

Policy Texas Public Policy Foundation

June 2006

Perspective



Laying the Foundation for Better Probation

by Marc Levin Esq., director of the Center for Effective Justice

Introduction

The origins of probation can be traced to English criminal law of the Middle Ages and growing dissatisfaction with the over 200 crimes, many minor, that were punishable by death at the whim of the King. Probation is a term coined by John Augustus, from the Latin verb "probare"—to prove, to test. Augustus was a Massachusetts bootmaker who brought probation to America and was the nation's first probation officer.¹

Probation in Texas began as "desk probation" with an offender simply checking in with a judge or court administrator every so often. However, rather than simply wait for offenders to check-in, the modern probation system is expected to take pro-active measures to ensure that offenders are reformed and victims are recompensed. Today, probation is the most extensive feature of the state's criminal justice system, encompassing more offenders than prisons and parole combined. Some 455,000 Texans, which amounts to one out of every 20 people, are on probation.

The state's probation system consists of 121 judicial districts known as Community Supervision and Corrections Departments (CSCDs). These 121 regional CSCDs oversee probation in the state's 254 counties with major counties having their own CSCD while small, rural counties often share a CSCD.² CSCDs receive state funds through the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ-CJAD) and fund the remainder of their operating budgets through probation fees and appropriations by county governments.³ While most of the funding for felony probationers comes from the state,

Policy Recommendations

- Allow judges to release offenders from probation who have met the terms of their probation agreement and do not pose a risk to public safety prior to the current 10-year maximum probation period.
- Increase the number of drug courts through a new fee on convicted drug-related offenders and savings from fewer revocations to prison.
- Create garnishment procedure for victims to collect restitution similar to garnishment of wages for child support.
- Require judges to set a timeline and/or installments for offender's payment of court-ordered restitution to victim.
- Use incentive-based funding to reward probation departments that achieve high rates of collecting victim restitution.
- Frontload basic state probation funding to encourage departments to provide more intensive supervision early in probation terms while releasing probationers who have met all obligations and do not need further supervision.
- Explore feasibility of adopting categorical probation funding formulas that would tie state funding to the supervision needs of each department's population and the actual services provided.
- Modify state law to respond to minor drug-related offenses and technical violations by probationers with treatment rather than revocation to prison.

Continued on next page

Recommendations continued

- Increase availability of inpatient and outpatient drug, alcohol, and mental illness treatment for probationers.
- Eliminate funding priority for CSCDs with highest technical revocation rates.
- Expand use of electronic monitoring as an intermediate sanction for probationers who require closer supervision but do not present a danger to public safety requiring incarceration.

the majority of funding for misdemeanor probationers comes from county governments. Misdemeanant probationers are revoked to county jails while felony probationers are revoked to state jails or prisons.

Recent increases in probationers being revoked to state facilities have spurred legislative interest in probation reform, as these revocations cost the state more than a half billion dollars in recurring incarceration costs and contribute to the projected need for new prisons. Although the 79th Legislature made progress in improving the probation system, additional work remains for the 80th Legislature.

Recent increases in probationers being revoked to state facilities have spurred legislative interest in probation reform, as these revocations cost the state more than a half billion dollars in recurring incarceration costs.

Accomplishments of the 79th Legislature

The Legislature and Governor Rick Perry could not agree on House Bill 2193, which would have made

changes in the state's probation system, including shortening probation terms and creating mandatory early termination review. Nonetheless, the 79th Legislature and Governor Perry bolstered the probation system through the appropriations process.

The appropriation bill added \$55.4 million in probation funding for the 2006-07 biennium. While more money is hardly the answer to every problem, additional funding for probation can actually save the state money on prisons and reduce crime, as the following facts suggest:

- Crime actually pays—at least for the state. For every \$1 the state spends, the probation system collects \$1.13 in offender fees for supervision, victim restitution, court costs, and fines. This does not include the 10.2 million hours of community service work performed by probationers in the 2003 fiscal year, which at minimum wage would be valued at \$52.5 million.⁴
- In 2001, 37 percent of prison intakes and 41 percent of state jail intakes that were revoked probationers accounted for \$547 million in direct incarceration costs.⁵ The figure is substantially higher today due to more probationers, higher revocation rates, and inflation-related increases in incarceration costs. Simply based on the more than 4,100 additional revocations to prison in 2004 as compared to 2001,¹ the figure today is at least \$653 million.
- From fiscal years 1995 to 2004, state probation appropriations declined 4.3 percent in real terms, and far more in inflation-adjusted terms. During the same period, felony revocations increased 44.4 percent, imposing substantial costs on taxpayers through increased incarceration.⁶
- Incarceration costs \$40.06 per day, per offender in the institutional division of TDCJ, a figure that excludes construction costs. Probation costs \$2.27 total per day, which includes the \$1.09 state cost and \$1.18 in offender fees.⁷ In short, while prisons will always be necessary to incapacitate violent offenders, probation is much less costly because it involves far less government

¹There were 22,164 prison revocations from felony probation in 2001, a rate of 13.8 percent, compared to 26,239 such revocations in 2004, a rate of 16.7 percent. See *Statewide Criminal Justice Recidivism and Revocation Rates*, Legislative Budget Board, January 2005.

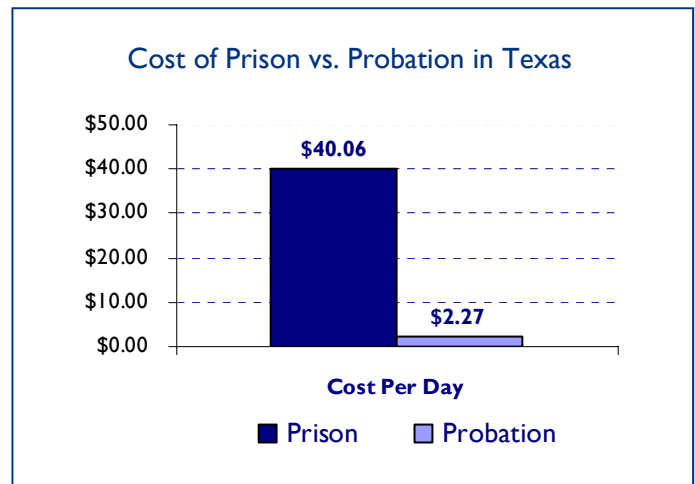
Incarceration costs \$40.06 per day, per offender in the institutional division of TDCJ, a figure that excludes construction costs. Probation costs \$2.27 total per day, which includes the \$1.09 state cost and \$1.18 in offender fees.

than prison. Unlike probation, prison entails not only security costs, but the provision of food, health care, and all other necessities.

- If no changes are made, the Legislative Budget Board (LBB) estimates that by 2010, the state will need more than 14,000 new prison beds, which would cost over \$1 billion in construction expenses alone.⁸ In June 2006, the LBB updated this estimate, predicting only 9,600 new beds may be needed by 2010, which would still amount to nearly \$1 billion in prison construction costs.⁹
- The Wisconsin Policy Research Institute found: “Even 10 percent less recidivism in Wisconsin by those on probation, parole and pretrial release would mean nearly 20,000 fewer crimes a year, saving citizens \$122 million annually and offsetting about 88 percent of the cost of community corrections.”¹⁰

These statistics illustrate the benefits of an effective probation system as an alternative to unnecessary incarceration, particularly for nonviolent drug and property offenders who pose little or no risk to public safety. They also suggest an ideally efficient probation system might itself cost more than the current probation system, but result in less total spending on criminal justice, due to lower incarceration costs. Even if fully implementing a probation system that could provide more intensive monitoring and programming in all appropriate cases required a little more than the \$2.27 per day per offender cost of the current probation system, it would still be far less than the \$40.06 per day per offender cost of the prison system.

Fortunately, the 79th Legislature recognized the benefits of making probation a more viable and effective alternative to prison. Probation funding was increased by \$55.4 million for the 2006-07 biennium. Half of these funds are going towards reducing caseloads while the other half is expanding access to residential treatment and sanction beds. With this funding, legislators sought to reduce the current average ratio of 150-1 of probationers to probation officers to a more manageable 95-1, although 116-1 is thought to be a more realistic estimate. The new funding for residential treatment and sanction beds is expected to result in the creation of another 500 inpatient beds at community correction centers, which include drug and mental illness treatment facilities and work restitution centers.



Source: Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD).

Moreover, the Legislature instructed CJAD that, in distributing these new funds, they should give preference to CSCDs that implement the progressive sanctions model. Progressive sanctions reduce revocations by responding to each probation infraction with measured punishments, such as increased reporting requirements, a curfew, electronic monitoring, or a shock night in jail. Additionally, the Legislature directed CJAD to develop a specific accountability system for monitoring the effectiveness of these programs. In response, CJAD is now providing quarterly reports to each CSCD and a statewide report showing progress based on key criteria, including:

- change in felony probation placements,
- numeric reduction in caseload size,
- percent reduction in felony revocations, and
- percent reduction in felony technical revocations.

The results so far are encouraging. According to CJAD, in the first quarter of 2006, there has been a 12 percent decrease in felony probation revocations attributable to the departments that accepted the new money and implemented progressive sanctions. Since progressive sanctions most directly reduce technical revocations—revocations for violating terms of probation as opposed to committing a new offense—it is even more striking that felony technical revocations have declined from 3,638 in the first quarter of 2005 to 2,893 in the first quarter of 2006, a 20.48 percent decrease.¹¹ If these trends continue throughout 2006, Texas would see 3,000 fewer new prison intakes than projected, reducing the anticipated need for new prison beds.

Priorities for the 80th Legislature

Rework House Bill 2193

The 79th Legislature passed HB 2193, an overhaul of the probation system that was vetoed by Governor Perry. The bill had a positive fiscal note, indicating that it would have produced savings to the state of \$6.64 million in the 2006-07 biennium and \$12.84 million in the 2008-09 biennium.¹² Some prosecutors, led by Williamson County District Attorney John Bradley, objected to the bill. House Corrections Chairman and HB 2193 cosponsor, Jerry Madden (R-Plano), is working with the Governor's office and key stakeholders during the interim to reach consensus on a slightly revised version of this legislation, which is expected to be high on the agenda next session. Therefore, it is instructive to review the key features of HB 2193:

- ***Shorter Probation Terms.*** Texas probation terms average 67 months compared to the national aver-

age of 40 months. HB 2193 would have reduced from 10 years to five years the initial probation terms that judges can impose for third-degree felonies other than “3g” violent and sex offenses.ⁱⁱ Under HB 2193, probation terms could have been extended up to 10 years through a maximum of five one-year, judicially-approved extensions.

- ***Probation Instead of State Jail for Repeat Drug Offenders.*** HB 2193 would have expanded upon HB 2668 by former State Representative Ray Allen, which became law in 2003. Under HB 2668, judges must sentence first-time, nonviolent, low-level drug offenders guilty of a state jail felonyⁱⁱⁱ to probation rather than state jail.^{iv} It is a state jail felony to possess a gram or less of any illegal drug other than marijuana. HB 2193 would have extended this provision to cover state jail felons with previous state jail drug offenses that were reduced to misdemeanors.
- ***Revising Early Termination Procedures.*** Under HB 2193, judges would have been required to review defendants' records and consider whether to reduce or terminate probation after defendants had served one-half of their sentence. Currently, judges may elect to review a probationer for early termination after only one-third of their probation term has elapsed, but there is no requirement that such a review be conducted. For the first time, state jail felons, who are almost entirely nonviolent property or drug offenders, would be eligible for early termination. Under HB 2193, a judge could deny early termination on the grounds that the defendant posed a danger to public safety, but failure to pay restitution or fees could not be the basis for denying early termination if caused by indigence.

ⁱⁱThe “3g” offenses are set forth in the Texas Code of Criminal Procedure, Article 42.12 (3g) and include murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, certain repeat offenses, and certain other offenses committed with a deadly weapon.

ⁱⁱⁱThese state felony drug offenses are possession of one gram or less of any illegal drug other than marijuana, possession of between 4 ounces and 5 pounds of marijuana, and abuse of a prescription drug.

^{iv}Prosecutors have nonetheless been able to obtain county jail time for many such offenders by using Section 12.44(a) of the Penal Code, which allows a judge to punish a state jail felony as if it were a Class A misdemeanor for which the maximum punishment is a year in county jail. As a result, since September 2003, the number of state jail felons in Harris County jails has risen from 327 to 941, an increase of 188 percent.

- ***Credit for Time Served in Court-Ordered Residential Treatment Facilities.*** HB 2193 would have modified existing law to give offenders credit towards the satisfaction of their sentence for time spent in court-ordered residential treatment facilities, such as inpatient drug treatment centers.
- ***Giving Judges Discretion on Community Service.*** Judges would have been given discretion as to whether to require probationers to perform community service. Defense lawyers and some judges have complained that excessive community service requirements interfere with probationers' ability to hold a job, obtain treatment, pay fees and restitution, and take care of their family.
- ***Expanding Drug Courts.*** HB 2193 would have lowered the population threshold over which counties must establish a drug court from 500,000 to 200,000, but only if state or federal funding was available. To help generate this funding, HB 2193 sought to authorize a new \$50 fee to fund the state's drug courts, which would have been charged to defendants convicted of DWIs and drug-related offenses. However, due to an oversight in the appropriations bill, there was no provision directing this funding to drug courts.

In his veto message, Governor Perry objected to HB 2193 because it would shorten probation terms for third degree felonies, such as conviction for assault on a peace officer, taking a weapon away from a peace officer, kidnapping, injury to a child, repeated spousal abuse, intoxication assault, and habitual felony drunk driving. Chairman Madden issued a letter in response to the Governor's veto statement. He commented:

It appears to me to be a bad job by the prosecutor if someone who seriously assaults a peace officer or takes away a peace officer's weapon receives probation. A third degree assault on a peace officer requires infliction of a minimum amount of pain—but no injury. Second degree assault on a peace officer requires serious bodily injury be inflicted. Suspended sentence probation as well as deferred adjudication probation have been available for both of these offenses for over 20

years. As I am sure you are aware, there are different degrees of assault, and a defendant who seriously assaults a peace officer should not receive probation

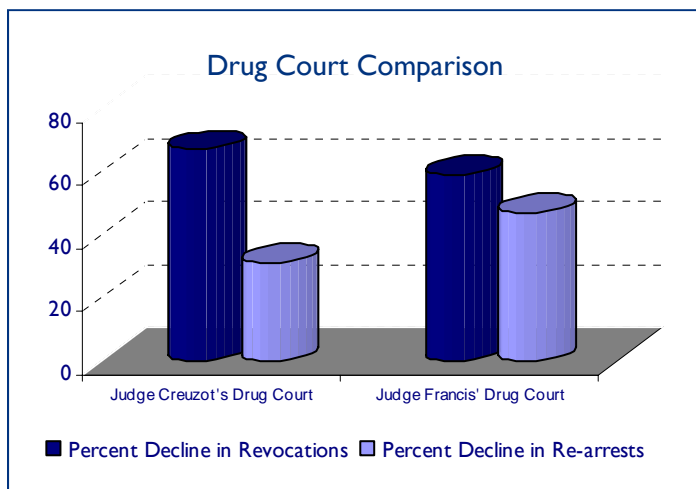
Similarly, while kidnapping is a third degree felony punishable by two to 10 years in prison, aggravated kidnapping is a second degree felony that would not be covered by HB 2193.

The offenses cited by Governor Perry in his veto message represent a small percentage of the third degree felony convictions. There are many more third degree felony convictions for nonviolent drug offenses than there are for assaulting a police officer. With regard to nonviolent drug and property offenses that make up most of the caseload of third degree felonies excluding "3g" and sex offenses, Governor Perry did not express disagreement with the goal of HB 2193, which is shorter but more intensive probation terms for the least serious felony offenders who have kept a clean record while on probation.

In Texas, 54 percent of revocations occur during the first two years of probation. Consequently, it makes sense to focus probation resources during this formative period when most offenders will either transform their life or revert to criminal behavior.

Currently, 18 percent of probationers statewide abscond,¹³ due in part to the high caseloads that limit the ability of CSCDs to apply intensive supervision techniques, such as treatment programs and electronic monitoring, to those probationers most at-risk of absconding or committing new crimes. In fact, many prosecutors have said they would be more likely to request probation as the sentence for nonviolent offenders, if they had more confidence that the probation system would be able to provide sufficient supervision. By releasing from probation those offenders who have been reformed, more resources can be focused on monitoring probationers who continue to

pose a risk to the public. In Texas, 54 percent of revocations occur during the first two years of probation.¹⁴ Consequently, it makes sense to focus probation resources during this formative period when most offenders will either transform their life or revert to criminal behavior.



Source: Dallas County SAFFP Re-Entry Courts Outcome Study, Southern Methodist University, April 2006.

Other important aspects of HB 2193 that deserve support in the 80th Legislature include expansion of drug courts, credit for time served in court-ordered residential treatment facilities, and the use of probation and/or county jail instead of state jail for repeat minor drug offenders. The data strongly supports the use of drug courts and mandatory treatment as alternatives to incarceration. A new, independent three-year review of participants in the drug courts of Dallas Judges John Creuzot and Robert Francis shows that, compared to the control group, revocations were reduced 67 percent in Judge Creuzot's court and 59 percent in Judge Francis' court.¹⁵ Similarly, re-arrests were reduced 31 percent in Judge Creuzot's court and 47 percent in Judge Francis' drug court. Similar findings regarding the efficacy of drug courts are discussed further in the Foundation's policy brief, "Drug Courts: The Right Prescription for Texas."¹⁶

In revising HB 2193, legislators should secure funding for new drug courts, using both the new fee and part of the millions in savings the LBB estimates from the legislation. Funding should be provided for additional drug courts in counties with more than 500,000 people as well as an initial drug court in counties with populations above 200,000.

One aspect of HB 2193 that concerns some victims' advocates is that more offenders would be released early from probation, despite having not fully paid restitution. This is an issue that is largely inapplicable to drug offenses, but relevant to the property offenses and the less serious violent offenses covered by the bill. As passed by the Legislature, HB 2193 stated: "A judge may not refuse to terminate a period of community supervision solely on the ground that the defendant is indigent and unable to pay restitution, fines, costs, or fees."¹⁷ Although somewhat unclear, the intent of this provision was presumably to cover only those probationers who have made a good faith effort to obtain employment. The provision should be clarified to clearly authorize the judge to determine why the probationer lacks the resources to pay restitution.

Fundamentally, the Legislature must examine whether probation is the most effective alternative for collecting restitution from an offender who has satisfied all of the other terms of their probation, since revocation to prison is rarely sought for a probationer whose only violation of their terms of probation is failure to pay restitution. Of course, an incarcerated individual by definition will not be earning funds with which to pay restitution. Whatever leverage probation offers for collecting restitution is also complicated by the substantial fees an offender must pay to the probation department, which may come at the expense of restitution. Accordingly, there are several measures that would enhance the collection of restitution, particularly from released probationers.

Improve Collection of Restitution from Probationers and Offenders Released from Probation

Nationally, the rate of collecting restitution orders is estimated to be between 34 and 45 percent.¹⁸ The potential release of more offenders from probation earlier in their terms highlights the importance of empowering victims with sufficient tools to collect any restitution that remains. Some entity, whether it is the CSCD or District Attorney's office, must have the responsibility and the resources to assist victims in obtaining restitution from offenders released from probation with outstanding restitution payments due.

First, victims must be informed of the probation sentence so that they are aware of the restitution order that is a condition of probation. In 1995, the Legislature required that CSCDs provide services to crime

victims, or if they are deceased, their closest relatives. Victim services include notification of the offender's current status and conditions of community supervision, as well as the date, time, and location of any hearing at which the conditions of the offender's community supervision may be modified, revoked, or terminated. However, the only state funding to support these victim services is a modest grant program that helps a small percentage of CSCDs.

In 1995, State Representative Pete Gallego (D-Alpine) introduced HB 3070 that would have instituted garnishment for court-ordered restitution, but the legislation was left pending in committee.

In collecting child support, Texas relies in large part on judicially-approved garnishment orders through which payments are automatically deducted from the obligor's salary. By making a similar procedure available for crime victims who are owed restitution, the collections rate can be increased. In 1995, State Representative Pete Gallego (D-Alpine) introduced HB 3070 that would have instituted such garnishment for court-ordered restitution, but the legislation was left pending in committee.¹⁹ Arizona, a leader in victims' rights, has enacted a statute providing for garnishment to collect restitution.²⁰

Texas is one of 32 states that allow crime victims to enforce restitution orders in the same manner as a civil judgment.²¹ However, enforcing civil judgments is notoriously difficult in Texas, as debtors can exempt their homestead as well as \$60,000 in personal property if married and \$30,000 if single. These exemptions should be lowered for restitution payments to account for the fact that a criminal offense is more serious than a civil debt. Another problem is that Section 42.037 merely gives the judge discretion when ordering restitution to impose a timetable for making payments. Therefore, in many cases, it is never clear when the offender is delinquent on restitution. This statute should be modified to require that courts require installments and/or a deadline for fully satisfying the restitution obligation.

Additionally, the Legislature should ensure that the Attorney General's or district attorney's office provides victims with the legal assistance needed to obtain garnishment orders and liens. If additional staffing is needed to accomplish this, some of the savings from shortening probation terms and reducing revocations could be used. Victims should not be required to spend their own resources on retaining attorneys to collect the restitution they are owed.

Finally, the Legislature should provide incentive funding for probation departments that collect restitution at rates above the state or national average. Such a program would be similar to the incentive funding that Governor Perry recently implemented to reward the best performing teachers. Currently, not all CSCDs actually report their restitution collections to the TDCJ Victim Services Division. In addition to providing an incentive for CSCDs to put greater emphasis on collecting restitution owed to victims, such incentive-based funding would encourage those CSCDs that do not monitor and/or report to the state their rate of collecting restitution to begin doing so.

Revise Probation Funding Formulas to Front-load Funding, and Make Such Funding Contingent on Full Implementation of Progressive Sanctions Model

State funding can be leveraged to encourage and enable probation departments to put in the necessary resources to make a difference at the beginning of probationers' terms while releasing from probation long-serving individuals who pay fees, but have met their obligations and do not require additional supervision. The state could create such an incentive by adjusting per capita funding on a sliding scale based on how long probationers in each CSCD have been on probation. By including this as part of a net increase in probation funding and/or by inserting a hold harmless provision for the first biennium, the Legislature could assure that such a change would not be disruptive.

Since one of the purposes of such additional funding would be to encourage more intensive supervision of probationers early in their terms when they are most likely to be revoked, the additional funding could be made contingent on CSCDs adopting the progressive sanctions model. Some 26 CSCDs, including those in the state's five most populous counties, already

agreed to follow this model in exchange for the new funding provided in the last session.²² The concept of progressive sanctions is flexible enough that smaller departments which may not have the resources to provide every type of sanction could nonetheless qualify for the front-loaded funding.

Explore Feasibility of Adopting Categorical Probation Funding Formulas

In school finance, the state allocates per student funding based on formulas that adjust for the additional costs associated with educating students with special needs, such as students with English as a second language (ESL) and students with disabilities. A similar formula for basic probation funding could take into account the number of probationers a CSCD has with special needs, ranging from those who need treatment for drug addiction or mental illness to sex offenders who require heightened monitoring. There are 1,000 sex offenders on probation in San Antonio alone—if they recidivate the consequences are likely to be far worse for the public than a minor property or drug offender.²³ By better aligning funding with the supervision needs of probationers, such an approach would make more transparent the level of funding needed to fully implement the probation programming that is correlated with reduced recidivism and revocations.

Categorical probation funding formulas would also encourage CSCDs to conduct inventories to determine the needs of each probationer and tailor the level and nature of the supervision provided accordingly. Travis County Probation Department has developed an innovative matrix for classifying probationers based on their original offense and socialization level to target each probationer with the most appropriate type and degree of supervision.

To avoid encouraging unnecessary classifications and programming, the formulas should accurately reflect the actual cost involved but not overcompensate. Additionally, CSCD's should be required to keep documentation on file reflecting each offender's supervision needs and the programming they receive, which should then be audited by TDCJ-CJAD. Since most probation departments outsource services such as drug treatment to private providers, this state can use these contracts in setting formulas to reflect the actual cost incurred by the CSCDs. Moreover, since CSCDs

would be passing through much of the formula-based program funding in subcontracts with private service providers rather than adding to their own budget and staff, they will not have a strong incentive to make unnecessary classifications and provide unnecessary services for the purpose of obtaining additional funding.

Treatment Instead of Revocation to Prison for Probationers' Nonviolent, Minor Drug Offenses and Drug-Related Technical Violations

The Legislature should also consider requiring drug treatment of probationers prior to revocation to prison for nonviolent, minor drug offenses. For example, someone not on probation caught with a small amount of marijuana would only be guilty of a misdemeanor, which at most would result in a year or less in jail, and more likely just a fine. However, the same offense by someone on probation usually leads to being revoked to prison. The average prison sentence for revoked probationers who commit a new offense is five years.²⁴ Yet, before successfully completing a drug treatment program, most addicts have at least one relapse.²⁵ Therefore, a relapse does not indicate that continued, and perhaps more intensive, treatment will not ultimately be successful. The National Institute on Drug Abuse estimates that drug treatment is successful in about up to 60 percent of cases and significantly reduces criminal activity.²⁶

The National Institute on Drug Abuse estimates that drug treatment is successful in about up to 60 percent of cases and significantly reduces criminal activity.

In addition to revocations for new offenses, probationers are also being revoked for drug-related technical violations, such as failing a drug test. Revocations for technical violations, which range from missing a counseling meeting to a dirty urinalysis, result in average prison sentences of 2.5 years.²⁷ In an extreme case but one that illustrates the need for reform, Dallas Judge Keith Dean revoked Tyrone Brown to prison for life simply for testing positive for mari-

juana while on probation.²⁸ Shortening probation terms will have some effect in reducing such revocations, as former probationers who have a drug problem may seek treatment outside of the criminal justice system. However, the Legislature should also consider adopting guidelines on technical revocations that call for CSCDs to try treatment before resorting to revocation when an otherwise compliant probationer tests positive for drug use.

Increase Residential and Outpatient Treatment Capacity

In the 79th Legislature, funding was increased to provide for 500 new local treatment beds that can serve an estimated 1,500 offenders per year. Additionally, \$7.2 million was appropriated to fund outpatient treatment that is estimated to reach 2,000 offenders per year. However, this still leaves the state with approximately 3,300 community correction facility beds compared with 4,751 beds in 1995 when there were fewer probationers.²⁹ A TDCJ survey indicated that over 70 percent of judges would use probation more often as a sentencing option or as an alternative to revocation if more community corrections facility beds were available.³⁰

In 2000, 61 percent of California voters approved Proposition 36, which required mandatory treatment instead of incarceration for minor drug offenders. A new study by U.C.L.A. researchers shows that the state has saved \$800 million as a result.

Money that would have been spent on incarcerating revoked probationers and state jail felons guilty of minor drug offenses should be redirected to further increase the capacity of community correction centers, including residential drug and mental illness treatment and work restitution centers. Each of these types of community correction centers has been proven to substantially reduce recidivism.³¹ Although drug courts offer the additional benefit of combining treatment with extensive interaction between the judge and the offender, the use of inpatient or outpa-

tient treatment for nonviolent drug offenders ordered by any judge compares favorably to incarceration both in effectiveness and cost. The National Institute on Drug Abuse reports that only 27 percent of former heroin users were still using heroin a year after participating in an outpatient methadone therapy program.³² In 2000, 61 percent of California voters approved Proposition 36, which required mandatory treatment instead of incarceration for minor drug offenders. A new study by U.C.L.A. researchers shows that the state has saved \$800 million as a result.³³

Eliminate Funding Priority for CSCDs with Highest Technical Revocation Rates

Rider 73 to the appropriations bill approved by the 79th Legislature instructed CJAD to give preference to CSCDs with high revocation rates for technical violations in distributing the new funding for residential treatment and sanction beds. While the intent of this provision was to focus funding on the areas of greatest need, it also provides an incentive for more technical revocations. Accordingly, it is the opposite of performance-based funding. The expectation is that technical revocations will decrease as these beds are used as alternatives to incarceration for probationers who need treatment for substance abuse or mental illness. CSCDs that are meeting this expectation and no longer have high revocation rates should not be penalized for their success. Therefore, even assuming this preference made sense initially, it should be discontinued.

Expand Use of Electronic Monitoring as an Intermediate Sanction

The use of electronic monitoring with an ankle device is a far less expensive alternative that can provide an added degree of supervision over probationers who pose a high risk of flight or commission of new offenses. Where necessary, such monitoring can be in conjunction with a judicial order placing the probationer under house arrest. Together, this sanction may cause a probationer who has veered from the terms of their probation to come back into line without resorting to revocation.

Many major CSCDs, such as Travis County, already make extensive use of electronic monitoring. A state grant program could assist some of the smaller CSCDs with obtaining the equipment and staff

needed to implement such a monitoring program, provided that the monitoring is used as an intermediate sanction to reduce the number of revocations to prison, resulting in net savings to the state.

Conclusion

For too long, the probation system has been neglected because of an overemphasis on incarceration. Probation revocations perpetuate this cycle. While the probation system itself collects more money than it receives in state appropriations, this is far offset by more than \$650 million in incarceration costs attributable to revoked probationers. This figure does not include other expenses the state incurs when the probation system fails, such as the inestimable human cost of new crimes being committed and the loss of potential tax revenue the state would receive if more probationers were successfully reformed and became productive members of society.

to imprison probationers who might have been reformed with better supervision and probationers who simply need drug treatment but do not threaten public safety, the state can both save taxpayers' money and produce better outcomes for offenders, victims, and their communities. ★

Marc Levin, Esq., is the director of the Center for Effective Justice at the Texas Public Policy Foundation. Contact Marc Levin at: mlevin@texaspolicy.com.

By diverting a share of the resources used to imprison probationers who might have been reformed with better supervision and probationers who simply need drug treatment but do not threaten public safety, the state can both save taxpayers' money and produce better outcomes for offenders, victims, and their communities.

Legislative priorities for improving probation should include progressive sanctions, more effective tools for collecting restitution during and after probation, expansion of drug courts, shorter but more intensive probation terms, increased availability of inpatient and outpatient drug treatment, and better tailoring the nature and degree of supervision to the particular offender. While some of these enhancements to the probation system will require reallocating funds, they will ultimately result in less total spending on criminal justice. By diverting a share of the resources used

Endnotes

- ¹A Brief History of Probation, New York City Probation Department, <http://ci.nyc.ny.us/html/prob/html/history.html>.
- ²Texas Department of Criminal Justice 2003 Annual Review, Community Justice Assistance Division, <http://www.tdcj.state.tx.us/publications/annual-report/annualreview2003/supervision/cjad.html>.
- ³Texas Department of Criminal Justice 2003 Annual Review, Community Justice Assistance Division, <http://www.tdcj.state.tx.us/publications/annual-report/annualreview2003/supervision/cjad.html>.
- ⁴Community Supervision and Corrections in Texas, presentation by Bonita White of Texas Department of Criminal Justice CJAD to House Committee on Corrections (Mar. 22, 2006).
- ⁵Tony Fabelo, "Trends, Profile and Policy Issues Related to Felony Probation Revocations in Texas," Criminal Justice Policy Council (May 2002) http://www.lbb.state.tx.us/PubSafety_CrimJustice/6_Links/Link_to_Criminal_Justice_Policy_Council/felpro2.pdf.
- ⁶Community Supervision and Corrections in Texas, presentation by Bonita White of Texas Department of Criminal Justice CJAD to House Committee on Corrections (Mar. 22, 2006).
- ⁷Ibid.
- ⁸Adult and Juvenile Correctional Population Projections Fiscal Years 2005-2010, Legislative Budget Board (Jan. 2005) http://www.lbb.state.tx.us/PubSafety_CrimJustice/Projections_Reports_2005.pdf.
- ⁹Adult and Juvenile Correctional Population Projections, Fiscal Years 2006-2011, Legislative Budget Board (June 2006) http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Projections_Reports_2006.pdf.
- ¹⁰George Mitchell, "Privatizing Parole and Probation in Wisconsin: The Path to Fewer Prisons," Wisconsin Policy Research Institute (Apr. 1999).
- ¹¹See Monitoring of Community Supervision Diversion Programs Fiscal Year 2006 - 1st Quarter Results, Texas Department of Criminal Justice CJAD, <http://cjadweb.tdcj.state.tx.us/Research/EvaluationCriteria/StatewideTotals.aspx>.
- ¹²See fiscal note at <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=02193&VERSION=3&TYPE=F>.
- ¹³Tony Fabelo and Angie Gunter, "Organizational Assessment of Travis County Community Supervision and Corrections Department," JFA Institute, (Aug. 2005) <http://www.aclutx.org/files/Travisprobationreport.pdf>.
- ¹⁴Tony Fabelo, "Trends, Profiles and Policy Issues Related to Felony Probation Revocations in Texas," Criminal Justice Policy Council (May 2002) http://www.lbb.state.tx.us/PubSafety_CrimJustice/6_Links/Link_to_Criminal_Justice_Policy_Council/felpro2.pdf.
- ¹⁵Teresa May-Williams, Dallas County SAFPF Re-Entry Courts Outcome Study, Southern Methodist University (Apr. 2006).
- ¹⁶Marc Levin, "Drug Courts: The Right Prescription for Texas," Texas Public Policy Foundation (Feb. 2006) <http://www.texaspolicy.com/pdf/2006-02-PP-drugcourts-ml.pdf>.
- ¹⁷See Text of House Bill 2193, available at: <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=02193&VERSION=5&TYPE=B>.
- ¹⁸<http://pcs.la.psu.edu/Final.Report.April.19.2006.pdf>.
- ¹⁹See bill text at <http://www.capitol.state.tx.us/tlo/74R/billtext/HB03070I.HTM>.
- ²⁰See statute at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/13/00812.htm&Title=13&DocType=ARS>.
- ²¹See Section 42.037(m) of the Code of Criminal Procedure.
- ²²See List of Counties Receiving Funding at <http://cjadweb.tdcj.state.tx.us/Research/EvaluationCriteria/CountiesReceivingFunding.pdf>.
- ²³"TDCJ parole officers keep tight tabs on sex offenders throughout state," *Criminal Justice News*, Texas Department of Criminal Justice (May/June 2006) http://www.tdcj.state.tx.us/mediasvc/connections/MayJune2006/agency_v13no5.html.
- ²⁴Tony Fabelo, "Trends, Profiles and Policy Issues Related to Felony Probation Revocations in Texas," Criminal Justice Policy Council (May 2002) http://www.lbb.state.tx.us/PubSafety_CrimJustice/6_Links/Link_to_Criminal_Justice_Policy_Council/felpro2.pdf.
- ²⁵James C. McKinley Jr., "Proposals for Overhaul Of New York Drug Laws," *The New York Times* (Sep. 2, 2001).
- ²⁶See <http://www.nida.nih.gov/PODAT/PODAT5.html>.
- ²⁷Tony Fabelo, "Trends, Profiles and Policy Issues Related to Felony Probation Revocations in Texas," Criminal Justice Policy Council (May 2002) http://www.lbb.state.tx.us/PubSafety_CrimJustice/6_Links/Link_to_Criminal_Justice_Policy_Council/felpro2.pdf.
- ²⁸Brooks Egerton, "Cases with similar judgments have very different outcomes," *Dallas Morning News* (Apr. 26, 2006) http://www.herald-democrat.com/articles/2006/04/26/texas_news/state03.txt.
- ²⁹Community Supervision and Corrections in Texas, presentation by Bonita White of Texas Department of Criminal Justice CJAD to House Committee on Corrections (Mar. 22, 2006).
- ³⁰Ibid.
- ³¹Community Corrections Facilities Outcome Study, Texas Department of Criminal Justice (Jan. 1999).
- ³²The Sixth Triennial Report to Congress From the Secretary of Health and Human Services, Drug Abuse and Addiction Research, National Institute on Drug Abuse (Sep. 1999) <http://www.drugabuse.gov/STRC/Role2.html>.
- ³³Douglas Longshore, Ph.D., Angela Hawken, Ph.D., Darren Urada, Ph.D., and M. Douglas Anglin, Ph.D., Evaluation of the Substance Abuse and Crime Prevention Act, Cost Analysis Report (First and Second Years), Prepared for the Department of Alcohol and Drug Programs California Health and Human Services Agency (Apr. 5, 2006) http://www.uclaisap.org/prop36/documents/SACPA_COSTANALYSIS.pdf.

We Need Your Help

The Texas Public Policy Foundation is a non-profit, non-partisan research institute guided by the principles of limited government, free enterprise, private property rights, and individual responsibility. We seek to improve Texas government by producing academically sound research on important issues offered to policymakers, opinion leaders, the media, and general public.

We do not accept government funding or sell research outcomes; therefore, we rely solely on the generous contributions of individuals, foundations, and civic-minded corporations.

If you believe studies like this are important for Texas, won't you consider a financial gift to support the Foundation and our mission?

Give generously today by visiting us online at:

www.TexasPolicy.com



Log On to Learn More

All of the Foundation's research and reports are available online at www.TexasPolicy.com.

While there, be sure to sign up for the *Texas Public Policy News (TPPN)*. This free e-newsletter is published every other week and includes information about current policy issues, upcoming events, and publications.

Don't miss a single issue!

