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**State of Michigan**

**Local Administrative  
Order**

**Washtenaw County  
Trial Court**

**Restorative Justice Criminal Diversion  
Program**

C22 2022-05

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Effective Date: October 27, 2022

**IT IS ORDERED:**

The purpose of this order is to establish a Restorative Justice Diversion Program in the criminal division of the Washtenaw County Trial Court. This order is intended to encourage the use of restorative justice practices by providing a privilege for participation in such practices and ensuring that anything said or done during the practice, or in anticipation of or as a follow-up to the practice, is privileged and may not be used in any future proceeding unless the privilege is waived by the informed consent of the party or parties covered by the privilege. The Washtenaw County Trial Court affords this privilege in recognition of restorative justice as a powerful tool in addressing the needs of victims, offenders, and the larger community in the process of repairing the fabric of community peace. The Court encourages residents of this County to employ restorative justice practices, not only in justiciable matters, but in all aspects of life and law.

1. Definitions as used in this Section:

- a. "Circle" means a versatile restorative practice that can be used proactively, to develop relationships and build community, or reactively, to respond to wrongdoing, conflicts, and problems.
- b. "Conference" means a structured meeting between offenders, victims, and both parties' family and friends, in which they deal with the consequences of a crime or wrongdoing and decide how best to repair the harm.
- c. "Deflection" means that a criminal case is sent to the Restorative Justice Program before the case has been formally charged by the Prosecutor's Office.
- d. "Diversion" means that a criminal case is sent to the Restorative Justice Program after the case has been formally charged by the Prosecutor's Office. In diversion cases, the Defendant will already have a defense attorney and Judge associated with the case.
- e. "Facilitator" means a person who is trained to facilitate a restorative justice practice.
- f. "Party" means a person, including a facilitator, an individual who has caused harm, a individual who has been harmed, a community member, and any other participant, who voluntarily consents to participate with others who have agreed to participate in a restorative justice practice.
- g. "Proceeding" means any legal action including but not limited to civil, criminal, juvenile, or administrative hearings.

- h. “Restorative Justice Practice” or “Practice” means a gathering, such as a conference or circle, in which parties who have caused harm or who have been harmed and community stakeholders collectively gather to identify and repair harm, and, to the extent possible, address trauma, reduce the likelihood of further harm, and strengthen community ties by focusing on the needs and obligations of all parties involved through a participatory process.
2. Criminal cases may be diverted to the Restorative Justice Program after a case is formally charged by the Prosecutor’s Office.
  3. When a case is diverted to the Restorative Justice Program, a pretrial should be held to officially divert the case.
  4. At the pretrial, the following should occur:
    - a. The APA, Defense Counsel, and Defendant should sign the attached Memorandum of Understanding for participation in the RJ program.
    - b. The Court must advise the defendant of the following and determine that the defendant understands:
      - i. The nature of the pending charges;
      - ii. The maximum possible sentence for each offense, including, if applicable, whether the law permits or requires consecutive sentences, and any mandatory minimum sentence required by law;
      - iii. The defendant’s participation in the Restorative Justice Program is voluntary;
      - iv. The defendant has the right to terminate the restorative process in order to deny guilt, and that the defendant may opt for a formal trial process at which the prosecutor would have to prove beyond a reasonable doubt that the defendant is guilty;
      - v. The defendant understands that this program may take up to 18 months; and
      - vi. The defendant is waiving any speedy trial right in exchange for his participation in the program.
    - c. The Assistant Prosecutor should place on the record that the victim (where applicable) has been consulted and affirmatively wants to participate in the Restorative Justice Program.
    - d. If the Defendant successfully completes the Restorative Justice Program, the victim may choose to provide a Victim Impact Statement at the close of the case before charges are dismissed by the prosecutor.
    - e. The Court should set another pretrial for approximately three months to follow up on the status of the case; the Court may enter a stay of the matter pending resolution.
  5. Privilege:
    - a. Anything said or done during or in preparation for a restorative justice practice or as a follow-up to that practice 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.
- b. Privileged information is not subject to discovery or disclosure in any judicial or extrajudicial proceedings.
  - c. Any waiver of privilege is limited to the participation and communication of the waiving party only, and the participation or communications of any other participant remain privileged unless waived by the other participant.
  - d. 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.
  - e. All memoranda, work note or products, or cases files of agencies, organizations, and individuals facilitating restorative justice practices are confidential and privileged and are not discoverable nor subject to disclosure in any civil, criminal, or juvenile judicial or administrative proceeding.
6. The privilege afforded by this order does not apply if:
- a. Disclosure is necessary to prevent death, great bodily harm, or the commission of a crime;
  - b. Necessary to comply with another law; or
  - c. A court, tribunal, or administrative body requires a report on the restorative justice practice, but such report shall be limited to the fact that a practice has taken place, an opinion regarding the success of the practice, and whether further restorative justice practices are expected.
7. Restorative Justice Reports: If a court, tribunal, or administrative body requires a report on a restorative justice practice the report shall be limited to the fact that a practice has taken place, an opinion regarding the success of the practice, and whether further restorative justice practices are expected.
8. This order applies to all restorative justice practices that are convened on or after the effective date of the order.

Date: 10/14/2022



\_\_\_\_\_  
Hon. Carol Kuhnke  
Chief Judge, Washtenaw County Trial Court

Memorandum of Understanding Regarding Participation in the Restorative Justice Program

The Defendant, \_\_\_\_\_, and the Washtenaw County Prosecutor’s Office (WCPO) enter into this agreement to divert the Defendant’s case to the Dispute Resolution Center.

This memorandum of understanding serves to start the Restorative Justice Process through the Dispute Resolution Center. Both parties understand that no one can force the parties to reach an agreement. If an agreement cannot be reached between the parties, or if either party fails to follow through with the restorative justice sessions, the DRC staff can suggest other options for resolving the dispute including referring the case back over for prosecution.

This program is designed to restore the community and the relationship between the parties involved.

As such, the WCPO commits to the following:

- Nothing in this document will be used against the Defendant during a criminal jury trial relating to the offense that brings Defendant here today.
- Nothing Defendant says during the course of the restorative justice programming will be used against them during a criminal jury trial relating to the offense that brings Defendant here today, consistent with Local Administrative Order \_\_\_\_\_.
- If the Defendant successfully completes this program and does not engage in any additional criminal activity for a period of 18 months, the WCPO will dismiss the Defendant’s case.

\_\_\_\_\_  
Assistant Prosecuting Attorney

\_\_\_\_\_  
Date

As such, the Defendant understands the following:

- I understand that my participation in the restorative justice process is voluntary, and that a significant part of this process requires taking accountability for my actions.
- I am willing to participate because I am willing to acknowledge the harm that I have caused.
- I understand that I retain the right to terminate the restorative process in order to deny guilt, and that I could opt for a formal process at which guilt would necessarily have to be proven.
- I understand that this program may take up to 18 months and that if I commit new criminal activity during the course of this program, I may no longer be able to participate in this program.
- I waive any speedy trial right in exchange for my participation in this program.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant’s attorney

\_\_\_\_\_  
Date