



Restorative Arlington

Heart of Safety Restorative Justice Conferencing Program

Memorandum of Understanding

Signatories

THIS MEMORANDUM OF UNDERSTANDING (MOU) is by and between the following signatories: Office of the Commonwealth's Attorney for Arlington County and the City of Falls Church (OCA), Juvenile and Domestic Relations Court Services Unit for Arlington County and the City of Falls Church (CSU), and Restorative Arlington.

Statement of Opportunity and Benefit

Restorative Arlington offers a restorative justice conferencing program to benefit the community of Arlington County and the City of Falls Church.

By creating spaces where young people can make amends directly to the people they have harmed, restorative justice helps all participants understand the harm. The process also creates a space to listen and respond to the needs of the person harmed, the person who harmed, and their communities; to encourage accountability through personal reflection and collaborative planning; to integrate the person(s) who harmed into the community as a valuable and contributing member; to empower families to address youthful wrongdoing; and to create caring climates that support healthy families and communities.

Across different studies, the research consensus is that restorative justice practices are generally more effective than current adversarial court processes in terms of both reducing recidivism and meeting the needs of harmed parties.

As noted in a Campbell Systematic Review of 10 separate studies, restorative justice conferencing models have been demonstrated to be the most effective restorative practice, especially in cases of serious harm, such as those we propose to address. The effect of restorative justice conferences, especially the reduction in recidivism rates, was larger for violent crimes than for property crimes. Contrary to conventional wisdom, the review also found

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a slightly larger positive effect for adults who had committed offenses than for youth who were minors. For harmed parties, these models helped reduce post-traumatic stress symptoms, decrease the desire for violent revenge, and increase satisfaction with the resolution of their cases.

Program Description

Restorative Justice Conferencing Process (RJCP): In this model, originally adapted from Indigenous Maori traditions to the United States context, experienced restorative justice Facilitators manage the process in four stages.

- 1) **Consent:** After determining whether the case is suitable for restorative justice, Facilitators identify and inform potential Participants about this option. Participants enter and remain in the process only through voluntary consent.
- 2) **Pre-conferencing:** Facilitators carry out individual conversations with Participants to prepare Participants and determine if and when they are ready for a joint meeting. During individual conversations, Participants express their experiences and needs, identify other Participants, and work with Facilitators to address any reservations or questions they may have about the process.
- 3) **Conference:** The Facilitators accompany the Participants in structured conversation about what happened, the causes and impacts of the incident(s), and how to move forward, typically resulting in a mutually agreed-upon written restoration plan.
- 4) **Follow-up:** The Facilitators follow up with Participants to ensure they are satisfied with the process and the plan has been meaningfully completed, otherwise additional conferences may be needed.

Note that the process can be adapted to better serve Participants and so may not necessarily pass through all four stages or may use alternatives to in-person meetings with the Participants.

Definitions

Heart of Safety: Restorative Arlington's restorative justice conferencing program.

Restorative Justice Conferencing Process (RJCP): The entire process described in the Program Description, from initial consent through plan completion.

Referring Partner: The person, agency or organization that refers cases or conflicts to the RJCP.

Person Harmed: Person(s) harmed in the incident(s) being addressed in the RJCP.

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Respondent(s): Youth or Young Adult who is responsible for the harm being addressed in the RJCP. In program materials, Restorative Arlington will use the term Person(s) Responsible for better alignment with current restorative justice practices.

Surrogate: A proxy for the Person Harmed or the Respondent for harm, to be offered in cases where the Person Harmed chooses the RJCP but is unwilling or unable to participate directly or in cases where the Person Harmed chooses the RJCP, but the Respondent is unwilling or unable to participate directly.

Supporters: Individuals who were not directly harmed in the incident(s) being addressed who are chosen by Person(s) Harmed and/or Respondent(s) to enable them to participate fully and authentically in the RJCP.

Participants: Anyone who attends any part of the RJCP.

Referral Criteria

The OCA and CSU Intake may, taking into consideration Restorative Arlington's capacity, refer to the RJCP the most serious cases permitted by the eligibility criteria below. That is, the cases referred to the RJCP must be felonies or serious misdemeanors and must be crimes that, had they gone through the criminal legal system, would have resulted in penalties of probation or incarceration. These are cases that would have been charged and prosecuted had RJCP not existed. Examples of good candidates for pre-charge RJCP cases include some assaults, burglaries, robberies, arsons, and car thefts. All referred cases should have at least one identifiable Person Harmed, although a small number of cases may ultimately proceed without the Person Harmed's presence and will instead include a Surrogate, ideally of the Person Harmed's choosing. If Restorative Arlington does not have the appropriate staffing to take a case or cases, they will notify the Referring Partner(s).

Once a Respondent's case is referred to the RJCP, Restorative Arlington retains sole discretion to return the case back to the Referring Partner. The signatories agree that once the case is referred to Restorative Arlington, the referral cannot be undone by any signatory without a consensus of the signatories.

Issues of Guilt

Cases in which there is clear evidence of guilt are best for RJCP. The signatories agree that RJCP is not meant to serve as an investigative tool for purposes of prosecution or an opportunity to refer cases that would otherwise be dismissed.

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Prior History

Because studies show that people who reoffend are more successful with restorative responses than with standard court processing, the signatories agree to refer and to accept cases of Respondents who have either a prior adult or juvenile record, as well as those who are currently on probation for a prior offense and those who have no record. Neither the existence of prior offenses nor current juvenile probationary status shall be the sole basis to decline to refer a Respondent to RJCP or to preclude participation in the program. When such history exists, Restorative Arlington shall consult with the Referring Partner. Restorative Arlington retains sole discretion for accepting a referral to RJCP. Restorative Arlington will accept Respondents who have come in contact with the system due to dependency issues, as long as they meet the other criteria for referral.

If a Respondent was referred to the RJCP in the past, regardless of whether they enrolled in or completed the RJCP, they are still eligible to be referred if the new case meets the referral criteria.

If a Respondent is currently in the RJCP and is arrested for an unrelated offense, so long as that offense also meets the RJCP eligibility and referral criteria — including the voluntary consent of the Person(s) Harmed and Respondent(s) — the presumption is that the new case will also be referred to the RJCP. In instances where the new case is not otherwise RJCP-eligible, but involves less serious charges than the existing RJCP case, the signatories agree the new case should be handled through the existing RJCP through diversion or other means, where possible, until and unless the existing RJCP is unsuccessful or state law requires that a petition be filed. If a petition is filed, the OCA will not act to prosecute unless the RJCP is unsuccessful. This does not apply to status offenses.

Person Harmed and Respondent Both Agree to Resolve the Case Using RJCP

Restorative Arlington will ensure that both the Person Harmed and the Respondent have agreed to resolve the case using RJCP prior to moving forward with the RJCP. Participants enter and remain in the process only through voluntary consent and informed commitment.

Geographic Locations

This program is designed in part to address racial and ethnic disparities in the juvenile and criminal legal system. To further that aim and in accordance with the present capacity of Restorative Arlington, cases will be prioritized in the geographic areas where data show that racial and ethnic disparities are most prevalent. This provision is *not* intended to exclude eligible cases from elsewhere in Arlington County or the City of Falls Church. This stipulation can be modified by mutual agreement at any time.

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Other Considerations:

1. Cases with co-defendants are eligible for the RJCP. A case is eligible even if there are possible future co-defendants who have not yet been charged.
2. If a Respondent who has been referred to the RJCP is arrested on a new charge that meets the RJCP eligibility and referral criteria prior to enrollment in the RJCP, the new charge will be referred to the RJCP, unless a juvenile court petition is required by Virginia law. If a petition is filed, the presumption is that the OCA will refer the new eligible charge to the RJCP.
3. If the Respondent has enrolled in the RJCP and is arrested on a serious offense that is not eligible for the RJCP, the new charge will not be accepted into the RJCP. This does not stop the current RJCP from proceeding.

Eligibility Criteria

1. The date the case is referred must be on or after January 1, 2022.
2. Respondents must be 26 years old or under at the time of the harm to participate.
3. The harm must have originated in Arlington County or the City of Falls Church.
4. Respondents must not currently be on adult supervised probation or have charges pending in General District Court or Circuit Court. Respondents may be considered for the RJCP if they have been on supervised probation previously, or if they have an open informal adjustment, pretrial diversion, or truancy case.
5. Respondents in the custody of the Department of Human Services due to neglect and dependency may be considered for the RJCP.
6. At least one individual Person Harmed must be identified.
7. Respondent(s) and Person(s) Harmed must both agree to resolve the case with the RJCP.

Confidentiality

Information Obtained During RJCP Not to Be Used in Prosecution

The OCA agrees that all new information learned in the Restorative Justice Conferencing Process (including pre-conferencing meetings) is privileged and will not be used against the Respondent or any other participant in any juvenile or criminal proceeding. The OCA agrees to not subpoena as witnesses or otherwise ask RJCP Facilitators or other Restorative Arlington personnel or consultants to share facts learned in matters that involve Respondents who participate in conferencing. The OCA also agrees to not subpoena other RJCP Participants (in either pre-conferencing meetings or in the Restorative Justice conference) to testify about any conversations that take place as part of the RJCP.

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Restorative Arlington is **not** an agent of the Commonwealth, a criminal investigatory agency, or a law enforcement agency involved in the investigation of alleged criminal behavior. Restorative Arlington is an independent non-profit, and it is **not** engaged in investigation, prosecution, or punishment of alleged criminal behavior such that the information learned during the restorative process can be imputed to the OCA for purposes of *Brady v. Maryland*, 373 U.S. 83, 87 (1963) and its progeny. Nonetheless, in the event that the RJCP is not successful, the only information that the Restorative Arlington Facilitators would disclose to the OCA would be any exculpatory evidence of the person accused of a crime.

Finally, the signatories understand that a Respondent's agreement to participate in the RJCP, or the failure of a case to successfully resolve through the RJCP, will not be introduced into any juvenile or criminal proceedings. Any information learned outside of the RJCP is **not** governed by this agreement.

Confidentiality for Disclosures about Other Participants

If the Respondent brings another person to the RJCP or discusses other persons in the RJCP, the OCA agrees that conversation, including the identities of those other persons, will not be used against those additional persons in a court of law unless such information is mandatorily required by law to be reported. Any information learned outside of the RJCP is **not** governed by this agreement.

Prosecution of Cases Referred to the RJCP

It is understood that prosecution of respondents may proceed against respondents based on information gathered before, after, or otherwise outside of the RJCP **if, and only if**, the conferencing process is unsuccessful in resolving the case, as determined by Restorative Arlington. If the RJCP is successful, prosecution will **not** proceed for the referred case.

If a case has been referred through a law enforcement mechanism such as the ACPD or the Falls Church Police Department, the OCA agrees to delay prosecution for 10 months from the date of the referral to the RJCP. This provision is related only to the specific case referred to the RJCP and has no bearing on additional or previous crimes the Respondent may have committed. This provision is intended solely to delay prosecution of a case referred for RJCP pre-charge diversion until a reasonable time has been allotted to resolve the case through the RJCP. Every effort will be made to resolve cases as quickly as possible for the benefit of all parties.

Where cases have been referred through non-law enforcement mechanisms, such as school disciplinary entities or community-based organizations, the OCA may not be aware that an RJCP is in process. If any participating organization or agency learns that the OCA has initiated prosecution of a case referred to the RJCP, the organization/agency will contact the OCA to alert the Commonwealth's Attorney to the ongoing RJCP. All parties to this agreement agree

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that when cases are being resolved through the RJCP, the RJCP shall be the default forum for resolving that case. However, if any of the signatories have additional information that renders the case ineligible for the RJCP, the referral may be reconsidered.

Mandatory Reporting

Nothing in the MOU shall be interpreted in a manner inconsistent with state or local law governing mandatory reporting. An important exception to confidentiality is that Facilitators may share information disclosed during the RJCP with the relevant authorities if necessary to prevent an imminent and serious threat of bodily harm, abuse, neglect, or abandonment.

Multiple Referral Mechanisms

The confidentiality agreements above apply regardless of whether the case is referred to the RJCP through community-based organizations, faith-based organizations, schools, police departments, probation officers, the OCA, courts, Arlington County Fire Department, or individuals.

Confidentiality Issues with Regard to Immigration Status

The OCA understands that any information learned in the RJCP (including pre-circle/conference meetings) regarding immigration status of *any* of the Participants will be confidential and shall not be accessible to law enforcement. The OCA agrees that all information learned in the RJCP (including pre-circle/conference meetings) regarding the immigration or documentation status of the Person(s) Harmed or Respondent(s), their families and/or caregivers, and others participating in or discussed in the RJCP will be treated as confidential and privileged information. The OCA agrees not to share such confidential information with any federal law enforcement or immigration agencies or authorities.

The OCA will oppose all requests for information regarding the immigration status of *any* Participant made on behalf of federal law enforcement and immigration agencies, unless specifically authorized by the Participant, for example in the process of certifying a U visa. The OCA agrees not to subpoena as witnesses or ask questions of any RJCP Facilitators or other Restorative Arlington staff about immigration facts learned in matters that involve the Person(s) Harmed or Respondent(s), their family and/or caregivers, the other RJCP Participants, or people discussed during the RJCP. The OCA also agrees not to subpoena other RJCP Participants (in either pre-conferencing meetings or in the circle/conference itself) to testify or to answer questions about any information regarding immigration status that is learned through the RJCP. The OCA agrees not to ask anyone referred to RJCP about their immigration status. The OCA further agrees that immigration status shall not be used as a basis to decline to refer to or preclude Person(s) Harmed, Respondent(s), or any other individuals from participating in the Restorative Justice Conferencing Process.

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Role of Restorative Arlington

Case Referrals and Requests for Cases

Restorative Arlington will contact the signatories when Restorative Arlington is prepared to take a new case or set of cases. Any signatory may contact Restorative Arlington about a potential referral at any point when a case seems appropriate for the RJCP, based on the criteria listed above. CSU will contact Restorative Arlington when a juvenile case is appropriate for referral to the RJCP. Upon referral of the case by CSU, Restorative Arlington will determine if the case meets the criteria for the RJCP.

Confidentiality

The signatories authorize Restorative Arlington and its providers to access necessary information for Respondents who are subject to the jurisdiction of Juvenile and Domestic Relations Court pursuant to § 16.1-301 G of the Virginia code. This information shall remain confidential, and it is unlawful for a person to intentionally disclose or disseminate to the public the files and records of Respondents who are subject to juvenile court jurisdiction. Restorative Arlington will ensure that all providers of RJCP services are aware of the laws on confidentiality of Juvenile and Domestic Relations Court and other court records. Restorative Arlington will further ensure that all providers sign agreements acknowledging that such records may only be used for the limited purpose of facilitating the RJCP.

Demographically Appropriate

Restorative Arlington will work to have available a broad spectrum of RJCP Facilitators so as to provide culturally appropriate facilitation of the RJCP for both Persons Harmed and Respondents.

Reporting Status/Outcomes

The Referring Partners will receive a brief memorandum summarizing progress on all RJCP cases from Restorative Arlington every four weeks. For specific cases, the Referring Partner(s) will be notified of whether the RJCP resulted in a plan to repair harm. Referring Partners will not be notified about the specifics of the plan itself unless further action is required by Referring Partner(s) to complete the plan. Referring Partner(s) will also receive monthly notification of the progress on the plan completion, notification of any reconvening of the RJCP (if the plan needs to be adjusted), and a notification when the plan is completed. If the Respondent repeatedly fails to complete the plan and reconvenes are unsuccessful in helping them get on track, the case will be returned to the Referring Partner to be handled at their discretion, subject to the protections listed above.

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Program Assessment

Restorative Arlington shall work with George Mason University's Carter School for Peace and Conflict Resolution to collect data on the restorative justice conferencing program, analyze such data, and report on the results of the restorative justice conferencing program. GMU's Carter School will provide a yearly independent assessment to all system partners.

Completion Timelines

The entire Restorative Justice Conferencing Process, from initial consent through conferencing and plan completion, will ideally be complete in eight to 10 months from the date of the case referral. Plans are to be completed within three to six months of the conference. Some rare cases may require longer to complete, particularly if Respondent(s) agree to enroll in a program with a longer duration. Restorative Plans will include measurable completion benchmarks that allow for active monitoring towards full completion.

Compensation

This MOU does not govern any contractual or financial arrangements between the parties.

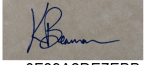
Terms and Termination

This MOU shall commence on the effective date and shall continue unless either amended by agreement of all parties or terminated pursuant to this paragraph: Any party may terminate its obligations under this MOU prior to expiration upon 30-day notice to all of the parties to the MOU. Any RJCP cases that commenced under the terms of this agreement will be governed by the terms of this agreement, even if the MOU has been terminated. Commencement is determined by the receipt of the case from the referring entity.

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Approvals

The effective date of this MOU is January 1, 2022.

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Kimiko Lighty, Executive Director, Restorative Arlington

1/26/2022

Date

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Parisa Dehghani-Tafti, Commonwealth's Attorney
for Arlington County and the City of Falls Church

1/31/2022

Date

DocuSigned by:

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Earl Conklin, Director of Court Services, Juvenile and
Domestic Relations Court, Arlington County and the
City of Falls Church

1/28/2022

Date