



Peacemaking is a form of Native American justice that stresses reconciliation over adversarial court processes. Can peacemaking be applied to state courts?

Peacemaking Programs Offer State Courts an Alternative Path

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In 2013 the Michigan Supreme Court, through a Court Performance Innovation grant, asked the Washtenaw County Trial Court to explore tribal peacemaking philosophies, principles, and procedures and report on whether state courts could benefit from this Native American practice. The short answer was, “yes.”

But the Washtenaw County Trial Court has not been the only state court to implement a peacemaking program. These innovative programs are drawing the attention of judges, court administrators, attorneys, and other justice partners. These programs are spreading to other jurisdictions, including Brooklyn, New York, and Chicago, and other new programs are in the planning stages, including a dependency peacemaking program in the Los Angeles Superior Court.

What Is Peacemaking?

Peacemaking is a traditional Native American form of restorative justice that focuses on healing and restoration, with the core values of community, cooperation, and relatedness. Peacemaking generally brings together the disputants, along with family members and other members of the community who have been

"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 model."

*-U.S. Supreme Court Justice
Sandra Day O'Connor (1996: 14)*

affected by the dispute. Community member volunteers, trained as 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. The purpose of peacemaking is to reach a consensus to resolve the dispute. Peacemaking differs significantly from the western, adversarial justice system. The adversarial system focuses on assigning guilt and meting out punishment, while peacemaking seeks to achieve the long-term healing of relationships and strengthening of communities.

How Is Peacemaking Different from Mediation or Other Forms of Dispute Resolution?

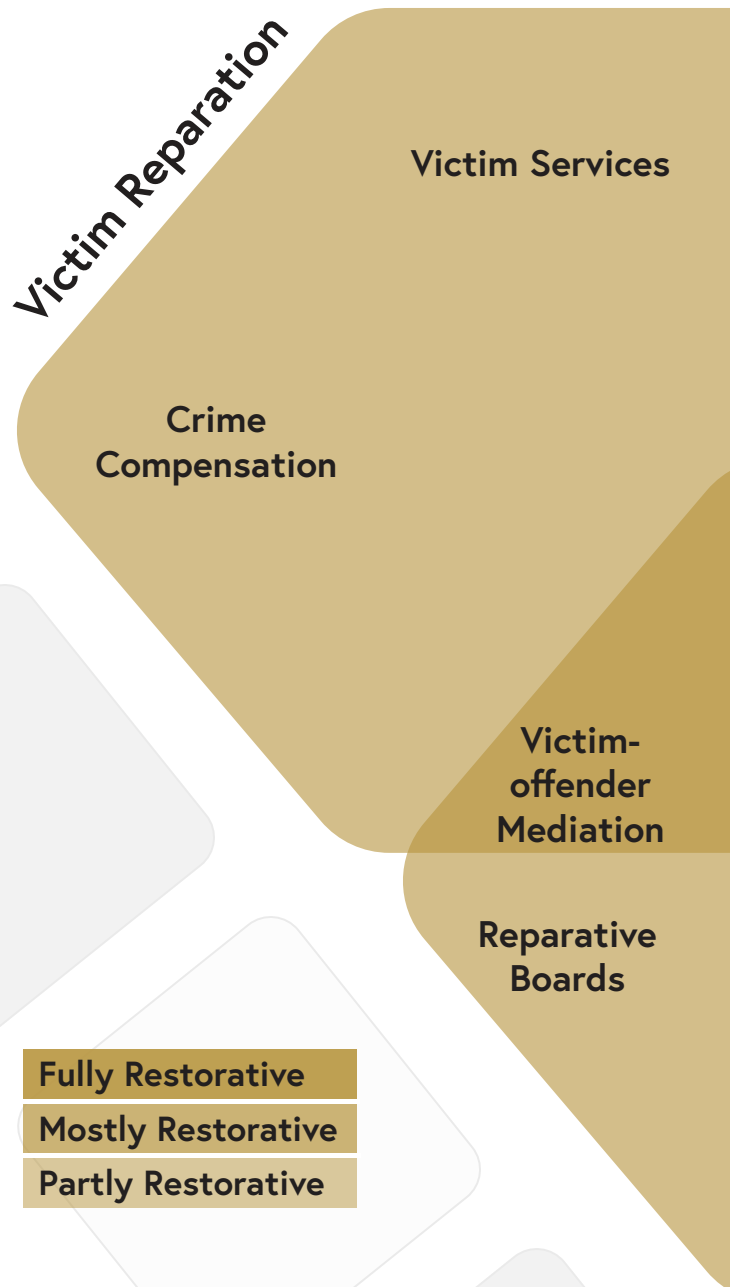
Although mediation also brings parties together to settle their disputes outside the adversarial model, it focuses on resolving the issue at hand and typically requires each party to give up something to reach a compromise. By contrast, peacemaking focuses less on the present dispute and more on healing relationships and creating long-lasting harmony. As Chief Justice Herb Yazzie (2010) of the Navajo Nation has stated, “When people leave a peacemaking session, they leave talking to each other.” 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” (Judicial Branch of the Navaho Nation, 2004: 1).

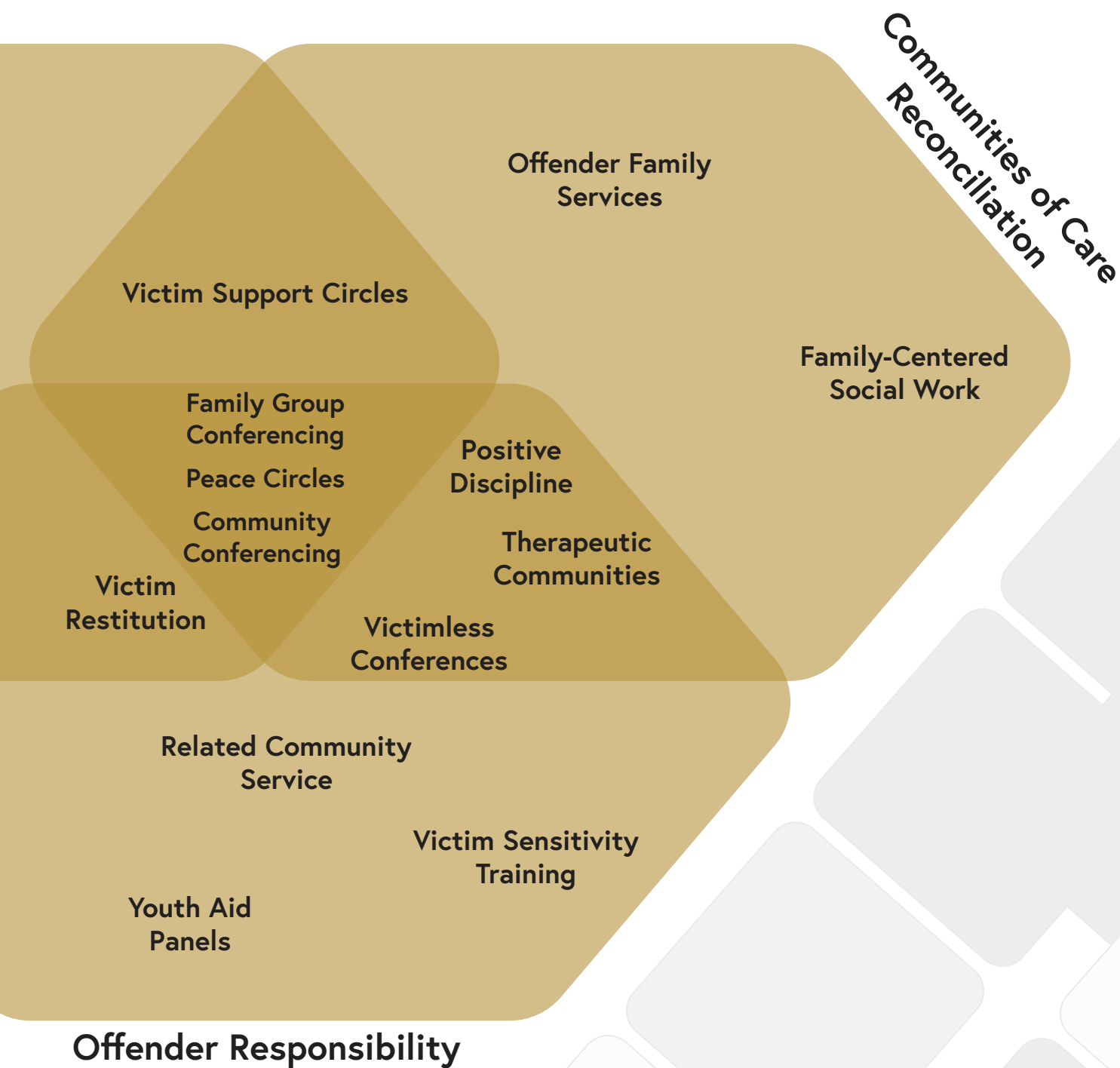
What Case Types and Issues Are Appropriate for Peacemaking?

Peacemaking programs have been used in a variety of state court case types, including criminal, juvenile delinquency, civil disputes, child protection, and family law, including dissolution and child custody and guardianship cases. Within a case type, several different issues often arise that could benefit from a peacemaking process (e.g., see the flowchart on pp. 26-27 for issues in a typical child protection case that could be addressed through peacemaking).

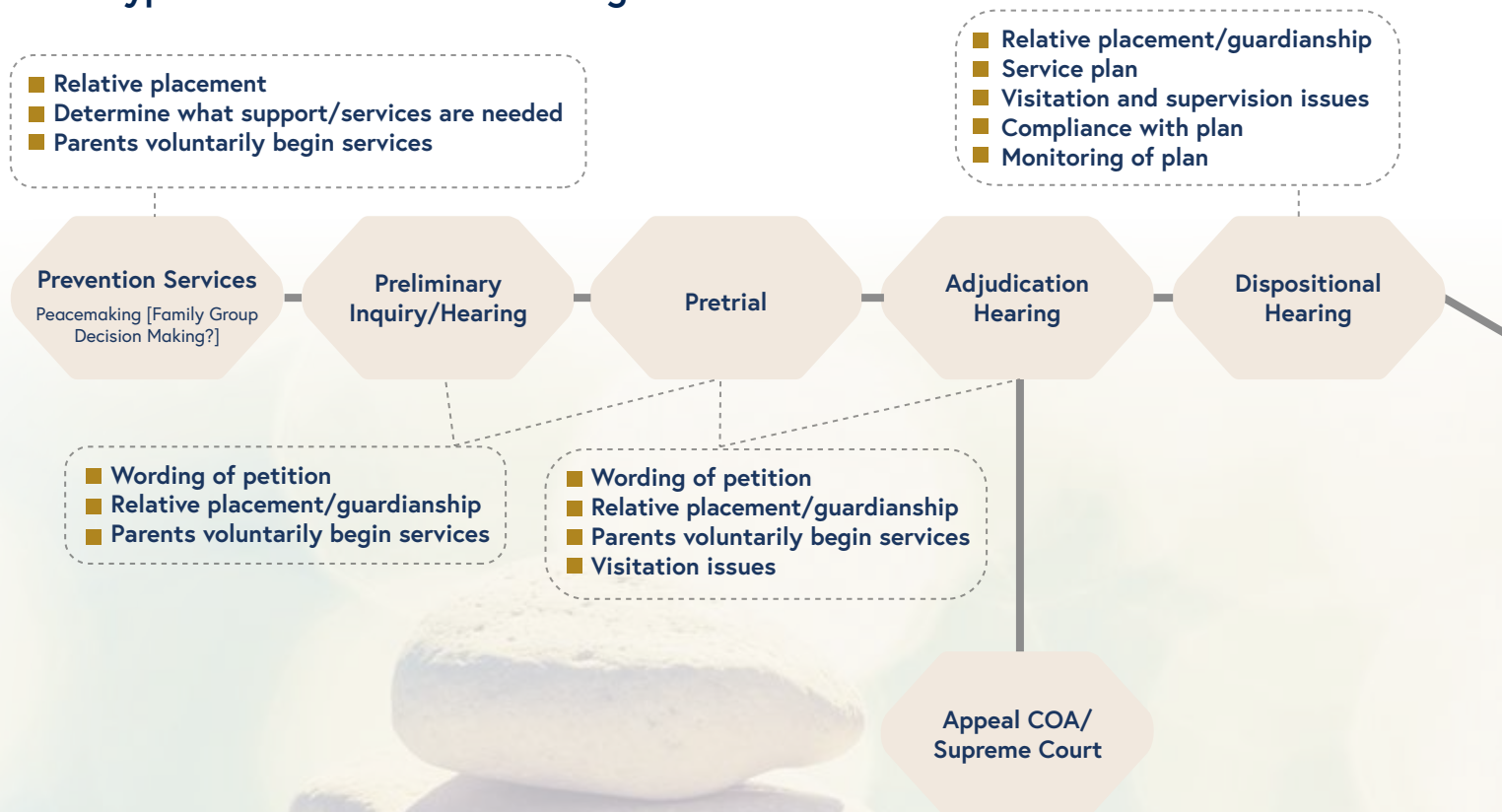
Restorative Practices Typology

Note: See McCold and Wachtel, 2003.





Example of Michigan Child Protection Court Process, with Typical Issues for Peacemaking in Dotted Lines



How Does a Case Get Referred to Peacemaking and When in the Court Process?

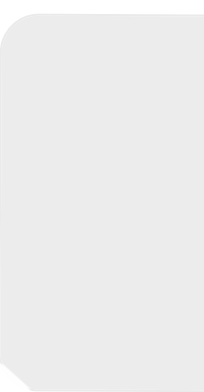
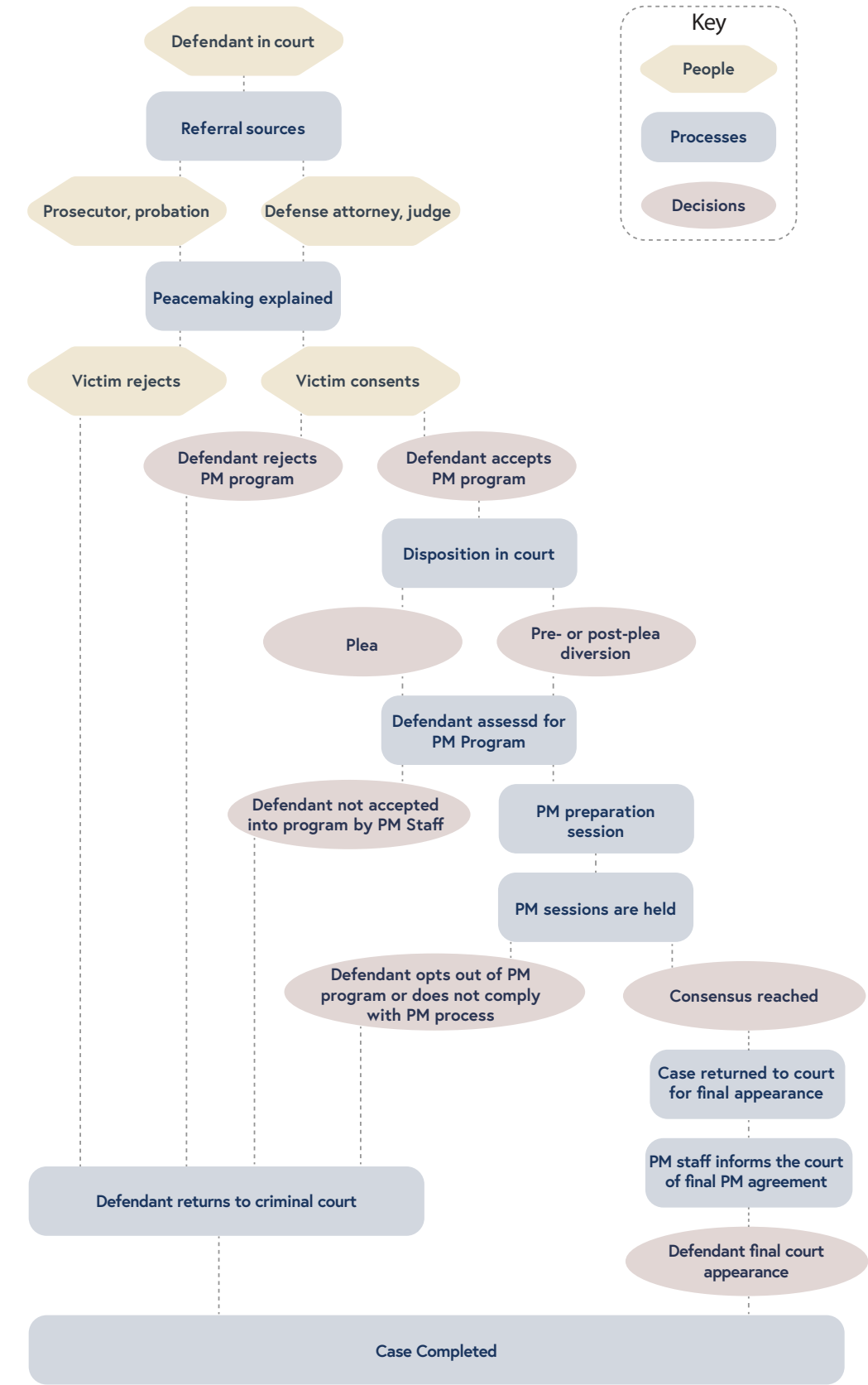
The process varies across programs and case types, but the Red Hook Peacemaking program provides a good example. This program, operating out of the Red Hook Community Justice Center in Brooklyn, was launched in 2013 as a diversion program for criminal and family court matters.

Once the Red Hook Peacemaking program receives a referral, and if the judge and attorneys agree to proceed with peacemaking, the program coordinator will meet with the defendant to explain how the program works. The program coordinator will also confirm whether the defendant meets all eligibility criteria.¹ 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. Disposition may include a guilty plea, the reduction of the charge, or a dismissal as a form of pre-plea diversion.



Red Hook Peacemaking Program Caseflow Diagram



Is It Working?

Before we can answer whether it is working, we must first define success. In other words, what impacts on the participants, the court system, and the community do court peacemaking programs hope to achieve? Some of the identified participant, community, and court outcomes of peacemaking programs include the following:

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

- increase public trust and confidence in the court system
- bring conflict resolution skills to members of the community
- increase community engagement with the criminal justice system
- replace the focus on process with a focus on healing
- instill community members with a sense of responsibility to their fellow citizens in crisis

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

Early evidence suggests positive results in many state court peacemaking programs. For example, survey responses from the first year of the Washtenaw County, Michigan peacemaking program, across a variety of probate and family cases, stated that 94 percent of cases resulted in an agreement from both parties, and of those agreements, 82 percent agreed or strongly agreed that the results were fair as compared to what might have occurred in a traditional court. In addition, 91 percent of participants agreed or strongly agreed that after listening to everyone speak, the participant had a better understanding of the other person's perspective. And finally, 94 percent of respondents agreed or strongly agreed that they would recommend peacemaking to others. One of the attorney participants commented, "I have no doubt in my mind that if this guardianship petition would have gone through the normal court procedure, there would be no mother/daughter relationship today. . . . [T]he Peacemaking Court saved one of the most important relationships one can experience—the parent/child relationship."²

What Is the Future for Peacemaking in State Courts?

Strengthening of Juvenile and Family Courts

The traditional adversarial family court is hard on families—including parents, children, and extended families—and communities. State courts will continue to develop innovative ways to offer more accessible, affordable, timely, peaceful, and effective ways to resolve disputes for the families they serve. Furthermore, many family courts now identify their role as beyond simply arbitrating immediate disputes. Family courts are including in their mission and programmatic responses a duty to improve the lives of the families they serve, regardless of the jurisdiction door the family enters. These innovations includes peacemaking, and court experts predict that peacemaking programs will continue to spread to other juvenile and family courts, and existing programs will grow.

Criminal Justice Reform

State court leaders are actively engaged in several criminal justice reform efforts, including the areas of sentencing, pretrial and bail, and fines and fees.

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Peacemaking offers state court judges an alternative to the traditional, adversarial criminal court process that is very beneficial to offenders, victims, and their

communities. By offering an intervention that interrupts the revolving door of the criminal justice system, peacemaking programs can offer sustainable change.

Education of Future Attorneys

Peacemaking courses are increasingly being offered at law schools across the country as law students' desire to learn alternative methods for resolving disputes increases. For example, since 2015, Columbia Law School has offered the course *Native Peacemaking*.³ Other law schools that have recently offered peacemaking courses include Marquette University, University of Minnesota, UCLA, and DePaul University.

Implementation Resources

In response to the call from the court community for information and advice about implementing peacemaking programs, the National Center for State Courts and the Center for Court Innovation developed the 2017 implementation guide for state courts interested in developing a peacemaking program: *Inspired by Peacemaking: Creating Community-Based Restorative Programs in State Courts* (Sasson and Sydow, 2017). This guide offers profiles of several existing peacemaking programs, implementation information and advice, stories from the field, and other helpful resources. This guide was supported by the State Justice Institute.

Conclusion

The American state courts are currently experiencing a transformative moment. Court leaders and experts are calling for courts to reimagine their processes and move from a rigid, expensive, one-size-fits-all adversarial form of justice to processes that are more individualized and responsive to litigants and communities (Flango and Clarke, 2015). Peacemaking programs are one way we see state courts answering this call to action. The peacemaking approach to resolving disputes and strengthening relationships, families, and communities is spreading throughout the state court system in a variety of case types, including family law, child protection, probate, juvenile delinquency, and adult criminal matters. These state court peacemaking programs are experiencing positive outcomes and are anticipated to continue to spread to other courts.

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¹ In the Red Hook Peacemaking program, eligibility criteria include the following: 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; and the case does not involve any history of or allegations of intimate partner domestic violence, elder abuse, or sexual assault.

² A more rigorous evaluation of Washtenaw's peacemaking program was conducted in 2016; see Waverley Group Midwest, L.L.C. (2016), online at <https://tinyurl.com/yycbco5m>.

³ Course description available online at <https://tinyurl.com/yccfhs78>.

