



# Results-Oriented Solutions for Probation Funding

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## Key Points

- Increased growth in prison and jail populations has received much of the public's attention, but most offenders are on community supervision, which has rapidly grown, as well.
- Probation funding formulas which incentivize supervision of probationers for longer than may be necessary are partially responsible for community supervision population growth.
- Performance-based funding has been shown in many jurisdictions to reduce caseloads, reduce the number of people revoked from supervision and into prison, and to effectively restrain costs.
- Earned-time credits can also be an effective method of reducing over-long supervision by encouraging probationers to adhere to treatment plans and remain crime-free in exchange for early termination.

## Introduction

Within the broad sphere of the criminal justice system, it is perhaps understandable that the system's physical entities—predominantly state prisons, but also increasingly county jails—have received most of the scrutiny among the reform-minded. Decades of growth in prison and jail populations, driven in large part by “tough on crime” sentencing policies that emphasized carceral sanctions for wrongdoing, have long necessitated construction of such correctional facilities to house offenders. This has been an expensive undertaking—and not simply in terms of dollars and cents. Recidivism rates among those returning from prison are stubbornly high ([Durose et al, 1](#)). As a result of this disconnect between high public expenditures and flagging public-safety outcomes, policies that encourage incarceration over potentially better-performing alternatives have been targeted for reform ([Right on Crime](#)).

Enter probation. Probation, a form of community supervision, is a practice whereby an individual's jail or prison sentence is deferred or suspended—in whole or in part—by a judge until after a term of supervision is successfully completed. During this supervision, the individual is expected to remain crime-free and to fulfill various requirements of the court, including regular check-ins with probation officers, routine drug tests, and participation in substance abuse or mental health treatment programs ([Glod, 2](#)). In this way, allowing an individual to complete a portion or the entirety of their sentence in the community, rather than behind bars, acts as a significant incentive to stay within the color of the law going forward, as failing to comply can result in punishment, including revocation to prison.

Various data bears out this “carrot and stick” approach. For example, in Harris County, Texas, which includes the Houston metro area, those sentenced to community supervision are substantially less likely to be rearrested 16 months after release than those sentenced to state jail (across all risk levels) (HCSCD). Furthermore, the costs associated with supervising people in the community are far less than the cost of incarceration as well: In 2018, community supervision in Texas cost \$3.75 per person versus \$62.34 to incarcerate the same person in prison ([LBB, 1](#)).

Probation generally performs better than incarceration for many individuals in terms of recidivism and costs. However, administering it still presents its own challenges. While the four walls of a prison capture the mind's eye of the criminal justice system among the public, it is actually community supervision that forms the largest part of our correctional systems. To wit, there are 4.5 million people on probation or parole, according to the Pew Charitable Trusts—roughly twice the country's total incarcerated population and which represents an increase of 239 percent since 1980 ([Horowitz et al, 1](#)). Supervising a population this large

at any given time puts an enormous strain on probation departments' ability to carry out their important mission: improve public safety while adding much needed flexibility for judges to avoid incarcerating someone who should not be.

Many of the broader challenges that probation departments face can be traced to the way that they are funded. In many states, funding formulas apportion monies to local probation departments largely based on the number of individuals being directly supervised at any given time. Coupled with a general reliance on probationer fees to make up the rest, this can lead to perverse outcomes. Probation departments under this sort of funding scheme are implicitly incentivized to supervise individuals longer than their circumstances may require, leading to bloated caseloads and, paradoxically, the potential to actually increase the likelihood of recidivism among probationers<sup>1</sup>. Furthermore, this sort of funding structure also discourages diversion from probation into various pre-charge programs, such as Law Enforcement-Assisted Diversion (LEAD), for certain lower-level offenders in the first place, as a growing number of jurisdictions are beginning to implement in response to overcrowded jail space.

Conversely, there is no direct incentive to terminate supervision early when circumstances are warranted, which would in turn free caseload resources to be used instead on higher-risk probationers with more intensive supervision needs.

Performance-based funding formulas for probation have been shown across the country to address these perverse incentives in different ways. First, there remain local jurisdictions across the country, such as in Illinois, which do not have adequate community supervision programs available in which to divert suitable individuals from incarceration at the outset. This results in imprisonment—with its attendant costs and higher recidivism rates—that may not be necessary. Second, other states have begun to base a portion of probation funding on the ability of localities to innovate ways to reduce revocations back to prison while enhancing public safety. As a significant proportion of those being sent to prison are those being revoked from community supervision for technical violations or committing new crimes, such incentives are an important method of ensuring positive outcomes and giving judges, prosecutors, and lawmakers confidence in diversion programs.

This paper will investigate several such useful models for probation funding—at both the adult and juvenile level—

that can help reduce caseloads, better balance costs, and improve public safety and probationer outcomes. Additional points for lawmakers to consider when crafting funding formulas are also discussed, including front-loading probation funding during the earliest portion of supervision, taking caseload risk levels into account, and incentivizing early termination for compliant probationers.

### Illinois' "Redeploy" Program

Enacted by the Crime Reduction Act of 2009, the adult "Redeploy" diversion program in Illinois (Adult Redeploy Illinois, hereafter abbreviated to ARI) is modeled after the state's successful reforms with juvenile diversion programs that have been in place since 2004 ([ARI 2019](#)). Its purpose is to provide financial, performance-based incentives to local jurisdictions to divert non-violent offenders from prison by expanding more cost-effective, community-based services. ARI provides grants to counties, groups of counties, and judicial districts to fund evidence-based interventions, including specialty problem-solving courts, that are predicated upon rooting out underlying reasons for criminality that arise at the community level, with the primary goals of:

- Reducing crime and recidivism in a cost-effective manner;
- Encouraging local supervision of eligible individuals for the purpose of facilitating reintegration into the local community; and
- Performing data collection to access program outcomes ([ARI 2018, 3](#)).

In return for this funding, ARI sites set a goal of reducing those sent to Illinois Department of Corrections (IDOC) facilities by 25 percent (from a locally defined target population, based on the past three years' average). As a backstop for faithful compliance, there are corrective action policies in place in the event that a jurisdiction believes it will fail to reach this reduction goal, which includes remediation plans to avoid penalty charges and regular reporting to the program oversight board. In fiscal year 2017, ARI awarded \$6.4 million in grants to 20 sites—spanning 39 counties—and served 1,689 people, including almost 600 individuals newly diverted to avoid IDOC facilities ([ARI 2018, 1](#)).

### Results

ARI program success is internally measured as the number of people successfully diverted from state prison and the concomitant taxpayer savings that are realized by utilizing less-expensive supervision programs for those who would otherwise have remained in prison. By these standards, ARI is indeed effective.

<sup>1</sup> A comparison study of 1,436 federal probationers whose supervision was terminated early versus those who served their full term showed a lower likelihood of re-arrest for all offenses among those terminated early (10.2 percent and 19.2 percent, respectively) ([Baber and Johnson, 19](#)).

**Table 1. Successful diversion rates in Illinois' Redeploy Program**

| Year | Successful Diversions | Total Probationers Served | Probations Revoked | Success Rate |
|------|-----------------------|---------------------------|--------------------|--------------|
| 2014 | 1486                  | 1698                      | 212                | 87.5%        |
| 2017 | 1481                  | 1689                      | 208                | 87.7%        |

In fiscal year 2014—the earliest year for which data allows for an apples-to-apples comparison—data show that there were 1,486 probationers successfully diverted from prison out of 1,698 served. The revocation rate that year was 12.49 percent, as 212 offenders were terminated from supervision and revoked to prison ([ARI 2015, 7](#)). In fiscal year 2017, there were 1,481 individuals who were diverted away from prison—and stayed out—versus a total of 1,689 people who were supervised in community corrections programs ([ARI 2018, 15](#)). There were 208 revocations to state prison—in which individuals were initially diverted into community supervision but were unsuccessful, whether due to a technical violation or commission of a new crime—which occurred at a rate of 12.31 percent. Costs avoided during a single quarter totaled \$5.6 million ([ARI 2018, 28](#))—savings which, theoretically, would be available to reinvest toward further expansion of ARI into Illinois' remaining counties.

A two-year state budget impasse occurred—beginning in July 2015 and ending in 2017 ([Mendoza, 1](#))—which forced implementation sites to operate at about 80 percent of their expected state funding levels during 2017 ([ARI 2018, 2](#)). “Stopgap” dollars signed into law in 2016 reimbursed jurisdictions for FY 2016 program expenditures and maintained pre-impasse site budgets for FY 2017 ([ARI 2018, 4](#)). According to the 2017 annual program report, this impasse had an effect on jurisdictions' ability to accept new enrollments during 2016. This likely had a further effect on program sites' ability to deliver services at a level it may have otherwise, and thereby realize even greater revocation reductions. Despite this fiscal uncertainty, however, all but one program site still met its goal to reduce the number of those sent to state prison by 25 percent ([ARI 2015, 15](#)), indicating the strong investment these jurisdictions have for the program.

In toto, ARI has averted almost \$108 million in prison costs over its lifetime, as the average cost of ARI programming in 2017 was approximately \$3,500, versus a per capita cost to incarcerate of \$26,365 (with marginal costs of \$7,776) ([ARI 2018, 16](#)). Furthermore, ARI steered over 3,000 probationers who would otherwise have gone to prison toward effective alternatives to incarceration since January 2011 ([ARI 2018, 28](#)).

While averting costs from needless incarceration through diversion into probation is a good outcome, it is not obvious that ARI is shrinking the state's real, overall corrections costs yet. For example, between 2010 and 2017, total expenditures for IDOC facilities actually increased by almost 14 percent<sup>2</sup>. In most correctional systems, costs increase every year for a variety of reasons, including health care costs for staff and for an aging inmate population. Furthermore, many jurisdictions are reluctant to fully close prisons even as populations decline, and Illinois is not immune to this. (In 2015, the state was spending almost a million dollars a year on utilities, maintenance, and security costs on the Tamms Correctional Center, which closed in 2013 ([Parker](#)). As of this writing, there is pending legislation to even reopen it for use as a vocational training facility ([HB 210](#).) As a result of these factors, certain fixed costs remain, despite a lower prison population.

For ARI to produce the sort of cumulative savings that would allow for real dollar savings in corrections—i.e., from closing prisons—it will likely need to expand into the remaining jurisdictions in the state and admit a greater share of participants who are initially eligible for the program. As of 2018, ARI programming is available in 45 of 102 counties (with an additional 2 receiving planning grants) ([ARI 2019](#)).

The ultimate benefit of ARI, however, is not in dollar-and-cent savings, but in generating better outcomes. Year over year, hundreds of people are diverted from Illinois prisons and supervised in the community, where they receive treatment for drug addictions, mental health issues, or other behavioral maladies. In turn, this can reduce recidivism and foster closer ties with their families. Illinois has faced broader fiscal uncertainty in its budget which has affected ARI's footing, but as the latest annual report stated, “the resilience of the ARI network demonstrated how vital a function the program plays in the state's criminal justice system” ([ARI 2018, 17](#)).

### Ohio's “Reclaim” Program

In an effort to ease overcrowding in the state's Department of Youth Services (DYS) facilities and direct suitable at-risk youth toward local supervision, Ohio lawmakers passed a bill creating the “Reasoned and Equitable Community

2 From \$1.01 billion in 2010, to \$1.15 billion in 2017. See annual reports for 2010 and 2017 ([IDOC](#)).

and Local Alternatives to the Incarceration of Minors” (RECLAIM) program, which began as a nine-county pilot initiative in January 1994 ([ODYS, 2019a](#)).

The purpose of the program is to use incentive-based funding to encourage local juvenile courts to develop options for community-based programming—including aftercare and alternative schooling, victim restitution and community service, and mental health counseling, among others—that is appropriate to each youth offender or those at risk of offending. By targeting anti-social and behavioral dysfunctions that can drive future criminality in a community setting, this type of programming can reduce recidivism and contain costs better than can traditional commitments to a state juvenile facility.

Under the revised funding mechanism, implemented in 2005, courts are given a number of “credits” based on that particular court’s four-year average number of youth felony adjudications ([ODYS, 2019b](#)). These credits are reduced by a certain amount any time a court uses a chargeable DYS bed day (1 credit) or a community corrections facility (CCF) bed day (2/3 credit). This incentivizes each jurisdiction facing the prospect of committing a juvenile to a state facility to be especially discerning when doing so, as fewer commitments mean a greater portion of state funding that can be pulled down for localities to innovate solutions for recalcitrant cases and continue to supervise youth in the community. Remaining credits then translate to a percentage of total RECLAIM funds that are allocated to that court.

RECLAIM decreased commitments to state facilities in the initial nine-county pilot program by 43 percent. In light of this success, the program was expanded statewide one year later in 1995 ([ODYS, 2019a](#)).

## Results

Much like Illinois’ Redeploy program, RECLAIM’s goal is to reduce commitments to costly and ineffective state facilities and expand local options for at-risk youth supervision.

On this score, and based as well upon recidivism and cost-benefit data, the RECLAIM program has been very successful. In a 2014 evaluation of program outcomes by University of Cincinnati researchers, RECLAIM programming was shown to feature substantially lower likelihood of recidivism among youth who participated compared to youth placed in CCF or DYS facilities, across all risk levels ([Latessa et al., 2014a, 32](#)):

**Table 2. Recidivism rates by risk level (from “All Failures”)**

|         | Low | Moderate | High |
|---------|-----|----------|------|
| Reclaim | 7%  | 14%      | 37%  |
| CCF     | 20% | 37%      | 57%  |
| DYS     | 24% | 43%      | 59%  |

Source: “Evaluation of Ohio’s Reclaim Programs,” University of Cincinnati, 2014.

Likewise, the costs associated with processing 10 youth through RECLAIM programming are also significantly less versus placing youth in secure facilities (across all risk levels): RECLAIM programming costs approximately \$99,950 per 10 youths, while CCF and DYS placements cost \$422,520 and \$1,661,740 per 10 youths, respectively<sup>3</sup> ([Latessa et al., 2014b, 8](#)).

The effect of using local RECLAIM programming to divert youth offenders away from traditional incarceration at the state level has helped to dramatically reduce facility populations, which were down from about 2,600 to fewer than 510 between May 1992 and June 2013.

## Arizona’s “Safe Communities Act”

Like many states shortly after the turn of the century, Arizona experienced rapid corrections growth that was swamping its ability to keep up—in terms of prison-bed space and, as a consequence, expenditures that swallowed an increasing portion of the state’s general budget. According to a 2007 report on the deteriorating situation by the Council of State Governments, the state’s prison population had grown by 52 percent over the preceding 10 years, while the corrections budget doubled (consuming 10 percent of the overall budget, one of the highest in the nation at the time) ([CSG, 1](#)).

Analysis showed that much of this growth was driven, in no small part, by individuals who had violated the terms of their probation, which then accounted for one-third of admissions to state prison ([CSG, 2](#)). Of these revocations, about 80 percent were property and/or drug offenders and almost 50 percent featured substance abuse as a contributory factor ([PCS, 1](#)).

In response to this problem, Arizona lawmakers passed the “Safe Communities Act” (SCA) of 2008. The legislation featured two main elements, each based on expanding incentives to improve outcomes:

### *Earned-Time Credits*

This provision granted the court the discretion to adjust a probationer’s term of supervision by 20 days for every month that the probationer successfully “exhibits positive

3 The study’s authors multiplied the initial cost values by 10 to standardize costs across all settings.



progression” toward the goals and treatment of their case plan, avoids new arrests, remains current on court-ordered fines and fees payments, and remains current on community restitution ([SB 1476](#)).

### **Performance Incentive Funding**

The bill’s performance-based funding mechanism required that a share of state savings realized by reducing the number of individuals revoked from probation into a state prison—up to 40 percent—be appropriated to a county’s adult probation office when they reduced the number of revocations for either technical violations (up to 20 percent of savings) or new convictions (up to 20 percent of savings). Reductions were measured against a three-year average “baseline” revocation rate for each county. The sole stipulation to receiving this funding was that counties were required to use the monies to increase the availability of substance abuse treatment, to increase risk reduction and intervention programs, and on grants to partner with non-profit victim services organizations to increase the amount of restitution collected from probationers ([SB 1476](#)).

### **Results**

Based on annual reporting data required by the legislation, SCA delivered on its intended goal to reduce the number of supervision failures and revocations to state prison (despite realized savings never having been shared with the counties and the funding mechanism having been repealed in 2011) ([Glod, 3](#)).

Between baseline-year 2008 and fiscal-year 2010, there was a 27.8 percent decrease in the number of revocations to Arizona Department of Corrections facilities, with only three jurisdictions showing an increase in revocations ([AOC, 7](#)). Additionally, the number of probationers receiving a new felony conviction fell by over 31 percent during the same period ([AOC, 9](#)). According to a Pew Center for the States analysis, if the number of revocations had remained at 2008 baseline levels, Arizona taxpayers would have been on the hook for an additional \$36 million to warehouse new inmates ([PCS, 3](#)).

As stated above, Arizona never ultimately followed through on sending down a portion of state savings to the counties, and this appears to have been a fateful decision. Between 2008 and 2011, when counties were adopting revocation-reduction programming with the understanding that a portion of state savings from reduced incarceration would follow, revocations fell. However, after the funding mechanism was repealed in 2011, state data show that the reductions promptly leveled off and revocations began to increase every year through FY 2015 ([Waters and Aguilar-Amaya, 7](#)).

Revocations in FY 2015 were lower than during the 2008 baseline year, possibly due to the incentive effect of earned-time credits.

That said, such a rapid swing in revocation numbers suggests that the performance funding played a critical role in spurring localities to address probationer re-offending, and that in the absence of state savings being sent down, departments had less cause to continue shouldering the initial costs of doing so. Arizona lawmakers would do well to recommit themselves to this funding mechanism, while other states should heed these results and seek out their own similar proposals.

### **Important Elements to Consider in Crafting Probation Funding Formulas**

Each of the preceding states’ programs for funding local probation departments have, expectedly, their own nuances which reflect each state’s particular priorities and corrections environment. But there is a common thread: instituting some form of funding incentive for local departments to reduce the number of offenders being sent to state lockup while improving public safety. For instance, jurisdictions have expanded community supervision capacity in the first place and imposed monetary penalties or other remediation measures if counties do not meet revocation reduction goals (Illinois), reduced the amount of state funding that can be pulled down if counties use chargeable prison-bed days (Ohio), or tied performance funding to the reduction of revocations (Arizona).

But there are other important elements to probation funding that ought to be closely considered as states investigate their own reforms.

As mentioned above, much of the broader challenges regarding probation funding in general stems from the fact that many states structure their formulas based primarily on the number of probationers being supervised at any given time. Because a substantial portion of local probation funding also comes from probationer fees, this structure creates a natural incentive to keep people on supervision lest probation departments lose funding—even in cases where continued supervision may no longer be necessary or warranted.

For the same reasons, local probation departments are disincentivized under this structure from offering pre-trial diversion to certain first-time, low-risk offenders from the traditional criminal justice system altogether, as a grow-

ing number of jurisdictions are now utilizing (such as the LEAD<sup>4</sup> program or other pre-charge diversions).

Accordingly, when developing probation funding models, states should take the following into account:

#### ***Front-loading funding for probation toward earliest period of supervision***

Given data showing that most re-offending while on supervision occurs within the first two years,<sup>5</sup> states ought to adjust their funding formulas to front-load a higher per-capita funding rate during those earlier years of supervision. Beyond that, funding could be tapered to a standard rate during the middle term of supervision, and at one-half the standard rate for the final period. This would allow for more intensive supervision to take place during the riskiest portion of a probationer's term—in part by helping to reduce caseload sizes and by expanding programmatic capacity—while also encouraging probation departments not to needlessly supervise during the latter-most period when the likelihood of re-offense is lower.

#### ***Adjustments for caseload risk levels***

Funding formulas should also take probationer risk into account. Higher-risk offenders may still be suitable for diversion into community supervision but may require greater, individualized interventions that are relatively expensive (albeit less so than incarceration would be). Funding formulas that do not take this risk consideration into account create a disincentive to offer probation at all in these cases. Adjusting funding to address specialized caseloads that feature higher levels of risk can provide adequate resources to probation offices to administer more intensive supervision while further restraining unnecessary costs from incarceration. Conversely, care should be taken when crafting statutes that incentivize probation departments to

reduce technical violations so as not to unduly penalize or reduce risk-based funding to those departments that utilize supervision for these more challenging cases.

#### ***Adjustments for early termination***

Basing probation funding on the number of those being directly supervised at any given time disincentivizes early termination of supervision for lower-risk probationers who have been compliant, pose no continuing public safety risk, and are current on fee payments and victim restitution. This increases costs and focuses supervisory efforts where it is not needed.

Creating an award structure in funding formulas for those departments who terminate suitable candidates early would help to address this disincentive. For example, states could continue to pay a portion of the standard per-capita rate during the latter period of supervision, even if the court orders early termination. Coupled with higher funding during the earliest period of supervision, this would help to reduce caseload sizes, concentrate supervisory efforts on more needs-intensive cases, and compensate departments for losses of probationer fee revenue.

## **Conclusion**

A well-known fact about people is that they respond to incentives. This is true of entire systems, as well—including probation departments. Several states across the country have shown that by providing results-oriented funding to local probation departments, localities can—and usually do—respond by innovating or adopting new practices to reduce the likelihood of supervision failure and revocation to state lockups. In turn, taxpayer costs can be restrained while realizing greater returns in public safety and, ultimately, confidence in our institutions. As experience has shown, however, follow-through is the key. ★

4 Law Enforcement-Assisted Diversion. Spearheaded in Seattle, LEAD is a type of pre-booking diversion that allows law enforcement officers themselves to initiate diversion of low-level offenders—usually for drug possession or prostitution—away from arrest and traditional prosecution toward evidence-based rehabilitation programs that provide pro-social supports and reduce recidivism (Petersen).

5 For example, one study of recidivism among those placed on federal community supervision showed that among all sampled offenders, overall recidivism within five years of commencing supervision was 38.4 percent, but the likelihood of re-offending had already reached 26.9 percent within the first two years (i.e., recidivism still occurred after two years of supervision, but at a slower rate) (Rhodes et al., 8).

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