

Proposed IL Supreme Court Rule on Confidentiality

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.