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Family Group Conferencing: Implications for Crime Victims

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Center for Restorative Justice & Peacemaking
University of Minnesota

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U.S. Department of Justice
Office of Justice Programs
810 Seventh Street NW.
Washington, DC 20531

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Attorney General

Daniel Marcus
Acting Associate Attorney General

Mary Lou Leary
Acting Assistant Attorney General

Kathryn M. Turman
Director, Office for Victims of Crime

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Family Group Conferencing:

Implications for Crime Victims

Mark S. Umbreit, Ph.D., Director

Center for Restorative Justice & Peacemaking
(formerly Center for Restorative Justice & Mediation)
School of Social Work
University of Minnesota
St. Paul, Minnesota

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This document draws upon a previous article by Mark Umbreit and Howard Zehr (1996), and the guidelines in the conclusion are based upon a consensus that emerged from a group of individuals who participated in the Family Group Conference training provided by the REAL JUSTICE organization in Pennsylvania in 1995.

Message From the Director

This collection of six documents covers a number of important issues related to restorative justice. Four of the documents focus on victim-offender mediation, which is a major programmatic intervention that fully embraces the concepts of restorative justice. The first of these documents is the *Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue*, which assists administrators in developing or enhancing their restorative justice programs. It provides practical guidance for mediators to facilitate balanced and fair mediation, which will ensure the safety and integrity of all the participants. The *National Survey of Victim-Offender Mediation Programs in the United States* contains information about the characteristics of the various victim-offender mediation programs operating nationwide and the major issues facing them in their day-to-day operations. The *Survey* describes the actual functioning of the programs, while the *Guidelines* sets standards for the practice of victim-offender mediation. Next, the *Directory of Victim-Offender Mediation Programs in the United States* lists all identified victim-offender mediation programs in the country and provides their addresses, phone numbers, and contact and other basic information. The purpose of the *Directory* is to provide easy access for persons who would like to contact a given program. The *Family Group Conferencing: Implications for Crime Victims* document discusses a related form of restorative justice dialogue that originated in New Zealand and Australia and has been replicated in some communities in the United States. The *Multicultural Implications of Restorative Justice: Potential Pitfalls and Dangers* document informs practitioners about concerns regarding the implementation of such frameworks when working with persons of cross-cultural perspectives. The sixth document, entitled *Victim-Offender Mediation and Dialogue in Crimes of Severe Violence*, will be added to the collection late FY 2000. It will provide case study evidence suggesting that many of the principles of restorative justice can be applied to crimes of severe violence, including murder. In addition, this document includes a discussion about the need for advanced training for persons working with victims of severe violence.

The Office for Victims of Crime does not insist that every victim participate in victim-offender mediation, family group conferencing, or other restorative justice intervention. Such participation is a personal decision that each victim must make for herself or himself. We strongly advocate, however, that all restorative justice programs be extremely sensitive to the needs and concerns of the victims who would like to meet with their offenders. No pressure should be placed on victims to participate, for participation must be strictly voluntary. Victims should be granted a choice in the location, timing, and structure of the session and a right to end their participation at any stage in the process. These protections for victims do not mean that offenders can be treated insensitively. Both victim and offender must be dealt with respectfully.

We sincerely hope that restorative justice programs already in operation in probation or parole agencies, judicial agencies, religious groups, victim service organizations, community-based organizations, or elsewhere study these documents and embrace the victim-sensitive

guidelines that are relevant to their particular type of intervention. Restorative justice programs can only be strengthened by operating with heightened awareness of the needs of crime victims.

Kathryn M. Turman
Director
Office for Victims of Crime

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This project also benefited greatly from the contributions, guidance, and support of Susan Laurence, the Project Manager at OVC. This *Restorative Justice and Mediation Collection* is the result of the efforts of many individuals in the field who generously shared their materials and experiences with the Center for Restorative Justice & Peacemaking so that victims may be provided additional options in the process of healing.

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Introduction

During the past several years, family group conferencing (FGC) models used in New Zealand and Australia have received considerable attention in North America. Representatives from both countries have lectured and provided training workshops throughout the United States and Canada. Audiences have ranged from those in the victim-offender mediation (VOM) and restorative justice movements to many law enforcement officers, school officials, and a growing number of victim advocates.

What Is Restorative Justice?

By Mark S. Umbreit, Ph.D., Center for Restorative Justice & Peacemaking
University of Minnesota School of Social Work

Restorative justice is a victim-centered response to crime that allows the victim, the offender, their families, and representatives of the community to address the harm caused by the crime. Restorative justice emphasizes the importance of providing opportunities for more active involvement in the process of offering support and assistance to crime victims; holding offenders directly accountable to the people and communities they have violated; restoring the emotional and material losses of victims (to the degree possible); providing a range of opportunities for dialogue and problem solving to interested crime victims, offenders, families, and other support persons; offering offenders opportunities for competency development and reintegration into productive community life; and strengthening public safety through community building.

Restorative justice policies and programs are developing in more than 45 States, including a growing number of State and county justice systems that are undergoing major systemic changes. Restorative justice is also developing in many other parts of the world, including numerous European countries, Australia, New Zealand, and South Africa. The principles of restorative justice draw upon the wisdom of many cultures throughout the world, most notably American-Indian cultures within the United States and aboriginal cultures within Canada, Australia, and New Zealand.

Specific examples of restorative justice initiatives include crime repair crews, victim intervention programs, family group conferencing, victim-offender mediation and dialogue, peacemaking circles, victim panels that address offenders, sentencing circles, community reparative boards before which offenders appear, offender competency development programs, victim empathy classes for offenders, victim-directed and citizen-involved community service by the offender, community-based support groups for crime victims, and community-based support groups for offenders. As the oldest and most widely developed expression of restorative justice, having been in use more than 25 years and the subject of numerous studies in North America and Europe, victim-offender mediation and dialogue programs currently work with thousands of cases annually through more than 300 programs in the United States and more than 700 in Europe.

Research has found that restorative justice programs provide higher levels of victim and offender satisfaction with the process and outcome and a greater likelihood of successful restitution completion by the offender than traditional justice programs. Research has also shown that restorative justice programs have reduced fear among victims and decreased the frequency and severity of further criminal behavior among offenders.

This attention has resulted in the introduction of a number of pilot projects and new program initiatives that incorporate some form of the FGC approach. One Pennsylvania-based organization, REAL JUSTICE, is vigorously promoting a specific police- and school-based model that originated in Wagga Wagga, Australia. REAL JUSTICE has trained hundreds of police officers and school staff members and is working to replicate this Australian model in a number of sites. The Minnesota Legislature funded the development of FGC pilot projects using the REAL JUSTICE model in nine communities in the First Judicial District.

Rarely has a new criminal justice idea received such extensive exposure to and interest from audiences as widespread as activists, professionals, and the general public in such a short period of time. No other restorative justice approach has so quickly brought such large numbers of law enforcement officials to the table as active stakeholders in the restorative justice movement.

Family Group Conferencing

FGC involves the community of people most affected by the crime—the victim and the offender and the family, friends, and key supporters of both—in deciding the resolution of a criminal or delinquent act. The facilitator contacts the victim and offender to explain the process and invite them to the conference; the facilitator also asks them to identify key members of their support systems who will be invited to participate as well. Participation by all involved is voluntary. The offender must admit to the offense to participate. The parties affected are brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired.

The conference typically begins with the offender describing the incident, followed by each participant describing the impact of the incident on his or her life. Through these narrations, the offender is faced with the human impact of his or her behavior on the victim, on those close to the victim, and on the offender's own family and friends. The victim has the opportunity to express feelings and ask questions about the offense. After a thorough discussion of the impact of the offense on those present, the victim is asked to identify desired outcomes from the conference and thus helps to shape the obligations that will be placed on the offender. All participants may contribute to the process of determining how the offender might best repair the harm he or she has caused. The session ends with participants signing an agreement outlining their expectations and commitments.

FGC is intuitively appealing to most restorative justice advocates in North America. The mediation process, which involves a wide range of people affected by the crime, appears to expand the rich 20-year history of VOM. FGC primarily works with juvenile offenders and uses police or probation officers or school officials, rather than trained volunteers, as facilitators.

Despite its appeal, a number of unresolved issues and potential dangers remain in adapting the FGC model to North American justice systems with their strong commitment to retributive, offender-driven principles. The purpose of this overview is to encourage a serious discussion of the opportunities and potential pitfalls presented by the FGC process, particularly from the perspective of its impact on crime victims.

The History of Family Group Conferencing

FGC originated in New Zealand as a way to address the failures of traditional juvenile justice and to incorporate indigenous Maori values that emphasize the role of family and community in addressing wrongdoing. Institutionalized into law in 1989, FGC is now the standard way to process juvenile cases in New Zealand. Australia subsequently adopted the idea and has implemented a number of FGC models in various communities. Like VOM in North America, Australian implementation of FGC has been piecemeal, and the model used varies with the community.

All juvenile cases in New Zealand, with a few exceptions such as homicide, are diverted by courts to FGC. Consequently, judges report drops in caseloads of up to 80 percent. These conferences are then organized and facilitated by a youth justice worker employed not by the criminal justice system but by the welfare/social service sector. The conferences attempt to be inclusive. In addition to involving the offender, a major effort is made to include as many of his or her family members as possible, including extended family members. Victims and their supporters are invited as are any professional caregivers who have been involved with the parties. A lawyer/advocate for the offender is invited, and a representative of the police department, who serves as the prosecutor, is present. Facilitator roles are broadly and loosely defined and include mediation. The entire group, which includes participants usually considered adversaries, is expected to come to a consensus on the outcome for the case, not just on a restitution agreement. Goals of the conference include accountability, prevention of future misconduct, and victim empowerment.

FGC is clearly grounded in the theory of "reintegrative shaming" of offenders, which was developed by Australian criminologist Dr. John Braithwaite (1989), as well as Silvan Tomkins' affect theory (1992). By themselves, these theories were not sufficient in addressing the importance of engaging crime victims in the process. Restorative justice theory did not play a large part in the origin of FGC, but was used later to help fine-tune the approach, resulting, for example, in a greater appreciation of the centrality of victims' roles. Now, New Zealand Judge F.W.M. McElrea calls the approach the first truly restorative system institutionalized within a Western legal system.

FGC was adopted in Australia in a variety of forms, but the model most often promoted in North America was developed in the Wagga Wagga Police Department. It differs from the New Zealand model in that it uses police officers, usually in uniform, or school officials to set up and facilitate meetings. Developments in Australia were considerably influenced by Braithwaite and his work on reintegrative shaming, with its emphasis on changing offender behavior.

Similarities and Differences Between Family Group Conferencing and Victim-Offender Mediation

FGC is strengthened by its similarities with and differences from VOM. FGC seems to be a natural expansion of the dominant model of VOM currently used by most of the more than 300 programs in North America and an even larger number of programs in Europe. Like VOM, FGC provides victims an opportunity to express the full impact of the crime upon their lives, to receive answers to any lingering questions about the incident, and to participate in holding the

Family Group Conferencing: Comparison of New Zealand and Australia (Wagga Wagga) Models

	New Zealand Family Group Conferencing	Australia (Wagga Wagga) Family Group Conferencing
Convened by:	New Zealand Children & Young Persons Services—Youth Justice Coordinator.	Law enforcement officers, school personnel.
Participants:	Youth Justice Coordinator, offender, offender's counsel, offender's family and support system, victim, victim's family and support system, social services, police.	FGC Coordinator, offender, offender's family and support system, victim, victim's family and support system, investigating officer.
Purpose:	Clarify facts of incident, express a plea ("Yes, I did it." or "No, I did not."), reveal effects of incident on all present, determine measures to make amends, make decisions relating to other penalties.	Reveal effects of incident on all present, express emotional impact, determine measures to make amends.
Selection of community members:	Youth Justice Coordinator and family of offender identify key people to be involved; victim identifies his or her support system.	Coordinator identifies key people to be involved; victim identifies his or her support system.
Decisionmaking:	Consensus.	Consensus.
Victim role:	Chooses participants for support, expresses feelings about the crime, describes impact on self, approves plan to make amends that is submitted by offender's family.	Chooses participants for support, expresses feelings about the crime, describes impact on self, provides input to plan to make amends.
Time in operation:	Legislatively mandated in 1989.	Since 1991.
Targeted offenders:	All juvenile offenders except murder and manslaughter offenders.	Juvenile offenders with property offenses and assaults.
Size of group in conference:	Typically 12–15; can be 40–50.	Typically 12–15; can be 40–50.
Preparation of participants:	Face-to-face visit with offender and family before meeting, phone contact to explain process to victim and other participants, personal visit to victim if needed.	Phone contacts (as the norm) with all participants to explain the process. Occasional personal visits, if determined to be necessary.
Gatekeeper/access to program:	Statutes that provide a family group conference as a right for victims of all juvenile offenses other than murder and manslaughter and require offender participation.	Discretionary judgment of law enforcement or school officials.
Conceptual framework:	Clearly based on restorative justice principles with explicit reference to the long experience of victim-offender reconciliation and mediation programs.	Clearly grounded in the theory of reintegrative shaming by John Braithwaite, as well as Silvan Tomkins' affect theory. Not explicitly grounded in restorative justice principles and not explicitly drawing upon the experience of victim-offender reconciliation and mediation programs.

offender accountable for his or her actions. Offenders can tell their story of why the crime occurred and how it has affected their lives. They are given an opportunity to make things right with the victim—to the degree possible—through some form of compensation. FGC primarily works with juvenile offenders who have committed property crimes, but it has also been used with violent juvenile offenders and adult offenders. This is consistent with the experience of VOM in North America over the past 20 years.

Unlike VOM, FGC uses public officials (police officers, probation officers, school officials) rather than trained volunteers as facilitators. Although their roles include mediation, they are more broadly defined, combining mediation with other methods of interaction and allowing for more directed facilitation. The FGC process also casts a much wider circle of participants than VOM. This approach has some potential advantages over current VOM practice:

- FGC contributes to the empowerment and healing of the community as a whole because it involves more community members in the meeting called to discuss the offense, its effects, and how to remedy the harm. By involving a broader range of people affected by the crime, far more citizens become direct stakeholders in the criminal and juvenile justice processes.
- A wider circle of people is recognized as being victimized by the offense, and FGC explores the effects on these people: the primary victim, people connected to the victim, the offender's family members, and others connected to the offender. The full impact of victimization is more likely to be addressed in FGC because both primary and secondary victims are invited to participate.
- Citizen volunteers are more likely to offer followup support for both the victim and the offender because a wider range of participants is potentially involved in assisting with the reintegration of the offender into the community and the empowerment of the victim.
- The important role of the family in a juvenile offender's life is acknowledged and emphasized. Family dynamics play a major role in juvenile delinquency, and far too few programs effectively address these issues. FGC offers a restorative justice intervention with great potential for strengthening accountability that can actively involve both the offender's family and the victim's family.

Potential Dangers of Family Group Conferencing

The FGC model has tremendous potential for enhancing the practice of restorative justice in North America by providing opportunities for crime victims to participate in holding offenders accountable and investing new stakeholders in the process (police personnel, school officials, and probation officers). However, a number of potential dangers could result in unintended consequences. There are at least five potential dangers in the current FGC approach, particularly with the Australian form:

1. Inadequate Preparation

Preparation of the primary parties prior to the joint conference is crucial to the process of building rapport and trust with the involved parties, preparing them for participation in a dialogue in which the facilitator/mediator does not dominate the conversation, assessing their needs/expectations, and understanding the full human context of the crime that occurred. Meeting in person with the

parties prior to a joint meeting has long been recognized by most VOM programs as the preferred process. Although the New Zealand FGC model always involves prior meetings with the offender and family, it does not routinely involve prior in-person meetings with the victim and family. The Australia FGC model routinely contacts the parties by phone and only occasionally conducts in-person meetings. Eliminating in-person meetings prior to FGC may significantly limit the impact of FGC, as the parties may not feel safe and prepared to attend and participate freely in a genuine dialogue.

2. Victim Insensitivity and Coercion

The FGC model emphasizes the importance of involving and serving victims. However, several aspects of the model may inadvertently mirror the dominant, offender-driven criminal justice system and its use of victims as "props": the offender's group is usually seated first, which limits the choices presented to victims (such as where they would feel the safest or most comfortable in the meeting room or whether they would prefer to begin the conference with their story); the meeting routinely begins with the offender's story; and separate meetings are not scheduled with the victim prior to facing the offender. If the FGC model is perceived as not being sensitive to the emotional, informational, and participatory needs of victims, it defeats one of its main purposes—to serve victims' needs—and is likely to trigger needless but understandable resistance from the larger victims' rights constituency.

3. Young Offenders Feeling Intimidated by Adults

The presence of so many adults, including a police officer in uniform, may be so intimidating to young offenders that they may not feel safe or comfortable enough to express and share their feelings and thoughts. It has long been recognized in the VOM movement that the presence of parents in some cases, not to mention additional adults, can interfere with the process of the juvenile offender truly admitting to his or her delinquent behavior and feeling comfortable enough to speak openly. As the FGC model is adapted for use in the United States, it is important to ensure that the process truly creates an environment in which the young person feels safe enough to actively participate, express feelings, and respond to questions posed by the victim. Otherwise, the conference could be dominated by adults talking at or about the offender, with the offender tailoring responses to suit the adults. Coercing offenders to say what adults want to hear is very different from a more genuine expression of their feelings about what happened.

4. Lack of Neutrality—Shaming of Offenders

Police officers, probation officers, and/or school officials play a particularly critical role in the FGC model, especially in the Australian form, as "coordinators" of the actual sessions (a role that is actually quite similar to facilitators or even mediators). Because of this, these public officials must be trained in conflict resolution and mediation skills so that they can put aside their usual authoritarian role as a public official. The inability of public officials (such as police or probation officers) to serve in a neutral (unbiased in the sense of not taking sides, even though the parties are not truly equal) and facilitative role can be a problem and needs to be closely monitored as FGC programs begin developing in more communities throughout the United States, especially given the retributive climate of American criminal justice. If conference coordinators fall

into authoritarian leadership and communication patterns, the process could lead to the offender experiencing the conference as a "shaming and blaming" encounter. The process could be one of "breaking down the juvenile offenders and then trying to build them up," rather than the preferred "reintegrative shaming" in which the criminal behavior is denounced but offenders are treated with respect and feel safe enough in the presence of adults to express themselves.

5. Inflexibility and Assumed Cultural Neutrality of the Process

While the New Zealand model of FGC appears to allow for a great deal of flexibility in the process, the Australia model, which is being widely promoted in the United States, appears to be a very prescriptive, script-driven process. In many training manuals, coordinators are encouraged not to worry about whether the process should be adapted to different cultural needs and preferences within a community. Trainers emphasize that the FGC model (based on the Wagga Wagga experience in Australia) is remarkably resilient and beneficial if the coordinator adheres to the script and if the participants trust the coordinator. Many victim advocates, however, would be concerned about issues of power and control for the victim when the emphasis is primarily on trusting the coordinator. The inflexibility of the Australia model may present a serious obstacle to its being considered a truly restorative process that is victim-sensitive, particularly in diverse and multicultural communities.

Guidelines for Restorative Family Group Conferencing

As FGC begins to develop more extensively throughout North America in the coming years, the following recommendations can serve as initial guiding principles to maximize the likelihood of it truly being a restorative intervention for victims, offenders, families, and communities. The following guiding principles are based on a consensus that emerged from a group of individuals who participated in FGC training, which is offered throughout the country. This group included representatives from education, law enforcement, VOM programs, and communities in Minnesota. It was convened by the Center for Restorative Justice & Peacemaking (formerly Center for Restorative Justice & Mediation) at the University of Minnesota School of Social Work in 1995.

1. The process should be clearly and explicitly grounded in restorative justice values.
2. If public agencies such as police or probation are initiating FGC, the actual sessions should be cofacilitated by a trained community member.
3. If a local VOM program exists, a new FGC program should be developed as a collaborative effort, including the use of VOM volunteer mediators as cofacilitators.
4. FGC coordinators/facilitators should be trained in mediation and conflict resolution skills and the effects of victimization and needs of crime victims.
5. FGC coordinators/facilitators should be trained in understanding the experiences and needs of offenders.
6. The FGC process should be conducted in the most victim-sensitive manner possible, including providing victims with a choice of when and where to meet and allowing them to present their story first. When asked to consider the process, victims

should be informed of both the potential benefits and the potential risks, and they should not be pressured into a conference or told just to trust the coordinator's judgment.

7. In-person preparation of the primary participants in a conference (the victim, the victim's immediate family, the offender, and the offender's immediate family) should occur to connect with the parties, build rapport and trust, provide information, encourage participation, and prepare them for the conference should they choose family group conferencing. This can help them to feel safe enough to participate in an open dialogue with one another, with the coordinators/facilitators being as nondirective as possible.
8. FGC coordinators/facilitators should be trained in cultural and ethical issues that are likely to affect the conference process and participants.

Conclusion

Family group conferences are an exciting development in the field of restorative justice. They open up new opportunities for crime victims to become directly involved in imposing sanctions on the offender. As with all innovations, however, potential pitfalls must be considered. Good ideas and programs may have unintended consequences. Particularly as a new program concept or model is being widely promoted, there is a danger of falling into a "one size fits all" perspective. Victim-offender dialogue, whether through victim-offender mediation or family group conferencing, has the potential for both benefits and risks. The intervention must be adapted to the specific context and needs of the individuals involved. Some cases might warrant family group conferencing rather than involve a much smaller group of people through victim-offender mediation. Other needs expressed by crime victims may suggest that victim-offender mediation is more appropriate. Some more serious cases may even require both: first the smaller mediation session and then, later, the larger conferencing session. It is hoped that those involved in victim advocacy, family group conferencing, and victim-offender mediation will continue the dialogue as new opportunities are sought for restorative justice in our communities and the available options and services for crime victims are expanded.

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