

TEXAS PUBLIC POLICY FOUNDATION

Restorative Justice In Texas: *Past, Present & Future*

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By refusing government funding, the Foundation maintains its independent voice on the issues important to Texas’ future.

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Introduction

When it comes to criminal justice, Texas is often depicted in the national media as backward and primitive for leading the nation in executions and “locking them up and throwing away the keys.”¹ While Texas does have 150,000 prisoners compared to 163,000 in California — despite having about half the population — Texas is increasingly doing more than simply being tough on crime. Indeed, Texas has become one of the first states to implement restorative justice programs involving victim-offender interaction.

Restorative justice practices seek to empower crime victims in the criminal justice process, repair the harm done to victims, restore personal and community relationships severed by crime, and reduce recidivism by conveying to offenders the impact of their crime on others. This report examines the historical evolution of restorative justice, modern restorative justice concepts, and current restorative justice programs in Texas. It concludes with recommendations for enhancing both restorative processes and outcomes in Texas.

The Historical Evolution of Restorative Justice

Given the biblical and tribal roots of restorative justice, what is truly backward and primitive might now be called progressive. Indeed, restorative justice has been the dominant model of criminal justice throughout most of human history in all parts of the globe.²

In ancient times, wrongs done to a person or his property were generally regarded as private matters, subject to remedial action by a victim and his family against an offender and his family.³ Norms of permissible retaliation and recompense arose among tribal and family-based cultures for what are now regarded as criminal offenses against individual victims.⁴ The central role of the victim in these ancient proceedings is evidenced by provisions of the Torah, the Code of Hammurabi, and other ancient codes that require offenders to provide restitution to victims, but say nothing of government prosecutions.⁵ As opposed to modern criminal trials dominated by formal procedures, constitutional rights, and an adversarial structure that emphasizes lawyers, ancient proceedings were largely informal affairs in which tribal leaders or community elders decided guilt and handed down a sentence based on consensus.

The principles of restorative justice are deeply embedded in all of the world’s major religious traditions. The Vedic civilization (6000-2000 B.C.) of the Hindus believed that reincarnation

flows from penance, which must be performed after every sin is committed.⁶ Islamic law requires that a murderer compensate the victim's family and dictates that the victim's family judges the crime and decides a proper punishment with the help of an individual in the community who is an expert in Islamic law.⁷ In Christianity, the institutionalization of restorative justice occurred in the late sixth century as Celtic monks developed a new approach of reconciliation with God that involved personal penance coupled with confession.⁸ Buddhist thought is encapsulated by the Dalai Lama's statement that the "more evil the crime, the greater the opportunity for grace to inspire a transformative will to resist tyranny with compassion."⁹

Restorative justice also has deep roots in indigenous justice systems from various cultures, including American Indian, Australian Aboriginal, and Eskimo traditions.¹⁰ Sentencing circles, an informal process through which a case is heard and the punishment is decided through community dialogue and consensus, are rooted in the traditional peacemaking rituals of both Native Canadians and Native Americans.¹¹

This victim-centered system of redress rooted in all of the world's major religions and the traditions of indigenous peoples was displaced in Western Civilization by the rise of the monarchy in the eleventh century. After invading England, William the Conqueror decided that expanding the state's involvement in criminal law could help strengthen the nobility's fragile reign over the people.¹² As a result, William the Conqueror and his successor and son King Henry I made most individual acts committed against a person or his property offenses against the "king's peace" or the crown rather than private matters to be resolved by the affected parties.¹³ Fines were paid by the offender to the government and capital, corporal, and other forms of offender punishment increasingly accompanied, and often replaced, the previous requirements of offender restitution to the victim.¹⁴

American history parallels that of Europe. In Colonial America, criminal prosecutions were primarily private matters, as victims sought retribution or restitution from offenders.¹⁵ Although there were some public prosecutions, colonists were largely responsible for instigating prosecutions for crimes committed against them or their families in courts that were far more informal than those today.¹⁶ After the Revolutionary War, this system gave way to the current one in which criminal charges are brought by government prosecutors. Among the reasons for this change was that, due in large part to the dearth of judges, it was difficult for victims to successfully obtain justice.

Unlike early Colonial America, Texas does not have a history of victim-initiated criminal proceedings. Prior to Texas achieving its independence from Mexico in 1836, Texas largely operated under a modified *alcalde* municipal system of criminal justice used in Mexico.¹⁷ This system came from Spain and had its origins in Roman law. The *alcalde de crimen* was appointed by the *alcalde* mayor to oversee the enforcement of criminal law, which included arresting, prosecuting, sentencing, and jailing criminals. Victims of crime could make a complaint to the *alcalde*, which would then investigate and decide whether to bring a prosecution. Those arrested were tried without the benefit of a jury.

In 1821, Stephen F. Austin instituted *Instructions and Regulations for the Alcaldes*, relying largely on English common law. Under these regulations, murder was punishable by hanging.¹⁸ Other crimes against the person like battery and abuse were punishable by a fine not to exceed \$100 and incarceration with hard labor on public works for three months. Additionally, in what might be considered an early form of restitution, those found guilty of battery, abuse, or ill treatment were made liable for monetary damages in a civil suit brought by the injured party. Aus-

tin's guidelines took a restorative approach to crimes against property such as robbery and larceny making them punishable by a fine of three times the fair market value of the stolen property and incarceration at hard labor on public works. Austin's guidelines also authorized citizens to use force to apprehend criminal wrongdoers by making a citizen's arrest and delivering the suspect into the custody of the *alcalde*.

Both the 1845 and 1876 Texas Constitutions provided for trial by jury and the creation of local district attorneys in charge of bringing prosecutions. Texas built its first state penitentiary in 1848 and enacted the Penal Code in 1856, further laying the groundwork for the state's current criminal justice system.

In both Texas and the nation, the current system of state-initiated prosecution has retained its basic character over the last two centuries, changing primarily only in size and scope as the number of state and federal crimes has grown along with an attendant increase in the number of prosecutions and prosecutors. However, victims and their families have recently come to feel marginalized by this government-run system of prosecution, leading to the rise of the victims' rights movement beginning in the 1970's.¹⁹ The movement has been successful in pushing through victims' rights legislation. Some 33 states, including Texas, have adopted a constitutional amendment to provide rights to victims of crime and all 50 states have enacted victims' rights legislation.²⁰

The federal *Justice for All Act* was signed into law by President George W. Bush on October 30, 2004, providing victims of federal crimes the right to be reasonably protected from the accused; timely notice of any public court proceeding regarding the crime, release, or escape of the accused; the right to be included and publicly heard at any public court proceeding involving release, plea or sentencing; right to timely restitution as provided by law; and the right to be treated with fairness and with respect for the victim's dignity and privacy.²¹ Additionally, since 1965, every state has adopted a crime victim compensation program and, since 1972, more than 10,000 victim assistance programs have been created throughout the country.²²

In addition to the proliferation of programs empowering victims to play a greater role in the criminal justice process, the last several decades have spawned restorative justice programs that involve direct compensation or interaction between victims and offenders. At least 21 states require that offenders pay restitution to victims for "non-property crimes."²³ Moreover, there are now over 300 victim-offender reconciliation programs in North America and over 500 in Europe.²⁴

Modern Principles of Restorative Justice

Restorative justice begins with the premise that crime is indicative of a broken relationship between the offender, the victim, and the community. Crime is considered primarily as a wrong against another person and secondarily as a wrong against the state.²⁵ While restorative justice encompasses the rehabilitative goal of reforming the offender and reintegrating him into the community, it also requires that the offender be willing to take responsibility for his offense and the resulting harm by making amends. Thus, an offender who cannot be disabused of the notion that he did nothing wrong and is unwilling to repair the damage his crime has done cannot fulfill the aims of restorative justice, even if he commits no further crimes upon release from confinement.

Leena Kurki at the University of Minnesota Law School summarized five central tenets shared by leading restorative justice thinkers and advocates:

“Most restorative justice advocates agree on five basic ideas. First, crime consists of more than violation of the criminal law and defiance of the authority of government. Instead, and second, crime involves disruptions in a three-dimensional relationship among the victim, the offender, and the community. Third, crime harms the victim and the community, and the primary goals should be to restore the victim and the community, repair harms, and rebuild relationships among the victim, the offender, and the community. Fourth, the victim, the community, and the offender should all participate in determining what happens, and government should surrender its monopoly over responses to crime. Fifth, the disposition should be based primarily on the victim’s and the community’s needs and not solely on the offender’s needs or culpability, the dangers he presents, or his criminal history.”²⁶

Ted Wachtel, President of the International Institute for Restorative Practices, has distinguished restorative justice from other approaches to juvenile crime, explaining:

“If we are neglectful toward troubled youth, we do *not* do anything in response to their inappropriate behavior. If we are permissive, we do everything *for* them and ask little in return. If we are punitive, we respond by doing things *to* them. If we respond in a restorative manner, we do things *with* them and involve them directly in the process. A critical element of the restorative approach is that, whenever possible, we also include victims, family, friends, and community—that is, those who have been affected by the offender’s behavior.”²⁷

There are several primary goals of restorative justice programs. First and foremost, the victim, the victim’s family, and the community should be fully compensated by the offender. This involves not only restitution but also reconciliation between the victim and the offender.²⁸ Healing occurs when victims, victims’ families, and community members become convinced that an offender feels a sense of remorse, has made his best effort to repair the damage his crime inflicted, and is now leading a productive and meaningful life that adheres to the law and fulfills his familial and community obligations.

The other primary goal of restorative justice programs is to reduce recidivism both by forcing the offender to confront the consequences of his actions and reintegrating the offender into the community. This can be accomplished in part through programs involving interaction with the victim or victims generally, thereby instilling in the offender an appreciation of the harm his crime has inflicted upon the victim and the community. In light of the high rate of mental illness and substance abuse among offenders, successful treatment is often required before an offender can rationally examine his own conduct and develop the capacity to empathize with and provide compensation to his victim.

Restorative justice programs can be divided into two categories: those that promote restorative processes and those that promote restorative outcomes.²⁹ Examples of the former include victim offender mediation/reconciliation, family group conferences, victim-offender panels, sentencing circles, and community crime prevention. Programs in the latter category include restitution, community service, victim support services, victim compensation programs, and rehabilitation programs for offenders. A fully restorative system would be characterized by both restorative processes and outcomes.³⁰

Restorative Justice Programs in Texas

A. Restitution

Under common law, Texas courts have always had within their judicial discretion the power to order restitution to the victim as part of criminal sentencing and as a condition of probation.³¹ In 2005, the Texas Legislature approved and Governor Rick Perry signed into law House Bill 1751 that strengthens Texas' restitution statutes by requiring that trial courts that decline to order restitution or order only partial restitution to "state on the record the reasons for not making the order or for the limited order."³² In 2003, Texas collected approximately \$48 million in restitution payments.³³

The Texas Crime Victims' Compensation Fund was created in 1979 and is overseen by the Attorney General. Created in part to provide financial assistance to victims when the offender is insolvent, the Fund offers total reimbursement of up to \$50,000, except for catastrophic injuries resulting from crime.³⁴ In such cases, an additional \$75,000 is available. The Fund, which is bankrolled through criminal court costs, fees, and fines, paid out \$73 million to victims in 2003. Only victims of violent crime are eligible. The Fund also provides grants to government agencies and non-profits that assist victims and underwrites the state's Crime Victim Notification Program.

In 1983, the Legislature passed House Bill 658, allowing the Texas Department of Criminal Justice (TDCJ) to provide funding to local corrections departments to establish restitution centers.³⁵ These centers are residential facilities where offenders participate in activities designed to assist them in paying back individual victims of crime and society as a whole. Judges may sentence offenders, who might otherwise go to prison, to probation and confinement in a restitution center. Residents work full time, perform community service restitution, and attend educational and rehabilitative programs. There are 14 restitution centers in the state with a total capacity of 737 beds. Restitution centers are one of five types of community corrections facilities in Texas — the others are boot camps, court residential treatment centers, intermediate sanctions facilities, and substance abuse treatment facilities.

The evidence indicates that restitution centers are efficient and effective. In 2001, it cost the state an average of \$7,957 to place an offender in a community corrections facility, which is some \$32,581 less than it costs to send an offender to prison.³⁶ Moreover, restitution center residents paid more than \$4.5 million toward victim restitution, fines and fees and contributed another \$600,000 in community service restitution.³⁷ A TDCJ study indicates that restitution centers reduce recidivism, as only 21.3 percent of residents discharged from restitution centers were subsequently rearrested.³⁸

B. Victims' Rights and Services

In 1989, Texas adopted a constitutional amendment establishing the various rights of crime victims. Article I, Section 30 of the Constitution provides:

- 1) A crime victim has the following rights:
 - a) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and

- b) the right to be reasonably protected from the accused throughout the criminal justice process.
- 2) On the request of a crime victim, the crime victim has the following rights:
 - a) the right to notification of court proceedings;
 - b) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;
 - c) the right to confer with a representative of the prosecutor's office;
 - d) the right to restitution; and
 - e) the right to information about the conviction, sentence, imprisonment, and release of the accused.
- 3) The legislature may enact laws to define the term "victim" and to enforce these and other rights of crime victims.
- 4) The state, through its prosecuting attorney, has the right to enforce the rights of crime victims.
- 5) The legislature may enact laws to provide that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this section. The failure or inability of any person to provide a right or service enumerated in this section may not be used by a defendant in a criminal case as a ground for appeal or post-conviction writ of habeas corpus. A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section but does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

The Texas Code of Criminal Procedure provides several mechanisms for victims to present an impact statement at a criminal trial. First, Texas Code of Criminal Procedure Article 56.03 allows a victim to submit a written impact statement that the court shall consider prior to sentencing but after conviction of the defendant. Additionally, Article 42.03 allows the victim to present an oral statement after the sentence is pronounced.

The Texas Department of Criminal Justice created its Victim Services Division in 1987 to offer crime victims a range of useful services.³⁹ Among them are a toll-free number through which victims can obtain assistance, including information about an offender's status. This toll-free line processed some 68,319 calls in 2004. Additionally, an Automated Victim Notification System was created by House Bill 1572 passed in the 77th Legislative Session. This system allows victims, upon request, to receive an automated call when there is a development in the criminal case involving the offender. Over 17,000 automated calls were processed in 2004. Some 87,714 victims are registered with the notification system.⁴⁰ The Division also operates the Texas Crime Victims Clearinghouse that helps connect victims with community and state resources throughout the state.

In addition, the Division has assembled a Victim Advisory Council consisting of approximately 30 representatives from victim advocate groups, state agencies, and local victim ser-

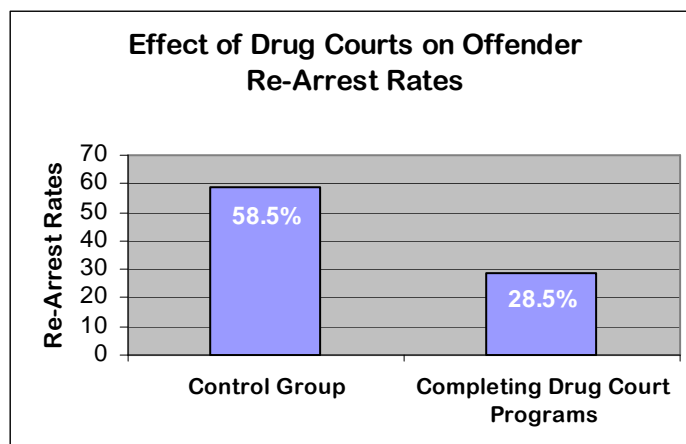
vice providers that meet quarterly to evaluate the Division's programs and suggest future initiatives. The Division also offers various publications for victims and holds regular conferences for victims and victims' advocates. Furthermore, the Division offers prison tours and even allows victims' families and close friends to view the execution of the murderer. In 2004, 74 victim witnesses viewed executions.⁴¹

C. Specialized Courts

The 77th Texas Legislature passed House Bill 1287, authorizing counties to create drug courts and requiring counties with populations over 550,000 to establish such courts by September 1, 2002.⁴² These diversionary courts provide court-supervised treatment and court-administered graduated sanctions for non-compliance for first-time offenders. If participants successfully complete the program, they avoid having a drug conviction on their records.

The restorative aspect of drug courts stems from the fact that drug offenses are not, in fact, victimless crimes. At the least, the offender himself is also a victim and, almost invariably, a drug addict defaults on his responsibilities to family members and friends. Unlike incarceration which does not force a drug offender to confront his addiction and isolates him from the impact of the addiction on those around him, drug courts often involve an offender's family, friends, and community in developing the compliance plan for the offender, which generally includes drug treatment, community service, job and life skills training, and community re-integration.

The research indicates that drug courts are reducing recidivism in Texas. According to the TDCJ, offenders completing drug court programs had a 28.5 percent re-arrest rate compared to 58.5 percent in the control group.⁴³ Even including those offenders who failed to successfully complete the drug court program, the re-arrest rate is 40.5 percent. Similarly, the incarceration rate of offenders who complete drug court programs is only 3.4 percent after three years compared with 12.0 percent for all drug court participants and 26.6 percent for the control group.



Source: Texas Department of Criminal Justice

One of the most effective drug courts in Texas is Judge John Creuzot's DIVERT Court in Dallas. A study by Monica Turley at Southern Methodist University found that just 16 percent of successful DIVERT graduates were rearrested compared with 50 percent of those

who received no drug addiction treatment.⁴⁴ This amounts to a 68 percent reduction in recidivism. Even including all DIVERT participants, not just those who graduated, the reduction in recidivism was 48 percent.

In addition to drug courts, Texas has several other specialized courts. In August 2004, Fort Bend County created the first “Special Sanctions Court” in Texas under the direction of Judge Bradley Smith. The Court oversees probationers at a medium or high risk of recidivism. Unlike probation officers, the court can toughen the terms of probation or provide incentives such as reductions in fees and community service to reward good behavior.⁴⁵ Compared with traditional community supervision, the court provides closer supervision, including more frequent office visits, field visits and intensive drug testing. As many offenders have substance abuse problems, the court also provides treatment services. The revocation of probationers to prisons for technical violations, which include missing meetings, dirty urinalysis, and failure to make restitution payments, fell by 62 percent in Fort Bend County following the court’s first seven full months of operation.⁴⁶ Revocations for the commission of new crimes declined 31 percent during the same time period.

Finally, Texas is among the 48 states with a total of 1,000 local teen court programs in which youths serve as judges, juries, and lawyers.⁴⁷ In Texas, there are approximately 80 teen court programs.⁴⁸ Offenders are only diverted by a judge to teen court upon taking responsibility for the offense and agreeing to be sentenced in teen court. Offenses eligible for teen court are minor crimes, such as shoplifting, disorderly conduct, and vandalism. Most teen courts have guideline ranges for sentences, which generally consist of community service, a written apology, and/or restitution. In some teen courts, victims are allowed to address the proceeding. A study of a teen court in Arlington, Texas found that teen court participants were a third less likely to commit another offense as compared to similar offenders in the control group.⁴⁹

D. Victim-Offender Interaction

While restitution, victims’ rights and services, and specialized courts are important aspects of restorative justice, Texas’ programs that foster victim-offender interaction embody the essence of restorative justice and are among the most innovative in the nation.

Victim Offender Mediation/Dialogue

TDCJ initiated the Victim Offender Mediation/Dialogue program in 1994 and it became a permanent program in 2001 upon passage of House Bill 1572. Three women who were victims of violent crime are largely responsible for its existence: Cathy Phillips, Raven Kazen and Ellen Halbert.⁵⁰ When Phillips asked for a meeting with her daughter’s killer in 1990, officials denied the request, but Phillips saw a television program on victim-offender mediation. She then contacted Ellen Halbert, herself a victim of violent crime who then served on the Texas Board of Criminal Justice, and TDCJ Victim Services Division Director Raven Kazen, who continues to serve in that position today. The Victim Offender Mediation/Dialogue program resulted from their joint efforts and Phillips became one of its first participants.

The program is initiated by victims who must express a desire to meet with the offender. If the offender declines to meet, he or she is then given the option of corresponding with the victim through letters or taped messages.⁵¹ If the offender refuses this as well, the victim or the victim’s family may then choose to meet with a surrogate

offender, another prisoner who is willing to talk with different victims to promote understanding. At any point prior to the meeting, it can be called off by the victim, the offender or the mediator.

While other state mediation programs at the time involved only nonviolent offenders, the Texas program has focused on violent offenders because the requests for meetings have come primarily from victims of violent crime. The offender must admit guilt prior to the meeting and, because the mediation is not included in the inmate's parole file, the offender does not have an incentive to agree to the meeting in the hopes it will increase his chances of being released.

Preparation is central to the program. The victim, offender, and mediator each go through approximately 100 hours of training prior to the meeting. As a result, it often can take at least six months between the time the victim requests a meeting and the actual meeting. The mediations are coordinated by three full-time TDCJ staff working with volunteers.

All available barometers indicate that the Victim Offender Mediation/Dialogue program has been a success. As of December 2004, 187 mediations had been completed.⁵² Dr. Marilyn Armour, a professor of social work at the University of Texas at Austin who is a nationally recognized expert in restorative justice, has evaluated the program for TDCJ.⁵³ Satisfaction surveys administered by Dr. Armour show that 97 percent of participants were satisfied with the process and some 80 percent reported major life changes as a result. Armour says that, following the mediated discussions, victims' families did not excuse the crime, but were able to ease their feelings of anger and vengeance.⁵⁴ Armour's research also indicates that the participating offenders gain self-esteem from a sense that they were able to provide some measure of compensation to the victim.

Additionally, Armour notes that offenders had fewer disciplinary problems in prison after participating in the mediation. Because most participating offenders are guilty of violent crimes and thus are serving long prison sentences, there is no data available on recidivism rates for the Victim Offender Mediation/Dialogue program. However, a national study indicates that victim offender mediation reduces offender recidivism rates by between 18 and 27 percent.⁵⁵

Finally, the success of the Victim Offender Mediation/Dialogue program is also evidenced by the fact that it is served as a model for other states. For example, Alabama officials created a similar program in 2002 and noted that it was based on Texas' program.⁵⁶ Indeed, Armour says that Texas' program, along with a similar one started at about the same time in Ohio, is now serving as a model for another 12 to 15 states creating such programs.

Bridges to Life

The other major victim-offender interaction program in Texas is Bridges to Life (www.bridgestolife.org). Designed to help both victims and inmates at the same time, the program relies on 300 volunteers who put in over 26,000 hours every year. Unlike the Victim Offender Mediation/Dialogue program, the interaction it fosters is not between the actual offender and victim of the same crime, but between volunteer victims and offenders as a whole. Also, Bridges to Life is a non-profit organization funded

through private donations, although they receive essential cooperation by partnering with TDCJ's Victim Services Division and Chaplaincy, enabling them to operate in Texas prisons. Perhaps the most significant difference between the two programs is that offenders who participate in Bridges to Life are, on average, within 12 months of being released.

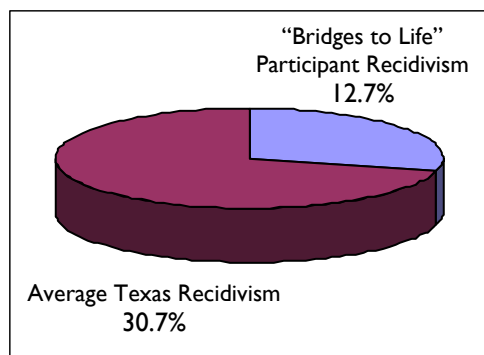
Bridges to Life was formed in 1998 as the brainchild of John Sage and began as a pilot program in 1999. Sage is a Houston businessman and former defensive captain of the 1970 Louisiana State University football team whose sister, Marilyn Sage Meagher, was murdered in 1993. After becoming depressed as a result of the murder, Sage founded Bridges to Life to fill a gap in the criminal justice system that he saw as providing little rehabilitation for offenders and showing little concern for the impact of crime on victims.

The 12-week program held in prisons involves 40 inmates at a time, in addition to victims and facilitators. It features victim panel discussions, facilitated small groups of inmates, and classroom-style lessons. Each inmate participates in a total of 32 hours of sessions. Inmates are required to tell their story, including the crime they committed and how they committed it. They must also write a letter to their family and to the victim's family, and read the letters aloud to the small group. The classroom curriculum emphasizes responsibility, reconciliation, and restitution. Inmates are assigned readings, including Bible verses relevant to these concepts. Although the program is faith-based, it is strictly ecumenical. Volunteers and inmates often talk about their faith, but inmates are not required to pray and participating volunteers and inmates have come from all religious groups, including non-believers.⁵⁷

As of March 2005, 1,777 inmates had gone through Bridges to Life and 1,532 have been released. The recidivism rate of these released offenders is only 12.7 percent.⁵⁸ By comparison, Texas' average recidivism rate is 30.7 percent.⁵⁹ The national average recidivism rate is approximately 52 percent.⁶⁰ Most experts attribute the difference to Texas' longer prison, probation, and parole terms. Longer prison sentences result in fewer prisoners being released while they are still within the age demographic that is statistically most likely to commit crimes. Longer probation and parole terms result in more offenders being revoked to prison for violations other than new crimes, which

technically do not count as recidivism.

"Bridges to Life" Reduces Rate of Recidivism



As impressive as the recidivism reduction is, even Bridges to Life supporters believe that further research is needed. First, Bridges to Life points out that all of the released offenders have not been out of prison for three years yet so it is not a completed study. The completed study should

Sources: "Bridges to Life" and Texas Department of Criminal Justice

be available later this year. Second, Dr. Armour notes that there may be a self-selection bias among offenders who choose to participate in Bridges to Life. The opportunity to participate largely spreads among prisoners via word-of-mouth. Dr. Armour is currently seeking funding for a pilot study of Bridges to Life in which inmates would be randomly assigned to the program. She believes that such a study would boost support for the program among social scientists who may question whether some of its success is attributable to self-selection bias.

In addition to the data demonstrating its success, there are less quantifiable testimonials as to the positive impact that Bridges to Life has had on both victims and offenders. Thomas Allen, whose criminal record included aggravated assault on a peace officer, aggravated robbery with a deadly weapon and burglary of a motor vehicle, commented that the Bridges to Life program has helped him understand the consequences of crime and the hurt it causes. Now out of prison and rebuilding his life and family, he said, “I can’t say that I wouldn’t have relapsed,” if it had not been for that insight.⁶¹

Yet another indicator of success came when Sage was chosen to receive the 2004 Social Entrepreneurship Award given by the Manhattan Institute. The award recognizes enterprising individuals who are helping Americans realize their full potential as citizens and members of society.

E. Prison Ministries

While it does not involve interaction with victims, the InnerChange Freedom Initiative is a prison ministry in Texas that promotes restoration and reconciliation through religious re-awakening.⁶² The program emphasizes that offenders have sinned and must seek penance, and rejects what program materials describe as the message of the therapeutic approach - that offenders are victims of society. Unlike Bridges to Life, the InnerChange Freedom Initiative is a strictly Christian program grounded in biblical principles. Although inmates of any religion may choose to participate, they are advised of the Christian nature of the program. The program operates exclusively at the Vance Unit in Richmond and is funded by Prison Fellowship Ministries, an organization headed by former Watergate figure Charles Colson. It targets prison offenders within 18 to 30 months of release.

A state study suggests that the InnerChange Freedom Initiative reduces recidivism for at least those inmates who complete the program.⁶³ Program graduates had a recidivism rate of 8 percent after two years compared with between 19 and 22 percent for the control groups. However, inmates who enrolled in the InnerChange Freedom Initiative but failed to complete the program had a high recidivism rate of 36 percent. Improvements in the selection criteria and structure of the program have increased the completion rate from 24 percent to 71 percent from 1997 to 2000. The study also found that the InnerChange Freedom Initiative should be better integrated with the parole system so parole officers can facilitate contact between participants and their program mentors following release. Parolees who had such contact had lower rates of recidivism.

The Future of Restorative Justice in Texas

A. Enhancing Victim Involvement in Trial and Sentencing Process

With the Victims’ Bill of Rights enshrined in the Texas Constitution and several procedures

for victims to file impact statements, Texas has made significant progress in the area of restorative processes, but there are several ways in which Texas could further empower crime victims.

Many victims' rights groups have pushed for the creation of a third mechanism for victims to present a statement in addition to the current procedures of filing a written statement before sentencing and making an oral impact statement after sentencing. In the 79th Legislative Session, State Reps. Elliott Naishtat and Ruth McClendon introduced legislation to allow victims, or if deceased, their close relatives, to present oral impact statements prior to sentencing, but neither of these bills received a hearing.⁶⁴

Texas should also explore the use of sentencing circles, a restorative justice practice that has been used for centuries in American Indian and Aboriginal societies. More recently, circles have been implemented in several Canadian provinces and in some communities in Minnesota.⁶⁵ In Canada and Minnesota, the circles are used as a method of sentencing, not for determining guilt, and thus only in cases where the offender has acknowledged responsibility. Circles involve the victim and the offender and their supporters, but also key community members and are open to the public. In one kind of sentencing circle, judges refer cases to circle sentencing, resulting in a consensus agreement and sentence that the judge then ratifies. Another type of circle involves the judge, prosecutor, and defense attorney in the discussion so that an agreement becomes the final sentence. One hallmark of sentencing circles is a "talking piece" — the individual holding the piece shares their feelings about the crime and then passes it to the next person.

Sentencing circles, like some other traditional restorative justice practices, may be challenging to implement in modern communities that are not as tightly knit as those societies in which these practices originated. Reparative probation boards are a similar but more formalized restorative justice practice that could be more easily implemented in Texas. Reparative probation boards consist of panels of five to seven citizen volunteers who meet with the offender and victim and develop a contract that the offender agrees to fulfill as the only condition of probation. The contract is based on five restorative goals: the victim is restored and healed, the community is restored, the offender understands the effects of the crime, the offender learns ways to avoid re-offending, and the community offers reintegration to the offender.

Vermont established reparative probation boards in 1995 and by 1998 they were handling 1,200 criminal cases per year, more than one-third of state's rather modest docket.⁶⁶ Ten statewide reparative coordinators oversee the program and provide training for the citizen volunteers. There is considerable data on the use of such boards in the Canadian province of Manitoba as part of their restorative resolutions project. For example, the Manitoba panels included restitution in 56.4 percent of their sentences while only 24.9 percent of similar offenders sentenced by judges were required to make restitution. Also, 78.6 percent of victims provided written impact statement and 10.3 percent actually met with the offender. The recidivism rate of probationers sentenced through this program was 22 percent lower than the norm.⁶⁷

Perhaps the most fundamental reform to increase victim involvement in the trial process would be to permit private prosecutions in at least some circumstances, or at minimum, permit victims to hire attorneys who would work alongside prosecutors. Three states — Montana, Ohio, and Alabama — still allow private prosecutions to be brought by victims.⁶⁸ Sev-

eral other states permit victims to hire attorneys to assist the prosecutor even though ultimate authority over the prosecution must remain with the state.⁶⁹ Texas should explore creating such a mechanism, as it could not only empower victims but also relieve some of the burden on overworked prosecutors.

In England, 3 percent of all prosecutions today are initiated by victims.⁷⁰ Like the United States, Germany has created a virtual public monopoly over prosecution, but they have two important exceptions.⁷¹ First, victims can bring prosecutions for a class of misdemeanors, including violations such as domestic trespass. Second, a crime victim can demand that the public prosecutor pursue a case, and if the demand is refused, the victim can appeal to the court. If the court orders prosecution, the victim can act as a “supplementary prosecutor” to make sure that the public prosecutor adequately presents the case.⁷² One advantage of this approach is it ensures that frivolous prosecutions are not brought for vengeance or other motives. Texas should consider creating a similar avenue for victims to obtain prosecutions through a court order when local prosecutors are unwilling to act.

B. Expand Victim-Offender Interaction Programs

The available evidence indicates that both the Victim-Offender Mediation/Dialogue and Bridges to Life programs are highly effective. Bridges to Life has the potential to be more widely implemented than the Victim-Offender Mediation/Dialogue program because of the significant amount of preparation and facilitation that is required prior to each mediation. Furthermore, Bridges to Life is particularly attractive because the inmates involved will be released, creating the potential for savings to the state through reductions in recidivism. Bridges to Life also has the potential to reach all inmates because it is ecumenical while the InnerChange Freedom Initiative and other faith-specific programs, however effective, are limited both by the fact that non-Christian inmates are unlikely to participate and by the political opposition that may arise if there is additional government sponsorship or involvement.

There are several avenues for expanding the reach of Bridges to Life and similar programs in Texas. First, Bridges to Life is already expanding itself. Founder John Sage realized that several factors limited their ability to expand the standard program. Among them was a lack of available space in most state prisons for the facilitated small group sessions with inmates and victims. Another limiting factor is that many prisons are not near urban areas where most of the volunteer facilitators and victims live. Consequently, the organization developed Restoring Peace, a program that is being implemented at additional prisons and jails where Bridges to Life cannot be accommodated. The primary differences are that Restoring Peace has fewer small group facilitated sessions, requiring fewer volunteers; uses a combination of live and video-taped victim panels; relies more on self-initiated inmate study using a workbook to do homework; and does not include a full-time Bridges to Life staff member at each facility. The Restoring Peace program now reaches 300 inmates in 11 prisons, in addition to the 600 inmates at seven prisons served by the standard Bridges to Life program. While Sage says that the Restoring Peace program is not quite as powerful for both inmates and victims as the standard Bridges to Life program, his observations indicate that it still makes a strong impact.⁷³

There are several ways in which the state and Texas counties could further promote Bridges to Life, Restoring Peace, and similar programs. First, in prisons where space is a constraint,

portable buildings, such as those used in public schools, could be set up. In facilities where space is stretched so thin that Bridges to Life sessions cannot be held, it is probably also lacking GED classes and other educational programs operated by the Windham School District, the state's educational system for inmates.

Second, prisons and jails could themselves implement some version of the Restoring Peace program. In fact, Louisiana has initiated a pilot program in one prison where the state purchased the workbook, facilitator manual, victims' video, and other materials from Bridges to Life and used several state employees — a substance abuse counselor and reentry specialist — to administer the Restoring Peace program to inmates.⁷⁴ Sage says the cost of these materials for a typical class of 125 inmates is only several hundred dollars. Both the TDCJ and county jails should consider providing the Restoring Peace materials to their inmates along with as much live instruction and facilitation as feasible.

On an even more basic level, TDCJ and county jails should consider requiring all inmates to watch a video on the impact of crime on victims that could include footage of Bridges to Life victim panels. This could be similar to the videos featuring testimonials from victims of drunk driving teens must watch as part of the required Texas driver education course and could be implemented with only minimal expense. While live victim panels where inmates can ask questions are ideal, Sage says the video-taped victim impact panels they have shown have had nearly the same impact as the live presentations.

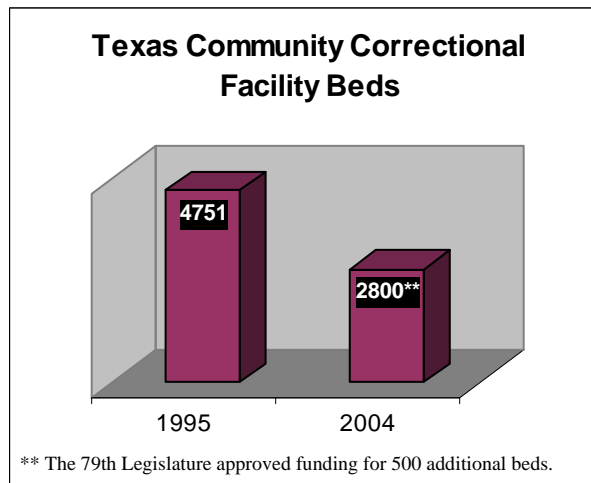
Finally, as both the Victim-Offender Mediation/Dialogue and Bridges to Life focus on inmates, there is not a victim-offender interaction program for the 450,000 Texans on probation or the 70,000 Texans on parole. In fact, many probation and parole agreements contain terms forbidding offenders from interacting with their victims. Like the two existing programs, any such program for probationers or parolees should, of course, be victim-initiated. While such a program for probationers would not likely require as extensive preparation and facilitation as the Victim-Offender Medication/Dialogue program, given the fact that most probationers are non-violent offenders, some facilitation by probation officers or specialists assigned to the program would still be necessary. Such a program could be combined with creative restitution measures that benefit the victim, such as the probationer doing volunteer work for a charity of the victim's choice.

C. Increase Capacity of Community Corrections Residential Facilities

Alcohol abuse and drugs are involved in 80 percent of the crimes that put people behind bars.⁷⁵ Fifty percent of probationers committed a substance abuse-related instant offense and these probationers are overrepresented among those who are revoked to prison.⁷⁶ The Department of Justice estimates that 16 percent of offenders suffer from mental illness.⁷⁷

At the end of fiscal year 1995, there were 4,751 state-supported community corrections facility beds, but that number had declined by 41 percent to 2,800 by 2004.⁷⁸ The result has been a shortage of beds, forcing judges who wish to refer an offender to a community corrections facility — such as a substance abuse treatment facility or work restitution center — to wait as long as six months for a spot to open up.⁷⁹ Because probationers must spend the waiting time behind bars, the end result would often represent a longer time commitment for the offender to accept probation rather than serving a prison sentence. Indeed, a TDCJ survey indicated that over 70 percent of judges would use probation more often as a sentencing option or as an alternative to revocation if more community corrections facility beds were available.⁸⁰

Fortunately, the 79th Texas Legislature appropriated \$27 million for community corrections facilities, which will provide 500 new community corrections facility beds and 4,000 additional probationers with outpatient drug rehabilitation services.⁸¹ However, this still leaves the state with over 1,400 fewer beds than in 1995 despite a larger population of probationers, and Bexar County criminal district Judge Mark Luitjen believes that still more beds are needed.⁸²



Source: Texas Department of Criminal Justice

TDCJ research indicates that the state saves 49.5 percent in decreased costs of revocation and incarceration for each offender sentenced to a restitution center and 41.4 percent for each substance abuse treatment facility.⁸³ Similarly, court residential treatment centers, some of which include treatment services for the mental illness, produce savings of 49.5 percent.⁸⁴ The availability of mental illness and drug treatment programs is not only critical to promoting rehabilitation and reducing recidivism, but also to restoring the victim. Offenders suffering from addiction or mental illness are unlikely to realize the gravity of their crime and be in a position to hold a job and make restitution payments. Such offenders are also unlikely to be good candidates for victim-offender interaction programs.

D. Expand Use of Specialized Courts

In addition to the evidence highlighted earlier in this report demonstrating the effectiveness of several Texas drug courts, a meta-analysis of national studies has shown the effectiveness of drug courts in reducing both recidivism and later drug use.⁸⁵ Similarly, a rigorous randomized trial found that offenders who went through the Baltimore City Drug Treatment Court had significantly fewer re-arrests than the control group over a two-year follow-up period.⁸⁶ Accordingly, there is sufficient state and national evidence to justify increasing the number of drug courts in Texas. With 268 drug courts operating nationally, Texas with only eight courts has disproportionately fewer courts when compared with its share of the nation's population.⁸⁷ The creation of new drug courts in Texas will require additional funding either by the state or by individual counties.

E. Reduce Prison and Probation Populations

Ultimately, the fact that Texas has 150,000 prisoners and 450,000 probationers will continue to pose a significant challenge to the implementation of restorative justice initiatives. Through reductions in these totals, more resources can be made available for innovative programs and these programs can therefore reach a greater percentage of offenders. Also, by reducing the number of offenders on probation, the remaining offenders can be more closely supervised by probation officers to ensure they are meeting conditions, such as attending therapy sessions and paying restitution. One of the most promising ways to reduce the prison population is by reducing parole and probation revocations, which together account for 46 percent of new prison inmates.⁸⁸

The 79th Texas Legislature and Governor Rick Perry were unable to agree on a version of House Bill 2193. A primary purpose of the bill was to reduce probation revocations, particularly for technical violations, by shortening probation terms to five years for many offenses unless a judge enters a finding extending the term. Supporters argued that this would allow probation officers to provide more intensive oversight of the remaining probationers. Perry vetoed the bill, citing the fact that it would have reduced probation terms for violent offenses, such as assaulting a police officer, kidnapping, injury to a child, and intoxication assault.⁸⁹ Opponents such as Williamson County District Attorney John Bradley noted that the bill's early termination provision was poorly structured. Instead of listing factors that a judge could consider in deciding whether to grant early termination, the bill specified several grounds on which a judge could not deny the request, including if the offender's failure to pay restitution was due to negligence. Also, due to a drafting error, the bill did not appropriate the new money that was intended to expand drug courts. The Governor, legislative leaders, prosecutors, and other stakeholders should work during the interim to reach consensus on an improved version of this legislation.

F. School Discipline and Juvenile Justice

There is significant potential for the implementation of restorative justice practices in both school discipline and juvenile justice. Restorative and rehabilitative approaches have particular appeal in these contexts because youths are, by definition, more impressionable than adults and thus may be less set in their delinquent or criminal ways.

Restorative justice practices directed at youths, which are particularly prevalent in Canada and New Zealand, include family group conferencing, restitution, and community service. Yet, Texas and other states have increasingly moved towards punitive approaches, such as trying juveniles as adults and long sentences in prison or juvenile justice facilities. However, research indicates that referral to the adult criminal justice system actually increases youth recidivism.⁹⁰ While some serially violent youths may need to be removed from classrooms in the interest of the safety of teachers and other students, other cases may benefit from a more restorative approach in which youth offenders are not segregated and isolated, but instead must confront and take responsibility for the harm they have inflicted and compensate the victim.

The actions of the 79th Texas Legislature indicate a trend towards positive reforms of school disciplinary and juvenile justice practices. The Legislature passed and Governor Perry signed into law House Bill 603 amending the *1995 Safe Schools Act* that created the "zero tolerance" regime, which has led to many highly publicized incidents where otherwise exemplary schoolchildren have been expelled and referred for criminal prosecution for honest mistakes. This amendment clarifies that expulsion to juvenile justice facilities is not mandatory under state law for students who unknowingly bring inappropriate items such as pocket knives to school. This legislation may encourage school districts to explore more restorative alternatives to expulsion in circumstances where student does not pose an ongoing danger. Legislation was also filed, but did not pass, that would have clarified that violations of the student disciplinary code are not automatically criminal offenses if they do not violate any criminal law and that such violations should therefore not be referred to prosecutors.

There is considerable potential for the use of restorative practices in lieu of referring students to alternative schools or once they have been referred to such facilities. The two types

of alternative schools in Texas are Disciplinary Alternative Education Programs (DAEPs), which are operated by school districts, and Juvenile Justice Alternative Education Programs (JJAEPs) also known as boot camps, which are operated by counties under oversight by the Texas Juvenile Probation Commission. DAEPs currently serve over 80,000 students while there are approximately 6,000 students in JJAEPs.

Unfortunately, there is a dearth of data as to whether students who are placed in these facilities are learning. The academic performance of students in JJAEPs is lumped in with that of all students from their school of origin, a problem that would have been remedied by House Bill 1757 by Rep. Dora Olivo, which was left pending in committee during the last session. Likewise, the Texas Education Agency candidly informed the Senate Education Committee on March 22, 2005 that they had discontinued monitoring the performance of DAEPs, citing a lack of funding for their agency. With greater transparency and scrutiny of both the process for referring students to these facilities and the treatment of students who are placed there, the effectiveness of existing practices and the opportunities for integrating restorative practices can be better assessed.

The Center for Effective Justice will publish a report prior to the 80th Legislative Session focusing specifically on the use of restorative practices in school discipline and juvenile justice.

G. Domestic Violence

Domestic violence presents, at once, one of the most controversial and logical areas of criminal law that could benefit from restorative justice practices. It is controversial because practices such as victim-offender mediation can be misconstrued as blaming the victim. Yet, it is logical because victims of domestic violence are often married to the offender or at least have children together. Therefore, the victim's goal is often not to sever the relationship or have the offender incarcerated, but to prevail upon the offender to stop the abuse so the relationship can be healed.

The debate over a restorative approach to domestic violence has even pitted feminist scholars against one another. Some feminists believe that prosecutors should follow the "no-drop" rule in which they continue to prosecute a domestic violence offender even when the victim does not wish to proceed.⁹¹ However, others argue that this approach violates the feminist belief in the empowerment and self-determination of each individual woman.⁹² This debate as to the proper course when the interests of the state and victim diverge goes to the heart of restorative justice because it concerns whether the criminal justice system is primarily for the benefit of victims or the state.

In its future work, the Center for Effective Justice will examine Texas' current approach to combating domestic violence and the opportunities for the use of restorative practices.

Conclusion

Perhaps owing to the optimism of Americans, terming a criminal justice policy as backward would not normally be taken as a compliment. However, growing public dissatisfaction with our current criminal justice system, the enormous costs associated with incarceration, and the relatively high crime rate in modern America belies this faith in progress.⁹³ Consequently, a return

to the emphasis on the victim that characterized the criminal justice systems of ancient civilizations and Colonial America can be viewed as both regressive and progressive. To be sure, total reliance upon the informal criminal justice practices of tribal societies and the private prosecutions in Colonial America would be impractical as substitutes for the modern criminal justice system, due largely to factors such as population growth, urbanization, and the transient nature of many modern communities. Nonetheless, a growing body of evidence indicates that the integration of restorative practices into the modern criminal justice system can benefit offenders, victims, and taxpayers.

With its wide array of victims' rights and services and initiatives such as Bridges to Life and the Victim-Offender Mediation Program, Texas can lay claim to being a pioneer in restorative justice, refuting the popular misconception that the Lone Star State simply "locks'em up and throws away the keys." At the same time, the presence of these programs can be obscured, and their overall effect diminished, by the sheer size of the state's criminal justice system. Through the expansion of existing programs and the incorporation of restorative processes and outcomes into a wider cross-section of its criminal justice policy areas, Texas can move forward by looking backward.

End Notes

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- ⁹³ "Escape fails to cast shadow on security," *Houston Chronicle* (March 4, 2001) 2. (Noting that only 39 percent of Texans approve of the overall job being done by the Texas Department of Criminal Justice.)

Save the Date

4th Annual Policy Orientation for the Texas Legislature

The dates have been set for the 4th Annual Policy Orientation for the Texas Legislature. Each year, the Texas Public Policy Foundation brings together lawmakers and policy experts from across the political spectrum. This two-day symposium — sold-out since its inception — draws legislators and interested Texans to discuss and learn about a wide range of policy issues facing the state.

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TexasPolicy.com for more information.

January 9 & 10, 2006
Austin Marriott at the Capitol
Austin, Texas

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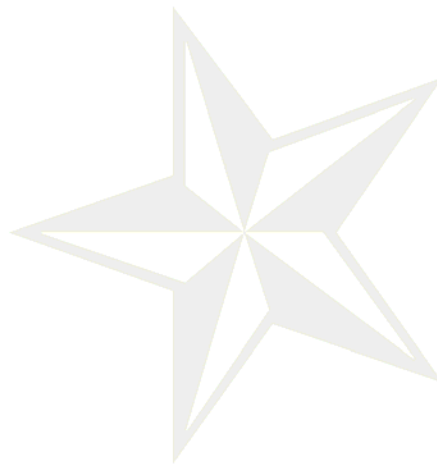
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About This Report

Restorative justice practices seek to empower crime victims, repair the harm done to victims, restore personal and community relationships severed by crime, and reduce recidivism by conveying to offenders the impact of their crime on others.

This report highlights several existing successful restorative justice programs in Texas and offers recommendations based on effective restorative practices in other jurisdictions. Because crime is first and foremost an offense against the victim—victims should be provided with enhanced restitution, greater input in sentencing, and a mechanism for securing prosecution when local prosecutors decline to act.

With the state's prisons approaching capacity with 150,000 inmates and more than half a million Texans on parole or probation, the key to reducing long-term incarceration and supervision costs is lowering the recidivism rate. This requires transforming, not simply warehousing, offenders through initiatives such as victim-offender interaction programs that emphasize accountability and penance.

