

Probation Practices: Supervision term, early termination, and earned credit options

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Initial thoughts



- There are approximately 3 million people currently under probation supervision in the U.S.
 - There are approximately 66,000 adults on probation in CO (June, 2021).
 - CO has the 17th largest probation population amongst the States.
- The number of people on probation is impacted by:
 - The number of people placed on probation at sentencing
 - The period of probation imposed by the court
 - Opportunities to reduce the probation period
 - Early termination determinations
 - Revocation/case closure practices

See: Kaeble, BJS, Probation and Parole in the U.S. 2020, 2021; CO Judicial Branch, Annual Statistical Report, 2021

I. Probation terms imposed

- The “average” term of probation imposed in the U.S. is just under 2 years. There are many types of probation.
 - The average term of probation imposed varies substantially from state to state – with a low of 9 months (KS, MS) to a high of 5 years (HI, NJ).
 - The average term of probation in felony cases was longer than the average length of time for misdemeanor cases (e.g., MN – twice as long for felony cases).

See: Pew Charitable Trusts, Public Safety Performance Project, Average Length of stay on probation, 4/15/21; NCSL, Review of 50 state statutes, 2017.

Maximum term of probation – misdemeanors



- The maximum length of probation supervision in misdemeanor cases ranges from:
 - 2 years (15 states) to 7 years (1 state – WV)
 - 5 years is the maximum term in 9 states, including CO

See: NCSL, Review of 50 state statutes, 2017.

Maximum term of probation – felony cases



- *30 states have a specific term of years:*
- 2-4 year maximum terms in six states (OK, DE, ME, IL, LA, UT)
- 5 year maximum term in 19 states.
- 7-10 year maximum terms in 5 states (AZ, WV, HI, TX, AK)

See: NCSL, 50 state review, 2017

Maximum term of probation – **felony** cases

***13 states** tie the maximum probation term to the maximum period of incarceration for the crime committed.*

***In 7 states (including CO for felony cases)** the maximum probation term is statutorily unstated – and can be longer than the maximum period of incarceration that can be imposed . (CO, FL, MA, IN, SD, VA, VT .*

Impact of longer probation terms



- Nationally, about 65% of probation case closures were considered “successful” closures.
- Most probation violations occur during the early portion of supervision (first 12-18 months of supervision).
- Longer periods of probation are not necessarily correlated with lower rates of reoffending, but they can be correlated with an increased number of technical violations.
 - Individuals with long probation sentences are “more likely than shorter ones to lead to technical violations.” Pew Trusts, 2020

See, Morgan, 1994; Lurigio, 2000, CSG, 2019. CJI, CO Justice System Policy Changes During Covid, 2021; Kaeble, BJS, 2021; Pew Trusts, “States can shorten probation and Protect Public Safety”, 2020. Putting Public Safety First: 13 Strategies, Pew Center on the States, 2008.

II. Earned Credits



- **16 states** allow for “earned credits” that could reduce the period of probation supervision.
 - Arizona, Alaska, Arizona, Delaware
 - Indiana, Illinois, Louisiana, Maryland
 - Missouri, Mississippi, Nevada, Oregon
 - South Carolina, South Dakota, Texas, Utah

See: NCSL, Review of 50 state statutes, 2017.

Amount of credits earned

- **The amount of credit than can be earned varies:**
 - 30 days earned for each month of satisfactory completion of probation (5 states)
 - 20 days earned per month (3 states)
 - 10 days earned per month or less (8 states).
 - See, e.g., KS HB 2084 – suggesting 7 days/mo.
- **Some typical requirements are:**
 - satisfactory compliance with meeting requirements
 - the absence of violations
 - meeting all financial obligations



III. Early discharge or termination



- **40 states (including CO)** have statutes that allow judges to terminate the probation period prior to the originally stated end date.
- In 22 states, petitions for early termination can be made by probation or DOC staff. In some states petitions can be made by the probationer.

Is review for early discharge required?



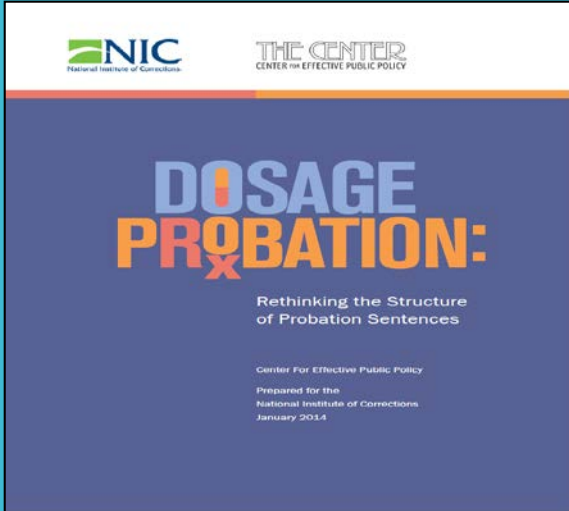
- Only 10 states require an early termination review at a prescribed time.
- Examples:
 - TX after 1/3 of supervision completed
 - SC, MI after 1/2 of supervision completed
 - NC, GA – after 3 years

Example from GA



- Probation officers are required to submit a petition requesting early discharge (for certain cases) once the probationer completes three years of supervision (provided the probationer has not been arrested or revoked during that period and is current with restitution payments). GA 42-8-34(1), 2021.
- Judges in GA can also establish a "Behavior Incentive Date" which allows for termination of probation at a point up to 3 years after sentencing provided the probationer complies with specific requirements.

IV. Dosage probation



- Dosage probation is a specific initiative supported by NIC that is being explored/implemented in 4 locations:
- Napa County, CA
- Washington County, MN
- Dodge-Fillmore-Olmstead Counties, MN
- Wright County, MN

Traditional Probation Model v. Dosage Probation Model

- Traditional: Individuals are sentenced to fixed probation lengths.
 - Required to meet conditions of supervision set by the sentencing judge or probation staff
 - **Success = Person satisfies conditions of supervision**
- Dosage: Individuals can early discharge from supervision by meeting intervention dosage targets aimed at risk reduction.
 - Success = Individual meets dosage targets

Dosage, Duration, Intensity (Adults)

Risk Level	Low	Moderate	Moderate/High	High
Dosage	Not applicable	100 hours	200 hours	300 hours
Duration	Minimal	3–6 months	6–9 months	9–18 months
Intensity	Minimal	1x/week	2x/week	3x/week or residential

See *Dosage Probation: Rethinking the Structure of Probation Sentences* (Carter & Sankovitz, NIC, 2014) for further discussion

V. Length of time imposed for a probation revocation

- The length of time that can be imposed due to revocation also differs from state to state.
- Some states indicate that only a specific portion of the probation/suspended sentence can be imposed at a revocation hearing (e.g., 2 years in GA, lower amounts in KS, MT).



Options and possibilities



- **1. Length of probation:**
 - Suggest legislation that would create a shorter maximum period of probation for misdemeanors.
 - Pursue legislation that would create a definite period of time for probation supervision in felony cases – which could be based on the type of felony.
- **2. Earned credits**
 - Consider pursuing legislation that would allow for earned credits to be applied to probation cases for each month of satisfactory completion
 - Credits could be applied or tied to certain types of cases.

Options and possibilities



- **3. Early termination**
 - Clarify criteria or expectations regarding early termination reviews.
 - Consider requiring a review for early termination at a fixed point in time after supervision starts.
 - Consider requiring that an early termination request be submitted under certain circumstances by probation staff.

Options and possibilities



- **4. Behavior-related case closures dates**
 - Consider exploring options for judges to establish a “behavior incentive date” to terminate cases.
 - Consider exploring dosage probation possibilities through NIC or other behavior-related options that may be linked to probation termination requests.
- **5. Length of probation revocation**
 - Pursue legislation that would limit the length of time that could be imposed as a result of a probation revocation
 - Length of revocation could be tied to the nature of the violation.

Questions?

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