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An Eye for an Eye Will Make the Whole World Blind: How Restorative Justice Will Help Florida See Again

Amber Massey*

*Nova Southeastern University, Shepard Broad College of Law, am2136@mysu.nova.edu

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AN EYE FOR AN EYE WILL MAKE THE WHOLE WORLD BLIND: HOW RESTORATIVE JUSTICE WILL HELP FLORIDA SEE AGAIN

AMBER MASSEY*

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I. INTRODUCTION

Restorative justice is a theory that *emphasizes restoring victims*.¹ Restorative justice is victim-centered and involves those most directly affected by the crime—the victim, the offender, their family members, and

* Amber Massey earned her bachelor's degree in Psychology from Florida Atlantic University. She is currently a Juris Doctor Candidate for May 2019 at Nova Southeastern University, Shepard Broad College of Law. Amber would like to thank her parents, Robin and Larry Massey, for their unconditional support throughout her law school journey and for instilling in her the importance of hard work and dedication. Lastly, Amber would like to thank her fellow colleagues and the executive board of *Nova Law Review*, Volume 43, for all of the hard work and time spent refining and perfecting this Comment.

1. Steve Mulligan, *From Retribution to Repair: Juvenile Justice and the History of Restorative Justice*, 31 U. LA VERNE L. REV. 139, 140 (2009).

members of the community.² Through the restorative justice process, these individuals are directly involved in addressing the harm caused and coming to a solution.³ Retributive justice views crimes committed by an offender as a crime against the state⁴ and asks the questions: What law was broken, who broke it, and what should the punishment be?⁵ Restorative justice instead focuses on the crime against the victim⁶ and asks the questions: “Who was harmed, [w]hat are the needs and responsibilities of all affected, [and] [h]ow do the parties together address [those] needs and repair [the] harm?”⁷ Restorative justice is a relatively new process and only emerged in the United States around the 1970s as an alternative to the criminal justice system we know today.⁸ Nationwide, there are “[t]hirty-five states [that] have adopted legislation encouraging the use of restorative justice for [both] children and adults.”⁹ However, for many years, local non-profits have been relied upon to provide these restorative justice programs.¹⁰

With regard to Florida, there are quite a few administrative codes that deal with restorative justice in the education system and only one statute when it comes to the criminal system.¹¹ Florida Statute section 985.155 allows for any state attorney to establish a Neighborhood Restorative Justice Center in areas throughout the county for *first-time, non-violent juvenile offenders*.¹² The statute defines a *first-time, non-violent juvenile offender* as:

[A] minor who allegedly has committed a delinquent act or violation of law that would not be a crime of violence providing grounds for detention or incarceration and who does not have a

2. See Mary Ellen Reimund, *The Law and Restorative Justice: Friend or Foe — a Systematic Look at the Legal Issues in Restorative Justice*, 53 DRAKE L. REV. 667, 668 (2005).

3. See Nuri Nusrat, *What Is — and Is Not — Restorative Justice?*, NAT’L COUNCIL ON CRIME & DELINQ.: NCCD BLOG (Aug. 20, 2013), <http://www.nccdglobal.org/newsroom/nccd-blog/what-and-not-restorative-justice>.

4. Mulligan, *supra* note 1, at 140.

5. Nusrat, *supra* note 3.

6. Mulligan, *supra* note 1, at 141.

7. *About RJ*, FLA. RESTORATIVE JUST. ASS’N, <http://www.floridarestorativejustice.com/about-rj.html> (last visited Dec. 17, 2018).

8. Marilyn Armour, *Restorative Justice: Some Facts and History*, TIKKUN, Winter 2012, at 25, 26.

9. Rebecca Beitsch, *States Consider Restorative Justice as Alternative to Mass Incarceration*, PBS: NEWS HOUR (July 20, 2016, 11:51 PM), <http://www.pbs.org/newshour/nation/states-consider-restorative-justice-alternative-mass-incarceration>.

10. *Id.*

11. See *About RJ*, *supra* note 7.

12. FLA. STAT. § 985.155(2)(a) (2018).

previous record of being found to have committed a criminal or delinquent act or other violation of law.¹³

Of the twenty judicial circuits in Florida, only four judicial circuits offer a form of restorative justice programs for juveniles: The Fourth Judicial Circuit, which includes Clay, Duval, and Nassau counties; the Ninth Judicial Circuit, which includes Orange and Osceola counties; the Twentieth Judicial Circuit, which includes Charlotte, Collier, Glades, Hendry, and Lee counties; and the Seventeenth Judicial Circuit, which includes Broward County.¹⁴ While the purpose behind Florida Statute section 985.155 is to allow for alternatives to the traditional juvenile system route, very few counties are taking advantage of these alternatives.¹⁵ Rather than giving state attorneys the option to enact a Neighborhood Restorative Justice Center, it should be mandatory that all judicial circuits have restorative justice as an alternative avenue for first-time, non-violent offenders, especially with regard to juveniles.¹⁶

Section II of this note will provide a brief overview of the history of restorative justice, as well as explain the most common types of restorative justice programs.¹⁷ Section III examines studies in both the United States and worldwide on how employing restorative justice practices can reduce recidivism among juveniles and adults.¹⁸ Section IV examines whether there is a cost benefit to using restorative justice over the traditional justice system.¹⁹ Section V examines the different types of laws Florida has in effect pertaining to restorative justice.²⁰ Section VI examines how restorative justice has been used in Florida case law.²¹ Section VII looks specifically at Broward County, Florida—how the county uses restorative justice practices and whether those programs are state funded or privately funded.²² Section VIII looks at other states' use of restorative justice practices and programs, and how they relate to Florida's use.²³ Section IX

13. *Id.* § 985.155(1)(c).

14. *About RJ*, *supra* note 7; *Diversion Programs*, OFF. ST. ATT'Y, <http://www.sao17.state.fl.us/diversion-programs.html> (last visited Dec. 17, 2018); *Judicial Circuits Map*, FLA. B., <http://www.floridabar.org/directories/courts/maps-circuit/> (last visited Dec. 17, 2018); *Restorative Justice*, OFF. ST. ATT'Y, <http://www.sao4th.com/about/programs-and-initiatives/restorative-justice/> (last visited Dec. 17, 2018).

15. *See* FLA. STAT. § 985.155; *About RJ*, *supra* note 7.

16. *See* FLA. STAT. § 985.155; *About RJ*, *supra* note 7.

17. *See infra* Section II.

18. *See infra* Section III.

19. *See infra* Section IV.

20. *See infra* Section V.

21. *See infra* Section VI.

22. *See infra* Section VII.

23. *See infra* Section VIII.

examines the limitations surrounding restorative justice.²⁴ Lastly, section X will offer a conclusion on why Florida needs to implement more restorative justice practices and make restorative justice the route for first-time, non-violent juvenile offenders.²⁵

II. OVERVIEW OF RESTORATIVE JUSTICE

When a crime is committed, often as a society we believe “the punishment must fit the crime.”²⁶ Within the westernized legal system, having justice done is most often *synonymous with administering punishment*.²⁷ While the current criminal justice system in the United States has its strengths, there are also weaknesses, such as, being overworked and overwhelmed with the number of cases.²⁸ As a result of being overwhelmed, the offender and victim might not get the attention needed due to lack of time.²⁹ The restorative justice model is better suited to meet an individual’s needs because there is a personalized sense to it—from the face-to-face direct communication to working together to reach a solution.³⁰

The restorative justice model started out in the 1890s based on the tradition of oral justice of the New Zealand Maori and the native people of North America.³¹ However, the movement did not begin to gain momentum until the 1960s when a variety of approaches to restorative justice started to emerge in many countries throughout the world.³² Canada, being one of

24. See *infra* Section IX.

25. See *infra* Section X.

26. Mikhail Lyubansky, *Our Justice System Requires Us to Punish Wrongdoers. What If There Were a Better Way?*, PSYCHOL. TODAY: BETWEEN THE LINES (Aug. 18, 2010), <http://www.psychologytoday.com/us/blog/between-the-lines/201008/our-justice-system-requires-us-punish-wrongdoers-what-if-there-were>.

27. *Id.*

28. Jae Allen, *Weaknesses of the Criminal Justice System*, LEGAL BEAGLE, <http://www.legalbeagle.com/7158564-weaknesses-criminal-justice-system.html> (last visited Dec. 17, 2018).

29. *Id.*

30. Nusrat, *supra* note 3.

31. Jasmine Duel et al., *Restorative Justice: Restoring California’s Juvenile Justice System and Abolishing Juvenile Life Without Parole*, 3 L.A. PUB. INT. L.J. 68, 78 (2012).

Navajo of North America explain that their version of restorative justice was not designed to punish individuals, rather to “teach them how to live a better life. It is a healing process that either restores good relationships among people or, if they do not have good relations to begin with, fosters and nourishes a healthy environment.”

Id. at 79 (quoting Michael L. Hadley, *Spiritual Foundations of Restorative Justice*, in HANDBOOK OF RESTORATIVE JUSTICE: A GLOBAL PERSPECTIVE 174, 179 (Dennis Sullivan & Larry Tift eds., 2006)).

32. *Id.* at 78–79.

these countries, is considered to be the pioneer behind the restorative justice movement because they began using victim offender mediation (“VOM”) in 1974 as a result of an incident in Elmira, Ontario.³³ There, a probation officer—who wanted to make offenders accountable for their actions—took two men door-to-door to the owners of the properties they vandalized.³⁴ This action had such positive reactions from all parties involved that it served as a springboard for victim-offender mediation programs.³⁵ While restorative justice was around in the 1970s, the movement really began to take off in 1989 when New Zealand made restorative justice the hub of its entire juvenile justice system.³⁶ Since then, restorative justice can be seen throughout the world in countries such as Australia, Canada, Hong Kong, Israel, New Zealand, South Africa, and much of Western Europe.³⁷ Even international organizations such as the United Nations have policies promoting the use of restorative justice.³⁸

In the United States, restorative justice programs have been around sporadically since the 1970s and 1980s.³⁹ However, the majority of growth in restorative justice began in the 1990s with the implementation of the Balanced and Restorative Justice Project (“BARJ”) in 1992.⁴⁰ “BARJ was developed through a funding initiative of the Office of Juvenile Justice and Delinquency Prevention of the [United States] Department of Justice.”⁴¹ “A number of states are currently implementing . . . restorative justice principles [into] their juvenile justice systems [such as:] Arizona, California, Colorado, Illinois, Iowa, Minnesota, New York, Ohio, Oregon, Pennsylvania, Texas, Vermont, and Wisconsin.”⁴² While restorative justice originally began as a way of dealing with property crimes such as burglary, today restorative justice is being used for even the most severe forms of crimes, including murder.⁴³ Restorative justice is not only used throughout the criminal justice system, but is also used in schools, communities, businesses, and foster care

33. *Id.* at 77; T. Bennett Burkemper, Jr. et al., *Restorative Justice in Missouri’s Juvenile System*, 63 J. MO. B. 128, 130 (2007).

34. Duel et al., *supra* note 31, at 77; Bhavya Mahajan, *Victim-Offender Mediation: A Case Study and Argument for Expansion to Crimes of Violence*, 10 AM. J. MEDIATION 125, 127 (2017).

35. Duel et al., *supra* note 31, at 77.

36. *Id.*; 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, 266 (2005).

37. Burkemper, Jr. et al., *supra* note 33, at 130.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. Burkemper, Jr. et al., *supra* note 33, at 130.

43. *See* Mahajan, *supra* note 34, at 125.

and group homes.⁴⁴ There are three main models of restorative justice used in the criminal justice system: “(1) victim offender mediation, (2) family group conferencing, and (3) circles.”⁴⁵

A. *Victim-Offender Mediation*

“The *Elmira Case* is . . . credited with the birth of . . . VOM.”⁴⁶ “VOM is the most developed and widespread” form of restorative justice;⁴⁷ it is also one of the broadest forms of restorative justice.⁴⁸ There are typically four phases in VOM: “(1) intake, (2) preparation, (3) mediation, and (4) follow-up.”⁴⁹

In the first phase, a mediator looks at a potential case to make sure the case is appropriate for VOM.⁵⁰ In the second phase, “the mediator meets with all parties involved” with the case to see if they are willing to participate in good faith.⁵¹ If any party is not willing to participate, then VOM cannot occur.⁵² If all parties agree to participate, they are expected to be honest and candid in expressing how they recount the events and their feelings surrounding it.⁵³ Throughout these discussions, “victims and offenders work together to create” a plan for restitution that appropriately addresses the crime.⁵⁴ In VOM, victims have the chance to be heard and explain how they were directly impacted by the crime and offenders take full accountability for what they have done and attempt to make amends with the victim.⁵⁵ When VOM originated, it only included the victim and the offender, but now it can also include “parents, family members, or other supporters.”⁵⁶ Then, in the follow-up phase, the case is reviewed for success; if VOM was not successful, then the case is returned back to the courts.⁵⁷

There are many benefits to VOM.⁵⁸ First, the victim benefits because he or she is able to directly confront the offender and explain the

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44. *About RJ, supra* note 7.
 45. *Duel et al., supra* note 31, at 79.
 46. *Id.* (emphasis in original).
 47. *Id.*
 48. *Mahajan, supra* note 34, at 125.
 49. *Duel et al., supra* note 31, at 79.
 50. *Id.*
 51. *Id.*
 52. *Id.*
 53. *Id.*
 54. *Duel et al., supra* note 31, at 79.
 55. *Id.* at 79–80.
 56. *Id.* at 80.
 57. *Id.*
 58. *See id.*

impacts without the stresses of a court room setting.⁵⁹ Second, the offender benefits through taking responsibility for his or her actions and dealing with the ramifications associated with those actions.⁶⁰ And third, society benefits because the offender can directly approach the harmed community and make amends for his or her wrongdoing, resulting in decreased recidivism.⁶¹

B. *Family Group Conferencing*

Family Group Conferencing (“FGC”) originated in 1989 in New Zealand under the Children’s and Young People’s Well-Being Act.⁶² FGC can be seen in one of its various forms throughout the world.⁶³ There are two main models when it comes to FGC: The New Zealand model and the Australian model.⁶⁴ FGC is manifested differently between New Zealand and Australia.⁶⁵ In New Zealand, the FGC model focuses on using social service workers to organize conferences and help families decide who is most appropriate to participate in the process.⁶⁶ The New Zealand model does not use a script to steer the direction of the dialogue.⁶⁷ Further, the offender, or his or her family, offers a proposal to the victim and his or her family in order to provide a cure for the harm caused.⁶⁸ To the contrary, the Australian model uses an authoritative figure, such as a police officer, to mediate the conference.⁶⁹ Further, the Australian model uses a scripted dialogue to steer the direction of the conversation.⁷⁰

In the United States, where the FGC has been adopted, the Australian model is followed.⁷¹ A case is usually referred for FGC by judges or probation officers; however, police officers and schools can refer as well.⁷² FGC in the United States uses neutral facilitators, which can consist of law enforcement officers, human services personnel, county staff, clergy,

59. Duel et al., *supra* note 31, at 80.

60. *Id.*

61. *Id.*

62. *Id.*; *see also* Children’s and Young People’s Well-Being Act 1989, pt. 2, cl. 20 (N.Z.).

63. Duel et al., *supra* note 31, at 80–81.

64. *Id.* at 81.

65. *Id.*

66. *Id.*

67. *Id.*

68. Duel et al., *supra* note 31, at 81.

69. *Id.*

70. *Id.*; Reimund, *supra* note 2, at 677.

71. Duel et al., *supra* note 31, at 81.

72. Mark Umbreit & Claudia Fercello, *Practicing Restorative Justice: Family Group Conferencing and Juvenile Crime in the Suburban Metro Area*, CURA REP., June 2000, at 15, 15.

or community-based volunteers.⁷³ These facilitators assist the victims, offenders, and their families in engaging in an open dialogue.⁷⁴ In the FGC, the number of supporters present can range from six to ten or to only a couple of individuals.⁷⁵ “FGC has been primarily used in cases involving juveniles” in order to help “facilitate cooperation between families of victims and families of offenders” in resolving the conflict.⁷⁶ However, FGC use for adults has been steadily increasing.⁷⁷ A 2001 estimate “showed ninety-four active FGC programs in the United States.”⁷⁸ When looking at FGC and VOM, the main difference between the two is that family members take a primary role in FGC, while in VOM they take a secondary role and are not mandatory participants.⁷⁹

C. *Circles*

In restorative justice, circles refer to a community-based decision-making approach that is derived from traditions of aboriginal people of North America.⁸⁰ These circles were used as a way to strike a balance between the individuals and the community and to restore harmony.⁸¹ “The use of circles in the United States began . . . with a pilot [program] in Minnesota” in 1995.⁸² Circle sentencing—which is also referred to as “community circles, peace[] circles, or healing circles”—has been evolving “since the early 1990s as an effective” means to uncover “the root of the problems” leading to an offender’s actions.⁸³

Unlike in VOM, where only the victim and offender are focused on, in circles, the healing process is expanded by including the entire community in the process.⁸⁴ Circles often can include attorneys, mediators, and “families of [the] victims and offenders.”⁸⁵ In order to effectively include the community in the circle, a *talking piece* is used and “passed clockwise

73. *Id.*

74. *Id.*; Umbreit et al., *supra* note 36, at 269.

75. Umbreit et al., *supra* note 36, at 269.

76. Duel et al., *supra* note 31, at 81.

77. *Id.*

78. Reimund, *supra* note 2, at 677.

79. Duel et al., *supra* note 31, at 81–82.

80. *Id.* at 82.

81. Brian Sapir, Note, *Healing a Fractured Community: The Use of Community Sentencing Circles in Response to Hate Crimes*, 9 CARDOZO J. CONFLICT RESOL. 207, 217 (2007).

82. Reimund, *supra* note 2, at 677.

83. Sapir, *supra* note 81, at 208.

84. *Id.* at 210; *see also* Mahajan, *supra* note 34, at 125.

85. Mahajan, *supra* note 34, at 129.

around the circle.”⁸⁶ Whoever is in possession of the *talking piece* has uninterrupted time to convey his or her thoughts and wishes on a particular event, usually the crime.⁸⁷ The use of the *talking piece* is to “emphasize respect, valuing what each participant has to say.”⁸⁸ It also helps the participants to speak from the heart because the person with the *talking piece* cannot be interrupted.⁸⁹ Since the community is invited to these circles, the discussion is typically focused on how the community as a whole can prevent future “harm to the communit[y], provide care and support for [the] victim[], and appropriately receive community offenders.”⁹⁰

III. RESTORATIVE JUSTICE AND RECIDIVISM

A. *In Other Countries*

There are multiple studies that show the benefit of switching to a restorative justice system.⁹¹ A meta-analysis that examined thirty-five victim and offender programs found that programs using restorative justice were far more effective than programs using traditional criminal justice.⁹² Further, a 2007 study found that restorative justice practices were more effective at reducing more serious crimes than less serious crimes, such as property crimes.⁹³ The study—including close to eight hundred cases—found that restorative justice reduces the frequency of reoffending by an average of twenty-seven percent.⁹⁴ A handful of other studies have found that restorative justice has this positive effect.⁹⁵ The Ministry of Justice—in a report on re-offending following a restorative justice program—found that

86. Duel et al., *supra* note 31, at 82.

87. *Id.*

88. Reimund, *supra* note 2, at 678.

89. *Id.* at 677–78; *see also* Duel et al., *supra* note 31, at 82.

90. Duel et al., *supra* note 31, at 82.

91. *See* LAWRENCE W. SHERMAN & HEATHER STRANG, RESTORATIVE JUSTICE: THE EVIDENCE 9, 88 (2007), <http://www.smith-institute.org.uk/wp-content/uploads/2015/10/RestorativeJusticeTheEvidenceFullreport.pdf>.

92. Jean Ferguson, *Professional Discretion and the Use of Restorative Justice Programs in Appropriate Domestic Violence Cases: An Effective Innovation*, AM. U. CRIM. L. BRIEF, Summer 2009, at 3, 15.

93. SHERMAN & STRANG, *supra* note 91, at 8.

94. *See id.*; Lawrence Kershen, *Reply: Restorative Justice Can Reach the Parts That Criminal Justice Can't: Research Shows That These Meetings Between Victims and Offenders Cut Crime*, GUARDIAN, Sept. 17, 2010, at 37; *Restorative Justice Reduces Crimes by 27%*, U. CAMBRIDGE: NEWS (July 1, 2008), <http://www.cam.ac.uk/news/restorative-justice-reduces-crime-by-27>.

95. *See* SHERMAN & STRANG, *supra* note 91, at 22.

those who participated in a restorative justice program had a fourteen percent lower re-offending rate than those who did not participate.⁹⁶

B. *The United States*

The United States Department of Justice supported research in 2017 on the effectiveness of restorative justice programs.⁹⁷ The objective of the research was to incorporate highly quantitative studies to analyze the effectiveness of various restorative justice programs.⁹⁸ This research looked at “results related to delinquency, non-delinquency, and victim outcomes” for offender and victim participants in the restorative justice programs.⁹⁹ Analysis of these programs “showed a moderate reduction in future delinquent behavior” as compared to a more traditional juvenile court proceeding.¹⁰⁰ However, victim-participants in these restorative justice programs “appear to experience a number of benefits and are more satisfied” with the restorative justice programs than the traditional approach of the justice system.¹⁰¹ When looking at the different types of restorative justice programs, research found encouraging results in terms of delinquency outcomes for the offenders.¹⁰² Overall, the findings suggest that certain restorative justice programs could reduce future youth delinquency while increasing victim satisfaction with the outcome.¹⁰³

However, the Department of Justice will likely continue to do additional evaluations to substantiate the promising effects identified.¹⁰⁴

A “meta-analysis . . . found that restorative justice conferences cause a ‘modest, but highly cost-effective, reduction in the frequency of repeat offending by the consenting [incarcerated/formerly incarcerated individuals] randomly assigned to participate in such a conference.’”¹⁰⁵ Another “meta-

96. RESTORATIVE JUSTICE COUNCIL, WHAT DOES THE MINISTRY OF JUSTICE RJ RESEARCH TELL US? 3 (2011), <http://www.restorativejustice.org.uk/sites/default/files/resources/files/Ministry%20of%20Justice%20evaluation%20of%20restorative%20justice.pdf>.

97. DAVID B. WILSON ET AL., EFFECTIVENESS OF RESTORATIVE JUSTICE PRINCIPLES IN JUVENILE JUSTICE: A META-ANALYSIS 4 (2017), <http://www.ncjrs.gov/pdffiles1/ojjdp/grants/250872.pdf>.

98. *See id.* at 2.

99. *Id.*

100. *Id.*

101. *Id.* at 3.

102. *See WILSON ET AL., supra* note 97, at 2. These outcomes were seen in “victim-offender conferencing, [FGC], arbitration/mediation programs and circles.” *Id.*

103. *Id.* at 2–3.

104. *See id.* at 3, 39.

105. KATHERINE BECKETT & MARTINA KARTMAN, UNIV. OF WASH., VIOLENCE, MASS INCARCERATION AND RESTORATIVE JUSTICE: PROMISING POSSIBILITIES 7 (2016),

analysis of a sample of 11,950 juveniles found that restorative justice programs [had] a [thirty-four] percent reduction in recidivism.”¹⁰⁶ Studies have also found that even “when former participants did re-offend, [the] crimes [that they committed] were less serious than those committed by others who had not [participated in a] restorative justice process[.]”¹⁰⁷ Further, while less is known about the effect of diversionary programs—which are programs that use restorative justice practices to divert defendants from incarceration—evaluations have found that recidivism rates were significantly lower for program participants than for comparison groups.¹⁰⁸

C. *Analysis*

It is clear that the United States needs to conduct more research to determine the full range of the effectiveness of implementing restorative justice programs and the decrease in recidivism associated with it.¹⁰⁹ It appears that, with time and further research, the United States—like the United Kingdom and the rest of Western Europe—will see a substantial decrease in the amount of recidivism in its juvenile and adult offenders.¹¹⁰ It is apparent though, based on the studies done in other countries, that there is a link between restorative programs and a decrease in recidivism; the United States should use these studies as further proof that restorative justice practices are a smart move for itself and society as a whole.¹¹¹ It also appears that, while one benefit of switching restorative justice practices is a

http://www.jsis.washington.edu/humanrights/wp-content/uploads/sites/22/2017/02/Restorative_Justice_Report_Beckett_Kartman_2016.pdf (quoting Lawrence W. Sherman et al., *Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review*, 31 J. QUANTITATIVE CRIMINOLOGY 1, 1 (2015)).

106. *Id.* at 7.

107. *Id.*

108. *See* Umbreit et al., *supra* note 36, at 281–82, 284.

109. *See* WILSON ET AL., *supra* note 97, at 3.

110. *See* SHERMAN & STRANG, *supra* note 91, at 22, 33; WILSON ET AL., *supra* note 97, at 3; Joshua Wachtel, *Restorative Justice Reduces Crime and Saves Money: UK Ministry of Justice Report*, INT’L INST. FOR RESTORATIVE PRACS.: NEWS (Dec. 23, 2008), <http://www.iirp.edu/news-from-iirp/restorative-justice-reduces-crime-and-saves-money-uk-ministry-of-justice-report>.

111. *See* BECKETT & KARTMAN, *supra* note 105, at 7; RESTORATIVE JUSTICE COUNCIL, *supra* note 96, at 3; SHERMAN & STRANG, *supra* note 91, at 4; WILSON ET AL., *supra* note 97, at 3; Kersten, *supra* note 94.

lower re-offending rate, there also appears to be a cost benefit to switching as well.¹¹²

IV. COST BENEFITS OF RESTORATIVE JUSTICE

The costs of using restorative justice are significantly lower than the traditional justice system.¹¹³ Many have concluded that these programs are significantly lower due to the following reasons: “Volunteers typically mediate sessions; [most] cases can . . . be dealt with in a few hours; and . . . offenders [often] do not require legal representation”¹¹⁴

For example, “Genesee County in New York has been [using] restorative justice program[s] since 1981.”¹¹⁵ “Based on data [collected] by the end of December 2004, the County estimates it saved over four million dollars by [sending] offenders to *community service sentencing* versus placing them in jail.”¹¹⁶

In a cost-benefit study of an adult felony . . . court, researchers found that though the cost of probation for . . . participants [in drug court] was about \$1,400 more than those who were not, there [were] net savings and other financial benefits to the community that far outweighed the costs.¹¹⁷

Another study done by Indiana and Ohio compared consequences for seventy-three youths and adults going through VOM programs against those in a traditional process.¹¹⁸ The VOM “offenders spent less time incarcerated and when they were incarcerated,” they spent time in county jail rather than state prison, which resulted in *substantial cost savings*.¹¹⁹ Even on a worldwide scale, restorative justice has been shown to be cheaper than

112. See JEFF LATIMER & STEVEN KLEINKNECHT, DEP’T OF JUSTICE CAN., THE EFFECTS OF RESTORATIVE JUSTICE PROGRAMMING: A REVIEW OF THE EMPIRICAL RR2000-16E 10, 14 (2002), http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00_16/rr00_16.pdf.

113. *Id.* at 14.

114. Marc-Antoine Carreira da Cruz, *A Potential Use of Crime Statistics — Measuring Cost Effectiveness of Restorative Justice Programmes: A Cross Eye on the British and Canadian Debate*, EFFECTIVS NEWSL. (Effectivus, Brussels, Belg.), Nov. 2010, at 1, 3.

115. *Benefits of Restorative Justice to Victims, Offender, Communities*, MO. ST., http://www.associations.missouristate.edu/assets/morjc/Benefits_of_RJ_Victims_Offender_Community.pdf (last visited Dec. 17, 2018).

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

traditional justice.¹²⁰ A report by the United Kingdom’s Ministry of Justice found, “that face-to-face [restorative justice] conferences both reduce crime and provide a cost saving to [the] government.”¹²¹ Further, the report found that there were “[n]ine pounds saved for every one pound spent,” which in United States currency would be for every \$11.36 saved, \$1.26 was spent.¹²²

Unlike the research done on recidivism, there is very little in the realm of whether restorative justice is more cost-effective than the traditional justice system.¹²³ However, the research that has been conducted shows a promising potential for monetary benefits in addition to the societal benefits.¹²⁴ If countries like the United Kingdom are seeing a substantial saving in cost by using restorative justice practices, then there is no reason that—with time and effort—the United States will not see the same results.¹²⁵ Even if the cost savings turn out to be not as substantial as originally hoped, the societal benefits should still be considered when looking at whether to employ restorative justices practices.¹²⁶

V. FLORIDA STATUTES ON RESTORATIVE JUSTICE

There is only one criminal statute in Florida relating to a restorative justice program for juveniles, which is Section 985.155 of the Florida Statutes.¹²⁷ Florida Statute section 985.155 allows for the state attorney in each judicial district to establish at least one Neighborhood Restorative Justice Center in each county¹²⁸ for “the purposes of operating a deferred prosecution program for first time, nonviolent, juvenile offenders.”¹²⁹ Out of

120. See LATIMER & KLEINKNECT, *supra* note 112, at 14; Wachtel, *supra* note 110.

121. Wachtel, *supra* note 110.

122. *Id.*; see also *Exchange Calculator from Dollar to British Pound*, CURRENCY-CALC.COM, http://www.currency-calc.com/USD_GBP (last visited Dec. 17, 2018).

123. See *Benefits of Restorative Justice to Victims, Offender, Communities*, *supra* note 115.

124. See *id.*

125. See LATIMER & KLEINKNECT, *supra* note 112, at 14; Wachtel, *supra* note 110.

126. See Carreira da Cruz, *supra* note 114, at 3; Beitsch, *supra* note 9; *Benefits of Restorative Justice to Victims, Offender, Communities*, *supra* note 115.

127. FLA. STAT. § 985.155(1)(c) (2018); see also *About RJ*, *supra* note 7.

128. *Id.* § (2)(a).

First-time, non-violent juvenile offender means a minor who allegedly has committed a delinquent act or violation of law that would not be a crime of violence providing grounds for detention or incarceration and who does not have a previous record of being found to have committed a criminal or delinquent act or other violation of law.

Id. § (1)(c).

129. *Id.* § (2)(a).

the twenty judicial circuits, only four offer some form of alternate restorative justice program: The Ninth Judicial Circuit, which includes Orange and Osceola Counties; the Twentieth Judicial Circuit, which includes Charlotte, Collier, Glades, Hendry and Lee Counties;¹³⁰ the Fourth Judicial Circuit, which includes Clay, Duval, and Nassau Counties;¹³¹ and the Seventeenth Judicial Circuit, which covers Broward County.¹³² Under Florida Statute section 1006.13 subsection 1, which falls under the Education Code and allows for, but does not require, “alternatives to expulsion or referral to law enforcement agencies to address disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs.”¹³³ There are, however, Florida Administrative Codes that cover the topic of restorative justice.¹³⁴ Florida Administrative Code Rule 63H-2.006 requires the Department of Juvenile Justice (“DJJ”) non-residential staff to be trained in restorative justice,¹³⁵ while Rule 63H-2.007 requires the DJJ detention staff to be trained in restorative justice.¹³⁶ Even more encouragingly, Florida is on the right path in implementing more of a restorative justice system for juveniles; Rule 63E-7.016, requires that “residential commitment program’s mission statement . . . be consistent with the [DJJ’s] mission and principles of . . . restorative justice philosophy.”¹³⁷

VI. FLORIDA RESTORATIVE JUSTICE CASE LAW

In the case of *State v. VanBebber*,¹³⁸—a Florida Supreme Court case—a defendant, convicted of several felony counts of driving under the influence, was given a downward departure sentence due to mitigating circumstances.¹³⁹ In the concurring opinion by Justice Pariente, she talked about how sentencing the defendant to a lengthy prison term would only complete the goal of retribution, but by using a restorative justice approach instead, the harm between the defendant and his child would be healed.¹⁴⁰

130. *About RJ, supra* note 7; *Judicial Circuits Map, supra* note 14.

131. *See Restorative Justice, supra* note 14.

132. *See Diversion Programs, supra* note 14.

133. FLA. STAT. § 1006.13(1) (2018).

134. FLA. ADMIN. CODE ANN. r. 63H-2.006 (2018); FLA. ADMIN. CODE ANN. r. 63E-7.016 (2018).

135. FLA. ADMIN. CODE ANN. r. 63H-2.006.

136. FLA. ADMIN. CODE ANN. r. 63H-2.007 (2018).

137. FLA. ADMIN. CODE ANN. r. 63E-7.016.

138. 848 So. 2d 1046 (Fla. 2003).

139. *Id.* at 1047–48.

140. *Id.* at 1053–54.

In this case, a lengthy prison term would satisfy only the goal of retribution. On the other hand, a balanced and restorative justice approach views crime as “more than a violation of . . . criminal law” but also as a disruption “in a

Additionally, in the case of *Department of Revenue v. Jackson*¹⁴¹—another Florida Supreme Court case—a defendant was incarcerated and filed a petition for modification of his child support obligation until his release from prison.¹⁴² “The Fifth District Court of Appeal affirmed the [petition] . . . and certified conflict with a case from the Fourth District Court of Appeal.”¹⁴³ The Florida Supreme Court held that the trial court could hold the incarcerated parent’s petition for modification in inactivity pending release.¹⁴⁴ While the case itself is fairly unimportant to restorative justice, what was notable about this case was the opinion of Justice Pariente, concurring in part and dissenting in part.¹⁴⁵ In her concurring/dissenting opinion, Justice Pariente stated:

Alternatives to incarceration could embrace a balanced and restorative approach to criminal justice. This approach requires the offender to be held accountable for his or her criminal actions by recognizing the harm done, including indirectly to his or her child, and by imposing a solution that would enable the offender to seek to repair the harm resulting from his or her criminal behavior, including the continued payment of child support.¹⁴⁶

Even more impressive is the case of nineteen-year-old Conor McBride, which is the only criminal case in Florida to use restorative justice.¹⁴⁷ On March 28, 2010, Conor McBride walked into the Tallahassee Police Department and told the officer on duty that he shot his fiancé in the head.¹⁴⁸ About an hour before McBride walked into the department, he had shot his girlfriend of three years, Ann.¹⁴⁹ The shooting occurred after, what

three-dimensional relationship of victim, community, and offender.” It further recognizes that because crime “harms the victim and the community, the primary goals should be to repair the harm and heal the victim and the community.” The goal of any case disposition should be to promote public safety, competency development, and accountability. Further, sentencing that has been based on restorative justice principles has shown higher rates of compliance with payment of restitution amounts and in completion of community service. (citations omitted).

Id. at 1054, n.9.

141. 846 So. 2d 486 (Fla. 2003).

142. *Id.* at 488; *About RJ*, *supra* note 7.

143. *About RJ*, *supra* note 7.

144. *Jackson*, 846 So. 2d at 494.

145. *Id.* at 495–500.

146. *Id.* at 500 (Pariente, J., concurring in part and dissenting in part).

147. See Mahajan, *supra* note 34, at 138; Paul Tullis, *Forgiven*, N.Y. TIMES

MAG., Jan. 6, 2013, at 30–32.

148. Tullis, *supra* note 147, at 30.

149. *Id.*

was essentially, thirty-eight hours of continuous fighting.¹⁵⁰ The State Attorney for Leon County charged McBride with first-degree murder, which “carries a mandatory life sentence, or potentially, the death penalty.”¹⁵¹ Ann’s parents forgave Conor and, through research, found out about restorative justice and restorative justice expert, Sujatha Baliga.¹⁵² After a conference call among all parties and their attorneys, they were convinced the situation was suitable for a restorative justice program.¹⁵³ After doing his own research, the prosecutor agreed to the mediation, and on June 22, 2011, the restorative circle took place.¹⁵⁴

This restorative circle was in a similar format as seen in VOM, “except [for] the fact that the attorneys were . . . present with the parties.”¹⁵⁵ Each party, including Conor, his parents, and Ann’s parents, spoke about the crime and how it affected them.¹⁵⁶ After the circle was over, Ann’s parents were asked what they wanted as restitution; this would be in addition to the punitive sentence.¹⁵⁷ They asked that Conor do enough good work for society for two people “because Ann was not there to do her share”; they suggested a sentence of ten to fifteen years in prison for his crime.¹⁵⁸ The State Attorney said he would take their suggestions into consideration, but he still needed to consult other individuals before offering a plea deal.¹⁵⁹ “Three weeks later, [the State Attorney] gave Conor a choice between [twenty-five] years . . . imprisonment [or] [twenty years] imprisonment plus [ten] years of probation.”¹⁶⁰ Conor chose the twenty years plus ten years of probation.¹⁶¹ Restorative justice expert, Sujatha Baliga stated:

[T]hat the retributive system rarely sees the importance and need of including the victims in deciding what happens to the people who have done unimaginable damage to their lives. Likewise, the retributive system does not recognize redemption or allowing the offender the opportunity to repair the irreparable before entering the doors of the courthouse.¹⁶²

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150. *Id.*
 151. *Id.* at 31.
 152. Mahajan, *supra* note 34, at 139–40.
 153. *Id.* at 140.
 154. *Id.* at 140–41.
 155. *Id.* at 141.
 156. *Id.*
 157. Mahajan, *supra* note 34, at 142.
 158. *Id.*
 159. *Id.* at 142–43; *see also* Tullis, *supra* note 147, at 31.
 160. Mahajan, *supra* note 34, at 142.
 161. *Id.*
 162. *Id.* at 143–44.

Two important questions were asked after looking at this case: (1) “has the restorative circle . . . worked?”,¹⁶³ and (2) “[o]n a larger scale, [has] it met the ends of community justice?”¹⁶⁴ In order to answer these questions, you have to look at “comparing the outcome[s] of [the] case with the goals of a VOM model.”¹⁶⁵ Based on the outcomes of this case, it is clear that all the objectives of VOM had been met.¹⁶⁶ “The offender was held accountable, the victim[’s parents] received closure, and the ways of restitution were agreed upon.”¹⁶⁷ Even more impressive, is that “the punitive sentence was also decided through [this] restorative circle.”¹⁶⁸

There is not much case law using restorative justice practices in Florida.¹⁶⁹ It is worth noting that the cases that have mentioned the benefits of using restorative justice practices have been Florida Supreme Court cases; further, the one case where restorative justice was used throughout the entire process was a first-degree murder case.¹⁷⁰ The fact that the Florida Supreme Court justices and even some attorneys are starting to see how beneficial using restorative justice practices can be is a big step in what the future can hold for Florida.¹⁷¹ Over the last ten years or so, restorative justice can be seen more and more in Florida and even specifically in Broward County.¹⁷² There are a handful of programs offered within Broward that are helping to bring the community, victims, and offenders together to repair harm.¹⁷³

VII. USE OF RESTORATIVE JUSTICE IN BROWARD COUNTY

In Broward County, “[i]f a minor child has committed a first or second non-violent offense, the State Attorney’s Office (“SAO”) may choose to offer the minor [the option of] a diversionary program.”¹⁷⁴ The SAO

163. *Id.* at 144.

164. *Id.*

165. Mahajan, *supra* note 34, at 144.

166. *Id.*

167. *Id.*

168. *Id.*

169. *See* Dep’t of Revenue v. Jackson, 846 So. 2d 486, 500 (Fla. 2003); State v. VanBebber, 848 So. 2d 1046, 1052 (Fla. 2003); Tullis, *supra* note 147, at 32.

170. *See* Jackson, 846 So. 2d at 500; VanBebber, 848 So. 2d at 1054; Tullis, *supra* note 147, at 31.

171. *See* Jackson, 846 So. 2d at 500; VanBebber, 848 So. 2d at 1054; Tullis, *supra* note 147, at 32.

172. *See* BROWARD CTY. HUMAN SERVS. DEP’T, ANNUAL REPORT: FY2016 1, 5 (2016), <http://www.broward.org/HumanServices/JusticeServices/Documents/OJS%20-%20Fiscal%20year%202016%20Report.pdf>.

173. *Id.*; *Juvenile Delinquency*, SEVENTEENTH JUD. CIR. FLA., <http://www.17th.flcourts.org/04-juvenile-delinquency/> (last visited Dec. 17, 2018).

174. *Juvenile Delinquency*, *supra* note 173.

offers several different diversionary programs, not only for minors, but for adults as well, which include: Truancy diversion, misdemeanor diversion, felony pre-trial intervention, domestic violence misdemeanor diversion, driving while license suspended diversion program, and alternative to formal processing of juvenile cases.¹⁷⁵

The Broward County Sheriff's Office has a program called the Community Justice Program ("CJP").¹⁷⁶ "[This] is a voluntary program established to provide Civil Citation (pre-arrest) and diversion (post-arrest) options for juvenile offenders who reside in Broward County."¹⁷⁷ The CJP is offered to youths—ages seven to seventeen—who are referred for criminal offenses committed within the county.¹⁷⁸ Youths can enter the program either by a civil citation referral by law enforcement officers or via a post arrest diversion referral from the SAO.¹⁷⁹ This program also focuses on the needs of victims of crimes that are associated with the juveniles' cases and the community "through the implementation of restorative justice principles."¹⁸⁰ The goal of CJP is to "[reduce] recidivism; [r]educ[e] youth risk factors; [p]rovide and link youth to appropriate community services to meet their social, educational, and health needs; . . . [a]ddress victim needs for counseling, reparation, and restitution;" etc.¹⁸¹ Since 2012, when the CJP program was put in place, over four thousand youths have been served.¹⁸² Of those youths, ninety percent achieved successful completion rates and ninety-eight percent of the youths did not recidivate within the twelve-month period following the program.¹⁸³ Further, the use of the CJP program "saved an estimated \$13.6 million in arrest processing costs."¹⁸⁴

"As of [the 2016 Fiscal Year], Broward County is ranked [third] in . . . Florida for civil citation utilization."¹⁸⁵ The 2016 report found that seventy-two percent of youths that were eligible to receive a civil citation received one, up two percent from the previous year.¹⁸⁶ The report also

175. *Diversion Programs*, *supra* note 14.

176. *Juvenile Assessment Center*, SHERIFF'S OFF. BROWARD COUNTY, <http://www.sheriff.org/CP/Pages/JAC.aspx> (last visited Dec. 17, 2018).

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Juvenile Assessment Center*, *supra* note 176.

182. BROWARD CTY. HUMAN SERVS. DEP'T, *supra* note 172, at 5; Michelle Hollinger, *Commissioner Seeks Expansion of Civil Citation Ordinance*, S. FLA. TIMES: NEWS (Jan. 25, 2018), <http://www.sfltimes.com/news/local/commissioner-seeks-expansion-of-civil-citation-ordinance>.

183. BROWARD CTY. HUMAN SERVS. DEP'T, *supra* note 172, at 5.

184. Hollinger, *supra* note 182.

185. BROWARD CTY. HUMAN SERVS. DEP'T, *supra* note 172, at 5.

186. *Id.*

looked at missed opportunities where a civil citation could have been issued, but arrests were made instead.¹⁸⁷ “In Broward County in [2016], there were 365 missed opportunities, which accounted for [twenty-eight] percent of [youths] eligible [for] civil citations.”¹⁸⁸

Broward County also has the PROMISE program, which stands for Preventing Recidivism through Opportunities, Mentoring, Interventions, Support, and Education.¹⁸⁹ This was put into effect by the Broward County public school system to address student issues that would normally lead to juvenile delinquency arrest and result in entry to the juvenile justice system.¹⁹⁰ The PROMISE program uses restorative justice principles to help “address socially unacceptable or illegal behaviors” of children in public schools.¹⁹¹ The Urban League of Broward County offers another program called Project EMBRACE.¹⁹² “Project EMBRACE is a three-to-six month [long] diversion program for first time juvenile offenders [that] provides alternatives to [the] traditional criminal justice processes.”¹⁹³ “[The] program is centered on the restorative justice model where offenders and victims meet face-to-face to discuss the events that [occurred].”¹⁹⁴

Broward County has a good variety of restorative justice programs in effect and a majority of them are run by a local government, such as the Broward County Sheriff’s Department or Broward County public schools.¹⁹⁵ While there are still a few programs that are run through private or non-profit funding, it is a positive sign to see the county taking a role in applying these restorative justice practices to its juvenile offenders.¹⁹⁶ There will always be a need for non-profit-type organizations to step in to help the local government, but instead of working independently of the local government, there should be a switch to working together to form one single, unified community; working towards using restorative justice practices is a step in

187. *Id.*

188. *Id.* at 5–6.

189. *PROMISE Program*, DIVERSITY, PREVENTION & INTERVENTION DEP’T, <http://www.browardschools.com/Page/32438> (last visited Dec. 17, 2018).

190. *See id.*

191. *Id.*

192. *Education*, URB. LEAGUE BROWARD COUNTY, <http://www.ulbroward.org/education> (last visited Dec. 17, 2018).

193. *Id.*

194. *Id.*

195. *See Juvenile Assessment Center*, *supra* note 176; *PROMISE Program*, *supra* note 189.

196. *See Juvenile Assessment Center*, *supra* note 176.

the right direction to having restorative justice be an everyday part of the traditional justice system.¹⁹⁷

VIII. OTHER STATES' USE OF RESTORATIVE JUSTICE

A. *Colorado*

Colorado is leading “the [n]ation in [p]ioneering [r]estorative [j]ustice laws,”¹⁹⁸ and “in legal support for restorative justice.”¹⁹⁹ Colorado Revised Statute section 19-1-103(94.1)²⁰⁰ defines restorative justice.²⁰¹ Colorado has statutes in the state criminal code and children’s code that promote the use of restorative justice not only in the school disciplinary setting, but also in criminal and juvenile court and the Department of Corrections.²⁰² In 2007, upon signature of the governor, the Colorado Restorative Justice Coordinating Council was created pursuant to HB-07-1129.²⁰³ In 2013, Colorado expanded restorative justice through HB-13-1254,²⁰⁴ which initiated pilot programs for four districts—Pueblo, Alameda, Boulder, and Weld—to screen for cases that were eligible for restorative justice practices as the first line of response to many juvenile crimes.²⁰⁵ “In 2015, HB-15-1094 further expanded the [Restorative Justice Coordinating] Council membership to include a public defender, judge, and law

197. See Allen, *supra* note 28; *Diversion Programs*, *supra* note 14; *Juvenile Delinquency*, *supra* note 173.

198. Deb Witzel, *Colorado Leads the Nation in Pioneering Restorative Justice Laws*, RESTORATIVE JUST. COLO.: BLOG, <http://www.rjcolorado.org/blog/colorado-leads-the-nation-in-pioneering-restorative-justice-laws> (last visited Dec. 17, 2018).

199. *Id.*

200. COLO. REV. STAT. § 19-1-103(94.1) (2018).

Restorative justice means those practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include, but need not be limited to, apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.

Id.

201. *Id.*

202. Witzel, *supra* note 198; see also COLO. REV. STAT. § 19-1-103.

203. DIV. OF CRIMINAL JUSTICE & RESTORATIVE JUSTICE COORDINATING COUNCIL, ANNUAL REPORT ON IMPLEMENTATION OF HB 2013-1254, 3 (2016); see also H.R. 07-1129, 66th Gen. Assemb., 1st Reg. Sess. (Colo. 2007).

204. H.R. 13-1254, 69th Gen. Assemb., Reg. Sess. (Colo. 2013).

205. *Id.*; Witzel, *supra* note 198.

enforcement.”²⁰⁶ HB-15-1094 also allowed for the expansion of eligible cases “to include petty offenses, misdemeanors, and felony 3–6 level offenses.”²⁰⁷ During the pilot program period of July 1, 2014 and June 30, 2016, 574 youths were found to be suitable and began participation in a restorative justice program.²⁰⁸ During this two year period, 474 youths out of the 574 participated in the restorative justice program and reached an agreement, while “433 youths had successfully completed their restorative justice contracts.”²⁰⁹ All 433 cases were referred to the pilot program.²¹⁰

When looking at the recidivism in these pilot programs, at the time the data was collected, 283 of the 574 had completed participation in the restorative justice program.²¹¹ Of those 283 youths, “17.7% (50) had been out of the restorative justice program for a full year, 45.9% (130) had been out of restorative justice at least six months, but less than a full year, and 36.4% (103) had been out of restorative justice for less than six months.”²¹² The data looked at the youth who had been out of the program for an entire year, and of those fifty youths, eight percent recidivated in the year following their restorative justice program.²¹³ This is a significant decrease when compared to the local and national average of sixty to seventy percent recidivism for those not using restorative justice programs.²¹⁴

Even more impressive, is that Colorado has a High Risk/Impact Victim Offender Dialogue (“HRVOD”).²¹⁵ This is a unique system “that serves survivors [or] victims of high impact crimes.”²¹⁶ Participation in HRVOD is voluntary and can include, but is not limited to, the following violent crimes: All forms of murder, vehicular homicide, assaults,

206. DIV. OF CRIMINAL JUSTICE & RESTORATIVE JUSTICE COORDINATING COUNCIL, *supra* note 203, at 3; *see also* H.R. 15-1094, 70th Gen. Assemb., Reg. Sess. (Colo. 2015).

207. H.R. 15-1094, 70th Gen. Assemb., Reg. Sess.; Witzel, *supra* note 198; *see also* DIV. OF CRIMINAL JUSTICE & RESTORATIVE JUSTICE COORDINATING COUNCIL, *supra* note 203, at 3.

208. DIV. OF CRIMINAL JUSTICE & RESTORATIVE JUSTICE COORDINATING COUNCIL, *supra* note 203, at 13.

209. *Id.*

210. *Id.*

211. *Id.* at 14.

212. *Id.*

213. DIV. OF CRIMINAL JUSTICE & RESTORATIVE JUSTICE COORDINATING COUNCIL, *supra* note 203, at 14.

214. Molly Rowan Leach & Sandra Pavelka, *The Political Rise of Restorative Justice*, HUFFPOST: BLOG (May 26, 2014), http://www.huffingtonpost.com/molly-rowan-leach/the-political-rise-of-res_b_5029413.html.

215. *High Risk/Impact Victim Offender Dialogue – (HRVOD)*, RESTORATIVE JUST. COLO., <http://www.rjcolorado.org/restorative-justice/justice-system/hrvod> (last visited Dec. 17, 2018).

216. *Id.*

kidnapping, aggravated robbery, and child abuse.²¹⁷ HRVOD has been used since 2011 and works “in conjunction with or within the criminal justice system.”²¹⁸ Often “restorative justice . . . in HRVOD cases occurs after sentencing [or] much later in the punishment phase.”²¹⁹ It is easy to see why Colorado is leading the way for restorative justice in the United States; not only does the state as a whole implement restorative justice, individual counties also have some form of restorative justice program—for example, the Boulder County Sheriff’s Office Restorative Justice (“BCSORJ”) program, which was founded in 2000.²²⁰ There are also numerous other restorative justice programs throughout the state—approximately sixty-three.²²¹ These programs are made up of judicial districts, school boards, private companies, and police departments.²²²

One example of how Colorado’s pilot restorative justice program is helping to heal victims of crimes is evidenced in the case of Sharletta Evans, whose three-year-old son was killed in a 1995 drive by shooting by Raymond Johnson.²²³ At the time of the crime, Johnson was sixteen years old.²²⁴ When Sharletta Evans learned of Colorado’s new restorative justice pilot programs, she wanted to be one of the first to use it.²²⁵ Johnson was now thirty-two.²²⁶ On May 23, 2012, Evans and her other son, Calvin, sat down with her son’s killer and had an honest conversation about the crime from each of their own points of view.²²⁷ Sharletta and Calvin Evans left that day with a *mission accomplished*.²²⁸ Calvin said he left with his anger behind him and confirmation that Johnson was truly remorseful for what had transpired.²²⁹ Sharletta says, “[t]he experience strengthened her belief in

217. *Id.*

218. *Id.*

219. *Id.*

220. See *High Risk/Impact Victim Offender Dialogue — (HRVOD)*, *supra* note 215; *Who We Are*, BOULDER COUNTY, <http://www.bouldercounty.org/safety/victim/restorative-justice/who-are-we/> (last visited Dec. 17, 2018).

221. *Restorative Justice Programs*, RESTORATIVE JUST. COLO., <http://www.rjcolorado.org/restorative-justice-programs/index.html> (last visited Dec. 17, 2018).

222. *Id.*

223. Kevin Simpson, *Healing, Compassion Amid Justice: “At Times I Let Him Feel My Anger. And at Times We Discussed the Divine. Does God Have a Plan Here? How Did Our Paths Meet?”*, DENV. POST, July 10, 2012, at A1.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. Simpson, *supra* note 223.

229. *Id.*

restorative justice;” she is “not at peace with [Johnson] spending the rest of his life in prison,” and would like to see him receive a second chance at life.²³⁰

B. *Minnesota*

Minnesota, like Colorado, is seen as pioneering the way for restorative justice practices.²³¹ Minnesota continuously employs restorative justice practices, especially within its Department of Corrections (“DOC”).²³² The DOC has integrated restorative justice practices into its correctional system, such as through its apology letter program and its victim-offender dialogue.²³³ Both of these programs are only possible if the victim wants it to happen, as the goal of restorative justice is to make the victim feel better about a crime committed against them.²³⁴ Another program that makes Minnesota stand out is the University of Minnesota, School of Social Work’s Center for Restorative Justice and Peacemaking (“CRJP”).²³⁵ It is the home base for many of the state’s restorative justice initiatives.²³⁶ CRJP also has a multitude of resources to provide training and education to the community.²³⁷ Minnesota, like Colorado, is special because it has legislative authority for the use of restorative justice programs to “assign an appropriate sanction to [an] offender.”²³⁸ And one of Minnesota’s restorative justice statutes, section 611A.775,²³⁹ has already withstood a challenge brought before the

230. *Id.*

231. Jessica A. Focht-Perlberg, *Two Sides of One Coin — Repairing the Harm and Reducing Recidivism: A Case for Restorative Justice in Reentry in Minnesota and Beyond*, 31 *HAMLIN J. PUB. L. & POL’Y* 219, 259 (2009).

232. *Id.* at 259–60.

233. *Apology Letters*, MINN. DEP’T OF CORRECTIONS, <http://www.mn.gov/doc/victims/restorative-justice/victim-initiated-restorative-practices/apology-letters/> (last visited Dec. 17, 2018); *Victim Offender Dialogue*, MINN. DEP’T OF CORRECTIONS, <http://www.mn.gov/doc/victims/restorative-justice/victim-initiated-restorative-practices/victim-offender-dialogue/> (last visited Dec. 17, 2018).

234. *Apology Letters*, *supra* note 233; *Victim Offender Dialogue*, *supra* note 233.

235. *See Umbreit & Fercello*, *supra* note 72, at 15.

236. *See id.*

237. *Id.*

238. Reimund, *supra* note 2, at 678 (quoting MINN. STAT. ANN. § 611A.775 (West 2018)).

239. MINN. STAT. ANN. § 611A.775.

A community-based organization, in collaboration with a local governmental unit, may establish a restorative justice program. A restorative justice program is a program that provides forums where certain individuals charged with or petitioned for having committed an offense meet with the victim, if appropriate; the victim’s family members or other supportive persons, if appropriate; the offender’s family members or other supportive persons, if

Minnesota Supreme Court in the case of *State v. Pearson*.²⁴⁰ Minnesota currently has approximately four statutes that implement the use of restorative justice practices or techniques dealing with both children and adults.²⁴¹ For example, section 609.125 allows for the performance of work in a restorative justice program as an option for sentencing in misdemeanors or gross misdemeanors.²⁴² Minnesota also requires that, for first time juvenile petty offenders, the prosecutor refer the juvenile offender to a restorative justice program or provider.²⁴³

C. *Analysis*

Both Colorado and Minnesota have impressive restorative justice programs and legislation in place that other states, including Florida, should use as a guide on how to begin or better implement restorative justice programs.²⁴⁴ While Florida has some counties that implement restorative justice practices through the use of diversionary programs, they are not mandatory for first time non-violent juvenile offenders; rather, it is left open to the discretion of the State Attorney whether they even want to offer a type of diversionary program.²⁴⁵ It is clear why these two states are leading the nation in restorative justice practices—the fact that both Colorado and

appropriate; a law enforcement official or prosecutor when appropriate; other criminal justice system professionals when appropriate; and members of the community, in order to: (1) discuss the impact of the offense on the victim and the community; (2) provide support to the victim and methods for reintegrating the victim into community life; (3) assign an appropriate sanction to the offender; and (4) provide methods for reintegrating the offender into community life.

Id.

240. 637 N.W. 2d 845 (Minn. 2002). The Court found that “[o]n a more concrete level, the statute explicitly gives restorative justice programs the authority to assign appropriate sanctions to [the] offender,” but ruled that the courts still have the sentencing authority. *Id.* at 847–48. The court further noted that the State’s lack of participation in the circle does not negate the sentencing circle recommendation and that the statute does not make attendance by the prosecutor mandatory. *Id.* at 848. Further, if the prosecutor wanted a particular sentencing result, he should have participated in the circle and the state is bound by the results. *Id.*

241. See REBECCA PIRIUS, MINN. HOUSE OF REPRESENTATIVES, CRIME VICTIM LAWS IN MINNESOTA: AN OVERVIEW 22 (2013), <http://www.house.leg.state.mn.us/hrd/pubs/crimvict.pdf>.

242. MINN. STAT. § 609.125 (2017). “Upon conviction of a misdemeanor or gross misdemeanor the court, if sentence is imposed, may, to the extent authorized by law, sentence the defendant . . . to perform work service in a restorative justice program in addition to any other sentence imposed by the court.” *Id.* § (a)(6).

243. *Id.* § 609.092(b).

244. See *id.* § 609.125; Focht-Perlberg, *supra* note 231, at 259; Witzel, *supra* note 198.

245. See FLA. STAT. § 985.155(2)(b) (2018).

Minnesota have restorative justice written into legislation as a means other than the traditional court system allows more victims and offenders a way of healing that is less stressful than the traditional system.²⁴⁶ If Florida were to write restorative justice programs as a means for first time juvenile offenders into legislation rather than as an option, it would likely see similar results as in Colorado and Minnesota, and result in a much lower rate of recidivism among its juvenile and adult offenders.²⁴⁷

IX. LIMITATIONS OF RESTORATIVE JUSTICE

While there are a number of limitations that restorative justice programs have, many of them are remedial.²⁴⁸ “The first [limitation] has to do with the limited access to restorative justice that results when programs entail dialogue between crime survivors and the specific person who harmed them.”²⁴⁹ Participation for victims in restorative justice practices is solely voluntary and is often initiated by the victim.²⁵⁰ Because of this, the many benefits that restorative justice programs have to offer may be unavailable to a larger amount of offender parties.²⁵¹ Furthermore, the entire restorative justice process relies on the offender’s willingness to take full accountability for their actions, and to engage in candid dialogue without further revictimizing the victim.²⁵² Additionally, a lot of crimes never result in an arrest or a conviction, and in those situations, the victim cannot benefit from a restorative justice program because there is no offender to have an open dialogue with.²⁵³ Even though it is not always an option in many cases, when it is an option, the dialogue between victim and offender can be quite powerful.²⁵⁴

Secondly, while “participation in some restorative justice programs may serve as a substitute for, or part of, a defendant’s court sentence, most [restorative justice programs] are not designed as an alternative to traditional court sentenc[ing].”²⁵⁵ These programs are also typically “not designed to reduce the number of defendants” that are currently incarcerated or about to

246. See Focht-Perlberg, *supra* note 231, at 259–60; Witzel, *supra* note 198.

247. See FLA. STAT. §985.155(2)(b); Focht-Perlberg, *supra* note 231, at 258–60; Witzel, *supra* note 198.

248. BECKETT & KARTMAN, *supra* note 105, at 8.

249. *Id.* (emphasis in original).

250. *Id.*

251. *Id.*

252. *Id.*

253. BECKETT & KARTMAN, *supra* note 105, at 8.

254. *Id.*

255. *Id.*

be incarcerated; however, there has been a shift in this to try to combat the issue of mass incarceration.²⁵⁶

Lastly, “many restorative justice programs, particularly those offering an alternative to traditional court processes and incarceration, are available only to juveniles or to adults charged with low level offenses.”²⁵⁷ While application of restorative justice approaches to those charged with serious criminal offenses has been more controversial, there has been growing support in the application of it.²⁵⁸ The deficiency of restorative justice programs that include serious violence is unfortunate; evidence has found that restorative justice outcomes are the greatest when used with serious violent crimes.²⁵⁹

X. CONCLUSION

There are many reasons why Florida should have restorative justice programs written into legislation in a non-discretionary manner; for one, restorative justice has been found to lower the rate of reoffending among those who participate in restorative justice programs.²⁶⁰ A study from Sam Houston State University found that restorative justice interventions, even if minimally involved with the criminal proceedings, reduces recidivism of juvenile offenders.²⁶¹ By focusing on limiting the amount of recidivism among juvenile offenders—especially on those that have been convicted of their first offense—Florida would also be reducing the number of adult offenders it sees in the criminal justice system.²⁶²

Not only would Florida be able to directly reduce the number of re-offending juvenile offenders, and indirectly reduce the number of re-offending adults, but the state would also likely be able to save costs while doing so.²⁶³ As studies from the United States and other countries around the world have shown, there is a cost benefit to implementing restorative justice

256. *Id.* at 8–9.

257. *Id.* at 9 (citation omitted).

258. BECKETT & KARTMAN, *supra* note 105, at 9.

259. *Id.*

260. *See id.* at 7.

261. Sam Houston State Univ., *Research Reveals Restorative Justice Reduces Recidivism*, FORENSIC MAG.: CRIME SCENE (July 28, 2017, 12:17 PM), <http://www.forensicmag.com/news/2016/07/research-reveals-restorative-justice-reduces-recidivism>.

262. *See* David Newton, *Restorative Justice and Youthful Offenders*, FBI L. ENFORCEMENT BULL. (Oct. 6, 2016), <http://leb.fbi.gov/articles/featured-articles/restorative-justice-and-youthful-offenders>.

263. *See id.*; Wachtel, *supra* note 110.

programs into the justice system.²⁶⁴ While studies regarding this area of restorative justice are limited, the research that has been done shows promising results.²⁶⁵ The United Kingdom Ministry of Justice's report is a prime example of this.²⁶⁶ Even if the cost of implementing restorative justice programs are more expensive than the traditional route, it can still have cost saving benefits such as the study shown by Indiana and Ohio, which found that those in VOD programs spent less time incarcerated and those that were incarcerated spent time in county jail rather than state prison which saved a substantial amount.²⁶⁷ While in that situation, it does cost more to implement restorative justice, but money was still saved in the long run due to the decrease in recidivism—which as a result saved money because less people were being incarcerated, leading to a decrease in costs.²⁶⁸

Additionally, by implementing mandatory restorative justice programs, Florida would be helping all of its citizens come together and heal from crimes.²⁶⁹ Restorative justice, unlike the traditional justice system, involves only those directly impacted by the crime and their supporters.²⁷⁰ By having this intimate setting, victims are able to directly convey their thoughts and emotions without the barrier of the formalities of the court, and the same goes for the offender.²⁷¹ Allowing this kind of open, frank conversation and questioning helps victims heal and allows the offender to really come to terms with why they committed the crime.²⁷² This type of deep reflective conversation is also likely one of the reasons that recidivism is lower for restorative justice programs, because the offender really gets the full force of the effects of their actions.²⁷³

An example of how restorative justice could have changed the outcome of a child's life is the case of *Graham v. Florida*.²⁷⁴ In 2003, at the age of sixteen, Terrance Graham was arrested for attempted robbery of a barbeque restaurant.²⁷⁵ The prosecutor in Graham's case charged him as an adult with a first-degree felony for armed burglary with assault and a second-

264. *Benefits of Restorative Justice to Victims, Offender, Communities, supra* note 115; Wachtel, *supra* note 110.

265. *See* Wachtel, *supra* note 110.

266. *Id.*

267. *Benefits of Restorative Justice to Victims, Offender, Communities, supra* note 115.

268. *Id.*

269. *See id.*

270. Reimund, *supra* note 2, at 668.

271. *See* Umbreit et al., *supra* note 36, at 266, 269.

272. Sapir, *supra* note 81, at 208.

273. *Id.* at 212–13; Tullis, *supra* note 147, at 32.

274. 560 U.S. 48 (2010).

275. *Id.* at 53.

degree felony for attempted armed robbery.²⁷⁶ However, the judge withheld adjudication and sentenced Graham to three years of probation.²⁷⁷ Six months later, Graham was arrested again after allegedly forcefully entering a home and ransacking it.²⁷⁸ Graham's attorney requested a five-year sentence, the Florida Department of Corrections recommended four years, and the State asked for "[thirty] years on the armed burglary count and [fifteen] years on the attempted armed robbery count."²⁷⁹ The trial court found Graham guilty and sentenced him to "life imprisonment for the armed burglary and [fifteen] years for the attempted armed robbery."²⁸⁰ Graham challenged this sentence under the Eighth Amendment.²⁸¹ The First District Court of Appeal affirmed his sentence as it did not find it grossly disproportionate to his crimes.²⁸² Further, the First District Court of Appeal of Florida found that Graham was not capable of rehabilitation.²⁸³ The Florida Supreme Court denied review, but the Supreme Court of the United States granted certiorari.²⁸⁴ The Supreme Court of the United States held that it is "*grossly disproportionate* and hence unconstitutional for any judge or jury to impose a sentence of life without parole of an offender [under the age of eighteen], unless [they have] committed a homicide."²⁸⁵

While it is nice to know that the law prohibits the sentencing of juveniles to life for non-homicide offenses, it still allows for juveniles to be sentenced to several years in prison with a possibility of parole.²⁸⁶ If this

276. *Id.* at 53–54. Under Florida law, the prosecutor has discretion whether to charge sixteen and seventeen-year-olds as adults for most felony crimes. *Id.* at 53.

277. *Id.* at 54.

278. *Graham*, 560 U.S. at 54.

279. *Id.* at 56.

280. *Id.* at 57. In the trial court's explanation for the sentences, the judge explained:

So then it becomes a focus, if I can't do anything to help you, if I can't do anything to get you back on the right path, then I have to start focusing on the community and trying to protect the community from your actions. And, unfortunately, that is where we are today is I don't see where I can do anything to help you any further. You've evidently decided this is the direction you're going to take in life, and it's unfortunate that you made that choice.

I have reviewed the statute. I don't see where any further juvenile sanctions would be appropriate. I don't see where any youthful offender sanctions would be appropriate. Given your escalating pattern of criminal conduct, it is apparent to the Court that you have decided that this is the way you are going to live your life and that the only thing I can do now is to try and protect the community from your actions.

Id.

281. *Id.* at 58; *see also* U.S. CONST. amend. VIII.

282. *Graham*, 560 U.S. at 58.

283. *Id.*

284. *Id.*

285. *Id.* at 97 (Thomas, J., dissenting).

286. *See id.* at 82.

case had used restorative justice practices, the outcome might have been different for Terrance because restorative justice helps get to the root of why an offender is committing crimes.²⁸⁷ Terrance Graham had a rough start to life: Graham's parents were addicted to crack cocaine throughout his early years of life.²⁸⁸ "Graham was [also] diagnosed with attention deficit hyperactivity disorder in elementary school" and "began drinking alcohol and using tobacco at age [nine] and smoked marijuana at age [thirteen]."²⁸⁹ While this is not an excuse to commit violent acts against other people, this upbringing could have shaped his reality of the world and how to interact with it.²⁹⁰ Like in the case of Conor McBride, where restorative justice was used for a murder case, this case could have had a similar outcome had those practices been used.²⁹¹ There is no question that Terrance Graham still needed to face punishment for his actions, but had restorative justice been implemented in addition to his punishment, the second crime might have never occurred.²⁹² If Terrance had been given the ability to sit down with the restaurant owner and have an open conversation about how the crime affected the owner and why Terrance did it, something might have clicked, and he may have realized the severity of his actions.²⁹³ Even if Terrance could not have had a conversation with the actual victim, there are other restorative justice programs where he could have talked to victims of other crimes about how their lives have been changed because of the crimes.²⁹⁴

This is a perfect example of why restorative justice needs to be mandatory for juvenile offenders, regardless of whether they are violent or non-violent offenders.²⁹⁵ It is clear that restorative justice is gaining momentum throughout the United States and is on its way to repairing the harm afflicted against victims by offenders and bringing people together in the process; however, there is still progress to be made.²⁹⁶

287. See Sapir, *supra* note 81, at 208.

288. *Graham*, 560 U.S. at 53.

289. *Id.*

290. See *id.* at 53, 56–57.

291. See Tullis, *supra* note 147, at 31, 36.

292. See *id.*; Sam Houston State Univ., *supra* note 261.

293. See *Graham*, 560 U.S. at 53–56; Tullis, *supra* note 147, at 31–32. During the first robbery, an accomplice with Graham "struck the restaurant manager in the back of the head with a metal bar." *Graham*, 560 U.S. at 53. The manager needed stitches for the injury to his head. *Id.*

294. See Rebecca Beitsch, *Can Restorative Justice Help Offenders Reintegrate into Society?*, PBS: NEWS HOUR (July 22, 2016, 11:49 AM), <http://www.pbs.org/newshour/nation/can-restorative-justice-help-offenders-reintegrate-society>.

295. See *Graham*, 560 U.S. at 53, 70, 72; Duel et al., *supra* note 31, at 71.

296. See Burkemper Jr. et al., *supra* note 33, at 130, 134; Duel et al., *supra* note 31, at 80; Beitsch, *supra* note 9.