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# Expanding Pathways to Justice: Restorative justice as a means of addressing sexual violence

*A whitepaper from the New Jersey Coalition Against Sexual Assault, July 2019*

## ***In Brief***

The New Jersey Coalition Against Sexual Assault:

- **Supports** the use of restorative justice to provide survivors of sexual violence with an empowering, trauma-informed alternative for holding those who harmed them accountable
- **Rejects** that we must have any one system responsible for responding to the needs of all survivors

## ***In-Depth: Restorative Justice***

Restorative justice focuses on repairing the harm caused by a crime through direct involvement of those affected. This approach acknowledges that crime has adverse effects on not just victims, but also their family, friends, and community members. Restorative justice aims to fulfill survivors' expectations for justice while holding those who have caused harm accountable for their actions.<sup>i</sup>

Restorative justice can be implemented in a variety of formats — including sharing circles, victim impact panels, and facilitated conferences — and can take place in community settings. Whereas the criminal justice system focuses exclusively “on ‘what law was broken, who broke it, and how should they be punished?’ restorative justice asks, ‘Who was harmed? What do they need? Whose obligation is it to meet those needs?’”<sup>ii</sup>

Restorative justice programs vary widely in practice but are generally guided by the same overarching philosophy and a common set of principles. Restorative justice experts Howard Zehr and Harry Mika distilled these principles into ten “signposts,”<sup>iii</sup> which we adapted and expanded upon below:



### ***We are working toward restorative justice when we...***

1. Focus on the harms of wrongdoing more than the rules that have been broken
2. Show equal concern and commitment to survivors and those who caused harm, involving both in the process of justice
3. Work toward the restoration of victims, empowering them and responding to their needs as they see them
4. Support those who caused harm while encouraging and requiring them to understand, accept, and carry out the consequences of their actions
5. Recognize that while consequences may be difficult for the person who caused harm, they should not be intended as harms and they must be achievable
6. Provide opportunities for dialogue, direct or indirect, between the victim-survivor and the person who caused them harm, as appropriate
7. Involve and empower the affected community through the justice process and increase its capacity to recognize and respond to community bases of crime
8. Encourage collaboration and reintegration, rather than coercion and isolation
9. Give attention to the unintended consequences of our actions and programs
10. Show respect to all parties, including survivors, the person who caused harm, and justice colleagues

States and jurisdictions across the United States have implemented restorative justice practices in community, school, and criminal justice settings, and national organizations including the American Bar Association and the National Organization for Victim Assistance have endorsed the principles of restorative justice.<sup>iv</sup> Globally, research has demonstrated that restorative justice, as compared to conventional criminal justice, substantially reduces recidivism,<sup>v</sup> increases all parties' satisfaction with justice,<sup>vi</sup> reduces survivors' post-traumatic stress symptoms,<sup>vii</sup> and increases learning and development for those who caused harm.<sup>viii</sup>

Restorative justice can serve as an empowering, trauma-informed alternative to the criminal justice system, which too often fails survivors of sexual violence. Attrition plagues each stage of the justice system for sexual assault cases, with only 23% of rape and sexual assault victimizations being brought to the attention of law enforcement, and of those cases only 13% resulting in a finding of guilt.<sup>ix</sup> Additionally, many survivors of sexual violence find the criminal justice process re-traumatizing.<sup>xi</sup> As psychiatrist and expert researcher on trauma Judith Lewis Herman wrote, "If one set out to intentionally design a system for provoking symptoms of traumatic stress [for victims of sexual violence], it might look very much like a court of law."<sup>xii</sup>

In contrast, restorative justice prioritizes active accountability for those who caused harm and ensures that victims have the opportunity to express the harm they experienced and receive acknowledgement of that harm. This approach aligns with research findings on what victims of sexual violence want from the pursuit of justice — to have a voice, receive validation, and hold those who caused harm accountable.<sup>xiii</sup>

While research on outcomes from implementing restorative justice for cases involving sexual assault is still emerging, existing studies show very promising results. In Arizona, a community-based restorative justice program for prosecutor-referred felony and misdemeanor sexual assault cases allowed victim-survivors, people who caused harm, and their friends and family to participate in a face-to-face conference facilitated by professionals. Following the conference, those who caused harm were required to follow a 12-month redress plan that included offense-specific therapy and community service. A two-year evaluation of the program found that more than 90% of participants were satisfied with the program, and most survivor-victims who participated reported feeling "justice



was done.”<sup>xiv</sup> The program had no negative impacts on survivors’ emotional or physical health, and more than 90% of participants agreed that they “felt safe, listened to, supported, treated fairly, [...and] treated with respect.”<sup>xv</sup> Survivors overwhelmingly agreed that they chose the program over other justice options because they wanted to take back their power and “make the responsible person accountable.”<sup>xvi</sup> Another pilot program where restorative justice conferencing was used as a diversion from the juvenile justice system in California also showed strong outcomes. 91% of the survivor participants reported that they would participate in another session of conferencing with the person who harmed them, and 91% also said they would recommend the process to a friend. The study further found the restorative justice process to be effective at reducing recidivism, finding that “the youth who participated in the program were 44% less likely to commit future crimes than those whose crimes were addressed through the county’s juvenile justice system.”<sup>xvii</sup>

Along with reported high levels of satisfaction from both parties, there are also fiscal impacts when implementing restorative justice practices. The aforementioned pilot program for restorative conferencing with juveniles found that:

*“The average cost of placing a young person on probation in Alameda County is \$23,000 per year. This estimate does not include other costs resulting from a youth’s involvement in the legal system, including those associated with the public defender’s office, district attorney’s office, court costs, and police costs post-arrest. In contrast, Alameda County’s restorative justice program carries a marginal cost of approximately \$4,500 per case.”<sup>xviii</sup>*

### **NJCASA’s Position**

To address and end sexual violence, we must center the experiences of survivors while remaining mindful of the foundational role that various forms of oppression play in perpetuating sexual violence. Restorative justice programs have the potential to be survivor-informed practices that address those issues survivors have identified as leading to feeling a sense of justice. Restorative justice can also serve as an alternative to the criminal justice system, which has failed to result in justice for even a fraction of survivors and is pervaded by profound racial disparities in sentencing, length of incarceration, and collateral consequences.

Unfortunately, current approaches to addressing sexual violence are failing. According to the national Rape, Abuse, and Incest National Network (RAINN), out of every 1,000 sexual assaults, 230 are reported to police, 46 will lead to an arrest, 9 will land on a prosecutor’s desk, and 5 will lead to a felony conviction.<sup>xix</sup> Additionally, when survivors *are* choosing to engage, the system is falling short in addressing the broad scope of survivors’ needs. Research found that after interacting with law enforcement, 71 percent of survivors reported feeling depressed, 89 percent felt violated, and 91 percent reported feeling disappointed.<sup>xx</sup>

It is imperative that we create additional avenues to justice that are responsive to the needs of survivors, and that have the potential to result in healing and societal change. NJCASA therefore calls for the creation of the first-ever sexual violence restorative justice project in New Jersey. Our solutions to the epidemic of sexual violence need to be as varied and unique as the problem itself. An approach to sexual violence that is grounded in restorative justice practices is an approach that upholds the principles of survivor autonomy, restores a sense of control and independence to survivors who can choose to participate in a program that follows their lead, and emphasizes outcomes that many survivors have identified as essential to their healing process, such as knowledge that the perpetrator will not harm another individual, acknowledgment of harm by hearing “I am sorry” and “I caused you harm,” and accountability to the community at large.



To fully address rape culture and the root causes of sexual violence, options for justice for survivors should be designed to move the person who harmed them towards an understanding of the impact of their actions. This can lead to transformation of people, relationships, and communities, which is the path we must take to create societal-level change. The research on restorative justice approaches to addressing sexual violence suggest that these practices are more likely to lead to an acceptance of responsibility on the part of the offender and a reduction in recidivism.<sup>xxi</sup>

<sup>i</sup> Koss, M. P. (2014). The RESTORE program of restorative justice for sex crimes: Vision, process, and outcomes. *Journal of Interpersonal Violence*, 29(9), 1623–1660. <https://doi.org/10.1177/0886260513511537>

<sup>ii</sup> baliga, s. (2018). “A different path for confronting sexual assault.” Vox. <https://www.vox.com/first-person/2018/10/10/17953016/what-is-restorative-justice-definition-questions-circle>

<sup>iii</sup> 49 Zehr, H., & Mika, H. (2002). Restorative justice signposts. *Conciliation Quarterly*, 20(3).

<sup>iv</sup> [http://www.cjci.org/uploads/cjci/documents/jpi\\_restorative\\_justice\\_in\\_the\\_states.pdf](http://www.cjci.org/uploads/cjci/documents/jpi_restorative_justice_in_the_states.pdf)

<sup>v</sup> Sherman, L., Strang, H., Mayo-Wilson, E., Woods, D., & Ariel, B. (2015). Are restorative justice conferences effective in reducing repeat offending? Findings from a Campbell Systematic Review. *Journal of Quantitative Criminology*, 31(1), 1-24.

<sup>vi</sup> Sherman, L.W., & Strang, H. (2007). *Restorative justice: The evidence*. London: The Smith Institute.

<sup>vii</sup> Angel, C. M., Sherman, L. W., Strang, H., Ariel, B., Bennett, S., Inkpen, N., Keane, A., & Richmond, T. (2014). Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: A randomised, controlled trial. *Journal of Experimental Criminology*, 10, 291–307.

<sup>viii</sup> Karp, D.R., & Sacks, C. (2014). Student conduct, restorative justice, and student development: Findings from the STARR Project (STudent Accountability and Restorative Research Project). *Contemporary Justice Review*, 17, 154-172

<sup>ix</sup> Morgan, R. E., & Kena, G. (2018). Criminal victimization, 2016: Revised[PDF]. Retrieved from <https://www.bjs.gov/content/pub/pdf/cv16.pdf>

<sup>x</sup> Seidman, I., & Pokorak, J. J. (2011). Justice responses to sexual violence. In M. P. Koss, J. W. White, & A. E. Kazdin (Eds.), *Violence against women and children*, Vol. 2. Navigating solutions (pp. 137-157). Washington, DC, US: American Psychological Association.

<sup>xi</sup> *Ibid.*

<sup>xii</sup> Herman, J.L. (2005). Justice from the victim’s perspective. *Violence Against Women*, 11(5), 571–602.

<sup>xiii</sup> Daly, K. (2017). Sexual violence and victims’ justice interests. In E. Zinsstag & M. Keenan (Eds.), *Restorative Responses to Sexual Violence*. London: Routledge.

<sup>xiv</sup> Koss, M. P. (2014). The RESTORE program of restorative justice for sex crimes: Vision, process, and outcomes. *Journal of Interpersonal Violence*, 29(9), 1623–1660. <https://doi.org/10.1177/0886260513511537>

<sup>xv</sup> *Ibid.*

<sup>xvi</sup> *Ibid.*

<sup>xvii</sup> baliga, s., Henry, S., Valentine, G. (2017). Restorative community conferencing: A study of Community Works West’s restorative justice youth diversion program in Alameda County [PDF]. Retrieved from [https://impactjustice.org/wp-content/uploads/CWW\\_RJreport.pdf](https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf)

<sup>xviii</sup> *Ibid.*

<sup>xix</sup> The Rape, Abuse, & Incest National Network (RAINN). The Criminal Justice System: Statistics. <https://www.rainn.org/statistics/criminal-justice-system>

<sup>xx</sup> Campbell, R. (2005) What really happened? A validation study of rape survivors’ help-seeking experiences with the legal and medical system. *Violence and Victims*, 20(1). [https://www.researchgate.net/profile/Rebecca\\_Campbell23/publication/7697659\\_What\\_Really\\_Happened\\_A\\_Validation\\_Study\\_of\\_Rape\\_Survivors%27\\_Help-Seeking\\_Experiences\\_With\\_the\\_Legal\\_and\\_Medical\\_Systems/links/5799307d08aeb0ffcd08d122/What-Really-Happened-A-Validation-Study-of-Rape-Survivors-Help-Seeking-Experiences-With-the-Legal-and-Medical-Systems.pdf](https://www.researchgate.net/profile/Rebecca_Campbell23/publication/7697659_What_Really_Happened_A_Validation_Study_of_Rape_Survivors%27_Help-Seeking_Experiences_With_the_Legal_and_Medical_Systems/links/5799307d08aeb0ffcd08d122/What-Really-Happened-A-Validation-Study-of-Rape-Survivors-Help-Seeking-Experiences-With-the-Legal-and-Medical-Systems.pdf)

<sup>xxi</sup> Karp, David R. & Casey Sacks, Student Conduct, Restorative Justice, and Student Development: Findings from the STARR Project: A Student Accountability and Restorative Research Project, 17 CONTEMP. JUST. REV. 154, 156 (2014).

