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Addressing Illinois' Recidivism Rate: The Newly Reformed Texas Correctional System and the Need for Expansion to Illinois, 52 UIC J. MARSHALL L. REV 835 (2019)

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ADDRESSING ILLINOIS' RECIDIVISM
RATE: THE NEWLY REFORMED TEXAS
CORRECTIONAL SYSTEM AND THE NEED
FOR EXPANSION TO ILLINOIS

NICHOLE JERRICK

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Abstract

Recidivism rates in the United States are among the highest in the world. On a smaller scale, states such as Illinois consistently struggle with high rates of recidivism. In turn, these high rates force the state to pay additional costs with funds that it does not have to reincarcerate offenders. Illinois has the potential to break this costly cycle by adopting a restorative, not retributive, approach to crime. One unexpected state has been successful in implementing restorative justice techniques: Texas. Texas has a variety of legislation and programs aimed at rehabilitating offenders. As a result, Texas has lowered its recidivism rate. This comment explores Illinois' and Texas' criminal justice systems in order to illustrate Illinois' need to adopt restorative justice principles. This comment proposes steps Illinois can take, based on Texas' approach, to lower its recidivism rate and ultimately save the state money in the long run.

I. INTRODUCTION

What comes to mind when you hear the words “*revolving door*”? An entrance to your local shopping mall? A political metaphor? According to one Illinois study, the answer is much more daunting—America’s prisons.¹

The “*revolving door*” study refers to high recidivism rates in the United States.² Recidivism is defined as one’s relapse to criminal conduct after he or she has already been convicted of a prior criminal offense.³ Put simply, recidivism refers to the rate at which convicted criminals reoffend.⁴ It then follows that recidivism rates are measured by a criminal’s commission of a subsequent crime—regardless of whether it results in an arrest, conviction, or sentence—during a period of three years following the original arrest.⁵ This computation is generally represented and expressed as a percentage. These repeat offenders, “*recidivists*,” represent a small percentage of the population but are responsible for a large percentage of America’s crime.⁶

States like Illinois are struggling with high levels of recidivism.⁷ In the last forty years, the number of incarcerated individuals in the state has risen exponentially.⁸ The number of prisoners has grown from a mere 6,000 in 1974, to a staggering 49,000 today.⁹ In 2004, the recidivism rate for Illinois prisoners was 51.7 percent within a three-year period.¹⁰ More recently, in 2014, the State of Illinois reported that this rate was down slightly to forty-eight percent.¹¹ These figures are significant because Illinois

1. PEW CTR. ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA’S PRISONS (2011), www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2011/pewstateofrecidivism.pdf.

2. *Id.*

3. GEORGIA ZARA & DAVID P. FARRINGTON, CRIMINAL RECIDIVISM: EXPLANATION, PREDICTION AND PREVENTION 5-6 (1st ed. 2015).

4. MICHAEL G. MAXFIELD & EARL R BABBIE, BASICS OF RESEARCH METHODS FOR CRIMINAL JUSTICE & CRIMINOLOGY 84 (Caroline Define, 4th ed. 2016).

5. See MATTHEW R. DUROSE, ALEXIA D. COOPER & HOWARD N. SNYDER, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 (2014), www.bjs.gov/content/pub/pdf/rprts05p0510.pdf (tracking recidivism patterns in various states). Recidivism rates are sometimes measured by different post-release periods besides three years, but the common period used is three years. *Id.*

6. ZARA & FARRINGTON, *supra* note 3.

7. Illinois State Commission on Criminal Justice and Sentencing Reform, *Illinois Prison Overview*, www.icjia.org/cjreform2015/research/illinois-prison-overview.html (last visited Aug. 26, 2019).

8. *Id.*

9. *Id.* Illinois prisons have been overpopulated for decades; prisons were at double their capacities in 1994. *Id.* The prison rates have stabilized the last few years around 49,000 inmates. *Id.*

10. PEW CTR. ON THE STATES, *supra* note 1.

11. ILLINOIS SENTENCING POLICY ADVISORY COUNCIL, THE HIGH COST OF RECIDIVISM 1-3 (2015) icjia.state.il.us/spac/pdf/Illinois_Results_First_1015.pdf.

recidivism rates are lingering above the national average, which is about forty percent.¹²

Illinois can lower its high levels of recidivism by observing the approaches of other states. Texas, for example, was one of the first states to implement a restorative approach to crime.¹³ Consequently, Texas has been extremely successful in reducing its crime and recidivism rates.¹⁴ Illinois can refer to states like Texas for guidance to create a more effective criminal justice system.¹⁵

This comment will compare Texas' and Illinois' correctional systems and recidivism rates to propose a solution to reduce Illinois' high recidivism levels. Section II provides a history on the development of recidivism in the United States and demonstrates that Illinois in particular has exceptionally high recidivism rates. Section II also introduces the theory of restorative justice, which has been successfully implemented in Texas. Section III analyzes Texas' and Illinois' recidivism statistics, statutory schemes, alternative courts and restitution programs, and finances. Through this comparative analysis, the shortcomings of Illinois' correctional system are revealed. Section IV proposes suggestions to lower Illinois' recidivism levels based upon Texas' restorative approach to crime.

II. BACKGROUND

Michael Maltz, a Chicago criminologist, described recidivism as the following sequence of societal failures: failure of the recidivist to act lawfully and meet society's expectations, failure of society to contribute to the recidivist, and failure of the recidivist to make the necessary reforms while previously incarcerated.¹⁶ Based on these failures, society is able to track how many offenders are returning to the prison systems. Through the study of recidivism rates, policymakers and legislators can both protect the public and address prison overcapacity problems.¹⁷ These figures provide policymakers with information about threats to public safety posed by different types of criminals, while putting our current

12. *Id.*

13. Derek Cohen, *Reviving Restorative Justice: A Blueprint for Texas*, TEX. PUB. POL'Y FOUND. (2013), www.texaspolicy.com/library/doclib/2013-12-PP39-RevivingRestorativeJustice-CEJ-DerekCohen_0.pdf.

14. *Id.*

15. Joe Tabor, *Illinois' First Restorative Justice Court Will Save Money, Improve Outcomes*, ILL. POL'Y (July 31, 2017), www.illinoispolicy.org/illinois-first-restorative-justice-court-will-save-money-improve-outcomes/.

16. See MICHAEL D. MALTZ, *RECIDIVISM 1-2* (2001) (providing a general introduction to the concept of recidivism).

17. See UNITED STATES SENTENCING COMMISSION, *RECID05, RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW 3* (2016) (analyzing recidivism rates amongst federal offenders by a federal body).

correctional system to the test.¹⁸ First, this section will discuss recidivism at a nation-wide level. Then, this section will focus specifically on Illinois and how the state compares to national statistics. Lastly, this section will conclude by discussing restorative justice principles and Texas' utilization of this longstanding approach.

A. *The United States Struggles with High Recidivism Rates*

The federal government has recognized the importance of studying recidivism.¹⁹ It enacted the "Recidivism Reduction and Public Safety Act of 2014," which ordered various government actors to implement programs and create organizations designed towards lowering the recidivism rate.²⁰ This Act directed the Bureau of Prisons to offer programs to incarcerated individuals including faith-based programs, prison jobs, academic classes, and career advising.²¹

More recent legislation passed includes the "Corrections and Recidivism Reduction Act of 2016."²² This bill, too, recognized the importance of reducing recidivism rates in order to promote public safety and an efficient prison system.²³ As a result, the Attorney General created the "Post-Sentencing Risk and Needs Assessment Program" to evaluate recidivism risks of each prisoner.²⁴ The goal of this program was to find specific activities for each prisoner's criminogenic needs required to rehabilitate and release them.²⁵

From 1994-2004, United States recidivism rates consistently hovered near forty percent.²⁶ Although, studies have found this number to be much higher. For example, the Bureau of Justice Statistics ("Bureau") conducted a study tracking over 400,000 prisoners in thirty states upon their release in 2005.²⁷ The Bureau made some startling observations: 56.7% were rearrested within one year, 67.8% were rearrested within three years, and 76.7% were

18. See UNITED STATES SENTENCING COMMISSION, THE PAST PREDICTS THE FUTURE: CRIMINAL HISTORY AND RECIDIVISM OF FEDERAL OFFENDERS 2-3 (2017) (studying the trends of federal recidivism).

19. See Recidivism Reduction and Public Safety Act of 2013, 113 S. 1675 § 3621 (2013) (addressing the need for a reduction in recidivism rates in the United States).

20. *Id.*

21. *Id.*

22. Corrections and Recidivism Reduction Act of 2016, 114 H.R. 759 § 1 (2016).

23. *Id.*

24. *Id.*

25. *Id.*

26. PEW CTR. ON THE STATES, *supra* note 1.

27. DUROSE, COOPER, & SNYDER, *supra* note 5.

rearrested within five years.²⁸ When nearly seventy percent of offenders released from prison are rearrested within three years, it is clear the effectiveness of the correctional system must be reexamined.²⁹

The United States Sentencing Commission (“Commission”) is active in the study of our country’s recidivism rates.³⁰ The Commission provides comprehensive research and data to the public regarding the sentencing of federal offenders in the United States.³¹ Like the Bureau, the Commission studied 26,341 offenders, tracking the recidivism rates of offenders who were either released or received probation in 2005.³² Within an eight-year period, 49.3 percent of offenders were either rearrested for a new offense or for a violation of their probation or release conditions.³³ Similar to the Bureau’s study, most recidivists committed the subsequent crime within the first two years after being convicted of the prior crime.³⁴

Senator Rand Paul remarked that although the United States only makes up around five percent of the world’s overall population, it is responsible for twenty-five percent of the world’s prison population.³⁵ This shocking statistic worsens as the United States’ incarceration rates grow.³⁶ In 2014, the United States’ population comprised 319 million of the world’s 7.1 billion people.³⁷ Likewise, the United States prison system housed 2.24 million of the world’s 10.2 million prisoners.³⁸ Based on these statistics, the United

28. *Id.* This study also broke down offenders by race, sex, offenses, and age upon release. *Id.* For purposes of this comment, recidivism is addressed as a whole. Analyzing recidivism rates amongst different age groups or crimes is outside the scope of this comment.

29. *Id.* at 7-11.

30. See generally UNITED STATES SENTENCING COMMISSION, RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW (2016), www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf (describing findings related to federal offender recidivism published by the U.S. Sentencing Commission).

31. *Id.*

32. UNITED STATES SENTENCING COMMISSION, *supra* note 17 and accompanying text, at 3-5.

33. *Id.*

34. *Id.*

35. See Michelle Ye Hee Lee, *Does the United States really have 5 percent of the world’s population and one quarter of the world’s prisoners?*, WASH. POST (Apr. 30, 2015), www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/ (addressing the problem with incarceration rates); ACLU, THE PRISON CRISIS (2017), <https://www.aclu.org/prison-crisis> (explaining the failure of the American criminal justice system and the need for reform).

36. Hee Lee, *supra* note 35.

37. *U.S. and World Population Clock*, U.S. CENSUS BUREAU, www.census.gov/popclock/ (last visited Oct. 6, 2017).

38. Hee Lee, *supra* note 35; see also WORLD PRISON BRIEF, UNITED STATES OF AMERICA, www.prisonstudies.org/country/united-states-america (last visited

States' prison rate is highly disproportional when compared to similarly situated countries.³⁹ For context, the United States' prison population rate, or amount of prisoners per 100,000 people, is 655.⁴⁰ Canada's prison population rate is 114.⁴¹ Norway's prison population rate is 63.⁴²

B. Illinois' "Dangerously High" Recidivism Rates

Illinois has struggled with the amount of convicted criminals reoffending. The state has publicly acknowledged that its recidivism rates are "dangerously high" and recognized the current correction system "perpetuates a vicious and costly cycle."⁴³ Like the majority of states, Illinois has historically followed a retributive justice system, which focuses on punishment, as opposed to a restorative justice system, which focuses on rehabilitation.⁴⁴ But studies have shown that a retributive approach simply creates a perpetual cycle of revenge and anger.⁴⁵ As such, a restorative approach is required to break this cycle.⁴⁶ Illinois has set a goal of reducing its number of prisoners by twenty-five percent by the year 2025.⁴⁷ In order to reach this goal, Illinois must employ a restorative approach when it comes to crime. If Illinois were to implement a more restorative approach, additional positive side effects would result. Notably, prison reform will also save millions of dollars that were once spent on incarceration costs.⁴⁸

Apr. 22, 2019) (tracking the number of prisoners in the United States in 2015). This prison population total is comprised of federal prisoners, state prisoners, and local jail prisoners. *Id.*

39. See Lee, *supra* note 35; see also Tapio Lappi-Sepala, *Trust, Welfare, and Political Culture: Explaining Differences in National Penal Policies*, 37 CRIME & JUST. 313, 313-318 (2008) (explaining and comparing penal systems around the world).

40. WORLD PRISON BRIEF, *supra* note 38.

41. *Id.*

42. *Id.*

43. Ill. Exec. Order No. 15-14 (Feb. 11, 2015), www.icjia.org/cjreform2015/pdf/ExecutiveOrder2015-14.pdf [hereinafter Ill. Exec. Order 15-14].

44. See Christopher D. Lee, *They All Laughed at Christopher Columbus When He Said the World as Round: The Not-So-Radical and Reasonable Need for a Restorative Justice Statute*, 30 ST. LOUIS U. L. REV. 523, 526 (2011) (explaining the traditional criminal justice system approach).

45. *Id.*

46. *Id.*

47. Ill. Exec. Order 15-14, *supra* note 43.

48. Austin Berg, *Could This Court Be The Future Of Criminal Justice In Illinois?*, CHI. TRIB. (Aug. 3, 2017), www.chicagotribune.com/suburbs/daily-southtown/opinion/ct-sta-berg-column-st-0804--20170803-story.html.

C. Background and History of Restorative Justice

Crime costs the country, and taxpayers, money.⁴⁹ In 1993, the United States paid an estimated \$450 billion due to crime.⁵⁰ This figure takes into consideration all possible costs, including tangible costs to victims, governmental costs, and costs to offenders.⁵¹ Along with these monetary costs lie intangible costs, such as emotional suffering and loss of human life.⁵² There is an obvious need for attempts to reduce and prevent crime because of these high costs.⁵³ However, theories of punishment are far from agreed upon when it comes to preventing crime.⁵⁴

The main theories of punishment are deterrence, incapacitation, retribution, and rehabilitation.⁵⁵ This article focuses on the latter two theories, which overlap to form somewhat of a hybrid theory—a restorative approach.⁵⁶

Restorative justice has been defined as the “process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future.”⁵⁷ The goal is restorative justice is two-fold: helping victims become whole again and holding the offender accountable for his or her actions.⁵⁸ A main objective is to make the victim, offender, and community active in the restorative justice process as soon as possible.⁵⁹ Often times the victim and

49. Brandon C. Welsh & David P. Farrington, *Monetary Costs and Benefits of Crime Prevention Programs*, 27 CRIME & JUST. 305, 305-306 (2000).

50. *Id.*; See generally RAND, COST OF CRIME CALCULATOR, www.rand.org/jie/justice-policy/centers/quality-policing/cost-of-crime.html (last visited Oct 6, 2017) (calculating the economic costs of different types of crimes).

51. Welsh & Farrington, *supra* note 49.

52. *Id.*

53. *Id.*

54. See Mike C. Materni, *Criminal Punishment and the Pursuit of Justice*, 2 BR. J. AM. LEG. STUD. (2013) (exploring the different theories of punishment); Benjamin B. Sendor, *The Relevance of Conduct and Character to Guilt and Punishment*, 10 ND J. L. ETHICS & PUB. POL'Y 99 (1996) (analyzing a defendant's character and the need for different punishments depending on the person).

55. See J.C. Oleson, *The Punitive Coma*, 90 CALIF. L. REV. 829, 833-839 (2002) (identifying the main theories of punishment and an analysis of the transformation of punishment).

56. *Id.*; See also Andrew E. Taslitz, *Mass Incarceration: Causes, Controversies, and Exit Strategies: The Criminal Republic: Democratic Breakdown as a Cause of Mass Incarceration*, 9 OHIO ST. J. CRIM. L. 133, 171-174 (comparing restorative justice and restitution).

57. DENNIS SULLIVAN & LARRY TIFFT, HANDBOOK OF RESTORATIVE JUSTICE: A GLOBAL PERSPECTIVE 16-18 (1st ed. 2006).

58. Van Ness & Nolan, *infra* note 72.

59. See ELMAR G.M. WEITEKAMP & HANS-JURGEN KERNER, RESTORATIVE JUSTICE: THEORETICAL FOUNDATIONS 2-5 (1st ed. 2002) (identifying the goals of restorative justice); see also Braithwaite, *infra* note 66 (assessing the restorative justice approach to crime).

offender are brought together through a reconciliation program.⁶⁰ There, the victim and offender meet face to face, discuss what happened, come to a better understanding of one another, and ultimately reconcile.⁶¹

Despite its growing popularity in recent years, a restorative approach to crime is not a contemporary idea.⁶² Scholars believe that restorative justice has existed predating colonization, and that many of the theories stem from Native American and Aboriginal ideas of justice.⁶³ Today, many Native American tribes still practice restorative justice techniques.⁶⁴ These tribes believe that if problems are not solved in a manner which takes into account all parties' needs, their society will inevitably fall apart.⁶⁵ Others have surmised that a restorative justice model to crime has been the predominant model for all of human history.⁶⁶ Currently, restorative justice is used in criminal justice and judicial systems around the world, including Europe, Australia, and New Zealand.⁶⁷

Conversely, the "tough on crime" movement in the United States has led to a dramatic increase of incarcerations and prisons overall.⁶⁸ The American correctional system has shifted towards harsher sentencing and punitive approaches to crime that can be traced back to the time of the Reagan administration.⁶⁹ The effects of these prior political and legislative decisions can still be seen in the United States today.⁷⁰ New legislation, such as mandatory sentencing minimums and harsher drug laws, has contributed to the country's prison boom.⁷¹

60. WEITEKAMP & KERNER, *supra* note 59.

61. *Id.*; Braithwaite, *infra* note 66.

62. See generally GERRY JOHNSTONE & DANIEL W. VAN NESS, HANDBOOK OF RESTORATIVE JUSTICE 5-6 (1st ed. 2011) (explaining the origins of restorative justice and the prominence of the restorative justice movement); see also Ali M. Abid, *Restorative Justice in the Gilded Age: Shared Principles Underlying Two Movements in Criminal Justice*, 8 CRIM. L. BRIEF 29, 29-32 (2012) (explaining the existence of restorative justice in Western history).

63. Lee, *supra* note 44.

64. JOHNSTONE & VAN NESS, *supra* note 62.

65. *Id.* at 2.

66. John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, 25 CRIME & JUST. 1 (1999).

67. Lee, *supra* note 44; see also James Coben & Penelope Harley, *Intentional Conversations about Restorative Justice, Mediation and the Practice of Law*, 25 HAMLIN J. PUB. L. & POL'Y 235, 291 (2004) (discussing the restorative justice approach in New Zealand).

68. Michael Tonry, *Sentencing in America, 1975-2025*, 42 CRIME & JUST. 141, 141-144 (2013) (examining the evolution of America's sentencing policies).

69. *Id.*; see generally SARA WAKEFIELD & CHRISTOPHER WILDEMAN, CHILDREN OF THE PRISON BOOM: MASS INCARCERATION AND THE FUTURE OF AMERICAN INEQUALITY, 13-15 (2d ed. 2014) (addressing the exponential rise in American incarceration rates from the 1900's to current times).

70. WAKEFIELD & WILDEMAN, *supra* note 69.

71. See Walker Newell, *The Legacy of Nixon, Reagan, and Horton: How the Tough on Crime Movement Enabled a New Regime of Race-Influenced*

Despite the current punitive approach, restorative justice is a growing movement within the country.⁷² It has gained more recognition in recent years as prison rates have risen.⁷³ Restorative justice focuses on the true healing of the injury, rather than mere punishment of the offender.⁷⁴ Opinion surveys suggest that the desire to aid and rehabilitate offenders remains very strong among the general public, and even some first-hand victims of crime.⁷⁵

One fundamental goal of restorative justice is to reintegrate both the victim and offender into a safer society where the crime will not be recommitted.⁷⁶ In traditional theories of punishment such as rehabilitation or retribution, the court forces the offender to face the consequences of his or her actions.⁷⁷ Unlike those approaches, restorative justice allows the offender to choose to be involved with the remedial process.⁷⁸ Restorative justice seeks to balance and advocate the needs of the victim, offender, and society.⁷⁹ The “restoring” portion of restorative justice can be disseminated into a variety of concepts: restoring injury, property, dignity, security, etc.⁸⁰ The core belief of this approach is that it will be more useful than the standard retribution approach.⁸¹ Lower recidivism rates are a “happy side-effect” of restorative justice, and states who have implemented this approach have seen success.⁸² Other states have begun to reform their correctional and criminal

Employment Discrimination, 15 BERKELEY J. AFR. AM. L. & POL'Y 1, 14-16 (2013) (examining Reagan's “tough on crime” policies); *see also* Erik Luna, *Drug War and Peace*, 50 U.C. DAVIS L. REV. 813, 814-824 (discussing the war on drugs, calling it “America's longest war”).

72. Daniel Van Ness & Pat Nolan, *Legislation for Restorative Justice*, 10 U.L. REV. 53, 53-54 (1998) (explaining the purpose and goals of restorative justice).

73. *Id.*

74. *Id.*

75. *See* DANIEL W. VAN NESS & KAREN HEETDERKS STRONG, *RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE*, at 3-4 (5th ed. 2015) (introducing restorative justice and the need for this approach in modern society); *see also* Memorandum from The Mellman Group & Public Opinion Strategies to The Public Safety Performance Project Of The Pew Charitable Trusts, (Feb. 10, 2016), www.pewtrusts.org/~media/assets/2016/02/national_survey_key_findings_federal_sentencing_prisons.pdf (explaining the results of a study showing the public desires a correctional system reform).

76. Howard Zehr & Harry Mika, *Fundamental Principles of Restorative Justice*, 1 CONTEMP. JUST. REV. 1, 47-55 (1998).

77. *Id.*

78. *Id.*

79. Lee, *supra* note 44.

80. Braithwaite, *supra* note 66.

81. *Id.*; *contra* Stephen P. Garvey, *The Practice of Restorative Justice: Restorative Justice, Punishment, and Atonement*, 2003 UTAH L. REV. 303, 304-317 (contrasting ideologies of restorative justice with retribution and arguing that restorative justice cannot fully heal victims without punishing the offender).

82. Lee, *supra* note 44.

justice systems, adopting this restorative approach to crime.⁸³

1. *Laws in Texas Reflecting a Restorative Justice Approach*

The Texas Constitution has defined crime victims' rights and allows for them to be part of their own remedial process, including restitution.⁸⁴ Further, the Texas Code of Criminal Procedure permits judges to order restitution in a variety of circumstances.⁸⁵ This Code affords Texas judges more freedom when it comes to sentencing, which enables them to explore alternatives to incarceration.⁸⁶ Similarly, Texas passed House Bill 1287, which gives Texas counties the authority to set up drug courts when a population exceeds 550,000 people.⁸⁷ As a result, judges are inherently given more sentencing discretion.⁸⁸ This discretion includes taking a more rehabilitative approach to drug offenses as opposed to the standard, punitive approach of incarceration.⁸⁹

In 2005, the Texas House of Representatives enacted a bill that strengthens these existing restitution statutes.⁹⁰ This relatively new legislation allows restitution services to be imposed rather than payment of a monetary fine.⁹¹ The bill also requires a trial court judge to state on the record why he or she did not elect to use restitution services, or the reasons for a limited use of restitution.⁹² As such, judges are inevitably forced to consider restitution as a result of this requirement.⁹³ Moreover, this requirement pushes judges to analyze what crimes would be appropriate for a restorative remedy.⁹⁴

Texas legislation regarding restorative justice has expanded even further in recent years. In 2013, the Texas Senate enacted a bill allowing adult criminal cases to be resolved by way of mediation as opposed to incarceration.⁹⁵ To request mediation, the state's

83. Patrick Glen Drake, *Victim-Offender Mediation in Texas: When "Eye for an Eye" Becomes "Eye to Eye"*, 47 S. TEX. L. REV. 647, 651-668 (2006) (condoning the use of restorative justice in Texas and examination of mediation programs, such as "victim-offender mediation").

84. TEX. CONST. art 1, § 30. For purposes of this article, "restitution" will be used to refer to any sort of restoration of something, not solely monetary compensation.

85. TEX. CODE CRIM. PROC. § 42.037.

86. *Id.*

87. E. Anne Brockett, *Expansion of Texas Drug Treatment Courts*, 6 TEXAS SUPERVISION 1, 6 (2003).

88. *Id.*

89. *Id.*

90. H.R. Res. 1751, 79th Leg., Reg. Sess. (Tex. 2005).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. S. Res. 1237, 83rd Leg., Reg. Sess. (Tex. 2013).

attorney must obtain consent of the state and the victim.⁹⁶ This legislative change allows victims to be restored to their distinguishable place in society while holding offenders accountable for their actions—a core principle of restorative justice.⁹⁷

2. *Laws in Illinois Reflecting a Restorative Justice Approach*

The Illinois Constitution has similarly outlined crime victims' rights, including the right to restitution.⁹⁸ One goal of its sentencing policies is to restore offenders to “useful citizenship.”⁹⁹ The Illinois Code of Criminal Procedure permits a judge to order restitution in a variety of circumstances.¹⁰⁰ In 2015, the Governor of Illinois signed a bill calling for restorative justice within Illinois schools.¹⁰¹ Restorative justice in schools focus on repairing harm done to relationships rather than imposing punishments.¹⁰² While school systems can inevitably intertwine with the state's justice and correctional systems, Illinois focuses much of its restorative ideologies on schools, rather than on the public as a whole.¹⁰³

In 2015, former Governor Bruce Rauner issued an Executive Order (“Order”) establishing the Illinois State Commission on Criminal Justice and Sentencing Reform (“Commission”).¹⁰⁴ This Order forced a review of the state's current criminal justice system and sentencing structures.¹⁰⁵ Perhaps even more importantly, this Order granted the Commission the authority to review the use of alternatives to incarceration, noting that the state's prison rates were up by 700 percent.¹⁰⁶ This Order had one main goal: reduce the prison rate by twenty-five percent by 2025.¹⁰⁷ The enactment of this Order made it clear that Illinois' criminal justice system, in its current state, is failing.

In response to the Order, the Commission completed its review and submitted its findings to the state.¹⁰⁸ In its report, the

96. *Id.*

97. Van Ness & Nolan, *supra* note 72.

98. ILL. CONST. art 1, § 8.1.

99. Ill. Exec. Order 15-14, *supra* note 43.

100. 725 ILL. COMP. STAT. 120/4.5 (2019).

101. S. Res 100, 99th Gen. Assemb., Reg. Sess. (Ill. 2015) (focusing on juveniles and schools, not crime committed by the general public).

102. Sara Balgoyen, *Restorative Justice in Communities*, ILL. BALANCED & RESTORATIVE JUST., www.ibarj.org/communities.asp. (last visited Oct. 1, 2017).

103. *Id.*

104. Ill. Exec. Order 15-14, *supra* note 43.

105. *Id.*

106. *Id.*

107. *Id.*

108. ILL. STATE COMM'N ON CRIMINAL JUSTICE AND SENTENCING REFORM, FINAL REPORT (2016). This report includes propositions for reform. *Id.* Because the Executive Plan is to have improvements by 2025, conclusive results of the propositions are not yet available. *Id.*

Commission proposed twenty-seven reforms aimed at reducing Illinois' prison rate.¹⁰⁹ While this report introduces many potential ideas, the methods Illinois has implemented thus far have still fallen short of achieving its goal.¹¹⁰ Illinois is still in dire need of a more comprehensive reform of its correctional system. The Illinois Department of Corrections spending is at an all-time-high—\$1.4 billion in 2015—and the state needs to make effective changes.¹¹¹

Illinois' extremely high recidivism rate has become a statewide crisis.¹¹² While previous sources have discussed in depth Illinois' issues within the legal and correctional system, and have even identified serious problems, no one has proposed a solution. Illinois must analyze what measures states with low recidivism rates have taken in order to find a practical and workable solution. Illinois has fallen short by only proposing solutions, while Texas has produced tangible results.

III. ANALYSIS

To begin, Illinois' and Texas' restorative justice practices must be compared to highlight where Illinois should improve. In this section, Texas and Illinois' recidivism statistics, statutory schemes, alternative courts and other restitution programs, and finances will be compared and analyzed.

A. *Comparison of Texas and Illinois Recidivism Statistics*

A Pew Center on the States study asked forty-one states to report their recidivism rates within a three-year period.¹¹³ The average nation-wide recidivism rate for the 2004 cohorts was 43.3 percent.¹¹⁴ The Texas recidivism rate was 31.9 percent, while the Illinois recidivism rate was 51.7 percent.¹¹⁵ In 2004, Texas housed 168,105 prisoners, while Illinois housed only 44,054.¹¹⁶ This is

109. *Id.*

110. Bryant Jackson-Green, *Rauner's Proposed Prison Funding Increase Must be Accompanied by Incarceration Reform*, ILL. POL'Y (Feb. 19, 2015), www.illinoispolicy.org/rauners-100m-increase-in-prison-funding-wont-solve-overcrowding/.

111. See STATE OF ILLINOIS, STATE BUDGET: FISCAL YEAR 2017 (2017) (listing of Illinois finances); see also Jackson-Green, *supra* note 110 (explaining the need for prison reform due to Illinois' budget crisis).

112. See Vincent Caruso, *Report: Recidivism to Cost Illinois More Than \$13B Over Next 5 Years*, ILL. POL'Y (Aug. 3, 2018), www.illinoispolicy.org/report-recidivism-to-cost-illinois-more-than-13b-over-next-5-years/ (discussing the direct and indirect costs of crime and recidivism in Illinois).

113. Pew Center on the States, *supra* note 1.

114. *Id.*

115. *Id.*

116. PAIGE M. HARRISON & ALLEN J. BECK, BUREAU OF JUSTICE

significant because Texas housed approximately four times the number of prisoners, yet its recidivism rate was over twenty percent less.

B. Comparison of Texas and Illinois Statutory Schemes

Illinois and Texas have varying statutory approaches to restorative justice and restitution. Texas' statutes, in the manner which they are applied, allow the courts to impose more of a restorative approach. In *Laureles v. State*, Arlene Laureles' vehicle was pulled over after an officer witnessed her swerving and driving over the center line.¹¹⁷ She was arrested for driving while intoxicated and possession of cocaine.¹¹⁸ Ultimately, the court gave her the option to participate in the county's "Divert Court" drug program, as opposed to incarceration, because Texas law permitted that alternative.¹¹⁹

Like Texas, the right to restitution is enumerated within the Illinois Constitution.¹²⁰ The Illinois Code of Criminal Procedure also gives victims the right to restitution in their criminal proceedings.¹²¹ However, Illinois statutes limit the state's ability to impose restorative principles. For example, mediation legislation in Illinois, such as the Illinois' Uniform Mediation Act, does not encompass criminal acts, whereas Texas' does.¹²² Because Illinois declines to resolve criminal acts via mediation, it inevitably sends many offenders into the prison system who would qualify for one of these alternative options.¹²³ Consequently, Illinois continues to maintain its stagnant, elevated recidivism rate.¹²⁴

The Illinois Balanced and Restorative Justice Project, an organization that promotes the practices of restorative justice, focuses much of their work on schools.¹²⁵ This organization recognized two Chicago schools that have successfully implemented restorative practices, Manley Career Academy High School ("Manley") and Christian Fenger Academy High School

STATISTICS, PRISONERS IN 2004, 3 (2005).

117. *Laureles v. State*, 2014 Tex. App. LEXIS 4398, *1 (2014).

118. *Id.*

119. *Id.*

120. ILL. CONST. art 1, § 8.1.

121. ILL. CONST. art 1, § 8.1; 725 ILL. COMP. STAT. 120/4.5 (2019).

122. H.R. 2146, 93rd Gen Assemb., Reg. Sess. (Ill. 2003).

123. *Id.*

124. *Id.*; See generally Arit John, *A Timeline of the Rise and Fall of 'Tough on Crime' Drug Sentencing*, ATLANTIC (Apr. 22, 2014) www.theatlantic.com/politics/archive/2014/04/a-timeline-of-the-rise-and-fall-of-tough-on-crime-drug-sentencing/360983/ (explaining the nationwide ideologies of drug sentencing and changes that have affected states such as Illinois).

125. See Balgoyen, *supra* note 102 (explaining restorative justice practices in communities and schools).

("Fenger").¹²⁶ Manley partnered with Umoja Student Development Corporation, a non-profit organization, to assist at-risk students with furthering their education.¹²⁷ Umoja helps students with college and career preparation, long-term mentoring, social and emotional support, and academics.¹²⁸ In 2009, eighty percent of Manley's students graduated; in contrast, the average graduation rate across Chicago Public Schools was a meager forty percent.¹²⁹ Furthermore, before this program existed, only ten percent of students attended college or a university.¹³⁰ In 2009, all but a few students attended post-secondary education.¹³¹

Similarly, Fenger has seen success practicing restorative justice techniques.¹³² The school's former principal, Robert Spicer, recognized that students were open to this restorative change so long as faculty explained to students its importance.¹³³ Since implementing restorative justice practices in 2009, the school's misconduct rate has been reduced by seventy percent.¹³⁴ The origin of restorative justice in schools stem from the criminal justice technique. If the restorative approach has been this successful in Illinois schools, it can likely be successful in the Illinois correctional system.

C. Texas Alternative Courts and Restitution Programs

1. Texas' Special Sanctions Court

Texas created a Special Sanctions Court in 2004.¹³⁵ This court oversees probationers who are at a high risk of recidivating.¹³⁶ It is available to those who have committed felonies and seeks to ensure

126. *Id.*

127. *Id.*

128. Dawn Rhodes, *Group Helps At-Risk Kids Further Their Education*, UMOJA (Oct. 18, 2012), www.umojacorporation.org/news-events/media/umoja-chicago-tribune/.

129. Clare Lane, *Umoja Provides a College Plan for Manley Career Academy Students*, CHI. TRIB. (June 12, 2009), articles.chicagotribune.com/2009-06-12/news/0906110172_1_students-graduate-college-and-career-program.

130. *Id.*

131. *Id.*

132. Nirvi Shah, *"Restorative Practices:" Discipline but Different*, THE NOTEBOOK (Oct. 22., 2012), thenotebook.org/articles/2012/10/22/restorative-practices-discipline-but-different.

133. *Id.*

134. *Id.*

135. See Marc Levin, *Restorative Justice in Texas: Past, Present, & Future*, TEXAS PUBLIC POLICY FOUNDATION (Sept. 2005) (analyzing different restitution courts in Texas); see generally *Special Sanctions Court*, FORT BEND COUNTY, TEXAS (2017), www.fortbendcountytexas.gov/index.aspx?page=1725 (providing location and contact information regarding Texas' Special Sanctions Court).

136. *Special Sanctions Court*, *supra* note 135.

that offenders are meeting all requirements of their probation.¹³⁷ This court differs from traditional probation because it is able to adjust the terms of probation (i.e. making terms of the probation tougher or providing incentives such as a reduction in fees).¹³⁸ Additionally, its participants are provided with close supervision and treatment services.¹³⁹ Within the court's first seven months of operation, Fort Bend¹⁴⁰ experienced a sixty-two percent drop in recidivating due to technical violations and a thirty-one percent drop in recidivating due to the commission of new crimes.¹⁴¹

Experts at the University of Houston evaluated the effectiveness of this court.¹⁴² Studies found that the participants of this program felt this court has greatly helped them successfully complete their probation sentences.¹⁴³ Moreover, participants were less likely than non-participants to violate probation conditions, commit new offenses, and be convicted of new offenses.¹⁴⁴

2. Texas' DIVERT Court

Texas also created DIVERT Court—a drug court.¹⁴⁵ It is available to Dallas County residents and provides a treatment regimen controlled by a judge.¹⁴⁶ Upon completion of this program, an offender can move to have his or her drug related charge dismissed or expunged.¹⁴⁷ A Southern Methodist University Study found that the recidivism rate of those participating in this court was sixteen percent, while the recidivism rate of those not receiving any drug treatment was fifty percent.¹⁴⁸

137. CLETE SNELL, FORT BEND COUNTY COMMUNITY SUPERVISION AND CORRECTIONS SPECIAL SANCTIONS COURT PROGRAM: EVALUATION REPORT ii (2007).

138. Levin, *supra* note 135.

139. *Id.*

140. Fort Bend is a county in Texas where the Court is located.

141. Levin, *supra* note 135.

142. SNELL, *supra* note 137, at 2.

143. *Id.* at 7-8.

144. *Id.*

145. Levin, *supra* note 135; See Scott Goldstein, *Dallas County's DIVERT Program Provides Intense Supervision in Substance Abuse Cases*, DALLAS MORNING NEWS (Aug. 21, 2013), www.dallasnews.com/news/crime/2013/08/21/dallas-county-s-divert-program-provides-intense-supervision-in-substance-abuse-cases (telling a story about a DIVERT Court participant and his success in the program).

146. *Divert Court Program*, DALLAS COUNTY, www.dallascounty.org/departments/criminal-justice/divert-court-program.php.

147. *Id.*

148. Levin, *supra* note 135; see also SOUTHERN NEW HAMPSHIRE UNIVERSITY, *DIVERT COURT OF DALLAS COUNTY: COST-BENEFIT ANALYSIS* (2002), faculty.smu.edu/tfomby/divertfinal.pdf (studying the recidivism rates and successfulness of Texas' DIVERT Court).

3. *Texas' Victim-Offender Mediation Dialogue Program*

Texas' Victim-Offender Mediation Dialogue Program was initiated in 1994 and became permanent in 2001 pursuant to the passage of H.B. 1751.¹⁴⁹ This program is unique in that victims are given control over the program.¹⁵⁰ Victims decide whether they wish to meet their offender.¹⁵¹ If the offender does not want to meet, they have the option to communicate via letter.¹⁵² If the offender does not want to meet or write, the victim can meet with another prisoner who is willing to speak to the victim regarding his or her experience.¹⁵³ A goal of this process is to answer any questions the victim may have in order to achieve healing.¹⁵⁴ This program is also open to violent crimes.¹⁵⁵

Dr. Marilyn Armour, a nationally recognized expert in restorative justice, has evaluated this program.¹⁵⁶ She concluded that ninety-seven percent of the program's participants were satisfied with the results, and eighty percent reported major life changes.¹⁵⁷ Victims' families reported that feelings of anger and revenge were reduced after participating in this mediation.¹⁵⁸ Even offenders reported a greater sense of self-esteem after being able to reconcile with the victim.¹⁵⁹ Currently, most participating offenders are serving long-term sentences and therefore recidivism rates cannot be tracked; however, a national study concluded that victim-offender mediation reduces recidivism rates between eighteen and twenty-seven percent.¹⁶⁰

4. *Texas' Bridges to Life Program*

Another program targeted towards reducing Texas' recidivism rates is Bridges to Life.¹⁶¹ Bridges to Life operates in ninety-five

149. *Id.*; see generally VICTIM OFFENDER MEDIATION DIALOGUE PROGRAM, TEXAS DEPARTMENT OF CRIMINAL JUSTICE (2015) (providing questions and answers regarding the Victim Offender Mediation Dialogue Program).

150. *Victim Services Division*, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, www.tdcj.state.tx.us/divisions/vs/vomd.html. (last visited Oct. 23, 2017).

151. Levin, *supra* note 135.

152. *Id.*; VICTIM OFFENDER MEDIATION DIALOGUE PROGRAM, *supra* note 149 and accompanying text.

153. VICTIM OFFENDER MEDIATION DIALOGUE PROGRAM, *supra* note 149.

154. *Id.*

155. Levin, *supra* note 135.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. MARK S. UMBREIT, ROBERT B. COATES & BORIS KALANJ, VICTIM MEETS OFFENDER: THE IMPACT OF RESTORATIVE JUSTICE AND MEDIATION (Monsey, N.Y.: Criminal Justice Press, 1994).

161. *History and Mission*, BRIDGES TO LIFE (2011), www.bridgestolife.org/index.php?option=com_content&view=article&id=3&Itemid=6.

prisons, forty-eight of which are located in Texas.¹⁶² Bridges to Life is a 12-week program that houses victims and offenders and features discussions, panels, and classroom-style sessions.¹⁶³ This program is similar to the Victim-Offender Mediation Dialogue Program; however, Bridges to Life handles interactions of victims and offenders as a whole and in large groups.¹⁶⁴ Offenders who participate in this program are generally a year short of being released from prison.¹⁶⁵ Inmates are required to explain their crimes and write a letter to the victim's family.¹⁶⁶

Over 4,600 inmates have graduated from this program in Texas.¹⁶⁷ The recidivism rate for participants of this program is only 12.7 percent.¹⁶⁸ Overall, Texas has fourteen restitution centers in the state.¹⁶⁹ A judge possesses authority to order a person to confinement at one of these centers, as opposed to prison.¹⁷⁰ At these centers, residents work full-time, attend rehabilitation programs, and perform community service.¹⁷¹

D. Illinois Alternative Courts and Restitution Programs

1. Illinois Restorative Justice Court

Illinois recently created a Restorative Justice Court in 2017.¹⁷² There is not much data available for this court, as the program is still in its infancy.¹⁷³ To be eligible for this court, the offender must be a resident of North Lawndale (where the Court is located) between the ages of 18-26.¹⁷⁴ This Court is the first of its kind in the

162. *Id.*

163. Levin, *supra* note 135; see Leslie Yates, *Local Heroes: Judge Bill Burke: Building Bridges to Life*, 44 HOUS. LAWYER 30 (2007) (providing background and history of Texas' Bridges to Life Program); see also Katherine Beaty Chiste, *Faith-Based Organizations and the Pursuit of Restorative Justice*, 32 MAN. L.J. 27, 45 (2007) (acknowledging the faith-based principles sometimes seen in restorative justice). Bridges to Life is a faith-based prison ministry program. *Id.*

164. Yates, *supra* note 163.

165. *Id.*

166. *Id.*

167. BRIDGES TO LIFE, *supra* note 161.

168. Levin, *supra* note 135.

169. *Id.* at 9.

170. *Id.*

171. See generally Alan T. Harland, *Monetary Remedies for the Victims of Crimes: Assessing the Role of Criminal Courts*, 30 UCLA L. REV. 52, 76 (1982) (providing a historical background regarding the need for restitution and the different forms restitution can be used).

172. Yana Kunichoff, *Should Communities Have a Say in How Residents Are Punished for Crime?*, ATLANTIC (May 2, 2017), www.theatlantic.com/politics/archive/2017/05/chicago-restorative-justice-court/524238/.

173. *Id.*

174. Michael A. Strom, *Restorative Justice Community Court is Coming to Cook County*, www.decaloguesociety.org/wp-content/uploads/2017/01/2016-Fall-Restorative-Justice-Court-CORRECTED.pdf (last visited Oct. 24, 2017).

state but is not necessarily permanent.¹⁷⁵ In an attempt to assist the court's take-off, the Department of Justice granted Cook County \$200,000 to pilot the court for two years.¹⁷⁶ This court seeks to bring victims and offenders face to face in an effort to work out an agreement and resolution to the crime committed.¹⁷⁷ In effect, the victim and defendant postulate an appropriate remedy that is ultimately approved by a judge.¹⁷⁸ The court convenes each Thursday and is expected to serve about one hundred defendants in its first year of operation.¹⁷⁹

If the defendants satisfy their end of the agreement, crimes are expunged and no jail time is served.¹⁸⁰ However, the eligibility requirements for this court limit its effectiveness within the state. Further, this court can only resolve non-violent felonies and misdemeanors.¹⁸¹

The Illinois Association of Problem-Solving Courts published a list of "problem solving" courts in the state.¹⁸² These courts are broken down into three areas: drug courts, mental health courts, and veteran courts.¹⁸³ However, these courts fail when it comes to a restorative justice approach, as they only involve the defendant and not the victim.¹⁸⁴ This is problematic because victim participation is one of the core ideologies of restorative justice.¹⁸⁵

E. Comparison of Texas and Illinois Finances

Another benefit to Texas' restitution centers is their cost efficiency.¹⁸⁶ In 2001, Texas spent an average of \$7,957 per offender to participate in a community correctional program.¹⁸⁷ In comparison, it would cost approximately \$40,538 to send each offender to prison.¹⁸⁸ In 2015, Texas reportedly spent \$22,012 per prisoner.¹⁸⁹ This amount is much less than the national average.¹⁹⁰

175. *Id.*

176. *Id.*

177. Tabor, *supra* note 15.

178. *Id.*

179. *Id.*

180. *Id.*

181. Kunichoff, *supra* note 172.

182. *Problem-Solving Courts in Illinois*, ILLINOIS ASSOCIATION OF PROBLEM-SOLVING COURTS (2017), www.ilapsc.org/ProblemSolvingCourtsIL.html.

183. *Id.*

184. *Id.*

185. Van Ness & Nolan, *supra* note 72.

186. Levin, *supra* note 135.

187. *Id.*

188. *Id.*

189. *How Much Do States Spend on Prisons?*, BACKGROUNDCHECKS.ORG (2017), backgroundchecks.org/home-security/state-prison-statistics#How-much-do-states-spend-on-each-prisoner?.

190. *Id.*

On the other hand, Illinois spends an excessive amount of money on corrections.¹⁹¹ According to a Vera Institute of Justice study, Illinois spends \$38,286 per year, or \$105 per day, on each inmate.¹⁹² Another 2015 study concluded that Illinois spends about \$33,507 per year on each inmate.¹⁹³ The Illinois Department of Corrections spends most of its budget running its prisons instead of rehabilitative and restorative programs.¹⁹⁴ In 2014 alone, Illinois prison employee overtime cost taxpayers \$74 million.¹⁹⁵

The Illinois State Commission on Criminal Justice and Sentencing Reform's Final Report in response to Rauner's Executive Order states that Illinois is acting inappropriately when it comes to correctional spending.¹⁹⁶ The Illinois Department of Corrections' budget has remained relatively steady, even as the prison population has risen.¹⁹⁷ Therefore, the state is spending too much on corrections given Illinois' fiscal needs, but not enough compared to the number of people Illinois incarcerates.¹⁹⁸ Illinois should allocate these fiscal resources more responsibly to create an effective correctional system.¹⁹⁹ Illinois must make changes to the correctional system that resembles the programs and ideologies in Texas. This will greatly reduce its recidivism rates, while making Illinois a safer and more cost-efficient state.

IV. PROPOSAL

This section will propose new solutions to reducing Illinois' high recidivism rates. If Illinois is serious about reducing its prison rates twenty-five percent by 2025, then Illinois must be willing to implement considerable changes to its correctional system and be open-minded when determining solutions.²⁰⁰ With the help of model

191. Berg, *supra* note 48.

192. Roger Schlueter, *This Is How Much Illinois Spends Per Inmate Per Year*, BELLEVILLE NEWS-DEMOCRAT (Aug. 12, 2017), www.bnd.com/living/liv-columnists-blogs/answer-man/article166830882.html.

193. BACKGROUNDCHECKS.ORG, *supra* note 189.

194. BRIAN JACKSON-GREEN ET AL., MAKING ILLINOIS SMART ON CRIME: FIRST STEPS TO REDUCE SPENDING, EASE OFFENDER RE-ENTRY AND ENHANCE PUBLIC SAFETY, ILLINOIS POLICY (2017).

195. *Id.*

196. ILL. STATE COMM'N ON CRIMINAL JUSTICE AND SENTENCING REFORM, *supra* note 108, at 15-16.

197. *Id.*; see also Bryant Jackson-Green, *Prison Population Growth Driving Illinois Corrections Budget Higher*, ILL. POL'Y (July 22, 2015), www.illinoispolicy.org/population-growth-driving-illinois-prison-budget-higher/ (addressing Illinois prison costs and concluding the need for significant change in correctional spending).

198. Jackson-Green, *supra* note 197, at 16.

199. *Id.*

200. Ill. Exec. Order 15-14, *supra* note 43; see David E. Olson, *Presentation: Getting to 25% by 2025* at the Illinois Governor's Criminal Justice and Sentencing Commission (May 14, 2015) (presenting an alternative viewpoint

states, such as Texas, who have seen success through the implementation of restorative justice, Illinois can achieve its recidivism goal and improve the overall quality of the state.²⁰¹ This can be accomplished through incorporating programs similar to Texas', expanding its current restorative justice court, and amending its correctional/sentencing statutes to reflect a restorative approach.

As previously noted, former Governor Bruce Rauner issued an Executive Order in 2015 calling for reforms to the correctional system in an effort to reduce Illinois' prison rates.²⁰² While this order seems like a great start to solve Illinois' recidivism problem, it is still too early to tell if any significant changes have resulted. In 2019, J.B. Pritzker replaced Rauner as Governor. Presumably, Pritzker will continue the push towards restorative justice,²⁰³ but since the Commission's Final Report was completed in 2016 not many changes have been made.²⁰⁴ Illinois can still be doing more to address the recidivism problem. A brief discussion below will propose ideas, which, in conjunction with the Executive Order and Final Report, can help Illinois significantly reduce its recidivism rates.

This comment proposes that Illinois adopt a restorative approach to its correctional system by incorporating programs used in Texas. Because Illinois already has some similar programs, this section will focus on what Illinois is missing.

Illinois needs a program which brings the victim and offender face-to-face, like Texas' Victim-Offender Mediation Dialogue Program.²⁰⁵ Currently in Illinois, the drug, veteran, and mental health courts solely focus on the offender.²⁰⁶ The victim plays no part in the treatment or restitution; it is just assumed that they are equipped to heal from the crime on their own, or that the money

explaining ways in which Illinois can achieve its goal of reducing prison rates by 2025).

201. Cohen, *supra* note 13.

202. Ill. Exec. Order 15-14, *supra* note 43.

203. Stefano Esposito, *Pritzker Unveils Justice Reform Initiative*, CHI. SUN TIMES (Feb. 11, 2019), chicago.suntimes.com/news/illinois-criminal-justice-reform-marijuana-legalization/.

204. ILL. STATE COMM'N ON CRIMINAL JUSTICE AND SENTENCING REFORM, *supra* note 108.

205. Drake, *supra* note 83; see Mark William Bakker, *Repairing the Breach and Reconciling the Discordant: Mediation in the Criminal Justice System*, 72 N.C.L. REV. 1479 (1994) (providing additional information regarding mediation in the criminal justice system). This comment explains that mediation has grown tremendously in the United States and calls for an even greater expansion. *Id.* See also Christopher Bright, *Victim Offender Mediation*, CTR. FOR JUST. & RECONCILIATION, restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/victim-offender-mediation/ (last visited Oct. 4, 2019) (explaining the history of Victim-Offender Reconciliation and how it originated as an experiment).

206. ILLINOIS ASSOCIATION OF PROBLEM-SOLVING COURTS, *supra* note 182.

provided to them will make them whole again.²⁰⁷ Implementing a program in Illinois like the Victim-Offender Mediation Dialogue Program can successfully bring the recidivism rates of the state down because it allows for both sides to mutually come to an agreement and resolve any issues. Advantages include the victim being able to speak and write to the offender, and the offender truly understanding the impact of his or her crime.

If parties can agree on a resolution, the crime can be expunged, which saves the state money by not incarcerating the offender.²⁰⁸ Also, assuming the offender completes a rehabilitation program and is changed by this experience, the state will save more money in the future by not prosecuting the same person for the same crime.²⁰⁹ While this approach will not prevent every offender from committing crimes, it will still greatly help reduce Illinois' recidivism rate. Many people incarcerated in Illinois were arrested for committing petty crimes or misdemeanors; these crimes can be prevented if the offender's core problems are assessed, addressed, and healed.²¹⁰

Bringing the victim and offender together, on its face may seem outlandish, but this restorative and peaceful approach to crime can be what the state needs in order to stop habitual offenders' perpetual cycles of crime. Some may believe that a victim would never want to meet face-to-face with their offenders. However, studies have shown that victims actually prefer rehabilitation, education, and alternative sentences as opposed to harsh prison sentences.²¹¹ Accordingly, mutual involvement by the victim and offender in the restitution process provides the best outcome for both parties.²¹²

Currently, the requirements to participate in the new Illinois Restorative Justice Court severely limit its availability to Illinois residents.²¹³ This comment proposes an expansion of the Illinois Restorative Justice Court to allow people of any age, in any location which has jurisdiction in Illinois, to participate. By requiring participants to be 18-26 years of age, Illinois excludes a significant

207. *Id.*

208. Berg, *supra* note 191.

209. See LeRoy L. Kondo, *Advocacy of the Establishment of Mental Health Specialty Courts in the Provision of Therapeutic Justice for Mentally Ill Offenders*, 28 AM. J. CRIM. L. 255 (2001) (exploring the solution of mental health courts to stop chronic nuisance crime commission).

210. THE ILLINOIS DEPARTMENT OF CORRECTIONS, FISCAL YEAR 2016 ANNUAL REPORT (2016), www.illinois.gov/idoc/reportsandstatistics/Documents/FY2016%20Annual%20Report.pdf. This report states that in 2016, 16.5 percent of offenders in an Illinois prison were incarcerated for a controlled substance violation. *Id.* Further, 55.7 percent of people were incarcerated for Class 1-4 felonies, many of which could utilize my restorative justice propositions. *Id.*

211. ALLIANCE FOR SAFETY AND JUSTICE, *infra* note 220.

212. *Id.*

213. Berg, *supra* note 191.

range of people, curtailing the courts reach.²¹⁴

Another proposition includes creating multiple restorative justice courts throughout Illinois because many locations could benefit from this court, like North Lawndale has already. Multiple restorative courts would be beneficial to have in Chicago alone, as it is the state's most populous city.²¹⁵ Adding a court to southern and central Illinois would also be beneficial because it would be available and accessible to more residents. If courts were more ubiquitous, both victim and offenders would have easier accessibility, which in turn would increase participation rates.

Some have argued that due to Illinois' financial crisis, Illinois simply does not have the means to provide alternative courts.²¹⁶ Taxpayers pay approximately \$118,746 each time an offender recidivates.²¹⁷ Nonetheless, research indicates that restorative justice programs could save Illinois \$780,500 per year.²¹⁸ Illinois Policy Institute Research concluded that implementing restorative justice approaches, instead of incarceration, could save over \$1,500 per inmate.²¹⁹ When looking at costs of incarceration compared to costs of alternative courts, it is simply more cost-effective to choose alternative courts.

Additionally, this comment suggests that Illinois expand these courts to allow for all types of crime, not just non-violent felonies or misdemeanors, with the consent of the victim. Overall, victims prefer rehabilitation as opposed to harsh sentencing, assuming rehabilitation is actually effective.²²⁰ If the victim is willing to

214. THE ILLINOIS DEPARTMENT OF CORRECTIONS, *supra* note 210. This report also states that in 2016, the average age of an offender in an Illinois prison was 37 years old. *Id.* Therefore, the average offender would be prohibited from participating in this new Illinois Restorative Justice Court. This conclusion supports the contention that the requirements for this court must be expanded.

215. U.S. CENSUS BUREAU, 2010 CENSUS OF POPULATION AND HOUSING (2010), www.census.gov/prod/cen2010/cph-2-15.pdf.

216. See generally Ted Dabrowski & John Klingner, *The History of Illinois' Fiscal Crisis*, ILL. POL'Y, www.illinoispolicy.org/reports/the-history-of-illinois-fiscal-crisis/ (last visited Oct. 4, 2019) (outlining the history of Illinois' financial crisis and explaining the reasoning for Illinois not having a budget); Julie Roin, *Illinois and Seventh Circuit Article: Planning Past Pensions*, 46. LOY. U. CHI. L.J. 747 (2015) (providing a background in Illinois financial problems and explaining its unfunded pension plans).

217. Berg, *supra* note 191.

218. *Id.*

219. *Id.*

220. See ALLIANCE FOR SAFETY AND JUSTICE, CRIME SURVIVORS SPEAK: THE FIRST-EVER NATIONAL SURVEY OF VICTIMS' VIEWS ON SAFETY AND JUSTICE (2016), www.allianceforsafetyandjustice.org/crimesurvivorspeak/ (explaining that victims overwhelmingly prefer rehabilitative approaches to crime as opposed to punishment). This study was a first of its kind and shows that the United States is experiencing a significant shift in the way we look at crime. *Id.* By an almost 3 to 1 margin, victims stated they preferred our correctional systems to invest more money in rehabilitation programs as opposed to prisons.

participate, there is no reason the state should exclude a victim simply based on the type of crime. Our correctional system should strive to heal the parties to a crime rather than denying victims the opportunity to participate.²²¹

In order to lower recidivism rates, Illinois should change its current statutory scheme regarding sentencing and corrections. Specifically, it should be statutorily mandated that all criminals participate in treatment or attend a rehabilitation program. Further, statutes should be amended to allow, at the victim's wishes, a mediation between the victim and offender. At these meetings, a victim can voice what they believe is proper restitution. This restorative approach allows for both the victim and the offender to fully heal and move on from the incident, deterring the offender from committing a crime again and allowing the victim to become whole again. If the victim and offender come to some sort of restitution agreement, the crime should be expunged, and if not, then it would be fair for the offender to be incarcerated.²²²

There are, however, certain situations and crimes where the offender should be incarcerated, regardless of what the victim wants, in the interest of public safety. These instances should be limited to violent felonies, such as murder and armed robbery, or where an offender is deemed a danger to society. Even these offenses should have mandated programs with the hope of rehabilitating the offender.²²³ Meetings with the victim, once again victim permitting, should also be allowed to help heal the victim.²²⁴ Because many of the inmates in state facilities are incarcerated due to drug or non-violent offenses, this new change in legislation will greatly help reduce the number of inmates and, in turn, the recidivism rate.²²⁵

Reforming Illinois' correctional system will not only help lower the crime rate and reduce recidivism, but it can improve the state's financial condition. It would be much cheaper for Illinois to heal and rehabilitate its criminals as opposed to incarcerating them.²²⁶ Allocating more resources to rehabilitate offenders will save Illinois money as opposed to being so quick to lock offenders up and throw away the key.²²⁷

Id.

221. Lee, *supra* note 44.

222. Tabor, *supra* note 15. This idea is modeled after an aspect of the new Illinois Restorative Justice Court. *Id.*

223. Levin, *supra* note 135.

224. WEITEKAMP & KERNER, *supra* note 59.

225. THE ILLINOIS DEPARTMENT OF CORRECTIONS, *supra* note 210.

226. JACKSON-GREEN ET AL., *supra* note 194.

227. Berg, *supra* note 191.

V. CONCLUSION

Illinois' current correctional system is ineffective. Recidivism rates are higher than the national average and the state spends an excessive amount of money to house prisoners each year.²²⁸ To fix its high recidivism rate, Illinois must take more immediate action than Rauner's Executive Order and the Commission's Final Report outlines.

Illinois can lower its recidivism rates by applying some of the reforms Texas has enacted—adopting a restorative, rather than punitive, approach to crime. Further, the state must expand its current restorative justice court. Illinois can involve more residents in the restorative justice process by enacting restorative justice courts throughout the state. Lastly, Illinois should expand its statutory scheme to encompass restorative justice principles. Implementing these changes to Illinois' correctional system will ease the financial crisis in Illinois. Illinois has the power and means to greatly reduce recidivism if it takes effective action.

228. PEW CENTER ON THE STATES, *supra* note 1; Schlueter, *supra* note 192.