

# A Report on Promoting Restorative Initiatives for Sexual Misconduct on College Campuses

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The Campus PRISM Project is an international network of scholars and practitioners, coordinated by the Skidmore College Project on Restorative Justice. Project members participate based on their interest and expertise rather than as official representatives of their respective institutions.

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## EXECUTIVE SUMMARY

Restorative justice (RJ) encompasses a range of processes, programs, practices, and policies as well as a philosophical perspective that offers a new approach to addressing the problem of sexual and gender-based misconduct on college campuses. A restorative approach is responsive to individual incidents of misconduct as well as to the broader cultural contexts that support such behavior by offering non-adversarial options for prevention education, resolution, and pathways to safe and accountable reintegration. RJ offers interventions that focus on understanding the harm caused, how to repair harm, how to prevent its reoccurrence, and how to ensure safe communities. RJ offers a way to support survivors to heal from the trauma of victimization, while creating a space for offenders to be accountable for their actions and take steps to reduce their risk of reoffending. Restorative interventions are also used for community building to establish appropriate standards of sexual conduct on campus, reduce fear, and counteract the hostile climate often characterized as “rape culture.”

The Campus PRISM Project (Promoting Restorative Initiatives for Sexual Misconduct) includes an international team of researchers and practitioners who are deeply invested in reducing sexual and gender-based violence by exploring how a restorative approach may provide more healing and better accountability. The Project is coordinated by the Skidmore College Project on Restorative Justice.

Campus PRISM promotes restorative justice processes that...

- Encourage true accountability through a collaborative rather than adversarial process;
- Reduce risk of reoffending and provide greater reassurance of safety to survivors/harmed parties and the community;
- Meet survivors’/harmed parties’ needs for safety, support, and justice; and
- Create meaningful forums for the examination of hostile campus climates and the development of community-building interventions.

Goals of the Campus PRISM Project:

- Create space for scholars and practitioners to explore the use of RJ for campus sexual and gender-based misconduct (which includes sexual harassment, sexual assault, and other forms of gender-based misconduct) as an alternative or complement to current practices.
- Consider the potential and challenges of RJ in light of the national concern about campus sexual assault.
- Apply lessons learned from the use of RJ in criminal justice sex offenses, e.g. Circles of Support and Accountability, restorative conferencing, and other trauma-informed practices.
- Gather and disseminate knowledge about RJ practice and research.
- Explore the potential for multi-campus RJ pilots.

### **Prevention and Education**

Restorative justice, which includes community-building circles, may enhance current prevention education and practice. Circle practices offer people on campus a way to surface and explore issues related to sexual norms and behavior. They can be used for community building, personal and group reflection, facilitated discussions about sexual harm, rewriting cultural narratives about rape and hegemonic masculinity, and developing commitment to pro-social behavior along the stages-of-change continuum. RJ circles can be implemented as one-time events or sustained dialogues.

Circle practice offers an innovation in the prevention education arena through its unique emphasis on the intersection of information sharing, education, reflection, and community building. This innovation is informed by experiential learning theory and practice, which emphasizes the value of the knowledge and experience that participants bring to the educational process. A circle-based approach incorporates the sharing of important technical and legal information that is universal to prevention education, but does so in a meaningful and intimate learning space. Circles provide a context that allows students to collectively analyze their personal views and experiences, at the same time making the learning process individually relevant. In circles, participants develop shared norms and community-based action plans, which can promote individual *and* group accountability and inclusive, restorative responses to harm.

Restorative practice is rooted in the basic human impetus to sit together and deliberate the issues. The circle is designed so that participants engage in an inclusive and non-hierarchical way, typically by sitting in a circle formation with no obstructions (no conference tables or desks) and passing a talking piece around the circle repeatedly to ensure that everyone has a voice.

### **Response to Sexual and Gender-Based Misconduct**

In many cases, restorative practices can be used as an alternative or supplemental resolution process that is tailored to meet the needs of harmed parties and campus communities while leading to meaningful behavioral change in student offenders. RJ models for adjudication may provide more healing outcomes than adversarial approaches. Because RJ is an approach that is inclusive in its decision-making, it may provide outcomes that are perceived by the stakeholders to be more legitimate than conventional practices.

Restorative conferencing brings those who have accepted responsibility for causing harm, those who have been harmed, affected community members, and support people, into a process intended to repair the harm, support true accountability, and reestablish trust. After a discussion of the harm, the participants (rather than conduct administrators) decide what steps the student offender can take to repair the harm. Trained facilitators guide the dialogue.

The restorative approach to accountability differs from traditional punishments in an important way. Instead of relying on the severity of the sanction as its metric, RJ relies on the testimonials of harmed parties and concrete measures of behavioral change. Rather than simply assigning passive offender accountability, in which punishment is delivered but change is not measured, RJ cultivates active accountability in which offenders can repair harm and demonstrate responsible behavior.

### **Reintegration**

After an incident has been officially resolved, even when a student has been found in violation and suspended, a restorative approach takes into account the long-lasting impact on the individuals involved and the wider community. Although some students who violate campus sexual and gender-based misconduct policies will require criminal prosecution and/or expulsion from the institution, others will remain enrolled or be allowed to reenter after some period of suspension. Implementation of a restorative approach would provide opportunities for student offenders who return to address their issues in a meaningful and socially accountable manner while providing for enhanced monitoring and service provision.

A Circle of Support and Accountability (CoSA) is a collection of 4-6 community volunteers who pledge to assist an offender in their attempts to integrate with a community. These volunteers are supported by community professionals and the program is managed by a circle coordinator. The circle offers

community support while the student offender commits to doing everything in their power to avoid reoffending and the situations that put them at risk to do so. The CoSA holds the student accountable to this commitment through regular meetings and checking to make sure agreements are upheld. Providing support circles for survivors that work in parallel with CoSAs is an important way to address the ongoing needs of survivors.

### **Recommendations**

In recent years, interest in and support for a restorative justice approach to campus sexual and gender-based misconduct has grown. Below is a list of next steps for campuses that are interested in pursuing a restorative approach.

*Adopt a Restorative Lens:* One first step is to start using restorative language. Where possible, focus on the harm caused by sexual and gender-based misconduct, and then pathways to active accountability and healing for harmed parties. Even in traditional hearings, the language of harm can be used: ask involved parties to identify the harm and what would need to be done to repair it. This approach can help broaden sanctioning options to include actions that meet the needs of all participants and develop responses designed to broaden community awareness and involvement. Seeking non-adversarial opportunities to understand the harm caused and possible steps to repair it can help participants to feel supported by the institution rather than alienated by it.

*Create a Restorative Justice Study Group/Steering Committee:* Restorative justice is now a global social movement with well-developed principles, guidelines, and practices. Implementing RJ requires thoughtful study and oversight. Many campuses have faculty who teach RJ as well as students who came from high schools with established restorative programs. Building a steering committee with students, staff, and faculty is an appropriate step for sharing knowledge and developing a plan of action.

*Develop Capacity in RJ through Training and Facilitation:* Intensive training in RJ builds knowledge, skills, as well as enthusiasm for implementation. Implementing RJ without proper training and expertise may cause harm to the parties and to the larger project. Create a small team, get trained, and create opportunities for facilitation. Working on issues of campus sexual and gender-based misconduct (including sexual violence) from various perspectives (legal, student conduct, Title IX, advocacy) can often be a challenge for colleagues. Using a circle process can help staff experience the restorative process, build an effective team, and provide a space to discuss differences, challenges and how to work together toward shared goals.

*Review and Update Policies to Include Restorative Justice:* In the last few years, sexual and gender-based misconduct policies have been undergoing continuous revision to comply with recent legislation. Policy development is an opportunity to educate a variety of key stakeholders and apply restorative principles of collaborative decision-making. Use policy development as a means to discuss RJ with senior leadership, develop community partnerships, and potentially influence regional or national responses to sexual violence.

*Promote Community Awareness:* Since RJ is not widely understood, it is important to educate the campus about restorative philosophy and practice. This can be achieved by hosting speakers, videos, and educational workshops.

*Engage in Restorative Justice Research:* As the evidence continues to accumulate, researchers increasingly focus on the effectiveness of RJ for different populations (including sex offenders) and in

different settings (including college campuses). Partnering with researchers to develop theory-based programs and rigorous assessment plans is necessary to demonstrate effectiveness. Many research questions will need to be answered as implementation occurs.

*Pilot a Restorative Approach:* In the U.S., campuses may be hesitant to employ RJ practices for sexual and gender-based misconduct because they are not clear if RJ is permissible under OCR guidelines. Because Title IX covers a broad range of behavior, it is possible to clarify, with needed guidance from OCR about sexual assault cases, what is currently permissible and begin implementation. Policies must clarify how restorative processes are related to other conduct practices, such as whether they function as an informal resolution, a formal alternative to traditional adjudication, or an incorporated facet of traditional adjudication. Similarly, campuses are hesitant to move forward because they are uncertain about the criminal ramifications for students. If students, for example, admit fault during a restorative process, will that be later used against them in criminal court? Any pilot must clarify this issue with local district attorneys and understand relevant state law. Victim advocates may be hesitant to recommend RJ because of concern for re-victimization. Consider educational programs for advocates that explain how RJ procedures minimize this risk, including alternatives to face-to-face dialogue, as well as significant benefits for harmed parties. Ensure that trauma-informed procedures are well-established to protect against this risk.

### **Conclusion**

A restorative approach to campus sexual and gender-based misconduct offers hope that we can truly meet the needs of victims, offenders, and campus communities. Rather than aspire to simply meet compliance standards, RJ offers an opportunity for healing, student development, and community growth. Implementing RJ calls for new perspective and long-term aspirations to provide a comprehensive approach that includes prevention, response, and reintegration. Inevitably, piloting a program will begin with incremental, small steps. As capacity grows, campuses can apply RJ practices broadly with the goal of true community transformation.

## SECTION ONE: INTRODUCTION TO A RESTORATIVE APPROACH TO SEXUAL AND GENDER-BASED MISCONDUCT

Restorative justice (RJ) encompasses a range of processes, programs, practices, and policies as well as a philosophical perspective that offers a new approach to addressing the problem of sexual and gender-based misconduct on college campuses. A restorative approach is responsive to individual incidents of misconduct as well as to the broader cultural contexts that support such behavior by offering non-adversarial options for prevention education, resolution, and pathways to safe and accountable reintegration. RJ offers interventions that focus on understanding the harm caused, how to repair harm, how to prevent its reoccurrence, and how to ensure safe communities. RJ offers a way to support survivors to heal from the trauma of victimization, while creating a space for offenders to be accountable for their actions and take steps to reduce their risk of reoffending. Restorative interventions are also used for community building to establish appropriate standards of sexual conduct on campus, reduce fear, and counteract the hostile climate often characterized as “rape culture.”

### **Campus PRISM: Promoting Restorative Initiatives for Sexual Misconduct on College Campuses**

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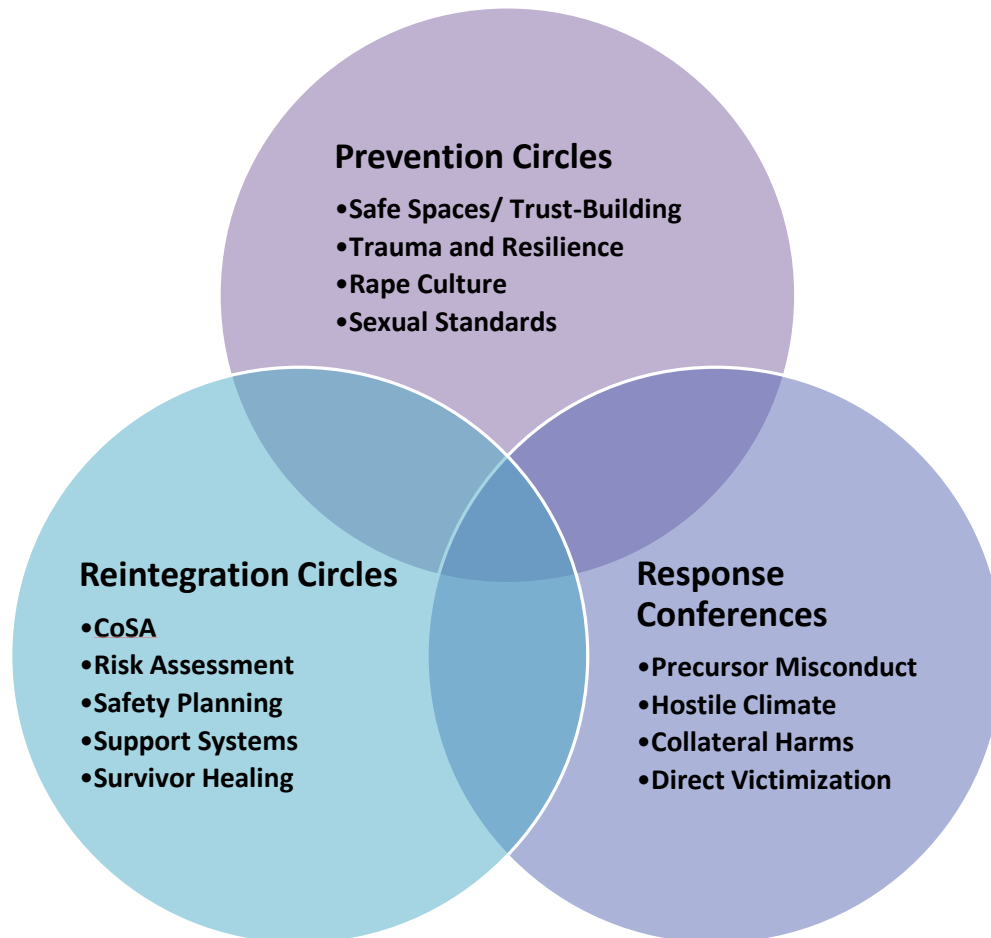
A note on language: this report reflects the contributions of professionals from many disciplines. We recognize that different fields use different terminology, some of which may have pejorative connotations. When we reference sexual and gender violence, we primarily use the terminology of higher education conduct systems: sexual and gender-based misconduct. We use the terms “survivor” and “victim” interchangeably. We use the language of criminology when we refer to offenders rather than the commonly used term in higher education, “respondents.” However, we note that restorative justice advocates often prefer the less-negative term “person responsible.”

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- Consider the potential and challenges of RJ in light of the national concern about campus sexual assault.
- Apply lessons learned from the use of RJ in criminal justice sex offenses, e.g. Circles of Support and Accountability, restorative conferencing, and other trauma-informed practices.

- Gather and disseminate knowledge about RJ practice and research.
- Explore the potential for multi-campus RJ pilots.

Campus PRISM is exploring a wide range of restorative options including policy development; circle practices to provide meaningful prevention education; restorative conferences that respond to specific incidents of misconduct; and circle practices to provide support and accountability for offenders who are returning to campus after a period of separation.



**A Restorative Model for Prevention, Response, and Reintegration**

### **Sexual and Gender-Based Misconduct on College Campuses**

A significant social movement is underway on college campuses to reduce sexual violence by changing campus cultural attitudes and to revise administrative policies and procedures to better respond to the problem.<sup>1</sup> Organizations such as “Know Your IX,” popular books, such as *Missoula*, magazines, such as *Rolling Stone*<sup>2</sup> and *Time*,<sup>3</sup> and documentaries, such as *The Hunting Ground*,<sup>4</sup> have brought widespread attention to the issue. While a broader movement to address violence against women has existed for decades, this new wave has focused its attention on campus policies and procedures through online activism, lawsuits, federal complaints, and increased pressure on the federal government to mandate and enforce new rules for reporting, victim services, and conduct procedures.

Incidents of campus sexual and gender-based misconduct include a wide range of offending behaviors such as sexual harassment, stalking, sexual assault, and intimate partner violence. The table below



summarizes the extent of misconduct, indicating how many undergraduate females were victimized during the 2014-15 academic year.<sup>5</sup> Victimization is lower among male students and higher for LGBTQ students.

**Rates of Victimization (Bureau of Justice Statistics 2016)**

Sexual and Gender-Based Victimization	
Undergraduate females, self-report, 2014/2015 academic year	
Sexual harassment (unwelcome comments, gestures, exposure, sexting/photos/videos)	28%
Sexual touching (unwanted, forced kissing, touching, groping)	6%
Coerced sexual touching/rape (threats, promises, persistent pressure)	8%
Rape (sexual penetration through force, threat of force or incapacitation)	4%
Intimate partner violence	6%

**The Obstacles to Effective Response**

There are several challenges to effective response to sexual and gender-based misconduct on college campuses.<sup>6</sup> The primary problem is that most student survivor/victims do not make any official reports or complaints. Few college student rape victims report their victimization to campus officials or the police, yet most tell friends or family.<sup>7</sup> This can be exacerbated for students of color and LGBTQ students who may have low expectations that an institutional process will be responsive to their needs. This highlights a significant gap between the kind of support survivors are seeking and the trust they have in campuses and the criminal justice system to meet their needs.

Universities are trying to improve procedures by dedicating greater resources to complex investigation and adjudication processes. However, the goals of a campus adjudication process—utilizing fundamentally fair and unbiased approaches to determine what happened, whether what happened entailed a policy violation, and if so, what outcome should be assigned—can be incompatible with the needs of survivors. Campus and justice-system administrators, even when well intentioned, often inflict additional harm on survivors through multiple points of contact; this is known as *secondary victimization*.

Can we develop processes that promote true accountability through a collaborative rather than adversarial process? Can we develop processes that reduce risk of reoffending and provide greater reassurance of safety to survivor/victims and the community? Can we develop processes that attempt to meet victims’ needs and promote healing? Can we develop processes that engage the community to promote cultures of respect?

Formal hearing processes as well as single-investigator processes with no live hearing can create an adversarial dynamic between the participants, as well as between the participants and the institution, and are emotionally challenging for all involved. Findings of responsibility can be difficult, as the offending behavior often occurs in private without witnesses, making evidence collection difficult, and cases are left to word-against-word credibility determinations. Mandatory expulsion policies displace risk from the college to other communities and may work against fact-based findings of responsibility.

Furthermore, given the uncertainty about facts in many cases, coupled with lower evidentiary standards than are used in criminal courts, zero-sum resolutions may lead to more appeals, federal complaints, lawsuits, and dissatisfaction by both survivors and accused students.

It is therefore not surprising that most survivor/victims opt out of adjudication processes: only 13% of campus rape victims make any kind of report to police or campus officials, including health services, counseling, and conduct administrators.<sup>8</sup> This low reporting rate inhibits a college's ability to effectively respond to campus sexual violence. It is likely that some survivors would appreciate the opportunity to speak directly with the person who harmed them in a safe setting, but this is not an option that is typically available.

Regardless of whether campus or criminal complaints are pursued, the respective cultural challenges faced by both survivors and accused students can work against the goals of healing, accountability and increased individual and community safety. Sexual misconduct is a violation of physical and psychological boundaries, which may lead survivors to experience trauma-based reactions such as self-blame, uncertainty, memory impairment, and avoidance of help-seeking or reporting. Offenders and survivors are often acquainted, which may increase trauma for the victim and also uncertainty about how to proceed. Rape culture on campuses promotes an environment of entitlement while pervasive binge drinking facilitates risk. Rape myths undermine social support for victims. Institutions may sometimes seek to manage their reputations rather than prioritize their students' well-being. Offenders are predisposed to minimize, displace, or deny responsibility and adversarial processes reinforce this. When offenders are found responsible for sexual or gender-based misconduct, their sanctions may promote separation and isolation rather than reconciliation and reintegration. In addition, most campuses do not have effective risk assessment protocols or treatment options for offenders, making their safe and successful reintegration a challenge.

### **Title IX, the Clery Act, VAWA, and Campus Response**

Campus administrators' primary response to sexual and gender-based misconduct is determined by college policy. While the behavior may be a crime and victims may choose to go to the police, administrators are responsible for offering support and accommodations, and for determining whether or not the behavior is a violation of campus policy. In the United States, many aspects of campus policy are mandated by federal law, including Title IX, the Clery Act, and the Violence Against Women Act (VAWA), and institutions are accountable to guidance from the Department of Education's Office for Civil Rights (OCR), which enforces Title IX. Title IX is an antidiscrimination law: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."<sup>9</sup> The US Department of Education offered initial guidance on how schools should respond to sexual misconduct in 1997 and 2001, emphasizing the importance of ending the harassment, preventing its recurrence, and remedying its effect.<sup>10</sup> OCR followed up with additional guidance in 2011: their "Dear Colleague Letter"<sup>11</sup> ("DCL") specified in greater detail how campuses should respond to Title IX violations, specifically with regard to sexual violence. It received widespread attention in the media and spurred changes at colleges and universities around the country. In the years that followed, additional legislation and guidance emerged in the form of the 2014 reauthorization of VAWA, which added to the Clery Act significant institutional requirements for education, prevention and response, OCR's publication of an FAQ document to supplement the 2011 DCL and another Dear Colleague Letter in 2015.<sup>12</sup>

Even though student affairs administrators prioritize educational and developmental learning outcomes in their conduct practices, the current climate on campuses has become highly adversarial, limiting an administrator's ability to hold students accountable and promote positive developmental outcomes. We may see increased litigation, reduced reporting, and negative psychological and academic outcomes for both victims and offenders in sexual misconduct cases.

This national social movement to address campus sexual and gender-based misconduct has raised awareness; fostered policy and procedural changes; increased training, case management, and data collection; and updated adjudication procedures. However, this movement may have, unintentionally, reinforced adversarial and retributive responses that may actually lead to prolonged trauma for victims, adverse educational outcomes for both parties, and a contested campus climate that reduces reporting and trust in administrators.

### **A Restorative Approach to Sexual Misconduct**

#### **The Restorative Impulse: The Case of Allison Huguet and Beau Donaldson**

In Jon Krakauer's critical exposé, *Missoula: Rape and the Justice System in a College Town*,<sup>13</sup> he examines how the University of Montana and the City of Missoula handled incidents of sexual assault, and begins with a case of acquaintance rape by a UM football player. After Allison Huguet's childhood friend Beau Donaldson raped her, like many victims, Huguet was uncertain about what to do. She didn't want to reveal this traumatic and deeply intimate crime to the police, to the university, or even to her father. But she did want Donaldson held accountable in a way that would not "ruin" his life and "to make sure this never happens to another person."<sup>14</sup>

For her, the solution was to confront him directly, without the assistance of the university or justice system. Initially, this was a success. Donaldson admitted his offending behavior, expressed remorse, and committed to getting psychological help. "He promised me that he would get treatment for his drug, alcohol, and sexual issues," Allison recalled. "And I made it clear that this promise was the only reason I wasn't going to the police."<sup>15</sup>

But after this confrontation, the two did not see each other again for more than a year. Donaldson did not abide by his promise, and when he saw her, his response was hostile. She did then go to the police and he was arrested. But instead of vindication, Huguet soon became the object of widespread community scorn and doubt about her credibility. Her mental health suffered and she became embroiled in a frustrating and uncertain year-long court process. Ultimately, this case was unusual because the police were able to obtain a confession from Donaldson, which led to a conviction and lengthy prison sentence. More typically, he would not have confessed and the case might not have been taken up by the district attorney.

*What if there was a process that supported Alison's "restorative impulse" and ensured accountability in the way that she wished? What if there was a justice process that could meet a survivor's needs and avoid the survivor's subjection to the kind of lengthy secondary victimization that can often characterize our traditional justice process? What if there was a process that encouraged an offender to accept responsibility—rather than promote their denial—and get the counseling and supervision they need to ensure community safety? What if there was a process that did not stigmatize and exile both survivors and offenders, but instead promoted community understanding and social support?*

Restorative justice is a global social movement that includes a variety of practices in schools, universities, and juvenile and criminal justice. The approach has been used to address minor crimes and policy violations, other offenses that affect community climate but do not violate conduct codes, as well as serious offending and human rights violations.<sup>16</sup> RJ has evolved from numerous faith-based and indigenous justice traditions and strives to be inclusive and respectful of cultural values, beliefs, and practices. In the context of sexual and gender-based misconduct, RJ circle practices may be employed in prevention and education, trauma-informed RJ conferencing may be used for resolution of some types of cases, and Circles of Support and Accountability may be used for student offenders returning from suspension or transferring. Since RJ is guided by a set of values, no one set of practices define it, and new practices may be developed and applied as needed.

Restorative justice on college campuses is a non-adversarial approach to addressing offensive behavior that seeks to identify and repair harm and rebuild trust through facilitated dialogue. It includes a variety of practices, including prevention circles, response conferences, and reintegration circles, designed to empower harmed parties and strengthen offenders' social ties and accountability to the community.

In Australia, RJ has been used successfully for juvenile sex offending.<sup>17</sup> More generally, research evidence demonstrates that RJ, compared to court processes, can better reduce recidivism,<sup>18</sup> reduce victims' post-traumatic stress symptoms,<sup>19</sup> increase all parties' satisfaction with the justice process,<sup>20</sup> and increase offender learning and development.<sup>21</sup>

Restorative justice may provide a way to ensure accountability and increase the potential for positive outcomes for all stakeholders. Research has demonstrated that restorative practices produce high levels of satisfaction for participants, even in cases of severe violence.<sup>22</sup> Restorative responses may offer a more humane response for all parties involved, and one that is better aligned with institutional goals of education and student development.

### **Meeting Community Needs**

As a global social movement, restorative justice is linked to efforts to promote social justice and culturally-responsive justice process. RJ has its roots in various efforts to address injustices of marginalized and disadvantage groups, such as the Truth and Reconciliation Commission in South Africa, Maori family group conferencing in New Zealand, and circle sentencing for First Nations Peoples in Canada.<sup>23</sup> College student conduct administration also has its roots in social justice. In the U.S., the first guarantee of due process for college and university students emerged in response to the case of nine African-American students who were expelled in 1960 from Alabama State College for participating in a civil rights demonstration.<sup>24</sup> In recent years, with the development of the *Black Lives Matter* campaign and other like movements, students have gained a better understanding of power, privilege and oppression; an understanding that is not separate from their experiences in the classroom, in campus life, and in conduct processes. A restorative approach may provide a meaningful approach that is culturally sensitive and conscientious about power dynamics present in both the conduct process and in the wider campus culture. RJ practices create opportunities to communicate through differences, explore how power structures may support the privilege or oppression of campus social groups, and undertake collective efforts to address systemic injustices. A restorative approach simultaneously takes seriously the needs of the community, harmed parties, and offenders.

Colleges and universities are responsible for creating a healthy and safe climate for student living and learning. Campus communities are unique in their high population turnover, requiring continuous renewal of community norms. Even though individual incidents of misconduct may be handled with respect to privacy, these incidents, particularly in the age of social media, often have far-reaching community ramifications, from uncertainty to fear to outrage, that can affect the institutional culture for many years. A restorative approach recognizes that focusing on addressing individual incidents is important, but insufficient, and community-building efforts are also needed.

In addition to generally educating students about sexual and gender-based misconduct policies and their behavioral expectations, it is necessary to combat campus subcultures that implicitly (or even explicitly) encourage sexual and gender-based misconduct. RJ provides community-based methods for challenging embedded sexist beliefs by creating forums to explore the harm of sexual and gender-based misconduct and to deliberate about community standards and expectations.

### **Meeting Victims' Needs**

The primary critique of traditional responses to campus sexual and gender-based victimization is that they have not been “trauma-informed,” and without understanding the psychological impact of trauma, social service providers, conduct administrators, and criminal justice professionals often unwittingly or insensitively retraumatize survivors.<sup>25</sup> Reliance on adversarial processes creates an unfortunate tension for survivors and their advocates between efforts to support survivors’ healing process and the justice process’s orientation toward determining accountability as defined by policy. Restorative justice is an approach that is consistent with trauma-informed care. Trauma-informed care is based on five core values designed to alleviate this tension: “safety, trustworthiness, choice, collaboration, and empowerment. If a program can say that its culture reflects each of these values in each contact, physical setting, relationship, and activity and that this culture is evident in the experiences of staff as well as consumers, then the program’s culture is trauma-informed.”<sup>26</sup>

A restorative justice approach to sexual and gender-based misconduct makes survivor care central, but also allows for the autonomy of survivors to make their own choices in the aftermath of victimization. As noted above, survivors are often unwilling to pursue a formal complaint for a variety of reasons. These may include distrust in systems that have been traditionally biased against people with marginalized identities, such as students of color, international students and first-generation students<sup>27</sup>; the social complications of continuing to coexist in shared friendship groups with offenders; and/or the wish to prioritize education and treatment for offenders over punishment. Survivors may, however, still wish to confront the offender in some capacity, and the aforementioned barriers to reporting leave these needs unmet. Whatever their reasons, RJ can provide a nonadversarial forum to address their wishes. In England, where there is more widespread implementation of RJ, the public stands firmly behind victims. A recent poll measured public opinion and found that “77% of people think that victims should have the right to meet their offender.”<sup>28</sup> From a victim rights perspective, the opportunity for RJ is one strategy to meet survivors’ needs.

Professor and RJ practitioner Judah Oudshoorn argues that “harms create needs. Justice is meeting needs. True justice is healing.”<sup>29</sup> He identifies the following needs of survivors that guide the restorative approach.

### Primary Needs of Survivors of Sexual and Gender-Based Misconduct

Safety and Care	•Providing physical and emotional safety. Building trust by creating safe, supporting relationships.
Support and Education	•Supports that foster resiliency. Education that clarifies the trauma experience.
Information and Options	•Understanding options for services and participation in the justice process.
Grieving and Expression	•Space for exploring the impact of offense.
Voice and Empowerment	•Telling their story. Having options for the healing process and influence on justice outcomes.
Believed, Absolved, and Vindicated	•Affirming their story, no victim-blaming, asserting the wrongfulness of the transgression.

### Meeting Offenders' Needs

Individuals who engage in sexual violence are society's modern day pariahs. There are few, if any, communities in which people who engage in sexually inappropriate conduct are welcome, including colleges and universities. Current trends in legislation, such as residency restrictions, have all but barred such individuals from certain communities. Campuses that rely on expulsion as the default sanction for sexual and gender-based misconduct may recreate the same stigmatizing and exclusionary practices that have been undertaken by the broader community, with similar issues and controversies.

Sex offenders rarely garner sympathy, although they are vociferously defended when believed to be innocent. When a student is found in violation of sexual and gender-based policies, many expect or demand swift and certain punishment, primarily through suspension or expulsion and a transcript notation that would prevent the student from hiding their misconduct from other schools. Just as harm creates needs, Oudshoorn points out that harm creates obligations, and the justice process must hold offenders accountable for their obligations to survivors and the community.<sup>30</sup> Restorative justice does not advocate for softness or leniency, but it does call for accountability within a context of social support. RJ does not assume that policies singularly focused on exclusion can effectively address community or offender needs and lead to meaningful behavioral change.

Although we live in a society that appears more strongly inclined toward punitive approaches, a growing literature has shown that such endeavors are less likely to return positive outcomes, *vis a vis* community safety and offender rehabilitation, than those in which human service delivery is front and center.<sup>31</sup> Integral to that emerging literature is a focus on ideas and methods described as restorative justice. Traditionally, RJ practitioners have shied away from working with people who engage in violence, including sexual violence; however, some jurisdictions have sought to include restorative principles in their work with offenders returning to the community. One specific example of a restorative justice-informed approach to sexual violence prevention is known as Circles of Support and Accountability (CoSA), a professionally facilitated model of community volunteerism that originated in Canada, but has since taken hold in Europe, New Zealand, the United Kingdom, and the United States. We will explore this model in greater detail in Section Four of this report.

Campus communities often work with students who have violated sexual and gender-based misconduct policies, when they have transferred, are returning from suspension, or have been sanctioned, but not separated from the institution. Student conduct administrators not only seek to ensure a safe campus, but to educate student offenders about the expectations of the university and to learn and grow as individuals. A restorative justice approach with these students is aligned with contemporary student development theories and has been demonstrated to enhance student learning.<sup>32</sup>

## SECTION TWO: A RESTORATIVE APPROACH TO SEXUAL AND GENDER-BASED MISCONDUCT PREVENTION AND EDUCATION

Restorative justice offers a vision for meaningful sexual and gender-based misconduct prevention, community education, and the development of a healthy campus climate. Intimate relationships can be complex for students to navigate given campus cultures of hooking-up, high-risk drinking, gendered peer groups such as Greek organizations and athletic teams, misogynistic pornography, and sexist/homophobic beliefs.<sup>33</sup> Each year, news stories emerge about rape chants by student leaders, sexist banners hung from fraternity balconies, and college sports fans who seem to care more about their teams winning than the traumatizing victimization of students.<sup>34</sup>

The field of public health offers a useful framework for understanding both root causes and prevention strategies. Researchers have helped guide prevention practice by examining topics ranging from risk and protective factors for perpetration of sexual violence, to the interactions of those risk factors with the volume and frequency of alcohol use that occurs on college campuses, to the breadth of gender and sexuality norms young people encounter and absorb before and during college.<sup>35</sup> Acquiring and utilizing skills to understand one's own identity and values framework, feel empathy for others, and navigate emotionally and sexually intimate relationships is an important part of college students' developmental arc. But prevention education is often limited to introductory online workshops or one-time large-group presentations, which are unlikely to effect change at the levels of personal relationships or community culture.

Restorative justice, which includes community-building circles, may enhance current prevention education and practice. Circle practices offer people on campus a way to surface and explore issues related to sexual norms and behavior. They can be used for community building, personal and group reflection, facilitated discussions about sexual harm, rewriting cultural narratives about rape and hegemonic masculinity, and developing commitment to pro-social behavior along the stages-of-change continuum. RJ circles can be implemented as one-time events or sustained dialogues. There is compelling evidence of the success of this approach in other arenas: similar practices for semester-long dialogues have demonstrated effectiveness in changing attitudes about race.<sup>36</sup>

### **Prevention Circle Case Study: Addressing Campus Party Culture**

This case study details the use of circle practice to create prevention plans for off-campus parties at a small, liberal arts college. Based on a review of several data sources (climate survey, qualitative interviews, and fact patterns of conduct cases), a prevention circle was organized to address day parties, called "dalties", which were mostly held at off-campus houses. These parties were a concern as an antecedent to assaults, including ones still occurring on campus, but precipitated by social interactions originating at the dalties. The circle was part of a larger response that included meetings with students planning to live off campus and a requirement that off-campus residents participate in bystander intervention training.

Staff working on sexual assault prevention and response and also trained in restorative justice practices, convened a circle of student stakeholders to address action possibilities. The circle included students active in sexual assault activism, student entertainment, and athletics (as many of the off-campus residences are rented by members of athletic teams). The facilitators introduced the circle process, including the use of a talking piece, and ground rules, and presented some of the background



information on darts, as well as the hope that the circle could yield a framework for thinking about darts as prevention opportunities.

The first question for the circle was, “How would you describe the level of safety at darts?” This question yielded very mixed opinions. Some students felt that it depended on which house hosted the event, whether they personally knew the hosts, the level of crowding, whether the event prioritized drinking over other forms of socializing, and even the weather (on warm days, the parties went longer and people drank more). At darts, students sometimes found themselves becoming much more intoxicated than they planned or expected to be. This led to situations where people lost track of friends or became much less aware of the actions of those around them, limiting their skills as bystanders even if they had good intentions to act as such. Other participants identified a problem of what they called “implied consent”: the shared concept that by attending darts, and by leaving the party with someone, that an individual was consenting to anything that happened thereafter. After a participant shared that example, other participants stressed that they didn’t themselves hold this belief but that it was a widely identifiable belief on campus.

After the circle shared its concerns, the facilitators asked, “What would need to change about darts to make them more safe?” This question proceeded as an open space conversation rather than a structured circle. The key concept to emerge in this discussion was that the interventions would have to be something students themselves could implement as guests or hosts of darts, given the relative lack of control by the college administration and the perception by participants that what was problematic about darts were social interactions that were not crimes and would not involve law enforcement. Students identified that there needed to be something “in the party” that would remind people of shared values about safety and consent. Some ideas, like having fellow students as sober monitors or bouncers, failed to gain traction with the group, because they believed that people chosen to be sober monitors might not have enough social capital to intervene in every situation and that “bouncers” were out of sync with a perceived “openness” in the community. Another idea was t-shirts with a slogan, such as “Party With Consent,” but participants felt that because many of the darts involved costume themes of various kinds, that the shirts wouldn’t end up being worn. A gender inclusive accessory—like mesh baseball hats—was proposed as an alternative and got good response. The student athletics group agreed to take this “in the party” idea on as a project in time for the spring party season.

Lessons learned: A diverse circle of participants held very different pieces of information about darts. Administrators had a sense of what was occurring after darts, and students held much more information about the preceding context. They were also able to share differing opinions with one another in ways that increased everyone’s knowledge and breadth of perspective. The suggested action steps that students came up with were not items that administrators would have developed on their own, or been able to successfully implement even if they had.

### **Prevention Education through Circle Practice**

Circle practice offers an innovation in the prevention education arena through its unique emphasis on the intersection of information sharing, education, reflection, and community building. This innovation is informed by experiential learning theory and practice, which emphasizes the value of the knowledge and experience that participants bring to the educational process. A circle-based approach incorporates the sharing of important technical and legal information that is universal to prevention education, but does so in a meaningful and intimate learning space. Circles provide a context that allows students to collectively analyze their personal views and experiences, at the same time making the learning process

individually relevant. In circles, participants develop shared norms and community-based action plans, which can promote individual *and* group accountability and inclusive, restorative responses to harm.

### The Limits of Current Prevention Education on Campus

Most campuses, citing a limitation of resources and time, meet mandates for prevention education by offering workshops on such topics as effective consent or bystander intervention, either online or in person. Many offer an open-invitation voluntary workshop; others specifically target populations such as fraternities and athletic teams.<sup>37</sup> Some colleges and universities require incoming students to attend a one-time workshop, typically in an auditorium with hundreds of peers. In these scenarios, the extent to which participants process the information or apply it to their own behavior remains unknown.

According to Sarah DeGue, the author of a federal report on prevention education, “brief, one-session educational

programs conducted with college students, typically aimed at increasing knowledge or awareness about rape or reducing belief in rape myths” fall under the category of “what *doesn't* work.”

Across dozens of studies using various methods and outcome measures, none have demonstrated lasting effects on risk factors or behavior. Although these brief programs may increase awareness of the issue, it is unlikely that such programs are sufficient to change behavioral patterns that are developed and continually influenced and reinforced across the lifespan.<sup>38</sup>

Experts agree that a single workshop is not effective at changing behavior, and that the impact of educational experiences (workshops, on-line courses, etc.) can only be sustained through regular, ongoing interactions. Even as campuses attempt to increase the “dosage,” often through the use of on-line programs,<sup>39</sup> a further problem arises in the universalized approach to prevention education. In addressing large audiences, these programs cannot account for the diverse quality and content of K-12 sexual education programs, nor for the cultural differences that students from around the country and the world bring to their understanding of gender and sexuality. It is difficult to know whether the student actually understands or embraces what is being presented.

Restorative practice is rooted in the basic human impetus to sit together and deliberate the issues.

As a response to this problem, prevention researchers recommend approaches that engage students in developing community standards and practices for preventing sexual and gender-based misconduct. As DeGue and her colleagues note, “Strategies that foster positive relationships between participants and their parents, peers, or other adults have been associated with better outcomes in past prevention research... For example, programs that engage youth in facilitated peer support groups... can leverage



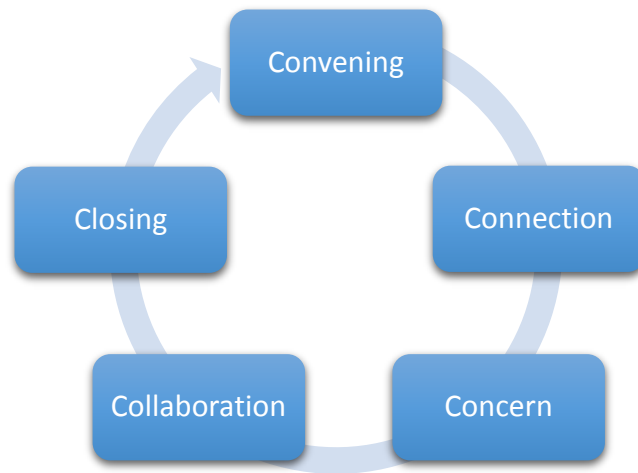
positive peer influences to reduce violent behavior...[I]nvolving members of the target population in the development and implementation of prevention strategies may improve the programs' perceived relevance to the community's needs."<sup>40</sup>

Prevention education that is rooted in restorative practice aligns with these goals, both in terms of its emphasis on inclusive community involvement and its reliance, for structure and content, on the collective wisdom of the community itself. A restorative approach takes the wealth of information presented in a one-time workshop and integrates it into a series of circle experiences that communities can engage in together.

### **The Innovation of Restorative Circles for Prevention**

Restorative practice is rooted in the basic human impetus to sit together and deliberate the issues. The circle is designed so that participants engage in an inclusive and non-hierarchical way, typically by sitting in a circle formation with no obstructions (no conference tables or desks) and passing a talking piece around the circle repeatedly to ensure that everyone has a voice. A circle process typically includes five elements:

- **Convening:** Facilitators welcome participants and cultivate the learning environment through reflection, sharing, and collectively establishing group norms.
- **Connection:** Participants introduce themselves to build common ground and shared identity.
- **Concern:** Participants focus on the topic of concern, sharing individual perspectives.
- **Collaboration:** Participants identify goals and actions that will address the topic of concern.
- **Closing:** The group reflects on the circle experience and any decisions that have collaboratively made.



**The 5 C's of Circles**

The circle creates a respectful space where people can build a collective foundation of the knowledge and experience that they bring to complex topics. It emphasizes peer-peer learning and empowerment as the group integrates new technical or legal knowledge through a highly inclusive and interactive process of discussion and deliberation. Through this process, people learn to practice “intersubjectivity,” defined as the experience through which people can express and compare subjective views with each other to develop a shared, multidimensional view of a given topic or situation.<sup>41</sup> This is the basis from which people collectively develop shared morality, or at least a common set of practices and norms in communities.

As it opens, a circle builds trust through “ice breakers” and other exercises, then draws people into increasingly open, respectful and empathetic communicative experiences that involve storytelling and deep listening. When practiced with regularity, each circle that forms within a community can reproduce and reinforce its shared norms and community agreements; take in new information through films, readings, PowerPoint presentations or other media; and utilize interactive and, most notably, inclusive processes to discuss and deliberate what has just been learned. Circle practice can be highly outcome-oriented, to the extent that it can lead to a specific plan of action or community agreement, based on the careful deliberation of the group, and a sense of each participant’s shared accountability to the group.

Circle practitioners carefully prepare for circles by planning exercises to build trust and guiding questions that invite participants to think through a given issue with the thoroughness needed to develop collective agreements or remedies for problems or harms. Given that the heart of the circle process is a series of questions, it will likely not fulfill the conventional expectation people bring to educational practices of an expert who will tell audiences what they need to know about a given topic with a sense of “efficiency.” However, the underlying values of circle practice, such as respect, equality, empathy, patience, shared leadership and responsibility, all transform the learning environment from passive and disengaged to one that can inspire personal and collective accountability to campus cultural change.

The circle creates a respectful space where people can build a collective foundation of the knowledge and experience that they bring to complex topics.

In a restorative approach to sexual and gender-based violence prevention, the information that is typically presented in a prevention workshop is instead incorporated into circle practice. Through this practice, participants develop a “social norms” approach to prevention. As they deliberate, students can address and challenge their peers’ assumptions, typical beliefs and behaviors of students. The goal of the social norms approach is to “amplify the voice of the silent majority of students already aligned with the aims of campus sexual-assault prevention programs.”<sup>42</sup> Circle practice helps develop a level of trust and inclusivity that allows for those who are less likely to speak up to be heard within the group.

Particularly in communities whose members have been called out for negative social behaviors or have been implicated in cases of sexual and gender-based misconduct, members of the silent majority may appreciate the opportunity to steer the group in a new direction. It is the onus of the group to redefine or even “rebrand” itself based on common values and shared norms, rather than submit to outsiders’ perspectives or expectations. Through such a process of redefinition, the group will likely increase its sense of cohesion and community, in a virtuous cycle.

Talking together about the social norms surrounding consent in circles that are framed by values and communication guidelines can provide people with safe and brave spaces to discuss barriers to affirmative consent. According to Annika Johnson and Stephanie Hoover, “[heterosexual] young adults’ sexual behaviors reflect their perceptions of their peers’ sexual attitudes and behavior... Young adults tend to avoid direct conversations regarding sexual consent when possible and rely on nonverbal passive approaches to avoid embarrassment... When participants perceived that their sexual partner would negatively react to their sexual communication, they were less likely to exhibit sexual consent behaviors.”<sup>43</sup> In their avoidance of clear sexual communication, students are enacting sexual scripts and communication norms based on embedded gender roles. Building a true consent culture among such

students would thus require not only individual recognition of campus policies, but a shift in cultural norms that would affect communicative behavior. The circle can be a space within which people practice new communicative styles while simultaneously discussing both the rules and shared norms and practices of consent culture.

The most effective prevention circle practice will occur within established communities (residence halls, identity-based or theme houses, fraternities, sororities, other living spaces, student organizations, discussion sections, etc.). Participants can build and strengthen community together over a period of time while exploring complex and difficult, yet ultimately relevant, topics. The values and norms developed through circle practice and through discussion of relationships become the basis for intentional, values-based communities. As noted above, it can also lead to a specific action plan among circle participants, including a shared commitment to next steps. This is a key element for prevention education regarding bystander intervention, for example, where circle participants can agree to engage in certain behavior, rather than simply learning about what they could or should do, when faced with a given situation that calls for intervention.

### **Consent/Community-Building Circle Modules**

This prevention education curriculum using restorative circles was developed collectively by staff and students of the by the Restorative Justice Center at the University of California-Berkeley. Some aspects have been piloted and others will be piloted in spring of 2016. For the full curriculum, go to [rjcenterberkeley.org](http://rjcenterberkeley.org)

**Goals of this series of circles:** To build community through a common understanding of official rules, personal perspectives and collective agreements regarding consent.

**Facilitators:** It's preferable to have at least 2 if not 3 facilitators for these circles so that people can share responsibilities and keep an eye on how everyone is doing. If someone has to leave the circle, one of the facilitators can follow them out to make sure they're okay.

**Trigger warnings:** People who have experienced sexual violence involving a lack of consent may be triggered by the consent circle process, and may not feel comfortable "outing" themselves as survivors. A separate consent circle process can be developed for people who self-identify as survivors.

**Circle duration:** 10 modules of 1.5 hours each

**Ideal circle size:** 10-12 participants

**Materials needed:**

- Large *post-it* paper
- Markers
- Pens for letters and questions
- Consent Handout with definitions
- 8 x 11 card stock paper (for name placards), index cards
- Tissues
- Candle and centerpiece items
- Ball of yarn

## Modules Table of Contents

- 1. Introduction to Community Building and Consent:** *Participants become familiarized with the community-building circle process and begin to think about the concept of consent.*
- 2. Consent and Lack of Consent in Popular Culture:** *Participants are invited to bring examples from popular culture with examples of consent or lack of consent and to discuss them.*
- 3. Consent across Cultures and Intersectionalities:** *Participants consider the cultural contexts of giving and receiving consent, as well as intersectionalities of ethnicity, gender identity and sexuality, religion and so on. Optional: Participants can discuss the pros and cons of continuing the circles as a whole group or dividing up along the lines of difference.*
- 4. Giving Consent:** *Participants consider what it means to give one's consent. What challenges arise? What kinds of expectations are embedded in this act? What responsibilities or obligations come into play for participants?*
- 5. Legal and Official Definitions of Consent:** *Participants study the legal and official definitions of consent and discuss implementing them in real life situations.*
- 6. Asking for and Receiving Consent:** *Participants discuss ways in which individuals ask for consent, what obligations are inherent in the act of receiving consent, reasons why people avoid asking for consent and what to do about that.*
- 7. Consent, Intoxication and Hook-up culture: Reducing Harm:** *Participants consider cultural norms of drinking, drug-taking and hooking up in order to recognize what is required to implement the rules of consent.*
- 8. "You know you want it:" Methods of Coercion and Manipulation:** *Participants discuss the use of coercion and manipulation in gaining consent, and their links to cultural norms regarding gender, class, ethnicity and more.*
- 9. Restorative Responses to Cases of Sexual Misconduct:** *Participants are introduced to the concepts of restorative justice and consider restorative responses to cases of sexual misconduct in their communities.*
- 10. More Restorative Responses: Making Things Right in Communities:** *Participants discuss ways in which communities can respond restoratively to cases of sexual misconduct.*

### Module 1: Introduction to Community Building and Consent

#### Introductions and Check-in

Have each person explain their official name, what people call them, and what they like to be called. Invite them to share their pronouns of choice.

#### Intro to the Space

Thank everyone for coming and explain the purpose of creating a space for community building around the topic of consent.

#### Mindfulness Moment

Invite everyone into the space with a short meditation/stretch.

#### Establishing Values

Say your version of the following:

- *Think about what what's needed from everyone in the circle today to allow for open and thoughtful conversation about challenging topics.*
- *Write down one value on the card that, if we all practice it, will create a space for those conversations. When you're ready, we'll pass the talking piece and ask you to share your value and explain why you chose it.*

Ask participants to write their value in large letters on their name placards or on an index card that they place in the middle of the circle. Once they're all gathered, re-read the values to the group and ask if anyone has any questions or comments about them in another round with the talking piece.

### **Community Agreements and Trigger Warnings**

Say your version of the following:

- *Now that you've identified a common set of values, I'd like to ask you to think about a set of community agreements that you can develop to ensure that your actions match these values.*

As participants call out, record the community agreements on a large sheet of paper. Once they are set, read the community agreements aloud and invite the group to discuss/add to them in another round. Ask circle participants to give thumbs up if they consent to abide by these agreements throughout the duration of the circle. Invite students to discuss the concept of "trigger warnings" and how they want to address them.

### **Icebreaker Exercise: Your Move**

Each person will say their name and make a signature gesture or movement. The group will repeat the person's name while they make the movement. When everyone has had a turn, ask if anyone can recall all the names and movements.

### **Guiding Questions on Consent:**

Ask the following question:

- *Write down one word or phrase that comes to mind when you hear the word "consent."*

After people share what they've written, do another round, inviting people to comment on what someone else has said, or speak generally to the experience.

Next, invite participants to write a response to the following question on an index card, crumple it up and throw it into the middle of the circle.

- *What are some issues, concerns or questions you have around the topic of consent?*

Ask participants to read these out and then do a round of comments. Facilitator explains that these issues, concerns and questions will be addressed in the following weeks.

### **Closing**

Thank everyone for coming and present a brief summary of what happened. Remind the group of available support resources on campus. Present homework for the next circle:

- *Find an example in a film, song or advertisement that depicts consent or lack of consent to bring to the next circle.*

Closing exercise: Breathing, grounding, silent reflection.

## SECTION THREE: A RESTORATIVE RESPONSE TO INCIDENTS OF MISCONDUCT

In many cases, restorative practices can be used as an alternative or supplemental resolution process that is tailored to meet the needs of harmed parties and campus communities while leading to meaningful behavioral change in student offenders. RJ models for adjudication, such as RESTORE,<sup>44</sup> may provide more healing outcomes than adversarial approaches. Because RJ is an approach that is inclusive in its decision-making, it may provide outcomes that are perceived by the stakeholders to be more legitimate than conventional practices.<sup>45</sup>

There are a variety of restorative justice practices such as restorative discipline circles,<sup>46</sup> family group conferencing,<sup>47</sup> and community conferencing<sup>48</sup> that may be used in response to misconduct, but all are guided by a common set of restorative goals. Restorative justice leaders Howard Zehr and Harry Mika identified ten “signposts” of restorative practice:<sup>49</sup>

### We are working toward restorative justice when we...

- Focus on the harms of wrongdoing more than the rules that have been broken
- Show equal concern and commitment to victims and offenders, involving both in the process of justice
- Work toward the restoration of victims, empowering them and responding to their needs as they see them
- Support offenders while encouraging them to understand, accept and carry out their obligations
- Recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable
- Provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate
- Involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to community bases of crime
- Encourage collaboration and reintegration rather than coercion and isolation
- Give attention to the unintended consequences of our actions and programs
- Show respect to all parties, including victims, offenders and justice colleagues

### **Restorative Responses and the Spectrum of Sexual and Gender-Based Misconduct**

As noted above, there is a rich history of the use of restorative practices to resolve harms caused by many different kinds of misconduct. However, we recognize that there are aspects of the current national cultural and legislative landscape that add significant complexity to the application of RJ to certain kinds of campus sexual and gender-based violence. It may therefore be helpful to identify those areas within the broad range of potential sexual and gender-based harms for which RJ might currently offer an effective response, and those areas where there are additional philosophical, institutional and legal questions to be explored before an RJ approach to resolution can be advanced.

Listed below are four categories of behaviors, including those that might later lead directly or indirectly to sexual and gender-based misconduct.



### Categories of Misconduct for Restorative Conferencing

#### Pre-Cursors to Sexual and Gender-Based Misconduct

- Alcohol violations
- Hazing

#### Hostile Campus Climate

- No targeted, direct victim (although groups might be targets)
- Sexism, patriarchy
- Banners, dance floors, social media

#### Direct Victimization

- Stalking, harassment, sexual assault, intimate partner violence

#### Collateral Harms

- Ripple effects/fallout from specific incidents
- Retaliation

An individual incident within some categories above might vary from causing minor to serious harm. While these incidents might not all be violations of campus misconduct policies by themselves, they can contribute to an unwelcoming or even hostile environment in which more significant forms of violence are tolerated.

At this time, RJ has been used with success in response to harms that fall in the first three categories above: Precursors to Sexual and Gender-Based Misconduct, Hostile Campus Climate, and Collateral Harms. It is primarily within these contexts that the restorative conferencing model discussed below is offered. For discussion of RJ in circumstances involving stalking, harassment, sexual assault or intimate partner violence, please see “Restorative Justice and Direct Victimization” below. Nonetheless, although there is a temptation to apply new and unfamiliar practices to only the most minor incidents, research has demonstrated that RJ practices are most effective for serious cases.<sup>50</sup>

### The Restorative Conferencing Model

In the field of restorative justice, numerous models of practice have been developed including restorative conferencing and various circle practices. Here, for simplicity, we will focus on one model—restorative conferencing, particularly designed for response to cases of sexual and gender-based misconduct. Even this model can, and should, be adapted based on individual circumstances, including the incorporation of interventions that do not involve face-to-face dialogue.

Restorative conferencing brings those who have accepted responsibility for causing harm, those who have been harmed, affected community members, and support people into a process intended to repair the harm, support true accountability, and reestablish trust. After a discussion of the harm, the participants (rather than conduct administrators) decide what steps the student offender can take to repair the harm. Trained facilitators guide the dialogue.

### **Sorority Hazing Case Study: A Restorative Conference for Pre-Cursor Misconduct**

Restorative practitioners Thom Allena and Beverly Title facilitated a conference in response to a sorority hazing incident.<sup>51</sup> During a sorority tradition known as the “tuck-in,” first year pledges were led by older sorority members through a night of activities before they were to be tucked into bed after the successful completion of the event. The pledges were given baby bottles of alcohol, wore pajamas with pillow cases over their heads as they were led from one party to the next at various fraternities, and performed sexually humiliating acts such as eating bananas fed to them by fraternity members while on their knees. One student, “Amy,”<sup>52</sup> became so intoxicated that she fell when leaving a fraternity house, shattering her teeth. Rather than attend to her injuries, her sorority sisters merely dropped her off at the entrance to her residence hall. She was taken to the emergency room only after her roommate discovered her passed out in the lobby. At the hospital, she was treated for her dental injuries and alcohol poisoning. As reflected in the chart above, while Amy was not sexually assaulted, the community’s willingness to tolerate reckless endangerment is often a precursor to such victimization.

The facilitators convened a complex RJ conference over the course of two evenings, which included Amy, her supporters, other impacted parties, and the offending students. In all, there were 42 participants who were organized into two concentric circles to manage the size of the group and to structure the dialogue. First, the most culpable students participated in the inner, discussion circle. Later, their seats were taken by less culpable offenders (organizers of the tuck-in, but sorority members who did not participate in the event). During the storytelling phase of the conference, numerous harms were identified, most notably the physical and emotional harm to Amy, but also her medical costs, the impact of the incident on her grades, and her mother’s anguish at a time when her husband was seriously ill. In response to these and other harms, the group brainstormed a series of restorative obligations. These included letters of apology; additional organized events to explore the irresponsibility of the sorority and what was learned during the RJ process; the creation of a committee to help reintegrate Amy into the sorority; and the creation of a new non-hazing ritual that features this incident and how it conflicts with the sorority’s mission and ideals. Ultimately, 30 individualized agreements were developed for each of the offending students. All 30 of those agreements were fulfilled.

The conference process includes (1) Referral and Intake; (2) Preparation; (3) Conference—sometimes more than one; and (4) Monitoring and Reintegration.<sup>53</sup> The information below about each of these stages is not intended to be exhaustive, but to provide a general overview of the goals and practices associated with each step. It is also important to remember that RJ is not a “one-size-fits-all” program to implement, and the stages discussed below therefore do not reflect a monolithic model. Mark Umbreit’s and Marilyn Armour’s book, *Restorative Justice Dialogue*, provide an excellent overview of the variety of RJ practices.<sup>54</sup> Institutions may decide for themselves where and how an RJ philosophy might be best incorporated into their communities. Section Five of this report provides information about how to learn more.

*Referral and Intake:* In this stage, survivors/victims are presented with a set of options for how they would like to proceed, in accordance with campus policies. They may choose to do nothing, seek services to meet their own needs, pursue a formal campus conduct process, report to the police for criminal investigation, and/or request a restorative resolution. RJ may be an alternative to the formal process, supplemental to it, or incorporated within it. If the survivor/victim chooses RJ, then the accused student is asked to participate. *The accused student must admit responsibility for a RJ conference to proceed.* When restorative options are available, such admissions are, perhaps surprisingly, frequent. Studies in England and Australia have found that offenders choose conferencing over court in at least 80% of cases.<sup>55</sup> In Mary Koss’ study of the RESTORE Program, a community-based pilot for use of

restorative conferencing for sex crimes, 100% of misdemeanor-level offenders chose conferencing over court and 90% of felony-level offenders.<sup>56</sup>

*Preparation:* Unlike mediation, which typically provides minimal preparation to participants, restorative conferences incorporate significant preparation. Depending on the complexity and severity of the case, preparation can be as short as one or two meetings or can require months of planning and consultation.

Offenders, victims, and other participants are prepared separately and meet with conference facilitators and community resource persons to become well-informed about the process as well as evaluated for readiness to participate. Support persons are selected and also prepared during this stage. Other community members may be recruited to participate, particularly those well connected to campus resources and can help facilitate community change. Primarily, facilitators work with victims to help them prepare impact statements, identify supports and services, and identify what they would like to see happen as a just outcome of the conference process. Similarly, facilitators work with offenders to prepare statements, identify supports and services, and discuss what they believe they can do to address the harm caused and reassure the victim and community that they can be responsible in the future. Facilitators closely assess whether offenders are able to take responsibility for their misconduct, and may draw upon trained professionals to assist with this assessment. They may also suspend the process if they believe safety and other conditions are not met. Throughout the preparation process, participants are reminded that the conference is voluntary and they may choose not to participate at any time.

Restorative conferences occur when survivor/victims request RJ, accused students admit responsibility, and trained facilitators carefully prepare participants and assess safety.

*Conference:* The conference is a facilitated dialogue where creating a safe space in which participants can be honest is a primary goal. Safety planning begins with the selection of the location, instructions about where and when participants are to arrive to ensure they do not cross paths before the conference starts, seating arrangements, and making sure campus safety officers and counseling center staff are on call. While it is typical in standard conference models to sit in a circle without a table, in sexual and gender-based misconduct cases, a table is used to create additional physical and visual safety. Facilitators use a carefully developed script that structures the dialogue and order of questions. The first part of the discussion is focused on what happened, an explanation provided by the offender, a sharing of the impact by the victim, and a summary of harms by the facilitators. The second part of the conference explores how the harm can be addressed and what can be done to rebuild trust. An agreement is specified that delineates tasks and a timeline of restoration and reintegration. Support systems are developed for both harmed parties and offenders. Circles of Support and Accountability may be created to assist offenders and reassure harmed parties after a period of separation from the institution. In lieu of face-to-face dialogues by survivors and offenders, conferencing might also be conducted remotely or with surrogates for the survivors, such as a friend or victim advocate.

*Monitoring and Reintegration:* After the conference, conduct administrators meet regularly with offenders to ensure compliance with the conference agreement. They also keep victims informed about progress and check in to make sure victims' support systems are intact.

### **Social Isolation of a Survivor Case Study: A Restorative Conference for Collateral Harm**

At a private university, two students, “Samantha” and “Kate” belonged to the debate club and saw each other daily for this activity they loved but that also demanded significant personal commitment. Although Samantha and Kate were never close friends, their relationship had deteriorated and become fraught with tension. Samantha was torn between her desire to drop out of the debate club or to persevere because she believed it was an essential support system in the aftermath of personal trauma. Months earlier, Samantha had been sexually assaulted by “Jeff,” Kate’s good friend. Jeff was subsequently expelled, and Kate blamed Samantha, having only heard Jeff’s account of the incident. Kate’s insensitivity caused Samantha to feel isolated from an important peer support group

Samantha approached college staff for assistance and they offered to arrange a restorative conference. The facilitators met separately with each student to gather information and prepare for the dialogue. When they met, the facilitators observed that the dialogue was emotionally challenging, but Samantha got a chance to tell Kate how her actions affected her and what she needed from Kate to be able to maintain her role in the club. Kate appeared genuinely surprised by how Samantha was affected by her behavior and gained an understanding of Samantha’s perspective. Rather than continuing to blame Samantha, Kate committed to supporting her going forward. Both students expressed gratitude for the safe space that was created for this dialogue. Later, the club advisor reported that the students’ relationship was improved and was grateful for the assistance.

### **Restorative Justice and Direct Victimization**

Harms within the category of Direct Victimization—stalking, harassment, sexual assault and intimate partner violence—are more complex, and may intersect with institutional legal obligations in ways that preclude or require adaptation of certain RJ applications. Certainly, there are pressing questions to explore, including but not limited to the following:

- What conditions—cultural, procedural, and legal—need to be established in order to create a safe space where all participants, including offenders, can be honest? How does the specter of criminal prosecution influence these conditions?
- When behaviors that are potentially criminal are involved, what institutional and/or local resources would be required to allow colleges to feel confident in their ability to reintegrate offenders into their community safely?
- Is it possible for institutions to develop a philosophical foundation that allows for substantially different processes and outcomes for similar high-level violations, when the determining factor between the approaches may be solely the preferences of the survivor?

There is no question that contemplating a restorative response to direct victimization within the existing legal and cultural environment requires creativity and commitment, and an institutional willingness to consider critical paradigm shifts. Nonetheless, the research documenting positive survivor, offender and community outcomes is sufficiently compelling to invite national and institutional investment in exploring this frontier.

There is room for optimism in this area. The case studies below reflect promising variations on a restorative response to direct victimization: the availability of a restorative process external to the institution, and the incorporation of a restorative response into a formal adjudication system within the sanctioning process.

### **Two Sexual Assault Case Studies: Restorative Conferences for Direct Victimization**

Case 1: At a public university, “Catherine” was sexually assaulted by a friend, “Leo,” who was not a student. Leo was dating Catherine’s best friend, but had developed feelings for Catherine. On the night of the assault, Leo and Catherine had been hanging out together in her room. Catherine fell asleep, but was awoken when Leo began rubbing her genitals. Catherine was dating someone else and did not share Leo’s feelings. She was upset and outraged that he would do such a thing without her consent—or conscious awareness. Catherine talked to a therapist at the campus counseling center, who reviewed with Catherine the various reporting options available to her. Catherine was adamant that she did not want to report the incident to the police. While Leo had stopped dating Catherine’s best friend, he remained in their friendship circle.

Several months passed and Catherine was still upset about the incident and had been unable to talk about it with Leo. She learned about a restorative justice program (outside the College’s formal reporting/response structures) from a friend and believed this would be her best option. She told Leo she wanted to talk to him, but with the support of a restorative facilitator. He agreed and a restorative conference was organized. Catherine brought two support persons while Leo chose not to bring any supporters. During the conference, Catherine was able to express to Leo how angry and upset she had been about what he did. Her supporters were able to share with Leo how much they believed Catherine was affected by the incident. Leo was extremely sorry and agreed that he should go to the counseling center to further discuss why he touched her without her consent. Catherine also wanted Leo to know that his behavior had negatively affected her relationship with her boyfriend. She asked Leo to talk to her boyfriend about what he had done and for Leo to encourage him to be patient with Catherine during this difficult time. Afterwards, Leo and Catherine both shared how helpful the conference was for them.

Case 2: At another university, two students, “Allen” and “Leslie,” were watching a movie together and Allen persistently engaged in unwanted kissing and touching. Despite multiple attempts to resist, Leslie stopped the movie and told Allen to leave. Six months later, Leslie filed a complaint with the university, but did not want him to be sanctioned. She said that she simply “wanted him to understand how his behavior had changed how she dates.” An investigation was made, Allen admitted that he “overstepped the boundaries,” and he was found in violation of the university’s sexual misconduct policy. He did receive sanctions, including a no-contact order, probation, and a sexual assault education program. Both students were also offered the opportunity to participate in a RJ conference and they accepted. During this conference, Leslie was able to ask Allen questions that had been bothering her and fully explain how the incident had impacted her. Allen was able to sincerely apologize. Both students were grateful to have been provided this opportunity and were satisfied with the outcome.

### **Distinguishing Restorative Conferencing from Mediation**

At this time, the Department of Education’s Office for Civil Rights (OCR) has not provided guidance about the use of RJ for sexual and gender-based misconduct. In the 2011 Dear Colleague Letter, OCR briefly discusses informal resolution options and identifies mediation as permissible “for resolving some types of sexual harassment complaints,”<sup>57</sup> but inappropriate for sexual assault cases. Because mediation and RJ are often confused, this stipulation has had a chilling effect on the application of RJ for sexual and gender-based misconduct.

Mediation practice is so varied in style and purpose that it is difficult to provide an accurate distinction between RJ and mediation. There are some major overlapping features and some important distinctions. We believe the differences make restorative justice appropriate for some sexual and

gender-based misconduct cases and often preferable to mediation and contemporary resolution processes.

Restorative justice and mediation share several features:

- Some restorative practices use the term *mediation*, such as victim-offender mediation.<sup>58</sup> Despite the shared terminology, in practice victim-offender mediation is more similar to restorative conferencing than it is to the civil mediation practices commonly used in American courts and community dispute resolution projects.
- Mediation and RJ conferencing make use of *trained facilitators*. Typically, mediators and RJ facilitators receive 20-40 hours of initial training, followed by a supervised apprenticeship.
- Mediation and RJ conferencing prioritize *participant empowerment* to come to an agreement. Unlike arbitration or other hearing models where a neutral authority determines sanctions, in both mediation and RJ, it is the participants themselves who brainstorm and decide on what they believe to be the best course of action to resolve the complaint. In some RJ models, these agreements are final and in others, the agreements are used as a recommendation to inform an external authority's final determination.

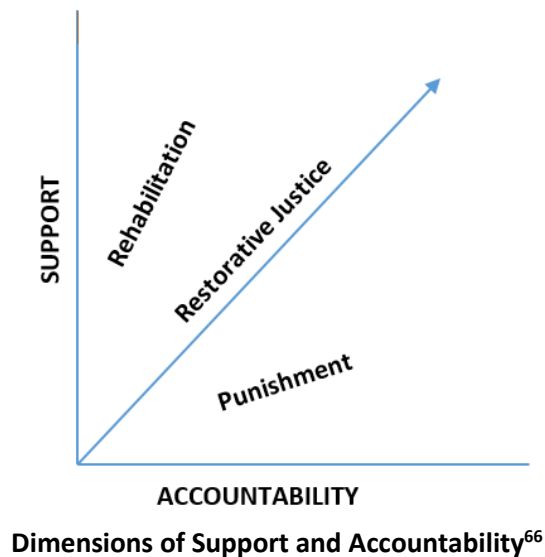
Restorative justice and mediation diverge in important ways:

- RJ conferencing is used when an accused student admits to engaging in the harmful behavior (although they may not fully grasp the full impact) and commits to taking responsibility for it. In mediation, fault is not predetermined and it is up to the participants to decide how much or how little responsibility they are willing to accept. It is this distinction that may make mediation particularly unsuitable, and likely unsafe, for sexual assault or intimate partner violence cases.
- Unlike mediation, RJ facilitators meet extensively with participants during the preparation process to assess whether the case should include a face-to-face dialogue and to prepare participants in advance of the dialogue.
- Although many mediation models have been specifically designed to offset power imbalances, mediation has been criticized for creating a forum in which offenders might attempt to revictimize survivors through coercive or manipulative language and undermine the explicit goal of survivor empowerment.<sup>59</sup> Restorative conferencing, although it can provide for face-to-face dialogue and cannot eliminate all risk of revictimization, is distinctive in its guidelines and practical strategies to create a safe and noncoercive environment.<sup>60</sup> An important example of this is the addition of support people to the conference who play an active role in the dialogue.

### **Restorative Justice, Rehabilitation, and Punishment**

Activists in the movement against campus sexual and gendered-based misconduct argue that offenders must be held accountable, primarily with the strongest sanctions available to colleges and universities.<sup>61</sup> For example, in the Dalhousie University sexual harassment case, a Change.org petition that received over 50,000 signatures called for the expulsion of the accused students.<sup>62</sup> Similarly, activists in the U.S. generally support the OCR requirement that sexual assault allegations be addressed through a formal hearing or grievance process.<sup>63</sup> A critique of using RJ is that it might trivialize the offense by leading to less-than-the-most-severe sanctions or, if managed informally, the cases might not receive sufficient oversight and scrutiny that is sought through a formal hearing process. In essence, critics worry that restorative "processes reflect a re-privatization of violence, and outcomes may appear too lenient and send the wrong message to offenders and potential offenders."<sup>64</sup> These critics feel that only harsh punishment sends a clear message that condemns sexual violence.

Alternatively, advocates of rehabilitation argue that highly punitive responses may be counter-productive by failing to ensure that offenders get the psychological treatment they may need, and that when lack of treatment is combined with the social stigma of expulsion or other punitive sanctions, offenders will be more likely to reoffend.<sup>65</sup> While rehabilitation offers strong social support, it does little to ensure accountability. RJ is an approach that seeks to maximize both accountability and social support, as indicated by figure below.



The restorative approach to accountability differs from traditional punishments in an important way. Instead of relying on the severity of the sanction as its metric, RJ relies on the testimonials of harmed parties and concrete measures of behavioral change. Rather than simply assigning passive offender accountability, in which punishment is delivered but change is not measured, RJ cultivates active accountability in which offenders can repair harm and demonstrate responsible behavior. Generally, victims who participate in RJ believe offenders have been held accountable, even more so than victims who saw their offenders punished in criminal courts.<sup>67</sup>

**Sexual Harassment on Facebook Case Study: A Restorative Conference for Hostile Campus Climate**  
At Dalhousie University, in Nova Scotia, Canada, four female students in the Faculty of Dentistry filed a sexual harassment complaint about a private Facebook group maintained by several male members of their class and about the general climate and culture of the academic program.<sup>68</sup> The various posts were made public and the case garnered significant media attention and public concern. A restorative justice response to complaints about a hostile climate differs from other incidents because it focuses not only on the immediate incident and offenders, but also seeks to identify and respond to the broader culture that made the misconduct possible. While the Dalhousie RJ process did include a restorative dialogue that involved the offenders and harmed parties, the process also included significant investigation into the related campus climate and culture. Multiple RJ dialogues were facilitated, including ones with the harmed parties, university president, other administrators, other students in the dentistry class, and members of the Nova Scotia Dental Association.

With sensitivity to safety and to prepare the male students for participation in the restorative dialogue, the RJ facilitators arranged for the men to be educated about sexual harassment, rape culture,

intersectionality of gender, sexuality, race, and culture, power and privilege, human rights, and bystander intervention. Throughout these preparation sessions, individual meetings, and the restorative dialogue, the participants came to a full understanding of what happened and the significance of the incident and its aftermath. As the RJ process concluded, the dentistry community was able to commit to plans of action to address the issues of climate and culture that the RJ process revealed and truly begin the process of rebuilding trust. A testimonial, written jointly by the offenders and harmed parties speaks to the success of the community-building efforts:

*As we reflect upon our five-month journey, we recognize how far we have come not only individually but collectively. We have challenged and supported one another as we confronted what happened with Facebook and the climate and culture within our school. These uncomfortable, difficult and complicated conversations have required us to delve deeper into societal and cultural issues of sexism, homophobia, and discrimination and how they erode the foundations of supportive and healthy communities. We did not create these issues, but we have come to understand our parts in perpetuating and tolerating them within our relationships and community... Having endured such a public fracturing of our class community and many of our personal relationships, our focus throughout the process has not been to return to normal but to create a new "normal" for the future. We have engaged in the restorative justice process as individuals and as groups of men and women, Facebook group members and others. As the process developed we have worked through the harms and issues that divided us. At the end of this process, while we have some distinct experiences to share, we write not as separate groups of "the men" and "the women" but as the restorative justice group from DDS2015, united in our commitment to ensure our experience matters for the future.*

### **Evidence of Effectiveness**

An impressive and increasing body of evidence now supports the effectiveness of restorative justice. Methodologically, the best evidence comes from a series of experimental studies using the same measures for restorative conferencing in criminal cases with 1,879 offenders and 734 victims in England, Australia and the U.S.<sup>69</sup> These studies constitute the longest follow-up of multiple randomized trials in the history of criminological research.

Across sites, victim satisfaction with their RJ experience ranged from 60-92% compared with a range of 42-68% for victims in the control groups. Victims who participated in RJ were less fearful of repeat attack by the same offenders, more pleased with the way their cases were handled, and more likely to receive sincere offender apologies. Robbery and burglary victims suffered much less post-traumatic stress, especially female victims. Victims who were not offered RJ were often disappointed by not having this option available to them. After 10 years, victims had less anxiety about revictimization, less general fear of crime, and less anger and bitterness about the crime.

Offenders who participated in RJ had between 7-45% less recidivism than offenders in the control groups. They expressed more shame yet believed the process was fairer than court-adjudicated offenders. RJ worked especially well for violent offenses and for offenders with high levels of prior offending.

College student misconduct was studied by David Karp and Casey Sacks comparing 165 RJ cases with 403 traditional conduct cases at 18 colleges and universities in the U.S.<sup>70</sup> The study found similarly high levels of satisfaction among harmed parties and consistent improvement in student offender learning and development compared with traditional approaches.



Research on RJ in cases of sexual and gender-based violence is limited, but growing.<sup>71</sup> Mary Koss studied 22 sex crime cases from the RESTORE program in Arizona.<sup>72</sup> Although a small sample, findings echo other studies with high levels of survivor/victim and offender satisfaction with the process. Notably, most survivor/victims voluntarily chose to participate in the RJ process (63% for felonies, 70% for misdemeanors) and almost all offenders chose to participate (offenders must have accepted responsibility and survivor/victims must have already consented before offenders were invited). Most offenders (91% in misdemeanor cases, 66% in felony cases) completed their restorative agreements. Research on youth sex offending in Australia found that RJ conferencing had a positive impact on recidivism for youth sex offenders (prolonged time to reoffending for first time offenders).<sup>73</sup> The research also found that youth sex offenders were more likely to admit responsibility in a RJ process than in a court process and suffered less stigmatizing social exclusion. Victims were more likely to have the opportunity to tell their story and obtain a favorable outcome, and in half the time. RJ has also been found to be effective in cases of intimate partner violence.<sup>74</sup>

## SECTION FOUR: A RESTORATIVE APPROACH TO REINTEGRATION AFTER HARMFUL INCIDENTS

After an incident has been officially resolved, even when a student has been found in violation and suspended, a restorative approach takes into account the long-lasting impact on the individuals involved and the wider community. In this section, we describe how restorative practices may be used to provide healing, reassurance, reintegration, and community engagement for future prevention efforts.

### **Circles of Support and Accountability for Offenders**

Rarely have campuses developed strong systems to manage the return of student offenders to campus after suspension or for their integration into a new campus community as transfer students.

Increasingly, such students are subject to campus-wide concern, anger, and fear.<sup>75</sup> Circles of Support and Accountability (CoSA) are a restorative practice used to assist high-risk sex offenders returning to the community from prison.<sup>76</sup> It is a model of proactive and positive community engagement that recognizes that offender success is not solely dependent on the individual, but also on the community support system.

Circles of Support and Accountability can be adapted for students returning from suspension after sexual and gender-based misconduct.

This model may be adapted for campuses and could provide community reassurance and better outcomes for key stakeholders. While prevention, response and reintegration have been presented as distinct in this report, ultimately a restorative justice approach is integrated, with equal attention to each dimension.

In general, people who engage in socially unacceptable conduct are more likely to change if they are provided with opportunities to address their transgressions, learn new ways of behaving, and are able to re-enter their respective communities with support and a reasonable accountability framework. Due to the strong negative response most communities demonstrate regarding sexual violence, best practice initiatives are often difficult to implement. Emotionally charged reactions often follow incidents of sexual violence on college and university campuses across the United States, as well as in Canada and other similar nations.<sup>77</sup> The highly contentious nature of these situations have sometimes left few opportunities for support and advocacy for parties on both sides, and it is that void that early purveyors sought to address by establishing what later became known as CoSA.

*Birth of the CoSA Model:* In 1994, two particularly high-risk sexual offenders, Charlie and Wray, were released to the community in Ontario, Canada. Significant media coverage surrounded each of these releases, with the public being told that the offenders were at extremely high risk to sexually reoffend in a short period of time. All of the usual community social service agencies declined to work with these men, citing concerns over the particularly high risk profile each presented (i.e., 100% chance of sexual reoffense in seven years via actuarial risk assessment).<sup>78</sup> In both situations, local citizens expressed fear for the safety of their families and friends; in some cases, this led to picketing and other demonstrations of civic unrest.

Despite the protests and threats intended to drive the offenders from the community, in both cases, church leaders organized groups of volunteers from their congregations to assist the offenders with their integration back into the community. Even though both offenders were at the highest risk for reoffending, “as weeks turned into months and months turned into years, Charlie and Wray and their respective Circles proved that they could be law-abiding citizens. Armed with little more than their faith

and a sheer strength of will, these two Circles weathered the storm and ultimately gained a measure of respect from the police and the community.”<sup>79</sup> Following the success the both of these pioneering efforts, the Mennonite Central Committee of Ontario sought funding from the Canadian government to establish the first CoSA program.

A Circle of Support and Accountability is a collection of 4-6 community volunteers who pledge to assist an offender in their attempts to integrate with a community. These volunteers are supported by community professionals and the program is managed by a circle coordinator. The original intent was to address shortcomings associated with offender re-entry, especially when those offenders had little or no access to services that would assist them in remaining safe. In CoSA terminology, the person-of-risk is known as the core member of the circle. The circle offers community support while the core member commits to doing everything in their power to avoid reoffending and the situations that put them at risk to do so. The circle holds the core member accountable to this commitment through regular meetings and checking to make sure agreements are upheld. It also serves as a conduit for communication should concerns arise. This role is crucial to the needs of communities that are serious about risk management and, ultimately, gaining empowerment as they heal from the wounds of sexual and other violence.



**Graphic representation of CoSA model<sup>80</sup>**

*Research Findings on Circles of Support and Accountability:* Since the time of the two inaugural Circles noted above, hundreds more CoSAs have been established throughout Canada and in Europe, the United Kingdom, and the United States. Peer-reviewed studies of the model have reported important data regarding quantitative and qualitative outcomes. Quantitatively, in comparison to matched control samples, men in a CoSA reoffended sexually at rates 70% less than their circle-less peers.<sup>81</sup> Involvement in a CoSA not only dramatically decreased victimization, but did so at a fraction of the cost to its alternatives.<sup>82</sup> Furthermore, even in those rare cases in which a core member reengaged in sexually inappropriate conduct, the nature of the new offense was categorically less severe than the offense for which he had most recently been sanctioned.

In terms of the human effect of Circles of Support and Accountability, qualitative reviews have identified some of the key restorative and public safety elements at play.<sup>83</sup> Sociologist Kathy Fox, who evaluated the CoSA program for sexual and violent offenders in Vermont, found that “Core members were grateful for the support and enthusiastic about the program, saying they would recommend it to others.... [They] expressed more positive senses of self as contributing members to society, a commitment to pro-social relationships, a sense of mutual obligation toward and trust of circle members, and somewhat greater optimism for the future.”<sup>84</sup> Based on her interviews with core members, circle members, and reentry coordinators, Fox argues that the success of CoSAs is based on the relationships developed in the circle. “The normative expectations of the core member are communicated through a trusting and honest relationship. The genuineness of the relationships both models positive relationships for the core member and legitimizes the intrusion of the volunteers in core members’ lives. In other words, the team only has moral authority because of the caring and respectful relationships formed.”<sup>85</sup> As research indicates that the CoSA model works well in non-academic settings, its potential for successful adaptation to address risk on campus is promising.

#### **Case Study on Reintegration after a Suspension for Sexual Misconduct**

This case study highlights some elements of a CoSA, but we are not aware of any CoSA programs currently implemented in higher education at this time. One university conducted an investigation of an allegation of sexual misconduct involving nonconsensual fondling of a student’s breasts and attempted removal of her underwear. The university found the student, “Michael,” in violation and suspended him for one semester. Michael strongly denied the finding, stating “I feel harassed and attacked... She is out for blood. She paints this picture of me being this predator... For now, I’m just forced to endure the tyranny empowered by the university.” Before Michael could return, he was required to complete assigned readings on gender violence and document his reflections on them, one-on-one sexual harassment training, two alcohol education sessions, and an overall reflection on what he learned during the suspension. He needed to meet with conduct administrators along with his conduct support person for a review and evaluation meeting to determine re-enrollment eligibility, and attend a reintegration meeting just prior to reenrollment to identify support resources to help ensure his success.

The entire package of sanctions was intended to provide both support as well as accountability, important for a restorative process. The review and evaluation meeting and the reintegration meetings were conducted with several institutional stakeholders. Candid, authentic and supportive conversations were held to assess and confirm what Michael had learned from the situation, and to identify resources and support services for his sustained success reintegrating into the community. Michael carried several marginalized identities and suffered many severe personal hardships during his enrollment and suspension (e.g. homelessness, family illness and death). He expressed being grateful that the university allowed him back in, as he felt the university was taking a risk on him in doing so. Michael stated during his reintegration process that he felt every single sanction had helped him in some way. Despite his earlier denials, he took full ownership and responsibility for having committed the assault. He learned that tactics “to get a girl to say yes” were not actually gaining consent, but rather were exerting coercion. Michael’s final two-page reflection essay demonstrated profound learning and even appreciation for his sanctions:

*Initially I was very angry, upset, and in denial... I was blinded by rage and I couldn’t see the damage that I caused... The largest obstacle I dealt with internally was accepting responsibility and admitting that I did something wrong... Throughout the appeals process I had maintained that I was sober and didn’t need to go to substance abuse workshops. Now, I see that alcohol played a huge role in our interaction. I was so caught up in trying to prove that I had non-verbal consent during the appeal. Now I also understand that*

*simply saying “yes” does NOT give one consent... The best route is to practice healthy sexual habits, as mentioned in the structured reading. If I get to know and trust a person, I won't have to guess or ask because it would be something that we have already discussed. At the end of the day I have to accept responsibility for my actions. I have to be in control and make the decisions to be better and succeed. That truly seems to be the theme of my time away--learning to accept responsibility for my actions and making better decisions... It helped me to mature, to see my wrong doing, and it forced me to become more informed. I did a terrible thing that I will never forget. I've learned from my mistake and took my time off to become a better person.*

Michael's reintegration was successful and he was a responsible member of the campus community after his return.

Although some students who violate campus sexual and gender-based misconduct policies will require criminal prosecution and/or expulsion from the institution, others will remain enrolled or be allowed to reenter after some period of suspension. Implementation of a CoSA-type approach would provide opportunities for student offenders who return to address their issues in a meaningful and socially accountable manner while providing for enhanced monitoring and service provision. The circle works to ensure victim and community safety while supporting student offenders to demonstrate change and succeed academically. At the request of the victim or student offender, and with approval by the administration, a CoSA could be offered to an individual who wants to remain on campus and repair the relationship with the victim and campus community caused by their misconduct. Volunteers could be recruited or appointed from faculty, administrative staff, and the student body, according to principles established in the broader CoSA community. The length of time a student would remain in a CoSA would be determined by the members of their circle in cooperation with the professional support circle, but a minimum of six months to a year is likely necessary to achieve optimal outcomes.

*Professional support circle:* Each circle of volunteers would be supported by a group of campus professionals with expertise in responding to sexual and gender-based misconduct drawn from campus mental health services, victim services, student conduct offices, academic support services, and campus safety departments.

*Training:* Modules for training volunteers would be developed and delivered prior to establishing actual circles. Topics could include campus policies, confidentiality of records, understanding and responding to the needs of survivors, human sexuality and sexual deviance, the role of substance abuse and impulse control in sexual violence, restorative justice, the CoSA model and participant roles, risk and needs assessments, maintaining healthy personal boundaries as volunteers, conflict resolution, group dynamics and building group cohesion, responding to crises and critical incident stress, resolution and closing a circle, and other topics as necessary.

### **Survivor Support Circles**

Victims of sexual and gender-based misconduct have a particularly difficult pathway before them. Fearing for their safety while often still recovering from significant trauma, their grades and personal lives suffer.<sup>86</sup> In the most severe cases, victims may transfer or drop out of school and experience lifelong struggles with mental and physical well-being. Providing support circles for survivors that work in parallel with reentry circles is an important way to address the ongoing needs of survivors. In addition to circles of support for an individual survivor, circles can be created for groups of survivors as a mechanism for ongoing support as described below.

### **Template for a Survivors' Support/Community Building Circle**

Reminder to the group: the focus of this circle is on building community around a shared experience of the *emotions and impact* that have resulted from a traumatic incident of sexual misconduct, rather than the sharing of specific details of the incident.

Facilitators: it's preferable to have at least 2 if not 3 facilitators for this circle so that people can share responsibilities and keep an eye on how everyone is doing. If someone has to leave the circle, one of the facilitators can follow them out to make sure they're ok.

Circle duration: around 3 hours

Materials needed:

- Large *post-it* paper
- Markers
- Printed documents of community agreements
- Playdough
- Ball of yarn
- Pens for letters and questions
- 8 x 11 card stock paper (for name placards), index cards and journals.
- Tissues
- Candle and centerpiece items

#### **Introductions and "weather word" check-in**

Have each person state their name, their pronouns, and how they're feeling, using a word or phrase that described the weather.

#### **Intro to the space**

A circle facilitator thanks everyone for coming and explain the purpose of creating a space for community building around survivor support.

#### **Community agreements and trigger warnings**

Community Agreements have been placed on each chair. Explain the agreements and invite everyone to consent to them. Discuss trigger warnings.

#### **Establishing values**

A facilitator says the following:

- *Think about what you need today to create a trusting environment...*
- *Think about how you can create a trusting environment for others here today.*
- *Write down one value on the card that, if we all practice it, will create a safe space for us to talk about these difficult subjects. Share your value with the group.*

#### **Icebreaker / grounding exercise**

A facilitator leads the group in breathing and stretching exercises. As people sit back down, they can open the containers of playdough to give them something to do with their hands. Pass the talking piece as you ask these questions:

- *What is one thing that you're hopeful for in this space?*
- *What is one thing that you're worried about?*

### **Backpack exercise**

On an index card, people in the circle write the name of something they're carrying with them that feels like a weight on their shoulders. People share out, and then put the cards into the backpack which sits symbolically at the center of the circle. Have a round of reflection on that exercise.

### **Guiding questions on normalizing trauma**

Facilitators ask the following questions:

- *In your journal, write down in your journal something that has changed, or something you feel you've lost since your experience.*

As the group shares what they've written, facilitators can ask others to raise their hands if they've shared this experience.

- *To debrief: what was it like to do that exercise?*
- *What is it that you need/want/hope for to heal?*

### **Break and breathing exercise**

As people return from the break, a facilitator leads the group in deep breathing and visualization.

### **Guiding questions on self-care**

A facilitator asks the following question:

- *What are some things that have helped you in your experience or something that you believe would help you moving forward?*

As people share, someone can write these all down on a large piece of paper.

### **Need to know exercise**

A facilitator invites people in the circle to write down questions they have about any aspect of their experience on an index card. Once they're done writing, people can crumple up their cards and throw them in the middle of the circle. A circle participant picks up and reads each question, and the group is asked to comment. If there is a question that requires further expertise, one person can be designated to further research that issue for the group.

### **Guiding questions (Repairing Harm/Journals):**

A facilitator asks circle participants to write the following in their journals:

- *What do you need from the person who harmed you?*

Circle participants are invited to share out as they feel comfortable.

Next, circle participants are invited to write in their journals:

- *What do you need from the community?*

People are invited to share out as they feel comfortable.

### **Guiding questions for community building:**

A facilitator asks the following questions:

- *How do we come together as a community to tackle these issues?*
- *What resources are we all aware of?*

A facilitator can document the responses on large paper to make available to the group at a later time.

### **Appreciations**

Participants throw the ball of yard across the circle to each other to create a web and voice appreciations for all the members of the circle.

### **Reflections**

A facilitator asks:

- *What are the strengths you saw in this room?*
- *Is there anything that made you feel hopeful?*

### **Well wishes**

People are invited to silently reflect for a few moments and send good wishes to each other before they part ways.

Follow-up: a facilitator can collect the names and contact information for everyone in the circle, and send out a follow-up email with the information gathered in the circle.

Further follow-up: ideally, this circle could mark the beginning of a series of circles that facilitators and participants could plan together on a variety of issues, including the following:

- Intersectionalities
- How to be an ally for a survivor
- Specific challenges for survivors on campus
- Campus strategies for prevention education

*This circle was created and performed as a collaboration of students and staff from Greeks Against Sexual Assault, the ASUC (Associated Student of University of California) Sexual Assault Commission, the Restorative Justice Center and the Confidential Care Office at UC Berkeley.*



## SECTION FIVE: NEXT STEPS AND CONSIDERATIONS FOR IMPLEMENTING A RESTORATIVE APPROACH ON CAMPUS

In recent years, we have seen increased interest in and support for a restorative justice approach to campus sexual and gender-based misconduct.<sup>87</sup> As the quotation below indicates, survivors are looking for alternatives to adversarial processes.<sup>88</sup> As attention to the issue of campus sexual violence has grown, and familiarity with the limitations of an adversarial system become clearer, a search for alternative models has begun. Below we outline next steps for campuses that are interested in pursuing a restorative approach.

“It’s hard not to wonder now, from my perch of more than a quarter-century later, staring at the pinched look on my face in the photos from that rainy graduation morning, why there hadn’t been a third option besides either pressing charges or doing nothing, neither of which felt like an appropriate reaction to what had happened to me in that bed.” Deborah Copaken Kogan

### **Adopt a Restorative Lens**

One first step is to start using restorative language. Where possible, focus on the harm caused by sexual and gender-based misconduct, and then pathways to active accountability and healing for harmed parties.

Even in traditional hearings, the language of harm can be used: ask involved parties to identify the harm and what would need to be done to repair it. This approach can help broaden sanctioning options to include actions that meet the needs of all participants and develop responses designed to broaden community awareness and involvement. Seeking non-adversarial opportunities to understand the harm caused and possible steps to repair it can help participants to feel supported by the institution rather than alienated by it.

### **Create a Restorative Justice Study Group/Steering Committee**

Restorative justice is now a global social movement with well-developed principles, guidelines, and practices. Implementing RJ requires thoughtful study and oversight. Many campuses have faculty who teach RJ as well as students who came from high schools with established restorative programs. Building a steering committee with students, staff, and faculty is an appropriate step for sharing knowledge and developing a plan of action. Student affairs staff can be recruited from offices of residential life, student conduct, gender violence prevention, diversity and inclusion, religious and spiritual life, counseling, and campus safety. Such a committee can function as a study group as they work to develop an implementation plan. Initial readings might include *The Little Book of Restorative Justice for Colleges and Universities* and *The Little Book of Restorative Justice for Sexual Abuse*.

### **Develop Capacity in RJ through Training and Facilitation**

Intensive training in RJ builds knowledge, skills, as well as enthusiasm for implementation. Implementing RJ without proper training and expertise may cause harm to the parties and to the larger project. Trainings often include students, faculty, and student affairs staff. Create a small team, get trained, and create opportunities for facilitation. Currently, campuses are using restorative practices to build community in residential life, to host dialogues about controversial community issues, and to respond to student misconduct.

Circle practice can also be used with university staff. Working on issues of campus sexual and gender-based misconduct (including sexual violence) from various perspectives (legal, student conduct, Title IX, advocacy) can often be a challenge for colleagues. Using a circle process can help staff experience the

restorative process, build an effective team, and provide a space to discuss differences, challenges and how to work together toward shared goals. Regular trainings focused on campus RJ are offered by the Association for Student Conduct Administration (ASCA) and the Skidmore College Project on Restorative Justice. Often campuses with well-developed RJ programs, such as UC Berkeley, the University of San Diego, and Michigan State University, will invite others to participate in their trainings. Campuses will also find RJ expertise in community-based programs, which will often partner with campuses to provide training and facilitator apprenticeships.

### **Review and Update Policies to Include Restorative Justice**

In the last few years, sexual and gender-based misconduct policies have been undergoing continuous revision to comply with recent legislation. Some campuses, such as Michigan State University, Swarthmore College, and the University of North Carolina at Chapel Hill, have used this opportunity to introduce language that supports restorative responses. Other campuses clearly articulate the role of RJ in their student conduct policies, such as Skidmore College, the University of San Diego, Dalhousie University, and the University of Michigan. Policy development is an opportunity to educate a variety of key stakeholders and apply restorative principles of collaborative decision-making. Use policy development as a means to discuss RJ with senior leadership, develop community partnerships, and potentially influence regional or national responses to sexual violence.

### **Promote Community Awareness**

Since RJ is not widely understood, it is important to educate the campus about restorative philosophy and practice. This can be achieved by hosting speakers, videos, and educational workshops. The University of San Diego and Michigan State University have excellent websites, promotional videos, and brochures that can serve as models for campus-specific materials.

### **Engage in Restorative Justice Research**

Restorative justice is the focus of an enormous number of research studies.<sup>89</sup> As the evidence continues to accumulate, researchers increasingly focus on the effectiveness of RJ for different populations (including sex offenders) and in different settings (including college campuses). Partnering with researchers to develop theory-based programs and rigorous assessment plans is necessary to demonstrate effectiveness. Many research questions will need to be answered as implementation occurs. Will restorative options increase reporting by victims? Will these options encourage student offenders to take responsibility? Will RJ impact satisfaction rates, which might be indicated by reduced appeals, OCR complaints, and lawsuits? Do prevention-focused circles change behavior and improve campus climate? Are campus-based Circles of Support and Accountability effective as a means to provide community reassurance and student offender success?

### **Pilot a Restorative Approach**

In the U.S., campuses may be hesitant to employ RJ practices for sexual and gender-based misconduct because they are not clear if RJ is permissible under OCR guidelines. Because Title IX covers a broad range of behavior, it is possible to clarify, with needed guidance from OCR about sexual assault cases, what is currently permissible and begin implementation. Policies must clarify how restorative processes are related to other conduct practices, such as whether they function as an informal resolution, a formal alternative to traditional adjudication, or an incorporated facet of traditional adjudication. Similarly, campuses are hesitant to move forward because they are uncertain about the criminal ramifications for students. If students, for example, admit fault during a restorative process, will that be later used against them in criminal court? Any pilot must clarify this issue with local district attorneys and understand relevant state law. Victim advocates may be hesitant to recommend RJ because of concern

for re-victimization. Consider educational programs for advocates that explain how RJ procedures minimize this risk, including alternatives to face-to-face dialogue, as well as significant benefits for harmed parties. Ensure that trauma-informed procedures are well-established to protect against this risk.

### **Conclusion**

A restorative approach to campus sexual and gender-based misconduct offers hope that we can truly meet the needs of victims, offenders, and campus communities. Rather than aspire to simply meet compliance standards, RJ offers an opportunity for healing, student development, and community growth. Implementing RJ calls for new perspective and long-term aspirations to provide a comprehensive approach that includes prevention, response, and reintegration. Inevitably, piloting a program will begin with incremental, small steps. As capacity grows, campuses can apply RJ practices broadly with the goal of true community transformation.

## LIST OF CAMPUS PRISM MEMBERS

David Karp (Co-Chair)	Skidmore College	Kaaren Williamsen (Co-Chair)	Swarthmore College
<b>Prevention Group</b>		<b>Advisory Group</b>	
Julie Shackford-Bradley (Coordinator)	University of California at Berkeley	Lyndsay Anderson	Dalhousie University
Rachel Cunliffe	Portland State University	Caitlan Hendrickson	University of Arizona
Laura Haave	Carleton College	Derrick Franke	Michigan State University
Meg Bossong	Williams College	Erin Dagle	Skidmore College
Nina Harris	Swarthmore College	Mariel Martin	Skidmore College
		Jordan Perry	Hampshire College
<b>Reintegration Group</b>		Gary Pavela	NACUA
Robin Wilson (Coordinator)	McMaster University	Andrea Seabert Olson	Evergreen State University
Ida Dickie	Spalding University	Jennifer Berman	Antioch College
Rick Shafer	Michigan State University	Nadia Bazy	University of Michigan
Charlene Berquist	Missouri State University	Carrie Landrum	University of Michigan
Melissa MacKay	Dalhousie University	Rod Kelley	Florida State University
Stephane Kirven	Sacred Heart University	Jennifer Broomfield	Florida State University
Sheryl Wilson	NACRJ Board	Howard Kallem	Duke University
		Duke Fisher	Learning Labs
<b>Response Group</b>		Howard Zehr	Eastern Mennonite University
Jennifer Scott	University of North Carolina at Chapel Hill	Kathleen Sensabaugh	James Madison University
Joan Pennell	North Carolina State University	Lauren Ellis	James Madison University
Nuri Nusrat	Impact Justice	Catherine Spear	University of Virginia
Stacy Vander Velde	West Virginia University	Rachel Storm	University of Illinois at Urbana-Champaign
Josh Bacon	James Madison University	Anne Seymour	National Crime Victim Advocate
Elise Lopez	University of Arizona	Ryan Holmes	University of Texas at El Paso
<b>Strategy Group</b>		Karen Guttentag	Middlebury College
Mary Koss	University of Arizona	Gina Smith	Pepper Hamilton Law
Sheryl Wilson	NACRJ Board	Holly Rider-Milkovich	University of Michigan
Julie Shackford-Bradley	UC Berkeley	Anne Bonner	Oregon State University
Donna Coker	University of Miami	Jennifer Anderson	University of Otago
Jennifer Llewellyn	Dalhousie University	Supriya Poonati	Union College
		Deborah Eerkes	University of Alberta
		Chris Hackett	University of Alberta
		Jill Atkinson	Truckee Meadows Community College
		Caitlin Robertson	Gonzaga University
		Abigail Erle	Emerson College
		Millicent Carvalho	Bryn Mawr College
		Jay Wilgus	University of Utah

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<sup>82</sup> See cost-benefit analyses in Choynard, J.A. & Riddick, C. (2014). *An evaluation of the Circles of Support and Accountability demonstration project: Final report*. Evaluation report prepared for the National Crime Prevention Centre. Ottawa, ON: Public Safety Canada / University of Regina Collaborative Centre for Justice and Safety; Duwe, G. (2013). Can Circles of Support and Accountability work in the United States? Preliminary results from a randomized experiment in Minnesota. *Sexual Abuse: A Journal of Research and Treatment*, 25, 143-165; Elliott, I.A. & Beech, A.R. (2013). A cost-benefit analysis of Circles of Support and Accountability. *Sexual Abuse: A Journal of Research and Treatment*, 25, 3-20.

<sup>83</sup> Fox, K.J. (2014). Restoring the social: Offender reintegration in a risky world. *International Journal of Comparative and Applied Criminology*, 38, 235-256; Wilson, R.J., Picheca, J.E., & Prinzo, M. (2007a). Evaluating the effectiveness of professionally-facilitated volunteerism in the community-based management of high risk sexual offenders: Part one—Effects on participants and stakeholders. *Howard Journal of Criminal Justice*, 46, 289-302.

<sup>84</sup> Fox, K.J. (2013). *Circles of Support and Accountability: Final report prepared for the State of Vermont Department of Corrections*. Burlington, VT: University of Vermont, p.9.

<sup>85</sup> Fox (2013), p. 14, supra note 84

<sup>86</sup> Jordan, C. E., Combs, J. L., & Smith, G. T. (2014). An exploration of sexual victimization and academic performance among college women. *Trauma, Violence & Abuse*, 15(3), 191-200.

<sup>87</sup> “An Alternative Approach to Campus Justice.” Editorial Board *New York Times*. September 9, 2015. <http://www.skidmore.edu/campusrj/karp-vitae-files/media/An-Alternative-Approach-to-Campus-Justice.pdf>; Koss, M.P., Wilgus, J.K., & Williamsen, K.M. (2014). Campus sexual misconduct: Restorative justice approaches to enhance compliance with Title IX guidance. *Trauma, Violence & Abuse*. 15, 242-257; American Association of University Professors. (2016). *The history, uses, and abuses of Title IX*. March 24; Association for Student Conduct Administration. (2014). Student conduct administration and Title IX: Gold standard practices for resolution of allegations of sexual misconduct on college campuses. <http://www.theasca.org/files/Publications/ASCA%202014%20Gold%20Standard.pdf>

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