



Justice for All: How Restorative Justice Mutually Benefits Victims and Youth

By Logan Seacrest

Restorative justice has the potential to heal both the victim and the offender, offering a new route to protecting public safety and promoting the common good.

Executive Summary

Restorative justice is an alternative approach to addressing crime focused on repairing harm and restoring relationships. From international peacemaking tribunals to the school playground, restorative frameworks can be adapted to fit almost any situation. Empirical, up-to-date evidence on restorative practices is necessary to design programs that hold people accountable and address the needs of all stakeholders in ways that the traditional justice system is not necessarily designed to do. This policy paper explores the history, principles, methods and outcomes of applying restorative practices to the juvenile justice system and offers key recommendations for implementing such programs.

Introduction

Since the introduction of the juvenile court concept in 1899, criminal justice professionals, academics and policymakers have been debating how society should respond when a young person breaks the law.¹ The typical courtroom

Table of Contents

Executive Summary	1
Introduction	1
A Note on Language	2
The Need for Restorative Justice	2
Restorative Justice: Description, History and Theoretical Framework	3
Restorative Group Conferencing:	
Three Case Studies	6
Kiwi Conferencing: The Transformation of New Zealand’s Juvenile Justice System	6
Cornhusker Conferencing: Restorative Justice in Nebraska	8
California Conferencing: A Randomized Controlled Trial	12
Meta-analysis Findings	13
Challenges of Restorative Justice	15
Key Recommendations	17
Conclusion	18
About the Author	18

Table/Figures

Table 1: Restorative Justice vs. Retributive Justice	4
Figure 1: Restorative Justice Legislation in the United States	8
Figure 2: Participation in Nebraska Victim-Youth Conferences	9
Figure 3: Rearrest Probability Curve in the Four Years Following Make-It-Right	13
Figure 4. Restorative Community Conference, Victim Perspectives	14

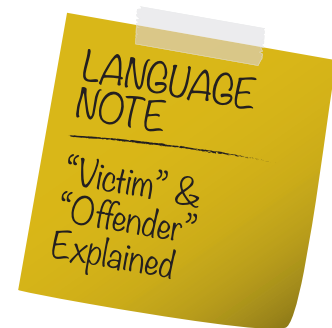
1. Robert E. Shepherd, Jr., “Juvenile Court at 100 Years: A Look Back,” *Juvenile Justice* 6:2 (December 1999), pp. 13-21. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/juvenile-court-100-years-look-back>.

approach has some notable strengths, but it also has certain limitations. By disincentivizing victims and offenders from engaging in meaningful communication with each other, the conventional system often fails to promote mutual healing or provide lasting justice. In contrast, restorative justice intentionally brings together the key stakeholders—victims, offenders and their families—to collectively repair the harm caused by a crime.²

In this paper, we explore the value of restorative processes in the juvenile justice system. We discuss the fundamentals of the approach, its historical origins and a variety of current examples from different juvenile justice settings. We also synthesize and discuss research on program results, offering key recommendations for effective implementation.

A Note on Language

In the juvenile justice community, there has been some controversy over the language used to talk about justice-involved youth. Increasingly, terms such as “victim” and “offender” have come under scrutiny for being overly simplistic—perhaps even harmful.³ Labeling theory suggests that young people may internalize such labels, creating a cycle that further perpetuates behavioral problems.⁴ This paper makes a concerted effort to use alternative terms, however we have not eliminated them entirely because they are still widely used. The intention is to use “victim” or “offender” only in reference to the roles individuals play in the restorative process, not as a commentary on the intrinsic worth of justice-involved youth themselves.



The Need for Restorative Justice

Since the dawn of English common law, the concept of justice has been based on an adversarial litigation process to determine truth and resolve disputes.⁵ On one side is a defense attorney, standing in for the defendant. On the other side is the state, standing in for the victim. Due process requires that the two sides face off before an impartial arbiter, such as a judge or jury, who decides on a winner and a loser. This has served countries like the United States relatively well, but over the centuries, our jurisprudence has ossified, freezing out alternative conceptions and stifling experimentation. We are rooted in a system—formed largely in the 19th century—that reductively measures justice by the degree to which it adheres to its own rigid rules, rather than the degree to which it produces a fair sentence for the accused, satisfaction for the victim or harmony in society.

2. Office of Juvenile Justice and Delinquency Prevention, “Restorative Justice for Juveniles: Literature Review: A product of the Model Programs Guide,” U.S. Department of Justice, August 2021. <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/restorative-justice-for-juveniles>.
3. Erica Bryant, “Words Matter: Don’t Call People Felons, Convicts, or Inmates,” Vera Institute of Justice, March 31, 2021. <https://www.vera.org/news/words-matter-dont-call-people-felons-convicts-or-inmates>.
4. Howard Becker, *Outsiders: Studies in the Sociology of Deviance* (Free Press of Glencoe, 1963).
5. “The Common Law and Civil Law Traditions,” Berkeley Law (2011), pp. 1-11. <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf>.

According to restorative justice advocates, the winner-take-all nature of the adversarial system replaces the search for truth and reconciliation with the desire for victory over the opposing side.⁶ It is a zero-sum incentive structure that deters taking personal responsibility, which is an important step in rehabilitation. In addition, although the defensive posture necessary for court is intended to protect the rights of the accused, it can also block the healing that comes with admitting wrongdoing. Ironically, the very setting in which defendants are expected to show remorse and personal growth is depersonalized and intentionally made as antiseptic as possible.⁷

Moreover, the criminal justice industrial complex leaves little room for victims, who are either treated like pieces of evidence or excluded from the process entirely. The system deprives families of the right and responsibility of caring for their own, offloading responsibility to anonymous legal professionals. However, under a restorative justice framework, crime is reconceived of as primarily a breach of human relationships and secondarily as a violation of the law. Crimes are not acts against an impersonal, monolithic state; they are acts against specific human beings.⁸ Instead of owing a debt to society, people who have caused harm owe a debt to their victims. This is an important distinction, as empowering victims to narrate their trauma and define their own needs (rather than have them defined by the state or even victim advocates) can be a critical step in transcending the experience of a crime.⁹

Restorative Justice: Description, History and Theoretical Framework

Although restorative justice can mean different things to different people, the term is thought to have been coined by Albert Eglash in 1977 when he outlined two basic types of criminal justice: retributive justice based on punishment and restorative justice based on reparation (Table 1).¹⁰ Restorative justice seeks to elevate the role of crime victims, hold perpetrators directly accountable to the people they have violated, and restore—to the extent possible—the emotional scars and material losses of all parties involved. Importantly, restorative justice makes the actual victims of a crime central participants in the response to it, recognizing that the people most affected by a crime are best equipped to determine a just outcome.



Under the restorative justice framework, instead of owing a debt to society, people who have caused harm owe a debt to their victims. This is an important distinction, as empowering victims to narrate their trauma and define their own needs can be a critical step in transcending the experience of a crime.

Key Term

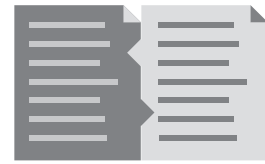
Restorative Justice:

Elevates the role of crime victims, holds perpetrators directly accountable to the people they have violated, and restores—to the extent possible—the emotional scars and material losses of all parties involved.

6. Howard Zehr, *The Little Book of Restorative Justice* (Simon and Schuster, 2015).
7. Stephanos Bibas and Richard A. Bierschbach, "Integrating Remorse and Apology into Criminal Procedure," *Yale Law Journal* 114:85 (Sept. 28, 2004). https://www.yalelawjournal.org/pdf/429_nn5sm3kh.pdf.
8. Zehr, 2015.
9. Lawrence W. Sherman and Heather Strang, "Restorative Justice: The Evidence," The Smith Institute, 2007, p. 8. <http://www.smith-institute.org.uk/wp-content/uploads/2015/10/RestorativeJusticeTheEvidenceFullreport.pdf>.
10. Logan Seacrest interview with Kimiko Lighty (Zoom), March 14, 2023; Laura Mirsky, "Albert Eglash and Creative Restitution: A Precursor to Restorative Practices," *Restorative Practices EForum*, Dec. 3, 2003, pp. 1-4. <https://www.iirp.edu/images/pdf/eglash.pdf>.

Table 1: Restorative Justice vs. Retributive Justice

Restorative Justice	Retributive Justice
Crime violates people and relationships	Crime violates the state and its laws
Justice focuses on needs and obligations so things can be made right	Justice focuses on establishing guilt so punishment can be applied
The central parties are the victim and the person who caused harm	The central parties are the state and the defendant
Justice is sought through dialogue and mutual agreement	Justice is sought through a conflict between adversaries
Accountability is achieved by making amends and repairing harm	Accountability is achieved by punishing offenders



Source: Derived from Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2015).

Even though the modern term “restorative justice” came to prominence in the 1970s, the philosophies it embodies are rooted in ancient indigenous cultures from around the globe. For millennia, aboriginal populations in New Zealand, the United States and Canada have relied on restorative principles in response to wrongdoing. Rather than focusing solely on the fault of a single individual, these cultures’ justice traditions are based on the interconnectedness of individuals within the tribe or community. The First Nations people of Canada used “Peacemaking Circles,” which rely on interpersonal dialogue and collective decision-making, rather than retribution.¹¹ As one restorative justice practitioner explains,

“[I]ndigenous people of the Pacific Northwest call it ‘breathing the smoke of the same fire.’ The idea is we are connected, not just through the fact we are all human, but intimately connected by breathing the same air at the same time.”¹²

To this day, modern restorative circles still use a “talking piece”—an object passed from one speaker to the next intended to create a physical and metaphysical connection between people.¹³

The central questions around crime tend to be very different in restorative justice. For example, courts are primarily concerned with questions such as “what laws have been broken,” and “what punishment does the convicted person deserve” whereas the restorative justice model focuses on questions like “what kind of harm did the crime cause,” and “what must be done to repair the harm?”¹⁴ The latter types of questions are intended to determine the source of delinquent behavior, provide an opportunity to accept responsibility and—especially in the juvenile justice system—create positive obligations that bolster adolescent emotional development.¹⁵ This comprehensive approach to juvenile crime both supports the victim and helps



The central questions around crime tend to be very different in restorative justice. What kind of harm did the crime cause,” and “what must be done to repair the harm?” are intended to determine the source of delinquent behavior, provide an opportunity to accept responsibility and create positive obligations that bolster adolescent emotional development.

11. Kay Pranis, *The Little Book of Circle Processes: A New/Old Approach to Peacemaking* (Good Books, 2005).

12. Logan Seacrest interview with Kimiko Lighty (Zoom), March 14, 2023.

13. Ibid.

14. Zehr, 2015.

15. Mary Louise Frampton, “Finding Common Ground in Restorative Justice: Transforming Our Juvenile Justice Systems,” *UC Davis Journal of Juvenile Law & Policy* 22:2 (Summer 2018), pp. 101-134. <https://sjlr.law.ucdavis.edu/archives/vol-22-no-2/JJLP-Vol22-Issue2-Frampton.pdf>.

reintegrate the offender into the community. Perhaps most importantly, it takes a process that has historically been the domain of impersonal, bureaucratic institutions and transfers it back to those most directly affected by a crime.

From a theoretical standpoint, restorative justice is based on the concept of “reintegrative shame” (shame that stigmatizes the act rather than the actor) over “stigmatizing shame” (shame that excludes, isolates and degrades an individual).¹⁶ Reintegrative shame deters crime through two main mechanisms: personal conscience and fear of societal disapproval.¹⁷ This theory is backed by evidence indicating that when shame is intentionally used to reintegrate individuals back into a supportive social network, it can be a powerful agent for change.¹⁸ Restorative justice also builds on procedural justice theory, which suggests that individuals are more likely to obey the law if they perceive the criminal justice system to be a reasonable and legitimate institution.¹⁹ In other words, an individual’s perception of fairness regarding their personal experience of the justice system influences their view of law enforcement, their compliance with laws and ultimately their willingness to reoffend.²⁰ Because successful restorative justice programs are often perceived to be more legitimate, procedural justice theory suggests that they should produce superior outcomes.²¹

The growth and development of restorative justice in the last three decades has occurred largely within the realm of juvenile justice.²² Because they are less cognitively developed than adults and more malleable, children stand to benefit more from restorative interventions, particularly those involving family and peers.²³ In fact, the Supreme Court has found children to be constitutionally different from adults, recognizing that they have both decreased levels of culpability and increased prospects for rehabilitation.²⁴ Public polling also indicates that people tend to accept more lenient interventions for youth offenders because they understand that young people commonly make mistakes as they transition to adulthood.²⁵ Addressing delinquent behaviors before they require punitive court measures avoids the many negative downstream effects and social stigma associated with an arrest.²⁶ Thus, from a first-principles perspective, one of the main benefits of juvenile restorative justice is the focus on early intervention, which enables benefits to compound over time.



The Supreme Court has found children to be constitutionally different from adults, recognizing that they have both decreased levels of culpability and increased prospects for rehabilitation.

16. John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge University Press, 1989).

17. *Ibid.*

18. Nancy Rodriguez, “Restorative Justice, Communities, and Delinquency: Whom Do We Reintegrate?,” *Criminology & Public Policy* 4:1 (February 2005), pp. 103-130. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9133.2005.00010.x>.

19. Tom R. Tyler, “Restorative Justice and Procedural Justice: Dealing with Rule Breaking,” *Journal of Social Issues* 62:2 (2006), pp. 307-326. <https://courses.washington.edu/pbafhall/514/514%20Readings/tyler%20justice.pdf>.

20. Natalie Kroovand Hipple et al., “Restorativeness, Procedural Justice, and Defiance as Long-term Predictors of Re-Offending of Participants in Family Group Conferences,” *Criminal Justice and Behavior* 42:11 (November 2015), pp. 1110-1127. <https://scholarworks.iupui.edu/bitstream/handle/1805/9390/Hipple-2015-Restorativeness.pdf?sequence=1&isAllowed=y>.

21. *Ibid.*

22. Jane Bolitho et al., *Restorative Justice: Adults and Emerging Practice* (Federation Press, 2014), pp. 1-16.

23. Pamela Cantor et al., “Malleability, plasticity, and individuality: How children learn and develop in context,” *Applied Developmental Science* 23:4 (2019), pp. 307-337. <https://www.tandfonline.com/doi/full/10.1080/10888691.2017.1398649>.

24. *Miller v. Alabama*, U.S. Supreme Court, June 25, 2012. <https://www.oyez.org/cases/2011/10-9646>.

25. Alex R. Piquero and Laurence Steinberg, “Public preferences for rehabilitation versus incarceration of juvenile offenders,” *Journal of Criminal Justice* 38:1 (January-February 2010), pp. 1-6. <https://www.sciencedirect.com/science/article/abs/pii/S0047235209001366>.

26. Richard Mendel, “Why Youth Incarceration Fails: An Updated Review of the Evidence,” The Sentencing Project, March 1, 2023. <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence>.

Restorative Group Conferencing: Three Case Studies

One form of restorative justice is the group conference, which brings together the victim, offender, their families and community members to collectively determine a satisfactory intervention that meets all parties' needs. The following sections describe three case studies that illustrate successful approaches to the group conference model in the juvenile justice setting.

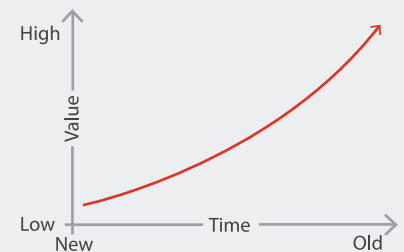
Kiwi Conferencing: The Transformation of New Zealand's Juvenile Justice System

In the late 1980s, New Zealand's juvenile justice system was in crisis, with skyrocketing crime rates and overburdened youth courts. The country also had one of the highest incarceration rates of indigenous young people of anywhere in the world.²⁷ In an effort to address these inequalities, members of Parliament traveled to Māori, Polynesian and other Pacific Island communities throughout the country. The lawmakers discovered that long before the term "restorative justice" was invented, the Māori had been practicing a system called "marae" based on timeless restorative principles.²⁸ In the Māori cultural tradition, judges did not dispense punishment from on high. Instead, the whole community was involved in addressing conflict. More important than assigning blame was the question of why the wrongdoing occurred in the first place. Māori leaders pointed out that addressing root causes is more important than any individual circumstance in isolation.²⁹



Restorative Justice Is “Lindy”

Restorative justice is one of the oldest ideas in criminal justice.³⁰ Its long track record can be viewed as an example of the “Lindy Effect,” a phenomenon by which the longer an idea survives, the more objectively useful it is for civilization.³¹ In other words, since only the strongest ideas survive over time, the length of an idea's life is representative of its value to society. This phenomenon was initially observed in the context of Broadway shows: The longer a show had run, the longer it could be expected to remain on the stage. This was deemed the “Lindy Effect,” named after Lindy's restaurant in New York City, where Broadway performers often gathered.³² Restorative justice has persisted over centuries for a reason—it resonates with society and offers better outcomes than alternative approaches to justice.



As a result of this fact-finding tour, New Zealand adopted the “Children, Young Persons and their Families Act,” becoming the first Western nation to mandate the use of restorative practices across its entire youth justice system.³³ The country

27. Allan MacRae and Howard Zehr, *The Little Book of Family Group Conferences: New Zealand Style* (Good Books, 2004), pp. 13-14.

28. V.E. Jantzi, “Restorative Justice in New Zealand: Current Practice, Future Possibilities,” Massey University Centre for Peace and Justice Development, August 2001, p. 5. <https://emu.edu/cjp/docs/rj-in-newzealand.pdf>.

29. Ibid.

30. Zehr, 2015.

31. Nassim Nicholas Taleb, *Antifragile: Things That Gain from Disorder* (New York, Random House, 2016).

32. Ezra Marcus, “The Lindy Way of Living,” *The New York Times*, June 17, 2021. <https://www.nytimes.com/2021/06/17/style/lindy.html>.

33. Emily Watt, “A History of Youth Justice in New Zealand,” New Zealand Ministry of Justice, 2003. <https://www.justice.govt.nz/assets/Youth-Court-History-of-the-Youth-Court.pdf>.

adopted a family group conference (FGC) model that was directly influenced by ancient Māori practice, adapted to fit a modern legal framework.³⁴ FGCs bring together victims, perpetrators and their families in a facilitated dialog to seek a resolution that provides accountability and protects public safety. Most cases involving youth ages 14 to 17 can be handled by FGCs.³⁵ To deflect as many young people away from the justice system as possible, FGCs are the default option for most juvenile cases. In other words, charges are not filed in court unless certain criteria are met, and police can refer cases to an FGC without involving the court at all.³⁶ As a result, most FGCs are not court directed, and most matters are handled without any court appearance whatsoever.³⁷ Although penalties can be issued as part of FGCs, reintegration is the primary goal—not punishment.³⁸

Since passing that Act in 1989, New Zealand has run its entire youth justice system in a non-adversarial manner, downsizing the system dramatically and providing the world's best example of how restorative justice practices can transform an entire juvenile justice system. The year after the new law went into effect, only 16 per 1,000 young people appeared in the youth court, compared with an average of 63 per 1,000 in the three calendar years before the new law.³⁹ Additionally, after New Zealand drastically reduced arrests and detention, the overall youth crime rate began to decrease. The drop in crime produced a virtuous cycle, allowing New Zealand to continue downsizing its youth justice system over time. The number of young people charged in court annually decreased from approximately 6,000 when the Act was passed in 1989 to 1,884 in 2017.⁴⁰ Today, more than 75 percent of juvenile cases are handled through restorative justice diversion.⁴¹

Studies on this program have found that it naturally compliments community policing reforms and improves perceptions and attitudes toward police.⁴² FGCs allow participants to feel a greater sense of ownership in the process and outcome, which has led to higher levels of satisfaction with restorative justice processes compared to traditional courts.⁴³ Furthermore, forging partnerships based on mutual responsibility allows for a deeper investigation into the multimodal, systemic causes of crime. Specifically, police can better understand why crimes are occurring and



Since passing the Children, Young Persons and their Families Act in 1989, New Zealand has run its entire youth justice system in a non-adversarial manner, downsizing the system dramatically and providing the world's best example of how restorative justice practices can transform an entire juvenile justice system.

34. F.W.M. McElrea, "Justice in the Community: The New Zealand Experience," in Jonathan Burnside and Nicole Baker, eds., *Relational Justice: Repairing the Breach* (Waterside Press, 1994), pp. 93-103. <https://www.napierlibrary.co.nz/assets/Judge-McElrea/RJ-as-relationships-chapter-1994.pdf>.
35. Allison Morris, "Youth Justice in New Zealand," *Youth Crime and Youth Justice: Comparative and Cross-National Perspectives* 31 (2004), pp. 243-292. <https://www.jstor.org/stable/3488348>.
36. F.W.M. McElrea, "The New Zealand Youth Court: A Model for Development in Other Courts?," National Conference of District Court Judges, April 6-9, 1994. <https://www.napierlibrary.co.nz/assets/Judge-McElrea/Rethinking-punishment-DCJ-199404.pdf>.
37. F.W.M. McElrea, "Twenty Years of Restorative Justice in New Zealand – Reflections of a Judicial Participant," *Journal of Commonwealth Criminal Law* (2011), p. 45. www.napierlibrary.co.nz/assets/Judge-McElrea/Twenty-years-of-rj-in-NZ-Jnl-of-Commonwealth-Crim-Law-2011.pdf.
38. Ibid.
39. Allison Morris and Gabrielle Maxwell, "Restorative Justice in New Zealand: Family Group Conferences as a Case Study," in Andrew von Hirsch et al., eds., *Restorative Justice & Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2005), pp. 219-236.
40. Melissa Coretz Goemann et al., "New Zealand's Youth Justice Transformation: Lessons for the United States," National Juvenile Justice Network, April 25, 2018, p. 2. <https://www.njjn.org/uploads/digital-library/New%20Zealand's%20Youth%20Justice%20Transformation%20--%20Lessons%20for%20the%20United%20States%20Final%20204.25.18.pdf>.
41. Ibid.
42. Kyle Peyton et al., "A field experiment on community policing and police legitimacy," *Proceedings of the National Academy of Sciences of the United States of America* 116:40 (Sept. 16, 2019), pp. 19895-19896. <https://www.pnas.org/doi/10.1073/pnas.1910157116>.
43. "Victim Satisfaction Survey 2021," New Zealand Ministry of Justice, September 2021. <https://www.justice.govt.nz/assets/FINAL-Restorative-Justice-Survey-Report-September-2021.pdf>.

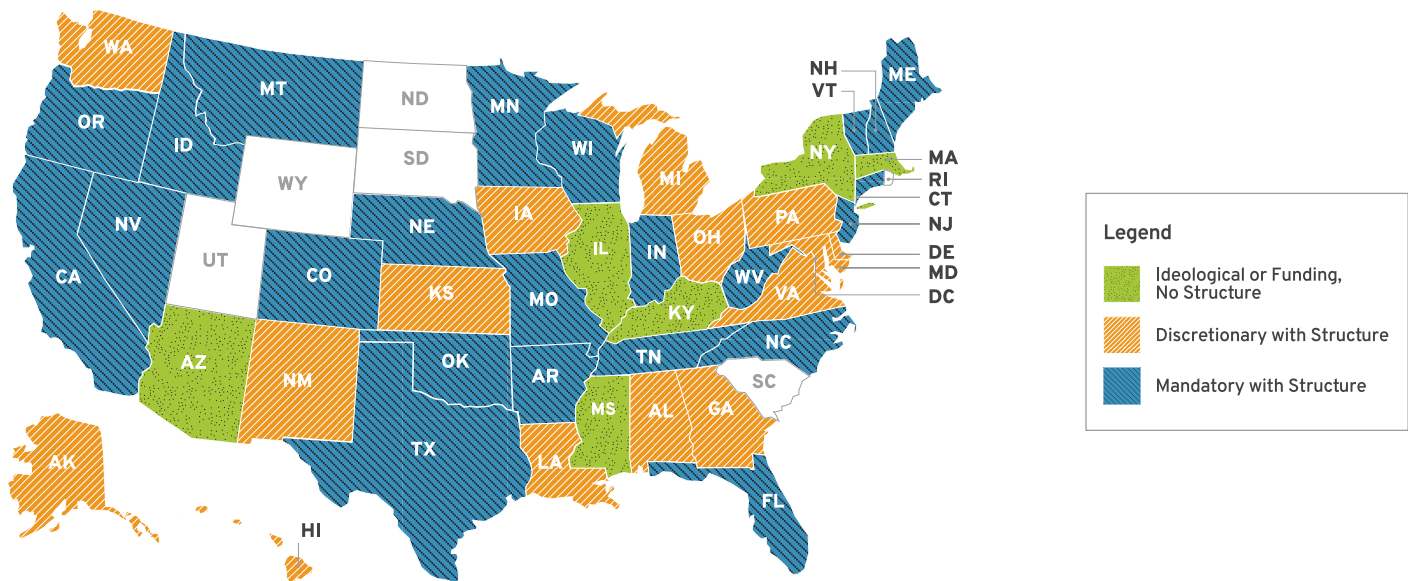
then target specific areas and types of offenses with carefully tailored enforcement actions.⁴⁴ For example, Wellington police used information gathered from FGCs to target certain gang activity and truancy problems. Within three years, the city experienced an approximately two-thirds reduction in juvenile crime.⁴⁵

Cornhusker Conferencing: Restorative Justice in Nebraska

Restorative justice is becoming more common in the United States. Forty-five states have enacted laws supporting the use of restorative justice or similar models, and 35 have codified the use of restorative justice in juvenile justice processes (Figure 1).⁴⁶ Some of these restorative justice programs are designed to serve as deflection or diversion options, whereas others are designed as disposition outcomes, in which youths are sentenced to participate.⁴⁷ Under these laws, restorative interventions occur at various contact points in the juvenile justice process, including at arrest, referral, intake and post-adjudication.



Figure 1: Restorative Justice Legislation in the United States



Source: “Juvenile Justice: Young People and Restorative Justice,” National Conference of State Legislatures, Oct. 12, 2022. <https://www.ncsl.org/civil-and-criminal-justice/juvenile-justice-young-people-and-restorative-justice>.

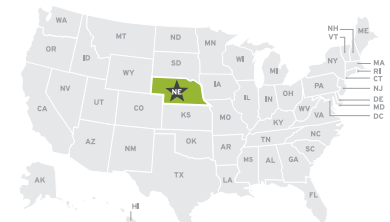
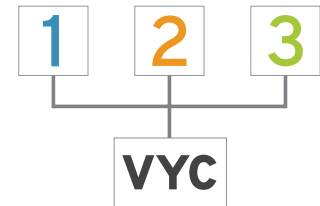
Nebraska is one of the states that has invested most heavily in restorative justice. In January 2018, the state launched a new program with the goal of integrating restorative practice into every aspect of its juvenile justice system.⁴⁸ Much like the

44. Gordon Bazemore and Mark Umbreit, “A Comparison of Four Restorative Conferencing Models,” Office of Juvenile Justice and Delinquency Prevention, February 2001. <https://www.ojp.gov/pdffiles1/ojjdp/184738.pdf>.
 45. Allan MacRae and Howard Zehr, *The Big Book of Restorative Justice* (Good Books, 2015), p. 244.
 46. Thalia González, “The Legalization of Restorative Justice: A Fifty-State Empirical Analysis,” *Utah Law Review* 2019:5 (2020), p. 1031. <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1242&context=ulr>; “A Review of Restorative Justice in Florida and Other States,” Office of Program Policy Analysis and Government Accountability, January 2020. <https://oppaga.fl.gov/Documents/Reports/20-02.pdf>.
 47. Kathleen J. Bergseth and Jeffrey A. Bouffard, “Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders,” *International Journal of Offender Therapy and Comparative Criminology* 57:9 (July 18, 2012), pp. 1054-1075. <https://journals.sagepub.com/doi/abs/10.1177/0306624X12453551>.
 48. NEB. REV. STAT. §43-260.03.

FGCs in New Zealand, Nebraska’s Victim-Youth Conferencing (VYC) program brings together victims, youth ages 11 to 17 and their families to develop an accountability plan to repair harms caused by juvenile crime. Referrals to Nebraska’s VYC program come from three primary sources: (1) schools when a youth receives a citation from law enforcement, (2) county attorneys diverting cases from court, or (3) judges after adjudication or as part of probation. VYCs are organized and run by skilled facilitators who are responsible for the extensive preparation work done ahead of the conference to ensure that participants know what to expect.⁴⁹ Facilitators do not function in a legal or adjudicatory capacity; they serve as an impartial third party that leads a constructive conversation between the victim and the youth. Under Nebraska law, all parties are entitled to bring another person for support.⁵⁰

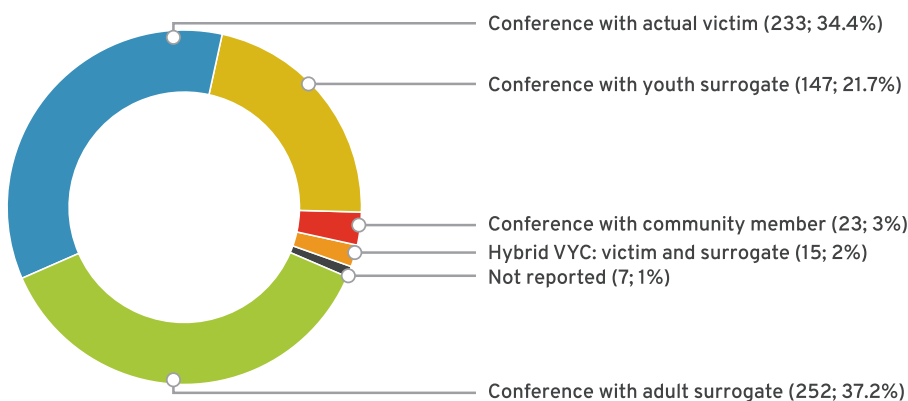
While not possible in every case, victim participation has been identified as a key factor in successful restorative justice outcomes. When the victim is unable to join or declines to attend, the facilitator may read a victim-impact statement or a surrogate may speak on behalf of the victim.⁵¹ Surrogates do not necessarily represent the victim, but instead engage the youth in a dialogue about the impact of the offense. Even if a crime has no individually identifiable victim, such as cases of drunk driving or drugs, VYCs can use surrogates who have been adversely affected by a similar crime. For example, the families of individuals with substance use disorders or of those killed in car collisions may be invited to confront the harmful nature of the conduct in a personal way. Nebraska also trains former victims and justice-involved youth to be surrogates, which benefits the program and provides continuing restorative benefits to participants who have become volunteers (Figure 2). Nebraska is one of the only programs nationwide that identifies and trains former youth offenders to be victim surrogates in other cases.⁵²

Referrals to Nebraska’s VYC program come from three primary sources.



Nebraska is one of the only programs nationwide that identifies and trains former youth offenders to be victim surrogates in other cases.

Figure 2: Participation in Nebraska Victim-Youth Conferences



Source: Data derived from “Victim Youth Conferencing Evaluation,” State of Nebraska Judicial Branch Office of Dispute Resolution, June 2021. https://supremecourt.nebraska.gov/sites/default/files/u7124/VYC_Evaluation_Report_2018-2021_Final.pdf.

49. Logan Seacrest interview with Lesley Ahrens (Email), April 10, 2023.

50. NEB. REV. STAT. §25-2939.

51. Donal J. Schmid, “Restorative Justice in New Zealand: A Model for U.S. Criminal Justice,” Fulbright New Zealand, August 2001, p. 14. https://www.fulbright.org/en/wp-content/uploads/2011/12/axford2001_schmid.pdf.

52. Kristen M. Blankley and Alisha Caldwell Jimenez, “Restorative Justice and Youth Offenders in Nebraska,” *Nebraska Law Review* 98:1 (2019), p. 44. <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=3238&context=nlr>.

In Nebraska, the actual conference itself is a relatively simple and straightforward process. After introductions, the facilitator reads a statement that includes basic facts about the case and background information about the young person who caused the harm. If the juvenile agrees to the facts (or at least a portion of them), the facilitator will ask the parties to think about three main questions: (1) What happened? (2) How did this situation affect you? and (3) How can the situation be resolved?⁵³ Victims are given a chance to describe the physical, financial and emotional consequences of the crime, in some cases for the very first time. The victim might express feelings of fear, anxiety, depression, animosity or anger. Material impacts might include lost property, medical bills, or physical pain and suffering. The offender often feels shame, embarrassment, resentment, regret and other uncomfortable emotions. In this way, restorative justice is by no means “soft-on-crime” nor does it excuse criminal behavior. On the contrary, it exposes young offenders to the difficult responsibility of seeing and hearing the consequences of their actions, facilitating accountability through face-to-face dialog with their victims.

The conference is also a useful venue for victims to get questions answered, like “Why did you target me?,” “Am I safe now?” and “How will you make this right?” One of the greatest sources of frustration to victims can be the difficulty in getting information about their cases.⁵⁴ With the restorative process, however, details that would have little legal relevance are often brought to light.⁵⁵ Extenuating circumstances, such as a fight the youth had with his or her parents, the death of a loved one or a divorce in the family, are of little consequence in a court setting but can be crucial to a conference. Importantly, confidentiality and non-coercion are key components of restorative justice (see text box below), so Nebraska statute protects juveniles in these proceedings, sealing records relating to victim-offender mediation.⁵⁶



In Nebraska, the actual conference itself exposes young offenders to the difficult responsibility of seeing and hearing the consequences of their actions, facilitating accountability through face-to-face dialog with their victims.

Reverse Miranda Rights

For restorative justice to work, the parties involved must be able to talk openly and honestly, without fear that their participation will later be weaponized against them. Therefore, youths need assurances that their participation will not be used as evidence or an admission of guilt in subsequent legal proceedings. Reverse Miranda Rights protect youth by ensuring that what they say in a restorative setting remains confidential and inadmissible in court. In these circumstances, instead of the right to remain silent, individuals have the right to be heard.



In these conferences, eventually the conversation frequently (but not always) shifts to an apology or some expression of contrition by the youth. True

53. Alisha Caldwell Jimenez, “Victim Youth Conferencing Evaluation” State of Nebraska Judicial Branch Office of Dispute Resolution, January 2018 - June 2021. https://supremecourt.nebraska.gov/sites/default/files/u7124/VYC_Evaluation_Report_2018-2021_Final.pdf.
54. Heather Strang et al., “Victim Evaluations of Face-to-Face Restorative Justice Conferences: A Quasi-Experimental Analysis,” *Journal of Social Issues* 62:2 (June 2006), pp. 281-306. https://www.researchgate.net/publication/227658960_Victim_Evaluations_of_Face-to-Face_Restorative_Justice_Conferences_A_Quasi-Experimental_Analysis.
55. Susan J. Szmania and Daniel E. Mangis, “Finding the Right Time and Place: A Case Study Comparison of the Expression of Offender Remorse in Traditional Justice and Restorative Justice Contexts,” *Marquette Law Review* 89:2 (2005). <https://scholarship.law.marquette.edu/mulr/vol89/iss2/6s>.
56. NEB. REV. STAT. §43-247.03.

repentance can be therapeutic for the victim and offender alike, particularly when the victim senses sincerity and empathy. The victim is empowered with the discretion to grant forgiveness to the youth, reinstating a sense of control in their life. Victims sometimes consider this symbolic form of reparation to be as significant as, if not more significant than, monetary restitution.⁵⁷ The conference participants then discuss collectively what should be done to atone for the harm, negotiating obligations tailored to benefit all participants in the conference. Facilitators help guide the parties in establishing “SMART” agreements that are specific, measurable, attainable, realistic and timely.⁵⁸ The plan may include the youth paying compensation to the victim, participating in community service or offering some other form of restitution.

One advantage of restorative justice programs like Nebraska’s is the ability to offer dynamic solutions that fit the idiosyncratic circumstances of a given situation, as opposed to fixed sentences defined by statutes.⁵⁹ Although financial compensation is common, conferences also produce creative forms of restitution that can be more effective than a fine.⁶⁰ For example, a victim who has a fondness for animals may request that the youth dedicate his or her community service hours to a local animal shelter. If a collective agreement is reached by everyone in the room, the plan is recorded in writing by the facilitator.⁶¹ Importantly, in Nebraska’s program, the county attorney retains the power to reject the recommendation of the VYC. This power to reject a plan, although seldom used, is a means of avoiding seriously disproportionate sentences that are too onerous or lenient. If, however, the proposed plan is approved, it becomes legally binding, and the coordinator follows up to ensure that it is completed. If the VYC participants are unable to come to an agreement on the plan, or if the youth fails to complete the plan, the case is returned to juvenile court.⁶²



One advantage of restorative justice programs like Nebraska’s is the ability to offer dynamic solutions. Although financial compensation is common, conferences also produce creative forms of restitution that can be more effective than a fine.



Of 871 case referrals, 78 percent held a VYC, and of the 677 VYCs that were held, 668 produced a reparation plan (99.6 percent).



Of the 668 cases with a reparation plan, 88.8 percent were successfully fulfilled.



91.1 percent of participants who completed a post-VYC conference survey reported being satisfied with the outcome; 93.2 percent of respondents said they would recommend VYC for others.



Nearly 90 percent of youth participants did not recidivate within 1 year of participating in the VYC program.⁶³

Nebraska’s program has been successful across a number of metrics.

57. Alfred Allan et al., “The impact of voluntariness of apologies on victims’ responses in restorative justice: findings of a quantitative study,” *Psychiatry, Psychology and Law* 29:4 (2022), pp. 593-609. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9318312/pdf/TPPL_29_1956383.pdf.

58. George T. Doran, “There’s a S.M.A.R.T. way to write management’s goals and objectives,” *Management Review* (November 1981), pp. 35-36. <https://community.mis.temple.edu/mis0855002fall2015/files/2015/10/S.M.A.R.T-Way-Management-Review.pdf>.

59. Zehr, 2015.

60. Jeff Bouffard et al., “The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders,” *Youth Violence and Juvenile Justice* 15:4 (May 4, 2016), p. 12. http://www.antonioacasella.eu/restorative/Bouffard_2016.pdf.

61. Blankley and Jimenez, 2019.

62. Ibid.

63. Jimenez 2021.

California Conferencing: A Randomized Controlled Trial

An enormous amount of research on restorative justice programs has been published over the last 30 years. Early program evaluations of American juvenile restorative initiatives in the 80s and 90s were promising, with up to a 40 percent reduction in recidivism over participants who went through the traditional juvenile system.⁶⁴ However, this research was limited by methodological issues such as small sample sizes, lack of random assignment, nonequivalent control groups and varied definitions of re-offense.⁶⁵ In addition, because of the voluntary nature of restorative justice programs and their restriction to mostly minor and non-violent offenses, there is also a self-selection bias that can be a threat to evaluation validity.

With these technical issues in mind, an organization called Community Works West partnered with the California Policy Lab in 2022 to conduct a randomized controlled trial—the gold standard for social science research—to learn about the impact of their restorative justice program. Over the past decade, Community Works West has successfully deflected hundreds of teens from the justice system in Alameda County, California.⁶⁶ Their program, called “Make-It-Right,” uses a technique called restorative community conferencing, which is similar to Nebraska’s VYCs and New Zealand’s FGCs with an important difference—it prioritizes young people who would have otherwise faced serious felony charges. Up until recently, restorative justice in the United States has largely been applied to first-time offenses or misdemeanors.⁶⁷ Make-It-Right is interesting because it is geared toward more serious cases (robberies, assaults, weapons violations, etc.) before formal charges are filed. The pre-charge nature of the program allows the County to keep costs as low as possible by avoiding the use of court time, probation officers and other judicial system resources.⁶⁸

Researchers used a true experimental design to evaluate Make-It-Right. Eligible youth were randomly assigned to either receive an offer to participate in restorative justice (intervention group) or be processed through traditional juvenile prosecution (control group). The researchers found that juveniles in the intervention group were, on average, 19 percent less likely to be rearrested than those in the control group.⁶⁹ The study indicated a possible causal effect, as the 12-month rearrest rates among youth who completed the program were much lower (19.2 percent) than those who enrolled but did not complete the program (57.7 percent).⁷⁰ The reduction in arrests continued four years after participation

Restorative
Group
Conferencing
Case Study

3



The Community Works West program, called “Make-It-Right,” uses a technique called restorative community conferencing. Similar to Nebraska’s VYCs and New Zealand’s FGCs, it offers an important difference—it prioritizes young people who would have otherwise faced serious felony charges.

64. Edmund F. McGarrell et al., “Returning Justice to the Community: The Indianapolis Juvenile Restorative Justice Experiment,” Office of Justice Programs, June 2000. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/returning-justice-community-indianapolis-juvenile-restorative>.

65. M.S. Umbreit and R.B. Coates, “Cross-Site Analysis of Victim-Offender Mediation in Four States,” *Crime and Delinquency* 39:4 (October 1993), pp. 565-585. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/cross-site-analysis-victim-offender-mediation-four-states>.

66. Logan Seacrest interview with Kyle Magallanes (Email), April 10, 2023.

67. Estelle Zinsstag, “Conferencing: A developing practice of restorative justice,” in Estelle Zinsstag and Inge Vanfraechem, eds., *Conference and Restorative Justice: International Practices and Perspectives* (Oxford University Press 2012), pp. 11-32.

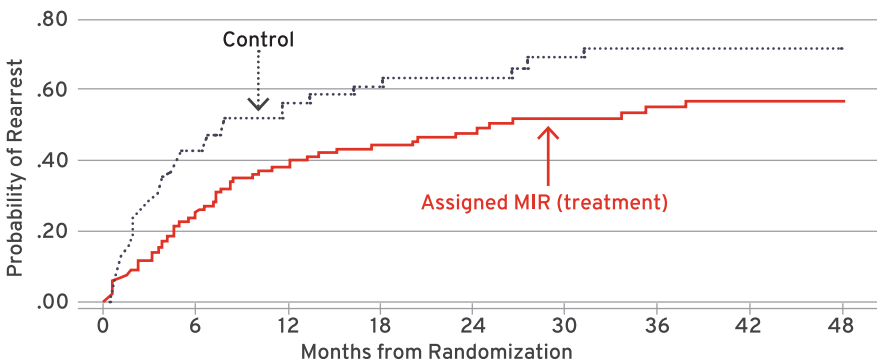
68. Sujatha Baliga et al., “Restorative Community Conferencing: A study of Community Works West’s restorative justice youth diversion program in Alameda County,” *Impact Justice*, Summer 2017, p. 4. https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf.

69. Yotam Shem-Tov et al., “The Impacts of the Make-it-Right Program on Recidivism,” California Policy Lab, January 2022. <https://www.capolicylab.org/wp-content/uploads/2022/05/Impacts-of-the-Make-it-Right-Program-on-Recidivism.pdf>.

70. Ibid.

in Make-It-Right, providing strong evidence that the program can reduce justice-system involvement among youth charged with relatively serious offenses (Figure 3).⁷¹ Of note, the average effect size of this study is especially meaningful, considering that Make-It-Right is primarily a one-time intervention.

Figure 3: Rearrest Probability Curve in the Four Years Following Make-It-Right.



Source: Reprinted with permission from “The Impacts of the Make-it-Right Program on Recidivism,” California Policy Lab, January 2022. <https://www.capolicylab.org/wp-content/uploads/2022/05/Impacts-of-the-Make-it-Right-Program-on-Recidivism.pdf>.

Meta-analysis Findings

Meta-analyses provide a useful means of weeding out weak evaluation designs, summarizing diverse research findings and synthesizing findings in an objective manner. Various meta-analyses have shown that restorative justice programs can reduce offender recidivism, produce improved victim satisfaction and enhance perceived legitimacy of the justice system for both groups.⁷² A 2017 meta-analysis found a significant decrease in delinquency for juveniles in restorative justice programs compared with youths who went through the traditional juvenile justice system.⁷³ Another study concluded that restorative justice participation accounted for a 26 percent decrease in juvenile recidivism relative to those who did not participate in such programs.⁷⁴ Youth referred to juvenile court also tend to reoffend more quickly, even after controlling for initial group differences.⁷⁵ In some studies, these programs have demonstrated better outcomes than traditional court procedures across almost every variable for victims and offenders, including saving taxpayer money.⁷⁶ Like the Make-It-Right study findings, meta-analyses have shown that restorative justice interventions focused on serious and violent offenses achieve the best results.⁷⁷

A 2017 meta-analysis found a significant decrease in delinquency for juveniles in restorative justice programs. One study concluded that restorative justice participation accounted for a

26%

decrease in juvenile recidivism relative to those who did not participate in such programs.

71. Ibid.

72. Lawrence W. Sherman et al., “Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review,” *Journal of Quantitative Criminology* 31 (2015), pp. 1-24. <https://link.springer.com/article/10.1007/s10940-014-9222-9>.

73. David B. Wilson et al., “Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis,” Office of Justice Programs, June 2017. <https://www.ojp.gov/pdffiles1/ojjdp/grants/250872.pdf>.

74. William Bradshaw and David J. Roseborough, “Restorative justice dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism,” University of St. Thomas, 2005. https://ir.stthomas.edu/cgi/viewcontent.cgi?article=1028&context=ssw_pub.

75. Bouffard et al., 2016.

76. Sherman et al., 2015.

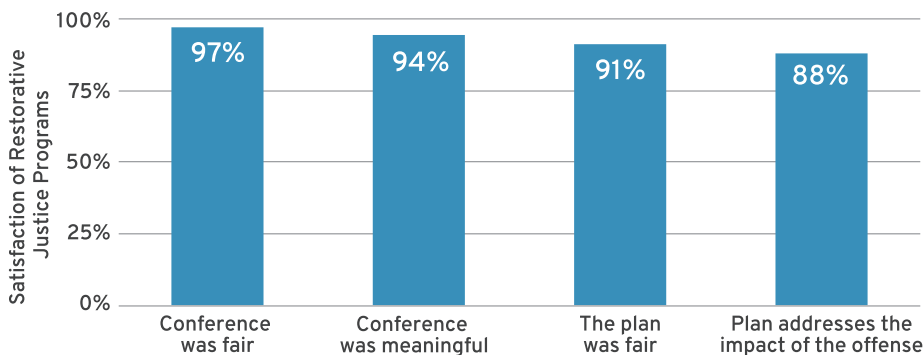
77. Sherman and Strang, 2007.

But even if restorative justice had no effect on crime or recidivism, it would still be a useful strategy if it benefitted victims. A growing body of empirical research indicates that victims who participate in restorative justice programs have greater satisfaction, increased perceptions of fairness, and enhanced psychological benefits compared to victims who suffered the same type of crime but went through the conventional legal process (Figure 4).⁷⁸ A 2023 meta-analysis of restorative justice programs in 11 countries across five continents found that victims experience considerable reductions in negative emotions (fear, anger, guilt, anxiety, distress, etc.) after a restorative conference.⁷⁹ The researchers also found that victim participation reduces feelings of helplessness about what happened, increases perceptions of security and provides a renewed sense of control. This catharsis persisted over a period of years, indicating that a transformation from “victim” status to “survivor” status had occurred, which is imperative to emotional recovery following a traumatic event.⁸⁰ Interestingly, the severity of the crime appears to have little effect on victim satisfaction or outcomes.⁸¹



A 2023 meta-analysis of restorative justice programs in 11 countries across five continents found that victims experience considerable reductions in negative emotions (fear, anger, guilt, anxiety, distress, etc.) after a restorative conference.

Figure 4: Restorative Community Conference, Victim Perspectives



Source: Data derived from Sujatha Baliga et al., “Restorative Community Conferencing: A study of Community Works West’s restorative justice youth diversion program in Alameda County,” Impact Justice, Summer 2017. https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf.

One area for future research is examining how restorative justice programs could help solve crimes and improve case clearance rates.⁸² If restorative justice is able to bolster community relations with law enforcement, it has the potential to enhance evidence collection, witness cooperation and overall investigative effectiveness.⁸³ For example, families and friends of a young person who committed a crime may be hesitant to speak with police if they believe their cooperation will result in their loved one being incarcerated. However, if

78. Bailey Maryfield et al., “Research on Restorative Justice Practices,” *Justice Research and Statistics Association*, December 2020. <https://www.jrsa.org/pubs/factsheets/jrsa-research-brief-restorative-justice.pdf>.
 79. Ana M. Nascimento et al., “The Psychological Impact of Restorative Justice Practices on Victims of Crimes—a Systematic Review,” *Trauma, Violence, & Abuse* 24:3 (April 23, 2022), pp. 1929-1947. <https://journals.sagepub.com/doi/10.1177/15248380221082085>.
 80. Jane Bolitho, “Putting justice needs first: a case study of best practice in restorative justice,” *Restorative Justice* 3:2 (Oct. 14, 2005), pp. 256-281. <https://www.tandfonline.com/doi/abs/10.1080/20504721.2015.1069531>.
 81. Mark S. Umbreit et al., “Victims of Severe Violence in Mediated Dialogue with Offender: The Impact of the First Multi-Site Study in the U.S.,” *International Review of Victimology* 13:1 (January 2006), pp. 27-48. <https://journals.sagepub.com/doi/10.1177/026975800601300102>.
 82. Derek Thompson, “Six Reasons the Murder Clearance Rate Is at an All-Time Low,” *The Atlantic*, July 7, 2022. <https://www.theatlantic.com/newsletters/archive/2022/07/police-murder-clearance-rate/661500/>.
 83. Rod Brunson and Brian Wade, “Oh hell no, we don’t talk to police: Insights on the lack of cooperation in police investigations of urban gun violence” *Criminology & Public Policy* 18:3 (2019), pp. 623-648. <https://nicjr.org/wp-content/uploads/2020/09/NYC-Study-2019.pdf>.

restorative justice is a viable and well-known alternative, providing evidence or testimony could become less of a moral dilemma and more of a way to help a loved one toward a path of positive change.

Challenges of Restorative Justice

Although restorative justice addresses certain issues within the contemporary criminal justice system, it poses possible risks of its own. In much of the literature, restorative justice is presented in unequivocally positive—even utopian—terms; an enlightened approach to justice policy that is appropriate in almost all cases. However, critics argue that this view is overly optimistic and dependent on an impractical communitarian ideal that borders on caricature.⁸⁴ In reality, justice-involved youth are sometimes not emotionally mature enough to engage in a discourse of moral reasoning and repair.⁸⁵ It has also been pointed out that crudely aggregating the diverse nature of indigenous conflict-resolution under the umbrella of “restorative justice” romanticizes these historic practices in an act of institutional appropriation.⁸⁶

Furthermore, without established and universally agreed-upon standards of practice, conference participants may experience inconsistency between jurisdictions where facilitators have varying levels of expertise, which could potentially re-victimize participants or damage faith in the system. Some studies have also demonstrated problematic outcomes in terms of mutual understanding, sincerity of apology and reoffending.⁸⁷ Additionally, victims are not always satisfied after participating in restorative justice programs, and some programs tend to emphasize the justice-involved youths’ needs over the victims’ needs. For example, one study found that some victims who participated in victim-offender mediation reported that they felt pressured to accept the youth’s apology, even if they were not ready to do so.⁸⁸

Another challenge of restorative justice is accounting for the differences between youth and adult offenders. Some critics have pointed out that the very rationale central to applying restorative justice to a juvenile context— young people’s limited developmental and cognitive capacities—can be a key impediment to its effectiveness.⁸⁹ For example, voluntary participation is widely seen as a prerequisite for taking part in restorative justice. However, children may not always understand that their participation is voluntary, and they may feel pressured to take part. Consider a young offender who is given the choice between participating in a restorative process or taking their chances in court



Justice-involved youth are sometimes not emotionally mature enough to engage in a discourse of moral reasoning and repair.

84. Chris Cunneen and Barry Goldson, “Restorative justice? A Critical Analysis,” in Barry Goldson and J. Muncie, eds., *Youth, Crime and Justice* (Sage, 2015), pp. 137-156.

85. Adriaan Lanni, “Taking Restorative Justice Seriously,” *Buffalo Law Review* 69:3 (June 17, 2021), pp. 635-681. <https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=4913&context=buffalolawreview>.

86. Adam Crawford, “State, Community and Restorative Justice: Heresy, Nostalgia and Butterfly Collecting,” *Restorative Justice and the Law* (2002), pp. 101-129. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/state-community-and-restorative-justice-heresy-nostalgia-and>.

87. Kathleen Daly, “Restorative justice: The real story,” *Punishment & Society* 4:55 (2002). http://www.antonioacasella.eu/restorative/Daly_2002.pdf.

88. Mary Riley and Hennessey Hayes, “Youth restorative justice conferencing: facilitator’s language – help or hindrance?,” *Contemporary Justice Review* 21:1 (2018), pp. 99-113. <https://www.tandfonline.com/doi/abs/10.1080/10282580.2017.1413358>.

89. Jung Jin Choi et al., “Review of research on victims’ experiences in restorative justice: Implications for youth justice,” *Children and Youth Services Review* 34 (2012), pp. 38-39. <https://tarjomefa.com/wp-content/uploads/2017/02/6134-English-TarjomeFa.pdf>.

with a judge. This would hardly be a choice, and their participation in the alternative approach would certainly not be voluntary.⁹⁰

Justice-involved youth have little power to resist pressure from authority, especially when backed up by threat of punishment. Even wrongly accused minors might feel inclined to accept alternatives like restorative justice to avoid any further legal procedures.⁹¹ Research has confirmed this issue, suggesting that some youth offenders “agree” to restorative justice largely out of self-interest, especially when the alternative is viewed as worse.⁹² This power imbalance presents a risk that youth offenders may be coerced to apologize or enter into a conference agreement that they do not actually support. One study found that 25 percent of youth offenders agreed with the restorative justice plan because they “felt they had to.”⁹³ This is problematic, as coerced apologies are less likely to be perceived as sincere by victims and may negatively affect the ethical identity of youth offenders.⁹⁴

An additional challenge inherent in restorative justice is that it reinforces the idea of a victim-offender binary that forces wrongdoers into the “offender” role. The reality, however, is that most children in conflict with the law are also victims themselves. The lives of those who are deeply embedded in the juvenile justice system tend to be characterized by poverty; family dysfunction; drugs and alcohol; mental illness; emotional, physical and sexual abuse; self-harm; homelessness; isolation; limited educational and employment opportunities; and the constant stress associated with ongoing trauma. As a result, the identities of “victims” and “offenders” are intertwined in ways that defy neat, dichotomized classification.⁹⁵ Moreover, the development of empathy requires environmental conditions such as a nurturing childhood and opportunities to interact positively with others.⁹⁶ But in a restorative process, young people are expected to display significant emotional maturity, even when they may lack the psychological tools necessary to express genuine empathy.⁹⁷ Due to their disadvantaged backgrounds, many justice-involved youth have underdeveloped communication skills, limiting their ability to express remorse in a way that would be perceived as genuine.⁹⁸ This lack



An additional challenge inherent in restorative justice is that it reinforces the idea of a victim-offender binary that forces wrongdoers into the “offender” role. The reality, however, is that most children in conflict with the law are also victims themselves.

90. Masahiro Suzuki and William Wood, “Is Restorative Justice Conferencing Appropriate for Youth Offenders?,” *Criminology & Criminal Justice* 18:4 (2018), pp. 450-467. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3158796.
91. Nessa Lynch, “Restorative Justice Through a Children’s Rights Lens,” *International Journal of Children’s Rights* (2010), pp. 168-183. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2548721.
92. Jung Jin Choi et al., “Putting a human face on crimes: A qualitative study on restorative justice processes for youths,” *Child & Adolescent Social Work Journal* 28:5 (2011), pp. 335-355. <https://psycnet.apa.org/record/2011-22323-001>.
93. Helen Beckett et al., “Interim Evaluation of the Northern Ireland Youth Conferencing Scheme,” *Northern Ireland Statistics & Research Agency*, January 2004, p. 11. https://www.researchgate.net/publication/242171963_Interim_Evaluation_of_the_Northern_Ireland_Youth_Conferencing_Scheme.
94. Christopher Bennett, “Taking the Sincerity Out of Saying Sorry: Restorative Justice as Ritual,” *Journal of Applied Philosophy* 23:2 (2006), pp. 127-143. <https://www.jstor.org/stable/24355119>.
95. Kimberly J. Cook, “Doing difference and accountability in restorative justice conferences,” *Theoretical Criminology* 10:1 (February 2006), pp. 107-124. <https://journals.sagepub.com/doi/10.1177/1362480606059987>.
96. Erica G. Hepper et al., “Narcissism and Empathy in Young Offenders and Non-Offenders,” *European Journal of Personality* 28:2 (March 1, 2014), pp. 201-210. <https://journals.sagepub.com/doi/abs/10.1002/per.1939>.
97. Elizabeth S. Scott and Laurence Steinberg, “Adolescent Development and the Regulation of Youth Crime,” *The Future of Children* 18:2 (Fall 2008), pp. 15-33. <https://doi.org/10.1353/foc.0.0011>.
98. Thomas Hopkins et al., “Young offenders’ perspectives on their literacy and communication skills,” *International Journal of Language & Communication Disorders* 51:1 (January 2016), pp. 95-109. <https://pubmed.ncbi.nlm.nih.gov/26344238>.

of adequate verbal ability can be interpreted as rudeness, disinterest, poor motivation and an unwillingness to engage, leading to suboptimal restorative outcomes.⁹⁹

Lastly, several studies have suggested that restorative justice interventions can sometimes be inappropriately applied to individuals who would not have been subject to any sanction at all in the absence of such programs.¹⁰⁰ As a result, one of the most common criticisms of restorative justice is the danger of net-widening, in which a larger number of young people enter the justice system through programs designed to have the opposite effect.¹⁰¹ Although a primary goal of restorative justice is to shrink the juvenile justice system, net-widening can occur if youth who would otherwise not have had contact with the system are referred to a restorative intervention. For example, student misbehavior that would otherwise have been handled as a routine matter of school discipline could be referred to unnecessary “restorative” intervention, inadvertently criminalizing behavior once seen simply as youthful indiscretion.

Key Recommendations

Considering the research, best practices and challenges discussed in this paper, we offer the following key recommendations for designing a restorative justice program:

1. Make it the default. Restorative justice is supposed to be voluntary. But if it is the only alternative to harsher punishment, then it is not truly consensual. To prevent this coercive effect, policymakers should consider making restorative justice the default to address certain delinquent behaviors.

2. Guard against net-widening. To protect young people from being swept up in the justice system unnecessarily, restorative processes should be used only when there is sufficient evidence to charge youth in the formal justice system.

3. Encourage creative restitution. Restitution directly linked to the specific harm or offense can be more effective at reducing recidivism than a simple financial penalty (for example, having a young person mow the lawn of a property they vandalized).¹⁰²

4. Let law enforcement take the lead. As the gatekeepers of the justice system, police and/or prosecutors have an integral role in leveraging restorative justice to address the underlying causes of juvenile crime, thereby promoting public safety.



99. Pamela Snow, “Restorative Justice Conferencing, Oral Language Competence, and Young Offenders: Are These High-Risk Conversations?,” *Prevention Researcher* 20:1 (2013), pp. 18-20. <https://eric.ed.gov/?id=EJ1006579>.

100. Jeremy Prichard, “Net-Widening and the Diversion of Young People From Court: A Longitudinal Analysis With Implications for Restorative Justice,” *Journal of Criminology* 43:1 (April 1, 2010), pp. 112-129. <https://journals.sagepub.com/doi/10.1375/acri.43.1.112>.

101. Jeremy Prichard, “Net-widening and the diversion of young people from court: a longitudinal analysis with implications for restorative justice,” *Australian and New Zealand Journal of Criminology* 43:1 (April 2010), pp. 112-129. <https://journals.sagepub.com/doi/10.1375/acri.43.1.112>.

102. Bouffard et al., 2016.

5. Focus on deflection rather than diversion. Youth in prearrest diversion (also known as deflection programs) are significantly less likely to reoffend than youth in post-arrest diversion, so restorative efforts should be geared toward deflecting young people from any justice system involvement whatsoever.¹⁰³

6. Expand referral criteria. Despite the increasing acceptance of restorative justice, most programs are still only available in first-offense or misdemeanor cases. Expanding the scope of these programs is important because interventions that focus on serious or even violent offenses achieve the best results.¹⁰⁴

7. Maintain confidentiality. Offender participation in restorative justice programs should not be used as evidence or as an admission of guilt in subsequent legal proceedings.

8. Screen for youth capacity. Given the problems that arise from limited youth cognitive capacity and developmental issues, care must be taken to ensure that youth are emotionally mature enough to participate effectively. For example, Community Works West employs an in-house clinician to assess youth capability, suitability and needs before enrollment.¹⁰⁵

9. Require trauma-informed training. Restorative justice practitioners should be trained in victim sensitivity, including education on victim trauma and adverse childhood experiences.¹⁰⁶

10. Track data. Use a logic model to create a data plan at the program-design phase to inform ongoing data collection and program evaluation.



Conclusion

Restorative justice is a philosophy that challenges the justice system to adopt a more human approach that can better address the needs of victims, youth and communities. When those closest to injustice take ownership in helping resolve it, an ethic of co-responsibility can emerge, which recognizes that crime arises in a social context and fault usually does not lie entirely with the accused. By emphasizing the centrality of human relationships, restorative justice has the potential to heal both the victim and the offender, offering a new route to protecting public safety and promoting the common good.

103. Logan Seacrest, “Data-Driven Deflection: A Systems Approach to Reducing Juvenile Arrests,” *R Street Policy Study* No. 290, June 2023. <https://www.rstreet.org/research/data-driven-deflection-a-systems-approach-to-reducing-juvenile-arrests>.

104. Sherman and Strang, 2007.

105. Logan Seacrest interview with Kyle Magallanes (Email), April 10, 2023.

106. “Adverse Childhood Experiences (ACEs),” Centers for Disease Control and Prevention, last accessed July 17, 2023. <https://www.cdc.gov/violenceprevention/aces/index.html>.

About the Author

Logan Seacrest is a resident fellow on the Criminal Justice and Civil Liberties team. He produces research and analysis on the criminal justice system with a focus on juvenile justice.