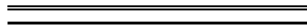


**The Bill Blackwood  
Law Enforcement Management Institute of Texas**



**Incorporating Restorative Justice**



**A Leadership White Paper  
Submitted in Partial Fulfillment  
Required for Graduation from the  
Leadership Command College**



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## **ABSTRACT**

The current criminal justice system should consider incorporating aspects of restorative justice into the existing retributive system. Two of the primary considerations are high recidivism rates among offenders and the victim feeling that they are being re-victimized by the system or simply not feeling like they are a part of the process. The current retributive system is not as effective as it could be if there were open mindedness among criminal justice professionals.

The Bureau of Justice Statistics reported that 67.5% of offenders that are released reoffend within three years. Offenders are housed and released back into the community and as just stated reoffending in a short amount of time. Criminal justice systems and practices that are currently in place in addition to promoting recidivism are often causing victims to feel like the system has let them down. They do not feel as if they are part of the system and in some cases feel as they have been re-victimized by the very system that is supposed to help those ("Reentry Trends," 2013).

So, as professionals and leaders in the field of criminal justice, a paradigm shift in how victims and offenders are viewed and treated should occur. This is not intended to soften views on crime; it is to reduce the number of repeat offenders but more importantly, it is to help the victim heal. A shift from the retributive system and how victims, the community and the offenders, are intertwined must occur.

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## INTRODUCTION

Justice systems are examined worldwide. Two of the most widely discussed and examined are retributive and restorative justice. This paper will address the issue of restorative justice and whether or not it would be beneficial to merge with or create a hybrid system with retributive justice. In short, retributive justice seeks to have the punishment fit the crime. In other words, the philosophy of retributive justice is that offender should receive a punishment that fits the crime they have been convicted of. The offenders should be punished and these punitive measures in and of themselves offer vindication for the victim, even when the two may never be in the same room, save for an actual criminal trial. Restorative justice seeks not to dissuade criminal justice professionals from trials and punishments but to include these aspects with giving the offender the opportunity to apologize and seek forgiveness from the one whom has been harmed. Restorative justice does not seek to abolish the criminal act, or pretend that it never happened. Instead it says, yes, this crime was committed, this person was harmed by this offender and both have an interest in moving forward with and through restorative methods. But as criminal justice professionals, there is an obligation to help the victim.

In determining how to apply the concepts, theories and aspects of restorative justice several books, essays, theories and practices were reviewed. In applying the principles, Criminal Justice professionals seek punitive measures for the offender and seek to vindicate those who have been wronged. Criminal Justice professionals also seek a holistic approach to dealing with offenders by which the victim and the victim's support system, along with the offender and the offender's support system are both

involved with the processes and outcomes of the criminal process all in hopes of making the victim whole again.

There are two types of restorative justice viewpoints; they are diversionary and therapeutic. Diversionary is more centered on the offender and is “designed to operate in lieu of the formal criminal justice processes” (Miller, 2011, p.12). Therapeutic justice on the other hand, has as its mission to heal and empower victims of crime and can occur at any point during the formal criminal justice process (Miller, 2011, p. 12). Restorative justice can include some or all of the following: group sessions, mediation and sentencing circles (Shapland, 2003, p. 197). The therapeutic viewpoint is the one that is explored by this paper and will show that a paradigm shift towards this model will benefit the victim, offender and society as a whole.

Restorative justice is “currently being portrayed as new and different, but its origins are rooted in the philosophies of early indigenous societies” (Balgoyen & Defreitas, 2011, p. 4). Concepts of restorative justice do not implicitly imply that the offenders do not face punitive repercussions, quite the contrary. In fact, in cases involving those truly violent crimes such as murder, rape, robbery, etc., it is best suited to not employ the restorative approach until after the offender has been arrested by the police, prosecuted by the State and if convicted, sentenced by a jury of his peers.

The effectiveness and successes of restorative justice relies heavily on crime victims or and in some cases, substitute victim’s participation. Another element that is vital to the success of restorative justice is the offender’s sincerity for remorse and in seeking forgiveness from those they have harmed. When an actual victim participates the offender can seek forgiveness from the person who has been wronged or suffered

as a result of the offender's behavior. The offender has the opportunity to make amends with the actual victim. As previously mentioned, there are programs that utilize substitute victims.

Another key element in the process is the involvement and support of the community. Community includes more than those that live in close proximity, or have a set of shared values. It can include those whom may be secondary victims or those that have as their mission to serve; the mediators, counselors or community supervision personnel. Societal and community norms will also have to shift to accommodate this theory and practice.

With the involvement of the victim, offender, and the support of the community, there are promising statistics regarding recidivism. Traditional or retributive justice recidivism shows that, as of 1994, 67.5% of prisoners released in 1994 were rearrested within three years ("Reentry Trends," 2013). In addition, prisoners released in 1983 had a 46.8% reconviction rate over a three year period ("Reentry Trends," 2013). Conversely, a review of 11 studies involving 2,021 offenders in Indianapolis, Australia, and England showed adult recidivism was 27% lower among restorative justice participants than among defendants who did not participate in the restorative justice program ("Restorative Justice," 2009). The Restorative Justice Consortium in the United Kingdom reports statistics that show Restorative Justice successes that are being realized in that country. The research illustrates that "victim participation rates were extremely high, with up to 77% of victims choosing to take part in cases involving adult offenders, and up to 89% of victims participating in cases involving young

offenders. Offender participation rates were similarly high. ("What does the Ministry", 2010).

Restorative justice should be considered as a complement or as another component to retributive justice in currently utilized in the criminal justice system. The data illustrates that recidivism rates are lower among offenders that participate in some form of restorative justice (Latimer, Dowden, & Muise, 2005). Victims are also more satisfied with their involvement in restorative justice over their dis-involvement with traditional models. Victims have traditionally have felt neglected with traditional justice models, sometimes never finding out what the conclusion was to their case since the State takes the role as the victim in many cases (Hudson, 2003, p. 177). Additionally, the victim chooses (or not) to participate in the process. They are empowered first with their choice and then have the opportunity oftentimes to actually confront the person who victimized them.

## **POSITION**

The criminal justice system should move toward a model of justice that will empower victims instead of re-victimizing them, and one that provides an opportunity for a more successful integration of offenders back into society. Victim participation in this process must be completely voluntary and this cannot be stressed enough. Their participation and their level of participation is entirely their choice. Secondly, statistics show that restorative justice reduces recidivism among offenders by affording them the opportunity to see their victims as other human beings, not objects for their aggression ("Restorative Justice," 2009). Adult recidivism was 27% lower among restorative justice participants than among defendants who did not participate in the restorative

justice program ("Restorative Justice," 2009). In areas all over the United States, criminal justice systems sometimes see the same offenders again and again. This is frustrating for law enforcement and the other cogs in the law enforcement wheel. All too often, society sees the news reports where a person is arrested for driving under the influence and learn that this is the fifth, sixth, or even higher number of arrest for this offender for the same offense. Offenders on the other hand, are afforded the opportunity but they must be genuinely affected by their poor choices in committing their crimes. This is not a cure all, end all, but it is a move in the right direction; The current criminal justice processes are certainly not working. In 2008, the New York Times reported that one in 100 people are incarcerated (Liptak, 2008).

Cunneen and Hoyle (2010) asserted that victims feel neglected during the traditional criminal justice process and that they feel that they are able to provide more input from the restorative justice models. Victims are not left in the dark, wondering what happened or the how and why of the processes. Even when the outcome of a criminal proceeding is favorable for the victim, they do not always feel a sense of vindication or satisfaction because their desires are not necessarily the same as the legal system and nowhere in the mainstream justice system are the victim's view of justice present (Cunneen & Hoyle, 2010).

Another advantage to incorporating elements of restorative justice into the retributive justice system is that the victims are not left to themselves. The processes encourage the victim to include their personal support system in the proceedings; therefore, they are not alone in the process; instead, they are surrounded by their supporters. In turn, this increases their feelings that the system is fair and equitable



thus fostering the opinion that the program has been successful. For example, according to Balgoyen and Defreitas (2011), victim-offender mediations have a 90% victim satisfaction rate.

Just as the victims are afforded a support system, so are the offenders. The offenders are allowed to have the same type of support that is afforded to the victim. This fosters feelings of fairness, all-around satisfaction and a smoother integration back into society. Offenders are given the opportunity to face reality about the crimes they are accused and/or convicted of. They are given the opportunity to acknowledge that their behavior has caused harm to another person, and that they could have made a choice that would not have inflicted harm on another person. A choice that was theirs alone.

A successful endeavor that melds old with new, retributive with restorative, is functioning and functioning well. It is in Denver, Colorado. In 2003, criminal justice professionals began collaborative efforts to enhance community support for the justice system, reduce recidivism, and foster better relationships with the community. Their success is due to the level of commitment from all levels of involvement, but most likely due to the heavy involvement of the police department. Their police department participates in the process from arrest through adjudication and community supervision. This process utilizes a “team approach” that enables “communication and service among the judiciary, the probation, the law enforcement, and the treatment systems and the community at large” (Cooper, Rajae, & Rodriguez, 2012, p. 55). These efforts have resulted in improved accountability for the offender, reduced recidivism, increased

public safety, improved perception of law enforcement and surprisingly, officers had improved job satisfaction (Cooper, Rajae, & Rodriguez. 2012 p. 55).

## **COUNTER POSITION**

The current retributive criminal justice system is built on the principles of retribution. These are the philosophies that are long-standing and its tenets are widely accepted and held. This formal model has been strongly embraced since the mid-19<sup>th</sup> century (Capeheart, 2007). Society should have harsh punishments; punishments that fit the crime. Convicted offenders deserve to suffer harm as they have harmed others. Offenders should lose their rights and any respect they once had when they are convicted and enter into incarceration. The loss of civil liberties, threat of incarceration and other punitive measures should discourage the commission of crimes. Retributive justice is a good moral educator, since it detours future crimes. The threat of being incarcerated or the threat of being incarcerated again along with losing the right to vote or the right to own a gun legally is enough to stop or curtail criminal acts.

The retributive system is not working and continues to churn out guilty verdicts and incarcerate too many with little or no hope for rehabilitation. This is evident in the high recidivism rates that are continually charted and the feeling from law enforcement professionals and officers criminals are locked up just to be let out again. Once back into society, they are left to fend for themselves, save a visit to the parole and/or probation office every so often. They are left to drop back into old habits and they are once again in the back seat of a police car headed to jail and another person is now a victim of crime. With the current retributive system, there is little incentive to keep individuals from committing crimes. Recidivism rates continue to be unacceptably high.

Subjecting victims of crime to facing off with the offender will cause them to feel re-victimized. They will seek to avoid the restorative processes and instead will prefer to move along with their lives with no involvement in the process. This will be especially true of those whom have been victimized by a violent crime against them such as domestic violence. Victims will feel vindicated through the normal and accepted judicial processes. Their voice is carried by the state.

Retributive justice gives little or no thought as to what the crime victim thought of the judicial processes, the outcomes or whether or not the victim feels vindicated. Victims of violent random crimes may never know the outcome of their case. This is especially true if their case was dismissed, a plea bargain was reached, or if it was used only at the sentencing portion of their trial and not an entirely new case against the accused. In cases in which victims know the offender, they may feel like they are obligated to help the one who harmed them. They will doubtfully be receptive to the idea of restorative justice and they may feel as if they have been re-victimized by the justice system when they do not feel vindicated (Mika , Achilles, Halbert, Amstutz, & Zehr, 2004). The data confirmed that victims who are willing participants in restorative justice models in fact do feel a sense of vindication. As previously stated, according to Balgoyen and Defreitas (2011), victim-offender mediations have a 90% victim satisfaction rate.

The data confirms contradicts this information. Victims who are willing participants in restorative justice models in fact do feel a sense of vindication. They are aware of how their case was handled, from inception to completion. Victims also report

higher satisfaction with the criminal justice system over those who do not participate in some form of restorative justice.

## **RECOMMENDATION**

The points presented in this paper are definitive that the retributive criminal justice system is in need of repair. For the most part, cogs in the criminal justice do not recognize the victim in the context they deserve; they are not just a statistic to be counted when reporting yearly statistics to the governing bodies of the agency. They are also not integrated as part of the process nor as part of the solution. They should be given the opportunity to agree or dissent to participation in the processes. The current retributive system does not offer means by which to detour offenders from offending nor does it implement a system wide philosophy with the intent of detouring them from reoffending. If it were a properly functioning justice system, not only would it detour people from committing the original offense, but it would restore them back to society so that they would choose not to reoffend, not the other way around.

Taking the holistic approach and encouraging the participation of all involved, (victim and their support system, offender and their support system) criminal justice professionals can work toward ensuring reducing crime rates drop and making the streets in communities safer. Therefore, criminal justice professionals should shift their thoughts and practices to a system of justice that empowers victims and provides for successful integration into society for offenders. This shift will not be easy and it will likely meet with heavy resistance. Old school thoughts and processes will seek to maintain their hold on the retributive criminal justice system without compromise in some areas. The criminal justice system must be rebranded. Criminal justice

professionals must also have the integrity to live up to the rhetoric that is preached. It is through education, both formal and informal, as well as training to start the shift towards a process that treats the person and the problem, not just the acts of crime.

A holistic approach to offender rehabilitation shows the most promise. The proposed approach would be a combined effort beginning after sentencing. The offender would have pled guilty, the first acceptance of responsibility. After the sentencing, the offender and the victim would both have to be willing participants in the restorative process. Once the agreements are reached, the restorative process can begin. Both the offender and the victim will attend individual sessions with licensed professionals. After the initial sessions, victims will attend sessions with other victims as a means of support, letting them see they are not alone. The offender will also attend sessions with a group of other offenders. The offenders will need support as well; this is going to be a new process for them, especially if they are repeat offenders who have decided they no longer wish to live a life behind bars. For crimes that were non-violent, the next step is for the victim, the victim's family, the offender, and the offender's family will come together with the aid of the licensed professionals to have. Once the foundation is laid and the victim and the offender realize their support network, they can participate in the circle of listening.

There are many facets to this approach and it is not an overnight solution. It will take time, effort and commitment from all whom are involved. The beneficiaries are the victim, the community, and the offender. The victims' satisfaction with the system will improve and recidivism will be reduced. This is a win for the community to reduce crime through reducing recidivism.

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