

# PolicyPerspective

## Treating Texas Crime Victims as Consumers of Justice

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### Introduction

Texas property crime victims often pay twice—once for the crime and once for the time as taxpayers. Only half of all court-ordered victim restitution in Texas is collected, though this exceeds the national average.<sup>1</sup> Most importantly, too often victims have little role in the process and no say in the sentence. By expanding the use of victim-offender mediation that results in binding restitution agreements, conferring rights on property crime victims, using victim satisfaction as a performance measure for criminal justice agencies, and continuing to strengthen viable alternatives to incarceration, Texas can empower and restore victims and communities impacted by crime.

### Making Victims Whole

It is often asserted that inmates “pay their debt to society,” but the primary debt in many cases is to victims and incarceration actually compounds debts. Consider that in 2008, Texas probationers who owed victim restitution paid an average of \$109, totaling \$46.8 million.<sup>2</sup> Since felony probationers are typically on probation for close to the maximums of five to ten years depending on the offense, this can add up to between \$500 and \$1,000 per offender over that time.\* This is more than 34 times the restitution paid by each prison inmate.<sup>3</sup> Texas probationers also performed 9.7 million community service hours, which would be worth \$63.3 million based on an hourly rate of \$6.55 per hour.<sup>4</sup> Statewide data is not maintained on the percent of probationers who are current on their restitution and community service obligations, which would

be a useful performance measure for evaluating probation departments.

In 2008, Texas prison inmates paid a mere \$501,000 in total victim restitution, fines, fees, and court costs, an average of only \$3.21 per inmate.<sup>5</sup> Parolees did better, paying \$1.2 million solely in victim restitution, an average of \$15.18 per parolee. Parolees typically have a lower educational level and income than probationers and face many challenges in readjusting to society. Also, the average inmate who leaves prison owing child support is more than \$16,000 in arrears, making these children secondary victims of crime and an overreliance on incarceration.<sup>6</sup>

Among victims of burglary surveyed in Iowa, restitution was the sanction most desired whereas a prison term was the sanction least desired.

### Survey of Iowa Burglary Victims

| Sanction                     | Percent Requesting |
|------------------------------|--------------------|
| Restitution                  | 81.4%              |
| Community Service            | 75.7%              |
| Pay Fine                     | 74.3%              |
| Regular Probation            | 68.6%              |
| Treatment/Rehabilitation     | 53.5%              |
| Intensive Probation          | 43.7%              |
| Short Jail Term              | 41.4%              |
| Boot Camp                    | 40.0%              |
| Work Release Facility        | 34.3%              |
| Prison Sentence Year or More | 7.1%               |

Source: Iowa Crime Victimization Survey, University of Northern Iowa<sup>7</sup>

\* Probationers also pay fees of about \$700 per year, covering 40 percent of the cost of probation. State funds pay for the remaining operating costs while counties cover the cost of facilities and equipment for probation departments.

Interestingly, inmates who were surveyed ranked equivalent time in seven alternative sanctions such as day reporting, intensive supervision probation, and community service as tougher than prison.<sup>8</sup>

## Victim-Offender Mediation

One way to give victims more of a say in the sentence is pretrial victim-offender mediation, which results in a binding restitution agreement that may also include community service and other alternatives to incarceration. Mediation is typically used in property offense cases, particularly for first-time offenders, and must be chosen by both the victim and the offender, since the offender is required to take responsibility for his conduct. Mediation has been recommended by the U.S. Department of Justice since at least 2000, which has issued guidelines for its successful implementation.<sup>9</sup> Statutes authorizing mediation have been enacted in 14 states.<sup>10</sup> Texas does not have a specific statute on pretrial victim-offender mediation, but no statute precludes it. Legislation was passed by both chambers in 2009 specifically authorizing and providing guidelines for victim-offender mediation, but it cleared the Senate in the last few days, leaving insufficient time for minor differences between each chamber's version to be reconciled in conference.<sup>11</sup>

Nonetheless, the Dispute Resolution Center (DRC) in Lubbock conducts as many as 600 criminal mediations a year. Data provided by the Lubbock DRC indicates that 89 percent reach a successful conclusion, usually in the form of a binding restitution agreement.<sup>12</sup> Cases are screened for referral by the Lubbock County District Attorney's Office. There are 17 other DRCs in Texas metropolitan areas, many of which are prepared to conduct a significant number of mediations at no cost or at a nominal cost.<sup>13</sup>

At a time when prosecutors' offices, such as those in Houston and Dallas, face a hiring freeze, it is an ideal opportunity to offload appropriate cases to mediation. In addition to DRCs, the non-profit organization Innovative Alternatives in the Houston area received an \$80,000 grant from the Governor's office in 2008 to conduct mediations. The Governor's office distributes more than \$28 million in federal funds for victims programs from which this grant was made.

National research on mediation consistently demonstrates that results are superior to those achieved through the traditional court process. Restitution agreements are fulfilled in 89 percent of cases.<sup>14</sup> A multi-site study found that 79 percent of victims who participated in mediations were satisfied, compared with 57 percent of victims who went through the traditional court system.<sup>15</sup> In mediation programs in the U.S. and Canada, victims who went through mediation were more than 50 percent less likely to express fear of re-victimization than the comparable of victims who did not go through mediation.<sup>16</sup>

A meta-analysis found that 72 percent of mediation programs reduced the rate of re-offending.<sup>17</sup> Mediation works because the offender often realizes the harm they have caused to another person, more than just violating a statute. The process fosters greater empathy in the offender while, at the same time, the victim obtains closure. In many instances, victims want an apology, answers to basic questions such as why the offender committed the act, and an assurance it won't happen again, all of which mediation is ideally suited to provide. The Lubbock County Dispute Resolution Center estimates mediation costs as little as \$75 per case, far less than the traditional system. Also, offenders don't receive a criminal record provided they comply with the agreement and commit no new offenses, making it more likely they can maintain or obtain a job, whereas a conviction contributes to unemployment. The few failed cases are referred back to the prosecutor.

Although mediation is equally applicable to adult and juvenile cases, the majority of mediation programs in the U.S. are for juveniles. Sometimes direct service restitution is part of the agreement, such as the youth cleaning up graffiti or regularly mowing the lawn for the victim from whom he stole. This may be particularly meaningful since the parent often pays the monetary restitution. While the victim in mediation is typically an individual, some juvenile shoplifting cases that have been mediated in Lubbock involved representatives from retailers who explained the impact of shoplifting on stores, and particularly on their employees.

## Rights for Property Crime Victims

Few people realize that property crime victims have no rights in Texas. The state statute on victims' rights defines "victim" as a person injured by a violent crime.<sup>18</sup> House Bill 1228 filed in the 81st session would have conferred rights on victims of felony property crimes, including the right, upon request, to be informed of relevant proceedings, attend those proceedings, and express a preference to the prosecutor on the type of punishment.<sup>19</sup> While many Texas district attorneys' offices have victim liaisons that consult with the victim, the level of victim consultation and services varies widely and property crime victims are not legally entitled to any involvement in the process.

## Victim Satisfaction as a Performance Measure

Victim satisfaction should be used as a performance measure for agencies such as district attorneys' offices and probation departments. The National District Attorneys Association has recommended victim satisfaction as a performance measure for prosecutors.<sup>20</sup> The most traditional district attorney performance measures are the number of cases processed, convictions, and conviction rate, though most Texas counties do not appear to have performance measures for the District Attorney's office or any departments. Among the four measures used by Fort Bend County are felony and misdemeanor dispositions.<sup>21</sup> Similarly, the measures in Dallas County focus on the number of filings and dispositions.<sup>22</sup> These volume measurements are of limited value, since more cases may simply reflect an increase in crime.

## Strengthening Probation

Finally, Texas policymakers must continue strengthening the probation system. In the 2009 fiscal year, direct sentencing commitments to prisons and state jails declined 6.0 percent according to preliminary data, while there has been a 9.3 percent increase in probation placements in departments participating in the state's diversion funding program during the 2008-09 biennium.<sup>23</sup> The program is designed to reduce revocations from probation to prisons and state jails,

both by preventing probationers from committing another offense and by increasing the use of graduated sanctions to provide a swift, sure, and commensurate response to rule violations. Departments that began receiving funds in 2004-05 have reduced their average caseload size from 129.0 to 111.3 and their revocations by 1,372. Probation costs taxpayers less than \$2 per day compared to \$56.10 per day for prison, as probationers bear 40 percent of the cost through fees.

The reduction in prison commitments and increase in probation placements suggests strengthening probation may not only reduce revocations, but also increase its utilization as an alternative to prison. Prosecutors, judges, and victims may be gaining confidence in some probation departments' ability to provide supervision and treatment consistent with evidence-based practices and the risk and needs of each offender while also collecting restitution for the victim. Results from Maryland's correctional options program show that low-risk, non-violent offenders sentenced to probation with graduated sanctions and services were 22 percent less likely to recidivate than comparable offenders sentenced to prison.<sup>24</sup>

## Conclusion

Punishment for punishment's sake is based on the notion that society must get even with the offender, regardless of whether the victim is restored or the community is made safer and stronger. Instead, the criminal justice system must be shifted towards empowering and restoring victims and communities at the same time it holds offenders accountable and promotes rehabilitation. Policymakers and practitioners must expand the opportunities available for victims and willing and suitable offenders to undo as much of the damage caused by crime as possible and, secondly, implement proven approaches that will reduce the number of future victims. ★

## Endnotes

- <sup>1</sup> Glenn Kercher, "Restitution in Texas: A Report to the Legislature," <http://www.crimevictimsinstitute.org/documents/Restitution%20Report.pdf>.
- <sup>2</sup> Charlene Anderson, Texas Department of Criminal Justice Community Justice Assistance Division, email, 3 Dec. 2009.
- <sup>3</sup> Travis Sampley, House Committee on Corrections, email, 22 Dec. 2009.
- <sup>4</sup> Charlene Anderson, Texas Department of Criminal Justice Community Justice Assistance Division, email, 3 Dec. 2009.
- <sup>5</sup> Travis Sampley, House Committee on Corrections, email, 22 Dec. 2009.
- <sup>6</sup> Rachel McLean and Michael Thompson, "Repaying Debts," Council of State Governments Justice Center (29 Aug. 2007) accessed 31 Dec. 2009, [http://reentrypolicy.org/jc\\_publications/repaying\\_debts\\_full\\_report;file](http://reentrypolicy.org/jc_publications/repaying_debts_full_report;file).
- <sup>7</sup> Gene Lutz, et. al, "1997 Iowa Adult Crime Victimization Survey," University of Northern Iowa (Apr. 1998) accessed 1 Jan. 2010, [http://www.csbs.uni.edu/dept/csbr/pdf/CRI\\_Crime\\_Victimization\\_Survey-1998.pdf](http://www.csbs.uni.edu/dept/csbr/pdf/CRI_Crime_Victimization_Survey-1998.pdf).
- <sup>8</sup> Peter B. Wood and Harold G. Grasmick, "Inmates Rank the Severity of Ten Alternative Sanctions Compared to Prison," *Oklahoma Criminal Justice Research Consortium Journal* (1995) <http://www.doc.state.ok.us/offenders/ocjrc/95/950725J.HTM>.
- <sup>9</sup> "Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue," U.S. Department of Justice Office of Justice Programs, Office for Victims of Crime (Apr. 2000) accessed 31 Dec. 2009, [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/restorative\\_justice\\_ascii\\_pdf/ncj176346.pdf](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/restorative_justice_ascii_pdf/ncj176346.pdf).
- <sup>10</sup> Mark Umbreit, et. al, "Restorative Justice in the Twenty-first Century: A Social Movement Full of Opportunities and Pitfalls" *Marquette Law Review* 89(2):251-304, <http://law.marquette.edu/s3/site/images/restorative/lawreviews/Umbreit.pdf>.
- <sup>11</sup> House Bill 2139, 81st Legislative Session, <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB2139>.
- <sup>12</sup> Gene Valentini, Director, Lubbock County Dispute Resolution Center, phone conversation, 8 Dec. 2009.
- <sup>13</sup> Alternative Dispute Resolution Centers of Texas (13 Feb. 2009) accessed 1 Jan. 2010, <http://www.courts.state.tx.us/pubs/2009JudicialDirectory/DispResCtrs.pdf>.
- <sup>14</sup> John Gehm, "Mediated Victim-Offender Restitution Agreements: An Exploratory Analysis of Factors Related to Victim Participation," Burt Galaway & Joe Hudson (Eds.), *Criminal Justice, Restitution, and Reconciliation* (New York: Criminal Justice Press, 1990).
- <sup>15</sup> Mark Umbreit, Robert Coates and Boris Kalanj, *Victim Meets Offender: The Impact of Restorative Justice and Mediation* (Monsey, N.Y.: Criminal Justice Press, 1994).
- <sup>16</sup> Mark Umbreit, Robert Coates, and Betty Vos, "Impact of Restorative Justice Conferencing with Juvenile Offenders: What We Have Learned From Two Decades of Victim Offender Dialogue Through Mediation and Conferencing," Balanced and Restorative Justice Project, Community Justice Institute, Florida Atlantic University (28 Nov. 2000) [http://rjp.umn.edu/img/assets/13522/Victim\\_Impact\\_RJC\\_with%20Juvenile\\_Offenders.pdf](http://rjp.umn.edu/img/assets/13522/Victim_Impact_RJC_with%20Juvenile_Offenders.pdf).
- <sup>17</sup> Jeff Latimer, Craig Dowden and Danielle Muise, "The Effectiveness of Restorative Justice Practices: A Meta-Analysis," *The Prison Journal* 85(2) (June 2005) [http://www.ngoalliance.net/fragment/programlar/yuvenal\\_edliyya/Effectiveness%20of%20Restorative%20Justice%20Practices.pdf](http://www.ngoalliance.net/fragment/programlar/yuvenal_edliyya/Effectiveness%20of%20Restorative%20Justice%20Practices.pdf).
- <sup>18</sup> Texas Code of Criminal Procedure, Article 56.01, <http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.56.htm>.
- <sup>19</sup> House Bill 1228, 81st Legislative Session, <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB1228>.
- <sup>20</sup> [http://www.ndaa.org/pdf/performance\\_measures\\_findings\\_07.pdf](http://www.ndaa.org/pdf/performance_measures_findings_07.pdf).
- <sup>21</sup> Fort Bend County Budget, District Attorney's Office (30 Dec. 2008) accessed 1 Jan. 2010, [http://www.co.fort-bend.tx.us/upload/images/budget\\_of\\_fice/2009\\_budget/by\\_department/District\\_Attorney09.pdf](http://www.co.fort-bend.tx.us/upload/images/budget_of_fice/2009_budget/by_department/District_Attorney09.pdf).
- <sup>22</sup> Dallas County Performance Measure Data, First Quarter 2009 (3 June 2009) accessed 1 Jan. 2010, [http://www.dallascounty.org/department/budget/documents/PerfMeasuresFY09\\_Q1\\_000.pdf](http://www.dallascounty.org/department/budget/documents/PerfMeasuresFY09_Q1_000.pdf).
- <sup>23</sup> Texas Department of Criminal Justice Community Justice Assistance Division, "Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds" 1 Dec. 2009, 29 Dec. 2009, [http://www.tdcj.state.tx.us/publications/cjad/Monitoring\\_of\\_DP\\_Reports\\_2009\\_REPORT\\_TO\\_GOVERNOR.pdf](http://www.tdcj.state.tx.us/publications/cjad/Monitoring_of_DP_Reports_2009_REPORT_TO_GOVERNOR.pdf).
- <sup>24</sup> Greg Jones and Michael Connelly, Maryland State Commission on Sentencing Policy, "Prison vs. Alternative Sanctions: Trying to Compare Recidivism Rates" (Sept. 2001) accessed 1 Jan. 2010, <http://sentencing.nj.gov/downloads/pdf/articles/alternative1.pdf>.

