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SEXUAL ASSAULT VICTIMS WANT SERVICES TAILORED TO THEIR NEEDS

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EXECUTIVE SUMMARY

For decades, prosecutors and advocates strove to make the criminal legal system more victim-centered. This resulted in more money being funneled towards prosecutions and policing as well as laws that now require harsher penalties and more regular notifications for victims. But it has also produced, paradoxically, a downgrading of social services, counseling, medical care, and other services that victims need to feel whole.

This is most evident in sexual assault prosecutions. Historically under-enforced, victims' advocates pushed for greater criminal penalties and policies that were pro-arrest and pro-prosecution in an attempt to keep victims safe and wrongdoers accountable. But these policies have not helped. And the harms to women of color and women who identify as LGBTQ have only increased—a byproduct of increased policing.

As community leaders around the country push plans to defund the police, advocates and victims are driving forward proposals that give victims a voice to help shape their own options for justice, rather than treating them as tools of the prosecution. By offering victim-centered methods of accountability, like restorative justice, communities can both decrease reliance on policing and create a system where victims' voices are placed center stage, where they can feel comfortable asking for what they need without fear of negative repercussions.

Voters support alternative approaches, including mental health counseling and trauma-related services according to a recent poll conducted by Data for Progress and The Justice Collaborative Institute.

- ▶ 69% of survey respondents, including over 60% of those identifying as Republican and 72% of women, would support victims' services being made available to those who choose not to report to law enforcement.
- ▶ 58% of all respondents supported drawing funding for victims' services from law enforcement funds.

TRADITIONAL POLICING FAILS VICTIMS OF SEXUAL ASSAULT

Most victims, if asked, want a process that both prevents future harms and meets their needs, such as retaining control and protecting themselves from more trauma. Yet this is often not what they are offered. (These individuals are often referred to as “survivors,” but because this report focuses on justice services the term “victim” is used.)

The vast majority of sexual assaults remain unreported (an analysis of 2016 Justice Department data found 80% of rapes and sexual assaults went unreported), and when they are reported, most go unsolved. Even when victims do report and police can identify a suspect and make an arrest, prosecutors often choose not to pursue such cases because they doubt the evidence is strong enough to obtain a conviction. Overall, less than 1% of sexual assaults end in a felony conviction.

The reasons behind the lack of reporting vary, but, in general, most victims say that they fear retaliation or being disbelieved. There are also often concerns about losing immigration status, housing, or child custody. Victims sometimes blame themselves, which deters reporting. Some victims, especially if they were under the influence of alcohol or drugs at the time of the incident, are deterred from reporting their assaults to avoid being portrayed as at fault.

Lawmakers have responded by increasing criminal penalties for acts of sexual assault, often out of concern for victims and a desire to vindicate harms that have historically been ignored. One example is the federal Violence Against Women Act. Passed in 1994, VAWA poured increasing amounts of money into prosecution and policing, including sensitivity training. But this didn't address victims' lack of control over their cases, and the fact that they can be compelled to provide testimony against their wishes. Prosecutions are, for all intents and purposes, the only recourse for victims of sexual assault. This not only deters some victims from reporting; it also invalidates other needs of victims, like resolution, empowerment, and safety. VAWA funding for non-law enforcement services, like housing, financial assistance, and therapeutic care, have diminished over the years, from 38% of total VAWA funds in 1994 to just 15% by 2013.

Scholars have noted that participating in prosecutions makes victims feel devalued, disempowered, and revictimized. And even when criminal prosecution ends in a “win”—with a conviction being one of the only “successful” outcomes available—victims do not always feel vindicated. For a long time, prosecutors, lawmakers, and advocates have ignored this gap between what victims want and what is available to them. The current willingness of the public to rethink policing altogether is a valuable opportunity to consider alternative approaches

to righting wrongs and repairing harms, especially for sexual assault victims, a group of people long underserved by current systems.

THE NEED FOR A VICTIM-CENTERED APPROACH

A victim-centered approach to crimes like sexual assault requires re-centering the conversation around what victims want. Despite the “victims’ rights” movement of the 1980s and ’90s, there has been little examination of the actual desires and needs of sexual assault victims in particular. Victims of sexual assault span a variety of socio-economic, racial, and class boundaries. They do not all have the same objectives and needs.

Currently, many community groups focus on exactly this victim-centered approach. Survived and Punished, for example, focuses on women of color who have been victims of sexual assault and domestic violence by providing a space for resolution outside of the criminal legal system. Such alternative methods of healing should be explored; they are particularly useful for communities that have been heavily damaged by institutional racism and over-policing, such that a lack of trust in law enforcement leads victims not to ask for help.

THE PROCESS OF RESTORATIVE JUSTICE

While there is no single model for how to center victims more in adjudicative processes, multiple studies show that restorative justice,

when done correctly, can provide victims with a sense of closure and vindication, whether or not the process occurs within the criminal legal system. Restorative justice provides victims the opportunity to decide for themselves how to resolve their case, without the intrusion of police and prosecutors, and provides moments of validation and resolution.

Restorative justice is an alternative way for sexual assault victims to assert their voice and have their stories heard and believed, without the judgment of police or prosecutors. This model also offers the opportunity to address different types of harms that are not necessarily covered by criminal statute, like sexting, uploading sensitive videos or photos to the internet, or other forms of sexual harassment. (It should be noted that restorative justice may not be suitable for all victims, and some will not choose it when offered.)

Studies that have observed the use of restorative justice in sexual assault contexts provide a set of guidelines that center the rights of victims and minimize trauma. First, participation in restorative justice should always be voluntary and include family and community members. No victim of sexual violence should be compelled to engage in restorative justice nor should the process be tied to criminal prosecution. Second, the process should be victim-centered. Thirdly, programs should offer validation and vindication for victims, with a focus on repairing harm to the victim, their loved ones, and the broader community. Finally, restorative justice should involve accountability.

One of the most common desires voiced by victims is that the wrongdoer not harm anyone else in the future. Restorative justice addresses this concern by creating a redress plan that can, when appropriate, require the wrongdoer to participate in a form of therapeutic intervention to resolve mental health issues related to offending, and increase empathic capacity.

To ensure that these goals are met, restorative justice should proceed in phases: preparation, conferencing, post-conferencing monitoring, and evaluation. It is essential that restorative justice models include a substantial amount of planning and preparation before there is a face-to-face meeting. Preparation is also required to create a plan for redress, rehabilitation and accountability to meet the needs of all parties. By moving forward deliberately and always with the victim's voice in mind, these phases ensure that participants are physically and psychologically safe.

Restorative justice works in concert with a set of wrap-around services for victims, including psychiatric care and counseling, medical care, housing assistance, child care, and employment assistance. For most victims, the most immediate needs are economic and practical, and any victim-centered justice process must acknowledge that.

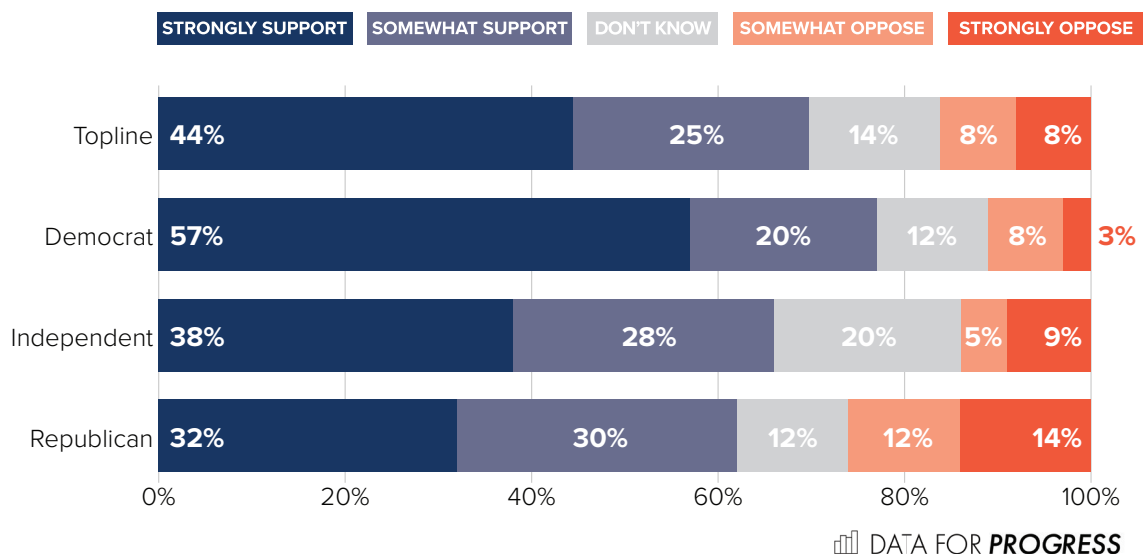
Critics of restorative justice—prosecutors, police, and some victims' advocates—fear either that the accused will somehow be “let off the hook,” resulting in no change in behavior, or that victims will be pressured by family and community members to ignore the incident and move on. Many of these critics have been part of movements to reduce violence against women and worry that movement away from the traditional criminal legal system trivializes women's concerns, and concerns about sexual assault more broadly. But the criminal justice system as is fails to meet the needs of many victims, and often operates over their objection. People have been jailed to compel their testimony in cases they wish to drop. Victims should only participate in restorative justice if they feel it serves their interests. But when presented with the options, many victims of sexual assault choose restorative justice.

The limited studies available show that victims are satisfied at the end of the process when they do choose restorative justice. In one study of RESTORE, the first restorative justice program for sex crimes in the United States, more than 80% of participants felt that justice had been done. In the context of sexual assault on college campus, where both the victim and perpetrator often know each other, and where the criminal legal system is often uninvolved, restorative justice is already

widely used for other misconduct and needs to be adopted for sexual violations of behavioral codes.

Restorative justice is not just popular with victims. Polling by Data for Progress and The Justice Collaborative Institute shows the vast majority of survey respondents agree that victims' services should be available to those who choose not to report to law enforcement.

Would you support or oppose allowing victims of sexual assault and rape access to mental health and trauma-related services, even if they choose to not report the assaults to law enforcement?

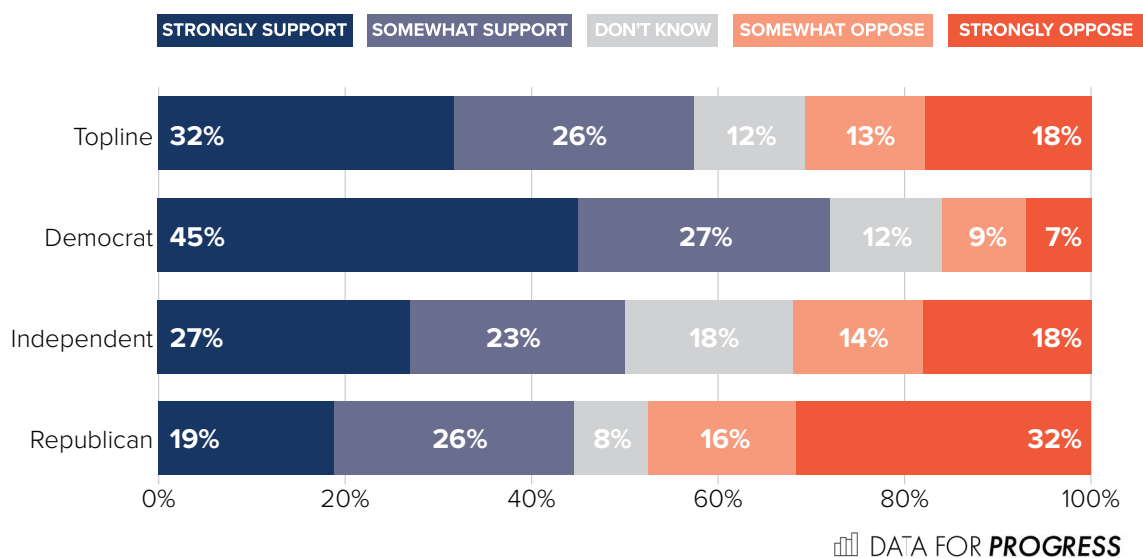


These non-law enforcement services help victims navigate the aftermath of a sexual assault and have been proven to work. However, financial resources have primarily been provided to criminal legal systems—which don't provide the best remedy for victims. Since VAWA passed, the Office on Violence Against Women has issued more than \$8 billion in grants; by 2018, the majority of this funding was directed to the

criminal legal system, providing incentives for police and prosecutors to focus primarily on legal solutions for victims. Instead, funding should be redirected to victim-centered services.

Well over half of all respondents agree that funding for victims' service should be drawn from law enforcement funds.

Do you support or oppose funding programs for mental health counseling and trauma-related services for victims of sexual assault using money that is currently being spent on police department budgets?



CONCLUSION

Available data shows that there is an opportunity for a better and more victim-centred approach to resolving incidents of sexual violence that exists outside of criminal legal systems. By focusing on the victim's voice and needs, restorative justice can provide a path forward both for the victim and for their community.

POLLING METHODOLOGY

From 8/7/2020 to 8/7/2020, Data for Progress conducted a survey of 1,074 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is +/- 3 percent.