

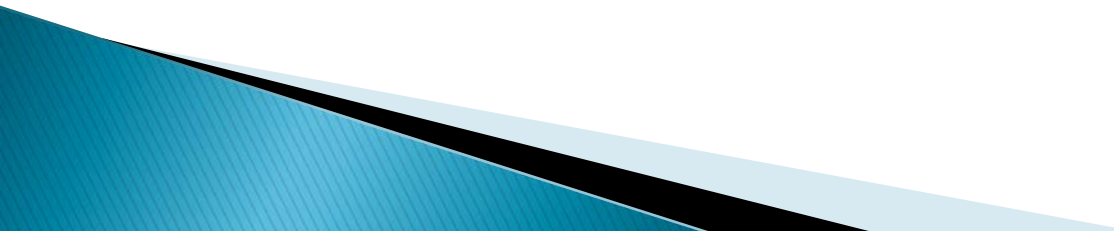
Restorative Justice and mentally disordered offenders

A confrontation of a 'pure RJ model' with
current CJS routines

Criminal Justice

- ▶ The Necessity of Punishment as core idea
- ▶ ‘Not punishable is he who commits a criminal act for which he can not be held responsible on the grounds of a deficient developmental state or a mental disorder’. (par. 39 Dutch Criminal Code).
- ▶ Relevant for distributing ‘punishments’ and ‘(security) measures’ but *not for reparation*.

A Restorative Justice *system*?

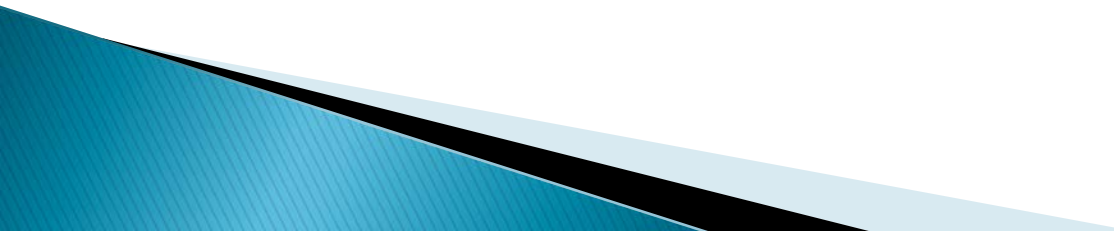
- ▶ It is difficult to imagine how a ‘fully restorative justice system’, *independent* of traditional criminal justice, would work
 - ▶ Because restorative justice interventions are nowadays interwoven in the ‘old’ system
 - ▶ But it might help to put all the traditional concepts and precepts between brackets.....
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Restorative Justice

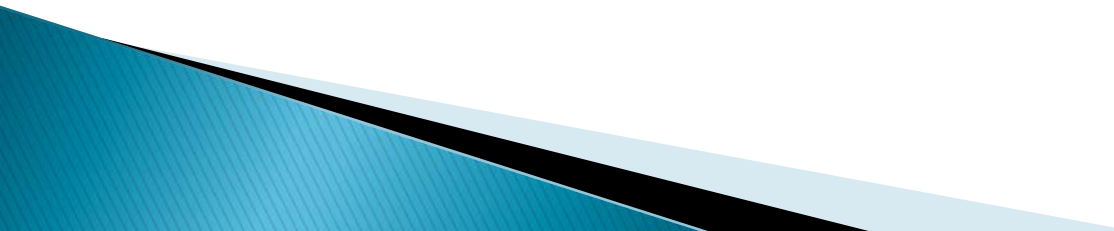
‘Restorative Justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through co-operative processes that include all stakeholders’.

Not victim oriented, nor offender oriented, but harm-repair oriented justice

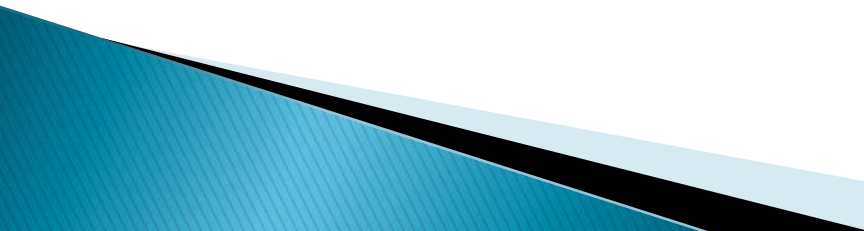
‘Legal consequences’

- ▶ H. Zehr: Restorative principles (2002: 19)
 - ▶ Crime is a violation of people and of interpersonal relationships
 - ▶ Violations create obligations
 - ▶ The central obligation is to put right the wrongs
 - ▶ Obligation(s) of the offender and of other stakeholders.....in a specific procedure.....
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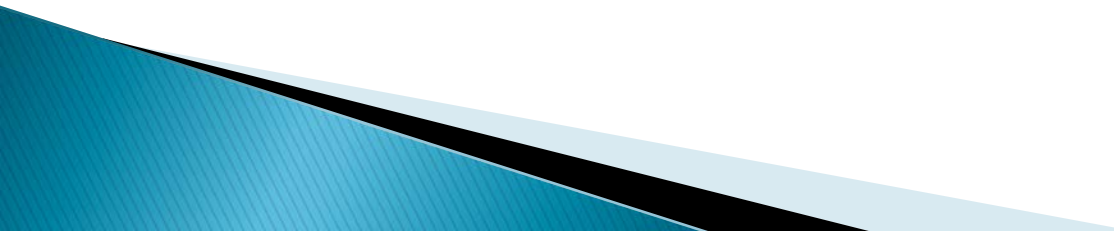
‘procedural arrangement’

- ▶ The first thing a restorative system would do is arrange interviews with the primary parties (“offenders” and “victims”?) to find out:
 - ▶ what are the views on/about what happened
 - ▶ What do these parties consider to be the wrongs and harms done
 - ▶ Who do they feel should become involved in further deliberations about reparative action?
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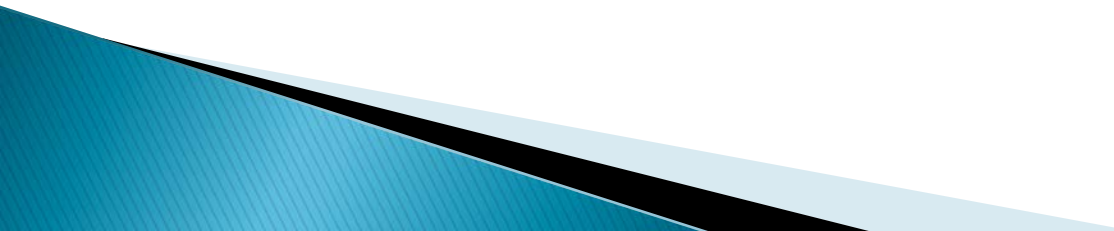
‘procedural arrangement’

- ▶ Preferably a ‘face to face’ meeting would be proposed and organised when accepted
 - ▶ Mediation or conferencing
 - ▶ Alternatively: shuttle mediation
 - ▶ The central aim would be to develop *an agreement* that defines how the central obligation to put right the wrongs is best fulfilled (doing justice to/for all stakeholders).
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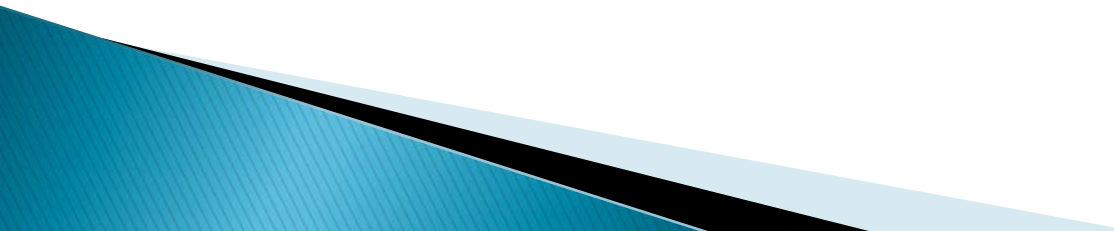
Forensic assessments?

- ▶ The need for diagnosing a presumed mental disorder might arise
 - ▶ In view of the nature and the circumstantial details of the reported criminal conduct
 - ▶ during intake–interviews with the parties
 - ▶ By input from ‘other stakeholders’ who have pre–existing (psychiatric) information about one (or more) of the primary parties
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Continuous deliberation

- ▶ The need for diagnostics does not imply that the deliberative process between the stakeholders should be discontinued. Unless:
 - ▶ There is a clear and apparent danger of new victimisation
 - ▶ It has become clear that sensible (moral) communication is unachievable (even with the best facilitators)
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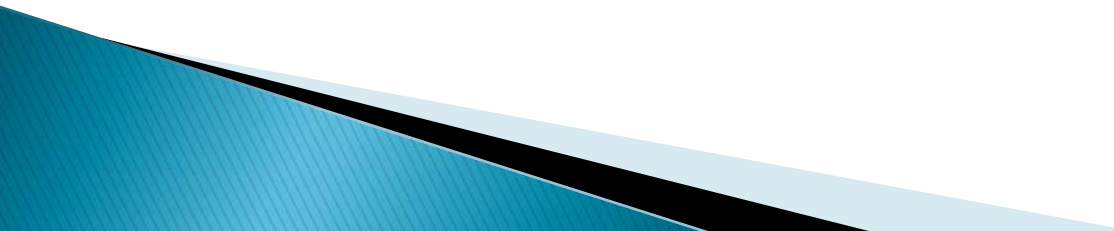
‘Restorative Custody’?

- ▶ A facility should exist to ‘detain’ offenders when necessary for security reasons and for diagnostic purposes
 - ▶ Ideally: offenders go voluntarily (Rehabilitation centers?)
 - ▶ Criteria of criminal (procedural) code could be adapted and legal rights protected
 - ▶ This facility should be as open as possible to all (other) stakeholders
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Current state of affairs

- ▶ Par. 51h CPC: as early as possible in the criminal process the police should mention the possibilities of (using) mediation between *suspect*/defendant and victim
- ▶ Also in the stage of executing penalties mediation between the *convicted person* and the *victim* will be ‘promoted’ ‘*when the PPS has ascertained that the victim consents.*’

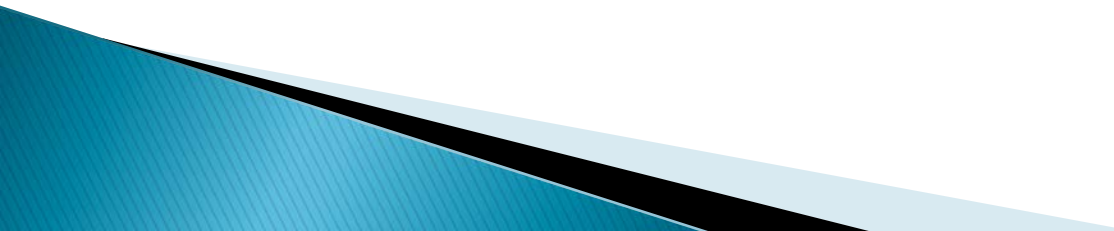
Lack of enthusiasm

- ▶ Despite support for mediation in professional legal circles there is little political support
 - ▶ Recent experiments with mediation in criminal matters show good results but: **no public funding** will be made available
 - ▶ It can be assumed that suspects *known* as mentally disordered are excluded from (an offer of) mediation. *No data available.*
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‘Victim oriented CJS/RJ’

- ▶ ‘*victim-offender-mediation*’ often perceived as merely *a service to victims* (par. 51h CPC is in section “rights of the victim”)
- ▶ Combined with concerns to avoid ‘*secondary victimisation*’ (by and in mediation process)
- ▶ And unaware of, or rejecting, the fact that VOM offers opportunities for **better and more effective justice to offenders!**

Current CJS routines

- ▶ Currently in most criminal cases mediation is not mentioned, let alone tried
 - ▶ The suspect is often remanded in custody
 - ▶ The separation between offender and victim is thereby enlarged and prolonged
 - ▶ Considering a restorative encounter is exception to the rule (*a deviation*) and needs to be legitimized as such
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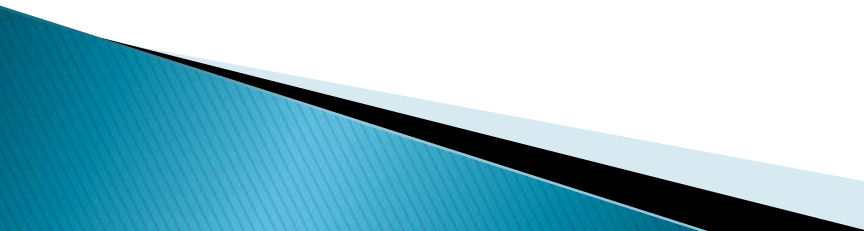
Punishing offenders, protecting victims

- ▶ EU Directive 2011 (on victim rights) stipulates the ‘right to safeguards in the context of mediation a.o. restorative justice *services*’ (*art. 11*) --- *against secondary victimization.*
- ▶ *Art. 18: Need of ‘Mechanisms for identifying vulnerable victims’*
- ▶ *Considering type of crime and personal traits of the victim*

Vulnerable victims

- ▶ Cf. the EU directive prosecution guidelines identify as vulnerable victims:
- ▶ Victims of **sexual violence**
- ▶ Victims of **exploitation**
- ▶ Victims of **human trafficking**
- ▶ **Juveniles**
- ▶ Mentioned in EU-Directive also: *Bias crime, Organised crime, terrorism*

Awareness of vulnerability

- ▶ It is very important to be aware of vulnerability
 - ▶ Not only many victims, also many offenders are quite vulnerable (f.i. by a disorder)
 - ▶ Offenders criminal conduct might be an expression of preceding victimization
 - ▶ A patronizing attitude of justice officials can be felt as victimisation and add to feelings of vulnerability (*'not being able to cope'*)
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Victim/Offender screening

- ▶ In cases of (intra-family) child abuse and neglect the CPS may decide to waive prosecution when the **offender** agrees to accept therapeutic help and the facts are not too severe (Guideline 2010A024)
- ▶ *Nowhere in any guideline with regard to vulnerable victims mediation is mentioned. So it is probably not considered appropriate.*

thanx

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