

Texas Public Policy Foundation

Criminal Justice

Legislator's Guide to the Issues 2017-18



Adult Probation and Parole



The Issue

More than 400,000 Texans are on probation, including approximately 218,000 felony probationers. Revoked probationers account for 37% of prison intakes and 41% of state jail intakes. The 22,980 probationers revoked in 2015, including 12,330 revoked for technical violations such as missed appointments, are projected to serve an average of 2.5 years at a cost of \$54.89 a day, resulting in an annual cost of \$460 million.

The 84th Texas Legislature continued 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 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 \$55 million in funding went towards reducing caseloads from approximately 150 to 110 probationers per officer in major metropolitan areas and expanding specialized, much smaller caseloads for subgroups such as mentally ill probationers. This facilitated closer supervision, and the consistent application of such sanctions. Participating probation departments have implemented graduated sanctions and reduced revocations, allowing the state to avoid at least \$226 million in incarceration costs. While progress has been uneven as the minority of departments not participating have increased revocations, overall from 2005 to 2013 the share of probationers revoked to prison for technical violations—failure to comply with probation rules rather than conviction of a new offense—fell 8.7%.

However, recent results from parole have surpassed probation. Even as the parole rate has risen dramatically, the number of new convictions by parolees leading to revocation hearings has dropped from 7,439 in 2006 to 5,191 in 2014. Technical revocations of parolees have plummeted from 2,031 in 2006 to 843 in 2014. Now, the technical revocation rate for parolees is more than five times lower than that of probationers. This is likely attributable to many factors, including greater use of intermediate sanctions facility beds by the parole board which do not count as a revocation and the fact that parole is a statewide system with decisions made by one parole board, whereas there are 121 probation departments with revocation decisions shaped by countless probation officers, prosecutors, and ultimately elected judges.

The Facts

- Probation costs \$3.20 per day, of which the offenders pay 54% of that in fees. Parole costs \$4.04 per day.
- At a 2016 interim hearing before the House Corrections Committee, testimony offered by the head of the Texas Department of Criminal Justice Community Assistance Division indicated that while a state audit found that graduated sanctions were used in 60% of probation technical revocations, this still leaves 40% of cases where this evidence-based practice was not followed.

Recommendations

- **Require probation with mandatory treatment for first-time, low-level drug possession offenders.** SB 1909, passed by the Senate in 2007, would have made this change, applying only to offenders convicted of possessing less than four grams of drugs

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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. 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. Under SB 1909, an offender could still be initially sent to prison upon a documented judicial finding of danger to the community. Furthermore, if the nonviolent drug user did not comply with the treatment program or otherwise violated their probation, they could be revoked to prison for up to ten years. The LBB estimated that SB 1909 would have saved taxpayers \$500 million over five years.

- **Cap maximum time nonviolent revoked probationers can serve for technical violations.** Given that research shows that the swiftness and sureness of punishment is more important than the length of stay and that there is less of a need to incapacitate nonviolent offenders, technical revocations of nonviolent offenders who have not previously been revoked should be capped at nine months or less with eligibility for parole occurring at six months.
- **Reduce number of inmates discharged without supervision and eliminate practice of releasing inmates directly from solitary confinement.** Studies have found that both of these practices lead to higher recidivism rates. One study of similar inmates in New Jersey found those released on to parole were 36% less likely to commit a new crime. While the sentences of those already incarcerated cannot be constitutionally extended to include a post-release supervision period, those who are scheduled for release within six months and have already served at least three years could be given an option of leaving three months early in exchange for six months on supervision.

Resources

[*The Role of Mental Health Courts in Texas*](#) by Marc Levin, et. al, Texas Public Policy Foundation (April 2015).

[*Incentivizing Stronger Probation in the Texas Budget*](#) by Marc Levin, Texas Public Policy Foundation (March 2013).

