

RESTORATIVE JUSTICE IN THE TWENTY-FIRST CENTURY: A SOCIAL MOVEMENT FULL OF OPPORTUNITIES AND PITFALLS

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I. INTRODUCTION

A burglary victim comes face-to-face with the young offender and his father. She is able to express the full impact of the crime, get answers to many questions, and help develop a plan to repair the harm. Her involvement in this community-based victim-offender mediation program leads to a deep sense of satisfaction, fairness, and ability to move on with her life. Meeting his victim has a huge impact on the young offender and leads to his getting his life in order and staying out of further criminal activity.

A family group conference is convened to allow the parents of the young offender who vandalized a home in the neighborhood to meet the victim's family. Several other support people are present as well. Together, along with the young offender, they talk about the impact of the crime on their lives and the community, and they develop a plan to repair the harm. All involved feel good about the process, believing it to be a very practical way of holding this young person accountable.

In response to a racial incident, a group of thirty community members, including both victims and offenders, come together in a peacemaking circle to openly discuss what led up to this crime, its impact on the community, the need for greater understanding and tolerance among diverse community members, and a detailed plan for both repairing the harm and meeting several more times to foster healing within the community.

Juvenile offenders appear before neighborhood accountability boards or community justice conferences to discuss the impact of the crime with members of the community who will determine, in coordination with the probation department, specific requirements that address the need for accountability, victim reparation, and competency development within their own lives.

Local and national justice systems and corrections departments, along with victim advocates and community members, develop policies and practices to be more responsive to the needs of crime victims and the community, while providing increasing opportunities for both juvenile and adult offenders to be actively involved in repairing the harm and increasing their victim empathy and skills for becoming productive members of the community.

In their quest for meaning and healing following the death of their loved ones, surviving family members of homicide victims from both criminal and political violence are seeking to meet the offenders

through restorative dialogue opportunities in North America, Europe, Israel, Palestine, South Africa, and other parts of the world.

These stories of finding hope, meaning, and healing in the process of creating justice and promoting accountability are representative of an important social reform movement that has been developing throughout the world over the past thirty years. The movement has spawned thousands of individual programs in many countries, has led to a rising number of system-wide policies across various components of many justice systems, and increasingly has gained the attention of scholars throughout the world. In addition to a growing number of books devoted to the topic, more than 750 articles in law journals and hundreds more in other related journals have addressed restorative justice. The scholarly discussion rests on a rapidly expanding database from studies in both the United States and abroad examining the process and outcome of restorative responses. Clearly, restorative justice has become a social movement that impacts the way we understand and respond to crime and conflict in diverse communities throughout the world.

This Article provides an overview of the restorative justice movement in the twenty-first century. In Section II we offer a summary of the movement's distinguishing characteristics, its history and development, and what it looks like in practice. Section III is focused on restorative justice dialogue, the most widely practiced and extensively researched modality of the restorative justice movement. We present a review of current restorative justice dialogue research and an examination of public policy support for such dialogue across the United States. In Section IV we turn to continuing issues, including pitfalls, opportunities, and questions for the future.

II. OVERVIEW OF RESTORATIVE JUSTICE

A. Distinguishing Characteristics

Most contemporary criminal justice systems focus on law violation, the need to hold offenders accountable and punish them, and other state interests. Actual crime victims are quite subsidiary to the process and generally have no legal standing in the proceedings. Crime is viewed as having been committed against the state, which, therefore, essentially owns the conflict and determines how to respond to it. The resulting criminal justice system is almost entirely offender driven.

Restorative justice offers a very different way of understanding and responding to crime. Instead of viewing the state as the primary victim in criminal acts and placing victims, offenders, and the community in passive roles, restorative justice recognizes crime as being directed against individual people. It is grounded in the belief that those most affected by crime should have the opportunity to become actively involved in resolving the conflict. Repairing harm and restoring losses, allowing offenders to take direct responsibility for their actions, and assisting victims to move beyond vulnerability towards some degree of closure stand in sharp contrast to the values and practices of the conventional criminal justice system with its focus on past criminal behavior through ever-increasing levels of punishment.

Within the English-speaking world, roots of the prevailing focus on harm to the state can be traced back to eleventh-century England.¹ Following the Norman invasion of Britain, a major paradigm shift occurred in which there was a turning away from the well-established understanding of crime as a victim-offender conflict within the context of community.² William the Conqueror's son, Henry I, issued a decree securing royal jurisdiction over certain offenses (robbery, arson, murder, theft, and other violent crimes) against the King's peace.³ In the years preceding this decree, crime had been viewed as conflict between individuals, and an emphasis upon repairing the damage by making amends to the victim was well established.

Restorative justice values, principles, and practices hearken back to such earlier paradigms, not only in British and American history, but also in numerous indigenous cultures throughout the world.⁴ Among these are many Native American tribes within the United States, the Aboriginal or First Nation people of Canada, the Maori in New Zealand, Native Hawaiians, African tribal councils, the Afghani practice of jirga, the Arab or Palestinian practice of Sulha, and many of the ancient Celtic practices found in the Brehon laws.⁵

In addition, the values of restorative justice are deeply rooted in the ancient principles of Judeo-Christian culture that have always emphasized crime as being a violation against people and families,

1. DANIEL VAN NESS & KAREN HEETDERKS STRONG, RESTORING JUSTICE 10 (1997).

2. *Id.*

3. Thomas Quinn, *Restorative Justice: An Interview with Visiting Fellow Thomas Quinn*, 235 NAT'L INST. JUST. J. 10, 11 (1998).

4. HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 19-20 (2002) [hereinafter ZEHR, LITTLE BOOK].

5. *Id.* at 11; Quinn, *supra* note 3, at 11.

rather than “the state.”⁶ Many biblical examples are found in both the Old and New Testaments setting forth the responsibility of offenders to directly repair the harm they caused to individuals, harm that has created a breach in the “Shalom community.”⁷

The most succinct definition of restorative justice is offered by Howard Zehr, whom many consider the leading visionary and architect of the restorative justice movement.⁸ His seminal book, *Changing Lenses*,⁹ provided the conceptual framework for the movement and has influenced policy makers and practitioners throughout the world. According to Zehr, “Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”¹⁰

Instead of focusing upon the weaknesses or deficits of offenders and crime victims, restorative justice attempts to draw upon the strengths of these individuals and their capacity to openly address the need to repair the harm caused. Restorative justice denounces criminal behavior yet emphasizes the need to treat offenders with respect and to reintegrate them into the larger community in ways that can lead to lawful behavior.

From a restorative perspective, the primary stakeholders are understood to be individual victims and their families, victimized communities, and offenders and their families. The state and its legal justice system also clearly have an interest as a stakeholder but are seen as more removed from direct impact. Thus the needs of those most directly affected by the crime come first. Wherever possible, opportunities for direct engagement in the process of doing justice through various forms of dialogue are central to the practice of restorative justice.

Like many reform movements, in its early years the restorative justice movement focused on contrasting its values and principles with those of the status quo. The phrase “retributive justice” emerged to describe the conventional criminal justice system approach, particularly regarding its emphasis on offenders getting what they deserved.¹¹

6. HOWARD ZEHR, *CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE* 130 (1990) [hereinafter ZEHR, *CHANGING LENSES*].

7. See generally ZEHR, *LITTLE BOOK*, *supra* note 4.

8. *Id.*

9. ZEHR, *CHANGING LENSES*, *supra* note 6.

10. ZEHR, *LITTLE BOOK*, *supra* note 4, at 37.

11. MARK UMBREIT, *VICTIM MEETS OFFENDER: THE IMPACT OF RESTORATIVE*

Following more than twenty-five years of practice, research, and continuing analysis, Zehr has come to a different understanding, stating that such a sharp polarization between retributive and restorative justice is somewhat misleading.¹² The philosopher of law, Conrad Brunk, argues that on a theoretical level, retribution and restoration are not the polar opposites that many assume.¹³ He notes that both actually have much in common: a desire to vindicate by some type of reciprocal action and some type of proportional relationship between the criminal act and the response to it.¹⁴ Retributive theory and restorative theory, however, differ significantly in how to “even the score”—how to make things right.¹⁵ Retributive theory holds that the imposition of some form of pain will vindicate, most frequently deprivation of liberty and even loss of life in some cases. Restorative theory argues that “what truly vindicates is acknowledgement of victims’ harms and needs, combined with an active effort to encourage offenders to take responsibility, make right the wrongs, and address the causes of their behavior.”¹⁶

Even so, Zehr notes that restorative justice can be contrasted with conventional criminal justice along at least four key variables:¹⁷

Criminal Justice	Restorative Justice
Crime is a violation of the law and the state.	Crime is a violation of people and relationships.
Violations create guilt.	Violations create obligations.
Justice requires the state to determine blame (guilt) and impose pain (punishment).	Justice involves victims, offenders, and community members in an effort to put things right.
Central focus: <i>offenders getting what they deserve.</i>	Central focus: <i>victim needs and offender responsibility for repairing harm.</i>

JUSTICE AND MEDIATION 2-4 (1994) [hereinafter UMBREIT, VICTIM MEETS OFFENDER].

12. ZEHR, LITTLE BOOK, *supra* note 4, at 58.

13. *Id.* at 58 (citing CONRAD BRUNK, SPIRITUAL ROOTS OF RESTORATIVE JUSTICE: RESTORATIVE JUSTICE AND THE PHILOSOPHICAL THEORIES OF CRIMINAL PUNISHMENT (Michael L. Hadley ed., 2001)).

14. *Id.*

15. *See id.* at 59.

16. ZEHR, LITTLE BOOK, *supra* note 4, at 59.

17. *Id.* at 21.

The conventional criminal justice system focuses upon three questions: (1) What laws have been broken?; (2) Who did it?; and (3) What do they deserve? From a restorative justice perspective, an entirely different set of questions are asked: (1) Who has been hurt?; (2) What are their needs?; and (3) Whose obligations are these?¹⁸

Restorative justice is not a list of specific programs or a clear blueprint for systemic change. It requires a radically different way of viewing, understanding, and responding to the presence of crime within our communities. Thus, an increased interest is emerging in addressing the broader, system-level implications of restorative justice principles. Among others, Braithwaite speaks of restorative justice with these larger dimensions in mind, emphasizing that restorative justice is far more than reforming the criminal justice system. It offers a way of transforming the entire legal system, while also impacting family life, workplace behavior, and even political conduct. Braithwaite's vision of restorative justice is nothing less than changing the way we do justice in the world.¹⁹

Whether at the level of system-wide interventions or in individual programs, we are working toward restorative justice when our work meets the following criteria:

1. focus on the harms of wrongdoing more than the rules that have been broken;
2. show equal concern and commitment to victims and offenders, involving both in the process of justice;
3. work toward the restoration of victims, empowering them and responding to their needs as they see them;
4. support offenders while encouraging them to understand, accept, and carry out their obligations;
5. recognize that while obligations may be difficult for offenders, they should not be intended as harms, and they must be achievable;
6. provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate;
7. involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to community bases of crime;
8. encourage collaboration and reintegration rather than coercion and isolation;

18. *Id.*

19. See JOHN BRAITHWAITE, CRIME, SHAME AND REINTEGRATION 17-26 (1989).

9. give attention to the unintended consequences of our actions and programs; and
10. show respect to all parties including victims, offenders, and justice colleagues.²⁰

B. History and Development

In the mid- to late-1970s, restorative justice principles and its precursor, victim-offender reconciliation, were advocated by a small and scattered group of community activists, justice system personnel, and a few scholars in both North America and Europe.²¹ Though these advocates began establishing connections with one another, they remained largely on the margins of the criminal justice system as a whole and were not initially connected with efforts to reform the system. Few of those involved in the early years would have ever thought their passionate yet modest efforts to promote restorative justice would trigger a widespread social reform movement with international impact.

In its more than a quarter century of development, the restorative justice movement has gone through a number of stages quite similar to other social movements. The mid-1970s marked the birthing phase of what would become known as the restorative justice movement. The “child” of this birthing process was the first Victim Offender Reconciliation Program (“VORP”) in Kitchener, Ontario, in 1974.²² From the late 1970s to the early 1980s, a number of experimental programs based on restorative justice principles and modeled after the Kitchener program were initiated in several jurisdictions in North America and Europe, with the first VORP in the United States located in Elkhart, Indiana, in 1978.²³

Through the mid-1980s, in many jurisdictions, restorative justice initiatives remained small in size and number and continued to have little impact on the larger system. Few criminal justice officials viewed such programs as a credible component of the system. From the mid-

20. Howard Zehr & Harry Mika, *Fundamental Concepts of Restorative Justice*, 1 CONTEMP. JUST. REV. 47, 54-55 (1998).

21. EDMUND F. MCGARREL ET AL., RETURNING JUSTICE TO THE COMMUNITY: THE INDIANAPOLIS JUVENILE RESTORATIVE JUSTICE EXPERIMENT 48 (2000).

22. Dean E. Peachey, *The Kitchener Experiment*, in MEDIATION & CRIMINAL JUSTICE 14, 14-16 (Martin Wright & Burt Galaway eds., 1989).

23. Mark S. Umbreit, *Mediation of Victim Offender Conflict*, 1988 J. OF DISP. RESOL. 85, 85-87 (1988) [hereinafter Umbreit, *Mediation*].

1980s to the mid-1990s, the movement slowly began to be recognized in many communities as a viable option for interested crime victims and offenders, though still impacting a very small number of participants. England initiated the first state supported Victim Offender Mediation Programs (“VOM”) during this period.²⁴

In 1994 the American Bar Association (“ABA”) endorsed victim-offender mediation.²⁵ This followed a yearlong study and considerable skepticism over the previous years.²⁶ The ABA recommended the use of victim-offender mediation and dialogue in courts throughout the country and also provided guidelines for its use and development.²⁷ Specific guidelines emphasized in the ABA endorsement included that participation by both offenders and victims be entirely voluntary, that offenders not incur adverse repercussions, and that statements and information shared be inadmissible in criminal or civil court proceedings.²⁸

Victim organizations were initially skeptical about victim-offender dialogue and other restorative justice initiatives in part because of the early history of focusing on offenders and their needs. However, in 1995, the National Organization for Victim Assistance (“NOVA”) endorsed the principles of restorative justice by publishing a monograph entitled *Restorative Community Justice: A Call to Action*.²⁹ As dialogue programs and other restorative initiatives continue to demonstrate a strong commitment to the needs and wishes of crime victims, victim organizations are increasingly supportive.

The movement began to enter the mainstream in some local and state jurisdictions beginning in the mid-1990s, a development that has led to mixed consequences.³⁰ On the one hand, recognition by and active collaboration with the formal justice system is vital to

24. Tony F. Marshall, *Results of Research from British Experiments in Restorative Justice*, in CRIMINAL JUSTICE, RESTITUTION, AND RECONCILIATION 83, 83-86 (Burt Galaway & Joe Hudson eds., 1990).

25. Criminal Justice Policy on Victim-Offender Mediation/Dialogue, 1994 A.B.A. Res., available at <http://www.vorp.com/articles/abaendors.html>.

26. *Id.*

27. *See id.*

28. *Id.* at 6-8.

29. MARLENE A. YOUNG, RESTORATIVE COMMUNITY JUSTICE: A CALL TO ACTION (1995).

30. Mark S. Umbreit, *Avoiding the Marginalization and “McDonaldization” of Victim-Offender Mediation: A Case Study in Moving Toward the Mainstream*, in RESTORATIVE JUVENILE JUSTICE: REPAIRING THE HARM OF YOUTH CRIME 213, 214 (Gordon Bazemore & Lode Walgrave eds., 1999) [hereinafter Umbreit, *Avoiding the Marginalization*].

implementing the underlying vision of restorative justice. On the other, such widespread growth and impact has made the movement increasingly vulnerable to being co-opted by the very justice systems that were initially so critical of its existence. We will examine this issue in more detail in our concluding section.

Restorative justice policies and programs are known today to be developing in nearly every state and range from small and quite marginal programs in many communities to a growing number of state and county justice systems that are undergoing major systemic change.³¹ Examples of such systemic change initiatives are occurring in the states of Arizona, California, Colorado, Illinois, Iowa, Minnesota, New York, Ohio, Oregon, Pennsylvania, Texas, Vermont, and Wisconsin.³²

Restorative justice is also developing in many other parts of the world, including Australia, Canada, numerous European countries, Japan, New Zealand, South Africa, several South American countries, South Korea, and Russia.³³ The United Nations, the Council of Europe, and the European Union have been addressing restorative justice issues for a number of years.³⁴ Meeting in 2000, the United Nations Congress on Crime Prevention considered restorative justice in its plenary sessions and developed a draft proposal for *UN Basic Principles on the Use of Restorative Justice Programs in Criminal Matters*.³⁵ The proposed principles encourage the use of restorative justice programming by member states at all stages of the criminal justice process, underscore the voluntary nature of participation in restorative justice procedures, and recommend beginning to establish standards and safeguards for the

31. MARK S. UMBREIT, *THE HANDBOOK OF VICTIM OFFENDER MEDIATION: AN ESSENTIAL GUIDE TO PRACTICE AND RESEARCH xxx-xxxii* (2001); Jean E. Greenwood & Mark S. Umbreit, *National Survey of Victim Offender Mediation Programs in the US*, VOMA CONNECTIONS, Winter 1998, at 1, 7, 9-11, available at <http://www.voma.org/docs/connect1/connect1.pdf>.

32. Greenwood & Umbreit, *supra* note 31, at 1, 7, 9-11.

33. ZEHR, LITTLE BOOK, *supra* note 4, at 4; Gordon Bazemore & Lode Walgrave, *Introduction: Restorative Justice and the International Juvenile Justice Crisis*, in *RESTORATIVE JUVENILE JUSTICE: REPAIRING THE HARM OF YOUTH CRIME*, *supra* note 30, at 1-2; Daniel W. Van Ness, *The Shape of Things to Come: A Framework for Thinking About a Restorative Justice System*, in *RESTORATIVE JUSTICE: THEORETICAL FOUNDATIONS 1* (Elmar G.M. Weitekamp & Hans-Jürgen Kerner eds., 2002).

34. *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, ESCO Res. 2000/14 U.N. Doc. E/2000 (July 27, 2000), available at <http://www.library.dal.ca/law/Guides/RestPathfinder/RestorativeDeclarationpdf.pdf>; Council of Europe Committee of Ministers, *Mediation in Penal Matters*, Recommendation No. R(99)19 (Sept. 15, 1999).

35. *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, *supra* note 34.

practice of restorative justice.³⁶ This proposal was adopted by the United Nations in 2002.³⁷ The Council of Europe was more specifically focused on the restorative use of mediation procedures in criminal matters, and it adopted a set of recommendations in 1999 to guide member states in using mediation in criminal cases.³⁸ In 2001, the European Union adopted a policy in support of “penal mediation,” otherwise known as victim-offender mediation.³⁹ This policy stated that member states (nations) of the European Union should promote mediation in criminal cases and integrate this practice into their laws by 2006.⁴⁰

European nations have clearly outpaced American policy development and implementation in support of restorative justice practices, with Austria having established the first national policy commitment in the world to broad implementation of victim-offender mediation in 1988.⁴¹ Numerous other European countries have now made strong policy commitments to restorative justice and, particularly, victim-offender mediation. Germany has an exceptionally broad and large commitment to victim-offender mediation, with more than 468 programs and 13,600 cases referred annually.⁴² Other European countries that have developed local victim-offender mediation programs or national initiatives include the following: Denmark, Finland, Sweden, Ireland, the Netherlands, Luxembourg, Switzerland, Albania, Slovenia, Romania, Poland, Bulgaria, Italy, Spain, and Ukraine.⁴³ England is currently going far beyond a focus just on VOM, with a national policy recommendation to implement restorative justice policies and practices throughout the country.⁴⁴

In contrast to many previous criminal justice reform movements, the restorative justice movement has major implications for system-wide change in how justice is done in democratic societies. While initiating restorative justice interventions such as victim-offender mediation,

36. *See id.*

37. *See id.*

38. Council of Europe Committee of Ministers, *supra* note 34, at 5-6.

39. Council Decision 2001/220/JHA, Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings, 2001 O.J. (L 82) 1, 1.

40. *See generally id.*

41. Van Ness, *supra* note 33, at 1.

42. Tony Peters, *Victim-Offender Mediation: Reality and Challenges*, in VICTIM-OFFENDER MEDIATION IN EUROPE 9, 9-10 (Eur. Forum for VOM & Rest. Just. ed., 2000).

43. *Id.*

44. Restorative Justice: The Government's Strategy (July 22, 2003), <http://www.homeoffice.gov.uk/documents/rj-strategy-consult.pdf>.

family group conferencing, restorative community service, victim panels, and other forms of victim-offender dialogue or neighborhood dispute resolution, restorative justice places a heavy emphasis upon systemic change. In the United States, a study completed in 2000 found that at least nineteen states had passed legislation promoting a more balanced and restorative juvenile justice system.⁴⁵ Additional studies found that twenty-nine states have specific state statutes promoting victim-offender mediation, a hallmark of restorative justice.⁴⁶ There are individual restorative justice programs in virtually every state of America, and a growing number of states and local jurisdictions are dramatically changing their criminal and juvenile justice systems to adopt the principles and practices of restorative justice.⁴⁷

C. Restorative Justice in Practice

A wide range of restorative justice practices, programs, and policies are developing in communities throughout the United States and abroad. In this section, we briefly describe several different examples, followed by a more detailed presentation of a system-wide change effort.

1. Program Examples

In Orange County, California, a victim-offender mediation and conferencing program receives nearly one thousand referrals of juvenile offenders and their victims each year.⁴⁸ This program is supported by a large government grant and provides much needed support, assistance, and restoration for victims of crime, while also holding these young people accountable to their communities.⁴⁹ By diverting these cases

45. SANDRA O'BRIEN, RESTORATIVE JUVENILE JUSTICE IN THE STATES: A NATIONAL ASSESSMENT OF POLICY DEVELOPMENT AND IMPLEMENTATION 1, <http://www.fau.edu/barj/survey.pdf> (last visited December 12, 2005).

46. Elizabeth Lightfoot & Mark S. Umbreit, *An Analysis of State Statutory Provisions for Victim-Offender Mediation*, 15 CRIM. JUST. POL'Y REV. 418, 420 (2004) [hereinafter Lightfoot & Umbreit, *State Statutory Provisions*]; Mark S. Umbreit, Elizabeth Lightfoot & Johnathan Fier, *Legislative Statutes on Victim Offender Mediation: A National Review*, 15 VOMA CONNECTIONS, Fall 2003, at 5, available at <http://www.voma.org/docs/connect15.pdf> [hereinafter Umbreit, Lightfoot & Fier, *Legislative Statutes*].

47. See O'BRIEN, *supra* note 45, at 4.

48. See Mike Niemeyer & David Shichor, *A Preliminary Study of a Large Victim/Offender Reconciliation Program*, 60 FED. PROBATION 30, 31 (1996).

49. *Id.* at 32.

from further penetration into the justice system, if the victim's needs are met, the county also benefits from a significant cost reduction in the already overcrowded court system. The program in Orange County is part of a much larger network of more than 1500 victim-offender mediation and conferencing programs in seventeen countries, working with both juvenile and adult courts.⁵⁰

In several United States cities, prosecuting attorney offices routinely offer choices for victims of crime to actively participate in the justice system, to participate in restorative dialogue with the offender and others affected by the crime, and to meet whatever other needs these individuals are facing. A program in Indianapolis works closely with the police department in offering family group conferencing services in which young offenders and their families meet the individuals they have victimized and work toward repairing the harm, resulting in a significant reduction in recidivism among these offenders.⁵¹

Another dialogue-based format was creatively used in Eugene, Oregon, following a hate crime against the local Muslim community that occurred within hours of the September 11 attacks.⁵² The prosecutor's office gave the victimized representatives of the Muslim community a choice of either following the conventional path of prosecution and severe punishment or the restorative justice path of participating in a neighborhood accountability board including face-to-face conversations with the offender and others in the community who were affected by this crime.⁵³ The victims elected to meet in dialogue; together they were able to talk openly about the full impact of this hate crime and to develop a specific plan to repair the harm and promote a greater sense of tolerance and peace within the community.⁵⁴

In several jurisdictions, restorative justice procedures are being used to enable ethnic communities to access elements of their traditional means of handling infractions and breaches of trust among themselves. The Hmong peacemaking circles in St. Paul, Minnesota, receive referrals from local judges in cases involving Hmong participants so that the offense is handled in a more culturally appropriate way that fosters

50. *See id.*

51. MCGARRETT ET AL., *supra* note 21, at 48-49.

52. *See generally* Mark Umbreit, Ted Lewis & Heather Burns, *A Community Response to a 9/11 Hate Crime: Restorative Justice through Dialogue*, 6 CONT. JUST. REV. 383, 383-391 (2003), available at http://www.hrusa.org/workshops/humphrey/workshop/PublicForum/Community%20Response%20to%20a%209_11%20Hate%20Crime.pdf.

53. *Id.* at 386.

54. *Id.* at 390.

peacemaking and accountability.⁵⁵ In Canada, aboriginal groups are utilizing the circle format of restorative justice dialogue to handle a wide range of offenses within the community.⁵⁶

Restorative justice dialogue responses are increasingly being offered to victims of severe and violent crime, driven by requests from victims for such opportunities. Departments of corrections in Texas, Ohio, Pennsylvania, and several other states have initiated statewide victim-offender mediation and dialogue programs through their victim services units.⁵⁷ In such programs, victims of severe violence, including homicide, meet in facilitated dialogue with the offenders who have harmed them as part of their search for meaning and some measure of closure in the wake of trauma. A retired Wisconsin Supreme Court Justice facilitates dialogue groups in a state prison among prisoners and with several victims of severe violence in an effort to ingrain the full human impact of the prisoners' behavior upon victims and their communities.

Most recently, restorative practices are emerging as part of the healing process for victims of political violence. The Truth and Reconciliation Commission hearings in South Africa were established to foster national healing in the wake of severe violent political conflict as the apartheid system of racial segregation and oppression was dismantled.⁵⁸ A victim-offender mediation was held in Israel between two Israeli-Palestinian youth and a young Israeli mother who had been assaulted and robbed; families of both the offenders and the victim were involved. Both the Jewish and the Palestinian communities actively participated and forged a path toward greater understanding, accountability, and mutual respect. And in the last few years, a former prisoner who was an icon of the Irish Republican Army ("IRA") movement in Northern Ireland met face-to-face with the daughter of one of the men he killed in their joint search for greater understanding, meaning, and peace in their lives.

55. Hannah Allam, *Sentencing Circle Aims to Rebuild Lives*, ST. PAUL PIONEER PRESS, Mar. 2, 2002, at 12A.

56. Thérèse Lajeunesse & Assocs. Ltd., *Evaluation of Community Holistic Circle Healing*, HOLLOW WATER FIRST NATION, Apr. 2, 1996, at 37-38.

57. MARK S. UMBREIT, BETTY VOS, RONALD B. COATES & KATHERINE A. BROWN, *FACING VIOLENCE: THE PATH OF RESTORATIVE JUSTICE DIALOGUE* 14 (2003) [hereinafter UMBREIT, VOS, COATES & BROWN, *FACING VIOLENCE*].

58. AMANDA DISSEL, *RESTORING THE HARMONY: A REPORT ON A VICTIM OFFENDER CONFERRING PILOT PROJECT* 9, 12 (2000), available at <http://www.csvr.org.za/papers/papvoc1.htm>.

2. Systemic Change Examples

As many advocates point out, restorative justice is a process, not a program. Therefore, some proponents are hopeful that a restorative justice framework can be used to foster systemic change, and such changes are beginning to occur. For example, within Minnesota, the State Department of Corrections established a policy to handle letters of apology by prisoners to their victims in a highly restorative and victim-centered manner. It encouraged and assisted prisoners who wanted to write such letters. The letters were then deposited in a victim apology letter bank in the central office for viewing by the prisoners' victims who were willing to read the letters.⁵⁹

Broad systemic change initiatives have been undertaken in a number of other countries. For example, in 1988 Austria adopted federal legislation that promoted the use of victim-offender mediation throughout the country.⁶⁰ In 1989 legislation was adopted in New Zealand that totally restructured its youth justice system based on the traditional practices of its indigenous people, the Maori, and principles consistent with restorative justice.⁶¹ The largest volume of youth justice cases now go to family group conferences, rather than to court. This change has resulted in a significant reduction in both court cases and incarcerations, with no evidence of increased recidivism.⁶² And a nationwide systemic change effort has been undertaken in the United Kingdom through its policy commitment to adopt restorative justice principles and practices throughout the country.⁶³ These changes are focused on increased participation by crime victims, youth accountability boards, and different forms of victim-offender mediation and dialogue.

Washington County Court Services near St. Paul, Minnesota, is one of few jurisdictions in the United States that has explicitly undertaken system-wide change through adopting policies informed by restorative justice principles. Here, we summarize data gathered from a more

59. Interview with Tim Hansen, Restorative Justice Planner, Minnesota Dep't of Corrections, in St. Paul, Minn. (Sept. 13, 2005).

60. Van Ness, *supra* note 33, at 1.

61. Lee Kathleen Daly, *Conferencing in Australia and New Zealand: Variations, Research Findings, and Prospects*, in RESTORATIVE JUSTICE FOR JUVENILES: CONFERENCING, MEDITATION & CIRCLES 59, 61 (Allison Morris & Gabrielle Maxwell eds., 2001).

62. *Id.*

63. Van Ness, *supra* note 33, at 2.

extensive study in which we interviewed key system and community decision makers to document the change process and gather participant assessments regarding significant changes made.⁶⁴

Often reform efforts in criminal justice are prompted by a crisis, a jail riot, or an offender suicide, for example. This was not the case in Washington County. Instead, key leaders built upon long established relationships among criminal justice professionals and with community groups.⁶⁵ The county was one of the first to opt into the Community Corrections Act passed in 1973, giving counties more administrative control and resources for developing community based programs for offenders.⁶⁶ Key leaders in the 1990s had grown professionally under a community-based banner, which provided them with a philosophy that shared some common ground with restorative justice principles and a history of working with community groups.⁶⁷

A restorative justice frame brought victim issues into focus. Although planners point out that this reform effort did not begin with rewriting the mission statement because they did not want to get bogged down, there was an explicit broadening of the mission to include victims along with offenders and community.⁶⁸ Impacting offenders, victims, and community provided a foundation for thinking and doing from writing case reports to assessment to new program development.⁶⁹

The director of court services often used a “seed planting” metaphor when talking about change strategies.⁷⁰ To that end, considerable time was spent on education and training.⁷¹ Likewise, seeds were planted through one-on-one conversations and relationship building.⁷² Mutual respect and relationship building were identified by most of the

64. See generally ROBERT B. COATES, MARK S. UMBREIT & BETTY VOS, RESTORATIVE JUSTICE CIRCLES IN SOUTH SAINT PAUL, MINNESOTA (2000), available at <http://2ssw.che.umn.edu/rjp/Resources/Documents/Circles.Final.Revised.pdf> [hereinafter COATES, UMBREIT & VOS, RESTORATIVE JUSTICE CIRCLES].

65. See generally ROBERT B. COATES, MARK S. UMBREIT & BETTY VOS, SYSTEMIC CHANGE TOWARD RESTORATIVE JUSTICE: WASHINGTON COUNTY, MINNESOTA 2002, <http://2ssw.che.umn.edu/rjp/Resources/Documents/SYSTEMIC%20CHANGE%20IN%20COMMUNITY%20CORRECTIONS%205-1-02.pdf> [hereinafter COATES, UMBREIT & VOS, SYSTEMIC CHANGE].

66. *Id.* at 4; see Community Corrections Act, ch. 354, 1973 Minn. Laws 711 (codified at MINN. STAT. § 401 (2003)).

67. COATES, UMBREIT & VOS, SYSTEMIC CHANGE, *supra* note 65, at 26.

68. *Id.* at 4-5.

69. *Id.* at 18, 26.

70. *Id.* at 6, 7-8, 21.

71. *Id.* at 9.

72. See *id.* at 9.

individuals interviewed as pivotal for this effort at reform to succeed.⁷³

"It is the community piece that has some in the system reacting to restorative justice with resistance," the director said.⁷⁴ He believed that systems change primarily because of outside forces.⁷⁵ In this instance, that was the community, including victim groups, as well as service providers. Community members participated on ad hoc department committees, as volunteers in victim-offender conferencing and peacekeeping circles, and as developers of private community-based services.⁷⁶ This involvement was not without tension. Some community participants wanted the system to move further and faster than many key decision makers were prepared to do.⁷⁷ A few long established community service providers were skeptical of some restorative practices.⁷⁸ Yet, it was this partnership among community participants, criminal justice decision makers, and court service personnel that formed the foundation for the reform and upon which the ongoing process depends.

Reform proponents point to the use of victim-offender conferencing and peacekeeping circles, case planning focused on victim and community needs as well as those of offenders, and assessment tools considering the impact on all three groups as significant changes reflecting a restorative justice lens.⁷⁹ More is left to do to make these changes system wide and to remain open to new restorative possibilities. Participants acknowledge that continuation of the reform will require risk taking and that this restorative process "is a marathon not a sprint."⁸⁰

III. RESTORATIVE JUSTICE DIALOGUE

As a means of providing an in-depth examination of restorative justice in practice, we have elected to turn our close-up lens on restorative justice dialogue. In so doing, we do not mean to imply that it is the best practice or the only practice worth examining. We selected it because it is the oldest, most widely practiced, and most thoroughly

73. *Id.*

74. *Id.* at 10.

75. *Id.*

76. *Id.*

77. *Id.* at 11.

78. *Id.* at 8.

79. *See id.* at 15.

80. *Id.* at 14.

researched of the various processes that fall under the broad umbrella of restorative justice.

A. Description

Four general types of restorative justice dialogue are examined in this review. These include victim-offender mediation, group conferencing, circles, and "other." All have in common the inclusion of victims and offenders in direct dialogue, nearly always face-to-face, about a specific offense or infraction; the presence of at least one additional person who serves as mediator, facilitator, convener, or circle keeper; and usually, advance preparation of the parties so they will know what to expect. The focus of the encounter nearly always involves naming what happened, identifying its impact, and coming to some common understanding, often including reaching agreement as to how any resultant harm would be repaired. Use of these processes can take place at any point in the justice process, including pre-arrest, pre-court referral, pre-sentencing, post-sentencing, and even during incarceration.

Victim-offender mediation (often called "victim-offender conferencing," "victim-offender reconciliation," or "victim-offender dialogue") usually involves a victim and an offender in direct mediation facilitated by one or sometimes two mediators or facilitators; occasionally, the dialogue takes place through a third party who carries information back and forth, a process known as shuttle mediation. In face-to-face meetings, support persons (such as parents or friends) for victims or offenders are often present. A 1999 survey of victim-offender mediation programs in the United States found that support persons, including parents in juvenile cases, were present in nearly nine out of ten cases.⁸¹

Group conferencing (usually known as "family group conferencing," "community group conferencing," or "restorative group conferencing") routinely involves support persons for both victims and offenders as well as additional participants from the community. Many group conferencing programs rely on a script, though some are more open-ended. The number of support persons present can often range from ten to six to only a few, much like victim-offender mediation. Some group conferences can be quite large.

Circles are variously called "peacemaking circles," "restorative

81. Mark S. Umbreit & Jean Greenwood, *National Survey of Victim-Offender Mediation Programs in the United States*, 16 *MEDIATION Q.* 235, 241 (1999).

justice circles,” “repair of harm circles,” and “sentencing circles.” The numbers and types of participants gathered for circles are similar to those gathered for conferences, though sometimes there is even wider community member participation as interested persons, additional circle-keepers, or facilitators. The process involves the use of a “talking piece” that is passed around the circle to designate who may speak.

“Other” refers to programs such as reparative boards and other community-based programs that invite victims and offenders to participate together in crafting an appropriate response to the offense.

Increasingly over time, distinctions across these categories have begun to blur, in particular between “mediation” and “group conferencing.” Thus, there are programs that refer to their process as “family group conferencing” or “restorative group conferencing” but in fact convene only offenders and victims with few, if any, support persons and no outside community representatives. Similarly, many “victim-offender mediation” or “victim-offender conferencing” programs have moved towards more routinely including support persons, and occasionally additional affected community members. The present review attempts to maintain the distinction between victim-offender mediation (or victim-offender conferencing) and group conferencing (family group conferencing), but it seems likely that knowledge building may be better served in the future by collapsing the categories. Doing so would allow for participant responses and outcomes to be analyzed across actual variations in structure and format, rather than according to what the intervention is called.

The present review examines participation rates and reasons, participant satisfaction, participant perception of fairness, restitution and repair of harm, diversion, recidivism, and cost. A total of eighty-five studies were reviewed for the present report, including fifty-three mediation studies, twenty-two group conferencing studies, five circle studies, two studies of other dialogue programs, and three meta-analyses.

B. Evidence-Based Practice

1. Participation Rates and Reasons

Inviting victims to meet with the offender that harmed them was first conceived of as a means to help young offenders understand the impact of their crime and possibly decrease the likelihood of their re-offending.

In those early days of the restorative justice dialogue movement, no one knew how likely it would be that victims would even want to participate in such a meeting, or whether they would find it helpful. In fact, large numbers of victims who are approached about the possibility of such a meeting elect to participate.

Participation rates for crime victims are addressed in several VOM studies and typically range from 40% to 60%, though rates as high as 90% have been reported.⁸² Several studies noted that victim willingness to participate was driven by a desire to receive restitution, to hold the offender accountable, to learn more about the why of the crime, to share their pain with the offender, to avoid court processing, to help the offender change behavior, or to see the offender adequately punished.⁸³ Coates, Burns, and Umbreit found that victim reasons for choosing to participate were ranked as follows: to possibly help the offender, to hear why the offender did the crime, to communicate to the offender the impact of the crime, and to be sure the offender would not return to commit a repeat offense.⁸⁴ Interestingly, victims frequently report that while restitution was the primary motivator for them to participate in VOM, what they appreciated most about the program was the opportunity to talk with the offender.⁸⁵

Offenders choosing to participate often wanted to pay back the victim, to get the whole experience behind them, to impress the court, or to apologize to the victim.⁸⁶

82. ROBERT B. COATES, HEATHER BURNS & MARK S. UMBREIT, VICTIM PARTICIPATION IN VICTIM OFFENDER CONFERENCING: WASHINGTON COUNTY, MINNESOTA COMMUNITY JUSTICE PROGRAM 2 (2002) [hereinafter COATES, BURNS & UMBREIT, VICTIM PARTICIPATION IN VICTIM-OFFENDER CONFERENCING]; COATES, UMBREIT & VOS, SYSTEMIC CHANGE, *supra* note 65, at 17.

83. COATES, BURNS & UMBREIT, VICTIM PARTICIPATION IN VICTIM-OFFENDER CONFERENCING, *supra* note 82, at 2.

84. *Id.* at 21.

85. LINDA PERRY, THÉRÈSE LAJEUNESSE & ANNA WOODS, MEDIATION SERVICES: AN EVALUATION 39 (1987); MARK S. UMBREIT & ROBERT B. COATES, VICTIM OFFENDER MEDIATION: AN ANALYSIS OF PROGRAMS IN FOUR STATES OF THE U.S.: EXECUTIVE SUMMARY 13 (1992) [hereinafter UMBREIT & COATES, FOUR STATES]; Mark S. Umbreit, *Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice*, 53 FED. PROBATION 52, 55-56 (1989) [hereinafter Umbreit, *Crime Victims Seeking Fairness*].

86. LAURA S. ABRAMS, ANNE GORDON & MARK S. UMBREIT, YOUTHFUL OFFENDERS RESPONSE TO VICTIM OFFENDER CONFERENCING IN WASHINGTON COUNTY, MINNESOTA 4-5 (2003); TIM ROBERTS, EVALUATION OF THE VICTIM OFFENDER MEDIATION PROJECT, LANGLEY, B.C.: FINAL REPORT 4 (1995) [hereinafter ROBERTS, MEDIATION PROJECT]; MARK S. UMBREIT, MEDIATION OF CRIMINAL CONFLICT: AN ASSESSMENT OF PROGRAMS IN FOUR CANADIAN PROVINCES 111 (1995) [hereinafter UMBREIT, MEDIATION OF CRIMINAL CONFLICT]; MARK S. UMBREIT, ROBERT B. COATES & BETTY VOS, JUVENILE VICTIM OFFENDER MEDIATION IN SIX OREGON COUNTIES 23, 31-

Among victims who elected not to participate in VOM, reasons included feeling the crime was too trivial to be worth the time, feeling fearful of meeting the offender, and wanting the offender to have a harsher punishment.⁸⁷ Victims in a study by Coates, Burns, and Umbreit ranked those reasons as follows: not worth the time and trouble involved, the matter had already been resolved, too much time had passed since the crime, just wanted the money, and complaint that the system just wanted “to slap the wrist of the offenders.”⁸⁸

Gehm studied 535 eligible VOM cases and found 47% of the victims willing to participate.⁸⁹ Victims were more likely to participate if the offender was white (as were the victims), if the offense was a misdemeanor, and if the victim was representing an institution.⁹⁰ Wyrick and Costanzo similarly found that property cases were more likely to reach mediation than personal offenses.⁹¹ They further noted an interaction between type of crime and the passage of time: the longer the time lapse between the offense and the mediation opportunity, the less likely property crimes would come to mediation, but the more likely personal crimes would meet.⁹²

Offender reasons for not participating are less frequently explored. Some offenders have reported being advised by lawyers not to participate,⁹³ and some simply did not want to be bothered.⁹⁴

In regards to mediated dialogue in severely violent crimes, victims' chief reasons for wishing to meet are to seek information (58%), to

32, 36 (2001) [hereinafter UMBREIT, COATES & VOS, SIX OREGON COUNTIES]; Niemeyer & Shichor, *supra* note 48, at 32; Umbreit, *Crime Victims Seeking Fairness*, *supra* note 85, at 53; Robert B. Coates & John Gehm, *An Empirical Assessment*, in *MEDIATION AND CRIMINAL JUSTICE*, *supra* note 22, at 252; Eliza Strode, *Victims of Property Crime Meeting Their Juvenile Offenders: Victim Participants' Evaluation of the Dakota County (MN) Community Corrections Victim Offender Meeting Program (1997)* (unpublished masters thesis, Smith College School of Social Work) (on file with the Smith College Library).

87. UMBREIT, *MEDIATION OF CRIMINAL CONFLICT*, *supra* note 86, at 141; Niemeyer & Shichor, *supra* note 48, at 32; Coates & Gehm, *supra* note 86, at 252-53.

88. COATES, BURNS & UMBREIT, *VICTIM PARTICIPATION IN VICTIM OFFENDER CONFERENCING*, *supra* note 82, at 20.

89. John Gehm, *Mediated Victim-Offender Restitution Agreements: An Exploratory Analysis of Factors Related to Victim Participation*, in *CRIMINAL JUSTICE, RESTITUTION, AND RECONCILIATION*, *supra* note 24, at 177, 179.

90. *Id.* at 179.

91. Phelan A. Wyrick & Mark A. Costanzo, *Predictors of Client Participation in Victim-Offender Mediation*, 16 *MEDIATION Q.* 253, 255-56, 260 (1999).

92. *Id.* at 260-61.

93. Anne L. Schneider, *Restitution and Recidivism Rates of Juvenile Offenders: Results from Four Experimental Studies*, 24 *CRIMINOLOGY* 533, 539 (1986).

94. Coates & Gehm, *supra* note 86, at 252.

show the offender the impact of their actions (43%), and to have some form of human contact with the person responsible for the crime (40%).⁹⁵ Offenders who agreed to meet offered the following victim-related reasons: to apologize (38%), to help victims heal (38%), and to do whatever would benefit victims (26%).⁹⁶ Offenders also hoped the experience would benefit themselves (74%), including that it would contribute to their own rehabilitation (33%), that it could change how their victims viewed them (21%), and that they had spiritual reasons for wanting to meet with their victim (18%).⁹⁷

2. Participant Satisfaction

i. Victim-Offender Mediation

The vast majority of studies reviewed reported in some way on satisfaction of victims and offenders with victim-offender mediation and its outcomes. Expression of satisfaction with VOM is consistently high for both victims and offenders across sites, cultures, and seriousness of offenses. Typically, eight or nine out of ten participants report being satisfied with the process and with the resulting agreement.⁹⁸ Two studies that utilized shuttle mediation yielded slightly lower satisfaction rates for those participants than for participants who met face-to-face.⁹⁹

95. UMBREIT, VOS, COATES & BROWN, FACING VIOLENCE, *supra* note 57, at 307.

96. *Id.* at 308.

97. *Id.* at 307-08.

98. CLIFFORD CARR, VORS PROGRAM EVALUATION REPORT 7-8 (1998); ROBERT DAVIS, MARTHA TICHANE & DEBORAH GRAYSON, MEDIATION AND ARBITRATION AS ALTERNATIVE TO PROSECUTION IN FELONY ARREST CASES, AN EVALUATION OF THE BROOKLYN DISPUTE RESOLUTION CENTER 51 (1980); AUDREY EVJE & ROBERT CUSHMAN, A SUMMARY OF THE EVALUATIONS OF SIX CALIFORNIA VICTIM OFFENDER RECONCILIATION PROGRAMS 3 (2000), available at <http://www.courtinfo.ca.gov/programs/cf-cc/pdffiles/vorp.pdf>; PERRY, LAJEUNESSE & WOODS, *supra* note 85, at 42; UMBREIT, COATES & VOS, SIX OREGON COUNTIES, *supra* note 86, at 32; SUE WARNER, MAKING AMENDS: JUSTICE FOR VICTIMS AND OFFENDERS 57-58 (1992); Coates & Gehm, *supra* note 86, at 253-56; Marshall, *supra* note 24, at 92-93; Mark S. Umbreit, *Minnesota Mediation Center Produces Positive Results*, CORRECTIONS TODAY, Aug. 1991, at 192, 194 [hereinafter Umbreit, *Minnesota Mediation Center*]; Laura Roberts, Victim Offender Mediation: An Evaluation of the Pima County Juvenile Court Center's Victim Offender Mediation Program (VOMP) 15 (Sep. 1998) [hereinafter Roberts, Pima County] (unpublished Masters Thesis, University of Arizona Department of Communications) (on file with the Center for Restorative Justice and Mediation, University of Minnesota); see ROBERTS, MEDIATION PROJECT, *supra* note 86, at 5.

99. JIM DIGNAN, REPAIRING THE DAMAGE: AN EVALUATION OF AN EXPERIMENTAL ADULT REPARATION SCHEME IN KETTERING, NORTHAMPTONSHIRE 33-35 (1990); MARK

Secondary analysis of satisfaction data from a United States study and a Canadian study yielded similar high rates of satisfaction.¹⁰⁰ Using step-wise multiple regression procedures to determine those variables most associated with victim satisfaction, the authors discovered that three variables emerged to explain over 40% of the variance.¹⁰¹ The key variables associated with victim satisfaction were as follows: (1) the victim felt good about the mediator; (2) the victim perceived the resulting restitution agreement as fair; and (3) the victim, for whatever reason, had a strong initial desire to meet the offender.¹⁰²

When asked, typically nine out of ten participants would recommend a VOM program to others.¹⁰³

These high levels of satisfaction with victim-offender mediation also translated into relatively high levels of satisfaction with the criminal justice system. Where comparison groups were studied, those victims and offenders going through mediation indicated being more satisfied with the criminal justice system than those going through traditional court prosecution.¹⁰⁴

In a meta-analysis covering both VOM and group conferencing programs, Latimer, Dowden, and Muise found that in twelve of the thirteen VOM and group conferencing programs that reported satisfaction rates, victims were more satisfied than those in traditional approaches.¹⁰⁵ Satisfaction rates were somewhat higher in VOM than in group conferencing; the authors felt one reason might be that conferences typically have more participants, making it more difficult to

S. UMBREIT & ANN W. ROBERTS, *MEDIATION OF CRIMINAL CONFLICT IN ENGLAND: AN ASSESSMENT OF SERVICES IN COVENTRY AND LEEDS* 11-12 (1996).

100. See William Bradshaw & Mark S. Umbreit, *Crime Victims Meet Juvenile Offenders: Contributing Factors to Victim Satisfaction With Mediated Dialogue*, 49 *JUV. & FAM. CT. J.* 17, 18 (1998) [hereinafter Bradshaw & Umbreit, *Crime Victims*]; William Bradshaw & Mark S. Umbreit, *Factors that Contribute to Victim Satisfaction with Mediated Offender Dialogue in Winnipeg: An Emerging Area of Social Work Practice*, 9 *J. OF LAW & SOC. WORK* 35, 37 (1999) [hereinafter Bradshaw & Umbreit, *Factors that Contribute*].

101. Bradshaw & Umbreit, *Crime Victims*, *supra* note 100, at 21; Bradshaw & Umbreit, *Factors that Contribute*, *supra* note 100, at 45.

102. Bradshaw & Umbreit, *Crime Victims*, *supra* note 100, at 21-22; Bradshaw & Umbreit, *Factors that Contribute*, *supra* note 100, at 45.

103. EVJE & CUSHMAN, *supra* note 98, at 41; UMBREIT, COATES & VOS, *SIX OREGON COUNTIES*, *supra* note 86, at 35; Coates & Gehm, *supra* note 86, at 254; Umbreit, *Minnesota Mediation Center*, *supra* note 99, at 194-97.

104. DAVIS, TICHANE & GRAYSON, *supra* note 98, at 64; UMBREIT, *MEDIATION OF CRIMINAL CONFLICT*, *supra* note 86, at 106.

105. JEFF LATIMER, CRAIG DOWDEN & DANIELLE MUISE, *THE EFFECTIVENESS OF RESTORATIVE PRACTICES: A META-ANALYSIS* 9-12 (2001).

find as much satisfaction with an agreement.¹⁰⁶ The meta-analysis found a “moderate to weak positive impact” on offender satisfaction as compared to offenders in non-restorative programs.¹⁰⁷

ii. Group Conferencing

Group conferencing also yields fairly high satisfaction responses from participants. Apart from an early New Zealand study, in which only 53% of victims reported being satisfied,¹⁰⁸ more recent group conferencing studies have yielded satisfaction rates ranging from 73% into the high 90% range.¹⁰⁹ Two recent studies reported participant agreement rates from 90% to 100% across a range of items tapping dimensions of satisfaction.¹¹⁰

Victims in a Minnesota study of group conferencing listed the most helpful component of their experience as the opportunity to talk to the offender and explain effect of crime on them and to hear the offender’s explanation.¹¹¹ The least helpful aspect of group conferencing was the “negative attitude of [some] parents.”¹¹²

Three studies found that over 90% of victims and offenders would recommend the group conferencing program to others.¹¹³ One of these further compared recommendation rates to the control sample, in which only 25% of the victims would so recommend.¹¹⁴ For the juvenile offenders in this study, 85% would recommend the program compared

106. *Id.* at 18-19.

107. *Id.* at 11.

108. GABRIELLE M. MAXWELL & ALLISON MORRIS, FAMILY, VICTIMS AND CULTURE: YOUTH JUSTICE IN NEW ZEALAND 120 (1993).

109. CLAUDIA FERCELLO & MARK S. UMBREIT, CLIENT EVALUATION OF FAMILY GROUP CONFERENCING IN 12 SITES IN 1ST JUDICIAL DISTRICT OF MINNESOTA 7-9, 11 (1998), available at <http://2ssw.che.edu/rjp/Resources/Documents/ferumb98.pdf>; PAUL MCCOLD & BENJAMIN WACHTEL, RESTORATIVE POLICING EXPERIMENT: THE BETHLEHEM PENNSYLVANIA POLICE FAMILY GROUP CONFERENCING PROJECT 3-4, 51 (1998); MCGARREL ET AL., *supra* note 21, at 42-43; Daly, *supra* note 61, at 59, 78-79.

110. Hennessey Hayes & Kathleen Daly, *Conferencing and Re-offending in Queensland*, 37 AUSTR. & N.Z. J. CRIMINOLOGY 167, 173-74, 184-85 (2004); Alice Ierley & Carin Ivkor, *Restoring school communities: A report on the Colorado Restorative Justice in Schools Program*, VOMA CONNECTIONS, Winter 2003, at 1, 3-4, available at <http://www.voma.org/docs/connect13insert.pdf>.

111. FERCELLO & UMBREIT, *supra* note 109, at 10, 16.

112. *Id.*

113. *Id.* at 11; MCCOLD & WACHTEL, *supra* note 109, at 56-63; MCGARREL ET AL., *supra* note 21, at 43.

114. MCGARREL ET AL., *supra* note 21, at 43.

with 38% of the control group.¹¹⁵

iii. Circles

Fewer studies regarding participant response to restorative justice or peacemaking circles are available to us. Circles are most often imbedded in a broader community response to conflict.

Preliminary research efforts suggest that talking circles, healing circles, and sentencing circles have positively impacted the lives of those who have participated in them. In an early evaluation of the Hollow Water First Nation Community Holistic Circle Healing approach to sex victimizers, their victims, families, and the community pointed to positive outcomes as well as lingering concerns.¹¹⁶ Having a voice and a stake in justice outcomes, mutual respect, and renewed community and cultural pride were cited as benefits of participation.¹¹⁷ On the other hand, lack of privacy, difficulty of working with family and close friends, embarrassment, unprofessionalism, and religious conflict were cited by others as negative aspects of the circle process.¹¹⁸

Victim satisfaction is cited as “very high” in the Healing/Sentencing Circles Program in Whitehorse, Yukon Territory.¹¹⁹ Participant satisfaction with restorative justice circles for misdemeanors and low level assaults in South St. Paul, Minnesota, was also high.¹²⁰ Each of the thirty victim and offender participants who were interviewed indicated that he or she would recommend the circle process to others who were in similar circumstances.¹²¹ Offenders indicated that what they liked most about circles was “connecting with people in the circle,” “changed attitude and behavior,” “opportunity to pay back the victim and community,” and “avoid court.”¹²² Victims liked “being able to tell their story,” “listening to others,” and “connecting with people in the circle.”¹²³ Community representatives liked feeling that “they were

115. *Id.*

116. *See generally* Lajeunesse & Assocs., *supra* note 56.

117. *See id.* at 101, 106-07.

118. *See id.* at 106-07.

119. STEPHEN A. MATTHEWS & GAYLE LARKIN, GUIDE TO COMMUNITY-BASED ALTERNATIVES FOR LOW-RISK JUVENILE OFFENDERS 67 (1999).

120. COATES, UMBREIT & VOS, RESTORATIVE JUSTICE CIRCLES, *supra* note 64, at 26-29.

121. *Id.* at 57-58.

122. *Id.* at 54.

123. *Id.*

giving something back to the community” and that “they were helping people.”¹²⁴

Three Minnesota school districts used a three-year prevention grant to train staff in the circle process and implement the use of circles in the schools as an alternative response to discipline problems.¹²⁵ Satisfaction was mixed and was related to levels of success in implementing the program.¹²⁶ South St. Paul had the highest satisfaction.¹²⁷ In surveys collected at the conclusion of “circles to repair harm,” a majority of participants (students, staff, parents, applicants, and victims) indicated satisfaction with the process, with higher reports of feeling “hopeful, grateful, confident, and supported after the process.”¹²⁸ School staff felt circles had a positive impact and felt the process was fair to teachers and students.¹²⁹

Satisfaction data was less complete for the other two districts. In one, the training received a positive evaluation, and by the end of the third year, 70% of teachers were using the circle process in community-building activities in the classroom.¹³⁰ Return rate on staff surveys in the other district was only 27%; of these, 70% were positive, 19% neutral, and 11% negative.¹³¹

iv. Other Programs

Karp, Sprayregen, and Drakulich evaluated the Vermont Reparative Probation program and found that although victim participation rates were low, of those victims who did participate, 82% were satisfied.¹³²

124. *Id.*

125. NANCY RIESTENBERG, *IN-SCHOOL BEHAVIOR INTERVENTION GRANTS: A THREE-YEAR EVALUATION OF ALTERNATIVE APPROACHES TO SUSPENSIONS AND EXPULSIONS* 3 (2001).

126. *Id.* at 4.

127. *Id.* at 6, 8, 11.

128. *Id.* at 11.

129. *Id.*

130. *Id.* at 6.

131. *Id.* at 8.

132. DAVID R. KARP, MARY SPRAYREGEN & KEVIN M. DRAKULICH, *VERMONT REPARATIVE PROBATION YEAR 2000 OUTCOME EVALUATION FINAL REPORT 35-36* (2002), available at <http://nicic.org/library/018509>.

3. Fairness

i. Victim-Offender Mediation

Many studies of victim-offender mediation asked participants about the fairness of the mediation process and of the resulting agreement.¹³³ Not surprisingly, given the high levels of satisfaction, the vast majority of VOM participants (typically over 80%) across setting, cultures, and types of offenses reported believing that the process was fair to both sides and that the resulting agreement was fair.¹³⁴ Again, these experiences led to feelings that the overall criminal justice system was fair.¹³⁵ Where comparison groups were employed, those individuals exposed to mediation came away more likely feeling that they had been treated fairly than those going through the traditional court proceedings.¹³⁶ In a study of burglary victims in Minneapolis, Umbreit found that 80% who went through VOM indicated that they experienced the criminal justice system as fair compared with only 38% of burglary victims who did not participate in VOM.¹³⁷

133. See, e.g., JEAN P. COLLINS, FINAL EVALUATION REPORT ON THE GRANDE PRAIRIE COMMUNITY RECONCILIATION PROJECT FOR YOUNG OFFENDERS 66 (1984); DAVIS, TICHANE & GRAYSON, *supra* note 98, at 55-56; EVJE & CUSHMAN, *supra* note 98, at 41, 62, 98; UMBREIT & COATES, FOUR STATES, *supra* note 85, at 14; UMBREIT, COATES & VOS, SIX OREGON COUNTIES, *supra* note 86, at 29; UMBREIT & ROBERTS, *supra* note 99, at 15-16; Umbreit, *Crime Victims Seeking Fairness*, *supra* note 85, at 52-53; Umbreit, *Minnesota Mediation Center*, *supra* note 98, at 194-97; Mark S. Umbreit, *Violent Offenders and Their Victims*, in MEDIATION AND CRIMINAL JUSTICE, *supra* note 22, at 99, 100 [hereinafter Umbreit, *Violent Offenders*]; Strode, *supra* note 86, at 74-76.

134. COLLINS, *supra* note 133, at 66; EVJE & CUSHMAN, *supra* note 98, at 41, 62, 98; UMBREIT & COATES, FOUR STATES, *supra* note 85, at 14; UMBREIT, COATES & VOS, SIX OREGON COUNTIES, *supra* note 86, at 29; UMBREIT & ROBERTS, *supra* note 99, at 15-16; Umbreit, *Crime Victims Seeking Fairness*, *supra* note 85, at 52-53; Umbreit, *Minnesota Mediation Center*, *supra* note 98, at 194-97; Umbreit, *Violent Offenders*, *supra* note 133, at 99, 100; Strode, *supra* note 86, at 74-76.

135. COLLINS, *supra* note 133, at 68; DAVIS, TICHANE & GRAYSON, *supra* note 98, at 51, 55-56; EVJE & CUSHMAN, *supra* note 86, at 61-62; UMBREIT & COATES, FOUR STATES, *supra* note 85, at 14; UMBREIT, COATES & VOS, SIX OREGON COUNTIES, *supra* note 86, at 29; UMBREIT & ROBERTS, *supra* note 99, at 14; Umbreit, *Crime Victims Seeking Fairness*, *supra* note 85, at 56; Umbreit, *Minnesota Mediation Center*, *supra* note 98, at 194-97; Umbreit, *Violent Offenders*, *supra* note 133, at 99, 100; Strode, *supra* note 86, at 74-76.

136. DAVIS, TICHANE & GRAYSON, *supra* note 98, at 51, 55-56; EVJE & CUSHMAN, *supra* note 98, at 41, 62, 98; UMBREIT & COATES, FOUR STATES, *supra* note 85, at 14; UMBREIT, COATES & VOS, SIX OREGON COUNTIES, *supra* note 86, at 29; UMBREIT & ROBERTS, *supra* note 99, at 15-16; Umbreit, *Crime Victims Seeking Fairness*, *supra* note 85, at 56; Umbreit, *Minnesota Mediation Center*, *supra* note 98, at 194-97; Umbreit, *Violent Offenders*, *supra* note 133, at 99, 100; Strode, *supra* note 86, at 74-76.

137. Umbreit, *Mediation*, *supra* note 23, at 97; Umbreit, *Crime Victims Seeking Fairness*,

ii. Group Conferencing

Fairness is also an issue of concern for participants in group conferencing and is often a focus of research. In an Australian study, 80% to 95% of victims and offenders reported that they were treated fairly and had a say in the agreement.¹³⁸ Similarly, preliminary data from the Australian Reintegrative Shaming Experiments (“RISE”) found that 72% of the offenders felt the outcome of group conferencing was fair, compared with 54% of comparison offenders prosecuted in the traditional courts.¹³⁹ Interestingly, the conference offenders were also more likely to feel that they would be caught if they re-offended.¹⁴⁰

In three United States studies, about 95% of victims indicated the process or outcome was fair.¹⁴¹ Regarding offenders, 89% of the juvenile offenders in a Minnesota-based study indicated that the resulting conference agreement was fair.¹⁴² All seven offenders in a small survey of another Minnesota group conferencing program felt the process was fair.¹⁴³ Hayes re-analyzed the data from McCold and Wachtel¹⁴⁴ and found that conferenced youth were more likely to experience fairness in the justice system than court-referred youth (97% versus 87%).¹⁴⁵

4. Restitution and Repayment of Harm

The form of restitution, or what is called reparation in some jurisdictions, is quite varied and can include direct compensation to the victim, community service, work for the victim, and sometimes unusual paybacks devised between victim and offender. Apologies are also often included in program reports as a component of repairing the harm. In some settings, restitution amounts are established before cases are referred for mediation; in others, deciding whether the victim should

supra note 85, at 56.

138. Daly, *supra* note 61, at 78-79.

139. LAWRENCE SHERMAN & HEATHER STRANG, RESTORATIVE JUSTICE AND DETERRING CRIME (1997), available at <http://www.aic.gov.au/rjustice/rise/working/risepap4.html>.

140. *Id.*

141. FERCELLO & UMBREIT, *supra* note 109, at 12; MCCOLD & WACHTEL, *supra* note 109, at 54-61; MCGARREL ET AL., *supra* note 21, at 44.

142. FERCELLO & UMBREIT, *supra* note 109, at 11.

143. ABRAMS, GORDON & UMBREIT, *supra* note 86, at 4.

144. MCCOLD & WACHTEL, *supra* note 109.

145. Hayes & Daly, *supra* note 110, at 186-87.

receive restitution and how much is seen as an important domain for the mediation session.

i. Victim-Offender Mediation

About half the studies under review addressed the issue of restitution or repair of harm. Of those cases that reached a meeting, typically 90% or more generated agreements.¹⁴⁶ Restitution of some sort was part of the vast majority of these agreements.¹⁴⁷ Looking across the studies reviewed here, it appears that approximately 80% to 90% of the contracts are reported as completed.¹⁴⁸

Results from comparative studies have been somewhat mixed, with some studies reporting higher amounts of restitution or greater completion rates for VOM participants than comparison groups,¹⁴⁹ while another reported no difference.¹⁵⁰ The meta-analysis covering both mediation and group conferencing found that offenders participating in these programs had substantially higher completion rates than offenders processed in other ways.¹⁵¹

ii. Group Conferencing

Restitution or reparation is often a major focus of conferences, and

146. PERRY, LAJEUNESSE & WOODS, *supra* note 85, at 33; SANDRA STONE, WILLIAM HELMS & PAMELA EDGEWORTH, COBB COUNTY JUVENILE COURT MEDIATION PROGRAM EVALUATION 39-42 (1998); UMBREIT, COATES & VOS, SIX OREGON COUNTIES, *supra* note 86, at 34; Coates & Gehm, *supra* note 86, at 257.

147. PERRY, LAJEUNESSE & WOODS, *supra* note 85, at 33; STONE, HELMS & EDGEWORTH, *supra* note 146, at 19; UMBREIT, COATES & VOS, SIX OREGON COUNTIES, *supra* note 86, at 34; Coates & Gehm, *supra* note 86, at 257.

148. COLLINS, *supra* note 133, at 104; DISSEL, *supra* note 58, at 50; EVJE & CUSHMAN, *supra* note 98, at 28; JOANNE KATZ, VICTIM/OFFENDER MEDIATION IN MISSOURI'S JUVENILE COURTS: ACCOUNTABILITY, RESTITUTION AND TRANSFORMATION 17 (2000); PERRY, LAJEUNESSE & WOODS, *supra* note 85, at 33; UMBREIT & COATES, FOUR STATES, *supra* note 85, at 10-11; UMBREIT, COATES & VOS, SIX OREGON COUNTIES, *supra* note 86, at 34; WARNER, *supra* note 98, at 59; Coates & Gehm, *supra* note 86, at 257; Sudipto Roy, *Two Types of Juvenile Restitution Programs in Two Midwestern Counties: A Comparative Study*, 57 FED. PROBATION 48, 50 (1993); Umbreit, *Mediation*, *supra* note 23, at 96; Umbreit, *Minnesota Mediation Center*, *supra* note 98, at 194-97; Burt Galaway, *Informal Justice: Mediation between Offenders and Victims*, in CRIME PREVENTION AND INTERVENTION: LEGAL AND ETHICAL PROBLEMS 103, 106-07 (Peter-Alexis Albrecht & Otto Backes eds., 1989).

149. EVJE & CUSHMAN, *supra* note 98, at 22.

150. Roy, *supra* note 148, at 52.

151. LATIMER, DOWDEN, & MUISE, *supra* note 105, at 12.

high agreement rates are reported, usually reaching the high 90% range,¹⁵² and in one instance achieving 100%.¹⁵³ Apologies play a central role in group conferencing outcomes with well over half of the victims receiving apologies across studies that report this distinction.¹⁵⁴ Other frequently reported agreement components included monetary restitution and work for the victim or the community.¹⁵⁵

When victims were present for the conference, any work performed by offenders was more likely to be done for the victim than when victims were not present, although this still happened in only two-fifths of the cases. In addition, reparation occurred 42% of the time when victims were present, compared to 29% across all cases that harmed victims.¹⁵⁶

Group conferencing studies using comparison groups have found much higher rates of receiving repair for victims who participated in group conferencing than victims whose cases were processed through other channels.¹⁵⁷ In one instance, the overall rate of receiving repair (including apology) was ten times that of traditionally processed cases.¹⁵⁸

Completion rates for agreements developed during conferences are quite high, ranging from the middle 80% range to the middle 90% range.¹⁵⁹

iii. Other Programs

The Vermont Reparative Board program reported that restitution was ordered in 69% of those cases where material harm was

152. FERCELLO & UMBREIT, *supra* note 109, at 12; MAXWELL & MORRIS, *supra* note 108, at 92; see DAVID MOORE & LUBICA FORSYTHE, A NEW APPROACH TO JUVENILE JUSTICE: AN EVALUATION OF FAMILY CONFERENCING IN WAGGA WAGGA 27-100 (1995) (reporting that all fourteen cases in this study reached an agreement).

153. Loren Walker, *Conferencing—A New Approach for Juvenile Justice in Honolulu*, 66 FED. PROBATION 38, 40 (2002).

154. MAXWELL & MORRIS, *supra* note 108, at 93; MCGARREL ET AL., *supra* note 21, at 41; Heather Strang & Lawrence Sherman, *The Victim's Perspective* (Apr. 1997), available at <http://www.aic.gov.au/rjustice/rise/working/risepap2.html>.

155. MCGARREL ET AL., *supra* note 21, at 41; MAXWELL & MORRIS, *supra* note 108, at 93.

156. MAXWELL & MORRIS, *supra* note 108, at 95.

157. MCGARREL ET AL., *supra* note 21, at 46; Strang & Sherman, *supra* note 154.

158. Strang & Sherman, *supra* note 154.

159. Walker, *supra* note 153, at 41; Joy Wundersitz & Sue Hetzel, *Family Conferencing for Young Offenders: The South Australian Experience*, in FAMILY GROUP CONFERENCES: PERSPECTIVES ON POLICY AND PRACTICE 111, 132-33 (Joe Hudson et al. eds., 1996); Ierley & Ivkor, *supra* note 110, at 2-3.

identified.¹⁶⁰ Of the victims surveyed who had sustained such losses, 66% indicated that their losses were addressed.¹⁶¹ Overall, 18% of cases resulted in apologies to victims; in cases where victims attended, that percentage rose to 67%.¹⁶²

5. Diversion

Among other reasons, many restorative programs are nominally established to divert offenders from the traditional justice system processes. While such diversion was a goal lauded by many, others expressed concern about the unintended consequence of widening the net—that is, sanctioning offenders who otherwise would not have received sanctions through traditional procedures. Only a handful of the studies reviewed here address this question.

i. Victim-Offender Mediation

Two mediation studies, both in the United Kingdom, have reported a net-widening impact for the intervention. One concluded that at least 60% of the offenders participating in mediation were true diversions from court prosecution, and overall there was a 13% net-widening effect, much less than expected.¹⁶³ In the other, fully 43% of the comparison group cases were not prosecuted and received no sanction, a fairly broad net-widening result.¹⁶⁴

In contrast, two United States-based studies found that the mediation programs successfully diverted offenders from court. One North Carolina program apparently reduced court trials by as much as two-thirds.¹⁶⁵ An Indiana-Ohio study compared consequences for seventy-three youth and adults going through VOM programs with those for a matched sample of individuals who were processed in the traditional manner.¹⁶⁶ VOM offenders spent less time incarcerated than did their counterparts, and when incarcerated, they did county jail time

160. KARP, SPRAYREGEN & DRAKULICH, *supra* note 132, at 17.

161. *Id.*

162. *Id.* at 15.

163. DIGNAN, *supra* note 99, at 27-28.

164. WARNER, *supra* note 98, at 58.

165. STEVENS H. CLARKE, ERNEST VALENTE & ROBYN R. MACE, *MEDIATION OF INTERPERSONAL DISPUTES: AN EVALUATION OF NORTH CAROLINA'S PROGRAMS* 45 (1992).

166. Coates & Gehm, *supra* note 86, at 251-63.

rather than state time.¹⁶⁷

ii. Group Conferencing

Results for group conferencing are likewise mixed across the few studies addressing the issue. The Bethlehem, Pennsylvania group conferencing program left police and courts largely unaffected.¹⁶⁸ On the other hand, an Australian program greatly reduced the total number of police interventions involving young people and increased the proportion of cases handled through cautioning rather than in court.¹⁶⁹ A school-based group conferencing program reported that all of its conferenced cases were diversion; 70% were in place of suspension, and 35% (with some overlap) were in place of criminal charges.¹⁷⁰

The New Zealand experience offers a perspective on system wide change. New Zealand's Children, Young Persons and Families Act of 1989 established new procedures for state intervention into families and the lives of children and young people, replacing many court processes with family group conferencing.¹⁷¹ Similar results were found; that is, the changes dramatically reduced the court load from up to 13,000 cases per year to as little as 2587 in 1990.¹⁷² On the other hand, the authors point out that only three out of five youths who appeared in court previously received any formal penalty, while fully 95% of conferenced youths either received a penalty or made an apology.¹⁷³ Again, this demonstrates a net-widening impact.

iii. Circles

The Hollow Water First Nation Community Holistic Circle Healing Process was designed, in part, as a way of keeping victimizers in the community.¹⁷⁴ Over a ten-year period, ninety-four individuals were diverted within the four communities making up Hollow Water.¹⁷⁵

167. *Id.*

168. MCCOLD & WACHTEL, *supra* note 109, at 44-46, 108-11.

169. MOORE & FORSYTHE, *supra* note 152, at 245.

170. Ierley & Ivkor, *supra* note 110, at 2-3.

171. See MAXWELL & MORRIS, *supra* note 108, at xviii.

172. *Id.*

173. *Id.* at 175.

174. NATIVE COUNSELING SERVICES OF ALTA., A COST-BENEFIT ANALYSIS OF HOLLOW WATER'S COMMUNITY HOLISTIC CIRCLE HEALING PROCESS 10 (2001).

175. See *id.* at 69-71.

Forty-one of these persons had assault charges, and thirty-seven had sexual assault charges.¹⁷⁶ An additional seven adult males came to the program from other reserves, resulting in a total of 101 individuals who were diverted from the provincial or federal justice system.¹⁷⁷

A school-based circle project in Minnesota succeeded in reducing behavioral referrals by 75% over the three years of its implementation.¹⁷⁸ Whether this qualifies as diversion (reduction of referrals) or recidivism (prevention of further infractions) may be subject to debate, but the result is nonetheless impressive.

6. Recidivism

The goal of restorative processes is to meet the needs of all parties affected by crime—victims, offenders, and communities. Preventing recidivism is often used as a long-term measure of the “effectiveness” of such programs; such prevention benefits offenders directly, and more broadly, benefits communities. There has been some concern that the demonstrable outcome of reduction in recidivism should not be the only measure of effectiveness, but rather it should be placed in a broader context that includes the range of restorative goals.

A large number of the studies reviewed here have addressed recidivism; we will confine our discussion to those studies that provide some type of comparison group. Studies simply reporting overall re-offending rates with no comparison will not be addressed.

i. Victim-Offender Mediation

Results from studies examining the impact of mediation on recidivism have been mixed overall. Several studies found lower rates for mediation participants than for offenders processed through traditional means.¹⁷⁹ In addition, five of the six programs examined by

176. *Id.*

177. *See id.*

178. RIESTENBERG, *supra* note 125, at 9.

179. KATZ, *supra* note 148, at 16-17; UMBREIT & COATES, *FOUR STATES*, *supra* note 85, at 18; William R. Nugent & Jeffrey B. Paddock, *The Effect of Victim-Offender Mediation on Severity of Reoffense*, 12 *MEDIATION Q.* 353, 359-62 (1995); Schneider, *supra* note 93, at 543-49; Karin Jewel Stone, *An Evaluation of Recidivism Rates for Resolutions Northwest's Victim-Offender Mediation Program (2000)* (unpublished masters thesis, Portland State University) (on file with the Portland State University Library).

Evje and Cushman also found reduced recidivism.¹⁸⁰ Two studies also found that youths who did re-offend tended to incur less serious charges than their counterparts.¹⁸¹ Others reported little or no difference,¹⁸² as did one of the six programs studied by Evje and Cushman.¹⁸³ A study of a county-wide restorative program that included VOM as one component found virtually equal recidivism rates between the sample and the control group.¹⁸⁴

One United Kingdom study compared recidivism data on the VOM offenders who went through face-to-face mediation with those who were exposed only to shuttle mediation.¹⁸⁵ The former group did somewhat better than the latter: 15.4% and 21.6%.¹⁸⁶ As with satisfaction measures reported earlier, face-to-face mediation seems to generate better results both in the short run and in the longer run than the less personal indirect mediation.¹⁸⁷ Another United Kingdom study, examining seven varying restorative justice schemes, found that “the only scheme that routinely involved victims . . . was for the most part both lower cost and more effective than the other schemes.”¹⁸⁸ The program reduced both the frequency and the seriousness of subsequent offenses.¹⁸⁹

A few studies have examined participants’ offense rates before and after mediation. All of these studies found an overall reduction in offense rates for participating offenders.¹⁹⁰

Three meta-analyses have addressed recidivism issues. Nugent, Umbreit, Wiinamaki, and Paddock conducted a rigorous reanalysis of recidivism data reported in four previous studies, involving a total

180. EVJE & CUSHMAN, *supra* note 98, at 49, 60, 69, 84, 96, 103.

181. UMBREIT & COATES, FOUR STATES, *supra* note 85, at 18; Nugent & Paddock, *supra* note 179, at 359-62.

182. Roy, *supra* note 148, at 52; STONE, HELMS & EDGEWORTH, *supra* note 146, at 39-42.

183. See EVJE & CUSHMAN, *supra* note 98, at 69.

184. Bill Bradbury, Deschutes County Delinquent Youth Demonstration Project, Sec. St. Audit Rep. # 2002-29, at 5.

185. See DIGNAN, *supra* note 99.

186. *Id.* at 39.

187. *Id.*

188. DAVID MIERS ET AL., AN EXPLORATORY EVALUATION OF RESTORATIVE JUSTICE SCHEMES ix (2001).

189. *Id.* at viii.

190. SARAH NELSON, LANE COUNTY DEPARTMENT OF YOUTH SERVICES: EVALUATION OF THE RESTORATIVE JUSTICE PROGRAM 13 (2000); UMBREIT, COATES & VOS, SIX OREGON COUNTIES, *supra* note 86, at 39-42; Jane Wynne & Imogen Brown, *Can Mediation Cut Reoffending?*, 45 PROBATION J. 21, 24-25 (1998).

sample of 1298 juvenile offenders, 619 who participated in VOM, and 679 who did not.¹⁹¹ Using ordinal logistical regression procedures, the authors determined that VOM youth recidivated at a statistically significant 32% lower rate than non-VOM youth.¹⁹²

In a subsequent report, Nugent, Williams, and Umbreit expanded their database to include fifteen studies.¹⁹³ This analysis relied on a combined sample of 9037 juveniles and similarly found that the mediated adolescents committed fewer and less serious offenses than their counterparts.¹⁹⁴

The third meta-analysis included both mediation and group conferencing, and found that the two types of programs together yielded reductions in recidivism compared to other, non-restorative approaches, and that offenders in the two program types were significantly more successful during the follow-up periods.¹⁹⁵

ii. Group Conferencing

As with mediation, results have been somewhat mixed. Several studies have reported a positive difference between conferenced offenders and those who were traditionally processed.¹⁹⁶

Other studies have found different effects for different groups of participants. A series of reports on the RISE experiments showed a reduction in re-offending for the violent crimes but not for the other

191. William R. Nugent et al., *Participation in Victim-Offender Mediation and Reoffense: Successful Replications?*, 11 RES. SOC. WORK PRAC. 5 (2001) [hereinafter Nugent et al., *Successful Replications*].

192. *Id.* at 16.

193. William R. Nugent, Mona Williams & Mark S. Umbreit, *Participation in Victim-Offender Mediation and the Prevalence and Severity of Subsequent Delinquent Behavior: A Meta-Analysis*, 2003 UTAH L. REV. 137, 139-40 [hereinafter Nugent, Williams & Umbreit, *A Meta-Analysis*].

194. *Id.* at 140, 162.

195. LATIMER, DOWDEN & MUISE, *supra* note 105, at 14-16.

196. DAVID HINES, THE WOODBURY POLICE DEPARTMENT RESTORATIVE JUSTICE PROGRAM RECIDIVISM STUDY 4 (2004); CAROLYN HOYLE, RICHARD YOUNG & RODERICK HILL, PROCEED WITH CAUTION: AN EVALUATION OF THE THAMES VALLEY POLICE INITIATIVE IN RESTORATIVE CAUTIONING 49-56 (2002); MCGARREL ET AL., *supra* note 21, at 48-49; MOORE & FORSYTHE, *supra* note 152, at 245-46; Garth Luke & Bronwyn Lind, *Reducing Juvenile Crime: Conferencing versus Court*, 69 CRIME & JUST. BULL.: CONTEMP. ISSUES IN CRIME & JUST., Apr. 2002, at 13, available at [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB69.pdf/\\$file/CJB69.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB69.pdf/$file/CJB69.pdf); Mark Griffiths, *The Implementation of Group Conferencing in Juvenile Justice in Victoria* 8 (Sept. 1999) (paper presented at the Restoration for Victims of Crime Conference convened by the Australian Institute of Criminology), available at <http://www.aic.gov.au/conferences/rvc/griffith.pdf>.

three categories of offense.¹⁹⁷ McCold and Wachtel similarly found that group conferencing had a more positive impact on recidivism rates for participants whose offenses were relatively more violent.¹⁹⁸ Walker found no overall difference in re-offense rates between conferenced youths and all youths in Honolulu but noted that nonviolent conferenced youths did not tend to escalate to violence in subsequent offenses, while similar youths who did not participate in group conferencing had significantly higher arrest rates for subsequent violent crimes.¹⁹⁹

A number of recent studies have begun to attempt to sort out factors that make a difference in the rate of re-offending among conferenced offenders. In 1996 Maxwell and Morris were able to contact 108 young people (67% of their original sample) and 98 parents who had participated in family group conferencing in 1990–91.²⁰⁰ Several multivariate analyses were conducted to sort out predictors of reconviction and pathways to re-offending.²⁰¹ Critical factors that were correlated with lessened re-offending included the following: having a conference that was memorable, not being made to feel a bad person, feeling involved in the conference decision making, agreeing with the outcome, completing the tasks agreed to, feeling sorry for what they had done, meeting the victim and apologizing to him or her, and feeling that they had repaired the damage.²⁰² As the authors point out, “These factors reflect key restorative values, processes and outcomes.”²⁰³

Hayes and Daly examined factors associated with re-offending in a juvenile group conferencing program and found that there was an interaction effect between age at first offending and whether or not the first offense was conferenced.²⁰⁴ They concluded that young, first-time offenders are less likely to re-offend if the response to that first offense is group conferencing than if it is court referral or cautioning.²⁰⁵ This finding has relevance for the net-widening concerns because early intervention has some potential to be more effective even if it

197. LAWRENCE W. SHERMAN, HEATHER STRANG & DANIEL J. WOODS, RECIDIVISM PATTERNS IN THE CANBERRA REINTEGRATIVE SHAMING EXPERIMENTS (RISE) 12 (2000).

198. MCCOLD & WACHTEL, *supra* note 109, at 75-80.

199. Walker, *supra* note 153, at 41.

200. MAXWELL & MORRIS, *supra* note 108, at 250, 261.

201. *Id.* at 251, 261.

202. *Id.* at 252-53, 261.

203. *Id.* at 261.

204. Hayes & Daly, *supra* note 110, at 186-87.

205. *Id.*

temporarily widens the net.

In a related study, Hayes and Daly found that youths who expressed remorse at conferences had one-third fewer re-offenses than youths who did not, and youths who felt their conference outcome was arrived at by a genuine consensus had one-fourth fewer re-offenses than youths who did not.²⁰⁶ Both variables are recognizable restorative concepts.²⁰⁷ However, as the authors point out, the study could not rule out that these differences may have been pre-existing characteristics of the involved youths, rather than something “caused or encouraged” by the conference process.²⁰⁸

iii. Circles

While recidivism is not a primary focus of any of the circle studies surveyed here, it was mentioned in two of the reports. Matthews and Larkin note that an internal self-study was completed for the Healing and Sentencing Circles Program at Whitehorse, Yukon Territory by an outside consultant.²⁰⁹ Over a two-year period the program served sixty-five clients.²¹⁰ Follow-up tracking showed that there was an 80% decrease in recidivism.²¹¹

Also, the Hollow Water study conducted by the Native Counseling Service of Alberta reported that only two clients (approximately 2%) over the ten years had re-offended.²¹² They suggest that typical “recidivism rates for sex offenses is approximately 13% and for any form of recidivism the figure rises to approximately 36%.”²¹³ It remains unclear if these latter comparative figures refer to provincial data, federal data, or both.

iv. Other Programs.

Bonta et al. evaluated a restorative program designed to divert

206. Hennessey Hayes & Kathleen Daly, *Youth Justice Conferencing and Reoffending*, 20 JUST. Q. 725, 757 (2003).

207. *Id.*

208. *Id.*

209. MATTHEWS & LARKIN, *supra* note 119, at 65-68.

210. *Id.* at 67.

211. *Id.*

212. NATIVE COUNSELING SERVICES OF ALTA., *supra* note 174, at v.

213. *Id.*

offenders from incarceration.²¹⁴ The reparative board-type program attempted to involve victims and the community in developing a plan for the offender.²¹⁵ One-year post-program recidivism rates were significantly lower for program participants than for either of two comparison groups.²¹⁶

7. Costs

i. Victim-Offender Mediation

The relative costs of correctional programs are difficult to assess. Several studies reviewed here addressed the issue of costs.

Cost per unit case is obviously influenced by the number of cases handled and the amount of time devoted to each case. The results of a detailed cost analysis in a Scottish study were mixed.²¹⁷ In some instances, mediation was less costly than other options and in others more costly. The author notes that given the “marginal scope” of these programs, it remains difficult to evaluate their cost if implemented on a scale large enough to impact overall program administration.

Evaluation of a large scale VOM program in California led the authors to conclude that the cost per case was reduced dramatically as the program went from being a fledgling to being a viable option.²¹⁸ Cost per case was \$250. A Missouri program reported total cost per case that ranged from \$232 to \$338, but did not provide comparison data.²¹⁹

As noted earlier, some programs have impacted either total incarceration time,²²⁰ place or cost of incarceration,²²¹ or reduction of trials.²²² Additionally, time spent to process a case has implications for overall cost. Stone, Helms, and Edgeworth found that the total time required to process mediated cases was only one-third of that needed

214. JAMES BONTA, SUZANNE WALLACE-CAPRETTA & JENNIFER ROONEY, RESTORATIVE JUSTICE: AN EVALUATION OF THE RESTORATIVE RESOLUTIONS PROJECT 6 (1998), available at http://www.sgc.gc.ca/publications/corrections/pdf/199810b_e.pdf.

215. *Id.* at 6-7.

216. *Id.* at 26-28.

217. WARNER, *supra* note 98, at 55-57.

218. Niemeyer & Shichor, *supra* note 48, at 31.

219. KATZ, *supra* note 148, at 29.

220. Coates & Gehm, *supra* note 86, at 258-60.

221. *Id.*

222. CLARKE, VALENTE & MACE, *supra* note 165, at 45.

for non-mediated cases.²²³

In an evaluation of a large-scale restorative program (of which VOM was one component) for youths who would have been referred to state custody, Bradbury found that the yearly cost per case was less than for the state custody program (\$48,396 versus \$65,866).²²⁴ Since recidivism was virtually the same between the two groups, the restorative program was less costly on the surface.²²⁵ However, the author concluded that because the restorative youths spent more days in the community, they posed more risk to community residents. Therefore, neither program could be designated as “clearly superior.”²²⁶

ii. Circles

A cost-benefit analysis was the cornerstone of the Native Counseling Services of Alberta study of the Hollow Water’s Community Holistic Circle Healing Process.²²⁷ Efforts were made to track the cost that would have occurred if the ninety-four victimizers participating in the program had not been diverted but rather had proceeded on to the provincial or federal justice systems.²²⁸ Estimates of pre-incarceration, incarceration, and parole costs were derived.²²⁹ These were compared to the costs of the CHCH.²³⁰ The estimates indicated that the total costs to provincial and federal governments without CHCH in place would have ranged from \$6,212,732 to \$15,902,885.²³¹ The authors concluded that given the “very low recidivism rate . . . it is appropriate to state that the value of services to both the government and community has been significantly understated.”²³²

C. Public Policy Support for Restorative Justice Dialogue

To illustrate the range and types of legislative changes that emerge as restorative justice moves into the mainstream, we draw on a recently

223. STONE, HELMS & EDGEWORTH, *supra* note 146, at 38.

224. Bradbury, *supra* note 184, at 3.

225. *Id.*

226. *Id.* at 4.

227. NATIVE COUNSELING SERVICES OF ALTA., *supra* note 174, at 67-80.

228. *Id.* at 72-78.

229. *Id.* at 76-77.

230. *Id.* at 78-79.

231. *Id.* at 78.

232. *Id.* at v.

reported examination of United States state statutes related to restorative justice dialogue.²³³ Below we summarize our analysis of the fairly extensive development of formal public policy at the state level supporting the restorative justice dialogue practice of victim-offender mediation (VOM). The review, completed in 2002, examined the state codes of all fifty states and the District of Columbia. The following is an update of this initial review, current as of Spring 2005. Legislative initiatives in support of other forms of restorative justice dialogue were not examined in our review of state statutes.

1. Continuum of State Statutory Support for VOM

A growing number of states have passed legislation related to implementation of VOM. Twenty-nine states currently have at least a reference to VOM or VOM-type programs in their state codes.²³⁴ The majority of the states passed legislation since the late 1980s, and new VOM bills are being introduced every year.²³⁵ There is a continuum of statutory authority related to VOM. The states fall loosely into five categories along the continuum, including: “Comprehensive VOM Legislative Framework,” “Specific Statutory Provision for VOM,” “Basic Statutory Provision for VOM,” “Programs that May Include VOM,” and “No VOM Statutes.” The following will detail each of these categories.

i. Comprehensive VOM Legislative Framework

Seven states, Delaware, Indiana, Kansas, Montana, Nebraska, Oregon, and Tennessee, fall into the “Comprehensive VOM Legislative Framework” category.²³⁶ These states have statutes that detail comprehensive guidelines for VOM programs within their states. The statutes in these seven states are quite varied, but all include a variety of

233. Lightfoot & Umbreit, *State Statutory Provisions*, *supra* note 46, at 421-423; Umbreit, Lightfoot & Fier, *Legislative Statutes*, *supra* note 46, at 3-4.

234. Lightfoot & Umbreit, *State Statutory Provisions*, *supra* note 46, at 421; Umbreit, Lightfoot & Fier, *Legislative Statutes*, *supra* note 46, at 5.

235. *See, e.g.*, H.R. 849, 211th Leg. (N.J. 2004) (proposing a victim-juvenile offender mediation program).

236. *See* DEL. CODE ANN. tit. 11, §§ 9501-9505 (2001); IND. CODE ANN. §§ 11-12-1-2.5, 11-12-8-1 (LexisNexis 2003); KAN. STAT. ANN. §§ 38-1633, -1635 (2000); MONT. CODE ANN. §§ 2-15-2013 to -2014, 41-5-1304, 46-18-101 (2005); NEB. REV. STAT. §§ 43-245, -274, -286 (2004); OR. REV. STAT. §§ 36.105, .115, 135.951-.955, .980 (2003); TENN. CODE ANN. §§ 16-20-101 to -105 (2001).

specific requirements for the VOM programs within their states, such as oversight, mediator training requirements, funding, costs, confidentiality, eligibility for participation, and liability. The structure of the statutes themselves varies as well. Some states have one specific statute detailing all the aspects of VOM,²³⁷ while others with a comprehensive legislative framework have the VOM requirements in a variety of sections of their state code.²³⁸ The unifying factor among this category of states is that state agencies have a clear statutory authority for VOM as well as guidance on the operations of such programs.

ii. Specific Statutory Provision for VOM

An additional seven states, Arkansas, Louisiana, Minnesota, Ohio, Oklahoma, Texas, and Virginia, have a “specific statutory provision for VOM.”²³⁹ These states have a clear statutory authority for VOM, usually in a specific section of the state code, but fewer detailed requirements than states with a comprehensive VOM legislative framework.²⁴⁰ These state statutes provide an overarching framework for VOM with one or two specific requirements, but do not detail a broad array of requirements. In these states, while VOM may be mandated and a few operational details are mandated, most of the implementation particulars are left to the state agencies or court system.²⁴¹

iii. Basic Statutory Provision for VOM

Nine states, including Alabama, Arizona, California, Colorado, Iowa, Missouri, North Carolina, Washington, and Wisconsin, have a

237. See, e.g., DEL. CODE ANN. tit. 11, §§ 9501-9505 (2001).

238. See, e.g., IND. CODE ANN. §§ 11-12-1-2.5, 11-12-8-1 (LexisNexis 2003); IND. CODE ANN. § 35-40-6-4 (LexisNexis Supp. 2005).

239. See ARK. CODE ANN. §§ 9-31-401 to -405 (2002); LA. CHILD CODE ANN. art. 435, 439, 441, 444 (2004); MINN. STAT. § 611A.77, .775 (2003); OHIO REV. CODE ANN. §§ 307.62, 321.44 (West 2003); OHIO REV. CODE ANN. § 737.41 (West 2000 & Supp. 2005); OHIO REV. CODE ANN. § 2152.19 (West 2003 & Supp. 2005); OHIO REV. CODE ANN. § 2929.17 (West 2003); OKLA. STAT. ANN. tit. 10, § 7302-8.1 (1998); OKLA. STAT. ANN. tit. 22, § 991a (2003 & Supp. 2005-2006); TEX. CODE CRIM. PROC. ANN. art. 26.13, 42.12, 56.02, 56.13 (Vernon Supp. 2005); VA. CODE ANN. § 19.2-11.4 (2004); Lightfoot & Umbreit, *State Statutory Provisions*, *supra* note 46, at 428.

240. Lightfoot & Umbreit, *State Statutory Provisions*, *supra* note 46, at 424.

241. *Id.*

basic statutory provision for VOM.²⁴² A basic statutory provision essentially allows VOM as an option for courts to consider, but provides no details or requirements as to any aspect of the auspices of the program. In these nine states, VOM is included as an option among a list of many other options, with no special emphasis on VOM as a preferred or desired approach. Alabama is an example of a state with a basic statutory provision. In Alabama's State Code on Community Punishment and Correction, state funds may be used for community punishments and services at the local level. The code lists twenty-two different options for such community-based programs, including the following: "[c]ommunity service supervision; . . . community detention and restitution centers; victim-offender reconciliation programs; home confinement/curfew; electronic surveillance; [and] intensive supervision."²⁴³ This is the only mention of VOM within the Alabama state code. California's basic statutory provision differs slightly. In California, VOM is authorized under a variety of different statutes, including the penal code for adults²⁴⁴ and under the juvenile court provisions,²⁴⁵ but none of these California statutes provide any details about implementation of VOM. For all of the states in this category, the agencies are not provided statutory guidance in implementing VOM, and discretion is left to public officials.²⁴⁶

iv. Programs that May Include VOM

Seven states, Alaska, Florida, Illinois, Maine, New Jersey, New York, and Vermont, have statutes that authorize programs that may include restorative justice dialogues, but they do not specifically discuss VOM within their state code.²⁴⁷ The state statutes in this category all

242. See ALA. CODE § 15-18-180 (1995 & Supp. 2004); ARIZ. REV. STAT. ANN. § 8-419 (1999); CAL. PENAL CODE § 8052 (West 2000); CAL. WELF. & INST. CODE § 202 (West 1998 & Supp. 2005); COLO. REV. STAT. ANN. § 19-2-309.5 (West 2005); IOWA CODE ANN. § 901B.1 (West 2003 & Supp. 2005); MO. ANN. STAT. § 217.777 (West 2004); N.C. GEN. STAT. § 7B-2506 (2003); WASH. REV. CODE § 13.40.070 (West 2004); WIS. STAT. ANN. § 938.34 (West Supp. 2005).

243. ALA. CODE § 15-18-180(a)(1) (1995 & Supp. 2004).

244. CAL. PENAL CODE § 8052 (West 2000).

245. CAL. WELF. & INST. CODE § 202 (West 1998 & Supp. 2005).

246. Lightfoot & Umbreit, *State Statutory Provisions*, *supra* note 46, at 424-25.

247. See ALASKA STAT. §§ 12.55.011, 47.12.010 (2004); FLA. STAT. ANN. § 985.303 (West 2001); 705 ILL. COMP. STAT. ANN. 405/5-310 (West 1999); ME. REV. STAT. ANN. tit 15, §§ 3204, 3301 (2003); ME. REV. STAT. ANN. tit 34-A, § 1214 (Supp. 2005); N.J. STAT. §§ 2A:4A-74, -75 (2005); N.Y. JUD. LAW § 849-a to -g (Consol. 2002); N.Y. CRIM. PROC. LAW §§ 215.10, .13 (LexisNexis Supp. 2005); VT. STAT. ANN. tit. 28, §§ 2a, 102, 252 (Supp. 2005).

reflect strong restorative justice principles.²⁴⁸ In general, these statutes allow for states to establish programs that entail dialogues between offenders and community members in teams or panels to discuss the offense and/or possible consequences.²⁴⁹ While victims may be part of the teams or panels, the main purpose is not for dialogue between victim and offender. Thus, while these state statutes may result in dialogue between the victim and the offender in a similar fashion as a VOM program, the state statutes do not technically authorize a structured dialogue between a victim and a mediator in the same fashion as VOM. Nonetheless, these state statutes do evince support of restorative justice dialogues.

v. States with No VOM Statutes

Twenty-one states and the District of Columbia do not have any reference to VOM in their state codes or statutes as of 2002.²⁵⁰ While several states have restorative justice language in their state statutes, they had no specific reference to VOM or any program that would entail interaction between a victim and an offender.²⁵¹ However, state statutes are not required for states to implement VOM or other restorative justice programs. As noted above, virtually every state in the United States has some sort of restorative justice program.²⁵² However, state statutes help to promote the legitimacy of VOM and other restorative justice programs, which can be valuable when legal issues arise.²⁵³

248. Lightfoot & Umbreit, *State Statutory Provisions*, *supra* note 46, at 425.

249. See, e.g., 705 ILL. COMP. STAT. ANN. 405/5-310 (West 1999) (Illinois' community mediation program and community mediation teams); ME. REV. STAT. ANN. tit 15, §§ 3301, 3204 (2003); ME. REV. STAT. ANN. tit. 34-A, § 1214 (Supp. 2005) (Maine's community resolution teams).

250. Lightfoot & Umbreit, *State Statutory Provisions*, *supra* note 46, at 422, 425; Umbreit, Lightfoot & Fier, *Legislative Statutes*, *supra* note 46, at 5. The states with no VOM provisions: Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, West Virginia, and Wyoming.

251. See, e.g., 42 PA. CONS. STAT. ANN. § 6301 (2000); S.C. CODE ANN. §§ 20-7-20, -6840 (1985 & Supp. 2004).

252. O'BRIEN, *supra* note 45, at 1.

253. Lightfoot & Umbreit, *State Statutory Provisions*, *supra* note 46, at 435.

2. Variations in Statutory VOM Provisions

There is no standard model for VOM legislation across the states that have adopted VOM statutes. The thirty state VOM statutes vary in regards to structure of VOM programs and the various requirements for VOM program and program participation. The following will outline some of they key features included in VOM statutes.

States have adopted eight different statutory approaches for implementing VOM.²⁵⁴ Six states have general referral language;²⁵⁵ eight states have authorized state VOM programs;²⁵⁶ eight states have authorized grants to nonprofits to run VOM programs;²⁵⁷ and four states, Arizona, Indiana, Kansas and Virginia, have authorized county-level VOM programs.²⁵⁸ The remaining three approaches, each used by a single state, include providing statutory authority for a specific program at the University of Arkansas by Arkansas,²⁵⁹ grants to counties or nonprofits by Ohio,²⁶⁰ and referrals to individual mediators by Louisiana.²⁶¹ Delaware, Montana and Oregon have also established, through statutes, statewide commissions to guide the implementation of VOM within their state.²⁶²

Other key variations among state statutes relate to the program

254. *Id.* at 426; Umbreit, Lightfoot & Fier, *Legislative Statutes*, *supra* note 46, at 7.

255. The states are Alabama, Alaska, New Jersey, North Carolina, Washington, and Wisconsin. See ALA. CODE § 15-18-180 (1995 & Supp. 2004); ALASKA STAT. §§ 12.55.011, 47.12.010 (2004); N.J. STAT. §§ 2A:4A-21, -75 (2005); N.C. GEN. STAT. § 7B-2506 (2003); WASH. REV. CODE § 13.40.070 (West 2004); WIS. STAT. ANN. § 938.34 (West Supp. 2005).

256. The states are Colorado, Florida, Illinois, Iowa, Maine, Missouri, Oklahoma, and Texas. See COLO. REV. STAT. ANN. § 19-2-309.5 (West 2005); FLA. STAT. ANN. § 985.303 (West 2001); 705 ILL. COMP. STAT. ANN. 405/5-310 (West 1999); IOWA CODE ANN. § 901B.1 (West 2003 & Supp. 2005); ME. REV. STAT. ANN. tit 34-A, § 1214 (Supp. 2005); MO. ANN. STAT. § 217.777 (West 2004); OKLA. STAT. ANN. tit. 10, § 7302-8.1 (1998); OKLA. STAT. ANN. tit. 22, § 991a (2003 & Supp. 2005-2006); TEX. GOV'T CODE ANN. § 508.191 (Vernon 2004).

257. The states are Delaware, Minnesota, Montana, Nebraska, New York, Oregon, Tennessee, and Vermont. See DEL. CODE ANN. tit. 11, § 9502 (2001); MINN. STAT. § 611A.77 (2003); MONT. CODE ANN. §§ 2-15-2013 to -2014 (2005); NEB. REV. STAT. § 25-2909 (1995); N.Y. JUD. LAW § 849-b(2) (Consol. 2002); OR. REV. STAT. § 135.959 (2003); TENN. CODE ANN. § 16-20-102 (2001); VT. STAT. ANN. tit. 28, § 101 (Supp. 2005).

258. See ARIZ. REV. STAT. ANN. § 8-419 (1999); IND. CODE ANN. § 30-40-6-4 (LexisNexis Supp. 2005); KAN. STAT. ANN. § 38-1635 (2000); VA. CODE ANN. § 19.2-11.4 (2004).

259. See ARK. CODE ANN. § 9-31-402(3) (2002).

260. See OHIO REV. CODE ANN. § 307.62 (West 2003); OHIO REV. CODE ANN. § 737.41 (West 2000 & Supp. 2005).

261. See LA. CHILD CODE ANN. art. 437 (2004).

262. See DEL. CODE ANN. tit. 11, § 9502(a) (2001); MONT. CODE ANN. § 2-15-2013 (2005); OR. REV. STAT. §§ 135.951-.955 (2003).

details of VOM. States differ on the eligibility age of offenders for participation in VOM programs. Twelve states authorize VOM solely for juveniles,²⁶³ and seven states authorize VOM solely for adults.²⁶⁴ Seven states have separate provisions authorizing VOM for juveniles and adults,²⁶⁵ and four that authorize VOM for juveniles and adults under the same statute.²⁶⁶ Altogether, twenty-three states authorize VOM for juveniles, and eighteen authorize VOM for adults.

Many of the other VOM requirements are only included in a handful of state statutes. For example, seven states have codified mediator requirements for those providing VOM services.²⁶⁷ Of these seven, Kansas, Louisiana and Nebraska have detailed requirements for mediators involved in VOM, while Delaware, Minnesota, New York and Tennessee have general requirements that agencies providing services establish minimum training requirements for VOM mediators. Likewise, seven states provide specific statutory immunity to parties involved in VOM, such as mediators, agencies or prosecutors.²⁶⁸

263. The states are Arkansas, Colorado, Florida, Illinois, Kansas, Louisiana, Maine, Nebraska, New Jersey, North Carolina, Washington, and Wisconsin. *See* ARK. CODE ANN. § 9-31-402 (2002); COLO. REV. STAT. ANN. § 19-2-309.5 (West 2005); FLA. STAT. ANN. § 985.303 (West 2001); 705 ILL. COMP. STAT. ANN. 405/5-310 (West 1999); KAN. STAT. ANN. §§ 38-1633 to -1635 (2000); LA. CHILD CODE ANN. art. 435, 439, 441, 444 (2004); ME. REV. STAT. ANN. tit 34-A, § 1214 (Supp. 2005); NEB. REV. STAT. §§ 43-245, -274, -286 (2004); N.J. STAT. § 2A:4A-21, -75 (2005); N.C. GEN. STAT. § 713-2506 (2003); WASH. REV. CODE § 13.40.070 (West 2004); WIS. STAT. ANN. § 938.34 (West Supp. 2005).

264. The states are Alabama, Iowa, Missouri, New York, Texas, Vermont, and Virginia. *See* ALA. CODE § 15-18-180 (1995 & Supp. 2004); IOWA CODE ANN. § 901B.1 (West 2003 & Supp. 2005); MO. ANN. STAT. § 217.777 (West 2004); N.Y. JUD. LAW §§ 849-a to -g (Consol. 2002); TEX. CODE CRIM. PROC. ANN. art. 26.13, 42.12, 56.02, 56.13 (Vernon Supp. 2005); TEX. GOV'T CODE §§ 508.191, 508.324 (Vernon 2004); TEX. CIV. PRAC. & REM. CODE § 154.073 (Vernon 2005); VT. STAT. ANN. tit. 28, § 102 (Supp. 2005); VA. CODE ANN. § 19.2-11.4 (2004).

265. The states are Alaska, Arizona, California, Minnesota, Ohio, Oklahoma, and Oregon. *See* ALASKA STAT. §§ 12.55.011, 47.12.010 (2004); ARIZ. REV. STAT. ANN. § 8-419 (1999); ARIZ. REV. STAT. ANN. § 12-299.01 (2003); CAL. PENAL CODE § 8052 (West 2000); CAL. WELF. & INST. CODE § 202 (West 1998 & Supp. 2005); MINN. STAT. § 242.32 (2003); MINN. STAT. § 611A.77 (2003); OHIO REV. CODE ANN. § 2152.19(C) (West 2003 & Supp. 2005); OHIO REV. CODE ANN. § 2929.17(L) (West 2003); OKLA. STAT. ANN. tit. 10, § 7302-8.1 (1998); OKLA. STAT. ANN. tit. 22, § 991a (2003 & Supp. 2005-2006); OR. REV. STAT. §§ 135.953(4), (6) (2003); OR. REV. STAT. § 419C.320 (2003).

266. The states are Delaware, Indiana, Montana, and Tennessee. *See* DEL. CODE ANN. tit. 11, § 9502(b)(4) (2001); IND. CODE ANN. § 11-12-8-1 (LexisNexis 2003); MONT. CODE ANN. § 2-15-2013 (2005); TENN. CODE ANN. § 16-20-102(b)(3) (2001).

267. The states are Delaware, Kansas, Louisiana, Minnesota, Nebraska, New York, and Tennessee. *See* DEL. CODE ANN. tit. 11, § 9502 (2001); KAN. STAT. ANN. § 75-7038 (1997 & Supp. 2004); LA. CHILD CODE ANN. art. 439 (2004); MINN. STAT. § 611A.77 (2003); NEB. REV. STAT. § 43-245(7) (2004); TENN. CODE ANN. § 16-20-102(b)(2) (2001).

268. The states are Illinois, Indiana, Minnesota, Nebraska, Oklahoma, Tennessee, and

Virginia and Indiana require victims to sign a waiver of liability, while Illinois, Minnesota, Nebraska, Oklahoma and Tennessee provide general immunity to participants. Again, other states may have broader immunity in other parts of their state codes, but these states have guaranteed immunity specifically in regards to VOM activities. Another common statutory provision is in regards to confidentiality of VOM provisions. Ten states, including Delaware, Illinois, Louisiana, Maine, Nebraska, New York, Oklahoma, Oregon, Tennessee, and Texas, have mandated VOM proceedings to be confidential.²⁶⁹

There are many other types of provisions included in state codes, such as four states that mandate costs for VOM,²⁷⁰ while two mandate that VOM be free;²⁷¹ five states that require the state or county to maintain comprehensive lists of trained VOM mediators,²⁷² and four states that have statutory provisions regarding to training.²⁷³

While this review demonstrates that there is no standard approach by states to include provisions for VOM within their codes, there is clearly a growing trend to codify VOM practices into state laws, and the majority of states have now adopted VOM provisions. As VOM is a cornerstone of restorative justice practices, this is further evidence that restorative justice is becoming a mainstream and accepted practice within the United States.

Virginia. See 705 ILL. COMP. STAT. ANN. 405/5-160 (West 1999); IND. CODE ANN. § 35-40-6-5 (LexisNexis 2003); MINN. STAT. § 595.02 (2003); NEB. REV. STAT. § 25-2915 (1995); OKLA. STAT. ANN. tit. 22, § 991a(A)(1)(M) (1998); TENN. CODE ANN. § 16-20-105 (2001); VA. CODE ANN. § 19.2-11.4(B) (2004).

269. See DEL. CODE ANN. tit. 11, § 9503 (2001); 705 ILL. COMP. STAT. ANN. 405/5-310 (West 1999); LA. CHILD CODE ANN. art. 441 (2004); ME. REV. STAT. ANN. tit 34-A, § 1214 (Supp. 2005); ME. REV. STAT. ANN. tit 15, § 3301 (2003); NEB. REV. STAT. § 25-2914 (1995); N.Y. JUD. LAW §§ 849-b(6) (Consol. 2002); OKLA. STAT. ANN. tit. 20, § 991a(A)(1)(m) (1998); OR. REV. STAT. § 135.957 (2003); TENN. CODE ANN. § 16-20-103 (1994); TEX. CIV. PRAC. & REM. CODE ANN. § 154.073 (Vernon 2005).

270. The states are Kansas, Louisiana, New York, and Oklahoma. See KAN. STAT. ANN. § 38-1633 (2000); LA. CHILD CODE ANN. art. 405 (2004); N.Y. JUD. LAW § 849-b(4)(c) (Consol. 2002); OKLA. STAT. ANN. tit. 22, § 991a(A)(1)(m) (1998).

271. The states are Delaware and Tennessee. See DEL. CODE ANN. tit. 11, § 9502(b)(4) (2001); TENN. CODE ANN. § 16-20-102(b)(3) (1994).

272. The states are Kansas, Louisiana, Nebraska, New York, and Oregon. See KAN. SUP. CT. R. 902; LA. CHILD CODE ANN. art. 436 (2004); NEB. REV. STAT. § 25-2908(11) (1994 & Supp. 2004); N.D. N.Y. UNIFORM DIST. CT. ACT § 83.11-2 (Consol. 2002); OR. REV. STAT. § 135.980 (2003).

273. The states are Arkansas, Missouri, Nebraska, and Texas. See ARK. CODE ANN. § 9-31-405 (2002); MO. ANN. STAT. § 217.777(5)(1) (West 2004); NEB. REV. STAT. § 25-2913(1) (1995); TEX. CODE CRIM. PROC. ANN. art. 56.13(1) (Vernon Supp. 2004-2005).

IV. CONTINUING ISSUES

A. Pitfalls and Unintended Negative Consequences

The restorative justice movement is grounded in values that promote both accountability and healing for all affected by crime. It emphasizes positive human development, mutuality, empathy, responsibility, respect, and fairness. Yet, the principles and practices of the restorative justice movement are not inherently benign or incapable of doing harm. In fact, as in so many other movements and interventions grounded in lofty values and good intentions, reports of unintentionally harmful consequences or outcomes surface periodically.

In large part, the pitfalls derive from the inherent difficulty of attempting to balance so many valid needs: needs of victims, needs of offenders, needs of the community, and ultimately the needs of the state that has come to represent them. Small programs that are accountable to a finite and immediate constituency may be less prone to such errors than large institutions and governments, but even so, examples of unintended harm abound.

Sometimes the problem arises from inattention to some of the basic principles and guidelines that have by now become well established and widely known. For example, well intentioned judges in two different states took the opportunity during the civil portion of trials involving negligent homicide from drunk driving to refer the offender and the family survivor of the victim to a mediation process—on the surface, a positive restorative option for both. However, in each instance there was no separate preparation of the involved parties, and the persons responsible for facilitating the meetings had no specific training in victim-offender dialogue.²⁷⁴

In one of these cases, the judge adjourned the civil portion of the trial to allow the defendant and the wife of the husband who was killed to go into the jury room in order to empower the victim to determine, with the defendant, what type of settlement would be the most helpful to her. This victim had no preparation, and even her victim advocate did not object to this process. Her experience was one of intense fear and re-victimization in spite of the good intentions of the judge. In a negligent homicide drunk driving case, a judge referred a defendant to a very experienced local mediation program that focused on civil court disputes and involved attorneys quite extensively in the process. This

274. The following statements are based on the personal experiences of the lead author.

organization had not even done a victim-offender mediation in a petty vandalism, yet they were now faced with facilitating a mediation and dialogue in a homicide case, with no training or experience in this area.

It is not just well-intentioned individuals who make such errors. A nationally recognized exemplary offender re-entry project that receives large federal grants to support restorative group conferencing invites victims at the last moment with no preparation, no support, and little involvement. The net result is a feeling of re-victimization by those crime victims who participated.

In many jurisdictions there are well-intended juvenile justice officials and judges who mandate young offenders to meet with their victims if the victim is willing to do so, even if the defendant does not own up to the offense or would prefer not to do this type of intervention. Two documented cases occurred in a midwestern state in both a victim-offender mediation program and a family group conferencing program. In both cases the victims and their support people felt re-victimized by the process because of the attitude projected by the offender who was mandated to attend against his will. The victims themselves reported feeling coerced into the mediation or conference, despite the good intent of the highly committed restorative justice advocates who were responsible for their participation in the process.

Some of the reported problems are a result of insufficient attention to training volunteers and monitoring their performance. One participant in a peacemaking circle process reported being required to attend, receiving no preparation, and finding that the facilitator not only monopolized the process but in fact identified with and openly supported the other party in the disagreement. Observers in another program reported on a community accountability board that consisted of three elderly retired men who functioned more as arbitrators in their questioning and comments toward the young offender who appeared before them. In addition, this entire encounter took place without any victim presence or any mention of victim concerns and needs.

Some of these examples also derive from attempts by the formal criminal justice system to take over the movement and fashion it to meet the traditional needs of the system and its bureaucracy. As Zehr and Towes point out, such endeavors can threaten the soul of the restorative justice movement and neutralize its impact.²⁷⁵ A frequent shortfall of this type is excessive focus on offender rehabilitation, to the

275. HOWARD ZEHR & BARB TOEWS, *CRITICAL ISSUES IN RESTORATIVE JUSTICE* vii (2004).

exclusion of the needs of the victims and the community. Within the United States, at least one state has adopted legislation to support restorative justice principles because of the restorative justice impact on reducing recidivism and prison overcrowding.²⁷⁶

B. Opportunities for Expanding the Vision

In the face of these potential pitfalls, the restorative justice movement needs to remain passionately committed to its foundational vision of an entirely different way of understanding and responding to crime and conflict. This vision is grounded in values that are resonating with an increasingly broad range of individuals and communities throughout the world, presenting many opportunities for new and widened impact. A number of these opportunities are listed below; many others continue to emerge.

Initiating a system-wide commitment to providing local citizens who are victimized by all but the most serious violent crime. Both parties would retain the legal right to go before the formal criminal or juvenile justice system if either felt that they were not treated fairly or were dissatisfied with the outcome of the restorative justice intervention. Such a policy would place restorative justice in the forefront of our collective response to crime, rather than consigning it to a marginal position as an option for only a select number of individuals. This policy would also result in huge cost savings.

Developing an increasing number of hybrids that integrate the strengths and limitations of each individual restorative justice intervention. For example, in more serious cases the use of victim-offender mediation on a small or intimate level could first be offered to the specific victim and offender. This could be followed by a session involving a number of family members and support people. Then, even this could be followed at a later time with a much larger community intervention involving a peacemaking circle of perhaps twenty to thirty individuals. Case examples of such combinations go all the way back to the experience of Genesee County, New York, in responding to a sniper shooting case in the early 1980s.²⁷⁷ Examples also include a more recent case in Dakota County, Minnesota in which the response to a pipe bomb incident by students in a high school resulted in combining

276. See H.R. 11, 20th Leg. (Haw. 2000).

277. Brook Larmer, *After Crime, Reconciliation*, CHRISTIAN SCIENCE MONITOR, June 24, 1986, at 1.

elements of victim-offender mediation, family group conferencing, and a community peacemaking circle.²⁷⁸

Increasing the use of surrogate victim-offender community dialogue. Encounters with surrogates can be a partial response to the large volume of crime victims whose offenders are never caught. Such victims are equally in need of gaining a greater understanding of why people commit such crimes and letting others in the community know about the impact on their lives. Often, they also find it beneficial to help hold other similar offenders accountable for their actions even though their own offender was never caught. Dialogue groups in prisons and other correctional facilities that include offenders, victims of similar crimes, and community members have been shown to benefit all who are involved at a relatively low cost. Examples of this exist in the states of Minnesota, Washington, and Wisconsin.²⁷⁹

Applying restorative justice principles and practices in school settings from elementary level through college. Examples of this include the use of peacemaking circles to deal with student conflicts in an entire school district in Minnesota and other schools throughout the country that use various forms of victim-offender mediation, peer mediation, family group conferencing, circles, or other types of restorative dialogue.

Expanding the use of restorative justice principles and practices in work place settings among co-workers.

Increasing the use of restorative justice principles and practices to foster healing in the wake of severe political violence and in the context of national healing.

Building increased coalitions among unlikely allies within communities that focus on the real human impact of crime, the need for direct and understandable accountability of law violators, and the need to foster healing within the community.

Offering more support for victims of severe violence. This would include greatly expanding the opportunities for victim-offender dialogue for those victims who seek to meet. It would also involve much wider use of victim intervention projects that respond to the needs of victims

278. Jim Adams, *Hastings Teens, City Finally Come Full Circle*, MINNEAPOLIS STAR TRIBUNE, August 20, 1998, at B1.

279. HEATHER BURNS, CITIZENS, VICTIMS AND OFFENDERS RESTORING JUSTICE PROJECT: MINNESOTA CORRECTIONAL FACILITY AT LINO LAKES (2002); Jacqueline Helfgott, Madeline Lovell & Charles Lawrence, Results from the Pilot Study of the "Citizens, Victims, and Offender Restoring Justice" Program at the Washington State Reformatory 2 (March 1999) (paper presented at the Academy of Criminal Justice Sciences Annual Conference).

immediately, whether or not there ever is any direct engagement with the offender.

Developing strong legislative support for public resources being appropriated to support the restorative justice movement, based on evidence of its effectiveness in reducing recidivism, cutting costs, and increasing victim and citizen satisfaction with the justice process. Such initiatives would also involve building stronger alliances with the crime victim advocacy community through focusing on joint interests between restorative justice advocates and crime victim advocates.

Building ever-increasing bridges between the dominant culture and the many ethnic groups and communities of color within our society. One approach already being utilized is that of tapping into the ancient wisdom among many indigenous people, who have for centuries practiced elements of what today is called restorative justice.

Using the principles of restorative justice to engage in a new framework for research on the public policy and human impact of the death penalty.

Strengthening the very fabric of community and civic responsibility through increasing involvement of neighbors and citizens in restorative community-based justice initiatives that provide opportunities for more frequent and meaningful contact with each other in activities that benefit all of society.

C. *Questions for the Future*

Despite the wide and increasing international acceptance of restorative justice principles and practices and despite the many opportunities facing the movement in the twenty-first century, there remain numerous unresolved and often troubling issues. Many of these issues speak to the core integrity of the movement, while others pose questions about fair and effective implementation. We present the most salient of these in the following list:

Is restorative justice in fact about developing an entirely new paradigm of how our criminal justice systems operate at a systemic level, or is it a set of processes, specific principles, and practices that can operate within our conventional criminal justice systems?²⁸⁰

How does the restorative justice movement avoid becoming a micro-level intervention serving victims, offenders, and communities? The

280. Paul H. Robinson, *The Virtues of Restorative Processes, the Vices of "Restorative Justice,"* 2003 UTAH L. REV. 375, 380-87.

movement would then have no macro-level impact on the contributing factors to crime and delinquency in our communities, which are inseparable from the social injustice that permeates our society.

Can restorative justice really be a victim-centered approach when the overwhelming emphasis and resources in the system are so heavily focused upon identifying, apprehending, processing and punishing, or even treating the offender?

How big is the tent under which policies and practices are considered to be part of the restorative movement? As Susan Sharpe points out, there are at least two camps: the “purist,” who would severely limit who is really in “the movement,” and the “maximalist,” who would be so inclusive that it becomes hard to distinguish what makes the policy and practice uniquely restorative.²⁸¹

How can the restorative justice movement avoid the predictable co-opting of its philosophy?

The vast majority of crime victims never have their offenders apprehended and processed in the system. These victims are currently largely ignored by the justice system—restorative or conventional. How can restorative justice address the multitude of needs facing victims of crime whose offenders are never caught and, therefore, are never given the opportunity to enter a mediation session, conference, peacemaking circle, or other related interventions?

Will restorative justice be marginalized through being essentially required to deal with only the most minor types of criminal and delinquent offenses, many of which would self-correct on their own?

Will restorative justice as a movement gravitate toward a “one size fits all” approach in which a specific intervention or approach will be viewed as appropriate for nearly all cases, or all cases of a given type?

A major pillar of the restorative justice approach is its emphasis upon the involvement of communities and respecting the needs of the community. How will the restorative justice movement deal with the reality that many communities express a wish for policies and practices that are far from being restorative in nature? Will the movement be able to integrate respect for those positions while still advocating more restorative approaches?

How will the restorative justice movement effectively deal with cases involving domestic violence? This is a tremendously controversial area and many different opinions exist in the field already. Some believe

281. Susan Sharpe, *How Large Should the Restorative Justice “Tent” Be?*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 276, at 17, 20.

that domestic violence cases can be routinely referred to such programs as victim-offender mediation, while others are more cautious. In theory, restorative justice may have a great deal to offer to the field of domestic violence. In practice, however, it carries a tremendous capacity for doing harm, despite good intentions. How can the dangerous territory of domestic violence be reconciled with the good intent of those involved with the restorative justice movement?

Within the United States, the criminal justice system has a vastly disproportionate number of persons of color caught in its policies and practices. How does the restorative justice movement avoid mirroring this same reality? How many restorative justice policies and programs affect communities of color? How many of these programs and policies actively engage persons of color in leadership roles and service delivery roles?

How can the informal nature of community-based justice, which characterizes the restorative justice movement, be reconciled with the protection of rights offered by our formal criminal and juvenile justice systems? How can extensive and unfair disparity in sanctions and outcomes be avoided as individual victims and communities are given a wide range of options for holding the offender accountable?

V. CONCLUSION

The restorative justice movement is having an increasing impact upon criminal justice system policymakers and practitioners throughout the world. As a relatively young reform effort, the restorative justice movement holds a great deal of promise as we enter the twenty-first century. By drawing upon many traditional values of the past, from many different cultures, we have the opportunity to build a far more accountable, understandable, and healing system of justice and law that can lead to a greater sense of community through active victim and citizen involvement in restorative initiatives.