RESTORATIVE JUSTICE AND DISSOCIATIVE IDENTITY DISORDER OFFENDERS—AN ALTERNATIVE PATH TO HEALING

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I. INTRODUCTION

Restorative justice programs continue to gain in popularity as an alternative to the traditional criminal justice system that focuses on meeting the needs of the offender and the victims or communities impacted by the offender's actions.[1] A restorative program's goals are to repair the harm caused by the offense while providing support to all parties involved.[2] Offenders typically have the opportunity to acknowledge responsibility for the offense, apologize to the victim or impacted community, and attempt to repair the harm caused to themselves and others.[3]

The most popular forms of restorative processes are community circles, victim-offender mediation, and family group conferencing.[4] Other programs, which involve less direct victim-offender contact, have been classified as restorative practices.[5] Some examples include providing community service, offering restitution, using victim impact panels or community reparation boards, and writing letters of apology.[6]

The restorative process is built around the notion that the offender takes full responsibility for the crime and is fully accountable for their actions.[7] Empathy and understanding are vital to the program's success.[8] Without the capacity to empathize with other parties, conferencing may be unlikely to alter one's behavior.[9] Herein lies the issue—because offenders with Dissociative Identity Disorder (DID) have multiple personalities and do not remember events that occur when other personalities are in control of the body, it is difficult for a DID offender to actually be accountable for the crime.[10]

This Article analyzes the ability of offenders diagnosed with DID to effectively participate in the restorative justice process. By examining restorative justice's general approach to mental health combined with the unique characteristics of DID, this Article proposes considerations and safeguards for engaging DID offenders and the potential benefits that flow

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1. Thomas L. Hafemeister et al., *Forging Links and Renewing Ties: Applying the Principles of Restorative and Procedural Justice to Better Respond to Criminal Offenders with a Mental Disorder*, 60 BUFF. L. REV. 147, 245 (2012).

2. Dirk J. Louw, *The African Concept of Ubuntu and Restorative Justice*, *in* HANDBOOK OF RESTORATIVE JUSTICE: A GLOBAL PERSPECTIVE 161, 162 (Dennis Sullivan & Larry Tifft eds., 2006).

3. U. N. OFF. ON DRUGS & CRIME, HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES, at 17 U.N. Sales No. E.06.V.15 (2006).

4. *See id.* at 14–15; *see also* Hafemeister et al., *supra* note 1, at 240.

5. James Coben & Penelope Harley, *Intentional Conversations About Restorative Justice, Mediation and the Practice of Law*, 25 HAMLINE J. PUB. L. & POL'Y 235, 240 (2004); *see* U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 15.

6. Coben & Harley, *supra* note 5; *see* U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 15.

7. *See* HOWARD ZEHR, CHANGING LENSES 203–04 (2015).

8. Hafemeister et al., *supra* note 1, at 213.

9. *Id.*

10. Mary Eileen Crego, *One Crime, Many Convicted: Dissociative Identity Disorder and the Exclusion of Expert Testimony in* State v. Green, 75 WASH. L. REV. 911, 914 (2000).

from involvement for the offender, victim, and community, while also addressing limitations and impediments to engagement.

Roughly 1.5% of American adults experience DID,[11] a mental illness categorized by an identity disruption where an individual has two or more distinct personality states with variations in behavior, memory, cognition, consciousness, perception, or sensory-motor functioning.[12] Hundreds of personalities may exist in one body that repeatedly take control of the individual's behavior.[13] The personalities often differ greatly by race, gender, age, and emotional state.[14] They may even possess different eye-glass prescriptions, achieve diverse scores on psychological tests, and respond differently to physical stimuli.[15]

The inability to truly empathize with the victim presents just one of the barriers to success for DID offenders.[16] The personality present during a restorative meeting may not have been active at the time of the offense and thus, may have no recollections or accountability for it.[17] Without true accountability, it will likely be difficult for the offender to empathize with the other parties—the core focus restorative justice is based on.[18]

While further research by trained professionals is necessary to determine effective ways for DID offenders to participate, this Article investigates the current state of affairs for restorative parties. Arguably, DID offenders may participate by implementing considerations and safeguards designed to protect all parties involved.[19] This Article explores the necessary components and introduces three safeguards utilized to combat barriers DID offenders face when participating in the restorative process: (1) all DID offenders should be required to disclose their disorder; (2) all facilitators should be specifically trained regarding the DID diagnosis and should set individual goals for the process, which may deviate from typical restorative outcomes; and (3) each DID offender's path should proceed on a step-by-step basis, beginning with an exchange of letters between the victim and offender.

This overall approach allows the DID offender the opportunity to experience restorative opportunities while providing protection from

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11. Rafaële J. C. Huntjens et al., *Schema Therapy for Dissociative Identity Disorder (DID): Rationale and Study Protocol*, 10 EUR. J. PSYCHOTRAUMATOLOGY 1, 2 (2019).

12. Bethany L. Brand et al., *Separating Fact from Fiction: An Empirical Examination of Six Myths About Dissociative Identity Disorder*, 24 HARV. REV. PSYCHIATRY 257, 257 (2016).

13. Sarah K. Fields, *Multiple Personality Disorder and the Legal Systems*, 46 WASH. U. J. URB. & CONTEMP. L. 261, 264 (1994).

14. *See id.*

15. Crego, *supra* note 10, at 914.

16. *See* Hafemeister et al., *supra* note 1, at 213.

17. *See* Kevin Dawkins, *Dissociative Identity Disorder: Persons, Personalities and Criminal Responsibility*, 1998 N.Z. L. REV. 557, 557 (1998); Philip Wang, *What Are Dissociative Disorders?* AM. PSYCHIATRIC ASS'N (Aug. 2018), https://www.psychiatry.org/patients-families/dissociative-disorders/what-are-dissociative-disorders.

18. *See* Hafemeister et al., *supra* note 1, at 213.

19. *See* U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 33–35.

potential embarrassment or stigmatization that might occur without these safeguards in place.[20] Thus, DID offenders can potentially engage with their victims, repair previous harms, and improve the chances of successful reintegration within their communities.

This Article explores the intricate aspects of DID and why further research must be done to expand restorative processes and increase participation of DID offenders. Part II provides a brief overview of restorative justice and how the system currently operates. Part III introduces the historical background of DID, current treatments that exist, and why the need for further research is imperative to finding a cure. Part IV reviews mental-health courts and promising approaches to restorative justice for mentally-ill offenders, while identifying current barriers to success for DID offenders, their impacted victims, and impacted communities. Part V combines information from the previous sections and proposes three safeguards to effectively implement restorative justice for DID offenders. Part VI concludes with a summary of steps to successfully integrate DID offenders into the restorative process.

II. BASIC PRINCIPLES OF RESTORATIVE JUSTICE

Restorative justice exists to provide parties harmed by an offender with an opportunity to heal.[21] When a crime occurs, the harm impacts not only the victim but also interpersonal relationships, the offender, and the community itself.[22] Restorative practices focus on recognizing the importance of interpersonal dimensions and identifying victims as actual people with needs.[23]

A. Development of Restorative Justice

By grounding restorative justice in practical experience, it fundamentally differs from retributive justice.[24] Traditional retributive justice focuses on the social dimensions of crime, defines the state as the victim, often disregards the relationship between the victim and offender,[25] and defines whether justice is served according to lawbreaking and guilt.[26] In

20. *See id.*

21. ZEHR, *supra* note 7, at 186–87 ("Crime involves injuries that need healing. Those injuries represent four basic dimensions of harm: 1. [t]o the victim[;] 2. [t]o interpersonal relationships[;] 3. [t]o the offender[;] [and] 4. [t]o the community[.]").

22. *Id.*

23. *Id.* at 186.

24. Coben & Harley, *supra* note 5, at 245.

25. ZEHR, *supra* note 7, at 187.

26. *Id.* at 183.

contrast, principles of restorative justice can be considered "a compass pointing a direction" toward growth and healing for all impacted parties.[27]

Restorative processes are designed to provide victims with an opportunity to receive answers to questions they may have regarding the harm and the offender, express themselves regarding the harm's impact, potentially receive an apology, receive restitution and reparation, or reach closure in their own lives.[28]

The traditional adjudication system needs improvement because victims and community members are rarely provided with any opportunities to participate in the process. Victims have historically been "neglected as stakeholders in both formal and community justice approaches" with the attention primarily focused on the offender's potential guilt and subsequent punishments.[29] The victim often experiences more suffering when they are not in the middle of the traditional justice system or are not consulted regarding the offender's punishment.[30] In contrast, restorative justice honors a victim's need to speak about the trauma.[31]

Additionally, the traditional criminal justice system is not designed to improve an offender's emotional wellness.[32] Therefore, offenders frequently suffer from a poor sense of self-worth, which prison does not improve.[33] Restorative processes provide offenders with opportunities to express emotions regarding the crime, receive support while attempting to repair the harm caused to oneself and others, apologize to the victim, acknowledge responsibility for the crime, understand the effects forced onto the victim, and reach their own sense of closure.[34]

B. Theory of Restorative Justice

Restorative justice may be considered "an umbrella term for a spectrum of practices used in association with the criminal justice system"[35] that

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27. Coben & Harley, *supra* note 5, at 245 n.24 (quoting HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 47 (2002)).

28. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 17; Jessica Burns, *A Restorative Justice Model for Mental Health Courts*, 23 S. CAL. REV. L. & SOC. JUST. 427, 449 (2014) (footnote omitted) (citation omitted) ("Offenders are nearly seven times more likely to apologize in a restorative justice context than in court."). Apologies also appear to contribute to a reduction in recidivism. Burns, *supra* (citation omitted). Four years after an offender apologized to their victims, the offenders were three times less likely to have committed and been convicted of another crime in comparison to offenders that did not apologize. *Id.* (citation omitted).

29. GORDON BAZEMORE & MARK UMBREIT, A COMPARISON OF FOUR RESTORATIVE CONFERENCING MODELS 8 (2001), https://www.ojp.gov/pdffiles1/ojjdp/184738.pdf.

30. Coben & Harley, *supra* note 5, at 246.

31. *Id.*

32. *See id.*

33. *Id.*

34. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 17.

35. Coben & Harley, *supra* note 5, at 239.

emphasizes those primarily impacted by harm while involving the community and engaging its citizens.[36]

> Restorative justice is a process whereby parties with a stake in a specific offen[s]e resolve collectively how to deal with the aftermath of the offen[s]e and its implications for the future. The aim is offender accountability, reparation to the victim[,] and full participation by all those involved . . . . Restorative justice . . . is based on the assumption that within society a certain balance and respect exists, which can be harmed by crime. The purpose of the justice system is then [not punishment, but rather] to restore this balance and to heal relationships [through the direct involvement of] all the parties to the crime (victim, offender and the community).[37]

Restorative practice typically includes some form of meeting that brings the parties together[38] and focuses on the needs of those involved.[39] When viewed through a restorative lens, crime is considered a violation of relationships and people.[40] Crime "creates obligations to make things right. [In contrast, restorative justice] involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance."[41]

C. How Restorative Justice Currently Operates

Restorative justice allows offenders to participate in various types of mediation conferences with the victims of their crimes.[42] Referrals are made by courts, police, probation offices, and prosecutors.[43] The criminal justice system typically initiates a restorative justice process at one of the four most common points: (1) at the police level (pre-charge); (2) at the prosecution level (post-charge, typically before the trial begins); (3) at the court level (either pre-trial or during sentencing); and (4) at the corrections level (as either alternate sentencing or additional programming).[44] However, restorative justice can operate at a variety of other points in time because officials may use their discretionary powers to refer offenders to a related program.[45]

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36. Burns, *supra* note 28, at 447.
37. Louw, *supra* note 2, at 162.
38. *Id.*
39. Coben & Harley, *supra* note 5, at 246.
40. ZEHR, *supra* note 7, at 183–84. Crime may represent an injury to the offender, as well as the victim. *Id.* Many offenders experienced abuse as children and utilize crime in order to cry for help or assert their own personhood. *Id.* "They do harm in part because of harm done to them." *Id.*
41. *Id.* at 183.
42. Hafemeister et al., *supra* note 1, at 158.
43. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 17.
44. *Id.* at 13.
45. *See id.*

In some cases, a restorative process can be initiated instead of reporting a particular crime or conflict to the criminal justice system to begin with.[46] For example, some school-based or neighborhood programs utilize restorative mediation to deal with minor issues that occur within their communities.[47]

While restorative practices can benefit a wide range of parties, many programs only accept crimes such as misdemeanors,[48] like failure to pay for restaurant meals and shoplifting.[49] This is partly because violent crimes require more preparation and necessitate that mediators be schooled in advanced techniques.[50] Moreover, violent crimes require implementing additional steps to protect the victim and society, which require more time and financial resources.[51]

The ultimate goal of restorative justice is for the parties to reach an agreement and understanding with each other on how the offender can address the harm and take action to right the wrong so they can all move forward.[52] In order to move toward healing, become productive, and successfully re-integrate into society, offenders generally need to express remorse and acknowledge their involvement in the crime to the victim and others in the community.[53] Once a general understanding "is established regarding the objective world (facts), the subjective world (feelings and intentions), and the social world (normative rights and wrongs, and what is needed to right the wrong) in relation to the particular event in question," the parties can then negotiate an agreement.[54] This should determine the actions needed to establish positive relationships, help the offender make amends to the victim and other affected individuals, and map out an effective plan to proceed.[55]

This section will address the most widely used formats for restorative justice: community circles, victim-offender mediation, and family group conferencing.[56]

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46. *Id.* at 14.
47. *Id.*
48. Hafemeister et al., *supra* note 1, at 207.
49. *Id.* at 208.
50. *Id.*
51. *Id.*
52. Audrey L. Barrett, *The Structure of Dialogue: Exploring Habermas' Discourse Theory to Explain the "Magic" and Potential of Restorative Justice Processes*, 36 DALHOUSIE L. J. 335, 354–55 (2013).
53. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 18 ("The offender must accept or not deny responsibility for the crime.").
54. *See* Barrett, *supra* note 52, at 357.
55. *See* Hafemeister et al., *supra* note 1, at 158.
56. Coben & Harley, *supra* note 5; U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 14–15.

1. Community Circles

Community circles began as traditional healing and sanctioning practices in the early communities of the United States and Canada.[57] In 1991, judges and justice committees in northern Canadian communities resurrected peacemaking circles.[58] These circles have been extensively developed in Manitoba, the Yukon, Saskatchewan, and other communities.[59] In 1996, community circles were revived in the United States with initial debuts in Minnesota, Colorado, and Massachusetts.[60] Since then, community circles have been used for juvenile and adult offenders, in both urban and rural settings, for many types of offenses.[61] In order to determine whether the community circle process is a realistic option, the following key factors are examined: the victim's point of view; the offender's connection to the community, sincerity, personality, and character; and the extent the victim's and offender's support groups are willing to participate.[62]

Peacemaking community circles are utilized as a "holistic reintegrative strategy"[63] to address the causes of incidents and to encourage community building by considering the needs of families, victims, and the local communities.[64] Circles may involve justice and social service personnel, family, friends, lawyers, judges, victims, offenders, and interested community members who are provided with the opportunity to speak in a safe environment.[65] Here, circle members determine the steps needed to prevent future crimes and assist all affected parties in healing, to discuss community-wide problems, to facilitate offenders as they re-enter the community, and to confirm the community's expectations of behavior to expedite future change.[66] Participants customarily sit in a circle and pass a talking piece around to signify the importance of each individual's story.[67] This larger, holistic view focuses on the offender's present and future conduct, social conflict, and community empowerment.[68] As every

57. BAZEMORE & UMBREIT, *supra* note 29, at 6.
58. *Id.*
59. *Id.*
60. *Id.* at 6, 8.
61. *Id.* at 6.
62. *Id.* at 7.
63. *Id.* at 6.
64. *Id.*; Coben & Harley, *supra* note 5, at 247.
65. BAZEMORE & UMBREIT, *supra* note 29, at 6; Coben & Harley, *supra* note 5, at 242.
66. Coben & Harley, *supra* note 5, at 242–43, 247; BAZEMORE & UMBREIT, *supra* note 29, at 6.
67. Coben & Harley, *supra* note 5, at 242.
68. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 24 (explaining that circles can help "reacquaint individuals, families and communities with problem solving skills; rebuild relationships within communities; promote awareness and respect for values and the lives of others; address the needs and interests of all parties, including the victim; [and] focus action on causes, not just symptoms, of problems . . . ").

community is different, the specifics of the circle process are created locally to fit in with its surrounding culture and unique needs.[69]

Goals of community circles include the following:

- Promoting healing for all affected parties[;]
- Providing an opportunity for the offender to make amends[;]
- Empowering victims, community members, families, and offenders by giving them a voice and a shared responsibility in finding constructive resolutions[;]
- Addressing the underlying causes of criminal behavior[;]
- Building a sense of community and its capacity for resolving conflict[;]
- Promoting and sharing community values.[70]

Restorative justice proponents believe that "people are far more likely to do things they have agreed to do, than to do things which they have been ordered to do."[71] In psychology, this phenomenon is known as compliance, which involves altering one's behavior because someone else asked you to do so.[72] Thus, community circles emphasize positive characteristics to strengthen relationships and deepen connections between the offender and other parties.[73] This is accomplished by allowing offenders to affirm their respective community norms and discover the member's expectations.[74] As a result, the offender's behavior often improves significantly.[75]

The community circle's biggest emphasis is on the process itself due to the belief that it can shape and sometimes heal the relationships between participants.[76] By engaging in communicative action and agreeing on certain ideas, the parties often form a common understanding and begin to trust each other as a group.[77] The magic begins when participants are able to imagine what the others feel, believe, and think while deeply understanding their perspective.[78] This transformation can ultimately promote empathy and growth in the "hearts and minds" of participants.[79]

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69. BAZEMORE & UMBREIT, *supra* note 29, at 6.

70. *See* BAZEMORE & UMBREIT, *supra* note 29, at 6.

71. Barrett, *supra* note 52, at 353 (quoting GERRY JOHNSTONE, RESTORATIVE JUSTICE: IDEAS, VALUES, DEBATES 136 (2001)). Other interdisciplinary research supports this claim under the theory of communicative action. *See generally* James Johnson, *Habermas on Strategic and Communicative Action*, 19 POL. THEORY 181 (1991).

72. Kendra Cherry, *The Psychology of Compliance*, VERYWELLMIND, https://www.verywellmind.com/what-is-compliance-2795888 (last updated June 22, 2021).

73. Barrett, *supra* note 52, at 354.

74. Coben & Harley, *supra* note 5, at 247.

75. *Id.*

76. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 24.

77. Barrett, *supra* note 52, at 353.

78. *Id.* at 357.

79. *Id.*

Early evaluations of community circles revealed that participants reported empowerment to "resolve conflict in a manner that promotes sharing of responsibility for outcomes, generates constructive relationships, enhances respect and understanding among all involved, and fosters enduring, innovative solutions."[80] More research is needed to pinpoint the overall effectiveness of community circles and develop flexible standards for local communities to utilize in customizing their own circles.[81]

2. Victim–Offender Mediation

For over forty years, victim–offender mediation programs have been administered in the United States, Canada, and Europe.[82] While this method is primarily utilized for minor property crimes and young offenders, it also expands to encompass violent and serious crimes committed by adults.[83]

Victim–offender mediation involves the victim in the core process as it consists of a face-to-face meeting with the offender and victim after each party has been carefully prepared by a skilled mediator.[84] This benefits the victim by allowing them to tell the story of how they were physically, emotionally, and financially impacted by the offense in a safe and structured setting; to receive answers about the offender and the crime; and to express their desire to be consulted regarding the offender's treatment.[85]

Offenders also can tell their own story and make amends by taking direct responsibility.[86] Although most sessions result in a restitution agreement, reaching a settlement is not the primary focus.[87] Often, the victim and offender are able to experience each other as unique people instead of distant stereotypes.[88]

Goals of victim–offender mediation include the following: providing a platform for the offender and victim to agree upon a plan to address the harm caused; enabling offenders to accept accountability and discover the true impact of their actions on the victims and communities; and supporting victims in their healing process by providing a secure opportunity for conversations with the offender.[89]

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80. BAZEMORE & UMBREIT, *supra* note 29, at 6.

81. *See id.* at 7.

82. *See id.* at 2.

83. *See id.*

84. Coben & Harley, *supra* note 5.

85. *Id.*; U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 18 ("When there is a direct contact, the victim is often invited to speak first during the mediation as a form of empowerment."); *see also* BAZEMORE & UMBREIT, *supra* note 29, at 2.

86. *See* BAZEMORE & UMBREIT, *supra* note 29, at 2.

87. *See id.*

88. Coben & Harley, *supra* note 5, at 241.

89. *See* BAZEMORE & UMBREIT, *supra* note 29, at 2.

An offender's behavior is often driven by a desire to avoid the shame of disapproval by others they respect and the internal shame of having a conscience.[90] Therefore, offenders tend to be more positively affected by meeting their victim in person and listening to their story than by the typical punishment system.[91]

Victim–offender mediation may occur at any time during the adjudication process; however, when mediations occur pre-sentencing, any resulting recommendations are usually brought to the judge for consideration.[92] In order to conduct a victim–offender mediation, the following requirements must be met: "[(1)] the offender must accept or not deny responsibility for the crime; [(2)] both the victim and the offender must [want to voluntarily] participate;" and (3) both parties must believe it is safe to participate in the process.[93] While meeting face-to-face has its merits, it may not always be possible for the victim and the offender.[94] In this case, a facilitator may conduct an indirect mediation process by meeting with the parties separately.[95]

Early evaluations found that "95[%] of mediation sessions resulted in a successfully negotiated restitution agreement[,]" victims were "more likely to be satisfied with the justice system than were similar victims who went through the standard court process[,] victims were significantly less fearful of being revictimized[,]" participating offenders were far more likely to fulfill their restitution agreement than those who did not participate, and recidivism rates of participating offenders were lower than those who did not participate.[96] Other studies have shown that victims viewed the opportunity to meet with the offender and discuss the impact of the incidents as being more important than receiving actual restitution.[97] Moreover, participating offenders reported feeling better and appreciating the opportunity to speak with the victim.[98]

3. Family Group Conferencing

Family group conferencing has been developed from "centuries-old sanctioning and dispute resolution traditions of the Maori of New Zealand."[99] In 1989, this model was enacted into law in New Zealand and is currently used in Canada, Vermont, Pennsylvania, Montana, Minnesota, and several

90. Barrett, *supra* note 52, at 354.
91. Coben & Harley, *supra* note 5, at 241.
92. U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 17.
93. *Id.* at 18.
94. *Id.*
95. *Id.*
96. *See* BAZEMORE & UMBREIT, *supra* note 29, at 3.
97. *See id.*
98. *See id.*
99. *See id.* at 5.

other states in the United States.[100] New Zealand uses family group conferencing in processing all but "the most violent and serious delinquency cases."[101] In the United States, offenses including vandalism, child maltreatment cases, arson, drug offenses, minor assaults, and theft are resolved utilizing this method.[102] Family group conferencing is used to address unresolved issues or to define terms of restitution after the offender's incident has been adjudicated.[103]

This method allows participants to include family members, special adult friends, key supporters, teachers, and community contacts in the restorative process.[104] Family group conferencing is typically held in place of court proceedings to resolve a delinquent or criminal incident[105] and is often particularly effective with the younger generation of offenders.[106] This conferencing focuses on using shame in a positive way or adapting to the particular needs of the parties involved and creating proposals for consideration by the victim.[107]

Goals of the family group conference include the following: providing opportunities for the victim to participate in developing potential sanctions for the offender; expanding the offender's awareness of the personal impact their behavior has caused; allowing the offender to take full responsibility for the incident; and collectively involving the offender's support system to work towards improving the offender's future behavior while providing opportunities to make amends.[108]

To prevent future recidivism, this overall group dynamic focuses on providing support to the offender.[109] The offender typically starts the conference by describing the incident.[110] The other participants are then invited to "describe the impact of the incident on their lives. . . . [T]he offender is faced with the impact of his or her behavior on the victim, on those close to the victim, and on the offender's own family and friends, and the victim has the opportunity to express feelings and ask questions about the incident."[111] Eventually, the victim is presented with the opportunity to identify their desired outcomes.[112] This problem-solving process involves all of the participants and encourages the family of the offender to collaborate

100. *See id.*
101. *See id.*
102. *See id.*
103. *See id.* at 6.
104. *See id.* at 5–6; Coben & Harley, *supra* note 5, at 242.
105. *See* BAZEMORE & UMBREIT, *supra* note 29, at 5.
106. Coben & Harley, *supra* note 5, at 242.
107. *Id.*
108. *See* BAZEMORE & UMBREIT, *supra* note 29, at 5.
109. Coben & Harley, *supra* note 5, at 241–42.
110. *See* BAZEMORE & UMBREIT, *supra* note 29, at 5.
111. *Id.*
112. *Id.*

on an appropriate proposal for the victim and other impacted parties to consider.[113]

In the United States, early evaluations have found high levels of offender compliance with the agreements reached in these conferencing sessions and highly satisfied victims.[114] Facilitators involved in these programs have observed improved community skills in "conflict resolutions and participatory decision[-]making[,]" a much faster and more appealing resolution of incidents than if they were resolved in the traditional court system, and a reduction in the level of fear many of the victims have experienced.[115] While restorative programs have experienced great success, there are still minimal resources dedicated to expanding participation for those offenders that suffer from mental-health issues.[116]

III. BACKGROUND OF OFFENDERS WITH MENTAL-HEALTH ISSUES

According to the American Psychological Association, roughly half of incarcerated offenders suffer from mental-health issues.[117] Some practitioners believe mental-health offenders may be less culpable for criminal offenses due to "an impairment of their ability to (a) appreciate the nature, character, or consequences of their behavior; (b) appreciate that their behavior was wrong; (c) conform their behavior to the requirements of the law; or (d) choose between right and wrong, although the standard varies."[118]

Defenses to crimes for mentally-ill offenders range from insanity to diminished capacity.[119] While jurisdictions vary, an offender may generally plead insanity when, at the time of the crime, they suffered from a mental disease or defect and had no understanding of the nature or quality of the act or that what they were doing was wrong.[120] A defendant pleading the insanity defense essentially claims they are not guilty due to a lack of culpability arising from the mental illness.[121] Defendants that successfully assert an insanity defense are rarely let go.[122] Instead, they often end up institutionalized in some form of mental-health hospital.[123]

In contrast, diminished capacity is an argument that concerns the admissibility of evidence when dealing with a mentally-ill defendant and may

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113. Coben & Harley, *supra* note 5, at 242; *see also* BAZEMORE & UMBREIT, *supra* note 29, at 5.

114. *See* BAZEMORE & UMBREIT, *supra* note 29, at 6.

115. *Id.*

116. Lorna Collier, *Incarceration Nation*, AM. PSYCH. ASS'N (Oct. 2014), https://www.apa.org/monitor/2014/10/incarceration#.

117. *Id.*

118. Hafemeister et al., *supra* note 1, at 153.

119. Henry F. Fradella, *From Insanity to Beyond Diminished Capacity: Mental Illness and Criminal Excuse in the Post*–Clark *Era*, 18 U. FLA. J. L. & PUB. POL'Y 7, 16–17 (2007).

120. *Id.*

121. *Id.*

122. *Id.* at 52.

123. *See id.* at 35.

be invoked to negate the element of intent.[124] The defendant invoking a diminished capacity doctrine claims that their mental state prevented them from establishing the requisite mens rea for a crime.[125] Defendants who successfully claim a diminished capacity are found to be not guilty and set free—back into society.[126]

Many practitioners and citizens are concerned with the criminal justice system that treats mentally-ill offenders as ordinary criminals.[127] In *Clark v. Arizona*, the defendant was charged with first-degree murder for the killing of a police officer in the line of duty.[128] Clark was diagnosed with paranoid schizophrenia and asserted the insanity defense at trial.[129] A psychiatrist testified that Clark had "delusions about 'aliens'" and determined Clark was insane because he was incapable of knowing right from wrong at the time of the killing.[130] The Supreme Court of the United States determined that to establish an insanity defense, the party accused of the crime must have been laboring "under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."[131] The Court held the defendant did not prove he was insane by clear and convincing evidence; thus, he was sentenced to life in prison instead of treatment in a secure mental hospital.[132]

Offenders with mental-health issues can still benefit from restorative justice processes that result in accountability, further deterrence from future recidivism, and changes in behavior.[133] Research has shown that individuals with mental-health illnesses care about how they are treated by others and value human interactions.[134] Hence, society has an important impact on their identity as a person.[135] By sentencing mentally-ill offenders to life in prison instead of treatment for mental illness, the criminal justice system perpetuates the life cycle of crime.[136]

If an offender does not receive the regimen that they need to improve their mental health, it is likely the recidivism rates will continue to increase. Thus, more research needs to be published to measure the recidivism and success rates of restorative justice programs for mentally-ill offenders. This quantification of success rates may provide the criminal justice system with

124. Fradella, *supra* note 119, at 47–48.
125. *Id*. at 48.
126. *Id.* at 52.
127. *See* Hafemeister et al., *supra* note 1, at 155.
128. Clark v. Arizona, 548 U.S. 735, 743 (2006).
129. *Id.* at 745.
130. *Id*. at 736.
131. *Id.* at 735.
132. Fradella, *supra* note 119, at 10.
133. *See* Hafemeister et al., *supra* note 1, at 152.
134. *Id.* at 151.
135. *See id.*
136. *See id.* at 155.

the metrics needed to justify increasing the sentencing of those with mental-health issues to restorative programs, instead of traditional incarceration.

A. Historical Background of DID

In 1646, DID was first noted clinically when a woman claimed "another personality had stolen her money and that she could recall nothing of the incident."[137] There was little documentation of DID during the eighteenth and nineteenth centuries; however, some practitioners believe DID cases were mistaken for demonic possession.[138] Around the world, many cultures still believe that "experiences of being possessed are a normal part of spiritual practice and are not dissociative disorders."[139]

Since 1980, the number of patients diagnosed with DID has steadily risen in the United States.[140] Public awareness of DID has increased through media such as *Sybil*, a television broadcast portraying a woman with multiple personalities, and *The Three Faces of Eve*, a film featuring the diagnosis of a "multiple."[141] The American Psychiatric Association now estimates that DID is prevalent in 1.5% of American adults,[142] with 1.6% of males and 1.4% of females.[143]

B. Unique Components of DID

DID, previously known as Multiple Personality Disorder,[144] is defined as "an identity disruption indicated by the presence of two or more distinct personality states . . . , with discontinuity in sense of self and agency, and with variations in effect, behavior, consciousness, memory, perception, cognition, or sensory-motor functioning."[145]

The average person diagnosed with DID has eight personalities;[146] however, there can be hundreds of personalities in one body that repeatedly take control of their behavior.[147] The personalities often differ in gender, race,

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137. Fields, *supra* note 13, at 264.
138. *Id.*
139. *See* Wang, *supra* note 17.
140. Fields, *supra* note 13, at 265 n.27.
141. *Id.*
142. Huntjens et al., *supra* note 11.
143. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS: DSM–5, at 294 (5th ed. 2013) [hereinafter DSM-5].
144. Robert Todd Carroll, *Multiple Personality Disorder [Dissociate Identity Disorder]*, THE SKEPTICS DICTIONARY (last updated Oct. 31, 2015), http://skepdic.com/mpd.html. In 1994, the diagnosis of Multiple Personality Disorder was changed to Dissociative Identity Disorder. *Id.*
145. Brand et al., *supra* note 12.
146. Fields, *supra* note 13, at 264.
147. DSM-5, *supra* note 143.

emotional state, age, eye glass prescription, and handwriting.[148] They may respond differently to physical stimuli and achieve diverse scores on psychological tests.[149]

An overall individual, including all of the personalities that inhabit "the body, is referred to as a 'multiple.'"[150] The personality that controls the body most of the time is referred to as the "[h]ost."[151] "Alter" personalities are those who surface and control the body at different points in time.[152] Each alter personality is understood to have its own name, language, self image, and personal history.[153] Additionally, secondary personalities can be aggressive and hostile with the host personality appearing more reclusive and timid.[154]

DID offenders often experience amnesia relating to both remote and recent personal history,[155] including everyday events or past traumatic occurrences.[156] DID may cause one to "feel that they have suddenly become observers of their own speech and actions, or their bodies may feel different (e.g., like a small child, like the opposite gender, huge and muscular[, etc.])."[157]

Personalities may transform from one to another upon request or without warning.[158] This may occur suddenly while the individual is in the midst of doing something begun by an alter personality.[159] Alter personalities may not realize other personalities exist[160] and may have no recollection of actions taken when the others control the body.[161] Thus, it is common for individuals to suddenly find themselves at a location with no memory of how they got there.[162] The DID offender may discover evidence of their actions and tasks that they do not recall doing.[163] Because of this, DID offenders are typically not able to communicate their thoughts about what originally led to the crime.[164]

The complex components of each personality and its interaction with the others are unique to each individual.[165] For example, Billy Milligan was

148. Fields, *supra* note 13, at 264.
149. Crego, *supra* note 10, at 914.
150. *Id.*
151. *Id.*
152. *Id.* at 914–15.
153. Dawkins, *supra* note 17, at 557.
154. Fields, *supra* note 13, at 266 n.30.
155. Dawkins, *supra* note 17, at 557.
156. *See* Wang, *supra* note 17.
157. *Id.*
158. Fields, *supra* note 13, at 274.
159. DSM–5, *supra* note 143, at 292–93.
160. Crego, *supra* note 10, at 914.
161. DSM–5, *supra* note 143, at 292–93.
162. *Id.*
163. *Id.*
164. Hafemeister et al., *supra* note 1, at 152.
165. Crego, *supra* note 10, at 914.

acquitted on three rape charges when doctors discovered he had up to twenty-four different personalities.[166] The personalities included "a [three]-year-old dyslexic girl, an escape artist, a Yugoslav munitions expert who speaks Serbo-Croatian[,] and a Briton who reads and writes fluent Arabic."[167]

DID patients have the highest mean impairment scores of all dissociative disorders when measured on occupational, interpersonal, and psychosocial functioning.[168] These scores of impairment are more than 50% higher than those of patients with other personality-related psychiatric disorders or syndromes, with results staying high after controlling for comorbid, gender, and age disorders.[169] Moreover, DID patients are at high risk for early mortality because DID is strongly related to multiple suicide attempts and self-harm.[170]

The causes of DID typically stem from severe physical, sexual, or psychological abuse that is often repeated during childhood.[171] Approximately 90% of individuals diagnosed with DID in the United States, Canada, and Europe were victims of childhood neglect and abuse.[172] Symptoms of DID may occur in children as young as two.[173] Individuals with illnesses like DID often score high on Kaiser's Adverse Childhood Events Study (ACES), designed to measure the impact of childhood trauma on adult behavior.[174] Clinicians believe that trauma and abuse cause the individual to seek other personalities within themselves for rescue and protection.[175] This fantasy world exists to separate the child from real-world abuse.[176] By creating additional personalities, the individual can detach their sense of self so the trauma transpires to someone else.[177]

DID is sometimes misdiagnosed due to its common symptoms and propensity for comorbidity with other disorders.[178] DID patients may experience symptoms related to personality, mood, eating, substance abuse,

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166. United Press Int'l, *Escaped Fugitive Caught*, CHI. TRIB. (Nov. 22, 1986, 12:00 AM), https://www.chicagotribune.com/news/ct-xpm-1986-11-22-8603270881-story.html.

167. *Id.*

168. Huntjens et al., *supra* note 11.

169. *Id.*

170. *Id.*

171. Fields, *supra* note 13, at 265–66.

172. Wang, *supra* note 17.

173. Fields, *supra* note 13, at 266.

174. *See Adverse Childhood Experiences and Well Being over the Lifespan*, E. ILL. UNIV., https://www.eiu.edu/counsctr/AdverseChildhoodTraumaImpact.pdf (last visited Mar. 8, 2022); *About the Kaiser Ace Study*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/violenceprevention/aces/about.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Facestudy%2Fabout.html (last updated Apr. 6, 2021).

175. Fields, *supra* note 13, at 266.

176. *Id.*

177. Crego, *supra* note 10, at 915.

178. *See* Brand et al., *supra* note 12, at 260–61.

and functional somatic disorders, in addition to psychosis, among others.[179] Additionally, patients seeking care tend to refrain from revealing childhood trauma and dissociative indicators, which can lead to further misdiagnosis.[180]

The most popular treatments for DID are hypnosis and extensive psychotherapy with the goal of reintegrating several personalities into one.[181] Practice-based clinical guidelines recommend a lengthy phase-based approach that reports high dropout rates.[182] Thus, DID patients are frequently associated with high levels of treatment costs, treatment utilization, and impairment.[183] This substantial demand on resources makes it difficult for individual practitioners to dedicate the time and resources necessary to improve DID patient outcomes overall.[184]

Psychotherapy can help patients gain control over related symptoms and help to integrate the different elements of their identity.[185] This process may be difficult and intense because it involves recalling and dealing with past traumatic experiences.[186] Therapists use cognitive-behavioral therapy and dialectical-behavioral therapy when treating DID patients.[187] Cognitive-behavioral therapy helps patients learn new ways of managing difficult emotions and stressful situations by changing their behaviors and altering the way they think.[188] In contrast, dialectical-behavioral therapy helps DID patients to examine their opinions, reactions, and thoughts.[189]

Hypnosis can be useful in helping the primary personality become aware of other personalities within.[190] When utilizing hypnosis, the multiple is in a suggestive state, often allowing the therapist to discover other personalities who are more willing to appear and speak up.[191] While under hypnosis, a crime suspect's alter personality may confess to the alleged crime.[192] This creates a difficult situation as once another personality resumes control, the offender's host personality may have no knowledge of the confession or the crime itself.[193]

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179. *See id.* at 257.
180. *See id.*
181. *See* Fields, *supra* note 13, at 267; Wang, *supra* note 17.
182. Huntjens et al., *supra* note 11.
183. *Id.*
184. *See id.*
185. Wang, *supra* note 17.
186. *Id.*
187. *Id.*
188. *Dissociative Identity Disorder Treatment*, RECOVERY VILL. DRUG & ALCOHOL REHAB, https://www.therecoveryvillage.com/mental–health/dissociative–identity–disorder/treatment/ (last updated Aug. 18, 2021).
189. *Id.*
190. Fields, *supra* note 13, at 267.
191. *Id.*
192. Elyn R. Saks, *Multiple Personality Disorder and Criminal Responsibility*, 25 U.C. DAVIS L. REV. 383, 385 (1992).
193. *See id.*

Medication may be utilized for DID offenders in conjunction with therapy to treat related conditions like depression or anxiety.[194] Because DID is not chemically related, there are no medications available to successfully treat the disorder itself.[195]

While DID is a relatively common disorder, very little empirical research exists to substantiate the effectiveness of treatments because there are no published controlled trials at the time of this writing.[196] Instead, most studies highlight the successful treatment of patients with general dissociative disorders[197] or of patients diagnosed with DID as only one of multiple disorders.[198] Additionally, there are no specific evidence-based treatment guidelines available for DID.[199] In practice, treatment for DID is preferably delivered in multiple phases and may last for ten years or longer.[200]

After consulting multiple medical and psychological journals, there does not appear to be a cure for DID.[201] The longest term study available is a unique six-year study that determined DID necessitates long-term and specialized treatment in order to achieve functionality and stabilization.[202] The goals of this study were for DID patients to decrease self-destructiveness; decrease dissociative, destructive, and post-traumatic symptoms; decrease symptoms of comorbid disorders; and increase their adaptive functioning level.[203] The therapists measured each patient's quality of life, interpersonal victimization, global functioning, stressors, and safety after six years—when only 61% of the original patients remained in treatment.[204]

The study results showed that DID patients required significantly fewer hospitalizations and exhibited significant improvement in global functioning with decreased sexual revictimization and reductions in family relationship stress and internal conflict among self-states.[205] This study made it clear that treatment must address DID patients' "profoundly damaged capacity for relationships" as they continued to experience difficulties in their friendships,

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194. Wang, *supra* note 17; *Help with Anxiety Disorders*, AM. PSYCHIATRIC ASS'N, https://www.psychiatry.org/patients-families/anxiety-disorders (last visited Mar. 8, 2022).

195. Fields, *supra* note 13, at 267.

196. *See* Susan M. Chlebowski & Robert J. Gregory, *Three Cases of Dissociative Identity Disorder and Co-Occurring Borderline Personality Disorder Treated with Dynamic Deconstructive Psychotherapy*, 66 AM. J. PSYCHOTHERAPY 2, 165–66 (2012).

197. *See generally* Amie C. Myrick et al., *Six-Year Follow-up of the Treatment of Patients with Dissociative Disorders Study*, 8 EUR. J. PSYCHOTRAUMATOLOGY 1 (2017).

198. Chlebowski & Gregory, *supra* note 196, at 166.

199. Huntjens et al., *supra* note 11.

200. *Id.*

201. *See* RECOVERY VILL. DRUG & ALCOHOL REHAB, *supra* note 188; Chlebowski & Gregory, *supra* note 196; *see also* Myrick, et al., *supra* note 197; *see generally* Huntjens et al., *supra* note 11 (providing background information on DID).

202. Myrick et al., *supra* note 197, at 1.

203. *Id.*

204. *Id.*

205. *Id.* at 6.

occupational functioning, and romantic relationships.[206] As the study noted, more research needs to be done to determine the effectiveness of DID treatments and their psychosocial and economic impact.[207]

The lack of research on the efficacy and effectiveness of DID treatments is attributed, in part, to the fact that DID patients are typically excluded from treatment studies "due to their complexity, poly-symptomatology, and the long treatment length they are supposed to need."[208] Studies that do provide preliminary evidence for the effectiveness of treatment are often very small and may "suffer from major methodological shortcomings, limiting both internal and external validity."[209] For example, most of the studies lacked a randomized controlled design and did not include comparison groups or conditions.[210] Without extensive research over lengthy periods of time, practitioners are unable to develop consistent treatment plans to improve the lives of DID offenders and those they impact.[211]

In order to expand the scope of restorative justice to better serve DID offenders and their impacted victims and communities, there is a definite need for controlled trials and evidence-based treatment plans.

C. Current System Limitations for DID Offenders

Society struggles when responding to offenders with a mental disorder "whose criminal behavior has been shaped and driven by their mental disorder."[212] DID makes it even more difficult because DID is the only type of psychological disorder that is sufficient to prove that a defendant is not responsible for a crime by virtue of its presence alone.[213] Once an offender has established that they are a multiple, in most cases, the multiple "can almost *never* responsibly commit a crime, and a mere finding that a defendant has MPD [Multiple Personality Disorder] will result in [their] exoneration."[214]

In *Multiple Personality Disorder and Criminal Responsibility*, Professor Elyn R. Saks argues that three exceptional circumstances exist where the state may potentially refute a multiple's nonresponsibility for a crime.[215] In the first case, the prosecution could rebut the offender's nonresponsibility when all of a multiple's alters are aware of and consent to

206. *Id.*
207. *Id.*
208. Huntjens et al., *supra* note 11.
209. *Id.*
210. *Id.*
211. *See id.* (detailing advantages of a multiple baseline case series design).
212. Hafemeister et al., *supra* note 1, at 148.
213. Saks, *supra* note 192, at 453.
214. *Id.*
215. *Id.* at 453–54

the crime.[216] This is likely to be "so rare as to be almost non-existent" because multiples' different personalities are often at odds with each other.[217] In the second case, the host personality stands trial after committing the crime while the other alters appear so limited that "punishing the person/body does not seem problematic—it causes a trivial harm."[218] This is also so rare it would be almost non-existent because "guilty alters may take special pleasure in letting innocent alters suffer."[219] In the third case, a well-organized multiple with a ringleader alter who has established lines of responsibility for different tasks could be held responsible under a group-liability theory.[220] This mindset can lead to challenges in implementing and expanding restorative programs because the offender must generally accept responsibility for the crime in order to participate.[221] Thus, the criminal justice system generally lacks an appropriate process to rehabilitate DID offenders who are technically "not responsible" for their crime.[222]

IV. RESTORATIVE JUSTICE'S APPROACH TO MENTAL HEALTH

Practitioners encounter unique challenges when dealing with mental-health offenders.[223] In order to participate in restorative justice, offenders must be accountable for their behavior.[224] Often, this accountability can function as a step toward healing and future change.[225] Offenders with various types of mental illness may lack the capacity to truly understand and thus, account for their crimes.[226] Therefore, the restorative justice system needs to be flexible in creating individualized processes to adapt to each offender's unique circumstances.

> [O]ffenders respond more positively to processes they perceive as fair, and they generally perceive victim-offender meetings as fair, especially when compared to court proceedings. A fair process can create a ripple effect whereby "procedural fairness by authorities quite strongly increases trust in authorities, and trust in authorities in turn has considerable effects in increasing identification with one's community and society and ultimately participation in the community."[227]

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216. *Id.* at 453.
217. *Id.* at 454.
218. *Id.*
219. *Id.*
220. *Id.*
221. U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 18.
222. *See* Saks, *supra* note 192, at 454.
223. *See* ZEHR, *supra* note 7, at 189–91.
224. *Id.* at 190.
225. *Id.*
226. *See* Hafemeister et al., *supra* note 1, at 209–10; U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 18.
227. Burns, *supra* note 28, at 451.

One statistic shows that 86% of victims received an apology during the restorative process.[228] Moreover, a genuine apology may lead to more sympathy from the victims, adding to a more successful outcome overall.[229]

An offender's ability to participate in the restorative process may be limited by cognitive, emotional, or behavioral disorders, including the ability to engage in and follow the discussions.[230] Therefore, it is important for considerations and safeguards to be implemented to ensure the safety of all parties.[231]

The next section discusses the current state of mental-health courts and the role they play in providing restorative opportunities for mentally-ill offenders.

A. Mental-Health Courts

Mental-health courts are designed to connect mentally-ill offenders to treatment on a faster scale than those involved with the traditional justice system.[232] Unfortunately, mental-health courts, in general, often send offenders to jails and prisons where the largest number of sentences related to mental illness occur.[233] By sending qualified offenders to a treatment-based setting—instead of confining them to expensive jail beds—individuals are able to work towards a healthy re-entry into the community and receive the specialized care they need.[234]

An early study indicates that some mental-health courts "attempt to present a supportive environment in which participants have confidence that they can speak and have their problems addressed."[235] This can be an ideal environment for offenders and victims to discuss their concerns and relate to each other's victimhood.[236]

The role of restorative justice is to reintegrate offenders with their community.[237] Depending on the jurisdiction, mental-health courts will sometimes consider supervised victim-centered restorative programs as a supplement to community services.[238] These types of programs focus on restoring social ties of the victim, offender, and community.[239]

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228. *Id.*
229. *Id.*
230. Hafemeister et al., *supra* note 1, at 212.
231. *See* U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 33–35.
232. Judge Elinore Marsh Stormer, *What is a Mental Health Court?*, OHIO ST. B. ASS'N (Nov. 16, 2020), https://www.ohiobar.org/public_resources/commonly_asked_law_questions_results/courts_and_lawyers/what_is_a_mental_health_court/.
233. Burns, *supra* note 28, at 428.
234. *See* Stormer, *supra* note 232.
235. Burns, *supra* note 28, at 447.
236. *Id.*
237. *Id.*
238. *Id.* at 446–47.
239. *Id.*

Practitioners argue that jails should be the last resort for mental-health offenders because restorative justice is often more effective than incarceration when compared with recidivism results.[240] For example, an early study showed that recidivism rates of offenders who participated in victim-offender mediation were lower than non-participating offenders.[241] Moreover, the participating offenders' resulting crimes were generally less serious.[242]

Restorative justice contributes to reintegration by supplementing community services, which appears particularly suited to mental-health courts.[243] A seamless integration of the two models seems intuitive because restorative justice encourages collaboration and problem-solving, and mental health courts are known to be problem-solving courts.[244] Thus, some mental-health courts are implementing restorative processes, such as victim-offender mediation, where both parties may invite their family members; Assertive Community Treatment programs (ACT), where case managers work with clients in their own homes;[245] and some forms of transitional housing.[246] While some mental-health courts incorporate restorative processes into mentally-ill offenders' treatments, practitioners envision approaches to expand the reach of restorative programs and provide opportunities for a wider scope of participants.[247]

B. Promising Approaches

At the core of restorative justice, practitioners with both legal and non-legal backgrounds believe that offenders must be able to understand the purpose of the program. Some offenders lack the ability to participate when they are unable to adequately communicate regret for their actions to the victim.[248] Facilitators need to trust that participants have sufficient insight into their own behavior to "feel the remorse and responsibility necessary to make the process work."[249]

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240. *Id.* at 444.

241. BAZEMORE & UMBREIT, *supra* note 29, at 3.

242. *Id.*

243. *See* Hafemeister et al., *supra* note 1, at 153; *see also* Burns, *supra* note 28, at 447.

244. *See* Burns, *supra* note 28, at 447.

245. *See id.* at 445; ACT programs generally use a "team approach with a small case manager-client ratio; treatment provided where the client lives, with a focus on helping the client obtain their basic needs; and assertive, persistent engagement of weakly motivated clients." Merith Cosden et al., *Evaluation of a Mental Health Treatment Court with Assertive Community Treatment*, 21 BEHAV. SCI. & L. 415, 416 (2004).

246. *See* Burns, *supra* note 28, at 445–47.

247. Allison D. Redlich et al., *Patterns of Practice in Mental Health Courts: A National Survey*, 30 L. & HUM. BEHAV. 347, 357 (2006).

248. Hafemeister et al., *supra* note 1, at 209.

249. *Id.*

Facilitators play a critical role in the restorative process when working with mental-health concerns.[250] Here, facilitators should be specially trained and prepared to focus on the offender's mental disorder when implementing a program.[251] In order to lay the proper groundwork for a successful session, the facilitator should meet with each of the parties in person to clarify the goals and issues to be addressed.[252] When preparing the victim, the facilitator may cover the nature of mental illness in general, along with the offender's specific disorder to address any potential impacts it may have on the session.[253]

The facilitator is trained to anticipate the possibility that unfounded stereotypes, fears, or beliefs about mental illness may exist.[254] By meeting with the victim prior to a restorative session, the facilitator may address potentially false beliefs that could impact the victim's sense of personal safety.[255] Depending on an offender's comfort level and requirements of the program, the facilitator may address the specifics of an offender's disorder and whether it likely contributed to their criminal behavior.[256] This dialogue may also encourage the offender to share what steps they have taken to treat the disorder and reduce the likelihood that criminal behavior will recur.[257]

Public sector organizations facilitate many restorative justice programs that work with mental-health offenders.[258] For example, non-profit organizations, courts, and law enforcement organizations facilitate restorative programs.[259] ACT programs are also utilized to support mental-health offenders by providing a team approach with a high client-to-case manager ratio where the client lives.[260]

Because every case is unique, the restorative process may not be appropriate at one point in time; however, treatment at a later date may prove to be successful.[261] Overall, treatment is considered to be the most effective when offenders can connect with the community in the early stages of illness.[262]

A small number of offenders with severe mental-health disorders may only be able to participate in restorative processes with extended treatment

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250. *See id.* at 211.
251. *Id.*
252. *See* BAZEMORE & UMBREIT, *supra* note 29, at 3.
253. Hafemeister et al., *supra* note 1, at 211–12.
254. *Id.* at 212.
255. *Id.*
256. *Id.*
257. *Id.*
258. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 15.
259. *Id.*
260. Burns, *supra* note 28, at 445 (explaining that ACT programs focus on helping their clients obtain basic needs in life and meet frequently to stay engaged in the process.).
261. *Id.* at 450.
262. *Id.* at 445.

or not at all.[263] Depending on the situation, some practitioners are concerned that the victim may be revictimized if they become "so entrenched or distant in time as to make recovery relatively unlikely" or when time diminishes the victim's ability to sufficiently recall the underlying circumstances necessary to engage in the process.[264] Alternatively, some victims may prefer to wait to engage with the offender until years after the crime was committed.[265]

Thus, the flexibility of restorative justice allows the processes to take place an extended time after a crime has occurred—as they often do—depending on the severity. As restorative justice grows in popularity, practitioners are likely to contribute to the system by discovering new and innovative ways to benefit all parties and provide additional insight into existing studies and programs.

If restorative justice programs are to continue expanding, more research needs to be conducted to assess how the various mental-health disorders specifically impact the offender's ability to effectively participate. Without clinical data, it is difficult for practitioners to implement safeguards that protect all parties involved and grow their restorative programs. By conducting clinical studies, researchers can likely devise more promising approaches to assess the potential problems or success rates for given disorders when paired with a specific restorative process.

C. Restorative Justice's Current Approach for DID Offenders

When multiples are deemed not responsible for the vast majority of crimes, few options exist to deal with the offenders.[266] Practitioners contemplate whether communities must set the alleged offenders free, even if it is reasonably certain they will reoffend.[267] Restorative justice may be one solution with custom considerations and safeguards. This section will address potential barriers to successful restorative programs for DID offenders, victims, and impacted communities.

1. Barriers to Success for DID Offenders

The restorative process is built around the notion that an offender has taken full responsibility for the crime and is fully accountable for their actions.[268] Because offenders with DID have multiple personalities and do

263. Hafemeister et al., *supra* note 1, at 210.

264. *Id.* at 211.

265. *See* Jill Suttie, *Can Restorative Justice Help Prisoners to Heal?*, GREATER GOOD SCI. CTR. UNIV. CAL. BERKELEY (June 9, 2015), https://greatergood.berkeley.edu/article/item/restorative_justice_help_Prisoners_heal; *see also* THE PRISON WITHIN (Gravitas Ventures 2020) (showing a case where a victim engaged with a prisoner-offender years after the crime was committed).

266. Saks, *supra* note 192, at 453.

267. *Id.*

268. ZEHR, *supra* note 7, at 203–04.

not remember events that occur when other personalities are in control of the body, it is difficult for a DID offender to actually be accountable for the crime.[269] This appears to be the biggest barrier to successful restorative processes for DID offenders.

Additionally, an offender must consent to participate in the restorative process.[270] If the present personality has no recollection of the crime, it is likely that truly informed consent is impossible. Therefore, if the offender is merely agreeing to be accountable in order to participate in what they may view as a lighter sentence, it is likely the offender may be unable to truly improve and heal their relationships.

Some offenders with mental-health issues may embrace the restorative process as an outlet to make amends.[271] Although some personalities may be more inclined to be empathetic than others, it is difficult for offenders to empathize or feel remorse without an active recollection of the crime.[272] This is necessary to precipitate change and recovery.[273] Without the capacity to empathize with other parties and understand the effects of their actions, conferencing may be unlikely to alter one's behavior.[274]

This presents a barrier for DID offenders because the personality present during a restorative meeting may not have been active at the time of the crime and thus, has no accountability for it.[275] Research has shown that alter personalities may have no recollection of actions taken by other personalities as the individual may suddenly find themselves at a location with no memory of how they got there.[276] Additionally, the DID offenders may discover evidence of their actions and tasks that they do not recall doing.[277] This, in turn, can make it difficult for impacted victims and the community to understand the offender's actions.[278]

For the restorative process to be successful, the DID offender needs to acknowledge and disclose the DID despite the potential for stigmatization or embarrassment.[279] This disclosure must occur for the victim to understand why the incident occurred and what may occur in the process if the offender's personality changes or if the offender appears to have no knowledge of the crime. Moreover, this disclosure may improve the overall outcome of the processes because victims often exhibit greater sympathies towards the

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269. Crego, *supra* note 10, at 914, 921.

270. U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 34.

271. *See* Hafemeister et al. *supra* note 1, at 213.

272. *See* DSM–5, *supra* note 143, at 293, 295–96; *see also* U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 18.

273. Hafemeister et al., *supra* note 1, at 213.

274. *Id.* (citation omitted) ("[O]ffenders with a mental disorder may not be sufficiently able to empathize with their victims.").

275. *See* DSM–5, *supra* note 143, at 292–94.

276. *Id.*

277. *Id.*

278. *See* U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 18.

279. Hafemeister et al., *supra* note 1, at 213.

offender once they learn of the mental illness.[280] Therefore, when a DID offender is unwilling to disclose their DID diagnosis, the offender is not able to effectively participate in restorative processes.

Additionally, a DID offender may struggle with consistency and experience further shame or stigmatization if alternate personalities appear in restorative meetings.[281] Therefore, it may be difficult for the offender to meaningfully participate in the process when the present personality has no recollection of the criminal actions. This may create additional barriers for the offender in the community they seek to rejoin. There is a dire need for more research to expand the scope of restorative justice and provide opportunities for the DID-offender population to benefit from the processes when appropriate.

2. Barriers to Success for Victims of DID Offenders

Victims need a supportive environment to have confidence that their problems will be addressed and to understand the offender's situation.[282] When dealing with DID offenders, the victim may be confronted by an alter personality that has no recollection of the crime, no recognition of who the victim is, and no understanding as to why they are participating in this process.[283] If adequately prepared, a victim witnessing this may have an entirely different view of the offender.[284] Though potentially not the apology or outcome desired, this may be beneficial to the victim when participating because it allows them to understand the individual in a more complete way.

By observing the transformation of the offender's personalities from one to another, the victim may conceptualize the root of the disorder in ways that no amount of research can provide.[285] It is possible for the victim to discover firsthand that the offender is mentally-ill and may not have intentionally victimized them or their family members.[286] This may help the victim to remove the personalization from the crime and feel more secure in society at large because the victim may not have been personally targeted.[287] Because the DID offender may not have the requisite mental capacity necessary to

280. Burns, *supra* note 28, at 448.

281. *See* Hafemeister et al., *supra* note 1, at 214.

282. Burns, *supra* note 28, at 447.

283. *See* DSM–5, *supra* note 143; U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 18.

284. Hafemeister et al., *supra* note 1, at 212–13.

285. ZEHR, *supra* note 7, at 189 ("Healing for victims does not imply that one can or should forget or minimize the violation . . . it implies a sense of recovery, a degree of resolution or transcendence. The violated should again begin to feel like life makes some sense and that they are safe and in control."); *see* Hafemeister et al., *supra* note 1, at 212–13.

286. *See* ZEHR, *supra* note 7, at 32–33.

287. *Contra* Hafemeister et al., *supra* note 1, at 212.

specifically single out a victim, it is possible there was nothing the victim could have done to prevent the crime.[288]

Therefore, adequate preparation for the victim is incredibly important. A central foundation to successful restorative justice is the offender's accountability for the offense.[289] Because the DID offender has multiple personalities, it is possible for one personality to commit the crime, fully admit to it, and agree to participate in the process only for an alter personality to appear at the mediation.[290]

The DID offender's lack of memory and inability to have any recollection of the events is the largest barrier to successful restorative processes.[291] It may be difficult for victims to understand and interact with the offender if their speech or thoughts are highly disorganized.[292] Additionally, victims may have incorrect beliefs about mental-health disorders that facilitators need to explain prior to participation in the process.[293]

The time frame involved for a DID offender to receive and benefit from treatment may also pose a barrier to success for victims.[294] By waiting for the offender's treatment, the victim must continue on in the grief process and delay any potential closure they might otherwise experience with different options.[295] Alternatively, it may be healthy for the victim to have time and space for healing between the event and the restorative process.[296] This likely varies on a case-by-case basis.

3. Barriers to Success for Communities Impacted by DID Offenders

Community building and community problem-solving dimensions are some of the most important outcomes from community circles.[297] In the traditional criminal justice process, the community is often left out—depriving members of the opportunities for interactive growth.[298] Therefore, restorative programs play a critical role in building communities and preventing future crimes. Community members who participate in community circles have the chance to enhance their own positive self-image while helping the offenders to heal themselves.[299] Without the ability to

288. *See* DSM–5, *supra* note 143, at 292–94
289. *See* U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 18.
290. *See* DSM–5, *supra* note 143, at 293.
291. See Crego, *supra* note 10, at 914.
292. Hafemeister et al., *supra* note 1, at 212.
293. *See id.* at 212.
294. *Id.* at 210–11.
295. *Id.* at 211.
296. *See* Suttie *supra* note 265; *see also* THE PRISON WITHIN, *supra* note 265.
297. *See* ZEHR, *supra* note 7, at 175.
298. *See id.*
299. *See id.* at 176.

properly process conflicts in a restorative setting, a "fundamental building block of community and of crime prevention" is often removed.[300]

Crime has a tendency to undermine a community's sense of wholeness.[301] Thus, the restorative process should consider how the community impacted by the crime can also be healed.[302] A central foundation to successful restorative justice is based on the offender's accountability for the offense.[303] Because the DID offender has multiple personalities, it is possible that the personality who appears at the community circles may have no recollection of the crime.[304] This mental state can create barriers to community growth and can deprive participating members of their own chance to heal.[305] Without proper counseling and a widespread understanding of the DID disorder itself, this can lead to further disconnection between the offender and members of the community they hope to rejoin.

Communities also face potential barriers to success with the timeframe involved for a DID offender to receive and benefit from treatment.[306] By waiting for the offender's treatment, the community may experience added expenses and must continue delaying any potential closure they might otherwise benefit from.[307] The longer it takes for the offender to improve, the more likely it is for the memory of impacted community members to fade, making the ability to recall relevant circumstances and events more difficult.[308]

Alternatively, communities may benefit from an extended timeframe because it allows members to explore other ways to support the offender.[309] Education of community members is a key to success in discovering ways to encourage offenders impacted by any mental illness, including DID.[310] When community members bring "love, concern, support, and a willingness to forgive" into the community circles process, the actions and attitudes of many offenders can be profoundly influenced.[311] For example, one participating offender described how his anger about how community members had acted towards him in the past was changed when he discovered that they actually cared about him.[312] This discovery led to a new perspective where he wanted to be different for the community.[313] Thus, continuing to involve and update

300. *Id.* at 175.
301. *See id.* at 190.
302. *Id.*
303. *Id.*
304. *See* DSM-5, *supra* note 143, at 293.
305. *See id.*
306. *See* Hafemeister et al., *supra* note 1, at 210–11.
307. *See id.*
308. *See id.* at 211.
309. *See id.*
310. ZEHR, *supra* note 7, at 178.
311. *Id.* at 177.
312. *See id.*
313. *See id.*

impacted community members on the offender's treatment status is critical to overcoming potential barriers and to the success of community circles overall.

V. IMPORTANT SAFEGUARDS FOR RESTORATIVE JUSTICE WHEN WORKING WITH DID OFFENDERS

The biggest challenge to working with DID offenders in restorative practices is the current personality's inability to recall the actions of alter personalities and be presently accountable for their actions.[314] The personality responsible for the offense may accept full responsibility for their actions and knowingly agree to participate yet fail to emerge during the restorative meeting.[315]

As each offender's situation is unique, there are a variety of approaches for the parties to draw from when laying the groundwork for a successful program.[316] By taking a relationship-focused approach to the restorative process, the spotlight is on the relationship between and among the parties involved.[317] This approach focuses on the character or nature of the relationships that have been affected by the offense.[318] Alternatively, the contextual approach to the restorative process requires that practices and processes be flexible and responsive to the specific individual situation.[319] When crafting a restorative process, parties need to consider cultural practices, safety or security concerns, and the complexity of issues involved to customize an individual plan.[320]

Even offenders who are "unable to fully understand the nature of the proceedings may benefit from being given an opportunity to participate, which . . . may enhance their ability to respect and accept the outcomes of this and other proceedings that stem from the commission of the crime."[321] Further research is needed to explore whether an alternative version of restorative justice—different from the current process—may be established to allow the victim and DID offender to integrate and "see" each other fully.

Practitioners caution restorative facilitators against automatically assuming that cognitive and emotional disorders of offenders will limit or inhibit their participation in the proceedings.[322] Facilitators should be aware

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314. *See* Crego, *supra* note 10, at 921 (explaining the difficulty of holding one alter legally responsible for the actions of another alter).

315. *See id.*

316. *See* Jennifer J. Llewellyn et al., *Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation*, 36 DALHOUSIE L. J. 281, 289 (2013).

317. *See id.* at 301.

318. *See id.*

319. *Id.*

320. *Id.*

321. Hafemeister et al., *supra* note 1, at 213.

322. *Id.* at 212.

that by estimating impacted offenders' disorders, they may actually increase those deficits by marginalizing them and further reducing their self-esteem.[323] This may result in individuals that become less capable of living responsibly in society and caring for themselves.[324] Perhaps, the restorative programs might create a specialized network of individuals with heightened skills who can help with the process.

It is imperative that restorative processes set parameters for programs to ensure that all participants are protected by necessary legal safeguards.[325] Reparative requirements for offenders must be customized and consistent with the DID offender's abilities.[326] All parties need to consider the high levels of impairment that DID causes and recognize that DID patients are specifically at high risk for self-harm and multiple suicide attempts.[327] Thus, any restorative process designed for the DID offender should be carefully crafted to benefit their situation and provide safeguards to protect the offender, specifically, against further harm.

At the integration point, a DID offender must be fully informed of the restorative process, how it works, their rights, and any possible consequences of their decision to participate.[328] In certain situations, the DID offender may need to obtain permission from their counselor before participation.[329] The offender must also be notified of their right to consult with legal counsel.[330] This is notably important for DID offenders as the disclosure of their diagnosis may potentially have long-lasting or far-reaching effects, especially if it was not disclosed as a defense in prior criminal proceedings.

The offender also has the right not to participate.[331] The restorative process is completely voluntary, and neither the victims nor the offenders are required to engage.[332] Coercion generally conflicts with the principles of restorative justice and is often counterproductive with mental-health offenders.[333] Thus, forced participation in the treatment or preparation sessions should not occur,[334] and fully informed consent is required.[335]

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323. *Id.* at 212 n.289.

324. *Id.*

325. U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 33 (describing how parties should have the right to consult with legal counsel regarding the restorative process).

326. *See id.* at 37.

327. Huntjens et al., *supra* note 11.

328. U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 34.

329. *See The School Counselor's Role in Restorative Practices*, CONFIDENT COUNS. (Sept. 3, 2019), https://confidentcounselors.com/2019/09/03/the-school-counselors-role-in-restorative-practices/.

330. U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 33.

331. *Id.* at 34.

332. *See id.* at 37 (noting that when a victim is unwilling to participate in the restorative process, a surrogate should be utilized).

333. *See* Hafemeister et al., *supra* note 1, at 211.

334. *Id.*

335. U.N. OFF. OF DRUGS & CRIME, *supra* note 3, at 34.

Agreeing to participate in a restorative process should not be evidence of an offender's guilt in subsequent legal proceedings.[336] Any agreements that arise out of this process should be considered both voluntary and reasonable.[337] Absent the party's agreement or legal requirements, the restorative processes should be confidential as long as they are not conducted in public.[338]

If an agreement arises from the restorative program, it should be judicially supervised or integrated into pending judicial decisions or judgments.[339] In most jurisdictions, this means the prosecution or the offender could appeal the outcome.[340] Thus, the outcome should "preclude prosecution in respect to the same facts."[341] The process should also be structured so there is no increased punishment levied on the offender for failure to reach or implement an agreement.[342]

The seriousness of the offense likely impacts the timeframe involved.[343] If the victim is willing to wait for the offender to obtain psychological or hypnotic treatment, the chances of successful mediation are higher.[344] This requires the victim to continue in the grief process and delay any potential closure they might obtain from successful mediation sessions.[345]

The benefits may still be worth waiting for the offender to progress in treatment. For example, Dionne Wilson participated in a restorative process nine years after her husband—a police officer—was killed while on duty.[346] Dionne was originally a strong advocate for the death penalty who wrote editorials for the local paper until her husband's killer received the death sentence.[347] Dionne greatly benefited by participating in the Victim Offender Education Group (VOEG), a program offered by the Insight Prison Project at San Quentin State Prison.[348] This restorative process changed Dionne's perceptions of the death penalty, leading her to support sentencing reform.[349] Dionne ultimately represented survivors at congressional hearings, advocated against the death penalty, and became a featured Ted Talk lecturer focused on reform.[350]

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336. *Id.*
337. *Id.*
338. *Id.*
339. *Id.*
340. *Id.*
341. *Id.*
342. *Id.* at 35.
343. *See id.* at 14.
344. *See* Fields, *supra* note 13, at 267; Hafemeister et al., *supra* note 1, at 210–11.
345. *See* Hafemeister et al., *supra* note 1, at 210–11.
346. Suttie, *supra* note 265; THE PRISON WITHIN, *supra* note 265.
347. THE PRISON WITHIN, *supra* note 265.
348. *Id.*
349. *Id.*
350. *Id.*

Another victim, Darlene Farah, participated in the restorative process with her daughter's killer three years after the crime occurred.[351] The three years allowed Darlene to delve into the offender's background so she had more compassion for him than she had initially felt.[352] Darlene was so moved by the process she began working with youths that had similar situations as the offender.[353]

Thus, there are many success stories, like those of Dionne and Darlene, which provide benefits to the parties when participation occurs long after the commission of the crime.[354]

This Article breaks this new approach for DID offenders into three safeguards: (1) the offender's DID diagnosis should be disclosed; (2) the facilitator should customize goals of the process, which may deviate from typical restorative outcomes; and (3) the process should first begin with a victim-offender letter exchange.

A. Safeguard #1: DID Diagnosis Disclosure Is Necessary

In fairness to the offender, victim, other community members, and those funding the process, all parties should be initially provided with information regarding the offender's DID diagnosis. This provides impacted victims and communities with the transparency necessary to make an informed decision as to whether they are truly open and willing to interact with the offender in this restorative process.

The victim should be fully prepared for the offender to arrive as another personality or for them to switch personalities during the mediation session. The facilitator may utilize examples, videos, case scenarios, or real-life stories of the offender to successfully prepare the victim for the reality of DID. The victim should be advised that the alter personalities may have no recollection of the offense, who the victim is, or why they are sitting in this mediation process. If the victim is fully informed from the start and anticipates the meeting may not go as desired, the DID offender can still participate.

Once a victim is fully informed of the offender's mental disorder, they may still choose to proceed with the restorative process regardless of how inarticulate the offender is expected to be.[355] This may be due to the victim's desire to be heard, their need to express a "sense of injustice at being the

351. Eli Hager, *They Agreed to Meet Their Mother's Killer. Then Tragedy Struck Again*, MARSHALL PROJECT (July 21, 2020, 6:00 AM), https://www.themarshallproject.org/2020/07/21/they-agreed-to-meet-their-Mother-s-killer-then-tragedy-struck-again.

352. *Id.*

353. RECOVERY VILL. DRUG & ALCOHOL REHAB, *supra* note 188.

354. *See* Suttie, *supra* note 265; THE PRISON WITHIN, *supra* note 265.

355. Hafemeister et al., *supra* note 1, at 213.

target of a crime[,]"[356] their need to reclaim or reassert power with the offender, or their need to feel recognized as being the subject of harm.[357] The victim's needs have the potential for fulfillment to some degree by merely participating in the session with the offender.[358] Here, the victim still receives some form of symbolic recognition for being harmed,[359] regardless of whether the personality who committed the crime is actually in attendance.

Family group conferencing involves similar concerns as with mediation; however, this conferencing involves more depth and relational dynamics. It is likely the family members may be aware of the offender's DID diagnosis. However, it is still necessary that the facilitator fully inform all parties in the restorative process.

In community circles, the facilitator should fully inform the community members proposed to participate in the meeting of the offender's DID diagnosis to adequately prepare. Thus, the facilitator's transparency will allow community members to anticipate, understand, and accept the offender's personality state that appears in the circle. The impacted community may benefit from simply participating in the process itself and exploring additional avenues to support the offender in the future. To provide some protection for the offender's privacy, the facilitator should require all participating members to sign a non-disclosure agreement, prohibiting the disclosure of the offender's DID diagnosis to those outside of the process. This would, of course, only apply in non-public settings.

Even when privacy safeguards are in place, this full disclosure may still not be comfortable for the host personality of the offender because this is the community they may one day rejoin. Additionally, this situation may not be comfortable to community members. However, when the disorder is disclosed up front, the likelihood that community members may reject the offender, or, even worse, respond in a fashion that further harms their already fragile emotional state, decreases.

B. Safeguard #2: Facilitator Should Customize DID-Specific Goals

The restorative justice facilitator should work with the victim or community members to customize DID-specific goals of the process, which may deviate from typical restorative outcomes. Facilitators need to first undergo specialized training to ensure they are highly qualified to take on this role.[360] In cases where a DID offender has an extensive history with their counselor, the counselor may also be involved to assist in quelling the

356. *Id.*

357. Inga N. Laurent, *From Retribution to Restoration: Implementing Nationwide Restorative Justice Initiatives – Lessons from Jamaica*, 42 FORDHAM INT'L L. J. 1095, 1108 (2019).

358. *Id*. at 1109.

359. *Id.*

360. *See* Hafemeister et al., *supra* note 1, at 211.

offender's symptoms or foretell circumstances when a change in personalities might occur.

When meeting with the victim or community members, the facilitator can utilize storytelling, understanding, and empathy to discuss and flesh out any concerns the parties may have regarding the offender's DID diagnosis. Any misunderstandings of the disorder should be clarified to bring the parties' expectations to the most realistic state possible. Depending on the parties, a variety of tools may be utilized, such as showing video clips of individuals with DID, potentially showing video clips of the offender, and providing resources for the parties to reflect on after the session. Open communication is crucial here because the parties must feel they are in a safe space where they can freely discuss any concerns or hesitancies with the facilitator.

Facilitators need to receive extensive training to make an appropriate determination based on assessments of the parties and the interactions thus far. Due to the nature of DID, this assessment will be highly unique to each individual participant. The facilitator should have the flexibility and the knowledge to customize a realistic plan for the parties within the overall guidelines set forth by the regulatory system involved (e.g., court administrators) or form an advisory board for this purpose.

An advisory board may be utilized to determine whether the offender participates in further restorative processes or may serve as a reference to assist the facilitator in making this decision.[361] The advisory board may consist of court representatives, social workers or counselors, victim service representatives, previous victims or offenders who have successfully completed a victim-offender mediation, or others.[362] It is imperative the victim be given the opportunity to express what it is that they need individually.[363] The facilitator should be completely open to the victim's needs and cannot limit their options or feelings to only those on a prescribed list.[364] If the victim has certain questions or desires relating to a potential meeting with the DID offender, the facilitator must fully hear the victim's requests and be flexible in making accommodations when possible.[365] Thus, victims have a true opportunity to have their own needs met and participate in restorative processes with the DID offender in the most conducive setting possible.[366]

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361. *See* U.S. DEP'T OF JUST. ET AL., GUIDELINES FOR VICTIM–SENSITIVE VICTIM–OFFENDER MEDIATION: RESTORATIVE JUSTICE THROUGH DIALOGUE 17 (2000), https://www.ncjrs.gov/ovc_archives/reports/96517-gdlines_victims-sens/ncj176346.pdf.

362. *Id.* at 25.

363. *See* Mary Achilles, *Can Restorative Justice Live Up to Its Promise to Victims?*, *in* HOWARD ZEHR & BARB TOEWS, CRITICAL ISSUES IN RESTORATIVE JUSTICE 67 (2004).

364. *See id.* at 66, 70.

365. *See id.* at 66–68.

366. *See id*. at 67.

C. Safeguard #3: The Process Should Begin with a Letter Exchange

The overall success of a restorative process with the DID offender may likely depend on the type of program best suited to the individual. By first limiting the restorative process to an exchange of letters between the victim and the offender, the parties can reduce the potentially harmful impact.[367] If a DID offender successfully participates in the letter exchange, the parties can then jointly explore whether progressing to a victim-offender mediation session may be beneficial. If a victim-offender mediation session is successful, the facilitator can explore whether including additional parties in a family group conferencing session or the community in a circle may be beneficial. It is still possible that the victim-offender letter exchange may succeed with the accountable personality state in attendance, while subsequent meetings may not.

By utilizing both the relationship-focused[368] and the contextual[369] approach, this program can craft a very unique and individualized plan on a case-by-case basis. The facilitator should make this decision based on input from all parties, considering how the offense has impacted their relationships and providing flexibility. If either the victim or offender is unwilling to participate in further processes, the facilitator should not require them to. It is possible that the victim may decline further sessions; however, the offender may benefit from meeting with the family or impacted community on their own.

If the DID offender has successfully participated in the victim-offender letter exchange and a victim-offender mediation session, the parties can then provide insight—with permission to disclose—to potential parties that may want to participate in family group conferencing sessions or community circles. This overall approach allows the DID offender to experience potential restorative opportunities while providing protection from potential embarrassment or stigmatization that might occur without these safeguards in place. In certain circumstances, it may be possible to involve others who know the offender to paint a more complete picture of their life and continue the healing process. This might also provide additional validation for the victims, family, and community members involved.

Ultimately, research by trained professionals is necessary to measure the efficacy of this approach. Thus, pending professional analysis, these safeguards may allow the DID offender to participate in the process to the

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367. *See A Penpal in Prison: University Students and Inmates Exchange Letters, Change Each Other's Lives*, WLRN (June 18, 2017, 8:31 PM), wlrn.org/news/2017-06-18/a-penpal-in-prison-university-students-and-inmates-exchange-letters-change-each-others-lives/.

368. *See* discussion *supra* Section V (describing how the relationship–focused approach centers on the character or nature of the relationships that have been affected or involved in by the offense).

369. *See* discussion *supra* Section V (describing how the contextual approach requires that practices and processes be flexible and responsive to the specific individual situation).

extent they are capable while still protecting and benefiting the impacted victim and community.

VI. CONCLUSION

As DID offenders are extremely unique and may include hundreds of personality states, the traditional criminal justice system offers little rehabilitation. In contrast, the restorative justice process can provide DID offenders with the potential to repair previous harms, engage with their victims, and improve the chances of successful reintegration within their communities.

While further research by trained professionals is needed, it appears that some DID offenders may take part in the restorative process. By implementing safeguards that require the offenders to initially disclose their disorder, facilitators to obtain specialized training on DID while developing customized goals, and the process to be individualized, beginning with an informed victim-offender letter exchange, the current adjudication system can be primed for alternative healing paths to justice for all.