

Senate Committee on Finance – Adult Probation Funding Formula

Dear Senate Finance 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.

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 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,¹ yet the use of these programs remains fairly limited. Despite clear benefits that align with state goals, the current 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. The statute, through the use of discretionary grant funds, allows the Community Justice Assistance Division (CJAD) to provide some funding for pretrial intervention programs,² but this is limited to select programs at the felony level.

Pretrial defendants are not counted when the Legislative Budget Board projects the likely number of defendants placed on community supervision, despite the fact that these programs, like probation, save state dollars by reducing state jail commitments. Thanks to the leadership of Senator Whitmire, the Legislature 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-involved individuals. This measure removes a key obstacle to expanded use of pretrial intervention.

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

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.

Harris County Information Technology Center, Preliminary Data – Re-Integration Docket Study.

FORMULA CHANGES TO REDUCE REVOCATIONS AND INCREASE EARLY TERMINATIONS

As Texas' prison population has expanded rapidly over the past two decades, straining limited state resources, community supervision has increasingly become an alternative to incarceration. Importantly, the current probation population has a higher risk/need profile compared to a decade ago, requiring more intensive supervision, programming, and social supports.³ The Legislature increased allocations for Diversion Program grants to probation departments between 2006 and 2017,⁴ 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.⁵ The formula does not take into

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

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,⁶ 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.⁷ The recommendations – which were in line with Senator Whitmire's recommendations during the 2007 Legislative Session,⁸ and which TCJC supports – would revise the formula as follows:

- **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.** Allocating more resources at the front end will enable probation departments to decrease caseload sizes and provide individualized supervision during the early term of probation, reducing 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.

Citations

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

² Texas Government Code, Section 509.011 (b) (1)

³ 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

⁴ 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.

⁵ 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.

⁶ TDCJ CJAD, *Funding Review*, p. 4.

⁷ Ibid, p. 6-7.

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