



Restorative Justice for Sexual Assault Survivors

A Tip Sheet for Office on Violence Against Women-funded Lawyers

Restorative justice (RJ) practices are centuries old and can be found, in various forms, in communities all around the world. Restorative justice includes the acknowledgement that crime causes harm. That harm, in turn, creates needs in the victim and an obligation in the person who caused the harm to correct it. Restorative practices also recognize that, when a crime is committed, the resulting harms impact not only the victim but the broader community as well.

Restorative justice may be implemented in response to any number of harms, ranging from minor transgressions to catastrophic life events. For example, restorative practices are used to respond to a verbal playground dispute, to shoplifting, to carjacking, and events as significant as rape or murder.

This tip sheet focuses specifically on the use and practices of restorative justice in the context of sexual violence. The tips below provide an overview and recommendations for how Office on Violence Against Women (OVW)-funded attorneys can support sexual assault survivors interested in exploring restorative justice options on their path to healing. The tips in blue provide background information about how restorative practices are implemented. Each tip is followed by a series of questions (in italics) that lawyers can explore with their clients as they research options available in their community.

If you are brand new to restorative justice and are interested in a more comprehensive primer, many practitioners suggest *The Little Book of Restorative Justice* by Howard Zehr. For additional resources you can visit resource hubs transformharm.org and the National Association of Community and Restorative Justice website, www.nacrj.org/.

Background: Historically, restorative justice has deep roots in Indigenous cultures and is practiced in communities around the world in some form or another. This history continues to influence current RJ practices. Many of the more modern RJ practices in the western world began in the 1970s and were created largely in

conjunction with the criminal justice system. While some practitioners believe that truly restorative practices cannot involve the criminal justice system or other institutions, others see the process as a potential complement to criminal prosecution.

Restorative justice practices are constantly developing and evolving. There has been a recent surge of awareness, interest, and implementation of these practices in communities across the U.S. There may be a variety of RJ alternatives available in your community or the options may be much sparser. A restorative approach involving the criminal justice system may be better than none at all for survivors interested in exploring alternative paths to justice.

This tip sheet is organized chronologically. It begins, in Part I, with a discussion of where, how, and with whom to launch an exploration of RJ options in your community. Part II of this Tip Sheet provides guidance on discussing RJ with your client who is a sexual assault survivor while Part III offers some insights for how best to determine if the RJ programs available in your community are likely to meet your survivor clients' needs.

I. Steps You Can Take Now

An important first step to supporting survivors in your community is to research what programs are available. The tips below are intended to help you understand the varied restorative justice practices that may be available to survivors of sexual violence in your community.

Tip #1: Familiarize yourself with the RJ programs in your community. To find out about the available options in your community, you might ask community partners, population-specific providers, criminal defense attorneys (e.g., a public defender office) and your state sexual assault or dual (domestic violence and sexual assault) coalition about any known resources or restorative justice working groups. You might also reach out to a local district attorney or probation office to ask if they are implementing any of the practices discussed below. Local colleges, universities, or other institutions of higher education may be a good resource,

too, as they may be practicing restorative justice with students or have faculty researching the subject.

Tip # 2: Familiarize yourself with available programs' approaches to restorative justice and the processes typically employed. Restorative justice has become an umbrella term for a variety of alternative civil and criminal justice paths. There is no widely agreed upon definition, nor is there a singular blueprint for a restorative justice process. Circle practice, victim-offender dialogue, juvenile justice diversion programs, and informal resolutions in educational institutions are all examples of practices that fall under the restorative justice umbrella. The programs in your community may incorporate elements from any one or more of the paths above. Each program facilitating restorative justice processes is unique, and each process should be tailored to best meet the needs of participants and to consider the circumstances of the harm committed. There is no “correct way” to engage in restorative justice.

What approach to restorative practices does the prospective program employ?

How long has the program been operating?

What types of harm has the program previously addressed?

How many restorative justice cases has the program conducted?

Will there be a meeting between the victim and the person who harmed them? If yes, who may attend the meeting?

Will the facilitator meet individually with the parties to prepare for any meeting between the victim and person who caused the harm?

Tip #3: Determine if the available programs are a good fit for sexual violence cases. There is not a list of crimes that are “good candidates” to be resolved through restorative justice programs. Whether a harm can be addressed via restorative justice is less about the specific crime committed and more about the participants involved, their willingness and commitment to participate in the RJ process, and whether their goals in participating align. That said, there certainly

are power differentials that should be considered and addressed in the context of sexual violence. If you are helping a survivor-client identify a restorative justice program, it will be important to explore how the program addresses this imbalance of power. For example, will the facilitator bring the parties together at any point? If so, how will the survivor be supported during this meeting? Will a plan be made for the survivor to take a break or adjourn the meeting if feeling overwhelmed or unsafe?

In how many cases has the program used restorative justice processes to address sexual violence?

In addition to victim-offender dialogue, what other restorative practices does this program offer to survivors (e.g., community healing circle, survivor support circles)?

Who does the program typically include in the restorative process to support those impacted?

Has the program previously facilitated sexual violence-focused dialogues between a survivor and the person who harmed them?

How does the program address this power imbalance between the parties?

What training if any do facilitators receive on sexual violence?

Tip # 4: Determine what role you might have in the process. Generally, victims' attorneys will not have a participatory role in the restorative dialogue or circle. Their role will be limited to supporting the survivor in connecting with restorative justice programs and navigating the restorative process – helping survivors navigate any questions about the process and any privacy or safety concerns they have about participating in the process.

Is your client interested in having you participate in some fashion?

Does your organization limit the role you may play in RJ processes?

What limitations does the facilitating organization have for attorney participation? If not permitted to participate, may an attorney be present to advise their client about legal or privacy concerns? At which points in the process?

If attorneys may not be present, may the parties request breaks to consult with their attorneys?

II. Discussing Restorative Justice with Your Survivor-Client

Tip # 5 Consider whether and how to introduce restorative justice options to survivor-clients. Just as we alert clients to all legal remedies available, attorneys should ask clients if they are interested in a restorative approach. Lawyers should be equipped to describe the RJ programs that exist and be prepared to provide an overview of how those programs operate. To accomplish this, it is important to have investigated the options available in your communities and be prepared to answer the italicized questions listed above. This groundwork is necessary to provide an accurate picture of what programs are available and provide enough information to allow the client to make an informed decision about whether to further explore a restorative program.

Tip # 6 Determine how, if at all, the RJ process interacts with related criminal or administrative proceedings. Some restorative justice programs are conducted in concert with criminal justice systems or other institutional processes, such as Title IX cases in the campus setting. These are often considered “diversionary programs.” They are considered diversionary because, if the person who caused the harm completes the restorative justice process, they may face lesser consequences or no criminal or administrative consequences at all. However, if they do not complete the process, their case may revert to the criminal justice system for prosecution or to be addressed through the institution’s disciplinary process. It is critical to know how the RJ process will impact or be informed by pending court or disciplinary proceedings.

What happens to the criminal case if the victim withdraws from the process?

What information from an RJ process can be used in a traditional investigation or adjudication process in an educational setting?

Are statements made by either party during the restorative justice process confidential? Is there any way to enforce a confidentiality agreement?

Does the prosecutor's office need to endorse or approve the process and any agreements reached between the parties? May the prosecutor be a participant in the facilitated conversation?

May statements made during the restorative justice process be used to impeach a party or witness at a subsequent court or administrative hearing?

Even if the parties agree that neither participant can be impeached by the statements made during the restorative justice process, can those statements be used as the basis for further inquiries, for example in discovery requests or identifying potential witnesses?

May statements made by the participants be used to try and impeach other witnesses or as the basis for subsequent discovery efforts?

Tip #7 Help to manage your client's expectations through the process. The criminal justice system focuses on punishing those who have caused harm. In restorative justice, the focus in responding to harm shifts from retribution to accountability, and to repairing the harms. The end goal of the restorative process is not necessarily that the survivor feels completely healed from the process, but that the person who caused the harm takes responsibility. For some survivors, the restorative justice process may be a destination in their healing but, for many, it is simply one step in their journey.

How does the RJ program determine what accountability and repair look like?

In what capacity may the survivor offer their views and needs regarding accountability and repair?

Who decides when the process is complete?

What if the survivor is not satisfied with the result? Does the program make intentional efforts to assess a survivor's comfort with the structure or facilitation of the process?

What does a survivor need to know if they choose to withdraw from the RJ program before the process is complete?

III. Determining if a RJ Program Is a Good Fit

Tip #8 Determine how long the process typically takes and the frequency with which your client will need to participate. Restorative justice takes time. While each program and situation are unique, a commonality is that there will be a *process*. The process could take months, or even years. If a survivor-client is expressing interest in restorative justice, it is important that they understand all that it involves and what it requires of them. In most cases, the RJ process will involve individual meetings with the facilitator and each participant before bringing the participants together for a facilitated conversation.

How long does the process typically take?

How many individual meetings can the survivor expect?

How many meetings with community stakeholders?

How many meetings with the person who harmed them?

Tip #9 Ask how the program engages with those who have caused harm. Some restorative justice programs require that the process be initiated by the victim. All require the voluntary participation of the parties. If the survivor is not interested in pursuing restorative justice, there are programs that allow offenders to do accountability work on their own. Letter banks, for example, allow offenders to write a letter and submit it to the letter bank if the victim expresses an interest in a dialogue in the future. Some survivors may be interested in learning about options that do not involve or require their direct engagement.

What does it mean for a person who caused harm to be a voluntary participant if the RJ process is tied to the criminal justice system or some other administrative disciplinary proceeding?

Will the survivor be satisfied if the offender's voluntary participation is motivated by pending criminal, administrative or other proceedings and the corresponding punishment?

Who is responsible for contacting the offender to gauge their interest in participating?

Tip #10 Ask the program if and how they use surrogates. While both parties' participation in the RJ process must be voluntary, the degree to which a survivor must participate may vary. In some instances, a survivor may opt to have a surrogate take their place in portions of the restorative justice process. For example, the survivor may wish to speak with the facilitator for individual sessions leading up to the facilitated dialogue but may prefer that a surrogate attend meetings for which the person who caused the harm will be present. This surrogate may be a proxy selected by the survivor (e.g., a friend or family member) or it might be a surrogate identified by the facilitator (e.g., a survivor of sexual assault by a different offender, or someone who works regularly with survivors who can bring a survivor's lens to the conversation).

In what portions of the process may a surrogate be used?

Who chooses the surrogate and, if the survivor may choose their surrogate, must the person who caused the harms agree to that choice?

In what steps of the process, if any, must the survivor participate directly?

How and by whom will the survivor be updated about the aspects of the process for which a surrogate was used?

Tip #11 Ask about the process for identifying and inviting third parties to participate. As part of the restorative justice process, both parties may have an opportunity to invite third parties from their communities. This could include family members, friends, classmates, neighbors, fellow worshippers, coworkers, etc. These third parties are there to support the victim and the person who

caused harm and/or speak about how they were harmed as a community member.

Is there an approval process for suggested third-party participants?

Must both parties agree to all participants or is the survivor's approval sufficient?

May the person who caused the harm include additional participants over the victim's objection?

Must the facilitator agree to all participants?

Tip #12 Ask the program whether or how the offender's history of trauma will be a factor that is addressed in the RJ process. The harm that prompted the restorative justice process may not be the only harm discussed during the process. Generally, restorative justice practices prioritize the survivor. However, a tenet of many restorative practices is a recognition that addressing the harms committed by an offender may also require exploring harms that the offender has experienced. Some programs may discuss this individually with the person who caused the harm while others may bring this into the facilitated group conversation.

If the trauma experienced by the offender will be introduced and discussed as part of the RJ process, this could be important information for your client to have in advance. Once you determine if this is the case, discuss this with your client and prepare them for what to expect. Some survivors may struggle with a feeling that exploring the offender's trauma diminishes the focus on the harm the offender caused to them or to their community or is offered as an excuse for the offender's behavior. It is important to explore this with any prospective program and discuss with the survivor how it may come up in the process.

Will trauma experienced by the offender be discussed in the process?

At which points in the process might it be considered? Who decides if the offender's history of trauma will be introduced into the process?

Will the survivor have a role in determining whether the offender's history of trauma is part of the process?

Conclusion

While restorative justice practices are centuries old, their use in the United States, and their application to sexual violence, are relatively new. Exploring the options available in your community will prepare you to support survivors as they explore their options. Your research and experience working with survivors may also lend you a unique perspective to share with growing restorative justice programs as they begin facilitating restorative processes in sexual violence cases. As with all legal representation of sexual violence survivors, offering survivor-centered and client-directed services is key to supporting clients as they explore the options available.



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