

Commonwealth's Attorney Policies and Procedures for Restorative Justice Referrals

Eligibility

All six of the following factors must be met for a case to be referred to a restorative justice conferencing:

1. **There is at least one identifiable crime victim who can be consulted about the process and participate in conferencing.** Sometimes there is more than one victim affected by the same incident or harm. A crime victim can also be a particular community or institution, such as a neighborhood, school, business, or church. In such a case the community or institution could appoint a representative to participate.
2. **The crime does not involve intimate-partner violence, sexual assault, a child who has allegedly been victimized by an adult, or a case in which the person who committed harm was in a supervisory role or other position of authority over the victim.** Such factual circumstances raise the potential for coercive control to be exercised over the victim.
3. **The factual circumstances of the case do not indicate a general threat to public safety or identifiable persons.** A murder case, for example, would be ineligible for a restorative justice process designed for diversion, but may be appropriate for the healing of victims under certain circumstances.
4. **Both the victim and the person responsible must be willing participants in the restorative justice conferencing process.** This is a voluntary process designed to heal and provide support to victims, and their support is necessary; the responsible person must be willing to be accountable. However, referrals to support circles are available for victims at all times. In the case of victims under 18, at least one parent must be a willing participant.
5. There must be **clear evidence of guilt.** If a defendant maintains their innocence a restorative justice conference will be inappropriate.
6. The OCA would have **otherwise maintained the prosecution.** If the case would not have been prosecuted for any reason, it is not appropriate for the restorative justice conferencing process.

All potential referral cases should be brought to the attention of the Commonwealth's Attorney.

What to Expect

If a case is referred for restorative justice, a representative of the Office of the Commonwealth's Attorney will contact the victim to determine their interest in the possibility of going forward with a restorative justice process. If they are interested, trained restorative justice facilitators will have separate initial conversations with the victim and the person responsible to explain the process and determine each person's willingness to proceed. **Both** the victim and the person responsible must be willing to participate for the referral to move forward. The facilitators then schedule and conduct pre-conference conversations separately for the victim and person responsible. Pre-conference meetings may be conducted over the phone or in person depending on the circumstances. There may also be instances in which participants other than the victim or the person responsible should participate, such as supporters of the victim or of the person responsible or people affected directly by the incident. These might include other family members, neighbors, school staff, or community members. Any additional participants must also prepare in pre-conference meetings with the facilitators.

Typically, during pre-conference preparation, the facilitators are eliciting information about what happened, who was harmed and how, what needs have arisen as a result of the harm, and what might be done to repair the harm.

If the facilitators conclude during a pre-conference that the harm is not eligible or if one or more of the parties is not appropriate for participation, they will, after consultation, determine what is the best course of action, including dismissal of the referral. No participant will be required to continue engagement and dismissal of the referral will redirect the case to the legal system.

Once the facilitators conclude that each participant is ready, willing, and capable of proceeding to a conference, and that there is no clear likelihood that the victim will suffer more harm by doing so, the conference will proceed. A conference is a face-to-face meeting in a neutral location.

Any participant who is under 18 **must** have a parent or guardian present during pre-conference preparation. Participants may also elect to have someone(s) else present to support them. If the facilitators judge that a particular participant would likely cause more harm, they should encourage alternatives with the respective participant.

During the conference, facilitators and the participants will discuss the harm that has been caused and ask questions of the other participants. The person responsible is expected to accept responsibility for the harm and be willing to try to repair it. The facilitator serves as a neutral person who guides the conversation and helps the parties reach their own resolution. The victim will be asked what they would like the person responsible to do to repair the harm, which will usually lead to a specific written agreement including what will be done by a particular date. The outcome is typically a written restorative plan mutually agreed and co-created by the parties that sets forth the terms of repair. The plan is covered by the confidentiality agreement and copies are shared only with the victim, person responsible and any other conference participants who are involved in the plan completion.

Post-conference reporting will be expected from the facilitators to the extent permissible within confidentiality parameters.

Confidentiality

To encourage the parties to speak freely and openly during the conference, the facilitator will ask them to agree that all statements made during the conference will remain confidential. This also means that if the restorative justice process does not result in a satisfied agreement, the parties, including the attorney for the Commonwealth, will not use any statements made during the pre-conferences or conference in court.