic University, Ft. Lauderdale, FL.
- About OJJDP. Retrieved on March 25, 2016 from <http://www.ojjdp.gov/about/about.html>.
- Oregon Revised Statutes 419C.001, Purpose of juvenile justice system in delinquency cases. (1995).

- Pavelka, Sandra. (2013). Practices and policies for implementing restorative justice within schools. *The Prevention Researcher* 20(1), pp.15-19.
- Pavelka, Sandra. (2008). Restorative juvenile justice legislation and policy: A national assessment. *International Journal of Restorative Justice* 4(2), pp.100-118.
- Pavelka, S. and Doug Thomas (2016). Performance measurement in juvenile justice: Developing and implementing model reporting systems, *Perspectives*. Winter. Lexington, KY: American Probation and Parole Association, pp. 59-65.
- Rowan, Molly L. and Sandra Pavelka. (2014, March 2). The political rise of restorative justice. *The Huffington Post*, Retrieved January 8, 2016, from [http://www.huffingtonpost.com/molly-rowan-leach/the-political-rise-of-res\\_b\\_5029413.html](http://www.huffingtonpost.com/molly-rowan-leach/the-political-rise-of-res_b_5029413.html).
- Rubin, H. Ted. (2016). Restorative juvenile within and throughout Colorado's juvenile correctional agency. *Juvenile Justice Update* 21(6), pp. 1-16.
- Shields, Linda and Alison Twycross (2008). Content analysis. *Pediatric Nursing* 20(6), p. 38.
- Skiba, Russell J. and Daniel J. Losen. (2015). From reaction to prevention: Turning the page on school discipline. *American Educator* 39(4), pp. 4-11.
- Vermont Statute Annotated Title 28 910a, Reparative boards, functions. (1999).
- Washington Revised Code 13.40.500-13.40.540. (1997).
- Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. (2008). Retributive and restorative justice. *Law and Human Behavior*, 32(5), pp. 375-389. Retrieved on March 25, 2016, from <http://www.jstor.org/stable/25144639>.
- Wyoming Statute Annotated 14-6-245. (2012).
- Youth Authority Act, California welfare and institutions code, relating to minors, Section 1700. (1999).
- Zehr, Howard. (1990). *Changing lenses: A new focus for crime and justice*. Scottsdale, PA: Herald Press.
- Zehr, Howard. (2015). *Changing lenses: Restorative justice for our times*. Harrisburg, VA: Herald Press.

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## Appendix

**Appendix A** State Statutes or Codes Incorporating the Balanced Approach and/or Restorative Justice

State	Statute/Code	Type of Reference
Alabama	Code of Alabama Section 12-15-101	Purpose clause BA
Alaska	Alaska Code Section 47.12.010 Section 12.55.011	Victim community involvement in sentencing Goal and purposes of chapter BARJ
Arizona	Arizona Revised Statute 8-419 8-1001	Victim reconciliation services Family group decision making BARJ

<b>State</b>	<b>Statute/Code</b>	<b>Type of Reference</b>
Arkansas	Arkansas Code Annotated § 9-27-302 Purpose	BARJ
California	California Welfare and Institutions Code Section 1700 Relating to minors Section 202 General provisions, purpose	BARJ
Colorado	Colorado Revised Statute Section 19-2-102 Legislative declaration Section 19-1-103 Definitions Section 19-2-213 Restorative justice coordinating council Section 19-2-308 Community service and community work programs Section 19-2-309.5 Community accountability board	RJ
Connecticut	General Statutes of Connecticut Section 46b-121h Goals of the juvenile justice system	BARJ
Delaware	Delaware Code Title 11, Chapter 9501 Victim offender mediation	RJ
Florida	Florida Statute Section 985.01 Purpose and intent Section 985.155 Neighborhood restorative justice	RJ
Georgia	Official Code of Georgia Annotated § 15-11-1 Purpose of chapter	BARJ

<b>State</b>	<b>Statute/Code</b>	<b>Type of Reference</b>
Hawaii	Hawaii Revised Statute HR 11 (2000) Ch. 353H-31	Mandate to establish restorative justice Adult offender reentry programs and services RJ
Idaho	Idaho Statute Title 20, Ch. 5, 20-501	Juvenile Corrections Act Legislative intent BARJ
Illinois	Illinois Compiled Statute 705 ILCS 405/5-101	Juvenile Court Act Purpose and policy BA
Indiana	Indiana Code IC 31-10-2-1	Policy and purpose BA
Iowa		NA
Kansas	Kansas Statutes Annotate Ch. 38-2301	Citation; goals of the code; policy development BA
Kentucky		NA
Louisiana	Louisiana Revised Statute RS 46: 1841 RS 46:1842	Legislative Intent Definition BARJ
Maine	Maine State Statute Title 17-A, 1204-A Title 54: 1321	Community Reparative Boards Purpose RJ
Maryland	Maryland Code Title 3-8A-02	Courts and judicial proceedings BARJ
Massachusetts		NA

State	Statute/Code	Type of Reference
Minnesota	Minnesota Statute Chapter 611A.77 Chapter 611A.775	Mediation program for crime victims and offenders Restorative justice programs RJ
Mississippi		NA
Missouri	Missouri Revised Statutes Section 217.440 Section 217.777	Program of restorative justice, requirements Community corrections alternative program for eligible offenders, purpose, operation, rules RJ
Montana	Montana Code Annotated Title 2-15-2012 Title 2-15-2013 Title 2-15-2014	Intent Office of restorative justice Restorative justice fund created, source of funding, use of fund RJ
Nebraska	Nebraska Statute Section 43-402 Section 43-247.01	Legislative intent, juvenile justice system, goal Facilitated conferencing, purposes BARJ
Nevada		NA
New Hampshire	New Hampshire Revised Statutes RSA 169-B:1	Applicability of chapter, purpose BA

<b>State</b>	<b>Statute/Code</b>	<b>Type of Reference</b>
New Jersey	New Jersey Statute Annotated P.L. 2002 Title 2A:4A-21 Incorporates balanced and restorative justice principles in juvenile justice system	BARJ
New Mexico	New Mexico Statutes Chapter 32A-2-2 Delinquency Act Purpose of Act	BA
New York		NA
North Carolina	North Carolina General Statutes Article 15, Ch. 7B-1706 Undisciplined and delinquent youth, Purpose.	BA
North Dakota		NA
Ohio	Ohio Revised Code Title 21, Ch. 2152.01 Delinquent Children Purpose of Juvenile Dispositions	BARJ
Oklahoma	Oklahoma Statute Annotated 7301-1.2 7301-5.3 General provisions Purpose clause	BA
Oregon	Oregon Revised Statute Chapter 417.365-417.375 Chapter 419C.001 Family decision-making meeting Purposes of juvenile justice system in delinquency cases	BARJ
Pennsylvania	Pennsylvania State Statute 42 PA CSA Section 6301 Juvenile Act	BARJ
Rhode Island		NA

<b>State</b>	<b>Statute/Code</b>	<b>Type of Reference</b>
South Carolina	South Carolina Code of Laws Section 20-7-20	Children's policy established RJ
	Section 20-7-6840	
South Dakota		NA
Tennessee		NA
Texas	Texas Statutes Title 3 Chapter 51.01	Juvenile Justice Code purpose and interpretation BA
Utah	Utah Judicial Code Title 78A-6-102	Juvenile Court Act BA
Vermont	Vermont Statute Title 28 § 910	Restorative justice programs Reparative boards; functions RJ
	Title 28 § 910a	
Virginia	Code of Virginia Chapter 11	Juvenile and domestic relations district courts Purpose and intent Establishment of community based services, statewide plan for juvenile justice services BARJ
	16.1-227	
	16.1-309.2-309.10	
Washington	Revised Code of Washington RCW 13.40.500-.540	Community Juvenile Accountability Act BARJ

<b>State</b>	<b>Statute/Code</b>	<b>Type of Reference</b>
West Virginia	West Virginia Statute 49-1-206 General Provisions and Definitions Definitions related, but not limited, to advocacy, care, residential and treatment programs	RJ
Wisconsin	Wisconsin Statute 938.01 Juvenile Justice Code Title, legislative intent and purposes	BARJ
Wyoming	Wyoming Statutes 14-6-245 Progressive sanction guidelines	BA

BARJ – Balance and Restorative Justice

BA – Balance Approach

NA – Not Applicable

RJ – Restorative Justice