

2010

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Recommended Citation

Uduakobong Ikpe, & Kendell L. Coker, *Encouraging the Use of Community Involvement and Restorative Practices as Treatment for Trauma with Black Juvenile Offenders*, 15 Pub. Interest L. Rptr. 220 (2010).

Available at: <http://lawcommons.luc.edu/pilr/vol15/iss3/7>

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ENCOURAGING THE USE OF COMMUNITY INVOLVEMENT AND RESTORATIVE PRACTICES AS TREATMENT FOR TRAUMA WITH BLACK JUVENILE OFFENDERS

by UDUAKOBONG IKPE, M.S. & KENDELL L. COKER, PH.D.

THE STORY OF “AB”

AB was a 13-year-old Black male from the inner city of Memphis, TN. He was arrested for sexually assaulting an elderly neighbor. Routine screening by the court mental health professional found that AB suffered from a plethora

of mental health symptoms including anxiety, disorganized behavior, lack of concentration and nightmares amongst others. He reported that he moved to Memphis from Chicago, IL because his mother was a substance abuser who regularly placed him and his older brother in “scary and messed up” situations. When the possibility of mental health disturbance was discussed with AB, he became very angry.

Prior to making recommendations to the court, the mental health professional was contacted by the alleged victim. She explained that she was a retired special education teacher and that she knew something about AB was “not right.” She explained that he was seen at all hours of the night roaming the neighborhood alone in a high-crime area. She felt that some sort of intervention was necessary before a one-time incident became a pattern. As his neighbor and fellow community member, she felt obligated to call his attorney, who directed her to the mental health professional. She indicated that she wanted AB to get treatment because she thought he was being neglected. She also wanted him to move out of his current home and into the home of a family member that she knew would monitor his actions. Contact was made with a family member who was willing to help AB. Still, AB refused to take ownership of his actions or to agree to terms that would improve his mental health, even though he had already fully confessed to the offense.

In the end, AB returned to the neighborhood on probationary status and the victim was left feeling helpless and greatly saddened. She later told the mental health professional that she felt justice was not served for herself or AB. The mental health professional was left thinking that restorative practices could have intervened and put an end to an unfortunate, yet all too common scenario. This article will discuss restorative justice and a proposed model that is a promising alternative to incarceration and the disproportionately harsh treatment Black youth are subjected to in the legal process¹ while concurrently meeting their mental health needs.

THE RACIAL DISPARITY AGAINST BLACK YOUTH IN THE JUVENILE JUSTICE SYSTEM

Juvenile delinquency is a critical issue that needs to be addressed. When the question arises as to why it is so important, the answer appears to be fundamentally obvious. Our youth represent our future. Thus, our society will only

be as successful as those who are raised in it.² Additionally, some of the adults' lives, currently in the penal system, could have been more productive, rather than criminal, if they had received the proper mental health interventions and services earlier in life. This is particularly evident when researching juvenile delinquency and the co-occurrence of mental health issues in juvenile offenders.³

By focusing adequate resources and targeting services to meet the needs of juvenile justice populations we may reduce crime rates in the future. In order to properly address the concern about children involved in the juvenile justice system, we must first demonstrate an accurate understanding of the problem, who is affected by it most and why. Some of the most alarming statistics are concerning youth violence.

In 2006, there were 5,958 murders among young people between the ages of 10 and 24.⁴ Homicide was the second leading cause of death among the 10 to 24 year olds and 84 percent were killed with a firearm.⁵ In 2007, 18 percent of youth reported carrying a weapon, with 5.2 percent carrying a gun, within the 30 days preceding a Center for Disease Control (CDC) survey.⁶ In that same year, there were well over 1,000 juveniles arrested for murder, over 3,000 for rape, and over 57,000 arrested for aggravated assault.⁷ With regard to school violence, approximately 27 percent reported stealing or intentionally damaging school property and 12 percent reported being in a physical fight on school property in the 12 months prior to taking the survey.⁸ These statistics are presented to show the magnitude of the problem and demonstrate the level of help our youth need. However, these statistics do not show the whole picture. They cloud two significant issues which Congress and public health agencies nationwide saw fit to address in recent years: disproportionate minority contact and mental health needs in juvenile justice settings.⁹

The numbers above do not reveal the discrepancy between Black/African Americans,¹⁰ White/Caucasians and other ethnic groups. For instance, although homicide was the second leading cause of death for all young people, it was the highest cause of death for Blacks by a significant amount.¹¹ Homicide rates among Blacks were 62.2 per 100,000, 21.5 per 100,000 among Hispanics, and 3.4 per 100,000 among Whites.¹² Furthermore, Black youth receive harsher treatment in the juvenile justice system than their White counterparts for similar offenses.¹³ Despite only making up 17 percent of the total population of youth, they make up 30 percent of youth arrested.¹⁴ In comparison to

White youth, Black youth are 50 percent less likely to be diverted before adjudication and 50 percent more likely to be detained before adjudication.¹⁵ Public perception, though erroneous and often from the mouths of politicians, help fuel the image that Black youth are crime prone and these number are not mere reflections of inequities in society.¹⁶ But their comments fail to point out the many disparities. For instance, Black youth are twice as likely to be arrested for property and drug offenses. Although Black youth are 40 percent more likely to be involved in a physical altercation they are “300 percent more likely to be arrested for aggravated assault and other offenses.”¹⁷ Moreover, Black youth are nine times more likely to receive an adult sentence than White youth.¹⁸

This disparity has long-term ramifications for Black youth because a disproportionate amount of them may not have the same promises for a positive future, given what we know about the negative effects of incarceration on youth.¹⁹ Youth transferred to the adult system are more likely to recidivate than those who remain under the jurisdiction of juvenile court.²⁰

It is important to understand some of the forces that cause crime in predominately Black inner city communities and the psychological needs of these youth as a result. This is a critical point because, given Black youth’s disproportionate contact with the juvenile justice setting, we must understand what “pressures” lead them into the system and how this impacts them so we can find proper ways to treat them. Some argue that class is the ultimate racial equalizer but Black youth are more likely to have their poverty status pose as a both a catalyst for delinquency and a barrier to more effective legal representation.²¹

Because of factors such as poverty, family disruption, class segregation, race and other social inequalities, juvenile violence is “primarily a function of community context.”²² Unfortunately, this, in conjunction with the alarmingly high homicide and assault rates for Black youth mentioned earlier, suggests that many of these youth are exposed to violent crime on a pervasive scale. Typically, statistics show the number of youth murdered or harmed, but not how many of them witnessed the event that can be just as traumatic. The literature on juveniles and mental health show that many of the same youth who may become involved with the juvenile justice system come from communities where violence exposure is dangerously high. Studies have continued to document the relationship between violence exposure, victimization, and de-

linquency.²³ In short, a significant factor playing a role in juvenile delinquency particularly among inner city Blacks is trauma.

EXPOSURE TO VIOLENCE AS A SOURCE OF TRAUMA IN THE INNER CITY AND ITS EFFECTS

What is trauma? The concept “trauma” has a very broad definition because it can encompass a wide spectrum of experiences. Some commentators have defined trauma as an experience of a threatening or overwhelming event that leads to an extreme stress reaction.²⁴ The American Psychiatric Association incorporates a stressful event such as witnessing and/or being the target of a threatening situation and the person experiences intense fear, helplessness, or horror, into the definition.²⁵ Trauma is the result of some experience of victimization either as the actual victim or witnessing it. Studies have shown that significant amounts of Black children were either victimized or witnessed victimization at some time in their life. One such study found that 91 percent of Black children living in inner city neighborhoods witnessed violence and another study found the amount of victimization to be as high as 70 percent.²⁶

Trauma, in turn, is a contributing factor for many of these juveniles’ delinquent behavior. Chronic exposure to violence and trauma among Black inner city youth can lead to a feeling of helplessness and inescapable vulnerability. Thus, they must find alternative ways to cope with their environment that may be maladaptive. To further illustrate the association between the various types of trauma and criminal justice involvement, neglected children have similar arrests rates for violent crimes as physically abused children. In comparison to those without trauma histories, these differences in arrest rates are apparent as early as eight-years-old.²⁷ One study found that as high as 50 percent of Black male and females who were victims of abuse or neglect had an arrest for violence.²⁸ Yet other studies, as mentioned above, have shown high rates of community violence²⁹ and the link between trauma in the context of community violence and arrests for violent crime.³⁰ Research shows that these victimized inner city youth are increasingly likely to participate in violence, associate with other negative peers and obtain guns for protection.³¹

These youth must receive an intervention to help them cope with the trauma they experience. Trauma has a significant impact on a juvenile’s mental health, which “influences their ability to handle stress, relate to other people, and

make decisions.”³² A juvenile’s ability to regulate and control his/her anger is affected by trauma.³³ Furthermore, when children are unable to cope with their angry feelings, they are more likely to act out in the form of violence³⁴ thus increasing the likelihood of being arrested. Even when it comes to trauma, race remains a factor for the juvenile’s contact with the justice system. Black children with abuse and neglect histories were more significantly likely to be arrested than White youth with abuse histories from similar backgrounds.³⁵

The above research shows the strong link between trauma and the aggressive, acting out behavior of juvenile offenders and establishes the pervasiveness of trauma in inner city Black communities. Studies have demonstrated an imperative need for trauma intervention programs as a prevention method for crime and recidivism.³⁶ Current interventions provide treatment to these youth outside of their communities only to send them back home where they will be exposed to the same risk factors that may have been responsible for their incarceration.³⁷ Therefore, interventions must not only address the trauma, but also the community factors that have been argued, because of sociocultural³⁸ and/or economic factors, to either promote violence and crime or failing to prevent it.

FROM JUVENILE JUSTICE TO RESTORATIVE JUSTICE AS A TREATMENT OF TRAUMA

The current criminal justice system is inadequate in terms of its failure to meet the needs of those affected by it.³⁹ A great deal of literature has espoused the idea that the juvenile justice system has fallen short of its original tenants of providing rehabilitation to its targeted participants: children.⁴⁰ From its inception, the juvenile justice system sought to act as a parental figure to the youth that committed crime.⁴¹ The goal being to help children who had lost their way in order to protect their wellbeing and to ensure that they could be guided towards becoming productive members of society;⁴² positive contributors in their communities. However, a lack of due process⁴³ ended the solely paternalistic nature of that court and gave way to a hybrid in which the main goal was rehabilitation.⁴⁴ The idealistic theory that rehabilitation was the sole need for the court to address was at odds with the factual reality that these children were causing social harm.⁴⁵ They were negatively impacting their communities in ways that, over time, led to more negative results. Eventually, the juvenile

justice system assimilated goals similar to that of the adult system where public safety became a major focus.

Still, the theories that resulted in the creation of the original juvenile justice system remain true. Developmentally, children lack the same ability to regulate their behavior in the same manner expected of adults.⁴⁶ This becomes particularly evident in children with mental health issues. Today's juvenile justice system is teeming with youth suffering from mental health problems.⁴⁷ The numbers suggest that 1/5 of the adolescents in the juvenile justice system also receive mental health services. Some theorists believe that mental disorders and juvenile delinquency have common antecedents.⁴⁸ This is indicative of the need for modalities that can successfully integrate treatment needs and those of the juvenile justice system.⁴⁹

Restorative justice is an alternative to the traditional adjudicatory system wherein the victim, offender and community are considered the primary stakeholders for which the specific criminal behavior has the greatest impact.⁵⁰ That is, each stakeholder is afforded the opportunity to determine how best to resolve the matter before him or her. It is the interaction between the stakeholders that creates empathy within the offender and sympathy from the victim. It also empowers the community. This makes restorative justice unique in relation to other forms of alternative dispute resolution and can effectuate the most positive change possible for the stakeholders involved.⁵¹ In the United States today, there are approximately 773 programs nationwide and about 94 percent of all states use some form of restorative processes.⁵² The types of crime usually referred to such programs are vandalism, minor assaults and theft. However, there are occasionally serious violent crimes that have been referred to and handled in a restorative justice manner.⁵³

The restorative process generally takes several sessions and requires all relevant parties to have case preparation prior to attending the group conferences. Most restorative justice programs focus primarily on the victim's wellbeing and how the outcome affects him/her.⁵⁴ This is of the utmost importance and is an integral part of any successful restorative justice program. The informality of the process allows for the type of creativity necessary to address multiple issues including offender needs. In fact, as of late, many restorative justice programs seek to ameliorate offenders' dysfunctional attributes.⁵⁵ Restorative justice group conferencing has been described as being "dramatic, emotionally

charged, and potentially capable of producing significant transformation of individual participants, as well as collective conflicts.”⁵⁶

Restorative justice theories in the juvenile justice system suggest that restorative justice has the ability to reduce recidivism rates in juveniles by allowing the offender to be accountable for his/her actions while empowering victims.⁵⁷ Furthermore, restorative justice practices can be used to provide communities with a means of recourse for the social harm caused by crime.⁵⁸ It can be argued that the application of such practices amongst Black juvenile delinquents will uplift and include the community. This reduces the occurrence of violence amongst Black youth and, in turn, the amount of trauma experienced by these youths.

Various programs have been implemented that focus specifically on using the community as a means of reducing trauma symptoms in urban youth.⁵⁹ Restorative justice models should be considered for application in the juvenile justice system that has alarming rates of contact with the Black youth, as it is a means of reaching this at risk population on at a greater scale. Furthermore, restorative justice may have the capacity to reduce the amount of confinement for Black juveniles because such programs are often implemented on diversionary levels prior to the criminalization of its participants.⁶⁰ By affording Black offenders the opportunity to participate in such programming, both the chances of minority contact and minority confinement with the justice system may be greatly reduced.

An exploration of community-based restorative justice programs in Northern Ireland discussed how these programs have been utilized to change the culture of violence long since established in the area.⁶¹ According to Anna Eriksson (2008), violent communities create environments that perpetuate the use of violence as a means of resolving interpersonal conflicts.⁶² Furthermore, she postulates that the use of restorative justice can lead to the reduction of violence on a communal level.⁶³ In these programs, local community members, specifically ex-leaders of the paramilitary groups, act as a moral compass for juvenile offenders and also bring an increased level of respect and legitimacy to the programming.⁶⁴ This is extremely important due to the lack of involvement felt by these youths thus limiting their belief the justice system is geared towards helping and including them. The situation in Northern Ireland is one that is very similar to the inner workings of the inner city community where Black youth are often exposed to violence associated with the presence of

gangs, high rates of substance abuse and poverty. Restorative justice programs, similar to the ones found in Northern Ireland, offer a promising alternative to the current adjudicatory nature of the juvenile justice system.

Though it is true that there are many restorative justice programs throughout the world that rely heavily on community involvement, few programs utilize ex-gang members or ex-convicts whose credibility with the offending youth is high. The involvement of these individuals, with whom the juvenile offender can identify, will lend validity to the process that cannot otherwise be developed. It may be best that any restorative justice programs established in Black communities seek to include these often-marginalized community members that are also often revered by juvenile offenders. It is possible that the presence of respected individuals who insist upon the youth being held accountable and taking ownership for his/her actions will lead to increase in modeling appropriate behaviors which can lead to a reduction in the use of violence in order to resolve conflict and, as such, reduce the amount of traumatic exposure Black youth experience. The proposed model for restorative justice programs will incorporate the use of various community members in order to reduce disproportionate contact and confinement within the Black community, as well as, treat the trauma caused by exposure to violence by reducing that exposure.

THE PROPOSED MODEL FOR THE TREATMENT OF TRAUMA USING RESTORATIVE PRACTICES⁶⁵

This model will operate much like a restorative group conference rather than the typical victim-offender mediation program.⁶⁶ Community involvement will be one of the most important and unique aspects of the program. Surveys of such programs in the United States found that an average of 7 individuals, including the victim, offender and facilitator attend the conferences with the participant number reaching as high as 22. This means that anywhere between 4 and 19 community members are involved in the conferencing process. In this model, there shall be no exact amount of community members required for involvement. Rather, certain criteria shall be considered in order to meet the specific stakeholders' needs.⁶⁷ All victim-offender mediation programs require voluntary participation by the victim and, usually, the offender.

This proposed model shall not stray from this formula. Participation shall be voluntary on the part of both the victim and offender. Referral to the program

may occur at either of two points: prior to adjudication much like diversionary program or post-adjudication as a probationary option. The point of entry is important because either can address the amount of contact an offender has with the justice system by diverting them prior to criminalization. It can address the disproportionate confinement issue by requiring several conferencing sessions that can act as an intervention for the offender rather than confining the child to a rehabilitating program that limits the child's freedom while failing to treat his/her mental health needs.

Conferences shall occur at an accessible neutral location agreed upon by both parties. Examples of such locations include local community centers, churches/faith-based locals, schools or designated rooms within the juvenile courthouse. Several case preparation sessions should occur with the offender and members of the community who will also attend the conferencing. The focus of these sessions shall be treatment intervention. Anger management, problem-solving, assertiveness training and conflict resolution shall be reviewed with the offender prior to conferencing with the victim. These are interventions that are commonly used for the treatment of trauma and will increase the positive participation in the actual conference by the offender since he/she has previously learned how his/her actions could have been mitigated by making a different choice. The interventions will help in understanding how his/her mental health issues have impacted their current legal situation.

The case preparation conferences shall be provided with help of trained volunteers with backgrounds similar to that of the juvenile⁶⁸ as well as a mental health professional and other effected community members and leaders. Once it is determined that the juvenile is prepared to address the victim in an empathetic manner and that alternative means of conflict resolution have been taught to the juvenile, he/she shall meet with the victim in order to further address the restorative needs of the stakeholders involved. This may include requiring the juvenile to attend more intervention programming, provide restitution, take ownership of his/her actions in the form of an apology, all of the above or other solutions agreed upon by the stakeholders involved.

CALL FOR MORE RESEARCH ON RESTORATIVE JUSTICE WITHIN THE JUVENILE JUSTICE SYSTEM

The use of restorative justice practices is an emerging area and thus has limited research regarding currently implemented programs. It has been argued that there is little connection between the theories of restorative justice and the actual implementation and practice of these programs.⁶⁹ This article seeks to add to the literature available on possible interventions for the reduction of trauma exposure in inner city Black youth, while touching on other areas that can be ameliorated by restorative practices.

Any program that chooses to follow the proposed model should do so experimentally with the hopes of gaining more incite on which areas need improvement. This will maximize the positive mental health outcomes for the offender, improve the community by reducing the amount of juvenile recidivism created by a culture of violence and empower and heal victims. This model serves as an example of ways restorative practices can be used to improve various aspects of the Black community and aid Black juvenile offenders. Further research should be conducted focusing on the matters briefly touched upon by this article, such as how restorative practices can aid in the reducing the disproportionate contact and confinement amongst Black youth as compared to their counterparts from different racial backgrounds. It is important that the situations like that of AB, discussed at the beginning of this article, not be avoided but embraced by the community in order stop the cycle of violence and trauma which so severely plagues Black youth.

NOTES

1 Monya M. Bunch, *Juvenile Transfer Proceedings: A Place for Restorative Justice Values*, 47 HOWARD L.J. 909 (2003).

2 NANETTE J. DAVIS, YOUTH CRISIS: GROWING UP IN THE HIGH-RISK SOCIETY 8 (1999).

3 Elizabeth Cauffman et al., *Predicting First Time Involvement in the Juvenile Justice System Among Emotionally Disturbed Youth Receiving Mental Health Services*, 2 PSYCHOL. SERV. 28 (2005).

4 CENTER FOR DISEASE CONTROL, YOUTH VIOLENCE, FACTS AT A GLANCE (Summer 2009).

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 Neelum Arya & Ian Augarten, *Critical Condition: African American Youth in the Justice System*, 2 RACE & ETHNICITY 16 (2008). In 1988, under the Juvenile Justice and Delinquency Prevention Act (JJDP), Congress required states to address racial disparities in the juvenile justice system. In 1992, Congress made addressing this issue a “core requirement” of the Act and in 2002, Congress broadened the language by changing it from disproportionate minority “confinement” to disproportionate minority “contact.”

10 The term Black will be used throughout this article instead of African American in part because not all Blacks in this country identify themselves as African American, but African American connotes Blacks. Thus, Black is the more inclusive categorization.

11 YOUTH VIOLENCE, *supra* note 4.

12 *Id.*

13 Arya & Augarten, *supra* note 9, at 1.

14 *Id.*

15 *Id.* at 17.

16 In 2005, William Bennett, Secretary of Education under the Reagan Administration said, “If it were your sole purpose to reduce crime you could abort every black baby in this country, and your crime rate would go down. . .that would be an impossible, ridiculous and morally reprehensible thing to do, but your crime rate would go down.” William Saletan, *Natural Unborn Killers: The Bigotry of Bill Bennett’s Low Expectations*, SLATE, Oct. 4, 2005, available at <http://www.slate.com/id/2127378/>; In defense of Bennett’s remarks Andrew C. McCarthy, Former Federal Prosecutor said, “Some identifiable groups, considered as a group, commit crime at a rate that is higher than the national rate. . .Blacks are such a group. That is simply a fact. . .plus he was right, which ought to count for something even in what passes for today’s media critiques.”; Andrew C. McCarthy, *Shameful Attacks: Bill Bennett Stresses Our Morality. . .and Pays the Price*, National Review Online, Sept. 30 2005, <http://old.nationalreview.com/mccarthy/mccarthy200509301104.asp>.

17 Arya & Augarten, *supra* note 9, at 20.

18 *Id.*

19 *Id.* at 8-9; See generally Finn-Aage Esbensen & David Huizinga, *Juvenile Victimization and Delinquency*, 23 YOUTH & SOC’Y 202 (1991).

20 Arya & Augarten, *supra* note 9, at 5.

21 Arya & Augarten, *supra* note 9, at 7; See also Darnell F. Hawkins et al., *Race, Ethnicity, and Violent Juvenile Offending*, Office of Juvenile Justice and Delinquency Prevention (2000), available at http://www.ncjrs.gov/html/ojjdp/2000_6_1/contents.html.

22 Hawkins et al., *supra* note 21.

23 See generally ANNETTE U. RICKEL & EVELYN BECKER-LAUSEN, INTERGENERATIONAL INFLUENCES ON CHILD OUTCOMES: IMPLICATIONS FOR PREVENTION AND INTERVENTION, THE FAMILY-SCHOOL CONNECTION: THEORY, RESEARCH, AND PRACTICE (B. A. Ryan, G. R. Adams, T. P. Gullotta, R. P. Weissberg, & R. L. Hampton eds., 1995).

24 JOHN G. ALLEN, COPING WITH TRAUMA: A GUIDE TO SELF-UNDERSTANDING (1995).

25 AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed. Text Revision 2000).

26 J. D. Osofsky et al., *Chronic Community Violence: What is Happening to our Children*, 56 PSYCHIATRY 36 (1993); M. Dempsey, *Negative Coping as a Mediator in the Relation between Violence and Outcomes: Inner-City African American Youth*, 72 AM. J. OF ORTHOPSYCHIATRY 102-09 (2002).

27 DAVIS, *supra* note 2, at 215.

28 *Id.*

29 See generally National Urban League Policy Institute, *Youth Violence: Implications for Post-traumatic Stress Disorder in Urban Youth* 4, Mar. 2009, available at <http://www.nul.org/content/youth-violence-implications-posttraumatic-stress-disorder-urban-youth> [hereinafter *Youth Violence Implications*].

30 C.S. Widom, *Understanding Child Maltreatment and Juvenile Delinquency* (2003).

31 D.L. Wilkinson, *Violent Events and Social Identity: Specifying the Relationship between Respect and Masculinity in Inner City Youth Violence*, 8 SOC. STUD. OF CHILD. AND YOUTH 231-65 (2001).

32 Glen Ellis, *Is Black Youth Violence a Public Epidemic?* (2008), available at <http://www.izania.com>.

33 W. NOVACO & C.M. CHEMTOB, ANGER AND TRAUMA CONCEPTUALIZATION: ASSESSMENT AND TREATMENT, COGNITIVE BEHAVIORAL TREATMENTS OF TRAUMA (V. M. Follette, J. I. Ruzek, & F. R. Abueg eds., 1998).

34 M.M. Omizo et al., *Teaching Children to Cope with Anger*, 22 ELEMENTARY SCHOOL GUIDANCE AND COUNSELING 241-45 (1988).

35 DAVIS, *supra* note 2, at 215.

36 See generally *Youth Violence Implications*, *supra* note 29.

37 It is important to remember that a large percentage of Blacks who live in the inner city do not commit crimes and function extremely well psychologically. This article primarily addresses that smaller percentage of individuals for whom community circumstances have a more negative impact on.

38 For an enlightening account that provided an explanation for the high rate of violence among Black inner city youth: See generally ELIJAH ANDERSON, *CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY* (1999). The theories and ideas presented in *Code of the Street* were also empirically tested and validated. For a review of their findings: See generally U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *The Code of the Street and African American Adolescent Violence*, Research Brief, NCJ 223509 (2009), available at www.ojp.usdoj.gov/nij.

39 Tony Ward & Robyn Langlands, *Repairing the Rupture: Restorative Justice and the Rehabilitation of Offenders*, 14 AGGRESSION & VIOLENT BEHAV. 205 (2009).

40 ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 82-117 (Harvard University Press 2008).

41 *Id.* at 61-81.

42 *Id.*

43 *In re Gault*, 387 U.S. 1 (1967) is the groundbreaking case in which the US Supreme Court held that the juvenile justice system, at that time, did not protect the due process rights of children as it failed to afford them the right to counsel, the right to confront witnesses and the right against self-incrimination and the right to timely notice, amongst other due process rights afforded to all people by the 14th Amendment.

44 SCOTT & STEINBERG, *supra* note 40, at 82-117.

45 *Id.* at 91-92.

46 See generally SCOTT & STEINBERG, *supra* note 40.

47 Cauffman et al., *supra* note 3, at 34.

48 *Id.* at 28.

49 Currently, the juvenile justice system seeks to balance the need for rehabilitation with the necessity of public safety. Public safety has become the overriding focus of the system. This has led to an increase in laws addressing the transfer youth once considered less culpable for their actions to adult court.

- 50 See generally Marilyn Peterson Armour & Mark S. Umbreit, *Victim-Offender Mediation and Forensic Practice*, HAND OF FORENSIC MENTAL HEALTH WITH VICTIMS AND OFFENDERS (David W. Springer & Albert R. Roberts, eds., 2007).
- 51 GORDON BAZEMORE & MARA SCHIFF, JUVENILE JUSTICE REFORM AND RESTORATIVE JUSTICE: BUILDING THEORY AND POLICY FROM PRACTICE 17 (2005).
- 52 BAZEMORE & SCHIFF, *supra* note 51, at 107.
- 53 According to the National Survey of Victim-Offender Mediation Programs criminal acts such as assault with bodily injury, assault with a deadly weapon, negligent homicide, domestic violence, sexual assault, murder and attempted murder have all be mediated through restorative justice programs, as noted in the survey. *National Survey of Victim-Offender Mediation Programs in the United States*, 8 CTR. FOR RESTORATIVE JUST. & PEACEMAKING, U. OF MINNESOTA (2000).
- 54 See generally BAZEMORE & SCHIFF, *supra* note 51.
- 55 *Id.*
- 56 BAZEMORE & SCHIFF, *supra* note 51, at 3.
- 57 *Id.* at 17.
- 58 Joan Pennell & Mimi Kim, *Opening Conversations Across Cultural, Gender and Generational Divides: Family and Community Engagement to Stop Violence against Women and Children*, in RESTORATIVE JUST. AND VIOLENCE AGAINST WOMEN, 178-79 (James Ptacek ed., 2010).
- 59 *Youth Violence Implications*, *supra* note 29, at 12-16.
- 60 *National Survey*, *supra* note 53.
- 61 Anna Eriksson, *Challenging Cultures of Violence Through Community Restorative Justice in Northern Ireland*, 11 SOC. OF CRIME L. & DEVIANCE 231-60 (2008).
- 62 *Id.*
- 63 *Id.* at 233.
- 64 *Id.* at 233-39.
- 65 Not every case will be appropriate for referral to this program, but it is presented as a general approach that must be tailored to meet the needs of each victim, offender and community as necessary. Also, screening must occur to determine if there are mental health needs that can be appropriately addressed using this intervention at the outset.
- 66 Though this model will closely resemble a restorative group conference, much of the process also resembles successful victim-offender mediation programs.
- 67 Issues such as the nature of the crime, the number of victims, the extent to which community members are directly effected by the outcome of the matter, the victims' and the offenders' desire for community members to be present, amongst other relevant issues shall be considered when determining how many members of the community to involve as well as which community members to involve.
- 68 When appropriate, ex-gang members or ex-convicts who are considered by the community to be genuinely rehabilitated shall participate as trained volunteers to assist in modeling appropriate behavior in terms of future decision-making and conflict resolution while adding a certain level legitimacy to the program from the perspective of the youthful offender.
- 69 BAZEMORE, *supra* note 51, at 20.