



POST-LEGALIZATION: JUDGES' PERSPECTIVES ON REFERRING CASES TO RESTORATIVE JUSTICE IN TAIWAN



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PURPOSE OF THIS PROJECT

- Since its trial implementation by district prosecutors in 2010, restorative justice has been adopted in Taiwan as an auxiliary process for handling criminal cases
- Apart from its application in the stages of investigation and prosecution, restorative justice has also been integrated into the trial and correction phases, and has been fully legalized since 2020
- However, there remain uncertainties among criminal justice personnel regarding their understanding of restorative justice, willingness to promote it, self-defined roles within it, and the coordination and integration of resources and workforce. Particularly notable is the rarity of court-initiated referrals to restorative justice cases
- **The aim of this study is to examine judges' perspectives on the use of restorative justice practices, with a particular focus on whether the legalization of restorative justice has brought about any changes**

RESTORATIVE JUSTICE DEVELOPMENT IN TAIWAN

Preparation (2008-2009)

- Promote RJ
- Lectures, training, and workshops for practitioners' knowledge and capacities of RJ

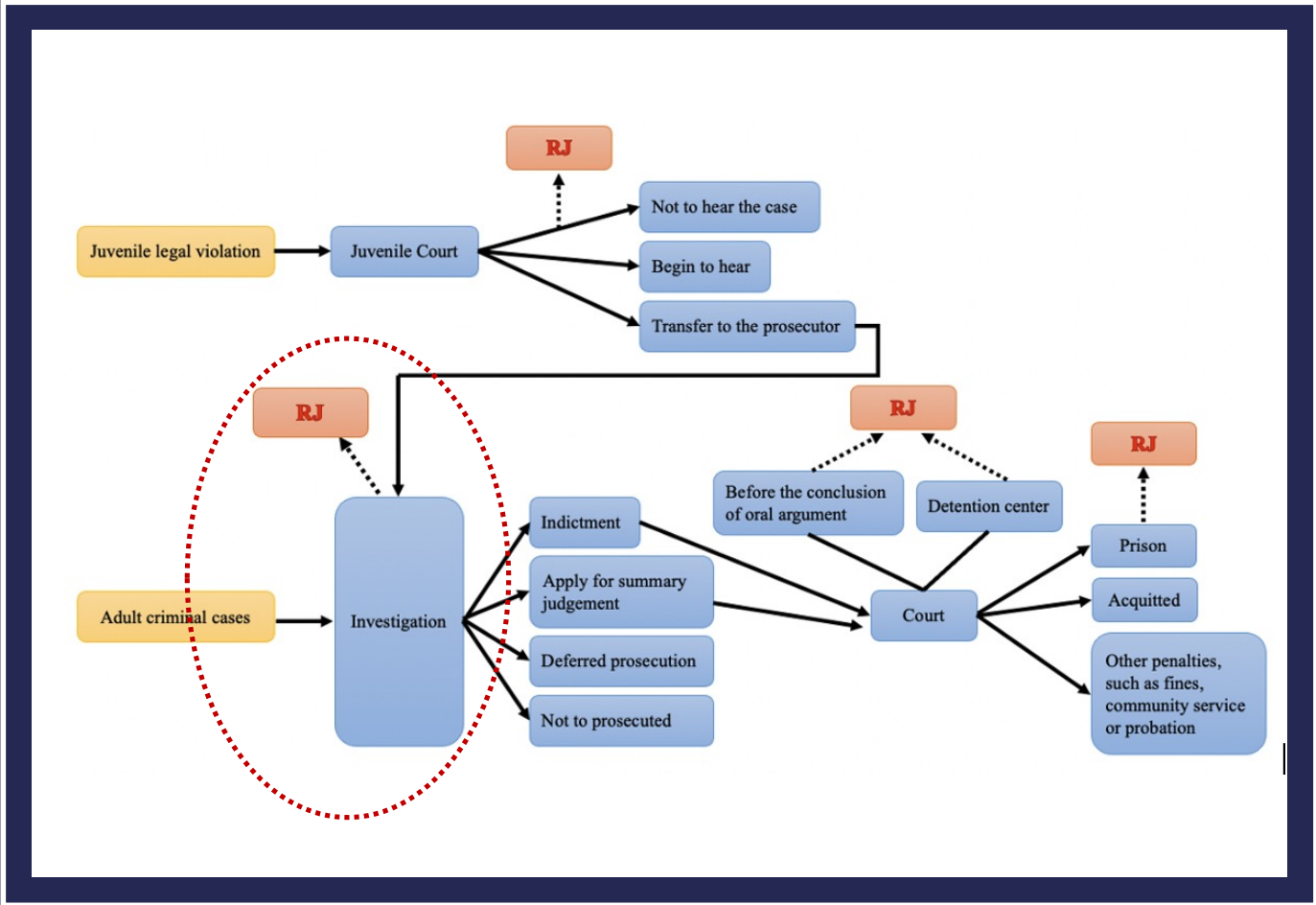
Pioneer Trial (2010-2017)

- RJ initiative in 8 selected district prosecutors offices
- Rolled out to all prosecutors offices in 2012
- Full discretion enjoyed by the prosecutors offices, 2014-2018
- VOM model

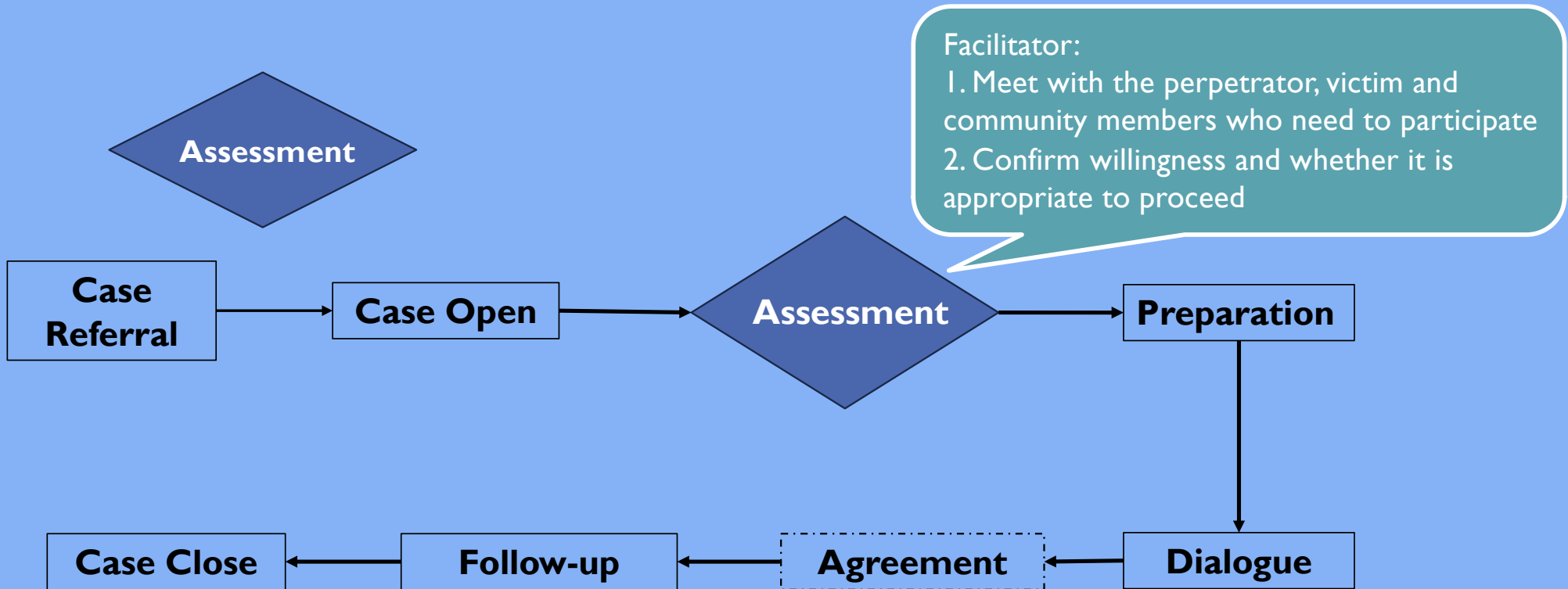
Full Implementation (since 2018)

- The judicial reform conference, 2016-2018
- 2018 action program of RJ
- Codification of RJ practices in CJ system, 2019-2020

RJ IN CRIMINAL JUSTICE SYSTEM



THE RJ PROCESS IN THE PROSECUTOR'S OFFICES



CASE
REFERRAL
AND
IMPLEMENTA
TION OF RJ

Year	Total cases referred	No. of cases accepted	No. of cases entering dialogues	No. of cases with agreement	Investigation concluded in district prosecutors offices
2017	286	252	138 (54.8%)	96 (69.6%)	479,087
2018	192	168	94 (56.0%)	72 (76.6%)	482,034
2019	156	140	90 (64.3%)	62 (68.9%)	474,108
2020	183	152	83 (54.6%)	51 (61.4%)	484,565
2021	155	126	60 (47.6%)	36 (60%)	505,716
2022	200	171	100 (58.5%)	63 (63%)	636,468
Total	1,172	1,009	565 (56.0%)	380 (67.3%)	

CONCERNS

Missing a crucial piece of puzzle:

What is the role of judges in the whole RJ practices?

Initiator: Prosecutors

Subjects: Adults

Majority of Cases: Violent offending

- Injuries
- Domestic violence and violation of protection order
- Homicide and manslaughter

According to statistics from the Criminal Department of the Judicial Yuan, there were 6 cases in which the court applied for referral to restorative justice from April 2022 to February 2023

OTHER WAYS FOR RJ PRACTICES - EMBEDMENT

A 21-year-old man with the surname Chen had an episode of irritable bowel syndrome and went to a convenience store to use the restroom in April this year. Since he didn't bring toilet paper, he took a pack of 10 NTD facial tissue from the store shelf when no one was around. The store staff discovered the theft and reported it to the police, leading to charges.

The District Prosecutor's Office filed an indictment, and the District Court recently ruled on the case. The court found that the theft of a pack of tissues had low financial value, and Chen's criminal motive was closely related to his physical needs. Since the store had forgiven him, the court decided to exempt him from punishment. The judge also said, "How lucky must a person be to sit in a comfortable position like you and think the world is kind while wielding absolute power and being cruel to criminals," expressing disapproval of the indictment.

According to the ruling, although Chen committed theft, he only took a pack of tissue paper, which had little value, and the victim had already forgiven him. Moreover, his criminal motive was largely tied to his physiological needs. Chen had suffered from irritable bowel syndrome since childhood, making it difficult for him to avoid sudden bathroom needs. On the day of the incident, he took the tissue paper worth 10 NTD simply because he urgently needed to use the restroom in the convenience store.

The judge also pointed out that Chen had intellectual limitations, anxiety symptoms, and diabetes. He is currently attending university, and his mother accompanied him to court. Based on the statements of his family, it was clear that raising Chen was not just about providing for his basic needs but also about helping him develop the skills to be self-sufficient in society. Despite his challenges, Chen had made progress in managing his life, which was not easy and required gradual effort over time.

The judge stated that, as Chen's mother mentioned in court, they had never intended to give up on him and had always strived to help him grow and live like a normal child. Looking at Chen's past, he had no criminal record, and considering his motives for theft, the stolen item, and his situation, it was hard to justify putting him through a trial. This process had been painful for both Chen and his family, and even a slight misstep could have left a permanent criminal record.

Regarding the indictment, the judge believed that while the prosecutor requested a simplified verdict with the option of a fine, there were other more diverse ways to address the case. The judge found it difficult to agree with the prosecution's decision to press charges.

The judge concluded that the criminal proceedings should have been enough to make Chen more cautious. If the court imposed a sentence, it would not help his situation and would not serve justice.

The judge concluded that from the perspectives of punishment, general deterrence, special deterrence, or **restorative justice**, Chen's case was minor, and imposing even the minimum penalty would be excessive. After considering mitigating factors under Article 59 of the Penal Code, the judge decided that the declaration of his crime would be sufficient to achieve the necessary outcome, thus exempting him from punishment based on Article 61, Clause 2 of the Penal Code.

REFLECTIONS

- To practice restorative justice is not fixed and there are varieties to fulfill the RJ spirit. The most important is that we bring in the idea of restorative justice into our lives, cultures, circumstances and societal context without force and deliberation
- To answer my question: What are judges' perspectives on referring cases to RJ after the codification? Not willingly based on the case number, but they are willingly to practice RJ on court, and use its concept for sentencing

**THANK YOU
FOR LISTENING**

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