

**SENTENCING REFORM TASK FORCE**  
FINAL RECOMMENDATION PRESENTED TO THE  
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE  
January 13, 2023

**FY23-SR #01. Standardize Early Termination Review in Probation [Policy]**

**Recommendation FY23-SR #01**

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.

- **Process development:** The State Court Administrators Office (SCAO) and the Division of Probation Services (DPS), in collaboration with probation staff, stakeholders (e.g.: treatment providers, prosecuting and defense attorneys), and victim representatives, should develop a protocol for the standardization of reviewing adult cases for early termination by June 30, 2024. The protocol should include inclusionary and exclusionary criteria used to inform probation officer decisions to petition the court for early termination based on the individual circumstances of each person under review as well as victim considerations for Victim’s Right Act (VRA) cases.  
*(See APPENDIX A –Technical Process Areas to be Addressed)*
- **Policy and Standards:** The protocol should result in a statewide policy that provides direction on the process. The *Standards for Probation in Colorado*, issued by the Supreme Court, should also incorporate mandatory review of adult cases once a probationer completes 50% of their sentence in order to advance a certain and transparent timeframe at which an initial review will occur. The *Standards* should be revised by June 30, 2024.
- **Structured Tools:** The protocol should rely on standardized forms and structured tools to ensure consistency statewide. There should be a form provided to the probationer at the beginning of probation that describes the behavioral response system and the incentive for early termination, as well as a checklist for the probation staff to determine eligibility for early termination.
- **Specialized Intensive Programs:** Standards should be developed to ensure that probationers placed on intensive supervision serve at least 6 months on regular supervision before being submitted for early termination or that judicial officers at least consider the amount of time served on regular supervision before granting early termination at 50% of the sentence period for those who were assessed as higher risk and higher need at intake on probation.
- **Stakeholder Education:** Stakeholders should be informed of the early termination protocol. The workgroup that develops the protocol should decide if stakeholder education should happen at the state level (e.g.: presentations to victims’ groups, the chief judges’ council, the public defenders’ office, district attorneys’ council) or at the local level.
- **Victim Notification:** There should be procedures developed such that victims of eligible crimes are given appropriate education and time to opt in for notification in Victims Right Act (VRA) cases where a petition for early termination is indicated.
- **Training:** The Division of Probation Services should develop and administer a stand-alone training on the protocol for all current employees. After statewide implementation, this training portion should be incorporated into the Probation Academy, which is mandatory for all new probation officers.
- **Quality Assurance:** The protocol should result in additional data entry to track the frequency and timeliness of early termination reviews. Staff at DPS/SCAO should annually review district compliance with the protocol and provide feedback to districts on the metrics.

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- **Implementation:** The SCAO/DPS should develop a strategy to consider district-level workload impact, docket impact, victim transparency, and victim impact in implementing the new policies and standards for current cases for those who are newly eligible and those who are pending eligibly for early termination under the new model as of June 30, 2024.

**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.<sup>1</sup>

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.

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<sup>1</sup> CJI Colorado report – Improving Outcomes and Safely Reducing Revocations from Probation Supervision in Colorado, Crime and Justice Institute, June 2022.

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**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.

**APPENDIX A: Technical Process Areas to be Addressed**

The following technical and procedural areas will need to be addressed, as part of the process development. This list should not be considered exhaustive and is not in any particular order.

- **PROBATIONERS WITH MULTIPLE CASES:** It will be important that there be consistency across districts, procedural fairness for clients and victims, and individualized consideration of early termination granting by judicial officers. In order to address over-supervision, it may be prudent to request early termination at 50% of the length of the sentence, regardless of the number of concurrent or consecutive cases. The early termination may provide an incentive and motivation to complete the additional cases. Furthermore, a later revocation in another case would not impact the first case, which was terminated early; thus, reducing the violations for cases in which the client has been compliant.
- **CONTINGENCY PLANNING:** Review for early termination beyond the mandatory initial review should be discretionary. Probation should develop practices for situations when the probationer doesn't meet eligibility requirements halfway through the sentence, such as a contingency plan when the probationer finishes treatment or complies with other requirements. Creating a contingency plan may be considered a best practice. It could be motivating for a probationer to know what they must finish, in order to have an early termination petition filed. Although a best practice, a contingency plan is not required, when an individual doesn't meet the early termination requirement, or the early termination petition filed halfway through the sentence is denied.
- **COURTESY AND INTERSTATE COMPACT CASES:** The protocol should address the degree to which local policy might have an impact on courtesy cases and interstate compact cases.
- **PRIVATE PROBATION PROCEDURES:** Private probation will need to incorporate all procedures. Probation should consider the degree to which this should be measured in the current private audit tool to ensure compliance in private probation.
- **TREATMENT CONSIDERATIONS:** Treatment requirements may be longer than a year for some populations, when they have a two-year sentence or otherwise last beyond the 50% sentence

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criterion. The protocol should address these situations. There may be certain types of treatment or classes that don't necessarily need to be completed for early termination consideration. This issue, and the inclusion of input for treatment providers or multi-disciplinary team members, will need to be addressed by the process development group.

- **AUTOMATED CASE MANAGEMENT INFORMATION:** The SCAO should automate information to the best degree possible in existing or new case management systems. For example:
  - Importing information from JPOD into the early term checklist, such as LSI and rater box scores.
  - An automated trigger where ITS programs an automated review date by calculating one-half of the sentence.
  - Consideration of an event or narrative code to document the results of the review for quality assurance purposes.
- **SUPERVISORY REVIEW OF PROCESS:** The protocol should address the degree to which a formal supervisory review is appropriate as part of the initial quality assurance process.
- **INFORMATION TO THE COURT:** The protocol should identify the type of information submitted to the court. For example:
  - A list of incentives and sanctions previously used.?
  - Case plan progress and considerations and goal achievement.
  - Risk reduction and other behavioral progress accomplished during the first 50% of the sentence.
- **COURT ORDERS:** The protocol should address which court orders can **not** be completed, yet still lead to a petition for early termination.
- **LOCAL POLICIES:** SCAO/DPS should develop a model policy template for districts to use and adapt.