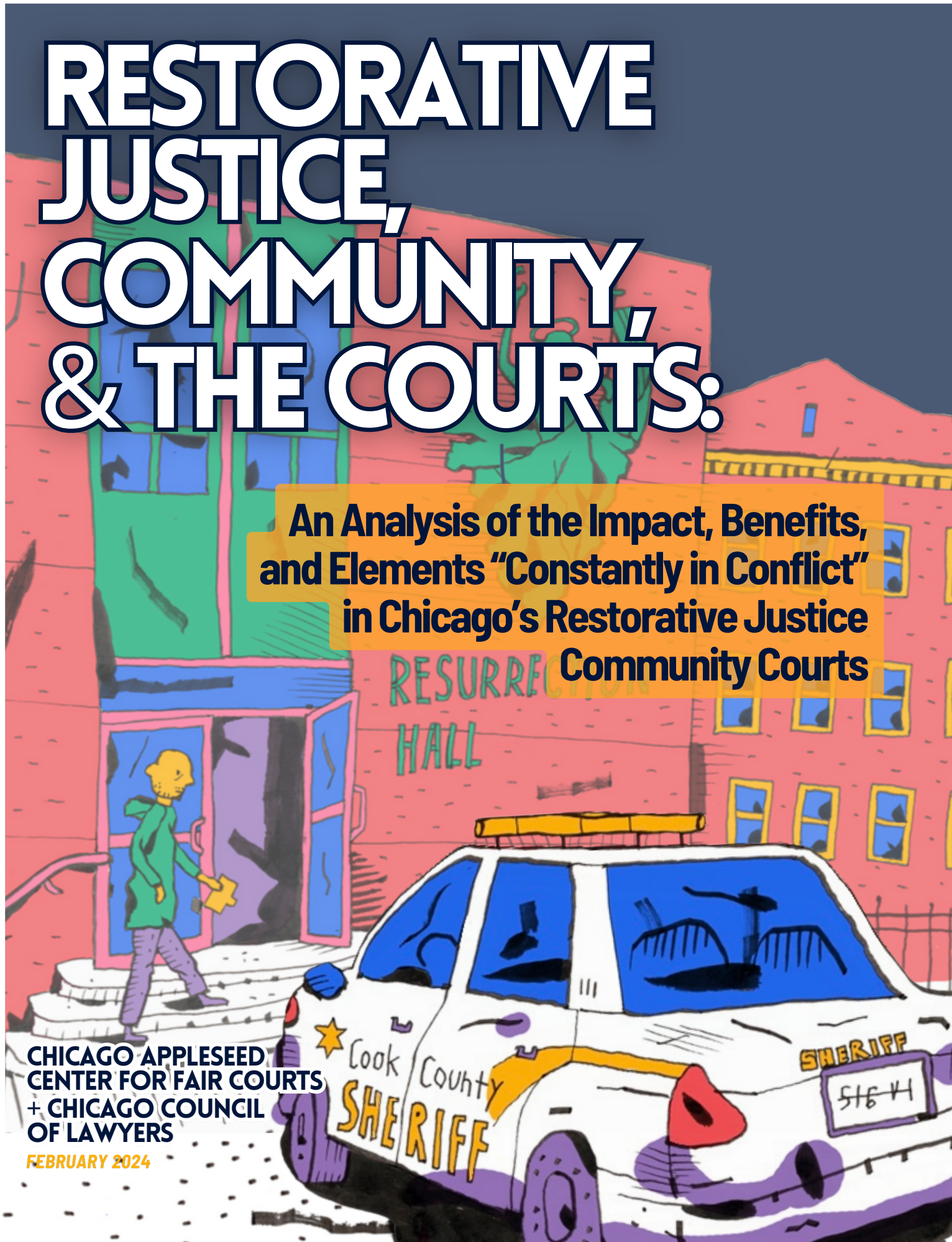


RESTORATIVE JUSTICE, COMMUNITY, & THE COURTS:

**An Analysis of the Impact, Benefits,
and Elements “Constantly in Conflict”
in Chicago’s Restorative Justice
Community Courts**

**CHICAGO APPLESEED
CENTER FOR FAIR COURTS
+ CHICAGO COUNCIL
OF LAWYERS**

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Chicago Appleseed Center for Fair Courts is a volunteer-led, collaborative 501(c)(3) non-profit organization advocating for fair, accessible, and anti-racist courts in Chicago, Cook County, and across the state of Illinois.



The Chicago Council of Lawyers is Chicago's first public interest bar association, working toward the fair and effective administration of justice for all people since 1969.

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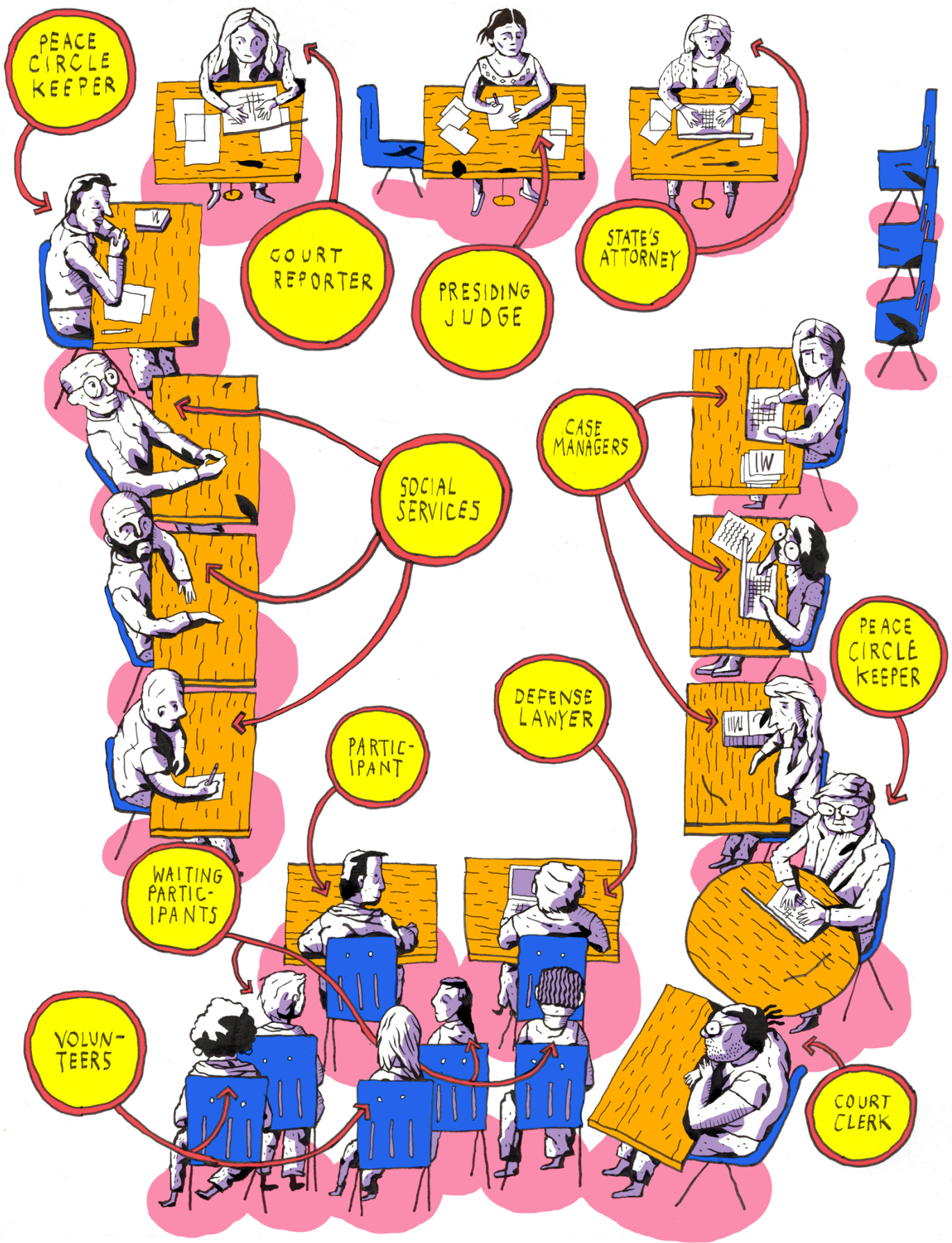
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ACRONYMS

- **ASA** Assistant State's Attorney
- **CCL** Concealed Carry License
- **CCSAO** Cook County State's Attorney's Office
- **FOID** Firearm Owner's Identification Card
- **GED** General Education Development (Tests)
- **OCJ** Office of the Chief Judge (of the Circuit Court of Cook County)
- **PSC** Problem-Solving Court
- **RJ** Restorative Justice
- **RJCC** Restorative Justice Community Court
- **ROHA** Repair of Harm Agreement

KEY TERMINOLOGY

- **PEACE CIRCLE** – Peace circles are structured conversations between participants and impacted parties, such as the person/people harmed, family members, neighbors, and community stakeholders that are facilitated by a “circle keeper.” The structure and process of the peace circle usually includes (1) an opening statement, (2) check-in, (3) laying out guidelines, (4) facilitating and managing conversational rounds in the circle, (5) check out, and (6) a closing statement.
- **PROBLEM-SOLVING COURTS** – Diversion or “problem-solving” courts are specialty courts that are meant to divert people from incarceration. In Cook County, there are pretrial (“pre-plea”) diversion programs, which allow participants to complete the court’s requirements without pleading guilty to charges, and “post-plea” programs, which require that the accused person plead guilty to charges but allow them to complete a term of probation instead of imprisonment and allow a judge to vacate the conviction upon successful completion.
- **REPAIR OF HARM AGREEMENT** – The Repair of Harm Agreement (ROHA) is the document including the tasks that a Restorative Justice Community Court participant must complete in order to repair the harm they have allegedly caused and move forward. The participant and the person/people harmed meet with circle keepers and community members in the peace circle setting, which is when the Repair of Harm Agreement is drafted, negotiated, and agreed to by all parties involved. Components of each ROHA vary but frequently include educational, career/job, community and social service, and other lifestyle requirements.
- **RESTORATIVE JUSTICE** – Compared to retributive justice, “restorative justice” is a process of addressing harm that focuses on the needs of the individuals affected by and/or accused of causing harm, their families, and their communities. Restorative justice rejects punishment ideology as a form of accountability and instead offers an accused person the agency to repair the harm they have caused and offers the harmed person agency to co-direct what repair should look like.
- **STAKEHOLDERS (PRIMARY & SECONDARY)** – In restorative justice practice, “primary stakeholders” are commonly understood as the victims, the accused people, and their families. “Secondary stakeholders” consist of those indirectly affected by the harm, such as neighbors and the government (as a proxy for the people).



INTRODUCTION

This report is an exploratory study of the three Restorative Justice Community Courts (RJCCs) administered by the Circuit Court of Cook County in Chicago, which are located in the Avondale (North Side), Englewood (South Side), and North Lawndale (West Side) neighborhoods. Specifically, this report uses a mixture of interview, observational, and quantitative data to explore the history, policies, and programming of the RJCCs in relation to general restorative justice best practices. Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers employed multiple data collection methods in order to explore how these courts came to be and in what ways they align with or depart from restorative justice best practices based on qualitative data. Our research aimed to understand how community members and stakeholders feel about how these courts operate and where they may be able to improve.

Because the purpose of this report is to explore where the RJCCs' practices align with and/or depart from general restorative justice principles, and because of our small sample size, we draw conclusions limited to that scope and do not intend for this report

to comprise an exhaustive evaluation of the Restorative Justice Community Courts. Generally, our findings show positive outcomes for people involved in the RJCCs who complete the program and "graduate." There is no doubt that the RJCCs reduce the harms of the criminal legal system for people who have access to them. Nonetheless, our research uncovers some concerns related to the inherent tensions between restorative justice and retributive justice ideology (i.e., the traditional criminal legal system), and the limited number of people who are given access to participate in these courts.

We describe our research methodology, the literature we reviewed, our findings, and our recommendations in the sections that follow. We hope these findings can inform continued efforts to enhance the Restorative Justice Community Courts and diversion from the criminal legal system in Cook County—and perhaps also inform other locales about potential strengths, weaknesses, and opportunities that could come into play if they introduce or expand restorative justice diversion programs into their own jurisdictions.

METHODOLOGY

This report examines the Restorative Justice Community Courts in the Avondale, Englewood, and North Lawndale neighborhoods of Chicago. Given the exploratory nature of this study, we conducted mixed methods analyses to gain as holistic a view as possible of these RJCCs.

DATA COLLECTION

We employed multiple data collection methods in order to gain a comprehensive understanding of the Chicago-based RJCCs. The primary data in this report was collected from two main sources: (1) interviews with court stakeholders, community advocates, service providers, and former RJCC participants and

(2) court observations collected by trained volunteer court-watchers.¹

INTERVIEWS

Primary data includes 16 semi-structured interviews with ten court stakeholders, two community advocates, and four former participants of the RJCCs. We interviewed until we were unable to recruit additional interviewees.² The interviews were intentionally semi-structured in nature to allow for comparison among interviews, yet flexible enough to allow for new ideas and themes to emerge based on the individuals' unique experiences. Interview questions were developed after a careful consideration of the existing academic literature on restorative and

¹ Information about the court-watching program for Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers can be found at <http://www.chicagoappleseed.org/court-watching/>

² O'Reilly, M. & Parker, N. (2013). 'Unsatisfactory Saturation': A Critical Exploration of the Notion of Saturated Sample Sizes in Qualitative Research. *Journal of Qualitative Research*, 13(2), 190-197; Green, J. & Thorogood, N. (2004). *Qualitative Methods for Health Research*. Fourth Ed. Sage Publications: London, United Kingdom. ISBN: 9781473997110.

transformative justice, problem-solving courts,³ and Cook County-specific program information.

The interviews touched on various aspects of an interviewee's direct experience with the RJCCs. We asked interviewees directly what their relationships to the RJCCs were; how restorative justice is implemented in the RJCCs; their views on the impact, strengths, and weaknesses of the RJCCs; how their experience with the RJCCs has impacted their view of the criminal legal system; and considerations for if/how they would like to see the RJCCs change in the future. Given the lack of literature on restorative justice court programs in general and the RJCCs specifically, we encouraged interviewees to describe how the court functions before addressing more analytical questions. Each interview was approximately one hour long and conducted over Zoom (teleconferencing). The interviews were audio-recorded and later transcribed so that interviewers could focus on interpersonal rapport with participants without the distraction of note-taking. After each interview, the researchers met and reflected on the interview, sharing initial thoughts and reactions with one another, which were then fleshed out later in analyses.

It should be noted that three additional interviews were conducted after an original draft of this report was written. The original sample of interviewees contained only one graduate of the RJCCs, which we considered to be a major limitation of our report, so we felt it was necessary to include more participants' perspectives. Thus, we engaged in a community feedback period, which allowed us to connect with additional people who had direct experience in the RJCCs. These three additional interviews differed from other interviews because we also asked participants for feedback on our original recommendations.

COMMUNITY FEEDBACK

In order to ensure that the recommendations of our report were realistic and aligned with community members' and restorative justice practitioners' sentiments, we prepared a summary of our initial report findings and presented it to practitioners during three different feedback sessions. During these sessions, we received feedback that helped us tailor our recommendations. Although this final report includes information from the three

additional interviews that were conducted as a part of our continued community feedback process, this information did not impact the findings detailed in this report.

COURT OBSERVATIONS

We generated observational data by watching court sessions in the Avondale, Englewood, and North Lawndale Restorative Justice Community Courts from January through March of 2023. Data from these sessions was collected by seven trained volunteer court-watchers who conducted 18 total observations of ten RJCC in-person courtroom sessions and recorded field notes. Volunteer court-watchers collected data on participant and court actor engagement, court culture, and judicial behavior – especially as they relate to restorative justice principles and best practice literature. After attending a court call, court-watchers consulted their field notes to fill out and submit an online survey based on their observations. All observations referenced in this report were collected by volunteers who completed a one-hour training with Chicago Appleseed staff.

DATA ANALYSIS QUALITATIVE ANALYSES

To analyze interview data, we conducted two rounds of coding using the flexible coding method,⁴ a method of analysis well-suited to a study in which we entered with limited understanding of the operations of the RJCCs. Our first review of interview data established a series of overarching themes through the lens of our interview questions. This was an extensive process that entailed multiple iterative discussions about interview content and repeated themes.⁵ During this phase, researchers did not review transcripts of interviews that they themselves had conducted or participated in, allowing for fresh perspectives on each set of responses. We then collectively generated a series of analytic codes related to identified themes that were used for further analysis. We used a qualitative data analysis platform to attribute codes and themes to relevant interview excerpts. Each interview was coded twice by two separate researchers in order to ensure proper and consistent coding. Each series of excerpts attributed to a code was then systematically reviewed and

³ Sharif-Kazemi, H., Staudt, S. & Johnson, N. (2023). One Size Doesn't Fit All: A Review of Post-Plea Problem-Solving Courts in Cook County. Chicago Appleseed Center for Fair Courts & Chicago Council of Lawyers. Retrieval at <https://www.chicagoappleseed.org/wp-content/uploads/2023/04/One-Size-Doesnt-Fit-All-Chicago-Appleseed-FINAL-03202023-1.pdf>

⁴ Detering, N. & Waters, M. (2021). Flexible Coding of In-depth Interviews: A Twenty-first-century Approach. *Sociological Methods & Research*, 50(2), 708-739.

⁵ *Id.*

summarized by a researcher. Excerpts that most strongly demonstrated the code or theme were also identified at this time. The summaries and excerpts identified during this process became the basis for the findings that are discussed in this report.

QUANTITATIVE ANALYSES

The quantitative data analyzed for this report came from the Cook County State's Attorney's records. These records involved a series of programming scripts to link the "diversion" datasets to the "disposition" and "sentencing" sets to allow an analysis of participant outcomes. The datasets covered cases that have moved through Cook County's diversion programs from January 1, 2011, through September 6, 2023. Overall, 598 people were listed as having participated in an RJCC during this time period; 3 records that were listed as having referral dates prior to the RJCC opening in 2017 were removed from the sample, leaving 595 total records.⁶ Additionally, 10 records have dispositions coded as "DDPP Graduate" or "Deferred Prosecution Program Completed," which indicate they did not remain in the RJCCs, or "Nolle - AONIC" (Nolle Prosequi - Arresting Officer Not in Court), which indicates that the case was dismissed because the arresting officer did not appear in court; these 10 records were excluded from analyses.

ETHICAL CONSIDERATIONS + LIMITATIONS

This research was carried out according to social science research principles, as guided by the Chicago Appleseed Center for Fair Courts research standards.⁷ Across all research projects, our methodological approach is rooted in the protection of human subjects, mitigation of risk, and reduction of any forms of harm the study may cause participants during or following the research

process. Consent was given by all community organizations and individuals to utilize their interview data to develop this report and the option for anonymity was given to each participant. Due to the small number of individuals working in or with the RJCCs, we have anonymized organizations' and individual participants' names and identity markers, such as gender and specific court location.

Unfortunately, our team struggled to connect with RJCC graduates and was only able to interview four people who completed programming in the Restorative Justice Community Courts. One graduated from the North Lawndale RJCC and three graduated from the Avondale RJCC. A major limitation of this report is that we were not able to interview more RJCC graduates, nor any graduates from the Englewood RJCC. As a result, our interviews likely do not capture the breadth of participant experiences. Another limitation was that we interviewed only *graduates* of the RJCC and not current participants or individuals who participated but did not complete the programming. This decision was intentional to ensure that people currently engaged in the process would not feel as if they might be punished for any criticisms of the RJCCs, nor would incomplete participation skew the collection of data in a subjective way.⁸ We recognize that there is likely a bias created by only interviewing people who successfully completed these programs and not those who did not. In addition, we were connected with some RJCC participants by court stakeholders who may have referred us to graduates who had a positive experience with the RJCC. There is likely some self-selection bias in that participants who spoke with us may have been more deeply engaged with the RJCCs while participating, which may have impacted their experiences.

In this report, we keep court actors anonymous; this was challenging because the three Restorative Justice Community Courts have a very small community of court actors who mostly

⁶ Upon initial review of this report, the Office of the Chief Judge advised the report authors that the public data from the CCSAO's that was analyzed for this report does not match the OCJ's internal record keeping.

⁷ Chicago Appleseed Center for Fair Courts. (2021). Guiding Principles for Ethical, Rigorous Research. Retrieval at <https://www.chicagoappleseed.org/wp-content/uploads/2021/10/2021-Research-Standards-Framework-2.pdf>

⁸ "The Common Rule identifies certain 'vulnerable' populations, including pregnant women, human fetuses and neonates, prisoners, and children. The definition of prisoner includes not just individuals incarcerated in prisons, but any individual committed to a facility in lieu of incarceration as well as individuals detained in jails awaiting arraignment, trial, or sentencing." See e.g., McDermott, B. (2013). Coercion in Research: Are Prisoners the Only Vulnerable Population? *Journal of the American Academy of Psychiatry and the Law Online* 41(1), 8-13. Retrieved at <https://jaapl.org/content/41/1/8>; Peter, E. & Friedland, J. (2017). Recognizing Risk and Vulnerability in Research Ethics. *Empirical Research on Human Research Ethics: An International Journal* 12(2), 107-116. Retrieved at <https://www.jstor.org/stable/90012286>; Leggett Dugosh, K., et al. (2010). Measuring Coercion to Participate in Research Within a Doubly Vulnerable Population: Initial Development of the Coercion Assessment Scale. *Journal of Empirical Research on Human Research Ethics* 5(1), 93-102. Retrieved at <https://doi.org/10.1525/jer.2010.5.1.93>

know each other. In order to maintain anonymity, we had to hold back relevant data from this report. We also know there are always limitations with what people are willing to share in an interview; therefore, we supplemented our research with other forms of data collection.

Lastly, it is important to note that court-watching data is based on volunteers' individual and subjective perceptions. While we

recognize that subjectivity may influence the data collected from court-watching, this information is relevant in that (a) it helps contextualize interview and quantitative data and (b) these observations help approximate how outside observers (i.e., "the public") perceive court actors such as prosecutors, judges, probation/police officers, and others, as well as the kinds of requests and decisions they make.

BACKGROUND

Restorative justice is a framework and ideology that stems from Indigenous belief systems and practices with many definitions but is fundamentally focused on interpersonal and communal relationships as the basis for collective wellbeing. While it is also frequently valued for its perceived applicability to the criminal legal system (and this report does focus on the application of restorative justice within the criminal legal system) we want to caution that harm-centered definitions of restorative justice offer a limited view of what restorative justice is or can be.

In the context of the criminal legal system, restorative justice is commonly contrasted with retributive justice in that it focuses on the victim's needs following harm, rejects punishment as a form of accountability, and offers dignity and agency to the accused person.⁹

Danielle Sered, a leading author on violence, justice, and alternatives to incarceration, explains that retribution sets people up to passively receive punishment rather than to recognize and repair the harms of their actions.¹⁰ "Retributive justice" not only dehumanizes convicted people but also fails to hold them truly

accountable.¹¹ Moreover, research shows that it is not effective¹² and that does not reduce recidivism.¹³ Restorative justice, on the other hand, with its focus on communal relationships and connection, acknowledges the value an accused person may contribute to their community and prioritizes the restoration of what has been lost over the punishment of accused people.¹⁴

RESTORATIVE JUSTICE FRAMEWORKS

Restorative justice centers the needs of victims, the people who caused harm, and their communities with great emphasis on relationships.¹⁵ Restorative justice differs from other forms of justice because it places the decision of how to address harm "in the hands of those most [directly] affected by it," including the victim, person who caused harm, and their community.¹⁶ Community plays a central role in restorative justice. When community members are integrated into the process, restorative justice can empower communities, as opposed to institutions, to

⁹ McCold, P. & Wachtel, T. (2003). In Pursuit of Paradigm: A Theory of Restorative Justice. *International Institute for Restorative Practices*. Retrieval at <https://www.iirp.edu/images/pdf/paradigm.pdf>

¹⁰ Sered, D. (2019). *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*. The New Press: New York, NY. ISBN: 978-1-62097-657-9.

¹¹ *Id.*

¹² Petrich, D. M., Pratt, T. C., Jonson, C. L., & Cullen, F. T. (2021). Custodial Sanctions and Reoffending: A Meta-Analytic Review. *Crime and Justice*, 50(1), 353-424.

¹³ Hwang, A. (2020). Restorative Justice: A Better Alternative for Reducing Recidivism? *The Sociological Imagination: Western's Undergraduate Sociology and Criminology Student Journal* 6(1). Retrieval at <https://ojs.lib.uwo.ca/index.php/si/article/view/10514>; Travis, J., Western, B., & Redburn, F. S. (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press.

¹⁴ *Supra* note 10.

¹⁵ Zehr, H. & Mika, H. (1997). Fundamental Concepts of Restorative Justice. *Contemporary Justice Review*. Retrieval at https://www.academia.edu/1299608/Fundamental_concepts_of_restorative_justice

¹⁶ Rosenblatt, F. F. (2015). Community Involvement in Restorative Justice: Lessons From an English and Welsh Case Study on Youth Offender Panels. *International Journal of Restorative Justice*, 2(3), 280-301. Retrieved on January 19, 2024, from <https://doi.org/10.5235/20504721.2.3.280>

take control over resolution of its conflicts.¹⁷ According to Pranis (2007), the community's role in restorative work includes (1) supporting victims, (2) providing opportunities for those who caused harm to make amends, (3) establishing norms and holding members accountable, and (4) performing prevention work.¹⁸

PRACTICE MODELS

The term "restorative justice" is broad and may take many forms in practice. While there is no universally-accepted method of conducting restorative justice, most practice models are guided by the principles that justice should be survivor-centered, community- and accountability-based, safety-driven, racially-equitable,¹⁹ and that violations of people or relationships create obligations to repair harm.²⁰ When utilized to address harm, popular restorative practices include:

- "Talking Circles" and "Family Group Conferences," which originate from Indigenous healing practices.²¹ Circles provide opportunities for stakeholders to come together in a shared space (often sitting in a physical circle), express grievances, determine responsibility, and collaborate on an outcome.²²
- "Victim-Offender Mediation," which is a moderated interaction between the victim and accused person to empower the former and encourage the latter to understand and repair their harm; alternatively, "Victim-Impact Panels" invite victims of similar types of harm – and family and friends as proxies for the victim – to enable the accused person to empathetically process the consequences of their actions.

- "Community Reparative Boards," which are trained groups who develop an agreement with the participant and monitor their compliance and progress. These are controversial among some advocates for restorative justice because, while they may sometimes seek restoration and invite community input, they do not center the victim in the process.²³

Generally in restorative justice practice, the "primary stakeholders" (who are commonly understood as the victim, the accused person, and their families) should guide the decision-making process around how to achieve restoration and accountability;²⁴ a consensus reached by these parties should be prioritized over an "imposed outcome."²⁵ The role of "secondary stakeholders" (consisting of those indirectly affected by the harm, such as neighbors and the state as a proxy for the people) is to support the restoration and reintegration processes.²⁶

RESTORATIVE JUSTICE...ACKNOWLEDGES THE VALUE AN ACCUSED PERSON MAY CONTRIBUTE TO THEIR COMMUNITY AND PRIORITIZES THE RESTORATION OF WHAT HAS BEEN LOST OVER THE REFORMING AND/OR PUNISHMENT OF ACCUSED PEOPLE.

Some scholars have provided frameworks that are useful for characterizing instances of restorative justice in practice. Zehr (2014) identifies six questions to classify a restorative justice model on a continuum from pseudo- or non-restorative to fully restorative: (1) does the model address harms, needs, and causes; (2) is it adequately victim-oriented; (3) are offenders encouraged to take responsibility; (4) are all relevant

¹⁷ *Id.*

¹⁸ Pranis (2007). *Communities and the Justice System: Turning the Relationship Upside Down. Restorative Justice On-Line Notebook*. Washington DC. Office of Justice Program National Criminal Justice Reference Service.

¹⁹ Sered, D. (2017). *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*. Vera Institute of Justice. Retrieval at <https://www.publicwelfare.org/wp-content/uploads/2018/04/accounting-for-violence.pdf>

²⁰ Borrows, J. (2006). *Report for the Law Commission of Canada*. Ottawa, ON: Law Commission of Canada.

²¹ *Id.*

²² Bazemore, G. & Umbreit, M. (2001). *A Comparison of Four Restorative Conferencing Models. Juvenile Justice Bulletin*. Retrieved on January 19, 2024, from <https://www.ojp.gov/pdffiles1/ojdp/184738.pdf>

²³ Development Services Group, Inc. (2010). *Restorative Justice [Literature Review]*. Office of Juvenile Justice and Delinquency Prevention. Retrieval at https://www.ojdp.gov/mpg/litreviews/Restorative_Justice.pdf

²⁴ *Supra* note 10.

²⁵ *Supra* note 16.

²⁶ *Supra* note 10.

stakeholders involved; (5) is there an opportunity for dialogue and participatory decision-making; and (6) is the model respectful to all parties?²⁷ Morrison (2003) also provides a useful framework of evaluating restorative justice models by categorizing them as *primary*, *secondary*, or *tertiary* interventions.²⁸ The *primary* or universal level, directed at entire communities, entails reform of systems and processes that lead to harm or injustice to affirm relationships and prevent harm from occurring; the *secondary* or targeted level involves proactive programming for those with greater needs and risks; and the *tertiary* or intensive level directly addresses individual conflicts after they have occurred. Further, Karp (2001) distinguishes between *thick restoration*, in which a case's outcome is directly intended to repair what had been lost in the crime and *thin restoration*, in which accused people are tasked with community service not directly related to their victims.²⁹

Limited research has been conducted on the prevalence and outcomes of restorative justice practices in courts. In a review of such literature in the 1980s and 1990s, Poulson (2003) found that restorative justice courts were generally perceived as more satisfactory, fairer, and more conducive to accountability by victims and accused people than traditional courts, and victims were less likely to be upset about the crime afterward than in traditional courts.³⁰ Further, a wide variety of restorative justice

methods have been shown to reduce recidivism in juvenile courts, even those that involved minimal or no contact between the victim and accused youth.³¹ In addition, experiments in which some participants were randomly assigned to restorative

justice courts have found that victims and accused people were more likely to find social solidarity,³² and accused people were less likely to face rearrest³³ and to experience post-traumatic stress symptoms³⁴ in restorative justice courts than traditional courts.

SYSTEM MODELS

Restorative principles have been implemented in courts throughout the United States³⁵ (as well as in New Zealand,³⁶ South Africa,³⁷ and other nations³⁸) to varying degrees. According to Silva & Lambert (2015), there are three "levels of state-level statutory support" for restorative justice practices: *ideological support*, which is the encouragement of restorative justice without providing any implementation structure; *active support*, which extends beyond the ideological by involving financial or administrative contributions; and *structural support*, which includes mandating restorative justice or providing extensive assistance.³⁹ Some court systems have incorporated restorative justice practices into their enactments of justice more fully than others. The Red Hook Community Justice Center, for

²⁷ Zehr, H. (2015). *The Little Book of Restorative Justice: Revised and Updated*. Skyhorse Publishing (Good Books): New York, NY. ISBN 9781561483761

²⁸ Morrison, B. (2007). *Restoring Safe School Communities*. Federation Press: Alexandria, NSW. ISBN 9781862874770

²⁹ Karp, D. R. (2001). Harm and Repair: Observing Restorative Justice in Vermont. *Justice Quarterly*, 18(4), 727-757. Retrieval at <https://doi.org/10.1080/07418820100095081>

³⁰ Poulson, B. (2003). A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice. *Utah Law Review*, 15. Retrieval at www.researchgate.net/publication/228859300_Third_Voice_A_Review_of_Empirical_Research_on_the_Psychological_Outcomes_of_Restorative_Justice_A

³¹ Bouffard, F., Cooper, M., & Bergseth, K. (2016). The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders. *Youth Violence and Juvenile Justice*, 15(4), 1-16. Retrieval at <https://doi.org/10.1177/1541204016647428>

³² Sherman, L. W., Strang, H., Angel, C., Woods, D., Barnes, G. C., Bennett, S., & Inkpen, N. (2005). Effects of Face-To-Face Restorative Justice on Victims of Crime in Four Randomized, Controlled Trials. *Journal of Experimental Criminology*, 1, 367-395. Retrieval at <https://doi.org/10.1007/s11292-005-8126-y>

³³ McGarrel, E., Olivares, K., Crawford, K., & Kroorand, N. (2000). Returning Justice to the Community: The Indianapolis Juvenile Restorative Justice Experiment. Retrieval at <https://www.ojp.gov/nrcjrs/virtual-library/abstracts/returning-justice-community-indianapolis-juvenile-restorative>

³⁴ Angel, C., Sherman, L., Straang, H., Ariel, B., Bennett, S., Inkpen, N., Keane, A., & Richmond, T. (2014). Short-Term Effects of Restorative Justice Conferences on Post-Traumatic Stress Symptoms Among Robbery and Burglary Victims: A Randomized Controlled Trial. *Journal of Experimental Criminology*, 10, 291-307. Retrieval at <https://doi.org/10.1007/s11292-014-9200-0>

³⁵ See Appendix 1 for examples of and references related to courts based on restorative principles have been established in the United States.

³⁶ New Zealand Ministry of Justice. (2022). How Restorative Justice Works [Webpage]. Retrieved on October 3, 2023, from <https://www.justice.govt.nz/courts/criminal/charged-with-a-crime/how-restorative-justice-works>

³⁷ Stand Together for Rights. (2011). Restorative Justice: The Road to Healing [Informational Booklet]. Republic of South Africa Department of Justice and Constitutional Development. Retrieved on October 2, 2023, from <https://www.justice.gov.za/rj/2011rj-booklet-a5-eng.pdf>

³⁸ Danduran, Y. & Griffiths, C. (2006). Handbook on Restorative Justice Programmes. Criminal Justice Handbook Series for the United Nations Office on Drugs and Crime. Retrieved on October 3, 2023, from https://www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf

³⁹ Sliva, S. & Lambert, C. (2015). Restorative Justice Legislation in the American States: A Statutory Analysis of Emerging Legal Doctrine. *Journal of Policy Practice*, 14(2), 77-95. Retrieval at <https://doi.org/10.1080/15588742.2015.1017687>

example, is a multi-jurisdictional community court in Brooklyn, New York that “focus[es] on healing and community restoration rather than punishment.”⁴⁰ In Hawaii, any convicted person may request a talking circle with loved ones, but this program is limited in scope and more rehabilitative than restorative as it does not affect sentencing.⁴¹

CONCERNS

While restorative justice practices are inspired by Indigenous practices, they are not the same as Indigenous traditions of justice.⁴² In fact, restorative justice practices have been critiqued for co-opting Indigenous practices to further the aims of the Western criminal legal system.⁴³ Recent scholarship has explored how dynamics of settler colonialism, racism, and classism can be present in contemporary adaptations of restorative justice practices and have an impact on its outcomes.⁴⁴ Court-based restorative justice has also been critiqued for legitimizing the criminal legal system as an agent that can address harm. As Pavlich (2013) explains:

The aim here is not to challenge state-based criminal justice arrangements, as might be expected from an independent alternative deemed to be the very opposite of retributive justice. Rather, restorative justice is then espoused as a way of enhancing state agencies, and ironically furthering or

*elaborating upon state criminal justice arenas.*⁴⁵

Scholars have also raised concerns about differential access to resources within communities that may affect participant outcomes,⁴⁶ as well as the risk that these programs may in some cases uphold white, middle-class biases and values.⁴⁷ Engaging meaningfully with communities in these programs presents challenges, including the need to avoid professionalizing community members in restorative justice,⁴⁸ addressing the risk of power dynamics in restorative justice courts resembling traditional justice systems,⁴⁹ and resisting “illusory” (or performative) community engagement.⁵⁰

THICK RESTORATION...[OCCURS] WHEN A CASE'S OUTCOME IS DIRECTLY INTENDED TO REPAIR WHAT HAD BEEN LOST...AND THIN RESTORATION...[OCCURS WHEN] ACCUSED PEOPLE ARE TASKED WITH COMMUNITY SERVICE NOT DIRECTLY RELATED TO THEIR VICTIMS.

Over the past few decades, restorative justice has become common in juvenile courts more so than in adult courts.⁵¹ Restorative justice programs aimed at young people, though, may still in some ways rely on or embody the logics of the youth

⁴⁰ Red Hook Community Justice Center. (n.d.). Center for Justice Innovation. Retrieved on October 3, 2023, from <https://www.innovatingjustice.org/programs/red-hook-community-justice-center>

⁴¹ Walker, L. & Kobayashi, L. (2020). Hawaii Federal Court Restorative Reentry Circle Pilot Project. *Federal Probation*, 84(1), 48-55. Retrieved at https://www.uscourts.gov/sites/default/files/84_1_5_0.pdf

⁴² Chartrand, L. & Horn, K. (2016). A Report on the Relationship Between Restorative Justice and Indigenous Legal Traditions in Canada. Department of Justice Canada. ISBN: 978-0-660-27826-1. Cat. No. J4-51/2018E-PDF. Retrieved at <https://www.justice.gc.ca/eng/rp-pr/jr/rjilt-jrtja/rjilt-jrtja.pdf>

⁴³ Abramson, A. & Asadullah, M. (2023). Decolonizing Restorative Justice. *The Routledge International Handbook on Decolonizing Justice*. Cunneen, C., Deckert, A., Porter, A., Tauri, J. & Webb, R. (Eds). Routledge: New York, NY. ISBN: 9781032009773. Retrieved at <https://doi.org/10.4324/9781003176619>

⁴⁴ Valandra, E. C. & Wapřháha Hokřila, W. (Eds.). (2020). *Colorizing Restorative Justice: Voicing Our Realities*. Living Justice Press: St. Paul, MN. ISBN 978-1-937141-23-3. Retrieved at <https://livingjusticepress.org/product/colorizing-restorative-justice-2/>

⁴⁵ Pavlich, G. (2005). *Governing Paradoxes of Restorative Justice*. Routledge-Cavendish: Oxfordshire, UK. ISBN: 9780203065952. Retrieved at <https://doi.org/10.4324/9780203065952>

⁴⁶ Sullivan, D. & Tift, L. (2001). *Restorative Justice: Healing the Foundations of Our Everyday Lives* (p. 51). Monsey, NY: Willow Tree Press.

⁴⁷ *Supra* note 17.

⁴⁸ Bazemore, G. & Schiff, M. (2001). *Restorative Community Justice: Repairing Harm and Transforming Communities*. New York, NY: Routledge; Rosenblatt, F. F. (2015). Community Involvement in Restorative Justice: Lessons From an English and Welsh Case Study on Youth Offender Panels. *International Journal of Restorative Justice*, 2(3), 280-301. Retrieved on January 19, 2024, from <https://doi.org/10.5235/20504721.2.3.280>

⁴⁹ *Supra* note 17.

⁵⁰ Bartkowiak, I. & Jaccoud, M. (2008). “New Directions in Justice in Canada: From Top-down to Community ‘Representatives’” in *Justice and Community and Civil Society: A Contested Terrain*. Cullompton, UK: Willan Publishing.

⁵¹ See Appendix 2 for examples of and references to restorative justice in juvenile courts.

control complex, a concept that characterizes the hyper-criminalization, surveillance, punishment, and incapacitation of marginalized youth by various institutions.⁵² Researchers have observed that the treatment of Black and Latine children as deviant and in need of intervention exists not only among law enforcement but also within their communities and schools.

These kids commonly face stigma in these settings and lack access to nurturing rather than punitive social structures.⁵³ These youths' behavior is often hyper-criminalized and this effect is exacerbated if they enter the juvenile justice system.⁵⁴ In this analysis of the RJCCs, we consider if these courts rely on, or embody, logics of the *youth control complex*.

COOK COUNTY RESTORATIVE JUSTICE COURTS

The Cook County Restorative Justice Community Courts are specialty courts for young adults ages 18 to 26 who have been charged with nonviolent felonies and misdemeanors and live in or near one of the communities where an RJCC is housed. The Chicago-based RJCCs are currently located in North Lawndale, Englewood, and Avondale, pulling cases from the West, South, and North Sides of the city, respectively. In each community, court is held once a week in a community-based location: UCAN in North Lawndale, the Salvation Army in Englewood, and St. Hyacinth Basilica in Avondale.

According to the Circuit Court of Cook County, the RJCCs seek to “end the harmful cycle of revenge and recidivism” and to “resolve conflict through restorative conferences and peace circles” with the different individuals who participated in or were affected by the crime.⁵⁵ The model is based on the Red Hook Justice Center in Brooklyn, New York.⁵⁶ RJCCs are somewhat similar to problem-solving courts (such as drug and mental health courts),⁵⁷ but importantly, RJCCs are pre-plea diversion programs where status hearings are held within the community where the program is focused and are distinct from the processes of traditional courts due to their emphasis on peace circles and Repair of Harm Agreements (ROHAs). Peace circles are facilitated conversations between participants and impacted parties, such as the person/people harmed, family members, neighbors, and

community stakeholders. A ROHA includes tasks for a participant to complete in order to repair harm and move forward; components of each ROHA will vary by participant, but these frequently include completing community service hours, passing a GED (the General Educational Development test, which certifies academic knowledge equivalent to a high school diploma), finding a job, engaging with various social services, designing a vision board, and/or researching gun licensure, among other things. Participants in RJCCs meet with their case managers on a regular basis and attend court about once a month to check in on the progress of their case. Peace circles are held until a participant is able to identify ways to repair the harm of their actions, and at the completion of the peace circle process, ROHAs are finalized in collaboration with participants and circle stakeholders. The length of each case can vary depending on the participant's progress in completing their ROHA; on average, people who graduate from a RJCC are involved for about 13 months. Once completed, participants attend a graduation ceremony.

HISTORY

Cook County's first Restorative Justice Community Court was founded in North Lawndale in 2017, building upon the active Restorative Justice (RJ) Hub in the neighborhood. Cook County

⁵² Rios, V. M. (2011). *Punished: Policing the Lives of Black and Latino Boys*. New York, NY: NYU Press. Retrieval at <https://www.jstor.org/stable/j.ctt16f99dh>

⁵³ *Id.*

⁵⁴ Rios, V. M. (2016). The Hyper-Criminalization of Black and Latino Male Youth in the Era of Mass Incarceration. *Souls*, 8(2), 40-54. Retrieval at <https://doi.org/10.1080/10999940600680457>; Morris, M. (2016). “Learning on Lockdown” in *Pushout: The Criminalization of Black Girls in Schools*. The New Press; Lopez, V., & Pasko, L. (2017). Bringing Latinas to the Forefront: Latina Girls, Women, and the Justice System. *Feminist Criminology*, 12(3), 195-198.

⁵⁵ Circuit Court of Cook County. (n.d.). Restorative Justice Community Courts [webpage]. Retrieved on January 19, 2024, from <https://www.cookcountycourt.org/ABOUT-THE-COURT/Restorative-Justice-Community-Courts>

⁵⁶ *Supra* note 41.

⁵⁷ *Supra* note 3.

Judge Colleen Sheehan, the original lead judge for RJCC, was particularly interested in this model based on her experience with conducting peace circles for juvenile courts, according to some of the people we interviewed. Initially, Cook County received a two-year grant from the McCormick Foundation that laid the foundation and facilitated collaborations between court staff and service providers. For the first two years, RJCC stakeholders attended RJ Hub meetings that hosted up to 25 organizations. The underlying purpose of these collaborations was to share power between the court and neighborhood stakeholders and offer community members opportunities to impact the direction of the program.

According to interviewees, tensions quickly emerged between the court actors and community stakeholders in North Lawndale. The community felt that the court was overstepping boundaries and not allowing enough community input in the development of ROHAs. One interviewee shared about an incident that led to the dissolution of the community oversight body:

Early in the days, [the RJCC] had a real strike with the community and the courts...and there was all kinds of nasty stuff. [An outside group] came in to do [restorative] circles...Ultimately, it wasn't very successful in the sense that people were just dug in.

At the time, community stakeholders also expressed concerns about if conversations during peace circles would be confidential, especially in the rare instances where a participant may be released from the program and moved into traditional prosecution. To ensure confidentiality, advocates went to the state legislature and successfully pushed for formal legislation (signed in 2021) that ensured information provided during restorative justice processes could not be used in prosecution:

Anything said or done during or in preparation for a restorative justice practice or as a follow-up to that practice, or the fact that the practice has been planned or convened, is privileged and cannot be referred to, used, or admitted in any civil, criminal, juvenile, or administrative proceeding unless the privilege is waived, during the proceeding or in writing, by the party or parties protected by the privilege.

Privileged information is not subject to discovery or disclosure in any judicial or extrajudicial proceedings.⁵⁸

In 2019, Judge Sheehan retired and Judge Patricia Spratt took over the North Lawndale RJCC. Soon after, in the fall of 2020, RJCCs were expanded to Englewood and Avondale. These courts exhibit some differences from North Lawndale, where the case managers are employees of Lawndale Christian Legal Center, a community-based legal services organization; the case managers for Avondale and Englewood are employees of the Circuit Court of Cook County. The Englewood and Avondale RJCCs also have assets and challenges that impact their relationship with the local community. While North Lawndale and Avondale had a local RJ Hub upon which to build its services, Englewood did not. This required the program to build relationships with social service agencies from scratch:

The first thing [they] had to do was find some partners. [Englewood] did not have a hub or a monthly meeting of neighborhood groups coming together for a common cause in the same way that North Lawndale does...and actually Avondale had a hub as well. So they already had 10 or 15 neighborhood groups meeting. They did not have that in Englewood.

"What Englewood had was a location," our interviewee continued. The Englewood RJCC is unique in that it has a dedicated space in a Salvation Army building,⁵⁹ whereas neither Avondale nor North Lawndale have a space primarily dedicated to the Restorative Justice Community Courts' work.

PRESENT

There have been 595 people admitted to the Restorative Justice Community Courts (for whom we have records) between June 19, 2017, and September 6, 2023. After dropping to its lowest level during the pandemic, referrals to RJCCs skyrocketed in 2021 and remained high in 2022 and 2023. This is likely due to the opening of additional RJCCs in Avondale and Englewood in 2019. In approximately the first 8 months of 2023, admissions were substantially higher than they were from January to September of previous years. In November of 2023, the Circuit

⁵⁸ See 735 ILCS 5/804.5 at <https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=073500050K804.5> and <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=64&GAID=16&DocTypeID=SB&SessionID=110&GA=102>

⁵⁹ In 2004, the Kroc family (founders of McDonald's restaurants) left \$1.5 billion to The Salvation Army, which then opened Kroc Centers throughout the country—including in Chicago. See e.g., <https://www.nbcnews.com/id/wbna4006823> and <https://www.kroccenterchicago.com/learn-more>

Court of Cook County announced the opening of a suburban court location in Sauk Village, Illinois.⁶⁰

GENERAL PROCESS

People who meet the eligibility criteria and who gain approval to move their case to an RJCC by the prosecutor of their original case are provided the option to participate in the RJCC process (see Figure 1).⁶¹ To qualify for participation in an RJCC, participants should (a) be 18-26 years old, (b) be charged with a nonviolent felony or misdemeanor, (c) live in an RJCC neighborhood, (d) have no “violent” criminal history, and (e) accept responsibility for harm caused.

Both the person who was harmed and the person who is charged must be willing to participate in the process. The court then presents a written declaration to the participant stating that they are willingly entering into the RJCC process and acknowledging that they have caused harm to an individual or their community. This becomes problematic when cases do not have a direct person harmed such as in drug and gun possession cases:

[The participant doesn't] make the connection where [they] hurt the community, [they] hurt this person in the community. And so I'm not sure why they started with drug cases, I think they just started where they thought they could get the lowest kind of crimes, but RJ is not for just small crime.

While this declaration could be seen as tantamount to a guilty plea, because the RJCC operates outside of the traditional court process, this admission is not officially considered a conviction. The restorative justice and retributive (traditional criminal system) processes are two fundamentally different ways of addressing harm. Most notably, RJCCs are not firmly interested in finding guilt that leads to a period of incarceration. The agreement that each participant signs to enter an RJCC is an acknowledgement that they indeed engaged in the behavior they have been accused of and are willing to make amends to rectify the harm caused and make steps towards changing their behavior.

FIGURE 1

COOK COUNTY RESTORATIVE JUSTICE COMMUNITY COURT PROCESS

CRIMINAL CHARGE IS FILED

COOK COUNTY STATE'S ATTORNEY CHARGES SOMEONE WITH A NONVIOLENT FELONY OR A MISDEMEANOR.

DETERMINE QUALIFICATIONS FOR RJCCS

IF THE ACCUSED PERSON IS BETWEEN 18-26 YEARS OLD; LIVES NEAR A NEIGHBORHOOD WITH AN RJCC; HAS NO/A NONVIOLENT CRIMINAL HISTORY; ACCEPTS RESPONSIBILITY FOR HARM CAUSED; AND IS WILLING TO PARTICIPATE IN THE PROCESS, THEY ARE ELIGIBLE. THE PERSON WHO WAS HARMED (IF APPLICABLE) MUST ALSO BE WILLING TO PARTICIPATE.

ELIGIBLE

IF THE CRITERIA ARE MET AND ALL PARTIES CONSENT, THE PERSON IS ELIGIBLE AND THE PRELIMINARY HEARING IS WAIVED.

INELIGIBLE

IF THE CRITERIA ARE NOT MET, THE PERSON IS INELIGIBLE.

RETURN TO THE TRADITIONAL CRIMINAL COURTS

BEGIN RESTORATIVE JUSTICE COMMUNITY COURT PROCESS

PRE-CIRCLE

THE RJCC'S CIRCLE KEEPER CONTACTS ALL PARTICIPANTS AND PREPARES THEM FOR THE PEACE CIRCLE PROCESS.

PEACE CIRCLE

THE CIRCLE KEEPER GUIDES A CONFIDENTIAL CONVERSATION ABOUT THE HARM CAUSED AND THE PROCESS WHICH WILL BEGIN TO REPAIR THAT HARM.

REPAIR OF HARM AGREEMENT

ALL PEACE CIRCLE PARTICIPANTS CREATE AND AGREE TO A REPAIR OF HARM AGREEMENT (ROHA) THAT SETS REQUIREMENTS FOR THE PARTICIPANT TO REPAIR THE HARM CAUSED. THE AGREEMENT IS SUBMITTED TO THE RJCC.

REQUIREMENTS MET

ONCE THE ROHA REQUIREMENTS ARE COMPLETED BY THE PARTICIPANT, THE CASE IS SUBMITTED TO THE STATE'S ATTORNEY FOR DISMISSAL.

CASE DISMISSED

REQUIREMENTS UNMET

IF THE REQUIREMENTS OUTLINED IN THE ROHA ARE NOT COMPLETED BY THE PARTICIPANT, THE CASE RETURNS TO THE TRADITIONAL SYSTEM.

⁶⁰ Buckley, M. (2023). Experimental Neighborhood Courts Will Expand to the Suburbs for the First Time, Cook County Chief Judge Announces. *Chicago Tribune*. Retrievable at <https://www.chicagotribune.com/news/criminal-justice/ct-restorative-justice-expands-first-suburban-court-20231102-nwo6h7uignchghck7ibv5xp4u-story.html>

⁶¹ Circuit Court of Cook County. (n.d.). Restorative Justice Community Court [Brochure]. Retrieved on January 19, 2024, from https://www.cookcountycourt.org/Portals/0/Chief%20Judge/RJCC/RJCC%20Brochure%20.pdf?ver=wcoeht7T8nkvgZxs749_1Q%3D%3D

RJCCs provide the opportunity for all stakeholders to recognize the dignity of the individual and the psychological, sociological, and environmental underpinnings that create a dynamic human being. The RJCCs support individuals' journeys toward reparation (albeit with the threat of removal from the RJCC if one fails to comply with the court's directives). If the person fails in an RJCC and is sent to traditional court processes, they will begin the process of a preliminary hearing to submit a plea. Before participating in the RJCC participants also participate in a screening with the Circuit Court of Cook County Social Services Department using a standard assessment tool. The department passes along the information to the participant's assigned case manager to handle the day-to-day support of their case.

After the person has submitted their written consent to participate, case managers and circle keepers connect with the participant to schedule the first "pre-circle." This involves circle keepers communicating the process of the peace circle, what the requirements of the participant are (as well as the person harmed if identified), and when the first meeting will take place. On the date of the first peace circle, the participant (and the person harmed) will meet with circle keepers and community members in the circle setting. It is in this circle setting that the repair of harm agreement (ROHA) is drafted, negotiated, and agreed to by all parties involved in the circle. Throughout the process, which usually takes about 13 months,⁶² the participant regularly meets with RJCC staff. The court, as a part of a participant's ROHA, may require several things from the participant during their time, including but not limited to gainful employment, completion of community service hours, education requirements, and/or letters of apology to people they harmed or family members who were impacted by their involvement in the criminal legal system. The major purpose of attending court is to ensure that the participant is receiving any support or services they may need to be successful in the program and are completing the tasks as outlined in their ROHA. Once the participant has completed all the requirements of the ROHA and is in good standing with the court, the participant is considered to have completed the program, and the case is dismissed. To the RJCCs, these participants are recorded in the data as having "graduated" and are invited (but not required) to be part of a graduation ceremony conducted by court actors at specific times during the year. Case managers also prepare a transition plan for participants to help them transition out of the RJCCs.

⁶² For those who graduate from the RJCCs, the process usually takes about 13 months.

FIGURE 2

PARTICIPANTS' RACES AND GENDERS FROM 2017-SEPTEMBER 2023

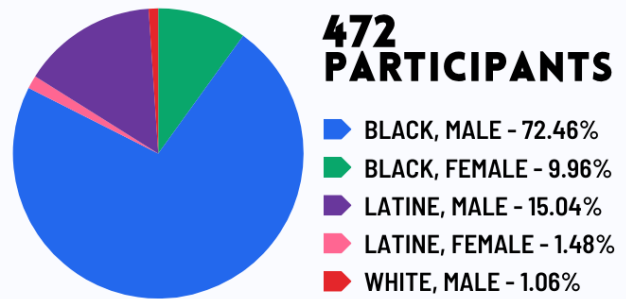


FIGURE 2:

This pie chart represents the breakdown of races and genders of all Restorative Justice Community Court participants for which we have race and gender data (472 total) from June 2017 through September 6, 2023.

FIGURE 3

RJCC PARTICIPANTS BY AGE FROM 2017 - SEPTEMBER 2023

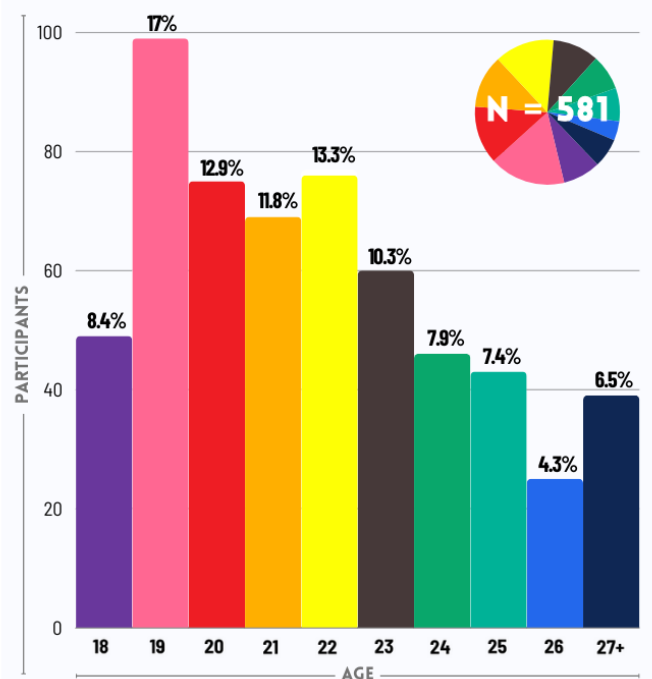


FIGURE 3:

This bar graph represents the breakdown of ages of all RJCC participants for which we have data (581 total) between 2017 and September 6, 2023.

COURT STAKEHOLDERS

The RJCCs include a number of stakeholders with various roles. Some of these roles are reflective of the traditional criminal legal system, such as public defenders, judges, prosecutors, court coordinators, and “participants” (i.e., defendants), while other roles are unique to the restorative justice process—such as case managers, service providers, circle keepers, and community members.

PARTICIPANTS

Participant is the designated name for the person who has been charged and agrees to participate in the RJCC process. Restorative justice language reconstructs notions of guilt and innocence, thus honoring the complex nature of the individual and their interpersonal and broader social relationships. The participant can also be termed “one who has done harm” or “one who has caused harm,” both in court and in the peace circle proceedings.

DEMOGRAPHICS

Of all RJCC participants for which we have data, about 88.6% were male, 82.5% were Black, and 72.5% were both Black and male (see Figure 2). This data matches the demographics of both the people charged with crimes in Cook County overall⁶³ and the demographics of the neighborhoods where the RJCCs are based generally.⁶⁴ Notably, the RJCCs are supposed to be reserved for people under the age of 26,⁶⁵ but some people over 26 have been admitted since the courts’ beginnings (see Figure 3). The oldest participant is listed as being 39.

CHARGES

Interestingly, at no point in its history has the RJCC worked primarily, or even substantially, with cases involving a personal victim. In the first two years of the RJCC’s existence (2017-2018),

the court dealt almost exclusively (89%) with drug cases—primarily narcotics possession and narcotics delivery or possession with intent to deliver cases (see Figure 4). As one community-based restorative justice practitioner stated:

[W]hen the RJ Courts started, they started with drug cases, which is not a very good way to start. Because you can argue that they're victimless crimes. In other words, "I don't have...to look at...[any] person [who was] harmed."

In the most recent few years of the RJCCs (see Figure 6), drug cases have made up less than 10% of the cases in the RJCCs and gun possession has made up about 83%. The inclusion of gun charges has fundamentally shifted the charge composition in recent years. Only 7% of all charges over all the years of the RJCCs have appeared to have involved a personal victim. As one interviewee stated, both drug and gun possession cases are charges where the State of Illinois is the “victim,” which is “a harder way to begin this...process, because you dehumanize it.”

FIGURE 4

CHARGE CATEGORIES FOR RJCC PARTICIPANTS FROM 2017-2018

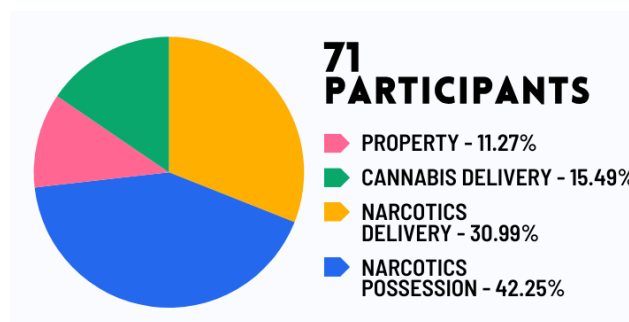


FIGURE 4:

This pie chart represents the breakdown of charges for 71 Restorative Justice Community Court participants for which we have charge data from 2017 to 2018.

⁶³ Between 2000 and 2018, more than 3 million criminal cases were filed in Cook County; over 60% of those were filed against Black people, according to an analysis by *The Circuit*. See McGhee, J. & Rutecki, J. (2021). Fewer People in Cook County are Being Charged with Crimes. Why are Black People Making Up a Larger Share of Defendants? *Injustice Watch*. Retrieved on September 7, 2023, from <https://www.injusticewatch.org/news/courts/2021/the-circuit-racial-disparities-explainer/#:~:text=More%20than%203%20million%20criminal,quarter%20of%20the%20county's%20population>

⁶⁴ In Englewood, 91.4% of the population is Black and 4.4% are non-White Latine; in North Lawndale, 80.2% are Black and 12.8% are non-White Latine, and in Avondale 2.3% are Black and 51.8% are non-White Latine, according to data from 2017-2021 reported by the Chicago Metropolitan Agency for Planning (CMAP). See CMAP Community Data Snapshots (2023) for Avondale (<https://www.cmap.illinois.gov/documents/10180/126764/Avondale.pdf>), Englewood (<https://www.cmap.illinois.gov/documents/10180/126764/Englewood.pdf>), and North Lawndale (<https://www.cmap.illinois.gov/documents/10180/126764/North+Lawndale.pdf>). Snapshots of the neighborhoods where Restorative Justice Community Courts are located can be found in Appendix 3.

⁶⁵ *Supra* note 62.

OUTCOMES

A total of 117 people were admitted to the program between 2017 and 2019 with diversion results listed in available data; 94 people (80.3%) successfully completed the program and 23 people (19.7%) did not (*see Figure 7*). This trend seems to have improved in recent years, according to an analysis by the Office of the Chief Judge: A total of 218 people were admitted to RJCC programming between 2020 and 2022; as of March 31, 2023, 94 people (43.1%) had their charges dropped or dismissed, six (2.8%) had been found guilty, and 118 cases

(54.1%) were still pending (*see Figure 8*). We do not have data to independently verify the OCJ's data since much of the publicly available data is incomplete. For those who graduated, the average amount of time they spent in the program was about 13 months (*see Figure 9*), with the longest tenure being documented as nearly 4 years (1,450 days). For those marked as having "failed" RJCC programming, the average time spent in the court was 4.6 months. The longest tenure for an individual who eventually failed the program was 1.9 years (681 days).

FIGURE 5

CHARGE CATEGORIES FOR RJCC PARTICIPANTS FROM 2019-2020

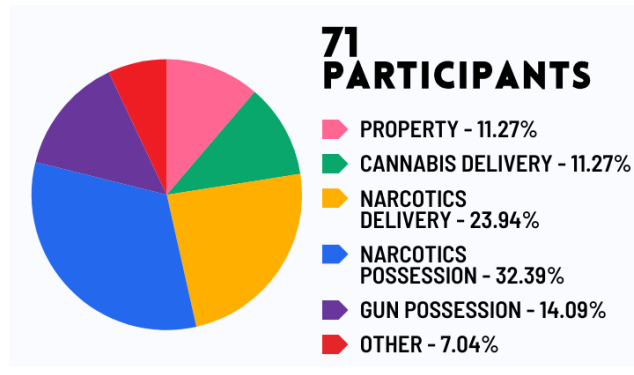


FIGURE 5: This pie chart represents the breakdown of charges for 71 Restorative Justice Community Court participants for which we have charge data from 2019 to 2020.

FIGURE 7

PARTICIPANTS WHO "GRADUATED" OR "FAILED" FROM 2017-2019

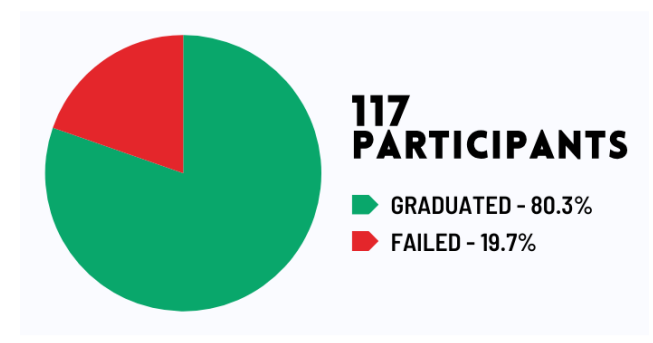


FIGURE 7: This chart shows that of the total 117 people who were admitted to the program between 2017 and 2019 with diversion results listed, 94 people (80.3%) successfully completed the program and 23 people (19.7%) failed.

FIGURE 6

CHARGE CATEGORIES FOR RJCC PARTICIPANTS FROM 2021-2023

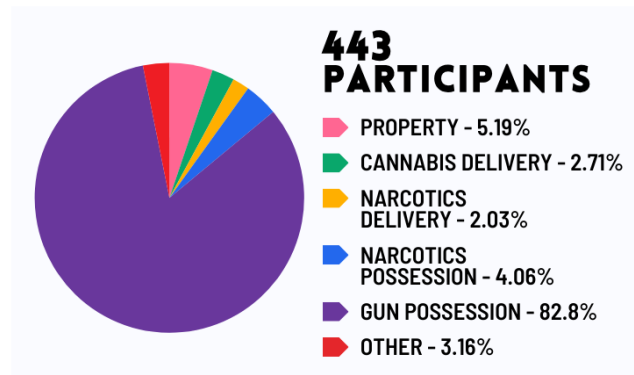


FIGURE 6: This chart shows the breakdown of charges for 443 Restorative Justice Community Court participants from 2021 to September 6, 2023.

FIGURE 8

PARTICIPANTS WHO "GRADUATED" OR "FAILED" FROM 2020-2022

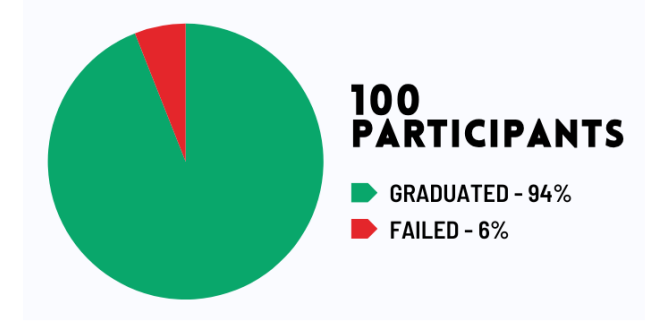


FIGURE 8: This chart uses data from the Office of the Chief Judge. A total of 218 individuals were admitted to RJCC programming between 2020 and 2022; as of March 31, 2023, 118 cases were still pending. Of the 100 people who had completed their time in the program as of March 31, 2023, 94 people (94%) had their charges dropped or dismissed and six (6%) had been found guilty. The chart excludes pending cases.

Inarguably, one of the major benefits of the RJCCs is the overall success of the program in reducing re-arrest rates. Indeed, according to an analysis⁶⁶ of RJCC outcomes (see Figure 10) provided by the Office of the Chief Justice of the Circuit Court of Cook County:

[A]mong those who have been in the community for at least one year after release, 13.1% of RJCC participants were charged with a new offense versus 65.2% of a matched control group. One defendant in RJCC was charged with a violent offense versus seven defendants in the matched control group, including one charged with murder... Among the 94 RJCC participants with charges dismissed, 10.6% (10 of 94) had new charges filed after graduation and before March 31, 2023, including five charged with felony weapons possession, two with misdemeanor battery, two with drug possession, and one with resisting an officer.

COMMUNITY MEMBERS

Part of the ethos of restorative justice is the inclusion of *community members* in the process. This could comprise a whole host of different individuals, including the person who has been harmed (the "victim"). The only prerequisite is that the person attending the court session is indeed a member of the community that the court services. While there are three distinct communities that the RJCCs serve, there are instances where a "community member" may come from a community adjacent to or nearby the court's designated area. A community member is welcome to view, provide input when solicited, or offer themselves in a court-approved manner to support any person in the RJCC process. Community members are also invited and encouraged to attend peace circle sessions, though findings

FIGURE 9

NUMBER OF DAYS SPENT IN AN RJCC BY OUTCOME FROM 2017 - SEPTEMBER 2023

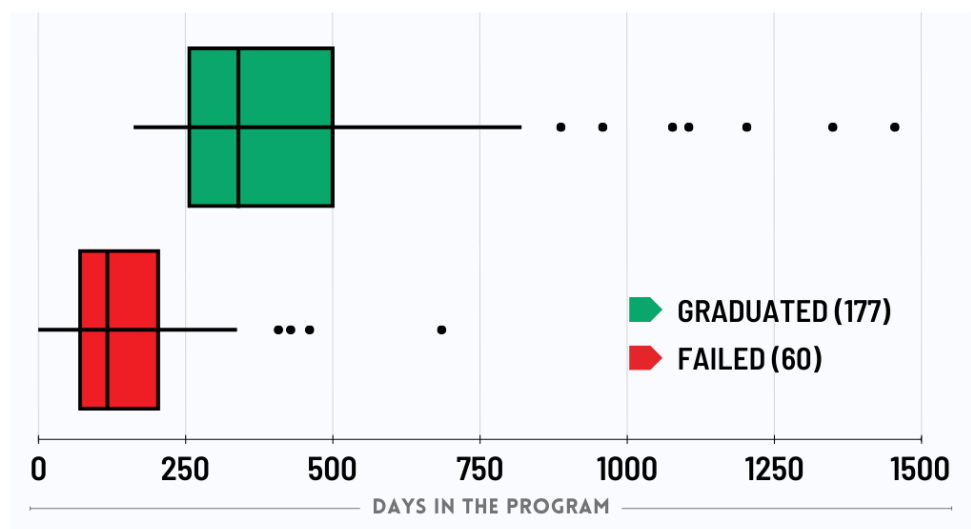


FIGURE 9:

This scatter plot represents the number of days 237 Restorative Justice Community Court participants who have "graduated" (177) and who "failed" (60) between 2017 and September 6, 2023, spent in the program. The chart excludes pending cases.

FIGURE 10

ONE YEAR RECIDIVISM RATES: RJCC VS. MATCHED CONTROL

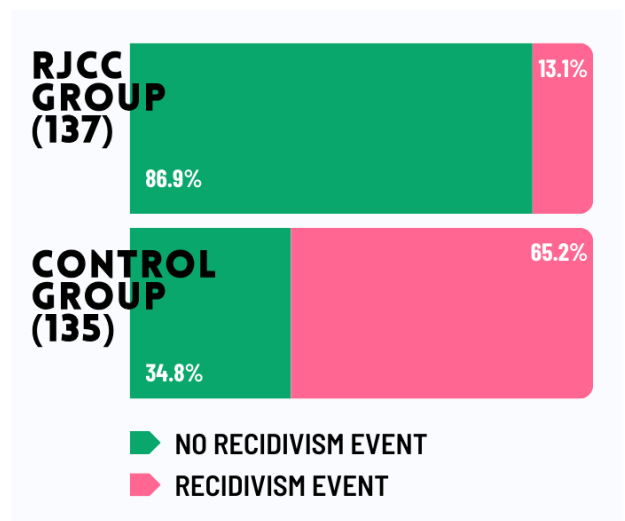


FIGURE 10:

This stacked row chart compares the one-year recidivism rates of all participants admitted to programming between 2020 and 2022 (135 people) to a matched control group (135) who have been in the community for at least one year after release. This data was provided by the Office of the Chief Judge of the Cook County Circuit Court and can be found in an Appendix of this report.

⁶⁶ See Appendix 4 for the recidivism analysis that was sent to Chicago Appleseed Center for Fair Courts on July 24, 2023, from the Office of the Chief Justice of the Circuit Court of Cook County.

discussed later in this report lay out difficulties in making this a reality.

CIRCLE KEEPERS

The *circle keeper* plays the pivotal role of guide in the restorative justice peace circle ("circle"). They are responsible for keeping the structure and process of the circle, which usually includes: (1) an opening statement, (2) check-in, (3) laying out guidelines, (4) facilitating and managing conversational rounds in the circle, (5) check out, and (6) a closing statement. Through intentional questions and conversation-starters, the circle keeper progresses the dialogue in a meaningful way that both addresses the harm caused and allows members of the circle to dive deeper into the questions surrounding it. The intent is to ensure that the social-emotional learning component is in full focus for *all* members of the circle.

DEFENSE ATTORNEYS

The *defense attorney* acts in a similar manner to traditional court; they are the participant's legal representative. These individuals ensure that the participant's legal rights are protected and serve as the first line of defense when translating legal proceedings into common language; defense attorneys attend every court call but are not involved with case management, peace circles, or other relationship building. Each RJCC has a public defender present to represent the participant if they have not acquired private representation on their own accord; if ever that public defender is unavailable to attend a court call, a substitute is sent. Public defenders attend each RJCC court call to represent participants but do not participate in other court functions like peace circles and case management.

PROSECUTORS

Prosecutors play an active role in RJCCs, working collaboratively with the judge, case managers, circle keepers, and service providers to monitor the progress of the participant and provide input and influence in the direction of the participant's goals. These Assistant State's Attorneys (ASAs) are a part of the Alternative Prosecution Department of the Cook County State's Attorney's Office (CCSAO). They ensure that each participant's ROHA is both resonant with the purported harm committed and being actively achieved. Prosecutors also screen for participants that are eligible for the program. They also make the ultimate decision to remove a participant from the program if they are not making progress towards completing their ROHA.

JUDGES

While the actionable role of the *judge* differs from traditional court, they serve as the facilitator of the court process. These judges can make decisions without the agreement of the rest of the RJCC actors, and often their opinions appear to carry more weight than those of others, but they do not tend to make unilateral decisions. Rather, they collaborate with other court stakeholders to ensure that the needs of the participant are being met and address challenges collectively.

COURT COORDINATORS

The *court coordinator* has the primary responsibility of maintaining the administrative aspects of RJCCs. They are responsible for the collection and submission of necessary documents about the participant throughout the court process, from intake to discharge. They are also charged with ensuring that the needs of the court are met by cultivating relationships with service providers, circle keepers, and case managers, and occasionally fill in for one of these roles as needed. Court coordinators seem to work to create a comfortable environment for the participants and stakeholders alike.

CASE MANAGERS

Every participant receives a *case manager* who serves as their main point of contact throughout the duration of their time in the RJCC. They support the participant by connecting them to resources that fit their needs. Case managers check in with participants frequently (often weekly) either by phone or in person to record their progress on completing their ROHA. Some case managers perform therapeutic-like functions; however, the majority of case managers focus on the tangible and concrete factors that support a participant's success in the RJCCs, such as educational or employment resources, in accordance with the requirements in the participant's ROHA.

SERVICE PROVIDERS

RJCC participants often present with immediate needs that require some form of tangible support. Considering the needs of the participants, the court engages with various Chicago-based nonprofit and government institutions to connect participants with *service providers* who may offer mental health, job training, certification, and education (this could be GED, college enrollment, or safe gun education) services. While representatives of these organizations are not directly involved in the court process, they liaise with the participant and

potentially the case manager to ensure that participants' needs are being met. At the North Lawndale court, service providers also provide case management support. UCAN provides grant-

funded case management services and the Lawndale Christian Legal Center provides some case management and legal representation to participants.⁶⁷

FINDINGS + THEMES

Below we outline the locations, environments, and cultures of each of the Chicago Restorative Justice Community Courts, and have detailed the overarching themes from our interviews and the observations of our court-watchers.

COURTROOM STRUCTURES

The Restorative Justice Community Courts are held in very different spaces than traditional courts. They follow the same general proceedings, but there are clear differences between each of the three, including the distinct styles employed by staff, influences of location, and the community organization and circle keeper involvement. As opposed to a traditional courtroom, participants and stakeholders in RJCCs generally sit in a "rectangular formation," as described by court-watchers; likewise, the judge is not on an elevated podium but instead sits "at the same level as the participant" and wears street clothes instead of a robe. Judicial style has a large impact on the feeling and case flow of the court. The three RJCC judges have different perspectives and strategies: Some judges focus on relationship-building whereas others focus on participants completing their ROHA. As one court stakeholder explained: "Some of our judges care more about the individual, some care more about 'did you check your boxes? Can I dismiss your case?'"

AVONDALE

LOCATION + ENVIRONMENT

The Avondale RJCC is the most visually remarkable. It is located in a church-school building, in what one court-watcher described as the "multipurpose hall at St. Hyacinth Basilica." They explained that "[t]here is a classroom where the participants wait" before they enter the "courtroom, [which] is a multipurpose event space."

Another court-watcher elaborated on the space:

The room is cozy in a sense; dark paneled wood, wood floors, even a small little bar area where snacks and water are sitting for anyone to grab. Above on the ceiling are small, 6x6 [inch] portraits of past and present Popes... Other Catholic symbols adorn the room. Lots of indication that this is a space [designed] for Polish Catholic [people].



On Friday mornings, court participants enter Resurrection Hall through the St. Hyacinth Basilica parking lot.

⁶⁷ Information about UCAN and Lawndale Christian Legal Center (LCLC) can be found at <https://ucanchicago.org/> and <https://lclc.net>



Public sessions of the court are held in the Hall's cafeteria, beneath a ceiling commemorating Catholic popes from 42 A.D. to the present.

Based on court-watcher observations, the average length of the court call in Avondale was between ten and thirty minutes. It should be noted that participants spend additional time in peace circles, in meetings with their case managers, and completing the goals identified in their ROHA. Avondale is the only court where court-watchers did not observe circle keeper participation during the court calls.

CULTURE

Court-watchers observed that the participants were largely Latine with a notable number of Black participants. According to our court-watchers, the judge at Avondale emphasizes formal education in a way that the other judges appear not to. If a participant in the Avondale RJCC does not have a high school degree or GED, they are required to receive one in order to "graduate" from the RJCC. The judge at the Avondale RJCC also has a unique interpersonal style. As one court-watcher described:

The judge took her time going through each case, asking the participant how their weekend was and how their holidays were if she hadn't seen them since. The conversations were very "chit chat"-oriented. She didn't ask [many] deeper questions but seemed to be focused on building rapport.

One participant described the positive impact of this courtroom culture:

But I would say she was someone, like when you came into the courtroom, it was very welcoming, in my personal opinion. She didn't make you feel like you was a criminal in her courtroom. She treated you with decency, like as a human. She allowed you to express yourself when you have the floor on the court to talk.

There are "Words of Wisdom" in a jar next to the judge at the Avondale RJCC. At the end of every court session, participants take one note from the jar and read it aloud. Each note has motivational and affirming phrases ("words of wisdom") like: "You are one of a kind and have something great to offer." After the phrase is read, everyone in the room claps.

ENGLEWOOD

LOCATION + ENVIRONMENT

The Englewood RJCC is hosted in a dedicated room in the Salvation Army's Adele and Robert Stern Red Shield Center. The

Englewood RJCC is the only Restorative Justice Community Court that has its own dedicated space (located within a Salvation Army building). As one court-watcher described:

The room is a relatively large space with green chairs and a big picture of a bumblebee and some flowers. The observer/participants' chairs are well spaced out and the space feels open. There are offices for court staff coming off the side of the room. It seems that the space is only used for RJCC related purposes.

Based on court-watcher observations, the average length of the court call in Englewood was approximately two minutes. It should be noted that participants spend additional time in peace circles, with case management, and completing the goals identified in their ROHA. Interviews revealed that the Englewood RJCC's ownership of their space guarantees consistent access to a physical location for the RJCC for participants, even when court is not in session, making it easier for participants to access resources. It also allows court staff to work in a shared space and more easily build a culture.

CULTURE

Court-watchers observed that the vast majority of participants were Black. The court culture is less observable during sessions at the Englewood RJCC because "cases went by quickly," according to our court-watcher. They continued:

The judge briefly states what they have completed and what they have left to complete. There is no discussion of their case/why they are in court; the next court date is scheduled.

Another court-watcher expanded on the activities at court:

Circle keepers were asked by the judge to provide input on the participants' engagement in Circle; the judge asked case management if they had anything to add (sometimes they did but it was just to let the participant know they had something for them and wanted to speak with them after); the [ASA] was also asked if they had any input ([they] rarely gave any input).

The court-watchers noted that "the judge did not try to build rapport with participants" and that there was "no discussion of cases, but if there was a need identified, the court actors responded." Still, court-watchers described a relaxed environment in the Englewood RJCC: "Everyone seemed really comfortable to be there, with defendants on their phones in the chairs as they waited, dressed casually."

Another court-watcher noted: “The energy at the Englewood court was great, and the court staff seemed to communicate really well with participants.”

NORTH LAWNDALE

LOCATION + ENVIRONMENT

The North Lawndale RJCC is hosted in a conference room in UCAN's Administrative Building. One court-watcher described the “conference room” where court took place as “a medium-sized open room.” Another elaborated that “[t]he room did not look like a courtroom at all.” Based on court-watcher observations, the average length of the court calls in North Lawndale was between two and three minutes. It should be noted that participants spend additional time in peace circles, meeting with their case managers, and completing the goals identified in their ROHA. The court uses a hybrid model. As one court-watcher described:

Court is both in-person and on Zoom. Most court staff had a laptop in front of them with the Zoom screen up. It was difficult to hear the participants that were on Zoom, and there was often an echo making it hard to hear everyone.

North Lawndale is supported by more community partners and resources than the other two courts. Court-watchers noted that during North Lawndale court sessions, there are LCLC attorneys representing clients and case managers from multiple organizations whereas at the other two courts staff are all employed by Cook County.

CULTURE

Court-watchers observed that the majority of participants were Black with some Latine participants. Because the North Lawndale RJCC is associated with an RJ hub – and has been from its inception – more community organizations are involved. Although there were not a large number of community members present at the North Lawndale RJCC when our court-watchers observed, it was clear that there were a greater number of community organizations involved. One stakeholder explained the difference in structure between the North Lawndale RJCC and the others:

They use a lot more community resources...in terms of case management and things like that, people that work with the court, and I think it's because of how they were initially

set up...It was always set...to use [community resources] to help participants.

Although not always voluntary (Avondale requires participants to complete a GED), another stakeholder explained the benefits that the hub provides:

And as far as the other service providers, that's the hub. Right? That's where the hub comes into play... bringing all these new people who do work in the community, and are willing to work with our participants, whether it's mentorship, workforce development, of course, there's always the treatment piece if they, if they voluntarily want to get into mental health treatment, or drug treatment. Again, it's voluntary, right? Do we have a young person who wants to get back into school and get their education – then get their high school education? Do they then want to go on to college?

Our court-watchers noted that the North Lawndale RJCC judge tells “dad jokes” when court is delayed; she reads these jokes from a book, allowing participants to guess the punchline as they wait for court. This practice seems to bring some levity to the situation.

EFFICIENCY

Across all three Restorative Justice Community Courts, court-watchers noted both the speed and the perceived quality of court proceedings. While court-watchers found it important to ensure the quality of interactions between court staff and participants, they also noted the importance of relatively quick hearings for participants who have to take time out of their day, often their workday, to participate in the RJCC.

FLEXIBILITY

In general, when a participant stated that they were feeling unwell, court-watchers observed that they were granted a brief appearance which demonstrates an unprecedented level of flexibility that would not be observed in other criminal courts.⁶⁸ Here is where the RJCCs are remarkable: Their flexibility and recognition of participants, who are largely young Black and Brown men, as human beings unlike many criminal proceedings at other Cook County criminal courts.

⁶⁸ See e.g., Gonzalez Van Cleve, N. (2016). *Cook County: Racism and Injustice in America's Largest Criminal Court*. Stanford, CA: Stanford University Press. ISBN: 9780804799201

FLEXIBILITY AND RECOGNITION OF PARTICIPANTS, WHO ARE LARGELY YOUNG BLACK AND BROWN MEN, AS HUMAN BEINGS ARE UNLIKE MANY CRIMINAL PROCEEDINGS AT OTHER COOK COUNTY CRIMINAL COURTS.

Court-watchers also noted several instances where the court helped people get off of electronic monitoring, which is sometimes assigned during the pretrial/bond hearings in regular criminal court before a participant is referred to the RJCCs. Typically, the participant's attorney would request for their device to be removed and the judge would grant it; court-watchers observed no instances where a person was denied removal from electronic monitoring. A court-watcher even noted that one "participant was granted permission by the court to travel to the Bahamas for their birthday [and] the court wrote a special order that they can keep on their person while they travel." Court-watchers found that overall, participants are not treated like criminals, but like human beings with a right to freedom of movement.

USE OF TIME

Court-watchers observed that court calls at the RJCCs vary in length. Court-watchers observed that the Englewood RJCC had fast court times (2 minutes on average) that functioned as a quick administrative check-in. The North Lawndale RJCC also had relatively fast cases (2-3 minutes on average), which consisted of minimal relationship building and an administrative check-in but with more time spent on first-time cases. Avondale had long cases (10-30 minutes), which largely consisted of relationship building. Longer court calls fatigued court-watchers, and we found they fatigue some participants as well.

Concerns about the appropriate usage of time were largely voiced about the Avondale court. One court-watcher noted that "the judge reads participants' 'homework' during the court call and then asks questions to the participant [about their work]." The court-watcher noticed the inefficient use of time and stated: "I feel like it would be [more] respectful of everyone's time [if the judge were] to read these pieces before the court call." A former RJCC participant expressed frustration with how the judge used court time:

She spent a lot of time talking to each person. And most of these days, I'm needed at work. So I have them texting me or calling me: "Hey, where are you? Hey, how long? Hey, are you on the way yet?" and while they're doing that, the judge

is asking people how their cat [is] this morning, you know what I mean?

Efficiency also came up in relation to frustrations about "staffing" calls before court. "Staffing" is a closed meeting held by court actors immediately before court takes place; during this meeting court actors discuss participants' progress in the program, any issues that need to be addressed, and what course of action should be taken. Delayed court start times were observed at all three RJCCs because of "staffing" going longer than expected. In one extreme instance, a court-watcher witnessed a court call that "ended an hour and 45 minutes after its scheduled end time." The court-watcher recorded their hunger because they had not anticipating staying at court for so long and stated:

I am sure that court participants were similarly uncomfortable. I felt that it was extremely disrespectful to participants' time to start late and end late as some participants had to be at court for almost 4 hours. On average each participant spent 20 minutes speaking with the judge...The judge always tried to engage [and] chat with participants even when they clearly weren't interested. I think relationship development is a critical part of RJ but it does not feel like the right role for the judge.

In an interview, a court staffer mentioned similar frustrations about delayed court start times:

A [participant] can sometimes have hopped on at like 9:30 in the Zoom, and is waiting until like 10:45, 11 o'clock, because staffing done took so long.

A couple of interviewees also noted that efficiency can be in direct conflict with involving community members in the accountability process. Interactions can become more about speedy case management as opposed to healing, growth, and accountability.

I think sometimes [community engagement and accountability] lack[s] because of efficiency...This is really a community process and a way that community can come together and take ownership and responsibility for...what is happening. And a lot of times, I think the [court's] overreach is, "thanks, [the court will] take care of that." And you know, they have somebody in the courtroom that says, "[what the community proposed as a path to restoration is] good...but also we want him to do this." And...as soon as you do that, all bets are off. It's no longer [the court] just taking [direction] from the community.

While issues of efficiency may seem relatively minor, they reflect a larger issue of respectfulness and accountability by the system stakeholders, which is discussed in more detail below.

RESOURCES + SKILLS

The stakeholders we interviewed noted the need for more resources – such as mental health and mentorship services – for RJCC participants and for RJCC staffers. Many of the court actors we spoke to were concerned about insufficient funding and resources for the RJCC. Some interviewees also expressed a desire for a hub similar to the Red Hook court that would allow participants to access resources in one place. One court actor expressed a desire for this one-stop-shop model:

So if somebody needs to meet with a job coach, it's in the building; if somebody needs to have mental health resources, it's in the building; if somebody needs to sign up for government resources, it's in the building... I'll be able to direct you to various floors, where you can tap into those resources that you need.

Interviewees cited the growing number of participants in the program as a reason for needing more resources, especially for staff:

There's still two more circle keepers budgeted for, we just haven't been able to fill those positions. And that's a problem we have. We need more...people to support the court. We need more case managers and...more [circle] keepers because our caseload is getting bigger and bigger. I'm happy to see it grow, but I want to be able to provide services.

Our court-watchers also noted that the shortage of circle keepers affected the efficiency of the courts, slowing down the court process for some participants because they do not have a ROHA and could not begin working on their goals, which leads to participants being involved in the RJCC for a longer period of time without receiving the benefits of the program. One court-watcher noted:

The lack of case manager and circle keepers showed during this session. Several participants had not yet gone to circle and as a result could not create their ROHA. Several people's next appearances were scheduled for a month and a half to two months out to give them time to be assigned to a circle.

Although restorative justice is a philosophy and approach to addressing harm that must be embodied – and not a skill that a person can learn – court actors largely impact the quality of the RJCCs, so continuous training is critical for ensuring that RJCC actors are competent in the restorative justice process. Some court actors felt that they were well-trained for their role, but others had concerns. As one court actor explained: “There's supposed to be a handbook...[but it] has never been presented [to me]. So...I would assume that people are just kind of going off common sense.” Therefore, the court actors that appeared to be the most dedicated to restorative justice supplemented their training by seeking their own information. One court actor stated:

[Some of us] are constantly reading, constantly trying to set things up, constantly trying to find out what else we can do outside the training that we had as circle keepers, to make us better, because every circle you go to will be different, even though we've all been trained the same. But every last one of them are different.

Inconsistent training may influence efficiency because unskilled court staff inhibit the whole system. This notion came up especially in reference to case managers from outside organizations who may not receive the same training as other RJCC court actors.

While court staff are largely hired through the Circuit Court of Cook County, some courts have staff that are loaned to the courts from other organizations. One court actor explained:

We have lots of caseworkers from different organizations, so it's not as cohesive. There probably needs to be some type of general or specific training so that all caseworkers can at least have a basic guideline to follow or basic standard.

Various interviewees also noted concerns with nonprofit involvement in the court. As one court stakeholder said: “RJCC [is] just a little piece [of outside nonprofits' missions], we do all this other work.” Another stated:

It's lovely that these [outside] organizations contribute, but they have their own limitations. You know, the [nonprofit] case managers...also owe allegiance to their employer who gives them work to do, so they have two caseloads: The work from their employer and the work from, from the restorative justice court. Divided loyalty.

STAKEHOLDER INFLUENCE

The RJCCs, like all courtrooms, are made of people, and biases come into play. However, at the RJCCs, the humanity of the program is more apparent; rules are less rigid, and court actors are routinely faced with situations where they must choose how to act, given that the power dynamics vary somewhat in comparison to traditional courtrooms. The choices that court actors make, especially in how to treat and react to participants, demonstrate their alignment, or lack thereof, with restorative justice ideology.

POWER DYNAMICS

In restorative justice, all participants should be equal. While some court actors strive to reach this ideal, it appears to be unattainable in the RJCCs. There is a clear hierarchy of court actors: Our court-watching and interview data indicates that judges and ASAs have the most power, followed by defense attorneys and court coordinators, then case managers and circle keepers, and finally community members and participants. This organizational culture is fundamental to the nature of the system and occurs despite the best intentions of the stakeholders who, as revealed in interviews, truly seem to want the best for participants and the community.

That said, many court actors appear to lack a fundamental understanding and embodiment of restorative justice principles that are needed to create a truly restorative space that values all actors equally—especially when they are frustrated with the participant. One court-watcher, for example, witnessed how the court enforced its fundamental authority in a case that “involved a participant that had missed a lot of meetings,” recalling:

The judge was very upset and said [they have] the power to “kick him out.” She said if he misses another meeting he is out [of] the program. He has to come back to court every week until he’s back on track... It was interesting that the most negative call was saved for last when all the other participants had left. The judge’s tone changed markedly from supportive to very punitive.

JUDGES

The role of a judge in the RJCC differs from traditional criminal court because they do not make rulings; as opposed to making final decisions, they instead have discussions with other stakeholders about how to meet participants’ needs and guide people through the process. When describing their role in

interviews, all three RJCC judges used terms – such as “steward,” “host,” and “guest star” – to differentiate their role from the role of a typical judge and to illustrate their purpose not as the main actor but as a facilitator of the court. Despite judges reporting that they do not feel a central role, court observations make it clear that because the judge leads the court call, their temperament has an impact on the culture and environment of the courtroom. As a result, judges are among the most powerful court actors. As one court-watcher noted:

The participant completed their GED even though they initially did not want to. The judge said something like, “aren’t you glad that you did it?” and the participant agreed. The participant seemed to appreciate the program but it was hard to discern if they were grateful for the program, happy to be done, or [just] telling court staff what they [thought they] wanted to hear (or perhaps some combination).

These power dynamics, coupled with the judge’s understanding of RJ and their personal life experiences that act as psychological drivers, determine how each judge conceptualizes and implements court proceedings. This gives each court a different style. Overall, judges were supportive, kind, and flexible to participants, but there were times where they engaged in tough, stern, or reprimanding behaviors when a participant was not achieving their goals or properly participating in the program.

PROSECUTORS

In the Restorative Justice Community Courts, ASAs have a complicated and multifaceted role. They screen incoming cases for possible referral to alternative prosecution programs like the RJCCs and initiate people’s enrollment in those programs. Although the prosecutor is the one who makes the offer for RJCC participation, and the defense attorney is the one who accepts the offer for their client, the judge is not compelled to agree and may not “go along with the agreement,” according to our interviews with court stakeholders who witness this process firsthand. Their main role in the day-to-day operations of the court is to make sure that participants are complying with terms of their ROHA. They also handle paperwork related to the cases. The ASA’s power lies in their ability to make the *final call* about removing a participant from the program. As one court actor said:

When the rubber has to meet the road, it is the State’s Attorney who can say, “I’m sending this back to [the criminal courthouse at] 26th Street for regular court. You’re out of here.”

Despite their powerful position, ASAs participate in “staffing” and are “part of the team.” They have the job of ensuring that RJCC participants are completing the established ROHA goals. They are essentially responsible for the quality and effectiveness of the RJCC programming.

The ASA’s personal and professional priorities have a big impact on how the court functions, as they are among the most powerful stakeholders in the RJCCs. They face added external pressures to ensuring program quality because bad press could affect their job or community perceptions, which could cause fewer referrals to program. As a result, ASAs have an incentive to ensure the program is sufficiently rigorous. In this way, ASAs are accountable to the norms of the larger criminal legal system, and it is their choice whether to take an interest in restorative practices. They do quality control primarily in staffing, so their complex role is not usually visible during a regular court call.

COURTROOM COORDINATORS

Similar to typical courtrooms, which each have a clerk, the court coordinator is in charge of the administrative aspects of the court such as maintaining participant documents and ensuring that court calls run smoothly, as well as maintaining a warm, friendly environment for court calls. As one court coordinator explained:

[We sometimes] feel like a conductor of the orchestra so that everything works and [make] sure that people not only know what we are and what we’re doing, but also making sure that we are equipped with everything starting from water [and] snacks for people who are coming to the court and ending with resources.

Court coordinators play an important role in maintaining relationships with service providers and oversee circle keepers and some case managers. They may also fill gaps by taking on the responsibilities of circle keepers and case managers when they are absent or the RJCC is understaffed. Court coordinators embody RJ principles to varying degrees: Some clearly are deeply invested in RJ while others seem to practice non-restorative practices. One court-watcher perceived an escalated interaction in which the court coordinator “seemed to be in a very bad mood” so they were “not acting restoratively [or] patiently.”

CASE MANAGERS

Case managers have the most interactions with participants and therefore are critical in managing the case flow and efficiency of

the RJCC. Case managers make participation in the RJCC possible by handling the interpersonal work of attending to participants’ wellbeing. However, they also have little power as compared to other court actors. A shortage of circle keepers has led to a delay in participants starting the circle process; therefore, case managers are assigned to participants before they can start the circle process, which has resulted in some case managers helping participants identify goals when that is not their role. Case managers are expected to keep in regular communication with their caseload, usually checking in with them on the phone once a week. Participant failure to communicate with their case manager is grounds for dismissal from the program:

Every Tuesday of the week, before I go to work – because that’s how my schedule was so tight – we would spend no more than like 30-to-45 minutes on the phone call pretty much touching bases on my ROHA work. Where was I at? What did I finish? What I needed to work on next.”

Participant experiences with case managers varied. One participant described their experience checking in with their case manager as “pretty much a waste of my time...we already know where I’m at, we already know what’s going on.” However, another participant explained how they really appreciated their case manager:

She was very consistent in reminding me of things that I was supposed to be keeping up with. It didn’t feel like I was being pressed to complete my objectives, job assistance, wherever I needed it...I liked the reminders. I’m a very forgetful person; I have a lot on my plate, so sometimes things just slipped my mind...Very positive experience with her.

While case managers operate as a support for participants, our research found that they also serve as the surveillance arm of the RJCC system. Their role of maintaining information about participants’ progress in the program and reporting that progress to the court allows the RJCCs to get updates about participant progress, even when they are not in court.

CIRCLE KEEPERS

Circle keepers do the brunt of RJCC work and yet have little power or control over court proceedings. Their role is the most important in ensuring that the RJCC is loyal to restorative justice principles because they are the only stakeholder whose role inherently involves practicing restorative justice. Nonetheless, circle keepers

are present at North Lawndale and Englewood RJCCs but were not observed at Avondale court sessions.

The following incident, where a participant became upset, “raised their voice, and cursed” during a disagreement with a court coordinator was observed by one of our court-watchers. This incident illustrates the importance of circle keepers’ presence in every courtroom:

This caused the court coordinator to become very angry and started yelling back at them on Zoom, creating an argument...a circle keeper then chimed in and said that the court had not acted restoratively and were adding fuel to the fire.

Based on the conversation between court actors after the participant left, our court-watcher noted:

It felt like there were many different opinions [among court actors] about what should be done. At the end, everyone said that this never happens and is very unusual for a participant to get angry/for a fight to happen. We also found out that this participant started RJCC in 2021 [and had experienced significant trauma during that period].

They continued:

The participant was disrespectful but the court coordinator really escalated [the situation] while the judge was trying to de-escalate. I was grateful that the circle keeper spoke up.

Circle keepers conduct difficult social-emotional work that embodies the restorative aspects of the court: care, empathy, community, nurturing, love, and advocacy. Another court-watcher gave an example of this role of the circle keeper well:

One participant said they were going through a hard time - their father passed away and they lost their job. The court staff said they were sorry to hear that but didn't offer much emotional support...A circle keeper followed [them] out.

Although all court staff expressed their regrets for the passing of the participant’s father, it was the circle keeper who performed the emotional labor of comforting the participant.

Unfortunately, when we conducted this study, we noticed that multiple courts were understaffed with circle keepers. Despite circle keepers’ outsized responsibility for ensuring the court adheres to RJ principles, circle keepers are among the least powerful in the unofficial (yet very palpable) court stakeholder hierarchy. Circle keepers have a huge impact on the efficiency of the court, are arguably the most important role within the court, and yet are paid a relatively low salary⁶⁹ for a Chicago-based professional. The understaffing of circle keepers then may perhaps be related to the impact of their role compared to compensation, the high expertise needed, and the difficulty of the work.

MOTIVATIONS

The motivations of court actors for choosing to be involved in the RJCCs varies among each individual stakeholder. Most people we interviewed explained that they feel that the traditional prosecution system does not work for folks and that they believe in the principles of restorative justice:

I very much believe in restorative justice, and that it is... the way to go to reduce crime, to heal harm of crime and community, and to get away from prosecution and incarceration.

Some people stated that they are motivated by the desire to serve their own communities:

Being in my neighborhood was really what intrigued me... I mean, I've lived in Englewood all my life, I was born and raised here. So having a court like this, in this community, being able to help this community was really what fascinated me.

Another person reported that experiencing the use of restorative justice to interrupt community violence was the motivator for their involvement:

I had never seen or heard of peace circles [when I witnessed] a dispute between rival gang members...after school... Everything stopped [and someone] set up a peace circle... It was just mesmerizing to watch how people who are, for whatever reason, enemies...come to a place where they're both sobbing and hugging each other.

⁶⁹ See e.g., Office of the Chief Judge Job Description: Full Time Restorative Justice Community Court Peace Circle Keeper. (n.d.). Retrieved on January 16, 2024, from <https://www.cookcountycourt.org/Portals/0/RJCC%20Peace%20Circle%20Keeper%20Job%20Descr.pdf>

Regardless of each stakeholders' motivations for involvement in the RJCCs, their personal and professional backgrounds, paired with sociocultural influences, very likely have an impact on how they perform their duties and interact with the participants and community members.

ACCOUNTABILITY

A central theme in restorative justice is accountability. It is fundamental that a person who has caused harm takes accountability for what they have done and works to repair that harm with the person they harmed and the broader community. This is distinct from the traditional criminal court process because it requires a more compassionate, reparative approach through intentional acts instead of a punitive system of punishment. Accountability in restorative justice exists not only for the person who has caused harm and as a result is engaged in the RJCC—it is a philosophical tenet that undergirds the whole process, and as such, applies to *everyone* involved. The following account from a court-watcher highlights an instance that challenges the notion of RJCCs being a space that fundamentally operates around both the theoretical and practical aspects of restorative justice:

[In response to a participants' concerns, a court coordinator] yelled on Zoom, saying that [they were] matching his tone. [The court coordinator] said that if he didn't wanna be here, then he should've thought of that before he got arrested. [They] said [they] were about to hang up on him.

We would be remiss not to recognize that everyone in the system is a whole human with a range of emotions. Yet, the purpose of restorative justice is to recognize when harms have been done (purposefully or not) and engage in the process of repairing the harm. In this situation, attempts were made by a circle keeper to bring awareness to the issue, but the court coordinator chose not to try to repair any of the harm done.

[The circle keeper] intervened and said, "that is not restorative." [The court coordinator] said that [they] kn[e]w it [was] not restorative, but participants in the program have to respect the court actors. [The circle keeper] said that they should not add fuel to the fire, which offended [the court coordinator].

An interviewee recalled a time when there was friction between court stakeholders, and a circle was held to repair the harm:

We've had a Sheriff [Deputy] in circle with a participant when they kind of had an incident...before court one

morning, and [the participant] was able to sit down and apologize to [the Sheriff [Deputy]] for [the] behavior, then he apologized to [the participant] for getting too upset...and they were able to hug it out. And now we're okay.

It may be possible that the court regularly engages in restorative justice circles of their own when harm has occurred between participants and stakeholders, but because this is not transparently named or recognized as official policy, we are unable to determine if this happens regularly as an established feature of the court. Some court actors do not hold themselves to the same expectations as participants. One participant noted that, though their judge commonly engaged in relationship building that extended court calls significantly, "it was certain days where it felt like she was moving at a quicker pace because she was busy." However, on days when she was not in a rush, this participant felt court dragged on for an excessive length of time when they had other obligations to tend to. They described these inconsistent approaches to pacing as "a smack in the face," noting their feelings that the judges respected their own time more than the participants' time.

Most stakeholders understood that systemic racism plays a role in criminal legal system involvement. This is expressed by both court stakeholders and participants themselves:

It's bad enough as it is being a person of color, to have a felony background, it's a million times worse and most of them recognize that. So just being able to make a huge mistake, you know it happens...some of us have made similar dumb mistakes and just never got caught for it. Right? So why should they pay the rest of their life for a stupid mistake? That alone is huge.

However, stigmatizing and stereotyping language was used by court system actors to varying degrees throughout our interviews. For example, one White stakeholder noted the following when discussing their view of the Black youth they encounter in Restorative Justice Community Courts:

[Often], I'm looking at...a young [Black] person who's wrapped up into layers and layers and layers of emotional body armor, because they've lived a traumatic life. They come from a traumatized community. Nothing about their life has been normal. I've heard people call this court a second chance court. It's not, it's a first chance court...They haven't had a first chance [if] they're...born

into a household that's broken, or that neither parent is there and they have the grandmother, or there's role models in the house who are all gang-related, and that's what they see or know.

BOUNDARIES

The relationship-building aspects of RJCCs, especially when done by a judge, sometimes lead to uncomfortable situations where boundaries between court and personal matters are blurred or traversed. In one example described by a court-watcher, a judge was speaking to a participant who had expressed that they "regretted their actions the moment they were in jail." In response, the court-watcher noted:

[The judge] asked extensively about [the participant's] incarceration for the offense...ask[ing] about the jail conditions, food, etc., [and] even asked what the incarcerated folks were talking about while they were in jail. . . I think [the judge] was trying to get the participant to express feelings of regret. That made me super uncomfortable...The judge also asked [the participant] to freestyle because he is a rapper – he said no.

In another example, a court-watcher describes a conversation between a judge and a participant where the judge said, "you know you can tell me whatever" in an apparent attempt to connect with the participant, but the power dynamics inherent in the criminal legal system make this difficult. In our April 2023 report on Cook County's post-plea problem-solving courts, we saw a similar theme where the non-traditional "interdisciplinary team model" can cause confusion related to stakeholder roles and individuals' confidentiality: "The problem-solving courts 'blurred' stakeholder roles in order for the court to closely monitor participants."⁷⁰

In another example, a judge "was strangely using an emotional approach" to appeal to a participant as a means to encourage them to complete the program: [The judge] told one...participant, "you'll break my heart" and "you'll join the long list of men who have broken my heart" if they did not graduate and ended up in prison. While the court-watcher perceived that the judge "really did seem to care about why participants weren't meeting requirements," they found that this "moment of guilt tripping was strange." Clearly, the judge's

behavior traversed the boundary of what is appropriate.

PARTICIPANT ENGAGEMENT

Court-watchers found it difficult to gauge participant engagement in the RJCCs. Court-watchers noted that some participants seemed genuinely engaged with and/or enthusiastic about the RJCC, while others – especially when speaking with a judge – seemed less engaged or nervous especially when asked more personal questions. The obvious power imbalance between court stakeholders and participants is also notable in terms of real and perceived participant engagement. For example:

The Judge asked a participant how they liked the circle process and whether they would recommend it. However, it never seems like the participants would feel like they're in a position to say no.

A court-watcher noted how one judge's rapport-building process "seemed to be a conversation, but it was more of a one-way street...once you pan out a bit, it's more like an interrogation." They elaborated:

[The judge] asked a battery of questions to what I can only assume was an attempt to build rapport and a relationship, but there wasn't the same kind of sharing on [their] end. At one point I did a five minute test to see how many questions the judge asked compared to the number of affirmations she provided once a person gave a response. The ratio was 13 questions to 2 affirmations.

Our court-watchers felt that most participants they observed appeared "committed to completing the RJ programming and reaching graduation," but there is a spectrum of engagement that exists across participants, which may vary based on background, purpose for enrollment in a RJCC, cultural and social influence, personal trauma, and more. According to a judge who was interviewed:

It doesn't happen often that we have somebody who doesn't engage, but that does happen and I see them when they come...the first time to the courtroom and they don't know what they're getting into. They've just been transferred over from Criminal Court and they're sitting

⁷⁰ *Supra* note 3.

there with an attitude, you know?

As one court-watcher noted:

Some individuals...seemed more enthusiastic about their participation in certain programming whereas some others seemed like they were going through the motions to graduate likely because this is obviously a far better alternative to the traditional pretrial system. It's hard to know exactly how transformative participation in these RJ courts may be.

Court-watchers witnessed some genuinely enthusiastic and engaged and participants: "As one first time participant was leaving, they seemed in great spirits and said, 'I really like it here!'" However, court-watchers and interviewees alike reported stories of participants who were palpably disengaged. One court stakeholder recounted: "[I] have literally seen a kid fall asleep for the whole court process." A court-watcher noted:

[The participant][d]id not enjoy the first circle process that [they] engaged in [and] was asked why [but] could not remember details. Judge was asking a lot of questions and the participant really was not engaging, opening up...no other strategy was really used to get [them] to open up. [They] did provide information about [their] employment situation but again, [they] definitely [were] not interested in participating.

Despite the variation in engagement, it was clear to court-watchers that the RJCC judges and staff seem to want participants to be engaged. Engaged participants appear to make court actors feel that their work is meaningful and worthwhile. In one example provided by a court-watcher:

One [participant] didn't really want to engage nor did he have high expectations for the new circle he was going to... the judge and case managers both tried to encourage him.

There is an incentive for participants to perform the appearance of being engaged to speed themselves along in the process. One observer noted:

The judge was very respectful but stern [and] told [the

participant] that no one is slowing him down and that the only way for him to graduate quicker is to do the work.

In this way, participant engagement at the RJCC is also a currency that can win favor with court actors. Likewise, when participants are engaged, they are very unlikely to experience punishment or consequences from the court, which then speeds up their time in the RJCC. This need for participants to perform commitment and gratitude sometimes hinders honest communication between participants and court actors. According to one participant:

They wanted to see that you're making the effort to show up to court, to show up to your case manager meetings, to contact them, to communicate. And when...it seems like the slightest inconvenience, they kind of bite back like they [say]: "Oh, well, you gotta get here, you know, we're not asking that much, you still have to be here." And I get it, but that's kind of what it always felt like, it was trading off time and effort for this opportunity.

Participants are expected to perform their commitment through their attendance and communication. One participant noted an instance in which they missed a court call because of a phone service issue, and a court actor called them that same day and "told [them] that [they] might be removed from the RJCC program because of missing court." They only received a "second chance" once they explained the circumstances. Another participant noted that "how much you communicate" with case managers will "determine your status in the program," and emphasized that if a participant stops communicating with their case manager, "they can automatically send your case back [to the traditional system]." The most disengaged participants were described by some court staff as "not respecting the process," while they perceive participants who are enthusiastic as showing respect.

Sometimes you could tell...[participants] don't care or...they're being disrespectful... Stuff like that irks my soul, because it's like, "oh, you [are not] really respecting this process right now...you really don't care."

This view of participants is in line with the concept of "compliance" with court-imposed mandates in mental health and drug courts; researchers find that compliance is critical to success in these courts.⁷¹ The spectrum between respectful, enthusiastic

⁷¹ Epperson, M., Sarantakos, S., Suslovic, B., Thompson, J., & Self, J. (2022). "You Feed and Water a Rose Bush and Eventually It Blossoms": Constructions of Self-Transformation Among Mental Health Court Defendants. *International Journal of Law and Psychiatry*, 85, 101839; Kaye, K. (2019). Enforcing Freedom: Drug

engagement or compliance and disrespectful disengagement or non-compliance helps court actors decide if they view participants as deserving or undeserving⁷² of the courts limited time and resources. It also serves to legitimize the RJCC court processes and delegitimize people who lack engagement. It prevents court actors from questioning their actions and processes and places the locus of responsibility for successfully graduating the program largely on the participant. This lack of acknowledgement of the informal incentive structure of the RJCCs is often illustrated when court actors compare the RJCC to criminal court:

They see the benefit of...being in this court instead and seeing how [it] is [run] for them...Everything we do is literally for them...to get better, versus being at [the] Cook County [criminal courts], where [the purpose is] trying to get the charge...get as much time as [they] can, you know?

Court actors believe that the RJCC is an incredible opportunity—and for many participants, it may be. However, this framing prevents court actors from considering the larger picture and asking what burdens the RJCC might be placing on a participant.

PHILOSOPHICAL TENSIONS

While interviewees generally appreciated the RJCCs as a model alternative to the traditional criminal legal system, they note tensions between the tenets and practices of restorative justice and the structures and processes of the criminal legal system. While restorative justice is often heralded as an alternative to the traditional criminal legal system, one scholar coined the term

“paradox of imitor...to connote restorative governmentalities’ simultaneous attempt to offer a substitute for criminal justice whilst predicating themselves on (and so imitating) existing criminal justice arrangements.”⁷³ As one court actor aptly noted:

There are three elements of [RJCC]. There’s the restorative justice element of it, the community element of it, and the court element of it. All three of those are constantly in conflict.

Based on best practices research, our court-watching observations, and interviews with stakeholders, we discuss below how these tensions manifest in relation to the purpose and practices of the RJCCs, the processes and engagement of stakeholders, and mindsets related to transformative change.

PURPOSE + PRACTICES

Though the behaviors and mindsets of court actors certainly contribute to these tensions, there will inevitably be some discord between restorative ideals and the retributive criminal legal system in which they are housed. Restorative justice programs situated within the criminal legal system have received criticism for legitimizing some of the punitive practices and logics of the legal system. According to Gavrielides (2008),⁷⁴ there are six conceptual fault-lines along which tension has arisen among advocates for restorative justice, and the first two⁷⁵ concern whether restorative justice could and should exist independently of, in tandem with, or within the criminal legal system.

Scholars have detailed the complex challenges of situating restorative justice within the criminal legal system, highlighting the fixed roles, predetermined guilt, and inherent power dynamics embedded in the latter.⁷⁶ By placing the RJCCs within

Courts, Therapeutic Communities, and the Intimacies of the State. Columbia University Press; O’Brien, A., Fahmy, R., & Singh, S. P. (2009). Disengagement from Mental Health Services: A Literature Review. *Social Psychiatry and Psychiatric Epidemiology*, 44, 558-568.

⁷² See e.g., Altreiter, C. & Leibetseder, B. (2014). Constructing Inequality: Deserving and Undeserving Clients in Austrian Social Assistance Offices. *Journal of Social Policy* 44(1), 127-145. Retrieved at <https://www.cambridge.org/core/journals/journal-of-social-policy/article/abs/constructing-inequality-deserving-and-undeserving-clients-in-austrian-social-assistance-offices/C4CFC42AA7F9D1E3C05C06049A43480B>; Zatz, N. (2012). Poverty Unmodified?: Critical Reflections on the Deserving/Undeserving Distinction. *UCLA Law Review* 59, 550-592. Retrieved at <https://www.uclalawreview.org/pdf/59-3-3.pdf>

⁷³ *Supra* note 45.

⁷⁴ Gavrielides, T. (2008). Restorative Justice—The Perplexing Concept: Conceptual Fault-Lines and Power Battles Within the Restorative Justice Movement. *Criminology & Criminal Justice*, 8(2), 165-183. Retrieval at <https://doi.org/10.1177/17488958080888993>

⁷⁵ The third fault-line identified by Gavrielides (2008) revolves around the focus of restorative justice as being on either court processes or outcomes. The final three fault-lines pertain to the execution of restorative practices and ideals: who should be present at mediated interactions, the role of punishment within restorative justice, and the flexibility of ideals in practice.

⁷⁶ Shapland, J., Atkinson, A., Atkinson, H., Colledge, E., Dignan, J., Howess, M., Johnstone, J., Robinson, G. & Sorsby, A. (2006). Situating Restorative Justice Within Criminal Justice. *Theoretical Criminology*, 10(4), 505-532. Retrieved from <https://doi.org/10.1177/1362480606068876>

an existing criminal legal system, one scholar notes that restorative justice becomes:

[Not] an alternative to the criminal justice rationales and practices but...an alternative to specific processes provided within that system. In this mode, restorative justice emerges as an appendage to enhance (perhaps even expand) existing criminal justice and/or legal institutions.⁷⁷

PUNITIVE PRACTICES

The stakeholders we interviewed consistently recognized these inherent difficulties in implementing a community-based, restorative justice model within the fundamentally punitive court system. Some people are kicked out of the RJCCs because they do not achieve the goals stated in their ROHA, are accused of another crime that is not eligible for RJCC participation, or perhaps have needs that the RJCC staff cannot meet.

THERE ARE THREE ELEMENTS OF [RJCC]. THERE'S THE RESTORATIVE JUSTICE ELEMENT OF IT, THE COMMUNITY ELEMENT OF IT, AND THE COURT ELEMENT OF IT. ALL THREE OF THOSE ARE CONSTANTLY IN CONFLICT.

Interviews showed some court actors desired to control participants through surveillance and punishment, which is not aligned with the restorative justice value of participant autonomy. One court-watcher described a situation where a participant was reprimanded and punished by a judge with an "angry parent vibe" for lack of engagement in the program:

[For the]ast participant it was as if the judge's demeanor flipped a switch...[they] aggressively asked why [the participant] was deliberately skipping meetings. [They were] not able to provide any response; [their] demeanor was not combative but quite passive...[The judge] threatened to kick [the participant] out on numerous occasions [and] forced [them] to commit to weekly attending the...court on Fridays on top of seeing [the] case manager weekly on Mondays.

As the court-watcher noted above, punishment often comes in the form of making participants come to court more often.

Another threat regularly made by court stakeholders is that participants will be "sent back to 26th Street" (the criminal courthouse). This threat also looms as possible punishment for all RJCC participants who witness interactions similar to the one described above. Participants are very aware, and are routinely reminded by court actors, that if they are not successful in the RJCC their case will go back to the traditional criminal system, where they may risk incarceration. As one court-watcher noted:

It felt like participants were told what was expected of them very firmly. If they didn't like the rules, they can leave and go back to 26th street.

Researchers have predicted that the tethering of restorative practices to the criminal legal system would too often lead to referral back to traditional courts rather than dismissal of cases.⁷⁸ The strongest form of punishment that the RJCCs have is to send people back to 26th Street, but many court stakeholders noted that they wished there was another way to exercise control over participants actions. One interviewee's frustrations about a lack of recourse for disengagement shows how the nature of restorative and punishment ideology are at odds:

I don't want to say there's...no punishment, because that's kind of harsh, but sometimes the court is too open...with the policy. For example, I've had a kid who missed court two or three times...like it's literally nothing...I feel like...there's nothing to like, tell them, "hey, you know you need to be on the ball." Like...the judge might tap him on the wrist...[but] there's really nothing [else]...we can do in there, because the only thing...[would be] send a court case back to 26th Street, and that's not what we're trying to do."

A participant described the consequences of not maintaining contact with their case manager:

Participants need to make sure that they [have an] up to date contact phone number or...however they decide to [maintain] contact with their case manager, because if you stop communicating with them at some point, they can automatically send your case back [to criminal court]. And...at that point, the program is over...for you. That has happened to some participants, unfortunately, and they don't get that second chance to, you know, come

⁷⁷ *Supra* note 46.

⁷⁸ Shapland, J. (2014). Implications of Growth: Challenges For Restorative Justice. *International Review of Victimology*, 20(1), 111-127. Retrieved from <https://doi.org/10.1177/0269758013510808>

back and do better.

Because of this potential severe consequence, participants have a strong, nearly coercive, incentive to stay in the RJCCs and participate actively and consistently, even though their participation is technically voluntary.

COMMUNITY ENGAGEMENT

As emphasized by its full name, Restorative Justice *Community Courts*, these courts are driven by the dual values of restorative justice and community engagement. Although these values are not mutually exclusive, as restorative justice practices and processes always require buy-in and participation with community members, it is important to recognize RJ and community engagement as two distinct concepts and components of these programs. As such, both the restorative and community-based aspects of the program require investment and equal prioritization throughout the implementation of RJCCs. Unfortunately, some stakeholders expressed that RJCCs have not yet threaded the needle between restorative justice and community engagement. One reason for this, according to interviews, is that "starting up during the pandemic kind of hindered the community being aware of the court really being here."

While RJCCs have successfully implemented peace circles from the beginning, interviewees shared that engaging community members in these circles has been consistently challenging:

I remember one person in a [community] meeting saying, "oh, it sounds like jury duty." So I think trying to get the community more familiar with the practice of restorative justice...is a challenge...[It's] a challenge getting people familiar with the RJ practices, as well as getting people to see the benefit in the community for the court to be here.

Participants discussed community engagement as it relates to community service requirements in their ROHAs. Community service hours can be extremely time-consuming for participants; they can be required to complete up to 80 hours, a daunting task for many participants who work full time. One participant

described not feeling like they were making an impact in their community:

I feel like they could have added something to my ROHA that benefited the community beyond just community service... but [since it was done in another neighborhood], my community service didn't benefit my community.

Another participant described how their work to do service independently to those in need in the city was not recognized by the RJCC as a valid form of community service:

I'm actually out there with...people in need...and giving back to them. How was that not going to be a part of my community service? Like, as soon as I even run that idea [by RJCC staff] to donate [essential items to people in need they] just pretty much was like, "no, that's not that's not giving back to the community," which indeed it is, but I'm not gonna worry about it. But I just want them to know that [there's] other ways to give back to your community.

By requiring specific criteria for community service, the RJCC may in fact be inadvertently discouraging authentic, grassroots, community engagement. One interviewee suggested that community participation has been hindered by lack of community power in the process:

And I've been invited to too many circles to where they wanted the community to sit in circle, but ultimately, they weren't giving the community the final say on what would happen at the end of the day.

As most RJCC cases do not include an identifiable victim, it can be difficult to find stakeholders who feel harmed by the participant's actions and want to participate in the restoration process. Interviewees also shared, however, that community engagement remains difficult when there is an identifiable person or group harmed. It is important to note that in evaluations of similar RJ processes, victims/survivors often express much higher satisfaction with the process than traditional courts, so the lack of community engagement in RJCCs is especially unfortunate.⁷⁹

⁷⁹ Strang, H., Sherman, L., Mayo-Wilson, E., Woods, D., & Ariel, B. (2013). Restorative Justice Conferencing (RJC) Using Face-to-face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review. *Campbell Systematic Reviews*, 9(1), 1-59. Retrieval at <https://doi.org/10.4073/csr.2013.12>

One court actor shared an example of a recent case where they were unable to get victim participation in the peace circle process:

We do have [a participant] now... who stole [something]... [and] none of the [victim or community] representatives... wanted to participate in the circle, but they did want an apology letter, which they're going to get and reimbursement for the stolen materials.

Interviewees thought there were many opportunities for improvement in engaging the community and provided some suggestions, such as engaging with faith-based organizations to “extol the praises of restorative justice and ask the community to come and support the court and maybe sit in circle” and/or hiring circle keepers that are employed by community organizations, rather than the court, to enhance trust within the court. Our research found that the RJCCs have not been successful about getting the word out to the communities about the programs. All participants we interviewed stated that they heard about the program only after they were arrested. Even in the legal field, the RJCCs are relatively unknown. As one former participant noted:

It was a couple of times when we had... meetings in the courtroom with the judges, where it was other lawyers from other courtrooms that was just coming in to sit in on what was going on because they'd never heard about the program... It was so unfamiliar to them. And I thought that mind-blowing that lawyers around the city or whatever, they didn't know about the program. And it's like, "Y'all are lawyers! If I catch a case and you're my lawyer, and this is an option, this should be the first thing you tell me."

Community engagement is foundational to ensuring that restorative practices used in the RJCCs, such as peace circles, are utilized to genuinely repair harm. Without meaningful participation of community stakeholders within the peace circles and process of developing a ROHA, the ROHAs are not much different than a traditional diversion agreement. The idealized collaborative engagement with the community is an important facet of the RJCCs that has the potential to radically shift power dynamics within court processes, but at this time, the community engagement of the RJCCs is generally lacking. As one community advocate summed up the potential for meaningful community engagement in RJCCs:

I do believe that we can build something and have a

collaboration but I do believe the systems have to respect and honor the community as a partner in this—an equal partner, if not a majority partner.

PROCESSES + ENGAGEMENT

There are several facets of the Restorative Justice Community Court process that contribute to the inherent tensions within the program, such as the prosecutorial referral process, decision-maker buy-in, and issues of power-sharing between stakeholders and the community.

REFERRALS

By nature, the process for the Restorative Justice Community Courts begins when a person who has been accused of a crime enters an arrangement with the criminal legal system. The prosecutor is responsible for screening a case and referring it to a diversion program. According to our interviews, ASAs from the RJCCs are sometimes put in the position to convince judges and other prosecutors to refer a case. It can also lead to late referrals to the RJCC. According to one participant:

I was going to court like on 26th in California about 5, 6, 7 times before they told me that this is what they were going to do. And I was already well in [to the traditional process].

A restorative justice program that relies on referrals from a punitive criminal legal system will inevitably fall short of restorative ideals in order to maintain buy-in from court actors and the public. With a referral system from traditional courts, there is inherent friction between restorative ideals and the very logic of prosecution. Unlike prosecution, restorative justice-based conflict resolution is a response to harm rather than crime; that is, restorative practices should ideally occur if stakeholders have reported a harm and a desire to restore what was lost—not if the state decides that an individual has violated a law.

Since the RJCCs form a deferral program from the traditional court system controlled by state actors, they are another apparatus for the state to control the behaviors and outlooks of the people it prosecutes, disproportionately Black, Brown, and poor Chicagoans.

The result is a restorative justice program in which cases are defined not by community concerns but the paternalistic hand of the criminal legal system, holding young participants under surveillance with the looming threat of incarceration until they have adjusted their lives to fit the court's expectations.

DECISIONMAKER BUY-IN

Though restorative justice-based approaches to conflict resolution should have a primary goal of repairing harm caused to victims, almost no cases heard in the RJCCs involve a direct victim; based on interviews, this seems to reflect what crimes are considered low-hanging fruit for selling restorative justice in a system that presents punishment and incarceration as the only safe and sufficient responses to violence. As the RJCCs depend on ASAs to refer cases, buy-in from such court actors is always a consideration when making decisions about the program and even individual cases; since the public has some sway over these public officials, media coverage also matters. To preserve support from the Circuit Court and the general public at large, the RJCCs deprioritize the needs of primary stakeholders (victims and accused people) and inadvertently draw a distinction between those *worthy* of restorative practices and those *better-suited* for traditional court proceedings and consequences, according to our interviews. In addition, the RJCCs violate the restorative principle that an outcome mutually agreed upon by primary stakeholders should be prioritized over an imposed outcome, because the judges and ASAs sometimes require participants to modify their ROHAs to not appear "too easy" on participants.

POWER SHARING

While restorative justice emphasizes equal power sharing between all involved stakeholders, traditional court is inherently hierarchical. RJCCs do attempt to minimize these hierarchies; the physical courtrooms are set up in a circular or rectangular design, where the judge is level with all other stakeholders versus sitting above, and participants have some autonomy in designing their ROHA. However, these attempts to balance power only go so far. For example, although participants have autonomy in designing their ROHAs, judges retain the discretionary power to require certain components, such as obtaining a GED.

There's one particular aspect in the courts where participants need to sign an agreement that they're participating in RJCC before they even do a ROHA, and there are some stipulations on there. For example... getting a GED in one of the courts is non-negotiable... Is it really RJ [if] it's...you have to do X, Y, and Z without any discussion of or input from circle keeping or restorative justice partners?

Moreover, court actors often refute participant objections to ROHA elements so much so that advocating for oneself at times becomes futile. One participant recalled a court coordinator pushing a doctor's physical and meeting with a mental health professional as elements of their ROHA, which the participant objected to because of time and cost. After advocating for themselves multiple times and the idea being "continuously brought back and voted on," they eventually gave in as a means to "move forward." Meaningful autonomy for participants would not necessitate them to accept elements that are arguably unrelated to repairing harm.

CASES ARE DEFINED NOT BY COMMUNITY CONCERNS BUT THE PATERNALISTIC HAND OF THE CRIMINAL LEGAL SYSTEM, HOLDING YOUNG PARTICIPANTS UNDER SURVEILLANCE WITH THE LOOMING THREAT OF INCARCERATION UNTIL THEY HAVE ADJUSTED THEIR LIVES TO FIT THE COURT'S EXPECTATIONS.

Restorative justice foundationally relies on the belief that an individual that has harmed another must be held accountable for their actions and face consequences to repair the harm done. However, restorative justice also centers values such as power-sharing, trust, and autonomy; the power differentials inherent in a court-related program that retains incarceration as a potential consequence make it extremely difficult to engage in true restorative justice. This thread of the inherent tensions in the development and implementation of RJCCs leave an open question regarding how restorative and community-oriented any program run by a court system can be.

TRANSFORMATIVE CHANGE

Other, more broad tensions that exist between the principles of restorative justice and the objectives of the criminal legal system involve the stated goal of the RJCCs to "to end the harmful cycle of revenge and recidivism."⁸⁰

SYSTEMIC ISSUES

A majority of cases heard by the RJCCs are related to substance use or gun possession, which are largely consequences of a lack of safety in, the over-policing of, and systemic disinvestment from

⁸⁰ *Supra* note 56.

poor Black and Latine communities in Chicago.⁸¹ At least one participant was in the program because they could not afford a concealed carry license (CCL). They explained that they had gotten a firearm owner's identification (FOID) card, "but to get the actual CCL [it was] like 250 or 260 [dollars] or something like that, and I didn't have the funds at the time to get it."

Rather than divest from systems that harm the Chicago neighborhoods in which they reside and reinvest in community organizations, the RJCCs intend to set participants "on the right path" by providing guidance and connecting them to approved resources. The RJCCs emphasize education and work; many participants have to obtain a high school diploma or GED as part of their ROHA, and employment is strongly encouraged. Here, the RJCC diverges from a traditional restorative justice program and takes on aspects of a diversion or work program. It also serves to encourage participation in the workforce as an antidote to crime. This, however, does not address the root causes of illegal gun possession, which, for example, may occur because someone feels unsafe moving about in their community.⁸² One person we interviewed speculated that safety concerns may be the reason that many young Black people, primarily men and boys, in Chicago carry guns; this theory has been supported by research.⁸³ The root causes of these safety concerns are not addressed by RJCCs or the tasks they require participants to complete. In that regard, participants may continue to feel the need to possess a gun even after successfully completing the program. This is why *transformative* justice and *restorative* justice, when fully realized, focus on addressing underlying causes and meeting underlying needs behind harm.

While RJCCs may meet some participant needs, they may not address them enough to truly eliminate the participant's felt need to engage in the criminalized behavior. Restorative justice programs embedded in the criminal legal system inevitably fail

to transform communities and be fully restorative because they, by nature, respond to the consequences of systemic harm under the supervision of the criminal legal system, which often places full blame on the individual and does not aim or claim to address systemic causes of harm. A former RJCC participant explained to us in an interview: "Now I mostly stay in the house. I don't go nowhere besides work... Ain't nothin outside but trouble so I just stay in the house." While the participant acknowledged the benefit provided to them by the RJCC, the program was unable to address the reality that this participant faces living in their neighborhood.

Participants are expected to be remorseful for the alleged harm caused by the crime for which they were arrested. This comes into conflict with the mostly victimless offenses that participants are in court for because sometimes participants fail to see their actions as harmful, or at least harmful in the way the court wants them to see it. One of our court-watchers recounted an interaction between a participant and a judge that showed an obvious disconnect between the court's expectations and the individual's needs:

The conversation felt extremely personal and borderline inappropriate. The participant shared a lot and it felt like the judge was encouraging the sharing of personal details. The participant was in court for gun possession (they had a gun license but not a conceal and carry permit)...The judge asked what the participant felt the pros and cons of gun ownership were [and] the participant shared that they felt gun ownership is important because they live in a dangerous neighborhood [and] the cons were [risks to] safety [of those living with them]. It felt like the judge kept asking for more cons and wasn't totally satisfied with the answers.

This opens a larger consideration about the fact that when people are arrested without necessarily causing harm to a specific person – such as in the case of not having the correct gun ownership

⁸¹ Lakeidra, C. & Hing, G. (2023). The War on Gun Violence Has Failed. And Black Men are Paying the Price. *The Marshall Project*. Retrieved from: <https://www.themarshallproject.org/2023/03/23/gun-violence-possession-police-chicago>; ACLU Illinois. (2022). *Racially Disproportionate Traffic Stops Do Not Make Chicago Neighborhoods Safer*. ACLU Illinois. Retrieved from: <https://www.aclu-il.org/en/news/racially-disproportionate-traffic-stops-do-not-make-chicago-neighborhoods-safer>

⁸² See e.g., National Institute of Justice. (2018). Why Do Some Youth Become Violent and Carry Firearms? Retrieved on from <https://nij.ojp.gov/topics/articles/why-do-some-youth-become-violent-and-carry-firearms>; Center for Justice Innovation. (2023). Why Are Young New Yorkers Carrying Guns? A New Study Uncovers the Reasons. Retrieved from <https://www.innovatingjustice.org/articles/young-gun-carriers-brooklyn>

⁸³ Fontaine, J, La Vigne, N, Leitson, D, Erondu, N., Okeke, C, & Dwivedi, A. (2018). We Carry Guns to Stay Safe: Perspectives on Guns and Gun Violence from Young Adults Living in Chicago's West and South Sides. The Urban Institute. Retrieved on January 19, 2024, from <https://www.urban.org/research/publication/we-carry-guns-stay-safe>

license – it is difficult for the “harm” to be addressed. According to Pavlich (2013):

By implicitly accepting criminal justice designations of crime, and placing the responsibility for harm almost exclusively on offenders, restorative governmentalities join state counterparts in eschewing the possibility that great harms are very often introduced by criminal laws themselves.⁸⁴

In other words, like the traditional criminal court system, restorative justice courts can affirm that *crimes* are synonymous with *harm*, as opposed to recognizing the socioeconomic causes of crime and that the criminal legal system is a purveyor of harm itself. This is especially relevant in the RJCC’s treatment of “victimless” crimes, where harm is nebulous or only to the participant, if anyone. This framing also ignores ways in which the victimization of participants may be a root cause of their criminalized behavior, such as a person carrying a gun after being a victim of gun violence, or a person using substances as a form of self-medication of complex trauma when they lack access to more commonly accepted medical treatment. The logics of the criminal legal system that assume the accused person is fully at fault for their action, and that any illegal action is inherently harmful, permeate the operation of Cook County’s RJCCs, whereas a community-based approach might give more agency to individuals and communities to more critically define harm and victimhood.

NOW I MOSTLY STAY IN THE HOUSE. I DON'T GO NOWHERE BESIDES WORK...AIN'T NOTHIN OUTSIDE BUT TROUBLE SO I JUST STAY IN THE HOUSE.

One proposed alternative is transformative justice. Popularized in abolitionist spaces, transformative justice empowers those most impacted by particular harms to address underlying problems in order to prevent future harm; it approaches harm with a more structural analysis by recognizing the relationship between interpersonal conflicts and systemic injustices. It insists that the undoing of systemic injustices is necessary to address and prevent harm. Although many practitioners and frameworks

of restorative justice acknowledge and encourage the need for healing and restoration at the root cause and systems levels, modern restorative justice programs and initiatives in practice more often advance change with individuals and at interpersonal and sometimes neighborhood levels. This can address some root causes but may miss root causes that can only be addressed by policy and broader scale change. The approach to harm reduction espoused in transformative justice often remains ignored and marginalized by most institutions of law but occurs in certain community spaces.⁸⁵ It is impossible for a restorative justice program to be fully transformative without addressing and working to dismantle the systemic harms that policing, racism, racial capitalism,⁸⁶ and disinvestment have caused communities. Unfortunately, the dismantling of these structures would be antithetical to the longevity and legitimacy of the criminal court system in which the RJCCs exist. Herein lies an obvious conflict.

HARM REDUCTION

RJCCs are limited in their ability to affect transformational change in the communities the participants come from. Because the court is dealing with situations on a case-by-case basis, their focus is on reducing the harm that may be caused by or to that individual. These courts exist to make attempts to divert people away from jail or prison time as well as from the collateral consequences that come from having a felony charge. As one court actor noted: “The participants that walk in are avoiding a felony background; so that is big in and of itself, that they have a second chance.” Felony charges stay with people throughout their lives and present serious barriers to accessing housing, social service programs, employment, education, and more. In this way, the court intervenes to provide an off-ramp for people, provided they abide by the regulations the court sets forth. A participant stated that they didn’t get a felony and were able to keep their job because they participated in the RJCC. These are two extremely important points that make an incredible difference in a person’s life. According to the participant, when asked to explain the purpose of the RJCCs in their own words: “It give[s] people a second chance basically to rewrite the[ir] wrongs, especially if it’s your first time.”

Participants we interviewed for this study were generally grateful for the program, although they had complaints and noted aspects they would like to see changed. Many participants identified that

⁸⁴ *Supra* note 46.

⁸⁵ Kim, M. (2018). From Carceral Feminism to Transformative Justice: Women-Of-Color Feminism and Alternatives to Incarceration. *Journal of Ethnic & Cultural Diversity in Social Work*, 27(3), 219-233. Retrieval at <https://doi.org/10.1080/15313204.2018.1474827>

⁸⁶ Robinson, C. (2005). *Black Marxism: The Making of the Black Radical Tradition*. The University of North Carolina Press: Chapel Hill, NC. ISBN: 0-8078-4829-8.

a benefit of the program is that it allowed them to continue to be eligible for firearm licenses and give them more information about how to legally and responsibly own a firearm:

Doing the research papers and having to do all that research, I learned a lot about the law and the rules of driving and stuff that I didn't know, so like, knowing all that stuff now can definitely help me, like, avoid situations like that.

Other participants stressed that the relationships they built in the court helped encourage and motivate them. For one participant:

They motivated me to get a business together, they motivated me...to plan my next five years, you know what I mean? And those were very positive attributes, they reached out to me in that way.

Although they do not employ harm reduction methodologies in their strictest sense, the RJCCs clearly reduce the harms of the criminal legal system on a participant's life. Harm reduction, often used in the fields of substance use and sex education, is a set of specific policies and practices – generated by public policy or grassroots organizing – implemented to lessen the psychological, physiological, and sociological impacts of harmful human behavior.⁸⁷ The approach recognizes that there are intentional ways to engage with individuals who are unwilling to make a change in behavior that still reduces harm to themselves and the communities they are in.

RJCCs do not necessarily employ policies that are sensitive to a person's willingness or unwillingness to make a change in behavior. The court sets forth specific mandates and in-effect orders participants to engage in them. While the person does sign documents that acknowledge their commitment to the program, their engagement is inherently coercive in that it is based on the choice between either taking their chances in criminal court or being provided a route away from possible incarceration through the RJCCs. The court does not operate along the specific lines of harm reduction methodology, but we acknowledge their work in providing individuals with the opportunity to divert themselves away from lengthy incarceration and, if successful, have their case dismissed. Not having the scarlet letter of a felony conviction allows for greater

access to a host of resources and has the potential to allow that individual to access greater stability in their future.

The court predominantly takes gun possession cases and provides connections for individuals to receive proper gun ownership classes. Unfortunately, the court cannot provide protection for the participants returning to communities where they do not feel safe. The court cannot address historic and contemporary marginalization of communities based on class or race. It also cannot engage in advocating against policing policy that permits racial profiling and directly causes the overrepresentation of Black and Latine people in the criminal legal system, especially for weapon and drug offenses. One participant expressed that after completing the program they plan to legally purchase a firearm because of safety concerns:

I don't care what nobody say, I see it on a regular basis in my neighborhood...where a woman – a Black woman – can get beat up and everybody is just standing there recording on a phone and laughing...I'm not going to be another statistic out here...if it's in my right to go in and get, you know, my firearm and be able to carry it legally? Done. So I'm gonna do it.

RJCCs are still operating within and according to a larger court system that is designed along punitive lines. While infractions are dealt with in a comparatively more compassionate way, continued inclusion in the program is contingent upon adherence to the rules set forth by the court, and so participants are not necessarily free from the legal system's reach. As expressed in the previous section, there is an inherent tension in the court's goal to employ restorative justice through both an accountability and a consequence based lens simultaneously.

ELIGIBILITY EXPANSION

Another important consideration when discussing transformative change is the eligibility of people facing charges considered "violent" for diversion from the traditional court system. The RJCCs are a deferred prosecution program not bound by any state statutes. Therefore, the CCSAO can make changes to the eligibility criteria for the RJCCs via an agreement with key stakeholders, such as the OCJ, public defender, and community representatives. While court actors largely expressed enthusiasm about potential expansion of the RJCCs with regard to charges, geography, age,

⁸⁷ Collins, S., Clifasefi, S., Logan, D., Samples, L., Somers, J., & Marlatt, G. (2012). "Current Status, Historical Highlights, and Basic Principles of Harm Reduction" in Marlatt, G., Larimer, M. & Witkiewitz, K. (Eds.): *Harm Reduction: Pragmatic Strategies for Managing High-Risk Behaviors* (3–35). The Guilford Press: New York City, NY. Retrieval at <https://psycnet.apa.org/record/2012-07985-001>

and history of prior cases, these are often paired with caveats or concerns, or discussed in conflicting ways. Many court actors supported an expansion of charges eligible for the RJCC program, though a few expressed concerns about the capacity and appropriateness of the RJCCs in cases considered “violent.” One court actor advocated for diverting “violent” cases to the RJCCs as soon as possible but noted that buy-in from other system actors would need to be secured beforehand:

I don't have a problem broadening the scope and taking in violent [crimes], but what we need to do first is to go through their process, we need to get the buy-in from the State's Attorney, the Public Defender, social services, the Chief Judge, and the community. And if everybody's on board, I don't see the reason why we can't include violent offenses now.

Not all court actors supported expanding charge eligibility at this time, however. One court actor argued that the RJCCs are not currently equipped to handle cases involving “violent” charges since they are still finding their footing. Some court actors named funding and staffing as potential complications of opening new RJCCs, and one court actor stated that they would like each present RJCC to reach 100 cases before opening new RJCCs. Timing and resources were not the only concerns raised; another court actor suggested that restorative practices would be inappropriate for charges that are considered “violent,” stating:

If...they were like actually acting out violence and hurting someone and like, you know, something really bad happened out of it...I don't think a second chance program would be appropriate...because, you know, they need...the hand to be a little bit heavier, not to say super heavy, but, you know, they need to deal with something a little bit more to help maybe.

This excerpt reflects the conditional form of restorative justice employed by some court actors who regard restorative practices as appropriate responses to crime only if the harm is minimal and fits into their definition of worthiness. Thus, differences in how court actors conceptualize and implement restorative justice guide some conflicting opinions on how expansion should occur. Nonetheless, court actors generally support broadening the geographic scope of the RJCCs within Chicago, but some noted

potential complications of this change. One court actor has advocated for introducing the RJCCs to every Chicago neighborhood:

I'm looking right now for all of the 77 neighborhoods...[in] Chicago. Let's get [in] every neighborhood in Chicago and show the world...how successful restorative justice courts can be.

Multiple court actors emphasized the importance of maintaining the presence of community in the RJCCs as they expand geographically. Another dimension a few court actors mentioned for expansion was the age range. One community advocate said:

I don't think there's anything magical about that age... Apparently, we stopped developing our brains at 26 years old, can't make new decisions.

While the age range of 18-to-26 years is intended to encompass adults whose brains are still developing, multiple court actors expressed that the RJCCs would likely find success with people outside of this range. While some participants in the RJCCs have fallen outside of the designated age range, the vast majority of participant's ages fall within it. Research has found that restorative justice practices can be effective for all ages,⁸⁸ even older adults. One former participant reflected:

I made it so close to the deadline that it could have played out totally differently...I kind of feel like the cut off age should be a little higher...they made this great program, but they say it's only until the age of 26...If I'm older than 26, why should I be penalized or not eligible for the program? I stayed out of trouble all this time and it's my first case, and you telling me...I'm not eligible? Just because I'm a year older?

Other court actors proposed expanding eligibility to people with prior felony convictions, explaining that they would support including people with a past felony conviction in the RJCCs, especially if it was gun-related:

Now they are a convicted felon. They're legally never allowed to own a gun again in Illinois. So what do you do if you still...live in that area? You're 18, still living in this area where people are, are dying next to you—you can't just up

⁸⁸ Beck, E., Lewinson, T. & Kropf, N. P. (2015). Restorative Justice with Older Adults: Mediating Trauma and Conflict in Later Life. *Traumatology*, 21(3), 219. Retrieval at <https://psycnet.apa.org/record/2015-26623-001>

and move, so you need to protect yourself. Now you're carrying a gun as a felon. Now [if you get arrested], you have a class three [felony charge, but] we don't take those cases. In my mind, that's a very easy next logical step.

We recognize the tremendous benefits of preventing carceral outcomes for a broader range of Chicago

RECOMMENDATIONS

The following recommendations are based on best practices research, the findings we have detailed above, and general restorative and transformative justice principles. These recommendations also include the input of community restorative justice practitioners who Chicago Appleseed Center for Fair Courts staff met with to discuss their perspectives of our findings on November 1, November 4, and November 7, 2023. We also conducted three additional interviews with former Restorative Justice Community Court participants during the week of November 13, 2023. The following sections with short- and long-term recommendations reflect their feedback.

SHORT TERM

- 1. The Circuit Court of Cook County should immediately implement a community oversight model and pause any future development of additional RJCCs until that has been achieved.**

By nature, name, and location, the RJCCs are *community courts*. A *community court* necessitates not only community involvement but also community oversight. In addition, restorative justice is meant to be a community-based approach.⁸⁹ However, court observations and interviews revealed that there was very little community engagement with the RJCCs. Some interviewees recalled when the North Lawndale RJCC was overseen by a "community board," this oversight body was

residents accused of crime, but we also foresee potential negative consequences of expanding the RJCCs at this time. There is a great amount of harm prevented by helping people avoid the adversarial and retributive traditional court system. Yet, we see considerable drawbacks with the RJCCs as they exist now that should be addressed before expansion is considered.

dissolved after conflicts with the Presiding Judge at the time. More community oversight by residents who practice restorative justice in and belong to the communities from which many RJCC participants hail might result in collaboration that leads to creative solutions that address the deeply entrenched, systemic problems that cause harm and violence in Chicago communities. At minimum, it would allow the RJCC to closer align with its stated purpose to empower "the community to create solutions to repair the harm caused by crime and conflict."⁹⁰

We posit that absolute community oversight of the RJCCs is necessary for the court to be both a restorative justice court and a community court. Without community oversight, these are simply neighborhood-based courts that implement some restorative practices. Community oversight will help rectify the power dynamics that currently favor court actors over participants or community members, as was observed by our court-watchers who noted that judges and ASAs have undue influence over the repair of harm agreements. By nature, community representatives should oversee all aspects of restorative justice and should be present during all aspects of these court processes; court actors should primarily oversee administrative case resolution matters. The role of the court should be to "affirm the community's authority"⁹¹ and not assert their own authority. Community members must have power over the processes and functions of the RJCC. All court actor roles, except for circle keepers, should be largely administrative. For example, as opposed to the Assistant State's Attorney operating as quality

⁸⁹ Rosenblatt, F. F. (2015). Community Involvement in Restorative Justice: Lessons From an English and Welsh Case Study on Youth Offender Panels. *International Journal of Restorative Justice*, 2(3), 280-301. Retrieved on January 19, 2024, from <https://doi.org/10.5235/20504721.2.3.280>; Pranis, K. (2007). "Communities and the Justice System: Turning the Relationship Upside Down" in Restorative Justice On-Line Notebook. Office of Justice Program National Criminal Justice Reference Service. Retrieved on January 19, 2024, from <https://www.ojp.gov/pdffiles1/nij/242196.pdf>

⁹⁰ *Supra* note 62.

⁹¹ *Supra* note 19.

control over the ROHA's and participant engagement, the community should fill that role. In addition, the community should have discretion over who is removed from the program. The lack of community presence in the Restorative Justice Community Courts is of deep concern not only because it is antithetical to true restorative justice practice, but also because it allows court actors to operate unchecked. While our research shows that, generally, court actors want the best outcomes for participants in the program, conflicts remain. For instance, we note certain conflicts with what court actors think is best for participants and what community members (who are more likely to share the positionalities and values of participants) actually feel is necessary.

We also note instances of "othering," stereotyping, and saviorism in certain perspectives communicated by court actors, which in practice, could be potentially harmful to participants' and communities' outcomes. In its current organizational structure, the court lacks community accountability, and yet court actors hold a significant amount of discretion. Until a community oversight model can be established, no new RJCCs should be created. In order to improve the court's relationship with the community, we recommend that court actors make space for community members to build relationships with participants after court and plan quarterly community engagement events that are accessible to people who work typical 9:00 AM to 5:00 PM hours.

2. The Restorative Justice Community Courts should prioritize transparency, accountability, and openness around their operations, service providers, staff, funding, and outcomes in order to effectively implement restorative justice principles.

We found that the RJCCs – just like all other aspects of the court system – are extremely opaque. Despite the community-based nature of these courts, it was not readily apparent when court calls took place or where the courts were located; our researchers were made to contact the court system directly to access this information. This basic information should be readily available to community members who are absolutely essential to any restorative justice process; likewise, all courts (except juvenile court) are statutorily open to the public, so the lack of public

information access runs counter to that principle. The courts should also provide more transparency on the service providers involved in the RJCCs, the resources provided to participants, and all staff qualifications. Ideally, each RJCC should have a web page with information about the courtroom, when and where it is held, which staff work there, staff training and standards, what processes are employed in the court, and what service providers it partners with. Requirements for participation should also be listed, since there is not consistency across each court (i.e. the Avondale court uniquely requires a GED). This information would likely be helpful to have publicly available for prospective participants who want to learn more about RJCCs as a potential option for them in a pending case. In addition to publishing data about these courts online, we recommend that, in order to promote transparency, the courts plan community-based events to invite community members into their space to engage with court actors. This could be a space to discuss court processes, outcomes, and potential areas for improvement with community members.

3. The Office of the Chief Judge of the Circuit Court of Cook County should ensure that all Restorative Justice Community Court practitioners (judges, court staff, service providers, and others) receive ongoing, rigorous, community-led restorative justice training.

All court actors in the RJCCs must not only have an in-depth understanding of restorative justice practices, but also be comfortable practicing restorative justice. Our findings show that court actors had varying degrees of understanding and embodiment of restorative practices and we observed some instances of behaviors not in line with restorative justice. Even court actors who are employed by other organizations but work in the court should participate in these training sessions to prevent disparate and/or non-restorative treatment of participants. The goal of these trainings should not only be to provide participants with a restorative experience but to cultivate a culture of restorative justice⁹² within the RJCCs. Training sessions should explore the power dynamics brought about by court actors' roles, socioeconomic, racial, and gender identities; and relationship to settler-colonialism.⁹³ Furthermore, restorative justice training should be based in trauma-informed, healing-centered, and – to the extent possible – anti-oppressive

⁹² Hopkins, B. (2015). From Restorative Justice to Restorative Culture. *Social Work Review/Revista De Asistenta Sociala*, 14(4). Retrieved on January 19, 2024, from https://www.iirp.edu/images/pdf/DOPHTU_From_Restorative_Justice_to_Restorative_Culture.pdf

⁹³ *Supra* note 44.

frameworks with an understanding of long-term transformative justice goals.

4. We recommend that the RJCCs take steps to increase participant autonomy, reduce the amount of time the court process takes, and provide more scheduling flexibility.

We found that generally, the RJCCs do not adhere to restorative justice best practices that promote participant agency and choice.⁹⁴ Lack of agency and respect for participants' choices came up in interviews in regard to court call scheduling, delayed court calls, and court call efficiency. Participants, who often work full time or have family obligations, struggle to attend RJCC court calls and the time taken out of their day can have a negative impact on their employment or other responsibilities. Participants should be able to select which dates they come to court in advance to be able to better manage their schedules and avoid conflicts at work. Delayed court start times were observed at all three RJCCs because of "staffing" going longer than expected. This led to participants waiting an indeterminate amount of time for court to start. We recommend that the court practice better time-management, starting "staffing" earlier to provide a buffer to the beginning of court calls. RJCC judges should focus court calls on programming needs and case management rather than on relationship building. Our research shows that the court calls that were focused on case management were most efficient and appear to be most effective. We recognize that relationship building is a critical part of restorative justice; however, this relationship building should be between participants and their community and therefore is best conducted by circle keepers, case managers, and community members as opposed to other court actors. Furthermore, this kind of relationship building should take place outside of regular court calls out of respect for all participants' time. While court actors, like judges and prosecutors, should certainly be respectful and friendly to participants, court calls are not the appropriate time for relationship building.

5. The Office of the Chief Judge should create a task force to evaluate the courts, gain participant feedback, and oversee changes to the court.

The taskforce should be composed of restorative justice experts and community members, in addition to professionals who have

experience with the RJCCs. RJCC court actors should make up no more than 25% of the task force to make space for community voice. The members should be selected with input from the community, perhaps by using a nomination process. It may be useful for there to be a larger task force and subcommittees dedicated to each individual court since no two courts are exactly the same. The task force and subcommittees should evaluate the courts and determine what current strengths are and what changes need to be made in order to advance the mission of the courts and make them more restorative. In addition, it should consider changing the RJCC model to align with other models of restorative justice within the criminal legal system (see *Recommendation #8*). Finally, the court task force should establish a mechanism to receive feedback from participants and staff about their experience with the program on a regular and on-going basis moving forward. To achieve the goal of transparency in our second recommendation, the results of the feedback should be published and publicly discussed with the community, along with ideas about how to implement feedback in a productive way.

LONG TERM

6. We recommend that the Office of the Cook County State's Attorney create an internal rule to ensure that all accused people eligible for the RJCCs are given the automatic opportunity to participate.

We recommend that the Cook County State's Attorney's Office take steps to limit the discretion prosecutors have in allowing people to participate in the Restorative Justice Community Courts. Because some court actors may not "buy-in" to the RJCC model, these limitations are important to ensure individuals' biases do not influence this process in ways that hurt some prospective participants' chances of engagement in the RJCCs. Ideally, any and all people who meet the eligibility criteria to participate in the RJCCs should be automatically deemed eligible, informed of this option by their lawyer, and given adequate opportunity to decide if they would like to participate in the RJCCs or continue their case in the traditional criminal court system. Instead of requiring accused people to *opt in* to RJCCs, they should be given the option to *opt out* and return to the traditional criminal legal process. By limiting prosecutors' discretion, individual or professional biases that may affect

⁹⁴ *Supra* note 10.

eligibility would also be limited.

We recommend that the Cook County State's Attorney's Office create an internal rule to ensure that all eligible accused people are given the automatic opportunity to participate. This rule will help clarify to all court stakeholders the presumption that anyone who meets eligibility standards will have the opportunity to participate. It is important that this eligibility criteria be developed and agreed to by a larger constituency of stakeholders that includes community members and other court actors, such as defense attorneys, in order to honor the community-oriented goals of RJCCs. This could potentially be a responsibility taken on by the task force we recommended that the Chief Judge create to evaluate and improve the courts (see *Recommendation #5*). We recognize that automatic eligibility may increase the number of participants in the program. Therefore, we recommend that the court consider implementing a community committee that can oversee who is admitted into the RJCCs and suggest community-based alternatives to prosecution.

7. Circuit Court of Cook County stakeholders should work together to expand the RJCCs' purview to include charges where there may be a clear victim, including those that are labeled "violent."

Currently, the RJCCs currently only accept nonviolent, first time offenses. Because the RJCCs are a deferred prosecution program not bound by any state statutes, the CCSAO can make changes to the eligibility criteria for the RJCCs via an agreement with other key stakeholders, such as the OCJ, public defender, and community representatives. As discussed in this report, the majority of participants in the RJCCs were referred for gun and drug possession crimes. Within the criminal legal system, restorative justice models are uniquely positioned to address instances where harm has been done to another person or persons, yet our research shows that the RJCCs model are inappropriately unavailable to people accused of such crimes.

We do not doubt that restorative justice and community-based practices can have an incredible impact on a person's life in many instances, but low-level possession charges should be diverted out of the criminal legal system altogether. People accused of gun possession crimes, for example, might be better served by a program, unrelated to the criminal legal system, that teaches them about gun safety and possession laws in Illinois and helps participants access legal gun ownership while avoiding a felony conviction. The RJCCs, however, commit participants to a lengthy process that requires them to complete time-consuming tasks

that are not always related to the allegations they face. While some of these activities, such as working on one's business or education, can be beneficial, individuals should not have to be involuntarily involved in a court-related program with a risk of incarceration to access these supports. This reflects a larger issue with the RJCCs that is ripe for consideration: In many instances it seems the RJCCs are overseeing cases that would be better off dismissed from traditional prosecution at the outset and referred to community-based supportive programs. When low-level offenses where there is no alleged harm to another person make up the majority of the cases in a program like the RJCCs, that may be a sign that the courts are currently expanding or risk expanding the number of people entangled, even if indirectly, in the criminal legal system. Connection to the traditional punitive legal system regularly causes significant harm to people, especially members of marginalized communities, and should be substituted for less punitive and more supportive alternatives whenever possible.

Charges considered "violent" and property crimes are well-suited to a restorative justice model within the court system because there is a clear, identifiable victim. Several U.S. counties and states already allow restorative justice for such crimes. Eligibility criteria should be developed and agreed to by a larger constituency of stakeholders that includes community members and other court actors, such as defense attorneys, in order to honor the community-oriented goals of RJCCs. If stakeholders agree to make more offenses labeled as "violent" eligible for the RJCC, the transition to including such offenses should be made at a measured pace so as to ensure that there is proper expertise on staff to support these participants. As court staff pointed out during our research, RJCCs would need increased resources and supportive services in order to be able to support participants with more and different needs, but the healing that can come from taking on more restorative responses to harm that happens in communities would be well worth the investment.

8. The Circuit Court of Cook County should work with the Cook County Board of Commissioners and other decision makers to explore outsourcing some of the work of the Restorative Justice Community Courts to community-based and grassroots organizations, given the conflicts that arise when integrating restorative justice into the criminal legal system.

Cook County should explore creating a pre-plea restorative justice program that refers participants to a community-based

organization to manage the restorative justice process with court oversight. This program should then be evaluated by outside researchers who can determine if it is successful and then it should be scaled up. Throughout this report, we have repeatedly underscored how restorative justice has fundamental tensions with the criminal legal system generally; true transformational justice would prioritize a restorative approach that is unable to result in retributive, punitive sanctions. However, the courts themselves are not able to actualize this given the legal framework they are bound to.

Many restorative justice programs in the U.S. use a community-based model: For example, Alameda County Restorative Community counseling is a pre-plea community-based program with high victim satisfaction rates.⁹⁵ Likewise in Denver, the District Attorney's Office partners with The Conflict Center to offer pre-plea restorative justice programming that is open to the majority of cases.⁹⁶ Finally, Vermont has decentralized community justice centers that hold volunteer-led restorative justice circles in lieu of prosecution after a referral from law enforcement or prosecutors.⁹⁷ While participation in the

program usually happens before or instead of any conviction, the centers also have some people involved during or after their incarceration. Restorative justice can and should be used for any allegation or offense where the primary stakeholders (i.e., victim and person who caused harm) are willing. To the extent possible, we recommend that the Circuit Court of Cook County partner with the Justice Advisory Council of the Cook County Board President's Office, legislators, and other related decision makers to assess if the community justice center model⁹⁸ (outside of the legal system) may be an achievable goal for Chicago and Cook County communities. We recognize that there are statutory and practical limitations to implementing this model, but believe it is a worthwhile goal. A community-based restorative justice program in Cook County should maintain the use of wrap-around services, like a case manager, to help participants access resources they self-determine they need or want. Community-based programs allow community members to have control over programming and prevent the paradoxes presented herein that result from attempting to align restorative justice within the criminal legal system.

CONCLUSION

With the Office of the Chief Judge having recently announced details for the development of a fourth RJCC in the south suburbs,⁹⁹ it is increasingly important to critically examine the current state of the RJCCs. Our findings show that the RJCCs most certainly are a less harmful system than traditional courts: They provide participants with flexibility and grace and stakeholders appear more willing to treat participants as human beings. During our research, we were provided numerous examples of participants whose lives moved in a positive direction after

completing their participation in an RJCC. This evidence is promising and we hope for continued collaboration with the Office of the Chief Judge to undertake a more robust and data-heavy evaluation of these courts in the future.

However, these courts and the people who administer them also display some characteristics and practices that prevent them from being fully restorative, which puts participants at risk for similar challenges to those posed by involvement in the

⁹⁵ Restorative Community Conferencing: A Study of Community Works West's Restorative Justice Youth Diversion Program in Alameda County. Retrieved from: https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf

⁹⁶ District Attorney State of Colorado Denver & The Conflict Center. (2022). Restorative Denver Third Annual Report. Retrieved from: <https://conflictcenter.org/wp-content/uploads/2023/08/RD-3rd-Annual-Report.pdf>

⁹⁷ Vermont Center for Justice Research (2014). Vermont Community Justice Center Reparative Panel Programs: Outcome Evaluation Final Report. Retrieved from: https://doc.vermont.gov/sites/correct/files/documents/Restorative_Justice/CJC/vermont_cjc_outcome_eval_5-6-14c.pdf

⁹⁸ Vermont General Assembly. Title 24: Municipal And County Government, Chapter 58: Community Justice Centers Retrieved from: <https://legislature.vermont.gov/statutes/fullchapter/24/058>

⁹⁹ Circuit Court of Cook County (2023). "Restorative Justice Community Courts Get Housing Program, and New Suburban Branch is Announced" [Press release from November 2, 2023]. Retrieved on January 19, 2024, from <https://www.cookcountycourt.org/MEDIA/View-Press-Release/ArticleId/3037/Restorative-Justice-Community-Courts-get-housing-program-and-new-suburban-branch-is-announced>

traditional criminal legal system and limits the ability for victims of harm to receive appropriate justice. In some instances, the RJCC courts take on characteristics of a traditional work, diversion, or community service program instead of truly empowering participants to repair the harm they caused. The RJCCs employ methods of surveillance and the threat of punishment to directly and indirectly coerce participants into changing aspects of their personal lives, which denies communities true and meaningful autonomy in deciding what is both feasible and necessary to repair harm. We found that most power in the RJCCs rests in judges and prosecutors rather than the community. In practice, this leads to a minimal role of community members, punitive responses to non-preferred behavior by participants, and mandatory ROHA elements that do not contribute to repairing harm. Because so few cases heard in the RJCCs respond to harm caused to an identifiable victim,

prioritization of community engagement and victims' autonomy are especially important.

In this report, we identify how these aspects of the RJCCs are largely symptomatic of the tension between the criminal legal system and community-based, restorative approaches to justice. We present short-term and long-term recommendations designed to explore possible ways to diminish the role of the criminal legal system and its actors in the restorative justice process and empower communities to decide how best to prevent and repair harm. Our research validates the findings of community restorative justice practitioners that, when utilized in the criminal legal system, its full potential is greatly diminished. Nonetheless, there is real harm reduction happening in the RJCCs and we hope that our recommendations can bring the RJCCs closer to accountability.

APPENDICES

APPENDIX 1:

Examples of and references to courts based on restorative principles that have been established in the United States.

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APPENDIX 3:

Snapshots of neighborhoods where Restorative Justice Community Courts are located.

AVONDALE NEIGHBORHOOD SNAPSHOT

The Avondale neighborhood on Chicago's Northwest Side. In 2020, the average life expectancy of an Avondale resident was higher than Chicago residents generally, at 80.5 years compared to 75.4, and the neighborhood's unemployment rate is about half as high as the average of the city as a whole (5% compared to 10%).¹⁰⁰ While 33.2% of all Chicago residents report that "violence occurs in their neighborhood 'every day' or 'at least every week,'" only about 19.6% of Avondale residents feel that way.¹⁰¹ Avondale¹⁰² has a very small population of Black residents (2.3%) and a higher population of Latine residents (51.8%) compared to Chicago's averages¹⁰³ of 28.8% and 28.7% respectively; the White population in Avondale accounts for about 37% of residents, which is just slightly higher than the city's average of 33.1%. Avondale has a higher percentage of both foreign-born residents (26%) and residents with limited English-speaking proficiency (12%) than the city of Chicago generally, at 21% and 8%, respectively.¹⁰⁴

ENGLEWOOD NEIGHBORHOOD SNAPSHOT

Englewood is a primarily Black neighborhood located on Chicago's South Side. According to Chicago Metropolitan Agency for Planning (CMAP) data, 91.4% of the population of Englewood is Black,¹⁰⁵ which is over three times higher than Chicago's total Black population, which is 28.8%.¹⁰⁶ Englewood has extremely small Latine (4.4%) and White (1.4%) populations compared to Chicago's averages of 28.7% and 33.1%, respectively, and very low percentages of both foreign-born residents (3.46%) and residents with limited English-speaking proficiency (0.53%) compared the city of Chicago (at 21% and 8%).¹⁰⁷ In 2020, the average life expectancy of an Englewood resident was just 68 years—over 7 years *less* than Chicago residents generally; the neighborhood's unemployment rate was over double the average rate of the city as a whole (24.7% compared to 10%); and over three-quarters (75.2%) of Englewood residents reported that "violence occurs in their neighborhood 'every day' or 'at least every week,'" compared to about one-third (33.2%) of Chicago residents overall.¹⁰⁸

NORTH LAWDALE NEIGHBORHOOD SNAPSHOT

North Lawndale¹⁰⁹ is a neighborhood on the West Side of Chicago with a larger Black population (80.2%) and smaller Latine (12.8%) and White (5%) populations compared to the city's averages of 28.8%, 28.7%, and 33.1%,¹¹⁰ respectively. Similar to Englewood, North Lawndale has very low percentages of both foreign-born residents (4.96%) and residents with limited English-speaking proficiency (1.62%) compared to the city of Chicago at-large (at 21% and 8%).¹¹¹ In 2020, the average life expectancy of a North Lawndale resident was just 67 years, compared to 75.4 for Chicago residents generally, and the neighborhood's unemployment rate (17.9%) was higher than Chicago's average of 10%.¹¹² Over half (57.4%) of North Lawndale residents reported that "violence occurs in their neighborhood 'every day' or 'at least every week,'" compared to about one-third (33.2%) of Chicago residents overall.¹¹³

¹⁰⁰ "Avondale." (n.d.). Chicago Health Atlas from Chicago Department of Public Health, PHAME Center at UIC, Metopio, & Otho S.A. Sprague Memorial Institute. Retrieved on October 10, 2023, from <https://chicagohealthatlas.org/neighborhood/1714000-21?place=avondale>

¹⁰¹ *Id.*

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¹⁰⁴ *Supra* note 103.

¹⁰⁵ *Supra* note 65.

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¹¹² *Id.*

¹¹³ *Id.*

APPENDIX 4:

Recidivism analysis provided by the Office of the Chief Judge of the Circuit Court of Cook County and received by Chicago Appleseed Center for Fair Courts on July 24, 2023.

APPENDIX 4 (1/12)

The Restorative Justice Community Courts (RJCC) are the first courts of their kind in Cook County to adopt peace circles as the resolution process for criminal cases for emerging adults. The RJCCs partner with community service providers to provide wrap-around services to participants (and also, where needed, to victims). Upon successful completion of all RJCC requirements, the case against RJCC participants will be dismissed. Currently there are RJCCs in the North Lawndale, Englewood, and Avondale communities.

The Supporting Employment and Education Development (SEED) program, operating out of the Leighton Criminal Courthouse, is a county-wide deferred prosecution program. The program was designed to target individuals charged with either manufacturing and delivery of a controlled substance or possession with intent to deliver a controlled substance. Program participants receive employment services, educational opportunities, cognitive behavioral interventions, and other evidenced-based support services delivered by Heartland Human Care Services.

Key findings for each program are below.

Restorative Justice Community Courts

- A total of 218 individuals were admitted to RJCC programming between 2020 and 2022.
- The majority (84%) of the 218 individuals were admitted to RJCC on a weapons possession charge.
- As of March 31, 2023, 94 (43.1%) of the RJCC participants had had their charges dropped or dismissed, six (2.8%) had been found guilty, and 118 cases (54.1%) were still pending.
- Among those who have been in the community for at least one year after release, 13.1% of RJCC participants were charged with a new offense versus 65.2% of a matched control group. One defendant in RJCC was charged with a violent offense versus seven defendants in the matched control group, including one charged with murder.
- Among the 94 RJCC participants with charges dismissed, 10.6% (10 of 94) had new charges filed after graduation and before March 31, 2023, including five charged with felony weapons possession, two with misdemeanor battery, two with drug possession, and one with resisting an officer.

SEED Program

- 181 participants were admitted to the SEED program between January 2021 and February 2023.
- A majority of SEED participants were male (88.4%), Black (69.6%), and were charged with felony manufacturing/delivering cannabis offense (56.4%).
- There have been 60 (33.1%) successful graduates from SEED with charges dismissed, and 39 (21.6%) unsuccessful terminations, while 82 individuals (45.3%) were pending admission or actively engaged in programming on February 28, 2023.
- Overall, 39 of the 181 SEED participants (21.5%) had a new charge by February 2023.¹

¹ Recidivism rates calculated for the SEED court are not directly comparable to the RJCC rates reported here, which were calculated over a standard one-year observation period. However, we can conclude that the recidivism rate among SEED participants is higher than RJCC participants. This aligns with the

general pattern of higher recidivism among drug defendants than among weapons possession defendants.

I. Restorative Justice Community Courts

This analysis presents case outcomes and one-year recidivism rates among all Restorative Justice Community Court (RJCC) participants admitted to programming between 2020 and 2022 versus a matched control group. The matched control group included cases drawn from ZIP codes in the Chicago community areas of Austin, Chatham, and Humboldt Park, which are similar demographically to North Lawndale, Englewood, and Avondale, respectively, but do not yet have RJCCs.

Characteristics of RJCC Participants

Two hundred eighteen unduplicated RJCC participants released from January 1, 2020 through December 31, 2022 were included in the analysis. The sample included 90 North Lawndale participants, 41 Avondale participants, and 87 Englewood participants.

Demographic and case characteristics of RJCC participants are shown in **Table 1**. The majority of Lawndale and Englewood participants were Black, whereas the majority of Avondale participants were Hispanic/Latino. More than 90% were males. Most defendants were between 18-23 years old at the time of case filing.² The majority of defendants were charged with Class 4 felonies as the top charge, and more than 80% of Englewood and Lawndale RJCC participants were charged with weapons possession. In Avondale, 71% of the participants were charged with weapons possession and 19% with drug possession.

² Six defendants had birthdates in the Clerk's system indicating that they were older than 26 (range 27-31).

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Table 1. Demographic and Charge Characteristics: RJCC Participants January 2020-December 2022

Demographics and Charge Characteristics		North Lawndale n=90		Avondale n= 41		Englewood n=87		Total RJCCs n=218	
		No.	Percent	No.	Percent	No.	Percent	No.	Percent
Race/ Ethnicity	Black	79	88%	12	29%	84	97%	175	80%
	Hispanic	11	12%	27	66%	2	2%	40	18%
	White	0	--	2	5%	1	1%	3	1%
Gender	Male	83	92%	37	90%	83	95%	203	93%
	Female	7	8%	4	10%	4	5%	15	7%
Age at case filing	18	15	17%	4	10%	13	15%	32	15%
	19	18	20%	6	15%	10	11%	34	16%
	20	10	11%	5	12%	7	8%	22	10%
	21	13	14%	8	20%	10	11%	31	14%
	22	14	16%	1	2%	12	14%	27	12%
	23	11	12%	7	17%	9	10%	27	12%
	24	3	3%	1	2%	6	7%	10	5%
	25	5	6%	4	10%	7	8%	16	7%
	26	0	--	2	5%	8	9%	10	5%
	Over 26	1	1%	3	7%	5	6%	9	4%
Top Charge Class	Class X	1	1%	0	--	0	--	1	<1%
	Class 1	2	2%	3	7%	1	1%	6	3%
	Class 2	4	4%	2	5%	3	3%	9	4%
	Class 3	1	1%	2	5%	2	2%	5	2%
	Class 4	81	90%	34	83%	76	87%	191	88%
	Misdemeanor	1	1%	0	--	5	6%	6	3%
Top Charge Category	Battery	0	--	1	2%	1	1%	2	1%
	Armed Violence	1	1%	0	0%	0	--	1	--
	Agg UUW - Possession	75	83%	29	71%	73	84%	177	81%
	UUW - Possession	4	4%	0	--	2	2%	6	3%
	Other Weapon Offenses	0	--	0	--	1	1%	1	<1%
	Burglary	1	1%	3	7%	0	--	4	2%
	Motor Vehicle Theft	2	2%	0	--	2	2%	4	2%
	Retail Theft	1	1%	0	--	0	--	1	<1%
	Crim. Damage/Trespass	0	--	0	--	2	2%	2	1%
	Drug Distribution	2	2%	3	7%	3	3%	8	4%
	Drug Possession	4	4%	5	12%	2	2%	11	5%
	Motor Vehicle Offenses	0	--	0	--	1	1%	1	<1%

Case Processing – RJCC Participants

OCJ’s Research and Evaluation Unit used the SPSS function “Case Control Matching” to randomly select 211 emerging adults with cases filed in the Circuit Court of Cook County between January 2020 and December 2022 who matched the Restorative Justice Court participants on demographic and case characteristics.³ The matched control group would have been eligible for RJCC placement based on age, no prior violent conviction per the Public Safety Assessment, and no violent or person top charge on their current case. One matched control group case was randomly selected and matched on race, age (within 3 years), gender, top charge category (Drug, Person, Property, or Other charge), release date (2020 vs 2021 vs 2022), and top charge class (Class 4 vs. higher felony class) for each RJCC participant. The sample was drawn from ZIP codes in the RJCC communities as well as the community areas of Austin, Chatham, and Humboldt Park. These communities are similar demographically to North Lawndale, Englewood, and Avondale, respectively, but do not have RJCCs. **See Appendix Table 1** for demographics and case characteristics for the matched control group. The distribution of race and gender is identical in the matched control group, and the distribution of category of the top charges is similar. At 22.4 years, the average age of the matched control group is older than average age of the RJCC group (21.4 years).

Table 2 presents case status for the RJCC vs. matched control group defendants as of March 31, 2023. As can be seen in the table, 41.7% of the defendants in the matched control group were found guilty, whereas only six RJCC participants (2.8%) have been found guilty of the charges in the case for which they were referred to the RJCC. However, more than half of RJCC cases were still pending on March 31, 2023. In addition, among disposed cases, cases in RJCCs took 73% longer to resolve than cases in the matched control group (mean 429 days vs. 247 days). It should be noted that RJCC cases remain pending while the participant completes the Repair of Harm Agreement.

Table 2. Case Status on March 31, 2023:
RJCC Participants vs. Matched Control Group

Case Status as of 3/31/2023	RJCC Participants		Control group	
	Number	Percent	Number	Percent
Dismissed/Dropped	94	43.1%	51	24.2%
Not Guilty	0	--	7	3.3%
Guilty	6	2.8%	88	41.7%
Deceased	0	0.0%	1	0.5%
Pending on 3/31/2023	118	54.1%	64	30.3%
Total	218	100.0%	211	100.0%
Average time to disposition, disposed cases	429 days (n =100)		247 days (n = 148)	

New Criminal Activity – RJCC Participants

For this analysis the OCJ Research and Evaluation Unit used the most recent new criminal activity data generated for the Model Bond Court Dashboard, which runs through the first calendar quarter of March 2023, and matched it to the RJCC and matched control groups in order to measure new charges filed. Only the first new arrest/case filing was included in this analysis.

³ Seven control cases were determined to be RJCC participants (a non-RJCC case for these participants was randomly selected by the program for the matching group), and were omitted from analysis.

APPENDIX 4 (6/12)

Figure 1 shows the one-year recidivism rates among all Restorative Justice Community Court (RJCC) participants admitted to programming between 2020 and 2022 and a matched control group of individuals who have been in the community for at least one year after release (137 in the RJCC group and 135 individuals in the control group). As shown, the proportion of individuals in the matched control group charged with a new offense is more than three times that of the RJCC participants (65.2% vs 13.1%).

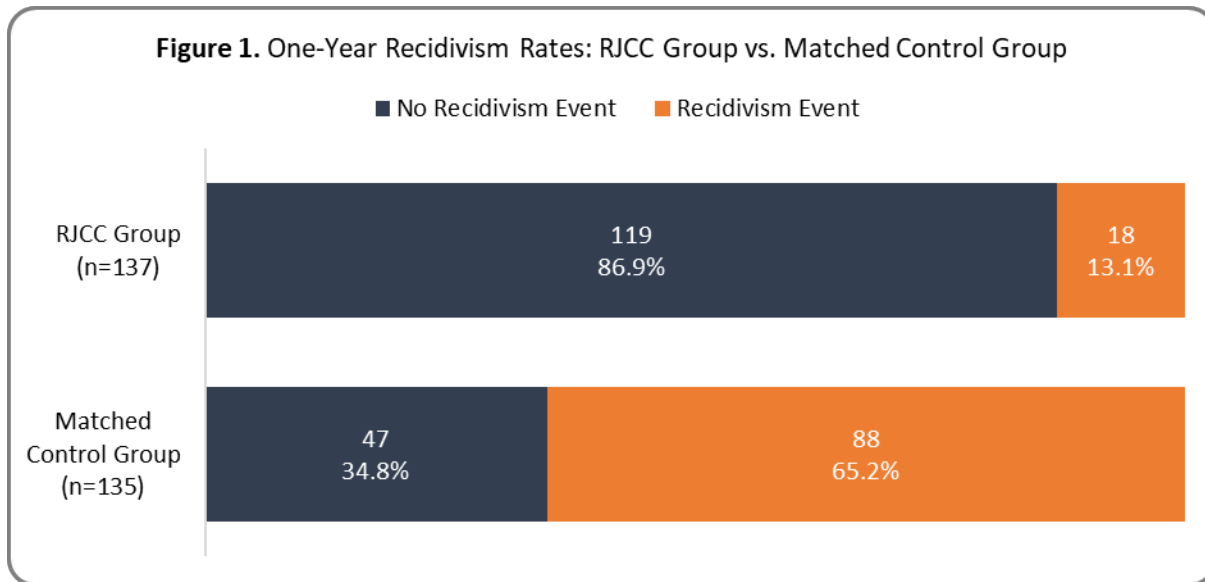


Table 3 provides detail on new criminal activity among RJCC participants and the matched comparison group.

- The most common new charges among RJCC participants were felony aggravated weapons possession (three cases), possession of a controlled substance (two cases) and misdemeanor battery (three cases). Seven individuals in the matched control group had violent new charges, including one charged with murder or attempted murder, versus one participant in the RJCCs.⁴
- Among the 94 RJCC participants with cases filed between 2020 and 2022 who had their charges dismissed, the electronic docket reflects that 10 (10.6%) had new charges after graduation and before March 31, 2023. These included five charged with felony weapons possession, two charged with misdemeanor battery, two charged with drug possession, and one charged with resisting an officer.⁵

⁴ This individual was arrested for criminal sexual assault one month after admission to the RJCC.

⁵ About three quarters of graduates have been in the community after graduation for less than one year.

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**Table 3. Rate of New Criminal Activity (NCA) Within One Year of Release by Top Charge:
RJCC Group vs. Matched Control Group**

Rate of New Criminal Activity by Top Charge of New Offense		RJCC Group		Control Group	
		Count	Percent	Count	Percent
No New Criminal Activity		119	86.9%	47	34.8%
New Violent Felony Filing	Murder	0	--	1	0.7%
	Agg Battery	0	--	1	0.7%
	Agg Assault	0	--	1	0.7%
	Agg Criminal Sexual Assault	1	0.7%	0	--
	Agg Robbery	0	--	3	2.2%
	Robbery	0	--	1	0.7%
New Felony Filing	Discharge of Firearm	0	--	2	1.5%
	Armed Violence	0	--	2	1.5%
	Armed Habitual Criminal	0	--	2	1.5%
	Agg UUW – Possession	3	2.2%	23	17.0%
	UUW – Possession	0	--	3	2.2%
	Other Weapon Offenses	1	0.7%	1	0.7%
	Burglary	0	--	1	0.7%
	Motor Vehicle Theft	1	0.7%	2	1.5%
	Drug Delivery	3	0.7%	5	3.7%
	PCS	2	1.5%	6	4.4%
	Other Offenses	0	--	5	3.7%
New Misdemeanor Filing	Battery	3	2.2%	14	10.4%
	Assault	1	0.7%	1	0.7%
	UUW – Possession	1	0.7%	0	--
	Other Weapon Offenses	1	0.7%	1	0.7%
	Theft	0	--	1	0.7%
	Retail Theft	0	--	2	1.5%
	Criminal Damage & Trespass to Prop	0	--	3	2.2%
	Drug Delivery	0	--	1	0.7%
	PCS	2	1.5%	1	0.7%
	Sex Offenses	0	--	1	0.7%
Other Offenses	1	0.7%	4	3.0%	
Total		137	100.0%	135	100.0%

APPENDIX 4 (8/12)

II. Supporting Employment and Educational Development (SEED) Program

Characteristics of SEED Participants

Table 4 shows the demographic and case characteristics of SEED participants. Unlike the majority of RJCC participants, the SEED participants were charged with drug offenses.

Table 4. Demographic Characteristics of Individuals Who Enrolled in SEED Program from January 1, 2021 through February 1, 2023

Demographic Characteristics	Number	Percent	
Gender	Male	160	88.4%
	Female	21	11.6%
Race	Black	126	69.6%
	White	39	21.5%
	Asian	4	2.2%
	Hawaiian/Pacific Islander	1	0.6%
	Other	11	6.1%
Ethnicity	Hispanic-Latino	40	22.1%
	Non-Hispanic/Latino	141	77.9%
Age Group	18-20	27	14.9%
	21-23	52	28.7%
	24-26	44	24.3%
	27-29	43	23.8%
	30+	15	8.3%
Charge Type	MFG/DEL Cannabis	102	56.4%
	MFG/DEL Other Controlled Substance	50	27.6%
	Other Amt. Narc. Schedule I & II	29	16.0%
Total	181		

Case Processing - SEED Participants

As shown in **Table 5**, of the 181 individuals who had agreed to participate in SEED between January 2021 and February 2023, 45.3% were still active, 33.1% had successfully graduated, and 21.5% were unsuccessfully discharged from the program (includes 4 participants who died during the program).

Table 5. Case Status on February 28, 2023: SEED Court		
Case Status as of 2/28/2023	Number	Percent
Pending on 2/28/2023	82	45.3%
Terminations		
• Discharged Before Beginning Orientation	16	
• Discharged During Orientation Phase	6	
• Discharged During 12-Month Programming	13	
• Deceased	4	
Total Terminations	39	21.6%
Completions		
• Graduated	60	33.1%
Total	181	100.0%

New Criminal Activity – SEED Participants

Table 6 shows new criminal activity among SEED Court participants through February 2023. Overall, 39 of the 181 participants (21.5%) had a new charge. It should be noted that these rates are not directly comparable to the RJCC rates which were calculated over a standard one-year observation time frame. However, it is apparent that there are more new charges among SEED participants than among RJCC participants overall. This finding aligns with the observation that new criminal activity among those charged with drug offenses is higher than among those with weapons possession offenses.

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Table 6. New Criminal Activity of SEED Participants

New Criminal Activity	NCA Count	Participants	Percent of Participants
Pending Start of Orientation			
• AGG UUW - Possession	1		
Total Pending Participants with New Charges	1	38	2.6%
Active Participants			
• MFG/DEL Cannabis	6		
• PCS	1		
• Battery - Cause Bodily Harm	1		
• MFG/DEL Heroin	1		
• Delivery of a Controlled Substance	1		
• Soliciting Unlawful Business	1		
Total Active Participants with New Charges	11	44	25.0%
Terminations			
• AGG UUW	4		
• MFG/DEL Cannabis	3		
• Domestic Battery	3		
• Armed Habitual Criminal	2		
• Other Amt. Narc. Schedule I & II	2		
• Aggravated Battery	1		
• Vehicular Hijacking	1		
• Receive/Poss./Sell Stolen Vehicle	1		
• Retail Theft	1		
• PCS	1		
• Criminal Damage to Property	1		
Total Terminations with New Charges	20	39	51.3%
Completions – Graduates			
• MFG/DEL Cannabis	4		
• Aggravated Assault	1		
• Poss. Title/Registration Not Authorized	1		
• UUW- Poss. Firearm W/O Valid FOID Card	1		
• Total Graduates with New Charges	7	60	11.7%

Conclusions and Limitations

Early program outcomes suggest that RJCCs are making an impact at reducing new criminal activity among young people involved in the criminal justice system when compared to similar defendants who undergo standard criminal case processing. The current analysis is particularly robust in that the control group comes from similar communities as the RJCC participants, which controls to some extent for environmental and neighborhood factors. Only six RJCC participants in this cohort have been convicted of the original felony charge and 94 have had their charges dismissed, avoiding the adverse consequences of a felony conviction on one's record. Less than one in five participants were arrested on any new charge within one year of release versus two thirds of the comparison group. Only one participant in the RJCCs has been charged with a new serious violent crime after release, versus seven in the control group.

APPENDIX 4 (11/12)

An analysis of SEED Court recidivism showed a somewhat higher overall rate of new criminal activity; 21.5% of SEED court participants had new charges vs 13.1% of RJCC participants. As noted above, although their ages are similar, the populations enrolled into these two courts are different, in that the SEED court admits only drug manufacturing/distribution cases whereas the majority of RJCC participants have been charged with weapons possession. However, we can conclude that the rate of new charges among SEED participants is higher than among RJCC participants. This aligns with the general pattern of greater recidivism among drug defendants than among weapons possession defendants. In addition, the analysis of RJCCs shows that RJCC participation may have prevented violent crime, suggesting that the RJCCs are a good investment from a societal point of view.

There are several limitations to this analysis. The analysis is limited by the short time frame, which does not permit an evaluation of the outcomes of the new charges. We observe only whether a new charge is filed and not whether the defendant was found guilty. Only the first new charge since release is reported here. Finally, in the case of the RJCC analysis, although the matching process creates between-group equivalence on age, race, gender, and other important factors, there may be other important unmeasured factors that influence RJCC referral, admission, and successful program participation. These potential unmeasured confounders are reason for some caution when understanding the effects of RJCC participation on reducing new criminal activity when compared to the control group.

APPENDIX 4 (12/12)

Appendix: Demographic and Case Characteristics of Matched Comparison Sample

Appendix Table A. Demographic and Case Characteristics of Matched Comparison Sample (n = 211)			
Demographic Characteristics		Number	Percent
Race	Black	169	80.1%
	Hispanic	39	18.5%
	White	3	1.4%
Gender	Male	197	93.4%
	Female	14	6.6%
Age	18	24	11.4%
	19	15	7.1%
	20	29	13.7%
	21	20	9.5%
	22	29	13.7%
	23	19	9.0%
	24	17	8.1%
	25	21	10.0%
	26	10	4.7%
	27	12	5.7%
	28	7	3.3%
	29	8	3.8%
Top Charge Characteristics		Number	Percent
Charge class	Class X	1	0.5%
	Class 1	2	0.9%
	Class 2	12	5.7%
	Class 3	5	2.4%
	Class 4	186	88.2%
	Class A	3	1.4%
	Class B	1	0.5%
	Class C	1	0.5%
Charge Category	Person	2	0.9%
	Weapon	179	84.8%
	Property	11	5.2%
	Drug	18	8.5%
	Other	1	0.5%



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