

## AGREEMENT TO INITIATE RESTORATIVE JUSTICE PROCESS

- The prosecutor and defense counsel, signing below and referred to herein as “The Parties,” are jointly referring the above captioned case for a restorative justice process. The Parties have read the document titled *DSC’s Restorative Justice Process*, attached, and agree to allow the process to proceed under those terms.
- The Parties enter into this Restorative Justice Process in reliance on this agreement and with the understanding that all Parties will honor the terms of this agreement.
- The Parties understand that the Restorative Justice Facilitator shall not disclose, directly or indirectly, information communicated by any Party or attendee during the Restorative Justice Process, unless that participant gives permission to do so. The Facilitator may encourage a Party or attendee to permit disclosure, but absent such permission, the Facilitator shall not disclose.
- The Parties understand that the Restorative Justice Facilitator will obtain signed confidentiality agreements from all participants in the Restorative Justice process.
- Each Party agrees not compel the Facilitator of the Restorative Justice Process to testify or produce evidence concerning statements made and conduct occurring during the Restorative Justice Process;
- Each Party agrees not use any information learned solely during the Restorative Justice Process against the Defendant in any court proceeding related to the case at issue in the Restorative Justice Process unless consented to by both the State and Defense Counsel;
- Each Party agrees not disclose any information learned about the Victim, Defendant, or any other participant in the Restorative Justice Process to any person outside of the Restorative Justice Process without express written consent of that person who is the subject of the information and/or who disclosed the information during the Restorative Justice Process;
- Should the outcome of a Restorative Justice Process become relevant to the legal disposition of a case, the process may be disclosed and described in open court, but only as agreed upon in advance by the Parties, Facilitators, and participants as necessary.
- The Parties recognize that as mandated by N.C.G.S. 7B-301, any person who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, must report the case of that juvenile to the department of social services in the county where the juvenile resides or is found. This agreement does not prohibit any party from making a report mandated by N.C.G.S. 7B-301.

My signature below shows that I consent to this case being referred for a Restorative Justice Process and I agree to be bound by the terms of this agreement.

***[Signatures on following page]***

Orange County

State v. \_\_\_\_\_

File No. \_\_\_\_\_

**Signature Page**

Defense Counsel's Name

\_\_\_\_\_

Defense Counsel's Signature

\_\_\_\_\_

Date: \_\_\_\_\_

Prosecutor's Name

\_\_\_\_\_

Prosecutor's Signature, on behalf of the State

\_\_\_\_\_

Date: \_\_\_\_\_



## DSC's Restorative Justice Process

### The restorative justice process

A Restorative Justice (RJ) process facilitated by DSC will follow the basic structure below. The RJ facilitators will be DSC staff and/or trained volunteers supervised by DSC.

- 1) Preconferencing:** RJ facilitators will meet separately with each person involved in the incident of harm, their persons of support, and anyone else that might be helpful in working towards repair;
- 2) Conference:** When (and if) everyone is ready to meet, all the people involved may meet in a conference facilitated by the RJ facilitators. Each participant will have an opportunity to say what happened, how they have been affected, and what accountability might look like. In some cases, the RJ facilitators may use alternate conference formats when a meeting between parties is not possible or appropriate;
- 3) Repair Agreement:** Together, participants create a repair agreement outlining the actions necessary to address the harm. The RJ facilitators will support the participants in completing the repair agreement and monitor for completion. The RJ process is complete when the repair agreement has been fulfilled.

Pre-conferencing and conferencing may take place in-person or virtually.

### Referral Process

In order for DSC to accept RJ referrals in criminal matters, counsel for both the State and the defense must both agree to the referral. Referrals must be made on the DSC referral form. DSC will review the referral before determining whether the case can be accepted for an RJ process. The court should not enter an order requiring RJ participation until DSC has agreed to accept the case.

### Legal Posture of the Case

DSC will accept referrals in cases that are both pre-adjudication and post-plea. DSC's experience is that the RJ process is most effective when it is used as an alternative to retributive justice, rather than in conjunction with punishment.

### Timeline

Any deadlines set by the court should allow a minimum of 90 days for the completion of the RJ process. RJ processes in cases of serious harm (homicide, sexual assault, serious bodily injury) may require more than 90 days, and attorneys should consult with DSC before setting any deadline.

Each restorative justice process is unique and addresses complicated issues; there is no set timeline for reaching a restorative outcome. The facilitators' goal is to reach a restorative outcome within the

timeline set by a court. No decision-maker should consider the length of time that a process has taken to be a reflection, negative or positive, on the sincerity or level of engagement of any party.

### **Confidentiality of the Process**

Counsel for both the State and defense must sign an agreement pledging not to use in litigation any information obtained solely from the RJ process. RJ should never be used by either party as an investigative tool.

If any party to the criminal matter is also represented by counsel in a civil, administrative, licensing, or disciplinary matter related to the incident, that counsel must also sign an agreement pledging not to use any information obtained solely from the RJ process in court or in any other process, dispute, or litigation.

During the course of facilitating the RJ process, DSC facilitators will ask all participants to sign acknowledgements that they are participating voluntarily. All participants will also be required to pledge: 1) not to divulge information obtained from the RJ process and 2) not to ask any facilitator or participant to appear in court or otherwise divulge information obtained from the RJ process.

### **Participant consent**

DSC will not accept a referral unless all parties have been informed about the RJ referral and do not object to it.

Defendant: Defense attorneys should explain to their clients any legal consequences of participating in the RJ process and obtain their client's consent for the referral. Attorneys should not refer defendants who assert their factual innocence of the crime. A defendant's acknowledgment of responsibility for some extent of harm increases the likelihood of a constructive outcome. However, DSC does not require that a defendant plead guilty in order to participate in the RJ process.

Victims: DSC never wants to accept an RJ referral if doing so would cause harm to the victim. Prosecutors should explain to victims how an RJ referral will affect the defendant's legal outcome. DSC will not accept a referral if, once informed, victims object to the referral. Where there are multiple victims, at least one victim must support the referral to RJ. The fact that the prosecutor is unable to reach the victim to inform them of the RJ referral will not prevent DSC from accepting the referral.

Victims do not need to agree to personally participate in the process for DSC to accept the referral. If the victim chooses not to participate, facilitators will modify the process so that it can continue without the participation of the victim.

### **If DSC decides not to move forward with RJ**

At any point after receiving a referral, DSC facilitators may become aware that the case is not appropriate to proceed with an RJ process. In the event that DSC determines that the process cannot continue safely and with integrity, DSC will notify the attorneys. In order to protect the confidentiality and integrity of the process, the facilitators will not disclose to counsel the exact reason why the process cannot continue.

There are many reasons why a case may be or become unsuitable for RJ. DSC's decision not to proceed with an RJ process does not indicate fault of either party and should never be held against a defendant.

**Communication between DSC and counsel/court**

DSC does not consider the following information confidential:

- Whether an RJ process is ongoing
- Whether a party is participating
- Whether a repair agreement has been reached
- Whether a repair agreement has been fulfilled

Other than the facts above, DSC will not share information arising from the process with those outside the process, including attorneys and the court, without the consent of the parties. As a matter of principle, DSC believes that the integrity and success of the RJ process is best preserved by keeping it as separate as possible from the legal process.

With the consent of the defendant, facilitators might convey information from the defendant to defense counsel. Likewise, with the consent of a victim, facilitators might convey information from a victim to prosecutors. Facilitators will not convey information about a defendant to the prosecutor or about a victim to defense counsel without that party's consent.

**Notification of process outcome**

At the conclusion of the process, DSC will produce a written report including the following information:

- Name of Defendant
- Case Number
- Whether a repair agreement has been fulfilled
- Any additional information that the parties consent to be disclosed

DSC will forward this report to the referring attorneys for the State and defense.