



# Legislative Brief

(800) 456-5974 • www.county.org • @TexasCounties

## UNFUNDED MANDATES

### WHAT COUNTIES ARE SAYING

Unfunded mandates are significant cost drivers for county governments that have placed an increased strain on county budgets and in turn, on local property taxes and local taxpayers. The Texas Legislature should pass a constitutional amendment to prevent future unfunded mandates on counties.

### BACKGROUND

Texas counties have long faced unfunded mandates from both the state and federal governments. These costly mandates may be unintentional on the part of legislators when bills are originally passed, but they end up costing local taxpayers once they are implemented.

Fundamentally, unfunded mandates are laws passed by the Texas Legislature (or Congress at the federal level) or regulations issued by agencies that direct counties to undertake specified governmental actions without the funding to support such mandates.

In response to these mandates, counties, over the past several legislative sessions, have sought the passage of a constitutional amendment prohibiting unfunded mandates. An amendment prohibiting future state unfunded mandates would help prevent financially disruptive circumstances from adversely affecting county operations, minimize interference with sound financial planning and protect important bond ratings. A similar amendment has been incorporated in the constitutions of many other states. While it would not affect present unfunded mandates, it would prevent the adoption of additional ones in the future.

What follows is a chronicle of some of the more substantial current unfunded state mandates which

counties are obligated by statute to carry out. Please be aware that this list is not all-inclusive but contains several significant cost drivers that can negatively affect local property tax rates.



### CRIMINAL INDIGENT DEFENSE

The Fair Defense Act, enacted as SB 7 during the 77th Legislature, sets forth specific standards relating to the entitlement and appointment of counsel for indigent defendants in certain criminal adversarial judicial proceedings. The Texas Indigent Defense Commission administers several types of reimbursement grants to counties for the cost of providing counsel to indigent defendants. However, historically, the grants have only reimbursed a small percentage of county costs. In fiscal year 2015, expenditures for indigent defense totaled approximately \$238 million; counties contributed about \$209.4 million of that amount, while the state contributed about \$28.6 million.

### INCARCERATION OF STATE INMATES AND HEALTH CARE IN COUNTY JAILS

Even though state convicts are ready to leave the county jail, they can be held there for up to 45 days without reimbursement by the state. Additionally, the county is required to hold parole violators awaiting hearings. While incarcerated in county jail, state-bound inmates are the expense of the county. The county is also legally obligated to provide health services to indigent prisoners in their custody and control, which can include extraordinary medical costs such as emergency room visits, as well as mental health services.

*(continued on next page)*

## UNFUNDED MANDATES *(continued)*

### THE INDIGENT HEALTH CARE AND TREATMENT ACT

Enacted in 1985, the Indigent Health Care and Treatment Act establishes the duty of a county, as the payor of last resort, to provide healthcare for indigent residents of the county under prescribed circumstances—if there is no hospital district or public hospital or other available source that serves in the area where the indigent resides. The Act establishes the limit of financial responsibility of a county at 8 percent of the county’s general tax levy, including sales tax revenue. Once this annual threshold is reached, state assistance (reimbursement of 90 percent of eligible expenditures) is available, but only if appropriated by the state. State reimbursement is not guaranteed and funding is subject to the appropriations process.

### JUVENILE PROBATION PERSONNEL

State law requires the county commissioners court to pay, out of the general fund of the county, the salaries of the juvenile probation personnel and other expenses certified as necessary by the juvenile board chairman.

### JAIL STANDARDS

County jails must comply with the regulations promulgated by the Texas Commission on Jail Standards. The state requirements of providing safe and suitable jails are administered and managed by the Commission, and to the extent that counties are required to comply with its rules that involve expenditures, the Commission’s regulations constitute unfunded mandates.

### BLUE WARRANT INMATES

Counties are responsible for the detention of “blue warrant” inmates. These inmates are parolees from state prison who are charged with technical or administrative violations of the terms of their parole. State law requires disposition of the administrative charges against such an inmate before the 41st day after the date on which one or several conditions apply. The state does not compensate counties for prisoner care during the inmate’s confinement in the county jail. The 84th Legislature passed a bill that would allow some technical parole violators

to bond out of jail to await their parole hearing, however, recent data show very little impact on the jail population. Even though state law provides that the sheriff may release an inmate, the sheriff cannot do so unless the state has been notified 10 days in advance of the release. Moreover, it would be bad public policy for the sheriff to undertake such action as a routine practice.

### APPOINTMENT OF COUNSEL IN CHILD PROTECTIVE SERVICES CASES

Counties are responsible for the costs of appointed counsel in Child Protective Services (CPS) cases. Upon establishment of indigency in a managing conservatorship proceeding brought by a governmental entity, the costs associated with the appointment of an attorney ad litem to represent a child or parent must be paid from the general funds of the county.

### ELECTIONS

According to numerous statutes in the Election Code, the burden of elections falls onto counties as mandated by the state. Yet counties do not receive funding from the state to conduct them. Pursuant to state law, each county must pay the expenses incurred to conduct an election. Special elections cannot be predicted as they are subject to the call of the governor or other entities, and therefore, adequate funds to cover potential special elections may not be included in a county’s fiscal year budget. ★