

Keeping Texas Competitive

A Legislator's Guide to the Issues 2013-2014



Adult Probation

The Issue

Nearly 450,000 Texans are on probation, including 170,000 felony probationers. Revoked probationers account for 37% of prison intakes and 41% of state jail intakes. The 23,881 probationers revoked in 2011 are projected to serve an average of 2.5 years at a cost of \$50.79 a day, resulting in an annual cost of \$442 million.

Since 2005, \$55 million in state probation funding has been incentive-oriented. Departments are eligible for the incentive funding if they adopt graduated sanctions and pledge to reduce their technical revocations. Graduated 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. Technical violations involve conduct that contravenes the terms of probation such as missing appointments but does not constitute a new crime.

Most of the state's 121 probation departments have participated in the incentive funding plan, and these departments have reduced their technical revocations by 16% while non-participating departments increased technical revocations by 8%. Had all departments increased their revocations by 8%, another 2,640 probationers would have been revoked to prison at a cost of \$119 million. Departments receiving the funding used most of it to reduce caseloads from 150 to about 110 probationers per supervising officer. Overall, the Texas felony probation revocation rate has fallen from 16.4% in 2005 to 14.7% in 2010.

The Facts

- To help avoid spending \$2 billion on building and operating new prisons, the 80th Legislature strengthened probation, including adding 1,400 beds at probation and parole intermediate sanctions facilities (ISFs). These facilities are typically located in major urban areas, such as the one across from Minute Maid Park in Houston, and have average stays of 60 days and primarily house probationers and parolees who would otherwise be revoked for technical violations or misdemeanors.
- Probation costs \$2.92 per day, about 53% of which is paid for by offenders in probation fees. Prison costs \$50.79 per day, all of which is paid for by taxpayers.

Recommendations

- **Require probation with mandatory treatment for first-time, low-level drug possession offenders with no prior violent, sex, property, or drug delivery crimes.** Senate Bill 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 such as cocaine. 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 traffic violation. Those covered would be sentenced to mandatory probation and treatment, which they would have to pay for. The judge would determine whether the offender would go to a residential facility, which could be the state's six month secure Substance Abuse Felony Punishment Facilities (SAFPFs), or day treatment, or a combination of both. 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 his/her conditions of probation, he/she could be revoked to prison for up to 10 years. The LBB estimated that SB 1909 would have saved taxpayers \$500 million over five years, not including potentially even more in avoided prison construction costs.

- **Revise probation funding formula.** Currently, state basic adult probation funds are distributed based solely on the number of individuals under direct supervision in that department. Distributing funding based on the number of adult probationers provides an incentive to keep probationers who have been compliant for many years, pose no risk to public safety, and are fully paying their fees on probation longer than necessary. Also, because the current funding formula does not incorporate risk, there is a disincentive to put individuals on probation in lieu of prison who could be safely supervised but only with a lower caseload, specialized treatment, electronic monitoring, and/or other interventions that are costly, though far less so than prison. Accordingly, the current statute that mandates funding based on the number of probationers should be revised to instruct the TDCJ Community Justice Assistance Division to develop a new formula that includes the following factors: 1) the number of felony probation referrals; 2) an incentive for early termination of compliant probationers who have fulfilled all of their obligations and do not pose a risk to public safety, 3) adjusted funding based on risk level of the caseload, and 4) an incentive to reduce technical revocations so long as new crimes by probationers either remain the same or decline.
- **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, focus on felony offenders, and be based on guidelines that ensure 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.

Resources

Breaking Addiction Without Breaking the Bank by Marc Levin, Texas Public Policy Foundation (Apr. 2011).

Texas Criminal Justice Reforms: Lower Crime, Lower Cost by Marc Levin, Texas Public Policy Foundation (Jan. 2010).

