

Strengthening Restorative Justice

A Progress Report

for the Joint Committee on Corrections Oversight

In response to Act 50, § E338 (a), FY 2014 Appropriations

by

Representatives of
Vermont Association of Court Diversion Programs
The Community Justice Network of Vermont
Balanced and Restorative Justice Providers
The Department for Children and Families
The Department of Corrections
The Attorney General's Office

March 12, 2014

To: Stakeholders in Restorative Justice

In this report we envision and recommend using restorative justice options at all intercept points as a means of increasing offender accountability and victim satisfaction, decreasing recidivism, and saving money.

With the legal expectation that restorative justice shape criminal justice response in the state (28 V.S.A. § 2.a) and an extensive network of organizations and citizens who provide restorative justice services already in place, Vermont has the foundation to expand the application of restorative justice principles and practices across the system of justice. Twenty years of experiment and study has also demonstrated that restorative justice decreases recidivism.

Those who currently operate restorative justice programs substantively agree on principle, purpose, vision and process. They also agree that that are opportunities to more fully integrate restorative justice practice across the structure of our criminal justice system, providing decision-makers in law enforcement, prosecution, judiciary, and human services with viable alternative community mechanisms that produce these outcomes: help people resolve conflict without infringing on the rights of others; tend to the needs of victims; encourage offenders to be accountable; increase public safety; and make optimal use of public resources.

This report outlines a vision. Transforming current structures to realize that vision requires participation by not only the restorative justice providers, but all the stakeholders in the legal system of criminal justice. The integration of restorative justice practices with the structure and process of criminal justice is complex and demands careful, collaborative planning. We look forward to working with all the stakeholders in a joint endeavor to begin the development of the system design and structure we envision.

Overview

Our State Statute, 28 V.S.A. § 2.a., passed in 2000 by the 1999 (adjourned) session of the Vermont General Assembly, and signed into law by Governor Dean, requires that restorative justice principles shape criminal justice. Our committee recognizes, however, that there is still work to be done to ensure that restorative justice responses are available to all Vermonters.

Vermont is an acknowledged national and international leader in the implementation of restorative justice practice in our criminal justice system. We have a strong history of building community by resolving conflicts and disputes by means of a non-adversarial community process, focusing on the repair of the damage caused by criminal acts, and reducing the risk of offender recidivism.

Vermont has an extensive network of organizations and citizens who provide restorative justice services. There are Court Diversion programs in every county and Community Justice Centers in cities and towns throughout the state. The Department for Children and Families contracts with providers to deliver Balanced and Restorative Justice Programs; the Department of Corrections supports re-entry programs based on restorative practices; and restorative justice programs continue to emerge in schools and other organizations throughout the state. These programs are sponsored and funded by the Attorney General, the Department of Corrections, and the Department for Children and Families, and by growing local contributions. Several thousand Vermont citizens have served and are serving as unpaid volunteers providing restorative justice services to the people of the state. Tens of thousands of criminal cases have been diverted from the traditional systems of justice with significant improvement in public safety, community satisfaction, and cost efficiency.

Evidence that restorative justice works to reduce recidivism and meet the needs of victims and communities continues to emerge. Providers of restorative justice programs as well as the decision-makers in criminal justice (legislators, judges, law enforcement, prosecutors, defense attorneys, DOC, DCF) and many citizens of the state increasingly recognize both that restorative justice practices are effective in diversion of workload and in the resolution of conflict. Currently, these practices are limited in application to those specific points of entry into (or exit from) the standard criminal justice system where the programs were developed. Current delivery systems offer an array of efficient and effective interventions, yet there are some areas of overlap, some gaps,

some inconsistency in access among various counties and communities and significant unrealized opportunities.

More and more, the stakeholders and decision-makers recognize that the capacity and opportunity for diversion of appropriate cases at each of the “Intercept” points of the justice system can be enhanced. These intercepts include investigation, citation, arrest, arraignment, plea, adjudication, sentencing, supervision, and release. This report outlines a fundamental vision: Vermont can provide those people who commit crimes and who are willing to be actively accountable for the harm they have caused with the opportunity to do so, in lieu of or in conjunction with imposed sanctions. Restorative justice offers structure and practices for those directly affected by crime to (1) determine the nature of the effect on them, (2) identify needs created by the offense, and (3) collectively work towards a response that meets those needs. This process encourages community engagement and improves the quality of life and safety in our towns and villages.

Further, there is recognition of the promise for expansion of restorative justice principles and practices in our schools, our workplaces, and our neighborhoods, and across our communities, to both prevent the escalation of conflict into crime, and to rebuild productive relationships.

Imagining a Seamless Delivery System for Restorative Justice

Our vision of an evolution for the delivery system of restorative justice in Vermont is informed by the collective wisdom gained from years of experience. The recommendations herein were created by a collaboration of representatives from Community Justice Centers, Court Diversion Programs, Balanced and Restorative Justice Programs, the Office of the Attorney General, the Department of Corrections and the Department for Children and Families. We called ourselves the Imagine RJ Workgroup.

The committee’s task was to imagine a delivery system, unhindered by the architecture of what is now in place, to design a more comprehensive and integrated system to build on the existing foundation. We deliberately set aside the current organizations, funding streams, and operation protocols now in place while incorporating what we have learned about their strengths and weaknesses. Our vision is also informed by best practices as validated by evaluation of programs in Vermont and beyond. See Appendix B.

Shared Vision

We define justice as the restoration of the state of right relations among people responsible for and affected by an offense. Government must provide the processes, resources and safety necessary for people to find a point of balance – to feel that they have experienced justice. This balance is best achieved in a cooperative society that incorporates social supports for building and maintaining empathy, active accountability and equity.

We believe a comprehensive delivery system for restorative justice services must provide more than the capacity and authority to intervene after a crime has been committed. It begins with proactive initiatives based on the understanding that the formal justice system cannot resolve crime and wrongdoing alone. Our vision includes an intercept point that occurs before those currently identified and discussed by criminal justice stakeholders, where a foundational value is built into our schools, governance systems and workplaces. We envision a government role in supporting the development, spread and utilization of restorative practices embedded in all our systems, practices that help people live in harmony and resolve conflicts as they arise. There is a precedent for this intercept point in communities such as Halifax, Nova Scotia and the cities of Hull and Leeds in England, where an intention was set to build a *restorative community*.

While government's role in assigning punitive sanctions for those found guilty of offending is a well-established means of holding people accountable for violating laws, a seamless delivery system for restorative justice is an essential complement to this system. When a crime is considered in terms of the harm to the people affected by criminal offending in addition to the violation of law, those people responsible for the damage can – with encouragement – voluntarily take personal responsibility for their behavior, learn from the real and natural consequences of their actions and take actions to make things better. Others who care about and are affected by the health of their communities can become directly involved in supporting their fellow citizens and shoring up the collective efficacy necessary for the operation of a safe, healthy community. Right relations can be restored.

The criminal justice system in Vermont is operated by the state government and is provided for the benefit of all Vermonters. Our vision of a fully developed and seamless delivery system for restorative justice is integrally connected with and has equivalent standing to the criminal justice practices currently in place. It is supported by state government and accessible to all at a community level without discrimination or barriers. It is informed by guiding

principles and values tied to the tenets of restorative justice. Moreover, it not only yields benefits to those responsible for and affected by criminal offending, it is also cost effective.

Common Principles of Restorative Justice

The Community Justice Network of Vermont and the Vermont Association of Court Diversion Programs collaboratively developed and adopted the following set of principles to guide their work.

Crime is a violation of people and relationship.

- While crime is a violation of law – an act against the state – the primary concern is the physical, emotional, and social impact crime has on people and relationships.
- Crime harms and affects people – victims, family members, community members, offenders and others – damages relationships, and disrupts peace in the community.

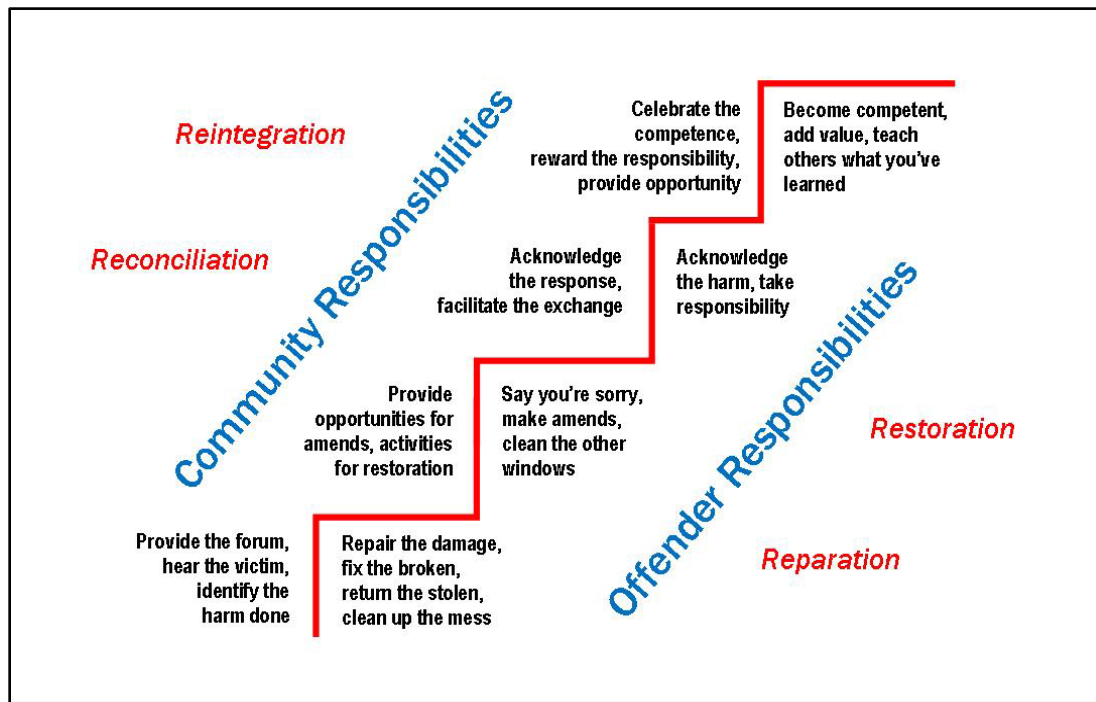
Violations create obligations.

- Each situation is complex and creates obligations to repair harm and to put things as right as possible, as defined by all parties.
- Offenders have a responsibility for their actions – to gain insight into how their actions have affected others, to make amends, and to learn ways to avoid future re-offense.
- The community has a responsibility to its members, including supporting victims' needs and offenders' responsibility to make amends for the harm they've caused.

Restorative Justice engages victims, offenders, and community members – all those affected by the crime – in an effort to put things right.

- All parties – those affected, those whose actions affected them, and the community – are provided meaningful opportunities to participate, shape the process, make decisions and seek resolution.
- Those involved are in the best position to know what it means to put things right for them in their particular situation.
- Victims determine their level of participation in any restorative process.
- Victims have the opportunity to talk about the crime from their perspective, identify how their needs may be best met to make things right as possible for them, and plan for a safe environment.
- Putting things right includes follow-through and satisfaction with the process.

While the focus of restorative justice is to meet the needs of victims as defined by them, there is an essential role played by communities in facilitating this exchange. The illustration below suggests the respective responsibilities of community and offender necessary for a transformative restorative justice response. Note as the person who offended progresses from step to step, he not only addresses the immediate incident but becomes an active participant transforming the relationship between himself and his community, a critical component of desistance from crime.



John Perry, *Repairing Communities through Restorative Justice*. 2001: American Correctional Association

Foundation of a Seamless System

In our discussions, we came to agreement to use these assumptions to inform our system design:

- The fundamental purpose of justice is the restoration of a state of right relations among people.
- There should be opportunities for restorative responses to criminal offenses across the system of justice.
- Assessment of the restorative option should be embedded at every intercept point in the justice process.

- Intervention should be at the earliest intercept point appropriate to the offense, victim, and community needs and capacities.
- Citizen and community organizations should have the opportunity to learn and participate in restorative justice practices.
- Access to restorative alternatives should be universal.
- The system should be local where feasible, regional where not.
- Best practice standards for restorative justice options must be delineated for each intercept point.
- Needs, harm and reparation are best defined by the participants of a restorative justice process.
- Interventions such as mental health and substance abuse treatment should not preclude addressing victims' needs.
- Communities have a responsibility to support victims irrespective of offender participation, or lack thereof, in a restorative justice process.

System Design

A comprehensive system of restorative justice would be available at each point of the intervention process. At each step, the decision-maker (e.g., law enforcement, prosecutor, judge, corrections official, DCF staff) has both the traditional response and a restorative option available. As the offender progresses through the system, either in success or failure, both options should be considered. The integration of restorative justice can be done incrementally, as we have been doing in Vermont for more than 20 years or, as this report envisions and recommends, it can be accomplished with a more comprehensive and systematic approach.

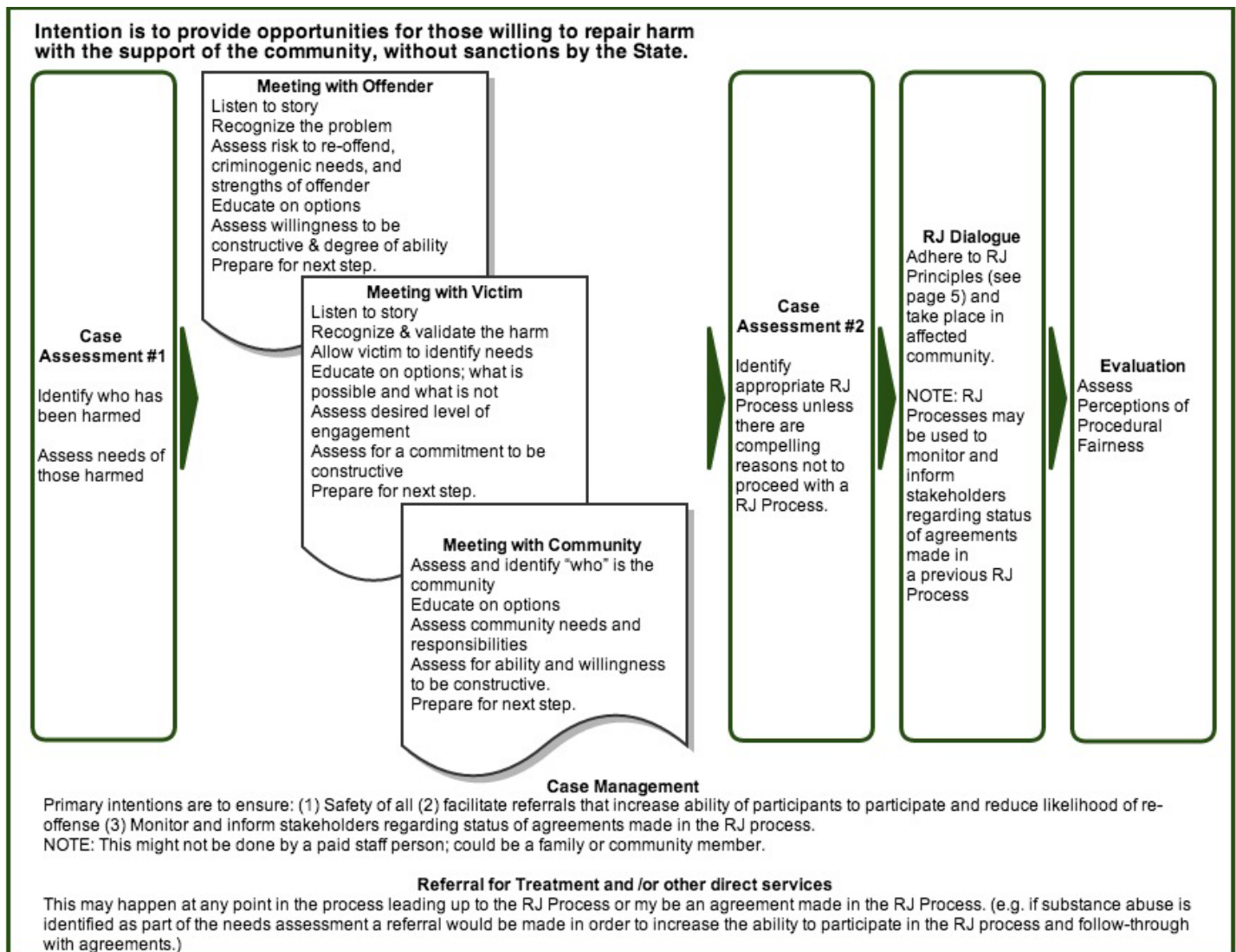
A restorative justice process must be consistent with the protections of the defendant under our Constitution and laws. Consequently, it is fundamental that the decision to participate be voluntary on the part of the offender while preserving due process rights. Critical to the restorative process is the opportunity for involvement by the victim and by the community of harm. The process for that involvement must be safe and incremental, allowing the wrongdoer to validate the harm done, acknowledge responsibility, and take action to make amends. The offender is encouraged to be actively accountable to the victim and to the community.

Each decision point in the criminal process presents a choice about whether to move forward to the next. At each of the decision points, the traditional decision is binary: to move on (prosecute), or to stop (dismiss). A

seamless restorative justice approach provides a third alternative for each step, expanding the set of options for each decision-maker, who is called upon to consider the interests and motivation of all those directly involved in an incident, as discussed in the paragraph above.

Components of the Restorative Process

At the initiation point of each step in criminal processing, there is an opportunity for a restorative alternative. At the entry point, there is an assessment, and a decision. The current model requires only an assessment of the fact of a crime, and an assessment of public safety risk. A consideration for a restorative alternative would require a further assessment of both offender and victim willingness to participate in a restorative process. See diagram.



If the decision is to divert, and the offender is willing to participate, a restorative process can begin. Restorative process requires contact with victim, offender, and the affected community. The restorative justice program engages the parties in dialogue, and assesses the appropriateness of the case and the willingness of the participants. This is an iterative process. At each point, both the offender and the program can determine the willingness to proceed and compliance with agreements. In all cases, failure with the restorative process can lead to referral back to the initiating decision-maker.

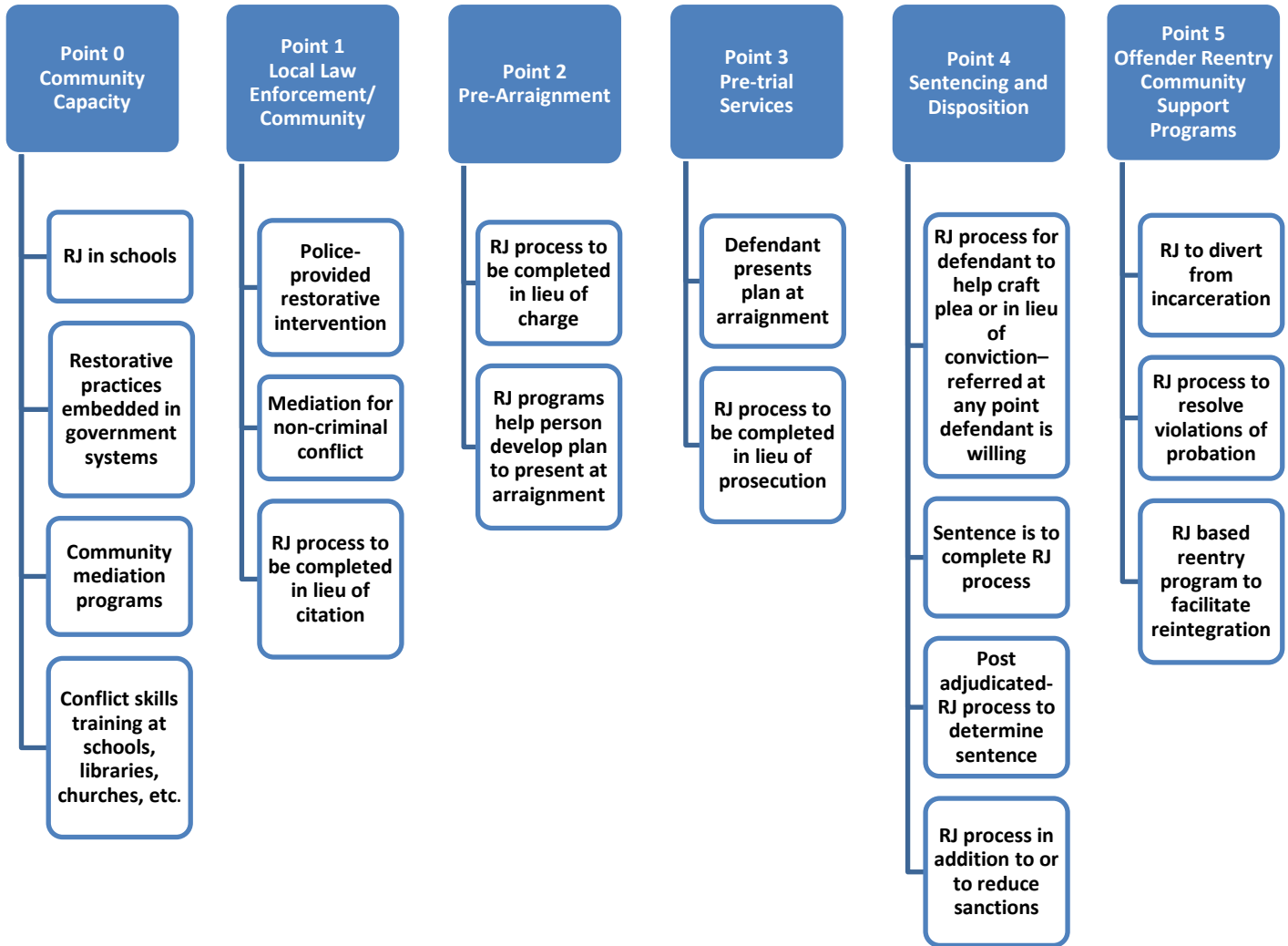
At the initiation of each of the steps, the opportunity for diversion to a restorative alternative can be offered. Since this is an iterative system, each level of the process assesses the appropriateness of restorative justice, and offers a mechanism to follow.

At each point in the process, the offender can choose to engage with the restorative program, specifically to develop a plan for proceeding with the alternative. This would allow offenders, as they prepare for adjudication, to both become educated on their options and to take responsibility for their behavior.

Restorative Justice at the Intercept Points

Criminal Justice stakeholders in Vermont currently define the system in terms of intercept points from the time law enforcement becomes involved to the point of reentry from prison and community reintegration. In this report we envision and recommend using restorative justice options at all intercept points as a means of increasing offender accountability and victim satisfaction, decreasing recidivism, and saving money. We explain below the opportunities at each intercept point. We also include an additional intercept point that precedes the others – the community building necessary to create a foundation for civic engagement that is empowering and prepares people to be accountable for their actions and in relation to one another. See table below.

Sequential Intercept Model in Vermont With Recommended Restorative Justice Opportunities



Victim needs assessment and referral to RJ and for other services occurs at all intercept points

Intercept Point 0: Community Capacity

Restorative Community

Building the community capacity to manage conflict is fundamental to avoiding crime. This can be done with intention and attention. People learn the attitudes and skills that result in effective communication: empathy, compassion, collaboration, negotiation and various strategies for dispute

resolution. Schools adopt and model restorative practices for helping our youngest citizens organically learn this way. Our government systems and private enterprises adopt restorative practices that encourage values of civility and equality. Communities provide accessible conflict assistance by trained mediators.

Intercept Point 1: Local Law Enforcement / Community

Community

Law enforcement and other public officials refer people in a dispute to a conflict assistance program that encourages them to craft their own solutions rather than imposing a top-down resolution that rarely stays resolved.

Investigation

Currently in some Vermont communities, law enforcement officers investigating a report of criminal behavior choose not to arrest or cite the perpetrator. They choose to directly apply restorative justice processes, such as facilitating dialogue between affected parties or supervising the return of stolen property. An immediate response that encourages accountability and amends making is especially effective in low risk cases where research has shown that criminal justice intervention actually increases recidivism. Restorative justice-based police cautioning can be encouraged and taught to all police officers.

Arrest and detention

Local and state police can also be trained to not only assess the seriousness of offense, the immediacy of threat to public safety, and the ability of the offender to maintain law-abiding behavior as they do now, but also to assess the appropriateness of diversion to community restorative processes. A protocol to refer the incident to a restorative justice program at this intercept point would address victim needs when they are most pronounced and encourage active accountability by offenders. These referrals are for events that do not rise to the level of threat to public safety, but may be criminal in nature. Such referrals could keep detainees out of correctional facilities as they await arraignment. Most misdemeanor and low level felony offenders could begin a restorative process rather than languishing, waiting for a court date.

This is an area of significant opportunity for development and expansion of restorative justice practice in Vermont. While some police departments are significantly involved, many are not, either due to lack of awareness, or training or capacity necessary to respond.

Intercept Point 2: Pre-arraignment / Pre-preliminary hearing

Most low level offenders are cited to appear in court at a future date, and released by the investigating officer. During the period prior to their first court appearance, there is little or no intervention. This is a period we believe is rich in opportunity for education about the possibilities for restorative justice. For classes of minor offenses, along with the citation, offenders could be referred to a restorative justice program where they are afforded the opportunity to develop a restorative plan to present to the prosecution and court at their first appearance.

Recent developments in Vermont's juvenile and criminal courts include opportunities for risk and need screening. Similarly, screening methods can be used to determine appropriateness for a restorative justice process that might include the offender working with restorative justice programs at the local or county level to create a plan to make amends and reparations.

Intercept Point 3: Pre-trial services

For over thirty years, prosecutors have referred offenders to community based programs, in lieu of prosecution. Initially these options were only available for youth and first-time offenders but it has expanded over time to become an option for repeat offenders of all ages. More importantly, the programs providing the community based response have become committed to employing restorative justice principles and practices, which have been shown to reduce recidivism and produce additional benefits for people and communities affected by crime.

Intercept Point 4: Sentencing and Disposition

Plea-negotiation

As part of the plea process, defendants could participate in a restorative process. A restorative plan (which could include a conviction) could be developed for agreement and presentation to the court. This could significantly expedite the court process, bringing swifter justice.

Adjudication

The Court always has the authority to ask the defendant to participate in a restorative process to inform the sentencing decision. Using restorative programs to support this process would enhance the incorporation of reparation agreements in sentencing.

Presently multiple court appearances occur during the process of resolving a number of cases being adjudicated. At any stage in this process, should a previously unwilling defendant become willing, the court could refer the case for a restorative justice process in lieu of subsequent hearings.

Sentencing

Vermont courts already include restorative components in some sentences. This is working well currently; however, the numbers served are declining as earlier diversion strategies are working. This is a good thing. However, given the findings that reparative probation reduces recidivism as compared to standard probation, there are many cases where a reparative condition added to a sentence would result in better outcomes for the victim, offender and community. We envision a system through which all offenders are encouraged to be actively accountable by understanding the harm, taking responsibility for it, and making amends. In addition, all those sentenced should have the opportunity to successfully complete a restorative justice process.

Intercept Point 5: Offender Reentry and Community Support Programs

Violation of Probation

For many violations of probation, referral to community justice for development of restorative plans could allow significant addition of community and victim input to the decision to continue supervision in lieu of incarceration, and provide additional incentive for offenders to maintain compliance with conditions of release. This would require additional restorative justice capacity.

Reentry & Reintegration

Currently, the implementation of CoSA (Circles of Support and Accountability) programs in many communities has allowed the application of restorative justice practices and community justice process to offenders reentering the community after incarceration. This program is relatively new, but has shown great promise in reducing re-incarceration failures, and extending the periods of successful reintegration. The technology, well-documented in Canada, has application for offender reintegration during supervised release, and as a program for diversion from incarceration, including reduction of sentence.

Some Preliminary Conclusions

Vermont is strong in its capacity for Restorative Justice. We are strong because our communities and our sense of interdependence create a citizenry willing to participate and engage with one another in solving tough problems.

We have the foundations for expanding the application of restorative justice principles and practices across the system of justice. The history over twenty years of experiment and study has demonstrated both efficacy and citizen approval.

There is substantive agreement across the existing programs on principle, purpose, vision and process.

There is substantive agreement on the need to more fully integrate restorative justice practice across the structure of our criminal justice system, providing decision-makers in law enforcement, prosecution, judiciary, and human services with viable alternative community mechanisms for encouraging offenders to be accountable, ensuring the public safety, and reducing cost.

There is also substantive agreement on the need for the establishment of a statewide restorative justice organization, integrating current networks and program components, and providing a forum for development.

There is agreement on the need to maintain the local control of neighborhood justice, while recognizing the need for statewide uniformity of the administration of justice.

There is agreement on the need for standards for training and education for community members, as well as the need for common procedures for referral.

There is agreement on the potential for expansion of restorative justice practices to provide resolution for conflicts that are not criminal, in our schools, in our workplaces, and in our neighborhoods.

Next Steps

This is a progress report. There is still much to do.

The first report of our work group indicated the primary work to be done was in stages. A second work group would design the structures and funding for a

delivery system. A third group would develop a plan to build the relationships among criminal justice stakeholders.

These workgroups were envisioned as sequential. Our work on this document has resulted in our recognition that the design of the structures must involve not only the community justice providers, but the stakeholders in the legal system of criminal justice. The complexities of the integration of restorative justice practices with the structure and process of criminal justice require careful, collaborative planning.

We intend, then, to broaden the participation in our planning workgroups, and begin the development of system design and structure together. We will provide progress reports.

Appendix A: Vermont State Statute

28 V.S.A. § 2a

(a) State policy. It is the policy of this State that principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offenses, and how the State responds to persons who are in contempt of child support orders. The policy goal is a community response to a person's wrongdoing at its earliest onset, and a type and intensity of sanction tailored to each instance of wrongdoing. Policy objectives are to:

(1) Resolve conflicts and disputes by means of a nonadversarial community process.

(2) Repair damage caused by criminal acts to communities in which they occur, and to address wrongs inflicted on individual victims.

(3) Reduce the risk of an offender committing a more serious crime in the future, that would require a more intensive and more costly sanction, such as incarceration.

(b) Implementation. It is the intent of the General Assembly that law enforcement officials develop and employ restorative justice approaches whenever feasible and responsive to specific criminal acts, pursuant to 3 V.S.A. §§ 163 and 164, concerning Court Diversion, 13 V.S.A. chapter 221, concerning sentencing, and the provisions of this title, concerning persons in the custody of the Commissioner of Corrections. It is the further intent of the General Assembly that such restorative justice programs be designed to encourage participation by local community members, including victims, when they so choose, as well as public officials, in holding offenders accountable for damage caused to communities and victims, and in restoring offenders to the law-abiding community, through activities:

(1) Which require offenders to:

(A) acknowledge wrongdoing and apologize to victims;

(B) make restitution for damage to the victims, consistent with provisions of 13 V.S.A. chapter 221 and of this title;

(C) make reparation for damage to the community by fulfilling a community service; and

(D) when relevant, successfully complete treatment addressing the offense or other underlying problematic behavior, or undertake academic or vocational training or other self-improving activity.

(2) Which aid in the recovery of victims, recognizing that victims, particularly of violent crime, often suffer lifelong effects and, accordingly, must feel safe and involved in any program offered to assist them.

(3) Which help in identifying the causes of crime and ways community members and municipal and State government can reduce or prevent crime in the future. (Added 1999, No. 148 (Adj. Sess.), § 62, eff. May 24, 2000; amended 2011, No. 119 (Adj. Sess.), § 8.)

Appendix B

Selected Meta-Analyses

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