California Community Corrections Performance Incentive Act of 2009

(Senate Bill 678)

Update as of the 2013-14 May Revision

Background

The California Community Corrections Performance Incentive Act of 2009 (SB 678) established a system of performance-based funding that shares state General Fund savings with county probation departments when they demonstrate success in reducing the number of adult felony probationers going to state prison because of committing new crimes or violating the terms of probation. This measure is designed to help decrease California's prison admissions by reducing criminal behavior, and thus relieve prison overcrowding and save public funds.

Based on a jurisdiction's success, measured by the reduction of felony probationers who are sent to prison, the state shares a portion of its savings achieved with those jurisdictions that are successful in reducing the number of felony probationers committed to state prison. At the end of every calendar year, the California Department of Finance (Finance) is required to determine the statewide and county specific felony probation failure rates. Using a baseline felony probation failure rate for calendar years 2006 through 2008, Finance calculates the amount of savings to be provided to each county probation department.

Based on improvements in probation failure rates reflected in the increase in grant funding provided to counties, SB 678 grants appear very successful. The county funding level grew from $89.2 million in 2011-12 to $138.9 million in 2012-13 due to improved performance in the prevention of probation failures. Over these two years, it is estimated that SB 678 has prevented over 15,000 prison admissions.

Governor's Budget Proposal

SB 678 requires the Governor's Budget to include an estimate of the total probation failure reduction incentive payments to be provided to counties in the upcoming fiscal year. Based on data from the first two quarters of calendar year 2012, Finance estimated SB 678 payments to counties to be $35 million by following the calculation methodology laid out in current law. Following this methodology, the amount of funding available under SB 678 was reduced significantly due to the implementation of 2011 public safety realignment and standardized staffing within California's prisons.

As a result of realignment, a large portion of adult felony probationers who are revoked or commit new crimes now serve their sentences in county jails instead of prison (50.1 percent). The amount of state savings to be shared with county probation departments was reduced because these offenders are no longer eligible for state prison. In order to estimate this impact with available data, the ADP avoidance attributable to revocations served in county jail was not included in the calculation used to determine the performance incentive payment for the county. This required an adjustment to the 2006 through 2008 established baseline rate in order to isolate the impact of the prison eligible offenders by estimating that 49.9 percent of the offenders would have had prison eligible crimes.

Additionally, the California Department of Corrections and Rehabilitation (CDCR) implemented standardized staffing on July 1, 2012, which provides for a cost-effective, safe, and efficient prison system. Standardized staffing allows for the inmate density to range from 100 to 160 percent of design capacity without the need to adjust the number of correctional officers. As a result, the new marginal rate used to calculate SB 678 state cost savings has decreased from almost $30,000 to approximately $10,000 per inmate annually.

May Revision Proposal

The May Revision proposes a revision to the SB 678 funding allocation formula, bringing the total funding for county probation departments to $106.9 million for fiscal year 2013-14. The revised formula: 1) now includes felony probation failures resulting in jail incarceration, in addition to those resulting in prison incarceration, to determine a county's overall probation failure rate; 2) makes an adjustment to the 2012 marginal rate for CDCR inmates; 3) adds a third tier for performance incentive payments; and 4) adds counties with failure rates below the statewide average to the counties entitled to receive a minimum of $200,000.

Overall county performance and the determination of which counties are eligible for High Performance and Tier payments, is based on a comparison between the historical baseline probation failure rate and: 1) the rate of felony probationers who fail and are sent to prison for new crimes or revocations; and 2) the rate of felony probationers who fail and are sent to jail for new crimes or revocations. The baseline probation failure rate was based on data from 2006 through 2008, when all felony probationers had convictions for prison eligible crimes. However, we do not have data on the commitment offense for each of these felony probationers. Consequently, there is no data on the number of felony probationers that committed crimes that have since been realigned and are now eligible incarceration in jail. Without this data, there is no accurate way to measure a county's performance in preventing prison incarcerations against the established baseline rate for 2012. As a result, in order to maintain a fair measure of felony probation performance for 2012, Finance proposes to include felony probation failures resulting in prison *and* jail incarceration to measure a county's overall performance.

Secondly, the marginal rate has been adjusted to account for the implementation of standardized staffing on July 1, 2012. As discussed above, standardized staffing resulted in a reduction in the marginal rate for each prisoner prevented from coming to prison. Standardized staffing reduced the marginal cost from close to $30,000 per inmate to approximately $10,000 per inmate annually. As a result, the revised marginal rate used for SB 678 is $20,000 per inmate since standardized staffing was in place for only half of calendar year 2012.

New to the SB 678 formula this year is the establishment of a third tier for performance incentive payments. The third tier of performance will provide an incentive payment equal to the estimated number of probationers successfully prevented from being sent to prison or jail multiplied by 30 percent of the cost the state would have incurred for that inmate ($20,000 for 2012). This third tier will be applied to any county that demonstrated an improvement in its felony probation failure rate, but that still has a felony probation rate that is above the 2006 through 2008 baseline statewide failure rate of 7.88 percent.

The funding made available by the establishment of the third tier was used to provide counties with probation failure rates below the 2012 statewide average with a minimum payment of $200,000. Current law provides that any county eligible for a tier payment award shall receive a minimum of $200,000. This proposal would add counties with a probation failure rate below the statewide average, but that did not show improvement compared to its baseline rate, with the same minimum payment. This change, in combination with the establishment of the third tier payments, provides for a more equitable distribution of SB 678 funding.

A similar methodology could also be followed for calculating the 2014-15 payments, although Finance proposes that AOC collect additional data on the felony probation population. This would include identifying which felony probationers are eligible for prison and which are eligible for jail, regardless of whether or not they fail probation. We currently only have this data for those probationers that are revoked.

Proposed Trailer Bill Language

Trailer Bill Language is proposed to: 1) require the AOC to collect additional data on the felony probation population relating to the number of Penal Code section 1170(h) convictions; 2) revise the probation failure rate calculation so that it includes revocations resulting in county jail incarceration; 3) add a third tier of performance incentive payments for counties that demonstrate improved felony probation outcomes, but that still have combined probation failure rates above the 2006 through 2008 baseline statewide average; 4) remove the statutory authority to fund the Administrative Office of the Courts' (AOC) workload associated with SB 678 and realignment (a separate appropriation was proposed in the Governor's Budget); and 5) extends the $200,000 minimum payment to counties performing better than the statewide average.