

Colorado Restorative Justice Law

for the CCJJ Sentence Structure Working Group Listening Session #3

Defining Restorative Justice (RJ): Within criminal legal system, RJ is generally a process where a person who has been harmed (crime victim or survivor) and the person who caused harm (the defendant), along with their respective support people, come together (sometimes with community members) to discuss what happened, the impact, accountability, and what can be done to repair the harm to the greatest extent possible.

- More broadly, and properly understood, restorative justice is a set of principles, values, and practices designed to address a person's, group's, or community's needs around connection, harm reduction, accountability, conflict-resolution, healing, and (re)integration.
- See § 18-1-901(3)(o.5), C.R.S. (criminal code definition of RJ)

Relevant Colorado RJ Law

General Provisions

- RJ is an enumerated purpose of the criminal code. § 18-1-102(1)(e) (“to promote maximum fulfillment of its general purposes” including “[t]o promote acceptance of responsibility, provide restoration, and healing for victims and community, while attempting to reduce recidivism and costs to society by the use of RJ practices.”).
- The VRA includes the right for victims/survivors to be informed about RJ. § 24-4.1-302.5(1)(l.5) (“In order to preserve and protect a victim's rights to justice and due process, each victim of a crime has the following rights: . . . [t]he right to be informed about the possibility of restorative justice practices, . . . which includes victim-offender conferences.”).
- The VRA requires that district attorneys inform victims about RJ. § 24-4.1-303(11)(g) (“The district attorney shall inform a victim of the following: . . . [t]he availability of restorative justice practices, . . . which includes victim-offender conferences.”).

Sentencing Provisions

- RJ is an enumerated purpose of sentencing, which courts must consider in fashioning a sentence. § 18-1-102.5(1)(f) (“To promote acceptance of responsibility, provide restoration and healing for victims and community, while attempting to reduce recidivism and costs to society by the use of RJ practices.”); *see also* § 18-1-102.5(1)(d)-(e).
- RJ may be used as an alternative to imposing a sentence. § 18-1.3-104(1)(b.5)(I) (court can refer a defendant to RJ as an “alternate sentencing option” as part of a “specialized restitution and community service program” as defined in another section).

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Recommendations

- (1) Protect Open & Honest Dialogue during the RJ Process – whether that’s at the sentencing stage or otherwise. This would expand the safe use of RJ at any point in the criminal system continuum, i.e., whenever the person harmed wishes to participate in RJ.
 - In the children’s code, confidentiality protections are contained within the definition of RJ.
- (2) Create an Affirmative Right for People Harmed to Request RJ – including high impact dialogue (aka victim offender conferencing or mediation). More often than not, as reflected in Colorado victim studies, people harmed are not informed about victims services, let alone RJ.
 - Amend the VRA so as not to qualify the right to request RJ (*i.e.*, remove “possibility” from 24-4.1-302.5(1)(1.5) and change “availability” to “right” in 24-4.1-303(11)(g).
- (3) Increased Investment in Community-Based RJ Infrastructure & Victim Services to Ensure Equal Access Statewide. People who have been harmed need access to victim services (including financial assistance) without a requirement to report to law enforcement. This is also true for RJ services/facilitation. While highly-skilled high impact dialogue facilitators are available to travel throughout the state, and local RJ programs are scattered across the state, more investment in RJ infrastructure is needed – both to support increased system-based referrals to RJ and community referrals.
- (4) Enumerate RJ as a Stand-Alone Sentencing Alternative. Restorative justice can be used as the entire sentencing consequence. It does not need to be part of a “specialized restitution and community service program.”
 - Amend the statute to create stand-alone RJ alternative
 - Amend the “specialized restitution and community service program” statute (§ 18-1.3-302) to require programs to practice restorative and transformative justice principles.

Questions? Please contact me:

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