

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

Restorative Justice



REPORT DOCUMENT NO. 48

**COMMONWEALTH OF VIRGINIA
RICHMOND 2010**

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION

Senate of Virginia

Janet D. Howell, Co-Chair
Kenneth W. Stolle, Co-Chair
Henry L. Marsh

Virginia House of Delegates

David B. Albo, Vice-Chair
Ward L. Armstrong*
Robert B. Bell
Terry G. Kilgore
Kenneth R. Melvin*
Beverly J. Sherwood
Onzlee Ware*

Gubernatorial Appointments

Glenn R. Croshaw
Col. W. Gerald Massengill
Richard E. Trodden

Office of the Attorney General

Bill Mims

Staff

Kristen J. Howard, Executive Director
G. Stewart Petoe, Director of Legal Affairs

Christina M. Barnes, Senior Methodologist
Holly B. Boyle, Policy Analyst
Thomas E. Cleator, Senior Staff Attorney
Richard S. Fiorella, Policy Analyst

Steven D. Benjamin, Special Counsel

**Delegate Melvin resigned as a Member of the House of Delegates effective May 31, 2009. Delegates Ward Armstrong and Onzlee Ware were appointed to the Crime Commission on January 7, 2009 and July 10, 2009, respectively.*

TABLE OF CONTENTS

I.	Authority for Study.....	1
II.	Executive Summary.....	1
III.	Background and Methodology.....	2
IV.	Conclusion.....	10
V.	Acknowledgements.....	11

I. Authority

The Code of Virginia, § 30-156, authorizes the Virginia State Crime Commission (“Crime Commission”) to study, report and make recommendations on all areas of public safety and protection. In so doing, the Crime Commission shall endeavor to ascertain the causes of crime and recommend ways to reduce and prevent it, explore and recommend methods of rehabilitation of convicted criminals, study compensation of persons in law enforcement and related fields and study other related matters including apprehension, trial and punishment of criminal offenders.¹ Section 30-158(3) empowers the Crime Commission to conduct studies and gather information and data in order to accomplish its purpose as set forth in § 30-156 ... and formulate its recommendations to the Governor and the General Assembly.

Using the statutory authority granted by the General Assembly to the Crime Commission, staff conducted a study on the issue of restorative justice in the Commonwealth.

II. Executive Summary

Senate Joint Resolution 362 (SJR 362) was introduced by Senator Norment during the 2009 Regular Session of the General Assembly.² Although SJR 362 was left in House Rules, the Executive Committee of the Crime Commission approved study of the resolution. As such, the Crime Commission was directed to examine a number of key issues regarding various types of restorative justice initiatives, specifically including victim-offender reconciliation programs, legal and practical issues, and possible recommendations relating to the preferred types of restorative justice. It should be emphasized that the primary purpose of the study was to provide an update and overview of restorative justice practices in Virginia, as the subject has not been examined in over 10 years.

Crime Commission staff utilized several methodologies to address the directives of the mandate regarding restorative justice, including an overview of national, state and academic literature, statutory review of Virginia Code relating to restorative justice and a multi-state survey of statutory and legislative restorative justice efforts.

Restorative justice practices have become increasingly popular in recent years. Restorative justice can be defined as a theory of justice that focuses on repairing the harm that a criminal offense inflicts on victims, offenders, and communities. There are many different forms of restorative justice practices, which involve key stakeholders to varying degrees. The extent to which these programs have been evaluated varies widely; however, research has produced consistent findings that victims, offenders and communities can benefit greatly from such practices. In particular, victim-offender reconciliation, also known as victim-offender dialogue or mediation, appears to be the most widely implemented practice and provides the most evidence of positive outcomes for the victim and offender in regards to levels of satisfaction, perceived fairness, and reduced recidivism rates.

¹ VA. CODE ANN § 30-156 (Michie 2009).

² S.J.R. 362, Va. General Assem. Reg. Sess. (2009). *See* Attachment 1.

When examining other state statutes relating to restorative justice, it can be concluded that there is no one specific approach that is used; rather, each state appears to provide limited authority for certain types of restorative justice programs for specifically designated classes of offenders or offenses. The Virginia Code affords the ability to include restorative justice-based principles in sentencing in the following ways:

- As part of a suspended sentence or as part of probation (§ 19.2-303);
- As community-based probation for non-violent offenders (§ 9.1-174);
- As part of any juvenile's sentence, provided that he is not tried as an adult (§ 16.1-278.8);
- As part of victim impact statements (§ 19.2-299.1, § 16.1-273); and,
- Ability of Crime Victim and Witness Assistance Programs to establish a victim-offender reconciliation program (§ 19.2-11.4).

Restorative justice-based programs have been operating in Virginia since the 1980's with promising outcomes for victims, offenders, and communities. There are several types of restorative justice-based initiatives operating in Virginia, which are based in a variety of settings, including courts, prisons, jails, and schools. In summary, the traditional approach of justice in Virginia can, at a minimum, be supplemented by some innovative, evidence-based restorative justice approaches. It also appears that victim-offender mediation is the preferred method due to the fact that it is the approach that has been researched the most and is therefore considered evidence-based. However, it is recommended that more consistent, rigorous program evaluations be carried out for *all* types of restorative justice-based initiatives in order to justify wider implementation in Virginia. The Crime Commission made no formal recommendations as a result of this study.

III. Background and Methodology

Literature Review

Staff conducted a literature review of existing national, state and academic restorative justice studies. The following section includes a summary of findings from the literature review.

Overview of Restorative Justice Concept

It should be made clear that there is no single definition of restorative justice. However, it can be defined as a theory of justice that focuses on repairing the harm that a criminal offense inflicts on victims (direct and indirect), offenders, and communities.³ The term is often used as an umbrella-term for a wide array of practices that incorporate elements of restorative justice in some capacity. It is an approach that gained popularity in the U.S. beginning in the 1970's and 80's with the victims' rights movement. It is a process whereby victims are afforded active participation in the justice process, offenders are held accountable and given the opportunity to repair harms and make amends to the victim(s) and community, and the community benefits

³ See, for example, H. Zehr, *CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE*. Scottsdale, PA: Herald Press (1990); and, H. Zehr, *THE LITTLE BOOK OF RESTORATIVE JUSTICE*. Intercourse, PA: Good Books (2002).

from the negotiation of the restorative resolution as well.⁴ As such, restorative justice can be viewed as a holistic approach, a philosophy of conflict resolution, which addresses the needs of all individuals impacted by a criminal offense. In general, restorative justice aims to:

- Involve all key stakeholders in the justice process;
- Balance the needs of all stakeholders;
- Hold the offender accountable for his actions;
- Insure victim satisfaction and reduced levels of fear; and,
- Benefit the community and repair the overall harm caused by the criminal offense.⁵

Restorative justice approaches can take many different forms. Such initiatives can be classified as fully, mostly, or partly restorative.⁶ Fully restorative approaches involve all three key stakeholders including: the victim, offender and community. Mostly restorative approaches involve two of the three stakeholders and partly restorative includes only one of the three stakeholders. Partly restorative approaches may be utilized when an actual meeting between all parties is not appropriate or available under given circumstances.⁷

Clients of restorative justice-based programs can include violent and non-violent juvenile or adult offenders, victims (direct and indirect), community members and anyone else impacted by the criminal offense. The process can be victim- or offender-initiated and can take place at any point during the criminal justice process. For instance, points of referral to restorative justice-based programs can exist pre/post charge, pre/post sentence, during incarceration, and during community release (as an alternative to probation/parole revocation). Consequently, restorative justice practices can transcend a number of different agencies and entities, including juvenile and criminal courts, police departments, correctional facilities, as well as primary, secondary and higher education institutions. Some examples of the various types of restorative justice initiatives include pretrial diversion, victim/community impact statements, restitution, peacemaking/sentencing circles, community service, family/group conferencing, community restorative boards, prisoners' reentry programs, victim impact panels and classes, and victim-offender dialogue/mediation.⁸

Restorative Justice Evidence and Evaluations

The degree to which these types of programs have been evaluated varies widely, from single program evaluations to rigorous, randomized controlled trials. However, literature has produced remarkably consistent outcomes and results suggesting that offenders and their victims

⁴ See, for example, G. Bazemore, & M. Umbreit, *Rethinking the sanctioning function in juvenile court: Retributive or restorative responses to youth crime*. CRIME AND DELINQUENCY, vol. 41, issue 3, 296-316 (1995); and, D. Van Ness, & K.H. Strong, RESTORING JUSTICE. Cincinnati, OH: Anderson Publishing Co. (1997).

⁵ For example, Zehr, *supra* note 3 (1990); and, S. O'Brien, & G. Bazemore, *Crime, government, and communities: Tracking the dimensions of restorative justice*. PUBLIC ORGANIZATION REVIEW, vol. 4, issue 3, 205-219 (2005).

⁶ P. McCold, & B. Wachtel, *In pursuit of paradigm: A theory of restorative justice*. Paper presented at the XIII World Congress of Criminology, Rio de Janeiro, Brazil, Available at <http://www.realjustice.org/library/paradigm.html> (2003).

⁷ McCold, *supra* note 6.

⁸ See Attachment 2 for an illustration of how each type of program is classified according to a fully-to-partly restorative continuum.

may have better outcomes with a restorative justice approach as compared with offenders and victims in traditional justice.⁹ For example, a recent meta-analysis of the most empirical research conducted on restorative justice practices revealed a number of key findings including: substantial reductions in recidivism for both violent and property crime; that such initiatives reduce crime more effectively with more serious crimes (i.e., those involving a person as a victim), rather than less serious; and, that it appears to “work differently on different kinds of people.”¹⁰ When looking at the various types of restorative justice initiatives, evidence consistently suggests that on average, victims benefit the most from face-to-face initiatives, such as victim-offender reconciliation/mediation programs, which are a primary focus of SJR 362.¹¹

Victim-offender mediation and reconciliation programs, also referred to as victim offender dialogue¹², are the most common and accepted restorative justice practices in the U.S.¹³ Victim-offender dialogue is a process that allows interested victims an opportunity to meet their offender in a safe setting and engage in mediated discussion of the crime, which typically results in a final settlement at the end of the process.¹⁴ The American Bar Association (ABA) endorses such programs and recommends its use across the U.S.¹⁵ There are approximately 300 victim-offender dialogue programs in the U.S.¹⁶ In order to understand the nature of these programs and the types of referrals handled, researchers conducted a national survey, which found:

- Most programs are voluntary in nature;
- Most programs focus on juvenile offenders;
- Programs are most often offered by private, nonprofit, community based agencies, as well as churches or other faith-based agencies, probation offices, correctional facilities, prosecutors’ offices, victims’ services and police departments;
- Most referrals involved misdemeanor offenses (approximately two-thirds);
- Most common offenses for referral include vandalism, minor assault, theft and burglary; and,

⁹ See, for example, L.W. Sherman, & H. Strang, RESTORATIVE JUSTICE: THE EVIDENCE. The Smith Institute (2007).

¹⁰ Sherman, *supra* note 9.

¹¹ Sherman, *supra* note 9; and, M.S. Umbreit, R.B. Coates, & B. Vos, *Victim-offender mediation: Three decades of practice and research*. CONFLICT RESOLUTION QUARTERLY, vol. 22, issue 1-2, 279-303 (2004).

¹² The evolution of the field has suggested the use of the term “victim-offender dialogue” as opposed to “mediation” or “reconciliation” as it is seen as less offensive to victims involved in the process. For purposes of this report, the term “dialogue” will be used except when referring to the Code of Virginia. In this instance, the term “reconciliation” will be used to remain consistent with the language in the Code.

¹³ G. Bazemore, & M. Umbreit, *A comparison of four restorative conferencing models*, JUVENILE JUSTICE BULLETIN, OJJDP, U.S. DEPARTMENT OF JUSTICE, Washington, D.C. (2001); and, E.J. Gumz, & C.L. Grant, *Restorative justice: A systematic review of the social work literature*, FAMILIES IN SOCIETY, vol. 90, issue 1, 119-126 (2009).

¹⁴ See, for example, M.S. Umbreit, B. Vos, R.B. Coates, & E. Lightfoot, *Symposium: Restorative justice in action: Restorative justice in the twenty-first century: A social movement full of opportunities and pitfalls*. MARQUETTE LAW REVIEW, vol. 89, issue 2, 251-304 (2005); and, M.S. Umbreit, THE HANDBOOK OF VICTIM-OFFENDER MEDIATION: AN ESSENTIAL GUIDE TO PRACTICE AND RESEARCH. San Francisco: Jossey-Bass (2001).

¹⁵ American Bar Association. CRIMINAL JUSTICE POLICY ON VICTIM-OFFENDER MEDIATION/DIALOGUE. Chicago: ABA (1994).

¹⁶ Strickland, *supra* note 8; and, National Institute of Justice, PROMISING PRACTICES IN RESTORATIVE JUSTICE: VICTIM-OFFENDER MEDIATION, Available at: <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/promising-practices/victim-offender-mediation.htm> (2007).

- Primary referral sources include probation officers, judges and prosecutors.¹⁷

Since victim-offender dialogue is the most popular restorative justice practice in the U.S., it is also the most researched.¹⁸ When examining the most rigorous studies comparing victim-offender dialogue participants with similar non-participants, many studies found lower recidivism rates among those who participated in the program,¹⁹ whereas other studies found mixed results.²⁰ In addition to measuring rearrest and reconviction rates, evaluations also consider participants' levels of satisfaction and perceived fairness. Findings indicate consistently high satisfaction and perceived fairness with the process and resulting agreement across various settings, cultures and types of offenses.²¹ Somewhat linked to the degree of satisfaction is that nearly all dialogues end with a restitution agreement, of which 80-90% were reported as completed.²²

There are some limitations that the literature suggests future research address, such as examining the impact of differential program implementation, the impact of programs over the long-term (longitudinal studies), a deeper examination of participants' levels of satisfaction and fairness, and, the development of even more rigorous research designs employing random assignment into various treatment groups, which may help alleviate the most significant limitation: self-selection bias, as the programs are of a voluntary-nature.²³

¹⁷ M. Umbreit, & J. Greenwood, *National Survey of Victim Offender Mediation Programs in the U.S.* MEDIATION QUARTERLY, vol. 16, 235-251(1999).

¹⁸ Evidence is less clear regarding other forms of RJ programs.

¹⁹ For instance, A. Schneider, *Restitution and recidivism rates of juvenile offenders: Results from four experimental studies.* CRIMINOLOGY, vol. 24, 533-552 (1986); and, M. Umbreit and R. Coates, *VICTIM OFFENDER MEDIATION: AN ANALYSIS OF PROGRAMS IN FOUR STATES OF THE U.S.* St. Paul, MN: Center for Restorative Justice and Peacemaking (1992); and, W. Nugent, & J.B. Paddock, *the effect of victim-offender mediation on severity of reoffense.* MEDIATION QUARTERLY, vol. 12, 353-367 (1995); and, W. Bradshaw, D. Roseborough and M.S. Umbreit, *The effect of victim offender mediation on juvenile offender recidivism: A meta-analysis,* CONFLICT RESOLUTION QUARTERLY, vol. 24, issue 1, 87-98 (2006); and, W.R. Nugent, M. Umbreit, L. Wiinamaki, & J. Paddock, *Participation in victim-offender mediation and severity of subsequent delinquent behavior: Successful replications?* RESEARCH ON SOCIAL WORK PRACTICE, vol. 11, issue 1, 5-23 (2001); and, W. Nugent, M. Williams, and M. Umbreit, *Participation in victim-offender mediation and the prevalence of subsequent behavior: A meta-analysis.* RESEARCH ON SOCIAL WORK PRACTICE, vol. 14, 408-416 (2004); and, J. Latimer, C. Dowden and D. Muise, *THE EFFECTIVENESS OF RESTORATIVE JUSTICE PRACTICES: A META-ANALYSIS.* Ottawa: Canada Department of Justice Research and Statistics Division (2005).

²⁰ See, for example, S. Roy, *Two types of juvenile restitution programs in two Midwestern counties: A comparative study.* FEDERAL PROBATION, vol. 57, issue 4, 48-53 (1993); and, S. Stone, W. Helms, & P. Edgeworth, *COBB COUNTY (GEORGIA) JUVENILE COURT MEDIATION PROGRAM EVALUATION.* Carrolton: State University of West Georgia (1998); and, A. Evje, & R. Cushman, *A SUMMARY OF THE EVALUATIONS OF SIX CALIFORNIA VICTIM OFFENDER RECONCILIATION PROGRAMS.* San Francisco: Judicial Council of California, Administrative Office of the Courts (2000).

²¹ Umbreit, *supra* note 11; and, Latimer, *supra* note 19

²² Umbreit, *supra* note 11; and, Latimer, *supra* note 19

²³ See, for example, Umbreit, *supra* note 11; and, Latimer, *supra* note 19; P. McCold, & B. Wachtel, *RESTORATIVE POLICING EXPERIMENT: THE BETHLEHEM PENNSYLVANIA POLICE FAMILY GROUP CONFERENCING PROJECT.* Pipersville, PA: Community Service Foundation (1998); and, Bradshaw *supra* note 19.

Virginia Code Relating to Restorative Justice-Based Practices

It has been over ten years since the Crime Commission examined restorative justice in Virginia.²⁴ At that time, Senate Joint Resolution 99, agreed to by the 1996 General Assembly, directed the Crime Commission to study restorative justice for *non-violent* offenders. The current study, however, examines the various types of restorative justice initiatives for all types of offenders in Virginia with specific attention to victim-offender reconciliation (dialogue) programs.

The Code of Virginia affords the ability to include restorative justice-based principles in sentencing in the following ways:

- As part of a suspended sentence or as part of probation (§ 19.2-303);
- As community-based probation for non-violent offenders (§ 9.1-174);
- As part of any juvenile's sentence, provided that he is not tried as an adult (§ 16.1-278.8);
- As part of victim impact statements (§ 19.2-299.1, § 16.1-273); and,
- Ability of Crime Victim and Witness Assistance Programs to establish a victim-offender reconciliation program (§ 19.2-11.4).

General Sentencing

As permitted by Virginia Code § 19.2-303, after conviction, judges have the authority to “place the defendant on probations under such conditions as the court shall determine,” “may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court.”

Community-based Probation

Virginia Code § 9.1-174 allows for the creation of community service probation service agencies, which includes the administration of “community service” and “additional services.” Judges may only sentence offenders to these programs if they are convicted of a felony or misdemeanor that is not an act of violence as defined by Virginia Code § 19.2-97.1, the sentence is no more than 12 months, and the defendant is an adult or a juvenile sentenced as an adult. A community that opts for this program must also create a “community criminal justice board” that is responsible for: providing advice on the development and operation of the program, assisting the community agencies with establishing the programs, evaluating and monitoring the program to determine the impact on offenders, and facilitating local involvement and flexibility in responding to the problem of crime in their communities. Additionally, the membership of these boards must include the following local officials: a circuit court judge, general district court judge, JDR court judge, local Commonwealth's Attorney, and the head of local law enforcement (either the Sheriff or the Chief of Police).

²⁴ REPORT OF THE VIRGINIA STATE CRIME COMMISSION, Virginia State Crime Commission, S.D. NO. 9 (1997).

Juvenile Sentencing

Virginia Code § 16.1-278.8 affords JDR judges the ability to include aspects of restorative justice during sentencing. In particular, the judge may defer disposition of a sentence and “place the juveniles on probation under such conditions and limitations as the court may prescribe,” place the juvenile on “probation under such conditions and limitations as the court may prescribe, without deferring disposition,” “require the juvenile to participate in a public service project under such conditions as the court prescribes,” make “at least partial restitution or reparation for any property damage” or pay “for actual medical expenses incurred by the victim as a result of the offense,” or, require the juvenile to “participate in a community service project under such conditions as the court prescribes.”

Victim Impact Statements

A Victim Impact Statement may be considered by the court in deciding a sentence. Specifically, Virginia Code §§19.2-299.1 and 16.1-273 afford crime victims the ability to submit to the court a written statement describing the impact of the crime on the victim and his or her family. Victims may also be given the opportunity to testify, at the sentencing hearing, regarding the impact of the crime.

Virginia and Victim-Offender Reconciliation (Dialogue)

Virginia Code clearly allows for the ability to establish victim-offender reconciliation programs. Virginia Code § 19.2-11.4 establishes that any Crime Victim and Witness Assistance Program may establish a victim-offender reconciliation program to provide an opportunity after conviction for a victim, at his request and upon the subsequent agreement of the offender, to:

- Meet with the offender in a safe, controlled environment;
- Give to the offender, either orally or in writing, a summary of the financial, emotional, and physical effects of the offense on the victim or the victim's family; and,
- Discuss a proposed restitution agreement which may be submitted for consideration by the sentencing court for damages incurred by the victim as a result of the offense.

Virginia Code § 19.2-11.4 also establishes that if the victim chooses to participate in a victim-offender reconciliation program, the victim shall execute a waiver releasing the Crime Victim and Witness Assistance Program, attorney for the offender and the attorney for the Commonwealth from civil and criminal liability for actions taken by the victim or offender as a result of participation. A victim shall not be required to participate in a victim-offender reconciliation program under this section. Finally, the failure of any person to participate in a reconciliation program pursuant to this section shall not be used directly or indirectly at sentencing.

Overview of Virginia Restorative Justice-Based Programs

There are over 700 restorative justice-based programs in operation across the United States at both the state and federal levels.²⁵ In Virginia, there are several types of restorative justice-based initiatives currently operating, including pretrial diversion, victim/community impact statements, restitution, community service, prisoners' reentry programs and victim-offender mediation. Examples of programs that incorporate restorative justice-based approaches include:

Court-related Programs

- Apple Valley Mediation Network, Inc.;²⁶
- Blue Ridge Court Services Restorative Justice Program;²⁷
- Central Virginia Restorative Justice;²⁸
- Community Mediation Center;²⁹
- Loudoun County Juvenile Probation Court Service Unit;³⁰ and,
- Piedmont Dispute Resolution Center.³¹

Prison/Jail-Based Educational Programs

- Southside Regional Jail, Community Model;³²
- Prison Fellowship;³³ and,
- How to Handle Conflict.³⁴

School-Based

- Albemarle County Public Schools;
- Charlottesville City Public Schools;
- Fairfax County Public Schools;³⁵
- Fauquier County Public Schools;
- Northern Virginia Mediation Service;³⁶ and,
- Restorative Community Foundation.³⁷

²⁵ G. Bazemore, & M. Schiff, *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*. Cullompton: Willan Publishing (2005).

²⁶ See <http://www.avmn.org/> for more information on this program.

²⁷ See <http://www.staunton.va.us/directory/departments-a-g/court-services/restorative-justice-program> for additional information on this program.

²⁸ See www.centralvirginiarj.com for more information on this program.

²⁹ See <http://www.weworkitout.org/> for more information on services provided to Harrisonburg-Rockingham County, Staunton, Waynesboro, and Augusta County.

³⁰ For additional information on this program, contact Lance Kelley, Restorative Justice/Court Diversion Specialist at Lance.Kelley@loudoun.gov or the Loudoun County Court Service Unit.

³¹ See <http://piedmontdisputeresolution.org/> for more information on this Center. This Center also administers the Prince William County Office of Dispute Resolution-Restorative Justice Program (Contact: 31st Judicial Circuit Court ODR- Restorative Justice Program).

³² See <http://www.therapeuticjustice.com/> for additional information on the community model in corrections.

³³ See <http://www.prisonfellowship.org/prison-fellowship-home> for more information on the programs offered by Prison Fellowship, Justice Fellowship Program.

³⁴ For more information, contact Ms. Judith Clarke at weareatrest@verizon.net.

³⁵ Administered in conjunction with Northern Virginia Mediation Service.

³⁶ See <http://www.nvms.us/> for more information about this service provider.

Victim-Based

- H-E-A-R-T³⁸

Emerging programs in:

- Culpepper County;
- Fairfax;
- Orange County;
- Roanoke; and,
- Tidewater, including Hampton Roads.³⁹

Multi-State Survey

Staff conducted a review of other state statutes to determine the extent to which other states permit restorative justice aims as part of their criminal justice systems. Overall, there is no one specific type of restorative justice statutory approach; rather, each state seems to provide limited authority for certain types of restorative justice programs for specifically designated classes of offenders or offenses:

- California has an emphasis of including restorative justice as part of sentencing for hate crimes;⁴⁰
- Alaska permits the community, as well as the victim and offender, to be a party to an agreed sentence;⁴¹
- Minnesota allows for restorative features for sanctions for parole violations,⁴² as does Utah;⁴³ and,
- New Mexico even requires police officers accused of violating the “Prohibition of Profiling Practices Act” to participate in restorative program.⁴⁴

There is only one feature of restorative justice that many states seem to have adopted, and that is voluntary victim-offender reconciliation programs.⁴⁵ Overall, states appear to adopt specific statutory schemes to address particular crimes or types of offender.

³⁷ See www.restorativecommunity.org for additional information about this Foundation.

³⁸ See www.h-e-a-r-t.info for additional information on this program focusing on victims of sexual assault.

³⁹ According to Restorative Justice Association of Virginia, 2008.

⁴⁰ Cal.Rules of Court, Rule 4.427.

⁴¹ ALASKA STAT. § 12.55.011 (Michie 2009).

⁴² MINN. STAT. ANN. § 244.196 (West 2009).

⁴³ Utah Code of Judicial Admin., Rule 7-304 (2009). Applies only to juveniles.

⁴⁴ N.M. STAT. ANN. § 29-21-9(B)(2) (Michie 2009).

⁴⁵ ALA. CODE § 15-18-180 (2009); ALASKA STAT. § 12.55.011 (Michie 2009); ARIZ. REV. STAT. ANN. § 8-419 (West 2009); COLO. REV. STAT. ANN. § 19-1-103 (West 2009); DEL. CODE ANN. TIT. 11§ 9501 (2009); LA. REV. STAT. ANN. § 46:1846 (West 2009); MINN. STAT. ANN. § 611A.775 (West 2009); MONT. CODE ANN. § 2-15-2013 (2009); TENN. CODE ANN. § 16-20-102 (2009); TEX. CRIM. PROC. § 56.02 (Vernon 2009); WASH. REV. CODE ANN. § 13.40.080 (West 2009).

IV. Conclusion

Restorative justice-based programs have been operating in Virginia since the 1980's with promising outcomes for victims, offenders, and communities. It appears that the traditional approach of justice in Virginia can, at a minimum, be supplemented by some innovative, evidence-based restorative justice approaches. It also appears that victim-offender mediation is the preferred method due to the fact that it is the approach that has been researched the most and is therefore considered evidence-based. However, this does not mean that other programs do not show promise; rather, they need to be rigorously evaluated to help determine their efficacy in order to justify wider implementation. More consistent, rigorous program evaluations will need to examine and track specific performance outcomes, such as:

- Rates of recidivism (re-arrest, re-convict and/or recommit);
- Restitution rates (if applicable);
- Behavioral changes (i.e., self-esteem, skill development);
- Victims' and communities' perceived satisfaction levels;
- Victims' levels of fear and perceived fairness; and,
- Costs (any reduction in cost compared to traditional approaches in terms of reducing incarceration time, reduction of trials, etc.).

It must be underscored that this is not an exhaustive list of performance measures, as each program is unique in its organization, structure, and participant involvement; thus, evaluations need to reflect such variations.⁴⁶ Further, few standardized assessment tools for programs nationwide have been developed, and appear to be limited to victim satisfaction levels only.⁴⁷ However, any evaluations, even at an individual program level, should also help to improve services to victims, offenders, and communities.

Finally, it should be mentioned that in addition to restorative justice practices, there are many other community-based responses to crime that can serve as alternatives to incarceration, especially for non-violent offenders. These should be examined as well. Some of these programs are post-conviction in nature, but there are also many other programs in Virginia ranging from pretrial diversion programs to aftercare that have shown evidence of success. Therefore, in addition to restorative justice practices, there are other alternative or supplementary practices that may prove cost-beneficial to the Commonwealth, while at the same time ensuring public safety.

⁴⁶ Gumz, *supra* note 13.

⁴⁷ See, for example, W. Bradshaw, & M. Umbreit, *Assessing satisfaction with victim services: The development and use of the Victim Satisfaction with Offender Dialogue Scale*. INTERNATIONAL REVIEW OF CRIMINOLOGY, vol. 10, 71-83 (2003).

V. Acknowledgements

The Virginia State Crime Commission extends its appreciation to the following agencies and individuals for their assistance and cooperation on this study:

With special thanks to:

Center for Therapeutic Justice

Morgan Moss, Co-Director

Penny Patton, Co-Director

Central Virginia Restorative Justice

David Saunier, Restorative Justice Coordinator

H.E.A.R.T.

Debbie and Rob Smith, Directors

Piedmont Dispute Resolution Center

Lawrie Parker, Executive Director

Prison Fellowship, Justice Fellowship Program

Mark Earley, President

Pat Nolan, Vice-President

Restorative Community Foundation

Christa Pierpont, Director

Restorative Justice Association of Virginia

Sylvia Clute, President

Phyllis Lawrence, Board Member

The Community Model Association of America

Virginia Mediation Network

Attachment 1
Senate Joint Resolution 362

098379284

SENATE JOINT RESOLUTION NO. 362

Offered January 14, 2009

Prefiled January 14, 2009

Directing the Virginia State Crime Commission to study restorative justice. Report.

Patron—Norment

Referred to Committee on Rules

WHEREAS, victims and survivors of violent crimes have often been devastated by and deal with long-term negative effects from the commission of those crimes; and

WHEREAS, some victims and survivors in other states and jurisdictions have benefited from a variety of forms of restorative justice including dialogue directly with the offender; and

WHEREAS, a significant percentage of offenders reoffend and some do not accept responsibility for the consequences of their crimes; and

WHEREAS, other states have succeeded in reducing recidivism and increasing the acceptance of responsibility by offenders for their crimes through the use of restorative justice; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission be directed to study restorative justice. The Crime Commission shall study the various forms of restorative justice, specifically including victim-offender reconciliation programs as permitted under § 19.2-11.4 of the Code of Virginia.

In conducting its study, the Virginia State Crime Commission shall investigate the legal and practical issues surrounding the different types of restorative justice. This study shall also include possible recommendations relating to the preferred types of restorative justice and on the procedures and implementation steps necessary to allow for the use of restorative justice and victim-offender reconciliation programs as a part of the criminal justice system. The outcome of this study is designed to benefit victims and survivors of violent crimes and shall not have any effect on an offender's sentence or liability under the law.

Technical assistance shall be provided to the Virginia State Crime Commission by the Department of Corrections. All agencies of the Commonwealth shall provide assistance to the Virginia State Crime Commission for this study, upon request.

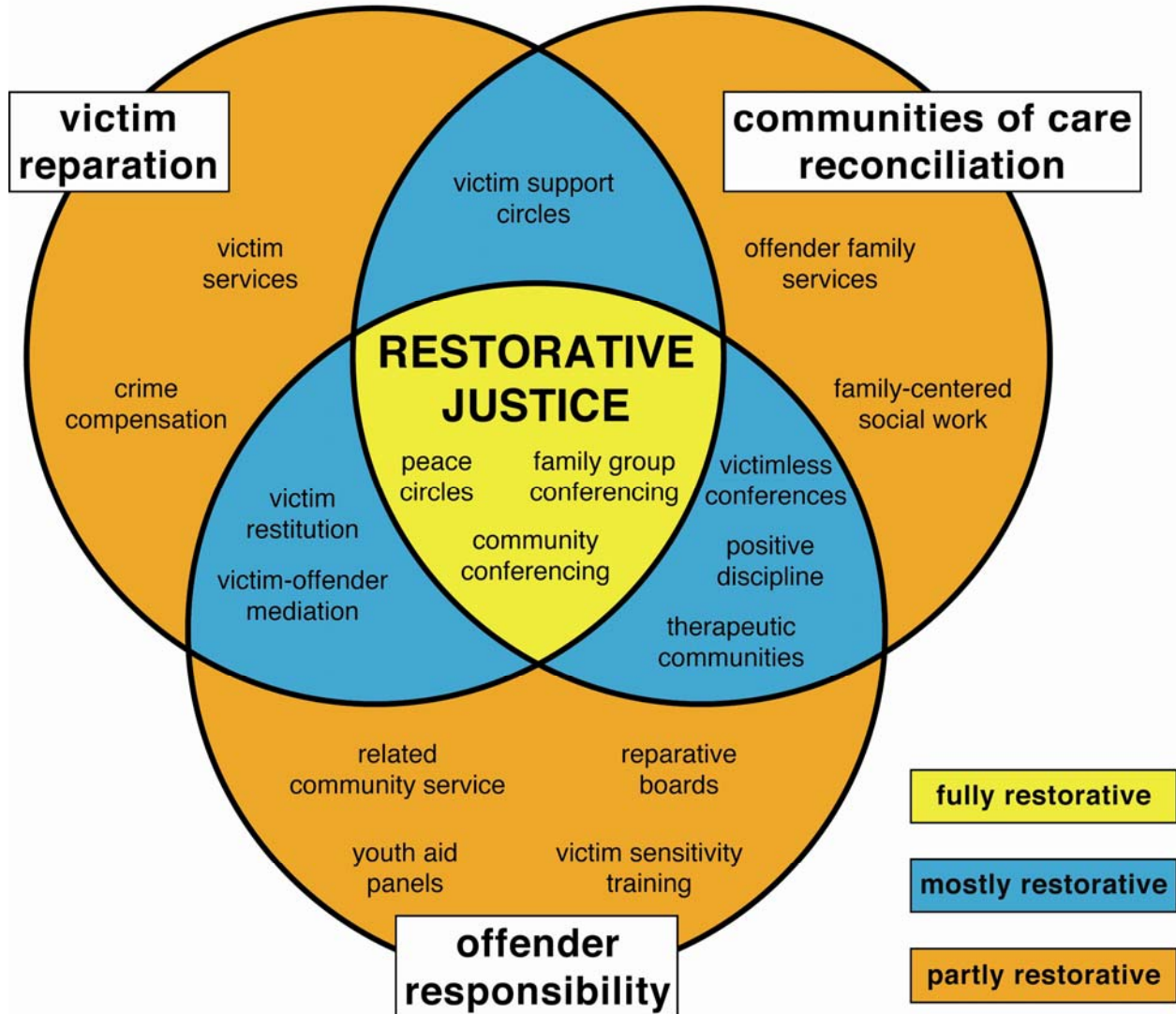
The Virginia State Crime Commission shall complete its meetings by November 30, 2009, and the Director shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2010 Regular Session of the General Assembly. The executive summary shall state whether the Virginia State Crime Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

INTRODUCED

SJ362

Attachment 2
Types and Degrees of Restorative Justice Practice

Types and Degrees of Restorative Justice Practice



Source: McCold, *supra* note 6. Illustration provided with permission of the International Institute of Restorative Practices.