



Nishnawbe-Aski Legal Services Corporation



Restorative Justice Department Pre-Charge Program

2022 NISHNAWBE-ASKI LEGAL SERVICES & NISHNAWBE ASKI POLICE AGM SYMPOSIUM

This year has been filled with highs and lows as we begin returning to some semblance of normal with the pandemic slowly taking a back seat while we return to regular programming.

One of our greatest highs this year is having the opportunity of getting a working protocol with Nishnawbe-Aski Police Services signed by its Chief of Police Roland Morrison and our Executive Director Irene Linklater at our annual NAPS & NALSC Symposium.

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NISHNAWBE-ASKI LEGAL SERVICES CORPORATION INTRODUCTION



On March 1, 1990, Nishnawbe-Aski Legal Services Corporation was created to address the shortcomings in the administration of justice within Nishnawbe Aski Nation (NAN); and to improve access to justice for members of NAN.

Since 1990, NALSC has grown steadily and worked hard to develop a professional image, and to hire qualified staff to carry out the corporation's mandate.

Innovative and creative programs have made NALSC a leader, and at times – an example, in alternatives to justice options. NALSC has met with success in these areas.

MANDATE

To promote creative community-based justice systems and to deliver on a wide range of law-related services including legal, para-legal, public legal education, and law reform services to members of Nishnawbe-Aski Nation.

MISSION:

To deliver the programs and services in a culturally appropriate manner sensitive to the unique values, customs and traditions of NAN communities.

OUR VALUES & PRINCIPLES

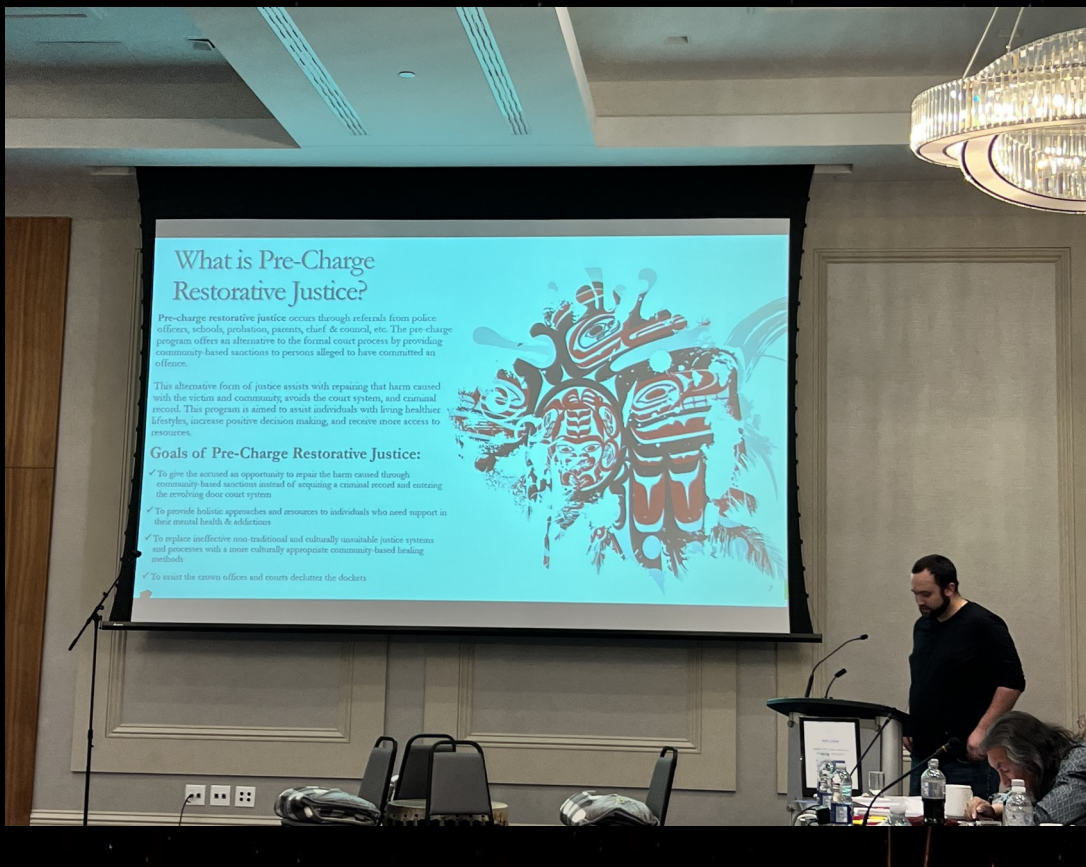
Unity, Self Governance, and
Sustainability
Respect and Dignity
Integrity and Honesty
Sharing and Partnership
Humility
Courage
Compassion and Caring
Wisdom
Truth



The crime committed by the offender can cause a ripple effect of harm from the victim to their families, and into the community.

In a larger sense, the social fabric that binds communities is damaged when crime happens as well. Offenders may feel deep remorse, but not have the opportunity to make amends to the victim, or to make positive changes in their lives.

In restorative Justice the aim is to involve victims, offenders, and the community in a meaningful, proactive approach that attempts to create value and learning.



A crime is a violation against one or more persons by another, rather than as an offence against the crown.

In the westernized justice system, an offender is seen as having committed an offence against the crown. In restorative justice, the crime is viewed primarily as a violation against the victim and a community.

As a result, restorative justice involves the people linked to the incident – the offender, victim, and members of the community – and works towards a holistic healing approach to deal with how the offender will repair the harm caused by their crime.

WHAT IS PRE-CHARGE RESTORATIVE JUSTICE?

The pre-charge restorative justice program is modelled after the post-charge program. The principles of restorative justice are based on respect, compassion and inclusivity. Restorative justice encourages meaningful engagement and accountability and provides an opportunity for healing, reparation and reintegration.

Pre-charge restorative justice means that diversion methods are used **BEFORE** criminal charges are laid. The process starts with a traditional circle, lead by a Pre-Charge Restorative Justice Worker (PCRJW). While attending the circle it is the goal to reach an agreement. Within this agreement, the offender agrees to take a course of action to repair harms caused by him/her to the victim. It is a up to the offender to put in the effort and dedication needed to uphold the agreement. If the offender is successful in meeting the conditions set by the circle, then the matter is closed. If the conditions are not successful, the matter is referred to the referring party for potential charges stemming from the offence(s) committed.

Restorative justice gives opportunity for the offenders to hear how their crime harmed the victim, and a safe place to talk about what happened. It is within the healing circle that the offender becomes responsible for making amends to the victim and the community. This can be presented in requirements such as: community service, traditional healing, hunting, and gathering, letters of apology, enrollment in specific programming etc.



“It is important NOT to have strict policies on which cases can be referred to the

Pre-Charge

Restorative Justice Program.

Each case and all its

circumstances should be thoroughly reviewed to

determine eligibility”

WHO CAN REFER?

Referrals can come from anywhere

Court & Crown Attorneys

Police Officers

Probation Officers

Peace Keepers

By-Law Officers

Chief and Council

Principals & Teachers

Community Resource Workers

WHAT IS PRE-CHARGE RESTORATIVE JUSTICE?

It is important not to have strict policies on which cases can be referred to the pre-charge restorative justice program. Each case and all its circumstances should be thoroughly reviewed to determine eligibility.

Restorative justice is defined as an alternative form of justice that focuses on addressing the harm caused by crime while holding the offender responsible for their actions. In our pre-charge program, we also include cultural healing and traditional resources. A healing circle is done in this process, and provides an opportunity for the parties directly affected by the crime – victims, offenders and community members – to identify and address their needs to repair the harm caused by the crime.

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Pre-charge restorative justice means that diversion methods are used before criminal charges are laid. The process starts with a traditional circle, lead by a restorative justice facilitator. While attending the circle it is the goal to reach an agreement. Within this agreement, the offender agrees to take a course of action to repair harms caused by him/her to the victim. It is a up to the offender to put in the effort and dedication needed to uphold the agreement. If the offender is successful in meeting the conditions set by the circle, then the matter is closed. If the conditions are not met the matter is referred back to the referring party for potential charges stemming from the offence(s) committed.

Restorative justices are being used for civil matters, neighborhood disturbances (i.e. Barking dogs, loud music), workplace disputes and harassment. In schools, restorative justice circles are being used for serious discipline problems like bullying, truancy and harassment. For criminal matters, restorative justice circles are most commonly used as a pre-charge diversion at the referring party's discretion. This process has been used for both youth and adults for all types of cases...here are just a few examples of charges referred:

- Theft
- Assault
- Break and Enter
- Breaches
- Bullying
- Covid 19 Infractions
- Mischief
- Trespass to Property
- Public Intoxication
- Impaired Driving
- Fail to Comply
- Disturbances
- Disputes
- Repetitive Warnings

Pre-Charge~Restorative Justice



How does it work?

Through Nishnawbe-Aski Legal Services proven Restorative Justice model, Community Youth Justice Workers (CYJWs) will receive youth diversions from the courts, police and probation officers in the communities that they serve.

Once diverted, the CYJWs will begin to plan for a justice circle to take place where the youth will be afforded the opportunity to fully understand their behavior and how it has affected those around them in a manner that is traditionally and culturally suited to them.

Through the involvement of the victim, offenders and the community, the CYJWs will facilitate healing circles towards a resolution that affords reparation, healing and successful re-integration while preventing further harm.

Youth will be held accountable for his/her actions.

This program gives all involved an opportunity to have a voice, to heal, and to grow within themselves and their communities. We want people to access further resources from this process as well as develop self-determination for positive decision making. Through motivation and understanding, Restorative Justice works towards changing the mindset of offenders to live more positively and recognize their strengths as individuals. Lastly, we also aim to replace ineffective, non-traditional and culturally unsuitable justice systems with more culturally appropriate community based healing methods.

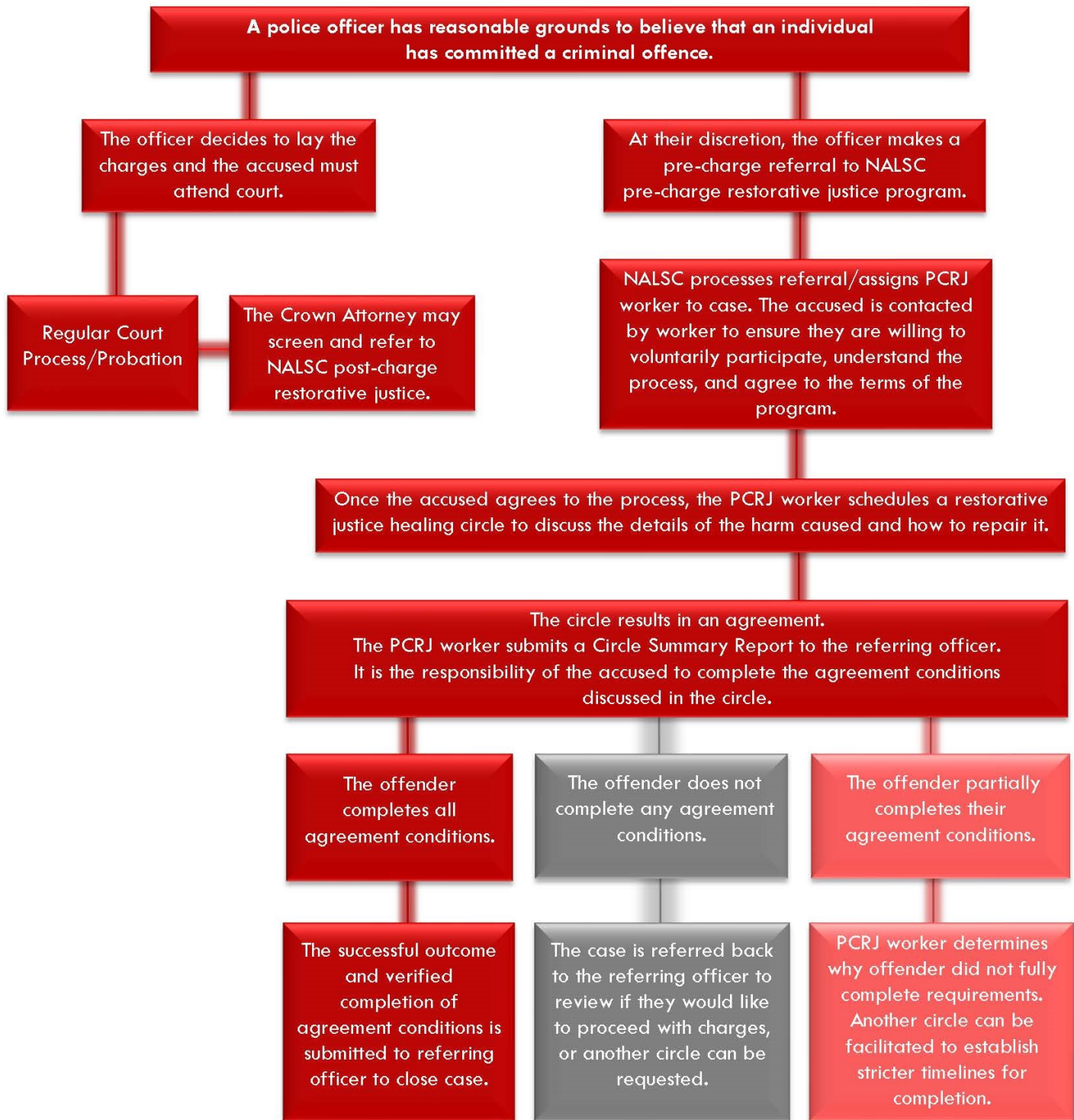
Benefits of PRE-CHARGE

1. Significantly reduces recidivism.
2. Provides culturally relevant justice processes grounded in Indigenous law.
3. Addresses the overrepresentation of Indigenous people.
4. Involves Indigenous communities in local justice administration.
5. Results in significant cost and time savings
6. Provides victims and community with meaningful participation.
7. Reduces court delay and frees up court time for more serious cases.

Benefits to the Police

1. Frees up Police Time for other priorities: Paperwork, Crown Brief (Disclosure), Court time
2. Improves relationships with Indigenous communities and organizations
3. Improves relationship with the accused / offender
4. Lower recidivism, no breach of bail charges

Pre-Charge Referral Flow Chart



*This referral process differs from the **POST CHARGE** Restorative Justice Referral Process.*



Nishnawbe-Aski Legal Services Corporation Restorative Justice Pre-Charge Referral

Date of Referral: _____

Referral Source (Name & Organization): _____

Name of Accused: _____ Date of Birth: _____

Accused Contact Information: _____

Charges Being Diverted: _____

Incident Date: _____ Incident Location: _____

Complainant(s) Name:	Contact Information (or Officer's phone number):	Date of Birth:
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Complainant Consent:

Complainant Signature

Date

Officer Consent:

I am of the opinion that there are reasonable and probable grounds to charge the accused and I hereby consent to referring the matter to the Pre-Charge Restorative Justice Program. I acknowledge that I have the discretion to proceed with charges if the accused does not successfully complete the Program.

Officer Signature

Date

Accused Consent:

1. I understand that a police officer believes they have the grounds to charge me with a criminal offence but is using their discretion to divert me to the Restorative Justice Program.
2. I understand that if I do not complete the Restorative Justice Program, the police officer has the discretion to proceed with charging me with a criminal offence.
3. I consent to attend the Restorative Justice Program and to comply with all the terms of the Restorative Justice Program.
4. I understand that any statements made during a circle are confidential and sacred and are not to be used against me in a Court of Law.
5. I understand that in order to participate in the Restorative Justice program I have to take responsibility for my actions.

Accused Signature

Date

If under 18, Parent/Guardian Signature

Date

Attention to Chantelle Johnson, Manager

Email: cjohnson@nanlegal.on.ca

Fax: (807) 622-3024

All referrals can be downloaded on our Website

<http://www.nanlegal.on.ca>

Or contact your NALSC Worker



NALSC & NAPS PROTOCOL (Pre-charge Portion only)

1.2) Pre-Charge Diversions:


The NAPS officers in cases deemed appropriate shall, prior to the laying of charges, ensure the offender is voluntarily willing to complete restorative justice, then contact the NALSC Restorative Justice program manager by sending a pre-charge referral form: Appendix "A".

The NALSC program manager will then send to appropriate worker for that specific community. The worker will contact offender and initiate diversion process, and report to NAPS the result of the Circle and all follow up. If for any reason the process breaks down, the matter will be referred to back to the NAPS officer, who will then proceed to lay charges if they wish to do so. (In cases of summary conviction offenses, the process must be finalized within 6 months of the date of the offence).


This agreement will take effect from the date of signing.

Dated in Thunder Bay this 9th day of February 2022

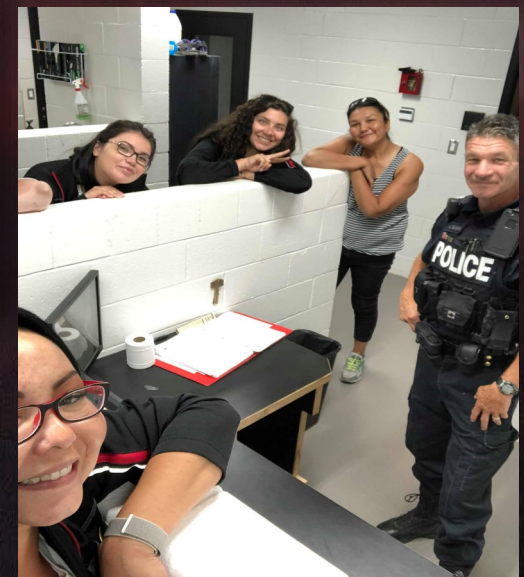



Irene Linklater
Executive Director
Nishnawbe-Aski Legal Services Corporation




Witness


Roland Morrison
Chief of Police
Nishnawbe Aski Police Service





NALSC & OPP PROTOCOL

Sioux Lookout



SIoux LOOKOUT DETACHMENT

PRE-CHARGE DIVERSION
STANDARD OPERATING PROCEDURES

PRE-CHARGE DIVERSION STANDARD OPERATING PROCEDURE

Application

Pre-charge diversions through Nishnawbe-Aski (NAN) Legal Services Corporation restorative justice programs shall be considered by Sioux Lookout Ontario Provincial Police (OPP) officers if a warning or caution is believed to be insufficient to address issues underlying criminal behaviour and/or further resolution is required.

Pre-charge diversions through restorative justice programs serve to connect individuals to the services and support networks they require to directly address the underlying issues behind criminal behaviours, and provide the resources necessary to prevent individuals from re-offending. The pre-charge diversion process ensures that the accused is subject to meaningful consequences for their behaviours while offering an appropriate resolution for victims, without involving the criminal court system.

Restrictions

Pre-charge diversion shall only be considered by officers when grounds exist for laying a charge, and:

- The accused has admitted responsibility and consents to participating with the diversion process, and
- The victim is consenting to the diversion of charges, and
- There are no un-addressed victim safety concerns.

In cases where the accused may benefit from a restorative justice program but one or more of the above restrictions are not met, officers may make a recommendation to the Crown Attorney for a post-charge diversion.

Previous diversion efforts should be taken into consideration when determining if an individual is eligible for diversion. If previous efforts have been made to divert charges yet criminal behaviours are continuing, the individual should not be considered eligible to participate in pre-charge diversion processes. Any new charges should be laid so that these behaviours may be addressed through the court.

Offences Suitable for Diversion

- Minor Property Crime
 - Break and Enter
 - Theft under \$5,000
 - Mischief
 - Possession of Stolen Property
- Assault
- Breach of Release Conditions
- Bullying/ Trouble with Youth

Diversion **SHALL NOT** be considered in cases where Police Orders state that charges shall be laid (ie: domestic violence related occurrences).

Diversion Process

- The investigating officer will determine if an offender is eligible to participate in a restorative justice program, based on the above noted restrictions and their own discretion.
- Officers will notify any victims that a pre-charge diversion is being considered to obtain their approval prior to proceeding. Victim contact information will be included with the referral. Should the victim consent to the accused being diverted but not wish to further participate, they will be notified that they will be contacted by NAN Legal Services Corporation to provide a victim impact statement for use in the diversion process.
- Diversion will be approved by OIC prior to continuing. Approval will be recorded in Investigating Officer's notebook.
- Once approvals are obtained, officers will inform the accused, and their guardian if the accused is a youth, of the option to participate in the restorative justice program. The officer will also provide a brief explanation of the program and the expectation that they will complete the program.
- If the accused is interested in participating in the program, the Pre-Charge Diversion Referral Form (Appendix A) will be completed by the officer and signed off on by the accused and their parent/guardian, if applicable.

- The investigating officer will notify the Restorative Justice Manager (RJM) and OPP Community Mobilization Officer (CMO) as soon as practicable so that arrangements can be made to meet with the accused. If the investigating officer is unable to speak to the assigned Restorative Justice Worker (RJW) directly, a brief synopsis of the occurrence and summary of any known underlying factors will be forwarded with the referral form.
- Once all information is provided to the RJM / RJW and arrangements have been made for an initial meeting between the RJW and the accused, it is the responsibility of the accused / RJW to continue to move forward in the Restorative Justice process. The RJW will forward the file to the appropriate diversion programs.
- The RJW and RJM will communicate with the OPP through the CMO. After meeting with the accused, the RJW will provide the CMO with a summary report of planned diversion activities, as well as ongoing updates for completion or non-compliance with elements of the diversion plan. Diversion may include connection to specific support services / personnel, provision of adequate housing, attendance at treatment programming, community service activities, or any other activity deemed appropriate by the RJM.

- The individual will be considered to be actively working with the pre-charge diversion process for six months following referral, unless OPP are notified by the RJW of early completion/ termination of the program. During this time, any additional safety concerns or ongoing contact with police related to the diverted offence, including identified underlying factors, may be communicated with the RJW.
- Charges will not be back-laid for individuals failing to complete the pre-charge diversion process once this has begun. However, previous diversion efforts will be taken into consideration when officers determine if a repeat offender is eligible to participate in a diversion process for any future offences.

Contacts

Restorative Justice Manager (Nishnawbe-Aski Legal Services Co.)
Chantelle Johnson
Phone: 807-766-7081
Cell: 807-252-3934
Fax: 807-622-3024
Email: cjohnson@nanlegal.on.ca

Restorative Justice Worker (Nishnawbe-Aski Legal Services Co.)
Natasha Sakchekapo-Lalande
Phone: 807-737-7959
Fax: 807-737-4847
Email: nsakchekapo@nanlegal.on.ca

Community Mobilization Officer

(Sioux Lookout OPP)
P/C Andrea DEGAGNE
Phone: 807-737-2020
Cell: 807-738-3864
E-mail: Andrea.Degagne@opp.ca

Other Considerations

- All property crime investigations shall be conducted in accordance with the *Sioux Lookout Property Related Crime Reporting Policy*.
- Officers will adhere to Police Orders: 2.21.1 when considering extrajudicial measures for young persons alleged to have committed an offence.
- NCO's are to ensure that pre-charge diversions are documented by members and that any statistical measures are recorded.
- Detachment CMO is to ensure all diverted occurrence dispositions are updated as the diversion progresses.



Pre-Charge RJ the Process

STEP 1) RECEIVE THE REFERRAL

Referral form needs to be sent to the restorative justice worker, either from a local officer, a community member or Chief and Council.

STEP 2) SPEAK WITH THE CLIENT

After receiving the referral the next step is to speak with the client, it is best to do this in person where you can get a feel for the client's willingness to move forward with the process. If the client is unwilling to participate, they may need a reminder that it is possible to refer their charges back to court if that is their preference. During this period, have the client fill out the client information form outlining their history, emergency contact information etc., and explain to them the circle process.

STEP 3) CONTACT THE VICTIM

Once you have discussed the circle date and time with the client, your next conversation should be with the victim. This is the individual who has been harmed the most, and as such is a key participant in the circles success. Once first contact has happened explain to the victim the circle process and the part each participant would play in the circle. While speaking with the victim let them know they are not being ordered to appear and that it is their choice to participate. However, if the victim feels they are not ready to participate physically, there are other methods that they can use to participate.

STEP 4) FINDING A LOCATION

In order to do a restorative justice circle there needs to be a space big enough to house all the possible participants. This space can be anywhere, although it should be kept in mind that not all places will be acceptable. Speak to the local band office about rentals for space as these types of areas are ideal.

STEP 5) CONTACTING COMMUNITY SUPPORTS

After contacting the client and the victim, the next step would be contacting both parties support, which can include family and friends. Once that happens the facilitator should contact members of the community to also assist in the circle, if possible the officer that was present for the case, an elder from the community, community support individuals such as nurses or health practitioners etc.

STEP 6) ADDITIONAL PREPARATIONS

Facilitators should envision how the circle may unfold. This becomes easier as facilitators gain experience and understanding of the dynamics of circles. In order to help with understanding the flow of a Circle process a Circle Script is provided. This should be read through to determine the order that the participants will speak, and it should be noted using a seating chart. Facilitators should also ensure the conference room is reserved and that participants were told the correct time, date and location for the Circle.

Facilitators may put a sign on the door saying, "DO NOT DISTURB: CIRCLE IN PROCESS." In addition, facilitators will provide tissues, which signify to the participants that emotional expression is acceptable, and refreshments for the informal period after the circle.

If facilitators are concerned about handling a particular situation, they should seek advice from a colleague who has been trained in facilitating Restorative Justice Circles. NALSC provides direct support for facilitators, via phone, email, or other suggested means.

STEP 7) HOW DO YOU RUN A RESTORATIVE JUSTICE CIRCLE

After the introductions and greetings have been made, the restorative justice worker or circle facilitator states the reason or purpose of the circle and advises all the parties to the circle (including the offender and the victim) that they have a legal right to leave if they do not want to partake in the circle.

The facilitator then makes an opening statement and he or she refers to the incident, and how the circle participants will work towards mending the harm that was done. Everyone is then given a moment of reflect on this opening statement. There is also the option of opening the circle with a prayer from an elder, this would be discussed previously with the participants before the date of the circle.

The offender would then speak first. Inherently he or she is asked first whether he or she voluntarily takes responsibility for his or her actions. Then the victim is given an opportunity to speak about how the incident has affected him or her. Next the victim's supporters would have a turn speaking. Finally, the offender's supporters are called upon. Then, after each person in the circle has spoken about how the offence has affected them the focus of the circle is changed to deciding how best to repair the harm. This is where all the participants work towards creating circle agreements. If an agreement is reached, satisfying all parties, it is documented and accepted by being signed by both parties. Before closing the conference, the facilitator gives everyone an opportunity to express any final thoughts and do a closing prayer.

STEP 9) SETTING UP AGREEMENTS

After the Circle Agreements have been made, the next step will be completing the outlined agreements from the circle. This may require some assistance from the facilitator and can include things like speaking with elders, or shop keepers, or band council members who may be able to provide places for community service hours.

STEP 10) COMPLETING THE PROGRAM

Once the circle agreements have been completed, your client has finished all of the requirements for the circle and will be free to go however, it should be discussed that there are additional programs available including the Youth Intervention program which assists youth in providing them with activities to keep them occupied and have positive social interactions with youths their age.

The Circle



CIRCLE PARTICIPANTS

The following individuals should be invited to participate in the circle:

- ◆ The victim and their supporters
- ◆ The offender and their supporters
- ◆ Key persons involved in helping the offender and victim such as youth workers, social workers, teachers and counselors
- ◆ Elders & Leadership



**For More Information on the
Pre-charge Program visit:
www.nanlegal.on.ca**