

Arizona Restorative Justice Coalition
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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

Petition to Amend Rule 17.4 and
Rule 38 of the Arizona Rules of
Criminal Procedure

Arizona Supreme Court No. R-24-0016

**Arizona Restorative Justice
Coalition's Reply**

Pursuant to Rule 28(e)(5) of the Rules of the Arizona Supreme Court, the Arizona Restorative Justice Coalition (“AZRJC”) respectfully submits this Reply in support of its Petition to Amend Rules 17.4 and Rule 38 of the Arizona Rules of Criminal Procedure to Incorporate Limited Restorative Justice Principles. The petition process has established broad support for restorative justice in Arizona. AZRJC hopes that, at a minimum, more collective inquiry and consideration of how restorative justice may be implemented is the result.

I. Victims, justice stakeholders, and other members of the public support restorative justice.

It is evident that victims and members of the public support restorative justice. AZRJC's petition has been viewed more times and generated more comments than any other criminal rules petition during this year's cycle. And it has generated more comments from non-lawyer members of the public than criminal rule-change petitions customarily generate.

Of the 16 comments filed, 7 were filed by non-lawyers. 13 of the 16 comments supported, at a minimum, more discussion on restorative justice. Notably, the Attorney General's Office, the State Bar of Arizona, the American Civil Liberties Union Foundation of Arizona, Arizona Attorneys for Criminal Justice, and Directors of the Maricopa County Indigent Defense Agencies all support the creation of a Restorative Justice Task Force.

And since this Petition was filed, new data presented at the March 08, 2024 meeting of the Commission on Victims in Courts establishes that victims in Arizona want to participate in restorative justice practices such as those proposed by this Petition. A comprehensive study conducted by researchers with the T. Denny Sanford School of Social and Family Dynamics at Arizona State University concluded that victims desire "restoration and repair" rather than just financial restitution. *See* Leslie Paik, Brittany Romanello, & Aaron Thompson, *Victim Experiences with Restitution and Compensation* at 3, Arizona State University

(2024) (available in the “meeting packet” for the March 08, 2024 COVIC meeting at <https://www.azcourts.gov/cscommittees/Commission-on-Victims-in-the-Courts/COVIC-Meeting-Information>).

This study concluded that victims in Arizona experience “dissatisfaction and disappointment [] due to unmet expectations related the case outcome and their pursuit of restitution and compensation. That is, they viewed the court as a place where they would find justice or some type of closure.” *Id.* Among multiple recommendations for improving communication and enforcement of victims’ rights, the study concluded that many victims supported alternatives to financial restitution characterized as “emotional restitution.” *Id.* at 29-34. Numerous victims expressed a desire to be heard by the accused about the impact of the harm, hear a remorseful apology from the offender, and want accountability of the wrongdoer as a consequence of the harm as opposed to strictly punitive measures. *Id.*

The findings of the study presented to the Commission on Victims in the Courts are consistent with other surveys establishing that restorative justice polices are widely supported and that people desire to engage in them. For example, polling carried out by Ipsos Mori on behalf of the Restorative Justice Council (RJC) has found overwhelming support for the principles of restorative justice (RJ) from members of the public, particularly those who have been victims of crime themselves.” *See* “Overwhelming support for restorative justice among the public.”

Restorative Justice Council (available at <https://restorativejustice.org.uk/sites/default/files/resources/files/Ipsos%20MORI%202014%20summary.pdf>). (last accessed May 25, 2024). The poll established that 75% of respondents agreed that “Victims of crime should have the right, if they want to, to meet the offender and tell them the impact of the crime,” while only 15% disagreed. *Id.* at 1. This number jumps to 84% among victims of crime. *Id.* And the polling data established that those who oppose restorative justice policies exhibit a poor understanding of the concepts and practices. *Id.* More education, awareness, and understanding of the efficacy of restorative justice will lead to more support. *Id.*

The data before this Court supports, at a minimum, further study of restorative justice. Concerns about the constitutionality of restorative conflict resolutions procedures proposed within the petition are overstated.

II. This Court has the constitutional authority to adopt restorative justice conferencing procedures.

This Court has the constitutional authority “to make rules relative to all procedural matters in any court.” Ariz. Const. art. 6, § 5 (5). The proposal outlined in the petition is procedural is merely “prescribes the practice, method, procedure or legal machinery by which the substantive law is enforced or made effective.” *State v. Birmingham*, 96 Ariz. 109, 110 (1964).

Contrary to claims raised by the Maricopa County Attorney and the Arizona Prosecuting Attorneys Advisory Council, the proposal does not displace the sentencing code established by the Legislature. Nor does it deprive prosecutors of the authority to prosecute a case or decide whether a case should be subject resolved via plea agreement, diversion, or deferred prosecution. *Compare* MCAO Comment at ep 5-7; APAAC Comment at 1-2 *with State v. Prentiss*, 163 Ariz. 81 (1989) (delineating the roles of the executive, legislative, and judicial branches in criminal cases to account for discretion of the executive branch in the manner by which cases are charged and sentencing outcomes are sought.).

Under the proposal, the case prosecutor *is required agree to the restorative agreement before* it could proceed via plea agreement or deferred prosecution. Proposed Rule 17.4(a)(3)(vii). Thus, the same constitutional principles authorizing the use of plea agreements and deferred prosecution would apply to AZRJC's proposal. *See State ex rel. Polk v. Hancock*, 237 Ariz. 125, 129, ¶ 13 (2015) (recognizing that “the state and a defendant ‘may negotiate concerning, and reach an agreement on, any aspect of the case,’ except as limited by public policy or the law.”).

The Attorney General raises a concern about the exclusion of prosecutors from the victim-offender conference. AG Comment at 2. But the proposal does not currently require their exclusion. Victims could choose to select the prosecutor to

participate. Proposed Rule 17.4(a)(3)(ii). And AZRJC is not opposed to amendments requiring the inclusion of both the prosecutor and defense counsel.

But, ultimately, assertions that court procedures designed to promote a victim's constitutional right to be heard and treated with fairness, dignity and respect through the implementation of restorative victim-offender conferences do not run afoul of the Arizona Constitution.

III. The Arizona Restorative Justice Coalition appreciates the thoughtful consideration of this Petition and urges more collective action.

AZRJC appreciates that prosecutors take seriously their duties to protect the public and ensure public safety beyond advocating for victims in particular cases. And AZRJC appreciates the time and energy already invested by MCAO, APAAC, the AG, and others in considering how restorative justice may be implemented in Arizona.

Although AZRJC is working to expand its stakeholder coalition and aspires to be inclusive of all voices impacted by Arizona's criminal justice system, it also recognizes that the deliberative process that generated the Petition fell short of those goals. To that end, AZRJC concedes that a restorative justice process should be the product of procedures that are reflective of the philosophies that they promote.

Accordingly, AZRJC extends a sincere invitation to all stakeholders interested in improving our societal response to harm to attend, participate, and engage our

coalition with the goal of developing restorative justice practices that may be implemented by community members any place where harm occurs.

At the March 08, 2024 meeting of the Commission on Victims in the Courts, members of the Commission informally advised AZRJC to continue working on the proposal to improve it. AZRJC will follow this advice and hopes other stakeholders, including those who participated in this process, join AZRJC in such efforts.

But the leadership of this Court is warranted.

Restorative justice is part of this Court's strategic plan. *See* Chief Justice Robert Brutinel, Justice for the Future: Planning for Excellence at Restorative Justice at 9 (2019) (available at <https://www.azcourts.gov/Portals/0/Communications/JusticeForTheFuture.pdf?ver=2019-06-28-165330-887>).This Petition has established support for restorative justice in Arizona.

AZRJC, along with the Arizona Attorney General, the State Bar of Arizona, the American Civil Liberties Union Foundation of Arizona, Arizona Attorneys for Criminal Justice, and Directors of the Maricopa County Indigent Defense Agencies all support the creation of a Restorative Justice Task Force. Therefore, if this Court does not adopt a version of the restorative justice procedures outlined in this Petition, AZRJC urges this Court to form a Restorative Justice Task Force for the purposes

of studying and proposing restorative justice practices that may be implemented by Arizona's courts.

Respectfully submitted May 28th, 2024

Arizona Restorative Justice Coalition

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