

Restorative Justice

A Framework for Fresno

February 2001

INTRODUCTION

On July 24, 1998, more than 20 leaders of Fresno County's leading governmental agencies and organizations, including the Probation Department, Courts, County Administrative Office, District Attorney's Office, Public Defender's Office, Department of Human Services, City and County Schools, Fresno City Police Department, and the Sheriff's Department endorsed the development of a community restorative justice plan.

On November 19, 1998, approximately 100 private and public sector community leaders gathered to further consider the possibility of restorative justice within Fresno County. They authorized a leadership group to provide direction for a broad based systemic change based on restorative justice.

Early drafts of a framework were prepared in the summer of 1999. In the spring of 2000,

a new, smaller committee assembled to complete the job.

This framework is a product of those efforts.

PURPOSE OF THE FRAMEWORK

The purpose of this framework is to provide a resource to public agencies, business and nonprofit organizations, schools, and other groups interested in restorative justice principles and applications. **The framework provides a set of consistent principles and common language so that restorative justice can be applied across a broad spectrum of the Fresno community. *Thus, this framework applies not just to the Criminal Justice system, but to all organizations and relationships.***

This framework has been created to encourage the use of restorative justice principles in responding to conflicts, disputes, offenses and crimes throughout our community. Restorative justice principles apply to conflicts in the home, the schools, in congregations, the workplace, our political bodies, nonprofit institutions, and the courts.

This framework has several components. First, it briefly describes the history of restorative justice in Fresno County. Second it establishes the fundamental principles of restorative justice. Third, it provides a glossary of terms to promote common understanding and clear communication of restorative justice concepts. Finally, this framework provides a guide for applying restorative justice principles in organizations, institutions, and agencies throughout Fresno County.

Although drafted specifically for Fresno County, all communities are invited to adopt any or all of this framework's components.

HISTORY

Fresno has been a seedbed from which many restorative justice ideas have grown and flourished. The victim impact statement that pre-dated the use of restorative justice language was introduced in Fresno and is now used throughout the country. Fresno's Victim Offender Reconciliation Program (VORP), founded in 1982, was the first in California and many of its models, including the Community Justice Conference, have been duplicated throughout California, the United States, and the world. Restorative Justice Fundamental Principles were first written to provide guidance to the work of VORP in Fresno County. In August, 1995, the United Nations Non-Governmental Organization (NGO) Working Party on Restorative Justice adopted the Fresno principles as a foundation for its work in international restorative justice.

The Center for Peacemaking and Conflict Studies at Fresno Pacific University has provided leadership and continues to study and develop restorative justice theory and practice. In addition to training professionals in restorative justice principles and practices, it sponsors the annual Restorative Justice Conference, which brings restorative justice advocates and decision makers together for discussions and presentations on restorative justice programs, principles, and applications.

Many ideas and programs have emerged to help offenders and victims make constructive adjustments in their lives.

Valley Teen Ranch has adopted restorative justice principles in its programming.

Fresno County's Raisin City School has implemented restorative justice principles in its school discipline system and in response to other conflicts

and offenses. This model has been the basis for curriculum development and additional resources to assist in implementing restorative justice in our schools.

implementing restorative justice in its Family Maintenance Unit and has introduced Family Group Conferences in appropriate Child Protective Service cases.

The Fresno County Courts, Probation Department, District Attorney, and Public Defender, in collaboration with VORP, developed a pilot restorative justice program called the Community Justice Conference. The Community Justice Conference transfers substantial sentencing authority to the community in non-violent felony and serious misdemeanor juvenile cases.

The Boys and Girls Clubs of Fresno County implemented restorative justice in their discipline and leadership training. The focus is to present new strategies and values to the young boys and girls who are considered to be at risk of committing criminal offenses, prior to their occurrence.

The Fresno County Children & Family Services Department developed a pilot program

RESTORATIVE JUSTICE PRINCIPLES

1. Restorative justice is a way of thinking and responding to conflicts, disputes, or offenses. Restorative justice concerns making things as right as possible for all people.
2. Restorative justice recognizes that response to conflicts, disputes or offenses is important. Restorative justice responds in ways that build safe and healthy communities.
3. Restorative justice is not permissive. Restorative justice prefers to deal cooperatively and constructively with conflicts, disputes and offenses at the earliest possible time and before they escalate.
4. Restorative justice recognizes that violations of rules and laws are also indicators of transgressions and offenses against persons, relationships, and community.
5. Restorative justice addresses the harms and needs created by, and related to, conflicts, disputes and offenses.
6. Restorative justice holds disputants and offenders accountable to recognize harm, repair damages as much as possible, and creates a civil future.
7. Restorative justice empowers victims, disputants, offenders and their communities to assume central roles in recognizing harm, repairing damages, and creating a safe and civil future.
8. Restorative justice repairs the breach and reintegrates the victim, disputant, offender and their community as much as possible.
9. Restorative justice prefers maximum use of voluntary and cooperative response options and minimum use of force and coercion.

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10. Restorative justice authorities provide oversight, assistance, and coercive backup when individuals are not cooperative.
 11. Restorative justice is measured by its outcomes, not just its intentions. Do victims emerge from the restorative justice response feeling respected and safe? Are participants motivated and empowered to live constructive and civil lives? Are they living in the community in a way that demonstrates an acceptable balance of freedom and responsibility? Are responses by authorities, community, and individuals respectful, reasonable, and restorative for everyone?
 12. Restorative justice recognizes and encourages the role of community organizations, including the education and faith communities, in teaching and establishing the moral and ethical standards that build up the community.

GLOSSARY OF TERMS

Accountability

Genuine accountability includes an opportunity to understand the human consequences of one's actions, to face up to what one has done and to whom one has done it.

Accountability also involves taking responsibility for the results of one's behavior (ownership in the outcome). As long as consequences are decided for offenders, accountability will not involve responsibility. Accountability empowers and encourages responsibility and takes seriously all three levels of need and obligation: victim, community and offender.

Community

The community in any given conflict will be dependent upon a number of factors, including the level of harm inflicted, the relationship of the disputants and the aggregation represented. There are many different levels of community,

as there are different levels of disputes and conflicts. Each victim, disputant, offender may be members of several communities--family, friends, neighborhoods, schools, businesses, congregations and community organizations.

Community Justice

Community justice means that the community has the first responsibility to maintain peace. This means a transfer of authority to the community from political and governmental agencies.

Government agencies provide support and back-up to the community justice processes, but do not dominate them.

Community justice is a subset of the larger restorative justice ideas.

Conflicts, Disputes and Crimes

Conflicts, disputes, and injustices occur when rights are threatened or violated, laws are

transgressed, or when people perceive that their objectives, hopes, or aspirations are being blocked or removed by the acts of another.

A crime is an offense specially designated by the common law or the legislature.

Consequences

Consequences flow from conflicts, disputes, offenses, misbehaviors and crimes. The party's choice of cooperative processes leads to certain consequences. Restorative justice recognizes that some participants will be, at times, non-cooperative and unwilling to participate in restorative processes. In these circumstances, the uncooperative party should be clearly aware of the consequences of non-cooperation. In the event a coercive process is required, coercion should be implemented in reasonable and respectful ways with the goal of achieving a restorative result.

By restorative results, we mean that victims, offenders, or

disputants are integrated or reintegrated into the community. Reconciliation is allowed to occur, and needs and obligations are met.

Covenant Justice

The belief in covenant justice, arising from the Jewish Pentateuch and the Christian Old Testament, states that God had made a covenant with people implying a reciprocal responsibility and commitment. This covenant created the basis for a new society that would work towards *shalom* (living in right relationships with God and one another). Similar expressions of right relationships among people are expressed in the sacred writings of Hinduism, Buddhism, Sikhism and Islam.

Covenant justice makes things right, to build *shalom* by acting on behalf of those in need, to be concerned with needs, not merit. Justice is tested by the outcome, and process, for corrective discipline occurs in a context of constructive community, accompanied by a

renewal of the covenant. Retribution is subordinate to *shalom*, which tempers and limits retributive justice.

Crime

Crime is primarily an offense against human relationships and secondarily a violation of penal law.

Healing

Disputants in conflicts, disputes, and offenses often need to be healed. Healing requires opportunities for forgiveness, confession, repentance and reconciliation. The healing process includes empowerment, truth telling, answers to questions, restoring equity, and creating constructive future intentions.

Mediation/Arbitration/Trial

Mediation is a dispute resolution process in which the disputants bring in a fair third party to assist in finding resolution. The third party does not make the decision. Mediation may be facilitative or directive,

adversarial or cooperative. The parties have the power to resolve the dispute, which occurs only when there is unanimous assent.

Arbitration is a private judicial proceeding in which the disputants bring in a third party, usually neutral, to decide the dispute based on evidence presented. Formal rules of evidence and procedure may not apply. The parties have no power to decide the dispute; they invest all power in decision making to the third party. Arbitration may be adversarial or cooperative.

Trial is a public judicial proceeding in which the disputants present their case to a judge or jury for a decision based on formal rules of evidence and rules of procedure. Professionals represent parties. The parties have no power to decide the dispute; they invest all power in decision making to the judge or jury and delegate substantial authority to the professional in matters concerning strategy and

tactics. Trial is always adversarial, never cooperative.

Offender

An offender is a person who causes injury to another or who causes resentful displeasure in another. The *primary offender* is the individual principally responsible for the harm. The *secondary offenders* are whose behavior creates the conditions that contribute to conflicts, disputes, crime, or violence.

Primary Dispute Resolution (PDR)

Primary Dispute Resolution (PDR) refers to those dispute resolution processes utilized before adversary processes are engaged. *PDR* is distinguished from *Alternative Dispute Resolution (ADR)* in that *ADR* implies processes that are alternatives to arbitration or trial, thus giving adversary processes primacy in a dispute resolution system. In contrast, *PDR* gives cooperative dispute resolution processes primacy. Adversary processes, such as arbitration or trial, should be

considered a back-up for the parties when they have failed to reach a cooperative agreement to resolve the conflict. There are civil and criminal cases which require that a trial take precedence over *PDR*. Even these trials should be conducted under restorative justice principles.

Reconciliation

Reconciliation is the settlement of a conflict, dispute or offense that includes improving friendly relations with someone after an estrangement. Reconciliation is a primary focus of restorative justice.

Reintegration and Integration

The process of reintegration and integration concerns those persons who have been damaged and estranged through disputes, misbehaviors, and crimes, and the acceptance of them back into the community

Remedies

Remedies consist of four classes of relief available at law. Those classes include substitutionary remedies (compensation for what was lost and measured by the value of the thing lost), equitable remedies (coercive orders), declaratory remedies (declaration of rights and obligations under instruments or statutes), and restitutionary remedies (preventing unjust enrichment, measured by the value of the benefit conferred). Restorative justice remedies are broader than classical legal remedies and are therefore preferred for resolving conflicts, disputes and offenses.

Restorative Discipline

Restorative Discipline is Restorative Justice when applied at School and Home. Restorative Discipline is a way of responding to conflict and misbehavior that makes things as right as possible for all who were impacted. Restorative Discipline includes recognizing the conflict or harm, repairing

the damage (physical and relational) as much as possible and creating plans and/or agreements that will prevent the same thing from happening again. Restorative Discipline includes programs, processes, and procedures that are guided by Restorative Justice principles. (See Discipline that Restores Principles Appendix)

Restorative Justice

Restorative Justice is a way of responding to conflict, misbehavior and crime that makes things as right as possible for all who were impacted. Restorative Justice includes recognizing the conflict or harm, repairing the damage (physical and relational) as much as possible and creating future accountability plans and/or agreements that will prevent the same thing from happening again. Restorative Justice includes programs, processes, and procedures that are guided by Restorative Justice Principles. (See Restorative Justice Principles page 7)

Retributive Justice (Retributive Discipline)

Retributive Justice (Retributive Discipline) is a way of responding to conflict, misbehavior, and crime that assumes that things are made as right as possible by administering pain to persons who have violated rules or laws. Retributive Justice is guided by policies and procedures intended to limit and determine the appropriate amount of pain administered by those in charge.

Victim

Victim is a person who suffers from a destructive or injurious action or agency. The *primary victim* is the one(s) most impacted by the offense. The *secondary victim* includes others impacted by the crime. These *secondary victims* may include family members, friends, criminal justice officials, community, etc.

A BLUEPRINT FOR RESTORATIVE JUSTICE

- ❖ Leaders must decide to introduce restorative justice within their organizations, agencies, workgroups, congregations, schools or homes.
- ❖ All stakeholders are educated in restorative justice principles.
- ❖ Stakeholders analyze how restorative justice principles relate to conflicts, disputes and offenses affecting them. They bring in outside assistance, if necessary.
- ❖ Stakeholders evaluate and discuss current processes for responding to conflicts, offenses, and misbehaviors.
- ❖ Stakeholders examine how others have used restorative justice principles to guide their programs.

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- ❖ Stakeholders design and develop, with outside assistance if needed, a plan for organizational change based on restorative justice principles.

 - ❖ Stakeholders implement restorative justice principles, using both their own trainers and outside trainers.

 - ❖ Stakeholders evaluate their progress towards **systemic change** based on restorative justice principles.

 - ❖ Restorative justice principles should guide organizational change.

CONCLUSION

Fresno County has a unique opportunity to systemically change the way people treat each other. The county is isolated from the urban areas in northern and southern California, yet is large enough and diverse enough to sustain a major philosophical shift in principles of human conduct.

In addition, the community is small enough that leaders and stakeholders can meet formally and informally to debate, discuss, refine, and implement restorative justice principles.

This Framework is therefore a catalyst for change, a map for the future, and a centralizing force in changing the face of our communities.

This Framework's success will be reflected by a myriad of effective restorative justice programs, policies, and ideas, all holding to the basic principles set forth here.

Through the organizing principles of this Framework and the vision and commitment of the community, a radical and supremely positive change in human relations will occur.

This framework is available to all communities and organizations. All are encouraged to adopt its principles, ideals, and practices.

THE AUTHORS

This framework is the work of many people over several years. The ideas and concepts are a synthesis of many authors, scholars, and leaders in the restorative justice movement.

The final framework is the effort of Ron Claassen, co-director of the Center for Peacemaking and Conflict Studies at Fresno Pacific University, Charlotte Tilkes, Offender Programs Manager, Fresno County Sheriff's Department, Phil Kader, Fresno County Probation Department, and Douglas E. Noll, Esq., private attorney, peacemaker and law professor.

The final Framework was created in April, May and June 2000.

APPENDICES

Appendix 1 Endorsements

Appendix 2 Training Resources

Appendix 3 Bibliography/Links

Appendix 4 Applications/Programs Index