



Thinking Outside the Cell: Aligning Goals and Incentives in the Texas Criminal Justice System



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Why Criminal Justice?

- Empower & Restore Crime Victims
- Reduce Crime
- Control Public and Private Sector Costs
- Limit Scope of Criminal Law to Conduct that Harms Others



First Principles



- Incentives matter – even for criminals.
- Victims are primary and public is secondary consumer of criminal justice services.
- Next public dollar should be spent in the way that most reduces the harm caused by crime – may be more police to deter crime rather than more prisons.

Criminals' Incentives



What Motivates Criminals

- May be rational – studies show crime pays more than most jobs.
- Or irrational – mentally ill, addicts.
- Poor decisionmaking – average Texas inmate has 6th grade education.
- Chance of being caught X punishment
- 43 percent of Harris County DWI offenders choose jail over probation





Preferring Prison

Survey of Male Inmates Shows They'd Rather Be in Prison for More Time Than Alternative Sanction for Less Time

Months in Prison

8

12

| | 8 | 12 |
|-----------------------|-------------|-------------|
| Day Fine/Work Release | 114 days | 137 days |
| Community Service | 97 days | 130 days |
| Day Reporting | 6.35 months | 7.93 months |
| Halfway House | 7.28 months | 9.23 months |

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. Available at: <http://www.doc.state.ok.us/offenders/ocjrc/95/950725J.HTM>

Why Choose Prison?

- John Hamm, director of Alabama's Montgomery County community corrections explained: "That's because community corrections programs demand a lot more responsibility, including working to pay off family bills, restitution and other expenses. These programs make you change your lifestyle. They take up your time, and if they take up their time they won't have time to do criminal activity."



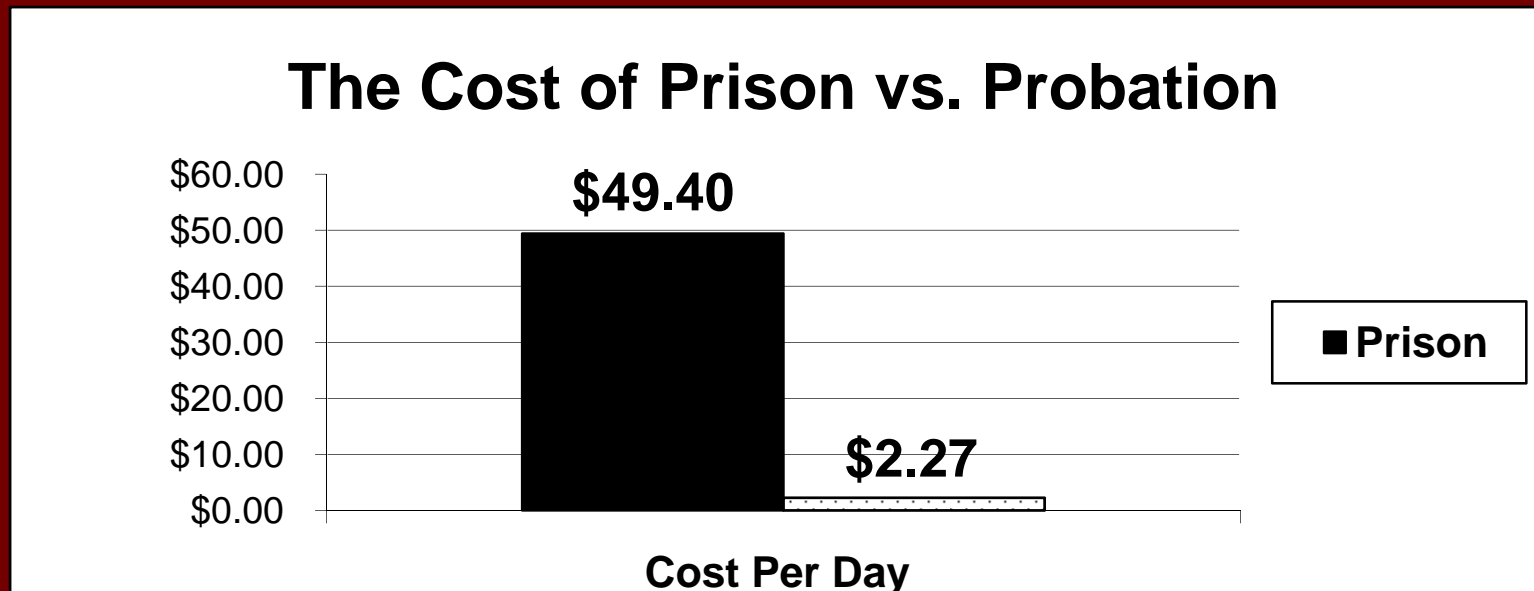
Does Incarceration Work?



- Incapacitates violent, sex, and serial property offenders, though often not long enough for them to “age out.”
- Recidivism within three years is 31 percent at TDCJ, 52 percent at TYC.
- Diminishing returns. New York and Pennsylvania have reduced crime more with less incarceration than Texas.
- Replenishment rate for nonviolent crimes like drug possession and shoplifting makes prison inefficient and co-mingling offenders is risky.

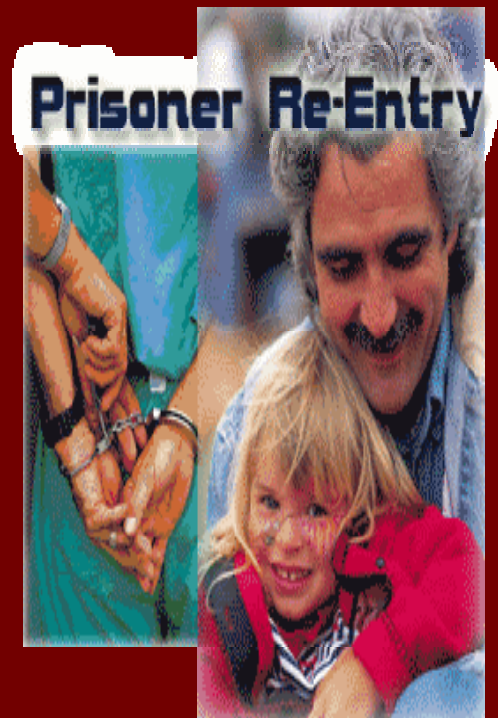
Prison is Costliest Option for Taxpayers

- It's \$18,000 per year per adult inmate. TYC costs \$100,000 per year per youth. Every new prison bed costs \$77,000.
- 50,000 Texas prisoners in 1990 and 156,000 today.



Incentives for Ex-Offenders

- 20% of Texans have a conviction
- Ex-offenders who are employed 3 to 5 times less likely to re-offend.
- Barriers to licenses in more than 150 occupations
- Employers afraid of civil liability for negligent hiring.



Victims' Incentives



Crime Victims' Incentives & the System



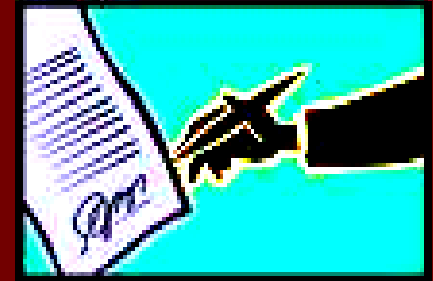
- Victims do not report 67 percent of all crimes. Most often reason cited is system is confusing/intimidating.
- Most crimes not solved – Houston Police solve 6 percent of home burglaries.
- Police have incentive to focus on revenue generators like traffic citations. HPD had issued 2,000 obscured license plate tickets per month.
- Use data-driven policing, hold each sector accountable, ask victim whether satisfied

What Do Crime Victims Want?

Survey of Iowa Crime Victims of Burglary

| 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% |

The Restitution Tradition



- Exodus 22:9 - "In every case in which an ox, donkey, sheep, clothing, or anything else is lost, and the owner believes he has found it in the possession of someone else who denies it, both parties to the dispute shall come before God for a decision, and the one who God declares guilty shall pay double to the other."
- Restitution prominent in all major religions.
- Indian tribes known for determining the appropriate restitution by consensus in a circle in which the victim and offender speak.

Goals of Victims Not Incentivized

- Restitution payments compete with probation fees and court costs – less than half collected.
- Prisoners owe \$2.3 billion child support.
- Neither police, prosecutors, probation departments, or courts evaluated on basis of restitution collected. Not all probation departments report this to TDCJ-CJAD.
- No right to mediation with binding agreement or plea bargaining participation.
- No garnishment of wages for restitution and offenders face employment barriers.

Victim-Offender Mediation



- Builds on success of ADR in civil justice system.
- Meta-analysis of 27 victim-offender mediation programs found that 72% of them lowered recidivism. Victims 50% less likely to fear being victimized again.
- Currently, 11 Texas juvenile probation departments use VOM.
- TJPC study on victim-offender mediation due out in July.
- Victim's right vs. prosecutorial discretion
- Retailer shoplifting referrals.

Systemic Incentives



Prosecutorial & Judicial Incentives



- Elected judges impose longer prison sentences. In Yale University Pennsylvania study of 22,000 cases, an additional 2,777 years of incarceration was attributable to proximity of election.
- Prosecutors' performance often evaluated on number of convictions and length of sentence rather than crime rate, recidivism rate, restitution payment rate, victim satisfaction, or efficient use of resources.

Texas Lawmakers' Incentives



- More criminal laws and enhancement of penalties – say we did something.
- Texas has more than 2,000 state criminal laws – many probably never prosecuted. 11 relate to oysters alone.
- El Paso recently criminalized minors possessing permanent markers. Some 87 citations have been issued at \$270 each in total costs, likely borne by parents.

Passing the Juvenile Probation Buck



- State has historically paid only one-third of the cost of juvenile probation, giving counties an incentive to overuse TYC. TYC population grew from 3,467 in 1996 to 4,800 in 2006.
- In 2003 the Comptroller noted, "In some cases juvenile probation departments will send youths to TYC simply because available TJPC funding has run out—even if the youths' offenses do not merit TYC placement, and despite the fact that TYC placement is far more expensive than probation options."

Passing the Adult Probation Buck



- Because adult probation fees cover 40% of departments' budgets, incentive to revoke non-paying probationers for technical violations while failing to early terminate regular payers who are easy to supervise. Result is more technical revocations and higher prison costs.
- 37% of prison intakes and 41% of state jail intakes are revoked probationers, resulting in \$547 million in direct incarceration costs. Of the 22,357 probation revocations in 2006, 12,432 were for technical violations.
- Parole "blue warrants" cut the other way.

Disparate Use of Incarceration

- Harris County with 16 percent of state's population accounts for more than half of all state jail felons incarcerated for less than a gram of illegal drugs.
- Overall, 5,000 Texas inmates have no convictions other than drug possession.



Aligning System Goals and Policies





Probation Reform Proves the Right Incentives Work

- In 2005, additional \$55 million in funding for stronger probation supervision to probation departments that adopted progressive sanctions.
- Participating probation departments reduced their technical revocations by 16% while those that didn't increased technical revocations by 8%
- Had all departments increased their revocations by 8%, another 2,640 revocations for an average of 2.5 years at a cost to taxpayers of \$119 million, not including prison construction.
- Create new formula that includes re-offense rate, employment, restitution, and child support.

Enhance Attractiveness of Competing Sentencing Products



- Increase opportunities for first-time minor property and drug offenders to resolve case without conviction through victim-offender mediation, drug court and mandatory treatment and work release
- Shift budget from more prisons to day reporting, work restitution centers, GPS
- Performance-based probation funding
- Increase work opportunities for ex-offenders through occupational licensing reform and civil liability relief.

Pool Funds for Nonviolent Incarceration and Probation and Remit to Counties



- Ohio's RECLAIM program remitted funds for nonviolent juveniles to counties so they could buy slots at state lockups or use for local programs.
- Eliminates incentive to dump offenders on state and encourages local alternatives.
- RECLAIM recidivism rate is 7 percent compared with 52 percent rate for TYC.
- RECLAIM resulted in 36.2 percent fewer commitments to state youth lockups

New Incentive-Based Approach to Private Corrections



- **Current approach is low bidder and conformity with state down to the cell-lock.**
- **Need flexibility to innovate in contracts and compensation based not just on per diem, but on outcomes such as recidivism, GEDs and vocational certificates, and employment within 3 months of release.**
- **Involve private sector beyond prisons, such as work release programs where earnings contribute to restitution and child support.**



Wrap Up



- System incentivizes incarceration although it is the most expensive option, is less of a deterrent to offenders than alternatives, and is not preferred by most victims of nonviolent crimes.
- Sanctions and positive incentives needed for offenders - light at the end of the tunnel.
- All levels of system must enhance performance measures based on outcomes such as recidivism, victim satisfaction, restitution collections, crime rate, and crimes solved.