

Incentivizing Results: Lessons From Other States' Probation Funding Formula Reforms and Recommendations to Texas Lawmakers

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Key Points

- Most probation funding to counties comes from the state based upon the amount of offenders being directly supervised.
- This funding formula does not incentivize counties to implement strategies that maximize results but may cost counties more on the front-end.
- Several states have altered their probation funding formulas to incentivize counties to reduce the amount of offenders going to state correctional facilities and to get a portion of the savings back.
- Texas could make minor changes to its current funding formula to achieve better probation results and save millions on incarceration costs.

Introduction

Prison is an important and necessary component of the criminal justice system. It is, in many cases, necessary to incarcerate offenders who pose a danger to society even with strict and modern monitoring.

That being said, the state should supervise offenders outside the prison walls if the interests of public safety and liberty are best served by forgoing incarceration. When implemented effectively, probation keeps neighborhoods safer, saves money, and produces more successful outcomes for nondangerous offenders. When taking into account risk level, recidivism rates for individuals who are sentenced to community supervision (also known as probation) are lower than for those who are incarcerated.

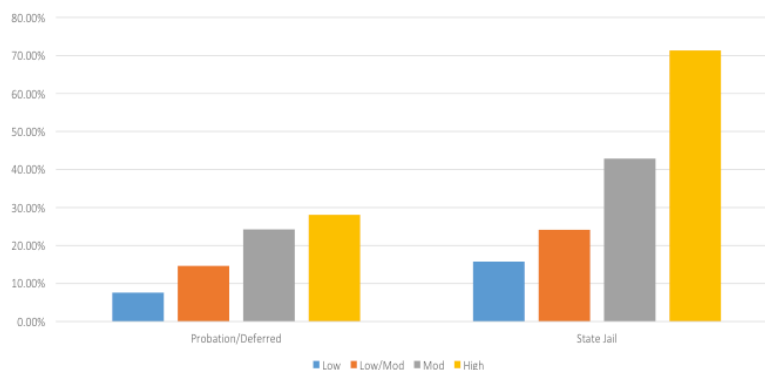
Data collected by the Harris County Community Supervision and Corrections Department show offenders released from probation or placed on deferred adjudication in Harris County were less likely (across all risk levels)

to be rearrested within 16 months after release than offenders with the same risk level but who were sentenced to state jail.

At the juvenile level statewide, youth offenders from 2005 to 2011 were 21 percent less likely to be rearrested within one year if they were diverted to community supervision than offenders with practically identical risk profiles who were committed to state-run facilities (Fabelo et al., 55-58).

In 2014, the cost of a prison bed per day in Texas was \$54.89, while community supervision cost the state \$1.63 per day and the local jurisdiction \$1.57 per day, although the local cost is paid by the probationer. (LBB 2015, 6). The revocation rate for direct felony supervision in 2014 was 15.6 percent. With 160,628 individuals on direct felony supervision in 2014, prison costs increased by \$486,747,091 annually had they stayed on probation, assuming each offender was incarcerated for at least a year (LBB 2015a).

Percent Re-arrested (16 Months After Release) by Risk Level and Sentence Type (CY 2012-2013)



Source: Harris County Community Supervision and Corrections Department

The data shows that greater emphasis on community supervision can decrease revocation rates substantially ([Glod](#)). In 2005, the Texas Legislature allocated \$55 million in incentive-based probation funding to departments promising to reduce revocations by 10 percent as well as to provide graduated sanctions for technical violations, such as missing a meeting ([Levin](#)). Departments that participated reduced their technical revocations by 13.4 percent from 2005 to 2012, while departments that did not participate increased their technical revocations by 5.9 percent over the same period. Assuming all departments increased their technical revocations by 5.9 percent, the total amount of technical revocations would have increased by 797. Instead, Texas experienced a decline of 1,470 technical revocations, saving \$104.4 million in revocation costs (assuming an average time served of 2.5 years) over previous expectations ([Levin](#)).

In other words, a greater investment in probation funding has the potential to keep Texas safer and save millions in future prison costs.

Current probation funding formulas, however, do not properly incentivize county judicial systems and probation departments to continue to implement strategies that were proven successful in Texas in 2005. This includes specialty courts, substance abuse and mental health treatment programs, specialized probation officers for mental health probationers, electronic monitoring, and diversionary programs.

Because most funding is doled out by the state to probation departments per probationer under direct supervision, departments do not have an incentive to get individuals who are current on their fees, restitution, and other probation conditions off supervision when it is no longer necessary for public safety or rehabilitation for the individual.

Other states, including Arizona, California, and Illinois, have shown that modifying probation funding formulas to incentivize better results for probationers not only saves money, but considerably reduces probation revocations and recidivism.

Texas has embraced incentivized probation funding at the juvenile level. Established in 2009, the Commitment Reduction Program, also known as the Grant C Community Corrections Diversion Program, provides grant funding to probation departments that divert suitable juveniles from state facilities and use cost effective, evidence-based practices proven to reduce recidivism ([TJJD 2013](#)).

The data shows that juvenile commitments dropped drastically from 2009 to 2013 (1,481 to 818) ([TJJD 2014](#)). Public safety was not affected as eight state-run juvenile correction facilities were closed, and appropriations for state-run secure facilities were reduced by \$150 million ([Fabelo et al., 16](#)).

On the adult side of probation, Texas enacted legislation in 2011 that would allow counties to receive 35 to 60 percent of the state savings on prisons based on reducing commitments, decreasing new offenses by probationers, and increasing the number of probationers current on their payments of victim restitution payments ([SB 1055](#)). However, financial issues and timing of when departments must submit their plans to receive the funding have prevented the statute from being fully implemented ([Texas General Appropriations Act: 2016-2017 Biennium](#)).

Further, a 2007 bill that was vetoed over a definitional issue would have based probation funding on, among other things, the number of probation referrals rather than the number of individuals under direct supervision. This approach would have encouraged departments to grant, with the consent of the judge, an early termination to probationers who no longer require supervision, without losing funding ([HB 3200](#)).

This paper will examine Texas' current adult probation funding formula, the successes of other jurisdictions moving toward an incentive-based funding initiative, and policy recommendations for lawmakers.

How Probation Works

Community supervision is an alternative to prison whereby either an offender's sentence is deferred without an adjudication of guilt until after the term of supervision is completed (called deferred adjudication), or the individual's term of imprisonment, fine, or other punishment is suspended, in whole or in part, on the condition that the terms of probation be successfully completed ([Texas Constitution and Statutes](#)). Terms are imposed by the judge and can include program participation, staying crime free, routine check-ins with the offender's probation officer, drug tests, and fine payments.

If individuals receives deferred adjudication, their conviction can be discharged and dismissed, which allows for offenders to have their record sealed for many misdemeanor and felony charges. If there is a violation of the terms of probation, they can be arrested or served a summons (depending on the severity of the violation and risk of the of-

fenders to the community) to appear in court to determine their punishment. If given deferred adjudication, defendants can then be adjudicated and punished at a subsequent hearing. If their original punishment was suspended, the judge can require that these offenders serve any portion of the suspended punishment ([Texas Constitution and Statutes](#)).

How Adult Community Supervision Is Funded

There are 122 community supervision departments that service the 254 Texas counties ([LBB 2015](#)). Many departments serve several counties and must share their portion of state funding among the counties. At year-end 2013, there were 399,655 probationers ([Herberman, Bonczar, Appendix Table 2](#)), of which 164,552 offenders were on felony direct community supervision ([LBB, 2015a, 16](#)).

Government Code Section 509.011 lays out the formula used by the Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice (TDCJ) to allocate state funding for probation departments. Each department must submit a proposed probation plan. Once the plan is accepted, state funding is distributed as follows:

- A per-day amount for each felony defendant directly supervised by each department
- A per-day amount for each nonfelon defendant for a period not to exceed 182 days
- An annual amount computed by assigning a percentage of funding based on the state's population residing in the counties served under the department and the department's percentage of all felony defendants in the state under direct community supervision. This percentage is then multiplied by the total amount appropriated by the General Appropriations Act.

In addition to this basic funding formula, Diversion Program grants and Treatment Alternatives to Incarceration Program grants are awarded to select divisions for alternatives to incarceration for certain offenders ([LBB 2015, 21](#)).

State funding through CJAD provides about 65 percent of each department's operating budget. The other 35 percent comes from court-ordered fees and local governments ([TDCJ](#)).

State Success Implementing Incentive-Based Adult Probation Funding

Arizona

According to a report by the Council of State Governments Justice Center, Arizona's prison population was expected to increase by 50 percent from 2008 to 2017 if 2006 trends continued. This rate was far ahead of population growth projections, which estimated a 26 percent increase in residents from 2005 to 2015. It was anticipated Arizona would be forced to spend \$2 billion to \$3 billion over a 10-year period to handle the additional capacity ([Justice Center](#)).

Offenders failing on probation were a major driver of this projected prison growth, with Arizona spending approximately \$100 million each year on prison costs to send roughly 4,000 offenders back to prison after they violated conditions of their probation. Seventy-nine percent of revoked probationers were drug or property offenders, with substance abuse as a factor for revocation for 45 percent of those individuals ([Justice Center](#)).

In response to these revelations, Arizona passed the Safe Communities Act of 2008. The bill generally comprised two aspects. First, the bill allowed for earned time credits for offenders who complied with their terms of probation. Second, the bill enacted performance-based incentive funding for counties that reduced probation revocations and saved the state funding that would have been spent on incarcerating these individuals ([SB 1476](#)).

Counties were eligible for 40 percent of the costs that are avoided if they reduce the percentage of people on supervised probation and convicted of a new felony offense relative to what was anticipated ("baseline"). The monies received must be used to increase the availability of substance abuse treatment programs, risk reduction programs and interventions for probationers, and grants to nonprofit victim services organizations to increase restitution collected from probationers.

Counties embraced the Safe Communities Act, and the data reflects this, even though the state never actually delivered on returning the funding and the legislation was repealed in 2011. During its enactment (2008-2010), total probation revocations declined by 29.3 percent, equating to 2,261 less revocations when compared to the 2008 baseline ([Waters, Aguilar-Amaya, 7](#)). Additionally, revocations back to jail decreased by 38.7 percent while revocations back to prison dropped by 27.8 percent (7-8).

New felony convictions for probationers decreased by 31.1 percent, equating in 986 less felonies when compared to the 2008 baseline (9). As stated above, the law was dropped in 2011, due to a lack of funding and the savings provided to the state never went back to the county.

California

In 2006, California's prison population stood around 160,000—nearly double the prison system's intended capacity. In 2009, California was ordered by a federal court to decrease its prison population to 137.5 percent of its intended capacity within two years ([Coleman v. Schwarzenegger](#) and [Plata v. Schwarzenegger](#), 7).

One of the major drivers of California's overcrowded prison system was revocations from probation. From 2008 to 2009, 40 percent of new felony admissions in California prisons were due to probation revocations ([Taylor, 20](#)). As was the case with Arizona, counties had little incentive or funding to improve probation outcomes.

In an effort to comply with its federal mandate, in 2009 California passed the California Community Corrections Performance Incentives Act (SB 678). The bill created a probation incentive initiative that would allow counties to receive 40–45 percent of the state's savings from not having to imprison anticipated revoked probationers. An average probation failure rate from 2006, 2007, and 2008 was used as the baseline rate (7.9 percent) ([Pew Center on the States](#)). SB 678 also allows for high-performance grants to counties that already had very low revocations so as to reward them for their successful probation programs prior to the enactment of the law. The savings received were required to be spent on evidence-based community corrections practices and programs including:

- Implementing and expanding evidence-based risk and needs assessments;
- Implementing and expanding intermediate sanctions such as electronic monitoring, mandatory community service, home detention, day reporting, restorative justice programs, work furlough programs, and incarceration in county jail for up to 90 days;
- Providing more intensive probation supervisions;
- Expanding availability of evidence-based rehabilitation programs such as drug and alcohol

treatment, mental health treatment, anger management, cognitive-behavioral programs, and job training and employment services;

- Evaluating the effectiveness of rehabilitation and supervision programs and ensuring program fidelity.

The bill had immediate results. In 2010, 47 out of 58 counties reduced the number of felony probationers revoked. The number of felony probationers revoked declined from 7.9 percent (baseline average from 2006 to 2008) to 6.1 percent—a reduction of 6,182 probationers. This equated to a \$179 million savings in that year alone, with \$87.5 million being returned to counties for the 2011/12 fiscal year ([Pew Center on the States, 3](#)). This downward trend in felony probation failure continued, with a 5.6 percent failure rate in 2014—a 29 percent decrease from the baseline (7.9 percent). The trend equated to 34,021 avoided felony revocations in total from 2009 to 2014, avoiding \$970.6 million in anticipated corrections costs, assuming this trend continued ([Judicial Council of California, 3, 14](#)).

Although not tracked by all counties, several major jurisdictions saw significant reductions in new felony conviction rates. San Diego County reduced its new felony conviction rate for completed probationers from 37 percent in 2008 to 31 percent in 2010. Orange County saw a similar recidivism success, with the rate dropping to 30 percent in 2010 from 33 percent in 2008 ([Pew Center on the States](#)).

Successes in Juvenile Probation Incentive Initiatives

Texas

The Lone Star State has seen its own success in probation incentive funding. In 1991, Texas' average daily secured juvenile population stood at 1,392 ([Texas Juvenile Probation Commission and Texas Youth Commission 91](#)). Legislative initiatives during the 1980s and '90s bringing stiffer penalties for juveniles, as well as construction of new youth lockups, dramatically increased the population in these facilities, reaching 4,305 juveniles in 2007 ([Pew Charitable Trusts; Fabelo et al., 26](#)).

In 2007, a major abuse scandal led to several reforms that directed more juveniles into community-based juvenile probation programs ([Levin 2010, 3](#)). By 2009, the average daily juvenile population in secured residential facilities had dropped to 2,425. In 2015, the population stood at 1,077 ([Fabelo, et al 26; TJJD 2015, 16](#)).

The creation of the Commitment Reducation Program, a grant initiative providing county probation departments with additional funding to implement rehabilitation services for juvenile offenders in order to divert high-risk juveniles from secure facilities, is one of the many reforms Texas undertook that helped to reduce its secure residential facility population. These services can include community-based, residential, and aftercare programs.

County probation departments must submit detailed plans prior to receiving any funding. Plans must provide the following:

- Description of new programs and services, or expansion of existing programs;
- Supervision that will be added;
- Description of the types of residential placements (secure and non-secure) to be utilized and the services to be provided.

For each aspect of the plan, the grantee must specify the amount of juveniles to be served by the proposal and must provide supporting evidence and documentation.

Performance is measured by the following factors:

- Number of juvenile offenders served by the grant funding;
- Percentage of juveniles served who complete the program or placement;
- Number of juveniles served who are committed to the Texas juvenile justice system by the probation department;
- One-, two-, and three-year recidivism rates for all juveniles served and entered into programs and post-adjudication placement;
- Number of juveniles ages 10 to 16 certified as adults by the juvenile probation department;
- The cost per youth participating in the grant-funded program, service, or placement ([Texas Juvenile Probation Commission, 3–5](#)).

In 2014, \$19,846,054 was allocated to 156 probation departments. Eleven chose not to receive funding. Allocation is based on 75 percent of the previous fiscal year's funding level and 25 percent on juvenile population ([HB 1, V-34; TJJD 2015, 10](#)).

The data suggest that the Grant C Program has played a positive role in reducing the state secure facility population. In 2010–2011, the first biennium of the Grant C Program, \$45.7 million was appropriated. In 2007, the Legislative Budget Board predicted the youth population in state-run secure correctional facilities would increase by more than seven percent from 2007–2012 ([LBB 2007, 16](#)). However, the population dropped to 1,481, a 66 percent decrease. In 2007, 2,457 juveniles were committed to state secure facilities. By 2012 that number was down to 879 and currently stands at 825 (Fabelo, et al, 26; TJJD 2015, 12). It is difficult to determine exactly how many individuals would have been committed to a state facility if not for the Grant C Program and other reforms. However, due to the high risk of reoffending for the Grant C cohort and the high percentage of juveniles on supervision for felonies (36 percent in 2014), it is likely many of these youths would have found themselves in state-secured facilities if not for the grants ([Pew Charitable Trusts](#)).

The TJJD Annual Report to the Governor and Legislative Budget Board in 2015 followed three different groups for three years (beginning in 2012) and tracked their reoffense rate and whether they were subsequently incarcerated into an adult facility or placed in a secured placement. The groups consisted of juveniles placed on probation or given deferred prosecution; juveniles leaving a residential placement facility, or those who served in a Grant C funded program in 2012 (entering or leaving a placement). Reoffense was defined as a juvenile being referred to juvenile probation or arrested as an adult for a Class B misdemeanor or greater charge that resulted in a referral to juvenile probation, an arrest, or both. This also includes violations of a felony court order. Subsequent secure residential placement and incarceration rates were also measured.

Juveniles who participated in a Grant C Program in 2012 appear to have fared better than those leaving a state-secured facility, although the data leaves some open questions. The data bifurcates the Grant C participants into those who are entering and exiting. For those entering a Grant C Program in 2012, 62.9 percent reoffended in three years, while 11.8 percent of those juveniles were subsequently incarcerated. For those exiting a Grant C placement, 77.7 percent reoffended within three years with 21.6 percent being subsequently incarcerated. For those ending residential placement, 75.7 percent of juveniles reoffended, and 22.9 percent were subsequently incarcerated.

Several things remain unclear from the data, such as why there is such a large difference between reoffense percentages for those entering a Grant C placement and those exiting. The 2011 cohort mimics this trend as well (TJJJ 2014, 22). It is likely due to a couple things. First, the obvious is that the average length of stay for a Grant C placement in 2012 was 5.8 months, meaning the exiting group was not under a program for nearly six months longer (TJJJ 2012, 27). Most reoffending occurs within the first year. Second, large characteristic variances in the population. For example, of those entering Grant C placement in 2012, 25 percent had three or more referrals, while of those exiting a Grant C program, 64 percent had three or more referrals (TJJJ 2015, 22). Third, it may be that the programming is getting better or that it worked better for the specific characteristics of that population. Even in years two and three, those entering Grant C programming in 2012 have much better success than those exiting Grant C or residential placement in 2012 (22-23). Additionally, any juvenile receiving at least 5 percent of their funding from Grant C were counted, meaning some juveniles may have not received the services their particular high-risk case deserved (23).

What should be obvious is the re-offense rate for juveniles is far too high across all placement types, and in particular, residential placement in TJJJ facilities is not helping public safety. Further examination, including which particular community-oriented, Grant C services are working and which are not should be implemented. For example, in 2015, 64 percent of juveniles placed with Grant C funds entered a secure placement while 36 percent entered a nonsecure placement (TJJJ 2015, 21). Would more nonsecure placements with programming be more effective? Texas should also determine whether more monitoring after exiting a Grant C placement would help reduce the reoffense percentage.

At the very least, public safety was not harmed by the Grant C diversion of juveniles while saving millions in state-secured facility costs. With the average per-day cost of housing a juvenile inmate in a state facility currently at \$437.11 and probation on average costing \$14.52 per day, millions in correctional costs have been avoided, allowing this money to be saved or used elsewhere (LBB 2015, 1). Since the Commitment Reduction Program and other juvenile justice reforms in 2007, funding for state-run secured facilities has dropped drastically, while more funding has gone to county level probation departments. In the 2008-2009 biennium, appropriations for state-run secure facilities were 526 million. By the 2014-2015 biennium, appropriations for state-

run facilities dropped to \$290 million. If funding had stayed at 2008-2009 levels, Texas would have spent \$542 million more on state-run secure correctional facilities than they had. Instead, some of these savings were invested in county probation. In the 2008-2009 biennium funding to probation increased by \$58 million from the previous biennium. Other than an increase in the 2010-2011 biennium, county probation funding has stayed fairly consistent over this time period (Fabelo, et al., 46).

Illinois

In 2005, approximately 1,700 juveniles were committed to Illinois state youth prisons (Bray), costing taxpayers approximately \$70,827 per juvenile per year (Illinois Department of Human Services [DHS]). Half of those juveniles were reincarcerated in a juvenile prison within three years (Bray). Prior to 2005, Illinois counties would avoid paying for a significant amount of the services by diverting the juvenile offender from the Department of Juvenile Justice's state lock-ups while bearing none of the cost for the county prosecuting the youth.

In 2005, Redeploy Illinois was launched in four sites: Macon County, Peoria County, St. Clair County, and the Second Judicial Circuit (which totals 15 rural counties). Counties or groups of counties agreed to reduce their commitments of juvenile offenders by 25 percent, based upon the average number of commitments from the past three years. In exchange, the state provided the savings to the counties to use in the creation or expansion of community services or programs.

From 2005 to 2012, participating counties (42 total) have only sent 1,036 juveniles to state commitment. This is a 54 percent decrease from projected commitments over the same period. Conservatively estimated, this avoided \$59.6 million in anticipated incarceration costs, assuming commitments.

A 2013 study was conducted to measure the recidivism rates of successful and unsuccessful youth who entered the program for the first four pilot sites from 2006 to 2010. Youth that successfully completed Redeploy programming had a 27 percent lower recidivism rate than the unsuccessful participants. Sixty-one percent of successful youth had not been incarcerated within three years after completing the program, compared to only 34 percent of unsuccessful youth (Illinois DHS).

Policy Recommendations

Authorize Implementation of Senate Bill 1055 from the 2011 Session in the Texas Department of Criminal Justice (TDCJ) Budget

In the 82nd Legislature, SB 1055 was passed and signed by then Governor Rick Perry. The bill, among other things, allows a community supervision and community corrections department, either alone or through a regional partnership, to obtain state funding by reducing the number of individuals sent to prison through direct sentences and/or probation revocations to submit a commitment reduction plan to CJAD. The plan must include, among other things:

- Target number of individuals, as compared to last fiscal year, that the county intends on reducing for direct sentencing commitments, community supervision revocations, or both. This cannot include individuals who committed 3g offenses*;
- A calculation of the savings to the state that will result from the county hitting its target reduction mark;
- Description of programs and services the department or departments intend to provide with the state funding in order to “enhance public safety, reduce recidivism, strengthen investigation and prosecution of criminal offenses, improve programs and services available to victims of crime, and increase the amount of restitution collected from persons supervised by the department or departments”;
- A pledge to provide accurate data;
- A pledge to repay to the state a percentage of the lump sum received that is equal to the percentage by which the county or counties failed to reach their target number.

If the plan satisfies the requirements, TDCJ may award the department or departments a one-time lump sum equal to 35 percent of the savings goal. Of the remaining 65 percent of the savings, there are certain incentive payments that the department or departments can receive based upon their performance in the previous two years:

- 15 percent for reducing the percentage of persons supervised by the county or counties who commit a new felony while under supervision;
- 5 percent for increasing the number of persons supervised by the county or counties who are not delinquent in making any restitution payments;
- 5 percent for increasing the percentage of persons supervised by the county or counties who are gainfully employed.

Unfortunately, TDCJ and CJAD have not actually proceeded with SB 1055. Pursuant to Rider 37 under the Department of Criminal Justice Section of the Texas 2016-2017 biennium budget, any “unexpended and unencumbered balances of state funds” must be returned to the state. If that amount exceeds \$13 million, then the money “shall be redistributed by TDCJ for the benefit of the community supervision and corrections system and to implement one or more commitment reduction plans authorized by Senate Bill 1055 enacted during the Eight-second Legislation, Regular Session, 2011” (V-14).

The amount estimated for the most recent budget, and every budget since its passage has been \$0. It appears that not enough money in excess has been returned for the bill to be implemented. However, the structure of SB 1055 requires the commitment reduction plan to be submitted “no later than the 60th day after the date on which the time for gubernatorial action on the state budget has expired under Section 14, Article IV, Texas Constitution.” This might be too rigid of a timeframe to determine whether funding is available, and if it is, enough time to get a commitment reduction plan in place.

To provide more flexibility and feasibility, current language from SB 1055 should be changed to allow CJAD and each local jurisdiction to reach agreement on how much each local jurisdiction needs for upfront funding, as well as for performance-based funding, at a later date than what the code today requires.

The Texas Legislature should authorize this funding because it is a no-lose situation for the state and the counties. If the counties reach their goals, they will receive savings via the reduction in commitments. If they do not, the counties are required by statute to reimburse the amount they did not save but intended to save.

* 3g offenses, found in Code of Criminal Procedure 42.12, Section 3g, include murder; capital murder; indecency with a child; aggravated kidnapping; aggravated sexual assault; aggravated robbery; sexual assault; several drug offenses that use children in the commission of the offense or in which drugs are sold in drug-free zones; injury to a child or an elderly or disabled individual; sexual performance by a child; first-degree criminal solicitation; trafficking of persons; certain burglary offenses; and certain weapons offenses.

Another possible solution is to modify the statutory language of SB 1055 to allow another option for counties if the upfront funding portion of the bill is not implemented in the budget. This would be a model similar to Arizona's that would provide a certain percentage of the savings, as compared to a baseline, subsequent to the reduction instead of before. This would enable local governments to proceed to reduce direct commitments and/or probation revocations with the hope that the following session of the Legislature would allocate to them their share of the savings achieved. However, it might make the community supervision departments and district attorneys who often file the revocation motions weary of participating if there was no guaranteed funding to ensure that interventions such as electronic monitoring and treatment would be immediately available to safely monitor these offenders in the community. The statute could also be amended to allow for private entities such as foundations to provide some or all of the upfront money necessary and thereby receive back at least what they invested once the savings are achieved.

Revise Current Probation Formula to Incentivize Release of Successful Probationers

The majority of state funds distributed to probation departments are based upon the number of individuals the department has under direct supervision. This means that there is a substantial disincentive to terminate probation sentences for individuals who have followed all requirements of their probation, timely paid their restitution, and no longer need to be supervised.

In 2007, House Bill 3200 was passed. The bill directed CJAD to develop a new basic probation funding formula based on certain criteria. First, it would base funding on the number of felony defendants placed on community supervision, rather than directly supervised. This means the department would not lose out on funding for terminating an individual's probation early. Second, funding would be additionally based on each felony defendant participating in a pretrial program and supervised by the county. This addresses the current fiscal disincentive for local jurisdictions to divert appropriate individuals from probation altogether, such as by not bringing or by dismissing charges against those arrested for first-time, low-level drug pos-

session contingent on completion of a drug treatment program. Third, a per diem amount would apply for each misdemeanor placed on community supervision. Fourth, higher rates of funding would be established for felony defendants who are serving the early years of their term rather than felony defendants who are serving the end of their term. This is based on data showing most new offenses and revocations occur within the first two years a person is on probation and that for those who have been exemplary in that time there is little or no benefit to further supervision. Fifth, funding would be reduced for departments with excessive numbers of technical revocations. Sixth, additional funding would be provided based on the number of early terminations, which is partly designed to compensate for the lost probation fees, which may be disproportionate to the savings from not supervising a person who required little supervision to begin with.

The bill was vetoed because "technical revocation" was not defined. A possible solution is to define technical revocation can be defined as violating the terms of probation without any allegation of a new criminal offense. Additionally, it would be beneficial to instruct CJAD that in determining the penalty for excessive technical revocations consideration should be given to the risk level of a department's caseload and the jurisdiction's rate of sentencing nonviolent and low-risk offenders to prison. This ensures that jurisdictions that utilize probation in cases involving more challenging offenders are not penalized.

Another way to further increase the public safety and cost-saving benefits of this proposed legislation would be to also base funding on risk level of the offender. Higher-risk offenders require greater supervision in the community, such as electronic monitoring, treatment programs, and smaller caseloads. This heightened supervision requires greater funding per probationer. Further, law enforcement diversion programs, such as LEAD,* should be incentivized and accounted for in the probation funding formula. The funding for these types of diversion programs would be similar to how HB 3200 based a portion of funding on felony defendants on pretrial programs and supervised in the county.

* LEAD, or Law Enforcement Diversion Program, is a pilot program started in Seattle, Wash., that allows for officers at the point of arrest to divert certain offenders from the criminal justice system and into diversionary programs that have been proven to reduce recidivism and save millions in tax dollars ([Glod](#)).

Conclusion

The evidence is overwhelming. Incentivized probation results in more successful probation outcomes, and saves millions of dollars each year. Texas' adult probation system has been on the cusp of joining the litany of states that have already seen the improvements to public safety

through incentive-based adult probation funding, and there is no reason to wait any longer. Revisions to current statutory and budgetary provisions and the implementation of bills that have already gained overwhelming support will continue to keep Texas at the forefront of criminal justice reform. ★

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