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## Examining the Use of Restorative Justice Practices in Domestic Violence Cases

Judge Bennett Burkemper  
Bennet.Burkemper@court.mo.gov

Nina Balsam  
Ninab3@sbcglobal.net

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## EXAMINING THE USE OF RESTORATIVE JUSTICE PRACTICES IN DOMESTIC VIOLENCE CASES

JUDGE BENNETT BURKEMPER\* AND NINA BALSAM\*\*

### I. INTRODUCTION

Restorative Justice is a way of looking at crime that focuses on identifying and healing the harm to the victim, holding the offender accountable, and involving the community of people affected by the crime. Despite the fact that restorative justice practices have proven quite beneficial to victims who choose to participate, advocates against domestic violence have been justifiably wary about their use with victims/survivors. This Comment will explore the use of restorative justice practices in domestic violence situations and argues that at least some of these practices can be safely and beneficially used given an understanding of the dynamics of domestic violence, careful planning, and responsiveness to the needs of domestic violence victims/survivors. Sections II and III provide an overview of restorative justice principles and practices while Section IV examines how these principles and practices apply to victims and Section V explains why victims might want to engage in restorative justice practices. Section VI covers those special considerations that should be taken into account when using restorative justice in domestic violence cases because of the particular dynamics of domestic violence. Section VII describes how practices that account for these considerations should be constructed. Section VIII describes actual practices that have successfully taken these

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\* Judge Ben Burkemper is an Associate Circuit Judge in Lincoln County of the 45th Judicial Circuit in Missouri. He obtained a B.A. (1988) and M.B.A. (1994) from Saint Louis University, a J.D. (cum laude) (1991) from Gonzaga University and a LL.M. (Public International Law) (1995) from the London School of Economics and Political Science.

\*\* Nina Balsam, J.D., graduated from Washington University School of Law in 1976. She worked for Legal Services of Eastern Missouri for 21 years, largely doing domestic violence related work. During her tenure at Legal Services, she co-authored Missouri's Adult Abuse Law, which provided a civil remedy for victims of domestic violence. She thereafter worked for the Missouri Coalitions Against Domestic Violence as the Legal Advocacy Projects Director. She currently works at the Center for Women in Transition, promoting Restorative Justice in the state of Missouri. Ms. Balsam would like to thank May Yeh, student intern from Washington University School of Law, for her assistance with this article.

considerations into account. Finally, Section IX describes an emerging project in Missouri that takes these considerations into account.

## II. RESTORATIVE JUSTICE PRINCIPLES

Although restorative justice practices have been increasingly utilized in the adult and juvenile justice systems, restorative justice remains a relatively unknown concept in the United States.

Commonly defined as a “process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible,”<sup>1</sup> restorative justice differs widely from the traditional retributive philosophy that underlies most criminal justice systems. While the central focus in traditional criminal courts is that a crime is a violation of the law for which the state imposes punishment,<sup>2</sup> restorative justice focuses on the harm to the victim most affected by the crime and how to make that person whole.<sup>3</sup> In the traditional system, the offender may be held “accountable” by the imposition of punishment;<sup>4</sup> through restorative justice, however, the offender may be held accountable not only by taking responsibility but also by making amends.<sup>5</sup> Unlike the traditional justice system, restorative practices involve not only the offender and the victim but the community as well.<sup>6</sup> The community is integral in addressing harm to victims and holding offenders accountable.<sup>7</sup>

Victims given an opportunity to meet their offenders through restorative justice processes are generally more satisfied with the criminal justice system and less fearful of being re-victimized.<sup>8</sup> Further, offenders who participated in a restorative justice have a personal connection with, and understand the impact of the crime on, their victims and, as a result, comply with agreements at a higher rate than with court orders in which they have little or no input.<sup>9</sup> Offenders recidivate at lower rates than those who do not go through a restorative justice process.<sup>10</sup> In addition to lowering recidivism rates,

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1. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 37 (2002).

2. Mark S. Umbreit et al., *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*, 89 MARQ. L. REV. 251, 254 (2005).

3. *Id.* at 255.

4. *Id.* at 254.

5. Roger J.R. Levesque, *Future Visions of Juvenile Justice: Lessons from International and Comparative Law*, 29 CREIGHTON L. REV. 1563, 1575 n.80 (1995–1996).

6. Umbreit et al., *supra* note 2, at 256.

7. *See generally* ZEHR, *supra* note 1, at 17–18.

8. *See* discussion *infra* Parts V., VI.

9. *See infra* notes 39, 40 and accompanying text.

10. Umbreit et al., *supra* note 2, at 17–18.

restorative processes save time and money.<sup>11</sup> The community benefits by providing an increased sense of involvement in the methods by which crime is addressed in that there is greater collaboration among community members<sup>12</sup> and greater satisfaction for and increased confidence within the criminal justice system.<sup>13</sup>

### III. RESTORATIVE JUSTICE PRACTICES

Various models of restorative justice are being utilized in the United States and throughout the world. This section presents the most widely used Restorative Justice Models which include: Victim Offender Dialogue; Family Group Conferences; Community Accountability Boards; Restorative Justice Circles; and Victim Impact Panels.

#### A. *Victim Offender Dialogue*

Victim Offender Dialogue (VOD) is the form of restorative justice most commonly used in the United States.<sup>14</sup> As its name indicates, the victim and the offender are the primary actors in a conference<sup>15</sup> that is facilitated by a trained mediator.<sup>16</sup> The goal of a VOD model is to allow the victim and the offender to meet, for the victim to be able to explain the effects of the crime on him/her, and to hold the offender accountable.<sup>17</sup> VOD generally results in a mutual agreement,<sup>18</sup> the terms of which focus on healing the harm to the victim and holding the offender accountable. Agreements are reached and complied with in the vast majority of these cases. Dialogues can be used at any point in the criminal justice system, including as a diversion from prosecution, as an alternative to trying the case, as a condition of probation, or even after the

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11. T. Bennett Burkemper et al., *Restorative Justice in Missouri's Juvenile System*, 63 J. MO. BAR. 128, 129 (2007).

12. Donald Schmid, *Restorative Justice in New Zealand: A Model for U.S. Criminal Justice*, 34 VICTORIA U. WELLINGTON L. REV. 91, 125–26 (2003) (citing Barry Stuart, *Guiding Principles for Peacemaking Circles*, in RESTORATIVE COMMUNITY JUSTICE 235 (Gordon Bazemore & Mara Schiff eds. 2001)).

13. Zvi D. Gabbay, *Justifying Restorative Justice: A Theoretical Justification for Use of Restorative Justice Practices*, J. DISP. RESOL. 349, 371–72 (2005).

14. Alyssa H. Shenk, *Victim-Offender Mediation: The Road to Repairing Hate Crime Injustice*, 17 OHIO ST. J. ON DISP. RESOL. 185, 216 (2001).

15. Gabbay, *supra* note 13, at 361.

16. *Id.* at 358.

17. *Id.* at 368.

18. *Id.* at 361–62.

offender has been incarcerated.<sup>19</sup> The use of these dialogues was endorsed by the American Bar Association in 1994.<sup>20</sup>

### B. Family Group Conferences

Family Group Conferences (FGC) are similar to VODs in structure and purpose but FGCs include a larger group of conference participants by including family members of both the victim and the offender, members of the community and any other interested parties.<sup>21</sup> The FGC model recognizes the empowerment of the family and its impact on the healing process after a crime is committed. Conferences are used, to a large extent, in juvenile cases.<sup>22</sup>

### C. Community Accountability Boards

Community Accountability Boards involve community members who make up the Board, and offenders and victims and their families and supporters. The Board, along with the other participants, decides how an offense will be addressed<sup>23</sup> and most board meetings end with reparation agreements comprised of restitution, if applicable, and community service. Similar to the FGC model, Boards are often used in juvenile cases, but can be used in adult probation settings.<sup>24</sup>

### D. Restorative Justice Circles

The Restorative Justice Circles model, similar to the FGC model, includes victims, offenders, other interested parties and members of the community.<sup>25</sup> Participants are arranged in a circle and a “talking piece” is passed from person to person to ensure each participant has an opportunity to speak to the individualized effects of the offense, the conditions leading to the offense, and appropriate ways to address healing for the victim and the community. In the criminal context, the circles model is employed to address sentencing and may even include the judge and prosecutor.<sup>26</sup> Circles are also used in school settings for discipline cases and have been used in other settings, such as workplace disputes, to resolve conflict or provide support for participants.

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19. *Id.* at 364.

20. Umbreit et al., *supra* note 2, at 260 (citing *Victim–Offender Mediation/Dialogue Programs*, 1994 A.B.A. Res., available at <http://www.vorp.com/articles/abaendors.html>).

21. *Id.* at 253.

22. Carol LaPrairie, *Conferencing in Aboriginal Communities in Canada—Finding Middle Ground In Criminal Justice*, 6 CRIM. L.F. 576, 580 (1995).

23. Burkemper et al., *supra* note 11, at 129.

24. *Id.* at 128 n.2.

25. ZEHR, *supra* note 1, at 51.

26. Rachel King, *Restorative Justice: How Law Schools Can Help Heal Their Communities*, 34 FORDHAM URB. L.J. 1285, 1299 (2007).

### E. Victim Impact Panels

Victim Impact Panels involve victims meeting with offenders with whom they have not had previous contact so that the victims can explain the impact of the crime on them.<sup>27</sup> These panels help victims heal by allowing victims to explain the harm caused to them and help offenders develop an understanding of the impact on victims so they are less likely to recidivate.

## IV. RESTORATIVE JUSTICE AS APPLIED TO VICTIMS

Participation in restorative justice processes should always be voluntary on the part of the victim. Victims should never be required or coerced into participating. They need to undergo emotional healing before being able to engage in the restorative justice process in order to avoid being re-traumatized.<sup>28</sup> Voluntariness is particularly important for domestic violence victims as their safety could also be compromised by their participation.

Before justice professionals initiate a restorative justice practice, victim readiness and safety to engage should be assessed via a specifically designed screening tool.<sup>29</sup> Moreover, offenders should only participate in restorative justice processes if they are willing to accept responsibility for their actions and be held accountable; otherwise, victims are at risk for re-victimization.<sup>30</sup>

The extent of community involvement differs between the justice models: Victim/Offender Dialogue has almost no community involvement, with the exception of the facilitator, whereas Community Accountability Boards have a great deal of community involvement. However, all processes should be designed to support the victim and hold the offender accountable.<sup>31</sup>

## V. WHY A VICTIM MIGHT WANT TO ENGAGE IN RESTORATIVE JUSTICE

Studies show that victims who participate in restorative justice encounters have consistently high satisfaction rates.<sup>32</sup> For example, an Oregon study found that eight out of ten victims were satisfied with the Restorative Justice

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27. Jeffrey Fagan & Victoria Malkin, *Theorizing Community Justice Through Community Courts*, 30 FORDHAM URB. L. J. 897, 903 n.32 (2003).

28. HOWARD ZEHR, CHANGING LENSES 206 (3d ed. 2005) [hereinafter ZEHR, CHANGING LENSES].

29. For example, Jessalyn Nash has developed a screening tool to assess victim readiness. Jessalyn Nash, *Victim Screening Assessment for Restorative Conference Participation*, Joint Center on Violence and Victim Studies, (June 2006) available at <http://www.washburn.edu/ce/jcvvs/newsletter/2006/august.html>.

30. ZEHR, CHANGING LENSES, *supra* note 28, at 198.

31. *Id.* at 191, 194.

32. MARK S. UMBREIT ET AL., CTR. FOR RESTORATIVE JUSTICE AND PEACEMAKING, RESTORATIVE JUSTICE DIALOGUE: EVIDENCE-BASED PRACTICE 4 (2006), [http://rjp.umn.edu/img/assets/13522/RJ\\_Dialogue\\_Evidence-based\\_Practice\\_1-06.pdf](http://rjp.umn.edu/img/assets/13522/RJ_Dialogue_Evidence-based_Practice_1-06.pdf).

processes.<sup>33</sup> An English study found an 84% satisfaction rate among victims.<sup>34</sup> When studies included control groups, the high satisfaction rates for restorative justice programs in comparison to typical court processes were striking.<sup>35</sup> “Participation in a restorative justice program resulted in higher victim satisfaction ratings when compared to a comparison group in all but one of the 13 programs examined. It should be noted that the one negative result was found in the only program that operated at the post sentence (or corrections) entry point.”<sup>36</sup>

As for domestic violence cases, three National Institute of Justice (NIJ) grant reports found significant dissatisfaction among victims having gone through the traditional court system.<sup>37</sup> Satisfaction was directly related to whether the victim felt she had some control of the process and the outcome.<sup>38</sup> Consequently, dissatisfaction led to reluctance to report incidents to the police in the future.<sup>39</sup> One study found that some victims did not want to separate from their abuser or want their abuser to go to jail; they just wanted the abuse to stop.<sup>40</sup>

One reason restorative justice brings satisfactions to victims is that they experience the process as fairer than the traditional criminal justice system. For example, one study reported 80% of victims participating in Victim/Offender Dialogue thought the process was fair while only 37% thought the traditional criminal justice process was fair.<sup>41</sup>

Victims express that they want to be involved in restorative justice to: 1) obtain restitution; 2) hold the offender accountable; 3) avoid the court process; 4) help the offender change; and 5) see that the offender is punished.<sup>42</sup> Interestingly, offenders who participate in a restorative justice model that allows for a personal connection with the victim, and who have input into

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33. *Id.*; see also MARK S. UMBREIT ET AL., CTR. FOR RESTORATIVE JUSTICE AND PEACEMAKING, JUVENILE VICTIM OFFENDER MEDIATION IN SIX OREGON COUNTIES 21 (2001), [http://rjp.umn.edu/img/assets/19524/Oregon\\_APPENDIX\\_A%20.pdf](http://rjp.umn.edu/img/assets/19524/Oregon_APPENDIX_A%20.pdf).

34. MARK S. UMBREIT & ANN WARNER ROBERTS, CTR. FOR RESTORATIVE JUSTICE AND PEACEMAKING, MEDIATION OF CRIMINAL CONFLICT IN ENGLAND: AN ASSESSMENT OF SERVICES IN COVENTRY AND LEEDS 7 (1996), [http://www.rjp.umn.edu/img/assets/18485/Umbreit\\_Coa\\_Rob\\_1998\\_VOM.pdf](http://www.rjp.umn.edu/img/assets/18485/Umbreit_Coa_Rob_1998_VOM.pdf).

35. Jeff Latimer et al., *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 85 PRISON J. 127, 136 (2005).

36. *Id.*

37. *Victim Satisfaction with the Criminal Justice System*, NAT'L INST. JUSTICE J., January 2006 at 16 available at <http://www.ncjrs.gov/pdffiles1/jr000253.pdf>.

38. *Id.* at 16–17.

39. *Id.* at 17.

40. *Id.*

41. Mark S. Umbreit et al., *The Impact of Victim Offender Mediation: Two Decades of Research*, 65 FED. PROBATION 29, 31 (2001) [hereinafter Umbreit et al., *Impact*].

42. *Id.* at 30.

constructing an agreement that includes restitution, have a significantly higher compliance rate with regard to paying restitution than those who do not.<sup>43</sup> In one study, 81% of offenders who participated in Victim/Offender Dialogue complied with the restitution agreement, while only 57% of those that went through the court process complied.<sup>44</sup>

Evidence is emerging that not only are victims more satisfied after engaging in a restorative justice process but they also suffer less psychological trauma.<sup>45</sup> A study conducted to determine the effect of Restorative Justice on post-traumatic stress symptoms (PTSS) experienced by victims randomly assigned 137 cases either to court only or to court plus restorative justice conference.<sup>46</sup> An assessment of the victims using a standard psychological PTSS measuring instrument showed that victims who participated in a restorative justice practice consistently scored lower than those who only experienced the court process, both immediately after the case was completed and six months later.<sup>47</sup> Further analyses showed that the robbery and burglary victims took 50% longer to return to work if they had not engaged in the restorative justice conference.<sup>48</sup>

#### VI. SPECIAL CONSIDERATIONS IN DOMESTIC VIOLENCE CASES

While all crime victims are emotionally affected by the trauma of the event and might find it difficult to interact with the offender, these effects hold particularly true in cases of domestic violence. Because abuse is often part of the historical and intimate relationship, victims/survivors are traditionally afraid of, and intimidated by, the offender. A victim/survivor may believe, quite accurately in some cases, that the offender may try to intimidate or even harm her if she is part of a process that holds him accountable.

However, because of the benefits that restorative justice can bring to victims, some domestic violence victims/survivors may want to engage in such a process, and that engagement may very well benefit them. So, the question is, how should a process be constructed that takes into account the aforementioned special considerations and is most potentially beneficial to the victim/survivor?

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43. Latimer, *supra* note 35, at 137.

44. Umbreit et al., *Impact*, *supra* note 41, at 31.

45. LAWRENCE W. SHARMAN & HEATHER STRANG, RESTORATIVE JUSTICE: THE EVIDENCE, THE SMITH INSTITUTE 64 (2007), [http://www.esmeefairbairn.org.uk/docs/RJ\\_full\\_report.pdf](http://www.esmeefairbairn.org.uk/docs/RJ_full_report.pdf).

46. *Id.*

47. *Id.*

48. *Id.*

## VII. CONSTRUCT CONSIDERATIONS

In any construct, attention must be paid to a number of issues. First, the stage at which the restorative justice encounter occurs can be of utmost importance. If the victim/survivor is afraid of being hurt by the offender, she will not be comfortable meeting with him without protections being available. She also may not be able to encounter him if he is not in custody. This might militate against the encounter occurring outside of a prison setting.

Second, the circumstances in which the process occurs should be carefully considered. For example, a victim/survivor who is afraid of being hurt by the offender and still feels intimidated by him might not want to meet with him at all, which militates in favor of a surrogate process. This surrogate process provides for a victim/survivor to meet with an offender, but not the perpetrator of the crime against her.

Third, the preparation that both the victim/survivor and the offender receive prior to engagement is critical. Ideally, victims/survivors should be supported through the restorative justice process by a victim advocate who is aware of and trained in the dynamics of domestic violence. The victim/survivor should undergo a screening assessment to determine whether she is emotionally ready for the encounter and will be safe during the process. The screening should also assess whether the victim's/survivor's reasons for wanting to be involved are realistic and appropriate. Offenders should also be screened to minimize the risk of re-victimization. They must be ready to take responsibility for their actions and want to stop their abusive behavior. Thereafter, each party should receive an orientation to the restorative process in which they will engage and be prepared to talk about the issues of importance. Each party should also be informed of the issues that may be brought up by the other party.

Fourth, persons who facilitate restorative justice practices with victims/survivors and offenders must be well-trained in both the dynamics of domestic violence and facilitation of restorative justice encounters. Mediation training is insufficient because the format, assumptions, and desired results are often very different in a restorative justice process. In addition, the facilitator must be skilled enough to pick up nuances that might indicate that the victim is no longer safe or comfortable and either re-direct or stop the proceedings.

Fifth, support for the victim/survivor through the process is also essential. In addition to the numerous factors warranting support discussed above, victims/survivors often do not get support for their experience due to victim-blaming by their families, communities, and some members of the criminal justice system. Therefore, it is important that an advocate accompany the victim/survivor through the process and that she has access to a support system of both peers and professionals who will validate her experience.

Finally, offenders need support for accepting responsibility for their actions and changing their beliefs and behaviors. Again, their family, community, and some members of the criminal justice system may serve to reinforce their beliefs and their abusive behavior. Therefore, it is important for offenders to have a community of people who encourage and support change.

#### VIII. CONSTRUCTS THAT WORK

Three widely differing models show promise in leading to greater healing for victims/survivors and transformation of offenders. Each of these models has been in existence long enough to have quantitative outcomes or anecdotal evidence demonstrating that the process benefits the victim/survivor and the offender.

The Surrogate Victim/Offender Dialogue Program (SVODP) is a model operating in Washington County, Oregon and is co-sponsored by Washington County Community Corrections and the Center for Victim Services.<sup>49</sup> The program is driven by victims/survivors requesting to participate who are referred by a local shelter or from another referral source.<sup>50</sup> These victims/survivors meet with perpetrators of domestic violence who are in prison and with whom they have had no previous relationship.<sup>51</sup>

Victims/survivors who participate in the SVODP project are carefully screened for readiness based on whether the victim: attended counseling through a shelter or a domestic violence counseling program; expressed a desire to talk to an offender as part of her journey toward healing; has a clear personal outcome goal for the session; and has been warned by her counselor of the possible outcomes of the dialogue.<sup>52</sup> To increase the victim's sense of safety and control in the situation, she may terminate participation in the session at any time.<sup>53</sup>

Offenders are also carefully screened and prepared for the dialogue. Among other criteria, the offender must have: accepted responsibility for his actions; a desire to make a change in his life; consistently attended a batterers intervention program; talked with his counselor about feelings of anger that might occur during the session; and a clear personal outcome goal for the session.<sup>54</sup>

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49. Domestic Violence Surrogate Dialogue Homepage, <http://www.dvsvodp.com> (last visited Mar. 17, 2008) [hereinafter Homepage].

50. Domestic Violence Surrogate Dialogue Participation Guidelines, <http://www.dvsvodp.com/participate.php> (last visited Mar. 17, 2008) [hereinafter Participation Guidelines].

51. Homepage, *supra* note 49.

52. *Id.*

53. *Id.*

54. *Id.*

Outcomes from the Surrogate Victim/Offender Dialogue Program are anecdotal as it is currently a pilot project. However, victims report they experience both empowerment and increased healing through involvement;<sup>55</sup> one measure of this is the waiting list of victims interested in participating.<sup>56</sup>

The second model is Family Group Conferencing (FGC) used in child maltreatment cases that include the co-occurrence of domestic violence. The cases are referred by Child Welfare, Adult (Parole and Probation), and Youth Corrections.<sup>57</sup> The program, called the Family Group Decision Making Project, was started and administered by Dr. Joan Pennell, Ph.D. in Newfoundland and Labrador, Canada and has been continued by Dr. Pennell at North Carolina State University.<sup>58</sup>

The foundation position for the program is: 1) domestic violence and child maltreatment often happen in the same family; 2) family violence isolates child and adult victims from their support and breeds secrecy; 3) even after batterers leave, women and children may suffer post-traumatic stress disorder; and 4) FGC helps build or rebuild informal and formal supports to keep family members safe.<sup>59</sup> In order to have safe conferencing, the program needs to: 1) build partnerships with women's advocates, children's advocates, and the legal system; 2) perform safety assessment for each referral and then decide whether to hold the FGC; 3) determine safety measures for holding an FGC by consulting with survivors and other support; 4) proceed with caution; and 5) respect the strengths of family members.<sup>60</sup>

A great deal of time is spent on safety planning and preparing the victim/survivor for the conference through developing a support system of family and friends, some of whom will be present at the conference.<sup>61</sup> Many hours are also spent on building a support system that encourages the offender to take responsibility for his actions and commit to stopping the abuse.<sup>62</sup> The conference is attended by the victim/survivor, the offender, and their family and friends. Institutional representatives are also present, but the family meets

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55. Telephone Interview with Louise Bauschard, Co-coordinator of Surrogate Dialogue Program (2005).

56. *Id.*

57. Joan Pennell & Gale Burford, *Feminist Praxis: Making Family Group Conferencing Work*, in RESTORATIVE JUSTICE AND FAMILY VIOLENCE 108, 110 (Heather Strang & John Braithwaite eds., 2002).

58. Joan Pennell is Professor and Head, Department of Social Work North Carolina State University.

59. *See generally* Family Group Decision Making Project, Newfoundland and Labrador, <http://social.chass.ncsu.edu/jpennell/fgdm/index.htm> (last visited Nov. 7, 2007).

60. *Id.*

61. C. Quince Hopkins et al., *Applying Restorative Justice to Ongoing Intimate Violence: Problems and Possibilities*, 23 ST. LOUIS U. PUB. L. REV. 289, 306 (2004).

62. *See* Joan T. Pennell & Gale Burford, *Family Group Decision Making: Protecting Children and Woman*, 79 CHILD WELFARE 131, 133 (2000).

separately to develop a plan.<sup>63</sup> The plan focuses on how the family will help the victim take care of the children, support the victim in living violence-free, and support the offender in transforming. The plan must then be approved by the institutional representatives.<sup>64</sup>

Outcomes from The Family Group Decision Making Project are quite promising in terms of reducing child maltreatment and domestic violence and, no conference has reported any violence.<sup>65</sup> Further, in interviews with 115 participating families, 66% believed they were better off after the conference.<sup>66</sup> According to a review of Child Welfare files, child protection events were reduced from 233 pre-conference to 117 post conference versus an increase in the comparison group of 129 before and 165 after.<sup>67</sup> Child welfare files showed a reduction from 84 to 34 events in mother/wife abuse versus an increase in the comparison group from 45 to 52.<sup>68</sup>

Even more significant are the outcomes that relate to beliefs about male domination in relationships that may lead to domestic violence, and the behaviors beyond abuse that reflect power and control in the relationship. The study measured family dynamics, including the abuser's domination of the conversation and control of economic resources. In interviews, participants revealed that domination of the conversation was reduced from four to two these incidents pre versus post conference and control of economic resources was reduced from four to zero incidents.<sup>69</sup> For the comparison group, domination of the conversation remained at two incidents pre versus post study and control of economic resources increased from three to four incidents.<sup>70</sup> In terms of emotional abuse, men in the study belittled their partners in five incidents pre-study versus three post-study while these incidents increased in the comparison group.<sup>71</sup> The study also measured the batterer's minimization of violence, transference of responsibility for the violence to the victim, and refusal to accept responsibility for the abuse.<sup>72</sup> For families involved in the study, these incidents were reduced from eight pre-study to three post-study while incidents in the comparison group increased from four to six.<sup>73</sup> Finally, the study measured the batterer's rigid adherence to sex roles, including expecting or demanding that his partner serve him, and noted a reduction in

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63. *Id.* at 140.

64. *Id.*

65. Hopkins, *supra* note 61, at 307 (citing Pennell & Burford, *supra* note 62, at 144).

66. Pennell & Burford, *supra* note 62, at 144.

67. *Id.* at 145-47.

68. *Id.* at 148.

69. Hopkins, *supra* note 61, at 308 (citing Pennell, *supra* note 62, at 142,146).

70. Pennell & Burford, *supra* note 62, at 146.

71. *Id.*

72. *Id.*

73. *Id.*

these beliefs from three to one in participating families while remaining constant in the control group.<sup>74</sup>

The third model, Circle Sentencing (CS), is used in selective domestic violence cases at the Tubman Family Alliance in Minnesota.<sup>75</sup> Circle Sentencing is employed in criminal cases where the victim wishes to participate and the offender admits guilt and articulates a desire to change.<sup>76</sup> Generally, the victim, offender, family, friends of both the victim and offender, and members of the criminal justice system are involved in the CS process.<sup>77</sup> The group mutually determines the offender's sentence and what the offender needs to do to repair the harm to the victim.<sup>78</sup> Follow-up meetings are held to oversee compliance with the agreement reached. Additionally, Healing Circles are offered for support of victims.<sup>79</sup> Twenty domestic violence cases have been handled through CS since 1998, and 95% of those offenders have not re-offended.<sup>80</sup>

#### IX. MISSOURI'S APPROACH

The 45<sup>th</sup> Judicial Circuit in Missouri is collaborating with a batterers intervention program, victim advocates, and a restorative justice expert in developing and implementing Victim Impact Panels in domestic violence cases. These Panels involve victims talking to domestic violence offenders, although not the offenders in their individual crimes, regarding the impact of the crime. Panels provide an opportunity for victim healing and for offenders to develop an understanding of the impact of the abuse on the victims. The Panels in Missouri have been expanded to include not only survivors but a family member of a survivor, a grown child of a survivor, a family member of an offender, a prior rehabilitated offender, and community members, such as law enforcement, business leaders, elected officials, and faith leaders. In this way, the Missouri model is similar to the Family Group Conferencing Model described above<sup>81</sup> and the anticipated outcomes are similar, as well: increased awareness of the impact of the crime by the perpetrators; increased support for victims of domestic violence by the community leading to greater healing and empowerment; and increased pressure on the perpetrators to change their behavior.

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74. *Id.*

75. See Judy Brown, *Restorative Justice and Family Violence: From Court to the Community*, [http://www.tubmanfamilyalliance.org/need\\_help/programs/place\\_of\\_hope.html](http://www.tubmanfamilyalliance.org/need_help/programs/place_of_hope.html) (last visited Mar. 6, 2007).

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Pennell & Burford, *supra* note 62 at 137.

All Panel members are screened for readiness and appropriateness to participate in the Panels and prepared for participation. Survivors are also carefully screened by a victim advocate using a modified version of Jessalyn Nash's screening tool and through individual interviews to determine whether they have experienced sufficient emotional healing to participate and not be retraumatized.<sup>82</sup>

Perpetrators who attend the Panels come from the Court's Order of Protection docket where they are initially ordered to participate in a batterer's intervention program. After sufficient progress in the batterer's intervention program and thorough screening, they attend a Victim Impact Panel. Those perpetrators deemed not ready to be personally involved in the Panels due to the danger of them re-victimizing will be able to watch a video tape that will be made of one of the panels.

One panel has been held so far, with outcomes showing increased understanding by perpetrators of the impact of their crime. Victims also show greater healing and empowerment, which seems to increase with time.<sup>83</sup>

#### X. CONCLUSION

Restorative Justice Practices have been used in domestic violence situations and have resulted in greater victim healing and changes in offender beliefs and behaviors. While not all victims will want to engage in restorative justice practices, those that desire to participate should be given the opportunity. However, to help to ensure victim safety, programs should be developed by individuals with an understanding of the dynamics of domestic violence who will keep the special considerations articulated in this Comment in mind as they create the protocols for the program.

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82. *See supra* note 29 and accompanying text.

83. Interview with Alison Brown, Program Director in St. Charles, Mo. (Mar. 6, 2008).

