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# Pono Kaulike: Reducing Violence with Restorative Justice and Solution-Focused Approaches<sup>1</sup>

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Leslie Hayashi, District Court Judge, State of Hawaii

"I UNDERSTAND YOU'RE going to plead guilty to this charge. I see the complaining witness is the mother of your daughter. Is that right?" asks the judge, looking up from a file and down at the man standing before her bench.

"Yes, your honor," says David. He is twenty-six years old and dressed in a bright orange jump suit with OCCC printed in white on the back. Shackles are looped around his wrists and ankles.

It is 2004 and David is being sentenced for terroristic threatening in the Hawai'i State District Court in Honolulu. He has been imprisoned in the O'ahu Community Correctional Center since he told his former girlfriend he was going to kill her.

The judge continues, "We have a new program for people who plead guilty to crimes against family members. It's something called restorative justice, the *Pono Kaulike* program. It's a voluntary program where you can look at how your behavior affected people and what you can do to repair the harm. If your former girlfriend wants, she can participate too, but

she doesn't have to, it's up to her. Either way, you can meet with our facilitators and make a plan for how you can try to make amends with your family and make a better future for yourself. Does this sound like something you'd like to do?"

"Yes, Ma'am. I'm so sorry for what I did. I was high. I really messed up. If there's anything I could do to make it up to my little girl and her mom, I wanna try," replies David.

A few months after the hearing, David's former girlfriend, and the mother of their four-year-old daughter, is contacted about participating in the program. Alice is asked if she wants to meet David, with both of their supporters, or with him alone, and a *Pono Kaulike* facilitator.

"Nah, I neva wanna see him again. He's caused me so much problems already," says Alice.

"Sure we understand. Instead would you like to meet with us to talk about how his behavior affected you, and what you'd like him to do to make things right? We could also try and help you figure out how you and your family can deal with all this. And whatever you decide you want David to do, would be given to the judge," replies the facilitator.

"Yeah, that sounds good. Where do I have to meet you folks?"

"We come to you Alice. We can meet at your home or anywhere else that works for you."

"You mean I don't have to come to town? To an office?"

"Yeah, no office in town. When's a good time for you to meet?"

A few days later a facilitator meets with Alice, her current boyfriend and her daughter for a *restorative session*. It is held in the afternoon, which was most convenient for them. David has a restorative session, the day after Alice's, in a private waiting area in the back of the rural courthouse. Later that day he is sentenced.

During each restorative session the small group discusses how they were affected by David's behavior; what David could do to try and repair the harm; what Alice and David's goals are; and how they can each achieve their goals despite what has happened. In David's case that includes what he needs to do to stay drug and crime free.

During Alice's restorative session, she says that she wants David to enroll in parenting classes, anger management, and a drug treatment program. She also says that she wants to move into a new home and she begins strategizing how she can accomplish that.

At David's restorative session, he learns what Alice needs from him to repair the harm, and he readily agrees to all of her requests.

Later when asked about the process, Alice says she preferred the private restorative session to court. "I think this program is better for families like ours."

So much better for kids because they get emotional a lot and been through enough already."

## Description of *Pono Kaulike* Program

*Pono Kaulike* is a pilot program for people who plead guilty to criminal offenses, the

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people hurt by the crimes,<sup>2</sup> and their supporters. The program was piloted in Honolulu's District Court of the First Circuit and has been previously described (Walker & Hayashi, 2004 & 2007).

The program began in 2003 to test and measure the application of *restorative conferencing* for criminal cases, and was conducted for four years. It evolved to apply *solution-focused brief therapy* for groups and for people who meet individually with facilitators without the participation of other parties (Walker & Hayashi, 2004 & 2007).

As described previously, "*Pono Kaulike* uses the solution-focused brief therapy approach, which carefully uses language, and appreciates the importance of relationships in assisting troubled people to find their own solutions to problems" (Walker & Hayashi, 2007 p. 20). Solution-focused approaches are empowering and considered a best practice by the federal government (OJJDP, 2008). Solution-focused brief therapy has been extensively researched and found to be more effective for people dealing with depression than other forms of psychotherapy (Knekt, & Lindfors, 2004).

Restorative conferencing describes "a range of strategies for bringing together victims, offenders, and community members in non-adversarial community-based processes aimed at responding to crime by holding offenders accountable and repairing the harm caused to victims and communities" (Bazemore & Umbreit, 2001). Restorative conferences are a group process, which include the participation of the people who committed the crime, the people hurt by the crime, and the supporters for each side.

As the *Pono Kaulike* pilot program developed, it became apparent that there was a need for other restorative interventions that did not require face-to-face meetings between all of the involved parties. It was additionally discovered that the facilitators could apply solution-focused brief therapy language skills with better outcomes for participants. As a result, *Pono Kaulike* developed three distinct facilitated restorative justice processes using the solution-focused brief therapy approach,

which has been used successfully with incarcerated people (Walker, 2008). Restorative conferences are for victims, offenders and their respective supporters; restorative dialogues are for victims and offenders together without supporters; and restorative sessions are for individual victims and offenders who meet separately and are encouraged to bring supporters, but are not required to do so.

The key goals of *Pono Kaulike's* three processes are to help people hurt by crime to heal and to decrease repeat criminal activity. Restorative justice assumes that most people who have hurt others and who have been hurt have the capacity to address what they and what others may need to heal (Zehr, 1995). Research shows that restorative processes increase participant satisfaction and rehabilitation more than prison and punishment for many types of crimes (Sherman & Strang, 2007; Shapland et al, 2008). By giving people a voice and the opportunity to consider what they and others need to deal with the consequences of crime, they are given the opportunity to learn and to improve their lives (Walker, 2000).

### Need for Restorative Interventions

Crime can create both physical and emotional wounds (Schwartz & Boodell, 2009). Restorative justice addresses these wounds by focusing on what people need to heal after they have been hurt. Our current criminal justice system largely ignores what people need for healing, and instead focuses primarily on who is to blame and how the identified offenders should be punished (Zehr, 1995). Restorative justice instead focuses on the unique needs of the individuals affected by specific incidents of crime and invites them to participate in a personalized and private experience where they have the opportunity to consider what is necessary to help them heal. These processes have the potential to build relationships and rehabilitate people, in contrast to parts of the current justice system that can lead to further problems.

Currently our justice system includes victim participation at the sentencing stage of the case. In Hawai'i, as in all states, victims are invited to criminal sentencing hearings to provide statements concerning how a crime affected them (Hawai'i Revised Statutes; Alexander & Lord, 1994). While victim impact statements are meaningful because they provide victims with an opportunity to participate, sentencing hearings can create

more ill will and further damage emotional health because they are conducted as part of an adversarial process.

In one recent sentencing hearing, the victim's loved ones not only wore tee shirts with a large color photo of her surrounded by the words "Killed by a Drunk Driver," but they also brought the woman's ashes held in an urn into the courtroom with the same message printed on it. The offender in the case had pled guilty to the offense and had been suicidal a number of times as a consequence of killing the victim (Boylen, 2006).

In another Hawai'i sentencing, a drunk driver's lawyer claimed she suffered a "genetic predisposition to alcoholism" due to her Native American heritage. The offender also told the court that she "wanted to die" when she woke up in the hospital after the crash and learned she killed a man. At the hearing she was noticeably pregnant, and the victim's sister said, "The fact that you are conveniently pregnant disgusts me" (KITV.COM). Considering what occurred at her hearing it is not surprising that the offender felt the need to describe herself to the court as "a human."

Adversarial processes have the potential to dehumanize people. Fighting usually does not create understanding and often causes more anguish and suffering. Argument is a form of fighting and does little to help hurt people cope with emotional pain (Tannen, 1998). If the victims and the offenders in these drunk driving cases had been given the opportunity to meet privately with the judge or a facilitator to discuss their loss, everyone, including the community, would have likely experienced some emotional relief.

Research on crime victims' feelings shows significant anger and anxiety reductions, along with increased understanding, after participation in restorative interventions compared to traditional court hearings (Sherman & Strang, 2003). Likewise the benefits of restorative processes for the people who commit crimes are apparent by the recidivism reduction that results. Victims, offenders, and the affected community, including the party's supporters, would be better served by having opportunities for open discussions in private restorative settings, rather than adversarial processes, especially at the time of sentencing.

A review of different restorative justice research projects reveals that when crime victims are offered restorative interventions and the opportunity to meet with offenders, between 57 percent and 40 percent of them choose to participate (Walker & Hayashi,

<sup>2</sup> Effort is made here to avoid labeling people as offenders and victims and uses these terms only for clarity purposes. Deficit-based labels reinforce negative thoughts, behaviors and emotions. While we should disapprove of bad behavior and recognize pain we feel, we should identify strengths, possibilities, and hope. People always have potential and are more than what happens to them and what they have done in the past.

2004; Sherman & Strang, 2003). The rest of the victims, such as Alice, who do not wish to meet with the people who hurt them, should at least be given the opportunity to speak privately, to discuss their pain and what they need to repair the harm. A private, non-adversarial meeting reduces the potential of generating more negative emotions and harm for people involved in a crime.

It is unlikely that Alice would have participated in a public sentencing hearing. Our justice system is especially not equipped to deal with family and intimate violence in meaningful ways (Mills, 2006).

Many people hurt by violence never appear in court, regardless of subpoenas or other formal sanctions imposed against them for failure to do so. Reasons include not wanting to confront the offender, believing the justice system will not work to improve things, or feeling as if they are being victimized by the system (Ford, 2003; Mills, 2008).

Innovative programs in Hawai'i, including *Pono Kaulike*, have demonstrated that there are alternatives for individuals to participate in restorative processes without meeting others. The Restorative Session that Alice, her daughter, and her boyfriend participated in is an example.

In addition to developing the Restorative Session for individuals, in 2002 Hawai'i piloted a successful program for victims without offender participation (Walker, 2004). The *restorative conversation*, which is similar to the restorative session, provided individuals with a restorative intervention to help them cope with the effects of being hurt by crime without offender participation. The need for the restorative conversation arises from no one being identified as a perpetrator, or no one admits guilt, or the victim simply not wishing to meet with the offender.

England's CONNECT program is another example of how restorative interventions can be provided without meetings between victims and offenders. CONNECT uses *indirect* or *shuttle mediation* to provide restorative interventions without requiring a meeting between victims and offenders (Sharpland, et al 2008).

## Selection of Cases for Study

This experimental study reviewed fifty-nine subjects who were eligible for the *Pono Kaulike* interventions between 2002 and 2007. Thirty-eight subjects received the *Pono Kaulike* intervention and twenty-one subjects did not. All fifty-nine subjects were selected

by having been charged with criminal offenses in the District Court of the First Circuit and being eligible for inclusion in *Pono Kaulike*. The court mainly adjudicates petty and misdemeanor level cases. All fifty-nine subjects in the study plead guilty to one or more of the crimes including assault, harassment, criminal property damage, criminal trespass, terroristic threatening, and negligent homicide. The study only included subjects who pled guilty.

Forty-four defendants were referred to the *Pono Kaulike* program and forty-one of these referred defendants received the intervention. In one case the victim of the defendant, but not the defendant himself, received services, and in two other cases the defendants did not contact the *Pono Kaulike* program providers for services. These three cases are not included in this study. Of the forty-one people who received services, only thirty-eight were evaluated for recidivism purposes. The three cases that were not evaluated included two defendants who had pleaded not guilty to an offense, and one man who was charged with a dog-barking nuisance case.

The control group of twenty-one individuals who were eligible for *Pono Kaulike* services, but were not referred to the program, pled guilty to crimes in the District Court of the First Circuit. These twenty-one cases were selected out of forty-three potential controls. The unselected twenty-two cases pled not guilty, although several of them later changed their pleas to guilty.<sup>3</sup>

Of the thirty-eight subjects in the *Pono Kaulike* experiment group, twenty-nine were charged with harassment, which usually had been downgraded by the prosecutors from more serious charges of abuse of a family member or assault. Seven of the *Pono Kaulike* group were charged with assault, one with criminal property damage, and one with negligent homicide.

In the *Pono Kaulike* group, twenty-two subjects participated in restorative sessions, and eight of them brought supporters who also participated in the meetings. Six of the sessions were for intimate violence cases of a man against a woman<sup>4</sup>; one was a woman against her boyfriend; one was a woman against her

former boyfriend's new girlfriend; and six were domestic violence cases where mothers, fathers, brothers, sisters were the victims and some were offenders.

Ten subjects participated in restorative dialogues. One dialogue was used for a boyfriend and girlfriend who had both been charged with harassment against each other; two other cases were boyfriend against his girlfriend; another case of a woman against her boyfriend; two lesbian cases; and two cases of men against their fathers (one of these cases later had a restorative conference, but the subjects were only counted once for the study results).

Seven subjects participated in restorative conferences. Two of the cases involved intimate violence and the rest were family member cases, i.e. son against father, sister against sister, etc.

Of the twenty-one controls, fourteen were charged with harassment, six with assault, and one with criminal trespass.

## Result: *Pono Kaulike* Participant Satisfaction Verification

A total of sixty-one *Pono Kaulike* participants were surveyed immediately following their participation in the services for their satisfaction with the process. Fifty-nine reported the process was positive, with two reporting it was mixed, but finding other aspects positive. Only one person reported any aspect of a *Pono Kaulike* intervention as negative.

To ensure that the surveys did not have a *bubble effect*, where participants are more inclined to report satisfaction than they would over time (McCold & Wachtel, 1998), telephone interviews were attempted with all of the previously surveyed participants between one and four years later. Out of all sixty-one participants previously surveyed, 16 percent, ten individuals, were located and interviewed. After 2008 most of the participants' phone numbers had been disconnected or changed and thus they were not contacted.

Despite the small sample size, the participants contacted verified that they remained satisfied with the process they experienced two or three years earlier.

One participant who participated in a restorative conference after being harassed by her nephew said: "It's heartening to realize the courts helped our family so much. I believe the meeting was positive because it put me on a path to a better recovery. It was a chance to air out our problems. It put closure on everything. It also helped me deal with another family member who wasn't present."

<sup>3</sup> These cases were not referred to *Pono Kaulike* mainly because the sentencing judge did not make the referral.

<sup>4</sup> The idea of using restorative justice and having shared meetings with people involved in intimate violence (man against woman), which *Pono Kaulike* provides, is controversial and has been discussed previously (Walker & Hayashi, 2007).

Another woman who is the mother of a man who assaulted his father, who participated in a restorative conference, said it continued to be a very positive experience. "It helped us to think about what the mistakes were on both sides. It really helped our family to discuss everything."

A couple involved in intimate violence, who participated in a restorative dialogue, and had remained together three years later, said they continued to believe it had been a very positive process. The man charged with harassment said: "It got both parties to settle the dispute in a positive manner. We found better awareness and realized boundaries. It is a positive program. Beneficial for myself and others who need alternatives to prosecution."

His girlfriend, and the complaining witness, said, "Counseling is always good."

A man who was the victim in another case involving his former girlfriend also believed the process continued to be very positive. He said: "It was a good way to prevent things like that from happening in the future. Everything is working out good."

A woman in a lesbian relationship whose spouse was charged with harassing her found the process continued to have positive results. She said: "It was helpful to talk about our feelings. Everything is perfect, good now."

Finally, the parents of a man who harassed them also continued to believe the process was positive. The father said: "Everything is fine now. Hopefully in the future we will not have problems like that again." His wife and the offender's mother said: "Father and son are communicating. Son is on his own and doesn't bother us."

## Recidivism Results

For purposes of this study recidivism is considered any new charges and not complying with the sentencing, probation and the restorative intervention terms. If a new charge was brought against a person or if a bench warrant was issued for failure to fulfill requirements like drug treatment or anger management, it was counted as non-compliant. Failures to pay fines to the State imposed by the court and made part of the sentencing were not considered as non-compliant. Fines represent an economic and monetary condition for the State only, and are not relevant to the behavior toward the other party.

Of the twenty-one people in the control group, twelve of them were counted as recidivists with a recidivism rate of 0.57. Ten of the twelve had new charges against

them including assault, harassment, terroristic threatening, theft, disorderly conduct, and drug trafficking. Two more were counted as recidivists for not complying with the terms of their probation, and bench warrants for their arrests were issued against them. One man who harassed his father was non-compliant after being placed on probation and ordered to complete anger management and attend a substance abuse assessment and any recommended drug treatment program. His probation was revoked for not fulfilling these requirements. Another man who harassed his girlfriend did not attend parenting and anger management classes as required of him.

In the *Pono Kaulike* experimental group, of the thirty-eight people studied who received the interventions, eleven were counted as recidivists, with a rate of 0.29. The counted recidivists included:

- David who complied with all the terms of his probation agreement and completed everything Alice requested after he threatened her, but was subsequently arrested for criminal trespass almost two years after participating in the restorative session;
- A man who smashed a shelf on his neighbor's outside wall, in an area adjoining the offender's home, was charged with terroristic threatening less than two months after he participated in a restorative session;
- A man who harassed his girlfriend was charged with drunk driving (DUI/OVUII) two years after his restorative session;
- A man who harassed his girlfriend failed to comply with his probation terms to attend substance abuse treatment until clinically discharged within six months of participating in a restorative dialogue;
- A woman who harassed her female spouse was charged with criminal trespass nine months after participating in a restorative dialogue;
- A woman who harassed her former boyfriend was charged with harassing her mother who had also participated with her in a restorative session a year and a half earlier;
- A homeless man who harassed his girlfriend was charged with several new crimes, the most serious of which was assault in the third degree (it is not clear who the complaining witness was in this new case) two months after he participated in a restorative conference at the beach;
- A man who assaulted a cab driver was charged with drinking alcohol in public almost a year after he participated in a restorative session;

- A woman who harassed and threatened her roommate was charged with theft in the third degree four years after she participated in a restorative session;

- A man who harassed his girlfriend was charged with promoting drugs sixteen months after participating in a restorative session;

- Finally, one of the youngest *Pono Kaulike* participants, an 18-year-old man who harassed another man, was charged with assault in the third degree after his mother attended a restorative session with him fourteen months earlier. It is unclear who the complaining witness was in either the first or second case.

The recidivism differences between the control and *Pono Kaulike* groups are significant ( $t=2.17$ ,  $p<0.05$ ). The recidivism in the control group was nearly double that in the experimental group, as seen in Figure 1. However, the significance of the result is limited by the small sample sizes.

## Discussion

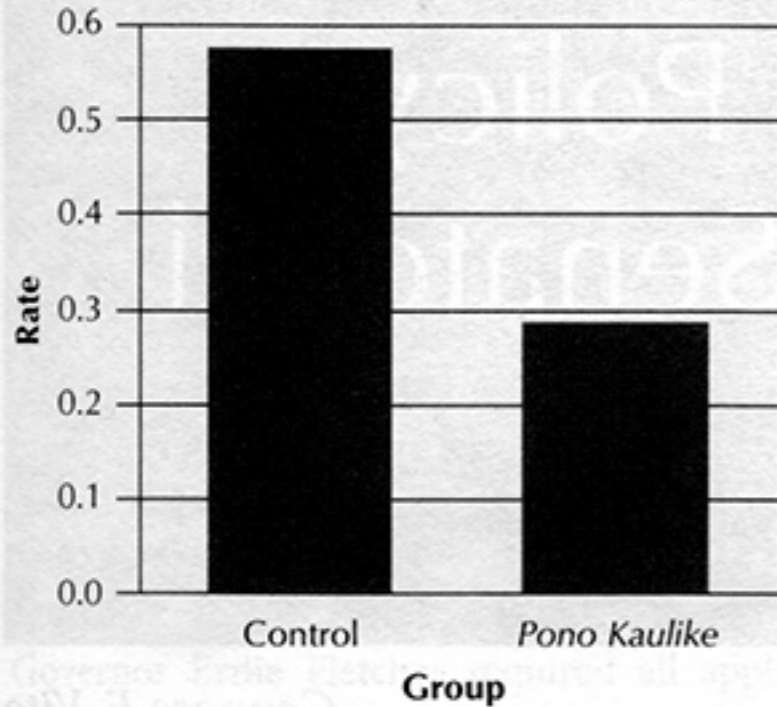
The subjects who participated in the *Pono Kaulike* interventions committed fewer repeat crimes, or failed to comply with court sanctions only 29 percent of the time (10 people out of 38 re-offended). This is in marked contrast to the people in the control group who had an almost doubled recidivism rate of 57 percent (12 people out of 21 re-offended). This difference is due to more than simply chance.

The argument could be advanced that the *Pono Kaulike* group chose to participate in the program and that this self-selection aspect is what sets the two groups apart; however, almost all parties that were informed and invited to participate in *Pono Kaulike* readily agreed. The groups in the study were fairly matched. Only people who pled guilty to crimes were studied. The control group would have been eligible for the *Pono Kaulike* program. There is no reason to believe that if the controls had been given this same opportunity they would not have also agreed to participate.

## Conclusion

Recidivism results for the *Pono Kaulike* program indicate that restorative justice and solution-focused approaches are more effective at preventing repeat crime and helping victims than our current system. Without rehabilitating people and assisting victims cope with the effects of wrongdoing, we put our communities at risk for increased conflict and crime.

**Figure 1.**  
Recidivism Rates



Family and intimate violence is a serious problem with far-reaching consequences. "Family violence accounted for 11% of all reported and unreported violence between 1998 and 2002," with approximately twenty-two percent of all the 2002 murders being committed by family members (Durose, et al, 2005, p. 1). Besides death, family violence can cause serious emotional damage that can lead to more crime. "The typical female inmate in the United States...was likely to have been the victim of sexual abuse and to have witnessed violence in the home (Greene, S., 2002, p. 1732).

Stopping violence and most crime begins with people learning that they will not always get what they want. The current system usually fails to teach this vital lesson and instead often makes people angrier, including victims who are the very consumers that the system purports to protect.

As the mother of an incarcerated man said recently while participating in a restorative intervention, "People need to learn to expect and accept disappointments." As this research supports, restorative and solution-focused interventions offer a way for people to learn this simple, but often difficult lesson.

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