



Resource RJD Program Overview and Elements



RJD Program Overview and Elements

At its core, restorative justice is about relationships—how you create them, maintain them, mend them. It's based on the philosophy that we are all interconnected, that we live in relationship with one another, and that our actions impact one another. In the context of diversion, restorative justice honors the humanity and dignity of people by acknowledging that we are more than the worst thing we've ever done or experienced.

With this in mind, this model of restorative justice diversion (RJD) encourages constructive community-based responses to wrongdoing. The process brings together those who caused harm, those who have been harmed, and impacted community members to promote healing and accountability, while rebuilding relationships. This can take many forms, most notably community conferencing models and circle processes, which are explained in further detail below. Restorative justice processes result in consensus-based plans to repair harm through face-to-face dialogues that meet the needs of the person(s) harmed while also supporting the positive development of those who have caused harm.

This document answers the following questions:

- How does this model of restorative justice diversion work?
- How do circle process and Restorative Community Conferencing (RCC) work?
- Who facilitates RCCs and circles?
- What roles do the criminal legal system play in RCC?
- Where is RJD already happening and how do we know it works?
- What are the core elements of this RJD model?

How does this model of restorative justice diversion work?

Our RJD programs are post-arrest but pre-charge, meaning that the young person who committed harm has been arrested but has not been charged with a crime. Instead of being processed through the juvenile legal system, the young person is diverted to the RJD program by police, probation, or the district attorney's office. RJD programs are run by community-based organizations (CBOs), who are always independent of any law enforcement or systems partner. They are often local nonprofits experienced in supporting youth and are rooted in the communities they serve.

Once a case is referred to a facilitating CBO, the referring agency informs the person harmed and the responsible youth via letter and/or phone call of the decision to divert and the opportunity to participate in an RCC or circle process. This diversion model is most effective with more serious crimes (felonies and high-level misdemeanors), which have a clear, identifiable person harmed such as robbery, burglary, car theft, assault/battery, arson, teen dating violence, and sexual assault. When the RJD program reports back to the referring agency that the case was completed successfully through an RCC or Circle, the referring agency considers the case resolved with no charges filed. If the RJD program returns the case without completion, the referring agency can still process the case as it would have, but it cannot use as evidence any information gathered during the RJD preparation, process, or follow up.

How do circle processes and RCCs work?

Circle processes involve a facilitated dialogue using a talking piece and can be implemented in a broad range of contexts, from welcoming an individual back into the community after a period of incarceration to addressing conflict between community partners. Like Restorative Community Conferencing (RCC), a circle process can be used to address wrongdoing by asking questions of the young person who has committed a harm, the person who was harmed, and their supporters about the incident and their needs.

RCC is used to address situations where harm has occurred. After receiving a diverted case, the facilitating CBO meets with the responsible youth and their caregivers to find out if they're interested in participating and whether the young person is willing to take responsibility for the harm. If the young person is willing to participate, the facilitator meets with the person harmed to find out how they have been impacted and what they need. The facilitator then prepares each participant, helping to process what happened and find out what repairing the harm could look like. They prepare the person harmed and their supporters, as well as the responsible youth and their supporters for an RCC process.

During the RCC, the young person who has caused harm, the person who has been harmed, their families, and community members come together to discuss the impact of the incident on everyone. In each RCC, there is self-reflection by all parties and supportive, yet firm, accountability. This culminates in producing a consensus-based plan for the young person to make things as right as possible for the person harmed, their family, the community, and themselves. The plan is usually completed within 3-6 months, after which the case is closed with no charges filed.

Who facilitates RCCs and circles?

Someone who has been trained in both RCC and circle processes. Staples of a facilitator are:

- Having equal partiality—care, compassion, and concern—for each and every person in the process, regardless of their involvement. This is particularly necessary in the cases where facilitators are emotionally close to the issue being addressed through the process
- Supporting the dignity and wholeness of each participant while also creating safe, brave, and non-judgmental containers for true accountability to occur
- Orientation that each participant has the wisdom and agency to name what they need to heal

What roles do the criminal legal system play in RCCs?

Traditionally, the criminal legal system operates by asking three questions:

1. **What law was broken?**
2. **Who broke it?**
3. **What punishment is deserved?**

Legally, harm and wrongdoing are defined as acts against the state (the breaking of the state's laws), rather than an act against a person. Restorative justice recognizes wrongdoing as a harm done to people and communities. By adopting a restorative justice approach, we seek to replace the current punitive framework with healing and accountability by asking instead:

1. **Who was harmed?**
2. **What are their needs?**
3. **Whose obligation is it to meet those needs?**
4. **Who else has been impacted by this harm?**
5. **What are the root causes?**
6. **What is the appropriate restorative process to repair the harm and address root causes?**

Given the paradigm shift we're working toward, the criminal legal system's involvement in the RJD process is limited, but important. The system plays a role in diverting cases to RJD programs that would otherwise result in incarceration or probation. The criminal legal system is not involved in the actual restorative process and follows the recommendations of the facilitating CBO upon case completion and/or case return.

Where is RJD already happening and how do we know it works?

The model of restorative community conferencing we train people in was developed in Aotearoa (also known as New Zealand). In 1989, the government in Aotearoa passed the Children, Young Persons, and Their Families Act, which transformed the nation's juvenile legal system. This includes using Family Group Conferencing—after which restorative community conferencing has been modeled—to address racial and ethnic disparities in the incarceration of young people. Currently the Restorative Justice

Project at Equal Justice USA also partners with communities with active RJD programs around the country - visit <https://ejusa.org/issues/healing-justice/restorative-justice-work/restorative-justice-diversion/> to see the current list of sites.

This model of restorative justice diversion has been proven successful in reducing recidivism, producing high satisfaction among people harmed, and reducing spending in incarceration. A 2017 study of [Community Works West's Restorative Community Conferencing \(RCC\) program in Alameda County](#) documented the effectiveness of this program:

- **Reduced criminalization.** During the first two years, the DA diverted 102 youth to the RCC program for cases that would have otherwise been addressed through the legal system.
- **Lower recidivism rates.** Participating youth were 44 percent less likely to recidivate, compared to similarly situated probationary youth.
- **Satisfaction among people harmed.** Ninety-one percent of people harmed said that they would recommend the process to a friend.
- **Family connectedness.** Seventy-five percent of participating youth indicated that the process had a “big positive” or “good” impact on their family relationship; 80 percent of participating parents/guardians indicated that their child talked to them more after completing the process.

What are the core elements of this restorative justice diversion model?

The RJD program is...

- **Element 1: Oriented around the needs of people harmed.** The person harmed identifies what they need to repair the harm. The process is oriented around getting those needs met and their questions answered. They also make decisions on the process that make them feel safe and supported. This even includes details of where people sit in the RCC, who enters the room first, who they want as support people, etc. Because a person's needs are dynamic and can change, the RCC process is flexible to meet their needs. The input of the person harmed is fundamental in the creation of the plan to repair the harm.
- **Element 2: Created and held by community.** Restorative justice diversion relies on the wisdom, knowledge, and expertise of community members to address the issues that impact them. The relationships that bind families and communities together are what power restorative justice processes. Being “held by community” means that restorative justice processes function best and are in alignment with the values and goals of restorative justice when operating fully outside of the legal system. It also means that the program is developed by, and responsive to, the needs of directly impacted people.
- **Element 3: Designed to reduce the criminalization of BIPOC communities.** Youth diversion programs often fail to reach the communities most impacted by our criminal legal systems. Therefore, keeping the reduction of criminalization of BIPOC communities at the forefront of how we implement RJD programs is essential. To address this, the jurisdictions we operate in focus on the zip codes from which youth of color are most often incarcerated and crimes for which youth of

color are disproportionately incarcerated. Additionally, selecting CBO's that prioritize hiring folks with lived experience and BIPOC staff is another way to help reduce the likelihood of implicit bias creeping into restorative justice processes and contribute to a level of cultural competence that enables restorative justice processes to effectively serve BIPOC communities.

- **Element 4: Focused on pre-charge diversion.** An RJD program should aim to divert cases as early on as possible in order to minimize the interaction with the system for both the responsible youth and the person harmed. A pre-charge referral means that a case is referred by the DA or referring agency to the CBO after a young person has been arrested and before any charges are filed. Diverting cases pre-charge is important because the admission of guilt in an RCC process could be used in criminal proceedings if there is a charge present, leading a young person to fear telling the truth. In post-charge cases, CBO facilitators who are not qualified to give legal advice may do so unintentionally, which would cause liability issues, and concerns around confidentiality about what occurs in the RJD process.
- **Element 5: Structured to avoid net-widening of the legal systems.** The cases diverted to RJD should only be cases that would have been charged and would have resulted in the young person being incarcerated or placed on probation. The purpose of this is to support the people harmed, as well as to reduce incarceration. We do not want to divert cases that would have been thrown out in court or low level cases that wouldn't have resulted in probation/incarceration. Moreover, this RJD model is intended for addressing serious harms, and studies show that high-level interventions for low risk youth actually increase recidivism.
- **Element 6: Committed to protecting participant confidentiality.** In order for RJD to be effective, confidentiality must exist on multiple levels within the process. The most concrete and critical measure of confidentiality is through a signed memorandum of understanding (MOU) between the CBO and the DA or local charging authority that clearly states that nothing said during the RCC process or learned as a result of the RCC process can be used in criminal or juvenile court. With an MOU in place, folks can tell the truth at any stage of the process, and none of their statements will be used as evidence in court. Also, the fact that a young person did or didn't opt to participate in the RCC process cannot be used in court. No CBO should accept cases from the juvenile legal system without a signed MOU.
- **Element 7: Dedicated to a strengths-based approach to healing harm.** When working with the young person who has committed a harm, we must shift their perspective, and those around them, from what is "wrong" with them to what is *right* with them. That they are more than just the worst things they have ever done. This helps to view them as not just part of the problem, but as integral to the solution—to making things right by the person they harmed, their community, and themselves. We must also shift the perspective around the person harmed toward their own strengths and what they know helps them heal.
- **Element 8: Rooted in relationships - how to nourish, deepen, and heal them.** Remember, at its core restorative justice is all about relationships—how you create them, maintain them, mend them. We approach the entire process, including prep, with relationships at the center. This includes getting to know each other, building relationships, and cultivating trust. We want to know what people value, what they like about themselves, what they're interested in, what they want out of this process, what would make them feel whole. What will help them feel their dignity is intact or increased during this process?