

## Incentivizing Lower Crime, Lower Costs to Taxpayers, and Increased Victim Restitution

*Testimony before the Senate Criminal Justice Committee*

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

This legislation brings fiscal balance to the criminal justice system by giving local jurisdictions the opportunity to receive a share of the state's savings to strengthen local public safety strategies when they send fewer non-violent offenders to prison and reduce recidivism, increase restitution collections, and increase the percentage of probationers who are employed. Under this legislation, Texas counties could submit a plan to the state whereby they would receive between 35 and 60 percent of the state's savings on prison costs based on sentencing and revoking fewer nonviolent offenders to prison and reducing recidivism among probationers, increasing the percentage of probationers current on their victim restitution payments, and increasing the percentage of probationers who are employed.

Local communities could use the share of the state's savings on prisons that they receive pursuant to this bill for approaches such as more intensive probation supervision, electronic monitoring, graduated sanctions and incentives for probationers, electronic monitoring, partnerships between probation departments and law enforcement, treatment for mentally ill and chemically dependent probationers, short-term incarceration, and even prosecutorial expenses.

This bill does not lower any penalties or preclude sending any particular offender to prison. It is entirely voluntarily so it is up to county leaders, including the probation chief, county commissioners, and the district attorney, whether to participate by submitting a plan to the state.

Similar legislation adopted in Arizona that became effective in December 2008 led to a 31 percent decline in new felony convictions among probationers and a 28 percent decline in revocations of probationers to prison.<sup>1</sup>

This legislation and the Arizona measure is similar to the budgetary provision that the Texas Legislature adopted in 2009 that created the Commitment Reduction Program (CRP) within the juvenile justice system that had led to lower crime and saved Texas taxpayers at least \$114 million.

- In 2009, the Legislature cut funding for the Texas Youth Commission from \$314 million in 2008 to \$210 million in 2010 and \$205 million in 2011, primarily due to a decline in population.<sup>2</sup> Effectively, part of the savings—\$45.7 million—was allocated for the CRP through which county juvenile boards that choose to participate may obtain additional funds for community-based programs in exchange for agreeing to target fewer commitments to TYC. Rider 21 to the General Appropriations Act requires that TJPC pay TYC \$51,100 for each youth committed to TYC in excess of 1,783 youths per year.<sup>3</sup> However, this claw-back provision (SB 1055 also has a claw-back provision to ensure the state saves money) will not be invoked, since TYC commitments have fallen 36 percent this year as juvenile probation departments are on pace to meet and, in many cases, come in far under their targets.<sup>4</sup> This is particularly notable given that commitments were already at historically low levels. Most importantly, the juvenile arrest rate declined 4.4 percent in the first year following implementation of Texas' juvenile incentive funding measure.<sup>5</sup>

This legislation is based on model legislation unanimously adopted by the American Legislative Exchange Council (ALEC) Public Safety & Elections Task Force and ratified by the ALEC leadership and membership.<sup>6</sup> ALEC is a conservative organization that encompasses nearly 40 percent of state legislators.

In Texas, prison costs \$50.79 a day while probation costs taxpayers \$1.30 a day, with offenders paying the rest in fees. Right now, if a probation department believes an offender needs GPS monitoring to keep them in line, most departments simply don't have the money for this, which costs more than \$8 a day. However, if they revoke that probationer to prison for technical violations such as missing an appointment, the state then pays \$50.79 day. This bill provides a solution to this dilemma, bringing fiscal balance to the system.

Mohave County, Arizona offers an excellent case study of how this incentive funding model and empower communities to reduce both crime and corrections costs to the state.

- In Mohave County, the probation department in 2009 reduced its total revocations by 101 and the percent of its probation caseload revoked for a new felony dropped from 4.6 to 1.1 percent.<sup>7</sup> This saved the state \$1.7 million in incarceration costs that otherwise would have been incurred and Mohave County officials are expecting the state to fulfill its end of the bargain by appropriating 40 percent of the savings to the County in the next budget.
- How did Mohave County achieve these results? In short, they implemented evidence-based practices—those techniques that research has shown reduce the risk of criminal behavior. Assistant Probation Chief Alan Palomino noted: “First we looked at our revocation process and at who we were revoking. There were a lot of technical violators who missed appointments or were just not doing exactly what was required of them on their probation. We looked at ways to motivate them toward cooperation and buying into their own probation process.” The enhancements in Mohave County to their approach to probation included:
  - Training probation officers to utilize motivational interviewing, a method of therapy that identifies and mobiliz-

es the client's intrinsic values and goals to stimulate behavior change. Motivation to change is elicited from the client, and not imposed from without. It is assumed that ambivalence or lack of resolve is the principal obstacle to be overcome in triggering change. In an example of motivational interviewing, an officer may ask a probationer questions designed to elicit self-motivational statements such as, “What are you afraid might happen if things continue as they are?” and “What might be some advantages of changing your behavior?”<sup>8</sup> Motivational interviewing has been designated by the National Institute of Corrections as one of eight evidence-based practices that contribute to reduced recidivism.<sup>9</sup>

- Separating the minimum-risk offenders from the medium- and high-risk populations and varying supervision and caseload levels for each group with one officer handling minimum-risk offenders in each city within the county.
- Better identification of the needs of each offender such as substance abuse programs, educational programs, and anger management.
- Implementing Moral Recognition Therapy, a cognitive educational program that helps probationers understand that their own choices have put them into their situations and become accountable for their actions, and immediate consequences for violations and positive accolades for accomplishments.

We must address the state's budget challenges through this incentive and performance-oriented approach that builds upon Texas' recent progress in both controlling corrections costs and enhancing public safety that has become a model for the nation. ★

<sup>1</sup> [http://www.pewcenteronthestates.org/uploadedFiles/PSPP\\_Arizona\\_probation\\_brief\\_web.pdf](http://www.pewcenteronthestates.org/uploadedFiles/PSPP_Arizona_probation_brief_web.pdf).

<sup>2</sup> 81st Legislature, “Text of Conference Committee Report Senate Bill No. 1, Regular Session (General Appropriations Act),” (Austin: 26 May 2009), 22 Oct. 2009, [http://www.lbb.state.tx.us/Bill\\_81/6\\_FSU/Bill-81-6\\_FSU\\_0909.pdf](http://www.lbb.state.tx.us/Bill_81/6_FSU/Bill-81-6_FSU_0909.pdf).

<sup>3</sup> 81st Legislature, “Text of Conference Committee Report Senate Bill No. 1, Regular Session (General Appropriations Act),” (Austin: 26 May 2009), 22 Oct. 2009, [http://www.lbb.state.tx.us/Bill\\_81/6\\_FSU/Bill-81-6\\_FSU\\_0909.pdf](http://www.lbb.state.tx.us/Bill_81/6_FSU/Bill-81-6_FSU_0909.pdf).

<sup>4</sup> Linda Brooke, Texas Juvenile Probation Commission, 12 April 2010.

<sup>5</sup> [http://www.txdps.state.tx.us/director\\_staff/public\\_information/pr051010.pdf](http://www.txdps.state.tx.us/director_staff/public_information/pr051010.pdf).

<sup>6</sup> [http://www.alec.org/AM/PDF/publicsafety&elections/ALEC\\_Community\\_Corrections\\_Performance\\_Incentive\\_Act.pdf](http://www.alec.org/AM/PDF/publicsafety&elections/ALEC_Community_Corrections_Performance_Incentive_Act.pdf)

<sup>7</sup> “Mohave County leads state with reduced probation revocations,” Arizona Rural Times, 17 Feb. 2010, 17 May 2010, <http://azruraltimes.com/2010/02/17/mohave-county-leads-state-with-reduced-probation-revocations>.

<sup>8</sup> Edward Pecukonis, Ph.D., “Module IV: Motivational Interviewing,” 23 Nov. 2009, <http://ahec.allconet.org/newrihp/powerpoint/module3motivation-interview.ppt>.

<sup>9</sup> National Institute of Corrections, “Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention,” (2004), 22 Oct. 2009, [http://nicic.org/WebPage\\_380.htm](http://nicic.org/WebPage_380.htm).