

PROBATION IN-DEPTH THE LENGTH OF PROBATION SENTENCES

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In 2014, the Robina Institute of Criminal Law and Criminal Justice published a report entitled *Profiles in Probation Revocation: Examining the Legal Framework in 21 States*,¹ the purpose of which was to gain understanding of the laws and processes governing probation revocation in a cross-section of states. Building from that report, this informational brief pulls together the statutes that govern the length of probation sentences in each of the twenty-one jurisdictions studied,² as well as the legal framework for early termination or extension of the probation term.

Factors Determining Length of Probation

The period of time that an individual will serve on probation is initially established by the court when the individual is sentenced. There are few constitutional restrictions on the length of probation, other than the requirement that the sentence conform to local laws. In many jurisdictions there are statutory limitations as to the length of the original probation sentence as well as whether and under what circumstances probation can be extended. Probation terms may typically be extended for probation violations or failure to meet certain conditions (e.g., not paying restitution). On the other hand, probationers may be incentivized by statutes that allow the court to shorten or terminate probation and release them from supervision, thus fulfilling their criminal sentence.

Maximum Probation Terms for Felony and Misdemeanor Sentences

Felonies are more serious offenses, and at this level, conviction may result in a prison sentence. For some dangerous offenses, state statutes may authorize a lifetime term of probation.⁵ Setting lifetime probation aside, Table 1 focuses on the maximum terms of probation that may be imposed for other felony offenses in each jurisdiction. The most common length of felony probation is five years, with laws in 8 of the 21 states examined setting this as the maximum term.⁶ In three states, the maximum probation period is unclear or discretionary. In three others, the maximum term of felony probation is tied to the maximum incarceration term for the crime. For example, in Minnesota,

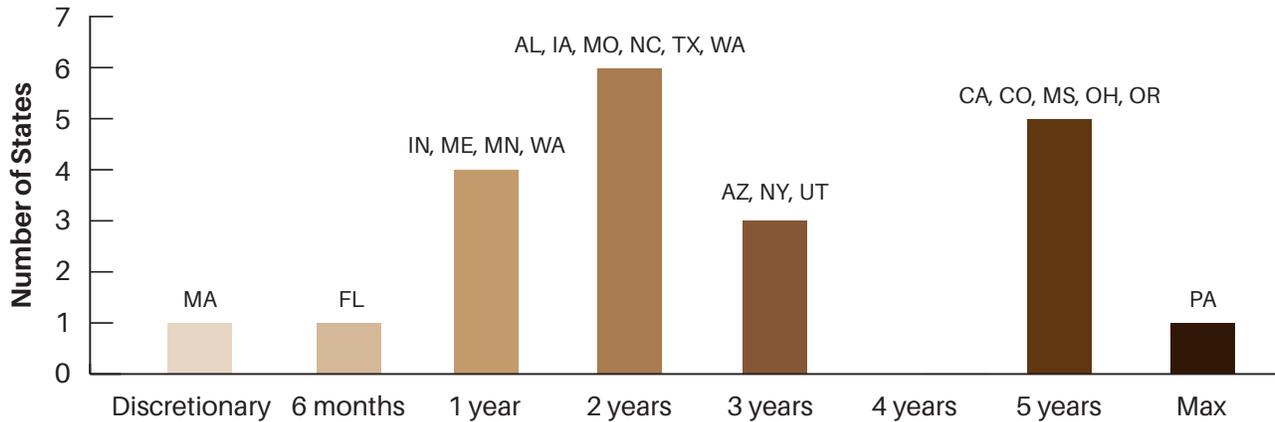
Table 1. Felony Probation Lengths

Max. Length of Felony Probation	States
1 year	WA
2 years	FL ³
3 years	UT
4 years	ME
5 years	AL, IA, MO, MS, NY, NC, OH, OR
7 years	AZ
10 years	TX
Discretionary	CO, MA
Maximum term	CA, MN, PA, WI
Unclear	IN ⁴

the maximum felony incarceration term for a very serious crime is 40 years; this would also be the maximum possible length of probation for such an offense.⁷

Misdemeanors are typically less serious offenses where the term of incarceration, if any, is shorter and is likely to be served in a county jail rather than a prison. However, states define "misdemeanor" differently; for example, in Pennsylvania, a misdemeanor sentence may extend for up to five years and may include a prison term whereas in Minnesota, a misdemeanor is punishable by a maximum of 90 days.⁸ Most states researched set an absolute maximum number of years for which misdemeanor

Table 2. Misdemeanor Probation Lengths



probation could be imposed, often capped at two years or five years. Only Massachusetts allows full judicial discretion in the probation term.⁹ (See chart above).

for early termination of probation and either don't allow it (Washington, Indiana) or allow it through common law (Minnesota, Massachusetts).¹³

Early Termination of Probation

Early termination of probation is generally a reward for good conduct. In some jurisdictions offenders are not eligible until they meet certain probation conditions, which can sometimes include full payment of all fines, fees, and restitution.¹⁰ Two states in our sample, Texas and Wisconsin, allow consideration for early termination only after a certain percentage of the sentence is served.¹¹ Two states, North Carolina and Texas, also have an automatic review of probation at a certain number of years to see if the probationer would qualify for early termination.¹² In contrast, some states studied have no explicit mechanism

Probation Extension

Extension of probation allows the court to add time to the probationary term that must be served, usually up to the maximum term possible for a given crime. In about a third of the states studied, probation could only be extended after a probation violation. However, in many other states, the extension of probation can occur upon failure to complete specific conditions, often related to financial obligations.¹⁴ In a few states, extension is at the discretion of the court (frequently with some due process limitations). Two jurisdictions, Maine and Washington, have no provisions to extend the probation term.¹⁵

Chart 1. Early Termination of Probation

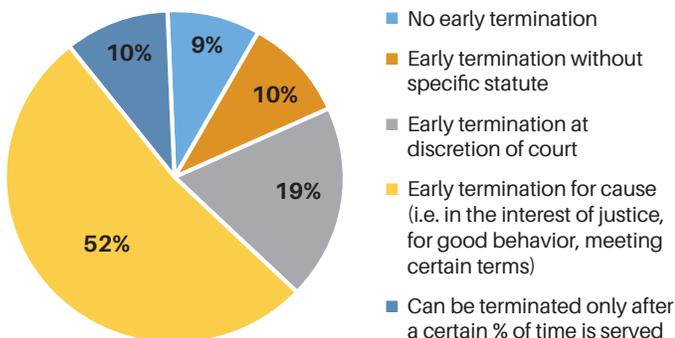
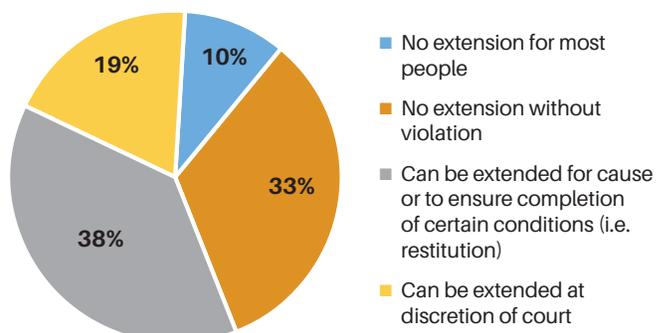


Chart 2. Extension of Probation



Why Does the Length of Probation Matter?

Probation length prompts consideration of many competing interests. The probation term must be long enough to ensure community safety, to provide rehabilitative services, and to adequately punish offenders. Effective probation terms can both prevent future crime and foster individual growth for probationers. However, unnecessarily lengthy terms of probation may not benefit any of the stakeholders involved. State and local governments, for example, must determine whether the benefits to public safety of long supervision terms are outweighed by the rising costs over time of maintaining supervision over steadily growing caseloads.¹⁶



“[T]he length of the probation term depends on what an officer wants to accomplish and what resources the agency has in place to assist the offender in working toward his/her goals. Community tolerance and public safety factors also have to be considered [...].”

*–Carl Wicklund, Former Director,
American Probation and Parole Association*

Therefore, it is important to strike a balance in probation length. In a 2014 study by the Center for Effective Public Policy prepared for the National Institute of Corrections, recommendations included systematically matching probation length to offender risk level and concluding the probation term after important rehabilitative goals and program successes were accomplished, rather than at a specific time.¹⁷ Carl Wicklund, former director of the American Probation and Parole Association, believes that lengthy initial probation sentences may be justified, but that in appropriate cases probationers should be released from their term when they have “accomplished all that was expected of them.” For higher-risk offenders, he notes that “the length of the probation term depends on what an officer wants to accomplish and what resources the agency has in place to assist the offender in working toward his/her goals. Community tolerance and public safety factors also have to be considered [...]”¹⁸ The results in this brief may provide context for this ongoing discussion.

REFERENCES

- ¹ Robina Inst. of Crim. Law & Crim. Justice, *Profiles in Probation Revocation: Examining the Legal Framework in 21 States* (2014), <http://www.robinainstitute.org/publications/profiles-probation-revocation-examining-legal-framework-21-states/> [hereinafter *Profiles in Probation Revocation*].
- ² The states we examined were: Alabama, Arizona, California, Colorado, Florida, Indiana, Iowa, Maine, Massachusetts, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Utah, Washington, and Wisconsin.
- ³ The maximum in Florida may be less for those placed on community control where the entire sentence was under 2 years. Fla. Stat. § 948.01(4) (2015).
- ⁴ Indiana recently repealed the statute that set the maximum term of probation for a felony. Ind. Code § 35.50-2-2 (repealed eff. July 1, 2014).
- ⁵ See, e.g. Ariz. Rev. Stat. Ann. § 13-902(2015).
- ⁶ Profiles in Probation Revocation, *supra* note 1.
- ⁷ Minn. Stat. Ann. § 609.135, subd. 2 (2015).
- ⁸ 18 Pa. C. S. § 106 (2015); Minn. Stat. § 609.02, subd. 3 (2015).
- ⁹ Mass. Gen. Laws ch. 297, § 1A (2015); Mass. Gen. Laws ch. 276, § 87 (2015).
- ¹⁰ See Fla. Stat. § 948.04(3) (2015); Iowa Code §§ 907.7(3), 907.9(1) (2015).
- ¹¹ Tex. Code Crim. Proc. Ann. art. 42.12 § 20(a) (2015); Wis. Stat. § 973.09(2)(c)(3) (2015).
- ¹² Tex. Code Crim. Proc. Ann. art. 42.12 § 20(a) (2015); N.C. Gen. Stat. Ann. § 15A-1342(d) (2015).
- ¹³ Profiles in Probation Revocation, *supra* note 1, at 30, 46, 86; *Commonwealth v. Hunt*, 900 N.E. 2d. 121, 124 (Mass. App. 2009).
- ¹⁴ See, e.g. Minn. Stat. Ann. § 609.135, subd. 2(g)-(h) (205) (extension can occur if probationer fails to pay restitution or complete treatment).
- ¹⁵ Profiles in Probation Revocation, *supra* note 1, at 88; Me. Rev. Stat. tit. 17-A §§ 1202, 1203-C (2015).
- ¹⁶ See e.g., Minn. Sentencing Guidelines Comm’n, Probation Revocations at 7 (Jan. 2015) (detailing the increase in volume of felony cases sentenced to probation from 2001 to 2012); Mariel Alper et al., *American Exceptionalism in Probation Supervision* (Robina Inst. of Crim. Law & Crim. Justice 2016), <http://www.robinainstitute.org/news/new-data-brief-american-exceptionalism-probation-supervision/> (demonstrating that the U.S. probation supervision rate in 2013 was more than five times greater than the rate for European countries).
- ¹⁷ Ctr. for Effective Pub. Policy, *Dosage Probation: Rethinking the Structure of Probation Sentences* (2014), <https://www.fppoa.org/sites/default/files/dosage.pdf>.
- ¹⁸ Am. Prob. And Parole Ass’n, Probation and Parole FAQs Qs. 8-9, *citing* communication from Carl Wicklund, https://www.appa-net.org/eweb/DynamicPage.aspx?WebCode=VB_FAQ#8.