

AMENDED IN ASSEMBLY JUNE 25, 2009

AMENDED IN ASSEMBLY JUNE 4, 2009

AMENDED IN SENATE APRIL 16, 2009

SENATE BILL

No. 678

Introduced by Senators Leno and Benoit
(Coauthors: Senators Ducheny, Hancock, Oropeza, and Steinberg)
(Coauthors: Assembly Members Arambula, Gilmore, Hagman, and Hill)

February 27, 2009

An act to add and repeal Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of the Penal Code, relating to ~~probation~~ *probation*, and declaring the urgency thereof, to take effect immediately..

LEGISLATIVE COUNSEL'S DIGEST

SB 678, as amended, Leno. Criminal recidivism.

Existing law establishes provisions authorizing the Department of Corrections and Rehabilitation to oversee programs for the purposes of reducing parolee recidivism.

This bill would authorize each county to establish a Community Corrections Performance Incentives Fund (CCPIF) and would authorize the state to annually allocate money into a State Corrections Performance Incentives Fund to be used for specified purposes relating to improving local probation supervision practices and capacities, as specified. This bill would require the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation-Officer *Officers* of California, and the Administrative Office of the Courts, to calculate the amount of money to be appropriated from the state fund into a CCPIF. This bill

would specify that the calculation would be based on costs avoided by the Department of Corrections and Rehabilitation because of a reduction in the percentage of adult probationers sent to prison for a probation failure, as specified. This bill would also require each county using CCPIF funds to identify and track specific outcome-based measures, as specified, and report to the Administrative Office of the Courts on the effectiveness of the programs paid for by the CCPIF.

This bill would require the community corrections programs to be developed and implemented by the chief probation officer, as advised by a Community Corrections Partnership. This bill would require specified local officials to serve as part of that Community Corrections Partnership. Because this bill would increase the duties for certain local officials, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 California Community Corrections Performance Incentives Act
3 of 2009.

4 SEC. 2. Chapter 3 (commencing with Section 1228) is added
5 to Title 8 of Part 2 of the Penal Code, to read:

6
7 CHAPTER 3. CALIFORNIA COMMUNITY CORRECTIONS
8 PERFORMANCE INCENTIVES
9

10 1228. The Legislature finds and declares all of the following:
11 (a) In 2007, nearly 270,000 felony offenders were subject to
12 probation supervision in California’s communities.

1 (b) In 2007, out of 46,987 new admissions to state prison, nearly
2 20,000 were felony offenders who were committed to state prison
3 after failing probation supervision.

4 (c) Probation is a judicially imposed suspension of sentence
5 that attempts to supervise, treat, and rehabilitate offenders while
6 they remain in the community under the supervision of the
7 probation department. Probation is a linchpin of the criminal justice
8 system, closely aligned with the courts, and plays a central role in
9 promoting public safety in California’s communities.

10 (d) Providing sustainable funding for improved, evidence-based
11 probation supervision practices and capacities will improve public
12 safety outcomes among adult felons who are on probation.
13 Improving felony probation performance, measured by a reduction
14 in felony probationers who are sent to prison because they were
15 revoked on probation or convicted of another crime while on
16 probation, will reduce the number of new admissions to state
17 prison, saving taxpayer dollars and allowing a portion of those
18 state savings to be redirected to probation for investing in
19 community corrections programs.

20 1229. As used in this chapter, the following definitions apply:

21 (a) “Community corrections” means the placement of persons
22 convicted of a felony offense under probation supervision, with
23 conditions imposed by a court for a specified period.

24 (b) “Chief probation officer” means the chief probation officer
25 for the county or city and county in which an adult offender is
26 subject to probation for the conviction of a felony offense.

27 (c) “Community corrections program” means a program
28 established pursuant to this act consisting of a system of felony
29 probation supervision services dedicated to all of the following
30 goals:

31 (1) Enhancing public safety through the management and
32 reduction of offender risk while under felony probation supervision
33 and upon reentry from jail into the community.

34 (2) Providing a range of probation supervision tools, sanctions,
35 and services applied to felony probationers based on a risk/needs
36 assessment for the purpose of reducing criminal conduct and
37 promoting behavioral change that results in reducing recidivism
38 and promoting the successful reintegration of offenders into the
39 community.

1 (3) Maximizing offender restitution, reconciliation, and
2 restorative services to victims of crime.

3 (4) Holding offenders accountable for their criminal behaviors
4 and for successful compliance with applicable court orders and
5 conditions of supervision.

6 (5) Improving public safety outcomes for persons placed on
7 probation for a felony offense, as measured by their successful
8 completion of probation and commensurate reduction in the rate
9 of felony probationers sent to prison as a result of a probation
10 revocation or conviction of a new crime.

11 (d) “Evidence-based practices” refers to supervision policies,
12 procedures, programs, and practices demonstrated by scientific
13 research to reduce recidivism among individuals under probation,
14 parole, or postrelease supervision.

15 1230. (a) Each county is hereby authorized to establish in each
16 county treasury a Community Corrections Performance-~~Incentive~~
17 *Incentives* Fund (CCPIF), to receive all amounts allocated to that
18 county for purposes of implementing this chapter.

19 (b) In any fiscal year for which a county receives moneys to be
20 expended for the implementation of this chapter, the moneys,
21 including any interest, shall be made available to the chief
22 probation officer (CPO) of that county, within 30 days of the
23 deposit of those moneys into the fund, for the implementation of
24 the community corrections program authorized by this chapter.

25 (1) The community corrections program shall be developed and
26 implemented by probation and advised by a local Community
27 Corrections Partnership.

28 (2) The local Community Corrections Partnership shall be
29 chaired by the chief probation officer and comprised of the
30 following membership:

31 (A) The presiding judge of the superior court, or his or her
32 designee.

33 (B) The chief administrative officer for the county.

34 (C) The district attorney.

35 (D) The public defender.

36 (E) The sheriff.

37 (F) A chief of police.

38 (G) The head of the county department of social services.

39 (H) The head of the county department of mental health.

40 (I) The head of the county department of employment.

1 (J) The head of the county alcohol and substance abuse
2 programs.

3 (K) The head of the county office of education.

4 (L) A representative from a community-based organization with
5 experience in successfully providing rehabilitative services to
6 persons who have been convicted of a criminal offense.

7 (3) Funds allocated to probation pursuant to this act shall be
8 used to provide supervision and rehabilitative services for adult
9 felony offenders subject to probation, and shall be spent on
10 evidence-based community corrections practices and programs,
11 as defined in subdivision (c) of Section 1229, which may include,
12 but are not limited to, the following:

13 (A) Implementing and expanding evidence-based risk and needs
14 assessments.

15 (B) Implementing and expanding intermediate sanctions that
16 include, but are not limited to, electronic monitoring, mandatory
17 community service, home detention, day reporting, restorative
18 justice programs, work furlough programs, and incarceration in
19 county jail for up to 90 days.

20 (C) Providing more intensive probation supervision.

21 (D) Expanding the availability of evidence-based rehabilitation
22 programs including, but not limited to, drug and alcohol treatment,
23 mental health treatment, anger management, cognitive behavior
24 programs, and job training and employment services.

25 (E) Evaluating the effectiveness of rehabilitation and supervision
26 programs and ensuring program fidelity.

27 (4) The chief probation officer shall have discretion to spend
28 funds on any of the above practices and programs consistent with
29 this act but, at a minimum, shall devote at least 5 percent of all
30 funding received to evaluate the effectiveness of those programs
31 and practices implemented with the funds provided pursuant to
32 this chapter. A chief probation officer may petition the
33 Administrative Office of the Courts to have this restriction waived,
34 and the Administrative Office of the Courts shall have the authority
35 to grant such a petition, if the CPO can demonstrate that the
36 department is already devoting sufficient funds to the evaluation
37 of these programs and practices.

38 (5) Each probation department receiving funds under this chapter
39 shall maintain a complete and accurate accounting of all funds
40 received pursuant to this chapter.

1 1231. (a) Community corrections programs funded pursuant
2 to this act shall identify and track specific outcome-based measures
3 consistent with the goals of this act.

4 (b) The Administrative Office of the Courts, in consultation
5 with the Chief Probation Officers of California, shall specify and
6 define minimum required outcome-based measures, which shall
7 include, but not be limited to, all of the following:

8 (1) The percentage of persons on felony probation who are being
9 supervised in accordance with evidence-based practices.

10 (2) The percentage of state moneys expended for programs that
11 are evidence-based, and a descriptive list of all programs that are
12 evidence-based.

13 (3) Specification of supervision policies, procedures, programs,
14 and practices that were eliminated.

15 (4) The percentage of persons on felony probation who
16 successfully complete the period of probation.

17 (c) Each chief probation officer receiving funding pursuant to
18 Sections 1233 to 1233.6, inclusive, shall provide an annual written
19 report to the Administrative Office of the Courts and the
20 Department of Corrections and Rehabilitation evaluating the
21 effectiveness of the community corrections program, including,
22 but not limited to, the data described in subdivision (b).

23 (d) The Administrative Office of the Courts shall, in consultation
24 with the chief probation officer of each county and the Department
25 of Corrections and Rehabilitation, provide a quarterly statistical
26 report to the Department of Finance including, but not limited to,
27 the following statistical information for each county:

28 (1) The number of felony filings.

29 (2) The number of felony convictions.

30 (3) The number of felony convictions in which the defendant
31 was sentenced to the state prison.

32 (4) The number of felony convictions in which the defendant
33 was granted probation.

34 (5) The adult felon probation population.

35 (6) The number of felons who had their probation revoked and
36 were sent to prison for that revocation.

37 (7) The number of adult felony probationers sent to state prison
38 for a conviction of a new felony offense, including when probation
39 was revoked or terminated.

1 1232. Commencing no later than 18 months following the
2 initial receipt of funding pursuant to this act and annually
3 thereafter, the Administrative Office of the Courts, in consultation
4 with the Department of Corrections and Rehabilitation, the
5 Department of Finance, and the Chief Probation Officers of
6 California, shall submit to the Governor and the Legislature a
7 comprehensive report on the implementation of this act. The report
8 shall include, but not be limited to, all of the following information:

9 (a) The effectiveness of the community corrections program
10 based on the reports of performance-based outcome measures
11 required in Section 1231.

12 (b) The percentage of felony probationers whose probation was
13 revoked for the year on which the report is being made.

14 (c) The percentage of felony probationers who were convicted
15 of crimes during their term of probation for the year on which the
16 report is being made.

17 (d) The impact of the moneys appropriated pursuant to this act
18 to enhance public safety by reducing the percentage and number
19 of felony probationers whose probation was revoked for the year
20 being reported on for probation violations or new convictions, and
21 to reduce the number of felony probationers who are sent to prison
22 for the year on which the report is being made.

23 (e) Any recommendations regarding resource allocations or
24 additional collaboration with other state, regional, federal, or local
25 entities for improvements to this act.

26 1233. (a) The Director of Finance, in consultation with the
27 Department of Corrections and Rehabilitation, the Joint Legislative
28 Budget Committee, the Chief Probation Officers of California,
29 and the Administrative Office of the Courts, shall calculate for
30 each county a baseline probation failure rate that equals the average
31 number of adult felony probationers sent to state prison during
32 calendar years 2006 to 2008, inclusive, as a percentage of the
33 average adult felony probation population during the same period.

34 (b) For purposes of calculating the baseline probation failure
35 rate, the number of adult felony probationers sent to prison shall
36 include those adult felony probationers sent to state prison for a
37 revocation of probation, as well as adult felony probationers sent
38 to state prison for a conviction of a new felony offense. The
39 calculation shall also include adult felony probationers sent to

1 prison for conviction of a new crime who simultaneously have
2 their probation term terminated.

3 1233.1. After the conclusion of each calendar year following
4 the enactment of this section, the Director of Finance, in
5 consultation with the Department of Corrections and Rehabilitation,
6 the Joint Legislative Budget Committee, the Chief Probation
7 Officers of California, and the Administrative Office of the Courts,
8 shall calculate the following for that calendar year:

9 (a) The cost to the state to incarcerate in prison and supervise
10 on parole a probationer sent to prison. This calculation shall take
11 into consideration factors, including, but not limited to, the average
12 length of stay in prison and on parole for probationers, as well as
13 the associated parole revocation rates, and revocation costs.

14 (b) The statewide probation failure rate. The statewide probation
15 failure rate shall be calculated as the total number of adult felony
16 probationers statewide sent to prison in the previous year as a
17 percentage of the statewide adult felony probation population as
18 of June 30 of that year.

19 (c) A probation failure rate for each county. Each county's
20 probation failure rate shall be calculated as the number of adult
21 felony probationers sent to prison from that county in the previous
22 year as a percentage of the county's adult felony probation
23 population as of June 30 of that year.

24 (d) An estimate of the number of adult felony probationers each
25 county successfully prevented from being sent to prison. For each
26 county, this estimate shall be calculated based on the reduction in
27 the county's probation failure rate as calculated annually pursuant
28 to subdivision (c) of this section and the county's baseline
29 probation failure rate as calculated pursuant to Section 1233. In
30 making this estimate, the Director of Finance, in consultation with
31 the Department of Corrections and Rehabilitation, the Joint
32 Legislative Budget Committee, the Chief Probation Officers of
33 California, and the Administrative Office of the Courts, shall adjust
34 the calculations to account for changes in each county's adult
35 felony probation caseload in the most recent completed calendar
36 year as compared to the county's adult felony probation population
37 during the period 2006 to 2008, inclusive.

38 (e) In calculating probation failure rates for the state and
39 individual counties, the number of adult felony probationers sent
40 to prison shall include those adult felony probationers sent to state

1 prison for a revocation of probation, as well as adult felony
2 probationers sent to state prison for a conviction of a new felony
3 offense. The calculation shall also include adult felony probationers
4 who are sent to prison for conviction of a new crime and who
5 simultaneously have their probation terms terminated.

6 1233.2. Annually, after the conclusion of each calendar year,
7 the Director of Finance, in consultation with the Department of
8 Corrections and Rehabilitation, the Joint Legislative Budget
9 Committee, the Chief Probation Officers of California, and the
10 Administrative Office of the Courts, shall identify the appropriate
11 Probation Revocation Tier for each county for which it was
12 estimated that the county successfully prevented any number of
13 adult felony probationers from being sent to state prison, as
14 provided in subdivision (d) of Section 1233.1. The tiers shall be
15 defined as follows:

16 (a) Tier 1. A Tier 1 county is one which has a probation failure
17 rate, as defined in subdivision (c) of Section 1233.1, that is no
18 more than 25 percent higher than the statewide probation failure
19 rate, as defined in subdivision (b) of Section 1233.1.

20 (b) Tier 2. A Tier 2 county is one which has a probation failure
21 rate, as defined in subdivision (c) of Section 1233.1, that is more
22 than 25 percent above the statewide probation failure rate, as
23 defined in subdivision (b) of Section 1233.1.

24 1233.3. Annually, the Director of Finance, in consultation with
25 the Department of Corrections and Rehabilitation, the Joint
26 Legislative Budget Committee, the Chief Probation Officers of
27 California, and the Administrative Office of the Courts, shall
28 calculate a probation failure reduction incentive payment for each
29 eligible county, pursuant to Section 1233.2, for the most recently
30 completed calendar year, as follows:

31 (a) For a county identified as being in Tier 1, as defined in
32 subdivision (a) of Section 1233.2, its probation failure reduction
33 incentive payment shall equal the estimated number of probationers
34 successfully prevented from being sent to prison, as defined by
35 subdivision (d) of Section 1233.1, multiplied by 45 percent of the
36 costs to the state to incarcerate in prison and supervise on parole
37 a probationer who was sent to prison, as defined in subdivision (a)
38 of Section 1233.1.

39 (b) For a county identified as being in Tier 2, as defined in
40 subdivision (b) of Section 1233.2, its probation failure reduction

1 incentive payment shall equal the estimated number of probationers
2 successfully prevented from being sent to prison, as defined by
3 subdivision (d) of Section 1233.1, multiplied by 40 percent of the
4 costs to the state to incarcerate in prison and supervise on parole
5 a probationer who was sent to prison, as defined in subdivision (a)
6 of Section 1233.1.

7 1233.4. (a) It is the intent of the Legislature for counties
8 demonstrating high success rates with adult felony probationers
9 to have access to performance-based funding as provided for in
10 this section.

11 (b) On an annual basis, the Department of Finance, in
12 consultation with the Department of Corrections and Rehabilitation,
13 the Joint Legislative Budget Committee, the Chief Probation
14 Officers of California, and the Administrative Office of the Courts,
15 shall calculate 5 percent of the savings to the state attributed to
16 those counties that successfully reduce the number of adult felony
17 probationers sent to state prison.

18 (c) The savings estimated pursuant to subdivision (b) shall be
19 used to provide high performance grants to county probation
20 departments for the purpose of bolstering evidence-based probation
21 practices designed to reduce recidivism among adult felony
22 probationers.

23 (d) County probation departments eligible for these high
24 performance grants shall be those with adult probation failure rates
25 more than 50 percent below the statewide average in the most
26 recently completed calendar year.

27 (e) A county probation department may receive a high
28 performance grant under this section in a year in which it does not
29 also receive a probation failure reduction incentive payment as
30 provided for in Section 1233.3. The CPO of a county that qualifies
31 for both a high performance grant and a probation failure reduction
32 incentive payment shall indicate to the Administrative Office of
33 the Courts, by a date designated by the Administrative Office of
34 the Courts, whether the CPO chooses to receive the high
35 performance grant or probation failure reduction payment.

36 (f) The grants provided for in this section shall be administered
37 by the Administrative Office of the Courts. The Administrative
38 Office of the Courts shall seek to ensure that all qualifying
39 probation departments that submit qualifying applications receive
40 a proportionate share of the grant funding available based on the

1 population of adults ages 18 to 25, inclusive, in each of the counties
2 receiving the grants.

3 1233.5. If data of sufficient quality and of the types required
4 for the implementation of this act are not available to the Director
5 of Finance, then the Director of Finance, in consultation with the
6 Department of Corrections and Rehabilitation, the Joint Legislative
7 Budget Committee, and the Administrative Office of the Courts,
8 shall use the best available data to estimate probation failure
9 reduction incentive payments and high performance grants utilizing
10 a methodology that is as consistent with that described in this act
11 as is reasonably possible.

12 1233.6. (a) Probation failure reduction incentive payments
13 and high performance grants calculated for any calendar year shall
14 be provided to counties in the following fiscal year. The total
15 annual payment to each county shall be divided into four equal
16 quarterly payments.

17 (b) The Department of Finance shall include an estimate of the
18 total probation failure reduction incentive payments and high
19 performance grants to be provided to counties in the coming fiscal
20 year as part of the Governor's proposed budget released no later
21 than January 10 of each year. This estimate shall be adjusted by
22 the Department of Finance, as necessary, to reflect the actual
23 calculations of probation revocation incentive payments and high
24 performance grants completed by the Director of Finance, in
25 consultation with the Department of Corrections and Rehabilitation,
26 the Joint Legislative Budget Committee, the Chief Probation
27 Officers of California, and the Administrative Office of the Courts.
28 This adjustment shall occur as part of standard budget revision
29 processes completed by the Department of Finance in April and
30 May of each year.

31 (c) There is hereby established a State Community Corrections
32 Performance Incentives Fund. Moneys budgeted for purposes of
33 providing probation revocation incentive payments and high
34 performance grants authorized in Sections 1230 to 1233.6,
35 inclusive, shall be deposited into this fund. Any moneys deposited
36 into this fund shall be administered by the Administrative Office
37 of the Courts and the share calculated for each county probation
38 department shall be transferred to its Community Corrections
39 Performance Incentives Fund authorized in Section 1230. The
40 Legislature may allocate up to 3 percent of the funds annually

1 deposited into the State Community Corrections Performance
2 Incentives Fund for use by the Administrative Office of the Courts
3 for the costs of administering this program.

4 1233.7. The moneys appropriated pursuant to this chapter shall
5 be used to supplement, not supplant, any other state or county
6 appropriation for the chief probation officer or the probation
7 department.

8 1233.8. This chapter shall remain in effect only until January
9 1, 2015, and as of that date is repealed, unless a later enacted
10 statute, that is enacted before January 1, 2015, deletes or extends
11 that date.

12 SEC. 3. The Judicial Council shall consider the adoption of
13 appropriate modifications to the Criminal Rules of Court, and of
14 other judicial branch policies, procedures, and programs, affecting
15 felony probation services that would support implementation of
16 the evidence-based probation supervision practices described in
17 this chapter.

18 SEC. 4. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.

23 SEC. 5. *This act is an urgency statute necessary for the*
24 *immediate preservation of the public peace, health, or safety within*
25 *the meaning of Article IV of the Constitution and shall go into*
26 *immediate effect. The facts constituting the necessity are:*

27 *County budget shortfalls threaten to significantly reduce*
28 *probation budgets, likely resulting in more probation failures, that*
29 *will negatively affect public safety. Tens of thousands of probation*
30 *failures already come to prison each year. As of April 2009, the*
31 *prison inmate population totaled 168,000 with significant*
32 *overcrowding of state prisons, affecting the safety and security of*
33 *staff and inmates. In order to improve the safety of the general*
34 *public and those working and being housed in state prisons, it is*
35 *necessary for this act to take effect immediately.*

O