

**First Supplement to Memorandum 2022-02
Crime Victims’ Rights and Services
Panelist Materials**

Memorandum 2022-02 gave an overview of victims’ rights in California and discussed areas of law where revisions of the Penal Code could more directly center and address crime victims’ needs. This supplement presents and summarizes written submissions from panelists scheduled to appear before the Committee on February 23, 2022.

Exhibit

Crime Victim and Survivor Rights and Services

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- Rachel Michelin, President & CEO, California Retailers Association B

Victim Compensation and Restitution

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Discussion Panel 1 Crime Victim and Survivor Rights and Services

Mariam El-Menshawi, Director, California Victims Legal Resource Center

The California Victims Legal Resource Center is mandated by the Penal Code to operate the state's confidential 1-800-VICTIMS line and provide information and referrals to services for crime victims, their families, and advocates. Ms. El-Menshawi's submission lists articles on the importance of victims' rights and how to improve them.

Rachel Michelin, President & CEO, California Retailers Association

Ms. Michelin's submission outlines the California Retailers Association's four-part strategy to address organized retail crime and theft: dismantle the infrastructure behind organized theft crimes by providing additional state funding to law enforcement, disrupt the digital black market for stolen goods by implementing online marketplace transparency reforms, deter serial theft by strengthening laws against repeat offenders, and divert repeat offenders into rehabilitation programs as an alternative to jail.

Discussion Panel 2 Victim Compensation and Restitution

Delaney Green, Clinical Teaching Fellow, UC Berkeley Policy Advocacy Clinic

Ms. Green's submission outlines research conducted by Debt Free Justice California. The research included over 30 Public Records Act requests, a survey of more than 100 people paying restitution, and a review of laws and literature related to restitution. The researchers found that 78% of the people surveyed that owed restitution were also crime survivors. Among other recommendations, the submission recommends ending commissary garnishments for incarcerated people as a method to collect restitution, and limiting restitution to losses not covered by insurance.

Aswad Thomas, National Director, Crime Survivors for Safety and Justice

Mr. Thomas' submission offers insight from Crime Survivors for Safety and Justice (CSSJ), an organization that represents 12,000 crime survivors in the state of California. CSSJ believes that all survivors of violence should have a right to trauma recovery, and that the state must do more to address the scale of the need that exists and end discriminatory barriers to support. The submission outlines several recommendations to make financial support more accessible to victims, including allowing alternative reporting methods, ending denials for lack of cooperation with law enforcement, and creating an emergency cash assistance program to directly support crime victims.

Dr. Gena Rodriguez Castro, Assistant Professor, University of San Francisco & Director, Survivor Policy, Prosecutors Alliance

Dr. Rodriguez Castro's submission explains that securing compensation in the aftermath of a crime can be difficult and overwhelming for crime survivors. It also outlines two recent surveys conducted by Dr. Castro that measured survivors' access to and utilization of financial compensation after victimization. The survey results highlight several challenges with compensation raised by survivors, including lack of knowledge about compensation as a resource, eligibility rules that exclude victims from marginalized communities, problems with the payer of last resort and reimbursement model, and low reimbursement rates.

**Discussion Panel 3
Restorative Justice**

Steve Raphael, Professor of Public Policy, UC Berkeley

Professor Raphael's submission is a Policy Brief from the California Policy Lab that describes the impact of the Make-it-Right restorative justice conferencing program on recidivism. Utilizing a randomized control trial, researchers found that participants in the program, which served youth in San Francisco County who would have otherwise faced relatively serious felony charges, were 44% less likely than the control group to be rearrested within six months. Notably, the study also found that the reduction in arrests persisted even four years after the initial offer of participation.

Jeff Reisig, District Attorney, Yolo County & President, California District Attorney's Association

Ryan Couzens, Assistant Chief Deputy District Attorney, Yolo County

The submission from the Yolo County District Attorney's Office is a draft bill to create a victims' right to restorative justice. The bill explains the restorative justice process and cites research findings that restorative justice results in decreased trauma and increased satisfaction for crime victims while reducing recidivism. The bill gives crime victims the right to participate in a restorative justice program before trial if such a program has been developed by the prosecutor, ensures confidentiality of the process, and excludes certain offenses from its coverage, including murder, sexual assault against minors, domestic violence, arson, and human trafficking.

Mike Young, Assistant Chief, CDCR Office of Victim & Survivor Rights & Services

Assistant Chief Young's submission describes the mission and work of CDCR's Office of Victim and Survivor Rights and Services (OVSRS). In addition to notifying victims of release dates and parole hearings, and collecting restitution from people in prison, OVSRS facilitates post-adjudication restorative justice programs. The Victim-Offender Dialogue program is one such program that uses volunteer facilitators to prepare victims, survivors, next of kin, and people convicted of crimes for face-to-face dialogues about the impacts of the crime. The Accountability Letter Bank uses approved program facilitators to assist people serving prison sentences in writing apology letters to their victims.

Cymone Fuller, Co-Director, Impact Justice's Restorative Justice Project

Ms. Fuller's submission describes the role of Impact Justice in providing training and technical assistance to community-based organizations and legal systems seeking to develop restorative justice programs. The submission explains the restorative justice conferencing process and that restorative justice is most effective for felonies and high-level misdemeanors that have an identifiable person harmed, like robbery, car theft, and assault/battery.

Respectfully submitted,

Rick Owen
Senior Staff Counsel

Exhibit A

Mariam El-Menshawi, Director, California
Victims Legal Resource Center

- Why do Victims Need Rights?
 - Paul G. Cassell, Crime Victims' Rights. Utah Law Faculty Scholarship. 33. (2017)
 - National Institute of Justice Research in Brief, The Rights of Crime Victims- Does Legal Protection Make a Difference. (1998)
 - President's Task Force on Victims of Crime, Final Report of the President's Task Force on Victims of Crime (1982)
- Current State of Victims' Rights
 - Stacy Lee, Crime Victim Awareness and Assistance Through the Decades. National Institute of Justice (2019)
 - Heather Warnken, Real Justice: Victims' Rights Delivered, Report and Recommendations (2012)
 - Roxanna Altholz. Living with Impunity. International Human Rights Law Clinic, UC Berkeley School of Law. (2020)
- Making Rights a Reality
 - Douglas E. Beloof, The Third Wave of Victims' Rights: Standing, Remedy, and Review. BYU L. Rev. (2005)
 - Nat'l Crime Victim Law Inst., Polyvictims: Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization" in the Criminal Justice System, VICTIM L. BULL. Mar. 2013
 - Margaret Garvin & Douglas E. Beloof, Crime Victim Agency: Independent Lawyers for Sexual Assault Victims, 13 Ohio St. J. Crim. L. 67 (2015)

Exhibit B

Rachel Michelin, President & CEO,
California Retailers Association



FACT SHEET

Organized retail crime (ORC) and retail theft are urgent crises that require immediate attention to ensure the safety of our communities.

Sadly, because of rampant and shocking retail theft, neighborhood stores have been forced to reduce hours or even shut down to protect the safety of their employees and local shoppers. Not only does this impact businesses and local economies, it hurts the residents who depend on the goods and services neighborhood stores provide — like groceries, medicine, and everyday household items.

The California Retailers Association is committed to a comprehensive approach that prioritizes the **four Ds** to deter organized retail crime and retail theft.

Dismantle: Governor Newsom and the legislature made an important first step to address organized retail crime by extending funding for the retail crime task force in last year's budget. This year, Governor Newsom announced "The Real Public Safety Plan," which includes over \$300 million per year over the next three years to increase law enforcement presence in retail locations and combat organized retail crime so Californians and small businesses across the state can feel safe. This program goes a long way to **dismantle the infrastructure behind these crimes** with additional state funding to the Organized Retail Crime Task Forces (ORCTF) and other enforcement resources.

Disrupt: In the Digital Age, the "fencing" of stolen goods has become all too easy. By setting up third-party accounts under fake names, ORC rings are exploiting online marketplaces and the anonymity many of them provide to offload their stolen goods. We need to **disrupt the digital black market** by passing common-sense, online marketplace transparency reforms, like Senate Bill 301 (Skinner), that will bring these criminal enterprises out of the shadows.

Deter: Today, many thieves view retail theft as a low-risk/high-reward crime, knowing they face low odds of arrest or serious consequences. This situation only worsens as frustrated business owners and citizens give up on reporting thefts. We need to change the message. By strengthening laws against repeat offenders, we can **deter serial theft** and encourage responsive intervention from law enforcement, retailers, and our communities, providing sentence discretion.

Divert: California's rehabilitation programs for habitual shoplifters are underutilized. We need to strengthen and reform diversion programs so we can **divert repeat offenders** into rehabilitation programs as an alternative to jail — and provide options for these individuals to make better life choices.

Organized retail crime and retail theft have quickly become one of the highest profile and top of mind issues in California. Our focus is to promote policies that will protect retail employees, retail customers and the neighborhoods in which retailers, large or small operate.

Exhibit C

Delaney Green, Clinical Teaching Fellow,
UC Berkeley Policy Advocacy Clinic

February 23rd, 2022.

CRPC- Victim Restitution Panel

Remarks: Debt Free Justice California- Restitution Subgroup, Presented by Delaney Green

- Introduction and Thanks on behalf of DFJC
- Clarifications as needed
 - Clarify that restitution is not limited to compensatory payments, but includes fines, fees, and other unavoidable costs.
- Areas of focus for remarks:
 - Survivor-Payer overlap
 - Who is a crime survivor/ who is a victim
 - Other recommendations
- Our research methods
 - 30+ Public Records Requests, 17 interviews, a survey of 100+ people paying restitution, a scan of restitution related statutes, and a literature review on past restitution research.
- Our findings:
 - HISTORY/NARRATIVE: Other countries use a system that more closely resembles workers compensation. The punitive extremism of our system is distinctly American, and results in crime survivors ultimately bearing the cost of the state's failure.
 - Fines shift accountability to create stable funding for survivors.
 - OVERLAP of SURVIVORS and POTP
 - 78% of people ordered to pay restitution are crime survivors. (DFJC Survey 2021)
 - Cycle of violence and cycle of wealth extraction (Interviews Spring 2021)
 - Survivors w/ past conviction eligibility.
- VICTIM DEFINITION per Cal. Pen. Code §1202.4(k)

- Currently insurance companies, hospitals, corporations and other commercial entities, the motion picture association, and public emergency response agencies (police and fire departments), are considered "victims" and therefore eligible to receive victim restitution. We recommend that insured losses beyond deductibles should not have a "victim" or subsequent restitution order. Similarly, insurance companies that have collected premiums, hospitals that have discharged debt, and police departments should not be collecting restitution.
- REEVALUATE COLLECTION PRACTICES per Cal. Pen. Code § 2085.5(a), 2085.6(a)
 - Harm reduction
 - Friends and Families of incarcerated individualism who in many cases are survivors should not have commissary deposits garnished in any amount.
 - Income deduction floor.
 - Documentation requirements for any collecting entity.

Exhibit D

Aswad Thomas, National Director, Crime
Survivors for Safety and Justice



CRIME SURVIVORS FOR
SAFETY AND JUSTICE

Strengthening Financial Support for Survivors of Violence

Crime Survivors for Safety and Justice (CSSJ), a flagship program of Alliance for Safety and Justice and Californians for Safety and Justice, represents a growing network of more than 90,000 crime survivors across the country and 12,000 California survivors advocating for new safety solutions. CSSJ believes that all survivors of violence should have a right to trauma recovery.

California has taken important steps to improve the delivery of services to crime survivors, and to advance a new public safety agenda rooted in healing. CSSJ has been at the forefront of this work, moving long marginalized survivor voices to the center of this conversation. But with millions of residents impacted by violence every year, the state must do more to address the scale of the need that exists, and end discriminatory barriers to support.

The burden of violent victimization is not borne equally in the United States. Generations of entrenched racism, deliberate divestment and extraction, and structural and state violence have cultivated conditions under which low income people of color, immigrants, people with disabilities, transgender and LGBTQ people, unhoused people, and incarcerated and other justice involved people are significantly more likely to be victims of violent crime.¹ Yet marginalized survivors are more likely to be denied help.²

Nationally, only roughly 1 in 10 survivors of violence receive direct assistance from a victim service agency.³ Californians for Safety and Justice conducted a representative survey of California crime survivors in 2013, and found that younger survivors, and Black and Latinx survivors, were more likely to report being interested in but unaware of services including help applying for compensation, mental health services, and support groups.⁴

¹ Crime Against Persons with Disabilities, 2009-2015 - Statistical Tables. Washington, D.C.: US Department of Justice, Bureau of Justice Statistics.; National Center for Transgender Equality (2017). The Report of the 2015 U.S. Transgender Survey.; Bradford, S.L., Reisner, M.A., Honnold, J.A., and Xavier, J. (2013). Experiences of Transgender-Related Discrimination and Implications for Health: Results From the Virginia Transgender Health Initiative Study. *American Journal of Public Health*.; Sterzing, P.R., Edison, J., Fisher, A., Gartner, R.E. (2013). Polyvictimization Prevalence Rates for Sexual and Gender Minority Adolescents: Breaking Down the Silos of Victimization Research. University of California, Berkeley, School of Social Welfare.

<https://www.ncjrs.gov/pdffiles1/nij/grants/251353.pdf>; Christensen, R. C., Hodgkins, C. C., Garces, L. K., Estlund, K. L., Miller, M. D., & Touchton, R. (2005). Homeless, mentally ill and addicted: The need for abuse and trauma services. *Journal of Health Care for the Poor and Underserved*, 16, 615-622.; Harrell, E. (2017). Hiday, V.S. et. al. (1999) Criminal Victimization of Persons With Severe Mental Illness. *Psychiatric Services* 50: 62-68.; White, M.C. et al (2006). History of arrest, incarceration and victimization in community-based severely mentally ill. *Journal of Community Health*: 31:123-135.

² Californians for Safety and Justice (2013). *California Crime Survivors Speak: A Statewide Survey of California Victims' Views on Safety and Justice*.

³ Warnken, H. and Lauritsen, J.L. (2019). Who experiences violent victimization and who accesses services? Findings from the National Crime Victimization Survey for Expanding Our Reach

⁴ Californians for Safety and Justice (2013). *California Crime Survivors Speak: A Statewide Survey of California Victims' Views on Safety and Justice*.

A 2019 survey of California crime survivors found that only 14 percent of survivors felt “very supported” by the criminal justice system after they experienced crime.⁵ Survivors also strongly prefer investments in education, mental health treatment, and rehabilitation over incarceration.⁶

Of survivors who receive help following a victimization, they are more likely to receive it from friends and family or a hospital than from law enforcement. While most victims do not use the criminal justice system to address their victimization, California’s victim services system is in many ways bound to it. Research suggests that these coercive structures fracture trust communities need to effectively prevent and respond to violence. Survivors must rely on the criminal justice system to validate their experiences in order to access healing services, creating a power imbalance that defeats opportunities to heal.

Studies show that survivors overwhelmingly need support meeting basic needs following the crime.⁷ Providing financial resources to survivors can help survivors stabilize, get to safety, and significantly reduce the risk of developing PTSD.⁸ Without support, survivors may have to scramble to raise funds to cover critical expenses while traumatized or grieving – or not get the help they need at all. Accessible financial support is a critical component of healing and recovery, and should be central to a comprehensive strategy to support survivors. These supports complement other critical needs, including accessible trauma recovery services; housing, employment, and immigration protections; restorative justice programs; and other pathways to healing for survivors.

State victim compensation programs are intended to meet victim needs by reimbursing expenses including medical bills, funeral and burial expenses, relocation, counseling, and support for dependents. The program is the payor of last resort - survivors only receive compensation if they have no other means of covering an expense (e.g. insurance, civil settlement). Coverage can be a lifeline that allows survivors and their loved ones to focus on healing.

While California’s victim compensation program is in many ways a national leader,⁹ survivors in California entitled to compensation still face many hurdles to accessing it, and thousands of claims are denied every year.¹⁰ Survivors of color, immigrant survivors, survivors with disabilities, and LGBTQ survivors face discriminatory barriers that are built into compensation eligibility law and practice.

Discriminatory Barriers Built into Compensation Law in California

⁵ Californians for Safety and Justice (2019). California Crime Survivors Speak: A Statewide Survey of California Victims’ Views on Safety and Justice.

⁶ Californians for Safety and Justice (2019). California Crime Survivors Speak: A Statewide Survey of California Victims’ Views on Safety and Justice.

⁷ See Kelly, VG. et. al.. (2010). Outreach, Engagement, and Practical Assistance: Essential Aspects of PTSD Care for Urban Victims of Violent Crime. *Trauma, Violence and Abuse*, 11(3): 144-156.; See also Zatzick, D. et. al. (2007). Strengthening the patient-provider relationship in the aftermath of physical trauma through an understanding of the nature and severity of posttraumatic concerns. *Psychiatry*, 79, 260-273.

⁸ Kelly, VG. et. al.. (2010). Outreach, Engagement, and Practical Assistance: Essential Aspects of PTSD Care for Urban Victims of Violent Crime. *Trauma, Violence and Abuse*, 11(3): 144-156.

⁹ Californians for Safety and Justice has analyzed 2019 data reported to the Office for Victims of Crime by every state. California has the eighth highest application approval rate - CalVCB reports that 90% of applications are approved. This masks though that only about 40% of approved applicants ever actually successfully submit a bill for coverage from CalVCB. CA also has the 9th highest rate of applications approved per-UCR Part I violent offense reported.

¹⁰ California Victim Compensation Board. Annual Report 2020-21. Retrieved from: https://victims.ca.gov/uploads/2021/10/CalVCB-Annual-Report_FY-2020-21-1.pdf

- Overall, eligibility restrictions that are entangled with law enforcement can lock survivors out of compensation, and entrench racist perceptions of survivors as “deserving” or “undeserving”, disproportionately denying survivors of color and other oppressed groups compensation.
- These restrictions include police reporting and cooperation requirements, and regulations that direct CalVCB to rely on the immediate impressions of law enforcement when determining whether a victim allegedly contributed to their own victimization.¹¹
- Nearly half (47%) of all compensation denials in California are due to non-reporting or non-cooperation.¹²
- A 2021 Alameda County Grand Jury report analyzed victim compensation denial data for survivors from Alameda County and found that:
 - Overall, 42% of denials between 2015-2019 were of Black applicants, whereas white applicants accounted for 10% of denials. As a percentage of applications submitted by each group, 27% of Black applicants were denied compared to 20% of white applicants.
 - Black applicants were more than twice as likely as white applicants to have their applications denied for lack of cooperation with law enforcement – Black applicants accounted for 52% of all applicants denied for lack of cooperation, compared to 8% white applicants. Overall, 10% of all Black applicants were denied for lack of cooperation compared to 5% of white applicants.
 - Black applicants were nearly twice as likely as white applicants to be denied based on alleged “involvement” – 7% of Black applicants were denied compared to 4% of white applicants. And, Black applicants accounted for half of all applicants denied for this reason while white applicants accounted for just 8%.
 - The Grand Jury concluded that disparities in compensation denials based on “lack of cooperation” and “involvement” are the primary cause of racial disparities in victim compensation denials for survivors from Alameda County, and that these restrictions are systemically racially biased.¹³
- California is one of just eight remaining states that has restrictions to accessing victim compensation based on a conviction record or status in the criminal legal system - victims on probation or parole for certain offenses in California cannot receive victim compensation to cover things like medical or mental health services or help relocating until they finish their supervision. Pervasive racial disparities in the criminal justice system mean that these policies disproportionately harm Black and Brown survivors and families.¹⁴

¹¹ 2 CCR § 649.55

¹² Office for Victims of Crime (2020). CA Annual State Performance Report, Victim Compensation Formula Grant Program, Reporting Period: [Oct 1, 2018 to Sept 30, 2019].

¹³ Alameda County Grand Jury (2021). Final report: Racial Inequities in Police Responses to Victims' Needs. <http://grandjury.acgov.org/grandjury-assets/docs/2020-2021/Racial%20Disparities.pdf>

¹⁴ Santo, A. (2018, Sept 13). The victims who don't count. *The Marshall Project*.

- CA requires that most survivors provide a police report to access compensation. Survivors of domestic violence, sexual assault, and human trafficking can use alternative forms of documentation, but other survivors do not yet have these alternatives.
 - This requirement alone creates barriers for groups that have had negative experiences with law enforcement, or have reason to fear retaliation, or to fear being blamed or not believed.
 - Nationally, 60% of violent acts are never reported to law enforcement.¹⁵
- Survivors of police violence and family members of those killed by law enforcement are virtually ineligible for compensation.
 - When someone is injured or killed by a law enforcement officer, a report fully documenting the victimization is often elusive. Victims and witnesses may also hesitate to speak with officers, resulting in exclusion from compensation for noncooperation.
 - Additionally, victims of police violence can face denial of a compensation claim based on the victim’s perceived “involvement in the events leading to the crime.”¹⁶ CalVCB regulation encourages giving “significant weight... to the evidence from and conclusions of a law enforcement agency in making these determinations.”¹⁷ In cases of state violence, the very people who may have caused the injury or death may be tasked with assigning blame, which can deny the victim or their loved ones access to needed resources.
- Burdensome red tape means that even survivors who are eligible or approved may not get the help that they need
 - Despite CA being the state with the second highest cost of living in the country, CA’s compensation program spends less than nearly every other state in the country in compensation to survivors per-application approved in a year.¹⁸
 - This is in large part because most survivors who have an application approved never actually successfully submit a bill for reimbursement.¹⁹
 - The reimbursement-based model for many expenses simply doesn’t work for survivors who don’t have the money to pay for emergency or unexpected costs like funerals or relocation upfront. When we launched our We are Survivors campaign we found victims as young as 7 years old fundraising to pay for funeral expenses. This is dehumanizing.

¹⁵ Morgan, R.E. and Thompson, A. (2021). Criminal Victimization, 2020. US Department of Justice, Bureau of Justice Statistics. Retrieved from: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cv20.pdf>

¹⁶ Cal Gov’t Code § 13956(a).

¹⁷ 2 CCR § 649.52

¹⁸ Analysis of US Department of Justice, Office for Victims of Crime, FY 2019 Annual Performance Measures Reports - Victim Compensation Formula Grant Program. 50 state reports retrieved from: <https://ovc.ojp.gov/states>

¹⁹ CalVCB response to data request - CalVCB shared that they only receive bills from approximately 40% of approved applicants. This could be for a number of reasons, including survivors not being aware that they have been approved, burdensome documentation requirements for expense reimbursement, or learning too late that their application has been approved.

- And, overwhelming paperwork and long processing times mean that many survivors become discouraged, or opt out all together.
- Caps on expenses that have not kept up with actual costs, additional paperwork required for urgent needs like relocation, and limits on eligibility for loss of income or support means survivors and their loved ones often cannot get the help they need from the compensation program.
- The way the victim compensation program is funded is also not sustainable in the long term, and does not reflect California's values.
 - The restitution fund that provides the majority of funding for the victim compensation program has in recent years spent more than it has taken in.
 - The fund currently relies on revenue from criminal conviction fines and fees, an inherently unstable funding source.
 - Onerous fines and fees also trap people in the justice system in cycles of impossible debt, frustrating the ability to move past a conviction. Continuing to rely on fines and fees runs counter to California's values, is not sustainable, and poses a threat to survivors and the wellbeing of all Californians.
 - The state has backfilled some of the restitution fund loss with general funds, but has not rethought the overall model for funding.
 - The VOCA Fix Act, which passed Congress in 2021, increased the federal match rate for the compensation program – every state dollar spent to compensate survivors will be matched with 75 cents from the federal government now, up from 60 cents. This makes now an especially good time for the state to shift its approach to funding—every general fund dollar spent on compensation will see a higher federal return.

Recommendations for Improving Financial Support for Crime Survivors

1. **Allow alternatives to a police report for all victims, and end denials for lack of cooperation with law enforcement.**
 - California already allows alternatives to a police report for survivors of domestic violence, sexual assault, and human trafficking. But other survivors do not have these alternatives.
 - Several states have recently introduced or passed bills to allow alternatives to a police report.
 - New Mexico (HB 342, 2019 - passed)
 - Pennsylvania (HB 2028, 2021-22 - active)
 - New York (S.7573, 2021-22 - active)
 - A number of other states, including California, allow alternatives to a police report for survivors of certain specified survivor groups (typically DV, SA, human trafficking), but not all survivors.

- There is significant national momentum toward removing law enforcement cooperation requirements.
 - The federal VOCA Fix Act, which passed in July 2021, clarified that states are not required under federal rules to deny survivors compensation for noncooperation, opening the door for states to change these policies.
 - Hawaii²⁰ and Vermont²¹ appear to have never had an additional cooperation requirement, separate from having reported the crime to law enforcement.
 - Illinois recently changed its laws such that if a victim seeks medical care, this alone qualifies as cooperation.²²

2. Eliminate eligibility restrictions for survivors on probation or parole.

- Under current California law, survivors may apply for compensation but are ineligible to have any expenses reimbursed while on probation or parole for certain offenses.²³ Survivors are also ineligible while incarcerated or on the sex offense registry.²⁴
- Only seven other states have these types of restrictions – AR, FL, GA, MS, NC, RI, and WA. Three more states deny victims who haven't paid a fine/fee for a past conviction, or are convicted of a crime while their claim is being processed.²⁵
- CSSJ worked with lawmakers in Ohio (SB 36, 2021) and Illinois (HB 3653, 2020) in the last two years to pass bills reversing their policies restricting eligibility for people with convictions. Louisiana²⁶ and Missouri²⁷ also eliminated conviction- and supervision-based restrictions in recent years.

3. Extend support to victims of police violence.

- The legislature should pass SB 299 this year, which would ensure that survivors injured and the loved ones of victims who are killed by law enforcement can access support.

4. End eligibility exclusions that effectively blame victims for their own victimization.

- In California, alleged “involvement” restrictions are vague and disproportionately applied to Black victims and families.
- Several states have made progress toward eliminating or narrowing denials based on the victim's alleged involvement.
 - Ohio greatly narrowed and made more objective contributory misconduct exclusions.²⁸

²⁰HRS §§ 351-31 – 351-88

²¹ 13 V.S.A. §§ 5351-5358a

²² IL HB 3653, 2020

²³ Cal Gov Code § 13956(c). Victim compensation will not provide reimbursement to victims to pay for expenses they incur while on probation or parole for one of 23 felonies listed as violent under Cal Pen Code § 667.5 (c).

²⁴ Cal Gov Code § 13956(c)

²⁵ Analysis of Evans, D.E. (2014). Compensating Victims of Crime. Research & Evaluation Center, John Jay College of Criminal Justice. Alliance for Safety and Justice updated count to reflect states that have changed laws in recent years.

²⁶ Louisiana, HB 85, 2019

²⁷ Missouri, SB 966, 2018

²⁸ Ohio, SB 36, 2022

- Maine, New Jersey, Illinois, Ohio, and Washington State have all barred denials for this reason if the victim dies.

5. Cover expenses at the level of actual need and minimize red tape

- California must increase caps on burial, relocation, crime scene cleanup, and counseling expenses so that these are fully covered by the program.
- Statute also currently sets the standard processing time for an emergency award at 30-days.²⁹ Survivors need help more quickly, and law should also create a presumption that survivors are eligible for emergency awards for urgent expenses like relocation and funerals.
- Finally, on top of the regular application, law sets out a number of additional hurdles and restrictions for survivors needing help with certain expenses. California should minimize the additional documentation burden to prove eligibility for relocation, loss of income, and loss of support – and ensure survivors and their impacted loved ones who need coverage for these losses and costs are eligible.

6. Replace the current fines and fees-driven funding model with an annual appropriation

- California has started partially funding compensation with general fund dollars, but can fully fund compensation this way.

7. Create a local flexible emergency cash assistance grant program to directly support survivors

- The state's victim compensation program is one tool, but due to barriers, few survivors ever access these funds. Even those survivors who may qualify must navigate overwhelming paperwork and restrictions that limit the kinds of resources they are eligible for.
- In 2021, Crime Survivors for Safety and Justice launched the We Are Survivors campaign, a pilot to provide eight organizations with small grants to distribute in cash assistance to survivors.³⁰ We saw lives changed by these funds. Domestic violence victims fleeing for their safety were able to secure housing. Victims of assault had funds to help them recover from their injuries and return to work.
- The state should establish a program to provide grants to trusted community-based organizations rooted in communities most affected by violent crime, who in turn distribute funds in cash assistance to survivors.
- Local immediate needs funds for flexible cash assistance – ideally based in trusted community organizations – can supplement compensation and flexibly serve survivors who are most harmed and least supported by existing systems.

²⁹ Gov Code § 13952.5

³⁰ Touissant, K. (July 6, 2021). "This justice organization is giving crime victims direct cash grants." *Fast Company*. Retrieved from: <https://www.fastcompany.com/90652311/this-justice-organization-is-giving-crime-victims-direct-cash-grants>

- Community-based organizations that are rooted in communities most harmed by violence and least supported are uniquely set up to get financial resources to the survivors who need them most, quickly.

Attachments

- California Crime Survivors Speak: A Statewide Survey of California Victims' Views on Safety and Justice
- California Victims Agenda: Addressing the needs of California's diverse victims of crime

Exhibit E

Dr. Gena Rodriguez Castro, Assistant
Professor, University of San Francisco
& Director, Survivor Policy, Prosecutors
Alliance

*Dr. Gena Castro Rodriguez, Psy.D., LMFT
Director of Survivor Policy, Training and Resource Center, Prosecutors Alliance California
Assistant Professor, University of San Francisco Department of Counseling Psychology*

Meeting on the Committee on Revision of the Penal Code Victims' Rights and Services

Introduction

It is my pleasure to present the following information and recommendations for the Committee on Revision of the Penal Code today regarding Victims' Rights and Services. As the Director of the Survivor Policy, Training and Resource Center for the Prosecutors Alliance California my role is to support the progressive prosecutors of the Alliance in reforming our criminal justice system through smart, safe, modern solutions that advance not just public safety but community well-being. As the director of the Survivor Center I work on policy, training and resources that help survivors of crime heal and recover. We are currently working on three legislative proposals that further this goal.

- SB 299 which provides victims compensation for survivors of police violence.
- SB 103 which provides 40-hour Trauma Informed Training for all advocates working with crime survivors
- AB 2103 Which proposes a pilot program of 24-hour crisis response services for crime survivors in San Francisco, Los Angeles, San Joaquin, and Contra Costa Counties.

The Prosecutor's Alliance is committed to victims and survivors and working to develop stronger responses grounded in healing.

Background

Survivors face a range of challenges in the aftermath of a crime event. Violence and crime incidents can cause physical, emotional, social, and financial challenges preventing them from getting better. Compensation programs allow victims to focus on the physical and emotional recovery, with less financial stress. Compensation covers medical and mental health, funeral and burial, crime scene clean-up, lost wages, relocation, and other vital expenses following a crime.

The process of securing compensation can be confusing and difficult for survivors, especially those dealing with the effects of trauma. Determining eligibility, understanding maximum claim limits, managing the application process, submitting documentation, and negotiating upfront payments while waiting for reimbursement can be overwhelming. Crime compensation is a payer of last resort, so survivors must exhaust all available resources including insurance, workman's compensation, paid time off and other sources before becoming eligible.

Survivors are required to report incidents to law enforcement (except in the cases of human trafficking, domestic violence, and sexual assault) and cooperate with the investigation usually within the first seventy-two hours. Law enforcement determines if the survivor is cooperating based on the crime report, sometime moments after the crime happens. Additionally, a subjective assessment of contribution to the crime is determined up front is the initial report.

Research

Over the last two years I have conducted two studies with over 1000 crime survivors: the *Survivor Impact 2020 Report* (San Francisco District Attorney's Office) and the *Survivor Voices Study* (Prosecutors Alliance California). A primary purpose of this research has been to understand the interactions between survivors of crime with the criminal justice system and the utilization of resources meant to aid in healing and recovery. This research has helped to understand what is working, what is not, and what change is necessary to help survivors. In both studies we asked questions about survivors' access and utilization of financial compensation after victimization. The following includes findings from the research with survivor listening sessions, interviews, and surveys.

Challenges with Compensation Raised by Survivors

Knowledge of Compensation as a Resource

According to report prepared for the Assembly Budget Subcommittee on Public Safety on February 7, 2022, the California Victims Compensation Board (CalVCB) has had a decrease in claims received from 53,400 to 39,718 and decrease in payouts made from \$61.5 million to \$47.23 million between 2018-2021 due to denials, lack of ponderance of evidence, none covered crimes, and lack of cooperation or involvement by applicants. Many survivors are not aware of CalVCB and victims' compensation, so they never apply. The *Survivor Voices* study found that only 60% of survivor we surveyed knew about compensation, but 89% of the survivors who were informed did apply and 93.5% of them received compensation. **We need more public awareness about the California Victim Compensation program offered in multiple formats, languages, and modalities.**

Eligibility

Many survivors expressed challenges with the reporting and cooperation requirements for CalVCB. Survivors, particularly survivors from marginalized communities are often ineligible for compensation because they did not report their crime or were considered be not in cooperation with law enforcement. There are many reasons survivors don't report crimes including fear of further victimization, mistrust of police, fear of stigma and concerns about immigration or other legal issues. Survivors may also be deemed uncooperative if they are injured or have experiencing trauma and don't answer questions posed to them by law enforcement, even directly after they have been victimized. This include survivors who may be in the process of getting treatment for serious injuries. **We have exceptions for other vulnerable survivors that should be applied to more populations that don't come forward to report victimization but can verify their experience through access of health, mental health, and community-based services.**

Contribution is another challenging issue for many crime survivors. If a survivor has or is perceived to have contributed in any way to the crime event, they can be denied compensation. Survivors who for instance get into a car with someone who has been drinking, don't use a cross walk to cross the street, or fight back when attacked may not qualify for compensation. CalVCB determines these on a case-by-case basis leaving each circumstance up to subjective review. This issue is particularly critical for victims and survivors of gun violence who be assumed to have

been involved in potential behavior that put them at risk for violence. Regardless of how the victimization happened, the impact of violence and trauma have profound affects. **The parameters for determining contribution should be expanded to include information secured after the victim or survivor has had time to secure medical treatment and stabilize from the traumatic event.**

Furthermore, the Survivor Voices study found that 70% of the survivors who did not receive victims' compensation after applying did not know why they did not received compensation. **There should be better outreach and explanation for survivors who are denied compensation including easily accessible process for appealing decisions and access to additional resources.**

Payer of Last Resort and Reimbursement

For survivors who do apply and are approved for compensation there are more barriers that can prevent them from utilizing the financial assistance to help with immediate needs. Cal VCB is a payer of last resort meaning the survivor must show proof that they do not have or have been denied by other resources such as insurance, workman's' compensation, employment benefits or other funds before they can access victims' compensation. This process can significantly delay access to funds. It is particularly challenging for survivors who must rely on their insurance companies or employers to provide this critical information. It can take weeks or months to secure the information needed and impede the survivor's ability to support themselves or their families. **The practice of withholding funds from survivors while waiting for verification from insurance, employers or other sources should not be used for important resources like relocation, lost wages, or mental health treatment.**

Compensation is also provided on a reimbursement basis which means the survivor must pay for the expense first then wait to be paid back. This is particularly challenging for low- or no-income survivors who don't have thousands of dollars to pay up front for funeral and burial, relocation, or medical expenses. **Financial resources should be made available to survivors upfront to assist with immediate needs utilizing a non-reimbursement-based model.**

Reimbursement Rates

The current reimbursement rates for expenses covered by the victims' compensation program do not adequately cover the cost of goods and services needed by survivors to heal and recover. For example, the funeral and burial maximum is \$7500 but the average funeral and burial cost is \$10,000. Relocation expenses have a cap of \$2000 which provide inadequate support for a survivor to secure new housing in most counties in California.

Finally, Mental Health service reimbursement is significantly lower than the actual cost of therapy, paying only \$81 an hour for a licensed clinician and \$99 an hour for doctoral level clinician. These rates decreased 10% from 2006 to present. The average cost of therapy is currently \$150 an hour. This disparity makes it difficult to find mental health providers willing to see survivors of crime using CalVBC compensation as payment. Additionally, CalVCB recently excluded the payment of mental health services outside of California which has significantly affected survivors who were residents or victims of crime in California returned to their state of residence or moved for safety.

The reimbursement rates for mental health providers should be re-evaluated and raised to meet the actual cost of mental health services and telehealth options should be approved as a permanent allowable expense to increase access for survivors.

Conclusion

Treating trauma makes the individual, family, and community safer. It provides survivors the tools and resources they need to heal and recover and gives people the capacity to live happy and successful lives. It restores safety, power, and control to the lives of those who have been violated and helps them rebuild their lives. Investments in treatment will not only promote healing but prevent violence. Victims' compensation is a vital resource for healing and recovery, and we should work to ensure it readily available, accessible, and responsive to the needs of crime survivors.

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Exhibit F

Steven Raphael, Professor of Public Policy,
UC Berkeley



The Impacts of the Make-it-Right Program on Recidivism

YOTAM SHEM-TOV, STEVEN RAPHAEL, AND ALISSA SKOG

The Make-it-Right (MIR) restorative justice conferencing program serves youth ages 13 to 17 who would have otherwise faced relatively serious felony charges (e.g., burglary, assault, unlawful taking of a vehicle). Following extensive preparation, participating youth meet with the people they have harmed or a surrogate, accept responsibility for the impact of their actions, and come to an agreement for how the youth can repair to the greatest extent possible the harm they caused. If the youth follow through with the repair actions outlined in the agreement, charges against them are never filed. If they do not, they face traditional juvenile felony prosecution. In this study, eligible youth were randomly assigned to participate in MIR or to a control group in which they faced felony prosecution. We find that youth given the opportunity to participate in MIR had a 19-percentage-point lower likelihood of a rearrest within six months, a 44 percent reduction relative to the control group of youth who were prosecuted in the traditional juvenile justice system. The reduction in justice-system contact persists even four years after the offer of participation, providing strong evidence that restorative justice community conferencing can reduce subsequent justice-system involvement among youth charged with relatively serious offenses and can be an effective alternative to traditional prosecution.

RESTORATIVE JUSTICE CONFERENCING

Restorative Community Conferencing (RCC) is an alternative to standard case processing that emphasizes accountability through repairing harm rather than imposing sanctions. While restorative justice practices take many forms, programs designed to divert cases away from the criminal and juvenile justice systems usually involve intensive preparation followed by direct conferencing between the person responsible for the harm (responsible party), the victim/survivor (harmed party), and supporters of both parties, resulting in an agreement whereby the accused person makes amends for the harm through a mutually agreed-upon set of actions. The RCC process involves the accused person taking responsibility for their actions and engaging in dialogue about the impacts of their actions with

those who they have harmed, as well as family and other community members.

The current evidence on the effectiveness of restorative justice programming in reducing recidivism is mixed. Some studies find reductions in recidivism, others find no effects, and some find small increases for individuals diverted to a restorative justice process. Despite growing demand for alternatives to traditional criminal and juvenile justice practices, it is unclear when and if restorative justice alternatives can be an effective tool for reducing recidivism. This study evaluates the effectiveness of a restorative justice community conferencing program for juveniles using a randomized control trial (RCT).



Photo credit: Community Works

THE MAKE-IT-RIGHT PROGRAM

The San Francisco District Attorney (SFDA) teamed with [Community Works](#) (CW) and [Huckleberry Youth](#), two Bay Area nonprofits supporting youth involved in the criminal-legal system, to pilot the MIR program at the end of 2013. **MIR is a pre-charging diversion program:** youth whom the prosecutor otherwise would have charged with certain felony offenses are diverted to this RCC program.

Conferencing involves a dialogue between the youth, their family, the person harmed, and a community representative, facilitated by CW and ultimately leading to an agreed-upon plan for addressing the harm imposed during the incident. The agreement can include writing formal letters of apology, paying restitution, agreeing to specific community service, and/or tailored actions of good faith. Youth also participate in post-conference case management and agreements monitoring, managed by Huckleberry Youth's Community Assessment and Resource Center. If the youth completes the requirements of the program and the provisions of their RCC agreements, the SFDA does not file formal charges against them. Youth who fail to follow through with the program have their cases referred back to SFDA for felony prosecution.

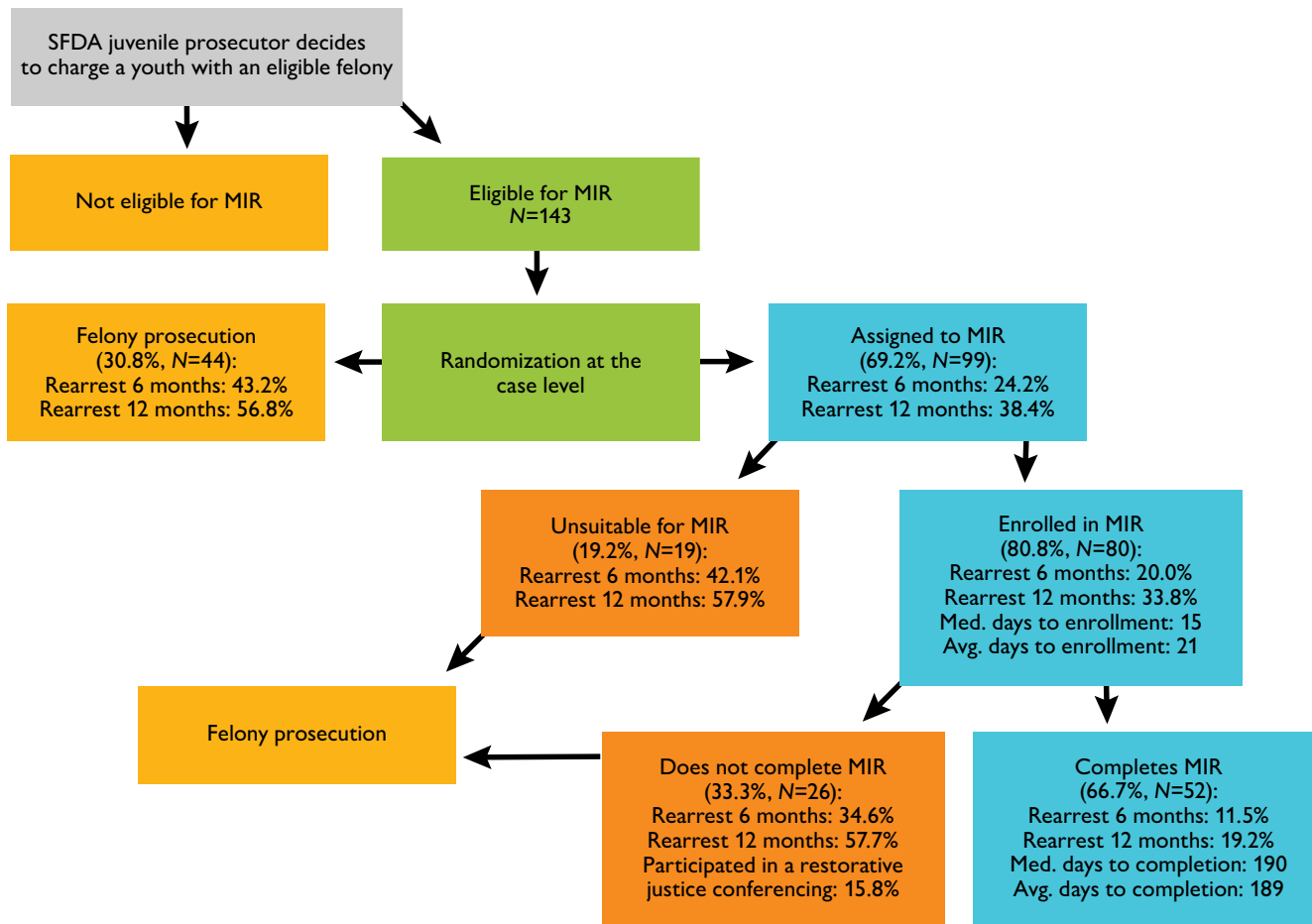
THE STUDY

The SFDA and CW partnered with the California Policy Lab to conduct an [RCT](#) to learn about the impact of MIR. During the study period, after the juvenile prosecutor reached the decision to file charges but before charges were formally filed, eligible youth were randomly assigned to receive an offer to participate in MIR (treatment group) or to not receive that offer and instead be processed through traditional juvenile prosecution (control group). All the individuals in the control group faced charges, as did youth given the opportunity to participate in MIR but who did not enroll or who enrolled, but did not complete the program.

Once assigned to MIR, CW assessed the youth's ability to participate. An essential requirement for participation was that the youth demonstrate capacity for reflection and an openness to taking responsibility for their actions. If the youth was deemed unsuitable or unable to participate, the case was referred back to the SFDA for traditional prosecution. Young people and their parents or legal guardians could decline to participate, effectively opting for the case to be referred back to the SFDA for prosecution.

In total, 143 cases were deemed eligible between 2013 and 2019, with 99 (69.2 percent of study subjects) randomly referred to MIR and 44 (30.8 percent) randomly referred to face traditional prosecution ([Figure 1](#)). Youth assigned to MIR either enroll in the program or are deemed unsuitable. Lack of family support was a common reason why youth were not able to commit to the RCC process.

FIGURE 1. Case flow through the different treatments in the Make-it-Right study



FINDINGS

MIR had high program enrollment and completion

The MIR enrollment rate was high: four out of five of those referred to MIR enrolled in the program. In contrast, other RCTs of restorative juvenile justice programs in the US found average enrollment rates below 50 percent (see [full study](#) for a summary). The higher rate may reflect the fact that MIR study youth are alleged to have committed more serious offenses relative to youth enrolled in prior programs under study, and face felony prosecution and potentially severe sanctions if they chose not to participate in conferencing. Alternatively, youth who have committed more

serious offenses may be more remorseful and perhaps more amenable to the self-reflection required by the intervention.

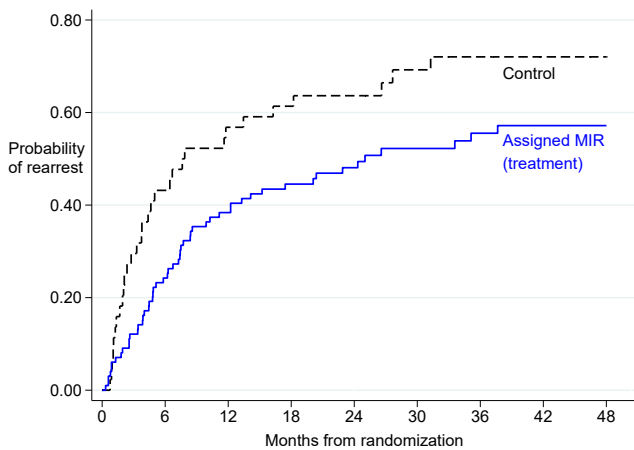
Overall, 52.5 percent of those given the opportunity to participate in MIR completed the program and ultimately did not face juvenile prosecution. Among youth who participated in a restorative community conference, 95 percent followed through on their agreements and completed the program. There are several reasons why youth might not complete the program. For example, the youth and the harmed party might not reach an agreement during the conference, or the youth may not fulfill the accountability plan agreed upon with the harmed party during the conference.

MIR leads to declines in rearrest

Figure 2 shows how the probability of being rearrested changes over time for the group offered to participate in MIR compared to the group experiencing traditional juvenile prosecution.

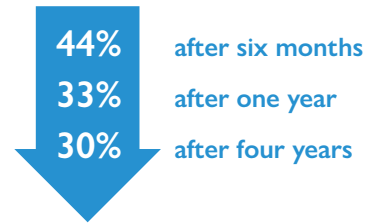
Nearly half of the control group was rearrested within six months of randomization and over 70 percent were rearrested by the end of the four-year period. The rearrest rates are markedly lower for youth in the treatment group (those given the option to participate in MIR): the rearrest rate for the MIR group is approximately 20 percentage-points lower than the control group at six months, and this difference continued for four years following the offer to participate.

FIGURE 2. Probability of rearrest in the four years following the offer to participate in Make-it-Right



Note. All outcomes are measured from the date that youth are randomized to either receive an offer to participate in MIR (the treatment group) or are instead processed through traditional juvenile prosecution (control group). Rearrest is defined as a new arrest in San Francisco.

Assignment to Make-it-Right reduces rearrests by:



An offer to participate in MIR reduces the likelihood of rearrest by 18.9 percentage points within the first six months, 18.4 percentage point within the first year, and 14.4 percentage points within the first two years. Relative to young people who were not given an offer to participate in MIR and were prosecuted, these effect sizes imply a 44 percent, 33 percent, and 23 percent reduction in recidivism, respectively. The overall effect sizes persist at three years following the date of program offer (14.7 percentage points or 20 percent less than youth not given an offer to participate) and widens at four years (26.7 percentage points or 30 percent less than youth not given the offer to participate).

Completion of the program likely drives the declines in arrest

Figure 1 suggests that the reduction in arrest rates among youth given the offer to participate in the MIR program is likely driven by the youth who enrolled in the program and completed the agreement. The 12-month rearrest rates among youth who completed is much lower (19.2 percent) than those who enrolled but did not complete (57.7 percent). While these substantial differences suggest MIR transforms the outcomes for the youth involved, it's also possible that youth who complete the program and youth who do not may be different in other ways that contribute to differences in subsequent arrest rates.

DISCUSSION

This study finds large effects of the MIR restorative justice community conferencing program on recidivism among juveniles arrested on felony charges. What might be driving these large changes in recidivism? First, the MIR program served youth charged with more serious offenses that would usually make them ineligible for similar restorative justice programs. It may be the case that youth charged with serious offenses are more likely to be rearrested in the future than youth charged with less serious offenses, therefore there is simply more opportunity to reduce the likelihood of future arrests among this group. In addition, interventions targeted at less serious offenses may widen the net of the criminal justice system and apply an intensive intervention in instances that do not merit it.

Second, unlike prior restorative justice studies where youth assigned to the control group were funneled into various diversion programs, in this study, youth who were not given an offer to participate in MIR faced felony prosecution. Moreover, youth who were given the offer to participate but declined to do so or who did not successfully complete MIR also faced felony prosecution. We suspect that the high enrollment and completion rates were driven by the potential for serious sanctions.

To conclude, **our findings show that juvenile restorative justice community conferencing can reduce recidivism among youth charged with serious offenses and be an effective alternative to traditional juvenile justice practices.**

This policy brief is based on a working paper on this study, which can be downloaded [here](#).

The MIR program is still active in San Francisco. Since the conclusion of the research experiment, the program has expanded to include people up to 25 years old and increased the list of eligible charges.

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The California Policy Lab builds better lives through data-driven policy. We are an independent, nonpartisan research institute at the University of California with sites at the Berkeley and Los Angeles campuses

This research publication reflects the views of the author and not necessarily the views of our funders, our staff, our advisory board, the Regents of the University of California, Community Works, Huckleberry Youth, the Office of San Francisco District Attorney, or the Office of San Francisco Juvenile Probation.

Exhibit G

Jeff Reisig, District Attorney, Yolo County &
President, California District Attorneys
Association

An Act to add Section 1379.1 to the Penal Code relating to creating the right of a victim of crime to restorative justice.

1379.1 Right of Crime Victims to Restorative Justice

(a) Legislative Findings and Intent

1. Restorative justice is an approach to justice and the prosecution of crimes whereby the parties (offender and victim) engage in a structured mediation, sometimes with assistance from community representatives. The elements of restorative justice generally require offender and victim to meet, face-to-face, and share their experiences wherein the offender would take responsibility for his or her actions in order that they may redeem themselves, the two parties would discuss the harms and motivations for the crime, and the offender would make or promise payment of restitution for any financial harm. The above generally occurs in a confidential setting so that the offender and victim may make amends without the threat of the substance of the conversation being later published or used in civil or criminal processes. For victims, restorative justice provides agency, and is designed to reduce the powerlessness and anxiety experienced by victims.

2. Restorative justice programs have been used with documented success around the state. For example, a community-based restorative justice program created by the Yolo County District Attorney has routed over 2,000 cases away from the traditional, retribution-based justice system with less than 11% rearrested for a new crime within three (3) years. Research on Restorative Justice shows that restorative justice: (a) reduces recidivism, (b) reduced crime victims’ post-traumatic stress symptoms; (c) provided both victims and offenders with more satisfaction with justice than traditional prosecution and (d) reduces costs of prosecution. (Lawrence W. Sherman & Heather Strang (2007) “Restorative Justice: The Evidence,” University of Pennsylvania.) Restorative justice is also documented as being more successful at bringing “emotional restoration” to victims of crime. (Strang, *et al.*, *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review*, 9 (1), Campbell Systematic Rev. 1, 39 (2013).) In August of 2020, the American Bar Association passed Resolution 106a, in which it urged “prosecutors, defense attorneys, judges, probation officers, parole authorities, legislators, policymakers, and community partner organizations to consider using a restorative justice response to crime as one effective alternative, or adjunct to, a criminal adjudicatory process in appropriate cases.”

3. This research into the success of restorative justice, particularly the myriad of benefits to crime victims, has prompted a belief that a victim of crime should have a right to restorative justice. (Lynn S. Branham, *The Overlooked Victim Right: According*

to Victim-Survivors A right of Access to Restorative Justice, Denver Law Review (August 2021).)

(b) Victim's Right to Restorative Justice.

1. With the exceptions listed below, a direct victim of crime shall have the right, prior to a trial on the charges in the case, to participate in a Restorative Justice Program if such a program has been developed by the office of the state, county or local agency responsible for prosecuting the case (hereinafter, the "Prosecutor"). Should a case have multiple direct victims, each victim may invoke the right to restorative justice for any charges or enhancements solely attributable to that victim or, if a single charge or enhancement relates to multiple victims, the victims may agree to invoke restorative justice;

2. A Restorative Justice Program is any program developed by the Prosecutor with the following general parameters:

a. Is comprised of one or more structured, face-to-face meeting or mediation between the direct victim or victims of a crime and the alleged perpetrator or offender in which the crime and the motivations and repercussions of that crime are discussed with a victim-centered approach (as that term is described in ABA Resolution 106a (August, 2020));

b. Requires the informed consent of the victim or victim surrogate and the offender, that either party may withdraw;

c. May be facilitated by community volunteers and/or a trained specialist who can determine if the victim and the offender can be safely brought together and who can protect the interests of both;

d. Requires an acknowledgement of wrongdoing by the offender and seeks to produce, if feasible, a voluntary agreement or understanding between the victim and the offender designed to acknowledge and restore the harm caused by the offender;

e. May include the undertaking of additional obligations such as commitments to employment or counseling, community service;

f. Participation in the meeting or meetings is protected by rules of confidentiality so that statements made may not be used in later criminal, disciplinary or civil proceedings;

g. Successful participation in the program, as defined by the Prosecutor, results in dismissal or non-filing of the charges; and

h. Maintains data on the effectiveness of restorative justice practices to improve processes and ensure that they are evidence-based and effective and should include, but not be limited to, data on the underlying crime and eligibility criteria, the percentage of cases in which restorative justice was chosen by victims, victims' satisfaction rates, recidivism rates and collection of restitution.

3. Restorative Justice is only available for crimes in which there is an identifiable, direct victim and is not available for the following crimes:

a. Homicides, including all forms of murder and manslaughter;

b. All forms of sexual assault or molestation where the alleged victim is under the age of 18 at the time Restorative Justice is considered;

c. Any crime in which the direct victim of the crime is incapable of voluntary consent based on age or disability, including all forms of Elder Abuse under Penal Code 368, *et al.*;

d. Domestic violence, felony or misdemeanor;

e. Arson;

f. Charges relating to Human Trafficking, Child Pornography, Pimping or Pandering;

g. Any other charge in which the Prosecutor determines that the charged crime evidences a predisposition to conduct that endangers the public or charges where the Prosecutor determines that the charged offender has engaged in undue influence of the alleged victim to seek restorative justice.

Exhibit H

Mike Young, Assistant Chief, California
Department of Corrections &
Rehabilitation, Office of Victim & Survivor
Rights & Services



For informational Purposes

February, 2022

Office of Victim and Survivor Rights and Services (OVSRS)

The California Department of Corrections and Rehabilitation (CDCR), Office of Victim and Survivor Rights and Services (OVSRS) mission is to maintain a comprehensive victim services notification, information and restitution program that supports justice practices to ensure offender rehabilitation and accountability to victims, the community, and to themselves. In California, victims of crime have the right to be notified of the offender's status, the right to participate in the juvenile and criminal justice process, and the right to be reimbursed by the offender for costs related to the criminal act. OVSRS has the responsibility to ensure that these rights are enforced for crime victims of offenders sentenced to CDCR. OVSRS works closely with local victim/witness assistance agencies, probation departments, district attorneys' offices and the courts to enhance services to victims throughout the State.

A summary of services OVSRS provide include:

- **Requests for Notification of Offender Status**
Process requests from victims, victims' family members (next of kin) or witnesses to be notified of (1) release, escape, death, or scheduled execution of an offender in state prison; (2) parole suitability hearings, and (3) transfer, escape, discharge, and annual hearings for juvenile offenders housed in Division of Juvenile Justice (DJJ) facilities.
- **Parole Board Hearings**
Coordinate, prepare and educate victims who wish to give a victim impact statement at parole hearings for adult offenders and at juvenile offender annual review hearings and discharge hearings. Accompany victims to parole hearings and provide support.
- **Special Conditions of Parole/Supervision**
Assist with requests from victims and victims' immediate family members for no contact by an adult offender released on parole or community supervision and requests to place the adult offender in another community. Work directly with the Division of Adult Parole Operations (DAPO) to ensure victims' rights are enforced.
- **Restitution Information**
Provide court ordered restitution information for victims, victims' immediate family members, offenders, and interested stakeholders.



➤ **Collection and Disbursement of Restitution**

Work with county probation departments, district attorney's offices, courts, county revenue collections, and designated state agencies to maximize the collection and disbursement of restitution from adult offenders in state prison, adult offenders released on parole or community supervision, discharged adult offenders, and juvenile offenders housed in DJJ facilities.

➤ **Locate Victim Contact Information**

Locate victim contact information in cases where the department has collected court ordered restitution from the offender for the victim and has no mailing address to send the money to the victim. Assist district attorneys' offices, state agencies, institutions, in locating updated victim information for confirmation of notification of release or for notification of parole board hearings.

➤ **Restorative Justice Opportunities**

- Victim Offender Dialogue
 - The Victim-Offender Dialogue (VOD) is a victim-centered, offender-sensitive facilitated preparation and dialogue process typically involving victim(s)/ survivor(s)/next of kin, an offender and a volunteer facilitator. The goal of the VOD program is to support personal justice and healing by empowering victim(s)/ survivor(s)/next of kin to meet with the offender in a safe and secure environment and address the personal impacts of violent crimes.

- Accountability Letter Bank
 - The Accountability Letter Bank (ALB) offers adult and juvenile offenders under the jurisdiction of the CDCR an opportunity to write a thoughtful, appropriate apology letter to their victim(s)/survivor(s)/next of kin, with the assistance of approved program facilitators. All approved accountability letters from qualifying programs, will be sent to the Office of Victim and Survivor Rights and Services (OVSRS) within the CDCR and not directly to the victim(s)/survivor(s)/next of kin.

In addition, the OVSRS is available to provide victim services and restitution training for state and county agencies and provide outreach to victim organizations about the services available and how victims, victims' family members and witnesses can request to receive services.

Contact OVSRS

Toll Free 1-877-256-6877
E-Mail: VictimServices@cdcr.ca.gov
Website: www.cdcr.ca.gov/victims
Fax: (916) 445-3737

Exhibit I

Cymone Fuller, Co-Director, Impact Justice
Restorative Justice Project



Restorative Justice Project

Impact Justice's Restorative Justice Project works with communities to meet the needs of people harmed, reduce youth criminalization, and address racial and ethnic disparities in the charging and prosecution of youth of color. We collaborate with community-based organizations (CBOs), system agencies, and impacted community members nationwide to develop restorative justice diversion programs. Our pre-charge diversion model brings together the person who caused harm, the person harmed, and impacted community members into an accountability process that heals relationships and strengthens communities. You can learn more by visiting [RJDToolkit.org](https://www.rjdtoolkit.org).

What does the Restorative Justice Project offer to communities?

The Restorative Justice Project provides training and technical assistance to CBOs and legal system agencies. This includes:

-  Identifying a CBO to facilitate restorative justice processes
-  Developing a memorandum of understanding between the prosecutor's office and CBO
-  Building partnerships between CBOs and system agencies
-  Facilitating a suite of trainings:
 - Community Circles
 - Harm Circles
 - Restorative Community Conferencing
-  Creating program criteria based on local arrest, geographic, and demographic data
-  Providing ongoing guidance and mentorship

What is restorative justice?

At its core, restorative justice is about relationships—how you create them, maintain them, and mend them. It's based on the philosophy that we are all interconnected, that we live in relationship with one another, and that our actions impact each other.

How does restorative justice compare to the criminal legal system?

Traditionally, the criminal legal system operates by asking three questions:

- 1** What law was broken?
- 2** Who broke it?
- 3** What punishment is deserved?

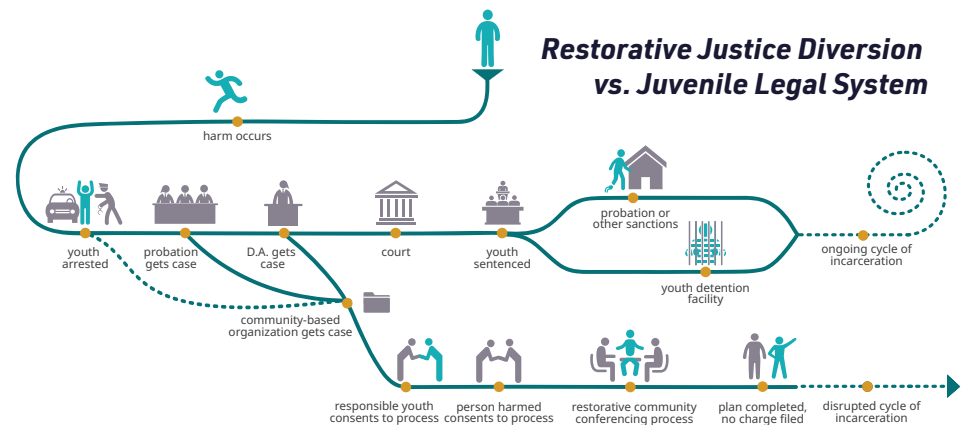
Legally, harm and wrongdoing are defined as acts against the state (the breaking of the state's laws), rather than an act against a person. **Restorative justice recognizes wrongdoing as a harm done to people and communities and seeks to shift the punitive paradigm toward healing and accountability** by asking instead:

- 1** Who was harmed?
- 2** What are their needs?
- 3** Whose obligation is it to meet those needs?

Restorative justice diversion honors the humanity and dignity of people by recognizing that we are more than the worst thing we've ever done and attending to the questions above.

How does restorative justice diversion work?

Our restorative justice diversion programs are post-arrest and pre-charge, meaning that the young person who has committed harm has been arrested but has not been charged with a crime. Restorative justice diversion is most effective with **serious harms** (felonies and high level misdemeanors), which have a **clear, identifiable person harmed** such as **robbery, burglary, car theft, assault/battery, arson, and teen dating violence**. The young person is diverted by the local prosecutors office instead of being processed through the juvenile legal system. Restorative justice diversion programs are run by CBOs who are always independent of any law enforcement or systems agency. They are often local nonprofits experienced in supporting youth and are rooted in the communities they serve.



Once a case is referred to the CBO, trained facilitators inform the responsible youth and the person harmed of the decision to divert and the opportunity to participate in a Restorative Community Conferencing process. Once a case is completed successfully, the referring agency closes the case with no charges filed against the youth.

What is a Restorative Community Conference and how does it work?

Restorative Community Conferencing (RCC) is the process that brings together the person harmed, the responsible youth, caregivers/family members, and community members to discuss what happened, including the causes and impact of the harm.

Preparation. Once a case is diverted and everyone is on board, the facilitator prepares each participant. Together they process what happened, determine what repairing the harm could look like, and walk through what to expect from the RCC. Prep can take several months.

Conference. During the RCC, each person shares how the harm impacted them. The responsible youth reads an apology letter and the person harmed identifies their needs. Everyone contributes to create a plan for the young person to make things as right as possible for the person harmed, their family, the community, and themselves.

Plan Completion. The plan usually takes two to three months to complete, after which the case is closed with no charges filed.



Who facilitates Restorative Community Conferences?

RCCs must be facilitated by someone who has been trained in both Restorative Community Conferencing and circle processes. Staples of a facilitator are:

- Having equal partiality—care, compassion, and concern—for each and every person in the process, regardless of their involvement
- Supporting the dignity and wholeness of each participant while also creating safe, brave, and non-judgmental containers for true accountability to occur
- Belief that each participant has the wisdom and agency to identify what they need to heal

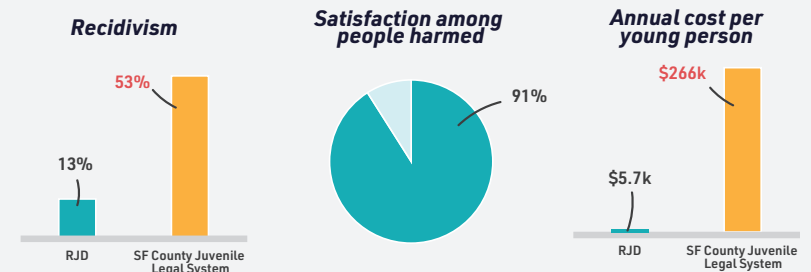
What role does the criminal legal system play in Restorative Community Conferencing?

Given the paradigm shift we are working toward, the criminal legal system's involvement in the restorative justice diversion process is limited but important. The system plays a role by diverting cases to RCC, without which a program could not operate. System leaders can also support by sharing data, increasing the number of referrals, and expanding the case referral criteria. The legal system is not involved in the actual RCC process.

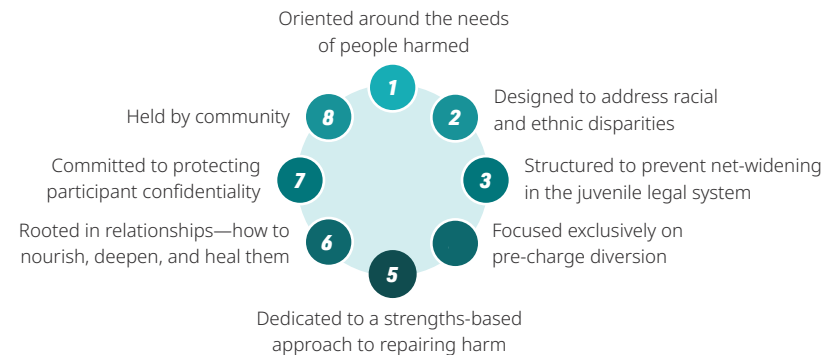
Where is restorative justice diversion already happening and how do we know it works?

The model of RCC in which we train people originated in Aotearoa (New Zealand), where it is called Family Group Conferencing. In 1989, the government in Aotearoa passed the Children, Young Persons, and Their Families Act, which [transformed the nation's juvenile legal system](#). This included using Family Group Conferencing to address racial and ethnic disparities in the incarceration of young people. Since our launch, the Restorative Justice Project at Impact Justice has partnered with communities around the country to develop similar programs through our restorative justice diversion model.

Restorative justice diversion has been proven successful in [reducing recidivism](#), producing high [satisfaction among people harmed](#), and [reducing spending](#) in incarceration.



What are the core elements of this approach to restorative justice diversion?



To learn more, visit impactjustice.org/restorative-justice and RJDToolkit.org.

Impact Justice is committed to fostering a more humane, responsive, and restorative system of justice in our nation. We confront mass incarceration, cruel and inhumane conditions, barriers to re-entry, and the failure to meet the needs of people harmed. We understand that our struggle for justice takes place in a context of historic, systemic, and pervasive racism. Because of this, we are committed to changing hearts and minds, behaviors, and structures.