

Protecting (Restorative) Justice: An Analysis of Confidentiality, Admissibility and Privilege Provisions in State Law

ABSTRACT

Over the last thirty years, the use of restorative justice within and adjacent to state juvenile and criminal proceedings, including community contexts, has expanded significantly in the United States. As such, what once could be fairly characterized by scholars as a norm and practice at the legal margins has moved widely into the mainstream. As increased legal institutionalization occurred, so too has scholarly attention. Shifting away from foundational “first generation” theoretical and empirical legal studies of practices and programs, a second stream of interdisciplinary legal scholarship has emerged centralizing structural questions as to the legalization of restorative justice. In this literature, researchers approach restorative justice statutes, codes and court rules from a range of vantage points including comparative examinations of patterns of adoption, assessments of the durability and operationalization, and systematic typological analyses. The prevailing scholarship, however, has limitations. This Article attends to one such gap and presents the first systematic review of “protective” restorative justice laws—those that create procedural protections for restorative justice through confidentiality, admissibility, and privilege. Drawing on an original dataset of state laws passed over a seventeen-year period, the study descriptively identifies, synthesizes and differentiates between

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these laws with the central aim of more fully articulating for scholars, policymakers, attorneys, and practitioners an integrated understanding of the American criminal law restorative justice regime.

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I. INTRODUCTION

Restorative justice¹ is a global phenomenon evidenced by practices² and programs³ which, over the last thirty years, have been increasingly

1. There is no universally accepted definition of restorative justice. However, in the United States, and many international contexts, it is acknowledged by scholars and practitioners as imbued as a precolonial Indigenous form of dispute resolution which centers the restoration of right relationships within a community and oneself. Robert Yazzie, *Life Comes from It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 181 (1994); *see also* Robert G. Yazzie, *Forward* of EDWARD C. VALANDARA & WADBLI WAPĤÁHA HOKŚÍLA, *COLORIZING RESTORATIVE JUSTICE* xi (2020) (“Indigenous Peoples have used the peacemaking circle to work out their issues in every respect from time immemorial.”); EDWARD C. VALANDARA & WADBLI WAPĤÁHA HOKŚÍLA, *COLORIZING RESTORATIVE JUSTICE* 1–2 (2020) (“Rather than changing systems, the [Restorative Justice] processes are called on to ‘patch up’ the harms that racist and colonizing structures and institutions cause routinely.”). It should be noted there is not agreement as to a primary Indigenous narrative with more recent scholarship challenging racist and ethnocentric lenses. Aparna Polavarapu, *Myth-Busting Restorative Justice: Uncovering the Past and Finding Lessons in Community*, 13 U.C. IRVINE L. REV. 949, 949 (2023); *see also* Jenna Smith, *Decolonization Restoration: Reconstructing Restorative Justice Practices*, in *DECOLONIZATION AND JUSTICE: AN INTRODUCTORY OVERVIEW* 96, 96 (Muhammad Asadullah ed., 2022).
2. David Miers, *An International Review of Restorative Justice*, in *CRIME REDUCTION RESEARCH PAPERS SERIES 1* (United Kingdom Home Office, 2001), <https://restorativejustice.org.uk/sites/default/files/resources/files/An%20InInternational%20Review%20of%20Restorative%20Justice.pdf> [https://perma.cc/V68S-5BEM]; Yvon Dandurand & Curt T. Griffiths, *HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS 1* (U.N. Office on Drugs and Crime, 2006), https://www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf [https://perma.cc/89QC-TDBS]; Ian D. Marder, *Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland*, 70 INT’L J.L. CRIME & JUST. 100544, 100544 (2022) (“The Department of Justice now cites restorative justice as one element within its victim support, youth justice and criminal justice reform strategies, reflecting a growing, high-level aspiration to explore how to support victims and reduce crime by learning from research and other jurisdictions.” (citations omitted)).
3. In Canada, for example, there are 395 restorative justice programs operating nationally as of April 2025. *Directory of Restorative Justice*, CANADA DEP’T OF JUST., <https://www.justice.gc.ca/eng/cj-jp/rj-jr/sch-rch.aspx> [https://perma.cc/RJN3-ZHSS] (last visited Dec. 19, 2025).

formalized in criminal matters through judicial policies and court rules,⁴ and legislative regimes.⁵ In Belgium, for example, restorative justice programs exist “in the field of juvenile justice, mediation and conferencing; in the field of adult criminal law, penal mediation and restorative mediation” and are all regulated by law.⁶ In addition to provincial-, regional-, and country-wide internalization,⁷ international institutions, such as the United Nations, the Council of Europe, and the European Union, have promulgated rules and directives governing restorative justice.⁸ For example, Rule 19 of the Committee of Ministers provides:

Restorative justice services should be available at all stages of the criminal justice process. Victims and offenders should be provided, by the relevant authorities and legal professionals, with sufficient information to determine whether or not they wish to participate. Referrals could be made by judicial authorities

4. Vera Regina Pereira de Andrade, *Restorative Justice and Criminal Justice: Limits and Possibilities for Brazil and Latin America*, 1 INT'L J. RESTORATIVE JUST. 9, 13–14 (2018); Carmen Hein de Campos & Cristina Rego de Oliveira, *Judicial Restorative Justice and Domestic Violence in Brazil: Setting Problems and Challenges from the Field*, 10 INT'L J. CRIME JUST. & SOC. DEMOCRACY 146, 147 (2021); RESTORATIVE JUST. COUNCIL, RESTORATIVE JUSTICE IN THE MAGISTRATES COURT: AN INTRODUCTION TO RESTORATIVE JUSTICE IN CASES INVOLVING DEFENDANTS/OFFENDERS AGED 18 AND OVER IN COURTS IN ENGLAND AND WALES 8 (2023), <https://restorativejustice.org.uk/sites/default/files/resources/files/Restorative%20Justice%20in%20the%20Magistrates%20Court%20-%20Final.pdf> [<https://perma.cc/M2Z7-RR6A>] (“The Crime and Courts Act 2013 and the Sentencing Act 2020 gives crown court judges, district judges or magistrates the power to defer passing a sentence for restorative justice to take place in cases where both victim and offender are willing to participate. The court can also adjourn the case to facilitate a period of pre-sentence restorative justice activity.”).
5. Ivo Aertsen, *Restorative Justice in Belgium*, in THE INTERNATIONAL ENCYCLOPEDIA OF RESTORATIVE JUSTICE – EUROPE (Ivo Aertsen & Jennifer Llewellyn eds. 11th vol., 1st ed. forthcoming 2026) (on file with the Nebraska Law Review); Marianne Lehmkuhl et al., *Legislative Basis for Restorative Justice at the Pre-trial and Court Level of Criminal Procedure*, in THE INTERNATIONAL ENCYCLOPEDIA OF RESTORATIVE JUSTICE – EUROPE (Ivo Aertsen & Jennifer Llewellyn eds. 11th vol., 1st ed. forthcoming 2026) (on file with the Nebraska Law Review); see also 2012 O.J. (L 315) 57-73; Oranga Tamariki Act 1989, s 22 (N.Z.).
6. Aertsen, *supra* note 5, manuscript at 2.
7. The Restorative Justice Act, C.C.S.M. c. R119.6 (Can.); *Legislation and Policy*, DEP'T JUST. CANADA, <https://www.justice.gc.ca/eng/cj-jp/rj-jr/lp.html> [<https://perma.cc/A7DB-NKFL>] (last visited Dec. 19, 2025); EUROPEAN FORUM FOR RESTORATIVE JUSTICE, COUNCIL OF EUROPE RECOMMENDATION 2018 CONCERNING RESTORATIVE JUSTICE IN CRIMINAL MATTERS: A BRIEFING FOR EUROPE (2018), https://www.euforumrj.org/sites/default/files/2020-05/EFRJ_Policy_Brief_CoE_Rec.pdf [<https://perma.cc/VDC8-V332>] (Recommendation, CM/Rec (2018)8, “outlin[es] several ways in which governments and criminal justice agencies can utilise restorative justice principles and practices to help maximise the effectiveness of their victim and offender interventions, meet international justice standards and change systemic and institutional cultures.”).
8. EUROPEAN FORUM FOR RESTORATIVE JUSTICE, UN MODEL STRATEGIES ON REDUCING REOFFENDING: INPUT ON THE POTENTIAL ROLE OF RESTORATIVE JUSTICE IN REDUCING REOFFENDING 8 (2022), https://www.unodc.org/documents/justice-and-prison-reform/ReducingReoffending/European_Forum_for_Restorative_Justice_UN_model_strategies_on_reducing_reoffending_contribution_on_restorative_justice_by_EFRJ.pdf [<https://perma.cc/U5VE-QJ3X>] (referencing restorative justice in international documents).

or criminal justice agencies at any point in the criminal justice process; this does not preclude possible provision for self-referral to a restorative justice service.⁹

In the United States, a parallel movement of legal internalization and acculturation of restorative justice has occurred at the subnational level with states and the District of Columbia codifying restorative justice into criminal law.¹⁰ While distinct from the international context—there is no national (federal) restorative justice statute¹¹—states have developed analogous domestic legal structures. The Colorado legislature, for example, in addition to promulgating more than thirty

9. EUROPEAN COMMITTEE ON CRIME PROBLEMS, *Recommendation CM/REC (2018)...* of the Committee of Ministers to Member States Concerning Restorative Justice in Criminal Matters (2018), https://rm.coe.int/09000016808cdc2a_1https://perma.cc/4XMY-9HU6].
10. Thalia González, *The State of Restorative Justice in American Criminal Law*, 6 WIS. L. REV. 1147, 1147 (2020). In states such as Illinois and Wisconsin, the legalization of restorative justice has expanded beyond law to include the development of community restorative justice courts. CIRCUIT COURT OF COOK COUNTY, RESTORATIVE JUSTICE COMMUNITY COURTS, <https://www.cookcountycourt.il.gov/division/restorative-justice-community-courts> [https://perma.cc/QDC7-ZHUS] (last visited Dec. 19, 2025); COUNTY OF DANE, THE DANE COUNTY RESTORATIVE COURT (CRC), <https://www.dcdhs.com/Children-Youth-and-Family/Community-Restorative-Court> [https://perma.cc/TL7M-HG6G] (last visited Dec. 19, 2025).
11. While the federal government has not passed any legislation specific to restorative justice in criminal matters, two federal district offices (Massachusetts and Hawaii) have developed and sustained restorative justice programs without support or directive from the federal Judiciary and Administrative Office of the Courts or the Department of Justice. Lorren Walker & Leslie E. Kobayashi, *Hawaii Federal Court Restorative Reentry Circle Pilot Project*, 84 FED. PROB. J. 48, 48–55 (2020); U.S. DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, RESTORATIVE JUSTICE PROGRAM, <https://www.mad.uscourts.gov/restorative-justice-program.htm> [https://perma.cc/EYK7-4XMZ] (last visited Dec. 19, 2025). Despite the lack of federal restorative justice law, offices within the Department of Justice, including the National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Assistance, have invested fiscal resources in the development of pilot programs, research evaluations, and trainings on restorative principles and the application to criminal justice and public safety. See U.S. DEP'T JUST., BUREAU JUST. ASSISTANCE, ESTABLISHMENT OF A NATIONAL CENTER ON RESTORATIVE JUSTICE: FY 2019 COMPETITIVE GRANT SOLICITATION (2019), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/BJA-2019-17794.pdf> [https://perma.cc/HGU4-KLPX]; U.S. DEP'T JUST., OFF. JUVENILE JUST. & DELINQUENCY PREVENTION, EFFECTIVENESS OF RESTORATIVE JUSTICE PROGRAMS: OJJDP-FUNDED RESEARCH IN BRIEF (2017), <https://www.ojp.gov/pdffiles1/ojjdp/grants/250995.pdf> [https://perma.cc/7E4F-QFVR]; U.S. DEP'T JUST., OFF. VIOLENCE AGAINST WOMEN, OVW FISCAL YEAR 2025 RESTORATIVE PRACTICES PILOT SITES PROGRAM (2025), <https://www.justice.gov/ovw/media/1412516/dl?inline> [https://perma.cc/3839-F8XF]; NAT'L INST. JUST., INCORPORATING RESTORATIVE JUSTICE AND COMMUNITY JUSTICE INTO AMERICAN SENTENCING AND CORRECTIONS, RESEARCH IN BRIEF (1999), <https://nij.ojp.gov/library/publications/incorporating-restorative-and-community-justice-american-sentencingand#:~:text=Restorative%20justice%20and%20community%20justice%20are%20two,neighborhood%20residents%20in%20planning%20and%20decision%20making> [https://perma.cc/DDC6-AFPY].

restorative justice statutes applicable to criminal and juvenile matters, established a state restorative justice coordinating council whose charge includes “support[ing] the development of restorative justice programs, serv[ing] as a central repository for information, assist[ing] in the development and provision of related education and training, and provid[ing] technical assistance to entities engaged in or wishing to develop restorative justice programs.”¹²

Attentive to expanding formal criminal legal and community-based restorative justice mechanisms governed under law, a second generation of restorative justice scholarship emerged in the late-2000s.¹³ Within this interdisciplinary subfield of legal research, scholars have predominantly centralized their inquiries through structural analyses to develop a more nuanced understanding of the adoption, promotion, and formalization of restorative justice under state statutory schemes.¹⁴ González, for example, examined regime design and promotion of justice norms by measuring the internationalization of restorative justice statutes and court rules across the country.¹⁵ Sliva and Plassmeyer comparatively analyzed “the impacts of legislatively supported restorative justice pilot projects in Colorado on overall juvenile filing rates in implementing districts,” and outcomes within non-implementing districts.¹⁶ Multiple studies have coded restorative justice statutes, codes, and court rules into typologies and classes including

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12. COLO. REV. STAT. § 13-3-116(a) (2023).
 13. See, e.g., Sandra Pavelka O'Brien, *Restorative Juvenile Justice Legislation and Policy: A National Assessment*, 4 INT'L J. RESTORATIVE JUST. 100, 100–18 (2008); Shannon M. Sliva & Carolyn G. Lambert, *Restorative Justice Legislation in the American States: A Statutory Analysis of Emerging Legal Doctrine*, 14 J. POL'Y PRAC. 77, 77–81 (2015).
 14. Though this Article focuses on state legislation, with specific attention to protections for practices, programs, and people engaged in restorative justice, it is not a tacit or direct endorsement of the American carceral state or the criminal legal system. Additionally, while the scope of this Article is limited to the current study, as authors we understand existing critiques of the legalization of restorative justice as legitimizing structures of power or the harms that might extend from state formalization of restorative justice. See, e.g., Adriaan Lanni, *Taking Restorative Justice Seriously*, 69 BUFF. L. REV. 635, 638–40 (2021); Annalise Butth & Lynn Cohn, *Looking at Justice Through a Lens of Healing and Reconnection*, 13 NW. J.L. & SOC. POL'Y 1, 2 (2017); M. Eve Hanan, *Decriminalizing Violence: A Critique of Restorative Justice and Proposal for Diversionary Mediation*, 46 N.M. L. REV. 123, 133 (2016); Sarah Deer & Abigail Barefoot, *The Limits of the State: Feminist Perspectives on Carceral Logic, Restorative Justice and Sexual Violence*, 28 KAN. J.L. & PUB. POL'Y 505, 519–24 (2019); Olwyn Conway, *Grasping the Third Rail: Restorative Justice and Violent Crime*, 81 WASH. & LEE L. REV. 1379, 1379–80 (2024).
 15. Thalia González, *The Legalization of Restorative Justice: A Fifty-State Empirical Analysis*, 5 UTAH L. REV. 1027, 1027 (2019).
 16. Shannon M. Sliva & Mark Plassmeyer, *Effects of Restorative Justice Pre-File Diversion Legislation on Juvenile Filing Rates: An Interrupted Time-Series Analysis*, 20 CRIMINOLOGY & PUB. POL'Y 19, 19 (2021).

system, application/procedural process, decision-maker, confidentiality, admissibility, fee/cost, and party participation requirements.¹⁷

Several observations can be made from this prevailing body of literature. First, it evidences a growth pattern in restorative justice laws as measured by quantitative prevalence.¹⁸ In 2008, Pavelka identified twenty-six states that included balanced and restorative justice in their state code or statutes.¹⁹ In 2014, Sliva and Lambert found that thirty-two states provided legislative support for the use of restorative justice in criminal justice settings.²⁰ Six years later, González's study (2020) found that not only had the number of states codifying restorative justice into criminal law increased, from thirty-two to forty-six, but the aggregate number of laws had also significantly expanded (165 to 264).²¹ Second, it indicates the diffused and local nature of a subnational approach. Variance, for instance, is not simply represented by a difference in the total number of statutes or codes in each jurisdiction, but also the content and form of the laws. In states such as Nebraska, Washington, Arkansas, and Florida, the use of restorative justice is predominantly available for juveniles.²² Furthermore, few jurisdictions have clearly defined the term "restorative justice," with most codifying it in association with field-accepted proxy terms of practice such as victim-offender mediations and dialogues, family group conferences, circles, and community conferences.²³

Despite the absence of a uniform definition of restorative justice in international or American criminal law, there exists a consensus as to the central principle of confidentiality for the use of restorative practices in criminal matters.²⁴ To date, however, few studies have exam-

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17. Sliva & Lambert, *supra* note 13, at 83–84; González, *supra* note 10, at 1153–94.
 18. González, *supra* note 10, at 1149. While outside the scope of this Article, restorative justice has been codified into state education law. THALIA GONZÁLEZ ET AL., GEORGETOWN L. CTR. ON POVERTY & INEQUALITY, SCHOOL-BASED RESTORATIVE JUSTICE LEGISLATIVE TRENDS (2020); GEORGETOWN L. CTR. ON GENDER JUST. & OPPORTUNITY, SCHOOL-BASED RESTORATIVE JUSTICE AND STATE LEGISLATION: 2023 TREND ANALYSIS AND REVIEW (2024).
 19. Pavelka O'Brien, *supra* note 13.
 20. Sliva & Lambert, *supra* note 13, at 85.
 21. González, *supra* note 10, at 1156–57; Sliva & Lambert, *supra* note 13, at 86.
 22. González, *supra* note 10, at 1159, 1166–69.
 23. *Id.* at 1161.
 24. EUROPEAN FORUM FOR RESTORATIVE JUST., GUIDELINE ON THE PRINCIPLE OF CONFIDENTIALITY IN RESTORATIVE JUSTICE 4 (2023), https://www.euforumrj.org/sites/default/files/2024-10/efrj_confidentiality_guide_a5.pdf [<https://perma.cc/ZG-T5-BQ5H>]; ALICIA VIRANI, ET AL., THE PROMISE AND PERILS OF RESTORATIVE JUSTICE LEGISLATION IN CALIFORNIA, UCLA LAW SCHOOL CRIMINAL JUSTICE PROGRAM 9–11 (2023), https://law.ucla.edu/sites/default/files/PDFs/Criminal_Justice_Program/The_ProProm_and_Perils_of_RJ_Legislation_in_California.pdf [<https://perma.cc/S395-PATA>]; Abigail Young, *Protecting Restorative Justice Participants: The Implications of Implementing Restorative Justice Practices Without Proper Safeguards for Participants*, 13 U. MIAMI RACE & SOC. JUST. L. REV. 88, 95–96 (2023); González, *supra* note 10, at 1190–93; González, *supra* note 15, at 1051–53; *see also* Tim Walker, *Bill Supporters*

ined the protective statutory frameworks for restorative justice under procedural mechanisms. This Article aims to fill this gap. Drawing on an original dataset of thirty statutes and court rules²⁵ in fifteen jurisdictions passed over a seventeen-year period, the project aims to improve understanding of the subnational restorative justice statutory scheme in the United States in several ways.²⁶ First, it introduces the overall scope of state law protections for restorative justice.²⁷ Second, it explicates the distinct and overlapping composition of each law across coded categories and subcategories. Third, it supports the development of a more integrated model of restorative justice legal design, one that takes into account the conditions necessary for practices and programs to be effective. To do so, the Article proceeds in four parts. Part II presents the study methods. Part III sets forth aggregate findings and trends. Part IV disaggregates the findings with respect to the form of procedural protections and the distinct procedural effects relative to a restorative justice process or practice. To conclude, Part V engages in a brief discussion of future implications of the project and potential directions for new research.

Say Confidentiality Critical to Success of Restorative Justice Programs, MINNESOTA HOUSE OF REPRESENTATIVES SESSION DAILY, (Mar. 18, 2025, 4:44 PM), <https://www.house.mn.gov/sessiondaily/Story/18614> [<https://perma.cc/5RL5-MMTF>] (discussing members of the Minnesota House of Representatives views on the importance of confidentiality in restorative justice programs).

25. COLO. REV. STAT. § 19-2.5-102 (2024); COLO. REV. STAT. § 19-2.5-402 (2024); DEL. CODE ANN. tit. 11, § 9503 (2019); GA. CODE ANN. § 24-5-511 (2025); 735 ILL. COMP. STAT. 5/8-804.5 (2022); ME. STAT. tit. 15, § 3204 (2019); MINN. STAT. § 595.02 (2025); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024); NEB. REV. STAT. § 43-247.03 (Cum. Supp. 2024); OR. REV. STAT. § 423.600 (2020); OR. REV. STAT. § 423.610 (2020); OR. REV. STAT. § 147.610 (2023); OR. REV. STAT. § 420A.300 (2023); OR. REV. STAT. § 420A.310 (2023); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); UTAH R. EVID. 512; VT. STAT. ANN. tit. 3, § 163 (2024); VT. STAT. ANN. tit. 3, § 164 (2024).
26. In addition to systematic coding, semi-structured interviews were conducted with principal legislative advocates in three representative jurisdictions: Oregon, Illinois, and Minnesota. Zoom Interview with Tristen Edwards, Lead Attorney for Restorative Justice at Metropolitan Public Defender (Nov. 3, 2025) (on file with the author); Zoom Interview with the Honorable Thomas Donnelly, Circuit Judge, Circuit Court of Cook County (Nov. 20, 2025) (on file with the author); Zoom Interview with Rep. Sandra Feist, Minnesota House of Representatives (Dec. 3, 2025) (on file with the author).
27. Almost all of the fifteen states have codified confidentiality protections through statute. Utah is the only state that has codified confidentiality protections in its state court rules. *See* UTAH R. EVID. 512. However, some states have promulgated evidentiary guidance based on current state law that includes confidentiality protections for restorative justice. *See* MASS. G. EVID. § 529 (2025).

II. METHODS

Data for this study was collected using Westlaw as an aggregator of state statutes and court rules. A content analysis²⁸ design was employed with the primary term of “restorative justice,” cross-coded with a closed set of secondary terms and phrases related to procedural protections, including “admissible,” “admissibility,” “confidential,” “confidentiality,” and “privilege” for fifty-one jurisdictions for the years 2020 to 2025.²⁹ Statutes and court rules were identified in fifteen jurisdictions with secondary confirmation analysis upon original source review. Data from the years 2020 to 2025 was aggregated with prior findings³⁰ and cross-confirmation yielded a final dataset ($n = 30$) distributed over a final seventeen-year period (2008 to 2025).³¹ Table 1 presents disaggregated data in six categories and twenty subcategories.

Table 1: Categories and Subcategories

Categories	Subcategories
System	Adult Criminal Justice
	Juvenile Justice
	Civil Proceedings
	Administrative Proceedings
Posture	Pre-adjudication
	Post-adjudication

28. Textual content analysis is a widely accepted research method in legal and social science fields. *See, e.g.*, Theodore Eisenberg, *Why Do Empirical Legal Scholarship?*, 41 SAN DIEGO L. REV. 1741, 1741 (2004) (explaining that empirical legal studies can “help[] inform litigants, policymakers, and society as a whole about how the legal system works”); Mark A. Hall & Ronald F. Wright, *Systematic Content Analysis of Judicial Opinions*, 96 CALIF. L. REV. 63, 63–65 (2008) (analyzing the history and benefits of content analysis and arguing that content analysis “could form the basis for a uniquely legal empirical methodology”); Jodi L. Short, *The Paranoid Style in Regulatory Reform*, 63 HASTINGS L.J. 633, 662–75 (2012) (conducting content analysis of nearly 1,400 law review articles); Christina L. Boyd, *In Defense of Empirical Legal Studies*, 63 BUFF. L. REV. 363, 363–64 (2015) (exploring the importance of empirical studies as an invaluable method of studying law); José B. Ashford, Katherine Puzauskas & Robert Dormady, *Judicial Responses to Age and Other Mitigation Evidence: An Exploratory Case Study of Juvenile Life Sentences in Pre-Miller Cases*, 112 J. CRIM. L. & CRIMINOLOGY 593, 606–07 (2022) (employing a mixed-methods design including content analysis to study judicial responses to mitigation evidence).

29. All fifty states and the District of Columbia.

30. González, *supra* note 10.

31. This period represents the temporal range of first to last protective law passed. Two laws have been amended between 2020 and 2025. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); W. VA. CODE § 49-4-725 (2021). For the purposes of this study, the amended statutes were not counted twice.

Categories	Subcategories
Content Protected	Admissions Statements Communications Conduct Participation Records
Form of Protection	Confidentiality Admissibility Privilege
Duration of Protection	Before Initiation of Restorative Justice During Restorative Justice Following Restorative Justice
Exceptions and/or Waivers	Presence of Exceptions and/or Waivers Absence of Exceptions and/or Waivers

The “system” category represents four subcategories of proceedings: “adult criminal justice,”³² “juvenile justice,”³³ “civil proceedings,”³⁴ and “administrative proceedings.”³⁵ The “posture” category contains

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32. See ALA. CODE § 45-39-82.05 (2020); ALA. CODE § 45-28-82.25 (2020); COLO. REV. STAT. § 18-1.3-104(1)(b.5)(I) (2020); COLO. REV. STAT. § 18-1.3-204(2)(a)(III.5) (2020); DEL. CODE ANN. tit. 11, § 9503 (2019); GA. CODE ANN. § 24-5-511 (2025); 735 ILL. COMP. STAT. 5/8-804.5 (2022); ME. STAT. tit. 34-A, § 1214(3)(F) (2019); MASS. GEN. LAWS ch. 276B, § 4 (2018); MINN. STAT. § 595.02 (2025); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024); OR. REV. STAT. § 147.607 (2023); OR. REV. STAT. § 147.610 (2023); OR. REV. STAT. § 161.398(2) (2020); TENN. CODE ANN. § 16-20-103 (2024); TENN. CODE ANN. § 16-20-102 (2020); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); UTAH R. EVID. 512; VT. STAT. ANN. tit. 3, § 164 (2024); VT. STAT. ANN. tit. 28, § 205(c) (3) (2020).
33. See COLO. REV. STAT. § 19-2.5-102 (2024); COLO. REV. STAT. § 19-2.5-402 (2024); GA. CODE ANN. § 24-5-511 (2025); 735 ILL. COMP. STAT. 5/8-804.5 (2022); ME. STAT. tit. 15, § 3204 (2019); ME. STAT. tit. 34-A, § 1214(3)(F) (2019); MASS. GEN. LAWS ch. 276B, § 4 (2018); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024); NEB. REV. STAT. § 43-247.03 (Cum. Supp. 2024); OR. REV. STAT. § 420A.300 (2023); OR. REV. STAT. § 420A.310 (2023); OR. REV. STAT. § 423.600 (2020); OR. REV. STAT. § 423.610 (2020); UTAH R. EVID. 512; VT. STAT. ANN. tit. 3, § 163 (2024); W. VA. CODE § 49-4-725 (2021).
34. See ALA. CODE § 45-39-82.05 (2020); ALA. CODE § 45-28-82.25 (2020); GA. CODE ANN. § 24-5-511 (2025); 735 ILL. COMP. STAT. 5/8-804.5 (2022); MASS. GEN. LAWS ch. 276B, § 4 (2018); MINN. STAT. § 595.02 (2025); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); UTAH R. EVID. 512; VT. STAT. ANN. tit. 3, § 163 (2024); VT. STAT. ANN. tit. 3, § 164 (2024).
35. See DEL. CODE ANN. tit. 11, § 9503 (2019); GA. CODE ANN. § 24-5-511 (2025); 735 ILL. COMP. STAT. 5/8-804.5 (2022); MASS. GEN. LAWS ch. 276B, § 4 (2018); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024); OR. REV. STAT. § 147.610 (2023); OR. REV. STAT.

two subcategories that identify when the restorative justice process occurs in the adjudication process³⁶ and is coded as “pre-adjudication” or “post-adjudication.”³⁷ The “content protected” category contains six subcategories (“admissions,” “statements,” “communications,” “conduct,” “participation,” and “records”) that identify the structural contents of a restorative justice process included under the statute and/or court rules protection. “Admissions” includes only self-incriminating statements made by an individual.³⁸ “Statements” encompasses all oral assertions made by individuals, including admissions.³⁹ “Communications” expands statements to include oral and written statements made

§ 420A.300 (2023); OR. REV. STAT. § 420A.310 (2023); OR. REV. STAT. § 161.398(2) (2020); OR. REV. STAT. § 423.600 (2020); OR. REV. STAT. § 423.610 (2020); TENN. CODE ANN. § 16-20-103 (2024); TENN. CODE ANN. § 16-20-102 (2020); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); VT. STAT. ANN. tit. 3, § 163 (2024); VT. STAT. ANN. tit. 3, § 164 (2024).

36. For the purposes of this Article, “adjudication” means the formal hearing process. *See Adjudication*, BLACK’S LAW DICTIONARY (12th ed. 2024).
37. “Pre-adjudication” indicates the protected restorative justice process is available prior to adjudication, such as a pre-trial diversion program. Six jurisdictions have pre-adjudication protections. *See* ALA. CODE § 45-39-82.05 (2020); ALA. CODE § 45-28-82.25 (2020); COLO. REV. STAT. § 19-2.5-102 (2024); COLO. REV. STAT. § 19-2.5-402 (2024); MINN. STAT. § 595.02 (2025); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); VT. STAT. ANN. tit. 3, § 163 (2024); VT. STAT. ANN. tit. 3, § 164 (2024); W. VA. CODE § 49-4-725 (2021). “Post-adjudication” indicates the protected restorative justice process is available after adjudication, such as a sentencing alternative. Five jurisdictions have post-adjudication protections. *See* COLO. REV. STAT. § 18-1.3-104(1)(b.5)(I) (2020); COLO. REV. STAT. § 18-1.3-204(2)(a)(III.5) (2020); MINN. STAT. § 595.02 (2025); OR. REV. STAT. § 161.398(2) (2020); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); VT. STAT. ANN. tit. 28, § 205(c)(3) (2020).
38. COLO. REV. STAT. § 19-2.5-402 (2024) (protecting any “admission, confession, or incriminating evidence”); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024) (protecting any “admission, confession, or incriminating information”); W. VA. CODE § 49-4-725 (2020) (protecting “self-incriminating information”).
39. COLO. REV. STAT. § 19-2.5-102 (2024) (protecting “[a]ny statements made”); COLO. REV. STAT. § 18-1.3-104(1)(b.5)(I) (2020) (protecting “[a]ny statements made”); COLO. REV. STAT. § 18-1.3-204(2)(a)(III.5) (2020) (protecting “[a]ny statements made”); 735 ILL. COMP. STAT. 5/8-804.5 (2022) (protecting “[a]nything said”); ME. STAT. tit. 15, § 3204 (2019) (protecting “[s]tatements”); MASS. GEN. LAWS ch. 276B, § 4 (2018) (protecting “[a]ny statement made”); MINN. STAT. § 595.02 (2025) (protecting “[s]tatements made”); NEB. REV. STAT. § 43-247.03 (Cum. Supp. 2024) (protecting “[a]ll discussions”); OR. REV. STAT. § 161.398(2) (2020) (protecting “oral communications”).

by individuals.⁴⁰ “Conduct” covers an individual’s actions or manners.⁴¹ “Participation” covers an individual’s participation in the restorative justice practice.⁴² “Records” includes any written documents, data, memoranda, requests for action, or other related materials created during or in relation to the restorative justice program.⁴³ The category

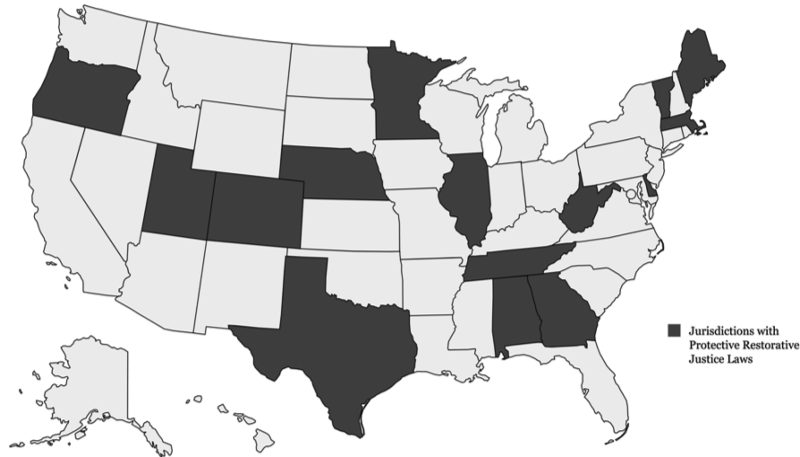
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40. ALA. CODE § 45-39-82.05 (2020) (protecting “[c]ommunications”); ALA. CODE § 45-28-82.25 (2020) (protecting “[c]ommunications”); DEL. CODE ANN. tit. 11, § 9503(b) (2019) (protecting “[a]ny communication”); GA. ANN. CODE § 24-5-511 (protecting “[a]ny communication”); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024) (protecting “[a]ny verbal, written, or electronic communication”); OR. REV. STAT. § 147.607 (2023) (protecting “[a]ll communications, written and oral”); OR. REV. STAT. § 147.610 (2023) (protecting “[a]ll communications, written and oral”); OR. REV. STAT. § 420A.300 (2023) (protecting “[a]ll communications, whether oral, written or recorded”); OR. REV. STAT. § 420A.310 (2023) (protecting “[a]ll communications, whether oral, written or recorded”); OR. REV. STAT. § 423.600 (2020) (protecting “[a]ll communications, whether oral, written or recorded”); TENN. CODE ANN. § 16-20-103 (2024) (protecting “[a]ny communication”); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024) (protecting “communication”); UTAH R. EVID. 512 (protecting “communication . . . between a victim and a victim advocate”); VT. STAT. ANN. tit. 3, § 163 (2024) (protecting “[a]ll information”); VT. STAT. ANN. tit. 3, § 164 (2024) (protecting “[a]ll information”); VT. STAT. ANN. tit. 28, § 205(c)(3) (2020) (protecting “any confidential information”).
 41. GA. CODE ANN. § 24-5-511 (2025) (protecting any “action made”); 735 ILL. COMP. STAT. 5/8-804.5 (2022) (protecting anything “done”).
 42. GA. CODE ANN. § 24-5-511 (2025) (protecting “the fact that such practice or dialogue has been planned or convened”); 735 ILL. COMP. STAT. 5/8-804.5 (2022) (protecting “the fact that the practice has been planned or convened”); MASS. GEN. LAWS ch. 276B, § 4 (2018) (protecting “[p]articipation in a community-based restorative justice program”); TENN. CODE ANN. § 16-20-102 (2020) (protecting “anonymity of all mediation participants”).
 43. ALA. CODE § 45-39-82.05 (2020) (protecting “records or records related”); ALA. CODE § 45-28-82.25 (2020) (protecting “records or records related”); COLO. REV. STAT. § 19-2.5-402 (2024) (protecting the “risk screening tool”); DEL. CODE ANN. tit. 11, § 9503 (2019) (protecting “[a]ll memoranda, work notes or products, case files or programs, and data collected”); ME. STAT. tit. 34-A, § 1214 (2019) (protecting “[r]equests for action”); MINN. STAT. § 595.02 (2025) (protecting “documents offered”); OR. REV. STAT. § 147.607 (2023) (protecting “[a]ll memoranda, work products, documents and other materials”); OR. REV. STAT. § 147.610 (2023) (protecting “[a]ll memoranda, work products, documents and other materials”); OR. REV. STAT. § 420A.300 (2023) (protecting “[a]ll memoranda, assessment and evaluation forms, documents and other materials” and “[a]ll materials or recordings submitted”); OR. REV. STAT. § 420A.310 (2023) (protecting “[a]ll memoranda, assessment and evaluation forms, documents and other materials” and “[a]ll materials or recordings submitted”); OR. REV. STAT. § 161.398(2) (2020) (protecting “[a]ny documents”); OR. REV. STAT. § 423.600 (2020) (protecting “[a]ll memoranda, assessment and evaluation forms, documents and other materials” and “[a]ll materials or recordings submitted”); OR. REV. STAT. § 423.610 (2020) (protecting “[a]ll memoranda, assessment and evaluation forms, documents and other materials” and “[a]ll materials or recordings submitted”); TENN. CODE ANN. § 16-20-103 (2024) (protecting “[a]ll memoranda, work notes or products, or case files”); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024) (protecting “[a]ny record made”); VT. STAT. ANN. tit. 3, § 163 (2024) (protecting “[a]ll information”); VT. STAT. ANN. tit. 3, § 164 (2024) (protecting “[a]ll information”).

“form of protection” includes three subcategories that identify the type of procedural protection under the law: “confidentiality,” “admissibility,” and “privilege.”⁴⁴ The “duration of protection” category also contains three subcategories that identify the temporal application of protections: “before initiation of restorative justice,” “during restorative justice,” or “following restorative justice.”⁴⁵ The final category is “exceptions and/or waivers,” and was coded “yes” if exceptions and/or waivers to the protections exist, and coded “no” if they do not exist.⁴⁶

III. AGGREGATED ANALYSIS

In 2008, the first protective restorative justice law was codified by the Vermont legislature.⁴⁷ Since then, fourteen additional jurisdictions have passed such laws with increased frequency and scope (Figure 1).

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44. See *infra* Part IV (discussing the difference between confidentiality, admissibility, and privilege).
 45. For the purposes of this study, distinctions were drawn analogous to the following example: before: preparing for a victim-centered practice; during: participating in a victim-centered practice; following: as follow up to a victim-centered practice. See GA. CODE ANN. § 24-5-511 (2025). Further discussion of the amorphous nature of the duration of protection is discussed *infra* section IV.B.
 46. West Virginia is the only jurisdiction that does not carve out any exceptions or waivers for its admissibility law. See W.VA. CODE § 49-4-725 (2021). Several Oregon statutes authorize the Oregon Youth Authority or the Department of Corrections to adopt limited exceptions to the protections, but as of July 2025, no exceptions have been adopted. See OR. REV. STAT. § 420A.310 (2023); OR. REV. STAT. § 423.600 (2020); OR. REV. STAT. § 423.610 (2020). All other jurisdictions carve out exceptions and/or waivers. See, e.g., ALA. CODE § 45-39-82.05 (2020); COLO. REV. STAT. § 19-2.5-102 (2024); DEL. CODE ANN. tit. 11, § 9503(b) (2019); GA. CODE ANN. § 24-5-511 (2025); 735 ILL. COMP. STAT. 5/8-804.5 (2022); ME. STAT. tit. 34-A, § 1214 (2019); MASS. GEN. LAWS ch. 276B, § 4 (2018); MINN. STAT. § 595.02 (2025); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024); OR. REV. STAT. § 147.610 (2023); TENN. CODE ANN. § 16-20-103 (2024); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); UTAH R. EVID. 512; VT. STAT. ANN. tit. 3, § 163 (2024). Secondary analysis was conducted to examine the specific exceptions and/or waivers and is presented *infra* Part III.
 47. VT. STAT. ANN. tit. 28, § 205(b)(2) (2020) (providing that information revealed by offenders concerning their participation in a probation restorative justice program is confidential).

Figure 1: Protective Restorative Justice Laws by Jurisdiction

An aggregated analysis of temporal and structural dimensions identifies five key trends. First, an increase in legislative activity occurring during the period of 2019 to 2025. Specifically, nineteen laws were enacted during this time, representing nearly two-thirds of the total number of laws codified across the seventeen-year period.⁴⁸

Second, the development of observable textual mimicry across statutory provisions.⁴⁹ For example, signed into law in May 2025, section 24-5-11 of the Georgia Statutes includes parallel provisions for protections and exceptions to chapter 735, act 5, section 8-804.5 of the Illinois Compiled Statutes which was enacted in 2021.⁵⁰ Similarly,

48. COLO. REV. STAT. § 19-2.5-102 (2024); COLO. REV. STAT. § 19-2.5-402 (2024); DEL. CODE ANN. tit. 11, § 9503 (2019); GA. CODE ANN. § 24-5-511 (2025); 735 ILL. COMP. STAT. 5/8-804.5 (2022); ME. STAT. tit. 15, § 3204 (2019); MINN. STAT. § 595.02 (2025); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024); NEB. REV. STAT. § 43-247.03 (Cum. Supp. 2024); OR. REV. STAT. § 423.600 (2020); OR. REV. STAT. § 423.610 (2020); OR. REV. STAT. § 147.610 (2023); OR. REV. STAT. § 420A.300 (2023); OR. REV. STAT. § 420A.310 (2023); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); UTAH R. EVID. 512; OR. REV. STAT. § 147.607 (2023); VT. STAT. ANN. tit. 3, § 163 (2024); VT. STAT. ANN. tit. 3, § 164 (2024).

49. Analysis of legislative text indicates mimicry has occurred most often post-2019. See Zoom Interview with Rep. Sandra Feist, Minnesota House of Representatives (Dec. 3, 2025) (on file with the author) (stating that in the process of developing the Minnesota legislation, legislators, community advocates, and coalition members reviewed previously passed protective laws in Oregon and Illinois.).

50. Compare GA. CODE ANN. § 24-5-511 (2025) (protecting communications, conduct, and participation before, during, and following the practice as privileged and not admissible as evidence unless such privilege is waived or the evidence is subject to mandated reporting or is created or discovered outside of the practice) with 735 ILL. COMP. STAT. 5/8-804.5 (2022) (protecting statements, conduct, and participation before, during, and following the practice as privileged and not admissible as evidence unless such privilege is waived or the evidence is subject to mandated

section 595.02 of the Minnesota Statutes, also passed in May 2025, presents textual consistency between its admissibility protections and exceptions to those codified in section 147.610 of the Oregon Revised Statutes in 2023.⁵¹ As field interviews affirm, patterns of statutory mimicry are driven by state-level political dynamics and inter-actor interactions that reinforce confidentiality as a prerequisite for the structural efficacy of restorative justice.⁵²

Third, a shift towards provisions that establish protections for restorative justice practices and processes in earlier phases of the criminal legal process. For instance, admissibility protections apply in pre-adjudication restorative justice diversion programs in Alabama, Colorado, and Vermont.⁵³ Likewise, Minnesota and Texas have enacted statutory pre-adjudication protections, occurring prior to court

reporting or is created or discovered outside of the practice). However, Illinois's scope of protections is significantly more comprehensive, with the statute applying to a broader definition of restorative justice practices, while Georgia's protections apply to victim-centered practices or victim-offender dialogues. 735 ILL. COMP. STAT. 5/8-804.5 (2022); GA. CODE ANN. § 24-5-511 (2025).

51. Compare MINN. STAT. § 595.02 (2025) (protecting statements made or documents offered in the course of a restorative practice as not subject to discovery or admissible as evidence in a civil or criminal proceeding, but excluding statements made or documents that are the subject of mandated reporting or if a restorative practice participant reasonably believed their disclosure was necessary to prevent reasonably certain death, great bodily harm, or commission of a crime) with OR. REV. STAT. § 147.610 (2023) (protecting restorative justice communications as confidential and not admissible as evidence in any administrative or judicial proceeding, but excluding as confidential communications related to mandated reporting or those that a restorative justice program staff member or facilitator reasonably believes the disclosure of is necessary to prevent the commission of a crime that is likely to result in death or substantial bodily injury to a specific person). However, Oregon extends its protections to administrative proceedings and includes confidentiality protections in addition to admissibility. OR. REV. STAT. § 147.610 (2023).
52. Walker, *supra* note 24; Jennifer Ullman, *Need For Confidentiality Privilege in Restorative Justice Mediations in Illinois*, U. ILL. CHI. L. REV. (Mar. 24, 2020), <https://lawreview.law.uic.edu/news-stories/need-for-confidentiality-privilege-in-restorative-justice-mediations-in-illinois/> [<https://perma.cc/4UU4-2CK6>]; GEORGIA JUSTICE PROJECT, ENABLING VICTIM-CENTERED PROGRAMS TO THRIVE: HB 582 (2024), <https://www.gjp.org/wp-content/uploads/2025/02/Victim-Centered-Policy-One-Pager-1.pdf> [<https://perma.cc/G3EQ-HBSV>]; Letter from Sammi Teo, Public Policy Advocate, Oregon Food Bank to Chair Kropf, Vice-Chairs Andersen and Wallan, and members of the Oregon House Committee on Judiciary (Apr. 13, 2023), <https://olis.oregonlegislature.gov/liz/2023R1/DownloadD/PublicTestimony-Documents/91017> [<https://perma.cc/TJ76-RWNU>]; Zoom Interview with Tristen Edwards, Lead Attorney for Restorative Justice at metropolitan Public Defender (Nov. 3, 2025) (on file with the author) (stating that protective confidentiality laws help people feel assured that they can be transparent and increases the use of restorative practices); Zoom Interview with the Honorable Thomas Donnelly, Circuit Judge, Circuit Court of Cook County (Nov. 20, 2025) (on file with the author) (stating that restorative justice was not receiving much traction without confidentiality protections).
53. ALA. CODE § 45-39-82.05 (2020); ALA. CODE § 45-28-82.25 (2020); COLO. REV. STAT. § 19-2.5-402 (2024); VT. STAT. ANN. tit. 3, § 163 (2024); VT. STAT. ANN. tit. 3, § 164 (2024).

involvement in Minnesota and before the institution of formal judicial proceedings in Texas.⁵⁴

Fourth, the application of protections for restorative practices and processes to non-criminal legal matters. For example, both Nebraska and Vermont extend confidentiality protections to civil and administrative proceedings.⁵⁵ In fact, two-thirds of jurisdictions that enacted statutory protections apply them to community-based restorative practices rather than limiting them to criminal legal contexts.⁵⁶ According to expert field interviews, the incorporation of community-based restorative practices was a notable feature of legislative drafting in Illinois, Minnesota, and Oregon.⁵⁷

Fifth, despite an overall increase in confidentiality, admissibility, and privilege protections for restorative justice practices across multiple measures, nearly all jurisdictions carve out exceptions or allow waivers that constrain these protections.⁵⁸ In Minnesota, admissibility protections for restorative justice practices are limited and do not cover statements or records associated with mandated reporting, imminent threats, professional misconduct, compliance with court-ordered restorative justice, or evidence that would otherwise be admissible or discoverable.⁵⁹ Other common exceptions and/or waivers include the

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54. MINN. STAT. § 595.02 (2025); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024).
 55. NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024); VT. STAT. ANN. tit. 3, § 163 (2025); VT. STAT. ANN. tit. 3, § 164 (2024).
 56. COLO. REV. STAT. § 19-2.5-102 (2024); GA. CODE ANN. § 24-5-511 (2025); 735 ILL. COMP. STAT. 5/8-804.5 (2022); ME. STAT. tit. 15, § 3204 (2019); MASS. GEN. LAWS ch. 276B, § 4 (2018); MINN. STAT. § 595.02 (2025); NEB. REV. STAT. § 43-247.03 (Cum. Supp. 2024); OR. REV. STAT. § 147.610 (2023) (defining a “restorative justice program” as “a community-based program administered by a private or public entity that offers as a part of the program a facilitated dialogue between a crime victim or a survivor and the offender” in OR. REV. STAT. § 147.605 (2023)); VT. STAT. ANN. tit. 3, § 163 (2024); W. VA. CODE § 49-4-725 (2021) (defining a “restorative justice program” as “a voluntary, community based program which utilizes evidence-based practices that provide an opportunity for a juvenile to accept responsibility for and participate in setting consequences to repair harm caused by the juvenile against the victim and the community by means of facilitated communication” in W. VA. CODE § 49-1-206 (2024)).
 57. Zoom Interview with Tristen Edwards, Lead Attorney for Restorative Justice at metropolitan Public Defender (Nov. 3, 2025) (on file with the author) (stating that confidentiality laws are a way to have community referrals to restorative justice which empowers “public safety”); Zoom Interview with the Honorable Thomas Donnelly, Circuit Judge, Circuit Court of Cook County (Nov. 20, 2025) (on file with the author) (stating Illinois’s definition of restorative justice was “intentionally drafted broad” to encompass community and religious groups, and following the passage of confidentiality protections, the increase in usage of community courts was “night and day”); Zoom Interview with Rep. Sandra Feist, Minnesota House of Representatives (Dec. 3, 2025) (on file with the author) (stating confidentiality protects a “safe space for restorative dialogue”).
 58. Again, fourteen of fifteen jurisdictions with protections have at least one exception and/or waiver present in the statute. *See* sources cited *supra* note 46.
 59. MINN. STAT. § 595.02 (2025).

participating parties' waiver of privilege,⁶⁰ participation in a restorative justice practice for the purpose of avoiding discovery,⁶¹ if a participant commits a chargeable offense during the restorative justice practice,⁶² or if disclosure is necessary to comply with another law.⁶³

IV. DISAGGREGATED ANALYSIS

While this study presents protective restorative justice laws as an identifiable and specific typology within the larger American criminal law regime,⁶⁴ the thirty state statutes and court rules within this typology are not uniform. This is particularly relevant when the data is analyzed across three primary categories: (a) protected content, (b) duration of protection, and (c) procedural systems to which the protections apply.⁶⁵ The following sections present findings and analysis specific to each of these categories.

However, before proceeding, it is important to distinguish differences in the form of protections and its three subcategories: confidentiality, admissibility, and privilege.⁶⁶ While each form provides procedural protections, they are not uniform. Consider the following examples from Vermont, West Virginia, and Delaware to illustrate the core distinctions. Title 3, sections 163 and 164 of the Vermont Statutes present protections for restorative justice in the form of confidentiality provisions.⁶⁷ Specifically, it provides that “[a]ll information gathered in the course of the adult [or juvenile] diversion process[es] *shall be held strictly confidential* and shall not be released without the participant’s prior consent[.]” thereby protecting such communications from disclosure in a proceeding.⁶⁸ In contrast, West Virginia has codi-

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60. *E.g.*, TENN. CODE ANN. § 16-20-103 (2024) (“Any communication . . . is a privileged communication and is not subject to disclosure in any judicial or administrative proceeding *unless all parties to the communication waive the privilege.*” (emphasis added)).
 61. *E.g.*, DEL. CODE ANN. tit. 11, § 9503(b) (2019) (“Confidentiality . . . may be waived if a court or administrative tribunal determine that the materials were submitted by a participant to the program *for the purpose of avoiding discovery* of the material in a subsequent proceeding.” (emphasis added)).
 62. *E.g.*, COLO. REV. STAT. § 18-1.3-104(1)(b.5)(I) (2020) (“Any statements made during the conference shall be confidential and shall not be used as a basis for charging or prosecuting the defendant *unless the defendant commits a chargeable offense during the conference.*” (emphasis added)).
 63. *E.g.*, 735 ILL. COMP. STAT. 5/8-804.5(f) (2022) (“The privilege afforded . . . does not apply if . . . *necessary to comply with another law.*” (emphasis added)).
 64. *See* González, *supra* note 10.
 65. This variance also directly impacts the scope of protection and its corresponding systemic applicability, thereby broadening or narrowing the presumptive efficacy of the restorative justice protections.
 66. *See* VIRANI, *supra* note 24, at 9–10 (providing high level and brief analysis of the distinctions between fifteen laws that address confidentiality, admissibility and/or privilege).
 67. VT. STAT. ANN. tit. 3, §§ 163, 164 (2024).
 68. *See* VT. STAT. ANN. tit. 3, § 164(d)(2) (2024) (emphasis added); *see also Confidential*, BLACK’S LAW DICTIONARY (12th ed. 2024) (providing common legal definition);

fied an admissibility provision in section 49-4-725 of the West Virginia Code.⁶⁹ The statute sets forth that “[n]o self-incriminating information obtained from [a] juvenile as the result of a restorative justice program *is admissible as evidence* against [them] in a subsequent proceeding[,]” limiting the evidence that is legally allowed to be considered in a proceeding.⁷⁰ An evidentiary privilege creates a legal right to refuse to provide evidence or to protect the evidence from use or disclosure in a proceeding, as illustrated by Title 11, section 9503(c) of the Delaware Code— “[a]ny communication relating to the subject matter of the resolution made during the mediation process by any participant, mediator, or any other person *is a privileged communication*.”⁷¹ Thus, while similar in that each law creates a protection for restorative justice practices and processes, each form has unique procedural effects relative to the restorative justice process or practice.

Table 2: Forms of Protection by Jurisdiction

Jurisdiction	Confidentiality	Admissibility	Privilege
Alabama		X	X
Colorado	X	X	
Delaware	X		X
Georgia		X	X
Illinois		X	X
Massachusetts	X	X	
Maine	X	X	
Minnesota		X	
Nebraska	X	X	X
Oregon	X	X	X
Tennessee	X		X
Texas	X	X	
Utah	X		X
Vermont	X		
West Virginia		X	

Communication, BLACK’S LAW DICTIONARY (12th ed. 2024) (providing common legal definition).

69. W. VA. CODE § 49-4-725 (2021).

70. See W. VA. CODE § 49-4-725(f) (2021) (emphasis added); see also *Admissible*, BLACK’S LAW DICTIONARY (12th ed. 2024) (providing common legal definition); *Admissible Evidence*, BLACK’S LAW DICTIONARY (12th ed. 2024) (providing common legal definition).

71. DEL. CODE ANN. tit. 11, § 9503(c) (2019) (emphasis added); see also *Privilege*, BLACK’S LAW DICTIONARY (12th ed. 2024).

As shown in Table 2, the forms of protection vary by jurisdiction, with twenty-two laws codifying confidentiality protections (ten jurisdictions), eighteen laws codifying admissibility protections (eleven jurisdictions), and ten laws codifying privilege protections (eight jurisdictions).⁷²

A. Category: Content Protected

Analysis of the content category shows variation by jurisdiction and form, as summarized in Tables 3A and 3B. Within this category, there is a graduated presence of legislative preference, ranging from the highest to lowest for the protection of communications ($n = 17$), to records ($n = 17$), to statements ($n = 9$), to participation ($n = 4$), to admissions ($n = 3$), and to conduct ($n = 2$).⁷³

72. ALA. CODE § 45-39-82.05(b) (2020) (discussing admissibility and privilege); ALA. CODE § 45-28-82.25(b) (2020) (discussing admissibility and privilege); COLO. REV. STAT. § 19-2.5-102(45)(b) (2024) (discussing confidentiality); COLO. REV. STAT. § 19-2.5-402(4)(a) (2024) (discussing admissibility); COLO. REV. STAT. § 18-1.3-104(1)(b.5)(I) (2020) (discussing confidentiality); COLO. REV. STAT. § 18-1.3-204(2)(a)(III.5) (2020) (discussing confidentiality); DEL. CODE ANN. tit. 11, § 9503 (2019) (discussing confidentiality and privilege); GA. CODE ANN. § 24-5-511 (2025) (discussing admissibility and privilege); 735 ILL. COMP. STAT. 5/8-804.5 (2022) (discussing admissibility and privilege); ME. STAT. tit. 15, § 3204 (2019) (discussing admissibility); ME. STAT. tit. 34-A, § 1214(4) (2019) (discussing confidentiality); MASS. GEN. LAWS ch. 276B, § 4 (2018) (discussing confidentiality and admissibility); MINN. STAT. § 595.02 (2025) (discussing admissibility); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024) (discussing confidentiality, admissibility, and privilege); NEB. REV. STAT. § 43-247.03 (Cum. Supp. 2024) (discussing confidentiality, admissibility, and privilege); OR. REV. STAT. § 147.607 (2023) (discussing confidentiality); OR. REV. STAT. § 147.610 (2023) (discussing confidentiality and admissibility); OR. REV. STAT. § 420A.300 (2023) (discussing confidentiality and admissibility); OR. REV. STAT. § 420A.310 (2023) (discussing confidentiality and admissibility); OR. REV. STAT. § 161.398(2) (2020) (discussing confidentiality and admissibility); OR. REV. STAT. § 423.600 (2020) (discussing confidentiality and admissibility); OR. REV. STAT. § 423.610 (2020) (discussing confidentiality and admissibility); TENN. CODE ANN. § 16-20-103 (2024) (discussing confidentiality and privilege); TENN. CODE ANN. § 16-20-102 (2020) (discussing confidentiality); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024) (discussing confidentiality and admissibility); UTAH R. EVID. 512 (discussing confidentiality and privilege); VT. STAT. ANN. tit. 3, § 163 (2024) (discussing confidentiality); VT. STAT. ANN. tit. 3, § 164 (2024) (discussing confidentiality); VT. STAT. ANN. tit. 28, § 205(b)(2) (2020) (discussing confidentiality); W. VA. CODE § 49-4-725 (2021) (discussing admissibility).

73. See sources cited *supra* notes 38–43.

Table 3A: Content Protected by Jurisdiction

Jurisdiction	Admissions	Statements	Communications
Alabama			X
Colorado	X	X	
Delaware			X
Georgia			X
Illinois		X	
Massachusetts		X	
Maine		X	
Minnesota		X	
Nebraska	X	X	X
Oregon		X	X
Tennessee			X
Texas			X
Utah			X
Vermont			X
West Virginia	X		

Table 3B: Content Protected by Jurisdiction

Jurisdiction	Conduct	Participation	Records
Alabama			X
Colorado			X
Delaware			X
Georgia	X	X	
Illinois	X	X	
Massachusetts		X	
Maine			X
Minnesota			X
Nebraska			
Oregon			X
Tennessee		X	X
Texas			X
Utah			
Vermont			X
West Virginia			

The analysis of content-protected subcategories reveals variation in how states codify protections. For example, Tables 3A and 3B show that nine states⁷⁴ safeguard both records and communications associated with restorative justice, typically within the same statute, but such dual protection is not consistent across all jurisdictions.⁷⁵ Differences are evident in the statutory inclusion of content-protected subcategories. Although both Colorado and Georgia provide protections for three subcategories, the particular subcategories protected are not identical.⁷⁶ In Colorado's juvenile justice system, "[a]ny statements made during the restorative justice process are confidential and must not be used against [a participating] juvenile,"⁷⁷ and:

[t]he risk screening tool and any information obtained from a juvenile in the course of any screening, including any admission, confession, or incriminating evidence, obtained from a juvenile in the course of any screening or assessment in conjunction with proceedings pursuant to this section or made in order to participate in a diversion or restorative justice program is not admissible into evidence in any adjudicatory hearing in which the juvenile is accused and is not subject to subpoena or any other court process for use in any other proceeding or for any other purpose.⁷⁸

Whereas in Georgia, section 24-5-511 provides that:

[A]ny communication or action made at any time while preparing for or participating in a victim centered practice or a victim-offender dialogue or as a follow up to such practice or dialogue, or the fact that such practice or dialogue has been planned or convened, shall be privileged and shall not be referred to, used, or admitted in any proceeding unless such privilege is waived.⁷⁹

This pattern is observed in other jurisdictions as well, even where forms of textual mimicry exist, as discussed *supra*,⁸⁰ including Illinois, Nebraska, and Tennessee.⁸¹ As codified in chapter 735, act 5, section 8-804.5 of the Illinois Compiled Statutes, protections exist for statements and conduct made before, during, and following a restorative

74. See ALA. CODE § 45-39-82.05 (2020); ALA. CODE § 45-28-82.25 (2020); DEL. CODE ANN. tit. 11, § 9503(b) (2019); MINN. STAT. § 595.02 (2025); OR. REV. STAT. § 161.398(2) (2020); OR. REV. STAT. § 423.600 (2020); OR. REV. STAT. § 423.610 (2020); OR. REV. STAT. § 147.607 (2023); OR. REV. STAT. § 147.610 (2023); OR. REV. STAT. § 420A.300 (2023); OR. REV. STAT. § 420A.310 (2023); TENN. CODE ANN. § 16-20-103 (2023); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (West 2024); VT. STAT. ANN. tit. 3, § 163 (2024); VT. STAT. ANN. tit. 3, § 164 (2024).

75. This confirms an overall trend, discussed *supra*, of an expanded scope of protective laws since 2008.

76. See COLO. REV. STAT. § 19-2.5-102(45)(b) (2024); COLO. REV. STAT. § 19-2.5-402(4)(a) (2024); GA. CODE ANN. § 24-5-511(b)(1) (2025).

77. COLO. REV. STAT. § 19-2.5-102(45)(b) (2024).

78. COLO. REV. STAT. § 19-2.5-402(4)(a) (2024).

79. GA. CODE ANN. § 24-5-511(b)(1) (2025).

80. See *supra* Part III.

81. See 735 ILL. COMP. STAT. 5/8-804.5 (2022); NEB. REV. STAT. § 25-2914.01(1) (Cum. Supp. 2024); NEB. REV. STAT. § 25-2914.01(2) (Cum. Supp. 2024); NEB. REV. STAT. § 43-247.03 (Cum. Supp. 2024); TENN. CODE ANN. § 16-20-103(a) (2023); TENN. CODE ANN. § 16-20-102(h)(2) (2020).

practice, and the participation therein.⁸² In Nebraska, “[a]ny verbal, written, or electronic communication made in or in connection with matters referred to a restorative justice program which relates to the controversy or dispute undergoing restorative justice and agreements resulting from the restorative justice program, . . . shall be confidential and privileged[.]”⁸³ “[n]o admission, confession, or incriminating information obtained from a juvenile in the course of any restorative justice program . . . shall be admitted into evidence against such juvenile,”⁸⁴ and “[a]ll discussions taking place during such restorative justice practices, including plea negotiations, shall be confidential and privileged communications[.]”⁸⁵ In Tennessee, “[a]ll memoranda, work notes or products, or case files of [victim-offender mediation centers] are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding[.]” and “[a]ny communication relating to the subject matter of the resolution made during the resolution process . . . is a privileged communication and is not subject to disclosure in any judicial or administrative proceeding unless all parties to the communication waive the privilege.”⁸⁶ Moreover in Tennessee, the statistical data of victim-offender mediation centers “shall maintain the confidentiality and anonymity of all mediation participants.”⁸⁷

The same pattern of variability also occurs within a single subcategory, such as records. In Maine, records protections are specific to the “[r]equests for action” by the Office of Victim Services and “must be treated confidentially.”⁸⁸ In contrast, the records protections codified in section 595.02 of the Minnesota Statutes extend to “documents offered in the course of a restorative practice[.]”⁸⁹ and in Delaware records protections broadly extend to “[a]ll memoranda, work notes or products, case files or programs, and data collected” in victim-offender alternative case resolutions.⁹⁰

In addition to variation across categories and subcategories, protections differ in terms of their specificity. Section 147.605 of the Oregon Revised Statutes defines “restorative justice communication” as “[a]ll communications, written and oral that are made in the course of, or in connection with, any phase of a restorative justice program,” and “restorative justice program” as “a community-based program administered by a private or public entity that offers as a part of the program a facilitated dialogue between a crime victim or a survivor

82. 735 ILL. COMP. STAT. 5/8-804.5 (2022).

83. NEB. REV. STAT. § 25-2914.01(1) (Cum. Supp. 2024).

84. *Id.* at § 25-2914.01(2).

85. *Id.* at § 43-247.03(1).

86. TENN. CODE ANN. § 16-20-103(a) (2023).

87. *Id.* at § 16-20-102(h)(2) (2020).

88. ME. STAT. tit. 34-A, § 1214(4) (2019).

89. MINN. STAT. § 595.02 (2025).

90. DEL. CODE ANN. tit. 11, § 9503(a) (2019).

and the offender.”⁹¹ Whereas under section 154.073 of the Texas Civil Practice and Remedies Code, which also includes a protection for communications, such protections are limited to those “communication[s] relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure[,]” as applied to victim-offender mediations by the Texas Department of Criminal Justice following criminal conduct causing bodily injury or death to victims.⁹²

The presence of exceptions and/or waivers to a protective law varies, even when the protected content falls within the same subcategory. For example, although section 19-2.5-402 of the Colorado Revised Statutes, section 25-2914.01 of the Nebraska Revised Statutes, and section 49-4-725 of the West Virginia Code all provide protections for admissions obtained from juveniles participating in restorative justice programs,⁹³ only Nebraska provides the exception that such admissions may be admitted as rebuttal or impeachment evidence or may be considered at sentencing or disposition proceedings.⁹⁴ Notably, Vermont, in providing protections for communications made in preparation for, during, or as a follow-up to adult or juvenile diversion processes, is the only state that prevents the use of such communications for impeachment or cross-examination purposes.⁹⁵

Analysis also shows that content protections vary based on an individual’s role as a participant, facilitator, or other attending party in restorative justice processes.⁹⁶ Under title 15, section 3204 of the Maine

91. Section 147.605 of the Oregon Statutes provides the definition which applies to sections 147.607 and 147.610. OR. REV. STAT. § 147.605 (2023).

92. TEX. CIV. PRAC. & REM. CODE ANN. § 154.073(a) (West 2024); *see also* TEX. CODE OF CRIM. PROC. ANN. art. 56A.602 (West 2021) (discussing connection to victim-offender mediation).

93. COLO. REV. STAT. § 19-2.5-402 (2024); NEB. REV. STAT. § 25-2914.01 (Cum. Supp. 2024); W. VA. CODE § 49-4-725 (2021).

94. NEB. REV. STAT. § 25-2914.01(2) (Cum. Supp. 2024).

95. *Compare* NEB. REV. STAT. § 25-2914.01(2) (Cum. Supp. 2024) (“No admission, confession, or incriminating information obtained from a juvenile in the course of any restorative justice program . . . shall be admitted into evidence against such juvenile, except as rebuttal or impeachment evidence . . .”), *with* VT. STAT. ANN. tit. 3, §§ 163(d)(3), 164(d)(3) (2024) (“Information related to any offense that a person divulges in preparation for, during, or as a follow-up to the provision of the juvenile [or adult] diversion programming shall not be used against the person . . . for any purpose, including impeachment or cross-examination.”).

96. Sixteen laws ($n = 12$ jurisdictions) make explicit reference to an individual’s role in the restorative process when defining the content protected. *See* ALA. CODE § 45-39-82.05(b) (2020) (“[c]ommunications between pretrial diversion program counselors and offenders”); ALA. CODE § 45-28-82.25(b) (2020) (“[c]ommunications between pretrial diversion program counselors and offenders”); COLO. REV. STAT. § 19-2.5-402(4)(a) (2024) (“obtained from a juvenile”); DEL. CODE ANN. tit. 11, § 9503(c) (2019) (“by any participant, mediator, or any other person”); ME. STAT. tit. 15, § 3204 (2019) (“a juvenile or of a juvenile’s parents, guardian or legal custodian”); MASS. GEN. LAWS ch. 276B, § 4 (2018) (“made by a juvenile or adult

Statutes, the admissibility protection applies only to “[s]tatements of a juvenile or of a juvenile’s parents, guardian or legal custodian” and does not include statements of other parties participating in the restorative justice program.⁹⁷ However, other jurisdictions, such as Delaware and Tennessee, provide protections for content regardless of whether it was created by a restorative justice participant, facilitator, or other attending party.⁹⁸

Moreover, an individual’s status may also determine their eligibility to claim a protection. In Utah, the evidentiary privilege may only be claimed by “the victim[,]” “the guardian or conservator of the victim if the guardian or conservator is not the accused[,]” or “the victim advocate during the life of the victim.”⁹⁹ Whereas in Georgia, the ability to “refuse to disclose communications relating to a victim centered practice or victim-offender dialogue and prevent others from disclosing such communications” is held by “[p]arties of a victim centered practice or victim-offender dialogue[.]”¹⁰⁰ Section 24-5-511(a)(2) of the Georgia Statutes further defines a “party” as “a person, including a facilitator, a victim, an offender, a community member, and any other participant, who voluntarily consents to participate with others in a victim centered practice or victim-offender dialogue.”¹⁰¹

B. Category: Duration of Protection

To further assess the typology of protective restorative justice laws, data was analyzed from three subcategories within the duration category. Table 4 summarizes the temporal scope of protection by jurisdiction. Fourteen laws provide protections *before* ($n = 9$ jurisdictions), twenty-six laws provide protections *during* ($n = 15$ jurisdictions), and eleven laws provide protections *following* a restorative practice

defendant”); NEB. REV. STAT. § 25-2914.01(1)–(2) (Cum. Supp. 2024) (“the restorative justice facilitator, the staff of an approved center, a party, or any other person” and “obtained from a juvenile”); OR. REV. STAT. § 423.600(2) (2020) (“the participants’ communication”); OR. REV. STAT. § 147.607(2) (2023) (“their [the participants’] communications”); OR. REV. STAT. § 420A.300(2) (2023) (“the participants’ communication”); OR. REV. STAT. § 420A.310(1) (2023) (“program facilitators, advisory committee members, volunteers, contractors and staff persons”); TENN. CODE ANN. § 16-20-103 (2023) (“any participant, mediator, or any other person”); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073(a) (West 2024) (“made by a participant”); UTAH R. EVID. 512 (“[a] victim communicating with a victim advocate”); VT. STAT. ANN. tit. 28, § 205(b)(2) (2020) (“revealed by the offender”); W. VA. CODE § 49-4-725(f) (2021) (“obtained from the juvenile”).

97. ME. STAT. tit. 15, § 3204 (2019).

98. See DEL. CODE ANN. tit. 11, § 9503(c) (2019) (protecting any communications made by “any participant, mediator, or any other person” during the mediation process); TENN. CODE ANN. § 16-20-103(a) (2023) (protecting any communications made by “any participant, mediator, or any other person” during the resolution process).

99. UTAH R. EVID. 512.

100. GA. CODE ANN. § 24-5-511(b)(2) (2025).

101. *Id.* at § 24-5-511(a)(2).

or process ($n = 7$ jurisdictions).¹⁰² Consistent with prior findings, the analysis reveals variance in the temporal limits of protections during the restorative practice.¹⁰³ Notably, however, all fifteen jurisdictions with procedural protections provide these protections for content throughout the duration of the restorative practice.¹⁰⁴ The “during” designation is exemplified by section 19-2.5-102 of the Colorado Revised Statutes, stating “[a]ny statements made *during the restorative justice process* are confidential and must not be used against the juvenile, or as a basis for charging or prosecuting the juvenile,”¹⁰⁵ and section 595.02 of the Minnesota Statutes, providing that “[s]tatements made or documents offered *in the course of a restorative practice* are not subject to discovery or admissible as evidence in a civil or criminal proceeding.”¹⁰⁶

102. ALA. CODE § 45-39-82.05(b) (2020) (during pretrial diversion or “related to pretrial diversion program admission”); ALA. CODE § 45-28-82.25(b) (2020) (during pretrial diversion or “related to pretrial diversion program admission”); COLO. REV. STAT. § 18-1.3-104(1)(b.5)(I) (2020) (during the conference); COLO. REV. STAT. § 18-1.3-204(2)(a)(III.5) (2020) (during a restorative justice conference); COLO. REV. STAT. § 19-2.5-102(45)(b) (2024) (during the restorative justice process); COLO. REV. STAT. § 19-2.5-402(4)(a) (2024) (“in the course of any screening or assessment . . . or made in order to participate”); DEL. CODE ANN. tit. 11, § 9503(c) (2019) (during the mediation process); GA. CODE ANN. § 24-5-511(b)(1) (2025) (“preparing for or participating in . . . or as a follow up”); 735 ILL. COMP. STAT. 5/8-804.5(c) (2022) (“during or in preparation for . . . or as a follow-up to”); ME. STAT. tit. 34-A, § 1214(4) (2019) (requests for action); ME. STAT. tit. 15, § 3204 (2019) (during a restorative justice program); MASS. GEN. LAWS ch. 276B, § 4 (2018) (during the course of assignment); MINN. STAT. § 595.02(1b)(b) (2025) (“offered in the course of a restorative practice”); NEB. REV. STAT. § 25-2914.01(1)–(2) (Cum. Supp. 2024) (“made in or in connection with” and “in the course of”); NEB. REV. STAT. § 43-247.03(1) (Cum. Supp. 2024) (“taking place during such restorative justice practices”); OR. REV. STAT. § 161.398(2) (2020) (“created, submitted or provided for use in the restorative justice program”); OR. REV. STAT. § 423.610(2) (2020) (made “in the course of or in connection with”); OR. REV. STAT. § 147.610 (2023) (“made in the course of, or in connection with,” or “prepared for”); OR. REV. STAT. § 420A.310(2) (2023) (discussing communications made “in the course of or in connection with”); TENN. CODE ANN. § 16-20-103(a) (2023) (“made during the resolution process” and placing no durational restrictions on “memoranda, work notes or products, or case files of centers”); TENN. CODE ANN. § 16-20-102(h)(2) (2020) (providing no durational restrictions on data anonymity); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073(g) (West 2024) (made in or at a victim-offender mediation); UTAH R. EVID. 512(a)(2) (during victim communication with a victim advocate); VT. STAT. ANN. tit. 28, § 205(b)(2) (2021) (revealed in connection with); VT. STAT. ANN. tit. 3, § 163(d)(3) (2024) (“in preparation for, during, or as a follow-up”); VT. STAT. ANN. tit. 3, § 164(d)(3) (2024) (“in preparation for, during, or as a follow-up to”); W. VA. CODE § 49-4-725(f) (2021) (“as the result of a restorative justice program”).

103. González, *supra* note 10, at 1190–91; VIRANI, *supra* note 24, at 9–11.

104. See sources cited *supra* note 102.

105. COLO. REV. STAT. § 19-2.5-102(45)(b) (2024).

106. MINN. STAT. § 595.02(1b)(b) (2025).

Table 4: Duration of Protection by Jurisdiction

Jurisdiction	Before	During	Following
Alabama	X	X	
Colorado	X	X	X
Delaware		X	
Georgia	X	X	X
Illinois	X	X	X
Massachusetts		X	
Maine	X	X	
Minnesota		X	
Nebraska	X	X	X
Oregon	X	X	X
Tennessee	X	X	X
Texas		X	
Utah		X	
Vermont	X	X	X
West Virginia		X	

In addition to procedural protections for content during a restorative practice or process, Alabama and Maine provide procedural protections to content prior to the initiation of a practice or process. In Alabama, “[p]retrial diversion program records or records related to pretrial diversion program admission, with the exception of the statement of the applicant concerning [their] involvement in the crime charged, shall not be admissible in subsequent proceedings, criminal or civil.”¹⁰⁷ In Maine, title 34-A, section 1214(4) of the Maine Statutes provides that “[r]equests for action by the [Office of Victim Services] must be treated confidentially” and “[i]n no case may a victim’s request for notice of release be disclosed outside the department and the office of the attorney for the State with which the request was filed[,]” thereby protecting the request for the initiation of a restorative process.¹⁰⁸

While not consistent across all jurisdictions, analysis of post-2019 statutes indicates an emerging trend of a more comprehensive durational approach to procedural protections, e.g., the protections exist

107. ALA. CODE § 45-39-82.05(b) (2020); ALA. CODE § 45-28-82.25(b) (2020). Alabama remains an outlier among all protective laws in requiring an admissible statement of guilt as a condition of participation in restorative justice. González, *supra* note 10, at 1191.

108. ME. STAT. tit. 34-A, § 1214(4) (2019).

pre-, in- and post-process and practice. In four states, Georgia, Illinois, Oregon, and Vermont, statutes set forth unambiguous language for this approach. Section 24-5-511 of the Georgia Statutes states “at any time while preparing for or participating in a victim centered practice or a victim-offender dialogue or as a follow up to such practice or dialogue, or the fact that such practice or dialogue has been planned or convened[.]”¹⁰⁹ Similarly, chapter 735, act 5, section 8-804.5 of the Illinois Compiled Statutes provides “during or in preparation for a restorative justice practice or as a follow-up to that practice, or the fact that the practice has been planned or convened,”¹¹⁰ and title 3, sections 163 and 164 of the Vermont Statutes establish information “divulge[d] in preparation for, during, or as a follow-up to the . . . diversion programming[.]”¹¹¹ Specifically in Oregon, section 147.605 of the Oregon Revised Statutes sets forth confidentiality and admissibility protections as “made in the course of, or in connection with, any phase of a restorative justice program, including but not limited to a phase under which a facilitated dialogue occurs and the referral, preparation, pre-enrollment, enrollment, post-enrollment and post-dialogue phases of the program.”¹¹²

C. Category: Application

Analysis of the application category confirms the general trend of expanding restorative justice protections beyond formal criminal legal system settings.¹¹³ As shown in Table 5, twenty laws apply to the adult criminal justice system ($n = 14$ jurisdictions), sixteen laws to the juvenile justice system ($n = 10$ jurisdictions), eleven laws to civil proceedings ($n = 9$ jurisdictions), and sixteen laws to administrative proceedings ($n = 9$ jurisdictions).¹¹⁴

109. GA. CODE ANN. § 24-5-511(b)(1) (2025).

110. 735 ILL. COMP. STAT. 5/8-804.5(c) (2022).

111. However, title 3, sections 163 and 164 of the Vermont Statutes both provide that the fact of an adult’s or juvenile’s participation and success in diversion programming, or reasons for failure, may become part of the prosecutor’s records. VT. STAT. ANN. tit. 3, §§ 163(d)(3), 164(d)(3) (2024).

112. Here, Oregon also includes the language “any phase of a restorative justice program,” similar to Georgia’s “at any time.” Compare OR. REV. STAT. § 147.605(3)(a) (2023) (protecting communications “made in the course of, or in connection with, any phase of a restorative justice program” (emphasis added)), with GA. CODE ANN. § 24-5-511(b)(1) (2025) (protecting communications and actions “made at any time while preparing for or participating in . . . or as a follow up to” (emphasis added)).

113. As is true in other categories, there is not uniformity as to the overall scope and content of the state- and/or community-based siting.

114. See sources cited *supra* notes 32–35. These findings confirm prior studies of restorative justice legislation. See González, *supra* note 10, at 1151.

Table 5: Applicable Systems by Jurisdiction

Jurisdiction	Adult Criminal Justice	Juvenile Justice	Civil Proceedings	Administrative Proceedings
Alabama	X		X	
Colorado	X	X		
Delaware	X			X
Georgia	X	X	X	X
Illinois	X	X	X	X
Massachusetts	X	X	X	X
Maine	X	X		
Minnesota	X		X	
Nebraska	X	X	X	X
Oregon	X	X		X
Tennessee	X			X
Texas	X		X	X
Utah	X	X	X	
Vermont	X	X	X	X
West Virginia		X		

Three observations can be drawn from analysis of the twenty laws in this category. First, most laws set forth unambiguous and specific references to the systems in which the protections apply.¹¹⁵ For example, sections 45-28-82.25 and 45-39-82.05 of the Alabama Code provide that the confidential pretrial diversion program records or records related to pretrial diversion program admission “shall not be

115. See sources cited *supra* notes 32–35. Delaware, Oregon, and Tennessee apply their respective protections to *judicial or administrative* proceedings. DEL. CODE ANN. tit. 11, § 9503(b) (2019); OR. REV. STAT. § 161.398(2) (2020); OR. REV. STAT. § 423.600(3) (2020); OR. REV. STAT. § 423.610(4) (2020); OR. REV. STAT. § 147.607(2) (2023); OR. REV. STAT. § 147.610(1)(b) (2023); OR. REV. STAT. § 420A.300(3) (2023); OR. REV. STAT. § 420A.310(4) (2023); TENN. CODE ANN. § 16-20-102(h)(2) (2020); TENN. CODE ANN. § 16-20-103(a) (2023). The use of the word “judicial” adds a layer of ambiguity to the applicability of the protection—should a judicial proceeding be understood as proceedings within that particular chapter of the statutory code, or rather, as any court proceeding, criminal or otherwise? See *Judicial Proceeding*, BLACK’S LAW DICTIONARY (12th ed. 2024). Oregon also applies its protections to arbitration proceedings, and it is the only jurisdiction to do so. See OR. REV. STAT. § 423.600(3) (2020); OR. REV. STAT. § 423.610(4) (2020); OR. REV. STAT. § 420A.300(3) (2023); OR. REV. STAT. § 420A.310(4) (2023).

admissible in subsequent proceedings, *criminal or civil*,”¹¹⁶ whereas title 15, section 3204 of the Maine Statutes applies only to the state’s juvenile justice system.¹¹⁷

Second, multiple laws link system and temporal protections. Consider, for example, title 3, sections 163 and 164 of the Vermont Statutes which provides that information divulged by a person before the initiation of, during, or following the adult or juvenile diversion programming “shall not be used against the person in any *criminal, civil, family, juvenile, or administrative investigation, prosecution, or case* for any purpose, including impeachment or cross-examination.”¹¹⁸ Similarly, chapter 735, act 5, section 8-804.5 of the Illinois Compiled Statutes protects statements and conduct before the initiation of, during, or following a restorative justice practice as “privileged and cannot be referred to, used, or admitted in any *civil, criminal, juvenile, or administrative proceeding*[,]” and “[p]rivileged information is not subject to discovery or disclosure in any *judicial or extrajudicial proceedings*.”¹¹⁹

Third, jurisdictions that have codified protective laws have included provisions extending such protections to community-based restorative practices. For example, in its statutory definition of “restorative justice practices,” Colorado explicitly references community-based practices by including “community conferences” and declares that restorative justice practices “emphasize repairing the harm caused to victims and the community by offenses.”¹²⁰ In Massachusetts, chapter 276B, section 4 of the Massachusetts General Laws provides admissibility and confidentiality protections for “[p]articipation in a community-based restorative justice program[,]” and “[a]ny statement made by a juvenile or adult defendant during the course of an assignment to a community-based restorative justice program[.]”¹²¹ In Minnesota, “restorative practices” are statutorily defined to “include but are not limited to victim-offender conferences, family group conferences, circles, *community conferences*, and other similar victim-centered practices[,]” and states that “[r]estorative practices are rooted in community values.”¹²² Although Vermont provides its restorative justice protections for pre-charge diversion

116. ALA. CODE §§ 45-39-82.25, 45-28-82.05 (2020).

117. “Statements of a juvenile or of a juvenile’s parents, guardian or legal custodian made . . . during a restorative justice program . . . are not admissible in evidence during the State’s case in chief at an adjudicatory hearing against that juvenile on a petition based on the same facts that caused the referral . . .” ME. STAT. tit. 15, § 3204 (2019). Title 15, section 3204 is codified in the Maine’s juvenile code. *See id.*

118. VT. STAT. ANN. tit. 3, §§ 163(d)(3), 164(d)(3) (2024).

119. 735 ILL. COMP. STAT. 5/8-804.5(c) (2022).

120. COLO. REV. STAT. § 18-1-901(3)(o.5) (2024).

121. MASS. GEN. LAWS ch. 276B, § 4 (2018).

122. *See* MINN. STAT. ANN. § 142A.76 (2025) (emphasis added); *see also* MINN. STAT. § 595.02(1b)(a)(1) (2025) (incorporating the definition provided in MINN. STAT. ANN. § 142A.76 (2025) for inadmissibility purposes).

referrals of individuals to community-based restorative justice providers,¹²³ it differs from prior examples in that they explicitly comment “[p]re-charge diversion shall not be construed to include a community referral[,]” in the statutory definition of pre-charge diversion.¹²⁴

V. CONCLUSION

As restorative justice has increasingly expanded into formal law at the subnational level in the United States, scholars have engaged in empirical and conceptual analyses with the aim of developing a more comprehensive understanding of such emerging statutory schemes. Within this literature, common typologies of laws have been identified, including laws that provide procedural protections for parties, practices, and documents. This national study focuses on this specific typology—protective laws—that codify procedural protections of confidentiality, admissibility, and privilege for restorative justice practices and processes. As such, it expands the current evidence base with two primary descriptive and analytical contributions to the field. First, at a macro-level, it affirms a growth pattern in the overall subnational scheme of restorative justice laws as measured quantitatively, with a specific increase occurring between 2019 and 2025. Second, at a macro-level, it quantitatively and qualitatively evidences an expansion of the specific typology of protective restorative justice laws across multiple metrics. As demonstrated in Part IV, the thirty statutes and court rules codified since 2008 not only protect a broader range of content for longer periods, but also across multiple systems. While a preference still exists for restorative justice associated with state juvenile and criminal proceedings, an observable emerging trend relative to community-based practices is identifiable.

As a study that employs content analysis of state statutes and court rules, limitations exist as to conclusions and observations about the functionality of these laws at a local level. For example, one field interview indicated an increase in restorative use following the passage of the state law, and while consistent with the prevailing view of the significance of confidentiality to restorative justice, this conclusion has not been tested.¹²⁵ Additionally, this study does not address the variations across jurisdictions of the distinct protections in practice. Inquiry in this area is much needed and should be attended to. Furthermore, examinations of the complex processes by which legislators and advocates institutionalize protections for restorative justice are needed. Though textual mimicry exists and interviews confirmed review of

123. VT. STAT. ANN. tit. 3, §§ 163, 164 (2024).

124. *Id.* at § 162(a).

125. Zoom Interview with the Honorable Thomas Donnelly, Circuit Judge, Circuit Court of Cook County (Nov. 20, 2025) (on file with the author).

preceding statutes,¹²⁶ few studies have investigated these key areas.¹²⁷ Finally, future research as to other typologies of restorative justice would benefit the field greatly. The legalization of restorative justice in the United States at the state level has grown significantly over the last three decades, with some states developing statutory schemes of more than thirty individual laws. As work on normative change and restorative justice continues, there has been a marked shift in the United States that has moved restorative justice from the margins of law and policy to the mainstream.¹²⁸

126. Zoom Interview with Rep. Sandra Feist, Minnesota House of Representatives (Dec. 3, 2025) (on file with the author).

127. See e.g., Shannon M. Sliva, *A Tale of Two States: How U.S. State Legislatures Consider Restorative Justice Policies*, 20 CONTEMP. JUST. REV. 255, 255–57 (2017) (providing a case study analysis of state legislative processes to pass restorative justice statutes); Sliva & Plassmeyer, *supra* note 16, at 19 (providing a comparative analysis of the “impacts of legislatively supported restorative justice pilot projects in Colorado on overall juvenile filing rates in implementing districts”).

128. González, *supra* note 15, at 1064.