



**THE PROMISE AND PERILS
OF RESTORATIVE JUSTICE
LEGISLATION IN CALIFORNIA**

UCLA

School of Law

Criminal Justice Program

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About the UCLA School of Law's Criminal Justice Program

The Criminal Justice Program (“CJP”) at UCLA School of Law serves as a central hub for criminal law related courses and research. Research undertaken by CJP faculty and staff helps to inform criminal law and policy at both the national and local levels. CJP engages law students directly in research on critical issues of criminal law and policy, and past work has addressed several key areas, including police brutality and accountability, pretrial detention and bail policy, youth justice and diversion, the family policing system, restorative and transformative justice, and alternatives to policing and prosecution.

About the Research for Change Initiative

CJP’s Research for Change Initiative harnesses the power of University-based research to inform real-world topics in criminal law. The Initiative brings together community members, non-profit organizations, and government stakeholders to advance policy change and transformation in the criminal legal system. It also serves to train law students in community-centered policy advocacy, providing four paid research assistant positions each year to be the “Research for Change Fellows.”

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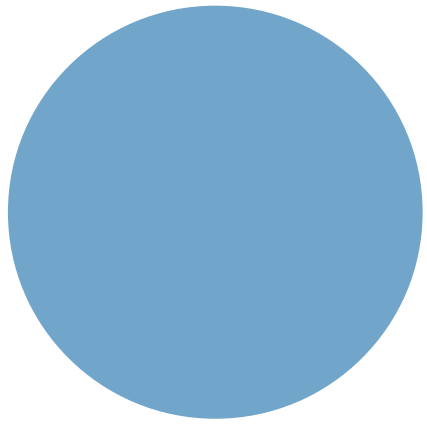
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INTRODUCTION

The inaugural project of the Research for Change Initiative focused on restorative justice (“RJ”) policy initiatives in California. The CJP Research for Change team researched existing RJ legislation within and outside of California, analyzed the potential benefits and drawbacks of pursuing RJ legislation in California, and conducted participatory research with RJ practitioners and participants across the state to understand whether legislation could support their work and any concerns about legislation that they have.

What Is Restorative Justice?

RJ is a theory and set of practices that are rooted in indigenous traditions. RJ can prevent harm from occurring and provide an alternative way of addressing harm after it occurs. RJ takes a broad view of why harm happens, identifying the unmet needs of the person who caused harm and the person who has been harmed, as well as the systemic

and foundational roots of individual acts of harm. RJ processes after harm occurs are centered on the victims/survivors of the incident and assisting them in finding healing, while at the same time supporting the person who has caused harm to take accountability through an active process. Sometimes, RJ processes involve bringing together the victim/survivor and the person who caused harm for a “conference” or a “circle” facilitated by skilled community-based RJ practitioners. RJ practices provide an opportunity for people most directly impacted by an incident of harm to voluntarily and collectively determine a path forward to begin the journey of healing and accountability.

Why Research Restorative Justice Policy?

There are three main reasons that make it important to focus on policy reform around RJ in California right now. First, there has been a proliferation of RJ legislation across the country in the past decade.¹ California lags behind other states in terms of adopting RJ legislation, particularly with regards to RJ’s application in earlier stages of criminal and juvenile proceedings. As will be addressed in Section Three, most existing California RJ legislation in the adult criminal context governs cases that are post-conviction, while little has been done in the context of juvenile delinquency.

Second, in 2022, the California Committee on Revision of the Penal Code (CRPC) recommended adding a victim’s right to RJ to state statute.² Beyond this right, CPRC also recommended a broad scheme of other legislation surrounding RJ processes, stating “the programs should prioritize victim needs, be administered by independent community-based organizations, occur in confidential settings, apply to a wide variety of offenses, and result in the dismissal or non-filing of charges if successful to all parties.”³ These recommendations laid the groundwork for interest in RJ legislation within the California legislature.

Third, while some research on RJ policy exists in the U.S. context, there are many gaps in this research.⁴ Research has failed to track how RJ legislation and policy is implemented, whether there are unintended consequences of legislation, and what, if any, parameters should exist when enshrining RJ in law. There is also a lack of participatory research that incorporates the viewpoints of RJ practitioners and participants.

This report marks the beginning stages of this work for CJP. In Part I, we discuss the emergence of the California Restorative Justice Policy Coalition, to understand how community-based leaders conceive of the promise and perils of RJ legislation. In Part II, we summarize the research our team conducted nationwide and within California to understand the legislative and policy landscape of RJ. In Part III, we provide an analysis of Assembly Bill 60, a pending piece of legislation in California. We conclude with our takeaways and next steps for this work.

THE CALIFORNIA RESTORATIVE JUSTICE POLICY COALITION

The California Restorative Justice Policy Coalition emerged in late 2022 and took a more concrete form in 2023. The Coalition is comprised of twenty organizations across the state, which will be discussed in greater detail in Section III.⁵ The Coalition's purpose statement provides:

We recognize that policy may have a role in protecting existing restorative practices, dismantling punitive approaches to harm, and removing barriers so community-centered restorative justice can grow. Therefore, we come together to develop a shared baseline of principles and understanding from which policy changes at any level of government can be considered, advocated for or against, and proposed, as the group decides.

The following details how this Coalition was formed.

Focus Groups and Surveys

From July through September 2022, three focus groups were convened by Impact Justice, Community Works West, the Ahimsa Collective, and the UCLA Criminal Justice Program. Thirty people participated in these sessions. The goal of the focus groups was to bring community-based RJ practitioners and participants together to listen to their ideas and concerns about RJ legislation in California. The focus groups provided space for conversations about whether to pursue RJ legislation, and, if RJ legislation is pursued, how to do so with fidelity to the core principles of RJ. After the focus groups, the Research for Change team sent a survey to the focus group participants with a more tailored set of questions to continue to elicit further feedback about the direction of RJ legislation in California. We received sixteen responses.

Through the focus groups and survey responses, we found that there is an interest in pursuing RJ legislation while also a wariness and hesitancy about the potential unintended consequences of legislation. Amongst the participants, there was widespread interest in obtaining robust state funding for RJ, since all of the organizations expressed a lack of financial support for their programs. Participants were also eager to see eligibility for RJ be expanded, such that more serious offenses could be considered

as suitable for RJ processes. Participants expressed the need to protect the confidentiality of RJ processes for facilitators and participants through legislation. Some participants understood legislation to be the best avenue to pursue those goals. Many also highlighted the expressive or educational role that legislation could serve in increasing awareness about RJ and its benefits.

Even though benefits that would derive from legislation were identified, there was still an overwhelming concern that legislation around RJ could be co-opted by system actors. This was concerning to participants for several reasons. First, RJ is supposed to be community-based. Legislating RJ could end up embedding it within systems, such as courts, in a way that removes power from the participants in the process. Second, it could lead to a professionalization of RJ, mandating certain formal training requirements like expensive degrees or certification, which would exclude people who cannot access those. And finally, creating schemes of when and how RJ can be used removes the individualized and localized nature that is central to RJ practices. There were many other concerns around co-optation voiced by participants. As one of the focus group participants emphasized, “...ideally, I’d like to see...community led practitioners versus carceral systems practitioners taking on RJ.”⁶

The focus groups and survey responses informed a series of recommendations about future RJ policy work. These included:

1. A budget proposal for unrestricted and sustainable funding for RJ;
2. Comprehensive confidentiality protections for all RJ participants;
3. Statewide legislation with sweeping eligibility criteria for RJ programming; and
4. Legislation that protects against co-optation.

After the focus groups and survey, the majority of participants expressed interest in being a part of a statewide coalition. Thus, those individuals began meeting weekly in September 2022. Additional members were identified and invited to join the Coalition throughout the fall.

Convening

In March 2023, thirty-three members of the Coalition spent two full days at an in-person convening at UCLA School of Law. The goal of the convening was to collaboratively define the Coalition’s purpose, solidify membership and commitments, set goals, and establish short- and long-term goals for RJ policy. Topics covered at the convening included community-building, research presentations, and strategy.

The convening served as an important opportunity for Coalition members to be together in-person, to build community and to practice RJ together as many people had never met in person prior to the convening. The convening began and ended in circle, an RJ practice of mindful listening and sharing. The opening circle asked members to share about their values and connection to RJ and the closing circle asked members to share takeaways from the convening. Designing the convening through the lens of RJ practices allowed members to be sensitive to one another, recognize when there were moments of hesitancy or disagreement in the group, and provided a structure through which to

address those concerns. The community-building sessions helped people feel that they were on the same page. As one convening participant put it,

“We have a strong coalition, filled with great people that share the same principles.”

- Camila Robayo Durán, The CHAT Project

The skills-building sessions of the convening focused on educating the coalition about the California legislative process and was presented by the Alliance for Boys and Men of Color. Because people in the Coalition had varying degrees of experience in engaging with the legislative process, the convening was an excellent space to share knowledge. The second part of the skills-building sessions was an overview of RJ legislation across the country, presented by the Research for Change team. The purpose of this presentation was for convening participants to understand what other states were doing which might help generate new ideas for California legislation as well as provide lessons learned about what not to do through legislation.

“The teach-ins during the RJ Coalition were very helpful and added to the experience of the RJ Coalition convening. As someone who is new to policy advocacy, the presentation by the Alliance for Boys and Men of Color gave me a better understanding about how state legislation is passed and how my organization can become involved. The UCLA presentation on RJ legislation in other states opened my eyes to the piecemeal nature of RJ legislation throughout the country. I left both presentations with new information and opportunities to get involved in the coalition.”

- Ali Haezaert, California Conference for Equality and Justice

Convening participants also took part in two strategic planning sessions adapted from the *Technology of Participation: Focusing Collective Power for Change* by the Institute of Cultural Affairs, with guidance and facilitation from Impact Justice.⁷ The first strategic planning session focused on defining the Coalition’s collective vision. Vision was defined for the members as: “Visions are dreams and hopes that are real to us. They are what we deeply believe must be in place if there is to be a future and they arise from our most profound experiences of life. They exceed our grasp and often seem impossible to achieve. They require that people take a leap out beyond what is, to a future they imagine.” The participants were presented with the question, “What do we envision will

be in place in 3-5 years, if we decide to continue moving forward with this coalition?" The Coalition defined their vision as having six components:

1. Creating local networks for healing in communities;
2. Forming a generative, robust, inclusive, and powerful Coalition;
3. Protecting the integrity of RJ within and outside of the law;
4. Contributing to a culture shift in the state toward RJ and healing;
5. Influencing public opinion through RJ principles and practices; and
6. Creating opportunities for unrestricted and abundant ethical funding for RJ.

After the first strategic planning session, members felt more aligned with one another and certain of the purpose of the Coalition. One participant stated,

"Our visioning process was a restorative approach. The outcome was a vision and strategy to transform our legal system, which in its completion, will be our compass to meet our aim of keeping restorative justice a community-centered practice."

- Kevin R. Martin, Community Works

The second strategic planning session focused on naming the obstacles that impede the Coalition's vision. The members were presented with the question, "What is blocking us from moving toward our vision?" Identifying obstacles helped members of the Coalition think about what short term steps are necessary in order to remove barriers and achieve their long-term vision.

"Putting our heads together to identify obstacles to our collective vision for RJ in CA helped me to discern which obstacles exist across the state versus in smaller localities, and which obstacles the Coalition is positioned well to respond to versus obstacles requiring outside resources and partnerships. It's clear that RJ practitioners across the state face the same or very similar barriers to providing principled RJ services, which means that a successful effort to counter these obstacles will have widely felt benefits."

-Erica Washington, Impact Justice



RESEARCH

Throughout the academic year, the Research for Change team engaged in research the Coalition needed to be able to make informed decisions about their strategy and approach to RJ policy in the state. First, we conducted a nationwide scan of RJ state legislation. While some states may have court rules and regulations outside of state legislation, we only focused on statutory law for this project. RJ legislation across the country is varied and there does not seem to be much uniformity between states. Only eleven states do not have any RJ statutes.⁸ Legislation runs the gamut, including mere mentions of RJ without much more, definitions of RJ, establishing very specific RJ programs and oversight bodies for these programs, and expanding or constraining eligibility for RJ based on age, type of offense and conviction history. Because of the wide variety of legislation, our research was guided by what the Coalition was interested in learning more about. The Coalition wished to know more information about:

1. Legislation that establishes a right to RJ;
2. Legislation on confidentiality provisions for RJ; and
3. Whether and how legislation contributes to or prevents the co-optation of RJ by state actors.

Each of these research areas is covered in detail below.

Right to Notice and Right to Restorative Justice

Our research found that there are only six states that have legislative language that provides either a right to RJ or a right to be notified about RJ processes. The majority

of these six states provide a right to access RJ, which we classify as a “right to RJ.” Laws in Oklahoma,⁹ New Hampshire,¹⁰ and Indiana¹¹ provide a right to RJ for victims/survivors. Each of these three states also indicates who is responsible for fulfilling this right, from Victim/Witness offices to governmental task forces. In the state of Texas, victims/survivors have a right to request RJ, but it is unclear whether this right to request it in fact means they will be able to access it every time.¹²

Interestingly, California already had a right to notice of RJ for anyone harmed by a minor. California’s statutory language establishes that “The probation officer shall inform the victim of the offense, if any, of any victim-offender conferencing program.”¹³ Victim-offender conferencing is a type of RJ process. The statute specifies this notification should be available “when a petition is filed in juvenile court,” thus, the right appears to only be operational after a case has already been filed. This is not a right to access RJ, but a right to be notified that it exists as an option.

Colorado is the only other state that provides people a right to be notified about RJ processes. Colorado law provides for both victims/survivors¹⁴ and the person who caused harm¹⁵ to be notified about RJ practices. However, the right to be informed of RJ practices “if available in the jurisdiction” only applies to youth in the juvenile delinquency system and not adults who have caused harm.¹⁶ The Colorado law clarifies that it does not “establish any right to restorative justice practices on the juvenile’s behalf.”¹⁷

In sum, these laws confer a variety of different rights when it comes to RJ but leave much to be desired in terms of implementation. For example, Colorado’s law that gives victims/survivors the right to “be informed about the possibility of restorative justice practices” does not indicate who will do the informing, when the individual must be informed, and what information must be provided.¹⁸ In California, it is unclear if and how probation officers are providing notice about victim-offender conferencing programs. In the states where a victim/survivor has the right to actually access RJ, it begs the question of whether there is sufficient funding for RJ programs such that the need will be met. A right to access RJ is hollow if there are not enough programs to meet the need. As will be discussed in Section Four, these are all considerations that arose when determining the approach to the pending Assembly Bill 60.

Confidentiality, Admissibility and Privilege

Confidentiality for RJ processes is essential to their ability to function. A person who caused harm needs to be empowered to be fully honest about the harm they caused in order to reach accountability; however, they may never do so if they fear criminal repercussions such as admissions of guilt being used against them in future court proceedings. Currently, several RJ programs address this issue by entering into memoranda of understanding (MOU) with local prosecutors’ offices and/or law enforcement agencies. These MOUs typically govern many aspects of the programs’ operation, including confidentiality. They delineate what is confidential and typically prevent information obtained during an RJ process from being used against the person who caused harm in future proceedings. However, because not all organizations have this and it is incredibly labor-intensive to negotiate and renegotiate these agreements, the Coalition was interested in understanding what confidentiality legislation looks like across the country.

As of the publication of this report, fifteen states have statutes that address confidentiality, admissibility, and/or privilege in relation to RJ processes.¹⁹ As we have seen in other areas of RJ legislation, these statutes vary widely. Most states do not classify the information obtained through an RJ process as privileged, although the majority of them do delineate that the information is inadmissible in future proceedings. Some states' legislation provides for the information to be confidential but are silent as to admissibility.

One example is Nebraska's confidentiality statute for juvenile RJ programs which states, "Any verbal, written, or electronic communication made in or in connection with matters referred to a restorative justice program which relates to the controversy or dispute undergoing restorative justice and agreements resulting from the restorative justice program, whether made to the restorative justice facilitator, the staff of an approved center, a party, or any other person attending the restorative justice program, shall be confidential and privileged."²⁰ Nebraska's statute goes on to state that "no admission, confession, or incriminating information...shall be admitted into evidence...".²¹ This statute protects a broad swath of information, particularly when it says "no incriminating information", which provides protection for anything a youth may say even if unrelated to the underlying incident for which they were referred to an RJ process. However, Nebraska's statute does provide a carveout for the evidence, allowing it to be used for rebuttal or impeachment purposes.²² While Nebraska explicitly allows for this carveout, there are no states that *prevent* information obtained during an RJ process from being used as impeachment or rebuttal evidence.

Most states do a good job at shielding the information shared during an RJ process for all of the many people involved in the process. For example, Tennessee's legislation states, "Any communication relating to the subject matter of the resolution made during the resolution process by any participant, mediator, or any other person is a privileged communication...".²³ States have also been creative in delineating what type of information is protected. For example, in Texas, "the conduct and demeanor of the parties" is protected as confidential²⁴ which goes far beyond the typical protections for oral or written statements. In Massachusetts, the very fact of participation in an RJ process is protected, as the law states it "shall not be used as evidence or as an admission of guilt, delinquency or civil liability in current or subsequent legal proceedings against any participant."²⁵

California does not have any confidentiality or admissibility protections that explicitly apply to RJ processes. However, many programs throughout California rely on the mediation confidentiality, privilege and admissibility provisions found in the Evidence Code to protect their processes. These provisions only apply to civil, non-criminal proceedings. RJ programs that work with youth likely have a good argument that their processes could avail themselves of these protections because delinquency proceedings are considered civil. It is unclear whether RJ processes involving adults who have caused harm would fall within these protections. Thus, we found that it is important that California consider confidentiality legislation going forward.

Through our research, we propose that the strongest RJ legislation in this area would include the following:

1. Protect as confidential, privileged, and inadmissible anything said, written, or recorded in preparation for, in the course of, or pursuant to an RJ process, including the fact of participation;
2. Provide that the aforementioned information is inadmissible in any civil, criminal, administrative, extrajudicial, or juvenile proceeding; and are inadmissible in a prosecutor's case in chief as well as for rebuttal or impeachment purposes; and
3. Apply to not only the person harmed and the person who caused harm, but the facilitators and any third-party participants, like family or community members.

Co-optation

A primary concern for the Coalition was around the co-optation of RJ by state actors. They identified co-optation as taking two primary forms. One, is a concern around RJ becoming embedded within the current criminal and juvenile legal systems, when a core principle of RJ is that it remains community based. Second, is the concern that the core principles of RJ could be watered down by legislation such that the practice of RJ becomes unrecognizable. Coalition members were already aware of the co-optation of RJ occurring in California in many ways. For example, probation officers from Los Angeles and Santa Clara Counties have a website, Probation Saves Lives, which states “Restorative Justice Starts Here”, but does not go on to explain anything about RJ or what they might be doing that has any resemblance to RJ.²⁶ Coalition members saw this as an instance of co-opting the language to gain legitimacy for probation departments without engaging in actual RJ practices. Coalition members also pointed to several RJ programs that are embedded in prosecutors’ offices as another instance of co-optation in that they remove the power from community-based organizations to lead RJ. Because of the already existing forms of co-optation, the Coalition was quite concerned about how legislation may enable the co-optation of RJ and whether legislation could serve to protect against co-optation.

To understand whether and how co-optation has arisen in other states, we conducted a review of all criminal and juvenile codes that mention RJ in each state. One way that co-optation seems to be happening across the U.S. is when legislation ties funding for RJ to requirements for collaboration between RJ programs and law enforcement and prosecutors. Oregon has legislation that establishes a program to allocate grants for RJ. Within that legislation is a requirement that each applicant for the funding “demonstrate in the application coordination with community-based organizations and the ability to work collaboratively with system partners, including local law enforcement entities, courts, district attorneys and defense attorneys.”²⁷

Other forms of co-optation include legislation giving the power to systems actors to develop or lead RJ programs. For example, Pennsylvania has a law that allows schools to confer power onto school resource officers (school police) to train students in RJ.²⁸ Oklahoma empowers the District Attorneys Council to develop and administer a five-year RJ pilot program.²⁹

Legislation such as that in Oregon, Pennsylvania, and Oklahoma has the potential to co-opt RJ by taking it out of the hands of the community and placing it in the hands of people who have power over the participants. It may encourage reporting to law enforcement, prosecutors, or judges of things said in the process, and potential “failures” of the RJ process which might trap people in a carceral cycle. It may also mean that the foundational principles of RJ are not adhered to as people who are trained in punitive methods, like police officers, often find RJ training, which is non-punitive, to be at odds with how they typically operate.

On the other hand, there are examples where states have legislated in a way that seems to address some of the concerns of co-optation. Several states with grant programs established by the legislature provide that funding for RJ programs can only go to community-based organizations or non-profits. For example, Delaware’s legislation says that in order to be eligible for state funds, an RJ program must be a 501(c)(3).³⁰ An even stronger example is legislation in Illinois establishing grants for RJ programs in schools; this legislation explicitly states that “Grant funds may not be used to increase the use of school-based law enforcement or security personnel.”³¹ Alaska, limits the participation of juvenile court judges in the RJ process, indicating some awareness that RJ processes exist outside of the traditional court system.³² These examples show that there is the ability to protect the RJ process through legislation. The legislation that attempts to do this seems to do so primarily by placing parameters around who can and cannot be involved in RJ processes.



THE STATE OF RESTORATIVE JUSTICE IN CALIFORNIA

The Research for Change team also engaged in research to better understand the scope of RJ in California. They wished to understand both who was practicing RJ in California, what the current state of RJ legislation is in California, and which legislators may be supportive of RJ legislation.

Restorative Justice Programs and Practices Field Scan

Understanding the scope of RJ organizations and groups across the state was important to the Coalition both to be able to identify other potential Coalition members and to understand the breadth of RJ practitioners' needs. To this end, the Research for Change team identified RJ organizations in all fifty-eight counties and invited these organizations to complete a questionnaire.

Twenty-eight organizations of various sizes participated in the field scan. They reported offering a variety of RJ services, including community and family group conferencing, victim-offender mediation, and healing circles. Twelve of these organizations said they receive referrals from law enforcement, district attorneys, probation, or all three. Service volume varied by organization, with some organizations reporting handling 30-50 cases per year and others reporting 500 cases per year. There were two organizations that said they provide RJ services throughout the entire state of California. Both of these organizations provide RJ in the post-conviction context. The rest of the organizations were concentrated in Northern and Southern California, with no representation from the central part of the state. There are many other RJ organizations throughout the state that were contacted, but they did not all respond.

Restorative Justice Legislation in California

As of the writing of this report, California has twenty-five mentions of RJ in state statutes, including in the Penal Code, Education Code, Welfare and Institutions Code, Government Code, and Health and Safety Code. Statutes in the Penal Code and Education Code make up for twenty-one of the states' RJ laws. The Penal Code statutes primarily focus on RJ post-conviction³³, and many list RJ as a form of “sanction” that a person can be referred to by a supervising agency when they are on some form of supervision upon release from jail or prison. The Education Code statutes provide for RJ to be used as a first response to disciplinary issues and encourage the broad use of RJ across schools. Unlike some other states, there is not a lot of substance to California's RJ statutes. That is to say, California's RJ statutes do not define RJ, they do not specify when and for whom RJ can be used, there is no preference for diversion to RJ programs, and legislation is silent on confidentiality protections for RJ.

This lack of substance is glaringly apparent when compared to other states, as discussed above, particularly states like Tennessee, Delaware, and Nebraska, which would not be the usual suspects in leading the charge around alternatives to incarceration. Although California is the birthplace of many “tough on crime” policies like three strikes laws, there have also been incredible legislative developments in the past ten to fifteen years attempting to roll back some of the harms of mass incarceration. As mentioned, it seems that the state is now poised to begin thinking about RJ legislation more comprehensively.

California Legislator Research

The Research for Change team conducted research on all current California state legislators to help inform the Coalition's collective decision-making in determining what type of RJ legislation to propose, which legislators may be interested in sponsoring RJ legislation, and which legislators may support or oppose the Coalition's current and future legislation. Research was conducted on each legislator to identify their existing connections to RJ, stated legislative priorities, and whether there were any RJ community-based organizations or advocacy organizations in their districts. This resource will be incredibly helpful to the Coalition as their legislative work progresses.



ASSEMBLY BILL 60

Assembly Bill 60 (AB 60) is a bill authored by Assemblymember Isaac Bryan (D-Los Angeles) that amends both the California Penal Code and Welfare and Institutions Code to add a right to be notified about RJ for victims/survivors in California. As of the writing of this report, the bill language reads:

A victim shall be notified of the availability of community-based restorative justice programs and processes available to them, including, but not limited to, programs serving their community, county, county jails, juvenile detention facilities, and the Department of Corrections and Rehabilitation. The victim shall be notified as early and often as possible, including, but not limited to, during the initial contact, during followup investigation, at the point of diversion, throughout the process of the case, and in all postconviction proceedings.³⁴

It also strikes the previous notification language mentioned in Section Three above, removing the power of RJ notification from probation officers.³⁵

Getting to AB 60

Upon review of the focus groups and survey, there was no consensus that a right to RJ should be enshrined in law. Some participants voiced a desire for this right to be granted to both the victims/survivors and to people who cause harm. Others were concerned that creating such a right would cause an increase demand for RJ, when there are not sufficient community-based programs with enough funding to respond to an increase in requests. This raised a subsequent concern that “cookie-cutter” RJ programs would emerge to try to meet the need, without much intention or experience in RJ. Once AB 60 was proposed by Assemblymember Bryan (influenced by the work of the California Penal Code Revision Committee), however, the majority of Coalition members agreed that if the bill could be limited in scope that it would not do much harm, would help the Coalition get familiar with how to push legislation forward, and would begin to establish the Coalition as the “go-to” group for RJ knowledge and experience in the state capitol.

The initial draft of AB 60 included a right to notice of RJ programs for victims/survivors as well as confidentiality legislation. The Coalition ultimately decided to request that the confidentiality piece of the legislation be removed because they had not had sufficient time to discuss their ideal confidentiality legislation as well as any unintended conse-

quences. They also realized that because of the Victim's Bill of Rights in California that any legislation that changes the rules of evidence in a way that requires the exclusion of certain pieces of evidence, must be enacted by a two-thirds vote in both houses of the California legislature.³⁶ Whereas, a simple bill on notice, would only need to receive a majority vote. Thus, the Coalition decided to proceed with a simple but powerful bill for its first foray into legislation.

The Coalition had, and continues to have, many conversations about how a right to notice would be implemented. They acknowledged that law enforcement is often the first point of contact for victim/survivors, so they will inevitably be one of the entities providing notice of the availability of RJ. However, thinking about co-optation and how the benefits of RJ are best conveyed by those with lived experience in it, the Coalition remained steadfast that law enforcement or other state actors should not be the only entities responsible for notification. Thus, the bill refrains from naming a laundry list of people responsible for notification, leaving it up to implementation to determine how people are notified and by whom. The Coalition also identified the issue that providing notice once, particularly immediately after someone has been harmed, is not sufficient as people may not have time to process and understand the information. Thus, the Coalition chose to be specific about the timing of when notification should happen, inserting the following language into the bill: "The victim shall be notified as early and often as possible, including, but not limited to, during the initial contact, during followup investigation, at the point of diversion, throughout the process of the case, and in all postconviction proceedings."³⁷

Additionally, through our research, we found that in 2022, legislation was passed that required the Attorney General to create a Victim Protection and Resources Card by July 1, 2025.³⁸ The legislation delineates a series of victims' rights and information that must be conveyed to victims/survivors that are not typically communicated to them.³⁹ These include information about tenant protections for domestic violence victims, and information about federal immigration relief available to victims.⁴⁰ The Coalition decided to include the RJ notice provision as one of the rights in this particular Card. Finally, the Coalition wanted to define what "community-based restorative justice programs and processes" are to ensure that neither law enforcement nor government agencies could be considered as providing RJ, since this Coalition sees those entities at cross-purposes with how they approach and define RJ. Amendment language to that effect is still pending at the time of this report's writing.

AB 60 was flagged as a public safety bill and on April 18, 2023, it passed unanimously through the Assembly Public Safety Committee.⁴¹ The bill then moved on to the appropriations committee, where it passed on May 10, 2023. The bill was classified as "on consent" for the full Assembly, meaning it was not up for debate. The bill passed out of the Assembly on May 18, 2023 and moved on to the Senate.

CONCLUSION

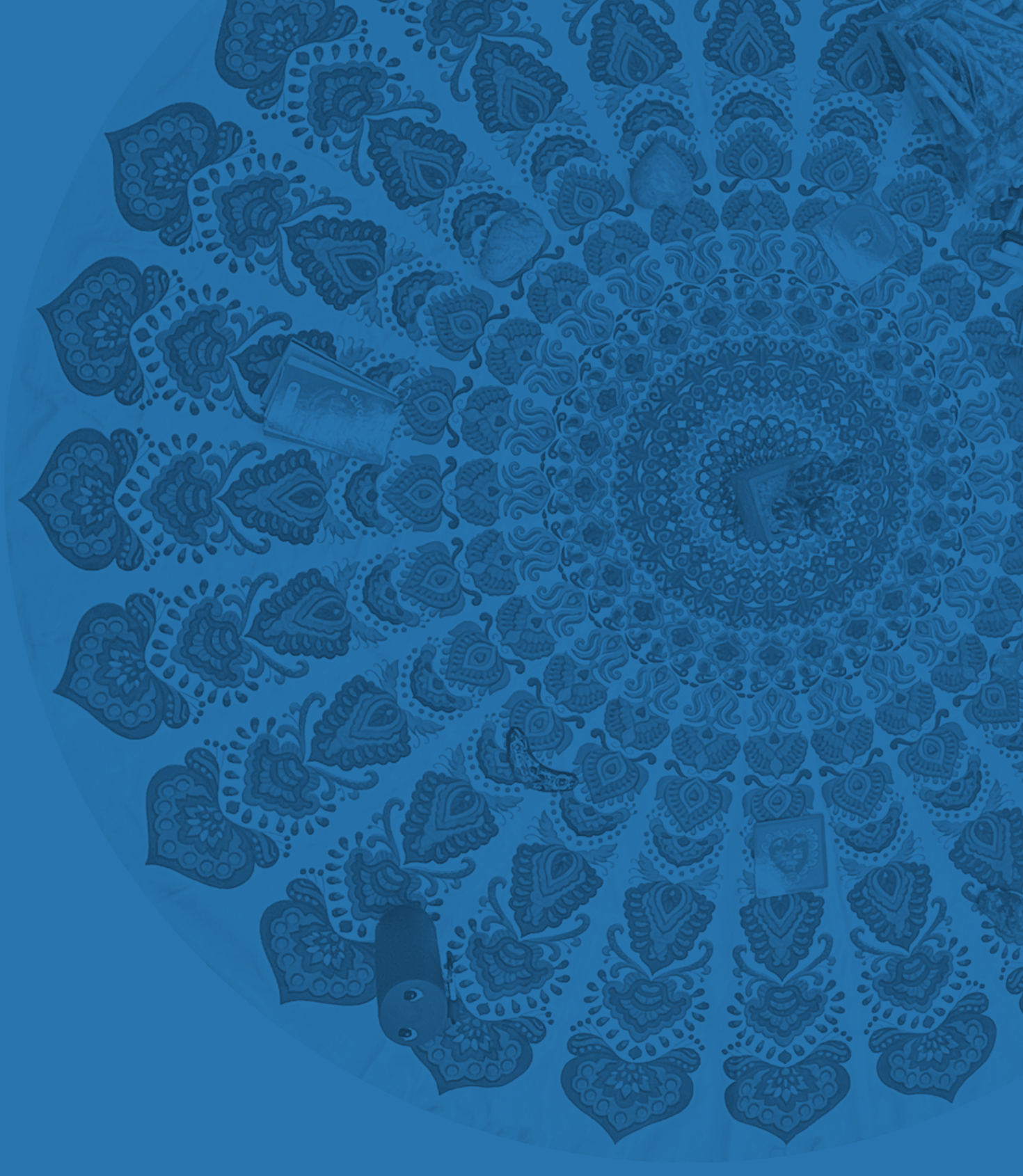
In reflecting back on the year, the Research for Change team shares the following takeaways with other communities interested in pursuing RJ policy in their own jurisdictions:

1. Statewide coalitions should first identify all community-based RJ programs and processes in their state and start building community, using restorative practices, amongst this group of people before engaging in the legislative process. This was the intention for this Coalition, but just about three months into its formation, AB 60 became a proposed piece of legislation and the Coalition had to shift into a responsive mode rather than a proactive one. Building together early on will help once the fast-paced nature of legislative advocacy begins to dictate the speed of the work.
2. Along the same vein, coalitions should come together to identify their vision, barriers to that vision, and a defined theory of change early on. This Coalition spent a lot of time at the convening trying to determine whether there was consensus that the Coalition would be a policy-focused Coalition as opposed to a Coalition that was hoping to have a broad vision and role in spreading the practices of RJ statewide. In the end, the Coalition determined that there was a lack of presence and voice in the policy arena on the part of community-based RJ practitioners and so focusing on being a policy coalition would fill a gap. Any RJ coalition should engage in the same process to identify the gaps, determine their goals, and decide what strategy is best to achieve those goals. For example, depending on the community, local organizing and policy advocacy may be a better strategy than passing legislation.
3. Coalitions should constantly be alert for co-optation of RJ by systems actors. Coalitions should draft their own legislation that adheres to the core principles of RJ and consistently be in conversation about unintended consequences of particular pieces of legislation before they start to work with legislators on any bills. Coalitions should spend time together brainstorming whether and how legislation can protect RJ from co-optation by excluding state actors from wielding power over the process. It is important for RJ to remain defined and led by those with long-standing RJ experience and experience working with people most impacted by our legal systems. Coalitions should simultaneously work on implementation plans and keep a close eye on the impacts of legislation once enacted in order to make legislative tweaks when needed and share lessons learned with other jurisdictions.

As this report shows, the Research for Change team conducted a great deal of research that is a helpful foundation as California begins to consider RJ legislation. It is important that the path to RJ legislation is informed by this research and is led by community-based RJ providers and participants so that legislation upholds the integrity of RJ and its community-based approach to achieving accountability, healing, and transformation.

Endnotes

- 1 Thalia González, *The Legalization of Restorative Justice: A Fifty-State Empirical Analysis*, 2019 Utah L. Rev. 1027, 1031 (2019).
- 2 Comm. on Revision of the Penal Code, 2022 Ann. Rep. and Recommendations 20, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf.
- 3 *Id.*
- 4 See Thalia González, *The State of Restorative Justice in American Criminal Law*, 2020 Wisc. L. Rev. 1147, 1151-52, concluding after conducting extensive macro and micro-analyses of RJ laws, “...this study affirms the need for careful examination of the risks and benefits of the rapid legalization and expansion of restorative justice in law and policy.”
- 5 The current organizations represented in the Coalition are: Alliance for Boys and Men of Color, Ahimsa Collective, American Friends Service Committee, California Conference for Equality and Justice, Californians for Safety and Justice, CHAT Project, Communities United for Restorative Youth Justice, Community Works, Creative Interventions, Centinela Youth Services, DeafHope, Impact Justice, Insight Prison Project, LA County’s Department of Youth Development, Mend Collaborative, Pangea Legal, Restore Oakland, RJOY Oakland, RYSE Center, and Sierra Vista Cares.
- 6 Focus group responses are on file with the authors.
- 7 The Inst. of Cultural Aff. in the U.S.A., *Technology of Participation®: ICA Consultation and Facilitation Services*, ICA-USA, <https://www.ica-usa.org/consult.html> (last visited May 18, 2023).
- 8 Those states are Arizona, Arkansas, Georgia, Mississippi, New Mexico, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, and Wyoming.
- 9 Okla. Stat. tit. 57, § 521.2 (2023).
- 10 N.H. Rev. Stat. Ann. § 21-M:8-k (II)(v) (2023).
- 11 Ind. Code § 35-40-6-4 (2021).
- 12 Tex. Code Crim. Proc. Ann. art. 56A.602 (West 2021).
- 13 Cal. Welf. & Inst. Code § 742 (West 2023).
- 14 Colo. Rev. Stat. Ann. § 24-4.1-302.5 (West 2023).
- 15 Colo. Rev. Stat. Ann. §19-2.5-902 (West 2023).
- 16 *Id.*
- 17 *Id.*
- 18 Colo. Rev. Stat. Ann. § 24-4.1-302.5.
- 19 These states are: Alabama, Colorado, Delaware, Florida, Illinois, Maine, Massachusetts, Nebraska, North Carolina, Oklahoma, Oregon, Tennessee, Texas, Vermont, and Virginia.
- 20 Neb. Rev. Stat. Ann. § 25-2914.01 (West 2023).
- 21 *Id.*
- 22 *Id.*
- 23 Tenn. Code Ann. § 16-20-103 (West 2023).
- 24 Tex. Civ. Prac. & Rem. Code Ann. § 154.053 (West 2023).
- 25 Mass. Gen. Laws Ann. ch. 276B, § 4 (West 2023).
- 26 Cal. Coalition of Probation Unions. *Probation Saves Lives*, <https://www.probatonsaveslives.com> (last visited May 31, 2023).
- 27 Or. Rev. Stat. Ann. § 137.679 (West 2023).
- 28 24 Pa. Stat. and Cons. Stat. Ann. § 13-1313-C (West 2023).
- 29 Okla. Stat. Ann. tit. 22, § 305.7 (West 2023).
- 30 Del. Code Ann. tit. 11, § 9502 (West 2023); see also Minn. Stat. Ann. § 611A.77 (West 2023), which grants money only to non-profit organizations; Mont. Code Ann. § 44-7-303 (West 2023) stating that grant funds for RJ programs can only be provided to community-based, including faith-based, organizations; Neb. Rev. Stat. Ann. § 25-2909 (West 2023) indicating an RJ program can only apply for funding if it has a 501(c)(3) designation; Tenn. Code Ann. § 16-20-102 (West 2023) stating that programs applying for funding must have proof that they are a 501(c)(3).
- 31 105 Ill. Comp. Stat. Ann. 5/2-3.181 (West 2023).
- 32 Alaska Delinq. R. 23.
- 33 See Cal. Penal Code §§ 5006, 5007.3, as examples of provisions in the California Penal Code that provide funding to organizations providing RJ programs inside of prisons.
- 34 Assemb. B. 60, 2023-2024 Legis. Reg. Sess. (Cal. 2023), amending Cal. Penal Code § 679.02(a) (2022) by adding subsection (15), and amending Cal. Welf. & Inst. Code § 742 (West 2023).
- 35 See Assemb. B. 60, amending Cal. Welf. & Inst. Code § 742(b).
- 36 Cal. Const. art. 1, § 28(f)(2).
- 37 See Assemb. B. 60, amending Cal. Penal Code § 679.02(a), adding subsection (15).
- 38 Cal. Penal Code § 679.027 (2022) (effective Sept. 29, 2022, and conditionally operative July 1, 2024, as prescribed by its own provisions).
- 39 *Id.* (while there has long been legislation requiring the Attorney General to create a “Marsy’s Card” that enumerates victims’ rights as laid out in article 1, section 28(b) of the California Constitution, this new Victim Protection and Resources Card will add other rights that are found outside of constitutional provisions, but would be supportive of victims/survivors).
- 40 *Id.*
- 41 Assemb. B. 60, 2023-2024 Legis. Reg. Sess., *Bill Votes* (Cal. 2023) https://leginfo.legislature.ca.gov/faces/bill-VotesClient.xhtml?bill_id=202320240AB60.



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