

RESTORATIVE JUSTICE AS A RESPONSE TO THE HARMS OF HATE

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Executive Summary

Diverse faith communities have been drawn to restorative justice work because of how it connects to virtues such as empathy, compassion, non-violence, forgiveness, mercy, interconnectedness, and a shared common humanity that operate across many religious traditions.¹ The Religion & Society Program believes that faith



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communities can make substantive and meaningful contributions to the ideas, enactment, and promotion of restorative justice (RJ) practices.

Our prior research on hate and extremism identified significant interest among civil society practitioners in exploring RJ responses to hate crimes and incidents.² In response, this resource aims to provide a roadmap for civil society organizations that are interested in pursuing RJ approaches to repairing the harms of hate. It is informed by the insights of the 15 members of the Dismantling Hate cohort of the Aspen Institute's Powering Pluralism Network that were shared with the Religion & Society Program during a convening held in New Brunswick, NJ, in March 2023. The topline insights of the Dismantling Hate convening are presented below.

- The enactment of state and federal hate crime enhancements to recognize bias-motivated crimes has in some sense acclimated communities to think about a hate crime enhancement as the defining measure of recognition of harm(s) visited on them. However, the data indicate that it is exceedingly rare for a hate crime survivor's experience to be validated by the criminal-legal system through a hate crime designation, enhancement, or conviction.³
- There is a growing body of evidence from systematic reviews and meta-analyses that point to the effectiveness of restorative justice and its positive impacts on recidivism for offenders and outcomes in terms of survivor satisfaction and restoration (See Appendix 1). The results of these studies are promising, regardless of whether RJ programs target juvenile or adult offenders, or low-level, serious, or violent crimes.⁴ This report acknowledges the limitations of current research on restorative justice, including instances of small sample sizes, selection bias, and limitations in the transferability of practices from one context to another.
- Underlying issues of identity and bias motivations can be addressed by a restorative justice process. Harmed parties can be provided with the acknowledgement, validation, and reparation that they might otherwise hope to see from a criminal-legal hate crime charge and conviction. RJ processes hold the potential of addressing a wide range of incidents and crimes, including non-criminal hate incidents, latent aggressions, and/or microaggressions that fall outside the purview of the criminal-legal system, given the high threshold of what constitutes prosecutable forms of hate speech in the United States.⁵

1 See Hadley, Michael L., ed. *The Spiritual Roots of Restorative Justice*. SUNY Series in Religious Studies. Albany: State University of New York Press, 2001.

2 This enthusiasm was expressed in a series of qualitative interviews with representatives from organizations such as the Anti-Defamation League, Muslim Advocates, and the Southern Poverty Law Center. FitzGerald, Gerald. "Hate and Extremism Targeting Faith Communities: Challenges, Opportunities, and Advancing the Field." Washington, DC: The Aspen Institute, March 2023 (unpublished manuscript).

3 Kena, Grace, and Alexandra Thompson. "Hate Crime Victimization, 2005–2019." Washington DC: Bureau of Justice Statistics, September 2021. https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf.

4 See Maryfield, Bailey, Roger Przybylski, and Mark Myrent. "Research on Restorative Justice Practices." Washington DC: Justice Research and Statistics Association, December 2020, 5. <https://pdf4pro.com/amp/view/research-on-restorative-justice-practices-75bd4f.html>

5 For an example of this legal reasoning, see *Snyder v. Phelps*, 562 U.S. 443 (2011).

Restorative justice practitioners also argue that the needs of survivors of violent crime are better met by asking people who commit violence to accept responsibility for their actions and make amends in ways that are meaningful to those they have hurt—none of which ordinarily happens in the context of a criminal trial or a prison sentence.⁶

- However, the suitability of a restorative justice process should be assessed on a case-by-case basis, considering the nature of the offense, the willingness of participants, and the potential for meaningful engagement and resolution.
- Civil society and community organizations have different levels of comfort with—and access to—the criminal-legal system. In some instances, faith and interfaith communities may see a benefit in partnering with law enforcement and prosecutors to establish the relationships and infrastructure to allow for the future diversion of cases that are already in the criminal-legal system. For a variety of reasons, faith and interfaith communities may wish to locate an RJ program completely outside of the criminal justice system, whether because of histories of distrust or objections to the inherently punitive nature of the criminal-legal system or its structural inequities.
- Obtaining buy-in from politicians and policymakers will be crucial for institutionalizing restorative approaches to address hate-related incidents. Securing community endorsement of the suitability of restorative justice as a response to hate crimes will likely be key to obtaining political support.⁷
- National organizations can work with local chapters and community-based partner organizations to make the case for the viability of RJ processes as a meaningful response to hate crimes and incidents. Organizations should consider designing strategic communications so that communities will already be receptive to an RJ process when an appropriate case arises.

The following sections will explore the basic principles of restorative justice, as well as its potential benefits, pitfalls, the kinds of stakeholders that are involved in RJ responses to hate crimes and incidents, and how civil society organizations can build institutional capacity and community support to deploy restorative justice practices in response to hate crimes and incidents.

Defining Hate Crime

Hate crime is defined by the FBI as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”⁸ However, this formal-legal definition is not particularly useful for the advocacy or philanthropic sectors, given the high bar for what constitutes a “hate crime” in the US. In this report, we will also use the term “hate incidents” to refer to a broader category of prejudiced targeting that is not necessarily illegal but is still harmful.

What is Restorative Justice?

Restorative justice (RJ) is a process that “is primarily concerned with the engagement of those affected by wrongdoing in a dialogic process which aims to achieve reparation—be it emotional, material, or to relationships.”⁹ The goal of RJ is to bring together those most affected by the harm—the responsible party, the individual(s) harmed, and community members—in a process to repair harms. This process involves

6 Sered, Danielle. *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*. New York: The New Press, 2019.

7 Walters, Mark A, Jenny L Paterson, and Rupert Brown. “Enhancing Punishment or Repairing Harms? Perceptions of Sentencing Hate Crimes Amongst Members of a Commonly Targeted Victim Group.” *The British Journal of Criminology* 61, no. 1 (January 1, 2021): 61–84.

8 “The FBI Encourages the Public to Report Hate Crimes,” June 30, 2021. <https://www.fbi.gov/news/press-releases/press-releases/the-fbi-encourages-the-public-to-report-hate-crimes>.

9 Walters, Mark Austin. *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms*. Oxford: Oxford University Press, 2014, 32.

encouraging accountability on the part of the responsible party that meets the needs and helps the healing of those harmed. Using this lens, *justice* involves an effort on the part of the harming party and those harmed to put things right (see Table 1).

A restorative justice process gives survivors the opportunity to directly tell the responsible party how their harmful behavior has affected them and to ask questions. It also gives the responsible party an opportunity to (1) admit what they have done and understand the impact it has had on those harmed; (2) make amends (e.g., written apologies, community service, financial payments, counseling, educational requirements, or other tailored remedies); and (3) work to change their behavior. However, although RJ processes might



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conform to a certain basic structure, there is no “one-size-fits-all” solution to hate crimes. RJ is not a panacea, and each situation may call for a different response.

Restorative Justice programs in the US take several forms. Some are **prosecutor-led** (i.e., designed and/or managed fully or in part by prosecutors’ offices). For example, DC Attorney General Karl Racine launched the Restorative Justice Program in the Office of the Attorney General for the District of Columbia in 2016. This program provides a pathway for prosecutors to divert cases that meet its eligibility criteria into an RJ process. Some RJ programs are

prosecutor-adjacent (i.e., they rely on the threat of a criminal charge to motivate involvement). For example, Impact Justice and Community Works West follow a pre-charge restorative justice diversion model that involves working with prosecutors to divert appropriate cases into a RJ process that is located outside the criminal-legal system.¹⁰ Other programs operate on an **extrajudicial** basis in the sense that they are located completely outside the criminal-legal system. For example, The Ahimsa Collective’s “Restorative Justice in the Community” program serves survivors, bystanders, and people who have done harm who wish to enter an RJ process independent of the criminal-legal system.¹¹

Table 1 | Distinguishing Between Criminal Justice and Restorative Justice Paradigms

Criminal Justice	Restorative Justice
<i>Crime is a violation of the law and the state</i>	<i>Crime is a violation of people and relationships</i>
<i>Violations create guilt</i>	<i>Violations create obligations</i>
<i>Justice requires the state to determine blame (guilt) and impose pain (punishment)</i>	<i>Justice involves harmed parties, responsible parties, and community members in an effort to put things right.</i>
Central focus: <i>Offenders getting what they deserve</i>	Central focus: <i>The needs of the harmed party and the responsible party’s obligation to repair the harm caused</i>

Adapted from Zehr, Howard. *The Little Book of Restorative Justice*. PA: Good Books, 2002.

10 See Impact Justice. “Restorative Justice Diversion.” Accessed October 30, 2023. <https://impactjustice.org/innovation/restorative-justice/>; also “Restorative Practices – Community Works West.” Accessed October 30, 2023. <https://communityworkswest.org/our-approach/restorative-practices/>.

11 The Ahimsa Collective. “What We Do.” Accessed October 30, 2023. <https://www.ahimsacollective.net/what-we-do>.

Restorative Justice and Accountability

There are widespread misunderstandings about how RJ approaches operate (see Table 2). Restorative justice approaches focus on accountability and healing as distinct from the retributive criminal-legal system, which focuses on the punishment of perpetrators who violate the law. Here, it is important to distinguish between accountability and punishment. Punishment in the criminal-legal sense does not ordinarily involve a perpetrator taking full responsibility for behavior or making repairs for the harm caused. In fact, the criminal-legal system provides incentives for perpetrators to *not take responsibility* for the harm they cause. For example, the burden of proof in criminal cases rests with the prosecution, which often incentivizes perpetrators to adopt a “deny everything” strategy, knowing that it can be challenging for the prosecution to meet this standard. Moreover, defense attorneys may advise their clients to remain silent, avoid admissions of guilt, or challenge evidence vigorously, even in cases where the perpetrator may be willing to take responsibility.

In the RJ paradigm, accountability involves those who cause harm taking responsibility for their actions; acknowledging the harmful effects of those actions; expressing remorse; and engaging in actions, guided by those harmed, to repair harm.¹² Dialogue is central to this process, and it is common for individuals to experience empathy for one another which can elicit more genuine feelings of remorse. In short, RJ is focused on holding people who cause harm accountable for their actions in ways that are meaningful to survivors.

Table 2 Common Misunderstandings about Restorative Justice	
MYTH	REALITY
Restorative justice ignores accountability.	RJ is focused on holding people accountable for their actions in ways that are meaningful to survivors.
RJ is the “easy way out” for people who cause harm.	RJ processes require that people face up to, and be accountable for, the harm their actions cause, and make amends for those actions.
RJ signals that harm is not being taken seriously.	RJ takes a broad range of harms seriously, including those that may not meet the formal-legal definition of a crime. RJ centers the needs of the harmed party in a healing-centered process.
RJ is compulsory and traumatic for people who have experienced harm.	Participation in RJ is always voluntary. Studies show high levels of satisfaction with RJ interventions.

Adapted from Beckett, Katherine, and Steve Herbert. “Developing Restorative Justice as a Response to Hate Crime in Washington: A Proposal.” University of Washington, December 1, 2021.

Restorative justice practitioners argue that the needs of survivors of violent crime are better met by asking people who commit violence to accept responsibility for their actions and make amends in ways that are meaningful to those they have hurt—none of which ordinarily happens in the context of a criminal trial or a prison sentence.¹³

12 Common Justice. “Restorative Justice: Why Do We Need It?” Accessed April 26, 2023. https://www.commonjustice.org/restorative_justice_why_do_we_need_it.

13 Sered, Danielle. *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*. New York: The New Press, 2019.

How Does Restorative Justice Work?

Restorative Justice programs take multiple forms—some operate within the criminal-legal system, some operate as diversion programs that remove cases from the criminal-legal system, while others are entirely community-run and outside the criminal-legal system. However, most RJ processes have specific eligibility criteria. Potential cases will be evaluated by either a prosecutor, RJ professionals associated with a community organization, or other parties, depending on the type of program. RJ practitioners point to several important prerequisites for a successful outcome. The consent of the responsible party and the harmed party is key. The harmed party must be willing to voluntarily opt-in to an RJ process without coercion. The person who committed the harm must also be able and willing to participate and take responsibility for the harms caused.

Highly trained RJ facilitators help connect the responsible party with the harmed party as well as with supportive family and community members. Once everyone agrees to participate in the process, the facilitators work separately with all parties to prepare them for a restorative conference. In this conference, the parties discuss what happened. Facilitators then work with the harmed party and the responsible party to determine the appropriate response to the harms caused and the repair involved.

- **The harmed party** has an opportunity to share how they were affected and what they are going to need to heal. The process thus provides a “voice” often denied of many marginalized survivors and opens a path for them to form their own narrative through open discussion of the effects of prejudice and hatred. Solutions might include financial restitution, replacing items that were broken or lost or completing certain reparative tasks on behalf of the person or community harmed.
- **The responsible party** accepts responsibility for causing harm and articulates what they need to reduce the likelihood of a recurrence. This should ultimately include an agreement stating that the incident(s)/dispute would stop.
- **The facilitator** supports participants in reaching an agreement that meets everyone’s needs; it is important that participants feel their own sense of empowerment, agency, and ownership in the process.



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The facilitator also observes the responsible party’s adherence to the restorative agreement.

Restorative justice offers survivors the opportunity to have their needs met in ways that are not ordinarily available through the criminal-legal system.

Of primary interest in this report is the use of restorative justice to facilitate dialogue and reconciliation in cases involving hate crimes, racial or ethnic discrimination, or other forms of bias-motivated offenses. However, RJ processes can be applied to a wide range of cases, including:

- Offenses against marginalized groups: Restorative justice can be used to address harm done to marginalized individuals or communities, such as cases involving LGBTQ+ individuals, indigenous peoples, or immigrants.
- Offenses involving individuals: Restorative justice can be used for cases of theft, property damage, assault, bullying, harassment, or other interpersonal conflicts.
- Juvenile justice: Restorative justice is often employed in cases involving young offenders to help them understand the consequences of their actions, take responsibility, and make amends.

- Community conflicts: Restorative justice can be utilized to address disputes within communities, such as conflicts between neighbors, disputes in schools or workplaces, or incidents involving community members.
- Family and domestic conflicts: Restorative justice processes can be effective in resolving conflicts within families, including cases of domestic violence, elder abuse, or disputes over child custody.

Not all cases may be suitable for restorative justice. The suitability of a restorative justice approach should be assessed on a case-by-case basis, considering the willingness of participants, the nature of the offense, and the potential for meaningful engagement and resolution.

- Seriously mentally ill individuals who do not have the capacity to understand the results of their actions are unlikely to be suitable candidates for an RJ process.
- Hardened or “mission-driven” offenders who are committed to their prejudices and who may re-traumatize the harmed party because of these deeply held beliefs will be less suitable candidates for an RJ process. Research indicates that it is unlikely that a brief restorative intervention will generate any meaningful transformations in the case of offenders whose worldviews and prejudices have accumulated over a lifetime.¹⁴

It is important to note that RJ programs can also exacerbate inequality if certain people are more often diverted, or if some people are seen as expressing contrition more than others (on a racially disparate basis), or if individuals suffering from mental illness are excluded without providing alternative opportunities for diversion.

Two Illustrative Cases

Case 1: Antisemitism and restorative justice

Mr. Y, a seventeen-year-old white British male, physically assaulted Mr. K and hurled racial slurs at him because of his Jewish identity.¹⁵ The incident prompted Mr. K to file a police report. Despite the report, Mr. Y continued to victimize Mr. K, even racially abusing him and his mother in public. As part of a restorative justice process, an RJ practitioner was assigned to Mr. Y’s case. The practitioner met with Mr. K and his father to discuss the impact of the incident. During the conversation, Mr. K suggests that instead of a traditional punishment, Mr. Y should educate himself about the historical consequences of antisemitism. Consequently, Mr. Y is assigned a research project to study the rise of the Nazi party and the effects of anti-Semitism during World War II.

The project was supervised by an offender manager who is herself Jewish. Mr. Y completed the research over a two-week period and presented the resulting report to Mr. K and his family. In the report, Mr. Y expressed newfound understanding and remorse for the pain he caused. He acknowledged the seriousness of his offense, the significance of the Holocaust, and the impact of hateful language on individuals and communities.

Initially, Mr. K and his father were skeptical about the genuineness of Mr. Y’s reflections. However, after considering the report, they recognized its value as a starting point for change. Mr. K hoped that the experience had persuaded Mr. Y to change his ways, while also acknowledging the personal benefit he gained from the process. While there was uncertainty about whether Mr. Y’s transformation was genuine, Mr. K has not experienced any further harassment from Mr. Y.

14 Gavrielides, Theo. *Restorative Justice Theory and Practice: Addressing the Discrepancy*. 2nd Edition London: RJ4All Publications. 2007.

15 This case study is taken from Walters, Mark A. “Repairing the Harms of Hate Crime: A Restorative Justice Approach.” In *The Routledge International Handbook on Hate Crime*, edited by Nathan Hall, Abbee Corb, Paul Giannasi, John G. D. Grieve, and Neville Lawrence. London New York: Routledge, Taylor & Francis Group, 2018.

This case exemplifies how reparative work, such as the research project undertaken by Mr. Y, can help offenders gain a deeper understanding of cultural and identity differences. It highlights the harmful impact of racial and religious hostility on both individual victims and entire communities.

Case 2: A role for faith-based civil society advocates

In the early morning hours after September 11, 2013, Alex [a pseudonym] assaulted a Sikh man, charging him and forcefully knocking off his turban. Alex fled after the assault. However, the survivor chased Alex down and the police soon arrived. At the request of the survivor, Alex was given 72 hours of mandatory community service. To his surprise, the Sikh Coalition requested that he spend his community service volunteering with them. Alex testifies that “those hours would permanently alter the course of my life.”¹⁶ During the time that Alex spent with his Sikh colleagues, he was shocked to learn about the severity of the hate crimes, profiling, discrimination, and school bullying that the American Sikh community faces every day.

The Sikh Coalition’s work also encouraged Alex to look back on his own education and how it contributed to his prejudice. Alex grew up in an area of the country with some diversity, but he understood very little about the Sikh faith and community. Alex reported that:

Through that process, I gained an incredible support system that inspired me to make dramatic changes in my life. One year later, I have stopped drinking, I have a steady job, and I have continued to volunteer for the Sikh Coalition well past my mandated hours. I am an example of how working towards a cause bigger than yourself can truly change you, and the ripple effect that will follow. I will never forget the pain I caused, but the Sikh belief in restorative justice has turned my regretful actions into another voice advocating for change.¹⁷

Alex’s account illustrates how faith-based civil society organizations can work with willing participants to realize the potential for meaningful engagement and resolutions to hate crime that involve fostering understanding and empathy across difference.

What is the Case for Using Restorative Justice for Hate Crime?

Incarceration nation

By almost any measure, the US criminal-legal system is one of the most punitive in the world. Controlling for the crime rate and population size, the US imposes longer sentences, spends more money on prisons, and executes more of its citizens than every other advanced industrial democracy.¹⁸ This has many deleterious socio-economic consequences such as tradeoffs in the services offered by local, state, and federal governments, diminished socio-economic and health conditions among the incarcerated, their families, and their communities, wrongful convictions, and even changes to some election outcomes.¹⁹

The social and political consequences of mass incarceration are not distributed equally across all segments of society. The highest probability of incarceration is faced by those with low incomes or low education levels.²⁰ Racial minorities are the most likely to be imprisoned, and the social and political costs of mass

16 The Sikh Coalition. “My Life Changed After I Assaulted a Sikh Man,” December 18, 2014. <https://www.sikhcoalition.org/blog/2014/my-life-changed-after-i-assaulted-a-sikh-man/>.

17 The Sikh Coalition, “My Life Changed.”

18 Blumstein, Alfred, Michael Tonry, and Ashley Van Ness. “Cross-National Measures of Punitiveness.” *Crime and Justice* 33 (January 2005): 347–76; Cowen, Nick. “Comparisons of Crime in OECD Countries.” London: CIVITAS Institute for the Study of Civil Society, 2010; Farrell, Graham, and Ken Clark. “What Does the World Spend on Criminal Justice?” The European Institute for Crime Prevention and Control, 2004. http://old.heuni.fi/material/attachments/heuni/papers/6KtlkZMtL/HEUNI_papers_20.pdf.

19 Enns, Peter. *Incarceration Nation: How the United States Became the Most Punitive Democracy in the World*. New York, NY: Cambridge University Press, 2016, 8.

20 Travis, Jeremy, Bruce Western, and National Research Council (U.S.), eds. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, D.C: The National Academies Press, 2014.

incarceration have been disproportionately borne by racial minorities and those with the lowest income and education levels.²¹ These trends have resulted in prison overcrowding and fiscal burdens on states to accommodate an oversized penal system, despite increasing evidence that large-scale incarceration is not an effective means of achieving public safety.²²

The ‘justice gap’: Deficits in the criminal-legal approach to hate crime

There is a very high threshold of what constitutes prosecutable forms of hate speech in the United States because of how the Supreme Court interprets the First Amendment.²³ As a result, many expressions of hate do not meet the very high bar of criminality set by the US criminal-legal system. For example, abusive language directed towards someone because of their identity that does not directly incite violence against them is legally protected. RJ processes hold the potential of addressing these non-criminal, but harmful, hate incidents and preventing them from escalating into violent crime.

The justice gap in the United States is illustrated by the stark discrepancy between reported and unreported hate crimes in the United States. The National Crime Victimization Survey (NCVS) collects data on non-fatal violent and property crimes that are reported and not reported to police. We can estimate the number of unreported hate crimes from these data. From 2010 to 2019, the NCVS reported an annual average of 243,770 hate crime victimizations of persons twelve years of age or older.²⁴ The FBI’s Uniform Crime Reporting (UCR) system, which details law enforcement’s cataloging of hate crimes, recorded an annual average of 7,830 hate crime victims during this same period.

Hate incidents and hate crimes are underreported by marginalized groups that are disproportionately affected by language barriers or documentation status, do not have a strong culture of reporting, or have a history of victimization, or otherwise contentious relations with law enforcement.²⁵ This, coupled with the glaring discrepancy between reported and unreported hate crimes, highlights the need for alternative responses that focus on harm reduction and/or survivor support and that can provide a voice—and ultimately more satisfactory forms of justice—to marginalized communities.

The enactment of state and federal hate crime enhancements to recognize bias-motivated crimes has in some sense acclimated communities to think about a hate crime enhancement as the defining measure of recognition of the harm(s) visited on them. However, it is exceedingly rare for a survivor’s experience to be validated by the criminal-legal system through a hate crime enhancement or conviction. Local law enforcement and the FBI identify only a small proportion of reported incidents as hate crimes. Many federal and state prosecutors see little benefit in adding a hate crime enhancement when the underlying criminal offense will already trigger a significant prison sentence. Some also fear that introducing a hate crime enhancement to a criminal charge may increase the state’s burden of proof, complicate the decision processes of juries, or otherwise reduce the likelihood of obtaining a guilty verdict.²⁶

21 Hinton, Elizabeth, LeShae Henderson, and Cindy Reed. “An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System.” Vera Evidence Brief. New York, NY: Vera Institute of Justice, May 2018. <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>; Enns, *Incarceration Nation*, 5-9

22 “Trends in U.S. Corrections.” Washington, D.C.: The Sentencing Project, May 2021. <https://www.sentencingproject.org/app/uploads/2022/08/Trends-in-US-Corrections.pdf>.

23 For an example of this legal reasoning, see *Snyder v. Phelps*, 562 U.S. 443 (2011).

24 Kena, Grace, and Alexandra Thompson. “Hate Crime Victimization, 2005–2019.” Washington DC: Bureau of Justice Statistics, September 2021. https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf.

25 Kena and Thompson, “Hate Crime Victimization.”

26 Bishop, Tyler, Arielle Andrews, Sam Becker, Lauren Martin, Benjy Mercer-Golden, Mariel Pérez-Santiago, Tierra Rogers, Kai Wiggins, Shirin Sinnar, and Michael German. “Exploring Alternative Approaches to Hate Crimes.” Palo Alto, CA: Stanford Law School Policy Lab on Assessing Alternative Responses to Hate Crimes and the Brennan Center for Justice, June 2021. https://law.stanford.edu/wp-content/uploads/2021/06/Alternative-to-Hate-Crimes-Report_v09-final.pdf.

Underlying issues of identity and bias motivations can be addressed by a restorative justice process. Harmed parties can be provided with the acknowledgement, validation, and reparation that they might otherwise hope to see from a criminal-hate crime charge and conviction.



Photo by Picszel Photography

The Evidence Base

There is a growing body of evidence from systematic reviews and meta-analyses that point to the effectiveness of restorative justice and its positive impacts on recidivism for offenders and outcomes in terms of survivor satisfaction and restoration (See Appendix 1). The results of these studies are promising, regardless of whether RJ programs target juvenile or adult offenders, or low-level, serious, or violent crimes.²⁷ Recent research on RJ and hate crime indicates that restorative justice processes help to prevent the re-victimization of survivors, reduce their levels of anxiety, and improve their emotional wellbeing.²⁸

There is a growing body of evidence from systematic reviews and meta-analyses that point to the effectiveness of restorative justice and its positive impacts on recidivism for offenders and outcomes in terms of survivor satisfaction and restoration.

The primary reasons for these improvements were that participants were empowered to take an active role in resolving their conflict and felt supported by the mediators who listened to their account of events.²⁹ This was particularly important to survivors who had previously felt ignored by law enforcement or treated as though they were part of the problem. During meetings, mediators and facilitators created a space where survivors could express the harm they experienced and talk more generally about their

27 See Maryfield, Bailey, Roger Przybylski, and Mark Myrent. "Research on Restorative Justice Practices." Washington DC: Justice Research and Statistics Association, December 2020, 5

28 These findings are still a small sample and with respect to a single program in the UK. There are many kinds of RJ programs and findings from one cannot be assumed to apply to another. See Walters, Mark A., and Carolyn Hoyle. "Healing Harms and Engendering Tolerance: The Promise of Restorative Justice for Hate Crime." In *Hate Crime: Concepts, Policy, Future Directions*, edited by Neil Chakraborti, First edition. London: Taylor and Francis, 2017.

29 Walters and Hoyle, "Healing Harms and Engendering Tolerance."

experiences as a minoritized member of the community. This meant that they had a voice to articulate what it was like for them to experience prejudice, sometimes as part of their daily life. Finally, mediators asked perpetrators to sign an agreement where they agreed to desist from any further hate incidents. This provided survivors with a commitment they would not be re-victimized.

Furthermore, the study found that out of 19 ongoing cases of hate crime incidents researched, 11 ceased directly after the restorative meeting was completed, and an additional six cases were resolved after further meetings were held that included other agencies, such as schools, social services, community police officers, and housing officers.³⁰

Who Should Mediate in a Restorative Justice Process?

Professionals, community members, or volunteers who have undergone appropriate training can mediate a restorative justice process.³¹ The nature of the harm, the parties involved, and the community context may determine the community's or harmed party's choice of a mediator in a restorative justice process. Individuals or groups who may be well-suited to mediate a restorative justice process include:

- **Trained facilitators / Restorative justice practitioners:** Restorative justice processes are often led by trained professionals who have experience facilitating difficult conversations and managing emotions in a neutral and supportive way. Some communities have established restorative justice programs that are staffed by trained practitioners who specialize in mediation and conflict resolution.
- **Community members:** In some cases, trained community members who are respected and trusted by the individual(s) responsible for the harm and the harmed party may be asked to mediate a restorative justice process. These individuals may have a deep understanding of the cultural and social context in which the harm occurred and may in some instances be better placed to help the parties find a resolution that is acceptable to all.

National organizations, local chapters of national organizations, or other organizations that are seen to be closely associated with one party or community may not be suitable mediators in an RJ process. This may be especially the case in inter-communal crimes or incidents where they might be seen as biased by virtue of proximity to one community or party. In some instances, the harmed party or community may find it necessary to use a mediator who is familiar with the community or communities involved. In other cases, this may not be necessary. The key to a successful restorative justice process is for the parties involved to have confidence that the mediator is impartial, respectful, and has the appropriate training and/or lived experience to allow them to guide the parties towards a mutually satisfactory resolution.

Potential Risks and Challenges in Restorative Justice Work

It is important to consider the potential risks and challenges associated with restorative justice approaches. Some common risks include:

1. **Inadequate participation:** Restorative justice most often relies on voluntary participation of all parties (although for criminal offenders in an RJ diversion process, the alternative to participation is often a criminal charge/prosecution). However, victims may choose not to participate due to fear, concerns about their safety, or a lack of trust in the process. Similarly, offenders may refuse to take responsibility for their actions or may not fully engage in the process or engage in good faith, undermining the effectiveness of a restorative justice process.

30 Walters and Hoyle, "Healing Harms and Engendering Tolerance."

31 For a listing of restorative justice training programs in the US, see Appendix 3.

How can inadequate participation be mitigated/avoided?

- Mediators need to clearly explain the benefits and goals of the restorative justice process to the person(s) harmed and the responsible party and foster a supportive and non-adversarial atmosphere throughout the process.
- Mediators need to assure the parties to a restorative justice process that they can pull out at any time or opt for indirect mediation with no face-to-face meeting.
- Mediators need to consider the use of a victim surrogate in cases when the person(s) harmed declines to participate. The use of a victim surrogate who has lived through a situation like the case at hand may allow an offending party to participate in the process. Facilitators would ideally provide follow-up information to the harmed party on the responsible party's agreement and compliance and report back regarding unanswered questions.
- Mediators can offer incentives or rewards for participation, such as reduced sentences or other appropriate benefits.

- 2. Unequal power dynamics and re-victimization:** Interactions between those who have caused harm, the harmed party, and other affected parties can involve an imbalance of power, particularly if the responsible party has more power or influence than the victim. This power differential can potentially lead to re-victimization or re-traumatization. Participation in an RJ process may place a substantial burden on the harmed party. Even when they opt in, the harmed party may not themselves have the adequate language to describe the harm done or may not have the emotional strength and it should not be implied that the harmed party assumes a community spokesperson role.

How can unequal power dynamics and re-victimization be mitigated/avoided?

- Mediators must carefully screen and prepare participants.
- Mediators should structure restorative justice processes that respond to hate crimes in ways that explicitly acknowledge the power dynamics that characterize these types of harm.
- Mediators should receive comprehensive training on recognizing and addressing power imbalances, trauma, and re-victimization and harmed parties should always be able to opt-out if they feel the process is not suitable or safe for them.
- Mediators must offer support to survivors throughout the restorative justice process, both within and outside the process itself. This may involve access to counseling services and/or victim advocacy organizations.
- Mediators must recognize and respect diverse backgrounds, beliefs, and values to avoid perpetuating power imbalances or re-victimizing marginalized individuals or communities.
- Program leads should evaluate restorative justice programs to identify and address any shortcomings or issues related to power dynamics and re-victimization. Program leads should actively seek feedback from participants, including victims, offenders, and facilitators, to improve future processes.

- 3. Lack of resources and support:** Implementing restorative justice requires adequate resources, trained facilitators, and support services for victims and offenders. Organizations and/or jurisdictions may struggle to provide the necessary resources and infrastructure to effectively implement and sustain restorative justice programs. A lack of resources and support may compromise cases in ways that undermine the viability and potential of RJ work more broadly.

How can a lack of resources and support be mitigated/avoided?

- Civil society organizations and advocacy groups can raise awareness about the positive impact of restorative justice and its potential benefits to society, which can help attract financial and resource contributions.

- Civil society organizations can advocate for increased funding and support for restorative justice programs from government bodies, philanthropic organizations, or community members.
- Civil society organizations can invest in training programs for facilitators, practitioners, and community members to enhance their skills and understanding of restorative justice principles. This training can help compensate for the lack of resources by creating a pool of knowledgeable individuals who can effectively support the process.
- Civil society organizations can engage in collaborative efforts with community organizations, non-profits, or government agencies that can provide additional resources or support. Seek partnerships that align with the goals and principles of restorative justice to leverage their expertise and assistance.
- The federal government and some state provide grants to support the creation of RJ programs.

4. Cultural and contextual challenges: Restorative justice approaches need to be adapted to different cultural contexts and individual circumstances. It is important for program leads and mediators to consider cultural sensitivities, power structures, and social dynamics to ensure that the process is fair and effective. Failure to do so may result in unintended consequences or reinforce existing inequalities.

How can cultural and contextual challenges be mitigated/avoided?

- Mediators should have a deep understanding of the cultural backgrounds, norms, beliefs, values, and potential biases of the individuals involved in the process. Training programs can help practitioners develop cultural sensitivity and awareness. Awareness of any language and communication barriers is key as this can impede effective dialogue in a restorative justice process.
- Mediators should work to ensure that all parties affected by the harm can participate in the restorative justice process. This could include engaging diverse voices, such as community leaders who can provide cultural guidance and support. Efforts should be made to create an environment where everyone feels comfortable expressing their perspectives and concerns.
- Program leads and mediators should consider customizing the process to align with cultural values and norms to enhance participants' comfort and engagement. This might involve incorporating rituals, ceremonies, or traditional dispute resolution methods within the overarching restorative justice framework.
- Program leads and mediators can engage communities throughout the process to foster a sense of collective responsibility and shared understanding. Community members can provide valuable insights, support healing, and contribute to the successful reintegration of the individuals involved.
- Evaluation of the restorative justice process by mediators and/or program leads can help identify areas where cultural challenges persist.

In sum, the successful implementation of restorative justice requires careful planning, adequate resourcing and training, ongoing evaluation, and a commitment to addressing the potential risks and limitations associated with this approach.

Restorative Justice Debates

Restorative justice practitioners are engaged in substantive debates as to whether RJ processes are better located within the criminal-legal system, adjacent to it, or completely outside it. Many diversion programs that operate outside the criminal-legal system are not completely independent of it, because they are diverting offenders from being charged. In this sense, an RJ program's level of independence from the criminal-legal system is better seen as a spectrum rather than a binary.

RJ programs in the US are most often either prosecutor-led (i.e., designed and/or managed fully or in part by prosecutors' offices) or prosecutor-adjacent (i.e., programs to which prosecutors' offices make referrals). Advocates for locating RJ functions within the criminal-legal system argue that some degree of coercion is needed to incentivize perpetrators to participate in RJ processes. Where the victim and perpetrator are not in the same networks, school, or workplace, there is no incentive to participate voluntarily in an RJ process if there is no threat of criminal action.

Restorative justice processes can help to reduce recidivism and increase community trust in the justice system by providing opportunities for offenders to take responsibility for their actions, make amends, and repair harm caused to harmed parties and their communities. In this sense, integrating restorative justice practices into the criminal justice system can be seen as a way to reform and improve the system.

RJ programs that operate to divert cases from criminal prosecution have different purposes and limits. Their eligibility criteria most often limit the cases they address to specific types of cases, such as those involving juveniles or "low-level" offenses. Prosecutors and practitioners working within the criminal-legal system often consider these cases to be the most suitable for RJ interventions due to the perceived promise of diverting juveniles from carceral responses and their political viability. For offenders in an RJ diversion process, the alternative to participation is often a criminal charge/prosecution. In this sense, RJ diversion processes involve a degree of coercion. Participation in a RJ process within the criminal-legal system may not preclude prosecutors from seeking criminal charges against responsible parties, although these charges would most often be diminished by virtue of participation in the process. However, they also offer an alternative that many defendants may welcome. In the absence of this coercive diversion, many offenders would not accept responsibility for their actions.

Whether restorative justice diversions from the criminal-legal system happen pre-charge or post-charge, there are corresponding levers of coercion that involve either diminishment or avoidance of the charge (in pre-charge diversions) or sentence reduction (in post-charge diversions). RJ practitioners working within the criminal-legal system argue that, in the absence of these coercive incentives, the vast majority of those responsible for causing harm will not submit to a restorative justice process. Locating RJ processes entirely outside the criminal-legal system limits their operation to cases where there are other incentives for responsible parties to participate.

Those who advocate for locating RJ processes outside the criminal-legal system argue that the criminal-legal system is inherently adversarial and focused on punishment, rather than rehabilitation and repair. Some RJ practitioners note that the incentives to only pursue RJ solutions in politically viable cases—such as those involving juveniles and/or "lower-level harms"—risks limiting our ability to explore the full range of benefits of RJ practices in cases for which they may be eminently suitable. Some practitioners believe that locating restorative processes within the criminal-legal system lends a sheen of legitimacy to a structurally inequitable, punitive, and retributive system. They argue that this hinders attempts to achieve the comprehensive criminal justice reform that is necessary for constructing a more just and equitable society. It follows from these lines of argument that, ideally, restorative justice should be practiced separately to maintain its integrity and effectiveness and to provide a more accessible and inclusive alternative for communities that may not trust the criminal-legal system.

Should organizations work inside or outside the criminal-legal system?

Civil society and community organizations will have different levels of comfort with—and different levels of access to—the criminal-legal system. In some instances, law enforcement and local faith and interfaith communities may have a pre-existing relationship. Organizations and communities that are more comfortable working with the criminal-legal system may see a benefit in partnering with law enforcement and prosecutors to establish the relationships and infrastructure to allow for the future diversion of cases that are already in the criminal-legal system.

Faith-based legal organizations, or those based on ethnicity, may be able to lay the groundwork for RJ programs by opening conversations with different parts of the criminal-legal system such as prosecutors and judges. Garnering buy-in from other legal professionals may help prosecutors to sell RJ programs internally with peers and colleagues. Before engaging with legal system partners, civil society and community organizations will need to have a level of comfort with the criminal-legal system, and familiarity with criminal-legal issues in their communities.

As previously noted, there are good reasons for why organizations may wish to locate an RJ program completely outside of the criminal justice system. The history of law enforcement’s targeting and securitization of religious, racial, and ethnic communities has in many instances created deep-seated distrust that has undermined relationship-building between community organizations and the criminal-legal system. Other organizations and communities may have objections to the inherently punitive nature of the criminal-legal system and/or its structural inequities.

Building Institutional Capacity for Restorative Responses to Hate

Civil society organizations need to construct the infrastructure around restorative justice before they can address hate crimes and incidents using RJ practices. Faith-based organizations and religious leaders may be uniquely positioned to stand up this infrastructure because of the legitimacy and credibility they enjoy within the communities they serve, and because of the energy, experience, and commitment that they can lend to this work. However, this will not always be the case as faith-based organizations and religious leaders are not immune from the biases and prejudices present in the communities that support them.

Civil society organizations need to adequately resource a community-based RJ program, including staffing it with trained specialists, and operating it independent of the criminal-legal system where possible. Organizations that are interested in standing up an RJ program must be prepared to make the necessary investments in human resources to sustain an effective RJ program and grow it over time. The government and philanthropic sectors may provide funding for standing up a restorative justice program (See Appendix 2). Pursuing this work involves methodical steps and careful consideration of the issues posed for organizations that have decided to build a restorative justice function. These include:



Photo by Picszel Photography

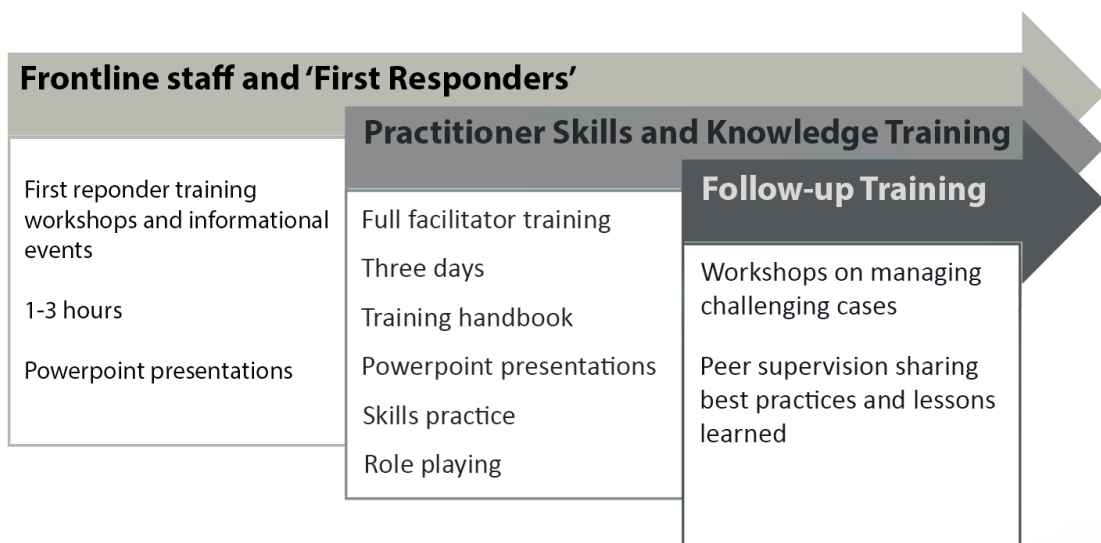
1. Determining who to train, when to train them, and what type of training is necessary.
2. Identifying appropriate training resources.
3. Customizing training approaches for faith-based or faith-inspired civil society organizations and/or local contexts.
4. Continuing professional development and support networks.

Determining the appropriate type of training for any new RJ program will be key. It is not necessary to train everyone in advanced RJ skill sets. In many cases, it may be more prudent to provide frontline staff with a basic grounding in restorative justice processes so they can create a pathway for any survivor, anyone who has done harm, or any bystander into a restorative process (See Figure 1). With respect to assessing

RJ training needs, organizations need a clear idea of their objectives, as training that is directly tailored to project objectives is found to deliver the best outcomes.³²

When determining who to train, the key questions for civil society organizations are (1) who has the capacity to do the work? and (2) who can be upskilled to ensure improved outcomes for the community members they serve? It may be possible for organizations to identify staff members who demonstrate a natural affinity with the RJ approach and can thus easily integrate its core beliefs and values into their work. In bias-motivated cases, community organizations may not be the best choice to lead an RJ process. For example, a Muslim community organization is less likely to be perceived as a fair arbiter of an anti-Muslim incident.

Figure 1 | A Restorative Justice Training Roadmap for Organizations



Adapted from Holland, Bonita, Liyana Kayali, and Mark Walters. "Safeguarding Students against Hate and Prejudice on University Campuses: Developing a Restorative Practice (Toolkit)." University of Sussex and University of Brighton, 2019.

Different types of cases will require different training, with the highest level of training recommended for more sensitive or complex cases. Fortunately, there is a wide range of training packages and trainers available (See Appendix 3). RJ could help develop local capacity with organizations that have the resources to be able to build and sustain in-house RJ functions. It may make sense for national-level organizations to pilot an RJ program in a particular locality and then expand it to other localities or throughout a region. It might also be possible to establish a deployable model where skilled facilitators could act in a 'rapid response' fashion to respond to cases in other localities.

Organizations should also be aware of the unintended consequences of the professionalization of the restorative justice space. Trainers with lived experience may be better positioned and more aligned with a program's values and goals than those with an accreditation or certification and no lived experience. From an equity standpoint, the proliferation of professionalized spaces, accreditations, and academic centers with certifications and degree programs may hinder the opportunities for directly impacted communities to engage in RJ work.

Even with an appropriate and adequately resourced RJ program in place, there is no guarantee that a harmed community will support a restorative solution to address the harms of a hate crime or incident. Communicating the benefits of restorative justice to the larger community to achieve buy-in will be a key consideration. Civil society organizations may be able to set the groundwork by acclimatizing the communities they serve to the benefits of restorative justice practices.

32 Holland, Bonita, Liyana Kayali, and Mark Walters. "Safeguarding Students against Hate and Prejudice on University Campuses: Developing a Restorative Practice (Toolkit)." University of Sussex and University of Brighton, 2019.

Building Community Support for Restorative Justice Processes

Public narratives and bipartisan political norms about the appropriate responses to hate crimes and incidents (and crime more generally) have traditionally favored “tough-on-crime” responses.³³ This public support for “tough-on-crime” policies – and the attendant responsiveness of politicians and the criminal-legal system – is critical to understanding the historical growth and dominance of retributive justice and the carceral system in the United States.³⁴

However, the data indicate that public attitudes have become less punitive since the late 1990s.³⁵ This declining punitiveness may be key to understanding recent shifts in criminal justice policy and political rhetoric. For example, in recent years we have seen the decriminalization of certain low-level drug offenses, the closing of prisons, and a decline in the overall prison population. The emergence of the Black Lives Matter movement and the movement to “defund the police” have both further shifted and polarized the conversation.

Gaining the support of politicians and policymakers will be key to attaining widespread acceptance of restorative responses to incidents of hate. This will likely be facilitated by the ability to provide evidence of community support for the appropriateness of restorative justice responses.³⁶

Faith-based and faith-inspired organizations may be well-positioned to communicate the benefits of restorative justice as a response to hate crimes because of the high value many religious traditions place in virtues such as empathy, compassion, non-violence, forgiveness, mercy, interconnectedness, and a shared common humanity.

Gaining the support of politicians and policymakers will be key to attaining widespread acceptance of restorative responses to incidents of hate. This will likely be facilitated by the ability to provide evidence of community support for the appropriateness of restorative justice responses.³⁶

Building community support for RJ work requires credible and authentic leadership. Faith-based and faith-inspired organizations may be well-positioned to communicate the benefits of restorative justice as a response to hate crimes because of the high value many religious traditions place in virtues such as empathy, compassion, non-violence, forgiveness, mercy, interconnectedness, and a shared common humanity. Messaging that links RJ to these virtues is likely to resonate within and across many faith communities. “Black Lives Matter” and similar anti-racist advocacy groups must not be excluded as viable partners in RJ initiatives because of the hostility of some religious organizations and law enforcement.



Photo by Picszel Photography

National organizations can work with local chapters and community-based partner organizations to make the case for the viability of RJ processes as a meaningful response to hate crimes and incidents. Organizations should consider designing strategic communications so that communities will already be receptive to an RJ process when an appropriate case arises. One approach that organizations could take would be to routinely tailor communications in the aftermath of hate incidents to emphasize the benefits of restorative justice approaches in terms of survivor satisfaction and improved recidivism rates (and thus de-emphasize punitive responses).

33 Sinnar, Shirin. “Hate Crimes, Terrorism, and the Framing of White Supremacist Violence.” *110 Cal. L. Rev.* 489, 2022.

34 Enns, Peter. *Incarceration Nation: How the United States Became the Most Punitive Democracy in the World*. New York NY: Cambridge University Press, 2016.

35 Enns, “Incarceration Nation.”

36 Walters, Mark A, Jenny L Paterson, and Rupert Brown. “Enhancing Punishment or Repairing Harms? Perceptions of Sentencing Hate Crimes Amongst Members of a Commonly Targeted Victim Group.” *The British Journal of Criminology* 61, no. 1 (January 1, 2021): 61–84.

Civil society organizations may need to deploy different kinds of evidence in support of implementing restorative justice approaches depending on what will appeal most to the communities they serve. It may make sense for organizations to arrange presentations to communities that include a mix of hard data and illustrative storytelling.³⁷ For some communities, hard data on the effectiveness of RJ, survivor satisfaction, and how it reduces recidivism might be most persuasive, while other communities might be more responsive to more qualitative data (See Appendix 1).

In some instances, prevailing community sentiments and narratives may not readily lend themselves to the adoption of RJ practices. In these cases, organizations will need to undertake a concerted effort to gain the community buy-in necessary to establish and sustain an RJ program over the long term. However, community leaders who are supportive of RJ processes need to be mindful of not exerting emotional pressure on survivors into taking the way of redemption, mercy, or forgiveness. Survivors may be particularly vulnerable to social or community pressures and organizations must take care to ensure that harmed parties do not feel coerced or compelled in participating in an RJ process.

Coalitional Approaches

Organizations can also work to identify ally communities that may be interested in partnering on RJ initiatives. Collaborating with interfaith, multicultural, or anti-racist organizations may help civil society organizations to map sensitivities with local actors that can vary from community to community.

Organizations that adopt a coalitional approach can tap into the resources of faith leaders and civil rights

and community organizations that are already embedded in communities. Organizations could also draw on potential allies in the criminal justice reform space and people with professional expertise in areas touching on related topics, ranging from psychologists to professional mediators.

Other examples of organizations and people who could be supportive of RJ work by virtue of their community embeddedness include:

- Civic associations
- Community boards
- Non-profit service providers
- School boards
- Libraries
- Youth program leaders (coaches, mentors, etc.)

In sum, there is a wide range of possibilities and the decision to do the work of implementing an RJ program will depend largely on gauging your organization's enthusiasm, capacity, and reach.



Photo by Picszel Photography

37 For some examples, see Bishop, Tyler, Arielle Andrews, Sam Becker, Lauren Martin, Benjy Mercer-Golden, Mariel Pérez-Santiago, Tierra Rogers, Kai Wiggins, Shirin Sinnar, and Michael German. "Exploring Alternative Approaches to Hate Crimes." Palo Alto, CA: Stanford Law School Policy Lab on Assessing Alternative Responses to Hate Crimes and the Brennan Center for Justice, June 2021, 19-20. https://law.stanford.edu/wp-content/uploads/2021/06/Alternative-to-Hate-Crimes-Report_v09-final.pdf.

Conclusion

The enactment of state and federal hate crime enhancements to recognize bias-motivated crimes has in some sense acclimated communities to think about a hate crime enhancement as the defining measure of recognition of harm(s) visited on them. However, the data indicate that it is exceedingly rare for a hate crime survivor's experience to be validated by the criminal-legal system through a hate crime designation, enhancement, or conviction. On the other hand, there is a growing body of evidence from systematic reviews and meta-analyses that point to the effectiveness of restorative justice and its positive impacts on recidivism for offenders and outcomes in terms of survivor satisfaction and restoration (See Appendix 1). The results of these studies are promising, regardless of whether RJ programs target juvenile or adult offenders, or low-level, serious, or violent crimes.

Restorative justice processes hold the potential of addressing a wide range of incidents and crimes, including non-criminal hate incidents, latent aggressions, and/or microaggressions that fall outside the purview of the criminal-legal system. Restorative justice practitioners also argue that the needs of survivors of violent crime are better met by asking people who commit violence to accept responsibility for their actions and make amends in ways that are meaningful to those they have hurt—none of which ordinarily happens in the context of a criminal trial or a prison sentence.

However, the suitability of a restorative justice process should be assessed on a case-by-case basis, considering the nature of the offense, the willingness of participants, and the potential for meaningful engagement and resolution. It is also important to consider the potential risks and challenges associated with restorative justice approaches. Some common risks include inadequate participation, unequal power dynamics, re-victimization, a lack of resources and support, and cultural and contextual challenges. These risks and challenges can often be mitigated and/or avoided by the careful selection—or upskilling—of restorative justice facilitators.

Civil society organizations will need to construct the infrastructure around restorative justice before they can address hate crimes and incidents using RJ practices. Faith-based organizations and religious leaders may be uniquely positioned to stand up this infrastructure not only because of the legitimacy and credibility they enjoy within the communities they serve, but because of the energy, experience, and commitment that they can lend to this work. Civil society and community organizations have different levels of comfort with—and access to—the criminal-legal system. In some instances, faith and interfaith communities may see a benefit in partnering with law enforcement and prosecutors to establish the relationships and infrastructure to allow for the future diversion of cases that are already in the criminal-legal system. For a variety of reasons, faith and interfaith communities may wish to locate an RJ program completely outside of the criminal justice system, whether because of histories of distrust or objections to the inherently punitive nature of the criminal-legal system or its structural inequities.

National organizations can work with local chapters and community-based partner organizations to make the case for the viability of restorative justice processes as a meaningful response to hate crimes and incidents. Organizations should consider designing strategic communications so that communities will already be receptive to an RJ process when an appropriate case arises. Securing community support for the suitability of restorative justice as a response to hate crimes will likely be key to obtaining the political support necessary to institutionalize the use of restorative approaches to address hate-related incidents.

APPENDIX 1: Research on Restorative Justice and Hate Crimes

Restorative justice as a response to hate crimes.

Bishop, Tyler, Arielle Andrews, Sam Becker, Lauren Martin, Benjy Mercer-Golden, Mariel Pérez-Santiago, Tiarra Rogers, Kai Wiggins, Shirin Sinnar, and Michael German. “Exploring Alternative Approaches to Hate Crimes.” Palo Alto, CA: Stanford Law School Policy Lab on Assessing Alternative Responses to Hate Crimes and the Brennan Center for Justice, June 2021.

This report assesses several critiques of hate crimes laws articulated within communities of color and other targeted communities and evaluates potential alternative approaches to responding to hate crimes. The report suggests that restorative justice programs may offer a way to identify and mend the unique individual and community harms caused by hate crimes, while demanding meaningful accountability for those who cause harm. [Link to full-text pdf](#)

Coates, Robert B., Mark S. Umbreit, and Betty Vos. “Responding to Hate Crimes through Restorative Justice Dialogue.” *Contemporary Justice Review* 9, no. 1 (March 2006): 7–21.

This article reports on a two-year study of seven communities that utilized elements of a restorative justice dialogue approach as one component of responding to bias-motivated crimes and hate-charged situations. Following presentation of three case studies, the article highlights the invitational nature of such dialogue, the preparation of participants, and the dialogue process. It also examines factors that influence the dialogue, including the intense impact of hate crimes, the role of the media, and the involvement of outside interest groups. Finally, it explores ways to sustain dialogues after a crisis recedes.

Gavrielides, Theo. “Contextualizing Restorative Justice for Hate Crime.” *Journal of Interpersonal Violence* 27, no. 18 (December 2012): 3624–43.

The article investigates how RJ is conceptualized within the hate crime context. The findings are based on a 3-year research program, which combined theoretical analysis, literature review, and UK-focused field research that was carried out through a combination of qualitative methods. These included semi-structured interviews with an expert sample of practitioners and policy makers as well as focus groups with young victims and offenders of hate incidents.

———. “Restoring Relationships: Hate Crime and Restorative Justice.” In *European Best Practices of Restorative Justice in the Criminal Procedures*. Hungary: European Union, 2010.

This article provides a series of case studies of where RJ is used successfully to address hate crime in various countries and within different cultural contexts. There may be a selection bias here in that cases of failure are not addressed. The author closes the article with seven recommendations for government, researchers, policymakers, legislators, funders, the RJ movement, and politicians. [Link to full text pdf.](#)

Holland, Bonita, Liyana Kayali, and Mark Walters. “Safeguarding Students against Hate and Prejudice on University Campuses: Developing a Restorative Practice (Toolkit).” University of Sussex and University of Brighton, 2019.

This toolkit is primarily directed toward a university setting but there are guidelines and recommendations that could be applied in diverse settings. Part B might be of particular interest as it covers topics such as understandings of hate and restorative justice and how civil society organizations can develop institutional capacity to respond restoratively. [Link to full-text pdf.](#)

Selected empirical studies of restorative justice

González, Thalia. “The Legalization of Restorative Justice: A Fifty-State Empirical Analysis.” *SSRN Electronic Journal*, 2019.

Drawing on data from an original 50-state analysis, this article argues that the current degree of legal internalization of restorative justice indicates the emergence of a new legal norm. These findings call for a critical reexamination of current perceptions of restorative justice normatively and empirically. These findings should be of significant interest to reformists seeking to advance laws, policies, and systems that promote fairness, equity, and justice and to practitioners who increasingly interact with formal restorative processes. [Link to full-text pdf.](#)

Maryfield, Bailey, Roger Przybylski, and Mark Myrent. “Research on Restorative Justice Practices.” Washington DC: Justice Research and Statistics Association, December 2020.

This research brief provides a recent and succinct overview of research on the effectiveness of restorative justice and findings from systemic reviews and meta-analyses. [Link to full-text pdf.](#)

Shem-Tov, Yotam, Steven Raphael, and Alissa Skog. “Can Restorative Justice Conferencing Reduce Recidivism? Evidence from the Make-It-Right Program.” Cambridge, MA: National Bureau of Economic Research, January 2022.

This paper studies the effect of a restorative justice intervention targeted at youth ages 13 to 17 facing felony charges of medium severity (e.g., burglary, assault). Eligible youths were randomly assigned to participate in the Make-it-Right (MIR) restorative justice program or a control group where they faced standard criminal prosecution. Assignment to MIR reduced the probability of a rearrest within six months by 19 percentage points, a 44 percent reduction relative to the control group. Moreover, the reduction in recidivism persisted even four years after randomization. Thus, the authors’ estimates show that restorative justice conferencing can reduce recidivism among youth charged with relatively serious offenses and can be an effective alternative to traditional criminal justice practices. [Link to full-text pdf.](#)

Strang, Heather, Lawrence W Sherman, Evan Mayo-Wilson, Daniel Woods, and Barak Ariel. “Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review.” *Campbell Systematic Reviews* 9, no. 1 (January 2013): 1–59.

The authors conduct ten randomized control studies, producing an overall sample of 1,879 offenders and 734 victims, all of whom consented to participate in a restorative justice conferencing program prior to random assignment. Findings indicated that restorative justice conferencing reduced subsequent convictions for offender participants two years post-random assignment from 7%–45%. Slightly larger recidivism reductions were found for adults compared to juveniles, contradicting a belief held by many that restorative justice is more appropriate for juvenile offenders. Positive outcomes also were found for several measures of victim impact, including victims’ satisfaction with the handling of their cases; material restoration; emotional restoration, and the reduction of post-traumatic stress symptoms. The researchers also estimated that the programs studied produced “eight times more benefit in costs of crimes prevented than the cost of delivering restorative justice.” [Link to full-text pdf.](#)

Suzuki, Masahiro, and Xiaoyu Yuan. “How Does Restorative Justice Work? A Qualitative Metasynthesis.” *Criminal Justice and Behavior* 48, no. 10 (October 2021): 1347–65.

Drawing on 26 studies, the authors identify three themes to help us understand “how RJ works”: (1) opportunities for humanization, learning, and putting emotions of victims and individuals who committed a crime at the center of conflict-solving; (2) support networks and mechanisms for communication; and (3) life-changing journey enshrined in healing. They develop a line of argument showing how the micro-, meso-, and macro-elements of RJ interact with each other.

Walters, Mark Austin. *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms*. Oxford: Oxford University Press, 2014.

Presenting the results of an 18-month empirical study examining the use of restorative justice for hate crime in the United Kingdom, this book draws together theory and practice to analyze the causes and consequences of hate crime victimization.

Chapter 4 presents findings from an empirical study conducted at Southwark Mediation in South London. It provides a detailed analysis of the differing ‘types’ of hate incidents which proliferate in multicultural communities and examines whether community mediation meetings helped to repair the harms of hate crime/incidents. Chapter 6 examines the use of multi-agency partnerships within RJ practice. Using data gained from victim interviews, the chapter demonstrates the secondary harms that were often caused by local state authorities who had responded to reports of hate crime. Chapter 8 examines the role that emotions play in forming connections between participants, including how feelings such as shame, guilt, remorse, and empathy can be utilized to encourage behavioral change

Walters, Mark A, Jenny L Paterson, and Rupert Brown. “Enhancing Punishment or Repairing Harms? Perceptions of Sentencing Hate Crimes Amongst Members of a Commonly Targeted Victim Group.” *The British Journal of Criminology* 61, no. 1 (January 1, 2021): 61–84.

This article investigates the attitudes and emotional reactions of LGBT+ people to enhanced sentencing (ES) and restorative justice (RJ) interventions for hate crime. When forced to choose between interventions, the authors’ survey (N = 589) found a preference for the use of RJ over ES, which was perceived to be better at reducing reoffending and supporting victims. Nevertheless, the study found greater average levels of support for the use of ES for hate crime, which was predicted by previous experiences of hate crime, perceptions of threat and feelings of anger. An additional experiment (N = 120) revealed RJ, in response to a hate crime, elicited less anger and sadness and higher levels of satisfaction compared with an ES intervention. [Link to full-text pdf](#).

Wong, Jennifer S., Jessica Bouchard, Jason Gravel, Martin Bouchard, and Carlo Morselli. “Can At-Risk Youth Be Diverted From Crime?: A Meta-Analysis of Restorative Diversion Programs.” *Criminal Justice and Behavior* 43, no. 10 (October 2016): 1310–29.

The authors examine recidivism outcomes drawn from 21 independent evaluations of restorative justice diversion programs producing an overall sample of 5,209 treatment group participants and 13,049 comparison group youth, each predominantly 12 to 18 years of age. The findings suggest that restorative diversion programs reduced recidivism for youth participants. The researchers also found substantial heterogeneity in the outcomes of the programs studied. The type of research design employed as well as the study’s sample size and racial/ ethnic composition were found to moderate recidivism reduction effects. Studies employing more rigorous research designs found weaker recidivism reduction effects.

Practical aspects of implementing restorative justice

Beckett, Katherine, and Steve Herbert. “Developing Restorative Justice as a Response to Hate Crime in Washington: A Proposal.” University of Washington, December 1, 2021.

The evidence reviewed in this report underscores the limited capacity of the criminal-legal system to promote healing and accountability in the context of hate crime and other bias-motivated harms and finds that restorative justice (RJ) practices hold significant promise. However, it is also clear that the restorative justice infrastructure remains underdeveloped in Washington State. As a result, the development of a pilot project to implement RJ responses to hate crime does not appear to be a viable option in the short term. Because RJ does hold significant promise as an alternative response to hate crime, the authors recommend state-level investment in a new grants program to support the development of such an infrastructure. [Link to full-text pdf](#).

Dandurand, Yvon, and Annette Vogt. *Handbook on Restorative Justice Programmes*. Second Edition. Vienna, Austria: United Nations Office on Drugs and Crime (UNODC), 2020.

Presents key considerations in the implementation of participatory responses to crime based on a restorative justice approach. Its focus is on a range of measures and programs, inspired by restorative justice values, that are flexible in their adaptation to criminal justice systems and that complement them while considering varying legal, social, and cultural circumstances. The materials presented in this handbook are directed toward several different audiences and you may find some sections of more relevance and interest than others. [Link to full-text pdf.](#)

Sered, Danielle. *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*. New York: The New Press, 2019.

Sered argues that reckoning is owed not only on the part of individuals who have caused violence, but also by our nation for its overreliance on incarceration to produce safety—at a great cost to communities, survivors, racial equity, and the very fabric of our democracy. She argues persuasively that the needs of survivors of violent crime are better met by asking people who commit violence to accept responsibility for their actions and make amends in ways that are meaningful to those they have hurt—none of which happens in the context of a criminal trial or a prison sentence.

Sinnar, Shirin, and Beth A. Colgan. "Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration." *NYU Law Review* 95 (September 2020): 149–70.

This essay explores two alternatives to the traditional sentence enhancement model that might retain the expressive message of hate crimes laws—to convey society's particular condemnation of crimes of bias—while relying less heavily on police and prisons: the reformation of victim compensation programs to help victims and targeted communities and the application of restorative justice processes to hate crimes. [Link to full-text pdf.](#)

Weisberg, Robert. "Restorative Justice and the Dangers of Community." *SSRN Electronic Journal*, 2003.

This paper explores the various uses of the concept of "community"—from "community" as an ideal to "sense of community" as a social goal, to "the community" as a supposedly identifiable social entity to "the [group name] community" as the designation for a certain social, racial, ethnic, or other associations. It argues that greater self-criticism in the use of the concept of "community" is essential to a thoughtful program in restorative justice. [Link to full-text pdf.](#)

Woolford, Andrew John, and Amanda Nelund. *The Politics of Restorative Justice: A Critical Introduction*. Second Edition. Boulder: Lynne Rienner Publishers, Inc, 2020.

The authors argue that restorative justice must be concerned with class-based, gendered, racialized and other injustices. The authors expand on how intersecting socio-political contexts — gendered, racialized, settler colonial, hetero-normative and others — contour the practice and potential of restorative justice. In addition to updated examples and data, this edition discusses the embodied and emotional politics of restorative justice, transformative restorative justice, and other-than-human actors/ecological justice.

Zehr, Howard. *Changing Lenses: A New Focus for Crime and Justice*. 3rd ed. Scottdale, Pa: Herald Press, 2005.

*Zehr offers a framework for understanding crime, injury, accountability, and healing from a restorative perspective. Uncovering widespread assumptions about crime, the courts, retributive justice, and the legal process, *Changing Lenses* offers provocative new paradigms for public policy and judicial reform.*

Selected faith-based perspectives on restorative justice

Absar, Absar Aftab. "Restorative Justice in Islam with Special Reference to the Concept of Diyya." *Journal of Victimology and Victim Justice* 3, no. 1 (April 2020): 38–56.

Islamic law is commonly misconstrued, to the extent that retributive justice is considered its characteristic feature. This is because of the provision for the award of death penalties for Hudud, Hirabah, and Qisas (retaliation) crimes are the focus of human rights groups. Contrary to this perception, the basic tenets of the doctrine of restorative justice are enshrined in the texts of Islamic jurisprudence and have been practiced for over 14 centuries in the form of Diyya and other provisions, such as forgiveness and conciliation. [Link to full-text pdf.](#)

Allard, Pierre, and Wayne Northey. "Christianity: The Rediscovery of Restorative Justice." In *The Spiritual Roots of Restorative Justice*, edited by Michael L. Hadley. SUNY Series in Religious Studies. Albany: State University of New York Press, 2001.

Allard and Northey contend that a Christian reading of the Hebrew scriptures point to what can be called a restorative justice model for understanding and responding to crime. The authors contend that, through the life, death, and resurrection of Jesus, God demonstrated his merciful and suffering love in response to our wrongdoing, thus making forgiveness and restoration fundamental to how we should respond to human wrongdoing. Allard and Northey see the background to this understanding of Jesus in the Hebrew concept of shalom and in the ethical and messianic insights of the Hebrew prophets.

Hadley, Michael L., ed. *The Spiritual Roots of Restorative Justice*. SUNY Series in Religious Studies. Albany: State University of New York Press, 2001.

This interdisciplinary study explores what major spiritual traditions say in text, tradition, and current practice about criminal justice in general and restorative justice in particular. It reflects the close collaboration of scholars and professionals engaged in multifaith reflection on the theory and practice of criminal law. A variety of traditions are explored: Aboriginal spirituality, Buddhism, Chinese religions, Christianity, Hinduism, Islam, Judaism, and Sikhism.

Segal, Eliezer. "Jewish Perspectives on Restorative Justice." In *The Spiritual Roots of Restorative Justice*, edited by Michael L. Hadley. SUNY Series in Religious Studies. Albany: State University of New York Press, 2001.

A fundamental Jewish belief proclaims repentance, escaping the momentum of the past misdeeds, and turning over a new leaf. Full repentance involves stages of compensation, remorse, and a determination to improve future conduct. Harmed individuals are encouraged to treat the reformed sinner with compassion, forgiving the sins of the past. The Torah treats crime on at least three levels: 1) restoration to its rightful owner of the stolen object; 2) an additional punitive payment to the victim, probably deterrent in purpose, consisting in this case one fifth of the total cost of the stolen item or harm caused and; 3) atonement for the trespass against God, to be administered by the priest, through the bringing of "ashram" sacrifice, the so-called guilt-offering. On atonement, the payment of restitution is seen as the acceptance of guilt and readiness for atonement. [Link to full-text pdf.](#)

APPENDIX 2: Potential Funders of Restorative Justice Work

With thanks to Impact Justice for curating most of this list.

Grantmaker	Area	URL
Andrus Family Fund Social Justice	Social Justice	https://affund.org/grantseekers/
Annie E. Casey Foundation	Juvenile Justice	https://www.aecf.org/work/juvenile-justice
Asian Americans/Pacific Islanders in Philanthropy (AAPIP)	Social Justice	https://aapip.org/what-we-do/national-giving-circle-network
Charles Koch Foundation	Criminal Justice Reform	https://www.charleskochfoundation.org/apply-for-grants/
Criminal Justice Initiative	Criminal Justice Reform	http://www.criminaljusticeinitiative.org/
David Rockefeller Fund	Criminal Justice Reform	http://www.drfund.org/programs/criminal-justice/
Democracy Alliance	Social Justice	https://democracyalliance.org/investments/
Edward W. Hazen Foundation	Social Justice	http://hazenfoundation.org/programs/grantmaking
Ford Foundation	Social Justice	https://www.fordfound.org/work/our-grants/
Hill-Snowdon Foundation	Social Justice	https://www.hillsnowdon.org/grantmaking
Laura & John Arnold Foundation	Criminal Justice Reform	http://www.arnoldfoundation.org/grants/
MacArthur Foundation	Social Justice	https://www.macfound.org/about/
NEO Philanthropy	Social Justice	https://neophilanthropy.org/
North Star Fund	Social Justice	https://northstarfund.org/apply/
Open Society Foundations	Criminal Justice Reform	https://www.opensocietyfoundations.org/grants-search-results/39/all/all/all/now
Public Welfare Foundation	Criminal Justice and Youth Justice	http://www.publicwelfare.org/grants-process/apply-for-a-grant/
Robert Wood Johnson Foundation	Health Communities	https://www.rwjf.org/en/how-we-work/grants-and-grant-programs.html
The Pew Charitable Trusts	Public Policy Reform	https://www.pewtrusts.org/en
Tides Foundation	Social Justice	https://www.tides.org/solutions/
W.K. Kellogg Foundation	Social Justice	https://www.wkkf.org/grants/

APPENDIX 3: Organizations Offering Restorative Justice Training

With thanks to The Ahimsa Collective for curating this list.

The Ahimsa Collective

The Ahimsa Collective welcomes requests from community groups, universities, prisons, or organizations to create a workshop that is specific to your locale.

<https://www.ahimsacollective.net/trainings>

Circle Up Education

While CircleUp Education focuses on schools, it also trains nonprofit, technology companies, county, and city employees in restorative practices that prevent and respond to conflict. It provides coaching and ‘train the trainer approaches’ as well as refresher or refinement courses.

<https://www.circleuped.org/restorative>

Community Works West (CWW)

The restorative practices offered in CWW’s programs include:

- Pre-charge restorative justice diversion
- Reentry circles
- Restorative arts circles
- Restorative economics/Guaranteed Income Project
- Family transition circles
- Circles with surrogate survivors & men convicted of violent offenses

<https://communityworkswest.org/>

Eastern Mennonite University: Summer Peacebuilding Institute (SPI)

SPI offers both training and individualized practicum placements. Its faculty are on the leading edge of research and practice in the field of conflict resolution and conflict transformation.

<https://emu.edu/cjp/grad/restorative-justice>

Impact Justice

For over a decade, Impact Justice’s Restorative Justice Project has worked with communities across the country to develop pre-charge restorative justice diversion programs that reject the notion that we must criminalize or incarcerate people to address harm.

<https://impactjustice.org/innovation/restorative-justice/#national-training-and-innovation-center>

Restorative Justice Training Institute (RJTI)

RJTI holds space for conversations, provides presentations, trainings, consulting and support as schools, school districts and organizations to learn about, investigate, adopt, and implement restorative justice in Education and Peacemaking Circles.

<https://www.rjtica.org/services>



www.aspeninstitute.org/religion