

SENATE THIRD READING

SB 678 (Leno)

As Amended September 12, 2009

Majority vote

SENATE VOTE: 33-0PUBLIC SAFETY

7-0

APPROPRIATIONS

16-0

Ayes: Arambula, Hagman, Ammiano,
Furutani, Gilmore, Hill, Ma

Ayes: De Leon, Conway, Ammiano, Coto,
Davis, Fuentes, Hall, Harkey, Miller,
Nielsen, John A. Perez, Skinner,
Solorio, Audra Strickland, Torlakson,
Hill

SUMMARY: Creates the California Community Corrections Performance Incentives Act of 2009 which would establish a system of performance-based funding to support evidence-based practices relating to the supervision of adult felony probationers. Specifically, this bill:

1) Finds and declares all of the following:

- a) In 2007, nearly 270,000 felony offenders were subject to probation supervision in California's communities;
- b) In 2007, out of 46,987 new admissions to state prison, nearly 20,000 were felony offenders who were committed to state prison after failing probation supervision;
- c) Probation is a judicially imposed suspension of sentence that attempts to supervise, treat, and rehabilitate offenders while they remain in the community under the supervision of the probation department. Probation is a linchpin of the criminal justice system, closely aligned with the courts, and plays a central role in promoting public safety in California's communities; and,
- d) Providing sustainable funding for improved, evidence-based probation supervision practices and capacities will improve public safety outcomes among adult felons who are on probation. Improving felony probation performance, measured by a reduction in felony probationers who are sent to prison because they were revoked on probation or convicted of another crime while on probation, will reduce the number of new admissions to state prison, saving taxpayer dollars and allowing a portion of those state savings to be redirected to probation for investing in community corrections programs.

2) Defines as follows:

- a) "Community corrections" means the placement of persons convicted of a felony offense under probation supervision, with conditions imposed by a court for a specified period;
- b) "Chief probation officer" means the chief probation officer for the county or city and county in which an adult offender is subject to probation for the conviction of a felony offense;

- c) "Community corrections program" means a program established pursuant to this act consisting of a system of felony probation supervision services dedicated to all of the following goals:
- i) Enhancing public safety through the management and reduction of offender risk while under felony probation supervision and upon reentry from jail into the community;
 - ii) Providing a range of probation supervision tools, sanctions, and services applied to felony probationers based on a risk/needs assessment for the purpose of reducing criminal conduct and promoting behavioral change that results in reducing recidivism and promoting the successful reintegration of offenders into the community;
 - iii) Maximizing offender restitution, reconciliation, and restorative services to victims of crime;
 - iv) Holding offenders accountable for their criminal behaviors and for successful compliance with applicable court orders and conditions of supervision; and,
 - v) Improving public safety outcomes for persons placed on probation for a felony offense, as measured by their successful completion of probation and commensurate reduction in the rate of felony probationers sent to prison as a result of a probation revocation or conviction of a new crime.
- d) "Evidence-based practices" refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or post-release supervision.
- 3) Authorizes each county to establish a county treasury a Community Corrections Performance Incentive Fund (CCPIF), to receive all amounts allocated to that county for purposes of implementing this chapter.
- 4) Provides that in any fiscal year for which a county receives moneys to be expended for the implementation of this chapter, the moneys, including any interest, shall be made available to the chief probation officer (CPO) of that county, within 30 days of the deposit of those moneys into the fund, for the implementation of the community corrections program authorized by this chapter as follows.
- a) The community corrections program shall be developed and implemented by probation and advised by a local Community Corrections Partnership (CCP).
 - b) The local CCP shall be chaired by the chief probation officer and comprised of the following membership:
 - i) The presiding judge of the superior court, or his or her designee;
 - ii) A county supervisor or the chief administrative officer for the county;

- iii) The district attorney;
 - iv) The public defender;
 - v) The sheriff;
 - vi) A chief of police;
 - vii) The head of the county department of social services;
 - viii) The head of the county department of mental health;
 - ix) The head of the county department of employment;
 - x) The head of the county alcohol and substance abuse programs;
 - xi) The head of the county office of education;
 - xii) A representative from a community-based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense; and,
 - xiii) An individual who represents the interests of victims.
- c) Funds allocated to probation pursuant to this act shall be used to provide supervision and rehabilitative services for adult felony offenders subject to probation, and shall be spent on evidence-based community corrections practices and programs, as defined under existing law, which may include, but are not limited to, the following:
- i) Implementing and expanding evidence-based risk and needs assessments;
 - ii) Implementing and expanding intermediate sanctions that include, but are not limited to, electronic monitoring, mandatory community service, home detention, day reporting, restorative justice programs, work furlough programs, and incarceration in county jail for up to 90 days;
 - iii) Providing more intensive probation supervision;
 - iv) Expanding the availability of evidence-based rehabilitation programs including, but not limited to, drug and alcohol treatment, mental health treatment, anger management, cognitive behavior programs, and job training and employment services; and,
 - v) Evaluating the effectiveness of rehabilitation and supervision programs and ensuring program fidelity.
- d) The CPO shall have discretion to spend funds on any of the above practices and programs consistent with this act but, at a minimum, shall devote at least 5% of all funding received to evaluate the effectiveness of those programs and practices implemented with the funds

provided pursuant to this chapter. A CPO may petition the Administrative Office of the Courts (AOC) to have this restriction waived, and the AOC shall have the authority to grant such a petition if the CPO can demonstrate that the department is already devoting sufficient funds to the evaluation of these programs and practices; and,

- e) Each probation department receiving funds under this chapter shall maintain a complete and accurate accounting of all funds received pursuant to this chapter.
- 5) Requires all community corrections programs funded pursuant to this act to identify and track specific outcome-based measures consistent with the goals of this act.
 - 6) Asks the AOC, in consultation with the Chief Probation Officers of California (CPOC), shall specify and define minimum required outcome-based measures, which shall include, but not be limited to, all of the following:
 - a) The percentage of persons on felony probation who are being supervised in accordance with evidence-based practices;
 - b) The percentage of state moneys expended for programs that are evidence-based, and a descriptive list of all programs that are evidence-based;
 - c) Specification of supervision policies, procedures, programs, and practices that were eliminated; and,
 - d) The percentage of persons on felony probation who successfully complete the period of probation.
 - 7) States that each CPO receiving funding shall provide an annual written report to the AOC and the Department of Corrections and Rehabilitation (CDCR) evaluating the effectiveness of the community corrections program.
 - 8) Necessitates the AOC, in consultation with the chief probation officer of each county and the CDCR, provide a quarterly statistical report to the Department of Finance (DOF), including, but not limited to, the following statistical information for each county:
 - a) The number of felony filings;
 - b) The number of felony convictions;
 - c) The number of felony convictions in which the defendant was sentenced to the state prison;
 - d) The number of felony convictions in which the defendant was granted probation;
 - e) The adult felon probation population;
 - f) The number of felons who had their probation revoked and were sent to prison for that revocation; and,

- g) The number of adult felony probationers sent to state prison for a conviction of a new felony offense, including when probation was revoked or terminated.
- 9) Commences no later than 18 months following the initial receipt of funding pursuant to this act and annually thereafter, the AOC, in consultation with the CDCR, the DOF, and the Chief Probation Officers of California, shall submit to the Governor and the Legislature a comprehensive report on the implementation of this act. The report shall include, but not be limited to, all of the following information:
- a) The effectiveness of the community corrections program based on the reports of performance-based outcome measures;
 - b) The percentage of felony probationers whose probation was revoked for the year on which the report is being made;
 - c) The percentage of felony probationers who were convicted of crimes during their term of probation for the year on which the report is being made;
 - d) The impact of the moneys appropriated pursuant to this act to enhance public safety by reducing the percentage and number of felony probationers whose probation was revoked for the year being reported on for probation violations or new convictions, and to reduce the number of felony probationers who are sent to prison for the year on which the report is being made; and,
 - e) Any recommendations regarding resource allocations or additional collaboration with other state, regional, federal, or local entities for improvements to this act.
- 10) Asks the DOF Director, in consultation with CDCR, the Joint Legislative Budget Committee (JLBC), CPOC, and AOC, to calculate for each county a baseline probation failure rate that equals the average number of adult felony probationers sent to state prison during calendar years 2006 to 2008, inclusive, as a percentage of the average adult felony probation population during the same period.
- 11) Provides that for purposes of calculating the baseline probation failure rate, the number of adult felony probationers sent to prison shall include those adult felony probationers sent to state prison for a revocation of probation, as well as adult felony probationers sent to state prison for a conviction of a new felony offense. The calculation shall also include adult felony probationers sent to prison for conviction of a new crime who simultaneously have their probation term terminated.
- 12) Orders at the conclusion of each calendar year following the enactment of this section, the DOF Director, in consultation with CDCR, JLBC, CPOC, and AOC, to calculate the following for that calendar year:
- a) The cost to the state to incarcerate in prison and supervise on parole a probationer sent to prison. This calculation shall take into consideration factors, including, but not limited to, the average length of stay in prison and on parole for probationers, as well as the associated parole revocation rates, and revocation costs;

- b) The statewide probation failure rate. The statewide probation failure rate shall be calculated as the total number of adult felony probationers statewide sent to prison in the previous year as a percentage of the statewide adult felony probation population as of June 30 of that year;
 - c) A probation failure rate for each county. Each county's probation failure rate shall be calculated as the number of adult felony probationers sent to prison from that county in the previous year as a percentage of the county's adult felony probation population as of June 30 of that year;
 - d) An estimate of the number of adult felony probationers each county successfully prevented from being sent to prison. For each county, this estimate shall be calculated based on the reduction in the county's probation failure rate as calculated annually and the county's baseline probation failure rate. In making this estimate, the DOF Director, in consultation with CDCR, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the AOC, shall adjust the calculations to account for changes in each county's adult felony probation caseload in the most recent completed calendar year as compared to the county's adult felony probation population during the period 2006 to 2008, inclusive; and,
 - e) In calculating probation failure rates for the State and individual counties, the number of adult felony probationers sent to prison shall include those adult felony probationers sent to state prison for a revocation of probation, as well as adult felony probationers sent to state prison for a conviction of a new felony offense. The calculation shall also include adult felony probationers who are sent to prison for conviction of a new crime and who simultaneously have their probation terms terminated.
- 13) Mandates after the conclusion of each calendar year, the DOF Director, in consultation with CDCR, JLBC, CPOC, and AOC, shall identify the appropriate Probation Revocation Tier for each county for which it was estimated that the county successfully prevented any number of adult felony probationers from being sent to state prison. The tiers shall be defined as follows:
- a) Tier 1. A Tier 1 county is one which has a probation failure rate that is no more than 25% higher than the statewide probation failure rate; and,
 - b) Tier 2. A Tier 2 county is one which has a probation failure rate that is more than 25% above the statewide probation failure rate.
- 14) Requires, annually, the DOF Director, in consultation with CDCR, JLBC, COPC, and AOC, shall calculate a probation failure reduction incentive payment for each eligible county, for the most recently completed calendar year, as follows:
- a) For a county identified as being in Tier 1, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being sent to prison, multiplied by 45% of the costs to the state to incarcerate in prison and supervise on parole a probationer who was sent to prison; and,

- b) For a county identified as being in Tier 2, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being sent to prison, multiplied by 40% of the costs to the state to incarcerate in prison and supervise on parole a probationer who was sent to prison.
- 15) Makes it the intent of the Legislature for counties demonstrating high success rates with adult felony probationers to have access to performance-based funding as provided for in this section.
- 16) Provides that on an annual basis, the DOF, in consultation with CDCR, JLBC, CPOC, and AOC, shall calculate 5% of the savings to the state attributed to those counties that successfully reduce the number of adult felony probationers sent to state prison.
- 17) Requires the savings estimated to be used to provide high performance grants to county probation departments for the purpose of bolstering evidence-based probation practices designed to reduce recidivism among adult felony probationers.
- 18) Allows county probation departments eligible for these high performance grants to be those with adult probation failure rates more than 50% below the statewide average in the most recently completed calendar year.
- 19) States that a county probation department may receive a high performance grant under this section in a year in which it does not also receive a probation failure reduction incentive payment. The CPO of a county that qualifies for both a high performance grant and a probation failure reduction incentive payment shall indicate to the AOC, by a date designated by the AOC, whether the CPO chooses to receive the high performance grant or probation failure reduction payment.
- 20) Announces that the grants provided for in this section shall be administered by the AOC. The AOC shall seek to ensure that all qualifying probation departments that submit qualifying applications receive a proportionate share of the grant funding available based on the population of adults ages 18 to 25, inclusive, in each of the counties receiving the grants.
- 21) Provides that if data of sufficient quality and of the types required for the implementation of this act are not available to the DOF Director, the DOF Director, in consultation with the CDCR, JLBC, and AOC, shall use the best available data to estimate probation failure reduction incentive payments and high performance grants utilizing a methodology that is as consistent with that described in this act as is reasonably possible.
- 22) Distributes probation failure reduction incentive payments and high performance grants calculated for any calendar year to counties in the following fiscal year. The total annual payment to each county shall be divided into four equal quarterly payments.
- 23) Estimates of the total probation failure reduction incentive payments and high performance grants to be provided to counties in the coming fiscal year as part of the Governor's proposed budget released no later than January 10 of each year by the DOF. This estimate shall be adjusted by the DOF Director, as necessary, to reflect the actual calculations of probation revocation incentive payments and high performance grants completed by the DOF Director, in consultation with the CDCR, JLBC, CPOC, and AOC. This adjustment shall occur as part

of standard budget revision processes completed by the DOF in April and May of each year.

- 24) Establishes a state CCPIF. Moneys budgeted for purposes of providing probation revocation incentive payments and high performance grants authorized, shall be deposited into this fund. Any moneys deposited into this fund shall be administered by the AOC and the share calculated for each county probation department shall be transferred to its CCPIF. The Legislature may allocate up to 3% of the funds annually deposited into the state CCPIF for use by AOC for the costs of administering this program.
- 25) Disallows the moneys appropriated pursuant to this chapter to be used to supplement, not supplant, any other state or county appropriation for the chief probation officer or the probation department.
- 26) Effectuates this chapter until January 1, 2015, and as of that date is repealed unless a later enacted statute enacted before January 1, 2015, deletes or extends that date.

EXISTING LAW:

- 1) Defines "probation" as the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer.
- 2) Provides that if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.
- 3) Allows the court to impose and require any reasonable conditions, as it may determine are fitting and proper to the end of justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and superficially for the reformation and rehabilitation of the probationer, and that should the probationer violate any terms or conditions imposed by the court in the matter, it shall have the authority to modify and change any and all the terms and conditions to re-imprison the probationer in the county jail within the limitations of the penalty of the public offense.
- 4) Finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. It is the intent of the Legislature that efforts be made with respect to persons who are subject to sex

offender registration who are transients and are on probation to engage them in treatment.

- 5) Allows probation departments to engage in activities designed to prevent adult delinquency. These activities include rendering direct and indirect services to persons in the community. Probation departments shall not be limited to providing services only to those persons on probation being supervised, but may provide services to any adults in the community.

FISCAL EFFECT: According to the Assembly Appropriations Committee:

- 1) Major annual General Fund (GF) savings, likely in the tens of millions, to the extent this act successfully enhances probation services, resulting in a reduction of probation revocations to state prison.

A similar version of this bill adopted by the Budget Conference Committee has been scored by the DOF as a \$30 million savings for the 2009-10 budget year. These savings should increase significantly in the out years.

- 2) The 2009-10 Budget Act appropriates \$45 million from federal Byrne Justice Assistance grant funding to county probation departments for grants consistent with the purposes of this bill, including \$424,000 to the AOC, which would administer the grant program in this bill, for administrative purposes. Proponents of this bill view these funds as essentially seed money for the program, which is projected to significantly increase in the out years as programs take effect and expand.
- 3) DOF notes that if half of the 20,000 felony probationers currently admitted into state institutions annually instead remained on local probation caseloads with enhanced services and review, the savings from reduced incarceration and parole supervision would be about \$255 million (GF). On the basis of these figures, county community corrections programs could receive about \$127.3 million annually to enhance probation staffing, practices, programs, etc.
- 4) DOF indicates its administrative workload required by this bill is absorbable.

COMMENTS: According to the author, "Adult probation is a ticking time bomb waiting to go off. Currently, there are large numbers - 200,000 or more - of adult felons on probation. Forty percent of new admissions to state prison are offenders who have been sent to prison because they failed on felony probation. That means 40% of those headed to prison for new crimes were under community supervision, but because probation is so sorely under-resourced very little can be done to stop their cycle of offending. Many of these lower level offenders are prime candidates for intensive intervention practices that can be very successful at ending the cycle of offending, saving tax dollars, preventing further victimization and making our communities safer.

"This bill is designed to reduce the felony probation failure rate by investing in probation and achieving three key goals:

- a) "This bill will reduce crime in California's communities through a community corrections strategy focused on increasing the supervision and management of felony offenders on

probation.

- b) "This bill will reduce prison overcrowding, not by early release but by decreasing the criminal activity of those already on felony probation. The bill actually makes offenders MORE accountable for their actions by providing better supervision, monitoring and intermediate sanctions that will change their behavior. By improving the public safety outcomes for adult felons who now are failing felony probation, this bill will stem the tide of those going to prison by *de-escalating* their criminal behavior.
- c) "This bill will establish sustainable funding for enhanced adult felony probation through performance incentive funding. As felony probation supervision and management improves, measured by reductions in felony probationers who are committing crimes or failing probation conditions, communities experience less crime and the state saves money. Under performance incentive funding, a portion of these state savings are shared with probation for further adult probation services.

"Funding for this program is based on improved public safety outcomes for persons on felony probation. State savings will accrue from reduced prison admissions attributable to improved felony probation supervision and management resulting in less crime. Funding will support evidence-based probation practices and programs, including improved supervision and monitoring, that decrease crime by changing criminal behavior while on probation.

"This bill, once implemented, will mean sustainable funding for probation and community corrections programs, stable reductions in crime among felony probationers, and a decline in prison commitments as a result of improved public safety at the local level."

Please see the policy committee for a full discussion of this bill.

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