



RED HOOK PEACEMAKING PROGRAM

PROGRAM GUIDE FOR COURT REFERRALS

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IN GRATITUDE

In the months and years preceding the launch of this program, Center staff worked with countless tribal court judges, justice system practitioners, and peacemakers who generously shared their wisdom, vision, and experience. The Center is grateful to all of these mentors from across the United States and Canada, and would especially like to thank Lauren Abramson, Anna Francis-Jack, Michael Jackson, Julie Marthaler, Michael Petoskey, and Kay Pranis, David Raasch, Barbara Smith, and Barry Stuart. Special thanks also go to the elders of the Colville Tribes' Peacemaker Circle Program for welcoming us into their circles. The Center also thanks its partners in the Kings County District Attorney's Office, the New York State Unified Court System, Corporation Counsel, the Legal Aid Society, and the Red Hook Community Justice Center for their openness and enthusiasm in approaching this project, with special thanks to Alex Calabrese and Justin Barry. Finally, the Center owes a special debt of gratitude to Gloria Benally, Raymond Deal, and Stanley Nez, all esteemed peacemakers from the Navajo Nation, whose generosity and wisdom has inspired our program.

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A. BACKGROUND

The Center for Court Innovation (the Center) created the Tribal Justice Exchange in early 2008 to provide technical assistance to tribal communities seeking to develop or enhance their tribal justice systems. Funded by the Bureau of Justice Assistance, the Tribal Justice Exchange's three major goals are: (1) to ensure that tribal communities have access to training and ongoing technical assistance about problem-solving community-based practices; (2) to encourage formal collaborations between traditional tribal justice systems and state and local court systems; and (3) to identify and disseminate best practices developed in Indian country that could help strengthen public safety initiatives elsewhere in the United States.

Since 2008, the Center has visited dozens of tribal communities and collaborated with hundreds of tribal justice practitioners. Much of this work has focused on assisting tribes in planning and implementing new problem-solving justice initiatives. Equally important, however, has been the opportunity to observe and learn about Native approaches to justice, such as peacemaking. At the 2nd Annual Indigenous Peacemaking conference, held in Green Bay in October 2008, participants offered numerous first-hand accounts of how peacemaking, a traditional, non-adversarial approach to justice, had succeeded in reaching formerly "unreachable" offenders and in healing the deep wounds suffered by victims of crime. Although used for centuries in many Native communities, peacemaking clearly represented something new for state court systems. Center staff began to explore the possibility of testing the peacemaking approach in a non-tribal setting.

In 2010, the Center applied for and received a grant from the United States Department of Justice, Bureau of Justice Assistance to support the planning of a peacemaking pilot program in a state court system. The project would include a multi-stage planning process involving intensive research on the history and uses of peacemaking in tribal communities, a roundtable discussion with peacemaking experts from around the country to explore the use of peacemaking in a non-tribal setting, and a feasibility study assessing whether peacemaking could work in the New York State court system. As a result of the feasibility study, the Center chose the Red Hook Community Justice Center as the pilot site for the launch of the program.

In July 2012, the Center began implementing its peacemaking program in Red Hook. Center staff recruited community members to participate in an intensive training process that would prepare them to serve as peacemakers. The first class of Red Hook peacemakers learned about the history, principles, and practices of peacemaking in Native American communities and how the peacemaking program will fit within the state court in Red Hook. Two experienced peacemakers from the Navajo Nation visited Red Hook in November 2012 to explain the fundamental tenets of peacemaking and demonstrate the peacemaking process in action. The Center launched the peacemaking program in January 2013. In its first year of operations, the Peacemaking Program dealt with 30 criminal court cases and one case from the community, and trained a second class of peacemakers.

B. PROGRAM OVERVIEW

1. Mission

Peacemaking is a traditional Native American form of justice that promotes healing and restoration. Although peacemaking varies across tribes, it generally brings together defendants and victims, as well as others affected by the defendant's behavior. Peacemakers, who are trained volunteers from the community, lead the peacemaking sessions and allow each participant to speak about how the case has affected him or her personally. The purpose of peacemaking is to reach a consensus to resolve the dispute and, more generally, "to talk it out in a good way."¹ The Navajo Nation, which operates the best-known peacemaking model in the country, describes the process as the "reparation or mending of controversies through harmony."²

2. Goals

Peacemaking seeks to resolve disputes through an inclusive, non-adversarial process that empowers all of the affected parties. To fulfill this mission, the Red Hook peacemaking program will pursue the following goals:

Healing relationships: Peacemaking is concerned with healing the relationships that were harmed by a dispute or crime. Instead of merely punishing the past act, peacemaking looks to the future, focusing on healing the relationships involved and correcting harmful behavior to ensure that it is not repeated. Peacemaking emphasizes the development of participants' sense of identity and commonality with members of his or her community.

Giving victims a voice: Peacemaking provides victims with an opportunity to express how the crime has affected them, their families, and their communities. In a peacemaking session, the victim can actively participate in the discussion that leads to a resolution.

Holding participants accountable: Peacemaking requires participants to accept responsibility for their actions and fosters a sense of accountability. Participants face other members of their community, recognize the effects of their actions, and participate in determining how to repair the harm they have caused.

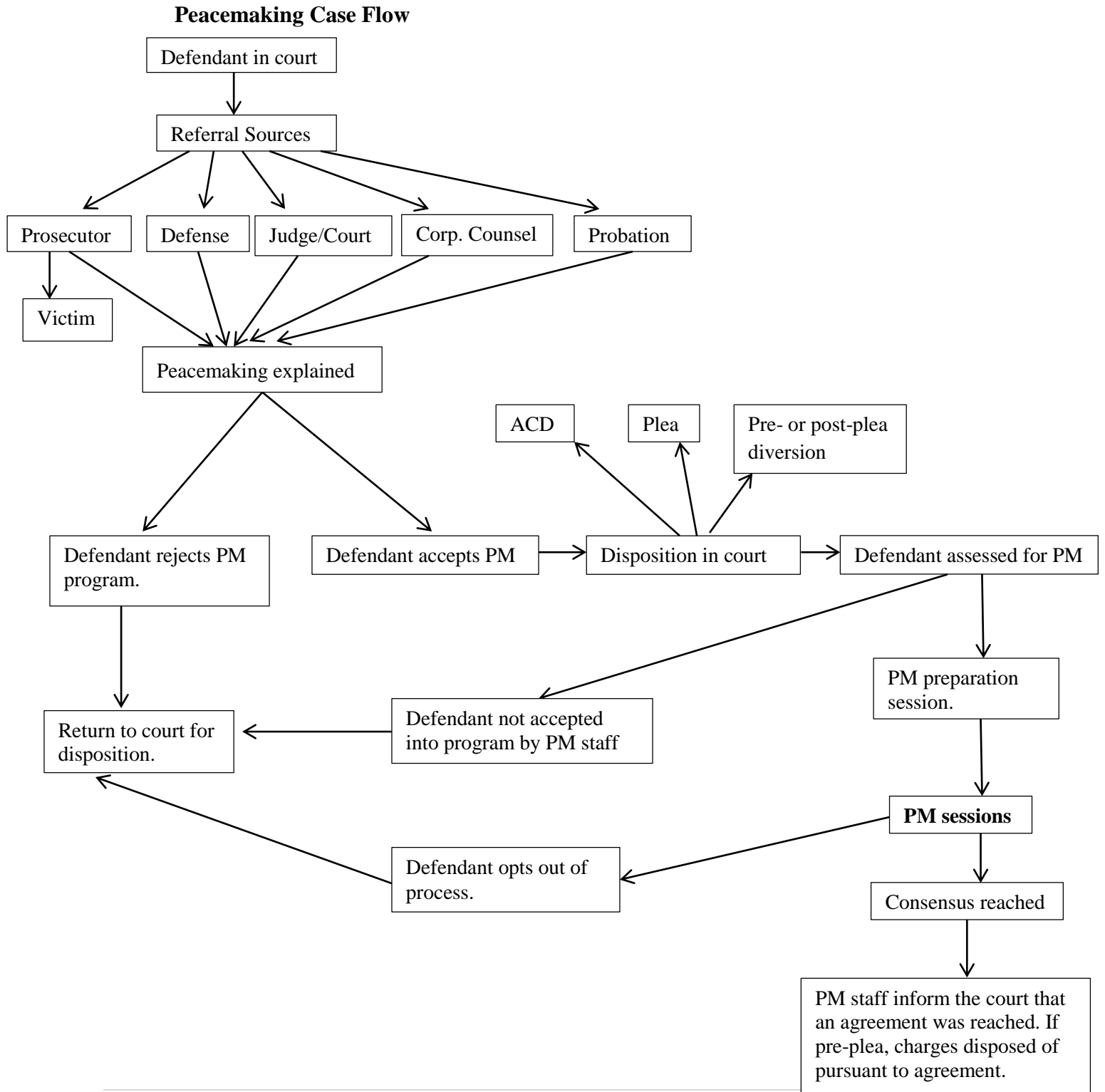
Empowering the community: The peacemaking program trains community members to serve as peacemakers, giving the community a direct and active role in addressing the conflicts and crimes that affect their community. In addition, the peacemaking program invites other community members to participate in peacemaking sessions, offering them an opportunity to talk through and resolve disputes and demonstrating that the community shares responsibility for repairing the harm caused by conflicts.

¹ ROBERT V. WOLF, CTR. FOR COURT INNOVATION, WIDENING THE CIRCLE: CAN PEACEMAKING WORK OUTSIDE OF TRIBAL COMMUNITIES? 3 (2011); see also Nancy A. Costello, *Walking Together in a Good Way: Indian Peacemaker Courts in Michigan*, 76 U. DET. MERCY L. REV. 875 (1999); JUDICIAL BRANCH OF THE NAVAJO NATION, PEACEMAKING (A GUIDE TO THE PEACEMAKING PROGRAM OF THE NAVAJO NATION) (2004), available at <http://www.navajocourts.org/Peacemaking/peaceguide.pdf>.

² JUDICIAL BRANCH OF THE NAVAJO NATION, PEACEMAKING (A GUIDE TO THE PEACEMAKING PROGRAM OF THE NAVAJO NATION) 1 (2004), available at <http://www.navajocourts.org/Peacemaking/peaceguide.pdf>.

C. PROGRAM STRUCTURE

The peacemaking program is designed to identify cases better suited for resolution outside of the court system. To facilitate its interaction with the justice system, the following case flow chart illustrates the life of a peacemaking case from referral to final disposition.



1. Court Referral Process

The peacemaking program will accept referrals from different stakeholders within the justice system, including the judge, district attorney, corporation counsel, defense counsel, probation, and the resource coordinator. If the judge and both attorneys agree to proceed with peacemaking, referrals will be sent to the program coordinator, who will meet with the defendant and explain how the program works. The program coordinator will also confirm whether the defendant meets all eligibility criteria. The defendant will decide whether to participate in the peacemaking program.

If defendant agrees to participate in the peacemaking program, the program coordinator will inform the court and counsel. In victim cases, the prosecutor will speak with the victim and ensure the victim's consent to send the case to peacemaking (see Roles and Responsibilities, below). The victim will be invited—but not required—to speak with the program coordinator to learn more about the peacemaking process. Generally, victims may decide whether to participate personally in the peacemaking sessions, or whether to have their interests represented by the peacemakers or another participant in the peacemaking session. The court will then recall the case to enter the disposition consistent with the plea offer. This disposition may include a guilty plea, an ACD or pre-plea diversion.

Following the disposition, the defendant will meet with the program coordinator to complete an assessment. This assessment may take place on the day of the court hearing or at a convenient time shortly thereafter. If any substantial concerns arise from the assessment (see Eligibility Requirements, below), the program coordinator will ask the court to re-calendar the case. Otherwise, the program coordinator will set up a peacemaking preparation session for the defendant and the victim (if participating) to prepare them for what to expect out of the sessions. The defendant will also fill out a short pre-survey, as part of the Center's evaluation strategy (see Appendix 1). The first peacemaking session will be scheduled within two weeks following acceptance into the program.

2. Referring courts

The Red Hook Peacemaking Program currently accepts referrals from the Red Hook Community Justice Center and the Adolescent Diversion Pilot from the downtown criminal court at 120 Schermerhorn. The Peacemaking staff operate out of the Red Hook Community Justice Center and conduct all intakes from their office on-site. For cases originating out of 120 Schermerhorn, the protocol for accepting referrals requires the participation of the Associate District Attorney of the Adolescent Diversion Pilot, as well as Center staff who operate the Brooklyn Justice Initiative at 120 Schermerhorn. *For the full referral protocol from the Adolescent Diversion Pilot, see Appendix 3 (in development).*

3. Eligibility Requirements

The peacemaking program will accept cases involving both minors and adults. It will also accept first-time offenders and those with prior criminal records. Additional eligibility requirements are as follows:

- Defendants must accept responsibility for their actions related to the dispute or crime.
- All participation must be voluntary. Each defendant will sign a consent form.
- The defendant understands the intensive nature of the peacemaking process and is willing and able to commit the time and effort to complete the process.
- Parental/Guardian consent is required for defendants under the age of 18.
- In justice system cases involving defendants 15 years of age and younger, the corporation counsel will assist the court and defense counsel in determining whether the child is mature enough to accept responsibility and participate in peacemaking.
- The defendant does not suffer from a severe and/or untreated mental illness and is not in need of intensive drug treatment.
- The case does not involve any history of or allegations of intimate partner domestic violence, elder abuse or sexual assault.

4. Peacemaking Program Intake Steps

Upon receipt of a referral, the program coordinator will conduct a three-step intake procedure.

Step 1: Introduction to Peacemaking. The program coordinator will meet with each prospective defendant to explain the peacemaking process, assess whether the case is suitable for peacemaking, and obtain the defendant's consent to enter the program.

Step 2: Intake Assessment. If the defendant agrees to participate, the program coordinator will administer an assessment questionnaire to evaluate the facts of the underlying dispute and the defendant's willingness to accept responsibility. The program coordinator will also examine any relevant medical and family history, in order to determine whether the defendant has either a severe and/or untreated mental illness or is in need of intensive drug treatment, or any other issues that might make peacemaking inappropriate. If there are no barriers to peacemaking, the program coordinator will accept the defendant into the program. If the peacemaking program declines to accept a defendant, the reasons will remain confidential.

Step 3: Preparation for Peacemaking. The program coordinator will meet with the defendant to (a) conduct a brief pre-peacemaking survey and (b) prepare the defendant for peacemaking. During this meeting, the program coordinator will provide the defendant with detailed information about the peacemaking process to help him or her understand what to expect from the sessions, from the peacemakers and from the overall experience. The program coordinator will also explain what the peacemakers will expect from the defendant, in terms of the principles of conduct during the sessions and the goals of the process. If the defendant wishes to bring support persons into the program, those persons will also meet with the program associate to

prepare for the first session. If a victim will be participating in the sessions, the program coordinator will provide that person with the same level of preparation.

5. Confidentiality

Defendants, victims and peacemakers will sign a confidentiality agreement prohibiting the disclosure of any and all matters that are discussed in the peacemaking sessions. The program coordinator will explain to defendants the two exceptions to confidentiality, which are:

- If a peacemaker suspects that a child is being abused or is about to be abused, the peacemaker must report the issue to the peacemaking staff, who will report it to a state agency.
- If a peacemaker suspects that one of the participants in the session is in danger of causing physical harm, to him or herself or another, the peacemaker must report the issue to the peacemaking staff, who will follow the rules of the safety protocol (see Appendix 2).

6. Status Updates

During the time that the defendant is attending peacemaking sessions but no consensus decision has yet been reached, the program coordinator will monitor the defendant's attendance and compliance. The program coordinator will work directly with the peacemakers to determine whether the defendant is participating in all peacemaking sessions actively and in good faith. In addition, the program coordinator will provide the court and the attorneys with regular status updates detailing the defendant's attendance at peacemaking sessions and overall compliance with the program. However, neither the program coordinator nor any other program staff may reveal to the court or other justice system agency the content of any peacemaking session, except as required by mandated reporter laws (see above).

7. Consensus Decision

The goal of each peacemaking session will be to reach a consensus decision for healing and restitution. The peacemakers will work to ensure that all participants in the process have a voice in resolving the case and agree on the ultimate outcome. The program coordinator will monitor the defendant's progress in fulfilling the terms of the consensus decision and may schedule additional peacemaking sessions for the purpose of assessing the defendant's compliance with the consensus decision. Once the participant has fully complied with the consensus decision, the peacemaking process will be considered complete, and the program associate will notify the court in writing that the peacemaking process has concluded. Upon receipt of this notice, the court will calendar the case for final disposition pursuant to the parties' plea agreement.

8. Failed Sessions

In the event that the defendant does not attend peacemaking sessions, refuses to participate in good faith, or fails to comply with the consensus decision, the program coordinator, after

consultation with the peacemakers and after having given notice to the defendant, may request the matter be brought back into court. The program coordinator will inform the court that the peacemaking process is not the appropriate course of action in the current circumstances, either due to failed attendance or a failure to participate in good faith, or any other significant reason that interferes with the peacemaking process. However, the program coordinator will not disclose the substance of any discussions conducted during the peacemaking process.

9. Community Referrals

In addition to accepting referrals from court, the peacemaking program will accept referrals from outside the formal justice system, including from schools, public housing authorities, and community members. In all cases, participation in the peacemaking program must be voluntary, and the program associate will seek consent from all known parties to the dispute. The process for the sessions will follow the same structure as the court-referred cases. The main parties involved in the dispute will go through the intake process with the program coordinator, who will determine whether the dispute is appropriate for peacemaking. If accepted, the parties will attend peacemaking sessions until a consensus decision has been reached.

D. PEACEMAKING SESSIONS

After a case is referred and accepted into the peacemaking program, the program associate will schedule the first peacemaking session. Two to three volunteer peacemakers and at least one Center for Court Innovation staff member will attend each session. Defendants and victims will have the opportunity to invite family members and friends who were affected by the case to attend the session. All participants in a peacemaking session are treated equally, and all are allowed to speak about how the event, crime, or crisis affected them personally. The purpose of peacemaking is to reach a consensus to resolve the dispute and, hopefully, to heal the relationships among those involved.

1. General Guidelines

Peacemaking differs substantially from the adversarial model that is used in most state courts. Some key differences include:

Healing. The goal of peacemaking is to heal damaged relationships and restore healthy connections between defendants and the community. The peacemaking process is designed to reveal the underlying issues, conflicts, and wounds that are often at the root of criminal behavior. Far from serving as neutral decision-makers, peacemakers actively guide the defendants, encourage open communication, and share stories from their own lives to help participants in the process reach a consensus decision.

Responsibility. Peacemaking requires defendants to face the person or community that has been affected by his or her wrongful behavior. This intensely personal process frequently leads defendants to accept a deeper level of accountability than is typical in an adversarial courtroom. Moreover, defendants are encouraged to propose their own solutions to resolve the underlying controversy. Rather than rely on justice system professionals to determine the appropriate

resolution to the case, defendants, along with the rest of the participants in the process, are asked to reach a consensus decision that fits the unique circumstances and issues raised in each dispute. By requiring defendants to face their community and participate in solving their own problems, peacemaking promotes personal responsibility and accountability. Participants learn to self-correct their behavior instead of relying on others to fix it for them.

Consensus decision-making. Consensus decisions reached through peacemaking are often more creative and varied than are sentences handed down by courts. They may require the defendant to apologize to those affected by his or her harmful actions, to provide restitution to victims or the community, to acknowledge responsibility in a meaningful way, or to address his or her own personal challenges by participating in educational programs or other supportive services. For specific examples of creative responses, see the Healing Steps, below.

Alternative approach. Peacemaking is not a court process. It combines traditional Native American practices and contemporary community values to bring parties together to talk through disputes and to reach a consensus decision. A peacemaker is not a judge, a mediator, or an arbitrator. A peacemaker does not adjudicate a dispute, assign guilt or responsibility to the parties, or engage in any kind of fact finding. Rather, peacemakers are esteemed community leaders who have been trained to help participants talk through their issues and reach their own conclusions.

Rules and procedures. Peacemaking sessions are not governed by conventional court rules and are intended to be much less formal than typical court proceedings. Participants are encouraged to communicate openly, and the peacemakers will allow the discussion to take its course. Often, participants in a peacemaking session will spend a substantial amount of time discussing issues and concerns that most courts might not consider relevant to the case at hand. The goal is to reach the deeper issues that underlie a dispute and promote long-term healing. Despite lack of rigid procedural rules, peacemakers will ask all participants to maintain a respectful and courteous tone throughout the session and may require participants leave the session in the event that their behavior is inappropriate or disruptive to the peacemaking process.

Ceremony. Ceremony is an important aspect of peacemaking, as it imparts a sense of seriousness and promotes a feeling of connectedness, caring, and intimacy among participants. Ceremony emphasizes that peacemaking is focused on strengthening the community, and that peacemaking is different from conventional court processes or other modes of alternative dispute resolution, such as mediation or arbitration. The peacemakers have been trained to ensure that any ceremonies associated with a peacemaking session are not grounded in any formal religious observation. Instead, peacemaking ceremonies will be designed to encourage the participants to focus on their intention, and to communicate to participants that a sense of peace is integral to peacemaking. The peacemakers will begin and end each peacemaking session using one of the following modes of ceremony:

- Observing a moment of silence.
- Standing in a circle while holding hands and “passing the pulse” from one person to the next.
- Stating, “Peace be with you.”

- Stating, “May all of the benefits of this session today extend to all beings in all directions.”
- Stating, “Any harm to the community is harm to me. Any disrespect to you is disrespect to me.”
- Playing a piece of music.
- Some other form of expression that fosters a focus on intention and peace.

2. Steps in a Peacemaking Process

The goal of each peacemaking session is to reach a consensus decision and to heal the relationships underlying the crime. Very often, however, one peacemaking session will not suffice to reach these goals. Therefore, each case will involve as many peacemaking sessions as the peacemakers and the participants feel is required to reach a consensus decision for resolving the dispute.

Each peacemaking sessions will follow the steps listed below:³

- The peacemakers will begin by introducing the participants and reviewing the principles of conduct that will govern the session.
- Peacemakers will begin the session with an opening ceremony.
- Each participant will be permitted to make opening remarks, introducing what she or he feels is most relevant. Participants will sit in a circle and speak in turn using a talking piece. No one may speak unless he or she holds the talking piece.
- Peacemakers will ensure that participants understand the nature of the controversy before inviting the participants to engage in additional discussion. Peacemakers may ask the participants questions for the purpose of clarifying the nature of the controversy.
- Peacemakers will permit, and encourage, the participants to discuss the dispute openly and freely.
- Peacemakers will ensure that all participants are permitted full and fair opportunity to address comments presented by others.
- Discussions will continue until all participants have had an opportunity to speak.
- After the participants have fully discussed the controversy and the desired relief, the peacemakers will guide the participants toward a consensus decision, allowing full opportunity for discussion and input. Peacemakers may assist the participants by

³ In gratitude to our mentors Gloria Benally and Raymond Deal from the Navajo Nation Peacemaking Program for providing this summary of the steps in a peacemaking session.

suggesting different types of restitution, community service, and healing steps that may be appropriate.

- After the participants reach a consensus decision, the peacemakers will provide a final summary of the agreement and ask the defendant to reduce it to writing. The written agreement should be acknowledged by all participants and peacemakers.
- Peacemakers may require participants to return to additional peacemaking sessions for the purpose of reviewing the participants' progress and compliance with the consensus decision.
- Peacemakers will end the session with closing ceremony.

3. Length of the peacemaking process

Each peacemaking session will typically last for two hours. If, at the end of a session, participants are not able to fully reach a consensus decision, the peacemakers will schedule another session within two weeks. The sessions will continue on a biweekly basis until resolution. The program associate will update the judge, prosecutor and defense attorney of the formal progress of the case and will communicate any concerns the court staff might have about the length of time to the peacemakers.

If a defendant in a peacemaking process is concerned about the length of the peacemaking program, the defendant may petition the Peacemaking Program Director to determine whether any modification in the process is required. The court and/or counsel may also petition the Peacemaking Program Director if the length of time becomes problematic.

4. Food

One of the central goals of peacemaking is building and repairing relationships, and food is an indispensable part of this process. Tribal and non-tribal cultures across the world build community by breaking bread together. Food helps to break the ice, make people more comfortable, create a common bond, and begin to set the tone for the discussion to come. At the start of each peacemaking session, participants and peacemakers will share a light meal before beginning the discussion. The peacemaking program will use private funds generously provided by the Kindle Project to pay for food in all peacemaking sessions.

5. Healing Steps and Modes of Repair

Peacemakers will encourage participants to seek out meaningful forms of restitution. The program coordinator will assist the defendants to schedule different healing steps and/or modes of repair. While the participants may also be required to complete conventional forms of restitution, such as community service, group classes and letters of apology, the peacemakers will encourage the participants to connect with each other and their community throughout the peacemaking process, including, but not limited to:

- Creating a detailed family tree
- Participating in a mentoring program
- Volunteering at the Senior Center
- Youth/Elder pairings
- Interviewing a community or family member about culture or about the history of Red Hook, and/or about how they came to be settled in Red Hook.
- Attending a cultural event
- Volunteering with a local veterinarian or ASPCA
- Learning farming techniques
- Participating with StoryCorps

E. ROLES AND RESPONSIBILITIES

1. Prosecutor

The prosecutor will identify cases that may be appropriate for peacemaking and refer those cases to the peacemaking program. In any case referred to the peacemaking program, regardless of the source of the referral, the prosecutor will speak with the victim and ensure the victim's consent to either (a) participate in the peacemaking process or (b) have the defendant participate in peacemaking in lieu of the formal court process. If the victim wishes to participate in the process, the prosecutor will ask the victim to speak with the program coordinator to learn more about peacemaking. If the victim objects to the use of peacemaking for his or her case, the case will return to the regular court process.

The prosecutor will provide the defendant with an offer for disposition contingent upon successful completion of the peacemaking program. If the defendant successfully completes the program, the prosecutor will ensure that the agreed disposition is entered on the court record. If the defendant fails to successfully complete the peacemaking program, the case will be sent back to court and the prosecutor may resume prosecution in the usual manner.

The prosecutor will not be privy to the details of the peacemaking sessions, which will remain confidential, but will rely on the peacemaking program staff to ensure that the defendant has successfully completed the process.

At the time of referral, when practicable, the prosecutor will make a notation of the disposition and sanctions that would have been offered to the defendant had he or she been processed through the formal court system. See the Evaluation Strategy, at Appendix 1.

2. Corporation Counsel

Corporation Counsel will identify cases involving juvenile defendants that may be appropriate for the peacemaking program and refer those cases to the peacemaking program. Corporation Counsel will be responsible for making an initial determination, in consultation with defense counsel and the court, that the juvenile is mature enough to understand the fundamental principles of peacemaking and to accept responsibility for his or her actions. If the juvenile defendant is accepted into the peacemaking program, Corporation Counsel will be responsible

for obtaining the consent of the victim to either (a) participate in the peacemaking process or (b) have the juvenile defendant participate in peacemaking in lieu of the formal court process. If the victim wishes to participate in the process, Corporation Counsel will ask the victim to speak with the program coordinator to learn more about peacemaking.

Corporation Counsel will provide the juvenile defendant with an offer for disposition contingent upon successful completion of the peacemaking program. If the defendant successfully completes the program, Corporation Counsel will be responsible for ensuring that the agreed disposition is entered on the court record. If the juvenile defendant fails to successfully complete the peacemaking program, the case will be sent back to court and Corporation Counsel may resume prosecution in the usual manner.

Corporation Counsel will not be privy to the details of the peacemaking sessions, which will remain confidential, but will rely on the peacemaking program staff to ensure that the defendant has successfully completed the process.

3. Probation

The probation department may refer cases involving juvenile defendants to the peacemaking program for adjustment. If the juvenile defendant is accepted into the peacemaking program, the probation officer will be responsible for obtaining the consent of the victim to either (a) participate in the peacemaking process or (b) have the defendant participate in peacemaking in lieu of the formal court process. If the victim wishes to participate in the process, the probation officer will ask the victim to speak with the program coordinator to learn more about peacemaking.

The probation officer will provide the defendant with an offer for adjustment contingent upon successful completion of the peacemaking program. If the defendant successfully completes the program, the probation officer will be responsible for ensuring that the defendant is adjusted. If the defendant fails to successfully complete the peacemaking program, the probation department may attempt to adjust the case through other means or refer the case for formal prosecution by the corporation counsel.

The probation officer will not be privy to the details of the peacemaking sessions, which will remain confidential, but will rely on the peacemaking program staff to ensure that the defendant has successfully completed the process.

4. Defense Attorney

The defense attorney may refer cases to the peacemaking program. The defense attorney will be responsible for explaining to defendants that participation is entirely voluntary and that peacemaking is an intensive process that may involve several peacemaking sessions over the course of several weeks or months. In addition, the defense attorney may wish to underscore the limits of confidentiality within a peacemaking session (see Confidentiality, above). The defense attorney will negotiate the final disposition with the prosecutor contingent upon successful completion of the peacemaking process. The defense attorney will speak to the defendant about

waiving the requirements of a speedy trial in order to allow the defendant to take the time necessary to complete the peacemaking process.

5. Judge

The judge may refer cases to the peacemaking program, which will then be subject to consent from the prosecutor and the defense counsel. During the peacemaking process, the court will receive status updates from the program associate about the defendant's attendance and compliance with the peacemaking program. The judge, however, will not be privy to the details of the peacemaking sessions. Like the prosecutor and defense counsel, the judge will rely upon the program staff to ensure that the defendant has successfully completed the peacemaking process.

Once a consensus decision has been reached and complied with, the program associate will inform the court that an agreement has been reached. When appropriate, the judge may invite—but not require—the defendant to speak about the effects of the peacemaking sessions.

6. Resource Coordinator

The resource coordinator of the Red Hook Community Justice Center will be responsible for identifying cases that may be appropriate for referral to the peacemaking program and bringing these cases to the attention of the prosecutor, judge, defense attorney, and/or the peacemaking staff. If the case is referred to peacemaking, the resource coordinator will share any relevant background information with the program staff and provide the program staff with the defendant's criminal history. If the case is accepted into the peacemaking program, the program coordinator will provide the resource coordinator with status updates at the same time and in the same manner as these updates are provided to the judge and counsel.

7. Clinical Department

The program coordinator will conduct the intake assessments for all peacemaking candidates. If the program coordinator discovers an issue that raises concerns about the candidate's suitability, the program associate may ask the Red Hook Community Justice Center's Clinical Department for a second opinion, and the Clinical Department will make a social worker available for such discussions. If the program coordinator is unable to conduct the initial assessment, the Clinical Department will assist another member of the peacemaking staff to conduct the intake assessment for any questions of a psycho-social nature. The Clinical Department will also assist the peacemaking staff in case of any emergency (see Safety Protocol, Appendix 2).

8. Victims and support persons

In any case accepted into the peacemaking program, the referring prosecutor, corporation counsel, or probation officer will be responsible for contacting all identifiable victims in the case

to determine whether peacemaking—with or without the victim’s participation—would be appropriate for any given case. If a victim consents to the peacemaking process, he or she will be invited to speak with the program coordinator to gain more information about how and in what capacity he or she may wish to participate. If a victim consents to the use of the program for the defendant but declines to personally participate, the victim’s interests and perspective will be represented during the session by the peacemakers or by another participant designated by the victim. The victim will then be informed of the consensus decision but will not have access to the content of the discussions that led to the final result. If the victim objects to the use of peacemaking for his or her case, the case will return to the regular court process.

If a victim chooses to participate in the process, the program coordinator will set up a meeting in advance of the first session to prepare the victim for what to expect out of peacemaking. The victim may choose to invite members of their family, close friends, school officials (teachers, guidance counselors), and/or community members to attend the peacemaking sessions in a supportive capacity. Victims will be given the opportunity to examine the list of available peacemakers and to choose anyone who might make them particularly at ease, or to remove someone who might make them uncomfortable. Victims do not have to give reasons or otherwise justify their choice of peacemakers.

Support persons must have a direct connection to the case or be able to contribute substantively to the discussion. During the peacemaking sessions, support persons will be invited to express how they feel about the underlying controversy and their recommendations for restitution, repair and healing. Support persons must always respect the rules and principles of the peacemaking session.

9. Defendant

A defendant who wishes to participate in peacemaking must take part in the full intake, assessment, and preparation process. As described above, the defendant will first meet with the program coordinator for an intake meeting, at which the program associate will explain the peacemaking process in detail and determine whether the defendant wishes to participate. Second, the program coordinator will conduct an in-depth assessment of the defendant. Third, the defendant will meet with program coordinator to prepare for the first peacemaking session. Defendants will be given the opportunity to examine the list of available peacemakers and to choose anyone who might make them particularly at ease, or to remove someone who might make them uncomfortable. Defendants do not have to give reasons or otherwise justify their choice of peacemakers.

Peacemaking is a purely voluntary process—the defendant is never required to enter the peacemaking program. Peacemaking is most effective for participants who are ready to mend the relationships that were harmed by dispute, crime, or wrongful behavior. It is not appropriate for those who wish to contest the charges or who lay blame on all other parties. A defendant who does not accept responsibility should return to court for a hearing on the merits of the case. Through the intake process, the program coordinator will assess whether an individual is seeking entry into the process on a voluntary basis. Although entry into peacemaking is voluntary, once accepted into the process, a defendant has a responsibility to remain in the peacemaking sessions

until resolution. A defendant who leaves the peacemaking sessions prematurely may be refused re-entry into the program. In addition, the defendant's court case will not be resolved and he or she will be obligated to return to court.

Defendants are welcome to invite members of their family, close friends, school officials (teachers, guidance counselors), and community members to attend the peacemaking sessions in a supportive capacity. Prior to the initial peacemaking session, defendants will inform the program coordinator of any support persons they would like to attend the session. Support persons must have a direct connection to the case or be able to contribute substantively to the discussion.

One of the main purposes of peacemaking is to promote responsibility and self-correction in the participant. Defendants will be expected to take an active role in creating the peacemaking session that will best facilitate their healing process. Defendants will be responsible for ensuring that their support group attends the session, discussing the parameters of the consensus decision and reducing it to writing, and following up with the terms of the decision.

F. PEACEMAKERS

The peacemaking program will rely on a corps of community volunteers who will serve as peacemakers.

1. Recruitment

In its first year of operations, peacemakers were recruited from the larger Red Hook community. As of its second year, peacemakers were recruited from across New York City. This reflects the growing impact of the peacemaking program, which accepts cases from the Red Hook community, the Red Hook Community Justice Center (which includes three precincts serving Red Hook, Sunset Park, Park Slope, Prospect Heights, Gowanus, Windsor Terrace, Boerum Hill, and Carroll Gardens), and the Adolescent Diversion Pilot at the downtown criminal court, which takes cases from across Brooklyn.

2. Training

All peacemakers will undergo an intensive unpaid training program over the course of three months. The training program will include instruction on the history and practices of peacemaking in Native communities, the criminal justice system, the art of storytelling, the Navajo Nation peacemaking program, mandatory reporting for child abuse, and an introduction to the Red Hook Community Justice Center. The peacemakers will participate in mock peacemaking sessions and will take an active part in adapting the peacemaking model to the Red Hook context and the greater Brooklyn community. Each peacemaker will have completed peacemaking training program, and each peacemaker will also visit the Red Hook Community Justice Center to observe court and meet with the presiding judge. At the end of the training program, each peacemaker will be prepared to work in small teams to conduct peacemaking sessions.

3. Qualifications

The most important qualification for peacemakers is that they be respected members of the community with a desire to volunteer their time for the good of others. The length and intensity of the training program is designed to attract volunteers who are committed to their community and who are motivated by the underlying principles of peacemaking. Each peacemaker will also undergo a criminal record check. A criminal record will not, *per se*, preclude participation, however the Peacemaking staff will reserve the right to disqualify a peacemaker who has either (a) not been forthcoming about their criminal history, (b) has a registered conviction for a crime of a sexual, fraudulent or predatory nature or (c) other.

4. Responsibilities and Scheduling

Peacemakers will be responsible for attending all sessions related to a particular client. Two to three peacemakers will be assigned to each case, whose sessions will run once every other week. The program coordinator will schedule the sessions according to the availability of the peacemakers and the participants. In case of emergency where a peacemaker needs to reschedule, the peacemaker will contact the program coordinator, who will determine whether, in the interests of fairness to the participant, the best course is to reschedule the session or to go forward with the other peacemakers. In the event that a peacemaker cancels more than three peacemaking sessions, the Peacemaking staff will meet with that peacemaker to determine whether to continue working together.

5. Monthly meetings

Peacemakers will be invited to attend a gathering once a month for all of the peacemakers and peacemaking staff. These meetings will allow the peacemakers to reflect on how the program is going and whether they need any advanced or continued training. Peacemaking staff may invite trainers to these meetings to assist the peacemakers with any aspect of the program.

6. Confidentiality

Everything spoken and experienced in the peacemaking session is confidential, and peacemakers will be expected to maintain confidentiality throughout the life of the case and going forward indefinitely. Peacemakers are not to take notes during the session. Rather, the program coordinator will keep track of the sessions and will refresh the peacemakers' memories before each subsequent session. Peacemakers who violate the rules on confidentiality will be removed from the program.

There are two exceptions to the rule of confidentiality:

- If a peacemaker suspects that a child is being abused or is about to be abused, the peacemaker must report the issue to the peacemaking staff.

- If a peacemaker suspects that one of the participants in the session is in danger of causing physical harm, to him or herself or another, the peacemaker must report the issue to the peacemaking staff.

7. Ethics and Boundaries

Since many of the peacemaking participants are residents of Red Hook, it is expected that they may be known to the peacemakers prior to their participation in the program. Nonetheless, during the course of the peacemaking sessions, which may continue over a number of sessions, peacemakers must observe the following course of conduct vis-à-vis participating defendants and/or victims and their support persons, whether known to them previously or not:

- a. **Transparency:** peacemakers must report all contact made outside of the peacemaking sessions between peacemakers and defendants, victims and/or their support persons to the program associate.
- b. **Fraternization:** peacemakers are forbidden from engaging in sexual or romantic contact with peacemaking defendants, victims and/or their support persons.
- c. **Money:** peacemakers are prohibited from exchanging or lending money to peacemaking defendants, victims and/or their support persons.
- d. **Services:** peacemakers are prohibited from receiving labor or other services, whether paid or unpaid, from peacemaking defendants, victims and/or their support persons.

APPENDIX 1: Evaluation Strategy

The Center uses a variety of research methodologies to evaluate whether new initiatives are successful, to identify areas for improvement, and to document lessons for justice system planners elsewhere. The Center's research department will assist the peacemaking program staff in evaluation of this project, using the following methods:

Defendant Interviews. All defendants will be interviewed at the beginning and at the end of the peacemaking process. Although the interviews will be considered a program requirement, the defendants will have the choice as to whether the results of their interviews will be included in the formal evaluation. The program associate will conduct the first interview before the peacemaking process commences, and the research department will conduct the second interview at the end of the peacemaking process. The interviews will solicit information about what happened during the peacemaking session, perceptions of session content and structure (what worked and what did not), perceptions along key elements of procedural justice (e.g., voice, respect, neutrality, and understanding), and overall satisfaction with the peacemaking experience.

Community participants. Open-ended interviews will be conducted with at least ten participants, such as victims, family members, and concerned community members. The interviews will similarly solicit information about what happened during the peacemaking session, perceptions of session content and structure (what worked and what did not), perceptions along key elements of procedural justice (i.e., voice, respect, neutrality, and understanding), and overall satisfaction with the peacemaking experience. The interviews will be conducted within one month of the end of the peacemaking process.

Declined to participate. Short interviews will be conducted with defendants who decline to take part in peacemaking. The interviews will solicit information about why the person declined and any concerns the person had about peacemaking.

Group Interview—Justice Stakeholders. The Center is interested in justice system stakeholders' perceptions of the peacemaking program, including perceived effectiveness and legal appropriateness. The group interview will take place at the end of the first year of the program. As the group interview is intended to focus more on policy and less on individualized experiences, it will bring together different stakeholders and allow them to interact with each other. Relevant stakeholders may include judges, prosecutors, defense attorneys, civil attorneys, and other staff (e.g., clinical staff at the Red Hook Community Justice Center).

Group Interview—Peacemakers. At the end of the first year, the research department will host a group interview of all of the peacemakers to solicit information about the process, from the initial training process to the actual peacemaking sessions. The group interview will allow the peacemakers to interact with each other as they discuss what worked, what was difficult, and what could have been improved about the program.

Peacemaker's Process Assessment. After each peacemaking session, the peacemaking program associate will write a short report that analyzes whether the peacemakers followed the steps in the guidelines and adhered to the tenets of the program. The report will not contain any personal

identifiers of the participants and will focus entirely on the peacemaking process as conducted by the peacemakers. These reports will be compiled at the end of the year to shed light on any success or challenges of the peacemaking process and ways in which advanced training could be used to remedy any problems discovered.

District attorney's comparison. Whenever practicable, the peacemaking program director will work with the district attorney's office to record the sanction that the district attorney would have offered if the case had gone through the regular court process. At the end of the first year, the research department will compare the consensus agreements that resulted from peacemaking with the district attorney's original offer to determine whether any lessons can be drawn.

Research Report. The Center will produce a summary research report that will present the findings from all of the research activities outlined above.

APPENDIX 2: Safety Protocols

It is expected that peacemaking sessions will be held at a variety of locations throughout the Red Hook community. Before beginning any peacemaking session, the peacemaking staff should familiarize themselves with the facility being used, locate emergency exits, and request a copy of the building's safety protocols. In general, peacemakers and program staff should adhere to the following safety guidelines:

Timely breaks. Peacemakers should incorporate periodic breaks into all peacemaking sessions. Breaks give the participants time to process the things they hear during the session and allow emotions to cool. In general, peacemakers should call for a break once during a two-hour peacemaking session, and twice during a three-hour session. Breaks should be short, usually around 10 minutes. Additional breaks, or longer breaks, should be employed whenever the peacemakers feel it is appropriate or needed, as when an argument breaks out or it appears that particularly intense emotions may interfere with the peacemaking process.

Staggered departures. In the event that a session becomes hostile, the peacemakers should end the session immediately. Peacemakers should ask the defendant to remain in the building with his or her support people for 15 minutes or until all other participants leave. Peacemakers should always allow a victim and his or her support people to depart first. In the event that follow-up sessions are deemed appropriate and necessary, the peacemakers may request to hold the session at the Red Hook Community Justice Center in order to have a court officer available for assistance.

Mandatory reporting of suspected child abuse and maltreatment. New York State Social Services Law, Title 6, Section 413 requires certain service providers and professionals to report cases of suspected child abuse and/or neglect. Failure to report such cases as required by law may result in criminal prosecution. The peacemakers serving in the Red Hook Peacemaking Program are *not* mandated reporters as defined by law. Nonetheless, the peacemaking program requires, as a matter of strict policy, that all peacemakers immediately alert the program associate or the program director of any suspected instances of child maltreatment, abuse, or neglect. In the event that the neither the program associate nor the program director are available, peacemakers may report suspected child maltreatment, abuse, or neglect to other Center for Court Innovation staff. In any event, peacemakers shall notify the program associate or the program director at the first practical opportunity. All peacemakers have received training in the warning signs for suspected child abuse and/or maltreatment.

In case of emergency. If a peacemaker has concerns about a participant's safety, he or she should seek assistance from the program associate immediately. The program associate must treat any of the following circumstances as an emergency, suspend the peacemaking session, and call 911:

- Suicidal and/or homicidal thoughts with or without a plan for carrying it out;
- Medical emergency.

In cases of emergency, peacemakers will follow this protocol:

- While peacemaking is in session and it becomes evident that the participant's safety, or the safety of others, may be in jeopardy, the peacemaker should try to get as much information regarding the participant's suicidal/homicidal ideation as possible. This includes, but is not limited to, the participant's plan, means to carry-out the plan, any auditory, visual, olfactory hallucinations the participant may be having, and any weapons the participant may have access to.
- Once the peacemaker has finished speaking to the participant, they should politely ask the participant to remain in their seat and go *immediately* to the program associate (or supervising staff). Once the decision has been made to call 911 by the program associate (or supervising staff), the peacemaker will return to the participant and inform them that the goal is to ensure their safety and the safety of others.
- The peacemaker or peacemaking staff will inform the participant of the next steps. First, 911 will be called and EMS and the NYPD will be arriving. The peacemakers should inform the participant that the NYPD always accompanies EMS, and that the police will be arriving only to ensure everyone's safety. While waiting for EMS to arrive, the participant and his/her assigned peacemaker should sit in a separate room from the original peacemaking session if possible.
- If the participant is calm, the assigned peacemaker should wait with the participant. If the participant is agitated or becomes upset with the assigned peacemaker, the peacemaker may leave the participant to wait by themselves.
- The assigned peacemaker or peacemaking staff should speak with NYPD and EMS when they arrive about the need to contact 911 (NYPD generally arrives before EMS).
- It is helpful if the peacemaker can prepare a brief summary of the events that led to the EMS call and attach their contact information to the summary. This is especially helpful for the psych ER staff. The summary should be brief and include any medications, diagnosis (if known) and events that led up to the 911 call. This step is not mandatory, but merely helpful in ensuring the participant gets the best treatment possible.
- Before EMS leaves with the participant, the peacemaker should find out which hospital will be receiving the client. Once the client has been taken by EMS, the peacemaker or Peacemaking staff should immediately document the events.