

THE NECESSITY OF RESTORATIVE JUSTICE WITHIN PRISONS

*Sarah J. Pietrowski**

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* J.D. Candidate, 2024, University of Richmond School of Law; B.A., *magna cum laude*, 2021, University of Mary Washington. I would like to thank Professor Doron Samuel-Siegel for her guidance and feedback on this Note, which was initially written for her Restorative Justice class in 2023. I would also like thank the staff on the *Virginia Journal of Social Policy & the Law*, especially Maya Artis and Abigail Hauer, for their edits and dedication in publishing this piece. Finally, I am eternally grateful to my family and friends for their unwavering love and support, especially throughout my law school journey.

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In the era of mass incarceration, it is vital to reexamine the prison system to identify not only its weaknesses, but its successes. Successes in correctional systems are often measured by a reduction in recidivism rates, and in states where restorative justice practices have been implemented in prisons, recidivism rates have exhibited a significant decrease, affirming the necessity of restorative justice practices in prisons. Additionally, restorative justice not only helps victims of crime feel that their voices are heard and that the one who harmed them will experience personal growth, but it is preferred by the majority of victims as they prefer rehabilitation over long-term punishment.

This Note explores various restorative practices used in prisons throughout the country, with a particular focus on California, New Jersey, and Virginia. The author interviewed facilitators of each program discussed in this article in order to provide a unique and detailed overview unlike any other currently available.

INTRODUCTION

The United States is experiencing an era of mass incarceration. Within federal, state, local, and tribal systems, there are almost two million individuals incarcerated across over six thousand facilities throughout the country.¹ The majority, over one million, are held in state prisons, with local jails following at 514,000.² Prison populations have dropped somewhat since 2020 when the COVID-19 pandemic led to significant reductions in prison populations — the number of people in prison dropped fifteen percent during that year, and the number in jails reduced twenty-five percent by the summer of 2020.³ Now that the government has declared the pandemic over, prison populations are rising once again.⁴

Some like to believe that those who commit a crime go to prison, serve their time, and become rehabilitated enough to rejoin the general population with no further problems. However, that is not the case. Today's rate of recidivism is extremely high — about seventy-one percent within five years of release from incarceration — and it is crucial that we reevaluate

¹ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2023*, PRISON POLICY INITIATIVE (Mar. 14, 2023), <https://www.prisonpolicy.org/reports/pic2023.html>.

² *Id.*

³ *Id.*

⁴ *Id.*

our criminal justice system as it stands.⁵ There also tends to be an assumption that all victims of crime want the person who harmed them to be locked away and to receive the harshest punishment that the criminal justice system can provide. In reality, victims of crime tend to prefer crime and violence prevention initiatives over incarceration.⁶ Many believe that prison results in higher rates of recidivism and resources would be better spent on options beyond just imprisonment.⁷

Restorative justice is a victim-focused method often used in criminal justice that aims to repair the harm resulting from a criminal act by addressing the root cause of the criminal act and the impact that it had on both the victim and the community.⁸ It encourages an individual who has committed a crime to understand the consequences of their actions, take responsibility, and make amends.⁹ The purpose of this Note is to establish that restorative justice practices inside prisons are vital to reduce recidivism rates and successfully reintegrate formerly incarcerated individuals into society while still providing a sense of justice to the victim and the community that experienced a harm.

Part I of this Note will provide important background information broadly describing the state of the penal system across the U.S. It will then progress to define what restorative justice is and detail current restorative justice initiatives in the prison setting, such as victim impact panels, victim-offender mediation, and therapeutic solutions. Part II will focus on state specific restorative justice practices — particularly those that have been successfully implemented in New Jersey, California, and Virginia, all of which have adopted varied yet similar approaches to restorative justice within their correctional departments. Part II will also explore victims' opinions of these restorative justice programs, and, finally, offer an argument as to how these programs influence recidivism.

I. BACKGROUND

Prisons in the U.S. are overcrowded, underfunded, and often do more harm than rehabilitation. The problems are so prevalent that even the Supreme Court recognized the problem with the current system in 2015, stating: “[t]oo often, discussion . . . among practitioners and policymakers concentrates simply on the adjudication of guilt or innocence. Too easily ignored is the question of what comes next. Prisoners are shut away —

⁵ BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., NCJ 255947, SPECIAL REPORT: RECIDIVISM OF PRISONERS RELEASED IN 34 STATES IN 2012: A 5-YEAR FOLLOW-UP PERIOD (2012-2017) 4 (2021).

⁶ Sawyer & Wagner, *supra* note 1.

⁷ *Id.*

⁸ *Restorative Justice*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/policy-issues/sentencing-alternatives/restorative-justice> (last visited Jan. 30, 2024).

⁹ *Id.*

out of sight, out of mind”; yet the problems persist.¹⁰ A Department of Justice special report on recidivism released in 2021 revealed that the nationwide rate of recidivism is seventy-one percent, suggesting that when incarcerated individuals leave the prison system, they often lack the resources and knowledge needed to properly reintegrate into society.¹¹ They are further hindered by the stigma of having been to prison, which not only harms their personal relationships, but often impedes their efforts to find a home or job. The harmful conditions and lack of resources only serve to perpetuate the cycle of reoffending.

The implementation of restorative justice practices within prisons can help break the cycle. Restorative justice is not a way to let someone “get off easy” or simply a diversion from prison; it is personal development, therapy, education, and job training, all of which help incarcerated individuals grow and succeed upon reentry into the community. It is vital that practitioners and policymakers today reevaluate and improve upon the system using restorative methods.

A. *The Penal System: Incarceration & Recidivism*

Jails, or “houses of correction,” have a history in this country dating back to when the English colonized North America. At that time, they were used to hold individuals awaiting trial on a short-term basis.¹² It did not take long for these houses of correction to become what we now associate as jails and prisons with — a place of punishment for those who have committed a crime both before and after conviction.¹³ This change from a short-term, pre-trial holding facility to one used for post-trial, long-term punishment was at least in part due to major opposition to the use of corporal punishment as standards of decency evolved over the years.¹⁴ Historically, prisons have never been known for their humane practices and environments, and that has not changed much in the past few centuries.

¹⁰ *Davis v. Ayala*, 576 U.S. 257, 287-88 (2015) (Kennedy, J., concurring) (discussing the horrid conditions of the “usual patterns” of solitary confinement and the “human toll wrought by extended terms of isolation.”).

¹¹ DEP’T OF JUST. SPECIAL REPORT, *supra* note 5.

¹² EDWIN H. SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY* 378 (1934).

¹³ *Id.*; in early American prisons, “[c]orruption was rampant; prisoners were expected to bribe their keepers for minimally adequate treatment, and those without money were often allowed to die of neglect. The buildings, too, could prove fatal. Few were purpose-built facilities; many were dilapidated residences that had been quickly fitted with bars and padlocks. Hygiene was appalling — open sewers often ran through the facilities — and rarely were there fresh provisions or clean water.” Jack Lynch, *Cruel and Unusual Prisons and Prison Reform*, 33 *COLONIAL WILLIAMSBURG J.*, no. 2, 2011, at 37. See generally Shannon Haupt & Phil Miller, *Cruel and Usual: Contaminated Water in New York State Prisons*, 25 *CUNY L. REV.* 120 (2022).

¹⁴ *Id.*

In early 2023, there were approximately two million individuals incarcerated throughout the United States and its territories — around 1,873,000 people.¹⁵ Of those, 1,047,000 were held in state prisons.¹⁶ About forty-seven percent of the individuals in state prisons were there for “violent” crimes, though the term “violent” applies to a range of criminal acts, many of which would not generally be considered an act of violence.¹⁷ This “violent” label then attaches to the incarcerated individual for the remainder of their lives, resulting in problems reintegrating after imprisonment when searching for housing or employment opportunities. These labels have resulted in the election of “tough on crime” policymakers who introduce — and pass — policies that exclude those with this unshakeable label from criminal justice reforms.¹⁸ Examples of such policies include a 2011 bill from Louisiana that allows incarcerated individuals over the age of sixty who have been imprisoned for at least ten years to be reconsidered for parole unless they have been convicted of a crime of violence and a 2019 bill from Tennessee that excludes those convicted of a violent offense from an alternative to incarceration program offered to individuals who are the primary caretaker of a child.¹⁹

In part due to the high rates of incarceration and recidivism, there is a consensus that the criminal justice system, as it stands, is not fulfilling its duties of public safety, rehabilitation, and justice.²⁰ In general, prisons fail to adequately address mental illness in prisoners, they are overcrowded, and they are rife with violence.²¹

While living in prison, incarcerated individuals are confined in small cells — sometimes only four-feet by ten-feet²² — for great portions of

¹⁵ Sawyer & Wagner, *supra* note 1.

¹⁶ *Id.*

¹⁷ *Id.* Depending on the laws of the applicable state, stealing drugs, purse-snatching, manufacturing drugs, or even robbing an unoccupied building with a weapon on your person could be considered a violent crime.

¹⁸ *Id.*

¹⁹ *Id.*; Alexi Jones, *Reforms Without Results: Why States Should Stop Excluding Violent Offenses from Criminal Justice Reforms*, PRISON POL’Y INITIATIVE (Apr. 2020), <https://www.prisonpolicy.org/reports/violence.html>; LA. STAT. ANN. § 15:574.4(4) (2023).

²⁰ Shannon M. Sliva, Elizabeth H. Porter-Merrill & Pete Lee, *Fulfilling the Aspirations of Restorative Justice in the Criminal System: The Case of Colorado*, 28 KAN. J.L. & PUB. POL’Y 456, 456-57 (2019) (“A growing consensus exists among practitioners, policymakers, and scholars that the American criminal system is not fulfilling its aspirations of public safety, behavioral change, and justice. . . . [They] increasingly debate appropriate and effective responses to mass incarceration.”).

²¹ THEODORE L. DORPAT, *CRIMES OF PUNISHMENT: AMERICA’S CULTURE OF VIOLENCE* 55 (2007).

²² A helpful visual is the size of a standard parking space.

their day.²³ If an individual is subjected to solitary confinement, which is too often used as a management tool rather than a punishment for an offense committed within the prison, the conditions are so bad that it can lead to panic, hallucinations, and suicidal behaviors, among other things.²⁴ Individuals are often in solitary confinement for twenty-three hours of the day. Even during the one hour out of their cell, they are kept from human interaction and left to exercise in “dog runs” before returning to their windowless confinement.²⁵ It is no wonder that rates of recidivism remain high when the conditions in prisons are inhumane.²⁶ It is neither efficient nor effective.

When a crime occurs, the community may call for retribution and punishment, but that does not always provide comfort to the needs and fears of the victim of the offense and their supporters.²⁷ It is common knowledge that there is not enough focus on rehabilitation and preparation for reintegration at the end of an individual’s sentence.²⁸ Instead of solving the problem that led to the crime, prisons simply act as a place where we can send offenders so that we no longer have to deal with them.

B. Consequences of Imprisonment

Once an individual has been imprisoned, they lose many of their rights, especially if they were convicted of a felony; the rights to serve on

²³ Juan Moreno Haines, *Inside San Quentin State Prison’s Restorative Justice Programs*, LITERARY HUB (June 24, 2021), <https://lithub.com/inside-san-quentinsthate-prisons-restorative-justiceprograms/>.

²⁴ *Davis v. Ayala*, 576 U.S. 257, 289 (2015).

²⁵ Corinna Barrett Lain, *Following Finality: Why Capital Punishment Is Collapsing Under Its Own Weight*, in FINAL JUDGMENTS: THE DEATH PENALTY IN AMERICAN LAW AND CULTURE 40 (Austin Sarat ed., 2017).

²⁶ Extreme violence is pervasive in prisons. “[H]omicide and sexual abuse is common, knives and dangerous drugs are rampant, and incarcerated people are extorted, threatened, stabbed, raped, and even tied up for days without guards noticing.” *Prison Conditions*, EQUAL JUST. INITIATIVE, <https://eji.org/issues/prison-conditions/> (last visited Jan. 29, 2024). Over half of individuals who are incarcerated have a mental illness, but instead of receiving treatment their problems are often worsened by prison officials who “manage” behavior with physical force and/or solitary confinement. *Id.* Additionally, “[c]orruption and abuse of power among correctional staff runs rampant because prison officials are not held accountable.” *Id.* Despite the horrific conditions, those in power are hesitant to make changes due to the involvement of — and lobbying from — private corrections companies. *Id.*

²⁷ Dana Weimann-Saks & Inbal Peleg-Koriat, *Promoting Incarcerated individuals’ Positive Attitudes Toward Participating in a Restorative Justice Process: The Effects of a Victim Awareness Process*, 100 PRISON J. 381, 382 (2020).

²⁸ Lucy Clark Sanders, *Restorative Justice: The Attempt to Rehabilitate Criminal Offenders and Victims*, 2 CHARLESTON L. REV. 923, 926 (2008).

a jury, to carry a firearm, and to vote are just a few that could be lost.²⁹ They also face a multitude of problems when they attempt to reintegrate into society, including social alienation and difficulty finding a job or housing. An individual who has been incarcerated just one time is seven times more likely to experience homelessness than someone who has not been incarcerated.³⁰ If they have been incarcerated more than once, they are thirteen times more likely to be homeless than the general public.³¹ Those who were released within the prior two years are more likely to experience homelessness due to barriers to finding affordable housing and support with a criminal record.³² Once homeless, they are more likely to be arrested again due to the criminalization of homelessness (sleeping in public spaces, panhandling, and more low-level offenses lead to arrests).³³

A 2021 report released by the Bureau of Justice Statistics found that thirty-three percent of formerly incarcerated individuals were unemployed throughout the four years following their release from prison in 2010.³⁴ For the sixty-seven percent who were able to find employment at some point — even just for a short time — during the four years following their release, it took an average of 2.2 quarters (over six months) to find their first job, and each person had an average of 3.4 jobs throughout this period.³⁵ The average earnings lost over the lifetime of a formerly incarcerated individual due to their incarceration is over \$500,000.³⁶ They also often struggle to regain and repair the personal relationships that they had prior to incarceration, leading to increased alienation from their community.

Additionally, imprisonment is costly for taxpayers.³⁷ The U.S. government spends around \$80.7 billion on public prisons and jails each year.³⁸ The average cost per year to incarcerate someone at the federal level is

²⁹ Ginger Jackson-Gleich, *Rigging the Jury: How Each State Reduces Jury Diversity by Excluding People with Criminal Records*, PRISON POL'Y INITIATIVE (Feb. 18, 2021), <https://www.prisonpolicy.org/reports/juryexclusion.html>.

³⁰ Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL'Y INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., NCJ 303147, SPECIAL REPORT: EMPLOYMENT OF PERSONS RELEASED FROM FEDERAL PRISON IN 2010 10 (2021).

³⁵ *Id.*

³⁶ *The Economics of Incarceration: The Economic Drivers and Consequences of Mass Incarceration*, PRISON POL'Y INITIATIVE (Apr. 18, 2023, 9:55 PM), https://www.prisonpolicy.org/research/economics_of_incarceration/.

³⁷ Sanders, *supra* note 28, at 925.

³⁸ *The Economics of Incarceration*, *supra* note 36.

\$39,158.³⁹ In 2015, New Jersey spent \$61,603; California spent \$64,642; and Virginia spent \$21,299 on the average incarcerated individual.⁴⁰ When one considers how much is spent on each incarcerated individual and how overcrowded our prisons are, it is clear that the cost of mass incarceration has taken a great economic toll on society at large. It is more important than ever that we explore restorative justice practices in order to reduce prison populations and recidivism nationwide.

C. *What is Restorative Justice?*

Generally, restorative justice is used as an alternative to conviction or, occasionally, it can occur after the incarcerated individual is released from the criminal justice system. Many people are unaware of restorative justice practices that occur within the prison system following sentencing. Some practitioners of restorative justice may express skepticism about its use in prisons since many see the goal of restorative justice as eliminating prisons, but the penal system is a multibillion-dollar industry that is not going away anytime soon, so it is vital that we work within the system to aid incarcerated individuals as they serve their sentences so that they are better prepared to successfully reintegrate into society upon their release.

Restorative justice primarily focuses on three principles: “(1) . . . the harm done; (2) wrongs or harms result in obligations; and (3) engagement and participation by all parties”⁴¹ It can provide crime victims with the opportunity to meet the person who harmed them in a structured, neutral, and safe setting where they are able to express the physical, emotional, and psychological impact of the harm with their offender; victims are able to have their questions answered; and they can participate in developing a plan to move forward.⁴² It can also include the victim in an abstract way in order to ensure the offender recognizes the harm done without concern of re-traumatization for the victim if they do not wish to participate.

1. Examples of Restorative Justice Explored in this Note

i. Victim Impact Panels

Victim Impact Panels are found both within and outside of prisons. They generally occur when the victim of the crime does not wish to meet

³⁹ Annual Determination of Average Cost of Incarceration Fee (COIF), 86 Fed. Reg. 49,060 (Sept. 1, 2021).

⁴⁰ CHRIS MAI & RAM SUBRAMANIAN, VERA INST. OF JUST., *THE PRICE OF PRISONS: EXAMINING STATE SPENDING TRENDS, 2010-2015* 8 tbl.1 (2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/price-of-prisons-2015-state-spending-trends/legacy_downloads/the-price-of-prisons-2015-state-spending-trends.pdf.

⁴¹ KATHERINE BECKETT, *ENDING MASS INCARCERATION: WHY IT PERSISTS AND HOW TO ACHIEVE MEANINGFUL REFORM* 138 (2021).

⁴² *Id.*

with the incarcerated individual. Other victims who have been harmed by the same type of crime — but not by the particular offender — sit down and engage with the people who have committed this type of harm to speak about the offense and the impact that it had on them and their lives. These meetings happen in a group or classroom setting, with a moderator or facilitator present to ensure the discussion flows and is civil.⁴³

ii. Victim-Offender Dialogues

Victim-Offender Dialogues (VODs) occur prior to sentencing or during the term of imprisonment. During this process, the victim and the offender come together, along with supporters and facilitators if desired, to discuss what occurred. This dialogue provides the victim with an opportunity to express the impact that the crime had on them and to seek answers from the offender that they would not otherwise have obtained through the traditional legal process. VODs also provide the offender with the opportunity to take accountability for their actions and apologize to the person that they harmed.⁴⁴

iii. Therapeutic Solutions

Therapeutic solutions are not a traditional practice in restorative justice, but in recent years therapy has grown more popular in the correctional setting.⁴⁵ Prisons often provide various forms of therapy to incarcerated individuals, including group or solo therapy, anger and/or stress management, and cognitive behavioral therapy (CBT). CBT is a method used to change the thought processes criminal offenders may have that lead to maladaptive, or harmful, behavior.⁴⁶ CBT programs emphasize “personal accountability, help [incarcerated individuals] understand the thoughts and choices that led them to their crimes and, teach alternative behaviors

⁴³ OFF. JUV. JUST. & DELINQ. PREVENTION, DEP’T OF JUST., RESTORATIVE JUSTICE LITERATURE REVIEW 2-3 (2010).

⁴⁴ *Id.* at 3-4 (VODs are also known as “Victim-Offender Mediations”).

⁴⁵ The five main restorative justice practices are: (1) victim-offender mediation, (2) community and/or family group conferences, (3) circle sentencing, (4) peacemaking circles, and (5) community boards/panels (including victim impact panels). See generally OFF. ON DRUGS & CRIME, U.N., HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES 14-15 (2006); 5 *Examples of Restorative Justice*, GLOB. PEACE CAREERS, <https://globalpeacecareers.com/magazine/examples-of-restorative-justice/> (last visited Jan. 31, 2024). See also Amy Barch, *A Better Way to Keep People from Going Back to Prison*, STAN. SOC. INNOVATION REV. (July 7, 2021), https://ssir.org/articles/entry/a_better_way_to_keep_people_from_going_back_to_prison#.

⁴⁶ *Cognitive-Behavioral Therapy (CBT) for Offenders*, CNTY. HEALTH RANKINGS (Mar. 28, 2018), <https://www.countyhealthrankings.org/take-action-to-improve-health/what-works-for-health/strategies/cognitive-behavioral-therapy-cbt-for-offenders>.

and thought processes.”⁴⁷ Therapeutic solutions enable incarcerated individuals to better integrate into society, both within prison and when they are released, thereby reducing recidivism.⁴⁸ They are critical to restore an incarcerated individual’s peace of mind, which allows them to open themselves up to restorative practices.⁴⁹

iv. Education & Training

Like therapy, education and job training are not traditional practices of restorative justice, however, this Note argues that if the practice restores an incarcerated individual’s confidence and aids in their personal development so that they are better equipped to reenter society upon release and not reoffend, it is a restorative justice practice.⁵⁰ Education and job training provide incarcerated individuals the opportunity to reenter society with a degree or with valuable work skills. The programs are important tools to aid incarcerated individuals in landing on their feet upon release, thereby reducing recidivism.⁵¹

II. ARGUMENT

Over the past few decades there has been a spotlight on victims of crime that began with the Victims’ Rights Movement, which emerged in the 1970s when crime victims demanded to be more involved in the legal process instead of pushed to the side as witnesses to a crime.⁵² In recent years, the criminal justice system has made steps to become more victim-centered and victim-focused, with many states adding sections or amendments to their codes and constitutions that detail the rights of victims in a criminal process. The rights of crime victims have also been codified in the U.S. Code as the Crime Victims’ Rights Act.⁵³

Restorative justice practices in prisons are related to victims’ rights because a crime victim should have the right to be heard not just during court proceedings, but after sentencing, if they so choose. If a victim does not want to directly interact with their offender, it could still be beneficial for them to know that the person who harmed them is not being locked away only to be the same person upon release, but that while in prison

⁴⁷ *Id.*

⁴⁸ Patrick Clark, *Preventing Future Crime with Cognitive Behavioral Therapy*, 265 NAT’L INST. JUST. J. 22, 23 (2010).

⁴⁹ For the purpose of this Note, therapeutic solutions are considered restorative justice practices because they aid in individual growth and reduce recidivism.

⁵⁰ *Id.*

⁵¹ Annelies Goger, David J. Harding & Howard Henderson, *Prisoner Reentry*, in A BETTER PATH FORWARD FOR CRIMINAL JUSTICE 77 (2021).

⁵² *History of the Victims’ Rights Movement*, ARIZ. VOICE FOR CRIME VICTIMS, <https://voiceforvictims.org/history-of-the-victims-rights-movement> (last visited Apr. 8, 2023).

⁵³ 18 U.S.C. § 3771.

they gained accountability and came to understand the impact that they had on those they harmed.

The three states examined in this section — New Jersey, California, and Virginia — were chosen to display a small sample of varied yet similar approaches to restorative justice practices in prison being taken in different regions of the U.S. The programs discussed here have seen great success in aiding incarcerated individuals in their growth and development so that they are better prepared to reconnect with their families and communities upon release from imprisonment. Information about each state’s correctional population and the programs they utilize are provided as well.

A. *New Jersey*

New Jersey amended both its code and its constitution to add information about victims’ rights in response to the Victims’ Rights Movement.⁵⁴ Within its correctional system, New Jersey has implemented a number of successful restorative justice programs, including victim-focused programs. New Jersey’s population is 9,261,699 and approximately 9,000 adults are held across seven prison facilities, amounting to less than 0.1% of the state population (0.095%).⁵⁵ Comparatively, Virginia has a similar population (8,663,619), but its prison population is over double that of New Jersey with 22,212 incarcerated individuals.⁵⁶

1. Victims & Restorative Justice

In 2000, New Jersey’s Department of Corrections (DOC) created a department called the “Office of Victim Services” (OVS), which is dedicated to “protecting the rights of victims of crime and assisting them ... while being sensitive to the needs of victims.”⁵⁷ OVS works with victims

⁵⁴ See e.g., *Victims of Crime Compensation Office*, N.J. OFF. OF THE ATT’Y GEN., <https://www.nj.gov/oag/njvictims/rights.html> (last visited Mar. 4, 2023); N.J. REV. STAT. § 52:4B-36 (2023).

⁵⁵ *QuickFacts N.J.*, U.S. CENSUS BUREAU (2022), <https://www.census.gov/quickfacts/NJ>; *Facilities Map*, N. J. DEP’T OF CORR. (Aug. 29, 2022), <https://www.google.com/maps/d/u/0/viewer?hl=en&ll=39.4131785%2C-75.2075526&z=9&mid=19oCJlVou1rAvf3KLu7Se3UfAJF0> (population numbers were found by clicking on individual facilities; author collected and added them, finding a total of 8,827 people incarcerated in New Jersey state prisons. Author did not include the population numbers from the Adult Diagnostic Treatment Center or the Garden State Youth Correction facility).

⁵⁶ *QuickFacts Va.*, U.S. CENSUS BUREAU (2022), <https://www.census.gov/quickfacts/VA>; VA. DEP’T OF CORR., MONTHLY POPULATION SUMMARY MARCH 2023 (2023), <https://vadoc.virginia.gov/media/1838/vadoc-monthly-of-fender-population-report-2023-03.pdf>.

⁵⁷ *Office of Victim Services*, N.J. DEP’T OF CORR., <https://www.state.nj.us/corrections/pages/victimServices.html> (last visited Apr. 8, 2023).

to inform them about the inner workings of the state's correctional system.⁵⁸

In 2016, OVS developed a program entitled "Focus on the Victim" (FOV), which is a restorative justice initiative within the prison system.⁵⁹ This program takes a CBT approach to provide incarcerated individuals with the opportunity to examine the impact of the crime they committed.⁶⁰ The program includes group discussions, videos, experiential learning activities, and presentations by guest speakers.⁶¹ The discussion aims to personalize the impacts of crime by bringing in individuals who have been victims of crime to join as guest speakers to describe their experiences.⁶² The approach taken by the DOC encourages incarcerated individuals to take a step back from themselves and consider the impact their action(s) had that they may not have otherwise considered, such as how property crimes can affect insurance rates.⁶³ The program is voluntary, but it has become so successful and popular that the state parole board has started to mandate it in some cases.⁶⁴

One of the goals of the program is for the incarcerated individuals to make amends with their victim by writing an apology letter.⁶⁵ OVS works with the incarcerated individual to ensure that the letter is a true apology, and they connect with the victim before mailing it to ensure that the victim consents to receiving the letter.⁶⁶ About seventy percent of the incarcerated individuals in the program write these letters and send them off.⁶⁷

The program is offered at two institutions in New Jersey and takes place over fifteen weeks, with a one-and-a-half hour meeting each week.⁶⁸ OVS is able to offer FOV to two groups per day two times a week, reaching about sixty people per institution per course period.⁶⁹ Each class has around fifteen participants, and there is a waitlist at every institution since

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*; Video Interview with Dr. Dawn McRae, CTP, Supervisor in the Off. of Victim Servs. at the N.J. Dep't of Corr. (Mar. 20, 2023).

⁶² Interview with Dr. Dawn McRae.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* FOV was previously offered at nine institutions in New Jersey, but the pandemic forced the closure of the program from 2020 until April 2021. Two institutions in New Jersey were permanently closed during that period. The program is short staffed (only about three employees as of March 2023), which has also contributed to the scale back.

⁶⁹ *Id.*

it is so popular.⁷⁰ Participants are provided with a certificate of completion and the end of fifteen weeks.⁷¹

FOV has had success in helping the incarcerated individuals truly understand and feel remorse for what they have done.⁷² A supervisor of the program has stated that the FOV program is “definitely useful,” and it is “really helping [their] incarcerated population understand the effects of their actions.... The Restorative Justice approach impacts how we could resolve damaged relationships that were a result of crimes committed. [FOV is] a holistic approach [to] the justice process.”⁷³ Through the use of restorative programs, victims may feel a stronger sense of justice and comfort upon receiving the apology letter because they know that the person who caused them harm has taken accountability and might successfully reintegrate into the community one day without causing more harm.

B. California

California is unique in that its correctional department is actually the Department of Corrections and Rehabilitation (CDCR), highlighting its focus on the rehabilitation of incarcerated individuals. Its mission and vision statements further support this goal, stating that the CDCR is focused on the successful reintegration of those in its care so that they may return to their communities with the necessary “tools to be drug-free, healthy, and employable members of society.”⁷⁴ It accomplishes this by “providing education, treatment, rehabilitative, and restorative justice programs . . .”⁷⁵ California has a population of 39,029,342 individuals, with around 94,400 (0.24%) in state prisons.⁷⁶ While Virginia and New Jersey have about twenty-five percent of the population of California, Virginia’s incarcerated population amounts to 0.25% of its overall population, slightly higher than California’s rate of incarceration.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Vision, Mission, Values, and Goals*, CAL. DEP’T OF CORR. & REHAB., <https://www.cdcr.ca.gov/about-cdcr/vision-mission-values/> (last visited Apr. 8, 2023).

⁷⁵ *Id.*

⁷⁶ *QuickFacts Cal.*, U.S. CENSUS BUREAU (2022), <https://www.census.gov/quickfacts/CA>; DIV. OF CORR. POL’Y RSCH. & INTERNAL OVERSIGHT, CAL. DEP’T OF CORR. & REHAB., MONTHLY REPORT OF POPULATION AS OF MIDNIGHT MARCH 31, 2023 (2023), <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2023/04/Tpop1d2303.pdf>. Author calculated this total by beginning with the total CDCR population (142,423) and subtracting the numbers from Department of State Hospitals, CRPP Supervision, Parole, Non-CDCR Jurisdiction, and Other Populations. The final number of incarcerated individuals using this method is 94,394.

1. Victims and Restorative Justice

The CDCR opened its Office of Victim and Survivor Rights and Services (OVSRS) in 1988 in order to give a voice to crime victims and their families.⁷⁷ CDCR also has a Division of Rehabilitative Programs (DRP) that is dedicated to developing and providing rehabilitative programs and skills to incarcerated individuals.⁷⁸ Its aim is to lower rates of recidivism and aid in community reintegration.⁷⁹ DRP programs include education, technical skills, community-based reentry programs, transitional programs, and treatment for mental health.⁸⁰

In addition to state agencies, CDCR has partnered with non-profits such as the Insight Prison Project (IPP) and the Restorative Justice Mediation Program (RJMP) to enhance restorative justice programs for the state's incarcerated population.⁸¹ IPP offers programs for incarcerated individuals in order to aid individual health and wellbeing, as well as reentry and a reduction in recidivism.⁸² IPP's programs include Victim Offender Education Groups, VODs, and even continued education courses to follow the education groups and dialogues.⁸³

RJMP has partnered with CDCR to offer multiple programs, including a Prison VOD program and a Restorative Justice Reentry Prep Program (RJRPP).⁸⁴ RJMP was founded in 1993 specifically to facilitate VODs, which are primarily used for diversion but can occur post-sentencing during the period of the offender's incarceration.⁸⁵ In order for the in-prison dialogue to occur, the victim or surviving family member must submit a request to OVSRS; VOD is never initiated by the incarcerated individual.⁸⁶ It has shown to be a healing process that brings people together.⁸⁷ In

⁷⁷ *Office of Victim and Survivor Rights and Services*, CAL. DEP'T OF CORR. & REHAB., <https://www.cdcr.ca.gov/bph/victim-and-survivor-rights/> (last visited Apr. 8, 2023).

⁷⁸ *Division of Rehabilitative Programs*, CAL. DEP'T OF CORR. & REHAB., <https://www.cdcr.ca.gov/rehabilitation> (last visited Apr. 8, 2023).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Who We Are*, INSIGHT PRISON PROJECT, <http://www.insightprisonproject.org/who-we-are.html> (last visited Apr. 8, 2023); *CDCR Prison Victim-Offender Dialogue Program*, RESTORATIVE JUST. MEDIATION PROGRAM, <https://sdrjmp.org/cdcr-prison-victim-offender-dialogue> (last visited May 2, 2023).

⁸² *See* Insight Prison Project.

⁸³ *Id.*

⁸⁴ *Programs & Services*, RESTORATIVE JUST. MEDIATION PROGRAM, <https://sdrjmp.org/programs-services-overview> (last visited May 2, 2023); Video interview with Kaitlin Andrade, Assistant Program Director, Restorative Just. Mediation Program (Mar. 16, 2023).

⁸⁵ Interview with Kaitlin Andrade; Ms. Andrade noted that the program has seen an increase in requests from victims recently.

⁸⁶ *Id.*

⁸⁷ *Id.*

recent years, only four to five VODs would take place annually due to lack of victim interest and the length of the process in general.⁸⁸ When a victim requests a VOD, it must be approved by OVSRS.⁸⁹ OVSRS conducts a screening process to determine if the incarcerated individual is eligible and to provide clearance into the prison for the victim. A series of meetings then occur between the victim and a facilitator, and separately with the incarcerated individual and a facilitator, to ensure that all parties are adequately prepared for the discussion.⁹⁰ After this process is complete, the VOD may occur.⁹¹

In 2015 RJMP created the RJRPP, and it was in facilities up until the pandemic closed them to visitors.⁹² RJRPP is reentry preparation for incarcerated individuals in San Diego County facilities.⁹³ RJMP was able to return to CDCR facilities for a short time when they reopened to visitors, but its official contract for that program ended in December 2022.⁹⁴

RJRPP is based on CBT, where participants gather to talk about their personal trauma and the impact they had on victims, and what they can personally do to change.⁹⁵ They do this through a traditional restorative justice “circle practice,” where participants gather in a circle to discuss the topic of the day.⁹⁶ According to facilitators, the biggest indicator of real change is if the incarcerated individual is willing to make a change within themselves.⁹⁷ The program focuses on accountability, recognizing harms, developing empathy and remorse, understanding the impact on the victim, and personal healing.⁹⁸ Participants learn about behaviors that developed as a response to harm and methods to process that harm, and they work to change detrimental behaviors.⁹⁹ Participants appreciate the opportunity to learn about their values and relationships, and how their actions align with them.¹⁰⁰ The in-facility programming lasts ten weeks for one hour a day once a week, and it is completely voluntary.¹⁰¹ RJMP is able to meet with about eight groups a year, each group holding twenty to twenty-five participants, and half of the groups are held in Spanish.¹⁰² Participants can choose the basic ten-week course or a more advanced course that adds

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* RJRPP has been offered in both adult and juvenile facilities.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

another ten weeks of study.¹⁰³ RJMP's new contract includes an expanded program — The Peacemaker's Institute — at three facilities.¹⁰⁴ The program is thirty-five to forty weeks long and provides the option to gain a Dispute Resolution Program Act Mediation Certificate to become a certified mediator in California — this additionally helps with post-release job prospects.¹⁰⁵ RJMP is doing incredibly important work to provide participants with critical thinking and social skills to ultimately support successful reentry and reintegration into society.¹⁰⁶

C. Virginia

Virginia has amended both its constitution and its code to include rights of crime victims. Code of Virginia section 19.2-11.01, the Crime Victim and Witness Rights Act, is a bill of rights for victims in Virginia that ensures they are heard by the prosecutor throughout the trial process.

As previously noted, Virginia has 8,663,619 citizens, of which 22,212 (0.25%) are held across forty-one state prison facilities.¹⁰⁷ Virginia is certainly not immune to the issues that plague prisons noted in section I of this paper; however, it maintains the second-lowest recidivism rate in the country three years following release from incarceration.¹⁰⁸

1. Victims & Restorative Justice

The low rate of recidivism may be due to the fact that the Commonwealth allocates about \$1.5 billion each year to the DOC and offers over 120 programs to its incarcerated individuals, though not every program is offered at every facility.¹⁰⁹ For the purpose of this Note, I will focus on the

¹⁰³ *Id.*

¹⁰⁴ *Id.* The programming will start at three facilities, but there are plans to expand in the future.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See QUICKFACTS VA. and MONTHLY POPULATION SUMMARY, *supra* note 56. Virginia also houses 1,093 individuals in private prisons; these individuals are not included in the state prison calculation for this Note — only “Major Institutions” are included here.

¹⁰⁸ George Sisson, *Virginia's Recidivism Rate Remains Among Nation's Lowest*, VA. DEP'T OF CORR. (Feb. 7, 2023), <https://vadoc.virginia.gov/news-press-releases/2023/virginia-s-recidivism-rate-remains-among-nation-s-lowest/>; see also Luca Powell, *Incarcerated Individuals Hunger Strike for Better Conditions at Supermax Prison*, RICH. TIMES-DISPATCH (Jan. 11, 2024), https://richmond.com/news/state-regional/hunger-strike-red-onion-prison-virginia/article_be16e382-affc-11ee-8c36-437a567e5383.html#tncms-source=login.

¹⁰⁹ BUDGET OFF. DIV. OF ADMIN., VA. DEP'T OF CORR., MANAGEMENT INFORMATION SUMMARY ANNUAL REPORT FOR THE FISCAL YEAR ENDING JUNE 30, 2022 18 (2022); *Programs*, VA. DEP'T OF CORR., <https://vadoc.virginia.gov/incarcerated-individuals-and-probationers/incoming-incarcerated-individuals/facility-programs/> (last visited May 1, 2023).

How to Handle Conflict Program and the Victim Impact Program.¹¹⁰ The other programs offered include education, job training, and even programs like end-of-life care for horses that otherwise would have been euthanized.¹¹¹ Those programs vary from one session to over a year of weekly meetings.¹¹²

i. “Restorative Justice – How to Handle Conflict” Program

“Restorative Justice – How to Handle Conflict” (H2HC) is the only program that the Virginia DOC has officially labelled as a restorative justice program. The program was developed by the Virginia Center for Restorative Justice (VCRJ). VCRJ was formed in August 2010 as a faith-based non-profit organization.¹¹³ They quickly began recruiting and training volunteers to host “dialog circles” based on restorative justice and “the principles of trust, honesty, respect, empathy, forgiveness, integrity, accountability, determination, humility, and service to community.”¹¹⁴ It is now offered to incarcerated individuals during either a five- or ten-week class, depending on resource and facility availability.¹¹⁵ VCRJ staff and incarcerated individuals have noted that the ten-week programs are preferred and are more effective, but five-week classes have been utilized when necessary due to staff and facility availability, and to provide more opportunities for incarcerated individuals if the demand is significantly high.¹¹⁶ VCRJ is fully run by volunteers, and they are able to provide this program because of generous donations from the community and a contract with the DOC.¹¹⁷

Each class has about twenty incarcerated individuals, and each facility is able to reach around 60-100 people a year.¹¹⁸ H2HC’s desirability is exhibited by the fact that every facility has a waitlist for the program.¹¹⁹ The classes are completely voluntary; as such, not every student finishes the course.¹²⁰ VCRJ staff note that about seventy-five percent of participants finish the first five weeks of the program, and around thirty to forty

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *History*, VA. CTR. FOR RESTORATIVE JUST., <https://www.vcrj.org/Our-Story> (last visited Apr. 8, 2023).

¹¹⁴ *Id.*

¹¹⁵ Interview with Mary Jane Turner, long-term volunteer with Va. Ctr. for Restorative Just., in Richmond, Va. (Mar. 22, 2023).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

percent complete the entire course.¹²¹ Those that attend a significant number of the classes are given a certificate of completion.¹²²

Some facilities have expressed interest in having the classes five days a week for two weeks, though that is more difficult to coordinate with volunteers.¹²³ The incarcerated individuals who are approved to participate in the class are determined by each facility, but the majority of the participants — at least in the women’s facilities — have committed drug or otherwise related offenses (such as burglary while under the influence of drugs).¹²⁴

The classes are structured so that the incarcerated individuals sit in a circle formation to encourage open discussion, and the facilitator teaches the participants practices to relate better to themselves and others.¹²⁵ Many of the participants come from backgrounds involving trauma and abuse, and everyone’s experience is different.¹²⁶ The first class focuses on trust, and the volunteer uses an analogy to relate to the incarcerated individuals’ interpersonal relationships.¹²⁷ They are encouraged to talk about their experiences because VCRJ views storytelling as a healing practice.¹²⁸ They discuss how to trust and how to recognize concerning behaviors in others.¹²⁹ Throughout this process, the incarcerated individuals bond and often unlock traumas of their past.¹³⁰ During the class focused on respect, they learn the importance of respect and each participant passes a piece of paper around the circle that the other participants write something they respect about the paper’s original party.¹³¹ It is an affirming practice that the participants appreciate.¹³² The rest of the classes follow a similar pattern.¹³³ The participants discuss and process the traits of each class session and how each trait helps them to handle conflict.¹³⁴

H2HC is currently offered at four facilities across the Commonwealth: Coffeewood Correctional Center, State Farm Correctional Center, Virginia Correctional Center for Women, and Fluvanna Correctional Center for Women.¹³⁵

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* Previously it was offered at two other facilities, but VCRJ had not yet returned to those facilities following the shutdown in 2020 at the time of this interview.

The overall successes and failures of H2HC are hard to measure because VCRJ volunteers are not permitted to contact the incarcerated individuals for at least two years following the conclusion of the class.¹³⁶ However, throughout the program the volunteers notice the participants healing; participants know they have a safe space to discuss their past, and they bond and laugh with one another.¹³⁷ When they show empathy and support to one another, VCRJ staff view that development as a success.¹³⁸

Many incarcerated individuals have a lot of anxiety and fear surrounding release and reintegration.¹³⁹ They have noted that this program gives them confidence; it helps them make plans and set goals to work toward.¹⁴⁰ For example, one woman wanted to start a business following her release.¹⁴¹ Because of H2HC, she was able to develop a business plan with achievable steps to follow and achieve her goal.¹⁴² Another participant wanted to reestablish a relationship with her children, so the volunteer sat down with her to develop a plan.¹⁴³ The confidence gained from the program gives them the motivation to achieve their goal.¹⁴⁴ The program does not effectuate change in every participant.¹⁴⁵ Sometimes, the participants clash in the room and they do not come back to another class, but this is rare.¹⁴⁶ It is up to the participants to determine how seriously they want to treat the class.¹⁴⁷

VCRJ would like to become involved in more prisons throughout the Commonwealth and enlist more volunteers in the coming years.¹⁴⁸ The DOC has expressed interest in teaching the incarcerated individuals how to lead their own groups so that they may continue the program after the ten-week period if they would like to do so.¹⁴⁹ Volunteers would like the public to know that people who are in prison will one day live among us in our communities again, so it is important to have programs that enable them to be their authentic selves, good neighbors, and good coworkers.¹⁵⁰ Incarcerated individuals are not much different than those who have not

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

been incarcerated — one mistake could land anyone in the same position.¹⁵¹

ii. The Victim Impact Program

The Victim Impact Program (VIP) is the most popular restorative justice program involving victims within Virginia DOC facilities.¹⁵² VIP began in 2005 as a pilot program from the U.S. Department of Justice's (DOJ) Office for Victims of Crime Training and Technical Assistance Center that was instituted in multiple states.¹⁵³ The year-long pilot was so successful that the Virginia DOC has adopted it permanently.¹⁵⁴ It is currently available at sixteen prisons and seven probation offices throughout the Commonwealth, and organizers are working to expand and meet the pre-pandemic reach of at least twenty-four facilities; in the future they hope to work in as many of the forty-one facilities in Virginia as they can.¹⁵⁵ The DOC has produced videos to explain the impact that VIP has had on participants in an effort to publicize and potentially expand the program.¹⁵⁶

VIP is administered in a format where the participants are able to have an open discussion.¹⁵⁷ This may look like a circle formation, a classroom setting, or something else depending on the ability of the hosting facility and security restrictions.¹⁵⁸ Each class has about twelve participants who meet for around two-and-a-half hours a week for thirteen weeks.¹⁵⁹ The facilitators structure the groups to be diverse regarding offenses, length of sentence, etc.¹⁶⁰ The program is not mandatory, but it has been able to reach hundreds of incarcerated individuals a year across the various

¹⁵¹ *Id.*

¹⁵² Video Interview with Amber Leake, Victim Services Director, and Emily Sattie, Victim Services Coordinator, Va. Dep't of Corr., on Mar. 24, 2023 [hereinafter Video Interview].

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* As with most everything, the program was paused in 2020. Facilitators were able to resume their work inside facilities in April 2022. Despite the shutdown, the facilitators did not stop their efforts to serve their community. They were able to virtualize the program and send it to community corrections offices, where participants were able to access the program through PowerPoints and videos.

¹⁵⁶ *Id.*; see e.g., *Victim-Centered Programs*, VA. DEP'T OF CORR., <https://vadoc.virginia.gov/victim-services/victim-centered-programs/> (last visited Feb. 14, 2024). A new promotional video was released in 2023—it can be found at: https://www.youtube.com/watch?v=J7tVHmJ4Jbo&t=12s&ab_channel=VirginiaDepartmentofCorrections.

¹⁵⁷ Video Interview, *supra* note 152.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

facilities, and they maintain a waitlist for those who want to participate in future courses.¹⁶¹

Over thirty-five victims volunteer their time to come to the program to discuss the impact the crime had on them, their families, and their lives.¹⁶² There are activities, discussions, accountability statements, and videos about victims.¹⁶³ The goal is to relate the impact to the incarcerated individuals.¹⁶⁴ Most incarcerated individuals tend to see themselves as a victim of the system, so when asked who the victim is they respond “me.”¹⁶⁵ These resources help participants understand the emotional, physical, financial, and spiritual effect that their actions had on others.¹⁶⁶

Incarcerated individuals also have a habit of comparing their crimes—they might say something along the lines of “yeah I robbed someone but at least I didn’t commit murder.”¹⁶⁷ This program helps them understand that no matter the crime, the impacts are similar.¹⁶⁸ VIP leads to self-reflection about harm and actions.¹⁶⁹ It allows participants to build empathy and accountability about the harm they have caused.¹⁷⁰ Participants have deep conversations, acknowledge their biases, recognize their values, and learn what they need to change to be successful.¹⁷¹ It opens their minds and expands their understanding.¹⁷²

VIP is performing the crucial work of actively bridging the gap between the people doing the harm and the victims of harm.¹⁷³ The program is working well, but a lack of funding for victim programming makes it difficult to continue.¹⁷⁴ Facilitators believe more attention needs to be brought to VIP and other victim programming so that they can continue to help incarcerated individuals be better versions of themselves.¹⁷⁵

The DOC is currently conducting a study to measure the success of the program, but anecdotally there has been an over ninety percent approval rating among participants.¹⁷⁶ Outcomes include better relationships with families, fewer hostile conversations, and more openness in communication.¹⁷⁷ Delaware also has implemented this program and its recent

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

research has shown that VIP has cut recidivism in half—the DOC expects that Virginia may have similar results.¹⁷⁸ VIP is an example of how beneficial restorative justice programs are to cutting recidivism and aiding reintegration into the community.

D. Why should we institute restorative justice in prison settings?

Long prison sentences alone do not mitigate the harmful effects of violence, they are not preferred by crime victims, and they further harm individuals who themselves are often victims of crime, abuse, and/or violence by punishing them in a solely punitive manner.¹⁷⁹ Restorative justice holds incarcerated individuals accountable for their actions while also assisting them in restoring themselves and repairing their relationships with their community prior to and following release from incarceration.¹⁸⁰ It requires that offenders face the reality of what occurred, and that they take responsibility for their actions.¹⁸¹

The U.S. is an extremely punitive society and restorative justice practices are not always common. Restorative justice is primarily focused on healing relationships rather than “balancing hurt with hurt”¹⁸²—a system truly focused on rehabilitation and restorative justice would focus on crime prevention over the detection and punishment of crimes that have already occurred.¹⁸³

1. Establishing restorative justice practices within prisons reduces the rate of recidivism

Restorative justice practices are vital to reduce recidivism and successfully reintegrate formerly incarcerated individuals into the community upon their release. Recidivism occurs when a formerly incarcerated individual is rearrested, reconvicted, or otherwise returned to prison with or without a new sentence.¹⁸⁴ Studies vary in how they measure recidivism—for example, some do not include rearrests that did not result in a new conviction. According to a DOJ study published in 2021, sixty-two percent of incarcerated individuals from thirty-four states who were released in 2012 were rearrested within three years; after five years, that number jumped to seventy-one percent.¹⁸⁵ There are many reasons that a formerly incarcerated individual may recidivate, but major causes include unemployment and a lack of resources or connections to aid them in their

¹⁷⁸ *Id.*

¹⁷⁹ Sanders, *supra* note 28, at 236.

¹⁸⁰ *Id.* at 233.

¹⁸¹ *Id.* at 234.

¹⁸² *Id.* at 235.

¹⁸³ *Id.* at 239.

¹⁸⁴ Recidivism, NAT’L INST. JUST., <https://nij.ojp.gov/topics/corrections/recidivism> (last visited Apr. 30, 2023).

¹⁸⁵ DEP’T OF JUST. SPECIAL REPORT, *supra* note 5.

reintegration into the community.¹⁸⁶ Employment and reintegration are crucial — employment aids in securing basic needs such as shelter, clothing, and food, and reintegration ensures that the formerly incarcerated individual is supported socially.¹⁸⁷ Depression or other mental illness, negative social interactions that occurred during imprisonment, a lack of change in lifestyle and social circle upon release, and other underlying issues that led to the criminal behavior in the first place are just a few other causes of recidivism.¹⁸⁸

Restorative justice prioritizes the circumstances that surround the crime and focuses on the personalized needs of the incarcerated individual and the community, allowing them to reintegrate successfully following release from incarceration. Restorative justice programs such as FOV, RJRPP, H2HC, and VIP provide incarcerated individuals with the tools they need to bounce back after a prison sentence.¹⁸⁹ Instead of being suddenly thrust back into society after years of isolation, incarcerated individuals who are provided with access to these programs receive therapy, job training, and/or education that will enable them to obtain a job and develop healthy social relationships. By engaging with their community in a meaningful way and understanding what caused them to offend previously, it is less likely that they will offend again. The primary approach addressed in this section is CBT, the approach used in most of the state programs discussed throughout this note.

CBT has proven to have significant positive effects on recidivism.¹⁹⁰ It “is based on the assumption that cognitive deficits and distortions characteristic of [incarcerated individuals] are learned rather than inherent,” and, thus, CBT programs emphasize accountability and strive to teach incarcerated individuals how to recognize and address the thoughts and choices that led to their criminal act.¹⁹¹ The programs restructure the incarcerated individual’s thought patterns to help eliminate bias or otherwise distorted thinking, and build cognitive skills where deficits are found.¹⁹²

¹⁸⁶ LaToshia Butler & Ebonyque Taylor, *A Second Chance: The Impact of Unsuccessful Reentry and the Need for Reintegration Resources in Communities*, 15 CMTY. POLICING DISPATCH (Apr. 2022), https://cops.usdoj.gov/html/dispatch/04-2022/reintegration_resources.html.

¹⁸⁷ *Id.*

¹⁸⁸ Charlotte Nickerson, *Recidivism: Definition, Causes & Examples*, SIMPLE PSYCH., <https://www.simplypsychology.org/recidivism.html> (Feb. 24, 2023). The causes discussed here are just a small sample that is in no way an exhaustive list.

¹⁸⁹ See CNTY. HEALTH RANKINGS, *supra* note 46; 4 *Proven Ways to Reduce Recidivism*, TREND WYOMING, <https://www.trendwyoming.org/articles/proven-ways-to-reduce-recidivism/> (last visited Apr. 8, 2023).

¹⁹⁰ Mark W. Lipsey, Nana A. Landenberger & Sandra J. Wilson, *Effects of Cognitive-Behavioral Programs for Criminal Offenders*, 3 CAMPBELL SYSTEMATIC REVS., Aug. 13, 2007, at 4. CBT programs are used in the N.J. FOV, Cal. RJRPP, and both of the Va. H2HC and VIP programs.

¹⁹¹ *Id.*

¹⁹² *Id.*

Examples of how to facilitate this in the prison setting are exhibited through programs like New Jersey's FOV, California's RJRPP, and Virginia's H2HC and VIP — incarcerated individuals connect in a group setting and have meaningful discussions about the crime they committed, the effects that it had, and how to hold themselves accountable. These programs are an example of CBT's "cognitive skills training," which focuses on interpersonal problem-solving, "abstract thinking, critical reasoning, causal thinking, goal setting, long-term planning, and perspective taking."¹⁹³

A meta-analysis study on the effects of CBT programs for criminal offenders found that, on average, individuals who completed CBT programs were 1.53 times less likely to recidivate than those who did not complete a CBT program — this results in a thirty percent chance of recidivism for those who completed a program versus a forty percent chance for those who did not.¹⁹⁴ The most effective CBT programs — which are comprised of offenders who are at a moderately high risk of recidivating, have an average of two sessions per week, and have high quality implementation over an average of sixteen weeks — saw a nineteen percent chance of recidivism.¹⁹⁵ The study found that there are no significant differences in the effectiveness of different types of CBT used in different locations, but the inclusion of anger management and interpersonal problem-solving components do increase the effects of the program.¹⁹⁶ In addition, CBT has a greater effect on participants with a higher risk of recidivism who receive a more intensive program that focuses on criminal thought processes by utilizing approaches involving cognitive behavior and social learning.¹⁹⁷ The authors of this study noted that CBT is equally effective for both juveniles and adults, and the treatment setting is irrelevant — those treated in prison had comparable results to those who were treated after release into the community.¹⁹⁸

New Jersey, California, and Virginia have implemented successful CBT programs within their prisons, which could be a contributing factor to each state's relatively low rate of recidivism compared to the national average as reported by the DOJ. The DOJ reports that seventy-one percent of released state prisoners in 2012 were rearrested and forty-six percent were reconvicted within five years of release.¹⁹⁹

¹⁹³ *Id.* at 5.

¹⁹⁴ *Id.* at 21.

¹⁹⁵ *Id.* at 20-21. The authors of the study note that this "best practice" CBT program can be any one of the brand name programs listed in the report combined with anger management and interpersonal problem-solving aspects included. One of the brand name programs mentioned, "Thinking for a Change," is used in Virginia.

¹⁹⁶ *Id.* at 23.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ DEP'T OF JUST. SPECIAL REPORT, *supra* note 5.

New Jersey's rate of recidivism within three years for its 2015 cohort was thirty percent.²⁰⁰ Over half of those individuals were reincarcerated within the first year of release.²⁰¹ Of those who had returned within three years, 30.6% returned due to a new offense and 58.6% were the result of a parole violation.²⁰² Those who received job training and/or education had a lower level of recidivism.²⁰³ FOV had not yet been introduced when this cohort had been released, but they did receive job training, education, and various therapeutic programs throughout their incarceration.

California's rate of recidivism within three years for those released in the 2017-18 fiscal year was 44.6%.²⁰⁴ Similar to New Jersey, almost half—48.8%—of the reconvictions occurred within the first-year post-release.²⁰⁵ However, only 19.8% of the individuals released in 2017-18 were returned to prison within three years.²⁰⁶ In 2016, California passed Proposition 57, which allows incarcerated individuals to earn credits for educational and rehabilitative achievements as well as good behavior that can be used to reduce their sentence length, and this cohort was the first to be impacted by that change.²⁰⁷ Over half—17,770—of the 35,447 individuals in this cohort received at least one “Enhanced Credit” under this new law.²⁰⁸ Those who participated in rehabilitative and/or educational programs were less likely to recidivate than their peers who did not participate and achieve these credits.²⁰⁹ Rehabilitative programs include those offered by RJMP and IPP.

As previously noted, Virginia has the second-lowest rate of recidivism in the country.²¹⁰ Only 20.6% of released individuals are reincarcerated within three years of release.²¹¹ The Virginia DOC attributes this low rate to the vast reentry and educational programming— including H2HC and

²⁰⁰ STATE PAROLE BOARD, N.J. DEP'T OF CORR., 2015 RELEASE COHORT OUTCOME REPORT: A THREE-YEAR FOLLOW-UP 1 (2018), https://nj.gov/corrections/pdf/offender_statistics/2015_Release_Recidivism_Report.pdf.

²⁰¹ *Id.*

²⁰² *Id.* at 12.

²⁰³ *Id.* at 2.

²⁰⁴ KEVIN GRASSEL, KENDRA JENSEN & MIGUEL LIZARDE, CAL. DEP'T OF CORR. & REHAB., RECIDIVISM REPORT FOR OFFENDERS RELEASED FROM THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION IN FISCAL YEAR 2017-18 1 (2023), <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2023/04/Recidivism-Report-for-Offenders-Released-in-Fiscal-Year-2017-18.pdf>.

²⁰⁵ *Id.* at 14.

²⁰⁶ *Id.* at 15.

²⁰⁷ *Id.* at 28-29.

²⁰⁸ *Id.* at 28.

²⁰⁹ *Id.*

²¹⁰ Sisson, *supra* note 108.

²¹¹ TAMIA CELI, BRITTNEY VIA & MEGAN SKOLNICK, VA. DEP'T OF CORR., STATE RECIDIVISM COMPARISON (2023), <https://vadoc.virginia.gov/media/1818/vadoc-state-recidivism-comparison-report-2023-01.pdf>.

VIP — and treatment that is offered to incarcerated individuals.²¹² One of the goals of the DOC is to successfully reintegrate those who have been incarcerated back into their communities, thereby increasing public safety.²¹³ Virginia has seen decreasing rates of reincarceration in recent years — the 2016 cohort had a 23.9% rate, 2017's fell to 22.3%, and 2018's fell further to the 20.6% rate discussed here.²¹⁴

Even a small reduction in recidivism is a large benefit for society that restorative justice programming within prisons provides. Providing incarcerated individuals with the tools they need to successfully reintegrate back into society upon release and reduce recidivism is achievable through CBT programming, education, training, and other methods of restorative justice.

2. What do victims think?

It is a common misconception that victims of crime prefer that the person who harmed them receives a harsh punishment. On the contrary, the majority of victims do not hope for long prison sentences. According to a 2022 national survey, seventy-five percent of victims prefer “holding people accountable through options beyond prison, such as restorative justice . . .,” seventy-seven percent would prefer a higher investment in mental health treatment, and seventy-three percent prefer “incentives for pre-release rehabilitation, such as earned time credits towards shorter sentences.”²¹⁵ Less than ten percent of victims thought that prison sentences should be longer or that prisons and jails should be expanded.²¹⁶

Restorative justice practices, particularly those that involve victim-offender conversations, allow victims to ask the questions that haunt them following a crime. They are more likely to receive an answer directly from the offender than they would through the traditional criminal justice system. Most victims (fifty-seven percent) would prefer that our justice system focus on rehabilitation rather than punishment, and sixty percent would prefer that the criminal justice system focused on prevention and rehabilitation programs and shorter sentences over keeping an offender incarcerated for as long as possible.²¹⁷ In addition, around eighty to ninety percent of victims would like individuals with criminal records to be

²¹² *Id.*

²¹³ *Id.*

²¹⁴ TAMIA CELI, BRITTNEY VIA & DAKOTA CONTOIS, VA. DEP'T OF CORR., *RECIDIVISM AT A GLANCE: RELEASES FROM STATE RESPONSIBLE INCARCERATION* (2023), <https://www.vadoc.virginia.gov/media/1817/vadoc-state-recidivism-report-2023-01.pdf>.

²¹⁵ Sawyer & Wagner, *supra* note 1.

²¹⁶ ALL. FOR SAFETY & JUST., *CRIME SURVIVORS SPEAK 2022: NATIONAL SURVEY OF VICTIMS' VIEWS ON SAFETY AND JUSTICE 23* (2022), <https://allianceforsafetyandjustice.org/wp-content/uploads/2022/09/Alliance-for-Safety-and-Justice-Crime-Survivors-Speak-September-2022.pdf>.

²¹⁷ *Id.* at 27-28.

eligible for jobs and housing so that they may successfully rejoin the community.²¹⁸

This survey makes it clear that victims of crime do not generally seek harsher punishment and longer prison sentences. Instead, they would like the criminal justice system to prioritize healing and prevention. They overwhelmingly support rehabilitative programs, such as the restorative justice programs utilized by New Jersey, California, and Virginia. Victims are in favor of pre-release credits towards sentence reductions, such as Proposition 57 in California. By participating in rehabilitative programs such as job training, educational opportunities, CBT, and other restorative justice practices, incarcerated individuals develop interpersonal and professional skills while also taking accountability for their actions. This ensures that when they are released back into their communities, they are able to successfully reintegrate into society.

CONCLUSION

The United States' incarceration rate is astronomical — around 1,873,000 people are incarcerated across local, state, federal, and tribal facilities²¹⁹ — and does not seem like it will be drastically reduced anytime soon. Until we make vast changes to the current system, we can and should work within it to make changes for the better.

The first — very achievable — step would be to adopt and expand upon restorative justice practices in prisons so that we may reduce rates of recidivism, increase victim and community satisfaction, and ensure that when incarcerated individuals are released from prison, they have the necessary foundation and support to adequately reintegrate into society. The Restorative Justice Mediation Program and Insight Prison Project are examples of programs that could be expanded across the United States to aid incarcerated individuals if more non-profit organizations were provided with the resources to become involved with the Department of Corrections. However, the easiest path for states would likely be to adopt the Victim Impact Program developed by the Department of Justice that is used by various states, including Virginia. The Victim Impact Program curriculum and training is one hundred percent free and easily available from the Department of Justice's Office for Victims of Crime Training & Technical Assistance Center. On their website, it is called the "Victim Impact: Listen and Learn" program.²²⁰ A state's Department of Corrections would be the best facilitator since they have the most resources available, but any group could teach the material.

²¹⁸ *Id.* at 33.

²¹⁹ Sawyer & Wagner, *supra* note 1.

²²⁰ *Victim Impact: Listen and Learn*, OFF. FOR VICTIMS OF CRIME TRAINING & TECH. ASSISTANCE CTR., <https://www.ovcttac.gov/victimimpact/> (last visited Feb. 18, 2024).

New Jersey, California, and Virginia have established robust restorative justice practices within their prisons, and they are seeing great success in the form of victim satisfaction, reduced recidivism, and overall better mental health after the incarcerated individuals complete their cognitive behavioral therapy or other programs. States with less robust or no restorative justice practices should look to New Jersey, California, and Virginia as models to improve. Mass incarceration will only continue to worsen if we do not offer incarcerated individuals the opportunity to learn and grow from the mistakes that led to their incarceration in the first place.
