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Introduction

Whakatauki

Kua takoto te manuka.

The challenge has been laid down.

Purpose

The criminal justice system is a term that describes the processes and agencies that deal with 'criminal offences' – acts or omissions that can be punished by law.

As a restorative justice facilitator working with criminal cases you will be involved in the criminal justice system and will deal with others involved in the system, such as lawyers and judges. You are likely to be asked questions by conference participants about the criminal justice system and how their cases will be dealt with. (However, facilitators, even if they are lawyers, must not give legal advice to conference participants.)

This module will give you knowledge of the New Zealand criminal justice system so that you will be able to answer some of the questions, and speak the language of those you deal with.

The relevant principles of best practice that apply are:

- **UNDERSTANDING** is key to effective participation
- Offender **ACCOUNTABILITY** is key to the restorative justice process
What’s in this module?

In this module you will learn about:

- The New Zealand legal system
- The New Zealand court system and the processing of criminal cases
- Where restorative justice sits within the system
- Restorative justice referrals
- Sentencing

In the assessment for this module you will need to spend some time observing cases at your nearest District Court.

Learning objective

In this module you learn to:

- Explain the meaning of terms used within the criminal justice system
- Answer questions you will be typically asked by restorative justice participants

Your answers need to be correct and without giving any legal advice.

Pre-requisites

You need to have completed Modules 1 and 2.
Instructions for working through this module

- First ensure that you have the latest version of this module. The module date is on the footer. The Resolution Institute website has the latest version of each module.
- Work through the module with one or more colleagues if you wish. Group learning can be easier and more fun.
- Work through this module at your own pace. If you have a background in criminal justice you may choose to go straight to the on-line assessment.
- Visit a local District Court and observe a variety of cases and talk with the restorative justice coordinator in court.
- Complete the practice exercises and check your answers against the feedback that follows each practice.
- Access the references included in the module for further information.
- Use the glossary at the back of this module to look up the meaning of legal terms.
- Complete the on-line assessment. Instructions are given at the end of this module.
The New Zealand legal system

New Zealand’s legal system, including the criminal justice system, was founded on the English legal system. However, New Zealand has developed its own distinct legal structure.

Our laws are made by Parliament and are then administered by various Government and local organizations. For example:

- The police are in charge of ensuring law and order
- The police are in charge of safe driving on the roads
- Local Councils are in charge of ensuring dangerous dogs are confined
- Work and Income (MSD) is in charge of ensuring beneficiaries are not defrauding the Government

There are two main divisions of law - civil law and criminal law:

**Civil law** covers disputes between individuals, companies, and sometimes local or central government. The police are not usually involved in civil law disputes. Civil disputes often involve money. Small civil disputes may be resolved in the Disputes Tribunal and more major ones are decided in court by a judge. Civil cases are NOT referred to restorative justice. Examples of civil law cases are:

- A family taking a school to court for suspending their child
- A neighbour in dispute about a new boundary fence
- A politician taking a newspaper to court for printing defamatory comments

**Criminal law** refers to actions that are defined in our laws as offences.

The Crimes Act 1961 defines serious criminal offences. The Summary Offences Act 1981 includes a wide range of lesser criminal offences. Other criminal offences are included in several statutes including, for example, the Sale of Liquor Act, the Arms Act, the Land Transport Act and the Misuse of Drugs Act.

It is criminal cases that may be referred for restorative justice.
The New Zealand court system and the processing of criminal cases

What a court is

A court is not a building, although it is commonly referred to as such. The building is a courthouse. Within the courthouse there may be many courtrooms. When such a room is being used to make decisions and the judge is present, the court is said to be ‘sitting’.

A court is a judicial decision making process. The judge hears the evidence, interprets the law and reaches a decision (his or her judgment – note there is only one “e” in a judge’s “judgment”, which is different from the usual spelling). In criminal cases the judge also delivers the sentence.
In New Zealand, judges are entirely independent. That means they are not employees of the Ministry of Justice, and they do not take direction or advice from anyone – not even the Prime Minister and certainly not from restorative justice facilitators.

When speaking to a judge in court you should call them “Your Honour” or “Sir” or Ma’am (pronounced “Marm”). When speaking about a judge to another judge, you should refer to them as “His Honour” or “Her Honour Judge XX”. District Court Judges are called Judge Lastname, and High Court Judges are called Justice Lastname.
Types of court

There are a number of different courts in New Zealand but the ones you will likely hear about as a restorative justice facilitator are:

**The High Court** hears cases of more serious crime, and hears appeals from the District Court.

**The District Court** – hears lower level criminal and civil cases where the offender is an adult (18 years or older*). More serious cases (murder, for example) are heard by the High Court. Within some bigger District Courts, there might be some division of cases. For example in some courts there is a separate sitting to hear family violence cases.

* As from July 2019 the adult age will become 18 and older.

**The Family Court** is a specialist division of the District Court which deals with the law regarding family problems, including disputes between guardians, child protection, child support and maintenance, separation and divorce, family violence (protection orders and education programmes) and relationship property. The Family Court process usually involves mediations through a Family Dispute Resolution service (but not in cases where there has been violence). (Note that family violence offenders can also face a District Court criminal case.)

**The Youth Court** is a specialist division of the District Court, which deals with offences by young persons (under 18). Youths only go through adult court for the most serious offences, for example, murder. The Youth Court process involves family group conferences.
District Court

District Courts are presided over by District Court Judges. The Chief District Court Judge is the most senior judge of the District Courts. District Courts deal with both civil and criminal cases but only criminal cases are referred to restorative justice.

Criminal cases are categorized according to how serious the charges are. Different categories have slightly different procedures.

The least serious offences (category 1 and 2 offences) are dealt with by a District Court Judge without a jury. Defendants in category 3 offences have the option of a District Court Judge or a jury trial.

<table>
<thead>
<tr>
<th>DISTRICT COURT examples</th>
<th>HIGH COURT examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault, including family violence and sexual offending</td>
<td>Murder</td>
</tr>
<tr>
<td>Theft</td>
<td>Manslaughter</td>
</tr>
<tr>
<td>Burglary</td>
<td>Terrorism</td>
</tr>
<tr>
<td>Driving offences, including drink driving</td>
<td></td>
</tr>
<tr>
<td>Drug offences</td>
<td></td>
</tr>
<tr>
<td>Cruelty to an animal</td>
<td></td>
</tr>
<tr>
<td>Breaches – of protection orders, community work, etc</td>
<td></td>
</tr>
</tbody>
</table>

Only the most serious criminal charges (category 4 offences), for example, murder, manslaughter and terrorism offences, have to be heard before a judge and jury in the High Court.

Cases which are going through restorative justice will not go to a hearing. Hearings are only held when the defendant is disputing the facts or pleads not guilty. It is a rare occurrence for an offender who pleads not guilty to be referred to restorative justice.
Key roles in the criminal court process

Various personnel and agencies play key roles in the criminal court process. Before explaining the procedure for handling criminal cases in the District Court, here is a list with brief details of the key roles.

Police

The basic role of the police in criminal cases is to investigate and gather evidence, and to establish whether there is a case to be answered. Police decide whether or not to lay a charge – that is, whether to accuse someone of committing a crime. (In New Zealand, it is the role of the police, not the victim, to decide whether or not to lay charges.)

When laying charges the police have to name each and every charge and which Act of Parliament it relates to. For example:

- **Unlawfully takes motor vehicle**
- **Crimes Act 1961 Section 226 (1)**

Only the police can withdraw or change a charge that they have laid.

The police interview the offender, the victim, witnesses, and document the case in the “Police Summary of Facts”. This goes to the court and if the case is referred to restorative justice the facilitators will receive it via their provider.

Where the offence has resulted in monetary or property loss, the police prepare a “Reparation Report” detailing all loss and its value.

Prosecutor

A prosecutor is any person who appears in court and progresses a criminal case on behalf of the Government of New Zealand. In the District Court cases are normally initiated and progressed by a police prosecutor, but some cases are handled by other agencies. For example:

- If the case relates to benefit fraud then the prosecutor will be the Ministry of Social Development (Work and Income).
- If the charge is “Owner of a dangerous dog causing injury” then the prosecutor will be the local Council.

Defence lawyer or defence counsel

The defendant in a criminal case is advised by a lawyer. The victim does NOT have a lawyer.
A defence lawyer (also called defence counsel) represents the defendant in court proceedings. If the defendant cannot afford a lawyer, the government may provide for one through Legal Aid. Legal Aid (part of the Ministry of Justice) decides whether a person is entitled to legal assistance. If a defendant is granted legal aid they have a lawyer assigned to their case and this ‘assigned lawyer’ is available to the offender for advice between appearances and will speak on the offender’s behalf when they appear in court. Many assigned legal aid lawyers work for the Ministry of Justice Public Defence Service, but others are in private practice.

If a defendant is denied legal aid, a duty lawyer can represent them.

**Duty Lawyer**

A duty lawyer (sometimes called a duty solicitor) is a lawyer on duty at the courts and paid for the day’s service by the Ministry of Justice. They provide free legal help to people who have been charged with an offence and don’t have their own lawyer. A duty lawyer can be consulted by the offender on the day of their court appearance. The lawyer is not available for ongoing consultation between court appearances, and at different appearances the offender will likely see a different duty lawyer.

If an offender does not have an assigned lawyer the facilitator should advise the offender to talk to the duty lawyer.

**Summary of differences between a duty lawyer and an assigned lawyer**

<table>
<thead>
<tr>
<th>Duty Lawyer</th>
<th>Assigned lawyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can be consulted by an offender in court on the day of the offender’s appearance</td>
<td>Can be consulted both at court and between appearances</td>
</tr>
<tr>
<td>At different court appearances the offender is likely to see different duty lawyers</td>
<td>The offender sees the same assigned lawyer at different court appearances</td>
</tr>
</tbody>
</table>
Victim Adviser

Victim Advisers are specialist staff employed by the Ministry of Justice to help victims. Their role is to:

- provide information to victims about the case that relates to them
- advise victims about their rights in the court process
- help victims participate in the court system.

The Victim Adviser will inform the victim, for example, when the accused is to appear in court, whether the accused has been remanded in custody or not, what sentence was given, etc. The services provided by Victim Advisers are entirely confidential.

Their role is not to act as a support person for the victim but rather to check that the victim has support arrangements in place. They also convey the victims’ concerns to the court.

The Victims' Rights Act 2002 entitles victims to be fully informed of the progress of a court case relating to them. In some cases, victims are also entitled to have a say about matters such as name suppression, bail, home detention or parole.

The Victim Adviser may introduce the option of restorative justice to a victim and then advise the court whether the victim is interested in participating. This early information can assist the judge in deciding whether to refer to restorative justice.

The relationship between the Victim Adviser and the restorative justice provider is an important one.

Victim Support

Victim Support is an organisation, staffed principally by volunteers, which supports the victim. They offer counselling services and in certain cases, financial support for victims to attend court or restorative justice meetings. Victim Support also assist victims to write “Victim Impact Statements” which are referred on to the judge.

For further information go to:

Summary of differences between a Victim Adviser and Victim Support

<table>
<thead>
<tr>
<th>Victim Adviser</th>
<th>Victim Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employed by Ministry of Justice</td>
<td>Voluntary community role</td>
</tr>
<tr>
<td>Advises the victim on case progress and their rights</td>
<td>At request of police, assist victims to write a Victim Impact Statement.</td>
</tr>
<tr>
<td>Does not act as support person for the victim but check they have support in place.</td>
<td>Provide counselling and other support services for victims.</td>
</tr>
</tbody>
</table>

Probation Officer

Probation Officers are employed by the Department of Corrections. There is always a Probation Officer in the District court to provide the judge, when requested, with information on the offender and his/her performance of community sentences (for example, whether the offender has reported to Probation as instructed, and whether the offender has completed assigned programmes).

Registrar

The registrar is an employee of the court. In many courts the registrar runs the court during the defendant’s early appearances. In these sittings, administrative matters such as bail conditions and legal representation are dealt with. The registrar headed court sittings are designed to improve the efficiency of the later judge headed sittings when pleas are entered and sentencing occurs.

When the offender appears before a judge, the registrar will sit in front of the judge’s bench and be available to provide information and maintain records for the court.
How criminal cases are processed in the District Court

When a person commits an offence and is caught by the police they may be required to appear in court several times. The process is quite complex and it is important that you, as a restorative justice facilitator, have some knowledge of that process and the terms used, so that you can understand what an offender tells you. There is a glossary of terms in the back of this module.

To explain the process we will start with an example.

Example:

*A 25-year-old woman, Shirley, is caught shoplifting in a boutique clothing shop, ‘Live Bazaar’. She has many previous shoplifting offences.*

Shirley’s first contact with the law is with the police who come round to the shop and arrest her. Shirley is taken to the police station and charged with theft of an item under $1000. She is held at the police station while the police interview her, document the charge, and issue her with the charging document and police bail conditions. Shirley is remanded on bail and her bail conditions are that she is to live at her current address, is not to enter Live Bazaar, and is to attend court on Date 1.

Shirley’s summons says that she must appear at the District Court on Date 1. Shirley turns up for her first appearance in court. There is no judge there as this is an early appearance and a “Registrar’s Court” is running, headed by a registrar. This first appearance is administrative. The address Shirley lives at is confirmed and she is granted court bail on certain conditions. The bail conditions are that she is to live at the address given, is not to enter Live Bazaar, and is to appear at court on Date 2. Shirley applies for legal aid by filling out a form with the duty lawyer’s help. (Her other options were to choose to pay for a lawyer herself, or to represent herself.)

At this stage Shirley is referred to as ‘the defendant’ because she has not yet been found guilty of the charge. She does not enter a plea at this stage.
Shirley gets a letter from Legal Aid before her next appearance. The letter tells her she has been granted legal aid and it tells her the name of her assigned lawyer. At her next appearance, Shirley is in court in front of a judge. The judge hears what happened from the police. Shirley’s lawyer stands up and speaks on her behalf. Shirley is asked how she pleads and she says ‘guilty’. She is now referred to as ‘the offender’ because she is guilty of the offence.

Because of evidence presented by the lawyer and the frequency of Shirley’s offending, the judge remands Shirley for a probation report and a psychiatric report and for a check of her home’s suitability for electronic monitoring, all to be completed before the judge will sentence Shirley.

If Shirley’s case is referred to restorative justice, that will be done by the judge at this appearance.

After a month Shirley appears in court again. She has been sick and unable to attend a couple of appointments. Her lawyer asks for a deferral which will mean her next appearance is moved out a month. The judge grants a one month deferral.

After another month, during which Shirley is interviewed by a mental health worker and by a Probation Officer, Shirley is required to appear again. This time she is sentenced and the judge orders her to pay $400 reparation. She is ordered to attend counselling as directed by Probation and is sentenced to 6 months home detention.
Practice 1

This practice checks your knowledge of the New Zealand legal system and criminal court system.

Answer the following questions and then check your answers against the Practice 1: Feedback that follows.

1. A young offender says, “Well, he hit me too, so my dad’s going to lay assault charges against him.” How might you explain to this offender how assault charges are laid in New Zealand?

2. Which court deals with most criminal cases?

3. Name four types of offences that are dealt with by this court.

4. Give two examples of matters the Family Court deal with.

5. What is civil law and how is it different from criminal law?

6. What is the Victim Adviser’s role?
7. What is the Probation Officer’s role in a sitting of the criminal court?

8. What is the role of the registrar at sittings where the judge is not present?

9. What is the role of the registrar when the judge is sitting?

10. An 18-year-old youth and two 17-year-old accomplices commit burglary. The case of the 18-year-old is referred to restorative justice. The victim wants to know why all three have not been referred. How would you reply?

11. What does ‘bail’ mean?

12. When does a ‘defendant’ become an ‘offender’?

13. From the offender’s point of view, what is the difference between a duty lawyer and an assigned legal aid lawyer?

14. Does the victim have an assigned lawyer too?
Practice 1: Feedback

Check your answers against those given below.

1. A young offender says, “Well, he hit me too, so my dad’s going to lay assault charges against him.” How might you explain to this offender how assault charges are laid in New Zealand?

*Only the police can lay criminal assault charges. Perhaps you and your dad might need to talk to the police about that.*

2. Which court deals with most criminal cases?

*District Court*

3. Name four types of offences that are dealt with by this court.

- Common assault
- Sexual assault
- Threaten to kill
- Disorderly behavior
- Possession of offensive weapon
- Shoplifting
- Theft
- Burglary
- Contravene protection order
- Breaches (of supervision, community work, etc)
- Careless driving
- Dangerous driving
- Excess breath or blood alcohol
- Failure to answer bail
- Trespass
- Take/obtain/use a document (fraud)
- Possession of drugs
- *And the list goes on*

4. Give two examples of matters the Family Court deal with.

*Day to day care (formerly called custody)*
*Contact (formerly called access)*
*Protection orders*
*Division of relationship property*
5. What is civil law and how is it different from criminal law?

_Civil law is where the two parties in dispute go to court to allow the court to make a decision. There is no offender and victim. Both parties can be represented by lawyers who argue their case. In criminal law, the focus is on the offender and the court decides how the offender will be sentenced._

6. What is the Victim Adviser’s role?

_Please provide advice to the victim and inform them of their rights. They can also tell the victim about restorative justice._

7. What is the Probation Officer’s role in a sitting of the criminal court?

_Please provide information about the offender when the judge asks for it._

8. What is the role of the registrar at sittings where the judge is not present?

_Head the court and process administrative matters such as bail and legal representation._

9. What is the role of the registrar when the judge is sitting?

_Please provide information for the judge._

10. An 18-year-old youth and two 17-year-old accomplices commit burglary. The case of the 18-year-old is referred to restorative justice. The victim wants to know why all three have not been referred. How would you reply?

_The accomplices will go through the Youth Court which does not refer to restorative justice._

11. What does ‘bail’ mean?

_The offender can go home (they will not be held in custody) before their next court hearing, provided they agree to certain
conditions such as residing at a set address, making no contact with certain individuals, not drinking, etc. They are required to sign a ‘bail bond’ but no money is taken as security in New Zealand.

12. When does a ‘defendant’ become an ‘offender’?

When the defendant pleads ‘guilty’ or is found ‘guilty’.

13. From the offender’s point of view, what is the difference between a duty lawyer and an assigned legal aid lawyer?

An assigned lawyer is a lawyer who represents the offender at all court appearances and can offer advice between appearances. The duty lawyer is someone the offender sees at the court appearance and speaks on his behalf on that day. The duty lawyer is not available for advice between appearances and it is likely the offender will see a different duty lawyer at different appearances.

Assigned lawyers are paid by Legal Aid if the defendant qualifies for legal aid. Lower level charges will not qualify, and sometimes you have to pay back some of the cost of legal aid.

14. Does the victim have an assigned lawyer too?

No
Where restorative justice sits

Cases can be referred to restorative justice from various points and sources in the court process.

1. If it is a first offence the police can refer an offender to restorative justice. This is a **diversion referral** and we will cover it in more detail below.

2. When an offender pleads ‘guilty’, the judge must refer the case for restorative justice (under s24a of the Sentencing Act 2002). This is a **court referral** and is the most prevalent referral.

3. Restorative justice can be requested after sentencing and this is called **post sentence** restorative justice. The request for post sentence restorative justice can come from the offender or the victim.

**Police referred restorative justice**

The Police Adult Diversion Scheme

Diversion is based on the principle that not all offenders need automatically enter the formal criminal justice system, and that early intervention can reduce the likelihood of re-offending.

A copy of the policy relating to diversion is available from the police’s website at: www.police.govt.nz/service/diversion/policy.html

When an offender is granted diversion the police will give the offender a set time in which to achieve one or more tasks specified by the police. Example tasks are –

- Pay money to the victim
- Pay money to a charity
- Carry out some set hours of community work
- Write a letter of apology

If the offender completes the specified tasks within the timeframe then the charge is withdrawn and the offender retains a clear criminal record (although the diversion is recorded). If the offender does not complete the tasks then the case will go to court and the offender will be sentenced.
Whether an offender gets diversion is up to the police. It is designed for first time offenders who have committed a minor offence (for example, careless driving), and who admit their guilt. Usually diversion is granted once.

Restorative justice as part of diversion

The Police Diversion Officer (PDO) may set restorative justice as a task for the offender if they think it is likely to be beneficial and if the offender is willing. In such referrals the decision on diversion tasks is made not by police but through the restorative justice process, although the police may give an indication of their expectations.

A referral is made by the police to the local restorative justice provider. The restorative justice facilitator then carries out the normal restorative justice process of pre-conferences with the offender and then the victim. If the victim chooses, another person may attend to represent them at conference.

If the diversion case proceeds to conference the offender and victim can agree on outcomes. A conference report is written and passed to the police with copies also going to the victim and the offender (and the offender's lawyer if he or she has one).

The police will then check that the agreements have been met before withdrawing charges.

If the diversion case does not proceed to conference the police are notified (usually a ‘No conference’ report is emailed) and the police may then set diversion tasks for the offender to complete for their diversion.
Court referred restorative justice

After the offender has pleaded guilty, a District Court Judge may consider that the case is suitable for restorative justice and grant a deferral (or “adjournment”) for the restorative justice process to commence.

The model is described in the *Pre-sentence Restorative Justice Court Process*. This can be viewed on: http://www.justice.govt.nz/policy/criminal-justice/restorative-justice/restorative-justice-process-pre-sentence.

Post sentence restorative justice

There are a small number of cases referred to restorative justice after sentencing. This is funded by the Department of Corrections, generally after a recommendation from the Parole Board.
Differences between adversarial and restorative processes

While some restorative justice processes and principles are incorporated into the New Zealand criminal justice system, and victims have gained some voice in the criminal justice system, it is an adversarial system, with a great deal of focus on the offender.

The following outlines some general differences between adversarial and restorative approaches.

<table>
<thead>
<tr>
<th>Adversarial justice process</th>
<th>Restorative justice process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asks:</td>
<td>Asks:</td>
</tr>
<tr>
<td>What laws are broken?</td>
<td>Who has been hurt?</td>
</tr>
<tr>
<td>How did it happen?</td>
<td>What are their needs?</td>
</tr>
<tr>
<td>What does the law breaker deserve?</td>
<td>Who is responsible?</td>
</tr>
<tr>
<td>Crime violates the state and its laws</td>
<td>Crime violates people and relationships</td>
</tr>
<tr>
<td>Focus on establishing guilt</td>
<td>Aims to identify needs and obligations</td>
</tr>
<tr>
<td>Decides on the punishment</td>
<td>Gives priority to putting things right</td>
</tr>
<tr>
<td>The offender is central</td>
<td>The focus is on the victim</td>
</tr>
<tr>
<td>Is adversarial – offender versus the State</td>
<td>Encourages dialogue and mutual agreement</td>
</tr>
<tr>
<td>Creates winners and losers</td>
<td>Opportunity for responsibility to be taken, needs met and healing encouraged. Everyone can gain from the process.</td>
</tr>
<tr>
<td>Governed by rules</td>
<td>Process is facilitated to meet the needs of the participants</td>
</tr>
<tr>
<td>Offers limited opportunity to consider wider causes and solutions or inclusion of the general community</td>
<td>Offers a forum for the community to be involved in dealing with problems of crime</td>
</tr>
</tbody>
</table>


Further information

Differences between restorative justice and other similar processes

**Mediation**

This is a process by which participants who are in dispute, with the assistance of a qualified ‘mediator’;
- systematically isolate disputed issues
- develop options,
- consider alternatives and
- reach a consensual settlement.

**Similarities to restorative justice**

- It does deal with issues and needs, encourage dialogue and mutual agreement
- It aims to meet the needs of the participants.

**Differences from restorative justice**

- Is not a process that is designed to identify a victim and offender.
- Has a duty to be even handed rather than protect the victim from being re-victimized – it tends to work towards a process of concession and compromise from both parties to reach an acceptable outcome, rather than recognizing at the outset that one party has harmed the other.
- Is not aimed at providing an opportunity for responsibility to be taken (though this may occur).
- Is not a forum for the community to be involved in dealing with crime (though this could occur in some situations).
Family group conferences

It is useful to know a little about the youth justice process as it has been one of the bases from which restorative justice in the adult system has developed. (Note that Family Group Conferences also occur in the care and protection context – when Oranga Tamariki (Ministry for Vulnerable Children) is involved in deciding whether a child is getting the care the child needs. These are different from Youth Justice Family Group Conferences.)

Some of the key points are:

- Youth cases (offenders aged 17 and under) are heard by the Youth Court. A lawyer called a Youth Advocate is appointed to represent the young person.

- The police may refer a young offender for a Family Group Conference (FGC) before laying a charge in the Youth Court, in order to decide whether the case should go to court.

- If a charge is laid and the youth does not deny the charge the case is referred for a FGC. (Note that in the Youth Court, offenders do not usually have to plead, but can indicate whether or not they deny the charge.)

- If the youth denies the charge it goes to a defended hearing in the Youth Court. All youths appearing in the Youth Court will be referred for a FGC, if there has not already been one for that case.

The Family Group Conference (FGC) is organized and run by a Youth Justice Coordinator from Oranga Tamariki.

Similarities to restorative justice

- The FGC will make a plan that will include a number of actions to be completed by the offender. The plan ensures that the young offender is held accountable and accepts responsibility for their offending behaviour; the interests of the victim are taken into account and the matter is put right as much as possible.

- The case is referred back to court for the judge to confirm the plan. Oranga Tamariki monitor completion of the plan.

- Once the plan is completed the case is discharged. If the plan is not completed by the young person, then the case can go back to court and the judge may make an order. The order tells the young person what they have to do to make up for their offending.
Differences from restorative justice

- The FGC is offender focused. The plan seeks to maintain and promote the development of the young offender within their family and community wherever possible. Other aims are to strengthen the family group of the young offender and improve their ability to deal with the matter themselves.

- The FGC is compulsory for the offender

- Attendance of the victim (or someone to represent them) is optional

- The conferences are not community based but are run through a government department.

Occasionally victims or offenders who are referred to restorative justice will have had some involvement in a FGC. It is important to highlight the central place of victims in the restorative justice process, as this is different from the FGC.

Summary of differences between a family group conference and restorative justice.

<table>
<thead>
<tr>
<th>Family group conference</th>
<th>Restorative justice process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offender focused</td>
<td>Victim focused</td>
</tr>
<tr>
<td>Compulsory for offender</td>
<td>Voluntary for offender</td>
</tr>
<tr>
<td>Victim involvement optional</td>
<td>Victim is present or represented</td>
</tr>
<tr>
<td>Run by a Government Department employee</td>
<td>Run by community provider</td>
</tr>
</tbody>
</table>
Practice 2

This practice checks your knowledge of how restorative justice fits within the criminal justice system.

Answer the following questions and then check your answers against the Practice 2: Feedback that follows.

1. An 18 year old man has assaulted a friend with a hammer. It is his first offence and the case has been referred to restorative justice. What is the likely reason for his not getting diversion?

2. In diversion cases that have NOT been referred to restorative justice, who decides what the offender will do (pay money, community work, etc.) to get diversion?

3. In diversion cases that have been referred to restorative justice, who decides what the offender will do (pay money, community work, etc.) to get diversion?

4. An offender charged with assault gets diversion. A year later she is charged with shoplifting and does not get diversion. Why not?

5. If an offender completes his diversion tasks and is granted diversion, what sort of criminal record will the offender have?

6. In adversarial justice, who is central?

7. In restorative justice, who is central?
8. Which process (adversarial or restorative justice) is governed by rules?

9. Which process (adversarial or restorative justice) adapts to meet the needs of participants?

10. What are two differences between mediation and restorative justice?

11. In the family group conference, which participant is the focus of the conference?

12. Does a family group conference proceed if the victim does not want any involvement?

13. For a young offender, is attendance at the family group conference –
   - Compulsory
   - Voluntary

14. Who runs family group conferences?
Practice 2: Feedback

Check your answers against those given below.

1. An 18 year old man has assaulted a friend with a hammer. It is his first offence and the case has been referred to restorative justice. What is the likely reason for his not getting diversion?

*The crime is too serious*

2. In diversion cases that have NOT been referred to restorative justice, who decides what the offender will do (pay money, community work, etc.) to get diversion?

*Police*

3. In diversion cases that have been referred to restorative justice, who decides what the offender will do (pay money, community work, etc.) to get diversion?

*Offender and victim reach agreement*

4. An offender charged with assault gets diversion. A year later she is charged with shoplifting and does not get diversion. Why not?

*You can usually only get it once*

5. If an offender completes his diversion tasks and is granted diversion, what sort of criminal record will the offender have?

*None*

6. In adversarial justice, who is central?

*The offender*

7. In restorative justice who is central?

*The victim*
8. Which process (adversarial or restorative justice) is governed by rules?

Adversarial

9. Which process (adversarial or restorative justice) adapts to meet the needs of participants?

Restorative justice

10. What are two differences between mediation and restorative justice?

Any 2 of -

- In mediation, parties are equal while in restorative justice, there is an offender and victim
- The community can be involved in restorative justice (panel members) but not in mediation
- Mediation seeks to be even handed and to reach an acceptable solution, while restorative justice recognizes one party has harmed the other.
- Mediation is not aimed at providing an opportunity for responsibility to be taken (though that may happen)

11. In the family group conference, which participant is the focus of the conference?

The young offender

12. Does a family group conference proceed if the victim does not want any involvement?

Yes

13. For a young offender, is attendance at the family group conference compulsory or voluntary?

Compulsory

14. Who runs family group conferences?

Oranga Tamariki
Selection of restorative justice cases and referrals

Which cases are referred to restorative justice? Five criteria

Cases are referred to restorative justice by the court where five criteria are met (Sentencing Act 2002):

1. An offender appears before a District Court at any time before sentencing.
2. The offender has pleaded guilty to the offence.
3. There is at least one victim for the offence.
4. No restorative justice process has previously occurred in relation to the offending; and
5. The registrar has informed the court that an appropriate restorative justice process can be accessed.

When are cases referred

For court referred restorative justice the referral occurs after the offender has pleaded guilty and before he or she is sentenced. Typically, the judge refers the case to restorative justice when the guilty plea is heard. The case is remanded for a few weeks to see if restorative justice can proceed. If it can proceed, the judge then defers sentencing for another few weeks to allow time for the conference to take place.
The process for court referrals

Within the court

The judge refers a case to restorative justice after the guilty plea is entered.

The Court Registrar (or a delegated administrative person) emails or posts the documentation to the restorative justice provider. This documentation generally includes:
- A coversheet with key information – dates, case reference, contact details
- The Police Summary of Facts
- Previous criminal history of the offender
- Any victim impact statements
- Any police reparation schedules

Within the provider

The manager may handle the referrals (as detailed below) or in larger provider groups, the referral process may be delegated to one or more employees of the provider.

1. The manager receives the referral from the court – generally by email.

2. The manager obtains any missing information. For example:
   - Offender contact details – from police or the offenders lawyer if s/he has an assigned lawyer
   - Victim contact details from police or the Victim Adviser

3. The manager allocates the case to selected facilitators taking care to allocate specialist cases to specialist facilitators. For example:
   - Family violence cases require that at least one facilitator has special family violence (FV) endorsement.
   - Sexual offences are referred on to providers who have Ministry of Justice approval and funding to handle these sensitive cases

4. The manager obtains the facilitator’s agreement to handle the case and forwards all documentation to the facilitators.
The process for reporting back

Within the provider

1. The facilitators follow through the restorative justice process and either:
   - Report back to the manager that restorative justice is not proceeding, or
   - Report back with a completed conference report.

2. If a conference has taken place, the manager sends the final (reviewed) conference report within 5 days of the offender’s scheduled court appearance, to:
   - The offender
   - The offender’s lawyer (if they have one)
   - The victim
   - The Court Registrar
   - The prosecutor (generally Police Prosecution)

3. If restorative justice has not proceeded, the manager emails the court and the offender’s solicitor with a memo outlining that restorative justice did not proceed. Generally the facilitator notifies the offender and victim, usually by phone.

4. If more time is needed to complete the restorative justice process, the manager emails the Court Registrar and asks for a deferral of the sentencing date.

Within the court

The Court Registrar ensures that all information from the restorative justice provider reaches the judge. In particular, the registrar ensures the report reaches the judge at least a week before the sentencing date to allow sufficient time for the judge to read it.
Restorative justice provisions in legislation

Introduction

When talking to restorative justice participants it is often useful to reinforce that in New Zealand, restorative justice is reinforced through legislation. You can explain why a case has been referred (because the sentencing Act requires it) and what impact the restorative justice report might have (the judge has to read it and take it into account). Some details on what the legislation actually says follow.

The Sentencing Act 2002

The Sentencing Act 2002 requires the court to take the outcome of restorative processes into account when sentencing an offender. The court must take into account:

- any offer of amends,
- any agreement between the victim and the offender as to how the offender may remedy the wrong,
- the response of the offender or the offender’s family to the offending, or
- any measure to make compensation or apologize to the victim.

Any offers or agreements must also be taken into account by the court when deciding on appropriate levels of reparation.

In 2014, the Act was amended to establish a formalized process for court-referred restorative justice services at the pre-sentence state. Judges are required to adjourn cases for restorative justice if five criteria (p34) are met.

If the criteria are met, the court must adjourn the proceedings to:

(a) Enable inquiries to be made by a suitable person to determine whether a restorative justice process is appropriate in the circumstances of the case, taking into account the wishes of the victims; and

(b) Enable a restorative justice process to occur if the inquiries made under paragraphs (a) reveal that a restorative justice process is appropriate in the circumstances of the case.
Under Section 25 a judge can refer a case to restorative justice when the offender has pleaded not guilty, but such referrals are rare.

The amendment to the Sentencing Act intends to improve victim access to restorative justice services by requiring judges to adjourn cases so that suitability for restorative justice can be assessed, if the case meets certain criteria.

Research suggests that offenders who understand and have been involved in the sentencing process are more likely to comply fully with the requirements of their sentence. This is important, particularly for compliance with reparation orders.

Even more importantly, by giving recognition to restorative justice processes the Sentencing Act gives victims an opportunity to participate in the criminal justice system. It enables them to express their own views about the offence and the ways in which the harm caused can be put right.

**Victims’ Rights Act 2002**

The Victims’ Rights Act 2002 was amended in 2014. The Act provides a right to the victim if they make a request to meet with the offender to resolve issues relating to the offence. If this request is made, a member of court staff, police employee, or a probation officer (if appropriate) must, if satisfied that the necessary resources are available, refer the request to a suitable person who is available to arrange and facilitate a restorative justice meeting (section 9).
Sentencing and restorative justice

It is important that facilitators understand what the types of sentence are and what they mean so that you can understand what a lawyer or offender is talking about. It is, however, important to understand your limits. Restorative justice is not about sentencing and a facilitator (and coordinator) needs to know that:

- You never give an opinion on sentencing.

You always respond to questions about sentencing or possible sentences by advising the questioner to ask a lawyer, for example, “I don’t know, you would need to ask a lawyer about that”.

Sentencing decisions

The Sentencing Act 2002 provides the framework for judges to determine the sentences of offenders.

Sentencing is complex and there are many factors the judge must weigh up such as:
- The maximum penalties set by law
- Previous record
- Any mitigating circumstances presented by the offender or their lawyer
- Any aggravating factors (being drunk or high is NOT one)
- The gravity of the offence
- Guilt and responsibility
- Any offer, agreement, response, or measure to make amends, including those reported in restorative justice conference reports

Before sentencing the judge may consider various submissions or reports that may affect the sentence. They include:
- Victim impact statement
- Pre-sentence reports
- Restorative justice report
- Reparation schedule
- Psychiatric assessment
- Medical assessment

For further information on the above factors and reports please refer to the Glossary at the back of the module.
There are a wide range of sentencing options and some that you may come across are:

<table>
<thead>
<tr>
<th>Example Sentence</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discharged without conviction</td>
<td>The offender does not receive a criminal conviction.</td>
</tr>
<tr>
<td>Convicted and discharged</td>
<td>The offender receives a conviction and it is on the record but does not receive any other punishment.</td>
</tr>
<tr>
<td>Fine</td>
<td>The offender has to pay money to the court and this goes to the Government.</td>
</tr>
<tr>
<td>Reparation</td>
<td>The offender has to pay money to the court which is then passed to the victim. Reparation is paid first – before fines.</td>
</tr>
<tr>
<td>Disqualification from driving</td>
<td>A number of offences, including drink driving offences, carry a mandatory sentence of disqualification from driving.</td>
</tr>
<tr>
<td>Supervision/intensive supervision</td>
<td>The offender has to report to Probation and carry out specified programs – counselling, alcohol etc.</td>
</tr>
<tr>
<td>Community work</td>
<td>The offender has to do a set number of hours of community work. Community work is unpaid work on placement at a community work centre or at another agency (e.g. Council work) directed by the Probation Officer.</td>
</tr>
<tr>
<td>Community detention</td>
<td>The offender wears an ankle bracelet and is monitored electronically. They must be at home for specified hours per day (for example, for a working person, it may be 7pm - 7am).</td>
</tr>
<tr>
<td>Home detention</td>
<td>The offender wears an ankle bracelet and is monitored electronically. They must be at the approved address at all times unless given prior approval. They may be allowed to work and may be required to complete rehabilitation programmes.</td>
</tr>
<tr>
<td>Order to come up for sentence if called upon</td>
<td>There is no immediate sentence but a conviction is recorded and the offender will be brought back to court for sentencing if convicted of another offence within a specified timeframe.</td>
</tr>
</tbody>
</table>
The Corrections Department is responsible for administering sentences of imprisonment and community-based sentences, and the Ministry of Justice is responsible for administering fines and reparation.

**Restorative justice and sentencing**

Section 10 of the Sentencing Act 2002 is important in terms of restorative justice.

**The court is required to take restorative justice agreements into account when sentencing offenders.**

It requires the court (the judge), when sentencing an offender, to take into account any offers made to make amends, agreements reached and the responses of offenders or their whānau to the offending.

**However, the court should also consider whether restorative justice agreements, or other offers, are genuine, and whether the victim accepts them.**

This is covered in Section 10 (2) of the Sentencing Act 2002.

**The court can allow time for the offender to complete restorative justice agreements or fulfil offers.**

This is covered in Section 10 (4) of the Sentencing Act 2002.

Restorative justice reports frequently contain agreements (between offender and victim). When sentencing, a judge may adjourn proceedings for a period long enough for the offender to complete these restorative justice agreements. The judge will then sentence the offender, taking into account whether the agreements have been completed.

Another option is for the judge to endorse the restorative justice agreements and make them part of the sentence, or sentence the offender in a way which confirms or builds on the restorative justice agreements reached.

On the other hand, the judge may pass a sentence which appears to conflict with agreements made at the restorative justice conference. For example, this can happen if the Pre-Sentence Report prepared by Probation has recommendations...
that are markedly different from the views of the restorative justice conference.

The court can enforce sentences but not restorative justice agreements. For instance, an offender may agree at a conference to pay the victim $5000, but the judge sentences the offender to pay $3000. The court will enforce the payment of $3000, not the higher figure. The agreements made in a restorative justice conference are not enforceable unless they have been made into part of the sentence.

The provider cannot enforce agreements made in a restorative justice conference. They can only follow up and report back to the court and to the victim.

This means that the completion of restorative justice agreements depends on the commitment obtained from the offender and how the actions agreed upon are monitored and managed.

Further information

Go to www.legislation.govt.nz
Type “Sentencing Act 2002” into the ‘quick search’ box and look up section 10.
Court sanctions

Once a person has been sentenced, the court has a number of powers to ensure that directions are followed by the offender. Some examples follow.

Fines and reparation

- Work and Income will make deductions from benefits to pay the money directly to the court
- The court can make compulsory deductions from the offender’s bank account or wages
- The offender can be stopped from travelling overseas
- Other actions are also available to the court.

Community work and supervision

If an offender does not complete work hours as ordered, or does not report to Probation as ordered, or does not attend a program (e.g. anger management) as ordered, the offender will reappear in court for a ‘Breach of community work’ or a ‘Breach of supervision’. They will then be asked to enter a plea and will be re-sentenced.

Failure to appear

If an offender fails to turn up for a scheduled court appearance the judge will generally order a warrant to arrest the offender.

WARNING

For this reason, if an offender ever asks you whether they need to appear in court on a scheduled date the answer is “Yes” or if they have a lawyer, you can answer, “Talk to your lawyer about that”.
Practice 3

This practice checks your knowledge of referrals and sentencing.

Answer the following questions and then check your answers against the Practice 3: Feedback that follows.

1. In the list of charges below, tick any cases that meet the criteria for possible referral to restorative justice. Cross those that do not.

- ☐ Resisting police
- ☐ Driving while disqualified
- ☐ Shoplifting
- ☐ Cultivate cannabis
- ☐ Male assaulting female
- ☐ Theft
- ☐ Wilful damage
- ☐ Breath alcohol over 400 mgms
- ☐ Careless driving causing injury
- ☐ Dangerous driving
- ☐ Sexual assault
- ☐ Breach of community work
- ☐ Resisting arrest
- ☐ Receiving stolen property
- ☐ Being the owner of a dangerous dog causing injury

2. What must the offender do before the judge can refer a case to restorative justice?

3. What sort of restorative justice cases require that at least one facilitator has specialist accreditation?

4. What sort of cases are only handled by specialist providers?

5. Who prepares a Victim Impact Statement?
6. What reporting occurs if restorative justice has not proceeded?

7. What does the provider manager ask the court for if more time is needed to complete restorative justice?

8. What is reparation?

9. In a restorative justice conference the victim and offender agree $4000 will be paid by the offender for damage caused. Will the judge take this into account when sentencing?

10. What is the difference between a sentence of ‘discharged without conviction’ and ‘convicted and discharged’?

11. Can the court enforce restorative justice agreements?

12. If an offender’s sentence includes payment of $1000 reparation and $1000 in fines, which is paid first – the fine or the reparation?

13. If an offender has unpaid fines and/or reparation, what are two things the court can do?

14. What are mitigating factors or circumstances? Give two examples.

15. Give two examples of pre-sentence assessments that a judge may call for.
Practice 3: Feedback

Check your answers against those given below.

1. In the list of charges below, tick any cases that meet the criteria for possible referral to restorative justice. Cross those that do not.

- [x] Resisting police
- [x] Drov
- [x] Driving while disqualified
- [✓] Shoplifting
- [x] Cultivating cannabis
- [✓] Male assaulting female
- [✓] Theft
- [✓] Wilful damage
- [x] Breath alcohol over 400 mg

- [✓] Careless driving causing injury
- [✓] Dangerous driving
- [✓] Sexual assault
- [✓] Breach of community work
- [✓] Resisting arrest
- [✓] Receiving property
- [✓] Being the owner of a dangerous dog causing injury

2. What must the offender do before the judge can refer a case to restorative justice?

Plead guilty

3. What sort of restorative justice cases require that at least one facilitator has specialist accreditation?

Family violence

4. What sort of cases are only handled by specialist providers?

Sexual offending

5. Who prepares a Victim Impact Statement?

Victim Support or police, working with the victim

6. What reporting occurs if restorative justice has not proceeded?
A message goes to the court and offender’s lawyer to say restorative justice has not proceeded.

7. What does the provider coordinator/manager ask the court for if more time is needed to complete restorative justice?

A deferral

8. What is reparation?

Reparation is compensation for the victim from the offender. It is compensation for property lost or damaged, or for emotional harm caused by the offence. It is ordered by the court. Reparation is paid to the court which then pays it to the victim.

9. In a restorative justice conference the victim and offender agree $4000 to be paid by the offender for damage caused. Will the judge take this into account when sentencing?

Yes

10. What is the difference between a sentence of ‘discharged without conviction’ and ‘convicted and discharged’?

In both there is no penalty such as a fine or community work. If discharged without conviction there will be no criminal record of the offence. If convicted and discharged there will be a conviction recorded.

11. Can the court enforce restorative justice agreements?

No

12. If an offender’s sentence includes payment of $1000 reparation and $1000 in fines, which is paid first – the fine or the reparation?

The reparation is always paid first and this is paid by the offender to the court and then the court passes the money on to the victim.

13. If an offender has unpaid fines and/or reparation what are two things the court can do?

- The court can make compulsory deductions from the offender’s bank account
- The offender can be stopped from travelling overseas
14. What are mitigating factors or circumstances? Give two examples.

This is information about the defendant or the circumstances of the offending which might cause the judge to be more lenient. Examples include:

- the offender’s age,
- whether the offender pleaded guilty,
- the conduct of the offender,
- evidence of good character.

15. Give two examples of pre-sentence assessments that a judge may call for.

- Psychiatric
- Medical
- Psychological
- Alcohol and drug assessment.
Responding to participant questions

Remember the early warning in this module, to avoid giving legal advice or opinions. That warning applies whether or not you are legally qualified. When you have your restorative justice facilitator hat on you need to keep to that role.

We can’t look at all eventualities, but three areas to treat with care are:

Advice on charges
Sometimes charges change and sometimes there is some bargaining between the offender’s lawyer and the police. For example, “If you are prepared to drop this charge my client will be pleading guilty to the other five charges”. Keep right out of this area and leave it up to the lawyer.

Advice on appearing in court
We touched on this earlier. An example is that you tell the offender you are going to ask for a remand for the restorative justice conference. The offender then wants to know if he still has to turn up to court on the original date. The answer is ‘Yes” or if the offender has a lawyer, you can answer, “You will need to talk to your lawyer about that”.

Advice on sentencing
As a facilitator, you have no opinion on what the sentence might be. You can quote the maximum sentence that is written at the top of the Police Summary of Facts (and be clear that it is a maximum you are quoting) but that is all.

Now check your ability to identify answers that veer into the area of legal advice in the short practice that follows.
## Practice 4

This practice checks your knowledge of what are answers to participant questions are OK and what are not OK. It is a short fun practice.

Tick each possible answer that is OK and cross each that is veering into the area of giving advice or opinion, then check your answers against the Practice 4: Feedback that follows.

<table>
<thead>
<tr>
<th>Participant question</th>
<th>Possible answers to the question</th>
</tr>
</thead>
<tbody>
<tr>
<td>He didn’t take the bike from inside the shed, it was on his driveway, so why is he charged with burglary, surely that is theft?</td>
<td>□ Yes if he didn’t go into the building it would be theft.</td>
</tr>
<tr>
<td></td>
<td>□ I don’t know, sorry.</td>
</tr>
<tr>
<td></td>
<td>□ That is something to ask his lawyer.</td>
</tr>
<tr>
<td></td>
<td>□ I think you are right about that</td>
</tr>
<tr>
<td>If you are asking for a remand do I need to turn up next Thursday still?</td>
<td>□ That’s the safest option.</td>
</tr>
<tr>
<td></td>
<td>□ Talk to your lawyer about that.</td>
</tr>
<tr>
<td>Do you think I could just get a fine?</td>
<td>□ It is up to the judge.</td>
</tr>
<tr>
<td></td>
<td>□ The fact you are working means the judge is more likely to go for a fine than community work.</td>
</tr>
<tr>
<td></td>
<td>□ The maximum possible sentence is $2000 fine and six months imprisonment.</td>
</tr>
<tr>
<td></td>
<td>□ I can’t advise on sentencing. You will need to talk to your lawyer.</td>
</tr>
<tr>
<td></td>
<td>□ I had a similar case to yours and that offender got fined.</td>
</tr>
</tbody>
</table>
Practice 4: Feedback

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<td></td>
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</tr>
</tbody>
</table>

You have learnt about:
- The New Zealand legal system
- The New Zealand court system and the processing of criminal cases
- Where restorative justice sits within the system
- Restorative justice referrals
- Sentencing

In the assessment that follows you are asked to answer questions of the sort you might expect as a facilitator and explain terms you might hear in your role. You are also asked to observe and find out about the operation of restorative justice at the District Court in your area.
Assessment: New Zealand criminal justice system and restorative justice

Time to assess your competence. The assessment for this module is done online. If you have completed Module 1 you should already have a login to our online assessment account and access to the assessment for Module 5. If you do not, contact Resolution Institute on rj@resolution.institute or 0800 453 237.

Please note the following:

- You can have the module with you when you do the assessment – it is an open book assessment.

- Do the assessment alone – it is your knowledge and understanding we need to assess.

- The assessment comprises 30 questions which are all ‘yes/no’, multi choice or ‘arrange in order’ type questions. The pass rate is 27 questions, 90%.

- You can have up to three attempts at the assessment. The computer selects questions randomly from a question bank, so the questions will differ in each assessment although some will be the same.

- The computer will tell you what questions you have got right and whether this is a pass or whether you need to have another attempt. It will tell you the right answer for each question you got wrong. It will also email your result to you.

- If you do not meet the standard the first time, re-read your module and make sure you have done ALL the practices in the module before you have another attempt.

- Once you have successfully completed the assessment, the computer will record your success for us. Please proceed then to the next module.

If you have any problems or questions about the online assessments contact Resolution Institute on rj@resolution.institute or 0800 453 237
Glossary of terms

Aggravating factors
These are factors surrounding the crime which make the nature of the crime worse and would cause the judge to be less lenient. They include, but are not limited to:
- actual or threatened violence
- the extent of the loss, damage or harm
- the vulnerability of the victim
- hostility to the victim because of race, gender or age.

Assigned lawyer / legal aid lawyer
If an offender is granted legal aid they have a lawyer assigned to their case and this 'assigned lawyer' is available to the offender for advice between appearances and will speak on the offender’s behalf when they appear in court. An offender applies to Legal Aid by filling out a form at court (often with the help of a Duty Lawyer).

Bail
After a defendant is arrested, and until they are sentenced, they are remanded. This may be in custody, on bail, or “at large” (with no conditions). If remanded on bail they will sign a 'Bail Bond' that will specify where they are to reside and any conditions of the bail (for example, locations they must not visit or people they must not make contact with).

“Police bail” is granted by police until the first court date when a registrar or judge can grant “court bail”.

It is important that facilitators know what an offender’s bail conditions are so that they do not inadvertently cause a bail breach by meeting at the wrong place.

Court costs
As part of a sentence a judge can order the offender to pay court costs. This is added to any reparation or fines and is paid to the court.

Defence lawyer or defence counsel
The defendant in a criminal case can be advised by a lawyer (if they are granted legal aid or pay a lawyer). The victim does NOT have a lawyer.

A defence lawyer (also called defence
counsel) represents the defendant in court proceedings.

**Defendant**

Before an accused person admits guilt or is found guilty of an offence, s/he is usually called the 'defendant'.

**Deferral / adjournment**

A postponement of a court appearance date to a later date.

**Disputes Tribunal**

This is a tribunal headed by a referee that can deal with small civil claims of less than $15,000 in value. (It used to be called the Small Claims Court.)

**Diversion**

The Adult Police Diversion Scheme is managed by the police.

When an offender is granted diversion the police will give the offender a set time in which to achieve one or more tasks specified by the police, such as community work or payment of money.

If the offender completes the specified tasks within the timeframe then the charge is withdrawn and the offender retains a clear criminal record. If the offender does not complete the tasks then the case will go to court and the offender will be sentenced.

Whether an offender gets diversion is up to the police. It is designed for first time offenders who have committed a minor offence, and who admit their guilt. Diversion is usually granted only once.

**Duty Lawyer**

A duty lawyer (also called a duty solicitor) is a lawyer on duty at the courts and paid for the day’s service by the Ministry of Justice. They provide free legal help to people who have been charged with an offence and don’t have their own lawyer. A duty lawyer can be consulted by the offender on the day of their court appearance. The lawyer is not available for ongoing consultation between court appearances and at different appearances the offender will likely see a different duty lawyer. The duty lawyer is usually only available for a defendant’s first
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appearance.

**Electronic monitoring**

Anyone released on electronically monitored bail, or sentenced to community detention or home detention (where they must be at home between certain hours), is monitored electronically. This means they wear an ankle bracelet and have a base unit plugged into the power at their home. A security firm installs and monitors the unit and an alarm is activated if the person leaves without approval or removes the bracelet. More sophisticated monitoring devices are now available that track the offender using GPS.

**Family Group Conference (FGC)**

The FGC is organized and run by a Youth Justice Coordinator from Child Youth and Family (CYF). It is a meeting involving the young offender, his/her whānau and if willing to attend, the victim.

The focus of the meeting is on the young offender and coming up with a plan of actions to be completed by the offender. The plan completion is monitored by CYF.

Youth offenders can be referred to a FGC by the police or by the Youth Court.

**Fine**

This is a sentence option. The fine must be paid by the offender to the court. Any fine paid becomes government money. Reparation is paid first (and passed on to the victim) BEFORE fines.

**Judge**

The judge presides over the trial proceedings, decides whether to convict or not (if the person has pleaded ‘not guilty’) and passes sentence.

Judges are appointed on merit. Judicial appointments are non-political and impartial. Judges are not employees of the court or the Ministry of Justice and are entirely independent. Judges interpret and apply laws, they do not make them.
**Jury**

The jury is a group of 12 people chosen from the community to hear a trial and decide whether or not the defendant is guilty. Jury trials deal with the more serious offences.

**Legal aid**

If a defendant cannot afford a lawyer, the government may provide for one through legal aid. The defendant applies for legal aid by filling out a form supplied at court.

Legal Aid (part of the Ministry of Justice) decides whether a person is entitled to legal aid. If an offender is granted legal aid they have a lawyer assigned to their case and this ‘assigned lawyer’ is available to the offender for advice between appearances and will speak on the offender’s behalf when they appear in court.

Defendants often have to pay back some of the costs of legal aid. If a defendant is denied legal aid they can be represented by a Duty Solicitor at early appearances, but if they go to a hearing they will need to pay a lawyer or represent themselves.

**Maximum penalties**

The maximum penalty for each offence is set in law. The judge takes this into account to ensure that the scale of the sentence in relation to the other sentences for the same charge is fair.

**Mediation**

This is a process by which participants who are in dispute, with the assistance of a qualified ‘mediator’;

- systematically isolate disputed issues
- develop options,
- consider alternatives and
- reach a consensual settlement.

**Mitigating factors and circumstances**

This is information about the defendant or the circumstances of the offending which might cause the judge to be more lenient. They include, but are not limited to:

- the offender’s age
- whether the offender pleaded guilty
- the conduct of the offender
- evidence of good character

Note – the voluntary use of alcohol or any drug (except prescription) is not a mitigating factor.
The Victims’ Rights Act 2002 defines a victim as a person who has had an offence committed against them and who has suffered physical injury, or loss or damage to property as a result.

In the case of a child or young person (under 18 years), a parent or legal guardian can represent the victim’s views and rights.

In the case of a person who has been killed or incapacitated, a member of the immediate family is considered the victim.

When an accused person admits guilt or is found guilty of an offence, s/he is usually called the ‘offender’. It is a principle of best practice in restorative justice that cases are dealt with only where the offender has admitted responsibility for the offence.

These assessments are called for by the judge and include:

- Psychiatric assessments – to assess mental health
- Medical assessments – to assess physical health
- Psychological assessments – to assess behavioural issues
- Alcohol and drug assessments

The previous criminal record of the offender can be taken into account when sentencing, but not when deciding guilt or innocence. It is also relevant to whether bail is granted.

Probation Officers are employed by The Department of Corrections. There is a Probation Officer in the District Court to provide the judge, when requested, with information on the offender and his/her performance. For example, whether the offender has reported to Probation as instructed, and whether the offender has completed assigned programmes.
Probation Report

(Probation Service
Pre-sentence Report)

(Provision of Advice to
the Court (PAC)
Report)

Judges can ask for this pre-sentence report for any offence which can be punished with imprisonment.

The pre-sentence report can contain:

a) information on the offender’s personal, family, whānau, community, and cultural background, and social circumstances

b) information on factors that contributed to the offence, and the rehabilitative needs of the offender

c) information about any offer, agreement, response, or measure of a kind referred to in Sentencing Act section 10(1) or the outcome of any other restorative justice processes that have occurred, and

d) recommendations on the appropriate sentence or other disposition of the case, taking account of the risk of further offending.

Where the pre-sentence report proposes a sentence of supervision, intensive supervision, or home detention, the report can recommend conditions that should apply to the sentence, such as attending programmes, or requirements for the offender to take prescription medication.

Where the pre-sentence report proposes a sentence of community work, the report should provide information on the availability of community work in the area in which the offender will live.

Prosecutor

A prosecutor is any person who appears in court and progresses a criminal case on behalf of the government of New Zealand. In the District Court cases are normally initiated and progressed by a police prosecutor, but some cases are handled by other agencies. For example:

- If the case relates to benefit fraud then the prosecutor will be MSD (Work and Income).
- If the charge is “Owner of a dangerous dog causing injury” then the prosecutor will be the local council.
Registrar

The registrar is an employee of the court. The registrar heads the court for early appearances by the offender. In these sittings, administrative matters are dealt with such as bail conditions and legal representation.

When the offender appears before a judge the registrar will sit in front of the judge’s bench and be available to provide information and maintain records for the court.

Remands

Before the trial and before sentencing the offender, the judge may remand (hold over for trial or sentence) the defendant or offender:

- At large – that is, out in the community with no conditions imposed
- On bail – that is, out on the community but subject to a set of conditions, such as a restriction on travel, a requirement to live at a certain address, not to drink alcohol and not to contact the victim
- In custody – that is in jail.

Reparation

Reparation is compensation for the victim from the offender. It is compensation for property lost or damaged, or for emotional harm caused by the offence. Emotional harm reparation is to cover things like inconvenience, pain and suffering, impact on normal life (for example, having to go for medical treatment). Reparation is paid to the court which then pays it to the victim. Reparation is paid first – before court fines.

Reparation schedule

This is generally prepared by the police. It covers the nature and extent of the loss or damage suffered by the victim(s)

A judge may order a reparation report before sentencing.
Restorative justice report

This is the report on the process, outcomes and agreements from a restorative justice conference.

It provides for the judge a description of what happened at the conference and the outcomes and agreements of the conference. Refer to module 6 for information about writing reports on the restorative justice conference.

Where a restorative justice facilitator has met with an offender (or victim) but a restorative justice conference has not taken place, no report should be made to the court, except a note that a restorative justice conference could not be held.

Victim Adviser

Victim Advisers are specialist staff employed by the Ministry of Justice to help victims. Their role is to:

- provide information to victims about the case that relates to them
- advise victims about their rights in the court process
- help victims participate in the court system.

Their role is not to act as a support person for the victim but rather to check that the victim has support arrangements in place. They also convey the victims’ concerns to the court.

Victim Impact Statement

When deciding a sentence a judge may take into account how the offence was committed and how severe the harm has been. The judge gets most of his/her information about the severity of harm from the Victim Impact Statement.

This is prepared by the police or by Victim Support on behalf of the police. The judge will take the impact of the offence on the victim into account when sentencing.

The Victim Impact Statement includes information on the impact of the criminal event on the victim, such as:

- Physical harm
- Psychological harm
- Loss or damage to property
- Other impacts such as to whānau, community,
Victim Support is an organisation, staffed principally by volunteers who support the victim. They offer counselling services, financial support (in certain cases) for victims to attend court or restorative justice meetings. Victim Support also assist victims to write “Victim Impact Statements” which are referred on to the judge.

For further information go to:
http://www.victimsupport.org.nz/