



PolicyBrief

Advancing Reforms to Community Supervision in Texas

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Key Points

- Felony-level technical revocations from probation are not subject to a cap on how much time a person would serve upon being revoked.
- Probation leaders say many of their clients opt against residential drug treatment and choose revocation to state jail because it would get them out of any form of correctional control more quickly.
- Texas must move away from basing state funding of probation departments primarily on how many people are being directly supervised at any given time.
- Texas should transition to a more performance-based funding approach that encourages innovating ways to both reduce revocations to prison, and it should terminate supervision early for those who have been compliant.

The Challenge

As of August 2018, Texas has about 369,000 people on some form of community supervision—including nearly 153,000 on direct felony supervision, over 10,000 on felony pretrial supervision, and almost 65,000 on indirect felony probation (people who do not have to report face-to-face or who have absconded) ([TDCJ, 6-7](#)). The remaining people are on some form of misdemeanor probation. Texas also has nearly 87,000 people on parole—of which 66,502 are on active supervision ([TDCJ, 4](#)). Over the last decade, the state has achieved a dramatic reduction in parole revocations. This stems largely from the fact that parole is a statewide system, and improvements have been made to increase the use of graduated sanctions, referrals to treatment, and utilization of intermediate sanctions facilities (ISFs). ISFs are typically used in lieu of revocation for technical violations and/or a misdemeanor, or for a nonviolent, low-level felony. A person on parole can spend up to 90 days in an ISF before being released to continue their term of parole.

The primary community supervision problem to address in Texas is felony-level technical revocations from probation, which totaled over 11,500 in 2017 (Johnson, 3). Unlike other states such as Louisiana, Texas has yet to adopt a cap on how much time would be served upon revocation, meaning the person must serve the full sentence that was determined upon adjudication (although they would be eligible for parole in most cases). For example, someone who was on probation for third-degree drug possession (one to four grams) and is revoked for technical violations could face up to a 10-year prison term, even if they had spent substantial time in compliance on probation before being revoked. The situation is even worse for those on a different form of probation known as deferred adjudication, because the prosecutor is not bound by an upfront determination of the suspended sentence length and is well-positioned to seek the maximum time now that the person has failed probation.

A February 2019 study of technical probation revocations in Texas identified some of the specific challenges. First, about 40 percent of those sampled who were revoked from probation involved absconders, so to fully address the problem we must look at solutions—which could involve technology—to reduce absconding (Johnson, 9). Second, about 24 percent of technical revocations occurred after the person rejected a modification of their probation conditions (Johnson, 8).

Solutions could include changing the law to require that people on probation accept the modification—thereby preventing them from opting for state jail—and/or capping the amount of time that a person could be required to serve on probation after successfully completing residential treatment or a community corrections facility. Probation leaders, like Michael Wolfe, director of the Taylor County Supervision & Corrections Department, indicate that many or most of these cases involve refusing residential drug treatment. They point out that, under current law, accepting

a revocation to state jail is more attractive because it frees them from any form of correctional control more quickly.¹ Limiting the remaining probation period following residential treatment could change this calculus

Improving Community Supervision in Texas

Additionally, Texas must reexamine its probation funding formula. Currently, about 35 percent of probation costs are paid for by fees on probationers (CJAD, 1). Although state law now prohibits revocation solely because someone failed to pay because they could not afford it, 55 percent of probationers in one study pled “true” to not paying during their revocation hearing (although none were revoked solely for not paying) (Johnson, 11).

In addition to reducing reliance on fees, Texas must move away from basing state funding of probation departments primarily on how many people are being supervised at any given time. This encourages keeping those with exemplary behavior on probation longer than necessary and fails to account for differences in the risk-and-need levels of case-loads across various departments. This also has the effect of creating a fiscal disincentive to utilize probation for more challenging cases.

Instead of this population-based funding formula, Texas should transition to a more performance-based approach that encourages local departments to innovate ways to both

reduce revocations to prison and terminate supervision early for those who have been compliant, pose no continuing public safety risk, and are current on fines and fees. The former can be accomplished, in part, by frontloading a higher per-capita funding rate toward the beginning term of supervision when the likelihood of failure is the greatest (Haugen, 6). Meanwhile, probation departments can be incentivized to terminate supervision early by continuing to pay a portion of the standard per-capita rate even when supervision is terminated (so as to blunt the effect of losing revenue from probationer fees).

Texas should also adjust funding streams to ensure that pretrial diversion programs operated by probation departments are not disadvantaged in funding because participants have not been adjudicated (Glod, 8). Previous legislation that was passed in Texas in 2007—but was ultimately vetoed due to the definitional vagueness of “technical violation”—would have implemented many of these performance-based measures and also taken such pretrial diversions into account (HB 3200). This bill, or similarly crafted language, ought to be revisited by a future Legislature.

Finally, though the greatest opportunity is in probation, parole could be improved in many ways, including by a greater use of early termination for those who have been compliant for many years. ★

¹ Discussion with Michael Wolfe on April 25, 2019.

References

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About Right on Crime

Right on Crime is a national campaign of the Texas Public Policy Foundation, in partnership with the American Conservative Union Foundation and Prison Fellowship, which supports conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs. The movement was born in Texas in 2007, and in recent years, dozens of states such as Georgia, Ohio, Kentucky, Mississippi, Oklahoma, and Louisiana, have led the way in implementing conservative criminal justice reforms.

