

A Speedy and Public Trial

# Community Solutions to Court Backlogs in the Post-COVID World

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# Table of Contents

## A Speedy and Public Trial

Introduction - Justice Delayed, Justice Denied

Mary, Charles, and Jackson

How Court Backlogs Impact American Communities

A Short History of Court Backlogs in the United States

From a Persistent Problem to a Crisis

Research Scope and Methods

How to Read this Report

## Solution #1 - Community Mediation

Introduction to Community Mediation

History of Community Mediation

How Community Mediation Works

Benefits of Community Mediation

Short-term Benefits

Long-term Benefits

Community Benefits

Drawbacks of Community Mediation

## Community Mediation Case Study - Dispute Resolution Center of Thurston County

Impact Story - "We talked for the first time in 4 years."

History of the DRCTC

How DRCTC's Mediation Program Works

Impact

Why it Works

Funding and Support

How to Implement a Community Mediation Program in Your Community

## Community Mediation Case Study - NY Peace Institute

Impact Story - Funeral Home Removes Charges

History of the Small Claims Presumptive Mediation Program

How NYPI's Small Claims Presumptive Mediation Program Works

Impact

Why it Works

Funding and Support

How to Implement a Community Mediation Program in Your Community

## Solution #2 - Restorative Conferencing

- Introduction to Restorative Conferencing

- History of Restorative Conferencing

- How Restorative Conferencing Works

- Benefits of Restorative Conferencing

  - Short-term Benefits

  - Long-term Benefits

  - Community Benefits

- Drawbacks of Restorative Conferencing

## Restorative Conferencing Case Study - Longmont Community Justice Partnership

- Impact Story - Welding Justice

- History of LCJP's Community Group Conferencing Programs

- How LCJP's Community Group Conferencing Programs Work

- Impact

- Why They Work

- Funding and Support

- How to Implement a Restorative Conferencing Program in Your Community

## Solution #3 - Victim-Offender Dialogue

- Introduction

- History of Victim-Offender Dialogue

- How Victim-Offender Dialogue Works

- Benefits of Victim-Offender Dialogue

  - Short-Term Benefits

  - Long-Term Benefits

  - Community Benefits

- Drawbacks of Victim-Offender Dialogue

## Victim-Offender Dialogue Case Study - Restorative Justice Mediation Program

- Impact Story - Returning the Ring

- History of RJMP's Victim-Offender Dialogue Program

- How RJMP's Victim-Offender Dialogue Program Works

- Impact

- Why it Works

- Funding & Support

- How to Implement a Victim-Offender Dialogue Program in Your Community

## Solution #4 - Teen Court

- Introduction to Teen Court

- History of Teen Court
- How Teen Court Works
- Benefits of Teen Court
  - Short-Term Benefits
  - Community Benefits
- Drawbacks of Teen Court
- Teen Court Case Study - Council on Alcoholism and Drug Abuse
  - Impact Story - Catching Fire
  - History of CADA's Teen Court Program
  - How CADA's Teen Court Works
  - Impact
  - Why it Works
  - Funding & Support
  - How to Implement a Teen Court in Your Community
- What To Do Next
  - Solution #1 - Community Mediation
  - Solution #2 - Restorative Conferencing
  - Solution #3 - Victim-Offender Dialogue
  - Solution #4 - Teen Court
- Bibliography
- Tables



# Introduction - Justice Delayed, Justice Denied

*“Our Rabbis taught...the sword comes into the world, because of justice delayed and justice denied.”*  
-Pirkei Avot 5:8

Mary Ann Boulden, Charles Ford, and Jackson Sparks have little in common. Mary was a 62-year old mother of 3. She was shot and killed while taking an Uber ride in February 2020, a victim of a triple shooting in Milwaukee’s north side.<sup>1</sup> Charles Ford has been in and out of jail in Virginia for years, and was arrested in 2019 after a street fight turned violent.<sup>2</sup> Jackson, 8 years old, was marching with his 12-year old brother in the Waukesha, WI Christmas parade when he was struck by a rampaging driver.<sup>3</sup> His brother survived, but Jackson unfortunately did not, succumbing to his injuries two days later at a local hospital.

## Mary, Charles, and Jackson

What Mary’s family, Charles, and Jackson all have in common is they are victims of court backlogs, which, due to COVID-related shutdowns, are now the largest backlogs in history in many communities across the United States.

Mary was taking an Uber ride home from work in Milwaukee, WI, when the driver asked if he could pick up his girlfriend on the way. According to what the driver told investigators, after picking up his girlfriend a man on the street started shooting - an ex-lover of his girlfriend’s. The driver, his girlfriend, and Mary were all hit. Mary died at the hospital as a result of a gunshot wound to the head.<sup>4</sup>

2 years later, due to Milwaukee’s court backlogs, Mary and her family are still waiting for justice. Asked about the impact of the delays, Marvin Clinton, Mary Ann Boulden’s brother, told WTMJ -TV that the case delays are like “prolonging the agony that we have already dealt with.”<sup>5</sup>

After being arrested for his involvement in a violent street fight, Charles Ford waited nearly

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<sup>1</sup> Chronis, Kasey. *‘I Still Love You:’ Man Charged with Stalking Accused of Firing Shots That Killed 1, Injured 2*. Fox6now, February 15, 2020. <https://www.fox6now.com/news/i-still-love-you-man-charged-with-stalking-accused-of-firing-shots-that-killed-1-injured-2>.

<sup>2</sup> Weiner, Rachel. *Jury Trials Are Starting Again. but the Pandemic Put Some Behind Bars Past Their Sentences*. The Washington Post. WP Company, June 24, 2021.

<sup>3</sup> Carson, Sophie. *Jackson Sparks, an 8-Year-Old Boy, Becomes the First Child to Die from Injuries in the Waukesha Christmas Parade*. jsonline. Milwaukee Journal Sentinel, January 20, 2022. <https://www.jsonline.com/story/news/local/2021/11/23/jackson-sparks-8-years-old-dies-injuries-waukesha-christmas-parade/8741743002/>.

<sup>4</sup> Chronis, Kasey. *‘I Still Love You:’ Man Charged with Stalking Accused of Firing Shots That Killed 1, Injured 2*. Fox6now, February 15, 2020. <https://www.fox6now.com/news/i-still-love-you-man-charged-with-stalking-accused-of-firing-shots-that-killed-1-injured-2>.

<sup>5</sup> Jordan, Ben. *‘Justice Delayed’: MKE Co. DA, Chief Judge Say Criminal Case Backlog Could Take 2 Years to Overcome*. TMJ4, March 17, 2021. <https://www.tmj4.com/news/coronavirus/justice-delayed-mke-co-da-chief-judge-say-criminal-case-backlog-could-take-2-years-to-overcome>.

a year in jail for a hearing. Ford's first trial was cut short after two of the jurors contracted COVID, and the rest of the time he sat in jail waiting for Virginia's court backlogs to clear. By the time he was convicted, he had already served 22 months of a 6 month sentence.<sup>6</sup>

While serving time in jail, his bills piled up, his credit score dropped, and his fiancée left him. "It destroyed the foundation of everything that I built from before I got locked up," he said.

8-year old Jackson Sparks was marching with his baseball team in the Waukesha, WI Christmas parade when he was struck by a rampaging driver. The rampaging driver, Darrell Brooks, had been accidentally released from jail after allegedly threatening to kill his nephew and run over his ex-girlfriend. He would go on to drive his SUV through the parade, killing 6 people, including Jackson.

The assigned prosecutor that released Brooks was dealing with an onslaught of cases, and the case management system didn't keep up. "She did not have access to the risk assessment when she made that decision because it had not yet been uploaded to the case management system," said Milwaukee County District Attorney John Chisholm.<sup>7</sup>

## How Court Backlogs Impact American Communities

These overwhelming court backlogs affect everyone involved in the justice system: victims, offenders, and even the community.

For victims, the most simple impact from delays in the justice system is that the lack of closure impedes their recovery. Victoria Shanklin, Executive Director of Alaska nonprofit Victims for Justice, says that case backlogs don't allow victims to move on after the crime. "It doesn't allow people to like, move forward or feel like something has been closed or feel like there's been any type of justice involved."<sup>8</sup> This lack of justice can lead victims to develop mental issues like anxiety, night terrors, and suicidal thoughts.<sup>9</sup>

For the accused, they may be forced to stay in pre-trial detention for as long, or longer, than the crime they may eventually be sentenced for. As they wait for justice, the obligations they cannot fulfill can make it harder to reintegrate back into society, costing them jobs, relationships, and social capital.<sup>10</sup> Worse still, if the accused is innocent, they are unjustly punished

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<sup>6</sup> Weiner, Rachel. *Jury Trials Are Starting Again. but the Pandemic Put Some Behind Bars Past Their Sentences*. The Washington Post. WP Company, June 24, 2021.

<sup>7</sup> Luthern, Ashley and Dirr, Alison. 'A mistake:' Chisholm, chief judge explains low bail given to Waukesha parade suspect in earlier case. Milwaukee Journal Sentinel. Jan 20, 2022. <https://www.jsonline.com/story/news/local/milwaukee/2021/12/02/john-chisholm-discuss-low-bail-given-man-charged-waukesha-christmas-parade-attack-darrell-brooks/8814614002/>

<sup>8</sup> Horazdovsky, Kortnie. *Pandemic's Impacts on Alaska's Criminal Justice System Add to Case Backlog*. Alaska's News Source. KTUU, March 3, 2022. <https://www.alaskanewssource.com/2022/03/04/pandemics-impacts-alaskas-criminal-justice-system-add-case-backlog/>.

<sup>9</sup> Burman, Michele and Brooks-Hay, Oona. *Delays in Trials: the implications for victim-survivors of rape and serious sexual assault*. The Scottish Centre for Crime and Justice Research. July 2020. [https://www.sccjr.ac.uk/wp-content/uploads/2020/08/Delays-in-Trials-SCCJR-Briefing-Paper\\_July-2020.pdf](https://www.sccjr.ac.uk/wp-content/uploads/2020/08/Delays-in-Trials-SCCJR-Briefing-Paper_July-2020.pdf)

<sup>10</sup> Baughman, Shima. *Costs of Pretrial Detention*. Boston University Law Review, 1, 97 (April 1, 2016): 5–6. <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1018&context=scholarship>

with all of these for a crime they didn't even commit.

Finally, court backlogs impact the broader community. As overwhelmed prosecutors, judges, and public defenders face a rising number of cases, they make mistakes that threaten the safety a community relies on, accidentally releasing inmates,<sup>11</sup> or granting bail to dangers to the public, often with deadly consequences. Delays cause defendants to take up more space in jails and law enforcement time, costing the justice system and the taxpayer.<sup>12</sup> If the delays in justice continue, they can undermine the faith the public has in the system of justice, undermining public respect for rule of law and threatening the overall safety of the community.

## A Short History of Court Backlogs in the United States

For most of history, court backlogs have been one of, if not the most, pervasive problem with America's court systems.

As far back as 1930, a federal judicial conference report noted that "the congestion in the federal courts...continues to be a major problem."<sup>13</sup> In 1960, the Johnson Administration's Commission on Law Enforcement and the Administration of Justice found that, once again, "traditional methods of court administration have not been equal to managing huge caseloads."<sup>14</sup>

Two different organizations tried to reign in case processing times in the 1980s and the early 1990s. In 1983, The Conference of State Court Administrators (COSCA) proposed time standards for both civil and criminal cases.<sup>15</sup> For criminal cases, efficient courts would dispose of all cases within 180 days. Yet many courts struggled to meet the standards. In a national study of urban courts conducted in 1987 by the National Center for State Courts (NCSC), not a single court met the standard for all felony cases, and some even failed to meet the standard in 80% of cases.<sup>16</sup>

For civil cases, COSCA's standard was to resolve the cases within 18 months. Yet in a study of 37 urban trial courts, researchers were only able to identify one court that came close to this standard, resolving 99% of all civil cases in 24 months.<sup>17</sup>

In 1992, the American Bar Association (ABA) developed a separate set of standards for processing criminal cases, encouraging courts to process 90% of cases within 120 days, 98% within 180 days, and 100% within a year. These relaxed standards were still difficult for courts to

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11 Carbonaro, Giulia. *Nearly 200 Inmates Accidentally Released Due to 'Embarrassing' Glitch*. Newsweek. Newsweek, March 31, 2022. <https://www.newsweek.com/inmates-released-computer-glitch-failure-texas-1693723>

12 Luskin, Mary Lee, and Robert C. Luskin. *Why so Fast, Why so Slow?: Explaining Case Processing Time*. *The Journal of Criminal Law and Criminology* (1973-) 77, no. 1 (1986): 191. <https://doi.org/10.2307/1143594>.

13 *Report of the Judicial Conference* § (1930). 42. [https://www.uscourts.gov/sites/default/files/1930-10\\_0.pdf](https://www.uscourts.gov/sites/default/files/1930-10_0.pdf)

14 United States Government Printing Office, *The challenge of crime in a free society: A report* § (1967). 127. <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/42.pdf>

15 Rep. *Model Time Standards for State Trial Courts*. National Center for State Courts. Accessed August 28, 2022. [https://www.ncsc.org/\\_data/assets/pdf\\_file/0032/18977/model-time-standards-for-state-trial-courts.pdf](https://www.ncsc.org/_data/assets/pdf_file/0032/18977/model-time-standards-for-state-trial-courts.pdf).

16 Ibid.

17 Ibid.



follow, with one 9-state study finding that not a single state court met this standard.<sup>18</sup> In 2011, the NCSC, ABA, COSCA, the Conference of Chief Justices and the National Association for Court Management developed a more “realistic” set of time standards to drive efficiency in the courts. Yet in a 2016 study by the NCSC, the average time to disposition for misdemeanor cases was 193 days, and the average time to disposition for felony cases was 256 days.<sup>19</sup> A different study of 5.3 million civil cases filed in federal district courts since 2000 found that the average termination date was 344 days.<sup>20</sup>

Daniel McGillis, author of *Community Mediation Programs: Developments and Challenges*, summarized that, even before the COVID-19 pandemic, America’s courts have long struggled with backlogs:

*“These [backlog] problems have been chronic in the courts; the analyses of court problems by the Wickersham Commission in 1923 [sic] were remarkably similar in many respects to those of the President’s Commission on Law Enforcement and the Administration of Justice in the late 1960s and to more recent academic studies of the problems confronting the courts.”*<sup>21</sup>

However, the government-mandated shutdowns in the early stages of the pandemic drove these backlogs to critical levels.

## From a Persistent Problem to a Crisis

It is difficult to find evidence on when, if ever, the United States’ entire court system has ground to a halt. With the exception of an anthrax scare, the U.S. Supreme Court had not shut down since the Spanish flu outbreak of 1918.<sup>22</sup> The Georgia Supreme Court hadn’t heard virtual arguments in the court’s 175-year history.<sup>23</sup> U.S. courts even remained open during the entirety of the U.S. civil war.<sup>24</sup>

However, in March 2020, and following the lead of numerous other government agencies, the vast majority of courts in the United States shuttered their doors due to the COVID-19 pandemic. Every single U.S. state suspended some court proceedings, and eventually 36 states suspended court proceedings statewide, with many states not re-opening their courts for over 3

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18 Butters, Rob, Kort Prince, Allyson Walker, Erin B. Worwood, and Christian M. Sarver. *Does Reducing Case Processing Time Reduce Recidivism? A Study of the Early Case Resolution Court*. Criminal Justice Policy Review 31, no. 1 (2018): 22–41. <https://doi.org/10.1177/0887403418789465>.

19 Ostrom, Brian & Hamblin, Lydia & Schauffler, Richard & Raaen, Nial. (2020). 14-15. *Timely Justice in Criminal Cases: What the Data Tells Us*. 10.13140/RG.2.2.21207.70566.

20 Dalton, Trevor. *The Trajectory of Civil Cases in Federal Court*. Above the Law. The Juris Lab, May 28, 2021. <https://abovethelaw.com/2021/05/the-trajectory-of-civil-cases-in-federal-court/>

21 McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. New OJP Resources. U.S. Department of Justice. July, 1997. <https://www.ncjrs.gov/textfiles/165698.txt>

22 Golde, Katie Bart and Kalvis. *Supreme Court’s Closure Could Be First Disease-Related Shuttering in a Century (Updated)*. SCOTUSblog, March 19, 2020. <https://www.scotusblog.com/2020/03/supreme-courts-closure-could-be-first-disease-related-shuttering-in-a-century/>.

23 Rankin, Bill. *Georgia Supreme Court Holds First ‘Virtual’ Court Session*. ajc. The Atlanta Journal-Constitution, April 20, 2020. <https://www.ajc.com/news/crime--law/georgia-supreme-court-holds-first-virtual-court-session/9OrWlvBQkPkyA9uyXi1aBN/>.

24 *Ex Parte v. Milligan* (United States Supreme Court April 3, 1866).

months.<sup>25</sup>

These restrictions and near-complete shutdowns rocketed the number of cases pending disposition in court systems across the nation. In February 2021, New York City had a backlog of 49,000 criminal cases. Maine had 22,000. The State of Florida requested additional financial assistance for 1.1 million stalled cases<sup>26</sup>. As recently as February 2022, King County, Washington had a case backlog of over 5,000 cases<sup>27</sup>. In Wisconsin, Milwaukee County Chief Justice Mary Triggiano said “without help, it will take three or more years” to clear her county’s backlog. A Thompson-Reuters survey of court professionals found that the average court’s case backlog increased by 1/3rd<sup>28</sup>.

There is still little knowledge of the true current, and future, impact of these shutdowns. Victims across the country have been denied the closure that comes when justice is served.<sup>29</sup> Criminal defendants have languished in jail for months, and while pretrial detention has been less utilized during the pandemic,<sup>30</sup> many may be detained long past their sentences.<sup>31</sup> Across the nation, the homicide rate has spiked, which more than one prosecutor has attributed to delays in justice.<sup>32</sup>

For Mary Ann Boulden, these backlogs mean her family won’t see justice for years after her murder. For Charles Ford, these backlogs meant he was kept in jail for 16 months past his sentence.<sup>33</sup> For Jackson Sparks, whose killer was accidentally released by an overwhelmed assistant district attorney, it meant his story ended at just 8 years old.

While the courts often struggled to deliver speedy justice before the pandemic, several months of shutdowns have turned this struggle into a national crisis.

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25 State Court Closures in Response to the Coronavirus (COVID-19) Pandemic between March and November, 2020. Ballotpedia, 2020. [https://ballotpedia.org/State\\_court\\_closures\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic\\_between\\_March\\_and\\_November\\_2020](https://ballotpedia.org/State_court_closures_in_response_to_the_coronavirus_(COVID-19)_pandemic_between_March_and_November_2020)

26 Chan, Melissa. ‘I Want This Over.’ For Victims and the Accused, Justice Is Delayed as COVID-19 Snarls Courts. Time, February 23, 2021. <https://time.com/5939482/covid-19-criminal-cases-backlog/>.

27 Miller, Cody. Seattle City Attorney to Expedite Filing Decisions on All New Cases to Ease 5,000-Case Backlog. King5, February 7, 2022. <https://www.king5.com/article/news/local/seattle-city-attorney-case-backlog-filing-criminal/281-9111f932-d783-49dd-83f0-4ce0407c627e>

28 The Impacts of the COVID-19 Pandemic on State & Local Courts Study 2021. Thomson Reuters Institute, 2021. [https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/white-papers/covid-court-report\\_final.pdf](https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/white-papers/covid-court-report_final.pdf)

29 Morgan, Erin. Lowcountry Families Frustrated by Backlog in Homicide Cases. WCBD News 2. WCBD News 2, May 17, 2022. <https://www.counton2.com/news/crime/lowcountry-families-frustrated-by-backlog-in-homicide-cases/>.

30 Spence, Alaina Willis. PRETRIAL RELEASE IN THE AGE OF COVID-19: WHAT DID WE LEARN? Connecticut Public Interest Law Journal 21, no. 1 (2021): 99. <https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2022/03/21.1-Willis-Spen-ce-Final.pdf>.

31 Weiner, Rachel. Jury Trials Are Starting Again. but the Pandemic Put Some Behind Bars Past Their Sentences. The Washington Post. WP Company, June 24, 2021. [https://www.washingtonpost.com/local/legal-issues/pandemic-jury-trial-de-lays/2021/06/23/a8f905ba-ae93-11eb-ab4c-986555a1c511\\_story.html](https://www.washingtonpost.com/local/legal-issues/pandemic-jury-trial-de-lays/2021/06/23/a8f905ba-ae93-11eb-ab4c-986555a1c511_story.html)

32 MacGillis, Alec. Two Cities Took Different Approaches to Pandemic Court Closures. They Got Different Results. ProPublica, July 19, 2022. <https://www.propublica.org/article/two-cities-took-different-approaches-to-pandemic-court-closures-they-got-different-results>.

33 Weiner, Rachel. Jury Trials Are Starting Again. but the Pandemic Put Some Behind Bars Past Their Sentences. The Washington Post. WP Company, June 24, 2021. [https://www.washingtonpost.com/local/legal-issues/pandemic-jury-trial-de-lays/2021/06/23/a8f905ba-ae93-11eb-ab4c-986555a1c511\\_story.html](https://www.washingtonpost.com/local/legal-issues/pandemic-jury-trial-de-lays/2021/06/23/a8f905ba-ae93-11eb-ab4c-986555a1c511_story.html)

Aggravated by several months of shutdowns, court backlogs are delaying justice for victims, unfairly punishing the accused, and endangering American communities. *A Speedy and Public Trial: Community Solutions to Court Backlogs in the Post-COVID World* was written to help community leaders face this critical issue.

## Research Scope and Methods

### *The Challenge*

Researching community solutions to court backlogs has been an interesting challenge, in that the solutions we found must have done more than simply eliminate or served to reduce case backlogs, but delivered justice that is as good, or better than that of traditional court processes. After all, every case backlog in America could be eliminated tomorrow if the court simply let all parties go free, and refused to take new cases.

Finding solutions to court backlogs was a balance between efficiency and cost-effectiveness on the one-hand, while also ensuring the solutions served victims, offenders, and protected their communities as much or more than traditional court processes on the other. As the Johnson Administration's Commission on Law Enforcement and the Administration of Justice observed in 1969:

*"From the beginning of the criminal process to its end, from police work to correctional work, there is a tension between efficiency - protecting the community from crime - and fairness - protecting the rights of individuals. If these opposing pulls are not kept in balance, the process tends to become either excessively arbitrary, perfunctory, and hasty, or excessively deliberate, cumbersome, and dilatory."<sup>34</sup>*

Thus, the research in this report was conducted under a dual mandate. The first, and most important, was to find community solutions that relieved criminal and civil courts of their caseloads and provided that conflict resolution in a manner that is faster and cheaper than that which a similar court process provided. The second, however, was to also find out how these solutions served victims, the accused, and ultimately helped protect the community from harm. It was through this dual lens that we researched community solutions to court backlogs.

### *Inclusion Criteria*

In setting the inclusion criteria for this report, we considered both sides of this mandate, and attempted to find programs that would show significant improvements in both. We ultimately chose three sets of criteria for inclusion in this report. The first was that a program meaningfully advanced justice. While this is a broad claim, we chose two specific statistics to fulfill this criteria. If the program was of a civil nature, such as many community mediation programs,

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<sup>34</sup> United States Government Printing Office, *The challenge of crime in a free society: A report* § (1967). 154. <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/42.pdf>

then a majority of participants needed to be satisfied with the outcome. If the program dealt primarily with diverted criminal cases, then the recidivism rate was examined and must be lower than the closest comparable recidivism rate (Table 1).

Table 1 - Recidivism Rate Comparisons

Case Study	Recidivism Rate	Comparable Recidivism Rate
Longmont Community Justice Partnership	10% after one year from 2001-2008	Colorado Division of Youth Services 2004-2008: 32% <sup>35</sup>
Restorative Justice Mediation Program	8.5% after one year in 2019 (parent survey)	California Division of Juvenile Justice youth re-conviction rate: 55.5% <sup>36</sup>
CADA Teen Court	8-15% after one year 2012-2015	California Division of Juvenile Justice youth re-conviction rate: 55.5% <sup>37</sup>

The second set of criteria was that the program advanced justice faster than comparable court processes (Table 2). Given the complexities of determining state-by-state case processing times, we used the national average processing times for federal civil cases (the most recent average we are aware of is 417 days<sup>38</sup>), misdemeanor cases (156 days) and felony-level cases (256 days). We also took note of the cost per case, however with little national or local data to compare, it is difficult to determine whether these programs are also cheaper than traditional justice approaches.

Table 2 - Case Processing Time Comparisons

Case Study	Case Processing Time Average	Percent of similar cases	Comparable Case Processing Time average
Dispute Resolution Center of Thurston County	35 days	46% of civil cases in Thurston County, WA <sup>39</sup>	417 days

35 *Recidivism*. Division on Criminal Justice – Office of Research and Statistics. Accessed August 28, 2022. <https://ors.colorado.gov/ors-recidivism>.

36 Rep. 2017 *DIVISION OF JUVENILE JUSTICE RECIDIVISM REPORT*. California Department of Corrections and Rehabilitation, January 2019. [https://www.cdcr.ca.gov/juvenile-justice/wp-content/uploads/sites/168/2020/10/2017-Division-of-Juvenile-Justice-Recidivism-Report\\_ADA.pdf](https://www.cdcr.ca.gov/juvenile-justice/wp-content/uploads/sites/168/2020/10/2017-Division-of-Juvenile-Justice-Recidivism-Report_ADA.pdf).

37 Ibid.

38 Goerdt, John A. *Explaining the Pace of Civil Case Litigation: The Latest Evidence from 37 Large Urban Trial Courts*. *Justice System Journal* 15, no. 1 (1991): 298. <https://doi.org/10.1080/23277556.1991.10871132>.

39 Rep. *Courts of Limited Jurisdiction 2019 Annual Report: Annual Caseload Report*. 176. Washington State Courts, 2020. <https://www.courts.wa.gov/caseload/content/archive/clj/Annual/2019.pdf>.

Case Study	Case Processing Time Average	Percent of similar cases	Comparable Case Processing Time average
New York Peace Institute	45 days	-	417 days
Longmont Community Justice Partnership	<60 days	7-9% of misdemeanor criminal cases in Boulder County, CO <sup>40</sup>	156 days
Restorative Justice Mediation Project	30-60 days	4-6% of juvenile delinquency cases in San Diego County, CA <sup>41</sup>	156 days
CADA Teen Court	45 days	48%+ of juvenile delinquency cases in Santa Barbara County, CA <sup>42</sup>	156 days

Finally, as our mission is driving community solutions, each of the programs had to meet an additional two standards. First, every program had to be entirely voluntary, with no clients, litigants, victims or offenders required to go through the process. Secondly, the program had to offer its services either for no-cost or below market rates. Thirdly, each program had to demonstrate at least 50% community support, calculated by combining voluntary donations, the value of volunteer hours, and fees for services. This final measure of community support also helps verify the efficacy of a program - if volunteers and volunteer donors are engaged, it is yet another indicator that the program is successful.

### *Our Methodology*

From that lens, we started by identifying every active nonprofit in the United States with programs that helped parties resolve conflicts. We utilized internet searches, online databases, and the National Taxonomy of Exempt Entities (NTEE) codes I01 - I99.

We were able to identify 290 nonprofits with programs that helped parties resolve conflicts. We verified the active status of each of those organizations with the Internal Revenue Service's Tax-Exempt Organization Search (TEOS) and their state's Secretary of State business search, and we were able to verify the active status of 199 organizations.

After we identified active nonprofits with programs dealing with conflict resolution, we categorized their programs by major approach. We reviewed the relevant literature where possible, and as authoritative a source as possible where no literature existed, to define each approach,

<sup>40</sup> Rep. *Colorado Judicial Branch Annual Statistical Report Fiscal Year 2019*. 78. Colorado Courts, 2020. <https://spl.cde.state.co.us/artemis/scserials/sc112internet/sc1122019internet.pdf>.

<sup>41</sup> Rep. *2019 COURT STATISTICS REPORT Statewide Caseload Trends*. 140. Judicial Council of California, 2019. <https://www.courts.ca.gov/documents/2019-Court-Statistics-Report.pdf>.

<sup>42</sup> Ibid.

their history, how they work, and their benefits and drawbacks over traditional court processes

Through this research we were able to identify 8 potential pre-trial solutions, Community Mediation, Restorative Conferencing, Sentencing Circles, Victim-Offender Dialogue, Teen Courts, Arbitration, Conflict Coaching, and Accountability Boards. We reached out to 139 organizations, at least 10 nonprofit organizations who utilized each solution where possible, and all of them if not, of which 46 responded, and we evaluated 26 for this report. Sentencing Circles are not included in this report because significant empirical data does not support the effectiveness of these circles. Arbitration, conflict coaching, and accountability boards are not included because no program that used these approaches passed our evaluation.

Finally, we evaluated each nonprofit program to verify their impact data and community support. We requested program, impact and funding data for each nonprofit program and interviewed staff to gather qualitative data about each program's impact. We then evaluated this data to ensure that the programs were likely to be either faster or cheaper than traditional courts, and that they were community-supported. The organizations featured in our case studies are those that responded to our inquiry, passed our evaluation, and gave us the data we requested in time for this report to be published.

### *Research Limitations*

There are several limits to our research that are important to acknowledge. First, because there are nonprofits that have conflict resolution programs alongside other services, and the NTEE database only allows for one classification, there may be general service nonprofits with active conflict resolution programs that we were unable to identify and did not include in our research.

Second, because most of the nonprofits we interviewed had to limit or reduce services when the courts shut down or limited services, the impact data for each case study in this report is from 2019 or earlier. We verified that each program was still active at the time of our interviews, but most were running with reduced staff, or capacity. Because most states and court systems have returned to in-person proceedings and lifted their lockdowns, we believe pre-pandemic data provides the clearest picture on how these solutions can help communities recover from court backlogs.

Third, while we have verified the case study data to the best of our ability, the accuracy and recency of case study data depends on each nonprofit organization's data collection practices and approach. Case studies should be taken as examples of how a particular solution works in a community, rather than rigorous statistical analyses.

It is also worth noting that, to protect the confidentiality of conflict resolution processes and the privacy of those involved in conflicts, the names of parties in impact stories may have been changed and certain details have been omitted.

## How to Read this Report

We took a broad approach when researching community solutions to court backlogs to help you choose the solution that works best for your community's justice system, stakeholders, and population. This means we identified solutions that intervened in conflicts at any pre-trial stage, from conflicts that have not made it to court to conflicts that are diverted by court officers. Our solutions address all kinds of cases, from civil to criminal, and many kinds of audiences, including families and individuals, juveniles and adults, and victims and criminal offenders.

If there was a community solution that in a significant way served to reduce court caseload, we strove to include it in this report. Instead of ICS deciding, from our ivory tower, what solutions will and won't work, we wrote this report to provide you with the broadest possible array of solutions to court backlogs in your community.

In this report, there are 4 solutions: Community Mediation, Restorative Conferencing, Victim-Offender Dialogue, and Teen Court. Each of these solutions includes a history of that approach, how the process usually works, and the benefits and drawbacks of each solution for the various kinds of cases your court system faces.

Because the benefits of each solution can be varied, we split the benefits of each solution into three different impact areas. *Short-term benefits* means the benefits of that solution on participants while they are in the program. *Long-term benefits* means the benefits participants experience after they exit the program. In this case, that might be a greater sense of self-esteem or a better restitution rate after the program has completed. Finally, *community benefits* are benefits to people who did not participate in the program, but still benefit. These benefits include a reduction of court backlogs, but may also include fewer police calls, reduced future crimes, and reduced incarceration costs.

Each solution also has a case study, a nonprofit program we identified as an effective example of that solution in action in a community. Each of these case studies includes an impact story, history of the program, how that specific program works, why practitioners believe their program works, impact with impact data, and recommendations for starting something similar in your community.

You can read this report from front to back, or just page to the individual sections that interest you, as each solution is self-contained. Our hope is that these solutions spark new ideas, new action, and perhaps even new solutions to help you overcome the court backlogs crisis in your community.

## Solution #1 - Community Mediation

# Introduction to Community Mediation

Community mediation is the most widespread, and potentially the most promising, solution to reducing the burdens on court systems and delivering effective justice outside of traditional court processes. Created out of two separate movements in the 1960's, one to tackle the widespread inefficiencies and delays already present in the court system in 1965, and the other to moderate the rising urban violence that arose in the heat of the civil rights movement, an estimated 400 community mediation centers now mediate over 400,000 cases per year in the United States.<sup>43</sup>

Community mediation is one of the least structured approaches to conflict resolution, with few formal rules. Mediation cases span the spectrum from entirely voluntary, where community members bring their disputes directly to community mediators, to entirely mandatory, where courts order mediation before a formal court process can be initiated. However, mediations generally follow four phases. First, the mediator will contact both parties and arrange a mediation to hear both sides out. Secondly, the mediator will set an informal, non-confrontational tone and explain the process. Next, the mediator will hear the stories of both participants and try to find some common ground. Finally, the process usually ends with an agreement between the parties to remedy the situation. The National Association for Community Mediation (NAFCM) has 9 hallmarks for community mediation centers that also include being accessible, low-cost, inclusive, and timely.<sup>44</sup>

Mediation presents one of the most promising solutions to court backlogs, with studies indicating it can significantly reduce case times and somewhat reduce processing costs, while increasing the satisfaction of all involved over traditional court processes. Some drawbacks, however, include concern over how mediation handles power dynamics and lack of public transparency in this approach. Many scholars argue that in situations with significant power dynamics, like domestic violence, mediation could ultimately continue the harm being caused instead of resolving the dispute. The lack of due process protections in mediation may also make it unsuitable for crimes in which the accused claims innocence.

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<sup>43</sup> *Community Mediation Basics*. Resolution Systems Institute. Accessed May 12, 2022. <https://www.aboutrsi.org/special-topics/community-mediation-basics#:~:text=What%20is%20Community%20Mediation%3F,confrontation%2C%20prolonged%20litigation%20or%20violence>.

<sup>44</sup> *9 Hallmarks of Community Mediation Centers*. NAFCM. Accessed May 12, 2022. <https://www.nafcm.org/?page=9Hallmarks>



## History of Community Mediation

Community mediation in the United States arose out of two generally agreed upon, but separate, concerns. The first concern was with the overall efficiency of the judicial system. In 1965, the Johnson Administration's Commission on Law Enforcement and the Administration of Justice identified problems in court scheduling, management, and organization that resulted in some cases taking 3 months to reach a grand jury decision, with some serious crimes taking up to a year to go to trial. The commission did not mince words about these cases, saying they "made a mockery of bail decisions, were "unfair to the defendant," and "unfair to the community."<sup>45</sup>

Out of this commission, and a further report in 1976 by the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, rose a government-focused reform movement to bring formal mediation into the court system. Early efforts included the Philadelphia Municipal Court Arbitration Tribunal in 1969, the Columbus Night Prosecutors Program in 1971, which used law students to mediate cases in 30-minute time slots, the Institute for Mediation and Conflict Resolution in Manhattan, and the Miami Citizen Dispute Settlement Program in 1975.<sup>46</sup>

The second concern, which also developed in the early 1960's, was rising urban violence. In the heat of the civil rights movement, violent, racially-motivated confrontations at protests and marches were common, and members of Congress hoped that a community mediation approach could reduce the damage. In the 1964 Civil Rights Act, Congress created a little-known agency under the Department of Justice called the Community Relations Service (CRS).

The CRS was charged "to provide assistance to communities...in resolving [the] disputes, disagreements or difficulties relating to discriminatory practices based on race, color or national origin..."<sup>47</sup> According to oral histories of the CRS, agency mediators did just that, responding to thousands of civil rights disputes over the past 50 years, including the famous "Bloody Sunday" civil rights march in Selma, Alabama, the assassination of Martin Luther King Jr., and the riots following the 1992 Rodney King verdict.<sup>48</sup>

As the CRS focused on mediating racially-motivated conflicts from a federal level, organizations sprung up in communities across the country to help mediate all manner of disputes at a local level. Early organizations included the Rochester American Arbitration Association Community Dispute Service Project, an organization dedicated to helping the community deal

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45 United States Government Printing Office. *The challenge of crime in a free society: A report* § (1967). 154. <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/42.pdf>.

46 *Community Mediation Basics*. Resolution Systems Institute. Accessed May 12, 2022. <https://www.aboutrsi.org/special-topics/community-mediation-basics#:~:text=What%20is%20Community%20Mediation%3F,confrontation%2C%20prolonged%20litigation%20or%20violence>.

47 *Public Law*. Govinfo. Accessed May 12, 2022. <https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg241.pdf#page=27>.

48 Salem, Greta, and Richard Salem. *Civil Rights Mediation in the United States*. Civil Rights Mediation. Conflict Management Initiatives, 2007. [http://civilrightsmediation.org/us\\_med.shtml](http://civilrightsmediation.org/us_med.shtml).

with changing racial balances, the Boston (Dorchester) Urban Court Program, a court-connected program in a rapidly integrating Irish-American neighborhood; and the San Francisco Community Board Program,<sup>49</sup> which still exists today.<sup>50</sup>

The biggest difference between these community mediation programs and the court-focused community mediation movement is that these community mediators saw mediation's role outside of the court system, not merely as an augment to it. This second movement of mediators saw mediation as a tool to create greater understanding among individuals and communities, help people take their power back from the government, and decentralize dispute resolution, and other forms of decision-making, back to the community.

The fruits of both of these mediation movements exist in America today. In the court-focused movement, Neighborhood Justice Centers, stretching from New York to Las Vegas, provide alternatives, primarily to youth, to being sentenced in a criminal court. From the community-focused movement, an estimated 400 community mediation centers now provide mediation services, and mediate over 400,000 cases per year.<sup>51</sup>

## **How Community Mediation Works**

Community mediation tends to be one of the least formal conflict resolution approaches. Some community mediation programs work directly with the courts, some work primarily outside of the courts, some deal with civil cases, some with criminal cases, and many take disputes directly from the community.

Cases taken by community mediators, depending on the laws involved, span the spectrum from entirely voluntary to entirely mandatory.

In entirely voluntary cases, where the parties are not legally obligated to participate in any way, parties choose to work with a community mediation center of their own accord to settle disputes. Examples might include marital disputes, neighborhood disputes, and family quarrels, all of which are brought to the center before justice system involvement.

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49 *Community Mediation Basics*. Resolution Systems Institute. Accessed May 12, 2022. <https://www.aboutrsi.org/special-topics/community-mediation-basics#:~:text=What%20is%20Community%20Mediation%3Fconfrontation%2C%20prolonged%20litigation%20or%20violence>.

50 Community Boards. Accessed May 12, 2022. <https://communityboards.org/>.

51 *Community Mediation Basics*. Resolution Systems Institute. Accessed May 12, 2022. <https://www.aboutrsi.org/special-topics/community-mediation-basics#:~:text=What%20is%20Community%20Mediation%3Fconfrontation%2C%20prolonged%20litigation%20or%20violence>.

There are also mandatory cases. California mandates mediation for child custody cases.<sup>52</sup> Iowa requires mediation for debts on agricultural property of \$20,000 or more.<sup>53</sup> In many states, including Alabama, a judge can require parties to go through a mediation process before continuing their case in court.<sup>54</sup>

From our research, the majority of mediation cases appear to fall into the category of mostly voluntary, i.e., both parties agree to mediate the dispute with a community mediator but may, if mediation fails, then seek remedies in court.

These cases fall into two categories. The first is diversion cases, where a ticket or citation has already been issued, and the parties are given the opportunity to divert from the court system and repair the harm in mediation. The second category consists of community cases, where the parties are attending mediation to resolve their conflict, but if it fails, the parties will seek court involvement. Examples of this second kind might include small claims, divorce proceedings, or even criminal activity that hasn't yet been charged.

The mediation process varies by state, community mediation program, and individual mediator style. However, after referral, the process often follows Marje Burdine's 4 stages of mediation.<sup>55</sup>

1. **Set an informal tone** - The mediator welcomes parties to the mediation and explains the process to participants.
2. **Ask for accounts** - The mediator asks each party, in turn, to relate their account of the events. The mediator asks questions to clarify and understand the difference between the various parties' recounting of the events.
3. **Establish common ground** - The mediator attempts to establish commonalities between the parties over the case, including their interests, goals, and understanding of the events.
4. **Reach agreement** - Once the parties have all been heard and common ground established, the mediator works to create an agreement, usually legally binding, among the parties to resolve the dispute.

Some community mediation programs track the success of the agreement reached after a community mediation, and others simply rate the participants' satisfaction after the mediation has concluded.

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<sup>52</sup> Winestone, Jennifer. *Mandatory Mediation: A Comparative Review of How Legislatures in California and Ontario Are Mandating the Peacemaking Process in Their Adversarial Systems*. Mediate, February 2015. <https://www.mediate.com/articles/WinestoneJ4.cfm>.

<sup>53</sup> Tidgren, Kristine A. *Mandatory Agricultural Mediation in Iowa*. Center for Agricultural Law and Taxation. Iowa State University, July 27, 2016. <https://www.calt.iastate.edu/article/mandatory-agricultural-mediation-iowa>.

<sup>54</sup> *Alabama Mandatory Mediation Act*. Alabama ADR. Alabama Center for Dispute Resolution, May 17, 1996. [https://alabamaadr.org/web/roster-documents/med\\_Ala\\_Mand\\_Med\\_Act.php](https://alabamaadr.org/web/roster-documents/med_Ala_Mand_Med_Act.php).

<sup>55</sup> Burdine, Marje (1990) *Mediation Skills Manual: "How to Mediate a Dispute."* Vancouver: The Centre for Conflict Resolution Training, Justice Institute of B.C.

# Benefits of Community Mediation Over Traditional Justice Approaches

Community mediation appears to be the most promising candidate for helping communities overcome court backlogs. Limited research shows significantly reduced case processing times, costs, and an increased satisfaction with the process by all parties. Some studies even show greater likelihood for fulfilled agreements and reduced use of police services when community mediation is used. However, the lack of due process protections, public transparency, and the power imbalances present in mediations may limit the kinds of cases it can address.

## Short-term Benefits

### Reduced Case Processing Times

The starkest potential benefit of mediation is a significant reduction of case processing time. A 1979 study of five projects sponsored by the Florida Supreme Court found an average case processing time of 18 days for mediated cases.<sup>56</sup> In 2002, the Michigan Community Dispute Resolution program reported a case disposition time of 24 days. In 2003, New York community mediation centers reported an average case processing time of only 18 days.

### Reduced Case Costs

The second potential benefit of mediation might be the same or lower processing costs per case, especially if the cases are being processed faster. Determining the exact costs of court processing is challenging, which makes comparing the direct costs of mediation to court difficult, and is an area which researchers agree requires further study.<sup>57</sup> One 1985 study, which did make a direct comparison, found that the average case processing costs for the Durham, NC Court system were \$186, while cases processed by the Durham Dispute Resolution Center only cost \$72.<sup>58</sup>

Other studies have looked at potential cost savings, instead of direct comparative analysis of case processing costs. A 2004 California study estimated that the community mediation pro-

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<sup>56</sup> *The Citizen Dispute Settlement Process In Florida: A Study of Five Programs*. OJP. Florida Supreme Court. Accessed May 12, 2022. <https://www.ojp.gov/pdffiles1/Digitization/58274NCJRS.pdf>.

<sup>57</sup> Charkoudian, L. and Bilick, M. (2015), *State of Knowledge: Community Mediation at a Crossroads*. Conflict Resolution Quarterly, 32: 233-276. <https://doi.org/10.1002/crq.21112>

<sup>58</sup> Sheppard, B., *Report to Durham Dispute Settlement Center on the Comparative Costs of Going to Court vs. Mediation*. Durham, North Carolina. Duke University. 1985.

grams would save \$1.4 million in San Diego, \$395,000 in Los Angeles, and \$9,770 in Sonoma based on averted judges' salaries. The Task Force on Appellate Mediation in 2001 estimated a savings of \$6.2 million total for all mediated cases in the sample size.<sup>59</sup>

### Increased Perception of Fairness

The impact of perceptions of fairness cannot be understated. There are not enough police to enforce all of the laws, so it is the belief that the justice system is impartial and fair that realistically gives judgements their power. A study of community mediation in Brooklyn found that both complainants (77%) and respondents (79%) found mediation outcomes a fairer process for all involved, as opposed to only 56-59% of complainants and respondents who went through a standard court process.<sup>60</sup> In a comparative study of three small claims courts in Maine, parties thought the judgment was fair in only 23.5% of adjudicated cases, while 44% thought it was fair in mediated cases.<sup>61</sup>

### Increased Party Satisfaction

Perhaps because of the quicker dispositions of justice, greater perceptions of fairness, or simply the ability to have one's story heard in a safe environment, party satisfaction after mediation is also starkly better than that for traditional adjudication.

Several studies have compared participant satisfaction with the courts as opposed to community mediation. In the 1980 field test of Neighborhood Justice Centers in Atlanta and Kansas City, only 33% and 42%, respectively, of parties indicated that the courts had handled their case well. In contrast, 80% of participants in Neighborhood Justice Center mediations indicated they were satisfied with their mediation.<sup>62</sup> Similar studies in North Carolina (90%+ satisfaction rate),<sup>63</sup> Nebraska (89% satisfaction rate)<sup>64</sup> and New York, which found that 95% of those who reached agreement and even 63% of those who did not thought "mediation was a good way to attempt to resolve their dispute."<sup>65</sup>

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59 Stufflebeem, Cory William, *A New Method to Evaluate Community Based Mediation Programs: MultiAttribute Cost Utility Analysis* (2013). Electronic Theses and Dissertations. 632. <https://digitalcommons.du.edu/etd/632>

60 McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. New OJP Resources. U.S. Department of Justice, July 1997. <https://www.ncjrs.gov/textfiles/165698.txt>

61 McEwen, Craig A, and Richard J Maiman. *Small Claims Mediation in Maine: An Empirical Assessment*. RSI. Resolution Systems Institute. Main Law Review, January 1, 1981. <https://www.abourtsi.org/library/small-claims-mediation-in-maine-an-empirical-assessment>

62 McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. New OJP Resources. U.S. Department of Justice, July 1997. <https://www.ncjrs.gov/textfiles/165698.txt>

63 Clarke, S H, E Valente, and R R Mace. *Mediation of Interpersonal Disputes: An Evaluation of North Carolina's Programs*. Office of Justice Programs, 1992. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/mediation-interpersonal-disputes-evaluation-north-carolinas>

64 *Nebraska Office of Dispute Resolution Annual Report, July 1994-June 1995*. OJP. Nebraska Office of Dispute Resolution, 1995. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/nebraska-office-dispute-resolution-annual-report-july-1994-june>

65 *Community Dispute Resolution Centers Program*. NyCourts. New York State Unified Court System, 2003. <http://www2.nycourts.gov/sites/default/files/document/files/2018-07/AR02-03.pdf>

# Long-term Benefits

## Increased Fulfillment of Judgments

Mediation also has some interesting longer-term benefits over traditional court processes. First, and somewhat surprising given the coercive nature of court agreements, is that mediation agreements can be more likely to be fulfilled. In the same small-claims study in Maine, only 34% of judgements reached through adjudication were paid in full, compared to 71% of mediated cases.<sup>66</sup> In a study of divorce mediation, only 6% of participants in mediation reported having serious disagreements about their settlement, while 34% of participants in traditional court processes had serious disagreements.<sup>67</sup>

# Community Benefits

## Reduced Use of Police Services

The second is that mediations appear to reduce future reliance on police resources. An unpublished 1995 study found that, after mediation, calls for police service in Harrisburg, Pennsylvania decreased sharply.<sup>68</sup> Harrisburg's police chief corroborated this study in testimony before the Pennsylvania House of Representatives:

*“Through the NDSC referral network [a network of community mediation centers], dealing with interpersonal and neighborhood problems has benefited the Harrisburg Police Bureau by fewer calls to the same persons; fewer prosecutions at the district justice courts; more available patrol time for emergencies; and an increased rapport between the police and the community for the utilization of this new, community-oriented solution to an old problem.”<sup>69</sup>*

An even more recent, 2005, study found that future calls to the Baltimore Police Department dropped by an average of 9% in the six months after mediation for the group that had their cases mediated, compared to the control group.<sup>70</sup>

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66 McEwen, Craig A, and Richard J Maiman. *Small Claims Mediation in Maine: An Empirical Assessment: RSI*. Resolution Systems Institute. Main Law Review, January 1, 1981. <https://www.aboutrsi.org/library/small-claims-mediation-in-maine-an-empirical-assessment>.

67 Thoennes, Nancy A., and Jessica Pearson. *Predicting Outcomes in Divorce Mediation: The Influence of People and Process*. Journal of Social Issues 41, no. 2 (1985): 115–26. <https://doi.org/10.1111/j.1540-4560.1985.tb00858.x>.

68 Shepherd, R., *Neighborhood Dispute Settlement: An Evaluation Report of the Neighborhood Dispute Settlement Center's Program with the City of Harrisburg Bureau of Police*, 1995.

69 McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. New OJP Resources. U.S. Department of Justice, July 1997. <https://www.ncjrs.gov/txtfiles/165698.txt>

70 Charkoudian, L. and Billick, M. (2015), *State of Knowledge: Community Mediation at a Crossroads*. Conflict Resolution Quarterly, 32: 233-276. <https://doi.org/10.1002/crq.21112>

# Drawbacks of Community Mediation

There are three criticisms of mediation worth considering before implementing this solution in your community: the lack of due process protections for the accused, the lack of public transparency, and the limitations of mediations with regards to conflicts where there is a significant power differential.

## Lack of Due Process Protections

The American judicial system, in contrast to many other judicial systems around the world, gives precedence to the innocence and rights of the accused. William Blackstone summed up the aims of the American judicial system well when he said “the law holds that it is better that 10 guilty persons escape, than that 1 innocent suffer.”<sup>71</sup> The Bill of Rights guarantees specific protections, such as the right to face your accuser, the right to see the evidence against you, and that you cannot be compelled to self-incriminate, and others have been interpreted by the courts throughout the years, such as the right to an attorney in many proceedings. Federal and state sentencing guidelines that lay out detailed processes for protecting the rights of each party in traditional court processes run into the hundreds of pages.<sup>72</sup>

Few of these protections, and often only those imposed by individual state laws, exist in mediation. Critics argue that this lack of protections “allows more powerful interactants to gain the upper hand, and allows the powers that be to define and impose community norms and moral standards” in the mediation process.<sup>73</sup>

## Lack of Public Transparency

A second criticism to consider is that mediations are private proceedings with little, if any public transparency. In contrast to court cases, resolutions from mediation are confidential, and therefore do not create court precedents.<sup>74</sup> This may reduce the viability of mediation for addressing disputes in which there is a significant public interest, such as constitutional challenges, class action lawsuits, and conflicts between individuals and governments.

## May be Unsuitable for Certain Cases

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71 Vidar Halvorsen (2004) *Is it better that ten guilty persons go free than that one innocent person be convicted?*, *Criminal Justice Ethics*, 23:2, 3-13, DOI: 10.1080/0731129X.2004.9992168

72 United States Sentencing Commission, *Guidelines Manual*, §3E1.1 (Nov. 2018)

73 Bottomley, A. (1985). *What is Happening to Family Law? A Feminist Critique of Conciliation*.

74 Nader, L., *Trading Justice for Harmony*, NIDR Forum (Winter 1992).

Finally, while cases taken vary significantly from community mediation center to community mediation center, many observers oppose the use of mediation for cases where a significant power differential means one of the parties is unlikely to speak honestly and straightforwardly, or where it may continue a cycle of abuse, such as cases where one or more of the parties have a history of domestic violence.<sup>75</sup> Many mediation centers have developed procedures to screen out these kinds of cases for this specific reason.<sup>76</sup>

In cases like these, it may be more valuable to have the due process safeguards of the traditional court system in place to ensure each party gets a fair hearing.

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<sup>75</sup> *Mediation in Cases of Domestic Abuse: Helpful Option or Unacceptable Risk? The Final Report of the Domestic Abuse and Mediation Project*, Maine Court Mediation Service, January 1992

<sup>76</sup> McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. New OJP Resources. U.S. Department of Justice, July 1997. <https://www.ncjrs.gov/textfiles/165698.txt>.



## Community Mediation Case Study - Dispute Resolution Center of Thurston County

# Community Mediation Program

### Summary

- Organization: Dispute Resolution Center of Thurston County
- Program: Community Mediation Program
- Location: Olympia, WA
- Established: 1991
- Cases per year: 2172
- Average case length: 35 days
- Average cost: \$630/case
- Caseload: 46% of general civil cases in Thurston County, WA
- Impact: 83% of participants reach agreement, 90% of participants satisfied with the mediation process
- Operations
- Staff: 14
- Volunteers: 161
- Support
- Community: 65%
- Government: 35%

### ***Impact Story - "We talked for the first time in 4 years."***

When "Jim" returned from active duty, he had a tough time communicating with his family. He and his wife, "Brooke," were still married, but still lived a few blocks away from each other. They had two daughters together, aged 12 and 14 at the time. The girls told their mom that they didn't want to go over to dad's house anymore, because there were too many people coming and going, and that dad was checked out most of the time.

Brooke wanted an amicable divorce so she could move on with her life, and she wanted her kids to have regular, supervised contact with their father, but Jim wasn't willing to do that.

Brooke decided to call the Dispute Resolution Center of Thurston County. After talking to

Brooke, TDRC staff called Jim and encouraged him to try mediation.

In the first mediation session, Jim was slow to talk, and spoke quietly with few words. TDRC mediators worked hard to slow down the session and be attentive to him so he could respond and actively participate. Through the process, Jim was able to clearly communicate that he wanted to see his kids regularly.

At the end of the session, Brooke and Jim were able to agree to have the girls visit him in a neutral place with Brooke present, and to attend another mediation session. Brooke said that was the first time her and Jim had talked in 4 years.

## **History of the DRCTC**

Evan Ferber, founder of the Dispute Resolution Center of Thurston County (DRCTC), describes himself as a hippie. “I started the center because I just believed that peace was possible,” he says. DRCTC was one of numerous dispute resolution centers formed in response to the 1984 Court Improvement Act, a response by the Washington state legislature to rising concerns about the cost and complexity of court proceedings. The 1984 act laid out the legal framework for alternative dispute resolution, including community mediation, in the state.

DRCTC opened its doors in 1991 with their community mediation program. Since then, the DRCTC has relieved Thurston County’s court system of over 120,000 potential cases, and takes on 46% of Thurston County, WA’s general civil caseload - over 2,000 cases per year.

## **How DRCTC’s Mediation Program Works**

At first, DRCTC’s mediation program primarily received referrals from attorneys and other members of the court. “In the early days, the cases that were coming our way were judicial officers, attorneys basically saying to their clients ‘You know what? You guys have a different way you can approach this. How about you call the dispute resolution center?’,” says Jody Suhrbier, DRCTC’s Executive Director.

Since then however, the center has worked hard to get more referrals directly from the community. Today, 55% of referrals to DRCTC contact them before they reach the justice system. “We really want to not just be a court-adjacent service,” Jody says. “We actually do a lot of promotion and advertising where we get our name and our conflict resolution resource line out into the community.”

The resource line is where a potential mediation starts. On the line, trained facilitators ask the caller pointed questions about their dispute, what actions they’ve already taken, and what potential solutions they have in mind. If the caller wants to continue with mediation, the fa-

ilitators explain DRCTC's facilitative mediation model. "As much as we might like to believe that everybody understands what the facilitative mediation model is, there's a lot of confusion about it. Folks can very easily assume that they are coming to us to be their arbitrators, their judges, or even coming to us for an evaluative process. That's just not what we do," Jody says.

If the caller wants to continue with mediation, DRCTC facilitators will then reach out to the other party. This part can take awhile if the caller hasn't given the other party a heads-up that they will be contacted. "Sometimes [the caller] just gives us the contact info and we reach out cold. And that can take a little bit if folks weren't expecting us," Jody says.

After both parties have been contacted, a mediation is scheduled. Jody emphasizes that although some mediations are mandatory, the court only mandates that the parties show up, not that they mediate. DRCTC facilitators make sure the parties know the process is voluntary from there. "We emphasize for folks that while you were told to come, you have met your obligation to the court by showing up, but very rarely do parties choose to leave once the session has begun."

Once the parties enter mediation, DRCTC typically uses a two-facilitator mediation model. Jody says this helps ensure that their mediations are balanced. "Having two different individuals at the table can help balance the sense of what the process is for the parties. They can see that there isn't just one person that I need to plead my case to, but rather that there are two facilitators, and very much a balanced approach as to who does what."

In the mediation itself, DRCTC facilitators follow the facilitative mediation model. They start by informing parties of the legal guidelines around the mediation, namely that the mediation itself is confidential and that the agreement is legally binding when sent to the court. Then, they ask each party to share their version of the events, first with the facilitators, and then with each other.

Then, the parties enter negotiations, where they can ask questions of one another and start exploring solutions. "The bulk of the session is in negotiation," Jody says. At that point, "it's no longer time to state your case to us, but to consider what you'd like to ask of the person in front of you or the thing you might like to offer."

At any time, either party can "caucus," or have a private conversation with the facilitators to work through something or deal with a difficult issue. As the mediation is coming to an end, the facilitators will wrap up any agreements that are made and write up the settlement agreement. "Folks know in advance it's intended to be a legally binding agreement, so they're really intended to hold it with high regard," Jody says.

## Impact

There are two big indicators of DRCTC's mediation program's impact over the years. The first one is the agreement rate. Over 83% of DRCTC mediations reach a partial or full agreement. However, Jody says, the agreement number isn't the only thing they measure success by. "In our evaluations, that folks fill out when they're done, we're not just measuring whether or not they reached agreement because their own sense of satisfaction is a key part of it." Even if mediation participants don't reach a specific agreement, 90% of participants in DRCTC mediations say they are satisfied with the process.

Another big benefit of mediation is that it allows participants to create their own solution, Jody says. "It may be a rare occasion for them to truly have a voice in their conflict and feel empowered to address it. But in mediation "[they] have that self determination to come up with an outcome that is truly theirs."

Participants can also learn how to handle their own conflicts just by watching the facilitators' example. "We also get a lot of feedback from folks that they just so appreciate being around the mediators, because there's just something about being with skillful facilitators where you notice these people just being calm and interactive with one another and it can't help but influence your behavior, at least somewhat, as well," she says.

This leads into one of DRCTC's greatest impacts, which is that the skills participants learn in mediation often spread far beyond the mediation they are in. "For instance, folks will say I took your training 15 years ago and now I serve on this committee at my church and I found myself using the golden questions." Jody says that is DRCTC's ultimate goal. "Our vision is that everybody has these skills and uses them. We don't want to mediate for the whole community."

On average, every DRCTC mediation is completed within 35 days of referral. They charge each mediation participant \$165, on average, from a sliding scale based on income and ability to pay, while the actual cost to the DRCTC per mediation is \$630/case.

## Why it Works

The number one reason DRCTC's mediation program works, Jody says, is that it's a community effort where the mediators are made up of the community and representative of the community. "When you can effectively hold this constantly changing mix of over a hundred volunteers and keep everybody going in the same direction while learning from one another, it just makes for a really rich process."

That community learning is the second thing that makes DRCTC's mediation program work. "All throughout the process from training to certification, to recertification, there's always this commitment to learning and growing and benefiting from the wisdom of those around us," Jody says. "I think that is what makes us work and what makes our process continue to be honed and really just consistently appropriate and effective."

These two things combine to help drive the sense of purpose for everyone at DRCTC, Jody says. “If you have both of those things, where you have this deep commitment to the place where you live and you have this wonderful learning community that continues to develop and grow together, it creates a sense of family, a sense of purpose.”

### **Funding and Support**

DRCTC’s mediation program is 65% community supported, including voluntary donations, volunteer hours, and fees for services, and receives 35% of its income from state and local government contracts and grants.

14 staff are involved in the program. DRCTC staff cover about half of the center’s mediation intakes, follow-up with parties, participate in some mediations, and provide volunteer support. DRCTC’s 161 volunteers serve as mediators and handle about half of the intake and preparation needed for mediations.

### **How to Implement a Community Mediation Program in Your Community**

Jody’s advice for implementing a similar program is to focus on the main thing that makes community mediation work - community. “It comes down to a lot of the same things that are going to make a community mediation center thrive in the future. It’s having a real strong understanding and commitment to the core tenets of what it means to have a community mediation center, as far as being community-based, accessible, and representative of the community, not just being an arm of the court, and then committing to setting up programs and services that are in line with what the community most needs and wants to be strong and thriving.”

For advice on implementing a similar program in your community, contact the DRCTC at <https://www.mediatethurston.org/>.

## Community Mediation Case Study - NY Peace Institute

# Small Claims Presumptive Mediation Program

### Summary

- Organization: New York Peace Institute
- Program: Small Claims Presumptive Mediation Program
- Location: New York, NY
- Established: 2019
- Cases per year: 300
- Case length: 45 days
- Cost: \$186/case on average
- Impact: 51% of participants reach agreement, 80% of participants satisfied with the mediation process

### Operations

- Staff: 5
- Volunteers: 81

### Support

- Community: 54%
- Government: 46%

### Impact Story - Funeral Home Removes Charges

When her mother passed away in 2020, “Nancy’s” life insurance company paid equal claims to her and her brother. However, when her brother didn’t pay for his half of their mother’s funeral, the funeral home charged Nancy the full amount, which she couldn’t pay. She tried contacting the credit card company to address the error, but since it was a legitimate charge, they wouldn’t help. When she tried contacting the funeral home to get it addressed, the funeral company was willing to talk with her, but not willing to give up the full amount. Nancy went to the Richmond County, NY small claims court and filed suit.

Because of the New York State Court’s presumptive mediation initiative, she was diverted to the New York Peace Institute’s presumptive mediation program, where she attended a mediation with the funeral home. In the session, the funeral home was able to plead its case as well. They were a family-owned business that had been in business for 40 years, and while they didn’t want to make people unhappy, it would be a difficult loss for them to give up the whole

amount.

In the mediation, Nancy got to talk about her relationship with her brother, how he was generally considered the “black sheep” of the family, and that it wouldn’t be worth the time for the funeral home to go after him. At the end of the mediation, both parties felt heard, and the funeral home ended up removing the charge from Nancy’s credit card.

## History of the Small Claims Presumptive Mediation Program

While the New York Peace Institute (NYPI) has always handled some small claims cases as part of its mediation programs, NYPI’s small claims presumptive mediation program began in 2019. As part of her Excellence Initiative to reduce court backlogs and increase court efficiency, New York State Chief Judge Janet DiFiore introduced presumptive small-claims mediation into the New York State Courts.<sup>77</sup> In partnership with dispute resolution centers across the state, including the New York Peace Institute, NY State Courts started referring most civil cases to alternative dispute resolution processes, including mediation, as an initial step before court.<sup>78</sup>

During the COVID-19 pandemic, while the courts were shut down, NYPI’s presumptive mediation program continued, mediating disputes throughout the court shutdowns. In September 2020, the New York City court system, facing an overwhelming backlog of cases, started sending all cases to NY mediation centers, including NYPI’s presumptive mediation program, for resolution. To date, NYPI’s presumptive mediation program has taken 626 cases, and continues to take 40-50 cases a month off of the dockets of small claims courts in all five boroughs of NYC.

## How NYPI’s Small Claims Presumptive Mediation Program Works

Unlike most mediation programs, which are entirely voluntary, presumptive mediation requires parties to be referred to mediation before they can continue their claim in court. In New York, parties can choose to opt out of the process after referral, and are not required to stay for any length of time or mediate with the other party. Nicholas Schmitt, Esq., NYPI’s Program Manager for Civil and Housing Court, says they make it clear to parties that the mediation itself is voluntary. “The concern with mandatory mediation has always been people won’t participate solely because they’re required to. They won’t necessarily be there in good faith. We try to come up with reasons for people to want to participate, but if they just flatly refuse, we send those cases back to court.”

<sup>77</sup> Billingham-Hemminger, Savannah. *Update: ADR Breakfast on New York State’s Presumptive Mediation Implementation*. CPR ADR, July 16, 2019. <https://blog.cpradr.org/2019/07/16/update-adr-breakfast-on-new-york-states-presumptive-mediation-implementation/>.

<sup>78</sup> Russo, Louis, and Muhammad U. Faridi. *New York Announces Statewide ‘Presumptive’ Alternative Dispute Resolution Program*. PBWT, May 17, 2019. <https://www.pbwt.com/ny-commercial-division-blog/new-york-announces-statewide-presumptive-alternative-dispute-resolution-program>.

All referrals to the presumptive remediation program come directly from the NYC court system. When someone goes to file a claim in a NYC small claims court, they receive an email from the court diverting them to mediation, which is quickly followed up by an email from NYPI. “That email from us asks them to give us a time [to talk] and tells them we’re excited to talk about the mediation process,” Nick says.

On the initial call to each party, NYPI staff explain the mediation process and answer any questions the parties may have. Once the parties agree to a time to meet, NYPI staff sends an email out to their hundreds of volunteer mediators to set up a time for the mediation. All small claims mediations are held remotely. “95% of the time it’s Zoom, maybe 5% of the time we do teleconference mediation,” Nick says.

NYPI follows the facilitative mediation model, but leaves significant flexibility for its volunteer mediators. “We try to allow for freedom and for the parties to lead the process as much as possible” Nick says.

Typically, a small claims mediation starts with an opening statement from the mediator. Then, the mediator allows both parties to talk about their side of the story. From there, mediators will start working with the parties to generate options.

During the options generating portion, Nick says the options created can be surprising. “It was common to have people who sued for the statutory limit in small claims, which is \$10,000 in New York City. But they only had, for example, \$321 in actual damage and the rest is pain and suffering,” he says. “So those are interesting conversations because, you know, a \$10,000 claim might settle for \$300, plus some small amount for pain and suffering when you could assume, purely from the amount sued for, it would settle for maybe \$5,000.”

If the parties come to an agreement, the parties sign and the mediators send the completed agreement to the originating court.

### **Impact**

As of May 2022, there are no small claims backlogs in any of NYC’s five boroughs. According to Nick, the presumptive mediation program, in partnership with other nonprofits, virtually eliminated the backlog of court cases in those courts. “When we first started this program, [the NYC court system was] in the thousands of cases. Now, there’s no backlog,” he says.

While only 51% of small claims participants reach some kind of agreement by the end of the process, Nick says that the satisfaction of the parties involved is more important than any specific agreement. “We would rather a person leave the table with a proposal they want to consider rather than a signed agreement they might have second thoughts about down the road.”

Party satisfaction rates in the program are high. A little over 80% of small claims mediation participants agreed that the process was valuable and that they would recommend mediation



to others. Nick says the first reason is because of the amount of time the parties get in mediation. “107 minutes tends to be the average, which is way more time than they’d get in front of a small claims court judge,” he says.

The second reason is “We’re able to give them the opportunity to talk about not just that they want money, but who they are as a person, how they want to be seen as a person, how this conflict has impacted them, what, any amount of money, if they were to get it, how that impacts them, how not having the money has impacted them, how not having the thing, if it’s not about money, has impacted them.”

Some harder to measure impacts of the program, Nick says, are the conflicts prevented in the future by going to mediation. “We do know that one conflict, like a conflict between two people, winds up impacting something like nine other people in their sphere of influence.”

This also extends to preventing future violent conflicts. One small claims dispute NYPI mediated centered around a dog bite, where the party being sued had agreed to pay for the medical expenses of the claimant, but had not. “After they signed the agreement and shook hands, the guy said, you know, I’m glad we came to an agreement because if we hadn’t come to an agreement, I would have had to break in and rob you. And he was not joking, he was a hundred percent serious,” he says. “I don’t know how often people come to an agreement and wind up not getting robbed because of that agreement, but there are police that don’t have to get involved in a situation, there are people living in the house who would have been impacted, and there could have been criminal justice system involvement. That didn’t have to happen because they came to an agreement.”

On average, NYPI’s program’s time from referral to resolution is 45 days. While NYPI doesn’t charge litigants anything to attend a mediation, each case costs NYPI approximately \$186.

### **Why it Works**

The first reason Nick says the small claims program works is because of the centralized referral process from the small claims courts. “Without that, things would be scattershot. Courts in one borough might be sending lots of cases, but courts in another might be sending zero, which would mean that people living in that borough wouldn’t get the service.”

The second reason is the dedication of everyone to the program. “Without the dedication of all the people who are trying to make this work, the courts, the law schools, our organization, the referrals wouldn’t matter. People wouldn’t be getting phone calls. They wouldn’t be calling people up to do the mediations.”

This extends to the volunteer mediators, who Nick says really drive the program’s impact. “Some of our mediators have been doing this for 20 years, not necessarily in small claims court, but mediating for 20 years. Without the mediators, I don’t know that we would have the same response rates, the same agreement rates, the same ability to have people understand each other.”

## **Funding and Support**

NYPI doesn’t track specific funding for each program, but the organization is 54% community supported, including voluntary donations, volunteer hours, and fees for services, and receives 46% of its income from state and local government grants.

5 part-time staff are involved in the program, and handle administrative work, contacts with parties, scheduling, communicating with court staff, and mediations as needed. All of the small claims mediations are mediated by NYPI’s 81 trained volunteer mediators.

## **How to Implement a Community Mediation Program in Your Community**

For anyone who wants to implement a similar mediation program in their community, the first thing Nick recommends is to intervene as early as possible. “I’m a big fan of getting in as early as possible. If there were a way to implement this before a small claims case has been filed, I would encourage people to think about that.”

The second thing is to get as many volunteers involved as early as possible. “We were lucky in that we already had a pretty large group of people who were trained to do cases like this. But if we hadn’t been, we would’ve had a lot of issues trying to be responsive.”

Another important thing to consider is how to make the follow-up with litigants as quick as possible. “We try to do our initial outreach less than 24 hours after the [first] email goes out. Because otherwise what happens is even if people are interested, they stop responding,” he says. Nick suggests being open to communicating with the parties in as many ways as possible “We email, we follow and we text, we do everything,” he says.

For advice on implementing a similar program in your community, contact NYPI at <https://nypeace.org/>

## Solution #2 - Restorative Conferencing

# Introduction to Restorative Conferencing

Unlike mediation, which arose in the United States primarily as a response to court inefficiencies and racial unrest, restorative conferencing resulted from implementing indigenous practices in New Zealand's youth justice system, and didn't spread to the United States until the early 1990's.

A restorative conference is a structured meeting between victims, offenders, and both parties' family and friends, in which they discuss the consequences of a crime and decide together how to address the wrongdoing.<sup>79</sup> It is managed by a facilitator who contacts both parties after an offense, arranges the conference, and facilitates the parties through each stage. Towards the end of the conference, the parties sign a restorative contract, an agreement that outlines specific things the offender will do to repair the harm caused.

There are three primary restorative conferencing models, including Family Group Conferencing, the Wagga Wagga model, and the Real Justice model, which differ slightly from each other. The Family Group Conferencing model, developed in New Zealand after the Maori "wahanau," or family conference, invites the families to make the decision about how to deal with the offense separate from the facilitator. In the Wagga Wagga model, developed by the Wagga Wagga Police Service in Australia, a public official, such as a police officer, facilitates the conference and is present for the agreement discussion. The Real Justice model, named after the Pennsylvania nonprofit that pioneered it, is a modified Wagga Wagga model that includes specific restorative principles and a specific script to get the victim, offender, and other participants to understand and repair the harm caused.

Conferencing represents a promising solution for more serious crimes than community mediation usually addresses, and is often shown to reduce recidivism, primarily for youth offenders. Like mediation, all parties often express higher satisfaction with this approach than traditional court processes. The main drawbacks of conferencing are that it may provide limited benefits to the most distressed victims and suffers from the same criticisms over confidentiality and the lack of due process protections as community mediation.

A 2001 study identified hundreds of conferencing programs active in the United States, and the Longmont Community Justice Partnership provides an excellent case study of how restorative conferencing can benefit victims, offenders, and the community at large.<sup>80</sup>

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79 Wachtel, T. (2016). *Restorative Conference*. Defining Restorative. International Institute for Restorative Practices. <https://www.iirp.edu/defining-restorative/restorative-conference>

80 Weitekamp, E.G.M., & Kerner, H.-J. (Eds.). (2002). *Restorative Justice: Theoretical foundations* (1st ed.). Willan. Page 196. <https://doi.org/10.4324/9781843924838>

## History of Restorative Conferencing

Unlike community mediation, which emerged in the United States primarily to meet the needs of victims and the overwhelmed court system, restorative conferencing originated as a youth justice reform - on the opposite side of the world.

### *Family Group Conferencing*

Despite numerous reform efforts from the 1960s to the early 1980s, New Zealand's youth justice system was under heavy criticism. A Working Party committee report criticized the welfare and rehabilitative youth justice reforms as broadly ineffective and unnecessary:

*“Many young people who commit offences do not have any special family or social problems. Any problems they or their families have are more likely to be exacerbated than improved by official intervention triggered by the young person’s prosecution.”<sup>81</sup>*

Diversion programs introduced in 1974 that had initially excited the public were viewed by police officers as widely ineffective.<sup>82</sup> Perhaps most importantly, the indigenous Maori, who saw their children arrested at over 6 times the rates of their white counterparts, heavily criticized the justice system for ignoring indigenous traditions and culture.<sup>83</sup> A report by the Minister of Justice titled ‘Te Whaingā I Te Tika,’ (“In Search of Justice”), did not mince words:

*“The present system is based wholly on the British system of law and justice, completely ignoring the cultural systems of the Māori and breaking down completely that system, completely alienating the Māori, leaving them in a simple state of confusion and at the whim of the existing system.”<sup>84</sup>*

In response, the New Zealand Parliament passed the Children, Young Persons and their Families (Oranga Tamariki) Legislation Act in 1989. This act laid out several new approaches for the youth justice system, but the most fundamental shift was in making the Maori tradition of the “whānau,” or family conference, the standard approach to youth justice proceedings, which it remains in New Zealand today.<sup>85</sup>

### *Wagga-Wagga Conferencing*

At the core of Family Group Conferencing is the family caucus, or a private meeting between members of the family to decide the best remedy for the offense. However, as family group conferencing spread to Australia, there was some criticism of the family making the ultimate

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81 *Review of the Children and Young Persons. Bill, Renouf, J 1987*

82 Morris, A., & Young, W. (1987). *Juvenile Justice in New Zealand: Policy and Practice*. Study Series 1. Institute of Criminology, Wellington.

83 Wittman, M.R. (1995). *Juvenile Justice Legislation in New Zealand 1974 –1989: the process of lawmaking*. Unpublished LLM dissertation. Victoria University of Wellington, Wellington., p. 82

84 Emily Watt, *A History of Youth Justice in New Zealand* (New Zealand: Dept. for Courts, 2003), Page 13 <https://docplayer.net/114196-A-history-of-youth-justice-in-new-zealand-1.html>

85 *Youth Justice Family Group Conferences*. Oranga Tamariki, March 13, 2017. <https://www.orangatamariki.govt.nz/youth-justice/family-group-conferences/>.

decisions for the youth offender. In 1991, Terry O’Connell, a sergeant with the Wagga Wagga Police Service, developed a modified version called the Wagga Wagga model.<sup>86</sup> In this approach, a police officer or other public official leads the conference, and encourages the family and youth to come to an agreement for restitution and reparation. After showing some success in Wagga Wagga, the model was piloted in 5 other communities by the New South Wales Police Service, but ultimately Australia’s parliament decided to adopt the Family Group Conferencing model pioneered in New Zealand.<sup>87</sup>

Despite being rejected by its home, Wagga Wagga Conferencing started to spread internationally. In Sparwood, British Columbia, the Royal Canadian Mounted Police initiated Canada’s first restorative conferencing programs. The Thames Valley Police Service in the United Kingdom adopted the Wagga Wagga Model in their community.<sup>88</sup> The biggest boost for restorative conferencing, however, came from the modifications brought by Real Justice conferencing.

### *Real Justice Conferencing*

Real Justice Conferencing, named after the Pennsylvania nonprofit that pioneered the model, structures the Wagga Wagga approach around specific restorative principles.<sup>89</sup> Otherwise known as community group conferencing, Real Justice conferencing focuses the conference on a specific incident instead of using conferences to uncover needs for rehabilitative or social services. Real Justice conferencing also follows a specific script. The facilitator reads a preamble setting the focus of the conference, asks a specific series of questions to the victim, offender, and any of their support persons or representatives at the conference, negotiates a reparation agreement between the victim and offender, and ends by reintegrating the members of the conference with each other.

Early implementations of the Real Justice model in the United States included a Minnesota state-funded pilot program, efforts in Vermont,<sup>90</sup> and the Honolulu Police Department.<sup>91</sup>

Today, restorative conferencing has taken root in dozens of communities around the United States. A 2001 study identified hundreds of restorative conferencing programs across the country.<sup>92</sup>

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86 McCold, Paul. *Primary Restorative Justice Practices*. In *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, edited by Allison Morris and Gabrielle Maxwell, 41-59. London: Hart Publishing, 2001. Accessed May 12, 2022. <http://dx.doi.org/10.5040/9781472559111.ch-003>.

87 O’Connell, Terry. *From Wagga Wagga to Minnesota*. IIRP. First North American Conference on Conferencing, August 8, 1998. <https://www.iirp.edu/news/from-Wagga-Wagga-to-minnesota>.

88 Ibid.

89 McCold, Paul. *Primary Restorative Justice Practices*. In *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, edited by Allison Morris and Gabrielle Maxwell, 59. London: Hart Publishing, 2001. Accessed May 12, 2022. <http://dx.doi.org/10.5040/9781472559111.ch-003>.

90 O’Connell, Terry. *From Wagga Wagga to Minnesota*. IIRP. First North American Conference on Conferencing, August 8, 1998. <https://www.iirp.edu/news/from-Wagga-Wagga-to-minnesota>.

91 Walker, L. (2002). *Conferencing: A New Approach for Juvenile Justice in Honolulu*. *Federal Probation Journal*, 66(1), June 2022.

92 Weitekamp, E.G.M., & Kerner, H.-J. (Eds.). (2002). *Restorative Justice: Theoretical foundations* (1st ed.). Willan. Page 180. <https://doi.org/10.4324/9781843924838>

## How Restorative Conferencing Works

Restorative conferencing programs receive criminal referrals from police, judges, and other members of the criminal justice system. In some cases, the offender has already been charged and is offered the option of conferencing. If the offender completes the conferencing program, which includes the items in the restorative contract they sign at the end of the conference, then the case is dropped. In other cases, police officers direct a victim-offender pair to conference in lieu of issuing a citation. Victim-offender pairs are typically screened by the type of offense. Different programs have different ways to categorize offenses, and most programs have limits to the kinds of cases they will facilitate. Once screening is complete, the pair are referred to a trained facilitator.

Once the conference facilitator reviews the case, they will start by contacting the victim and offender to arrange the conference. While there are three different models of restorative conferencing, each follows a similar process and primarily differs based on who holds the conference and how structured the facilitator role is.<sup>93</sup> The normal process is as follows:

1. **Outreach** - The facilitator contacts the offender and victim or, in the case of youth, their families to explain the conference and invite them to the process. The facilitator also asks the victim and offender to identify key support members to come with them to the conference.
2. **Preparation** - The facilitator holds conversations with the offender and victim about the specifics of the conference and schedules the conference with the victim, offender, and their support persons.
3. **Conference** - In the conference, the facilitator asks both the victim and offender to share their experience of the situation and its impact on their lives. The facilitator will then ask the offender and victims' support persons to share their reaction to each of the stories.
4. **Restorative Contract** - After a thorough discussion of the impacts, the victim is asked to outline their desired outcomes from a restorative contract. The offender and victim closely negotiate the terms of the contract, often in a way that stresses the strengths of the offender to benefit both parties in the contract. The restorative contract is then signed by both victim and offender.
5. **Reintegration** - After the restorative contract is agreed upon, the victim and offender, and their support persons, go through a casual period of reintegration. Sometimes food is served, but this informal social period allows the victim and offender to recognize each other's humanity and interact in a normal setting.

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<sup>93</sup> McCold, Paul. *Primary Restorative Justice Practices*. In *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, edited by Allison Morris and Gabrielle Maxwell, 59. London: Hart Publishing, 2001. Accessed May 12, 2022. <http://dx.doi.org/10.5040/9781472559111.ch-003>.

Bazemore, Gordon and Mark S. Umbreit. *A Comparison of Four Restorative Conferencing Models*. Page 5. (2001).

After the conference is over, the conferencing program facilitator will track the progress of the restorative contract and, since almost all conferencing cases are criminal matters, report the progress of the contract to the police, courts, or other agencies that referred the offender. If the contract is completed, the offender has their case dismissed or charges are never filed. If the contract is broken, the victim still has the opportunity to seek justice in court.

# Benefits of Restorative Conferencing over Traditional Justice Approaches

Restorative conferencing, because it often deals with greater harms and more criminal cases than community mediation, may take longer and be more expensive than community mediation, but it may still be less expensive and faster than court.<sup>94</sup> In addition, it brings with it major additional benefits, such as increased party satisfaction, greater likelihood of apologies and restitution for victims of crime, reduced recidivism, and may even reduce the overall cost of crime to a community.

## Short-term Benefits

### Party Satisfaction

Like community mediation, one of the most important indicators of the benefits of restorative conferencing is the high satisfaction rates with the process. Several studies have looked at victim satisfaction with conferencing. An evaluation of 12 different conferencing sites in Minnesota found that victim satisfaction with the process and outcome hovered between 93% and 95%.<sup>95</sup> A preliminary report of conferencing in Washington County, MN found that 100% of the victims were satisfied with the process, and 80% of victims were satisfied with the restitution they received.<sup>96</sup> A majority of studies have found that victims overwhelmingly recommend the process to others.<sup>97</sup> While less research has been done on offender perception of the process, one New Zealand study found that 73% of offenders were satisfied with the conferencing process, as opposed to 54% of offenders that went through the court system.<sup>98</sup>

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<sup>94</sup> For example, the Longmont Community Justice Partnership's community group conferencing programs cost a little over \$1,000 per case, and take 2-3 months to complete, as opposed to community mediation programs which may resolve cases in weeks.

<sup>95</sup> Latimer, Jeff., & Kleinknecht, Steven. (2000, January). *The Effects of Restorative Justice Programming: A Review of the Empirical*. Department of Justice Canada, Research and Statistics Division. Retrieved May 2022, from [https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00\\_16/](https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00_16/)

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.



# Long-term Benefits

## Offenders are More Likely to Repair Harm

In what is again a somewhat surprising outcome, community conferencing seems to lead to more restitution and reparation for victims. In at least some preliminary findings from a comparison of conferencing to traditional court, Strang, Barnes, Braithwaite and Sherman found that while only 8% of victims reported getting an apology and restitution from offenders in court, 83% of victims in conference cases reported getting an apology and restitution.<sup>99</sup>

## Reduced Mental Issues for Victims

Conferencing also appears to have long term mental health benefits for victims. In London, two randomized, controlled trials were performed to test the effects of conferencing on victim Post-Traumatic Stress Symptoms (PTSS) after experiencing a robbery or burglary. Victims that attended restorative conferences showed 49% less instances of clinical PTSS symptoms than victims who went through traditional court processes.<sup>100</sup>

# Community Benefits

## Reduced Recidivism

By far the most promising, and well researched, area of restorative conferencing is its effects on recidivism. A meta analysis of 25 restorative conferencing programs, including nearly 12,000 youth offenders, found that restorative conferencing reduced recidivism among youth offenders by an average of 11%.<sup>101</sup> A study of the Australian Capital Territory juvenile offender conferencing program found a decrease in matched-case reoffenses of over 30%.<sup>102</sup> Individual program studies include an Alameda County, California program that reduced recidivism rates for juveniles by 13.7%, and a National Research Center report on the Longmont Community Justice Partnership's conferencing programs that found a recidivism rate of only 10% for program participants.<sup>103</sup>

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99 Ibid.

100 Angel, Caroline. M., Sherman, L. W., Strang, H., Ariel, B., Bennett, S., Inkpen, N., Keane, A., & Richmond, T. S. (2014). *Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: A randomized controlled trial*. *Journal of Experimental Criminology*, 10(3), 291–307. <https://doi.org/10.1007/s11292-014-9200-0>

101 Bradshaw, B., Roseborough, D. (2005). *Restorative Justice Dialogue: The impact of mediation and conferencing on juvenile recidivism*. *Federal Probation*, 69 (2), 15 – 21.

102 Broadhurst, Roderic & Morgan, Anthony & Payne, Jason & Maller, Ross. (2018). *Restorative Justice: An Observational Outcome Evaluation of the Australian Capital Territory (ACT) Program*. 10.13140/RG.2.2.11625.44643.

103 *Analysis of Longmont Community Justice Partnership Database 2007-2009* National Research Center. May, 2010.

## Reduced Long-term Costs of Crime

While comparative research of the costs of restorative conferences as opposed to court are difficult to find, some studies have found that the cost savings of crimes prevented far outweighs the traditional justice system. One meta-review of 10 restorative conferencing studies in the UK found that the reduced recidivism caused by restorative conferencing reduced the costs of crime to those communities by between 3x and 8.1x more than the cost of the conferences.<sup>104</sup>

## Better Community Policing

Some minimal research also indicates that conferencing can result in more community-oriented policing. A study of the Bethlehem, PA Police Department's conferencing program found that officers said that they had a more community-oriented and problem-solving approach to their work after attending the conferences.<sup>105</sup>

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104 Sherman, L.W., Strang, H., Mayo-Wilson, E. et al. *Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review*. *J Quant Criminol* 31, 1–24 (2015). <https://doi.org/10.1007/s10940-014-9222-9>

105 Latimer, Jeff., & Kleinknecht, Steven. (2000, January). *The Effects of Restorative Justice Programming: A Review of*

# Drawbacks of Restorative Conferencing

Restorative conferencing carries similar drawbacks to mediation, in that it may be limited in which victims it can help and there is a lack of due-process protections and transparency in the process.

## Limited Benefits for the Most Distressed Victims

One drawback of restorative conferencing is that it may be limited in the types of victims it can serve. Some research indicates that the victims who experienced the most distress from a crime may not experience recovery through the restorative conferencing process. One study of 1,400 conferences in South Africa found that while after one year, 95% of the no-distress, 78% of the low-distress, and 63% of the moderately-distressed victims had recovered, 71% of the high-distress victims had not yet recovered.<sup>106</sup>

## Can't be Used for Fact-finding

Conferencing, like mediation, is primarily a collaborative process for parties that have agreed that a harm occurred and where the offender has taken responsibility for at least some of the harm. Restorative conference facilitators are not attempting to address whether or not a crime occurred, but how to address the harm caused by that crime, meaning restorative conferencing can likely not be used for fact finding and determining guilt or innocence.<sup>107</sup>

## Lack of Public Transparency & Due Process

Similar to community mediation, restorative conferencing is a private process that is kept confidential between the parties. The criticisms that apply to mediation in this way may also apply to restorative conferencing.

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*the Empirical*. Department of Justice Canada, Research and Statistics Division. Retrieved May 2022, from [https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00\\_16/](https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00_16/)

<sup>106</sup> Daly, Kathleen. *Project Overview and Research Instruments*. Griffith. South Australia Juvenile Justice, December 1998. [https://www.griffith.edu.au/\\_data/assets/pdf\\_file/0023/223736/1998-Daly-SAJJ-CJ-Tech-report-1-Project-overview.pdf](https://www.griffith.edu.au/_data/assets/pdf_file/0023/223736/1998-Daly-SAJJ-CJ-Tech-report-1-Project-overview.pdf).

Daly, Kathleen. *The Limits of Restorative Justice*. Antonio Casella. Griffith University, January 15, 2005. Page 10. [http://www.antonioacasella.eu/restorative/Daly\\_2005.pdf](http://www.antonioacasella.eu/restorative/Daly_2005.pdf).

<sup>107</sup> Daly, Kathleen. *The Limits of Restorative Justice*. Antonio Casella. Griffith University, January 15, 2005. Page 3. [http://www.antonioacasella.eu/restorative/Daly\\_2005.pdf](http://www.antonioacasella.eu/restorative/Daly_2005.pdf).

## Restorative Conferencing Case Study - Longmont Community Justice Partnership

# Community Group Conferencing Programs

### Summary

- Organization: Longmont Community Justice Partnership (LCJP)
- Programs: Community Group Conferencing (CGC), RESTORE
- Location: Longmont, CO
- Established:  
Community Group Conferencing: 1997  
RESTORE: 2015
- Cases per year: 80-100
- Average case length: Under 60 days
- Average case cost: \$1,125/case
- Caseload: 7-9% of misdemeanor violations in Boulder County - Longmont, CO
- Impact: Over 90% of contracts completed, 10% recidivism rate, and 95% of participants satisfied with the conferencing process

### Operations

- Staff: 3
- Volunteers: 65

### Support

- Community: 65%
- Government: 35%

### Impact Story - Welding Justice

“Mike” was an employee of a major corporation with stores in Longmont, CO. He was caught embezzling money from the store he worked at, and was promptly fired. His case was diverted to Longmont Community Justice Partnership’s community group conferencing program.

When he entered the program, LCJP staff used their “strengths-based” approach to learn more about who he was as a person outside of the crime he had committed. It turned out that he was an aspiring welder, and his dream was to weld pipes in Alaska. He told LCJP staff he noticed when he was working at the corporation that there were several cart corrals that had fallen into disrepair, and there was no one to fix them.

In the conference, Mike and his employer agreed that he could restore them in a way that would use his new skills to help the corporation he harmed.

Instead of being charged with embezzlement, Mike fixed all the cart corrals at the corporation's stores in the area, restoring some of the money he took and helping him train for the career he wanted.

## History of the LCJP's Community Group Conferencing Programs

The Longmont Community Justice Partnership began as Teaching Peace, a national educational program focused on school bullying and violence prevention. However, after a few years, they felt like they were “expending our energy with this national effort and neglecting our own community,” wrote Beverly Title, Teaching Peace's founder.<sup>108</sup> In 1997, Teaching Peace received a grant from the Colorado governor's office and formed a partnership with the Longmont, CO police department, probation department, and school system to start implementing restorative conferences.

From these humble beginnings, Teaching Peace, now renamed the Longmont Community Justice Partnership (LCJP), has grown their community conferencing program from a small pilot in Colorado to national and international acclaim, presenting their model at international conferences including in the Netherlands, Canada, and Chile. To date, LCJP's programs have diverted 2,600 offenders from Longmont's municipal courts and Boulder County's criminal courts. Today, Longmont Police divert 80-100 offenders per year into LCJP's conferencing programs, just under 10% of Boulder County's misdemeanor criminal caseload.

## How LCJP's Community Group Conferencing Programs Work

LCJP has two community conferencing programs, community group conferencing, which is a facilitated dialogue between victims or victim surrogates and offenders, and RESTORE, a program that focuses specifically on reducing shoplifting. However, offenders for both programs come in about the same way.

Both store owners and the police refer offenders, what LCJP staff calls “responsible persons,” to LCJP through a referral form. If the police have been called, LCJP also receives a copy of the police report. The first thing LCJP staff do is reach out to the victim. “We share with the victim all the options for participating,” Dana Henderson, LCJP's Community Programs Director, says. Victims can choose to send the case directly to court, nominate a friend or family

108 Title, B. B. (2009, March 24). *HISTORY: OUR FOUNDER'S STORY HISTORY & OPERATIONAL VALUES OF TEACHING PEACE*. Longmont Community Justice Partnership. Retrieved May 2022, from [https://static1.squarespace.com/static/5b43b22d266c074e470c4796/t/5e93ba3e21219916190b68f9/1586739776906/LCJP\\_Founder\\_Beverly+History\\_.pdf](https://static1.squarespace.com/static/5b43b22d266c074e470c4796/t/5e93ba3e21219916190b68f9/1586739776906/LCJP_Founder_Beverly+History_.pdf)

member to participate in their stead, or participate in the process themselves.

Then, LCJP staff reach out to the responsible person. “We’re listening for what happened, and what responsibility they take,” says Dana. Based on the level of offense, they’ll determine which of LCJPs programs to send them to.

After LCJP staff screen the case, they hand it off to one of their 38 volunteer facilitators for the pre-conferencing process. The pre-conferencing process involves several separate calls with the victim and offender, and they look different for each.

Calls to the victim are primarily focused around what they need, how the process works, and what they are looking for to restore the harm. Calls to the offender focus on the process, but also who they are outside of just the crime. “During the time that we’re working with that responsible person, the volunteers in that pre-conference meeting are finding out, like, who are you? Who do you love? What do you think of, you know, what, what are your strengths and skills?” “That’s supporting this idea of ‘hey, we know that you are more than the decision you made.’”

When LCJP’s volunteer facilitators believe both parties are ready to reach an agreement, they will schedule a conference. At this conference, victims and offenders are encouraged to bring support persons, such as a relative or friend. Community members are invited to bring insight and voice impact, and the responding officer is often invited as well. “Most conferences include 2 facilitators, 2 community members, a responsible person, their support person, a police officer and a harmed party (victim) for a total of 8 people,” Jessica Goldberg, LCJP’s Training Institute Manager, says.

During the conference, everyone takes turns exploring what happened, who was affected and how, and what needs to be done to repair the harm. The victim shares how the crime impacted them, and the officers and community members give their perspective on how it affected the larger community. The responsible person answers questions the victim and community members want to ask. “The thing [victims] want most to understand is ‘why did this happen?’, ‘what did I do to cause harm to come my way?’ ‘Why did the person decide to do this?’,” Jessica says.

At this point in the process, the responsible person will take responsibility for the harm they’ve caused, and often offer an apology to the victim. Then, the victim and responsible person work together to create a “restorative contract,” an agreement on what the responsible person will do to repair the harm. This typically includes an apology letter, educating others on the harm they’ve caused, and may include some kind of restitution. At the end of the conference, they set a contract deadline, typically under 6 months, by which that harm will be repaired. “And then hopefully, there’s some work that follows and a celebration at the completion of that process.” says Dana.

## Impact

LCJP offers more than hope, however, that offenders will complete the process. Since 2007, LCJP has partnered with PenLink - a Colorado-based data analysis company - to track the completion rates of their contracts. Both youth and adults complete over 80% of their contracts, and their completion rate in the past 5 years is even higher, hovering at between 90% and 95%, Jessica says.<sup>109</sup>

More importantly, LCJP's responsible persons are less likely to reoffend after the contract is completed. According to an independent study by the National Research Center of LCJP's programs from 2007-2009, only 10% percent of responsible persons reoffended within one year, over three times less than that of the Colorado Division of Youth Services' 32% average recidivism rate in the same period.<sup>110</sup>

Satisfaction rates with the process for victims, responsible persons, and even community members hover around 95% as well. "I was afraid we were all going to be like holding hands and, you know, hitting the tambourine and singing and, and stuff," one of LCJP's police liaisons, Commander James Brown, says. "I can tell you, from a firsthand account, that the accountability that comes out of these conferences, especially for lower level offenses, is often much greater than what comes out of the criminal justice system. it would be much easier just to pay a fine than it would be to take the steps that often come out of these contracts in order to actually repair that harm and make a meaningful impact."

Another specific impact for victims, and even the responding officers who participate, is that they get to hear the responsible person actually take responsibility for their actions. "One of the reasons why police officers have bought into restorative justice and have agreed to participate is because they go to trial often as witnesses, and they don't hear anyone taking responsibility. But when they come to restorative justice, they hear it," Jessica says.

Finally, Jessica says, their program helps preserve future agency for the responsible person. "If the responsible person gained a criminal record, they "wouldn't be able to choose the job they want, get the loan for school that they need, or be seen by their family in the same way. By having an alternative process, we've preserved that agency in their life for them."

LCJP charges the responsible person a \$125 fee to participate in their conferencing programs, and the average cost of each case to LCJP is \$1,125.

109 *Restorative Justice: An Evidence Based Approach*. LCJP. Penlink, 2020. <https://www.lcjp.org/data-penlink>.

110 Rep. *Colorado Judicial Branch Annual Statistical Report Fiscal Year 2019*. 78. Colorado Courts, 2020. <https://spl.cde.state.co.us/artemis/scserials/sc112internet/sc1122019internet.pdf>.

## Why They Work

Dana says the most important thing that makes LCJP's programs work is their relationship with the Longmont Police Department (LPD). LCJP trains each of LPD's incoming officers in restorative justice principles. "They're the ones out there doing the screening," she says, referring to the two criteria officers use to evaluate for potential diversion to LCJP's programs. LCJP has a liaison team of 11 officers, and officers are invited to participate in the conferences themselves. "When police officers participate, their engagement in the process is what fuels their excitement and willingness to refer" Dana says.

Another thing that makes the program work is the dialogue between victims and responsible persons. "A court proceeding is set up to protect the rights of the people accused of a crime, so they don't have dialogue with the people they harmed," Jessica says. To avoid incriminating themselves, responsible people will often take little or no responsibility in a courtroom. However, the conference provides a safe space for the responsible person to admit and apologize for harm. "The beautiful thing about it is that with greater understanding, with a feeling of safety there's a willingness to be vulnerable, and accountability requires vulnerability," she says.

Finally, Dana cites LCJP's strengths-based approach as key to their success. When volunteer facilitators speak to the responsible person about the case, they look to learn more about who they are outside of just the harm they've caused. They identify that person's strengths and skills, not just to make the responsible person feel better about themselves, but to create a meaningful restorative contract. "We integrate those strengths into meaningful repair items that can go on the contracts, because that makes a big difference" Dana says.

## Funding and Support

LCJP's community conferencing programs are 60% community supported, including voluntary donations and volunteer hours, and receive 40% of their income from the city of Longmont.

"At a minimum, our programs require two full-time staff, but ideally 3 full-time," Jessica says. LCJP staff do all the intake, assessment, case management, and volunteer coordination, as well as building relationships, maintaining relationships, and training with justice system partners like the police and courts. LCJP has 65 total volunteers, most of whom serve as either community surrogates, who represent the victim when they don't want to attend a conference, or conference facilitators. The rest serve the program through administration, board, and committee work.



## How to Implement a Restorative Conferencing Program in Your Community

The first thing LCJP recommends for starting a similar program in another community is patience. “It takes a lot of diligence to win over [justice] system-involved stakeholders,” Jessica says. LCJP uses implementation science in their training institute, which helps train other organizations and leaders how to implement LCJP’s model in their community. They estimate it will take about 3 years to get something like this moving in a community. “Having time is really necessary.”

The second thing LCJP recommends is to get stakeholders involved early. “If the program’s not off the ground yet, have [stakeholders] participate in designing the program,” Jessica says. They recommend getting as wide a swath of justice-involved stakeholders as possible, including public defenders, district attorneys, and police officers.

Finally, LCJP strongly recommends starting the program under a nonprofit to build trust among both systems-involved stakeholders and victims and offenders going through the criminal justice system. “We can engage with more systems-affected people than government based programs can, because there’s an expectation that we have a community base and that we’re accountable to our community, not just to the people up the chain from us,” Jessica says.

For advice on implementing a similar program in your community, contact LCJP at <https://www.lcjp.org/>.

## Solution #3 - Victim-Offender Dialogue

# Introduction to Victim-Offender Dialogue

Victim-Offender Dialogue (formerly known as Victim-Offender Mediation) is the oldest and most studied approach to delivering effective justice outside of the court system. First started in 1974 by two youth probation volunteers in Canada, over 300 programs now serve thousands of cases per year in the United States.<sup>111112</sup>

Victim-offender dialogues (VODs) are used almost exclusively for criminal cases, and in many cases replace a standard criminal trial, though the victim has the opportunity to take the case to court if the outcome is unsatisfactory in many instances. In most programs, the VOD is initiated by the victim, though they can also be initiated by the prosecuting attorney and, in some cases, offenders as well.

A VOD typically consists of four steps. First, an agency will receive a referral from the victim, perpetrator, or court official such as a prosecutor. Secondly, the agency will check with both the victim and the perpetrator to see if they would like to proceed with the dialogue process. If both agree, then the agency holds preparatory meetings with the victim and perpetrator as well as support persons. The victim is prepared to tell their story and to consider what would help repair the harm. The offender is walked through taking responsibility for their actions and listening to the victim. Then, the agency schedules a dialogue between the victim, offender, and support persons, after which an agreement is signed listing out what the offender will do to repair the harm they caused. Finally, the agency monitors the agreement to completion, and when complete, contacts the court to have the charges removed from the perpetrator's record.

As one of the most studied alternative approaches to justice, VOD offers numerous, well-backed benefits over traditional prosecution. In the short term, both victims and offenders are more satisfied with the process than with traditional court proceedings, perceive the processes as fairer, and see higher completion rates of agreements and restitution paid than traditional justice approaches. In the long term, VODs can improve the attitudes of both the victim and offender toward each other, and the process likely significantly reduces offender recidivism.

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111 Gustafson, D. *Encountering 'The Other': Victim Offender Dialogue in Serious Crime*. Ku Leuven, 2018. [https://lirmo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1996032&context=L&vid=Lirias&search\\_scope=Lirias&tab=default\\_tab&fromSite-map=1](https://lirmo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1996032&context=L&vid=Lirias&search_scope=Lirias&tab=default_tab&fromSite-map=1)

112 Umbreit, Mark S., Robert B. Coates, and Betty Vos. *Victim-Offender Mediation: Three Decades of Practice and Research*. *Conflict Resolution Quarterly* 22, no. 1-2 (2004): 279–303. <https://doi.org/10.1002/crq.102>.

However, there are some drawbacks to consider as well. Similar to other alternative justice approaches, due process may be scarce or nonexistent. Victims and offenders may refuse to participate. While there has been some promising evidence that VODs can be used to help repair harms after violent or intimate crimes, there is a significant risk of revictimization of victims in these cases.

## History of Victim-Offender Dialogue

Victim-Offender Dialogues first started in 1974, when two youth probation volunteers became frustrated with the proceedings in the traditional Canadian criminal justice system and started to brainstorm about possible alternatives. When they came across a case where two youth offenders were arrested for vandalizing the small rural community of Elmira, Ontario, they suggested that the two perpetrators meet with all 22 of the victims in the community. The judge, originally interested but skeptical of the idea, reversed his decision and agreed to let the victims and perpetrators meet. After which, the offenders met with and apologized to their victims and ultimately paid restitution to “make things right”.<sup>113</sup>

Four years later, in 1978, VOD spread to the United States through the advocacy of several local probation officers and the Mennonite Church. It started with a few cases in Elkhart County, a community of approximately 137,000 [in 1978], in Northern Indiana. Judge William Bontrager referred some cases to a group of probation officers and the Mennonite Central Committee to experiment with. The results seemed to help reconcile victim-offender conflicts. While it initially started in the probation office, it became obvious that a community-based program was necessary, in order for it to develop. Additionally, third party, neutral citizens were believed to be a better fit for the mediation process, because they did not have the conflict of interest inherent in the probation officers.<sup>114</sup>

Then in 1983 a Community Service and Victim Assistance program was started in the small rural town of Batavia, New York. What made this program unique was that it was part of a larger and more intense victim assistance program, operated by the Genesee County Sheriff's Department. Between 1983 and 1985 only 17 cases went through the VOD program, but nearly all of the them involved violent offenses like homicide, rape, armed robbery, and assault.<sup>115</sup>

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113 *Victim offender dialogue*. Restorative Justice Mediation Program. (2021, August 17). Retrieved May 18, 2022, from <https://www.sdrjmp.org/services/victim-offender-dialogue/>

114 *Victim Offender Mediation: Conflict Resolution and Restitution*. (1985). US Department of Justice Office of Justice Programs. Retrieved May 18, 2022, from <https://www.ojp.gov/pdffiles1/Digitization/101322NCJRS.pdf>

115 *Ibid.*

Within a couple decades of the first cases in Ontario and Indiana, VOD programs expanded worldwide, including in the United States.<sup>116</sup> A study completed in 2000 found that at least nineteen states had passed legislation promoting a more balanced and restorative juvenile justice system, which included victim-offender dialogues.<sup>117</sup> By the early 2000s, VODs were being endorsed and encouraged by two international bodies: the United Nations and the Council of Europe.<sup>118</sup>

Victim Offender Dialogues remain the oldest and most widely developed usage of restorative justice practices; they have been in practice for over 50 years and several thousand cases a year are handled by VOD programs across the United States.<sup>119</sup> As of 2002, there were over 300 VOD programs across the United States.<sup>120</sup>

### How Victim-Offender Dialogue Works

A Victim-Offender Dialogue is a structured conversation between the victim, offender, and typically their support persons, that seeks to find ways to repair the harm caused.

In many programs, a VOD can only be initiated by the victim when they want to have a conversation with the offending party. The victim may want to initiate this dialogue for numerous reasons. Often, they want information about the offense or the offender. They may also be interested in sharing how the perpetrator's actions affected them and others. Finally, the victim may have an idea how to heal some of the harms caused by the offender.<sup>121</sup> Some other programs allow initiation by the offender's side or a referral by other people on the behalf of the victim, like therapists or aboriginal elders.<sup>122</sup>

Some VOD programs work with victims pre-charge, meaning that a charge does not yet appear on the offender's record even if a citation has been issued, and others work with victims after the offender has been charged but before they are convicted. Regardless of the stage in the process a dialogue is initiated, the VOD process typically consists of four steps.

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116 Ibid.

117 Mark, U. S., Vos, B., Coates, R. B., & Lightfoot, E. (n.d.). *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*. Marquette Law Review. Retrieved May 2022, from <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1098&context=mulr>

118 Umbreit, Mark S., Robert B. Coates, and Betty Vos. *Victim-Offender Mediation: Three Decades of Practice and Research*. *Conflict Resolution Quarterly* 22, no. 1-2 (2004): 279–303. <https://doi.org/10.1002/crq.102>

119 Gustafson, D. *Encountering 'The Other': Victim Offender Dialogue in Serious Crime*. *Ku Leuven*, 2018. [https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1996032&context=L&vid=Lirias&search\\_scope=Lirias&tab=default\\_tab&fromSite-map=1](https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1996032&context=L&vid=Lirias&search_scope=Lirias&tab=default_tab&fromSite-map=1)

120 Umbreit, Mark S., Robert B. Coates, and Betty Vos. *Victim-Offender Mediation: Three Decades of Practice and Research*. *Conflict Resolution Quarterly* 22, no. 1-2 (2004): 279–303. <https://doi.org/10.1002/crq.102>.

121 University of Wisconsin-Madison Law School. *Victim-Offender Dialogue*. Accessed May 11, 2022. <https://law.wisc.edu/fjr/rjp/vod.html>

122 Gustafson, D. *Encountering 'The Other': Victim Offender Dialogue in Serious Crime*. *Ku Leuven*, 2018. [https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1996032&context=L&vid=Lirias&search\\_scope=Lirias&tab=default\\_tab&fromSite-map=1](https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1996032&context=L&vid=Lirias&search_scope=Lirias&tab=default_tab&fromSite-map=1)

1. **Referral** - At the beginning of the dialogue process, the victim, court officer, or other involved person contacts a qualified agency that conducts VOD programs. The agency will often screen that case for the type of harm and involved parties. If the VOD agency is willing to facilitate the case, they will begin contacting each party. VOD program staff will often ensure that the offender has taken responsibility for the crime, any minors have been given permission to participate, and there are no mental health issues that could inhibit the process.<sup>123</sup> If both the victim and offender agree to participate, the agency will discuss with the victim what happens next.<sup>124</sup>
2. **Preparation** - Upon agreeing to facilitate the case, the VOD agency will hold preparatory meetings with both parties to discuss the process. With the victim, VOD program staff will prepare them to tell their story and encourage them to think about what might repair the harm caused. With the offender, VOD staff will often walk them through taking responsibility for their actions and listening to the victim. Both parties are also typically offered the opportunity to select support persons to join them in the dialogue. Once both parties are prepared, the facilitators will schedule a meeting in a safe environment that all parties agree to meet at for the dialogue.<sup>125</sup>
3. **Dialogue** - The VOD agency then facilitates a conversation between the victim, offender, and support persons about the harm caused. The exact structure of the VOD varies from program to program, but typically the facilitator will help each party walk through their experiences and ask questions of the other.<sup>126</sup> Towards the end of the dialogue, an agreement is crafted where the offender specifically lays out how they will repair harm caused, and the agreement is signed by both parties.
4. **Follow-up** - After the dialogue, the facilitator informs the referring agency of the agreement. After informing the agency, VOD staff monitor the completion of the agreement by the offender and keep the victim informed of the offender's progress. When the agreement is fulfilled, the VOD staff typically schedule a follow-up meeting. Often victims and offenders find this final meeting a symbolic closure to the whole ordeal. If no final meeting is requested, VOD staff notify the victim of the agreement's completion. In both cases, the staff then follow up with the referring agency on the next steps required to close the case, which may include the release of probation or other similar steps.<sup>127</sup>

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123 Hansen, Toran, and Mark Umbreit. *State of Knowledge: Four Decades of Victim-Offender Mediation Research and Practice: The Evidence*. Conflict Resolution Quarterly 36, no. 2 (2018): 99–113. <https://doi.org/10.1002/crq.21234>.

124 Ibid.

125 Amstutz, Lorraine Stutzman. *The Little Book of Victim Offender Conferencing: Bringing Victims and Offenders Together in Dialogue*. Intercourse, PA: Good Books, 2009.

126 Hansen, Toran, and Mark Umbreit. *State of Knowledge: Four Decades of Victim-Offender Mediation Research and Practice: The Evidence*. Conflict Resolution Quarterly 36, no. 2 (2018): 99–113. <https://doi.org/10.1002/crq.21234>.

127 Ibid.

# Benefits of Victim-Offender Dialogue over Traditional Justice Approaches

## Short-Term Benefits

There are a few short term benefits of VOD programs over traditional court proceedings. First, they have been shown to increase both victim and offender satisfaction with the outcome. Second, there is an increased rate of restitution. Finally, offenders often pay more, and sometimes significantly more, restitution in VOD programs than through traditional justice processes, even though the contracts are not enforced by a court.

### Victim Satisfaction

Like the other programs in this report, VOD is a voluntary program, and victims often refuse to participate. Across numerous studies, approximately 47% of victims chose not to participate, either because they didn't see the time required as necessary for the crime, feared meeting the offender, or wanted the offender to be more harshly punished.<sup>128</sup> However, for those victims that did participate, satisfaction rates are incredibly high, with an average of 80-90% of participants reporting being satisfied with the process.<sup>129</sup> Additionally, injured parties express feelings of empowerment and having a sense of emotional healing for being involved in the process.<sup>130</sup>

### Offender Satisfaction

Similarly, offenders also report much higher satisfaction rates. Some studies suggest 80 to 90 percent of participants who participate in restorative processes and the resulting agreement are satisfied.<sup>131</sup> Other benefits for the offender found them being more empathetic to their victims, feeling empowered, and avoidance of further involvement with the criminal justice system.<sup>132</sup>

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<sup>128</sup> Umbreit, Mark S., Robert B. Coates, and Betty Vos. *Victim Impact of Meeting with Young Offenders: Two Decades of Victim Offender Mediation Practice and Research*. Restorative Justice for Juveniles : Conferencing, Mediation and Circles. Accessed August 28, 2022. <https://doi.org/10.5040/9781472559111.ch-007>.

<sup>129</sup> Ibid.

<sup>130</sup> Umbreit, M. *Restorative Justice Through Mediation: The Impact of Offenders Facing Their Victims in Oakland*. Journal of Law and Social Work, 1995. <https://westerncriminology.org/documents/WCR/v01n1/Umbreit/Umbreit.html>

<sup>131</sup> Umbreit, Mark S., Robert B. Coates, and Betty Vos. *Victim Impact of Meeting with Young Offenders: Two Decades of Victim Offender Mediation Practice and Research*. Restorative Justice for Juveniles : Conferencing, Mediation and Circles. Accessed August 28, 2022. <https://doi.org/10.5040/9781472559111.ch-007>.

<sup>132</sup> Shack, J. (n.d.). *40 Years of Victim-Offender Mediation Research: Benefits to Victims, Offenders, Courts and Community*. Just court ADR. Retrieved January 28, 2022, from <http://blog.aboutsi.org/2019/research/40-years-of-victim-offender-media->

## Perception of Fairness

Potentially because the focus of a VOD shifts from a powerful arbitrator such as a judge, to simply the victim and offender, both participants often believe that the VOD process is fair. In a study of burglary victims in Minneapolis, MN, only 37% of burglary victims perceived the traditional justice process as fair, compared to 80% of burglary victims who participated in a VOD with their offender.<sup>133</sup>

## High Agreement and Completion Rates

VODs also tend to result in high agreement, and contract completion rates. In a meta-analysis of nearly 25 studies, nearly 90% of VODs resulted in an agreement, while an average of around 80-90% of those contracts were completed.<sup>134</sup>

## Higher Restitution Paid

Finally, some research has also shown impressive increases not just in contract completion, but in the amount of restitution paid. One study in California looked at the amount of restitution paid by youth offenders who went through a VOD as opposed to youth that went through traditional justice practices, and found increases from 95% (Sonoma County) to over 1,000% (Los Angeles County) increase in restitution paid.<sup>135</sup>

## Long-Term Benefits

### Changed Attitudes

Both victims' and offenders' attitudes may change, as a result of the process. Victims get an overall better understanding of offenders, along with, "the nature and causes of crime, and a reduced sense of alienation as a result of this process." Offenders, on the other hand, have the ability to demonstrate their commitment to the community and show they are not "just a monster."<sup>136</sup> One study of a Utah VOD program found that victims not only saw dialogue as a helpful process, but they had a better opinion of the offender after the process. Offenders agreed that they would recommend mediation to a friend and that they had a better understanding of how the victim was affected after the VOD process was complete.<sup>137</sup>

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[tion-research-benefits-to-victims-offenders-courts-and-community/](#)

133 Umbreit, Mark S., Robert B. Coates, and Betty Vos. *Victim-Offender Mediation: Three Decades of Practice and Research*. Conflict Resolution Quarterly 22, no. 1-2 (2004): 290. <https://doi.org/10.1002/crq.102>.

134 Ibid.

135 Evje, Audrey, and Robert C Cushman. Rep. *A Summary of the Evaluations of Six California Victim Offender Reconciliation Programs*. The Judicial Council of California Administrative Office of the Courts, May 2000. <https://www.courts.ca.gov/documents/vorp.pdf>.

136 Amstutz, Lorraine Stutzman. *The Little Book of Victim Offender Conferencing: Bringing Victims and Offenders Together in Dialogue*. Intercourse, PA: Good Books, 2009.

137 Poulson, Barton, and Kathy Elton. *Participants' Attitudes in the Utah Juvenile Victim-Offender Mediation Program*. Juvenile and Family Court Journal 53, no. 1 (2002): 37-45. <https://doi.org/10.1111/j.1755-6988.2002.tb00054.x>.

# Community Benefits

## Reduced Recidivism

From 2002 until 2012, seven out of eight meta-analyses showed a small to a significant reduction in offender recidivism. The most recent meta-analysis by authors Wilson, Olaghere, and Kimbrell found, "... evidence regarding the effectiveness of these programs in reducing continued delinquent behavior is promising, but given methodological weaknesses of the literature, is not at a level that would allow for a strong positive conclusion. Simply stated, the results are promising but not conclusive."<sup>138</sup>

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138 Wilson, D. B., Olaghere, A., & Kimbrell, C. S. (2017). *Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta Analysis*. Department of Justice. Retrieved from <https://www.ojp.gov/pdffiles1/ojdp/grants/250872.pdf>.



# Drawbacks of Victim-Offender Dialogue

## Due Process Concerns

There are potential drawbacks for all three groups involved in the dialogue: the victim, the offender, and the community. Victims may have unrealistic expectations of what to expect. Offenders are often fearful of what the victim may request for restitution. And the community may misuse VODs or view it as too soft on offenders.<sup>139</sup>

Victim expectations may be in many potentially harmful directions. Some victims may simply want to move on and not relive the event, as it may bring them too much pain. Others may receive some mental relief due to the proceedings. However, it is important to remember that the VOD process is not therapy; it is also a two-way street. If offenders do not empathize with the anguish they caused, it could be problematic for victims. Another avenue of disappointment for the victim is if the offender is unwilling or unable to provide adequate restitution.<sup>140</sup>

## Victim and Offender Reluctance

As discussed above, nearly half of all victims choose not to meet with an offender when given the opportunity.<sup>141</sup> Victims may see the process as unnecessary, frightening, or too soft on the offender and refuse to participate.

Perpetrators, on the other hand, will often worry about facing their victims, even if they are in a controlled, safe environment. Offenders may fear that their victim may want to exact revenge against them; they feel the victim may ask an exorbitant amount of restitution or may resort to violence themselves.<sup>142</sup>

## Revictimization

One final drawback is members of a community may feel that VOD is too soft on crime. If the community does not understand the benefits and principles of the VOD program, and participate in designing and operating the program, VOD programs may be seen as an easy way out of punishment for a crime committed.<sup>143</sup>

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139 Amstutz, Lorraine Stutzman. *The Little Book of Victim Offender Conferencing: Bringing Victims and Offenders Together in Dialogue*. Intercourse, PA: Good Books, 2009.

140 Ibid

141 *Victim Impact of Meeting with Young Offenders: Two Decades of Victim Offender Mediation Practice and Research*. Restorative Justice for Juveniles: Conferencing, Mediation and Circles. Accessed August 28, 2022. <https://doi.org/10.5040/9781472559111.ch-007>.

142 Ibid.

143 Ibid

## Victim-Offender Dialogue Case Study - Restorative Justice Mediation Program

# Victim-Offender Dialogue Program

### Summary

- Organization: Restorative Justice Mediation Program
- Program: Victim-Offender Dialogue Program
- Location: San Diego, CA
- Established: 1993
- Cases per year: 60-80
- Average case length: 30-60 days
- Average cost per case: \$3,000-\$5,000
- Caseload: 4-6% of juvenile delinquency cases in San Diego County, CA
- Impact: Over 80% of contracts completed, 91.5% did not reoffend after one year (based on a parent survey), and 75-80% of negotiated restitution recovered
- Operations
- Staff: 4
- Volunteers: 12
- Support
- Community: 100%
- Government: 0%

### Impact Story - Returning the Ring

In 2017, “Adrian” broke into several homes in a wealthy neighborhood in San Diego County. Instead of being sentenced for burglary, he was diverted to the RJMP Victim-Offender Dialogue program.

When Adrian and one of the homeowners he had stolen from, “Enrique,” sat down together in the dialogue, Enrique learned that Adrian and his family struggled with food insecurity. Enrique had also struggled with food insecurity growing up, and began to see Adrian as more of a struggling youth than just a burglar of his home.

At one point during the dialogue, Enrique told Adrian that he had stolen a prized family heirloom, a ring he really cared about. He had assumed it was lost forever after the burglary, but after talking to Adrian, sensed that he might be able to get it back.

He asked if Adrian could return it. Two weeks later, RJMP staff received the ring and were able to give it back to Enrique. Enrique ended up employing Adrian at his family business over the summer. RJMP's victim-offender dialogue program helped Enrique recover a prized ring, and helped give Adrian a pathway out of a life of crime.

### **History of RJMP's Victim-Offender Dialogue Program**

In the Mennonite Community, when a young member of the community causes harm, community members bring the youth together to talk with the victim and work to address that harm. Pearl Hartz, a member of that community, had been regularly doing these dialogues in San Diego before she started the Restorative Justice Mediation Program (RJMP). "Most of the dialogues were between neighbors or people with kids going to the same school," Xiani Williams, Director of Programs at RJMP said. "At that time, it was mostly adults who just wanted to have a conversation with others."

In 1993, RJMP started to informally take on criminal diversions from San Diego's juvenile justice system. To date, 650 youth offenders have gone through RJMP's Victim-Offender Dialogue program. The San Diego County DA's office diverts approximately 60-80 youth offenders to the program every year, between 4-6% of San Diego County's juvenile delinquency caseload.

### **How RJMP's Victim-Offender Dialogue Program Works**

While, true to its roots, RJMP does take referrals directly from community members looking to repair harm, the vast majority of cases are referred to RJMP by the San Diego Juvenile Court. "I'd say over 90% of our referrals come directly from the court," Xiani says. The public defender and district attorney agree to divert a case, which is then sent to RJMP for screening.

The primary thing RJMP looks for in the case is whether or not there is a victim and identifiable harm, as opposed to "victimless crimes" like drug possession cases. The RJMP screener will also ensure the youth offender and their parents know the RJMP program is voluntary. "I do highly encourage them to go through the process because it's a diversion opportunity, but we don't want anyone going through the process if they don't want to participate," says Xiani.

Once the offender has been contacted and agrees to participate in the dialogue, the RJMP screener will contact the victim to explain the process and answer any questions. If both parties agree to proceed, the screener will assign facilitators to the dialogue process.

Since all of their facilitators are volunteers, Xiani does her best to assign the facilitators she believes will be the best fit. “Some facilitators might want to work more with younger kids, or older kids, some facilitators will travel the entire county of San Diego while others won’t travel as much, and we need to make sure the facilitator either speaks the language of the parties in dialogue or find a court translator before we start.” RJMP assigns two facilitators to each case, a lead facilitator and a facilitator in training to watch and learn the process.

Once facilitators are assigned to the case, they will hold two pre-dialogue meetings, one with the youth offender and their parents and one with the victim, where both parties have the opportunity to discuss with the facilitator what happened, express their feelings about the harm done, and talk about what they believe would be appropriate reparations. RJMP facilitators make sure the offender and victim lead this process. “We don’t suggest any specific options. We let both of the parties come up with options, and we might provide technical help such as where to do the community service, if they want community service, but we don’t suggest any specific reparation,” Xiani says.

In that process, facilitators will also make an assessment of whether or not the case should move forward to dialogue. “If the victim is too emotional or angry, or the offender is not taking responsibility for any of the harm, we wouldn’t move forward with the process,” says Xiani.

When both parties have agreed to the dialogue, facilitators help each party prepare for the conversation, often spending a significant amount of time with the youth offender. Facilitators may help the offender think about what they want to say at the dialogue, or if they’re particularly young, even help them write a script.

RJMP’s dialogue is fairly structured. First, the offender will speak about what happened from their point of view and answer questions. Then, the victim, their support person or parents (if the victim is a minor), and the offender’s parents will get to talk about how this harm affected them. The parent’s voice is an important part of the process, says Xiani. “A lot of the time parents don’t have a voice about how this has affected them too, as the parent of the offender, so they get to speak about that in the dialogue.”

Next, the dialogue focuses on reparations. Reparations can include community services, direct services, monetary restitution, or even personal goals the youth offender must complete. “A lot of the time the [reparation] agreement includes academic goals, such as graduating with a 3.5 GPA, something that is measurable and the court can determine if it has been achieved or not,” Xiani says.

The last part of the dialogue is “future intentions,” where the offender talks about what they plan to do to avoid causing this kind of harm again, such as attending an after-school program so they stay out of trouble. “This is really important to us,” says Xiani. “During future intentions is where the offender can help make the victim feel like this won’t happen again.” RJMP can also help the youth fulfill their future intentions by referring them to services, such as tutoring or another nonprofit like a Boys & Girls club.

Once the youth offender and their parents sign the reparation agreement, RJMP monitors the process, and collects payments on behalf of the victim, to ensure the agreement is met. If the youth offender doesn't fulfill their agreement, the case is sent back to court. If they fulfill their agreement, the court is notified and the case is dismissed.

## Impact

RJMP ensures that in most cases, the victims get the reparations they requested. In a survey of offenders that went through the program from 2019-2021, RJMP found that 80% of their youth offenders completed their agreements. In a survey of offender's parents from the same period, 91.5% reported their child had not reoffended within one year of completing the program, compared to the California Department of Juvenile Justice reconviction rate of 55.5%.<sup>144</sup>

RJMP also touts the effectiveness of their restitution recovery, the total dollar amount negotiated between victims and offenders, as they are able to recover between 75-80% of the restitution negotiated.

Xiani says that a big impact of their program on a youth offender is actually meeting someone that has been affected by their actions. "A teenager might not think it's a big deal to tag (graffiti) a wall or break into a school, because they can't really put a face to anyone that has been harmed by their actions," Xiani says. "It makes a big impact when they hear from, for example, a teacher that their six year olds were afraid to go to the classroom after what the youth did."

This impact goes both ways. In one case, a group of youth offenders damaged a senior home in San Diego. After meeting with the kids, instead of demanding restitution, the city manager worked with RJMP to propose a different solution. When the city manager met with the kids, he said, "instead of going around and destroying things, why don't we have you be a part of the new skate park we're building? They actually integrated the kids into their committee so they could have input on what the skatepark looked like."

Another big impact is that going through RJMP's program helps a youth offender avoid any more contact with the juvenile justice system. "We do know that those youth who have any contact with the criminal justice system have a higher likelihood of being in the system, again, failing at school and things like that," Xiani says.

Once the youth are referred to RJMP, their contact with San Diego's juvenile justice system ends. "The very tangible impact is that the youth offender won't have a record or any kind of contact with the criminal justice system that could potentially prevent them from getting jobs, scholarships, you know, we know the impact of, of all those things," says Xiani.

144 Rep. 2017 DIVISION OF JUVENILE JUSTICE RECIDIVISM REPORT. California Department of Corrections and Rehabilitation, January 2019. [https://www.cdcr.ca.gov/juvenile-justice/wp-content/uploads/sites/168/2020/10/2017-Division-of-Juvenile-Justice-Recidivism-Report\\_ADA.pdf](https://www.cdcr.ca.gov/juvenile-justice/wp-content/uploads/sites/168/2020/10/2017-Division-of-Juvenile-Justice-Recidivism-Report_ADA.pdf).

On average, RJMP processes a case within 30-60 days. RJMP doesn't charge anyone to participate in the program, but the cost to RJMP for each dialogue and the monitoring of agreements afterwards is \$3,000-\$5,000.

### **Why it Works**

One big reason RJMP staff say that the program works is that the youth offender actually takes ownership of the process. Because the youth offender works directly with the victim to create a reparation agreement, they have a say in how their lives can turn out. "These kids feel like life is happening to them," says Ian Ragsdale, RJMP's Executive Director. "This is the first time they can make a decision on where they want things to go."

RJMP staff also say that the high restitution recovery rate comes from how their program is structured. By negotiating monetary damages directly with the offender, they find that many victims will negotiate a restitution the offender can actually pay, sometimes innovatively. "Actually, it's not very uncommon for us to have victims offering jobs to the youth," Xiani says.

### **Funding & Support**

RJMP's victim-offender dialogue program is 100% community supported, including voluntary donations, volunteer hours, and fees for services.

4 staff are involved in the program, who receive cases, follow-up with participants, recruit and train volunteer facilitators, and manage relationships with stakeholders. RJMP also has 12 volunteer trained facilitators, who facilitate each of the dialogues.

## How to Implement a Victim-Offender Dialogue Program in Your Community

RJMP staff has two specific pieces of advice for anyone who wants to implement a victim-offender dialogue in their community: Establish relationships with stakeholders and work with victim advocacy groups.

First is engaging the stakeholders. While community referrals might one day make up the majority of RJMP's referrals, right now they come from systems-involved stakeholders. Xiani especially recommends pitching the idea to the District Attorney and public defenders. "You have to really sell them on that idea first, because you have to work with the system in order to reform the system," she says.

The second is working with victim advocacy groups. Because the victim gets to be involved in and drive the process, victim advocacy groups are often interested in victim-offender dialogue. They also serve as a natural funnel for cases for a new dialogue program, as they have a large number of victims that might seek a dialogue with a youth offender.

For advice on implementing a similar program in your community, contact RJMP at <https://www.sdrjmp.org/>.

## Solution #4 - Teen Court

# Introduction to Teen Court

While many of the previous approaches can be geared more towards adult populations, teen court is a promising approach to delivering speedy and effective justice for juveniles. A teen court is a “peer justice” diversion program. It operates much like a traditional juvenile court, however unlike a traditional juvenile court, other teens serve as the court clerks, bailiffs, attorneys, jurors, and sometimes as judges. The starting point of teen courts is hotly disputed by researchers, but the popularity of these courts exploded after Natalie Rothstein of Odessa, Texas created her teen court program in 1983. Today, there are over a thousand teen court programs in the United States, and they see over 100,000 cases annually.

Teen courts generally follow a five-step process. First, the teen perpetrator is diverted from the traditional juvenile justice system to a teen court. Secondly, the perpetrator and their parent or guardian participate in an intake meeting where the offense is discussed, the teen court process is explained, and in some cases the teen undergoes psychological and/or alcohol and drug evaluations. Third, the teen participates in a hearing in front of a jury of their peers where they are asked questions about their offense and able to answer. Fourth, the teen jury hands down a sentence to the perpetrator and a contract is signed indicating how the perpetrator will repair the harm. Fifth, the contract is monitored and, if completed, the perpetrator’s charges are removed from their record.

The benefits of teen courts overall have been a bit inconclusive and/or unstudied. Numerous studies have attempted to determine the impact of teen courts on recidivism, but the results have been mixed. One study did find an increase in knowledge of court processes and positive attitudes towards judges. There are also some drawbacks to this model, including limited sentencing options since those recommending a sentence are minors, and a statistically insignificant impact on other attitudes and actions, such as drug use, self-reported delinquency, or increase in self-worth compared to the juvenile justice system.

## History of Teen Court

The location and date of the first youth court is hotly disputed by researchers and practitioners, some placing it in California in the 1930s and others citing an informal youth court in Illinois in 1973.<sup>145</sup> However, several sources point to a 1949 edition of the Mansfield News Journal that contained an account about a youth-operated court.<sup>146</sup> It was called the “Hi-Y” bicycle court in which teen judges saw cases about minor traffic violations involving bicycles. The sanctions were reported to be to write 300-word essays about traffic violations.<sup>147</sup>

145 Harrison, Paige, James R. Maupin, and G. Larry Mays. *Are Teen Courts an Answer to Our Juvenile Delinquency Problems? Juvenile and Family Court Journal* 51, no. 4 (2000): 27–35. <https://doi.org/10.1111/j.1755-6988.2000.tb00030.x>.

146 Higgins, P., & Mackinem, M. (2009). *History of Youth Court Movement. In Problem-solving courts: Justice for the Twenty-first century?* (pp. 162–177). essay, Greenwood Press.

147 Butts, J. A., & Wilson, J. B. (2002, March 1). *The Sudden Popularity of Teen Courts*. Urban Institute. Retrieved May 18,



Other accounts of youth jury programs were reported by local newspapers during the 1960's and early 70's. Overall, youth courts remained largely in obscurity until the 1980's.

The first time teen courts saw national attention was when Natalie Rothstein of Odessa, Texas began championing the cause. Ms. Rothstein had founded the Odessa Teen Court Program in 1983 and strongly advocated for intervening with youth, holding them accountable, in a manner that was constructive. Until her death in 1993, she promoted the teen court model nationally and gave presentations at juvenile justice conferences, and also penned articles in national journals.<sup>148</sup>

According to the National Youth Court Center, by 1994 there were 78 youth court programs across the country.<sup>149</sup> Shortly afterward, the U.S. Department of Justice and the U.S. Department of Health and Human Services began allocating resources in support of the teen court concept. National associations such as the American Probation and Parole Association, the American Bar Association, and the National Council of Juvenile and Family Court Judges also began promoting and advancing the methods amongst their members.<sup>150</sup> By 1998, the number of teen courts swelled to a number between 400 and 500.<sup>151</sup>

With the rapid increase of teen courts throughout the 1990s and early 2000s, the National Association of Youth Court was founded and it held its first national conference in 2007.<sup>152</sup> Today, according to the National Association of Youth Courts, teen courts operate in 49 states and the District of Columbia. Over a thousand teen court programs operate throughout the United States today,<sup>153</sup> and see over 100,000 cases annually.<sup>154</sup>

## How Teen Court Works

Unlike many of the other programs in the report, teen courts operate very similarly to the traditional juvenile justice system. The main difference is that instead of being tried and sentenced

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2022, from <https://www.urban.org/sites/default/files/publication/45456/1000262-The-Sudden-Popularity-of-Teen-Courts.pdf>

148 Office of Juvenile Justice and Delinquency Prevention, Goodwin, T. M., Steinhart, D. J., & Fulton, B. A., *Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs, November 1998 Update* (1998).

Available online: <https://ojjdp.ojp.gov/library/publications/peer-justice-and-youth-empowerment-implementation-guide-teen-court-programs-0>

149 Stickle, Wendy Povitsky, Nadine M. Connell, Denise M. Wilson, and Denise Gottfredson. *An Experimental Evaluation of Teen Courts*. *Journal of Experimental Criminology* 4, no. 2 (2008): 137–63. <https://doi.org/10.1007/s11292-008-9050-8>.

150 OJJDP, Goodwin, T. M., Steinhart, D. J., & Fulton, B. A., *Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs, November 1998 Update* (1998).

Available online: <https://ojjdp.ojp.gov/library/publications/peer-justice-and-youth-empowerment-implementation-guide-teen-court-programs-0>

151 Stickle, Wendy Povitsky, Nadine M. Connell, Denise M. Wilson, and Denise Gottfredson. *An Experimental Evaluation of Teen Courts*. *Journal of Experimental Criminology* 4, no. 2 (2008): 137–63. <https://doi.org/10.1007/s11292-008-9050-8>.

152 OJJDP, Goodwin, T. M., Steinhart, D. J., & Fulton, B. A., *Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs, November 1998 Update* (1998).

Available online: <https://ojjdp.ojp.gov/library/publications/peer-justice-and-youth-empowerment-implementation-guide-teen-court-programs-0>

153 National Association of Youth Courts. (2020). *The Significance of Youth Courts: The Mission of the National Association of Youth Courts*. National Association of Youth Courts. Retrieved May 17, 2022, from <https://youthcourt.net/the-significance-of-youth-courts/>

154 Gase, L.N., Schooley, T., DeFosset, A. et al. *The Impact of Teen Courts on Youth Outcomes: A Systematic Review*. *Adolescent Res Rev* 1, 51–67 (2016). <https://doi.org/10.1007/s40894-015-0012-x>

by adults, the teen perpetrator is tried and the sentence recommended is handed down by other teenagers, including, in some cases, former teen perpetrators serving on the teen jury.

Teen courts vary in the kind of court actors involved. Some teen courts have teens in all court officer positions, including as judge, some teen courts have teen attorneys while others let the jury directly question the teen perpetrator.<sup>155</sup> Some teen courts also integrate the principles of restorative justice, such as requiring admission of guilt before entering the program and utilizing Braithwaite's theory of reintegrative shaming<sup>156</sup>, though other practitioners dispute whether those can truly be counted as a teen "court," since guilt is decided before entry into the court.<sup>157</sup>

There are numerous teen court models, so no process will fully encapsulate all types of teen courts. However, teen courts typically follow the following five-step process.

1. **Referral** - The teen perpetrator is referred to the teen court by a court officer or law enforcement official.
2. **Intake meeting** - The teen perpetrator, usually accompanied by a parent, attends an intake meeting to learn more about the teen court process and be evaluated for suitability. In the meeting, the teen court staff will explain to the teen and their family how the teen court works, what the sentence may look like, and in some cases, take evaluations related to psychological health and /or drug and alcohol use.
3. **Court hearing** - The teen perpetrator appears in a court hearing, sometimes with a teen attorney, to hear the charges brought against them. A judge, sometimes teen and sometimes adult, presides. The teen jury asks questions about the harm caused and the teen pleads to the charges. In some more restorative courts, the teen jury questions the perpetrator about challenges in their background and what they believe they can do to repair the harm caused.
4. **Sentencing** - Then, the teen jury leaves the hearing room to deliberate their recommended sentence for the perpetrator. After deliberation, the teen jury delivers their recommendations, which often include community service, restitution, or apology letters. The teen perpetrator and their guardian are then given the opportunity to agree to the recommended sentence or send their case back to traditional juvenile court.
5. **Monitoring** - If the teen perpetrator and their guardian agree to the sentence, teen court staff monitor sentence completion over time. Once the contract has been completed, teen court staff submit the contract to the referring court, and have the charges removed from the teen's record. In some courts, a graduation ceremony is held that celebrates the teen completing their sentence.

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155 Butts, J. A., & Wilson, J. B. (2002, March 1). *The Sudden Popularity of Teen Courts*. Urban Institute. Retrieved May 18, 2022, from <https://www.urban.org/sites/default/files/publication/45456/1000262-The-Sudden-Popularity-of-Teen-Courts.pdf>

156 Office of Juvenile Justice and Delinquency Prevention, *Literature Review* § (2010). [https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/teen\\_youth\\_court.pdf](https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/teen_youth_court.pdf).

157 Researcher conversation with Scott Peterson, Executive Director of Global Youth Justice, April 19th, 2022

# Benefits of Teen Court over Traditional Justice Approaches

While there have been few conclusive studies on the impacts of teen courts, two benefits offer potential - reduced recidivism and changed attitudes about the justice system.

## Short-Term Benefits

### Changed Attitudes towards the Justice System

One additional benefit may be improved attitudes of teens towards the justice system. A 2001 study by Logalbo and Callahan found that teen court participants had an increased knowledge of how the justice system works and increased positive attitudes towards judges in general.<sup>158</sup>

### Speedier Process

Teen court also cuts down on the time waiting. While they do waive right to a speedy trial, a well organized teen court can move cases through in days rather than months. Given that the courts are run on a voluntary basis and prevent youth from being kept in detention, they also reduce the cost of proceedings and juvenile detention.<sup>159</sup>

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<sup>158</sup> Gase, Lauren N., Taylor Schooley, Amelia DeFosset, Michael A. Stoll, and Tony Kuo. *The Impact of Teen Courts on Youth Outcomes: A Systematic Review*. *Adolescent Research Review* 1, no. 1 (2015): 51–67. <https://doi.org/10.1007/s40894-015-0012-x>.

<sup>159</sup> Butts, Jeffrey, and Janeen Buck. *Teen Courts: A Focus on Research*. OJP. *Juvenile Justice Bulletin*, October 2000.

# Community Benefits

## Potentially Reduced Recidivism

Given the widespread nature of teen courts, there have been numerous studies attempting to establish whether teen courts ultimately reduce youth recidivism. There have been some promising studies. In one 2002 multi-state study, youth participants in an Alaska teen court recidivated at 6%, compared to 23% of youth offenders, while youth offenders in a Missouri teen court recidivated at 9% and 27% respectively.<sup>160</sup> However, numerous meta-analyses have failed to find any statistically significant difference in recidivism overall,<sup>161162</sup> so these should be taken with caution.

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Accessed May 12, 2022 <https://www.ojp.gov/pdffiles1/ojdp/183472.pdf>

160 Butts, Jeffrey A, and Jennifer Ortiz. Rep. *Teen Courts – Do They Work and Why?*, January 2011. <https://drj.fccourts.org/uploads/Teen%20Court%20Article.pdf>.

161 Gase, Lauren N., Taylor Schooley, Amelia DeFosset, Michael A. Stoll, and Tony Kuo. *The Impact of Teen Courts on Youth Outcomes: A Systematic Review*. *Adolescent Research Review* 1, no. 1 (2015): 51–67. <https://doi.org/10.1007/s40894-015-0012-x>.

162 Cotter, Katie L., and Caroline B. Evans. *A Systematic Review of Teen Court Evaluation Studies: A Focus on Evaluation Design Characteristics and Program Components and Processes*. *Adolescent Research Review* 3, no. 4 (2017): 425–47. <https://doi.org/10.1007/s40894-017-0056-1>.

# Drawbacks of Teen Court

There are a few potential drawbacks to this type of approach as well, including that, because teens are minors, sentencing options are often limited, and that if teen court changes other attitudes or actions outside of views towards the judicial system, they have yet to be empirically proven.

## Limited Sentencing Options

Because teens sentence their peers in teen courts, sentencing options are understandably limited. However, there may be an overreliance on certain options, leaving out potentially more effective sanctions like the juvenile justice system can require. One meta-analysis found that while sentencing options can be varied, the vast majority of teen court sentences are community service,<sup>163</sup> leaving out other, potentially more effective sanctions.

## Limited Effects on other Attitudes and Actions

One other potential drawback is a limited effect on other attitudes and actions proponents hope teen courts will create. Five different studies, including the 2001 study mentioned above, have examined the effects of teen courts on participant attitudes and actions, with few showing any significant effects on drug use, self-reported delinquency, or increase in self-worth compared to the juvenile justice system.<sup>164</sup>

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163      *Ibid.*

164      Gase, Lauren N., Taylor Schooley, Amelia DeFosset, Michael A. Stoll, and Tony Kuo. *The Impact of Teen Courts on Youth Outcomes: A Systematic Review*. *Adolescent Research Review* 1, no. 1 (2015): 51–67. <https://doi.org/10.1007/s40894-015-0012-x>.

## Teen Court Case Study - Council on Alcoholism and Drug Abuse

# Teen Court Program

### Summary

- Organization: Council on Alcoholism and Drug Abuse
- Program: Teen Court
- Locations: Santa Barbara, CA
- Established: 1993
- Cases per year: 500+
- Average case length: 45 days
- Average cost: \$1,000/case
- Caseload: 48% of juvenile delinquency cases in Santa Barbara County, CA
- Impact: 85%-90% of youth complete the teen court program, between 85-92% of youth did not commit a similar or more serious offense within one year after graduating from the program

### Operations

- Staff: 2
- Volunteers: 54 adults, 350 youth

### Support

- Community: 63%
- Government: 37%

### Impact Story - Catching Fire

In sixth grade, Luis made a big mistake. Playing around in an avocado grove near his home, he placed a smoke bomb in a snake pit. Then the field caught fire. Surrounding fields also caught fire, and the Santa Barbara Fire Department eventually had to fly in air support to calm the raging inferno.

Luis was facing felony charges, but the assistant DA diverted him to teen court instead.

In teen court, CADA staff found that Luis's mother was a functional heroin addict, and Luis wasn't home because drug dealers had been banging on his mother's door for payment. The teens in the court sentenced him to treatment and to volunteer to clean trucks at the local fire department over the summer.

15 years later, Luis ran into Ed Cue, Director of CADA's teen courts program, as a full-fledged firefighter and introduced him to his captain. CADA not only diverted Luis from serious criminal charges, but gave him a new direction he could take in his life. Instead of being another statistic, Luis is an example of teen court's power to change a young person's life.

## History of CADA's Teen Court Program

In 1993, Santa Barbara County, CA, Judge Thomas Adams saw what he believed was a "revolving door" of kids coming back to juvenile court again and again. Worse still, he was seeing those same kids appear again in adult court. After hearing about a teen court program in Odessa, TX, he brought the idea back to Santa Barbara. "Everybody said he was crazy, that teenagers could not operate a program like this," said Ed Cue, now the Director of the Teen Court program under CADA. "But he stood firm and held his ground."

After the local nonprofit that first ran the teen court program went under, teen court was picked up by the Council on Alcoholism and Drug Abuse. "We'd seen that 75% of the teens that were screened at the intake assessment were screening use or abuse of alcohol or drugs," Ed says. CADA's teen court is now a key part of Santa Barbara County's continuum of responses to juvenile crime, handling, on average, 48% of juvenile delinquency cases in the county.<sup>165</sup>

CADA now operates teen courts in several locations in Santa Barbara County, including Santa Barbara, Santa Maria, and Santa Ynez. Over the past 29 years, CADA's courts have diverted over 8,000 cases out of Santa Barbara County juvenile court, including 65 in 2021.

## How CADA's Teen Court Works

CADA's teen court program is designed with both court and treatment in mind. Because such a high percentage of the youth served by the courts struggle with mental health and substance abuse issues, having in-house treatment after sentencing "really helps get a lot of teens the help they need and helps parents engage in treatment services that are otherwise impossible to navigate," Ed says.

The courts accept minors from ages 10-18 for most misdemeanor offenses. Minors are referred to the courts by probation, which is often pre-trial for California youth, as well as local police and sheriff's departments. On receiving a referral, Ed or another adult court volunteer will meet with the youth for screening. During screening, the adult volunteer will attempt to determine the youth's needs outside of just the crime that they committed. "We go through different screening tools and we ask what are this particular youth's needs? What are we learning about who they are?," Ed says.

165 Rep. 2019 COURT STATISTICS REPORT *Statewide Caseload Trends*. 140. Judicial Council of California, 2019. <https://www.courts.ca.gov/documents/2019-Court-Statistics-Report.pdf>.

The adult volunteer also performs a behavioral wellness and substance abuse screening. Ed says the screening process is necessary because the crime doesn't always tell them how to serve the youth best. "This young person will come in for fighting, but we see that based upon the screening, they have a mental health issue, or there are some substance abuse issues that led to this," he says.

On their court date, an adult volunteer, typically an attorney or superior court judge, serves as the judge, but their role is primarily to keep order in the courtroom. The youth speaks directly with the jury the majority of the time. "If the jury is going to determine the sentence, they're asking the questions," Ed says.

Unlike juvenile court, teen court is of, by, and for teenagers. All of the jurors are teenagers. "What we found is that that power of peer influence had a significant effect on the teenagers coming into the courtroom process and completing the terms of contract," says Ed.

Some of the jurors are even youth offenders that are serving on the jury as part of their sentence. Ed says this really helps the youth internalize the teen court experience. "While the sentence may seem harsh at first, it becomes very clear when they become part of the jury... part of the intervention that continues even after their case is over is when they get to sit on the panel and hear a number of cases themselves."

After the jury and the youth exchange questions and answers, the jury will deliberate the case and deliver a sentence that can include community service, nights of jury duty, letters of apology, educational classes, or youth services. The youth offender gets to hear the justification for each of the items in their sentence. "The judge may pick a juror from the pool and ask them 'Why did you guys suggest this?' 'Did you think the [young person] was honest?' 'Do you think the [youth] was respectful to the court?'" Ed says.

At the end of sentencing, the youth is asked if they agree to the terms of their sentence, which most do. When the youth agree, CADA staff forwards that sentence to their referring agency, and then monitors the completion of that sentence.

Once the teen completes their sentence, they participate in a graduation ceremony. "For some of these kids, they've never had success before. For them to be able to complete the terms and contract of teen court is a huge success," Ed says.



## Impact

Impact data backs up the teen court program's effectiveness, both in contract completion and recidivism, over several decades. Since 1993, 85-90% of the youth sentenced by teen court completed their sentences. Data from the Santa Barbara County Probation Department from 2003-2017 found that between 85-92% of youth did not commit a similar or more serious offense within one year after their contract was completed, compared to the California Department of Juvenile Justice re-conviction rate of 55.5%.<sup>166</sup>

Another big impact Ed sees is on the attitude of youth offenders when they come into the court. "There are going to be some teenagers that come into the program kicking and screaming," but he says that somewhere in the middle of the program, whether it's going to counseling, attending a remedial class, or participating on the jury themselves, things change.

"All of a sudden, you see the light going on within these kids, and you see that in the questions that they're asking the other teens in the courtroom, because now they're asking intelligent questions and because they're using their experience [to help the teen], not in a show off type of way, but in a I'm trying to help you kind of way," Ed says.

Teen court also impacts the volunteer teen jurors. For those kids, Ed says, they're often asking why they work hard, get good grades and everyone else gets to have fun. In teen court, they realize why. "They get in that courtroom, they get to see the interaction of parents sitting in the courtroom, kids in trouble, and then they get it. The light goes on," Ed says.

For the parents of the kids in trouble, teen court often helps communicate to their child what they've been trying to communicate all along. "Those parents are coming in and saying, Eddie, you know what, the conversation that you've had with my child during intake, those are the things that we've been wanting to say for a long time," Ed says. "[They'll say] 'I didn't know what to expect when I went to the court. But when I walked out of that court and I saw how those kids were very responsible and how they came across, that totally caught me off guard.'"

Perhaps the greatest long term impact is that since the court is set up in a treatment, as opposed to a punishment model, it can really help teenagers figure out what they want to do in their lives. Former youth offenders in CADA's teen court have become police detectives, fire-fighters, event planners, and more. "[Completing teen court] allowed them to say, Hey, you know what, I'm on better ground. Now I see where I can win here."

While CADA charges \$250 to the family of the youth offender, no family is turned away for inability to pay. The average cost of teen court, plus treatment services, to CADA is \$1,000. This can increase with treatment services, but medicare and private insurance often offset that cost.

166 Rep. 2017 DIVISION OF JUVENILE JUSTICE RECIDIVISM REPORT. California Department of Corrections and Rehabilitation, January 2019. [https://www.cdcr.ca.gov/juvenile-justice/wp-content/uploads/sites/168/2020/10/2017-Division-of-Juvenile-Justice-Recidivism-Report\\_ADA.pdf](https://www.cdcr.ca.gov/juvenile-justice/wp-content/uploads/sites/168/2020/10/2017-Division-of-Juvenile-Justice-Recidivism-Report_ADA.pdf).

## Why it Works

Ed emphasizes that a big reason teen court works is because it isn't set up to punish the youth offender, but to deal with their underlying needs. "We tell the teen jurors that their sentence is not designed to be punitive, it is designed to be corrective. The decisions you make can change or save a life." The screening, the corrective approach from the jury, and the teen court-to-treatment model are all designed to address the underlying challenges the teen is facing. If they didn't do that, Ed says, "[the] mitigating factors were going to have a crushing effect on this child's life for the rest of their lives."

Another reason the model works is because of how quickly the court processes cases. It may take months for a teen to be heard in juvenile court. "We knew if we closed those windows, from citation to some treatment, teenagers were more apt to succeed." Ed says the court has gotten that window down significantly. "It could have been 9 month windows, but we're able to get it down to 45 days. Some cases are even faster than that."

The final thing Ed believes makes teen court work is hope. "I think from my experience working in corrections, I worked with a large population of young men and women that did not have hope. Because they did not have hope they could not have a dream of their future. Because they did not have a dream of their future they were more apt to reoffend and become involved in delinquent or felonious acts." Because of this, the teen court operates like a mentorship program for youth offenders. Ed does his best to make sure to show the teen a better path for their skills than crime. After completing teen court, when Ed asked her what she really wanted to do, a young offender said she wanted to become a police officer. Ed got her lunch with the police chief. "He made the time for that. And so we took her to lunch. So she ended up going to lunch, meeting the chief." That young lady is now a police detective.

"I'm not your parole agent. I'm your success coach. My job is to make sure you complete the program successfully and get something out of it," Ed says.

## Funding & Support

CADA's Teen Court program is 63% community supported, including voluntary donations, volunteer hours and fees for services, and 37% government supported through national, state, and local contracts and grants.

2 staff are involved in the program, who provide case management and support for youth offenders, run intervention classes or groups, operate the court, and provide clerking services. 54 adult volunteers, typically attorneys or judges, volunteer for the bench and help with court operations, case management, and intervention services. 350 youth volunteers serve as jury members.

## How to Implement a Teen Court in Your Community

To implement teen court in another community, Ed recalls the lessons learned when they created a similar teen court in Santa Maria, CA. The first is to build the teen court around the community it is designed to serve. “They are different communities, with different populations, and different challenges,” Ed says. “In Santa Barbara county, we have this urban, suburban population, with all the richness that takes place here, while Santa Maria is very gang-oriented, more apt to have weapons and guns pulled, people getting shot and killed.”

The second thing is to bring that community into the design of the court. Ed says this is what really opens the door for the community to be able to use it. “We asked the schools, we asked the community leaders, we asked them how are we going to shape it? What services are we going to put in your community? Where?”

Finally, continuing the trend, Ed says that the ultimate goal should be to let the community own the court and the services around it. When he was building a collaborative around the teen court in Santa Maria, he says that one of the members approached him and asked how the court could be expanded to cover other needs in the community. Ed helped them get funding to add those additional services.

“And as a result of that, they were able to build upon [teen court] for themselves. They took ownership of it. That collaboration built an opportunity for that community to try to create, to build their own destiny with their own people.”

For advice on implementing a similar program in your community, contact CADA at <https://cadasb.org/>.

## What to Do Next

There are Marys, Charles's, and Jacksons in nearly every community in the United States. Victims, and their families, are waiting months and sometimes years for justice. The accused are languishing in jail long before conviction, each passing day reducing their chances of reintegrating back into society. Communities are threatened by the slow grind of justice as perpetrators continue doing harm. The dangers posed by delays in justice are widespread, and affect every community, including yours.

If this report has its intended impact, not only will community leaders like yourself understand the danger court backlogs pose, but they will step up to the plate and do something about it. That could be sharing this information with other community leaders, sharing this information with systems-involved stakeholders, contacting the organizations in this report to learn more, or even starting a program based off of one of these solutions in your community.

If you're wondering where to go next, here are some resources that can help you learn more about each solution, provide resources on those solutions, and even train you to implement them in your community.

This report is only information, the rest is up to you.

### **Solution #1 - Community Mediation**

## The National Association for Community Mediation

The National Association for Community Mediation (NAFCM) provides tools, resources, grants, and support for individuals looking to set up a community mediation center or program in their community. On NAFCM's website you can access a directory of centers by state, download studies and research material on community mediation, and get one-on-one assistance through grants and NAFCM's Emerging Centers program.

<https://www.nafcm.org/>

## The National Conflict Resolution Center

The National Conflict Resolution Center (NCRC) offers training and resources for conflict resolution professionals and those new to the field. On NCRC's website you can sign up for training in mediation and restorative practices, invite NCRC to deliver no-cost conflict resolution workshops for your neighborhood or community organization, and access capacity-building resources at their Center for Community Cohesion.

<https://www.ncrconline.com/>

## Resolution Systems Institute

The Resolution Systems Institute (RSI) develops, designs, and researches court-focused alternative dispute resolution systems and approaches, including mediation. On RSI's website, you can search published studies on mediation benefits and drawbacks, get mediation training, and access RSI services including mediation program design assistance.

<https://www.aboutrsi.org/>

## Highlighted Programs

You can also reach the organizations listed as case studies in this report for help setting up a community mediation program in your community. Contact the Dispute Resolution Center of Thurston County (DRCTC) for details on general community mediation, and the New York Peace Institute (NYPI) for small claims mediation programming assistance.

DRCTC: <https://www.mediatethurston.org/>

NYPI: <https://nypeace.org/>

### **Solution #2 - Restorative Conferencing**

## International Institute for Restorative Practices

The International Institute for Restorative Practices (IIRP) is a graduate school established to examine, teach, and develop restorative practices, including restorative conferencing and sentencing circles. On IIRP's website you can find basic information on restorative justice, conferencing, and circles, earn professional development certificates, and explore graduate work in restorative justice.

<https://www.iirp.edu/>

## **Restorative Justice Exchange**

The Restorative Justice Exchange (RJE), by Prison Fellowship International, hosts one of the largest libraries of restorative justice resources on the internet. On the RJE archive, you can find handbooks, studies, guides, and more related to restorative practices, including conferencing and circles.

<https://restorativejustice.org/>

## **Restorative Justice Project**

The Restorative Justice Project (RJP), by Impact Justice, is a nationwide technical assistance program for those looking to start pre-trial restorative programs in their community. On the RJP's website you can download getting-started toolkits, get access to convenings of others interested in starting restorative programs, and get one-on-one technical assistance for starting a pre-trial restorative program in your community.

<https://impactjustice.org/>

## **Restorative Response**

Restorative Response is a restorative conferencing organization in Baltimore, MD, that offers training and assistance to those looking to start a restorative conferencing program in their community.

<https://www.restativeresponse.org/>

## **Highlighted Program**

The Longmont Community Justice Project (LCJP)'s Training Institute offers interactive training for anyone looking to start a restorative conferencing program in their community, law enforcement professionals interested in justice, and individuals hoping to learn how to facilitate restorative conferences.

<https://www.lcjp.org/>

### **Solution #3 - Victim-Offender Dialogue**

## **National Institute of Corrections**

The National Institute of Corrections (NIC), a division of the Department of Justice, offers handpicked resources on victim-offender dialogue/mediation. On NIC's website, you can find example VOD programs, research, and tools such as exit interviews and guides, that can help you set up a victim-offender dialogue program in your community.

### **Highlighted Program**

You can contact our case study, the Restorative Justice Mediation Program, for advice on how to create a victim-offender dialogue program in your community.

<https://www.sdrjmp.org/>

### **Solution #4 - Teen Court**

## **Global Youth Justice**

Global Youth Justice (GYJ) drives the creation of teen courts around the country and around the world. On GYJ's website, you can find a directory of teen courts around the world, research on teen courts, resources for starting a teen court in your community, and trainings on teen court best practices and approaches.

<https://www.globalyouthjustice.org/>

## **National Association of Youth Courts**

The National Association of Youth Courts (NAYC) provides information, offers technical support, and delivers resources to advance and improve teen courts around the country. On NAYC's website, you can find teen court planning guides, arguments for stakeholders, youth court guidelines, and contact specialists to help you get a teen court started in your community.

<https://youthcourt.net/>

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