



# SENTENCING & CORRECTIONS

## Issues for the 21st Century

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## Incorporating Restorative and Community Justice Into American Sentencing and Corrections

by Leena Kurki

Programs based on restorative and community justice principles have proliferated in the United States over the past decade simultaneously with tough-on-crime initiatives like three-strikes, truth-in-sentencing, and mandatory minimum laws. Restorative justice and community justice represent new ways of thinking about crime. The theories underlying restorative justice suggest that government should surrender its monopoly over responses to crime to those most directly affected—the victim, the offender, and the community. Community justice redefines the roles and goals of criminal justice agencies to include a broader mission—to prevent crime, address local social problems and conflicts, and involve neighborhood residents in planning and decisionmaking. Both restorative and community justice are based on the premise that communities will be strengthened if local citizens participate in responding to crime, and both envision responses tailored to the preferences and needs of victims, communities, and offenders.

In contrast to this bottom-up approach, recent changes in sentencing law are premised on retributive ideas about punishing wrongdoers and on the desirability of controlling risk, increasing public safety, and reducing sentencing disparities. Restorative and community justice goals of achieving appropriate, individualized dispositions often conflict with the retributive goal of imposing certain, consistent, proportionate sentences.

There are many ways to resolve this normative conflict. Restorative and community justice initiatives could continue to confine their efforts to juvenile offenders and people who commit minor crimes. This seems unlikely, as these approaches are expanding rapidly and winning many new supporters who want to extend their application. Alternatively, retributive sentencing laws could be revised or narrowed. But this too seems unlikely in the near term. How precisely the two divergent trends will be reconciled remains to be seen. Nevertheless, it seems



### Directors' Message

It is by now a commonplace that the number of people under criminal justice supervision in this country has reached a record high. As a result, the sentencing policies driving that number, and the field of corrections, where the consequences are felt, have acquired an unprecedented salience. It is a salience defined more by issues of magnitude, complexity, and expense than by any consensus about future directions.

Are sentencing policies, as implemented through correctional programs and practices, achieving their intended purposes? As expressed in the movement to eliminate indeterminate sentencing and limit judicial discretion, on the one hand, and to radically restructure our retributive system of justice, on the other, the purposes seem contradictory, rooted in conflicting values. The lack of consensus on where sentencing and corrections should be headed is thus no surprise.

Because sentencing and corrections policies have such major consequences—for the allocation of government resources and, more fundamentally and profoundly, for the quality of justice in this country and the safety of its citizens—the National Institute of Justice and the Corrections Program Office (CPO) of the Office of Justice Programs felt it opportune to explore them in depth. Through a series of Executive Sessions on Sentencing and Corrections, begun

## Directors' Message

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in 1998 and continuing through the year 2000, practitioners and scholars foremost in their field, representing a broad cross-section of points of view, are being brought together to find out if there is a better way to think about the purposes, functions, and interdependence of sentencing and corrections policies.

We are fortunate in having secured the assistance of Michael Tonry, Sonosky Professor of Law and Public Policy at the University of Minnesota Law School, as project director.

One product of the sessions is this series of papers, commissioned by NIJ and the CPO as the basis for the discussions. Drawing on the research and experience of the session participants, the papers are intended to distill their judgments about the strengths and weaknesses of current practices and about the most promising ideas for future developments.

The sessions were modeled on the executive sessions on policing held in the 1980s and 1990s under the sponsorship of NIJ and Harvard's Kennedy School of Government. Those sessions played a role in conceptualizing community policing and spreading it. Whether the current sessions and the papers based on them will be instrumental in developing a new paradigm for sentencing and corrections, or even whether they will generate broad-based support for a particular model or strategy for change, remains to be seen. It is our hope that in the current environment of openness to new ideas, the session papers will provoke comment, promote further discussion and, taken together, will constitute a basic resource document on sentencing and corrections policy issues that will prove useful to State and local policymakers.

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likely that restorative and community justice values will to some extent become more institutionalized in criminal justice processes.<sup>1</sup>



## What is restorative justice?

Restorative justice has evolved from a little-known concept into a term used widely but in divergent ways. There is no doubt about its appeal, although the varied uses of the term cause some confusion. The umbrella term “restorative justice” has been applied to initiatives identified as restorative by some but not by others. Examples are sex-offender notification laws, victim impact statements, and murder victim survivors’ “right” to be present at executions. Most advocates of restorative justice agree that it involves five basic principles:

- Crime consists of more than violation of the criminal law and defiance of government authority.
- Crime involves disruptions in a three-dimensional relationship of victim, community, and offender.
- Because crime harms the victim and the community, the primary goals should be to repair the harm and heal the victim and the community.
- The victim, the community, and the offender should all participate in determining the response to crime; government should surrender its monopoly over that process.
- Case disposition should be based primarily on the victim's and the community's needs—not solely on the offender's needs or culpability, the dangers he presents, or his criminal history.

The original goal of restorative justice was to restore harmony between victims and

offenders. For victims, this meant restitution for tangible losses and emotional losses. For offenders, it meant taking responsibility, confronting shame, and regaining dignity.

This notion has evolved, with the major recent conceptual development the incorporation of a role for the community. Many people still associate restorative justice primarily with victim-offender mediation or, more broadly (but mistakenly), with any victim-oriented services. The more recent conceptualization—that offenses occur within a three-dimensional relationship—may change the movement.

because crime harms the victim and the community, the primary goals [of restorative justice] should be to repair the harm and heal the victim and the community.

All three parties should be able to participate in rebuilding the relationship and in deciding on responses to the crime. The distinctive characteristic is direct, face-to-face dialogue among victim, offender, and increasingly, the community.



## What is community justice?

The concept of community justice is less clear. It can be portrayed as a set of new organizational strategies that change the focus of criminal justice from a narrow, case processing orientation: operations are moved to neighborhood locations that offer flexible working hours and services, neighborhoods are assigned their own officers and are provided with more information than is standard practice, and residents may identify crime problems and define priorities for neighborhood revitalization. Most experience with community justice is in the context of community policing, but prosecutors, judges, and correctional officers are increasingly rethinking their roles and goals.

The most frequently cited standpoints for community justice are problem solving and community empowerment. Problem solving is understood broadly: first, as an effort to build partnerships between criminal justice and other government agencies and between government agencies and neighborhoods; and, second, as an attempt to address some of the complex social problems underlying crime.

most experience with community justice is in the context of community policing, but prosecutors, judges, and correctional officers are increasingly rethinking their roles and goals.

Community justice proponents suggest that criminal justice agencies change the way they interact with the public, learn to listen to citizens, and work together with local people to prevent crime and solve crime-related problems.<sup>2</sup>

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Advocates of community justice believe that to maximize public safety and optimize crime prevention, residents must work on an equal basis with government agency representatives and elected officials. Dennis Maloney, Director of the Deschutes County, Oregon, Department of Community Justice has described the connection between citizen involvement and crime prevention: "In a community justice framework, the goal is to engage as many citizens as possible in building a better community. . . . People who share a strong sense of community are far less likely to violate the trust of others. Their stake in and bond with the community is the strongest force of guardianship to prevent crime from flourishing."



## Should restorative and community justice be incorporated into the criminal justice system?

Advocates of restorative justice and community justice often differ over the desirability of becoming part of the official criminal justice system. Restorative justice proponents believe in the efficacy of grassroots citizen efforts and thus many want to keep restorative justice initiatives separate from the criminal justice system. Community justice

advocates often support a total, systemwide transformation that would incorporate the new principles. Both groups are concerned about the role of government in these approaches and their growing popularity. They emphasize that restorative and community justice represent fundamental change: comprehensive philosophies or theories, not silver bullets or fads.

Proponents are also concerned that criminal justice agencies will add new community or restorative justice programs to appear "fashionable" or to solve a particular problem, but will do so without fundamentally rethinking their missions. Ronald Earle, District Attorney in Travis County, Texas, summarized this concern: "The question is how to focus the criminal justice system and fashion programs on a new way of thinking, not just another way of doing." Some advocates are skeptical about whether the new goals and principles can be meaningfully adopted by criminal justice agencies, which like many other government agencies tend to value passionless, specialized, professionalized, and routinized operations.

Another worry is that government agencies or experts will establish guidelines, standards,

and requirements for programs reflecting these values, thereby bureaucratizing them and once again "stealing the conflicts" from communities. As Ronald Earle put it, the "unstructured lack of standardization is the genius of the movement," but, at the same time, he added, "there is a great temptation to create a national template for community justice programs." The challenge for government will be to encourage and support the new initiatives without stifling the spontaneity, creativity, and grassroots ties that are their strengths.



## What is happening now

A fundamental difficulty in documenting or estimating the impact of restorative or community justice in the United States is the lack of systematic data. No one knows how many or what kinds of programs there are; how many offenders, victims, and volunteers participate; the amounts of restitution paid or community service performed; or the effects on victims, communities, and offenders. It is nearly impossible to monitor what is happening in different States or regions.

Little evaluation research is available, and there is no consensus on how to measure "success." Most advocates contend that recidivism is not the correct or only measure. Evaluations might also consider such measures as victim and offender satisfaction, amounts of restitution or community service, rates at which reparative agreements are fulfilled, levels of volunteer participation and community action, and victims' and offenders' quality of life.

Some advocates do not want to encourage rigorous evaluation because that might create pressure to standardize and "expertize" the movements. But because the varied programs and practices are what make restorative and community justice visible, concrete, and distinctive, it is important to document their

types, analyze their characteristics, and evaluate outcomes.

The dearth of information affects the writings of practitioners and academics. There is, however, a sizable literature on the principles and goals of restorative justice, how it differs from traditional criminal justice approaches, and its processes and terminology.<sup>3</sup> Other works describe programs or present details of local projects.<sup>4</sup> Most of the literature on community justice focuses on community policing, with little information on community prosecution, courts, or corrections.

### Restorative justice practices

Although something akin to restorative justice has long been observed in premodern and indigenous societies, restorative justice principles, in the form of victim-offender reconciliation programs, appeared in Western industrialized countries only in the 1970s. The first program was established in 1974 in Kitchener, Ontario. By the 1990s, such programs had spread to all Western countries—at least 700 in Europe and 300 in the United States.

Victim-offender mediation. Victim-offender mediation is the most widespread and evaluated type of restorative program. Offenders and victims meet with volunteer mediators to discuss the effects of the crime on their lives, express their concerns and feelings, and work out a restitution agreement. The agreement is often seen as secondary to emotional healing and growth. Victims consistently report that the most important element of mediation is being able to talk with the offender and express their feelings, and offenders also emphasize the importance of face-to-face communication. Advocates believe that developing an offender's empathy for the victim has preventive effects.

In many countries, victim-offender mediation is widely used. In Austria, for example, it became an official part of the juvenile justice

system as early as 1989. Public prosecutors refer juveniles to mediation, probation officers coordinate cases, and social workers serve as mediators. If an agreement is reached and completed, the case is dismissed.<sup>5</sup> In the United States, most programs are operated by private, nonprofit organizations; handle largely juvenile cases; and function as diversion programs for minor, nonviolent crimes. However, there is a movement to develop programs established and operated (or at least initiated) by corrections departments, police, or prosecutors and used as a condition of either probation or dropping charges. Most studies of mediation programs report high rates of success.<sup>6</sup>

Advocates are beginning to challenge the assumption that mediation is not suitable for violent or sexual crimes. Increasingly, in the United States and Canada, for example, victims and offenders meet in prisons. These meetings are not oriented to a tangible goal such as a restitution agreement, nor does the offender obtain benefits like early release or parole consideration. Usually the meetings are held because the victim wants to meet the offender and learn more about what happened to reach beyond fear and anger and facilitate healing. The results of a Canadian survey indicated that 89 percent of victims of serious, violent crimes wanted to meet the offender.<sup>7</sup>

Serious violent crimes are usually mediated on a case-by-case basis, but the need for permanent programs is growing. Such programs are offered, for example, by the Correctional Service of Canada in British Columbia and the Yukon Territory and by the Texas Department of Criminal Justice.

Family group conferencing. Family group conferencing is based on the same rationales as victim-offender mediation, with two main differences. Conferencing involves a broader range of people (family, friends, coworkers, and teachers), and family members and other

supporters tend to take collective responsibility for the offender and for carrying out his or her agreement. The other difference is that conferencing often relies on police, probation, or social service agencies for organization and facilitation.

Family group conferences originated in New Zealand, where they became part of the juvenile justice system in 1989. There, the new juvenile justice model, which incorporates Maori traditions of involving the family and the community in addressing wrongdoing, has four dispositional options:

- An immediate warning by the police.
- “Youth Aid Section” dispositions in which a special police unit may require, for example, an apology to the victim or community service.
- Family group conferencing.
- Traditional youth court sentencing.

About 60 percent of juvenile offenders receive a warning or go to the Youth Aid Section, 30 percent go to conferencing, and 10 percent go to youth court.<sup>8</sup>

By the mid-1990s, family group conferencing had been adopted in every state and territory of Australia. In South Australia, it is used statewide as a component of the juvenile justice system and resembles the New Zealand approach. In Wagga Wagga, New South Wales, conferences (originally part of a police diversion program) were organized and facilitated by police officers who were often in uniform.<sup>9</sup> Responsibility was transferred to juvenile justice agencies in 1998, and trained community members now facilitate conferences. In Canberra, the Federal Police set up a program called the Reintegrative Shaming Experiment, which involved more than 100 trained police officers.

There is evidence that conferencing can be successful. A recent evaluation of the Bethlehem, Pennsylvania, Police Family Group

## Minnesota—A Pioneer in Restorative Justice

Minnesota has been a groundbreaker in restorative justice. Its Department of Corrections created the “Restorative Justice Initiative” in 1992, hiring Kay Pranis as a full-time Restorative Justice Planner in 1994—the first such position in the country. The initiative offers training in restorative justice principles and practices, provides technical assistance to communities in designing and implementing practices, and creates networks of professionals and activists to share knowledge and provide support.

### Sentencing circles

Besides promoting victim-offender mediation, family group conferencing, and neighborhood conferencing, the department has introduced sentencing circles. Citizen volunteers and criminal justice officials from Minnesota have participated in training in

the Yukon Territory, where peacemaking circles have been held since the late 1980s. In Minnesota, the circle process is used by the Mille Lacs Indian Reservation and in other communities in several counties.

### The circle process

The circle process usually has several phases. First, the Community Justice Committee conducts an intake interview with offenders who want to participate. Then, separate healing circles are held for the victim (and others who feel harmed) and the offender. The committee tries to cultivate a close personal relationship with victims and offenders and to create support networks for them. In the end, a sentencing circle, open to the community, meets to work out a sentencing plan. In the towns of Milaca and Princeton, followup circles monitor and discuss the offender’s progress.

Conferencing program revealed that typical police officers were able to conduct conferences in conformity with restorative justice and due process principles if adequately trained and supervised, and that very high percentages of offenders, victims, and other participants were pleased with the process.<sup>10</sup> Evaluation of Canberra’s Reintegrative Shaming Experiment showed similar results.<sup>11</sup>

**Sentencing circles.** Sentencing circles originated in traditional Native Canadian and Native American peacemaking. They involve the victim and the offender, their supporters, and key community members, and they are open to everyone in the community. They attempt to address the underlying causes of crime, seek responses, and agree on offenders’ responsibilities. The process is based on peacemaking, negotiation, and consensus, and each circle member must agree on the outcomes.

Sentencing circles are so named because participants sit in a circle, and a “talking piece” (a feather, for example) is passed from person to person. When participants take the talking piece, they explain their feelings about the crime and express support for the victim and the offender. Separate circles often are held for the offender and the victim before they join in a shared circle.

In Minnesota, sentencing circles are used not only in Native American communities but also in rural white, suburban, and inner-city black communities (see “Minnesota—A Pioneer in Restorative Justice”). Community Justice Committees, established by citizen volunteers, handle organizational and administrative tasks and provide “keepers” who lead the discussions. Judges refer cases, and the committees make the final decision on acceptance. The agreements reached are presented to the judge as sentencing recommendations. In some cases, the judge, prosecutor, and defense

attorney participate in the circle, and then the agreement becomes the final sentence.

Reparative probation and other citizen boards. Reparative probation in Vermont involves a probation sentence ordered by a judge, followed by a meeting between the offender and volunteer citizen members of a Reparative Citizen Board. Together they draw up a contract, based on restorative principles, which the offender agrees to carry out. Fulfilling the contract is the only condition of probation (see “Vermont—Statewide Reparative Probation”).

Vermont’s program is different from most other restorative justice initiatives in the United States. Designed by the State’s Department of Corrections, it operates statewide, handles adult cases, and involves a sizable number of citizen volunteers. Compared with family group conferencing or sentencing circles, the Reparative Citizen Boards work faster, require less preparation, and can process more cases; however, they involve fewer community members. For example, offenders’ and victims’ families and supporters usually are not present.

Citizen boards also may be established to adjudicate minor crimes. For example, a Merchant Accountability Board in Deschutes County, Oregon, consists of local business owners who adjudicate thefts of property valued at \$50 or less, and some more serious cases involving property valued at between \$51 and \$750. Under an agreement with the district attorney, the police refer all minor shoplifting cases directly to the program. If offenders decide to participate, they are typically ordered by the board to pay fines, make restitution, or both.

Manitoba’s Restorative Resolutions Project offers an alternative to custodial sentences for offenders who otherwise are likely to face a minimum prison sentence of 6 months. Offenders and project staff develop sentencing plans, and victims are encouraged to partici-

## Vermont—Statewide Reparative Probation

A pilot reparative probation program began in Vermont in 1994, and the first cases were heard by a Reparative Citizen Board the following year. Three features distinguish this restorative justice initiative from most others in the United States: The Department of Corrections, headed by John Gorczyk, designed the program; it is implemented statewide; and it involves a sizable number of volunteer citizens. In 1998, the program was named a winner in the prestigious Innovations in American Government competition.

### The process

The concept is straightforward. Following an adjudication of guilt, the judge sentences the offender to probation, with the sentence suspended and only two conditions imposed: the offender will commit no more crimes and will complete the reparative program. The volunteer board members meet with the offender and the victim and together discuss the offense, its effects on victim and community, and the life situations of victim and offender. All participants must agree on a contract, to be fulfilled by the offender. It is based on five goals: the victim is restored and healed, the community is restored, the offender understands the effects of the crime, the offender learns ways to avoid

reoffending, and the community offers reintegration to the offender. Since reparative probation targets minor crimes, it is not meant as a prison diversion program.

### The numbers

In 1998, the 44 boards handled 1,200 cases, accounting for more than one-third of the probation caseload. More than 300 trained volunteers serve as board members. Ten coordinators handle case management and organization for the boards. The goal is to have the boards handle about 70 percent of the targeted probation cases. That only about 17 percent of offenders fail to complete their agreements or attend followup board meetings is a measure of the program's success. These offenders are referred back to court.

### Related initiatives

Other practices based on restorative justice are under way. More than 150 volunteers or Department of Corrections staff have been trained in family group conferencing. A Community Justice Center is operating in Burlington, and others are being developed elsewhere. The department is also looking into sentencing circles and ways to become more active in crime prevention and early intervention.

### Community justice practices

People who have no personal experience with community justice are often preoccupied with what “community” means and who is involved. Explanations vary. Reginald Wilkinson, Director of Ohio’s Department of Rehabilitation and Correction, says: “In a community, there would exist a sense of hope, belonging, and caring . . . . A sense of commitment, responsibility, and sacrifice would be basic

tenets of a communitarian.” For Minnesota Department of Corrections Restorative Justice Planner Kay Pranis, “Community self-defines around the issue that surfaces, so everybody who sees themselves as a stakeholder in a particular issue [makes up the community].” Vermont Department of Corrections Commissioner John Gorczyk says: “Beyond place, community is defined by relationships and the amount of interaction. In my community, the quality of those interactions, doing favors for one another, is what builds community.”

Although in “practicing” community justice, it is essential to identify the community and consider possible definitions, it is at least as important to think about the community’s *role*. While many new approaches in criminal justice have improved access to and satisfaction with justice services, often they have not transformed the role of citizens from service recipient to participant and decisionmaker.<sup>13</sup> For many community justice advocates, the ultimate goal is for communities to feel ownership of programs, but that can be achieved only if citizens participate. Even then the question remains whether government genuinely shares power or simply allows communities to supplement its power and exercise it only in certain types of cases.

Community policing and prosecution. Experiences with community policing show there is no shared understanding of the community’s role, and that it is difficult to generate citizen participation. Priorities and routines vary; for example, some efforts rely on heavy street-level enforcement, while others emphasize citizen involvement, better quality public services, delivery of community-based treatment, or diversionary policing that withholds enforcement as a way to build relationships with communities.

Few studies have attempted to measure the extent to which the rhetoric of community empowerment, involvement, and partnership

pate. The plans are presented to judges as nonbinding recommendations. Most plans require restitution, community service, and counseling or therapy. A recent evaluation revealed that offenders who participate have significantly fewer supervision violations and slightly fewer new convictions than those in comparison groups.<sup>12</sup>

## Travis County, Texas—Community Justice as the Prosecutorial Response

Ronald Earle, District Attorney of Travis County (Austin), Texas, for more than 20 years, is a strong advocate of restorative and community justice. Recognizing that people's natural reaction to crime is anger and fear, particularly if they lack power to influence responses, he believes this wasted energy can fuel positive change. This can be done if citizens are empowered and participate in planning and deciding on the response to crime.

To promote such participation, he drafted the Texas law that authorizes in each county a Community Justice Council and Community Justice Task Force. The task force includes representatives of criminal justice agencies, social and health services, and community organizations. With task force assistance, the council, consisting of elected officials, handles planning and policymaking and prepares a Community Justice Plan.

Many efforts are directed at juvenile offenses. In Austin, the Juvenile Probation Office offers victim-offender mediation for young people in trouble. For misdemeanors, juveniles may be diverted from court to Neighborhood Conference Committees. These consist of panels of trained adult citizens who meet with the juvenile offenders and their parents and together develop contracts tailored to the case.

The Travis County Children's Advocacy Center provides support and help to abused children through collaboration among social and criminal justice agencies, medical professionals, and private citizens. The Child Protection Team brings together police officers, social workers, and prosecutors to improve responses to child abuse and to reduce traumatization when cases are investigated and prosecuted.

building becomes reality, and the results are not particularly encouraging. Community input is often limited to assisting law enforcement. Many evaluations have not shown positive results, since implementation is often incomplete or partial.<sup>14</sup>

Many applications of community policing and prosecution are not fundamentally different from traditional approaches, although they may shift control to local levels and include the community in law enforcement efforts. They often promote tougher responses to crime than do traditional approaches because the emphasis is on a broader view of crime control that takes seriously minor, nuisance, and quality-of-life offenses. Some approaches, such as the one taken by the District Attorney of Travis County, Texas, however, clearly identify themselves as restorative (see "Travis

County, Texas—Community Justice as the Prosecutorial Response").

Applications in courts and corrections. The first community court in the United States, New York City's Midtown Community Court, is based on the idea of partnership with the neighborhood and focuses on quality-of-life crimes. Several restorative elements are evident:

- Offenders are sentenced to work on projects in local neighborhoods.
- Court staff try to link offenders with drug treatment, health care, education, and other social services and thus combine punishment with help.
- The community is encouraged to participate in shaping restorative, community-based sanctions.<sup>15</sup>

Nearly 70 percent of those convicted are ordered to perform community work, and of these nearly 70 percent complete it without violations. By fall 1996, almost 33,000 defendants had been arraigned.<sup>16</sup> The court houses health care and drug treatment providers, organizes education and job training, maintains mediation services for community-level conflicts, and provides counseling rooms and space to perform community service.

The Manhattan Court opened in 1993 and was followed by several others. The Portland (Oregon) Community Court began operations in 1998, and plans for community courts are under way in Baltimore, Hartford (Connecticut), Hempstead (New York), Indianapolis, Minneapolis, St. Louis, and no doubt elsewhere.

Deschutes County, Oregon, has made a comprehensive effort to implement community justice in corrections (as distinct from traditional community corrections), reinventing its Community Corrections Department as the Department of Community Justice. Committed to principles of both community and restorative justice, the department differs in this respect from most current community policing and prosecution initiatives.

The Deschutes approach is especially ambitious (see "Deschutes County, Oregon—Reinventing Community Corrections"). A true paradigm shift would combine operational strategies and the crime prevention and citizen involvement goals of community justice with the values and practices of restorative justice.



## Can the justice system incorporate restorative principles?

**A**lthough many activists would prefer that restorative justice remain an unofficial alternative to the criminal justice system,

## Deschutes County, Oregon—Reinventing Community Corrections

Deschutes County, Oregon, is attempting to apply community justice principles throughout its correctional system. In 1996 the County Board of Commissioners passed a “Community Justice Resolution,” which recognizes community justice as “the central mission and purpose of the county’s community corrections effort.” It calls for incorporating community justice principles into corrections by striking a balance among prevention, early intervention, and correctional efforts; ensuring participation by and restoration of victims; including community decisionmaking in crime prevention and reduction; and fostering offender accountability. In recognition of this major change, the Community Corrections Department, headed by Dennis Maloney, was renamed the Department of Community Justice.

### Basic principles

A lay citizen body, the Commission on Children and Families, was assigned authority over the department’s budget. In 1998, it set budget principles that for the first time included:

- Enhancing public safety.
- Paying particular attention to offender accountability, responsibility, and skill development.
- Incorporating the findings of research on cost-effective interventions.
- Focusing on restoration and defining offenders’ accountability as meeting their obligations to victims and the community.
- Encouraging volunteer involvement and reducing dependence on service delivery by professionals.

- Managing crime problems as cost effectively as possible.
- Directing reallocated resources to crime prevention.
- Viewing investment in prevention as the first order of business.

State law permits the county to apply any savings in juvenile detention to crime prevention.

### Community action and other initiatives

A number of former juvenile probation officers constitute a Community Action Team, which devotes most of its time and resources to neighborhood crime prevention. The new Community Justice Center contains space for juvenile custody facilities, houses a number of criminal justice agencies as well as victim service and other nonprofit organizations, and has a meeting room available for community groups.

Deschutes County also offers victim-offender mediation in criminal cases and dispute resolution in other conflicts. Merchant Accountability Boards, consisting of local business owners, adjudicate minor shoplifting cases. Reparative community service projects are operated through the collaboration of business owners, neighborhood residents, and community leaders. As part of these projects, offenders have built houses for Habitat for Humanity, cut and distributed firewood for elderly citizens, and built and maintained parks.

others contend that there are reasons for a systemwide shift to incorporate its values.

### Why not the best?

If restorative justice is a significantly better way to deal with crime, proponents ask why not implement it systemwide? If it really is a better idea, why should it not become the governing principle of the whole criminal justice system rather than be confined to small-scale, grassroots activities? Minnesota Restorative Justice Planner Kay Pranis emphasized the need to focus on community when she said, “It is very important for us to recognize that our current criminal justice interventions actually destroy community. So even to get neutral would be a huge step for this system.”

### No significant or lasting effects on values and practices

Advocates contend that restorative justice is unlikely to have significant or lasting effects on the official criminal justice system if it continues to operate primarily as local, unorganized grassroots activities. It is doubtful whether any program can be truly restorative in a system based on retributive values. Even if restorative justice principles cannot completely transform the justice system, they may turn criminal justice policy and values in another, arguably better, direction.

### Increased control and punishment

Advocates argue that if crime is seen in both traditional and restorative ways—as an offense against the state and as harm to the victim and the community—a double system of punishment may be created. Offenders will first be processed through the traditional system and receive punishment and then move to the informal restorative programs to agree to a reparative contract. As a consequence, they often will be subjected to greater social control and more sanctions.



## Trivialization of restorative programs

If the criminal justice system endorses restorative justice principles but does not participate in designing, implementing, and monitoring programs based on them, it is

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not likely to refer other than trivial cases. Criminal justice agencies and officials understandably do not want to rely heavily on practices whose outcomes they cannot comprehend, influence, predict, or trust. For the same reason, judges often are reluctant to divert offenders to these programs.

## No resource savings

Although restorative justice advocates emphasize that the goal is not decreased criminal justice caseloads or costs, it is unrealistic not to consider resource savings in the current climate of exploding correctional costs. Few resources will be saved if restorative solutions only supplement traditional punishments or are used only for minor crimes.

## Inconsistent practices and outcomes

The most common argument *against* restorative justice is that practices and outcomes vary with the particular program, and that fairness requires comparable crimes and criminals to be punished equally. Restorative justice involves individualized responses to crimes.

Proportionality and equality in punishment are often understood narrowly as calling for the *same* sentence for people who have committed similar crimes. However, they could just as well be interpreted as requiring *comparable* sentences for comparable offenses. This would mean punishment or

responses may vary as long as they are meaningfully related to the nature and effects of the crime. Thus, in principle, there is no reason restorative justice cannot respect the tenets of proportionality and equality.

In practice, responses to crime will be different and inconsistent as long as restorative justice is *not* implemented systemwide. Many people are concerned that assigning sub-

stantial punishment power to lay volunteers will mean random, inequitable, and capriciously severe sanctions. Restorative justice, with its positive, constructive goals, attempts to move in the opposite direction. If participants, including the offender, understand and accept restorative justice principles, the requirements of fairness will not be circumvented and there will be no extreme consequences.

If there is no systemwide shift, programs based on restorative justice will probably continue to handle only minor offenses, and problems of inequity will likely not become serious. It will not much matter whether one offender is sentenced to 10 hours of community service and \$50 in restitution and another, who commits a similar crime, to 20 hours of service and \$100 in restitution. However, the more serious the crimes, the more unjust the differences could become and the greater the need for consistent practices.

Other matters of equity relate to socioeconomic considerations. Without official encouragement and support, restorative justice initiatives are likely to be concentrated in middle-class white neighborhoods or rural areas, and volunteers will disproportionately be white, middle-class, and middle-aged and older individuals, as these are the demographic groups from which activists tend to emerge. Moreover, if citizen activists work on their

own, new practices may be concentrated in areas with relatively minor crime problems. By contrast, disadvantaged urban neighborhoods with large proportions of minority group members and immigrants—who are disproportionately affected by serious crime—would be unlikely to benefit.



## The future of restorative and community justice

How deeply restorative and community justice ideas will penetrate the traditional justice system remains to be seen. So far, restorative justice approaches are used much more for juveniles than for adults, and for minor offenses rather than for serious crime. Experience with community justice has consistently shown that generating citizen involvement and building relationships with the community is a challenge. Both movements have spread rapidly, however, and both are increasingly reaching out to encompass adult offenders, more serious crime, and disadvantaged urban communities where, arguably, the need is greatest.

## Notes

1. This paper is one of four in the first “round” of publications from the Executive Sessions on Sentencing and Corrections. Together the four constitute a framework for understanding the issues raised in the sessions. The other three are *Fragmentation of Sentencing and Corrections in America*, by Michael Tonry (NCJ 175721); *Reconsidering Indeterminate and Structured Sentencing*, by Michael Tonry (NCJ 175722); and *Reforming Sentencing and Corrections for Just Punishment and Public Safety*, by Michael E. Smith and Walter J. Dickey (NCJ 175724). All: Research in Brief—Sentencing & Corrections: Issues for the 21st Century, Washington, DC: U.S. Department of Justice, National Institute of Justice/Corrections Program Office, September 1999.

2. Barajas, Eduardo, “Moving Toward Community Justice,” in *Community Justice: Striving for Safe, Secure, and Just Communities*, Washington, DC:

U.S. Department of Justice, National Institute of Corrections, 1996.

3. Examples are Braithwaite, John, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts," in *Crime and Justice: A Review of Research*, vol. 25, ed. Michael Tonry, Chicago: University of Chicago Press, 1999; and Van Ness, Daniel, and Karen Heetderks Strong, *Restoring Justice*, Cincinnati, OH: Anderson Publishing, 1997.

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6. Umbreit, Mark, *Victim Meets the Offender: The Impact of Restorative Justice and Mediation*, Monsey, NY: Criminal Justice Press, 1994. It should be noted that evaluations of restorative justice conducted in the United States are usually not based on experimental and control groups, do not often measure recidivism rates, and seldom use sophisticated research designs.

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