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Achieving the Goals of the SB 678 County Probation Grant Program

PRESENTED TO:

Senate Budget and Fiscal Review Subcommittee No. 5
On Corrections, Public Safety, Judiciary, Labor and
Transportation
Hon. Laura Richardson, Chair



LEGISLATIVE ANALYST'S OFFICE

Background

- ***Felony Convictions Can Lead to Incarceration and/or Community Supervision.*** People convicted of felonies are typically sentenced to one of the following, depending on their criminal history:
 - County jail.
 - Split sentence, which is a sentence divided between jail and community supervision—known as “mandatory supervision”—by a county probation officer.
 - State prison followed by community supervision on parole—by state parole agents—or “post-release community supervision” (PRCS)—by county probation officers.
 - Felony probation, in which a person is generally supervised in the community by a county probation officer in lieu of one of the above.
- ***Community Supervision Violations Can Lead to Incarceration.*** People who violate the terms of their county felony supervision—which includes mandatory supervision, PRCS, or felony probation—can be punished in various ways, such as being placed in jail. People on felony probation who violate the terms of their supervision can be required to serve the typical term for their crime in prison if they are on probation for a prison-eligible crime. Otherwise, they can be required to serve the typical term for their crime in jail or through a split sentence for violations. People on all forms of county felony supervision can be sent to prison if they commit a new prison-eligible crime.
- ***Probation Departments Have Key County Felony Supervision Responsibilities.*** These include conducting investigations to provide presentencing reports to the courts after a conviction, supervising people to ensure they comply with the terms of their supervision, and referring people to programs intended to help them avoid committing new crimes and improve their lives.



SB 678 Grant Program

- **Program Has Three Primary Goals.** Chapter 608 of 2009 (SB 678, Leno) established a grant program to achieve three primary goals: (1) reduce the rate at which people on felony probation were sent to state prison, (2) create state savings, and (3) improve public safety. To do so, SB 678 required that a portion of the state savings created by the program be provided to counties—through a formula—to support the use of evidence-based practices (practices shown by research to be effective at reducing reoffending and are implemented consistent with that research).
- **Original SB 678 Funding Formula Tied Awards to State Savings.** When SB 678 was enacted, it included a funding formula designed to tie the amount counties receive closely to (1) their ability to divert people on felony probation from prison and (2) the amount of state savings they generated by doing so. The figure below shows how state savings were estimated. Based on various factors, counties generally received 40 percent to 45 percent of the estimated savings they created for the state. This formula was only used in 2011-12 and 2012-13.

Example of Estimated State Savings Under Original SB 678 Formula

	County A	County B	County C
Baseline Failure-to-Prison Rate ^a	15.0%	10.0%	1.3%
Felony Probation Population	5,000	10,500	5,000
Expected Failures to Prison	750	1,050	63
Actual Failure-to-Prison Rate	10.0%	8.6%	1.2%
Actual Felony Probation Failures to Prison	500	900	60
People Diverted From Prison	250	150	3
State Savings Created ^b	\$7,250,000	\$4,350,000	\$87,000

^a Calculated as the average felony probation failure-to-prison rate between 2006 and 2008.

^b State savings were calculated at about \$29,000 per person diverted from prison and parole.



SB 678 Grant Program

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- ***Sentencing Changes Affected Probation Following SB 678.***

Since the enactment of SB 678, the state has implemented various sentencing changes that impacted probation in significant ways. For example, the 2011 public safety realignment created new forms of supervision: mandatory supervision and PRCS. It also made fewer crimes prison-eligible. Because this meant fewer people on felony probation would go to prison, it was expected to artificially increase SB 678 grants to counties. The formula was temporarily adjusted in 2013-14 and 2014-15 to attempt to account for this.



Modified SB 678 Formula

- **SB 678 Formula Modified to Account for Sentencing Changes.**

The formula was permanently modified in 2015-16 by Chapter 26 of 2015 (SB 85, Committee on Budget and Fiscal Review) to account for additional changes to probation since the 2011 public safety realignment. The formula now has three key components but is still generally referred to as the SB 678 formula.

 - **Component 1: Funding for Reducing County Felony Supervision Failure-to-Prison Rate Below Baseline.**

This component compares a county's felony supervision failure-to-prison rate (meaning the rate that people on felony probation, PRCS, and mandatory supervision are sent to state prison) to the statewide average felony probation failure-to-prison rate between 2006 to 2008, which was 7.9 percent. Depending on how the county's rate compares to this baseline rate, the county will receive between 40 percent and 100 percent of the highest SB 678 grant payment received between 2011-12 and 2014-15.
 - **Component 2: Funding for Reducing County Felony Supervision Failure-to-Prison Rate Below Prior Year.** The second funding component compares a county's most recent annual county felony supervision failure-to-prison rate with its rate from the previous year. If the failure-to-prison rate is lower than the previous year, the county receives 35 percent of the estimated state savings associated with that reduction, estimated to be \$36,600 per person diverted, based on the state's correctional costs at the time.
 - **Component 3: Funding to Guarantee \$200,000 Minimum Award.** If the total amount that a county receives under Components 1 and 2 is less than \$200,000, the county will receive funding under Component 3 to increase the total amount to \$200,000.



Modified SB 678 Formula

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- **Modified Formula Temporarily Put on Hold From 2021-22 Through 2024-25.** From 2015-16 through 2020-21, the state implemented the modified SB 678 formula. However, as part of the 2021-22 budget, the formula was temporarily put on hold. Specifically, each county received their highest SB 678 grant award from the prior three fiscal years (2018-19, 2019-20, or 2020-21), irrespective of performance. This was done due to a concern that grant awards would fluctuate for reasons unrelated to county performance as a result of policies adopted in response to COVID-19 and other changes. In 2024-25, the formula remained on hold, but the total amount awarded was reduced by about 5.5 percent. Most county awards were reduced by a similar percentage.
- **Administration Proposes Changes to Modified Formula.** The administration proposes various changes to the modified formula. As this proposal was only recently provided to the Legislature, we are still in the process of reviewing it.



SB 678 Initially Appeared to Achieve Its Goals

- ***Prison Population and Crime Declined, Resulting in State Savings in Initial Years.*** Following the implementation of SB 678, the state prison population and crime declined. It is reasonable to think that SB 678 partially contributed to these reductions. For example, data suggest that SB 678 successfully diverted thousands of people from prison initially. This not only helped reduce the prison population but also could mean that the people diverted committed fewer crimes. Judicial Council estimates the program generated hundreds of millions of dollars in state savings.
- ***Notable Increase in Reported Use of Evidence-Based Practices.*** Counties self-certify each year to Judicial Council that they are spending their SB 678 funds on evidence-based practices. Much of the reported increase in the use of these practices occurred in the initial years of the formula's implementation.



Unclear on Extent to Which Program Is Currently Achieving Its Goals

- ***Difficult to Distinguish Effects of SB 678 on Prison Population, Crime, and State Savings From Other Policy Changes.*** After the initial years of implementation, it is difficult to assess whether reductions in the number of people on county felony supervision sent to prison are the result of improvements in practices or there being fewer prison-eligible crimes due to changes like the 2011 public safety realignment.
- ***Modified Formula Undermines Goal of Creating State Savings and Reducing Failure-to-Prison Rates.*** The changes made to the SB 678 grant formula by SB 85 conflict with some of the key goals of the original program. This is due to the following factors.
 - ***Grants Through Component 1 Based on Previous Grant Awards Instead of Number of People Diverted From Prison.*** Because Component 1 awards grants to counties based on a percentage of the county’s highest payment between 2011-12 and 2014-15, it is possible the state is paying some counties more than the state is saving through the program by not directly awarding counties based on the actual number of people diverted from prison. We find that this prevents the state from maximizing the program’s goal of achieving state savings.
 - ***Component 1 Baseline Rate Inconsistent With Program Goals.*** The baseline failure-to-prison rate of 7.9 percent used in Component 1 is based on the average probation failure-to-prison rates between 2006 and 2008 prior to the 2011 public safety realignment reducing the number of prison-eligible crimes. Because it is more difficult to send people to prison now, it no longer makes sense to compare current county felony supervision failure-to-prison rates to this baseline as it means counties with relatively poor performance can still qualify for payment. We find that this is inconsistent with the goal of reducing prison commitments and prevents the state from maximizing state savings.



Unclear on Extent to Which Program Is Currently Achieving Its Goals

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- **Estimated Savings of Component 2 No Longer Reflective of State Savings.** Counties currently receive \$12,800 for each person diverted from prison—35 percent of the \$36,600 in estimated state savings from each person diverted. However, we estimate the state saves more, which could translate to additional savings being passed on to counties. The lower amount in the current formula could weaken the incentive for counties to perform.
- **Component 3 Disconnects Actual State Savings From Performance.** The minimum guarantee of \$200,000 undermines the goal of generating state savings and reducing prison commitments as a county could continue to receive SB 678 funds despite not diverting anyone from prison.
- **Expansion in Evidence-Based Practices Has Stalled.** In recent years, increases in the reported use of evidence-based practices have stalled. For example, the reported use of validated risk and needs assessments—a key evidence-based practice—only increased by 7 percentage points between 2014 and 2021.
- **Unclear Whether All Practices Adopted by Counties Are Evidence Based.** While Judicial Council’s surveys show initial increases in reported use of evidence-based practices, Judicial Council does not monitor whether counties are actually using evidence-based practices.



Recommend New Funding Formula

- **Establish Alternative Formula.** Given that the Governor’s proposal was only recently released, we are still in the process of reviewing it. However, we currently recommend that the Legislature establish an alternative formula for the SB 678 grant program to better ensure the program’s goals are achieved. Specifically, we recommend creating a new formula with two portions described below. However, because establishing this formula will take time, we recommend extending the temporary hold currently in place on the formula for at least two years.
- **First Portion of Formula: Award Counties for Reducing County Felony Supervision Failure-to-Prison Rate.** First, we recommend awarding grants to counties for diverting people on county felony supervision from prison, similar to the original SB 678 formula. If the actual number of people sent to prison in a given year is less than estimated, the county would receive a portion of the state savings for each person diverted from prison.
- **Key Steps for Implementation of First Portion of Formula.**
 - **Establish Baseline.** We recommend that the new baseline be based on years that fully reflect all of the policy changes that have impacted county felony supervision failure-to-prison rates and do not reflect other temporary factors affecting such rates for reasons unrelated to performance (such as COVID-19). The Legislature could choose to update the baseline to account for any significant policy changes affecting probation and failure-to-prison rates in the future.
 - **Decide What Percentage of State Savings to Transfer to Counties.** A higher percentage provides greater incentive and resources to the counties to reduce prison commitments but reduces the amount of state savings achieved. A lower percentage does the opposite. Determining the amount ultimately depends on how the Legislature weighs the goal of achieving state savings versus reducing prison commitments.



Recommend New Funding Formula

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- **Second Portion of Formula: Ensuring Sustainable Funding to Reduce Prison Commitments.** If the state only provides funding based on performance as we recommend for the first portion, then SB 678 grant awards would likely decline significantly. Such a reduction in funding could be problematic if it results in counties spending less on evidence-based practices that successfully reduced prison commitments. As such, we recommend also providing counties with funding for using specific evidence-based practices likely to generate net savings for the state.
- **Key Steps for Implementation of Second Portion of Formula.**
 - **Identify Practices to Be Funded.** We recommend that a group of experts, be convened to identify evidence-based practices that are likely to reduce the number of prison commitments from the county felony supervision population. Only these practices would be eligible for funding through this portion of the grant. We recommend tasking the Board of State and Community Corrections (BSCC) with convening this group.
 - **Estimate Level of Savings and Award Amount for Each Evidence-Based Practice.** We recommend directing BSCC to collaborate with experts to estimate the savings likely to be created by each evidence-based practice identified in the previous step. The Legislature could then determine what portion of the cost of the practice would be covered through the grant by weighing its preference for expanding evidence-based practices against its interest in creating state savings.
 - **Establish Total Amount for Grant and Determine Allocation.** The Legislature would need to establish the total amount it is willing to spend on additional grants for specific evidence-based practices and determine a county allocation formula. This amount could be set such that the two portions of the grant would be roughly similar to the amount provided in recent years. One option for a formula allocation would be to base each county's maximum share of funds on the overall county felony supervision population. A county would then receive an award for each evidence-based practice it uses, up to this maximum.



Recommend New Funding Formula

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- ***Establish Oversight on Use of Evidence-Based Practices.*** We recommend requiring BSCC, which is responsible for promoting effective state and local corrections efforts, to have an oversight role of the program. Specifically, BSCC would be required to audit counties to ensure compliance with the selected evidence-based practices and to ensure outcomes at the local level are regularly evaluated.

