

Adult Probation

Legislator's Guide to the Issues 2015-16

Adult Probation



The Issue

Over 400,000 Texans are on probation, including approximately 230,000 felony probationers. Revoked probationers account for 37% of prison intakes and 41% of state jail intakes. The 24,186 probationers revoked in 2013 are projected to serve an average of 2.5 years at a cost of \$50.04 a day, resulting in an annual cost of \$442 million.

The 83rd Legislature continued to fund incentive-oriented probation funding that was first authorized by the 79th Legislature in 2005. Departments are eligible for the incentive funding if they adopt graduated sanctions and pledge to reduce 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. A technical violation is conduct that contravenes the terms of probation (such as missing an appointment) but which is not a new crime.

Most of the state's 121 probation departments, including most of those covering the most populous counties, have participated in the incentive funding plan and implemented graduated sanctions to respond to technical violations, and these departments reduced their technical revocations by 13.4% from 2005 to 2012 while non-participating departments increased technical revocations by 5.9%. Had all departments increased their technical revocations by 5.9% over this period, total technical revocations would have risen 797 instead of a net decline of 1,470. Had the difference, which amounts to 2,267 probationers been revoked to prison, the cost would have been \$104.4 million based on the average time served of 2.5 years. 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 2.8% from 2005 to 2013.

The Facts

- To avoid spending two billion dollars on building and operating new prisons, the 80th Legislature strengthened probation, including adding 1,400 beds at probation and parole intermediate sanctions facilities. These "ISFs" are typically located in major urban areas, such as one across from Minute Maid Park in Houston, have average stays of 60 days, and primarily house probationers and parolees who would otherwise be revoked for technical violations or misdemeanors.
- Probation costs \$2.99 per day, about 54% of which is paid for by offenders in probation fees. Prison costs \$50.04 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.** This could apply 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. The bill specifically included faith-based treatment programs that meet state standards.

- **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. In 2015, the Legislature should require implementation of a formula that includes factors such as: 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

Incentivizing Stronger Probation in the Texas Budget by Marc Levin, Texas Public Policy Foundation (Mar. 2013).

Public Safety and Cost Control Solutions for Texas County Jails by Marc Levin, Texas Public Policy Foundation (Mar. 2012).

