

VI RESTORATIVE JUVENILE JUSTICE LEGISLATION AND POLICY: A NATIONAL ASSESSMENT

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Introduction

While the modern day restorative justice movement continues to evolve at the state and community levels, jurisdictions have addressed juvenile justice system concerns with policy and legislative agendas. These actions have led to a response to juvenile crime and established a balance between the needs of victims, offenders and community. This article serves as an update of the research completed by the author (O'Brien, 1999), who found that a majority of states had incorporated restorative justice language in legislation, policy, mission or program. Three states are also identified as model implementation states.

Articulation of restorative principles in statute

Statutory or code articulations of restorative justice differ widely. Some focus exclusively on the balanced approach mission, in some cases articulating restorative principles in policy and procedures manuals. Others emphasize the restorative justice value framework with or without reference to the balanced approach. Appendix A provides the state, statute or code reference, and type of reference for each state articulating restorative justice and/or balanced approach principles.

Common restorative language (Bazemore, 1997) in many of these state documents includes: holding juvenile offenders accountable for their offense, involving victims and the community in the justice process, obligating the offender to pay restitution to the victim and/or a victims' fund, improving the juvenile's ability to live more productively and responsibly in the community, and securing safer communities. Statutes or codes which include a balanced approach (Maloney, et al., 1988) to juvenile justice incorporate accountability, community safety and competency development. Balanced and restorative justice legislative language comprehensively addresses principles from each paradigm.ⁱ

Balanced and restorative justice

Sixteen states articulate balanced and restorative justice in statute or code reference. The juvenile justice system in Pennsylvania (42 PA CSA Section 6301) is guided by a balanced and restorative justice philosophy, "the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care, and rehabilitation that provide balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable children to become responsible and productive members of the community." Alaska's statute (Sec. 47.12.010) promotes "a balanced juvenile justice system in the state to protect the community, impose accountability for violations of the law, and equip juvenile offenders with the skills needed to live responsibly and productively." Alaska's law also incorporates a key principle of restorative justice, "restoration of community and victim." Both of these states clearly emphasize restorative justice principles throughout policy and program documents.

The New Jersey legislative statement (P.L. 2002 Title 2A:4A-21) clearly declares "the Juvenile Justice Commission...to incorporate into the juvenile justice system the principles of balanced and restorative justice. The concept of restorative justice holds that an offender incurs an obligation to restore the victim of the offense and, by extension, the community to the state of well-being that existed prior to the offense. The principle of balance in connection with restorative justice suggests that the juvenile justice system should give equal weight to ensuring community safety, holding offenders accountable to victims, fostering reconciliation between the offender, victim and community, and providing competency development for offenders in the system so they can pursue legitimate endeavors after release."

Restorative justice

Eight states communicate restorative justice principles in statute or code reference. The legislative declaration of Colorado based on restorative justice (CRS Section 19-2-102) is to "protect, restore, and improve the public safety...provide the opportunity to bring together affected victims, the community, and juvenile offenders for restorative purposes." Further, "while holding paramount the public safety, the juvenile justice system shall take into consideration the best interests of the juvenile, the victims, and the community in providing appropriate treatment to reduce the rate of recidivism

productive member of society." California's statute (Welfare and Institutions Code, Section 1700) includes powerful restorative justice language which states "to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses."

The State of Montana, under MCA 2-15-2013, established the Office of Restorative Justice, which promotes restorative justice throughout the state. The legislation provides training and technical assistance to jurisdictions and offers resources to communities for program implementation. Montana communities have implemented a number of programs based on this philosophy, including victim/offender meetings, family group conferencing, sentencing circles, the use of victim and community impact statements, restitution programs, victim awareness education, school expulsion alternatives, diversion programs and community panels.

The balanced approach

Seven states convey the balanced approach in statute or code reference. Oregon's juvenile justice system is specifically based on the balanced approach, "the principles of personal responsibility, accountability, and reformation within the context of public safety and restitution to the victims and to the community (419C.001)." Connecticut (Section 46b-121h) incorporates the balanced approach with the goal of the juvenile justice system: "provide individualized supervision, care, accountability and treatment in a manner consistent with public safety to those juveniles who violate the law." Idaho's policy for the juvenile corrections system (Title 20, Ch. 5, 20-501) is also based on the principles of the balanced approach.

Restorative programs

Specific restorative programs are specified within statute of several states. Restorative justice programs are explicitly addressed in Minnesota's statute (Ch. 611A.775) including victim offender mediation. The State of Oregon (ORS 417.365) specifies a family decision making meeting as a facilitated intervention. Arizona (ARS 8-1001) offers victims reconciliatory services and family group decision making processes.

Reparative Boards are established for probationers in Vermont (Title 28 910a). Community Reparative Boards are specified in the Maine State Statute (Title 17-A:1204-A). Colorado implements Community Accountability Boards based on the Reparative Board model (CRS Section 19-2-309.5).

Hawaii (Ch. 353H-31) establishes the use of reentry courts to monitor offenders returning to the community. The reentry courts provide reintegrated offenders with drug and alcohol testing and treatment and mental and medical health assessment services. Restorative justice practices, including family or community impact panels, family impact educational classes, victim impact panels, and victim impact educational classes are facilitated across the state.

State models

Pennsylvania, Alaska and South Carolina have been identified as models of restorative justice reform and implementation. These states have clear and consistent restorative language in mission, legislation, policy and programs, while providing for systemic change. Leadership, stakeholder collaboration and consensus strengthen each state's ability to move forward with reform strategies. Each state has also developed performance measures and informs its citizenry of the progress of the identified outcomes through a report card system. The following narrative highlights each state's progress with regard to restorative justice.ⁱⁱ

Pennsylvania

Mission and legislation

The State of Pennsylvania has emerged to the forefront of being a model for juvenile justice reform by holding juveniles accountable for their crimes and by addressing the needs of its crime victims and its community. In 1995, the state's legislature thoroughly integrated the balanced approach and restorative justice (BARJ) into its Juvenile Act (42 Pa.C.S. S6301). The Juvenile Act required that the juvenile justice system provide balanced attention to the protection of the community, obligation of accountability for offenses, and development of competencies to delinquent youth. The law also secures allocation of resources necessary to achieve system balance and client goals.

Two years later, the Juvenile Justice and Delinquency Prevention Committee (JJJPC) incorporated victim restoration into its mission statement. Further, by the year 2000, the legislature amended the Crime Victims Act (18

P.S. S11.201) with provisions relating to juvenile crime victims in what is called the Basic Bill of Rights for Victims. Although Pennsylvania had amended its Crime Victims Act in 2000, giving victims of juvenile offenders the same rights as victims in the criminal system, it is notable that much attention was given to victim issues prior to the passage of this legislation. While legislation provided victims legal access to a wide variety of rights, the climate in the courts had already been receptive to assuring those rights (Pavelka, 2008).

Since the enactment of the new purpose clause in the Juvenile Act, the Pennsylvania Commission on Crime and Delinquency (PCCD) has awarded approximately \$2 million to develop, implement, and expand programs and services consistent with BARJ. Along with PCCD, the Juvenile Advisory Committee, Juvenile Court Judges' Commission and the Council of Chief Probation Officers develop funding allocations to promote state-wide BARJ conferences, training, technical assistance and evaluation components. The Victims' Services Advisory Committee is a strong voice in recommending that the basic services reach the crime victims and include dialogue with the juvenile justice systems partners.

By taking these steps, the juvenile justice system has placed a high degree of responsibility on its juvenile offenders, its crime victims, and its community. The system's response, therefore, determines the obligations of the juvenile offender to the crime victim and the community, guides juveniles in fulfilling his/her obligations to the victim and the community and engages the crime victims so that they receive their entitled rights in the process (Bender, et al, 2006) (See Table 1).

Table 1 Pennsylvania juvenile justice

Mission: community protection, victim restoration, youth redemption

<p>Our Belief</p> <p>In Pennsylvania, a juvenile who commits a crime harms the victim of the crime and the community and thereby incurs an obligation to repair that harm to the greatest extent possible.</p> <p>Guiding Principles</p> <p>Pennsylvania's juvenile justice system shall:</p> <ul style="list-style-type: none">○ Ensure that the harm to the crime victim and community is understood and considered by the decision makers throughout the juvenile justice process.○ Inform crime victims about their rights, their cases, and the juvenile justice process.○ Provide crime victims with access to a wide range of support and services and enable crime victims to actively participate in their cases.○ Require that community service performed by juvenile offenders be of value to crime victims and communities.○ Operate the juvenile justice system so that victims of juvenile crime regard the system as responsive, fair, and just.○ Ensure that juvenile offenders understand that crimes have consequences.○ Ensure that juvenile offenders understand the impact of their crimes on their victims and their communities.○ Hold juvenile offenders accountable for restoration of crime victims and communities to their pre-crime status, to the greatest extent possible.

(Source: Juvenile Justice and Delinquency Prevention Committee, Pennsylvania Commission on Crime and Delinquency. (2004) *Mission and guiding principles for Pennsylvania's juvenile justice system*).

Models for change

The John D. and Catherine T. MacArthur Foundation selected Pennsylvania to participate in its national initiative, *Models for Change*.ⁱⁱⁱ *Models for Change* supports the progress of juvenile justice system reform with principles that are restorative in nature, holding youth accountable for their actions, rehabilitating youth, protecting them from harm, increasing their life chances, and managing the risk to themselves and the community. Features of the advancement of reform in Pennsylvania consist of: engaging judicial expertise in juvenile justice policy and training, encouraging need-based programs and budgeting, using of evidence based prevention programs, providing mental

health screening for detainees, and supervising youth in community and school-based settings (Ziedenberg, 2006).

Outcome measures

The restorative process, in the case of Pennsylvania, goes beyond victim restoration and ensuring that the offender's obligations are completed, the offender must truly understand the harm that has occurred to the crime victim and the community, action to be taken to repair the harm to return the crime victim, to the greatest extent possible, to pre-crime condition and who has the responsibility for repairing the harm. Accountability and competency development are central to the process. Accountability incurs the obligation to the victim and community when a crime is committed by a juvenile. Competency development addresses having the juveniles who come within the jurisdiction of Pennsylvania's juvenile justice system leave the system more capable of being responsible and productive members of their communities (Juvenile Justice and Delinquency Prevention Committee, 2007). Specific outcome measures to address these goals are included in the juvenile's case plan, including writing a letter of apology, completing meaningful community service, attending victim awareness panels, providing restitution and payment to the Crime Victims Compensation Fund. Using the community justice "report card" model first developed in Deschutes County, Oregon, statewide outcome measures have been reported annually since 2004. The community protection, accountability, and competency development data, which is central to the goals of the state's juvenile justice process, are included in the report.

Alaska

Mission/statute

The mission of Alaska's Division of Juvenile Justice is "to hold each juvenile offender directly accountable for the offender's behavior, restoration of the community and victims, protection of the public, and development of the juvenile into a productive citizen, and assist offenders and their families in developing skills to prevent crime." Its statute (Sec. 47.12.010) was revised in 1999 to incorporate restorative language, "to promote a balanced juvenile justice system in the state to protect the community, impose accountability for violations of law, and equip juvenile offenders with the skills needed to live responsibly and productively, encourage and provide opportunities for local communities and groups to play an active role in the juvenile justice process in ways that are culturally relevant." Alaska's state statute (2007

Sec. 12.55.011) also includes a strong victim's component including victim and community involvement in sentencing.

Graduated incentives and responses are used with the expectation that juveniles must restore and repair the harm caused to victims and communities by their offenses. This approach ensures that the offenders take responsibility for repairing the harm caused to victims and communities by their delinquent behavior. Crime prevention, by supporting competency and skill development and providing alternatives to law-breaking behavior, is also a priority.

Diagram 1 Alaska's Juvenile Justice Logo
Incorporating Balanced and Restorative Justice



Performance measures

The Department of Juvenile Justice has specific performance outcomes that are addressed annually. The performance measures are identified for the department's restorative mission and its core services, including secure detention, court ordered treatment for juvenile offenders, intake investigation management, probation supervision and monitoring, and juvenile offender

skill development. The performance outcomes are linked to a report card that is presented to the community and elected officials.

The Juvenile Justice Report Card (2008) presents a performance-based report with concerns of the division to the legislature and citizens. The report card presents three specific performance outcomes: holding offenders accountable through community work service, promoting restoration of victims by providing restitution, and preventing repeat criminal behavior by monitoring recidivism. Other initiatives that are identified and aimed at improving the safety, security, and success of the juvenile facilities in the state include: appropriate funding for safety and security through elimination of the vacancy factor for juvenile facilities, provide adequate support for the Nome Youth Facility, meeting behavioral health needs, continued participation in performance-based standards, and provide sufficient staffing levels in juvenile facilities.

Tribal justice

A series of agreements have been documented with tribal villages across the state. These community panel agreements between the tribals, the Division of Juvenile Justice and the Department of Law authorize direct referrals to the division to be referred back to the tribe for resolution. Native American tribes utilize peacemaking circles and Native Elders Panels to form a resolution to the wrongdoing.

The Alaska Native Justice Center in Anchorage works with youth diverted from the system. The aggression replacement effort works primarily with male Natives who have been diverted from the system. Training includes skill building and cognitive building exercises. The Bethel Drumming Group incorporates cultural and victim sensitivity classes which allow the elders and young people to be culturally relevant in a restorative way.

The Kake Tribe established a Heart Healing Council which utilizes circle peacemaking, celebrates the completion of a sentence with young adults as a healing circle for victims. A group of tribal members determines the sentence and supervises the completion of the offender's sentence. The completion rate is approximately 98%. These practices used by indigenous communities have existed for centuries (Bird, 2007).

South Carolina

Mission and statute

The Department of Juvenile Justice in South Carolina has adopted Balanced and Restorative Justice in its mission, derived from the state's

Children's Code (Section 20-7-20; 20-7-6840). The department's mission statement addresses "protecting the public and reclaiming juveniles through prevention, community programs, education and rehabilitative services in the least restrictive environment."

University partnerships

Partnerships have been established with local universities in providing youth services. The department has partnered with Clemson University to create a Center for Girls Advocacy, a gender specific program, which incorporates circles and reintegration, along with a youth day treatment program. Female youth referred to the department participate in the "Seven Habits of Highly Effective Teens" program through Columbia College's Leadership Institute. While the Children's Law Center at the University of South Carolina collaborates with the department in addressing pre-trial detention, disproportionate minority confinement, and child protection education. (Telephone interview, September 23, 2008, Virginia Barr, Department of Juvenile Justice, State of South Carolina).

Reintegration

The Serious and Violent Offender Reintegration Program, originally funded by more than a \$1 million grant and presently state funded, seeks to address the needs of the offenders reentering their community following incarceration. This initiative, which serves four counties, creates aftercare and transitional case planning, service delivery, supervision, and support services for serious and violent juvenile offenders released from long-term facilities back to their communities. (See also <http://www.state.sc.us/djj/pdfs/reintegration-fact-sheet.pdf>)

Charrette concept

The *charrette* concept provides a framework for a community to implement vision and engage citizens. The community is brought together to collaboratively address its challenges. The Broad River Road complex is site to a charrette in a juvenile prison setting. The goal of this plan is to redevelop the complex using specific objectives: develop a recreational and therapeutic "community behind the fence", create a holistic approach to therapeutic activities through experience based learning, develop a continuum of activities which provide youth with responsible opportunities while institutionalized and upon reintegration into the community, create meaningful community service opportunities, engage in partnerships, and

develop a strong research component. In addition, the Friends of Juvenile Justice Foundation privately funded the Community Connections Center, raising \$3 million for its construction. The facility is part of the complex, including the girl's transition home. (See also <http://www.state.sc.us/djj/pdfs/charette.pdf>)

Performance measures

The state was one of the initial pilot sites receiving federally funded assistance from the American Prosecutors Research Institute to develop a report card.^{iv} The Department of Juvenile Justice developed the report card to inform the public on its progress toward identified goals (Rubin, 2006). Among its restorative benchmarks, South Carolina's "Report to Our Citizens" measures restitution payment rates, completion rate of community service hours ordered, victims satisfaction, volunteer hours, and recidivism rates following juvenile incarceration. The department's progress and key strategic goals are then included in the governor's annual accountability report (Thomas, 2006).

Concluding perspectives

The primary findings of this examination of restorative justice and the balanced approach in U.S. justice systems suggest that virtually every state is implementing restorative justice at various levels (e.g., state, regional, or local, in program and policy). The majority of the states that have revised their statutes or codes to reflect restorative justice principles have done so in the past two decades. The political and professional challenges will increase as restorative justice programs and practices expand to incorporate principles into state statutes, policies, mission statements, program plans, job descriptions, and evaluation standards. Certainly, *restorative justice is the ancient idea whose time has come.*

Appendix A
 State Statutes or Codes Incorporating
 The Balanced Approach and/or Restorative Justice

State	Statute/Code		Type
AL	Code of Alabama Section 12-15-1.1	Purpose Clause	BARJ
AK	Alaska Code Section 47.12.010 Section 12.55.011	Goal and purposes of chapter Victim community involvement in sentencing	BARJ
AZ	Arizona Revised Statute 8-201 8-419 8-1001	Definition Victim reconciliation services Family group decision making	BARJ
CA	California Welfare and Institutions Code Section 1700	Relating to minors	RJ
CO	Colorado Revised Statute Section 19-2-102 Section 19-2-213 Section 19-2-308 Section 19-2-309.5	Legislative declaration Restorative justice coordinating council Community service and community work programs Community accountability board	RJ
CT	General Statutes of Connecticut Section 46b-121h	Goals of the juvenile justice system	BARJ
DE	Delaware Code Title11, chapter 9501	Victim offender mediation	RJ
FL	Florida Statute Ch 985.155	Neighborhood restorative justice	RJ
GA	Official code of Georgia Annotated § 15-11-66	Disposition of a delinquent child	BARJ

HI	Hawaii Revised Statute HR 11 (2000) Ch 353H-31	Mandate to establish restorative justice Adult offender reentry programs and services	RJ
ID	Idaho Statute Title20, Ch 5, 20-501	Juvenile Corrections Act Legislative intent	BA
IL	Illinois Compiled Statute 705 ILCS 405/5-101	Juvenile Court Act	BARJ
IN	Indiana Code IC 31-10-2-1	Policy and purpose	BA
KS	Kansas Statutes Annotated Ch 38-2301	Citation; goals of the code; development	BA
LA	Louisiana Revised Statute RS 46: 1841-844	Legislative Intent	RJ
ME	Maine State Statute Title 17-A: 1204-A Title 54: 1321	Community Reparative Boards Purpose	RJ
MD	Maryland Code Title 3-802	Juvenile causes purpose and construction of subtitle	BARJ
MN	Minnesota Statute Ch 611A.77 Ch 611A.775	Mediation program for crime victims and offenders Restorative justice programs	RJ
MT	Montana Code Annotated Title 2-15-2012 Title 2-15-2013 Title 2-15-2014	Intent Office of restorative justice Restorative justice fund created, source of funding, use of fund	BARJ

NE	Nebraska Statute Section 43-402	Legislative intent, juvenile justice system, goal	BARJ
NJ	New Jersey Statute Annotated P.L. 2002 Title 2A: 4A-21	Incorporates balanced and restorative justice principles in juvenile justice system	BARJ
NM	New Mexico Statutes Ch 32A-2-2	Delinquency Act, purpose of Act	BA
NC	North Carolina General Statutes Article 15, Ch 7B-1500	Undisciplined and delinquent youth, purpose.	BA
OH	Ohio Revised Code Title 21, Ch 2152.01	Delinquent Children Purpose of Juvenile Dispositions	BARJ
OR	Oregon Revised Statute Ch 417.365-417.375 Ch 419C.001	Family decision-making meeting Purposes of juvenile justice system in delinquency cases	BARJ
PA	Pennsylvania State Statute 42 PA CSA Section 6301	Juvenile Act	BARJ
SC	South Carolina Code of Laws Section 20-7-20 Section 20-7-6840	Children's policy established Community service	RJ
TX	Texas Statutes Title 3 Ch 51.01	Juvenile Justice Code Purpose and interpretation	BA
VT	Vermont Statutes Title 28 § 910a Title 3 § 3085c	Reparative boards; functions Commission on juvenile justice	RJ

VA	Code of Virginia Ch 11 16.1-227 16.1.309.2-309.10	Juvenile and domestic relations district courts Purpose and intent Establishment of community based services, statewide plan for juvenile justice services	BARJ
WA	Revised Code of Washington RCW 13.40.500-13.40-560	Community Juvenile Accountability Act	BARJ
WI	Wisconsin Statute 938.01	Juvenile Justice Code Title, legislative intent and purposes	BARJ
WY	Wyoming Statutes 14-6-245	Progressive sanction guidelines	BA

BARJ = Balanced and Restorative Justice
 BA = Balanced Approach
 RJ = Restorative Justice

Notes

- i The language and extent to which legislation incorporates restorative justice and/or the balanced approach differ widely.
- ii For further information on each state's progress with its restorative justice initiatives and implementation, see also: Pennsylvania: <http://www.pccd.state.pa.us/pccd/cwp/view.asp?A=1411&Q=571707>, Alaska <http://www.hss.state.ak.us/djj/restorative.htm>, and South Carolina <http://www.state.sc.us/djj/>.
- iii Four states, Pennsylvania, Illinois, Louisiana, and Washington, have been chosen to participate in the *Models for Change* Initiative which seeks to promote juvenile justice system reform. The John D. and Catherine T. MacArthur Foundation provides funding for this initiative. The model policies, practices and procedures that are developed in these states represent reform that may be replicated in other jurisdictions. Website: <http://www.modelsforchange.net/>
- iv The American Prosecutors Research Institute also funded Deschutes County (Bend), Oregon, Pittsburgh, Pennsylvania, and Cook County (Chicago), Illinois. Nineteen other communities received training in the development of report cards from 2005-06.

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