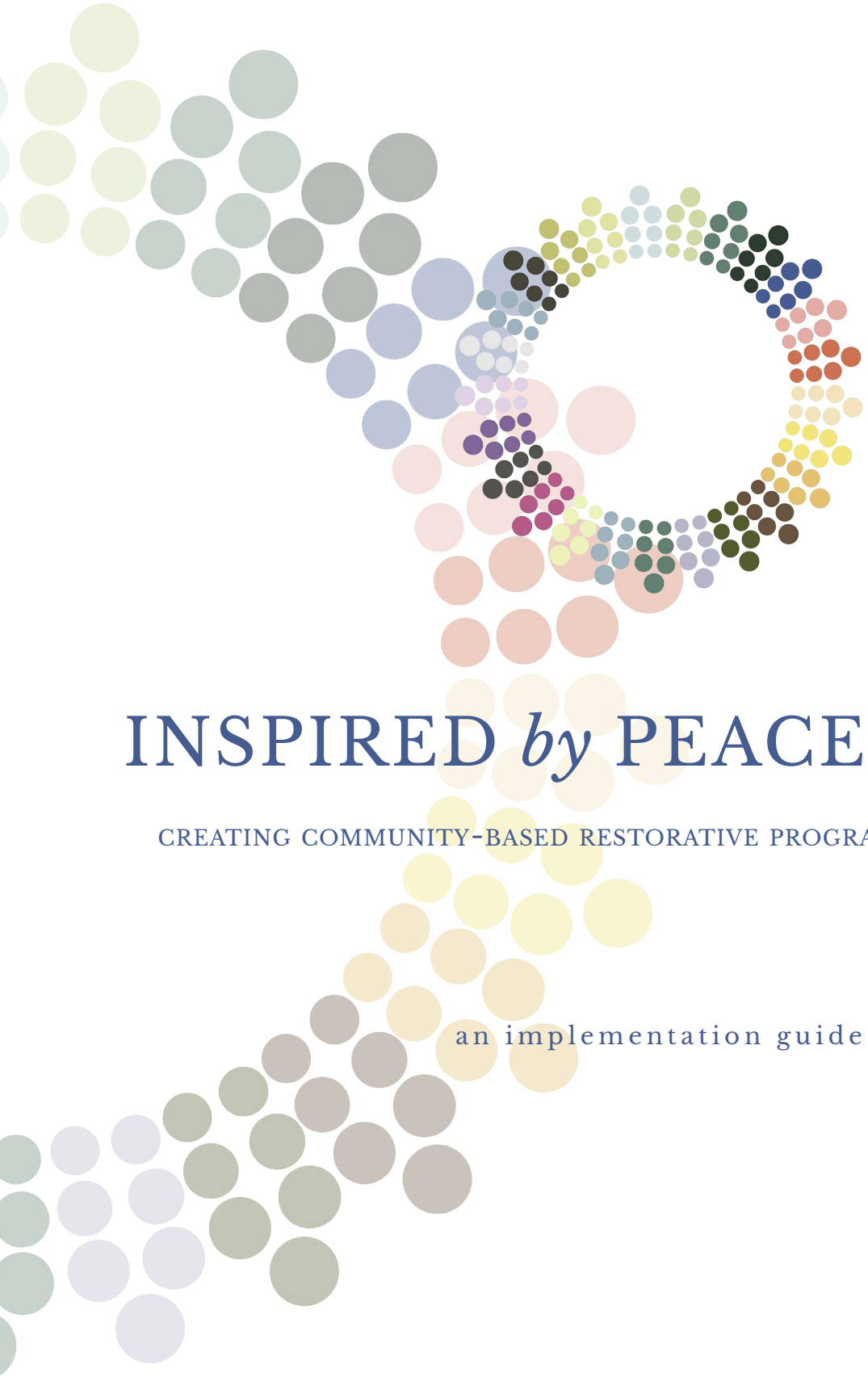

INSPIRED *by* PEACEMAKING

CREATING COMMUNITY-BASED RESTORATIVE PROGRAMS IN STATE COURTS

an implementation guide

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Foreword

In recent years, a number of state courts have been inspired by indigenous practices that focus on healing and restoration, as opposed to conventional adversarial models of justice. In particular, courts and communities are starting to explore whether and how to use lessons from Native peacemaking to improve stateside processes. Some of the programs discussed in this guide have been inspired by Native peacemaking and employ traditional Native peacemakers in their training and implementation. In no way are these programs considered replications of Native peacemaking. Rather, they represent sincere attempts to learn from Native American traditions in order to improve the resolution of controversies in state court systems. In using this guide, it is important to be mindful of the history, traditions and culture that underlie these concepts and their significance to their home communities. Whenever possible, people interested in learning more should reach out to neighboring Native communities as well as to Native American organizations that specialize in peacemaking.

With this guide, we hope to continue to build bridges across communities and promote wellness and healing in all of our communities.

Dedication

Justice is sacred in the Native worldview. The obligation to ensure justice means more than going through rote motions. Peacemaking and Native justice ideals, principles, practice, procedure and process have meaningful application for all human communities. They focus upon giving life to community values by respectfully coming together and talking things through. Relationships are maintained, or even enhanced, by avoiding the destructive effects of the adversarial trial model. A focus can be maintained on the "real" problems and issues, which leads to reconciliation and healing. Everyone's voice is important and equal because each has part of the wisdom, which will lead to consensus. Community harmony is maintained because matters are put to rest.

–Michael Petoskey, Chief Judge, Pokagon Band of Potawatomi, Michigan & Indiana

If the goal of adjudication is to reduce recidivism, peacemaking gets to the heart of the issues that brought the offender to court, taking a holistic and effective approach, and exploring triggers which would never be part of the conventional case but which go to the very heart of the defendant's behavior. Peacemaking is true community justice, where the court system sends cases to the community to resolve and trusts their results, bringing court and community together.

–Alex Calabrese, Presiding Judge, Red Hook Community Justice Center

Introduction

Peacemaking is a traditional Native American form of justice that focuses on healing and restoration. Although peacemaking varies across tribes, it generally brings together the disputants, along with family members and other members of the community who have been affected by the dispute. Peacemakers allow each participant to speak about how the event, crime, or crisis affected him or her personally, without restricting what is said according to evidentiary rules.[1] The purpose of peacemaking is to reach a consensus to resolve the dispute and, more generally, "to talk it out in a good way."[2] The Navajo Nation, which operates a well-known and extensive peacemaking program, describes the process as the "reparation or mending of controversies through harmony."[3]

Peacemaking differs significantly from the Western, adversarial justice system. The adversarial system typically focuses on assigning guilt and meting out punishment, while peacemaking seeks to achieve the long-term healing of relationships. Most often, the adversarial system tends to isolate the defendant, assigning an attorney to speak for the defendant in court and to negotiate with opposing counsel. The defendant is encouraged to remain silent, for fear that anything said may be used to incriminate. Indeed, most defendants go through the Western criminal justice system never having told their story to anyone, except perhaps defense counsel.[4] If sentenced to jail, the defendant is then physically separated from the community, furthering his or her isolation. By contrast, peacemaking encourages defendants (as well as victims, family members, and community members) to express themselves freely, and the entire process is premised on each person's equal participation. It emphasizes the defendant's relationship with the broader community, and tries to rebuild those relationships instead of severing them further.

Peacemaking is also different from other methods of alternative dispute resolution, such as mediation. Although mediation brings parties together to settle their disputes outside the adversarial model, it focuses on resolving the issue at hand and typically requires each party to give something up in order to reach a compromise. By contrast, peacemaking focuses less on the present dispute, and more on healing relationships and creating long-lasting harmony. According to Judge Barbara A. Smith of the Chickasaw Nation, "mediation is about an issue, whereas peacemaking is about relationships."[5] As Chief Justice Herb Yazzie of the Navajo Nation has stated, "when people leave a peacemaking session, they leave talking to each other."[6] Indeed, the Navajo Nation's Peacemaking Guide explains: "Peacemaking encourages people to solve their own problems by opening communication through respect, responsibility and good relationships . . . Rather than judge people, peacemaking addresses bad actions, the consequences of such actions and substitutes healing in place of coercion."[7]

1. In the Western adversarial system, rules of evidence are designed to limit what witnesses say in court, based on, for example, issues of relevance, prejudice, privilege, hearsay, etc. These rules result in a greatly circumscribed version of the witness' original narrative.
2. Robert V. Wolf, Ctr. for Court Innovation, Widening the Circle: Can Peacemaking Work Outside of Tribal Communities? 3 (2011); *see also* Nancy A. Costello, *Walking Together in a Good Way: Indian Peacemaker Courts in Michigan*, 76 U. Det. Mercy L. Rev. 875 (1999); Judicial Branch of the Navajo Nation, Peacemaking (A Guide to the Peacemaking Program of the Navajo Nation) (2004), *available at* http://www.navajocourts.org/Peacemaking/peaceguide.pdf.
3. Judicial Branch of the Navajo Nation, *supra* note 2, at 1.
4. In most jurisdictions, more than 90 percent of criminal cases are resolved through plea bargaining, during which the defendant usually does not speak in any public way. Even in cases that go to trial, defendants seldom testify.
5. Robert V. Wolf, Ctr. for Court Innovation, Peacemaking Today: A Conversation among Tribal and State Practitioners 4 (2012).
6. Chief Justice Herb Yazzie of the Navajo Nation, Address at the Center for Court Innovation's International Conference of Community Courts (Oct. 19-20, 2010).
7. Judicial Branch of the Navajo Nation, *supra* note 2, at 1.

PART I

What are the purposes and benefits of peacemaking in state courts?

"The Indian tribal courts' development of further methods of dispute resolution will provide a model from which the Federal and State courts can benefit as they seek to encompass alternatives to the Anglo-American adversarial mode."

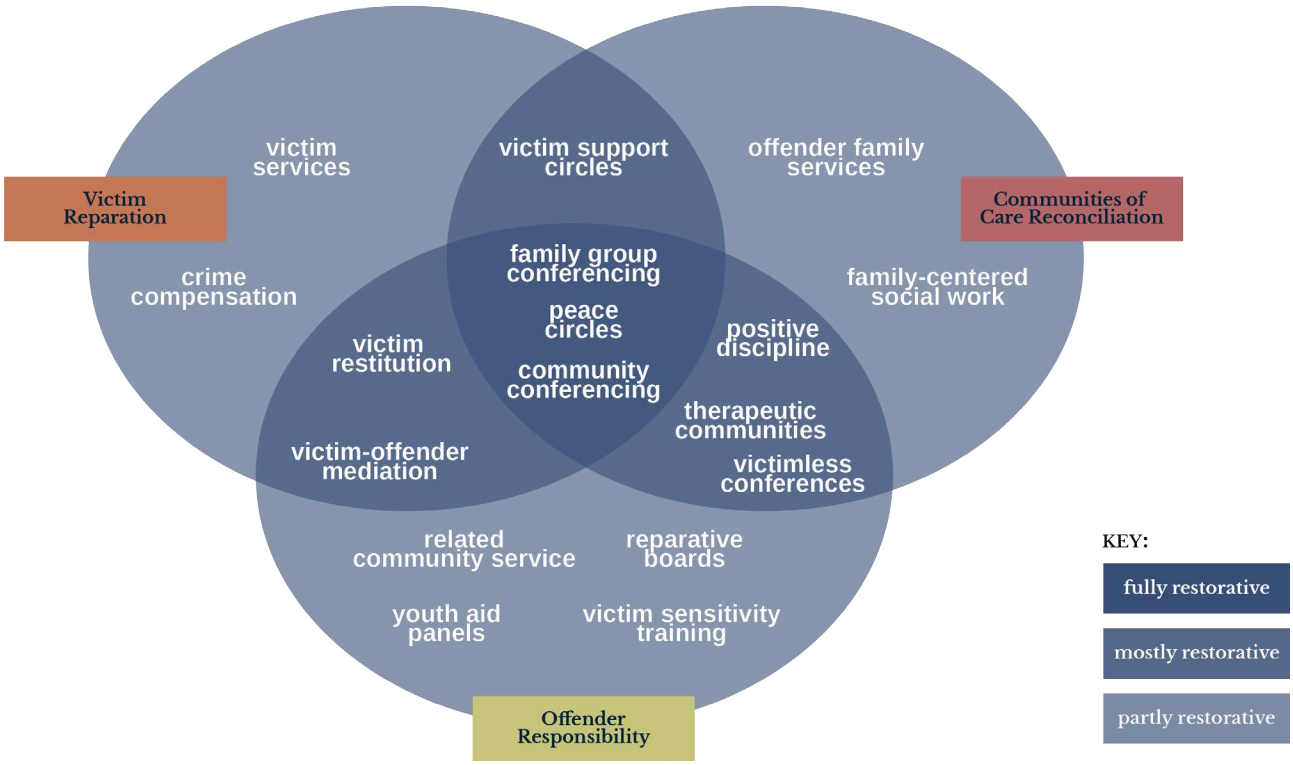
– Justice Sandra Day O'Connor

Peacemaking: Beyond Mediation

While there are many similarities between peacemaking and other dispute resolution and restorative practices, differences should be noted. The goals of peacemaking focus on healing relationships and restoring the participant's place in the community, while mediation focuses on the issue(s). Peacemaking is also a fully restorative practice, as it involves all three restorative justice stakeholders: victims, offenders, and communities of care. Furthermore, peacemaking involves direct citizen participation.

> I like to define peacemaking in comparison to other alternative dispute resolution processes to clarify differences. Similar to mediation, it is the parties in peacemaking who make the decisions as to outcome. However, although mediation is excellent for resolution of specific issues, peacemaking goes much, much deeper and allows people to heal wounds and repair relationships. Peacemaking fosters a longer lasting repair and healing to relationships and community than mediation provides.
>
> *-Susan Butterwick, Washtenaw County Peacemaking Court*

Figure 1. Restorative Practices Typology [8]



To provide an overview of the differences between peacemaking and mediation, Michigan's Washtenaw County court developed the following helpful resource (See ***Figure 2***). [9]

Involving the Community and Building Trust in the Courts

Peacemaking programs empower local communities, through the active involvement of community volunteers in the peacemaking process, to respond to conflicts and play an active role in repairing relationships. Involving the community also helps build public trust and confidence in the courts.

Becoming a Trauma-Responsive Court

State courts have regular interactions with vulnerable populations, such as victims of violent crime, victims of familial and interpersonal violence, children who have experienced developmental trauma, veterans suffering from post-traumatic stress disorder, and human trafficking victims. State courts are seeking to become more trauma-responsive to the communities they serve. Many courts can accomplish this by (1) realizing the widespread impact of trauma and understanding potential paths for recovery; (2) recognizing the signs and symptoms of trauma in defendants, juveniles, families, staff, and others involved with the court system; (3) fully integrating knowledge about trauma into policies, procedures, and practices, and (4) seeking to actively resist re-traumatization.[10] The traditional adversarial court process is not necessarily conducive to meeting the needs of victims of trauma. Peacemaking, on the other

8. Paul McCold & Ted Wachtel, *In Pursuit of Paradigm: A Theory of Restorative Justice*, Restorative Practices (Aug. 12, 2003), http://www.iirp.edu/pdf/paradigm.pdf (paper presented at the XIII World Congress of Criminology on August 10-15, 2003, in Rio de Janeiro, Brazil).
9. Washtenaw County Comparison of Peacemaking and Mediation. Adapted from Handbook for Facilitating Peacemaking Circles: http://www.foresee.hu/uploads/tx_abdownloads/files/peacemaking_circle_handbook.pdf
10. SAMHSA's Trauma and Justice Strategic Initiative, *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach,* Substance Abuse and Mental Health Service Administration, 9 (July 2014), http://store.samhsa.gov/shin/content//SMA14-4884/SMA14-4884.pdf

hand, focuses on healing, promotes an environment of respect for all, and strives to build long-lasting harmony for individuals and communities. Peacemaking is one of the many strategies courts are utilizing to become more trauma-responsive.

FIGURE 2. WASHTENAW COUNTY'S COMPARISON OF MEDIATATION AND PEACEMAKING.

	Mediation	Peacemaking
Facilitator	Mediator (usually one)	Peacemaker/Circle keeper (usually two)
Role of the Facilitator	Impartial as to the parties. Neutral as to the outcome. Creates the structure.	Impartial and often encouraged to share their experiences and opinions. Circle keeper holds and monitors the integrity of the circle. Participants may help structure the discussion.[11]
Participants	Parties with authority to settle the case, attorneys. Parties occasionally, but rarely, bring support people, if all parties agree to their presence.	Parties involved in the conflict, sometimes attorneys, family and/or community members who have been impacted by the dispute and can help with the solution, professionals where needed or relevant. Participants may bring support people; the peacemaking program also offers to provide trained peacemakers as support people to the litigants to help them think about ways to work through the problem and ways to approach the conflict with the other party. In delinquency or criminal cases, probation officers, attorneys, judicial or law enforcement representatives may also be present.
Process	Mediation may be ordered by the court. Mediator and parties make opening statements and mediator facilitates and assists in negotiation process, but does not follow a script. Mediator is very active in helping parties reach consensus. Parties may meet in joint session or mediation may be conducted by mediators in caucus or separate rooms. Parties usually sit around a conference table with mediator at head of table leading the discussion. May be one or more sessions. If mediation fails, parties rarely will return to mediation after the court's decision (unless the case is on appeal).	Peacemaking may be ordered by court, but is voluntary from perspective that participants have to want to resolve the case, and to heal relationships. Peacemaker / facilitator opens session with ceremony including traditional stories, words that explain the circle process. Peacemaker opens with an agenda based on pre-meeting preparation work with the parties and asks specific questions that focus on relationship, impact of the dispute, repairing harm, healing, as well as resolution. Guiding principles of peacemaking are: respect for one another, taking responsibility for actions, healing or repairing relationships, and redirection onto a new path and with reintegration back into the family or community through understanding and participation in the discussion. Everyone sits in a non-hierarchical circle and a talking piece is used to allow all participants to speak uninterrupted and for others to focus on listening. All participants are allowed to speak when talking piece is passed to them. The role of the facilitator is less than in mediation and the role of the participants, including family or community, is greater, in reaching a consensus. Participants stay in same room for the entire session. May entail multiple sessions. (With juveniles, it can entail several follow up circles to check in on progress). If peacemaking fails or the parties do not want to try peacemaking in lieu of a court decision, parties may opt to return to peacemaking again after the court's decision to determine how to implement the court order and to repair relationships post-court.
Goal	Settlement of the case.	Settlement of case, repairing harm, increasing understanding, healing relationships, and reintegration into community (where applicable) are equal goals.
Preparation	None or brief contact with attorneys and / or parties, screening for DV where applicable.	Extensive work and preparation with all participants prior to circle. DV screening, in-person visits occur in some kinds of cases. Some cases may be sent back to court for a court decision, based on intake discussions, and will be handled by judge using same or similar principles as the peacemaking session.

CONTINUED ON NEXT PAGE

11. Note: the term impartial can be misleading. In peacemaking, the peacemaker may know the parties personally and — as a member of the community—the peacemaker may even express the desire to reach a positive resolution of the controversy. That being said, the peacemaker still approaches the issue without judgment.

FIGURE 2. CONTINUED

Who sets the rules?	Mediator – participants are expected to follow the ground rules set by mediator	The circle participants and facilitators create the rules by consensus.
How long is the dialogue managed?	Mediator manages discussion with open-ended questions and hypotheticals to assist with negotiation.	After facilitator begins with agenda questions, the circle participants manage and continue the dialogue by passing the talking piece.
Understanding of the conflict	Between the parties who are in litigation.	Between all members of the circle, including those who are impacted by the conflict – family or community members – not just the litigants.
Court involvement (this program)	Does not involve the court system itself, except to settle its cases. Court orders parties to mediation (or other ADR processes). ADR is conducted apart from the court.	Involves a systems change in the court and how it views and handles its cases. Judge asks parties if they want to participate in peacemaking and asks them to explain why before making a referral to the program. If the parties do not opt for peacemaking or if they do not resolve their differences in peacemaking, the court uses the same principles (respect, responsibility, relationship, and redirection) in hearing and deciding the case in the courtroom. In some cases, judge and recorder begin the circle with parties and facilitators before intake begins and before the actual peacemaking session.
Benefits	60-80% of cases settle out of court. High rate of durability of agreements kept (approximately 80+%).	No final data yet on settlement rate for this program in Washtenaw County, but tribal sites indicate very high settlement rates. (See sentence fulfillment rates of Alaska Kake tribal peacemaking compared to state court system - 97.5% vs. 22%.) This program has resolved cases that have tried and failed to resolve in mediation and other ADR processes.

PART II

Peacemaking State Court Profiles

The Red Hook Story

Red Hook, Brooklyn, NY

In January 2013, the Center for Court Innovation launched the Red Hook Peacemaking Program. Operating out of the Red Hook Community Justice Center in Brooklyn, NY, the Red Hook Peacemaking Program was set up as a diversion program for criminal and family court matters.

Background

Since 2008, the Center for Court Innovation's Tribal Justice Exchange visited dozens of tribal communities and collaborated with hundreds of tribal justice practitioners. Much of this work focused on assisting tribes in planning and implementing new problem-solving justice initiatives. Equally important, however, was the opportunity to observe and learn about Native approaches to justice, such as peacemaking. While participating in the 2nd Annual Indigenous Peacemaking conference, held in Green Bay in October 2008, Center staff heard numerous first-hand accounts of how peacemaking

had succeeded in reaching formerly "unreachable" offenders and in healing the deep wounds suffered by victims of crime. Although used for centuries in many Native communities, peacemaking clearly represented something new for state court systems. Center staff began to explore the possibility of working with Native peacemakers to develop a peacemaking-inspired program in a non-tribal setting.

In 2010, the Center received a grant from the United States Department of Justice's Bureau of Justice Assistance to support the planning of a pilot program inspired by peacemaking but designed for a state court system. The project would include a multi-stage planning process involving intensive research on the history and uses of peacemaking in tribal communities, a roundtable discussion with peacemaking experts from around the country to explore the use of peacemaking in a non-tribal setting, and a feasibility study assessing whether peacemaking could work in the New York State court system and what such a program might look like.

Center staff began intensive research into peacemaking, reviewing dozens of publications, including manuals and forms from the Navajo peacemaking program and other restorative justice programs around the country. In addition, Center staff interviewed peacemakers and tribal justice system officials about how peacemaking is used in their communities and whether it could be adapted for a state court setting. The Center summarized this research in a practitioner monograph, *Widening the Circle: Can Peacemaking Work Outside of Tribal Communities?* [12] This paper also served as a briefing paper to prepare participants for the Center's roundtable discussion on peacemaking, which was held in December 2011 at the Fort McDowell Yavapai Nation in Fountain Hills, Arizona.

The peacemaking roundtable was a carefully-planned event that included a total of twelve participants: seven Native American peacemaking experts from diverse peacemaking traditions around the country, three practitioners who operate restorative justice programs in non-tribal jurisdictions, and a judge and administrator from the New York State Unified Court System. These participants, facilitated by Center staff, spent a day and a half discussing the key elements of peacemaking, some of the challenges associated with planning and operating peacemaking program, and whether peacemaking could be used in a state court system.

The peacemakers and restorative justice practitioners were unanimous in their belief that peacemaking could work in a diverse, urban community. They suggested that community norms and shared values would surface during the peacemaking process, and that each community has natural peacemakers who can do this work. Participants believed that the most significant challenge would be securing the buy-in of justice system stakeholders, who might be uncomfortable with the idea of using an alternative, non-adversarial method to resolve disputes and respond to crime. In January 2012, the Center for Court Innovation produced *Peacemaking Today: A Conversation among Tribal and State Practitioners*, [13] a publication that summarizes the lessons learned from the roundtable discussion and begins to outline some of the issues that should be addressed in planning a new peacemaking program. Following the roundtable discussions, Center staff visited and observed a number of peacemaking programs to see the principles in action.

After careful consideration, the planning team determined that the Red Hook Community Justice Center was best suited to host the peacemaking pilot. The Brooklyn District Attorney's Office expressed strong support for this project. In addition, the Red Hook Community Justice Center arraigns both

12. Wolf, *supra* note 2, at 3.
13. Wolf, *supra* note 5.

felony and misdemeanor cases for youth and adults. This diverse caseload would provide the peacemaking program with access to a variety of case types and would allow the program to test how peacemaking works in different scenarios. Red Hook's presiding judge, Alex Calabrese, had participated in the peacemaking roundtable discussion and expressed enthusiasm for locating the pilot program in Red Hook.

Finally, Red Hook is a geographically unique neighborhood in New York, bordered on three sides by water and cut off from the rest of Brooklyn by the Brooklyn-Queens Expressway. It is also home to one of the largest housing projects in the United States. As a result of these factors, Red Hook is a close-knit community—many community members live their entire lives in the neighborhood, and there are many respected community members who actively volunteer in the community. A number of these individuals had expressed interest in getting involved with the peacemaking program and—once it launched—many of them in fact became active peacemakers in the program.

Current operations

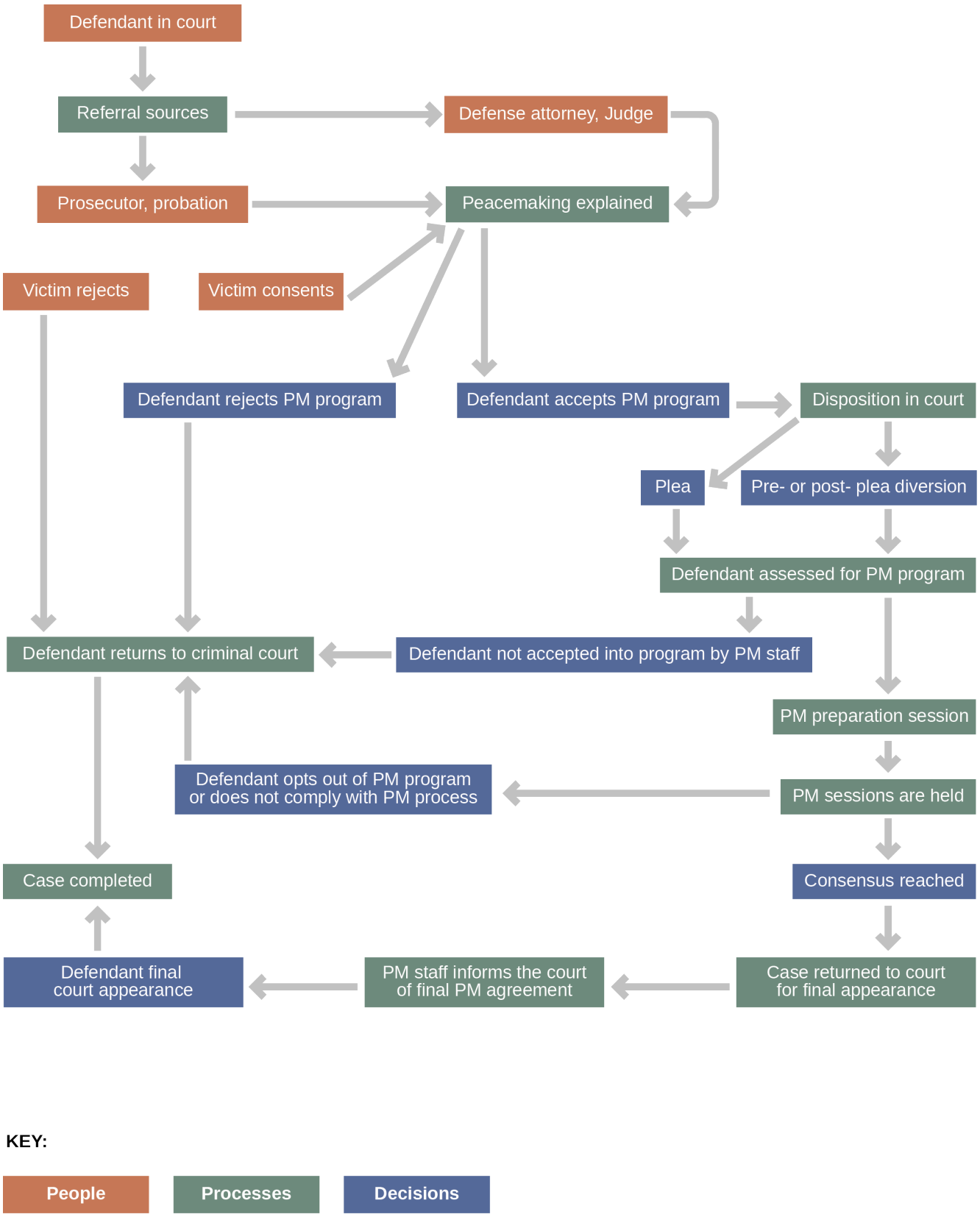
Since its launch in 2013, the Red Hook Peacemaking Program blossomed from a small pilot program taking a handful of cases and using a small cohort of community-based peacemakers, to a much more robust program that is integrated into the fabric of the Red Hook Community Justice Center as well as the Red Hook community at large. Scores of residents have been trained in a three-month intensive program that always includes direct training from Native American peacemakers. The program began by accepting referrals solely from the local court, but has since expanded to accept referrals from other criminal courts, public housing managers, police officers, school officials, and regular community members.

Goals

To fulfill its mission, the Red Hook Peacemaking Program outlined the following goals:

> *Healing relationships:* Peacemaking is concerned with healing the relationships that were harmed by a dispute or crime. Instead of merely punishing the past act, peacemaking looks to the future, focusing on healing the relationships involved and correcting harmful behavior to ensure that it is not repeated. Peacemaking emphasizes the development of participants' sense of identity and commonality with members of his or her community.
>
> *Giving victims a voice:* Peacemaking provides victims with an opportunity to express how the crime has affected them, their families, and their communities. In a peacemaking session, the victim can actively participate in the discussion that leads to a resolution.
>
> *Holding participants accountable:* Peacemaking requires participants to accept responsibility for their actions and fosters a sense of accountability. Participants face other members of their community, recognize the effects of their actions, and participate in determining how to repair the harm they have caused.
>
> *Empowering the community:* The peacemaking program trains community members to serve as peacemakers, giving the community a direct and active role in addressing the conflicts and crimes that affect their community. In addition, the peacemaking program invites other community members to participate in peacemaking sessions, offering them an opportunity to talk through and resolve disputes and demonstrating that the community shares responsibility for repairing the harm caused by conflicts.

Figure 3. Red Hook Peacemaking Program Case Flow



Court process

Once the program receives a referral, and if the judge and both attorneys agree to proceed with peacemaking, the program coordinator will meet with the defendant in order to explain how the program works. The program coordinator will also confirm whether the defendant meets all eligibility criteria.[14] The defendant will decide whether to participate in the peacemaking program. In cases involving a victim, the prosecutor will speak with the victim to ensure the victim's consent to send the case to peacemaking. The victim will be invited—but not required—to speak with the program coordinator to learn more about the peacemaking process. Generally, victims may decide whether to participate personally in the peacemaking sessions, or whether to have their interests represented by the peacemakers or another participant in the peacemaking session. The court will then recall the case to enter the disposition consistent with the plea offer. This disposition may include a guilty plea, the reduction of the charge, or a dismissal as a form of pre-plea diversion.

The peacemaking process in Red Hook

During peacemaking sessions, participants are encouraged to bring family members, friends, and others who were affected by the dispute and/or who can support them through the process. Everyone in the peacemaking circle has an opportunity to speak and respond without interruption. The community peacemaker is available to ask questions about the event and its underlying causes, to share their own stories of harm, loss, adversity and success, and to reflect on how the event impacted the community. During peacemaking sessions, the parties in the circle discuss what the participants could do to heal the relationships damaged in the conflict, provide restitution, or improve their own lives in order to avoid future conflicts. Usually, more than one session is required to resolve the conflict, and between sessions participants commit to taking steps to advance the healing process. Those healing steps might include obligations like letters of apology, volunteer work, or resumé writing, or promises to communicate respectfully, work on impulse control, or abstain from illegal activity. The peacemaking process is concluded when everyone—including peacemakers and participants—can reach consensus for a peaceful resolution, at which point any court-referred case is sent back to the courts for a dismissal or any other agreed-to disposition.

The community peacemakers

One of the differentiating features of the Red Hook Peacemaking Program is its reliance on community volunteers to train as peacemakers and then lead the peacemaking sessions. There are two fundamental aspects to the training program:

- First, it is always provided free of charge to Red Hook residents. Each year, program staff undertake an intensive recruitment effort within the Red Hook community in order to provide this training for the volunteers. This ensures that the training remains accessible and attracts volunteers with a range of experiences and from all walks of life. Many volunteer-based programs charge significant fees for their training programs. As a result, the cohorts of volunteers are comprised mostly from higher socio-economic brackets. By contrast, the practice of peacemaking in Red Hook is successful because the volunteer peacemakers come from the same community as the participants and can share life experience that is relatable, familiar, and accessible. Indeed, by providing free training, the Red Hook

14. Eligibility criteria include: Defendants must accept responsibility for their actions related to the dispute or crime; All participation must be voluntary; The defendant understands the intensive nature of the peacemaking process and is willing and able to commit the time and effort to complete the process; Parental/Guardian consent is required for defendants under the age of 18; The defendant does not suffer from a severe and/or untreated mental illness and is not in need of intensive drug treatment; The case does not involve any history of or allegations of intimate partner domestic violence, elder abuse or sexual assault.

program builds skills and capacity within the very community it aims to serve.

- The second significant aspect of the training is its connection to Native American peacemaking trainers. Program staff have sought to maintain a close relationship with its Native American roots. Every year Native trainers are invited to Red Hook to introduce the volunteers to traditional practices and to give them a sense of its history and heritage. This ensures that volunteers remain connected to the origins of peacemaking, while building important cultural bridges between tribal communities and urban New Yorkers.

SNAPSHOT:
Washtenaw County, MI

What court and case type?
The Washtenaw County Peacemaking Court was launched in October 2013 out of Judge Timothy Connors' courtroom in the Washtenaw County Trial Court, with the "blessing and encouragement of the [Michigan] state Supreme Court." [15] The program was inspired by Judge Connors's relationship with Tribal Judge Michael Petoskey, who has been active in reviving peacemaking traditions across the country, and who was also a mentor for the creation of the Red Hook Peacemaking Program. In its materials, the Washtenaw County Peacemaking Court Program describes itself in the following terms: "It is a model created to replace the limitations of an adversarial court system with more comprehensive, harmonious and balanced solutions that integrate the repairing of harm, healing of relationships, and restoration of the individual within their family and community." [16] The Washtenaw County Peacemaking Court Program is heavily connected to tribal court traditions, and focuses on four 'intrinsic values," which include relationships, responsibility, respect, and redirection. The program uses these values as the framework for resolving conflicts. Importantly, any agreement that is made during the peacemaking circles is considered as binding as a contract. It mostly sees cases involving probate, domestic relations, child welfare cases, and other civil cases.

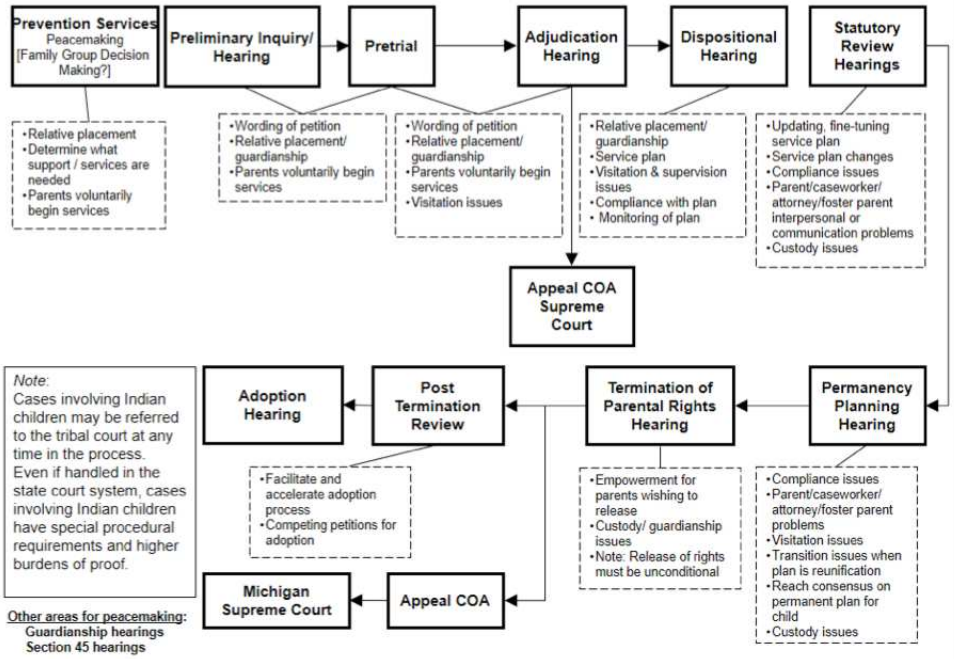
How are cases selected and referred to the program?
The Dispute Resolution Center's (DRC) trained peacemakers receive referrals to peacemaking from the court. The Dispute Resolution Center was opened in 1983 and is one of 19 nonprofit community dispute resolution centers in Michigan operating under the supervision of the Michigan State Court Administrative Office. [17] In 2015, a peacemaker referee was assigned to the trial court's child welfare docket to further integrate peacemaking practices throughout the court system. Friend of the Court, juvenile probation, and county detention staffs are trained to use peacemaking in their cases as well. [18]

What issues in a case would be appropriate for peacemaking?
Figure 4. illustrates the stages and issues in a child protection case where the court in Washtenaw might utilize peacemaking.

What is the relationship with the community?
The program trains volunteers through its partnership with the Dispute Resolution Center. The court's

15. Shelley Daily, *Peacemaking Court A new county program brings tribal peacemaking principles to the state court system*, Ann Arbor Observer (April 2014), http://annarborobserver.com/articles/peacemaking_court_full_article.html.
16. Jainelle Robinson, *Washtenaw County Peacemaking Court,* Washtenaw County Peacemaking Court (2013), http://thedisputeresolutioncenter.org/wp-content/uploads/2014/06/peacemaking-court-brochure.pdf.
17. *Mission and History,* The Dispute Resolution Center, http://thedisputeresolutioncenter.org/about/history-of-the-drc/.
18. Susan J. Butterwick, Timothy P. Connors & Kathleen M. Howard, *Tribal Court Peacemaking: A Model for the Michigan State Court System?*, 6 Mich. Bar J. 34–38 (2015), available at http://www.michbar.org/file/barjournal/article/documents/pdf4article2628.pdf.

FIGURE 4. EXAMPLE OF MICHIGAN CHILD PROTECTION COURT PROCESS, WITH TYPICAL ISSUES FOR PEACEMAKING IN DOTTED LINE BOXES



partnerships with various local organizations such as neighborhoods, schools, law enforcement, juvenile detention and child welfare providers allow them to utilize peacemaking with cases in court but also with disputes not currently in the court process.

Is it working?

Preliminary evidence suggests positive results. Survey responses from the first year of the project, across a variety of probate and family cases, demonstrate that 94% of cases resulted in an agreement from both parties, and of those agreements, 82% agreed or strongly agreed that the results were fair as compared to what might have occurred in a court setting. In addition, 91% of participants agreed or strongly agreed that after listening to everyone speak, they had a better understanding of other perspectives. Lastly, 94% agreed or strongly agreed that they would recommend peacemaking to others. These numbers are promising indicators of the success of the process both in terms of the ability to come to resolution and in terms of participants' satisfaction.

> "Our courts have a history of compartmentalizing cases and focusing on caseflow processing and time management guidelines….and we keep seeing the same people come back again and again, whether it is in criminal cases, domestic cases, or in juvenile cases. And those who have been with the juvenile court see generations coming again and again, sometimes the second and third generation. So it is clear that we need to do something different….We need a more holistic approach. We are so fortunate that we have Judge Tim Connors to bring the peacemaking model to Washtenaw County….I'm a big believer in this alternative dispute resolution process because I've seen it work. Since the court started in October of 2013 with a grant from the State Court Administrative Office, I have been referring cases and I've seen how lives have been transformed – not just the litigants, but the families and workers who bring them through the process."
>
> *– Hon. Darlene O'Brien, Washtenaw County Trial Court Judge* [19]

19. *Juvenile Peacemaking Court Training: Welcome and Introduction, 4/22/2015,* THE DISPUTE RESOLUTION CENTER (2015), http://thedisputeresolutioncenter.org/peacemaking-court-training-videos/ (videos of presentations for Stakeholders of the Washtenaw County Peacemaking Juvenile Court).

SNAPSHOT:

Near Westside Peacemaking Project, Syracuse, NY

Note: The Near Westside Peacemaking Project studied the model of the Red Hook Peacemaking Program and expanded the reach to a high-crime neighborhood in Syracuse, NY.

Why a neighborhood model?

The Near Westside Peacemaking Project runs a neighborhood-based peacemaking center with the goal of diverting cases from the justice system and empowering the community to heal relationships. Cases can originate (1) in the justice system, including from criminal court, family court, or police, (2) prior to involvement with the justice system, such as school-based disciplinary cases or neighborhood disputes, or (3) through community corrections, such as parole or probation. The Near Westside Peacemaking Project began accepting cases in March of 2015.

How and why did the program begin?

The Near Westside neighborhood in Syracuse, NY, represents the 9th highest-poverty census tract in the United States and has the highest percentage of residents on community supervision in the city. All five city schools that serve the neighborhood are deemed "failing" or "in need of improvement" by the New York State Department of Education. Residents identified quality of life crimes and social disorder as the issues that most troubled the neighborhood. When residents were presented with peacemaking during focus group discussions, they asked that cases not only come from justice system stakeholders but also directly from residents, churches, schools, and community agencies.

Through a one-year planning process, the Near Westside Peacemaking Project worked with a restorative justice architect, residents and justice system stakeholders to design the Peacemaking Center, a free-standing, neighborhood-based restorative justice center. During the first year, twenty community members completed peacemaking training.

How are community peacemakers selected?

Project staff reached out to community groups, including churches, community agencies, and school staff, for names of individuals who may be interested in volunteering as peacemakers, and held informational sessions and mock-circles. In order to become a community peacemaker, volunteers have a connection with the neighborhood, whether through residency, work, volunteering, school or church attendance. Volunteers also commit to completing a twenty-hour peacemaking training, which was developed in consultation with Native American peacemaker experts and the Red Hook Peacemaking Program. This training brings in Native American peacemakers to facilitate the training and includes the fundamentals of peacemaking, storytelling, understanding the criminal and family court systems, the importance of trauma-informed practices, and practicing mock-circles.

What are the program benefits to the community?

The Near Westside Peacemaking Project empowers a high-needs community to solve problems and heal relationships on their own, using the strengths of the neighborhood's residents to find solutions and address poverty, trauma, and violence. Justice system stakeholders use the Near Westside Peacemaking Project as (1) an alternative to arrest in neighborhood-disputes, (2) as a voluntary restorative-based sanction in misdemeanor and juvenile delinquency cases so that offenders can address the harm they have caused, and (3) as a tool to promote the best interests of the child and restore families during a family court case. Neighborhood schools have also used peacemaking as an alternative to suspension and churches have used it to address physical altercations at services.

SNAPSHOT:
Cook County, IL

Note: The following program uses restorative processes to improve state court cases, but differs from the Washtenaw County and Red Hook examples in that it is not directly inspired by Native peacemaking. Rather, it serves as an example of the ways in which courts are incorporating restorative practices in order to mitigate against the limitations of the adversarial process.

What court and case type?
The Parentage and Child Support Court (PCSC) in Cook County, Illinois determines the issue of parentage for unmarried parents. The mission of the court is to "help parents ensure that children have two loving and supportive parents who are not caught in the middle of parental hostility or court proceedings, that the children receive financial support, and that court assistance is available if needed to assist parents so that the children may grow up having a positive view relating to parents and families." The court began a restorative justice project in 2008.

How and why did the program begin?
The PCSC had one of the most crowded dockets in the Cook County Circuit Court system, including a very high percentage of pro se litigants from high-poverty areas.[20] Furthermore, in many parentage cases, unlike dissolution cases between married parents, there is no relationship history which can be rebuilt around a child. This often results in the child serving as liaison or messenger and often kept from the non-custodial parent as punishment. Often, the parents in parentage cases never learned to communicate with each other or cooperate in any meaningful ways.[21]

In 2008, Judge Martha A. Mills had a case before her in the PCSC in which she saw an opportunity for a restorative solution. She located two attorneys who were knowledgeable about family law and who were skilled in restorative processes. Attorneys Peter Newman and Elizabeth Vastine agreed to serve as circle keepers for this case, and the family, including the child, agreed to try the circle process. Afterwards, the family shared that their experience in the circle process helped them communicate better than they had in years, and perhaps ever.[22] Judge Mills referred several more cases to Newman and Vastine, and the outcomes were promising. Judge Mills wished to move the process to all other judges in the PCSC.[23] To take the project courtwide, Newman and Vastine suggested a partnership with DePaul College of Law's Schiller DuCanto and Fleck Family and Child Law Center where they hoped to teach a course in Restorative Peacemaking Practices to upper level law students and train them to become circle keepers for cases referred by the PCSC. The first class was held in the spring semester of 2010 and has continued every spring semester since. This partnership between the court and the law school was the first of its kind to apply restorative processes in the family law setting.[24]

How were cases selected and referred to the program?
When the program expanded to all judges in the PCSC, Judge Mills, Newman, and Vastine first educated the other PCSC judges on the restorative justice philosophy and circle process. They collectively

20. Stefani Silberstein Radist, Martha A. Mills, Elizabeth J. Vastine & Peter C. Newman, *Restorative Justice Pilot Project at the Parentage and Child Support Court of the Circuit Court of Cook County,* 8 DePaul J. for Soc. Just. 53, 54 (2014), *available at* http://via.library.depaul.edu/jsj/vol8/iss1/4.
21. Susan Swaim Daicoff, *Special Issue: Families in Circle Process: Restorative Justice in Family Law,* 53 Fam. Ct. Rev. 427, 434 (Jul. 2015).
22. *Supra*, note 20, at 55.
23. Judge Martha A. Mills served as the Supervising Judge of the Cook County Parentage and Child Support Court from 2009-2012
24. *Supra*, note 20, at 61.

decided what cases would be referred to the program, including cases where parties were able to communicate, but had gotten stuck on a particular issue; where the children were telling each parent what that parent wanted to hear, but had never had the opportunity to talk to both parents at the same time; or, where the parties had exhausted every legal, financial and emotional resource, and were willing to try a new approach. The judges also explored cases they thought would be inappropriate for a circle process, including disputes where one of the parties was "fixated" on a particular result, or cases where the mental or physical capacity of a party might prevent them from responsibly participating in a restorative circle process.[25]

Once judges referred a case to the program, Vastine or Newman reached out to each parent individually to share the restorative process philosophy and describe the circle process and what they might expect from it. The parents were informed that participation in the program was voluntary and not court ordered and that the process was confidential unless the parties otherwise agreed.[26] At the completion of the process, the families were invited to return to the program to address future issues or to make adjustments to their agreements to meet the changing needs of their child.[27]

What are the program benefits to the families?
Benefits of the project for families include an increase in the family's ability to problem solve and make their own decisions. It increased the likelihood that the parties would remain accountable to each other, and that agreements reached were durable and more likely to be successful over time than those imposed by a court. Any agreement reached by the parents was further strengthened if the children participated in the circle. The vast majority of cases that were referred to the program where the parents agreed to participate resulted in an agreement. Some cases never had to return to court, and others returned for resolution of other issues, such as child support modification.[28]

What are the program benefits to the court?
Because of the success the program has in helping families reach agreements and often avoid lengthy litigation, court time was freed and available for those cases not suitable for a circle process.

Potential expansion
Once judges outside of the PCSC learned of the value of restorative practices and their successes, they also wanted the program to be available as a resource throughout the Domestic Relations Division of the Circuit Court. The Domestic Relations Division has 43 judges and a docket of over 10,000 pending cases, not including cases from PCSC. To take the restorative process from the PCSC to the entire Domestic Relations Division would require a substantial change in the program, including the addition of an overall program administrator or coordinator, as well as considerably more trained circle keepers.[29] The court would likely have to look for circle keepers beyond those graduates of the law school partnership program.

25. *Id*.
26. *Id*. at 62.
27. *Id*. at 65.
28. *Id*.
29. *Id*. at 67.

PART III

Implementation

"Think big, start small, go slow, keep moving."

– Advice on implementation from the Red Hook Peacemaking Program

Each planning process is unique, and should be designed to respond to the idiosyncratic needs of the local justice system and communities. With that in mind, the following section sets out a series of steps that planning teams can undertake to create a successful new program inspired by the principles of peacemaking.

Phase I: Planning

1. **Find a champion**
   For most state court systems, peacemaking represents a major departure from business as usual. Resistance and skepticism can be expected. To develop a successful program, it is critically important to find a champion who has the interest, energy, ability, and influence to rally others to the cause. Often, a judge or prosecutor is the most persuasive advocate for change. In some cases, though, innovative programs have been successfully driven by the defense bar, probation, community-based agencies, and other stakeholders. Whoever takes on the mantle of champion must be willing to exhibit both tenacity and patience: the process for creating change can take time.

2. **Identify essential partners and a lead planner**
One of the champion's first jobs is to identify the key partners who should be included in the planning of this project. Typically, partners should include all of the major justice system stakeholders (judges, court administrators, prosecutors, defense counsel, probation, etc.) as well as representatives from impacted communities (community advocates, religious leaders, school officials, etc.). Next, the champion should identify a lead planner. This person may or may not be the champion. Often, when the champion is a central court player like a judge or prosecutor, daily responsibilities can overwhelm the person's ability to coordinate the planning and implementation process. The lead planner should be someone who can set up meetings, engage community partners, attend community meetings, research other peacemaking programs, apply for grant funding, and draft preliminary materials. An effective lead planner can mean all the difference between successful implementation and failure.

3. **Identify funding for start-up costs**
Small grants in early stages can provide the foundation for future success. For example, small grants can be used to pay the lead planner for his/her time on a part-time basis until more funding is acquired. Small grants can also be used to pay for food for meetings when convening partners or the planning team. Some courts have small sets of funds that can be allocated as seed money towards program planning. Private foundations may also be able to make a small grant towards this end.

In its first year of operations, the Kindle Foundation provided the Red Hook Peacemaking Program with a $5000 grant to provide food for the training program and the peacemaking sessions. Prior to receiving the grant, program staff had been individually cooking in order to provide food for volunteers, a key aspect to peacemaking. This modest grant had a large impact: it allowed staff to focus on training and implementing, and provided food for a whole year of operations.

4. **Assemble a planning team**
At a minimum, the planning team should include:
    - Lead planner
    - One or more judges
    - Prosecutor representative
    - Defense counsel representatives (public and private)
    - Probation
    - Court administrators
    - Court staff (determined by the types of cases being considered for peacemaking, e.g., family court staff, criminal court staff, small claims court staff, etc.)
    - Community-based organizations
    - Respected community members (often elders)

Other individuals to consider for the planning team might include:
    - Elected officials (mayor's representative, city council member, etc.)
    - Law enforcement representative
    - Probation/parole representative
    - School official (if working with youth)
    - Researchers to document process and impact (could be a local university)

5. **Conduct a study trip to an existing peacemaking program**
Whenever possible, planning teams should observe other peacemaking programs in action and speak

with those involved in the planning and operation of other programs. Given costs, the team may elect to send one or two people to travel on their behalf and report back what they have learned. There are many tribal communities practicing peacemaking. The best way to learn about peacemaking is to build bridges with Native communities and humbly seek to learn about the role of peacemaking in their cultures. In addition, visiting peacemaking programs in other state courts can help planners think through how best to adapt peacemaking to a non-Native setting.

6. **Identify mission and goals**
   There are many different reasons for starting a peacemaking-inspired program in a state court system. Peacemaking can elevate the role of the community in helping to resolve disputes and build capacity for a community-based approach to resolving disputes. Likewise, peacemaking can provide a more effective approach for resolving conflicts, healing relationships, and restoring harmony. Some research suggests that peacemaking leads to higher rates of participant compliance and reduces recidivism. The planning team should take the time to develop a clear mission statement and set of goals for the peacemaking program. The mission and goals will guide the planning and implementation of the program and will help define appropriate performance measures with which to evaluate the program.

7. **Identify case types for the program**
   Peacemaking-inspired programs have been used in a variety of state court matters, including criminal cases, juvenile delinquency, civil disputes, child protection and guardianship cases, and other family matters. One of the planning team's most important decisions is what kinds of cases to accept into peacemaking. To a large extent, this decision will be driven by local politics and concerns. For example, prosecutors may insist on excluding cases involving violence or injury. Court officials may indicate that staffing limitations or administrative challenges make it impractical to implement peacemaking in a particular court. Defense counsel may discourage clients from entering peacemaking in low-level cases where a dismissal or minor sanction is standard. The planning team should take these considerations into account and identify the kinds of cases that are most appropriate for peacemaking in light of local resources and concerns.

   One strategy is to start small by piloting the program with a single case type, and then expanding to other case types as staff gain experience in the process.

8. **Define target population and eligibility criteria**
   Once case types are identified, it becomes easier to identify the target population: these decisions usually go hand-in-hand. The eligibility criteria will depend on the case types. For example, some jurisdictions will opt for handling assaults, but will make intimate partner violence ineligible. In addition, program staff may want certain factors to be present before accepting a case into peacemaking. For example: Is there an ongoing relationship at stake that would benefit from peacemaking, or would parties prefer to simply move on and away from the relationship? Does an offender accept some level of responsibility for his/her actions? Is there acute mental illness or drug intoxication that would preclude open discussion? Is there a threat of future violence that would make participants feel unsafe?

9. **Clarify the role of the court and define the court process**
   It is important to establish expectations with court players early in the process. If a program is intended to be community-based, court players need to be prepared to trust the wisdom of communities in resolving controversies, and they need to be mindful not to micro-manage the program. To that end, program staff should clearly establish processes for communicating with court

players, such as eligibility requirements, referral process, status updates, compliance monitoring, and final resolutions. For example, the program should establish clear expectations regarding who will decide whether to accept participants into peacemaking, how participants' compliance with peacemaking will be monitored, and when cases will be sent back to the court for non-compliance.

At its first training program for volunteers learning to be community peacemakers, the Red Hook Peacemaking Program invited Judge Alex Calabrese of the Red Hook Community Justice Center to address the group. He welcomed everyone to Red Hook and thanked them for their service to the community. He then stated that he trusted the community to do this work and said he wouldn't stay any longer so that the court wouldn't be interfering with the important work that needs to be done by community members. This was a valuable statement from a person in authority, setting the tone for this to be a community-based and community-run program, without undue interference from the court.

10. **Create an MOU to define the use of confidential information**
    Courts may need status updates as a peacemaking process unfolds, but confidential information disclosed within a peacemaking session should not be shared. The program should develop a memorandum of understanding (MOU) between program staff, court players, and other partners that outlines the confidential nature of peacemaking sessions and any exceptions to that rule, such as mandatory reporting requirements. The MOU should also indicate that program staff and community volunteers cannot be subpoenaed to testify about anything disclosed during the sessions. Those same expectations should be communicated to all participants of a circle process, who should also sign forms indicating they understand the confidentiality requirements. An MOU should specify what types of information will be disclosed, with whom it will be shared, and under what circumstances.

11. **Identify the referral process**
    The planning team should work together to set out a process for how a case that has entered the court system can be referred to the peacemaking program. Use of a grid or case flow chart to illustrate the referral process can help communicate both processes and expectations. A referral process will also take into account whose job it is to explain the peacemaking process to a potential participant, how long that will take, whether a case is adjourned in the interim, and at what point screening tools will be administered.

12. **Create screening tools**
    With eligibility guidelines in place, the planning team should select (or develop) screening tools to ensure that appropriate cases are identified for peacemaking. If, for example, the program excludes participants with severe mental illness, a screening tool should be employed to assess participants' mental health. Similarly, if a program wants to exclude intimate partner violence, program staff should work with appropriate victim services to ensure that the screening tool includes questions designed to flag these issues. The planning team should also determine who will administer the screening tool and at what point in the court process.

13. **Identify peacemaker qualifications**
    Peacemakers need not have any specific credentials—the most important qualification for peacemakers is that they be respected members of the community who have wisdom and a desire to give their time for the good of others. Different programs may decide to require certain qualifications, but it is important to ensure that a community-based program does not become "professionalized" such that it resembles an exclusive membership.

14. Identify peacemaker stipend

Although peacemakers may be recruited as volunteers, some programs offer peacemakers a stipend (ex., $100 a month) to offset the costs of travel, phone calls, and other costs associated with the position. In some Native communities, the peacemaker is paid like other professionals, in recognition of their wisdom and expertise. In the Navajo Nation's plan of operations, for example, it states that peacemakers should be paid a "yeel", which is essentially a fee-for-service. [30]

15. Develop written materials

These are examples of the kinds of written materials that may be necessary:

- Program factsheet
- Screening tools
- Policies and procedures manual
- Participant's handbook
- Defendant's consent and acceptance of responsibility (note: this will not amount to a legal admission of guilt)
- Parental consent, when necessary
- Victim's consent, when necessary and appropriate
- Peacemakers' roles and responsibilities
- Justice system stakeholders roles and responsibilities
- Confidentiality agreement for defendants, victims, and peacemakers.
- MOU for the treatment of confidential information
- Declaration of delinquency form
- Notice of termination
- Compliance-monitoring form for status hearings
- District Attorney's offer for resolution upon completion of the program
- Evaluation protocol

Phase II: Launch

1. Recruit peacemakers

Each program will be different and will recruit from their communities in unique ways. With that in mind, however, a robust and representative cohort of community peacemakers will be instrumental in the program's ultimate success. The planning team, and especially the lead planner, should make extensive efforts to recruit from many sectors of the community. Some methods for recruitment include attending community events and monthly community meetings, police precinct meetings, and civic association meetings. The planning team might also post flyers at local community-based organizations and the local library, senior citizens center, veterans' association, and other community centers. It is also important to recruit active citizens who are well-known to--and respected by--their communities, and who have a good sense of the issues facing the neighborhood. The recruitment process should be ongoing throughout the life of the program, in order to ensure that many sectors of the community are represented, and not just the loudest and most easily recognizable voices.

2. Train peacemakers

Creating a training curriculum for community-based peacemakers requires significant planning. Given the origins of this tradition, connecting community members with Native peacemakers and experts is the best way to communicate its fundamental tenets. Some other topics to focus on in a

30. Judicial Branch of the Navajo Nation, *supra* note 2, at 1.

training program include the importance of storytelling, the elements of restorative justice, steps in a peacemaking process, the importance of self-care, and identifying trauma in both participants and peacemakers. Some Native peacemakers have suggested that training programs should be spread out over a long period of time, to ensure that volunteers demonstrate that they can stay the course and thus self-select into the program.

Phase III: Sustainability

1. **Identify long-term funding**
   It is never too early to start planning for long-term funding. Planning teams should scour both the local and national landscape for funding opportunities, looking at both public and private spheres. One method is to have one funder pay for part of the program and look to a second funder as a match. The best way to ensure long-term sustainability is to integrate the program into court operations and ask the local court system to absorb part or all of program staff costs, looking to outside funders to sustain the community peacemakers' stipends and training costs. An evaluation that outlines effectiveness as well as cost savings will also assist in convincing funders to invest in this work.

2. **Craft an evaluation plan**
   Evaluations help planners discover what is working and what's not and allow court leaders and program managers to make adjustments as needed, e.g. moving around resources, staff, etc. Evaluations can demonstrate program effectiveness and showcase success to funders and the community. Finally, evaluations demonstrate a commitment to continuous improvement.

   When conducting an evaluation of your court's peacemaking program, consider the following research questions:

   1. Are the goals and objectives of the peacemaking program being met?
   2. Is the peacemaking program being implemented as designed?
      - What are the characteristics of the participants being referred to peacemaking?
      - What are the characteristics of the volunteers and how are they performing?
   3. What is the impact of the peacemaking program on the participants, the community, and the court?

   In conventional evaluations, the metric is usually focused on whether a program reduces recidivism. For peacemaking and other restorative justice programming, the goal of reducing recidivism is only the tip of the iceberg. By creating a positive, future-oriented, and healing space for defendants, victims, their families, and community members, these processes can have far-reaching and unpredictable impacts. It is important that pilot programs take the time to quantify how different people are affected by the process (including every community volunteer and every support person who sits in a session to support a victim or defendant). The planning team should also consider all of the different steps that are taken to resolve a dispute and heal the relationships. For example, in pursuit of self- and family- improvement, a participant might decide as a result of a peacemaking session to complete an educational degree or apply for a job. These improvements should be tracked both short- and long-term and measured wherever possible. Similarly, community volunteers may also be inspired to make improvements to their lives and to their communities as a result of learning about peacemaking. All of these improvements need to be tracked in order for funders, court players, and the public to gain a true gauge of the breadth of impact.

Participant Outcomes

The following are examples of measurable participant outcomes.

- Reduce recidivism for this particular type of behavior
- Resolve conflicts that are related to and may aggravate the issues at hand
- Illuminate how third parties are affected by conflict
- Increase restitution collected
- Reduce the use of conventional outcomes (e.g. jail, fines, etc.)
- Reduce costs paid by litigants (e.g. court fines, fees, etc.)
- Improve victim satisfaction in the court process
- Improve offender satisfaction in the court process
- Have participants take responsibility for resolving the matter
- Increase accountability
- Improve relationships

Community Outcomes

The following are examples of measurable community outcomes.

- Increase public trust and confidence in the court system
- Bring conflict resolution skills to members of the community
- Increase community engagement with the criminal legal system
- Replace the focus on process with a focus on healing
- Imbue community members with a sense of responsibility to their fellow citizens in crisis

Court Outcomes

The following are examples of measurable court outcomes.

- Reduce pending caseload
- Improve court processing timeliness measures
- Improve court staff job satisfaction, as the revolving door of justice is replaced with more long-term and sustainable solutions

To plan an evaluation, identify the needed data elements including both quantitative and qualitative data. Quantitative data could be gathered from the court's case management system, case file reviews, and surveys. Qualitative data could be gathered through interviews and/or focus groups with participants, peacemakers or circle keepers, program staff, judicial officers, court staff, and stakeholders.

What evaluation design will be used?

Courts often lack the resources to engage an independent evaluator, but when possible this is recommended; see ***Figure 5***. The evaluator should be involved in the planning process as early as possible to help identify measurable goals and objectives and to assist in the design of a data collection process and tools. An evaluator may be available through the state court administrator's office, county/city government, or through a local college or university. Schools of criminal justice, sociology, or social work are often interested in participating in program evaluations of this kind and make effective partners.

FIGURE 5. COMPARISON OF EVALUATION METHODS

Evaluation Method	Process or Outcome Evaluation	Steps	Strengths	Weaknesses
Planned program design vs. actual implementation	Process	Measure over or under targets	Least costly	Measures process and not outcomes
Before and after comparison	Outcome	Measure criteria (e.g. offender attitudes and behavior before and after peacemaking)	Low cost; low expertise needed	Low credibility; difficult to correlate inputs/program activities to outcomes
Time series designs of pre/post program	Outcome	Measure criteria over several intervals and project future trends	Moderate costs and expertise needed	Extreme variations may falsely imply a trend
Quasi-experimental designs	Outcome	Measure changes in similar groups with one group assigned to peacemaking and the other group assigned to standard procedures	Low to moderate costs and time if data is available; otherwise moderate to high costs and time needed	
Randomized	Outcome	Some defendants are randomly assigned to peacemaking; identical groups are then compared	Systematic and methodologically robust	

PART IV

Stories from the Red Hook Peacemaking Program

Peacemaking affects those in the circle in unpredictable ways. Sometimes the victim is the one who benefits the most. Other times it might be a support person who is finally able to express how a conflict is affecting them. Peacemaking will often have long-lasting and unquantifiable effects. Here are some stories to illustrate the impact of the Red Hook Peacemaking Program. These stories also illuminate the need for creative thinking about performance measures that respond to the breadth of impacts of this type of work. All names have been changed to respect participants' privacy.

The neighbors

This case involved two Spanish-speaking women who were neighbors. They were both arrested in a cross-complaint and charged with assault, although the complaint against one was dropped by the police. Both women wanted to engage with the program to find a way to continue living in peace.

At the first session, Dolores (the defendant), brought her husband for support, and Aleida (the victim)

brought her brother. They both stated unequivocally that they would never be friends and they would barely look at each other. For the second and third sessions, the women came alone. Throughout the sessions, each woman had a chance to speak in great detail about the incidents leading up to the assault. They also spoke about underlying issues in their lives. Dolores was able to speak about the grief she was going through as a result of the recent deaths of both her son and her mother. Once Dolores felt heard by those in the circle, she was much more capable of recognizing what she had done to Aleida, and she apologized.

The peacemakers encouraged both women to make small steps to acknowledge each other, encouraging them to make eye contact, speak directly to one another, and say hello to each other. Although they both initially resisted making contact, after the second session both women felt safe and comfortable enough to go home together in a cab. By the third session, the peacemakers noticed that during the meal (served before each peacemaking session), the women were sitting next to each other quite naturally, chatting and eating. The peacemakers knew that the worst had passed and that the women were ready to make amends, which they did. Upon departure, Aleida left to take the bus home while Dolores was being picked up by her husband in a car. When Dolores realized this, she rushed out to catch Aleida at the bus stop in order to give her a ride home.

One year later: Both Dolores and Aleida report that there have been no further incidents. Aleida's child likes to go to Dolores' house to play with her son's toys. Their doors are open and they live peacefully. When things were volatile before peacemaking, Aleida had considered moving because she could not handle the tension, but now she feels comfortable staying in her home.

The bar fight

Originally, Jacquie, Vanessa and Luis came to the peacemaking program after having been charged with assault for allegedly beating up Rachel at a club. Jacquie and Vanessa used to be very close friends but stopped speaking after the arrest, blaming each other for speaking to police. Luis and Rachel were friends before the arrest but had also stopped speaking. During the first peacemaking session, which included all three defendants and the victim, the situation was tense. Each person was given a chance to speak and they went around and around, blaming and interrupting each other. Rachel cried about the impact that the incident had had on her and on her mother, who was horrified when she heard her daughter had been hurt in a fight. It was difficult to get them to respect the rules of peacemaking, which include speaking only when holding the talking stick. Luis, whose sister was still friends with Rachel, said that if Rachel ever came to his house he would have her thrown out.

For the next three sessions, just the defendants came, and they slowly unpacked what had really happened that night. They began to process their individual responsibility for letting that night get out of control. Both Luis and Jacquie were able to talk about some of the very difficult issues in their lives and make progress towards resolving them. They all undertook to start going to therapy. Jacquie and Vanessa also spoke in depth at what had happened to their friendship and how they could work towards making amends. During one of the sessions, Vanessa's daughter attended and participated, and asked her mother and Jacquie to make amends because she knew how much her mother missed and needed Jacquie as a confidante. She said she was also affected by the dispute and that she was tired of being her mother's replacement confidante.

By the last session, Jacquie and Vanessa had made great strides towards mending their relationship. They were Facebook friends again and were joking together before and after the session, and asking about each

other's kids. Luis and Rachel had also made amends and had resumed their friendship. Each defendant apologized to Rachel, and she accepted their apologies. She told the District Attorney that she no longer wanted an order of protection against any of the defendants and the charges were dismissed.

The students

Michelle and Kendra were referred to the Red Hook Peacemaking program from their local high school. Both girls were 17 years old and had been suspended after fighting at school, which had a zero tolerance policy for fighting and was in the process of transferring the girls. Both girls had learning disabilities and had struggled in other schools in the past.

Each girl expressed remorse and indicated they wanted to stay at their current high school. The school allowed them to participate in the Red Hook Peacemaking Program during their suspension to give them the opportunity to resolve their conflict, make amends, and reintegrate into the student body.

Michelle and Kendra had been friends before the incident. Michelle lived with her older sister in public housing. Her mother was a drug user and had abandoned her children, and she never knew her father. Kendra lived in an apartment with her mother and several other family members. She had been sexually abused by an uncle but no one in her family believed her when she told them. She spent most of her time with a boyfriend with whom she felt safe because he had stood up to her uncle and beat him up. He later began to physically and emotionally abuse Kendra, which upset Michelle who wanted Kendra to leave him. This eventually led to the altercation and assault at school.

After the girls were referred to peacemaking, they each had individual intake sessions with staff to prepare them. They did a total of four peacemaking sessions together over the course of two months. In addition, they each did a re-entry circle with school administrative staff and school counselors, and one with peers at their school. Michelle also did a separate circle with her older sister to work on some of the issues that had come up about her home life. While the girls were taking part in peacemaking, they also received individualized academic support from peacemaking staff. They would pick up their packets of take-home work from the school and bring them to the peacemaking office daily for tutoring and support. It gave them a structure to their days and ensured they didn't fall too far behind in school. Kendra was connected to trauma-focused counseling and rape crisis services. Peacemaking staff also helped both girls apply to summer jobs. Finally, both girls were re-admitted to the school. Michelle decided to become a peacemaker herself. After Michelle was readmitted to school, she continued to struggle and fell further behind in credits. She later dropped out but came back to the peacemaking program for help in finding a high school equivalency program. Kendra remained in school and is on track to graduate.

Michelle and Kendra remain close friends and critical support systems for one another today.

Image Left:
Peacemaking circle in progress, Red Hook, Brooklyn, New York

Image Below:
Peacemaking talking piece

PART V

Conclusion

The traditional family court process can be hard on families. Recognizing this, many state courts are looking to develop innovative ways to resolve disputes. This includes helping families become more self-sufficient and functional, and avoid future conflict and trauma. The experience of the programs in Brooklyn, Syracuse, Chicago, and Michigan suggests that peacemaking can play an important role in improving the delivery of justice to families with complicated disputes, complicated lives, and complicated relationships.

Peacemaking can also provide valuable assistance for those engaged in criminal justice reform. Criminal courts are recognizing that in order to stop the revolving door of crime and disorder, and in order to create interventions that contribute to lasting change, they need to address underlying issues and ongoing relationships. To that end, the Native tradition of peacemaking, with its future-facing emphasis and intent to heal relationships provides reformers with an opportunity to change existing practices and structures.

Resources

Butterwick, Susan J., Hon. Timothy P. Connors, and Kathleen M. Howard. Tribal Court Peacemaking: A Model for the Michigan State Court System? Michigan Bar Journal (June 2015). https://turtletalk.files.wordpress.com/2015/06/tribal-peacemaking.pdf

A former Prosecutor's view on using Peacemaking in a State Court setting http://www.courtinnovation.org/sites/default/files/documents/KindleProject_Sasson.pdf

Navajo Nation Peacemaking Program Plan of Operation http://www.navajocourts.org/Peacemaking/Plan/PPPO2013-2-25.pdf

Native American Rights Fund compilation of Peacemaking codes http://www.narf.org/peacemaking/codes/index.html

Peacemaking Today: Highlights of a Roundtable Discussion Among Tribal and State Practitioners. http://www.courtinnovation.org/sites/default/files/documents/Peacemaking_Today.pdf

Peacemaking Circles: Evaluating a Native American Restorative Justice Practice in a State Criminal Court Setting in Brooklyn http://www.courtinnovation.org/sites/default/files/documents/Peacemaking%20Circles%20Final.Pdf

Pranis, K., Stuart, B. and Wedge, M., Peacemaking Circles: From Crime to Community, Living Justice Press (2003).

Red Hook Peacemaking Program video http://www.courtinnovation.org/research/red-hook-peacemakingprogram?url=project%2Fpeacemakingprogram&mode=project&project=Peacemaking%20Program

Tribal Justice Exchange homepage at the Center for Court Innovation http://www.courtinnovation.org/topic/tribal-justice

Tribal Access to Justice Innovation
http://www.tribaljustice.org/

Widening the Circle: Can Peacemaking Work Outside of Tribal Communities http://www.courtinnovation.org/sites/default/files/documents/PeacemakingPlanning_2012.pdf

Umbreit, Mark, Coates, Robert and Vos, Betty. The Impact of Restorative Justice Conferencing: A Review of 63 Empirical Studies in 5 Countries, Center for Restorative Justice & Peacemaking, (2002). http://www.cehd.umn.edu/ssw/RJP/Projects/Victim-Offender-Dialogue/Restorative_Group_Conferencing/Impact_RJC_Review_63_Studies.pdf

Technical Assistance

Peacemaking comes from Native American traditions, and Native-run organizations are best placed to provide guidance on how to understand and incorporate those teachings. The following Native organizations provide technical assistance on peacemaking:

National American Indian Court Judges Association: http://www.naicja.org/

Indigenous Peacemaking Initiative of the Native American Rights Fund: http://www.narf.org/

In addition, the Center for Court Innovation's Tribal Justice Exchange can provide technical assistance on methods of adapting peacemaking processes to state court settings. http://www.courtinnovation.org/topic/tribal-justice

Appendices

APPENDIX A
Peacemaker Confidentiality Agreement

1 PAGE

APPENDIX B
Participant Confidentiality Agreement

2 PAGES

PEACEMAKER CONFIDENTIALITY AGREEMENT

All participants' information is to be treated as confidential, including the fact that he or she participates (or has previously participated) in Peacemaking Sessions. The privacy and confidentiality of our participants are of paramount importance. No participant's information may be disclosed without the explicit informed consent of the participant and authorization by the Peacemaking staff.

The following would be inappropriate, and a violation of confidentiality:

- Discussing/revealing participant's information (legal, personal, medical, etc.) to anyone outside the Peacemaking session. (e.g., friends, family, etc.).
- Removing any participants' information from the session for any purpose (including working from home) without explicit authorization from the participant and the Peacemaking staff.
- Discussing/revealing participant's information to another Peacemaker who has no legitimate need to know.
- Obtaining access to a participant's information not directly necessary for performing your duties.

GENERAL EXTENT AND LIMITS OF CONFIDENTIALITY

The Peacemaking Program is following the statutory guidelines for social service providers. As such, information about a participant will be kept confidential except for two types of information and/or situations. Those exceptions are:

- Safety: The danger of imminent harm to self and/or to others.
- Abuse: Suspicion of abuse, which can include neglect, hurt, verbal abuse or sexual molestation of another person.

If any of these situations arise, you must immediately notify the Peacemaking staff and/or another mandated reporter. You may not disclose this information to anyone else.

PEACEMAKING CONFIDENTIALITY AGREEMENT

I hereby acknowledge, by my signature below, that I understand that any participant's information to which I have access is considered confidential, including clinical records, financial records, or any other identifiable information about a participant. I understand that confidentiality must be maintained whether the information is stored on paper or on computer, or was communicated orally or through any other means.

I understand the non-disclosure guidelines of the Peacemaking Program. I know that that the Peacemaking Program authorizes me to have access to certain participant information in the performance of my routine duties. I understand that further authorization would be needed for me to disclose that information to anyone for any other purpose. I agree to disclose no participant's information without being informed by the Peacemaking staff.

I understand that unauthorized disclosure of participant's information or any other confidential or proprietary information is grounds for disciplinary action, up to and including my immediate dismissal. I understand that this duty of confidentiality and non-disclosure will continue to apply even after the case is closed and/or I am no longer a Peacemaker.

Peacemaker's Name (Print): _____

Peacemaker's Signature:_____Date:_____

Witness Signature:_____Date:_____

1 of 1

PARTICIPANT CONFIDENTIALITY AGREEMENT

Confidentiality in the Peacemaking Session

Before you tell anyone about yourself, you have the right to know what information can and cannot be kept confidential. Please read this and initial each item only if you understand and agree to the conditions described. If there is anything you don't understand, please let us know so we can explain it in more detail.

General Extent and Limits of Confidentiality
The law requires that all information about a participant be kept confidential except for certain types of information and situations. Those exceptions are:

1. Client's desire: If you want the Peacemaking Program to give information about your case to anyone outside this program, you must sign a release of information giving written permission for this disclosure.

Acknowledgment: I understand that if I want this agency to give information about my case to any outside person or agency, I must sign a release of information.

Initials: _____

2. Safety:

a. Risk of self-harm: If your words or behavior convince the Peacemakers that you are likely to harm yourself, either deliberately or because you are unable to keep yourself safe, your Peacemakers must do whatever they can to prevent you from being harmed. If this situation comes up, the Peacemakers will discuss it with you before taking action unless it appears that this would be unsafe or immediate action is needed to keep you from being harmed.

b. Risk of harm to others: If you threaten serious harm to another person, the Peacemaker must try to protect that person. He or she would report your threat to the police, warn the threatened person, and try to prevent you from carrying out your threat. If this situation comes up, the Peacemakers will discuss it with you before taking action unless it appears that this would be unsafe or immediate action is needed to keep you from acting on your threat.

Acknowledgment: I understand that the Peacemaking Program is following the statutory guidelines for social service providers. As such, if the Peacemakers believe there is a serious risk that I will hurt or kill myself or another person, the Peacemakers will report it to the Peacemaking Program staff, who are legally required to report this, warn the endangered person if someone other than myself, and take whatever action seems needed in his or her judgment to prevent harm to myself or others.

Initials: _____

3. Abuse: If the Peacemakers obtain information leading him or her to believe or suspect that someone is abusing a child, a senior citizen, or a disabled person, the Peacemakers must report this to Peacemaking staff, who will report to a state agency. To "abuse" means to neglect, hurt, or sexually molest another person. The Peacemakers cannot investigate and decide whether abuse is taking place: if the suspicion is there, they must report it. The state agency will investigate. If you are involved in a situation of this kind,

you should discuss it with a lawyer before telling the Peacemakers anything about it unless you are willing to have the Peacemakers make such a report. If this situation comes up, the Peacemakers will discuss it with you if possible before making a report.

Acknowledgment: I understand that if the Peacemakers believes or suspects that a child, a senior citizen, or a disabled person is being abused or neglected, the Peacemakers must report this to a state agency who will then investigate the situation.

Initials: _____

4. Peacemaking Session: In the peacemaking session, the other Peacemakers of the group are expected to maintain your confidentiality but other members are not. To avoid problems in this area, it is our policy to ask all participants in a session to agree to protect one another's confidentiality, and to remove from the group any person who violates someone's confidentiality.

Acknowledgment: I understand that in a peacemaking session, other participants that are not Peacemakers are not bound by the ethical rules on confidentiality. I also agree that I will not share information shared by others during the session outside of the session.

Initials: _____

5. Independent disclosure by client: Any personal information that you share outside of the peacemaking session, willingly and publicly, will not be considered protected or confidential.

Acknowledgment: I understand that if I myself willingly and publicly disclose personal information, that information is no longer confidential or legally protected.

Initials: _____

Our signatures here show that we have read, understood, and agreed to the conditions presented above.

Participant Name: _____ **Date:** _____
Signature: _____

For youth participants:
Parent/Guardian Name:_____ **Date:** _____
Signature: _____

SJI
State Justice Institute

NCSC
National Center for State Courts

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