

## House Committee on Appropriations – Adult Probation Funding Formula

**Dear House Appropriations Committee Members:** Thank you for the opportunity to comment on the current adult probation funding formula, and to recommend modifications that will help achieve lower recidivism rates, fewer revocations to prison or jail, and increased public safety.

### ALLOCATE FUNDING FOR PRETRIAL INTERVENTION

An emerging best-practice in community supervision is the use of pretrial intervention programs. These jail diversion programs are highly beneficial for a variety of reasons:

- They allow counties to connect defendants with more immediate substance use or mental health treatment, preventing jail overcrowding and lowering re-arrest rates.
- They help to mitigate the risk of releasing a defendant who may have a history of criminal justice involvement, largely due to untreated substance use or mental health issues.
- They save money by preventing later prison or state jail incarceration, and by reducing the amount of time under supervision, while still creating strict accountability for the defendant.

The number of cases handled through pretrial diversion programs in Texas more than doubled over the past decade,<sup>1</sup> yet the use of these programs remains fairly limited. Despite their clear benefits – which align with state and county decarceration, supervision, and public safety goals – the current state funding structure hinders the expansion of these programs. Texas’ adult probation funding formula is based on the number of people placed on either regular “direct” probation, which includes deferred adjudication, or misdemeanor probation for up to six months. Defendants placed on pretrial intervention programs are not counted when the Legislative Budget Board projects the community supervision population for each budget cycle.

#### **Model Pretrial Intervention Program: Harris County Reintegration Impact Court**

Harris County implemented a pretrial intervention program for most drug possession and felony prostitution cases, emphasizing quick release into treatment and supports. In less than one year, the county reduced jail bed days for possession cases by 100,000 and linked almost 4,000 people with recovery services. Clients are offered housing assistance and access to treatment, and they are assigned recovery coaches as well as peer support mentors. Those enrolled in these services may be eligible for their case to be expunged if they complete the conditions of the court.

*Source: Harris County Information Technology Center, Preliminary Data – Re-Integration Docket Study*

Current statute, through the use of discretionary grant funds, allows the Community Justice Assistance Division (CJAD) to provide some funding for pretrial intervention programs,<sup>2</sup> but this is limited to select programs at the felony level. No funds are allocated for supervision of defendants in these programs. Thanks to the leadership of Senator Whitmire, the Legislature in 2017 passed a provision that allows courts to place defendants enrolled in pretrial intervention programs in state-funded community corrections facilities, which provide treatment services for pretrial justice system-involved individuals. This measure removes a key obstacle to expanded use of pretrial intervention, but more must be done.

**Recommendation:** The Legislative Budget Board should count defendants on pretrial intervention programs when considering community supervision allocations for basic supervision, and the State should fund pretrial supervision at the same rate as probation clients.

### CHANGE THE PROBATION FUNDING FORMULA TO REDUCE REVOCATIONS AND INCREASE EARLY TERMINATIONS

As Texas' prison population expanded rapidly over the past two decades, straining limited state resources, the use of community supervision as an alternative to incarceration became more attractive to courts. Consequently, the current probation population has a higher risk/need profile compared to a decade ago, requiring more intensive supervision, programming, and social supports.<sup>3</sup> The Legislature increased allocations for Diversion Program grants to probation departments between 2006 and 2017,<sup>4</sup> helping most departments develop specialized programming to address substance use disorder, cognitive behavioral issues, mental health, and other factors. However, the Basic Supervision formula has remained relatively unchanged.

In short, the formula involves analysis of probation expenditures divided by the average daily probation population, which produces a cost per day that becomes the multiplier for projected populations in the future biennium.<sup>5</sup> The formula

$$\text{Cost per day} = \left( \frac{\text{Total program expenditures}}{\text{Average daily population} \times \text{Number of days in a fiscal year}} \right)$$

does not take into account the need for a better-trained probation workforce to manage a higher-need population, thereby putting greater pressure on departments to rely on probationer fees to retain qualified staff and meet operating expenses. Supervision fees represent 30 percent of the funding for probation departments,<sup>6</sup> despite the fact that higher-need populations are significantly less likely to be able to afford those fees.

The Community Supervision and Corrections Department Funding Committee released a set of recommendations to address this problem, emphasizing a model that promotes shorter probation terms, lower revocation rates, less reliance on supervision fees from a high-need population, and reduced recidivism rates.<sup>7</sup> The recommendations – which were in line with Senator Whitmire's recommendations during the 2007 Legislative Session,<sup>8</sup> and which TCJC supports – would revise the formula as follows:

#### ***Recommendation:***

- **Pay a higher per-capita rate for probationers during the early term of probation (except for offenses ineligible for early termination) when probationers are most likely to be revoked.** This additional funding will provide more intensive supports during the early term of probation to reduce the likelihood of re-offense.
- **Pay the standard rate during the middle term of probation.**
- **Pay one-half the standard rate for the final period of probation supervision, and pay the rate even if the court orders early successful termination.** This will promote early termination for successful completion of probation terms, in turn reducing caseload sizes and decreasing the overall probation population.

### PROVIDE INCENTIVE FUNDING TO REDUCE STATE JAIL AND PRISON POPULATIONS

In 2011, the Legislature passed SB 1055,<sup>9</sup> which created a permissive state/local incentive funding program, under which counties may set target reduction goals to reduce the number of nonviolent commitments to incarceration. Participation was intended to be completely voluntary, and counties could choose to partner with other counties to set and achieve their desired targets. Participating counties would receive an up-front, lump sum of the anticipated state savings from commitment reductions, and counties could use the fund to establish the programs necessary to meet their reduction goals. Unfortunately, the state has yet to find a means of providing up-front funding to support commitment reduction plans, so the legislation has never been implemented.

An incentive funding structure to support county efforts to reduce state jail and prison commitments could bring substantial benefits:

- **Counties could design their own interventions based on community needs.** Some counties might choose to focus on reducing probation revocations by augmenting vocational supports, whereas other counties might develop pre-booking diversion in partnership with law enforcement.
- **The State could recoup its up-front investment through reduced state jail and prison commitments.** As counties achieve their commitment reduction targets, the State can begin to take prison beds off line or even close facilities, with massive state-level savings.

**Recommendation:** The State should allocate enough funding to support a commitment reduction plan in up to five pilot counties to determine if the funding mechanism results in reduced state jail and prison commitments and reduced recidivism. Legislators and stakeholders can evaluate the different strategies that each county implements to determine which approaches achieve the best results with respect to prison/jail commitments and lower recidivism.

## Citations

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<sup>1</sup> Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD), *Community Supervision and Corrections Department Funding Review and Recommendations*, August, 2016, p. 10.

<sup>2</sup> Texas Government Code, Section 509.011 (b) (1)

<sup>3</sup> Stevens-Martin, et. al, “Technical Revocations of Probation in One Jurisdiction: Uncovering the Hidden Realities,” *Federal Probation*, December, 2014, Vol. 78, Number 3, p. 20. See also: TDCJ CJAD, *Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds, 2005 – 2016*, [https://www.tdcj.state.tx.us/publications/cjad/pubs\\_cjad\\_lbb\\_reports.html](https://www.tdcj.state.tx.us/publications/cjad/pubs_cjad_lbb_reports.html)

<sup>4</sup> Legislative Budget Board, Conference Committee Reports, State Budget, FY 2004/5 – FY 2018/19, [http://www.lbb.state.tx.us/Legislative\\_Session.aspx?Session=85](http://www.lbb.state.tx.us/Legislative_Session.aspx?Session=85).

<sup>5</sup> Legislative Budget Board, *Criminal and Juvenile Justice Uniform Cost Report, Fiscal Years 2015 and 2016*, January 2017, p. 13, [http://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/3137\\_UniformCosts\\_2017.pdf](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3137_UniformCosts_2017.pdf).

<sup>6</sup> TDCJ CJAD, *Funding Review*, p. 4.

<sup>7</sup> Ibid, p. 6-7.

<sup>8</sup> HB 3200, 80(R), <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=HB3200>.

<sup>9</sup> SB 1055 82(R), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=82R&Bill=SB1055>.