



## Restorative Justice Responses to Sexual Assault

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A large international literature promotes restorative justice options as satisfying and empowering to crime victims. This paper examines restorative justice for sexual assault from the perspective of three groups of survivors: (a) adults victimized by adult perpetrators; (b) adults or juveniles victimized by juveniles; and (c) adults sexually molested as children by adults. Sexual violence within a violent intimate relationship such as domestic violence is *excluded* from consideration. The use of restorative justice in cases of domestic violence is the subject of another VAWnet document by Ptacek and Fredericks (2008). Although it may involve forced sexual relations, domestic violence, compared to adult sexual violence, is more likely to involve longer standing and more committed relationships, multiple co-occurring forms of psychological and physical violence, repetitiveness and often escalation of the abuse over time, and the involvement of children directly or as witnesses (Hopkins, Koss, & Bachar, 2004).

Our key terms are defined as follows. The term *survivor/victim* is used throughout to retain the empowerment conveyed by the word “survivor” and the outrage implied by the word “victim.” The word *offender* is used to refer to the person responsible for perpetrating forced, unwanted sexual activity, without implying that an arrest has been made or charges issued. *Rape* is defined as unwanted oral, anal, or vaginal penetration against consent through force, threat of force, or when incapacitated. The term *sexual assault* references a broader range of contact and non-contact sexual crimes up to and including rape. The term *restorative justice* applies

to programs that view crime as a violation of people and relationships, causing harm for which offenders and communities are accountable and have an obligation to repair (Umbreit, Vos, Coates, & Lightfoot, 2006).

A restorative justice conceptualization involves three constituencies: (a) survivor/victims and secondarily victimized family and friends who suffer distress along with their loved one; (b) community members who experience less safety and social connection when they perceive high levels of crime and low deterrence, yet who simultaneously may be contributing to an environment supportive of sexual violence; and (c) offenders as well as their families and friends, who experience guilt and shame that is associated with being accused of a sexual crime or belonging to the interpersonal relationship context from which the offense arose. Restorative justice is implemented through a range of formats; those that have been used to address sexual assault will be defined later. Restorative options include sharing circles, victim-offender dialogue, victim impact panels, community reparation boards, circles of support, sentencing circles, conferencing with juveniles and adults, and restorative discipline in educational settings (Umbreit et al., 2006). Restorative interventions may occur at multiple time points including pre-charging, post-conviction, in prison, pre- or immediately post release, and whenever the survivor/victim desires resolution outside the justice system, often many years after the crime has occurred. Programs may operate parallel to or outside conventional justice systems. In practice this distinction determines how participants enter the

program, whether they are prosecutor- or self-referred, what judicial or extra-judicial consequences are available and the consequences when offenders fail to comply with accountability commitments they have made. The term “restorative” refers to the concept of the program, not to program outcomes. Some restorative program designs may be ineffective or even have negative outcomes for sexual assault. We critically evaluate alternate program models shortly.

The literature on restorative justice is large and encompasses a range of crimes including severe violence such as homicide. We have attempted to review literature that references *sexual assault* and to present a synthesis of findings that focus on: (a) listening to what survivor/victims say they want from a justice process; (b) examining the capability of conventional criminal and civil justice systems to respond to the identified needs; (c) describing operational restorative programs that focus on or include sexual crimes; and (d) delineating still unmet survivor/victims’ justice needs and the barriers faced in responding to them. We are unable within the space limitations to include a large portion of the published literature because the topics are very complex for reasons such as different legal systems, cultural settings, or in the case of indigenous people, issues that are specific to each group’s history of cumulative trauma and colonialism. We strongly encourage interested readers to read more broadly about restorative justice and offer the following references as starting points: philosophy, roots, and vision of restorative justice (Johnstone & Van Ness, 2006; Umbreit et al., 2006); restorative responses to collective violence including rape in war and conflict (Krug, Dahlberg, Mercy, Zwi, & Lozano, 2002); outcome evaluations on crimes other than sexual assault (Latimer, Dowden, & Muise, 2005; Sherman, et al., 2005); intersections with gender, culture, indigenous status and socioeconomic considerations (Cameron, 2006; Chartrand & MacKay, 2006, <http://www.justice.gc.ca/en/ps/rs/rep/2006/rr06-vic1/p10.html>; Daly & Stubbs, 2005; 2006; Skelton & Batley, 2006); debates over expectations regarding forgiveness (Armour & Umbreit, 2006); the effectiveness of conventional

approaches such as community registration or sex offender therapy to managing sex offender risk (Mcalinden, 2006); cost-benefit analyses (Couture, Parker, Couture, & Laboucane, 2001 [http://ww2.ps-sp.gc.ca/publications/abor\\_corrections/apc2001\\_e.pdf](http://ww2.ps-sp.gc.ca/publications/abor_corrections/apc2001_e.pdf)); and legal perspectives, practice standards, and ethical guidelines (United Nations, 2007; Ministry of Justice, 2004 <http://www.justice.govt.nz/restorative-justice/rjprinciples.pdf>; Department of Justice Canada, 2000 <http://www.justice.gc.ca/en/ps/voc/rjpap.html>). We begin our review by summarizing what has been learned from listening to survivor/victims and their advocates

Focus groups or listening projects with survivor/victims, service providers, and advocates have been conducted in several US states and in other countries to learn about justice needs in the aftermath of sexual assault and other violent crimes including other types of violence against women, and to catalogue these groups’ ideas about what constitutes a victim-centered process (e.g., Nancarrow, 2006; Milka, Achilles, Halbert, Amstutz, & Zehr, 2003). A consensus of published studies is that survivor/victims need to tell their own stories about their experiences, obtain answers to questions, experience validation as a legitimate victim, observe offender remorse for harming them, receive support that counteracts isolation and self-blame, and above all have choice and input into the resolution of their violation. Victim-sensitive justice capable of responding to these needs would involve processes that respect survivor/victims as autonomous persons, individualize both their needs and the appropriate community responses including avenues for offender accountability, censure, and material reparation if desired, protect physical safety, reduce potential re-abuse, and maximize offender fulfillment of commitments.

Advocates and service providers have nuanced thoughts about the capacity of restorative justice to respond to survivor/victims’ needs in cases of sexual assault and domestic violence. In Nancarrow’s (2006) Queensland, Australia listening project, advocates believed that restorative justice could serve survivor/victims by expanding their options

and lowering barriers for offenders to accept responsibility and convey remorse. Trepidations were most often expressed when restorative methods were proposed for domestic violence as opposed to sexual assault. Yet even in Australia where restorative justice is routinely utilized for juvenile sex crimes, advocates expressed concern about extending programs to adult offenders. Enthusiasm also varied depending on the point in the justice process where the restorative program occurred; pre-charging diversions were viewed less favorably than post-sentencing approaches.

### **Justice Needs Compared to Justice Response**

The law and order agenda supported by the anti-sexual violence movement has achieved major law and policy reforms dating back to the 1970s, including expanding definitions for rape, removing corroboration requirements, establishing rape shield protections, opening avenues for civil justice, increasing punitive responses for sexual assault (longer sentences, sex offender registration, community notification, and civil commitment), educating criminal justice personnel, and introducing restorative elements including compensation schemes, rights to notification, and victim impact statements. Some coalitions have opposed some of these changes and recently the National Alliance to End Sexual Violence has expressed concerns about civil commitment and mandatory minimum sentences (personal communication, July 18, 2007). This coalition views these policies as reactionary agendas driven by politicians who respond expediently to high profile cases. For the purposes of this article, it is important to recognize that criminal sanctions are only realized when cases have been reported to police (compensation), charged (rights to notification) or proceeded through sentencing (e.g., impact statements, incarceration and sex offender registration). Therefore, we must examine the extent to which survivor/victims receive accountability that addresses their needs and at what cost to them. Relevant studies focus on re-traumatization and case attrition. *Re-traumatization* refers to behavior of justice personnel and institutional culture that exacerbates rather than reduces survivor/victims' distress.

*Attrition* examines the proportion of cases of sexual violence where validation of the survivor/victim and social condemnation/punishment of the offender ultimately occurs (Kelly, 2001; Koss, 2006). Each is discussed in more detail below.

### ***Re-traumatization***

Examination of self-reports by physicians, nurses, police officers, and survivor/victims about the statements made or actions taken during rape care reveal that perceptions of their helpfulness differed (e.g., Campbell, 2005). Whereas these groups of service providers rated their behavior as very supportive, survivor/victims frequently did not. The presence of an advocate beginning in the emergency room resulted in some improvement in survivor/victims' experiences compared to survivor/victims without advocates. However, even with an advocate present more than half of survivor/victims still felt bad about themselves, guilty, depressed, anxious, violated, disappointed, distrustful, and reluctant to seek further help (Campbell, 2006). Despite efforts to sensitize a variety of personnel in the systems that respond to sexual violence, there is inherently some element of shame and degradation in the process; the justice system is adversarial by design. Survey responses showed that 46% of survivor/victims were dissatisfied with police interviews (Monroe et al., 2005). Likewise, interactions with prosecutors were negatively experienced. Prosecutors are tasked with proving that the accused is guilty, which often causes survivor/victims to feel as if they must prove they were raped. Most survivor/victims who participated in trials before juries in the US believed rapists had more rights, the system was unfair, their statutory victims' rights were not implemented, and they weren't given enough information or control over handling their case (Frazier & Haney, 1996). The conclusions are supported by recent findings in Germany, even though rape trials in that country are not by jury and an extensive victim/survivor support system is in place (Orth & Maercker, 2004). Likewise, results are similar in South Africa where special prosecution units for sexual assault and rape courts are utilized

(Walker & Douw, 2006). These authors' data fail to support the objectivity and ability of specialized prosecutors and courts to reduce re-traumatization.

Survivor/victims who pursue civil cases also frequently fail to achieve satisfaction of their primary goals. Civil justice involves two types of cases, tort and non-tort. A *tort* case involves an assertion of wrongful actions and available sanctions take the form of monetary recovery. *Non-tort* cases seek remedy for problems such as immigration matters, wrongful termination, education disruption, or denied medical benefits. In civil actions an entirely new set of legal obstacles comes into play compared to criminal justice (Bublick, 1999; 2006). Furthermore, attorneys are unmotivated to pursue most tort cases because most offenders are not wealthy enough from attorney's perspectives, as compensation is contingent on the amount of money awarded in a settlement or judgment. And even if received, settlements virtually universally exclude any acknowledgement of wrong-doing by the offender (Bublick, 2006; Des Rosiers, Feldthusen, & Hankivsky, 1998; Herman, 2005). Where non-tort legal representation could be of assistance, few attorneys will work with survivor/victims of sexual assault because they are often unable to afford the hourly fees that are charged (Seidman & Vickers, 2005). Civil attorneys also observe that many survivor/victims have problems that the civil justice system cannot resolve (<http://www.victimrights.org/html/3-who.htm>).

### **Attrition**

The US National Violence Against Women Survey identified 2,594 separate rape incidents among the 8,000 female respondents. Only small numbers of these incidents were reported to police (N=441), prosecuted (N=33), convicted (N=13) and jailed (N=9; Tjaden & Thonnes, 1998). Rape was far less likely to be reported to police (22%) compared to physical assault (78%; Felson & Paré, 2003). A statewide assessment of survivor/victims receiving care at 19 sexual assault centers in Maryland showed that 70% said they would not report to police. Of those who did report, 56% waited years before doing so (Monroe, et al., 2005; for a review

of rape reporting rates worldwide see Kelly, 2001). Studies in Australia, New Zealand, the UK and the US have found that depending on the data source, police officers judge that 1% to 70% of rape reports are false (Jordan, 2004). Cases that were particularly likely to be closed as "false," "unfounded," "recanted," or "uncooperative victim" involved survivor/victims and offenders that were under the influence of substances, even slightly acquainted, delayed reporting, had previous consensual sex, and those with a history of childhood sexual abuse or mental illness. Although police deemed worthy just a fraction of sexual assault cases, more than 30 studies across many nations document that prosecutors approached suspiciously even the pre-selected cases that police deemed to have the strongest evidence of sexual assault. Worldwide the average proportion of cases where charges were issued was 28%; the figure was 16% in the two US jurisdictions included in the analysis (Indianapolis and another midwestern city that is unnamed due to a confidentiality agreement with prosecutors; DuMont & Parnis, 2007). Prosecutorial decisions have been found to be unduly influenced by stereotypes and survivor/victims features that are not statutory elements of law including class, race, character, conduct, mental health, sexual history, lack of injury, failure to manifest extreme emotional distress, and absent evidence of strong resistance (Bublick, 2006).

Not only are rates of indictment low, guilty verdicts are also low. Nine studies internationally reported conviction rates for rape. The global average was 15% and it was 12% in the two US cities with available data (Boston and an unnamed midwestern city; Du Mont & Parnis, 2007). Among juvenile offenses, rape was the least likely to be proved in trials (Daly & Crutis-Fawley, 2006). The consensus is that justice reforms have not improved satisfaction of survivor/victims needs and that rape remains the "least reported, least indicted and least convicted non-property felony" (Seidman & Vickers, 2005, p. 472). Social psychological research has shown that not-guilty rape verdicts increase both men's and women's rape myth acceptance, which is among the best predictors of a

juror's refusal to convict of rape. Not-guilty rape verdicts create a self-perpetuating, negative downward spiral in public response to sexual assault because prosecutors fail to charge when they think juries will not convict. The conviction rate for rape has declined steadily in European countries over the past 30 years (Kelly & Regan, 1999). For example, rates between 1977 and 1981 in Finland were 24% and from 1991 to 1997 declined to 13%. Legal scholars point out that even where strong laws are in place prohibiting sexual offenses and providing rape prevention education, laws cannot successfully achieve their envisioned aims with a citizenry that condones sexual violence and is reluctant to convict in sexual assault cases (Seidman & Vickers, 2005). Taken together, the results of listening projects and the data on attrition and re-traumatization support the worth of examining options that are premised on meeting the justice needs of survivor/victims that in many cases are not sufficiently fulfilled through conventional justice.

### **Restorative Justice Programs**

Examination of empirical reports in the restorative justice literature reveals that although sexual violence is not explicitly excluded, in reality no cases were included. The reasons are not known. New Zealand to some extent and much of Australia are the only jurisdictions where restorative justice for sexual assault is routine, but even so it is limited to juvenile cases. South Africa has catalogued a wide range of restorative justice interventions that include traditional practices, social service, and criminal justice-based programs across the country (Skelton & Batley, 2006). Most address a range of crimes and may include sexual assault partly out of necessity; South Africa records the highest rape rates in the world. The Mennonite Central Committee of Canada (<http://mcc.org/canada/restorativejustice/>) also implements a wide array of restorative programs addressing sexual assaults. In the material that follows we briefly describe some restorative justice programs that have included or focused on sexual assault. The aim here is not an exhaustive review.

### ***Victim-Offender Dialogue***

Victim-Offender Dialogue (or mediation) has existed for 30 years. Whether a program uses the word "dialogue" or "mediation" in its title appears to be arbitrary because in both cases the processes appear identical. Some scholars even use inconsistent terminology within their own body of work. Victim-Offender Dialogue is widely used in a variety of settings outside criminal justice such as ethnic conflicts. When applied to crime, the method involves preparation for and facilitation of a direct meeting between survivor/victims and the offender, usually in a prison setting during incarceration or pre-release (Umbreit, et al., 2006). Although not specifically identified as responses to sex crimes, many of these programs do include sexual assaults. After a general overview of the programs themselves, we will discuss why it is problematic to use the word "mediation" in programs designed to include gendered crimes.

One model that has been used for sexual assault is initiated when a survivor/victim notifies correctional authorities of a desire to meet and the offender agrees. The agenda of the dialogue is determined by the survivor/victim and may include stating the impact of the crime, asking questions, and seeking acknowledgement of responsibility. The Pennsylvania Office of the Victim Advocate ([www.pbpp.state.pa.us/ova/site/default.asp](http://www.pbpp.state.pa.us/ova/site/default.asp)) has been very active offering the OVA Mediation Program for Victims of Violent Crime. Sexual assaults have constituted 1/2 of the survivor/victims they have assisted. This office also facilitates Victim Impact Panels (also known as Victim Impact Dialogue), which involve survivor/victims who volunteer to visit prisons and speak with incarcerated sex offenders about the impact of these types of crime on them (Allen, 2004). The Pennsylvania program has been documented in a film *Beyond Conviction*. Skelton and Batley (2006) describe many programs of this type across South Africa. In addition, the victim-offender mediation program run by the Fraser Region Community Justice Initiatives Association in British Columbia is specifically designed to address traumatic criminal offenses,

including rape, sexual assault, and child sexual abuse (<http://www.cjibc.org/Programs.htm>).

The Centre for Sexual Assault in Copenhagen, Denmark, also offers a dialogue program ([www.restorativejustice.org/editions/2006/july2006/denmark](http://www.restorativejustice.org/editions/2006/july2006/denmark)). Here staff assists the survivor/victim to write or telephone the offender to establish communication. Three cases have been described to date, two of which involved adult survivors of child sexual abuse. In the first the offender did not respond, leading to survivor/victim disappointment, in the second an e-mail exchange occurred, and the third resulted in a face-to-face meeting. Both of the survivor/victims who received some form of response from the offender were satisfied with their experience primarily because they received acknowledgement.

Umbreit and colleagues have been pioneers in providing quantitative and qualitative assessment of the outcomes of victim-offender dialogue. In one study that included felons incarcerated for crimes of severe violence including sexual assault in Texas and Ohio, the most commonly stated reasons that survivor/victims participated were to seek answers to lingering questions, to express the impact, to experience a more human interaction with the offender, and to advance healing. Preparation time depended on the scope of what the parties' desired to achieve through the meeting. The dialogues lasted 3.5 to 8 hours in Texas and 2 to 4 hours in Ohio. Of the 46 cases across the two sites that were evaluated, 8 involved sexual assaults representing the mix of sex acts for which offenders are incarcerated. The results were reported in aggregate across all crimes, which is clearly a limitation as is the small number of sexual assault cases. However, the overall survivor/victim satisfaction was so high (95% satisfied or very satisfied in Texas and 100% in Ohio), that large differences across crime types would be unlikely, but nevertheless merit examination in future research. A caution to this rosy picture comes from the program offered by the Department of Correctional Services in Leeuwkop, South Africa. Although overall program completion was 80% by offenders in general, commitment was more prob-

lematic among sex offenders (Skelton & Batley, 2006)

Many people in the sexual assault field object to programs that use the word "mediation," and the term "resolution of conflict." These terms connote practices involving parties with equal social resources, a neutral facilitator, a conflict that must be resolved, and a negotiation that results in each side getting something of what they want, such as the process for resolving labor disputes. Mediation methodology is not designed to respond to acts that involve parties with different levels of power. Sexual violence is primarily a gendered crime that challenges the assumption of equal resources to speak and be heard. In addition, crimes are not conflicts; there is an injured party and a wrongdoer. Finally, although mediation is a negotiation, victim-offender dialogue often typically does not involve reparations but instead focuses on voicing impact and receiving validation. Confusion exists not only in the professional literature but in community practice between the concepts of victim-offender mediation and divorce mediation. Divorce mediation uses different methods from victim-offender dialogue and is also frequently involuntary or mandated. Coerced participation is never acceptable for survivor/victims of sexual assault. One lesson that may be learned is that the word "mediation" is confusing and counterproductive for those who work with survivor/victims of sexual violence.

### *Sentencing Circles*

Circles developed primarily in Canada and have been utilized most widely among First Nations people. They involve a large group of individuals that are invested in the resolution of a crime and who come together to determine a plan for the offender. The circle concept is seen in other indigenous societies on every continent and has ancient roots, but the Canadian model has been examined most carefully by scholars. Attendees may include survivor/victims, offenders, their family/friends, offenders, criminal justice personnel (judges, prosecutors, defense attorneys, and police), social service providers, and community members (Shapeland, 2003). Often a talking piece is passed

to signify who is designated to speak, which in theory allows expression of a broader range of views than in traditional sentencing. However, circles are critiqued widely in the indigenous law literature (Rave, 2004). One of the best known programs is the Hollow Water First Nation Community Holistic Circle Healing approach to sexual offenders, their victims, and families (see Umbreit et al., 2006). The identified strengths of this program were having a voice and a stake in justice, the context of mutual respect, and renewed community and cultural pride. However, the model has been the subject of a series of critiques from within and outside the community. Expressed concerns included lack of privacy, embarrassment working with family and close friends, unprofessional conduct, coercion on survivor/victims because they are outnumbered, deferral to professionals by Native people, and class, gender, culture, and race bias (Cuneen, 2004). One legal scholar has suggested that circles do not even qualify as restorative justice (Coker, 2004). To her, circles involve the same criminal justice players as a conventional sentencing and may lack a clear normative judgment about what constitutes illegitimate conduct towards women.

### **Conferencing**

Conferencing is a widely used form of restorative justice that has been adopted specifically for sexual assault. It involves consensual agreement by survivor/victims, offenders, and their family and friends to prepare for a meeting together. It is premised on the offender taking responsibility for the acts committed, although this does not equate to a full understanding of why these acts are considered crimes. The conference is preceded by weeks or months devoted to informed consent and preparation for the meeting. The amount and content of the preparation process varies from program to program. When the meeting is convened, it is typically guided by a facilitator who follows a strict or loose script to ensure that key points are discussed, speech is non-abusive, and everyone has a chance to speak. Facilitators may be social service profes-

sionals, volunteers or police officers, but in any case they have received specialized training. Conferences have been conducted in a variety of settings, but many are sited in police stations for safety. The typical agenda of a conference includes the offender describing his/her acts and taking responsibility for them, the survivor/victim voicing the impact of the crime, followed by family and friends of both the survivor/victim and offender. The offender then acknowledges and responds to what he/she has heard about the harm that resulted from the acts. The meeting concludes with discussions formalizing the programmatic and survivor/victim-driven components of a plan that the offender accepts to make amends, repair harm to the survivor/victim, family/friends, and community, and undertake personal changes to prevent reoccurrence of similar acts. The conference and the resulting redress plan constitute restorative punishment. In contrast to conventional criminal justice, the punishment is driven by the survivor/victim, individualized to the offender and re-balances survivor/victims and community involvement in determining justice. In contrast to victim-offender dialogue, conferencing designs involve a wider circle of people affected by the crime and culminate in a plan for reparation and rehabilitation.

Conferencing may occur at various points within the justice process including being a component of the formal “caution” (warning) issued by police to the offender (not an option in the US justice system), as a pre-charge diversion, as a mandatory diversion subsequent to a guilty plea or verdict, or at any time point when a survivor/victim self-refers. Program process may also differ in their features. These include focus on juvenile or adult survivor/victims and offenders, inclusion of current and/or past sexual assaults, relationship to criminal justice, whether as an alternative form of accountability to criminal justice or a free-standing victim-services initiative, and the source of referrals (survivor/victim self-referral or prosecutor/court initiated).

Many conferencing programs operating in South Africa include rape within their scope. Furthermore, our research located four conferencing programs

specifically designed for sexual assault, including the South Australia Juvenile Justice Intervention, which was a formal comparison of restorative conference and conventional court outcomes (Daly, 2003; 2006). Other programs include RESTORE in Pima County, Arizona (Koss, 2006; Koss, Bachar, Hopkins, & Carlson, 2004), RESTORE-NZ in Auckland (Julich, 2005), and Phaphamani Rape Crisis Counselling Centre in Uitenhage, South Africa (Skelton & Batley, 2006).

The program plan for RESTORE in Pima County, Arizona, includes many features that were specific responses to listening projects, published critiques of restorative justice for sexual assault, or were alterations introduced after implementation as a response to unanticipated problems. Modifications from the standard conferencing model included (a) contacting survivor/victims first so that offender consent could not be used to coerce their participation; (b) providing survivor/victims with free legal consultation about their justice options to augment their conversations with program staff; (c) careful screening for appropriateness of offenders in a community-based program consisting of prosecutor referral and comprehensive psychosexual evaluation (a multi-hour assessment administered by a forensic examiner of personal and sexual history, risk factors for offending, and arousal patterns as determined by clinical interview and standardized measures); (d) developing rigid rules to prevent verbal re-abuse or contact with the victim; (e) seating participants around a large table rather than in an open circle to maintain separation and perceptions of protection; (f) allowing the survivor/victims to choose to be present or to designate a family member/friend or community volunteer to represent them; (g) imposing minimum accountability (therapy, case manager supervision, monitoring by a volunteer community board, and community service) to augment survivor/victims' directed elements of the redress plan; (h) creating a volunteer community board of individuals pre-screened and trained to validate the survivor/victims, offer offenders assistance in problem solving, maintain contact with law abiding community members, and terminate when necessary for non-

compliance; and (i) creating a formal program exit meeting where the offender prepares and delivers a letter of clarification and reflection to the community board and survivor/victims, if desired.

RESTORE has been operational for two years, so some anecdotal information is available. In a geographical area that received 749 rape reports in 2003 among a population of approximately one million, 65 referrals from prosecutors were received in 24 months. Participation rates have been 71% among those survivor/victims who could be contacted (many police reports lacked accurate contact information or parties had moved) and 84% of those offenders whose survivor/victims consented entered the program. Of 22 consented cases, conferences were successfully conducted in 20. Not all survivor/victims attended the conference in person, but in every case they gave permission for the process to proceed. Quantitative evaluation of survivor/victims' distress levels, offenders' recidivism and all parties' perceptions of satisfaction, fairness, and reparation are underway. Survivor/victims experiences are assessed by self-report survey including standard measures of PTSD. Re-offending is assessed using the revised Sexual Experiences Survey to screen for self-reports of perpetration after program exit (Koss, Abbey, et al., in press) and through criminal records search for arrests for any crime. To date, four cases were returned to prosecutors because of noncompliance or voluntary termination by the offender. None resulted in any prosecutors imposing any form of accountability despite the fact that a major reason for partnering with the justice system was to establish back-up consequences for drop-outs. Offenders who successfully completed the program made positive changes in their understanding of themselves and the harm they caused based on qualitative analysis of their statement of responsibility at program entry compared to their letter of reflection at program exit (Bletzer, Koss, & Raskin, in press). Reports on quantitative analyses and further qualitative findings are in preparation.

RESTORE-NZ in Auckland, New Zealand, has expanded the program concept to serve cases referred from the criminal justice system as well as



adult survivors of child sexual abuse who voluntarily seek out the program. When this article was written the program had conferenced 2 cases, but descriptions of the case characteristics are not yet available. The expansion of restorative justice conferencing to self-referral is an important innovation also found at the Phaphamani Rape Crisis Counseling Center in Uitenhage, South Africa. This program works with both criminal and civil cases and receives referrals from criminal justice, social services, as well as self-referrals. The Centre has completed 63 conferences and 72 victim-offender dialogues. Although there is no formal evaluation, staff report that the interventions often caused survivor/victims' pain to resurface but that participants were satisfied at the end. Program staff also commented that they encountered offenders who were willing but the family did not support participation. However, as in the Arizona experience, the most serious problem reported was lack of referrals to the program by the formal justice system.

The largest conferencing initiatives are in Australia where juvenile sexual assault is mandated to conferencing in many states and territories. A large-scale evaluation of conferencing outcomes for sexual assault, and in fact the only experimental comparison of restorative to conventional justice is the South Australia Juvenile Justice Intervention (a bibliography of published papers is available at <http://www.griffith.edu.au/school/ccj/kdaly.html>). Young people charged with sexual assault who admitted their acts were randomly assigned to restorative justice conferencing or court. Daly (2003) examined the results of 89 conferences. Survivor/victim satisfaction was higher in the group that was assigned to conferencing compared to court and conferenced cases more frequently resulted in admission of responsibility and apology compared to trials. In the courtroom the proved rate was 33% for sex crimes compared to 65% for burglary. Survivor/victims ranged in age from 3 to 50 years. Offenders were 11 to 18 years. Excluding the victims of a youth who exposed himself to older women, the median age of victims was 6 years. The severity of the sexual assaults was approximately

evenly divided across a spectrum from less serious to most serious. Many cases involved brothers and sisters, step relations, cousins, family friends, and other friends. All offenders participated for 12 months in the Mary Street Program, an adolescent sexual abuse prevention program and performed community service. Following the conference, 53% of survivor/victims reported having a greater understanding of why the offender committed the offense, and 82% reported satisfaction with how their case was handled. Despite these positive measures of satisfaction, only 20% of survivor/victims reported that the conference was helpful in overcoming psychological or emotional effects of the crime (Daly, 2003). Given the young age of many survivor/victims in this study, it is not clear how standardized and age-appropriate the assessment of psychological effects was and clearly the data do not generalize to adult survivor/victims of adult offenders or adults molested as children.

### Unmet Needs

This article has identified some innovative responses to survivor/victims' justice needs that are currently unmet by conventional justice. Compared to current practice, new groups that could receive services from restorative justice programs include: (a) adult survivor/victims who choose not to initiate a report to law enforcement; (b) those who reported but whose cases were closed against their wishes; (c) survivor/victims whose offenders were never apprehended; (d) adult survivors of child sexual assault who were unable to come forward at the time of the offense; (e) juvenile survivor/victims whose offenders are frequently young family members and friends where evidence of predilection to offending is absent upon psychosexual examination; and (e) family and friends of survivor/victims, who may suffer equal or more distress than the survivor/victims.

Some legal scholars have suggested that the justice response to intimate crimes such as sexual assault should be removed from the criminal justice system and handed over to service providers

(Seidman & Vickers, 2005). Although it is true that sexual assault survivor/victims are vastly more satisfied with the help they receive from these agencies compared to conventional justice, an array of arguments exist against this position. There are elements of the criminal justice system that neither survivor/victims nor advocates are ready to give up, including the power to force or coerce participation of the offender. Even if restorative justice were mandated, and we do not advocate that it should be, success depends substantially on the acceptability of restorative methods by individual survivor/victims and offenders, well-designed and implemented program processes, and offenders' willingness to accept responsibility and face expectations that they will participate in activities aimed at repair of themselves and others (e.g., Kaly, 2003).

The data reviewed previously supports the conclusion that the conventional justice system is very good at doing little to respond to sexual assault reports. We have noted some of the notable evidence of resistance to change in this system including the lack of a positive trend over the years of activism and education/training in increasing reporting or conviction rates. And even when restorative alternatives are made available, program directors report that the rates of utilization by prosecutors are low leading to no change in the overall level of accountability for sexual assault. Thus there is a credible argument that sexual assault service providers, advocates, and policy makers can take leadership in the development of restorative options both in parallel with and independent from the conventional justice system. Meeting survivor/victims' justice needs and fostering a credible deterrence of sexual violence would benefit from innovation and advocacy both within and outside the justice system. Initiatives could be explored in a variety of settings from sexual assault centers, schools, neighborhoods, and prisons, that addressed the forms of sexual violence that are most predominant at different stages of life from childhood to adulthood, and implemented at various time points beginning with prevention of the precursors of sexual violence and extending many years after a violation has occurred. Whereas judicial processes and incarceration primarily aim for deterrence and

punishment, restorative justice can be preventative. Primary prevention (preventing sexual violence perpetration/victimization from beginning) is advanced by restorative programs in schools that could bring offenders and survivor/victims together to address bullying, which consists primarily of gender/race/sexual orientation harassment and mild physical violence. These behaviors are widely viewed as precursors of future interpersonal violence. Secondary prevention aims to avoid progression of distress (survivor/victims) and escalation of violence (offenders). It is fostered by empowering survivor/victims to take action on their own behalf through a process designed to avoid retraumatization. Secondary prevention for offenders is advanced by hearing the impact of their behavior and receiving professional interventions, even in the absence of legal accountability. This approach may nuance offenders' thinking about the morality and social cost of perpetration to survivor/victims and to themselves, which could lower the chances they would behave similarly in the future as they did in the past.

Given the size and richness of the restorative justice literature, the minimal number and small scale of programs for sexual assault is notable. The reality is that policy, system, and resource barriers hinder their development more than for other crimes. For example, programs that treat both survivor/victims and offenders are ineligible to apply for grant funds made available through the Violence Against Women Act and there are system and resource barriers that hinder their development more than other crimes. Other funds to address victim or offender services are earmarked for continuation of existing programs, resulting in a failure to reward or nurture innovation. Finally, many available federal dollars cover only evaluation costs, not the much more significant costs to develop and operate new programs. System change can happen and we hope that this brief overview of survivor/victims' needs and restorative innovations will begin to encourage a re-envisioning of how the field could advocate for growth in responsiveness to the injustice of sexual assault.

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***In Brief:***  
**Restorative Justice Responses to Sexual Assault**

A large international literature promotes restorative justice options as satisfying and empowering to crime victims. This paper examines restorative justice for sexual assault from the perspective of three groups of survivors: (a) adults victimized by adult perpetrators; (b) adults or juveniles victimized by juveniles; and (c) adults sexually molested as children by adults.

A restorative justice conceptualization involves three constituencies: (a) survivor/victims and secondarily victimized family and friends who suffer distress along with their loved one; (b) community members who experience less safety and social connection when they perceive high levels of crime and low deterrence, yet who simultaneously may be contributing to an environment supportive of sexual violence; and (c) offenders as well as their families and friends, who experience guilt and shame that is associated with being accused of a sexual crime or belonging to the interpersonal relationship context from which the offense arose. Restorative options include sharing circles, victim-offender dialogue, victim impact panels, community reparation boards, circles of support, sentencing circles, conferencing with juveniles and adults, and restorative discipline in educational settings (Umbreit et al., 2006). Whereas judicial processes and incarceration primarily aim for deterrence and punishment of the offender, restorative justice can be both responsive to survivor needs for validation, empowerment, and repair of harm and preventative of future sexual assault.

This paper reviews data documenting the high levels of attrition that transpire between reporting sexual assault to law enforcement and case disposition by prosecutors. The data demonstrate that conventional justice has over a period of years been very good at doing little to respond to sexual assault reports. Some of the notable evidence of resistance to change in this system includes the lack of a positive trend despite dedicated activism and education/training in increasing reporting or conviction rates in sexual assaults. Even when restorative alternatives are made available, the status quo frequently prevails. Program directors report that the rates of utilization by prosecutors are low.

Survivor/victims have many justice needs that are currently unmet by conventional justice. Compared to current practice, groups that could receive services from restorative justice programs include: (a) adult survivor/victims who choose not to initiate a report to law enforcement; (b) those who reported but whose cases were closed against their wishes; (c) survivor/victims whose offenders were never apprehended; (d) adult survivors of child sexual assault who were unable to come forward at the time of the offense; (e) juvenile survivor/victims whose offenders are young family members and friends where the offense was an overly extreme developmentally driven sexual exploration occurring in the absence of evidence of deviant sexual arousal; and (e) family and friends of survivor/victims, who may suffer equal or more distress than the survivor/victims. There is a credible argument that sexual assault service providers, advocates, and policy makers can take leadership in the development of restorative options both in parallel with and independent from the conventional justice system. Meeting survivor/victims' justice needs and fostering accountability is preventative in itself and bolsters the primary prevention messages that are central elements of rape prevention education programs. Innovation from both inside and outside the justice system would benefit all parties.