

REPORT

# Juvenile Justice

Young People and Restorative Justice





# Introduction

At a recent NCSL policy roundtable in Nashville, Tenn., participants heard one family's experience with the criminal justice system. "Our 71-year-old dad was killed abruptly one morning going to the store to purchase a light for the family truck. He was hit by a 13-year-old driver after he hit another car, sped away and ran a red light." The family was devastated and noted that the resulting sentence for the young driver would not help them achieve justice or find closure. After months of soul searching, the family decided to take part in a restorative justice process. Restorative justice models give people who have been harmed the opportunity to be heard, ask questions, and seek restoration and closure. It also allows those responsible for crimes to apologize and make amends. "Victims of these crimes are not getting justice in the regular system. No one can bring my dad back. But I need to know why," one family member said. This is exactly what restorative justice is all about.

Restorative justice is one policy area being examined as states continue to reexamine and rebalance approaches to juvenile justice policy. These models typically involve family members and the community in discussions around accountability, reparations, and rehabilitation. The restorative justice model seeks to balance the needs of the victim, the individual who committed the offense, and the community by repairing the harm caused by delinquent acts.

According to the [Annie E. Casey Foundation](#), the model "uses highly trained facilitators to help connect the responsible party with the harmed party as well as with supportive family and community members. The group works together to determine the appropriate response and, if possible, repair, involved." All parties, including the victims, must agree to participate in the restorative justice process, while facilitators collaborate separately to prepare parties for a restorative conference to discuss what happened.

**"The person harmed has an opportunity to share how they were affected and what they need to heal. The young person assumes responsibility for causing harm and articulates what they need to reduce the likelihood of it happening again. The facilitator helps participants reach an agreement that meets everyone's needs. Solutions might include financial restitution, replacing items that were broken, lost, or completing certain chores on behalf of the person or community harmed."**

Source: [What is Restorative Justice for Young People?](#)

The Nashville family worked with facilitators at the [Raphah Institute](#) for 15 months to process through their anger, before they met with the young man who killed their father. The victim's wife of 50 years, the matriarch of the family, said it was healing to have the opportunity to hear from the young man in his own words. After speaking with him and his family, they learned he wanted to be a scientist. The family's deep grief and complicated emotions about the process were palpable, yet each family member emphasized their satisfaction in the restorative justice process—so much that they were willing to go through the pain of the story again to tell policymakers how it works.





# JUVENILE DIVISION

## Eligibility

Restorative justice programs typically target youths who have committed minor or nonviolent offenses; however, some programs also accept those who have committed violent crimes. Programs vary as to the ages of the youth accepted, but participants are typically between 11 and 17.

Some research suggests people convicted of different types of offenses may participate in varying restorative justice programs based on the level of risk they present to the community. For example, short-term, low-intensity programs (such as victim-offender mediation) may be used for nonviolent, low-risk youth. Conversely, high-intensity programs that emphasize direct dialogue between victims and justice-involved youth (such as victim offender dialogue) may be reserved for high-risk individuals.

### COMMON RESTORATIVE JUSTICE PRACTICES

**Victim Offender Mediation:** Typically used with victims and offenders of property crimes and minor assaults. Participants include the victim, offender, and facilitator.

**Restorative Community Conferencing or Family Group Conferencing:** Routinely involves support persons for both victims and offenders, as well as community participants. This approach emphasizes supporting offenders in taking responsibility for their actions and in changing their behaviors.

**Circles:** Sometimes referred to as “peacemaking circles,” “repair of harm circles” or “sentencing circles,” the number and types of participants are like those gathered for conferencing but include wider community member participation, either as interested persons, representatives of the criminal justice system, or as additional circle keepers or facilitators. Circles are more focused on the harm done to the community than the other approaches.

**Victim-Offender Dialogue:** used in crimes of severe violence, such as murder, vehicular homicide, or serious felony assault. It is strictly victim-initiated, not stipulated by the court, and occurs post-conviction and usually during incarceration.

*Source:* [Charter for Compassion](#); [OJJDP Restorative Justice for Juveniles](#)



# Studies on Efficacy

In 2015, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and George Mason University conducted a study to evaluate the effectiveness of restorative justice programs and practices. The analysis found that such programs moderately reduced future delinquent behavior, increased victim satisfaction and increased perceptions of fairness in the justice system. The research also revealed that certain types of restorative justice programs—including victim-offender conferencing, family group conferencing and arbitration or mediation programs—helped reduce lawbreaking behaviors. A [report](#) on Community Works West’s Restorative Community Conferencing (RCC) program, which diverts over 100 youth per year away from the juvenile legal system, analyzed data from January 2012 through December 2014. Notable findings reveal that, of 102 young people who completed the RCC program, after 12 months, only 18.4% of the RCC youth were subsequently adjudicated delinquent (determined by the court to have committed another delinquent act) compared to 32.1% of the control group of youth whose cases were processed through the traditional juvenile system. Over time, recidivism rates for RCC youth rose slightly, while the recidivism rates of the control group youth increased significantly over time. The RCC program carries significant cost-saving potential, due to the lower rates of reoffending from using RCC, combined with the RCC intervention’s average one-time cost of \$4,500, versus \$23,000 per year on average for a youth on probation.

## RESTORATIVE JUSTICE AT EACH STAGE OF A JUVENILE CASE

Nebraska’s Supreme Court provides resources regarding their juvenile restorative justice process, including a flowchart describing the various stages in which restorative practices are considered during a juvenile case. Diversion allows juveniles to participate in restorative justice practices before a petition has been filed. Once a petition is filed, juveniles still may participate in restorative justice practices through each stage of their case, pre-adjudication, post-adjudication, and even post-disposition. In Nebraska, restorative justice practices are implemented by various organizations depending on the stage of their case.

Source: [Nebraska Supreme Court](#)

### Restorative Practices in the Nebraska Juvenile Justice Process

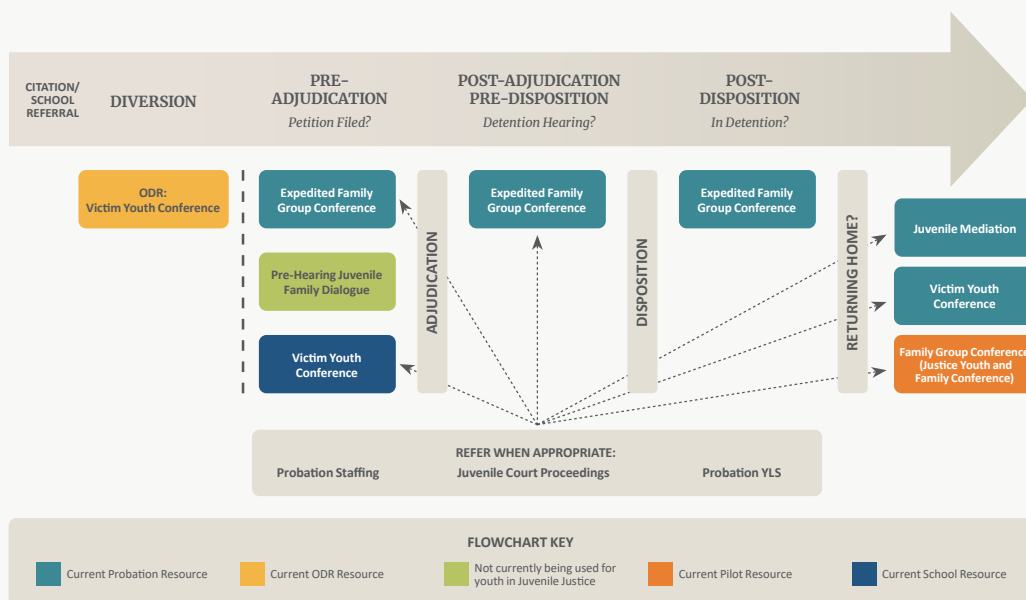




IMAGE COURTESY OF LONGMONT COMMUNITY JUSTICE PARTNERSHIP

## LONGMONT, COLO.

The city of Longmont Colo. has a self-funding, regional Restorative Justice Pilot Project. Adult and youth facilitators from schools and law enforcement are trained to facilitate programs under the Longmont Community Justice Partnership. (LCJP).

Since 2007, the LCJP has entered all case data into a custom database designed to capture every bit of information relevant to the case and program. With the assistance of a data analysis company, LCJP can conduct ongoing evaluation of their Community Restorative Justice case data and make it available to the public. Some of the information that has been gathered so far includes the following:

- Over 80% of responsible persons ages 11-17 successfully complete reparative contracts.
- Adult responsible persons are as likely to be successful as youth participants.
- Culturally responsive restorative justice processes allow all responsible persons equal opportunity to be successful, regardless of their ethnicity, culture or background.
- Success rates are well above 80% for most offenses; however, there is room to improve success rates for harassment and felony theft.

Source: [Longmont Community Justice Partnership](#)

# Victims & Restorative Justice

Not all victims of crime prefer traditional prosecution. Some victims have no desire to participate in the criminal process at all due to the possibility of being retraumatized by a criminal prosecution, even with the implementation of procedural reforms promoted by the victims' rights movement and others. However, a recent survey of crime victims revealed they preferred people be held accountable through options other than incarceration, such as rehabilitation or community service.

Even when victims suffer similar harms and come from similar backgrounds, they often have distinct, sometimes overlapping, needs and objectives. Proceeding from the premise that victims are a diverse group with differing needs, restorative justice focuses on victims who might prefer, and be better served by, a non-adversarial process that is centered on their needs.

According to recent [research](#), adversarial adjudication directed at convicting and incarcerating offenders risks retraumatizing victims rather than promoting healing. There are many reasons for this. Some argue it denies victims any significant control over the process, including control over their own narratives. The authors suggest that when victims voluntarily choose to engage in a restorative justice process, it may be healing because it gives victims agency and offers possibilities for addressing and repairing the harm that a traditional criminal prosecution cannot.

Preliminary findings from recent studies appear to confirm victim approval of restorative justice practices. For example, a review of Community Work West's restorative justice program found that 91% of victims participating in the Restorative Community Conferencing program reported that they would participate in another. In fact, some experts argue that victims should have a "right" to restorative justice. For example, some scholars argue that the law should accord victim-survivors a new right—a right of access to restorative justice process. Specifically, three needs of many victim-survivors are not being addressed by traditional justice practices but are appropriately addressed by restorative practices. These include:

1. The need for information from the responsible party.
2. The need to feel heard by the person who harmed the victim-survivor.
3. The need for a role in determining what the responsible party needs to do to "right the wrong" to the victim-survivor.

## Prosecutor Perspectives

Prosecutors [play](#) a pivotal role in restorative justice practices. Many states have prosecutor-led diversion and have taken the lead when championing restorative justice practices. They believe restorative approaches provide accountability, improve safety and meet the needs of crime survivors.

[Fair and Just Prosecution](#) (FJP), an organization that brings together elected local prosecutors who are committed to promoting a fair, equitable, compassionate and fiscally responsible justice system, published a report on restorative justice strategies. Along with highlighting model programs, the report makes several recommendations for prosecutors who would like to promote practices that engage and establish trust in the community and advance a deeper understanding by the individual of the consequences of their misconduct.

Those recommendations include:

1. Establish prosecutor-led restorative justice diversion programs.
2. Work with community partners to define an expansive scope of offenses eligible for restorative justice.
3. Collaborate with local restorative justice initiatives.
4. Provide restorative justice training to all prosecutors.
5. Support legislation and policy that promote, develop, and fund restorative justice programs.
6. Create or chair a restorative justice advisory group.
7. Learn about and visit best-practice restorative justice programs.





Additionally, The Institute for Innovation in Prosecution (IIP) published a [best practice guide](#) for restorative justice in January 2022 focusing on smaller jurisdictions. It discusses the additional challenges small jurisdictions have when creating a restorative justice program, including funding constraints, a lack of formal community-based organizations and a pushback from community members or leaders who prefer traditional prosecution.

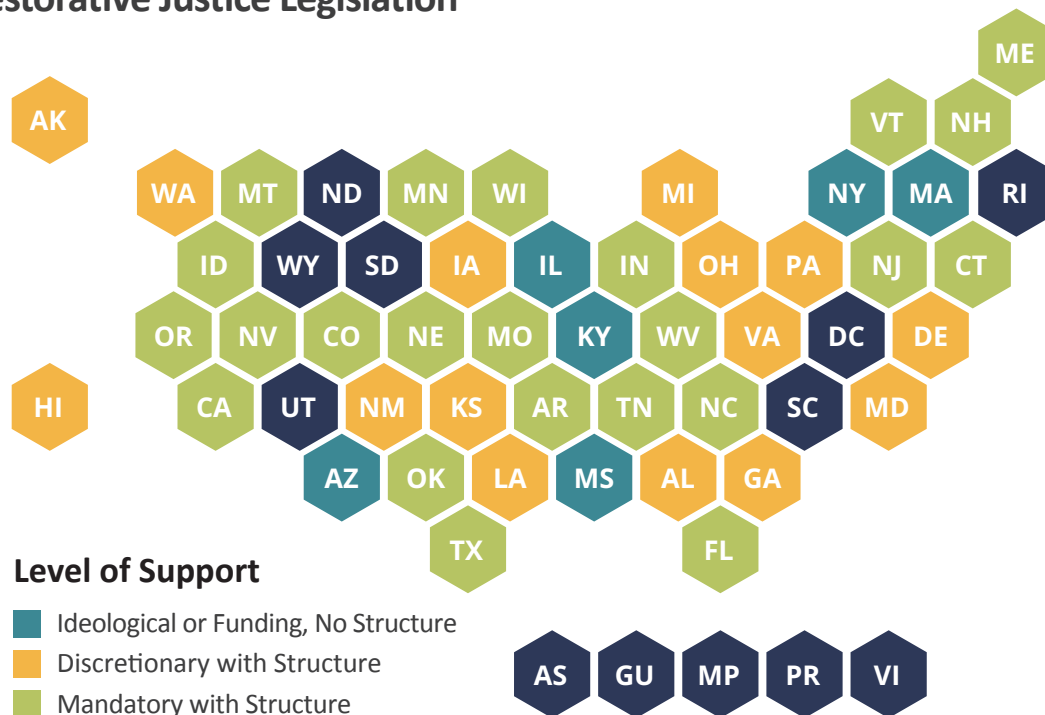
## State Legislation

Lawmakers have been enacting restorative justice policy for over 40 years, with some measures more comprehensive than others. The first bill enacted was in 1975 by Alabama (Alabama Code § 45-39-82.05(c)), which allows for district attorneys to establish restorative justice practices as part of their pre-trial diversion program. For a more complete history of bill passage, The University of Denver School of Social Work hosts an interactive comprehensive [database](#) of restorative justice laws by state. Using their data, six states have nine or more statutes supporting restorative justice. Sixteen states have three to seven statutes. Fourteen states have one or two statutes. Thirteen states have no statutory language supporting restorative justice.

NCSL's [Juvenile Justice Bill Tracking Database](#) can be used as a resource for tracking more recent enactments and introduced legislation. As of August 2022, six states have enacted laws with ideological or funding support for restorative justice programs, 14 states have laws that provide structural guidance should localities desire to setup restorative justice programs, and 23 states have passed laws that establish such programs with structural guidance.

Colorado enacted comprehensive restorative justice [legislation](#) in 2007. The measure created a state-level Restorative Justice Coordinating Council and strongly encouraged local juvenile justice planning committees to consider these programs. A subsequent 2008 [bill](#) added restorative justice practices to juvenile diversion and as sentencing and probation options. The bill also requires judges make youth and their parents or guardians aware that victim-offender conferences may be part of sentencing.

## Restorative Justice Legislation



Sources: Sliva, S. M. (2019). Restorative justice legislative directory [dataset]. Retrieved from <https://socialwork.du.edu/content/restorative-justice-laws>; NCSJ Juvenile Justice Bills Tracking Database. Retrieved from <https://www.ncsl.org/research/civil-and-criminal-justice/ncsls/juvenile-justice-bill-tracking-database.aspx>.

Today, states are also enacting legislation to fund restorative justice programs. A recent New Jersey [law](#) provides \$8.4 million over two years for four pilot community-based restorative justice hubs, which also provide reentry services. The legislature has since [expanded](#) the pilot program to a fifth city. Indiana also passed a [law](#) that includes a provision for setting up a juvenile diversion grant program to “emphasize the use of restorative justice practices.” Several states have also enacted legislation to incorporate restorative justice practices in the juvenile justice system. For example, West Virginia allows young people charged with status offenses and nonviolent misdemeanors to be diverted to a restorative justice program that emphasizes dialogue and repairing the harm against the victim and community.

Privileged information has become a nuanced and timely issue for states which have adopted restorative justice models. For example, in many restorative justice programs, the person responsible for the harm may be asked to provide a letter of accountability to the person they harmed. Participants' counsel raised fears that these letters of accountability would later be used against them in a court of law if restorative programs are not successfully completed and traditional prosecution is commenced. States often address such concerns by creating legal privileges. For example, doctor-patient privileges and attorney-client privileges are both designed to encourage participants to be open and honest without fear of reprisal. In an attempt to increase open and honest participation, Illinois recently passed a [law](#) providing confidentiality protection for restorative justice processes, setting up a legal privilege similar to an attorney-client privilege. Maine also enacted a [law](#) to protect statements of juveniles made during restorative justice programs. Oregon has also addressed this issue by passing a [law](#) to protect "facilitated dialogue and responsibility letter bank program communications".





## Conclusion

Restorative justice models present an alternative unique way for communities to understand and respond to crime. It allows individuals to take accountability, responsibility and attempt to repair the harm done. Victims/survivors can determine what type of repair may help to make them whole—gaining agency in the process. These models are a part of a greater effort by policymakers to reduce the over-reliance of secure confinement and promote collaboration in the justice system.



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“Accountability and Repair: The Prosecutor’s Case for Restorative Justice.” *Restorative Justice in the States: An Analysis of Statutory Legislation and Policy*

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Building Community Trust: Restorative Justice Strategies, Principles, and Promising Practices

Accountability and Repair: The Prosecutor’s Case for Restorative Justice

Crime Survivors Speak

Democracy Policy Network: Restorative Justice Policy Kit

Restorative Justice: A Best Practice Guide for Prosecutors in Smaller Jurisdictions

Victims’ Rights from a Restorative Perspective

The Overlooked Victim Right: According Victim-Survivors a Right of Access to Restorative Justice

Sliva, S.M. (2019). Restorative justice legislative directory [dataset]. Retrieved from <https://socialwork.du.edu/content/restorative-justice-laws>



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