

[2021 Session] Require Probation Practices to Focus on Public Safety and More Prudently Use Taxpayer Dollars



Policy Background

Probation is commonly framed as an alternative to incarceration — and, currently, approximately 365,000 people are on probation in Texas, 218,000 of whom are on felony probation.¹ However, probation has also become a costly driver of mass incarceration. Nearly one-third of people incarcerated in Texas each year (approximately 22,000 total) are there as a result of a probation revocation.² High revocation rates land large numbers of people in jail and prison, creating a revolving door effect.³ Put simply, the probation system is failing to help people live productively in the community, per its goal: to successfully rehabilitate and reorient individuals back into society.

Many Texas courts establish lengthy probation sentences (up to 10 years)⁴ and, in addition to requiring law-abiding behavior, require adherence to a relentless number of financial and other conditions; failure to meet these demands can result in incarceration. “Technical” probation violations, not new crimes, include missing a scheduled meeting with a probation officer (despite a probationer’s lack of transportation or child care), lack of employment, inability to pay a fee (despite that lack of employment), being late to court, missing curfew, not attending a required class, or going outside of a strict set of geographical boundaries.

Because Texas does not have one centralized probation system, probation practices and outcomes vary widely among counties, with success rates ranging from 30 to 70 percent.⁵ In 2019, a number of Texas counties saw probation failure rates (the

percentage of felony probation cases closed each year that were revocations) of well over 50 percent;⁶ in some of these counties, over 70 percent of revocations were due to technical violations.

Counties with high revocation rates, which simply siphon individuals into jails and prisons, rely more on surveillance and offer probationers little personalized support. Across Texas, this comes at significant cost to taxpayers: With active probation supervision totaling \$3.75 per person per day and prison totaling \$62.34 per day,⁷ the above-mentioned 22,000 people revoked and sent to prison are collectively costing taxpayers as much as \$1.27 million per day that could be invested in true community wellness. On top of that, low probation

success rates do not contribute to public safety.

On the other hand, counties with low revocation rates are working to improve public safety and do so by following a case-management approach,⁸ with personalized therapeutic interventions such as collaboration, appropriate goal-setting, linkage of individuals to valuable community resources, and facilitation of a life outside of correctional surveillance and control.

Proposed Solution

To help reduce the probation population in Texas and truly divert individuals away from the justice system, Texas leadership should:

1. Reduce the length of probation to the time necessary to accomplish the collaborative goals set forth by the probationer and the probation officer. Treatment planning and goal-setting are more important than a long, fixed sentence. Probation is a means of jail diversion that should tailor sentences to each individual probationer. The length of probation should be only as long as needed and never exceed two years; this time frame allows probationers to reach the goals outlined in their individual plans.

Over time, as probation populations continue to fall — and as fewer people are revoked to prison — the state can direct the savings towards communities, more effectively assisting them in facilitating the success of people on probation or recently completing probation.

2. Require the Texas Department of Criminal Justice's Community Justice Assistance Division (TDCJ-CJAD) to inform probation departments and judges with a greater than 50 percent failure rate of the necessity for corrective action. TDCJ-CJAD has the

authority to conduct audits and impose sanctions for noncompliance with probation standards,⁹ and it should be given the authority to require judicial education as a condition of a community supervision and corrections department (CSCD) receiving state-funded probation and treatment services. Further, the Legislature should authorize TDCJ- CJAD to issue diversion grant funds to high-performing CSCDs to provide training and technical assistance.

3. Promote the use of early termination as a motivation to complete probation requirements. Those CSCDs with exceptionally high probation success rates used early termination 7.5 times more frequently than those with very low success rates.¹⁰

4. Limit probation conditions. On average, a probationer is required to comply with 15 conditions on any given day; the more conditions a probationer must heed, the greater the likelihood that a condition will be violated³⁴ and they will be revoked to prison or jail at taxpayer expense.

Relevant Bills

- **Bill Number:** **HB 2384** [Sherman, Sr.]
Bill Caption: Relating to the criminal penalties for certain criminal offenses.
TCJE Materials: [Fact Sheet](#)
- **Bill Number:** **HB 358** [Sherman, Sr.]
Bill Caption: Relating to certain technical violations of conditions of community supervision.
TCJE Materials: [Fact Sheet](#)
- **Bill Number:** **HB 931** [Sherman, Sr.]
Bill Caption: Relating to certain violations of conditions of community supervision related to testing for alcohol or controlled substances.
TCJE Materials: [Fact Sheet](#)
- **Bill Number:** **HB 385** [Pacheco, White, Campos]
Bill Caption: Relating to conditions of community supervision and procedures applicable to the reduction or termination of a defendant's period of community supervision.

In light of Texas' projected budget crisis, TCJE developed 7 cost-saving solutions. Learn more about our "Spend Your Values, Cut Your Losses" campaign [here](#), and read the full portfolio of solutions [here](#).

¹ "Report to the Governor and the Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds," *Texas Department of Criminal Justice*, Community Justice Assistance Division, December 1, 2019.

² "Report to the Governor," TDCJ.

³ Alexi Jones, "[Correctional Control 2018](#)," *Prison Policy Initiative*.

⁴ Alexis Watts, "[Probation In-Depth: The Length of Probation Sentences](#)," *Robina Institute of Criminal Law and Criminal Justice*, 2014.

⁵ "FY 2019 Probation Fact Sheet," Received from the *Texas Department of Criminal Justice* in June 2020. 29.

⁶ "FY 2019."

⁷ *Legislative Budget Board*, "[Criminal and Juvenile Justice Uniform Cost Report, Fiscal Years 2017 and 2018](#)," January 2019, 4 and 6.

⁸ Jennifer L. Skeen and Sarah Manchak, "Back to the Future: From Klockars' Model of Effective Supervision to Evidence-based Practice in Probation," *Journal of Offender Rehabilitation*, Vol. 47, Issue 3 (2008).

⁹ *Texas Administrative Code*, [Title 37, Part 6, Chapter 163](#) Community Justice Assistance Division Standards, Rule 163.35 Supervision.

¹⁰ *Texas Department of Criminal Justice, FY 2019 Probation Stat Book*. The data was calculated by comparing counties with probation failure rates (percentage of cases closed each year due to revocation compared to successful completion) of greater than 58% with those with failure rates below 30%.

¹¹ Michael P. Jacobson, Vincent Schiraldi, Reagan Daly, and Emily Hotez, "[Less is More: How Reducing Probation Populations Can Improve Outcomes](#)," *Harvard Kennedy School, Program in Criminal Justice Policy and Management*, August 2017.