

## **ADVANCED POLICY ANALYSIS**

### **Restorative Justice as Diversion in California's Juvenile and Criminal Justice Systems: Potential Impacts and State Policy**

**A Study Conducted for the California Senate Office of Research,  
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**by**

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## Executive summary

The term “restorative justice” encompasses a set of practices for responding to and repairing harm through a facilitated interaction of the parties who have a stake in a particular offense. In this report, I explore the use of restorative justice as a way to divert offenders from the justice system in California. This practice has largely developed under the initiative and discretion of local justice system authorities and community organizations.

The goal of my analyses is to assess whether the current decentralized and entirely locally directed development of restorative justice practices in the context of pre-sentence diversion is on track toward optimal use of such practices or whether state intervention could help to guide development of such practices toward their optimal use. I define “optimal use” as one that reduces the crime rate, reduces the incarceration rate, reduces racial and ethnic disproportionalities, and improves return-on-investment. I examine the mechanisms through which broader use of restorative justice could impact these four areas of state-level concern.

There are three mechanisms by which the use of restorative justice as a form of diversion from the justice system could either increase or decrease **the crime rate**: (1) by changing the future offending behavior of *offenders* who participate in a restorative justice diversion program, (2) by changing the future offending behavior of *victims* who participate in a restorative justice diversion program, and (3) by changing the culture or incentives under which people decide whether or not to commit crimes.

There are three mechanisms by which the use of diversion to restorative justice could either increase or decrease **the use of incarceration** in California: (1) by affecting the amount of pre-sentence or pre-disposition time offenders spend waiting in jail or juvenile hall for their cases to be heard, (2) by diverting offenders from justice system sanctions which involve or lead to some form of incarceration, and (3) by changing offenders’ future behavior.

To the extent that the introduction of diversionary restorative justice expands opportunities for diversion, it has the possibility of altering **racial and ethnic disproportionalities** in California’s justice system. The following three factors would influence the direction and magnitude of this potential change: (1) the demographic characteristics of communities in which restorative justice diversion programs are located, (2) the eligibility criteria for such programs, (3) and the degree of subjectivity and discretion in the determination of offenders’ suitability for restorative justice.

The effect of diversionary restorative justice programs on justice system **return on investment** depends on the offenders and offenses targeted by the program and the program’s scale of operations. Restorative justice programs that serve offenders who would have otherwise been diverted (not been diverted) are likely to allow for a relatively smaller (larger) decrease in justice system workload. Furthermore, the larger the proportion of overall offenders that the program serves, the more economies of scale it can achieve.

While much uncertainty remains, I conclude that the preponderance of evidence suggests that broader use of diversionary restorative justice would

decrease California's crime and incarceration rates (more likely for county than state facilities), at least on the margin. In contrast, the direction of a net effect (if any) of broader use of diversionary restorative justice on justice system racial and ethnic disproportionalities and return on investment will likely depend on programs' locations and eligibility rules and programs' scale and counterfactuals, respectively.

To the extent that counties implement diversionary restorative justice programs, on balance, their efforts will probably support rather than undermine crime and incarceration reduction in California. However, depending on their program design choices, well-intended county efforts could inadvertently increase justice system racial and ethnic disproportionalities or decrease justice system return on investment. Furthermore, even if restorative justice diversion programs would produce net benefits for society, they may never be implemented due to several common implementation challenges faced by counties.

An analysis of interviews with justice system leaders and restorative justice practitioners revealed the following common implementation challenges: (1) the concept of restorative justice is a "paradigm shift" that can be counterintuitive for many who have spent their careers in the conventional justice system; (2) lack of justice system insider knowledge and connections can be a challenge for community-based organizations who are often the first champions and harbors of knowledge about restorative justice; (3) cost savings or workload reductions produced by restorative justice programs do not necessarily accrue to the decision-making entity; (4) economies of scale may mean that programs represent a net cost until they reach a certain scale of implementation.

I have developed the following state policy options to help ease implementation challenges and support the quality and potential impact of county restorative justice diversion programs:

- Option #1: Consider providing start-up funding and/or expertise for counties wishing to implement restorative justice diversion programs.
- Option #2: Support rigorous evaluations of outcomes and impacts of restorative justice policies and programs.
- Option #3: Track racial and ethnic disproportionalities, specifically as they relate to diversionary restorative justice.
- Option #4: Review justice system personnel standards and training as a possible way to better support county efforts to implement restorative justice programs.

Finally, to the extent that legislators wish to influence the development of diversionary restorative justice in any way, they should bear in mind the following guidelines to avoid unintentionally hindering the effectiveness or efficiency of restorative justice diversion programs:

- Guideline #1: Avoid policies that could hinder the use of restorative justice with higher-level crimes or with adults.
- Guideline #2: Avoid policies that push access to restorative justice diversion behind layers of justice system transactions.

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## I. Introduction

Concern about high incarceration rates, excessively punitive sentencing, tenuous relationships between law enforcement and communities, and racially disparate outcomes in the justice system, has been a recent centerpiece of national dialogue. Federal and state budget crises and calls for government austerity have weakened tolerance for large spending on corrections. As a result, there is mounting public support and bipartisan political will for innovative and less punitive approaches to justice (Karp & Frank, 2016).

Restorative justice is one such innovative and less punitive approach to criminal and juvenile justice that appears to be gaining attention and momentum, particularly in grassroots and academic domains (Karp & Frank, 2016). Practices referred to under the umbrella term “restorative justice” bring together parties who have a stake in a particular offense to repair the harm caused, to the extent possible.

A majority of states have statutes that mention restorative justice in some way, though they tend to provide little structure or support for systematic use of restorative justice practices (Sliva and Lambert, 2015). It’s not clear that these laws translate to substantial changes in local practices or indeed whether state-level policies are the most effective means of putting restorative justice into action. While research findings on outcomes for *individual participants* in restorative justice practices tend to be positive, there is little known about the effectiveness of restorative justice as a *policy solution* that can bring about desired changes in justice systems.

Restorative justice practices may be incorporated into the criminal or juvenile justice processes prior to sentencing (referred to as “diversion” if they are used as substitutes for elements of the conventional criminal justice process), as a part of sentencing, or after sentencing. California statute explicitly permits and offers some structure for the use of restorative justice as a part of sentencing, but is silent on the use of restorative justice in the pre- and post-sentencing contexts. As such, the use of pre- and post-sentencing restorative justice practices in California has developed solely under the initiative and discretion of local justice system authorities.

This status quo begs the following question: would state-level policy change on restorative justice help California to further its justice system reform agenda? In this report, I focus on the pre-sentence, and specifically diversionary, use of restorative justice in California. The goal of my analysis is to assess whether the current decentralized and entirely locally directed development of restorative justice practices in the context of pre-sentence diversion is on track toward optimal use of such practices or whether state intervention could help to guide development of such practices toward their optimal use. In doing so, I define “optimal use” as one that reduces the crime rate, reduces the incarceration rate, reduces racial and ethnic disproportionalities, and improves return-on-investment. I aim to identify and analyze the mechanisms by which restorative justice practices used in a pre-sentence, diversionary capacity in California do or could impact these four areas of state-level interest. Using interviews with local justice system leaders and restorative justice practitioners in California, I identify common challenges faced by

counties as they implement restorative justice diversion programs. Finally, I outline state policies that could be implemented pending further analysis and I recommend a set of guiding principles for state-level actions, should legislators wish to influence policy or practice pertaining to diversionary restorative justice.

## II. Background

### What is restorative justice?

There is no universally agreed-upon definition or unified theory of restorative justice (Karp & Frank, 2016, p. 2). Underlying principles of restorative justice include (1) a primary focus on repairing harm done to victims but also on addressing offender<sup>1</sup> and community needs that are produced or revealed through wrong-doing; (2) the notion that harm creates obligations on the part of offenders and the community to address such needs; and (3) an emphasis on the engagement of parties who have a key stake in the offense and its resolution. (Zehr, 2002).

Criminologists Lode Walgrave and Kathleen Daly both argue that the diverse and often highly philosophical conceptions of restorative justice undermine its credibility and frustrate efforts toward its empirical evaluation (Walgrave, 2008; Daly, 2016). To address this problem, Walgrave (2008) offers a purely outcomes-based definition of restorative justice as “an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational and social harm caused by that offence” (p. 8).

In contrast, Daly (2016) proposes a purely process-based definition of restorative justice. She labels restorative justice as a “justice mechanism,” which she in turn defines as “a justice response, process, activity, measure, or practice” (p. 15). Daly specifies the restorative justice mechanism as “a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people” (p. 20).

For this report, I adopt the following definition of restorative justice used by Sliva and Lambert (2015), which emphasizes both processes and outcomes: “Restorative justice is the practice of bringing together those who have a stake in a particular offense to repair the harms caused by crime and promote restoration and reconciliation, to the extent possible, between victim, offender, and community” (p. 82).

In addition to its justice system applications, which are the focus of this report, restorative justice is used to resolve conflict in schools, workplaces, and communities. It has also been used to address transgressions by the state in the context of truth and reconciliation commissions.

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<sup>1</sup> I use the word “offender” throughout this report for clarity, as it is part of the typical language of the criminal justice system. Though, recognizing that offenders are often themselves victims of previous harms, many people in the restorative justice field prefer the term “responsible party,” rather than “offender.”

### Restorative justice in state statute

Sliva and Lambert (2015) conducted content analyses of state criminal and juvenile codes, to understand how restorative justice has been integrated into law in the United States. As of March 2014, they identified 165 pieces of legislation pertaining to restorative justice, spread among 32 states. The researchers coded these statutes by their level of support – including *ideological*, *active*, and *structured* – for the use of restorative justice practices and their point of implementation – including *diversionary*, *intermediate sanctions*, and *post-sentencing*.

Of the 32 states with legislation pertaining to restorative justice, 27 (or 84 percent) provided what Sliva and Lambert characterized as *ideological* support by simply listing restorative justice practices as acceptable or desired applications of justice. Statutes in 18 states (or 56 percent) provided *active* support by establishing some structure for implementation of restorative justice practices, such as funding, personnel, or a description of how or when the practices should be used. Statutes in 7 states (or 22 percent) provided *structured* support by mandating or strongly encouraging the use of restorative justice practices and providing substantial support for implementation, such as administrative guidelines and confirmation of funding.

Statutes in 21 states (or 66 percent of the total 32 states) were coded as *diversionary*, meaning that they pertain to the use of restorative justice practices prior to and in lieu of adjudication, thus offering offenders an alternative to the traditional justice system. Nineteen states (or 59 percent) had statutes that provided for the use of restorative justice practices as *intermediate sanctions* to be used after adjudication and as a part of sentencing. When restorative justice practices were used after sentencing, with no effect on the offenders' adjudication or sentence, statutes were coded as *post-sentencing*. Eleven states (or 34 percent) had statutes that provided for the post-sentencing use of restorative justice practices.

Sliva and Lambert identified eight statutes in California that reference restorative justice in general or specific restorative justice practices. They classify the highest level of support for restorative justice found among these California statutes as *active*, which is the middle level in their classification system. Specifically, California law establishes restorative justice as a central goal of hate crime sentencing, permits restorative justice to be used as a form of community-based punishment and intermediate sanction, and allows Community Corrections Performance Incentives Funds to be used for restorative justice programs as intermediate sanctions (Penal Code § 1230(3)(B) (2011); Penal Code § 17.5(a)(8)(E) (2011); Penal Code § 3450(b)(8)(E) (2011); Penal Code § 422.86(a)(3) (2004); Penal Code § 8052(e)(6) (1994); Welfare & Institutions Code § 202(f) (2008)).

California law does not explicitly address the use of restorative justice at the diversionary or post-sentencing points of implementation (Sliva & Lambert, 2015). However, it does grant local justice system decision-makers the authority to implement diversionary and post-sentencing programs in general (J. Egurbide, personal communication, April 28, 2016). In turn, these local decision-makers may or may not choose to build restorative practices into such programs. So, the local



uses of restorative justice practices in the diversionary and post-sentencing contexts have developed essentially entirely without state-level guidance or direct support. However, the State has provided indirect support for such programs via general funds and grant funds (that are not specific to restorative justice practices but may be used to support them).

### Restorative justice as a form of diversion

Diversion, in general, may occur at several stages of the juvenile justice or adult criminal justice processes. It may take the form of a simple release without services or may be accompanied by programming involving treatment, social services, coursework, restitution, or community service.

Depending on the nature of the offense and the practices of the particular law enforcement agency, police may divert a juvenile or adult offender prior to making a formal arrest. This practice is called “pre-booking diversion”.

Juvenile cases that are not diverted by law enforcement are referred to county probation departments. At this point, probation department staff may divert youth with or without services. They may also put youth on informal probation, which is similar to diversion in that the youth will avoid further justice system contact if he or she successfully completes the informal probation. If the youth moves further through the juvenile justice process, he or she is referred by the probation department to the district attorney. District attorney staff may divert youth prior to filing petitions against them – known as “pre-file diversion” – or may divert them after filing a petition against them – known as “filed diversion”.

Adult cases that are not diverted by law enforcement are referred directly to district attorneys. They do not first go through the probation department, as do juvenile cases. District attorneys may divert adults prior to charging them with an offense – known as “pre-charge diversion” – or after charging them with an offense – known as “post-charge diversion”.

Finally, if a juvenile or adult case goes before a judge, he or she may – often upon the recommendations of the district attorney and public defender – divert the offender or give him or her what is called a “deferred entry of judgment”. A deferred entry of judgment allows the offender to avoid formal adjudication if he or she completes certain requirements imposed by the court.

Offenders can be diverted to restorative justice programs via any of the implementation points described above. When restorative justice is used as a means of diversion from the justice system, there are typically two criteria by which offenders are identified for such programs: eligibility and suitability. Local authorities such as judges or district attorneys set the conditions under which offenders are *eligible* for a restorative justice diversion program. These eligibility conditions are typically tied to the offense-level, offense-type, and number of prior offenses committed by the offender. To be *suitable* for restorative justice, offenders must accept responsibility for their offense and be willing and able to participate in a restorative justice process. They must not have serious mental health, drug addiction, or other specific needs that would make them better served by a different intervention, such as collaborative courts.

## Restorative justice diversion program case studies in California

Throughout this report, I reference nine restorative justice diversion programs in California to illustrate various ways that several counties and one city in California are using restorative justice practices to divert youth and adults from the formal justice system and give them the opportunity to repair the harm they have caused to victims or their community. Table 1 provides an overview of the key design features of these programs. Note that these case studies are not a comprehensive, or necessarily representative, list of restorative justice programs in California.

Two programs – the Reedly Peace Building Initiative in the city of Reedly and the Neighborhood Court Program in Yolo County – are ‘insourced’, meaning that the restorative justice service provider is a unit within the referring justice system agency. The remaining programs are ‘outsourced’, meaning that the restorative justice service provider is external to the referring justice system agency. In one case, Fresno County’s Community Justice Conference program, the restorative justice service provider is based in Fresno Pacific University. For all six other programs, the restorative justice service provider is a non-profit community-based organization.

Two programs serve adult misdemeanants – the Restorative Resources Young Adult program in Sonoma County and the Neighborhood Court Program in Yolo County – while the remaining seven programs serve juveniles. Of the seven programs serving juveniles, most accept both misdemeanors and felonies but tend to focus on one or the other. Points of diversion vary across and within programs.

**Table 1: Key design features of case study programs**

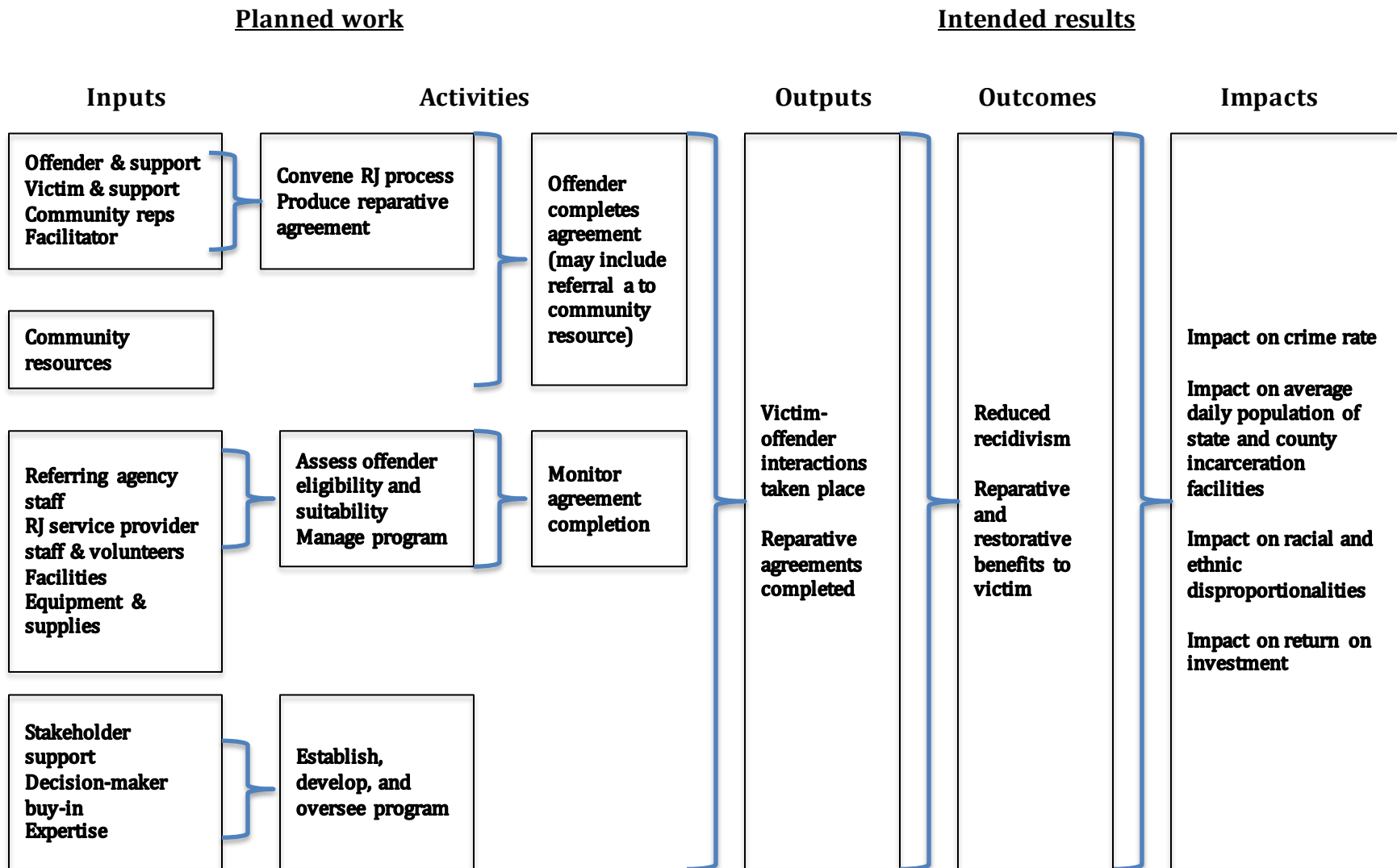
<b>Program name</b>	<b>County</b>	<b>RJ service provider</b>	<b>Offender age</b>	<b>Points of diversion</b>	<b>Types of offenses eligible</b>
Reedly Peace Building Initiative	Fresno	Reedly Police Department	Juvenile	Pre-booking referrals from police	All misdemeanors (except gang affiliated)
CCEJ Restorative Community Conferencing	Los Angeles	California Conference for Equality and Justice (CCEJ)	Juvenile	Pre-booking referrals from police; referrals from probation; and pre-file referrals from district attorney	Felonies and misdemeanors with person victims (such as burglary and battery)
Victim Offender Restitution Program	Los Angeles	Centinela Youth Services	Juvenile	Pre-booking referrals from police; referrals from probation; pre-file referrals from district attorney; and deferred entry of judgment from court	Primarily misdemeanors, occasional felonies if no weapon involvement.
Restorative Resources teen program	Sonoma	Restorative Resources	Juvenile	Misdemeanor referrals from probation; occasional referrals of felonies as deferred entry of judgment	Primarily misdemeanors and occasional felonies
CWW Restorative Community Conferencing	Alameda	Community Works West (CWW)	Juvenile	Pre-file referrals from district attorney	Primarily felonies and occasionally high-level misdemeanors, particularly if the youth is at risk of serving a long probation. Only cases with person victims.
Make it Right	San Francisco	Community Works West & Huckleberry Youth Programs	Juvenile (13-15 only)	Pre-file referrals from district attorney	Joy riding, grand theft, burglary, robbery (no gang affiliations, weapon involvement, or injuries to the victim)
Community Justice Conferencing	Fresno	Fresno Pacific University	Juvenile	Deferred entry of judgment from court	Primarily misdemeanors but occasionally low-level felonies on a case-by-case basis.
Restorative Resources Young Adult Program	Sonoma	Restorative Resources	Adult (18-25 only)	Deferred entry of judgment from court	Misdemeanors
Neighborhood Court Program	Yolo	Yolo County District Attorney's Office	Adult	Initially flagged by police and then diverted pre-charge by district attorney	Misdemeanors and infractions (primarily without person victims). No prior convictions allowed.

### III. Logic model for a restorative justice diversion program

Though restorative justice diversion programs vary in their design elements, they can be distilled into a single rudimentary logic model (Figure 1). A logic model is a tool for program planning, implementation, and evaluation. By mapping the relationships between the planned work and the intended results of a program, the logic model visually displays a program's underlying theory of change. A program's *planned work* is composed of inputs and activities. *Inputs* include human, financial, organizational, and community resources used by the program. Whatever actions the program takes with these inputs are collectively referred to as '*activities*'. A program's *intended results* include outputs, outcomes, and impacts. *Outputs* are the types and levels of services delivered by the program. *Outcomes* are specific changes in participants' behavior as a result of the program. *Impacts* are the broader societal changes driven by the program (W.K Kellogg Foundation, 2004).

Though actual programs may depart somewhat from this simple depiction, Figure 1 captures the essential features of a typical restorative justice diversion program. Because it clearly delineates intended program results and the resources and activities used to achieve them, this logic model is a helpful tool for conceptualizing and examining the outcomes (discussed below) and broader societal impacts (discussed in Section V) of restorative justice diversion programs.

Figure 1: Generic logic model underlying restorative justice (RJ) diversion programs



### *The planned work of restorative justice diversion programs*

Here, I discuss the inputs and activities, or the planned work, of a typical restorative justice diversion program (refer to the first three columns of Figure 1).

Staff within the referring justice system agency typically assess offenders for both eligibility and suitability for diversion to restorative justice. Offenders who meet both criteria may be referred to a restorative justice service provider at the discretion of justice system staff. Restorative justice service providers may be a unit within a justice system agency or a community-based organization. Upon intake, restorative justice service providers typically re-assess offenders for suitability and occasionally refer offenders back to the referring agency if they discover that the offender is not truly willing or able to participate in restorative justice.

Restorative justice service provider staff contact the victim to explain the restorative justice process and offer him or her the opportunity to participate. If he or she is not willing or able to participate, service providers may use a “surrogate” victim. Surrogates are individuals who have been victims of crime in the past and can thus speak from personal experience about the impacts of crime. When restorative justice is used in cases without clearly identifiable victims (such as vandalism of a public monument in which the harmed party is best defined as a whole community), restorative justice diversion programs may use victim impact panels in which a small group of community members represent the community “voice” in a dialogue with the offender.

Service providers either employ staff or train volunteers to facilitate restorative justice processes. Before convening a meeting between the victim and offender, facilitators conduct what are typically called “pre-conferences.” Separate pre-conferences are held with each party to the offense as a way to prepare him or her for the restorative justice process. Restorative justice processes themselves may take several formats, though they typically all involve the offender, victim, and a facilitator. Oftentimes, offenders and victims will be asked to invite members of their support networks to the meeting. Community representatives or other parties with a stake in the offense may also be included. During the restorative justice process, the parties will co-create a “reparative agreement,” which specifies actions that the offender will take to repair the harm that he or she has caused to the victim. Agreements often include (but are not limited to) restitution, meaningful community service, educational opportunities, and participation in self-help programs.

Service providers typically employ case managers to assign cases to facilitators, schedule restorative justice processes, monitor completion of reparative agreements, and to report back to the referring justice system agency as required. Offenders who complete the items in their reparative agreement are discharged from the program. Offenders who fail to complete the items in their reparative agreement are typically sent back to the referring agency for traditional justice system processing.

### *The outputs and outcomes of restorative justice*

Here, I discuss the outputs and outcomes of a restorative justice diversion program (refer to the fourth and fifth columns in Figure 1). I analyze the potential societal impacts of a restorative justice diversion program (refer to the sixth column in Figure 1) in Section V.

The intended *outputs* of restorative justice diversion programs are: (1) a meaningful dialogue between victim, offender, and other relevant parties, and (2) a set of actions taken by the offender – as agreed upon by victim and offender during the restorative justice process – to repair the harm he or she caused. Intended *outcomes* – or changes in participant behavior – resulting from restorative justice diversion programs are typically (1) a reduction in the offender's future criminal behavior and (2) an improvement in the victim's material or psychological well-being as a result of his or her interaction with the offender and the activities undertaken by the offender to repair the harm caused. An important question at this juncture is: why might these program *outputs* drive the intended program *outcomes*, or changes in participant behavior? Below I discuss theory and empirical evidence that shed light on this question.

### *Why might the outputs of restorative justice processes reduce offender's future criminal behavior?*

Deterrence Theory, a foundational concept of crime prevention, consists of the notion that fear of punishment deters people from committing crime. This effect can be categorized into two types: general deterrence and specific deterrence. General deterrence operates through the existence of laws, police, courts, and punishments, which signal to the general public that transgressions will be detected and punished. Specific deterrence is the impact of actual legal punishment on those who have transgressed and operates through offenders' experiences of detection, prosecution, and punishment (Australian Institute of Criminology, 2004). In other words, Deterrence Theory is based on the premise that people who intentionally commit crimes know that what they are doing is wrong but will continue to commit crimes until the sanctions they receive for doing so are more costly than the benefit they gain from such actions.

Criminologist Lawrence Sherman (1993) proposes a different theory of the effect of sanctions on criminal behavior, which has been used to explain the effects of restorative justice practices (Braithwaite, n.d.). Called Defiance Theory, it is centered on four key aspects of offenders' emotional responses to being sanctioned: legitimacy, social bond, shame, and pride.

Sherman posits that sanctions cause persistence in offending if offenders experience the sanctions as illegitimate, have weak bonds to the sanctioning agent or community in whose name the sanctioning agent was acting, and deny their shame or take pride in their isolation from the community. In contrast, he theorizes that sanctions will elicit desistance if offenders experience the sanctions as legitimate, have strong bonds to the sanctioning agent or community, and acknowledge their shame or retain pride in their connection with the community.

In a review of empirical support for Deterrence Theory, Bouffard and Piquero (2010) identify studies (Paternoster & Simpson, 1996; Paternoster &

Piquero, 1995; and Piquero & Paternoster, 1998) that found offenders' perceptions of unfairness of either the law broken or sanction imposed were indicative of a higher likelihood of reoffending. Bouffard and Piquero (2010) also review studies of police-citizen interactions (Mastrofski, Snipes, & Supina, 1996; Paternoster, Brame, Bachman, & Sherman, 1997; McCluskey, Mastrofski, & Parks, 1999; and Belvedere, Worrall, & Tibbetts, 2005) that tend to find citizens' perceptions of police legitimacy and fair treatment are associated with greater citizen compliance and reduced future offending. However, Bouffard and Piquero (2010) note that while these findings lend empirical support to elements of Defiance Theory, they come from studies that were not explicitly designed to examine it.

In a study designed to test Defiance Theory, Bouffard and Piquero (2010) use longitudinal data collected by Wolfgang, Figlio, and Sellin (1972) of police contacts for a cohort of males born in 1945 in Philadelphia and interviews with a subset of these men done by Wolfgang, Thornberry, and Figlio (1987) about the experience of their first arrest. Bouffard and Piquero code interview responses to assess the men's shame and perceptions of sanction legitimacy. The interviewers did not include any questions about social bonding. So, Bouffard and Piquero use educational attainment as a proxy for the men's levels of social bonding. The researchers control for the men's race, intelligence quotient (IQ), age of offending onset, involvement in status offenses, and involvement in behaviors indicative of low self-control.

Bouffard and Piquero (2010) find that men who perceived their treatment as unfair and were poorly bonded to the sanctioning agent or community exhibited higher rates of reoffending, whether they *accepted* or *denied* their shame, compared with those who perceived their treatment as fair and were well bonded. These results do not support a strict reading of Defiance Theory, which posits that a sanction will have zero or a deterrent effect on reoffending for individuals who define the sanction as unfair, are poorly bonded, but *accept* the shame of the sanction. However Defiance Theory is somewhat supported by the finding that *among* the men who perceived their treatment as unfair and were poorly bonded, those who *denied* their shame exhibited relatively higher rates of reoffending that persisted later in life, compared to those who *accepted* their shame.

By bringing offenders into dialogue with their victim about the impetus and impact of their offending behavior, restorative justice processes may engage offenders in a moral conversation. Such an experience may prompt offenders to consider whether or not crime is justified and allow them to view their actions from outside of their own perspective. Sanctions determined by both victim and offender via a reparative agreement may be perceived by the offender as more legitimate than traditional criminal sentencing. Because restorative justice practices incorporate community representatives and members of the offenders' own support network, offenders may be more bonded to the sanctioning agent when it is represented by these key stakeholders than by only conventional justice system personnel. By giving offenders the opportunity to repair – to the extent possible – the harm they have caused to their victim and community, restorative justice processes are an attempt to create a setting in which the act of wrong-doing is shamed, rather than the person. Hence, in theory, restorative justice leaves offenders with the possibility of becoming reintegrated into the community instead



of branded as 'bad people' and outcast from the community (Braithwaite, 1989). By giving offenders this chance at reintegration, restorative justice practices may also help offenders avoid developing a sense of pride in their isolation from the community.

In sum, sanctions imposed through restorative justice processes may be more likely than sanctions imposed by conventional justice system processes to create the four conditions that Sherman posits will elicit desistance from future offending. Limited empirical evidence supports Sherman's Defiance Theory that when offenders experience sanctions as legitimate, have strong bonds to the sanctioning agent or community, acknowledge their shame, and retain pride in their connection with the community, they will desist from offending.

Why might the outputs of restorative justice processes improve victims' material or psychological well-being?

Benefits to victims from engaging in a restorative justice process can be categorized as either reparative or restorative. Reparative benefits typically involve an attempt by the offender to repair what was damaged as a result of the crime, whether it be financial resources, physical property, or lost time. Restorative benefits include any therapeutic affect of restorative justice on victims' trauma, fear, and anger. Such benefits may arise from the victim's opportunity to ask questions of the offender, learn more about the offender's life circumstances, ensure that the offender knows the impact of his or her actions, receive a genuine apology from the offender, or other result of a facilitated conversation between victim and offender.

#### **IV. Research on the outcomes of restorative justice**

The suitability criterion for offender participation in restorative justice introduces a selection bias problem for evaluation of restorative justice programs. Offenders deemed suitable for participation in restorative justice diversion programs must take responsibility for their actions and be willing and able to participate in a restorative justice process. These individuals may be less likely to reoffend, regardless of whether or not they participate in a restorative justice process, relative to people who commit similar offenses but do not fit the suitability profile. Similarly, victims who opt to participate in a restorative justice process are not necessarily representative of the average victim. So a simple comparison of mean outcomes for restorative justice diversion program participants and non-participants will likely produce a biased estimate of the effect of the program. Only studies using random assignment or quasi-experimental designs will produce an unbiased estimate of the causal effect of participation in restorative justice diversion programs on victim and offender outcomes. This section provides a review of high quality research on the effectiveness of restorative justice diversion programs in achieving its intended outcomes (refer to the fifth column in Figure 1) relative to the conventional justice process.

### *Likelihood of reoffending*

Sherman and Strang (2007) systematically reviewed evaluation research on the effects of restorative justice on reoffending relative to the conventional criminal or juvenile justice systems. The authors only included studies rated levels 3, 4, or 5 on the Maryland Scientific Methods Scale, which is the same standard used for the 1997 report *Preventing Crime: What Works, What Doesn't, What's Promising*, prepared for the United States Congress.<sup>2</sup> Of the 25 studies that met this standard, 10 were evaluations of restorative justice programs focused on violent crime, 12 on property crime, and 3 on crime involving non-person victims. Given the high variation in contexts and populations on which these studies are based, the authors do not meta-analyze<sup>3</sup> the findings.

Of the ten studies of the application of restorative justice to violent crime, six (60 percent) showed statistically significant (at the 10 percent confidence level or less) decreases in reoffending associated with restorative justice relative to the conventional justice system. The remaining four studies showed no effect.

Two of the twelve (17 percent) property crime studies – one of Aboriginal youth in Canberra, Australia and the other of youth in Bethlehem, Pennsylvania – found restorative justice to be associated with *increased* reoffending. Five (42 percent) of the property crime studies found decreases in reoffending. Four of these five decreases were statically significant (at the five percent level).

Of the three programs focused on crimes with non-person victims, only one produced a decrease in offending. The other two studies found no effect of restorative justice relative to conventional justice system processing.

Sherman and Strang interpret these results to suggest that restorative justice most consistently reduces reoffending – or at least does not increase it – with violent crime. Evidence on the effects of restorative justice with property crime is mixed, though on balance, it tends to decrease reoffending. Evidence on the effects of restorative justice with non-victim crimes is both the least abundant and the least compelling. The authors hypothesize that the apparent effectiveness of restorative justice with violent crime may be rooted in its inherent emotional basis. However, they stress the need for additional research to understand in more detail for what types of crimes and offender characteristics restorative justice is most effective.

### *Benefits to victims*

Sherman and Strang (2007) found evaluations of 10 restorative justice programs with less biased comparison groups for victims. Specifically, they review studies in which victims randomly assigned to the *opportunity* to participate in restorative justice (whether they choose to participate or not) are compared to victims who were not offered restorative justice. The studies measured different

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<sup>2</sup> Papers rated Levels 3, 4, or 5 on the Maryland Scientific Scale employ a comparison of treatment and control groups with a credible counterfactual (for example, through a difference in difference design), exploit quasi-randomness in treatment (for example, through an instrumental variable or regression discontinuity), or use explicit randomization of the treatment through randomized controlled trials.

<sup>3</sup> Meta-analysis is a statistical technique used to combine the effect sizes and standard errors from several studies into a single weighted average.

outcomes pertaining to victims, including desire to harm their offender, post-traumatic stress symptoms, anger at the justice system, satisfaction with the justice system, and satisfaction with the outcome of their case. Findings consistently suggested that restorative justice produced more favorable results for victims than did the criminal justice system.

Sherman and Strang note that, while restorative justice seems to have consistent *average* positive effects on victims, some studies identified small minorities of victims who had negative experiences, perhaps caused by their confronting of an unremorseful offender. So for victims, restorative justice may entail higher rewards but also higher risks than the traditional justice system. Further research may help to promote better understanding of the factors that may cause restorative justice to be unproductive or counterproductive for some victims.

## **V. Possible societal impacts of restorative justice diversion**

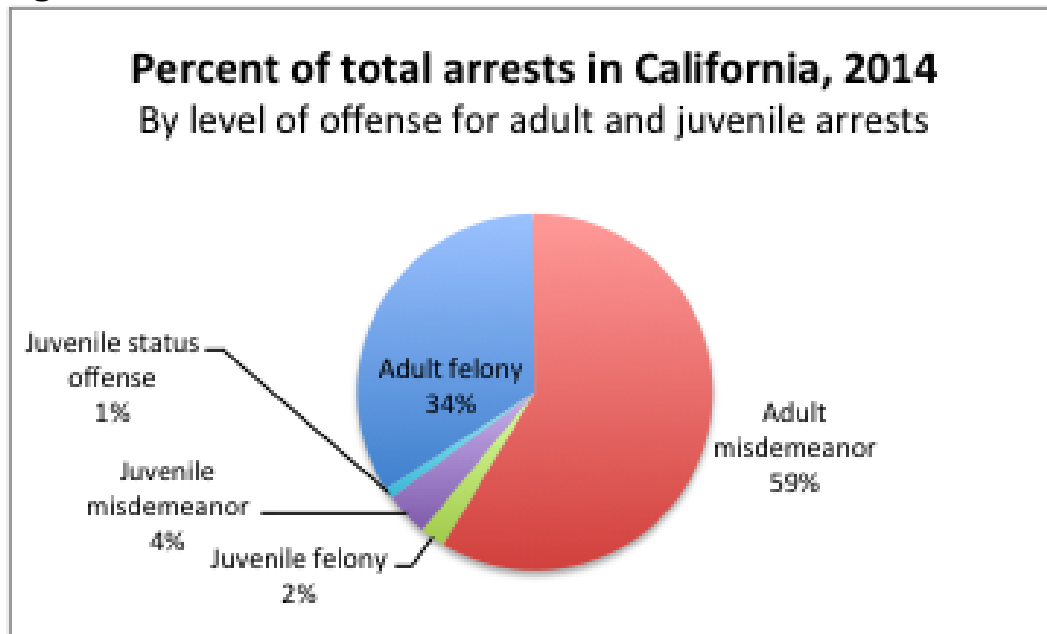
The body of research on restorative justice, discussed above, yields important insights about the effects of participation in restorative justice programs on victims and offenders. However, there is no body of rigorous empirical research on the potential broader societal impacts of restorative justice policies at the community, state, or national level. Yet, many scholars and advocates have used program-level evidence to support claims that restorative justice can effectively drive such broader impacts. In a critique of such claims, Wood (2015) refers to this notion that the introduction of restorative practices at a micro-level will drive macro-level outcomes as the ‘transformation assumption.’ This section presents assessments of whether and how this ‘transformation assumption’ could be valid in California for the four potential impacts in the logic model presented in Figure 1: the crime rate, the average daily population of state and county incarceration facilities, racial and ethnic disproportionalities, and justice system return-on-investment.

### **Potential impact on crime**

Rates of violent and property crime in California have exhibited long-term declines since the 1980s and 1990s, respectively. The State currently experiences about six times as much property crime as it does violent crime. In 2013, there were 402 violent crimes per 100,000 residents, which was above the national average of 368. In the same year, there were 2,658 property crimes per 100,000 residents, which was below the national average of 2,731 (Lofstrom & Martin, 2015a).

The vast majority of crime is committed by adults. 92.8 percent of the 1,212,845 arrests made in California in 2014 were of adults while only 7.2 percent were of juveniles. Of people arrested for misdemeanors and felonies in 2014, 40.2 percent were between the ages of 18 and 29 (Harris, 2014a). As shown in Figure 2, misdemeanors make up the largest portions of total arrests for both adults and juveniles.

**Figure 2.**



Source: Harris, K. D. (2014). *Crime in California*. Criminal justice Statistics Center, California Department of Justice.

There are three mechanisms by which the use of restorative justice as a form of diversion from the justice system could either increase or decrease the crime rate: (1) by changing the future offending behavior of *offenders* who participate in a restorative justice diversion program, (2) by changing the future offending behavior of *victims* who participate in a restorative justice diversion program, and (3) by changing the culture or incentives under which people decide whether or not to commit crimes. Each mechanism is discussed below.

***Mechanism 1: changing the future offending behavior of offenders who participate in a restorative justice diversion program***

Diversionary restorative justice can only directly influence future behavior for those offenders who come into contact with the justice system. So, it cannot, *via Mechanism 1*, prevent first-time offenses. Via Mechanism 1, the use of restorative justice can only affect recidivism. Yet, high rates of reoffending suggest that there is substantial potential for crime reduction through strategies that target recidivism. About half of adult felons released from California prisons are reconvicted and returned to prison within three years (Beard et al., 2014). Similarly, about half of first time violent juvenile offenders in Los Angeles County were rearrested (Ryan, Abrams, & Huang, 2014).

If, as studies indicate, diversion to restorative justice tends to reduce offenders' likelihood of reoffending relative to the conventional justice system, then its use would reduce the recidivism rate and hence the crime rate, all else held equal. However, the *magnitude* of such a reduction in recidivism is limited by both the proportion of total offenses for which restorative justice can be or is used and by

the degree to which it is effective in reducing recidivism for the types of offenses for which and offenders for whom it is used.

The proportion of total offenses for which restorative justice can be or is used is limited by three factors. First, restorative justice processes cannot take the place of a trial when there is question of fact or guilt. Offenders who maintain their innocence are not candidates for diversion to restorative justice, as it does not entail due process or legal counsel. In 2009-10, in almost 80 percent of felony cases in California, the defendant pleaded guilty prior to trial. Only three percent of California felony cases in 2009-10 were ultimately resolved by trial (Taylor, 2013). While some proportion of these guilty pleas likely occurred later in the justice process than would be preferable for diversion, the large number of cases in which the defendant does not maintain his or her innocence suggests that there may be a substantial number of cases that could potentially be resolved via restorative justice. Second, even when there is no question of guilt, offenders may be unsuitable for restorative justice for other reasons such as significant mental health or substance abuse issues. Third, offenders who pose threats to public safety will likely not be diverted to restorative justice.<sup>4</sup>

Research suggests that restorative justice may be most effective at reducing recidivism when it is used for violent offenses and offenses with identifiable victims. However, the extent to which the effectiveness of restorative justice varies by offender characteristics, victim characteristics, or the interaction between them is largely unknown. If this variation does exist, then restorative justice would yield greater recidivism reductions when applied to certain high-potential cases relative to others. However, there is not currently enough evidence with which to identify these high-potential cases.

Furthermore, patterns of repeat offending could also affect the potential of restorative justice to reduce the recidivism rate. If, hypothetically, the high-potential cases typically do not occur until the end of individuals' offending careers, then diversion to restorative justice will not have prevented the offenses that occurred before the high-potential offense. Furthermore, diversion to restorative justice for the high-potential offense will be less likely due to eligibility restrictions for repeat offenders.

### *Mechanism 2: changing the future offending behavior of victims who participate in a restorative justice diversion program*

If the experience of being a victim somehow makes victims more likely to engage in future criminal behavior, then by addressing the needs and trauma created by their victimhood, the use of restorative justice could perhaps prevent victims from engaging in crime in the future. Thus, unlike via Mechanism 1, restorative justice could, via Mechanism 2, prevent first time offenses. However, I

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<sup>4</sup> It is conceivable that cases in which the offender is a threat to public safety could still be resolved with restorative justice processes held inside a secure detention facility. Though, it is unlikely that justice system decision makers would consent to such a course of action in practice. I am unaware of any restorative justice diversion programs in California that operate in this way. Even if justice system decision makers would allow a case to be handled in this way, the reparative agreement would have to include jail time for the offender as long as he or she constitutes a risk to public safety.

am unaware of any empirical evidence establishing a causal link between victimization and future criminal behavior.

***Mechanism 3: changing the culture or incentives under which people decide whether or not to commit crimes***

Mechanisms 1 and 2 both operate via a victim or offender's direct participation in a restorative justice process. However, it is conceivable that the use of restorative justice could indirectly affect the crime rate by changing the incentives or culture in which people decide whether or not to engage in criminal behavior. For example, to the extent that the broader public is aware of its use, perception of restorative justice as yielding less (more) severe consequences for wrongdoing than the conventional justice system could create a smaller (larger) general deterrence affect and thus lead to more (less) crime on the whole.

Whether or not the *actual* experience of participating in a restorative justice conference is felt by offenders to be a more painful or difficult process than receiving a conventional justice system sanction, it is reasonable to assume that restorative justice is probably, on balance, *perceived* by the general public as less painful than a conventional sanction. So, while the existence and magnitude of a general deterrence effect of restorative justice on crime are unknown, common sense analysis suggests that to the extent it has any effect at all, restorative justice probably reduces general deterrence.

**Potential impact on average daily population of state and county incarceration facilities**

Of all youth referred to the juvenile court in delinquency cases, about 65 percent are declared wards of the state. Of those juveniles declared wards, about 31 percent are detained in secure county facilities and less than 1 percent are detained in secure state facilities (Harris, 2014b). Since the State began shifting responsibility for juvenile offenders to the counties in the mid-1990s, counties are barred from sending all but the most serious youth offenders to state custody (Tafoya & Hayes, 2014).

In 2011, the average daily populations of youth in county-level detention facilities were 4,896 youth in juvenile halls and 2,911 in ranches. These rates each declined by about 30 percent between 2007 and 2011. Approximately 30 percent of these detained youth were charged with misdemeanors and 70 percent were charged with felonies (Board of State and Community Corrections, 2013).

California's public safety realignment, enacted in 2011 by AB 109, shifted much responsibility for adult offenders from the state to counties. As a result of this change, counties may only send felons with a record of a serious, violent, or sexual offenses to state prison. The legislation also made counties responsible for sanctioning most parole violators, who would have previously been returned to prison. Between January 2010 and July 2015, California's prison population fell from near 170,000 prisoners to under 130,000 prisoners. The first three years of realignment implementation saw a steady increase in the jail population from about 72,000 in September 2011 to about 83,000 inmates in September 2014 (15 percent increase). County releases of pre-sentenced and sentenced inmates combined with



the passage of Proposition 47 in November 2014, which reclassified certain drug and property offenses from felonies to misdemeanors, reduced the jail population to pre-realignment levels. In sum, these reforms have dramatically reduced California's reliance on incarceration. Shortly after the passage of Proposition 47, California's total adult incarceration rate – including both prison and jail inmates – reached a 20-year low of 538 inmates per 100,000 residents. (Lofstrom & Martin, 2015b).

There are three mechanisms by which the use of diversion to restorative justice could either increase or decrease the use of incarceration in California: (1) by affecting the amount of pre-sentence or pre-disposition time offenders spend waiting in jail or juvenile hall for their cases to be heard, (2) by diverting offenders from justice system sanctions which involve or lead to some form of incarceration, and (3) by changing offenders' future behavior. These mechanisms are discussed below.

***Mechanism 1: affecting the amount of pre-sentence or pre-disposition time offenders spend waiting in jail or juvenile hall for their cases to be heard***

At any given time, a substantial number of youth and adults in county custody are awaiting court processing, rather than serving time as a part of a disposition or sentence. As of September 2014, 62 percent of jail beds in California were occupied by inmates awaiting trial or sentencing (Tafoya, 2015). As of 2011, about 30 percent of all youth in California's juvenile halls and camps or ranches on any given day were being held prior to disposition. The use of pre-disposition detention for youth appears to be gradually declining, as the rate dropped by about five percentage points between 2007 and 2011 (Board of State and Community Corrections, 2013).

If the use of diversion to restorative justice either increases or decreases the amount of time that individuals spend waiting for adjudication or trial, then broader use of restorative justice could conceivably affect the average daily populations of county detention facilities. However, this possibility is conditional on diversion to restorative justice being used for the type of crimes for which an offender may be detained prior to appearing in court. I am unaware of any theory or evidence with which to predict the direction of an effect of restorative justice on case processing time – or indeed, whether there is an effect at all. Furthermore, differences in county law enforcement booking or detention practices could yield variation in any relationship between the use of restorative justice and case processing time.

***Mechanism 2: diverting offenders from justice system sanctions which involve or lead to some form of detention***

As with any form of diversion, restorative justice diversion programs allow offenders to exit the justice system prior to sentencing, hence precluding their incarceration if they successfully complete the program. However, the use of diversionary restorative justice will only reduce incarceration if it is used for the types of offenses that would typically result in a disposition or sentence to some form of incarceration. To be an alternative for state-level incarceration, restorative justice diversion would have to be used for the most serious felonies. None of the California case studies reviewed for this report use restorative justice in this

capacity. Yet, research findings that restorative justice is most effective in reducing recidivism with violent and serious crimes, would bode well for a program targeting imprison-able offenses. On the other hand, the proportion of violent, sexual, or serious offenders (i.e. imprison-able offenses in California) that are not immediate public safety risks, accept accountability for their actions, and do not have serious addiction or mental health challenges might be small.

To be an alternative for county-level incarceration, restorative justice would have to be used for lower-level felonies that could yield a disposition to juvenile hall, juvenile ranch or a sentence to jail. Of the California case study programs reviewed for this report, only the Community Works West Restorative Community Conferencing program in Alameda County and the Restorative Resources Young Adult program in Sonoma County allow some offenders to avoid time in a ranch or jail, respectively. However, not all cases in these programs would have resulted in secure detention in the absence of diversion (A. Danzig, personal communication, April 7, 2016 & M. Perry, personal communication, February 19, 2016).

Due to the juvenile justice system's emphasis on treatment and rehabilitation over punishment (Tafoya & Hayes, 2014) and the growing recognition that incarceration can have serious negative consequences for youth (Aizer & Doyle, 2013), juveniles are probably less likely than adults to be incarcerated for a given type of offense, all else equal. A national survey of victim offender mediation programs found that 45 percent of programs worked only with juvenile offenders, 48 percent worked both juveniles and adults, and 9 percent worked only with adult offenders (M. Umbreit, Greenwood, Fercello, & J. Umbreit, 2000). Though I do not have systematic data, my sense is that diversionary restorative justice programs in California more frequently serve juveniles than adults. To the extent that diversionary restorative justice continues to be used more frequently for youth than for adults, it may generate a smaller decrease in incarceration than it would if it were used for adults, who are probably more likely to be incarcerated for a given offense.

On the whole, restorative justice is rarely used as a way to divert offenders away from some form of incarceration.<sup>5</sup> Among the case study programs reviewed for this report, probation was the most commonly avoided sanction. To the extent that counties use short-term detention as a sanction for technical violations of probation, then reducing probation caseloads could conceivably reduce the number of technical violations and hence average daily populations of county detention

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<sup>5</sup> Note that the use of restorative justice for diversion from a traditional court trial does not preclude the use of incapacitation as a form of sanction or public safety measure. For example, when restorative justice was used – instead of prosecution – to resolve a homicide case in Florida in 2010, the agreement developed by key stakeholders to the crime – including the victim's parents, offender, offender's parents, and the assistant state attorney – required the offender to serve 20 years in prison and 10 years on probation. Murder in Florida would otherwise likely have carried a life sentence (Tullis, 2013). Hence, while diversion to restorative justice did not avoid incarceration, it did allow the offender to spend less time in prison.



facilities.<sup>6</sup> However, the magnitude of such an effect will depend on local procedures for responding to technical violations.

### ***Mechanism 3: changing offenders' future behavior***

To the extent that participation in a restorative justice diversion program reduces offenders' likelihood of reoffending relative to conventional justice system processing, then use of restorative justice could prevent their future incarceration by preventing their future offending. However, this postulate only holds if the prevented future offenses are of a high enough severity to yield some time in county or state custody for the offender. For example, reducing the offending behavior of a juvenile who repeatedly commits low-level misdemeanors, would likely not prevent his incarceration as it is typically not used as a sanction for juvenile misdemeanors. In contrast, if restorative justice diversion is successfully used for a low-level misdemeanor case when the offender would have otherwise gone on to commit high-level felonies, then the use of restorative justice has prevented the offender's future incarceration.

### ***Potential impact on racial and ethnic disproportionalities***

The overrepresentation of certain racial and ethnic groups in the justice system relative to their size in the total population, referred to as "racial and ethnic disproportionalities", is a widespread concern in the justice system. Diversion of any form gives offenders the opportunity to prematurely exit the justice system. Hence, those who are diverted avoid certain contacts with the justice system, such as appearing in court, being on probation, or serving time in jail. Diversion programs are also often accompanied by services or referrals to community resources. So, from the perspective of the offender, diversion is almost always preferable to further justice system contact.

Jurisdictional differences and the high degree of discretion in the granting of diversion opportunities throughout California, inherently raise equity concerns, particularly with respect to race and ethnicity. Thus, any expansion of diversion opportunities has the possibility of altering disproportionalities in California's justice system. The following three factors would influence the direction and magnitude of this potential change: (1) the demographic characteristics of communities in which restorative justice diversion programs are located, (2) the eligibility criteria for such programs, (3) and the degree of subjectivity and discretion in the determination of offenders' suitability for restorative justice.

### ***Factor 1: demographic characteristics of communities in which restorative justice diversion programs are located***

To the extent that the initiation of a restorative justice diversion program expands access to diversion, then the demographics of the groups for whom it creates diversion opportunities will be conditional on the underlying demographics of the community in which the program exists. For example, if restorative justice

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<sup>6</sup> California's public safety realignment shifted responsibility to for post-release supervision of low-level felons from state parole to county probation. As a result, most probation and parole violators now go to county jails instead of prison.

diversion programs are only launched in counties that are disproportionately White, then – even if the program does not increase within-county racial and ethnic disproportionalities – it could still increase statewide disproportionalities by increasing access to diversion for Whites relative to other racial groups, simply by virtue of the community it serves. The realm of school discipline gives some indication that this factor is a legitimate concern. Payne and Welsh (2013) found that schools with higher proportions of Black students are less likely to use restorative justice techniques in school discipline.

***Factor 2: eligibility criteria for restorative justice programs***

Eligibility for restorative justice programs is typically determined by objective criteria such as age, type of offense committed, and number of prior offenses. To the extent that disproportionalities vary across these criteria, restorative justice programs could either increase or decrease disparities in access to diversion. For example, programs often restrict eligibility to offenders with zero or a limited number of prior offenses. However, racial and ethnic biases in other areas of the criminal justice system, from policing to sentencing, could cause non-White offenders to have higher numbers of prior offense (and thus be less likely to be eligible for diversion) simply by virtue of their race. Or, if Whites are more highly represented among offenses considered eligible for a given restorative justice program, then that program could increase the rate of diversion for Whites relative to other groups.

***Factor 3: degree of subjectivity in determination of offenders' suitability for restorative justice***

To be deemed suitable for restorative justice programs, offenders must demonstrate the capacity to reflect and to be accountable to their victim, their community, and themselves. Determination of such capacity lends itself to subjectivity. Hence, suitability determination is vulnerable to 'implicit bias', a term that refers to the attitudes or beliefs – often based on stereotypes – that affect peoples' understanding, actions, and decisions without their awareness.

Research on implicit bias and race has revealed that Black youth in the juvenile justice system are viewed as less innocent, less child-like, and even less human than children of other races (Goff, Jackson, Di Leone, Culotta, & DiTomasso, 2014 & Rattan, Levine, Dweck, & Eberhardt, 2012). A study of capital cases found that adult defendants with White victims were more likely to be sentenced to death if they had a stereotypically black appearance (Johnson, Eberhardt, Davies, & Purdie-Vaughns, 2006). The apparent pervasiveness of implicit bias in justice system decision-making and subjectivity in the determination of restorative justice suitability could exacerbate disproportionalities within the justice system. Indeed, several restorative justice program directors interviewed for this report expressed this concern. Empirical evidence also raises concern about disparities in selection for restorative justice diversion programs. Rodriguez (2005) finds that Black and Latino youth were less likely to be referred to an Arizona restorative justice program, relative to White youth when controlling for age, gender, schooling status, offense type, and number of prior offenses.

### Potential impact on justice system return on investment

If viewed through the lens of economic theory, offenders' involvement with the justice system can be thought of as a series of transactions, including: arrest, prosecution, probation, incarceration, etc. Each of these transactions poses a cost to taxpayers. The total operational cost of one offender's pathway through the justice system is the sum of the costs of all the transactions he or she incurs from entry to last interaction with the system.

Throughout each offender's pathway through the justice system, the government attempts to 'purchase' – via investment of resources in justice system agency and court operations – some amount of two outcomes that have positive value to society: victims' benefits and reduced future crime. The size of this investment and value it returns are discussed in turn below.

In evaluating the return on investment of a program, it is important to consider the justice system transactions and outcomes, which *would have occurred* in the absence of the program, or under 'business as usual' circumstances. This is known as the 'counterfactual,' or the state of the world had the program or policy intervention – in this case, diversion to restorative justice – not taken place.

The counterfactual to restorative justice diversion programs will vary by jurisdiction and by individual case. However, the set of possible counterfactual scenarios can be divided into two general categories: one in which the offender – in the absence of the program – would have been diverted and the other in which the offender – in the absence of the program – would have been processed through the criminal or juvenile justice system.

For example, the Restorative Community Conferencing program in Alameda County and the Make it Right program in San Francisco target youth who would have otherwise had a petition filed against them, had the petition sustained in court, and likely received probation (Y. Ankobia, personal communication, February, 25, 2016; T. Anderson, personal communication, April 8, 2016). In contrast, youth who participate in Restorative Resources' teen program in Sonoma County would have likely received diversion (not involving restorative justice) or a deferred entry of judgment in the absence of the program (S. Kinder, personal communication, February 17, 2016). Yolo County's Neighborhood Court program allows adult misdemeanants to receive a pre-charge diversion when, in the absence of the program, they would likely have received a post-charge diversion (C. Bulkeley, personal communication, February 18, 2016).

### Potential cost savings

Like other justice system transactions, diversion programs require an investment from taxpayers in the form of program operational costs. However, because they allow offenders to exit the system early, diversion programs may yield cost savings as a function of the conventional justice system proceedings that they supplant. Restorative justice programs that serve offenders who would have otherwise been diverted (not been diverted) are likely to allow for a relatively smaller (larger) decrease in taxpayer investment. However, differences in the operational costs of the programs themselves may reduce this gap in operational cost savings. Programs serving higher level offenders may be more costly to operate

if the restorative justice conferences are more time consuming or require paid facilitators as opposed to volunteers.

In addition to the counterfactual to which they are being compared, operational cost savings of restorative justice programs depend on the scale of program implementation. Government costs can be categorized as variable, fixed, and step-fixed. Variable costs – such as materials or supplies that are consumed during a single restorative justice process – change in direct proportion to the number of offenders served by the program. Step-fixed costs – such as the salaries of program staff – remain constant until the program caseload rises above a certain threshold. Fixed costs – such as building rent – stay constant regardless of the number of juveniles served.

Restorative justice diversion programs operate simultaneously to the traditional justice system. They typically make incremental changes in how offenders are processed. They do not – and cannot – prevent traditional court processing for *all* offenders. Hence, restorative justice diversion programs cannot reduce justice system fixed costs. The more offenders a diversion program serves, the more justice system variable and step-fixed costs it supplants.

For example, when one juvenile is given a pre-file diversion as opposed to adjudication and sentence to probation, variable costs (such as materials and supplies) will be affected. But one juvenile case will not sufficiently change workload to allow the district attorney's office to employ one less attorney or the probation department to employ one less probation officer. However, if an increment of, say 100 out of 500, juveniles are given pre-file diversion as opposed to adjudication and sentence to probation, variable costs *and* step-fixed costs may be affected. That is, with a decrease of 100 cases, the probation department may be able to employ fewer probation officers.

Alameda County downsized from four full-time juvenile courtrooms to three. This caseload reduction was in part due to the ramp-up of its Restorative Community Conferencing program, which now diverts approximately 100 youth per year (A. Danzig, personal communication, April 7, 2016).

Finally, it is important to note that cost savings from restorative justice diversion programs will not necessarily accrue to tax payers in the form of reduced justice agency expenditure. A reduction in the justice system workload could simply translate to a less to overburdened system.

### *Value created by the investment*

Crime causes tangible and intangible costs to victims. Tangible costs include the value of damaged or stolen property, medical expenses, and lost income due to temporary or permanent reduction of victims' ability to work. Intangible costs include victims' pain, suffering, and lost quality of life as a result of crime. McCollister, French, and Fang (2010) estimate the following victims' costs per crime (Table 2). These cost estimates are based on many assumptions and are only intended as tools for comparing policy outcomes.

**Table 2. Estimated victims' costs per crime in 2008 dollars**

	Tangible costs to victims	Intangible costs to victims	Total costs to victims
Murder	\$737,517	\$8,442,000	\$9,179,517
Rape/Sexual Assault	\$5,556	\$199,642	\$205,198
Aggravated Assault	\$8,700	\$95,023	\$103,723
Robbery	\$3,299	\$22,575	\$25,874
Motor Vehicle Theft	\$6,114	\$262	\$6,376
Arson	\$11,452	\$5,133	\$16,585
Houshold Burglary	\$1,362	\$321	\$1,683
Larceny/Theft	\$480	\$10	\$490

Source: McCollister, French, & Fong, 2010.

Note: McCollister, French, & Fong consider stolen property, vandalism, forgery and counterfeiting, embezzlement, and fraud to have zero or negligible costs to victims.

To the extent that restorative justice processes assuage some portion of tangible or intangible costs to victims after the occurrence of a crime, they create value for society. Restorative justice processes may assuage tangible costs by increasing restitution payment rates and allowing for more flexible, non-monetary forms of restitution such as labor hours. By giving victims the opportunity to meet with their offender, restorative justice processes may alleviate victims' intangible costs such as lingering trauma, fear, anger, and depression. In the majority of cases, restorative justice processes will likely not repair 100 percent of harm caused by crime. The proportion of victims' costs that can be ameliorated via the use of restorative justice is unknown and likely varies substantially by individual case. Hence, the figures in Table 2 can be thought of as upper bounds on the dollar value of reparative and restorative benefits to victims who participate in restorative justice processes.

To the extent that it reduces recidivism, restorative justice generates several benefits to society. For every crime prevented, costs to both victims and government agencies are avoided. Dollar value estimates of victims' costs of crime are presented in Table 2. Because victimization is avoided completely, these costs are avoided in full, rather than in part as when harm is repaired after the fact.

Government costs avoided via recidivism reduction include those of arrest, detention, supervision, and court processing. Again, programs that operate at a relatively larger (smaller) scale may see larger (smaller) cost savings. For example, if by changing offender behavior, a restorative justice diversion program prevents one percent of crimes in a given jurisdiction, it will may only save justice system variable costs. If it prevents, ten percent of crimes in a given jurisdiction, it may save step-fixed costs.

#### *Insights from benefit-cost analyses studies*

As described above, the factors that influence the return-on-investment of restorative justice diversion programs relative to conventional justice system

processing are numerous and complex. To quantify and monetize benefits and costs of the California case study programs reviewed for this report would require much information that is unavailable. However, benefit-cost analyses conducted by the Washington State Institute for Public Policy (WSIPP) on restorative justice programs, diversion in general, and probation provide useful insight. All program effect sizes used in WSIPP benefit-cost analyses are produced via meta-analysis<sup>7</sup> of rigorous program evaluation studies. The results of WSIPP's benefit-cost analyses are summarized in Table 3.

**Table 3. Washington State Institute for Public Policy benefit-cost analysis results**

	<b>Program</b>	<b>Benefits minus costs (net present value)</b>	<b>Chance benefits will exceed costs</b>
Juv eniles	Diversion without services versus traditional court processing	\$9,106	97%
	Diversion with services versus traditional court processing	\$4,659	97%
	Victim offender mediation	\$2,927	80%
	Intensive supervision (probation)	-\$12,615	0%
	Diversion with services versus simple release	-\$1,220	40%
Ad ults	Restorative justice conferencing	\$3,236	71%
	Intensive supervision (surveillance and treatment)	\$3,209	72%
	Intensive supervision (surveillance only)	-\$7,611	6%

Source: Benefit Cost Results, Washington State Institute for Public Policy. Retrieved on May 2, 2016 from <http://www.wsipp.wa.gov/BenefitCost>.

Note: The chance benefits will exceed costs is calculated by WSIPP using Monte Carlo simulation. So the percentages reported in this table are the percent of 10,000 runs of the benefit-cost model (allowing assumptions to vary for each) in which benefits exceed costs.

Among the results for juveniles, intensive supervision via probation was found to pose strikingly large net costs to society. In WSIPP's meta-analysis of studies on intensive juvenile supervision, the average number of monthly contacts

<sup>7</sup> Meta-analysis is a statistical technique used to combine the effect sizes and standard errors from several studies into a single weighted average.



was 37 and typical conditions of supervision included urine testing and required participation in treatment. Thus, this offender population is likely toward the more serious or high-needs end of the spectrum of offenders typically served by restorative justice diversion programs. However, the high net costs of intensive surveillance suggest a large margin for improvement in cost-effectiveness when restorative justice diversion programs do divert offenders away from this type of surveillance.

On the other end of the juvenile offender spectrum are those who are typically candidates for release or diversion. For this population, WSIPP's results suggest that higher-level than necessary interventions – often referred to as “net-widening”<sup>8</sup> – generate more costs than benefits. If a juvenile is eligible for a simple release or diversion without services, adding services was less efficient, whether the comparison was diversion without services or traditional court processing. “Services” in these studies typically referred to treatment programs. So, it's not clear that restorative justice is a “service” in this light, as it is not a treatment program, although it could result in an offender seeking treatment. Thus, restorative justice diversion should not be considered the same as “diversion with services.” However, these benefit-cost results do suggest that restorative justice diversion may not be cost-effective for the lowest level juvenile offenders for whom a simple release would have otherwise been chosen.

Among adults, intensive surveillance via probation was found to pose net costs to society. However, when treatment was added to intensive surveillance, probation was found to have net benefits for society. Programs included in WSIPP's meta-analysis of intensive surveillance averaged 12 face-to-face contacts per month and were delivered as a probation sentence, in lieu of incarceration, or as a conditional release from incarceration. Restorative justice conferencing for adults produced about the same magnitude of net benefits as intensive surveillance with treatment. However, it's not clear from WSIPP's analysis whether the offenders targeted by these two interventions are comparable.

While WSIPP's results suggest that use of restorative justice with youth and adults can create net benefits for society, it is important to remember that numerous contextual factors, including justice system context, program implementation fidelity, and scale, can affect the return-on-investment of diversion programs. Hence, actual net benefits of restorative justice diversion programs may vary widely.

### Summary of potential impacts

High rates of recidivism indicate that there is substantial room for reducing the crime rate by changing offenders' future behavior. The high proportion of offenders who plead guilty prior to trial suggests that a large number of cases would

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<sup>8</sup> The term “net widening” refers to administrative or programmatic changes that cause a larger number of people to be under the control of the criminal justice system (i.e. “widening the net” of social control). For example, introduction of diversion with services and treatment targeted at juveniles who would have otherwise simply been counseled and released would be considered “net widening.” The same intervention targeted at juveniles who would have otherwise received probation would not be considered “net widening” (Leone, n.d.).

meet a key criterion for diversion to restorative justice, which is that there must be no question of fact or guilt (Taylor, 2013). However, the extent to which these offenders would be willing and able to participate in a restorative justice process if it were made available on a large scale is not known. On balance, research suggests that restorative justice can reduce reoffending, particularly with violent or serious crimes that have clearly identifiable victims. However, lack of knowledge about how the effectiveness of restorative justice varies by more specific contextual factors limits our ability to strategically scale restorative justice practices in their most high potential environments. Finally, the effects of restorative justice on future behavior of victims or of members of the general public are not known. The preponderance of evidence suggests that expanded use of diversionary restorative justice in California would probably reduce crime on the margin, though considerable uncertainty about the magnitude of such a reduction remains.

To my knowledge, there are no restorative justice programs in California that divert offenders who would have otherwise gone to state incarceration facilities. Two of the nine case study programs reviewed for this report do appear to be diverting a small minority of offenders from county facilities. Though, I do not have data with which to systematically assess the extent of this practice statewide. On the whole, diversionary restorative justice programs seem to be diverting many more offenders from probation than from incarceration. To the extent that counties use flash incarceration as a response to probation violations, diverting offenders from probation could reduce incarceration at the county level. The preponderance of evidence suggests that broader use of diversionary restorative justice would reduce the average daily population of incarceration facilities, on the margin. Though the magnitude of such an effect is unclear, it would likely be larger for county facilities than for state facilities.

To the extent that diversionary restorative justice reduces incarceration, it should benefit communities of color who are disproportionately incarcerated. However, expanded access to diversion may disproportionately advantage Whites if restorative justice diversion programs are more frequently started in majority White communities or if program eligibility criteria disproportionately exclude non-Whites. In sum, both the magnitude and direction of impact of broader use of restorative justice practices on racial and ethnic disproportionalities will depend on where and with whom it is used.

Similarly, whether restorative justice diversion programs increase or decrease the return on investment of justice system expenditures will depend on their design features. While there are several interacting factors that determine programs' return on investment, two stand out as particularly influential. First, restorative justice programs that serve offenders who would have otherwise *not* been diverted are likely to allow for relatively higher cost savings. Second, programs that serve a large enough portion of overall offenders such that they can offset justice system step-fixed costs and not only variable costs will generate more cost savings.

In sum, there is still much unknown about the mechanisms through which use of diversionary restorative justice affects California's crime rate, incarceration rate, racial and ethnic disproportionalities, and justice system return on investment.



However, the preponderance of evidence suggests that broader use of diversionary restorative justice would probably reduce the crime and incarceration rates, *on the margin*. Yet, I cannot predict the magnitude of those changes or indeed whether they would be substantial. In contrast, it is not clear whether broader use of diversionary restorative justice would increase or decrease racial and ethnic disproportionalities or justice system return on investment. Whether use of restorative justice practices at the micro-level will have a net effect at all on disproportionalities or return on investment will likely depend on how such programs are designed.

## **VI. Themes in county-level implementation challenges**

Justice agency staff and restorative justice diversion program directors interviewed for this report shared several common challenges to implementation. These are summarized below.

### ***The concept of restorative justice can meet resistance***

Restorative justice is a “paradigm shift” that can be counterintuitive for many people who have spent their careers in the conventional justice system. Because justice system staff are not typically made aware of restorative justice through standard training, restorative justice service provider agencies must regularly educate new and experienced justice system staff in the basic concepts and practices of restorative justice.

To the extent that they allow systems to divert offenders – such as those who have committed higher-level offenses – who would not previously have been diverted, restorative justice diversion programs require those in power to relinquish some amount of control. This release of power to a service provider requires a great deal of mutual trust between the referring justice system agency and the service provider. Getting and maintaining buy-in from all the necessary decision-makers – including judges, district attorneys, public defenders, police leaders, probation leaders, etc. – can be a substantial obstacle to launching restorative justice diversion programs.

### ***Navigating the justice system is difficult for community-based organizations***

Because of their unconventional nature, restorative justice programs are often first championed by community-based organizations. Furthermore, expertise and knowledge in developing and operating restorative justice diversion programs often comes from outside the justice system. However, lack of justice system insider knowledge and connections can be a challenge for community-based organizations as they try to build relationships and trust with the web of agencies that make up the justice system. Furthermore, transaction costs may arise when the role of restorative justice service provider is outsourced to a community-based organization. For example, community-based organizations cannot run recidivism checks on their program participants. They must rely on justice system agencies to perform this critical function for them (J. Ellis, personal communication, February 18, 2016).

### *Program benefits may not accrue to the decision-maker*

Potential cost savings can be a powerful motivating factor behind the decision to launch a new program. However, to the extent that restorative justice diversion programs can drive cost savings or workload reductions, these efficiencies do not necessarily accrue to the decision-making entity or may not accrue for several years after program implementation. For example, a restorative justice diversion program could add workload to a district attorney's office if screening offenders for restorative justice eligibility and suitability is more burdensome than the level of screening that would have been done in the absence of the program. However, the same program could generate cost savings for the probation department if it increases the number of youth who are diverted and thus do not receive time on probation. Or, perhaps the program generates future savings to tax payers – but not to justice system agencies – by increasing the likelihood that juveniles graduate from high school and enter the labor force. Hence, even if a program would generate net benefits for society, the distribution and timing of benefits may prevent it from being started.

### *Economies of scale may create net costs during the start-up phase*

Economies of scale may mean that programs do not generate cost savings until they reach a certain scale of implementation. If a restorative justice diversion program serves a small number of offenders relative to the jurisdiction's overall caseload, it will only offset justice system variable costs. Thus, on net, the program may pose added workload and cost to justice system agencies. However, if the program serves a relatively large number of offenders, it could offset justice system variable costs and some step-fixed costs. At this scale of implementation, justice system agencies may begin to experience workload reductions and/or cost savings as a result of the program. Hence, upfront net cost may make it difficult for justice system decision-makers to justify additional spending to launch restorative justice diversion programs, particularly if they do not realize that economies of scale may yield cost savings if the program is scaled up.

Several of the case study programs have circumvented these challenges to internal funding by finding outside sources of funding. Restorative Resources, Community Works West, and Centinela Youth Services reported that state Title II funding was instrumental in helping them start or continue to operate juvenile restorative justice diversion programs in Sonoma, Alameda, and Los Angeles Counties, respectively. Restorative Resources receives funding for its young adult restorative justice diversion program from the AB 109 Community Corrections Partnership. The Yolo County District Attorney's Office received an Edward Byrne Memorial Justice Assistance Grant (JAG) grant from the State to help expand its Neighborhood Court program. The California Conference for Equality and Justice in Los Angeles County and the Community Justice Conferencing program in Fresno County have received funding from the California Endowment, though the Fresno County Probation Department also financially supports the Community Justice Conferencing program. San Francisco's Make it Right program received funding through the San Francisco Department of Children, Youth and Their Families and the Zellerbach Family Foundation. The Reedy Peace Building Initiative, which uses

all volunteer facilitators, is able to operate without outside funding, though it did require redirecting of some staff time and funds from the Reedley Police Department, the Kings County Unified School District, and the Mennonite Central Committee.

## VII. Options and recommended guidelines for future state policy

At the outset of this report, I posed the following question: is the current decentralized and entirely locally directed development of restorative justice practices in the context of pre-sentence diversion on track toward optimal use of such practices or could state intervention help to guide development of such practices toward their optimal use? I define “optimal use” of diversionary restorative justice as one that reduces the crime rate, reduces the incarceration rate, reduces racial and ethnic disproportionalities, and improves return on investment (including benefits to both taxpayers and victims).

While research findings on outcomes for individual participants in restorative justice tend to be positive *on average*, there is little known about how the effectiveness of restorative justice varies by specific contexts. Furthermore, there is no body of research evidence that allows for causal conclusions about whether diversionary restorative justice as a *policy solution* can bring about desired system-level changes.

In the absence of such policy evaluation research, I have tried to forecast the impacts of broader use of diversionary restorative justice practices by identifying the mechanisms of causal connection between micro-level restorative justice practices and California’s crime rate, incarceration rate, racial and ethnic disproportionalities, and justice system return on investment (Section V). However, much uncertainty remains.

In sum, a *fine-tuned* path toward optimal use of diversionary restorative justice practices in California cannot be specified at this juncture. Yet, my analysis indicates that program design features have important implications for the effect of diversionary restorative justice on racial and ethnic disproportionalities and return on investment. It has also revealed several implementation challenges faced by localities wishing to implement diversionary restorative justice (Section VI). Finally, it is likely that improved research and data collection on current restorative justice programs could improve the State’s ability to guide future restorative justice practices toward optimal use. With these findings in mind, I have developed the following state policy options and guidelines to support the quality of diversionary restorative justice programs.

### State policy options

Below, I present options for the State to support the quality and potential impact of county restorative justice diversion programs (to the extent that counties *choose* to implement them) through infrastructural supports. Note that these policy options are not mutually exclusive. Also, they should be subject to further analyses – such as cost estimation, political feasibility, and implementation feasibility assessments – before being selected.

***Option #1: Consider providing start-up funding and/or expertise for counties wishing to implement restorative justice diversion programs.***

As explained in Section VI, funding remains a central obstacle to implementing restorative justice diversion programs. To the extent that restorative justice diversion programs can drive cost savings or workload reductions, these efficiencies do not necessarily accrue to the decision-making entity or may not accrue for several years after program implementation. Thus, even programs with potentially high social return-on-investment may never get off the ground for lack of start-up money. The State could help to provide counties with some of these resources.

Similarly, counties that want to start restorative justice diversion programs may not be able to do so if they lack expertise in restorative justice practices. In this case, the State could pay staff from counties with successful restorative justice programs to provide technical assistance to staff in counties wishing to start new programs.

***Option #2: Support rigorous evaluations of outcomes and impacts.***

As explained in Section IV, a simple comparison of mean outcomes for restorative justice diversion program participants and non-participants will produce a biased estimate of the effect of the program. Only studies using random assignment or quasi-experimental designs will produce an unbiased estimate of the causal effect of participation in restorative justice diversion programs on victim and offender outcomes. Providing funding or data infrastructure for rigorous program evaluations is one way that the State could help to improve future uses of restorative justice diversion. In particular, there is a notable lack of studies that rigorously measure the impact of restorative justice policies or programs at the community or jurisdictional level, rather than the individual level.

***Option #3: Track racial and ethnic disproportionalities***

The Board of State and Community Corrections has a subcommittee focused on reducing racial and ethnic disproportionalities in California's juvenile justice system and has provided grants and technical assistance to several counties to support efforts to reduce disparities. However, despite these broad ongoing efforts, the State may consider investigating whether and how restorative justice diversion uniquely affects disproportionalities. For example, does the subjectivity inherent in the determination of suitability for restorative justice leave this type of diversion particularly vulnerable to the effects of implicit bias? Do typical eligibility criteria for restorative justice diversion programs exacerbate disparities? Does the current data infrastructure even allow for this information to be tracked?

***Option #4: Review justice system personnel standards and training***

Restorative justice is a paradigm shift from the norms and practices embedded throughout the conventional justice system. Yet, implementation of restorative justice diversion programs requires buy-in from stakeholders and decision-makers inside the justice system. It also requires the day-to-day work of justice system staff who interface with restorative justice diversion programs in

their daily work. The State may consider reviewing its standards and training for justice system staff (such as the Peace Officer Standards and Training and the Probation Officer Core Course) to assess whether it can better prepare these workers to support county efforts should they find themselves interfacing with a restorative justice diversion program during their career. Such improvements in training could conceivably both improve program implementation fidelity and increase program efficiency if staff do not have to be trained in the basics of restorative justice when they arrive.

### **Guidelines for state policy**

If the State pursues any of the options above – or takes any active stance on restorative justice diversion – it should be wary of potential unintended consequences of its actions. Legislative compromises may lead to the prohibition of restorative justice for certain groups or offenses, inadvertently running counter to research findings or restricting communities from innovating or adapting restorative justice practices to local needs or culture. I recommend the following two guidelines for state-level actions, should legislators wish to influence policy or practice pertaining to diversionary restorative justice in California.

#### ***Guideline #1: Avoid policies that could hinder the use of restorative justice with higher-level crimes or with adults.***

Research suggests that restorative justice is most effective in reducing recidivism with serious or violent crimes in which there is an identifiable victim. Also, higher-level crimes are less likely to be diverted in the absence of restorative justice. Hence, expansion of restorative justice to higher-level crimes likely means an expansion of diversion, which is likely more cost-effective than expansion of restorative justice to crimes that would have otherwise been diverted. Furthermore, victims of higher-level crimes may have more room to benefit from restorative justice relative to victims of lower-level crimes, if the lower-level crimes even have victims at all. Thus, limiting the use of restorative justice diversion to lower-level crimes could limit its potential effectiveness, cost-savings, and benefits to victims. However, it's important to note that use of restorative justice with higher-level crimes may entail greater risk (along with greater rewards) and thus require more expertise, including paid (or highly trained volunteer) facilitators.

On the other hand, despite the above reasoning, use of restorative justice with lower-level offenses is not necessarily a bad strategy. Most crimes are misdemeanors. So using restorative justice to address misdemeanors – as long as no net-widening<sup>9</sup> occurs – may allow jurisdictions to achieve economies of scale. However, if pursuing a high-volume strategy, diversion of low-level adult offenders

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<sup>9</sup> The term “net widening” refers to administrative or programmatic changes that cause a larger number of people to be under the control of the criminal justice system (i.e. “widening the net” of social control). For example, introduction of diversion with services and treatment targeted at juveniles who would have otherwise simply been counseled and released would be considered “net widening.” The same intervention targeted at juveniles who would have otherwise received probation would not be considered “net widening” (Leone, n.d.).

(particularly young adults who commit a disproportionate amount of crime) should be considered.

In sum, it's not clear exactly what types of offenses or offenders will yield the greatest effectiveness or efficiency in a restorative justice diversion program. However, it is clear that as effectiveness and efficiency are concerned, restorative justice diversion should not be constrained to the realm of low-level juvenile crime.

***Guideline #2: Avoid policies that push access to restorative justice diversion behind layers of justice system transactions.***

The earlier diversion occurs in the path an offender takes through the justice system, the more justice system transactions he or she avoids for a given offense and the larger the cost savings, all else held equal. So, to the extent that local decision-makers are comfortable using restorative justice to divert offenders prior to booking or prior to filing petitions or charges against them, state policy-makers should avoid policies that would hinder their ability to do so.

## **VIII. Conclusion**

In this report, I have provided analyses of potential state-level impacts of locally implemented diversionary restorative justice (Section V). While much uncertainty remains, the preponderance of evidence suggests that broader use of diversionary restorative justice would decrease California's crime and incarceration rates (more likely for county than state facilities), at least on the margin. In contrast, the direction of a net effect (if any) of broader use of diversionary restorative justice on justice system racial and ethnic disproportionalities and return on investment will likely depend on programs' locations and eligibility rules and programs' scale and counterfactuals, respectively.

To the extent that counties implement diversionary restorative justice programs, on balance, their efforts will probably support rather than undermine crime and incarceration reduction in California. However, depending on their program design choices, well-intended county efforts could inadvertently increase justice system racial and ethnic disproportionalities or decrease justice system return on investment. Furthermore, even if restorative justice diversion programs would produce net benefits for society, they may never be implemented due to several common implementation challenges faced by counties (Section VI).

I have developed the following state policy options to help ease implementation challenges and support the quality and potential impact of county restorative justice diversion programs:

- Option #1: Consider providing start-up funding and/or expertise for counties wishing to implement restorative justice diversion programs.
- Option #2: Support rigorous evaluations of outcomes and impacts.
- Option #3: Track racial and ethnic disproportionalities.
- Option #4: Review justice system personnel standards and training.

Finally, to the extent that legislators wish to influence the development of diversionary restorative justice in any way, they should bear in mind the following



guidelines to avoid unintentionally hindering the effectiveness or efficiency of restorative justice diversion programs:

- Guideline #1: Avoid policies that could hinder the use of restorative justice with higher-level crimes or with adults.
- Guideline #2: Avoid policies that push access to restorative justice diversion behind layers of justice system transactions.

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