

4 Performance Incentive Funding

Problem

Strong community corrections agencies can cut recidivism, but adequate funding for them is a perennial challenge in the criminal justice system. The nation's economic downturn is certain to steer funding priorities in other directions. People on probation and parole who violate their conditions of supervision are a major driver of prison populations and costs. Yet if community corrections agencies keep minor violators on community supervision, rather than revoke them to prison, the agencies get more cases but not more money to manage them. Higher caseloads result in lower levels of supervision and services, which undermines the confidence of the courts in community options. The net result often is still greater use of incarceration for low-risk offenders.

Solution

States and localities can realign their fiscal relationships in ways that reward performance. If corrections agencies are successful in cutting the rate of offenders sent back to prison for new crimes or rule violations, the state reaps savings by avoiding prison costs. By sharing some of those savings with the successful agencies, states can help build stronger community corrections systems without appropriating new funds. The incentive funding can be used to implement evidence based practices, provide effective substance abuse treatment and other risk reduction programs, and victim services. The same type of incentive can be applied to state probation and post-release supervision agencies as well. If state agencies save costs by reducing prison admissions while protecting public safety, some of those savings can be channeled back to those agencies so they can continue to cut crime and recidivism.

This provision:

- Appropriates to community corrections agencies up to 45 percent of the imprisonment costs averted when they reduce the rate of new felony convictions and the rate of revocations for technical violations.
- Appropriates 30 percent of the savings for reductions in the new conviction and revocation rates. Appropriates an additional five percent of the savings if the agency shows improvement in each of three other key outcome measures: employment, drug test failures, and victim restitution collection.
- Eliminates incentive funding if there is an increase in the agency's new felony conviction rate for probationers and parolees.
- Permits incentive funding to be used to implement evidence-based practices, expand effective offender programming, and provide grants to victim service organizations.

Suggested Language

Section 101. Short Title.

This title may be cited as the “Community Corrections Performance Incentive Act.”

Section 102. Definitions.

(1) “Evidence-based practices” means supervision policies, procedures, programs and practices that scientific research demonstrates reduce recidivism among people on probation, parole, or post-release supervision.

(2) “Supervised individual” means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail.

(3) “Conditions of supervision” means conditions of probation, parole or other form of post-prison supervision.

Section 103. Calculation of State Prison Savings.

(1) The [state oversight agency] shall annually calculate:

(A) The percentage of supervised individuals who are revoked for violations of their conditions of supervision and ordered to serve a term of imprisonment in the state [Department of Corrections]. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required pursuant to Section 106 of this title. The baseline revocation rate shall be the revocation rate in fiscal year 2008.

(B) The percentage of supervised individuals who are convicted of a new felony offense and sentenced to a term of imprisonment in the state [Department of Corrections]. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required pursuant to Section 106 of this title. The baseline new offense conviction rate shall be the conviction rate in fiscal year 2008.

(C) Any state expenditures that have been avoided by reductions in the revocation rate as calculated in paragraph (A) of this section.

(D) Any state expenditures that have been avoided by reductions in the new felony offense conviction rate as calculated in paragraph (B) of this section.

(2) The calculations in paragraph (1) of this section shall be made separately for supervised individuals under the supervision of probation agencies and under the supervision of parole or other post-prison supervision agencies, and shall be made separately by individual state and local agency.

Section 104. Performance Incentive Funding.

(1) Beginning in fiscal year 2010, the legislature shall annually appropriate up to [45] percent of any state expenditures that are avoided as calculated in Section 103 of this title. Such averted expenditures shall be appropriated to the [state or local agency or agencies] responsible for those savings.

(2) The appropriations in paragraph (1) of this section are subject to the following provisions:

(A) None of the calculated savings shall be appropriated annually to the [state or local agency or agencies] if there is an increase in the percentage of individuals supervised by [that agency or agencies] who are convicted of a new felony offense as calculated in Section 103 paragraph (1)(B) of this title.

(B) Of the state expenditures that have been avoided by a reduction in the revocation rate, as calculated in Section 103 paragraph (1)(C) of this title:

(i) [Thirty] percent of the total savings shall be appropriated to the [state or local agency or agencies];

(ii) An additional [five] percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is an increase in the percentage of people who are supervised by [that agency] and who are employed in a full-time job or employed part time for at least 25 hours per week, provided that the [agency] has submitted data to the [state oversight agency] showing such increases, and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title;

(iii) An additional [five] percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is an increase in the percentage of people who are supervised by [that agency or agencies] who are current in their payments of victim restitution, provided that the [agency] has submitted data to the [state oversight agency] showing such increases and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title;

(iv) An additional [five] percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is a decrease in the percentage of people who are supervised by that [agency or agencies] and who test positive for controlled substances, provided that the [agency] has submitted data to the [state oversight agency] showing such decreases and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title.

(C) Of the state expenditures that have been avoided by a reduction in the new felony offense conviction rate as calculated in Section 103 paragraph (1)(D) of this section:

(i) Thirty percent of the total savings shall be appropriated to the state or local agency or agencies;

(ii) An additional five percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is an increase in the percentage of

people who are supervised by [that agency or agencies] and who are employed in a full-time job or employed part time for at least 25 hours per week, provided that the agency has submitted data to the [state oversight agency] showing such increases, and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title;

(iii) An additional five per cent of the total savings shall be appropriated to the [state or local agency or agencies] if there is an increase in the percentage of people who are supervised by that [agency or agencies] who are current in their payments of victim restitution, provided that the [agency] has submitted data to the [state oversight agency] showing such increases and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title;

(iv) An additional five percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is a decrease in the percentage of people who are supervised by [that agency or agencies] and who test positive for controlled substances.

(3) The monies appropriated pursuant to this title shall be used to supplement, not supplant, any other state or county appropriations for probation, parole or other post-prison supervision services.

Section 105. Use of Funds.

(1) Monies received through appropriations pursuant to this title shall be used for the following purposes:

(A) Implementation of evidence-based practices;

(B) Increasing the availability of risk reduction programs and interventions, including substance abuse treatment programs, for supervised individuals;

(C) Grants to nonprofit victim services organizations to partner with the community corrections agencies and courts to assist victims and increase the amount of restitution collected from probationers.

Section 106. Reports.

(1) On or before [October 1] of each year, beginning in 2010, the judicial branch, [units of local government] and the state [Department of Corrections] shall jointly report to the [state oversight agency] the data necessary for the [state oversight agency] to perform the calculations required by Section 103 of this title. The report shall provide separate figures for probation and parole or other form of post-prison supervision and include for the prior fiscal year:

(A) The number of supervised individuals, by agency;

- (B) The number and percentage of supervised individuals, by agency, who were revoked for violations of their conditions of supervision and ordered to serve a term of imprisonment in the state [Department of Corrections]; and
- (C) The number and percentage of supervised individuals, by agency, who were convicted of a new felony offense and sentenced to a term of imprisonment in the state [Department of Corrections].

(2) On or before [December 1] of each year, beginning in 2010, the [state oversight agency] shall report each year on the implementation of this title to the president of the senate, the speaker of the house of representatives, the chief justice, and the governor. The report shall include the calculations made pursuant to this Section 103 of this title and the resulting performance incentive funding, if any, to be appropriated.

(3) The [state oversight agency] shall make its full report and an executive summary available to the general public on its website.

Notes and Drafting Alternatives

Items in [brackets] are terms, figures and timeframes that states may wish to adjust to their individual preferences or circumstances, such as the capacity of their community corrections agencies to implement the policy recommendations.

- Section 103 (state oversight agency): These provisions require the state to calculate each year the percentage of probationers, parolees and individuals on post release supervision who are revoked to state prison in the previous year, and the amount of state costs avoided because those individuals are not in prison. Each state should determine which entity is best positioned to make those calculations. Arizona designates the Joint Legislative Budget Committee to make the calculations, but other states may wish to designate the governor's budget office or another entity.
- Section 103 (revocations vs. new felony convictions): Probationers and parolees often are revoked for "new criminal activity" even though they have not been convicted of a new criminal offense. This is possible because supervision conditions typically prohibit being arrested for a criminal offense, and because it is economical for courts to handle these incidents in shorter revocation hearings than in the full-blown proceedings required for new criminal cases. Under this provision, revocations for new arrests would be counted as revocations under Section 103 (1)(A) and Section 106 (1)(B).
- Section 103 (cost savings calculations): States may wish to add a provision that specifies how savings would be calculated in their states, or charge the state oversight agency with developing rules or regulations that detail the calculation procedures. Calculations should at least account for variable costs averted, such as food and medical expenses, and also

consider some of the fixed and capital expenditures that are avoided when larger numbers of potential inmates are avoided.

- Section 104(state or local agency or agencies): Probation can be administered at the state or local level, and in the executive or judicial branches of government. These provisions are drafted generally, so that they apply in each of those conditions. States may need to tailor the designations to fit their particular probation structures, especially when probation is a function of local government.
- Section 104 (funding incentives for state agencies): This title recommends that states incentivize state agencies, as well as local jurisdictions, to improve their performance. In order to ensure that incentive funding is received by state agencies and does not supplant other funds, states may want to establish Performance Trust Funds or other special accounts.
- Section 104 (additional performance incentives): The provisions reward performance in other critical areas of community corrections—employment, reduced drug use and victim restitution. But since there are no direct or easily tracked savings to state government when these outcomes are achieved, the incentive payments are dependent on the costs averted by reductions in prison admissions for revocations and new felony offenses. As drafted, supervision agencies would receive greater portions of the savings they generate from reducing prison admissions for revocations and new felony offenses if they also have increased employment rates, reduced drug test positive rates, and increased victim restitution collection rates. The incentive funding, five percent for each of the three outcomes, is made available if these rates are moving in the desired directions. A specific minimum amount of change in the rates is not recommended.
- Section 104 (funding cut-off): Since crime prevention is the ultimate goal of community corrections, this provision prohibits incentive funding to agencies that see an increase in the rate of new felony convictions of individuals under their supervision.
- Section 106 (reports): Report dates were selected in order to provide agencies sufficient time to report on performance in the prior fiscal year, and the state oversight agency sufficient time to calculate savings, so that funding can be incorporated in the following year’s budgets. This timetable may need to be adjusted to fit agency’s reporting capacities and state’s individual budget calendars.

Rationale

A number of states and localities are realigning their fiscal relationships in ways that encourage local authorities to develop cost-effective, community-based sanctions for carefully selected offenders who otherwise would be sent to prison.¹ Not only does this help states and counties

save money, but also there is a growing body of research showing that a balanced approach to sanctions can reduce crime and victimization as well.²

State and local governments have been working on better ways to finance community corrections programs since at least the 1960s, when California passed the Probation Subsidy Act.³ Since then, some 36 states have created some form of state-local partnership, often called a Community Corrections Act, which defines the corrections relationship between the two levels of government and establishes a state funding stream to counties for community corrections

Beyond the traditional arrangement offered by CCAs, some states are redesigning their fiscal relationships with their local counterparts in the juvenile justice arena. Both Ohio and California are providing additional funding incentives to local counties if they retain juveniles in local programs rather than sending them to the state juvenile system (see below).

Few of the adult justice system partnerships, however, contain the performance incentive funding feature. And though state-local partnerships have explored the potential of incentive funding to help manage correctional populations, state agencies to date have not been rewarded fiscally for their efforts to control crime and prison costs. This title includes state-run probation and parole/post-prison supervision agencies since their labors also can have a dramatic impact.

State Examples

- **Arizona:** SB 1476 (2008) creates a performance funding mechanism for probation departments to employ best practices to reduce crime and violations committed by people under probation supervision. Under the new legislation, the state will award counties that successfully reduce crime and probation revocations a percentage of the cost savings generated by these reductions at the state level. The county will then be required to reinvest this supplemental funding in victim services, substance abuse treatment, and strategies to improve community supervision and reduce recidivism.
- **Kansas:** SB 14 (2007) provides \$4 million annually in state grants to county community corrections programs that submit plans to reduce revocations by 20 percent.
- **Ohio:** OHIO REV. CODE ANN. sec. 5139.41-.44 (Supp. 2000). The Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM) system, started in 1993, provides subsidy grants to the state's counties to serve up to 100,000 youth annually through about 700 programs. About \$30 million in RECLAIM funds and \$20 million in "base" youth services funding combine to pay for programs. RECLAIM Ohio gives each county a fund for local programs based on a formula, and encourages courts to keep low-

risk delinquents in county programs by deducting amounts from the fund for each low-risk delinquent sent to state facilities.⁴

- **California:** SB 81 (2007) provides counties with block grant funds—an average of \$130,000 per youth—to pay for alternatives to a state commitment for juvenile offenders. To receive a grant, counties must submit a Juvenile Justice Development Plan outlining their intended use of the funds. SB 81 also authorized up to \$100 million statewide in bond funds for the design and construction of new or renovated county facilities for youthful offenders. Oversight will be provided by the state’s Juvenile Justice Commission. The reform bill is expected to cut the population in state juvenile facilities from 2,500 to about 1,500 within two years.

¹ For an overview of this topic, see Pew Center on the States’ Public Safety Performance Project, *Getting in Sync: State-Local Fiscal Partnerships for Public Safety* (Washington, D.C.: The Pew Charitable Trusts, July 2008).

² See, for example, Sherman, L.W., “Thinking About Crime Prevention” in Sherman, L.W., D. Gottfredson, D. MacKenzie, J. Eck, P. Reuter and S. Bushway, *Preventing Crime; What Works, What Doesn’t, What’s Promising* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1997).

³ The Probation Subsidy Act, enacted by California in 1965, provided counties up to \$4,000 for each prison-eligible adult or juvenile offender who was supervised, sanctioned and serviced in the community. In combination with other reforms, the Act led to several successes achieved under Governor Ronald Reagan. Between 1969 and 1972, the state placed nearly all non-violent property offenders under local supervision, cut its inmate population by 30 percent, closed eight prison facilities, and drove recidivism (within two years of release) down from 40 percent to 25 percent.

⁴ Since initiating RECLAIM, Ohio has seen a drop of approximately 45 percent in admissions to the state’s residential facilities. A trio of University of Cincinnati evaluations has shown that RECLAIM saves Ohio taxpayers between \$11 and \$45 for every dollar spent. Please see Lowenkamp, Christopher T. and Edward J. Latessa, *Evaluation of Ohio’s RECLAIM Funded Programs, Community Correctional Facilities, and DYS Facilities: Cost-benefit Analysis—Final Report* (Cincinnati: University of Cincinnati, Division of Criminal Justice, 2005). Available online at www.dys.ohio.gov/dysweb/Reclaim/DYSCostBenefit121205.pdf.