

Experience from Practicing Restorative
Justice for Sexual Harm:
Trauma, Justice Needs, Participant Satisfaction, Equity, Law, and the Future

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Gary Winfield

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ONE 
STANDARD OF
JUSTICE



A PROUD AFFILIATE OF
NARSO



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Experience from Practicing Restorative Justice for Sexual Harm

Mary P. Koss, Laura Sinko, Kate Chisholm, Elise C. Lopez,
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Agenda

ACT ONE

1. Trauma and its impact - *Laura Sinko PhD, RN, CCTS-I*
2. Survivor/victim perspectives on justice - *Kate Chisholm, MPH, MA*
3. Lessons from practicing RJ - *Mary Koss, PHD*
4. College Campuses - *Elise Lopez, DrPH, MPH*
5. Legal issues- *Quince Hopkins, JD, LLM, JSD*

Intermission

ACT TWO

1. Reflections
2. Panel Hopes and Dreams
3. **Talk Back:** Dialogue with listeners

Understanding Trauma, Retraumatization, And Survivor Perspectives About Justice

Laura Sinko, PhD, RN, CCTS-I, University of Pennsylvania

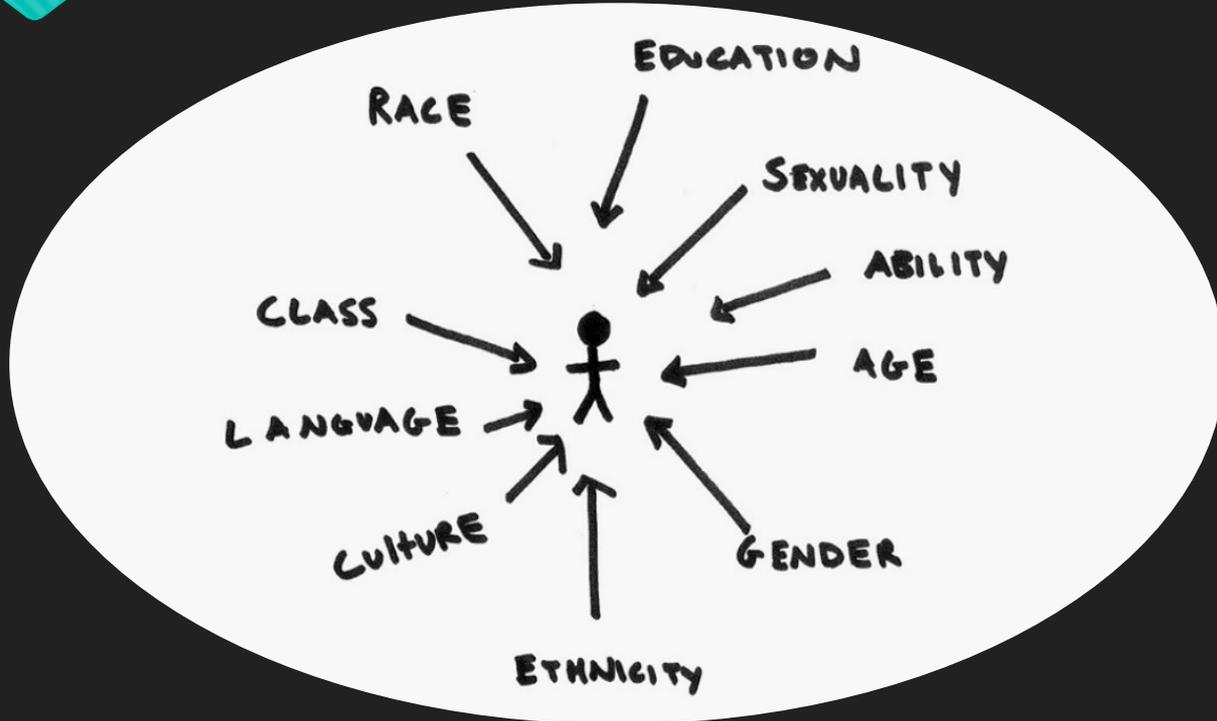
What is trauma?

Event: Events and circumstances cause trauma

Experience of Event: An individual's *experience of the event* determines whether or not it is traumatic

Effects: Can include adverse physical, social, emotional, or spiritual consequences.

Intersection of Identity and Trauma



Types of Trauma

Examples of personal or private events

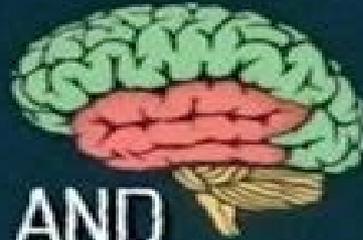
- Childhood physical, sexual, or emotional abuse or assault
- Intimate partner violence
- Sexual Assault/ Rape

Examples of Public Trauma and Events

- Natural or man-made disasters
- War, terrorism, or political violence
- Forced displacement
- Community violence
- Historical trauma

Impact of Trauma

TRAUMA AND THE BRAIN



<http://www.youtube.com/watch?v=4-tcKYx24aA>

Sexual Violence

The expression of power and dominance, most commonly by men over women or individuals of other genders, although men also experience sexual violence.

Nearly 23 million women and 1.7 million men have been the victims of rape or attempted rape at some point in their lives.

Sexual Violence Reporting



For every 1,000 assaults

230 are reported

5 result in
incarceration

“even if you received justice through [the criminal justice system], is it the kind of justice that you wanted?...Maybe not necessarily”

Survivor Justice Desires

Recognition

Voice

Dignity

Prevention

Consequences

Connectedness

Why is the criminal justice system not working for survivors?

1. Individuals with marginalized identities often do not feel safe working with law enforcement.
2. Survivors in general also often anticipate negative treatment and not feeling believed by these systems.
3. For many survivors, incarceration is not a goal.
4. Even survivors who do engage in these systems cite a lack of control/ voice during criminal-legal process.
5. There are many aspects of this system that can be retraumatizing.

SV Perspectives: A Qualitative Study

Kate Chisholm, DrPH Candidate, MPH, MA, University of Arizona

Background



CJ does not always align with
SV goals



RJ aligns with certain SV justice
interests



SV also have other goals

SV Perspectives on CJ

"My life has been utterly destroyed because I reached out for help. My case has been going for four years. I've been financially devastated. [...] At this point in time, when people tell me that they're in my same situation, I tell him not to report because **the system is so broken that they punish protective parents, and the harder you fight for justice, the more that they pathologize you and attack you.**" -Shelly

SV Perspectives on CJ

"I had injuries that needed stitches. The hospital wouldn't treat it until I was taken to a forensic interview. The detectives didn't believe me. They thought my boyfriend at the time had done it, even though we both told him we hadn't had sex, ever. And then he blamed me, accused me of doing it to myself, and then from the stress, I finally started to pass out. It was June in the police station in the middle of the night, no air conditioners, and the detective called 911 and he told paramedics that I was just doing that to get out of having the exam by the forensic nurse, that I was faking it. **And the whole thing, I felt like, and it's a big statement, but I felt like it was worse than the rape.** [...] I have told several people that if anyone came to me, I would tell [them] not to report." -Anne

SV Perspectives on CJ

"I honestly do not know why judges don't work with more of the mental health individuals or why there isn't specialized judges who has an actual greater understanding and maybe even a degree in psychology or psychiatry [...] **Because right now we have judges making psychological decision-making, but they're not qualified to.**" -Justina

SV Perspectives on CJ

"I have learned to understand that there are a lot of survivors that just want accountability. And what goes into that is someone listening. **And our criminal justice system is not listening.**" -Gail

SV Perspectives on RJ

"I see it as it would have given me a voice, an opportunity to say what I needed to and tell them exactly how their actions affected me, and those others in my life as well, because of their choices."

-Emma

SV Perspectives on RJ

"Sometimes, even if somebody goes through the criminal justice system, and let's say they go to jail, that doesn't necessarily mean that it still speaks to the individuals, all that they've endured. And so to be able to have a space where the perpetrator actually gets to hear, and we can talk about, and maybe even the community members or their family members being a part of that, I think is really healing on multiple levels. [...]

The basis of, I think what restorative justice is, is really about helping to facilitate a deeper level of healing that is not just put somebody in jail. That could be part of it, but there's more to it." -Veronica

SV Perspectives on RJ

“...I didn't want to see any of these people being put away. I didn't want to see them being handled by police. I didn't want to see them being punished in the courtroom. I didn't want to see them being hurt. And while I understand that for some people, that is something that is helpful [...], **I think for me, it wouldn't have helped. I think it would have just been re-traumatizing.**”
-Flecha

SV Perspectives on RJ:

"These are sociopaths. These are people that hurt other people and that take what they want without any thought about 'how is this going to impact [us] now or in the future?' They just do whatever they want to do, and they don't think that there are going to be any consequences. So to try to rationalize with, reason with a sociopath, with a criminal, criminal acts, that to me seems like it would be like to try to speak another language to somebody. Because our language is empathy, our language is humanity and human rights. And if you can do what these people have done to us as children or as adults, they don't have that in them. And that is a blanket statement, but I think it's a true assessment. They just 99.9% don't have it in them." - Deborah

SV Perspectives on RJ

"I'm conflicted. I have to say that when I first heard the concept, I said, 'Absolutely not. My perpetrator does not deserve a second of my time. I'm not gonna sit by them and breathe the same oxygen. They don't deserve it'. So I had a really negative reaction. After listening to more about it, I think it could be positive for others. I think you mentioned somebody else could read a statement from you, so you wouldn't actually be in the room, that's a maybe from me. **But there's also this part of me that would like to believe that this is more positive for our world than putting people in jail.**" -Lisa

SV Perspectives on RJ



MANY
MISCONCEPTIONS



MANY CONCERNS



MANY QUESTIONS

Key Informants: RJ Perspectives

- Community-based advocates and programming coordinators:

- Positive outlook on RJ
- Some: lack of knowledge about RJ
- Unsure about capacity for RJ & community buy-in

- System-based advocates:

- Lack of knowledge about RJ
- Did not feel possible
- Largely based on misconceptions



RESTORE RJ Program for Sex Crimes: Design and Outcomes

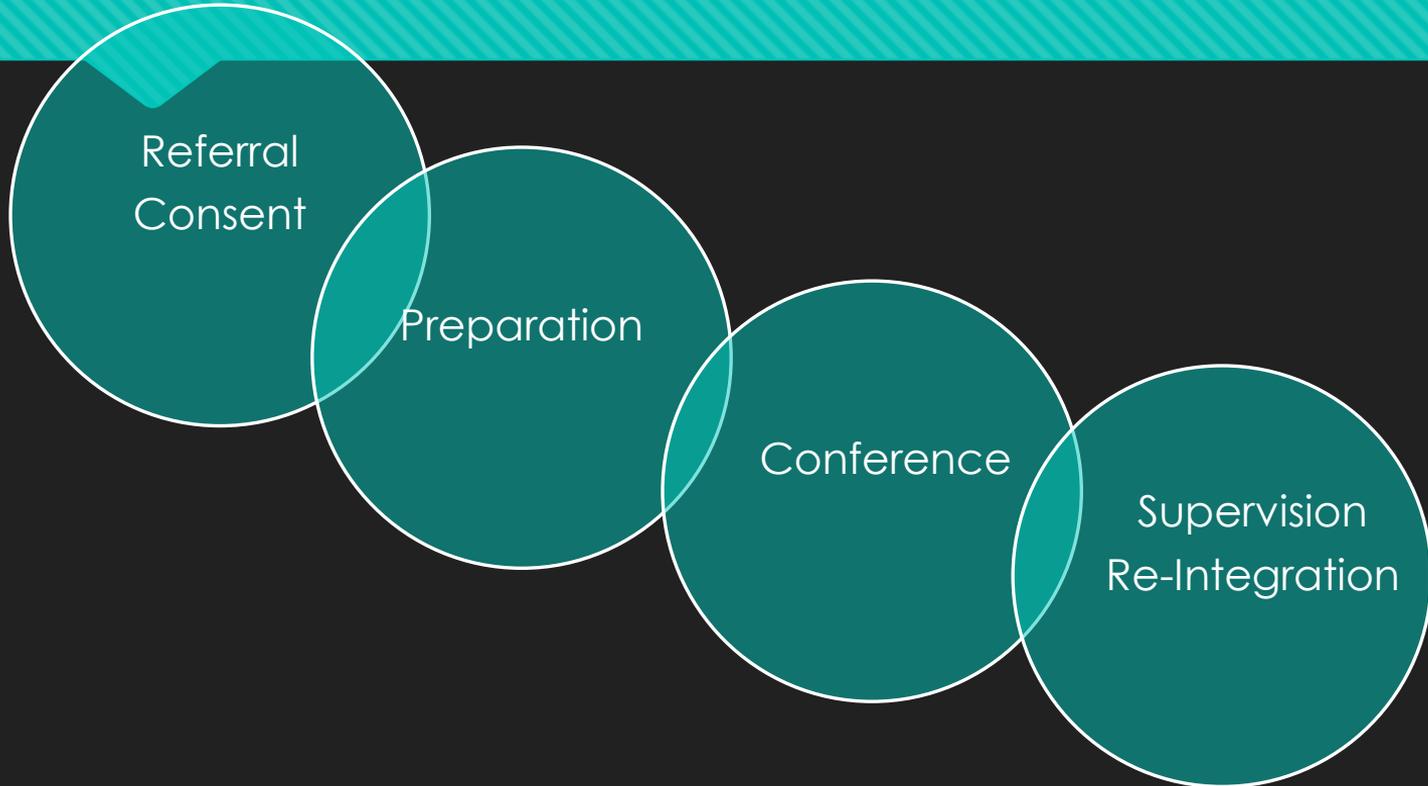
Mary P. Koss, PhD, University of Arizona

Restorative Justice (RJ) Conference Model

- Seeks justice focused on voicing impact, acknowledging responsibility, rehabilitation and repairing harm
- Three groups of constituents prepared to meet face to face
- Non-adversarial resolution with community-based accountability



RESTORE Components: What is an RJ Conference?



RJ Conferencing SHOULD BE :

Implemented by highly trained individuals.

A process that vets out offenders who can further harm the SV.

Done safely. Several systems with practices to ensure participant safety.

RJ Conferencing Is NOT:

Appropriate for all offenders. Repeat offenders, highly violent offenders, and offenders unwilling to participate must be excluded.

Appropriate for all SV. SV must want to participate in this process and fully understand what it offers.

Designing to Avoid Concerns

Victim Concerns

- Safety
- Re-traumatization by myths, blame
- Silencing by emotional distress or gender norms
- Coercion to participate
- Pressure to forgive
- Legal

Responsible Person

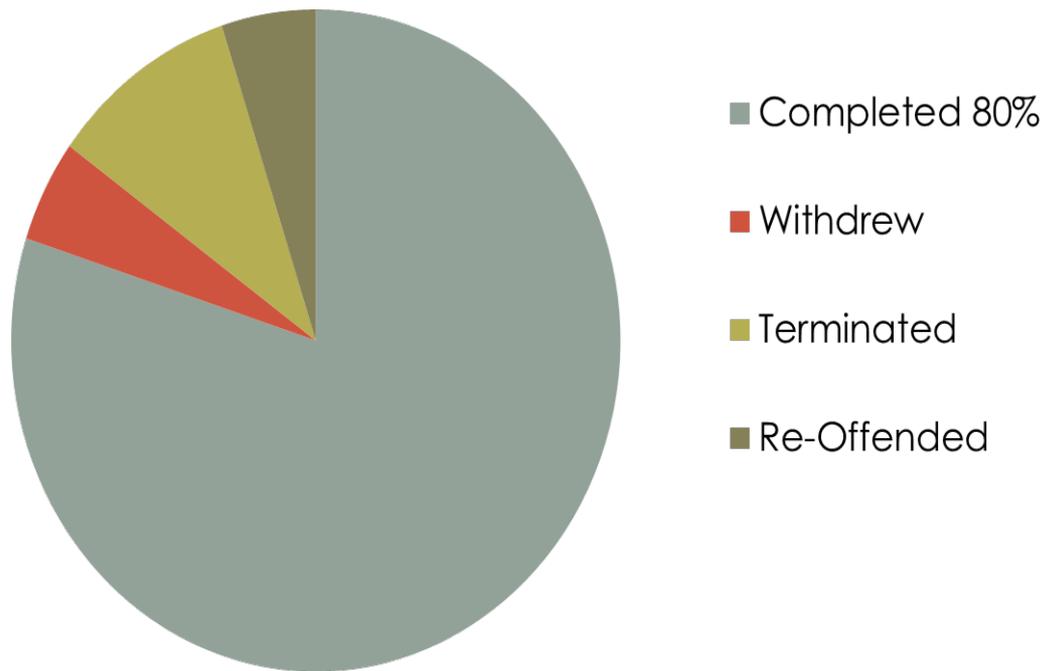
- Low motivation
- Counterproductive shaming
- Insincere apologies
- Failure to fulfill plan
- Exclusion from the non-sex offender community
- Legal

NOT SOFT JUSTICE

- Forensic evaluation and treatment as advised
- Restitution of material losses and medical expenses if requested
- Stay away agreement
- Community service
- Supervision and Re-integration was mandated for 12 months and overseen by a volunteer community board and case manager
- Letter of Reflection and Re-Integration (apology) read to community board and SV (if desired)

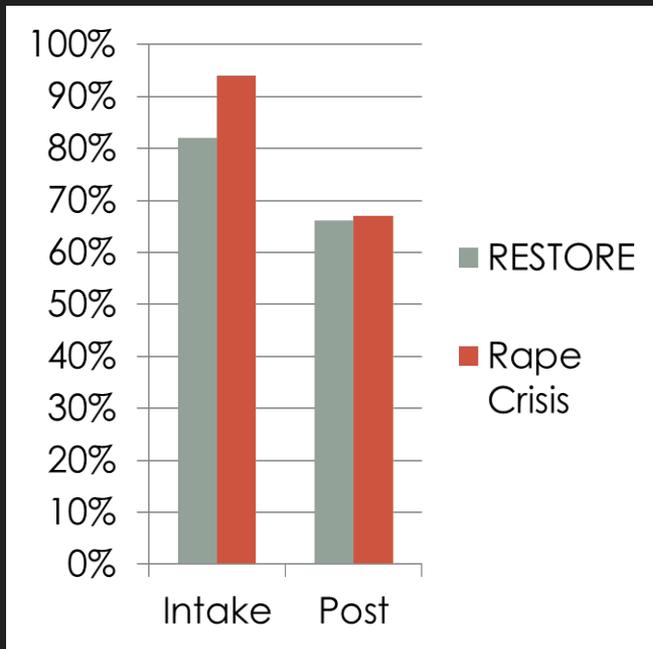
Outcomes

Outcomes



Safety

Percent with Diagnosable PTSD



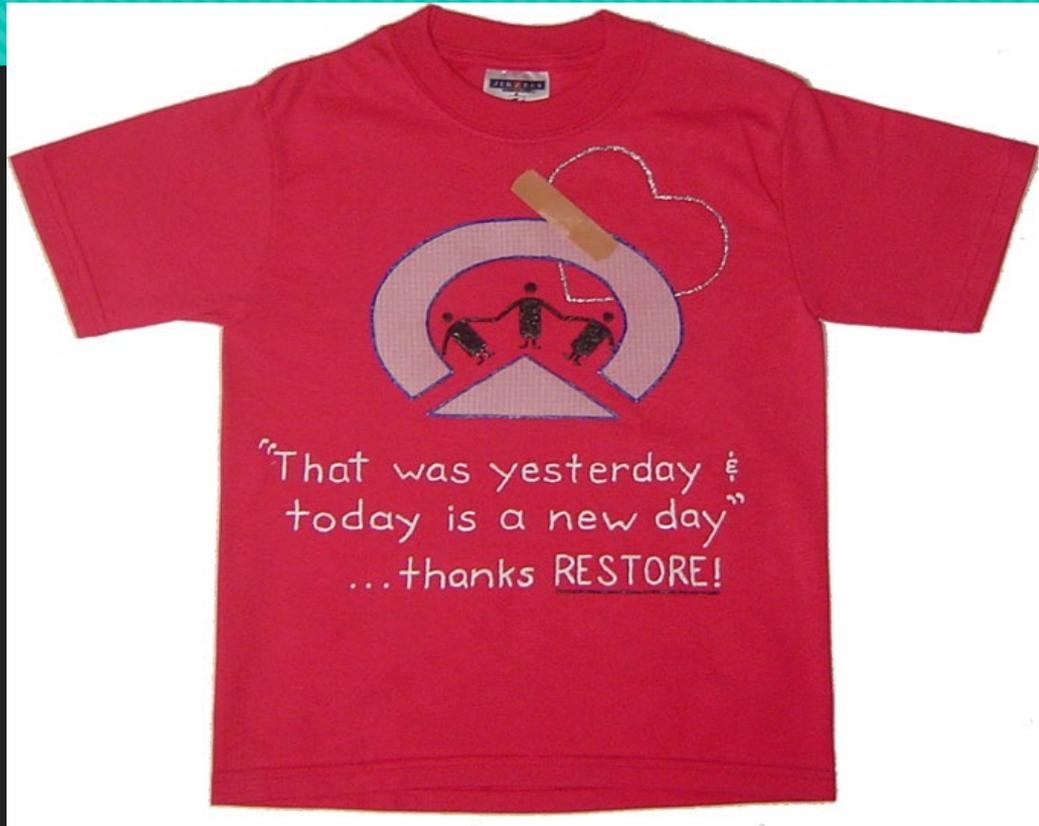
Justice Satisfaction across Constituents

- Conference was a success (100%)
- How case was handled (100%)
- Redress plan (90-100%)
- Justice was done (83-100%)
- Would recommend RESTORE (84-100%)

RJ Conferencing

- Compatible with, not replacement of adversarial criminal justice
- Offers understandable language and format
- Doesn't push person responsible into denial
- Preserves connections to family and positive models, protects current job or future employability
- Involves community in policing their neighborhoods

RESTORE



Restorative Justice for Interpersonal Violence on College Campuses: Can it be Done?

Elise C. Lopez, DrPH
Consortium on Gender-Based Violence
University of Arizona

Adjudicating sexual misconduct on campus... what does that actually mean?



Terms: **Complainant**, **Respondent**, **Grievance Process**

Reporting Party / Harmed Person / Victim / Survivor; **Reported Party / Responsible Person**;
Reporting Process / Resolution Process

Quick & Current Title IX Primer

TIX: No person can, on the basis of sex, be excluded from participation in, denied benefits of, or be subjected to discrimination under any edu, pgm or activity receiving fed fin assistance.

Schools no longer required to investigate cases that occur off campus (outside of a school's program or activity). (They CAN have their own policy on these cases)

Students can no longer file anonymous formal complaints

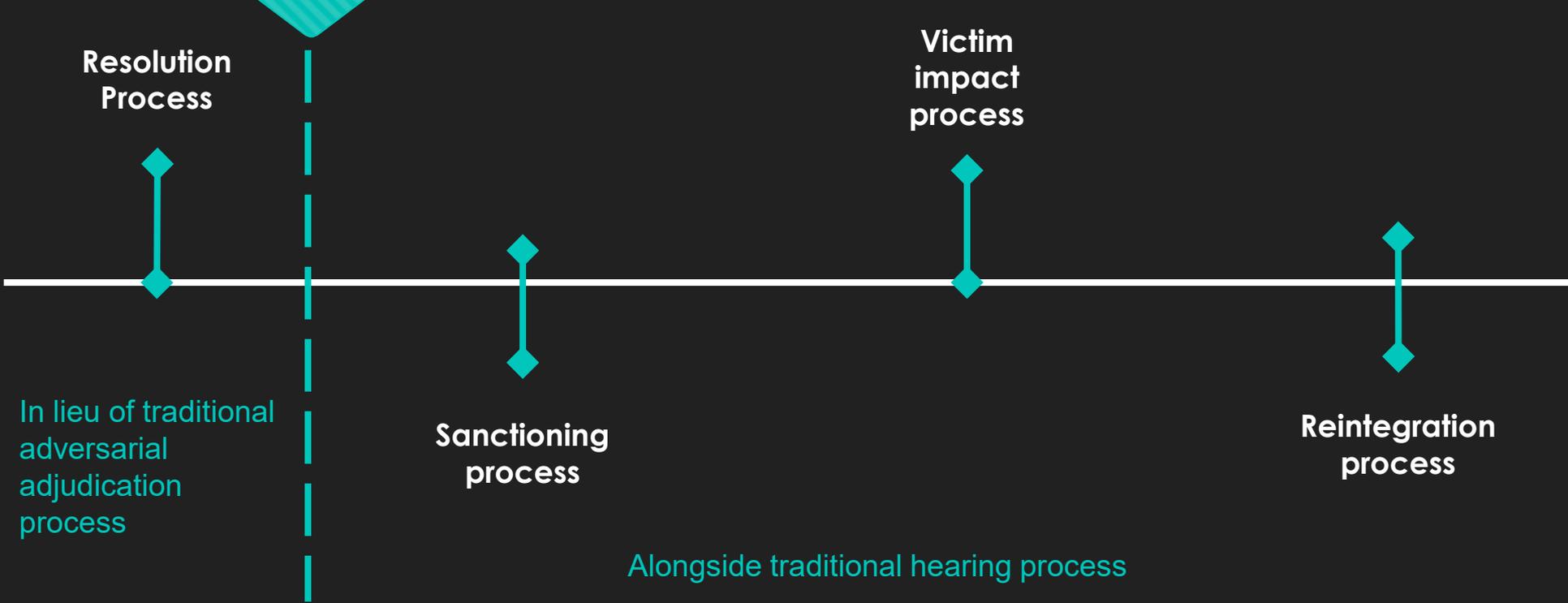
Can no longer decide their own adversarial process; **MUST** have an investigation and live hearing (hear from all parties and witnesses, live cross-x, review evidence, decision made).

Students can choose "informal resolution" if the school offers it. This can include RJ processes, though details of RJ are not specified in new regulations.

Why RJ for campus sexual misconduct?

- Survivors jaded by adversarial adjudication (e.g., “Title IX Process”)
- Over-alignment with CJS -> chilling effect on survivor reporting, fear of adversarial process
- May provide a greater sense of justice for survivors (feeling heard; resolution)
- Respondents who acknowledge harm done
- Excellent for addressing community-level harms (esp. when involving protected expression)
- Helps meet goals as an institution of higher education
 - Risky behavioral is developmentally appropriate (sometimes an explanation; not an excuse)
 - Education vs punitive sanctions for student growth into healthy, safe, responsible adults

Expanding Options for Survivors: Four Places for RJ in Campus Adjudication



What is needed to use RJ for campus sexual misconduct?

Formal staff training in restorative justice

Clear institutional policies and procedures (what, when, how, who, where)

Voluntary participation from survivor and responsible person

Preparation procedures + reasonable timeline

Safety procedures for all steps of the process

Follow-up/case mgmt for sanction/restoration plan for responsible person

Guidelines for reverting back to traditional adjudication (if applicable)

Legal Issues in Implementing a Restorative Justice Response to Sexual Harm

For further discussion, see C. Quince Hopkins, The Devil is in the Details: Constitutional and Other Legal Challenges Facing Restorative Justice Responses to Sexual Assault Cases, 50 (3) Crim. L. Bull. 1 (2014)

C. Quince Hopkins, JD, LL.M., JSD
Director, Erin Levitas Initiative for Sexual Assault Prevention
University of Maryland Francis King Carey School of Law

Timing Issues

- **Statutes of limitation:**
 - civil and criminal
 - Tolling
 - Waivers
- **Speedy trial right (criminal)**
 - Pre-indictment delay issues
 - 6th Amendment right to speedy trial

Legal Representation For Participants

Survivors

- State-level protections/rights
- Civil remedies (actions against institutions and/or individuals)

Responsible Person

- Constitutional-level right to counsel
- Advice on:
 - Criminal consequences
 - Civil consequences
 - SVP laws & sex offender registration

Recommendation:

- For survivors: collaborate with local public interest/victim representation bar
- For responsible persons: collaborate with public defender and private defense bar

Confidentiality Issues-Privilege(s)

- Therapist/patient confidentiality & exceptions
- Attorney/client confidentiality & exceptions
- Research: Federal Certificate of Confidentiality

Confidentiality Issues

Survivors

- **CHALLENGE:** possible use of exculpatory statements by defense attorneys in event of prosecution of RP

Recommendation:

- Confidentiality agreement for all participants that statements made cannot be used in other proceedings
- Exception: subsequent prosecution for a new offense

Responsible Person

- **CHALLENGE:** possible use of admissions by prosecutors in event of prosecution of RP
- **Consider:** Fifth Amendment Privilege Against Self Incrimination

RJ & Youth Peer-to-peer Sexual Harm-Considerations

- Age-appropriate language
- Parental involvement
- Different services/support needed for both participants
- Consider context in which the incident(s) occurred
 - Who is impacted
 - Other systems might be in play
 - Possible existing familiarity with RJ circles and conferencing

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