

FEBRUARY 2, 2021

The 2021-22 Budget: Funding for County Probation Departments



LEGISLATIVE ANALYST'S OFFICE

Overview

- The Governor’s budget for 2021-22 includes three proposals to increase state General Fund support for county probation departments:
 - **SB 678 Grant Adjustment**—\$10.3 million in 2021-22 related to a proposed modification to the grant program created by Chapter 608 of 2009 (SB 678, Leno), which provides grants to counties through the California Department of Corrections and Rehabilitation (CDCR).
 - **New Probation Grant Program**—\$50 million one time in 2020-21 to support a new county probation grant program that would be administered by the Board of State and Community Corrections (BSCC).
 - **Funding for COVID-19-Related Releases**—\$12.1 million one time in 2021-22 for BSCC to support county probation department workload associated with supervising certain people released from state prison early in response to the novel coronavirus disease 2019 (COVID-19).
- This analysis provides (1) background on county probation populations and state funding for probation, (2) an overview of recent policy changes affecting probation departments, and (3) an assessment and associated recommendations on each of the Governor’s proposals related to probation.



County Probation Departments Supervise Various Populations With Some State Funds

2011 Realignment Felony Supervision Populations

- **Post-Release Community Supervision (PRCS).** People released from state prison who were not serving a sentence for a serious or violent offense are generally supervised in the community by county probation departments for about 18 months. This is referred to as PRCS, which was part of a broader realignment of state responsibilities to local governments in 2011. People who violate the terms of their PRCS are typically placed in county jail. However, if they commit a new prison-eligible offense, they can be sent to state prison.
- **Mandatory Supervision.** The 2011 realignment also limited who could be sent to state prison by requiring that certain low-level felony offenders serve their incarceration terms in county jail or on a “split sentence.” People serving a split sentence spend a period of time in jail and a period of time in the community under “mandatory supervision” provided by the county probation departments. People who violate the terms of their mandatory supervision are typically placed in jail but can be sent to prison if they commit a new prison-eligible offense.
- **State Funding.** The 2011 realignment shifted a portion of annual state sales tax revenue—which has totaled about \$1 billion in recent years—to support realigned felony populations such as PRCS and mandatory supervision. In addition, the state has typically provided counties with additional funding when state policy changes temporarily increase the PRCS population.



County Probation Departments Supervise Various Populations With Some State Funds

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Misdemeanor and Felony Probation

- **Probation in Lieu of Incarceration.** Courts can place certain people in the community under the supervision of probation departments in lieu of a county jail or state prison sentence. Eligibility for probation depends on a person's criminal history and current charges. People who violate the terms of their probation can be subject to the felony sentence that they would have otherwise received, such as being sentenced to prison.
- **State Funding.** The state supports some of the cost of felony probation through a grant program created by SB 678 in 2009. The program utilizes a formula to award counties for reducing the rate at which people on PRCS, mandatory supervision, and felony probation are sent to prison (referred to as the felony supervision failure rate). Adjusting the grant awards based on this rate is intended to give counties an incentive to reduce the number of people on felony supervision that they send to prison. Grants must be used for evidence-based practices intended to reduce the felony supervision failure rate and counties must report annually on how they use the grants. A total of \$113 million in SB 687 grants is expected to be provided to counties in the current year.

Juvenile Justice

- **Youth in the Criminal Justice System.** While the state's Division of Juvenile Justice (DJJ) within CDCR currently houses certain youth who commit specific severe crimes listed in statute (such as murder or robbery), county probation departments are primarily responsible for youth in the criminal justice system. Youth under the responsibility of probation departments are typically supervised in the community or housed in county juvenile facilities.



County Probation Departments Supervise Various Populations With Some State Funds

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- **State Funding.** The state has historically provided funding for certain county juvenile justice responsibilities. For example, after restricting which youth could be sent to DJJ in 2009, the state established the Youthful Offender Block Grant (YOBG) which provides state funds annually to counties for the supervision of youth who previously could have been placed under state supervision. In 2020-21 counties are expected to receive \$160 million in YOBG funds.



Recent Policy Changes Have Impacted Probation Departments

Reduction in Maximum Probation Terms (AB 1950)

- Chapter 328 of 2020 (AB 1950, Kamlager) reduced maximum probation terms to one year for misdemeanors and two years for felonies. Previously, misdemeanor probation terms could last up to three years and felony probation terms could last up to five years or the maximum sentence for the offender's crime, whichever was greater.

COVID-19-Related Prison Releases to PRCS

- Beginning in April 2020, CDCR began releasing certain nonviolent prison inmates who are within 180 days of their release date in order to mitigate the spread COVID-19 by reducing the population density in prisons. This policy has resulted in a temporary increase in the PRCS population.
- The state has been providing county probation departments with about \$28 per day for each day that an inmate is released early.

Juvenile Justice Realignment (SB 823)

- Chapter 337 of 2020 (SB 823, Committee on Budget and Fiscal Review) established a plan to fully realign the state's juvenile justice responsibilities to counties. DJJ will generally stop intake beginning July 1, 2021. Going forward, youths who would otherwise have been placed in DJJ will instead be supervised by county probation departments.
- The 2020-21 budget provides BSCC with \$9.6 million (one-time General Fund) for competitive grants to counties intended to support the implementation of SB 823. Funds can be used for infrastructure-related needs and improvements associated with the realigned responsibilities. Recipients must submit a report on how the funding is used.



Recent Policy Changes Have Impacted Probation Departments

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- Pursuant to SB 823, the state will provide annual General Fund support to counties beginning in 2021-22 with \$46.5 million— increasing to about \$208 million by 2024-25—to support the juvenile justice realignment. Funding will be distributed based on each county’s total youth population, historical use of DJJ, and the number of youth with adjudications for certain serious or violent crimes. Beginning in 2022-23, counties will need to submit for state approval plans on how the funding would be utilized.



Governor's Proposal: SB 678 Grant Adjustment

Proposal

- The Governor's budget for 2021-22 proposes an adjustment to the SB 678 grant program to provide each county with their maximum SB 678 grant award from the prior three fiscal years. In order to support this adjustment, CDCR's proposed budget includes a \$10.3 million General Fund augmentation, bringing the total SB 678 grant awards to \$123 million in 2021-22 and ongoing.
- According to the administration, the intent of the proposal is to prevent SB 678 grant awards from declining due to COVID-19-related releases to PRCS and the shortening of probation terms by AB 1950.

Assessment

- **Recent Policies Will Likely Impact SB 678 Grants.** Recent policy changes will likely result in increased felony supervision failure rates for reasons unrelated to how well counties perform. First, COVID-19-related releases will temporarily increase the size of the PRCS population and people on PRCS are typically about twice as likely as other felony supervision populations to be sent to prison. Second, because people on felony probation become less likely to be sent to prison over time, AB 1950—which reduces the amount of time people are on probation—would remove people from felony probation who are less likely to be sent to prison while retaining people who are more likely to be sent to prison.
- **Adjustment to SB 678 Grant Appropriate in Near Term.** Given that the COVID-19-related releases to PRCS and AB 1950 will likely reduce SB 678 grant awards for reasons unrelated to their performance, we find that it is appropriate to temporarily adjust the grant formula.



Governor's Proposal: SB 678 Grant Adjustment

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- **Adjustment Could Undermine Intent of SB 678 if Made Permanent.** As noted earlier, the current SB 678 grant formula gives counties an incentive to reduce the rate at which they send people on felony supervision to prison. This is because counties receive SB 678 grants based on changes to their felony supervision failure rate. While the Governor's proposal would prevent the grant awards from declining for reasons unrelated to their performance, it also would remove the SB 678 grant's incentive structure as counties would receive a set amount of grant funding no matter how they perform.

Recommendations

- **Approve Proposed \$10.3 Million Augmentation.** Due to the likelihood that changes outside of county control will reduce SB 678 grant awards, we recommend the Legislature approve the Governor's proposal to temporarily adjust the SB 678 grant on a one-time basis.
- **Direct Administration to Provide Long-Term Plan for SB 678.** To ensure the intent of SB 678 is preserved in the long run, we recommend that the Legislature adopt budget trailer legislation directing the Department of Finance to provide a long-term plan for adjusting the SB 678 formula to preserve its incentive structure no later than January 10, 2022.



Governor's Proposal: New Probation Grant Program

Proposal

- The Governor's budget proposes a \$50 million one-time General Fund augmentation in 2020-21 to BSCC for a new grant program for county probation departments. According to the administration, the funds are intended to assist with the potential decline in SB 678 grants (as previously discussed) and help probation departments implement SB 823 and AB 1950.
- The administration indicates that counties could use the proposed funding for a broad range of services with an emphasis on keeping youth and adults out of the criminal justice system. The Governor is requesting early action on this proposal.

Assessment

► No Apparent Need for Requested Funding

- At the time of this analysis, the administration has not provided any information to justify the need for the proposed \$50 million. Moreover, it has not defined a particular problem that cannot be addressed with the state resources currently available to county probation departments, including funding to implement SB 823 which will increase over the next few years. In addition, since the Governor's budget also includes additional funding to specifically prevent a decline in SB 678 grant awards (as discussed earlier), it is unclear why additional funds are needed for the same purpose.
- We also note that AB 1950 is not expected to lead to any direct costs for probation departments. This is because AB 1950 actually reduces the amount of time people spend on probation, which, in turn, should significantly reduce probation workload and costs.



Governor's Proposal: New Probation Grant Program

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► No Allocation Plan Provided

- The administration has not provided a plan for how the grant funding would be allocated. For example, the administration has not indicated what criteria would be used to determine the amount of funding each county would receive. Without this such information, it is difficult for the Legislature to determine if the requested resources will be targeted effectively at achieving expected outcomes.

► Lack of Accountability

- The administration has not provided any language that specifically requires counties to use the funds for activities consistent with the proposal's intent. Moreover, unlike funding provided through SB 678 and SB 823, the proposal does not include any requirements for county probation departments to report on how they plan to spend (or actually spent) the funds. Accordingly, probation departments would have the ability to use the funding for purposes unrelated to the implementation of recent policies or keeping youth and adults out of the criminal justice system.

Recommendation

- **Reject Proposed Probation Grant Program.** In view of the lack of justification, allocation plan, and accountability mechanisms, we recommend that the Legislature reject the Governor's proposal to establish a new grant program for county probation departments.



Governor's Proposal: Funding for COVID-19-Related Releases

Proposal

- The Governor's budget for 2021-22 includes \$12.1 million in one-time General Fund for BSCC to support county probation workload associated with the release of prison inmates to PRCS due to the COVID-19 pandemic. The proposed amount is based on the administration's estimate that there would be 2,600 such releases in the budget year. Consistent with past practice, county probation departments would receive about \$28 per day for each day that an inmate is released early.

Assessment

► **Uncertain How Many COVID-19-Related Releases to PRCS Will Occur in 2021-22.**

- There is significant uncertainty as to the exact number of inmates who will be released early onto PRCS in 2021-22 to mitigate the spread of COVID-19 in the state's prisons. This is due to two primary reasons:
 - First, as vaccines become more widely available over the next few months, there will likely be less of a need to reduce the density of the prison population. We note that vaccinations are already taking place in prison and the federal Receiver responsible for overseeing inmate health care reports that all interested inmates could be vaccinated within weeks if a sufficient amount of vaccines become available.



Governor's Proposal: Funding for COVID-19-Related Releases

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- Second, while this proposal assumes 2,600 COVID-19-related releases to PRCS in 2021-22, other portions of the proposed budget assume that there will be no COVID-19-related releases. Specifically, the proposed CDCR budget is based on population estimates that assume COVID-19-related releases to PRCS will stop by June 30, 2021 (before the start of the next fiscal year). This suggests that either (1) the proposed funding for PRCS due to COVID-19-related releases is not needed or (2) CDCR's budget for 2021-22 should be reduced to reflect a lower inmate population resulting from the anticipated COVID-19-related releases.

Recommendation

- ***Withhold Action on Proposed Funding for Expedited Releases to PRCS.*** Given the above uncertainty, we recommend that the Legislature withhold action on the Governor's proposal until the May Revision. By the time of the May Revision, there should be greater clarity on the likelihood of the COVID-19-related releases to PRCS continuing into 2021-22 and the potential implications this would have on the budget.

