

# Examining restorative justice

By Phillip Stevenson

The Juvenile Justice Reform Provisions of 1998 (Public Act 90-590) took effect January 1999. Among the many changes to the Illinois Juvenile Court Act, a purpose and policy statement was added encouraging juvenile justice professionals to respond to juvenile crime in a way that includes the victim and community as well as the offender.<sup>1</sup>

The language used in the act's purpose and policy statement, "...to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively," embraces the fundamental principles of balanced and restorative justice. The restorative justice philosophy is a new way of thinking about juvenile justice which will require many criminal justice professionals to reevaluate how they do their jobs. This *Trends and Issues Update* presents an overview of the restorative justice philosophy and describes programs that are consistent with the philosophy.

## Justice philosophies

The two dominant justice philosophies, retribution and rehabilitation, are offender-centered. Retributive justice attempts to prevent crime by punishing offenders. Rehabilitative justice attempts to prevent crime by treating offenders. In contrast, restorative

justice is victim centered. Repairing harm to the victim caused by the offense is a primary goal of the restorative justice process. But unlike

Table 1

**Retributive and restorative justice questions and answers**

	Retributive justice	Restorative justice
How is crime defined?	A legal infraction.	A violation of relationships between people.
What is most relevant?	Legal variables.	Overall context.
Who are the actors?	State and offender.	Victim and offender primarily, along with state and community.
Describe the process.	Adversarial and technical.  Focuses on guilt.  Encourages offenders to deny responsibility.	Participatory, maximizing information, dialogue, and mutual agreement.  Focuses on victim needs and offender obligations.  Fosters empathy and encourages offender to take responsibility.
What are the outcomes?	Offender is punished.  Harm caused by offender is balanced by harm done to offender.	Identification of victim needs, offender obligations, healing, and problem-solving.  Harm caused by offender is balanced by offender working to correct mistakes.

Adapted from Lorraine Stutzman Amstutz and Howard Zehr (1998) "Victim Offender Conferencing in Pennsylvania's Juvenile Justice System."

offender-centered responses to crime that often minimize victim participation, offenders are actively involved in the restorative justice process. Restorative

justice practitioners encourage and often require offenders to participate in repairing the harm caused by their actions to the victim, the community, and to themselves.

Restorative justice also requires rethinking the meaning of accountability and the role of punishment in the justice system. Holding an offender accountable in a retributive justice sense focuses on punishing offenders for their crimes. Holding offenders accountable in a restorative justice sense requires that offenders accept responsibility for their actions and actively participate in the restoration of their victims, both materially and emotionally. This can be accomplished through means such as restitution, community service, and answering questions their victims may have about the crime.

Restorative justice may appear to be soft on offenders to those who advocate for increasingly punitive responses to crime, such as increased or longer prison sentences. But restorative justice advocates argue that several requirements to their approach are anything but soft, as offenders must:

- Listen as their victims express their anger and pain.
- Answer their victims' questions about the crime.
- Actively participate in the material restoration and emotional healing of their victims.
- Participate in activities that may reduce the likelihood of re-offending.

This does not mean incarceration is never a restorative justice response, only that restorative justice doesn't rely on incarceration to achieve accountability. An important concern of any justice system, whether retributive, rehabilitative, or restorative, is to protect the public. The goal of incarceration in a restorative justice system is to protect the community, not inflict punishment on the offender. Incarcerating an offender does not disallow the use of restorative justice strategies.

While incarceration makes restorative justice more difficult, protecting the community, holding offenders accountable for their misbehavior, and helping offenders to become better equipped to function as law-abiding members of the community can be goals of restricted environments.

### Restorative criminal justice strategies

Three criminal justice strategies that are consistent with the restorative justice philosophy are being used with greater frequency by criminal and juvenile justice systems nationwide in an attempt to respond to crime in a manner that attends to the needs of all affected parties. These strategies include family group conferencing, victim-offender mediation, and community reparative boards.

#### Family group conferencing

Some have suggested that family group conferencing is the strongest model for educating offenders on the consequences of their actions.<sup>2</sup> Family group conferencing is most commonly used as an alternative to prosecution, but it also is a sentencing option in some jurisdictions. The conferences vary in composition and content, but most often the victim, the offender, and their respective support groups are in attendance. Support group members include anyone the victims and offenders choose and are not restricted to family, although the attendance of family members is strongly encouraged. In addition, a representative from the community is encouraged to participate. A trained facilitator moderates the conference.

After the ground rules for the conference are established, including time limits and treating other participants with respect, the victim is usually given the opportunity to speak first about how the crime has impacted her or his life.<sup>3</sup> After the victim speaks, the offender is given the opportunity to discuss the crime. After both the victim and offender have spoken, support group members are given an opportu-

nity to speak. This process allows the relevant issues surrounding the crime to come to the surface, allowing for the determination of a response that is consistent with the principles of community safety, offender accountability, and building of the offender's competencies.

The response to the crime may include restitution for costs incurred by the victim, and meaningful community service. In cases involving juveniles, school attendance and improving one's grade point average are often part of the final agreement. When possible, the response to the offense includes tapping into the strengths of the offender. Focusing on an offender's strengths could include requiring that an essay be written by an offender who enjoys to write, or asking an offender who is artistically inclined to paint a mural with a positive message in a public space.

Conference attendees together decide upon the conditions of the final agreement with the needs and wishes of the victim taking priority. If an agreement cannot be reached in family group conferences that are alternatives to formal prosecution, the matter is referred back to the state's attorney's office.

#### Victim-offender mediation

Victim-offender mediation typically is used as a diversion from formal prosecution or as a condition of probation after the court has accepted an admission of guilt. Primarily used in property crimes, victim-offender mediation allows victims the opportunity to actively participate in a process through which a restitution agreement is reached. Victim-offender mediation also provides victims with the opportunity to ask offenders questions about the crime, and let offenders know how the crime has affected them. In these ways, mediation gives the victims a prominent voice in the justice process and holds offenders directly responsible for their crimes.

Unlike other forms of mediation, with violent offender mediation there is

a clear indication of the offender's responsibility for the conflict. As a result, determination of responsibility is not part of the mediation process and the amount of restitution is not a product of negotiation between the victim and offender. The goal of victim-offender mediation is to give victims the opportunity to directly inform offenders of the impact of their criminal behavior. In summary, victim-offender mediation is driven by the opportunity to let victims and offenders engage in a dialogue with the ultimate goals being victim healing, offender accountability, and recovery of the victims' losses.

### Community reparative boards

The strength of community reparative boards is in the involvement of the community in the justice process. A community reparative board consists of several community members trained to determine the appropriate response to an offense. The strong emphasis on community participation makes reparative boards especially useful when victims are reluctant to participate, and in so-called victimless crime situations, such as those involving drug use and the use of alcohol by a minor.

In the reparative board process the victim, the offender, and community members discuss the offense and the impact it had on the victim and the community. After a discussion of the offense has concluded, through continuing dialogue with the victim and offender, the board develops a set of proposed sanctions and actions that the offender must complete in a set period of time. The board also is responsible for monitoring the offender's compliance with the sanctions. In some states, such as Vermont, offenders may be sentenced in court to participation in the process. In these instances, the board submits a report to the court on the offender's compliance with the sanctions after the stipulated period of time has ended.

### Conclusion

Since the purpose and policy statement reflecting balanced and restorative justice was added to Section V of

Table 2  
**How restorative justice can benefit juvenile justice professionals**

Improves accountability to the victims
Greater victim satisfaction with performance of juvenile justice professionals.
Greater community satisfaction with the juvenile justice system.
Increased fulfillment of requirements by the offender because of his active participation in the process.
Increased options for creative forms of accountability through involvement of victim, offender, and the community.
Increases in the number of people who feel responsible for ensuring a minor's compliance because they are involved in the process.
Opportunities to facilitate a process that promotes a greater sense of closure for the victim and positive growth of the juvenile offender.
Encourages competency development
Increased community satisfaction with the juvenile justice system as a result of measurable increases in competency of delinquent youth.
Enhanced image of juvenile justice workers as assets to the community because of their ability to facilitate transformation of delinquent youth into community assets.
Personal satisfaction derived from facilitating positive change in the juvenile offender.
Promotes community safety
Increased victim and community satisfaction because community safety is seriously addressed.
Increased responsibility for community safety shared by numerous institutions and individuals.
Increased number of adults monitoring the behavior of delinquent youth.
Decreased opportunity for delinquent youth to re-offend while on supervision.
Increased sense of efficacy in addressing community safety issues.

Adapted from the "Guide for Implementing the Balanced and Restorative Justice Model," by the Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Illinois' Juvenile Court Act, the types of programs described here are being accepted more often as viable alternatives to traditional responses to crime and delinquency. The Ford County Probation Department developed a program based on family group conferencing that is being used in response to both juvenile and adult crime. The Children and Family Justice Center of Northwestern University's School of Law also operates a

program that gives community members a prominent role in the juvenile justice process. In addition, there are victim-offender reconciliation programs in Champaign and Woodford counties that serve victims of juvenile crime. The Administrative Office of the Illinois Courts also is expected to provide training and technical assistance on family group conferencing to up to four pilot sites in Illinois.

This *Trends and Issues Update* has focused on the promise of restorative justice programming. But there are limitations to restorative justice programs that have yet to be overcome. Restorative justice programs are not appropriate for all offenders. Participation in restorative justice programs must be voluntary—victims and offenders should not be forced to come together to discuss how the harm caused by a criminal or delinquent act is best remedied. There also are concerns over the appropriateness of using restorative justice strategies in domestic violence cases. In addition, there are differing opinions over where in the process restorative justice strategies should be used. Some believe that restorative justice programs should be an alternative to prosecution. Others believe restorative justice programs should be part of the offender's sentence.

What is becoming clear is that restorative justice programs can be effective at helping crime victims feel as

if justice was served, increase victim satisfaction with the criminal justice system, and reduce recidivism.<sup>4</sup>

To learn more about restorative justice in Illinois and nationwide, visit the Authority's Web site:

[www.icjia.state.il.us](http://www.icjia.state.il.us).

#### Footnotes

1. 705 ILCS 405/5-101
  2. Bazemore, Gordon, and Curt Taylor Griffiths. 1997. "Conferences, Circles, Boards, and Mediations: Scouting the 'New Wave' of Community Justice Decisionmaking Approaches." *Federal Probation*. 61:2 pp. 25-37.
  3. Although the ground rules are stated at the beginning of the conference, they have been discussed with all participants prior to convening a conference. Pre-conference work, along with other requirements (e.g., the offender exhibits remorse), is of vital importance to reducing the chances that the victim will be revictimized and insuring a positive outcome.
  4. Winnimaki, K. 1997. Doctoral dissertation. School of Social Work, University of Tennessee.
- Bradshaw, W. and Umbreit, M. 1998. "Crime Victims Meet Juvenile Offenders: Contributing Factors to Victim Satisfaction with Mediated Dialogue," *Juvenile and Family Court Journal* Vol. 49 pp. 17-25
- Nugent, W., M. Umbreit, L. Wiinamaki, and J. Paddock (2000). "Participation in Victim-Offender Mediation and Severity of Subsequent Delinquent Behavior: Successful Replications?" *Journal of Research in Social Work Practice*.

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