



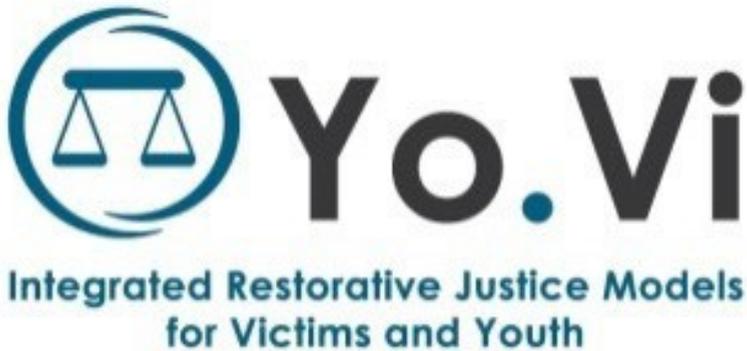
EUROPEAN COMMISSION
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MINISTRY OF JUSTICE
JUVENILE JUSTICE DEPARTMENT
Study, research and international activities



**EUROPEAN PROJECT PREVENTION OF AND FIGHT AGAINST CRIME
CALL FOR PROPOSALS RESTRICTED TO FRAMEWORK PARTNERS 2012
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**EUROPEAN GUIDELINES
FOR VICTIMS' PARTICIPATION IN RESTORATIVE JUSTICE PROCESSES
IN JUVENILE JUSTICE SYSTEMS**

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EU GUIDELINES FOR VICTIMS' PARTICIPATION IN RESTORATIVE JUSTICE PROCESSES IN JUVENILE JUSTICE SYSTEMS (*)

Preamble

- (1) Taking into consideration the work and results produced in Project Yo.Vi – Integrated Restorative Justice Models for Victims and Youth, a transnational project co-funded by the European Commission Fight Against and Prevention of Crime Programme devoted to support the integration of victims and victim protection within restorative justice practices in the juvenile justice system in order to promote the involvement of victim support organizations, multi-agency cooperation, and the development of private-public partnerships, to develop innovative RJ models that involve, support, and protect victims in accordance with victim protection principles and to create multi-level stakeholder networks for local, national and international initiatives;
- (2) Acknowledging that the responses to juvenile delinquency should be multidisciplinary and multi-agency in their approach and should be so designed as to tackle the range of factors that play a role at different levels of society: individual, family, school and community;

(*) This guidelines were prepared in the context of the European project Yo.Vi – *Integrated Restorative Justice Models for Victims and Youth* by Antony Pemberton, Professor of Victimology, International Victimology Institute Tilburg, Tilburg University and Frederico Moyano Marques and Rosa Saavedra, Senior Advisers, Portuguese Association for Victim Support (APAV). May 2015

- (3) Considering that juvenile justice systems are characterized by their objectives of education, prevention of offending and re-offending and social integration and by a large degree of flexibility and diversity of approaches towards the young offender, and operate according to the premise that youth are fundamentally different than adults, both in terms of level of responsibility and potential for rehabilitation;
- (4) Considering that the above mentioned objectives may be one of the motivations that lead victims of criminal offenses, on a perspective of social responsibility, to participate in restorative justice processes involving young offenders, but that at the same time the victims' needs and best interests shall be addressed and balanced with those of the young offenders;
- (5) Considering that criminal offences may cause great harm to the victims, by inflicting physical, mental or emotional harm and/or economic loss;
- (6) Recognising that restorative justice approaches and processes are increasingly used to respond to victims' needs and aware that they can play a valuable role in assisting victims to come to terms with their victimization;
- (7) Recognising the legitimate interest of victims to have a stronger voice in dealing with the consequences of their victimization, to communicate with the offender and to obtain apology and reparation;
- (8) Acknowledging that victims should have their status as a victim of crime recognised and should be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with restorative justice services;

- (9) Acknowledging the potential risks of secondary and repeat victimization, intimidation and retaliation that may arise from the victims' participation in restorative justice;
- (10) Recognising that providing restorative justice services requires specific skills and training;
- (11) Considering the importance of promoting a close cooperation between restorative justice services and victim support services;
- (12) Fully aware of the Directive 2012/29/EU of the European Parliament and of the Council, of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, in particular:
 - Considerandum 46 stating that Restorative Justice services can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation, and that such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm; and
 - Article 12 stating that Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services;
- (13) Bearing in mind the European Commission, DG Justice Guidance Document, of 19 December 2013, related to the transposition and implementation of the above mentioned Directive;
- (14) Having regard to the Council of Europe Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims, in particular paragraphs 13.2 and 13.3;

- (15) Considering the Council of Europe Recommendation No. R (99) 19 of the Committee of Ministers to member states concerning mediation in penal matters;
- (16) Considering the Council of Europe Recommendation No. R (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures;
- (17) Having regard to the Council of Europe Recommendation No. (2003) 20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;
- (18) Having regard to the Council of Europe Recommendation No.(87) 20 of the Committee of Ministers to member states on social reactions to juvenile delinquency;
- (19) Having regard to the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers´ Deputies;
- (20) Having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence, namely article 48;
- (21) Considering the Victim Support Europe Statement on the position of the victim within the process of mediation;
- (22) Taking into consideration the European Convention on Human Rights, the European Convention on the Exercise of Children's Rights, the United Nations Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of

Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Charter of Fundamental Rights of the European Union and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Adopts the following Guidelines for victims' participation in restorative justice processes in juvenile justice systems, acknowledging the fact that most of the following provisions are also applicable to victims' participation in restorative justice processes involving adult offenders, and invites Member States to implement them and ensure that they are widely disseminated among authorities and organizations responsible for or involved in the referral to and practice of restorative justice, victim assistance and support, including victims associations.

Use of terms

1. 'Victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence. The term also includes, where appropriate, family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.
2. 'Child victim' means a natural person below an age determined by national law who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence, and who, due to his/her age and maturity and to

particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation, benefits from specific provisions and measures.

3. 'Offender' is a natural person who is alleged to have or who has committed a criminal offense and has acknowledged the basic facts of the case. However, this assumption of responsibility in the course of the restorative justice process before any acknowledgement of guilt or conviction is without prejudice to the presumption of innocence.
4. 'Young offender' means a natural person below an age determined by national law who is alleged to have or who has committed a criminal offense. Due to the offender's age, physical and mental well-being, development, capacities and personal circumstances, this infringement is dealt with by the juvenile justice system or, when dealt with by the criminal justice system, specific provisions are applied taking into consideration the offender's particular characteristics.
5. 'Criminal offense' means any act or omission that when committed intentionally or with at least serious negligence is punishable by criminal law. For the purpose of these Guidelines it includes any such infringement dealt with by a criminal court or any other judicial or administrative authority.
6. 'Juvenile justice system' is defined as the formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions. It works closely with related agencies such as

health, education, social and welfare services and non-governmental bodies, such as victim and witness support.

7. 'Restorative justice' is any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party. In Restorative Justice processes, victims have an opportunity to express their needs and concerns at individual or collective level and to actively participate in the proceedings. Restorative justice aims to repair, in so far as possible, the harm suffered and to bring offenders to understand the consequences of their behaviour and accept responsibility. Restorative justice models include victim offender mediation, conferencing, circles, reparation panels and restorative cautioning, amongst others.
8. 'Victim support services' are confidential services that, acting in the interests of the victims of crime, provide them general and/or specialized support before, during and for an appropriate time after criminal proceedings.
9. 'Victims' associations' are organizations founded and run by persons who were victims of criminal offenses and/or by their relatives, friends or other close persons with the aim of providing support to other victims and contributing to the adoption of legislation and procedures devoted to promote the rights, interests and fulfillment of needs of those victims.
10. 'Secondary victimisation' is victimisation that occurs not as a direct result of the criminal offence but as a result of the response of public or private institutions to the victim.

Principles

1. Juvenile justice systems should be seen as one component in a broader, community based strategy for preventing and dealing with juvenile delinquency, that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs.
2. When dealing with young offenders, priority shall be given to measures that may have an educational impact as well as constituting a restorative response to the offences committed.
3. Member States should ensure that restorative justice services in juvenile justice have as primary consideration the best interests and needs of the victim, repairing harm to the victim and avoiding further harm, and that victim's views and concerns are taken into account.
4. Member States should ensure that restorative justice services in juvenile justice give full consideration to the best interests and needs of the young offender and that the young offender's views and concerns are taken into account.
5. Victims and young offenders should be treated with care, sensitivity, fairness and respect throughout any restorative justice process in juvenile justice, with particular attention for their personal situation, well-being and specific needs and with full respect for their physical and psychological integrity.
6. Member States should recognize and promote the role of victim support services and associations of victims in restorative justice policies, programmes and practices.

7. Restorative justice programmes shall be available through different models and shall be accessible at all stages of the juvenile justice system.
8. Member States shall promote the existence of restorative justice services within the juvenile justice system that use restorative justice models where the family, friends, professionals who work with child victims and/or young offenders and other members from the community of care can be involved.
9. Member States should ensure that restorative justice processes in juvenile justice are governed by recognized standards and codes of conduct, addressing at least the issues covered by these Guidelines, in order to protect victims' rights and best interests, and that the views of victim support services and of the associations of victims are taken into account when creating these standards and codes of conduct.
10. Member states shall encourage the use of appropriate restorative justice models in their education systems with the aim of facilitating relationship building and conflict management skills in young people.
11. Restorative Justice processes in the juvenile justice system should only be offered to victims in situations where the young offender has acknowledged the basic facts of the case.
12. Participation in restorative justice processes in the juvenile justice system should be voluntary, and parties should be able to withdraw consent at any time.
13. Member States should provide that the person facilitating the restorative justice process has received adequate training to a level appropriate to their contact with victims and observe professional

standards to ensure such services are provided in an impartial, respectful and professional manner.

14. Member States should provide that the person providing victim support services has received adequate training in the field of restorative justice, to ensure that information on restorative justice programmes is given to the victim whenever adequate and that referral to restorative justice programmes takes place in a timely and appropriate fashion.
15. Member states should provide sufficient resources and staffing to restorative justice programmes in the juvenile justice system in order to ensure observance of the aforementioned principles.

I Referring criminal cases to restorative justice services

1. Member States should ensure that victims are informed about the possibility of participating in restorative justice processes at their first contact with the competent authorities, except when receiving this information, taking into account the personal circumstances of the victim and/or the type, nature and circumstances of the criminal offense, may lead to secondary victimization.
2. Member States should ensure that young offenders are informed about the possibility of participating in restorative justice processes at their first contact with the competent authorities.
3. Member States should promote the adoption of clear rules, criteria and conditions for referring a case to restorative justice services:

- a) the referral process should take into account factors such as power imbalances, the age, maturity or intellectual capacity of the victim, that could limit or reduce their ability to make an informed choice or could prejudice a positive outcome for the victim;
 - b) selection of suitable cases should be undertaken with particular care when there is a close personal relationship between the victim and the young offender.
4. In order to safeguard the victim from intimidation, retaliation, repeated victimization and/or secondary victimization that may arise from the victim's participation in a restorative justice process in juvenile justice, means to evaluate individual risk should be in place.
 5. In order to safeguard the young offender from intimidation and retaliation that may arise from the young offender's participation in a restorative justice process in juvenile justice, means to evaluate individual risk should be in place.
 6. Self-referrals shall be encouraged, through the development of information and awareness raising campaigns amongst the public.

II Obtaining free and informed consent

1. Member States should ensure that the participation of victims and young offenders in a restorative justice process in juvenile justice is voluntary, which implies that both must have sufficient knowledge of the risks and benefits to make an informed decision whether or not to participate and that they are able to withdraw consent at any time.

2. Victims and young offenders should be provided with full and unbiased information about:
 - a) The juvenile justice system and its particular aims and characteristics;
 - b) the principles and rules governing the restorative justice process itself;
 - c) their rights and obligations;
 - d) where they can obtain independent support and advice;
 - e) the possibility to conduct the restorative justice process without face-to-face contact with the other party;
 - f) the potential outcomes of the restorative justice process;
 - g) the legal effects of the restorative justice process;
 - h) the procedures for supervising the implementation of any agreement reached during the restorative justice process, how any breaches of the agreement will be dealt with and the possible consequences of such a breach.
3. The above mentioned information shall be given in simple and accessible language and such communications shall take into account the personal characteristics of the participant, including any disability which may affect the ability to understand or to be understood.
4. The above mentioned information, when devoted to child victims or young offenders, shall be adapted to their age and maturity and shall be provided in a language that can be understandable by them.

5. Child friendly materials containing relevant information regarding the restorative justice process in juvenile justice should be made available and disseminated.
6. Only persons who have been fully trained to recognize the variable impact of the offer on victims of crime and the potential for adverse consequences should extend the invitation to participate in a restorative justice process.
7. Victims and young offenders should be given sufficient time to consider their decision whether or not to participate and to take independent advice.
8. In case the victim refuses to participate in the restorative justice process in juvenile justice, there should be other alternative measures available for the young offender, in case the process has a diversionary effect, or, where a case was referred by the court, any sentence discount which would be available following an agreement in the restorative justice process should also be available if the young offender had been motivated but the offer was declined.
9. In case the young offender refuses to participate in the restorative justice process and the victim expresses the will to be involved in a restorative justice scheme, programmes shall be available based on restorative justice models that do not require the participation of victims and offenders related to the same specific offense.
10. In the cases above mentioned in provisions 8 and 9 of this section, the victim should be informed about those possibilities.

11. The restorative justice process should not proceed if any of the main parties involved is not capable of understanding the meaning of the process.

III Handling of cases

A) Common provisions

1. Member States should encourage the adoption of guidelines, standards and codes of conduct addressing the handling of cases in restorative justice processes in juvenile justice and defining fundamental procedural safeguards.
2. A restorative justice process in juvenile justice, as well as the fulfillment of any agreement reached, should operate within a reasonable time-limit, which may vary according to different factors, namely the type of crime, the nature of the restorative justice process and its relation and impact on the juvenile justice proceedings, and the content of the agreement.
3. Preferably, the restorative justice service should not operate in the same facilities where the juvenile justice proceedings take place.
4. The mediator/facilitator should perform his/her task in an impartial manner, respect the dignity of the parties and ensure that the parties act with respect towards each other, be sensitive to the vulnerabilities of the parties and provide a safe and comfortable environment for the restorative justice process.

5. In cross-cultural cases, the appointed mediator/facilitator shall have the adequate knowledge and expertise to deal with those cultural specificities.
6. Victims and young offenders participating in a restorative justice process in juvenile justice shall have the right to legal advice before and during that process according to national law and, where necessary, to translation/interpretation.
7. In cases where child victims and/or young offenders participate in a restorative justice process in juvenile justice, those who are responsible for this process shall provide information and involve the holders of parental responsibility or, in cases where this is not possible, a special representative appointed by the competent authorities.
8. In cases involving several young offenders, serious crimes and/or intimate personal relationships, specific procedures and practices should be adopted to ensure the adequate balance between the parties and to minimize potential risks of intimidation, retaliation, repeated victimization and/or secondary victimization.
9. Procedures should be in place to refer victims to other organisations who can provide support and advice to victims whenever it is requested, and victims should be entitled to assistance from a supporter of their choice, before, during and after the process.
10. Procedures should be in place to refer young offenders to other organisations who can provide them support and advice whenever it is requested, and young offenders should be entitled to assistance from a supporter of their choice, before, during and after the process.

11. Although the restorative justice process in juvenile justice should in general be confidential, unless agreed otherwise by the parties, factors such as any other crime, for example threats, which occurs during the process, may be considered as requiring disclosure in the public interest.

B) Preparation

1. Once the victim and the young offender have decided to participate in the restorative justice process, adequate time must be allowed for preparation, in particular in cases where they will meet each other.
2. When preparing the participants, their expectations shall be addressed in order to be in consonance with the possible outcomes of the restorative justice process.
3. In the course of the above mentioned preparation of the participants, at least one meeting with the mediator/facilitator shall occur before any contact with the other party.

C) Contacts between victims and offenders

1. Victims and young offenders who prefer not to meet each other should have the option of indirect mediation or any other suitable measure, without prejudice of the possible outcomes of the case.
2. If, in the course of the restorative justice process in juvenile justice, the victim and the young offender meet, they shall be made explicitly aware of the rules that govern the process and the meeting at the beginning of the session.

D) Agreement and follow-up

1. Any agreement between the parties should be reached voluntarily, and should contain only reasonable and proportionate obligations.
2. Victims who have taken part in restorative justice processes in juvenile justice should be kept informed of the young offender's performance in meeting the terms of the agreement.

IV training

1. Member States should ensure that mediators/facilitators receive initial training before taking-up duties in restorative justice programmes in juvenile justice as well as in-service training, based on recognized standards and codes of conduct and aiming at providing for a high level of competence, taking into account conflict resolution skills, the specific requirements of working with victims and young offenders and basic knowledge of the juvenile justice system.
2. Mediators/facilitators in restorative justice processes involving child victims and/or young offenders shall receive appropriate training for that purpose, namely on the rights and needs of young people of varying ages as well necessary communication skills and techniques.
3. Training on victims' issues should include, as a minimum, skills and techniques of communication and of work with victims, including basic knowledge on victims' reactions.

4. Specialist training should be provided for mediators/facilitators who are expected to work with cases involving serious crimes and/or intimate personal relationships.
5. Training on victim awareness should be provided by experts who have experience of working with victims of crime.
6. Those providing information to victims on restorative justice programmes and processes in juvenile justice must receive appropriate training to perform this task in a respectful and professional manner.
7. Member States should ensure that victim support services and victims' associations receive training on issues related to restorative justice and on the functioning of restorative justice programmes in juvenile justice.
8. Any officials involved in referring cases and/ or assessing cases for referral to restorative justice procedures should be able to access and receive appropriate initial and ongoing training to the extent necessary to correctly apply rules, criteria and conditions for referring a case and in doing so safeguard the interests of both victims and young offenders. Member States should ensure such training for police services and court staff. Equally, training should be promoted for prosecutors and judges.

V cooperation between restorative justice services and victim services

1. Member States should promote the role of victim support services and victims' associations in the field of restorative justice, namely by providing consultation during the development of Government policies

in relation to Restorative Justice and by contributing to the design and monitoring of restorative justice programmes.

2. Member States shall facilitate networking and contribute to strengthen the partnership between restorative justice services, victim support services and victims' associations, namely by appointing a public body responsible for promoting regular meetings between those entities to debate and review procedures and practices, to detect and address emerging difficulties, to define strategies to deal with particularly complex cases and to design prevention efforts.
3. Victim support services' contribution should also include:
 - a) taking part in the training of mediators/facilitators and other personnel who are required to have direct contact with victims;
 - b) referring victims to restorative justice programmes in juvenile justice whenever appropriate, taking into account paragraphs 3. and 4. of Section I of these Guidelines and according to national law;
 - c) being involved, whenever appropriate and in close coordination with the restorative justice services, in making the initial approach to victims, in evaluating the risk of intimidation, retaliation, repeated victimization and/or secondary victimization in the course of the restorative justice process and in informing and preparing them to this process;
 - d) being available to provide independent support to victims before, during and after the restorative justice process, including support in reaching a decision whether or not to take part in that process;
 - e) being consulted during the drafting process of standards and codes of conduct governing restorative justice programmes and processes in juvenile justice.

4. Restorative justice services' cooperation with victim services and victims' associations should include:
 - a) taking part in the training of victim services staff, by providing knowledge on issues related to Restorative Justice and on the functioning of Restorative Justice programmes;
 - b) referring victims to victim services whenever appropriate, and awareness of the importance of speedy referral in cases involving serious crimes and/or intimate personal relationships;
 - c) informing victim services of the willingness of an offender to participate in a restorative justice process;
 - d) being consulted during the drafting process of standards and codes of conduct of victim support services and victims' associations in what concerns their involvement in restorative justice programmes and processes in juvenile justice.

VI Monitoring, research and exchange of information

1. Member States should ensure that restorative justice services in juvenile justice are regularly and adequately monitored.
2. Monitoring could preferably include measuring the quality of the provision of information to victims on restorative justice programmes and processes in juvenile justice, victims' satisfaction with the restorative justice process, the effect that this process had on their recovery from the impact of victimization and should provide information on which cases are most likely to be beneficial to both

parties and circumstances in which special provisions for preparation or support should be made.

3. Member States should consider victims' involvement and experiences in restorative justice processes in juvenile justice and the impact on child victims and on young offenders of their participation in restorative justice processes as areas of particular interest for research and therefore promote, support, and, to the extent possible, fund or facilitate fund-raising for victimological research concerning these topics, including comparative cross-national and cross-cultural research, in order to develop better standards of practice.
4. Member States should encourage all governmental and nongovernmental agencies that run restorative justice programmes in juvenile justice or provide victim support services to share their expertise with similar agencies in their country, in the European Union and where needed, elsewhere.