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Kapilipono: A U.S. District of Hawai'i Specialty Court Pilot Project

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KAPILIPONO: A U.S. DISTRICT OF HAWAI‘I SPECIALTY COURT PILOT PROJECT

LORENN WALKER,* LESLIE KOBAYASHI* & JEANNIE LUM*

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I. INTRODUCTION

In 2019, the United States District Court for the District of Hawai‘i implemented a pilot program to increase rehabilitation, minimize or mitigate the adverse effects of incarceration, and reduce recidivism by providing tools to enhance intrinsic motivation for long term change at the “front end” of the justice system.¹ The Hawai‘i program was modeled after federal Alternatives to Incarceration (ATI) court programs that have proliferated in about 38 federal districts.²

Pono Shim was invited to name the program and he chose *Kapilipono*, which exemplifies the pilot program’s goal and purpose by combining two Hawaiian words: “kapili” or “[t]o build . . . mend, fix, repair” and “pono” or “[g]oodness, uprightness, morality . . . excellence, well-being, equity . . . just . . . [and] fair.”³ Shim is a respected Native Hawaiian storyteller, peacemaker, and president and chief executive officer of the O‘ahu Economic Development Board.⁴ “*Kapilipono* was

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1. See e.g., *Vision 6: A Last Chance Before Prison*, REENTRY COURT SOLUTIONS (Oct. 27, 2014), <https://www.reentrycourtsolutions.com/2014/10/27/early-intervention-court-a-last-chance-before-prison/>

2. Laura Baber et al., *A Viable Alternative? Alternatives to Incarceration Across Seven Federal Districts*, 83 FED. PROBATION 8, 8–17 (2019).

3. *Kapili*, HAWAIIAN DICTIONARY, (6th ed. 1986).

4. *Long Story Short with Leslie Wilcox* (PBS Hawai‘i television broadcast Feb. 7, 2012) (transcript on file with PBS), <https://www.pbshawaii.org/wp-content/uploads/2015/04/LSS-515-Transcript-Pono-Shim-Through-a-Childs-Eyes-.pdf>.

chosen because it inspires to latch or crutch, erect, or lift up.”⁵ When Shim shared the name *Kapilipono* he stated, “You are all embarking on something so powerful and the names had to be something that would resonate to the entire community to recover.”⁶

Kapilipono is a pilot program for eligible defendants in federal court who have pled guilty and been convicted but have not yet been sentenced.⁷ It began as a two-year pilot program in October 2019 as a specialty court.⁸ Author Leslie Kobayashi, U.S. District Court Judge for the District of Hawai‘i, advocated for the creation of a federal court pretrial intervention program and assisted in planning with the chief architect of the *Kapilipono* program, Carol Miyashiro, Chief Pretrial Services Officer for the District of Hawai‘i. Authors Loren Walker and Jeannie Lum provided monthly cognitive behavioral treatment sessions and reentry planning circles for the *Kapilipono* participants with the non-profit Hawai‘i Friends of Restorative Justice.

This article describes the *Kapilipono* program and includes preliminary evaluation information about the program from its participants and the magistrate judge who oversees the specialty court.⁹ The *Kapilipono* participants are defendants in federal criminal prosecutions who entered guilty pleas and are awaiting sentencing. These participants reside in the community under bail conditions that are supervised by Pretrial Services Office for the District of Hawai‘i.

II. KAPILIPONO PILOT PROCESS

Individuals who meet the program criteria may apply to participate in the *Kapilipono* program that includes a specialty court overseen by a team consisting of a magistrate judge, and one representative for each of the following offices in the District of Hawai‘i: Pretrial Services, Probation Office, United States Attorney’s Office, the Federal Public Defender’s Office, and the Criminal Justice Act attorneys. Due to the current set of criteria that automatically disqualifies a potential applicant from the program based on the nature of the charge and the applicant’s background, the pool of participants in the pilot’s first cohort was narrowly restricted.

The applications to participate in the program are reviewed by the *Kapilipono Screening Committee*. Each Committee member has equal veto power in selecting pilot participants. Five applicants were found eligible to participate in the pilot *Kapilipono* program in 2019–2021.

Once selected to be in the program, participants are directly supervised by a single pretrial services officer who is a member of the *Kapilipono* team, and who

5. Telephone Interview with Pono Shim, CEO of O‘ahu Economic Development Board (Feb. 1, 2021).

6. Telephone Interview with Carol Miyashiro, Chief Pretrial Services Officer, District of Hawai‘i (Jan. 11, 2021) (on file with authors).

7. District of Hawai‘i United States District Court, *Kapilipono Program Operating Procedures*, 1–13 (2019) (unpublished) (on file with authors).

8. *Id.* Specialty courts are also called problem solving and therapeutic courts. See Tali Gal, *Restorative Justice Myopia*, 3 INT’L J. RESTORATIVE JUST. 341 (2020).

9. The authors extend their warm appreciation to Carol Miyashiro, Alison Thom, and Judge Rom Trader for providing information for this article, to the entire *Kapilipono* Team for their work on the pilot program, and to the program’s first five participants who openly shared their experiences.

provides the team with a detailed written monthly status report. The pretrial officer also prepares a detailed report for each of the district judges who will decide the criminal sentence for each of the *Kapilipono* participants. The report includes a description of what the participant did in the *Kapilipono* program, what goals were set at the start of the program, what goals were met, and any changes that were observed by the *Kapilipono* team.

Hawai'i Friends of Restorative Justice (HFRJ) provided reports on each *Kapilipono* participant that includes their goals.¹⁰ The information from the quarterly reports was used here to assess and report preliminary outcomes for the *Kapilipono* participants.

The applicants accepted into the *Kapilipono* program must commit to the program for twelve to twenty-four months and are required to participate in at least one weekly activity for the duration of the program. The first *Kapilipono* program was completed in fifteen months. Some participants began the program a few months before others, but all participants participated for a minimum of twelve months. The participants are all currently pending sentencing.

At the monthly meetings with the *Kapilipono* team, the participants discuss their accomplishments, failures, goals, and struggles. Encouragement, engagement, motivation and, if needed, disciplinary sanctions are provided by the *Kapilipono* team at these meetings.

The participants are asked to engage in a community service project as part of the pilot. The 2020–2021 cohort was given the opportunity to consider and collectively create a project. The *Kapilipono* participants considered several community service alternatives that they generated together. They finally decided that they would design and produce an informational video consisting of personal messages from each of them to future participants about their experience and the personal changes that they experienced from participating in the *Kapilipono* program. At the conclusion of the program, a graduation ceremony is held, and the video was shown.

III. KAPILIPONO PILOT PURPOSE & ELIGIBILITY CRITERIA

The overall goal of the pilot program is to decrease recidivism or tendency to commit another crime. The operational guidelines for the program specifically state its purposes are:

The District of Hawai'i's Alternatives to Incarceration (ATI) program, hereinafter known as *Kapilipono*, is designed for individuals who have pled guilty and are under the pretrial services supervision prior to sentencing. These individuals must be actively seeking to make positive change in their lives and committed to doing the hard work to be successful. They must voluntarily apply for admission and be accepted into the program. The goals of the program include:

10. Telephone Interview with Alison Thom, Deputy Pretrial Services Officer, District of Hawai'i, (Oct. 15, 2020) (on file with authors).

- Promote rehabilitation
- Promote productive and prosocial behavior
- Facilitate acceptance of responsibility for offense(s) and the consequences to others
- Facilitate and support an individual's intrinsic motivation to change
- Reduce recidivism and enhance community safety
- Manage taxpayer funds/resources wisely.¹¹

Program participants must meet all four of the following program eligibility criteria by being:

- (1) On pretrial release (not detained); and
- (2) Guilty plea has been entered and sentencing is pending [footnote omitted]; and
- (3) Individual has consulted with his/her defense counsel and voluntarily applies; and
- (4) Satisfies at least one (1) of the following conditions; and
 - a. Identified as Low or Low-Moderate risk based on the Pretrial Risk Assessment Tool (PTRA), with minimal criminal history, and instant offense appears to be an aberration; or
 - b. Serious history of substance abuse or addiction as reflected in information available to the U.S. Pretrial Services Office, and substance use or addiction substantially contributed to the commission of the charged offense; or
 - c. Diagnosed with a mental health condition that substantially contributed to the commission of the charged offense; and
 - d. History reflects significant deficiencies in full-time productive activity, decision making (i.e., criminal thinking in addition to charged offenses), or prosocial peer networks as a result of which the individual would benefit substantially from a structured pretrial program under the close supervision of the Court and the U.S. Pretrial Services Office.¹²

11. District of Hawai'i United States District Court, Kapilipono Program Operating Procedures, 1–13 (2019) (unpublished) (on file with authors).

12. *Id.* at 5–6.

The program requires each individual to participate in a combination of activities that are tailored to their individualized risks and needs including:

- Engage in productive activity (e.g., GED, school, employment, job training community service);
- Participate in cognitive behavioral therapy (CBT) to address criminal thinking (e.g., MRT [moral reasoning], journaling);
- Develop prosocial peer networks (e.g., mentors, volunteer opportunities, leadership project);
- Remove barriers to a law-abiding life (e.g., housing, health insurance, driver's license, child support, financial literacy, parenting skills, etc.);
- Abstain from alcohol and/or illicit drugs and maintain sobriety;
- Participate in substance use and/or mental health treatment when recommended; and
- Engage in other activities or programs as deem appropriate.

In addition, each participant will complete a restorative justice program that fosters an appreciation for the harm caused by the charged offense and seeks to motivate the individual to repair, at least in part, the harm from the offense.¹³

HFRJ provided monthly CBT group sessions for the *Kapilipono* participants and, near the conclusion of the program, an individual restorative reentry planning circle for each participant.¹⁴

IV. THERAPEUTIC JURISPRUDENCE, SPECIALTY COURTS AND RESTORATIVE JUSTICE

Therapeutic jurisprudence was first envisioned in the 1980s by law professors David Wexler, Bruce Winick, and others, who believed the legal system would be more helpful if it used behavioral sciences.¹⁵ Therapeutic jurisprudence (hereinafter TJ) is described by Wexler and Winick as:

13. *Id.* at 3.

14. Lorenn Walker & Leslie E. Kobayashi, *Hawai'i Federal Court Restorative Reentry Circle Pilot Project*, FED. PROB. J. 48–55 (2020), <http://lorenwalker.com/wp-content/uploads/2019/10/Federal-Court-Reentry-Circle-6.2020.pdf>.

15. David B. Wexler, *Development of Therapeutic Jurisprudence: From Theory to Practice*, REVISTA JURIDICA UNIVERSIDAD DE PUERTO RICO, 691–705 (1999), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2344940. For more information about therapeutic jurisprudence see INTERNATIONAL SOCIETY FOR THERAPEUTIC JURISPRUDENCE, <https://intljtj.com/> (last visited Apr. 9, 2021); David C. Yamada, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, 75 U. MIAMI L. REV. (forthcoming 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3777552.

Therapeutic jurisprudence is the study of the law's healing potential [references omitted]. An interdisciplinary approach to legal scholarship that has a law reform agenda, therapeutic jurisprudence seeks to access the therapeutic and counter-therapeutic consequences of the law and how it is applied as well as to increase the former and diminish the latter. It is an approach to the law that uses the tools of the behavioral sciences to assess the law's therapeutic effects and, when consistent with other important legal values, to reshape law and legal processes in ways that can improve the psychological functioning and emotional wellbeing of the individuals affected.¹⁶

As TJ developed, drug courts, and later other problem solving courts were established “‘in the trenches’ by practical, creative, intuitive, and frustrated judges desperate to break the revolving door cycle—arrest, conviction, sentence, release, arrest—of drug addicted offenders in the criminal justice system.”¹⁷

Specialty courts developed in response to the criminal justice system's failure to improve behavior. “By seeking to treat the root causes of criminal behavior—most often drug addiction, mental illness, or social and emotional problems—these courts attempt to reduce recidivism and improve the quality of life for therapeutic court participants.”¹⁸ Similarly, modern restorative justice developed in the West in the 1970s as those in working in the justice system became disillusioned with its focus that was mainly on establishing guilt and punishment.¹⁹ “RJ was brought back not by politicians or policymakers, but by passionate practitioners working in the voluntary and community sector in the hope of bringing balance and justice where the traditional criminal justice system failed.”²⁰

Braithwaite (2002) discussed the commonalities between TJ and RJ:

Restorative Justice and Therapeutic Jurisprudence share a commitment to an evidence-based structure, including the use of rigorous social science methods in pursuit of an understanding of the effect of legal practices on people.

. . .

16. David B. Wexler & Bruce J. Winick, *Therapeutic Jurisprudence, in Principles of Addiction Medicine*, SSRN, 1519–20 (2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1101507.

17. David B. Wexler & Michael S. King, *Promoting Societal and Juridical Receptivity to Rehabilitation: The Role of Therapeutic Jurisprudence, in COURT-SUPERVISED TREATMENT ALTERNATIVES TO INCARCERATION FOR DRUG-DEPENDENT OFFENDERS: THE DRUG POLICY AGENDA 21–43*, 21 (Cooper, C., Chrisman, A. & Lomda Maurandi, A. eds., 2011).

18. Amanda Peters, *Resource Problem Solving in Therapeutic Courts*, 2 MENTAL HEALTH L. & POL'Y J. 117, 118 (2013).

19. KATHERINE S. VAN WORMER & LORENN WALKER, RESTORATIVE JUSTICE TODAY: PRACTICAL APPLICATIONS. LOS ANGELES, CA: SAGE PUBLICATION, INC. (2013); THEO GAVRIELIDES, RESTORATIVE JUSTICE THEORY AND PRACTICE: ADDRESSING THE DISCREPANCY (HEUNI 2007).

20. THEO GAVRIELIDES, RESTORATIVE JUSTICE THEORY AND PRACTICE: ADDRESSING THE DISCREPANCY, 267 (HEUNI 2007).

Perhaps [] the most solid common ground between Therapeutic Jurisprudence and Restorative Justice is that they are both part of a return to problem-oriented adjudication.²¹

Likewise, Michael King, an Australian law professor and former specialty court judge, posits: “Therapeutic jurisprudence and restorative justice assert that emotional issues can be intimately related to a dispute’s development or to harmful behavior, and that effective management of emotions is important in resolution processes.”²² King also authored a bench book that applies solution-focused principles to courtroom procedures.²³ Fay-Ramirez submits that: “[R]estorative justice and its underlying principles are one example of a therapeutic tool.”²⁴ And Gal, suggests that: “The similarities of [TJ’s] principles to those of restorative justice is striking, yet little restorative justice is integrated into the work of specialized courts, and few referrals occur from restorative justice to such courts.”²⁵ Gal explained how the “referrals” she envisions might come “from restorative justice” to a TJ court:

[A] much broader use of RJ in serious crimes, even at the earlier stages of a criminal case. For example, let's think of an aggravated assault with a weapon which caused serious harm to the victim. Instead of waiting with the RJ process until after the perpetrator is imprisoned—assuming the victim is willing to meet, and the perpetrator takes responsibility—they can meet right after indictment. The reparation plan can integrate monetary and symbolic reparation to the victim, in addition to the consent of the perpetrator (and the prosecutor) to go through a specialized court program, to address his addiction/mental health/behavioral problems.²⁶

Despite the powerful potential of TJ and RJ in the criminal justice arena, courts rarely use these therapeutic tools. “Problem-solving courts seldom involve restorative justice, despite the great potential for cross-references.”²⁷ Michael Perlin, a prolific TJ academic, former criminal defense lawyer, and retired New York Law School professor, believes that RJ and TJ each share the value of treating all defendants with dignity.²⁸ He advocates that RJ should be offered to any defendant

21. John Braithwaite, *Restorative Justice and Therapeutic Jurisprudence*, 38 CRIM. L. BULL. 244, 244, 262 (2002).

22. Michael S. King, *Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice*, 32 MELB. L. REV. 1096, 1097 (2008).

23. MICHAEL S. KING, SOLUTION-FOCUSED JUDGING BENCH BOOK (The Australasian Inst. of Judicial Admin. Inc., 2009).

24. Suzanna Fay-Ramirez, *Therapeutic Practice Through Restorative Justice: Managing Stigma in Family Treatment Court*, 16 QUT L. REV. 50, 54 (2016).

25. Tali Gal, *Restorative Justice Myopia*, 3 INT’L J. RESTORATIVE JUST. 341, 324 (2020).

26. Letter from T. Gal, Head, School of Criminology, University of Haifa, Israel, to author (Jan. 12, 2021) (on file with authors).

27. Gal, *supra* note 25, at 348.

28. Michael L. Perlin & Valerie R. McClain, *Can Restorative Justice Be of Value in Forensic Cases in a Way That Is Consonant with Therapeutic Jurisprudence? Perspectives of a Lawyer and a Psychologist*,

who requests it.²⁹ Including RJ as part of the *Kapilipono* program was an intentional and important part of its program design. Unfortunately, because of narrow eligibility requirements, the *Kapilipono* program is not reaching all of those who Perlin suggests should be eligible for RJ and thus denying some who would likely benefit.

V. KAPILIPONO CBT COMPONENT

Kapilipono participants engage in at least one activity each week over the duration of the program: monthly meetings with the *Kapilipono* team; weekly individual meetings with the pretrial services officer who supervises their compliance with their requirements (such as drug testing, mental health or other therapy, and work or school attendance); and monthly group CBT sessions. The monthly meetings with the *Kapilipono* team took place from 3:30 p.m. to 4:30 p.m. and were initially held at the federal courthouse. After the COVID-19 pandemic and resulting lockdown in Honolulu occurred, these meetings were held by video teleconference. The monthly CBT sessions led by HFRJ also conducted in-person for the first three months of the program and these sessions lasted ninety minutes. After the pandemic, these sessions were reduced to sixty minutes and attended by video teleconference.

The curriculum for the CBT sessions were designed by HFRJ and similar materials in other programs HFRJ developed for incarcerated people were used.³⁰ The *Kapilipono* sessions were highly interactive and applied cooperative education methodology that involves a participant sharing and teaching the group about concepts that the individual is learning. A primary tenet is that each participant is considered a resource for information and is respected as a teacher for the group. In this way, a participant learns through teaching others.

The CBT session discussions often involved responses to questions asked in journals published by *The Change Companies*.³¹ These journals have been specifically developed for people recovering from substance abuse and help to develop self-insight and personal agency.³² The opportunity to exercise personal agency is important to support for desistance from substance abuse and criminal behavior.³³

VI. KAPILIPONO RESTORATIVE REENTRY CIRCLES

The *Kapilipono* participants requested and received a restorative reentry planning circle. HFJR developed, and has provided, these circles for years to formerly and currently incarcerated men, women and children, and their families

ISTJ BLOG (Oct. 4, 2020), <https://mainstreamtj.wordpress.com/2020/10/04/restorative-justice-and-therapeutic-jurisprudence-in-forensic-cases-perspectives-of-a-lawyer-and-a-psychologist/>.

29. Letter from M. Perlin, Professor Emeritus, New York Law School, to author (Jan. 18, 2021) (on file with authors).

30. Lorenn Walker & Ted Sakai, *A Gift of Listening for Hawai'i's Inmates*, CORR. TODAY 58, 59–61 (Dec. 2006), http://lorenwalker.com/wp-content/uploads/2016/06/Walker_Sakai_Dec_06.pdf.

31. CHANGE Co., <https://www.changecompanies.net> (last visited Apr. 2, 2021).

32. *Id.*

33. SHADD MARUNA, MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES 44 (2000).

and loved ones.³⁴ The circles for the *Kapilipono* participants were held by video teleconference, due to the COVID-19 pandemic, and were attended by the participants, their invited loved ones, the pretrial officer, and the facilitator. Each circle lasted approximately two hours and, a few days after each was completed, the facilitator provided the participant with a written plan based on information gathered during the circle.

Since 2015, reentry planning circles have been offered to individuals who have entered guilty pleas to federal criminal offenses in the District of Hawai'i and, to date, twenty-eight have been conducted for the court. HFRJ developed the circle process and, since 2005, has facilitated 168 circles in Hawai'i for adults and youth incarcerated or under the jurisdiction of the State of Hawai'i. It has provided an additional eleven circles in other states and countries where the process is being replicated in whole or in part. The circles apply restorative and solution-focused approaches that are goal-oriented and strength-based.³⁵

The format for the circle involves the attendance of the participant and anyone who they have identified as a supporter such as family members, friends, and a pretrial or probation officer who accepts the invitation to attend.³⁶ A facilitator guides the circle process and another person, if available, serves as a recorder who writes down the information generated during the circle to help the participant with his or her plan to reenter the community in a way that supports a sober and law-abiding lifestyle.³⁷ If no recorder is available, the facilitator records the information.³⁸ This record is used to formulate a written plan that is given after the circle to the participant and her or his supporters.³⁹

The process for the circle is strength-based and goal-oriented.⁴⁰ That is to say, the facilitator guides the discussion so that the participant and the supporters focus on internal strengths and resourcefulness, and less on failures and shortcomings.⁴¹ The group discusses the participant's goals in realistic and concrete ways, rather than in wishful or amorphous terms.⁴² The discussion is centered on how the participant can plan for and succeed in living a sober and law-abiding life.⁴³

The circle consists of two stages: reconciliation and planning.⁴⁴ During the reconciliation stage, the facilitator guides the group in discussing harm caused by the participant.⁴⁵ The supporters are given the opportunity to tell the participant about how they were affected by the participant's criminal behavior and incarceration, and what the participant can do to repair harm done by the

34. Lorenn Walker & Leslie Kobayashi, *Hawai'i Federal Court Restorative Justice Circle Pilot Project*, 84 FED. PROB. J. 1, 48–55 (2020).

35. PETER DEJONG & INSOO KIM BERG, INTERVIEWING FOR SOLUTIONS (4th ed. 2013).

36. Walker & Kobayashi, *supra* note 34, at 45–55.

37. Walker & Kobayashi, *supra* note 34, at 45–55.

38. Walker & Kobayashi, *supra* note 34, at 45–55.

39. Walker & Kobayashi, *supra* note 34, at 45–55.

40. Walker & Kobayashi, *supra* note 34, at 45–55.

41. Walker & Kobayashi, *supra* note 34, at 45–55.

42. Walker & Kobayashi, *supra* note 34, at 45–55.

43. Walker & Kobayashi, *supra* note 34, at 45–55.

44. Walker & Kobayashi, *supra* note 34, at 45–55.

45. Walker & Kobayashi, *supra* note 34, at 45–55.

behavior.⁴⁶ The participant is provided with an opportunity to address the harm articulated and to reconcile with her or his supporters.⁴⁷

After the reconciliation stage, the planning stage takes place with the facilitator asking the participant to articulate his or her goals and a plan for meeting his or her needs (such as shelter, food, healthy relationships) for living a sober and law-abiding life.⁴⁸ The group helps refine the plan.⁴⁹ Family or friends often offer to assist the participant in various ways (such as housing or employment).⁵⁰ Pretrial and probation officers are often able to direct the participant to resources in the community (such as drug treatment, mental health therapy, and housing).⁵¹

Reentry planning circles have been studied. Children of incarcerated parents who participated in circles are found to have increased optimism and decreased rumination that may be caused from losing a parent to prison.⁵² Other family members of incarcerated persons (such as parents, siblings, aunts, and uncles) who participated in circles also report these same positive benefits.⁵³ Moreover, reentry planning circles may support decreased recidivism. A quasi-experimental study conducted by an independent evaluator concluded that the reentry planning process significantly reduced recidivism.⁵⁴ This study controlled for self-selection by studying two subject groups that were made up of 118 individuals who had been incarcerated and had been released for at least thirty-six months: first, the experimental group that consisted of fifty-eight individuals had applied for and received a circle while incarcerated, and second, the control group that consisted of sixty individuals who had applied for a circle, but did not receive one.⁵⁵ Records established that both groups reoffended (i.e., committed new crimes after being released from incarceration); however, the number of individuals in the experimental group (i.e., those who received a reentry planning circle) who reoffended was 26% lower than the control group (i.e., those who applied for but did not receive a reentry planning circle).⁵⁶

To date, HFJR has provided circles for 770 participants. The participants in these circles are asked to complete written surveys about their experience. All but one of the surveys collected reported positive experiences and only one person

46. Walker & Kobayashi, *supra* note 34, at 45–55.

47. Walker & Kobayashi, *supra* note 34, at 45–55.

48. Walker & Kobayashi, *supra* note 34, at 45–55.

49. Walker & Kobayashi, *supra* note 34, at 45–55.

50. Walker & Kobayashi, *supra* note 34, at 45–55.

51. Walker & Kobayashi, *supra* note 34, at 45–55.

52. Lorenn Walker, et. al., *Benefits of Restorative Reentry Circles for Children of Incarcerated Parents in Hawai'i*, in INTERNATIONAL PERSPECTIVE AND EMPIRICAL FINDINGS ON CHILD PARTICIPATION 333 (Tali Gal & Benedetta Faedi Duramy, eds. 2015).

53. Lorenn Walker & A. De Reu, *How Reentry Planning Circles Help Loves Ones Heal and Benefit Incarcerated People*, in “THE POWER OF WE” COMMUNITY-BASED INTERVENTIONS IN COUNSELING AND THERAPY (Carl-Auer Verlag ed.) (forthcoming).

54. Lorenn Walker co-authored the paper reporting the findings of the independent evaluation study, which was conducted by Janet Davison, PhD. Walker did not participate in collection or statistical analysis of the recidivism data for the evaluation. Lorenn Walker & Janet Davidson, *Restorative Justice Reentry Planning for the Imprisoned: An Evidence-Based Approach to Recidivism Reduction*, in THE ROUTLEDGE INTERNATIONAL HANDBOOK OF RESTORATIVE JUSTICE 264, 264–78 (Theo Gavrielides ed., 2018).

55. *Id.*

56. *Id.*

reported the experience as “mixed.”⁵⁷ The five *Kapilipono* participants and supporters who attended their circles all reported their circle experiences as being positive.

The restorative reentry planning circle was a pivotal element of the program. It provided participants the opportunity to make amends with their loved ones and repair the hurt that they had caused as well as to rediscover the love and respect that each had for one another. All spoke of how the circles were most important in their reflections about self-identity and their understanding of how they were shaped in their youth and its relevance to having taken the wrong path. This opportunity to develop and share their story of transformation is supported by Maruna’s research on how people desist from substance abuse and crime.⁵⁸

VII. KAPILIPONO GRADUATION

The *Kapilipono* graduation ceremony was held on January 22, 2021, by video teleconference due to the COVID-19 pandemic. The five participants, their invited loved ones, the *Kapilipono* team, HFRJ staff, and invited guests (including federal judges and members of the court community) attended. This moving ceremony was opened with an ‘*oli* (a Hawaiian chant) and included remarks by Pono Shim, Chief Judge J. Michael Seabright, and Judge Rom Trader, the magistrate judge on the *Kapilipono* team. Shim provided a moving and motivating keynote speech in which he recognized the participants as being “navigators, peacekeepers, and healers,” and rejected portrayal of them as offenders or victims. This positive characterization based on strengths is also an important element of solution-focused brief therapy.⁵⁹

The participants each expressed what they learned from the program. The community service video created by the participants was shown. To celebrate their achievements, each were given a certificate of achievement; a group photograph of the participants with team members; a handmade cutting board made out of repurposed wood (to symbolize the patience and hard work required to reveal inner beauty); commemorative coins; and a 2021 planner and calendar. These gifts were wrapped in a box and delivered to the participants’ homes beforehand and opened by them simultaneously during the ceremony. The graduation ceremony and its various components—remarks, gifts, and engagement—reflects the

57. Lorenn Walker & Leela Bilmes Goldstein, *Hawai'i's Multicultural Contexts and Victim Participants' Information Shuttled for Restorative Reentry Planning Circles*, in GLOBAL PERSPECTIVES ON VICTIMIZATION ANALYSIS AND PREVENTION 134, 142–43 (Johnson Ayodele ed., 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3572139.

58. SHADD MARUNA, MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES (Am. Psychological Ass’n ed., 2001); Barry Vaughn, *The Internal Narrative of Desistance*, 47 BRIT. J. OF CRIMINOLOGY 390, 390–404 (2006), https://www.researchgate.net/profile/Barry_Vaughan/publication/249284741_The_Internal_Narrative_of_Desistance/links/55f163d308ae199d47c251a8/The-Internal-Narrative-of-Desistance.pdf.

59. PETER DE JONG & INSOO KIM BERG, INTERVIEWING FOR SOLUTIONS (4th ed. 2012).

restorative and therapeutic rituals and symbolic features discussed by Walker and Kobayashi⁶⁰ that help reinforce success in criminal desistance.

VIII. KAPILIPONO PILOT PROGRAM EVALUATION

The five participants made major *transformations* in their attitudes and behaviors. These transformations are documented by the reentry circle plans, quarterly program goal assessments, and participants' personal narratives shared during interviews.

Each participant fulfilled all program requirements, such as attending meetings with the pretrial services officer and with the *Kapilipono* team, maintaining sobriety, and attending work or school. Such adherence, however, does not translate necessarily as evidence of transformational change. To determine whether transformational change has taken place, evidence of rehabilitation and change in character (such as the adoption of productive and prosocial behaviors, a sense of responsibility, and accountability for actions and their consequences) was scrutinized.

To assess whether rehabilitation had taken place, the traditions of *transformative learning* were considered. Mezirow defines transformative learning as:

[T]he process of effecting change in a *frame of reference*. Adults have acquired a coherent body of experience—associations, concepts, values, feelings, conditioned responses—frames of reference that define their life world. Frames of reference are the structures of assumptions through which we understand our experiences. They selectively shape and delimit expectations, perceptions, cognition, and feelings.⁶¹

TL is commonly a pedagogy for critical reflection towards individual change and self-transformation within formal educational settings and non-formal environments.⁶² It is not typically a means to systematic institutional reform, judicial, or prison reform, but assists people individually. TL can serve as an evaluative framework for informing the judicial policy and practices that serves both the individual and supports institutional capacity. The power of educational programs to assist incarcerated people make transformative changes has been identified by Behan.⁶³

60. Loreen Walker & Leslie Kobayashi, *Restorative & Therapeutic Reentry Rituals*, in OFFENDER RELEASE AND SUPERVISION: THE ROLE OF COURTS AND THE USE OF DISCRETION 351, 351–371 (Martine Herzog-Evans ed., 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2700728.

61. Jack Mezirow, *Transformative Learning: Theory to Practice*, 74 NEW DIRECTIONS FOR ADULT AND CONTINUING EDUC. 5, (1997).

62. Andrew Kitchenham, *The Evolution of John Mezirow's Transformative Learning Theory*, 6:2 J. TRANSFORMATIVE EDUC. 103, 104–23 (2008); Christian Tønseth & Ragnhild Bergsand, *Prison Education in Norway – The Importance for Work and Life After Release*, 6:1 COGENT EDUC. 1, 1–15 (2019), <https://www.tandfonline.com/doi/pdf/10.1080/2331186X.2019.1628408?needAccess=true>.

63. Cormac Behan, *Learning to Escape: Prison Education, Rehabilitation and the Potential for Transformation*, 1:1 J. PRISON EDUC. & REENTRY 20, 20–31 (2014).

IX. PARTICIPANT EVALUATION OF KAPILIPONO PILOT PROGRAM

The five *Kapilipono* participants reported major *transformation* and their assessments are supported by the *Kapilipono* team. Written documentation of the work done during the *Kapilipono* program by the participants can be found in their individual reentry circle plans, the quarterly program goal assessments, the monthly report to the *Kapilipono* team, and the final report to the judge for use at sentencing. For the purposes of this article, the *Kapilipono* participants outcomes were analyzed to see if there was evidence that rehabilitation and change in character occurred. Rehabilitation, for this article, is defined as the adoption of productive and prosocial behaviors, a sense of responsibility and accountability for actions and consequences, and the development of a sincere intrinsic motivation for personal growth and change.

To make an assessment, the traditions of *transformative learning* were applied to design and apply a combination of quantitative and qualitative methods. Mezirow defines transformative learning as:

[T]he process of effecting change in a frame of reference. Adults have acquired a coherent body of experience—associations, concepts, values, feelings, conditioned responses—frames of reference that define their life world. Frames of reference are the structures of assumptions through which we understand experiences. They selectively shape and delimit expectations, perceptions, cognition, and feelings.⁶⁴

The transformative learning conceptual framework was used to assess both the *Kapilipono* program and its participants. TL is commonly seen as a pedagogy for critical reflection towards individual change and self-transformation within formal educational settings and non-formal environments.⁶⁵ In this preliminary investigation, we look at its potential usefulness as a transdisciplinary evaluative framework and tool towards systematic institutional reform that may inform judicial policy and practices.

The educational goal of TL is for the learner to become an autonomous and responsible person and “the educator’s responsibility is to help learners reach their objectives in such a way that they will function as more autonomous, socially responsible thinkers.”⁶⁶ In describing the evolutionary development of the theory, Kitchenham provides ten phases of TL as illustrated below in Table 1.⁶⁷ This model continues to be the standard for researching the transformative process of inquiry

64. Jack Mezirow, *Transformative Learning: Theory to Practice*, 74 NEW DIRECTIONS FOR ADULT & CONTINUING EDUC. 5 (1997).

65. Alessandra Romano, *Transformative Learning: A Review of the Assessment Tools*, 5 J. TRANSFORMATIVE LEARNING 53, 53–69 (2018); Magnus Boström et al., *Conditions for Transformative Learning for Sustainable Development: A Theoretical Review and Approach*, 10 SUSTAINABILITY 4479 (2018), doi:10.3390/su10124479.

66. Magnus Boström et al., *Conditions for Transformative Learning for Sustainable Development: A Theoretical Review and Approach*, 10 SUSTAINABILITY 4479, 4487 (2018), doi:10.3390/su10124479.

67. Andrew Kitchenham, *The Evolution of Mezirow’s Transformative Learning Theory*, 6 J. TRANSFORMATIVE EDUC. 104, 104–23 (2008).

and practices for teaching.⁶⁸ TL today incorporates modern and post-modern theoretical perspectives, e.g. Constructivist, Critical Social Theory, Emancipatory Consciousness studies, etc.⁶⁹ The simplicity of this model as a conceptual framework for its heuristic value and scope of discovery is both elegant and robust. It can contribute towards interdisciplinary and transdisciplinary approaches in understanding the complexities in social justice.

Table 1: 10 Phases of Transformative Learning⁷⁰

Phase 1	A disorienting dilemma
Phase 2	A self-examination with feelings of guilt or shame
Phase 3	A critical assessment of epistemic, sociocultural, or psychic assumptions
Phase 4	Recognition that one's discontent and the process of transformation are shared and that others have negotiated a similar change
Phase 5	Exploration of options for new roles, relationships and actions
Phase 6	Planning a course of action
Phase 7	Acquisition of knowledge and skills for implementing one's plans
Phase 8	Provisional trying of new roles
Phase 9	Building competence and self-confidence in new roles and relationships
Phase 10	A reintegration into one's life on the basis of conditions dictated by one's perspective

Mezirow's near replication of the TL phases for processes applied at the individual level.

68. See *infra* Table 2.

69. EDWARD W. TAYLOR & PATRICIA CRANTON, HANDBOOK OF TRANSFORMATIVE LEARNING: THEORY, RESEARCH, AND PRACTICE 3–20 (2012).

70. Kitchenham cites the construction of this table from Mezirow. Andrew Kitchenham, *The Evolution of Mezirow's Transformative Learning Theory*, 6 J. TRANSFORMATIVE EDUC. 103, 104–23 (2008). Jack Mezirow, *Perspective Transformation*, 28 ADULT EDUC. Q. 100–10 (1978).

Table 2 Phases of Transformative Learning⁷¹

<ul style="list-style-type: none"> · A disorienting dilemma involving dissonance, discomfort, or the unexpected
<ul style="list-style-type: none"> · Self-examination · A critical assessment of assumptions · Recognition of a link between discontent and the process of change
<ul style="list-style-type: none"> · Exploration of options for new roles, relationships, and action · Planning a course of action · Acquiring knowledge and skills for implementing a new plan · Provisional trying of new roles
<ul style="list-style-type: none"> · Building competence and self-confidence in new roles and relationships · A reintegration into one's life on the basis of conditions dictated by one's perspective

X. METHODOLOGY

A qualitative method of semi-structured, open-ended questionnaires for written responses and individual recorded interviews that were transcribed for content analysis along with pre- and post-likert-scaled questions were used. The interviews of the *Kapilipono* participants were conducted individually by video teleconference and each lasted approximately one to two hours. Data reviewed also included Restorative Justice Reentry Circle Plans, the Cognitive Behavioral Therapy Quarterly Assessments, and The Change Company workbook responses, which was synchronized with the solution-focused, strength-based, goal oriented restorative justice principles that guided the CBT sessions.⁷²

The protocols followed were as follows: first, the interviews were perceived as a reflection of the participants' perspectives and experiences in the program and were used to understand the impact that the *Kapilipono* experience had on the participant to evaluate whether transformation had taken place. Second, the *Kapilipono* team and HFRJ were characterized as collaborators and co-learners in a shared goal of improving and clarifying the pilot's efficacy.

The validity of qualitative methodology and research tools (e.g., individual case study, interviews, etc.) in the social sciences has long been established in the "subjective-objective" debates and has successfully challenged traditional notions

71. JACK MEZIRROW & EDWARD W. TAYLOR, TRANSFORMATIVE LEARNING IN PRACTICE: INSIGHTS FROM COMMUNITY, WORKPLACE, AND HIGHER EDUCATION (John Wiley & Sons, 2011).

72. CHANGE CO., <https://www.changecompanies.net> (last visited Apr. 10, 2021).

of “objectivity” science-based research which we find most appropriate in assessing our pilot program.⁷³

XI. PARTICIPANTS EVALUATIONS

Overall, the participants and their views of the criminal justice system before and after participating in the *Kapilipono* program, and whether a change in perception had occurred were assessed. If a participant did experience a change in perception, then whether that change had any effect on the participant’s outcome was assessed.

Prior to participating in the *Kapilipono* program, all participants reported similar beliefs that the criminal justice system was “messed up” and “broken.”

Just looking and watching some of my other friends that was involved in the system, you know . . . I thought that their [justice system] objective was just that we’re going to put you in jail and that’s that. A lot of people served their time and come back, and they get caught up in the same shit.⁷⁴

I often thought of them as uncaring and unconcerned with us, just wanting to add numbers to their list of successful cases . . . Like you know, because some people or, oh, ah, they just want information from you or like, you know, people that tell on other people or they just want to lock you up, just throw you in, just lock you up!⁷⁵

After completing the *Kapilipono* program, the participants’ views dramatically shifted.

The fact that they worked so hard and put so much of their personal time, so the people involved in it . . . there was you involved in it and with pretrial and with the court and the prosecutors. The fact that there’s so many people on board who are monitoring progress and even gives a shit, pardon my French, but a shit about somebody who broke the law. It really, like I feel, uh, I feel maybe there’s some good people out there doing good work, and it’s not all about punishment, you know. The recognition that people, you know, can do better with support and with programs that can help people change and act and think differently. I wouldn’t have thought that that was possible. Outside of like drug rehab programs, I’ve never experienced it. I never expected to experience it with the feds, for sure.⁷⁶

I believe that the program itself is the step in the right direction. People that commit crime should be punished in some way or whatever. You

73. Gareth Morgan & Linda Smircich, *The Case for Qualitative Research*, 5 ACAD. MGMT. REV., 491, 491–92 (1980); Brian Leiter, *Law and Objectivity*, in OXFORD HANDBOOK OF JURIS. AND PHIL. L. 969, 969–89 (Jules L Coleman et al. eds., 2004).

74. Online Interview with Participant number 2 (Dec. 30, 2020) (on file with authors).

75. Online Interview with Participant number 3 (Jan. 16, 2021) (on file with authors).

76. Online Interview with Participant number 1 (Jan. 5, 2021) (on file with authors).

do the crime, you do the time, whatever. But, if there is another way than just storing people into prison, 'cause I don't think that prison will change a lot of people, most people. I think that if we went about it a different way like the program, you know, we could actually get people to change their outlook on life or change their habits, bad habits and the choices that they make in life.⁷⁷

Participants reported developing new beliefs, attitudes, habits of thinking, behaviors, and values. Specifically, they reported gaining a deeper understanding about themselves, their relations with others, and their role as a member of society. They reported feeling increased positivity about the future.

As a participant of Kapilipono I found ways to build strengths in many areas I always struggled in primarily setting boundaries and standing firm on them, being able to say no to people, situations and offers even when someone tries to make me feel guilty about refusing. Understanding it is not my responsibility to place myself in the line of fire trying to help others out of their struggles. I have learned to cut off ties and relationships with anyone that is not doing the right thing for whatever their reasons are, I realize even if I don't participate in their law breaking behavior just being around the influences can still bring my progress down and greatly endangers all the work and effort I've made. But most importantly I have learned it is not selfish to place myself ahead of anyone else. It's responsible and smart, if I allow myself to neglect areas like self-care, and my health I am no good to anyone at all. As a member to our society, I feel confident eventually I will be able to one day be a counselor or even a peer mentor, Kapilipono has taught me to believe in myself and reach out to those in place around me in times of struggles or even just to get a second opinion BEFORE [emphasis reflects subject's stress on this word] making decisions, because there is always a chance that even the best intended decisions can go south and result in profound negative impacts. There is so many skills and tools I was able to gain and put into practice I am so grateful for.⁷⁸

The non-punitive, collaborative and supportive approach used in the *Kapilipono* program and the relationship built with the *Kapilipono* team were favorably commented on. They appreciated the way that problems were handled:

Everybody in the program had some sort of hiccup [but] the way we got punished for it wasn't like: "OK, you lose your spot in the program. We gonna throw you [out]" They worked with us. Like if we missed a drug test or something. . . . Nobody in the program never gave up on any of us even when we did have our mishaps throughout the program. It was

77. Online interview with Participant number 2 (Dec. 30, 2020) (on file with authors).

78. Kapilipono Program Participants Survey from Participant number 5 (Dec. 19, 2020) (on file with authors).

nice knowing that we had them behind us a hundred percent and just they was going to be supportive of all the things that we did. You know, when we did good, they let us know. When we did bad, they make sure they got us back on track. So, I mean, that support in our favor was one big reason why I think that a lot of us wanted, tried harder, to succeed.⁷⁹

Important components of the program that the participants identified were the services and resources that assisted physical ailments, mental illness, intellectual interests, housing, and transportation needs. As a result, the participants stated that they were able to complete their chosen goals and objectives. The services identified included the Alcoholics Anonymous Program, professional mental health therapists, medical doctors, cognitive behavioral therapy, and restorative justice group meetings.

The overall support that the program, the whole team that provides for you and the amount of resources and the help that they are willing to give to you. I mean that was the biggest thing for help anybody make these changes.⁸⁰

In particular, the participants identified that devotion and care that they felt was shown by the *Kapilipono* team. The participants felt valued and that the *Kapilipono* team had their interests at heart.⁸¹ Participants felt able to confide in and talk to the *Kapilipono* team. Several were required to abandon old social networks because these associates promoted a criminal lifestyle and they conveyed that the *Kapilipono* team helped with the transition by encouraging new relationships supportive of a law-abiding lifestyle. The following comments from participants illustrate these changes:

The Supervisory U.S. Pretrial Services Officer [herein after SPSO]⁸² was very on top of making sure that everybody got emails, letting everybody know the dates, the times, of all of our meetings, our courts, and all of that stuff, so. That's why I say, the overall support that we get from everybody, especially the SPSO. The SPSO is probably one very big reason why this program succeeded this year. You know for all of us. We'd all sit there and tell you guys the same thing that the SPSO was a big part of all our changes and all of that . . . kept on top of us, and just being there for us and whatever we needed, try to help get us whatever resources she could. That alone was really big.⁸³

I had a couple of situations, things like breaking curfew at my place where I was living. The court addressed it and they put me on home monitoring house arrest. And that was hard for me, so hard for me. I

79. Online Interview with Participant number 2 (Dec. 30, 2020) (on file with authors).

80. Online Interview with Participant number 2 (Dec. 30, 2020) (on file with authors).

81. In communicating with the authors about the instant article, the pretrial staff required that the interests of the participants in the program be completely protected and come first in reporting all information about or from them here.

82. The name is protected to honor confidentiality.

83. Online Interview with Participant number 2 (Dec. 30, 2020) (on file with authors).

was miserable. I was sad, but they didn't just leave me like that. They also worked with me with the SPSO doing extra counselling with me and the service provided with [treatment program]. What came out of it was that I ended up going back to school and getting job this job that I love more than anything. So rather than, just you're in detention and you're a failure, it was ok, what are we going to do to make this better? It was really a positive change that I made. It was like, uh, lotus blossom that bloomed in mud kind of thing.⁸⁴

That was something my wife had suggested because she was doing the therapy . . . something that she brought up and I don't know, it was that instant, "Fuck I don't need that shit. I don't need that kind of help". . . anyway. But end of it all, throughout the program it was one of the best things I asked for help with. Right. Cause, like that wasn't a court order from the judge. I had asked [the SPSO] if they could help me, get, you know, refer me to one of the therapists. I like try and do this. And it worked out for me, cause like I said, it's one of the better things that's happened throughout the program, for myself.⁸⁵

. . .

I talked to my counsellor . . . I asked him about what should I do? Should I go to school? Cause I said, I really want my CSAC (Certified Substance Abuse Counselor) cause I really want to help [others] . . . I talked to the SPSO and the SPSO talked to the lady, the director that run . . . [treatment program about] me being an intern. . . . And the SPSO said, "Well, you can be an intern if you want," but you're going to have to quit your job where you was getting overtime hours, good money, and come and live as an intern on the facility, which I think they only paying them \$100 a month...and still live with a lot of rules and all that. Or you can go to [college] and start working on your CSAC through [college] . . . my counselor, he said that uh, "As much as I think you can make a good intern here at [treatment program], I'd advise you to go to [college] and to go to *Kapilipono*." And one of the good things . . . when *Kapilipono* started, it was the SPSO and one of her co-workers that helped me . . . helped me apply and fill out my application at [college]. And set up my email. But, now I can go to school and I can get my CSAC through *Kapilipono*.

You know, I think a lot and uh, yeah, . . . what I . . . came to realize that, woww, that what exactly that was and I'm grateful for it. Because you know I'm thankful because there were people that actually, you know, they saw something in me that I didn't know at the time. But it helped me get started to change my thinking and helped build me to where I'm

84. Online Interview with Participant number 1 (Jan. 5, 2021) (on file with authors).

85. Online Interview with Participant number 2 (Dec. 30, 2020) (on file with authors).

at right now. That was one of the turning points in treatment early on, you know. In this journey that I'm on.

It's like, you know, I'm about to turn 50, cause I went in when I was 48 and so why would I want to change . . . my lifestyle, I was making good money, reputation, . . . I was like on top of the pecking order of how things are on the street down there. I already lost, I kinda given up on my family already. I lost everything that is dear and near to my heart . . . so why step into the unknown, you know. Didn't make sense at all in the beginning, but then thank God you know . . . I guess you know when you're sober, you start clearing up, your conscious starts clearing up to get to think clearly. You know that always bothers me. Like I would do anything just [to] have a relationship with my kids. Yeah, that was a real strong feeling, yeah. Even though I didn't trust myself how to go about doing it? There were people that uh, there to help me along the way. And that's why I say, that I'm forever grateful about the wisdom of the courts to send me to treatment.

I lost 96 lbs in treatment. Like I said, I was a walking corpse. When they picked me up, when I went to treatment, and that was . . . the lifestyle that I lived, I never really thought about myself. And that was one of the initial struggles. Like, what I'm going to do? How am I going about doing this? I guess, that book, Man's Search for Meaning by Victor Frankl⁸⁶ best summed up that process I went through. Frankl says, uh, for those people who thinks there's nothing to live for or nothing to expect out of life. The question is for those people to realize that life is still expecting something from them. So I found that's very true. And *Kapilipono* helped solidify that for me. Yep, and as slowly as I learn about myself, making choices, and take ownership of the choices that I make, because you know I'm responsible for it. In the beginning it was like, man that's a lot of work. But (laugh) you know, something about this freedom and responsibility. I view freedom as its not free because it comes with responsibility, but I guess that's the scary thing about it. You know...when you avoid responsibility of living that means you're not taking advantage of your freedom...That's what I think I'm doing right now, you know. Risking my freedom . . . for something better. I guess this all has to do with perception and how . . . [I] view things nowadays.⁸⁷

The restorative reentry planning circle was reported by the participant as a pivotal element of the program. They expressed that the experience allowed them to make amends with loved ones and repair hurt that they caused as well as to rediscover love and respect for one another. The participants stated that the circles help with understanding how they view themselves and how their perceived

86. The facilitator from the HFRJ offered this book to all of the participants in one of the first CBT sessions.

87. Online Interview with Participant number 4 (Dec. 30, 2020) (on file with authors).

identity led to taking the wrong path in life. Explaining how one has changed supports criminal and substance abuse desistance.⁸⁸

I pushed people away, I lied a lot to them. You know, they didn't trust me. They didn't like my attitude, because, you know, me being in the situation, getting myself into trouble. I was always angry with everybody instead of saying, hey, you know, I messed up. . . . For family, I'd say, like "If you guys didn't like, if you guys did better in life and we lived in another place, I wouldn't be getting into trouble. Now we live around all these people that do drugs and things like these." So I'd blame other people and they didn't like that. I'd always be upset with them and, it made them, you know. I hurt their feelings. And especially to lose their trust, it was hurtful to me as well. So coming out of this program and knowing that I was able to make amends with the people that I wanted to. I mean I feel that I made amends with people that I didn't even care to make amends with. I mean, I know that sounds weird, but most important people in my life like my mom, my cousins, my aunties and uncles. After that, . . . the reentry, or the circle? Yeah, having my mom there and letting her know how I really felt. Because it was like, I apologized to her but I didn't apologize to her, so for her to actually hear me out and we were able to get past that, you know, it was really to have her hear me out. It was just an amazing feeling. And after that I was able to sit down and talk with my cousins and other family members and friends, and let them know, you know. I don't like the person that I was. I didn't like how I treated you guys, and I knew you guys didn't deserve to be treated that way, especially for something that I did. So making amends and knowing that I'm earning everyone's trust back, it feels really . . . it feels amazing.

So then after sitting down and sharing with my mom and talking to her you know. It's like she always tells me, you know, like, "I understand what you did," you know, I mean, it's a lot. You know, I mean, it's not like I took someone's bicycle, and just road off with it, you know. It's like I actually broke the law, something more major, something more bigger than that. So I feel like, I mean, you know she would just tell me she cares about me. So that's the thing that helped me. So after *Kapilipono*, after we did that circle, the family circle and having to share, you know, with my mom and things like that. Just hearing that, having that reassurance, knowing that everything is going to be ok and that no matter what, you know, she was going to be there for me and you know that she still cared about me, just like other family members and friends. I mean yeah, I feel like that helped me a lot . . . when we were able to I don't know how to explain it, but yeah, it just helped me a lot knowing that, I still had everyone, the people that I love by my side. And

88. SHADD MARUNA, MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES 30 (2000).

then having *Kapilipono* and my peers and all you guys by my side, it was really helpful for me.

I was like crying to my mom. I was like, you know, if I didn't care, I wouldn't cry. But this *Kapilipono*, they really like did something, they touched me. You know they touched my heart and I feel like when I was at my lowest, you know, I didn't ever think that someone or a bunch of people could just, you know, just uplift me, just, you know, I don't know, you guys had my back.⁸⁹

The participants at the onset of the program set and wrote down goals for themselves and progress toward attainment that was evaluated in writing each quarter. Some of the goals participants set at the beginning of the program included repairing damaged relationships with loved ones, attending college to earn a degree, obtaining and maintaining employment, regaining custody of their children, improving physical and emotional health, and moving into a home with loved ones. By the conclusion of their participation in *Kapilipono*, the participants had attained these goals and many more.

Transformative learning requires critical reflection of one's assumptions and frames of reference that determine beliefs, values, attitudes, ways of behaving and thinking, and the steps needed for making positive change. This reflection is central to the participants being able to grasp of their past behavior and to be able to move forward in their lives. Based on the subjective self-assessments about change given by the participants and the objective completion of their chosen goals, the *Kapilipono* participants have demonstrated that transformative learning affirmatively took place as a result of their participation in the program.

XII. MAGISTRATE JUDGE'S EVALUATION OF KAPILIPONO PILOT PROGRAM

Judge Trader, who presided over the *Kapilipono* court, stated:

I was impressed with not only how participants embraced the opportunity to improve their lives, but more importantly, how they were able to put into practice the lessons and tools they were learning. They clearly were not simply "complying" with program requirements but were instead thinking and behaving differently. Notably, since they each have no guarantee that anything they do in the program will benefit them at sentencing, it seems evident that they are doing so because they truly want to change and improve their lives.⁹⁰

The judge believed one of the best things about the pilot was:

Collaboration and cooperation amongst team members are very important. In addition, while individual participants are responsible for meeting their own goals, it is incredibly important that they also view themselves as part of a group (fellow participants). They learn not only

89. Online Interview with Participant number 3 (Jan. 16, 2021) (on file with authors).

90. Interview with Judge R. Trader, Magistrate Judge (Dec. 31, 2020) (on file with authors).

from their own mistakes and achievements, but also from those of the other participants. They see that no one is perfect and people do have lapses in judgment and make mistakes. More importantly, however, they realize it is how they deal with it and what they can do to avoid it in the future that counts.⁹¹

Finally, he suggested improvements to the pilot program:

Currently screening criteria is too restrictive. This combined with USAO's [United States Attorney Office] consideration of additional factors not specified as program criteria, such as, whether the offender received a plea agreement, further restricts those eligible for the program. The end result is only very low-risk offenders being eligible for the program. Revising screening criteria to permit consideration of moderate-risk offenders would be a much better test of program goals and use of program resources.⁹²

In short, the magistrate judge and the participants separately expressed subjective belief that the *Kapilipono* program was a positive and transformative experience. The quarterly goal reports reflect objective evidence of transformative change in that the participants chose and met goals that reflect substantial change in prior behavior and support a prosocial, law-abiding lifestyle.

XIII. CONCLUSION

The *Kapilipono* program provides an opportunity to engage in recovery programming and restorative justice practices to individuals charged with serious federal criminal offenses under the supervision of a specialty court. As of this writing, none of the five individuals in the first *Kapilipono* program have been sentenced. It is unknown to what effect, if any, each participant's success in the *Kapilipono* program may have in reducing their incarceration.

Evaluation of the initial *Kapilipono* participants reveals evidence that each experienced transformative learning based on their subjective reports of satisfaction with personal change experienced after participating in the program, and the objective changes seen in behavior and attainment of stated goals. The accomplishments noted by the *Kapilipono* team reflects a level of rehabilitation that surpassed the *Kapilipono* program's listed requirements, such as engaging in productive activity, developing prosocial peer networks, removing barriers to a law-abiding life, maintaining sobriety, and participating in treatment.⁹³

An optimal use of the *Kapilipono* program would be (1) to reduce the limitations on who qualifies in order to accept more applicants so that the resources of the *Kapilipono* program are more extensively and effectively used; and (2) to incorporate a pretrial diversion component in which a participant, based on the

91. *Id.*

92. *Id.*

93. District of Hawai'i United States District Court, *Kapilipono* Program Operating Procedures, 1–13 (2019) (unpublished).

extent of rehabilitation and success achieved after completing the program, could be considered for dismissal of criminal charges or a recommendation by the prosecution against a term of incarceration. Otherwise, the *Kapilipono* program is not truly an Alternative to Incarceration. Furthermore, either suggestion would move the program closer to the program's intent and the aspirational meaning of its name: *Kapilipono*: to repair and to do justice.