

VICTIM-OFFENDER MEDIATION: A MISSING COMPONENT OF A MULTI-PRONGED APPROACH TO REDUCE NEW YORK CITY SUBWAY CRIME

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I. INTRODUCTION

The subway is a vital lifeline of New York City (“NYC”), as many rely on the quick, inexpensive transportation. However, NYC subway trains and stations have recently seen a massive surge in criminal activity. In 2022 alone, in January, a woman on her way home was pushed onto the train tracks by a man with a history of violence and mental health issues.¹ In April, multiple riders were injured and ten were shot when a man, with multiple prior arrests, set off smoke grenades and opened fire in a crowded subway car during rush hour.² In May, a man, on his way to brunch, was shot in the chest and killed on a train by another man with years of criminal history.³

Clearly, many incidents have occurred in 2022 alone,⁴ but these three examples do not begin to encompass the problem. From 2021

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¹ Anne Branigin, *For Many, Michelle Go’s NYC Subway Death Highlights Failures in Public Safety for Women*, WASH. POST (Jan. 19, 2022, 4:00 PM), <https://www.washingtonpost.com/lifestyle/2022/01/19/michelle-go-public-safety-women/> [https://perma.cc/5B4X-WJHQ].

² Jonah E. Bromwich et al., *Police Search for Gunman in Attack on Brooklyn Subway*, N.Y. TIMES (Apr. 15, 2022), <https://www.nytimes.com/live/2022/04/12/nyregion/brooklyn-subway-shooting> [https://perma.cc/92RC-93XP]; see also Chad Pradelli & Cheryl Mettendorf, *Who is Frank James? Digging into Brooklyn Subway Shooter’s Lengthy Criminal History*, 6ABC ACTION NEWS (Apr. 14, 2022), <https://6abc.com/frank-james-brooklyn-shooter-criminal-background-subway-shooting-gunman/11745301/> [https://perma.cc/U9QP-UZML].

³ Nicole Gelinas, *NYC Subway Crime is Soaring Because We No Longer Bother to Prevent it*, N.Y. POST (May 28, 2022, 1:58 PM), <https://nypost.com/2022/05/28/nyc-subway-crime-is-soaring-because-we-no-longer-prevent-it/> [https://perma.cc/5NS7-7MAZ].

⁴ Sarah Vasile, *Brooklyn Subway Attack just the Latest in String of 2022 Transit Crimes*, PIX11 (Apr. 12, 2022, 9:45 PM), <https://pix11.com/news/local-news/brooklyn-subway-attack-just-the-latest-in-string-of-2022-transit-crimes/> [https://perma.cc/GD6T-E3EX].

to 2022, subway crime has increased by nearly sixty-five percent.⁵ By April 2022, the New York City Police Department (“NYPD”) reported 617 transit crimes for the year.⁶ Moreover, in 2022, less than half of New York voters felt safe using the subway system in comparison to the seventy-six percent that felt comfortable in 2015.⁷

Violence results in arrests and prosecutions that are handled in a traditional adversarial criminal legal system, focusing solely on the party who broke the law.⁸ However, this approach can actually create additional harm because it is exclusionary, punitive and shameful in nature.⁹ Instead, restorative justice, a practice that relies on conflict resolution through dialogue and mediation to provide justice and healing to the harmed victims, perpetrators and the community, should be used.¹⁰ The clearest operationalization of restorative justice is expressed through victim-offender mediation programs.¹¹

Victim-offender mediation involves a perpetrator and a victim voluntarily meeting to discuss the impact of the harm with the help of a mediator, and, ultimately, coming to a mutually agreed upon amount and type of restitution.¹² The process gives victims and offenders the chance to “make things right” and enables some victims to recover from the effects of the crime while obtaining an element of emotional closure.¹³ While this process is typically utilized for “minor or non-violent cases” such as property offenses and theft, it has been used, and even recommended, to address the effects of more serious crimes such as aggravated assault and

⁵ Emmanuel Felton & Joanna Slater, *In New York, Subway Attack Adds to Fears that City has Grown Dangerous*, WASH. POST (Apr. 12, 2022, 8:03 PM), <https://www.washingtonpost.com/nation/2022/04/12/new-york-subway-shooter-crime/> [<https://perma.cc/DVW6-ZRFR>].

⁶ Noah Pransky, *Is Crime in NYC Actually Soaring? 2022 Crime Rates in Perspective*, LX NEWS (Apr. 14, 2022, 11:45 AM), <https://www.lx.com/community/nyc-crime-rates-how-dangerous-is-new-york-city/51473/> [<https://perma.cc/8AGD-ZZS2>].

⁷ *More Than 6 Out Of 10 NYC Voters Optimistic About Mayor Adams, Quinnipiac University New York City Poll Finds; Record Number Say Crime is a Very Serious Problem in NYC*, QUINNIPIAC U./POLL (Feb. 9, 2022), <https://poll.qu.edu/poll-release?releaseid=3834> [<https://perma.cc/Y6K5-G4V2>].

⁸ Jen K. Molloy et al., *An Exploratory Integrative Review of Restorative Justice and Social Work: Untapped Potential for Pursuing Social Justice*, 59 J. SOC. WORK EDUC. 133, 133 (2021).

⁹ *Id.* at 133–34.

¹⁰ Mike Niemeyer & David Shichor, *A Preliminary Study of a Large Victim/Offender Reconciliation Program*, 60-SEP FED. PROB. 30, 30 (1996); Molloy et al., *supra* note 8, at 1.

¹¹ Niemeyer & Shichor, *supra* note 10 at 30.

¹² *Id.*

¹³ *Id.*; Stephen Hooper & Ruth Busch, *Domestic Violence and the Restorative Justice Initiatives: The Risks of a New Panacea*, 4 WAIKATO L. REV. 101, 103 (1996).

murder.¹⁴ Family members or other support persons who may be involved in the mediation can also express their concerns and get answers to questions.¹⁵

While a multi-pronged approach is necessary to reduce the increased violence in the NYC subway system, victim-offender mediation is one component that has yet to be explored in this context. Thus, this Note will focus on the potential benefit of victim-offender mediation between subway crime victims and perpetrators. Using victim-offender mediation in this context as one element to reduce NYC subway crime will benefit the community of NYC subway riders by decreasing the likelihood of recidivism, while instilling a feeling of justice for subway crime victims. This Note does not propose that victim-offender mediation will solve all crime and mental health issues pertaining to the NYC subway system, but merely that victim-offender mediation is one ingredient that has been missing from the various proposals to ultimately reduce subway crime.

II. BACKGROUND

While the recent increases in violent crime have certainly alarmed residents and commuters,¹⁶ fear of the subway is far from new.¹⁷ During the 1970-80s, trains were the playground of NYC's criminals.¹⁸ Since the subway was filthy, noisy, dangerous, and filled with graffiti, subway riders often feared being victims of

¹⁴ See Tim Prenzler & Hennessy Hayes, *Victim-Offender Mediation and the Gatekeeping Role of Police*, 2 INT'L. J. POLICE SCI. & MGMT. 17, 28 (1999); Hooper & Busch, *supra* note 13, at 103-04; Niemeyer & Shichor, *supra* note 10 (The American Bar Association has recommended that local, state and federal agencies take steps to incorporate these programs into their criminal justice process for violent and nonviolent crimes).

¹⁵ MARK S. UMBREIT, *THE HANDBOOK OF VICTIM OFFENDER MEDIATION* 134 (Jossey-Bass 2001).

¹⁶ Ali Watkins, *Along a Subway Line's 31 Miles, Nagging Crime Fears Test Riders' Resolve*, N.Y. TIMES (Aug. 8, 2022), <https://www.nytimes.com/2022/08/08/nyregion/subway-crime-ridership-nyc.html> [<https://perma.cc/JP8T-GCRG>].

¹⁷ David A. Graham, *The Subway-Crime Death Spiral*, ATLANTIC (Apr. 14, 2022), <https://www.theatlantic.com/ideas/archive/2022/04/new-york-subway-shooting-transit-crime-death-spiral/629554/> [<https://perma.cc/PVE6-AMTW>].

¹⁸ *Learn About the Most Notorious NYC Subway Crimes and Incidents*, TIMEOUT (Oct. 14, 2013), <https://www.timeout.com/newyork/travel/learn-about-the-most-notorious-nyc-subway-crimes-and-incidents> [<https://perma.cc/HW2L-EUR7>].

crime.¹⁹ Graffiti artists took over in the 1970s,²⁰ and small crimes like graffiti led to bigger crimes.²¹ By September 1979, there were 250 felonies reported per week within the subway system.²² During the 1980s, subways were widely viewed as dangerous,²³ as 2.6 percent of all NYC felonies reported during 1984 occurred on the subways.²⁴ With crime rates skyrocketing, the NYC subway proved to be the most dangerous transit system in the world.²⁵ Moreover, while there has been a recent trend of increased crime in the subway system, it is a far cry from the crime of the 1980s and 1990s.²⁶ In a study of violent offenders who pushed or attempted to push victims on to the subway tracks in NYC from 1975 to 1991, it was found that ninety-five percent of offenders were psychotic and sixty-five percent were homeless.²⁷ Moreover, most of these offenders had extensive mental health and criminal histories, including psychiatric hospitalization and several prior arrests and convictions, often for violent crimes.²⁸

A series of initiatives was introduced to bring subway crime to a halt. Mayor Abraham Beame decided to close the rear cars of subway trains, attempting to keep riders closer to the conductor's car and presumably safer.²⁹ Thus, in July 1974, the Metropolitan Transit Authority ("MTA") shut down the rearmost cars of trains at night to combat the surge of violence,³⁰ but this proved ineffective.³¹

¹⁹ Damaris Pichardo, *The Subway System in the 1970s-1980s*, TLTC BLOGS, <https://blogs.shu.edu/nyc-history/subway-system-1970-1980s/> [<https://perma.cc/57WK-CEXB>] (last visited Oct. 12, 2022).

²⁰ Steven Thomas, *History of the New York City Subway*, TOPVIEW, <https://www.topviewnyc.com/packages/history-of-the-new-york-city-subway> [<https://perma.cc/9VLP-XFKY>] (last visited Oct. 12, 2022).

²¹ Pichardo, *supra* note 19.

²² Nikola Budanovic, *With Over 250 Felonies in a Week, NYC Subway in the 1970s was the Most Dangerous Place on Earth*, VINTAGE NEWS (July 11, 2018), <https://www.thevintagenews.com/2018/07/11/nyc-subway-1970s/?safari=1> [<https://perma.cc/B7EE-JAFD>].

²³ See Watkins, *supra* note 16.

²⁴ Pichardo, *supra* note 19.

²⁵ Budanovic, *supra* note 22.

²⁶ Katie Corrado, *Is NYC Transit More Dangerous Now Than in the 1980s & 1990s?*, PIX11 (Oct. 10, 2022, 11:05 PM), <https://pix11.com/news/local-news/is-nyc-transit-more-dangerous-now-than-in-the-1980s-and-1990s/> [<https://perma.cc/FZ49-6C3U>].

²⁷ Daniel A. Martell & Park E. Dietz, *Mentally Disordered Offenders Who Push or Attempt to Push Victims onto Subway Tracks in New York City*, 49 ARCHIVES GEN. PSYCHIATRY 472, 473 (1992) ("An offender was classified as *psychotic* at the time of the offense if the records described the presence of hallucinations, delusions, or formal thought disorder.").

²⁸ *Id.* at 472.

²⁹ Nicole Gelinas, *How Bratton's NYPD Saved the Subway System*, MANHATTAN INST. (Aug. 6, 2016), <https://www.manhattan-institute.org/html/how-brattons-nypd-saved-subway-system-9132.html> [<https://perma.cc/HJ54-GJ87>].

³⁰ Budanovic, *supra* note 22.

³¹ Gelinas, *supra* note 29.

In response to the fear of victimization and fear of the subway in general, Mayor Ed Koch introduced a new program in 1979 to decrease subway crime by placing transit police officers and city officers on all subway trains and in most stations during evening hours.³² Patrolling subway stations was a required part of city police officers' jobs.³³ The plan also called for the use of shorter trains to cut down on the number of empty cars and isolated passengers, because secluded passengers were deemed to be a reason why some people were victimized over others.³⁴ Nevertheless, this program was terminated because of the city's budget deficits, causing hundreds of transit police officers to lose their jobs.³⁵ Also in 1979, a civilian-crime watch group called the Guardian Angels, led by Curtis Sliwa, began unarmed patrol of the subway in an effort to discourage crime to make up for the lack of police patrol.³⁶ Members rode the subway between the toughest stops looking to detain criminals for police to arrest.³⁷ Some New Yorkers viewed the group as a solace, but others saw the group as "vigilantes who undermined police efforts and targeted young men of color."³⁸ Moreover, many questioned Sliwa's motives, specifically whether he was genuinely a Good Samaritan or merely seeking publicity.³⁹ In 1992, Sliwa admitted to lying about six incidents, including fake attacks on himself and the group's members.⁴⁰ He defended his actions on the ground that lying was the best way to gain media attention and recruit new group members.⁴¹ While the group has received widespread support from former New York mayors, government investigations from the 1980s demonstrated that the group "had a limited effect on crime rates, although they reported a positive effect on citizens' perception

³² Pichardo, *supra* note 19.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Mark S. Feinman, *The New York Transit Authority in the 1970s*, NYCSUBWAY (Nov. 19, 2002), https://www.nycsubway.org/wiki/The_New_York_Transit_Authority_in_the_1970s [<https://perma.cc/S99T-F579>]; *How We Got Our Start*, GUARDIAN ANGELS, <http://guardianangels.org/about/history> [<https://perma.cc/SY6P-UP42>] (last visited Oct. 12, 2022).

³⁷ Feinman, *supra* note 36.

³⁸ Gwynne Hogan, *Curtis Sliwa's Long, Strange, Sometimes Fabricated Road to Becoming a 2021 Mayoral Candidate*, GOTHAMIST (Aug. 2, 2021), <https://gothamist.com/news/curtis-sliwas-long-strange-sometimes-fabricated-road-to-becoming-a-2021-mayoral-candidate> [<https://perma.cc/HGP8-QD5U>].

³⁹ SUSAN PENNELL ET AL., *GUARDIAN ANGELS: AN ASSESSMENT OF CITIZEN RESPONSE TO CRIME 1* (National Institute of Justice 1986).

⁴⁰ Hogan, *supra* note 38.

⁴¹ *Id.*

of safety.”⁴² The group still patrols the subway today seven days a week.⁴³

In 1990, NYC witnessed a record crime wave and action was crucial.⁴⁴ Mayor David Dinkins’ “Safe Streets, Safe City” plan proposed additional police officers to patrol the transit system daily.⁴⁵ The plan promised that by 1994 there would be an officer on every train in the city between the hours of 8 P.M. and 4 A.M.; however, it neglected to do so.⁴⁶ Transit police never even attempted to carry out the mandate.⁴⁷ Nevertheless, throughout the duration of Dinkins’ term, major crime dropped fourteen percent, with murders dropping twelve percent.⁴⁸ Thus, little argument was made over the broken promise, as it is hard to fight the proven success.⁴⁹

In the 1990s, when the NYPD joined a citywide effort to combat crime, subway crime dropped dramatically.⁵⁰ Bill Bratton was hired by Mayor Rudy Giuliani to lead the city’s police force.⁵¹ Subway safety started to improve, and crime declined when Bratton and other leaders focused on cleaning up the system.⁵² “Broken windows” policing, which focuses on reducing illegal behavior and going after illegal disorderly acts, reduced crime in the city.⁵³ “Many attribute New York’s crime reduction to specific ‘get-tough’ policies carried out by former Mayor Giuliani’s administration.”⁵⁴ However, Mayor Giuliani also severely criminalized homelessness, noting that the

⁴² Ksenia Baatz, *What We Can Learn from New York City’s Guardian Angels*, YALE DAILY NEWS (Aug. 25, 2022, 4:21 AM), <https://yaledailynews.com/sjp/2022/08/25/what-we-can-learn-from-new-york-citys-guardian-angels/> [<https://perma.cc/U7V2-FHZ8>].

⁴³ *Id.*; Bruce Handy, *Back to the Eighties: Crime, Yucky Subways, and the Guardian Angels!*, NEW YORKER (Oct. 11, 2021), <https://www.newyorker.com/magazine/2021/10/18/back-to-the-eighties-crime-yucky-subways-and-the-guardian-angels> [<https://perma.cc/4QJQ-A8QC>].

⁴⁴ Richard Perez-Pena, *An Officer on Every Subway Train: a Popular Promise That Disappeared*, N.Y. TIMES (Mar. 24, 1996), <https://www.nytimes.com/1996/03/24/nyregion/an-officer-on-every-subway-train-a-popular-promise-that-disappeared.html> [<https://perma.cc/MB6D-TM9P>].

⁴⁵ Liz Crotty, *Opinion: NYC Subways Urgently Need More Cops*, CITYLIMITS (Jan. 26, 2021), <https://citylimits.org/2021/01/26/opinion-nyc-subways-urgently-need-more-cops/> [<https://perma.cc/4QU3-WCB5>].

⁴⁶ Perez-Pena, *supra* note 44.

⁴⁷ *Id.*

⁴⁸ Crotty, *supra* note 45.

⁴⁹ Perez-Pena, *supra* note 44.

⁵⁰ Thomas, *supra* note 20.

⁵¹ Al Baker & J. David Goodman, *Bratton, Who Shaped an Era in Policing, Tries to Navigate a Racial Divide*, N.Y. TIMES (July 25, 2016), <https://www.nytimes.com/2016/07/26/nyregion/william-bratton-new-york-city-police-commissioner.html> [<https://perma.cc/HME6-F7W2>].

⁵² Graham, *supra* note 17.

⁵³ Gelinis, *supra* note 29.

⁵⁴ David R. Francis, *What Reduced Crime in New York City*, NBER (Jan. 1, 2003), <https://www.nber.org/digest/jan03/what-reduced-crime-new-york-city> [<https://perma.cc/L7AN-XQSU>].

“[s]treets do not exist in civilized societies for the purpose of people sleeping there,” and “[t]he founding fathers never put that in the Constitution.”⁵⁵

Currently, it seems like the NYC subway system is heading back in the same direction that was seen in the 1980s. In 2021, when Mayor Bill De Blasio was prompted with the question of how to address the surge in subway violence, he offered no plan, downplayed the surge of subway violence, and merely stated, “if we need to shift NYPD personnel more to the subways, we absolutely will.”⁵⁶ Moreover, De Blasio insisted the 500-plus officers that the NYPD deployed into the subways towards the beginning of 2021 were sufficient to make riders feel safe.⁵⁷

In February 2022, in response to the escalation of violence, Mayor Eric Adams released a Subway Safety Plan to address public safety concerns.⁵⁸ The plan, implemented to reduce subway crime, states that New York must address the interconnected issues of homelessness, unmet mental health needs, substance misuse and violence on the subway platforms and stations.⁵⁹ Mayor Adams notes that New York faces two concurrent challenges: the problem of homelessness and of feeling safe within the subway system.⁶⁰ The plan outlines a tripartite system created to seamlessly transition New Yorkers in need of care from: (1) outreach, to (2) initial housing and mental health care, to (3) permanent housing and community.⁶¹ Mayor Adams insists this system will be employed by adding response teams throughout New York to connect with the unhoused individuals on the subways, ensuring that those individuals have short and long-term sources of care, support, and housing, and are working with all levels of government to begin

⁵⁵ Elisabeth Bumiller, *In Wake of Attack, Giuliani Cracks Down on Homeless*, N.Y. TIMES (Nov. 20, 1999), <https://www.nytimes.com/1999/11/20/nyregion/in-wake-of-attack-giuliani-cracks-down-on-homeless.html> [https://perma.cc/M2C4-T7EG].

⁵⁶ Nolan Hicks, *De Blasio Offers Non-Answer on NYC Subway Mayhem as Kids Go Back to School*, N.Y. POST (Feb. 9, 2021, 4:44 PM), <https://nypost.com/2021/02/09/de-blasio-offers-non-answer-on-increased-nyc-subway-violence/> [https://perma.cc/W98B-6SN2].

⁵⁷ Clayton Guse, *De Blasio Says MTA is Discouraging New Yorkers from Returning to Subways*, N.Y. DAILY NEWS (Apr. 13, 2021, 7:09 PM), <https://www.nydailynews.com/new-york/nyc-crime/ny-20210413-i6cfhcl4fndzbcw5ca6ouhiwn4-story.html> [https://perma.cc/5VBJ-AT8W].

⁵⁸ *Mayor Adams Releases Subway Safety Plan, Says Safe Subway is Prerequisite for New York City's Recovery*, NYC.GOV (Feb. 18, 2022), <https://www1.nyc.gov/office-of-the-mayor/news/087-22/mayor-adams-releases-subway-safety-plan-says-safe-subway-prerequisite-new-york-city-s#/0> [https://perma.cc/3HLR-ZMRZ].

⁵⁹ *The Subway Safety Plan*, NYC.GOV, <https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2022/the-subway-safety-plan.pdf> [https://perma.cc/7W2C-852R] (last visited Nov. 6, 2023).

⁶⁰ *Id.*

⁶¹ *Id.*

reforming our broken mental health and housing systems.⁶² The plan also calls for an increased police presence in subway cars and on platforms, especially at “high-priority stations,”⁶³ to assist with enforcing subway rules such as the prohibition on sleeping across subway train seats, decrease aggressive behavior, and enforce a sanitary environment.⁶⁴ The plan promises to send thirty specialized teams of police officers, homeless outreach workers, and behavioral clinicians into high-priority subway stations, as well as to create a transitional housing program.⁶⁵ Mayor Adams reasons that this approach aims to address “decades of failure” that have led to numerous individuals living and sleeping in the city’s subway system.⁶⁶ In reference to homelessness in the subway system, Mayor Adams noted that “[y]ou can’t put a Band-Aid on a cancerous sore” and “you must remove the cancer and start the healing process.”⁶⁷

Flooding the subway system with more police officers, a favorite response of mayors, might provide a short-term feeling of safety for subway riders, but crime cannot be entirely prevented since it is not feasible to have police officers on every train and every platform.⁶⁸ This would be a poor investment of resources, and an individual motivated to do massive harm may well still succeed.⁶⁹ It is a vicious cycle; subway crime increases when the subway system is more sparingly used, but when violent crime occurs, riders are discouraged from using the subway, which then only makes crime more likely.⁷⁰ New York mayors’ solutions all lack a common element: using victim-offender mediation as a piece of the puzzle.

⁶² *Id.*

⁶³ *Id.* (Noting more than 1,000 additional officers have already been deployed across the system).

⁶⁴ *Id.*

⁶⁵ Steven Vago et al., *Mayor Eric Adams’ Subway Safety Plan Off to a Slow Start After Violent Weekend*, N.Y. POST (Feb. 21, 2022, 7:46 PM), <https://nypost.com/2022/02/21/mayor-eric-adams-nyc-subway-safety-plan-off-to-a-slow-start-after-violent-weekend/> [<https://perma.cc/9MTH-89Y6>]; WSN Editorial Board, *Editorial: Eric Adams Needs to House the Homeless, Not Attack Them*, WASH. SQUARE NEWS (Feb. 28, 2022), <https://nyunews.com/opinion/2022/02/28/adams-subway-safety-is-bad-for-homeless-people/> [<https://perma.cc/5NXT-FG47>].

⁶⁶ Ryan W. Miller, *New York Wants to Stop People From Living in the Subways. But Where Will They Go?*, USA TODAY (Feb. 21, 2022, 3:24 PM), <https://www.usatoday.com/story/news/nation/2022/02/21/eric-adams-new-york-city-subway-violence-safety-plan-homelessness/6877425001/> [<https://perma.cc/XT9A-MG7Q>].

⁶⁷ *Id.*

⁶⁸ Graham, *supra* note 17.

⁶⁹ *Id.*

⁷⁰ *Id.*

III. DISCUSSION

A. *Defects in Mayor Adams' Subway Safety Plan*

While Mayor Adams' plan suggests promising results, it arguably criminalizes homelessness and poverty, which targets homeless and poor individuals, as opposed to providing long-term, sustainable solutions.⁷¹ While Mayor Adams' plan for the development of permanent housing is arguably a sustainable solution, his plan does not allow this to happen quickly, nor will this happen without the commitment of significant resources. The plan attempts to provide services and shelters to homeless New Yorkers, but "several nonprofit outreach organizations are skeptical of treatment effectiveness."⁷² Moreover, instead of creating permanent housing and stabilization beds, homeless rights workers fear that Mayor Adams is coercing the homeless from the subway, giving those individuals no alternatives aside from the shelter system or being left exposed on the city streets.⁷³ Many homeless individuals find these types of group shelters dangerous or the curfews too restrictive, and are thus more likely to accept safe havens, which are low-barrier shelters with fewer rules and residents.⁷⁴ Mayor Adams' plan does not call for sending individuals to safe havens, nor does it provide funds to increase these limited beds.

Without support for organizations that aid homeless New Yorkers, Mayor Adams' plan to fix homelessness places an undue weight on detaining and punishing the unhoused, as opposed to helping them.⁷⁵ Instead of fixing the problem successfully, this plan will just push unhoused individuals from one subway line to the next, or from the subway to the city's streets.⁷⁶ Moreover, critics argue that pairing police officers with mental health outreach teams can be detrimental in that instead of homeless individuals seeking out outreach teams who want to help them, the homeless will view them as a branch of the police.⁷⁷

⁷¹ Dean Moses, *Accepting Services or Bowing to Ultimatums? Advocates Question Adams' Subway Safety Plan Stats*, AMNY (May 26, 2022), <https://www.amny.com/new-york/accepting-services-or-bowing-to-ultimatums-advocates-question-adams-subway-safety-plan-stats/> [https://perma.cc/2DWG-LVB8]; WSN Editorial Board, *supra* note 65.

⁷² Moses, *supra* note 71.

⁷³ *Id.*

⁷⁴ Chau Lam, *City's Subway Safety Policy Collides with Realty as Enforcement Begins*, GOTHAMIST (Mar. 4, 2022), <https://gothamist.com/news/citys-subway-safety-policy-collides-with-reality-as-enforcement-begins> [https://perma.cc/V7A6-K6JL].

⁷⁵ WSN Editorial Board, *supra* note 65.

⁷⁶ Lam, *supra* note 74.

⁷⁷ *Id.*

Therefore, Mayor Adams' plan is unlikely to reduce subway safety problems that many New Yorkers fear, but instead "perpetuates the unending cycle of homelessness," and will be just another ill-fated attempt to address the problem that merely expands NYPD's power over the City's most vulnerable individuals.⁷⁸

B. *Current Policing on NYC's Subway System*

The subway attacks throughout 2022 have put police efforts to control subway crime in the spotlight,⁷⁹ as there is a disconnect between police presence and feelings of public safety.⁸⁰ While in January 2022, Mayor Adams said he would double the number of police officers patrolling New York's subway system,⁸¹ this has not made the subway system any safer for riders.⁸² Rather, violence continued to persist.⁸³ There were two officers stationed on the platform where Michelle Go was pushed on January 15, 2022.⁸⁴ Even with officers stationed at the Sunset Park station in Brooklyn, the April 12, 2022 mass shooting on the northbound N train still occurred and officers failed to stop or detain the attacker.⁸⁵ Moreover, an officer at that station asked people who were fleeing the scene to call 911 on their cell phones because his radio was malfunctioning.⁸⁶ In October 2022, Governor Kathy Hochul and Mayor Adams announced a plan to increase the presence of police officers in the transit system.⁸⁷ Specifically, the "state would help the city pay for an

⁷⁸ WSN Editorial Board, *supra* note 65.

⁷⁹ Ari E. Feldman, *Subway Attack Places Scrutiny on Police Transit Safety Efforts*, SPECTRUM NEWS N.Y.1 (Apr. 13, 2022, 4:30 PM), <https://www.ny1.com/nyc/all-boroughs/news/2022/04/13/subway-attack-places-scrutiny-on-police-transit-safety-efforts> [<https://perma.cc/LLP8-894P>].

⁸⁰ *Id.*

⁸¹ Matthew Guariglia, *The One Thing NYC Shouldn't Rush to Do After the Subway Attack? Increase Police Presence*, NBC NEWS (Apr. 17, 2022, 4:30 AM), <https://www.nbcnews.com/think/opinion/nyc-subway-attack-police-isnt-answer-rcna24605> [<https://perma.cc/AS9Q-HKSV>].

⁸² Sam McCann & Aaron Stagoff-Belfort, *More Police Won't Make Public Transit Safer. Housing and Social Services Will*, VERA INST. JUST. (June 17, 2022), <https://www.vera.org/news/more-police-wont-make-public-transit-safer-housing-and-social-services-will> [<https://perma.cc/TB3B-S4VB>]; Feldman, *supra* note 79 ("Reported transit crimes are up nearly 70% year-to-date compared with 2021, although the heightened statistics have come amid a massive influx of police into the system, as well as a higher arrest rate.").

⁸³ Emma G. Fitzsimmons, *New York City Will Increase Police Presence in Subways to Combat Crime*, N.Y. TIMES (Oct. 22, 2022), <https://www.nytimes.com/2022/10/22/nyregion/nyc-subway-police-combat-crime.html> [<https://perma.cc/VLF4-SRKX>].

⁸⁴ Feldman, *supra* note 79; Branigin, *supra* note 1.

⁸⁵ Feldman, *supra* note 79.

⁸⁶ *Id.*

⁸⁷ Fitzsimmons, *supra* note 83.

additional 1,200 overtime shifts per day for police officers to patrol the subway.”⁸⁸ Since the plan was announced, arrests have doubled, but most of these arrests are for fare evasion, along with a “surge in ‘quality of life’ summonses.”⁸⁹

The number of arrests for minor offenses like fare evasion, smoking, and obstruction of seats has dramatically increased.⁹⁰ The justification behind this is to aid in deterring crime, because those who commit serious crimes are more likely to evade fares.⁹¹ Enforcement of these minor crimes, known as “broken windows policing,” has been said to “target poor and minority New Yorkers,” lead to constitutional violations, and crowd jail facilities with too many individuals incarcerated for petty offenses.⁹² Moreover, “broken-windows policing merely creates a revolving door in which homeless people are arrested,” placed in jail, sent through the court system, and then “released back into the community in the same condition they left it.”⁹³ Therefore, it does not result in an individual’s stabilization in permanent housing, substance abuse services, or even with regard to long-term mental health.⁹⁴

This type of subway policing criminalizes poverty and focuses on the most vulnerable people, who need the most support, not policing.⁹⁵ This is evident in the fact that Mayor Adams has defended multiple police decisions to arrest innocent vendors within the city’s subway stations.⁹⁶ For instance, Mayor Adams defended a decision by NYPD officers to handcuff a woman for selling mangoes in a subway station without a license, in front of her daughter, by noting

⁸⁸ *Id.*

⁸⁹ Candace Pedraza, *Eric Adams and Kathy Hochul’s Plan to Put More Cops in the Subway will Only do More Harm*, COPWATCH MEDIA (Nov. 24, 2022), <https://copwatch.media/2022/11/eric-adams-and-kathy-hochuls-plan-to-put-more-cops-in-the-subway-will-only-do-more-harm/> [<https://perma.cc/5L3J-J248>]; see also Gwynne Hogan, *MTA Says Arrests, Summonses are Surging With More Police on NYC Subways*, GOTHAMIST (Nov. 1, 2022), <https://gothamist.com/news/mta-says-arrests-and-stops-are-surging-with-more-police-on-nyc-subways> [<https://perma.cc/4LAX-SHZ4>].

⁹⁰ Matt Katz, *Police in New York are Making More Arrests, Particularly on the Subways*, GOTHAMIST (Apr. 7, 2022), <https://gothamist.com/news/police-in-new-york-are-making-more-arrests-particularly-on-the-subways> [<https://perma.cc/FDG4-TAWP>].

⁹¹ See Feldman, *supra* note 79.

⁹² Katz, *supra* note 90.

⁹³ ALEX S. VITALE, *THE END OF POLICING* 93 (Verso, 2017).

⁹⁴ *Id.*

⁹⁵ Wilfred Chan, ‘Egregious Acts of Violence’: Why is Eric Adams Cracking Down on Subway Buskers and Mango Sellers?, *GUARDIAN* (July 1, 2022, 6:00 PM), <https://www.theguardian.com/us-news/2022/jul/01/new-york-street-vendors-arrests-mayor-eric-adams-nypd> [<https://perma.cc/QAH7-ZA69>].

⁹⁶ *Id.*

that the police were just enforcing the law.⁹⁷ In June 2022, police arrested a saxophonist who had played at the Herald Square subway station for more than five years.⁹⁸ The justification behind the arrest, which was defended by Mayor Adams, was that the saxophonist's cats were impeding pedestrian paths.⁹⁹ The result of using the City's resources on instances like these is "a huge bureaucracy that is spending a ton of time and resources policing and prosecuting the poorest New Yorkers for low-level offenses with no public safety benefit."¹⁰⁰ Criminalizing street vendors is a poor and ineffective use of the City's resources.¹⁰¹ Instead of focusing on these petty crimes, these resources should be expended on reducing more serious crimes.

C. *Mental Health and Homelessness Crisis*

Though currently prevalent, mental health issues have unfortunately also previously impacted the subway system. In 1999, Andrew Goldstein, a mentally ill man, shoved Kendra Webdale to her death in front of an oncoming subway train.¹⁰² In response, the State Legislature passed Kendra's Law (§ 9.60 of the Mental Hygiene Law), which allows "judges to order closely supervised outpatient treatment for mentally ill patients who had a history of refusing to take their medications and who had been put in jail or hospitalized repeatedly," or had become violent.¹⁰³

Proponents of Kendra's Law argue that the "law helps a subset of people with mental illness receive expedited care and avoid

⁹⁷ *Id.*; Chelsia R. Marcius, *Adams Defends Police for Handcuffing Vendor Who Sold Mangoes in Subway*, N.Y. TIMES (May 9, 2022), <https://www.nytimes.com/2022/05/09/nyregion/subway-safety-food-vendor-brooklyn.html> [<https://perma.cc/Z2UL-WM7X>].

⁹⁸ Chan, *supra* note 95.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Ali Watkins, *A Horrific Crime on the Subway Led to Kendra's Law. Years Later, Has it Helped?*, N.Y. TIMES (Sept. 11, 2018), <https://www.nytimes.com/2018/09/11/nyregion/kendras-law-andrew-goldstein-subway-murder.html> [<https://perma.cc/X7NW-YJX5>].

¹⁰³ N.Y. MENTAL HYGIENE LAW § 9.60 (McKinney 1999); Marc Santora & Anemona Hartocollis, *Troubled Past for Suspect in Fatal Subway Push*, N.Y. TIMES (Dec. 30, 2012), https://www.nytimes.com/2012/12/31/nyregion/erika-menendez-suspect-in-fatal-subway-push-had-troubled-past.html?_r=0 [<https://perma.cc/B9DB-L4XS>]; In re K.L., 1 N.Y.3d 362, 367 (N.Y. 2004) ("Kendra's Law was thus adopted in an effort to 'restore patients' dignity, and . . . enable mentally ill persons to lead more productive and satisfying lives,' while at the same time reducing the risk of violence posed by mentally ill patients who refuse to comply with necessary treatment.").

unnecessary hospitalization” and criminal charges.¹⁰⁴ Meanwhile, critics argue the system is coercive in that it uses broad language that often is used to violate constitutional rights.¹⁰⁵ However, both advocates and critics agree that the Kendra’s Law program is underutilized and underfunded.¹⁰⁶ The law is rarely used by law enforcement, but is more often utilized by family members to address a relative’s mental health crisis.¹⁰⁷ Despite the law’s enactment, mental health crises in the subway system have persisted. For instance, in December 2012, Erika Mendez, who previously had years of contact with NYC’s mental health and law enforcement establishments, pushed a stranger to his death under an oncoming subway train.¹⁰⁸

In response to the January 2022 death of Michelle Go, pushed to her death by a man with a history of mental illness, Governor Kathy Hochul proposed a significant expansion of Kendra’s Law,¹⁰⁹ which could create a means of “removing the mentally ill from the subway or from homeless encampments if they are unable to feed, clothe or shelter themselves, and if they pose a ‘substantial risk of physical harm.’”¹¹⁰ This proposal makes for involuntary inpatient care an overly broad standard.¹¹¹ Under the proposed expansion, an individual can be considered a danger if their mental illness makes them unable to meet basic needs like food, shelter, clothing or healthcare.¹¹² This proposal would also remove the standard that requires a determination that the individual being committed would

¹⁰⁴ Ethan Geringer-Sameth, *What’s Behind the Increased Use of Kendra’s Law in New York City?*, GOTHAM GAZETTE (Sept. 27, 2022), <https://www.gothamgazette.com/city/11599-increase-kendras-law-new-york-city> [<https://perma.cc/U92T-6DV7>].

¹⁰⁵ *Id.*

¹⁰⁶ Santora & Hartocollis, *supra* note 103.

¹⁰⁷ Joshua Solomon, *Changes to Kendra’s Law Could Expand State’s Power to Commit the Mentally Ill. Advocates are Concerned*, TIMES UNION (Mar. 30, 2022, 12:31 PM), <https://www.timesunion.com/state/article/Expansion-of-Kendra-s-Law-has-fallen-outside-the-17037168.php> [<https://perma.cc/Z2X2-KK3Q>].

¹⁰⁸ Santora & Hartocollis, *supra* note 103.

¹⁰⁹ Samar Khurshid, *After Subway Shoving, Officials Look to Expand State Laws on Mandatory Treatment for Mental Illness*, GOTHAM GAZETTE (Feb. 14, 2022), <https://www.gothamgazette.com/state/11077-expand-kendras-law-mandatory-treatment-mental-illness> [<https://perma.cc/SP3T-JWNQ>].

¹¹⁰ Solomon, *supra* note 107.

¹¹¹ *Id.*

¹¹² Khurshid, *supra* note 109.

likely benefit from treatment.¹¹³ This is the standard prior court cases rested constitutionality on.¹¹⁴

As of September 22, 2022, the number of people on assisted outpatient treatment in NYC rose to 1,655, a nineteen percent increase from the same day the previous year.¹¹⁵ Leaders in the civil rights community across New York wrote a letter to senators and assembly members urging them to protect the rights of mentally disabled New Yorkers and to reject the proposal to expand forced psychiatric commitment laws.¹¹⁶ The letter urges rejection on the ground that it is unnecessary and unconstitutional to broaden the standard for forced inpatient and outpatient commitments based on prediction of future harm to an individual who appears to be unable to meet basic needs.¹¹⁷ Moreover, the New York Court of Appeals relied on certain criteria to uphold Kendra's Law against a constitutional challenge: (i) the patient has a history of lack of compliance with treatment for mental illness; and (ii) the patient is likely to benefit from treatment.¹¹⁸ The proposed amendments go against these two factors and illegally permit those unable to obtain food, shelter, clothing, or medical services to be subjected to forced outpatient commitment without requiring a mandatory showing that the individual refused mental illness treatment and without even requiring that the individual is likely to benefit from an outpatient commitment Kendra's Law order.¹¹⁹

Despite Mayor Adams' plan to provide individuals with the necessary mental health treatment in order to alleviate the subway mental health crisis, very few mentally ill people encountered by subway safety teams are being brought in for psychiatric evaluations, let alone treatment.¹²⁰ Perhaps the most chilling wakeup call into the subway mental health crisis is April 2022 subway shooter, Frank

¹¹³ Solomon, *supra* note 107.

¹¹⁴ *Id.*; see Meyers v. Sullivan, 2017 WL 5125767, 5 (E.D.N.Y. 2017) (“[i]n *In re K.L.*, the New York Court of Appeals held that Kendra's Law does not violate an individual's constitutional right to due process because the standards that must be met to commit an individual under the statute ‘themselves satisfy due process.’”); see also Coleman v. State Supreme Ct., 697 F. Supp. 2d 493, 511 (S.D.N.Y. 2010) (“[t]he procedures set forth in Section 9.60 therefore are adequate to withstand a facial due process challenge under the Fourteenth Amendment.”).

¹¹⁵ Geringer-Sameth, *supra* note 104.

¹¹⁶ *Letter to State Legislators Regarding Kendra's Law*, NYLPI (Mar. 25, 2022), <https://www.nylpi.org/resource/letter-to-state-legislators-regarding-kendras-law/> [<https://perma.cc/QE6P-PZ6A>].

¹¹⁷ *Id.*

¹¹⁸ *In re K.L.*, 1 N.Y.3d at 368.

¹¹⁹ See *In re K.L.*, 1 N.Y.3d at 366; NYLPI, *supra* note 116.

¹²⁰ Melissa Russo, *Are Adams' Subway Safety Teams Getting Individuals the Mental Health Help They Need?*, NBC N.Y. (Mar. 11, 2018, 12:08 PM), <https://www.nbcnewyork.com/news/local/are-adams-subway-safety-teams-getting-individuals-the-necessary-mental-health-help/3594282/> [<https://perma.cc/8BVS-XYBT>].

James, stating in a YouTube video: “Mr. Mayor, I’m a victim of your mental-health program . . . I’m 62 now, full of hate, full of anger and full of bitterness.”¹²¹

D. *Victim Remedial Efforts*

Subway crime victims deserve justice, but where should they seek it from? Filing suit directly against a perpetrator may be hopeless since a perpetrator likely will not have the resources to pay damages.¹²² Even if a perpetrator’s sentence includes the legal obligation to pay damages in small amounts overtime, that is simply too long for an innocent victim to wait for justice.¹²³ Take the case of Bernard Goetz, who shot four young men on a NYC subway train after they allegedly tried to rob him in 1984.¹²⁴ Despite his straightforward confession, Mr. Goetz was cleared of attempted murder and ended up serving less than one year in prison.¹²⁵ Darrell Cabey, left paralyzed after the shooting, filed a civil suit against Goetz and was awarded \$43,000,000 by a jury for his gunshot injuries in 1996.¹²⁶ After the trial, Goetz declared bankruptcy and U.S. Bankruptcy Judge Cornelius Blackshear ruled that the award could not be dismissed by declaration of bankruptcy,¹²⁷ yet the Cabey family has never received any money from Goetz.¹²⁸

¹²¹ Post Editorial Board, *NYC’s Subway Shooting May Finally be a Turning Point for Mental Health*, N.Y. POST (Apr. 13, 2022, 5:28 PM), <https://nypost.com/2022/04/13/nycs-subway-shooting-may-be-a-mental-health-turning-point/> [<https://perma.cc/9YA9-EEAS>].

¹²² See Charles R., Gueli, Esq., *When Can You Sue for Assault, Battery, or Physical Abuse?*, INJ. CLAIM COACH (May 30, 2022), <https://www.injuryclaimcoach.com/assault-abuse.html> [<https://perma.cc/VXV6-Q356>].

¹²³ *Id.*

¹²⁴ Tina Kelley, *Following Up; Still Seeking Payment from Bernard Goetz*, N.Y. TIMES (Sept. 10, 2000), <https://www.nytimes.com/2000/09/10/nyregion/following-up-still-seeking-payment-from-bernard-goetz.html> [<https://perma.cc/D2HU-7NFO>].

¹²⁵ Pippa Raga, *The “Subway Vigilante” Shot Four Unarmed Black Men in 1984—Where is He Now?*, DISTRACTIFY (June 2, 2020, 1:10 PM), <https://www.distractify.com/p/bernhard-goetz-now> [<https://perma.cc/GHJ6-MEET>].

¹²⁶ Kelley, *supra* note 124.

¹²⁷ *Judge Rules Bankrupt Goetz Liable for \$43 Million Judgment*, AP NEWS (Aug. 2, 1996), <https://apnews.com/article/1b9a60d48716c43e1d4a2dad33abcd15> [<https://perma.cc/HR3C-6WNZ>].

¹²⁸ Rebekah Kuschmider, *Netflix’s ‘Trial By Media’: Where is Bernhard Goetz Today in 2020?*, YOUR TANGO (May 12, 2020), <https://www.yourtango.com/2020333925/where-bernhard-goetz-today-trial-by-media-netflix> [<https://perma.cc/6GUW-2NRE>].

The MTA has a legal duty to keep the premises reasonably safe, but it is hardly ever held liable for third-party criminal attacks.¹²⁹ The New York Court of Appeals decision in *Crosland v. New York City Transit Authority* addresses the issue of the MTA's liability for third-party criminal acts.¹³⁰ In a case involving a victim who was beaten to death at a subway station, the Court held that the NYC Transit Authority "owed [decedent] no special duty, for lack of the element of 'some direct contact between agents of the [defendant] and the injured party.'"¹³¹ Attorney Bob Genis notes he is unaware of any "Appellate Division case that sustains liability or allows liability from criminal acts by someone in the subway system."¹³² The liability of the MTA is solely its duty as a property owner.¹³³ Therefore, the MTA only has a duty to keep riders safe by taking reasonable precautions to avoid hazards and can only be found liable if its negligence leads to an accident and damages.¹³⁴ The MTA has no special duty to assure safety from the criminal acts of third parties and in the absence of such a duty, a plaintiff cannot recover on a negligence theory.¹³⁵ Moreover, New York courts have held that a third-party criminal act constitutes an intervening and superseding cause of a victim's harm and thus, cuts off any liability on the part of the MTA as a matter of law.¹³⁶

Victims of these horrendous crimes typically do not see desired results via litigation. For instance, a victim of Frank James' shooting, Ilene Steur, filed a federal lawsuit against Glock Inc., the manufacturer of James' weapon, arguing that Glock should be held liable for James' crime because Glock improperly marketed its firearm with an emphasis on their easy concealment as well as other features that "appeal to purchasers with criminal intent."¹³⁷

¹²⁹ See Andrew Denney, *A Victim of the April 12 NYC Subway Shooting Seeks to Hold the MTA Liable. Here's Why it Might be a Longshot*, N.Y. L.J. (May 2, 2022, 4:26 PM), <https://www.law.com/newyorklawjournal/2022/05/02/a-victim-of-the-april-12-nyc-subway-shooting-might-seek-to-hold-the-mta-liable-heres-why-it-might-be-a-longshot/?slreturn=20220722101453> [https://perma.cc/JQ2Z-AMEV].

¹³⁰ *Id.*

¹³¹ *Crosland v. New York City Transit Auth.*, 68 N.Y.2d 165, 168 (N.Y. 1986) (internal citation omitted).

¹³² See Denney, *supra* note 129.

¹³³ *Id.*

¹³⁴ Jonathan Damashek, *NYC Subway Injuries: Can You Sue the MTA?*, LAWYER1 (June 13, 2022), <https://lawyer1.com/blog/nyc-subway-injuries-can-you-sue-the-mta/> [https://perma.cc/Z54F-N4RA].

¹³⁵ See *Maynard v. New York City Transit Auth.*, 267 A.D.2d 37 (N.Y. App. Div. 1999).

¹³⁶ See, e.g., *id.* at 38 (Holding the transit authority assumed no special duty to assure safety of passengers from criminal acts of third parties and unforeseen criminal acts constituted intervening and superseding cause of passenger's harm); *Falcone v. Manhattan & Bronx Surface Transit Operating Auth.*, 166 A.D.2d 271 (N.Y. App. Div. 1990) (Holding unexpected criminal act of third party was superseding and intervening cause, relieving transit authority from liability).

¹³⁷ Troy Closson, *Subway Victim Sues Gun Maker Over Attack That 'Changed My Life Forever'*, N.Y. TIMES (May 31, 2022), <https://www.nytimes.com/2022/05/31/nyregion/subway-shooting-victim-sues-gun-maker-glock.html> [https://perma.cc/G847-HABC].

However, because there are tight federal protections for companies like Glock, and due to the burden of proof that Steur's lawyers would be required to meet to hold Glock liable, it is unclear if this suit will prevail in court.¹³⁸ While the state has a fund designed to financially support victims of violent crimes when victims have no other resources or have exhausted all other options, the fund has distributed money only to a small fraction of those eligible.¹³⁹

IV. PROPOSAL

A. *Victim-Offender Mediation*

The adversarial system is the traditional method of redressing violent crime.¹⁴⁰ However, besides the issues involved in litigating against perpetrators or the MTA, this approach can actually create additional harm because it's exclusionary, punitive and shameful in nature.¹⁴¹ Further, there is a growing recognition that the predominant approach of criminal justice, which centers on the offender's behavior and subsequent punishment, is not only ineffective and archaic, but also strips victims of the opportunity to participate actively in the justice process.¹⁴² Instead, restorative justice should be used as an alternative. Restorative justice, a practice in the field of criminal justice that dates back to the 1970s,¹⁴³ and unlike the traditional system, emphasizes the voices and experiences of harmed crime victims through dialogue, perspective-taking, and storytelling.¹⁴⁴ The clearest operationalization of restorative justice is expressed through Victim-offender Mediation Programs ("VOM").¹⁴⁵

¹³⁸ Samantha Max, *Can Subway Shooting Victim's Suit Against Glock Stand Up in Court? If it Does, it Will Change History*, GOTHAMIST (June 14, 2022), <https://gothamist.com/news/subway-shooting-victim-leans-on-new-ny-law-to-take-glock-to-court> [<https://perma.cc/UH65-U733>].

¹³⁹ Jessica Washington, *Violent Crime Victims in New York Struggle to Access Funds Due to Them*, THE CITY (June 1, 2022, 6:00 AM), <https://www.thecity.nyc/2022/6/1/23149316/victim-compensation-fund-new-york-violent-crime> [<https://perma.cc/627Q-JUBD>].

¹⁴⁰ HOWARD ZEHR, *CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE* (Herald Press, 3rd ed. 2005).

¹⁴¹ Molloy et al., *supra* note 8, at 133–34.

¹⁴² Niemeyer & Shichor, *supra* note 10.

¹⁴³ Christian B. N. Gade, *Is Restorative Justice Punishment?*, 38 CONFLICT RESOL. Q. 127, 128 (2020).

¹⁴⁴ Molloy et al., *supra* note 8, at 133.

¹⁴⁵ Niemeyer & Shichor, *supra* note 10.

Mediation has been implemented in two ways in relation to the criminal justice system: as an alternative to court proceedings or as complementary to court proceedings.¹⁴⁶ However, in the context of serious offenses, mediation is hardly possible as an alternative procedure where the offense threatened the victim's life and health because in those cases, there is a need to emphasize the general prevention effect of the penalty.¹⁴⁷ In the context of violent crime, VOM would necessarily be applied post-sentence, as opposed to a departure from prosecution.¹⁴⁸

VOM is comprised of a four-step process.¹⁴⁹ Step one is the intake and referral process, where a mediator contacts the victim and offender prior to a mediated session to ensure that they are well suited to the mediation process and have voluntarily chosen to participate.¹⁵⁰ Step two involves the mediator getting to know the victim and offender separately, gaining their trust and explaining the process to them in order to ensure their expectations are realistic.¹⁵¹ Step three is the mediated session where the mediator supports the victim and offender in voicing their thoughts and questions to one another, and ultimately, the parties may choose to construct an agreement.¹⁵² Step four concludes with wrapping up the process, where the mediator follows up by contacting the victim and offender to check in with them in order to ensure they are adhering to their commitments.¹⁵³ In the case of a restitution plan, which does frequently occur, the mediator will write up the details in a contract for the participants.¹⁵⁴ Overall, the VOM process humanizes the criminal justice experience for victims and offenders, holds offenders directly accountable to the people they harmed, and allows for more active involvement of crime victims,

¹⁴⁶ Juhani Iivario, *Victim-Offender Mediation—An Alternative, Addition or Nothing but a Rubbish Bin in Relation to Legal Proceedings?*, NAT'L RES. & DEV. CENTRE WELFARE & HEALTH, <https://biblioteca.cejamerica.org/bitstream/handle/2015/912/iivari-victim-offender.pdf?sequence=1&isAllowed=y> [<https://perma.cc/3JKL-W52M>] (last visited Oct. 10, 2022).

¹⁴⁷ *Id.* at 13.

¹⁴⁸ Rachel Alexandra Rossi, *Meet Me on Death Row: Post-Sentence Victim-Offender Mediation in Capital Cases*, 9 PEPP. DISP. RESOL. L. J. 185, 193 (2008).

¹⁴⁹ Toran Hansen & Mark Umbreit, *State of Knowledge: Four Decades of Victim-Offender Mediation Research and Practice: The Evidence*, 36 CONFLICT RESOL. Q. 99, 101 (2018).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 101–02 (In the context of crime victims, this means receiving a restitution agreement and/or an apology).

¹⁵³ *Id.* at 101–02.

¹⁵⁴ Mark S. Umbreit et al., *The Impact of Victim-Offender Mediation: A Cross-National Perspective*, 17 MEDIATION Q. 215, 217 (2000).

family members of victims and offenders, as well as community members, in the justice process.¹⁵⁵

VOM is a process whereby victims and offenders come together to discuss wrongdoing, its impacts, and ways to “make things right” in a safe setting.¹⁵⁶ Where most other applications of mediation are among individuals with some type of prior relationship, most, but not all, participants in VOM are strangers.¹⁵⁷ During the meeting, facilitated by a trained mediator, victims and offenders assume active problem-solving roles aimed at restoring material and psychological losses that not only the victim suffered, but also that the community suffered.¹⁵⁸ It is a humanistic and dialogue-driven process rather than settlement-driven, with participants directly sharing their narratives and listening to each other in a face-to-face format.¹⁵⁹ Victims can ask questions and tell the offender how the crime affected them,¹⁶⁰ receive answers to questions, and directly participate in developing a restitution plan for the offender to be accountable for the loss or damage caused.¹⁶¹ Offenders can take responsibility and/or are actively involved in the restitution plan.¹⁶² Offenders have been able to gain a far better understanding of the real human impact of their actions, “own up” to their behavior and make amends directly to the person they harmed.¹⁶³ Moreover, the offender’s attitude in reacting to a victim’s feelings conveys valuable information to officials tasked with assessing personal rehabilitation potential.¹⁶⁴ An offender who displays signs of empathy toward the victim’s feelings requires a different rehabilitation program from an offender who is apathetic and alienated.¹⁶⁵ If an offender fails to complete the restitution, court-imposed consequences can be imposed.¹⁶⁶ VOM increases satisfaction of both parties, saves time

¹⁵⁵ UMBREIT, *supra* note 15, at XLVI.

¹⁵⁶ Hansen & Umbreit, *supra* note 149, at 100.

¹⁵⁷ Mark S. Umbreit, *Mediation of Victim Offender Conflict*, 1988 J. DISP. RESOL. 85, 103 (1988).

¹⁵⁸ Niemeyer & Shichor, *supra* note 10.

¹⁵⁹ Hansen & Umbreit, *supra* note 149, at 101.

¹⁶⁰ Melvin Aulkemeyer, *Predicting and Improving the Public’s Attitudes and Beliefs About Victim-Offender Mediation in Response to a Serious Crime* (June 23, 2019) (B.A. Thesis, University of Twente) (on file with the Department of Psychology of Conflict, Risk & Safety, University of Twente).

¹⁶¹ UMBREIT, *supra* note 15, at XXXVIII.

¹⁶² Aulkemeyer, *supra* note 160.

¹⁶³ UMBREIT, *supra* note 15, at XXXVIII–XXXIX.

¹⁶⁴ Gabriel Hallevy, *Therapeutic Victim-Offender Mediation Within the Criminal Justice Process—Sharpening the Evaluation of Personal Potential for Rehabilitation While Righting Wrongs Under the ADR Philosophy*, 16 HARV. NEGOT. L. REV. 65, 77 (2011).

¹⁶⁵ *Id.*

¹⁶⁶ UMBREIT, *supra* note 15, at XXXVIII.

and costs, and has a tendency of ensuring restitution to victims of crime.¹⁶⁷

VOM in the context of serious crimes requires mediators to have far more extensive training, particularly a need for special knowledge and skills related to severely violent crimes, in addition to standard mediation skills.¹⁶⁸ There must be a focus on the process of facilitating a direct dialogue between parties related to the violence that occurred, the journey of grief experienced by the victim, and the potential for closure and healing.¹⁶⁹ From a victim's perspective, a mediator must understand the victimization experience, dealing with grief and loss, understanding post-traumatic stress, and the ability to collaborate with psychotherapists.¹⁷⁰ From an offender perspective, a mediator must understand criminal justice and corrections systems, understand the offender and prisoner experience, have the ability to non-judgmentally relate to offenders convicted of heinous crimes, and have the ability to negotiate with high level correctional officials to gain access to the offender.¹⁷¹

B. *Using VOM as a Tool to Reduce Violent Crime on NYC's Subway System*

i. Benefits of VOM

The VOM process provides a multitude of different possible benefits.¹⁷² Research shows three broad goals of VOM: to benefit the victim, to benefit the offender and the offender's family, and to benefit the community.¹⁷³ Parties generally report that VOM programs are beneficial, and victims appreciate the chance to directly participate in the criminal justice process.¹⁷⁴

Victims are especially interested in VOM because victims are left with unanswered questions and frequently want to hold the offender accountable, to share pain with their offender, and help

¹⁶⁷ Enoch Amoah, *Justification for Implementing Victim-Offender Mediation in the Criminal Justice System of Ghana*, 1 E-J. HUM. ARTS & SOC. SCI. 118, 121 (Sept. 2020).

¹⁶⁸ Mark S. Umbreit et al., *Victims of Severe Violence Meet the Offender: Restorative Justice Through Dialogue*, 6 INT'L REV. VICTIMOLOGY 321, 324 (1999).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Mark S. Umbreit, *Victim Offender Mediation: Conflict Resolution and Restitution*, U.S. DEP'T JUST. 8 (Sept. 15, 1985), <https://www.ojp.gov/pdffiles1/Digitization/101322NCJRS.pdf> [<https://perma.cc/H2L9-4KHQ>].

¹⁷³ Rossi, *supra* note 148, at 195.

¹⁷⁴ Katherine L. Joseph, *Victim-Offender Mediation: What Social & Political Factors Affect its Development*, 11 OHIO ST. J. DISP. RESOL. 207, 212 (1996).

their offender change behaviors.¹⁷⁵ Co-victims, family members and friends of homicide victims experience similar distress.¹⁷⁶ Victims can participate in fashioning a resolution for the offense and thereby gain control, which they are unable to do through the traditional justice system.¹⁷⁷ Victims also have reported satisfaction with meeting their offender and being able to better understand the crime and the offender's situation, and to be present while the offender expressed remorse.¹⁷⁸

Offenders get the opportunity to make amends and have the chance to regain control through active participation in the process.¹⁷⁹ Offenders may gain more respect for the criminal justice system, come to understand the personal costs that result from their criminal acts, and gain appreciation for other people's rights.¹⁸⁰ As discussed more in depth in Section (iii) below,¹⁸¹ VOM also has a positive correlation with preventing offenders from recommitting crimes or being rearrested.¹⁸² Reduced reoffending rates leads to fewer victims, fosters stronger communities, and promotes public safety.¹⁸³

VOM is for the benefit of the community as much as it is for the benefit of the victim and the offender.¹⁸⁴ The community can be represented in the VOM process by third parties, including active observers, social workers, or ordinary community members without a connection to the crime or the criminal justice process.¹⁸⁵ The community representative must emphasize the impact the specific crime had upon the community, beyond just the interaction between the victim and the offender.¹⁸⁶ VOM programs that include volunteers increase participation of the community in the criminal justice process and, to the extent that VOM programs enhance the possibility of offender rehabilitation and reduce recidivism, the community is spared future criminal conflict and victimization.¹⁸⁷ The immediate benefit to the community is the prevention of recidivism

¹⁷⁵ Rossi, *supra* note 148, at 197.

¹⁷⁶ *Id.*

¹⁷⁷ Joseph, *supra* note 174, at 212.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 212–13.

¹⁸⁰ *Id.*

¹⁸¹ *See infra* Section iii.

¹⁸² Amoah, *supra* note 167, at 121.

¹⁸³ Lynn Stewart et al., *The Impact of Participation in Victim-Offender Mediation Sessions on Recidivism of Serious Offenders*, 62 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 3910, 3921 (2018).

¹⁸⁴ Hallevy, *supra* note 164, at 80.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 81.

¹⁸⁷ Joseph, *supra* note 174, at 213.

by the offender, and the release of the victim's fears, angers and frustration.¹⁸⁸

A police officer may also act as a representative of the community.¹⁸⁹ Using VOM to improve the NYC subway system should require NYPD to play an active role in the scheme to further the community benefit. Restorative practices rely on police, courts and criminal law to set the restorative process into motion.¹⁹⁰ Police are often referred to as “the gatekeepers of the criminal justice system” because almost all cases proceeding through the criminal courts and corrections are a result of police action.¹⁹¹ Police decision-making is therefore an essential element of justice, and police officers have discretion regarding decisions to charge suspects or engage in other forms of intervention into problems of crime and disorder.¹⁹²

While restorative justice enjoys increasing popularity, it is not yet a structural part of police work.¹⁹³ Police officers believe restorative interventions are more suited for young accomplices on the periphery of the criminal organization as opposed to those who commit more violent offenses.¹⁹⁴ Even in the case of these ‘suitable’ offenses, according to police officers, only a small minority of cases handled by police are deemed eligible for restorative justice by the police.¹⁹⁵ However, Australian evaluations show that police rapidly become supporters of VOM after experiencing a conference firsthand, but the general approach appears to be one of suspicion of the process as a “soft option” or simply forgetting to consider the option.¹⁹⁶ Police saw VOM as a “soft option” when they felt a more punitive response was required.¹⁹⁷

Accordingly, NYPD should be required, as part of their training, to attend VOM conferences in order to increase the level of understanding of and support for the process.¹⁹⁸ NYPD should also use community policing, which places an emphasis on greater police

¹⁸⁸ Hallevy, *supra* note 164, at 81.

¹⁸⁹ Prenzler & Hayes, *supra* note 14, at 30.

¹⁹⁰ Patrick M. Gerkin, *Participation in Victim-Offender Mediation: Lessons Learned from Observations*, 34 GRAND VALLEY ST. U. CRIM. JUST. REV. 226, 229 (June 2009).

¹⁹¹ Prenzler & Hayes, *supra* note 14, at 17.

¹⁹² *Id.* at 17–18.

¹⁹³ M.S. Hoekstra, *Messy Victims & Sympathetic Offenders: The Role of Moral Judgments in Police Referrals to Restorative Justice*, 25 CONTEMP. JUST. REV. 179, 179 (2022).

¹⁹⁴ *Id.* at 181.

¹⁹⁵ *Id.*

¹⁹⁶ Prenzler & Hayes, *supra* note 14, at 21.

¹⁹⁷ *Id.* at 22.

¹⁹⁸ *Id.* at 23.

cooperation with communities in solving crime-related problems.¹⁹⁹ VOM can involve community policing in police referral of victims, in police participation in conferences, and in intervention in cases of non-compliance.²⁰⁰ If a system where police attend all VOMs is implemented, NYPD will see the positive effects that VOM has on violent offenders as well as troubled victims. In turn, NYPD will be more likely to use their discretion in referring the victims and offenders they encounter daily on the NYC subway to VOM.

Critics may be concerned about how the public will cope with the distrust that many community members feel toward police officers, especially because, since the high-profile use-of-force incidents of 2020, there has been a widened gap between police agencies and their communities.²⁰¹ This arrangement leaves potential for the public to view police officers negatively given their discretion and authority to refer participants to VOM. However, this conceivable distrust will not affect VOM's potential benefits given that the process is entirely voluntary for participants.

ii. Using VOM for Violent Crimes

In the context of violent NYC subway crime, the VOM program to be used is one where cases are referred primarily after a formal admission of guilt has been accepted by the court, with the mediation being a condition of probation, granted the victim so desires.²⁰² While the VOM process has typically been utilized for “minor or non-violent cases,” such as property offenses and theft, it has been used, and even recommended, to address the effects of more serious crimes such as aggravated assault and murder.²⁰³

Important differences exist between VOM after serious and less serious crimes.²⁰⁴ For instance, after a serious crime, offenders are typically in prison and already found guilty when they

¹⁹⁹ See *id.* at 20; see *Community Policing Defined*, U.S. DEP'T JUST. (2014), <https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf> [<https://perma.cc/38VT-YSZD>] (Community policing entails using “problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.”).

²⁰⁰ Prenzler & Hayes, *supra* note 14, at 20.

²⁰¹ Terrence M. Cunningham, *How Police and Communities Can Move Forward Together*, A.B.A. (Jan. 11, 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/how-police-and-communities-can-move-forward-together/ [<https://perma.cc/2UB4-R4F5>].

²⁰² UMBREIT, *supra* note 15, at XXXIX.

²⁰³ Prenzler & Hayes, *supra* note 14, at 28; see Hooper & Busch, *supra* note 13, at 103–04; Niemeyer & Shichor, *supra* note 10 (The American Bar Association has recommended that local, state and federal agencies take steps to incorporate these programs into their criminal justice process for violent and nonviolent crimes).

²⁰⁴ Aulkemeyer, *supra* note 160, at 4.

participate in VOM. VOM, in the context of serious crimes, requires much more extensive preparation than after less serious crimes on the part of the mediators, victims and offenders.²⁰⁵ The use of VOM and dialogue in severely violent crimes has various defining characteristics, such as: emotional intensity; extreme need for non-judgmental attitude; longer case preparation by the mediator; multiple separate meetings prior to joint session; multiple phone conversations; negotiation with correctional officers to secure access to the incarcerated person and to conduct mediation in prison; coaching of participants in the communication of intense feelings; and boundary clarification.²⁰⁶

While victims of serious crimes, experiencing high levels of suffering, are often anticipated to be unwilling to engage in mediated contact with offenders, especially when the crime happened recently, it has been found that many crime victims expressed the need for broader programs that include severely violent crimes.²⁰⁷ An increasing number of victims of sexual assault and attempted homicide and survivors of murder victims have requested the opportunity to meet the offender to express the full impact of the crime on their lives, to get answers to their questions, and to gain a greater sense of closure.²⁰⁸ However, due to the extremely violent nature of the crimes at hand, it may take longer for victims or offenders to be sufficiently prepared for dialogue.²⁰⁹ In most cases, VOM occurs many years after the crime occurred and the actual mediation or dialogue session is generally held in a secure institution where the offender is located.²¹⁰

Using VOM in crimes of severe violence is about engaging those most affected by violent crimes while holding the offender accountable, helping victims achieve a greater sense of meaning or closure concerning the severe harm resulting from the crime and assisting all parties in having a greater capacity to move on with their lives positively.²¹¹

²⁰⁵ *Id.*

²⁰⁶ Umbreit, *supra* note 168, at 323–24.

²⁰⁷ Katharina Kahl, *The Dynamics of Crime Seriousness & Victims' Preference to Participate in Online & Offline Victim-Offender Mediation* (June 28, 2022), (Study on file with the University of Twente, Faculty of Behaviour, Management & Social Sciences), http://essay.utwente.nl/90937/1/Kahl_BA_BMS.pdf [<https://perma.cc/RG38-8UL6>].

²⁰⁸ Umbreit, *supra* note 168, at 323.

²⁰⁹ Rossi, *supra* note 148, at 194.

²¹⁰ Umbreit, *supra* note 168, at 323.

²¹¹ *Id.* at 340–41.

iii. VOM & NYC Subway Crime Recidivism

In 2019, the MTA passed a resolution supporting the ban of criminal recidivists from the NYC transit system, emphasizing that it is unacceptable that serial criminal recidivists are able to continually enter the public transit system to prey upon MTA workers and subway riders.²¹² However, the resolution did not include language as to what would constitute a ban or how it would be enforced.²¹³ It merely stated that “there can and should be some mechanism in place to ban certain perpetrators from the transit system for some amount of time in order to protect the public.”²¹⁴ While this a good attempt to decrease recidivist crime on the subway, the MTA has no power to actually ban repeat offenders.²¹⁵ Additionally, banning individuals from public transit could actually increase recidivism rates, as it would make it almost certain that these people would have to return to a life of crime, because they will not have transportation options.²¹⁶ Therefore, more efforts must be made to remedy the recidivism problem.

Scholars have concluded that offenders who participate in restorative justice programs have a lower incidence of reoffending compared with offenders who do not participate in such programs and undergo the traditional justice procedure and sanction.²¹⁷ This is potentially because restorative justice practices can address offenders’ antisocial attitudes, their lack of problem-solving strategies, empathy and self-control, all of which should be considered.²¹⁸ Further, talking about the offense and an offender’s background or addictions can be charged with emotion for the offenders.²¹⁹

Studies show that when the mediation was focused on the offense and its consequences, victims and offenders were able to think about how to confront the offenders’ criminogenic needs.²²⁰ Direct contact with victims is associated with emotions of guilt,

²¹² *MTA Passes Resolution to Ban Repeat Offenders in NYC in New York City*, ABC7NY (June 26, 2019), <https://abc7ny.com/subway-new-york-city-repeat-offenders-nyc/5366027/> [<https://perma.cc/U5UL-P62R>].

²¹³ Erik Bascome, *MTA, Cuomo Looking to Ban Repeat Criminals from NYC Transit System*, SILIVE (June 25, 2019, 2:33 PM), <https://www.silive.com/news/2019/06/mta-cuomo-looking-to-ban-repeat-criminals-from-nyc-transit-system.html> [<https://perma.cc/9CLS-Y2UN>].

²¹⁴ *Id.*

²¹⁵ ABC7NY, *supra* note 212.

²¹⁶ Bascome, *supra* note 213.

²¹⁷ Jiska Jonas-van Dijk et al., *Victim-Offender Mediation & Reduced Reoffending: Gauging the Self-Selection Bias*, 66 *CRIME & DELINQ.* 949, 950 (2019).

²¹⁸ Anna Meléndez, *The Role of Criminogenic Needs & Emotions in Restorative Justice: Offenders’ Experiences in Victim-Offender Mediation*, 13 *EUR. J. PROBATION* 21, 22 (2021).

²¹⁹ *Id.*

²²⁰ *Id.*

remorse and shame, sparking in offenders the desire to apologize and make amends.²²¹ Empathy is an important goal for offenders so that they can understand the harm caused by their crime, which is important for genuine remorse and ultimately, a willingness to repair the harm.²²²

One Canadian study compared 122 offenders who participated in facilitated face-to-face meetings to a matched sample of 122 non-participating offenders.²²³ Offenders were matched on several variables including offense, type of crime, admission date, and release date.²²⁴ In general, the offenses were serious in nature, including homicide, manslaughter, and sexual assault.²²⁵ Due to matching, there were few differences between the demographic profiles of participants and non-participating matches, and no statistically significant differences were noted between participants and non-participants on key variables including age.²²⁶ “Given the low number of reoffending events, it was only possible to examine the statistical outcome for revocations of conditional release for any reason.”²²⁷ Overall, the offenders who participated in the meeting had significantly fewer revocations of release during the study period than the matched sample, and fewer of them returned to custody.²²⁸ Non-participant offenders matched to participants with a face-to-face meeting were six times more likely to experience a revocation than those who participated in a face-to-face-meeting.²²⁹

Participation in VOM can lower the risk of reoffending.²³⁰ Critics will argue that it is unclear whether this is due to the mediation process itself or due to a self-selection bias among those who choose to participate, given that it is a voluntary process.²³¹ Nevertheless, research suggests that restorative justice is more effective at reducing crime in cases that involve more serious offenses and crimes that involve personal injury victims, and that it is more likely to reduce recidivism as a supplement to the conventional criminal justice process.²³²

²²¹ *Id.*

²²² *Id.*

²²³ Stewart et al., *supra* note 183, at 3910.

²²⁴ *Id.* at 3915–16.

²²⁵ *Id.* at 3913.

²²⁶ *Id.* at 3916.

²²⁷ *Id.* at 3919–20.

²²⁸ *Id.* at 3919.

²²⁹ Stewart et al., *supra* note 183, at 3920.

²³⁰ Jonas-van Dijk et al., *supra* note 217.

²³¹ *Id.* at 963.

²³² Stewart et al., *supra* note 183, at 3912; Lawrence W. Sherman & Heather Strang, *Restorative Justice: The Evidence*, SMITH INST. (2007), <https://www.ajc.state.ak.us/acjc/docs/resources/restorative/restorjus.pdf> [<https://perma.cc/5Z4A-K7GN>] (“The success of RJ in reducing, or at least not increasing, repeat offending is most consistent in tests on violent crime.”).

iv. VOM with Mentally Ill Offenders

A possible limitation to using the VOM model for reducing NYC subway crime is the fact that many of these offenders likely have mental illness and generally have no connection with the people that they attack.²³³ While opponents may argue that random episodes of violence are used to scapegoat individuals with mental illness,²³⁴ data proves otherwise. In at least one-quarter of subway murders since 2020, and in nearly one-half of NYC's subway murders in which a suspect has been publicly identified, the suspect appears to have suffered from a well-documented mental illness before allegedly committing the homicide.²³⁵ Moreover, in at least three of these cases where the suspect suffered from a well-documented illness, the suspect was free on charges pertaining to an earlier alleged violent crime before committing the subway crime, indicating a failure of prosecutorial and criminal-justice supervision.²³⁶ In the last year, various individuals facing charges for unprovoked attacks were previously released without mandated treatment.²³⁷ For instance, in October 2021, a woman, diagnosed with schizophrenia, pushed an innocent rider into a moving subway train in Times Square when just months earlier, she allegedly beat another woman on the train, which was one of seven incidents for which she had been arrested since 2018.²³⁸

Nevertheless, offenders who have committed serious offenses and suffer from severe mental disorders are generally capable of having contact with their victim, depending on the aim and the type of contact.²³⁹ Specifically, it has been found that during mandatory treatment, it is possible for offenders and victims to engage in contact with each other if both parties agree.²⁴⁰ According to social workers,

²³³ Mackenzie T. Jones & Philip D. Harvey, *Neurocognition and Social Cognition Training as Treatments for Violence and Aggression in People with Severe Mental Illness*, 25 *CNS SPECTRUMS* 145 (June 28, 2019), <https://www.cambridge-org.ezproxy.yu.edu/core/services/aop-cambridge-core/content/view/S1092852919001214> [<https://perma.cc/GTL2-3SLB>].

²³⁴ Arun Venugopal, *Nearly Half of Those Arrested in Hate Crime Attacks had Mental Health Issues: NYPD*, *GOTHAMIST* (May 4, 2022), <https://gothamist.com/news/most-subway-crime-attributed-to-> [<https://perma.cc/8XNX-XEQT>].

²³⁵ Nicole Gelinas, *Public Safety on NYC Subways: No Safety in Small Numbers*, *MANHATTAN INST.* (Mar. 30, 2022), <https://www.manhattan-institute.org/public-safety-nyc-subways-no-safety-small-numbers> [<https://perma.cc/M3RN-7ZDN>].

²³⁶ *Id.*

²³⁷ *CBS2 Investigates: Why are so Many Repeat Offenders in Need of Mental Health Services Back on NYC Streets?*, *CBS NEWS N.Y.* (Dec. 29, 2021, 10:25 PM), <https://www.cbsnews.com/newyork/news/mental-health-services-crime-nyc/> [<https://perma.cc/A2GS-TY55>].

²³⁸ *Id.*

²³⁹ Mariëtte van Denderen et al., *Contact Between Victims & Offenders in Forensic Mental Health Settings: An Exploratory Study*, 73 *INT'L J. L. & PSYCHIATRY* 1, 5 (2020).

²⁴⁰ *Id.* at 1.

no type of offense or psychopathology is a clear exclusionary criterion for victim-offender contact,²⁴¹ and ultimately, it depends on the skills of the social worker and treatment team, how the psychopathology is managed, and finding a form in which contact can proceed safely.²⁴² Moreover, offenders who cannot be held fully responsible for their offenses, because of severe psychopathology or who suffer from diagnoses such as a personality disorder, schizophrenia and other psychotic disorders, developmental disorders or anxiety and mood disorders, have been judged to be at a high risk for reoffending.²⁴³

Studies report positive effects, such as decreased anger, need for revenge, and PTSD symptoms among victims after contact with their offenders.²⁴⁴ However, there are also studies that report that some victims felt more fearful or worse after meeting their offender.²⁴⁵ Managing the parties' expectations is essential because even if a mentally ill offender acts unengaged, offenders without regret for their offense might still be able to answer questions from victims.²⁴⁶ Another way to handle VOM in the context of a mentally ill offender is to postpone contact until an offender is better adjusted to anti-psychotic medication, or to have contact by letter instead of face-to-face contact.²⁴⁷ Since some crimes committed by mentally ill offenders can be explained by lack of proper treatment, the remorse that these offenders may experience during the restorative justice process may prompt them to control their illness by cooperating with medication and treatment plans.²⁴⁸

Offenders also generally respond more positively to processes they perceive as fair, and they generally perceive VOM meetings as fair, especially when compared to court proceedings.²⁴⁹ Procedural fairness by authorities strongly increases trust in authorities, and trust in authorities in turn has considerable effects in increasing participation in a community.²⁵⁰ Thus, to the extent a subway crime offender is mentally ill, the offender could very well view the VOM as a fair experience which could encourage them to respond well to treatment and ultimately, decrease their chances of reoffending.

²⁴¹ *Id.*

²⁴² *Id.* at 6.

²⁴³ *Id.* at 1.

²⁴⁴ *Id.*

²⁴⁵ van Denderen et al., *supra* note 239, at 1.

²⁴⁶ *Id.* at 6.

²⁴⁷ *Id.*

²⁴⁸ Jessica Burns, *A Restorative Justice Model for Mental Health Courts*, 23 S. CAL. REV. L. & SOC. JUST. 427, 450 (2014).

²⁴⁹ *Id.* at 451.

²⁵⁰ *Id.*

V. CONCLUSION

While a multi-faceted approach is necessary to reduce the increase in violence in the NYC subway system, VOM is one component that has yet to be explored in this context. VOM between subway crime victims and offenders certainly will not solve all crime and mental health issues pertaining to the NYC subway. However, the potential benefits of the process could, with other factors, help to reduce crime. VOM dialogues with subway crime victims and offenders, referred by NYPD, benefit the victim, the offender, and the NYC community of subway riders. The process allows victims to get answers to their questions, while also allowing offenders, even those that are mentally ill, to gain insight on how their actions made their victims feel. This can ultimately reduce the likelihood that those same offenders will reoffend in the subway system.

