

**RESTORATIVE
PRACTICES
IN ACTION
JOURNAL:
FOR
SCHOOL
AND
JUSTICE
PRACTITIONERS**

Journal Released at the
*Restorative Practices in Action:
A Conference for
School and Justice Practitioners*

Co-sponsored by the New York State Permanent
Judicial Commission on Justice for Children and
the Center on Race, Crime and Justice of the
John Jay College of Criminal Justice, CUNY

May 1, 2015

RESTORATIVE PRACTICES IN ACTION JOURNAL

Journal Released at the Restorative Practices in Action:
A Conference for School and Justice Practitioners

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NEW YORK STATE PERMANENT JUDICIAL COMMISSION ON JUSTICE FOR CHILDREN

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ACKNOWLEDGMENT

This publication is the result of a Call for Papers that was distributed to the presenters at the *Restorative Practices in Action: A Conference for School and Justice Practitioners*. These champions in restorative practices engage in promoting practices and policies of our education and justice systems that can reduce the involvement of youth in the justice system and help them succeed in school. These experts include academics, advocates, counselors, criminal justice experts, educators, judicial leaders, juvenile justice experts, legal experts, policymakers, program managers, researchers, school leaders and social workers.

To the contributing authors, thank you for taking our short- turnaround request to heart and making this publication a valuable resource for the conference and the crucial work that follows.

While the papers are overlapping, they are presented in three sections:

- I. GUIDING PRINCIPLES AND EFFICACY OF RESTORATIVE PRACTICES,
- II. SCHOOL TRACK AND
- III. JUSTICE TRACK.

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SECTION I.

**GUIDING PRINCIPLES
AND
EFFICACY OF
RESTORATIVE PRACTICES**

THE RESTORATIVE IMPLEMENTATION: PARADIGMS AND PRACTICES

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Changing the discipline practices of a school is a multi-year process requiring effort and buy-in from all members of the school community. Educators wishing to include restorative measures into their school climate efforts can look to implementation science for a framework of change. Restorative practices are similar to and have key differences from School-Wide Positive Behavioral Interventions and Supports, but the framework for implementation can be used for both sets of practices. Implementing restorative measures requires adults to reflect upon their beliefs about discipline and students and upon their own values in education.

The unintended outcomes of suspension and other exclusionary discipline policies are well documented. The U.S. Department of Education and the U.S. Department of Justice, no less, have recommended school districts change their discipline practices to keep students in schools, learning and off the streets and out

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of the criminal justice system. Two approaches, in particular, are cited as alternatives to suspension and expulsion: Positive Behavioral Interventions and Supports (PBIS) and Restorative Measures. Both are best implemented throughout the whole school, and both constitute a paradigm shift away from punishment to teaching and recognizing positive behavior expectations in the former, and building community and repairing harm in the latter (Joint Dear Colleague Letter, 2014).

The question at hand for schools looking to implement Restorative Measures is how to start? The basic answer is to look to implementation science, and follow the interconnected stages of exploration, installation, initial implementation and full implementation. Build a diverse team that has authority. Get buy in from the faculty and staff, the family members and the students. Collect data and analyze it. Make sure the leadership in the school supports the approach. Have meetings, train people. Coach. Train again. Re-allocate resources, adjust policy. Review data, disaggregate data, make decisions based on data. Report to the community and the school board. Engage in a continuous cycle of improvement. You know, run a school.

Implementation science developed in part to help ensure that a practice would be done to fidelity, and that students benefit from the practice. There is no short cut to Carnegie Hall: one has to practice, practice, practice. Since restorative approaches are relatively new to some educators, I would like to review a few items that are essential and perhaps very challenging. The restorative philosophy is a paradigm shift in the way adults and students work together. Implementation is a process, not an event. We do things best that we have learned deeply. Comparisons provide insight.

RESTORATIVE MEASURES

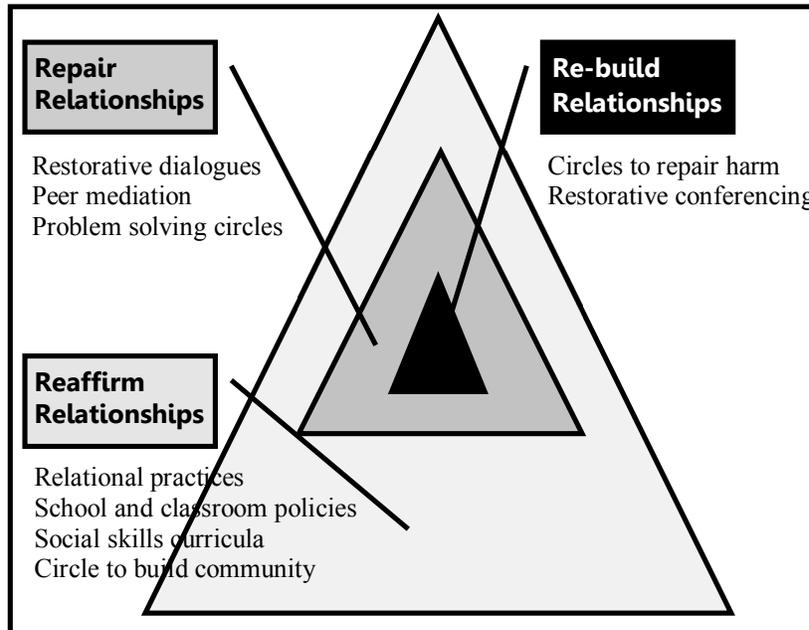
Prevention programs in schools are most effective when they provide a multi-tiered systems of support (MTSS), are implemented school-wide, use data to inform and improve programming, and address student and adult behavior as well as the school climate environment. The public health approach to disease prevention of primary, secondary and tertiary interventions has been adapted to illustrate these levels in schools, and is a useful framework for everything from reading instruction to behavior. The triangle framework is enhanced when educators use it to consider the whole child—their emotional, academic, behavioral and cognitive needs.

Restorative measures (or practices, approaches, discipline) can be organized into tiered levels of support, focusing on fair practices that:

1. Affirm relationships as a means of building community in the classroom and school,
2. Teach the skills of relationship to develop internal strength and
3. Use the power of relational connections to provide direction for repairing or rebuilding relationships (see Figure 1).

At the tier one level, Restorative Measures teach social and emotional skills with an emphasis on building community—relationships between students and students and adults and students, practiced through class meeting or the circle process (Nelson, Lott & Glenn, 1993, Stutzman, Amstutz & Mullet, 2005). Behavior expectations are based in the values of the

Figure 1. Responsive Regulation: A Whole School Model of Restorative Justice



Source: Morrison, B. Restoring Safe School Communities, 2007.

group and are developed by students and adults together (Boyes-Watson & Pranis, 2010). All adults teach, model and re-enforce empathy, primarily through the use of affective statements (Costello, Wachtel & Wachtel, 2009).

Restorative Measures involve values, skills and processes, not just a set of intervention techniques. To set up a restorative school, the adults must discuss their values and whether they can align what they do in school to their own self-care, to work with students and each other, and to compassion for each other and for the students and families.

PARADIGM SHIFT

The philosophy that underpins restorative approaches constitutes a paradigm shift. Instead of thinking only about how to respond to the individual, Restorative Measures are about harnessing the power of relationship and community. Brenda Morrison defines Restorative Measures as practices that sustain “safe and just school communities grounded in the premise that human beings are relational and thrive in contexts of social engagement over control” (Morrison, 2007).

So what does that mean, really? Most school policy is organized around the control exerted by adults over the students using negative or positive re-enforcement. In some instances that control is exerted by police officers. It can be a challenge, therefore, for some adults to believe that students, if asked to help keep the classroom safe for all, will actually work for the greater good.

Ted Wachtel states this concept of social engagement in this way: "The underlying premise of restorative practices is that people are happier, more cooperative, more productive and more likely to make positive changes when those in positions of authority do things WITH them rather than TO them or FOR them" (Costello Wachtel & Wachtel, 2009).

It may make sense in some people’s head to collaborate with students (to do WITH them) on creating a safe school environment, but that might be a challenge to their heart: some adults may not trust students. Other adults may be all for collaboration and relationships, as that feeds their heart, but they are concerned about very practical items, like, will the number of fights decrease? Will there indeed be less bullying? Will we be safe? How much time will this take? Will this increase academic achievement?

This tug between the head and the heart is perhaps the first challenge of implementation: getting buy-in from the school community. Adults, students and community members will need to grapple with issues such as punishment and consequences, taking the time we need, knowing that teaching takes time, youth development principles, fair process and resource allocation. Will we use restorative processes for all behavior problems, or just the simple ones? Will this work for every student and situation? Do we throw out the discipline manual? Will we use them for adult behavior? Is there a place for workplace restorative process for harm that happens between adults? Is it possible that some students did not choose to behave a certain way, but that they might not have the neural pathways for “good school behavior?” Can we accommodate trauma informed practices? Do we care at all about someone’s story? Do we really want relationships—adult to adult, student to student, teacher to parent, school to community?

So, how does one convince people to try another way? One way is to engage staff in a learning and discussion process. Kay Pranis and Carolyn Boyce Watson have developed a set of circle outlines for staff in their book *Circle Forward* (Boyes-Watson and Pranis, 2015). The staff can learn the Circle process, the means by which a restorative school can build community and then discuss restorative principles. By holding discussions in Circle, they have a practical reason to experience the process. That way, the staff has some idea of what they are buying into when the school is asked to “go restorative.” But in order to teach the information needed to discuss buy-in, someone needs to have “bought-in.”

IMPLEMENTATION IS A PROCESS, NOT AN EVENT

The research on implementation is a comfort and a challenge. The comfort is that a school cannot be expected to fix everything in a week or a month or a year. The challenge is that it takes two to four years to get through exploration to installation. Lasting change does not come overnight. To be effective, an *entire* community must be involved in and committed to the implementation of Restorative Measures.

Implementation science identifies several stages that require attention to allow for holistic integration of practice into all systems within a school. This is a process which requires a multiyear commitment of time and resources. The four stages of implementation are not always done in order, but each needs to be done fully (see Table 1).

1. Exploration
2. Installation (Training and Preparation)
3. Initial Implementation
4. Full Implementation.

School staff may learn about the process of implementation by reviewing the materials on the Active Implementation Hub, an online learning website developed by the University of North Carolina. School-Wide Positive Behavior Interventions and Supports is a working example of using the science of implementation. Several school districts are building such Restorative Measures frameworks, like San Francisco and Oakland. The Ministry of Education in New Zealand has built an excellent website with theoretical and practical linkages to their positive Behavior 4 Learning initiative, which has

Table 1. Four Stages of Restorative Measures Implementation

Focus	Stage	Description
	<p>Exploration</p>	<ul style="list-style-type: none"> • Decision of making a commitment to adopt and enact the process and procedures required to support implementation of restorative practices with fidelity.
	<p>Installation</p>	<ul style="list-style-type: none"> • Training staff and setting up infrastructure required to successfully implement restorative practices. • Involvement of students, staff and families. • Development of a core group/team to plan, implement and collect data.
	<p>Initial Implementation</p>	<ul style="list-style-type: none"> • Adoption of restorative practices into all systems within the school. • Staff are actively engaged in the practices. Students and families are knowledge of practices and active participants. • Clear evidence of restorative practices are visible. • Data collection is on-going.
	<p>Full Implementation</p>	<ul style="list-style-type: none"> • Data has been collected and reviewed with all stakeholders. • On-going professional development for all staff. • Benefits are present. • Adjustments are made as needed.

Source: Adapted from Los Angeles County Office of Education. For more information, go to <http://region11s4.lacoe.edu/attachments/article/104/2C.%20PBIS%20Stages%20of%20Implementation.pdf>. Also, Implementation of Best Practices, Minnesota Department of Education at <http://education.state.mn.us/MDE/EdExc/BestPrac/ImpleEffecPrac/index.html>.

11 frameworks, from Māori culture to Restorative Measures. (See the *Resources* section for website information on these initiatives.)

The exploration stage for Restorative Measures has taken many forms in Minnesota. In some instances, a lone advocate has caught the interest of teachers or administrators, and practices have been built off of the work of a few people. On the other end of the spectrum, a principal or superintendent has directed senior staff to implement Restorative Measures, however they can. Or the student support staff team has worked to influence either teachers or administrators to build community in the classroom or repair harm in the office. In other parts of the country, the community has worked with the district to build a restorative school.

But we know that advocates and administrators can leave—to another district, to another position within the district, to start an organic carrot farm. For that reason, as soon as the idea of using Restorative Measures is raised, it is helpful to put together a team to manage implementation, a team that is based upon the right functions, rather than good friends. The team then has enough people to carry on its work, regardless of promotions, position changes or life choices.

Just learning the components of implementation takes time, but it is time well spent, if we want an initiative to become part of the way things are done, as opposed to a program that ends. One is about sustainability, and the other is about the short run.

LEARNING RESTORATIVE MEASURES DEEPLY

To implement anything well, people need to know what it is and they need to know what it is *deeply*. This takes time.

Reading and studying the theory around Restorative Measures is essential, but equally important is experiencing the actual practice. I can explain a C major scale, but the essence is in the movement of my fingers over the keys. One restorative justice trainer provides opportunities for the teachers she trains to also volunteer at the restorative justice community program. They learn the essence of the process by participating weekly in a circle to repair harm. The process is the best teacher.

Restorative Measures are based in modern restorative justice theory, the psychology of affect, youth development principles and Indigenous People's wisdom (Morrison, 2007, Costello, Wachtel & Wachtel, 2009, Riestenberg, 2012, Pranis, 2005). I am guessing that all of our cultures had Restorative Measures, deep in the past. We all at one time could not afford to lose anyone from the fire circle, and so figured out how to repair harm for the good of the group. Some cultures still practice restorative ways. Deep learning includes finding the people in your community who know these practices and learning from them.

COMPARISONS PROVIDE INSIGHT

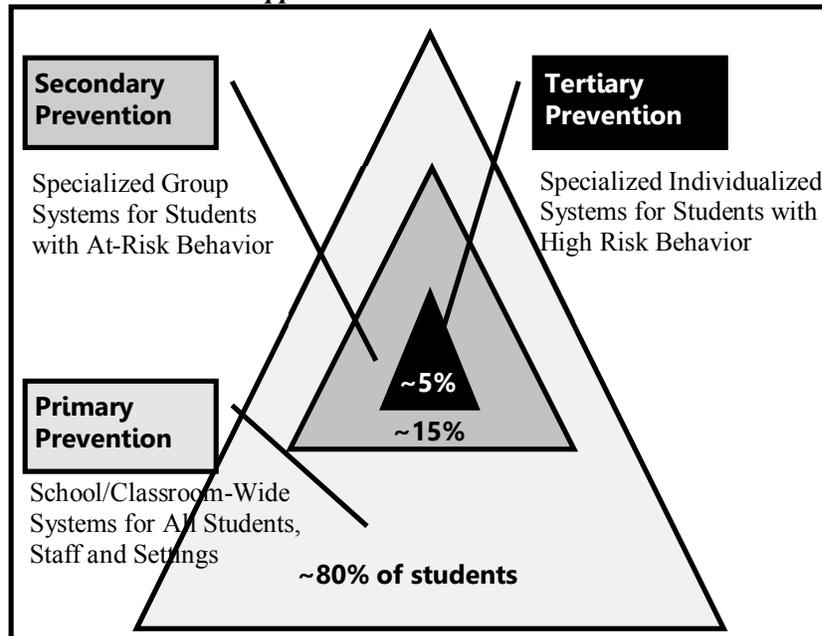
Because PBIS and Restorative Measures are being paired as ways of reducing disproportionality and improving school climate, it is useful to compare the practices, so that application can be done with fidelity to both. While PBIS seeks to establish a school-wide framework to teach and support student pro-social behaviors, Restorative Measures seeks to engage the group to encourage relationship building and to repair harm. The approaches are not mutually exclusive, as both draw upon the public health framework for prevention. Both provide approaches that fill in gaps in the puzzle of student need.

SCHOOL-WIDE-PBIS (SW-PBIS)

SW-PBIS provides a structure for targeting, implementing and sustaining evidence-based practices. Changes in the behavior of students comes from clearly articulating behavior expectations, aligning adult behavior so that all adults are looking for and recognizing positive, pro-social behavior, as well as changing the environment so that conditions for positive behavior are enhanced. Data helps to focus effort, making the coordination of related programs more effective.

It is based in behavioral theory and applied behavioral analysis (Sugai & Horner, 2002). At the primary level, adults work with students to identify the behaviors that everyone is expected to use, and the adults then teach the skills for those behaviors (see Figure 2). As David Osher and colleagues

Figure 2. Continuum of School-Wide Instructional and Positive Behavior Support



Source: SW-PBIS, 2009.

explain, “The goal is to establish a positive school and classroom climate in which expectations for students are predictable, directly taught, consistently acknowledged, and actively monitored” (Osher, Bear, Sprague, Doyle, 2010).

SIMILARITIES

SW-PBIS and restorative measures have shared core features and complement each other (see Table 2).

Table 2. *SW-PBIS and Restorative Measures Similarities*

Shared Core Features	Complementary Features
<ul style="list-style-type: none"> • Whole school approach • Attention to changing the behavior of adults • See and pay attention to each and every child • Change environment • Identify, teach and encourage positive behaviors • Build assets and protective factors 	<ul style="list-style-type: none"> • Restorative Measures provide early and/or intense interventions to restore harm and repair relationships • The Circle process provides a way of delivering content, especially Social Emotional Learning, that strengthens relationships at the same time as helping adults see each child • The SW-PBIS framework provides data for team-based decision making • SW-PBIS reflects best practices in implementation science

DIFFERENCES

Restorative measures and SW-PBIS also differ on the following dimensions (see Table 3).

Table 3. *SW-PBIS and Restorative Measures Differences*

Dimension	SW-PBIS	Restorative Measures
Practices	<ul style="list-style-type: none"> • Behavioral 	<ul style="list-style-type: none"> • Relational and structural problem-solving processes
Primary Focus	<ul style="list-style-type: none"> • Teaching • Acknowledging and rewarding pro-social behaviors 	<ul style="list-style-type: none"> • Affirming relationships • Teaching empathy • Resolving conflict and harm and restoring or re-building relationships
Decision Making Process	<ul style="list-style-type: none"> • Team- and data-based • Attention to fidelity of implementation 	<ul style="list-style-type: none"> • Problem solving using affective questions • Small impromptu conferences and group or class circles to re-affirm common agreements and expectations
Responsiveness to culture	<ul style="list-style-type: none"> • Team makeup and behavioral expectations reflect the culture of the school 	<ul style="list-style-type: none"> • The community building process of reaffirming relationships acknowledges and builds upon the cultures of the students in the classroom, as well as the culture of the school and majority culture

IMPLEMENTATION SCIENCE

Implementation science, which is integrated throughout the SW-PBIS framework, underscores the importance of practicing the process to fidelity. Sometimes, to ensure fidelity, processes need to stand side by side. For instance, it would be odd to a Restorative Measures practitioner to reward a student for participating in circle or send them to the principal's office if they choose not to participate. The process is about authentic and reciprocal social engagement. During the circle, participants—students and teacher alike—are more or less equal. Likewise, once the circle is done and the desks are back in place, adults resume recognizing the behaviors they want to see, keeping their focus as much as possible on the positive.

Sometimes processes can be imbedded, like providing a social emotional learning lesson or bullying prevention lesson taught in circle. Sometimes one approach can inform another like using youth development principles in the process of developing school wide behavior expectations. By asking the students in each class to come up with their expectations, and having those expectations included in the process of making one set for the school building, all voices—students and adults—are heard.

Finally, no one approach can provide everything a school needs for a safe climate. We need to consider mental health services, social emotional learning and equity efforts through the tiered levels of support, in addition to PBIS and Restorative Measures. Maintaining effort is the challenge and the hope of a school.

CONCLUSION

Comparing Restorative Measures and SW-PBIS provides insight into both approaches as well as an example of implementation. Whatever practice we use, we must use it to fidelity. Implementation is a process, not an event. We must learn deeply the musical scales of our practices, in order to do them well. Restorative Measures are a paradigm shift away from punishment and external control to social engagement, repair of harm and community building with each other. We can integrate Restorative Measures with other initiatives, we can use them to inform other practices and they can be used side by side.

With both relationships and recognition, students with adults can build and strengthen self-control so that everyone can work, play and learn in a safe, predictable, respectful community. More importantly, though, I would say we need to use the core features of any practice—academic, social emotional, behavioral or restorative—as an art, heartfelt, knowing that what we do is based in our values and is valuable.

RESOURCES

Active Implementation Hub

(<http://implementation.fpg.unc.edu/>)

The AI Hub is developed and maintained by the State Implementation and Scaling-up of Evidence-based Practices Center (SISEP) (<http://sisep.fpg.unc.edu/>) and the National Implementation Research Network (NIRN) (<http://nirn.fpg.unc.edu/>) at The University of North Carolina at Chapel Hill's FPG Child Development Institute.

Center for Justice and Peace Building at Eastern Mennonite University

(<http://www.emu.edu/cjp/>)

The Center for Justice & Peace building (CJP) is comprised of the Graduate Program in Conflict Transformation, and the Practice and Training Institute which houses the Summer Peace building Institute, Seminars for Trauma Awareness and Resilience (STAR) and other intensive training, program and partnership opportunities.

Center for Restorative Justice at Simon Fraser University, Vancouver, British Columbia

(<http://www.sfu.ca/crj/>)

The Centre for Restorative Justice is an initiative by the Simon Fraser University School of Criminology.

International Institute of Restorative Practices (IIRP)

(<http://www.iirp.org/>)

IIRP is a graduate school and resource center for restorative work in school and community.

Positive Behaviour for Learning

(pb4l.tki.org.nz)

The New Zealand Ministry of Education's Positive Behavior for Learning is a systemic approach to help schools "address problem behaviour, improve children's wellbeing and increase educational achievement." Ten initiatives are being used or are in development, including PB4L Restorative Practice.

Positive Behavior Interventions and Supports in Minnesota

(<http://www.pbismn.org/>)

PBIS MN is the website for the broad constituency of Minnesota SW-PBIS implementers, trainers, coaches, practitioners, stakeholders, teachers, advocates, researchers, volunteers, administrators, regional project and MN PBIS leadership staff.

PBISApps

(<https://www.pbisapps.org/About-Us/Pages/default.aspx>)

PBISApps is a not-for-profit group, developed and operated by Educational and Community Supports (ECS) faculty and staff, a research unit at the University of Oregon. It is the maker of the School-Wide Information System (SWIS) Suite, PBIS Assessment and PBIS Evaluation.

PBISWorld

(<http://www.pbisworld.com/>)

PBIS world was developed by a school social worker to provide practical information regarding tier one, two and three interventions, and to provide further opportunities for school personnel to discuss strategies for implementing PBIS.

Restorative Practices SFUSD

(<http://www.healthiersf.org/RestorativePractices/>)

The Restorative Practices website of the San Francisco Unified School District training materials, videos, brochures translated into several languages, the restorative questions in several languages, posters, a class curriculum to teach students about circle, policy language and a whole school implementation guide.

Restorative Practices International

(<https://www.rpiassn.org/>)

Restorative Practices International (RPI) is a not-for-profit, independent, professional member association that supports the development of restorative practice in schools, prisons, workplaces, organizations, families and communities.

Technical Assistance Center for Social Emotional Intervention (TACSEI)

(<http://www.challengingbehavior.org/>)

The Technical Assistance Center on Social Emotional Intervention for Young Children (TACSEI) provides products and resources on research-based practices to improve the social-emotional outcomes for young children with, or at risk for, delays or disabilities.

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The author thanks Debra Price-Ellingstad, Ed.D., Senior Technical Advisor, Technical Assistance Coordination Center (TACC), and Heather Lindstrom, St. Paul Public Schools.

RESTORATIVE APPROACHES IN THE NEXT DECADE: THE *HOW* MAY BE AS IMPORTANT AS THE *WHAT*

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*Studies of Restorative Approaches tend to study **what** we do and what impact it has on some select outcomes; few studies, however, examine the details of **how** we actually implement and practice these approaches. There are several (generally shared) foundational principles upon which the success of Restorative Approaches rest. We propose that one of these key principles that help explain the positive impact of Restorative approaches rests in our biology: that Restorative processes invite and encourage participants to be emotional—a fundamental biological human capacity that for too long has been leached out of many aspects of our institutions and society.*

*Being emotional is basic to our biology, and as such is at the heart of Restorative processes. Creating spaces for people to be in dialogue that are safe for participants to truly be genuine and emotional takes **time** and it takes **skill**. As Restorative Justice and Restorative Practices become more mainstream, we caution that it may be tempting to be overly-efficient about how these processes are implemented—as if they were highly-routinizable techniques—without taking the time and care necessary to fully nurture the emotional*

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engagement of participants. Restorative processes, however, will deliver their full potential for healing, learning and transformation only when they consistently provide a space for participants to be fully emotional, fully human, and—as follows—fully humane.

I came to the Restorative Justice (RJ) movement in 1994, not as someone who worked in criminal justice, or education, or law enforcement. Instead I came with a background in neuroscience and animal behavior, and as a scientist learning about the effects of emotions on health and illness. For years I had studied the biological nature of emotion and the physiological consequences of suppressing them. Additionally, as a clinician in a behavioral medicine clinic, I had also witnessed the staggering levels of physical suffering that stemmed from people having to “stuff” their feelings over months and years, manifesting in gut disorders, jaw problems, cardiac issues, and so on.

What so excited and heartened me about conferencing when I first heard about it from Australian David Moore at the annual meeting of the Tomkins Institute (www.tomkins.org) in 1994, was that the process not only allows for, but *encourages*, a great deal of expression of really tough emotions—among a group of people who are usually really angry with and afraid of each other, and who otherwise would probably never (want to) be in the same place to talk with each other. What an amazing opportunity this is, I thought, for people to be healthy *on an emotional level* with each other. And even better, they could do all this within their own communities, and really own the process and the outcomes—without an expert telling them what to do.

The bulk of my experiences with Restorative Practices (RP) has involved the Community Conferencing and dialogue circle processes. Community Conferences are used as an alternative to court, school suspension and arrest, and are also used for intractable conflicts in neighborhoods, workplaces and other communities. Each Conference is convened by a trained facilitator, who guides the group through a conversation about three questions:

1. What happened?
2. How have people been affected by what happened?
3. What can be done to repair the harm and prevent future occurrences?

Dialogue circles, also convened by a trained facilitator, provide a safe, regular space for participants to talk about whatever is important to *them*. The facilitator is non-directive and non-judgmental, providing opportunities for everyone to speak, to listen and to develop doable plans to address issues as they arise. They are used in classrooms, after school programs, workplaces, etc.; and have a variety of uses including: community-building, healing and celebrating.

What I have witnessed now over the past 20 years, are hundreds upon hundreds of Community Conferences in Baltimore, MD where people have been able to transform their rage, disgust and terror into some remarkably positive feelings about each other and healthy ways of moving forward; and hundreds of dialogue circles where participants can say how they really feel and talk about what really matters to them, and in doing so they emerge feeling better about themselves, about those around them and are able to create a healthy, functioning community.

By creating spaces for people to be emotional (*and* rational, *and* spiritual), Restorative Approaches allow groups to access a more grounded and integrated kind of wisdom that contributes to the transformational types of outcomes now well-documented with various Restorative processes.

Sadly, we live in a culture that is almost allergic to emotion. It is not easy for participants to feel comfortable saying how they feel and listen to the feelings of others; nor is it easy for many RP practitioners to “sit in the fire” of this level of emotional expression. Being intentional about keeping emotion expression as a core element of RP, however, will be important to realizing the promise of this movement to truly transform us individually and collectively.

THE BIOLOGY OF EMOTION

Emotions are part of our biology. An infant cries when sad, smiles when happy, pulls away in fear or lashes out in anger. Nobody *taught* that infant *how* to do that, or *when* it is appropriate to do that. That is because, as Charles Darwin delineated in his book, *The Expression of Emotions in Animals and Man* (1872), a certain set of basic emotions are *innate* in all mammals. We are born with them; they are part and parcel of the limbic system common to all mammals. Darwin argued that we have emotions for two important reasons: One is for *communication*. We all recognize the facial expressions for anger and fear and joy and other innate emotions; and we know the difference between a coo and a cry. This is because these emotions are part of our hard wiring. According to Darwin, however, the other, more important, purpose of emotions is that they serve a *preparatory function*. Each emotion *prepares* us to

act in a particular way that helps us survive. They motivate us in important ways.

Psychologist Silvan Tomkins (1962; 1963), a pioneer in the modern day study of emotion, built on Darwin's work by positing that *emotions are the primary motivators of human beings*. Emotions can override any of our other motivational systems when activated with intensity. For example, what happens to our sex drive when fear enters the bedroom; or, what happens to sleep when we are consumed with excitement over our latest art project? Similarly, people over-run with rage will say that they were so angry they couldn't think straight. Emotions are, biologically, our primary motivators—having more influence than biological drives and cognition over our behavior.

EMOTIONS AND HOW THEY MOTIVATE US

Tomkins' work on emotion helps explain so much of the power of conferencing and other RJ processes. But first some basics about the biology of emotion and how it relates to motivation.

According to Tomkins, we are born with nine innate emotions, and each one motivates us in a particular way that helps us survive. Each innate emotion elicits a cascade of physiological responses that *prepare us to act* and behave in a way that promotes survival. For example, when we experience **anger**, our heart rate increases, which subsequently pumps blood into our muscles; our brow knits and our pupils contract allowing us to most clearly see “the enemy” directly in front of us; our teeth are bared and our fists are clenched—all of which prepares us for and motivates us to **attack**. Similarly, when **interest** is aroused, we experience an optimal increase in

norepinephrine, our eyebrows rise and our eyelids widen—all of which prepares and motivates us to **engage** (if education were based on maximizing the levels of **interest** in students and educators, we would enjoy very different outcomes in our schools).

Table 1 below shows each of the nine innate emotions and how they motivate us.

Table 1. *Nine Innate Emotions and Motivations*

Emotion	Motivation
Dissmell*	“Stay away!” (avoid)
Disgust	Get rid of it (escape)
Fear	Run
Anger	Attack
Distress/Sadness	Comfort
Shame	Seek to restore
Surprise	Stop. Look. Listen
Interest	Engage
Joy	Affiliate

Source: Lauren Abramson adapted from Silvan Tomkins.

*Dissmell was a label coined by Tomkins for the emotion indicated by the face made with a raised upper lip (when something stinks), in contrast to disgust which is indicated by the tongue thrust out (spitting).

Thus, we are born with six negative emotions (dark gray), one neutral emotion (medium gray) and two positive emotions (light gray) (See Table 1). Having both *positive* and *negative* emotions, however, does not mean that we have “good” emotions and “bad” emotions. They are all vital in that they provide us with important information that ensures not only our

basic survival, but that gives our experiences meaning and that guides us intelligently in all aspects of living.

In fact, the emergent field of “emotional intelligence” as applied in business and economic practices is but one example of contemporary society’s growing appreciation of the vital role of emotion in human society.

THE ROLE OF EMOTION IN CONFLICT TRANSFORMATION AND RP

Believing as I do that our emotions are what motivate us more than anything, I also believe that we will not be able to *think* our way out of conflict and/or into peace. Rather, we will need to *feel* differently about each other, ourselves, our communities and our world in order to create just and peaceful communities and nations. Nobel Peace Prize winner Aung San Suu Kyi captured a profound truth related to this when she said, “Violence is not the problem, hate is the problem.” If a problem is resolved intellectually, it may be a terrific “solution,” but if the people involved still hate each other, it surely will not last.

This is where RP offer such great power for change—in individuals, communities and systems—for they provide safe spaces for people to be emotional with each other, often at very challenging times, like when they are reeling in conflict or in the wake of crime. My experience over the past 20 years has led me to the understanding that meaningful change—in attitudes and behaviors—happens most profoundly when we change the way we *feel* rather than when we change the way we *think*. The virulent racist is far more likely to shift to a positive attitude about a hated group of people through a direct positive experience with someone from that group, rather than through

reading an article or hearing a lecture. Similarly, a teacher with a bent toward punishment as a main approach to discipline is far more likely to facilitate a classroom circle, and to do so in a way that builds trust and voice among the student participants, if s/he has had a powerful personal experience within a circle.

An appreciation of the role of emotion in conflict transformation can also help us better understand an underlying emotional dynamic that we have found to be consistent in Restorative processes that address incidents of harm (Abramson & Moore, 2002; Abramson, 2014). I will speak in this case to Community Conferencing, which is one of the processes with which I have the most experience.

My understanding of an underlying biological basis for the power of conferencing is that it provides a space for participants to collectively transform their negative emotions (disgust, anger, fear) that generate conflict, into positive emotions (interest, joy) that promote cooperation.

Think for a moment of any crime which has caused people a significant amount of harm, be it physical or emotional. Participants enter into the justice process feeling any number of the following emotions at varying levels of intensity:

Disgust—Motivates Us to Keep Away
Disgust—Motivates Us to Get Rid of It
Anger—Motivates Us to Attack
Fear—Motivates Us to Run

Our typical justice process tells everyone to put a lid on those feelings. But where do they go? How do they affect people's behavior?

These emotions will be motivating participants in the ways they were designed, biologically, to do in order to help us survive: People who are angry will be in “attack” mode. People who are “dismissing” of others will be dismissive (“you stink!”), those who are afraid will feel like they want to run away from the whole mess.

Thus, in our facilitator training workshops, we feel it is important to train our facilitators to *expect* these kinds of feelings as people enter the RJ process, so they will not be tempted to quash them before they can run their natural course—which RP allow them to do so beautifully.

So what happens during the conferencing and many other RP processes is truly emotionally transformative. The conference begins with everyone hearing what happened and to share how they have been affected by what happened. This is the time for participants to be able to express their rage, their anxieties and other difficult feelings.

And then, quite often: the tears begin to flow.

Distress/Sadness—Motivates Us to Seek Comfort

With distress and crying comes its own motivation to seek comfort. Not only the person crying, but often other participants are quite “moved.” The emerging field of interpersonal neuroscience has elaborated some of the ways our brains register emotion in others. In fact, when we witness someone crying, “mirror neurons” in our brain are activated in the very same part of our brain that is activated when we ourselves cry. This is thought to be part of the neurological foundation of empathy.

Since distress motivates us to seek comfort, thus begins an emotional shift in the conference that brings participants closer to each other.

When this begins to happen, people feel more open and inclined to listen, to reach out. Participants begin to soften within themselves and towards others. Things are said that people would not have imagined saying before the conference, when they were so filled with anger.

At this point, something very particular often happens during many conferences; it is a very special emotional shift that involves shame. We never know when it will happen or how it will happen, or who might initiate it; but someone says something that takes all of the heat out of the conversation. Whatever it is that happens or that is said at that moment brings about an awareness in the group that there is something very seriously harmful that has gone on and everyone in the circle at that moment feel that they are in some way responsible for it. It is often felt as a sense of “deflation” in the circle. A First Nations woman once referred to this as “a moment of collective vulnerability,” in that everyone in the circle awakens to a feeling of collective responsibility for what is happening.

We have identified the emotion at play here as being one of shame. Tomkins had a uniquely insightful understanding of the biological nature of shame, in that he observed that it is experienced when someone has a positive connection/bond, and when they experience a partial barrier to that positive connection. The motivation when shame is experienced, then, is actually to *restore that positive connection*. The clearest example of this, perhaps, is that of a dog who is kicked by its human. Dogs, we know, are unconditional lovers of the human with whom they are best connected (hence, “man’s best friend”). Imagine how the dog looks if it is kicked by that

human: It drops its head and tail and slinks away; yet it also is looking back to that human with a pleading look that says, “Can I come back, please?” That is the biological shame response, and it motivates us to try to restore that breached bond.

Shame—Motivates Us to Restore a Broken Connection

Thus, and as we see so often in Conferences, shame may be felt not only by the “offender,” but by any number of people sitting in that circle as a sense of “we are all responsible for this.” And when that feeling of shame emerges, it is an almost palpable feeling within the circle that people are motivated to restore (or build) a positive connection with others.

At this point, participants will often feel surprised that they are actually caring about the young person who stole their car. Surprise is an orienting response that makes us stop and take stock of what is happening.

Surprise—Motivates Us to Stop, Look, Listen.

The group then moves into the Agreement phase to figure out how they are going to repair the harm and prevent this from happening again. The emotional feeling during this part of a conference is much different than the beginning, as people become interested both in each other and in how to fix the situation.

Interest—Motivates Us to Engage

Joy—Motivates Us to Affiliate

Thus, effective resolutions emerge from a transformation in the emotions felt by the participants. The subsequent changes in

attitudes and behaviors that comes from emotional states that shifted from negative to positive are often quite profound.

Our experiences in Baltimore over the past 20 years with Community Conferencing and other Restorative approaches have confirmed this general shift in emotion during successful conferences and circles, and have led us to the understanding that the level of transformation and success of circles seems to be directly proportional to the levels of emotion shared during the circle.

This holds true whether it is a classroom dialogue circle, or a Community Conference for an auto theft case.

SHIFTING PARADIGMS, CHANGING OUR CULTURE: THERE ARE NO EASY FIXES

Creating spaces where people feel safe enough to share this level of emotionality involves more than simply learning and executing a technique for convening circles. It takes time and it requires the care and skills of a practitioner who is willing to engage in ongoing learning and understanding of the principles that power these approaches.

Kay Pranis (personal communication) beautifully illustrates a similar sentiment with the image of a tree which she titles “Collective Action.” The tree image includes:

- **Roots**—Shared values, indigenous teachings of RP.
- **Trunk**—Skills and techniques that we learn as facilitators (circle keepers and mediators—guidelines, talking piece, consensus, ceremony and storytelling).
- **Leaves**—Community building, connection, and healing.

As Pranis recently shared with me about this image, “unless you have strong roots, the tree will fall down.” Techniques (trunk) are not enough; this work needs to be grounded in values and indigenous teachings (roots).

Thus, we caution that it will be important to pay attention to *how* we going about implementing and practicing Restorative approaches, taking special care to develop them with clearly defined values and principles. The RP movement will not thrive if we build programs and processes that are over-reliant on teaching the “technique” connected with any particular process, without adequate attention to the principles and values underlying that process.

CHANGING CULTURE IS A LONG, ARDUOUS PROCESS

The RJ movement is not merely about implementing new programs; it is about changing our culture. It is about shifting the paradigms of punishment and power which currently shape many of our institutions; and which, in turn, shape our communities and our sense of our selves. In an article detailing some guiding principles for RJ, Pranis (1995) outlined some existing paradigms and the shifts which RJ could help bring about (See Table 2).

Table 2. Characteristics of Existing (Non-restorative) Paradigm versus Restorative Paradigm

Current Paradigm	Restorative Paradigm
Power-based structures	Relationship-based structures
Punishment	Healing and accountability
Deficit-based planning	Asset-based planning
Retribution	Restoration and transformation

There are no shortcuts to shifting paradigms and changing our culture. It will not happen overnight; and if Restorative approaches are really going to take hold in our society, it will require a clear visioning and consistent practice of processes which are implemented in ways that remain true to the heart and spirit of this work.

Our hope is that, as we seek to transform our institutions through Restorative approaches, that we pay careful attention to *how* we are implementing them, that we have clear foundational principles and values to guide us, and that we safeguard the important role of emotion in our journey to create caring and connected individuals, communities, institutions and nations.

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SECTION II.

SCHOOL TRACK

WHERE DIGNITY IS PART OF THE SCHOOL DAY

FANIA DAVIS*

Restorative Justice for Oakland Youth

This paper is reprinted with permission: Davis, Fania. 2014. “Where Dignity is Part of the School Day.” *Yes!*: 69:32-35.

Old school punishments are giving way to more respectful resolutions. As executive director of Restorative Justice for Oakland Youth, Fania Davis can see programs like hers working to stop the school-to-prison pipeline.

Tommy, an agitated 14-year-old high school student in Oakland, Calif., was in the hallway cursing out his teacher at the top of his lungs. A few minutes earlier, in the classroom, he’d called her a “b___” after she twice told him to lift his head from the desk and sit up straight. Eric Butler, the school coordinator for Restorative Justice for Oakland Youth (RJOY—the author is executive director of the organization) heard the ruckus and rushed to the scene. The principal also heard it and appeared. Though Butler tried to engage him in conversation, Tommy was in a rage and heard nothing. He even took a swing at Butler that missed. Grabbing the walkie-talkie to call security, the principal angrily told Tommy he would be suspended.

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“I don’t care if I’m suspended. I don’t care about anything,” Tommy defiantly responded. Butler asked the principal to allow him to try a restorative approach with Tommy instead of suspending him.

Butler immediately began to try to reach Tommy’s mother. This angered Tommy even more. “Don’t call my momma. She ain’t gonna do nothing. I don’t care about her either.”

“Is everything OK?” The concern in Butler’s voice produced a noticeable shift in Tommy’s energy.

“No, everything is not OK.”

“What’s wrong?” Eric asked. Tommy was mistrustful and wouldn’t say anything else. “Man, you took a swing at me, I didn’t fight back. I’m just trying my best to keep you in school. You know I’m not trying to hurt you. Come to my classroom. Let’s talk.”

They walked together to the restorative justice room. Slowly, the boy began to open up and share what was weighing on him. His mom, who had been successfully doing drug rehabilitation, had relapsed. She’d been out for three days. The 14-year-old was going home every night to a motherless household and two younger siblings. He had been holding it together as best he could, even getting his brother and sister breakfast and getting them off to school. He had his head down on the desk in class that day because he was exhausted from sleepless nights and worry.

After the principal heard Tommy’s story, he said, “We were about to put this kid out of school, when what he really deserved was a medal.”

Eric tracked down Tommy’s mother, did some prep work, and facilitated a restorative justice circle with her, Tommy, the teacher, and the principal. Using a technique borrowed from indigenous traditions, each had a turn with the talking piece, an

object that has a special meaning to the group. It moves from person to person, tracing a circle. The person holding the talking piece is the only one talking, and the holder speaks with respect and from the heart. Everyone else in the circle listens with respect and from the heart.

As Tommy held the talking piece, he told his story. On the day of the incident, he had not slept, and he was hungry and scared. He felt the teacher was nagging him. He'd lost it. Tommy apologized. He passed the talking piece to his teacher and heard her story.

Earlier in the year another student had assaulted her. She was terrified it was about to happen again with Tommy. After the incident with Tommy, as much as she loved teaching, she had considered quitting. Tommy apologized again for the outburst and offered to make amends by helping her with after-school chores for the next few weeks. The teacher agreed to show more compassion in the future if she noticed a student's head down on the desk.

Taking responsibility, Tommy's mother apologized to her son and all present. She rededicated herself to treatment and was referred to the campus drug rehabilitation counselor. After the circle and with follow-up, Tommy's family life, grades, and behavior improved. The teacher remained at the school.

RESTORATION, NOT PUNISHMENT

Nelson Mandela's adage, "I destroy my enemies when I make them my friends," captures the profoundly inclusive nature of restorative justice (RJ). The hallmark of RJ is intentionally bringing together people with seemingly diametrically opposed viewpoints—particularly people who have harmed with people who have been harmed—in a carefully prepared face-to-face

encounter where everyone listens and speaks with respect and from the heart no matter their differences. The talking piece is a powerful equalizer, allowing everyone's voice to be heard and honored, whether that of a police officer, a judge, or a 14-year-old youth.

If the school had responded in the usual way by suspending Tommy, harm would have been replicated, not healed. Punitive justice asks only what rule or law was broken, who did it, and how they should be punished. It responds to the original harm with more harm. Restorative justice asks who was harmed, what are the needs and obligations of all affected, and how do they figure out how to heal the harm.

Had punitive discipline ruled the day, Tommy's story would have gone unheard and his needs unmet. Had he been suspended, Tommy's chances of engaging in violence and being incarcerated would have dramatically increased. Suspension likely would have exacerbated harm on all sides—to Tommy, his teacher, his family, and ultimately, his community. His teacher would have been deprived of hearing Tommy's story. She might have quit teaching and remained trapped in trauma.

If Tommy had been suspended and left unsupervised—as most suspended students are—he would have been behind in his coursework when he returned. Trapped in an under-resourced school without adequate tutoring and counseling, Tommy would have had a hard time catching up. According to a national study, he would have been three times more likely to drop out by 10th grade than students who had never been suspended.

Worse, had Tommy dropped out, his chances of being incarcerated later in life would have tripled. Seventy-five percent of the nation's inmates are high school dropouts.

GETTING KIDS OUT OF THE PIPELINE

The school-to-prison pipeline refers to the alarming national trend of punishing and criminalizing our youth instead of educating and nurturing them. Exclusionary discipline policies such as suspensions, expulsions, and school-based arrests are increasingly being used to address even the most minor infractions: a 5-year-old girl's temper tantrum, a child doodling on her desk with erasable ink, or adolescent students having a milk fight in the cafeteria. Use of suspensions has almost doubled since the 1970's. Black students are disproportionately impacted. According to data from the U.S. Office of Civil Rights, black students are three times more likely to be suspended than their white counterparts for comparable offenses.¹

Overreliance on exclusionary school discipline that disproportionately impacts African American youth led the U.S. Departments of Justice and Education recently to announce the launch of a national initiative to help schools and districts meet their legal obligation to administer discipline without unlawfully discriminating. At the January 8, 2014 release of a Guidance Package on equitable and effective school discipline, U.S. Secretary of Education Arne Duncan said, "Racial discrimination in school discipline is a real problem today, and not just an issue from 40 to 50 years ago."² According to a study by the Centers for Disease Control, a student's sense of belonging to a high school community is a top protective factor against violence and incarceration.³ In addition to convening restorative justice circles like Tommy's, RJOY also uses circles proactively to deepen relationships and create a school culture of connectivity, thereby reducing the likelihood that harm will occur.

RJOY'S 2007 MIDDLE SCHOOL PILOT ELIMINATED VIOLENCE AND EXPULSIONS, WHILE REDUCING SCHOOL SUSPENSION RATES BY 87 PERCENT.

A UC Berkeley Law study found RJOY's 2007 middle school pilot eliminated violence and expulsions, while reducing school suspension rates by 87 percent.⁴ After two years of training and participation in RJ practices, whenever conflict arose, RJOY middle school students knew how to respond by coming to the RJ room to ask for a talking piece and space to facilitate a circle. Today, at one of the RJOY school sites, student suspensions decreased 74 percent after two years and referrals for violence fell 77 percent after one year. Racial disparity in discipline was eliminated. Graduation rates and test scores increased.

IN 2010, THE OAKLAND SCHOOL BOARD PASSED A RESOLUTION ADOPTING RESTORATIVE JUSTICE AS A SYSTEM-WIDE ALTERNATIVE TO ZERO-TOLERANCE DISCIPLINE.

In Oakland, RJOY is successfully influencing the school district to make the approach in Tommy's case the new norm. The restorative justice model has been so successful in the schools where RJOY has worked that, in 2010, the Oakland school board passed a resolution adopting RJ as a system-wide alternative to zero-tolerance discipline and as a way of creating stronger and healthier school communities.

Young high school students in Oakland with failing grades and multiple incarcerations who were not expected to graduate not only graduate but achieve 3.0-plus GPAs. Some have become class valedictorians. Girls who have been long-time

enemies become friends after sitting in a peacemaking circle. Instead of fighting, students come into the restorative justice room and ask for a talking piece and circle. Youth and adults who walk into a circle feeling anger toward one another end up embracing. Youth report they are doing circles at home with their families. High school graduates are returning to their schools to ask for circles to address conflict outside the school.

Oakland is considered one of the most violent cities in the nation. However, today hundreds of Oakland students are learning a new habit. Instead of resorting to violence, they are being empowered to engage in restorative processes that bring together persons harmed with persons responsible for harm in a safe and respectful space, promoting dialogue, accountability, a deeper sense of community, and healing.

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LESSONS IN SCHOOL DISTRICT-WIDE IMPLEMENTATION OF RESTORATIVE JUSTICE FROM DENVER PUBLIC SCHOOLS

DANIEL W. KIM

Padres & Jóvenes Unidos

With its groundbreaking package of community-driven discipline policy reforms (district discipline code overhaul, statewide law, district-police memorandum of understanding), Denver Public Schools is looked to nationally as a model for ending the school-to-prison pipeline and transforming the punitive, exclusionary and racially discriminatory discipline culture of traditional public schools. What is less well understood is Denver's role in building one of the country's oldest and most evolved models for district-wide, school-based restorative justice (RJ) as a solution for addressing student conduct issues and school-based conflict. This paper is an attempt to begin documenting the development of Denver's district-wide RJ model over the past decade and to draw out preliminary lessons for districts and states that are now launching similar programs to pilot RJ or implement it systematically.

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and transforming the punitive, exclusionary and racially discriminatory discipline culture of traditional public schools. What is less well understood is Denver's role in building one of the country's oldest and most evolved models for district-wide, school-based restorative justice (RJ) as a solution for addressing student conduct issues and school-based conflict.¹

This paper is an attempt to begin documenting² the development of DPS' district-wide RJ model over the past decade and to draw out preliminary lessons for districts and states that are now launching similar programs to pilot RJ or implement it systematically.³ In particular, DPS' five-year investment (beginning in 2006) of over \$1 million in state grant funds into a RJ piloting and implementation program holds important pieces of the puzzle which include: community partnership, staffing sustainability (school-based RJ staffing and infrastructure), the question of RJ formats (circles vs. dialogs) and multistakeholder collaboration.

THE DEVELOPMENT OF DPS' RJ MODEL

DPS is the fastest growing urban school district in the country and the largest school district in Colorado. As of the 2014-2015 school year, the district's demographics include:

- 90,000+ students
- 185 schools
- 5,245 teachers
- 75 percent students of color (57% Latino, 14% Black)
- 70 percent of students living in poverty (qualify for free or reduced lunch)
- 35 percent of students are English language learners.⁴

SNAPSHOT OF CURRENT IMPLEMENTATION SCALE

The following highlight the current scale of RJ implementation in the district since it began its multi-school RJ implementation pilot in 2006:

- 12.8 percent of students with an office discipline referral received an RJ intervention in 2012-2013.⁵
- The original 7 schools expanded to at least 15 schools with dedicated RJ coordinators on-site.⁶
- District initiated the In-School Intervention Room program, a room in select middle schools that is staffed by a trained teacher to engage students sent out of classrooms or assigned to in-school suspensions.
- Funding for building-based RJ coordinators no longer requires grant funding (schools are electing to fund RJ coordinator positions voluntarily).
- 2,700+ educators from all school levels have been trained to lead RJ in their buildings (2-day training, offered monthly by district since August 2008).⁷
- 640 additional educators have been trained to date in their schools (hands-on, on-site training—new program this year).⁸
- District-level staffing and their roles include:
 - * District RJ Coordinator who manages RJ program, conducts district monthly two-day trainings, provides on-site coaching, support and trainings,
 - * Monthly district-led meeting of building discipline leaders where resources, training and support are continuously provided for adopting and troubleshooting non-punitive, non-exclusionary approaches to discipline, and

- * Network partner system—each school is assigned a network partner based in the district’s offices who visits the school building at least once a week; one of their priorities is to support each school to build positive school climate, including through use of RJ.⁹

THE FIVE-YEAR STATE GRANT AND PILOT PHASE

In 2006, DPS was awarded a five-year grant totaling well over \$1 million from the Colorado Department of Education [Department of Dropout Prevention and Student Re-Engagement, Expelled and At-Risk Student Services (EARSS) Program] to implement RJ at one high school and its three feeder middle schools.¹⁰ This grant included funding for extensive evaluation and was the first and largest grant for school-based RJ in the state. In the second year, the grant was expanded to include an additional high school and two of its feeder middle schools.

The grant was used to fund a full-time RJ coordinator in each participating school, and the project design proposed the use of RJ as an alternative resolution—a kind of diversion program—for office referrals for behavior that would normally result in suspension, expulsion, tickets and arrests.¹¹ The primary focus of Denver’s RJ program was not on the circle practices that are often most visibly associated with RJ today, but on victim-offender mediation practices from the criminal and juvenile justice systems.¹²

Each participating school built an RJ diversion track for their office referrals as “a more meaningful way to respond to incidents that would otherwise result in punishment (e.g., exclusion, criminalization) that does not address the root of the

behavior and that “carries little meaning for students, and does not teach alternative behaviors or problem solving strategies.”¹³

RJ Diversion Track Process

- 1. *PRE-CONFERCING/PRE-SCREENING:*** When a student is referred to the office for discipline, the dean (or advisor, assistant principal, etc.) makes a decision whether or not to refer the student to the RJ coordinator. The RJ coordinator conducts an investigation by speaking with the referral source, the victim and the offender, and, if relevant, any other parties involved in or affected by the incident. It must also be determined if all parties are willing to participate voluntarily.
- 2. *CONFERCING/PROBLEM SOLVING:*** Based on the investigation, the RJ coordinator sets up a structured dialog (conference) where each party has an opportunity to share their story and be heard and where a course of action (restorative agreement) is developed and mutually agreed upon to address and/or repair the harm and teach a new way of dealing with the issue in the future.
- 3. *REPAIR/FOLLOW-UP:*** The RJ coordinator supports and monitors involved parties in carrying out the agreement and/or repair, and follows up if the agreement is not fulfilled or violated.

This process is designed to foster a culture of respect, accountability, taking responsibility, empathy, commitment to

relationships and community, collaboration and empowerment. It also teaches key skills: active listening, facilitating dialog, social problem solving, listening to and expressing emotion, and conflict resolution.¹⁴

Evaluation of Five-Year Program

The third-party evaluation of the five-year program documented very encouraging outcomes, tracking impacts on suspensions, expulsions, attendance, as well as social skill competency improvements (Youth EQ Scale, Social Skills Rating System).¹⁵ More recent district level analysis supports this use of RJ as having a preventive impact on future suspension.¹⁶ District-wide data on RJ use will become much more coherent next year because of significant improvements to the centralized discipline/behavior tracking system implemented this academic year.

LESSONS LEARNED

The following are insights and lessons we can begin to draw from the pilot program.

COMMUNITY PARTNERSHIP

The district's ability to win the pilot implementation program and carry it out successfully was in significant part shaped by the grassroots advocacy of Padres & Jóvenes Unidos (PJU) and the partnership that developed and continues today. The role of PJU in collaborating with the district to develop the grant proposal has been documented.¹⁷ What has not been well

understood is the role played by the organization's *Campaign to End the School-to-Jail Track* in shifting the policy climate and public opinion to pave the way. Significant shifts of any long-established policy or institutionalized practice—such as school discipline—do not emerge out of thin air. In the years before the EARSS grant proposal, PJU had launched an intensive and high-profile community organizing campaign to overhaul the district's code of conduct to curtail racially discriminatory punishment and exclusion in favor of alternative interventions such as RJ. This campaign has been critical to shifting values and norms within the district and the state, driving down suspensions, expulsions and law enforcement referrals in the process. DPS' discipline code was overhauled in direct negotiation with PJU into one of the most progressive in the country (Policy JK-R 2008), helping to fuel the DPS RJ program in mid-stream. In 2011 as the grant program ended, PJU also launched a community accountability campaign that featured a demand for continuing expansion of the RJ program throughout the district.¹⁸

OF CIRCLES AND DIALOGS

The implementation path of RJ in DPS supports the recent redefinition of school-based RJ in the direction of “restorative practices.”¹⁹ Successful school-based RJ practices take many shapes, forming a spectrum. No single RJ practice guarantees success. Any of the practices, whether circles or victim-offender mediations, can be done well or done poorly. In one school in Denver, we might see DPS' RJ mediation model anchoring a vibrant, connected, caring climate and in another school see the same practice as little more than a velvet glove on the recalcitrant fist of traditional punitive, exclusionary discipline.

Denver's work also suggests that a district can start with one practice and progressively incorporate others. The original core of Denver's RJ model was focused on formal mediation/conferencing at the point of office referral. Informal RJ dialog to resolve conflicts in the classroom and reduce the number of office referrals became emphasized in the district's formal educator training. Most recently, DPS has begun to emphasize training and supporting educators in circle practices as part of its building-based training and coaching.

RJ ECOSYSTEMS AND THE QUESTION OF SUSTAINABILITY AND REPLICATION

Seven schools were funded during the grant program but when the money was gone, only half decided to continue to keep the RJ coordinators on staff with their own funds.²⁰ This fact and the emergence of new schools that have since adopted RJ practices or hired RJ coordinators without any grant funding raise the question of what resources and components are needed to introduce RJ into a school, let alone every school in the district. When the grant funding ended, the district shifted its focus to replicating the RJ program in other schools through top-down district-based training and technical support (for deans, advisors and assistant principals). The effectiveness of this approach is not clear. Replication has been happening but slowly and unevenly.

Two of the original pilot schools were particularly successful at transforming their discipline systems and school cultures, North High School and Skinner Middle School. Some of their programs' common features suggest criteria and components needed for sustainable implementation of school-wide restorative justice.

Common Features

1. ***STRONG LEADERSHIP ON RJ:*** The schools' leaders and discipline teams are highly unified in RJ values and are actively committed to ensuring their adoption throughout the staff and school.
2. ***PREVENTION/INTERVENTION ECOSYSTEM:*** RJ is integrated into an ecosystem of prevention/intervention practices, systems and personnel—all designed to cultivate positive climate and quickly identify students struggling academically, behaviorally or social/emotionally and to resolve the root of any behavioral issue as early as possible by providing meaningful and effective assistance to a student to keep them in the classroom successfully engaged and minimize the time out of classroom as much as possible [including Response-to-Intervention (RTI), Positive Behavior and Intervention Supports (PBIS)].
3. ***EMPHASIS ON CLASSROOM LEVEL INFORMAL RJ MEDIATION:*** Classroom teachers receive constant training and coaching on how to use a more informal version of the RJ mediation (RJ Dialog) to de-escalate or resolve behavior issues in the classroom whenever possible.
4. ***BEHAVIOR REFERRALS GO TO AN INTERVENTION TEAM:*** When behavior issues cannot be resolved at the classroom level and are referred for discipline, the RJ coordinator is part of an intervention team that responds as a whole to address the behavior, including

the discipline dean, social worker, intervention room educator/paraprofessional, psychologist, nurse, and instructional intervention specialists. RJ mediations or dialogs are practiced by many members of this team as well.

5. *IN-SCHOOL INTERVENTION/RE-ENGAGEMENT ROOM:*

The school has an intervention room staffed by a trained educator or paraprofessional where students can be re-engaged when they are sent out of class, leave class themselves or cannot return to class immediately (e.g., in-school suspension).

**CONCLUSION—MULTISTAKEHOLDER
COLLABORATION AS A KEY MOVING FORWARD**

To regain momentum toward systemwide replication and implementation of RJ will require a new level of collaboration between the core stakeholders. In Denver we are excited to have begun meeting monthly just over a year ago as a collaborative, including the district, the Denver Classroom Teachers Union, PJU and the University of Denver to achieve a more authentic, successful implementation of the district's discipline code with an emphasis on expanding the implementation of RJ throughout the district.

One of our first projects was a joint grant proposal to test a second-generation model of RJ implementation that relies on a new collaboration with the teachers union and with PJU's parent leaders. The district's leadership from the top is critical but can only push reform so far from the top down.

As we learned from the first pilot program:

- School principals have considerable autonomy to embrace or resist implementing RJ and other alternatives to punitive discipline, as do teachers in their classrooms.
- Parents and students—the most directly impacted by discipline practices—need their voices and perspectives to guide constructive assessments of what is working and not working in their schools.
- We need teachers at the table to help us understand what they need to feel adequately supported and empowered to shift their classroom management practices.
- We need the university to help us study and theorize what we've accomplished so far and be our thought partner as we chart and develop tools for the next phase of RJ implementation.

No one of us alone can solve the challenge of authentic, system-wide implementation. The key to success is the strength of the collaboration. It will take all of us working together—the school district, teachers union, grassroots community organization and university—to carry this project through.

REFERENCES

- ¹The history of school-based RJ implementation in the US has not been comprehensively studied. But the field's origins appear connected to the Balanced and Restorative Justice Project (BARJ) in the mid-1990s, which inspired isolated attempts to implement RJ within individual schools. OJJDP's summary of the BARJ Project can be found here: <https://www.ncjrs.gov/pdffiles/bal.pdf>. District-level attempts to implement RJ appear to emerge in the early 2000s. See International Institute for Restorative Practices. *Improving School Climate: Findings from Schools Implementing Restorative Practices* (2009). Denver's district-wide implementation project is set apart within this early period by its state funding and goal of moving from pilot phase to district-wide implementation.
- ²A comprehensive study is being planned with Yolanda Anyon of the University of Denver.
- ³Significant new district implementation programs have been launched recently in Chicago (Safe Schools Consortium, a collaboration including VOYCE, the Chicago Teachers Union, and Alternatives, Inc.), San Francisco (with Coalition for Fair and Caring Schools), and Buffalo ("Present Students, Future Leaders Project," with Citizen Action New York and the Alliance for Quality Education, with support from the Advancement Project).
- ⁴Denver Public Schools. Facts and Figures. (accessed 3/25/15) <http://www.dpsk12.org/communications/facts.html>.
- ⁵Data provided by Denver Public Schools.
- ⁶Interview with Tim Turley, District RJ Coordinator, Feb 27, 2015 in Denver, Colorado. District is in the process of identifying these schools.
- ⁷Email from Tim Turley, District RJ Coordinator, Feb 27, 2015.
- ⁸Email from Tim Turley, District RJ Coordinator, Feb 27, 2015.

- ⁹Interview with Tim Turley, Feb 27, 2015 in Denver, Colorado.
- ¹⁰Interview with Judith Martinez, Director of Dropout Prevention and Student Re-Engagement, Mar 15, 2015 in Denver, Colorado. The grant provided approximately \$360,000 to \$420,000 per year. See EARSS grant reports at www.cde.state.co.us/dropoutprevention/earss_evaluation. The project began with one grant that was expanded by a second grant in Year 2, with the two grants being consolidated in Year 3. As is general practice with all EARSS grants, the grant was stepped down to 50% in the last year to encourage the grantee to address funding sustainability.
- ¹¹Myriam L. Baker, Denver Pub. Schools. Denver Public Schools Restorative Justice and Disciplinary Reform Project. *CDE Expelled and At-Risk Student Services Grant: First Year Report 2006-2007* (2007).
- ¹²One of the key origins of this approach is the victim-offender reconciliation model that was and continues to be led in Denver by the Victim Offender Reconciliation Program (VORP). VORP's training and technical support was integral to launching not only the DPS grant-funded project discussed here but also the prior pilot RJ mediation program that began in 2005, especially at Cole MS.
- ¹³Myriam Baker. *DPS Restorative Justice Project: Year Three. Year-End Report 2008-2009 2-3* (2009).
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- ¹⁵Myriam Baker. *DPS Restorative Justice Project: Year Three. Year-End Report 2008-2009 9-13* (2009).
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- ¹⁹National Education Association, American Federation of Teachers, Advancement Project, National Opportunity to Learn Campaign. *Restorative Practices: Fostering Healthy Relationships and Promoting Positive School Discipline* (March 2014).
- ²⁰While seven school sites were funded throughout the grant program, two of the sites dropped out of the program due to restructuring and were replaced with alternate schools. In the final year, the alternate schools opted out of including the RJ component on their campuses and another school was added. See Myriam Baker. *DPS Restorative Justice Project: Year Five (Final) Executive Summary 2010-2011* (2011).

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A ROCK AND RUG—A NEW TECHNOLOGY TO BRING RESTORATIVE PRACTICES IN SCHOOLS

ROBERT SPICER

Restorative Strategies

Restorative Practices in schools are designed to create safe spaces where youth can have healthy dialogue in a safe learning environment. In sharp contrast, Zero Tolerance policies, which have been pervasive throughout our nation's schools, have created a School House to Jail House Pipe Line pulling youth out of schools and in to prisons. In a school in Chicago, the school community was forced to confront their zero tolerance discipline practices and shifted to the philosophy of Restorative Justice. That school has seen dramatic results as a part of this shift. In this paper, Robert Spicer recounts his journey from Chief Dean to Culture and Climate Coordinator and how restorative practices transformed this public high school from a school of violence to a school of peace.

**If we are to teach real peace in this world,
and if we are to carry on a real war against war,
we shall have to begin with the children.**

Mahatma Gandhi

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In the summer of 2009, I was hired as the Chief Dean at Christian Fenger High School, which had been designated by Chicago Public Schools as a Turnaround School. As the name implies, the Board of Education moved to turn the school around in response to the school's steadily declining test scores and high incidences of violence. Former staff members were removed and new staff were hired, including the principal. Youth from another community were bused in and the 2009-10 school year started with optimism for the new direction the school and the community were moving toward.

And then September 24, 2009, changed everything. On that day a student was beaten to death in a mob fight that started at the school and spilled out into the community. The fight was recorded by a student and posted on YouTube. The video went viral and it ended up on every major news outlet broadcasting all over the world. Three weeks into the start of the Turnaround, our school had turned into the most violent school in the United States and our students and the community were paraded around in the press as unruly and violent.

THE ZERO TOLERANCE APPROACH DID NOT WORK

I was hired to make the school building a safe and warm environment for our staff and students. Unfortunately, I was asked to use the policy of zero tolerance. This policy dictated that we use suspension, expulsion and arrest to deal with student misbehaviors. Over 375 students were arrested during the 2009-10 school year and many more were suspended and expelled. There was no re-entry process in place so students

came back to school further behind and further disconnected from the school. They were so far behind academically that there was no way they would pass their classes—leaving them further behind. I knew in my heart that zero tolerance would never get our school to that safe and warm environment I envisioned when I was hired. There was no accountability so there was a lot of blaming and shaming in our school. Our school became a push-out factory—churning out violent, ill prepared young adults destined to end up in jail or killed.

I became aware that Zero Tolerance policies were affecting schools throughout the nation and these exclusionary practices impacted communities of color disproportionately throughout our state and the nation. In 2012, a Chicago Tribune article entitled, *Illinois, Chicago Public Schools Top National List for Suspension Disparity*, reported the following findings from a major study,

One of every four African-American public school students in Illinois were suspended at least once for disciplinary reasons during the 2009-10 school year which was the highest rate among 47 states examined in a national study . . . Illinois schools, in particular Chicago Public Schools, also had the widest gap in suspension rates between black and white students...underscoring concerns by many educators that African-Americans face harsher discipline than their classmates.¹

SHIFTING DIRECTION

Zero Tolerance practices were having a negative effect on our school's culture and climate and there needed to be a change in direction. The policies were not only racist but wrong for our schools and for our country. Our school teams began to have conversations about the direction we would like to see the school go. Parents and staff started meeting to discuss what would be the best approach for our school. Did we have it within ourselves to change our approach? What was out there that could be the game changer for our youth and staff?

The answers to these questions materialized during a conversation with my principal—that approach would institute restorative justice (RJ) practices in our school. Out of these conversations birthed the ideas that would re-brand our school community into a school of peace. Out of these conversations, we crafted a new direction that would give us the potential to teach our students how to resolve conflict. And, out of these conversations, my role would change and the lives of our students and staff would change for the better.

WHAT IS RJ AND WHAT ARE RJ PRACTICES?

RJ is a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. Regarding crime, RJ is about the idea that if crime hurts, justice should heal. It follows that those who have been hurt and those who have inflicted the harm must be central to the process.²

Table 1 highlights some of the differences between the traditional discipline I was first asked to use and the RJ philosophy that we brought to our schools.

Table 1. Comparing Attributes of the Traditional-Punitive Discipline Model to the RJ Model

Attribute	Traditional Model	RJ Model
Goal	To punish the youth	To restore (or transform) the community and individuals involved to the functioning equilibrium that was offset by the offense
Focus	Retribution	Rehabilitation and repair the harm that was caused to all parties involved
Parties Involved	Involves the “Rule Keepers” and the youth offender	Involves the community, the youth offender and the youth victim
Accountability	Holds the youth offender accountable to the rules	Holds the youth offender accountable for the harm that was caused to the victim and the community as a whole

Source: RJ Manual (Internal Fenger High School document).

ROCK AND A RUG

What resulted from this shift was a re-visioning of my position in our school—starting with my new title: the *Culture and Climate Coordinator*. The reasoning behind changing my title specifically revolved around how my new role was to be perceived by both staff and students. When I spoke to one of my students, he asked, “Are you still a DEAN?”

I told the student, “Yes! I am the Dean of Peace.”

The student did not realize it but he was defining my new role by the question he asked. He was helping me to re-define my role and to give students an opportunity to define how we interact in the school setting. He was helping me to distance myself from my former role as the Chief Dean and to build a new relationship that revolved around RP. I had to re-build trust with students and staff as I forged a new relationship based on peace and social-emotional learning.

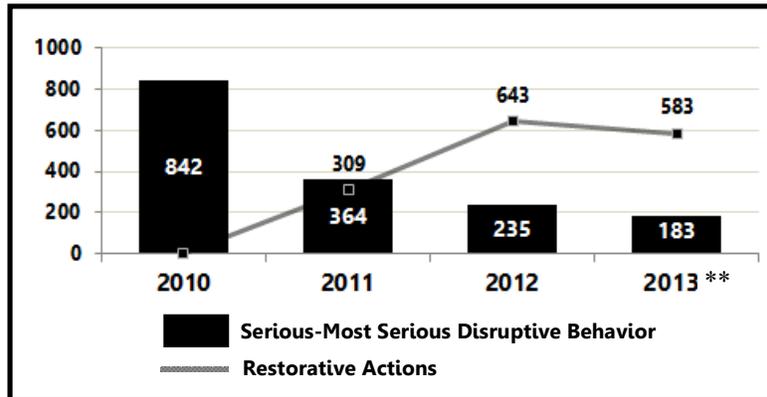
The responsibility to suspend, expel and arrests was taken out of my hands and what was left in my hands was a “*rock and a rug*.” What I mean by this is that I was left with the only tools and process that I knew could be used to support the social and emotional process in the school setting—Restorative Practices (RP) and specifically the Peacemaking Circle. In this new role I was responsible for ensuring that our school had a culture and climate that was warm and inviting. I used RP as my basis for moving our school toward becoming a peace school and built capacity in our school around these practices. I did this by training key staff members in our school community as well as youth who lead the peace initiatives. The parents began to engage in this work and assisted us in moving our school community forward as well. We instituted a “Peace Room”

which was used as a place where restorative practices came alive. Students and staff were able to use these practices to build trust, to deal with conflict and to move toward respect and healing.

Between 2010 and 2013, the use of restorative actions increased from 0 to 583. During this same period, the number of very serious to most serious disruptive behaviors decreased from 842 to 183 (See Chart 1).

The RP that I helped implement included Restorative Group Conferencing, Victim Offender Mediation and Peer Jury. The following briefly describes each of these practices.

Chart 1. Number of Very Serious to Most Serious Disruptive Behaviors* and Restorative Actions: CPS, 2010 to 2013**



Source: Chicago Public Schools. CPS Dashboard.

*Behaviors that were identified in Group 4–Very Seriously Disruptive Behaviors, Group 5–Most Seriously Disruptive Behaviors and Group 6–Illegal and Most Seriously Disruptive Behaviors. See Student Code of Conduct, Section 3 for lists of behaviors. http://cps.edu/SiteCollectionDocuments/SCC_StudentBehaviors.pdf

** 2013 data as of 5/3/2013.

**RESTORATIVE GROUP CONFERENCING—ALSO
CALLED FAMILY GROUP CONFERENCING OR
ACCOUNTABILITY CONFERENCING**

Restorative group conferencing is a meeting to decide how to resolve an incident. It involves the community of people most affected by an offense. Participants usually include the victim and the offender as well as the family, friends and key supporters of both. Participation by all involved is voluntary.

In a restorative conference the affected parties are brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired. To participate, the offender must admit to the offense. The facilitator contacts the victim and offender to explain the process and invites them to the conference; the facilitator also asks them to identify key members of their support systems, who will be invited to participate as well.

The conference typically begins with the offender describing the incident, followed by each participant describing the impact of the incident on his or her life. It is preferable to allow the victim to start the discussion, if they wish. Through these narrations, the offender is faced with the human impact of the behavior on the victim, on those close to the victim and on the offender's own family and friends. The victim has the opportunity to express feelings and ask questions about the incident. After a thorough discussion of the impact of the behavior on those present, the victim is asked to identify desired outcomes from the conference, and thus help to shape the obligations that will be placed on the offender. All participants may contribute to the problem-solving process of determining how the offender might best repair the harm he or she has caused. The session ends with participants signing an agreement outlining their expectations and commitments.

Source: Appendix G of the 2009-2010 Chicago Public Schools Policy Manual; *Student Code of Conduct for the Chicago Public Schools for the 2009-2010 School Year*, Section: 705.5, P 31-32.

**VICTIM OFFENDER MEDIATION—ALSO CALLED
VICTIM-OFFENDER CONFERENCING OR
VICTIM-OFFENDER DIALOGUE**

Victim offender mediation is a process that provides interested victims an opportunity to meet their offender, in a safe and structured setting, and engage in a mediated discussion of the offense. With the assistance of a trained mediator, the victim is able to tell the offender about the offense's physical, emotional and financial impact; to receive answers to lingering questions about the offense and the offender; and to be directly involved in developing a restitution plan for the offender to pay back his or her financial debt. This process is different from mediation as it is practiced in civil or commercial disputes, since the involved parties are not "disputants" nor of similar status—with one an admitted offender and the other the victim. Also, the process is not primarily focused upon reaching a settlement, although most sessions do, in fact, result in a signed restitution agreement. Because of these fundamental differences with standard mediation practices, some programs call the process a victim offender "dialogue," "meeting" or "conference."

GOALS

The goals of victim offender mediation include:

- Support the healing process of victims by providing a safe and controlled setting for them to meet and speak with the offender on a strictly voluntary basis
- Allow the offender to learn about the impact of the offense on the victim and to take direct responsibility for his/her behavior
- Provide an opportunity for the victim and offender to develop a mutually acceptable plan that addresses the harm caused by the offense.

MEDIATION IMPLEMENTATION OVERVIEW

In implementing any victim offender mediation program, it is critically important to maintain sensitivity to the needs of the victim. First and foremost, the mediator must do everything possible to ensure that the victim will not be harmed in any way. Additionally, the victim's participation must be completely voluntary, as should the participation of the offender. The victim should also be given choices, whenever possible, concerning decisions such as when and where the mediation session will take place, who will be present, who will speak first, etc. Cases should be carefully screened regarding the readiness of both victim and offender to participate. The mediator should conduct in person, pre mediation sessions with both parties and make follow-up contacts, including the monitoring of any agreement reached.

PEER JURY OVERVIEW

Peer Jury is a student group that hears cases of student misconduct and decides disciplinary outcomes. Peer Jury is used as an alternative to suspension with the goal of decreasing the number of suspension days. It is similar to the idea of a youth court, however, Peer Juries use restorative justice principles in the hearings and in the disciplinary actions. Specifically, in peer jury, offenders (called referred students) and victims have the opportunity to tell their side of the story. The peer jury members act as representatives of the community. The referred student is asked to reflect on who he believes was harmed in the situation and in what way. The outcome of the hearing is that all students work together to come up with an agreement (which is the equivalent of a disciplinary action) that works to undo the harm that was caused in the incident and build the offender's skills so that the incident does not re-occur.

Source: Appendix G of the 2009-2010 Chicago Public Schools Policy Manual; *Student Code of Conduct for the Chicago Public Schools for the 2009-2010 School Year*, Section: 705.5, P 33.

RESTORING THE PIECES PROJECT

One example of a project that captured our school community's imagination around RJ was the *Restoring the Pieces Project*.

There were three key components: a genealogy project, a mentorship project and a community art project.

- 1. THE GENEALOGY COMPONENT:** The genealogy project was lead by Tony Burroughs who is a professor at Chicago State University. Burroughs is a renowned genealogist who has worked on a variety of projects to help individuals trace their family histories. Burroughs' work on this project revolved around the student and adult participants retracing their family histories using different techniques and methods, including using *Ancestry.com*[®] genealogy software. He also had participants conduct autobiographical interviews and each of the students received CDs of their respective family's interviews.
- 2. THE MENTORSHIP COMPONENT:** The mentorship project was facilitated through the Peacemaking Circles process conducted by Cheryl Graves of the Community Justice for Youth (CJYI). The Peacemaking Circles, which is an indigenous practice, are used to bring people together in a way that everyone is respected and speaks uninterrupted while others listen. It is a method of communication that is used to celebrate successes, discuss challenging topics, make decisions or address wrongdoing. Participants sit in a circle so that everyone can see everyone else. Typically there is an opening

ceremony that differentiates the time in the circle from time outside of it and a talking piece is used to encourage active listening and to facilitate speaking openly and honestly. Participants determine the guidelines around how they will be in the circle and all decisions in the circle are made by consensus. The circle is closed with another short ceremony honoring the time and contributions participants have made. CJYI offered this process to youth after school on Tuesdays. During this time, youth participated in “check-in” circles. Each participant shared how their day went, among other things. CJYI also brought other trained circle keepers/mentors to share with the student participants and offer supports through this circle process. Thursday evenings (5-7:30 p.m.) was the community participation component of the program. During this time, community members from around the City—including church members, parents and circle keepers—were invited by the adult participants in the program to come weekly to the Fenger High School to sit in the Circle with our youth. This was an opportunity for the community to add their voice to the inter-generational dialogue around peace and community engagement. This was also an opportunity to introduce the RJ practice of Peace-making Circles to the community.

3. ***THE COMMUNITY ART COMPONENT:*** The community art project pulled all of these components together in the creation of a mosaic project, called “Choosing your Legacy.” The mosaic, facilitated by Carolyn Elaine and

the Fenger Community, reflected the discussions of the Peacemaking Circles and the genealogy project. The artist created a model with the help of the students from the architecture class and students from around the school community. The design was drawn on the north wall of the cafeteria and the students were organized into teams to work on different aspect of the projects. These teams were organized to break mosaic tile, cut mirrors, place the pieces on the wall, place the pictured tile on the wall and clean the mosaic tiles.

As a part of the “Community Day” celebration, Christian Fenger High School hosted a Peace Rally which was held in the cafeteria. A Peace Rally was done in collaboration with the Balance and Restorative Justice (BARJ) Committee at Juvenile Court. Members from Juvenile Court, as part of their BARJ week, came out to support our youth to stop the violence and increase the peace. There were over 300 students and adults in attendance. Once the Peace Rally was over, all of the participants were ushered to classrooms to be a part of Peacemaking Circles facilitated by trained Circle Keepers from the RJ community in Chicago.

On the following day, Fenger High School hosted the “Community Day” celebration. During this celebration, alumnae, community members, staff, student leaders and artists from around the City came to grout the mosaic wall. The event drew news media documenting the coming together of the Fenger community to complete the “Choosing your Legacy” mosaic. Everyone that was part of the “Community Day” event helped the Fenger High School community gather together in a positive and peaceful way.

Finally, the core student leaders and core adult mentors came together to reflect during their final community circle at Fenger High. Students, as well as adults, shared their hopes and dreams for their school and community. They supported each other and celebrated the meaning of this project and the journey this project took us all on. Many of the adults asked if this could be done on a more consistent basis. The students hoped that they could continue to meet and talk about the future peace projects at Fenger High School. In the end, the group left with *hope* for the future of Christian Fenger High School and the Roseland community.

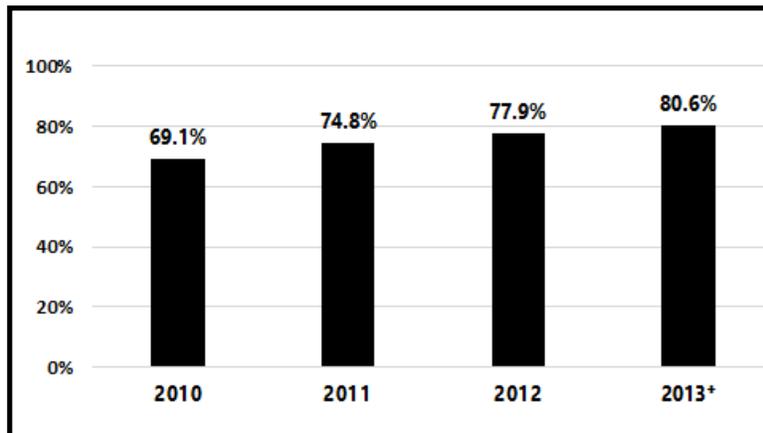
TAKE AWAY

What I learned from this experience was that collaboration was key to ensuring the success of this project. Our community needed a point person to coordinate the many people who would eventually help achieve our goals at the school and community levels. We needed key people with specific skills to work together to support our school community moving forward. And, finally we needed this to be a child-focused process that put the needs and the feelings of the children first. Here was an opportunity to bring unity into our community and show our youth that we were ready to change our approach and to listen to what they had to say. This is truly when our school began to “turnaround” and move toward its bright tomorrow.

IMPROVED OUTCOMES

As noted earlier, the use of restorative actions increased while the number of very serious to most serious disruptive behaviors decreased between 2010 and 2013 (see Chart 1). Specifically, the rate of serious misconduct incidents dramatically dropped from 175.0 to 38.6 per 100 students between 2010 and 2012 and the number of violent misconduct incidents dropped from 385 to 150 during the same period.³ During this time, Fenger High School also had improved outcomes, including improvements in attendance—from 69.1 percent in 2010 to 80.6 percent in 2013 (Chart 2), freshmen on track to graduate in four years—from 46.9 percent in Pre-Turnaround to 71.9 percent in 2012 (Chart 3) and five year graduation rates—from 37.3 percent in Pre-Turnaround to 45.1 percent in 2012 (Chart 4).

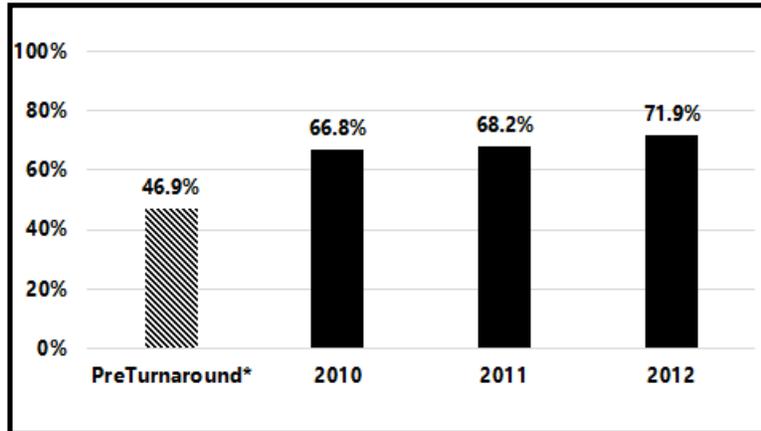
Chart 2. Average Daily Attendance Rate: Fenger High School, 2010 to 2013*



Source: Chicago Public Schools, CPS Dashboard.

*All 2013 data as of 5/3/2013.

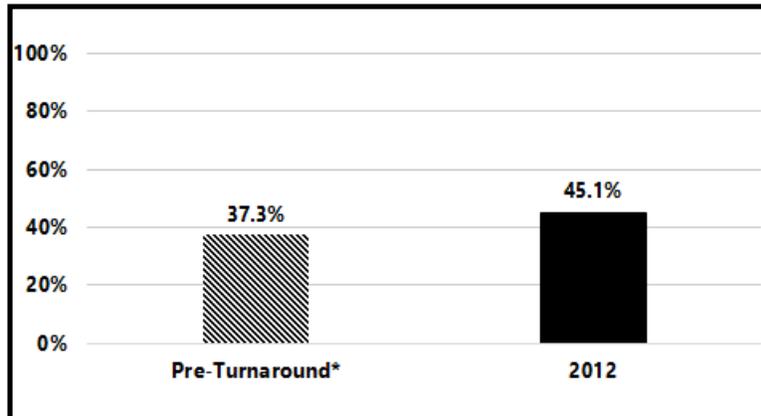
**Chart 3. Freshmen On-Track to Graduate in Four Years
Rate: Fenger High School, PreTurnaround* to 2012**



Source: Chicago Public Schools, CPS Dashboard.

* Pre-Turnaround data points are the average of the three years prior to Fenger's Turnaround (2007, 2008 & 2009).

**Chart 4. Five Year Graduation Rate: Fenger High School,
Pre-Turnaround* versus 2012**



Source: Chicago Public Schools, CPS Dashboard.

* Pre-Turnaround data points are the average of the three years prior to Fenger's Turnaround (2007, 2008 & 2009).

CONCLUSION

The questions that came to mind as I thought about how to expand this work in our communities include:

- Can this restorative healing process ripple out of the school community and into the homes and neighborhoods where our students live?
- How can we encourage these practices to continue after school and during the weekend?
- Are there places in our community where RP are utilized to promote respect and healing for our residents?
- Can such places flourish in a community impacted by violence?
- Who can be seen and respected by a community affected by violence as the person who can lead the community away from violence toward peaceful ways to resolve conflict?
- What are the processes and steps to doing this and can we replicate what we did in Fenger out in the community?

For now these questions are continuing to drive me and others toward a society that is willing to focus on our most precious resource—our children.

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- ³Chicago Public Schools, *School Climate Overview, Fenger HS, 2010-2013*. CPS Dashboard.

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SECTION III.

JUSTICE TRACK

**OUT OF COURT (AND SOMETIMES IN)—
PLAYING TO WIN:
RESTORATIVE PRACTICES AND PROCESSES OF THE
NEW ZEALAND YOUTH JUSTICE SYSTEM**

JUDGE ANDREW BECROFT*

Youth Court of New Zealand

SACHA NORRIE

Youth Court of New Zealand

In 1989, the New Zealand youth justice system underwent a seismic shift. Over the next 25 years, the system's architecture was rebuilt and current youth justice theory, principles and practices are virtually unrecognisable from their pre-1989 counterparts.

In the 1980s and decades preceding the Children, Young Persons and their Families Act 1989 (CYPF Act), traditional youth justice philosophies and practices prevailed. There was a strong focus on court-based resolutions and an acceptance that the court was the ultimate appropriate institutional forum to resolve youth offending. Police practices reflected the traditional functions of their role: detect crime, arrest, charge the young person and refer the ultimate decision-making to a Judge. The system was dominated by “professional” decision-making; state agencies were perceived to be

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making decisions on behalf of young people and their families. Consequently, families and communities felt disempowered.

In particular, Māori (the indigenous peoples of Aotearoa New Zealand) were marginalised and disadvantaged by the mono-cultural process. The enactment of the CYPF Act in 1989 introduced a “new paradigm.” Namely, a clear two-fold emphasis in the legislation: first, on not charging young offenders and if at all possible using police organised alternative responses; and, secondly (where police diversion was not possible), relying on the Family Group Conference (FGC)—both as a diversionary mechanism to avoid charging, and as the prime decision making mechanism for all charges that were not denied or which were subsequently proved. Clear principles were also enshrined, emphasising the importance of involving and strengthening the family group in all decision making and interventions.

Under the “new paradigm” there is now significantly reduced reliance on charging young people after apprehension by police. A specialist youth-focused division of the police force ensures that approximately 80 percent of all youth offending is dealt with by prompt, community-based alternative intervention. For the small group who are charged and come to the Youth Court, the mandatory FGC enables less reliance on judicial decision-making and places families, victims and the community at the heart of the decision-making process. A consensus-based Plan is created to hold the young people accountable for their behaviour while addressing the underlying causes of offending. Rehabilitative,

wraparound, community-based sentences are a priority and custody is an absolute last resort.

The FGC paved the way for a restorative justice approach (although restorative justice theory was not contemplated at the time the legislation was passed) and increasingly the Youth Court adopted a therapeutic, multi-disciplinary approach. Court numbers plummeted, government youth residences and prisons were closed, and youth offending rates stabilised.

The Youth Court and the youth justice FGC also became an incubator of restorative justice practices in subsequent years, gradually spawning a nation-wide movement towards restorative justice. Adult criminal courts began to adopt, and even mandate, restorative justice processes at sentencing. Schools, workplaces, and even some small cities also started adopting restorative theories to inform their practices.

A Model for Dealing with Youth Offenders: A Specialist System

New Zealand's youth justice system has been described as "revolutionary" and "an international trendsetter"¹ At its inception, the Children, Young Persons and Their Families Act 1989 (CYPF Act) was hailed as "a new paradigm"²—for going beyond traditional philosophies of youth justice and offering a completely new conceptual approach. However, this had not always been the case.

In the 1980s, and the decades preceding the CYPF Act's introduction, youth justice in New Zealand was the subject of growing public dissatisfaction. The prevailing "welfare approach" was subject to both criticism and a perception that the "welfarist" youth justice system had failed to hold young offenders properly accountable for their offending.³

Responses to offending during this time were wide ranging, inconsistent and regionally idiosyncratic. There was a focus on court-based resolutions, stemming from the wide-held belief that the court was the ultimate and certainly the appropriate institutional forum to resolve youth offending. This was seen as the proper way of doing things and was consistent with the understanding of the role of the Youth Court at the time.⁴ Similarly, police were acting as traditional police officers: detecting crime, arresting and charging young people and referring the ultimate decision-making to the Judge. Non-charging was not a traditional practice for police, who were also found to be bypassing such limited diversionary mechanisms as were available and overusing arrest to ensure prosecution.⁵

Generally, more consideration was given to the welfare needs⁶ of the young person than to the offence that they had committed. This lack of proportionality meant that even relatively minor offending (e.g., shoplifting), if considered to be caused by a welfare deficit, could result in a significant custodial response to "cure," "treat" or rehabilitate the young person. This was usually done with laudable motives and in the young person's best interests. The relatively high and disproportionate reliance on institutional interventions that resulted was matched with the belief that this was the best way to unscramble dysfunctional lives. There were significant concerns regarding the treatment of young offenders in

residential placements, with allegations of harsh treatment and abuse emerging.⁷

Amid mounting concerns about the state of youth justice in New Zealand during this period, there was an increasing awareness and discomfort about the mono-cultural nature of both the youth justice system and the criminal justice system in general. There was a view that state systems and processes were failing to take account of Māori values and cultural practices.⁸ The decision making mechanisms used by the Department of Social Welfare and other government agencies when making decisions about children, particularly Māori children, were seen as culturally inappropriate and racist. Describing the concerns at this time, Mike Doolan, the first Chief Social Worker for Child and Youth Services, commented:

In New Zealand, Māori and Pacific Island youth are more fundamentally at risk of the coercive, intrusive welfare dispositions, under the guise of treatment and in pursuit of rehabilitation, than are their Caucasian counterparts. The fact that most professional decision-makers in the youth justice system are from the dominant white culture and are rarely identified as working class, contributes directly to this state of affairs.⁹

The system was dominated by professional decision-making; it was alleged that social workers were making decisions on behalf of families without meaningful input from the families themselves. Consequently, families and communities felt frustrated and disempowered by these formalised and official decision making processes. There was

significant unease and concern that the youth justice system was becoming increasingly distanced from the community and, somewhat ironically, the more these trends continued, the higher the reoffending rates became.

The concerns about the state of youth justice in New Zealand in the 1980s are perhaps similar to some of the concerns and criticisms that youth justice systems currently face worldwide. The radical changes to the youth justice landscape in New Zealand with the enactment of the CYPF Act in 1989 were profound in their attempt to resolve these concerns. In retrospect, it is fair to say that the changes were revolutionary; the extent to which could not have been understood at the time. The principles and practices under the CYPF Act have stood the test of time. They work. Apprehension rates continue to decrease. Indeed, in New Zealand for the year of 2014, apprehension rates were at the lowest in recorded history.

In this way, the New Zealand system of youth justice (notwithstanding its own shortcomings) may offer some guidance as to a different or even a “new way” for dealing with young offenders.

It would be remiss not to acknowledge that this paper emphasises the theoretical high-water marks of the New Zealand system. Every youth justice system has its challenges, gaps between principle and practice, and lessons to be learned. New Zealand is no exception. Indeed, even in New Zealand, as with all countries when new systems are pioneered, there seems to be a slow, gravitational pull back towards the institutionalisation of certain parts of the youth justice process. We are increasingly aware of the unrealised, and sometimes under-executed, potential of the CYPF Act,¹⁰ and continue to strive for improvement.

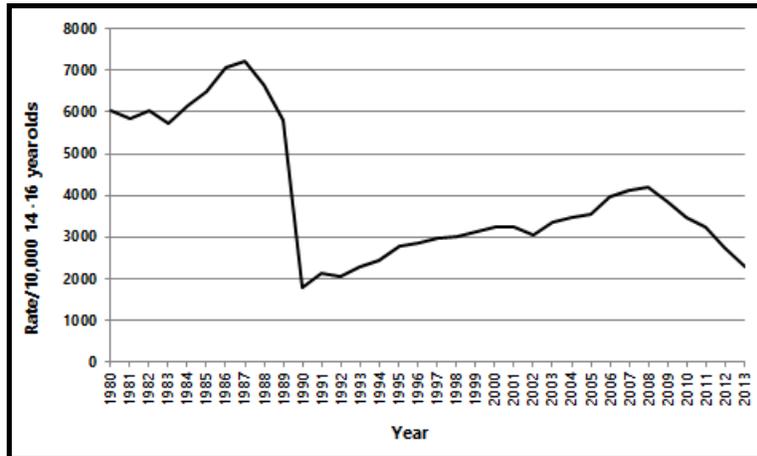
PRIORITY GIVEN TO NON-CHARGING RESOLUTIONS – LOW RELIANCE ON COURT

In New Zealand, up to approximately 80 percent of youth offending does not result in a formal charge in the Youth Court. The legislation provides that, unless the public interest requires otherwise, criminal proceedings should not be instigated against a child or young person if there are alternative means of dealing with the matter.¹¹ The overwhelming majority of cases are dealt with by police-led community alternative interventions.

New Zealand apparently remains the only country in the world to have a specialist division of the police force to deal with all young offenders after apprehension by frontline police. Police Youth Aid is comprised of approximately 240 highly specialised and highly trained members of the national police force. Very minor incidents are handled by front-line police with an immediate warning to the young person. These incidents are recorded on standard forms and sent through to Youth Aid for their records. More serious or persistent offending is referred to Youth Aid, who may then either deal with the matter through alternative resolutions, or refer the matter to an intention to charge Family Group Conference (FGC), or if there has been an arrest, may lay a charge directly in the Youth Court.

It is to the police's credit that in practice the overwhelming majority of all young offending is dealt with by warnings or informal police diversionary strategies. The approach taken by police has been fundamental to the CYPF Act's success. This very significant part of New Zealand's youth justice process is often little understood. It is one of the "twin pillars" of the New

Figure 1. Rate of 14 to 16 Year Olds Charged in NZ Youth Court: Rate per 10,000 14 to 16 Year Olds, 1980 to 2013



Source: New Zealand Ministry of Justice

Zealand system (the second—the use of the FGC—is described in the next section). The radical change that took place in the New Zealand youth justice system, with respect to drastically reduced charging of young people is shown in Figure 1.

**FOR THE SMALL GROUP WHO COME TO COURT:
LESS RELIANCE ON JUDICIAL DECISION-MAKING AND
MORE RELIANCE ON FAMILY, VICTIM AND
COMMUNITY BASED DECISION-MAKING PROCESSES**

This principle is big! It represents a whole new paradigm where reliance solely on judges making decisions is rejected. This is the essence of the FGC and its revolutionary power: we take away decision-making power in the first instance from the judge and give it to the young person, their family, the victim and the community. The nature of the accountability and types

of interventions for the young offender is decided, at least on a preliminary basis, by the young offender, the offender's family, the victim, police, youth justice professionals¹² and representatives of the wider community. Decisions are collaborative and consensus-based. They adopt a restorative justice approach. The FGC aims to address the underlying causes of offending while holding the young person accountable for their offending and encouraging them to accept responsibility for their behaviour. While final approval is required from the Youth Court Judge (who will usually accept and endorse the plan, perhaps with agreed modifications), the traditional role of the court/judge is radically different because of the centrality of the FGC delegated decision-making mechanism and the primacy given to the FGC Plan.

The FGC is the “hub” of the Youth Court process—it is not peripheral to the court procedure.¹³ FGCs are the primary and mandatory decision making forum for all types of serious offending before the Youth Court (except for charges of murder and manslaughter, and most non-imprisonable traffic offences and minor offences dealt with by way of an on the spot infringement notice).¹⁴ Despite subsequent adaptation and replication of the conferencing system in many jurisdictions around the world, New Zealand remains unique in that the FGC is the primary decision-making process in the Youth Court: it is not an adjunct to the court process and it is mandatory, irrespective of consent, in the Youth Court when a charge is not denied or proved after denial.¹⁵

THERE ARE SIX SITUATIONS IN WHICH A FGC MUST BE CONVENED:

1. CHILD OFFENDER CARE AND PROTECTION FGC: If the police believe, after inquiry, that an alleged child offender (aged 10-13) is in need of care and protection, this must be reported to a Youth Justice Co-ordinator (YJC). YJCs are employees of the New Zealand Government's Children, Young Persons and Their Families Service (CYFS) and are often qualified Social Workers. The YJC and police must consult, after which if police believe an application for a declaration of care and protection is necessary in the public interest, a FGC must be held¹⁶ to address the child's offending. At a care and protection FGC, the group must determine whether the offence is admitted, and, if so, what steps should be taken, including whether a declaration that the child is in need of care and protection should be filed in the Family Court.¹⁷

2. INTENTION TO CHARGE FGC: This is required whenever a young person is alleged to have committed an offence and has not been arrested (or has been earlier arrested and released) and the police intend to lay charges. Police must first consult a YJC. If, after consultation, the police still wish to charge the young person, a FGC must be convened.¹⁸ This is the second most common type of FGC, and accounts for between one third and one half of all FGCs annually. At an intention to charge FGC, the group must determine whether the charge is admitted and, if so, decide what should be done. This may include

completion of an agreed plan, which if successful will be the end of the matter, or a decision that a charge should be laid in court.¹⁹

3. ***“CUSTODY CONFERENCE” FGC:*** Where a young person denies a charge, but, pending its resolution, the Youth Court orders the young person be placed in CYFS or police custody, a FGC must be convened.²⁰ At a custody FGC, the group must decide whether detention in a CYFS secure residence should continue and where the young person should be placed pending resolution of the case.²¹

4. ***COURT DIRECTED FGC - “NOT DENIED”:*** Where a charge is not denied by the young person in the Youth Court, the Court must direct that a FGC be held.²² “Not denied” is a somewhat odd, but very useful, mechanism. It triggers a FGC without the need for an absolute admission of culpability. It may indicate the young person’s acceptance that he or she is guilty of something, although not necessarily the charge as laid. Invariably, in such cases, the details can be resolved at FGC. This is the most common type of FGC and accounts for at least half of all FGCs. At a court ordered FGC, the group must determine whether the young person admits the offence, and, if so, what action and/or penalties should result.²³

5. ***FGC AS TO “ORDERS” TO BE MADE BY YOUTH COURT:*** Where a charge is admitted or proved in the Youth Court and there has been no previous opportunity to consider the appropriate way to deal with the young

offender a FGC must be held.²⁴ At a penalty FGC, the group must decide what action and/or penalties should result from a finding that a charge is proved.²⁵

6. FGC at Youth Court Discretion: A Youth Court may direct that a FGC be convened at any stage in the proceedings if it appears necessary or desirable to do so.²⁶

In summary, if arrested and charged in the Youth Court, the young person must have a FGC; either when the young person does not deny the charge or the charge is subsequently proved.²⁷ It is worth noting that if the offending is particularly serious, in which case there will have been a compulsory FGC, or the FGC plan is not followed, the young person will usually receive a formal Youth Court order under s 283 (approximately 20% of all young people appearing in the Youth Court). Therefore, the FGC is a fundamental part of the process in situations where a charge is either formally laid in the Youth Court, or contemplated.

COMMUNITY SOLUTIONS WITH CUSTODY AS AN ABSOLUTE LAST RESORT

There are a number of advantages of this delegated decision-making FGC process. First, young people are actively involved in the discussions about their offending and rehabilitation, rather than standing mute and detached. Second, victims are not merely passive observers—they have the opportunity to express their emotions (forcefully) if they wish, share their views, and contribute to decisions about how the young person is to be held to account, and also how to get the young person back on track.

Third, and perhaps most importantly, the family is placed at the heart of the decision-making process. It would be hard to imagine that anyone involved in a 21st century youth justice system would argue against the absolute centrality of the family—both in understanding and explaining serious youth offending, and in constructing a rehabilitative response; however, this unearths one of the most fundamental paradoxes in any youth justice process: even though the family is often the central contributing factor for serious youth offending, no enduring solution is likely to be found without enlisting a young offender’s family in the process of rehabilitation. The FGC provides a mechanism for the mobilisation and engagement of a young offender’s familial network and, in some cases, the FGC process is able to strengthen the family unit itself.

The legislation requires that FGC plans reflect the principles laid down in the CYPF Act.²⁸ However, there are no other legislative, or formal or informal prescriptions for FGC plans - the established processes merely provide the platform from which creative and individualised resolutions are formulated. There are consequently no limitations on the imagination and ideas of the group and this is, in many ways, the strength of the system. The plan designed by the offender, victim and community, is likely to be realistic and reflect the resources and support available to those parties.²⁹ For 95 percent of cases, FGC-recommended outcomes involve accountability measures of some kind.³⁰ Plans commonly include an apology and/or reparation to the victim, community service requirements, counselling and rehabilitation programmes and educational requirements. Most recommendations/plans are accepted by the Court and if the plan is carried out no formal court order is imposed.³¹ However, formal orders are available if the plan is not carried out.³²

There will not be a FGC plan for the most serious offending where the only realistic outcome is a Youth Court order. But even then, the young person and their family have been part of the discussion that concluded that a Youth Court order is inevitable. If there is no agreement at the FGC as to whether a formal order is to be made, the Court will decide.

Most cases in the Youth Court are resolved through a FGC plan without the need for a formal court order. For example, in 2013 only 26 percent of Youth Court appearances resulted in a formal order. However, the Youth Court has the power to make certain formal orders, typically, but not exclusively, on the recommendation of the FGC, or where the FGC plan has either not been fulfilled or has been only partly fulfilled. Many of the Youth Court orders are comparable to sentences available in the adult court, but there are some unique aspects. Youth Court orders include, but are not limited to:

- Absolute discharge at the successful completion of a FGC plan, which may take a number of months. This type of discharge means that the charge is deemed to have never been laid (s 282);
- A discharge that is noted on the young person's record but there is no further penalty other than the note of the offence itself (s 283(a));
- An order to come before the Court for sentence if called upon within one year (s 283(c));
- Disqualification from driving a motor vehicle (s 283(i));
- Reparation to the victim for damage caused by the offending (s 283(f));
- Community work for up to 200 hours to be completed within one year (s 283(l));

- Placement under the supervision of a specified community organisation or the Ministry of Social Development for up to 6 months (s 283(k));
- An order placing the young person under the supervision of a specified community organisation or the Ministry of Social Development, which also requires the young person to attend or remain at a community-based activity or programme for up to 6 months (s 283(m));
- A custodial sentence in a youth justice residence (youth prison) for up to 6 months, which must be followed by community supervision for up to 12 months (s 283(n)); and
- Conviction in the Youth Court and transfer to the District Court for sentencing in the adult criminal court (s 283(o)).

NEW ZEALAND YOUTH JUSTICE AS A MODEL FOR RESTORATIVE JUSTICE? IN PRACTICE, BUT NOT IN THEORY!

The CYPF Act has been described as the “first legislated example of a move towards a restorative justice approach to offending” anywhere in the world, despite there being no specific mention of “restorative justice” in the legislation.³³ Indeed, at the time the CYPF Act was debated and formulated, the restorative justice movement was in its infancy, and the provisions of the CYPF Act had been developed before ideas about restorative jurisprudence had been widely disseminated.³⁴ The New Zealand system, and in particular FGCs, have become restorative in practice in an evolutionary way, rather than as a result of any theoretical underpinning or legislative prescription.

Although not mandated by, or mentioned in, the legislation, a restorative justice approach is entirely consistent with the Acts objects and principles. His Honour Judge McElrea notes:

[...] it is essentially the practice of youth justice, as experienced by practitioners, that is restorative, rather than the legislation underlying that practice. Sections 4-6 and s 208 spell out certain objectives of the Act and principles to be applied in youth justice. These are partly restorative, but mostly reflect a narrower emphasis namely the strengthening of the relationships between a young person and his family, whānau, hapū, iwi, and family group, and enabling such group whenever possible to resolve youth offending – see the short and long titles of the Act and ss 408 and 208(c).³⁵

Judge McElrea goes on, however, to say that the partly restorative aspects of the CYPF Act should not be downplayed. These “partly restorative” aspects are:

- Section 4(f) propounds the principle that young people committing offences should be “held accountable, and encouraged to accept responsibility, for their behaviour” and should be “dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial and socially acceptable ways.” These provisions emphasise accountability and membership of a wider community.
- By making criminal proceedings a last resort (s 208(a)), the Act encourages the solution to come from within the community.

- A “welfare” approach is discouraged by stipulating (s 208(b) and (f)) that criminal proceedings should not be instituted solely for welfare reasons, and that any sanctions should take the “least restrictive form” that might be appropriate.
- With almost breathtaking understatement, s 208(g) requires that “due regard” should be had to the interests of victims of offending and s 251 establishes the right of any victim or his/her representative to attend every FGC.
- Young offenders are intended to be kept in the community, so far as that is consonant with public safety (s 208(d)).
- And finally, the whole machinery of the Act that propels the FGC process is one that makes possible a restorative approach to justice.³⁶

Accordingly, an assessment of ss 4, 5 and 208 of the CYPF Act reveals a number of principles that are consistent with restorative justice processes. The importance of rehabilitation through family involvement is stressed.³⁷ Significantly, section 5 states that any Court which, or person who, exercises any power conferred by or under this Act shall be guided by:

*The principle that, wherever possible, a child’s or young person’s family, whānau, hapū, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whānau, hapū, iwi, and family group.*³⁸

Much like the focus on family involvement, the involvement of victims has been seized upon as a potentially restorative feature of the Act. However, it is important to note that at the time the Act was being contemplated, the inclusion of victims in the FGC process was intended to “keep the system honest” and to instill public confidence, not to contribute to restorative outcomes. During the drafting process, the Youth Justice Policy team at the Ministry for Social Development recognised that the unprecedented FGC model would be the subject of much public scrutiny. For the first time, a fundamental portion of the criminal justice decision-making forum would be taken out of the courtroom and the public view, and conducted in the private, confidential and unreported FGC forum. The process was fraught with questions around how the FGC process could appear to be, and indeed be, legitimate in the eyes of the public. It was ultimately decided that if victims could have their justice needs delivered by FGCs, then the public could be more confident that the process was legitimate.

Accordingly, the CYPF Act provides the right for victims, or their representatives, to be consulted about where and when a FGC should take place and to attend the FGC.³⁹ Victims are also entitled to a record of what was agreed to at the FGC.⁴⁰ These provisions are rooted in a “victim’s rights” framework, where the victim is able to attend a FGC as of right, rather than as party contributing to a restorative process aimed at repairing harm.

It was only *after* the legislation’s enactment that notions of the potentially restorative nature of victim involvement began to develop. Central to restorative justice theory is the idea that the offender will perform actions to repair the harm caused by the offending to achieve restorative outcomes. Therefore,

victim involvement in FGC processes certainly has the potential to be restorative in practice. However, as practice has developed since 1989, it has become evident that the actual “restorativeness” of FGCs fluctuates due, to a large extent, to the varying levels of victim attendance. Without a victim present, one of the key components of a restorative justice event, the repair of harm caused by the offending, is diminished.

Nevertheless, irrespective of its origins and underlying philosophies, the transfer of decision-making to the FGC, while radical at the time, is only partial and the Youth Court retains the ultimate decision-making power. The Youth Court has the obligation to “consider any decision, recommendation or plan made or formulated by the family group conference in relation to the offence”⁴¹ but is not bound to follow it.

There are three general pathways after the Youth Court considers the FGC Plan. Usually, the Judge will approve the Plan and monitor its progress at regular court hearings. Alternatively, if the Court has serious concerns as to the quality or consistency of the Plan (e.g., the response proposed is disproportionate to the offending or has not sufficiently addressed the causes of offending), the Court can order that the FGC be reconvened to reconsider those relevant matters.

Ultimately, in either case, if the Plan contains all of the necessary components and is successfully completed over the specified period, in practice, the Court will usually discharge the young person. As discussed above, there are two statutory provisions to discharge a young person in the Youth Court. The first is an absolute discharge under s 282, and has the effect as if the charge were never laid. The second is a formal discharge under s 283(a), which records a notation of the charge. There

are a number of considerations, and a body of jurisprudence, regarding the decision to discharge under s 282 or s 283(a). In some cases it may be appropriate for a record to be made due to the type of offending, particularly where the offending is violent or sexual in nature. This decision will be finely balanced between promoting the future interests of the young person, particularly in seeking employment, and protecting the interests of the public.

The third pathway involves the Court making a formal order. This may result from the FGC recommendation, or eventual failure by the offender to fulfil the FGC plan or, in rare cases, where the FGC cannot agree, or where the Judge believes the final FGC plan is simply inadequate relative to the seriousness of the offending (as discussed above).

SIGNIFICANT RECOGNITION OF INDIGENOUS AND MINORITY GROUPS—BUT NOT AN INDIGENOUS MODEL

One of the most groundbreaking elements of the CYPF Act at its inception in 1989 was that, for the first time, family and whānau status was clearly recognised and enshrined in legislation. The CYPF Act provides that, in the context of youth justice, any measures for dealing with offending by children or young persons should be designed:

- To strengthen the family, whānau, hapū, iwi, and family group of the child or young person concerned; and
- To foster the abilities of families, whānau, hapū, iwi, and family groups to develop their own means of dealing with offending by their children and young persons.⁴²

This new paradigm, and specifically the FGC process, was touted a partial amalgamation of traditional Māori and Western approaches to criminal justice, whereby Māori customs and tikanga o ngā hara (the law of wrongdoing) could influence dispute resolution processes. Khylee Quince identifies that fundamental to Māori notions of dispute resolution is the need to:

[...] restore the equilibrium of relationships between individuals, families and communities that are deemed to have been disrupted or harmed by offending behaviour. This process also seeks to restore the mana (dignity) of those persons, by acknowledging and addressing their harm and seeking consensus as to the appropriate means of utu (redress) in the circumstances. In Māori culture, the individual is identified in terms of their connection to people and territory. This preference for collectivism is reflected in the concept and practice of collective responsibility for disputes. The Māori system aims to account for past wrongs, but also focuses on future relationships and the reintegration of all parties involved back into the community. It is flexible, principle-based and enforced from the ground up.⁴³

Therefore, understanding why an individual had offended is inherently bound to notions of collective responsibility, and the imbalance between the offender and the victim's family has to be restored, often through a mediation process. Although many

of the processes of Māori law no longer exist, the whānau (or family) meeting is still used by extended families in some Māori communities to resolve disputes.

The FGC process is not prescribed in the Act. However, some parallels can be drawn between Māori tikanga (custom) and kawa (protocol) and the commonly utilised format of the FGC. For example, many FGCs open with karakia (prayer), those present are introduced, there is an opportunity for information sharing and consensus decision making, which are all aspects of traditional Māori dispute resolution principles and practices.⁴⁴

However, it is important to recognise that the FGC is *not* (as is sometimes unrealistically touted) the wholesale adoption of an indigenous or Māori method of dispute-resolution and a rejection of the Western legal system. A distinction must be drawn between a system that attempts to re-establish the indigenous model of pre-European times and a modern system of justice, which endeavours to be more culturally appropriate. The New Zealand system is an attempt to establish the latter, not to replicate the former. While it may incorporate some whānau-centred decision-making processes, the FGC also contains elements quite alien to indigenous models (for example, the presence of representatives of the State). Furthermore, there are other competing principles that are considered equally important: the empowerment of families, offenders and victims.

Within this scope for a more culturally appropriate response, a FGC can also include, for instance, the practice of *ifoga*, a form of Samoan dispute resolution. Pacific Island youth offenders, of which Samoan youth are the most represented, make up about 12 percent of New Zealand's youth offending population. Similar to Māori culture, and unlike

Western society, the core unit of Samoan society is not the individual: it is the extended family, known as the *aiga*. The *aiga* and the individual are one and the same. If an individual commits a crime, the entire *aiga* may be held responsible. Correspondingly, the victim of the crime is not just the individual person but their entire *aiga*.

This traditional view of criminal responsibility gives rise to the *ifoga*, a reconciliatory act performed by the offender's *aiga* for the victim's *aiga*. One goal of *ifoga* is to restore and maintain relationships between people, *aiga*, villages and with God. These relationships, known as *va*, are an important part of Samoan society. By restoring these relationships there is no lasting resentment or ill feeling. Retribution is avoided and harmony is maintained.⁴⁵

The CYPF Act does not create an indigenous, Māori or culturally specific framework for responding to youth offending. Rather, the CYPF Act seeks to make the established system more culturally appropriate and flexible and offers greater scope for processes to better reflect the “needs, values and beliefs of particular cultural and ethnic groups,” by giving decision-making primacy to family or kinship groups.⁴⁶

With all that said, the statistical reality continues to paint a very challenging and disturbing picture. Young Māori continue to be disproportionately overrepresented in the youth justice system—a disproportion that is getting worse, not better. In New Zealand, 23 percent of the 14 to 16 year old population are Māori.⁴⁷ However, in 2014 Māori made up 59 percent of all youth apprehensions and 60 percent of all Youth Court appearances.⁴⁸ While the numbers of young Māori charged in the Youth Court have significantly decreased, it has been at a lower rate than the decrease for non-Māori. Therefore, the proportion of youth in Court that are Māori has increased from

44 percent in 2005, to 57 percent in 2014. In some Youth Courts the percentage of those Māori young offenders appearing in the Youth Court is over 90 percent. Despite the pioneering vision for a more culturally responsive system contained in the CYPF Act, and the high hopes for its implementation, the increasing disproportionate representation of young Māori is probably the biggest challenge to the New Zealand youth justice system.

NEW ZEALAND YOUTH COURT RESTORATIVE PROCESSES HAVE SPAWNED A NATIONAL MOVEMENT WITH INFLUENCES THROUGHOUT NEW ZEALAND

When the CYPF Act was enacted in 1989, few New Zealanders understood its significance. As previously discussed, the theory underpinning the legislation was not explicitly a restorative justice approach. It took up to five years, and the observations of international commentators, such as Professor Howard Zehr, to realise that what was being done in youth justice, in practice, resonated with a restorative justice approach.

In New Zealand, all Youth Court Judges are also warranted District Court Judges, whose main work is in either the Family or Criminal Jury Trial jurisdictions. The Youth Court soon became a pollinating ground into other courts and jurisdictions. The first example of this took place in the adult criminal court when legislation was enacted to include restorative justice in the Sentencing Act 2002. The Courts are now required to take the outcome of restorative processes into account when sentencing an offender, including any offer of amends, any agreement between the victim and the offender as to how the

offender may remedy the wrong, the response of the offender or the offender's family, or any measures to make compensation or apologise to the victim.⁴⁹ In December 2014, the Sentencing Act was again amended and now requires a mandatory adjournment of proceedings to explore the possibility of offenders and victims engaging in the restorative justice process.⁵⁰ While there are some operational wrinkles to iron out with respect to the implementation of this new regime, the amendment demonstrates the increasing recognition of, and commitment to, restorative justice responses in the formal criminal jurisdiction.

Restorative practices have also been adopted by some schools in New Zealand as an alternative to purely punitive and exclusionary disciplinary systems and procedures. Increasingly schools are finding restorative approaches more effective in establishing long-term lasting changes in relationships. Restorative approaches are also found to be better at connecting members of a school community, involving and hearing victims, and enhancing climates of care within schools as a whole, while still ensuring that there are consequences for inappropriate behaviour. Workplaces are also employing restorative practices to build and maintain positive relationships among staff and transform conflict when it occurs. The city of Whanganui has become New Zealand's first "Restorative City"—Whanganui models a community-wide approach on restorative practices, which have been adopted throughout the justice, education, community services and workplace sectors.

Growing government support for restorative justice has seen the inaugural appointment of Professor Chris Marshall as the Diana Unwin Chair in Restorative Justice. This role serves as the focus for collaborative, interdisciplinary research and

teaching on restorative justice theory and practice, both within the justice sector and beyond.⁵¹ The Chair in Restorative Justice will play a pivotal role in carrying the restorative justice movement forward in an academically credible and practice-focussed way in the coming years.

CONCLUSION—THE REMARKABLE (AND SOMETIMES UNINTENDED) CONSEQUENCES OF PURSUING EXCELLENCE

Whāia te iti kahurangi ki te tūohu koe me he maunga teitei
*Pursue the highest cloud so that if you miss it,
you will land atop a lofty mountain*

This Māori whakataukī (proverb) echoes the transformation of the New Zealand youth justice system over the past 25 years. Enacted amid significant concerns about court-centred, formalised and institutional responses to youth offending, which disempowered young people, their families and the community, the CYPF Act truly did create a pioneering paradigm. The twin, and equal, principles place an emphasis on accountability but also responses which address the needs of the young offender and the causes of offending.

There is now significantly reduced reliance on charging young people after apprehension by police. A specialist youth-focused division of the police force ensure that approximately 80 percent of all youth offending is dealt with by prompt, community-based alternative intervention. For the small group who are charged and come to the Youth Court, the mandatory FGC enables less reliance on judicial decision-making and places families, victims and the community at the heart of the

decision-making process. A consensus-based Plan is created to hold the young people accountable for their behaviour while addressing the underlying causes of offending. Rehabilitative, wraparound, community-based sentences are a priority and custody is an absolute last resort. The successful completion of a FGC Plan is usually rewarded with a discharge, after the young person's future interests have been balanced against the protection of public interests. These principles will stand the test of time and continue to make a difference, as evidenced by record low numbers in our youth justice system – both in terms of the apprehension rates by the police and the rate of Youth Court prosecutions.

The pursuit of excellence under the CYPF Act has had some remarkable consequences, albeit unintended at the time. The youth justice process is restorative in practice, despite no explicit reference to restorative justice in the legislation, or contemplated at the time of drafting. The mobilisation of victims, families, community members and youth justice professionals, as well as the young person, to express their views and work towards an appropriate outcome together is, by nature, a restorative process. The FGC model also has the ability to offer a more culturally appropriate process. Recent challenges and limitations with the operation of the FGC (e.g., low victim attendance and insufficient pre-conference preparation) have surfaced and require careful consideration and continued energy. We must continue to do better for our Māori young people by addressing the disproportionate cultural representations in our system.

Another unintended consequence of the youth justice system's incubation of restorative practices is the growth of an interdisciplinary and nation-wide movement towards restorative justice. The adult criminal courts started informally to

implement restorative justice processes at sentencing. This was later formalised in statute. And now there is a mandatory requirement that restorative justice be, at the very least, explored to all levels of offending after a guilty plea. Our schools, workplaces, and even some small cities, are drawing on the expertise and experience of restorative theory to underpin their processes. Restorative justice is spreading wide, and fast.

Youth justice systems continue to evolve worldwide. There are some systems that require significant change. New Zealand can offer an example of a principled and effective model – there may be others. There is a risk that the New Zealand youth justice system is blind to its own flaws and inadequacies. Nevertheless, it is based on a principled approach consistent with best practice understanding and could be seriously considered and as at least a starting point for a principled discussion.

Unarguably, excellence is something for all youth justice systems to aspire to – outside and inside court. It is a challenging pursuit and careful reflection is needed at every step of the way. However, we have a principled duty to set our sights higher and strive to do better for our young offenders, their families, communities and the victims of their offending. And, as the above whakataukī suggests, even if we fall short, surely we will land upon an improved and more principled youth justice system.

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- ²Morris and Maxwell *Juvenile Justice in New Zealand: A New Paradigm* (Victoria University of Wellington, Wellington, 1990).
- ³Nessa Lynch *Youth Justice in New Zealand* Thomson Reuters, Wellington, (2012) at 13.
- ⁴In New Zealand, the Youth Court is statutory division of the District Court with formal procedures similar the Juvenile Court in the United States of America. It is not to be confused with a “Teen Court,” which is an informal juvenile justice diversion program in which young people are sentenced by their peers for minor crimes or offences.
- ⁵Allison Morris and Warren Young *Juvenile Justice in New Zealand: Policy and Practice* (Institute of Criminology, Wellington, 1987).
- ⁶In the New Zealand context, references to a “welfare” response to youth offending refer to an historical approach that regarded offending by children or young people as necessarily symptomatic of problems or deficits with their personal, familial or environmental circumstances. A welfare approach would use the fact of criminal offending as an opportunity to address any and all welfare and care needs to a degree, and in ways, that were often disproportionate to the actual offending.
- ⁷Morris and Young, above n 5, at 14.
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- ⁹MP Doolan “Legislation and Practice” in BJ Brown and FWA McElrea (eds) *The Youth Court in New Zealand: A New*

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¹⁰See His Honour Judge Andrew Becroft “Are there lessons to be learned from the youth justice system?” (2009) *Policy Quarterly* 5; and *Signed, Sealed - (but not yet fully) Delivered: an analysis of the “revolutionary” 1989 legislative blueprint to address youth offending in New Zealand, particularly by young Māori, and a discussion as to the extent to which it has been fully realised* by His Honour Judge Becroft, paper presented at the “Healing Courts, Healing Plans, Healing People: International Indigenous Therapeutic Jurisprudence Conference” Vancouver, Canada (2014).

¹¹CYPFA, s 208(a).

¹²For a full list of who can attend a Family Group Conference, see Children, Young Persons and their Families Act 1989, s 251.

¹³Alison Cleland and Khylee Quince, above n 8, at 140.

¹⁴CYPFA, s 273.

¹⁵Alison Cleland and Khylee Quince, above n 8, at 135.

¹⁶CYPFA, s 18(3).

¹⁷CYPFA, ss 258(a) and 259(1).

¹⁸CYPFA, s 245.

¹⁹CYPFA, ss 258(b) and 259(1).

²⁰CYPFA, s 247(d).

²¹CYPFA, s 258(c).

²²CYPFA, s 246.

²³CYPFA, ss 258(d) and 259(1).

²⁴CYPFA, s 281.

²⁵CYPFA, s 258(e).

²⁶CYPFA, s 281B.

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- ²⁹His Honour, (former) Chief District Court Judge of New Zealand, D J Carruthers *Restorative Justice and Juvenile Justice: A Comparison of the Singapore and New Zealand Experience* (2002) at 17.
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- ³³Gabrielle Maxwell and others *Achieving Effective Outcomes in Youth Justice – Final Report* (Ministry of Social Development, 2004) at 8.
- ³⁴Nessa Lynch, above n 3, at 114.
- ³⁵Judge FWM McElrea (1994), *The New Zealand Youth Court: A Model for Development in Other Countries? A paper presented for the National Conference of District Court Judges, Rotorua, New Zealand* (1994-1995) 4 JJA at 33.
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- ³⁷CYPFA, Long Title (b) and (c), ss 5(a), 5(b), 5(e)(i), 208(c) and 208(f)(i).
- ³⁸CYPFA, s 5(a).
- ³⁹CYPFA, ss 250(2)(a) and 251(1)(f).
- ⁴⁰CYPFA, s 265(1)(f).
- ⁴¹CYPFA, s 279.
- ⁴²CYPFA, s 208(c)(i),(ii).
- ⁴³Alison Cleland and Khylee Quince, above n 8, at 168.
- ⁴⁴At 169.
- ⁴⁵See Leilani Tuala-Warren “A Study in Ifoga: Samo’s Answer to Dispute Healing” (2002) *Te Mātāhauariki Institute Occasional Paper Series, Number 4, University of Waikato*.

⁴⁶CYPFA, s 4(a).

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⁴⁸“Trends in Child and Youth Apprehensions and Prosecutions” Ministry of Justice, 2015.

⁴⁹See Sentencing Act 2002, ss 8 and 24A.

⁵⁰Sentencing Act 2002, s 24A.

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RESTORATIVE PRACTICES

...reduce exclusionary school disciplinary practices and justice system involvement that disproportionately affect youth of color.

...ensure public safety, hold offenders accountable for their actions and develop competencies for the offender that avoid future offenses.

...repair the harm caused by the offending behavior, while balancing the roles and needs of the victim, offender and community.

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