

RESTORATIVE JUSTICE, ELDER MISTREATMENT, AND COGNITIVE IMPAIRMENT: TOWARD EXPANDING CURRENT FRAMEWORKS

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I. Introduction

Restorative justice is increasingly considered a framework to address categories of harm that have been resistant to impact via the traditional justice system. This article examines the application of a restorative justice framework to cases of elder mistreatment, particularly where the older adult experiencing harm has some degree of cognitive impairment. Part 1 discusses the essential elements of restorative justice; first historically, and then the ways in which its current rise in popularity is a direct response to perceived flaws or gaps in the traditional justice system, particularly the criminal justice system. Part 2 explores the ways in which common features of elder abuse can often be ill-suited to a traditional criminal justice response, particularly where the older adult who has experienced harm has cognitive impairment. Part 3 examines three programs currently providing elder abuse services and the degree to which these programs can integrate restorative practices. Finally, Part 4 examines the emerging trend of implementing a restorative approach in elder abuse cases where the older adult has a court appointed guardian or conservator; first through a case study, and then in an analysis of existing law. This article views the restorative justice approach as an emerging, promising practice in elder abuse cases and advocates for more consideration, both legally and clinically, of how current laws and programs can be adapted to expressly address the unique needs of people with cognitive impairment.

II. Restorative Justice Generally

A. Restorative Justice Origins

The popularity of restorative justice in the United States has emerged largely as a response to critical examination of the traditional justice system. Within the United States, the traditional approach to justice is structured around retributive responses, focused on assigning fault and enacting punishment.² Within contemporary justice systems, the response to harm is through punishment of the offender that is seen as equivalent to the severity of a crime.³ Modern restorative justice models have emerged from critiques of traditional justice systems as emphasizing punishment of the offender rather than addressing the personal and communal harms experienced by those involved.⁴

Recognizing the relationship between restorative practices and indigenous and faith-based traditions is critical to understanding modern restorative justice.⁵ Simply highlighting indigenous and faith-based traditions in broad terms can be challenging, as it risks oversimplifying and generalizing a diverse myriad of cultures, beliefs,

¹ The authors would like to thank Yusra Ahmed, MPH candidate at the Columbia University Mailman School of Public Health, and Alexandra Glezer, JD candidate at the Georgetown University Law Center, for their work on this article.

² Patrick Gerkin et al., *Implementing Restorative Justice Under the Retributive Paradigm: A Pilot Program Case Study*, SAGE OPEN (Feb. 1, 2017), <https://doi.org/10.1177/2158244017691562>.

³ Donald H.J. Hermann, *Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in the Search for Justice*, 16.1 SEATTLE J. SOC. JUST. 71, 72 (2017).

⁴ *Id.* at 71.

⁵ The authors acknowledge that we are discussing indigenous cultural practices from a perspective that is outside of these communities. We recognize that we are presenting concepts through a lens that can oversimplify and not fully capture the depth, diversity, and significance of these practices. Our perspective is limited and we encourage readers to seek out indigenous voices and scholarship for a deeper and more complete understanding.

and legal approaches.⁶ Generally speaking, Native American and First Nation justice philosophy and practice emphasizes healing and reintegrating individuals into their communities over punishment of the offender by the state.⁷ While not all indigenous legal traditions primarily utilize restorative practices,⁸ many indigenous cultures perceive the response to maltreatment as a communal process involving reconciliation and community healing.⁹

Particularly, Navajo law is deeply rooted in spirituality and creation, contrasting sharply with Western legal systems.¹⁰ In Navajo culture, the concept of law, known as *beehaz'aanii*, is not merely a set of manmade rules, but a sacred system of central importance given by the Holy People¹¹ since the beginning of time.¹² Within this context, the Navajo approach to justice is an egalitarian process that involves shared responsibility, involving resolutions through collective decision-making, rather than through authoritative processes.¹³ Traditional Navajo civil resolution procedures use ceremony to promote dialogue and involve spiritual assistance, while drawing upon respected knowledge and traditions that resonate with community members.¹⁴ The resolution process is centered on principles of healing and restoration through group consensus and shared understanding of the nature of the problem.¹⁵ This shared consensus becomes the foundation to determine a collective plan of action to restore familial and community relationships.¹⁶

B. Contemporary Restorative Justice

The concept of contemporary restorative justice is expansive, with various approaches to its implementation and a range of definitions shaping its practice. As more practitioners become familiar with restorative justice, there is increasing diversity of restorative methodologies and a corresponding sense of ambiguity regarding its precise meaning.¹⁷ Scholars have called for the development of shared standards and guiding principles to preserve the integrity of restorative practice while allowing for contextual adaptation.¹⁸ While preserving integrity and allowing for flexibility in restorative adaptations can be a complex balancing act, it allows for broadening the applicability of restorative principles across diverse populations and settings, making it possible to engage more people in meaningful and relative ways.

Restorative justice can be described as both a philosophical framework and a set of practices.¹⁹ Its modern emergence was first pioneered by Howard Zehr in the 1970s in an effort to address the shortfalls within the Western legal system, primarily concerning the disregarded perspectives of the victims and central focus on the punishment of the offender.²⁰ According to Howard Zehr, restorative justice can be described as an approach to justice that views crime as not just a violation of the law, but as a violation of people, interpersonal relationships,

⁶ VAL NAPOLEON & HADLEY FRIEDLAND, *THE OXFORD HANDBOOK FOR CRIMINAL LAW* 226 (Markus D. Dubber & Tatjana Hörnle eds., 2014).

⁷ Laura Mirsky, *Restorative Justice Practices of Native American, First Nation and Other Indigenous People of North America: Part One*, INT'L INST. RESTORATIVE PRACTICES (Apr. 27, 2004), <https://www.iirp.edu/news/restorative-justice-practices-of-native-american-first-nation-and-other-indigenous-people-of-north-america-part-one>.

⁸ Aparna Polavarapu, *Myth-Busting Restorative Justice: Uncovering the Past and Finding Lessons in Community*, 13 U.C. IRVINE L. REV. 949, 954 (2023).

⁹ Larry Chartrand & Kanatase Horn, *A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada*, DEP'T. JUST. CAN. 6 (Oct. 2016), <https://www.justice.gc.ca/eng/rp-pr/jr/rjilt-jrtja/rjilt-jrtja.pdf>.

¹⁰ Robert Yazzie, *Life Comes from It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 175 (1994) (“The term Holy People refers to divine personages or spirit forces which were instrumental in the creation of the world. Following creation and the exodus of the Navajo People to their present place in this world, the Holy People went into the rocks and earth, where they still help.”).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 180–181.

¹⁴ *Id.* at 184.

¹⁵ *Id.* at 185.

¹⁶ *Id.*

¹⁷ Polavarapu, *supra* note 8, at 952.

¹⁸ BELINDA HOPKINS, *RESTORATIVE THEORY IN PRACTICE: INSIGHTS INTO WHAT WORKS AND WHY* (2015).

¹⁹ Steve Kirkwood, *A Practice Framework for Restorative Justice*, 63 AGGRESSION AND VIOLENT BEHAV. 1 (2021).

²⁰ Howard Zehr, *Restorative Justice? What's That?*, ZEHR INSTITUTE FOR RESTORATIVE JUSTICE (2018), <https://zehr-institute.org/what-is-rj/>.

and communities.²¹ Zehr asserts that there are three questions vital to restorative processes: Who has been hurt? What are their needs? Who has the obligation to address the needs, right the harms, and restore the relationships?²²

According to Zehr, restorative justice responds to conflict and wrongdoing in a way that is both meaningful and grounded in the needs of those involved to achieve a sense of healing.²³ Because the needs or goals associated with healing vary depending on each person and their circumstances, approaches will differ among individuals and communities.²⁴

Restorative justice has gained significant traction in recent years, as evidenced by its use in various types of legal proceedings, demonstrating a broadening of its application across different contexts.²⁵ Increasingly, state statutes expressly reference restorative justice programming as an appropriate use of state funds or a complement to state action in a variety of contexts.²⁶ As of this writing, all of the 50 states have at least one reference to restorative justice codified in their statutes, most commonly in the areas of criminal justice, education law, or child welfare law.²⁷ In California, restorative justice is listed in the penal code's legislative findings as one of the purposes of criminal sentencing, and restorative justice programs are expressly listed among those that "should be available for incarcerated persons."²⁸

Specific programs vary greatly in the ways they operationalize principles of restorative justice. Victim-offender mediation²⁹ is one example of a restorative model within a criminal context that is designed to foster dialogue for both the victim and offender, often within formal justice systems.³⁰ It can be utilized prior to a charge or sentencing, or as a final resolution, with the goal of acknowledging the perspectives and needs of both parties while holding the offender accountable for their actions.³¹

Internationally, community and family group conferencing is a restorative justice process that has been integrated into New Zealand's criminal justice system.³² It is a restorative approach where trusted supports of both the victim and offender, with a professional facilitator, come together to discuss the impacts of an offense and identify agreed upon outcomes.³³ Stakeholders and community partners play a role in monitoring the offender's compliance, diverting public safety away from police to community-based organizations.³⁴

²¹ Howard Zehr & Harry Mika, *Fundamental Principles of Restorative Justice*, 1 CONTEMP. JUST. REV. 47, 47–55 (1998).

²² HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* (2002).

²³ Zehr, *supra* note 20.

²⁴ Erika Sasson & Charlene Allen, *Using Restorative Approaches to Address Intimate Partner Violence*, CTR. FOR CT. INNOVATION 7 (Oct. 2020), https://www.innovatingjustice.org/wp-content/uploads/2020/10/Guide_RJBlueprint_01282020.pdf.

²⁵ See Daye Gang et al., "Obviously It's for the Victim to Decide": Restorative Justice for Sexual and Family Violence from the Perspective of Second-Wave Anti-Rape Activists, 30(12–13) VIOLENCE AGAINST WOMEN 3187, 3187–88 (2024).

²⁶ Sandra Pavelka, *Restorative Justice in the States: An Analysis of Statutory Legislation and Policy*, 2 JUST. POL'Y J. No. 13, Fall 2016, at 1, 1.

²⁷ See *Restorative Justice Laws Database*, NAT'L CENTER ON RESTORATIVE JUST., <https://ncorj.org/laws/> (last visited Apr. 20, 2026).

²⁸ CAL. PEN. CODE § 1170(a)(1)(2) (2023).

²⁹ Victim-Offender Mediation (VOM) is a process that fosters direct communication between a victim and offender, facilitated by a trained mediator. Participation in this process is usually initiated by a referral from courts or probation officers, but can also be accessed directly by the parties themselves. Both parties must provide informed consent to participate, ensuring voluntary and intentional involvement. VOM offers a space for both parties to discuss the harm experienced, and explore restorative actions needed to address the harm. Typically, restorative actions can include the offender agreeing to pay restitution, participating in community service, or engaging in self-help activities such as therapy or treatment. The agreement is written, signed by both parties, and usually monitored for compliance by the staff of a mediation program. See Toran Hansen & Mark S. Umbreit, *State of Knowledge: Four Decades of Victim-Offender Mediation Research and Practice—The Evidence*, 36 CONFLICT RESOL. Q. 99 (2018); see also Mark S. Umbreit & Toran Hansen, *Victim-Offender Mediation: A Humanistic Approach*, THE MEDIATION HANDBOOK: RESEARCH, THEORY, AND PRACTICE 97, 97–104 (Alexandros Georgakopoulos ed., 2017).

³⁰ Adler School Institute on Public Safety and Social Justice, *Restorative Justice: A Primer and Exploration of Practice Across Two North American Cities*, RESTORATIVE JUSTICE EXCHANGE 7 (June 4, 2015), <https://restorativejustice.org/rj-archive/restorative-justice-a-primer-and-exploration-of-practice-across-two-north-american-cities/>.

³¹ *Id.*

³² *Id.* at 8.

³³ *Id.*

³⁴ *Id.*

C. Restorative Justice as a Response to Gaps in the Criminal Justice System

State law and particularly criminal law's embrace of restorative justice is rooted in the growing body of research demonstrating that these systems have traditionally fallen short in addressing the complex needs of those who have experienced harm. Survivors frequently report that traditional legal proceedings fail to validate their experiences or prioritize their healing.³⁵ Many highlight how these processes can be retraumatizing, particularly when there is emphasis on the progression of a case over the survivor's needs and desired choices.³⁶ In doing so, these systems have the potential to replicate the same power and control dynamics present in the harmful relationship the survivor had been seeking help in addressing. In many cases, especially when the person who caused harm is someone close to the victim, survivors may be hesitant to engage with a system that could impose punitive outcomes rather than promote understanding or reconciliation.³⁷

In addition to its limitations in supporting the victims' goals, the conventional criminal justice system often neglects the needs of those who cause harm. Root causes such as trauma, economic instability, or lack of community support are rarely addressed in punitive settings.³⁸ In contrast, restorative justice emphasizes accountability in a way that encourages self-reflection and responsibility. It provides space for individuals to reflect and engage in reparative actions. This approach not only supports rehabilitation but has also been shown to reduce recidivism and disrupt cycles of violence and harm.³⁹

Community involvement is a foundational element of restorative justice.⁴⁰ Whereas the conventional system often isolates justice as a matter between the state and the offender, restorative justice views harm as indicators of broken relationships within a broader social context.⁴¹ Through practices like community-building circles and restorative conferences, restorative justice mobilizes communities to collectively support healing, accountability, and prevention.⁴²

The expansive use of restorative practices is particularly relevant in fields like elder justice, where harm often arises within complex relational and caregiving dynamics.⁴³ A broader restorative practices framework offers a foundation for fostering client empowerment and community responses, elements that are critical in addressing and preventing elder abuse.

III. Restorative Justice in Elder Abuse Cases

The nature and dynamics of elder abuse may be ill-suited to a traditional justice approach. By definition, elder abuse happens within the context of a relationship of trust.⁴⁴ Most frequently a family member is the person causing harm.⁴⁵ Additionally, there is often an interdependent relationship between the person causing harm and the person experiencing harm, in which the person causing harm provides some level of caregiving or

³⁵ Daye Gang et al., *supra* note 25, at 3204.

³⁶ Julia Bradshaw et al., *Intimate Partner Violence Survivors' Perspectives on Coping With Family Court Processes*, 30(1) VIOLENCE AGAINST WOMEN 101, 117 (2024).

³⁷ Sasson & Allen, *supra* note 24, at 7.

³⁸ Michael McGee, *Why Punishment Doesn't Work to Produce Lasting Change*, NEV. SPECIALTY CT. CONF. 2 (Oct. 18, 2024), https://nvcourts.gov/_data/assets/pdf_file/0021/45426/Punishment_Handout_Nevada_Specialty_Court.pdf.

³⁹ ALISHA MORELAND-CAPUIA, TRAINING FOR CHANGE: TRANSFORMING SYSTEMS TO BE TRAUMA-INFORMED, CULTURALLY RESPONSIVE, AND NEUROSCIENTIFICALLY FOCUSED 263–291 (2019); David Newton, *Restorative Justice and Youthful Offenders*, FBI LAW ENFORCEMENT BULLETIN (Oct. 6, 2016), <https://leb.fbi.gov/articles/featured-articles/restorative-justice-and-youthful-offenders>.

⁴⁰ Paul McCold, *Restorative Justice: The Role of the Community*, INT'L INST. FOR RESTORATIVE PRAC. GRADUATE SCH. (Mar. 31, 1995), <https://www.iirp.edu/news/restorative-justice-the-role-of-the-community>.

⁴¹ MARK UMBREIT, & MARILYN ARMOUR, RESTORATIVE JUSTICE DIALOGUE: AN ESSENTIAL GUIDE FOR RESEARCH AND PRACTICE 1, 2 (2011).

⁴² *Id.*

⁴³ People who experience elder abuse are often dependent on the person causing them harm for some degree of daily care and assistance, even while the caregiver is also causing harm or a risk of harm. Simultaneously, the person causing harm may be dependent on the older adult for stable housing or financial support. See Jagmohan S. Jandu et al., *Elder Abuse*, NCBI BOOKSHELF (Oct. 6, 2024), <https://www.ncbi.nlm.nih.gov/books/NBK560883/>.

⁴⁴ Jeffrey E. Hall et al., *Uniform Definitions and Recommended Core Data Elements for Use in Elder Abuse Surveillance*, NAT'L CTR. FOR INJURY PREVENTION & CONTROL, DIV. OF VIOLENCE PREVENTION (2016), <https://stacks.cdc.gov/view/cdc/37909>.

⁴⁵ See Ron Aciermo et al., *National Elder Mistreatment Study*, NAT'L INST. JUST. 44 (2009), <https://www.ojp.gov/pdffiles1/nij/grants/226456.pdf>.

companionship to the person experiencing harm.⁴⁶ Elder abuse, like other forms of family violence, is not a single event or occurrence, but a pattern of behavior that happens over time.⁴⁷ Numerous studies have identified cognitive impairment as a risk factor for abuse.⁴⁸ While methodological issues make studies of this demographic difficult, the rate of abuse experienced by this population has been found to be as high as five times the rate of older adults without cognitive impairment.⁴⁹

In light of these characteristics of elder abuse, it is not surprising that older adults who experience abuse are unlikely to report the harm to any professional, including law enforcement.⁵⁰ Older adults who have experienced harm caused by someone they care about do not want to subject that person to the manifold potential consequences of a criminal prosecution. Incarceration is the most common potential harm generally cited, but these harms also include the disruption, embarrassment and expense caused by arrest and subsequent court appearances as well as the impact of arrest and prosecution on employment and benefits.⁵¹ Additionally, as stated above, older adults often rely on the person who caused them harm for some degree of caregiving or companionship, which the older adult may not want disrupted or likely permanently ended by a criminal prosecution.⁵² In cases where an older adult is experiencing some degree of cognitive impairment, the impact of upsetting this arrangement may be even more acute, as it may be challenging for the older adult to navigate finding alternate sources of support and simply a change in routine may cause a functional decline.

Criminal prosecution often will not achieve justice as conceptualized by the older adult who experienced harm. Often, the older adult conceives of justice as providing assistance to the person who caused harm, which may come in many forms, including treatment for alcohol or drug misuse, mental health support, or assistance around employment or housing. When the older adult who experienced harm is cognitively impaired, assistance for the person who caused harm may involve addressing caregiver burden, behavioral symptom management, caregiver-recipient conflicts, or lack of sufficient resources.⁵³ The role of orders of protection in criminal proceedings is particularly illustrative of the gap between the perspective of an older adult victim as described above and that of the criminal justice system itself.⁵⁴ For example, in New York State, an order of protection barring the defendant from any contact with the victim is issued at the outset of a criminal proceeding as a matter of course.⁵⁵ This order will remain in effect throughout the life of the criminal prosecution, and often part of a negotiated settlement or a guilty verdict will be the issuance of a final order barring contact between the parties for a period of years.⁵⁶ This standard feature of the criminal justice process may be in direct contravention to the goals of the older adult who experienced harm, whose goal is to maintain a relationship with the person who caused harm, albeit one without the harmful pattern of behavior.

⁴⁶ Jagmohan S. Jandu et al., *Elder Abuse*, NCBI BOOKSHELF (Oct. 6, 2024), <https://www.ncbi.nlm.nih.gov/books/NBK560883/>.

⁴⁷ *Elder Abuse and Neglect in Search of Solutions*, AM. PSYCH. ASS'N 2 (2012), <https://www.apa.org/topics/aging-older-adults/elder-abuse.pdf>.

⁴⁸ See CLAUDIA COOPER & GILL LIVINGSTON, *ADVANCES IN ELDER ABUSE RESEARCH* 140 (Amanda Phelan, ed., 2020); Jennifer E. Storey, *Risk Factors for Elder Abuse and Neglect: A Review of the Literature*, 50 *AGGRESSION VIOLENT BEHAV.* 1, 6 (2020).

⁴⁹ See Reza Nemat-Vakilabad et al., *The Prevalence of Elder Abuse and Risk Factors: A Cross-sectional Study of Community Older Adults*, *BMC GERIATRICS* 1, 2 (2023).

⁵⁰ See Lifespan of Greater Rochester, Inc. et al., *Under the Radar: New York State Elder Abuse Prevalence Study*, N.Y. STATE OFF. CHILD. FAM. SERV. (May 2011), <https://ocfs.ny.gov/reports/aps/Under-the-Radar-2011May12.pdf>; see also Tony Rosen et al., *Radiologists' Training, Experience, and Attitudes About Elder Abuse Detection*, 207 *AM. J. ROENTGENOLOGY* 1210, 1210 (2016).

⁵¹ Lisa Nerenberg, *In Elder Abuse Cases, Restorative Justice Holds the Promise of Honoring Relationships*, 27 *DISP. RESOL. MAG.* 13, 15 (2021).

⁵² Mary Helen McNeal & Maria Brown, *Elder Restorative Justice*, 21 *CARDOZO J. CONFLICT RESOL.* 91, 91 (2019).

⁵³ XinQi Dong et al., *Elder Abuse And Dementia: A Review Of The Research And Health Policy*, 33 *HEALTH AFF.* 642 (2024).

⁵⁴ An order of protection is a court order aimed at protecting survivors of violence and abuse and preventing further escalation. Orders of protection can be issued by both civil and criminal courts. They can contain a variety of different provisions including limits on contacting or being in physical proximity to the survivor, as well as orders to surrender firearms, orders to return a survivor's identifying documents or orders to refrain from certain actions towards the survivor. See Harry & Jeanette Weinberg Center for Elder Justice at the Hebrew Home at Riverdale & Project Guardianship, *Elder Abuse in Guardianship Cases: A Legal Resource Guide*, <https://theweinbergcenter.org/wp-content/uploads/2024/05/Elder-Abuse-in-Guardianship-Cases-A-Legal-Resource-Guide.pdf> (last visited May 28, 2026).

⁵⁵ N.Y. CRIM. PROC. LAW § 530.12(1) (McKinney 2025).

⁵⁶ *Id.* § 530.12(4)–(5).

Isolation is both a risk factor for elder abuse as well as a tactic used by people who cause harm to maintain power and control over an older adult.⁵⁷ Older adults who are socially isolated are more vulnerable to mistreatment when they have fewer social contacts, perhaps because the lack of other social supports causes them to increasingly rely, both emotionally and functionally, on the person causing them harm. Furthermore, as the person causing harm further isolates the older adult, the older adult has fewer opportunities to disclose abuse and seek help, allowing the abuse and its impact to grow more severe over time.⁵⁸ While little research has been done on social isolation among cognitively impaired older adults, there are indications that older adults with cognitive impairment are even more likely to be socially isolated and may have more difficulty accessing social networks,⁵⁹ particularly if someone is actively trying to prevent them from connecting with others.

The criminal justice system is not designed to address issues of social isolation or to increase community connection for victims of crime. In contrast, and as discussed in Part 1 above, restorative justice practices are fundamentally communal and address harm in the context of responsibility of and to the community.⁶⁰ Therefore, restorative practices may help to address not just the older adult's goal of re-establishing or reframing their relationship with the person who caused harm, but also their goal of reaffirming and strengthening community ties.

Finally, scholarship has assessed criminal justice policies allowing the state to act over the objection of older adult victims as rooted in ageist stereotypes about older adults.⁶¹ Professor Nina Kohn, in her article *Elder (In)Justice*, views this trend through a feminist lens, as an outgrowth of the mandatory arrest policies implemented in domestic violence cases.⁶² Just as there has been a recent backlash against these policies as not giving sufficient agency to mostly female domestic violence victims, Kohn argues there ought to be a reckoning with criminal justice policies around elder abuse and the degree to which they have been shaped by views of older adults as incapable of acting in their own best interests.⁶³ The rise of restorative justice practices, in both the domestic violence and now the elder abuse arenas, seem to be a part of that reckoning, by centering the goals of the victim in seeking justice.

When an older adult has been diagnosed with any degree of cognitive impairment, these ageist stereotypes may be even more difficult to combat.⁶⁴ This is the case both where an older adult does not wish to participate in a criminal justice proceeding, as described above, or conversely, where an older adult wishes to report abuse or testify in a criminal proceeding but whose credibility is questioned due to even mild cognitive impairment. The mere assertion of cognitive impairment may be sufficient to prevent an arrest in the first place or cause prosecutors to decide not to proceed with a case because they believe an older adult with cognitive impairment won't be able to provide evidence sufficiently credible to meet their burden of proof.⁶⁵ In these cases, the criminal justice system may be foreclosed even to those older adults who want to engage with it, because their credibility is questioned rather than assumed.

IV. Elder Restorative Justice Programs Currently in Operation

As discussed above, the unique and complex characteristics of elder abuse can be well-suited to a restorative justice approach. This Article will now examine several operational programs currently implementing

⁵⁷ Maria T. Brown & Mary Helen McNeal, *Addressing Elder Abuse: Service Provider Perspectives on the Potential of Restorative Processes*, 32 J. ELDER ABUSE & NEGLECT 357, 368 (2020); see also S. Duke Han & Laura Mosqueda, *Elder Abuse in the COVID-19 Era*, 68 J. AM. GERIATR. SOC. 1386, 1386 (2020).

⁵⁸ Storey, *supra* note 48, at 6.

⁵⁹ Pablo Galvez-Hernandez et al., *Primary Care-Based Interventions Addressing Social Isolation and Loneliness in Older People: A Scoping Review*, 12 BMJ OPEN 1, 2 (2022); see also Margalida Cardona & Pilar Andrés, *Are Social Isolation and Loneliness Associated with Cognitive Decline in Ageing?*, 15 FRONTIERS IN AGING NEUROSCIENCE 1, 1 (2023).

⁶⁰ Sasson & Allen, *supra* note 24, at 7.

⁶¹ Nina A. Kohn, *Elder (In)Justice: A Critique of the Criminalization of Elder Abuse*, 49 AM. CRIM. L. REV. 1, 2 (2012).

⁶² *Id.*

⁶³ *Id.* at 21–22.

⁶⁴ *Id.*

⁶⁵ *Id.* at 13.

restorative practices within their elder abuse intervention services, including those services offered to older adults with cognitive impairment.

A. The Waterloo Restorative Justice Approaches to Elder Abuse Project/EART

The Waterloo Restorative Justice Approaches to Elder Abuse Project, initiated in Ontario, Canada in 2000, was a community-based initiative developed in response to growing recognition that the conventional legal system often fails to meet the complex needs of older adults experiencing abuse.⁶⁶ The initiative aimed to create safe spaces for older adults to rebuild trust and relationships, particularly where formal legal action felt too adversarial or inaccessible.⁶⁷ The project had several goals, including increasing reporting of abuse, developing and implementing restorative approaches, and developing capacity to navigate abusive situations.⁶⁸ The restorative justice aspect of the program operated through a partnership with Conflict Resolution Network Canada and Community Justice Initiatives.⁶⁹ These organizations facilitated restorative processes such as victim/offender mediation, community conferencing, and community peacemaking circles.⁷⁰ Referrals could be made by anyone involved in the incident, and participation was decided by the older adult.⁷¹ Trained facilitators met individually with participants to establish safety and readiness before bringing parties together.⁷²

In 2006, the program's name was changed to the Elder Abuse Response Team (“EART”) and began operating within the Waterloo Regional Police Service domestic violence unit.⁷³ The EART maintained restorative justice as its guiding philosophy, but was broadened to provide other means of resolution where restorative justice was not suitable.⁷⁴ This shift in services addressed previous program limitations by increasing the amount of referrals and better facilitating community partnerships.⁷⁵

B. The RISE Model

The RISE (Relational, Individual, Social, and Environmental) model was developed in 2017 through a collaboration between the Maine Department of Health and Human Services and the Elder Abuse Institute of Maine.⁷⁶ It was created to fill the gap in existing Adult Protective Services (“APS”) structures, which often close elder abuse cases after brief crisis intervention, without addressing long-term healing or relationship dynamics.⁷⁷ RISE integrates restorative justice as one component of the larger program, “Repair Harm.”⁷⁸ Its framework was created to support older adults, alleged harmers, and the broader social environment surrounding them.⁷⁹

Restorative practices in RISE include person-centered goal setting, victim-defined reparative planning, and voluntary engagement of accused harmers, when appropriate.⁸⁰ Older adults who were harmed may articulate

⁶⁶ Arlene Groh & Rick Linden, *Addressing Elder Abuse: The Waterloo Restorative Justice Approach to Elder Abuse Project*, 23 J. ELDER ABUSE NEGLECT 127, 128 (2011).

⁶⁷ *Id.*

⁶⁸ *Id.* at 129.

⁶⁹ Arlene Groh, *A Healing Approach to Elder Abuse and Mistreatment: The Restorative Justice Approaches to Elder Abuse Project*, CMTY. CARE ACCESS CTR. OF WATERLOO REGION (May 2003), https://www.elderjusticecal.org/uploads/1/0/1/7/101741090/healing_approach_elder_abuse_manual.pdf.

⁷⁰ *Id.* at 25.

⁷¹ *Id.* at 34.

⁷² *Id.* at 37–38.

⁷³ Groh & Linden, *supra* note 66, at 141.

⁷⁴ *Id.*

⁷⁵ *Id.* at 142–43.

⁷⁶ David Burnes et al., *RISE: A Conceptual Model of Integrated and Restorative Elder Abuse Intervention*, 63 GERONTOLOGIST 966, 967 (2023).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 970.

the harm, express needs, and help co-create restorative action plans.⁸¹ Those who caused harm are given the opportunity to acknowledge wrongdoing and commit to specific, meaningful steps to prevent future harm.⁸² These processes allow for adaptability and flexibility based on client safety, capacity, and relational dynamics, with an emphasis on self-determination.⁸³

C. The Weinberg Center for Elder Justice Restorative Steps Program

The Weinberg Center for Elder Justice at the Hebrew Home at Riverdale (“Weinberg Center”) was founded in 2005 to provide safe haven together with supportive services for older adults who are unsafe within their communities.⁸⁴ The program was created to fill a gap in services for older adults, whose needs cannot be met in domestic violence and homeless shelter system, both because of the inability of those systems to meet older adults’ medical or clinical needs and the lack of professionals working within those systems with expertise in the specific issues facing older adults who have experienced abuse.⁸⁵ The Weinberg Center is embedded within a continuum of care facility that provides both rehabilitation and nursing care, enabling the program to address the variety of complex medical and nursing needs for older adults in tandem with providing supportive elder justice services.⁸⁶ These services are provided by a multidisciplinary team of lawyers, social workers, and medical professionals and include legal services, mental health services, case management, and housing navigation.⁸⁷ At the core of their work is a commitment to person-centered, trauma-informed care, delivered through comprehensive, multidisciplinary services that assess and respond to each client’s unique needs.⁸⁸ The program is short-term, with the goal of working with each client to support their long-term housing goals.⁸⁹

Programs based on the Weinberg Center model have been launched throughout North America by grassroots professionals hoping to fill a similar gap in their own communities. In 2012, the Weinberg Center created the SPRiNG Alliance (Shelter Partners: Regional. National. Global.) as a professional network for current and nascent elder justice shelter programs focused on capacity building and technical assistance.⁹⁰ In 2024, the New York Academy of Medicine released a national, multi-site evaluation of the elder justice shelter intervention.⁹¹ The evaluation was funded by the federal government’s Administration on Community Living, as part of an effort to explore best practices in helping older adults who experienced harm to move from needing crisis-level services to community-based living with local supports.⁹² Findings from the report suggest that elder justice shelter programs can contribute to greater safety, improved physical and mental health, better social connections, less recurring APS involvement, and greater long-term stability for older adults in need of services.⁹³ There are currently 28 communities who participate in the SPRiNG Alliance with shelter programs in various stages of development.⁹⁴

⁸¹ *Id.*

⁸² *Id.* at 971.

⁸³ *Id.*

⁸⁴ MALYA LEVIN ET AL., AN ELDER ABUSE SHELTER MODEL FOR INTEGRATED HEALTH SYSTEMS AND BEYOND: THE HARRY AND JEANETTE WEINBERG CENTER FOR ELDER JUSTICE 3 (2022).

⁸⁵ See Bonnie Brand et al, *A Safe Place to Heal: Addressing the Emergency Shelter and Transitional Housing Needs of Older Survivors of Abuse*, AMAZON WEB SERVICES 8–10, <https://s3-us-east-2.amazonaws.com/ncall/wp-content/uploads/2018/12/04154916/NCALLEmShelterTransHousing.pdf> (last visited June 2, 2026); see also National Domestic Violence Hotline, *When Abuse Tarnishes the Golden Years*, THE HOTLINE, <https://www.thehotline.org/resources/domestic-abuse-in-older-adults/> (last visited Apr. 20, 2026).

⁸⁶ SIERRA SMUCKER ET AL., EVALUABILITY ASSESSMENT OF THE WEINBERG CENTER FOR ELDER JUSTICE’S ELDER ABUSE SHELTER SERVICES 9 (2023).

⁸⁷ *Id.* at 2.

⁸⁸ *Id.* at 9.

⁸⁹ Levin et al., *supra* note 84, at 3.

⁹⁰ ELISA FISHER ET AL., NEED, ACCESS, IMPACT, AND OPPORTUNITIES: FINDINGS FROM A MULTI-SITE EVALUATION OF ELDER JUSTICE SHELTERS IN THE U.S. (2024).

⁹¹ *Id.* at 1.

⁹² *Id.* at 2, 41.

⁹³ *Id.* at 12, 40.

⁹⁴ *Id.* at 2.

Guided by clients' voices, the Weinberg Center recognized that some older adults may seek to reconnect with people who have previously caused them harm.⁹⁵ In response, the Weinberg Center launched its Restorative Steps initiative, an innovative protocol influenced by restorative justice principles.⁹⁶ This initiative is a framework that offers an organized yet flexible process for exploring reconnection and is grounded in the values of autonomy, dignity, safety, and healing.⁹⁷ It utilizes careful clinical and ethical inquiry with respect for a client's lived experience, and the belief that healing can include the restoration of previously harmful relationships in a context that allows for boundaries that balance safety and connection.⁹⁸

As discussed above in Section 2, restorative justice principles may be responsive to the unique needs of older adults with cognitive impairment who have experienced mistreatment. People who cause harm to older adults employ unique tactics when the older adult has cognitive impairment.⁹⁹ These tactics can compound the societal biases against older adults with cognitive impairment to effectively substitute the judgments and beliefs of others for those of the older adult. With a nuanced understanding of both elder abuse and cognitive impairment, it is possible to center the healing of the older adult via a restorative process even where there is significant cognitive impairment. This process requires expert investigation of the circumstances of the mistreatment as well as expert listening to and observation of the older adult in order to truly prioritize their wishes.

Recognizing these principles and drawing on their extensive expertise, the Weinberg Center expanded its Restorative Steps initiative to include a specialized restorative protocol primarily for older adults with dementia and other neurocognitive diseases, including those with court-appointed guardians.¹⁰⁰ This adapted framework recognizes the impact of cognitive changes on communication, memory, and judgment, while still centering the individual's values, historical preferences, and past and present expressed desires.¹⁰¹ This approach allows for both the continued protection and safety of their clients, while acknowledging the complex emotional and relational dynamics often present in elder abuse cases. The Restorative Steps Guiding Protocol for Clients with Cognitive Impairment is attached to this article as an appendix.

The protocol is intended for use by professionals in determining whether a restorative approach is appropriate in a particular case and if so, what framework would support a restorative process in order to minimize risk while prioritizing meaningful connection in accordance with the client's goals. The protocol begins by determining who initiated the request for contact, whether it is the client, family, guardian, or the person who caused harm. This initial question immediately prioritizes the client's perspective on reconnecting with the person who caused harm by seeking to distinguish other parties who might be initiating or supporting reconnection and to acknowledge their voices and motivation as distinct from that of the client. In centering the client's own voice when considering the possibility of a restorative approach, the protocol considers the client's expressed values, emotions, and preferences in a variety of ways that are not solely limited to verbal expressions. Cognitive impairment often affects an older adult's ability to communicate even strongly held wishes and preferences, which have the potential to significantly impact quality of life.¹⁰² Therefore, if a client cannot verbalize or express their desires around reconnecting with a person who has caused them harm, the Weinberg Center will still consider a

⁹⁵ SMUCKER ET AL., *supra* note 86, at 14.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Tactics used to assert power and control over an older adult with cognitive impairment include: isolation; withholding care; minimizing, denying or blaming the older adult for the mistreatment; threats and intimidation; asserting cognitive privilege over the older adult or to third parties; threatening the older adult's physical environment by disorganizing belongings or making the home unsafe; manipulating the relationship by eliciting strong feelings or fabricating a familial or historical connection; and legal maneuvering via coerced transfers of funds or property or coerced or unduly influenced advance directives or estate planning. See *Power and Control Wheel for People with Dementia*, THE WEINBERG CENTER FOR ELDER JUSTICE (2021), https://theweinbergcenter.org/wp-content/uploads/2022/02/Power-and-Control-Wheel-FINAL_Weinberg-Center.pdf.

¹⁰⁰ See App. 1.

¹⁰¹ See App. 1.

¹⁰² SIERRA SMUCKER ET AL., AN INITIAL EVALUATION OF THE WEINBERG CENTER FOR ELDER JUSTICE'S SHELTER MODEL FOR ELDER ABUSE AND MISTREATMENT 2, 18 (2021).

request for contact from another party by analyzing what the client's position would be on the issue.¹⁰³ The Weinberg Center draws on its expertise around elder abuse and cognitive impairment and considers past statements, known values, and input from trusted community members, family members, or their guardian relating to the client's desire for contact, in an effort to understand the client's wishes beyond verbal expression.¹⁰⁴

The protocol then prompts assessment of the client's baseline cognitive impairment and dementia related symptoms and the impact these symptoms may have on the older adult's ability to demonstrate insight into the harm that occurred, as well as to assess what would be meaningful to the older adult given their present cognition. This assessment helps professionals prepare for how to most appropriately plan with the client for restored contact, both in terms of therapeutic support before, during, and after a reconnection, as well as safety planning, which may require the support of professionals, as well as family and other social supports.

This process also considers the severity and history of the harm that occurred, any ongoing legal matters or court proceedings, both criminal and civil, and the emotional and physical risks involved in contact. The protocol is completed by a multidisciplinary team of attorneys, social workers and medical professionals, who all bring their respective professional expertise as well as knowledge and perspective of the particular case to bear on answering the questions posed by the protocol. At the conclusion of the analysis, if it is determined that a restorative approach can be attempted, a collaborative safety plan is developed with the client, family members, community supports, or guardian prior to initial contact. Based upon all the information gathered through the protocol, specific parameters for the visit are crafted which prioritize the client's clinical needs and the goal of maximizing their capacity, while also considering the specific history of the harm that occurred. The protocol also includes steps for monitoring initial visits and evaluating the emotional impact on the client to help inform phases for continued contact. The case study below, which describes how the protocol was used to initiate a restorative process for a client with a court-appointed guardian, illustrates the benefits of this program for older adults with cognitive impairment who have experienced harm.¹⁰⁵

This program benefits greatly from the controlled environment offered by a continuum of care facility and the constant professional presence which can be utilized to supplement safety planning and support. The degree to which the parameters of this protocol might be transferable to community settings is being explored.

V. Emerging Trends in the Use of Restorative Justice in Elder Abuse Cases

A. Ms. M's Story - A Restorative Approach in a Guardianship Case

Ms. M is a 75-year-old who lived in the townhouse she owned with her adult son for approximately two decades. She receives a significant pension in addition to Social Security benefits. In recent years, Ms. M began to exhibit signs of cognitive decline and was ultimately diagnosed with vascular dementia. Initially, her son assumed caregiving responsibilities, however concerns were raised by Ms. M's family about his ability to meet her complex care needs, citing his long-standing substance misuse.

In the fall of 2021, Adult Protective Services (APS) received a referral from NYPD for Ms. M after she was found wandering alone, disoriented, nearly an hour from her home. The assigned APS caseworker sought to connect Ms. M with essential services, including assistance with Medicaid planning and in-home care. However, these efforts were repeatedly obstructed by her son, as he would not provide needed financial documents, and refused home health aide services for his mother.

Further concerns emerged regarding financial exploitation, as it was believed Mr. S was misappropriating his mother's funds to support his continued substance use. In response, APS encouraged the son to engage in treatment through a structured day program, so he could continue to support his mother at home and to prevent him from using her funds. Despite these efforts, the son did not appear to actively participate in treatment and began evading the program altogether.

¹⁰³ See App. 1.

¹⁰⁴ See App. 1.

¹⁰⁵ See *infra* Part 4(A).

Subsequently, APS received anonymous photos that depicted patterned bruising on Ms. M's arms, legs and neck. When APS, accompanied by NYPD, conducted a home visit, they inquired about the injuries on Ms. M. Despite her dementia symptoms, Ms. M was able to articulate that her son had been the one who injured her. Due to significant safety concerns, Ms. M was admitted to a local hospital for evaluation. During her hospital stay, her son was permitted to visit Ms. M, but this was quickly ended after Mr. S gave his mother a marijuana edible in the hospital, which resulted in her experiencing increased paranoia and aggression.

Given Ms. M's cognitive impairment and concerns for her safety, the hospital filed a guardianship petition under New York Mental Hygiene Law § 81.08. Ms. M's niece was appointed as her temporary guardian and sought to have her admitted to the Weinberg Center Safe Haven Program. Initially, no contact was allowed between Ms. M. and her son, even though the Article 81 final order listed the son as a person entitled to visitation.¹⁰⁶ Ms. M's niece and guardian opposed this visitation, and the Weinberg Center assisted her in obtaining an order of protection in family court. During this proceeding, the son appeared in court while seemingly intoxicated and never produced evidence of participation in a substance misuse treatment program, which was a precondition of any sort of visitation with Ms. M. under the order of protection ultimately issued by the family court. After the family court order expired, Ms. M's son made a motion in the guardianship proceeding, requesting visitation with his mother in accordance with the final order in the Article 81 guardianship proceeding. In his motion, the son asserted that he was now sober and employed, and was now committed to rebuilding a safe relationship with his mother.

This motion and the son's representation of changed circumstances prompted the Weinberg Center professionals to initiate use of the Restorative Steps protocol. Engaging with the protocol focused the professionals on Ms. M's history of devotion to her son, who she maintained a close relationship with despite his long history of alcohol misuse. The protocol also underscored the fact that although Ms. M was unable to directly express her present wishes around visits with her son due to her confusion and significant impairment, she was generally quite social and responded positively to visits from family and friends.

Based on the analysis, it seemed to the professionals that to deny Ms. M the opportunity to engage with her son now that he was sober and seeking to connect with her would contravene her long-standing values, priorities and wishes. The Weinberg Center's multidisciplinary professional team engaged with the guardian around this conclusion, and the guardian was open to creating a plan for visitation with careful boundaries. The team then began to develop an individualized safety plan. The guardian had already marshalled Ms. M's assets, so financial exploitation was no longer a concern. The team agreed that initial visits ought to take place in a public area with supervision. The team also agreed that Ms. M's son would need to sign a written agreement acknowledging the parameters of the visits and acknowledging he would not bring Ms. M any food or otherwise interfere with her medical care. Ms. M's son was also required to provide periodic evidence of his continued participation in a substance misuse treatment program.

The initial visit was supervised by Ms. M's attorney as well as her son's attorney. Ms. M seemed quite happy to see her son. When she first saw him, she reached out toward him. She had a bright affect throughout the visit and continuously attempted to engage him in conversation. She was monitored closely during and after the visit for potential signs of distress such as pacing, agitation or tearfulness, and did not exhibit any. Subsequent visits were supervised by the Weinberg Center multidisciplinary professional team. At each one, Ms. M seemed very positively impacted by seeing her son.

Mr. S continued to demonstrate his renewed commitment to his personal growth and relationship with his mother. Through the Restorative Steps process and by witnessing his mother in an appropriate care environment, he began to acknowledge the harm he caused and expressed deep remorse for his actions. Determined to make meaningful changes, Mr. S articulated a clear goal: to prove to his mother and family that he is capable of long-term stability and is responsible for making amends.

¹⁰⁶ N.Y. MENTAL HYGIENE LAW § 81.16(c)(6) (McKinney 2025).

After six months of this, the visitation parameters were changed so explicit supervision was no longer required. Under the adjusted terms, Ms. M's son was required to schedule visits with the Weinberg Center professionals. These visits were to take place during normal business hours, Ms. M's son was to check in with the Weinberg Center upon arrival and the visits were to be held only in public areas. The visits are ongoing and Ms. M. continues to engage positively with her son and demonstrate enjoyment of his visits, while Mr. S continues to maintain his sobriety and stability.

B. Restorative Justice in Guardianship or Conservatorship

As the case study above demonstrates, individuals with cognitive impairment can respond positively to the use of restorative justice in guardianship or conservatorship proceedings. Under the 2017 Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, a “guardian”¹⁰⁷ is defined as someone appointed by a court to make personal decisions on behalf of an individual and a “conservator”¹⁰⁸ is defined as someone appointed by a court to make decisions with respect to the property or financial affairs of an individual. Many states only use one of these terms, with a guardian responsible for both the person and property or a conservator responsible for both.¹⁰⁹

The Uniform Act further provides the basis for appointing a guardian or conservator for an adult as:

(A) the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and (B) the respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative¹¹⁰

While the Act does not specifically define “capacity” or “incapacity,”¹¹¹ it takes both functional and cognitive elements, as well as an individual's needs, into consideration when determining whether an individual with cognitive impairment should be appointed a guardian or conservator.¹¹² Such elements can also be taken into consideration when guiding the process of restorative justice.

The elder justice models previously discussed provide support for using restorative justice in guardianship and conservatorship proceedings, including when the individual is experiencing mild or significant cognitive impairment.¹¹³ For example, the RISE model assists older adults, with cognitive impairment and who have been harmed, with expressing their needs and goals through a RISE Advocate who consults other trusted individuals and substitute decision-makers to help guide the restorative process.¹¹⁴ Similarly, the Weinberg Center's Restorative Steps program includes clients with cognitive impairment and centers their approach around the client's expressed values, emotions, and preferences, including past statements, known values, and input from family members, appointed guardians and conservators, or others if the client cannot verbalize or express their values, wishes or preferences.¹¹⁵

¹⁰⁷ UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT § 102(9) (UNIF. L. COMM'N 2017).

¹⁰⁸ *Id.* § 102(5).

¹⁰⁹ See, e.g., CONN. GEN. STAT. § 45a-650(f)–(g) (2025); N.Y. MENTAL HYG. LAW § 81.02(a); FLA. STAT. § 744.102(9) (2025); CAL. PROB. CODE § 1801(c) (West 2025).

¹¹⁰ UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT § 301(a).

¹¹¹ There has been a recent shift toward defining “capacity” in a way that reflects its potential to fluctuate over time and across contexts. For example, the Uniform Health-Care Decisions Act of 2023 adopted a more individualized standard for assessing “capacity.” Section 3 emphasizes an individual's abilities and limitations and recognizes supported decision-making, while Sections 4 through 6 provides guidance on how capacity determinations should be made. In comparison, most guardianship statutes (like Indiana's) typically define “incapacity” by listing conditions that may prevent decision-making, such as “mental illness, infirmity, substance use, incarceration, duress, fraud, or undue influence.” See UNIFORM HEALTH-CARE DECISIONS ACT (UNIF. L. COMM'N 2023); see also IND. CODE § 29-3-1-7.5 (2025).

¹¹² UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT § 301 cmt.

¹¹³ See *id.* prefatory note.

¹¹⁴ Burnes et al., *supra* note 76, at 968.

¹¹⁵ SMUCKER ET AL., *supra* note 86, at 14.

The 2022 National Guardianship Standard of Practice¹¹⁶ also provides support for using restorative justice after a guardian or conservator has been appointed. NGA Standard 7 for Decision Making requires guardians “to identify and advocate for the person’s goals, needs, and preferences.”¹¹⁷ Under this standard, if the person is unable to express their goals, needs, or preferences, the guardian is required to seek input from others familiar with the person to determine what the person would have wanted.¹¹⁸ Only when the person’s goals, needs, or preferences cannot be ascertained may the guardian make a decision in the person’s best interests.¹¹⁹

Additionally, there is support that individuals experiencing severe cognitive impairment can participate in the process of restorative justice.¹²⁰ One recent study found that while many providers expressed concerns about the participation of older adults who have advanced cognitive impairment or impaired capacity, some believed that with proper supports, older adults with cognitive impairments could participate in the restorative process.¹²¹ Even if they were unable to actively participate in the restorative process, the providers believed that cognitively impaired individuals could still benefit from outcomes negotiated on their behalf.¹²² This demonstrates that adults with severe cognitive impairments under guardianship and conservatorship could still benefit from restorative justice through their participation or the use of supports.

Some states have identified the benefits of restorative justice in guardianship and conservatorship proceedings. For example, Nebraska¹²³ permits contested guardianship and conservatorship cases to be accepted for restorative justice programs. As restorative justice practices become more common, it is anticipated that the number of states permitting restorative justice in guardianship and conservatorship proceedings will increase.¹²⁴ In the meantime, the RISE Model, Weinberg Center for Elder Justice’s Restorative Steps Program, and 2022 NGA Standards of Practice provide excellent guidance and support for the use of restorative justice in guardianship and conservatorship proceedings, including when individuals are experiencing mild or significant cognitive impairment.

VI. Conclusion

Restorative justice approaches are emerging as promising practices to address cases of elder mistreatment. Restorative approaches are particularly responsive to the gaps within the criminal justice response to elder abuse. As this article has shown, these gaps may be further exacerbated when the older adult who experienced harm has cognitive impairment. Therefore, restorative approaches should be considered in these cases, even where the older adult has a court appointed guardian or conservator. This article advocates for more clinical and legal work to design programmatic elements that expressly address the unique needs of older adults with cognitive impairment within a restorative justice framework, and ultimately, more research to evaluate the impact of these programs.

¹¹⁶ NAT’L GUARDIANSHIP ASS’N, STANDARDS OF PRACTICE § 4(VI) at 6 (5th ed. 2022).

¹¹⁷ *Id.* § 7(I), at 8.

¹¹⁸ *Id.* § 7(I)(C), at 9.

¹¹⁹ *Id.* § 7(I)(D), at 9.

¹²⁰ Burnes et al., *supra* note 114, at 970.

¹²¹ Maria T. Brown & Mary Helen McNeal, *Addressing Elder Abuse: Service Provider Perspectives on the Potential of Restorative Processes*, 32 J. ELDER ABUSE & NEGLECT 357, 371 (2020).

¹²² *Id.*

¹²³ NEB. REV. STAT. § 25–2911(1)(f) (2025).

¹²⁴ THALIA GONZÁLEZ ET.AL, STATE RESTORATIVE JUSTICE LEGISLATION 2020–2025: CONFIDENTIALITY, ADMISSIBILITY & PRIVILEGE 1 (2025).

Appendix 1: RESTORATIVE STEPS

GUIDING PROCEDURES FOR CLIENTS WITH COGNITIVE IMPAIRMENT

Guiding Statement: The Weinberg Center supports the autonomy of older adults living with dementia and works to facilitate their sense of dignity and respect. Through this commitment, we seek to advance the equity and inclusion of residents with cognitive impairments by including them in our Restorative Steps initiative. Professionals must balance accountability and flexibility when implementing this protocol.

Statement of Purpose: The Weinberg Center recognizes clients may want to reconnect with those who have caused them harm as part of their healing process. A trauma-informed approach to working with older adults who have experienced abuse, including those living with cognitive impairment, requires centering clients' goals and values. To assess a desire for contact with a third party who may have caused harm, we will utilize the following protocol.

Step 1: What was the client's cognitive baseline when coming into shelter? How does the resident's cognitive impairment impact their decision making and thinking?

Step 2: Who initiated the desire for contact?

- Resident
- Family
- Weinberg Center
- Guardian
- HHAR (Hebrew Home at Riverdale)
- PWACH (person who allegedly caused harm)
- Other _____

(a) If Resident initiated:

- How did the resident express this desire?
- What is the resident asking for?
- What are the associated emotions involved with the desire for contact?
- How long has the client been at the Weinberg Center?

(b) If Family Initiated:

- How does the resident respond to the request?
- Which family member is requesting this?
- What is being requested?
- Why is this request being made?
- What are the past and present family dynamics?

(c) If Weinberg Initiated:

- What is being requested?
- Why is this request being made?
- How does the resident respond to this request?

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(d) If Guardian Initiated:

- What is being requested?
- Why is this request being made?
- How does the resident respond to this request?

(e) If HHAR Initiated:

- What is being requested?
- Why is this request being made?
- How does the resident respond to this request?

(f) If PWACH Initiated:

- What is being requested?
- Why is this request being made?
- How does the resident respond to this request?

Step 3: Addressing reasons for Weinberg Center admission:

- What were the prior relationship dynamics between the client and PWACH?
- Does the client identify that harm was done?
- What is the client's narrative of events and how do they view the person who caused them harm?

Step 4: Case background relating to PWACH:

- Psychiatric Hx
- Substance Use Hx
- Criminal Hx
- Prior interactions with the Hebrew Home staff
- Severity of harm to resident
- Active legal case/legal case pending
- Orders of Protection
- Supports and protective factors

Step 5: If client is not able to verbalize request consider:

- Historical preferences, wishes, or values
- Past Statements by the client
- Family perceptions
- Level of care:
 - Rehab
 - Skilled
 - Memory Care
 - Palliative
 - Hospice

Assessment: Should Restorative Steps protocol proceed? If yes, continue to Step 6.

Appendix 1: RESTORATIVE STEPS

Step 6: Safety assessment

- Consider risks to client
 - What are the current risks?
- Consider other residents
 - What is the risk of harm to other residents?
 - What is the risk of harm to roommate?
- Consider other professionals (Doctor, Nurse, CNA, Social workers, Activities, Rehab, Security)
 - What is the risk of harm to staff?
 - Elicit feedback from staff prior to initial meeting.
 - Notify staff about upcoming meeting location and time.
- Safety planning
 - Identify existing protective factors and explore additional supports that can be implemented.
 - Develop a comprehensive safety plan that addresses potential risks and considers the reasons for shelter.
 - Establish a mutually agreed-upon objective for the meeting to promote collaboration and support positive outcomes.

Step 7: Communicate potential risks (physical, emotional, financial, sexual, and spiritual) and benefits to relevant stakeholders.

- Does the resident understand what risks and benefits are involved?
- Explore and communicate risks and benefits to Guardian or family.

Step 8: Establish Client Boundaries

- What are the client's boundaries?
- If client is unable to communicate their boundaries, include supportive community members, e.g. family, guardian, etc. in discussion.
- What are the PWACH boundaries?

Step 9: Initial meeting with PWACH and Weinberg Center Social Worker

- Review of visitation agreement and discussion of client's boundaries.

Step 10: Considerations prior to first visit between client and PWACH:

- The time and length of first visit is pre-scheduled, with the visit lasting a maximum of 1 hour. Refer to restorative steps visitation policy.
- Setting of visitation considerations:
 - Accessibility
 - Public space or private space
 - Sensitivity or reactivity to environment

Step 11: Initial meeting with PWACH and client:

Appendix 1: RESTORATIVE STEPS

- Meet with PWACH and escort them to meeting location
- Monitor clients verbal and non-verbal reaction to seeing PWACH
- Remain within direct vicinity to observe the entirety of the meeting
- Escort PWACH off the premise after the meeting has concluded
- Check in after first visit and evaluate impact on client
- Evaluate if a second meeting will occur
- Consider modifying restriction list

Step 12: Response to boundary violations:

- Boundary violation by resident:
 - Staff will assess the severity of the boundary violation and determine the appropriate intervention, which may include verbal redirection, documentation, temporary suspension of visits, or involvement of security.
- Boundary violation by PWACH:
 - Staff will assess the severity of the boundary violation and determine the appropriate intervention, which may include verbal redirection, documentation, temporary suspension of visits, or involvement of security.
- If termination of visits is appropriate or requested by client, proceed to step 13.

Step 13: Termination of visits:

- Evaluate potential impact to the client if visits are terminated:
 - Physical
 - Emotional
 - Psychological
 - Spiritual
- Provide appropriate referrals or supports as needed (e.g., mental health resources, adapted safety planning, or spiritual care).