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DEVELOPING RESTORATIVE  
JUSTICE AS A RESPONSE TO  
HATE CRIME IN WASHINGTON:  
A PROPOSAL

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## About the University of Washington Center for Human Rights

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The University of Washington Center for Human Rights (UWCHR) was established by an initiative of the Washington state legislature in 2009 following a decade of ambitious program-building on all three University of Washington campuses.

The Center's work is distinguished by its uniquely hands-on research mission, inscribed in the legislation that established it. The Center's work is conducted through partnership with organizations on the front lines of global human rights struggles, which places the resources of the University at the service of real-world social change.

# **CENTER FOR HUMAN RIGHTS**

HENRY M. JACKSON SCHOOL OF INTERNATIONAL STUDIES



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# EXECUTIVE SUMMARY

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Hate crime and other bias-motivated actions cause tremendous suffering. While criminal victimization of all sorts has adverse effects, research suggests that these effects are intensified when the offense stems from bias or hate.<sup>1</sup> In addition to their direct impact on victims, hate crimes also harm members of groups and communities who share aspects of victims' identities.

Awareness of the harm caused by hate crime has grown in recent decades and laws intended to prevent and sanction it have spread. Today, 46 states, the District of Columbia, and two U.S. territories have hate crime laws on the books.<sup>2</sup> In Washington State, a person is guilty of a hate crime offense if they maliciously and intentionally cause physical injury, cause physical damage or destruction to property, or threaten a person or group of people and create a reasonable fear of harm because of their perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability.<sup>3</sup>

These efforts to hold people accountable for the unique harms associated with hate crime are commendable. However, there is little reason to believe that the criminal legal system can do much to ameliorate these harms, for a number of reasons:

- Roughly half of all people who experience hate crime do not report their victimization to the police, and people of color are especially unlikely to do so;
- Few reported hate crimes are confirmed and recorded as such by law enforcement;
- Prosecution of violations of the hate crime statute are difficult and inevitably limited;
- In this context, deterrence is extremely unlikely to be achieved;
- Incarcerating people in jails and prisons where racial and ethnic tensions are pronounced, and opportunities to engage in productive programming are limited, is unlikely to lead to reductions in hate and bias; and
- Enhanced punishment of hate crimes may exacerbate racial and other inequities in the criminal legal system.

In this context, a growing number of advocates are urging the development of restorative justice (RJ) practices and processes as an alternative response to hate crime. RJ practices center the experiences and needs of the harmed party or parties. Since repairing harm is the central issue in a restorative framework, RJ requires a response that avoids committing further harm. Restorative justice as a response to harm is always voluntary; no one can be compelled to participate. RJ practices are aimed

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<sup>1</sup> Kathryn Benier, "The Harms of Hate: Comparing the Neighboring Practices and Interactions of Hate Crime Victims, Non-Hate Crime Victims, and Non-Victims," *International Review of Victimology* 23, 2: 179-201 (2017); Paul Iganski, "Hate Crimes Hurt More," *American Behavioral Scientist* 45, 4: 626-638 (2001).

<sup>2</sup> Movement Advancement Project, *Policy Spotlight: Hate Crime Laws*, July 2021. Still, legal definitions of hate crime vary significantly across the United States (and internationally). For example, states differ in terms of whether they create a new, independent crime or use a finding of bias motivation to authorize an enhanced sentence, whether and which specific protected groups are identified, whether judges may require community service or anti-bias education at sentencing, whether the state include hate crime reporting requirements, and across many other dimensions.

<sup>3</sup> RCW 9A.36.080

at repairing the harm caused by the wrongdoing (restoration); encouraging appropriate responsibility for addressing needs and repairing the harm (accountability); and involving the impacted, including the community, in the resolution of the harm (engagement) wherever possible.<sup>4</sup> In the process of coming together to address harm and restore relationships, affected parties are provided with an opportunity to heal.<sup>5</sup> Some prevention efforts aimed at reducing hate, conflict, and bias also involve the use of restorative practices, including restorative dialogue and conferences, circle processes, and targeted mentoring and outreach.

Existing RJ initiatives in the United States have only addressed hate crimes sporadically; there is no known RJ organization that focuses specifically on hate crime.<sup>6</sup> However, there is a substantial body of evidence that, in general, interventions informed by RJ principles improve survivor well-being. Many also reduce recidivism. Further, some decrease reliance on prisons and jails, and decrease racial and ethnic disparities therein.<sup>7</sup>

Development of RJ responses to hate crime and other bias-motivated incidents would offer numerous important advantages:

- Benefits for survivors of harm, including:
  - The opportunity to tell one’s story and have one’s feelings and experiences validated;
  - Assistance and support in accessing needed services;
  - Opportunities to ask questions and gain information about one’s own victimization and the circumstances that led to it;
  - The opportunity to educate the responsible party about the consequences of their harmful actions;
  - The opportunity to participate in the identification of appropriate acts of repair.
- RJ initiatives also have a comparatively broad scope compared to the criminal legal system and can address harms (such as the use of racial slurs) that may not constitute a crime. This creates more opportunities for people who experience these kinds of harm to receive services and opportunities. Potential participants in RJ processes include:
  - People who experience harm that is not criminal in nature;
  - People who choose not to report their criminal victimization to the police;
  - People whose criminal victimization is reported to law enforcement agencies but not recorded by those agencies as hate crime;

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<sup>4</sup> Ibid.

<sup>5</sup> J. Llewellyn and R. Howse, *Restorative Justice: A Conceptual Framework* (Ottawa: Law Commission of Canada, 1998).

<sup>6</sup> Shirin Sinnar and Beth A. Colgan, “Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration,” *New York University Law Review Online* 59: 149- 170 (2020). For a few examples, see Robert Coates, Mark Umbreit, and Betty Vos, “Responding to Hate Crimes through Restorative Justice Dialogue,” *Contemporary Justice Review* 9: 7-21 (2006).

<sup>7</sup> Caroline M. Angel et al., “Short-Term Effects of Restorative Justice Conferences on Post-Traumatic Stress Symptoms among Robbery and Burglary Victims,” *Journal of Experimental Criminology* 10, 3: 291-307 (2014); Carrie Menkel-Meadow, “Restorative Justice: What Is It and Does It Work?,” *Annual Review of Law and Social Sciences* 10.3–10.4 (2007); Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021.

- People whose criminal victimization is reported and recorded but not charged as a hate crime;
- People who prefer an RJ process to the conventional alternative.
- Finally, RJ initiatives would not compound, and may help to reduce, mass incarceration and associated racial and other inequities.

RJ interventions do pose certain challenges, including:

- Difficulty finding or engaging the person who caused the harm. In such cases, the use of “surrogates” may be helpful.
- Ensuring that all parties are prepared for dialogue and can engage constructively. This is a time-consuming process that requires special training, as well as community support and engagement.
- Ensuring that policymakers and practitioners take active steps to uphold racial equity in the availability of RJ and associated practices.

Implementing RJ as a response to hate crime specifically poses additional challenges:

- Any effort to implement restorative justice in response to hate crime must be cognizant of the role that mental illness sometimes plays, and may complicate any attempts at an RJ intervention.
- Parties in restorative justice encounters must be in a position to listen to and learn from each other. Bias and hate may interfere with this process. Facilitators will need to be trained on the specific issues that accompany hate crimes and bias incidents, and must be prepared to assist both victims and responsible parties to engage constructively with each other or with surrogates.
- Public understanding of restorative justice in the United States and in Washington state is quite limited. Any program aimed at implementing restorative justice in response to hate crimes will need to develop strategies to dispel common myths about it and to explain clearly why victims might wish to pursue it.
- RJ interventions will need to carefully consider how to develop guidelines for determining who can participate in group conferencing and circle processes.
- Perhaps the biggest challenge in developing RJ responses to hate crime in Washington state is the paucity of organizations and trained facilitators that currently conduct RJ interventions. At this moment, organizations that offer RJ do not focus on hate crime. Conversely, organizations that focus on hate crime do not currently practice RJ as a response to hate crime, though some may engage in restorative prevention.

Although these challenges are substantial, developing robust RJ responses to hate crime and related harms is an important component of developing a more holistic and healing-oriented approach to these harms. The use of restorative practices to prevent hate crime would also be highly beneficial.

In order to facilitate the development of a robust RJ infrastructure that would enable the development of RJ responses to hate crime, and to address the challenges identified above, we recommend that the Washington state legislature establish a substantial program as part of the operating budget to award grants to community-based organizations to develop or augment restorative justice initiatives. The details of this and related recommendations appear in the final section of the report.



# INTRODUCTION

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Hate crime and other bias-motivated actions cause tremendous harm and suffering. Fortunately, it appears that awareness of these harms has deepened in recent years. Unfortunately, the evidence indicates that this increase in awareness has been accompanied by a rise in hate crime itself.

Many victim-advocates understandably seek to provide services and opportunities for healing to people who have experienced hate-based harms, and to hold those who perpetrate them accountable for the harm they cause. This desire to promote victim-healing and augment accountability has fueled efforts to enhance the criminal punishment of people who engage in such harmful acts.<sup>8</sup> Yet it is increasingly clear that the criminal legal system does little, if anything, to enhance victim healing and promote accountability when hate or bias-motivated harm has occurred.<sup>9</sup> Moreover, the evidence suggest that increased prosecution and punishment would not meaningfully protect public safety.<sup>10</sup> Enhancing criminal legal system responses to hate crimes also has the potential to increase mass incarceration and the racial inequities that are part of it, both of which cause significant harm to individuals, families, and communities.<sup>11</sup>

In this context, an increasing number of advocacy groups are calling for community and healing-centered responses to hate crime. For example, a 2021 collaborative report released by the Movement Advancement Project “highlights the possibilities for expanding our response to hate violence, including through more holistic, restorative, and community-based efforts.”<sup>12</sup> Similarly, a 2021 report by the Stanford Law and Policy Lab and New York University’s Brennan Center for Justice reaches this conclusion: “Restorative justice may offer a way to identify and mend the unique individual and community harms caused by hate crimes, while demanding meaningful accountability for those cause harm.”<sup>13</sup>

This report was commissioned by the Washington state legislature in the spring of 2021 in response to the Washington Hate Crimes Advisory Working Group’s call for a study of the feasibility of enhancing restorative justice practices in response to hate crime. The evidence reviewed in this report underscores the limited capacity of the criminal legal system to promote healing and accountability in the context of hate crime and other bias-motivated harms, and finds that restorative justice (RJ)

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<sup>8</sup> Jeanine Bell, “What is a Hate Crime? The Narrow Legal Definition Makes it Hard to Charge and Convict,” *The Conversation*, March 19, 2021.

<sup>9</sup> Movement Advancement Project, *Policy Spotlight: Hate Crime Laws*, July 2021; Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021.

<sup>10</sup> Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021; Kai Wiggins, “The Dangers of Prosecuting Hate Crimes in an Unjust System,” *American Constitution Society Expert Forum*, August 5, 2019.

<sup>11</sup> Kai Wiggins, “The Dangers of Prosecuting Hate Crimes in an Unjust System,” *American Constitution Society Expert Forum*, August 5, 2019.

<sup>12</sup> Movement Advancement Project, *Policy Spotlight: Hate Crime Laws*, July 2021, p. ii.

<sup>13</sup> Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021, p. 5. See also Shirin Sinnar and Beth A. Colgan, “Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration,” *New York University Law Review Online* 59: 149- 170 (2020).

practices hold significant promise. However, it is also clear that the restorative justice infrastructure remains underdeveloped in Washington State. As a result, the development of a pilot project to implement RJ responses to hate crime does not appear to be a viable option in the short term. Because RJ does hold significant promise as an alternative response to hate crime, we recommend state-level investment in a new grants program to support the development of such an infrastructure.

This report is organized as follows. Part I describes the unique harms caused by hate crime and other bias-motivated harms, and analyzes trends in the United States and in Washington state specifically. It also shows why reliance on the criminal legal system is unlikely to alleviate the many harms associated with hate crime or to enhance accountability among those who perpetrate it.

Part II describes the benefits and challenges associated with restorative justice in general and in the context of hate crime and other bias-motivated harms in particular. This section also identifies ways that policymakers and practitioners might address some of these challenges.

Finally, Part III offers recommendations for developing a more robust restorative justice infrastructure that would enable the development of RJ responses to hate crime. Specifically, we recommend that the legislature establish a program to award grants to community-based organizations to develop or augment restorative justice initiatives, including both RJ responses to harm and restorative prevention. Ideally, these grants would enable the development of RJ initiatives that operate solely in the community as well as those that collaborate with system actors in order to implement diversion frameworks. We also recommend that the legislature set aside some of these monies to ensure that organizations across the state are able to secure the training and technical assistance they may need to develop successful grant proposals to support the development or extension of RJ initiatives.

# PART I

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## HATE CRIME: HARMS, PATTERNS, AND ENFORCEMENT CHALLENGES

A hate crime is a criminal offense that is motivated by animus or bias against actual or perceived aspects of victims' identities, such as race, ethnicity, sexual orientation, religion, gender-identity, or disability. Nearly all states, including Washington, have laws that identify and punish such offenses and/or enhance sentences in criminal cases in which a bias motive is established. These laws spread during and after the 1980s in response to victims' rights advocacy and the efforts of civil rights organizations to call attention to the unique harms caused by crimes motivated by hatred or bias.<sup>14</sup>

Awareness of the harm caused by hate crime has spread in recent decades. Criminal victimization often has profound physical, emotional, and financial consequences for people who experience it. Research suggests that these effects are intensified when the offense stems from bias or hate, in part because awareness that one has been victimized because of one's identity strikes at the core of people's sense of well-being and self-worth.<sup>15</sup> For example, a substantial share of people who have experienced anti-Asian violence experience symptoms of post-traumatic stress disorder, including depression and anxiety.<sup>16</sup> Moreover, most hate/bias-motivated crimes take place near victims' homes and many involve culprits who are known to the person who is harmed. As a result, hate crimes often undermine victims' sense of security and limit their comfort in engaging in everyday activities, often for extended periods of time.<sup>17</sup>

Hate crimes also deeply impact members of groups who share aspects of victims' identities. In fact, most surveyed members of targeted communities report increased feelings of anger, vulnerability, and anxiety in the aftermath of known offenses.<sup>18</sup> These "vicarious victims" – members of targeted groups – often express a range of emotions, including shock, anger, fear/vulnerability, and a sense of inferiority, that are similar to those reported by the direct victims of hate crimes. And like direct victims, vicarious victims often alter their habits and social interactions following known assaults,

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<sup>14</sup> Jeanine Bell, "What is a Hate Crime? The Narrow Legal Definition Makes it Hard to Charge and Convict," *The Conversation*, March 19, 2021; Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021.

<sup>15</sup> Kathryn Benier, "The Harms of Hate: Comparing the Neighboring Practices and Interactions of Hate Crime Victims, Non-Hate Crime Victims, and Non-Victims," *International Review of Victimology* 23, 2: 179-201 (2017); Paul Iganski, "Hate Crimes Hurt More," *American Behavioral Scientist* 45, 4: 626-638 (2001).

<sup>16</sup> David Takeuchi, "Ending Anti-Asian Violence Requires Urgent Action at All Levels," *Seattle Times*, March 17, 2021.

<sup>17</sup> Kathryn Benier, "The Harms of Hate: Comparing the Neighboring Practices and Interactions of Hate Crime Victims, Non-Hate Crime Victims, and Non-Victims," *International Review of Victimology* 23, 2: 179-201 (2017); Mark Austin Walters, *Hate Crime and Restorative Justice*. Oxford: Oxford University Press (2014).

<sup>18</sup> Jenny Patterson, Mark A. Walters, Rupert Brown and Harriet Fearn, *The Sussex Hate Crime Project: Final Report* (University of Sussex, 2018).

often in ways that can lead to social isolation.<sup>19</sup> For example, both direct and vicarious victimhood often reduce participation in community and public life in the aftermath of known hate crimes.<sup>20</sup> Hate/bias motivated harms thus have far-reaching effects, adversely impacting those who are directly targeted as well as members of their communities in profoundly harmful ways.

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## Hate Crime in the United States and Washington State: Trends and Patterns

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Two data sources, both of which have known limitations, provide some information about trends and patterns in hate crime in the United States. The first is the Federal Bureau of Investigations' National Incident-Based Reporting System (NIBRS), which only includes information about offenses that are reported to the police and that are found by law enforcement investigators to be motivated by hate/bias. These data undercount hate crime for two main reasons. First, many victims, particularly victims of color, choose not to report their victimization to the police. Second, the FBI instructs reporting agencies to identify an offense as a hate crime "only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias."<sup>21</sup> Determining whether an offense was motivated by hate/bias requires special training and additional resources, and can be a complex undertaking even when these resources exist. As a result, many incidents that are reported to the police and perceived by victims to have been motivated by hate or bias are not recorded by law enforcement agencies as hate crimes.

The National Criminal Victimization Survey (NCVS) also collects data about hate crimes. The NCVS is an annual survey of a representative sample of U.S. residents that includes nearly a quarter of a million survey-respondents. Unlike NIBRS data, these survey data *do* include offenses that were not reported to the police. Instead, the NCVS data identify offenses as hate crimes if the victim reports that at least one of three conditions existed: 1) the incident was confirmed by police to be motivated by bias; 2) the person(s) who committed the offense used hate speech; or 3) the person(s) who committed the offense left behind hate symbols such as swastikas or nooses.<sup>22</sup> Unlike NIBRS data, the NCVS data do not include victims under the age of 12 and do not include lethal hate crimes. Figure 1 illustrates the differences between hate crime data available from these two data sources.

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<sup>19</sup> Barbara Perry and Shahid Alvi, "We are All Vulnerable: The in Terrorem Effects of Hate Crimes," *International Review of Victimology* 18, 1: 57-71 (2012).

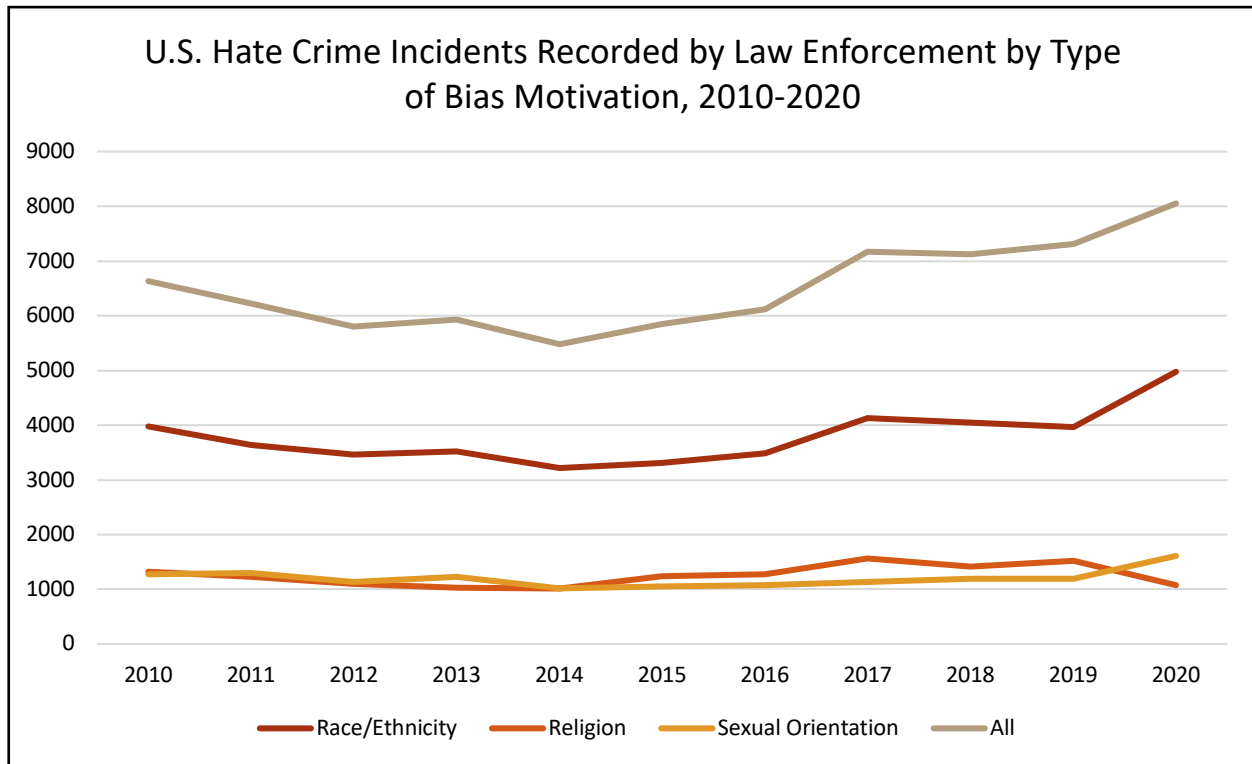
<sup>20</sup> Sidikat Fashola, "Understanding the Community Impact of Hate Crimes: A Case Study," *Victims of Crime Research Digest*, Issue No. 4 (2018).

<sup>21</sup> Bureau of Justice Statistics, Bias-Motivated/Hate Crime. Available at <https://bjs.ojp.gov/topics/crime/hate-crime>

<sup>22</sup> *Ibid.*

## Recent Trends in the United States and Washington State

Although not identical, these two data sources generally indicate that the number and rate of hate crimes in the United States has increased since approximately 2016 and that most are motivated by racism (see Figures 2-4 below). Figure 2 shows the trend in the number of hate crime incidents known to the police (and affirmed by the police as bias-motivated) across the United States.



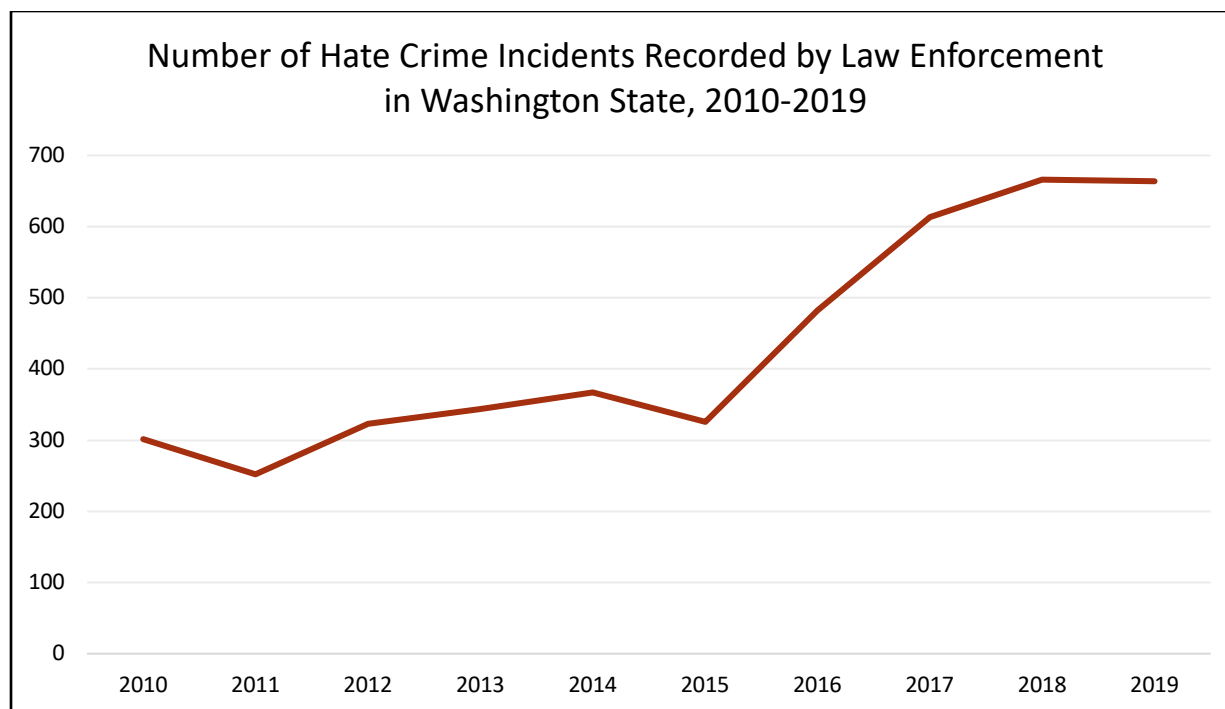
**Figure 1: NIBRS U.S. hate crime incidents, 2010-2020**

Sources: Erica Smith, *Hate Crime Reported by Law Enforcement* (Washington D.C.: Bureau of Justice Statistics, 2021), Table 1; U.S. Department of Justice, 2020 Hate Crime Statistics, available at <https://www.justice.gov/hatecrimes/hate-crime-statistics>

Notes: These data refer to the absolute number of hate crime incidents (which may involve more than one victim) known to and confirmed as bias-motivated by law enforcement. In 2020, the FBI reported 8,052 hate crime incidents that involved 11,126 victims.

NIBRS data are available at the state level, and indicate that hate crimes have been rising in recent years in Washington state as well (see Figure 3 below).<sup>23</sup>

<sup>23</sup> Data collected by the Seattle Police Department also suggest a sharp increase in the number of hate crimes known to the Seattle Police Department. See [http://www.seattle.gov/Documents/Departments/Police/Publications/Bias\\_Report\\_1st\\_Half\\_2020.pdf](http://www.seattle.gov/Documents/Departments/Police/Publications/Bias_Report_1st_Half_2020.pdf)



**Figure 2: NIBRS Washington hate crime incidents, 2010-2019**

Source: Federal Bureau of Investigation, Hate Crime Statistics series, 2010-2019, Table 11.

Note: Data for 2020 were released in October 2021 and are available through the FBI Crime Data Explorer (see <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime>). However, the data available through this data analysis tool for 2018 and 2019 are lower than the figures reported in Table 11 of the Hate Crime Statistics series. Because the reason for this discrepancy is unknown, we have not included data for 2020 in this figure.

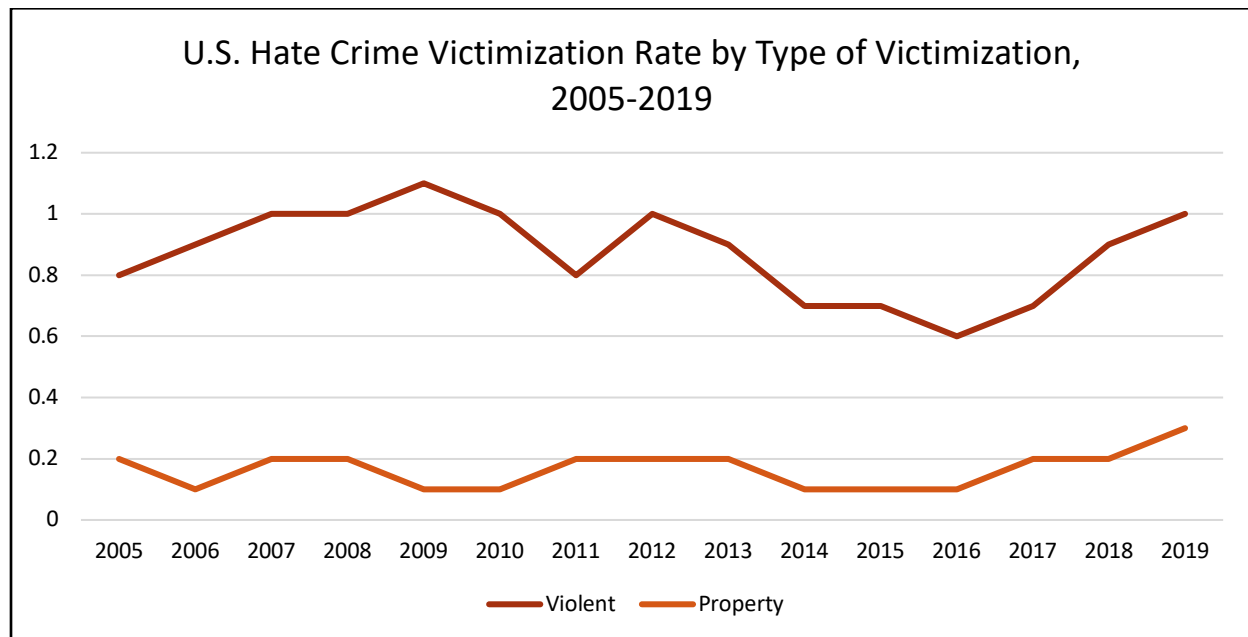
While the data depicted in Figure 3 indicate that hate crimes have increased dramatically in Washington State, it is important to note that these data may be affected by increased reporting of hate crimes by victims to the police and/or by improved investigation on the part of law enforcement. In addition, the raw data shown in Figure 2 do not take overall population growth into account.

As is the case nationally, most (77 percent) of the hate crimes known to and confirmed by Washington state law enforcement agencies involve crimes against persons (e.g. violent offenses) as opposed to crimes against property (21.5 percent) or against society (1.5 percent). As is true nationally, incidents involving animus based on race/ethnicity are most common (59.5 percent); about one in five (20.9 percent) involve bias based on sexual orientation and 13.7 percent involve religious animus.<sup>24</sup>

Below, Figure 4 shows the trend in the rate of hate crimes reported by victims across the country in the NCVS survey. Unlike the NIBRS data presented above, these survey data do include incidents that are not reported to the police; because they are rates rather than raw numbers, they also take population growth into account. On the other hand, they do not include lethal hate crimes (e.g., homicides motivated by hate/bias) or incidents involving victims under the age of 12. These data

<sup>24</sup> These data are reported in the FBI's Uniform Crime Reports and are available at <https://www.justice.gov/hatecrimes/state-specific-information/washington>

similarly indicate that hate crimes have been increasing since 2016, though they also show high levels of hate crime victimization in the late aughts.



**Figure 3: NCVS U.S. hate crime victimization by type, 2005-2019**

Source: Grace Kena and Alexander Thompson, *Hate Crime Victimization, 2005-2019* (Washington D.C.: Bureau of Justice Statistics, 2020), Table 1.

Notes: The rate of violent hate crimes in NCVS data is calculated per 1,000 residents aged 12 and older. The rate of property hate crimes is calculated per 1,000 households.

In short, both law enforcement (NIBRS) and NCVS victimization survey data have limitations, and each tells a slightly different story about trends prior to 2016. However, both data sources indicate that hate crimes have increased across the country since 2016. NIBRS data are available at the state level, and indicate that hate crimes have increased in Washington State. Unfortunately, NCVS data are not available at the state level, so it is not possible to compare the patterns revealed by the two data sources for Washington state specifically.

There is also emerging evidence that hate crimes continued to proliferate during the pandemic, particularly against people of Asian descent. For example, a study by the Center for the Study of Hate and Extremism found that anti-Asian hate crimes increased by 150 percent between 2019 and 2020 in 16 of the nation’s largest cities.<sup>25</sup> Relatedly, PEW reports that nearly one-third (31 percent) of Asian adults have experienced racial slurs or racist jokes since the start of the pandemic.<sup>26</sup> In 2020, the Stop AAPI Hate coalition received reports of an average of 10 bias incidents a day, more than two-thirds of which were directed at Asian women. While not all bias incidents meet the definition of a hate

<sup>25</sup> Center for the Study of Hate and Extremism, *Anti-Asian Hate Crime Reported to Police in America’s Largest Cities: 2020* (California State University in San Bernardino, March 2021).

<sup>26</sup> PEW Research Center, *Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID-19 Outbreak* (July 2020).

crime, it appears that both bias incidents that may not constitute a crime (such as using a racist slur) and hate crimes have been increasing during the pandemic.

## Patterns of Hate Crime

Both the NIBRS and NCVS data suggest that most hate crimes are crimes against persons rather than property crimes. For example, NCVS survey data indicate that most hate crimes are violent (89 percent) rather than property-related (11 percent), and that most violent hate offenses involve assault.<sup>27</sup>

Both NIBRS and NVVS data also provide some information about the motivation of those who commit hate crimes (see Table 1). Specifically, the two data sources indicate that most U.S. hate crimes are motivated by racial/ethnic bias. (As noted previously, NIBRS data are available at the state level; these state-level data similarly indicate that most hate crimes in Washington state stem from racial or ethnic bias). However, the two data sources provide somewhat mixed findings regarding other common motivations for hate crime. Specifically, NIBRS data indicate that religious animus and bias based on sexual orientation are the next most common types of bias motivation. By contrast, NCVS data show comparatively high numbers of cases involving bias based on gender identity and disability.<sup>28</sup> This discrepancy suggests that people who experience hate crime based on gender identity or disability-related bias may be less likely to report their victimization to law enforcement.

**Table 1: U.S. Hate Crime Victims by Type of Bias Motivation, 2010-2019**

Type of Bias	NIBRS, 2005-2019	NCVS, 2010-2019
<b>Race/ethnicity/national origin</b>	54.2%	68.9%
<b>Religion</b>	20.7%	9.4%
<b>Sexual Orientation</b>	16.3%	20.3%
<b>Gender/Gender-identity</b>	3.6%	24.2%
<b>Disability</b>	2.1%	11%

Sources: Grace Kena and Alexander Thompson, *Hate Crime Victimization, 2005-2019* (Washington D.C.: Bureau of Justice Statistics, 2020), Figure 4; Erica Smith, *Hate Crime Reported by Law Enforcement* (Washington D.C.: Bureau of Justice Statistics, 2021), Table 1.

Notes: These data pertain to the victims of hate crime. NIBRS data include only incidents in which there was a single type of bias found. NCVS data include incidents in which more than one type of bias was identified.

The data further indicate that people who experience hate crimes are racially and ethnically diverse. NCVS data from 2010-2019 show that 55.8 percent of all self-reported victims of violent hate crime

<sup>27</sup> Grace Kena and Alexander Thompson, *Hate Crime Victimization, 2005-2019* (Washington D.C.: Bureau of Justice Statistics, 2020), Table 2.

<sup>28</sup> Ibid, Table 3.



were White; 22.1 percent were Hispanic/Latino; 13.9 percent were Black; 2.9 percent were Asian or Pacific Islander.<sup>29</sup>

Hate crime suspects are also racially and ethnically diverse. For example, of the individual “known offenders” identified by law enforcement in 2019 for whom race is identified, 69.8 percent were identified as White and 22.5 percent were identified as Black. Although ethnicity is reported less consistently than race, 26.9 percent of the individual suspects for whom ethnicity is identified by law enforcement agencies were identified as Latino.<sup>30</sup> The NCVS data from 2010-2019 similarly show that the people believed by self-identified victims to have committed hate crimes are racially and ethnically diverse. Specifically, these data indicate that 45.3 percent of the assailants identified by victims were perceived as White; 33.4 percent were perceived as Black; and 15.4 percent were perceived as Hispanic/Latino.<sup>31</sup>

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## Data Considerations and Limitations

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There is strong reason to believe that the NIBRS law enforcement data described above may not provide an accurate or comprehensive picture of hate crime in the United States, for several reasons. First, many hate crime victims choose not to report their victimization to the police. In fact, NCVS data indicate that 57.3 percent of people who experienced violent hate crime reported their victimization to law enforcement, while just 29.4 percent of those experiencing property-related hate crime chose to do so. People of color who experience hate crime are less likely than their White counterparts to report their victimization to the police.<sup>32</sup> Overall, these data indicate that victims report roughly half of all hate crimes to law enforcement. Although victims were more likely to report more serious offenses such as aggravated assault to the police,<sup>33</sup> little is known about unreported hate crimes.

In addition, many incidents that are perceived as hate crimes by victims and are reported to the police are not recorded as such by law enforcement. As noted previously, there are many reasons for this, including the fact that ascertaining whether an offense stemmed from hate/bias requires special training, additional resources, and time. As a result, many offenses that are perceived by victims to be hate crimes are not recorded as such by law enforcement agencies. According to NIBRS data, for example, law enforcement agencies across the country identified 8,812 hate crime victims in 2019.<sup>34</sup> By contrast, the NCVS results suggest that an average of nearly a quarter of a million (240,770) people

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<sup>29</sup> Ibid, Table 4.

<sup>30</sup> These calculations are based on data presented in the FBI's 2019 Hate Crime Statistics series, Table 3.

<sup>31</sup> Grace Kena and Alexander Thompson, *Hate Crime Victimization, 2005-2019* (Washington D.C.: Bureau of Justice Statistics, 2020), Table 5.

<sup>32</sup> Heather Zaykowski, “Racial Disparities in Hate Crime Reporting,” *Violence Victimization* 25, 3: 378-94 (2010).

<sup>33</sup> Grace Kena and Alexander Thompson, *Hate Crime Victimization, 2005-2019* (Washington D.C.: Bureau of Justice Statistics, 2020), Table 2. Unlike the data presented in Figure 3, these data pertain to the number of victims rather than incidents.

<sup>34</sup> Erica Smith, *Hate Crime Reported by Law Enforcement* (Washington D.C.: Bureau of Justice Statistics, 2021), p. 1.

experienced hate crimes each year between 2015-2019.<sup>35</sup> As noted previously, roughly half of these incidents *are* reported to law enforcement.

The large gap between these estimates means that *many* incidents that are perceived by victims to have been motivated by hate/bias and are reported to the police are not recorded as hate crimes by law enforcement and therefore do not appear in the NIBRS data. In fact, comparison of the figures above indicates that just 7 percent of the hate crimes that victims reported to the police were confirmed as such by law enforcement agencies. This pattern appears to stem from the lack of investigation of possible hate/bias motivation on the part of many law enforcement agencies: although 47 states have hate crime statutes on the books, 86 percent of law enforcement agencies reported that *zero* hate crime incidents took place in their jurisdiction in 2019.<sup>36</sup> Law enforcement data thus provide a window onto a very small share of hate crime incidents.

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## Perpetrators and Situational Dynamics

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While the harmful effects of hate crime on individuals and communities have been widely documented, less is known about people who commit hate crimes and the situations in which it occurs. An early study on this subject documented variation in the motivations of the people who perpetrate hate crimes and developed a typology to capture this variation.<sup>37</sup> According to this typology, there are four distinct motivations for engaging in hate crime:

- **Thrill-seeking**, defined by desire for excitement and power;
- **Defensive**, defined by the desire to protect turf;
- **Retaliatory**, in which the desire to avenge a perceived wrong is paramount; and
- **Mission-driven**, in which people who commit hate crimes are on a mission to eliminate groups they perceive as inferior or evil.

However, more recent research suggests that many prosecuted cases cannot be classified according to this typology, and that this is especially true for cases in which bias is a peripheral rather than central motivation.<sup>38</sup> Moreover, there is evidence that most people who commit hate crimes are “ordinary people” rather than dedicated members of hate organizations. In fact, only about one in ten hate crimes are committed by members of organized hate groups, and it appears that most hate crimes are not pre-meditated.<sup>39</sup> Often, the crime occurs in the aftermath of another situation or conflict in which

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<sup>35</sup> Ibid.

<sup>36</sup> Jeanine Bell, “What is a Hate Crime? The Narrow Legal Definition Makes It Hard to Charge and Convict,” *The Conversation*, March 19, 2021.

<sup>37</sup> J. McDevitt, J. Levin & S. Bennett, S., “Hate Crime Offenders: An Expanded Typology.” *Journal of Social Issues*, 58(2): 303-317 (2002).

<sup>38</sup> Nickie D. Phillips, “The Prosecution of Hate Crimes,” *Journal of Interpersonal Violence* 24, 5: 883-905.

<sup>39</sup> Edward W. Dunbar, Jary Quinones, and Desiree Crevecoeur-MacPhail, “Assessment of Hate Crime Offenders: The Role of Bias Intent in Examining Violence Risk,” *Journal of Forensic Psychology Practice*, 5, 1: 1-19.

the perpetrator perceives that they have been wronged in some way.<sup>40</sup> At a deeper level, research suggests that much racist violence and other kinds of hate crimes are an expression of unacknowledged shame among the people who perpetrate it. This shame is often rooted in multiple forms of disadvantage and the subsequent transformation of that shame into rage based on racist and other kinds of stereotypes.<sup>41</sup>

Evidence from the Seattle area further indicates that many of the people arrested for hate crimes have long histories of mental illness; many are also unstably housed and/or struggle with addiction.<sup>42</sup> A non-systematic review of case descriptions of hate crime incidents reported to Seattle Police in 2020 revealed that approximately one-third of those incidents involved an individual who displayed evidence of mental illness. Many reported calls for hate crimes originated in facilities that provide shelter to the insecurely-housed.

Evidence regarding the role of mental illness in some hate crime incidents is controversial. In April of 2021, a *New York Times* story summarized some of the available evidence regarding this pattern in New York City.<sup>43</sup> In response, some observers correctly point out that most people with mental illness are not violent; that hatred is not a symptom of mental illness; and that mental illness cannot excuse or justify hate crime.<sup>44</sup> These objections are valid. At the same time, the presence of significant and unmanaged mental illness in some hate crime cases is well-documented and has important implications for both criminal legal and restorative justice responses to hate crime.

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## The Limits of Criminal Law Enforcement and Punishment

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As a result of increased recognition of the harm that hate crimes cause to individuals and communities, many states have altered their statutory response to hate crime. Today, 46 states, the District of Columbia, and two U.S. territories have hate crime laws on the books.<sup>45</sup> These laws rest on the idea

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<sup>40</sup> Paul Igansky, *Hate Crime and the City* (Bristol University Press, 2008).

<sup>41</sup> Larry Ray, David Smith, and Liz Wastell, “Shame, Rage, and Racist Violence,” *British Journal of Criminology* 44: 350-68 (2004).

<sup>42</sup> Nicole Hong, Ashley Southall, and Ali Watkins, “He Was Charged in an Anti-Asian Attack. It was his 33rd Arrest,” *New York Times*, April 6, 2021.

<sup>43</sup> *Ibid.*

<sup>44</sup> See, for example, Philip Yanos, “Hate is not a Symptom of Mental Illness,” *Psychology Today* blogpost, November 18, 2018, available at <https://www.psychologytoday.com/us/blog/written/201811/hate-is-not-symptom-mental-illness>

<sup>45</sup> Movement Advancement Project, *Policy Spotlight: Hate Crime Laws*, July 2021. Still, legal definitions of hate crime vary significantly across the United States (and internationally). For example, states differ in terms of whether they create a new, independent crime or use a finding of bias motivation to authorize an enhanced sentence, which specific protected groups are identified, whether judges may require community service or anti-bias education at sentencing, whether hate crime reporting requirements are included, and across many other dimensions.

that because hate crimes are intended to, and do, harm entire communities, enhanced punishment is appropriate.<sup>46</sup>

In Washington State, a person is guilty of a hate crime offense if they maliciously and intentionally cause physical injury, or cause physical damage or destruction to property, or threaten a person or group of people and create a reasonable fear of harm because of their perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability.<sup>47</sup> Further, Washington state law requires that law enforcement collect and report data regarding hate crime.<sup>48</sup>

Washington state lawmakers' efforts to recognize the unique harms associated with hate crime are laudable. At the same time, there is little reason to believe that criminal law and punishment will meaningfully ameliorate this harm, for a number of reasons, each of which is explored below.

### Few hate crimes are identified as such by law enforcement

As noted previously, about half of all people who believe that they have experienced a hate crime do not report their victimization to law enforcement. This is unlikely to change: many of the groups that are vulnerable to hate crime mistrust the police. For example, a survey of thousands of transgender people found that 57 percent of those surveyed would be uncomfortable calling the police for assistance, and 58 percent of those who had interacted with police in the last year experienced harassment, assault, or other forms of mistreatment in those interactions.<sup>49</sup> Unfortunately, people who do not report their victimization to the police are unable to receive compensation from the state victim compensation fund.

Even among the incidents that are reported to the police, only a small proportion are identified as hate crimes by law enforcement. As a result, many crimes that are perceived by victims to have been motivated by hate or bias are not identified as such in the data compiled by the FBI.

Together, these realities mean that a very small fraction of hate crime incidents have the potential to result in criminal prosecution. While increased investment in law enforcement resources and training could increase the share of reported crimes that are identified and recorded as hate crimes by law enforcement, the burden of establishing hate as a motive is a significant one that will continue to limit the share of reported offenses that are deemed by law enforcement to be hate crimes.

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<sup>46</sup> Randy Blavak, "Isn't Every Crime a Hate Crime? The Case for Hate Crime Laws," *Sociological Compass* 5/4: 244-55 (2011); Val Jenness and Ryken Grattet, *Making Hate a Crime: From Social Movement to Law Enforcement* (New York: Russell Sage, 2001).

<sup>47</sup> RCW 9A.36.080

<sup>48</sup> RCW 36.28A.030

<sup>49</sup> Cited in Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021, p. 11.

## Prosecution is difficult and inevitably limited

Even if a hate crime is reported to the police and is identified as such by law enforcement, it is unlikely to result in a criminal hate crime charge. Prosecutors offer many reasons for not charging many offenses as hate crime, even if they have been identified as such by law enforcement. Some see little to gain by adding a hate crime charge to another criminal charge when the underlying criminal offense(s) will already trigger a long prison sentence. Some also fear that introducing a hate crime charge would increase the state's burden of proof, distract juries, or otherwise render a guilty verdict less likely.<sup>50</sup> Moreover, establishing a bias motive is especially daunting from a prosecutorial point of view, given that it requires proof of someone's intent in committing the alleged offense.<sup>51</sup> Prosecutors interviewed for this report indicated that this procedural hurdle was especially difficult to overcome.

Despite Washington State's efforts to increase the reporting and prosecution of hate crime, data compiled by the Administrative Office of the Courts indicate that there were just 17 convictions for violation of the state's hate crime statute in 2020. Eleven of these convictions resulted in a jail sentence with an average length of 4.9 months; six resulted in prison sentences with an average sentence of 29.8 months.<sup>52</sup> It is thus clear that the vast majority of hate crimes that occurred in Washington state in 2020 did not result in a conviction and associated confinement sentence.

## Deterrence is an elusive goal

Research shows that any deterrent effect of criminal punishment results from certainty, rather than severity, of punishment.<sup>53</sup> Thus, even if the state could notably improve its identification of hate crime, and double, triple or even quadruple the number of prosecutions, certainty of punishment for hate crime will remain a distant goal. In addition, deterrence depends upon a series of assumptions that are likely invalid. For example, the deterrence model assumes that people contemplating crime plan their offenses ahead of time, are aware of the relevant laws and penalties, and perceive a high likelihood that they will be apprehended and punished. These and other assumptions are generally dubious and especially questionable in the hate crime context.<sup>54</sup>

In light of this, some might argue that criminal penalties can keep the public safe by incapacitating people who have committed hate crimes and may do so again in the future. Yet incarceration is not likely to reduce hate-motivated violence and may increase it. Indeed, rates of assault are far higher in prison than in the general population; people who are sent to prison are at great risk of both engaging

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<sup>50</sup> Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021, p. 12.

<sup>51</sup> Ibid; see also Jeanine Bell, "What is a Hate Crime? The Narrow Legal Definition Makes it Hard to Charge and Convict," *The Conversation*, March 19, 2021.

<sup>52</sup> Washington Caseload Forecast Council, *Statistical Summary of Adult Felony Sentencing FY 2020*, Table 2.

<sup>53</sup> National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by Jeremy Travis, Bruce Western, and Steve Redburn (Washington, D.C.: The National Academies Press, 2014).

<sup>54</sup> Phyllis B. Gerstenfeld, *Hate Crimes: Causes, Controls, and Controversies* (Los Angeles: Sage Publications, 4th edition, 2018).

in, and being a victim of, violence.<sup>55</sup> Moreover, many prisons are riven with racial and ethnic tensions and associated violence. As a result, a prison sentence may only intensify individuals' race-based animosity. Imprisoning people who have committed hate crimes, and who will be released from prison, likely does little to protect public safety in the medium or long run.

## Victims are not well served

As has been discussed, about half of all hate crime victims elect not to report their victimization to the police. Survey respondents give many reasons for not reporting violent hate crimes: they did not believe the police could or would do anything to help; they dealt with the event another way; they did not believe that the harm was serious enough to warrant reporting; they feared reprisal; or they did not want to get the person who harmed them in trouble.<sup>56</sup> People of color are especially unlikely to report their victimization, particularly when the offense was motivated by racial bias.<sup>57</sup> There are many reasons, for this, though widespread mistrust of the police and other legal institutions appears to be at the heart of the matter. As legal scholars Shirin Sinnar and Beth Colgan write,

*Some Latinx people experience deep-seated fear that reporting will lead to deportation of themselves or others in their family or community. Muslim, Arab, and South Asian victims may avoid reporting due to concerns that doing so will prompt law enforcement to surveil them, rather than their assailants. And some LGBTQ victims state that they do not report due to fear of retaliation, humiliation, or having to disclose their sexual orientation or gender identity.<sup>58</sup>*

Unfortunately, survivors who choose not to report their victimization to law enforcement are ineligible for crime victims' compensation and are unlikely to receive other forms of victim support services. Moreover, their questions remain unanswered, the harm they experienced remains largely invisible and unacknowledged and the person who harmed them is typically not held accountable for their actions.

Although people who do report their experiences with hate crime to law enforcement are potentially eligible for crime victims' compensation, research suggests that most do not actually receive the services they need.<sup>59</sup> People who live in poverty and/or are of color are especially unlikely to receive needed services.<sup>60</sup> Moreover, many people who do report their victimization are dissatisfied with the criminal legal process, and too many experience revictimization that amplifies their psychological

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<sup>55</sup> Bruce Western, "Inside the Black Box: Safety, Health, and Isolation in Prison," *Journal of Economic Perspectives* 35, 4: 1-27 (2021).

<sup>56</sup> Grace Kena and Alexander Thompson, *Hate Crime Victimization, 2005-2019* (Washington D.C.: Bureau of Justice Statistics, 2020), Figure 2.

<sup>57</sup> Heather Zaykowski, "Racial Disparities in Hate Crime Reporting," *Violence Victimization* 25, 3: 378-94 (2010).

<sup>58</sup> Shirin Sinnar and Beth A. Colgan, "Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration," *New York University Law Review Online* 59: 149- 170 (2020), p. 159.

<sup>59</sup> Susan Herman, *Parallel Justice for Victims of Crime* (New York: National Center for Victims of Crime, 2010).

<sup>60</sup> Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and the Road to Repair* (New York: The New Press, 2021).

distress.<sup>61</sup> In fact, some studies find that victim participation in the conventional criminal justice process exacerbates rather than alleviates survivors' trauma.<sup>62</sup>

Moreover, the focus of hate crime laws is on punishing individual offenders rather than on challenging their underlying prejudicial beliefs or tackling the root causes of racist violence and other expressions of bigotry. As a result, a focus on criminal legal remedies means that neither the broader drivers of prejudice, nor the actual harms done to victim(s) and the broader community, are addressed.

## Enhanced enforcement may exacerbate racial and other inequities in the criminal legal system

In Washington state and elsewhere, racial and ethnic disparities exist across many criminal legal outcomes;<sup>63</sup> disabled<sup>64</sup> and LGBTQ people<sup>65</sup> are also notably over-represented in the criminal legal system. The intensified enforcement of hate crime laws could contribute to enhance racial and other inequities in the criminal legal system.<sup>66</sup> As Kai Wiggins, policy analyst at the Arab American Institute, writes,

*Despite general support for hate crime penalty enhancement within the civil rights community, there is an obvious tension between these provisions and certain fundamental principles of criminal justice reform. After all, aggressive sentencing has contributed to soaring incarceration rates with severe and disproportionate consequences for people of color.*<sup>67</sup>

Although data regarding the racial composition of people convicted of hate crimes are limited, there is reason for concern. For example, in New York City, only two of the twenty people arrested for committing Anti-Asian violence in 2020 were White,<sup>68</sup> despite evidence that most (three-fourths) of

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<sup>61</sup> Susan Herman, *Parallel Justice for Victims of Crime* (New York: National Center for Victims of Crime, 2010); Ulrich Orth, "The Effects of Legal Involvement on Crime Victims' Psychological Adjustment," in *Social Psychology of Punishment of Crime*, edited by Margit Oswald (New York: Wiley & Sons, 2019); Jim Parsons and Tiffany Bergin, "The Impact of Criminal Justice Involvement on Victims' Mental Health," *Journal of Traumatic Stress* 23, 2: 182-88.

<sup>62</sup> Christine Englebrecht, Derek T. Mason and Margaret J. Adams, "The Experience of Homicide Victims' Families with the Criminal Justice System: An Exploratory Study," *Violence and Victims* 29, 3: 407-21.

<sup>63</sup> Task Force on Race and the Criminal Justice System, *Preliminary Report on Race and Washington's Criminal Justice System*, Seattle University School of Law, 2011.

<sup>64</sup> Elliott Oberholtzer, "Police, Courts, Jails, and Prisons All Fail Disabled People," *Prison Policy Initiative* (August 23, 2017).

<sup>65</sup> Alexi Jones, "Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System," *Prison Policy Initiative* (March 2, 2021).

<sup>66</sup> Movement Advancement Project, *Policy Spotlight: Hate Crime Laws*, July 2021; Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021.

<sup>67</sup> Kai Wiggins, "The Dangers of Prosecuting Hate Crimes in an Unjust System," *American Constitution Society Expert Forum*, August 5, 2019.

<sup>68</sup> Masood Farivar, "Anti-Asian Hate Crime Crosses Racial and Ethnic Lines," *Voice of America News* (March 23, 2021).

those who engage in Anti-Asian violence are White.<sup>69</sup> Additionally, as has been discussed, members of many communities are reluctant to report their experiences to the police out of fear of dismissal or discrimination. This can lead to further inequities in who receives support following hate violence and how the criminal justice system responds to it.<sup>70</sup>

In addition to inequities in the criminal legal system, there is reason to believe that some hate crimes stem from tension and struggles between marginalized groups.<sup>71</sup> For example, in 2018, the Los Angeles County Human Rights Commission concluded that most hate crimes against Black people were committed by Latinx people and vice versa.<sup>72</sup> To the extent that this dynamic, as well as bias in the criminal legal system, are operative, intensified enforcement of hate crime laws may increase racial and other inequities in the criminal legal system.

In light of the limited capacity of the criminal legal system to meaningfully ameliorate the harm caused by hate crime and other bias-motivated incidents, the following section explores the possibility of developing restorative justice responses to hate crime that would help address and alleviate the harm it causes while also holding those who engage in it accountable. Restorative prevention would also be a crucial component of a robust RJ response to hate crime. Overall, investment in restorative justice would be a crucial component of an alternative response to hate crime that focuses on prevention, supporting survivors and the communities from which they are drawn, and addressing the root causes of harm based on hate.<sup>73</sup>

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<sup>69</sup> Janelle Wong, “Beyond the Headlines: Review of National Anti-Asian Hate Incident Reporting/Data Collection Published Over 2019-2020,” June 7, 2021.

<sup>70</sup> Movement Advancement Project, *Policy Spotlight: Hate Crime Laws*, July 2021.

<sup>71</sup> See Barbara Perry, *In the Name of Hate: Understanding Hate Crimes* (New York: Routledge, 2001).

<sup>72</sup> Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021, p. 14.

<sup>73</sup> As noted in the introduction, several other recent reports also make the case for this kind of shift in orientation. See Movement Advancement Project, *Policy Spotlight: Hate Crime Laws*, July 2021; Stanford Law and Policy Lab and Brennan Center for Justice, *Exploring Alternative Approaches to Hate Crime*, June 2021. See also Shirin Sinnar and Beth A. Colgan, “Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration,” *New York University Law Review Online* 59: 149- 170 (2020).



## PART II

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### RESTORATIVE JUSTICE: PRINCIPLES, PRACTICES, AND BENEFITS

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#### Understanding Restorative Justice

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Existing RJ initiatives in the United States have only addressed hate crimes in a sporadic and ad hoc manner.<sup>74</sup> However, interest in developing RJ responses to hate crime appears to be growing. In New York City, for example, a coalition of community-based organizations has called for a pilot RJ program for youth who commit hate-based harm.<sup>75</sup> In San Francisco, prosecutors recently dropped charges against a 20-year-old who videotaped an attack on an elderly Asian man after the victim expressed his interest in a restorative dialogue instead.<sup>76</sup> The following sections describe the nature, benefits, and challenges associated with restorative justice.

#### Restorative Justice Principles

RJ practices center the experiences and needs of the harmed party or parties. Interventions based on restorative justice principles generally “involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.”<sup>77</sup> From an RJ perspective, crime and other forms of harm (including bias-motivated incidents that may not constitute crimes) are primarily violations of people and of relationships—relationships between the responsible party and their family, friends, the people they have harmed, and the community.

RJ responses to harm thus differs notably from the criminal legal system approach. Whereas the latter focuses on the question of legal guilt, RJ processes center the needs of the harmed party. Whereas the criminal legal system focuses on the laws that were broken and the legally proscribed penalty, RJ asks: What is the nature of the harm that occurred? How can it be repaired? And who is responsible for this repair work?

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<sup>74</sup> Shirin Sinnar and Beth A. Colgan, “Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration,” *New York University Law Review Online* 59: 149- 170 (2020). For a few examples, see Robert Coates, Mark Umbreit, and Betty Vos, “Responding to Hate Crimes through Restorative Justice Dialogue,” *Contemporary Justice Review* 9: 7-21 (2006).

<sup>75</sup> NYC Against Hate, *NYC Against Hate Coalition Policy Framework: Investing in a Restorative Community-Based Approach*. This Coalition includes the Arab American Association of New York, The Audre Lorde Project, Brooklyn Movement Center, the Center for Anti-Violence Education, DRUM, Global Action Project, Jews for Racial and Economic Justice, Make the Road New York, and New York City Anti-Violence Project.

<sup>76</sup> Shirin Sinnar and Beth A. Colgan, “Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration,” *New York University Law Review Online* 59: 149- 170 (2020), p. 164.

<sup>77</sup> Howard Zehr, *Little Book of Restorative Justice* (Philadelphia, PA: Good Books, 2002).

## Common Misunderstandings about Restorative Justice

### MYTH

RJ ignores accountability.

RJ is the easy way out for people who cause harm.

RJ signals that harm is not being taken seriously.

RJ is compulsory and traumatic for people who have experienced harm.

### REALITY

RJ is focused on holding people who cause harm accountable for their actions in ways that are meaningful to survivors.

RJ processes require that people face up to, and be accountable for, the harm their actions cause, and make amends for those actions.

RJ takes a broad range of harms, including those that may not meet the definition of crime, seriously and centers the victims needs in a healing-centered process.

Participation in RJ is always voluntary. Studies show high levels of satisfaction with RJ interventions among victims.

When RJ is used as a response to harm, its practices are aimed at repairing the harm caused by the wrongdoing (restoration); encouraging appropriate responsibility for addressing needs and repairing the harm (accountability); and involving the impacted, including affected community members, in the resolution (engagement) wherever possible.<sup>78</sup> Restorative justice is always voluntary; no one should ever be compelled to participate. In the process of coming together to address harm and restore relationships, the affected parties are provided with an opportunity to heal.<sup>79</sup> Since harm is the central focus of a restorative framework, RJ requires a response that avoids committing further harm.

Restorative practices, which are described in greater detail below, can also be used to address and reduce conflict, hate, and bias in order to prevent hate crime and associated harms.

### Restorative Justice Practices

RJ is best understood as set of principles that guide alternative responses to harm and violence rather than as a fixed set of practices that are uniformly applied. When used after harm has occurred, direct interaction between the person who experienced harm and the person who caused it is at the heart of

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<sup>78</sup> Ibid.

<sup>79</sup> J. Llewellyn and R. Howse, *Restorative Justice: A Conceptual Framework* (Ottawa: Law Commission of Canada, 1998).

most (but not all) RJ initiatives.<sup>80</sup> Typically, specially-trained RJ facilitators meet with all affected parties, often many times, to prepare impacted parties for direct dialogue to ensure that the experience is not traumatizing for people who have experienced harm. These processes ultimately provide harmed parties the opportunity to meet the person(s) who harmed them in a safe and structured setting; to tell the person who caused the harm about its physical, emotional, and financial impacts; to receive answers to unanswered questions about the harm and the factors that led to it; and to be directly involved in developing a restitution plan going forward. Some RJ interventions are entirely based on the community with no connection to the criminal legal system; others work in partnership with criminal legal agencies to facilitate the diversion of eligible cases.

RJ has roots in certain indigenous practices and emerged in Western criminal legal systems in the 1970s. Core practices include “victim-offender mediation,” “victim-offender dialogues,” family group conferences, and circle processes.<sup>81</sup> (The use of quotation marks in the previous sentence reflects the fact that the term “offender” is no longer considered appropriate; alternative names for these practices are increasingly used). The first of these--mediations and dialogues--typically involve the harmed party, the person who caused the harm, a mediator/facilitator, and support persons for each participant. Ideally, these mediations result in a consensus agreement about activities the responsible party will undertake to meet the needs or expectations of the person who was harmed.<sup>82</sup>

Family group conferencing was introduced in the United States in the mid-1990s. Family group conferencing is an adaptation of a traditional Maori process for resolving community problems and involves a dialogue between the harmed party, the responsible party, an array of their supporters, and one or more facilitators. The dialogue is meant to explore what happened, the impact of the harm, and what needs to happen to make things as right as possible. Every participant has an opportunity to speak to the issues and to collectively develop an agreement about obligations going forward.

Circle processes are based on indigenous talking circles and tend to involve the largest number of participants. When used as a response to harm, they involve the person(s) who experienced harm and the person(s) who caused that harm, as well as affected community members in a facilitated dialogue. Circles thus involve “a broad holistic framework [that includes] crime victims and their families, an offender’s family members and kin, and community residents in the response to the behavior and the formulation of a sanction which will address the needs of all parties.”<sup>83</sup> The process often involves separate circles for the various parties before they are brought together to dialogue and determine an action plan.<sup>84</sup>

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<sup>80</sup> Howard Zehr, *Little Book of Restorative Justice* (Philadelphia, PA: Good Books, 2002). In some post-conviction contexts, “surrogate” victims who have experienced certain kinds of harm may share their experiences with people who have caused that type of harm.

<sup>81</sup> Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale, PA: Herald Press, 1990).

<sup>82</sup> Kay Pranis, “Restorative Justice in Minnesota and the USA: Development and Current Practice,” Visiting Experts’ Papers, 123rd International Senior Seminar, Resource Material Series 63: 111-23 (2004).

<sup>83</sup> Curt T. Griffiths, “Sanctioning and Healing: Restorative Justice in Canadian Aboriginal Communities,” *International Journal of Comparative and Applied Criminal Justice* 20: 195-208 (1996).

<sup>84</sup> Kay Pranis, “Restorative Justice in Minnesota and the USA: Development and Current Practice,” Visiting Experts’ Papers, 123rd International Senior Seminar, Resource Material Series 63: 111-23 (2004).

As described above, these techniques can be used to promote healing and accountability after harm has occurred. Conferences, circle processes, dialogue, and targeted mentoring can also be used to prevent conflict and hate from escalating. Used in this manner, preventative restoration can be an important part of a robust RJ response to hate crime and other harms.

Although systematic information about the prevalence of RJ programs in the United States does not exist, it appears that initiatives based on this philosophy have expanded in recent decades. As of 2015, thirty-three states had enacted laws that mention or require some form of RJ in certain cases.<sup>85</sup> In 2021, the Oregon state legislature allocated over \$4 million in grants aimed at supporting the development of RJ work.<sup>86</sup>

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## Benefits of Restorative Justice

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There is a substantial body of evidence that interventions informed by RJ principles improve survivor well-being. Many also reduce recidivism, and some reduce reliance on prisons and jails. In a review of this literature, Professor Carrie Menkel-Meadow concluded that a “variety of different studies on at least three continents” substantiated claims that restorative justice “creates greater compliance with agreements or judgments, reduces imprisonment (and therefore costs to the system), provides greater satisfaction for both victims and offenders, and reduces recidivism rates.”<sup>87</sup> Each of these topics is discussed below.

### Victim Satisfaction

When given the option, many people who have experienced violence and other harms choose to participate in RJ alternatives. For example, than 90 percent of the survivors of violent crime offered a restorative justice alternative through Common Justice in Brooklyn accepted that offer.<sup>88</sup> In the United Kingdom, more than six in ten surveyed members of the LGBTQ community reported that they would prefer a restorative justice intervention over an enhanced prison sentence.<sup>89</sup> Victims who choose to participate in RJ-mediated dialogues and circles do so for a variety of reasons: to help (and pressure) the responsible party to address the underlying issues; to learn why the responsible party

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<sup>85</sup> Shannon M. Sliva and Carolyn G. Lambert, “Restorative Justice Legislation in the American States: A Statutory Analysis of Emerging Legal Doctrine,” *Journal of Policy Practice* 14, 2 (2015).

<sup>86</sup> Enrolled House Bill 2204, available at <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2204/Enrolled>

<sup>87</sup> Carrie Menkel-Meadow, “Restorative Justice: What Is It and Does It Work?,” *Annual Review of Law and Social Sciences* 10.3–10.4 (2007).

<sup>88</sup> Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and the Road to Repair* (New York: The New Press, 2021).

<sup>89</sup> Jenny Patterson, Mark A. Walters, Rupert Brown, and Harriet Fearn, *The Sussex Hate Crime Project: Final Report* (University of Sussex, 2018).

committed the harm/crime; to communicate to the responsible party the impact of the crime/harm; and to increase the chances that the responsible party will not harm others in the future.<sup>90</sup>

Studies show that parties who participate in RJ processes report high levels of satisfaction.<sup>91</sup> In fact, most victims and responsible parties express high levels of satisfaction across sites, cultures, and offense seriousness. Typically, for example, 80 to 90 percent of participants report satisfaction with mediated dialogue processes.<sup>92</sup> For any given mediation, the victim and the responsible party tend to report similar levels of satisfaction, regardless of the type of harm or the restitution agreed upon.

In addition, research tracing the impact of RJ conferencing on posttraumatic stress symptoms found that RJ practices notably reduce the traumatic impact of crime. For example, participants in RJ conferences who experienced robbery or burglary reported a more than 40 percent reduction in posttraumatic stress symptoms immediately, and these benefits persisted six months after participation.<sup>93</sup> The authors of one recent meta-analysis of RJ alternatives to the traditional juvenile justice system found that “Victims reported improved perceptions of fairness, greater satisfaction, improved attitudes toward the juvenile, are more willing to forgive the offender, and are more likely to feel that the outcome was just.”<sup>94</sup> Research suggests that victims’ satisfaction is likely to correlate directly with their perception of the process rather than with the outcome.<sup>95</sup> That is, harmed parties who feel that the process was conducted in a fair and thoughtful manner are likely to report high levels of satisfaction, regardless of the nature of the restitution or outcome.

Victim satisfaction also reflects increased feelings of safety that RJ processes tend to foster. For example, one study found that victims who participated in mediation in lieu of the criminal legal process reported not only feeling safer than they had before the mediation, but also before the harm occurred. By contrast, victims who went through traditional court processes reported that the experience had substantially *lessened* their sense of safety.<sup>96</sup> Survivor satisfaction also appears to reflect the positive impact of RJ processes on perceptions of fairness. A study of people who experienced burglary in Minneapolis, for example, found that 80 percent of those who went through RJ mediation

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<sup>90</sup> Jenny Patterson, Mark A. Walters, Rupert Brown, and Harriet Fearn, *The Sussex Hate Crime Project: Final Report* (University of Sussex, 2018); Mark Umbreit and Marilyn Armour, *Restorative Justice Dialogue: An Essential Guide for Research and Practice* (New York: Springer, 2011).

<sup>91</sup> Mark Umbreit, Betty Vos, Robert Bl Coates, and E. Lightfoot, “Restorative Justice in Action: Restorative Justice in the 21st Century,” *Marquette Law Review* 89, 2: 251-304; David B. Wilson, Ajima Olaghere, and Catherine S. Kimbrell, *Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-analysis* (Washington D.C.: Office of Juvenile and Delinquency Prevention, 2017).

<sup>92</sup> Mark Umbreit, Betty Vos, Robert Bl Coates, and E. Lightfoot, “Restorative Justice in Action: Restorative Justice in the 21st Century,” *Marquette Law Review* 89, 2: 251-304.

<sup>93</sup> Caroline M. Angel et al., “Short-Term Effects of Restorative Justice Conferences on Post-Traumatic Stress Symptoms among Robbery and Burglary Victims,” *Journal of Experimental Criminology* 10, 3: 291-307 (2014).

<sup>94</sup> David B. Wilson, Ajima Olaghere, and Catherine S. Kimbrell, *Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-analysis* (Washington D.C.: Office of Juvenile and Delinquency Prevention, 2017).

<sup>95</sup> Jamie P. Beven, Guy Hall, Irene Froyland, Brian Steels and Dorothy Goulding, “Restoration or Renovation?: Evaluating Restorative Justice Outcomes,” *Psychiatry, Psychology and Law* 12: 194-2006 (2005).

<sup>96</sup> *Ibid.*

experienced the process as fair, compared with only 38 percent of those who had participated in standard court processes.<sup>97</sup>

## Reductions in Recidivism

Although RJ often focuses on repairing harm in the present situation, the efficacy of any form of crime-related intervention is often measured in terms of its capacity to reduce recidivism. Moreover, many survivors elect to participate in RJ processes precisely because they hope that it will ensure that the person who harmed them will not hurt others in the future.<sup>98</sup> For these reasons, many studies assess whether RJ processes impact the likelihood of future harm.

Although there are significant methodological challenges associated with these evaluations, many studies do find that RJ programs reduce future violations.<sup>99</sup> One recent and exhaustive meta-analysis, for example, found that RJ conferences cause a “modest but highly cost-effective reduction in the frequency of repeat offending by the consenting incarcerated/ formerly incarcerated individuals randomly assigned to participate in such a conference.”<sup>100</sup> Another meta-analysis of a sample of 11,950 juveniles found that RJ programs generated a 34 percent reduction in recidivism.<sup>101</sup> In addition, some studies find that when former participants did reoffend, their crimes were less serious than those committed by people who had not gone through RJ processes.<sup>102</sup>

Many of these studies pertain to RJ processes that occur after conviction. Less is known about RJ informed diversion programs that keep people out of the criminal legal system. However, an evaluation of an RJ program that was designed to divert defendants from incarceration found that recidivism rates were significantly lower for program participants than for members of the comparison group.<sup>103</sup> The aforementioned meta-analysis of RJ programs for juveniles similarly found that diversion programs were associated with greater reductions in recidivism than non-diversion models.<sup>104</sup>

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<sup>97</sup> Mark Umbreit, Betty Vos, Robert Bl Coates, and E. Lightfoot, “Restorative Justice in Action: Restorative Justice in the 21st Century,” *Marquette Law Review* 89, 2: 251-304.

<sup>98</sup> Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and the Road to Repair* (New York: The New Press, 2021).

<sup>99</sup> Mark Umbreit, Betty Vos, Robert Bl Coates, and E. Lightfoot, “Restorative Justice in Action: Restorative Justice in the 21st Century,” *Marquette Law Review* 89, 2: 251-304.

<sup>100</sup> Lawrence W. Sherman, Heather Strang, Evan Mayo-Wilson, Daniel J. Woods, and Barak Ariel, “Are Restorative Justice Conferences Effective in Reducing Repeat Offending,” *Journal of Quantitative Criminology* 31, 1: 1-24 (2015).

<sup>101</sup> William Bradshaw and David J. Roseborough, “Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism,” *Federal Probation* 69, 2 15-21 (2005).

<sup>102</sup> Mark Umbreit, Betty Vos, Robert B. Coates, and E. Lightfoot, “Restorative Justice in Action: Restorative Justice in the 21st Century,” *Marquette Law Review* 89, 2: 251-304.

<sup>103</sup> Mark S. Umbreit, Betty Vos, and Robert B. Coates, “Restorative Justice Dialogue: Evidence-Based Practice,” *Contemporary Justice Review* 10, 1: 23-41 (2007).

<sup>104</sup> David B. Wilson, Ajima Olaghere, and Catherine S. Kimbrell, *Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-analysis* (Washington D.C.: Office of Juvenile and Delinquency Prevention, 2017).

Overall, then, there is reasonably strong evidence that RJ practices, particularly those that keep people out of the criminal legal system, reduce recidivism relative to conventional criminal legal processes. Importantly, most of these studies evaluate interventions that mainly involve facilitation of dialogue between harmed and responsible parties; the trauma of those who have caused harm is addressed in some, but not all, of these programs. It is likely that doing so in a more consistent manner would generate further reductions in recidivism.

## Restorative Justice as a Response to Violence

In the United States, many RJ programs exclude situations that involve violence.<sup>105</sup> Yet RJ may be most effective in such cases. For example, one Canadian study found no significant impact on future violations for individuals convicted of low-level offenses, but did report a 38 percent reduction in recidivism for people who committed violent crimes.<sup>106</sup> Another study found a direct and positive correlation between the long-term success of the program (measured mainly in terms of recidivism) and the seriousness of the offense.<sup>107</sup> The implication of these findings is that RJ interventions may have the most potential to facilitate victim healing and reduce recidivism if they address instances of interpersonal violence.<sup>108</sup>

These findings are consistent with evidence that survivors of violence experience the greatest level of trauma, and thus that a healing-centered approach will provide the most benefit to them. In fact, the Common Justice initiative described by Danielle Sered in *Until We Reckon* works only with people who experienced violent crime, and has achieved remarkable results.<sup>109</sup> For these reasons, expansion of RJ-based diversion approaches that include, and perhaps even prioritize, cases involving violence is warranted.

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## Benefits of Restorative Justice in the Context of Hate Crime

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As noted previously, restorative justice has not been used extensively in the United States to respond to hate crime. However, Professor Mark Walters, a criminologist who studies the use of RJ processes to prevent and respond to hate crime in the United Kingdom, finds that restorative justice practices notably improved survivor well-being by enabling them to give voice to their experiences and feelings,

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<sup>105</sup> David R. Karp and Olivia Frank, “Anxiously Awaiting the Future of Restorative Justice in the United States,” *Victims and Offenders* 11: 50-70 (2016).

<sup>106</sup> Lawrence W. Sherman, Heather Strang, Evan Mayo-Wilson, Daniel J. Woods, and Barak Ariel, “Are Restorative Justice Conferences Effective in Reducing Repeat Offending,” *Journal of Quantitative Criminology* 31, 1: 1-24 (2015).

<sup>107</sup> Paul McCold and Benjamin Wachtel, *Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project* (Community Service Foundation, 1998).

<sup>108</sup> See also Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and the Road to Repair* (New York: The New Press, 2021).

<sup>109</sup> *Ibid.*

receive support from facilitators, and obtain “assurances of desistance” from those who had hurt them.<sup>110</sup>

Although this and other studies of RJ responses to hate crime are based on limited data, there are a number of reasons to believe that restorative justice responses to hate crime would offer many advantages relative to the traditional criminal legal process. These advantages include a variety of benefits for victims; a comparatively broad scope that would enable RJ initiatives to address a wide range of hate and bias-related harms; and the fact that RJ initiatives may help reduce the harms of mass incarceration and its associated racial inequities, especially if paired with diversion. The following section describes these benefits in greater detail.

## Benefits for Victims

Many harmed parties report that RJ initiatives offer a more holistic and satisfying response than the traditional legal response. Unlike the criminal legal process, RJ interventions offer survivors of harm the opportunity to describe their experiences and to express their feelings about them; to ask questions and learn about the circumstances that led to the harm; to provide detailed accounts of the consequences of their victimization to the person who caused harm; and to participate in the identification of reparations that are meaningful to them. Each of these benefits to harmed parties is described below.

### *Victim Story-Telling*

One of the cornerstones of restorative justice is that it offers victims an opportunity to narrate their experiences on their own terms. In the process, they are given space to describe the specific harms that they suffered, and to provide an explanation for why those harms have been impactful. This enables them to understand their own experiences more fully and to have their emotional realities validated by facilitators and others.

Currently, most victims of hate crime do not enjoy these opportunities. In the small percentage of cases in which charges are brought, victims are often allowed to participate in traditional criminal justice procedures, but their stories are often understandably constrained by the rules of criminal procedure. By contrast, in restorative justice interventions, victims commonly are given greater license to narrate their stories, and specifically to recount the emotional harms that they have suffered. This provides them a more complete opportunity to be heard, which can be instrumental in their efforts to heal.<sup>111</sup>

Such efforts at healing are of particular importance in the hate crime context, given that individuals are targeted because of who they are. As Mark Walters argues, “The enhanced emotional traumas caused by hate crime are intrinsically connected to the fact that targeted victimization goes to the very

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<sup>110</sup> Mark Austin Walters, *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms* (Oxford University Press, 2014).

<sup>111</sup> Judith Kay, “Murder Victims’ Families for Reconciliation: Storytelling for Healing, as Witness and in Public Policy,” in D. Sullivan and L. Tift (eds) *Handbook of Restorative Justice: A Global Perspective* (Abingdon: Routledge, 2008); A. Morris and W. Young, “Reforming Criminal Justice: The potential of Restorative Justice,” in H. Strang and J. Braithwaite (eds), *Restorative Justice: Philosophy to Practice* (Dartmouth: Ashgate Publishing, 2000).



core of the victim's 'self', i.e., incidents tear at the very essence of who a victim is."<sup>112</sup> Because of the depth of harm that a hate crime can create, attention to a victim's emotional realities can benefit them significantly.

Even in the unlikely event that a successful prosecution does occur, it will almost certainly not foster the type of constructive and educative processes that can provide a deeper understanding of the harms that were caused, and a fuller opportunity for the wrongdoer to understand the consequences of their actions. Hate crime incidents are likely multi-layered, particularly if they emerge between parties that have some pre-existing relationships. A dialogic process can help unearth and explore these layers in a way that the adversarial criminal process is unlikely ever to accomplish.

### *Victim Sense-Making*

Survivors of crime often want to understand the dynamics of the criminal incident that befell them. They often wish to understand what motivated the person who caused harm. They often want to understand why they were the targeted victim, what the person who harmed them was thinking, and why they committed the act in question. Restorative justice interventions often allow the victim to learn what motivated the incident and to have other basic questions answered. This process can provide the victim with a greater opportunity to make sense of the crime, particularly one that they experienced as random. Absent such information, victims often remain deeply fearful of potential future incidents.

This ability to learn about the circumstances that led to one's victimization is particularly important in the hate crime context because many incidents involve individuals whose paths intersect with some frequency. This can increase the vulnerability that many victims feel on an ongoing basis.<sup>113</sup> For this reason, and because RJ interventions generally promote feelings of safety among people who have experienced harm,<sup>114</sup> any efforts to reduce that vulnerability by helping the victim understand how and why the offense occurred are worth pursuing.

### *Educational Opportunities*

Victims often hope that the person who caused harm does not continue to hurt others. Restorative justice provides an opportunity for the person who caused harm to develop empathy, to challenge their bigoted beliefs, and to understand the impacts of their actions more fully. In the case of hate crime, the person who caused harm can also develop a greater understanding of the impact of their actions on the wider community of which the victim is a part. To the extent that restorative justice helps reduce recidivism, it is likely a consequence of this educative aspect of the process and the empathy that it often promotes.

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<sup>112</sup> Mark Austin Walters, *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms* (Oxford University Press, 2014).

<sup>113</sup> *Ibid.*

<sup>114</sup> Jamie P. Beven, Guy Hall, Irene Froyland, Brian Steels and Dorothy Goulding, "Restoration or Renovation?: Evaluating Restorative Justice Outcomes," *Psychiatry, Psychology and Law* 12: 194-2006 (2005); Valerie Strang and Lawrence Sherman, "Victim Evaluations of Face-to-Face Restorative Justice Conferences: A Quasi-Experimental Analysis," *Journal of Social Issues* 62: 281-306 (2006).

Hate crime is driven in part by an internal set of attitudes that a restorative justice process can help to expose.<sup>115</sup> As Van Stokkom writes, restorative justice can result in a “moral learning process” that limits the possibility of re-offending.<sup>116</sup> This occurs when participants are able to see the humanity of the other and to allow stereotypes to lose their power. In Mark Walters’s words: “In this sense, victims’ stories aid not just offenders’ understanding of the harms they have caused, but also their appreciation of the cultural and identity differences of those involved.”<sup>117</sup>

### *Opportunities for Reparations*

Restorative justice understands criminal wrongdoing in terms of the harms it causes in the communities where it occurs. When harms occur, repair is necessary for healing to occur. Restorative justice interventions commonly allow victims to participate in the construction of appropriate acts of repair. Variation in possible repairs is extensive, and much wider than the available options within the traditional criminal process. People who cause harm might, for example, be required to perform service for an organization that supports the community of which the victim is a part. Or they may be asked to learn more about the history of oppression that the community has experienced. In one case in New York City, the man who had violently assaulted another man ultimately taught the victim various self-defense techniques, which sharply reduced the extent to which he struggled with symptoms of PTSD.<sup>118</sup>

Through such actions, the person who caused harm can gain a greater appreciation for why their acts were so impactful for the victim and their community. Moreover, survivors can have direct experience with the repair process. Further, victims will witness the person who caused harm taking responsibility for their actions, which may help to lessen any blame that they may be placing on themselves for their own victimization.<sup>119</sup> Importantly, any plan for reparations should include a clear promise of future desistance on the part of the wrongdoer.

The above attributes of restorative justice are largely absent from the traditional criminal process, which does not provide the same opportunities for victim story-telling or sense-making, for the education of people who cause hate-related harm, or for creativity in reparations. In fact, a more punitive approach can often work to alienate the wrongdoer further and thereby only intensify their animus toward members of communities that are vulnerable to hate crime. As Mark Walters puts it,

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<sup>115</sup> Alyssa Shenk lyssa Shenk, “Victim-Offender Mediation: The Road to Repairing Hate Crime Injustice,” *Ohio State Journal of Dispute Resolution* 17: 185-217 (2001).

<sup>116</sup> Bas Van Stokkom, “Moral Emotions in Restorative Justice Conferences: Managing Shame, Designing Empathy,” *Theoretical Criminology* 6: 339-360 (2002).

<sup>117</sup> Mark Austin Walters, *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms* (Oxford: Oxford University Press 2014), p. 227.

<sup>118</sup> Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and the Road to Repair* (New York: The New Press, 2021).

<sup>119</sup> Mark Austin Walters, *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms* (Oxford: Oxford University Press 2014).

“Any assertion that punishing an offender more will make him, or others, hate less is not only unsupported empirically but is also theoretically flawed.”<sup>120</sup>

Because restorative justice is not yet common in the United States, many victims do not understand how it works and hence may be initially reluctant to participate in such interventions. But an examination of these dynamics in the United Kingdom demonstrated that victims of hate crimes become more interested in restorative justice when they learn more about it, and often favor it over the traditional process when given an opportunity to understand it more fully.<sup>121</sup> It may take more than one conversation about restorative justice before victims feel comfortable participating in it.<sup>122</sup> This is largely because most crime victims are not aware of restorative justice and its underlying principles. However, given the overall levels of satisfaction that victims express with restorative justice, this educative effort may well be worth pursuing.

### RJ’s Comparatively Broad Scope

As has been discussed, roughly half of all hate crime survivors do not report their victimization to the police. Many reported incidents are not recorded as such by law enforcement. And prosecutors file charges in a tiny fraction of all hate crime incidents that are reported to the police. In other words, any benefits that criminal conviction allegedly provides are not realized in the vast majority of hate crime incidents. In such instances, the harms of the incident will likely remain unaddressed and the needs of victims largely unmet.

By contrast, RJ initiatives can include people who do not wish to report the crime/harm they experienced to the police and who have experienced harm that may not meet the legal definition of a hate crime. They can also serve harmed parties who do report their victimization to law enforcement, but where the offense is not identified by the police as a hate crime, where charges are not filed, and/or where the evidentiary burden of proving intent means that a hate crime charge is unlikely to be sustained. Indeed, the very lack of prosecutions arguably provides strong justification for developing mechanisms by which restorative justice might be pursued when the traditional criminal process cannot or will not be invoked. Finally, RJ initiatives that involve group conferencing and healing circles offer a way to involve, and promote healing among, family, friends, and community members who are also harmed.

Below, we describe some of the various ways RJ initiatives can serve a comparatively large number of people who have experienced a hate-related harm and are facing a broad range of circumstances.

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<sup>120</sup> Mark Austin Walters, *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms* (Oxford: Oxford University Press, 2014).

<sup>121</sup> Mark Walters, Jenny Paterson, and Rupert Brown, “Enhancing Punishment or Repairing Harms? Perceptions of Sentencing Hate Crimes Amongst Members of a Commonly Targeted Victim Group,” *British Journal of Criminology* 61: 61-84 (2021).

<sup>122</sup> Ben Andrew, *Making Restorative Justice Happen for Hate Crime in your Police Area* (London: Why Me?, 2021).

### *RJ in the Community: Prevention and Response to Harm*

Some RJ initiatives are entirely independent of the criminal legal system. Some such models tend to serve people who do not wish to report their victimization to the police. Alternatively, some community-based models engage in RJ prevention in neighborhoods or schools where tensions are simmering between one or more groups. Preventative interventions in these contexts might take the form of circles, where community members gather to share their experiences with one another in hopes that greater appreciation for cultural differences might emerge. In this way, ongoing tensions might be reduced through the types of open and respectful communication that is the hallmark of effective restorative justice.<sup>123</sup> These efforts at community-wide communication can vary in the size of the group that they target, the frequency with which they gather, and the depth of the conversation they pursue.

There is evidence that interventions of this type can reduce tensions in communities where divisions between groups are generating significant levels of conflict.<sup>124</sup> Community-based RJ initiatives can also provide support services for individuals who have experienced harm and, where the person who has caused the harm is willing to participate, facilitate dialogue aimed at accountability and healing.

### *RJ as Diversion from the Criminal Legal System*

In some cases, organizations that provide RJ services and facilitation may coordinate with criminal legal authorities to enable the diversion of some types of cases from the criminal legal system. Some such initiatives focus on youth, whose long-term well-being is compromised by legal system involvement. A program in Oakland, California called Community Works West, for example, accepts such diverted cases. If a restorative intervention is deemed successful, then all potential charges are dropped.<sup>125</sup> Similarly, in King County, Washington, Restorative Community Pathways receives referrals from the King County Prosecuting Attorney's Office. As with all restorative interventions, the goals are to ensure that the parties who caused harm gain a deeper appreciation of the implications of their actions and pursue appropriate actions through which they can repair the damage they created.

Both Community Works West and Restorative Community Pathways are examples of “pre-charging” RJ initiatives: upon successful completion of the intervention, no charges are filed against the person who committed harm. This approach has the added benefit of reducing criminal convictions and incarceration. This is also useful from a public safety perspective because conviction and incarceration have numerous adverse consequences that generally make it more difficult for people to establish stable and constructive lives.<sup>126</sup>

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<sup>123</sup> Robert Coates, Mark Umbreit, and Betty Vos, *Restorative Justice Circles in South Saint Paul, Minnesota* (St. Paul: Center for Restorative Justice and Peacemaking, University of Minnesota, 2000).

<sup>124</sup> Robert Coates, Mark Umbreit, and Betty Vos, “Responding to Hate Crimes through Restorative Justice Dialogue,” *Contemporary Justice Review* 9: 7-21 (2006).

<sup>125</sup> sujatha baliga, Sia Henry, and Georgia Valentine, *Restorative Community Conferencing: A Study of Community Works West's Restorative Justice Youth Diversion Program in Alameda County* (Oakland: Impact West, 2017).

<sup>126</sup> National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by Jeremy Travis, Bruce Western, and Steve Redburn (Washington, D.C.: The National Academies Press, 2014).

Other diversionary initiatives, such as Common Justice in Brooklyn, New York, partner with prosecutors and the courts to divert cases after charges have been filed. In such programs, charges may be reduced or dismissed pending a resolution that is satisfactory to all. Common Justice focuses mainly on cases involving inter-personal violence such as assault or robbery. For cases that meet certain eligibility requirements, RJ facilitators contact victims and offer the option of participating in an RJ process and receiving on-going support. If the process meets victims' needs, and the responsible party completes the terms of the collectively-created agreement, the charges are reduced to a misdemeanor and incarceration is avoided.<sup>127</sup>

### *Post-Conviction Restorative Justice*

Finally, some RJ interventions occur after conviction. One kind of post-conviction RJ intervention serves mainly to assist with the sentencing component of the traditional criminal process. For example, community sentencing circles have been developed in some jurisdictions to help determine the appropriate punishment in the aftermath of a crime. These circles will likely include the person who caused harm, the victim, family members, and community members. Through discussion and full exploration of the relevant harms, such circles generate ways of making amends that are seen to be responsive to the harms and to the relevant parties.

Alternative sentences in response to hate crimes could include service in the impacted community. For example, a Sikh Coalition lobbied in one instance for the perpetrator of an incident in their community be required to serve a continuous 72-hour community service with their group in order to better to understand Sikh culture.<sup>128</sup> These reparations are typically subject to the approval of prosecutors and/or judges. Circle members might also be tasked with ensuring completion of any reparations, and potentially to recommend the case back for prosecution if the offender is non-compliant.<sup>129</sup>

Other post-conviction RJ interventions such as Collective Justice's HEAL program are based primarily in jails or prisons and have no impact on sentencing, although they could conceivably impact post-conviction review processes such as ISRB review and clemency.<sup>130</sup> These interventions seek to facilitate dialogue between people who are incarcerated and the person(s) who experienced similar kinds of harm and, in the process, facilitate a healing process for victims and responsible parties alike. This approach may also reduce recidivism among participants who are released from jail or prison.

RJ prevention and RJ initiatives that occur at any stage in the process and use group conferencing and circles to respond to harm have the potential to involve, and promote healing among, family, friends,

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<sup>127</sup> For more information about Common Justice, see Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and the Road to Repair* (New York: The New Press, 2021).

<sup>128</sup> Alex D. (pseudonym), "My Life Changed After I Assaulted a Sikh Man," *sikh Coal.* (Dec. 18, 2014), <https://www.sikhcoalition.org/blog/2014/my-life-changed-after-i-assaulted-a-sikh-man>.

<sup>129</sup> Brian Sapir, "Healing a Fractured Community: The Use of Community Sentencing Circles in Response to Hate Crimes," *Cardozo Journal of Conflict Resolution* 9: 207-258. (2009).

<sup>130</sup> For more information about HEAL, see <https://www.collectivejusticenw.org/healing-circles>

and community members who are also harmed by hate crime and other bias-motivated incidents. The traditional legal process simply does not address these harms in a systematic way.

In short, because RJ processes can serve many direct and vicarious victims, and can occur in cases in which the harm is and is not reported to the police, these processes have the potential to benefit far more people who have experienced hate-based harm. They can also be used to reduce the likelihood that hate-related harms will occur in the first place.

## RJ Does not Compound the Harm Associated with Mass Incarceration and Racial Inequities

Finally, RJ initiatives can help reduce over-reliance on prison and jail and help ensure that the enforcement of crime does not worsen racial and ethnic inequities in the criminal legal system. Incarceration rates are quite high in Washington state by historical and comparative standards. In fact, if Washington was a country, it would have the sixth highest incarceration rate in the world.<sup>131</sup> In 2016, Washington's incarceration rate was more than three times higher than the average rate of the more than 30 Organization for Economic Co-operation and Development (OECD) countries.<sup>132</sup> Insofar as mass incarceration has many adverse consequences for individuals, families, and communities,<sup>133</sup> responses to hate crime that do not fuel mass incarceration or worsen racial inequities in it are desirable.

The capacity of RJ frameworks to serve as an alternative to the traditional criminal legal system is most apparent when initiatives divert cases from the criminal legal system. However, even community-based alternatives may reduce the scope and scale of the criminal legal system by providing community-based alternative ways of holding people accountable for the harm they have caused.

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## Challenges in Developing Restorative Justice as a Response to Hate Crime

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While restorative justice responses to bias-motivated incidents and hate crimes offer many benefits, developing such responses also poses some challenges. These are reviewed below. We begin with general challenges that characterize any RJ initiative, then focus on those that pertain to hate crime in particular.

### General Challenges in Restorative Justice

RJ initiatives generally face several key challenges. The first has to do with the limited access to RJ that results when post-harm interventions only facilitate dialogue between people who experienced harm and *the specific person* who harmed them. If the person who caused the initial harm is never arrested and

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<sup>131</sup> Emily Widra and Tiana Herring, "World Incarceration Rates if Every State Were a Country," Prison Policy Initiative. Available at <https://www.prisonpolicy.org/global/2021.html>

<sup>132</sup> Katherine Beckett and Heather Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State* (ACLU of Washington, 2020).

<sup>133</sup> National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by Jeremy Travis, Bruce Western, and Steve Redburn (Washington, D.C.: The National Academies Press, 2014).

convicted, and is not identified through some other process, or is identified but is unwilling or unable to participate in a RJ intervention in a constructive manner, then harmed parties are unable to benefit from many existing RJ programs. This is an important limitation.

One possible solution is to encourage the involvement of “surrogate” victims: harmed parties who wish to share their experiences with people who have caused similar kinds of harm. For example, the Insight Prison Project in California and Collective Justice’s HEAL program in Washington state arrange for people who have experienced certain kinds of harm (such as robbery or assault) to dialogue with people who were convicted of those same offenses. Many of the survivors who participate in these processes report that doing so is extremely valuable to their own healing, even though they have not communicated with the person who harmed them.<sup>134</sup> It is unclear whether this approach will yield reductions in recidivism, though many formerly incarcerated people report that participation in these programs expedited their own maturation, healing, and recovery.<sup>135</sup>

Second, the success of an RJ-based intervention that does involve the directly involved parties depends on responsible parties’ willingness and ability to engage in a dialogue without further harming the person who experienced trauma. Survivors who wish to participate in an RJ process are unable to do so when these conditions do not exist (although here, too, the use of surrogates may be helpful). Increased investment in training and in the process of preparing people who have caused harm to participate in RJ processes may help to address this constraint.

Third, cultural differences, bias, and racism cast a shadow over attempts to build RJ frameworks that benefit everyone. For example, there is evidence that schools with more Black students are less likely to employ RJ techniques than schools with fewer Black students.<sup>136</sup> The risk of maintaining or exacerbating preexisting racial disparities in the criminal justice system is heightened when RJ initiatives are not intentionally race-conscious. Practitioners should be aware of the role of racial and other biases, and policymakers and practitioners alike should take active steps to ensure racial equity in the availability and process of RJ.

Fourth, community support for all of the parties involved is key to the success of RJ initiatives. Victims will likely need to be supported as they prepare to share their story and to participate in the reparations process. Those who cause harm will also need support, in part to help to ensure accountability. Such support people can help make plain why bias is not acceptable and why hate incidents deserve repair. They can also ensure that the party who caused harm follows through on any commitments they made for reparations. For restorative justice efforts to work, then, all relevant parties will need to be able to draw upon support. In instances where such support is not available, restorative practices face a notable obstacle to potential success.

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<sup>134</sup> Katherine Beckett and Martina Kartman, *Violence, Mass Incarceration, and Restorative Justice: Promising Possibilities* (University of Washington Center for Human Rights and West Coast Poverty Center, 2016).

<sup>135</sup> *Ibid.*

<sup>136</sup> Allison Ann Payne and Kelly Welch, “Restorative Justice in Schools: The Influence of Race on Restorative Discipline,” *Youth & Society* 2013: 1-26 (2013).

## Challenges in Utilizing Restorative Justice as a Response to Hate Crime

### *Under-Reporting of Hate Crimes and Bias Incidents*

The under-reporting of hate crime makes it difficult to ascertain precisely which communities are most affected by it. It also makes it difficult to understand the range of underlying dynamics and hence to determine what types of restorative justice interventions might be most efficacious. For this reason, it is currently difficult to precisely identify the best types of restorative justice interventions to pursue in the aftermath of hate crime in Washington State. These decisions will best be made at the local level by members of communities.

### *The Role of Mental Illness*

The role of mental illness in some hate crimes and bias incidents was also noted previously. This reality needs careful consideration in the context of possible restorative justice interventions. All parties in the process must be in a position to understand the emotional realities of others and to take full cognizance of the harms that their behavior caused. In some instances, mental health treatment may need to precede any restorative justice interventions. Any effort to implement restorative justice in response to hate crime must take cognizance of the role that mental illness can play in such incidents and must determine whether and how an intervention can proceed in such circumstances.

### *Power Asymmetries in the Context of Hate and Bias*

Parties in restorative justice encounters must be in a position to listen to and learn from each other. Bias and hate may interfere with this process. Facilitators need to be trained specifically on the issues associated with hate crimes and bias incidents, and must be prepared to assist both victims and responsible parties to engage constructively with each other, or with surrogates. If dialogues are to occur, all parties must be genuinely open to others. If a person who committed hate-related harm remains committed to racist or other problematic ideologies, RJ dialogue may not occur. Certainly, victims need to be free of any fear of re-victimization that might result from encountering an unrepentant wrongdoer. Trained facilitators will be required to distinguish such situations and to properly prepare individuals where a restorative process might yield genuine benefits. Such facilitators will also need to discontinue any restorative processes when the circumstances do not portend success.

If any face-to-face conversations are to occur, facilitators must ensure that all parties understand the ground rules for the conversation. Further, the facilitator must be willing to enforce those rules if they are violated.<sup>137</sup> It will be important for facilitators to avoid subjecting people who have experienced racist or other kinds of hate-based harm to “coerced compassion” – that is, (often) racialized or gendered expectations that victims experience or express compassion and forgiveness rather than anger. All RJ initiatives require that victims be given the opportunity to express the full range of their emotions and needs, and treat all emotional responses to victimization as valid.

### *Misunderstandings about Restorative Justice*

Public understanding of restorative justice in the United States appears to be quite limited. Even criminal justice professionals commonly describe restorative justice in inaccurate terms, failing to

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<sup>137</sup> Robert Coates, Mark Umbreit and Betty Vos, “Responding to Hate Crimes through Restorative Justice Dialogue,” *Contemporary Justice Review*, 9:7-21 (2006).



recognize it as, in part, a means of holding people who cause harm accountable. If parties impacted by bias-motivated incidents are to participate in restorative processes, it is likely that they will need to be educated on the basic attributes of restorative justice, as well as its potential upsides and downsides.<sup>138</sup> Any program aimed at implementing restorative justice in response to hate crime will likely need to develop robust mechanisms by which to dispel common myths about it and to explain clearly why victims might wish to pursue it.

In addition, it will be important to convey that any RJ initiatives that are developed to address hate crime do not signify that these harms are less important than other forms of harm. Rather, they are needed to ensure that the harm caused by hate-related victimization is recognized as damaging, particularly because it is too often unaddressed.

### *The Boundaries and Role of Community*

RJ initiatives that involve group conferencing and circles have the potential to involve, and promote healing among, family, friends, and community members who are also harmed by hate crime. This represents a significant advantage over the traditional criminal legal process. At the same time, expansion of RJ processes to include community members can raise difficult questions about who is part of the community and who can speak for it. This will be especially complex when no obvious community boundaries exist and people who share some aspect of the victims' identity seek to influence the response to the harm in question. RJ interventions will need to carefully consider how to identify guidelines for determining who can participate in group conferencing and circle processes.

### *The Underdevelopment of a Restorative Justice Infrastructure*

Perhaps the biggest challenge in developing RJ responses to hate crime in Washington state has to do with the paucity of organizations and trained facilitators that currently conduct RJ interventions and prevention. The RJ practitioners interviewed for this report indicated that there are few community-based organizations with experience and training to conduct RJ interventions in the state, and very few outside King County. Practitioners in existing organizations report being overwhelmed by existing demand for RJ facilitation and intervention, and are therefore unable to take on additional work or build expertise in entirely new areas, such as hate crime, in the absence of additional funding. Conversely, we were unable to identify existing organizations that focus on hate crime and other bias motivated incidents that already conduct RJ processes and dialogues, although some may be engaging in targeted mentoring and outreach that is a component of preventative RJ.

For these reasons, our primary recommendation is that the Washington state legislature establish a program that administers a grant program to support the growth of the RJ infrastructure and the development of initiatives that offer RJ responses to hate crimes and other bias motivated incidents. The details of this proposal are provided in the following section.

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<sup>138</sup> Mark Walters, Jenny Paterson, and Rupert Brown, "Enhancing Punishment or Repairing Harms? Perceptions of Sentencing Hate Crimes Amongst Members of a Commonly Targeted Victim Group," *British Journal of Criminology* 61: 61-84 (2021).

## PART III

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### RECOMMENDATIONS

The previous section of this report identified the advantages of developing a robust, RJ-informed response to hate crime and bias-related harm in Washington state aimed at both preventing that harm and responding to it, as well as some of the challenges associated with that endeavor. One of the most fundamental of these challenges is that there are not enough existing RJ organizations and practitioners who are available to develop RJ responses to hate crime. At the same time, existing community-based organizations that focus on hate crime in Washington do not appear to be prepared to offer RJ facilitation or services. In addition, we have found that many stakeholders are unfamiliar with restorative justice philosophy and practice.

In this context, we recommend that the Washington state legislature develop a grant program to provide training and technical assistance about restorative justice to community-based organizations that plan to apply for these state monies. The goal is to enable the development of restorative prevention and restorative justice responses to various kinds of harm, including harm related to hate and bias, across the state. This recommendation stems from the fact that effective RJ responses to hate and bias-motivated harm will require increased awareness, fluency, and experience with RJ philosophy and techniques in general.

We recommend that the grant program support a range of practices associated with restorative justice in order to promote trust, decrease hate and conflict, build community, facilitate healing, and develop ways of holding people accountable for crime and harm in the community. In particular, we recommend that this program support the following activities, each of which is an important component of a robust RJ infrastructure:

- Education and trainings in restorative justice theory and practice for organizations that apply for state funds to develop or augment RJ initiatives. Funding the provision of training and technical assistance to grant applicants is crucial to ensure quality control and to enable the emergence of RJ initiatives across the state, including in locales where RJ is less common.
- Preventative restorative practices aimed at averting conflict, harm, and violence in the community, including school settings; and
- Restorative justice responses to harm aimed at promoting healing and accountability, including community-based RJ mediation and RJ-based diversion initiatives that involve coordination with criminal legal system actors.

Building a Restorative Justice Infrastructure in Washington			
Goals	Techniques	Who Can Do the Work	Where/When
RJ Education and Training	Webinars; written materials; in-person trainings	Organizations that offer training and technical assistance in RJ	In communities where organizations seek to apply for state funds to develop or augment RJ initiatives
Restorative Prevention	Restorative conferences; restorative dialogue; responsive (problem-solving) circle processes; targeted mentoring and outreach	Community-based and local organizations that work with people who have caused or experienced harm; local organizations with deep connections to impacted communities	In communities and institutional settings where tension and conflict exist and may give rise to violence or other harms
Restorative Justice Response and Mediation	Restorative responses to harm including restorative conferencing, and dialogue; targeted mentoring; reintegration circles	Community-based and local organizations that work with people who have caused or experienced harm; local organizations with deep connections to impacted communities	In communities and, to enable diversion, in coordination with criminal legal system actors

Toward these ends, we recommend the following:

*Recommendation 1: Infrastructure*

**In order to facilitate the development of an RJ infrastructure that will enable the implementation of RJ responses to hate crime, the Washington state legislature should establish a substantial grant program as part of the state operating budget to award grants to community-based and local organizations to develop or augment restorative justice initiatives.** We recommend that the legislature allocate *a minimum* of \$10 million annually to support this work.<sup>139</sup>

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<sup>139</sup> For context, the state’s 2021-23 biennial operating budget appropriated just over \$2.5 billion for the Department of Corrections.

### *Recommendation 2: Training*

**Some of the monies dedicated to the development of an RJ infrastructure should be used to contract with RJ organizations to provide training and technical assistance to community-based and local organizations in Washington state that plan to apply for state monies to develop or augment RJ initiatives.** Organizations who receive monies to provide training and technical assistance should have a long track record and widely recognized expertise in RJ theory and practice. This will ensure quality control and will enable organizations in parts of the state in which RJ is less common to develop the needed familiarity with RJ theory and practice to receive state funding.

### *Recommendation 3: Diversity of Practices*

**This state program should support both restorative prevention and restorative justice mediation after harm has occurred. Within the latter category, we recommend support for both community-based work and initiatives that involve community organizations working in coordination with legal system actors to effectuate diversion.** We recommend that community-based organizations that serve and support victims, address hate crime, and/or engage in anti-violence work or RJ in particular be encouraged to apply. Collaborative partnerships involving two or more organizations should be encouraged. State funds administered through this program could be used to pay for the cost of employing and training staff to engage in victim support and RJ initiatives, and to enable the acquisition of mental health services and support in the context of RJ interventions. Some of these monies should be set aside for groups specifically seeking to promote healing and accountability in the context of hate crime.

### *Recommendation 4. Documentation of Impact*

**Although robust outcome evaluation is likely not feasible in a two-year period, funded organizations should be required to document the nature of their work and to provide some evidence of its impact.** The cost of securing guidance from evaluation consultants should be covered by the state.

### *Recommendation 5. Allocation of Funds*

**Stakeholders with expertise in RJ and in hate crime should have input in the development of the RFP for these funds. The legislature should develop mechanisms to ensure that the grants are distributed to organizations that have, or have acquired, significant expertise in RJ.** For organizations seeking to develop RJ responses to hate crime specifically, we recommend that evaluation of proposals consider, among other things, the extent to which the grant-seeking organization has a plan to address the possible role of mental illness in some hate crimes as well as the existence of power asymmetries, misunderstandings regarding RJ, and the role of community members in their work.

# APPENDIX I

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## RESOURCES FOR POTENTIAL GRANT APPLICANTS

### Hate Crime/Hate Studies Websites

Bard Center for the Study of Hate

<https://bcsh.bard.edu/hate-studies/>

Gonzaga Institute for Hate Studies

<https://www.gonzaga.edu/academics/centers-institutes/institute-for-hate-studies>

International Network for Hate Studies

<https://internationalhatestudies.com/>

### Restorative Justice Websites

Center for Restorative Justice & Peacemaking, University of Minnesota at Duluth

<https://rjp.d.umn.edu/>

Impact Justice

<https://impactjustice.org/news-resources/>

National Association of Community and Restorative Justice

<https://nacri.org/>

The Zehr Institute for Restorative Justice

<https://zehr-institute.org/resources/>

### Webinars

Restorative Responses to LGBTQ+ Hate Crime, 2021.

<https://vimeo.com/617956672/31dc97d05e>

FY 2021 Services to Support Victims of Hate Crime, Office for Victims of Crime

[https://www.youtube.com/watch?v=QHVuhD\\_onmw](https://www.youtube.com/watch?v=QHVuhD_onmw)

Addressing Disparities that Criminalize Communities of Color Through Restorative Justice, Annie Casey Foundation

<https://www.youtube.com/watch?v=6xvY9O5eMRs>

The Importance of Community Held Restorative Justice Programs, Annie Casey Foundation

[https://www.youtube.com/watch?v=QHVuhD\\_onmw](https://www.youtube.com/watch?v=QHVuhD_onmw)