



Restorative Justice and the Criminal Legal System: Wisconsin and Beyond

Jonathan Scharrer

University of Wisconsin Law School



Wisconsin Criminal Justice by the Numbers

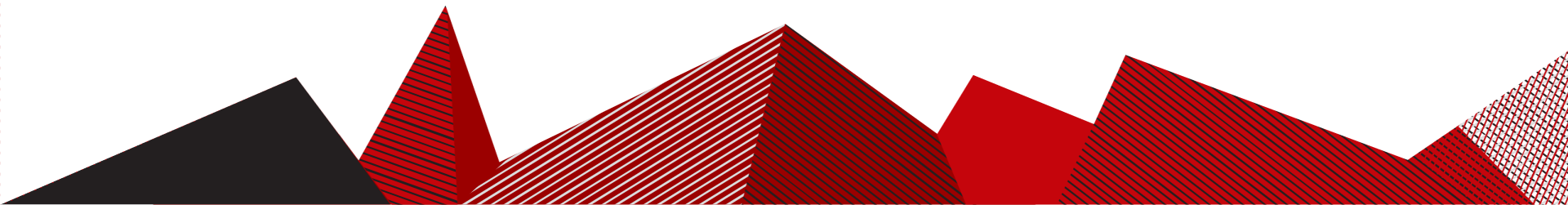
Mass
Incarceration

Racial
Disparities

Mental
Health

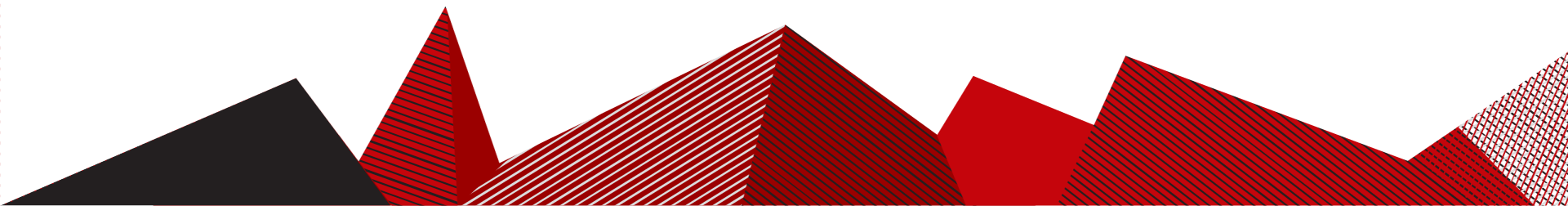
A decorative graphic at the bottom of the slide consisting of several overlapping triangles and polygons. The shapes are filled with various patterns, including solid dark red, solid light red, and diagonal hatching in dark red and light red.

Where does Restorative Justice Come From?



Key Concepts

- Crime is fundamentally a violation of people and interpersonal relationships
- These violations create obligations and liabilities
- Restorative justice seeks to heal and right these wrongs



Retributive vs. Restorative Justice

- Retributive Justice

Focus on RP; victim sometimes ignored

Victims lack information

RP seen in fragments (offense central)

Ignores social, economic, and moral context

RP denounced

Response based on RP's past behavior

Harm by RP balanced by harm to RP

Action from state to RP; RP passive

RP has no responsibility for resolution

- Restorative Justice

Victim's needs central

Information provided by & to victims

RP viewed holistically

Total context relevant

Harmful act denounced

Response based on effects of RP's behavior

Harm by RP balance by making right

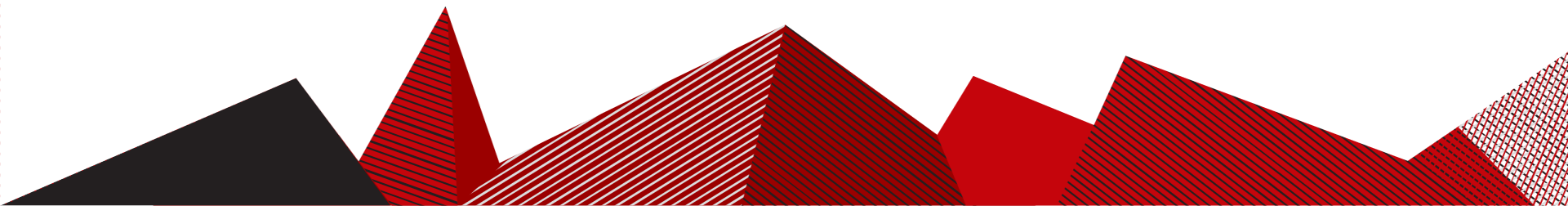
RP given role in solution

RP has responsibility in resolution

- RP = Responsible Party

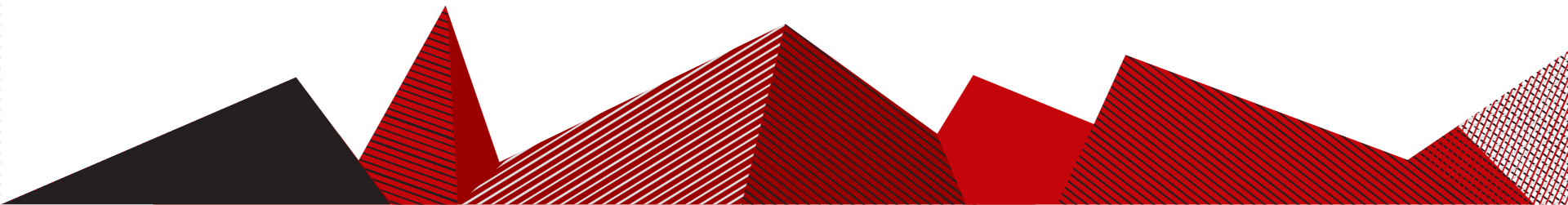
Traditional Questions in the Criminal Justice Framework:

- 1. What law was violated?
- 2. Who violated that law?
- 3. What is the appropriate punishment?



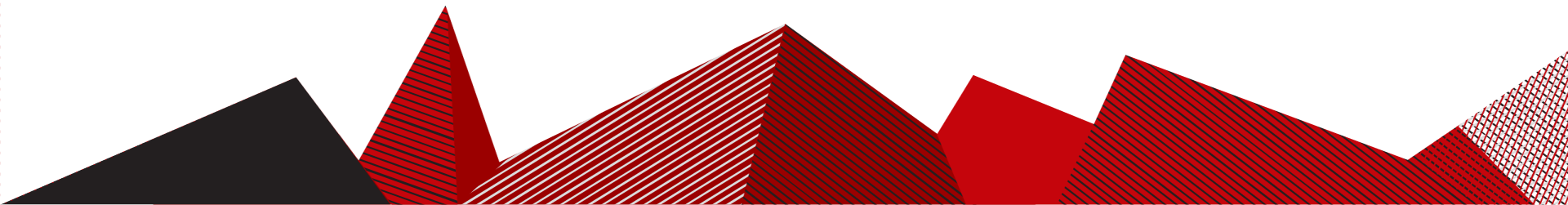
Questions asked in the restorative justice framework:

- Who was harmed?
- How were they harmed?
- What can be done to repair that harm?
- Who is responsible for repairing that harm?



“Ripple-Effect”

- Harm Spreads
 - Direct Victims
 - Indirect/Secondary Victims
 - Vicarious Trauma
- Ripples around Responsible Party



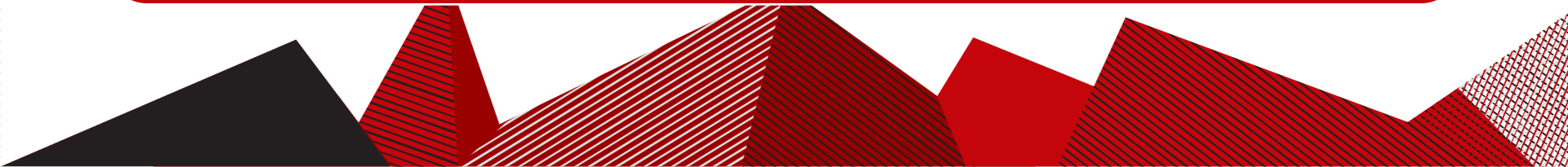


Victims' Experience with the CJ System

Often left with many unanswered questions

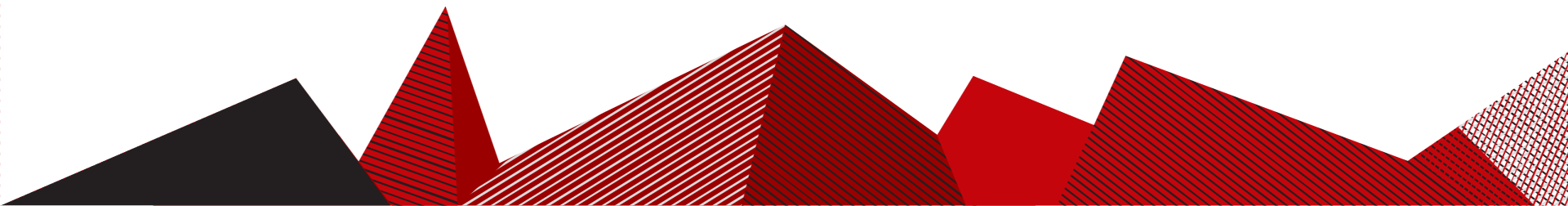
May not understand much of what happened in court or why it happened

Traditional justice system does not encourage accountability



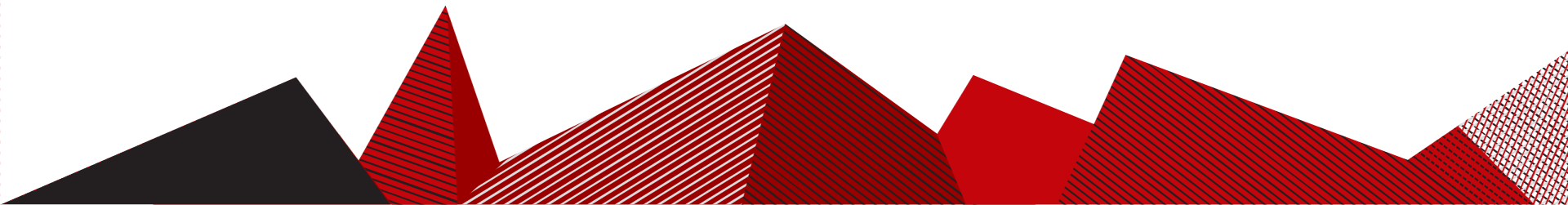
“The criminal justice system is like kryptonite to accountability...For all the ravages of prison, it insulates people from the human impact of what they have done.”

- Danielle Sered, *Until We Reckon*



“The only thing prison requires is that people stay in their cages and somehow endure the isolation and violence of captivity...Prison, lets people off the hook, as they aren't obligated to answer the victim's questions, listen to them, honor their pain, express genuine remorse, or do what they can to repair the harm they've done.”

- Michelle Alexander



To Experience Justice Crime Victims Need...

Answers

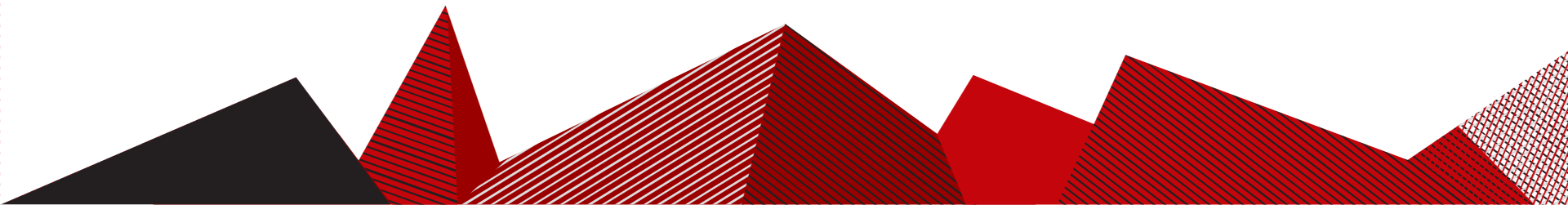
Compensation
for losses

An opportunity
for expression
of feelings

Empowerment

Safety

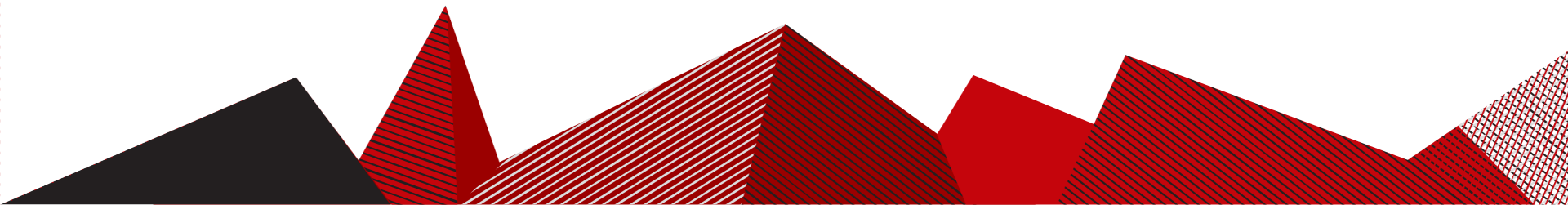
Access to
services and
resources



Effectiveness

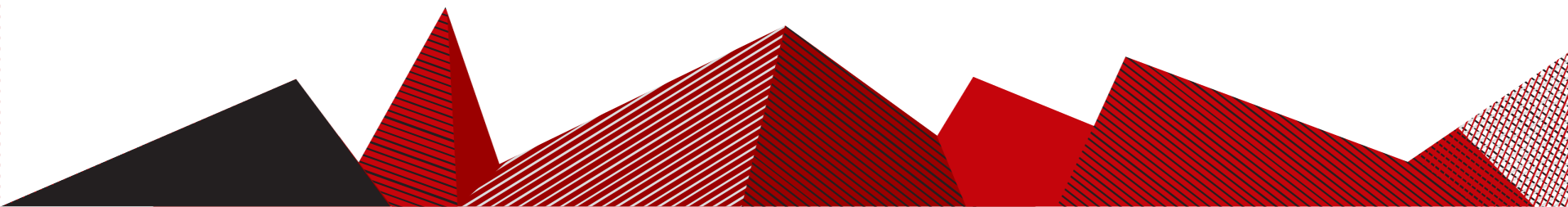
- **Recidivism**
- **Restitution**
- **Satisfaction and Fairness**
- **Psychological Metrics & Long-Term Effects**
- **Cost Savings, Timeliness, & Efficient Case Resolution**

“One of the most rigorously-
tested innovations in
sentencing and corrections.”



Restorative justice most commonly used with juveniles and less serious offenses...BUT

Research indicates that restorative justice is actually even more effective with adults and with more serious crimes!



Restorative Practices Models

- Victim-Offender Dialogue/Conference/Mediation
- Community Conferencing
- Family Group Conferencing
- Restorative Circle

Key Process Elements



VOLUNTARY



CONFIDENTIAL



NEUTRAL
FACILITATOR

Spaces for RJ in Criminal Justice System

- Pre-Adjudication

- **Pre-Charge Diversion & Post-Charge**

- Pre-Charge

- Addresses CCAP & Collateral Consequences Issue

- Significant Impact on Racial Disparities

Spaces for RJ in Criminal Justice System

- Pre-Adjudication

- Pre-Charge Diversion**

- Community Conferencing

- MD

- CO

- Victim Offender Conferencing/Mediation

- WI

Spaces for RJ in Criminal Justice System

- Pre-Adjudication

- **Pre-Charge Diversion**

- Community Restorative Court

- Dane County CRC

- Serves young adults

Spaces for RJ in Criminal Justice System

- **Pre-Adjudication**

- **Pre-Charge Diversion**

- Youth Court/Peer Court

- Family Group Conferencing

Spaces for RJ in Criminal Justice System

- Pre-Adjudication
 - Post-Charge Diversion
 - Likely paired with DPA
 - Community Conferencing or Victim-Offender Conferencing

Spaces for RJ in Criminal Justice System

- Supplemental to Court Process
 - Pre-Plea Conference
 - “Negotiation/Settlement Conference”
 - Used to get information and questions answered for the victim
 - Can guide sentencing recommendations

Spaces for RJ in Criminal Justice System

- Supplemental to Court Process
 - Post-Plea Conference

Requests Outside the Criminal Justice System

In lieu of criminal prosecution

- negotiated process with relevant system actors approving of process

Uncharged conduct

- Past statute of limitations
- Not interested in prosecution
- Prosecution barred by plea or settlement agreement in another case

Spaces for RJ in Criminal Justice System

- Post-Adjudication
 - Victim-Offender Dialogue
 - Many contexts from juvenile to adult, misdemeanors to felonies
 - **Sensitive Crimes & Crimes of Severe Violence**
 - Impact of Crime

What Sorts of Cases does RJP Handle?

- Most Common Requests:
 - Homicides & Attempts
 - Sexual-based Crimes
 - Armed Robbery
 - Shootings
 - IPV
 - Burglary




Who would want to do this?

Why would they want to meet?


Cross-tabulation of willingness to participate in RJ and type of Crime

Would you Participate in RJ?		Type of Crime:							Total
		Death	Sexual Crime	Property	Personal	Drug	Other	Not Answered	
Yes		96 (79%)	25 (80.6%)	76 (60%)	60 (71%)	42 (56%)	27 (61%)	12 (63%)	338 (67.6%)
Maybe/ Unsure		23	4	27	16	19	9	0	98 (19.6%)
No		1	2	20 (15.8%)	8 (10%)	13 (17%)	7	5	56 (11.2%)
Not Answered		1	0	3	0	1	1	2	8 (1.6%)
Total		121	31	126	84	75	44	19	500

Gretchen Casey, 2019



“I had never heard the offender speak about the crime, so I only had an imagined version of a very evil person who had no remorse. Face to face meeting allowed all of us to see each other as flawed humans, but humans with a story.”



“I believe that by having our conversation the offender has a more personal idea of who the victim was and how we, as his family and friends, have been impacted.”


Other Reasons

Questions of Safety

Assess Feelings of Offender Towards Victim

Confront Fear = Regain Power


Offender Returning to Same Community –
Control of Situation



Victim-Offender Dialogue/Restorative Justice

Common Misconception of RJ:

- Implications of Forgiveness
 - NOT REQUIRED or EXPECTED!



“I can’t begin to tell you how much this has helped me. I feel all my anger and hate for the world has left me, I now see life as hopeful rather than ugly and bitter.”

- Letter from survivor

Outcome Data

RJP Satisfaction Response Surveys:

- 98% (strongly agree 5/5) – the dialogue was a positive experience for me
- 95% This experience helped move my life in a positive direction (92% strongly agree 5/5)
- 98% would recommend this process to other people (94% strongly agree 5/5)



How have you felt since the VOD?

“I felt like I could breathe, like something isn’t constantly weighing me down. I also sleep so much better than I did a month ago.”



Questions??