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Commission on Criminal & Juvenile Justice

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March 15, 2024

TO: The General Assembly: House and Senate Judiciary Committees
FROM: The Commission on Criminal and Juvenile Justice
Stan Hilkey, Chair
RE: House Bill 2023-1368 - Final Report on Community Corrections

INTRODUCTION

Background. House Bill 2022-1368 directed the Colorado Commission on Criminal and Juvenile Justice (CCJJ) to create a task force to analyze aspects of community corrections and develop recommendations for the legislature. This study was to address the potential use or expansion of community corrections programs that may be beneficial to individuals convicted of misdemeanors who may not be eligible for placement in community corrections programs with state supported funding (See also, §16-11.3-103.3, C.R.S.).

Pursuant to the enacting legislation, the Commission assigned the Community Corrections Task Force (CCTF) to examine eight areas and make recommendation about whether it is appropriate to improve access to community corrections for misdemeanants:

- (a) An analysis of the population convicted of misdemeanors, including crimes of conviction and assessed risk by gender, age, race, and ethnicity;
- (b) The services provided by community corrections programs that may be beneficial to persons convicted of misdemeanors
- (c) Which persons convicted of misdemeanors, based on their assessed risk, would benefit from services provided by community corrections programs;
- (d) The ability to provide services to persons convicted of misdemeanors that align with their assessed risk using existing community correction programs;
- (e) Parameters for persons convicted of misdemeanors to access services at residential and non-residential community corrections programs;
- (f) What costs persons convicted of misdemeanors are responsible for at community corrections program;
- (g) What funding is necessary for community corrections programs to serve persons convicted of misdemeanors; and
- (h) What changes, including legislation, are necessary for community corrections programs to serve persons convicted of misdemeanors.





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As required by §16-11.3-103.3(2), C.R.S., the Task Force comprised 13 members. Statute designated three representatives of community corrections program, of which only one vote was allowed. Therefore, there were 11 voting members of the Task Force. The Task Force met monthly beginning in July 2022 and ending May 2023.

The Task Force was mandated to create a report of its findings and recommendations for submission to the Commission by July 1, 2023. However, the House Judiciary Committee on May 7, 2023 postponed indefinitely *Senate Bill 2023-158, Concerning the Continuation of the Colorado Commission on Criminal and Juvenile Justice*. The sunset of the Commission resulted in the suspension of all ongoing work by the Commission and its committees. Following the sunset, a final meeting of the Task Force scheduled on June 5, 2023 failed to achieve a quorum, preventing the completion of any recommendations.

This report of findings was reviewed and accepted by members prior to the sunset, but was not reviewed or approved by the Commission.

TASK FORCE FINDINGS

Statutory Purposes of Probation and Community Corrections

As recommended by the Colorado Commission on Criminal and Juvenile Justice, statute establishes the purposes of probation and community corrections, which include provisions to assist people in behavior change (§16-11-201.5(b), C.R.S.) and to address their assessed risks and needs (§17-27-101.5 (c), C.R.S.). Outcome data, analyzed by risk and need levels, suggests an opportunity to improve supervision and treatment of particular misdemeanants on probation by placement in community corrections under certain conditions.

Misdemeanant Population

Some individuals convicted of misdemeanors could benefit from additional response options. The group of high-risk/high-need probationers who have a difficult time complying with conditions of probation and continue to violate has shown that the typical course of probation is often not effective. Identifying this group through validated risk/need assessments and providing the possibility of new placement options to assist them in the process of stabilization may improve future performance on probation. House Bill 2019-1263 (*Concerning changing the penalty for certain violations pursuant to the "Uniform Controlled Substances Act of 2013"*) that reclassified some drug felonies to misdemeanors resulted in the ineligibility for placement in community corrections under a direct sentence for individuals who are at greater risk to experience homelessness, unemployment, continued drug use, and criminal behavior. This population is at higher risk of probation failure and future recidivism.¹

Community Corrections Services

There are services provided by Community Corrections programs that can be advantageous for the high-risk/high-need misdemeanor population in specific conditions. Services vary across jurisdictions and can include substance use disorder treatment, assistance obtaining post-release housing, mental health

¹ See "*Outcome by Risk and Need Considerations for Probationers*" on page 8 for supporting analyses regarding considerations and outcomes for the high-risk/high-need misdemeanor population in probation.



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treatment, intensive case management services, and others provided in the community corrections setting that could improve long-term outcomes in this high-risk/high-need population.

Current Limitations

Placement options for misdemeanants in community corrections are limited by funding and current law. Current law allows for limited use of the Correctional Treatment Cash Fund some offenders to be placed in in-patient substance use treatment in community corrections; however, the Colorado Department of Public Safety (CDPS) only requests for and applies such funding to placements in Intensive Residential Treatment (IRT). Due to the risk/need profile of those placed on probation, there is a need for services beyond a 90-day IRT program, which is currently the only option funded in the CDPS Long Bill for Community Corrections. The needs in probation suggest options for all types of misdemeanants, as well as for regular community corrections supervision, residential dual diagnosis supervision, and therapeutic communities.

PROBATION POPULATION TRENDS

The client population under the supervision of Colorado's Probation Departments has changed in the long-term due, in part, to legislative and criminal justice policy changes over the last 15 years. Figure 1 displays the overall trend in the probation population, reflecting a sharp drop after the first quarter of 2020. This particular reduction was largely related to the pandemic, due to slower sentencing by the courts and probation departments working to focus their caseloads on higher risk and higher need individuals. However, there have been no substantial changes in the crime class or demographic distribution of probationers (see Figures 2, 3 and 4). Between 2010 and 2020, as the overall probation population grew in size, the number of clients assessed as high-risk for recidivism increased over 100%, while the number of low-risk clients remained relatively stable.

Probation has seen only slight growth in its felony population, but there has been a 30% increase in the misdemeanor population between 2010 and 2020 and a 10% increase between 2015 and 2022. Over this period, this population shift is so large that two-thirds of new cases to probation are misdemeanants.

The Division of Probation Services has described some limitations regarding their race/ethnicity data, particularly in the differentiation between the White non-Hispanic and the White Hispanic populations. This is an artifact of probation's case management system and is an issue that was discussed in the Sentencing Alternative, Decisions & Probation Working Group of the Sentencing Reform Task Force (see ccjj.colorado.gov/ccjj-srtf). Consequently, caution should be used when interpreting ethnicity findings.



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Figure 1. Probation population trends, 2013-2022

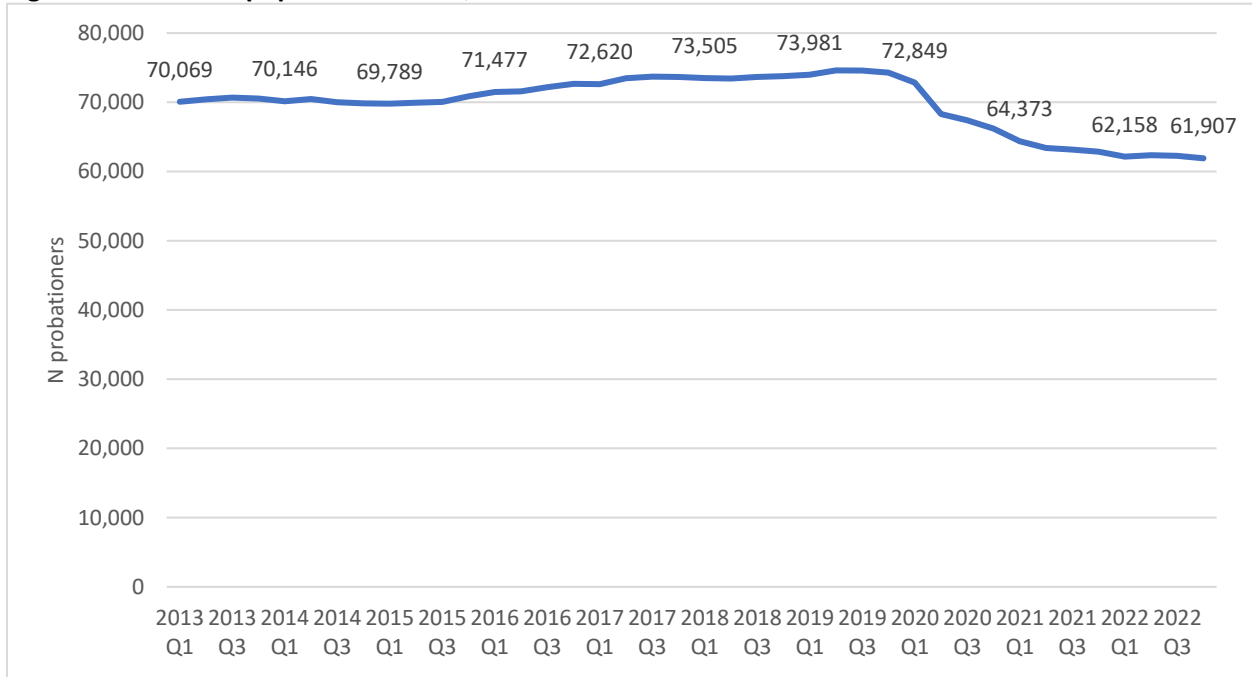
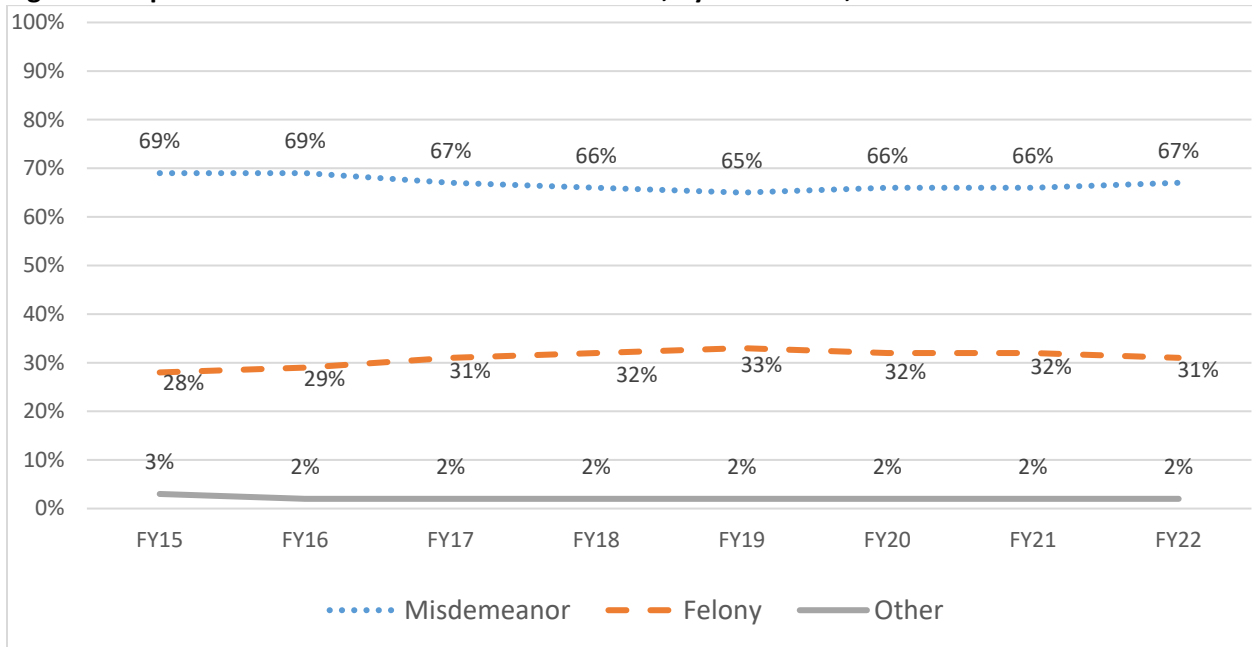


Figure 2. Population Distribution of New Probationers, by crime class, FY 2015-2022





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Figure 3. Population distribution of probationers, by race/ethnicity, FY 2015-2022

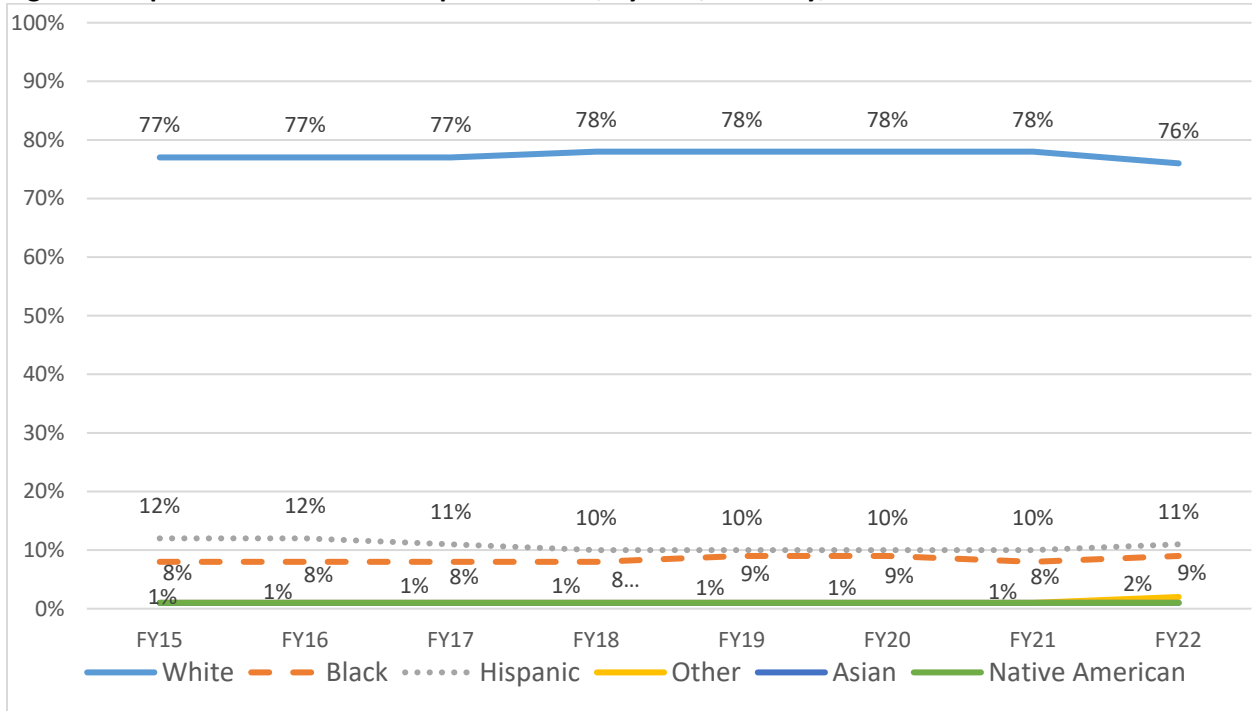
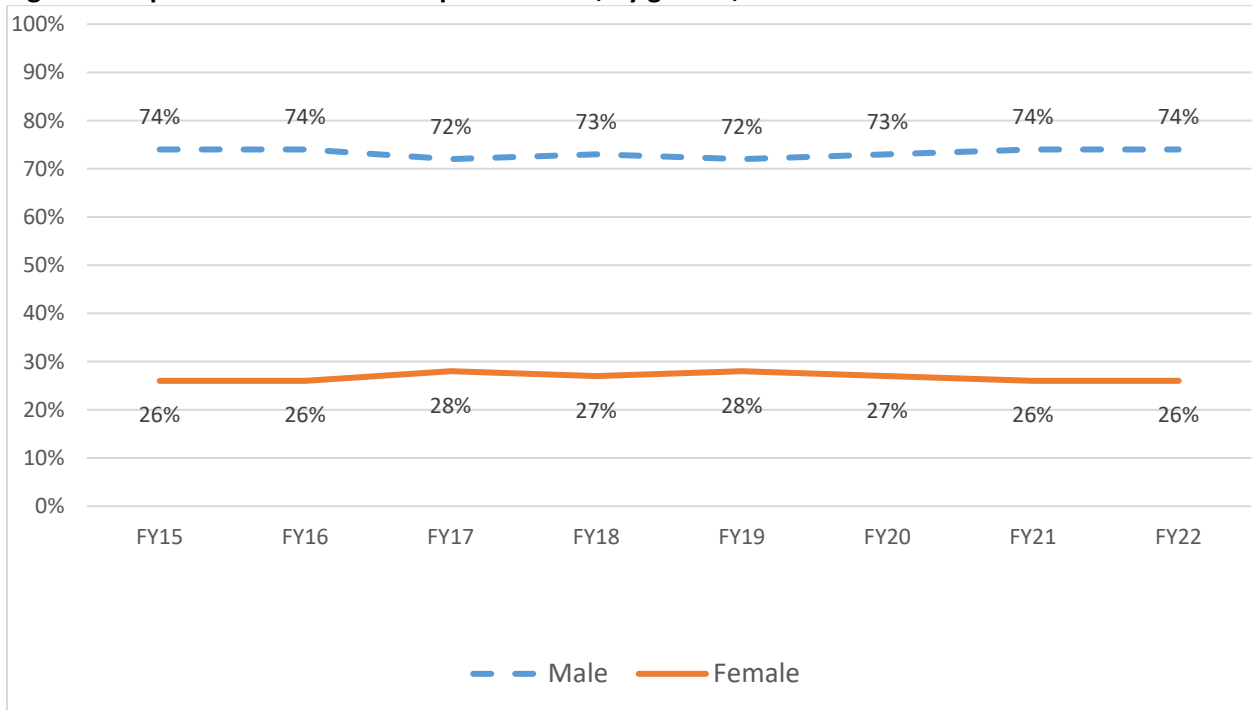


Figure 4. Population distribution of probationers, by gender, FY 2015-2022

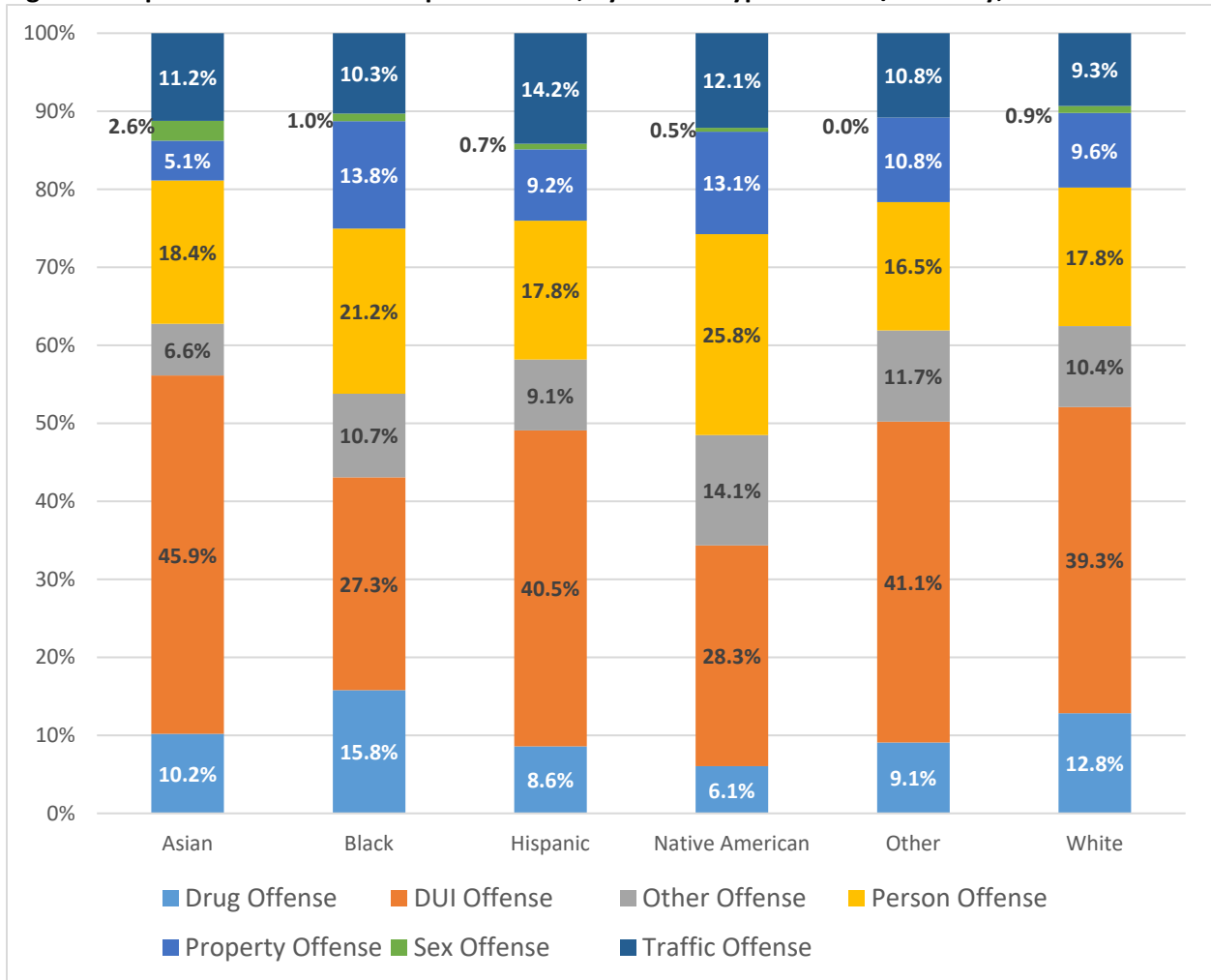




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The CCTF was also tasked to examine the demographics of probationers as it relates to offense type and risk assessment. Figure 5 shows the distribution of probationers by race/ethnicity and crime type. Driving while under the influence (DUI) was the most common offense across all race/ethnicity categories. Asian-American individuals were most likely to be on probation for a DUI offense (45.9%). Native American (25.8%) and Black/African-American (21.2%) probationers were more likely to be on probation for a person offense than either White or Hispanic/Latino probationers (17.8%). Black/African American probationers were the most likely to be convicted of a drug offense (15.8%) followed by White probationers (12.8%).

Figure 5. Population distribution of probationers, by offense type and race/ethnicity, FY 2020

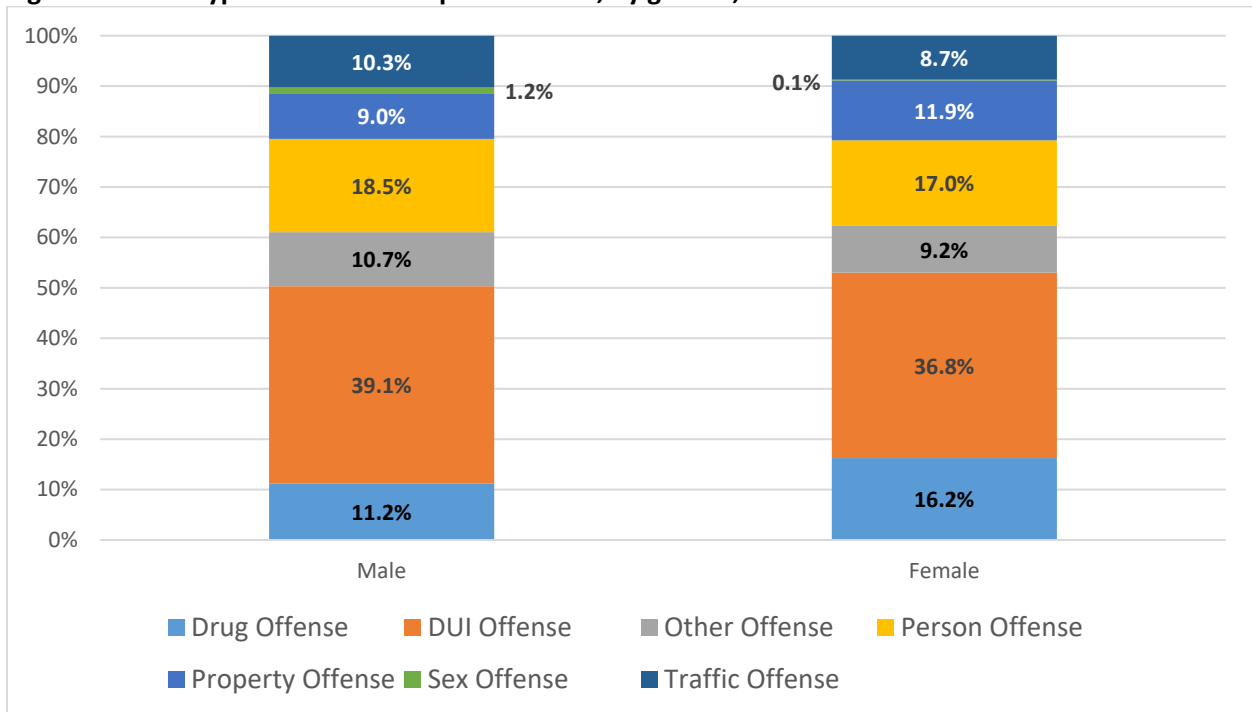




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The distribution of offense type by gender is presented in Figure 6. Again, DUI was the most common offense for either males or females who were placed on probation. A slightly higher proportion of males were placed on probation for DUI (39.1%) than females (36.8%). Conversely, females were more likely to be on probation for drug offenses (16.2%) than males (11.2%). There was little difference in the gender distributions by the other offense categories.

Figure 6. Crime type distribution of probationers, by gender, FY 2020



The CCTF also examined the risk level of probationers overall and by race/ethnicity. Table 1 provides details regarding the distribution of risk, where there are some notable differences. Overall, 70% of probationers fell into the lower risk/lower need or medium risk/need categories. There were differences based on race, where 70% of whites fell into this lower or medium risk/need, while 77% of Hispanic/Latino probationers and 89% of Asian probationers fell into this category. This contrasts with 62% of Black/African American probationers and 66% of Native American probationers who were assessed into these categories. Conversely, 29% of all probationers fell into the high risk or higher risk/higher need categories, while 38% of Black/African American and 34% of Native American probationers fell into these categories.

As the probation population grows in both the high-risk and misdemeanor categories, we see a corresponding decline over 10 years in successful completion rates. In 2022, more than two-thirds (68%) of probation's population terminated successfully which is lower than the 73% observed in 2013. About 8 of 10 failures on probation are for patterns of rule violation behavior or absconding compared to new crime while on probation. During the pandemic, probation saw an increase in the number of



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Table 1. Probationer risk level percentages by race/ethnicity, FY 2020 terminations

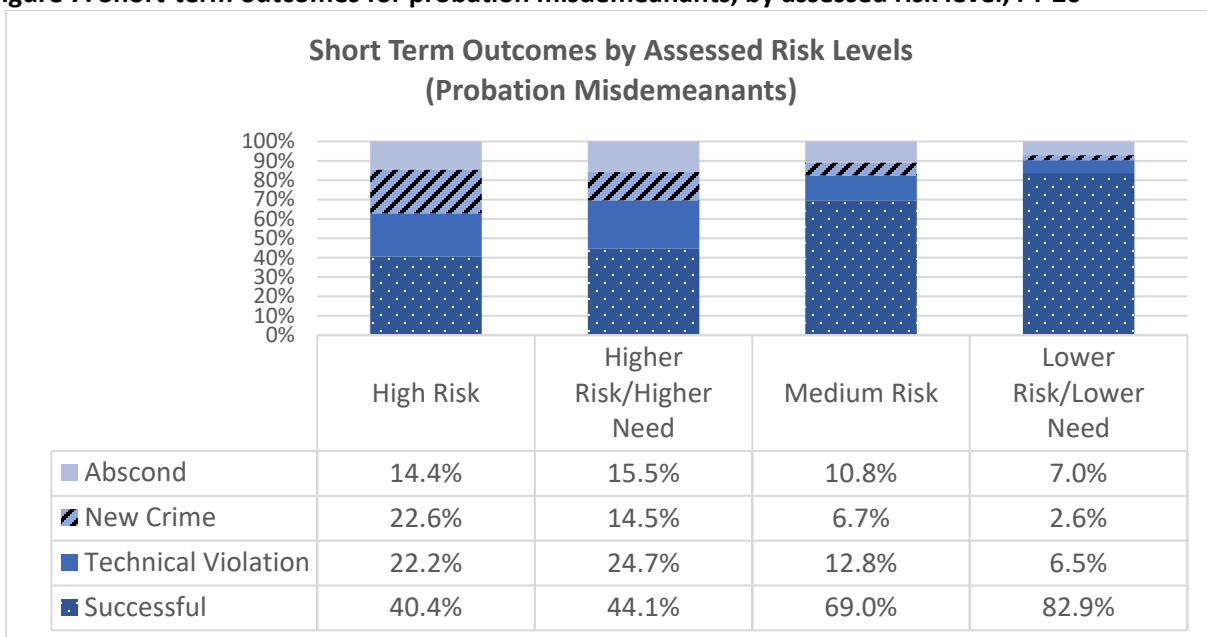
Risk / Need Category	White	Black/African American	Hispanic/Latino	Asian	Native American	Other	Total
High risk %	2%	5%	3%	1%	3%	1%	2%
Higher risk-higher need %	28%	33%	20%	10%	31%	22%	27%
Medium risk and need %	25%	26%	26%	22%	28%	24%	25%
Lower risk/low need %	45%	36%	51%	67%	38%	53%	45%
Total N	16,610	1,437	1,573	196	198	231	20,245

absconders. Pre-pandemic absconder rates for adults hovered in the 13%-14% range; however, during the pandemic and since, rates increased to 17%-19%. Just over 5,600 probationers absconded in FY22.

Thirty percent of misdemeanants terminated from probation in FY20 were classified as high-risk or high-risk and high-need. The success rate in Colorado Probation measures 44% for high risk and for high risk/high need misdemeanant cases compared to a 78% success rate for moderate to lower risk and need misdemeanant cases.

Figure 7 displays the assessed risk and need for misdemeanants under probation supervision and their short-term outcome data. The data suggest that higher risk and higher risk/higher need probationers are substantially less successful on probation, with most failures due to technical violation behavior.

Figure 7. Short-term outcomes for probation misdemeanants, by assessed risk level, FY 20



Outcome by Risk and Need Considerations for Probationers



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Figure 8. Felony and misdemeanor probationer success rate, by assessed risk level, FY 20

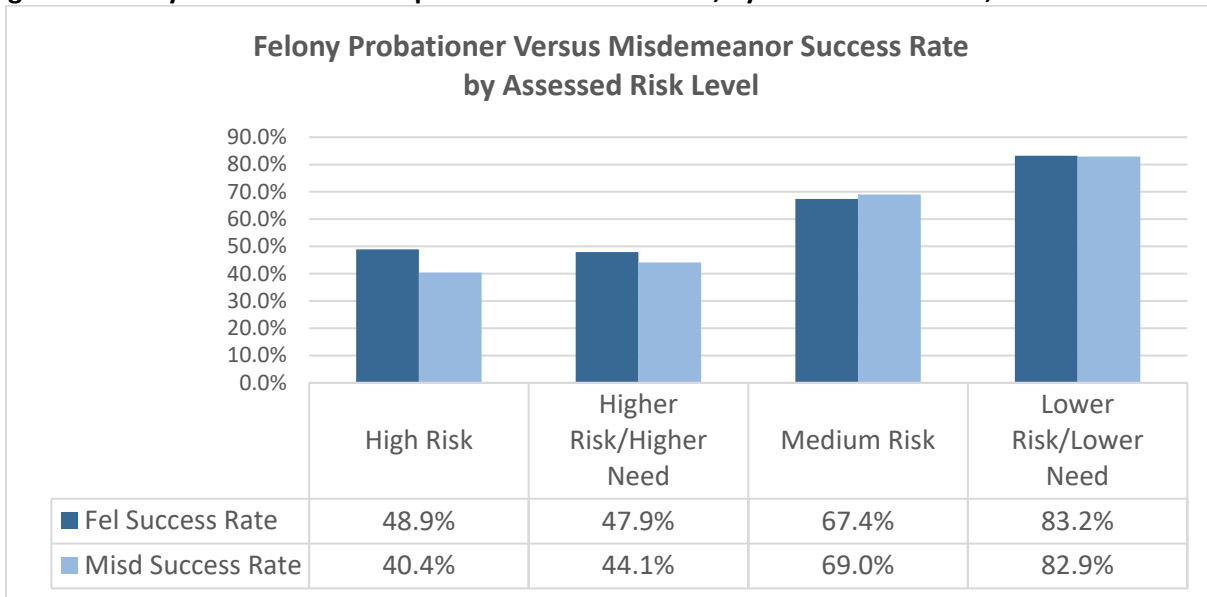


Figure 8 compares the success rates for felony and misdemeanor probationers. Probationers who are high risk or higher risk/higher need on supervision for a misdemeanor have lower success rates than their felony level counterparts. Medium and lower risk/lower need probationers had similar success rates regardless of crime classification.

Figure 9 illustrates the outcomes for drug misdemeanants on Probation. These probationers have especially poor outcomes compared to other misdemeanants and felons. Much of this population was once eligible for community corrections placement as a Diversion sentence prior to laws being changed that reduced felony level sentences for drug crimes and created drug felony and drug misdemeanor categories. The Division of Probation Services data show a 10% lower success rates for drug misdemeanants compared to overall misdemeanor success rate.

Probation has limited options when working with individuals with substance abuse problems if they are unsuccessful on regular probation or in a specialized caseload (e.g. a problem-solving court or intensive supervision). These clients resemble the population for which community corrections theoretically is more appropriate from a risk/need perspective. That is, a high or higher risk population that needs closer supervision, more structure, higher treatment dosage, and intensive behavior change services.

As with short-term outcomes, long-term recidivism is also driven by the assessed risk level of probationers. Figure 10 illustrates that Probationers who are higher risk and higher need on supervision for a misdemeanor also have higher recidivism rates than their felony level counterparts. Recidivism is defined as a new deferred agreement or conviction one-year post-release from supervision.



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Figure 9. Outcomes for drug misdemeanor probationers, by risk level, FY 20

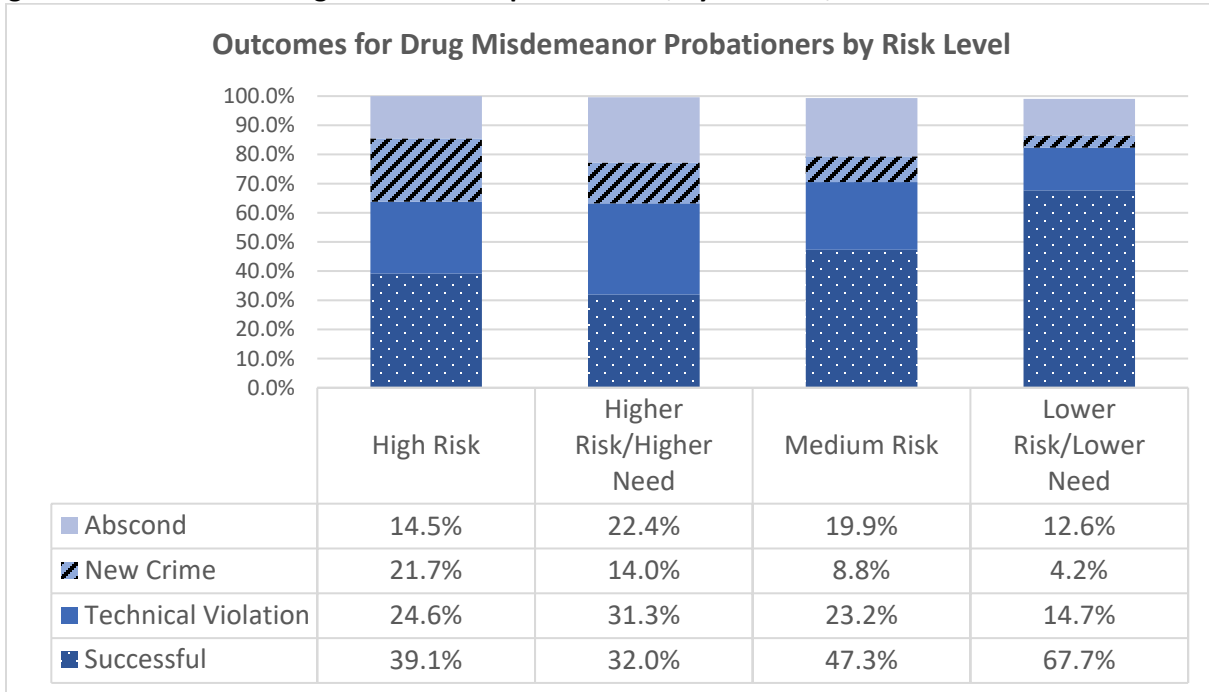
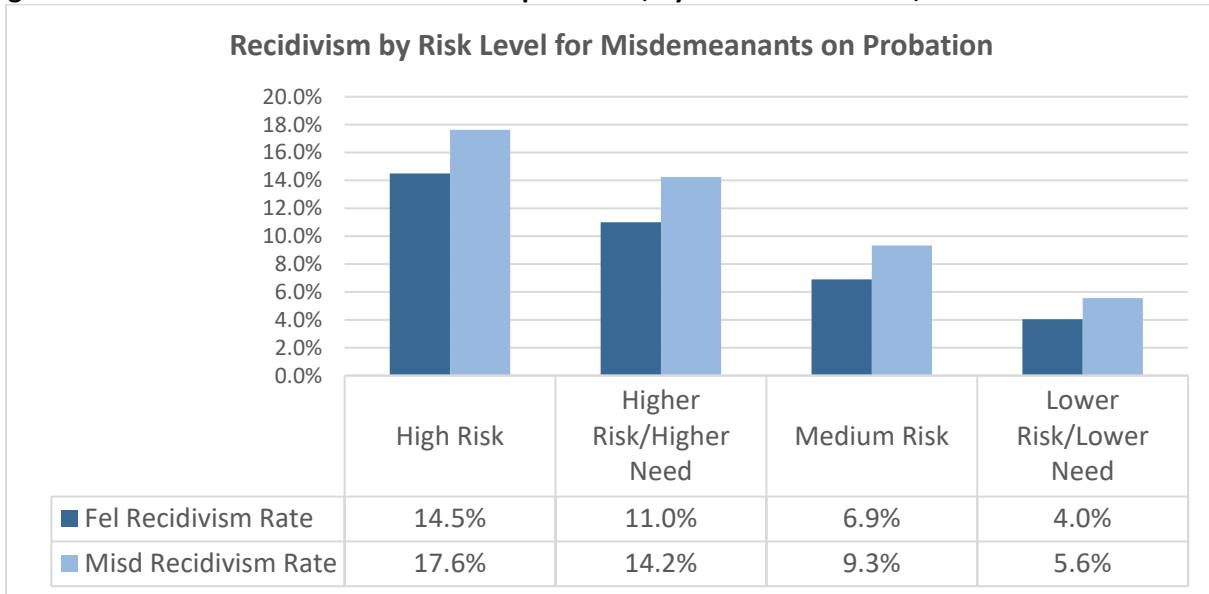


Figure 10. Recidivism of misdemeanants on probation, by assessed risk level, FY 20





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Recommendations from Crime and Justice Institute for Revocation Trends in Probation

In July 2022, the Colorado Division of Probation Services voluntarily opted into an external evaluation of revocation trends with the Crime and Justice Institute (CJI). While not without its limitations, the external study provided feedback to Probation to develop strategies to improve its outcomes and reduce revocations. Some key findings and recommendations informed the work of the Community Corrections Task Force. Among other findings, the CJI report found the following:

- ***Individuals whose probation is revoked and re-granted are unlikely to complete probation successfully. The study found that a sample of cases who were re-granted probation after being revoked, in some cases multiple times, the revoke/re-grant option rarely changed the terminal outcome. Revoking and then re-granting probation is not an effective strategy to prevent negative outcomes and only extends the term of probation with no corresponding benefit to the client, the victim, or the community.***
- ***Probation officers typically seek a revocation after an individual has committed three or more violations. CJI reported that officers seek a revocation when they have exhausted all resources and feel they have no options to address an individual's behavior in the community as well as rarely revoked after only one violation in the published report. In other words, probation officers work hard to avoid a terminal revocation and do not revoke for single violations or even after the first few violations. More often than not, individuals are revoked from probation due to a long pattern of violation behavior that probation is simply unable to address without additional tools or resources. This is especially true for misdemeanants where jail incarceration and revoke/re-grant cycles are the only options available, given that current community corrections options are extremely narrow in scope and capacity.***
- ***Availability and quality of programming and services to address criminogenic needs and responsivity factors vary considerably by region in Colorado. CJI found that there are gaps in services to meet the risk/need profiles for those on probation. Specifically, the report concluded that officers across the state reported that housing assistance, services for female clients, gang interventions, inpatient/residential treatment, transportation support, and language/translation services are significantly lacking in many areas.***

BACKGROUND REGARDING COMMUNITY CORRECTIONS FACILITIES

A. Community Corrections Facilities

There are 27 community corrections facilities in Colorado.² Sixteen facilities are in the Denver metropolitan area. Another four are in cities along the extended I-25 corridor including Fort Collins, Colorado Springs, and Pueblo. The remaining seven are spread through the state in other cities, Durango, Montrose, Rifle, Alamosa, Sterling, Lamar, and Grand Junction. Seven judicial districts have no community corrections facilities.³

² The Division of Criminal Justice maintains a list of community corrections providers (See dcj.colorado.gov/dcj-offices/community-corrections/find-community-corrections-programs).

³ The Judicial Districts without community correction facilities are the 3rd (Las Animas and Huerfano counties), the 5th (Eagle, Summit, Clear Creek, and Lake counties), the 11th (Park, Fremont, Chaffee, and Custer counties), the 14th (Grand, Routt, and Moffat counties), the 16th (Bent, Otero, and Crowley counties), and the 22nd (Dolores and Montezuma counties)



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The facilities in Rifle, Fort Collins, and Grand Junction are owned by the county and operated by county employees. The remaining 24 are privately owned and operated.

B. Level of Supervision and Services Provided

All community corrections facilities are required to comply with Community Corrections Standards promulgated by the Division of Criminal Justice.⁴ All of the facilities oversee individuals in residential and in non-residential community corrections placements.

For those placed in residential community corrections, the requirements for client supervision include headcounts and walkthroughs, restrictions on contraband, random monitoring of off-site locations, and substance abuse testing programs. For those in non-residential programs, home visits and community contacts are required.

Some facilities offer specialized treatment program, which include (as of 4/10/23):

- IRT - Intensive Residential Treatment (6 facilities)
- RDDT – Residential Dual Diagnosis Treatment (6 facilities)
- TC – Therapeutic Community (Peer I in Denver)
- SOSTCC - Sex Offender Supervision and Treatment in Community Corrections (15 facilities)

Many facilities contract with local providers to offer specialized treatment to their clients, which often are the same local providers utilized for those on probation. However, some treatment providers hire specialized staff to provide treatment to their clients.

CURRENT PRACTICES REGARDING MISDEMEANANTS IN COMMUNITY CORRECTIONS

There are currently two legal mechanisms that allow misdemeanants to serve sentences in community corrections.

A. Contract to Provide Residential Placement as Alternative to County Jail

Pursuant to §18-1.3-301, C.R.S. (Authority to place offenders in community corrections programs): (4)(a) District courts, county courts, and other local criminal justice officials may enter into agreements with community corrections programs which include the use of such programs to supervise offenders awaiting trial for felony or misdemeanor offenses, offenders convicted of misdemeanors, or offenders under deferred judgments, or to accept for residential placement person convicted of misdemeanor as an alternative sentence to a county jail sentence. Such agreements are subject to review and approval by the community corrections board of the jurisdiction in which any community corrections program making such agreement is located. Any such use of a community corrections program may be supported with funding from local governments, public or private grants, offender fees, and other sources other than the state general fund.

⁴ See the *2022 Colorado Community Corrections Standards* at dcj.colorado.gov/dcj-offices/community-corrections/colorado-community-corrections-standards-statutes.



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This allows a local jurisdiction to contract with community corrections providers. For example, in the 20th judicial district (Boulder), a contract allows the community corrections program to operate the work-release program.

B. Condition of Probation Placements for Clients who need Residential Drug Treatment

When granting probation, a court may include as condition of probation a requirement that the client participate in drug treatment. If the client's "assessed treatment need is for residential treatment," the court can make residential drug treatment a condition of probation and may place the client in a community corrections program that can provide this appropriate level of treatment (See §18-1.3-204(2.2) and §18-1.3-301(4)(b), C.R.S.). As long as a client is assessed to need residential treatment, a client can be placed in community corrections as a condition of probation, whether the conviction is a drug-related offense or a non-drug offense.

Pursuant to §18-1.3-301(4)(b), C.R.S.: A district court, county court, and any other criminal justice official may enter into agreements with community corrections programs that provide residential substance abuse treatment, for the placement and supervision of offenders as a term and condition of probation when assessed treatment need levels indicate that residential substance abuse treatment is necessary and appropriate. The agreement is subject to review and approval by the community corrections board in the jurisdiction where a community corrections program is located. A community corrections program used pursuant to this subsection (4)(b) may receive funds from the correctional treatment cash fund, as well as local funding, public or private grants, or offender fees.

In fiscal year 2023, the Department of Public Safety/Division of Criminal Justice received \$2,858,394 from the Correctional Treatment Cash Fund for substance abuse service placement in community corrections. At least some misdemeanor clients have been placed in community correction through these funds.

C. Lack of Data

Because these current contracts are with local jurisdictions, these placements are not tracked by the Division of Criminal Justice billing system, which is how other community corrections data is gathered. There is relatively little data about how many clients are in residential community placements through the available mechanism. Outside of Correctional Treatment Board money used for misdemeanants placed in substance abuse treatment in community corrections, there is no uniform tracking or reporting regarding these placements.

WORK-RELEASE PROGRAMS

Residential community corrections for misdemeanants and sheriff-operated work-release programs have many similarities. In general, both of these programs allow release of clients to conduct job searches or work, while providing supervision and a correctional setting at which the client resides. Work release does not typically provide options for substance use disorder treatment.

Jail work-release programs are generally operated at the discretion of the county sheriff. Many of these programs closed during the COVID-19 pandemic. The Task Force reviewed which judicial districts



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operated work-release programs. Table 2 below shows districts with work release and those district with community corrections facilities.

There are at least two districts operating work release through contracts with community corrections programs. Ten jurisdictions with community corrections facilities do not currently offer work release through the jail in the district. Generally, however, work-release programs are operated by the county sheriff who also operates the local jail. The cost to house misdemeanants serving jail sentences is typically borne by the county.

Table 2. Work Release (WR) and Community Corrections Programs by Judicial District

Judicial District	WR Program	Comm Corr facility	Special Notes/Circumstances Regarding Work Release
1	Yes	Yes	Yes, in Jeffco, staffing issues in Gilpin
2	No	Yes	Available pre-COVID
3	No	No	
4	No	Yes	Available pre-COVID, thinks it will come back in future
5	No	No	Available pre-COVID
6	Yes	Yes	
7	No	Yes	Suspended in 2020 due to funding
8	Yes	Yes	Run by County Department that also runs Community Corrections
9	Yes	Yes	Garfield only run through Community Corrections agreement w/jail
10	No	Yes	
11	No	No	
12	No	Yes	
13	No	Yes	All 5 counties had WR prior to COVID supports but there are none now.
14	No	No	Intermittent at best and generally gone since COVID
15	No	Yes	Eliminated during COVID and unlikely to return
16	No	Yes	
17	No	Yes	Eliminated w/pandemic & possibly staffing. There are efforts for return
18	Yes	Yes	
19	Yes	Yes	
20	Yes	Yes	Community Correction operates it by contract
21	No	Yes	Discontinued for financial reasons. Can use CC for WR but no funding source
22	No	No	Available pre-COVID in Montezuma



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TREATMENT AND SENTENCING OPTIONS FOR HIGH NEED DRUG MISDEMEANANTS

Generally, for misdemeanor convictions, the two sentencing options are probation or county jail.

A. Probation

When clients are sentenced to probation, probation services will provide an assessment of clients to determine risk and need levels. Within probation, clients can be required to engage in drug testing, substance abuse classes and education, outpatient treatment, or at times in-patient treatment. For clients that cannot afford treatment while on supervised probation, probation may access offender services funds to assist indigent clients. In some jurisdictions, clients can participate in specialty courts designed around substance abuse treatment and recovery. In many instances, participation in these courts is limited to felonies.

H.B. 22-1326 created requirements that clients who are convicted of fentanyl crimes undergo a drug evaluation specific to fentanyl consistent with general requirements that drug offenders undergo substance abuse and treatment evaluation. If the assessment recommends placement in a residential treatment facility, the court orders such treatment in a facility approved by the Behavioral Health Administration. For those who cannot afford the cost or who were represented by court-appointed counsel, the residential treatment is paid for through money from the Correctional Treatment Board Cash Fund. Because the BHA is a newly created agency, and these provisions have been in effect for less than a year, the effect of these provisions on successful completion of probation and recidivism are unknown.

Treatment providers and resources are jurisdiction-specific and can vary greatly. As is true in many aspects of the criminal justice system, resources and treatment providers tend to be most available in the metropolitan area. As already discussed, if contracted with community corrections, high need drug offenders can be sentenced to community corrections as a condition of probation.

B. Jail

When clients are sentenced to jail, treatment options are generally limited. However, jails are expanding the availability of medication-assisted treatment (MAT). Many jails have limited programming, like Alcoholic Anonymous or Narcotics Anonymous Groups. Jail Based Behavioral Services (JBBS; bha.colorado.gov/behavioral-health/jbbs) do provide services to clients in jail and assist in release planning.



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MISDEMEANOR SENTENCING AND COMMUNITY CORRECTIONS

There are four classes of misdemeanors in Colorado (with associated sentence lengths): Class 1 misdemeanors (M1; 5 years), Class 2 misdemeanors (M2; 5 years), Class 1 drug misdemeanors (DM1; 2 years), and Class 2 drug misdemeanors (DM2; 1 year). Colorado statutes define and set limits on the length of misdemeanor sentences. These include limits on the length of probation sentences and on the length of incarceration a person can serve as a condition of probation. Further, the law limits the amount of time a person can be sentenced to serve in jail (see Table 3).

These limits effect the amount of time that a misdemeanant could serve in community corrections. The limit on the length of probation is effectively the limit on the total length of a community corrections sentence, combining residential and non-residential sentence portions. The limit on jail time sets the limit the person could be sentenced to a residential community corrections program.

Table 3. Maximum Jail Time for Different Conditions of Probations

Maximum Jail as a Condition of Probation			
(The two most far right columns are limited by the residential portion of any community corrections sentence for a misdemeanor.)			
Misdemeanor Class	Jail as condition of probation	Education or Work Release as condition of probation	Jail without probation
M1	60 days	364 days	364 days
M2	60 days	120 days	120 days
DM1 – 1st or 2nd	60 days	180 days	180 days
DM1 – 3rd or sub.	60 days	364 days	364 days
DM2 – 1st of 2nd	60 days	120 days	120 days
DM2 – 3rd or sub.	60 days	180 days	180 days

Presentence confinement can reduce the amount of time that a misdemeanant can serve in community corrections. Misdemeanor presentence confinement and felony presentence confinement are calculated using the same rules [see *People v. Carrillo*, 297 P.3d (Colo. App. 2013)]. Time spent in residential community corrections as a direct placement are considered “confinement” and count as presentence confinement [see *People v. Hoecher*, 822 P.2d 8 (Colo. 1991) and *People v. Saucedo*, 796 P.2d 11 (Colo. App. 1990)]. Time spent in work release also counts as presentence confinement [*People v. Widhalm*, 991 P.2d 291 (Colo. App. 1999)]. (Quoted from “*People v. Widhalm*”: *We are persuaded that the rationale of Hoecher is equally applicable to a sentence to the county jail with work release as it is to residential community corrections. In each instance, the liberty of a defendant is restricted to a degree substantially greater than that of a person on probation and that restriction on liberty is sufficient to entitle a defendant to presentence confinement credit in both instances.*”)



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There is no difference in the rules or restraints on liberty for people in residential community corrections. It does not matter if they are Colorado Department of Corrections (CDOC) Transition clients, direct sentence clients, or there as a condition of probation. Every day in residential community corrections counts as incarceration and presentence confinement. That is equally true of misdemeanants in community corrections.

Misdemeanants who are sent to community corrections as a condition of probation must be accepted by the facility, approved by the local community corrections board, and sentenced to community corrections as a condition of probation. If they are terminated from community corrections, this triggers the filing of a probation complaint, which then triggers due process rights and a right to hearing about the violations. Walking away from a facility would not subject an individual to an additional charge, but would be a violation of probation rules.

Misdemeanants who are sent to community correction as part of a work-release contract also are subject to procedures established and controlled by the local community corrections board. They may be terminated from the program. If they walk away from the facility, they may face additional charges.

OUTCOMES OF PROBATION VERSUS COMMUNITY CORRECTIONS

A fundamental concern in evaluating whether community corrections should be further expanded to serve misdemeanants is whether community corrections would produce better outcomes. Better outcomes could include higher sentence competition rates, less recidivism, greater harm reduction to clients, greater levels of employment, or stable housing.

A. LIMITATIONS ON COMPARING CLIENT BY RISK LEVELS

While both Division of Probation Services (for probation clients) and the Division of Criminal Justice (for community correction clients), track and classify client by risk level, the two groups do not use identical assessments. In reviewing available data, there is no “apples to apples” comparison between the two groups. There is not currently uniform data to compare the distribution of risk level for clients in the two systems.

B. LIMITATIONS ON COMPARING CLIENTS BY RECIDIVISM

While both DPS and DCJ collect data on successful completion of the sentence and recidivism, there is no uniform definition of recidivism. Comparison of recidivism rates between probation clients and community corrections clients is not possible.

C. PROBATION OUTCOMES

The Task Force did receive and reviewed data regarding probation outcomes based on risk level and recidivism data by risk level. Unsurprisingly, the general trend shows that the clients with higher risk and need levels are less likely to successfully complete probation and are more likely to recidivate.

Due to differences in risk level and recidivism definitions, and because there is limited data about the misdemeanants in community corrections as a condition of probation or as a work release



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alternative, there is no valid method to compare outcomes across probation and community corrections.

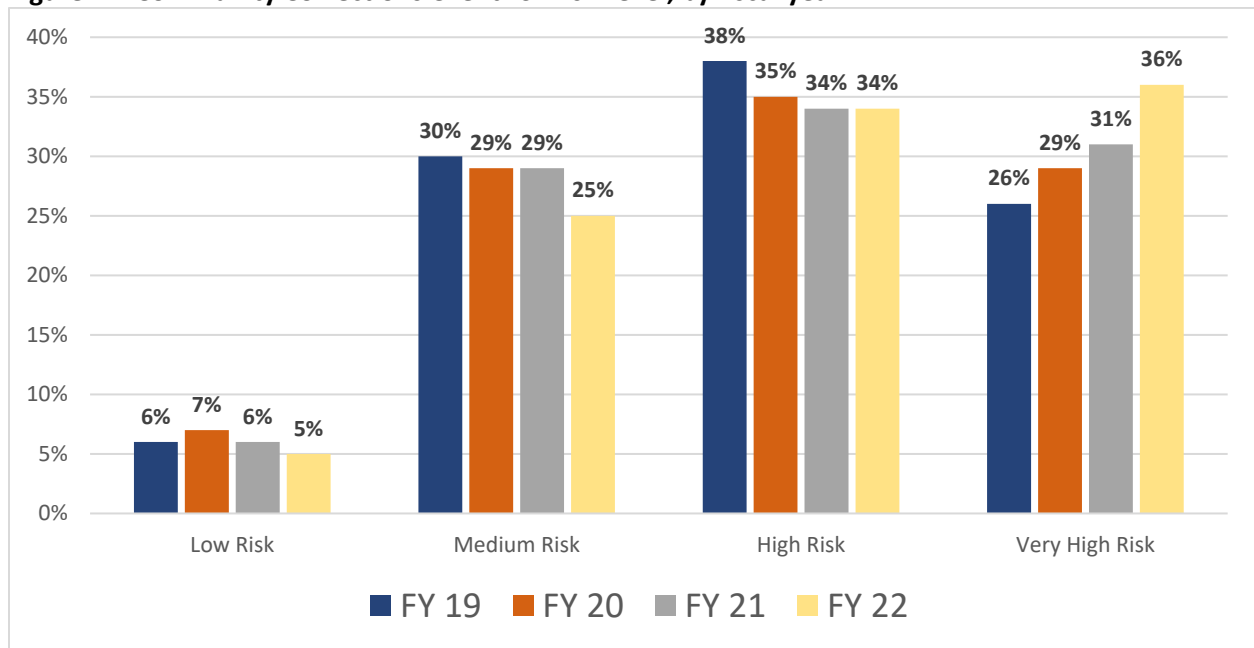
D. COMMUNITY CORRECTION OUTCOMES

The Task Force further reviewed community correction outcomes based on risk level, which included recidivism data by risk level. The review focused on felony diversion clients, who are individuals given a direct alternative sentence to community corrections. This population is the most similar to the misdemeanor population being considered for community corrections placement, as they have not recently served a period of confinement in the CDOC. It did not include transition clients who are clients that come to community corrections as a step down after serving time in the CDOC.

The general trends also show that the clients with higher risk and needs levels are less likely to successfully complete community corrections and are more likely to recidivate or walk away from community corrections. Figure 11 displays probation Client risk levels between FY19 and FY22. Figures 12 through 15 display the outcomes (termination type) for clients between FY19 and FY 22. Figures 16 through 19 demonstrate that for those with higher needs for substance use disorder treatment (indicated by TxRW4a or TxRW4b), the risk level is a better predictor of outcome than the need level.

Due to the difference in risk level and recidivism definitions and because there is limited to no data about the misdemeanants in community corrections as a condition of probation or as a work release alternative, there is no valid method to compare or predict outcomes across probation and community corrections.

Figure 11. Community Corrections Client LSI Risk Level, by fiscal year





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Figure 12. Community Corrections Termination type, by LSI Risk Level, FY 19

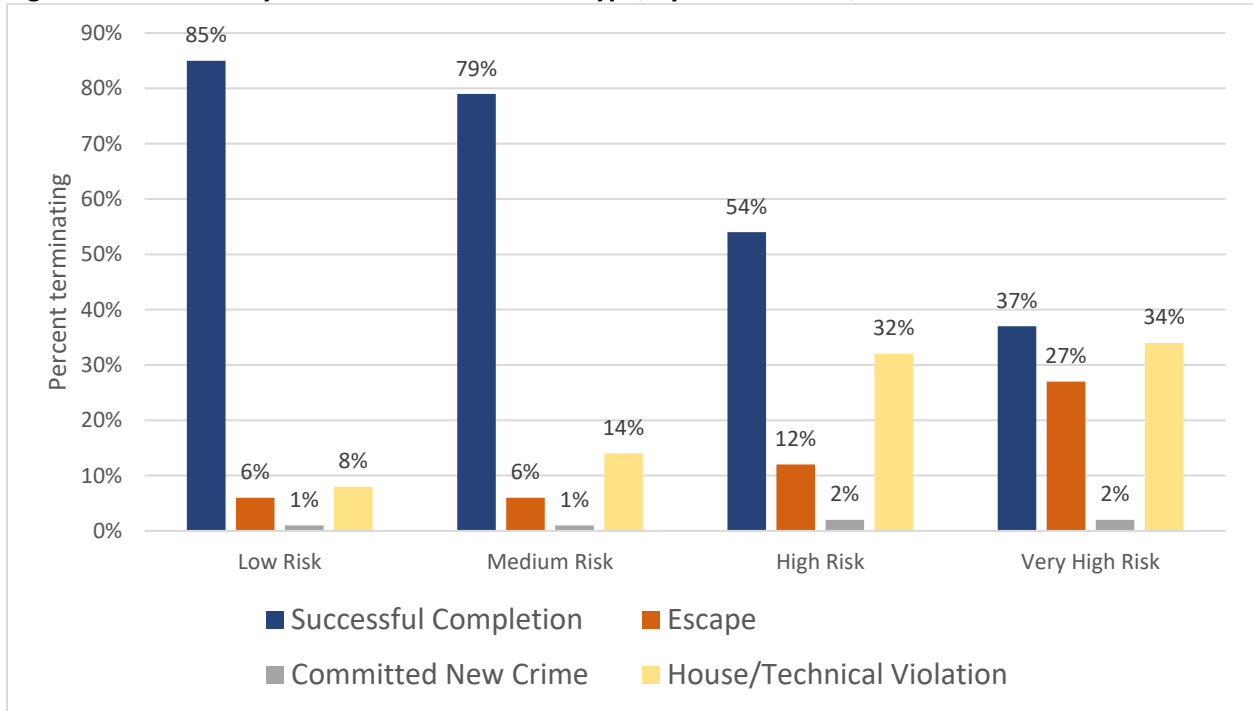
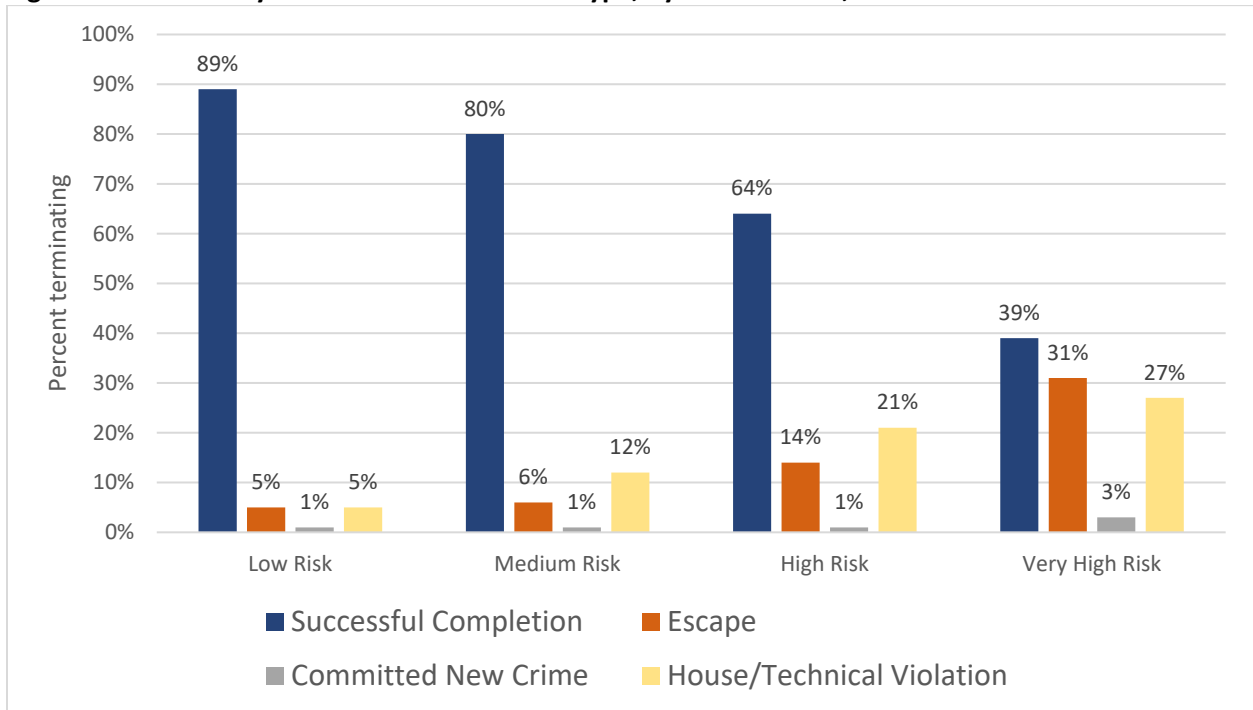


Figure 13. Community Corrections Termination type, by LSI Risk Level, FY 20





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Figure 14. Community Corrections Termination type, by LSI Risk Level, FY 21

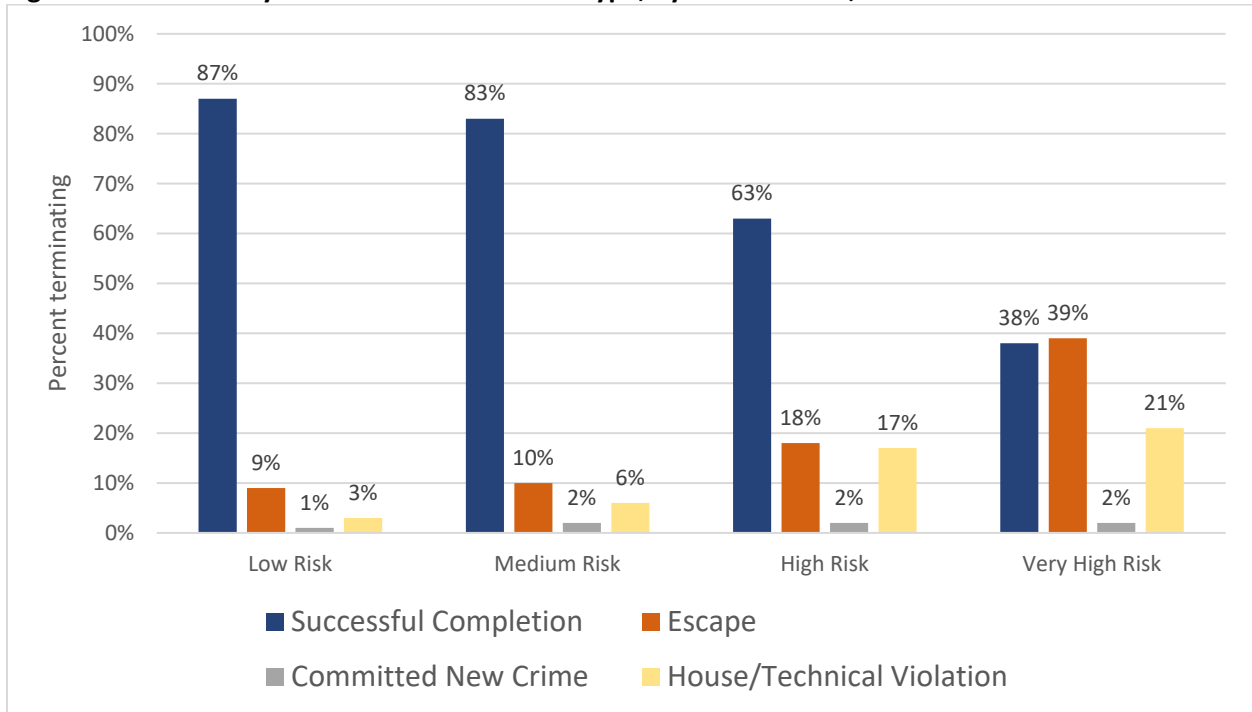
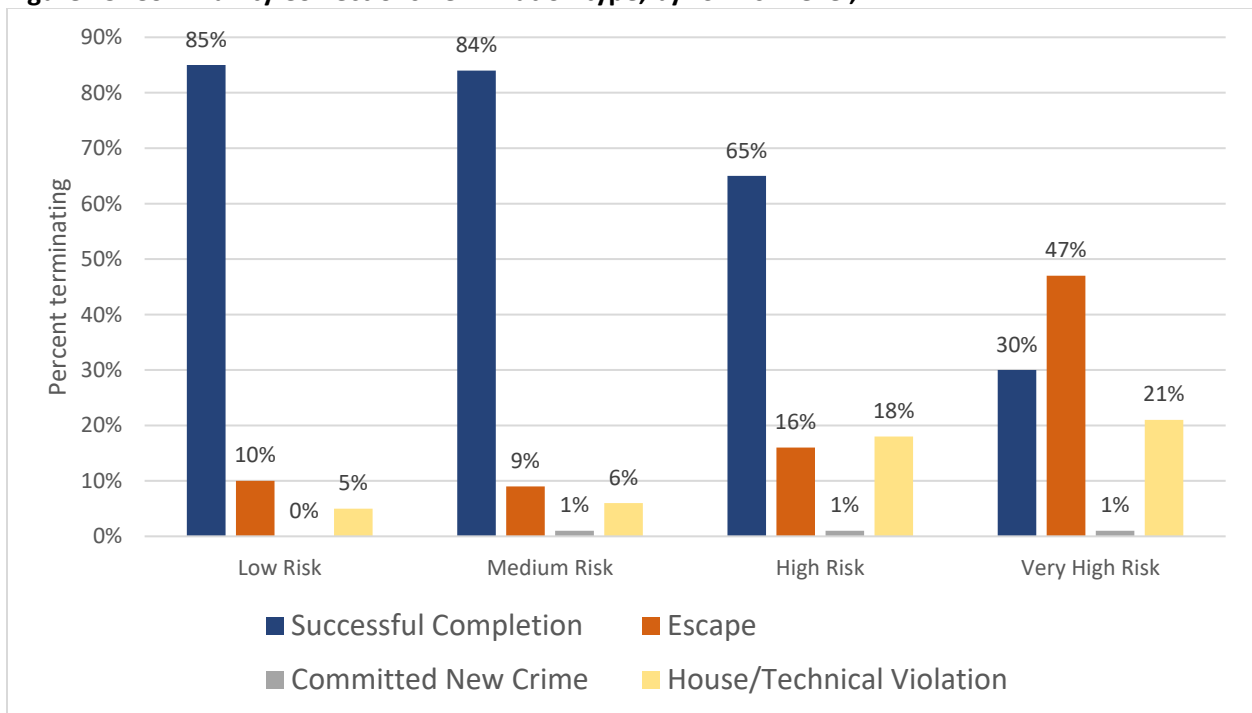


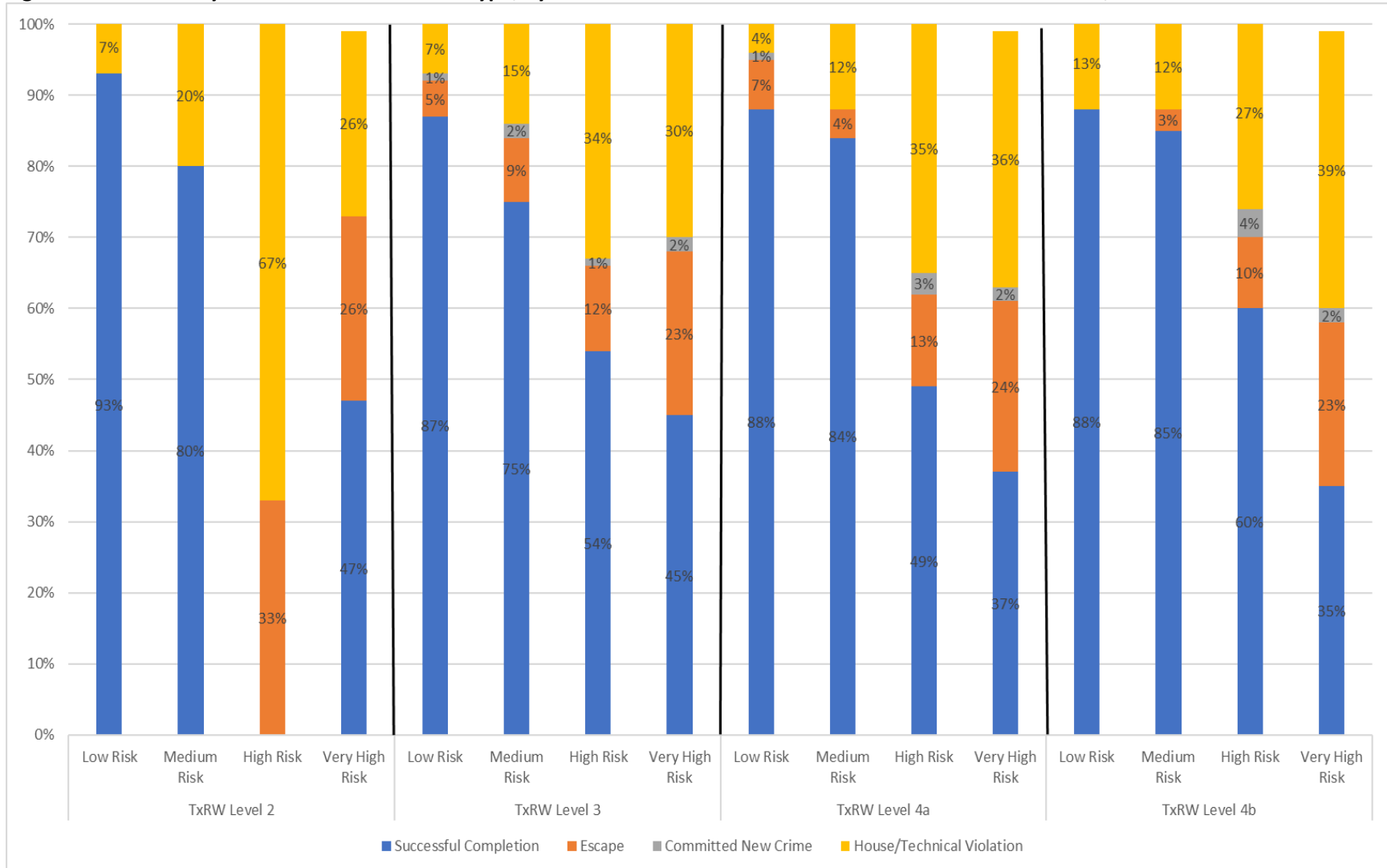
Figure 15. Community Corrections Termination type, by LSI Risk Level, FY 22





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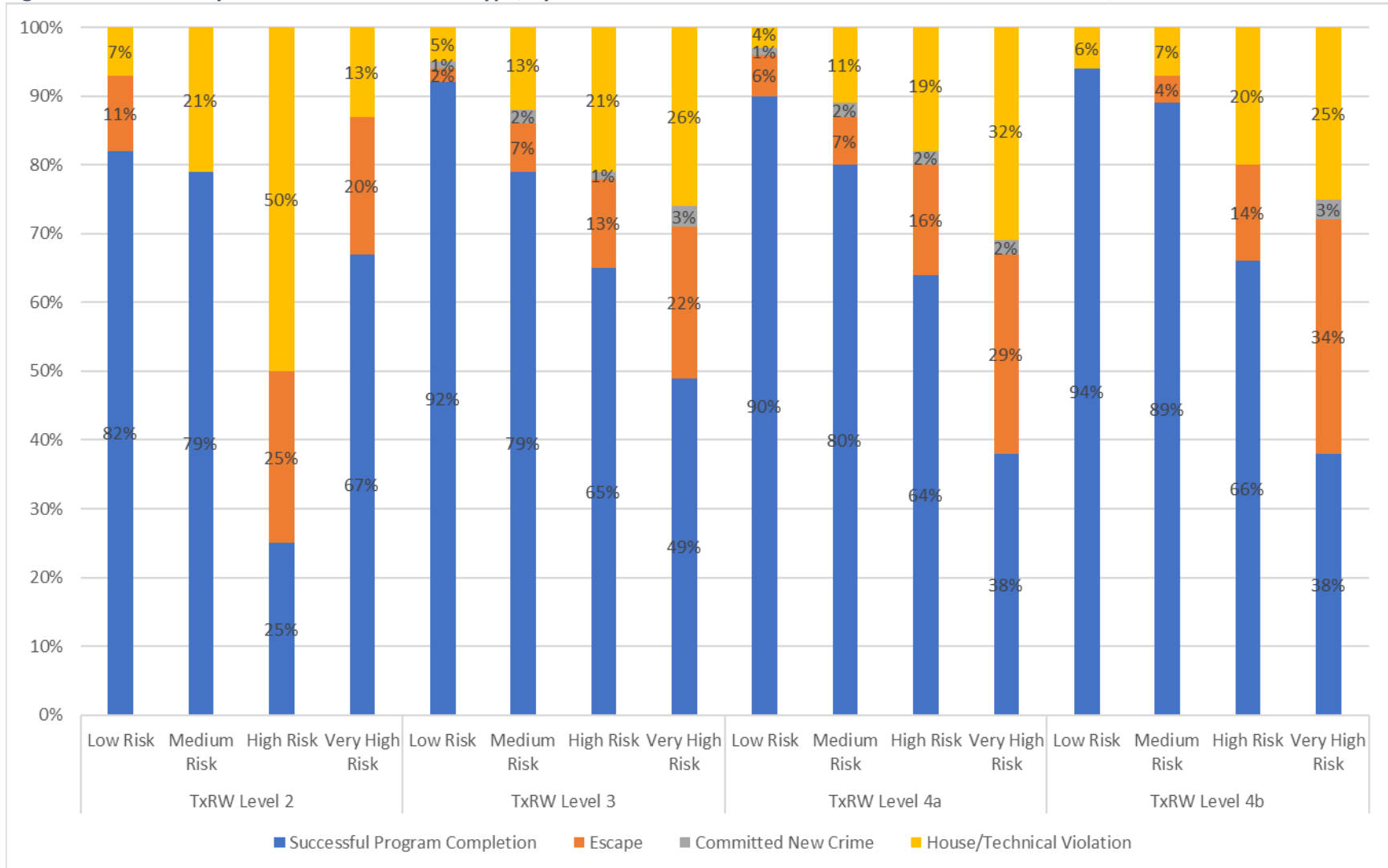
Figure 16. Community Corrections Termination type, by LSI risk level and substance use disorder treatment need, FY 19





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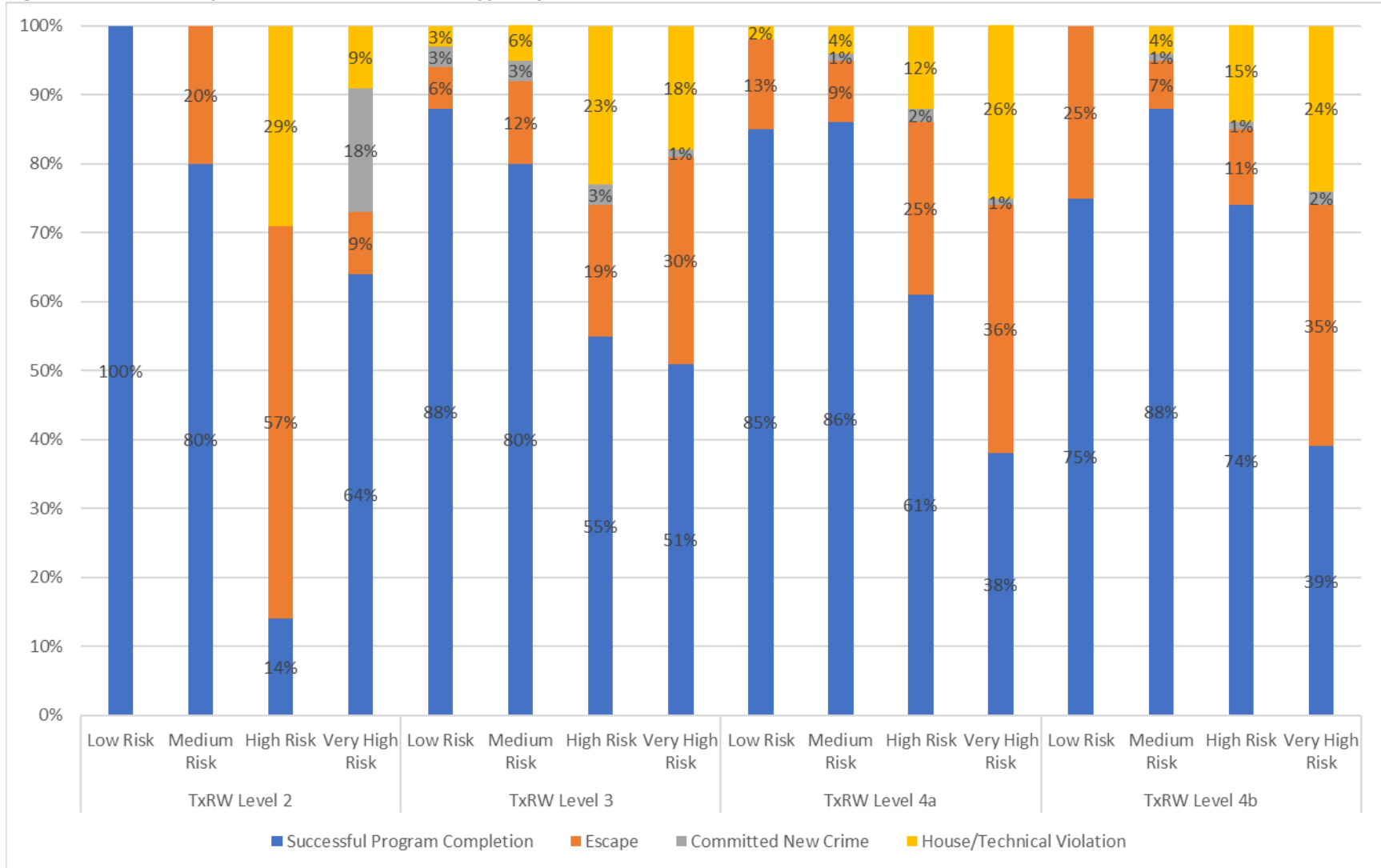
Figure 17. Community Corrections Termination type, by LSI risk level and substance use disorder treatment need, FY 20





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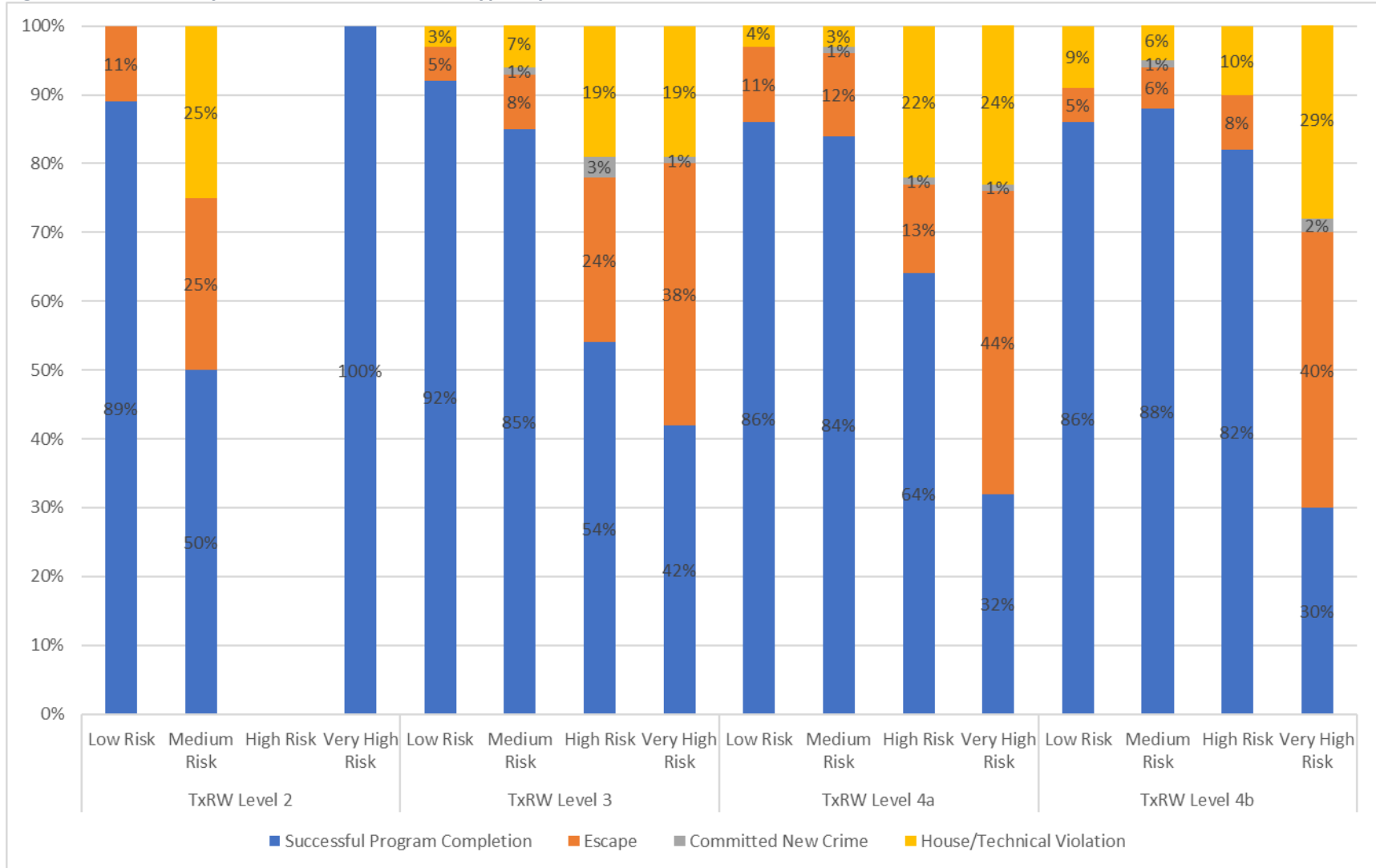
Figure 18. Community Corrections Termination type, by LSI risk level and substance use disorder treatment need, FY 21





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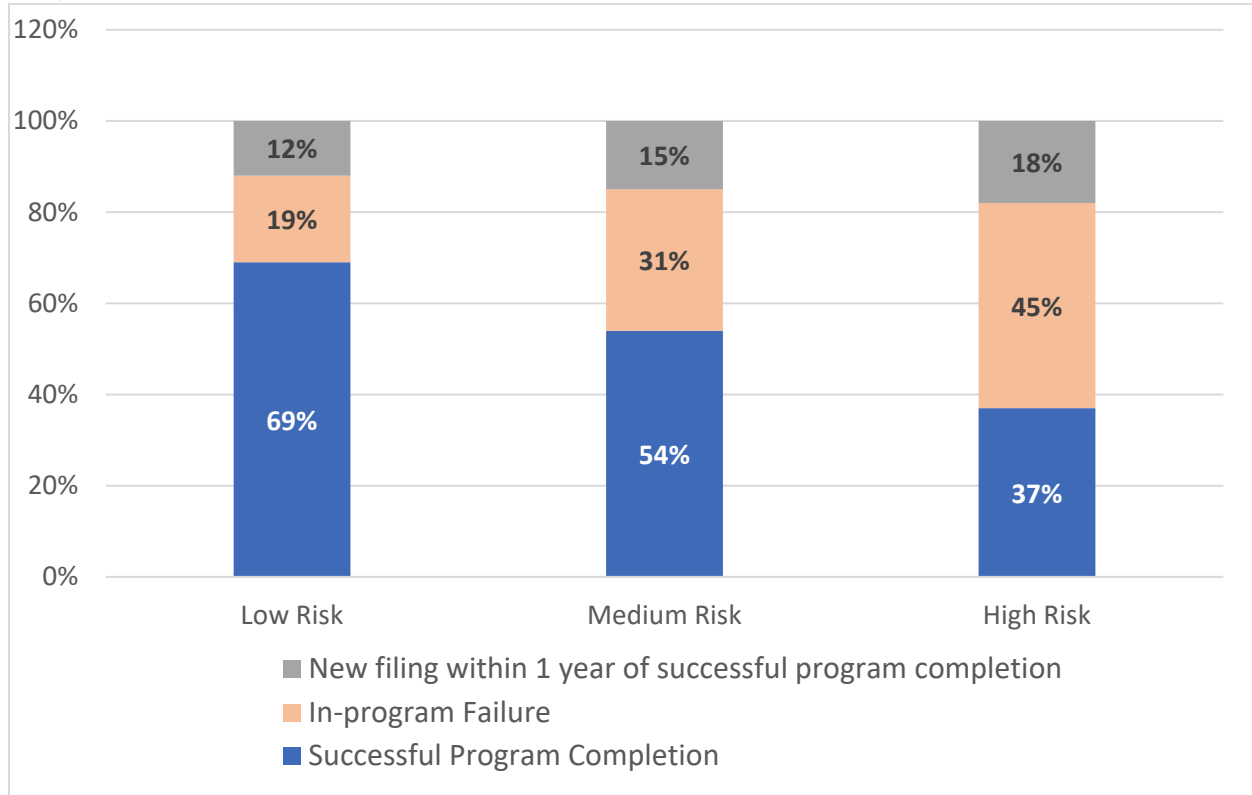
Figure 19. Community Corrections Termination type, by LSI risk level and substance use disorder treatment need, FY 22





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Figure 20. Combined outcome of termination type and one-year recidivism of community corrections clients, by risk level, 2020



COMMUNITY CORRECTIONS OUTCOMES

Figure 20 displays combined outcomes (one-year recidivism and program completion or failure) for FY 2020 terminations. These data were presented to the CCTF by the Office of Community Corrections, Division of Criminal Justice.⁵

FELONS IN COMMUNITY CORRECTIONS

While felons can serve time in community corrections as a condition of probation, generally they are found in community corrections via one of two paths: a direct sentence to community corrections (diversion client) or as a step down from prison (transition client).

⁵ The presentation titled, *Brief Summary: Community Corrections Outcome Data*, is available on the CCJJ: CCTF page (ccjj.colorado.gov/ccjj-cctf2022) under “Materials,” specifically at cdpsdocs.state.co.us/ccjj/Committees/CCTF/Materials/2022-09-12_CCJJ-CCTF-CommCorr-Outcomes.pdf.



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Generally, to be placed in community corrections, diversion clients must be approved by the local community corrections board, accepted by the facility, and sentenced to community corrections by the judge. Transition clients must be referred by the CDOC, approved by the local board, and accepted by the facility.

Community Corrections Boards vary in procedures, membership and review processes. Community Corrections has also emphasized local control, where boards and local programs control whether a person may enter a community corrections facility in their jurisdiction. Most boards are composed of volunteer, uncompensated citizen members in addition to justice system professionals.

Because of work volume and evidence-based practice, many boards have created different processes for acceptance depending on conviction type, criminal history, risk level or some combination thereof. Often lower classification felonies, which are not VRA crimes, allow an abbreviated review and acceptance decision by an administrator, or acceptance by a smaller group, rather than a review by the full board.

Diversion and Transition clients who break rules can generally be transferred directly to prison. Some jurisdictions allow diversion clients to have a resentencing hearing before a judge, but violations do not have to be proven. Other jurisdictions allow a new sentence to prison to be signed by a judge without bringing the client before the court.

If a diversion or transition client walks away from residential community corrections, they may be charged with an additional crime. Further, clients can face reduction in sentence credits for violations.

The stay in residential community corrections is often several months. Clients who are not succeeding on non-residential status can be regressed to residential community corrections.

WAITLIST AND DISPLACEMENT OF FELONS FROM COMMUNITY CORRECTIONS

There is no uniform tracking of waitlists for bed space in community corrections. When data is gathered, it is usually done through DCJ surveying or contacting local jurisdictions, local boards, or facilities to determine current size of waitlists.

Through the COVID pandemic, DCJ reports that there was open capacity in community corrections. DCJ reported to the Task Force that waitlists were beginning to climb, especially in the metro area.

If community corrections is expanded to additional misdemeanants, it may result in the displacement of felony offenders in jurisdictions with waitlists or where facilities are at capacity. If a jurisdiction, by policy, automatically accepts misdemeanants, the effect may cause felons who need full board approval to face increased denial rates due to capacity.

Some community corrections providers expressed that they have available space and the willingness to accept misdemeanor clients. If community corrections is expanded to serve misdemeanants, the acceptance rates of felons should be tracked to determine they are being displaced. Displacement of felons from community corrections has the potential to increase the prison population and cost to the State of Colorado.



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ACCESSIBILITY STATEMENT

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