



NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

RESOLUTION

No. 2019-03

Calling for the Creation and Improvement of Restorative Justice Programs to Reduce Contacts Between Youth and the Justice System

Reported to the Caucus by the NHCSL
Law and Criminal Justice Task Force
Del. Joseline Peña-Melnyk (MD), Chair

Sponsored by Rep. Patricio Ruiloba (NM)

Unanimously ratified by the Caucus on December 5, 2019

1 **WHEREAS**, large numbers of youth experience early contact with the justice system
2 and are at greater risk for future, more serious contact as adults;¹ and,

3 **WHEREAS**, this contact may affect and limit opportunities for youth to contribute to
4 society as adults and imposes significant costs and harm to communities;² and,

5 **WHEREAS**, restorative justice is a facilitated process that allows everyone involved
6 in a conflict to be heard and take responsibility for any harm caused, that seeks ways

¹ No Place for Kids: A Case for Reducing Juvenile Incarceration: The Case for Reducing Juvenile Incarceration, pp. 9-13 (The Annie E. Casey Foundation), available at: <https://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>

² Ibid.

7 to repair harm and make things right as much as possible and that restores
8 relationships and community;³ and,

9 **WHEREAS**, restorative justice programs help youth make better choices, engage in
10 school, graduate and transition into vocational opportunities or higher education, and
11 reduce contact with the juvenile and criminal justice systems, reducing future costs
12 and harm to individuals and the community, and assisting productive youth
13 development;⁴ and,

14 **WHEREAS**, the United Nations Economic and Social Council (ECOSOC) adopted
15 Resolution 2000/14 *Basic principles on the use of restorative justice programmes in*
16 *criminal matters*, that addresses important aspects of restorative justice;⁵ and,

17 **WHEREAS**, it defined restorative processes, including mediation, conciliation,
18 conferencing and sentencing circles, as “any process in which the victim and the
19 offender, and, where appropriate, any other individuals or community members
20 affected by a crime, participate together actively in the resolution of matters arising
21 from the crime, generally with the help of a facilitator;”⁶ and,

22 **WHEREAS**, according to ECOSOC, some of the restorative outcome that can result
23 from a restorative process “include responses and programmes such as reparation,
24 restitution and community service, aimed at meeting the individual and collective
25 needs and responsibilities of the parties and achieving the reintegration of the victim
26 and the offender;”⁷ and,

27 **WHEREAS**, one of the principles of the ECOSOC Resolution is that restorative justice
28 can only be implemented when there is sufficient evidence to bring formal charges
29 and with the free and voluntary consent of the victim and offender;⁸ and,

30 **WHEREAS**, as a matter of due process, since restorative justice processes depend on
31 the agreement between the victim and the offender regarding the basic facts of a case,
32 the United Nations Resolution stresses that the participation of the offender “shall not
33 be used as evidence of admission of guilt in subsequent legal proceedings;”⁹ and,

³ Ibid.

⁴ Centre for Justice and Reconciliation, available at: <http://restorativejustice.org/about-us/#sthash.EdvFKimc.dpbs>

⁵ UN ECOSOC Resolution 2000/14, *Basic principles on the use of restorative justice programmes in criminal matters*, available at: <https://www.un.org/documents/ecosoc/dec/2000/edec2000-inf2-add2.pdf>.

⁶ Ibid, ¶ 2.

⁷ Ibid, ¶ 3.

⁸ Ibid, ¶ 7.

⁹ Ibid, ¶ 8.

34 **WHEREAS**, another key aspect is that failure to implement an agreement between
35 the parties “should not be used as justification for a more severe sentence in
36 subsequent criminal justice proceedings;”¹⁰ and,

37 **WHEREAS**, Resolution 2000/14 finally urges that restorative justice programs take
38 into consideration “obvious disparities with respect to factors such as power
39 imbalances and the parties’ age, maturity or intellectual capacity,” as well as “obvious
40 threats to any of the parties’ safety;”¹¹ and,

41 **WHEREAS**, many states, counties, cities, and other jurisdictions, have implemented
42 restorative practices in schools, in neighborhoods, and in pre- and post-adjudication
43 criminal justice system stages;¹² and,

44 **WHEREAS**, those states, counties, cities and other jurisdictions can proudly point to
45 reduced recidivism, greater harmony in neighborhoods and in schools, a sense that
46 the justice system has served victims of crime and other societal benefits;¹³ and,

47 **WHEREAS**, restorative justice programs seek to attract new resources including
48 funding and volunteers from the community, professional organizations and faith-
49 based organizations.¹⁴

50 **THEREFORE, BE IT RESOLVED**, that The National Hispanic Caucus of State
51 Legislators (NHCSL) calls on state legislatures to study restorative programs with
52 demonstrated success and enact legislation that creates and strengthens restorative
53 justice programs that follow the principles outlined in ECOSOC Resolution 2000/14.

54 THE NHCSL EXECUTIVE COMMITTEE UNANIMOUSLY APPROVED THIS RESOLUTION
55 ON MAY 6, 2019 AT ITS SPRING MEETING IN WASHINGTON, DC.

56 THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS UNANIMOUSLY
57 RATIFIED THIS RESOLUTION ON DECEMBER 5, 2019, AT THE ANNUAL MEETING
58 IN SAN JUAN, PR.

¹⁰ Ibid, ¶ 17.

¹¹ Ibid, ¶ 9.

¹² Sandra Pavelka, *Restorative Justice in the States: An Analysis of Statutory Legislation and Policy* (Justice Policy Journal, 2016), available at: http://www.cjcj.org/uploads/cjcj/documents/jpj_restorative_justice_in_the_states.pdf

¹³ Ibid.

¹⁴ Centre for Justice and Reconciliation, *supra*, n. 4.