

LWVVA Restorative Justice (RJ) Study – Part II

Introduction: The two-year R J Study, which was adopted at Convention 2003, has attempted to look at the concepts on which “restorative justice systems” are based with a view toward reaching a statewide consensus. Information has been provided during 2003, in the Spring 2004 *Virginia Voter* and at Fall Workshops in September, 2004. Most of this material (except the Fairfax County data) was gathered and authored by LWVVA RJ Study Chair Phyllis Turner Lawrence, who has done extensive research, work and teaching in the field of restorative justice practices. Information on RJ practices in Fairfax County can be found on pages S-4-S7.

Defining Restorative Justice (RJ)

Before looking at programs and users of programs, let’s examine first the Restorative Justice “paradigm” (pattern, example or model) as contrasted with the traditional criminal and juvenile justice systems (CJS). Why? Because if programs are devised just for the purpose of reducing the caseload of the current system, or just as a means of using volunteers from the community to deal with victims and offenders rather than using CJS professionals, much of the purpose and possibilities of the RJ paradigm will be lost. There has been much talk in the field about “defining” restorative justice, and one common conclusion is that there cannot be **one** definition – the concept is too broad for a simplistic one-line definition.

One author says: “Restorative justice is the umbrella term that best defines and describes the nature of the reforms being advanced through this movement.” (Andrew N. Montgomery, 1998, *Restorative Justice and the Incorporation of Dispute Resolution into the Criminal Justice System: Playing Devil’s Advocate*,” at www.cfcj-fcjc.org/full-text/montgomery.htm)

Background

RJ advocates tend to believe that the “traditional” (referred to by some as “retributive” or “adversarial”) system of administration of justice in the U.S. has not worked well; that it has, and will, frequently fail to achieve healing, changes in behavior and just outcomes, regardless of how “tough” it is, because in the traditional system, the following occurs:

1. It treats crimes as “acts against the state,” rather than “breaches of relationships” with individuals and/or a community, and thus does nothing about – and often hinders – meeting the human needs for restoration and reconciliation, *i.e.*, the acknowledgment and repair of harm done followed by reintegration.
2. The focus is substantially on the “offender,” with little focus on needs of the “victims,” and usually no focus on needs of the community.

3. Focus on punishment and incarceration, and the resulting increased spending on prisons and other institutions, has not proved to serve the long-term interests of protecting society. Federal and state courts and governments are now recognizing this, as many are changing their “three strikes and you’re out” form of justice and increasing emphasis on re-entry programs to improve the current 67% rate of re-arrest.¹(See p. S-2 about HR4676.)

Simply stated, the traditional criminal justice system (CJS) asks only three questions: **What law was broken? Who did it? and How do we punish them?** Whereas, the RJ paradigm asks three different questions: **Who is hurt? What do they need? and How can those needs be met?** (Howard Zehr, *Changing Lenses*). The RJ model is based upon a collection of principles and values, which are exemplified by the “Signposts” created by Howard Zehr and Harry Mika, two leaders of the RJ movement, as outlined in the box on the next page.

By focusing on determining **all** of the harms, programs based on RJ values give attention to **all who are harmed**. This may include direct victims, their loved ones, neighbors and their broader community. The family of the offender and others connected to the offender and his or her community may well be victims. Often, the offender him or herself is a victim – at least in the sense of being harmed – by his or her own actions, and at times, is a victim of the actions or inactions of others (*e.g.*, abuse, neglect, lack of community support, racism, and so on). RJ processes include the repair of: property, physical and emotional injury, breached relationships, lost sense of security and control. Traditional justice processes, other than

¹ Of the 272,111 persons released from adult prisons in 15 States in 1994, an estimated 67.5% were rearrested for a felony or serious misdemeanor within 3 years, 46.9% were reconvicted, and 25.4% resentedenced to prison for a new crime. *Source: US Dept of Justice Bureau of Justice Statistics, www.ojp.usdoj.gov/bjs/crimoff.htm, which has other statistics and resources for further research.*

the occasional order for financial restitution or order to “stay away” from the victim, do not normally address these needs.

Restorative Justice Signposts

We are working toward restorative justice when we –

- I.focus on the harms of wrongdoing more than the rules that have been broken,
- II.show equal concern and commitment to victims and offenders, involving both in the process of justice,
- III.work toward the restoration of victims, empowering them and responding to their needs as they see them,
- IV.support offenders while encouraging them to understand, accept and carry out their obligations,
- V.recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable,
- VI.provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate,
- VII.involve and empower the affected community through the justice process and increase their capacity to recognize and respond to community bases of crime.
- VIII.encourage collaboration and reintegration, rather than coercion and isolation
- IX.give attention to the unintended consequences of our actions and programs,
- X.show respect to all parties, including victims, offenders and justice colleagues.

--Harry Mika and Howard Zehr 5/8/97

For additional examples of principles, see:
<http://www.restorativejustice.org.uk/resources/pdf/principles.pdf> (UK RJ Consortium)

<http://www.crnetwork.ca/RJ/NationalConsultation/BasicPrinciples.htm> (UN principles)

Restorative principles emphasize meeting the needs of the people actually involved, *i.e.*, not just listening to, *but involving*, the real stakeholders. Traditional justice system practices and policies emphasize the input and decision-making by professionals. However, one of the reasons the RJ movement has been expanding throughout the U.S. is that professionals such as judges and wardens, as well as legislators dealing with scarcer resources, are seeking new means for addressing the aftermath of crime and mechanisms for future crime prevention. In fact, a bipartisan bill which would give \$12 Million for programs based on RJ principles has been introduced in the House of Representatives – HR4676, called the “Second Chance Act.” Reportedly, President Bush supports this bill and a companion bill is expected to be introduced in the Senate soon.

Restorative justice also values developing processes and programs that are culturally appropriate. Thus, there is a great deal of emphasis by proponents on not having a “cookie cutter” approach to developing programs.

Restorative Justice Practices

Simplistically, R J practices can be divided into two major categories: 1) processes that involve a direct meeting (dialogue) between the person or people that were harmed and the person/people who did the harm in a given situation (*i.e.*, crime), and 2) “other” (non-dialogue) practices/ processes/ policies.*²

First, practices which bring the victim and the offender together for a facilitated dialogue are outlined in the bulleted list below. There are many models of victim-offender dialogue (which go by a number of names, such as “restorative conferencing” or “victim-offender mediation”) that are, or should be, *completely voluntary* for the victim and “somewhat voluntary” for the offender. Many in the field believe that the “heart” of restorative justice is victim/offender mediation.*

Some Victim-Offender dialogue processes currently being used are:

- **Complete diversion** of adult and criminal misdemeanors and some felonies from the criminal/juvenile justice system.* This could be where the parties themselves (victim and offender) agree to a dialogue program rather than reporting the incident to police. Or the police and/or intake officers refer the parties to dialogue programs rather than filing a warrant. When cases are referred prior to entering a plea, they are diverted from the court system **on the condition** that any agreements reached are met, or that the victim is otherwise satisfied (this generally means that the judge, prosecutor and defense attorney are **all** approving of this diversion)*;
- **After a plea and prior to sentencing***; so that if there is an agreement about some actions needed to make repair or get services for example, the judge will or may incorporate the agreement into the sentencing order;
- **As a term and/or condition of probation***; generally this means that the offender is not ordered specifically to meet with the victim, but rather is ordered to be screened or to cooperate with an RJ program, so that trained personnel can

² * Denotes example of concept included in Fairfax Co. material.

determine the appropriateness of the case for a dialogue and so that the victim does not feel pressured to participate; and

- **Post-sentencing;** there are victim-sensitive programs that facilitate dialogues between victim and incarcerated offenders as requested by the victim, and *if the offender is willing*. These post-sentencing dialogues often involve crimes of severe violence and the facilitators should have substantial training for aiding victims' and offenders' participation; these dialogues can also be conducted in the community, where there is no incarceration or after the offender returns from incarceration.

Secondly, "other" restorative-type practices being used in many jurisdictions around the country (such as in Colorado, Georgia, Minnesota, Oregon and Vermont) – although not face-to-face dialogues between the victim and offender – include:

- **Conducting victim awareness/empathy classes** for offenders in the juvenile and adult institutions and in community-based corrections (*i.e.*, parole and probation)*;
- **Conducting victim impact panels**, involving victims who want to share their stories with offenders (not their own);
- **Community/citizen circles** which meet regularly with offenders still in, or returning to, their communities after detention or incarceration to help hold offenders accountable while offering support for their efforts to reintegrate;
- **Assigning community service to offenders that is "restorative"** in nature * (*i.e.*, builds competencies and/or community connectedness, or serves the actual victims or otherwise meets the victims' needs/desires, or is chosen by the offender in order to empower the offender to find and choose ways of contributing to his or her community);
- **Creating restorative community projects**, sometimes in partnership with other non-profits, businesses, schools, etc., to which offenders may be assigned*;
- **Developing community advisory committees** working on development of neighborhood safety and offender reentry programs;
- **Training justice and corrections personnel in victim sensitivity** to reduce secondary victimization;

- **Facilitating dialogue and therapy groups** inside correctional institutions that focus on offender accountability and developing empathy*;
- **Supporting community dialogues** that can address community members' safety concerns, placement of halfway houses and other transitional services; and
- **Working with faith-based and community-based non-profits*** to aid with victim assistance and offender re-entry.³

As the variety of practices and models tend to indicate, there are many stakeholders who are viable participants in the dialogue, non-dialogue, community service, educational, and re-entry processes in both the juvenile and adult systems. Within these programs, in addition to the victims and offenders and their respective families and communities, there is a role for: law enforcement; defense and prosecution attorneys; judges*; schools, religious organizations, victim services and advocacy organizations; other victims and offenders not related to a specific case; volunteers as facilitators of dialogues, programs, and community services; and providers of social, psychological, counseling, and substance abuse services*. Other specific opportunities for participation include the offender paying financial restitution to the victim*, repair to damaged property or other service to the victim, community involvement in healing processes for the victim and reintegration processes for the offender and training to be facilitators*.



RJ PROCESSES in FAIRFAX COUNTY - JUVENILE

VICTIM WITNESS UNIT (Information provided by *Victim Services Office*): The Victim/Witness Unit for juvenile offenders in Fairfax County operates out of the Juvenile & Domestic Relations (J&DR) Court, Nineteenth Judicial Circuit, and is called the *Victim Services Office*. Comprised of one and one-half employees, the office serves **only** juvenile offender cases. The office receives cases daily, notified by means of the Victim Referral Form which is filled out by the Intake Officer or Complainant. Once notified, the office responds to the victims within 48 hours by

³ For an annotated bibliography of studies, please see: <http://2ssw.che.umn.edu/rjp/Resources/Documents/RJAnnotations%20June%202003.pdf> For examples of prison programs internationally using RJ principles, here are some web sites: <http://www.pficjr.org/programs/apac/reports/>; <http://www.pficjr.org/programs/stp/>

sending letters to all persons named on the form, enclosing a "Victim Rights" brochure, a Victim Impact Statement and a Restitution Claim Form. Approximately 50-60% of the Victim Impact Statements are returned and are placed in a sealed envelope in the offender's file for the judge to see after making a ruling or accepting a plea agreement.

The Victim Services Office provides to victims and witnesses the following: (free of charge) courtroom advocacy for the victim, will keep the victim informed of the status of the case and will provide Interpreter Services, if necessary. Also provided (but not limited to) are: emotional support; advanced notice of court proceedings; preparing the victim for court; assistance in writing victim impact statements and filing of restitution claim forms; resource referrals for counseling, medical or psychological services; assistance in obtaining compensation through the Criminal Injuries Compensation Fund and notification of offender status. Victim Services will advocate on behalf of the victim to the Commonwealth's Attorney, in cooperation with probation staff, to insure their rights to participate in an offender's sentencing and to have knowledge of any plea bargaining being offered to the court. Restitution Officers follow-up with the victim if restitution is ordered by the court to work out details of payment and schedules. Because of limited staff, the Victim Services Office cannot offer crisis response or see victims and/or crime scenes after hours.

A new program being developed by the Victim Services Office is victim/offender mediation. This program is designed as a follow-up to the Victim Impact Classes and provides an opportunity for the victim and offender to have a face-to-face meeting with the aid of a mediator.

Breakdown of casework: Because of limited staff, the **statistics for 2002 – 2003** that the Victim Services office has kept are as follows: Estimates are that the office has handled **1,064** cases since its inception in 2002; including, but not limited to, assaults, robberies, malicious wounding and property offenses. 41.6% of the cases have been crimes of violence and 49.4% have been property offenses. The coordinator says that there are approximately 60 open cases on any given day and that she may handle 1 to 7 court hearings on a daily basis.

RESTITUTION & COMMUNITY SERVICE for Juveniles (Information provided by the *Restitution Office* and the *Special Services Office* of the J & DR District Court.)

Restitution: The Fairfax J & DR Restitution Officers determine the amount of restitution and report back to the court. If the judge needs further information about a case, the court will require an "Investigation & Report" which is handled by the Probation Office who will

gather additional information by conducting interviews with schools, agencies, mental health counselors, parents, and/or whatever sources are required, including reviewing the Victim Impact Statements (if available), and can recommend alternative sentencing to include restitution and/or community service. If the judge writes "Amount To Be Determined," the Restitution Officers work with the police department, insurance companies, hospitals, schools and whatever agencies are involved in the offense, including talking with the victims to determine the sentence and/or restitution owed.

In approximately 25% of the cases, once all the conditions (restitution, community service, no further violations, good grades, etc.) have been met, the case will be dismissed; or in some cases, amounts and/or community service hours can be reduced to 'completed' status. Using an extensive database, Probation Officers constantly follow up for as long as is necessary until restitution payments are paid in full; unpaid amounts can be reduced to a judgment which becomes part of the offender's future credit record; or Restitution Officers can file a "Rule to Show Cause" [for disobeying a court order] which can require an offender to serve 12 months in jail for failure to comply with the court-ordered restitution payments (victims would not have to go back to court in these instances). Very few cases go uncollected in Fairfax.

Restitution Office Statistics for FY 2003:

Total Collected: \$189,171.86, distributed as follows:

- 52.6% to Individual Victims (\$99,510.57)
- 15.5% to Fairfax County Public Schools, Libraries and Parks (\$29,276.91)
- 15% to Merchants and small businesses (\$28,423.59)
- 8% to Insurance Companies (\$15,105.38)
- 4.5% to Civic and Homeowners Associations (\$8,420.93)
- 1.7% to Fairfax Co. Police and Virginia State Police (\$3,211.37)
- 1.4% to VDOT (\$2,755.00)
- 1.3% to US Treasury/Treasurer of Virginia/DJJ (\$2,468.11)

Community Service: If the offender pleads guilty without a trial, the judge orders the number of hours based on the seriousness of the offense—felonies would require 100 – 150 hours. If there is a plea agreement, the Commonwealth Attorney decides. If the offense goes to court, the judge follows a set of "Guidelines" which were drawn up and agreed to by judges and prosecutors in the mid-1990s. The five

Community Service (Probation) Officers in the Special Services Office determine which agencies/organizations will receive the service; the office has agreements with 200 entities and runs its own Community Service Program.

Efforts to relate the service to the actual victim or to the kind of crime committed are not always made—this is done only if the judge orders a particular site based upon a victim/witness request. Location usually determines the job site, depending on age of offender and type of offense, and whether offender has a special skill that can be utilized. However, efforts are made to “match” the offender’s skills and to the type of service needed, whenever possible. Cases are assigned to a specific probation officer who follows the case until all community service is completed; if the offender fails to complete the service, the probation officer will take the case back to court.

Community Service Statistics are stated in number of “cases” – not “hours of service”:

Total Number of Cases for 2003: 1092

Total Cases successfully completed: 1009

Cases terminated from service unsuccessfully: 34

Cases transferred to another caseworker: 42

Cases transferred to another CSU: 2

Cases sentenced to adult jail or Dept of Corrections:1

Cases of Order rescinded: 4

FIRST-TIME JUVENILE OFFENDERS (Info. provided by the *Juvenile Intake Office* of the J & DR Court)

The policy of the Juvenile and Domestic Relations Court (J&DR) and the Code of Virginia require that as many cases as possible be diverted, both from the system and from within the system (e.g. learning centers); diversion is given the highest priority. In CHINS cases (children in need of services or supervision, such as runaway or truancy), they try to divert 100% of the cases. There are few diversions for felony cases, and only if the juvenile is very young. In criminal cases, Virginia law allows a one-time diversion. If the crime is a misdemeanor or lower, they divert if there is no prior record. Likewise, they usually divert if the crime is shoplifting or destruction of property. Assault cases usually go to court (are not diverted from the system). At intake, cases can be diverted to an informal “Hearing Officer Program” (begun in 1970) or counseling. Diversion is also possible within the court system. Diversion can take the form of actions such as requiring the accused to provide county services, pay restitution, write letters of apology, or have the driver’s license taken away.

Following are two programs the Hearing Officer can use for diversion: **1) STOP** (Shoplifting Theft Offender Program) which handles shoplifting and petty theft cases, requires the accused to attend an education session and connects the juvenile to the community;

and **2) SAFE** (Substance Alcohol Family Education), which is jointly funded by the Court, ASAP (Alcohol Safety Action Program) and INOVA Health Systems, that usually requires the accused to pay \$250 and write an essay for a judge. (There are 14 such programs in the country; **Fairfax’s** is the **only one in Virginia**). For alcohol cases, the juvenile can be ordered into the SAFE program and then dismissed, or put on probation and supervision. At intake, CHINS cases can also be diverted to a family assessment program that includes a contract between the J&DR, the parents and the child. Or, the accused can be referred for family counseling (an internal program). Diverted cases are monitored for compliance. If they comply with requirements and commit no more offenses, they don’t go to court.

The amount of diversion programs available affects the rate of diversion to a certain extent. Also, state and county budget cutbacks have affected the counseling program; two contracts (for a pre-court probation type program and for a multi-cultural center) have been lost.

RJ PROCESSES in FAIRFAX COUNTY - ADULT

(Underlined words refer to asterisks throughout the material)

VICTIM/WITNESS UNIT (Victim/Witness Unit Information provided by *VSS office*): Called Victim Services Section (VSS) in Fairfax, this office is a unit within the Criminal Investigation Bureau of the Fairfax County Police Department that handles primarily adult offender cases. VSS has a staff of 11 who provide comparable services to victims of both adult and juvenile offenders and who include persons who speak languages other than English, including Arabic and Farsi. VSS serves Fairfax County, City of Fairfax, Towns of Herndon and Vienna, and George Mason University. Services are provided to persons within these jurisdictions who are victims of any of the following crimes: homicide (about 17 per year), involuntary manslaughter, adult sexual assault, adults molested as children, child sexual and physical abuse, elder abuse, robbery (involves use of a weapon), aggravated assault, malicious wounding, domestic violence, stalking, burglary, bias crimes, financial crimes/fraud. VSS also provides service to the victims of juvenile offenders and to children when cases are being investigated by the Criminal Investigations Bureau (homicide/ sexual assault/ robbery/ stalking and domestic violence) and may have other victims of juvenile offenders referred to them by various sources, working in conjunction with the Juvenile Victim Services Office.

Most victims are referred to VSS through the Police Department. Clients may also be referred by other county agencies, by hospitals, doctors, schools, prosecutors (rarely), or by call-in or walk-ins to VSS.

VSS receives and reviews stacks of indictments on a daily basis, as well as reports from police patrol officers. VSS reviews the process to assure that they are getting reports from all police incidents. The office offers: crisis intervention, 24-hour victim assistance, counseling referrals, support groups, court advocacy and escort, witness preparation, victim impact statement preparation, crime victim compensation, 24-hour safe haven for victims of domestic violence. The VSS staff track family disputes, which often times lead to future problems, and all domestic abuse situations, which may be early indicators of potential homicides. They have established a Cultural Information Exchange with regard to domestic abuse for outreach to persons from middle-eastern and Latin cultures. (The staff is especially alert to the reluctance to report domestic abuse of women of Middle Eastern and Spanish descent.)

VSS services are available 24 hours a day, 7 days a week. Staff is available to respond to the crime scene if needed and has a rotating schedule for after-hours responses. The Public Communications unit calls VSS staff when there is an after hours incident. The county provides VSS with cars that are taken home (so that they can respond quickly). VSS staff either provide transportation to a hotel or arrange for taxi service for victims who need a place to stay for the night. Fairfax County used to run a shelter but found that this was not cost effective.

Victim Impact Statements are used at the time of sentencing and, although the victims have a right to present the statement in court, this is very seldom done. VSS solicits the victim impact statements, counsels the victims and provides them with examples of statements. Although victims have the right to present orally, about 85% write something, rather than present orally, although occasionally persons will use photographs. A Victim Impact Statement can include any economic losses, physical/psychological injuries and any major life changes as the result of the crime. The judge reads the statements as part of the presentencing report; judges very often comply with the victim request. The statements are presented to the court by the Commonwealth Attorney and Probation Department.

Other Notes from the VSS office:

Regarding Restitution: It is the belief of some persons in the VSS office that restitution is not used enough, because as a component of restorative justice, restitution can serve as a "wake-up call" for accountability – especially for juveniles. The judges determine restitution; the Commonwealth's Attorney makes the request. The VSS educates victims at the beginning of the process about restitution, and shares the victim's request with the Commonwealth's Attorney.

Victims Compensation Fund: The State of Virginia supports this fund which can be used for things such as paying a portion of the funeral for murder victims. There is a limit of \$3,500 and also can be used for American victims abroad who are Virginia residents.

Face-to-face dialogues: Records indicate that 25% of victims would be willing to meet with the criminal. A program to prepare victims for the return of the criminal to society after completion of a sentence should be developed and used more. More attention is being given to the issue of re-entry, for both the victim and offender, at the local and federal levels. Grant money for this purpose is currently being provided by federal entities to local jurisdictions. (See information on HR4676 on p. S-2.)

Breakdown of casework: The average *annual* caseload per VSS staff person is 250, of which about **45% involve domestic violence**. After this, the highest percentage of cases are robbery and sexual assault; but a new category that is increasing is financial crime, such as identity theft. The most current breakdown of **statistics (for 2003):** approximately **70% of agency time is spent on serious felony/violent crimes**, mostly adults (90%); juvenile offender cases are usually handled through the community services unit (CSU) of the Juvenile Special Services Office, but some of the violent juvenile offenses will be handled by VSS (VSS and CSU communicate and sort this out). Therefore, about **30% of agency time goes into the remainder** of the kinds of victimization and about **95% of these involve adult offenders**.

ADULT RESTITUTION & COMMUNITY SERVICE operates out of the Fairfax Co. Court Services Division (CSD) of the General District Court. According to the CSD office, Fairfax County is the **only county** in the State of Virginia where the provision for "community corrections services" is **under the court system**. (Information provided by *CSD Office*)

Restitution: The amount of restitution or community service hours ordered by the judge is most often the result of plea bargaining between the Commonwealth's Attorney (prosecutor) and the defense attorney. Restitution, also validated by the judge, is based on the specifics of the case and the defendant and is most often used in cases of property damage and theft. The CSD office only deals with cases in which the offender has been convicted and ordered into the probationary program and only tracks defendants put on probation with CSD. The amount of restitution ordered and percentage paid is not tracked. CSD tracks by "totals collected" and percentage of "successful completion." CSD monitors the payment of restitution, payment of court costs and fines, and completion of community service hours.

Community Service: For cases requiring some type of community service hours, the judge usually does not make a specific recommendation as to the type of service to be performed. If there are no other conditions of probation, the court refers directly to the Opportunities, Alternatives, and Resources (OAR) office and Alternative Community Services (VAC) office to place and monitor probationers in the community to complete their hours of service. OAR and VAC charge a \$75 fee for their service, so if the probationer cannot afford to pay the OAR fees, a CSD probation officer will find community service placement for the probationer. If the probationer has other conditions of probation, they are referred to CSD which does not connect the type of crime to community service placement or to helping the actual victim, or to using the offender's competencies. In many of the cases which CSD receives, there is no contact between the victim and the probationer. (Note: Virginia law now designates that a DUI (driving under the influence) conviction requires some type of community service hours for part of the penalty.)

Statistics (amounts are tracked as "totals collected" and percentage of "successful completion"): **2003 statistics:** The probation program under CSD had a **71% successful completion** rate and almost **5,000 hours of community service** were completed. **Collection totals for 2003** were: **\$151,891.45** by the Adult Restitution program, with **\$32,623.42** recovered for fines and court costs.

FIRST TIME OFFENDERS-ADULT: (Information provided by *CSD office*)

Within the Court Service Division, the only adult diversion program is "driving on a suspended license resulting from administrative failures" (no suspensions involving *criminal charges* like DUI are diverted). If the defendant settles administrative problems and shows proof of settlement and a valid DL, then CSD has the authority to tell the defendants they do not have to appear in court—the records will indicate that they are legal license holders. CSD prescreens the 'driving with a suspended sentence' cases before court dates to pick out which cases are suspended because of "administrative" offenses. CSD petitions for a delayed court date and directs the defendant to the specific jurisdiction and office to settle the matter; there is a specified period of time in which the offense must be rectified; if the defendant does NOT comply by that date, the court is notified they are non-compliant and will render a judgment. The limited use of diversion programs in CSD is a function of staffing decisions. (See *other Adult first-time offender programs*.)

Other Adult First-time Offender Programs: These programs **do not operate** out of the Court Services

Division, although the CSD works with them (they are mostly non-profit community based programs – see Juvenile First-time Offender programs). **ASAP** operates a "First-Time Marijuana Program" and **OAR** operates a "First-Time Shoplifting Program." CSD runs the criminal history record checks on each defendant for OAR and ASAP to determine the defendant's eligibility for these programs. Defendants who select to go into either program do not go to trial or have any conviction shown on their record, and therefore, are no longer under CSD (which deals only with tried and convicted offenders). Some eligible defendants do not choose to go into the program because they are unwilling to make the required 12-week commitment.

Other Comments: CSD also shares with the Domestic Relations Court (J & DR Court) a grant from the Virginia Department of Criminal Justice which covers additional probation officers who supervise offenders convicted of domestic violence offenses. No statistics on recidivism, although Fairfax County has begun a study of recidivism.



Measuring RJ systems: The Virginia Supreme Court and the Restorative Justice Association of Virginia (RJAV) have been in discussion about developing standards of training and practice. This is a challenging issue as one of the RJ principles is inclusiveness and diversity – to require "certification" may preclude the involvement of many excellent volunteers.

The RJ study done by the League this past year revealed that few of the jurisdictions in Virginia which were researched by the committee effectively tracked and/or monitored the amount of financial restitution currently being ordered and collected*. Nor were the total hours of community service ordered and performed tracked*; nor were statistics available on the percentages of persons complying with the respective orders.* In some jurisdictions in the country, such data is collected locally and reported to the state. The state then provides some evaluation, which compares results based on whether hours and payments are court-ordered or part of a victim-offender or offender-community process.

As for comparing recidivism rates* between traditional justice and restorative justice systems, this measure is difficult to quantify. Since recidivism rates are high in the current traditional systems, cases which are adjudicated by RJ systems will show a lower rate because those type of cases are generally better suited

to lessening recidivism. This being said, in places where recidivism rates have been compared, recidivism rates in RJ systems tend to be better than in similar cases handled by the traditional systems.

Following are typical categories for measuring RJ systems:

- *Victim satisfaction* (such as feelings of being heard, that the process was fair, that the offender was sincere and accountable, and the extent that harm is repaired);
- *Offender compliance and satisfaction* (such as feelings of being heard, that due process was served, that the outcome was fair; and that they were able to comply with agreements reached). Some evaluations also discover that the offenders feel supported by others, (including the victim).
- *Restorative community service* can be evaluated on how does the community benefit; how does the offender benefit; does the offender continue as a volunteer; are new projects developed with community and business support; does the restorative community service build skills or offer reasonable financial fines?
- *Justice systems and program staff* can be evaluated on how restorative and victim-sensitive they are, as well as tracking rates of recidivism in the systems*.

Opposition to RJ

Although there are few *complete* opponents of RJ, many people raise the following concerns— responses to these concerns are based on research compiled from ongoing and successful systems incorporating RJ principles (both within the U.S. and internationally).

1. *If the goal is to involve victims in determining their needs and desired outcomes, what if they don't want to participate?* Any practices or processes should always be *voluntary for victims*. Their participation should be sought out and supported sensitively by people who have received some training in understanding victimization and trauma. (However, this does not mean they have to be professional counselors, etc.). Victims' participation can range from being part of policy development to being in dialogue with the person who harmed them. If the actual victim does not want to, or is unable to, participate in dialogue with the offender, in some cases others have "spoken for them," such as a family member, or members of the affected community, or

"surrogate" victims who have been through similar crimes.

2. *When victims do want to participate, are their needs being fulfilled?* Where local programs have measured self-reported victim satisfaction on each of the following measures, satisfaction results have typically been in the 85% to 95% range. Numerous studies, evaluations and self-reports have all indicated that participating victims feel safer, feel heard, and feel more satisfied than with the traditional justice system, where they have little opportunity to affect the outcomes of a case and/or to have their needs addressed.
3. *In the US, there are thousands and thousands of juvenile and criminal cases. Not all victims and all offenders will be willing or ready to participate in a dialogue. What are some ways in which criminal justice systems can be more restorative that do not involve direct contact between victims and offenders?* See information about "other"(non-dialogue) practices.
4. *Will "punishment for a crime" be negated by RJ systems of justice?* In the U.S., the system of justice is based on notions of fairness, including that "the punishment should fit the crime." From an RJ perspective, "accountability" for the crime would be more appropriate than just the concept of "punishment;" but nonetheless, some element of balance between accountability and punishment is generally deemed necessary by proponents of RJ—the degree of balance between the two concepts is a concern often raised by those favoring the more traditional system of justice. This concern can be addressed by justice officials, whether judges or probation personnel, who, when there are agreements for repair reached in a dialogue process, may retain the right to approve or disapprove the agreement*. Compliance with the agreement is usually monitored by either the RJ program staff or the courts*; and non-compliance usually leads the offender back into the traditional court response of graduated sanctions*.

Fairfax County information is based on interviews conducted by LWVFA RJ committee: Sherry Zachry, chair, Pat Brady, Kathy Fischer, Sarah Higgins, Therese Martin and Ruth Zeul. Additional resource material is available on the LWVVA website at: www.virginia.va.lwvnet.org/studies.html