

# NATIONAL JUVENILE JUSTICE NETWORK

## Funding Community-Based Supervision LEGISLATIVE LEVERS TO LOCK IN LOCAL FUNDING<sup>1</sup>

FISCAL POLICY CENTER TIP SHEET | MAY 2013

Frequently, when youth commitments to state facilities are reduced, local governments must manage community-based sanctions and services. Yet in times of fiscal austerity and uncertainty about the durability of state funding, local jurisdictions can be hesitant to accept responsibility for community-based care, due to the risks that funding will fall prey to budget cuts and providers will have insufficient resources to provide services. Are there legislative mechanisms that help mitigate these funding concerns? This paper will examine a few examples of how state and federal legislators have constructed legislation that triggers discussion or re-negotiation among key participants when funding is threatened or reduced.

Specifically, we will discuss the following legislative possibilities:

- 1) Link funding
- 2) Create firewalls to prevent fund tampering
- 3) Give counties the ability to opt out of community-based care obligations
- 4) Create a constitutional amendment to protect trust funds.

### 1. Build Coalitions through Linked Funding: Connecting Prevention and Enforcement Dollars

The Schiff-Cardenas Crime Prevention Act of 2000,<sup>2</sup> which linked California state supplemental funding for county law enforcement and youth crime prevention, demonstrates how linking funding can

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<sup>1</sup> The National Juvenile Justice Network's Fiscal Policy Center (FPC) acknowledges the substantial contribution of Jason Ziedenberg, consultant and member of the FPC advisory board, and Harlan Dalzell, NJJN extern and law student at the Georgetown University Law Center, to the research and writing of this summary. We are also grateful for the generous support of the Herb Block Foundation, John D. and Catherine T. MacArthur Foundation, Open Society Foundations, Public Welfare Foundation, and Tow Foundation which made this document possible.

help secure county funds for community-based services. Under the act, a special fund is appropriated in equal parts to the two groups.<sup>3</sup> The result is a shared interest between law enforcement and prevention stakeholders in maintaining the total allocation to the special fund.

In January 2005, Governor Schwarzenegger proposed a fiscal year 2005-2006 budget that, with legislative approval to unlink the funds, would have reduced prevention (CPA) spending by roughly 75 percent<sup>4</sup> while maintaining the law enforcement (COPS) funding at the previous year's level. In response, sheriffs and police chiefs told legislative budget committees that the prevention spending was an essential public safety program, and joined counties, probation and community youth service groups in opposing the cut.<sup>5</sup> By May 2005, the revised budget restored CPA funding, thereby ensuring funding for both prevention and enforcement.<sup>6</sup>

## 2. Create a Trust Fund for Linked Funding and Establishing Legislative Hurdles to Prevent Tampering with the Trust Fund

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Legislatures can also develop a multi-tiered approach to protect project funding. For instance they can combine mechanisms that create unlikely allies through linked funding and mechanisms that establish firewalls or barriers to funding level changes. One example of both of these mechanisms on the federal level is the Highway Trust Fund (HTF). Similar to (and predating) the California linked funding scheme discussed above, the HTF includes both a Highway Account and a Mass Transit Account.<sup>7</sup> Thus, changes to mass transit funds can affect highway funds, creating a natural alliance for fund protection.

However, Congress wanted to make sure that these program areas were durably linked. Consequently, in 2005, it created the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which established two firewall protections to HTF appropriations that protect against any sudden changes Congress may wish to make to the fund.<sup>8</sup>

- First, SAFETEA-LU separated the Highway Trust Fund from the general discretionary spending process, so across-the-board cuts to the general funds will not affect the HTF.<sup>9</sup> At the same time if Congress wants to shift funds from the HTF to the general discretionary fund it must: a) pass a

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<sup>2</sup> A.B. 1913, Gen. Assemb. 1999-2000 (Cal. 2000), (also called the "Juvenile Justice Crime Prevention Act"), codified at Cal. Gov. Code § 30061 et seq. (2013).

<sup>3</sup> See Cal. Gov. Code § 30061(b)(1)-(4) (2013).

<sup>4</sup> Governor's Budget 2005-2006, Youth and Adult Correctional Agency, 44, available at [http://www.dof.ca.gov/html/Budget\\_05-06/Budget05-06pdfMenu.html](http://www.dof.ca.gov/html/Budget_05-06/Budget05-06pdfMenu.html) (last viewed April 19, 2013).

<sup>5</sup> David Steinhart, "California Budget Report: Governor Restores \$75 Million In Schiff-Cardenas Crime Prevention Funds, Legislature Agrees," *Commonweal* (June 2005), <http://bit.ly/10c2fS2>; David Steinhart, "California Budget Bulletin May 17, 2005," *Commonweal*, <http://bit.ly/11N1SQX>.

<sup>6</sup> Governor's Budget 2005-2006 May Revision,, 55-56, available at [http://www.dof.ca.gov/html/Budget\\_05-06/MayRevision2005-06/CLE.pdf](http://www.dof.ca.gov/html/Budget_05-06/MayRevision2005-06/CLE.pdf) (last viewed April 19, 2013).

<sup>7</sup> See 26 U.S.C.A § 9503(e) (2013).

<sup>8</sup> See Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, P.L. 109-59 (2005).

<sup>9</sup> See Pub. L. 109-59 at § 8001.

law reducing HTF funding; and b) increase the total discretionary budget, because HTF funding is segregated from general discretionary funds.

- The law also created House Rule XXI (clause three), which prevents the House of Representatives from considering any bill, joint resolution, amendment, or conference report that would reduce HTF funding below the existing statutory level,<sup>10</sup> so the House would have to pass a new resolution freeing it from this restriction before it could consider new measures to reduce HTF funding.

Of course, no legislature can bind a future legislature. However, enacting firewall laws that must be repealed or amended means a future Congress would have to take multiple steps<sup>11</sup> (as described above) in order to reduce HTF appropriations, potentially sounding political alarms among HTF constituents.

For example, when the House of Representatives tried to modify the House Rule XXI at the end of 2010,<sup>12</sup> a coalition of 21 stakeholder groups—including the Association of State Highway and Transportation Officials, the Laborers International Union of North America, and the U.S. Chamber of Commerce—joined in a letter opposing the change.<sup>13</sup> Although House Rule XXI was ultimately amended to loosen restrictions on HTF changes, clause three still limits the measures the House may consider with regard to the HTF.<sup>14</sup> And as an alarm for constituents, the firewall appears to have worked.

### 3. Give Counties the Ability to Opt Out of Community-Based Supervision if Funding Levels Decline

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Over the last 40 years, Oregon has experimented with various levels of local control and state and county partnerships to supervise, service, and sanction sentenced adults in counties, rather than in state prisons.<sup>15</sup> In 1977, the state passed the Community Corrections Act (CCA), which provided state funding for local-level sentencing alternatives, supervision, and corrections programming.<sup>16</sup> Under the CCA, counties could draft community corrections plans and apply to the Department of Corrections (DOC) for funding.<sup>17</sup> The resulting intergovernmental agreement between the state and counties could

<sup>10</sup> See Pub. L. 109-59 at § 8004.

<sup>11</sup> These steps include having to change the House Rule before making changes to the fund or passing legislation to increase spending in some other budget category due to the nondiscretionary status of the fund.

<sup>12</sup> See H. Res. 112-5 (2011).

<sup>13</sup> Available at <http://bit.ly/YR13Tg> (last viewed April 19, 2013).

<sup>14</sup> Whereas the rule formerly prevented the House from considering measures that would reduce the HTF yearly appropriation at all, the new rule states only that the House may not consider measures that would spend HTF dollars (i.e., once appropriated) for other purposes. Now, the House may consider changing the size of the fund but not the purposes to which the fund is put. See Pub. L. 109-59 at § 8004; H. Res. 112-5 (2011).

<sup>15</sup> Historically, the Oregon Department of Corrections (DOC) managed community corrections for felony probationers and parolees, and supervision of misdemeanants was a county obligation.

<sup>16</sup> See former Or. Rev. Stat. § 423.505 (1994); 1977 Or. Laws ch. 412 § 1.

<sup>17</sup> See former Or. Rev. Stat. §§ 423.525, 423.430 (1994); 1977 Or. Laws ch. 412 §§ 5, 6.

also provide for the transfer of state corrections employees to county positions.<sup>18</sup> Although counties were entirely responsible for supervising individuals with misdemeanor convictions, they could choose to apply for CCA funds to provide community-based supervision and services to individuals with felony convictions.

In 1995, following passage of Ballot Measure 11,<sup>19</sup> which authorized mandatory prison sentences for a broad array of crimes and was expected to double the state’s prison population, the state enacted Senate Bill 1145 (SB 1145), which modified the CCA and again restructured Oregon’s adult correctional system. Under SB 1145, counties were mandated to assume responsibility for individuals with felony convictions who were on parole, probation, or post-prison supervision; sentenced to prison for 12 months or less; or sanctioned to a term of 12 months or less for a violation of a condition of supervision.<sup>20</sup> The state agreed to provide “adequate funding to counties for this responsibility”<sup>21</sup> “with appropriations from the General Fund for statewide community corrections programs on a continuing basis.”<sup>22</sup>

Since passage of SB 1145, the funding partnership between the state and counties has been enforced through an “opt out” clause: if the total state community corrections appropriation falls below the legislative baseline, any county can return responsibility for management, supervision, and services for individuals with felony convictions to the state DOC.<sup>23</sup> Counties that opt out of the program may reenter the partnership, but not more than once per biennium.<sup>24</sup>

The opt-out provision has motivated state and county decision-makers to work together in times of fiscal austerity to ensure that counties can afford to offer community-based supervision and care. Funding has fallen below the legislative baseline approximately three times since SB 1145 was passed. In each instance, the state legislature has formed an ad hoc, multi-disciplinary committee of state and local decision-makers to consider and propose legislation to adjust county workload so that providing community-based services remains affordable. For example, in 2009, when the state made significant cuts to the SB 1145 baseline funding in order to balance the budget, the state legislature followed the recommendations of an ad hoc committee and passed legislation that adjusted the counties’ workload by providing for a 60-day cap on incarceration for technical probation violations and early termination of probation.<sup>25</sup>

Although two of Oregon’s 36 counties have opted out of providing community-based services to probationers and parolees with felony convictions, the rest have retained this responsibility. The

<sup>18</sup> See former Or. Rev. Stat. § 423.550 (1994); 1977 Or. Laws ch. 412 § 10.

<sup>19</sup> See Initiative Measure No. 11, 68<sup>th</sup> Leg. Assemb. (Or. 1995).

<sup>20</sup> S.B. 1145 § 9, 68<sup>th</sup> Sen. (Or. 1995); Or. Rev. Stat. § 423.478 (2011).

<sup>21</sup> S.B. 1145 legislative findings at (4).

<sup>22</sup> S.B. 1145 at § 2.

<sup>23</sup> See Or. Rev. Stat. § 423.483(2) (2011)

<sup>24</sup> See Or. Admin. R. 291-031-0150(2) (2013).

<sup>25</sup> See H.B. 2290 § 1(b), 75<sup>th</sup> Leg. Assemb. (Or. 2009).

willingness of the state to work with the counties to ensure that funding levels are adequate has allowed the majority of counties to continue to manage probation and parole supervision and invest in creative local solutions to crime problems.

## 4. Create a Constitutional Amendment to Protect Trust Funds

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Some Maryland state legislators have been struggling with budget encroachment on that state's Transportation Trust Fund for several years.<sup>26</sup> In order to restore confidence that the governor will not transfer money out of the fund, the Maryland legislature recently passed a constitutional amendment. The amendment would prevent the diversion of transportation funds, absent a declaration of fiscal emergency and a three-fifths vote by the legislature.<sup>27</sup> Maryland voters will decide on the amendment during the November 2014 general election.<sup>28</sup>

Although pursuing a constitutional amendment is a drastic and unusual step, it is possible to envision a way that a constitutional amendment might accompany juvenile justice legislation. For example, legislation to create a trust fund for community-based care and education that locks in a portion of the annual expenditures previously spent on secure institutions<sup>29</sup> could be further protected by a constitutional amendment.

## Conclusion

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The examples described above suggest ways in which local jurisdictions can be protected fiscally when they assume responsibility for providing community-based supervision and services to youth in trouble with the law, instead of sending them to state-run institutions. Creative legislative and/or constitutional changes can protect local jurisdictions from the potential financial risks associated with assuming care of these youth. These legislative levers also open doors for partnerships between unlikely allies, all of whom share an interest in safe communities and reduced recidivism.

Although the legislative levers included above are by no means exhaustive, they can be used to start a conversation among advocates, policymakers and other stakeholders about ways to craft safety nets for jurisdictions that assume care of youth in the justice system.

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<sup>26</sup> Transportation Trust Fund Protection Act: Hearing on H.B. 383 Before the H. Appropriations Comm, 2010 Leg, 427<sup>th</sup> Sess. (Md. 2010) (statement of Kisha A. Brown, Dir. Gov't Rel. Greater Baltimore Comm.; WBALtv.com, Senators Propose Transportation Fund Firewall, <http://bit.ly/10EXWu8>).

<sup>27</sup> See S.B. 829, Sen. 2013 (Md. 2013).

<sup>28</sup> See *id.* at § 3.

<sup>29</sup> Lori Albin, "How to Retain Funds for Youth Programming From the Sale or Lease of Juvenile Facilities," (Washington, D.C.: National Juvenile Justice Network, Fiscal Policy Center, May 2012), at <http://bit.ly/12CULas>.