



FY2023 RECOMMENDATION/FY23-SR01 Standardize Early Termination Review in Probation [Policy]

Status: No Implementation

Actions/Updates

2023 UPDATE (JANUARY)

This recommendation, approved by the Commission on January 13, 2023, involves agency/entity implementation.

Description

In order to reduce potential for over-supervision in probation, there should be a standardized process within Colorado Probation among all judicial districts to ensure a transparent, consistent and timely review of each adult case for early termination. Following these recommendations (Appendix A) is a list of technical considerations and areas that will need to be addressed by a working group for this process to be successful. Recommended aspects of the standardized process include: Process Development, Policy and Standards, Structured Tools, Specialized Intensive Programs, Stakeholder Education, Victim Notification, Training, Quality Assurance and Implementation.

[See the "Recommendation Text" for Appendix A: Technical Process Areas to be Addressed.]

Agencies Responsible

Office of the State Court Administrator; Division of Probation Services; Courts; Prosecution; Defense

Discussion

The Sentencing Alternatives/Decisions & Probation Working Group was interested in finding ways to reduce the over-supervision of adult probationers, as it can lead to increased rates of recidivism and collateral consequences for those on supervision. Probation has addressed several areas, where over-supervision has occurred and continues to explore methods to safely reduce over-supervision while also achieving the Sentencing Reform Task Force's and Commission's broader goals of consistency, certainty, and transparency in sentencing.

To further address over-supervision of individuals on probation, the following proposal recommends standardizing the process for requesting early termination of adult probation sentences. This recommends criteria, while using an individualized approach with probationers that acknowledges behavioral compliance and readiness for early termination. In considering the criteria, community and victim safety have been paramount.

Pursuant to §16-11-201.5, C.R.S., probation is a sentencing option used to moderate and deter future criminal behavior by supporting individuals in behavior change. For criminal justice-involved individuals, research has shown that the effective use of incentives and sanctions can promote behavior change. Colorado Probation has a structured system of incentives and sanctions in place, which includes the potential to request early termination; however, the filing of petitions for early termination has been inconsistent throughout the state and has, at times, been confusing for victims and the community.

State probation and parole have opted into a study of revocation trends for their respective system in Colorado. While not without its limitations, the Crime and Justice Institute (CJI) recently reported high rates of variability in early termination policies and rates in a sample of cases among the Judicial Districts in Colorado. The CJI report recommended that Colorado expand and streamline the existing early termination policies used by probation with a goal of increasing consistency among districts on such practices. [FOOTNOTE 1]

This proposal will describe an approach to create more consistency, certainty, and transparency to probationers, victims and other stakeholders in the criminal justice process. Because probation can only petition the court for early termination and the final decision is made solely by a judicial officer, pursuant to §18-1.3-204(4)(a), this recommendation will focus specifically on the steps probation should take to standardize its process. This proposal is intended to influence but not to control judicial or prosecutorial discretion applied to individual cases in early termination considerations. Both prosecutorial and judicial discretion should be preserved under this recommendation. This proposal also acknowledges that the probation officer is best suited to determine when a petition is appropriate based on application of standardized criteria and tools as well as individual circumstances of each individual case and person under review.

The goal is to create a standardized process to review all cases once 50% of the sentence length has been served, with the exception of deferred judgments, indeterminate sentences, and sex offender cases with indeterminate sentences. Considerations beyond the initial mandatory review for early termination will remain discretionary. Probation's review will result in a determination of whether to file a petition for early termination, based on the individual's progress and in conjunction with victim input, pursuant to §24-4.1-303(13.5)(a)(III), C.R.S. Local policy will be required to provide direction to the probation staff, based on the results of the standardized review process.

If implementation and use of the protocol is successful, there are several positive outcomes to be expected. First, data should indicate a decrease in non-compliant behavior, resulting from the use of meaningful incentives. Change in behavior may be observed through decreasing risk scores and increasing protective factors on validated assessments, as well as completion of treatment, court orders, and other case plan goals. The number of petitions for early termination should increase, resulting in more probationers successfully completing their sentence sooner. Recidivism rates should decline slightly, as probationers' behaviors become more pro-social, their protective factors increase, and they are not exposed to the iatrogenic effects of over-supervision.

Footnotes

[FOOTNOTE 1] CJI Colorado Report – Improving Outcomes and Safely Reducing Revocations from Probation Supervision in Colorado, Crime and Justice Institute, June 2022.