

THE ADOPTION OF RESTORATIVE JUSTICE LEGISLATION AS A STATE POLICY  
RESPONSE TO CRIMINAL JUSTICE CONCERNS:  
A MIXED METHODS INQUIRY

by

SHANNON M SLIVA

Presented to the Faculty of the Graduate School of  
The University of Texas at Arlington in Partial Fulfillment  
of the Requirements  
for the Degree of

DOCTOR OF PHILOSOPHY

THE UNIVERSITY OF TEXAS AT ARLINGTON

May 2015

To the 2.3 million American men and women behind bars  
and to all those who search for justice

## Acknowledgements

It is with a grateful spirit that I look back on the past four years, in which time I designed and implemented my first research projects, taught my first university courses, and struggled to turn my visions for justice into an actionable path. This journey challenged me deeply, and it is with the support, encouragement, and wisdom of many guides that I emerged from the wilderness.

I would like to thank Dr. Rebecca Hegar for the faith she placed in me by agreeing to chair my dissertation on a topic outside of her primary field of inquiry. As an expert in the arena of policy practice, Dr. Hegar provided invaluable insights into my work on criminal justice legislation. Beyond this, she proved to be an intellectually stimulating and supportive consult at every phase of my process. Each of my committee members made substantive contributions to my work. I thank Dr. Courtney Cronley for her unending patience and guidance in mixed-method research models and statistical analysis, Dr. Rick Hoefler for his seminal and influential work on advocacy and interest groups, and Dr. Daniel Sledge for many thoughtful and engaging conversations which challenged my notions on policy dissemination. I am especially grateful for Dr. Marilyn Armour's role in helping me to position my research on policy within the broader field of restorative justice and for evoking my intuitive qualities to meet the demands of deeply qualitative work.

To my husband Vincent, thank you for enduring the late nights, working weekends, disregarded chores, and anxious moments with selfless patience and love. You are the steady rock around which my frequently raging waters buffet. To my mother Brenda, you have been my inspiration from the earliest age that I can remember. You instilled in me my curiosity for learning, the importance of always doing my best, and my deep desire to do good in the world. To my friend and fellow graduate Cara, I cannot

imagine having gone on this journey without you. Our library work days, long lunches, late night commiserations, and many glasses of wine brought laughter and sanity to the most challenging days and forged a lifelong friendship. To the many other family members, friends, and colleagues who checked in with me, showed an interest in my work, and expressed sincere joy in my achievements, each of you made my journey a little lighter. This especially includes my YogaSport family, a community of people who inspired me daily in their own commitment to self-actualization and held a space for me to be and become.

Finally, I would like to acknowledge the University of Texas at Arlington School of Social Work, Dr. Beverly Black, and all of the other faculty in connection with the PhD program for offering an environment of support, professional growth, and intellectual freedom. I am profoundly grateful for this experience and its impact on my life's work in the coming years.

April 15, 2015

Abstract

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Shannon M Sliva, PhD

The University of Texas at Arlington, 2015

Supervising Professor: Rebecca Hegar

Over the past two decades, 32 states have enacted legislation supporting the use of restorative justice as crime response. The purpose of this study is to explore the contexts in which restorative justice has been adopted as a policy solution for juveniles and adults by answering the following questions: (1) Are internal characteristics of American states correlated with the adoption of restorative justice legislation between 1988 and 2014? (2) How have social, economic, political, or other factors promoted or impeded the adoption of restorative justice legislation in key states?

This study uses a convergent-parallel mixed-methods approach to develop an empirically supported, contextual understanding of the state policy environments in which restorative justice policies are adopted. A quantitative cross-sectional analysis of secondary data from all 50 states uses ordinal regression to test whether hypothesized variables predict more supportive adoptions of restorative justice legislation at the state level. Concurrently, two case studies use in-depth interview methods to further explore the policy environment and the legislative decision-making process. Quantitative and qualitative data are analyzed in a convergent approach, integrating insights from both methods about the adoption of restorative justice legislation.

Results indicate that social factors are more useful than economic or overt political factors in explaining the adoption of legislation to support restorative justice. More supportive restorative justice legislation in a state was predicted by a higher percentage of female legislators, a higher proportion of Black Americans, and a higher state incarceration rate. Higher crime rates slightly decreased the likelihood of more supportive adoptions. Party affiliation, state fiscal capacity, tribal populations, and victims' rights policy preferences were not predictive of more or less supportive adoptions.

Case studies of legislative processes in Texas and Colorado – two states having undergone recent consideration of restorative justice bills with divergent outcomes – suggest that the legitimacy of restorative justice practices at a grassroots level, the involvement of advocacy coalitions and interest groups, and the characteristics and actions of the legislative sponsor entrusted with carrying the bill are key influences. Especially for more basic policy adoptions, these influences trump party ties and economic considerations.

With the highest documented incarceration rate in the world and prisons that showcase systemic race and class disparities, the United States is at a critical junction in policymaking. This study helps decode current legislative trends and identifies pressure points that are now leading states to consider alternative forms of justice. It aids practitioners working in the justice system in understanding how they can use statutory support for restorative justice to bolster their work, and it equips policymakers and advocates with influential messages and advocacy strategies. It also suggests ways to empower marginalized voices in advocacy efforts and addresses ethical risks such as the high potential for racial disparity in selection for diversion programs like restorative justice. This study assists social workers in knowledgeably offering innovative policy solutions that best serve victims, offenders, and communities harmed by crime.

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## Chapter 1

### Introduction

#### 1.1 Statement of the Problem

In 2011, 5.8 million people were victimized by a violent crime in the United States. Another 17.1 million households and businesses were victims of property crimes. At the most fundamental level, crime is a quality of life concern. Those victimized by crime experience a range of physical, emotional, psychological, and social harms which diminish their ability to function in society (Erez, 1989). Beyond the physical harm and financial losses that may be sustained during the course of a crime, victims often experience feelings of intense vulnerability, brought about by loss of control and loss of trust in what they can expect from the world around them (Frieze, Hymer, & Greenberg, 1987). Victims of violent crimes may experience a range of long-term effects including inability to maintain productive work and social relationships and post-traumatic stress disorder (Herman, 2010).

Offenders likewise suffer a loss of normal life and become subject to sanctions which remove their ability to contribute to and participate in normal society, such as loss of freedom, revocation of voting rights, removal of social connections, and withdrawal of access to housing and employment options (Ownes & Smith, 2012). Communities harmed by crime experience destruction of public and private property, damaged social relationships, and erosion of the feelings of safety and wellbeing that are integral to healthy community life. As crime rates peaked in the 1980s, the President's Task Force on Violent Crime (1982) declared: "Crime has made victims of us all. Awareness of its danger affects the way we think, where we live, where we go, what we buy, how we raise our children, and the quality of our lives as we age" (p. vi). Due to its prevalence and its

devastating effects, crime and victimization continue to be issues on the forefront of social discourse.

The American response to crime over the past half century has been highly punitive, with massive growth in the number and scope of criminal laws as well as in the incarcerated population. Attempts to count the number of federal criminal statutes alone have yielded best estimates of over 3,000 laws, with an acknowledgement that such attempts have been given up as “futile and inaccurate” (Field & Emshwiller, 2011, p. 1). Even while crime rates have declined since the 1990s, incarceration rates have continued to rise, pointing to a variety of political and social influences on crime policy and justice outcomes that have little to do with crime rates themselves (Smith, 2004). All the while, crime continues to affect tens of millions of Americans each year, and the present criminal justice system does little to ameliorate the long-lasting effects experienced by victims and communities or to create meaningful change in offenders. Victims’ critical needs for acknowledgement, information, privacy, safety, and involvement remain unmet by an adversarial justice system in which they are not a legal party to their own court case (Achilles & Stutzman-Amstutz, 2006; Englebrecht, 2011; Waller, 2011), and national recidivism rates indicate that two of every three criminal offenders return to the system within three years (Bureau of Justice, 2005).

As the justice system fails to fully address concerns of how to appropriately provide justice for victims, offenders, and communities, the discourse about crime and victimization has grown increasingly politicized. Widely recognized racial disparities in the U.S. criminal justice system result in one out of three black males being either incarcerated or otherwise under criminal justice supervision at some time during their lifetimes (Bonczar & Beck, 2003). Minorities and the very poor are arrested more often, serve longer sentences, and have higher recidivism rates than their white, middle class

counterparts (Jung, Spjeldnes, & Yamatani, 2010; The Sentencing Project, 2013). Most disparities in incarceration patterns coincide with low-level property and drug offenses (Oliver, 2001). In 2006, more than one third of federal prisoners were incarcerated on drug crimes, and drug offenders served average sentences of seven years (Motivans, 2009).

These apparent inequities in the administration of justice trigger increasing concerns about the current American crime response. The latest polls indicate that only 28% percent of Americans feel a high level of satisfaction with the criminal justice system (Saad, 2011), and a recent highly publicized announcement of then-U.S. Attorney General Eric Holder declared current drug sentencing policies “draconian” and announced a new commitment to finding “effective alternatives to incarceration” (Holder, 2013, para. 29, para. 31).

Dissatisfaction with current solutions has created an opening for a shift in crime response after a decades-long focus on punitive sentencing and incarceration. This shift is evidenced by a wave of decarceration policies (Brown, 2013), rehabilitation programs, and increased focus on reintegration and community corrections. The emergence of restorative justice as a new framework for thinking about crime has also provided a unique response.

Unlike the current U.S. justice model, which views crime as a violation against the state, restorative justice views crime as a violation of human relationships (Zehr, 1990). As a result, restorative justice solutions focus on the need for harms caused during crime to be addressed directly and repaired to the extent possible. Practices implicated in this approach are far ranging, from diversionary programs that allow juvenile and low-level offenders to respond to victims’ requests for reparations in place of traditional punishment options to arranged mediations between the victims and offenders

of serious violent crimes. The latter may have little to no bearing on the offender's original sentence, but still seeks to provide healing for both. While research on the outcomes of restorative justice practices is limited by conceptual and methodological challenges, studies to date have indicated that satisfaction with restorative processes by victims and offenders is high and that some approaches have also been successful in lowering recidivism rates among offenders (Umbreit, Coates, & Vos, 2002).

The recent formation of the National Association for Community and Restorative Justice and the overall movement toward professionalization of the restorative justice field have prompted increased attention on how restorative justice solutions can be used at the policy level to provide greater access to this unique response to crime and victimization. Nationally, practitioners of restorative justice are engaged in advocacy efforts to spur the adoption of restorative justice legislation at the state level. Currently, 32 states have enacted some form of legislation supporting the use of restorative justice as a response to crime. Up to this point, it is unclear what these states have in common or what the primary driving forces are behind their policies. Proponents and practitioners of restorative justice describe the approach as grassroots, non-partisan, and universally applicable across populations. Yet due to the relative newness of restorative justice, especially as a policy solution, there has been little empirical research to support commonly held beliefs about the spread of restorative justice legislation and its outcomes. This study begins to address this gap in the literature and to increase understanding of an innovative framework for justice that has potential to contribute to a new way of thinking about and responding to crime and victimization.

### 1.2 Purpose of the Study

The purpose of this study is to explore the contexts in which restorative justice is now being used as a policy solution. This task is approached by identifying the common

characteristics of states where restorative justice policies are being implemented in the form of legislation and developing a beginning understanding of which determinants are most prominent in contributing to the adoption of restorative justice policies. The following questions are proposed: (1) Are internal characteristics of American states correlated with the adoption of restorative justice legislation between 1988 and 2014? (2) How have social, economic, political, or other factors promoted or impeded the adoption of restorative justice legislation in key selected states? (3) What are the implications of the answers to these questions for policymakers and practitioners who wish to see restorative justice solutions enacted more broadly?

A mixed-methods approach is applied to answer these questions. A quantitative analysis uses ordinal logit regression to identify demographic, economic, social, and political variables which correlate with adoption of restorative justice policies at the state level between 1988 and 2014. In addition, two strategically selected case studies provide a more contextual understanding of the forces contributing to adoption of state restorative justice policies.

This study tests the relevance of various social and political theories for explaining restorative justice policymaking. A large body of existing literature contributes variables which have been used with some success to examine public policy innovations of other types and also suggests important gaps which invite further attention. This research has important implications for restorative justice policymakers and practitioners who are engaged in efforts to introduce innovative state legislation and increase the use of restorative justice strategies as a state-sanctioned solution for the problems that result from ongoing crime and victimization. In addition, this study has broader significance in its ability to provide new and different understandings of policymaking in general. Few studies of policymaking attempt to explain policy diffusion using social theories such as

the ones used in this research, and even fewer examine policy diffusion through a mixed methods approach that allows for contextual analysis of state level variables associated with adoption. This research offers novel application of theory and method which differs from that previously offered by economists and political scientists, creating an explanation of policymaking which is resonant with the field of social work.

## Chapter 2

### Restorative Justice: Practice and Policy

#### 2.1 The Restorative Justice Paradigm

Restorative justice offers a unique paradigm for responding to crime, proposing that at the most basic level crimes are a violation of people and relationships (Zehr, 2002). By this logic, punishment is a secondary function of the justice system. Instead, restorative justice advocates believe that the primary justice-related need is for offenders to acknowledge their guilt and make efforts to repair harms to victims physically (through reparations and restitution) and metaphorically (through listening, acknowledging, and apologizing). In this way, victims' needs are met and offenders have the opportunity to fulfill their obligations to both victims and the community.

Restorative justice encompasses a range of practices which are grounded in the following overarching principles: (1) a focus on the needs of victims that result from harm, as well as the needs of affected communities and offenders; (2) a requirement for offenders and offending communities to acknowledge and put right wrongs, and (3) the use of inclusive processes which involve all of those with a stake in the matter (Zehr, 2004). Most often, restorative justice practices involve direct contact between victim and offender in an exchange of accountability and truth telling. Face-to-face dialogues are referred to as victim-offender mediation or victim-offender dialogues and may occur in a variety of settings from pre-trial diversionary programs to probation offices to prisons (Umbreit & Armour, 2010). Other practices, such as family group conferencing or community circles expand participation to family members of the parties and community members with a stake in the harm caused. Practices are voluntary for both parties and are almost always initiated by the victim. When either the victim or the offender is unable

or unwilling to meet, surrogate parties who have experienced a similar crime in a similar capacity are sometimes used in a restorative exchange.

## 2.2 Background

The origins of restorative justice are often credited to the community justice practices of aboriginal and tribal populations. Umbreit and Armour (2010) cite Native American and First Nation peacemaking circles, Liberian Palava huts, Afghan Jirga councils, Indian Lok Adalat mediations, Rwandan Gacaca village courts, the Hawaiian practice of Ho'oponopono, and many others as examples of indigenous practices consistent with the modern applications of restorative justice. Today, Navajo community leaders note the congruence of peacemaking courts with restorative justice practices (Mirsky, 2004; Yazzie, 2005). In addition, the now widespread use of family group conferencing as a primary criminal justice response in New Zealand provides one example of how restorative justice practices allow indigenous peoples like the Maori to reclaim their cultural traditions of justice (Pratt, 1996).

Restorative justice is founded upon universal spiritual principals of repentance and reconciliation which are seen in Judeo-Christian theology, as well as in indigenous practices. Zehr (1990) speaks to the need for repentance in order to restore shalom, a fullness of peace that is only possible in right relationship within the universe and all living things. The Jewish idea of teshuva, or repentance, also focuses on the need to appease the injured parties when harm has been done (Telushkin, 1991). Bender and Armour (2007) explore this link between restorative justice and spirituality, emphasizing the nature of restorative justice as spiritually transformative. The authors derive from the literature nine elements of spirituality that infuse restorative justice processes, including transformation, connectedness, harmony, repentance, forgiveness, righting a wrong,

engagement in ritual, experience with the unexplained, and recognition of a common human bond.

While the cultural and spiritual history of restorative practices is certainly rich, some suggest that the depiction of restorative justice as a return to traditional ways of responding to harm is romanticized. Daly (2002) reminds proponents that there are as many examples of violent and retributive practices in native cultures and historical religious societies as there are of peacemaking traditions. Even assuming that restorative practices are rooted in indigenous traditions, the application of collectivist traditions that are built on respect for the importance of community may be especially challenging in modern cultures (Johnston, 2011).

The origins of the contemporary restorative justice movement in contemporary Western society were recorded in Kitchener, Ontario in 1974 (Umbreit & Armour, 2010). The Kitchener Experiment occurred when two teenagers went on a crime spree, vandalizing several businesses and homes in their small community (Peachey, 1989). In addition to a more punitive probationary term, the judge mandated that the teens meet face-to-face with the victims and provide reparations where possible. The offenders met with each victim and completed restitution agreements to repair damages caused during the crimes. The Kitchener Experiment is now known as the first Victim Offender Reconciliation Program (VORP).

In reality, the Kitchener Experiment was the first wave of a rising tide of activism by practitioners and scholars pursuing restorative practices (Umbreit & Armour, 2010). Within the next few years, similar programs began to develop in the U.S., Canada, and Europe (Walgrave, 1998). The original VORP in the U.S., beginning in Elkhart, Indiana, was the first of many. Umbreit (1994) estimates that 400 such programs were initiated

across the U.S. by 1990. Many of these were influenced heavily by the Mennonite Central Committee (Cordella, 1991).

In the U.S., the late eighties and nineties were times of widespread discontent with a justice system that failed to result in meaningful solutions for victims, offenders, and communities. A “get tough” climate prevailed, resulting in harsher penalties and stricter sentencing guidelines. Victims’ advocates, including the National Organization for Victims’ Assistance (NOVA), demanded increased attention to the needs and rights of crime victims (Waller, 2011). Scholars and advocates alike called for innovative solutions, and the answer came in the form of an increase in victims’ services, alternative dispute resolution, and restorative justice. In what is widely considered the seminal text on restorative justice, *Changing Lenses*, Zehr (1990) laid out a framework for understanding restorative justice as a morally and practically beneficial alternative to the traditional retributive justice paradigm.

Throughout the nineties, restorative justice programs entered the public discourse and gained popularity as a diversionary practice for juveniles and first-time offenders (Roach, 2000; Robinson & Shapland, 2008; Umbreit & Armour, 2010). Endorsements of restorative justice practices have come from the American Bar Association, NOVA, and national coalition Dignity in Schools. The restorative justice framework has been extended to police-based strategies (McCold, 2003), in-prison programs such as mediation, victim awareness programs, and community service (Dhami, Mantle, & Fox, 2009), and even to large scale violence and interethnic conflict outside of state criminal justice systems (Ame & Alidu, 2010; Coates, Umbreit, & Vos, 2006; Hanser, 2009; Umbreit & Armour, 2010). As the applications of restorative justice expand, Zehr (2002) suggests that it is not a dichotomous concept, but rather occurs along a continuum from potentially restorative to fully restorative practices.

### 2.3 Impacts and Outcomes

A growing body of research seeks to clarify the conceptual and theoretical underpinnings of restorative justice, as well as to explain the mechanisms and outcomes of restorative practices. Because of the broadly defined and amorphous nature of restorative justice, empirically evaluating the effectiveness of restorative solutions presents a methodological challenge (Doolin, 2007; Kurki, 2000). In general, the public views bilateral justice solutions – those reached through consensus – as fairer than unilateral ones, whether or not punishment is applied (Okimoto, Wenzel, & Feather, 2009). Likewise, restorative practices such as victim-offender mediation and family group conferencing have high rates of satisfaction – typically 80% to 90% – among participants, including victims, offenders, and community members (Coates & Umbreit, 1999; Umbreit, Coates & Vos, 2002; Umbreit, Vos, Coates, & Lightfoot, 2006; Van Ness & Schiff, 2001). Participants in restorative processes also express increased satisfaction with the criminal justice system when compared with those undergoing traditional prosecution (Davis & Grayson, 1980). Other outcomes of restorative processes include increased completion of restitution agreements, reduced court loads, and decreased incarceration rates (See Umbreit, et al., 2006 for a comprehensive review).

The empirical evidence about whether restorative justice reduces recidivism or prevents victimization is considerably more mixed (Kurki, 2000). Debate abounds over whether crime prevention and deterrence are conceptually appropriate goals for restorative justice, where the main focus is on repair of relationships and resolution of needs (Levrant, Cullen, Fulton, & Wozniak, 1999; Okimoto, Wenzel, & Feather, 2009; Robinson & Shapland, 2008). Nonetheless, several empirical studies and meta-analyses have identified decreased recidivism rates among restorative justice participants as compared with non-participating offenders (See Latimer, Dowden, & Muise, 2005;

Umbreit et al., 2002, 2006 for reviews). Based on analyses from the Colorado Criminal and Juvenile Justice Commission and the Washington State Institute for Public Policy, a report of the National Association of State Legislatures credits restorative justice practices with a cost savings of \$7,000 through reduced recidivism and increased compliance with restitution assessments per juvenile offered restorative justice-based diversion programs (NCSL, 2011).

#### 2.4 Critiques

While restorative justice represents a promising approach for achieving justice outcomes, critical appraisals abound (Ashworth, 2002; Daly, 2002; Herman, 2010). Daly and Stubbs (2007) summarize potential challenges to restorative justice as presented in the literature, noting concerns about victim safety in interactions with offenders, potential manipulation of the strategy by offenders or by communities in which structural power imbalances persist, failure to adequately communicate the blameworthiness of offenses, and inability to make a real impact on offenders. Others ask whether restorative justice is sustainable in contemporary Western cultures (Johnstone, 2011), whether restorative justice adequately supports victims (Herman, 2010), and whether it actually serves as a realistic alternative to incarceration (Immarigeon, 2010).

Critics emphasize that while restorative justice may offer some alternative solutions, it is not a “cure all.” Due to concerns about large-scale applicability and state cooptation, restorative justice is more palatable to many as a practice than as a system-level solution or an alternative to current justice policy. On the contrary, Williams & Arrigo (2004) suggest that the personal nature of victim-offender dialogue, family group conferencing, and other community-based strategies make the approach unlikely to result in substantial social or political change. The recent development of restorative justice as a policy solution in state legislation calls a serious look at the reach and impact of this

legislation, as well as key ethical considerations related to its implementation at the state level.

## 2.5 Restorative Justice as a Policy Solution

Despite the objections, there are many who believe that restorative justice offers a comprehensive theoretical framework for justice response, capable of either standing on its own or being used in conjunction with other justice models (Roach, 2000). As a result, restorative justice is able to be used at macro levels to create systemic change (Umbreit, et al., 2006a). A number of countries, including Australia, New Zealand, and the United Kingdom, have enacted some form of nationwide commitment to restorative justice principles and practices. In the United States, statutory recognition of restorative justice is also growing by means of state legislation aimed at encouraging, authorizing, or mandating the use of restorative justice either within or as a diversionary alternative to the traditional court system.

Restorative justice, as a practice and as a policy solution, is uniquely situated within the realms of criminal justice, social justice, and victims' rights. While restorative justice seeks positive outcomes for victims, offenders, and communities, it is first and foremost a victim-centered approach. At its roots, it is focused on meeting the needs of those harmed by crime. The Texas Public Policy Institute is one of many organizations advocating for the use of restorative justice practices and policies to further crime victims' rights (Levin, 2007); however, victims' rights organizations have historically expressed concerns about making sure restorative justice approaches do not unintentionally revictimize crime victims (Prendergast, 2011). Many restorative justice approaches also offer opportunities for offenders to repair harms by means outside of the criminal justice system or through a diversionary process. These practices have attracted the interest those concerned about reducing reliance on incarceration as a primary method of serving

justice. As a result, restorative justice is gaining popularity as a policy solution among groups with a broad range of interests (Lemley & Russell, 2002).

Research on the advancement of restorative justice policy has been extremely limited. As of 2005, Umbreit, et al. (2006) reported that 29 states had current legislation referencing victim-offender mediation (VOM), a specific restorative justice practice. (See Lightfoot & Umbreit, 2004 and Umbreit, Lightfoot, & Fier, 2003 for earlier iterations of this analysis.) State provisions ranged from general to specific, with seven states determined to have a comprehensive structural framework for VOM within their legislative code. Pavelka (2008) identifies 26 states which articulate the use of balanced or restorative justice in state code or statute, with a focus on exploring policy solutions for juveniles.

Currently, there is no quantitative empirical research on the driving factors of restorative justice policy innovations at the state level. A case study of one county's experience in adopting restorative justice policies provides some clues to precursors of this change (Coates, Umbreit, Vos, 2004). When Washington County Court Services in Minnesota undertook a systemic shift toward restorative justice, the organization asked the Center for Restorative Justice and Peacemaking at the University of Minnesota to document their change process. Coates, et al. (2004) found that reform was not prompted by any particular event or crisis, but was rather seen as a slowly evolving process within the context of a long-time progressive government ideology. The Director of Court Services was observed as a policy entrepreneur who was responsible for building a strong local network that supported the change effort. About the process, he stated, "I believe very much that systemic change doesn't happen because the system looks up one day and decides it needs a change. It happens because of outside forces" (p. 19). Some of these outside forces, nurtured by the director, included partnerships with victims' interest groups, criminal justice actors, and community participants. One can also

infer a partnership with the academic institute invited to document and publish about the change process.

In a case study focused on implementation challenges of another system level change, Lemley and Russell (2002) identify economic concerns about the cost of processing and incarcerating a high number of low level offenders as the major predictor of a restorative justice policy initiative in Spokane, Washington. Disagreement between a committed team of advocates who developed the initial plan and the city prosecutor's office led to a weakened version of the intended change, which was later strengthened over time. The authors posited that restorative justice's "more nebulous aspects permit the effects of conditional variables (bureaucratic resistance, political forces, etc.) to influence success of implementation, as well as offer a path to overcome resistance" (p. 164)

Roach (2000) and others also emphasize the "multiple faces" of restorative justice, and the claim that "there is something in restorative justice to appeal to everyone" (p. 263). Restorative justice is frequently presented as a bipartisan or non-partisan policy solution (Levrant, et al., 1999; Roach, 2000). While liberal parties view it as an opportunity for rehabilitation of offenders and community healing, conservatives see its potential to reduce incarceration costs, to privatize justice functions through community organizations, and to hold offenders more strongly accountable for harms caused to victims. Multiple constituencies have been suggested as having a special interest in restorative justice practices, including criminal justice professionals, community groups, crime victims, women, and aboriginal peoples (Roach, 2000). Daly (2002) decries as a myth the assumption that restorative justice is a feminized approach to retributive justice due to its concern for human relationships and argues instead that women may have reason to be critical of state administered use of restorative justice approaches. Other

critics of system-level use are concerned that restorative justice practices may be co-opted and corrupted if joined with the criminal justice system or administered by the state (Levrant, et al., 1999).

No unified, complete directory of restorative justice statutes exists, making it difficult to determine to what extent restorative justice is used as a policy solution across the United States and under what conditions it is being accepted as a viable justice alternative. Theoretical conceptualizations of restorative justice practices and policies suggest that the determinants of restorative justice legislation are likely to be unique, yet exploratory work may begin with the existing research on public policy innovations in general, with special attention to the forces which have contributed to crime policies and crime victims' rights policies of the past few decades.

## Chapter 3

### Theoretical Framework

#### 3.1 Introduction

Theorists in the fields of social work, sociology, and criminology offer an array of explanations for crime and deviance and far fewer explanations for criminal justice policymaking (Kraska, 2004). This chapter provides an overview of classical conceptions of justice, with an emphasis on the contributions of social work to justice theory and innovation. Restorative justice is conceptualized as an alternate framework for justice whose theoretical origins are both old and new.

The second and third parts of this chapter explore two major social theories with particular relevance for explaining restorative justice policy innovations. Research on sentencing and corrections policy can be informed by conflict theories which highlight the role of inequity and power in the development of social structures like the criminal justice system. Constructivist theories offer a less critical lens for understanding the socially constructed nature of both deviance and crime response. Together, these two frameworks guide the selection of variables used to explain restorative justice policymaking in this study.

#### 3.2 Classical Conceptions of Justice

Durkheim (1997) saw the justice system as a functional structure in society, a necessity for the regulation of social behavior (Spitzer, 1974). While the need for laws and legal structures in society are widely accepted, justice itself is a nebulous concept. In spite of centuries of inquiry into its nature and application, starkly differing views remain about what is required to exact justice when a crime has been committed. Justice scholars and theoreticians promote two primary schools of thought: one in which justice

requires retribution or vengeance, and one in which justice requires a useful attempt at crime prevention. Daly (2012) classifies retributive and utilitarian aims as symbolic and instrumental, respectively.

From a retributive viewpoint, the task of justice is a simple one: to communicate the moral blameworthiness of the offense and to enact atonement for the wrongdoing. Retribution is recognized as an ancient and biblical response to harm, harkening back to the Old Testament philosophy of “an eye for an eye, a tooth for a tooth.” The modern theory of “just deserts” originates from Kant’s (2002) *Groundwork of the Metaphysics of Morals*, penned in 1785. Kant proposed that the primary goal of justice as punishment and specified that to respond to offenses with punishment that is not directly in proportion to the harm done is a violation of the laws of justice (Carlsmith, Darley, & Robinson, 2002). In United States justice policy, retributive goals took precedence in the mid-1970s, led in part by the Committee for the Study of Incarceration, an investigatory committee created by two New York City foundations (Travis, 2005). The committee recommended the replacement of the rehabilitative treatment models of the 1960s with just deserts, citing inequality and disproportionality in the justice system as the result of individualized treatment for the same crimes (Barton, 2005). Von Hirsh, director of the committee and author of its report, *Doing Justice* (1976), insisted that proportionality of punishment to the offense rather than the individual was a basic requirement of fairness (von Hirsch, 1992).

While retribution only concerns itself with atoning for the past, utilitarian theories of justice suggest that our response to crime must create desired outcomes in the future in order to achieve the goal of justice. Utilitarian goals of crime prevention include deterrence, incapacitation, and rehabilitation. To this, some add the task of reintegration (Dilulio, 1993). These aims are focused on the usefulness of justice decisions in deterring

crime, ensuring the public safety, and rehabilitating offenders. Jeremy Bentham, a contemporary of Kant, is cited as the originator of utilitarian penal theories: "General prevention ought to be the chief end of punishment, as it is its real justification" (Bentham, 1962, p. 396, as cited in Carlsmith, et al., 2002). As punishment inherently brings harm to the punished, Bentham argues that the evil of punishment must be outweighed by good to those affected by the offense (Bentham, 1982, as cited in von Hirsch, 1992). As a result, effective justice solutions must result in the satisfaction of the victim, the community, and society at large. From this viewpoint, criminal justice institutions have a responsibility "to bring about socially desirable changes in individuals" (Gaes et al., 2004, p. 6).

One of the ways that society can benefit from the administration of justice is by the deterrence of future crimes. Deterrence theory springs from Hobbes' (1928) concept of the social contract, and is expanded upon by the later works of Beccaria (1963) and Bentham (Onwudiwe, Odo, & Onyeozili, 2005). Hobbes, believing people to be rational beings motivated primarily by self-interest, suggested that the role of law in society is to protect the common interests of its members. People knowingly enter into submission to the law in exchange for protection from the self-interest of others. Likewise, Beccaria describes punishment as a painful counterbalance to the pleasure which must motivate criminal acts. Using rational thought, people will choose to avoid punishment by desisting from crime when the punishment is severe, certain, and swift. Both Beccaria and Bentham emphasize that punishment must be just in proportion to the harm caused by the crime, and that punishment in excess of what is necessary to deter crime is unjust itself. Empirical proof of the deterrence effect of today's justice system is limited, yet it continues to attract the interest of scholars and criminal justice practitioners as a primary ideal for the justice system (Nagin, 1998). Deterrence theory is cited as a motivator for

increasing penalties, increasing arrest rates, and improving the speed of prosecution and sentencing.

Carlsmith, et al. (2002) describe incapacitation theory as a “less ambitious” form of utilitarian theory (p. 287). The goal of incapacitation is fulfilled when offenders are removed from society, thereby eliminating risk of future harm. The limitation of incapacitation as a primary justice aim is that offenders must be imprisoned indefinitely in order to permanently remove the threat of harm. The work of incapacitation proponents is to prove that likelihood of crime diminishes after a period of incarceration, and that the crimes of the offender are eliminated along with him, rather than filled by a new drug dealer or thief faced with the same demand (Zimring & Hawkins, 1995). Zimring and Hawkins (1995) suggest that the focus on deterrence and rehabilitation in the U.S. criminal justice system was replaced by the aim of incapacitation sometime during the 1970s, likely around the same time that von Hirsch (1976) called for a renewed attention to just deserts. Indeed, the following decades brought a skyrocketing imprisonment rate.

For the past century, social workers have stood at the forefront of the demand for a more healing and person-centered justice, taking the form of rehabilitative and reintegrative correctional approaches. With an emphasis on the social and environmental causes of dysfunction, social workers suggest that factors outside the control of individuals must be taken into account when serving the goals of justice. While individual responsibility and culpability for wrongdoing is a central tenet of both retributive and deterrent approaches, the recognition of social influences on individuals ushers in a need for social aid on behalf of offenders. Hudson (1999) offers a critical appraisal of retributive theory in her request for a “hardship defense” for offenders experiencing economic disadvantage, arguing that the structural inequalities in society make some offenders less

culpable than others. Hudson's definition of penal justice therefore extends to a requirement for social justice.

From its inception, the social work profession has been marked by a particular concern for juvenile justice (Roberts & Brownell, 1999). Social work's professional body, the National Conference on Charities and Corrections, was formed in 1879. Ten years later, Jane Addams and Julia Lathrop of Hull House were instrumental in introducing the first separate juvenile court system in Chicago, a venture which later spread across the state of Illinois and, subsequently, the nation (Brieland, 1990). Throughout the mid-twentieth century, social workers were among those advocating the expansion of juvenile diversion programs and youth services aimed at delinquents.

Likewise, the prisoners' aid movement was seen by social workers as an opportunity for society to support the rehabilitation of offenders and their successful reintegration into the community (Pray, 1945). In 1945, Kenneth Pray, Dean of the Pennsylvania School of Social Work wrote,

The venerable prisoners' aid movement approaches the middle years of the twentieth century with a new vitality as a dynamic factor in the democratic life of our time. The community's stake in this ancient service is more real and its interest is more sustained than ever before. (p. 111)

The midcentury saw a rise in education, treatment, and rehabilitative approaches for criminal offenders, which was later stifled by the movement toward incarceration as a function of incapacitation and retribution during the seventies, eighties, and nineties. By this time however, rehabilitative penal approaches were once again rising in the public interest. Von Hirsch himself, along with colleagues, debated whether improvements in treatment technologies warranted serious inquiry into the moral legitimacy of rehabilitation as a form of justice (von Hirsch & Maher, 1992).

The emerging field of restorative justice has lately placed growing focus on restoration as a “new” theoretical aim of justice (Gaes, et al., 2004; Keijser, van der Leeden, & Jackson, 2002). Scholars present restorative justice as a paradigm which is both new and old – a “changing [of] lenses” from the modern day punitive focus of justice systems and, simultaneously, a return to ancient, indigenous justice practices as described in Chapter 2 (Hansen & Charlton, 2014; Zehr, 1990). Restoration is both instrumental and symbolic in nature, seeking to contribute to crime prevention goals while restoring right relationship between offender, victim, and community. Restorative justice has been embraced by many social work scholars and practitioners interested in corrections, and social workers are a significant driving force in this emerging field of research.

While the various aims of justice appear to oppose one another theoretically, they frequently overlap in implementation. Societies, institutions, and policymakers may be interested in fulfilling one or more goals of justice simultaneously. For instance, a desire to incorporate rehabilitative or restorative goals into criminal justice does not preclude a continued practice of incapacitation or deterrence. More often, justice workers struggle to create an effective and meaningful balance which will satisfy the demand for justice simultaneously expressed by victims, offenders, and society at large. This study is concerned with the current shift toward restoration as a formally supported avenue for seeking justice. In the remainder of this chapter, conflict and constructivist lenses are used to provide a framework for explaining restorative justice policy making

### 3.3 A Conflict Theory Lens for Restorative Justice Policymaking

The conflict theory paradigm houses an array of theories that explain social behavior and interaction by means of conflict, power, and coercion (Robbins, Chatterjee, & Canda, 2012). Marx, the architect of conflict theory based on social class, suggested

that society is made up of groups vying for control over resources. Groups are united not by a consensus of values, but by self-interest and desire to either keep or gain their share of power, status, and wealth.

Though Marx said little about crime directly, conflict theories have been applied early and often in the study of crime and deviance (Russell, 2002; Spitzer, 1975). Conflict theorists suggest that crime is the result of structural inequality in society and that unequal distribution of wealth causes workers to engage in overt and covert conflicts for social control (Barlow, 1995; Bonger, 1969). The function of the justice system, designed by the ruling class, is to protect the interests of those in power (Chambliss & Seidman, 1982). Through this lens, crime is defined by the powerful, and crime policies are tools used by the powerful to manage and control the powerless (Christie, 1999).

Critical criminology is a contemporary extension of social conflict theory. Like other “critical” social theories, it is concerned with making an analytical appraisal of social phenomena with the intent to not only understand, but change them for the better (Tarr & Landmann, 2011). Critical criminology is expressly concerned with the coercion, power, and inequality in the justice system (Carrington & Hogg, 2002). It asks how changes in the law are related to power struggles in society and observes that minorities, the poor, and the mentally ill are disproportionately under the supervision of the criminal justice system (DeKeseredy, 2011). Alexander (2010) compares today’s marginalization of black Americans through disproportionality in the justice system and felony disenfranchisement laws with the state-led suppression of black political power facilitated by the Jim Crow laws of the 1960s. Marginalized populations are also the most victimized by crime (DeKeseredy, 2011).

Like other “critical” social theories, critical criminology offers a controversial explanation for social structures and political action taken by state legislators to block or promote policy change. Quinney (1974) writes:

The state is created by the class that has the power to enforce its will on the rest of society. The state is thus a political organization created out of force and coercion. The state is established by those who desire to protect their material basis and who have the power to maintain the state... the law is the tool of the ruling class. (p. 52)

In the hands of the ruling class, policy decisions are likely to yield economic, statutory, or other benefits for those in positions of power. The oppressive regime described by critical criminologists is not necessarily born of a strategic series of decisions to undermine others, but may be less intentional: the result of years of structural inequality and the cumulative actions of self-interested parties. Regardless of whether coercive actions are intentional, the implications of such a system are that systemic changes negotiated within the existing power structure are incapable of resulting in their targeted outcome.

DeKeseredy (2011) answers the question: “So, what is to be done? An obvious, but simplistic, critical criminological answer to this question is radical social, political, and economic change” p. 85). In the meantime, less revolutionary and more moderate solutions include decarceration, decriminalization of drugs and victimless crimes, and an emphasis on community-based rather than state-based justice (Barlow, 1995).

Restorative justice has been most closely linked to a prescriptive branch of critical criminology referred to as peacemaking criminology (Klenowski, 2009). Quinney and Pepinsky (1991) are credited with the first detailed articulation of peacemaking criminology as a theory of social justice and nonviolence. It is informed by Eastern philosophy and humanistic theological and intellectual traditions. Peacemaking criminology supports restorative justice’s focus on righting wrongs and asserts that crime

will continue without personal and social transformation that brings about a culture of peace.

Restorative justice promotes nonviolent and non-retributive practices that reflect Quinney and Pepinsky's (1991) ideals for peaceful, human-centered revolution within the criminal justice system. As a result, the debate is extensive over whether it is possible for restorative justice to coexist with traditional criminal justice ideals of punishment and retribution (Roach, 2000). Conteh-Morgan (2005) warns that peacebuilding efforts may be used to ensure the security of the state rather than the security of its marginalized inhabitants. Likewise, Friedrichs (2009) and others suggest that restorative justice within institutional contexts is vulnerable to cooptation by the state. Zehr (2002) argues, however, that the contrast between restorative and criminal justice is not as sharp as it appears and that there is room for meaningful system-level approaches to restorative justice.

Conflict theory suggests that the movement toward restorative justice could be indicative of a shift in power between groups. Class, race, and gender are critical areas of inquiry as they often provide the basis for power or marginalization. Shifts in the political power of previously marginalized groups such as victims, black Americans, and women may help explain shifts toward a restorative focus for victims and offenders. Alternately, conflict and critical theories introduce the possibility that seemingly restorative solutions are in reality the result of their economic or political benefit to the current ruling class. In either case, the adoption of restorative justice policy is likely to be politically and economically motivated and directly related to the interests of groups and individuals with the status and resources to affect legislation.

### 3.4 A Social Constructivist Lens for Restorative Justice Policymaking

Much more recently, the introduction of postmodern thought has been accompanied by the development of social constructivism. Berger and Luckmann (1991) introduced the term “social construction” in their 1966 work *The Social Construction of Reality*. Theories of social construction emphasize the subjective and co-created nature of the social world (Robbins, Chatterjee, & Canda, 2012). Constructivists question the extent to which what we know has objective truth. Instead, multiple understandings of the world are viable. Berger and Luckman (1991) view our understanding of society as both objective and subjective, focusing on how knowledge is developed and given meaning in society.

Because “how we know what we know” is important, social constructivists emphasize the role of language in shaping and maintaining our constructions of reality (Burr, 2003). Constructivists accept that texts, narratives, and discourse have many possible meanings, and that these meanings can also be used to form our perceptions of their subjects. Discourse analysis is a tool often used by social constructivists to examine the multiple constructions of meaning embedded in language (White, 2004). Rejecting the inherent truth of the language used to describe reality, constructivists instead “celebrate diversity, plurality, and the subjugated, all of which have a birth in its kaleidoscope of perspectives” (Henry & Milovanovic, 1996, p. 3)

Constructivist theories about crime emphasize its socially-defined nature. As articulated by Christie (1998): “Crime does not exist. Crime is created. First there are acts. Then follows a long process of giving meaning to these acts” (p. 121). The constructivist view does not altogether oppose critical criminology, which might simply argue that those in power possess the greater ability to define the social environment. Henry and Milovanovich (1996) suggest that social construction and conflict theories offer

similar implications for criminal justice policy: reconciliation, restitution, reparation, and decriminalization. Conflict theory is distinguished by a greater focus on the latter, along with more radical calls for revolution.

Justice policies informed by the constructivist view seek to understand the experience of crime and victimization in the language and voice of those touched (Conteh-Morgan, 2005). Solutions must respond to the deeply personal understanding of events by the involved parties, rather than a state-prescribed, institutionalized, or standardized response. In the postmodernist criminal justice system, "variation and creativity is desirable" (Young, 1999, p. 178). Likewise, restorative justice presents a profoundly personalized and relational response to victimization. Restorative justice *redefines* crime as a conflict between offender, victim, and the affected communities and attempts to create a meaningful discourse among them. This concern for the power of language is shared by constitutive criminologists, who call for a replacement discourse in justice policy as a means of restructuring the organization of justice. Henry and Milovanovich (1996) write:

The critical component of replacement discourse resides in the criminologist's ability to deconstruct that which is established truth, while at the same time to provide the replacement aspects to claim any newly created space with its own internally generated alternatives (p. 204)

In the constructivist view, policymaking is likely to be pluralistic and relative, concerned with the discourse behind decision-making and acutely aware of the socially and culturally defined nature of policy decisions. The emergence of restorative justice policies, for instance, may be the result of a shift in prevailing cultural definitions of justice, new social norms about the role of policy in responding to crime and victimization,

or the prominent voices of influential actors and organizations involved in creating an alternate discourse about criminal justice.

Notably, social construction theories support the utility of understanding multiple perspectives on policymaking and policy research. In reality, restorative justice policymaking is likely to be motivated by a combination of economic, political, and social forces. This study tests the usefulness of variables informed by conflict and critical theories as well as social constructivist perspectives. The results of this research stand to shed light on the ability of divergent, but overlapping, theoretical frameworks to explain the legislation of restorative justice practices.

## Chapter 4

### Literature Review

#### 4.1 Introduction

This chapter lays the groundwork for understanding innovation in restorative justice policy by providing a comprehensive review of the existing literature concerning the determinants of public policy innovations in general and determinants of crime policies and crime victims' rights policies in specific, as well as appropriate methods for studying policy innovation. The chapter concludes with theoretically and empirically supported hypotheses which may help explain and predict the adoption of state restorative justice legislation.

#### 4.2 Public Policy Innovation

The earliest efforts to understand the determinants of state policy adoption offered competing views about the relative importance of social, economic, and political factors and the relationship among them (Dawson & Robinson, 1963; Fenton & Chamberlayne, 1969; Walker, 1969). Walker's (1969) study of 88 policy topics across the United States is considered by many to be the seminal study on policy innovation, or the adoption of a policy by a state for the first time. A barrage of studies followed, each offering a unique model for the prediction of state policy innovations (Nice, 1994; Berry & Berry, 2007). While Walker (1969) aggregated a multitude of policies and policy types, Gray (1973) advocated for the separate consideration of narrow policy areas, finding differential support for determinants of 12 individual welfare policies. Berry and Berry (2007) estimated that more than 40 studies replicating their own (1990) model of policy innovation and diffusion were published between 1990 and 2005 alone, adding contributions to the field of research on a diverse array of policy topics including same-

sex marriage bans (Haider-Markel, 2001), electricity deregulation (Ka & Teske, 2002), the signing of Indian gaming compacts (Boehmke & Witmer, 2004), animal cruelty laws (Allen, 2005), and enactment of Children's Health Insurance Programs (Volden, 2006).

During the same time period that the literature on public policy formation was developing, dramatic shifts were occurring in federal and state responses to crime. Sentencing and corrections reforms were in the forefront of the discussion. Between 1972 and 2005, truth-in-sentencing laws, mandatory sentencing guidelines, three strikes laws, and movements toward prison privatization contributed in a 636% increase in the incarcerated population (King, Mauer, & Young, 2005). Anecdotal explanations abounded, ascribing sentencing and corrections policies to federal ideology and incentives (Harris, 1972), media hyping (Beale, 2006; Caldwell & Caldwell, 2011), shifts in public opinion (Shichor & Sechrest, 1996), and myriad other causes. Yet criminal justice and public policy researchers struggled to understand empirically the unique determinants of criminal justice policies within the framework of previously advanced ideas about the general study of public policy. Over the decades, studies evaluated the effects of social, economic, and political determinants on policies governing juvenile justice issues (Downs, 1976), computer crimes (Hollinger & Lanza-Kaduce, 1988), rape laws (Berger, Neuman, & Searles, 1991), hate crimes (Haider-Markel, 1998), capital punishment (Mooney & Lee, 2000), and due process standards (Davies & Worden, 2009), finding varying and often inconsistent levels of support for hypothesized determinants.

Mirroring the concerns of the past few decades over how to deal with criminal offenders was increased attention over how to best provide justice for victims. In 1965, California passed the first formal victims' rights legislation (McGillis & Smith, 1983). While more than 35 states passed some form of victims' rights legislation over the next two

decades, the 1980s brought increased attention to and concern over justice for crime victims (Sales & Gottfredson, 1990). This concern was reflected at the federal level by the creation of the President's Task Force on Victims of Crime in 1982, whose final report declared as a first priority that "the legislative and executive branches, at both the state and federal level, must pass and enforce laws that protect all citizens and that recognize society's interest in assisting the innocent to recover from victimization" (p. 16). Policies intended to ensure or expand the rights of crime victims include a range of statutes which encourage, authorize, or mandate (1) *restitution* to the victim by the offender during sentencing, (2) *compensation* of crime victims' losses by the state, (3) *notification* of proceedings including release of the accused, (4) access to and *participation* in criminal proceedings through victim impact statements or prosecutorial conferencing, (5) reasonable *protection* from the accused, (6) *information* about the criminal process and available resources for victims (8) *legal standing* as a party to their case, and (9) other rights related to the reasonable speed of proceedings, due process, fairness, respect, and privacy (National Crime Victim Law Institute, 2011).

In 1984, the Victims of Crime Act authorized the Crime Victims Fund to collect criminal fines and forfeitures for use in supporting state victim compensation programs and other victim services (Glenn, 1997). By 1998, all 50 states had passed a statutory bill of victims' rights (Kilpatrick, Beatty, & Howley, 1998), and as of 2013, 33 states had passed amendments to their state constitutions pertaining to victims' rights (NVCAP, 2013). At the federal level, the Crime Victims' Rights Act (18 U.S.C. § 3771) enumerates the rights of victims of federal crimes, including the rights to protection from the accused, the right to notification, the right to attend proceedings, the right to speak at criminal justice proceedings, the right to consult with the prosecuting attorney, the right to restitution, the right to a speedy trial, and the right to be treated with fairness, dignity, and

respect. On the thirtieth anniversary of the President's Task Force on Victims of Crime, victims and victim interest groups continue to advocate for the adoption of a federal constitutional amendment ensuring the unique rights of crime victims (National Victims Constitutional Amendment Passage, 2013).

Around the same time as the President's Task Force on Victims of Crime was formed, the Attorney General's Task Force on Violent Crime also called for a study of "the various crime victims' compensation programs and their results" (As cited in McGillis & Smith, 1983). Beyond the official funded report (See McGillis & Smith, 1983), a bulk of literature followed. Studies examined the use and impact of victims' rights policies such as crime victim compensation, victim impact statements, and other statutes guaranteeing crime victims participation and protection in the justice progress (Harland, 1983; McGillis & Smith, 1983; Sales & Gottfredson, 1990; Sales, Rich, & Reich, 1987). In a research project conducted by the National Center for Victims of Crime, Kilpatrick, et al. (1998) found partial support for the effectiveness of state policies in increasing the rights of crime victims. While states with strong policy structures consistently yielded better outcomes and higher satisfaction for victims than those with weak statutes for victim protection, upwards of 60% of victims surveyed still did not receive access to certain guaranteed protections and opportunities for participation in either type of state. Only half of victims reported being satisfied with the criminal justice system as a result of their interaction with it. Barriers to implementation of even the most comprehensive victims' rights statutes include adequate funding, training of justice system personnel who interact with victims, and enforcement of the rights guaranteed by law (Kilpatrick, et al., 1998).

But to what forces can we credit the flood of statewide victim's rights policy adoption and how can we best understand their patterns of diffusion? Contributions from political scientists and policy analysts have rarely explored the adoption of victims' rights

policies; however, some clues can be found and are contained herein. The following section provides an overview of the major environmental factors which have been used in the empirical literature to explain policy adoptions in general. It goes on to explore which determinants which have appeared more frequently in the policy innovation literature on criminal justice and crime victims' rights policies. Together, these lenses are used to form a frame for hypothesizing about the factors now contributing to restorative justice policy innovations.

#### 4.3 Methods to Study Policy Innovation and Diffusion

Due to the vast array of variables that have been associated with state policy adoptions, analyzing the determinants of public policy is a complex process. Sabathier (2007) summarizes the challenges: "Understanding the policy process requires knowledge of the goals and perceptions of hundreds of actors throughout the country involving possibly very technical scientific and legal issues over periods of a decade or more while most of those actors are actively seeking to propagate their specific "spin" on events" (p. 4). The empirical literature on public policymaking establishes a precedent for the use of regression-based methods to identify determinants associated with state policy adoptions. Depending on the purpose and scope of studies, some are cross-sectional (Brown, 2013) and others longitudinal (Berry & Berry, 1990).

Sophisticated longitudinal studies attempt to identify causal linkages using time hazard models, in which data points for each variable are available for each year under study, and allow prediction of the likelihood that a state will adopt a policy in a given year based on temporal information. Berry and Berry (1990) are credited with pioneering Event History Analysis, previously used in behavioral and social sciences, as a method for studying policy innovation. EHA is a discrete time hazard framework in which the variable being studied is the *hazard rate*, or the risk that a state will adopt a given policy

in any given year (Berry & Berry, 1990). As the hazard rate is an unobservable variable, a dummy variable is coded for each state in each year: 0 for a year in which the state does not adopt the policy and 1 for a year in which the state does.

While Berry (1994) has strongly advocated for the desirability of time hazard models as the only method which allows for the simultaneous testing of both internal state determinants and external determinants, she also notes the challenge of data collection required for this model. Where data is not available at multiple points in time, or where multiple points in time are simply not a feature of the dependent variable, other cross sectional regression models may be used to address either internal *or* external determinants of a policy event. In this sense, logistic regression is used to predict the likelihood, based on an array of independent variables, that a state will adopt a policy by or within the year under study (See Brown, 2013 and Williams, 2003). Most contemporary research on policy innovation follows these methodological guidelines.

The benefit of regression models is that they offer the opportunity to extend anecdotal accounts of policymaking into a quantifiable relationship between environmental characteristics and policy adoptions. In order to be helpful, regression models must be using data which complete and meaningfully operationalized and which meets the data requirements of the regression technique. Even a well-executed regression may fail to capture the rich context of the environment in which policymaking resides.

In political science research, case studies have commonly been used to supplement quantitative data collection and analysis and add depth to the understanding of the complex processes of policy innovation and diffusion (Kingdon, 1984; Minstrom, 1997). Yin (2014) describes a case study as “an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-world context, especially when the

boundaries of the phenomenon and context may not be clearly evident” (p. 16). As a result, it “copes with the technically distinctive situation in which there will be many more variables of interest than data points.” Case study research is capable of contextualizing an otherwise isolated understanding of policymaking, as well as to capture complex processes and causal mechanisms in the decision-making chain which cannot be reliably reduced during variable specification.

While many scientists have argued that case study research is “soft,” ambiguous, and unmethodical, scholars versed in the method consider that the openness of the case study is valuable as an artistic process which is founded upon the knowledge and intuition of the researcher engaged in breaking new ground. Gerring (2007) suggests that case studies represent “the first line of evidence” (p. 40) in explorations of emerging research subjects. Also, while case studies are unable to estimate causal effect sizes, they are well equipped to explore causal mechanisms which cannot easily be proved by large sample, multi-state research (Gerring, 2007).

Contrary to popular critique, rigorous methods are equally as important to the case study design as they are to other empirical methods. Yet there is limited agreement on a precise set of research designs and methodological specifications for case study research. Both Gerring (2007) and Yin (2014) have made recent attempts to present standardized considerations for case study research. Both emphasize the importance of carefully selecting and following a single- or multiple-case research design, with increasing units of analysis and increasing observations (either spatial or temporal) adding rigor. In addition, a strong case study research design should include (1) clearly defined research questions, (2) theory-based hypotheses or propositions, (3) purposive selection of cases, (4) attention to alternative explanations, and (5) strategic comparative

analysis of data, in addition to other intentional considerations projected to establish both reliability and internal and external validity.

Yin (2014) strongly advocates the importance of theoretical propositions in guiding data collection and analysis, and ultimately, in forming the basis for analytic generalizations as a result of case study research. Unique from statistical generalizations, which are based on generalizing from a sample to a population, analytic generalizations evolve when researchers are able to advance or reject the theoretical propositions employed during research design, or generate entirely new ones as a result of emerging data. In this way, rigorously conducted case studies may “shed light on a larger class of cases” (Gerring, 2007, p. 20). Gerring goes further to state that “properly constituted, there is no reason that case study results cannot be synthesized with results gained from cross-case analysis, and vice versa” (p. 13). In this way, mixed methods studies are able to gain an understanding of policy formation that is both broad and contextual.

#### 4.4 The Problem Environment

The earliest predictors of state policy-making to be explored were the internal characteristics of the state environment, including a variety of social, economic, and political variables influencing the passage of legislation (See Nice, 1994). However, the obvious starting point for much research is at the point of need. For instance, lengthier times for hazardous waste clean-up have been shown to prompt the adoption of Volunteer Remediation Program policies (Daley, 2007), and higher rates of uninsured children have been associated with increased Children’s Health Insurance Program expenditures per capita (Tope & Hickman, 2012).

Theoreticians have suggested that, like other social issues, crime policy is a logical reaction to observable features of the problem environment, such as crime rates,

recidivism rates, sentence lengths, and incarceration rates, all of which may also indicate the need for reforms to sentencing or corrections policies (Bennett, Dilulio, & Walters 1996; Ismaili, 2006). Some policy innovation research has demonstrated a link between crime rates and punitive correctional policies (Dharmapala, et al., 2010; Stemen, 2007; Williams, 2003). Still, support in the criminological literature for problem-based determinants of crime policy has been inconclusive, with rational explanations often superseded by political and economic forces (Link & Shover, 1986; Meier, 1994; Nicholson-Crotty, Peterson, & Meier, 2003).

While the literature is divided on how responsive crime policy is to the actual problem environment, there is significant evidence that *perceived* features of the problem environment are influential. For instance, while state crime policies have not fluctuated consistently with crime rates, there have been strong links between more punitive policies and fear of crime (Liska, Lawrence, & Sanchirico, 1982; Oreskovich, 2001). Often, media coverage plays a significant role in forming public perceptions of policy issues (Caldwell & Caldwell, 2011). While there is some support for effects of the problem environment on policy innovation, this initial view of policy as response to problem alone has widely given way to more politicized and contextual hypotheses that are more strongly supported in the empirical literature.

As with other crime concerns, the problem environment to which restorative justice responds is complex. Crime rates represent one component of this environment; however, restorative justice policies are primarily aimed at responding to, rather than preventing, crimes. Subsequently, they are unlikely to be seen as a solution for high crime rates. More relevant aspects of the problem environment include whether victims are satisfied with case outcomes, whether the justice process is effective in reducing crime, and whether the community feels satisfied with current justice solutions. Many of

these “problems” present significant challenges to measurement in a statistical model however, and they are also less likely to influence restorative justice policy adoptions because of the relatively low public awareness of restorative justice practices and policies.

#### 4.5 Economic Explanations

Looking beyond problem perspectives, there is evidence that across policy types, larger, wealthier, more urban, and more industrialized states are quicker to innovate (Walker, 1969). A central explanation of this finding is that such states have more resources and therefore greater capacity to implement new policy approaches (Boehmke & Skinner, 2012). In general, policy innovation is more likely to occur when states have access to slack resources, or resources in excess of what is needed for daily operations (Nice, 1994). Theorists focused on economic explanations of public policy formation proffer that a state’s level of fiscal or structural capacity more strongly affects its likelihood of adopting policies that variously tax or conserve resources. A limited resource environment induces pressure to reduce costs through policy decisions such as the reduction of welfare benefits (Tweedie, 1994), legal representation for the indigent (Worden & Worden, 1989), and costly criminal justice sanctions (Caplow & Simon, 1999; Nicholson-Crotty, Peterson, & Meier, 2003). Predictably, the resource environment takes a less influential role in policymaking when the policy in question is inexpensive to implement.

There is significant research to suggest that the economic and correctional system capacities of states predict adoption of sentencing and corrections policies. In a particularly high profile example, the state of California has received national attention due to a Supreme Court mandate to reduce prison overcrowding, resulting in a variety of innovative sentencing and corrections reforms (“The Magic Number,” 2013). Similarly,

lack of fiscal or system capacity may lead states to adopt criminal justice policies which result in cost reductions, or alternatively, to prevent states from adopting new policies which are viewed as cost inducing. Studies have found that lower corrections spending across the United States was of decreased adoptions of truth-in-sentencing laws, which are likely to increase incarceration costs (Allen, et al., 2004), and increased adoptions of policies mandating increases to parole and probation fees (Stemen, 2007). Likewise, Brown (2013) and Stemen (2007) found that decreased state revenues were associated with the adoption of decarceration policies and fee increases, respectively.

In their 1983 multi-survey of American victims' compensation programs, Smith and McGillis (1983) likewise observe that "states that have developed programs tend to have relatively large populations, relatively high crime rates, and relatively high per capita state taxes" (p. 7). Conversely, the authors observed that many states without compensation programs had below average state taxes and were less populated. These observations are consistent with theories of economic influence on state policymaking. Much the debate around their adoption is not over the merit of the policy, which in itself has bipartisan support, but rather the cost to the state (Smith & McGillis, 1983). Naturally, economic factors play a larger role in the adoption of victims' rights policies with a cost to the taxpayer – such as victim compensation programs – than those with only administrative implications.

Some restorative justice policy measures, such as access to post-conviction victim-offender mediations, are presented as beneficial primarily to victims at a low cost to the state. However, many advocates have identified restorative justice policies that are diversionary in nature as an opportunity to decrease state correctional costs by reducing reliance on incarceration. The Texas Public Policy Foundation is one such advocacy group that has recommended the use of restorative practices as a low-cost justice

alternative (Levin, 2007). It is likely, therefore, that the adoption of restorative justice legislation may be associated with strains on state fiscal capacity and correctional system capacity.

#### 4.6 Political Explanations

A variety of political variables add complexity to the problem and resource environments. Hypothesized political determinants of policy-making suggest that political party affiliation of the governor and legislature, party competition, legislative professionalism and diversity, public opinion, and state ideology all contribute in some fashion to decisions about public policy (Bergin, 2011; Berry & Berry, 2007; Karsh, 2007; Nicholson-Crotty & Meier, 2009; Nice, 1994; Walker, 1969).

In general, more liberal political environments are associated with an increased likelihood to explore and adopt new policies, as well as a greater interest in policies which value equality, while conservative environments are more likely to value market-based solutions to problems, with the exception of solutions to issues which highlight traditional moral values (Nice, 1994). Republican control of the state governorship or legislature has been associated with bans on abortion (Norrander & Wilcox, 1999) and decreased public health spending (Tope & Hickman, 2012), while Democratic control has been linked to more comprehensive policies to address dating violence (Hoefer, Black, & Salehin, 2012).

Historically, the Democratic Party has been associated with less punitive criminal justice goals. Brown (2013) finds that the percent of Republican legislators in a legislative body reduces the likelihood of adoption of decarceration policies, while Makse and Volden (2011) find that Democratic control of the governorship will increase general reforms in criminal justice policy.

Traditionally, crime victims' rights have been seen as a conservative response to concerns about crime and victimization, as they are considered to be more necessary where liberal justice laws are not doing their job (Edleheart & Geis, 1974). However, at least while grouped together with domestic violence relief, marijuana decriminalization, and abolition of the death penalty, state victim compensation policies have been associated with more liberal state ideology, while controlling for state income, urbanism, and education (Wright, Erikson, & McIver, 1987). While Haynes (2008) hypothesized that a larger Democratic population in counties in Pennsylvania would lead to the increased allocation of funding toward victim compensation, the opposite was true. Even so, victims' rights policies are not likely to lead to partisan debate and have been supported by both Republican and Democratic legislatures (Aaronson, 2008; Hays, 1996). The national Crime Victims' Rights Act of 2004 was passed with wide bipartisan support, without significant legislative debate or public visibility surrounding its adoption (Aaronson, 2008).

At the theoretical level, this is a particularly interesting area to explore with regard to adoption of restorative justice policy. Restorative justice has been linked by various parties to victim-centeredness, fiscal conservatism, and less punitive forms of alternative justice. While the Republican Party has been strongly linked to fiscal conservatism and more moderately linked to the victims' rights movement, it has also been associated with distinct opposition to crime policies perceived as "soft on crime." The Democratic Party is historically much more likely to support rehabilitative justice policies. As a result, some restorative justice advocates declare it to be a non-partisan or bi-partisan issue, in which both political parties can share an interest in adoption of restorative justice legislation.

Many studies of policy innovation have hypothesized that unified governments – in which the governor and legislature share a party – will be more effective in passing new party-supported laws due to decreased likelihood of gridlock (Stemen, 2007;

Whitaker, Herian, Larimer, & Lang, 2013), while others have suggested that the opposite may hold true. Party competition models theorize that when political races are close and there is more intense competition between parties, legislators will be more likely to push for policy innovations that distinguish them ideologically from their opponents. For example, divided governments have been found more likely to adopt punitive criminal sentencing policies (Dharmapala, et al., 2010) and state lottery legislation (Berry & Berry, 1990) due to the presence of greater competition in the political sphere. Party competition has also been found to be a key determinant of hate crime laws (Haider-Markel, 1998), social welfare benefits (Holbrook & Van Dunk, 1993), and many other policies (Walker, 1969). The extent to which party competition influences state legislation may be more likely to vary based on the public salience of the policy (Ringquist, 1994) and the extent to which the policy is a partisan issue (Nelson, 1984).

Sentencing and corrections legislation has represented a highly salient public policy issue throughout the last few decades. Accordingly, both Allen, et al. (2004) and Williams (2003) found that two separate measures of party competition were positive predictors of the adoption of truth-in-sentencing laws. In addition, Dharmapala, et al. (2010) found that the likelihood of truth-in-sentencing and sentencing guideline enactments increased with the number of years spent with a divided government since 1960. While sentencing and corrections remains an object of public attention, restorative justice policies are not well known. They often pass into legislation with little fanfare and without being part of an electoral platform.

Other characteristics of legislatures which have provided some insight into the policymaking process include the professionalism of the legislative body and the-race and gender of legislators. Legislative professionalism hypotheses suggest that legislatures which are more organized and legislators who are compensated more highly for their

expertise will be more successful at passing new laws. Many studies testing this variable use Squire's (1992) method of gaging legislative professionalism, which combines the average size of legislator staff, average salary, and average days per legislative session. More professional legislatures have been associated with state pollution control laws (Ringquist, 1994) and increased CHIP spending (Tope & Hickman, 2012). While Walker (1969) found some utility for this variable across policy types, Boehmke and Skinner (2012) did not.

In their 50-state, multi-decade, time-hazard models, Both Stemen (2007) and Makse and Volden (2011) operationalized legislative professionalism using legislative salaries and found a statistically significant relationship between the two; however, while Stemen (2007) found that legislative professionalism *increased* the likelihood of determinate sentencing reforms, Makse and Volden (2011) were surprised to find that a negative relationship existed between legislative professionalism and the adoption of 27 various criminal justice policies. Williams (2013), using a 48-state regression model and Squire's (1992) index of legislative professionalism, found no significant relationship between professionalism and adoption of truth-in-sentencing or three strikes laws during the year 1997. Taken alone, these results suggest that legislative professionalism may have distinctly different effects on different types of policies and that operationalization makes a difference in outcomes.

The effects of legislator characteristics such as race and gender have been somewhat more decisive. Wolbrecht (2002) writes that "women have been associated with issues such as education, healthcare, and the environment, and such image traits as compassion, cooperation, and honesty" (p. 149), while men promote a tougher image and indicate more support for policy issues related to crime, the economy, and defense. States with a higher percentage of female legislators have been found more likely to pass

certain domestic violence intervention laws (Murphy, 1997), policies supportive of senior citizens (Giles-Sims, Green, & Lockhart, 2012), abortion policies (Berkman & O'Connor, 1993), and other policies viewed as women's issues (Poggione, 2004; Saint-Germain, 1989; Thomas, 1991), including crime issues that more directly affect women (Wolbrecht, 2002). Paggione (2004) finds that the gender of legislators exerts an influence on policy preferences that is independent of constituency preferences, party, and ideology.

Likewise, research has supported the finding that black legislators have a unique political agenda more likely to represent minority interests and liberal goals (Button & Hedge, 1996; Miller, 1989; Preuhs, 2006). However, there has been inconclusive evidence about the level of influence that black legislators exercise over actual policy enactments (Preuhs, 2006). Bratton and Haynie (1999) found that in half of their study sample of states, black legislators were less successful at passing legislation than white legislators. A "racialized political context" works in concert with agenda setting to determine actual influence of minority legislative groups over policy adoption outcomes (Preuhs, 2006, p. 585). In addition, the impact of legislator characteristics, such as race and gender, is clouded by the influence of descriptive representation (Grose, 2005). Female and minority legislators are more likely to be selected by minority or liberal constituent bases. This presents a challenge for the measurement of policy impacts created by the legislators' gender or race alone, which interact with demographics of constituencies (Owens, 2005; Preuhs, 2006).

The effect of legislators' gender and race has not been consistently targeted as a possible determinant of criminal justice policy. In general, Barrett (1995) found that legislatures with fewer women and black legislators were significantly more likely to be concerned with "crime" as a policy issue; however, it is unclear whether this definition of crime policy encompassed rehabilitative or reintegrative efforts. Percival (2009) found

that a higher percentage of black legislators was associated with the increased rehabilitation services for state prisoners. Wolcrecht (2002) defines some crime issues as “women’s issues” to the extent that targeted crimes directly affect women, giving the Violence Against Women Act as an example. However, women and men experience similar rates of victimization overall (Federal Bureau of Investigation, 2012).

Restorative justice is often linked with qualities of compassion and collaboration, which have been strongly associated with female political agendas. Between 1997 and 2004, both black and female legislators were more likely to sponsor, support, and take action on legislative efforts to amend or abolish federal bans on welfare for drug felons (Owens and Smith, 2012). In essence, repeal of federal bans represents a policy preference for extending social rights to offenders. It is realistic to imagine that black legislators may also value alternative justice policies which stand to benefit the disproportionate number of black Americans supervised by the criminal justice system.

The ideological preferences of policy-makers and citizens represent another major area of inquiry in the literature on state policy innovation to date. Government ideology and public opinion are deeply linked, as citizens are imagined to affect public policy decisions by means of dynamic representation (Nicholson-Crotty, Peterson, & Ramirez, 2009; Wright, et al., 1987). For, “unless mass views have some place in the shaping of policy, all the talk about democracy is nonsense” (Key, 1961, p. 7, as cited in Wright et al., 1987, p. 980). Various, government ideology, citizen ideology, or public opinion have been associated with welfare reforms (Mead, 2004), antismoking policies (Shipan & Volden, 2006), and telecommunications regulation (Kim & Gerber, 2005). Admittedly, the accurate definition and measurement of “ideology” is complex, especially when political actors frequently reshape their public image according to their political goals (Berry, et al. 2010).

Berry, Ringquist, Fording, and Hanson's (1998) measure plots government and citizens on a continuum from liberal to conservative, taking into account voting histories of legislators and citizens (respectively) as an indicator of policy preferences. Other frequently used measures of state political ideology include Elazar's (1968) typology of political cultures and Erikson, Wright, and McIver's (1993) measure of political ideology. Elazar's typology labels states as Individualistic, Moralistic, or Traditionalistic based on the political worldview of citizens. He relies largely on geographical migration patterns to track the movement of socio-political beliefs and inclinations; however, his model is critiqued as unquantifiable (Johnson, 1976). Erikson, et al. aggregate poll data in order to estimate the ideology of each state's citizens.

In a review of the literature on diffusion of criminal justice policy, Bergin (2011) noted that only six of 20 studies examining political ideology found this variable a significant predictor of policy adoptions. However, she also identifies a lack of consensus on measurement of this construct. In general, political ideology has been associated with policies such as death penalty statutes but not hate crime laws or sentencing policies (Bergin, 2011). A liberal citizenry, as defined by Berry, et al (1998), has been associated with the adoption of policies abolishing the death penalty for juveniles (Traut & Emmert, 2003) and negatively correlated with privatization of prisons (Nicholson-Crotty, 2004a).

In addition, states are likely to adopt policies which are ideologically consistent with one another. As a result, the propensity of states to adopt new legislation has been evaluated in terms of their prior commitment to ideologically similar types of policies. A state's preference for comparably punitive crime laws has been associated with subsequent adoptions of social disenfranchisement of felons and truth in sentencing guidelines (Owens & Smith, 2012; Nicholson-Crotty, 2004). Likewise, a prior commitment

to alternative justice solutions may pave the way for acceptance of restorative justice practices at the system level (Coates, et al., 2004).

For restorative justice purists, the approach is most commensurate with a commitment to the needs and rights of crime victims, who are intended to be not the sole but the primary beneficiary of a more restorative paradigm. Consequently, it is possible that states that have indicated their commitment to victims' rights through the adoption of a constitutional amendment for victims' rights will be more likely to also adopt restorative justice legislation.

#### 4.7 Social Explanations

While economic and political determinants are often features of the state government itself, social explanations of state policymaking suggest that characteristics of the populace, such as race, poverty, and education, are likely to affect policy adoptions. Essentially, the presence of distinct groups may prompt policymakers to either promote policies that burden or benefit them (Boehmke & Skinner, 2012, p. 8). Growing nonwhite populations have been linked to white support for restrictive immigration policies (Rocha & Espino, 2009), felony disenfranchisement laws (Behrens, Uggen & Manza, 2003), and opposition to bilingual education (Hempel, Dowling, Boardman, & Ellison, 2013) and affirmative action policies (Tolbert, 2003), suggesting the presence of overt or covert racism. Accordingly, critical approaches suggest that public policies are "mechanisms for managing the underclass" (Garland, 1990, p. 134).

Widespread racial disparities in the criminal justice system suggest a pattern likely to extend into policy formation (Tonry, 1995). Racial threat theories predict that governing forces will respond to high minority populations and public portrayals of minority crime with more punitive sentencing and corrections policies (Jacobs & Carmichael, 2001; Liska, Lawrence, & Sanchirico, 1982). Indeed, studies have found a

statistical relationship between the passage of criminal justice reforms and the size of the African American population (Allen, et al., 2004), the non-white population (Makse and Volden, 2011), or the population of black and Hispanic males aged 15 to 34 (Link & Shover, 1986). Most racial threat explanations have centered on the effects of varying percentages of African Americans within a population, but some others have found significant positive correlations between increases in race riots and corrections spending (Jacobs & Helms, 1999), as well as interracial crime rates and general fear of crime (Liska, et al., 1982).

Link & Shover's (1986) materialist model provides support for a combined theory of racial and economic threat, indicating that large "problem populations" accompanied by rising unemployment rates and declining state economies were predictive of sentencing reform efforts. Studies employing models of economic threat have also explored connections between poverty rates, unemployment, and welfare spending as predictors of incarceration rates and punitive correctional policies, finding promising albeit inconclusive support for the theory (Beckett & Western, 2001; Greenberg & West, 2001; Jacobs & Carmichael, 2001; Jacobs & Helms, 2001; Link & Shover, 1986; Stemen, 2007). Crimes are also more likely to be cleared by arrests in cities with greater inequalities among population members (Jacobs & Helms, 1996, Liska, Chamblin, & Reed, 1984; Williams & Drake, 1980; Swanson, 1978). For this reason, many suggest that "the criminal justice system primarily exists to control the elements of an economic or racial underclass who threaten existing arrangements with predatory behaviors" (Jacobs & Helms, 1996, p. 324). In general, however, less support is apparent in the sentencing and corrections literature for economic threat than for racial threat hypotheses.

Considerable support for the potential of racial threat theories to explain sentencing and corrections policies suggests that this is fertile ground for future research.

Controlling for economic explanations, Percival (2009) focused on a race-based framework to explain the state level adoption of crime policies emphasizing prevention and rehabilitation across all 50 states in 1995 and 2000. Consistent with theories of racial threat, Percival found that states with greater racial diversity and more negative racial attitudes toward blacks were less likely to provide rehabilitation services to inmates. Alternatively, the percentage of African American legislators in a state increased its likelihood of passing legislation supporting prisoner reentry programs (Percival, 2009). With few other studies to shed light on the determinants of the growing adoption of rehabilitative, preventative, and restorative policies, there is much more to learn about the changing political, social and economic contexts in which less punitive crime policies are now being formulated.

Likewise, examination of restorative justice policies requires a critical lens. While restorative justice purists view the approach as victim-centered, it is also likely that policies may be perceived as beneficial for offenders, either directly, as a result of diversionary opportunities, or indirectly, by means of the potential for healing and reintegration of wrong-doers into society. Therefore, homogenous states may be more comfortable with the adoption of restorative justice policies, which create opportunities for disproportionately minority offenders in addition to victims of crime.

While the interests of minority populations may be suppressed through policymaking, cultural traditions and community norms also play a role in overall citizen ideology. Policymakers are much more likely to respond to ideological preferences of citizens when policies have moral implications (Haider-Markel & Meier, 1996; Mooney & Lee, 2000). In particular, fundamentalist and evangelical Protestant religious beliefs are sometimes associated with support for the death penalty (Grasmick, Bursik, & Blackwell, 1993). Restorative justice is often linked to its spiritual implications and is frequently cited

as having developed from aboriginal peoples and tribal societies. Therefore, there is potentially a connection between the use of restorative justice at a systems level and the influence of tribal populations within the state.

#### 4.8 Policy Entrepreneurs and Interest Groups

Policy entrepreneurs, advocacy coalitions, and interest groups represent forces inside or outside of the state government who introduce and spur innovations in public policy. Sheingate (2003) defines policy entrepreneurs as “individuals whose creative acts have transformative effects on politics, policies, or institutions.” (p. 185). For legislators, entrepreneurship may present a political opportunity to be viewed as innovative and effective (Weissert, 1991). However, entrepreneurs may take action from within or outside the government system, inclusive of both legislators and government aides, as well as dynamic leaders of interest groups, academics, researchers, and media figures (Kingdon, 1984). The definition of policy entrepreneur is also capable of expanding to include the strategic activities of “think tanks” or policy institutes dedicated to addressing particular issues (Mintrom, 2006), professional associations (Balla, 2001), and various other interest groups and parties (Crowley, 2003). Policy entrepreneurs, whether in the form of individuals or institutions, are innovators. As such, they are more likely to play a role in the adoption of policies that represent a significant diversion from the traditional approach rather than an incremental change to existing solutions (Mintrom & Vergari, 1996). Crowley (2003) provides a historical analysis of the role of policy entrepreneurs from legislators to social workers to interest groups in guiding major shifts in child welfare policy throughout the twentieth century. She notes the importance of ingenuity, persistence, alertness, and risk-taking in sorting policy entrepreneurs from other policy actors.

The role of policy entrepreneurs in agenda setting has been explored in various capacities; however, their influence has rarely been tested as a determinant of state policy adoptions (Karch, 2007). Kingdon (1984) asserts that policy entrepreneurs were key players in the adoption of new legislation in 65% of cases and that they were deemed unimportant only 13% of the time: “One can nearly always pinpoint a particular person, or at most a few persons, who were central in moving a subject up on the agenda and into position for enactment” (p. 180). Mintrom (1997a, 1997b, 2000, 2006) has taken the lead in promoting consideration of the role of policy entrepreneurs in standard models of policy innovation and diffusion, finding that the strategic activities of policy entrepreneurs – problem framing, teaming, and network inside and outside state lines – are significant predictors of the introduction and passage of school choice legislation when controlling for other internal and external determinant hypotheses. Both case studies (Oliver & Paulshaheen, 1997) and regression models (Balla, 2001) have been used to successfully connect the actions of policy entrepreneurs to the adoption of healthcare policy

Organized interest groups are often involved in policy entrepreneurship (Crowley, 2003). In fact, studies of human service interest groups suggest that they perceive engaging with the legislature as their most critical task (Hoefer, 2000a). Interest groups have been used to help predict environmental policies (Daley, 2007; Ringquist, 1994), abortion bans (Norrander & Wilcox, 1999), sex offender sanctioning (Oreskovich, 2001), and animal cruelty laws (Allen, 2005). However, the level of an interest group’s actual involvement and ultimate influence may also be difficult to measure. Availability of resources and access to key decision makers affect interest group success (Hoefer, 2000b). Further, interest group influence is greater when organizations are professionalized and when the policy issue is highly salient (Ringquist, 1994).

Erez (1989) suggests that "the redirection of the focus of attention in the criminal justice system from criminals to victims can be attributed mostly to the efforts of special subgroups of victims" (p. 237). Victims and their families, who fail to reach a sense of justice via the traditional criminal justice system, are the loudest advocates for reform of policies impacting victim involvement in justice (Aaronson, 2008). National organizations including the Association of Prosecuting Attorneys, Mothers Against Drunk Driving, the National Center for Victims of Crime, the National Organization for Victim Assistance, the National District Attorneys Association, and the National Organization of Parents of Murdered Children, as well as similar statewide coalitions and organizations have been active voices driving the expansion of victims' rights policies at the federal and state levels. Aaronson further credits the passage of the national Crime Victims Rights Act to "the scholarly contributions, organizing activities, strategic guidance, and political contacts of leaders of the contemporary victims' rights movement" (p. 630).

In Coates, et al.'s (2002) case study of a system-level restorative justice adoption, "partnership" was a key theme, and change centered around the coordinated efforts of community groups, justice system administrators, and key decision-makers. Much of the organization and growing professionalization of the restorative justice movement has been credited to the centralizing influence of academic institutes in schools of law, social work, and conflict resolution, along with community-based centers with a mission of providing information about and advocating for the spread of restorative practices. Such institutions may represent key policy entrepreneurs in the field of restorative justice. Some states have several centers dedicated to the generation of research and the promotion of restorative justice practices, while others have few or none. The role of policy entrepreneurs in the form of individuals and interest groups remains an underexplored area of the literature on both social work and criminal justice

policy and is likely to be particularly salient in understanding the adoption of restorative justice policy.

#### 4.9 External Determinants of State Policy Adoptions

The public policy research on diffusion indicates that in addition to internal decision-making within states, external forces contribute to the spread of policies from one state to another. Notably, the study of policy diffusion is methodologically unique from the study of policy innovation based on state characteristics (Berry, 1994). As external patterns of diffusion will not be explored in the present study, only a general overview of external determinants of policymaking is provided here.

In general, Makse and Volden (2011) find that likelihood of state policy adoption significantly increases along with the number of prior adopters: The more states that adopt a policy, the more likely others are to follow suit. Public policy theorists suggest that states are likely to adopt policies from other jurisdictions on impulses of imitation, emulation, or even competition (Karsh, 2007). Walker (1969) was among the first to study the role of diffusion in spreading policies throughout the United States, specifically focusing on the role of geographic proximity to previous adopters in the spread of 88 policy innovations. Geographically determined diffusion patterns have since been widely studied in the public policy literature, including a number of studies exploring policies in the criminal justice arena (See Bergin, 2011). Grattet, Jenness, & Curry, (1998) found that the number of prior adopters in the same U.S. Census region was predictive of hate crime legislation, whereas Soule and Earle (2001) found no support for such claim in their own study. Indeed, while geographical diffusion has been widely studied, there is limited support for the hypothesis that geographic proximity to previous adopters is a significant predictor of policy innovation (Bergin, 2011; Karsh, 2007; Mooney, 2001). Mooney (2001) reports that this variable is statistically significant in less than half of studies in which it is

tested, and suggests that the majority of the studies are methodologically flawed and do not control for ideological similarities between adoption states.

Grossback, et al. (2004) advance a theory of social learning to better explain diffusion patterns among states. A social learning framework suggests that geographic proximity is not the only or most important feature of a state that is acting as a reference group for another potential adopter. Rather, measures of ideological distance between reference states and adopting states act on the likelihood of adoption more predictably than geographic proximity (Grossback, et al., 2004; Nicholson-Crotty, 2004a; Nicholson-Crotty, 2004b). In addition, the ideological distance between adopting states and the federal government moderates the effect of federal influence on adoption (Grossback, et al., 2004). Controlling for a variety of political, legal, and economic variables, Nicholson-Crotty (2004a) found statistical support only for his ideological diffusion hypothesis in his study of federal influence on state level sentencing policies. Pacheco (2012) expands on prior hypotheses about the diffusion of policies from state to state by putting forth social contagion model in which public opinion shifts upon awareness of policies implemented nearby and creates an impetus for policymakers to act accordingly.

The research on state policymaking at least partially supports the hypothesis that states are influenced in their policy decisions by observing nearby states or the federal government. In addition, policy transfer is facilitated far more predictably by ideological similarities among prior and potential adopters than by geographical proximity. This represents an important area of continued research related to the spread of state legislation, yet is beyond the scope of the present study.

#### 4.10 Research Questions and Hypotheses

The present study is designed to identify internal state characteristics associated with the adoption of restorative justice policy at the state level. Due to the limitations of

data collection, the relatively low public awareness of restorative justice legislation, and the lack of federal incentives for or organization around the adoption of restorative justice policy, this study does not attend to external forces that may also drive policy diffusion. As a beginning exploration of restorative justice policymaking, it asks whether the following characteristics of American states are correlated with the adoption of restorative justice legislation between 1988 and 2014. The following hypotheses are informed by conflict and constructivist theoretical frameworks and the existing body of literature on state policy adoptions:

1. The adoption of more supportive restorative justice legislation is predicted by lower percentages of black residents as a proportion of the state population.
2. The adoption of more supportive restorative justice legislation is predicted by higher percentages of American Indian/Alaskan Native (AIAN) residents as a proportion of the state population.
3. The adoption of more supportive restorative justice legislation is predicted by higher percentages of female legislators as a proportion of all state legislators.
4. The adoption of more supportive restorative justice legislation is predicted by higher percentages of Democratic legislators as a proportion of all state legislators.
5. The adoption of more supportive restorative justice legislation is predicted by lower state revenues per capita.
6. The adoption of more supportive restorative justice legislation is predicted by higher incarceration rates per capita.
7. The adoption of more supportive restorative justice legislation is predicted by the prior adoption of a state constitutional amendment for victims' rights.

In addition, qualitative analysis is used to further explore how these factors and others have promoted or impeded the adoption of restorative justice legislation in selected states.

## Chapter 5

### Methods

#### 5.1 Overview

This study uses a convergent-parallel mixed-methods design (Creswell & Clark, 2007) to build an empirically-supported, contextual model of the state policy environments in which restorative justice policies are adopted. Using this approach, the researcher collects quantitative and qualitative data simultaneously and analyzes it separately before searching for patterns across data types (See Figure 5-1). A quantitative cross-sectional analysis of secondary data uses ordinal logit regression (Orme & Orme, 2009) to test whether social, political, and economic variables empirically supported by prior research on policy adoptions and relevant theories of justice predict adoption of more supportive restorative justice legislation at the state level.

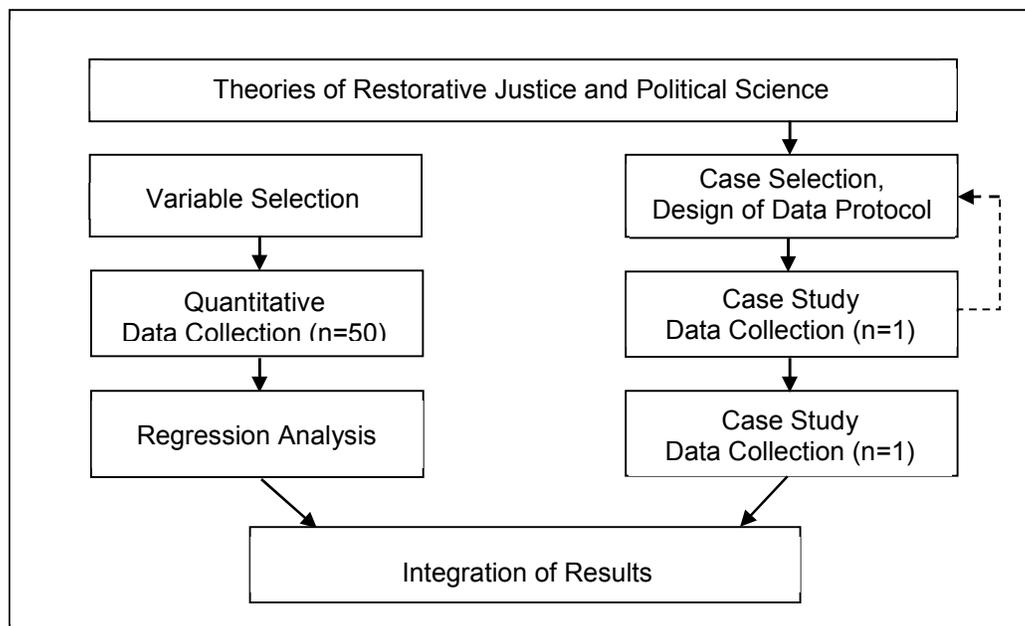


Figure 5-1 Convergent Parallel Mixed Methods Design

Concurrently, this study uses in-depth interview methods to conduct two diverse (maximum variation) case studies (Gerring, 2007). Because restorative justice policymaking itself is a relatively unexplored area, and because some variables, which are theoretically supported by the literature, are difficult to operationalize using quantitative methods, the openness and contextually rich nature of the case study design add considerable value. Quantitative and qualitative data are collected and analyzed in a convergent approach, in order to compare and integrate insights from both methods. This approach serves to validate and triangulate the results of both methods and to gain a comprehensive understanding of both “how much” and “how” state social, political, and economic conditions affect the adoption of restorative justice legislation.

## 5.2 Quantitative Method

### *Cross-Sectional Research Design*

This study uses a cross-sectional design and employs ordinal logit multiple regression to identify which social, political, and economic characteristics of states, if any, are associated with the level of support for restorative justice policy adoptions in each state. The study sample includes all 50 U.S. states, and examines the most supportive restorative justice policy adoption for each state between January 1, 1988 (the year of the first restorative justice policy adoption meeting the inclusion criteria for this study) and December 31, 2014. This timeframe was selected in order to capture all restorative justice legislation adopted at the state level. The supportiveness of state restorative justice policies is regressed onto state social, political, and economic variables during the adoption year for each state. For instance, Texas adopted its most supportive restorative justice policy innovation in 1999, and all independent variables hypothesized to predict this legislative event were collected for the same year. Collecting data on independent variables for the year of policy adoption captures the state environment in place at the

time the legislative decision was made, and assists in drawing conclusions about the usefulness of the variables in predicting upcoming policy adoptions based on state characteristics.

*Dependent Variable: Measurement and Data Collection*

The dependent variable in this model is the level of statutory support for restorative justice in each state, based on legislative statutes passed into law between 1988 and 2014. The Consortium on Negotiation and Conflict Resolution (CNCR) at Georgia State University School of Law assisted in compiling a directory of restorative justice legislation. Staff and interns at CNCR searched the WestLaw database for restorative justice statutes in all states using the following search terms: “restorative justice,” “community justice,” “balanced justice,” “victim-offender,” “community circles.”

The resulting database included the state, the year adopted, the location of the statute, and the verbiage surrounding the search term. For the purposes of this study, returned statutes were designated as “restorative justice policies” when they met one or more of the following criteria: (1) directly of the term “restorative justice,” (2) referenced a specific restorative justice practice such as victim-offender mediation, family-group conferencing, or sentencing circles, (3) expressed concern for the righting of wrongs between victims and offenders as a goal of justice. Statutes referring only to restitution or reparations without connection to the goal of righting wrongs were not included, as this is a crucial theoretical tenet of restorative justice practices (See Chapter 2). In addition, because this study is focused on how restorative justice is used as a means of criminal justice reform, statutes selected for this study are limited to those which address criminal justice matters, as opposed to family court or child welfare matters.

Restorative justice policies range widely in terms of their comprehensiveness, their point of intervention, their intended target, and their level of authority. For the

purposes of this study, the researcher worked in conjunction with the policy staff at CNCR to assign each statute a code from 1 to 3 based on the level of statutory support that it offered for restorative justice. The value of 0 was assigned in the absence of a statute. Statutes with a reference to restorative justice but no detail about administrative or fiscal support for its implementation were assigned a value of 1. Statutes that provide administrative or fiscal support for the use of restorative justice in a specific criminal context but do not require its use were assigned a value of 2. Statutes that mandated the use of restorative justice in any criminal justice context were assigned a value of 3.

The most supportive statute in each state was selected to represent the overall level of support in the state. This statute was targeted for analysis and also dictated the year for which independent variables were collected. In the instance that a state had multiple statutes offering the same level of support for restorative justice, the most recent policy adoption was chosen due to its greater relevance for the current policy environment in the United States.

#### *Independent Variables: Measurement and Data Collection*

Based on empirical evidence from prior studies on policymaking and an understanding of the theoretical propositions associated with restorative justice, this study tested eight independent variables for their association with the passage of state legislation (See Table 5-1). The independent variables were collected for the year of the most supportive restorative justice policy innovation in each state. For states without a restorative justice policy event, independent variables were collected at three points over the 26 year time period for this study – 1990, 2000, and 2010 – and averaged to create a composite score. While this introduces some limitations in terms of the precision of the estimate for each state, it provides the best available approximation of the general policy environment during the period in which restorative justice policies were not adopted.

Table 5-1 Independent Variables: Measurement and Source

<b>Independent Variable</b>	<b>Measurement</b>	<b>Source</b>
Black Population	Percent Black Pop. (Ratio)	U.S. Census Bureau
Tribal Population	Percent AIAN Pop. (Ratio)	U.S. Census Bureau
Female Legislators	Percent Female Legislators (Ratio)	Center for American Women and Politics
State Revenue	State Revenue per Capita (Ratio)	U.S. Census Bureau
Incarceration Rates	Incarceration Rates per Capita (Ratio)	Bureau of Justice
Victims' Rights Policy Preference	Constitutional Amendment (Dichotomous)	National Constitutional Amendment Passage State Directory
Democratic Legislators	Percent Democratic Legislators (Ratio)	U.S. Census Bureau
Crime Rates	State Crime Rates per Capita (Ratio)	Uniform Crime Report

#### Black population

The population of residents in each state who identify as black or African American was measured as a percentage of total state population and collected from the U.S. Census Bureau population estimates (U.S. Bureau of the Census, 2014a). This variable represents a proxy measure of political power held by black Americans in the state legislature. While gathering data on the percentage of black legislators as a proportion of the total seats, preliminary correlation testing revealed an almost perfect correlation between the percentage of black residents in a state and the percentage of black legislators in the state's legislature during 2009, the most recent year for which both datasets were available. For this reason and because of the difficulty of collecting annual data on the percentage of black legislators, only the population-level variable was included in this analysis.

### Tribal population

The Bureau of Indian Affairs collects data on the registered tribal population in each state, and this is markedly different from the percent of residents indicating American Indian or Alaskan Native (AIAN) on the U.S. Census. Unfortunately, there are a variety of challenges for tribes seeking federal recognition, which result in an inaccurate picture of tribes in the U.S. (Koenig & Stein, 2008). In addition, the registered tribal population for each state is not available on an annual basis. Acknowledging the potential limitations of this form of measurement, this study used the most complete measure available on an annual basis: U.S. Census population estimates for AIAN residents from each state, as a percentage of total population (U.S. Bureau of the Census, 2014a).

### Female legislators

Female legislators were measured as the percentage of total legislators in each state. These data are collected from annual fact sheets published by the Rutgers University Center for American Women and Politics (2014).

### State revenue

State revenue was measured as the annual state revenue per capita. This variable is available from the U.S. Census Bureau's Annual Survey of State Government Finances (U.S. Bureau of the Census, 2014b).

### Incarceration rates

While the literature suggests a variety of means to measure prison overcrowding, this is a difficult variable to operationalize consistently for a national sample over a period of 26 years. Data on prison capacity maintained by the Bureau of Justice in the National Prisoner Statistics collection vary by state and by year, and the database contains large amounts of missing data. The best available proxy measure for assessing prison overcrowding was incarceration rates. Incarceration rates are the rate of sentenced

prisoners under the jurisdiction of state or federal correctional authorities per 100,000 residents. Data on incarceration rates were collected from the U.S. Bureau of Justice (2014) in the National Prisoner Statistics data collection

#### Victims' rights policy preference

State victims' rights policy preferences was coded using a dichotomous variable: "1" if the state has adopted a constitutional amendment for victims' rights during or prior to the year of the most supportive adoption and "0" if not. Data on state constitutional amendment passage were collected from the centralized listing on the National Victims' Constitutional Amendment Passage website (NVCAP, 2014).

#### Democratic legislators

The dominance of selected political parties in state government has been measured alternately by majority control of one or both houses, or by the percentage of Republican or Democratic legislators as a proportion of total seats (Allen, et al., 2004; Brown, 2013; Makse & Volden, 2011). This study used the proportion of Democratic legislators, collected from the U.S Census Bureau (U.S. Bureau of the Census, 2014c). in order to capture their influence at the most specific level available, rather than limiting data to majority control. No data points for this variable were available for Nebraska, which holds non-partisan elections for its legislature; therefore, Nebraska was excluded from the regression model.

#### Crime rates

This study controls for the likelihood that states with higher crime rates will be more attentive to crime policy, and therefore more likely to adopt restorative justice policies along with other crime policies. Crime rates were measured as the number of violent and property crimes per 100,000 residents and collected from the U.S Department

of Justice Federal Bureau of Investigation's Uniform Crime Report (2014). See Figure 5-1 for the predicted ordinal logit model.

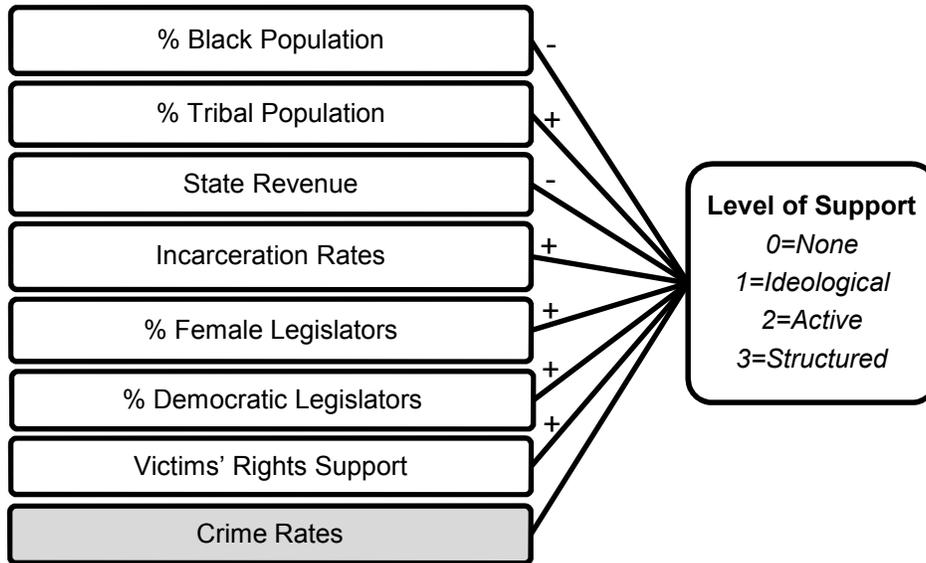


Figure 5-2 Predicted Ordinal Logit Regression Model

#### *Data Analysis*

Data were entered into SPSS.22 (IBM, 2012) statistical analysis software, where they were screened and then analyzed using ordinal logit regression (Orme & Orme, 2009). Initial univariate and bivariate analyses were used to screen data and assess whether the variables met regression model assumptions. Descriptive statistics include the range, mean, and standard deviation for continuous variables and frequency charts for non-continuous variables. In addition, frequency distributions, histograms, and boxplots were employed to assess the normality of the distribution, to diagnose kurtosis and skew, and to identify influential outliers. Fischer's coefficient was used to calculate the normality of each continuous variable and to monitor the outcomes of log transformations to address kurtosis and skew. For categorical variables, frequency distributions were used to screen for problematic patterns in the data. Bivariate analyses

including Pearson's correlation coefficients, ANOVA for continuous variables, and the Chi-Square test of independence for categorical variables were used to observe relationships between pairs of variables.

In order to better understand the sequence and geographic distribution of policy adoptions, a more detailed univariate analysis was conducted for the dependent variable dataset. Statutes are presented on a geographic map of the United States as well as on a timeline by the date of adoption. This analysis allows for the detection of non-statistical patterns in the dissemination of restorative justice policy adoptions.

In order to detect problematic collinearity between independent variables, Pearson's correlation was used for continuous variables and Kendall's Tau for dichotomous variables. In both cases, collinearity can be detected by a correlation coefficient ( $r$ ) of greater than  $|.80|$  (Abu-Bader, 2010). In addition, a mock linear regression model was used to retrieve the tolerance values and the variance inflation factors (VIF) for the independent variables. Typically, collinearity is diagnosed by tolerance values of less than  $.10$  or VIF values of greater than  $10$  generated during the mock regression output. However, the small sample size of this study suggests that a more conservative threshold for tolerance levels (below  $.40$ ) and VIFs (above  $2.5$ ) is appropriate (Allison, 1999).

Missing data were limited due to the use of reliable state and national datasets. Data for California, in which the most supportive policy adoption occurred in 2014, were not yet available. In addition, seven states adopted policies in 2012 or 2013, years for which state per capita revenue was not yet available through the U.S. Census Bureau. There is no agreed-upon cutoff in the literature for when missing data becomes problematic (Dong & Peng, 2013); however, due to the small sample size for this study, missing data on these points estimated using data from the most recent year available.

This decision was made based on the observation that state-level data are unlikely to change drastically in a single year, in the more likely event that the political power distribution remains relatively stable. California data therefore reflect the year prior to policy adoption (2013), while state per capita revenue data points for seven states represent the year 2011 instead of 2012 or 2013. As a result, there were no missing data in the final dataset except for the percentage of Democratic legislators in Nebraska. Nebraska has a non-partisan electoral system for the legislature and was therefore dropped from the sample.

Because the dependent variable of “level of support” was measured at the ordinal level on a scale of 0 to 3, ordinal logit regression was used (Orme & Orme, 2009). Ordinal logit regression calculates the cumulative probability that an event will occur based on the independent variables. In this instance, the regression model calculates the probability that a state will adopt a restorative justice policy at or up to a certain level of statutory support.

There is an array of opinions in the literature on the appropriate subject-to-variable ratio in a regression model. While a typical rule of thumb has called for at least ten subjects per variable, the precedent in state level research (in which the sample size is inherently limited to 50) has indicated that up to twelve variables drawn from complete, accurate state and national datasets may be usefully tested (See Brown, 2013; Hoefler, Black, & Salehin, 2012; Williams, 2003). Because of the small sample size, which increases the likelihood of Type II error, and because of the exploratory nature of this study, statistical significance was measured using an alpha level of .10 (Labovitz, 1968).

The dependent variable, level of support for restorative justice, was regressed onto the eight independent variables. Because this study is exploratory, variables were entered simultaneously, allowing interpretations of the influence of each predictor in the

model as if it were the last predictor entered. The ordinal regression model was interpreted based on overall model significance using the Wald  $\chi^2$  statistic and both Pearson's and Deviance goodness-of-fit tests (Menard, 2010). The effect of each coefficient in the ordinal logistic regression model was calculated as the probability of membership in each category of the dependent variable (Menard, 2010).

### 5.3 Qualitative Method

#### *Case Study Research Design*

This study pairs statistical analysis of state and national datasets with two qualitative case studies. The purpose of this pairing is to construct a historical and social context around the mechanisms which influence the adoption of restorative justice legislation. The case study component of this study was used to explore the legislative process over time. Stake (1995) advocates the use of "issue statements" (p. 17) to direct observation and interpretation of the case. The case studies here focus on expanding the political, social, and historical context of the following issues hypothesized about in the qualitative analysis:

- (1) The role of special populations such as women, minorities, and tribal populations in advancing or blocking restorative justice policy;
- (2) The role of the state's fiscal capacity and current correctional capacity in creating an environment conducive to the consideration of restorative justice policy;
- (3) The role of crime victims and victims' rights organizations in advancing or blocking restorative justice policy; and
- (4) The role of partisanship in debates about the value of restorative justice as a policy solution.
- (5) The case study method also allows for the consideration of issues that could not be captured through quantitative analysis, including:

- (6) The role of interest groups, including academic and community-based institutes, in the centralization of information, organization of resources, and promotion of policy;
- (7) The role of policy entrepreneurs in the prioritization of restorative justice as a legislative goal; and
- (8) The nature of the initial opportunity by which restorative justice was considered as a policy solution, and subsequent decision-making processes, which either advanced or blocked continued consideration.

This study uses an embedded multiple-case design (Yin, 2014), in which multiple types and sources of data are embedded within and used to describe multiple cases. The unit of analysis or “case” under study is a state’s legislative process. Each case is the “story” (Stake, 1995) of a single state’s consideration of restorative justice as a policy-level solution and the subsequent decision to adopt (or not adopt) legislation, which encourages or mandates the use of restorative practices in criminal justice contexts.

#### *Sample*

A “two-tailed” approach (Yin, 2014) or “diverse case method” (Gerring, 2007) guided the purposive selection of two cases, which are able to illuminate the research questions due to their recent involvement in the consideration of restorative justice legislation: one case was selected based on the state’s decision to adopt multiple highly supportive restorative justice bills; the other, on the state’s decision not to adopt multiple proposed restorative justice bills. The selection of cases was also guided by other features which increased each case’s utility for the study, namely: (1) the legislation considered or implemented was of significant nature in terms of its potential to affect state practices, (2) the process had taken place recently enough to be remembered

clearly by key decision-makers, and (3) key decision-makers, including the sponsor of the bill and major advocates, continued to be accessible for consultation during this study.

The two cases selected for study were Colorado and Texas. Between 2007 and 2013, the Colorado legislature adopted or updated 35 statutes relating to the implementation of restorative justice in the state court system, resulting in the most extensive legislative support for restorative justice practices in any state to date. In contrast, while the Texas legislature provided for the availability of victim-offender mediation as a post-sentencing, victims' rights initiative for serious violent crimes in 2001, more recent attempts were voted down by the state legislature. During each legislative cycle since 2009, efforts to establish a more extensive pre-trial victim-offender mediation program as a diversionary option (HB2622, 2009; HB2882, 2009; HB2270, 2009; HB2065, 2011; HB2019, 2011; HB167, 2013) or to establish a restorative justice pilot program for juvenile offenses (HB2114, 2009; HB1787 2011; HB937, 2013) repeatedly failed to gain the support necessary for adoption. The peak period for active consideration of restorative justice policy consideration also set the temporal boundaries for each case study from 2007 to 2013.

In addition to their divergent outcomes, these two cases were selected based on their ability to shed light on other contrasts relevant to the hypotheses of this study. Texas has a notoriously conservative legislative environment and was under Republican governorship for the duration of the selected time period. In contrast, Colorado had a Democratic governor during this time period and was drawing national attention for the state's liberal stances on marijuana legalization, environmental issues, gun control, and gay rights (Holt, 2013). The primary sponsor and acknowledged champion of Colorado's legislative success in restorative justice was Rep. Pete Lee (D), a white man. In Texas, various bills were filed by several male and female legislators, with the primary author

being Rep. Ruth McClendon (D), a black woman. In addition, as previously mentioned, restorative justice was widely advertised as a cost-saving approach in Texas by the Texas Public Policy Foundation (Levin, 2007).

This sampling strategy allowed exploration of the range of possible legislative decisions about the use of restorative justice. The exploration of these two cases in particular provided a useful opportunity to better illuminate the role of variables hypothesized in the quantitative model, as well to observe alternate explanations of restorative justice policymaking. Notably, the two cases are certainly not representative of the possible range of outcomes. Specifically, this case study approach does not allow for the generalization to different processes among all cases in which restorative justice legislation was adopted, nor among all cases in which legislation was not adopted.

#### *Measurement and Data Collection*

Multiple “units of analysis” (Yin, 2014) or observation points were embedded in each case. These units included interviews with key decision-makers in each state, videos and transcripts of legislative hearings, the text of legislative bills and statutes, and other documents submitted to the legislature on behalf of or in opposition to the legislation. Multiple observations increase the opportunity for triangulation and further improve the rigor of this method over single-observation designs. Sampling procedures for each unit of analysis are detailed below. In order to ensure reliability during data collection across multiple observations and in multiple cases, a data collection protocol was used (See Appendix A). The protocol includes detailed data collection procedures which guided each case study (Yin, 2014).

#### *Interviews*

The first interview for each case was solicited from the sponsor of the legislation, as this person was judged most likely to be able to describe when and how the initial

decision to propose legislation was made, as well as to identify the other key decision makers and influencers during the legislative process. Subsequent interviews were conducted based on the recommendations of the bill's sponsor(s), or identified through testimony at legislative hearings or submission of advocacy documents. Once interviews yielded little new information and interview participants were unable to provide referrals to additional participants relevant to the goals of the study, a point of saturation was reached. See Table 5-2 for a de-identified list of interview participants in each state. Notably, when the researcher contacted the sponsors of restorative justice bills in Texas and their legislative staff by phone and email three times over a three week period, they were either unresponsive or unwilling to contribute comments to this study.

Table 5-2 Interview Participants

<b>State</b>	<b>Interviewee</b>	<b>Referral Source</b>
Colorado	Primary Bill Sponsor	Legislative Documents
	Director, Restorative Justice Nonprofit	Bill Sponsor Hearing Testimony
	Probation Officer	Bill Sponsor
	Director, Colorado District Attorneys Council	Bill Sponsor Other Interviewees
	District Attorney	Bill Sponsor
	Director, Restorative Justice Program	Bill Sponsor
Texas	Legislative Staff, Texas District and County Attorneys Association	Legislative Documents Hearing Testimony
	Staff, Texas Criminal Justice Coalition	Legislative Documents Hearing Testimony
	Staff, Texas Public Policy Foundation	Legislative Documents Hearing Testimony Other Interviewees
	Staff, Texas Association of Businesses	Legislative Documents Hearing Testimony

Each interviewee was contacted by email to describe the purpose and benefit of the study and to seek his or her willingness to participate in the research. An informed

consent form was provided by email for electronic signature, along with a general list of topic areas to be covered during the interview. Following electronic consent, an appointment was set for a face-to-face meeting, video conference, or telephone interview, depending on the availability and accessibility of the interviewee. An interview guide was used to elicit responses to open-ended questions relating to the hypotheses of this study (See Appendix B). Additional questions arising from unanticipated responses of interviewees were also explored. One of the benefits of the case study method is its adaptability to evolving information through progressive focusing (Parlett & Hamilton, 1976, as cited in Stake, 1995). Interviews were digitally recorded and transcribed in order to allow thoughtful analysis.

#### Colorado legislative history and documents

The Colorado Joint Legislative Library provides access to the legislative history and text of all proposed bills considered by the Colorado legislature, as well as that of codified statutes (Colorado Legislative Council, 2014). All relevant bills and statutes related to restorative justice between 2007 and 2013 were reviewed. Audio recordings of committee hearings and floor debates in the House and Senate chambers are available beginning in 1973 from the same source and were gathered for major pieces of successful legislation during the targeted time period. Legislative committee summaries including the date, time, location, committee members, witnesses, general nature of discussion, and roll call votes, as well as written summaries of House and Senate floor debates were obtained from The Colorado General Assembly website (Colorado General Assembly, 2014).

#### Texas legislative history and documents

The Legislative Reference Library of Texas provides comprehensive access to documents including bill histories, bill files and analysis, statutes, audio recordings of

legislative hearings, House and Senate Journals and committee minutes, session summaries, and newspaper clippings (Legislative Reference Library of Texas, n.d.). Bill histories and bill filings for all restorative justice related bills between 2007 and 2013, including original and revised versions, fiscal notes, analyses by the Senate Research Center, committee reports, and vote sheets, were obtained electronically through Texas Legislature Online (n.d.). Audio recordings of committee hearings and floor debates for the House were accessed online through the Texas House of Representatives website (n.d.) and for the Senate through the Senate of Texas website (n.d.).

### *Data Analysis*

Data analysis and interpretation of case study research is unique from other qualitative methodologies. The result of case study analysis is a detailed description of the case and its setting, often attached to a chronology of events (Creswell, 2013). Multiple sources of data are used as evidence for each assertion about the case. Pre-established issue statements (Stake, 1995) or theoretical propositions (Yin, 2014) provide a frame for analysis. In this study, each case was analyzed independently as a single, contextual story of legislative decision-making, with special attention given to whether the data supported or refuted either the theoretical propositions of the study or other alternate explanations.

The legislative history of related bills and statutes was reviewed first and used to create a timeline of the state legislative effort. The Legislative Reference Library of Texas makes the distinction that, while “legislative history” is primary concerned with how a bill becomes law, “legislative intent” can best be described as why a bill becomes law (“Legislative history vs. legislative intent,” n.d.). The exploration of legislative intent therefore involves determining who authored, proposed, sponsored, supported, or opposed the bill and why each did so. Bill analyses, testimony at legislative hearings,

discussion at committee meetings, and interviews with key decision makers were used to establish legislative intent alongside the history of the bill and add evidence to the theoretical propositions of the study.

Documents including bills, statutes, and committee minutes were analyzed through content analysis, “a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (Hsieh & Shannon, 2005, p. 1278). Theoretical propositions of the study directed coding of documents, which also identified other conceptually significant text segments. The richest sources of data were drawn from first-hand narratives including interviews and recorded testimonies. These narratives were transcribed and coded in nVivo software, again using a priori codes indicated by the pre-defined issue statements with which this case study is concerned, as well as other prominent emerging themes. Coded text was assigned meaning through the process of categorical aggregation, a key form of data analysis in case study research (Stake, 1995). Using this technique, narrative codes and bits of evidence were aggregated into categories and then collapsed into themes (Creswell, 2013).

Stake (1995) describes case study analysis as an organic and spontaneously evolving process in which the researcher forms impressions based on his or her observations and then searches for data which confirm or disconfirm the assertions. The exploration of the legislative process in each state was likewise framed and focused by an effort to identify consistencies or inconsistencies with the theoretical propositions of the study, as well as to identify other unexpected factors with an active influence on the legislative process. The result is a story of the case which includes assertions about the possible meanings of the themes generated during research.

Qualitative research is often criticized as highly subjective; however, rigorous research techniques are capable of controlling for research biases. Detailed records of all data sources and research procedures served as an audit trail, documenting each research decision and its justification so that all procedures could be fully described in final reports (Padgett, 1998). In addition, preliminary research reflections were shared with interviewees in a process of member checking, and additional evidence was gathered to substantiate or refute alternative explanations proposed by participants (Creswell, 2013).

#### 5.4 Integration of Results

While quantitative and qualitative data were analyzed separately, the complimentary nature of these methods provides an opportunity to integrate the results of each in the final stages of analysis. At the conclusion of Chapter 7, the results of each case study are compared to identify any meaningful similarities or differences between the two cases. In Chapter 8, the results of both case studies are discussed in relationship to the results of qualitative data where applicable. To the extent that qualitative and quantitative data suggest matching patterns, case study results are used to help contextualize and explain the processes underlying statistical relationships. To the extent that they do not align, new theoretical explanations are constructed or identified for future research. This mixed methods design offers an opportunity to measure both “how much” and “how” hypothesized social, political, and economic variables affect the adoption of restorative justice legislation.

## Chapter 6

### Quantitative Results

#### 6.1 Introduction

The purpose of this study is to understand the state policy environments in which restorative justice legislation is being considered as a criminal justice policy solution. The quantitative section of this mixed methods study uses ordinal logit regression to determine whether various political, social, and economic characteristics of states predicted their likelihood of adopting more supportive restorative justice legislation in the same year. This chapter describes the national sample of states, including the dependent variable: the level of statutory support for restorative justice in each state. It then summarizes univariate analyses of the dependent and independent variables, as well as the results of bivariate analyses. Finally, it presents the ordinal regression model and interprets findings in relation to the hypotheses of this study.

#### 6.2 Sample

This study includes 49 American states, excluding Nebraska (See Chapter 5). As of June 2014, 32 states had statutory support for the use of restorative justice or specific restorative justice practices in their criminal or juvenile justice codes that met the inclusion criteria for this study (See Table 6-1). Within these states, 165 total statutes were identified. The number of statutes within each state range from a single mention (Arizona, Arkansas, Maine, New Mexico, Pennsylvania, Virginia) to 37 separate statutes (Colorado). A complete listing of statutes can be accessed in its most updated form, along with regulatory and court rules, through an online directory which is maintained by the CNCR at Georgia State University at the following URL: <http://law.gsu.edu/centers/consortium-on-negotiation-and-conflict-resolution/programs-and-research/>.

Table 6-1 State-Level Statutory Support for Restorative Justice

<b>State</b>	<b>Number of Statutes</b>	<b>Level of Most Supportive Statute</b>
Alabama	3	Ideological
Alaska	3	Active
Arizona	1	Ideological
Arkansas	1	Ideological
California	8	Active
Colorado	37	Structured
Delaware	5	Active
Florida	2	Active
Hawaii	2	Ideological
Illinois	2	Ideological
Indiana	3	Ideological
Kansas	2	Ideological
Louisiana	5	Active
Maine	1	Ideological
Minnesota	7	Structured
Mississippi	3	Ideological
Missouri	5	Structured
Montana	9	Structured
Nebraska	5	Active
New Hampshire	5	Structured
New Jersey	2	Active
New Mexico	1	Ideological
North Carolina	3	Active
Ohio	3	Ideological
Oklahoma	2	Active
Pennsylvania	1	Active
Tennessee	7	Active
Texas	9	Structured
Vermont	21	Structured
Virginia	1	Active
Washington	3	Ideological
Wisconsin	3	Active

Twenty states (70%) use the phrase “restorative justice” to describe available or desirable practices and programs. Others reference a specific practice which is distinct to



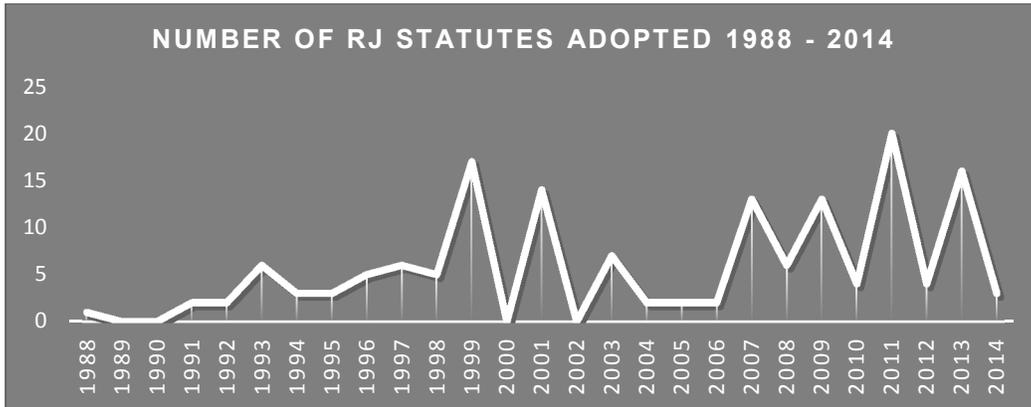


Figure 6-2 Adoption of Restorative Justice Statutes Between 1988 and 2014

### 6.3 Univariate Analyses

The dependent variable and eight independent variables were screened in preparation for their inclusion in the regression model. The section provides the mean, range, standard deviation, and distribution of each variable and describes efforts to improve the distribution of variables by addressing outliers and transforming data.

#### *Dependent Variable*

In order to capture the overall level of restorative justice policy support in each state, the most supportive and, secondarily, most recent statute was identified for inclusion in the dependent variable dataset. Frequency distributions were used to examine the shape of the dependent variable dataset and its readiness for use in the regression model (See Table 6-2). Using the original four-point scale of 0 to 3, there was only a small number of states with a structured level of support for restorative justice, resulting in an uneven distribution of the dependent variable. For this reason – and in recognition of conceptual similarities between active and structured support – the top two levels of the coding structure were collapsed in the subsequent bi- and multivariate analyses, resulting in values of none = 0, ideological = 1, and active = 2.

Table 6-2 Frequency Distribution of Dependent Variable

Variable	Original Categories		Collapsed Categories	
	Category	Frequency	Category	Frequency
Statutory Support	None = 0	36% (18)	None = 0	36% (18)
	Ideological = 1	26% (13)	Ideological = 1	26% (13)
	Active = 2	24% (12)	Active = 2	24% (19)
	Structured = 3	14% (7)		

*Independent Variables*

Because of the wide variability across states, many variables had large values associated with measures of variance such as range and standard deviation. In addition, several variables had problematic skew. Table 6-3 provides the mean, standard deviation, range, skew, and kurtosis of each original variable.

Table 6-3 Univariate Descriptive Statistics for Continuous Independent Variables

Variable	Mean	S.D.	Range	Kurtosis/S.E.	Skew/S.E.
Black Population (%)	10.06	9.57	36.78	.557/.662	1.148/.337
Tribe Population (%)	1.56	2.82	14.17	8.965/.662	2.910/.337
State Revenue (\$)	5,373.08	2,751.99	18,354.00	17.334/.662	3.473/.337
Incarceration Rates	369.38	151.65	678	.949/.662	.982/.337
Democratic Leg (%)	52.12	16.31	63.58	1.441/.662	-.204/.337
Female Leg (%)	22.56	7.43	31.00	-.308/.662	.450/.337
Crime Rates	3,828.25	986.52	5,137.00	2.269/.662	.956/.337

Using the values for kurtosis and skew, Fischer's coefficient was calculated and compared to a preferred limit of  $<|1.96|$ , which would indicate a normal distribution. In addition, histograms and boxplots were examined. Skewed variables were transformed using a natural log function. In most cases, this corrected the skew and kurtosis within the normal limits of Fischer's coefficient; however, in some cases it did not. See Table 6-4 for the Fischer's coefficient of kurtosis and skew for each variable before and after log transformation. The transformed variables for tribal population and state per capita revenue remain slightly skewed, with Fischer's coefficients of 3.04 and 4.08 respectively. The transformed variables were used in the regression, as regression is robust to minor problems with normality (Abu-Bader, 2010). See Appendix C for histograms and boxplots of each variable before and after transformation.

Table 6-4 Fischer's Coefficient Before and After Natural Log Transformation

Variable	Pre-Transformation Fischer's		Post Transformation Fischer's	
	Kurtosis/S.E.	Skew/S.E.	Kurtosis/S.E.	Skew/S.E.
Black Population (%)	.84	3.41	--	1.55
Tribe Population (%)	13.54	8.64	.40	3.04*
State Revenue (\$)	26.18	10.31	4.08*	1.96
Incarceration Rates	1.43	2.91	--	.23
Democratic Leg (%)	2.17	-.60	.29	--
Female Leg (%)	.47	1.34	--	--
Crime Rates	3.43	2.84	.13	.33

\*Fall outside the preferred range of  $<|1.96|$

### Black population

The black population of each state during specified years ranged from less than two percent of the state population in eight different states to 37% in Mississippi, with a national mean population of 10% black Americans. A box and whisker plot (See Appendix C) identified Mississippi as an outlier in the dataset. Log transformation corrected the skew and kurtosis to normal limits (See Table 6-4) and effectively addressed the outlier.

### Tribal population

The percentage of the population associated with an American Indian/Alaskan Native tribe (AIAN) was highly skewed, with a national mean AIAN population of less than two percent. Only six states had an AIAN population of more than five percent, and Alaska presented a substantial outlier with greater than 14% of the population marking this selection on the Census. A natural log transformation normalized kurtosis and reduced skewness (See Table 6-4). Because of the inherently small sample size (n=49), the determination was made to retain Alaska in the sample.

### State revenue per capita

State revenue per capita ranged from \$1,942.90 in Arizona to \$20,296.90 in Alaska, with a mean per capita state revenue of \$5,373.08. A boxplot identified Alaska, with its large state revenue and small population, as a major outlier. The natural log transformation normalized skewness and reduced kurtosis, minimizing the effects of outliers (See Table 6-4).

### Incarceration rates

The incarceration rate within each state in the specified year ranged from 68 per 100,000 residents to 806 per 100,000, with a mean incarceration rate of 369. While boxplots indicated that at least three states were outliers (Mississippi, 704; Texas, 714;

and Louisiana, 806), the log transformation eliminated outliers and normalized the distribution (See Table 6-4).

#### Democratic legislators

The percentage of democratic legislators within each state legislature ranged from 11% to 90%, with a mean of 52%. Boxplots indicated a relatively even distribution. Natural log transformation reduced slightly elevated kurtosis to normal limits.

#### Female legislators

The percentage of female legislators within each state legislature ranged from 6% to 41%, with a mean of 23%. Boxplots, histograms, and Fischer's coefficients revealed a normal distribution.

#### Crime rates

The combined violent and property crime rates per 100,000 ranged from 2,010 to 7,471, with a mean of 3,828 per 100,000. At 7,471 crimes per 100,000 residents, Arizona was an outlier in the dataset. A natural log transformation addressed outliers and corrected the distribution to normal.

#### Propensity toward victim's rights

For the dichotomous independent variable of victims' rights support, frequency distributions were examined (See Table 6-5). The frequencies for states with or without a state constitutional amendment for victim's rights were fairly evenly distributed.

Table 6-5 Frequency Distribution of Victim's Rights Propensity

<b>Variable</b>	<b>Category</b>	<b>Frequency</b>
Victim's Rights Amendment	No = 0	42% (21)
	Yes = 1	58% (29)

## 6.4 Bivariate Analyses

### *Correlations*

Transformed data were examined for statistically significant correlations. Because of the small sample size and likelihood of low power, as well as the exploratory nature of this study, a Pearson's correlation coefficient was computed at the .10 level using a two-tailed significance test. This test suggests a weak positive correlation between level of support and incarceration rates ( $r=.248$ ,  $n=50$ ,  $p=.082$ ).

In addition, there are several statistically significant relationships between independent variables. In keeping with the literature, there are moderate positive correlations between the black population percentage in a state and the state's per capita incarceration rate ( $r=.599$ ,  $n=50$ ,  $p=.000$ ). In addition, there is a weak-to-moderate positive correlation between the black population percentage and a state's crime rates ( $r=.466$ ,  $n=50$ ,  $p=.001$ ). There is a negative relationship between the black population and the state's the tribal population percentage ( $r = -.476$ ,  $n=50$ ,  $p=.000$ ), as well as between black population and the percentage of female legislators ( $r=-.413$ ,  $n=50$ ,  $p=.003$ ). Crime rates and incarceration rates are positively linked at a moderate level ( $r=.430$ ,  $n=50$ ,  $p=.002$ ), while crime rates are negatively correlated with state revenue ( $r=-.435$ ,  $n=50$ ,  $p=.002$ ). States with higher incarceration rates are also more slightly likely to have a victim's bill of rights encoded in statute ( $\tau = .303$ ,  $n=50$ ,  $p=.010$ ). See Table 6-6 for a complete correlation table. Pearson's correlations should be interpreted with caution. Relationships between data in a very small sample such as this one may fail to reach significance due to lack of power. (Goodwin & Leech, 2006).

Table 6-6 Pearson's Correlation Coefficient Matrix for All Variables

	Black Pop..	Tribal Pop.	State Revenue	Incarc, Rates	Crime Rates	Dem. Leg. <sup>a</sup>	Female Leg.	Victim's Rights <sup>b</sup>	Level of Support
Black Pop.		-.476***	-.242*	.599***	.466***	.269*	-.413***	.219*	.144
Tribal Pop.	-.476***		.201	.020	.046	-.460***	.136	.207*	.058
State Revenue	-.242*	.201		-.099	-.435***	.032	.238*	.022	.007
Incarceration Rates	.599***	.020	-.099		.430***	-.223	-.338**	.303**	.248*
Crime Rates	.466***	.046	-.435***	.430***		-.047	-.235	.251**	-.092
Dem. Legislators <sup>a</sup>	.269*	-.460***	.032	-.223	-.047		.144	-.084	-.040
Female Legislators	-.413***	.136	.238*	-.338**	-.235	.144		.117	.178
Victim's Rights <sup>b</sup>	.219*	.207*	.022	.303**	.251**	-.084	.117		.062
Level of Support	.144	.058	.007	.248*	-.092	-.040	.178	.062	

\*\*\*. Correlation is significant at the 0.01 level (2-tailed).

\*\*. Correlation is significant at the 0.05 level (2-tailed).

\*. Correlation is significant at the 0.05 level (2-tailed).

<sup>a</sup> n=49, Nebraska has a non-partisan legislature

<sup>b</sup> Kendall's tau used for non-parametric variable

### *Analysis of Variance and Chi-Square*

A one-way, between-subjects ANOVA compared the effect of each continuous independent variable on the level of statutory support for restorative justice in unsupported, ideological, and active conditions. A Levene's test verified the equality of variances within the categories at the alpha  $p < .05$  for all independent variables. Despite differences in the means between groups (See Table 6-7), none of the mean differences between levels of support were statistically significant (See Table 6-8 for the results of ANOVA tests).

A chi-square test of independence was conducted in order to assess the association between the dichotomous variable for victim's rights propensity and the dependent variable of level of support. This test, too, yielded an insignificant result at the  $p < .05$  level. Again, it is important to interpret the results of bivariate analyses with some caution due to lack of statistical power with a small sample size.

Table 6-7 Comparison of Means at Each Level of Statutory Support

<b>Variable</b>	<b>Level of Support</b>	<b>N</b>	<b>Mean</b>	<b>Std. Deviation</b>
Black Population	Level= 0	18	1.4412	1.37965
	Level= 1	13	1.8877	1.15666
	Level= 2	19	1.8616	1.22392
	Total	50	1.7170	1.25781
Tribal Population	Level= 0	18	-.4712	1.16578
	Level= 1	13	-.4302	1.21445
	Level= 2	19	-.3142	1.23982
	Total	50	-.4009	1.18420
State Per Capita Revenue	Level= 0	18	8.5166	.22785
	Level= 1	13	8.4584	.41519
	Level= 2	19	8.5224	.50916
	Total	50	8.5037	.39522
Incarceration Rates	Level= 0	18	5.6971	.38265
	Level= 1	13	5.8698	.45017
	Level= 2	19	5.9322	.39418
	Total	50	5.8313	.41045
Crime Rates	Level= 0	18	8.2207	.24954
	Level= 1	13	8.2904	.24051
	Level= 2	19	8.1689	.25929
	Total	50	8.2191	.25058
Democratic Legislators	Level= 0	18	3.9626	.35457
	Level= 1	13	3.8979	.27863
	Level= 2	18	3.9366	.20154
	Total	49	3.9359	.28104
Female Legislators	Level= 0	18	20.4943	5.55781
	Level= 1	13	23.9646	6.79423
	Level= 2	19	23.5641	9.13500
	Total	50	22.5631	7.42683
Victim's Rights Propensity	Level= 0	18	.50	.514
	Level= 1	13	.69	.480
	Level= 2	19	.58	.507
	Total	50	.58	.499

Table 6-8 ANOVA Results

Variable	Source	SS	df	MS	F	Sig.
Black Pop.	Between Groups	2.145	2	1.073	.669	.517
	Within Groups	75.377	47	1.604		
	Total	77.522	49			
Tribal Pop.	Between Groups	.243	2	.121	.083	.920
	Within Groups	68.471	47	1.457		
	Total	68.714	49			
State Revenue	Between Groups	.036	2	.018	.112	.894
	Within Groups	7.618	47	.162		
	Total	7.654	49			
Incarceration Rates	Between Groups	.537	2	.269	1.636	.206
	Within Groups	7.718	47	.164		
	Total	8.255	49			
Crime Rates	Between Groups	.114	2	.057	.903	.412
	Within Groups	2.963	47	.063		
	Total	3.077	49			
Democratic Legislators	Between Groups	.032	2	.016	.194	.824
	Within Groups	3.759	46	.082		
	Total	3.791	48			
Female Legislators	Between Groups	121.612	2	60.806	1.107	.339
	Within Groups	2581.124	47	54.918		
	Total	2702.735	49			

## 6.5 Multivariate Analysis

### Multicollinearity

None of the Pearson's correlation coefficients (See Table 6-6) between independent variables reached the .80 threshold, which suggests that collinearity between variables is not a concern (Abu-Bader, 2010). In addition, a mock linear regression to calculate VIF and tolerance values showed none which neared the standard limits of less than .10 for tolerance values and greater than 10 for VIF. Multicollinearity statistics for the black population hovered just above the more conservative limits proposed by Allison (1999) of less than .40 for tolerance values and greater than 2.5 for VIF (See Table 6-9).

Table 6-9 Multicollinearity Statistics

<b>Variable</b>	<b>Tolerance</b>	<b>VIF</b>
Black Population	.321	3.119
Tribal Population	.536	1.864
State Revenue	.715	1.398
Incarceration Rates	.471	2.122
Dem. Legislators	.891	1.123
Female Legislators	.584	1.713
Crime Rates	.514	1.944

*The Ordinal Logit Model*

Because this study is exploratory and because there are not statistically significant bivariate correlations between independent variables and the dependent variable, all hypothesized and control variables were entered simultaneously. This allows interpretations of the influence of each predictor in the model with all other variables held constant.

The omnibus chi square test for the resulting ordinal logit model is significant, indicating that the configuration of variables explains, in part, the level of support for restorative justice among states [ $\chi^2(8) = 17.299, p = .027$ ]. In addition, deviance [ $G^2(88) = 89.304, p = .441$ ] and Pearson [ $\chi^2(88) = 101.309, p = .157$ ] goodness of fit tests' large p-values provide evidence that the model should not be rejected (Smyth, 2003). Because the model is built with variables that do not have clear bivariate correlations, it is important to interpret the results of the model and individual effects with some caution and with consideration of potential interaction effects contributing to the model outcome. See Table 6-10 for the ordinal logit regression output.

Table 6-10 Ordinal Logit Regression Output

		Hypothesis Test					95% Wald Confidence Interval for Exp(B)		
		B	S.E.	Wald $\chi^2$	df	Sig.	Exp(B)	Lower	Upper
Threshold	[level2=.00]	-23.497	19.6897	1.424	1	.233	6.241E-11	1.085E-27	3590259.102
	[level2=1.00]	-22.060	19.6597	1.259	1	.262	2.627E-10	4.842E-27	14248194.855
[Victim's Rights=0]		1.254	.7712	2.646	1	.104	3.506	.773	15.894
[Victim's Rights=1]		0 <sup>a</sup>	.	.	.	.	1	.	.
Black Population		.843	.4878	2.984	1	.084	2.322	.893	6.041
Tribal Population		.521	.3543	2.165	1	.141	1.684	.841	3.373
State Revenue		-1.214	.8867	1.875	1	.171	.297	.052	1.689
Incarceration Rates		2.419	1.2251	3.898	1	.048	11.233	1.018	123.965
Democratic Legislators		-.457	1.2584	.132	1	.717	.633	.054	7.459
Female Legislators		.173	.0609	8.033	1	.005	1.188	1.055	1.339
Crime Rates		-3.709	1.8005	4.243	1	.039	.025	.001	.836

Turning to the effects of individual variables in the model, two of the stated hypotheses of this study are supported: More supportive restorative justice legislation is associated with higher percentages of female legislators in the state legislature and with higher incarceration rates. One hypothesis is rejected: The black population of a state predicts restorative justice policy adoptions in the opposite direction expected. More supportive adoptions are associated with *higher* percentages of black residents in a state. Higher crime rates are associated with less supportive policy adoptions. Four hypotheses – those related to tribal populations, state revenue, Democratic legislators, and victim’s rights policy preferences – are rejected altogether when controlling for other state level influences. See Figure 6-3 for the fitted ordinal model.

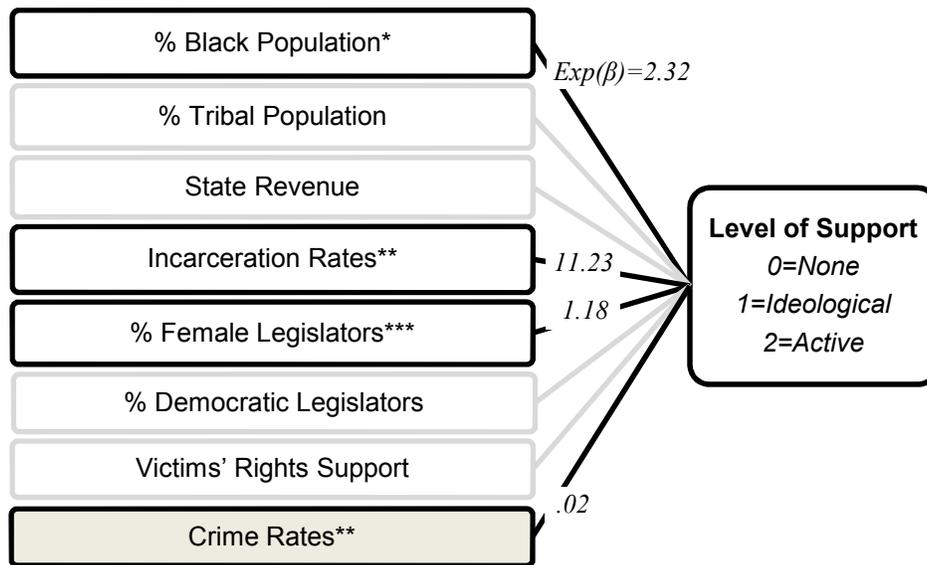


Figure 6-3 Fitted Ordinal Logit Regression Model with Exponentiated Slopes

#### Percentage of black residents

Contrary to the predicted hypothesis, an increase in the percentage of black residents in a state is associated with an increase in the odds of adopting more

supportive restorative justice legislation, with an odds ratio of 2.32 (95% CI, .893 to 6.041.484), Wald  $\chi^2(1) = 2.984$ ,  $p = .084$ . For each one unit increase in the percentage of black residents, the likelihood that a state adopts active support for restorative justice versus no support or ideological support increases by 70%, controlling for other variables in the model.

#### Percentage of female legislators

As predicted, an increase in the percentage of female legislators in a state legislative body is associated with an increase in the odds of adopting more supportive restorative justice legislation, with an odds ratio of 1.188 (95% CI, 1.055 to 1.339), Wald  $\chi^2(1) = 8.033$ ,  $p = .005$ . This means that for each one unit increase in the percentage of female legislators, the likelihood that a state adopts active support for restorative justice versus no support or ideological support increases by 54%, controlling for other variables in the model.

#### Incarceration rates

As predicted, an increase in the state's per capita incarceration rate is associated with an increase in the odds of adopting more supportive restorative justice legislation, with an odds ratio of 11.233 (95% CI, 1.018 to 123.965), Wald  $\chi^2(1) = 3.898$ ,  $p = .048$ . For each one-unit increase in the per capita incarceration rate, the likelihood that state adopts active support for restorative justice versus no support or ideological support increases by 92%, controlling for other variables in the model. However, the effect of incarceration rates on restorative justice policy adoptions should be interpreted with caution due to the wide confidence interval for this variable.

#### Crime rates

An increase in the state per capita crime rate is associated with a slight decrease in the odds of adopting more supportive restorative justice legislation, with an odds ratio

of .025 (95% CI, .001 to .836), Wald  $\chi^2(1) = 4.243$ ,  $p = .039$ . For each one unit increase in the per capita crime rate, the likelihood that state adopts active support for restorative justice versus no support or ideological support decreases by 2.6%, controlling for other variables in the model.

#### Insignificant predictors

When controlling for other variables in the model, neither the tribal populations of a state, the state per capita revenue, the percentage of Democratic legislators, nor the prior adoption of a constitutional amendment for victims' rights are predictive of the supportiveness of restorative justice policy adoptions at the state level.

### 6.6 Summary

State level data were collected and analyzed to explore seven hypotheses about the adoption of restorative justice legislation by state governments. An ordinal logit regression model predicted whether states would fail to adopt legislation, adopt ideological legislation, or adopt legislation with active support for restorative justice. Statistically significant predictors of more supportive restorative justice legislation include a larger black population as a percentage of state residents, a larger percentage of female legislators in the state governing body, and a higher incarceration rate. The model indicates that higher crime rates within a state predict less supportive policy adoptions. Controlling for the previous explanations, tribal populations, state revenue, the percentage of Democratic legislators in the state governing body, and the prior adoption of a constitutional amendment for victim's rights do not predict the likelihood of a state adopting a more supportive restorative justice policies.

## Chapter 7

### Qualitative Results

#### 7.1 Introduction

While the findings in Chapter 6 assist in identifying which features of states are statistically associated with adoption of restorative justice policies, these quantitative discoveries alone are limited in their ability to explain state legislative processes surrounding the consideration of restorative justice bills. This chapter presents qualitative findings that help to identify *how* the quantitatively explored variables and other factors affect legislative decisions. Stake (1995) refers to the case study as a narrative, unfolding “story” of a phenomenon, event, or process. This story is a tale of two states – more specifically, two state legislative processes centering on the consideration of proposed restorative justice legislation. The story of each state is told as an individual case and stands on its own. At times the stories converge, suggesting common themes for exploration. At other points, they provide a marked contrast to one another. When both stories have been fully told, new meanings are discerned and questions posed. In Chapter 8, the results of quantitative and qualitative methods will be discussed in an integrative manner which allows each to inform the other.

#### 7.2 The Case of Colorado

Prior to the 2007 legislative session in Colorado, there were already two references to restorative justice in state statute: one establishing “opportunities to bring together affected victims, the community, and juvenile offenders for restorative purposes” as a declared intent of the state juvenile justice system (19-2-102), and the other referencing restorative justice as a possible approach to alternative dispute resolution in sentencing first-time offenders convicted of bias-motivated crimes (18-9-121). In 2007,

however, a new legislative focus on restorative justice as crime response emerged. Between 2007 and 2013, 11 bills added or amended 35 statutes in Colorado code to include support for restorative justice or victim-offender conferencing (See Figure 7-1). The result was the most extensive state-level statutory support for restorative justice in the nation.

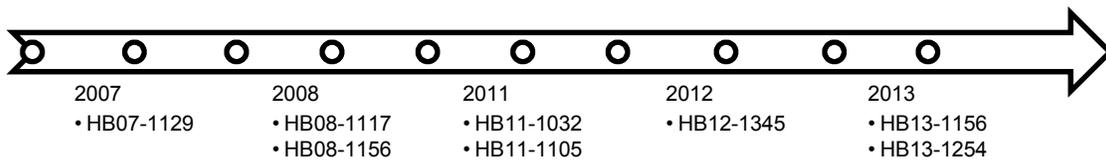


Figure 7-1 Timeline of Colorado Restorative Justice Bills Signed into Law

The vast majority of restorative justice-related additions to Colorado statutes between 2007 and 2013 were initiated by a series of four bills: HB07-1129 (Merrifield, 2007), HB08-1117 (Merrifield, 2008), HB11-1032 (Lee, 2011), and HB13-1254 (Lee, 2013). Each bill was marked by the involvement of Representative Pete Lee, who helped draft the 2007 and 2008 legislation as an attorney before taking office in 2010. The string of bills was strategically developed to add increasing statutory support for the use of restorative justice across five key contexts in the Colorado justice system: juvenile justice diversion, adult diversion, the Department of Corrections, school discipline, and the victims' bill of rights. While Representative Lee's bills built the primary structure for restorative justice policy in Colorado, other legislation during this time period added restorative justice to existing options for criminal and juvenile justice offenses including assault of a peace officer (HB11-1105) and graffiti cases (SB11-256), as well as components of school conduct plans (HB12-1345) and diversion agreements (HB13-

1156). This analysis focuses on the four major pieces of legislation contributing to Colorado's now expansive structure for restorative justice.

#### *The 2007 Legislative Session*

In 2007, Representative Michael Merrifield introduced HB07-1129, which represented the first attempt at providing some structure to the legislative intent of the Colorado Children's Code, which was updated in 1997 to read: "The general assembly finds that the juvenile justice system should seek to repair harm and that the victims and communities should be provided with the opportunity to elect to participate actively in a restorative process that would hold the juvenile offender accountable for his or her offense."

HB07-1129 "strongly encouraged" local juvenile justice planning committees to consider restorative justice programs, created a state-level Restorative Justice Coordinating Council, and directed a state granting entity – the Tony Grampsas Youth Services Board – to consider applications from restorative justice programs. The bill received strong support from restorative justice practitioners across the state, who showed up to testify for the bill in the committee phase. The leading witness was Thomas Quinn, the Director of Probation Services in the state judicial branch and a volunteer and board member for more than one restorative justice program.

Notably, there was little opposition to HB07-1129 at this early stage in the development of Colorado restorative justice statute. By the time the bill reached the Senate Judiciary Committee, the Senate sponsor, Senator John Morse, stated in his opening testimony that "I haven't heard *any* opposition to this bill and don't plan to produce any amendments." HB07-1129 passed unanimously through both committees and was adopted with little discussion. Senator Morse moved the bill on the Senate floor with one concise statement: "This bill ensures that restorative justice is highlighted in our

state as we search for ways to reduce crime and eliminate the need for additional prison beds. It does so in a way that has no fiscal impact and I ask for an aye vote.” The vote in the House was 65-0; the Senate, 33-1-1, with one excused.

#### *The 2008 Legislative Session*

In 2008, Representative Merrifield introduced a second restorative justice bill intended to increase the use of restorative justice in Colorado’s juvenile justice system. HB08-1117 contained six provisions: (1) it added restorative justice practices to juvenile diversion programs and required diversion services to consider restorative justice practices in awarding grants, (2) it added the availability of restorative justice practices to the list of advisements given by judges during appearances and pleas of juvenile offenders, (3) it added restorative justice to the sentencing options of the court for juvenile offenders, (4) it authorized probation departments to order juvenile offenders to an intake conference to determine their suitability for participation in victim offender dialogue, (5) it provided a statutory definition for restorative justice, and (6) it barred the ordering of restorative justice for juvenile sex offenses or cases involving domestic violence.

The final bill reflected an amendment to the drafted version, which had originally sought to require advisement of restorative justice to all juvenile offenders and make restorative justice intake conferences a requirement of probation. The amended bill presented these practices as options rather than mandates. In addition, the amendment introduced the exceptions for sex offenses and domestic violence cases. The amendments came in response to testimony from the Colorado District Attorneys Council (CDAC), who were concerned about retaining judicial and prosecutorial discretion in the face of mandates to engage in certain practices with every offender. In addition, CDAC expressed concern on behalf of the victims community that resulted in the offense-type

exceptions listed in the final bill. Following the amendment, a witness from the Colorado Organization for Victim Assistance provided testimony that “Restorative justice is not appropriate for every victim, nor is it appropriate for every criminal case. To that end, we appreciate provisions in this bill that allow for specific evaluative procedures to be in place if restorative justice is going to be ordered in a domestic violence or sexual assault case.”

Pete Lee, an attorney at the time, was engaged in drafting the legislation and also testified in committee hearings along with a variety of restorative justice practitioners. Lee testified on the collaborative nature of the finished product: “As one of the principle drafters of the bill, I can assure you this bill received the input of a variety of people in the community. It’s known as community justice, restorative justice. We received input from lawyers, judges, magistrates, DAs public defenders, from SB94 alternative to detention advocates, and from a variety of other people.” The bill passed out of the House on a vote of 63-1-1, with 23 other representatives signing on as co-sponsors, and the Senate on a vote of 33-0-2, with 18 senators joining Senator Morris as co-sponsors.

#### *The 2011 Legislative Session (The Omnibus Bill)*

In 2011, newly-elected Representative Pete Lee introduced HB11-1032, which he later described as an “omnibus bill” for restorative justice. The bill built in support for restorative justice broadly across the criminal, juvenile, and administrative codes. It provided a new, more specific definition for restorative justice practices and identified restorative justice as a foundational purpose of the Colorado Criminal Code: “To promote acceptance of responsibility and accountability and to provide restoration and healing for victims and the community while attempting to reduce recidivism and the costs to society by the use of restorative justice practices.” For adult offenders, the bill added an

advisement on restorative justice, a new alternative sentence, and a new condition of probation. For juveniles, the bill strengthened existing statutes by making advisement mandatory and providing guidelines for dismissing charges based on completion of restorative justice processes. In addition, HB11-1032 authorized pilot programs within the Department of Corrections and Division of Youth Corrections, encouraged the use of restorative justice as a school's first consideration to remediate disciplinary offenses, and added new protections for victims including the right to be informed about the possibility of restorative justice practices.

Bringing his first bill in the legislature before the House Judiciary Committee, Representative Lee remembers being surprised by “a buzzsaw of opposition” from two camps: the district attorneys, represented by the Colorado District Attorneys Council (CDAC), and the victim advocate community, represented by the Colorado Organization for Victim Assistance (COVA). Powerful forces in the Colorado legislature, CDAC and COVA provided influential testimony on the need to safeguard the discretion of district attorneys and the self-determination for victims. Nancy Lewis, director of COVA, testified: “No crime victim should ever get a phone call that says ‘Do you want to participate in a dialogue?’”

While an onslaught of supporters from the restorative justice practitioner community came to testify on behalf of the bill, Representative Lee requested that the committee chair lay the bill over until he could gain the support of his opposition through compromise. He spent the following two weeks engaged in drafting and redrafting with the input of CDAC and COVA. The CDAC director corroborated that it was joint process:

To Pete's credit, when I pushed back, I want to say we met in Colorado Springs at a restaurant and just kind of aired it out for two hours. And then

we started working together... Pete would do a draft. I'd bring it back here and spend three days redlining it and I'd send it back. (laughs)

As a result of this collaboration, some mandates in the bill were softened to encouragements and opportunities. In addition, the term "victim-initiated" was applied throughout the bill as language to emphasize the role of the victim in requesting victim-offender dialogues.

The amended bill passed unanimously out of the House Judiciary Committee and off the House floor. In the Senate Judiciary Committee, Senator Mark Scheffel moved an amendment to allow judges to waive the offender's fee for participation in a restorative justice program in the case of indigent defendants. Though unanimously supported in the Senate, this amendment ultimately repelled some of the bill's more conservative supporters in the House, who expressed concern over the judge's ability to require a private organization to provide services without being paid. The House adopted the Senate amendment to the bill 36-28-1.

*The 2013 Legislative Session (Restorative Justice 2.0)*

In 2013, Representative Lee introduced HB13-1254, which he referred to as "Restorative Justice 2.0." This bill was designed to expand statutory support for restorative justice that had been established in previous bills. HB13-1254 added members to the Restorative Justice Coordinating Council created in 2007, created a \$10 surcharge for convicted offenders to support restorative justice programs, clarified the definition of restorative justice, and prompted creation of a database of existing restorative justice programs in Colorado. The bill also expanded the entry points to the restorative justice process by empowering law enforcement personnel, district attorneys, and juvenile and adult offenders to request the use of restorative justice practices through the district attorney's office. Perhaps most substantially, HB13-1254 created pre-trial

diversionary pilot programs in four Colorado judicial districts – Pueblo, Weld, Alamosa, and Boulder – for first-time juvenile offenders with a misdemeanor or class 3, 4, 5, or 6 felony charge. The bill provided guidelines for collecting data and reporting back to the judiciary on the success of pilot programs.

Representative Lee again worked closely with the Colorado District Attorneys Council (CDAC) to draft the legislation and gain the support of district attorneys. However, in the House Judiciary Committee, HB13-1254 faced sharp criticism from victim advocates over the addition of new avenues for the initiation of victim-offender dialogues. Representatives from the Colorado Organization for Victim Assistance (COVA) and others testified with concern about the ability of anyone other than the victim to initiate a request for a dialogue and the need for strong consistent standards across jurisdictions for screening, initiating, and conducting conferences. Representative Lee responded to accusations that the bill was “offender-centered” by saying only “I believe the bill is balanced” and referring to the bill’s potential to keep juveniles out of the criminal justice system as “groundbreaking.” Committee Republicans criticized Representative Lee for his failure to collaborate and reach consensus with the victim’s community, but the Democrat majority committee passed the bill to finance with a vote of 6-4.

The bill returned to the committee two weeks later with additional amendments and the endorsement of COVA. COVA Director Nancy Lewis testified: “What I have learned is that there’s no bill that’s perfect, but there were a lot of people who worked for many hours to make sure that the things that were important to us [were addressed]. I would hope that you would pass the bill as amended.” Amendments included directives on establishing standards prior to the commencement of pilot programs and compromises on the process for victim notification. The amended bill was passed to appropriations with a vote of 7-4, still divided exactly along party lines.

HB13-1254 was likewise adopted by the House and Senate with continued criticism from Republicans about what they believed were “offender-centered” provisions in the bill. The vote in both the House (35-27-3) and Senate (21-14) fell on party lines as well, reflecting this division.

#### *Influences in the Legislative Process*

The following analysis of influences in the legislative process is guided by issues statements outlined in Chapter 5. These include the role of special populations, economic capacity, crime victims’ rights, partisanship, interest groups, policy entrepreneurs, and the overall nature of how restorative justice came to be considered. In addition, other influences emerging from the data – a grassroots movement of practitioners, attempts to define the issue, and the use of gradualism and collaboration – are explored.

#### The turn toward restorative justice

The rise of restorative justice legislation in Colorado coincided with a growing concern nationally over U.S. incarceration rates, as well as continued economic worries in the aftermath of the Great Recession. From the beginning, testimony on restorative justice bills reflected this concern. In his initial bid to expand statutory support for restorative justice in 2007, Representative Merrifield urged support for HB07-1129 by saying:

Our system is overloaded and the assembly line is slowing down. The adversarial process is necessary in some cases but many could be alternatively dealt with using restorative justice processes for much less cost... With more expanded restorative justice processes, we can reduce the growth of the criminal justice system.

Witnesses from county courts and probation as well as private providers testified on the reduction of caseloads in jurisdictions where restorative justice was already being used.

The director of a Colorado probation department using restorative justice extensively presented growing support for the paradigm as one piece of a statewide movement toward alternatives and evidence based practices “I think people started getting a sense that we were incarcerating too many people and that our corrections system wasn’t working. In 2008 when the state was cutting positions, they gave us [probation services] 100 positions because they could see that when they cut us in 2001 the prison population went up.”

Much of the concern over the criminal justice system in Colorado was focused on outcomes for juveniles and the state’s high dropout rates. Child advocates concerned about a juvenile justice crisis in Colorado’s schools and courts cited zero tolerance policies triggered by the Columbine High School shooting in 1999. Speaking about the environment in Colorado at the time his bill were heard, Representative Pete Lee later stated:

In Colorado, in ten years since Columbine, we’ve referred 100,000 kids to the criminal justice system for offenses which otherwise would have been handled in the schools. So there’s a 100,000 kids who have been ensnared in the criminal justice system because of zero tolerance.

In their testimony, witnesses also spoke to a long-standing culture of innovation in Colorado as part of the milieu. In his opening statements, Representative Lee presented HB11-1032 as continuation of a progressive tradition: “[The bill] builds on Colorado’s history and tradition of being in the forefront of judicial reform. We did so in 1996, and 2006, and in 2008, and now again.” Sharletta Evans, a crime victim who testified on behalf of the bill, expressed pride in this history: “Because I’m a Coloradoan (laughs) I can’t do nothing *but* be a forerunner and a trendsetter.” In committee hearings

on HB13-1254, Mike Violette of the Fraternal Order of Police urged that the legislation was “giving Colorado the legislative edge among states using restorative justice.”

It is likely that Colorado’s progressive culture provided a conducive environment for restorative justice legislation. A director of a restorative justice nonprofit reflected on this shift: “I do see a light coming forth, because you find people even in the correctional system saying, ‘It’s a new day. It’s time for change. It’s time we did something about this. Because, what are we really producing here?’”

#### Fiscal strain

Economic issues affected the consideration of restorative justice legislation in Colorado in two ways. First, as previously described, legislation was often presented as an economic benefit to a state in a fiscal crunch with high incarceration costs. Witnesses like Mike Maday of the Mediation Association of Colorado spoke about the long-term benefits of HB11-1032: “We believe wider use of RJ practices will save Colorado taxpayers money. Lower recidivism results in significant cost avoidance for courts and correctional systems.” Asked about cost savings of HB13-1254, a Longmont police officer involved in implementing a department restorative justice program responded:

Cost savings? I don’t know. But we’re all educated people. We spend \$35,000 to \$50,000 per year to incarcerate someone. Knowing how our program works, I can guarantee you it doesn’t cost anywhere near that.

However, Director of the Colorado District Attorneys Council was careful to distinguish local fiscal impact from an overall economic benefit to the state: “In our review of the bills that came through, the fiscal impact wasn’t really what drove it. Because you’re looking at [benefits at] the local level, that’s not part of the conversation here.” He also pointed out that many of the low-level cases which are likely to be referred to

restorative justice programs are more likely to be redirected from probation or other community-based programs rather than incarceration.

The other economic consideration was related to the cost of the bill's provisions and the ability of the state to support statutes with funding. Representative Lee pointed out that, "When this bill was introduced, Colorado was in a budget crunch. We were told 'No bill can have a fiscal note.'" Figuring out how to pay for the bill's provisions was therefore a challenge which at times negatively affected support for restorative justice legislation. While applying fees to criminal offenders was palatable to most, some were concerned about the impact on indigent defendants. Others were more concerned about the impact on private service providers should fees be waived. This single change on HB11-1032, introduced by a Senate amendment, changed the vote from unanimous on the original bill to borderline.

It is important to note that overall, testimony across bills addressed the merits of restorative justice and the benefit to victims, offenders, and communities much more frequently than any economic benefits. No specific cost benefit analysis of how much restorative justice could be expected to lower costs was presented. On the whole, economic issues were present but on the periphery of the conversation.

#### Party affiliation

Restorative justice advocates present the approach as a multifaceted one with bipartisan appeal. Supporters spoke in testimony and in later interviews about restorative justice's benefits from a standpoint of both social and fiscal responsibility. However, most acknowledge that restorative justice can be perceived as – as one conservative Texas policy advocate put it – "a bit drum-circle-y." In Colorado, a Longmont police officer testified about his initial reluctance to embrace what he saw as the liberal approach of

restorative justice: “I was a cop. I wasn’t soft. I wasn’t going to hug the tree of restorative justice. (laughter from witnesses)”

A district attorney involved in the pilot programs established by HB13-1254 observed a differential level of support among his colleagues according to political preference: “How supportive you are of the program is somewhat from your political point of view. I do think there are a lot of district attorneys who see this as a more touchy-feely social program.” Some witnesses attempted to address this perception by speaking to the deep personal accountability called for in restorative justice approaches. The Longmont police officer argued in his testimony that “the teeth of our restorative justice program are sharper than those of our criminal justice system.”

Between 2007 and 2014, Colorado was governed by Democratic control of the House, Senate, and governorship. Although the nation sees Colorado as predominantly liberal – not in small part due to its stance on marijuana legalization – residents and local advocates characterize it as a divided or “purple” state with both liberal and conservative pockets. Prior to 2007, a Republican governor held office for eight years. In 2015, control of the Senate passed to Republicans, establishing a split legislature in Colorado.

Whether Colorado’s Democratic majority during the time period in question contributed to the passage of restorative justice legislation is a complex question. In 2011, the Democratic Party of Denver testified on HB11-1032 that “The central committee of the county party has unanimously endorsed this bill. It is one of our highest priorities.” However, the first three bills examined in depth here enjoyed nearly unanimous support by both the House and Senate, barring a less enthusiastic House response to the Senate version of HB11-1032. Three legislators rose in support of HB11-1032 during its first run on the House floor: one Democrat and two Republicans. In 2013, HB13-1254 was aggressively challenged by House Republicans in the Judiciary

Committee and on the floor, passing the House 35-27-3. Likewise, the 21-14 vote in the Senate was split almost precisely along party lines, with the exception of one Republican “aye” vote.

This suggests that while there may be conceptual support for restorative justice across party lines, *how* restorative justice is implemented is likely to become a partisan issue. The more directive and detailed that the bills became, the more resistance arose from Republican legislators. Republican concerns included how restorative justice practices would be funded, who would have discretion in deciding when they are used, and to what extent victims would be protected.

#### Special populations

Based on the issue statements guiding this case, special attention was given to the role of women, Black Americans, and native tribal populations in consideration of restorative justice bills in Colorado. Colorado currently has the highest percentage of female legislators in the nation, at 41% of the legislature (National Council of State Legislatures, 2013). When asked about a special role for women in restorative justice advocacy, one director of an area nonprofit who was involved closely with the legislation remarked:

Many if not most of the voices that have provided input to Pete in the drafting of all three pieces of legislation have been women. I feel pretty certain that the majority of the grassroots organizing efforts and education and awareness efforts and call your representative efforts have been women saying ‘Okay we’re ready, get your phones out.’

She spoke about Colorado women’s role in “convening a space” for conversations about these issues, both prior to and following the legislative adoptions. While there is some evidence that women took a special role in promoting restorative approaches to justice,

there is nothing to indicate that restorative justice was a “women’s issue” or was perceived as such.

Likewise, while it made sense to many of the advocates interviewed for this case that Black Americans would have increased motivation to support alternative justice approaches due to racial disparities in the justice system, there was no input during the hearing phase by minority issue groups. There was very little talk in hearings on HB13-1254 about how the legislation might affect minority groups. Kim Dvorchak, Executive Director of the Colorado Juvenile Defender Coalition, acknowledged the relevance of restorative justice to minority youth, saying:

Any time there is discretion in choosing one child over another for a particular program, the likelihood of disparate impact for that choice is there. We participate in the Colorado Minority Youth equality committee, and we know that currently diversion is one of those places where white youth are more likely to be considered than youth of color. That’s a problem in Colorado, and that’s something we need to be mindful of.

Witnesses occasionally made references to the ancient, indigenous, or tribal origins of restorative justice. Steve Segal, a district attorney and member of the Colorado Organization on Victim Assistance policy taskforce, testified: “The concept of restorative justice is not new. It is ancient. The concept is to restore the community, the defendant, and the victim as best as possible considering the circumstances.” However, he went on to acknowledge that there is a negligible link to Colorado’s current use of restorative practices and area tribes, speaking to the need for a new set of standards: “How you go about that has often been led by ancient traditions that are passed on from generation to generation. We don’t have that in this situation.”

One witness described her work in a probation department neighboring the San Carlos Apache tribe and how this proximity influenced restorative practices in her

department. However, for the most part, there was no mention of local tribal influences. There are few registered tribes in Colorado, and those that exist are rarely involved with government functions. There is no evidence that these communities have been involved in advocacy around restorative justice statutes.

Notably, interviewees participating in this case study responded to questions about the involvement of minority and tribal populations with surprise and interest. Two respondents who are currently involved in education and advocacy efforts expressed the likelihood that the input of these groups has been “unsolicited” and communicated their intentions to reach out to these communities in the future.

#### Interest groups

Three groups representing the interests of their constituents played a significant role in the consideration of restorative justice legislation in Colorado: the Colorado District Attorneys Council (CDAC), the Colorado Organization for Victim Assistance (COVA), and the restorative justice practitioner community represented first by the Colorado Council for Restorative Justice Directors (CCRJD) and later by the Restorative Justice Coordinating Council. Hearings also frequently included supportive testimony from defendant protection groups such as the Criminal Defense Bar and the Colorado Juvenile Defender Coalition about the need for better options for juvenile and low-level defendants.

CDAC represents the interests of district attorneys in 21 of Colorado’s 22 judicial districts, excluding Denver. Director Tom Raynes described the CDAC’s role as protecting the legal function of prosecutors. While CDAC arose as a major oppositional force during hearings for HB11-1032 and subsequently worked to temper the expansiveness of restorative justice legislation, Raynes was careful to point out that most of the state’s district attorneys were not philosophically opposed to restorative justice: “I

think philosophically you would find most prosecutors in Colorado engaged in all kinds of conversations about alternatives, with restorative justice being one of those.” CDAC focused its testimony on ensuring the flexibility of legislation and prosecutorial discretion in determining when to apply the approach. “What it boils down to is that police chiefs, sheriffs, elected district attorneys don’t want to be told how they have to deal with a specific offender, but we’ll take a new tool any day.”

CDAC was also frequently in partnership with COVA on ensuring protections for crime victims. Advocates involved in the legislative process around restorative justice in Colorado all acknowledged both CDAC and COVA as powerful voices in the legislature. Executive Director Nancy Lewis testified that “Colorado leads the country in having victim advocates at all stage and a victims’ rights amendment that is one of the strongest in the 50 states.” COVA opposed original drafts of legislation in both 2011 and 2013 based on concerns about how crime victims would be notified about restorative justice options and the role of the victim in both initiating and refusing dialogues.

Other victim-oriented testimony from representatives of Mothers Against Drunk Driving, Voices of Victims, and Parents of Murdered Children was also supportive of the philosophy of restorative justice but asked for clear standards about when and how it would be initiated and implemented. A MADD spokesperson on HB13-1254 testified: “I believe wholeheartedly in restorative justice. I have seen it go very very well and I have seen it go badly. That’s why it’s critical that standards be put in place.”

Two crime victims who had lost family members also testified on HB11-1032 and HB13-1254. Despite the nature of the crimes they had experienced – murder and manslaughter – both were advocates for the power of restorative justice practices, when presented at the right time and available in a structured way. Sharletta Evans testified on HB11-1032:

When I received the call about the possibility of a bill, it brought so much excitement for me to be able to come here and speak about the importance of a thorough healing... I'm looking forward to the expansion and exposure of restorative justice for victims such as myself to be able to receive that closure.

Representative Lee reported that "People came out of the woodwork and supported these bills." The vast majority of these supporters were restorative justice practitioners. The Colorado Council of Restorative Justice Directors and the Restorative Justice Coordinating Council created by HB07-1129 were noted as helping to define the issue and identify needs. CCRJD was formed as a means of galvanizing the practitioner community and giving them an advocacy voice leading up to 2007-2008 legislation. They continued to be involved in subsequent legislation. One member of CCRJD described the dialogue happening in the council even today: "Is there a larger conversation that we need to be having? What are the key points we need to make? What is the language that we need?" Input from both CCRJD and the Restorative Justice Coordinating Council is solicited prior to each legislative session, and the organizations assist in engaging input and support from the practitioner community.

#### Policy entrepreneurs

The political science literature describes the importance of "individuals whose creative acts have transformative effects on politics, policies, or institutions." (Sheingate, 2003, p. 185). These policy entrepreneurs may play an important role in the adoption of landmark policies. During the legislative process and afterward, fellow legislators and advocates identified Representative Pete Lee as passionate, likeable, collaborative, creative, and utterly influential in Colorado's expansion of statutory support for restorative justice.

Prior to sponsoring legislation, Representative Lee had personal involvement with restorative justice through his work with local organizations and deeply believed in the ability of his legislation to impact lives: “I think we’ll see dramatic changes. I know it in my bones.” This passion drove him to prioritize restorative justice during a time when it was not a highly salient issue for voters.

When I decided to run for office, I wanted to put restorative justice as one of the components of my campaign and the people who were advising me were saying ‘No one’s heard of it, it’s not significant, it’s not important, it’s not sufficiently galvanizing to get people involved.’ But I insisted on doing it because I was pretty convinced that it was something that was important.

Representative Lee was a self-reported “rookie” when his bills were heard in the legislature. Audio from hearings reflect eloquent, assertive testimony along with unpolished procedural gaffes. He appeared to hold some sway in the House Judiciary Committee, of which he was regular member. Likewise, the Senate sponsor of HB11-1032 and HB13-1254, Barbara Newell, was a member of the Senate Judiciary committee where those bills were heard. Senator Newell was also a restorative justice advocate and referred to it as “one of the reasons that I’m here to do the work that I’m here to do.” Between 2010 and 2013, she sponsored several Senate Joint Resolutions related to restorative justice.

Still, Representative Lee stood out as the key figure. One interviewee who was involved throughout the legislative process remarked, “Pete is the one who is putting his reputation on the line in a lot of ways. He is out there in a very public way saying ‘This is the right thing to do.’ Pete has really stuck his neck out because he believes in it so completely.” Another observed: “Pete’s a get it done guy. Until you have a politician – a politician like Pete who everyone likes at the legislature... Without Pete, we wouldn’t be here, absolutely not.”

Representative Lee cashed in his political capital by working across the aisle. He described his process on HB11-1032 as follows:

I went to the fiscal conservatives and talked to them about how we can save costs. I talked to the strict disciplinarians about accountability as an essential component of RJ. So I tailored the approach to the individual legislators based on what I knew about them. And as I say, we came through the House unanimously, 65-0.

A restorative justice director closely connected with the process described

Representative Lee's key role in definition setting and visioning: "Overall I think Pete did a remarkable job of carrying it through the House – of convincing people what it was, the value of it, what the future looked like and that sort of thing."

A grassroots movement

Hearings for each of the bills were characterized by a large number of witnesses – both those called by the bill sponsor and those showing up to testify on or observe the proceedings of their own volition. In 2007, when Representative Merrifield's first restorative justice bill came before the House Judiciary Committee, the committee meeting was relocated to a new room "in order to accommodate a large number of witnesses" present for HB07-1129.

Witnesses consistently cited the prevalence of restorative justice practices in Colorado since as far back as twenty years prior. During testimony on HB11-1032, Mary Carr of the Colorado Restorative Justice Council testified that there were then more than 152 restorative justice programs in Colorado, and described a need to help institutionalize and standardize these programs through legislation. These included well developed programs in the Longmont Police Department, Boulder Probation Department, Pike's Peak Restorative Justice Council, and Denver Public Schools. As a result,

statistics presented in support of restorative justice were local more often than national or global.

Most witnesses who rose to testify, whether in support of or in opposition to the legislation, had been involved with restorative justice in the past in some capacity – as a volunteer, a probation officer, an attorney, or a crime victim. Those testifying against the bill did so based on the details rather than philosophical opposition to the approach. The restorative justice practice community, at a grassroots level, was highly influential in drawing attention to the bills and facilitating their passage. Beverly Title, another founding practitioner, captured the spirit of the room by beginning: “I come to you holding with the restorative justice community in Colorado” (in testimony on HB11-1032). Another agency director described the network of support:

As the legislation started to become what we really felt would work, people as individuals were doing reach-outs to their representatives... To educate and build the awareness around what the constituency is supporting and wanting their representatives to support was really important.”

#### Defining restorative justice

Despite the prevalence of restorative justice practices in Colorado and a strong body of grassroots support, advocates were skeptical of whether people outside of the criminal justice system in Colorado really know what restorative justice is and think of it as a salient topic. Dialogue often touched on the topic of how to define restorative justice and educate the community on it. A founding member of the Colorado Council of Restorative Justice Directors reported, “We’re looking at new language now as time goes on to be able to really educate people about what this is... I think once people understand it, they’ll embrace it wholeheartedly.”

The same agency director, who had worked with Representative Lee on the bills from beginning, reflected back:

I've sat in with Pete on all the beginning conversations and what we decided was we're never going to get a fiscal note attached to it even though we need one badly. So let's just get the conversation going. Let's get some legislation under our belts. Let's make sure that people begin to hear it – hear the phrase, begin to understand what it means.

Representative Lee was committed on this front, insisting on the inclusion of restorative justice in all of this campaign literature. "I wanted to get that term out there so I put it out there and I kept putting it out there. Now as I go door to door – I'm running for my third term – people say 'Oh, you're the guy that supported restorative justice.' I mean it's pretty cool that there's been sort of an increased consciousness of it."

Consistency of message has been critical. As one advocate said, "We never went away and we continued to have the conversation wherever anyone would listen. I think that has been the key to this transition that I see taking place where at least it's on the table." Another agreed that restorative justice is now coming to the forefront: "I think there's enough success and enough awareness that restorative justice is a pretty significant movement in this state and beyond that, people are engaging at a different level than they have in the past."

#### Gradualism

The "long game" of expanding restorative justice has been a recurring theme in the state process. In an early hearing on HB07-1129, Senator Morse responded to questions about the possibility of expanding the bill with, "As the council gets up and running, I have no doubt we will expand this as time goes on. We need to crawl before we walk and from walk we'll move to run and from run we'll move to marathon."

Representative Lee was advised by colleagues early on that “In this building [the statehouse], it’s a process of gradualism.” Ultimately, he made considerable concessions in each cycle to ensure movement forward. After making more compromises than he would have liked with amendments to HB11-1032, Representative Lee responded to a question from a fellow House Judiciary Committee member about whether there was still enough in the bill to make the impact he desired:

I can only say that that remains to be seen and that we will be looking at how it becomes implemented. I can assure that if we are not satisfied with that, we will be back before this committee next year.

Two years brought Lee’s next restorative justice bill and more concessions. The Director of CDAC remembers:

On Pete’s second bill, he actually wanted it to be statewide mandated. And I said ‘Pete, I will fight you to the death.’ (laughs) But if you do this as a pilot, and you let me entice people... I will have takers, and if I have takers, you get data. And if you get data that shows you it’s working, you ultimately win. And then everybody wins.

#### Concessions and collaboration

On replacing his proposed statewide approach with a four county pilot program Representative Lee said, “I learned after my first year that you’ve got to sit down with these people and talk to them and see what’s feasible and what can be done.”

Collaborative efforts often required concessions. Representative Lee spoke personally about the process of redrafting HB11-1032 with the input with CDAC and COVA: “That term victim-initiated was the result of those compromises. I really had to gulp hard on that... I hated it. I absolutely despised it. I thought the bill couldn’t work with victim-initiated, but I needed to get it through.” He described these compromises as his “first experience with the give and take of the legislative process.”

After hearing the opposition on his original draft of the bill, Representative Lee rose to say, “I have heard what the witnesses have said. I have listened carefully. We have taken scrupulous notes and I think we understand the concerns of the various stakeholders. I look forward to working with them.” Indeed, Lee was ultimately commended by all parties for his willingness to collaborate and compromise. One agency director said, “This is the great thing about Pete – he really tries to listen to as many people as he can. So a lot of us were really contributing to the language and the shaping of that legislation.”

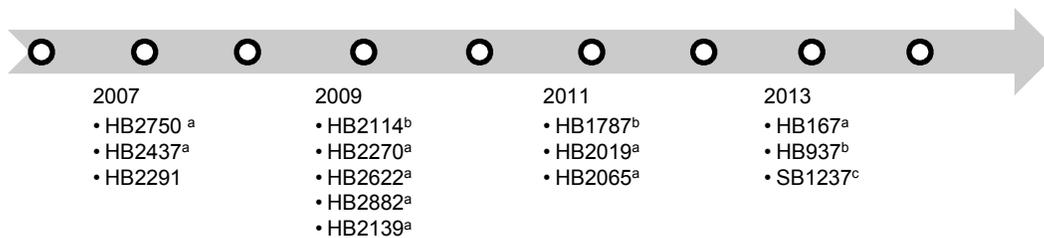
Reflecting back on key influences in the legislative process in Colorado, the director of CDAC highlighted the open dialogue: “I think it goes back to how these issues are presented. I think in many states they’re brought by extreme liberals and they’re brought forcefully. And I think part of the success here has been the conversation.”

### 7.3 The Case of Texas

During the same time period that the Colorado case was unfolding – 2007 to 2013 – a parallel process was occurring in Texas with very different outcomes. With existing statutory support for post-sentencing victim-offender dialogue in place since 2001, the Texas Legislature heard an influx of bills seeking to introduce restorative justice as a diversionary, pre-trial approach. Over four legislative sessions, 14 bills were filed by ten sponsors in an attempt to establish statutory support for victim-offender mediation as a county-level response to misdemeanor and state jail felony cases for either juvenile or general population offenders.

Most sponsors were responsible for a single bill during this time period, with many signing onto other bills as co-sponsors. However, two sponsors – Representative Ruth McClendon (D, San Antonio) and Representative Joe Farias (D, San Antonio) – authored and filed at least one bill during each legislative session in the targeted time

period. Both Representatives filed a string of identical or nearly identical bills during each of the four sessions. Representative McClendon’s filings related to “the establishment, operation, and funding of pretrial victim-offender mediation programs” at the county level, while Representative Farias’s filings primarily related to “establishing juvenile victim-offender mediation pilot programs” in one or more large counties, including his home county of Bexar. See Figure 7-2.



<sup>a</sup> Relating to the establishment, operation, and funding of pretrial victim-offender mediation programs  
<sup>b</sup> Relating to establishing a juvenile victim-offender mediation pilot program  
<sup>c</sup> Relating to referral of disputes for alternative dispute resolution, including victim-directed referrals

Figure 7-2 Timeline of Texas Restorative Justice Bills

*80<sup>th</sup> Legislative Session (2007)*

The Texas Legislature first began to hear proposals for the expansion of restorative justice as a pre-trial diversionary option in 2007. During the 80<sup>th</sup> Legislative Session, three authors filed three different bills related to victim-offender mediation programs. HB2750 (McClendon, 2007) and HB2437 (Escobar, 2007) both addressed “the establishment, operation, and funding of pretrial victim-offender mediation programs.” The former was never heard in committee, and its author signed onto Representative Escobar’s bill when it passed out of committee. The latter was not scheduled to be heard on the House floor.

HB2291 (Farias, 2007) was originally filed with the intent to establish a victim-offender mediation program administered by juvenile boards and to institute the collection of restitutions on behalf of victims by juvenile probation departments. The bill underwent several amendments and the version which was ultimately adopted only required the Texas Juvenile Probation Commission “to conduct a study of established victim-offender mediation programs for juvenile offenders in Texas for the purpose of determining the potential effect on the state's juvenile justice system of establishing guidelines for and expanding the implementation of victim-offender mediation programs for juvenile offenders.” The end result was a piece of legislation which did not provide statutory support for the application of restorative justice, but which only called for a study to be conducted of existing programs to evaluate their impact. The results of this study either have not been made available to the public or are no longer available.

*81<sup>st</sup> Legislative Session (2009)*

Texas legislators filed five bills related to the establishment of county victim-offender mediation programs in 2009 (TLO). HB2114 (Farias, 2009) sought to mandate that the Texas Juvenile Probation Commission establish a juvenile victim-offender mediation pilot program in Bexar County. HB2139 (McClendon, 2013), HB2622 (Gutierrez), HB2270 (Alonzo), and HB2882 (Martinez) each proposed to authorize the commissioners court of a county or governing body of a municipality to establish a pre-trial victim-offender mediation program for first-time offenders in certain crimes. The latter two were identified as duplicate companion documents at the time of introduction (TLO). All five 2009 bills were referred to the House Committee on Corrections; however, only Rep. McClendon’s HB 2139 was considered in committee. The authors of the remaining bills signed on as joint authors following the bill’s passage out of the House Committee.

HB2139 passed out of both the House Committee on Corrections and the Senate Committee on Criminal Justice with unanimous votes. However, the Senate Committee passed a committee substitute for the bill which strengthened protections for offenders by stating that “the court may not require the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program” and increased the role of prosecutors in identifying and referring participants to victim offender mediation by requiring the consent of the state’s attorney in order to proceed. The revisions addressed concerns raised by the Texas Fair Defense Project and the Texas District and County Attorneys Association (TDCAA). TDCAA and local district attorneys testified against the bill during the committee phase, objecting to the bill’s delegation of the role of assigning eligible defendants to mediation to the court. Legislative staff at TDCAA reported, “We tried to work with Representative McClendon’s office and explained to them our concerns about the prosecutors’ gatekeeping role being undermined, because they are the constitutionally elected office charged with handling those cases. They weren’t interested in fixing it.” The House Research Organization (HRO) bill analysis backs up TDCAA’s claim, stating that supporters of the bill say, “It would be appropriate for the court to have more authority than the state attorney over the program because a court could be more impartial in its implementation” (HRO HB2139, 2009).

According to TDCAA staff, they began working with the Senate sponsor of the bill, Senator Juan Hinajosa. As a result, the Senate passed a different version that specified the district attorney’s role in assigning cases to mediation. The record states that when the amended bill returned to the House for passage, the House “refused to concur” and requested a conference committee to come to a consensus. The conference committee report on file with the legislature indicated only that the additions requiring the state’s attorney to approve assignment of cases to mediation were the area of contention

and that the conference committee was unable to come to a consensus. TDCAA staff reported that the bill died because Representative McClendon was unwilling to accept the amended version, while a representative from the Texas Public Policy Foundation stated that “It just was in the conference committee the last day or two and ran out of time.” Rep. McClendon’s office did not choose to comment on this issue or any other aspect of the legislative process.

*82<sup>nd</sup> Legislative Session (2011)*

In 2011, three restorative justice bills were filed in the Texas House of Representatives: HB1787 (Farias, 2011), HB2065 (Allen, 2011), and HB2019 (McClendon, 2011). Representative Farias’s filing matched his bill from the previous session, attempting to mandate a juvenile pilot program – this time in counties with a population larger than one million and “in which more than 75 percent of the population resides in a single municipality” (HB1287, 2011). The fiscal note identified Bexar and Travis Counties as matching the bill’s criteria at that time. As in 2009, however, the bill was not considered.

In addition, TDCAA staff reported that HB2019, as filed, exhibited precisely the same problems as HB2139 (2009). “It still didn’t allow the prosecutor to have a gatekeeping function. It still allowed the defense attorney to file a dismissal against the objection of the prosecutor. We don’t do that in Texas.” HB2019 was assigned to the House Committee on Criminal Jurisprudence, where TDCAA and two district attorneys again raised concerns with the bill’s language. The Harris County District Attorney testified: “I’m here to testify against the bill, but I’m not here to testify against the bill’s principles. Of course we at the Harris County District Attorney’s Office are very much for diversion programs. What we’re against is more the wording of the bill in certain ways.” Representatives from the University of Texas at Austin’s Center for Restorative Justice

and Restorative Dialogue and the Texas Public Policy Foundation, a libertarian-oriented watchdog group, spoke favorably in their testimony on the bill.

During the committee meeting, a committee substitute was introduced which was presented as including the desired gatekeeping role for the prosecutors, and the Representative McClendon also stated her intention to address additional concerns raised by the Harris County District Attorney about the burden of victim notification. The bill was left pending in committee, purportedly due to time constraints. TDCAA noted that “by the time we got them to agree to let the prosecutor have that gatekeeping function, it was too late in the process.”

A similar bill, HB2065 (Allen, 2011), was also heard in the House Committee on Criminal Jurisprudence, where witnesses from the Texas Criminal Justice Committee and Texas Public Policy Foundation provided supportive testimony. The committee asked witnesses to address how this bill was different from Representative McClendon’s concurrent bill, and the only difference identified in response to the inquiry was that the applied to state jail felonies as well as misdemeanors. Representative Allen’s HB2065 also incorporated elements of Farias’s HB1787 by creating a juvenile pilot program in a county of the Juvenile Probation Commission’s choice. In addition, Representative Allen reported that the committee substitute being introduced “leaves discretionary authority in the hands of the prosecutors... it provides that the case will only go to a mediation if the DA refers it.” This bill, too, was left pending in committee.

A letter of information submitted to Representative Allen by the Director of the Institute for Restorative Justice and Restorative Dialogue at the University of Texas at Austin and the Director of the Office of Community and Restorative Justice at the University of Texas at San Antonio focused on differences in the training requirements

and the clear definition of restorative justice principals in HB1787 (Farias, 2011) as compared to the other two bills.

*83<sup>rd</sup> Legislative Session (2013)*

The most recent legislative session brought four more restorative justice bills forward. Two, HB937 and HB167, were similar iterations of previous filings from Representatives Farias and McClendon, respectively. HB937 (Farias, 2013) sought to establish restorative justice pilot programs for juvenile offenders in counties with a population of more than 1.5 million and in which more than 75 percent of the population resided in a single municipality. In hearing with the House Committee on Corrections, Representative Farias laid out the bill by stating, “This is nothing more than a study to get the counties reporting on their programs and how they are working and which ones are working best, so we can utilize and put in the place the best system possible to prevent our youth from being incarcerated.” Despite favorable testimony from the Texas Criminal Justice Coalition and little opposition to the bill in committee, it was again left pending there.

A committee substitute for HB167 (McClendon, 2013), requiring the consent of the state’s attorney for participation, was passed by the House Committee on Criminal Jurisprudence and the Senate Committee on Criminal Justice despite new concerns about whether the bill would potentially give the court authority to order court appearances for defendants who had not been formally charged. Witnesses testifying on the bill acknowledged significant changes addressing the concerns of past sessions including the clearer specification of which low-level offenses would be eligible and the role of the state’s attorney. In hearing, a representative for the Texas Criminal Justice Coalition stated, “I know it’s gone through multiple iterations and I think [Rep McClendon

and her staff] have come up with something that's palatable to everybody." Likewise, TDCAA testified:

Frankly, this is a bill that prosecutors have killed several sessions because it didn't allow prosecutors to have a say in who was admitted into the program. Chairwoman McClendon has agreed to that language in the committee substitute – so that's great."

Also filed in 2013 was a new pair of companion bills (SB1237 by Senator Schwertner and HB1512 by Rep Todd Lewis) seeking statutory authorization for adult criminal cases to be referred for a fee to mediation or victim-offender conferencing in Texas" in the Civil Practices and Remedies Code. Unlike the others, this broader and shorter bill met with little resistance. While many of the same supporters testified on SB1237 (Schwertner, 2013) and HB167 (McClendon, 2013), TDCAA was noticeably absent in hearings regarding the former, as it left program details under local control. TDCAA staff credited the quick passage of SB1237 with the simultaneous stalling of Representative McClendon's HB167 in the Senate: "When McClendon's bill passed over to the Senate, they didn't see the point in passing it."

#### *Influences in the Legislative Process*

The same issue statements that were used in Colorado were used to analyze and frame data from the Texas case. These included the role of special populations, economic capacity, crime victims' rights, partisanship, interest groups, policy entrepreneurs, and the overall nature of how restorative justice came to be considered. In addition, other influences emerging from the data – issues with size, definitional clarity, and political will – were identified.

The turn toward restorative justice

The consideration of bills supporting pre-trial restorative justice practices as a systems approach came in the midst of a state-wide shift in how legislators and their constituents were thinking justice and incarceration in traditionally conservative Texas. A legislative staff person with the Texas District and County Attorneys Association explained:

The pendulum swings back and forth. The pendulum has now swung back to the other side. What is new is the growth of groups like right on crime and the Texas Public Policy Foundation who take a libertarian perspective on crime. For drug and property crimes, they don't think the state should be locking those people up because it costs too much. They are interested in shrinking government. That's why they support victim-offender mediation. Why should we pay taxes and the court system to do something when people can do it themselves?

During the same time period of this case – between 2007 and 2011 – Texas implemented substantial juvenile justice reform focused on lowering youth incarceration rates (Council of State Governments & Public Policy Research Institute, 2015). This included prohibiting commitments to state-run secure facilities for juvenile misdemeanors, and allocating more than \$130 million to county programs, community supervision, and community mental health services. During this time, the number of youth incarcerated in Texas correctional facilities declined by 66 percent. This reveals a concurrent focus on addressing youth incarceration rates through community-based options, and a willingness to allocate funding to divert youth.

Fiscal strain

The role of Texas's fiscal capacity and current correctional capacity in creating an environment conducive to the consideration of restorative justice policy is an area of

significant focus but uncertain impact. During the timeframe in question, Texas legislators were actively responding to concerns about the costs of incarceration. Witnesses consistently cited the potential cost-savings of using restorative justice approaches as a diversionary measure as an important consideration for legislators during their testimony. However, in follow-up interviews, they were less certain of the exact fiscal impact of victim-offender mediation and, for that reason, the impact of economic arguments on legislative decisions.

In reference to HB2019 (McClendon, 2011), one witness from the Texas Public Policy Foundation testified that,

Because it is a difficult budgetary environment right now, it seems like a bill like this will reflect significant savings because it will lower court and prosecutorial costs and fundamentally it is a real tangible way of limiting the scope of government.

However, in reality, advocates acknowledge that these savings are difficult to quantify. Fiscal notes attached to various restorative justice bills in Texas reported a range of costs associated with implementing the new program, and accounted for offender fees provided for by the legislation, but were unable to capture intangible savings to the state in the long term. The fiscal note for HB2019 did report that “There would be a revenue gain to local governments if each eligible government established a pretrial victim-offender mediation program.” However, the three local counties providing cost estimates for the fiscal note gave widely disparate estimates related to how the bill would affect their net revenue. Bexar County reported a potential \$1.6 million dollar increase in revenue, while Burnet County predicted a \$235,629 decrease. In addition, attempts by Representative Farias to establish restorative justice pilot programs were predicted to have a negative impact of nearly \$2 million over the next two years, without making

appropriations to fund the provisions of the bill. TDCAA legislative staff observed that “The counties don’t like mandates – especially not unfunded mandates.”

An advocate with the Texas Criminal Justice Coalition acknowledged that, while economic arguments are frequently used by their organization and others, the potential cost savings of pre-trial victim offender mediation programs are difficult to measure. The implementation of VOM will have its own costs, especially if it uses trained mediators as recommended by the Institute for Restorative Justice and Restorative Dialogue in testimony on HB2065 (Allen, 2011). In addition, the policy is likely to impact a modest percentage of a county’s caseload. A skeptic with TDCAA stated,

Some of the ideas that they expect this big payout from, you’re just not going to get it. Because when you get into each individual case that is being handled, oftentimes this one-size-fits-all solution is not going to be the best thing to happen in that particular case.

Perhaps more importantly, none of the fiscal notes associated with restorative justice bills during this period quantified long-term savings associated with decreased use of incarceration and reduced recidivism. A policy advocate with the Texas Public Policy Foundation concurred: “So even though it is shown as a cost savings, people generally don’t recognize it as a major economic benefit to the state.”

#### Special populations

In Texas, there was little evidence of any direct action taken by women’s advocacy groups, minority advocacy groups, or tribal populations in advancing or blocking restorative justice policy. The primary leadership of Representative Ruth McClendon, a black female, in sponsoring restorative justice legislation was matched by several other restorative justice bills filed by white and Hispanic male legislators. In addition, there was no evidence of a marked interest in restorative justice bills by broader

populations of “the black community” or tribal communities in Texas, of which there are few.

Representatives from the National Association for the Advancement of Colored People (NAACP) registered in support of both HB167 (McClendon, 2013) and HB937 (Farias, 2013), but gave no testimony. Others who were involved in giving testimony on the bill reported that they were unaware of any significant role played by NAACP in supporting the legislation. NAACP could not be reached for comment. Likewise, there was no involvement of individuals or groups representing Native American tribes or presenting restorative justice as an indigenous or tribal approach to justice.

#### Party affiliation

Restorative justice advocates engaged with the legislation largely see the victim-offender mediation bills as something likely to be supported by both Republicans and Democrats. A legislative staff person for the Texas Public Policy Foundation, a conservative policy group in support of restorative justice, stated:

From my personal perspective, I see it as a bi-partisan issue. Just because the argument that people on the left would use is not the same one that people on the right would use... if there’s a vessel that carries both, you’re in good shape. There’s something there for everybody. The only problem is – considering that – you need someone on both sides reaching across the aisle and argue it to their own base.

All but two of the restorative justice bills proposed in Texas were authored and filed by Democratic members of the House of Representatives. Notably, the two bills filed by Republicans – SB1237 and HB1512 – resulted in the only expansion of statutory support for restorative justice during this time period. This may be because the bills themselves, authored by Republicans, left more room for local control and were therefore more palatable to Texas’s Republican-majority legislature. An alternate explanation is

that the bill sponsors had better political capital in the conservative environment, resulting in greater success in advocating for their proposed legislation.

While Democrats have more frequently taken the lead in proposing statutory support for restorative justice in Texas, legislators from both parties have supported victim-offender mediation bills. Voting records suggest that if support for restorative justice is not equally bipartisan, it is at least a non-divisive issue that is unlikely to be decided along party lines; however, it is noteworthy that most Texas legislation has expired without a vote rather than being voted down.

#### Interest groups and lobbies

In Texas, unlike Colorado, crime victims and victims' rights organizations did not play a noticeable role in advancing or blocking restorative justice policy. The consensus among key players interviewed for this study was that there is no major victims' rights lobby in Texas. "Specialty" groups like Mothers Against Drunk Driving and The Advocacy Project, supporting victims of domestic violence and sexual assault, were not engaged with this legislation during committee hearings or otherwise. Concerns for the rights of crime victims were frequently expressed by witnesses advocating for restorative justice approaches, and occasionally by committee members hearing testimony on the bills; however, specific demands were not made of the sponsors to address victims' issues. While crime victims' lobbies may have been involved in other state legislative processes, there is no evidence that they affected decision-making around restorative justice in Texas during this time period.

While crime victim's rights organizations did not prove to be a major influence in the consideration of restorative justice legislation in Texas, other interest groups and policy institutes played key roles in defining restorative justice, centralizing relevant information, and providing testimony. Perhaps the most powerful interest group involved

in the legislative process around restorative justice was the Texas District and County Attorneys Association. TDCAA represents the interests of 330 elected district attorneys across the state by highlighting issues that impact prosecutors and their role in the criminal justice system. While TDCAA never registered “for” or “against” a restorative justice bill, their legislative staff was consistently present at nearly every hearing to testify “on” the legislation and to raise concerns about any interference with the prosecutor’s role in recommending and consenting to any diversionary options for offenders. The legislative staff person interviewed for this study expressed his belief both privately and publically, during testimony before the house, that TDCAA had effectively “killed” multiple restorative justice bills over several sessions due to unaddressed interests of the prosecutors.

Three organizations consistently provided supportive testimony for multiple restorative justice bills over the period of interest. These were the Institute for Restorative Justice and Restorative Dialogue (IRJRD), housed in the School of Social Work at the University of Texas at Austin, the Texas Public Policy Foundation, and the Texas Criminal Justice Coalition. These organizations collaborated at some level, as evidenced by testimony on talking points from an apparently common source. Advocates from all three groups at times provided the same statistics and research indicating the prevalence of restorative justice nationally and globally, the popularity of the approach with victims and offenders, and positive outcomes demonstrated by dozens of research studies and several meta-analyses.

IRJRD was acknowledged by other organizations for their role in helping to streamline and centralize information and to provide community education on restorative justice. An interviewee from the Texas Public Policy Foundation described a primer on restorative justice hosted by IRJRD at the capitol: “They had it in a smaller room and it

wasn't as well attended [as other primers we have hosted], but given how niche the subject matter was, I thought it was pretty well attended." However, as a part of a public state university, IRJRD is limited in the types of advocacy activities that it can conduct.

The Texas Criminal Justice Coalition and the Texas Public Policy Foundation are private organizations who frequently testify on criminal justice issues in the legislature – TCJC from a more liberal perspective and TPPF from a conservative libertarian perspective. Notably, both support the use of restorative justice as a fiscally and socially responsible approach. TCJC staff also described their involvement in helping to develop and organize advocacy efforts around restorative justice bills brought to their offices by Representatives McClendon and Farias.

A smaller organization often on the periphery of legislative conversations about restorative justice bills was the Texas Fair Defense Project. Founder and Senior Council Andrea Marsh frequently registered in support of the bills at committee hearings and, in the case of some legislation, raised concerns about language relating to defendants' due process rights. In 2009, the Texas Fair Defense Project was successful in seeking amendments that clarified the confidentiality of defendants during mediations and their rights following the event of an unsuccessful mediation. Despite the involvement of a variety of groups in supporting restorative justice legislation in Texas, TDCAA seemingly held the greatest influence over the legislature. TDCAA was also backed by corresponding testimony from local district attorneys, while only paid staff from IRJRD, TCJC, and TPPF appeared in hearing to support legislation

#### Policy entrepreneurs

A particular aim of this case study was to identify the role of any policy entrepreneurs in the prioritization of restorative justice as a legislative goal. This exploration presented a challenge in Texas, as none of the legislators responsible for

sponsoring major restorative justice legislation during recent sessions were willing to provide comments for use in this study. Feedback from organizations involved in the process portrayed Representative McClendon, the primary sponsor for much of the legislation proposed, as difficult to reach or difficult to reach agreements with. One reported, “Her office doesn’t talk to a lot of people.” Another, “I’ve had very few conversations with Representative McClendon. I’ve had a lot of conversations with (her staff). And they have gone nowhere.”

Legislative staff at TDCAA, who had been largely responsible for opposing Representative McClendon’s bills, felt that she was unwilling to make relatively small concessions to make the legislation appeal to prosecutors:

We could have had a bill six years ago. There are some people who want a whole loaf. But those people who can compromise and get half a loaf this session and the rest next session – for whatever reason that office just hasn’t been willing to compromise.

Collaboration, on the other hand, played an important role in the passage of SB1237 (Schwertner, 2013). “[Sponsors of SB1237] just listened to our concerns and made sure that... you know, they had an interest in making sure it would work,” reported a staff person from TDCAA. “[SB1237] passed as soon as the language was right because everyone collaborated on it.”

More than one interviewee spoke to constraints of limited time and energy – or as one put it, “bandwidth” – that impact a legislator’s ability to be a true champion for a bill: “It takes a lot of political capital for a legislator to do that. So he or she has to really care about the issue.” Texas’s two year legislative cycle also contributes to cramped agendas for legislators during session. Perhaps for this reason, a policy analyst with the Texas Criminal Justice Coalition reported that both Representatives McClendon and

Farias had come to their organization over the course of the past few bills asking for their support in “working” the bill, or garnering support for it. The analyst reported that they were frequently approached to work bills without the time or resources needed to make a difference.

While Representative McClendon in particular was acknowledged as “a beloved member of the House” and obviously commanded some respect during House Committee meetings, there is little evidence that she or other legislators sponsoring restorative justice legislation in Texas acted aggressively as passionate champions of their bills. In response to hearing about the qualities of policy entrepreneurs as described in the literature, TDCAA staff responded, “Nobody cares about [restorative justice] at the legislature – not like that champion you’re talking about – if opposition arises.” Whether for lack of interest, skill, or “bandwidth,” the mark of a policy entrepreneur was absent.

#### Size and diversity

When thinking about the challenges faced by restorative justice bills over the past few sessions, supporters and opposition alike remarked on the difficulties of implementing a “one size fits all” approach in the vast state of Texas. A TDCAA staff person reported, “We have 330 elected prosecutors in Texas, which is a huge number. They are all locally elected and don’t always agree.” This means that TDCAA and local justice systems often prefer local control over criminal justice matters. An analyst with the Texas Criminal Justice Coalition, who supported restorative justice bills across several sessions, spoke to the difficulty of even knowing all of the current processes in place across the state as a means of developing appropriate, responsive legislation. In a smaller state with more homogeneity of processes between counties, it may be easier to establish system-wide changes that have widespread support.

#### Definitional clarity

Restorative justice as a field is often criticized for a lack of definitional clarity (Doolin, 2007). Likewise, definitional issues came up repeatedly while speaking with policy analysts and advocates about legislative efforts in Texas. Even spokespersons who had been involved with testifying on behalf of restorative justice legislation described the paradigm in broad terms or associated partially restorative practices with it.

There is no definition of restorative justice in Texas statute, and legislation passed in 2013 supported the use of victim-offender mediation within the larger framework of alternative dispute resolution. One policy analyst who supported the passage of SB1237 in 2013 but had previously opposed much restorative justice legislation in Texas stated,

I kind of internally smirk when you talk about the restorative justice community and ‘why doesn’t the bill say restorative justice?’ Well, there’s no definition of restorative justice in statute. Who cares? I mean, if a bill allows you to do what you want to do, then that’s something that should fit your needs.

#### Political will

While restorative justice legislation in Texas faced some opposition, advocates agreed that overall the Texas story is one of low political will. The Texas legislature hears thousands of bills each biennial session, and a limited number of those bills will ultimately represent prioritized issues. During the 83<sup>rd</sup> Legislative Session in 2013, Representative McClendon filed 50 bills and Representative Farias filed 46 (The Texas Tribune, n.d). The most productive Representatives and Senators filed over 100 pieces of legislation. A TDCAA staffer stated, “At the capitol you pick and choose where you lay your cards down and where you don’t.”

Comparing restorative justice to hot topic issues in Texas like women’s reproductive rights, same sex marriages, and gun policies, one TPPF advocate joked

“This just takes... not even the backseat, but this is strapped to the roof (laughs). Not a sexy topic if you will.” He went on to describe restorative justice as a periphery model for addressing the bigger criminal justice concerns in the state:

People would rather worry about what can we do to avoid building prisons, and they see diversions and community corrections as the way to go, but maybe don't recognize this modality as a piece of that. People definitely care about criminal justice at large, it's just that fixing it through restorative justice might not be the first place they would go to.

In 2014, three of the organizations interviewed for this case – the Texas Public Policy Foundation, the Texas Criminal Justice Coalition, and the Texas Association of Businesses – joined with other organizations including the American Civil Liberties Union of Texas to form the Texas Smart-On-Crime Coalition, “to pursue cost-effective reforms that enhance public safety, promote safe rehabilitation, and save taxpayer dollars.” Any references to restorative justice or victim-offender dialogue are notably absent from the new organizations legislative agenda for the upcoming session.

#### 7.4 Cross-Case Themes

Taken together, the legislative processes in Colorado and Texas suggest common themes for exploration. These include the seeding and definitional influence of existing restorative justice practices, the role of the legislative sponsor, the level of political will, intra-state diversity, and cross-state modeling.

##### *How Practices Seed Policy*

One of the most significant promoters of restorative justice policy adoptions in Colorado were a large and engaged practitioner community with rich experiences in implementing restorative justice through both state and local agencies and area nonprofits. Whereas Colorado witnesses spoke to the prevalence and impact of local programs in their testimony, staffs at various advocacy groups in Texas were unable to

accurately speak to the prevalence of restorative justice programs in Texas. This suggests that restorative justice legislation may be more quickly built upon a solid foundation of privately and publically administered programs. In addition, Colorado's grassroots history provided an enthusiastic "fan base" to testify in committee hearings and contact representatives. Restorative justice practitioners in Colorado were ultimately a centralizing body that helped to define the issue, establish its local benefits, and create a clear vision of the impact of legislation.

The definition of restorative justice woven by Colorado practitioners was primarily value-based – focused on the moral, social, and at times spiritual benefits of restorative justice. This definition is reflective of the restorative justice literature, and those professing this level and type of interest in restorative justice in Colorado occasionally referred to themselves as "true believers." In Texas, where practices are fewer and more decentralized, the definition of restorative justice was shaped by academic institutes, policy analysts, and district attorneys who had administered state victim-offender mediation programs. Whereas data on the effectiveness of restorative justice presented at Colorado hearings was local, Texas advocates relied on national statistics and published research articles to describe the benefits of restorative justice. With the exception of one mediator testifying in the Texas House on a single bill, definition setting was external, cognitive, and geared toward practical considerations such as cost and recidivism.

#### *How Sponsors Become Entrepreneurs*

The dynamic role of the legislative sponsor in Colorado, Representative Pete Lee, provided a stark contrast to the many sponsors of restorative justice legislation in Texas. Whereas Representative Lee was depicted by colleagues as highly participatory and collaborative in his approach, Texas legislators working on restorative justice bills

were described as closed to input. Whereas the former readily made concessions to move the policy forward, the latter held their ground at the risk of staying still. Whereas the former expressed a great deal of personal commitment to restorative justice, even in the face of risk, the latter are not known primarily for their work in this arena.

It is difficult to fully assess alternate explanations for the role of Texas legislators in this legislative process due to the notable absence of their personal contributions from this case study. However, even this fact suggests a lower prioritization of restorative justice issues by Texas sponsors. While it is impossible to tell how a different sponsor in either state would have changed the overall outcome, it appears that the personal characteristics, actions, and influence of the legislative sponsor are likely to be key promoters of successful legislative processes around restorative justice.

The Texas and Colorado case studies both point to the importance of a legislative sponsor who is personally invested in restorative justice as a legislative priority and holds political capital or goodwill amongst his or her peers in the legislature. In addition, a successful policy entrepreneur is likely to take significant action to define restorative justice as a legitimate policy priority, to engage partners on both sides of the aisle throughout the legislative process, and to collaborate with the opposition – even if doing so requires a more gradual approach than desired.

#### *How Political Will Directs Attention*

In both states, it was clear that there were no significant objections to restorative justice policies at a philosophical or conceptual level. In addition, the opposition to restorative justice legislation in Texas and Colorado was very similar, with the bulk of the objections issued by district attorneys and their representative interest groups. If anything, Colorado legislation faced added barriers due to the strong role of the victim's rights community there. Despite these similarities, the time spent in discussion of

restorative justice bills in Colorado hearings was often hours compared to only minutes in Texas, if the bill made it to committee at all. This likely relates to the involvement of the practitioner community in Colorado, who helped to prioritize restorative justice as a legislative issue by turning out in large numbers to testify on and express interest in the bills. The restorative justice field appears to have relevance for politicians in Colorado which far exceeds its legitimacy in nearby Texas. As a result, Colorado legislators may simply have a greater political will to see restorative justice statutes implemented.

#### *How Homogeneity Promotes Statewide Solutions*

One of the principal areas of investigation for this mixed methods study was how diversity within a state affects adoption of restorative justice policy. While there is little evidence provided by the two case studies that racial and cultural minority groups played a special role in the legislative process, a focus on a different type of diversity emerged. Texas is geographically more than twice the size of Colorado, with a population of residents that is five times larger. This contributes to the division of more than 300 judicial districts in Texas compared to 22 districts in Colorado. Both spokespersons for their state's district attorneys association emphasized the difficulty of finding policy solutions which are considered desirable by all of the prosecutors they represent.

While Texas's population is more racially and ethnically diverse than Colorado's, the former also has several major urban geographic centers throughout the state that are markedly different from one another in terms of both population and culture. In addition, the number of small rural judicial districts is staggering. Interviewees from Texas emphasized the importance of the state's massive size and unwieldy legislative structure as affecting the process by presenting challenges for the prioritization of one very specific response to crime over other broader solutions. Again, one area in which Colorado districts were united was in their prior exposure to restorative practices.

### *How Policy Transfers Between States*

One emerging area which was unaddressed by the hypotheses of this study but emerged during the case study period is the influence of other states on the consideration and adoption of restorative justice policy. While external determinants of policy diffusion are not a focus of this study, it is worth mention here that witnesses in both states made reference to the broader national movement of restorative justice and specific state practices in other jurisdictions. Witnesses from the Colorado Department of Corrections reported having visited Texas to learn about the state's standing victim-offender mediation programs in Texas Department of Criminal Justice. A legislative staff person at the Texas District and County Attorneys Association spoke about a restorative justice training which had been hosted for Texas prosecutors by the Texas Public Policy Foundation, the speaker for which was a prosecutor from Boulder, Colorado. Representative Lee proudly referenced upcoming legislation in Massachusetts which utilizes language from Colorado's recent bills. These few instances, taken together, suggest that states *are* exchanging ideas about restorative justice and how it can be implemented successfully at a policy level.

### 7.5 Summary

The study of two state legislative processes surrounding the consideration of restorative justice policies provides a contextual exploration of factors influencing legislative outcomes. While analyzed separately, the cases offer some cross-case themes with relevance to this study. First, while there is some evidence that women have been the conveners of many conversations about restorative justice in Colorado, there is little to suggest that it has been perceived or promoted as a women's issue. There is even less evidence that black Americans or tribal populations in Texas or Colorado have been directly engaged with this policy. Where victims' advocacy organizations exist,

these groups had a role in alternatively blocking or advancing policy depending on statutory protections for victims. Likewise, support from district attorneys and their interest groups, as well as Republican legislators, seemed contingent in both cases on the language and content of the policy rather than the philosophical premises of restorative justice.

In both states, legislators and advocates were overtly aware of stretched correctional and fiscal capacities and were eager to reduce incarceration; however, many were unsure whether the benefits of restorative justice were targeted enough, big enough, or broad enough to directly impact correctional costs and incarceration rates. Themes from both states also indicated that a broad base of practitioners and an effective legislative champion were beneficial in defining restorative justice, prioritizing it as a legislative issue, and generating political will to move bills forward. Legislative champions were more effective when they were personally invested, willing to collaborate with opposition, and open to gradual policy advances. Finally, issues related to the size of the state and the diversity of judicial districts affected support for a statewide “one-size-fits-all” crime response. The states in these two cases were, however, likely to engage in policy transfer with other state bodies.

## Chapter 8

### Discussion

#### 8.1 Integration and Discussion of Mixed Methods Findings

##### *Social Conceptions of Restorative Justice Policymaking*

The results of the regression model point to the importance of social factors and constructivist explanations in understanding restorative justice policy adoptions. The presence of more black residents and more female legislators are useful in predicting more supportive restorative justice policy adoptions at the state level. However, whereas a higher percentage of black residents has historically predicted the adoption of punitive justice policies, these new findings suggest that the explanations for a more restorative wave of legislation are different from those which have consistently predicted sentencing guidelines and mandatory minimums. Supportive restorative justice policy adoptions are not, as expected, taking place in more racially homogenous areas, but rather, more diverse ones.

While on a national level, supportiveness of restorative justice policy adoptions is associated with the increased presence of black Americans, minority interest groups were notably absent during the legislative decision-making processes in Texas and Colorado. This suggests that the population's connection with state policy adoptions is not the direct effect of advocacy. Instead, these minority groups may contribute something to the broader state environment that is conducive to the spread of restorative justice policy. Possibilities include the expansion of alternative ideals about justice, lessened experiences of racial threat, or increased concern for issues of correctional system disparity.

The black experience of the U.S. criminal justice system is characterized by disproportionate contact with police, courts, and prisons (Mauer, 1999) and cannot be separated from a long history of subjugation by white Americans (Morgan, 2002). Recent studies by the Pew Research Center (2013) indicate that black Americans are much more likely than white Americans to perceive unfair treatment of blacks in the U.S. justice system, as well as more likely to perceive biased treatment in the justice system than in other social settings like work, schools, and public businesses. If larger nonwhite populations result in a broader awareness of racial disparities in corrections, the results of this study prompt thought about how the growing diversification of the U.S. will affect criminal justice and social policy in coming years. The U.S. Census projects that the U.S. will be a “plurality nation” by the year 2043, as the percentage of white Americans falls below 50% of the nation’s population (Cooper, 2012).

A related explanation of these findings is indicated by the high correlation found during preliminary data screening between the black population in a state and the percentage of black legislators elected in that state. While the effect of black legislators was not captured by this study, whether or not the effect of black population rates on restorative justice policy adoptions is mediated by increased black legislative power poses an interesting question for future research.

While this study offers little evidence with which to frame restorative justice as a “women’s issue,” it does suggest that women also have a unique role in the dissemination of restorative justice policy. The results of the regression analysis indicate that across states, the adoption of more supportive restorative justice policies is associated with larger percentages of female legislators in the state legislative body. Female legislators have taken key roles alongside of male legislators in proposing and supporting restorative justice legislation in Texas and Colorado. In addition, the

grassroots community of restorative justice practitioners which was so influential in the Colorado legislative process is largely a community of women. Colorado women whom I spoke with for this study portrayed the roles of mediator, convener, and facilitator as more likely to be filled by women than men. As a result, it was primarily women who came forward to testify on behalf of restorative justice as a viable philosophical approach to justice. These women were practitioners, agency directors, crime victims, and victims' advocates.

While there is little in the literature to empirically describe women's preferences in terms of crime policy, Paggione (2004) and others find that female legislators have distinct policy preferences when controlling for other characteristics. In general, women have been associated with policy issues related to health, education, and the environment and are regarded as more likely to embody cooperation and compassion (Wolbrecht, 2002). While Daly and Stubbs (2007) protest the conceptualization of restorative justice as a feminization of justice, this study provides some evidence of a female policy preference for restorative justice approaches, while controlling for party membership. A feminist conception of justice as cooperative, reciprocal, and dialogue-based deserves further exploration.

The diversification of the U.S. in recent years has been slowly accompanied by the diversification of state legislatures and a closing gender gap. In 2014, women represented 24.2% of legislative seats across the U.S. (Ziegler, 2014). Whereas women have historically been relegated to the world of the home, feminist theory has been slow to respond with conceptions of women as significant contributors to civil society (Phillips, 2002). As the gender gap in state legislatures continues to close, opportunities to explore the "feminization" of public policy are ample – both in terms of how women's policy

preferences affect legislative processes and in terms of the potential for devaluation of domains classified as women's issues.

Although restorative justice has frequently been described as springing from indigenous justice practices (Umbriet & Armour, 2010), this study implies that the restorative practices currently propagating policy solutions across the U.S. are disconnected from their ancestral roots. Controlling for other variables, the percent of American Indian Alaskan Native residents in a state was not associated with a different level of statutory support for restorative justice. Even though there were limitations due the operationalization of "tribal influence" as AIAN population, the legislative processes in Texas and Colorado supported the rejection of this hypothesis. While interview participants and hearing witnesses occasionally referenced the indigenous nature of restorative practices, these comments were made in general and not in connection to local tribal communities or populations. In addition, no one from such a community came forward to speak on behalf of restorative justice practices or policies. It should be noted that neither Texas nor Colorado has a large AIAN population, and that the involvement of tribal communities may be different in states with a larger Native American population. However, considering the skew of AIAN data toward very low percentages, this scenario would only be likely to apply to a few states.

While tribal communities have not taken an active role in constructing this alternate paradigm of justice, the influences of black Americans and female legislators on restorative justice policymaking point to constructivist explanations for the trend. The diversification of the U.S. and the close of the gender gap in the political arena may be contributing to the construction of justice policy solutions which are less patriarchal and more egalitarian. Roach (2000) and others portray restorative justice as a multi-faceted paradigm with the ability to unite and hold together the many faces of justice.

### *Political and Economic Explanations of Restorative Justice Policymaking*

Despite the emphasis on restorative justice as a fiscally responsible alternative to incarceration during committee hearings, state fiscal capacity – at least as operationalized here – did not predict policy adoptions nationally. Advocates and decision-makers in both Texas and Colorado suggested that the financial benefits of restorative justice are either too difficult to prove, too small, or too limited in scope to significantly influence legislative decisions. In addition, the cost of implementing new practices at the system level presented a challenge for restorative justice legislation in tight fiscal environments, which may have counter balanced any perceived long range effect on system costs.

While the potential cost savings associated with restorative justice was not tangible enough to promote policy adoptions, more supportive restorative justice policy adoptions were predicted nationally by higher incarceration rates, even while controlling for crimes rates. This provides some evidence that states may adopt policies in response to a need or desire to offer alternatives to incarceration. This finding is different from the results of previous studies, in which incarceration rates did not predict the adoption of sentencing reforms or even a 2009 wave of decarceration policies (Brown, 2013). The wide confidence interval for the effect of incarceration rates ( $\text{Exp}(B) = 11.233$ ; 95% CI, 1.018 to 123.965), along with a moderately strong correlation between incarceration rates and the black population in a state ( $r = .599$ ,  $p = .000$ ) indicates that this effect should be interpreted with caution, and that further research is needed to understand how and why incarceration rates are uniquely linked with restorative justice policy adoptions.

The claim of many advocates that restorative justice policy is a bipartisan issue (Roach, 2000) was at least partially supported. The quantitative hypothesis that a higher percentage of Democratic legislators would be associated with more supportive

restorative justice legislation was rejected. In addition, early conceptual legislation in Colorado was adopted unanimously. In both Texas and Colorado, there was widespread support – or at least lack of opposition – for the basic principles of restorative justice. However, more structured statutory support for restorative justice drew opposition from victim advocates, state prosecutors, and Republican legislators. One advocate observed that, “The debate in Texas hasn’t been about *what*. It’s been about *how*, which is every bit as important as the *what*.” This distinction was likewise critical to Colorado Republicans, who supported broadly-worded restorative justice legislation unanimously in 2007, but strongly opposed structured versions of bills in 2011 and 2013. Taken together, these findings suggest that restorative justice legislation can elicit bipartisan support depending on the contents of the bill.

If restorative justice strategies are to be successfully promoted as a policy solution, this study indicates that the role of victims and prosecutors in restorative justice must be a point of focus for advocates. The hypothesis that those states expressing a concern for victim’s rights through the adoption of a constitutional amendment would be likely to adopt more supportive restorative justice legislation was rejected. In addition, the Colorado Organization for Victim’s Assistance played a critical role in opposing several early drafts of restorative justice bills in Colorado before being engaged in the amendment process. Restorative justice practitioners are certainly aware of objections from victim advocates and have been engaged in risk management related to fears of exploitation and revictimization (Umbreit & Armour, 2010). In fact, most restorative justice supporters view the paradigm as a truly victim-centered approach which rebalances the interests of justice toward the person harmed. However, the results of this study suggest that concerns about the victim’s role in restorative justice have not been fully addressed.

For the most part, economic and political hypotheses about restorative justice policymaking did not bear out in this study. As operationalized, state fiscal capacity and party membership in the state legislature did not help predict the supportiveness of policy adoptions. This indicates that restorative justice policies have not been adopted as a means of merely lowering costs or conforming to political ideologies. However, the fact that supportive policy adoptions are predicted by higher incarceration rates suggests that at least one form of economic strain may be contributing to a more restorative trend in criminal justice. Victim's rights interest groups were influential in the political process in at least one state, but the national influence of victim advocates as a political force remains unclear. On the whole, the adoption of restorative justice policies does not appear to be predicted by many of the conflict theory-driven variables which previously have been linked to the punitive criminal justice policies of the last decade.

#### *Key Actors in the Legislative Process*

In addition to helping contextualize and understand the results of the regression model, the two case studies capture details about the legislative process that were not addressed in the quantitative portion of this study. As hypothesized via qualitative issue statements, overlapping themes from the two case studies point to the importance of key actors in the policy literature for understanding restorative justice policymaking. These include policy entrepreneurs, advocacy coalitions, and interest groups. I suggest that each of these three frameworks offers an alternate path by which policy issues are defined, prioritized, and promoted.

First, this study highlights the role of influential legislative champions in a way that is consistent with the literature on policy entrepreneurs. Mintrom and Vergari (1996) observe that the policy entrepreneur (1) suggests innovative solutions to fill needs, (2) bears the risks associated with pursuing solutions, and (3) assembles and coordinates

networks to undertake change. Through their actions, entrepreneurs legitimize innovative policy ideas and pioneer dynamic change. Case studies in Colorado and Texas, taken together, point to the efficacy of a charismatic, personally invested, and collaborative entrepreneur in the former, and the absence of such a figure in the latter. These findings are also consistent with a prior case study on restorative justice policy implementation, emphasizing the efforts of one particular director responsible for leadership and network building (Coates, et al., 2004).

Mintrom and Veragari (1996) propose a policymaking framework which incorporates the dynamic movements of risk-taking policy entrepreneurs with the steady, coordinated actions of advocacy coalitions. The case studies presented here highlight the role of a broad-based, grassroots practitioner community organized around the issue of restorative justice and deeply embedded within the policy process in Colorado. This group of practitioners and agency directors, headed by the Restorative Justice Coordinating Council, meets Sabatier's (1988) definition of an advocacy coalition. The advocacy coalition works together to shape policy issues based upon a shared belief system through a "nontrivial degree of coordinated activity over time" (p. 139). While this definition could also extend to the more informal advocacy partnership between Texas organizations – the Institute for Restorative Justice and Restorative Dialogue, the Texas Public Policy Foundation, and the Texas Criminal Justice Coalition – it is less clear to what extent these organizations truly coordinated their activities and whether their joined efforts were aggressive enough to be classified as "nontrivial."

Other influential actors in the legislative processes in both states included key interest groups – district attorneys associations in both states and a powerful victim's rights lobby in Colorado. Much like Hoefler's (2000a) human service interest groups, these organizations viewed engaging with the relevant legislative issues as one of their

primary tasks in representing their constituencies. In Texas, there was a notable absence of a strong victim's rights interest group engaging across issues at the state level. As a result, we can discern that the effect of interest groups across states is likely to be inconsistent. For instance, it is unclear whether sister organizations in other states exist, have adequate financial and political capital to intervene in restorative justice policymaking, or would similarly prioritize the consideration of restorative justice legislation.

The two case studies emphasized the necessity of compromise and concession by key policy actors and the importance of gradualism in the development of a comprehensive restorative justice policy structure. In the case of Colorado, the legislative sponsor made major concessions in his first bill to gain the support of opposition, and then was able to strengthen those areas in a future legislative effort. In their account of a local level policy change, Lemley & Russell (2002) described a similar process in which a weakened version of an intended restorative justice change was strengthened over time. National patterns of prior adoptions also lend support to the prevalence of gradual policy advances. Across the nation, restorative justice statutory additions follow a pattern of increasing structure. Of the seven states coded at the highest level of statutory support, all but one had at least one prior adoption of a less supportive statute. The largest number of states has encoded only an ideological level of support for restorative justice; however, this existing legislation may likewise be interpreted as a ripe opportunity to increase structures in those jurisdictions.

## 8.2 Limitations

This research also has limitations. As with any regression model, the model is calculated without capturing every possible predictor. As a result, it is important to remember that our understanding of the effects of each predictor is therefore limited and

incomplete. Further, statistical analysis is only as useful as the data which is entered into the model. As there are myriad means of operationalizing and measuring many of the variables in this study, it is possible that the selected variables have failed to adequately capture the targeted constructs. Though it has been used often for this purpose in similar policy studies, the variable of state per capita revenue provides perhaps a limited view of “fiscal strain.” The influence of tribal communities in the state was simplified to the population reporting American Indian or Alaskan Native ancestry on the U.S. Census, which fails to capture the likelihood that these residents maintain indigenous traditions. Likewise, incarceration rates were used a proxy for a more sophisticated measure of prison capacity and overcrowding, which was not consistently available across states and decades. Due to data accessibility and collinearity issues, this study was unable to measure the impact of black legislators on restorative justice policy adoptions at all.

The identification and coding of restorative justice legislation also poses challenges. It is possible that the search terms and methods used failed to capture all current statutes. In addition, there is room for error in how restorative justice statutes were coding using the ordinal coding structure. Often, the difference between an ideological versus an active or structured policy is difficult to discern. A collaborative search and coding process using complete inter-rater reliability was employed in order to minimize these issues.

Finally, temporal issues present a challenge for the analysis of quantitative data in this study. Because each state is measured at a different point in time, it is difficult to understand overall threats of history and maturation. This method also fails to control for state to state diffusion and does not explain the way that restorative justice statutes are built and expanded over time. It also does not control for earlier, less structured prior adoptions of restorative justice policies.

Case studies, too, rely on meaningful data, which is affected by the willingness of key informants to be forthcoming and honest about their motivations and insightful about the motivations of others in a highly politicized process. Some legislators who played key roles in the consideration of restorative justice legislation refused participation in this study even with a guarantee of confidentiality. They may have felt that their comments would jeopardize their future legislative goals or relationships with key partners. Even with the participation of legislators and other key advocates, it is possible that interviews and hearing testimony failed to capture the real motivating forces behind support and opposition. This challenge was offset by using multiple sources of data to explore each case. Admittedly however, the case analysis can only represent the input and viewpoint of those who were willing to speak on the topic – whether in a personal interview or in public testimony.

The interpretation of qualitative data to form case studies is by nature a subjective process and is also likely to be colored by the researcher's understanding of the political process and perception of relevant actors. As with any selectively sampled qualitative research, the results of these two case studies cannot be generalized to other states. Instead, they suggest key areas for future quantitative and qualitative inquiry in order to build upon and expand our understanding of restorative justice policy advancement.

### 8.3 Implications

#### *Practitioners and Policymakers*

With the professionalization of restorative justice as a defined field of practice and inquiry, practitioners and researchers are increasingly interested in the application of restorative justice at the system level. This is evidenced by the 2013 formation of the National Association for Community and Restorative Justice and the continued

development of an internal committee dedicated to policy issues. One of six tracks of the organization's 2015 annual conference is "Transforming the Criminal Justice System through Restorative Justice."

This research seminally contributes to the nascent field of research of restorative justice policymaking and advocacy. By providing a national directory of restorative justice legislation and describing the nature of restorative justice bills and statutes in two states, this study aids practitioners in understanding how they can use statutory support to bolster their work. More particularly, it assists advocates in identifying state-level predictors of successful policy adoptions as well as advocacy strategies and messages which have been influential in the consideration of restorative justice legislation in at least two states.

The results of case studies in Colorado and Texas point to the importance of organizing local practices through a centralized body. Restorative justice policy adoptions are likely to be promoted by knowledge of the prevalence and effectiveness of current practices taking place within the jurisdiction. Therefore, conducting an assessment of the state of restorative justice practices at the local and state level may be a key first step in eliciting further statutory support for such practices. In addition, practitioners should be engaged by legislators or organizers to support advocacy efforts with testimony that speaks not just to the value of restorative practices but specifically to how statutory support could further their positive outcomes.

Restorative justice practitioners are one source of political capital that may be effectively organized for dynamic policy change. Whether via advocacy coalitions, interest groups, a key policy entrepreneur, or a combination of the three, policymakers should find a way to harness and direct political will. In particular, advocates seeking support for restorative justice legislation should select a legislative sponsor carefully, with

attention to the sponsor's personal investment in the issue as well as his or her capacity to collaborate with other legislators and community groups.

The results of both methods indicate that, once engaged in the process, advocates may be overemphasizing philosophical arguments for the use of restorative justice. Objections to the conceptual aspects of restorative justice were nonexistent in both states. Instead, developing bills that appropriately address structural concerns was substantially more pivotal in generating bipartisan support for legislation. These concerns include how new practices will be funded, who be eligible to initiate and participate in restorative practices, and what roles prosecutors and judges will take in overseeing programs and participants.

Policymakers and advocates should consider developing legislation which offers structure and support for restorative justice practices in the criminal justice system while allowing flexibility for local control in non-critical areas. Successful policies can provide opportunities and incentives for the use of restorative justice practices with mandating their use – an action likely to elicit opposition – by creating data collection requirements, offering fiscal support via grant programs or fee structures, and providing staffing and organizational support. In addition, policy development should account for victim's rights concerns by implementing protections for victims and setting training requirements.

One Texas skeptic contends that advocates should recognize a broader range of avenues to provide statutory support for restorative justice: "What we see is a lot of people who want boutique legislation based on their particular issue, the way they think it should be. And it has to have their right words in it because they're thinking inside the box." Thinking outside the box about restorative justice policy might mean creating statutory structures that aren't specific to restorative justice practices but that allow

practitioners to access greater support for restorative justice at the local level. Texas's 2013 civil legislation on alternative dispute resolution is one example of this approach.

Others worry that broadening the restorative justice language means weakening its efficacy. Without specifying elements of restorative justice best practices – like training requirements and voluntary assignment – there is no way to guarantee that it will be implemented with fidelity. Restorative justice purists are concerned that this tactic leaves too much flexibility to be effective. Many are looking for a way to emphasize restorative justice over other alternative dispute resolution practices or to mandate its use in certain types of cases.

The flexibility of restorative justice and how it is currently defined offers both challenges and benefits to the implementation of restorative justice centered policy. Lemley and Russell (2002) suggest that restorative justice's "more nebulous aspects permit the effects of conditional variables (bureaucratic resistance, political forces, etc.) to influence the success of implementation, as well as offer a path to overcome resistance" (p. 164). By opening up the conversation about the potential benefits of various types and levels of statutory support, restorative justice policymakers and advocates may be able to find common ground with any who are likely to oppose such policy changes. As in the case of Colorado, building structural support for restorative justice may take time, patience, and a few concessions. In many states across the U.S., restorative justice policy advances are being made slowly through a process of gradualism.

Finally, this research suggests that the voices of marginalized populations with the potential to benefit from more widespread use of restorative justice practices may be untapped during the legislative process. While the percentage of black Americans residing in a state helped to predict more supportive policy adoptions, and while restorative justice was anecdotally linked with the indigenous practices of tribal

populations, these groups were notably absent from conversations about legislation and direct advocacy efforts. Eliciting contributions from populations traditionally marginalized by the U.S. criminal justice system may be critical in shaping an understanding of justice that responds meaningfully to the needs of not only victims and offenders, but also communities.

### *Researchers*

The exploratory nature of this study naturally creates implications for the field of research. First, the results of this study point to future areas of inquiry related to a rising tide of rehabilitative and reintegrative criminal justice policy revisions. What role does the slowly growing population of female legislators play in building a more restorative way of thinking about justice? How will the continuing diversification of the U.S. affect crime policy and system disparities? If restorative justice policy adoptions are predicted by higher incarceration rates, what effect will potentially falling prison populations in the future have on the rehabilitative movement? To what extent is the relationship between crime, incarceration, and rehabilitation cyclical and reiterative, as the trends of the past century suggest? These are questions yet to be answered by the research on criminal justice policymaking.

Further, this beginning exploration of restorative justice policy emphasizes the urgent need for research on the implementation and impact of the statutory support detailed in this study. The implications for policymakers and advocates which are indicated by the results of this research are limited in relevance if statutory support for restorative justice does not have the desired impacts on system-wide practices and indicators. While dozens of studies and several meta-analyses identify the benefits of restorative justice practices, it is not yet clear how adding various types statutory support for these practices via legislation will affect the delivery of services. Future studies should

identify how often and how well restorative justice statutes are implemented and what impact they have at the system level. The desired outcomes of system-level applications of restorative justice include lower rates of trauma and post-traumatic stress for victims, reduced recidivism for offenders, and increased satisfaction with the justice system at the community level. In addition, evaluative efforts should monitor the impact of restorative justice policy on system disparities to mitigate disproportionality in who experiences the benefits of diversionary and alternative sentencing programs.

By tracking the impacts of restorative justice statutes, researchers can assist in developing model codes and best practices for implementing restorative justice at system levels. The development of a model code for restorative justice should incorporate the results of studies like this one, which help identify what components of bills are most likely to be supported by victim advocates, prosecutors, and legislators. In addition, model codes should incorporate future knowledge about what types of statutory support are likely to result in the best implementation and outcomes. Researchers should also assist in compiling best practices and developing risk assessment tools for practitioners and administrators to help standardize practices being implemented at the system level. This type of research has practical implications for restorative justice programs established within state and local government systems, as well as in the private sector.

#### 8.4 Significance for Social Work

Despite the social work profession's early integration with corrections, the movement away from the medical model toward punitive, retributive justice over the past few decades have resulted in declined engagement by social workers in the criminal justice arena. Gumz (2004) observes that "The tenets of social work practice – the innate dignity of the individual, self-determination of the client, confidentiality, moral neutrality, and social justice – were, and are, challenged by a criminal justice system that values

order, control, and punishment” (p. 451). A revival of interest in rehabilitative and reintegrative approaches to justice presents an opening for the reunification of social work and corrections, and restorative justice provides a rich meeting space for this to take place.

The conversation about criminal justice is inherently a conversation about social justice. Justice policies are inextricably linked to social and economic conditions which are the purview of social work, when both crime and incarceration affect low-income and minority communities at rates significantly higher than the rest of the population. In addition, the consequences of enrollment in the criminal justice system continue long after an offender’s sentence is served due to social exclusion and felony disenfranchisement policies that strike at the fundamental right to vote and participate in civil life. Crime victims likewise become voiceless in a system wherein they have little opportunity to contribute meaningfully to the justice process by telling their story, asking questions, and making requests. The social work profession is concerned with providing a voice to the marginalized and vulnerable, and yet has been largely silent on the expansion and hardening of the U.S. correctional system to the detriment of a population that is predominantly poor and non-white (Hairston, 1997).

Restorative justice advocates contend that equity is woven into restorative practices. One Colorado director interviewed for this study said, “Everyone has an equal voice, and it’s done with respect. You don’t have to have a law degree to be represented in restorative justice, and that serves everyone.” While restorative justice emphasizes the common human bond (Bender & Armour, 2007), social workers should be cautious about how restorative practices may be used within a system laden with disparity. Minority youth are disproportionately represented at every state of the criminal justice process, and are also more likely to be incarcerated than white youth (Dean, 1997). Black youth

are less likely to be diversion programs like restorative justice than their white counterparts. As a result, determining who will be assigned to restorative justice and monitoring racial, ethnic, class, and gender disparities is a critical ethical consideration. If restorative justice offers a means by which to heal victims, rehabilitate offenders, restore relationships, and resolve historical trauma, then the social work profession has a responsibility to ensure equal access to restorative practices within the justice system.

### 8.5 Conclusion

After decades of increasingly punitive crime and sentencing policies, there are signs that the U.S. is now experiencing a resurgence of rehabilitative, reintegrative, and restorative approaches to criminal justice. This paper presents the results of a mixed methods study designed to explain a growing trend toward the incorporation of restorative justice practices into state criminal codes by means of legislation. The results of an ordinal logit regression indicate that the percentage of black residents in a state, the percentage of female legislators in a state legislature, and a state's incarceration rates are predictive of more supportive restorative justice policy adoptions at the state level, while controlling for other explanations. Two case studies provide context for the results of the quantitative model by explicating the legislative processes occurring during the consideration of proposed restorative justice legislation and identifying the roles of key actors including advocacy coalitions, interest groups, and policy entrepreneurs.

The results of this study help direct restorative justice practitioners and policymakers toward advocacy messages and strategies which are most likely to be effective during legislative efforts focused on the adoption of restorative justice policy. In addition, it provides direction for researchers seeking to better understand the growing trend of restorative justice policy as well as those wishing to develop model codes, best practices, and ethical standards for the implementation of restorative justice practices at

the system level. In so doing, this study provides guidance for the social work profession to pursue social justice in the critical arena of criminal justice policy using an approach which honors the self-determination and human worth of victims, offenders, and the communities harmed by crime.

Appendix A

Case Study Data Collection Protocol

*Data Collection Protocol*

<b>Phase I: Collection of Legislative Documents</b> <i>Collect the following documents related to all bills legislating restorative justice or a specific restorative justice practice between 2007 and 2013.</i>	
<b>Document</b>	<b>Source</b>
Original and revised versions of bill text	Texas Legislature Online Colorado Joint Legislative Library
Codified statutes (Colorado only)	Texas Legislature Online Colorado Joint Legislative Library
Bill notes, fiscal notes, and bill analyses	Texas Legislature Online Colorado Joint Legislative Library
Committee minutes, summaries and reports	Texas Legislature Online Colorado General Assembly
Floor debate summaries and reports	Texas Legislature Online Colorado General Assembly Online

<b>Phase II: Collection of Testimonies in Committee Hearings and Floor Debates</b> <i>Collect the following testimonies related to all bills legislating restorative justice or a specific restorative justice practice between 2007 and 2013.</i>	
<b>Audio</b>	<b>Source</b>
Audio records of committee hearings and floor debates in the House of Representatives	Texas House of Representatives Online Colorado Joint Legislative Library
Audio records of committee hearings and floor debates in the Senate	Senate of Texas Online Colorado Joint Legislative Library

**Phase III: Collection of Key Informant Interviews**

*Conduct interviews with sponsors, key decision makers, and key support/opposition.*

**(1) Identify legislative sponsor(s) and contact by email to solicit participation.**

- a. Send follow up email(s) and contact legislative staff for assistance in arranging an interview, if needed.
- b. A face to face meeting is preferred, with video conferencing and (last) phone interview as alternate options.
- c. Keep a detailed record of all contact attempts and responses.

**(2) Provide informed consent form and an overview of topics in advance of the scheduled interview.**

- a. If speaking by phone or video conference, review the informed consent and get record of verbal acceptance.
- b. If speaking in person, review the informed consent and get signature.

**(3) Follow the semi-structured interview guide.**

- a. Audio record interviews and store recordings in a secure location according to the approved IRB.
- b. As interviewees identify other key decision makers, ask them to share contact information and provide a referral for participation in the study.
- c. At the end of the interview, provide researcher's contact information and ask the interviewee to follow up with any additional thoughts.

**(4) Follow up with participants.**

- a. Immediately thank all interviewees for their assistance by email.
- b. Follow up by phone or email to ask any additional questions prompted by data collection and analysis, if needed.

**(5) Make adjustments to the data collection protocol and semi-structured interview guide if needed, documenting any changes to the protocol in the audit trail.**

**(6) Provide a copy of preliminary data reports to participants and ask for feedback about the match between data analysis and their experience.**

Appendix B  
Semi-Structured Interview Guide

*Semi-Structured Interview Guide*

First, I'd like to learn more about the bill(s) in general, your role in the legislative process, and what you view as influential factors in the bill(s) success/failure.

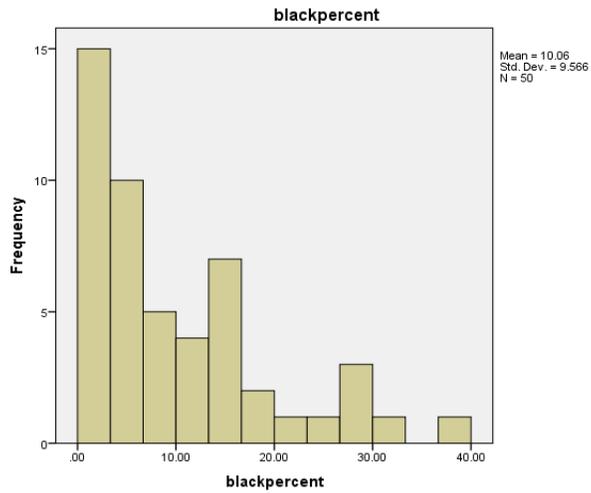
- (1) Tell me about how you first learned of restorative justice and how you became involved with the bill(s).
- (2) Describe the environment in the state around the time that the bill(s) were considered. Were there any key social, political, or economic issues leading up to consideration of the bill(s)?
- (3) What led you to support/oppose the bill(s) and what strategies did you use to do so?
- (4) What were the major sources of support for the bill(s)? (Probe for consideration of both people and organizations.) How influential were these sources in the process and final outcome?
- (5) What were the major sources of opposition to the bill(s)? (Probe for consideration of both people and organizations.) How influential were these sources in the process and final outcome?
- (6) Were there any key turning points in the legislative process in relation to the bill(s)?
- (7) In your opinion, what were the most significant factors in the bill(s) success/failure in the legislature?

Prior research and some theories about how restorative justice policymaking may work indicate a few potentially influential factors in the passage of legislation. I'd like to get your thoughts on the extent to which each of these factors may have had a role in your state's legislative process.

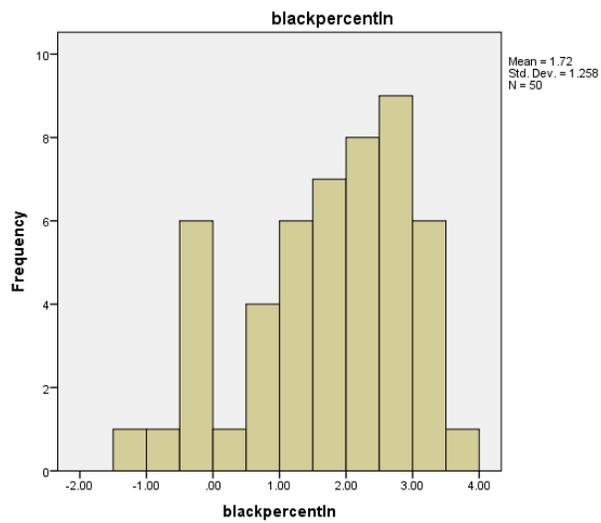
- (8) What was the role (if any) of women in advancing or blocking restorative justice policy? (Probe for consideration of both women in general and female legislators.)

- (9) What was the role (if any) of African Americans or other minorities in advancing or blocking restorative justice policy? (Probe for consideration of both the African American population in general and black legislators.)
- (10) What was the role (if any) of Native American or other tribal populations in advancing or blocking restorative justice policy?
- (11) To what extent do you believe economic crunches related to the state budget or state correctional capacity created an environment conducive to the consideration of restorative justice policy?
- (12) How would you describe the role of partisanship in debates about the value of restorative justice as a policy solution?
- (13) Describe the involvement of crime victims in advancing or blocking restorative justice policy. (Probe for consideration of victims' rights organizations as well.)
- (14) Describe the involvement of any interest groups in advancing or blocking restorative justice policy. (Probe for consideration of academic and community-based institutes, and their roles in centralization of information, organization of resources, and promotion of policy.)
- (15) Is there anything else you think is important to share about the process of considering and ultimately adopting/not adopting restorative justice legislation in your state?

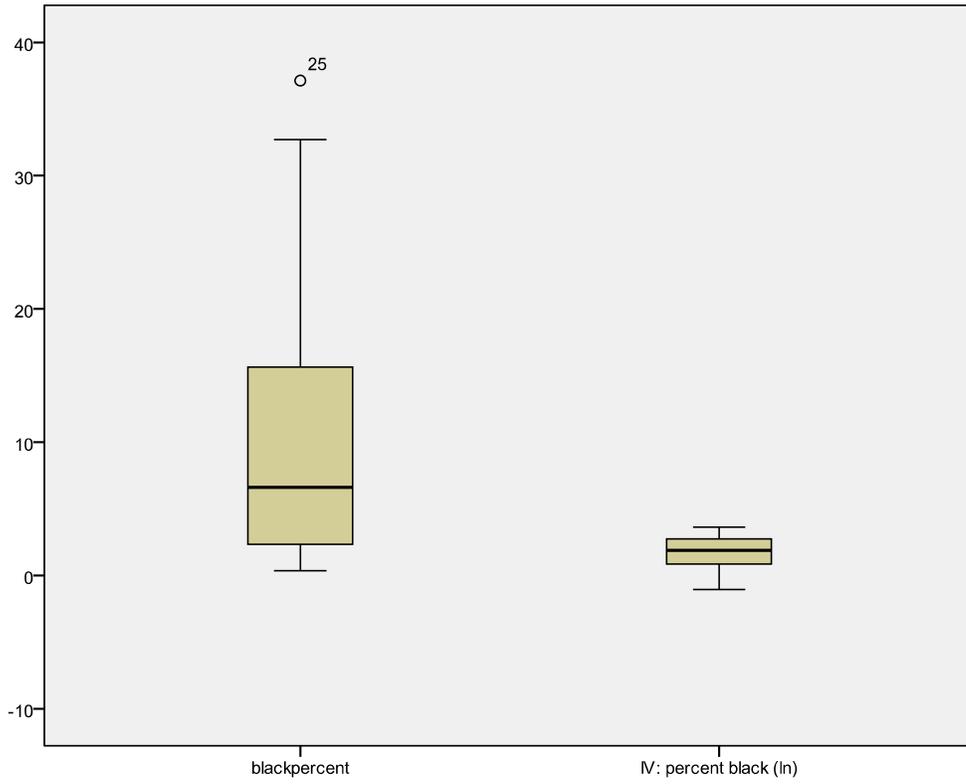
Appendix C  
Histograms and Boxplots



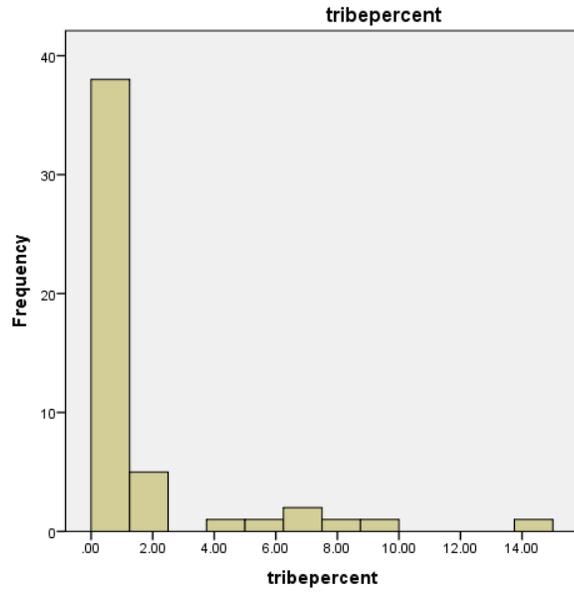
Histogram: Black Population Before Transformation



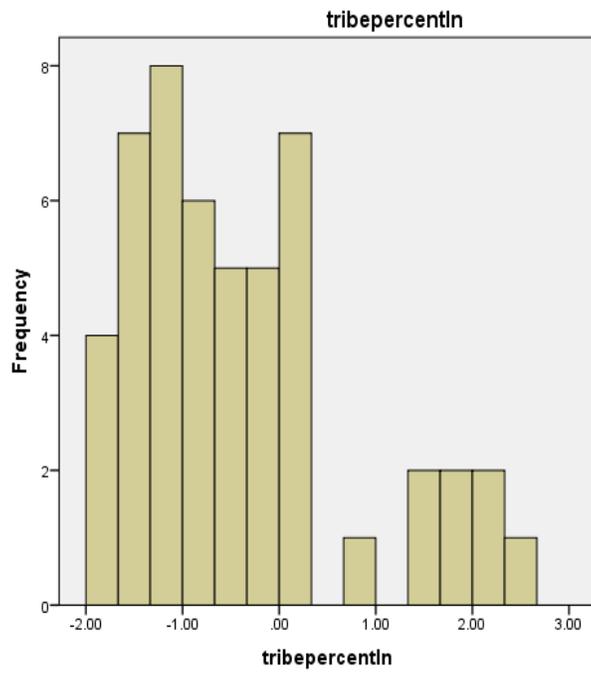
Histogram: Black Population After Transformation



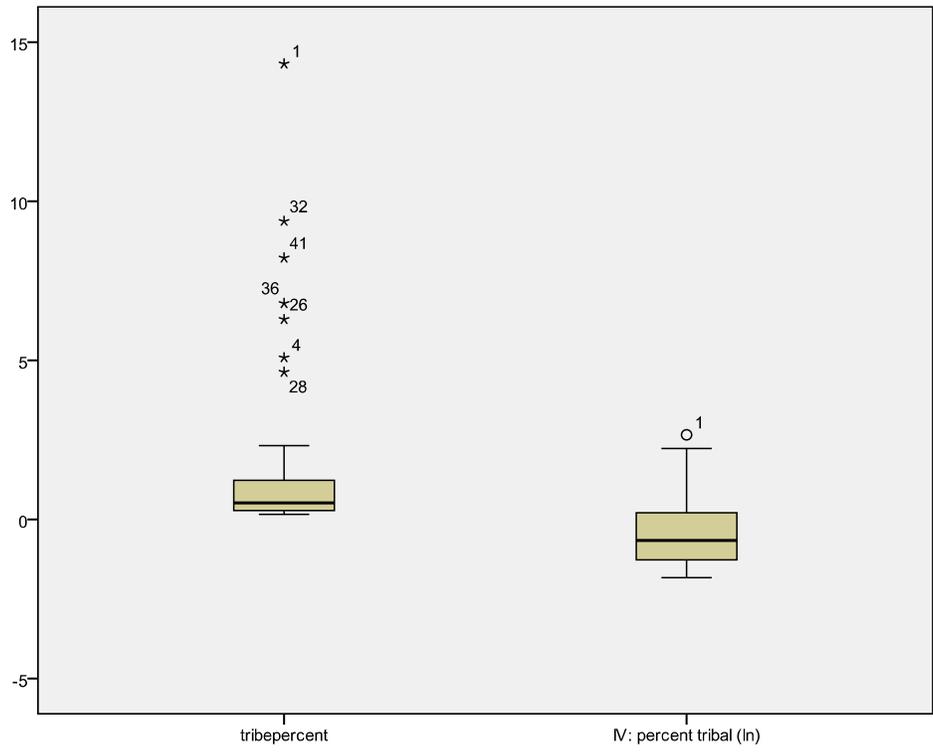
Boxplot: Black Population Before and After Log Transformation



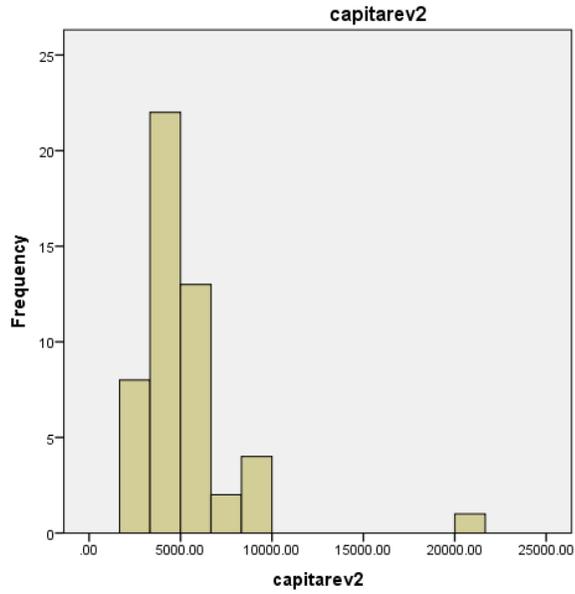
Histogram: AIAN Population Before Transformation



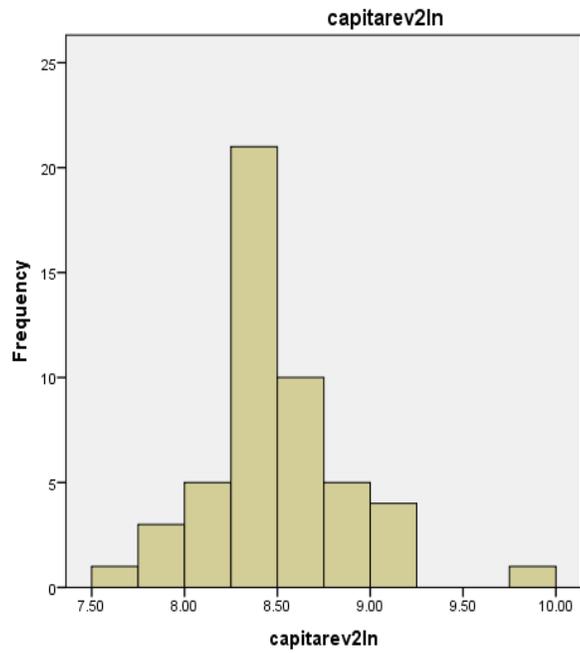
Histogram: AIAN Population After Transformation



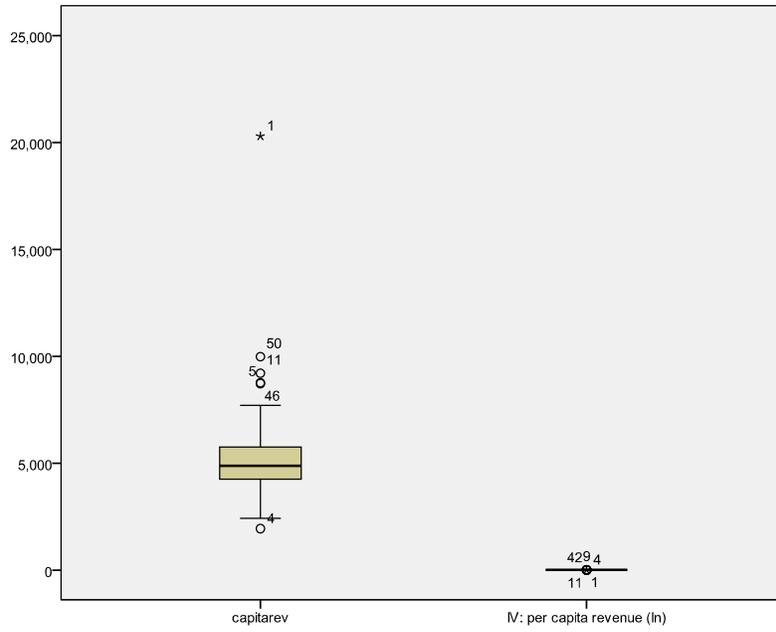
Boxplot: AIAN Population Before and After Log Transformation



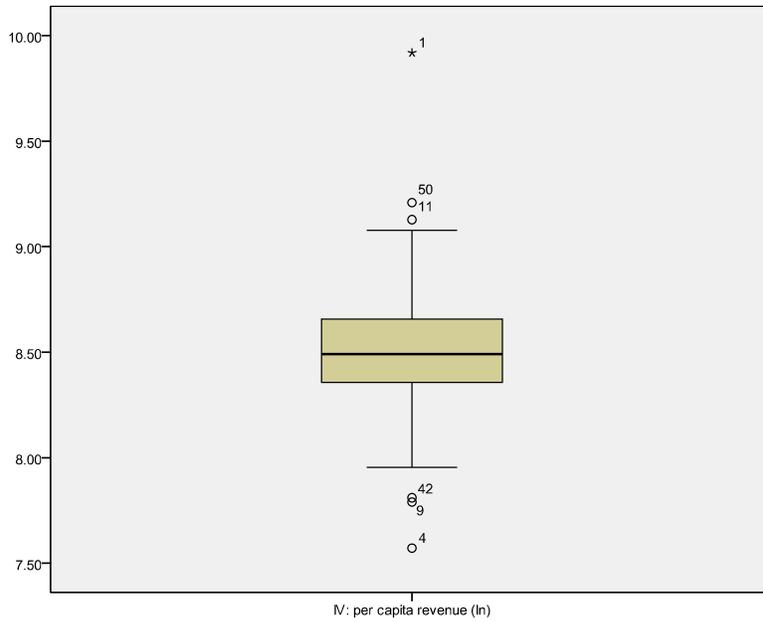
Histogram: State Per Capita Revenue Before Transformation



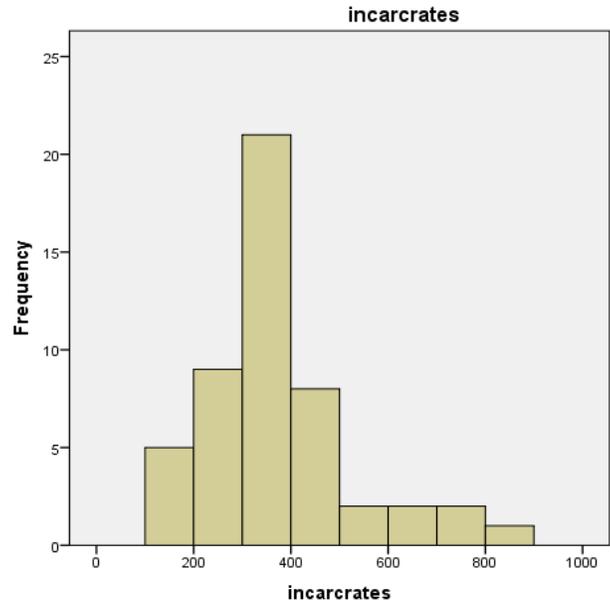
Histogram: State Per Capita Revenue After Transformation



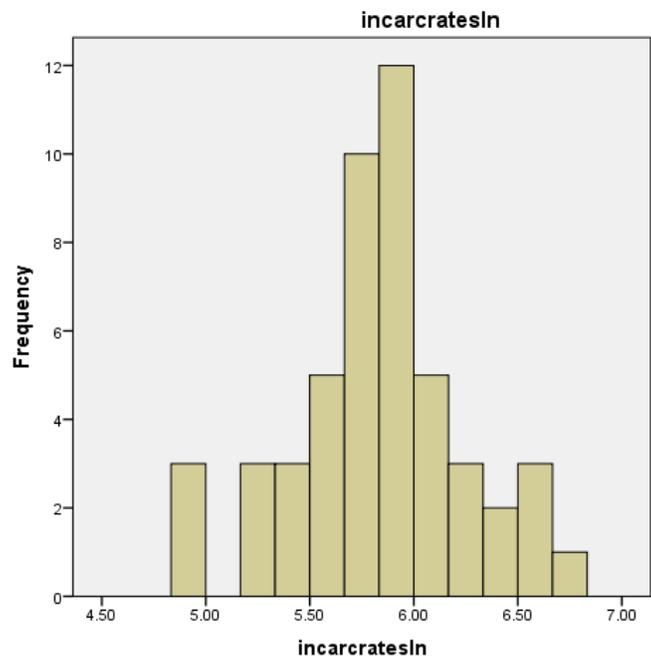
Boxplot: State Per Capita Revenue Before and After Transformation



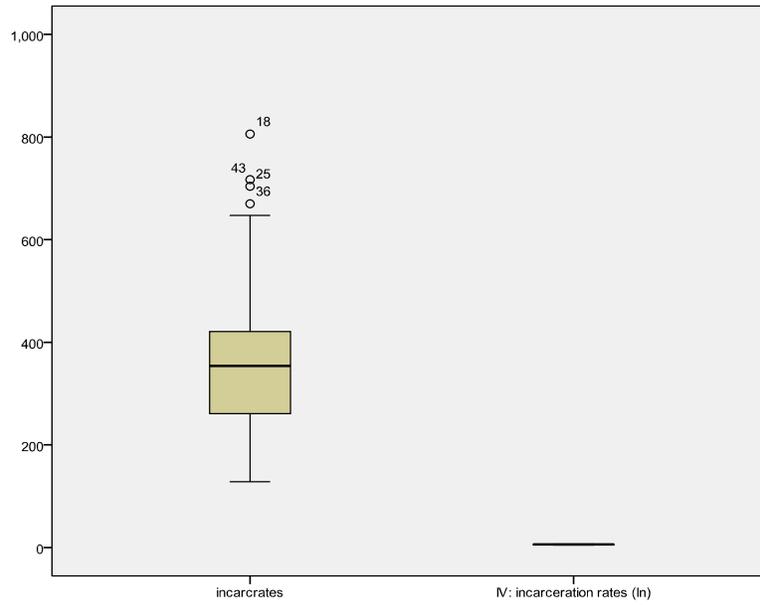
Boxplot: State Per Capita Revenue After Transformation (Close-Up)



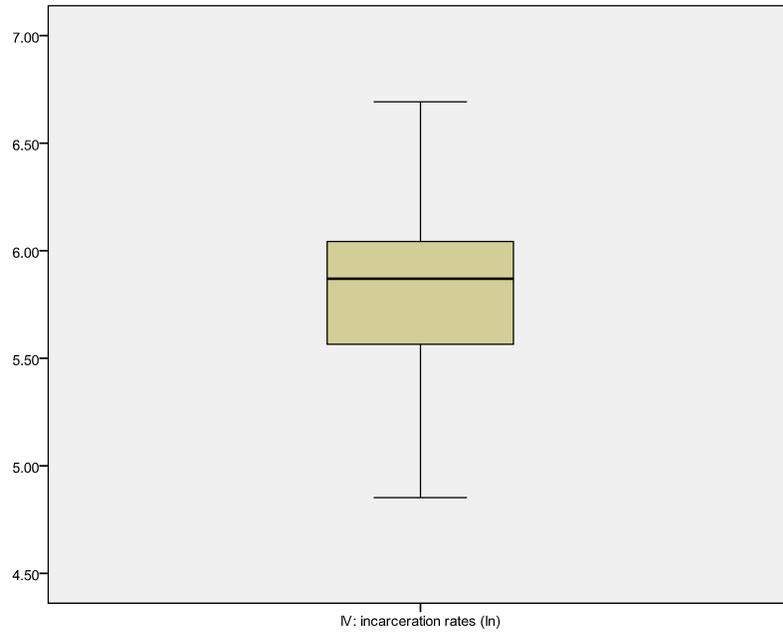
Histogram: Incarceration Rates Before Transformation



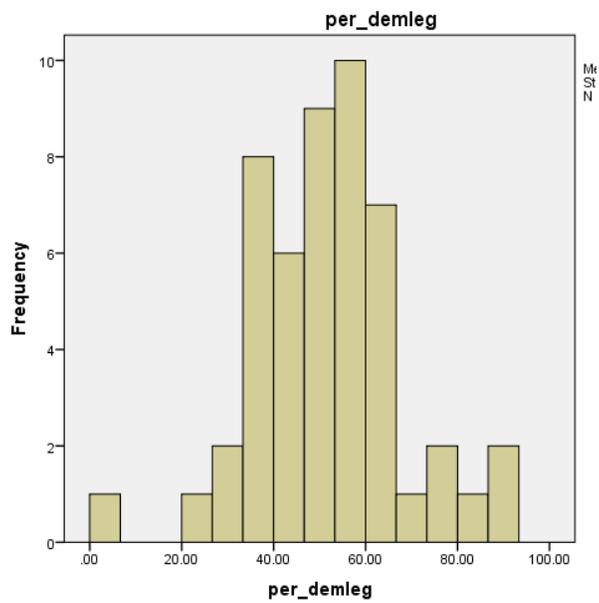
Histogram: Incarceration Rates After Transformation



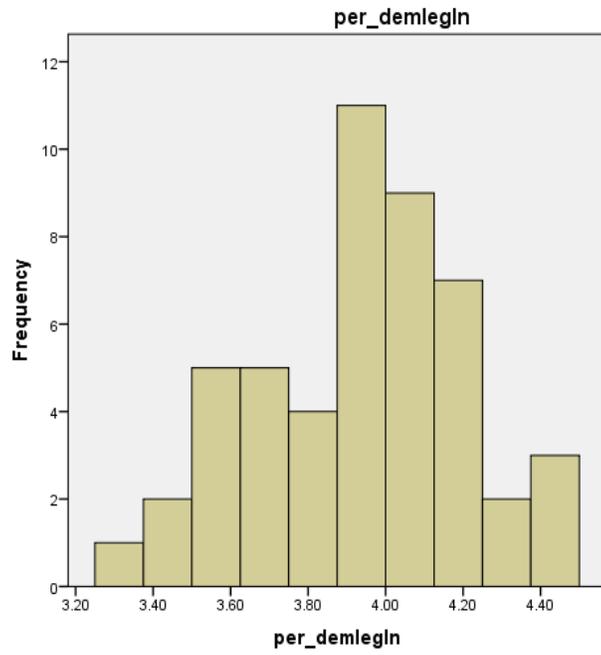
Boxplot: Incarceration Rates Before and After Transformation



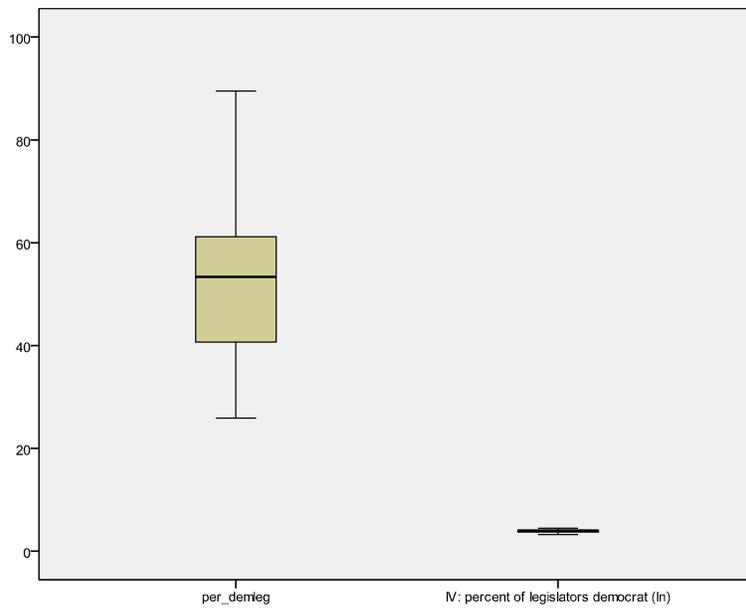
Boxplot: Incarceration Rates After Transformation (Close-Up)



Histogram: Democratic Legislators Before Transformation



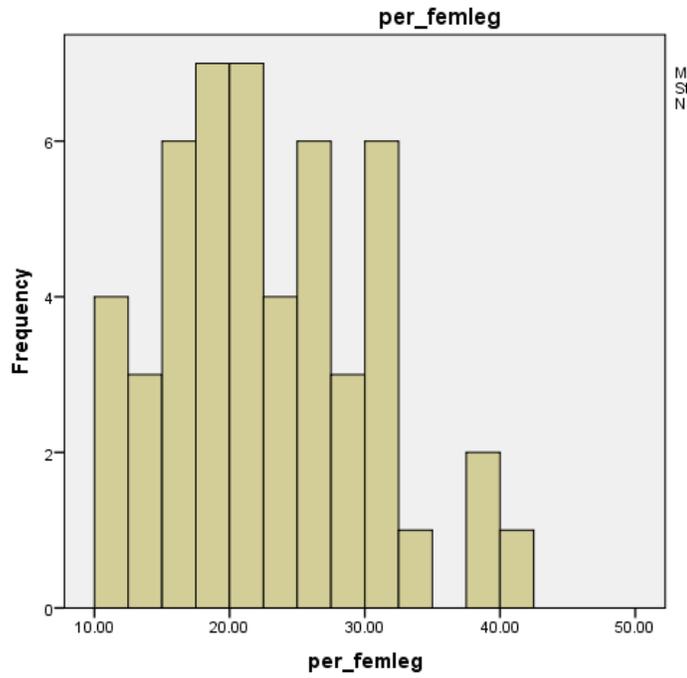
Histogram: Democratic Legislators After Transformation



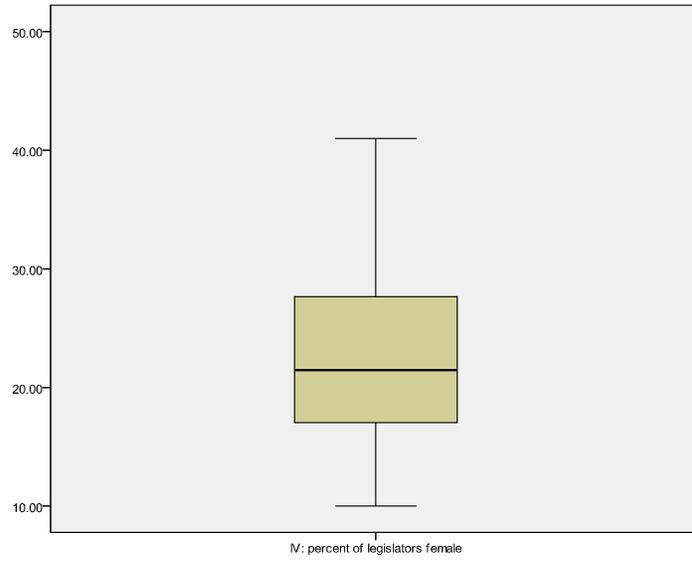
Boxplot: Democratic Legislators Before and After Transformation



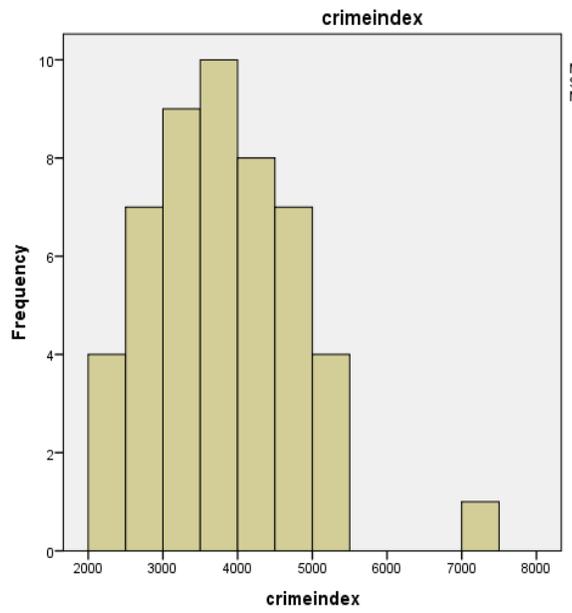
Boxplot: Democratic Legislators After Transformation (Close-Up)



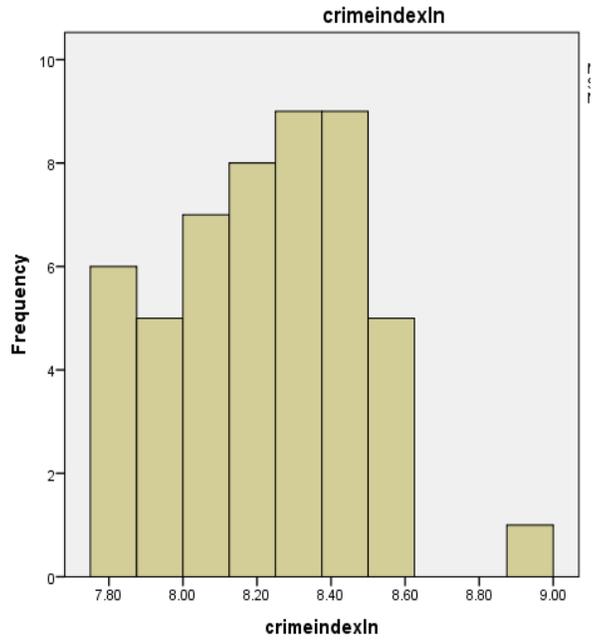
Histogram: Female Legislators



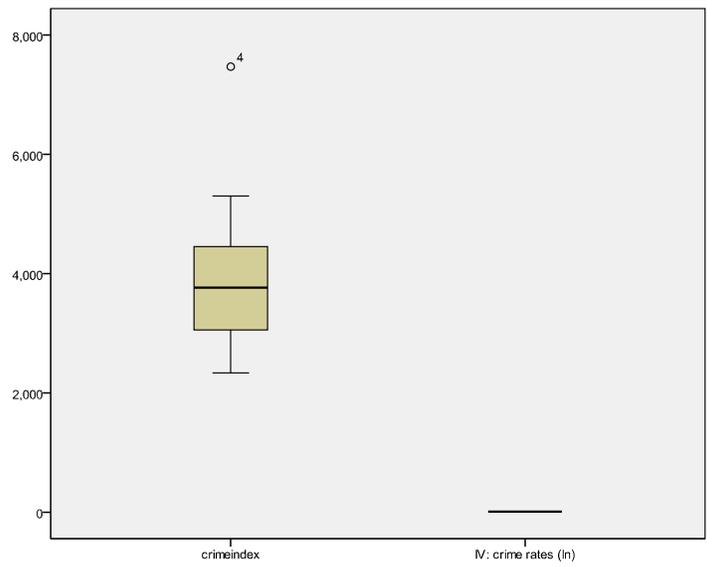
Boxplot: Female Legislators



Histogram: Crime Rates Before Transformation



Histogram: Crime Rates After Transformation



Boxplot: Crime Rates Before and After Transformation



Boxplot: Crime Rates After Transformation (Close-Up)

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### Biographical Information

Shannon M Sliva, PhD, LMSW, earned her Bachelor of Science in Social Work from Texas Christian University and her Masters and Doctoral degrees in social work from the University of Texas at Arlington. Her research focuses on the determinants and outcomes of criminal justice policy, and the development of system-level approaches to change which build the efficacy of community structures and social service organizations influencing offender populations. Currently, she is working on projects to evaluate the community-level outcomes of restorative justice programs and policies and to identify other viable forms of justice which are rehabilitative and reintegrative in nature.

Dr. Sliva's research and teaching is informed by a strong practice background in community organizing and program development. In 2014, she was recognized as the Outstanding Graduate Instructor in the School of Social Work at UTA for exemplary student evaluations in courses including Community and Organizational Practice, Advanced Administration, Social Policy, and Social Justice.

In 2015, Dr. Sliva was appointed as an Assistant Professor at the University of Denver. In addition, she continues to provide training, technical assistance, federal grantwriting, and evaluation services to community coalitions and nonprofit organizations across the United States.