



TEXAS PUBLIC POLICY FOUNDATION  
LEGISLATORS' GUIDE TO THE ISSUES

## Adult Probation

By Marc Levin, Esq., Director, Center for Effective Justice

### THE ISSUE

Approximately 450,000 Texans are on probation. Revoked felony probationers account for 37 percent of prison intakes and 41 percent of state jail intakes, resulting in approximately \$600 million in incarceration costs. Although three times as many Texans are on probation as in prison, 10 state dollars are spent on the prison system for every dollar spent on probation.

Since 2005, \$55 million in state probation funding has been incentive-based. Departments are eligible if they adopt progressive sanctions and make a non-binding pledge to reduce their technical revocations, which refer to the approximately half of prison revocations that are based on rules violations rather than a new offense. Progressive sanctions involve utilizing graduated measures such as increased reporting, community service, curfews, electronic monitoring, mandatory treatment, and even shock-nights in county jail prior to revoking a probationer to prison for technical violations.

Most probation departments have participated in the incentive funding plan and these departments have reduced their technical revocations by 16 percent since 2005 while non-participating departments increased technical revocations by 8 percent. Had all departments increased their revocations by 8 percent, another 2,640 probationers would have been revoked to prison at a cost of \$119 million, not including the cost of building more prisons. Departments receiving the funding used most of it to reduce caseloads from 150 to about 110 probationers per supervising officer.

### THE FACTS

- ★ To help avoid spending over a billion dollars on building and operating new prisons, the 80th Legislature added 1,400 beds at probation and parole

intermediate sanctions facilities (ISFs). These facilities are typically located in major urban areas, have average stays of 60 days, and primarily house probationers and parolees who would otherwise be revoked for technical violations or misdemeanors.

- ★ Texas has 121 adult probation departments and about half of their budgets come from probationers' fees.

### RECOMMENDATIONS

- ★ **Require probation with mandatory treatment for first-time, low-level drug possession offenders with no prior violent, sex, property, or drug delivery crimes.** SB 1909 passed by the Senate in 2007 would have made this change, applying only to offenders convicted of possessing less than four grams of drugs. Those convicted of drug delivery were excluded, as were drug possession offenders who had a previous conviction for any offense other than drug possession or a fine-only traffic violation. Those covered would be sentenced to mandatory probation and treatment, which they would have to pay for, if able. The judge would determine whether the offender would go to a residential facility or day treatment, or a combination of both, and the bill specifically included faith-based treatment programs that meet state standards. Under SB 1909, an offender could still be initially sent to prison upon a documented judicial finding of danger to the community. Furthermore, if the nonviolent drug user did not comply with the treatment program or otherwise violated their conditions of probation, they could be revoked to prison. The LBB estimated that SB 1909 would have saved taxpayers \$500 million in prison operating costs by 2012, not including possibly avoided prison construction costs.

*continued on back*

- ★ **Enhance use of problem-solving courts.** Evidence has established that drug courts, mental health courts, DWI courts, and other problem-solving courts can reduce recidivism and lower costs to taxpayers by diverting appropriate offenders from incarceration while still holding them accountable. State funding and oversight for these courts should be consolidated into one agency. Additionally, state funding for these courts should focus on felony offenders and guidelines should be developed to ensure that the lowest-risk, low-level drug possession offenders who can succeed with basic probation do not take up slots in problem-solving courts that could be better used to divert offenders who might otherwise be incarcerated.
- ★ **Continue strengthening probation.** State grants for probation departments that began in 2005 are tied to the goal of reducing revocations to prison and implementing graduated sanctions in response to rules violations instead of waiting for violations to pile up and then revoking the probationer to prison. These grants have more than paid for themselves by leading to fewer revocations for both new crimes and rules violations in nearly all of the participating probation departments.
- ★ **Institute performance-based probation funding across the board.** Given the success of the 2005 incentive funding initiative, this approach should be expanded. HB 3200 in the 2007 session, which would have linked a share of probation funding to lowering technical revocations and increasing early terminations, should be broadened to include weights for risk levels of the department's caseload, new offenses and their seriousness, employment rate, educational and vocational degrees and certificates earned, and restitution and child support paid.

## RESOURCES

*Texas Criminal Justice Reforms: Lower Crime, Lower Costs* by Marc Levin, Texas Public Policy Foundation (Jan. 2010) <http://www.texaspolicy.com/pdf/2010-01-PP04-justicereinvestment-ml.pdf>.

*Laying the Foundation for Better Probation* by Marc Levin, Texas Public Policy Foundation (June 2006) <http://www.texaspolicy.com/pdf/2006-06-PP-probationreform-ml.pdf>. ★

