

- SUBJECT:** State basic supervision funding for local probation departments
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 5 ayes — Madden, Hochberg, McReynolds, Haggerty, Jones
0 nays
2 absent — Dunnam, Oliveira
- WITNESSES:** For — Todd Jermstad, Texas Probation Association, Marc Levin, Texas Public Policy Foundation; Javed Syed, Nueces County CSCD; Rodney Thompson, Texas Probation Association, Angelina Co. CSCD; Ana Yanez-Correa, Texas Criminal Justice Coalition; (*Registered but did not testify*: Nicole Porter, American Civil Liberties Union of Texas; Jim Stott, Texas Probation Association; Bruce Gipson, 287th Judicial Dist. CSCD; Roxane Marek, Texas Probation Association; Lucinda "Cindy" Simons, Deaf Smith CSCD)

Against — None

On — Bonita White, Texas Department of Criminal Justice, Community Justice Assistance Division; Arnold Patrick
- BACKGROUND:** Under Government Code, sec. 509.011, the Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice funds basic supervision for local probation departments based on per capita funding.

Under section 509.011(a), per capita funding for felony offenders placed on probation is distributed based on a per diem basis for each felony defendant directly supervised by a department. For misdemeanor supervision, the per capita funding is based on the number of misdemeanor placements supervised by a department up to 182 days.
- DIGEST:** HB 3200 would alter the computations for determining state basic supervision funding for local probation departments for felony defendants placed on probation.

Instead of having the per capita funding for felons based on those directly supervised by local probation departments, it would be based on each felony defendant placed on probation and on each felony defendant participating in pretrial programs.

CJAD would be required to biennially establish a per capita funding formula that would have to include:

- higher per capita rates for felony probationers who are serving the early years of their probation terms than those who are serving the end of their terms;
- penalties in per capita funding for each felony probationer whose probation was revoked due to a technical violation of probation; and
- awards in per capita funding for each felony defendant who was discharged due to an early termination of probation.

The Texas Department of Criminal Justice board would be authorized to adopt a policy limiting the percentage of benefit or loss that a department could realize under the new formula.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. The formula would have to be established by January 1, 2008, and be used for the state fiscal year that begins on September 1, 2008.

**SUPPORTERS
SAY:**

CSHB 3200 would adjust the computation used to send money to local probation departments so that it would encourage more intensive supervision in the early years of probation terms, to discourage probation departments from keeping offenders on probation longer than necessary, and to discourage revocations of probation for technical violations of probation terms.

Front-loading probation funding by requiring higher rates for offenders in their early years of their terms would give departments the resources to intensely supervise probationers in the early years, which is when most re-offending occurs. Allowing funding for offenders in pre-trial programs would encourage the use of these programs, which can divert low-level offenders from the criminal justice system so that resources can be used for more serious offenders.

The current formula used to determine state funding provides an incentive to keep felony offenders on probation longer than they may need to be because funding continues as long as they are on supervision. It makes no economic sense to keep under supervision those who are doing a good job on probation by paying their fees and meeting their probation conditions when these offenders might be more appropriately released from supervision. Sometimes the fees paid by those who continue to meet their obligation to pay them may be used to make up funding from offenders who do not pay their fees.

CSHB 3200 would address this by requiring awards for early terminations of probation. Decisions about early terminations still would be made solely by judges who would not be influenced by the funding formula to make decisions that jeopardized public safety and who are accountable to voters.

CSHB 3200 also would establish a disincentive, where none currently exists, for probation departments to revoke offenders' probation and send them to prison for technical violations of probation, which are violations of supervision that do not include new offenses. In some cases, these technical violations do not warrant using a prison bed for a probationer, especially given that the state prison system is operating at capacity and beds should be reserved for violent and serious offenders. The change in the funding formulas would give the local probation departments incentives to work with offenders to improve their success on probation, but decisions about revocations would continue to be made by judges who do not receive the funding.

By requiring the funding formula to contain awards for early termination and for TDCJ to adopt a policy limiting benefits or loss to departments, the bill would mitigate its effects on probation departments.

**OPPONENTS
SAY:**

CSHB 3200 could upset the sentencing dynamics in Texas by providing incentives for probation departments to terminate probation early and disincentives to revoking probation.

If prosecutors and courts feel that the awards required in CSHB 3200 for early termination of probation resulted in early termination being the norm, they may support longer probation terms or more incarceration. Current law allows judges to review offenders at their own discretion and to reduce or terminate a probation term after one-third of the original term,

or two years, whichever is less. Probation departments should not have incentives to push for early termination in inappropriate cases.

In the same way, providing a disincentive to revoke probation for technical violations could result in some probationers remaining in the free world on probation when they should have their probation revoked and be sent to prison. Some technical violations of probation are serious and warrant revocation. For example, absconding from probation or coming in contact with a victim both could be technical parole violations. Under CSHB 3200, a probation department would have a financial incentive to keep offenders who committed these violations on probation instead of sending them to prison, which might be warranted.

NOTES:

The fiscal note for CSHB 3200 estimates a cost of \$21.4 million to the state for fiscal 2008-09.