

**Keeping Youth Out of the School to Prison Pipeline:  
How Nebraska's Office of Dispute Resolution  
is Using Restorative Practices to Effect Change**

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**Moderator:**

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**Program Description:**

This session describes how Nebraska's Office of Dispute Resolution has partnered with judges, county attorneys, diversion, probation, schools and regional nonprofit mediation centers to reduce the number of youths entering the juvenile system by utilizing Victim Youth Conferencing, a restorative justice practice.

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Under the traditional systems of justice, a crime is considered an act against the State. Working on such a premise, however, largely ignores the victim and the community that are hurt most by the crime. Instead, it focuses on punishing offenders without forcing them to face the impact of their crimes. To the contrary, restorative justice sees crime as a violation against people and relationships. It is based on a theory of "harm repair," which involves repairing the harm caused or revealed by criminal behavior.

Restorative justice is best accomplished through cooperative processes where those primarily affected by an incident or wrongdoing come together to share their feelings, describe how they were affected, and develop a plan to repair the harm done or prevent reoccurrence. While restorative justice practices can be utilized for offenders of any age, the topic of this session is primarily centered around youth.

Restorative justice has two main priorities: first, to assist the victims, and second, to restore the community. Both the victims and the community are central to restorative justice, which makes it unique as a theory. The main difference between criminal (retributive) justice and restorative justice practices is that while the focus of the former is offenders "getting what they deserve," the latter's goal is for offenders to take

personal responsibility to the victims and to the community for the crime committed and to develop an improved understanding of the impact of his or her actions.

Restorative justice is not a new idea. The restorative justice movement began in the 1970's with the first Victim Offender Reconciliation Program ("VORP") created in Ontario, Canada. The first VORP in the United States was established in 1978 in Indiana. In 1991, the Nebraska Office of Dispute Resolution was founded. By the early 2000's several national and foreign organizations, including the ABA and the European Union had formally endorsed the practice of Victim-Offender Mediation ("VOM") and urged federal, state, local governments to incorporate such programs into their criminal justice processes. Between 2012 and 2014, Nebraska adopted legislation endorsing VOM and other facilitated conferences.

There are multiple types of restorative justice programs. Some examples include:

- 1) School Practices
  - Peer Mediation
  - Peacemaking Circles
  - Restorative Conferencing
  - Truancy Intervention
  
- 2) Criminal Justice
  - Victim Offender Mediation
  - Restorative Panels & Accountability Boards
  - Peacemaking & Healing Circles
  - Victim Empathy Classes
  
- 3) Transitional Justice
  - Truth and Reconciliation Commissions
  - Indigenous, Village-Based Courts
  
- 4) Conflict and Dispute Resolution
  - Intergroup, Intertribal, Interfaith Dialogue Groups
  - Parent-Teen Mediation
  - Facilitated Family Conferencing
  - Workplace Setting Resolution Processes

Typically, these programs create opportunities for victims and offenders to meet and discuss the crime and its aftermath. Again, the expectation is for the offenders to take steps to repair the harm that they have caused. The ultimate goal is reintegration, or restoring the victims and the offenders to whole, contributing members of society.

The Nebraska Office of Dispute Resolution ("ODR") within the Administrative Office of the Courts has been operating for nearly 30 years to reduce the exposure of youth to lengthy adversarial court trials by increasing the use of alternative dispute resolution ("ADR") practices. In addition, there are six additional mediation centers operating within different geographical areas in Nebraska that help the ODR with carrying out its mission. In 2015, the ODR initiated the Juvenile Victim Youth

Conferencing (“VYC”) Pilot to address the negative impact of the deep immersion of youth into the juvenile justice system. Between March, 2015 and July, 2016, the pilot was implemented in three different judicial districts. In 2017, the pilot was extended for one more year and in 2018, it was expanded statewide.

VYC is a restorative process that provides interested and willing victims an opportunity to meet the “youth”<sup>1</sup> who harmed them. The youth and the victim meet in a safe and structured setting with a trained restorative justice facilitator and engage in a discussion about the harm done. The process allows the victim to tell the youth about the physical, emotional, and financial impacts of the harm and to receive answers about the offense from the youth. The youth and the victim are both involved in creating a restitution plan for the youth to make reparations through apologizing, paying back his or her financial debt, and/or providing community service. The idea behind this is that what constitutes justice varies from one victim to another. Whatever course of action is agreed upon, it must always involve the youth himself or herself “paying back” as opposed to his or her parents. For example, in one case where a youth broke an elderly woman’s window, the victim and the youth agreed that he will help her with housework.

In Nebraska, VYC has been incorporated into juvenile diversion statutes. Pursuant to NRS 43-274 (3) (a-f), county and city attorneys can use VYC as a diversionary option after receiving a law enforcement ticket or a school referral. However, youths can be referred to VYC after going to court (and even after adjudication (through a court order).

The VYC process involves several stages:

- 1) Youth commits offense
  - Mediation center receives a referral from County Attorney’s office usually following a school-based incident and a citation from law enforcement.
- 2) Intake and initial sessions
  - Initial contact – both youth and victim are contacted by a restorative justice facilitator within 2 weeks of receiving the referral;
  - Initial private sessions – aim to clarify the role of the facilitator, explain the VYC process, capture details about the case, and determine appropriateness for a face-to-face-conference (sometimes victims are uncomfortable to meet the youth, so other options are provided such as having a surrogate who has been in in a similar position and who meets with the youth not to speak on behalf of victim but to talk about their own experience).
- 3) Conference (3 main topics of discussion)
  - What happened? – both parties talk directly to each other, tell their story, and ask questions; storytelling that covers feelings, emotions, and motives is encouraged;
  - What was the effect? – parties are assisted in reaching a deeper understanding about the impact and consequences of the offense;

- How can the situation be made better? – addressing all possible solution ideas for reparation; determining which one the parties can choose mutually and putting it into a written agreement.
- 4) Follow up
- What was the outcome of the conference? – e.g., apology, restitution, community service, etc.

Within a relatively short period, the VYC program has increased the number of partnerships to a total of 1,148 stakeholders including courts, county and city attorneys, probation, school, and city and county officials in 56 counties. One of the goals of the program is to recruit diverse facilitators from the LGBTQ and ethnic minority communities, as well as younger facilitators. Diversity of facilitators makes youth feel more at ease during the VYC process.

While the VYC program has only been in operation for a few years, both internal and external evaluation results are extremely positive. The internal data shows that between January, 2015 and June, 2018, out of 349 cases referred, almost half were either fully or partially completed successfully, while only 10% of all cases were “unsuccessful.”<sup>2</sup> Additionally, the rate of recidivism within the same period was only about 15%.<sup>3</sup>

The Nebraska ODR partnered with the Center for Restorative Justice and Peacemaking at the University of Minnesota School of Social Work to create an evaluation plan based on the VYC theory of change: VYC as a primary restorative justice intervention will reduce youth involvement in the justice system. Specific long-term measures of change include: 1) reducing recidivism, 2) closing the gap in disproportionate minority contact with courts, 3) increasing safety in the communities, and 4) sustaining capacity for VYC statewide.

The evaluation methods include three separate types of questions:

- 1) Descriptive
  - Who is served and under what conditions?
- 2) Normative
  - What is working?
  - What can be improved?
  - Is fidelity to best practices maintained?
- 3) Impact-based
  - What is different as a result? Why? How do we know?

Although data collection and reporting has been inconsistent and subject to certain challenges and limitations, there were many positive highlights:

- In 3 years, the number of counties served increased from 6 to 13.
- The percentage of cases referred in the pre-adjudication phase increased from roughly 35% to 85%, which signals a shift to greater prevention.
- Training and education goals exceeded the 100% success (41 people completed facilitators training, 47 trained as VYC surrogates, 13 mediation

staff members certified to be trainers and 145 stakeholders attended information sessions).

- 100% of 159 VYC's conducted in 2017-2018 resulted in reparations agreements, about 94% of which were successfully fulfilled, while the remaining 6% were partially fulfilled.
- 95% of participants reported satisfaction with the VYC process overall.
- Over 70% of victims and about 90% of youth reported that the VYC process as a justice system was more responsive.
- In 2019, the reporting methods will be significantly improved and consolidated within a single report.

After the floor was opened to questions, multiple attendees instantly raised their hands. The first question was whether county attorneys had any say about the outcome of any particular case, to which Alisha responded that attorneys generally understand the victims' involvement and approval of the process, and that she was unaware of a single case in which an attorney was not satisfied with the outcome.

Another attendee asked if there were any limitations to what types of cases can benefit from VYC. Debora responded that the general belief is that restorative justice can be applied to any case, however the ODR has been working predominantly with minor offenses. However, she added that the ODR has been approached about working on more serious cases involving homicide and sexual assault.

Another question was raised about whether the initiative for restorative justice came from another state. Debora explained that the initiative came from within Nebraska, although they had looked into other states' experience and practices. Nonetheless, she clarified that Nebraska's model is particularly unique for using youth conferences and also for implementing surrogates.

The following question was about the sources of the legislative language, particularly with respect to the definition of restorative justice. Debora stated that the language was pulled from different articles as well as a book on restorative justice dialogue. Additionally, she explained that the statutes are broadly written and do not include specific programs, so that they can be expanded without taking additional legislative action.

The last question that was asked was about the future of restorative justice in Nebraska. Without hesitation, Debora expressed her hope to be able to apply restorative justice practices to adult offenders.

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<sup>1</sup> Since terms such as "offender" and "delinquent" are often stigmatized, offenders participating in the Victim Youth Conferencing are exclusively referred to as "youth."

<sup>2</sup> The results for 143 cases or 41% of all referrals were not reported.

<sup>3</sup> Rate of recidivism is measured by number of youths committing an offense within one year of completing the VYC program.