

5-1-2022

Humanize, Don't Paternalize: Victim-Offender Mediation After Intimate Partner Violence

Ren Warden

University of Richmond School of Law

Follow this and additional works at: <https://scholarship.richmond.edu/lawreview>



Part of the [Courts Commons](#), [Criminal Law Commons](#), [Family Law Commons](#), [Judges Commons](#), [State and Local Government Law Commons](#), and the [Supreme Court of the United States Commons](#)

Recommended Citation

Ren Warden, *Humanize, Don't Paternalize: Victim-Offender Mediation After Intimate Partner Violence*, 56 U. Rich. L. Rev. 1411 (2022).

Available at: <https://scholarship.richmond.edu/lawreview/vol56/iss4/9>

This Comment is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in University of Richmond Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

2021 MCNEILL LAW SOCIETY WRITING COMPETITION WINNER

HUMANIZE, DON'T PATERNALIZE: VICTIM- OFFENDER MEDIATION AFTER INTIMATE PARTNER VIOLENCE

INTRODUCTION

Retributive legal systems fail survivors of intimate partner violence.¹ In criminal cases, when the government and the offender are the parties to the matter, the legal status of a survivor is reduced to that of a mere witness.² Survivors then must surrender their agency in the fight against their own trauma.³ Survivors of intimate partner violence (“IPV”) who turn to civil litigation to recover after their experiences may experience further trauma as a result of time-consuming, extensive, and often invasive contact with the legal system.⁴ Even restitution, a largely restorative remedy, lacks the agency, finality, and emotive opportunities that IPV survivors in particular often desire.⁵ The retributive legal system displays a critical gap in addressing the needs of survivors.⁶

1. See generally HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE (3d ed. 2005) (describing how retributive legal systems fail numerous types of victims). See, e.g., C. Quince Hopkins, Mary P. Koss & Karen J. Bachar, *Applying Restorative Justice to Ongoing Intimate Violence: Problems and Possibilities*, 23 ST. LOUIS U. PUB. L. REV. 289, 298 (2004).

2. See ZEHR, *supra* note 1, at 30.

3. See generally ZEHR, *supra* note 1; Hopkins et al., *supra* note 1.

4. Michaela Keet, Heather Heavin & Shawna Sparrow, *Anticipating and Managing the Psychological Cost of Civil Litigation*, 34 WINDSOR Y.B. ACCESS TO JUST. 73, 79 (2010) (“[Litigants] with pre-existing cognitive, mental or emotional vulnerabilities can have those dispositions particularly exacerbated by litigation stress.”).

5. See ZEHR, *supra* note 1, at 26–27.

6. See Hopkins et al., *supra* note 1, at 290.

Restorative justice methods showcasing victim-offender mediation (“VOM”) can fill that gap for a substantial number of survivors.⁷

A truly just—a truly fair—society benefits everyone.⁸ In order to benefit everyone, the corresponding just legal system should include emphatic consideration for the needs of the survivors and offenders of those crimes in order to encourage healing on all sides, including that of the community at large.⁹ Restorative justice principles and methods, commonly including victim-offender conferencing, have been successfully implemented in numerous settings, including in juvenile cases, drug crimes, and sexual assault and rape cases.¹⁰ Courts should consider balancing various positive and negative factors in each case of IPV to determine whether survivors, offenders, and the community at large would benefit better from restorative victim-offender conferencing than from traditional retributive justice practices.

I. A BIRD’S-EYE VIEW OF RESTORATIVE JUSTICE

When survivors of IPV are traumatized by their abusers and seek outside help, they are frequently retraumatized by their interactions with loftier legal professionals.¹¹ Those professionals, including judges, attorneys, and guardians ad litem, may put little effort or emphasis on what would be most restorative for the survivor—that is, what the survivor wants or needs to do to heal.¹² Restorative justice practices have the potential to offer a complementary solution to the legal system’s chronic retraumatization of survivors of domestic violence.¹³ Traditional retributive models of justice prioritize deterrence or reduced recidivism above other outcomes, while restorative models of justice are meant to meet different, complementary needs.¹⁴ Unlike retributive justice, restorative

7. See Hopkins et al., *supra* note 1, at 294.

8. See, e.g., JOHN RAWLS, A THEORY OF JUSTICE 54 (rev. ed. 1999) (“Injustice . . . is simply inequalities that are not to the benefit of all.”).

9. See ZEHR, *supra* note 1, at 181.

10. See generally Thalia González, *The Legalization of Restorative Justice: A Fifty-State Empirical Analysis*, 2019 UTAH L. REV. 1027 (2019).

11. See, e.g., Keet et al., *supra* note 4, at 76–79.

12. ZEHR, *supra* note 1, at 30.

13. See Hopkins et al., *supra* note 1, at 293–94.

14. See generally ZEHR, *supra* note 1 (offering a broad comparison of restorative and retributive justice models). See also González, *supra* note 10, at 1028; William Bradshaw & David Roseborough, *Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism*, 69 FED. PROBATION 15, 19–20 (2005) (describing reduced recidivism as the “gold standard of outcomes” for traditional models of justice and noting other

justice practices focus on victim, offender, and community restoration and aspire to the ultimate goal of healing and putting things right.¹⁵ Effective restorative justice practices are predicated on three concepts: (1) accepting accountability, (2) restoring equality, and (3) addressing future intentions.¹⁶

The offender's acceptance of accountability for their past actions is an important part of a truly restorative outcome.¹⁷ Because the goal of restorative justice is holistic restoration and improvement among *all* parties to an offense, victims, offenders, and communities are unlikely to benefit from restorative practices, including and especially face-to-face VOM, if offenders are unwilling to accept that they caused harm in the first place and that the harm was unwarranted and unacceptable.¹⁸ In large part, this vital acceptance of accountability for harm tracks with the second goal of restorative practices: restoring equality to the parties' relationship.¹⁹

Creating or restoring present equality between the parties is vital as a strategy of restorative justice methods.²⁰ This asks the question: how can the parties restore a balanced relationship in order to establish a bilateral presumption of equality?²¹ In relationships with IPV, especially long-term coercive situations, an imbalance in power between the abuser and the survivor creates an imbalance in equality.²² The abuser over time creates an abusive cycle, which flows in a circle through tranquility, tension-building, and battering.²³ The abuser utilizes the additional control over the

societal needs that restorative justice programs can meet).

15. See ZEHR, *supra* note 1, at 181; cf. Mangesh Duggal, *Long May You Run: Drug Courts in the Twenty-First Century*, 21 BERKELEY J. CRIM. L. 126, 140 (2016) (describing problem-solving scholars' and restorative justice scholars' joint goal "to address the underlying social problems through some form of individual betterment and restoring harmony to both offenders and the community at large" in the context of drug courts).

16. See HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 57 (rev. ed. 2015); see also LUNDY BANCROFT, *WHY DOES HE DO THAT? INSIDE THE MINDS OF ANGRY AND CONTROLLING MEN* 100–01 (2002) ("It is essential that friends, relatives, courts, and communities . . . give the [victim] the most complete support and protection possible, while simultaneously taking steps to hold the abuser accountable.").

17. See ZEHR, *supra* note 16, at 48.

18. *Id.* at 25.

19. *Id.* at 57.

20. See González, *supra* note 10, at 1035.

21. See, e.g., *id.*; ZEHR, *supra* note 16, at 57.

22. See, e.g., Karla Fischer, Neil Vidmar & Rene Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 146 SMU L. REV. 2117, 2119–33, 2136–41 (1993) (reprinted in CLARE DALTON & ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND THE LAW* 60–61 (2001)) (comparing the "Ruler" abuser and the "Ruled" victim).

23. Lenore Walker, *The Cycle of Violence*, in *TERRIFYING LOVE: WHY BATTERED WOMEN*

survivor to perpetuate the abusive cycle, and the survivor frequently is manipulated over time to believe in the abuser's good intentions.²⁴ The survivor may be under an "illusion of absolute interdependency" where the abuser depends on the survivor's forgiveness and the survivor depends on the abuser's caring behavior.²⁵ In order to truncate the abusive cycle, the abuser's power over the survivor must also be truncated, and both parties will be prepared to move forward with a healing conversation on more equal grounds.²⁶ Creating or restoring balance between the parties allows survivors to reassert agency over their lives.²⁷ That balance also encourages offenders to improve in the future, perhaps establishing healthier views of appropriate relationships including in current or subsequent romantic, platonic, and familial relationships.²⁸

The third strategy of restorative justice practices is to address future intentions, goals, and needs: what can the parties do in the future to make the situation right and to ensure that IPV does not happen again?²⁹ The purpose of this final restorative consideration is to maximize lasting benefits to the survivor, the offender, and the community.³⁰ Without addressing future needs, restorative justice practices would be short-sighted and would fail to adequately support a truly holistic, long-lasting result.³¹

In practice, restorative justice broadly refers to a group of methods intended to meet the unique needs of victims, offenders, and communities in holistic consideration of past, present, and future circumstances.³² This can involve dialogues, monetary restitution,

KILL AND HOW SOCIETY RESPONDS 42–45 (1989) (reprinted in DALTON & SCHNEIDER, *supra* note 22, at 65–66).

24. *Id.* at 43 (reprinted in DALTON & SCHNEIDER, *supra* note 22, at 66).

25. *Id.* at 44 (reprinted in DALTON & SCHNEIDER, *supra* note 22, at 67).

26. *But see* Hopkins et al., *supra* note 1, at 295–96 (arguing that mediation is inappropriate in IPV situations because it relies on equal bargaining power between the parties).

27. *See* ZEHR, *supra* note 16, at 48 ("Restorative justice programs aim to put key decisions in the hands of those most affected by the crime.").

28. *See* ZEHR, *supra* note 16, at 43 ("An understanding of what hurt he has caused may help discourage him from causing harm in the future.").

29. *See* ZEHR, *supra* note 16, at 57.

30. *See, e.g.*, Hopkins et al., *supra* note 1, at 293 (suggesting that restorative justice practices should be considered as an option "to reduce permanently the prevalence of [IPV] and to provide survivors with comprehensive remedies").

31. *See* ZEHR, *supra* note 16, at 33 ("Wrongs or harms result in obligations . . . more likely than punishment to deter future offending.").

32. JAMES PTACEK & LORETTA FREDERICK, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN, RESTORATIVE JUSTICE AND INTIMATE PARTNER VIOLENCE 2 (2008).

written or oral apologies, or therapy, among other strategies.³³ VOM, family group conferences, community peacemaking circles, and surrogate conferences are facilitated, structured confrontations that are becoming increasingly common in various jurisdictions and case types.³⁴ VOM in particular has been successful in allowing a productive, restorative dialogue directly between survivor and offender and achieving high levels of victim satisfaction and empowerment.³⁵

II. PRECEDENT FOR RESTORATIVE JUSTICE METHODS

Precedent for restorative justice exists extensively in other settings in the majority of American states.³⁶ One common area where restorative justice practices have been successful is in cases involving juvenile offenders.³⁷ VOM has been shown to lead to positive and holistic outcomes, including significantly decreased rates of recidivism and extremely high rates of satisfaction with the process among victims, juvenile offenders, and guardians of offenders.³⁸ Restorative justice practices in cases with juvenile offenders have been used in tandem with traditional criminal justice sanctions to provide societal healing as well as individual restoration, leading to a higher chance of an offender's successful reintroduction into the community, as well as the victim's and community's acceptance of the offender back into the public.³⁹

Another area where restorative justice methods are increasingly common is in cases involving drug offenses, where the criminal justice system has been unable to effectively address offenders'

33. See ZEHR, *supra* note 16, at 57.

34. See, e.g., Avila Stahlman, *Restorative Justice in the Context of Intimate Partner Violence: Suggestions for Its Qualified Usage as Supplementary to the Criminal Justice System*, U. FLA. J.L. & PUB. POL'Y 193, 199–200 (2017) (describing VOM, family group conferences, and healing circles).

35. Laurie S. Kohn, *What's So Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 SETON HALL L. REV. 517, 535–36 (2010).

36. See González, *supra* note 10, at 1031–33.

37. See William Bradshaw & David Roseborough, *Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism*, 69 FED. PROBATION 15, 19 (2005).

38. See, e.g., *id.*; SUJATHA BALIGA, SIA HENRY & GEORGIA VALENTINE, RESTORATIVE COMMUNITY CONFERENCING: A STUDY OF COMMUNITY WORKS WEST'S RESTORATIVE JUSTICE YOUTH DIVERSION PROGRAM IN ALAMEDA COUNTY 7–13 (2017).

39. See Monya M. Bunch, *Juvenile Transfer Proceedings: A Place for Restorative Justice Values*, 47 HOW. L.J. 909, 936 (2004); Lode Walgrave, *Restoration in Youth Justice*, 31 CRIME & JUST. 543, 544 (2004).

individual struggles with addiction and related community concerns and public health issues.⁴⁰ State legislation encouraging drug rehabilitation in lieu of imprisonment for nonviolent drug offenses is also becoming more common.⁴¹ Key strategies in restorative drug courts include enhancing information given to the court regarding an offender's underlying problems (e.g., mental illness, drug addiction, or family dysfunction) so the court can make informed decisions with the particular offender in mind; promoting community engagement initiatives including public service; encouraging community, offender, and court collaboration to promote trust between citizens and the government; increasing offender accountability by requiring regular court appearances as an alternative to incarceration; and focusing on qualitative, not quantitative, outcomes.⁴² These strategies lead to justice that is individualized for the community and offender.⁴³ Critics argue that problem-solving drug courts are too focused on helping the offender and necessarily become less just as a result; however, "can a judge not do something that both works and is just?"⁴⁴ Other critics question the effectiveness of drug courts in reducing crime.⁴⁵ While multijurisdictional studies on the effects of restorative drug courts on recidivism are difficult to conduct and compare, studies have shown that offenders who participate in restorative drug courts are less likely to be rearrested than those who are subject to traditional court processes.⁴⁶ Finally, participation in drug courts saves taxpayer money that would otherwise be spent on detentions, case processing, imprisonment, and victimization costs.⁴⁷

Recently, restorative justice practices have been increasingly successful in cases with other gender-based violence, including in cases of rape and sexual assault, which is often closely related to IPV.⁴⁸ Colleges and universities, for example, have utilized

40. Duggal, *supra* note 15, at 129.

41. *See, e.g.*, Drug Treatment Court Act, VA. CODE ANN. § 18.2-254.1 (Cum. Supp. 2020).

42. Duggal, *supra* note 15, at 141-46.

43. *Id.* at 144.

44. *Id.* at 147.

45. *Id.* at 159.

46. *Id.* at 160.

47. *Id.* at 161 ("[T]he average annual cost is estimated to be \$23,000 per inmate, while the average annual cost of drug court participation is estimated to be \$4,300 per person." (citing Ryan S. King & Jill Pasquarella, THE SENTENCING PROJECT, DRUG COURTS: A REVIEW OF THE EVIDENCE 8 (2009))).

48. *See generally* Amy Kasparian, *Justice Beyond Bars: Exploring the Restorative Justice Alternative for Victims of Rape and Sexual Assault*, 37 SUFFOLK TRANSNAT'L L. REV. 377

restorative conferences, facilitated dialogues, peacemaking circles, discussions with surrogate survivors and offenders, indirect facilitation, and community dialogues to address campus sexual misconduct.⁴⁹ Those institutions allow students the option to seek a restorative remedy without allowing offenders to evade accountability.⁵⁰ Survivor-centered approaches to handling sex offenses can involve a set of trauma-informed stages from presentence investigations into the offense through family reunification and ongoing supervision.⁵¹ At each stage in the process, “supervision officers, sexual assault victim advocates, and other criminal justice system and community stakeholders . . . answer the question ‘What’s best for the victim and community?’”⁵² Victims of sexual violence often want more than simply a conviction, and restorative justice offers both emotional and legal benefits to them.⁵³

III. BENEFITS OF RESTORATIVE JUSTICE PRACTICES IN SETTINGS OF INTIMATE PARTNER VIOLENCE

VOM has the potential to repair, reconcile, and reassure all parties to an offense within a society.⁵⁴ First and foremost, restorative conferences like VOM can benefit survivors of IPV by increasing agency and lowering the risks of retraumatization by continued court processes.⁵⁵ Restorative conferences could also benefit the offenders themselves, improving their relationships, decreasing recidivism, and promoting successful reentry into society.⁵⁶ Finally, VOM can benefit society, including families, communities, and the legal system, by restructuring the way society thinks about gender-

(2014).

49. Madison Orcutt, Patricia M. Petrowski, David R. Karp & Jordan Draper, *Restorative Justice Approaches to the Informal Resolution of Student Sexual Misconduct*, 45 J.C. & U.L. 204, 209–13 (2020).

50. See Katie Vail, *The Failings of Title IX for Survivors of Sexual Violence: Utilizing Restorative Justice on College Campuses*, 94 WASH. L. REV. 2085, 2110–11 (2019).

51. KURT BUMBY, KAREN BAKER & LEILAH GILLIGAN, CTR. FOR EFFECTIVE PUB. POL’Y, *ADVANCING A VICTIM-CENTERED APPROACH TO SUPERVISING SEX OFFENDERS: A TOOLKIT FOR PRACTITIONERS* 16–17 (2018).

52. *Id.* at 15.

53. Clare McGlynn, Nicole Westmarland & Nikki Godden, *‘I Just Wanted Him to Hear Me’: Sexual Violence and the Possibilities of Restorative Justice*, 39 J.L. & SOC’Y 213, 231–33 (2012).

54. See ZEHR, *supra* note 1, at 181.

55. See, e.g., Orcutt et al., *supra* note 49, at 213 (noting that risk for revictimization is considered when determining if the parties should move forward with facilitated dialogues).

56. See, e.g., MARK S. UMBREIT & JEAN GREENWOOD, *GUIDELINES FOR VICTIM-SENSITIVE VICTIM-OFFENDER MEDIATION: RESTORATIVE JUSTICE THROUGH DIALOGUE*, CENTER FOR RESTORATIVE JUSTICE & PEACEMAKING 1–2 (2000).

based violence, best practices for healing and justice, and community and legal forgiveness.⁵⁷ Holistic goals for justice can encourage a pervasive and structural change within society that could lower the rates of IPV in the first place.⁵⁸

A. *Benefits to Survivors*

The injustice and trauma to the survivor which is inherent to IPV does not map with the way the current retributive justice system treats the survivor.⁵⁹ Restorative justice practices, including VOM, have the potential to benefit individual survivors of IPV by providing answers, restored agency, and personal closure which can provide better and more holistic opportunities for healing and justice.⁶⁰ VOM can give survivors the ability to confront their particular concerns or questions, ranging from “What happened?” to “Why did this happen?” to “How can this be prevented in the future?”⁶¹ Survivors’ experiences “are not monolithic and universal, but culturally diverse, highly contextual, and socially constructed.”⁶² Each survivor will be the best source to determine how that survivor will best heal.⁶³ Even so, many survivors find themselves exhibiting similar feelings and asking similar questions to one another.⁶⁴ Receiving long-awaited answers to those questions directly from the offender can give survivors closure, understanding, and empowerment, allowing for holistic restoration for the survivor.⁶⁵ Even being able to ask those questions grants survivors “opportunities to express and validate their emotions: their anger, their fear, their pain.”⁶⁶

VOM can benefit various types of victims. Those victims might include those who wish to maintain a positive relationship, even a

57. See *id.* at 1; Lara Bazelon & Bruce A. Green, *Victims’ Rights from a Restorative Perspective*, 17 OHIO ST. J. CRIM. L. 293, 334 (2020).

58. See Hopkins et al., *supra* note 1, at 310–11 (noting that restorative processes “must be sensitive to addressing the transformative power of a justice process on changing social norms and must create a process by which the sufferings of the individual are generalized to the treatment of women as a group”).

59. See ZEHR, *supra* note 1, at 29–30; Bazelon, *supra* note 56, at 294–95.

60. See ZEHR, *supra* note 1, at 30–32.

61. See, e.g., *id.* at 27.

62. Hopkins et al., *supra* note 1, at 294.

63. See, e.g., ZEHR, *supra* note 16, at 23 (“Victims should be able to identify their own needs.”).

64. See McGlynn et al., *supra* note 53, at 213; BANCROFT, *supra* note 16, at 3.

65. See ZEHR, *supra* note 16, at 27–28.

66. *Id.* at 27.

romantic or intimate one, with their partner for various reasons.⁶⁷ Such reasons might be emotional; love, cultural contexts, feeling that a great deal of effort has been put into a relationship, and even the time devoted to lengthier relationships might bolster a desire to save a relationship.⁶⁸ Those reasons might also be practical.⁶⁹ Practical factors that might lead a victim to continue an actively or formerly abusive intimate partner relationship may include benefits to children, property interests, housing opportunities, and lack of financial resources.⁷⁰ Encouraging accountability, restoring equality, and addressing future intentions in a controlled environment can encourage healthy reconciliation of certain relationships.⁷¹ VOM can also benefit those survivors who wish to cut all ties to the abuser at the end of the process; restorative practices may give survivors the chance to heal independently of the relationship which predicated the abuse.⁷² Regardless of the survivor's future intentions regarding the offender, VOM and other restorative practices can prepare survivors for continuing their lives normally by allowing holistic emotional, physical, relational, and financial healing.⁷³

B. *Benefits to Offenders*

Offenders can benefit from restorative practices. Under traditional retributive justice models, offenders must “suffer for the suffering they have caused.”⁷⁴ Importantly, restorative justice theory views offenders holistically.⁷⁵ Offenders are not defined by their offense; rather, they are viewed as entire people with the ability to improve for the betterment of those they have harmed, their communities, and themselves.⁷⁶ VOM can help offenders take responsibility for their actions, increase the offender's chance of

67. *Why People Stay: It's Not as Easy as Simply Walking Away*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/support-others/why-people-stay> [https://perma.cc/2KMV-N9CG].

68. *Id.*

69. *Id.*

70. *Id.*

71. *See generally* GUS KAUFMAN, JR., FAITHTRUST INST., RENEWAL AND RECONCILIATION AFTER FAMILY VIOLENCE? (2010).

72. Bennett Burkemper & Nina Balsam, *Examining the Use of Restorative Justice Practices in Domestic Violence Cases*, 27 ST. LOUIS U. PUB. L. REV. 121, 125–27 (2007).

73. *Id.*

74. ZEHR, *supra* note 1, at 75.

75. *Id.* at 213.

76. *Id.*

successful reintegration into the community, and lower the chance they will perpetrate IPV in the future.⁷⁷

Offenders, like survivors, might have the desire to continue the existing relationship in a healthy way for various emotional or practical factors.⁷⁸ Offenders are, after all, one half of an intimate partner relationship, and they may weigh any of the same factors, such as love, children, housing, or finances.⁷⁹ Offenders benefit by learning ways to participate healthily in future relationships with other intimate partners, thereby potentially forgoing future abusive cycles and reducing recidivism—a benefit to potential victims, the community, and themselves.⁸⁰

C. *Benefits to the Community*

Restructuring justice models to work better for survivors can help uproot the societal landscape that produces the history of violence against women in the first place, thus reducing rates of IPV.⁸¹ Additionally, “Etching empathy into the restorative justice framework arms society with a capacity to understand and address what is broken in the lives of offenders, and it may even give credence to society’s demand for accountability for the harm that has been inflicted.”⁸² These restorative practices can be used before charges are filed in order to encourage accountability and healing while also minimizing the burden on courts.⁸³

IPV damages the economy: the estimated costs of IPV against women exceeded an estimated \$5.8 billion in 2003.⁸⁴ Those costs

77. Cf., e.g., Rui Kaneya, *This Program Offers Sex Offenders Second Chances—And It’s Working*, HUFFPOST (Oct. 1, 2015, 5:59 PM), https://www.huffpost.com/entry/sex-offender-treatment-program-hawaii_n_560d98f3e4b0af3706e01324 [https://perma.cc/A9GP-6MRE] (describing a Hawaii program successfully rehabilitating sex offenders).

78. See *supra* section II.A; *Why People Stay: It’s Not as Easy as Simply Walking Away*, *supra* note 67.

79. See *supra* section II.A; see also *Reconciliation After Domestic Violence*, ANANIAS FOUND. (Nov. 2, 2019), <https://www.ananiasfoundation.org/reconciliation-after-domestic-violence> [https://perma.cc/3ESJ-2KDA].

80. See Paige H., *Approaching Behavior Change as an Abusive Partner: Planning and Goals*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/resources/approaching-behavior-change-as-an-abusive-partner-planning-and-goals> [https://perma.cc/HZ5A-T2EQ].

81. Deborah M. Weissman, *The Personal Is Political—And Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 448–49.

82. Renee Warden, *Where Is the Empathy? Understanding Offenders’ Experience of Empathy and Its Impact on Restorative Justice*, 87 UMKC L. REV. 953, 977 (2019).

83. See ZEHR, *supra* note 16, at 59.

84. DEP’T OF HEALTH & HUM. SERVS., COSTS OF INTIMATE PARTNER VIOLENCE AGAINST

included direct costs of medical care, mental health care, lost productivity, and the value of lifetime earnings.⁸⁵ Remnants of the power and control dynamic can have a lingering effect in the brain, leading to continued depression, anxiety, or isolation, which, aside from the inherent damage to the person, reduce work efficiency and skyrocket health costs.⁸⁶ Individuals who are not bound by unresolved or unattended trauma may feel freer to contribute more to society, work harder, spend more freely, and feel less prone to isolation.⁸⁷ Not only would lower rates of IPV benefit individual survivors and offenders, but they would also improve the economy: the Center for Disease Control has stated that “until we reduce the incidence of IPV in the United States, we will not reduce the economic and social burden of this problem.”⁸⁸ Holistic restorative justice methods, including ones that integrate VOM, could lessen the chance of revictimization, decreasing rates of IPV and thereby boosting the economy.⁸⁹

Finally, society has an interest in keeping families together. Short-term and long-term, children benefit financially, emotionally, and educationally from having two parents.⁹⁰ Specifically, children benefit from having two parents in a healthy relationship, even if coparenting and not in a romantic relationship.⁹¹ Children benefit less from coparenting when there is a history of violence.⁹² However, long-term coparenting outcomes depend on the type of IPV.⁹³ Couples who experience coercive controlling violence, which is rooted in continuous control and involves monitoring, isolating, and inciting fear in the victim, may experience less successful

WOMEN IN THE UNITED STATES 32 (2003).

85. *Id.*

86. *See id.* at 2; *see also* Sebastian Trautmann, Jürgen Rehm & Hans-Ulrich Wittchen, *The Economic Costs of Mental Disorders: Do Our Societies React Appropriately to the Burden of Mental Disorders?*, 7 *EMBO REPS.* 1245, 1245 (2016) (utilizing the human capital approach to find that mental disorders “account for more economic costs than chronic somatic diseases such as cancer or diabetes”).

87. BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA*, 205–07 (2014).

88. DEP’T OF HEALTH & HUM. SERVS., *supra* note 84, at 2.

89. *See* Weissman, *supra* note 81, at 443–45.

90. FRANK F. FURSTENBERG, JR. & ANDREW J. CHERLIN, *DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART* 45–46 (1991) (describing the negative impacts of single-parent households on children).

91. *See generally* Linda Nielsen, *Shared Physical Custody: Summary of 40 Studies on Outcomes for Children*, 55 *J. DIVORCE & REMARRIAGE* 613 (2014) (surveying outcomes for children in various types of families).

92. *Id.* at 631.

93. Jennifer L. Hardesty et al., *Coparenting Relationship Trajectories: Marital Violence Linked to Change and Variability After Separation*, 31 *J. FAM. PSYCHOL.* 844, 848 (2017).

coparenting after separation due to a perceived “threat to an abuser’s control over his partner and children.”⁹⁴ Conversely, couples who experience situational couple violence, which is the result of specific situations “without a relationship-wide motive to coercively control a partner” may experience healthier and more successful coparenting due to a bilateral perception of a more equal relationship.⁹⁵ Restorative justice offers positive reconciliation for diverse relationships, even involving children, because it prioritizes safety and relationships on equal grounds.⁹⁶

IV. CRITIQUES OF RESTORATIVE JUSTICE PRACTICES IN SETTINGS OF INTIMATE PARTNER VIOLENCE

VOM faces numerous critiques and challenges in IPV settings. Foremost among these difficulties is the belief that the power imbalance precludes any mediation or communication between the parties.⁹⁷ One expectation is that survivors of domestic violence are unable to reach equal bargaining power with their abusers.⁹⁸ On the other side of the relationship, there is the fear (whether founded or unfounded) that abusers are unprepared or unwilling to take responsibility for their actions. Finally, communities themselves might present structural, cultural, or legal challenges in the face of practices that show empathy even to offenders.

These challenges can be valid. However, a basic tenet of restorative justice methods on a practical level is the structured nature of those methods.⁹⁹ Restorative victim-offender conferences are always facilitated by a trained, trauma-informed neutral party.¹⁰⁰ Conferences are highly structured and even often scripted.¹⁰¹ Most importantly, restorative justice plans, especially ones involving victim-offender conferencing, are predicated on the safety and consent of all parties.¹⁰² Because restorative models of justice are primarily focused on healing, the practices must be individualistic and tailored to the unique needs of each survivor, offender, and

94. *Id.*

95. *Id.*

96. Roni Elias, *Restorative Justice in Domestic Violence Cases*, 9 DEPAUL J. FOR SOC. JUST. 67, 81 (2016).

97. Hopkins et al., *supra* note 1, at 295–96.

98. *See id.*

99. *See* Kohn, *supra* note 35, at 536.

100. *See* GUIDELINES, *supra* note 55, at 11–15.

101. *See infra* section IV.A.

102. *See, e.g.*, Kohn, *supra* note 35, at 536.

community.¹⁰³ VOM is one method of many restorative practices that can be combined to offer deep and broad benefits to survivors, offender, and communities.

A. *Survivor-Based Challenges*

Some survivors may not benefit from restorative justice practices. This may be due to a plethora of reasons: a continuing dynamic of the abuser's control and the survivor's submission; post-traumatic stress disorder or anxiety; triggering situations such as a partner's continued substance use; a painful custody battle; or simply an abuser's lack of interest in taking accountability for their actions.¹⁰⁴ In those cases, VOM may not be the best option—and it does not have to be the best option for everyone.¹⁰⁵ In fact, most restorative justice practices are integrated with traditional justice practices to provide the best benefits to the parties.¹⁰⁶ It is better for the legal system to have numerous paths that can benefit more people in breadth and in depth rather than funneling all parties onto one road of revictimization.¹⁰⁷

Survivors thrive and heal best when they are humanized, not paternalized.¹⁰⁸ Each survivor of IPV—not the offender, not the community, not the legal system—is the best source for determining what is best for that survivor.¹⁰⁹ Survivors of IPV can have greatly diverse goals and needs for healing from their trauma.¹¹⁰ Some survivors may not want to face their offenders and will not proceed with VOM, but many survivors are ready to heal and can move forward best with restorative methods, including face-to-face facilitated conferences with their offenders.¹¹¹ Allowing survivors

103. See ZEHR, *supra* note 16, at 60 (“Models differ in the ‘who’ and the ‘how.’”).

104. See generally UMBREIT & GREENWOOD, *supra* note 56; Kohn, *supra* note 35, at 540–46.

105. Barbara Hudson, *Restorative Justice and Gendered Violence: Diversion or Effective Justice?*, 42 BRIT. J. CRIMINOLOGY 616, 616 (2002) (arguing to integrate restorative practices along with retributive ones).

106. See González, *supra* note 10, at 1065–66.

107. Hudson, *supra* note 105, at 616 (arguing to integrate restorative practices along with retributive ones).

108. See, e.g., Kasparian, *supra* note 48, at 377 (describing how victim's rights theory dismantles criticisms that victims of sexual violence are unprepared for restorative justice conferences).

109. See McGlynn et al., *supra* note 53, at 213–14.

110. Cf. Kasparian, *supra* note 48, at 400–02 (describing similarly varied needs for victims of rape).

111. See Bazelon & Green, *supra* note 57, at 328.

to make that decision in the first place encourages the fact of their individual agency and helps to dismantle the abusive narrative.¹¹²

B. *Offender-Based Challenges*

One particularly significant issue revolving around VOM's effectiveness and feasibility regarding perpetrators of IPV is the need for perpetrators to accept accountability and responsibility for their actions.¹¹³ Restorative options rather than imprisonment, probation, or fines may encourage offenders to enter restorative practices wholeheartedly to avoid heavy punishment.¹¹⁴ However, some offenders simply may be unwilling to accept accountability whatsoever.¹¹⁵ In those cases, as in cases where the survivor is unwilling to face the offender, VOM may be inappropriate, and other restorative practices, such as surrogate mediation, or traditional justice practices might be better options.¹¹⁶

Batterers' intervention programs ("BIPs"), which are intended to be a more restorative alternative or supplement to traditional engagement in the criminal legal system, have shown discouraging results.¹¹⁷ BIPs generally involve educational, feminist, and cognitive behavioral programs in a small group or circle format with other abusers, whereas other restorative practices, including victim-offender conferencing, may involve direct conferencing with the survivor with long-term counseling or follow-up afterwards.¹¹⁸ BIPs may place too much emphasis on the abuser without placing appropriate emphasis on the offender's impact on the survivor, which gives the survivor less agency and less room to heal and discounts the need for accountability.¹¹⁹ This is patently unfair and

112. See Elias, *supra* note 96, at 75.

113. See ZEHR, *supra* note 1, at 200–01 (differentiating between accepting accountability and taking responsibility for restorative actions).

114. See, e.g., Kohn, *supra* note 35, at 581 ("Defense attorneys might encourage offenders to participate by suggesting that the offender's participation would affect the criminal disposition.").

115. See Burkemper & Balsam, *supra* note 72, at 128–29.

116. See Burkemper & Balsam, *supra* note 72, at 129–30; Hopkins, *supra* note 1, at 295–96.

117. See PATRICIA CLUSS & ALINA BODEA, THE EFFECTIVENESS OF BATTERER INTERVENTION PROGRAMS: A LITERATURE REVIEW & RECOMMENDATIONS FOR NEXT STEPS 15 (2011); Lynette Feder and David B. Wilson, *A Meta-Analytic Review of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers' Behavior?*, 1 J. EXPERIMENTAL CRIMINOLOGY 239, 254 (2005).

118. See Feder & Wilson, *supra* note 117, at 240.

119. See Linda G. Mills, Peggy Grauwiler & Nicole Pezold, *Enhancing Safety and Rehabilitation in Intimate Violence Treatments: New Perspectives*, 121 PUB. HEALTH REPS. 363,

disrespectful to survivors, and in fact, federal and state victims' rights provisions often specify that victims have the right to be treated with fairness and respect.¹²⁰ This continued state attention on the abuser and the lack of emphasis on the impact on the survivor can reinforce the mindset that the abuser is in control, while the survivor is forgotten.¹²¹ VOM could provide a solution to the BIP problem. In contrast to the BIP strategy, restorative methods can offer appropriate emphasis on the offender's wrongful actions *against the survivor*.¹²² VOM, which involves the survivor, the offender, and a facilitator and which are intentionally heavily structured, require significant time and attention devoted to the *survivor's* concerns.¹²³ This can increase survivor satisfaction and empowerment, which "attends to the lay, rather than legal, perspectives of crime and encourages a holistic understanding of the offense."¹²⁴

C. Community-Based Challenges

Societal attitudes towards gender-based violence, including IPV, impact the perpetration, survivor response, and institutional responses to that gender-based violence.¹²⁵ The same is true for societal attitudes regarding gender norms, which "can interact with structural inequalities in ways that can increase rates of [violence against women] and mute the effects of protective factors."¹²⁶ A significant challenge within broader communities is the feeling that perpetrators of domestic violence do not deserve a chance to right their wrongs.¹²⁷ It is this retributive community mindset and legal theory which perpetuates abusive cycles and prevents successful

365–67 (2006).

120. *E.g.*, Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771 (2004) ("A crime victim has . . . [t]he right to be treated with fairness and with respect for the victim's dignity and privacy."); VA. CONST. art. I, § 8-A ("[I]n criminal prosecutions, the victim shall be accorded . . . [t]he right to be treated with respect, dignity and fairness at all stages of the criminal justice system.").

121. *See* Mills et al., *supra* note 119, at 366.

122. *Id.*

123. *See* UMBREIT & GREENWOOD, *supra* note 56, at 7–8.

124. Mills et al., *supra* note 119, at 366.

125. Michael Flood & Bob Pease, *Factors Influencing Attitudes to Violence Against Women*, 2 TRAUMA VIOLENCE & ABUSE 125, 126 (2009).

126. Michael Salter, *Real Men Don't Hit Women: Constructing Masculinity in the Prevention of Violence Against Women*, 49 AUSTL. & N.Z. J. CRIMINOLOGY 463, 476 (2013).

127. *See* Warden, *supra* note 82, at 977 ("Society usually errs on the side of condemnation.").

reintegration into the community.¹²⁸ “The problem there is not an inability to recognize the pain inflicted, but rather a worldview that diminishes people’s rights and feelings into something that can be violated, thus succumbing to a presumption toward self-interest and self-preservation.”¹²⁹

Finally, Western society frequently perpetuates the misogynistic attitude that survivors of domestic violence somehow deserved violence, incited violence, or suffered from a mental disorder that sparked the violence.¹³⁰ The psychiatric field, for example, historically has pathologized some traditionally “feminine” behavior as a self-defeating personality disorder.¹³¹ Typical diagnostic criteria of this “disorder” included choosing people and situations leading to disappointment or failure; inciting angry or rejecting responses from others and feeling hurt in response; and engaging in unsolicited self-sacrifice.¹³² “The self-defeating personality disorder has been critiqued . . . as describing as maladaptive those behaviors that battered women and other victims of interpersonal violence adopt to keep themselves from serious harm.”¹³³

V. METHODS

Restorative justice methods are not one-size-fits-all and may weave traditional justice methods into the process.¹³⁴ Methods and goals may shift depending on whether the survivor’s goals include a continued relationship with the abuser.¹³⁵ Other factors influencing how parties plan their restorative justice practices happen might include their housing situation, whether they have any children, and whether their finances are tied together.¹³⁶ Face-to-face restorative justice methods such as VOM must be continuously

128. *Id.*

129. *Id.* at 962.

130. See, e.g., Victoria A. Ferrer-Perez, Esperanza Bosch-Fiol, Virginia Ferreiro-Basurto, Carmen Delgado-Alvarez & Andrés Sánchez-Prada, *Comparing Implicit and Explicit Attitudes Toward Intimate Partner Violence Against Women*, 11 *FRONTIERS PSYCH.* 1, 10–13 (2020).

131. Michèle Harway, *Battered Women: Characteristics and Causes*, in *BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE* 29–31, 35–36 (Marsali Hanson & Michèle Harway eds., 1993) (reprinted in DALTON & SCHNEIDER, *supra* note 22, 95–97).

132. *Id.* at 30 (reprinted in DALTON & SCHNEIDER, *supra* note 22, at 95).

133. *Id.* (reprinted in DALTON & SCHNEIDER, *supra* note 22, at 95).

134. See Hudson, *supra* note 105, at 616 (arguing to integrate restorative practices along with retributive ones).

135. See *supra* Part II.

136. See *supra* Part II.

consensual on both sides.¹³⁷ If either survivor or offender determines they are no longer willing to continue the process for any reason, then the process must end.¹³⁸ Some restorative justice scholars argue that only the victim's participation must be voluntary; however, involuntary participation by the offender could stunt accountability.¹³⁹

Restorative practices often involve facilitated discussions in three varieties: VOM, family group conferences, and circle processes.¹⁴⁰ VOM is the most widely used method within restorative practices and has been shown to provide high rates of satisfaction among all parties.¹⁴¹ VOM differs from traditional mediation in that "mediation does not presume a harm-causing party and a harmed party," while VOM and other restorative justice methods are in fact predicated on the harm caused to one party by another party.¹⁴² Restorative conferences should be combined with other restorative practices to create an appropriate plan to heal and restore each party to an offense.

A. *Victim-Offender Mediation in Practice*

The various types of facilitated or mediated encounters are often blended depending on the needs and goals of the parties involved.¹⁴³ VOM should be facilitated by a designated trauma-informed specialist in conferences involving IPV.¹⁴⁴ Stages involved in productive VOM include an initial intake, preconference meetings between the facilitator and the individual parties, the conferences themselves, and post-conference monitoring.¹⁴⁵

137. ZEHR, *supra* note 16, at 57.

138. See UMBREIT & GREENWOOD, *supra* note 56, at 3; Kohn, *supra* note 35, at 590 ("If either party expresses an unwillingness to comply or intimates that he or she was coerced into reaching a resolution, the facilitator should reconvene the group for further discussion and possibly for dismissal without resolution.")

139. See ZEHR, *supra* note 16, at 58 ("Efforts are made to maximize the offending person's voluntary participation as well. . . . [T]here is often some pressure on the offending person to choose between 'lesser evils.'")

140. ZEHR, *supra* note 1, at 56.

141. See González, *supra* note 10, at 1030; Kohn, *supra* note 35, at 536.

142. See Orcutt et al., *supra* note 49, at 216–17.

143. Hudson, *supra* note 105, at 56.

144. See Burkemper & Balsam, *supra* note 72, at 128. *But see* ZEHR, *supra* note 16, at 61 (noting that facilitators may include specially trained law enforcement officers, which may not best support communities with strained relationships between citizens and law enforcement).

145. See, e.g., Orcutt et al., *supra* note 49, at 212–14.

1. Intake

The intake stage of the restorative plan prior to VOM requires voluntary participation in the restorative process, with commitment shown by all parties.¹⁴⁶ Intake is predicated on full education of restorative, investigative, and all other options.¹⁴⁷ When the parties agree to participate voluntarily and in writing, they may continue to preconference meetings.¹⁴⁸

2. Preconference Individual Meetings

The next step involves individual meetings between the facilitator and each party (survivor and abuser) to determine best methods going forward with a restorative plan.¹⁴⁹ This stage is intended to continue determining if face-to-face conferences are a good option for a situation.¹⁵⁰ This includes the offender's acknowledgment of harm, assurance that the parties are participating voluntarily, assessing revictimization risk, and assessing mental health concerns.¹⁵¹ One consideration at this stage is ensuring that the abuser is not going forward with VOM with ulterior motives.¹⁵² While proper motivations for VOM might well include a reduced sentence in a criminal case, improper motivations might include the offender's use of restorative methods to continue the abusive cycle and exert control over the survivor.¹⁵³ During this stage, the facilitator helps the survivor determine goals and needs, including helping to prepare statements explaining the impact of the harm.¹⁵⁴ The facilitator ensures that the offender is willing to accept responsibility for the harm.¹⁵⁵ If the facilitator determines that the parties are not ready to proceed with VOM, or if any of the

146. *See id.* at 212–13.

147. *See id.* at 212.

148. *Id.* at 212–13.

149. *Id.* at 213.

150. *Id.*

151. *See id.*

152. *See id.*; *see, e.g.*, BANCROFT, *supra* note 16, at 15–16 (recounting an experience with a man who, after his partner asked for time apart, joined a therapy group for abusers in order to have the author provide the abuser instruction to spend more time with his partner).

153. *See, e.g.*, BANCROFT, *supra* note 16, at 15–16.

154. *See* Orcutt et al., *supra* note 49, at 213.

155. *See id.*

parties withdraw their consent to participate, they should suspend the restorative process for the well-being of the parties.¹⁵⁶

3. Facilitated Victim-Offender Mediation

VOM involves structured settings where participants can safely express their feelings, needs, and goals.¹⁵⁷ This first involves a frank discussion of facts of the harm by both parties and the facilitator.¹⁵⁸ The parties can then move forward to discussing remedies and restoration.¹⁵⁹ “Because [VOM] functions similar to negotiation or dispute resolution, most sessions result in a signed mediation agreement. The offender is bound to this agreement much as he would be under a probation contract.”¹⁶⁰ This agreement specifies expectations, tasks, timelines, and consequences if parties fail to meet the agreement.¹⁶¹ The written agreement may include other restorative measures, including monetary remedies, child support, medical bills incurred because of the IPV, substance abuse treatment, and therapy.¹⁶²

4. Monitoring

The last phase involves monitoring the parties to ensure commitment to the restorative process and written agreement.¹⁶³ Depending on whether the survivor and offender have agreed to continue their intimate partner relationship, this stage could look drastically different. Monitoring may include regular meetings or calls with the facilitator, ongoing safety planning with points of contact in case of future harm, and communication between the facilitator and survivor about the abuser’s progress and conduct. The persistence of the monitoring phase of restorative justice processes is vital—“the process of change for batterers (from violent and controlling lawbreaker to non-violent, non-controlling partner) is more likely linked to the repetition and consistency of our

156. *See id.*

157. *See id.* at 214.

158. *See id.*

159. *Id.*

160. LORETTA FREDERICK & KRISTINE C. LIZDAS, *THE BATTERED WOMEN’S JUST. PROJECT, THE ROLE OF RESTORATIVE JUSTICE IN THE BATTERED WOMEN’S MOVEMENT* 8 (2003).

161. *See Kohn, supra* note 35, at 588–90.

162. *Id.*

163. Orcutt et al., *supra* note 49, at 214.

message against domestic violence.”¹⁶⁴ It is possible that this phase could be linked to the court system, providing better legal enforcement, or could be independent of the court system until enforcement is necessary, providing greater comfort to those who are intimidated by the courts.¹⁶⁵

5. Additional Options

When VOM is inappropriate in IPV situations, other facilitated discussions might be beneficial.¹⁶⁶ Alternate or additional options for facilitated discussions might include family group conferences and community peacemaking circles.¹⁶⁷ Family group conferences could be beneficial when the survivor and offender have children together or when their family is a significant part of why the parties are seeking restoration.¹⁶⁸ Community peacemaking circles might be more beneficial when there is a disproportionate impact on the parties’ community or when the community itself finds better healing in alternate justice.¹⁶⁹

Restorative justice methods do not even necessitate an encounter between the survivor and the offender.¹⁷⁰ Nonconfrontational restorative practices may benefit parties who are unprepared or unwilling to face each other. Furthermore, nonconfrontational restorative practices may be blended with facilitated encounters to provide the best strategy for healing for the survivor, offender, and community.

Diversions are typically intended to provide an alternative to part of the offender’s criminal justice or sentencing process.¹⁷¹ Diversions may “a restorative conference to sort out elements of the sentence, such as restitution.”¹⁷² This may not involve the survivor’s presence—the conference may include the prosecutor, the judge, the offender, citizens within the community,

164. FREDERICK & LIZDAS, *supra* note 160, at 38.

165. *See* Kohn, *supra* note 35, at 590–93.

166. *See, e.g.*, Burkemper & Balsam, *supra* note 72, at 129–32.

167. ZEHR, *supra* note 1, at 56.

168. *See* Burkemper & Balsam, *supra* note 72, at 130–32.

169. *See, e.g.*, Donna Coker, *Restorative Justice, Navajo Peacemaking and Domestic Violence*, 10 THEORETICAL CRIMINOLOGY 67, 69–70 (2006) (comparing Anglo-American “vertical” adversarial justice methods to Navajo “horizontal” peacemaking justice methods).

170. ZEHR, *supra* note 16, at 66.

171. *Id.*

172. *Id.*

and a facilitator who is familiar with the survivor's needs.¹⁷³ A more open restorative conference provides the judge the best opportunity to be intimately familiar with the needs of everyone involved and thus make the most informed decision as to sentencing.¹⁷⁴

In cases where facilitated conferences may not be safe, wise, or voluntary, restorative conferences may involve surrogate parties to provide healing opportunities to one or more parties.¹⁷⁵ For example, if the survivor of IPV is in danger of further violence or re-traumatization when meeting the offending intimate partner, then the best option might be to facilitate a conference between the survivor and a surrogate offender who has caused a similar harm.¹⁷⁶ "In such encounter programs, involvement is not usually designed to impact the outcome of the case," but restorative justice is not solely intended to influence case outcomes.¹⁷⁷ Rather, as is in line with the holistic intentions of restorative justice, "[w]ith appropriate preparation and structure, such encounters have been found to be powerful, positive experiences for both victims and offenders."¹⁷⁸ Finally, victim impact statements offer similar benefits for increasing accountability, ensuring the survivor's voice is heard, and maximizing community justice.¹⁷⁹

CONCLUSION

Retributive justice fails survivors of intimate partner violence and their communities. "To the extent that women's experiences of intimate partner violence are thus only partially considered by a theoretically objectively neutral legal system, this formal system often fails in providing any redress."¹⁸⁰ Restorative justice practices, including victim-offender mediation, offer diverse

173. *Id.* at 66–67.

174. *Id.*

175. See Burkemper & Balsam, *supra* note 72, at 129–30.

176. See *id.* at 129.

177. ZEHR, *supra* note 16, at 67.

178. *Id.*

179. See Mary Lay Schuster & Amy Proppen, *Degrees of Emotion: Judicial Responses to Victim Impact Statements*, 6 L. CULTURE & HUMANS. 75, 91, 95–96 (2010); cf. Sarah Rahal & Kim Kozlowski, *204 Impact Statements, 9 Days, 2 Counties, a Life Sentence for Larry Nassar*, DETROIT NEWS (Feb. 8, 2018, 5:07 PM), <https://www.detroitnews.com/story/news/local/michigan/2018/02/08/204-impact-statements-9-days-2-counties-life-sentence-larry-nassar/1066335001> [<https://perma.cc/W5QB-5RHW>] (recounting the statements of 204 victims of a doctor's sexual abuse).

180. Hopkins et al., *supra* note 1, at 298.

opportunities for healing to parties to an intimate partner violence situation: victims, offenders, and the community at large. The type of opportunities and the ability to individualize restorative methods by case offers *breadth* of healing across many different communities and cultures as well as *depth* of healing in real, individual lives.

From an emotional standpoint, victims can feel empowered and healed, and offenders can take responsibility for fixing the harm they created. From a practical standpoint, the money saved by engaging in restorative justice practices such as victim-offender mediation can benefit victims, offenders, taxpayers, and courts. If the judiciary provides restorative options to parties in cases of intimate partner violence rather than requiring extended and complex legal battles, those parties and their communities will feel more empowered as citizens and will feel that their government has an interest in their well-being.

Where retribution cannot remedy intimate partner violence, restoration can succeed. Victim-offender mediation offers an extensive, safe, and individualistic phased healing plan that can restore agency to survivors, accountability to offenders, and lowered rates of intimate partner violence to communities. Victim-offender mediation will not work for all survivors of intimate partner violence, but neither does the current legal system—and integrating restorative principles into the current legal system will help, not hinder, individuals, families, and communities. When the ultimate goal is to reduce epidemic rates of intimate partner violence, holistic restoration using victim-offender mediation can offer concrete strategies to improve the well-being of all stakeholders.

Ren Warden *

* J.D., cum laude, 2022, University of Richmond School of Law; B.A., cum laude, 2017, University of Georgia. My heartfelt gratitude goes to my professor, mentor, and friend, Caitlin Bradley, for her advice and encouragement as I wrote this Comment. Many thanks also to my colleagues on the *University of Richmond Law Review* for their stellar editing skills and irreplaceable work ethic.