

**Proposal 17-07**  
**Creates Supreme Court Rule**  
**Offered by the Illinois Judicial Conference Juvenile Justice Committee**

**Rule \_\_\_\_\_.**

1. Where a restorative justice practice is convened, neither the fact that it has been convened, nor anything said or done with the practice is admissible in any court or tribunal, unless this privilege is waived, in court or in writing, by the party or parties about whom the information concerns or is subject to the exemptions below. Any waiver is limited to the participation and communication of that party only, and the participation or communications of any other participants remains confidential and privileged unless waived by the other parties. Further, this information is not subject to discovery or disclosure in any judicial or extra-judicial proceedings.

(a) Evidence that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because it was discussed or used in a restorative justice practice.

(b) The legitimacy of the restorative justice practice, if challenged, shall be determined by the discretion of the judge in any civil, juvenile, criminal or administrative proceeding. Such hearings may consider information that would otherwise be privileged, to the extent that the information is probative of the issue.

2. No party to a restorative justice practice shall reveal information relating to the practice unless the party or parties about whom the information relates waives this privilege in court or in writing, or the disclosure is permitted by paragraph (a).

(a) Nothing with respect to this privilege shall preclude a party to a restorative justice practice from revealing information:

(1) If that person reasonably believes it is necessary to prevent death or great bodily harm, or

(2) To comply with other law, or

(3) To report on a restorative justice practice session taking place in order to comply with a court related program; this report shall be limited to the fact that a practice has taken place, an opinion as to the success of the practice and if further proceedings are to follow. The specific communications elicited in the practice shall not be reported to the court unless waived by the appropriate parties; or

(4) To comply with a court order following a hearing that considers the following factors:

(A) The ease of obtaining the information through other methods;

(B) The need for the information; and

(C) The interest in protecting the privacy of restorative justice practices.

(b) A party may reveal information relating to the practice to the extent that person reasonably believes necessary to prevent a participant from committing a crime in circumstances other than those specified in section 2(a)(1).

(c) Any party to a restorative justice practice who, by reason of their employment or profession, is legally required to report information shall not be relieved of that duty based on this privilege.

3. Section 1 shall also apply to any information received by a party in preparation for a restorative justice practice, or received afterwards in follow-up proceedings.

#### Committee Comments

A Restorative Justice Practice brings together parties who have caused harm, parties who have been harmed, and/or community stakeholders. The parties come together in order to identify harm, repair harm to the extent possible, address trauma, reduce the likelihood of further harm, and/or strengthen community ties by focusing on the needs and obligations of all parties involved through a participatory process. This can lead to transformation of people, relationships and communities. It is employed by groups and courts worldwide and often takes the form of peace circles, peer counseling, peer juries and restorative justice conferencing. The worldwide use of restorative justice practices is not limited to criminal and juvenile courts; they are employed in all manner of civil courts, educational and community settings. However, for a restorative justice practice to be effective, all parties must be assured that both their participation in the practice, and anything communicated during the practice is strictly confidential, and will not be used against them in any future court proceedings without their informed consent. The purpose of this rule (statute) therefore, is to encourage the use of restorative justice practices by providing a privilege for such participation, which can be waived only by informed consent by the party or parties about whom the participation or communication concerns. This privilege applies to all parties involved in the proceeding. There are noted exceptions. These exceptions are based in current law and practice regarding other legal privileges. This privilege mirrors the privilege extended to participation in other relationships, such as lawyer/client, doctor/patient and participation in mediation and alcohol or drug counseling programs.

The question arises about when a practice is legitimately considered a restorative justice practice. Common forms of restorative justice practices include, but are not limited to peace circles, peer juries and restorative justice conferences. They are commonly held in connection to court cases, schools, places of worship and community centers. Currently, no accreditation or certification exists for restorative justice practitioners, although various groups or people are recognized as being trained, or recognized as trainers. Therefore, this committee leaves it to the courts, as the arbiters of legal issues, to decide if a particular practice was, in fact, a

legitimate restorative justice practice, if a person's participation is being challenged in court.

Proceedings in court are presumed to be open and recorded. If, during the course of an inquiry, revelations concerning the participation or communication of any person not waiving the privilege becomes necessary, a party may request an *in camera* proceeding. The purpose of an *in camera* inquiry is to protect any participants who are not waiving their privilege. It is within the judge's discretion whether or not to proceed *in camera*.

This committee recognizes that certain people, by law, are considered to be mandatory reporters. This requires them to report any information as it relates to paragraph 2(a). Other privilege language, as in the attorney-client privilege, creates a duty to report. Ordinarily, these mandatory reporters are required to report due to the nature of their employment or profession. Most of the participants in restorative justice practices do not fall into this category; they are parties to a court action, students, or members of the community. While respecting the need for mandatory reporters (as included in paragraph 2(c)), this committee does not believe that it is appropriate to create a new, broad class of mandatory reporters. Therefore, the participants in a restorative justice practice who are not otherwise required to report the situations in paragraph 2(a) are allowed to do so, but are not required to do so.

Paragraph 3 is included in the privilege based on the common practice of restorative justice practitioners to interview and prepare peace circle (or other restorative justice practice) participants prior to a peace circle taking place. It is also common for the participants to engage in follow-up activities, as deemed appropriate by the participants. Common examples are referrals to community based services, community service, and no contact agreements. These activities and communications likewise need to be protected and confidential, even though they are taking place outside of the actual restorative justice practice.