

2020

## Out with the Old and In with the New: The Need for Restorative Justice in the Illinois Juvenile Criminal Court System, 53 UIC J. Marshall L. Rev. 373 (2020)

Joseph Pesa

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Law Commons](#)

---

### Recommended Citation

Joseph Pesa, Out with the Old and In with the New: The Need for Restorative Justice in the Illinois Juvenile Criminal Court System, 53 UIC J. Marshall L. Rev. 373 (2020)

<https://repository.law.uic.edu/lawreview/vol53/iss2/5>

This Comments is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact [repository@jmls.edu](mailto:repository@jmls.edu).

# OUT WITH THE OLD AND IN WITH THE NEW: THE NEED FOR RESTORATIVE JUSTICE IN THE ILLINOIS JUVENILE CRIMINAL COURT SYSTEM

JOSEPH PESA

I.	INTRODUCTION .....	373
A.	The Stories of Two Young Men .....	373
B.	A Different Approach.....	374
C.	Comment Overview .....	377
II.	RESTORING SOCIETY: AN ALTERNATIVE TO THE “TOUGH ON CRIME” APPROACH.....	377
A.	The Birth of Restorative Justice .....	377
B.	“The Old”— An Antiquated Approach.....	378
C.	“The New”— Why Should We Consider Restorative Justice? .....	380
D.	The Types of Restorative Justice Programs and Its Effects on the Community.....	383
III.	THE NEED FOR CHANGE BEGINS WITH RESTORATIVE JUSTICE .....	385
A.	The Real Reason for Recidivism Is Incarceration ..	385
B.	Psychology and the Supreme Court.....	386
C.	The Positive Effects of Restorative Justice .....	388
D.	Restorative Justice in Practice.....	391
1.	New York’s Center for Court Innovation .....	391
2.	Restorative Justice Community Court in Chicago North Lawndale.....	393
E.	The Nay-Sayers.....	394
IV.	IMPLEMENTING RESTORATIVE JUSTICE IN ILLINOIS.....	396
A.	Proposal Overview .....	396
B.	Legislation.....	397
C.	What is in Our Way and How Do We Fix It? .....	397
1.	Funding.....	397
2.	Employees.....	398
3.	Volunteers.....	398
4.	Participants .....	399
D.	Restorative Justice and Our Local Law Enforcement.....	400
V.	RESTORATIVE JUSTICE WORKS.....	401

## I. INTRODUCTION

### A. *The Stories of Two Young Men*

In 1998, Anthony Laster was fifteen years old and had an IQ of fifty-eight.<sup>1</sup> Anthony’s mother had just died, and he was hungry.<sup>2</sup>

---

1. See Jeffrey Fagan, *Adolescents, Maturity, and the Law*, AM. PROSPECT (Aug. 14, 2005), [www.prospect.org/article/adolescents-maturity-and-law](http://www.prospect.org/article/adolescents-maturity-and-law) (discussing the treatment of juveniles as adults within the criminal justice system).

2. *Id.*

So, Anthony reached into the pocket of another student at his school and took two dollars.<sup>3</sup> What happened next to Anthony was tragic. The prosecutor, Barry Kirscher, decided to prosecute Anthony as an adult for the petty crime despite this being Anthony's first arrest. Anthony spent the next seven weeks in an adult jail.<sup>4</sup> Anthony even missed Christmas, his first without his mother.<sup>5</sup>

Lavell Staples was eighteen years old when he was sent to the Illinois Youth Center at Harrisburg for a low-level marijuana offense.<sup>6</sup> While incarcerated at that facility, Lavell was accused of pushing a correctional officer, and he was subsequently charged with aggravated battery and sentenced to four years in a state penitentiary.<sup>7</sup> Lavell was one of the youngest inmates in the penitentiary, and he was housed with murderers and various other violent offenders.<sup>8</sup> Lavell was forced to do anything to survive.<sup>9</sup> Had it not been for Lavell's initial incarceration for a petty offense, his life would have been completely different.<sup>10</sup>

### B. A Different Approach

Now, fast-forward to 2017. A young man in Syracuse, New York was eighteen years old when he was arrested at a local

---

3. *Id.*

4. *Id.*

5. *Id.*

6. See Duaa Eldeib, *For Some Youths, 'Minor' Offenses Lead to Major Sentences in Adult Prison*, PROPUBLICA ILL. (Oct. 25, 2017), [www.propublica.org/article/illinois-youths-adult-prison](http://www.propublica.org/article/illinois-youths-adult-prison) (discussing employees of state-run facilities and their resistance to statewide reforms).

7. See John Lam, *Reforms in Illinois Juvenile System Blocked by Youth Assaults*, SAN QUENTIN NEWS (May 8, 2018), [www.sanquentinnews.com/reforms-illinois-juvenile-system-blocked-youth-assaults/](http://www.sanquentinnews.com/reforms-illinois-juvenile-system-blocked-youth-assaults/) (discussing the Illinois guards using trivial incidents to create an "alternative correctional system" that enhances sentences for juvenile inmates).

8. Eldeib, *supra* note 6.

9. Gary Scott, *Prison is Too Violent for Young Offenders*, N.Y. TIMES (June 5, 2012), [www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/prison-is-too-violent-for-young-offenders](http://www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/prison-is-too-violent-for-young-offenders).

10. See Stanton E. Samenow, *Do Prisons Really Make Offenders Worse?*, PSYCHOL. TODAY (Apr. 9, 2011), [www.psychologytoday.com/us/blog/inside-the-criminal-mind/201104/do-prisons-really-make-offenders-worse](http://www.psychologytoday.com/us/blog/inside-the-criminal-mind/201104/do-prisons-really-make-offenders-worse) (debating that "[t]here is an inevitability to the perception that if you land in prison, you will turn into an even more corrupt or violent person when you leave"). Dr. Samenow writes that, although many inmates choose the correct path in prison to eradicate bad behavior, incarceration is a breeding ground or "school for crime" where many prisoners become worse. *Id.*; see also Dena Ross Higgins, *This is Your Brain in Jail*, A&E, [www.aetv.com/shows/60-days-in/articles/your-brain-in-jail](http://www.aetv.com/shows/60-days-in/articles/your-brain-in-jail) (last visited Nov. 18, 2018) (discussing the effects going to jail has on the brain, hormone levels, stress levels, potential brain damage, and PTSD along with the need for counseling and medical services upon release).

community college for assault.<sup>11</sup> The young man intervened in a physical fight that his friend was involved in.<sup>12</sup> This was his first arrest.<sup>13</sup> The case was referred to the Center for Court Innovation, and there, a member asked the young man what he wanted out of life.<sup>14</sup> This was a question he had not heard before.<sup>15</sup> The young man had a high school diploma but lacked direction.<sup>16</sup> The Center learned from the young man that he was interested in real estate, so they put the teen in touch with a peacemaker who held a job in that same field.<sup>17</sup> After some interaction with the peacemaker, the young man got his real estate license and made something of his life.<sup>18</sup> The difference between this young man and Lavell Staples or Anthony Laster: restorative justice.

“The Juvenile Court Act is about restorative justice . . . [a]nd if we’re going to fulfill that promise to juveniles, we have to be willing to give them a chance to come out of the system and make better decisions in the future.”<sup>19</sup> The juvenile criminal justice system in Illinois has experienced an overall lack of success in recent years.<sup>20</sup> In a study published by the Illinois Criminal Justice Information Authority, eighty-six percent of juvenile offenders were re-arrested within three years of their release from a juvenile prison.<sup>21</sup> In

---

11. Telephone Interview with Sarah Reckess, Director of the Center for Court Innovation, Syracuse Office and Senior Associate of the Tribal Justice Exchange (Nov. 2, 2018).

12. *Id.* The identity of the teen was confidential. *Id.*

13. *Id.*

14. *Id.* After an intake process, juveniles are paired with a member of the Center known as a “peacemaker.” *Id.* This peacemaker also acts as a mentor and remains with the juvenile throughout the process. *Id.*

15. *Id.*

16. *Id.* The teen graduated high school but was hanging out at the community college every day waiting for his friends to get done with class. *Id.*

17. *Id.* The identity of the peacemaker is also confidential. *Id.*

18. *Id.* This story is an example of how the restorative justice process can be effective rather than subjecting a juvenile to the criminal court system. *Id.*

19. See Eldeib, *supra* note 6 (quoting Kane County States Attorney Joseph McMahon about his process in prosecuting juvenile inmates involved in altercations with guards).

20. See Beth McDaniel, *Youth in Juvenile Justice System Need Help, Not Punishment or Stigma*, MONTGOMERY ADVERTISER (Dec. 11, 2017), [www.montgomeryadvertiser.com/story/opinion/columnists/2017/12/11/youth-juvenile-justice-system-need-help-not-punishment-stigma/931314001/](http://www.montgomeryadvertiser.com/story/opinion/columnists/2017/12/11/youth-juvenile-justice-system-need-help-not-punishment-stigma/931314001/) (stressing the lack of mental health resources available to juveniles, and the correlation between mental health issues and behavior among juvenile offenders).

21. Jordan Boulger, Lindsay Bostwick, & Mark Powers, *Juvenile Recidivism in Illinois: Examining Re-Arrest and Re-Incarceration of Youth Released from the Illinois Department of Juvenile Justice*, ILL. CRIM. JUST. INFO. AUTH., 64-65 (June 2013), [www.icjia.state.il.us/assets/pdf/ResearchReports/Juvenile%20Recidivism%20in%20Illinois\\_063013.pdf](http://www.icjia.state.il.us/assets/pdf/ResearchReports/Juvenile%20Recidivism%20in%20Illinois_063013.pdf) (“[t]here is justifiable concern from criminal justice policymakers, practitioners, and citizens about high recidivism rates of youth released from

addition, ninety-three percent were re-arrested within six years.<sup>22</sup> These numbers are high in comparison to twenty-seven other states that reported rates of recidivism between eight percent and seventy-eight percent.<sup>23</sup> The point of the criminal justice system is rehabilitation, not re-incarceration.<sup>24</sup> The purpose of restorative justice in the juvenile criminal justice system is to rehabilitate juvenile offenders and lessen their chances of recidivism.<sup>25</sup> Furthermore, the cascade effect of restorative justice implemented in the adult criminal justice system would also have a positive impact on juveniles. Juveniles who grow up in a home with one parent, usually the mother, are more likely to join gangs to seek a male influence in their lives.<sup>26</sup> Many of these juveniles begin committing crimes young, and, eventually, get arrested.<sup>27</sup> Despite this vicious cycle, restorative justice can prove to be useful at halting this cycle that perpetuates itself.<sup>28</sup>

---

IDJJ facilities”).

22. *Id.*

23. *Id.* (determining that “re-arrest rates were quite high for this population”).

24. Etienne Benson, *Rehabilitate or Punish? Psychologists Are Not Only Providing Treatment to Prisoners; They’re Also Contributing to Debate Over the Nature of Prison Itself*, 34 AM. PSYCHOL. ASS’N 7 (Jul./Aug. 2003), [www.apa.org/monitor/julaug03/rehab](http://www.apa.org/monitor/julaug03/rehab). “[T]oday’s prisons [are] much more unpleasant--and much less likely to rehabilitate their inhabitants--than in the past[.]” *Id.* The U.S. prison policy used to encourage inmates to develop occupational skills and resolve psychological issues. *Id.* However, the recent “get tough on crime” policy has changed the current system from rehabilitation to sheer punishment. *Id.*

25. Sam Houston State University, *Research Reveals Restorative Justice Reduces Recidivism*, EUREKALERT! (July 28, 2016), [www.eurekaalert.org/pub\\_releases/2016-07/shsu-rrr072716.php](http://www.eurekaalert.org/pub_releases/2016-07/shsu-rrr072716.php) (quoting Jeffrey Bouffard, Professor in the Department of Criminal Justice and Criminology and Research Director for the Correctional Management Institute of Texas at Sam Houston State University: “Our results generally not only support the effectiveness of RJ (restorative justice) programming as compared to traditional juvenile court processing but also suggest that each type of RJ intervention, even those that are minimally involved, reduces recidivism risk relative to juvenile court proceedings”).

26. See Dr. David Sortino, *Absentee Fathers and Juvenile Violence*, PRESS DEMOCRAT (June 4, 2012), [www.davidsortino.blogs.pressdemocrat.com/10129/absentee-fathers-and-juvenile-violence/](http://www.davidsortino.blogs.pressdemocrat.com/10129/absentee-fathers-and-juvenile-violence/) (explaining the correlation between “absentee fathers” and juvenile violence). Dr. Sortino suggests that youths join gangs and look to gang leaders to fill a “fatherless’ void[.]” *Id.*

27. *Id.* “72 percent of adolescents charged with murder grew up without their father.” *Id.* (citing Dr. Dewey G. Cornell, Elissa P. Benedek & David M. Benedek, *Characteristics of Adolescents Charged with Homicide: Review of 72 Cases*, BEHAV. SCI. & LAW (1987)). The likelihood that a teenage male will engage in violent behavior doubles when he is raised without a father or other male influence in his life. Sortino, *supra* note 26.

28. *Restorative Justice: Healing the Cycles of Violence, Incarceration, and Wasted Lives of Youth of Color*, BIONEERS (Aug. 28, 2018), [www.bioneers.org/restorative-justice-healing-the-cycles-of-violence-incarceration-and-wasted-](http://www.bioneers.org/restorative-justice-healing-the-cycles-of-violence-incarceration-and-wasted-)

### C. Comment Overview

The main purpose of this Comment is to identify what restorative justice is and how it looks in practice. Additionally, this Comment will explore the positive and negative effects restorative justice can have. Although it is a concept not known to many, restorative justice has been around for many years and is implemented within some jurisdictions throughout the United States, as well as other countries. It can be effective if done correctly. It will benefit society by decreasing the rate of recidivism, forcing juvenile offenders to take responsibility and make restitution for bad acts, and creating financial benefits because of the decrease in incarcerated youths.

The background section of this Comment will discuss the history of restorative justice and how it came to be. This section will reference statistics of recidivism rates of juveniles in the current criminal justice system. Additionally, it will explain some of the different types of restorative justice programs and the benefits of making those programs available to juveniles. In the analysis section of this Comment, the reader will learn of specific restorative justice court programs currently operating within the United States. This Comment will provide some analysis as to their successes and failures. Additionally, the analysis section will offer a look into the psychological effects of incarceration, which helps explain why the current system is ineffective and recidivism rates are so high. Finally, the proposal section will discuss how to implement restorative justice in Illinois courts and the benefits these programs would have. Although a somewhat difficult and politically driven process, some of the groundwork has been laid through proposed legislation and implementation of restorative justice on a very small scale.

## II. RESTORING SOCIETY: AN ALTERNATIVE TO THE “TOUGH ON CRIME” APPROACH

### A. *The Birth of Restorative Justice*

Restorative justice is a concept that can be applied to criminal justice, civil disputes, and even school discipline.<sup>29</sup> In 1974, in

---

lives-of-youth-of-color-zmbz1808/. In an interview with Jodie Geddes, Community Youth Organizing Coordinator for Restorative Justice for Oakland Youth, Jodie discusses the importance of “healing” the youth and getting involved with the community to stop the violence from spreading. *Id.*

29. Marilyn Armour, *Restorative Justice: Some Facts and History*, 27 DUKE UNIV. PRESS 1, 25-65 (2012), [www.charterforcompassion.org/restorative-justice/restorative-justice-some-facts-and-history](http://www.charterforcompassion.org/restorative-justice/restorative-justice-some-facts-and-history).

Kitchener, Ontario, Canada, a probation officer named Mark Yantzi arranged for two teenage offenders to meet with twenty-two people whose homes were vandalized by the juveniles.<sup>30</sup> The juveniles heard of the impact their crimes had on the victims.<sup>31</sup> Ultimately, the juveniles paid restitution to those victims.<sup>32</sup> This was the birth of restorative justice.<sup>33</sup> However, prior to restorative justice, the court system was not as favorable to the idea of restitution.<sup>34</sup>

### B. “The Old”—An Antiquated Approach

In the mid-1990s, many states were in favor of a tougher judicial approach to juvenile crime.<sup>35</sup> Some states enacted transfer laws, which lowered the age required to transfer a juvenile from the juvenile court system to the adult system.<sup>36</sup> A transfer law requires a juvenile to be prosecuted in an adult court regardless of his or her age.<sup>37</sup> In other states like California, they passed bills that sent juveniles to overcrowded and violent juvenile prisons.<sup>38</sup> Many of these juveniles were then tried as adults and, eventually,

---

30. See Ted Wachtel, *Defining Restorative*, INT’L INST. FOR RESTORATIVE PRACTICES, 2 (2016), [www.static1.squarespace.com/static/5d701917e72733000175fea2/t/5de4b0d47199857508c0f759/1575268565647/1.+Defining-Restorative\\_Nov-2016.pdf](http://www.static1.squarespace.com/static/5d701917e72733000175fea2/t/5de4b0d47199857508c0f759/1575268565647/1.+Defining-Restorative_Nov-2016.pdf) (discussing the history of restorative justice, the various types of restorative justice programs, and the effects of restorative justice).

31. *Id.*

32. *Id.*

33. See Paige Desmond, *Elmira Vandalism Spree Led to Restorative Justice Movement*, THERECORD.COM (Mar. 11, 2014), [www.therecord.com/news-story/4407394-elmira-vandalism-spree-led-to-restorative-justice-movement/](http://www.therecord.com/news-story/4407394-elmira-vandalism-spree-led-to-restorative-justice-movement/) (quoting Russ Kelly, one of the parties involved in the vandalism incident which led Mark Yantzi to propose restorative justice to the judge). Kelly stated the incident had a major impact on his life, but never fully realized the impact it had on other’s lives. *Id.*; see also *How a Drunken Rampage Changed Legal History*, CMTY. JUST. INITIATIVES, [www.cjiwr.com/the-elmira-case/](http://www.cjiwr.com/the-elmira-case/) (last visited Mar. 15, 2020).

34. See *Restorative Justice*, JOHN HOWARD SOC’Y ALBERTA (1997), [www.johnhoward.ab.ca/wp-content/uploads/docs/RestorativeJustice\\_1997.pdf](http://www.johnhoward.ab.ca/wp-content/uploads/docs/RestorativeJustice_1997.pdf) (asserting that “[v]ictim satisfaction with the overall outcome has been ignored”); see also *Restitution*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining restitution as the “[r]eturn . . . of some specific thing to its rightful owner or status”).

35. Richard E. Redding, *Adult Punishment for Juvenile Offenders: Does It Reduce Crime?* (Villanova Pub. Law & Legal Theory Working Paper Series, Paper No. 2006-03, 2006), [www.ssrn.com/abstract=896548](http://www.ssrn.com/abstract=896548).

36. *Id.*

37. Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. DEP’T JUST.: OFF. JUST. PROGRAMS: OFF. JUV. JUST. & DELINQ. PREVENTION, 2 (Sept. 2011), [www.ncjrs.gov/pdffiles1/ojdp/232434.pdf](http://www.ncjrs.gov/pdffiles1/ojdp/232434.pdf).

38. 2000 Cal. Legis. Serv. 1163 (West).

incarcerated with the same.<sup>39</sup> Additionally, juvenile detention halls became mandatory for youths charged with certain crimes.<sup>40</sup> The unfortunate reality was that the majority of Americans believed in this drastic change to the juvenile justice system.<sup>41</sup> But, not all faith was lost as some supporters still believed in and acknowledged the need for rehabilitative powers in the juvenile justice system.<sup>42</sup>

Throughout the 1970s and well into the 1980s, a small number of restorative justice programs were formed and were successful.<sup>43</sup> In 1983, Texas instituted Probationer Restitution Centers (PRC) to combat overcrowded prisons.<sup>44</sup> The idea behind PRC was to violate a probationer<sup>45</sup> for a minor offense, such as delinquency of payments to the county.<sup>46</sup> The court would then arrange for the probationer to remain at the PRC for a short period of time until he or she could make restitution.<sup>47</sup> The Polk County Iowa District Attorney's Office also implemented its Restorative Justice Center in the 1980s, which included a truancy program.<sup>48</sup> Consequently, in 1994, the American Bar Association (ABA) endorsed victim-offender mediation, which was another form of restorative justice.<sup>49</sup> By 2008, the ABA began to offer grants for restorative justice programs in an effort to expand on the concept and facilitate results.<sup>50</sup>

---

39. Redding, *supra* note 35, at 3.

40. See Rani A. Desai et al., *Mental Healthcare in Juvenile Detention Facilities: A Review*, J. AM. ACAD. PSYCHIATRY & LAW (June 2006), [www.jaapl.org/content/34/2/204](http://www.jaapl.org/content/34/2/204) (discussing the need for mental health services in juvenile detention centers because so many incarcerated juveniles incarcerated suffer from mental health issues).

41. Redding, *supra* note 35, at 2.

42. *Id.*

43. Jeff Latimer & Steven Kleinknecht, *The Effects of Restorative Justice Programming: A Review of the Empirical*, DEP'T JUST. CANADA 5 (Jan. 2000), [www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00\\_16/rr00\\_16.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00_16/rr00_16.pdf).

44. See Matt Clarke, *Texas Counties Give Up on Probationer Restitution Centers*, PRISON LEGAL NEWS 25 (Mar. 15, 2010), [www.prisonlegalnews.org/news/2010/mar/15/texas-counties-give-up-on-probationer-restitution-centers/](http://www.prisonlegalnews.org/news/2010/mar/15/texas-counties-give-up-on-probationer-restitution-centers/) (discussing the closing of several of Texas' PRC because of costs associated with maintaining the centers). Although the centers were instituted with good intentions, the counties came up with other ways to combat delinquency for probationers. *Id.*

45. See Sara J. Berman, *Probation Revocation*, NOLO, [www.nolo.com/legal-encyclopedia/probation-revocation.html](http://www.nolo.com/legal-encyclopedia/probation-revocation.html) (last visited Apr. 14, 2020). If a defendant fails to meet one or more court-imposed conditions of his probation, prosecutors may ask the court to revoke probation. *Id.* Revocation of probation could result in imposition of the original sentence. *Id.*

46. *Id.*

47. *Id.*

48. Telephone Interview with Sarah Bird, Program Manager for the Polk County Attorney's Restorative Justice Center (Nov. 1, 2018).

49. Armour, *supra* note 29.

50. *Id.*



C. “The New”— Why Should We Consider Restorative Justice?

In 2015, approximately 884,900 cases were heard in courts with juvenile jurisdiction.<sup>51</sup> This number equates to roughly 2,400 cases per day, and the offenses ranged from homicide to vandalism.<sup>52</sup> More than thirty-one million juveniles were under the supervision of the juvenile court, and of this thirty-one million, seventy-nine percent of the juveniles were between the ages of ten and fifteen.<sup>53</sup> In Illinois specifically, there were 21,244 juveniles who were responsible for 32,022 total juvenile arrests in 2015 alone.<sup>54</sup> Even more astounding was the 11,122 juveniles admitted to a secured detention facility.<sup>55</sup> Equally alarming was the rate of recidivism of juvenile offenders: Approximately sixty percent of juvenile offenders were rearrested within one year of release and 89 percent were rearrested within three years.<sup>56</sup>

The point of restorative justice is to restore the offender, the victims, and the community to the original position each was in before the offender committed the crime.<sup>57</sup> However, our current criminal justice system is “offender driven”<sup>58</sup> and aimed at punishment.<sup>59</sup> The system is aimed at incarceration. Even more so,

---

51. See Sarah Hockenberry & Charles Puzzanchera, *Juvenile Court Statistics 2015*, NAT'L CTR. FOR JUV. JUST. (April 2018), [www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2015.pdf](http://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2015.pdf) (reporting the statistical analysis for juvenile crime rates throughout the nation and comparing and contrasting the trend within past years).

52. *Id.*

53. *Id.*

54. See Erica Hughes & Jessica Reichert, *An Overview of Problem Solving Courts and Implications for Practice*, ILL. CRIM. JUST. INFO. AUTH. (Dec. 11, 2017), [www.icjia.illinois.gov/researchhub/articles/an-overview-of-problem-solving-courts-and-implications-for-practice](http://www.icjia.illinois.gov/researchhub/articles/an-overview-of-problem-solving-courts-and-implications-for-practice) (providing a state and national overview of restorative justice within the court system, as well as its effects on recidivism and public safety).

55. *Id.*

56. *Id.*

57. See *How Does Restorative Justice Work?*, RESTORATIVE PARTNERS, [www.restorativepartners.org/blog/restorative-justice-how-does-it-work.php](http://www.restorativepartners.org/blog/restorative-justice-how-does-it-work.php) (last visited Apr. 17, 2020) (explaining that the purposes behind restorative justice programs are to help those who have committed crimes to transform and to restore balance and peace to the community).

58. See Common, *Common: Our Criminal Justice System Needs an Overhaul*, USA TODAY (Aug. 16, 2017), [www.usatoday.com/story/opinion/policing/spotlight/2017/08/16/common-our-criminal-justice-system-needs-overhaul/557544001/](http://www.usatoday.com/story/opinion/policing/spotlight/2017/08/16/common-our-criminal-justice-system-needs-overhaul/557544001/) (inferring that an offender-driven criminal justice system is one that is not focused on rehabilitation, but instead focused only on incarcerating offenders).

59. See Mark S. Umbreit, *Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment*, W. CRIMINOLOGY REV. (1998), [www.westerncriminology.org/documents/WCR/v01n1/Umbreit/Umbreit.html](http://www.westerncriminology.org/documents/WCR/v01n1/Umbreit/Umbreit.html) (emphasizing the importance of restorative justice and analyzing the effects of

incarceration is no longer aimed at rehabilitation. Instead, it is aimed at isolation. No one act should define a person for the rest of his or her life. Restorative justice shifts the focus from punishment and moves towards restitution.<sup>60</sup> Restitution can be in the form of community service, repaying the victims, letters of apology, or various other means that a judge may impose.<sup>61</sup> Restitution paves the way for communication because it forces the offender and the victim to interact with one another.<sup>62</sup> Within these interactions, the parties learn from one another, and often times this learning can be life-changing.<sup>63</sup> It also forces the offender to accept responsibility for his actions, and restitution can even have a humbling effect on a person.<sup>64</sup> Performing this act of restitution in the public eye may also shame the offender, which will ultimately deter him from committing a crime in the future.<sup>65</sup>

With the exception of the North Lawndale restorative justice

---

its implementation in some jurisdictions throughout the United States).

60. GERRY JOHNSTONE, *RESTORATIVE JUSTICE: IDEAS, VALUES, AND DEBATES* (2002).

61. Christopher Bright, *Restitution*, CTR. FOR JUST. & RECONCILIATION (2018), [www.restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/restitution/#sthash.nUZuWgTx.dpbs](http://www.restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/restitution/#sthash.nUZuWgTx.dpbs) (tutorial on the basic concepts of restorative justice).

62. Katie L. Moran, *Restorative Justice: A Look at Victim Offender Mediation Programs*, 4 21ST CENTURY SOC. JUST. 1, 3 (2017), [www.fordham.bepress.com/cgi/viewcontent.cgi?article=1033&context=swjournal](http://www.fordham.bepress.com/cgi/viewcontent.cgi?article=1033&context=swjournal).

The success of Victim Offender Mediation within the juvenile justice system relies on ‘the possibility of reframing or recreating the relationship [between victim and offender] in such a way that the needs of both parties are met more adequately than they currently are’ or would have been by the courts.

*Id.* (quoting Barton Poulson, *Recreating Relationships: The Interpersonal Implications of Restorative Justice for Juvenile Offenders and Their Victims*, 10 J.L. Fam. Stud. 161, 161 (2007)).

63. Moran, *supra* note 62.

64. See Beverly Engel, *The Power of Apology*, PSYCHOL. TODAY (July 1, 2002), [www.psychologytoday.com/us/articles/200207/the-power-apology](http://www.psychologytoday.com/us/articles/200207/the-power-apology) (discussing the importance of apology to one’s mental and physical health). “Apology has the power to humble even the most arrogant . . . [and] offer restitution, or a promise to take action so that you will not repeat the behavior.” *Id.*

65. See David Rosen, *Crime & Public Shaming*, COUNTER PUNCH (Apr. 15, 2016), [www.counterpunch.org/2016/04/15/crime-public-shaming/](http://www.counterpunch.org/2016/04/15/crime-public-shaming/) (quoting Aaron S. Book, *Shame on You: An Analysis of Modern Shame Punishment as an Alternative to Incarceration*, 40 WM. & MARY. L. REV. 653 (1999) (analyzing the debate on whether the use of shame punishment as a form of cruel and unusual punishment). “[S]hame punishment is good for society because it allows offenders to return to productive lives without the stigma of prison on their records, and it provides the public with some tangible evidence that the offenders are paying their debts to society.” Book, *supra* note 65, at 671.

court in Chicago, there are no formal restorative justice programs in Illinois.<sup>66</sup> Restorative justice is still a relatively new concept within the Illinois criminal justice system.<sup>67</sup> However, there are judges who support the concept and, within their judicial powers, apply restorative justice as a guideline when sentencing.<sup>68</sup> Many judges find recidivism unacceptable when they see the same person stand before them on charge after charge.<sup>69</sup> These judges strongly advocate for reform.<sup>70</sup> They see the need for restorative justice, and many know the effects it can have.<sup>71</sup>

On May 14, 2015, the Juvenile Justice and System Involved Youth Committee adopted a bill.<sup>72</sup> This bill allows the Illinois Juvenile Justice Commission to review restorative justice programs in Illinois, as well as other states, and formulate a recommendation for how restorative justice will formally become part of the juvenile criminal justice system.<sup>73</sup> The overall goal is “restoring public safety through restoration of the child in conflict with the law, within a system that incorporates the full range of due process and human rights protections, maximizing community based responses and utilizing incarceration only as a last resort for as short a time as possible.”<sup>74</sup>

“The further you introduce a child into the criminal justice

---

66. *Restorative Justice Community Court Arrives in North Lawndale*, STATE ILL. CIR. CT. COOK CTY. (July 20, 2017), [www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2564/Restorative-Justice-Community-Court-arrives-in-North-Lawndale.aspx](http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2564/Restorative-Justice-Community-Court-arrives-in-North-Lawndale.aspx) (hereinafter “*North Lawndale*”).

67. See Yana Kunichoff, *Should Communities Have a Say in How Residents Are Punished for Crime?*, ATLANTIC (May 2, 2017), [www.theatlantic.com/politics/archive/2017/05/chicago-restorative-justice-court/524238/](http://www.theatlantic.com/politics/archive/2017/05/chicago-restorative-justice-court/524238/) (discussing the opening of the North Lawndale Community Court as Illinois’ first attempt to implement restorative justice).

68. *Id.*

69. See Kelly Puente & Sean Emery, *Are Criminal Repeat Offenders Being Given Too Many Second Chances?*, ORANGE CTY. REG. (Jan. 5, 2015), [www.oregister.com/2015/01/05/are-criminal-repeat-offenders-being-given-too-many-second-chances/](http://www.oregister.com/2015/01/05/are-criminal-repeat-offenders-being-given-too-many-second-chances/) (discussing current sentencing and its ineffectiveness). Judges have a very difficult job of determining the appropriate sentencing. *Id.* This article suggests that the need for change begins with the offender, because, otherwise, the offender will recidivate and exhibit the same behavior. *Id.*

70. See Gordon Bazemore, *Crime Victims and Restorative Justice in Juvenile Courts: Judges as Obstacle or Leader?*, W. CRIMINOLOGY REV. (1998), [www.westerncriminology.org/documents/WCR/v01n1/Bazemore/Bazemore.html](http://www.westerncriminology.org/documents/WCR/v01n1/Bazemore/Bazemore.html) (stating juvenile justice “decisionmakers” support restorative justice as an idea of reform within the courts, but the concern exists as to the practicality of the process). Judges also fear there are not enough resources to accommodate victims. *Id.*

71. *Id.*

72. SR0477, 99th Gen. Assemb. (Ill. 2015).

73. *Id.*

74. *Id.*

system, the more likely a child is going to recidivate.”<sup>75</sup> Unfortunately, the current options offered by the courts are either do nothing or send juveniles to criminal court.<sup>76</sup> By doing nothing, the juvenile offender does not accept responsibility, and, furthermore, the juvenile believes that his actions carry no consequences.<sup>77</sup> On the contrary, sending the juvenile to the criminal court exposes him to a whole new world.<sup>78</sup> The penalties are harsher, as are the people, and the juvenile tends to meet other criminals while incarcerated, thus expanding his “criminal capital.”<sup>79</sup> Adult criminal courts are for adults, not juveniles.<sup>80</sup> Restorative justice is a common ground which forces the juvenile to accept responsibility and make efforts to make better choices.<sup>81</sup>

#### *D. The Types of Restorative Justice Programs and Its Effects on the Community*

Different types of restorative justice programs include: victim/offender mediation or dialogue, conferencing, peacemaking circles, victim assistance and involvement, former prisoner assistance and involvement, real restitution, and community

---

75. See Jay Stapleton, *Young Justice: Review Boards Take Juvenile Matters Outside Court System*, CONN. L. TRIB. (June 15, 2012), [www.law.com/ctlawtribune/almID/1202559737436/young-justice/](http://www.law.com/ctlawtribune/almID/1202559737436/young-justice/) (quoting Judge Christine Keller, who endorses the use of restorative justice programs rather than the alternative of incarcerating a juvenile and placing them at the mercy of the criminal justice system). Most matters are better handled among the members of the community. *Id.*

76. *Id.*

77. See Redding, *supra* note 35 (drawing a reasonable conclusion from studies where juveniles stopped committing crimes because they knew they would be tried as adults). Many juveniles admitted that the reason they committed the crime was because they thought they would only receive a slap on the wrist. *Id.*

78. See Brad Plumer, *Throwing Children in Prison Turns Out to Be a Really Bad Idea*, WASH. POST (June 15, 2013), [www.washingtonpost.com/news/wonk/wp/2013/06/15/throwing-children-in-prison-turns-out-to-be-a-really-bad-idea/?noredirect=on&utm\\_term=.e75e4ec7810f](http://www.washingtonpost.com/news/wonk/wp/2013/06/15/throwing-children-in-prison-turns-out-to-be-a-really-bad-idea/?noredirect=on&utm_term=.e75e4ec7810f) (discussing alternative punishment for juveniles and the negative effect of incarceration on juveniles).

79. *Id.*

80. Deborah Brodsky, *No Place for a Child: Children in the Adult Criminal Justice System*, J. JAMES MADISON INST., 61 (2015), [www.iamforkids.org/wp-content/uploads/2015/07/Juvenile-Justice-JMI-Journal-Spring-2015-17.pdf](http://www.iamforkids.org/wp-content/uploads/2015/07/Juvenile-Justice-JMI-Journal-Spring-2015-17.pdf). “Prosecuting children as adults has failed as an effective public policy.” *Id.*

81. See John Braithwaite, *Accountability and Responsibility Through Restorative Justice*, in PUBLIC ACCOUNTABILITY: DESIGNS, DILEMMAS AND EXPERIENCES 33-51 (Michael W. Dowdle ed., 2006) (explaining that responsibility is both passive and active). Active is utilized in restorative justice because the juvenile must take responsibility of his actions. *Id.* Once responsibility is taken, justice is done. *Id.*

service.<sup>82</sup> Victim/offender mediation often consists of just the victim and the offender engaging with one another.<sup>83</sup> As previously mentioned, this affords the opportunity for both parties to learn things about each other that may positively impact their lives, and it encourages reconciliation.<sup>84</sup> Peacemaking circles are group settings where the juvenile offenders can speak with each other.<sup>85</sup> The point of the circle is to make the juvenile feel safe amongst his peers.<sup>86</sup> This can lead to the juvenile opening up about past experiences, difficulties in life, or possible trauma from his past.<sup>87</sup> Former prisoner assistance can have a major impact, especially on a juvenile.<sup>88</sup> Within this type of restorative justice program, a former prisoner will speak with the juvenile offender and share his experiences.<sup>89</sup> It is helpful sometimes for a juvenile to see and speak with someone he can relate to on a personal level.<sup>90</sup>

Other than the positive effects restorative justice programs have on juvenile offenders, it can also have a positive impact on the victims.<sup>91</sup> This is an important part of the restorative justice process

---

82. See *Restorative Justice*, INSIGHT PRISON PROJECT, [www.insightprisonproject.org/a-restorative-justice-agency.html](http://www.insightprisonproject.org/a-restorative-justice-agency.html) (last visited Apr. 4, 2019) (citing SUSAN SHARPE, *RESTORATIVE JUSTICE: A VISION FOR HEALING AND CHANGE* (1998)).

83. See *Learn About Victim Offender Mediation (VOM)*, VICTIM OFFENDER MEDIATION ASS'N, [www.voma.org/abtvom.shtml](http://www.voma.org/abtvom.shtml) (last visited Mar. 30, 2020) (explaining the victim offender mediation process, its history, and how it can be effective).

84. *Id.*

85. See Amy Bintliff, *Talking Circles: For Restorative Justice and Beyond*, TEACHING TOLERANCE (July 22, 2014), [www.tolerance.org/magazine/talking-circles-for-restorative-justice-and-beyond](http://www.tolerance.org/magazine/talking-circles-for-restorative-justice-and-beyond) (discussing peacemaking circles as an effective form of communication within schools). Bintliff is a proponent for restorative justice implementation within schools as opposed to expulsion or suspension and believes these circles are an effective form of communication among students and teachers. *Id.*

86. *Id.*

87. See Claudia Rowe, *King County Sticks with Peace Circles for Juvenile Crime, Even After a Murder Charge*, SEATTLE TIMES (Apr. 11, 2018), [www.seattletimes.com/education-lab/king-county-sticks-with-peace-circles-for-juvenile-crime-even-after-a-murder-charge/](http://www.seattletimes.com/education-lab/king-county-sticks-with-peace-circles-for-juvenile-crime-even-after-a-murder-charge/) (describing peacemaking circles as “miraculous” even after a restorative justice approach backfired when a participant was arrested for committing a violent crime).

88. Martha Henderson Hurley, *Restorative Practices in Institutional Settings and at Release: Victim Wrap Around Programs*, 73 FED. PROB. J. 1 (2009), [www.uscourts.gov/sites/default/files/73\\_1\\_3\\_0.pdf](http://www.uscourts.gov/sites/default/files/73_1_3_0.pdf).

89. *Id.*

90. Kimberly Trembley, *Offenders Speak: Gaining a New Perspective on What Works in Reducing Recidivism Among Young Adults* 30 (St. Catherine University, Master of Social Work Clinical Research Papers, clinical research paper, 2016), [www.sophia.stkate.edu/cgi/viewcontent.cgi?article=1685&context=msw\\_papers](http://www.sophia.stkate.edu/cgi/viewcontent.cgi?article=1685&context=msw_papers).

91. Hon. Colleen Sheehan, *A View From the Bench in Juvenile Court*, in RESTORATIVE JUSTICE IN PRACTICE: A HOLISTIC APPROACH (Sheila Murphy &

because, after all, the point is to restore the offender and the victim to the same position they were in before the crime.<sup>92</sup> What restorative justice does is it makes justice more “healing and transformative.”<sup>93</sup> A decision as important as imposing punishment should be placed into the hands of those most affected by the crime.<sup>94</sup>

### III. THE NEED FOR CHANGE BEGINS WITH RESTORATIVE JUSTICE

#### A. *The Real Reason for Recidivism Is Incarceration*

There are many reasons that restorative justice should be a necessary part of the criminal justice system, particularly when discussing juveniles. Children are affected both psychologically and socially as a result of growing up without access to at least one parent.<sup>95</sup> According to the United States Census Bureau, one in three children is without a father in the United States.<sup>96</sup> Children that are raised without a father are more likely to exhibit aggressive behavior, become depressed, have low self-esteem, do poorly in school, become incarcerated, commit suicide, or use drugs.<sup>97</sup> Additionally, adolescent boys raised in a one-parent household are more likely to be incarcerated and to adopt worse behavior while incarcerated.<sup>98</sup> This means there is an extremely high risk that the child will become a prisoner later in life, and, after imprisonment, it is almost impossible to reintegrate into society.<sup>99</sup>

There are many interconnected challenges that contribute to

---

Michael P. Seng eds., 2015).

92. *Id.*

93. *Id.* at 134.

94. *Id.* (discussing the need for change within the juvenile criminal justice system but recognizing the difficulty in implementing such reform).

95. See MURPHY & SENG, *supra* note 91, at 97.

96. See Melissa Steward, *The Father Absence Crisis in America*, NAT'L FATHERHOOD INITIATIVE (Nov. 12, 2013), [www.fatherhood.org/the-father-absence-crisis-in-america](http://www.fatherhood.org/the-father-absence-crisis-in-america) (asserting that “[t]here is a crisis in America” caused by the negative impact having only one parent has on a child).

97. See Michael Kismet, *Psychological Effects of Growing Up Without a Father*, OWLCATION (Oct. 30, 2018), [www.owlcation.com/social-sciences/Psychological-Effects-On-Men-Growing-Up-Without-A-Father](http://www.owlcation.com/social-sciences/Psychological-Effects-On-Men-Growing-Up-Without-A-Father) (describing the consequences of growing up with only one parent in the household and recounting personal experiences of the like).

98. M. Eileen Matlock et al., *Family Correlates of Social Skills Deficits in Incarcerated and Nonincarcerated Adolescents*, ADOLESCENCE, Spring 1994, at 117.

99. Simmons Staff, *The Challenges of Prisoner Re-Entry into Society*, SIMMONS UNIV. (Jul. 12, 2016), [www.socialwork.simmons.edu/blog/Prisoner-Reentry/](http://www.socialwork.simmons.edu/blog/Prisoner-Reentry/).

recidivism amongst recently released individuals.<sup>100</sup> It is generally difficult for them to find employment; parole restrictions such as geographic limitations or random searches by parole officers, fees, and limitations on social activities all make it difficult for a recently released person to reintegrate into society.<sup>101</sup> Many of these challenges actively deter a person from becoming a productive member of society.<sup>102</sup> Imprisonment lessens the chance for an effective parent-child relationship.<sup>103</sup> In infants, for example, there can be a lack of an emotional bond if one parent is incarcerated during the infancy stage.<sup>104</sup> During a young child's development, the effects of an incarcerated parent could include diminished cognitive abilities, or emotional or psychological problems like depression, anxiety, shame, or guilt.<sup>105</sup> Finally, school-aged children who have an incarcerated parent have been observed as having poor grades, are aggressive, and do not want to go to school out of embarrassment or fear of bullying.<sup>106</sup>

### B. *Psychology and the Supreme Court*

Juvenile offenders have diminished culpability and an increased capacity for change.<sup>107</sup> Prior to 2005, juveniles between sixteen and seventeen years of age who were convicted of homicide offenses were eligible to receive the death penalty.<sup>108</sup> In *Roper v. Simmons*, the United States Supreme Court held that executing a juvenile who was between sixteen and seventeen years old was a violation of the Eighth Amendment.<sup>109</sup> In 2010, the Supreme Court decided *Graham v. Florida*.<sup>110</sup> The Court noted that there were four

---

100. *Id.* Explaining that there are “six basic life needs: livelihood, residence, family, health, criminal justice compliance, and social connections.” *Id.* These six basic life needs, if adequately met, improve someone's re-entry into society after incarceration. *Id.*

101. *Id.*

102. *Id.*

103. Ross D. Park & K. Alison Clarke, *Effects of Parental Incarceration on Young Children*, U.S. DEPT HEALTH & HUM. SERVICES (Dec. 2001), [www.aspe.hhs.gov/basic-report/effects-parental-incarceration-young-children](http://www.aspe.hhs.gov/basic-report/effects-parental-incarceration-young-children).

104. *Id.*

105. *Id.*

106. *Id.* (suggesting that there are different stages in a child's life, and incarceration of a parent at any stage can have a significant effect on the child). These effects can often induce physical or psychological behaviors which stay with the child into adulthood. *Id.*

107. *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

108. See Daniel Dubois & Zach Zemlin, *Juvenile Offenders Before and After Graham v. Florida*, CORNELL UNIV. L. SCH. STUDENT PROJECTS (2010), [www.courses2.cit.cornell.edu/sociallaw/student\\_projects/juvenileoffenders.html](http://www.courses2.cit.cornell.edu/sociallaw/student_projects/juvenileoffenders.html) (summarizing three hallmark cases heard by the Supreme Court regarding juveniles: *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*).

109. *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005).

110. *Graham v. Florida*, 560 U.S. 48, 71 (2010).

main goals of sentencing: retribution, deterrence, incapacitation, and rehabilitation.<sup>111</sup> Moreover, assigning a sentence of life without the possibility of parole to a juvenile convicted of a non-homicide offense did not serve any of these goals.<sup>112</sup> As such, the Court held that a juvenile convicted of a non-homicide offense could not be sentenced to life without the possibility of parole.<sup>113</sup> Finally, in 2012, the Supreme Court decided *Miller v. Alabama*.<sup>114</sup> The Court extended *Graham* and held that a juvenile convicted of a homicide offense could not be sentenced to life without the possibility of parole.<sup>115</sup>

Current social science studies support the holdings of *Roper*, *Graham*, and *Miller*.<sup>116</sup> The general consensus within the social science community is that juveniles are generally less culpable than adults.<sup>117</sup> A juvenile's brain is not as developed as an adult's brain.<sup>118</sup> Criminal behavior is not seen as a permanent part of a juvenile's character.<sup>119</sup> Furthermore, a juvenile is not born a serious criminal, nor does he become one instantaneously.<sup>120</sup> In the juvenile criminal justice system, there is a chance to intervene early when a juvenile commits petty offenses.<sup>121</sup> These are the instances where rehabilitation is effective and can serve to deter – as voiced in *Graham* – a juvenile from re-offending and committing more serious offenses.<sup>122</sup>

---

111. *Id.* at 74.

112. *Id.*

113. *Id.*

114. *Miller*, 567 U.S. 460.

115. *Id.* at 472.

116. See Dubois & Zemlin, *supra* note 108 (citing Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. L. 741 (2000)).

117. Cauffman & Steinberg, *supra* note 116, at 741-42.

118. See *Juvenile Justice and the Adolescent Brain*, MASS. GEN. HOSP. CTR. FOR L., BRAIN, & BEHAV., [www.clbb.mgh.harvard.edu/juvenilejustice/](http://www.clbb.mgh.harvard.edu/juvenilejustice/) (last visited Mar. 29, 2020) (discussing how brain science is key to reforming juvenile criminal justice policies and practices).

119. *Provide Immediate Intervention and Appropriate Sanctions and Treatment for Delinquent Juveniles, in Combating Violence and Delinquency: The Juvenile Justice Action Plan*, U.S. DEPT JUST.: OFF. JUST. PROGRAMS: OFF. JUV. JUST. & DELINQ. PREVENTION (1996), [www.ojjdp.gov/action/sec1.htm](http://www.ojjdp.gov/action/sec1.htm).

120. *Id.*

121. *Id.*

122. Carolyn B. Lamm, *Youth Offenders Deserve a Chance for Rehabilitation*, ROLL CALL (Nov. 11, 2009), [www.rollcall.com/news/-40524-1.html](http://www.rollcall.com/news/-40524-1.html).



### C. *The Positive Effects of Restorative Justice*

There are many positive effects of implementing restorative justice within the criminal justice system.<sup>123</sup> Lives of juveniles who do not understand the gravity of their conduct would be salvaged, not ruined.<sup>124</sup> Incarcerated youth are more likely to commit serious offenses – like homicide, drug offenses, or other violent crimes – than a juvenile who has not been incarcerated.<sup>125</sup> Contrast this with a juvenile who did not serve any time and was more likely to finish school and not re-offend.<sup>126</sup> This is especially troubling when looking at juveniles who have been incarcerated for very minor behavioral issues like truancy.<sup>127</sup> By incarcerating a juvenile and giving him the stigma of being a criminal, the court system is setting up a pipeline of recidivism.<sup>128</sup> The point of the juvenile justice system is rehabilitation.<sup>129</sup> Restorative justice is rehabilitative because it avoids branding a juvenile as a criminal and making him feel shameful or embarrassed.<sup>130</sup> Rather, it forces the juvenile to take responsibility for his actions and to make restitution.<sup>131</sup> Overall, the goal is to lessen the likelihood of the juvenile to recidivate.<sup>132</sup>

In a restorative justice model,<sup>133</sup> juvenile offenders would receive the proper amount of social services, rather than being punished in the adult criminal justice system.<sup>134</sup> There are five

123. Rory I. Lancman & Joshua Kingsley, *Raising the Age Raises Us All*, N.Y. L.J. (Jan. 17, 2017), [www.law.com/newyorklawjournal/almID/1202776950307/Raising-the-Age-Raises-Us-All/?sreturn=20200218222805](http://www.law.com/newyorklawjournal/almID/1202776950307/Raising-the-Age-Raises-Us-All/?sreturn=20200218222805).

124. *Id.*

125. Zack Beauchamp, *Study: Throwing Kids in Jail Makes Crime Worse, Ruins Lives*, THINK PROGRESS (June 17, 2013), [www.thinkprogress.org/study-throwing-kids-in-jail-makes-crime-worse-ruins-lives-f67672a65637/](http://www.thinkprogress.org/study-throwing-kids-in-jail-makes-crime-worse-ruins-lives-f67672a65637/).

126. *Id.*

127. *Id.* (discussing the “school-to-prison pipeline” where juveniles are arrested for minor offenses and thrown into the criminal justice system).

128. *Id.*

129. *Juvenile Justice*, YOUTH.GOV, [www.youth.gov/youth-topics/juvenile-justice](http://www.youth.gov/youth-topics/juvenile-justice) (last visited Mar. 27, 2020). “The primary goals of the juvenile justice system, in addition to maintaining public safety, are skill development, habilitation, rehabilitation, addressing treatment needs, and successful reintegration of youth into the community.” *Id.*

130. See Nuri Nusrat, *What Is—and Is Not—Restorative Justice?*, NAT'L COUNCIL ON CRIME & DELINQ. (Aug. 20, 2013), [www.nccdglobal.org/newsroom/nccd-blog/what-and-not-restorative-justice](http://www.nccdglobal.org/newsroom/nccd-blog/what-and-not-restorative-justice) (explaining that “[r]estorative justice does not seek to alienate or isolate people”).

131. *Id.*

132. *Id.*

133. *Restorative Justice*, *supra* note 82. Restorative justice is a process where offenders and victims come together to achieve actual restitution. *Id.* Rather than incarcerating the offender and leaving the victim without answers, restorative justice seeks to mend human relationships through “dialogue, community support, involvement, and inclusion.” *Id.*

134. See Beauchamp, *supra* note 125.

influential areas of a juvenile's life: neighborhood, family, school, peers, and individual characteristics.<sup>135</sup> Risk factors within one of these five categories make it more likely that a juvenile will resort to delinquent behavior.<sup>136</sup> Some of these risk factors include the availability of drugs and weapons within the community, violent home-life, unaddressed academic failures, friends with violent behavior, etc.<sup>137</sup> What is crucial is addressing which of these risk factors are present within the community and identifying the available social services needed to combat those factors.<sup>138</sup> In restorative justice, the juvenile would receive the proper social services like mentoring programs, counseling, group therapy in the form of peacemaking circles, conferencing, or victim assistance and involvement.<sup>139</sup> This can be especially effective in a community that is impoverished or riddled with drugs and violence. A mentor is seen as a peer and can often be more influential than a parent.<sup>140</sup> Positive reinforcements in a juvenile's life at an early stage can make all the difference in the rehabilitative process.<sup>141</sup>

Restorative justice would also apply a community-based policing strategy for addressing crime.<sup>142</sup> Law enforcement policies should strengthen communities, not undermine them.<sup>143</sup> Unfortunately, tensions between law enforcement and communities are high.<sup>144</sup> Recent events involving police officers have caused a

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Mentoring for Youth Who Have Been Arrested or Incarcerated*, NAT'L MENTORING RES. CTR., [www.nationalmentoringresourcecenter.org/index.php/30-topic-areas/173-mentoring-for-youth-who-have-been-arrested-or-incarcerated.html?highlight=WyJwZWVyiwiGVlcnMiLCJtZW50b3JpbmciLCJtZW50b3IiLCJtZW50b3JzIiwibWVudG9yJ3MiLCJtZW50b3JlZCIIm1bnRvcnMnIiwibWVudG9yaW5nJ3MiLCInbWVudG9yJyIsInBIZXIgbWVudG9yaW5nIl0=](http://www.nationalmentoringresourcecenter.org/index.php/30-topic-areas/173-mentoring-for-youth-who-have-been-arrested-or-incarcerated.html?highlight=WyJwZWVyiwiGVlcnMiLCJtZW50b3JpbmciLCJtZW50b3IiLCJtZW50b3JzIiwibWVudG9yJ3MiLCJtZW50b3JlZCIIm1bnRvcnMnIiwibWVudG9yaW5nJ3MiLCInbWVudG9yJyIsInBIZXIgbWVudG9yaW5nIl0=) (last visited Mar. 28, 2020).

140. Mary Ila Ward, *Do Mentors Matter More Than Bosses and Parents? How to Establish Mentor/Mentee Relationships*, HORIZON POINT CONSULTING (Apr. 25, 2017), [www.horizonpointconsulting.com/blog3/item/do-mentors-matter-more-than-bosses-and-parents-how-to-establish-mentormentee-relationships/](http://www.horizonpointconsulting.com/blog3/item/do-mentors-matter-more-than-bosses-and-parents-how-to-establish-mentormentee-relationships/).

141. Ben M. F. Law, Andrew M. H. Siu, & Daniel T. L. Shek, *Recognition for Positive Behavior as a Critical Youth Development Construct: Conceptual Bases and Implications on Youth Service Development*, SCI. WORLD J. (2011), [www.downloads.hindawi.com/journals/tswj/2012/809578.pdf](http://www.downloads.hindawi.com/journals/tswj/2012/809578.pdf).

142. Lancman & Kingsley, *supra* note 123.

143. *Our Mission*, L. ENFORCEMENT LEADERS, [www.lawenforcementleaders.org/our-mission/](http://www.lawenforcementleaders.org/our-mission/) (last visited Mar. 29, 2020).

144. See Scot Haug & Dale Stockton, *Reducing Tensions Between Police and Citizens*, HENDON MEDIA GROUP (Oct. 2015), [www.hendonpub.com/resources/article\\_archive/results/details?id=5536](http://www.hendonpub.com/resources/article_archive/results/details?id=5536) (discussing the downturn of police/community relations since the 9/11 attacks on the World Trade Center).

large distrust between communities and law enforcement agencies.<sup>145</sup> This is unfortunate because, without the proper amount of trust between a community and local law enforcement, the function of the police is drastically undermined.<sup>146</sup> Consequently, members of communities feel as though they are an afterthought.<sup>147</sup> This has become a serious problem in today's society.<sup>148</sup> Police no longer walk a beat.<sup>149</sup> They are not in touch with what is going on in their communities.<sup>150</sup> They simply show up, handle service calls, and go home.<sup>151</sup> A large part of this is because of the amount of scrutiny they find themselves under.<sup>152</sup>

Many minority communities have lost all faith in law enforcement.<sup>153</sup> A common practice within a police department includes producing numbers, generating revenues, and making arrests.<sup>154</sup> Some police departments have lost the general idea of community policing.<sup>155</sup> With a restorative justice approach, police

---

145. See Michael Friedman, *What Happens When We Don't Trust Law Enforcement?*, PSYCHOL. TODAY (Sept. 9, 2014), [www.psychologytoday.com/us/blog/brick-brick/201409/what-happens-when-we-dont-trust-law-enforcement-0](http://www.psychologytoday.com/us/blog/brick-brick/201409/what-happens-when-we-dont-trust-law-enforcement-0) (referring to the shooting death of Michael Brown and the chokehold death of Eric Garner by law enforcement). Much of this distrust comes from members of the community who feel as though law enforcement officers are not held accountable for their actions. *Id.*

146. *Id.*

147. See Brentin Mock, *What Police and Poor Communities Really Think of Each Other*, CITYLAB (Feb. 23, 2017), [www.citylab.com/equity/2017/02/how-poor-communities-view-the-police/517485/](http://www.citylab.com/equity/2017/02/how-poor-communities-view-the-police/517485/) (discussing the theory that many members of high-crime communities are willing to cooperate with law enforcement, but they fear they will be mistreated by the police). Specifically, predominantly African American communities are skeptical about the treatment they might receive from law enforcement. *Id.*

148. See Friedman, *supra* note 145.

149. See Alissa Walker, *Could Police Keep the Peace by Walking More Beats?*, CURBED (Sept. 27, 2016), [www.curbed.com/2016/9/27/13063102/police-walking-safety-lapd](http://www.curbed.com/2016/9/27/13063102/police-walking-safety-lapd) (explaining that "having law enforcement officials monitor cities in glass and steel bubbles has proven problematic. Not only does a patrol car further isolate police from their communities, it sets up an undeniable us-versus-them hierarchy on American streets").

150. *Id.*

151. David Schaper, *Chicago Crime Spikes as Police Avoid Becoming "The Next Viral Video"*, NPR (Mar. 11, 2016), [www.npr.org/2016/03/11/469974819/chicago-murder-rate-spikes-less-aggressive-policing-blamed](http://www.npr.org/2016/03/11/469974819/chicago-murder-rate-spikes-less-aggressive-policing-blamed).

152. *Id.* (referring to the "Laquan McDonald Effect" which is when officers are worried about dash cam footage capturing a critical incident but being misconstrued and having serious consequences).

153. *Id.*

154. Jack Burns, *Revenue Generation: U.S. Police Departments Are Devising Ever Expanding Methods to Extort Funds from Citizens*, SIGNS TIMES (Dec. 28, 2016), [www.sott.net/article/338123-Revenue-generation-US-Police-departments-are-devising-ever-expanding-methods-to-extort-funds-from-citizens](http://www.sott.net/article/338123-Revenue-generation-US-Police-departments-are-devising-ever-expanding-methods-to-extort-funds-from-citizens).

155. See William Bratton, *Community Policing and Change*, PROJECT FOR

officers would be trained in restorative justice practices. Police officers who are detailed as school resource officers could be most helpful in implementing restorative justice because this is where a lot of the problems arise.<sup>156</sup> A school resource officer would have the ability to take two students who fought and refer them to the restorative justice court.<sup>157</sup> With the restorative justice model, these two students would not simply be charged with battery and sent to the juvenile courts to be sentenced. Rather, restorative justice would force the students to take responsibility for their actions and make restitution. They would participate in peacemaking circles where they could talk about their differences and ultimately resolve them. Moreover, the juveniles would have restored faith in law enforcement because, rather than arresting them, the school resource officer gave them a second chance. Also, restorative justice would force police officers to communicate directly with members of the community because community members volunteer to participate in many restorative justice courts. This would also give police officers a chance to do what most of them signed for: help people.<sup>158</sup> Overall, restorative justice would help restore communities' faith in law enforcement.

#### D. Restorative Justice in Practice

##### 1. New York's Center for Court Innovation

There have been restorative justice programs implemented within some jurisdictions throughout the United States.<sup>159</sup> One notable program is the Center for Court Innovation located in New York.<sup>160</sup> The Center has been operational since 2014.<sup>161</sup> It was

---

PUB. SPACES (Dec. 31, 2018), [www.pps.org/article/bratton](http://www.pps.org/article/bratton) (explaining how taking officers off their beats caused a loss of the "intimate contact and partnerships that those beat officers had for many years with neighborhoods").

156. John Rosiak, *How SROs Can Divert Students from the Justice System*, COPS (May 2015), [www.cops.usdoj.gov/html/dispatch/05-2015/sros\\_and\\_students.asp](http://www.cops.usdoj.gov/html/dispatch/05-2015/sros_and_students.asp).

157. *Id.*

158. See David Lester, *Why Do People Become Police Officers: A Study Of Reasons And Their Predictions Of Success*, 11 J. POLICE SCI. & ADMIN. 170 (1983) (concluding that people want to become police officers to both help people and enforce the law).

159. See ALLISON MORRIS & GABRIELLE MAXWELL, RESTORATIVE JUSTICE FOR JUVENILES: CONFERENCING, MEDIATION AND CIRCLES 4 (2001) (discussing other countries – such as Canada and New Zealand – that utilize restorative justice and how the United States is influenced by these countries and beginning to follow suit despite its reputation for "repressive penal measures").

160. Joseph Darius Jaafari, *Restorative Justice Programs that Work*, NATION SWELL (Sept. 14, 2018), [www.nationswell.com/criminal-justice-reform-restorative/](http://www.nationswell.com/criminal-justice-reform-restorative/).

161. Telephone Interview with Sarah Reckess, *supra* note 11.

originally funded through a three-year, one million dollar United States Department of Justice grant.<sup>162</sup> Additional funding for the Center comes from two county grants focused on youth, with one grant focusing on juvenile justice and the other focusing on mental health funding.<sup>163</sup> Moreover, the Center receives funding from generous private donors and from the New York State Foundation – a private health foundation.<sup>164</sup>

The Center handles cases diverted from the Syracuse City Court.<sup>165</sup> Specifically, cases are referred from the district attorney or directly from a judge.<sup>166</sup> The Center also handles cases referred from the juvenile court judge and from the juvenile probation department.<sup>167</sup> Approximately sixty-seven volunteers make up the majority of the staff at the Center.<sup>168</sup> Those volunteers receive stipends to assist with travel and time spent working.<sup>169</sup> The volunteers complete a twenty-hour training program, which is spread out over a period of a few months.<sup>170</sup> The Center also has a team – called the ACCESS team – which conducts pre-trial work for juveniles coming out of juvenile detention.<sup>171</sup> The ACCESS team is a mentoring program whose initiative is preventing juveniles from re-offending.<sup>172</sup>

Of the cases handled by the Center, eighty-one percent involve an offender who is a child under the age of eighteen.<sup>173</sup> Many juvenile cases are referred from the local school districts where all employees and school resource police officers are trained in the restorative justice model.<sup>174</sup> There is no set criteria an offender must meet to qualify for the Center; however, the Center predominantly handles misdemeanor cases.<sup>175</sup> The Center will not accept a case involving domestic violence or gang violence.<sup>176</sup> The

---

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Youth Courts Train Teenagers to Handle Real-Life Cases Involving Their Peers, Offering a Restorative Response to Misbehavior*, CTR. FOR CT. INNOVATION, [www.courtinnovation.org/node/20100/more-info](http://www.courtinnovation.org/node/20100/more-info) (last visited Mar. 29, 2020).

168. Telephone Interview with Sarah Reckess, *supra* note 11.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. Elise White et. al., *Up and Out: Towards an Evidence-Based Response to Misdemeanors*, CTR. FOR CT. INNOVATION (May 2018), [www.courtinnovation.org/sites/default/files/media/document/2018/upout\\_misdemeanors.pdf](http://www.courtinnovation.org/sites/default/files/media/document/2018/upout_misdemeanors.pdf).

175. *Id.*

176. Jill Filipovic, *Restorative Justice in Domestic Violence Cases is Justice Denied*, *GUARDIAN* (Jan. 12, 2013),

Center has a good relationship with local law enforcement as well as the neighborhood watch community.<sup>177</sup> There is an open and direct line of communication between the agencies.<sup>178</sup>

The juvenile programs have not yet released the current figures on recidivism rates, although the studies are in the process of collecting the necessary data.<sup>179</sup> Among the adults that also participate in the program, almost none of them re-offend.<sup>180</sup> Additionally, many of the offenders who complete the restorative justice program come back to take on leadership roles, especially the juveniles.<sup>181</sup>

## 2. *Restorative Justice Community Court in Chicago North Lawndale*

In Illinois, there is the Restorative Justice Community Court in North Lawndale.<sup>182</sup> The court heard its first case in September 2017, and it is funded through a 200,000 dollar United States Department of Justice grant.<sup>183</sup> Judge Colleen Sheehan, a judge in the juvenile justice court, is largely responsible for the initiation of the court in Chicago.<sup>184</sup> This court is for offenders between eighteen to twenty-six years old who reside in North Lawndale.<sup>185</sup> Part of this program requires the offender to accept responsibility for whatever he or she is accused of.<sup>186</sup> This court's purpose is that it "empowers victims and residents to work as our partners to help restore nonviolent individuals back to society, provide restitution to victims, and improve our overall quality of life."<sup>187</sup>

This court hears non-violent felony and misdemeanor cases.<sup>188</sup> The way this court operates is that once a person is charged with a crime, rather than appear before a criminal court judge and face possible jail time, the person appears before the restorative justice court.<sup>189</sup> The person accepts responsibility for the crime and

---

[www.theguardian.com/commentisfree/2013/jan/12/restorative-justice-domestic-violence](http://www.theguardian.com/commentisfree/2013/jan/12/restorative-justice-domestic-violence); *see also* Telephone Interview with Sarah Reckess, *supra* note 11.

177. Telephone Interview with Sarah Reckess, *supra* note 11.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *North Lawndale*, *supra* note 66.

183. *Id.*

184. Kunichoff, *supra* note 67. Judge Colleen Sheehan oversees the court and has worked since 2014 to integrate the practice of restorative justice into the circuit court system. *Id.*

185. *North Lawndale*, *supra* note 66.

186. *Id.*

187. *Id.*

188. Kunichoff, *supra* note 67.

189. *Id.*

acknowledges a repair of harm agreement.<sup>190</sup> Within the agreement, there are terms of restitution, services listed that the person will complete – such as drug counseling or employment development – and a time frame.<sup>191</sup> Once the person completes the terms of restitution, the arrest can be permanently erased from their records.<sup>192</sup>

Although there is some form of restorative justice within the criminal justice system in Illinois, it is still in the early stages of development and not implemented statewide throughout the criminal justice system.<sup>193</sup> Furthermore, it does not apply to juveniles, which is where it would be most effective.<sup>194</sup> Part of the reason why it has not been implemented on a wider scale is because of the many challenges that are present.<sup>195</sup> For example, funding can pose a problem in getting programs like the restorative justice court up and running.<sup>196</sup> Getting community volunteers and participants is also a challenge, as well as managing resources to have full-time staff present.<sup>197</sup>

### *E. The Nay-Sayers*

There are those that believe restorative justice is not the answer. One reason these nay-sayers provide is that restorative justice does not factor in the societal inequalities that are responsible for making a person commit a crime.<sup>198</sup> Others oppose restorative justice when applied to certain types of crimes, such as domestic violence or sexual assault.<sup>199</sup> Another argument,

190. *Id.*

191. *Id.*

192. *Id.*

193. Robert Kreisman, *Chicago's North Lawndale Restorative Justice Community Court Receives Visitors from the Union League's Administration of Justice Subcommittee*, KREISMAN L. OFFICES (June 18, 2018), [www.chicago-personal-injury-lawyer-blawg.com/chicagos-north-lawndale-restorative-justice-community-court-receives-visitors-from-the-union-leagues-administration-of-justice-subcommittee/](http://www.chicago-personal-injury-lawyer-blawg.com/chicagos-north-lawndale-restorative-justice-community-court-receives-visitors-from-the-union-leagues-administration-of-justice-subcommittee/). “This Community Court is a pilot program[.]” *Id.*

194. *Id.*; see also Kunichoff, *supra* note 67 (explaining that to qualify for the program, the offender must be – among other things – 18-26 years old).

195. Jenny Simeone-Casas, Sarah Conway, & Resita Cox, *Justice, Restored? New North Lawndale Court Aims to Change Punitive System*, CITY BUREAU (Sept. 21, 2017), [www.citybureau.org/stories/2017/12/10/justice-restored-new-north-lawndale-court-aims-to-change-punitive-system](http://www.citybureau.org/stories/2017/12/10/justice-restored-new-north-lawndale-court-aims-to-change-punitive-system).

196. *Id.*

197. *Id.*

198. Sarah Malotane Henkemen, *Why a Narrow View of Restorative Justice Blunts Its Impact*, CONVERSATION (Nov. 14, 2016), [www.theconversation.com/why-a-narrow-view-of-restorative-justice-blunts-its-impact-67258](http://www.theconversation.com/why-a-narrow-view-of-restorative-justice-blunts-its-impact-67258). “Modest Applications of restorative justice are therefore inadequate. They do not challenge persistent structural inequality. They also obscure society’s role in perpetuating violence . . . This holds individuals solely responsible.” *Id.*

199. See Marion Liebmann, *What Can Restorative Justice Offer Victims of*

specifically aimed at juveniles, is that juveniles do not possess the language skills to communicate with victims.<sup>200</sup> Finally, there are those that adhere to the antiquated approach of punishment as opposed to restoration.

However, there are flaws with each of these arguments. First, restorative justice bases its entire model on society and societal inequalities.<sup>201</sup> There is a reason that restorative justice uses volunteers from within the community, as well as mentors who may be former convicts.<sup>202</sup> These mentors are picked specifically to talk with the juvenile about the pressures of society and their environment.<sup>203</sup> Many advocates for restorative justice are aware that the reason many juveniles commit crimes is because they are a product of their environment. Rather than admit defeat and concede that we cannot change society, restorative justice aims to change that narrative. Additionally, putting the blame on society instead of allowing the juvenile to take responsibility for his or her actions is not the answer. This simply gives the juvenile an “out” and makes society a scapegoat.

For those who oppose restorative justice applied to certain types of crimes, restorative justice in the juvenile court would have strict limitations. Discussed further in the proposal section of this

---

*Domestic Violence?*, PENAL REFORM INT'L (Aug. 25, 2016), [www.penalreform.org/blog/can-restorative-justice-offer-victims-domestic-violence/](http://www.penalreform.org/blog/can-restorative-justice-offer-victims-domestic-violence/) (discussing the adverse effects of allowing restorative justice for domestic violence offenders); see also Michael Dolce, *Say No to Restorative Justice for Sex Offenders*, HILL (Jan. 31, 2017), [www.thehill.com/blogs/pundits-blog/crime/317111-say-no-to-restorative-justice-for-sex-offenders](http://www.thehill.com/blogs/pundits-blog/crime/317111-say-no-to-restorative-justice-for-sex-offenders) (explaining the multiple reasons why restorative justice is not effective for sex offenders). First, most sex offenders feel no empathy towards their victims. *Id.* Second, sex offenders are not the same as other habitual criminals. *Id.* Lastly, applying restorative justice to sexual harassment would not be effective as most sex offenders start exhibiting harassing behavior prior to committing a sexual assault. *Id.*

200. See Pamela Snow, *Restorative Justice May Not Work for All Young Offenders*, CONVERSATION (Nov. 9, 2011), [www.theconversation.com/restorative-justice-may-not-work-for-all-young-offenders-4116](http://www.theconversation.com/restorative-justice-may-not-work-for-all-young-offenders-4116). “Young offenders often suffer long-term abuse or neglect. They frequently fail to achieve academically, and have few, if any marketable employment skills. They face elevated risks of mental health problems and early and problematic substance abuse.” *Id.*

201. Kay Pranis, *Building Community Support for Restorative Justice: Principles and Strategies*, INT'L INST. FOR RESTORATIVE PRAC. (Dec. 31, 1995), [www.iirp.edu/news/building-community-support-for-restorative-justice-principles-and-strategies](http://www.iirp.edu/news/building-community-support-for-restorative-justice-principles-and-strategies). Restorative justice carefully thinks about the way it responds to crime. *Id.* It considers crime an injury to both the victim and the community. *Id.*

202. See HOWARD ZEHR & ALI GOHAR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 24-25 (2003) (espousing that an important aspect of restorative justice is who is involved in the process). “Members of the community may be directly affected and thus should also be considered immediate stakeholders.” *Id.*

203. *Id.*



Comment, restorative justice would be an option only for those charged with minor offenses. Restorative justice would not be offered to a juvenile charged with a domestic violence crime, any other violent offense, or felony crimes – which includes sexual assaults.

The argument that juveniles do not possess the language skills or the mental capacity is ludicrous. To say that a juvenile charged with an offense is mentally and intellectually incapable of showing empathy to a victim is offensive. Apart from some rare instances or severe mental impairments, most juveniles are capable of conversing with others. To deny these juveniles the opportunity to speak with their victims and take responsibility for their actions is giving up on the juvenile.

Finally, to those that believe the tough-on-crime approach is the way to go, this Comment has proven otherwise. Mass incarceration has done nothing to reduce recidivism.<sup>204</sup> As a society, we need to try something new. Furthermore, we need to be proactive rather than reactive. Reactive is the incarceration of juveniles who commit crimes<sup>205</sup> – proactive is restorative justice to ensure they do not do it again.<sup>206</sup>

#### IV. IMPLEMENTING RESTORATIVE JUSTICE IN ILLINOIS

##### A. *Proposal Overview*

This portion of the Comment will propose how Illinois can implement restorative justice practices within the juvenile criminal justice system. First, this Comment will address the legislative aspect. Next, this Comment will propose how to achieve a fully functional restorative justice court. Finally, this Comment will propose statewide changes for law enforcement policies and training measures.

---

204. *Id.* at 2 (western legal systems have suppressed traditional justice and conflict resolution processes).

205. Don Stemen, *Reconsidering Incarceration: New Directions for Reducing Crime*, VERA INST. JUSTICE 13-16 (2007), [www.vera.org/downloads/Publications/reconsidering-incarceration-new-directions-for-reducing-crime/legacy\\_downloads/veraincarc\\_vFW2.pdf](http://www.vera.org/downloads/Publications/reconsidering-incarceration-new-directions-for-reducing-crime/legacy_downloads/veraincarc_vFW2.pdf) (discussing the difference between reactive responses to criminal offending, like incarceration, versus how resources should be devoted to addressing the underlying causes of criminal offending). “Prisons are not the only way to fight crime.” *Id.*

206. *Id.* (Prison is effective when used to punish those who have committed crimes, but prison is not effective to reduce or prevent crime. Addressing the underlying factors that cause crime would benefit public safety to actually prevent crime as opposed to only responding to crime after it occurs.)

## B. Legislation

Illinois legislators have made statutory changes to implement restorative justice within the correctional system but have not yet made changes to include restorative justice within the judicial system.<sup>207</sup> The fact that Illinois legislators are discussing restorative justice practices is evident that they are familiar with the concept and its effectiveness. If Illinois were to adopt legislation that mandated restorative justice courts within the counties, this would be an enormous push for the implementation of this practice. Adoption of the necessary legislation is not difficult with the appropriate amount of research to back up the need for restorative justice.

### C. *What is in Our Way and How Do We Fix It?*

#### 1. *Funding*

There are some hurdles to overcome for a fully functional restorative justice court. Funding, employees, volunteers, physical space, and candidates are all potential problems. This is not an exhaustive list of issues, only some that may arise. This Comment will address these issues individually. Funding can be achieved through federal and state grant money.<sup>208</sup> Also, grants can be applied for various reasons. Since the restorative justice court would be in the interest of juvenile justice, there is a federal grant for that.<sup>209</sup> Furthermore, there are federal grants for reducing recidivism and helping formerly incarcerated individuals reenter society.<sup>210</sup> It would be appropriate and in the interest of the public to seek grant money to combat this epidemic. Additionally, there are private donors that would most likely be willing to support a cause such as this.

---

207. 730 ILL. COMP. STAT. 5/3-2.5-40.1 (2018). Illinois legislators amended the Unified Code of Corrections statute to include, “[t]he training for Department personnel shall include courses in restorative practices.” *Id.*

208. See *ICJIA Grant Programs*, ILL. CRIM. JUST. INFO. AUTH., [www.icjia.state.il.us/grant-programs](http://www.icjia.state.il.us/grant-programs) (last visited Mar. 30, 2020) (discussing various federal and state Grant programs that address juvenile crime, mental health, gang reduction, gun violence, etc.).

209. *Id.* (Juvenile Accountability Block Grant Program).

210. See, e.g., *Second Chance Act Grant Program: Federally Funded Resources for State and Local Efforts to Improve Reentry Outcomes*, JUST. CTR. COUNCIL STATE GOVERNMENTS, [www.csgjusticecenter.org/publications/second-chance-act/](http://www.csgjusticecenter.org/publications/second-chance-act/) (last visited May 1, 2020) (describing a grant aimed at helping local communities reduce recidivism and help those who were incarcerated reenter society).

## 2. *Employees*

For employees, Illinois could begin the restorative justice court with existing employees. At first, the program could be initiated with minimal employees. An example would be one judge and one state's attorney. The court could be held once per week, just like any other call. The court would not have to accept every candidate, at first, but, rather, it could be selective until the program really took off and attracted more attention and assistance.

## 3. *Volunteers*

Obtaining enough volunteers could potentially pose an issue.<sup>211</sup> Volunteers would be needed to act as mentors, oversee certain aspects of the program, and participate in peacemaking circles. Moreover, these volunteers would need to be trained. However, there are many community activists who strive for change within their communities.<sup>212</sup> These are not political figures, nor are these people looking for personal gain. They want to live in safe places where the violence and property crime rates are not through the roof. Especially in Chicago, there are many people who want to get involved.<sup>213</sup> Through enticing these people with stipends – which would be included in the grant funding – as well as pleading to communities that restorative justice has a positive result, the number of volunteers would be astounding. Many people would be willing to assist. Furthermore, many people in these communities may have been in the same position as the juveniles they will be helping. They can often be the best volunteers because they can relate to the juveniles as peers. Some of these people are just

---

211. See Simeone-Casas, Conway, & Cox, *supra* note 195 (discussing the challenges organizers faced when trying to get community members involved with the North Lawndale Restorative Justice Court).

212. Tanner Howard, *Chicago Activist Convention Shifts Focus to Community Benefits Campaign*, SHELTERFORCE (July 20, 2018), [www.shelterforce.org/2018/07/20/chicago-activist-convention-shifts-focus-to-community-benefits-campaign/](http://www.shelterforce.org/2018/07/20/chicago-activist-convention-shifts-focus-to-community-benefits-campaign/) (discussing citizens of various communities coming face-to-face with local politicians to demand change in their neighborhoods).

213. Hannah Steinkopf-Frank, *Chicago in Action: Give Back to the City With These Three Volunteer Organizations*, CHI. TRIB. (Jun. 14, 2018), [www.chicagotribune.com/redeye/ct-redeye-volunteer-nonprofit-books-prison-farm-20180322-story.html](http://www.chicagotribune.com/redeye/ct-redeye-volunteer-nonprofit-books-prison-farm-20180322-story.html) (discussing that one of the three volunteer groups mentioned in the article, Mothers Against Senseless Killing, has seen a large number of people taking pride in their community.); see also Gwendolyn Purdom, *Do Good Giving Community Groups Added Volunteer Support with Chicago Cares*, CHI. TRIB. (Apr. 11, 2018), [www.chicagotribune.com/redeye/ct-redeye-volunteer-opportunity-chicago-cares-20180405-story.html](http://www.chicagotribune.com/redeye/ct-redeye-volunteer-opportunity-chicago-cares-20180405-story.html) (describing that the Chicago Cares Organization assists in providing volunteers to various community projects.)

waiting for their opportunity to make a difference, and volunteering at the restorative justice court could serve as their chance.

Currently, Cook County has a very large juvenile court facility.<sup>214</sup> It is comprised of many courtrooms and is staffed with Cook County Sheriff Deputies who ensure the facility remains secure.<sup>215</sup> If the county were to set aside one of the courtrooms at a specific time each week, this would alleviate the issue of physical space for the restorative justice court.

#### 4. *Participants*

Finally, in order to have a restorative justice court, there is a need for candidates. A candidate would be a juvenile individual who is a first-time offender, charged with a minor offense, and who is willing to participate in the program. The North Lawndale Court in Chicago serves only offenders who are between eighteen to twenty-five years old residing in the North Lawndale neighborhood.<sup>216</sup> The proposed restorative justice court discussed in this Comment would serve only juveniles under the age of eighteen. Furthermore, the court would service juveniles charged in Cook County, Illinois. If implemented, the restorative justice court would not have difficulty getting juvenile offenders to participate. The fact that the juvenile would avoid detention in a juvenile holding facility or circumvent the court system would incentivize the juvenile to participate. The restorative justice court would give juvenile offenders a second chance.

In fact, a more difficult issue to deal with is the possibility of too many participants. Therefore, similar to the New York Center for Court Innovation, the proposed juvenile restorative justice court will have to be selective as to who they allow to participate in the program.<sup>217</sup> The intake process for a juvenile to go through a restorative justice court is time-consuming and expensive.<sup>218</sup> It requires hours of labor, designating a mentor or peacemaker, costs to the court and staff members, costs of volunteers, and other resources that may be provided, such as vetting the candidate.<sup>219</sup> Although it may be hard to turn away potential candidates who

---

214. Jonah Newman, *Solitary Confinement of Juveniles on the Rise in Cook County*, CHI. REP. (May 1, 2018), [www.chicagoreporter.com/solitary-confinement-of-juveniles-on-the-rise-in-cook-county/](http://www.chicagoreporter.com/solitary-confinement-of-juveniles-on-the-rise-in-cook-county/). Cook County Juvenile Temporary Detention Center is “one of the largest juvenile jails in the country.” *Id.*

215. See *Courtroom Services*, COOK COUNTY SHERIFF’S OFF., [www.cookcountysheriff.org/courts/courtroom-services/](http://www.cookcountysheriff.org/courts/courtroom-services/) (last visited May 4, 2020) (describing the duties of Deputy Sheriffs in the Cook County courtrooms).

216. *North Lawndale*, *supra* note 66.

217. Telephone interview with Sarah Reckess, *supra* note 11.

218. *Id.*

219. *Id.*

would benefit from restorative justice as opposed to the traditional criminal court system, it is important that the proposed restorative justice court not take on too much work. This could have negative effects on the court as a whole. The idea behind restorative justice is quality, not quantity.

#### *D. Restorative Justice and Our Local Law Enforcement*

A last important piece of the restorative justice court would be to integrate the court with local law enforcement. Unfortunately, the United States has seen a rise in school shootings since the Columbine massacre.<sup>220</sup> In light of these tragedies, there has been increased availability of federal funding for school districts to utilize a sworn police officer as a School Resource Officer (SRO).<sup>221</sup> The officer is employed by the local police department where the school is located. Having an SRO is beneficial to the restorative justice initiative because restorative justice can also be implemented within the school system. There are a good number of juvenile offenders that are charged with crimes committed while in school. A large portion of these juveniles can be put through the restorative justice program implemented within the school system with the assistance of the SRO. This would not only facilitate relationships between law enforcement and juveniles within the community, but it would keep juveniles out of the criminal court system and alleviate some overflow in the proposed restorative justice court. Additionally, it would allow for more juveniles to complete the restorative justice program rather than turning them away for lack of resources.

To implement restorative justice within schools with the assistance of local law enforcement, there needs to be training available to law enforcement officers. Illinois state law mandates that correctional officers employed by the Department of Corrections receive training in restorative justice practices.<sup>222</sup> The Illinois Law Enforcement Training and Standards Board should mandate the same type of training to law enforcement officers in

---

220. See John Woodrow Cox & Steven Rich, *How Many Children Are Affected By School Gun Violence in America?*, WASH. POST (Mar. 25, 2018), [www.washingtonpost.com/graphics/2018/local/us-school-shootings-history/?utm\\_term=.91ad38b26f84](http://www.washingtonpost.com/graphics/2018/local/us-school-shootings-history/?utm_term=.91ad38b26f84) (discussing the long-term effects of the Columbine massacre). Since Columbine, which was in 1999, more than 187,000 students have been exposed to gun violence in schools. *Id.*

221. *Increase Current Funding for Specially Trained School Resource Officers, NASRO Tells DOJ*, NAT'L ASS'N SCH. RESOURCE OFFICERS (Feb. 16, 2018), [www.nasro.org/news/2018/02/16/news-releases/increase-current-funding-for-specially-trained-school-resource-officers-nasro-tells-doj/](http://www.nasro.org/news/2018/02/16/news-releases/increase-current-funding-for-specially-trained-school-resource-officers-nasro-tells-doj/). "The DOJ currently provides grants through its Office of Community Oriented Policing Services to help local communities hire school resource officers." *Id.*

222. 730 ILL. COMP. STAT. 5/3-2.5-40.1 (2020).

police academies throughout the state of Illinois. The board has the power to mandate other types of training such as DUI enforcement, criminal law, use of force, etc., in accordance with the Illinois Police Training Act.<sup>223</sup> Implementing a training block in the police academy would train and certify new officers in the practical use of restorative justice and allow those officers to utilize that training immediately upon completion of the academy. Continuing education for current law enforcement officers can be implemented through agencies such as NEMRT.<sup>224</sup> Illinois has provided crisis intervention training for law enforcement officers because it recognized the need for it.<sup>225</sup> In the same fashion, the state could offer restorative justice training because there is a similar need.

## V. RESTORATIVE JUSTICE WORKS

Restorative justice is a necessary and useful practice that should be implemented within the juvenile criminal justice system. The benefits of restorative justice versus the traditional criminal justice system are substantial. Not only would restorative justice reduce recidivism amongst juvenile offenders, but it would significantly restore the relationship between communities and law enforcement. Additionally, it would reduce the overflow of the criminal court system and the juvenile detention facility. Finally, it would offer many juveniles a second chance at life. Rather than creating habitual offenders, the juvenile criminal justice system would be doing what it was intended to do: rehabilitate. Studies suggest that the current criminal justice system has been ineffective. So, rather than perpetuate a vicious cycle, there should be change. A new approach to juvenile criminal justice is Restorative Justice, and it will work.

---

223. 50 ILL. COMP. STAT. 705/1 (2018).

224. NE. MULTI-REGIONAL TRAINING, [www.nemrt.com](http://www.nemrt.com). Mission Statement: “North East Multi-Regional Training is one of fourteen Mobile Teams of the Illinois ASSIST Program. We provide in-service training to law enforcement and corrections personnel throughout the metropolitan Chicago land area.” *Id.*

225. John Dykstra, *Sam’s Act to Aid Police with More Mental Health Training*, DAILY J. (Sep. 25, 2017), [www.daily-journal.com/news/local/sams-act-to-aid-police-with-more-mental-health-training/article\\_101a32bf-f01f-5ced-9db3-564cd70e24d3.html](http://www.daily-journal.com/news/local/sams-act-to-aid-police-with-more-mental-health-training/article_101a32bf-f01f-5ced-9db3-564cd70e24d3.html); *see also* 50 ILL. COMP. STAT. 705/10.17 (2018).

