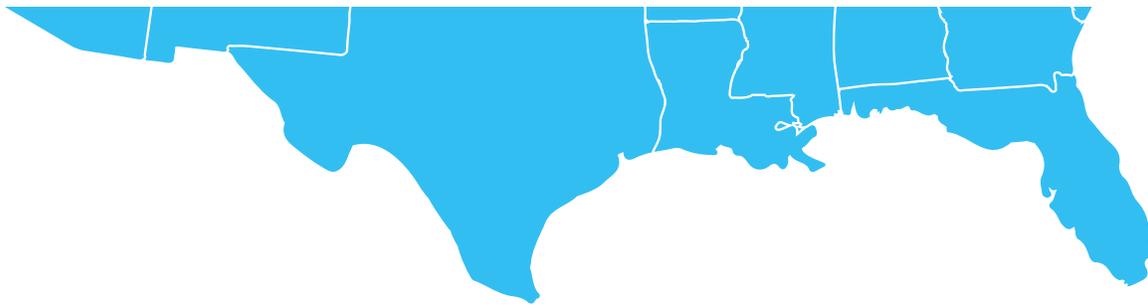


# RESTORATIVE JUSTICE:

A Best Practice Guide for Prosecutors in Smaller Jurisdictions

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A Paper Series of the Institute for Innovation in Prosecution's  
Beyond Big Cities Initiative

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# Introduction

Prosecutors nationwide are turning to restorative justice as an alternative to traditional prosecution, hoping to provide healing for victims, hold the accused accountable, and deliver more equitable justice. Much of the conversation surrounding restorative justice focuses on big, metropolitan areas even though smaller jurisdictions are also conducive to such programs.

The Institute for Innovation in Prosecution (IIP) launched its Beyond Big Cities Initiative in June 2021 with several discussions about restorative justice in smaller communities. The conversations – some of which were led by staff from Impact Justice’s Restorative Justice Project<sup>1</sup> – revealed advantages as well as unique challenges that smaller communities face in implementing restorative justice programs. In addition, Beyond Big Cities members shared how they implemented and tailored restorative justice programs to their communities’ needs. This document memorializes some of these conversations and provides guidelines for smaller jurisdictions seeking to use restorative justice as an alternative to traditional prosecution.

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<sup>1</sup> [Impact Justice](#) harnesses innovation, research, and policy ideas toward preventing more people from becoming involved in the justice system, improving conditions that ensure humanity and hope for those currently incarcerated, and helping formerly incarcerated people to successfully rejoin their communities.

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# What is Restorative Justice?

The term “restorative justice” has been used to describe programs that bring together the victim and the accused, as well as those that facilitate conversations between community members and the accused, in an effort to promote healing and accountability. Restorative justice has its roots in many indigenous communities.

Prosecutors must consider that the entire community is impacted by crime, not simply those who are the immediate victims. As prosecutors are elected to serve “the People,” they have a multifaceted duty to society, victims, and the accused. Restorative justice is a holistic approach that recognizes and seeks to fulfill this multifaceted duty and therefore is a valuable framework for prosecutors.

Restorative justice programs work not only to restore victims to a better place, but also to heal the accused.<sup>2</sup> After all, some people who commit crimes have experienced harm and trauma in their own lives. In fact, some of the accused are victims themselves before committing a crime. Restorative justice programs emphasize the rebuilding of community relationships through the healing and reconciliation of victims and the accused. Restorative justice programs have shown that there are alternatives to punishment and incarceration that can result in more positive outcomes for all.

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## How Restorative Justice Works

Restorative justice programs can operate at various levels and in different ways within the criminal system. In some districts, law enforcement and prosecutors defer cases to community-based organizations to be resolved through restorative justice before the accused is charged. In other jurisdictions, community-based nonprofits work alongside state actors to implement restorative justice in place of probation and incarceration, or as a diversion program before or after charges have been filed.

Central to the restorative justice program is the facilitator, who prepares each party before they meet and guides meetings between the accused and the victim. These meetings may also include supportive loved ones and community members. Facilitators have ideally been trained in the practice of restorative justice, either by indigenous leaders or by others with experience in facilitating conversations in the restorative context. For example, in Brooklyn, New York, one community’s facilitator training was initially designed to attract committed volunteers who had lived or worked in the community for a number of years – the training lasted for three months.<sup>3</sup> The D.C. Office of the Attorney General’s program has a staff of facilitators who have been trained by local restorative justice programs to facilitate meetings.<sup>4</sup> In many other cases, facilitators are trained and employed by community-based organizations and have deep ties to the communities they are serving.

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<sup>2</sup> Many restorative justice programs refer to the parties as “survivor” or “harmed party” and “responsible party.” For purposes of this paper, however, the authors chose the terms “victim” and “the accused.”

<sup>3</sup> Suvi Hynynen Lambson, [Peacemaking Circles: Evaluating a Native American Restorative Justice Practice in a State Criminal Court Setting in Brooklyn](#), CTR. FOR CT. INNOVATION 10-11 (2015).

<sup>4</sup> Keith Hasan-Towery & Kristy Love, [Restorative Justice in the District of Columbia](#), CRIM. JUST. COORDINATING COUNCIL 17 (2019).

Below is a description of three models of restorative justice meetings. In the first model, a victim and the accused meet prior to sentencing to discuss their respective backgrounds, the crime itself, and ways the accused can address the impact of the crime. In the second model, the accused meets with community members, rather than a directly harmed person. In the third model, the restorative process takes place after sentencing, and the accused has already been incarcerated.

## Facilitated Meeting Between Victim and the Accused

One restorative justice model, which usually entails a victim's consent, begins with the victim and the accused sharing information about themselves. The victim will talk about the impact of the crime on their life, and will often have an opportunity to ask questions of the accused. A facilitator typically guides the conversation with the goal of the accused seeing and acknowledging the harm they caused and all parties agreeing to a path forward for the accused. In some instances, the parties agree on restitution or another means of making the victim whole. Some restorative justice models allow a surrogate victim to participate when the directly harmed person does not want to meet the accused.

### Example:

**Reese Frederickson, County Attorney in Pine County, Minnesota (population 29,000)** implemented a pre-charge restorative justice program for young people in 2015. The head of Pine County's Probation Department collaborates with an expert in restorative justice to run the program. Although the Director of Probation runs the program, he does so on a volunteer basis. The program is not officially associated with the Probation Department. Facilitators include community volunteers, treatment specialists, indigenous leaders, or school counselors and administrators, depending on the crime and the background of the accused. The County Attorney's Office has also held successful restorative justice meetings with surrogate victims. The Office considers restorative justice practices for all juvenile misdemeanor and felony cases except for homicides and sex crimes. Pine County relied heavily on two restorative justice experts and trainers to help set up the program, and the insights of the experts proved invaluable.

## Facilitated Meeting Between the Accused and Impacted Community

Restorative justice can also be used for crimes that do not involve a directly-harmed person but still impact a community, such as welfare fraud.<sup>5</sup> Some jurisdictions have established neighborhood courts where community members meet with the accused and discuss the impact of their crime and how it can be remediated.<sup>6</sup>

Other jurisdictions engage volunteers from the community or people who have been impacted by similar crimes to act as surrogates in a facilitated conversation with the accused.

<sup>5</sup> See Jeff Reising et al., *Neighborhood Court: Restorative Justice for a Better Community*, ABA CRIM. JUST. J. 36, 38 (Spring 2019).

<sup>6</sup> *Id.* at 37 ("During the facilitated conference, the participant gives an account of the events that led up to the crime that was committed. It starts with allowing participants to share the story from their own perspective and give additional context by discussing the events that led up to the incident. The panelists then (1) ask questions of the participant to understand the circumstances around the crime; (2) work with the participant to identify the harms that the community, the participant, and the victim experienced as a result of the crime; and (3) decide together with the participant the steps that are necessary to make things right (as much as possible), and discuss future intentions on how to avoid repeating the behavior.").

For instance, if someone is participating in a restorative justice program after being arrested for selling drugs, a surrogate victim may be someone who lost a family member to a drug overdose. One example of restorative justice used in crimes with no direct victim – such as drug distribution – is the federal RISE program in the District of Massachusetts. RISE uses restorative justice principles and is in part specifically designed for people whose history of substance use disorder substantially contributed to the commission of the crime charged.<sup>7</sup> In RISE workshops, participants, community members, and surrogate victims meet to help RISE participants “appreciate that their crimes harmed real people[.]”<sup>8</sup> RISE participants plead guilty and engage in restorative justice as part of a year-long program designed to help them address issues that led to their crimes. Their participation is then considered at sentencing.<sup>9</sup>

## Facilitated Meeting Between Incarcerated or Formerly Incarcerated Person and the Victim/ Victim Surrogate

Restorative justice has been used for incarcerated or formerly incarcerated individuals to connect with victims after sentencing.<sup>10</sup> Unlike other restorative justice models, these meetings take place after the case has been resolved. Some of these programs are run through local departments of corrections<sup>11</sup> or community outreach groups and have no bearing on the outcome of the case. Rather, they often seek to provide the victims of crimes with healing and those convicted of crimes with an opportunity to understand the impact of their actions.

### Example:

**Chad Enright, Prosecuting Attorney in Kitsap, Washington (population 271,000)** utilizes the Dispute Resolution Center of Kitsap County to support victims of crime. There have been instances in which the Center engages with formerly incarcerated people in its restorative justice program.

## The Restorative Justice Process

A restorative justice program can last for a few hours, months, or even years. Sometimes, the parties create a plan that requires specific actions of the accused. Depending on the severity of the crime and the restorative justice program in place, this may act as a substitute for prosecution or incarceration entirely. Alternatively, fulfilling these commitments may lead to a reduced sentence. The agreements that the parties reach vary from case to case and can be specific to the harm caused and the wishes of the victim. For example, in one instance in New York, a person who attacked someone on the subway agreed not to ride the subway for a period

<sup>7</sup> Leo T. Sorokin & Jeffrey S. Stein, *Restorative Federal Criminal Procedure*, 119 MICH. L. REV. 1315, 1334-38 (2021).

<sup>8</sup> *Id.* at 1335.

<sup>9</sup> [The RISE Program](#), U.S. DIST. CT. & U.S. PROB. & PRETRIAL SERV., D. MASS. 1 (“Defendants accepted into the Program are given a year prior to their sentencing to address the issues that led to their committing crimes. Participants who make significant strides toward becoming sober, law-abiding, and employed citizens who can contribute to their communities will have their participation in the Program taken into consideration at sentencing.”).

<sup>10</sup> See e.g., Kevin Simpson, [Denver Woman Feels the Power of Restorative Justice After Son Murdered](#), DENV. POST (July 9, 2012).

<sup>11</sup> See *id.*; [Victim Offender Dialogue](#), COLO. ORG. FOR VICTIM’S ASSISTANCE (last visited Nov. 7, 2021) (“In 2011, the Colorado General Assembly passed legislation instituting restorative justice practices in the Department of Corrections, eventually paving the way for Victim Offender Dialogues (VOD) (C.R.S.A. § 17-28-103). The VOD is a facilitated process which occurs between victims, survivors, or family survivors of serious, violent crime and the offender in their case.”).

of time to understand the experience of the victim, who feared traveling after the incident.<sup>12</sup> Someone independent of the prosecutor's office often monitors the plan or agreement and ensures the accused is respecting its terms.<sup>13</sup>

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## Benefits and Criticisms of Restorative Justice Programs

Restorative justice provides many benefits to those impacted by crime. First, it enables victims to articulate and explain their trauma to the person who caused the harm and to identify ways that the accused can be held accountable for that harm. For many victims, restorative justice offers more control and satisfaction than traditional judicial proceedings.<sup>14</sup> A survey of thirty-eight restorative justice studies, some of which took place outside the United States, found high levels of satisfaction among both victims and those who had harmed others.<sup>15</sup>

Second, although the data is limited, there is evidence that restorative justice can decrease recidivism compared to more traditional criminal justice responses.<sup>16</sup>

Third, proponents of restorative justice emphasize that the practice promotes accountability for the accused in a way that cannot be accomplished through incarceration or other traditional forms of punishment.<sup>17</sup> For example, in a restorative justice practice, the accused can directly hear from the victim, apologize to those they have harmed, and take action to repair the harm

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12 Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*, 115-17 (2019) ("No court would have envisioned—or could have required—the kind of repair [the victim] imagined for herself. And the agreement she and [the accused] reached was certainly far from typical. The point of these acts is not that they are logical, though they often are; it is that they are meaningful and useful—to both parties. Harmed parties who get to shape the course of repair choose actions they believe will keep themselves and others safe from harm. Their sense of power in that process is critical, as is the sense of resolution that many experience when those promises are upheld.").

13 See Sujatha Baglia et al., *Restorative Community Conferencing: A Study of Community Works West's Restorative Justice Youth Diversion Program in Alameda County*, IMPACT JUST. 17 (2017) (describing how the Make it Right program in San Francisco "bifurcates the facilitator position into two roles: the facilitator prepares the case through the conference stage, and an Agreements Manager (who is housed in a separate program designed to support youth who have had contact with the law) works with the young person through the plan completion process.").

14 Seema Gajwani & Max G. Lesser, *The Hard Truths of Progressive Prosecution and a Path to Realizing the Movement's Promise*, 64 N.Y.L. SCH. L. REV. 69, 84 (2020) ("The traditional adversarial justice system fails to provide victims an opportunity to ask questions of the accused and get answers, assess the sincerity of an apology, or have a say about what the accused needs to do to repair the harm caused to the greatest extent possible."). See also Barton Poulson, *A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice*, 2003 UTAH L. REV. 167, 180 (2003) (finding victims participating in restorative justice in the United States and abroad were 2.8 times more likely to be satisfied with the way their cases were handled than those who went through traditional court systems).

15 Mark S. Umbreit et al., *The Impact of Victim-Offender Mediation: Two Decades of Research*, 65 FED. PROB. 29, 30 (Dec. 2001) ("Expressions of satisfaction with VOM [victim-offender mediation] are consistently high for both victims and offenders across sites, cultures, and seriousness of offenses. Typically, eight or nine out of ten participants report being satisfied with the process and with the resulting agreement." (citations omitted)).

16 See Yotam Shem-Tov et al., *Can Restorative Justice Conferencing Reduce Recidivism? Evidence from the Make-It-Right Program* (Nat'l Bureau of Econ. Rsch., Working Paper No. 29150, 2021).

17 Danielle Sered, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*, VERA INST. JUST. 18 (2017) ("The trouble is that prisons are not designed for accountability. No one in prison is required to face the human impact of what they have done; to come face-to-face with the people whose lives are changed as a result of their decision; to take responsibility for that decision; and to do the extraordinarily hard work of answering for that pain and becoming someone who will not ever commit that harm again.").

done, which is rarely part of the process in traditional prosecutions.

Restorative justice programs are not without their critics. A major concern is whether racial bias may exclude people of color from a restorative justice program.<sup>18</sup> Another worry is that a restorative justice program places too much of a burden on the victim to determine how the accused will be held accountable and that victims may feel pressured to agree to a restorative justice program before they have fully processed the harm they experienced.<sup>19</sup> These are valid concerns. However, to avoid perpetuating racial disparities, early implementation of programs can use a random selection process to determine which eligible cases are referred to a restorative justice program, especially as capacity is limited in early stages of program development.<sup>20</sup> Prosecutors can also monitor which cases are selected for restorative justice to identify any racial disparities once the program is expanded, and establish policies to limit the effects of implicit bias in the selection of cases for restorative justice programs. To allay concerns that victims are overly burdened, prosecutors should ensure the victim has several opportunities to ask questions and does not feel rushed or pressured to consent to the process.

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## Smaller Communities Can Be Particularly Conducive to Restorative Justice

In many ways, small communities are the ideal settings for restorative justice programs. Below are several ways in which smaller communities can be particularly conducive to restorative justice programs.

### Strong Coordination Between Government Agencies

Restorative justice may be particularly effective in small communities by bringing together different government agencies and community groups that can support those involved in a specific case. While this level of agency involvement is difficult in major cities because of volume and capacity issues, smaller communities may allow for more coordination between agencies. Ideally, both the victim and the accused are prepped extensively before having a restorative dialogue. Agency representatives can help during this preparation, assisting each

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<sup>18</sup> See Shannon M. Sliva et al., *Fulfilling the Aspirations of Restorative Justice in the Criminal System? The Case of Colorado*, 28 KAN. J.L. & PUB. POL'Y 456, 498 (2019) (“While restorative justice aspires to equity, it is important to acknowledge the likelihood that restorative practices imbedded in the criminal system will simply replicate the biases and disparities currently evidenced in arrest, sentencing, and conviction patterns. Critical scholars express particular concern about the ways in which restorative justice practices may be co-opted by the systems into which they are integrated.” (citations omitted)).

<sup>19</sup> Kate E. Bloch, *Reconceptualizing Restorative Justice*, 7 HASTINGS RACE & POVERTY L.J. 202, 210-11 (2010) (noting that “victims may find themselves uncomfortable or ill-equipped to shoulder the responsibility of what may amount to passing sentence on the offender,” and that “victims may not be ready to move to a phase of forgiveness at the time of the mediation”).

<sup>20</sup> In order to proactively combat the potential for bias, San Francisco’s “Make it Right” restorative justice pilot program (launched in collaboration with Impact Justice) purposely aligned eligibility criteria for restorative justice programs to include crimes for which youth of color are disproportionately arrested, charged, and incarcerated. Seventy percent of eligible cases were randomly sent to the Make it Right program to “ensure[] that there is no racial/ethnic or other bias in determining which cases are diverted.” See Baglia et al., *supra* note 13, at 18. The victim’s consent to have a case sent to the program was not required, but their choice to participate was always offered.

party with their immediate needs and playing a key support role for aspects of the plan to address the harm after a plan has been developed by those impacted by the harm. At times, these representatives may even attend the meeting should it be in the parties' interest. For example, a health agency that provides alcohol treatment services could be identified as a helpful resource in a restorative justice process involving a person accused of assaulting someone while intoxicated. Through this facilitated meeting, agency representatives can help develop the best way forward, communicate with each other, and be guided by the victim and accused's needs.

**Example:**

Particularly because the Pine County, Minnesota restorative justice program handles juvenile cases, school principals or counselors are often involved in the restorative justice process. In cases involving tribe members, indigenous elders are often invited to participate as well. The program also often includes treatment specialists and cultural community counselors.

## Increased Healing and Accountability

More than half of violent crimes and two thirds of property crimes go unreported.<sup>21</sup> There are many reasons for this – among them that victims worry the police will do nothing or conversely, that the accused will go to jail or suffer legal consequences.<sup>22</sup> In smaller communities, this pressure may be exacerbated by closer relationships between the victims and the accused. One Beyond Big Cities member noted that if witnesses and victims are aware of restorative justice programs and understand there are alternative legal outcomes that may not involve incarceration, there may be greater incentive to report to law enforcement.

In addition, whereas residents in cities may never see the person they harmed again, in smaller communities there is a higher chance that the victim and accused will interact in the future. Therefore, repairing the harm is critical. After an effective restorative justice program, victims may feel less afraid to see those who harmed them again and the accused may be more inclined to refrain from causing similar harm moving forward. One Beyond Big Cities member noted that particularly in very small communities, a conflict between two people often engulfs not just the victim and accused, but also their families and extended networks. Therefore, restorative justice presents an opportunity to repair a relationship between not just the victim and accused, but among multiple community members as well.

## Less Bureaucracy

Some smaller jurisdictions have far less bureaucracy than major metropolitan areas and therefore can more efficiently implement restorative justice programs. One Beyond Big Cities member stated that elected prosecutors in very small communities often have strong relationships with

<sup>21</sup> Rachel E. Morgan, Ph.D. & Jennifer L. Truman, Ph.D., *Criminal Victimization, 2019*, BUREAU JUST. STAT. 8 (Sept. 2020).

<sup>22</sup> *Id.* ("Victims may not report a crime for a variety of reasons, including fear of reprisal or getting the offender in trouble, believing that police would not or could not do anything to help, and believing the crime to be a personal issue or too trivial to report.").

other decision-makers, such as judges or county officials who have the power to fund restorative justice programs. Fewer system actors can also lead to more flexibility and consensus about how to implement a restorative justice program than in very large jurisdictions.

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## Challenges to Restorative Justice in Small Communities

Although smaller communities may be well-suited to launching restorative justice programs, there are clear disadvantages in small jurisdictions as well. These challenges include funding constraints, a lack of formal community-based organizations, and pushback from community members or leaders who prefer the continued use of traditional prosecution. These challenges exist also in larger jurisdictions, but are often less pronounced. Each of these potential hurdles, along with possible solutions, are discussed below.

### Funding

Several Beyond Big Cities members cited funding as a major hurdle to starting a restorative justice program. While some of their counterparts in metropolitan areas have a wide variety of nonprofit organizations to work with (some of whom have access to their own funding sources), smaller jurisdictions have fewer such options. Prosecutors may need to prioritize internal funding for the program itself by, for example, hiring one fewer junior prosecutor. As an alternative example, one Beyond Big Cities member recently hired a grant writer in part to raise funds to support a restorative justice program. Finally, some Beyond Big Cities members stressed the importance of advocating for such resources from local government officials.

#### Example:

**Cumberland, ME District Attorney Jonathan Sahrbeck (population 280,000)**, launched a restorative justice program in 2020. It has been used pre-arraignment and post-arraignment for juveniles and adults for many misdemeanor cases such as shoplifting, driving offenses and assault, as well as more serious cases like operating under the influence, invasion of privacy, and vehicular manslaughter. The Office refers cases to two local organizations that facilitate the restorative justice circles. The District Attorney's Office does not participate in order to maintain third-party neutrality. The prosecutors are told whether the accused party completed their restorative justice session, but what occurs during the session is completely confidential. For the majority of the cases, if completed successfully, the case is dismissed. The Office has used restorative justice dialogues as part of an agreement to have the plea either withdrawn or the sentence reduced. In 2020, the DA's Office received \$20,000 as part of its annual budget from the county which it uses to pay the third-party organizations. The DA's Office secured an increase in that budget to \$40,000 for 2022.

## Finding a Community Partner

Closely related to funding is the challenge of finding a community-based partner that can accept cases and facilitate the restorative process. Some of the prosecutors in the Beyond Big Cities sessions expressed difficulty in finding an organization with adequate expertise and infrastructure to accept cases in a systematic way. One person suggested partnering with less formal groups that can still be organized and trained to facilitate a smaller-scale program, such as volunteers from a church or an existing community-based organization that does not have a criminal justice focus.

### Example:

**In 2016, Cook County, Minnesota County Attorney Molly Hicken (population 5,300)** and other stakeholders started discussions about launching a local restorative justice program. County Attorney Hicken agreed that the program should not be run by her office or probation, and should instead be managed by people outside the criminal system. An informal group of volunteers began accepting cases in 2018, though the group has become more organized and is now part of the Northshore Healthcare Foundation, a larger nonprofit organization. Ted Lewis, a restorative justice expert, trains the volunteers, of which there are twelve highly active members. The County Attorney's Office, Sheriff, and Probation Department signed a memorandum of understanding that lays out how and which cases can be referred to the program. This program allows for sheriff deputies to recommend the restorative justice process as a resource for parties between whom a crime has not yet occurred but who may benefit from the practice. Additionally, the County Attorney's Office can forward a case pre-charge and then pursue the case if the accused does not comply with the program. The program does allow for cases involving violence, but excludes domestic violence and sexual assault cases. The program is funded through grants obtained by the Northshore Healthcare Foundation. To make up for limited funds, the program relies heavily on volunteers, many of whom are retirees.

## Educating the Community About Restorative Justice and Garnering Community Support

Several people in the Beyond Big Cities group mentioned skepticism among community members or other stakeholders about restorative justice as a barrier to implementing a program. There is a sense in some communities that restorative justice may fail to adequately hold people accountable. However, prosecutors can use the success of other restorative justice programs to educate their communities about the benefits of a similar one in their jurisdiction. Two studies in particular had small sample sizes, but showed promising results. A study by Impact Justice found that between January 2012 and December 2014, of the 102 young people who completed a pre-filing restorative justice program in Alameda County, California, only 18.4% were subsequently adjudicated delinquent within a year.<sup>23</sup> In sharp contrast, 32.1% of youth whose cases were processed through the traditional juvenile legal system were adjudicated delinquent within the same amount of time.<sup>24</sup> In addition, 91% of participating victims reported that they would participate in another restorative program.<sup>25</sup> Finally, the analysis also revealed

<sup>23</sup> See Baglia et al., *supra* note 13, at 7.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 9.

significant cost savings. The one-time cost for restorative justice was \$4,500 per accused person, versus \$23,000 per year on average for a young person on probation.<sup>26</sup>

A second study of individuals<sup>27</sup> assigned to a pre-filing restorative justice program in San Francisco, California between 2014 and 2019 also revealed a lower recidivism rate for young people who completed the county's restorative justice program. Specifically, the study found that youth who participated in the program were 20% less likely to be rearrested within three years and 32% less likely to be rearrested within four years of their original offense when compared with youth who went through the traditional criminal process.<sup>28</sup> Highlighting such objective evidence of the benefits of restorative justice in other communities can help prosecutors make the case that such a program is worthwhile in their jurisdiction.

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## Checklist for Prosecutors to Develop a Restorative Justice Program in Smaller Jurisdictions

Below is a step-by-step guide on how prosecutors can develop restorative justice programs in smaller communities. Some of these recommendations were published by organizations and experts including the State Justice Institute, National Center for State Courts & Center for Court Innovation,<sup>29</sup> Fair and Just Prosecution,<sup>30</sup> and the Texas Criminal Justice Coalition.<sup>31</sup> The Beyond Big Cities Initiative has modified some of the recommendations to make them more practical or relevant to prosecutors in smaller jurisdictions. It should be noted that many of these steps can and likely should occur in conjunction, and not necessarily in this exact order.

### Laying a Foundation for a Restorative Justice Program

- 1. Engage the community to get its support and decide what model of restorative justice is best for the prosecutor's office and community.** The prosecutor should have a vision for the program, based on conversations with community members, before convening a meeting with other stakeholders such as defense attorneys and judges.
- 2. Establish and maintain an open and transparent working relationship with the governing bodies that fund criminal justice.** The governing bodies that fund jails,

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<sup>26</sup> *Id.* at 16.

<sup>27</sup> See Shem-Tov et al., *supra* note 16, at 1-2 (the study included 99 participants in the restorative justice treatment group and 44 participants in the control group). Similar to the Alameda County study, this one used a small sample size; nonetheless, the authors are encouraged by the results.

<sup>28</sup> *Id.* at 2.

<sup>29</sup> Erika Sasson & Nora Sydow, [Inspired by Peacemaking: Creating Community-Based Restorative Programs in State Courts](#), CTR. FOR CT. INNOVATION & NAT'L CTR. FOR STATE CTS. (2017).

<sup>30</sup> [Building Community Trust: Restorative Justice Strategies, Principles and Promising Practices](#), FAIR & JUST PROSECUTION (2017).

<sup>31</sup> Kerrie Justice, [Implementing Restorative Justice in Texas' Juvenile Justice System](#), TEX. CRIM. JUST. COAL. (2018).

for example, also may support restorative justice programs. When they decline to do so, it is often because they simply do not understand how to implement a better approach, or its potential benefits. Transparency between the prosecutor and the funding governing body can alleviate these concerns.

3. **Get the support of justice system stakeholders.** If possible, meet directly with stakeholders to explain the prosecutor's office's interest in restorative justice. Gauge interest from individual prosecutors, judges, probation officers, law enforcement, and defense attorneys. Re-engage stakeholders who were resistant to the idea after documenting program outcomes.
4. **Create a mission statement and goals.** Root this mission in the foundational principles of restorative justice.
5. **Study model programs to learn best practices.** Ideally someone from the prosecutor's office will visit a program and receive training. If this is impossible because of time, cost, or travel constraints, pursue online educational material and trainings for restorative justice facilitation and implementation.<sup>32</sup> Additionally, connect virtually with similarly-situated prosecutors' offices practicing restorative justice to learn about their experiences and avoid problems they may have encountered.
6. **Identify community-based organizations that can facilitate the program.** While many urban centers have organizations dedicated to the practice of restorative justice, small communities often do not. Look for people who are practicing forms of restorative justice outside of the criminal system—in schools, indigenous communities, or religious groups. Social workers and educators may be familiar with the practice. Seek out defense attorneys, probation officers, and community leaders who may have ideas about a person or group of people who can serve as facilitators in lieu of a formal, community-based organization.
7. **Pursue and prioritize funding for the program.** Staffing and implementing a restorative justice program will cost money. As mentioned earlier, one Beyond Big Cities member hired a grant writer to pursue resources to, among other things, support a restorative justice program. Find volunteers to facilitate restorative justice practices, or pool resources with other agencies that may have an interest in supporting a restorative justice program.

## Implementing a Restorative Justice Program

1. **Determine and define eligibility.** To ensure restorative justice is offered consistently, offices should develop written policies that explain which cases and accused persons qualify for the program. It is important to establish informed guidelines for what behavior disqualifies a case from the restorative process. It is also helpful to create a screening document of eligibility requirements for the program.

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<sup>32</sup> Impact Justice has a series of training webinars about restorative justice available [here](#).

2. **Establish a referral process.** Decide who can refer cases for restorative justice and at what stage in the process. Some Beyond Big Cities members have created a program where police officers can refer a case to the program in lieu of making an arrest.
3. **Create standards of confidentiality.** The success of restorative justice programs require open and honest conversations between the victim, the accused, and community members. Third party organizations and facilitators should not be required to disclose details of the restorative justice sessions. Offices should have written agreements acknowledging this confidentiality and should ensure that participants sign confidentiality requirements.
4. **Communication Plan:** Create a communication plan for how to describe the process to victims, the accused, and the community at large. Compile a list of benefits and potential drawbacks of the process to ensure participants understand and want to move forward with a restorative justice program. In smaller districts, all prosecutors and defense attorneys can meet to understand the restorative justice practice being adopted by the office so that defense attorneys trust the process and feel comfortable advising their clients to participate. Additionally, all prosecutors should be trained in how to discuss restorative justice with victims to ensure they understand how the process differs from the traditional legal process. Where appropriate, consider bringing restorative justice practitioners into these conversations in addition to prosecutors.
5. **Maintain empirical data on the success of the program.** To start, this could be as simple as every prosecutor keeping a list of which cases were considered for restorative justice and which were resolved through the program. As the program grows, an office-wide database should exist (even in the form of a simple excel document). Keeping track of this information helps build the community's confidence and comfort with restorative justice. Success of the program could be determined through recidivism rates, victim satisfaction, defendant satisfaction, and community participation - this is all especially critical so that if an accused person goes through the program and then commits a violent crime, the prosecutor's office has data to show the program is still valuable. A survey for participants to fill out after they go through the process is helpful to measure the satisfaction of participants. Especially for jurisdictions that have a large enough sample size, an analysis of demographics is crucial to avoid perpetuating racial disparities. David Leavitt, the County Attorney of Utah County, UT, has partnered with a local university to collect and analyze data about his office's restorative justice program.
6. **Pilot Project:** Offices that have very limited resources or are restricted in other ways should try restorative measures in just one or two cases as test cases. It may be helpful to experiment before launching a full program. This also allows a local organization to try facilitating a few sessions without committing, from the outset, to taking on a large number of cases.

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