



LEGISLATIVE ANALYST REPORT

To: Members of the Board of Supervisors
From: Gabe Cabrera and Carolyn Huynh, Office of the Legislative Analyst (OLA)
Date: December 20, 2005
Re: **Restorative Justice** (BOS File No. 050455) (OLA No. 29-05)

SUMMARY OF REQUESTED ACTION

Motion requesting the OLA to research and prepare an in-depth report on the current restorative justice practices within the City and County of San Francisco and identify best practices from other municipalities.

EXECUTIVE SUMMARY

Restorative justice is a theory of criminal justice that focuses on crime as an act against another individual or community rather than the state. It asks victims, offenders and communities to resolve collectively to deal with the aftermath of crime. Restorative justice seeks to support victims, impress upon offenders the impact of their behavior and promote restitution to victims and communities. It is fundamentally different from traditional criminal justice, which focuses on punishing offenders, not restoring victims and communities.

Restorative justice can be a sentencing alternative or the sentence itself (or part of it). Initially, it was associated with low level crimes, but increasingly is applied in mid level and more serious crimes.

The OLA reviewed restorative justice programs throughout the country, with special emphasis on those in three counties: Fresno County (CA), Washington County (MN) and Cook County (IL). Our office learned that while the specifics of restorative justice programs vary, all involve some form of voluntary dialogue and problem solving among the parties affected by crime including victim-offender mediation, family group conferencing or peacemaking/sentencing circles. They may also include victim and offender assistance, restitution and community service. All of these practices are discussed in the Background section of this report.

In San Francisco, some City departments already run restorative justice programs that incorporate victim-offender mediation and family group conferencing. Others operate programs that share goals and principles of restorative justice. Still others surveyed for this report expressed interest in adopting or expanding their own restorative justice programs. Whether the Board of Supervisors should urge City departments to expand existing restorative justice programs or create new ones is a policy decision. Factors to consider include community interest and resources, due process safeguards, prevention of secondary victimization and the scope of cases to be diverted from the traditional criminal justice system.

BACKGROUND

Restorative justice is part of a movement to shift the focus of criminal justice from traditional criminal court case processing, which looks only to punish offenders, to repairing the harm caused by crime, which involves some form of dialogue and problem solving among the parties affected by crime (i.e., victim, offender and the community). It began in the late 1970's and is growing in popularity. Restorative justice is now developing in more than 45 U.S. states and many other parts of the world, including numerous European countries, Australia, New Zealand and South Africa.¹

Restorative justice is different from traditional criminal court case processing in several ways. First, it views crimes more comprehensively. Rather than defining crime as simply lawbreaking (i.e., an act against the state), restorative justice recognizes that offenders harm victims, communities and even themselves. Second, it involves more parties in responding to crime. Rather than involving only the government and offenders, it includes victims, family members and communities as well. Third, it measures success differently. Rather than measuring how punishment is inflicted, it measures how harm is repaired or prevented. Finally, it recognizes the importance of community involvement in responding to crime, rather than leaving the problems of crime to the government alone.

While the specifics of restorative justice programs vary, all involve some form of voluntary dialogue and problem solving among the parties affected by crime, which can include:

- **Victim-offender mediation (VOM).** This process allows the victim to meet face-to-face with his/her offender in the presence of a trained mediator. Through mediation, the victim tells the offender about the crime's impacts (i.e., physical, emotional and financial), asks questions and becomes directly involved in developing a plan for the offender to repair the harm that he/she caused. Cases may be referred to mediation as a diversion from prosecution, or after the court has accepted a formal admission of guilt, with mediation being the sentence (or part of it).
- **Family group conferencing.** Family group conferencing involves victims, offenders, family, friends and key supporters of both in deciding the resolution of a crime. All parties are brought together by a trained facilitator and allowed to ask questions and express their feelings. The entire group works out an agreement on how the offender may best repair the harm that he/she caused. This may be used as a diversion from prosecution, or after adjudication to address unresolved emotional issues or determine the specific terms of restitution.
- **Peacemaking/sentencing circles.** This is a community-directed process, in partnership with the traditional criminal justice system, to develop consensus on an appropriate disposition that addresses the concerns of all interested parties. Circles typically involve a multi-step procedure, including application by the offender to the circle process, separate healing circles for victim and offender, a disposition circle and follow-up circles to monitor the progress of the offender.

Some restorative justice programs share characteristics with the traditional criminal justice system, including:

¹ *Restorative Justice for Victims, Communities and Offenders*, Center for Restorative Justice and Peacemaking, School of Social Work, University of Minnesota, Mark Umbreit, April 15, 1999.

- **Victim assistance.** Victim assistance programs provide victims with a wide range of services, including physical therapy, mental health counseling and legal representation, as they recover from a crime.
- **Offender assistance.** Offender assistance programs, which seek to re-integrate offenders into the community, include job training, workshops and counseling on building community and trust, while developing communication and peaceful conflict-resolution skills.
- **Restitution.** Restitution is a sum of money paid by offenders for the financial losses they have caused to victims of their crimes.
- **Community service.** Community service is work performed by offenders for the benefit of the community as a formal or informal sanction. Neighbors and communities that are harmed by crime can be at least partially restored by unpaid service that contributes to their improvement.

Of the different forms that restorative justice may take, victim-offender mediation is the most developed and well documented. Early studies have shown positive results. For instance, in the largest multi-site study of victim-offender mediation conducted, with juvenile offenders in programs in four cities, victims who met their offender were more likely to be satisfied (79%) with the outcome of their case than similar victims who went through the traditional court process (57%).² Additionally, offenders who met their victim were more likely to successfully complete their restitution obligation to the victim (81%) than similar offenders who did not participate in mediation (58%).

CURRENT LAW AND PRACTICE

The following are brief descriptions of City policies and practices based upon the restorative justice philosophy in San Francisco:

Sheriff's Department. Established in 1997 after a one-year planning process, the Resolve to Stop Violence Project (RSVP) within the Sheriff's Department is an in-jail and post-release violence prevention program for male offenders with convictions for violent offenses. The goals of RSVP are to reduce recidivism and repair the harm caused by crime on victims, offenders and the community through three integrated components, as follows:

Created in 1998, the Offender Restoration Internship component requires 250-300 men/year to participate in an intensive jail curriculum designed to develop an understanding of the consequences of violence for victims and change their beliefs about the "male-role" behavior that leads to violence. Typically these men have been convicted of domestic violence, or some other form of violence such as robbery, assault, battery, rape or terrorists threats. During incarceration, they participate in general education, job development, life skills classes, male-role re-education, case management, substance abuse classes and/or surrogate victim-offender conferencing for up to twelve hours a day, six days a week, for a minimum of sixty days. RSVP advised the OLA that surrogate victim-offender conferencing, where victims (typically surrogates) tell their personal experiences with crime to RSVP's in-custody offenders, is an important healing and violence prevention strategy that has contributed to the program's overall effectiveness.

² *Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment*, Center for Restorative Justice and Peacemaking, School of Social Work, University of Minnesota, Mark Umbreit, 1998.

An evaluation of recidivism rates for the RSVP program shows positive results. Offenders who participated in RSVP for at least two months had a re-arrest rate for violent charges during the first year after release that was about 41% lower than that of members of a control group. For those in RSVP for three months or more, the re-arrest rate was about 51% lower, and those in for at least four months or more had a re-arrest rate about 80% lower.³

Upon their release, RSVP participants return to the community under the supervision of the Sheriff's County Parole and Jail Alternative Programs. They must participate in violence prevention groups and education and job placement programs, and work with community and victim advocacy groups to perform violence prevention services and education in schools and community centers. Some also partake in a six-month job-training program designed to train them as facilitators/case managers in the field of human services, which may lead to permanent employment.

The Survivor Restoration Program provides direct services, in three-steps, to victims whose perpetrators are participating in RSVP's Offender Restoration component. The first step of the program attempts to stabilize victims' living and financial situations by referring them to specific housing and monetary aid programs; the second step supports their transition to "survivors" through counseling and empowerment classes; and the final step encourages them to become victim advocates/activists by presenting their personal experiences with violence to new victims and survivors, as well as RSVP's in-custody offenders (also referred to as survivor impact presentations).

Per the Community Restoration component, RSVP graduates seek to repair the harm that they caused to the community by participating in mandatory community-based violence prevention activities such as personal encounters, art therapy, special events and public awareness projects. Community Renewal Dialogues (i.e., videoconferences that link RSVP's in-custody offenders with victims, their families and other community members) are used for crime prevention discussions, family dialogues, employment interviews and community meetings.

District Attorney's Office. The San Francisco Community Court program, which was created by the District Attorney's Office in collaboration with other City and non-City agencies, is an alternative to traditional criminal court case processing of misdemeanors and infractions (also referred to as "quality-of-life" offenses). The most common offenses processed include petty gambling, graffiti, littering, shoplifting, assault/battery and less serious drug violations. The first community court in San Francisco opened in 1998, and a total of twelve are currently operating in neighborhoods throughout the City.⁴ While components and implementation of community courts vary, they typically design a program of community service and social service treatment for low-level, quality-of-life offenders. Community court sentences are intended to restore neighborhoods through community service and rehabilitate offenders through social service programs.

³ *The Resolve to Stop the Violence Project: Effectiveness of Jail-Based Intervention on Reducing Violent Behavior During Incarceration and After Return to the Community*, Center for the Study of Violence, Harvard University Medical School, Dr. James Gilligan and Dr. Brandy Lee, 2004.

⁴ Community courts exist in the Bayview-Hunter's Point, Oceanview/Merced/Ingleside, Western Addition, Mission District, Excelsior District/Ingleside, South of Market, Tenderloin, Polk Street, Chinatown, Sunset, North Beach and Richmond.

The community court process is as follows. In almost every case where a misdemeanor is committed, a police report is forwarded to the District Attorney's Misdemeanor Intake Division. If this Division deems the case eligible for community court (which depends on the type of offense, the likelihood of it being resolved by community court, etc.), then the case is diverted to a community court. Participation in community court is voluntary, but for a defendant to take part, he/she must plead guilty. In the event that the defendant is unwilling, their case is automatically referred back to the District Attorney's Office and processed through the traditional court system.

If the offender accepts the offer to go before a community court, he/she must contact California Community Dispute Resolution Services, a nonprofit agency, to schedule a community court hearing. Once at the hearing, a judge arbitrator explains the program and a police officer reads the police report. The defendant has a chance to respond to the charges in the report. The arbitrator, in consultation with community panelists, has four judgement options in each case: 1) community service and/or fine; 2) restitution payments directly to victims; 3) social service treatment; and 4) dismissal of the case.

While community courts use the principles of restorative justice to guide their work, researchers/practitioners of restorative justice point out that the major shortcoming of these courts with respect to restorative justice is that they are based upon an adversarial approach (i.e., the defendant versus the other parties), whereas restorative justice is based upon a collaborative approach (i.e. all parties participate in a dialogue and problem solving process). In addition, an arbitrator's role in community court is typically less neutral than a mediator's role in restorative justice; most decisions in community courts do not involve mutual consent by the parties involved, whereas all decisions in restorative justice are consensual; and the adversarial approach of community courts is more likely to create a "power imbalance" between the offender and all the other parties involved which is inconsistent with restorative justice principles.

In April of 2004, community panelists from nine of the then ten community courts in San Francisco formed the Community Court Restorative Justice Committee to educate arbitrators and other panelists on restorative justice principles, address the above-noted shortcomings of community courts with respect to restorative justice and propose practices based upon restorative justice principles which each court could implement as they saw fit. All twelve courts in the City are currently represented on the committee, which has recommended that courts: a) organize panels of youth to talk with persons charged with the sale of alcohol to minors about the impacts of their actions on the community; b) create a substance abuse counseling and treatment program with education and community service components for drug offenders; and c) arrange for defendants and community panelists to participate in the Sheriff's Community Renewal Dialogues as a crime prevention strategy.⁵ The Restorative Justice Committee advised the OLA that it is exploring other ways to introduce restorative justice principles into the community court model.

The Department's other restorative justice based programs include the Back on Track Re-entry Program, which seeks to re-integrate low level drug offenders into the community by enhancing their personal competencies and requiring them to perform one hundred and twenty hours of

⁵ Of these recommendations, only the last has been implemented.

community service. The First Offender Prostitution Program educates first-time offenders (“johns”) about the legal, social and health ramifications of soliciting/engaging in prostitution. It includes surrogate victim-offender conferencing with johns and ex-prostitutes, as well as community panels that talk to offenders about the effects of prostitution on the quality-of-life in their neighborhoods.

Juvenile Probation Department – Several divisions within Juvenile Probation currently employ restorative justice based policies and practices. The Probation Services Division may assign arrested youth to community service and restitution in lieu of referring the case to the District Attorney for prosecution. At Juvenile Hall (a short-term detention facility), youth receive educational, medical and mental health services. They also receive training in socialization skills and general counseling from staff. At Log Cabin Ranch (a post adjudication facility for delinquent male juveniles), youth receive a range of educational, counseling, mental and physical health services. Therapeutic group sessions, vocational training, behavior management and substance abuse counseling are also available. The Community Programs Division contracts with community based organizations for a range of services to youth, including restorative justice based services such as two mentorship programs (one is for girls only) and peer counseling. The Department advised the OLA that it is in the process of incorporating restorative justice principles into its mission statement and goals. Thereafter, it intends to train all juvenile probation officers in the philosophy of restorative justice, and adopt specific strategies department-wide.

Adult Probation Department – Adult Probation employs restorative justice based policies and practices too. The Department’s Special Services Division supervises offenders convicted of specific crimes, mainly drug-related crimes, to insure that they are complying with the terms and conditions of their probation. It furnishes probationers with referrals to community treatment programs, employment and education opportunities. It also provides information, resources and assistance to victims, and helps them to obtain restitution. The Domestic Violence Unit within Special Services supervises batterers and provides counseling and community treatment referrals to batters and victims. The Department points out that the greatest barrier to expanding its restorative justice based polices and practices, despite the strong support and interest for them within the Department, has been the lack of advanced training for adult probation officers on ways to implement them into their daily caseloads.

Public Defender’s Office - The Public Defender’s restorative justice based programs include the Clean Slate Program, which helps ex-offenders to get their records expunged, sealed or destroyed. The Children of Incarcerated Parents Program allows incarcerated parents to maintain or restore meaningful relationships with their children by helping them to obtain family services, counseling and jail visits. Spearheaded by the Public Defender’s Office, MAGIC (Mobilization for Adolescent Growth in our Communities) is a neighborhood-based process for mobilizing community leaders, social service providers, churches, schools, juvenile justice agencies and families to implement the Comprehensive Strategy on juvenile justice reform in San Francisco.⁶ The Public Defender’s Office advised the OLA that many of MAGIC’s programs employ the principles of restorative justice, especially the offender assistance

⁶ The Comprehensive Strategy is a detailed, comprehensive community planning juvenile justice model which has been successfully implemented in over 50 cities nationwide.

component of the philosophy by providing mentoring opportunities to incarcerated youth and their families.

OTHER JURISDICTIONS

Of the various restorative justice programs throughout the country, those in Fresno County (CA), Washington County (MN) and Cook County (IL) appear to be the most developed and well documented. Table 1 summarizes the major features of these programs including: whether they are pre-adjudication (diversion) or post-adjudication (sentence); for adults, juveniles or both; typical offenses processed; whether offender participation is mandatory or voluntary; and what primary restorative justice practices are used.

Table 1: Major Features of Restorative Justice Programs Surveyed

Jurisdiction & Agency Name	Pre- or post-adjudication programs	Juvenile or adult offender	Typical offenses processed	Mandatory or voluntary offender participation	Primary restorative justice practices used
<ul style="list-style-type: none"> • Fresno County, CA Juvenile Probation Department & Juvenile Court 	Both	Juvenile	Property crimes	Both	VOM, victim restitution, offender assistance
<ul style="list-style-type: none"> • Washington County, MN Court Services Department 	Both	Both	All crimes	Both	Community service, family group conferencing, peacemaking/sentencing circles
<ul style="list-style-type: none"> • Cook County, IL Juvenile Probation & Court Services Department 	Both	Juvenile	All crimes	Both	VOM, community service, victim restitution, offender assistance

The following section contains additional details about restorative justice programs in the three counties surveyed.

Fresno County, California. Founded in 1982, the Victim Offender Reconciliation Program (VORP) of the Central Valley, Inc. is a nonprofit agency whose restorative justice practices have been duplicated throughout the world.⁷ VORP arranges meetings between the victim and offender, in the presence of a trained mediator, providing the opportunity for communication, responsibility, restitution and reconciliation. VORP deals mainly, but not exclusively, with property offenses. VORP is a sentencing alternative; it is not an additional penalty tacked onto a standard criminal sentence.

⁷ In 1995, the United Nations Alliance of NGOs Working Party adopted VORP's principles as a foundation for its work in international restorative justice.

Traditionally, referrals have come to VORP from the Fresno County Juvenile Probation Department and Juvenile Court. Youth may be referred at any time during their progress through the juvenile justice system. Referrals are based upon four criteria: 1) offender acknowledges involvement in the offense; 2) victim restitution has been ordered; 3) there is a clearly identifiable victim; and 4) there are trained volunteer mediators and staff available to manage each referral to completion.

After a referral is received and screened at VORP, it is assigned to a trained community volunteer who contacts the offender and victim, and explains the program. If the victim and offender agree to meet each other, the volunteer sets and facilitates a meeting at which the facts of the case are discussed, restitution negotiated and an agreement signed, stating the nature and amount of restitution agreed upon. After the meeting, the agreement is sent to the referring agency for approval and enforcement. VORP receives restitution payments from the offender and forwards them to the victim. When possible, VORP helps offenders find jobs to earn money to pay restitution.

Participation in the program is voluntary; while VORP may be ordered as part of a criminal sentence or as a probation condition, the referral will not be pursued if either the victim or offender is unwilling. In the event that no agreement is reached at a meeting, the case is returned to the referring agency.

VORP advised the OLA that it has not completed a formal evaluation of its program. However, it points out that victim-offender mediation results in high satisfaction with restitution agreements for both victims (59%) and offenders (73%).⁸

In 1997, a number of county agencies, in collaboration with VORP, created the Community Justice Conference (CJC), which is essentially an enlarged VORP meeting. Typically, a CJC includes the victim, offender, their parents, extended family members, teachers, faith representatives, probation officers and other agency representatives. CJC participants seek to reach unanimous agreement on an appropriate sentence (sometimes referred to as a restorative sentence) for the offender.

Like VORP, the CJC process is a sentencing alternative; but unlike VORP, cases typically involve non-violent felonies that are deemed serious enough to go to court. However, instead of pleading not guilty in order to get to trial or to a conference where the public defender and district attorney would bargain over the charge, the offender admits responsibility for what he/she did and agrees to participate in the CJC process. If the victim is unwilling to participate in a CJC, the case is returned to the court.

All participants enter a CJC with the intention of 1) recognizing the injustice of the offense; 2) searching for how to restore all those damaged by the offense as much as possible; and 3) considering the future and reaching unanimous agreement about the appropriate sentence for the offender. At the conclusion of a CJC, an agreement is signed by all in attendance and presented to the court. Unless there are special circumstances overlooked by the CJC process, the court accepts the agreement as the restorative sentence. The agreement is then incorporated into the offender's terms and conditions of probation.

⁸ *Victim & Offender Mediation Evaluations, 1994-2003*, VORP of the Central Valley, Inc., 2004.

Washington County, Minnesota. In Washington County, Court Services is the department charged with providing probation and parole services for adults and juveniles. Both pre- and post-adjudication restorative justice programs in the department began in the mid-nineties and evolved over time. Today there are four primary options available to staff, as follows:

First, the Sentence to Service (STS) program is a sentencing alternative designed to repay the community for harm incurred by a crime. In STS, low-risk offenders labor in organized work crews on projects that add value to organizations and communities throughout the county. Each day worked is credited as a jail day served or as eight hours at a pre-determined rate towards an outstanding fine. Offenders are also offered informational presentations on a variety of topics, including substance and domestic abuse, personal finance, parenting, job services and the judicial system. In 2004, the county saved over \$700,000 by avoiding the cost of incarcerating STS participants for 10,000 days. Offenders completed over 85,000 hours of work during the year. With a total value of hours worked, jail days saved and participation fees collected of nearly \$1.2 million, minus operating costs of \$600,000, the STS program produced a net value of \$600,000.⁹

Second, the Victim Offender Conferencing Program allows the victim and offender to meet face-to-face, in the presence of a volunteer or staff mediator, to talk about the facts and feelings related to the crime and develop a mutually agreeable restoration plan. Conferences may also involve family members and other key supporters. Agreements may include creative options identified as meaningful reparation by the conference participants, as well as monetary restitution or involvement in community programs. Cases may be referred prior to sentencing or as part of the sentence determined by the court. All levels of offenses may be referred to this program.

Community justice/peacemaking circles represent a third option. Circles involve judicial system professionals, offenders, victims and their respective support groups and community members in a decision-making process that combines indigenous and Western processes, including negotiation, mediation, consensus building and peacemaking. Cases are referred to a circle by probation officers or other criminal justice decision-makers, and the circle itself determines whether it will accept the case. If so, additional circles (such as healing, sentencing and follow-up circles) are held. The most typical cases referred to circles involve adult repeat offenders who have indicated a desire to change their behavior.

Court Services also engages in an ongoing effort to frame day-to-day casework of probation officers within the restorative justice philosophy. Probation officers are expected to demonstrate in writing how they expect to work a given case to reflect the department's emphasis on offender change, impact on victim and awareness of the community. Court Services advised the OLA that reframing how probation officers regard casework is time consuming and can be a wrenching experience for some, but it institutionalizes restorative justice principles into their supervision routines.

⁹ <http://www.co.washington.mn.us/info_for_residents/community_corrections/divisions_and_programs/community_justice_programs/>

Cook County, Illinois. In 1998, Illinois's General Assembly adopted the Juvenile Justice Reform Act, which incorporates the philosophy of Balanced and Restorative Justice (BARJ) as its guiding principle. The act attempts to balance three broad concepts in juvenile justice: 1) hold each offender accountable for his/her conduct; 2) have a mechanism in place that allows juvenile justice professionals to intervene early in an offender's life; and 3) increase the participation of the community in the juvenile justice process, including victims. Consistent with this act, Cook County's Juvenile Probation and Court Services Department established the following pre- and post-adjudication programs, which incorporate BARJ principles and enhance each juvenile's accountability to the victim and community as well as his/her personal competencies.

The Station Adjustment Collaboration/Early Intervention Program collaborates with the Chicago Police Department to coordinate services for youth whose cases are resolved at the arrest level through "station adjustments" rather than juvenile court. Station adjustments are an alternative to adjudication in which a youth enters into a contract pledging good behavior in exchange for avoiding prosecution.

After considering several factors, such as the juvenile's age and the seriousness of the offense, the police department may make either "formal" or "informal" station adjustments. For formal adjustments, the juvenile must admit involvement in the offense. Police, thereafter, develop a plan, with special conditions such as school attendance, curfew, community service and community mediation, which the juvenile and her/his parents must agree to and sign.¹⁰ If the juvenile fails to abide by the terms of the formal adjustment, the case may be referred to juvenile court. For informal adjustments, police need to determine only that there is probable cause to believe that the minor committed an offense. An informal adjustment does not require the youth to agree in writing to a plan, but it places many of the same conditions on him/her as a formal adjustment. If the youth fails to abide by these conditions, police may impose a formal adjustment.

For both formal and informal station adjustments, probation officers from the department's Community Liaison Unit supervise youth and community agencies provide needed social services to juveniles.

The department's other BARJ-based programs include the Community Liaison Program, which facilitates community participation in victim impact panels, community mediation and community panels for youth and teen courts. Youth referred to juvenile court for less serious and non-violent offenses can be diverted by the Cook County State's Attorney Office, through the Diversion Compliance Program, to specialized intervention programs, including victim-offender mediation. Lastly, the Victim Advocacy Program seeks to reduce the immediate and long-term impact of being a victim, while promoting the accountability of the offender. It includes victim-based efforts to prevent delinquency, victim panels and family group conferencing.

¹⁰ Community mediation panels informally hear cases in this process. Panels must consist of members who reflect the social-economic, racial and ethnic make-up of the community. Minors must admit responsibility for an offense to be eligible. Dispositions may include referral for placement in a community-based non-residential program, counseling, community service and/or restitution

FEASIBILITY OF EXPANDING RESTORATIVE JUSTICE IN SAN FRANCISCO

The following is a list of the major issues in the expansion of restorative justice in San Francisco:

Community Interest. Restorative justice often grows out of concern and frustration with the traditional criminal justice system. Under strict legal justice, victims and the community may not feel any sense of justice when their needs are not met and when offenders continue their criminal behavior despite prosecution. Offenders also may not feel any sense of justice when they are not held accountable to their victims and community for their actions. Therefore, the Board of Supervisors may wish to survey public satisfaction with the current system as well as interest in restorative justice practices.

Due Process. Legal processes provide many protections to accused offenders, both against wrongful conviction and disproportionate punishment. If these are removed, for instance by diversion from prosecution to mediation, an offender may be led to accept an excessive burden of punishment. Therefore, mediators or facilitators in any process should be neutral and concerned with protecting against the dominance of any one party in negotiation. Additionally, processes of appeal or complaint could be established for any party that feels they have been treated unfairly.

Secondary Victimization. Victims have a right to justice. This right includes an expectation that processes of dealing with the offense will not further damage them. Participation by the victim in any process should always be voluntary. Victims should themselves be allowed to determine whether the benefits of any course of action outweigh the costs. To do so they need to be provided a chance to ask questions and time to decide. They should also be provided with options for action, such as indirect mediation (without meeting the offender), a meeting with the offender and participation in a family group conference or circle.

Scope of Case Diversion. There has been a tendency to believe that restorative justice approaches are less appropriate for serious offenses. There is little basis for these views, however. Victim-offender mediation, for instance, has been used with both serious and less serious offenses (see the Other Jurisdictions section of this report). New restorative justice programs in San Francisco may sensibly concentrate at first on less serious offenses as they acquire experience, and they may remove restrictions as skills and resources permit. If a significant percentage of first-time offenders do not recidivate, then programs could begin to work with second-time offenders.

Punishment. Another common belief is that restorative justice approaches are “soft” on crime. However, restorative justice advocates argue that it is “tougher” in several senses.¹¹ It expects active responsibility on the part of the offender, including facing their victim and making reparations, and pays more attention to victims’ needs. Advocates also argue that excessive punishment does not equate with being tough on crime, and that punishment works most effectively when carefully measured and recognized by all parties as acceptable.

Community resources. Neighborhoods in San Francisco differ in their capacities to support offenders in their midst. Restorative justice programs that seek to tap into community programs, such as job training and counseling, may therefore be tapping into something that hardly exists. Offender support resources may need to be expanded in some communities and created in others for restorative justice programs to work. Otherwise there is the danger that such programs will raise expectations and involvement of local people and groups to a level they cannot sustain.

¹¹ *Restorative Justice An Overview*, Center for Restorative Justice and Peacemaking, School of Social Work, University of Minnesota, Tony Marshall, 1998.

Planning process. Members of the Community Court Restorative Justice Committee have proposed the formation of a Restorative Justice Working Group, comprised of representatives from the seven major local law enforcement agencies as well as victims, ex-offenders and community-based organizations, to create an integrated plan for implementing restorative justice throughout San Francisco's criminal justice system. As a first step, committee members, in collaboration with the Sheriff's Department, are planning a two-day conference on restorative justice in January 2006, bringing City decision-makers and restorative justice researchers/practitioners together with trainers from the University of Minnesota's Center for Restorative Justice and Peacemaking to examine current and best practices.

CONCLUSION

In San Francisco, some City departments already run restorative justice programs that incorporate victim-offender mediation and family group conferencing. Others operate programs that share goals and principles of restorative justice. Still others surveyed for this report expressed interest in adopting or expanding their own restorative justice programs. Whether the Board of Supervisors should urge City departments to expand existing restorative justice programs or create new ones is a policy decision. Factors to consider include community interest and resources, due process safeguards, prevention of secondary victimization and the scope of cases to be diverted from the traditional criminal justice system.