

# Reintegration: The Road to Grace

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Grace - do we all deserve it? Everyone on this earth has been given a measure of grace in some form. Whether it was grace from your mother when you stole the cookie she told you not to take or whether it was grace from your parents when you missed curfew and didn't get the punishment you should have received. No matter the circumstance, we all have been granted grace at some point in our life.

When we speak of grace, we generally believe that everyone and every class of people deserve it except one class: the formerly incarcerated person ("FIP"). Why is this? Haven't they already paid their debt to society? Wasn't their sentence served in full? If so, why has there been such a concerted effort to bar FIPs from joining our associations, organizations, clubs, and society? With this being said, why is it so hard for us as a society to extend grace to the formerly incarcerated person? If we think about it, we all are ex-some-things and have all needed forgiveness.

## RESTORATIVE JUSTICE

At its core, restorative justice is about repairing harm and addressing various needs. When a crime is committed, people are hurt, and the degree of hurt is not always obvious or predictable depending on the nature of the crime. If a young man is arrested for a drug charge, for example, those that have been harmed could include his family, friends, community, and often unconsidered ... himself. Howard Zehr, a modern day criminologist and lifelong criminal justice and prison reform advocate, started laying the foundation for the restorative justice movement in the

1970s when he applied indigenous teaching and philosophies to problems faced under the current U.S. practices. Zehr's book *Changing Lenses*, first published in 1990, was one of the first instances where restorative justice was formally organized and articulated as an alternative approach to punitive models of criminal justice.

In *Changing Lenses*, Zehr defined restorative justice as "a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible." Under this definition, we can distill that a restorative approach to justice is one that focuses on i) the harm caused by crime, ii) meaningful accountability, and iii) meeting the needs of those involved through safe and voluntary dialogue.

Restorative justice is a process where all the parties with a stake in a particular crime are able to come together and decide how to address and deal with the aftermath of the crime and its implications for the future. FIPs deserve to be restored into society. Restorative justice creates a path to reintegrate FIPs back into society. The input and involvement of the offender, the victim, and the community is crucial in a successful restorative process. In this way, everyone who has a stake and interest in the matter is involved in the healing and restoration process.

Restorative justice ensures everyone's voice is heard and equally valued. FIPs and the community benefit when the lives of those who have made mistakes are restored, the victim's life is restored, and

the FIPs have opportunities away from the ones that led to the previous behavior.

## WHO PARTICIPATES AND WHAT IS THE GOAL?

It is important to understand the players involved and what the end goal looks like when contemplating a restorative process. Immediate or tangential to the crime itself are the victim(s), offender, community, family, survivors, witnesses, neighbors and friends. Structurally, other parties may include police, attorneys, judges, mediators, counselors, victim support services, witness care liaisons, and restorative justice hubs and service providers. The roles and needs of all involved vary and are equally important to consider.

PUT SIMPLY, THE GOAL OF RESTORATIVE JUSTICE IS TO THINK ABOUT THE NEEDS OF INDIVIDUALS AND THE NEEDS OF THE COMMUNITY WHEN RESPONDING TO HARM.

When a crime occurs and we hold someone accountable for that crime, questions arise. A victim may ask: Why me? Is this going to happen again? How do I go on from here? What will happen to the person that did this to me? All of these are valid questions that deserve to be addressed. Offenders may seek answers, too. What can I do to repair the harm? How can I make things better? What does the victim need from me?

Put simply, the goal of restorative justice is to think about the needs of individuals and the needs of the community when responding to harm. This is of course in contravention to punishment, which is the goal of our current criminal justice system



ishment, recidivism is high. Recidivism creates a revolving door in which an FIP is in and out of the judicial system. Here is a good example of how recidivism can easily happen: An FIP applies for various positions, including positions at entry level jobs at chain restaurants. The FIP applies for more than 20 jobs, but no one will hire the FIP for any position.

With no opportunities for gainful employment and a paycheck to pay rent, bills, and support their family, many FIP will be in a position where they will most likely feel they have to recommit crimes to put food on their tables and keep a roof over their families' heads. When opportunities are not available, it is difficult, if not impossible, to get out of the situation the FIP was in that created the climate for crime. Additionally, many FIPs are released with little or no resources and placed back in the same circumstances and with the same associates that led to them being incarcerated in the first place. Restorative justice is important to stop recidivism and provide opportunities for FIPs to become fully integrated back into society so they can become active and contributing members of society.

Acknowledgement and discussion is overwhelmingly discouraged. For the victim, our criminal justice system can seem long, stressful and complicated. Criminal and judicial processes are unfamiliar and daunting to victims, and often leave them feeling powerless and excluded. Restorative justice creates a process of justice that meets a victim's needs by giving them a voice, and provides a path for understanding, growth, and personal betterment to the offender.

Yet, under the current judicial system, individuals who are incarcerated nonetheless typically return to incarceration, with many returning to places plagued by violence and lacking supportive social structures. By focusing only on the offending individual, the criminal justice system misses valuable opportunities to repair the harm caused by an offense and to strengthen relationships within struggling communities. Given the revolving door between prison and community,

there is much potential for restorative justice to play a role in reducing recidivism.

Several studies show the positive role restorative justice processes play in lowering reoffending rates. In 2007, Kimberly De Beus and Nancy Rodriguez studied the relationship between completion of a restorative justice program and re-offense in offenders. Offenders in restorative programs were more likely to complete the program and were less likely to reoffend compared to a control group. Furthermore, in 2005, William Bradshaw and David Rosenborough also conducted a study of the effect family group conference and victim-offender mediation had in reducing recidivism. In this study, family group conferencing was shown to have twice the effect as traditional justice programs, and victim-offender mediation had an even larger effect on recidivism. Several other studies showed the positive effects of restorative justice programs on decreasing recidivism.

#### SEVERAL STUDIES SHOW THE POSITIVE ROLE RESTORATIVE JUSTICE PROCESSES PLAY IN LOWERING REOFFENDING RATES.

In many ways, restorative justice is the opposite of our current criminal justice model which is based on punishment. A consequence to an action is not equal to a punishment. If one loses one's temper and pushes someone down, there should be a consequence to that action. However, whatever happens after that bad action occurs is a choice. We can choose to punish and focus on the law/rule that was broken, who committed the offense, and what retributions are appropriate. Alternatively, we can adopt a restorative approach and focus on what occurred, who was impacted and why, and what needs must be addressed to make it right.

Let's take a second to acknowledge the power of language. What if we referred to victims as people who were harmed and offenders as people who caused harm? Does that change how we think of them? Most people have caused harm or been harmed in their lifetime - we can all relate to this on

some level. It is unfair and punitive to label someone based on the worst thing they have ever done or that has been done to them. Dignity and grace should be ascribed when talking about human beings, even when the topics are difficult and complex.

Restorative justice is difficult and complex for a number of reasons - this is a human problem. Instinctually, people retreat into isolation as a form of protection. Many only feel safe isolated within the protection of their home. We've lost the skill of facing people and having difficult nuanced conversations, especially with people outside of our comfort bubble - people who are not like us. As a society, we are not adept at facing our fear of facing each other. The answer has been to take the easy path. Lock everyone up. Keep people separated to feel safe; let's lock away all harm inside of prisons so we don't have to see it or deal with it. This approach fails on many levels as demonstrated by the fact that 50%-70% of people that leave prison return within three years.

This model assumes that human beings are motivated by fear, and that people only follow the rules because they are afraid of what will happen if they get caught. If this were true, why have we not won the war on drugs ... or why is domestic abuse a daily occurrence? This antiquated approach fails to recognize and acknowledge that people are intrinsically good and capable of course correction, and that people need help. People can and are motivated by relationships and refrain from causing harm because they want to be in good relationships with those in their community. Punishment only causes more harm. Whereas, a restorative approach to justice restores humanity and helps to rebuild communication skills and compassion that have long been lost and blocked by the current criminal justice system and mass incarceration.

#### THE VALUE OF RESTORATIVE JUSTICE

The most important reason our current system is in need of serious reform is that in the United States, approximately 1 in 3 adults (70 million people) have some sort

of criminal record and are subject to having opportunities or employment withheld.

In fact, most people currently incarcerated in the United States are not accused of serious crimes, but instead are charged with misdemeanors or non-criminal violations. Rather than investing in community-driven safety initiatives, cities and counties are still devoting vast amounts of public resources into the processing and punishment of these minor offenses.

Many of these 70 million Americans are subject to criminal background checks

lowing the Money of Mass Incarceration, that the system of mass incarceration costs the government (and its taxpayers) and families of incarcerated individuals at least \$182 billion every year. According to the Vera Institute of Justice, incarceration costs an average of more than \$31,000 per inmate, per year, nationwide. In some states, it's as much as \$60,000. Taxpayers foot the bill for feeding, housing and securing people in state and federal penitentiaries.

Unfortunately, the negative effects of a criminal conviction are substantially more significant for African Americans

There are currently federal, state, and local laws protecting individuals with criminal records from unfair or discriminatory practices in the employment context, including laws governing the commercial background check industry; however, many employers are either unaware of these laws or choose to ignore them in their hiring practices. We encourage you to review and share the accompanying: "20 Best Practices Standards on the Use of Criminal Background Checks in Hiring Decisions", provided by the Legal Action Center Lawyers' Committee for Civil Rights Under the Law, and the National



when they seek employment and are often pre-screened and eliminated from employment opportunities before they go through the interview process. Most employers and occupational licensing agencies conduct criminal background checks on prospective employees.

Costs associated with the healthcare, shelter, food, and security services related to incarceration are expensive. The Prison Policy Initiative found in its report, Fol-

lowing the Money of Mass Incarceration, that the system of mass incarceration costs the government (and its taxpayers) and families of incarcerated individuals at least \$182 billion every year. According to the Vera Institute of Justice, incarceration costs an average of more than \$31,000 per inmate, per year, nationwide. In some states, it's as much as \$60,000. Taxpayers foot the bill for feeding, housing and securing people in state and federal penitentiaries.

Unfortunately, the negative effects of a criminal conviction are substantially more significant for African Americans than for Caucasians. A New York City study found that the employment harm suffered by African American applicants is almost twice the penalty for Caucasian applicants with a criminal record.

Workrights Institute. It is very important for job applicants with criminal records, employees, social service providers, employers, and lawyers be aware of all applicable laws and the changing landscape in the laws affecting potential employees.

According to a 2014 Brookings Institution study, local prisons cost taxpayers at least \$22 billion a year; this amount is separate and apart from the costs related to those serving sentences in state or federal prisons.

In the current system, social and economic disparities create large discrepancies in the amounts of bail set, charges made, and the length of sentences. Using



restorative justice instead of the current system would help address some of the clear race- and income-based disparities.

There are multiple disparities, all of which create an unjust system for people of color, but particularly for African Americans.

First of all, there are disparities in the amount of bail set. African American defendants receive higher average bail amounts than other defendants. Additionally, more African American and Latinx defendants are detained without bail in comparison to white defendants.

Additionally, and more importantly, there are many people incarcerated for long periods of time because they are unable to pay the bail set for them to be released from jail until their court date.

Over the past few decades, the jail and prison population in the United States has grown exponentially. This unprecedented growth of America's incarcerated population is almost entirely due to the rise in pretrial detention: the practice of holding defendants before their trial. It is clear that the reason for detaining defendants in pretrial detention is because an estimated 2.5 million people each year behind bars cannot afford their cash bail.

Most importantly, our current judicial system is in dire need of reforming its bail system. In addition to the 1.6 million people incarcerated in federal and state prisons, there are more than 600,000 people locked up in more than 3,000 local jails throughout the U.S. Over 70 percent of people held in local jails are being held there pretrial – those who have not yet been convicted of a crime.

The reason so many people are being held in jail before they have been convicted of any crime is primarily due to how our country ties its justice system to money bail. With money bail, the guarantees under the constitution of being innocent until proven guilty only apply to those with the funds to be able to pay bail money. Additionally, with money bail, if the defendant is unable to come up with bail

money, those accused of a crime can be incarcerated from their arrest until their case is resolved or dismissed in court.

Although it may not seem like a relatively minimal amount of money to many of us, there are numerous individuals being held because they are unable to pay \$900 in bail. A disturbing example of the economic disparities related to bail is well illustrated in the documentary, *Time: The Kalief Browder Story*, which is available on Netflix. Kalief Browder was accused of stealing a backpack and insisted on his innocence. He was held in jail for three years, much of that time in solitary confinement, without even being convicted of a crime or having his day in court to defend himself. If Kalief Browder's mother had been able to post bail in the amount of \$900, he would have been released until his trial.

Kalief Browder was subjected to beatings from fellow inmates and prison guards, and unknown other atrocities – all because he was accused of stealing a backpack. Although his story is shocking, what's truly shocking is how common this treatment is for so many other individuals involved in our country's judicial system. Kalief Browder's story is the story of far too many.

Perhaps some of you are aware from your work as paralegals in the criminal law arena, but most of you are probably wondering: how does bail work? Most individuals arrested and charged with crimes must provide a refundable deposit to ensure they will appear on their court date. This means either putting up their own cash, or paying a fee to a commercial bond company that will post the bail. Unfortunately, people who are unable to pay bail or a bail bondsman remain in prison.

The United States (minus four states) and the Philippines are the only countries with a commercial bail industry. Bail reform advocates contend that this system creates unequal justice for rich and poor citizens – effectively jailing people simply because they don't have access to the right amount of bail money at the right time.

Holding non-convicted citizens in jail has a multitude of serious effects, some of which are obvious: they can't work, they can't spend time with their families, they might lose housing, and they can't contribute to society through volunteer work. These individuals are pressured by the District Attorney's office to plead guilty just to avoid the misery of being locked up, and many of them do so. Kalief Browder could have walked out of jail immediately if he had pled guilty to a crime he hadn't committed. However, he was determined to have his day in court because he was innocent. Unfortunately, his day in court never came. These individuals who haven't been convicted too often lose their jobs and suffer physical and emotional trauma due to their incarceration. Who is this serving? No one. Instead, huge sometimes irreparable harm is being done to these individuals.

**THE AVERAGE SENTENCE FOR AFRICAN AMERICANS SENTENCE IS 168 DAYS LONGER THAN A SENTENCE FOR A CAUCASIAN.**

Research shows that the economic and emotional consequences of being jailed for lack of access to bail money leave defendants damaged and more desperate than they would have otherwise been, and most likely actually lead to more, not less crime.

Furthermore, defendants incarcerated before trial have a lot less leverage in bargaining with prosecutors when they are in custody versus out of custody on bail. They also have less opportunity to substantially contribute to their defense.

Secondly, African Americans are charged with more serious offenses than white defendants for the same crime. For a good example of this, please see Aaron Bath's accompanying article.

Lastly, the average sentence for African Americans sentence is 168 days longer than a sentence for a Caucasian. Even when researchers controlled for criminal history, jurisdiction, and neighborhood, they concluded: "racial disparities in sentence length cannot be solely be explained by the

contextual factors that we consider and permeate the entire criminal justice process.”

On June 2020, the American Bar Association’s Working Group on Building Public Trust in the American Justice System published a scathing report on the current justice system, outlining the various ways our current justice system penalizes and criminalizes our nation’s poorest citizens. A link to this report is available in the notes, references, and resources below.

## TRANSITION AND PATH TO REINTEGRATION

The transition from prison to free society is not merely a phrase. Transition, also known as re-entry, is alive and well, but is also well hidden within the boundaries of what society thinks it should be.

Even though grace has not been extended to FIPs by society’s standards, the state and federal criminal justices systems have surprisingly allowed a current offender to improve or better themselves for their return back into society by allowing the FIP the opportunity to take several different programs. Some of these programs are faith-based but they also include job training, General Educational Development (GED)/High School Equivalency Test (HISET), anger management, parenting skills, and alcoholics and narcotics anonymous. If the powers that be can have that type of empathy for the FIP, why can’t we as a society extend the same grace?

Re-entry begins when an incarcerated person is released from incarceration not when we as a society decide to release them from the prisons of our thoughts and minds. Contrary to popular belief, any work done, such as trainings or treatments, prior to setting foot outside the prison gate, is done in preparation for transition/re-entry back into society.

So, how can we as a society assist FIPs on the road to reintegration by giving them what they need and not by giving them what we think they need or what we want to give them? We believe the following steps are just the beginning of the process.

1. Use evidence based practices from Right-On-Crime 20 Best Practice Standards on the use of Criminal Background Checks in the hiring process which are as follows:
  - Background checks can often be misinterpreted by employers, not up-to-date, contain incorrect information, or do not tell the whole story of an individual, causing employers to unnecessarily pass up on highly qualified applicants.
  - Statistics show that employment of individuals that have criminal backgrounds reduces recidivism, improves public safety and helps the overall economy of our communities.
2. Involve non-correctional stakeholders (public, private and community agencies) who can provide services and support as re-entry efforts are planned and implemented;
3. Assure that transitioning offenders are provided basic survival resources such as identification documents, housing, appropriate medications, linkages to community services and informal networks of support before, during and after they are released from prison; and to
4. Expand the traditional roles of correctional staff beyond custody, security, accountability, and monitoring to include an integrated approach to offender management that engages offenders in the process of change.

What re-entry does not do is create unnecessary stress, or situations that can lead to re-arrest. Re-entry does not account for the masses of people on probation and is not an extension of the criminal justice system.

Successful re-entry programs for the FIP rely on more than merely helping ex-offenders find jobs; it also requires helping offenders change their attitudes and belief about crime, addressing mental health issues, providing mentoring, offering educational/vocational opportunities, job training, and increasing positive reinforcement.

The goal of re-entry initiatives is to cut the recidivism rate by 50% or more for returning citizens beginning with the local jurisdictions that contribute the highest numbers of prisoners to the system. If we combine a bit of grace with steps to help reintegrate FIPs back into society, we could reduce the rate of recidivism by numbers currently unimaginable.

A crime should not define who you are forever and hand out a life sentence by limiting opportunities available to FIPs. Without restorative justice, FIPs are given two different life sentences – behind bars and then the subsequent stigma of being someone with a felony record. We are all ex-some things and we have all made mistakes. Fortunately, we have been forgiven for those mistakes and are able to move forward. FIPs deserve forgiveness and the chance of a viable future. Once local, state and federal agencies have freed the incarcerated person, can we now also remove the shackles of judgment from the FIP and treat them as human beings who have paid for their transgressions? Forgiveness is the currency for redemption.

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# 20 Best Practice Standards

## On the Use of Criminal Background Checks in Hiring Decisions

- 1) Identify Risks of the Job for a Relevance Screen of Convictions
- 2) Review Only Convictions and, Where Permitted, Pending Prosecutions
- 3) Choose a Reasonable “Look-Back” Period
- 4) Don’t Mention Criminal History in the Job Posting
- 5) Don’t Ask about Convictions in the Application
- 6) Interview Option 1: Don’t Ask about Convictions (Check Before Final Hire)
- 7) Interview Option 2: Discuss Convictions
- 8) Use an Experienced Consumer Reporting Agency for Background Checks
- 9) Provide Relevance Screen to the Consumer Reporting Agency (CRA)
- 10) Don’t Use Databases Containing Non-Conviction Data
- 11) Confirm All Conviction Data from the Original Source
- 12) Report Convictions Only When Full Name and All Other Available Identifiers Match
- 13) Be Sure Disposition Reported Is Current
- 14) Report All Charges Related to a Single Incident as a Single Entry
- 15) Allow Time to Challenge a Disputed Report
- 16) Consider All Evidence Relevant to Rehabilitation
- 17) Choose Hiring Official Senior Enough to Balance All Factors
- 18) Presume Incumbents with a Track Record are Fit to Stay
- 19) If necessary, Offer Incumbent Appropriate Transfer
- 20) Train Human Resources Staff on Proper Use of Conviction Records

Excerpted from ***Best Practice Standards: The Proper Use of Criminal Records in Hiring***  
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[https://www.lac.org/assets/files/Best\\_Practices\\_Standards\\_-\\_The\\_Proper\\_Use\\_of\\_Criminal\\_Records\\_in\\_Hiring.pdf](https://www.lac.org/assets/files/Best_Practices_Standards_-_The_Proper_Use_of_Criminal_Records_in_Hiring.pdf)

