

NATIONAL JUVENILE JUSTICE NETWORK

MAKING RESTORATIVE JUSTICE TRANSFORMATIVE: TEN KEY QUESTIONS

TIP SHEET

DECEMBER 2018

Introduction

Restorative justice emerges from the understanding that crime is a violation of people and interpersonal relationships, which creates a central obligation to right the wrongs.¹ Rather than focusing on punishment for punishment's sake, restorative justice shifts the framework towards one of addressing victims' needs and ensuring the young person is accountable for the harm they caused, while also addressing underlying reasons for their behavior.² Restorative justice, at its best, respects the humanity of the young person by giving them the opportunity to take responsibility for their actions while restoring the harmed individual. Ideally, restorative justice embeds the response to youth behavior within a context of healing and strengthened community bonds.

Any discussion of justice system transformation must include an analysis of how structural racism is embedded into that system. One manifestation of this is that youth of color are surveilled and policed from their sidewalks to their schools far more intensely than white youth, resulting in starkly disproportionate rates of justice system involvement from arrest to confinement. Given the overreach of the justice system in controlling the lives of black and brown youth, shunting youth with low-level offenses into a restorative process that actually expands the social control around the youth will reinforce this dynamic. Moreover, research on local and international restorative justice programs, indicate better outcomes when used for

¹ Howard Zehr with Ali Gohar, *The Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2002): 40.

² Fair and Just Prosecution, Issues at a Glance Brief, "Building Community Trust: Restorative Justice Strategies, Principles and Promising Practices," (2017):1-2, https://fairandjustprosecution.org/wp-content/uploads/2017/12/FJP.Brief._RestorativeJustice.pdf.

serious and violent offenses.³ As a result, while restorative justice processes can be integrated into all aspects of a justice system, in order for them to be both highly effective and transformational, they should target serious and violent offenses, where relationships are significantly frayed.

Three basic models of restorative justice tend to dominate the landscape: victim-youth conferences; family group conferences; and circles.⁴ These models all involve a facilitated process that includes an encounter between key stakeholders – the young person responsible for the harm and the harmed party (representatives or surrogates may also be used), and sometimes other community and justice stakeholders.⁵ Studies have found restorative justice practices improve victim satisfaction and increase compliance with restitution requirements.⁶ They have also been shown to decrease recidivism when compared to traditional justice system responses, in particular for youth, including those with a history of committing violent offenses.⁷ While programs can be housed in a variety of locations, those placed in community-based organizations in under-resourced, higher crime communities are doubly beneficial. These kinds of programs are more likely to strengthen community bonds and increase community resources, both of which will serve to decrease crime, support young people and decrease victimization.

Below are ten key questions to consider in evaluating potential restorative justice programs for youth in order to increase the likelihood that the programs will help to transform the justice system into one that treats youth, families and victims with dignity and humanity.

Ten Key Questions

Are you prioritizing the reduction of racial and ethnic disparities?

You should ensure that reducing racial and ethnic disparities is maintained as a key focus in the program. Was the community engaged in the development and implementation of the program? How will youth be selected to participate? Are the staff culturally and

³ “It [restorative justice] is most effective with serious crimes in which there is an identifiable victim, such as in the case of robbery, burglary, car theft, assault/battery, arson, and teen relationship violence.” sujatha baliga, Sia Henry, and George Valentine, “Restorative Community Conferencing: A Study of Community Works West’s Restorative Justice Youth Diversion Program in Alameda County” (Impact Justice and Community Works West, Summer 2017): 2, https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf; Restorative practice of Family Group Conferences used as the standard mechanism for processing serious cases in New Zealand with positive results. Melissa Goemann, “New Zealand’s Youth Justice Transformation: Lessons for the United States” (Washington, DC: National Juvenile Justice Network, 2018): 16, 19, <https://bit.ly/2z11TXm>; “Restorative justice conferencing is more effective in cases of serious crime, particularly cases of violence, than in cases of property theft, or minor incidents.” Scoop Media, “Restorative Justice More Effective for Serious Crime” (May 21, 2013), <https://bit.ly/2PR3QKw>.

⁴ Zehr, 47.

⁵ Ibid.

⁶ Fair and Just Prosecution, 2.

⁷ Ibid.

linguistically competent for the population they will be serving? Are the services that can be made available for the young people culturally responsive?

Have you safeguarded against net widening?

You should ensure that only youth who are likely to have been arrested or charged can be referred for a restorative justice process. Restorative justice should not be used to keep youth in the system that otherwise would not be there. Rather, restorative justice programs should focus on youth who commit serious offenses, including violent offenses.

Does the program promote diversion and will the outcomes be proportionate?

It is preferable to use the restorative justice process as early as possible – pre-arrest or pre-charge. This enables youth to be diverted away from the system as soon as possible. Also, be sure that the program is set up so that the potential outcomes are proportionate to the alleged offense committed by the youth.

Are services available for all, including the responsible and harmed parties?

Is there access to services such as mental health and substance abuse, for all of the parties in the process, including the youth? Is the program responsive to the needs of those who have been harmed? Are they fully supported in the process?

Is the young person's confidentiality preserved?

Any admissions that the young person may make and everything said during the restorative justice process should be kept confidential and not admissible as evidence at an adjudicatory hearing against that young person if a petition is later filed– even if the restorative process is not completed. It's best if a confession or acknowledgement of guilt is not required to access restorative justice programs and services.

Are the appropriate people leading the program's implementation and facilitating the process?

Only people who believe in the mission should be implementing the restorative process. Stakeholders should not be required to facilitate the process if they don't buy into it. While facilitators do not have to be professional, there should be a process for training, supervision, and, ideally, recruitment from the community.

Is the community supportive and resourced?

Restorative justice programs are most beneficial when located within communities of color that are historically under-resourced. These communities should be centered in the process of developing and implementing a restorative justice program and they should be resourced to do the work.

How will you know if the program “works”?

It is helpful for stakeholders to identify a core set of measures for evaluation and clear criteria for data collection, and to establish mechanisms of quality assurance. Stakeholders should integrate into the evaluation a process for ensuring that the program stays true to the principles and values of restorative justice.

Would legislation or other regulations be helpful?

Consider whether state statute or court rule could protect youth’s confidentiality and/or encourage use of the program.

Are you addressing power imbalances?

Be intentional about addressing the inherent power imbalance between the young people and adults in the room as well as other structural power imbalances, such as those defined by class and race.

Conclusion

Restorative justice programs have the potential to uproot and transform our failed, punitive justice system approaches that harm youth, families, communities and public safety. When done right, restorative justice has the potential to restore relationships, heal individuals, and build community capacity.