Legislative Background Brief
for the
Law and Justice Interim Committee

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What is Restorative Justice?

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Definition

Restorative justice is described as a criminal justice philosophy that emphasizes reparation to crime victims through a process of negotiation, mediation, and victim empowerment. Some view restorative justice processes as offering alternatives to retributive justice and a promising strategy for diverting offenders from lengthy incarceration, while others see restorative justice processes as supplemental to the current system.

Historical perspective

Interest in victim restoration initially began to flourish in the 1970s and 1980s. By the 1990s, about 700 programs had been established in Europe and there were about 300 programs in the United States. Program size ranges from fairly small, while others handle hundreds of referrals annually.

Who operates the programs?

Restorative justice programs can be:
- community-based;
- church or faith-based; or
- system-based (e.g., operated by correctional institutions, courts, or law enforcement).

How are programs funded?

System-based programs usually receive federal, state, or local government funding. Faith-based programs utilize volunteers. Some community-based non-profit organizations receive funding from private foundations.

Types of programs

Restorative justice programs can be grouped into two broad categories:
- diversionary; or
- non-diversionary.

Diversionary programs offer an alternative process that may divert offenders from traditional retribution-centered punishment. Diversion may occur at any stage of the process (i.e., pre-charge, pre-sentencing, or post-sentencing).

Law and Justice Interim Committee Meeting
June 21, 2011

Exhibit 4

Non-diversionary programs involve victims and offenders within the framework of existing processes, such as during sentencing or as part of developing a restitution plan.

Specific examples of restorative justice processes include:
- victim impact panels;
- family group conferencing;
- victim-offender mediation and dialogue; and
- peacemaking or sentencing circles.

Who refers cases to restorative justice programs?

Judges, probation officers, prosecutors, and police officers may refer offenders to restorative justice programs. However, when and how referrals are made depends on the program and varies widely. Restorative programs are voluntary and victim-centered. Participation by offenders usually requires the offender to plead guilty or admit guilt.

What cases may be handled in a restorative justice process?

About two-thirds of the cases referred to restorative justice programs involve misdemeanors, while one-third involve felonies. Vandalism, minor assaults, theft, and burglary are the four most common types of cases referred. However, more and more programs are finding success with more serious offenses.

Montana's state-level programs

Department of Corrections, Victim Services:
The department of corrections has the following restorative justice programs in place:
- victim-offender dialogue;
- victim impact panels ;
- offender accountability letters;
- monetary restitution; and
- community restitution.

Department of Justice, Office of Restorative Justice:
The office of restorative justice under the Department of Justice was statutorily created through passage of HB 637 *(Kaufmann)* in 2001. It was initially funded by a federal grant through the Board of Crime Control, but the grant ended and no state funding has been specifically made for this program. However, the Department of Justice maintains the office as part of it's victim services office. (See sections 2-15-2012 through 2-15-2014, MCA.)

Mediation Alternative in Criminal Proceedings
In 2007, the legislature passed HB 629 *(Hamilton)* to allow courts to refer a criminal case (except cases involving serious crimes enumerated in the legislation) to mediation. The mediator is to be chosen by the court. (Title 46, chapter 1, part 5.)