

Restorative Justice Facilitated Dialogue

Thurston County Drug Court Pilot Program

Literature Review

Compiled by Robyn Togenen
DRC Intern, Brandman University

The judicial system in the United States is a process established by governments to enforce laws and enact penalties on those who violate the laws. The process is largely seen as a conflict between governmental authority and the accused in which the needs and interests of victims fall secondary (Freiberg, 2010). Restorative Justice is an alternative theory that shifts judicial focus from punishment of a crime to addressing the harm experienced by crime.

According to the Washington Association of Sheriffs and Police Chiefs (WASPC) Crime in Washington 2019 Annual Report, there were 815 reported drug violations in Thurston County. (Todd, Bassett, & Smith, 2020). This is an increase of 5.4% over the year prior and 34% over the previous five years. These drug offenses are described in the same report as a ‘crime against society’, yet there is little the traditional justice system does to address the harm the community experiences with these crimes.

Restorative Justice emphasizes repairing the harm caused by criminal behavior. By working with those involved, a restorative justice approach can lead to transformation of people, relationships, and communities. This approach shifts away from the traditional adversarial model of justice toward one of dialogue and cooperation (Abrahamson, 2000). It is widely accepted that the punitive emphasis of our modern justice system leaves something to be desired. There are many different diversion programs court systems have implemented that begin to offer community focused solutions. For example, the mission of the Thurston County Superior Court Drug Court Program is to “support participants to achieve total abstinence from drugs and alcohol, by promoting responsibility and accountability, and by teaching participants to become productive members of the community” (Thurston County Superior Court, n.d.). A Restorative Justice program is a natural next step to continue down the path of allowing all stakeholders of the crime committed to be involved in healing the harm.

This literature review has been conducted to explore Restorative Justice as an additional element of the Thurston County Drug Court Program. The questions explored in this review are:

1. Why is Restorative Justice a desired alternative to the traditional adversarial model of justice?
2. How has Restorative Justice transformed outcomes of the judicial process?
3. What are the foundational concepts to implement a successful Restorative Justice program?

Why is restorative justice a desired alternative to the traditional retributive model of justice?

Restorative Justice Facilitated Dialogue is a process whose goal is to have participants engage in difficult conversations, listening for understanding, in an effort to hear and heal harm. Only from a place of truly understanding another's perspective can we truly connect. Rather than healing harm, the traditional model of justice seeks to replicate harm against the offender. This punitive response does not seek to prevent future violations or restore relationships, but to provide retribution in proportion to the crime committed.

One of the main points of satisfaction Restorative Justice programs provide is the opportunity to repair harm. A drug court study in Arkansas found that all participants described some form of dysfunction in their relationships prior to engaging in drug court (Fulkerson, Keena, & O'Brien, 2012). Common adjectives used were "unwanted, untrustworthy, and rejected" Upon graduation, over two-thirds of the participants "reported repaired relationships with family, friends, and the community" (Fulkerson et al., 2012). These repaired relationships are paramount to offenders accepting accountability for their behavior

While the retributive model of justice may provide a deterrence for drug use in the first place, it has very little impact on those already dealing with drug addiction. Restorative Justice Facilitated Dialogue is rehabilitative in nature. It is a voluntary process that provides named and unnamed victims of crime, the individual that harmed them, and any other impacted family and community members, an opportunity to meet face to face, in a facilitated conversation focused on hearing and healing the harms caused. According to another drug court study, this process is beneficial to all stakeholders involved. The offender benefits by receiving treatment under supervision of the Drug Court. Victims benefit from repaired relationships and reduced future criminal behavior. The community benefits by allowing the offender to remain a productive member. And finally, the State benefits by providing a meaningful sentence at a significantly lower cost than incarceration (Fulkerson, 2004).

The Australian Sentencing Act of 1991 redefined punishment based on the desired objective. The traditional punitive description of punishing the offender in an equal manner to the offense still exists, but it also defines punishment as establishing conditions for rehabilitation (Legislation.vic.gov.au, 1991). Restorative Justice can represent a melding of traditional punitive views on justice with efforts to address community and victim needs.

How has Restorative Justice transformed outcomes of the judicial process?

Restorative Justice Facilitated Dialogue provides space for victims to find out what happened, explain the impact of crime and pattern of behavior that led to the crime, and together, with the individual and community support, determine how the individual will take responsibility and make amends to the extent possible. The intended outcome of a process such as this is not to solve an issue at hand with one conversation, but rather creating a space of deepening understanding, building shared awareness, generation of trust, rebuilding of relationship, and creative problem solving.

Various studies have found significant impacts on outcomes of Facilitated Dialogue programs. These outcomes most often include client satisfaction, restitution agreements, recidivism rates, and costs.

Client Satisfaction

In a review of 63 empirical studies, Mark Umbreit, Robert Coates, and Betty Vos (2002) found that “expression of satisfaction with [Facilitated Dialogue] is consistently high for both victims and offenders across sites, cultures, and seriousness of offenses.” They found 80-90% of participants were satisfied with the process and felt it was fair to both sides.

A goal of any justice system is to restore the offender to a position where they are a productive member of society. This goal cannot be measured by any legal result yet is a critical component to the success of the justice system (Cappa, 2006). Since Restorative Justice focuses on repairing harm caused by crime, participants often leave the process feeling that they are a valued part of their community. Research also often shows that victims are more satisfied with Facilitated Dialogue outcomes over formal court proceedings and are less afraid of revictimization (Umbreit & Greenwood, 2000).

Restitution Agreements

While restitution is often viewed as a byproduct, Facilitated Dialogue programs often report high rates of participants coming to a settlement agreement. Of the cases that participate, typically 90% reach a mutually generated agreement (Umbreit et al., 2002). Additionally, there is a higher likelihood of restitution completion. In one instance, 81% of those that participated in a Facilitated Dialogue program had a completed contract compared with 57% of those that did not participate (Umbreit et al. 2002). These agreements include various types of restitution such as a written apology, financial compensation, and community or personal service.

The goal of Facilitated Dialogue is not to determine guilt, but to discuss actions, feelings, and develop a plan for reparations. These sessions are designed to be dialogue driven rather than settlement driven. For victims, it allows them to identify and address their needs and interests while also developing a sense of empathy for the offender. For offenders, it is a chance to hear the impacts of their actions first-hand and an opportunity to take accountability and make amends.

Recidivism Rates

Recidivism rates are often valued higher than other outcomes of any judicial process. However, these results can be difficult to obtain due to the extended time it takes to gather data. Additionally, these rates can vary in statistical significance. One study from 1993 through 1996 found that Facilitated Dialogue participants showed return rates of 34.2% compared to 36.7% of the control group during that same time period (Umbreit et al., 2002), However, another study reported a 33% reoffending rate of Restorative Justice participants compared to a significantly higher 72% of the control group.

It is thought that the fear of social disapproval is a better deterrent to crime than any legal implications (Braithwaite, 2002). Recidivism rates have found to be especially low when the family of the offender is involved in Restorative Justice Facilitated Dialogue sessions. One study reported only 12% of participants involved in family conferences reoffended after 6 months while 23% of the control group was rearrested in the same time period (McGarrell, Olivares, & Kroovand, 2001).

Costs

Relative costs of judicial programs are also difficult to obtain. Depending on the number of cases handled and the time devoted to each case, the cost per case can dramatically fluctuate. “An alternative way of considering the cost impact of [Facilitated Dialogue programs] is to consider broader system impact” (Umbreit et al., 2002). A reduction in trials, incarceration time, and administrative burden could allow for a considerable reduction in cost to a state or county.

Outside the costs of the justice system, there are social opportunity costs to consider. Research shows that over five million children in the U.S. have had a parent incarcerated at one time or another (Murphey & Cooper, 2015). Parental incarceration is strongly associated with an increase in adverse childhood experiences (ACEs) along with more emotional and behavioral difficulties (Murphey & Cooper, 2015). Increased childhood trauma further perpetuates cycles of violence, substance abuse, and further criminal behavior.

What are the foundational concepts to implement a successful Restorative Justice program?

According to Howard Zehr and Harry Mika (1998), Restorative Justice has three key fundamental concepts that are applicable to any model. These concepts are 1) crime is fundamentally a violation of people and interpersonal relationships, 2) violations create obligations and liabilities, and 3) Restorative Justice seeks to heal and put right the wrongs. These concepts are exemplified by priority values outlined by John Braithwaite (2002) as empowerment, accountability, non-domination, respectful listening, and equal concern for all stakeholders.

Violations

As mentioned previously, the traditional concept of justice is the violation of laws imposed by a government. Restorative Justice readjusts the focus to the people and the community which the crime has harmed, effectively taking the government out of the role of primary victim (Zehr & Mika, 1998). This concept is closely aligned with the value that Restorative Justice provides equal concern for all stakeholders.

Key stakeholders in any crime is the victim, the offender, and the community in which they reside. To implement a successful Restorative Justice program, the relationships most affected by crime need to be addressed. The Facilitated Dialogue process seeks to maximize stakeholder participation in an effort to find reconciliation, responsibility, and future prevention.

Obligations

The primary obligation of the offender is to take accountability for their actions. They are offered the opportunity to engage with the victim and the community to develop a deeper understanding of the harm the crime has caused and to develop a plan to take responsibility (Zehr & Mika, 1998). Offender actions that follow a Facilitated Dialogue session should revolve around making things right.

Victims have the obligation to “be active participants in addressing their own needs” (Zehr & Mika, 1998). The traditional justice system does not allow for victims to be empowered to take an active role in determining how and what will make things right.

The community holds obligations to both victims and offenders. The victim must feel supported by the community and the offender must be allowed to reintegrate. If the community is not able to provide a safe environment, there is a higher likelihood of recidivism and revictimization.

Healing wrongs

The focus of Facilitated Dialogue is on the conversation among the stakeholders. “The process maximizes opportunities for exchange of information, participation, dialogue and mutual consent between victim and offender” (Zehr & Mika, 1998). The only way to have a successful, restorative process is for all parties to engage in respectful listening.

Fairness is critical in a Restorative Justice. Both the victim and offender should receive the opportunity to offer testimony and receive safety and support. To be successful, Facilitated Dialogue sessions must prevent domination of either side and foster a mutually created agreement of restitution.

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