

Examining Prosecutor Perspectives and Practices on Probation in Ramsey County

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Executive Summary

This study examined the role of prosecutors in the Ramsey County Attorney's Office in influencing the contours of felony probation sentences. The main target of this study was to determine how prosecutors view and influence the length of probation, but the study also included an examination of the other key components of a felony probation sentence, namely the probation type (stay of imposition versus stay of execution) and conditions of probation, as well as the role of prosecutors in the probation violation process. The study included both quantitative data analysis and interviews with staff from the Ramsey County Attorney's Office. Following are key findings and recommendations from the study.

Key Findings

Purpose of Probation

1. Those working in the Ramsey County Attorney's Office see probation as having two main goals: (a) to help people return to lawful behavior; and (b) to provide a period of accountability and monitoring (pp. 32-34).
2. Victims' expectations about probation may depend on whether they know the person: victims who know the person want them to get help; those who don't tend to have more punitive goals (pp. 34-35).
3. Success on probation means never seeing the person again; but in reality, those working in the office only see individuals who fail, so they have a skewed view of the success or failure rates of people on probation (pp. 33).

Probation Type

4. Those working in the office seem to be unclear about whether there is a policy about when it is appropriate to offer a stay of imposition versus a stay of execution, though most seem to think a stay of imposition is generally offered for a first-time felony (pp. 35-36).
5. Stays of imposition are viewed as a valuable tool for settling cases, and as a great benefit to defendants (pp. 35-36).

Probation Length

6. The average probation length in Ramsey County has fallen from a high of about 86 months in 2002 to 69 months in 2016 (pp. 7-8).
7. The majority of people sentenced to felony probation in Ramsey County (sex offenses excluded) receive a sentence of 5 years or less. From 2001-16, this accounted for 78% of cases. The next largest group of was sentenced to probation terms of six to ten years (though most of these cases were sentenced to ten years), accounting for 15% of cases in 2001-16. The remaining 7% were sentenced to probation terms of 11-40 years (pp. 9-10).
8. Quantitative analysis shows that the severity level of the offense is the most decisive factor for determining the length of probation in Ramsey County. Each one-level increase in severity level results in an additional 24 months in the probation length (pp. 15-18).
9. Probation terms are typically five years or less for cases at severity level 4 or below. Starting at severity level 5, the tide begins to turn in favor of terms that are longer than 5 years (p. 17). When the statutory maximum sentence is 10 years or less, probation length seems to track with the statutory maximum. If the statutory maximum is longer, probation terms are also significantly longer, but the average does not quite reach the statutory maximum (p. 10).

10. Recidivism rates are very similar in Ramsey County and Hennepin County, even though Hennepin has much shorter average probation terms. For those sentenced in 2003, the two-year recidivism rates were 17% in Ramsey County and 18% in Hennepin County; recidivism rates for the 12-13 year follow up period were 43% and 44%, respectively. For those sentenced in 2012, the recidivism rates were 23% in Ramsey County and 20% in Hennepin County (p. 19).
11. The relationship between probation length and recidivism is substantively weak. For each additional year of probation, recidivism decreases by 2%. This means that if you took two groups of 100 similarly situated offenders, everyone in Group A would have to receive an extra 4 years of probation in order to see 1 fewer person recidivate than Group B (p. 20).
12. The risk of recidivism is greatest in the first year and a half and falls after that (p. 23).
13. Individuals working in the office seems to be unclear about the law governing probation length, with some thinking the guidelines control it, others thinking the lengths are defined in statute, and others thinking the probation length must equal the statutory maximum sentence (p. 36).
14. Probation length is viewed differently at different stages of the case—initial appearance, pretrial and trial, sentencing. Probation length is not usually addressed at the initial appearance; attorneys handling pretrial or trial feel they cannot change the terms of any plea agreement; attorneys handling sentencing defer to the recommendation of the probation department (pp. 36-37).
15. There seems to be a divide between those who deal with less serious and more serious offenses. For those who deal with less serious felonies, there is active conversation about whether the probation term should be three years. Those who deal with more serious felonies seem to be inclined towards longer terms with the possibility of early discharge (p. 37).
16. Everyone seems to agree that early discharge is appropriate if the person is doing everything right. They rely on the probation department to bring those forth (p. 37).

Probation Conditions

17. Prosecutors want to hear from victims as to probation conditions; when the victim knows the individual being sentenced, individuals working in the office believe victims may know best what the defendant needs (p. 39).
18. Probation conditions are viewed differently at different stages of the case—conditions are not part of the plea at the initial appearance, they are more a reflection of victim input at the pretrial and trial stage, and there is deference to the probation department to suggest appropriate conditions at the sentencing stage (pp. 39-41).

Probation Revocations

19. Revocations for fifth-degree drug offenses outpaced the revocation rate for every other drug offense with 825 individuals revoked for this offense through 2017 (p. 27).
20. The largest volume of probation revocations occur at offense severities 2 and 4, which are also the severity levels where the largest volume of felony convictions occur. From 2001 to 2016 there were 1,425 revocations at severity level 2 and 1,117 revocations at severity level 4 (pp. 27-28).
21. On average, a greater proportion of cases for which the court granted a dispositional departure in Ramsey County are revoked than cases for which the guidelines called for probation, but these cases account for a very small proportion of probation cases overall (pp. 28-30).
22. Stays of execution are consistently revoked at higher rates—rates that are 10 to 15 percentage points higher in any given year—than stays of imposition (p. 30).

23. For individuals with a probation term of five years, or less nearly three-quarters of revocations (74%) occur by the end of the second year. By the end of the fifth year, 98% of all revocations have occurred. For individuals with probation terms of greater than five years, the revocation rate increases in the first year and then plateaus until the end of the second year when it starts a moderate decline. By the end of the fifth year, 93% of revocations have already occurred, and after that, the revocation rate is almost zero (pp. 30-31).
24. Those working in the office rarely deal with probation violations at the first appearance (the “admit/deny” stage). When the violations are contested or if there is a new charge, the County Attorney’s Office becomes involved. Law clerks often handle contested hearings when the violations are routine. More complicated violations are handled by attorneys assigned to the Sentencing Unit. When there is a new charge, the attorney prosecuting the new charge also handles the violation (p. 41).
25. Those in the office generally believe that a person should be given a few chances to get back on track if violations are fairly minor. But revocation may be more appropriate when the violations are more egregious, involve a new offense, or when minor violations begin to stack up (pp. 42-43).
26. There is less tolerance for probation violations for people who were given a mitigated dispositional departure, and in these instances, interviewees felt a stronger response was usually warranted (pp. 42-43).

Recommendations

The following recommendations were developed from the key findings above. The recommendations are more fully explained in Part Six.

1. *Formalize the goals of the office by bringing staff together to identify them and tie office policy to these goals (p. 43).*
2. *Develop a feedback loop for probation outcomes to gain regular input about what works in sentencing (p. 44).*
3. *Clarify the policy about when a stay of imposition versus a stay of execution is appropriate as an initial sentence (p. 44).*
4. *Develop and communicate a clearer policy on probation length (p. 44).*
 - Most cases are already receiving probation terms of 5 years or less. For those that currently receive 5 years, consider whether 3 years might be adequate in certain circumstances.
 - For those that receive probation terms of more than 5 years, consider whether 5 years might be appropriate in certain circumstances.
5. *Develop policy on when and how to seek specific probation conditions (p. 45).*
6. *Collaborate with other Ramsey County probation stakeholders such as Ramsey County Community Corrections, judges sentencing criminal cases in the district, and others who impact probation sentences (p. 46).*

Introduction

Annually each year, about three-quarters of individuals who are convicted of felony offenses (the most serious offense level) in Minnesota are sentenced to probation; the rest are sentenced to prison. But the courts are given wide latitude in how to craft the terms of those probation sentences, including the type of probation sentence (stay of imposition or stay of execution), length of the probation term, and the conditions of probation. More recently, policymakers and practitioners have paid more attention to the fact that the length of time that people are sentenced to serve on probation varies a great deal across the state. For example, the Minnesota Sentencing Guidelines Commission reported that for cases sentenced from 2015 to 2017, the average length of probation ranged from a low of 39.3 months in the Fourth Judicial District (Hennepin County) to a high of 87.0 months in the Seventh Judicial District (paralleling I-94 from St. Cloud to Moorhead). The average in the Second Judicial District (Ramsey County) was 68.6 months.¹ The presence of this variation has sparked conversation in Minnesota about how long probation sentences should be. In 2018 and 2019, bills were introduced at the Legislature suggesting caps on the length of felony probation. And throughout 2019, various workgroups have formed at the county level to examine multiple aspects of probation sentences, including probation length, which conditions should be ordered during probation, and probation revocations.

Against this backdrop, the Robina Institute of Criminal Law and Criminal Justice was commissioned to examine felony probation lengths in Ramsey County using both quantitative and qualitative data. This report is divided into six parts. Part One describes the felony probation sentencing and revocation processes in Minnesota. Using data provided by the Minnesota Sentencing Guidelines Commission, Part Two uses descriptive statistics to describe overall trends in probation lengths in Ramsey County and compares them to trends in nearby Hennepin County.² This section also examines which factors are associated with the length of probation. Part Three utilizes sentencing guidelines data to assess which factors predict recidivism and whether there is a relationship between probation length and these outcomes. Part Four utilizes sentencing guidelines data to describe probation revocations. Part Five analyzes interviews conducted with individuals who work in the Ramsey County Attorney's Office to describe prosecution practices related to probation sentencing and revocation. Pulling all of this information together, Part Six offers recommendations based on the results.

PART ONE – How Felony Probation Sentencing and Probation Revocation Work in Minnesota

In Minnesota, crimes are classified into one of three offense levels: misdemeanor, gross misdemeanor, and felony. Of the three, felony offenses are the most serious, and strictly defined, a felony is “a crime for which a sentence of imprisonment for more than one year may be imposed” (Minn. Stat. § 609.02, subd. 2). In Minnesota, sentencing for felony offenses is governed by the Minnesota Sentencing Guidelines. As shown in Figure 1, the Guidelines are based on a grid structure. The vertical axis of the Grid represents the severity of the offense for which the individual was convicted. The horizontal axis represents a measure of the individual's criminal history, which is a composite score derived from the number and weight of prior felony, gross misdemeanor, and misdemeanor convictions, prior juvenile adjudications, and whether an individual committed the offense while serving a prior sentence (Minn. Sent. Guidelines § 2.B). The presumptive guidelines sentence is found in the cell where the individual's

¹ Minnesota Sentencing Guidelines Commission, *2017 Probation Revocations* (Jan. 2019), Appendix 2, available at <http://mn.gov/msgc-stat/documents/reports/2017/2017MSGCReportProbationRevocations.pdf>.

² Ramsey County is located in Minnesota's largest metro area, and includes the city of Saint Paul. Nearby Hennepin County is located in the same metro area, and includes the city of Minneapolis. Together, Saint Paul and Minneapolis are known as the “Twin Cities.”

criminal history score and the severity level of the offense intersect. For cells in the gray-shaded area of the grid, the guidelines recommend a stayed sentence (probation). For cells in the non-shaded area of the grid, the guidelines recommend a prison sentence. The bolded black line on the grid represents the “disposition line,” which indicates the demarcation between probation and prison sentences.

Figure 1. Excerpt from Minnesota Sentencing Guidelines Grid

| SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>Italics</i>) | | Criminal History Score | | | | | | |
|---|---|------------------------|--------------------|--------------------|--------------------|---------------------|---------------------|----------------------|
| | | 0 | 1 | 2 | 3 | 4 | 5 | 6 or more |
| 8 | <i>Agg. Robbery; 1st Degree; Burglary, 1st Degree (w/ Weapon or Assault)</i> | 48 <i>41-57</i> | 58 <i>50-69</i> | 68 <i>58-81</i> | 78 <i>67-93</i> | 88 <i>75-105</i> | 98 <i>84-117</i> | 108 <i>92-129</i> |
| | <i>Felony DWI; Financial Exploitation of a Vulnerable Adult</i> | 36 | 42 | 48 | 54 <i>46-64</i> | 60 <i>51-72</i> | 66 <i>57-79</i> | 72 <i>62-84</i> |

When the guidelines recommend a prison sentence, there is additional information found on the grid. Within the non-shaded cells, the top number in the cell is the recommended length of the prison sentence in months. Additionally, by law, the court can impose a sentence that is up to 15% lower or 20% higher than the recommended sentence (Minn. Stat. § 244.09, subd. 5(2)), and this range is shown in italics. The shaded cells also contain a recommended prison length should the court choose to impose a prison sentence instead of probation. The imposition of probation for felony offenses involves three major decision points by the court: the type of probation sentence to be imposed (either stay of imposition or stay of execution), the conditions of probation, and the length of probation. The court has a great deal of discretion in each of these decisions, and there is no specificity to guide these decisions in the sentencing guidelines.³

When a court sentences a person to probation, the sentence will either be a stay of imposition or a stay of execution. To understand what these terms mean, it is first important to understand that there are two steps in sentencing: the imposition of the sentence and the execution of the sentence. “The imposition of sentence consists of pronouncing the sentence to be served in prison (for example, three years imprisonment). The execution of an imposed sentence consists of transferring the felon to the custody of the Commissioner of Corrections to serve the prison sentence” (Minn. Sentencing Guidelines § 1.B.19). A stay can occur at either of these points. “A ‘stay of imposition’ occurs when the court accepts and records a finding or plea of guilty, but does not impose (or pronounce) a prison sentence...A ‘stay of execution’ occurs when the court accepts and records a finding or plea of guilty, and a prison sentence is pronounced, but is not executed” (Minn. Sentencing Guidelines § 1.B.19(a), (b)). The two different types of probation have differing collateral consequences. A stay of execution always remains a felony on one’s criminal record. But by state law, if a person who has been given a stay of imposition successfully completes probation, the conviction will be deemed a misdemeanor (Minn. Stat. 609.13, subd. 1 (2019)).

³ While this report was in progress, the Minnesota Sentencing Guidelines Commission adopted modifications to the sentencing guidelines that would limit the length of probation to a period of up to five years, subject to departure for substantial and compelling circumstances. They changes are effective August 1, 2020.

The second decision by the court related to probation is the assignment of probation conditions. Regardless of the stay type, the court “may place the defendant on probation with or without supervision and on terms the court prescribes, including intermediate sanctions when practicable” (Minn. Stat. § 609.135, subd. 1 (2018), emphasis added). The “terms” referred to in statute are more commonly referred to as the conditions of probation, which are requirements the individual must fulfill or comply with while on probation. Conditions may include administrative requirements (e.g., maintaining contact with probation officer), monitoring (e.g., random urinalysis testing), treatment (e.g., cognitive behavioral therapy), and/or specific directives (e.g., no alcohol, no contact with the victim). The judge will assign a set of ten standard conditions⁴ and may assign additional conditions depending on the person, the offense, assessment results, probation recommendations, or other factors. It is the responsibility of probation officers to monitor and enforce conditions.

The length of probation (i.e., the period of community supervision) is also determined by the court at sentencing. Unlike the length of the prison term, which is recommended by the guidelines, the length of probation is fairly open-ended, and is guided by statute. State law provides that when the court imposes probation for a felony conviction, the probation term shall be “for not more than four years or the maximum period for which the sentence might have been imposed, whichever is longer” (Minn. Stat. § 609.135, subd. 2(a)). In Minnesota, maximum sentences for felonies range from 5 to 40 years; thus, in some cases, such those involving convictions for first-degree controlled substance offenses, the defendant could be placed on probation for a period of up to 40 years (Minn. Stat. § 152.021 (2018)). In contrast, the probation terms for misdemeanor and gross misdemeanor offenses are narrowly defined (Table 1). Thus, courts are given considerable latitude with regard to length of probation for felony offenses.

Table 1. Statutory Terms of Probation

| Offense Level | Most Offenses | DWI and Domestic Abuse Offenses |
|-------------------|---|---------------------------------|
| Felony | “four years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is greater” | |
| Gross Misdemeanor | 2 years | 6 years |
| Misdemeanor | 1 year | 2 years |

Source: Minn. Stat. § 609.135, subd. 1 (2019).

Probation revocation is one potential consequence flowing from a probation violation. To initiate a probation violation proceeding, the prosecutor or probation officer must submit a written report to the court showing probable cause to believe a probationer violated probation (Minn. R. Crim. P. 27.04, subd. 1), meaning the individual failed to comply with the conditions of probation. A violation can be “technical,” meaning the individual has not complied with his or her probation conditions, but that the conduct itself does not necessarily violate the law (e.g., not showing up for probation appointments, failure to attend court-ordered treatment), or a violation may involve the commission of a new crime. In Minnesota, a violation can be filed up to six months after the end of the probation term (Minn. Stat. Ann. § 609.14, subd. 1(b) (2019)). The revocation hearing must be held within a reasonable time following the initial appearance, but if the probationer is in custody, the hearing must be held within

⁴ The standard conditions of felony probation were set by Judicial Council Policy #522, available at http://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/Policies/500/522-Standard-Conditions-of-Probation.pdf?ext=.pdf.

seven days unless waived by the probationer. If the violation alleges a new crime, the revocation hearing may be postponed pending disposition of the criminal case (Minn. R. Crim. P. 27.04, subd. 2).

The court has several options if a violation is found. The court can impose and execute a jail sentence, continue probation on the terms previously set, continue probation but modify the terms, or revoke probation and execute a prison sentence. Additionally, if the court continues probation, the court can “level up” by imposing a more serious probation sentence (i.e., move from a stay of imposition to a stay of execution). If the court is considering revoking probation, the court must make findings on the three “*Austin* factors,” so named because they were established by the Minnesota Supreme Court in its decision in *State v. Austin*. The court must: (1) specifically identify the condition or conditions violated; (2) find that the violation was intentional or inexcusable; and (3) find that the policies favoring probation no longer outweigh the need for confinement (*Minnesota v. Austin*, 295 N.W.2d 246 (Minn. 1980)). If a violation is not found, the court must dismiss the proceedings and place the individual back on probation under the terms previously ordered (Minn. R. Crim. P. 27.04, subd. 3(2)(a)).

Though sentencing guidelines structure some decision-making regarding sentences for felony convictions, there is more latitude around probation sentences. Therefore, differences in probation sentences across districts in Minnesota could vary for multiple reasons, ranging from the types and volume of crime in each district to local court culture.

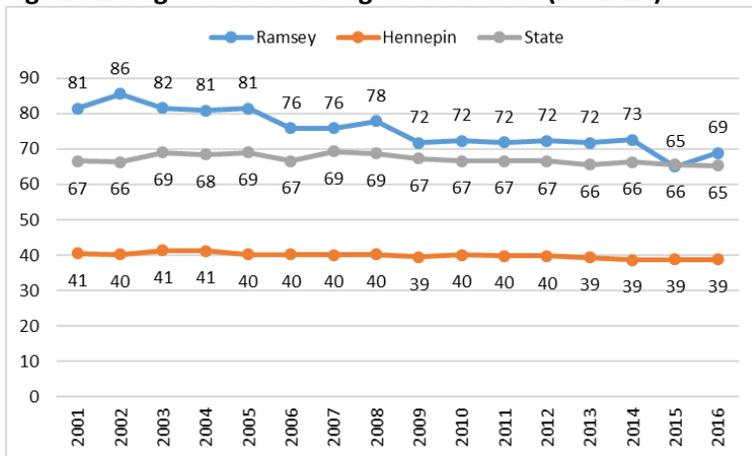
PART TWO: Describing and Identifying Predictors of Probation Length

This section uses data provided by the Minnesota Sentencing Guidelines Commission (MSGC) to: 1) describe average felony probation lengths in Ramsey County, 2) compare average felony probation lengths between Ramsey County and Hennepin County, and 3) determine which factors most influence the probation lengths assigned at sentencing. The data set provided by MSGC comprises all individuals sentenced to probation from 2001 to 2016. The data set contains demographic information about the individuals sentenced (e.g., age, sex, race), information about their sentences (e.g., conviction offense, whether it was a departure, and stay type), and information from the sentencing worksheet relevant to determining presumptive sentences (e.g., criminal history, severity level of the offense).

Using this data, Figure 2 shows the average probation lengths by year for offenses sentenced on the main grid in Ramsey County and Hennepin County, as well as the annual average probation lengths for the state.⁵ The average probation length in Ramsey County has fallen from a high of about 86 months in 2002 to 69 months in 2016. In contrast, the average probation length in Hennepin County has been consistently lower, ranging from just 39 to 41 months over the same period. The state average has been about 67 months over the same time period, and by 2016, the average in Ramsey County was very close to the statewide average.

⁵ Because sex offenses were sentenced on the main grid until 2006 and on the sex offender grid thereafter, sex offenses were completely removed from this analysis.

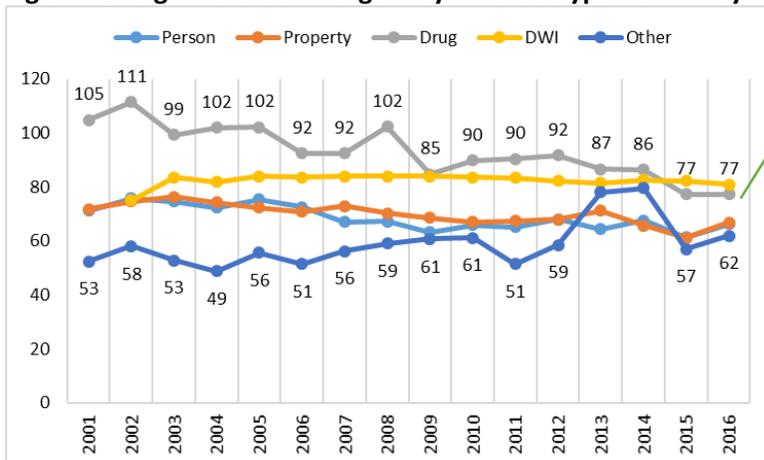
Fig. 2. Average Probation Lengths in Months (2001-16)



Main grid only; sex offenses excluded; n=20,953 for Ramsey, n=31,186 for Hennepin, N=163,185 for state.

There is further variation when probation terms are looked at by other factors. For example, Figures 3 and 4, which show probation lengths by offense type, demonstrate that there is much more variation in probation lengths in Ramsey County than in Hennepin County. In Ramsey County, the longest probation terms are given for drug offenses, though these terms have fallen from being at or near 100 months in the early 2000s to just under 80 months by 2016. Probation lengths for DWI offenses are the next highest, ranging from about 82 to 84 months over the entire period. Person and property offenses, which were very similar to each other over this period, are the next lowest, ranging from about 67 to 75 months. In contrast, in Hennepin County, probation lengths for person, property, drug, and other offenses are tightly packed around an average of 40 months. Only DWI offenses routinely receive longer probation terms in Hennepin County, averaging 60 months.

Fig. 3. Average Probation Lengths by Offense Type in Ramsey County (2001-16)

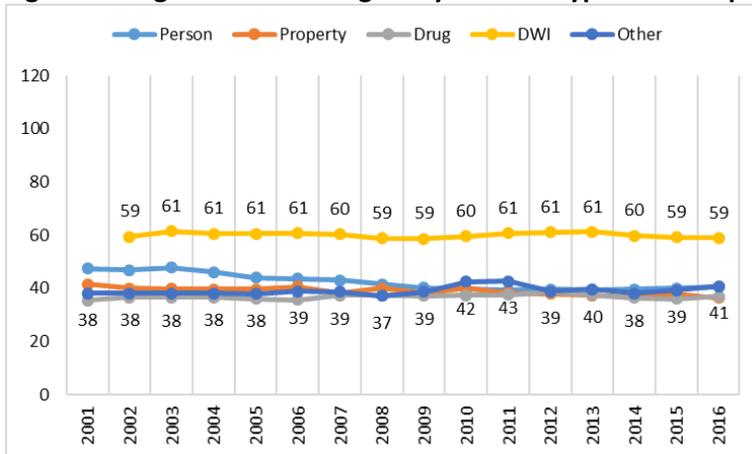


Average lengths shown for person and drug offenses only.

Main grid only; sex offenses excluded; n=20,953.

*Note: Felony DWI was enacted in 2001, so averages appear for 2002 forward.

Fig. 4. Average Probation Lengths by Offense Type in Hennepin County (2001-16)

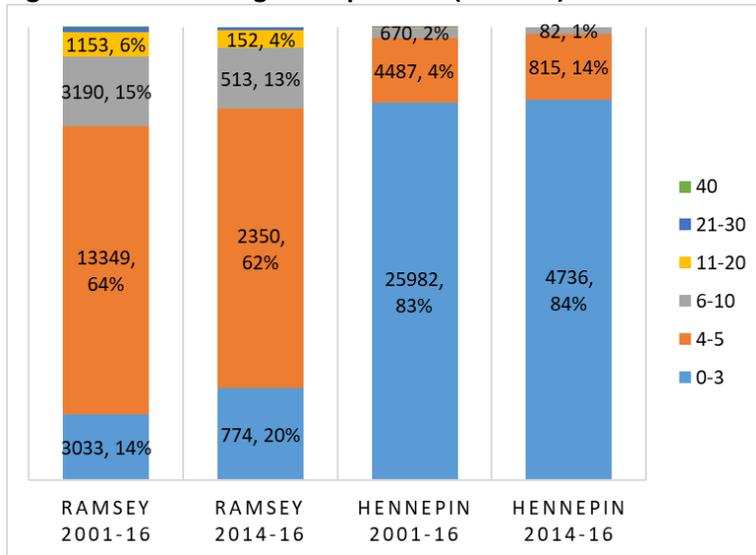


Main grid only; no sex offenses; n=31,186.

*Note: Felony DWI was enacted in 2001, so averages appear for 2002 forward.

As the interviews in Part Five will show, those working in the Ramsey County Attorney’s Office seemed to differentiate between two major categories of cases: those that are sentenced to five years or less and cases that are sentenced to longer terms. Therefore, the data was analyzed to show the proportion of cases sentenced within these ranges. Figure 5 shows data for the group as a whole as well as for the most recent three years of data to account for the more recent drop in average probation terms. Comparable figures for Hennepin County are shown as well. In Ramsey County, the majority of individuals sentenced to felony probation are sentenced to terms of five years or less. Over the whole period, this accounted for 78% of cases; when limited to the period 2014-16, a greater proportion of cases (82%) was sentenced to five years or less. The next largest group was sentenced to probation terms of six to ten years (though most of these cases were sentenced to ten years), accounting for 15% of cases in 2001-16 and 13% of cases in 2014-16. Another 6% were sentenced to 11-20 years in 2001-16 and 4% in 2014-16. A few additional cases were sentenced to terms ranging up to 40 years. In comparison, nearly all of the felony probation cases in Hennepin were sentenced to terms of five years or less, with the majority being sentenced to terms of three years or less in both periods. Thus, probation terms in Ramsey County are higher on average than probation terms in Hennepin County both because Ramsey has a greater proportion of cases falling into the four- to five-year range, and because Ramsey has more cases that are given probation terms greater than six years.

Fig. 5. Probation Length Frequencies (in Years)



Main grid only; sex offenses excluded; Ramsey n=20,954 and 3,813; Hennepin n=31,188 and 5,633.

* Note: Some categories are too small to appear clearly on the graph. For Ramsey County, over 2001-16, 220 (1%) were sentenced to 21-30 years, and 9 (0.04%) were sentenced to 40 years; over 2014-16, 24 (1%) were sentenced to 21-30 years, but no individuals were sentenced to 40 years. For Hennepin County, over 2001-16, 44 (0.14%) were sentenced to 11-20 years, 5 (0.02%) were sentenced to 21-30 years, and no individuals were sentenced to 40 years; over 2014-16, no individuals were sentenced to more than 10 years.

We next took a closer look at the offenses that were sentenced to probation terms of longer than five years to gain a sense of the kind of cases garnering those sentences. From 2001-16, in Ramsey County 4,572 cases were given probation terms longer than five years. Of these, 2,941 (64%) were presumptive stayed sentences under the sentencing guidelines; the guidelines called for presumptive prison for the remaining 1,631 (36%), so these cases received mitigated dispositional departures. Table 2 shows the average probation terms for offenses in which there were 100 or more cases during this period. Consistent with the numbers in Figure 3, the longest average probation terms are for drug offenses, with first-degree offenses averaging 268 months and fifth-degree offenses averaging 120 months. Aggravated robbery and first-degree burglary garner the next longest average probation terms at 186 and 184 months, respectively. Multiple other theft and property crimes round out the list. The average probation term seems to track with the statutory maximum sentence when the statutory maximum sentence is 10 years or less. When the statutory maximum is higher, the average probation term for the offense is also higher, but does not come as close to the statutory maximum sentence. From 2001-16, the offenses with the greatest volume were third-degree controlled substance and felony DWI. Looking at these same offenses over the more recent 2014-16 period, we can see that the average probation terms for all of the offenses except DWI have been reduced. One new offense—identity theft—shows up as a high volume offense in the 2014-16 period, and carries an average probation term of 157 months.

Table 2. Average Probation Terms for Offenses Sentenced in Ramsey County to Probation Terms of More than Five Years (2001-16)

| Offense | 2001-16 | | | | | 2014-16 | |
|--|--|------------------------------|--|--------------------------|-------------------------------|--|------------------------------|
| | Number of Cases | Average Probation Term (mos) | Severity Level | Presumptive Commit (Y/N) | Statutory Maximum | Number of Cases | Average Probation Term (mos) |
| Assault 2 | 328 | 88 | 6 | Yes | 7 or 10 years | 53 | 87 |
| Simple Robbery | 200 | 119 | 5 | No (182) Yes (18) | 10 years | 44 | 113 |
| Aggravated Robbery 1 | 147 | 186 | 8 (4 cases at SL 7) | Yes | 20 years | 48 | 168 |
| Theft | 271 | 120 | 3 (2 cases at SL 2, 4 cases at SL 4) | No (256) Yes (15) | Multiple, 10 years at SL 3 | 20 | 113 |
| Burglary 1 | 132 | 184 | 6 | No (113) Yes (19) | 20 years | 30 | 156 |
| Burglary 2 | 280 | 119 | 5 | No (260) Yes (20) | 10 years | 27 | 113 |
| Check Forgery | 133 | 119 | 3 | No (130) Yes (3) | 10 years | 7 | 115 |
| Wrongfully Obtaining Assistance / Food Stamp Fraud | 301 | 120 | 3 (1 case at SL2) | No (295) Yes (6) | 10 years | Not a significant number of cases for this period. | |
| Identity Theft | Not a significant number of cases for this period. | | | | | 42 | 157 |
| Controlled Substance 1 | 240 | 268 | 9 (36 cases at SL 8) | Yes | 30 or 40 years | 62 | 221 |
| Controlled Substance 2 | 214 | 229 | 8 (43 cases at SL 7) | Yes | 25 or 40 years | 42 | 163 |
| Controlled Substance 3 | 682 | 202 | 6 | No (528) Yes (154) | 20 years | 55 | 150 |
| Controlled Substance 5 | 112 | 120 | 2 | No (108) Yes (4) | 10 years* | 22 | 117 |
| Felon w/Gun | 166 | 158 | 6 | Yes | 15 years | 59 | 145 |
| Felony DWI | 567 | 84 | 7 | No (474) Yes (83) | 7 years | 81 | 84 |

Limited to Offenses with >100 Cases from 2001-16; main Grid only, no sex offenses.

* The statutory maximum for fifth-degree controlled substance offenses was lowered to 5 years in 2016.

In Hennepin County, from 2001-16, 5,206 cases were given probation terms longer than three years. Of these, the guidelines called for a stay in 2,789 (54%) and presumptive prison in 2,417 (46%) cases. The longest average probation term was 101 months for theft in an amount over \$35,000 (Table 3). The next longest probation terms were for first-degree controlled substance and theft, at 73 and 70 months, respectively. The remaining offenses received probation terms just slightly longer than five years. Thus, unlike Ramsey County, in which the probation sentences seem to track with the statutory maximum

sentences for these crimes, in Hennepin, offenses that receive probation terms greater than three years tend to default to probation terms of about five years.

Table 3. Average Probation Terms for Offenses Sentenced in Hennepin County to Probation Terms of More than Three Years (2001-16)

| Offense | 2001-16 | | | | | 2014-16 | |
|------------------------|--|------------------------------|---|--------------------------|-------------------------------|--|------------------------------|
| | Number of Cases | Average Probation Term (mos) | Severity Level | Presumptive Commit (Y/N) | Statutory Maximum | Number of Cases | Average Probation Term (mos) |
| Assault 2 | 354 | 63 | 6 | Yes | 7 or 10 years | 33 | 64 |
| Assault 3 | 136 | 60 | 4 | No (114) Yes (22) | 5 years | 16 | 59 |
| Domestic Assault | Not a significant number of cases for this period. | | | | | 17 | 55 |
| Simple Robbery | Not a significant number of cases for this period. | | | | | 20 | 56 |
| Aggravated Robbery 1 | 358 | 67 | 8 (33 cases at SL 7) | Yes | 20 years | 83 | 60 |
| Terroristic Threats | 143 | 58 | 4 | No (117) Yes (26) | 5 Years | 20 | 59 |
| Theft | 333 | 70 | 3 (78 cases at SL 2, 2 cases at SL 4) | No (291) Yes (42) | Multiple, 10 years at SL 3 | 22 | 61 |
| Theft over \$35K | 174 | 101 | 6 | No (141) Yes (33) | 20 years | 25 | 75 |
| Burglary 1 | 123 | 64 | 6 | No (83) Yes (40) | 20 years | Not a significant number of cases for this period. | |
| Burglary 2 | 155 | 61 | 5 | No (108) Yes (47) | 10 years | 20 | 65 |
| Controlled Substance 1 | 182 | 73 | 9 (6 cases at SL 8) | Yes | 30 or 40 years | 56 | 66 |
| Controlled Substance 2 | 154 | 62 | 8 (4 cases at SL 7) | Yes | 25 or 40 years | 47 | 61 |
| Controlled Substance 3 | Not a significant number of cases for this period. | | | | | 21 | 60 |
| Controlled Substance 5 | 171 | 62 | 2 | No (105) Yes (66) | 10 years* | 71 | 56 |
| Felon w/Gun | 267 | 65 | 6 | Yes | 15 years | 45 | 64 |
| Felony DWI | 1217 | 62 | 7 | No (1005) Yes (212) | 7 years | 222 | 62 |

Limited to Offenses with >100 Cases from 2001-16; main Grid only, no sex offenses

* The statutory maximum for fifth-degree controlled substance offenses was lowered to 5 years in 2016.

We next explored the degree to which probation length is influenced by various factors. Table 4 provides an overall description of the probation populations in Ramsey County and Hennepin County. From 2001 to 2016, there were 20,954 people sentenced to felony probation in Ramsey County. The

individuals ranged in age from 16 to 88, yielding an average age of 31. The majority of individuals were male (78%), and were either white (39%) or black (46%). The majority of individuals were convicted for a property crime (38%), and the next largest groups were those convicted for person and drug crimes (27% and 26%, respectively). A large majority had a criminal history score of 0 (43%) and were convicted of crimes ranked at severity levels 2 (37%) or 4 (24%). Stays of execution (59%) were more frequent than stays of imposition (41%), and just 12% received a probation sentence as a result of a dispositional departure, which occurs when the sentencing guidelines recommend a prison sentence but the court imposes a probation sentence. The population in Hennepin County was very similar, though a greater proportion of people receiving probation were black (55%) and a larger proportion received a dispositional departure (19%).

In order to examine how sentencing might vary according to these factors, Table 4 also provides the average probation terms associated with each characteristic. In Ramsey County, the overall average length of probation across all of these individuals was 76 months. Average probation terms tended to be slightly longer for women than men (78 vs. 75 months). Individuals who were white and black had similar average probation terms (75 and 76 months, respectively), but individuals who were Hispanic were assigned slightly longer average terms (80 months). When viewed by criminal history score, average probation terms actually decrease as the criminal history score increases, but this is likely due to the placement of the dispositional line on the sentencing grid. Persons with high criminal history scores are only eligible for probation under the guidelines when convicted for offenses with very low severity levels; thus we expect that the probation terms for these individuals would be shorter than probation terms for people who had lower criminal history scores but were convicted of higher severity crimes. Oddly, probation terms experience a noticeable dip at severity level 7. This is likely because for most of the years represented in this sample, DWI was the only offense ranked at severity level 7, and the maximum sentence for a DWI offense is 7 years (84 months), which is lower than the maximum sentence for several offenses ranked at severity level 6.⁶ Finally, the average probation term is much greater when the court pronounces a stay of execution compared to a stay of imposition (80 vs. 69 months), and the average is very high when the probation sentence results from a downward dispositional departure (132 months). In contrast, the factors in Table 4 seem to hardly affect the length of probation in Hennepin County. Probation terms seems to vary slightly by severity level, with cases sentenced at severity levels 1 and 2 receiving 35-month terms, and cases sentenced at severity levels 7 and above receiving 50- to 130-month terms. Cases that receive a stay of execution and that resulted from a dispositional departure also seem to receive slightly longer probation terms. But for the most part, Hennepin probation terms center around 39 to 40 months.

⁶ For example, aggravated robbery, which is ranked at severity level 6, is punishable by up to 15 years.

Table 4. Population Description (2001-16)

| | Ramsey County (n=20,954) | | | Hennepin County (n=31,188) | | |
|--------------------------------|------------------------------------|---------|-------------------------|------------------------------------|---------|-------------------------|
| | Number | Percent | Avg Prob. Length (mos.) | Number | Percent | Avg Prob. Length (mos.) |
| <i>Sex</i> | | | | | | |
| Male | 16,439 | 78% | 75 | 2,5364 | 81% | 40 |
| Female | 4,515 | 22% | 78 | 5,824 | 19% | 41 |
| <i>Race</i> | | | | | | |
| White | 8,286 | 40% | 75 | 11,000 | 35% | 41 |
| Black | 9,586 | 46% | 76 | 17,126 | 55% | 39 |
| Native American | 560 | 3% | 68 | 1,352 | 4% | 39 |
| Hispanic | 1,077 | 5% | 80 | 928 | 3% | 43 |
| Asian | 1,426 | 7% | 74 | 764 | 2% | 43 |
| Other | 19 | <1% | 62 | 18 | <1% | 39 |
| <i>Offense Type</i> | | | | | | |
| Person | 5,618 | 27% | 67 | 7,619 | 24% | 42 |
| Property | 8,042 | 38% | 71 | 11,213 | 36% | 39 |
| Drug | 5,428 | 26% | 95 | 8,802 | 28% | 37 |
| DWI | 588 | 3% | 83 | 1,312 | 4% | 60 |
| Other | 1,278 | 6% | 59 | 2,242 | 7% | 39 |
| <i>Criminal History</i> | | | | | | |
| 0 | 8,881 | 42% | 80 | 12,0001 | 38% | 40 |
| 1 | 4,208 | 20% | 77 | 6,486 | 21% | 41 |
| 2 | 3,365 | 16% | 73 | 4,922 | 16% | 39 |
| 3 | 2,356 | 11% | 68 | 3,484 | 11% | 39 |
| 4 | 1,019 | 5% | 69 | 1,974 | 6% | 39 |
| 5 | 663 | 3% | 68 | 1,170 | 4% | 39 |
| 6 | 462 | 2% | 77 | 1,151 | 4% | 44 |
| <i>Severity Level</i> | | | | | | |
| 1 | 1,324 | 6% | 39 | 2,063 | 7% | 35 |
| 2 | 7,832 | 37% | 59 | 11,437 | 37% | 35 |
| 3 | 2,842 | 14% | 73 | 3,923 | 13% | 40 |
| 4 | 5,013 | 24% | 60 | 5,758 | 18% | 38 |
| 5 | 868 | 4% | 102 | 1,568 | 5% | 42 |
| 6 | 1,711 | 8% | 151 | 3,012 | 10% | 47 |
| 7 | 642 | 3% | 96 | 1,468 | 5% | 60 |
| 8 | 468 | 2% | 202 | 1,472 | 5% | 50 |
| 9 | 245 | 1% | 249 | 460 | 1% | 58 |
| 10 | 0 | 0% | 0 | 4 | <1% | 111 |
| 11 | 1 | <1% | 240 | 5 | <1% | 149 |
| <i>Sentence Type</i> | | | | | | |
| Stay of Execution | 12,284 | 59% | 80 | 17,833 | 57% | 42 |
| Stay of Imposition | 8,669 | 41% | 69 | 13,355 | 43% | 37 |
| <i>Dispositional Departure</i> | 2,500 | 12% | 132 | 5,907 | 19% | 49 |
| <i>Age</i> | Range: 16 to 88 Average Age: 31 | | | Range: 16 to 85 Average Age: 32 | | |

Main grid only, sex offenses excluded.

To test these relationships further, ordinary least squares regression was used to determine which of the factors in Table 4 predict the length of the probation term. Probation length measured in months served as the dependent variable and all of the factors in Table 4 served as the independent variables. The results are presented in Table 5. Within Table 5, the numbers in the column labeled “unstandardized coefficient” tells us the number of months that a particular factor increases or decreases the probation term. Coefficients that are marked with stars indicate that the factor is statistically significant, meaning that the relationship is not by chance and is interpreted as a predictor of probation length. For factors that have multiple categories (e.g., sex is broken down into male and female categories), one category is marked as the reference point against which the number of months assigned to the other categories are judged. For example, in Ramsey County, being male decreases the probation term by just over 8 months relative to the probation term that would be assigned if the person were female, and the influence of this factor on the probation term is statistically significant.

As shown in Table 5, many of the listed factors influence the length of probation. In addition to sex, race – specifically being classified as white or black – can add about 3 months to the probation term, relative to being classified as Asian. Age seems to have no effect on the probation term. Offense type does influence the probation term with person, property, and DWI offenses decreasing the probation term while drug offenses increase the probation term. Here, we see that being convicted of a DWI has a dramatic effect on the probation term, decreasing it by 95 months. This is consistent with the overall dip in probation length at severity level 7 that we saw in the descriptive statistics above. The impact of criminal history is statistically significant, but the effect in months is minimal. Each one-point increase in criminal history decreases the probation term by slightly more than half a month. In contrast, severity level is much more impactful. Each one-level increase in severity results in an additional 24 months being added to the probation term. When the probation sentence type is a stay of execution, the probation term is increased by nearly 5 months on average. But probation terms are hardly affected when probation results from a dispositional departure, and this factor is not statistically significant.

Many of the same factors that influence probation length in Ramsey County also influence it in Hennepin County, though the effects are much smaller, influencing the term by just one to four months in either direction. Being male decreases the probation term by 1.5 months relative to being female. Using people classified as Asian as a reference point, persons classified as all other races receive probation terms that are 1-1/2 to 4 months shorter. In Hennepin, age is a statistically significant factor, but it has minimal effect; for each one-year increase in age, the probation term is increased by .06 months, or an average of 2 days. Offense type also influences the probation term, but in Hennepin County, unlike Ramsey, being convicted of a drug offense decreases the probation term by about 4 months, and being convicted of a DWI offense actually *increases* the probation term by about 9 months on average. The effect of criminal history is minimal and not statistically significant. A stay of execution increases the probation term by just over 2 months. And when the probation sentence results from a dispositional departure, the probation term is increased by about 4-1/2 months on average, and this relationship is statistically significant.

Table 5. OLS Regression Models Predicting Probation Length for Ramsey County and Hennepin County

| | Ramsey County | | Hennepin County | |
|--------------------------------|---|--------------------------|---|--------------------------|
| | Unstandardized Coefficient (Standard Error) | Standardized Coefficient | Unstandardized Coefficient (Standard Error) | Standardized Coefficient |
| <i>Sex</i> | | | | |
| Male | -8.146*** (0.590) | -0.065 | -1.571*** (0.207) | -0.040 |
| Female (Reference) | --- | --- | --- | --- |
| <i>Race</i> | | | | |
| White | 3.134** (0.961) | 0.030 | -1.664** (0.512) | -0.052 |
| Black | 2.898** (0.949) | 0.028 | -3.667*** (0.507) | -0.119 |
| Native American | -2.623 (1.664) | -0.008 | -3.957*** (0.620) | -0.052 |
| Hispanic | 1.945 (1.341) | 0.008 | -2.658*** (0.669) | -0.029 |
| Asian (Reference) | --- | --- | --- | --- |
| Other | -6.104 (7.648) | -0.004 | -2.812 (3.254) | -0.004 |
| <i>Age at Sentencing</i> | 0.000 (0.023) | 0.000 | 0.065*** (0.008) | 0.045 |
| <i>Offense Type</i> | | | | |
| Person | -42.778*** (1.106) | -0.369 | -2.281*** (0.352) | -0.064 |
| Property | -6.199*** (1.035) | -0.059 | -1.339*** (0.328) | -0.042 |
| Drugs | 10.655*** (1.057) | 0.091 | -4.474*** (0.330) | -0.131 |
| DWI | -95.892*** (1.057) | 0.091 | 9.246*** (0.566) | 0.120 |
| Other (Reference) | --- | --- | --- | --- |
| <i>Criminal History</i> | -0.600** (.202) | -.018 | 0.040 (0.065) | 0.004 |
| <i>Severity Level</i> | 24.365*** (.195) | 0.835 | 2.179*** (0.062) | 0.285 |
| <i>Probation Type</i> | | | | |
| Stay of Execution | 4.476*** (.602) | 0.043 | 2.257*** (0.198) | 0.073 |
| Stay of Imposition (Reference) | --- | --- | --- | --- |
| <i>Dispositional Departure</i> | 0.933 (.947) | 0.006 | 4.450*** (0.283) | 0.114 |
| Constant | | 9.059 | | 33.915 |
| Adjusted R ² | | 0.586 | | 0.210 |
| n | | 20,954 | | 31,169 |

*p<.05; **p<.01; ***p<.001

Main grid only, sex offenses excluded.

The explanations above told us how much a particular factor increases or decreases the length of probation. But to understand which factors are the most important in the sentencing decision, we must look at the column labeled “standardized coefficient.” Here, the coefficients have been reformatted so that they are all on the same scale, and this allows us to see the relative importance of each factor in relation to one another. Those coefficients with the largest absolute value are the most impactful. In Ramsey County, the factor with the largest coefficient by far is severity level, with a standardized coefficient of .835. No other factor comes close. Thus, the severity level of the offense is the factor that is most predictive of the sentence length. In contrast, in Hennepin County, multiple factors are arguably important. Like Ramsey County, the highest standardized coefficient for the Hennepin County sample is that for severity level (.285). But there is a secondary group of factors that are somewhat close: being black (-.119), being convicted of a drug (-.131) or DWI (.120) offense, and having a dispositional departure (.114). Thus, the variation in probation terms in Hennepin County may be attributable to multiple factors, whereas the variation in probation terms in Ramsey County is largely attributable to the severity level of the offense.

And indeed, if we look at the number of cases assigned to probation terms that are greater than or less than or equal to five years by severity level, we can see a clear demarcation starting at severity level 5 (Table 6). For severity levels 1 through 4, the majority of cases are given probation terms less than or equal to five years. But at severity level 5, a majority of cases are sentenced to probation terms that are greater than five years. For severity levels 6 and higher, nearly all cases are sentenced to these longer terms. It should be noted that at severity level 3, in earlier years of this sample, cases were split nearly evenly between five year terms and greater than five-year terms (not shown). But starting in about 2010, it appears that this practice changed, resulting in significantly fewer cases at severity level 3 being given probation terms longer than five years.

Table 6. Number of Cases Sentenced by Probation Length and Severity Level in Ramsey County

Main grid only, no sex offenses.

n=20,946 for 2001-16; n=3,813 for 2014-16

| Severity Level | 2001-16 | | 2014-16 | |
|----------------|------------|-----------|------------|-----------|
| | <= 5 Years | > 5 Years | <= 5 Years | > 5 Years |
| 1 | 1315 | 9 | 210 | 1 |
| 2 | 7691 | 141 | 1116 | 24 |
| 3 | 1975 | 867 | 418 | 46 |
| 4 | 4833 | 180 | 1234 | 14 |
| 5 | 273 | 595 | 68 | 92 |
| 6 | 247 | 1464 | 62 | 231 |
| 7 | 23 | 619 | 8 | 83 |
| 8 | 19 | 449 | 7 | 128 |
| 9 | 5 | 240 | 1 | 70 |
| 11 | 0 | 1 | 0 | 0 |

Finally, returning to the OLS regression results, it is important to point out the R² values. The R² value is a measure of how much of the variation in the outcome variable – here, the length of probation – is explained by the model. In other words, how well do the factors identified above explain the range of probation sentences we see in each county? The R² for Ramsey County is .586, indicating that about 60% of the variation in probation sentences is explained by the combination of these factors. In Hennepin County, however, the R² is .210, indicating that only about 20% of the variation in probation sentences is

explained by these factors. That means that probation terms in Hennepin are largely explained by factors outside of our model, such as local policy or practice. In other words, although many of the same factors appear to be significant in both models, this overall measure indicates that probation terms are, on the whole, driven by very different considerations in Ramsey County than Hennepin County.

PART THREE: Examining the Relationship between Probation Sentence Length and Recidivism

This section provides an analysis of the relationship between probation sentence length and re-offending across Minnesota using data from the MSGC. Looking at two cohorts – offenders sentenced to probation in 2003 and in 2012 – we examine whether the length of the sentenced supervision term is associated with or predicts the likelihood of re-offending with a felony offense. The 2003 sentencing cohort provides the ability to view offending patterns over a long-term period, while the 2012 cohort provides a snapshot of more recent sentencing practices and recidivism outcomes. Recidivism outcomes are compared for both sentencing cohorts in the two years immediately after the start of the supervision term, and, additionally, up to 13 years post-release for the 2003 cohort. A two-year recidivism period was chosen in order to equalize time at risk and in order to account for everyone sentenced and release from jail in the 2012 cohort before the end of the study follow up period. Additionally, after examining recidivism patterns in the data, the first two years of release was shown to be the highest risk period for these offenders and therefore a two-year follow-up period is adequate in understanding risk.

A. Sentencing Samples

The study focuses on two samples: all felony offenders sentenced to probation in Minnesota in 2003 and released from jail in 2003-2004;⁷ and all felony offenders sentenced to probation in Minnesota in 2012 and released from jail in 2012-2013.⁸ For both groups, recidivism is operationalized as a felony reconviction (using date of offense) within the follow-up period. In total, 10,129 offenders sentenced in 2003 were followed up to 13 years post release (up to December 31, 2015). We examine recidivism within 2 years and within 13 years following release from jail, or from the date of sentence for offenders without a conditional jail sentence. The 2012 sample includes 9,953, offenders who were followed for 2 years post release.

B. Average Probation Length and Recidivism

The mean probation term length in Minnesota in 2003 was almost 6 years (71 months) and ranged from 1 month to 480 months. Overall, 16% of offenders were reconvicted with a new felony within 2 years and 40% recidivated at some point before 2016. Ramsey County had substantially longer average probation terms than Hennepin County (7 years vs 3.5 years) and had a slightly lower rate of 2-year recidivism (17% vs 18%), however the difference is not statistically significant (meaning the small differences in the rates of recidivism is likely due to chance alone). Similarly, the difference in the long-term⁹ rate of recidivism between Ramsey and Hennepin counties (43% vs 44%) is also small and not statistically significant.

⁷ Excludes a small number of individuals (31) who were sentenced to probation with no time on supervision.

⁸ Excludes a small number of individual (91) who were sentenced to probation with no time on supervision.

⁹ Long-term follow-up period is 12 or 13 years depending on whether the individual was release from jail in 2003 or 2004.

Table 7. Comparison of Recidivism Rates for People Sentenced to Felony Probation in 2003

| | Avg. Probation Term | 2-year Recidivism Rate | 12- to 13-year Recidivism Rate |
|---------------------------|--|------------------------|--------------------------------|
| Ramsey (n=1,306) | 7 years (range from 1 month – 480 months) | 17% | 43% |
| Hennepin (n=2,119) | 3.5 years (range from 3 months – 365 months) | 18% | 44% |

The mean probation length sentence in Minnesota in 2012 was 5.5 years (66 months) and ranged from 1 day to 480 months. Overall, 18% of offenders were reconvicted with a new felony within 2 years of release. Ramsey County had longer average probation terms than Hennepin County (6 years vs 3 years) and had a slightly higher rate of 2-year recidivism (23% vs 20%).¹⁰ It appears that the average Minnesota probation term has gone down slightly in 2012 compared to 2003 (5.5 years vs 6 years), however the average 2-year recidivism rate has increased in that time (18% vs 16%). Ramsey County’s average probation length has also gone down by 1 year, while Hennepin County’s average probation length has gone down by 1.5 years. While in 2003, there was no substantive difference in the rate of recidivism between the two counties, in 2012 Ramsey County shows a 3% higher rate of reoffending than Hennepin County.

Table 8. Comparison of Recidivism Rates for People Sentenced to Felony Probation in 2012

| | Avg. Probation Term | 2-year Recidivism Rate |
|---------------------------|---|------------------------|
| Ramsey (n=1,248) | 6 years (range from 1 day – 360 months) | 23% |
| Hennepin (n=2,119) | 2 years (range from 1 day – 360 months) | 20% |

When viewed by judicial district, we find substantial variation in the length of probation sentences and the rates of recidivism between judicial districts in both the 2003 and 2012 cohorts. In 2003, districts ranged from an average of 38 months (District 6) to an average of 94 months (District 7) in their probation terms, with District 6 having the highest rate of 2-year recidivism (20%) and Districts 5 and 8 having the lowest at 10%. In 2012, the average probation term varied from an average of 38 months (District 6) to an average of 83 months (District 7). District 2 had the highest rate of 2-year recidivism (23%) and District 5 had the lowest (14%). Table 9 shows the 2003 and 2012 average probation lengths and felony recidivism rates by judicial district.

¹⁰ $p > .03$

Table 9. Mean Probation Length and Recidivism Rates by District

| District | 2003 Sentencing Cohort | | | 2012 Sentencing Cohort | |
|--------------------------|--------------------------------|-------------------------------|-----------------------------------|--------------------------------|-------------------------------|
| | Mean Probation Length (Months) | 2-Year Felony Recidivism Rate | 12-13 Year Felony Recidivism Rate | Mean Probation Length (Months) | 2-Year Felony Recidivism Rate |
| 1 | 61 | 15% | 35% | 59 | 19% |
| 2 | 83 | 17% | 43% | 70 | 23% |
| 3 | 90 | 13% | 36% | 79 | 15% |
| 4 | 43 | 18% | 44% | 39 | 20% |
| 5 | 73 | 10% | 34% | 79 | 14% |
| 6 | 38 | 20% | 47% | 38 | 20% |
| 7 | 94 | 15% | 37% | 83 | 17% |
| 8 | 75 | 10% | 30% | 76 | 17% |
| 9 | 83 | 17% | 42% | 81 | 18% |
| 10 | 91 | 17% | 38% | 79 | 16% |
| Statewide Average | 71 | 16% | 40% | 66 | 18% |

C. Modeling the Effect of Probation Length on Short and Long-Term Recidivism in 2003

In this section, we examine the association of probation lengths on short- and long-term recidivism. Using logistic regression, the outcome variable is recidivism, and the primary variable of interest is probation length. The regression models control for many of the same factors analyzed in Section Two: demographics (e.g., age, sex, race), factors relating to the sentence (e.g., conviction offense, whether it was a departure, and stay type), factors related to the seriousness of the offense (e.g., criminal history, severity level of the offense). Recidivism outcomes are examined across four models: two-year recidivism for those sentenced in 2003, 12 to 13 year recidivism for those sentenced in 2003, two-year recidivism for those sentenced on the main grid in 2012, and two-year recidivism for those sentenced on the sex offender grid in 2012. The results are in Table 10. For each variable, odds that are greater than one represent increased odds of recidivism (e.g., 1.2 means the odds of recidivism are 20% greater). Odds that are less than one represent decreased odds of probation revocation (e.g., .80 means the odds of recidivism are 20% less likely).

Across Minnesota, and across both the 2003 and 2012 cohorts, the relationship between the length of the probation term and recidivism is inverse, and substantively fairly weak. Controlling for a number of demographic factors (age, gender, race, etc.) and case characteristics (severity level, criminal history score, district, etc.) the odds of 2-year recidivism decrease by 2% for each additional year of supervision for the 2003 cohort (Model 1). Looking beyond the immediate two years, the effect of probation length is even weaker, with each additional year of supervision decreasing the odds of recidivism by 1% over the full study period (12-13 years) (Model 2). This means, the length of supervision has a slightly greater effect on the likelihood of recidivism in the first two years post release compared to over the long-term period. Substantively, this amounts to a very small decrease in both short and long-term recidivism due to sentence length alone. For example, if you took two groups of 100 similarly situated offenders, everyone in Group A would have to receive an extra 4 years of probation in order to see 1 fewer person recidivate than Group B.

In 2012, the relationship between length of probation and 2-year recidivism is not statistically significant for offenders sentenced on the standard grid (n= 9,376) (Model 3), but shows an inverse relationship for offenders sentenced on the sex offender grid (n=577) (Model 4).¹¹ Controlling for a number of demographic factors (age, gender, race, etc.) and case characteristics (severity level, criminal history score, district, etc.) the odds of 2-year recidivism remain about the same for offenders on the standard grid, regardless of the number of years an offender is sentenced to probation. However, the odds of 2-year recidivism go down by 7% for each additional year of probation for individuals sentenced on the sex offender grid.

Across the four models, we also see a stronger relationship between demographics and case characteristics with recidivism than between sentence length and recidivism. Offenders who are male, non-white, and younger show higher rates of recidivism in each model.¹² For example, men have 31%-51% higher odds of recidivating than women, while offenders who are white have 15%-32% lower odds of recidivating than non-white offenders. Additionally, for each additional year of age the odds of recidivism decrease by 2-4%. Case level characteristics also has a moderate association with the odds of re-offending. Having a mitigated dispositional departure is associated with a 27%-107% reduction in the odds of recidivating, while receiving a stay of execution is associated with a 21%-31% increase in odds for the 2003 cohort only (compared to not receiving those things). Receiving a conditional jail term is associated with a 28%-40% increase in the odds of recidivism for the 2003 cohort as well. Criminal history is strongly associated with the likelihood of recidivism, with each additional criminal history point increasing the odds of recidivism by 18%-35% across all four models. In the 2003 cohort, property offenders are more likely to recidivate than person and "other"¹³ types of offenders, but less likely than drug offenders. However, in 2012, person offenders are more likely to recidivate than property offenders. In the 2003 cohort, offense severity does not have a relationship with recidivism, in that offenders sentenced under any offense severity level have about the same likelihood of re-offending (controlling for other relevant characteristics). However, in the 2012 cohort the odds of recidivating decrease by about 7% for each increase in the offense severity level.¹⁴

The models also show some differences in the odds of recidivism for individuals in District 2 (Ramsey) compared to other districts when controlling for other factors. The odds of recidivism in District 2 are higher than in some districts and lower than others. But almost none of these differences are statistically significant. Thus, geographic location is not a strong predictor of recidivism.

¹¹ Because severity level is a control variable in our analysis, individuals scored under two different severity structures must analyzed separately.

¹² The effect of gender and race is not statistically significant for Model 4 (2012 Sex Offense Grid sample), most likely due to the low number of women and minorities in the sample.

¹³ This is a combination of offenses that are not easily categorized under property, drug, and person offenses (DWI, failure to register, conspiracy, etc.). For the 2012 cohort, failure to register was sentenced under the sex offender grid.

¹⁴ We were not able to analyze the effect of offense severity on individuals sentenced on the sex offense grid because of multi-collinearity between the sentence length variable and the offense severity variable.

Table 10. Logistic Regression of Probation Length and Recidivism for 2003 and 2012 Cohorts

| | Model 1 2003 Cohort 2-year Recidivism | Model 2 2003 Cohort Long-term Recidivism | Model 3 2012 Cohort 2-year Recidivism Standard Grid | Model 4 2012 Cohort 2-year Recidivism Sex Offender Grid |
|--|--|---|--|--|
| <i>Probation Length (in years)</i> | .978 (.009)* | .985 (.006)* | 1.01 (.010) | .923 (.032)* |
| <i>Dispositional Departure</i> | .646 (.068)*** | .729 (.056)*** | .653 (.068)*** | 2.075 (.714)* |
| <i>Probation Type</i> | | | | |
| Stay of Execution | 1.205 (.084)** | 1.308 (.069)*** | 1.09 (.071) | .817 (.269) |
| Stay of Imposition (Reference) | --- | --- | --- | --- |
| <i>Criminal History</i> | 1.24 (.028)*** | 1.345 (.025)*** | 1.309 (.028)*** | 1.180 (.098)* |
| <i>Sex</i> | | | | |
| Male | 1.314 (.101)*** | 1.440 (.082)*** | 1.505 (.117)*** | .396 (.234) |
| Female (Reference) | --- | --- | --- | --- |
| <i>Race</i> | | | | |
| White | .804 (.049)*** | .757 (.036)*** | .849 (.051)** | .680 (.197) |
| Nonwhite (Reference) | --- | --- | --- | --- |
| <i>Age at Release from Incarceration</i> | .982 (.003)*** | .967 (.002)*** | .962 (.003)*** | .963 (.014)** |
| <i>Severity Level</i> | .985 (.069) | 1.013 (.015) | .930 (.022)** | NA |
| <i>Offense Type</i> | | | | NA |
| Person | .802 (.069)* | .846 (.055)** | 1.197 (.086)* | |
| Property (Reference) | --- | --- | --- | |
| Drug | 1.201 (.083)** | 1.255 (.070)*** | .898 (.068) | |
| Other | .749 (.069)** | .936 (.065) | .688 (.073)*** | |
| <i>Jail Incarceration</i> | 1.395 (.130)*** | 1.280 (.087)*** | 1.192 (.109) | .925 (.339) |
| <i>Judicial District</i> | | | | |
| First | 1.06 (.119) | .882 (.076) | .883 (.094) | .729 (.415) |
| Second (Reference) | --- | --- | --- | --- |
| Third | .923 (.122) | .930 (.091) | .678 (.086)** | 1.195 (.705) |
| Fourth | 1.024 (.102) | .950 (.074) | .901 (.089) | .673 (.341) |
| Fifth | .682 (.122)* | .869 (.105) | .566 (.087)*** | 2.194 (1.221) |
| Sixth | 1.298 (.171)* | 1.29 (.136)* | .919 (.118) | .531 (.371) |
| Seventh | .999 (.119) | .904 (.083) | .780 (.091)* | .660 (.427) |
| Eighth | .641 (.151) | .676 (.108)* | .761 (.142) | .774 (.696) |
| Ninth | 1.523 (.146) | 1.106 (.109) | .836 (.100) | 1.033 (.673) |
| Tenth | 1.179 (.128) | .993 (.085) | .722 (.078)** | .574 (.329) |
| Constant | 1.000 | .913 | .541 | 2.140 |
| N | 10,129 | 10,129 | 9,376 | 577 |
| Log Likelihood | -4278.6231 | -6320.3031 | -4232.3908 | -204.32444 |
| Pseudo R ² | .0429 | .0707 | .0619 | .1132 |

*p<.05; **p<.01; ***p<.001

D. Long-Term Patterns of Recidivism

Graph 1 shows the hazard of recidivating over the entire study period focusing on individuals sentenced in 2003. As these individuals begin their supervision, their risk of recidivism increases until about one and a half years post release and then decreases every subsequent year. After year 6, the risk of recidivism continues to decrease but much slower than during the first 6 years of the study.

Graph 1. Cox Graph of Recidivism Over the Study Period for 2003 Cohort (N=10,129)

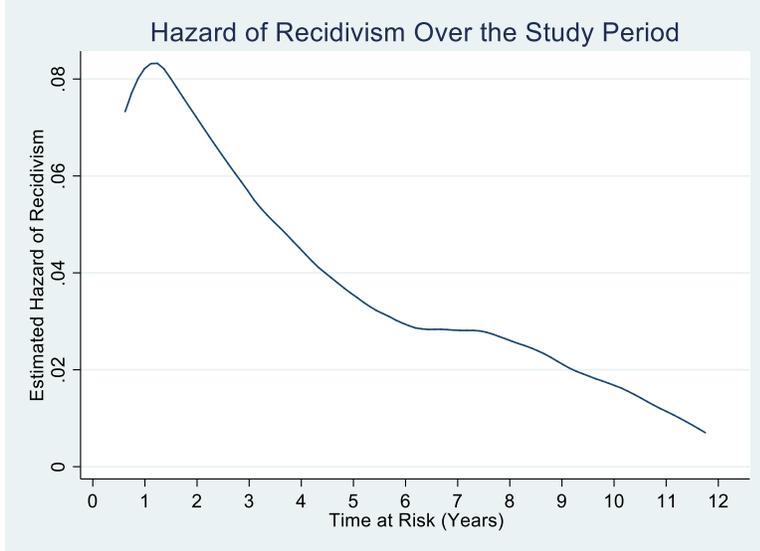
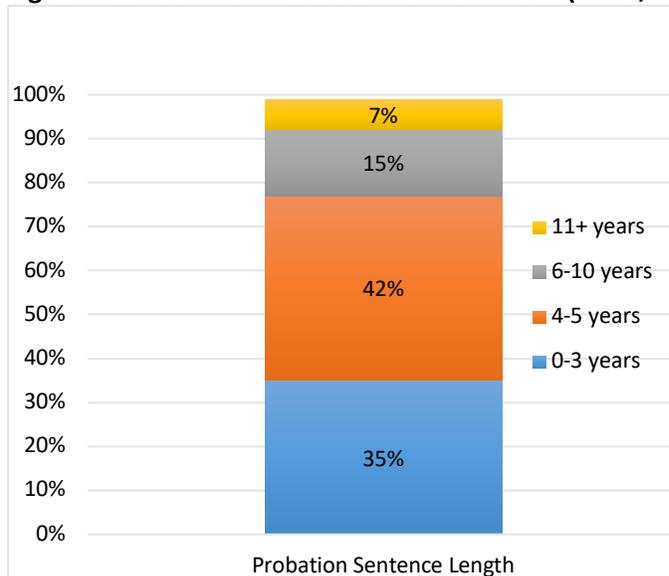


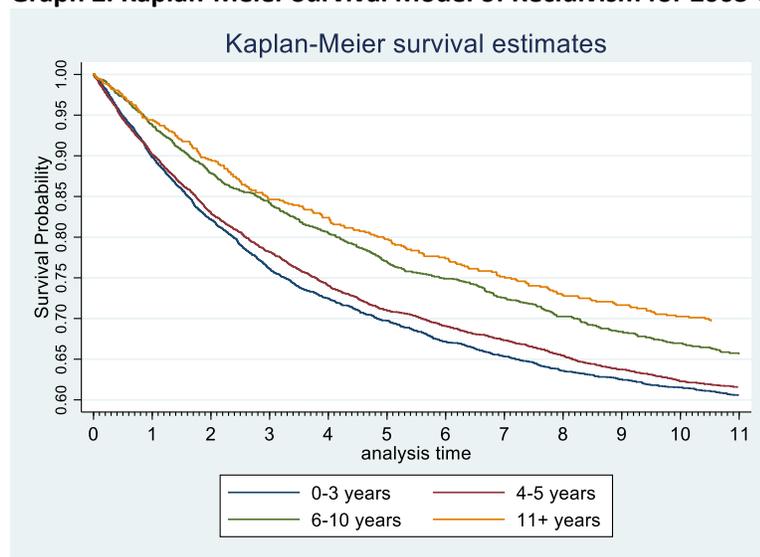
Figure 6 shows the breakdown of probation lengths in the 2003 sample. The most common probation term is 5 years. A full 41% of the sample received a 5-year probation term, and an additional 1% received a 4-year probation term. A full two-thirds of the sample received a probation term of 5 years or less.

Fig. 6. Breakdown of Probation Terms in 2003 (N=10,129)



Graph 2 shows the time to recidivism for four different groups of offenders over the study period: individuals receiving probation terms of 0-3, 4-5, 6-10, and 11 years or longer in 2003. This analysis was conducted to identify whether different probation lengths were associated with different times to failure (i.e., was a certain sentence length of probation associated with recidivating sooner). Individuals who received 0-3 and 4-5-year probation terms show similar, and not statistically significant, probabilities of survival (i.e., not-offending) over the study period. These two groups have a distinctly steeper downward curve than offenders who were sentenced to 6-10 and 11+ years of probation, meaning that their probability of staying in the study (i.e., not recidivating) decreases faster than individuals given longer probation terms. The difference in the survival probability between the 6-10 years and 11+ years groups is also not statistically significant. While all four groups experience higher rates of recidivism at the beginning of the study period, individuals sentenced to longer probation periods experience slightly longer time to recidivism than individuals sentenced to shorter probation terms. For example, at year 5, individuals sentenced to 5 or fewer years of probation have about a 70% chance of staying in the study (i.e., not-offending), while individuals sentenced to 6 years or longer have approximately an 80% chance.

Graph 2. Kaplan-Meier Survival Model of Recidivism for 2003 Cohort (N=10,129)



In summary, an analysis of two sentencing cohorts using a 2-year and a 13-year period of follow up showed that the relationship between probation sentence length and recidivism is negative, but weak. Controlling for specific demographics and case characteristics, as the length of the supervision sentence increases the likelihood of re-offending slightly decreases over the short and long-term follow-up periods. The relationship between probation sentence length and recidivism appears to be slightly stronger during the first two years of release, compared to the longer follow up period, as well as for 2012 offenders sentenced on the sex offender grid. This is likely because those receiving shorter probation terms are those who have been convicted for lower-level person and property crimes, which tend to have higher recidivism rates, whereas those receiving longer probation terms are those who have been convicted of more serious crimes, which in turn tend to have lower recidivism rates. Substantively, the relationship between probation length and recidivism is weak, requiring 4-5 years of additional probation in order to see even a 1% reduction in the likelihood of recidivism.

It is important to note that this analysis is not able to determine causality, meaning a negative relationship between sentence length and recidivism does not mean that additional years of supervision cause offenders to decrease criminal offending, or that sentencing offenders to longer probation terms would reduce re-offending. However, it does show that offenders who receive longer probation terms are slightly less likely to reoffend. This could be due to a number of reasons, such as differences in the types of offenders who most often receive shorter probation terms (i.e., higher risk offenders), the effect of increased surveillance on offending behavior, or the effect of services offered through probation (e.g., substance abuse treatment). It is also unclear why probation sentence length has a greater effect on recidivism for sex offenders, compared to offenders sentenced on the standard grid, but it's possible that the terms of this group's supervision differ in quality from probation as usual. Further research is needed to disentangle the mechanisms behind these relationships.

The analysis also shows that compared to probation sentence length, the relationship between recidivism and offender and case characteristics is considerably stronger. All the demographic control variables and many of the case level characteristics showed both a statistically significant and substantively meaningful relationship with recidivism. This suggests that efforts at reducing recidivism could be more effective by focusing on higher risk offenders, rather than on probation sentence length. Similarly, variations in the likelihood of recidivism remained between districts after controlling out individual case and offenders characteristics, suggesting that a focus on local services and criminal justices practices could also result in substantive reductions in re-offending.

To summarize, though the average length of probation is substantially higher in Ramsey County than Hennepin County, the recidivism rates are relatively similar. Across the state, the reductions in recidivism achieved from additional months on probation are somewhat minor. The most drastic reduction in recidivism occurs during the first few years of supervision. This means that if people are going to fail, most likely it will be within their first few years. But it also means that extending supervision terms beyond those few years are likely not obtaining great enough reductions in recidivism given the costs of supervision and the possibility that if someone receives too much supervision, in fact, they might be more likely to recidivate.¹⁵

PART FOUR: Describing Probation Revocations

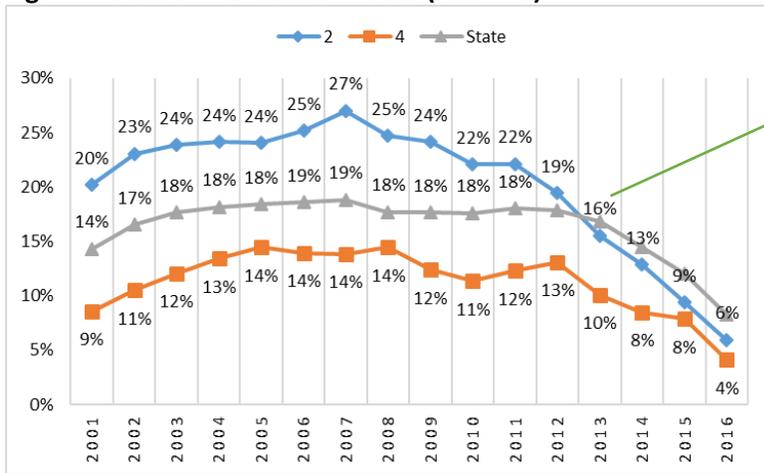
This section of the report examines probation revocation rates in the Second (Ramsey County) and Fourth (Hennepin County) Judicial Districts using data provided by (MSGC). The data include individuals sentenced to probation from 2001-16 and captures revocations through 2017. These revocations were for violations of the conditions of probation. Such violations may include the commission of new misdemeanor or gross misdemeanor offenses, but do not include commission of new felony offenses. Those are captured in the analysis in Part Three. Revocations are dependent to some extent on the supervision practices of probation since probation officers are responsible for enforcing conditions and reporting them to the court. Related, revocation rates are also dependent on the types of conditions assigned by judges and the judicial discretion in responding with a revocation to violations. Therefore, comparing revocations by judicial district or county is not without limitations since revocation rates are influenced by factors other than probationers' noncompliance or behaviors.

¹⁵ Research demonstrates that over-supervision can increase re-offending for those who score low on risk assessment instruments. Lowenkamp, C. T. and Latessa, E. J. (2004). Understanding the risk principle: How and why correctional interventions can harm low risk offenders. *Topics in Community Corrections*, 3-8.

A. Probation Revocation Rates

Figure 7 compares the probation revocation rates for the Second (Ramsey County) and Fourth (Hennepin County) Judicial Districts against the rate for the state as a whole. The probation revocation rate for the state is relatively flat from 2002 to 2013, but the rates for individual districts are more dynamic. (Note that the rate drops off starting in 2013, but this is because not enough time has passed yet to see the true revocation picture for each annual cohort.) The rate for the Second District peaked at a high of 27% in 2007, but has been decreasing since. The revocation rate for the Fourth District has been consistently lower over the same period, ranging from 9 to 14%.

Fig. 7. Probation Revocation Rates (2001-16)



Where the state and second district lines overlap (2012-16), only the second district numbers are shown.

Note: Rates from 2013-16 are artificially low because not enough time has passed to see the true picture for each annual cohort.

B. Probation Revocations by Offense Type

As shown in Figure 8, the majority of probation revocations in the Second and Fourth Judicial Districts from 2001-16 have been for person, property, and drug offenses. The Second District has a much higher revocation rate for property offenses whereas the Fourth District has a much higher revocation rate for person offenses. Table 11 shows the offenses with the highest number of probation revocations within each offense type. For person offenses, the most frequent offenses were nearly identical with the exception of domestic assault by strangulation (frequent in the Second but not the Fourth District) and first-degree aggravated robbery (frequent in the Fourth but not Second District). In both districts, terroristic threats and violations of restraining orders had the highest revocation frequencies. For property offenses, the Second District had more frequent revocations across a broader category of offenses than the Fourth District. Interestingly, there were nearly 200 revocations for check forgery (under \$5,000) in the Second District, compared to just 53 revocations in the Fourth District. Revocations for fifth degree drug offenses outpaced the revocation rate for every other drug offense with 825 individuals revoked for this offense in the Second District, and 735 individuals revoked in the Fourth District.

Fig. 8. Probation Revocations by Offense Type (2001-16)

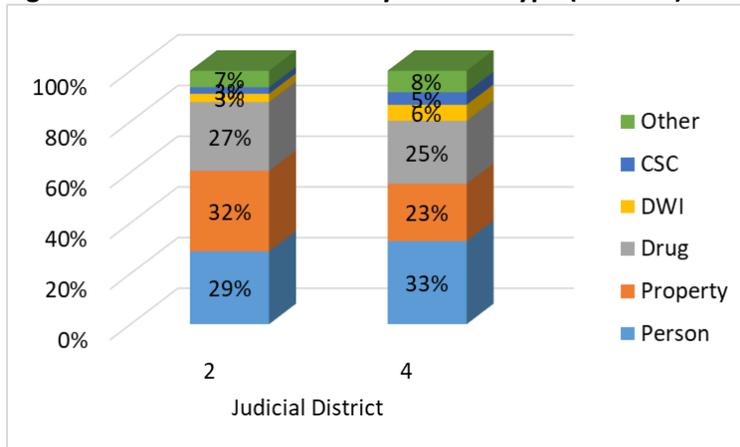


Table 11. Offenses with Highest Revocation Frequencies by Offense Type (2001-16)

| Offense | | Second | Fourth |
|----------|---|--------|--------|
| Person | Second-degree assault | 99 | 123 |
| | Third-degree assault | 103 | 105 |
| | Domestic assault | 155 | 130 |
| | Domestic assault by strangulation | 108 | --- |
| | First-degree aggravated robbery | --- | 137 |
| | Terroristic threats | 255 | 170 |
| | Violation of a restraining order | 225 | 152 |
| Property | Theft | 239 | 139 |
| | Motor vehicle use | 229 | 84 |
| | First-degree burglary | --- | 82 |
| | Second-degree burglary | 135 | 107 |
| | Third-degree burglary | 108 | --- |
| | Check forgery | 192 | --- |
| Drug | Fifth-degree controlled substance offense | 825 | 735 |
| | Third-degree controlled substance offense | 250 | 83 |

C. Probation Revocations by Offense Severity

The largest volume of probation revocations occur at offense severities 2 and 4, which are also the severity levels where the largest volume of felony convictions occur. In the Second Judicial District, from 2001 to 2016 there were 1,425 revocations at severity level 2 and 1,117 revocations at severity level 4 (Fig. 9). In the Fourth Judicial District, there were 1,038 and 850 revocations, respectively. But though severity levels 2 and 4 have the largest volume, the revocation rates in other severity levels are sometimes higher proportionally. Figure 10 shows that the proportion of individuals revoked in Ramsey County at severity level 6 tends to be higher, often in the mid-30% range. Interestingly, revocation rates for individuals convicted at severity level 7, which is felony DWI, started high when the offense was enacted in 2001, but has steadily dropped, indicating that policies and practices with individuals convicted of felony DWI may have improved with experience.

Fig.9. Probation Revocations by Offense Severity (2001-16)

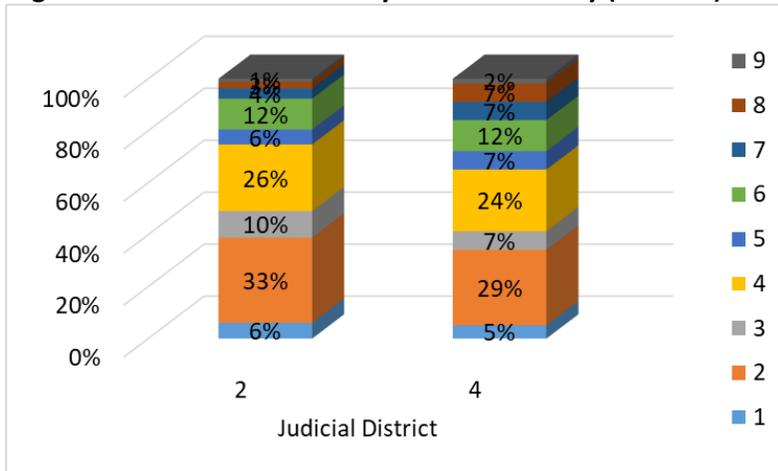
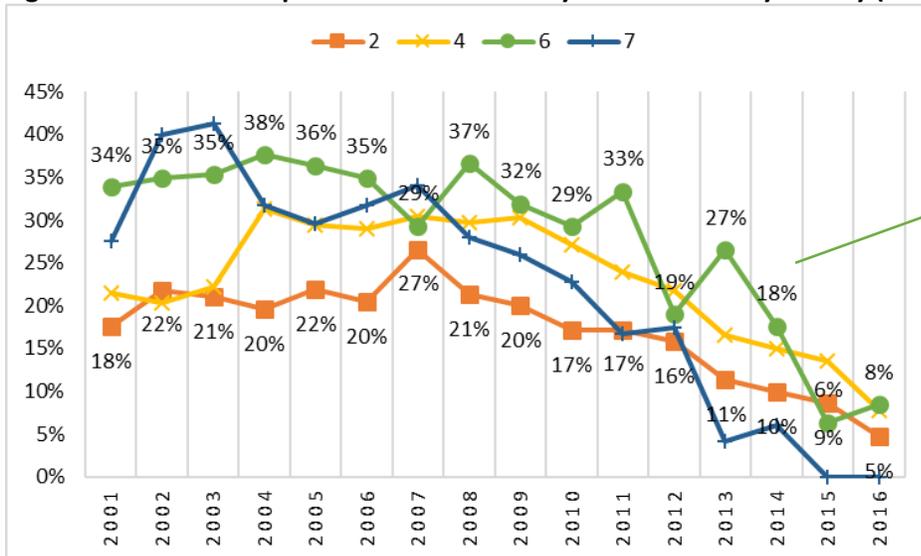


Fig. 10. Revocation Proportions within Severity Levels—Ramsey County (2001-16)



Percentages provided for Severity Levels 2 & 6 as reference

D. Probation Revocations for Dispositional Departures

On average, a greater proportion of cases for which the court granted a dispositional departure in Ramsey County are revoked than cases for which the guidelines called for probation (Fig. 11 and 12). But dispositional departures account for a smaller proportion of probation cases in Ramsey County overall, so even though the revocation rates are higher, they make up a much smaller proportion of the cases revoked in any given year (Fig. 13).

Fig. 11. Revocations for Presumptive Stay Offenses—Ramsey County (2001-16)

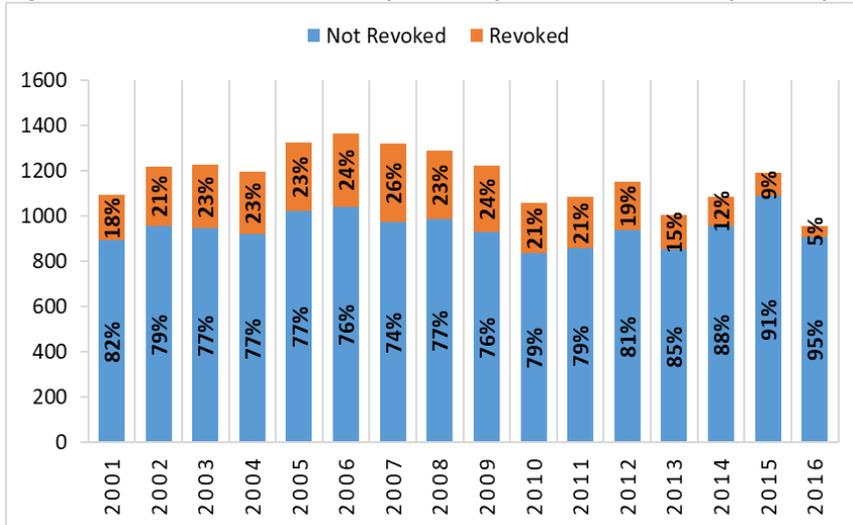


Fig. 12. Revocations for Presumptive Commit (Dispositional Departure) Offenses—Ramsey County (2001-16)

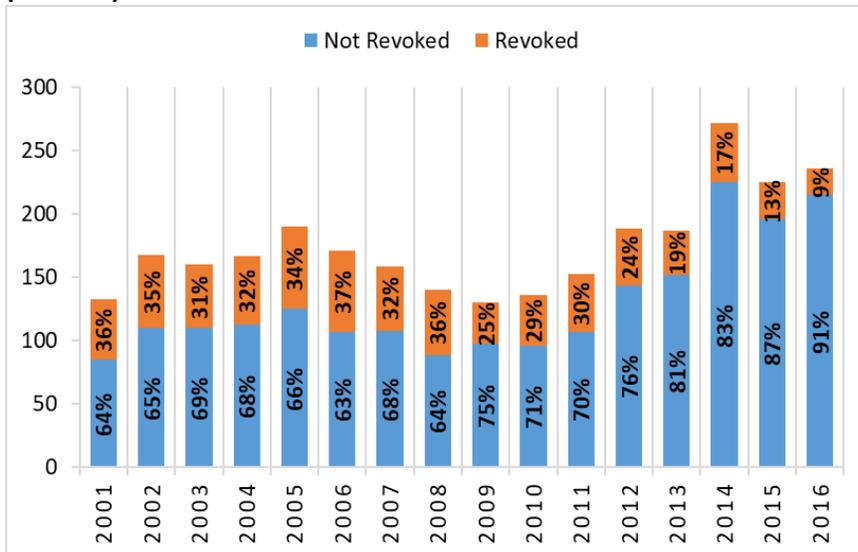
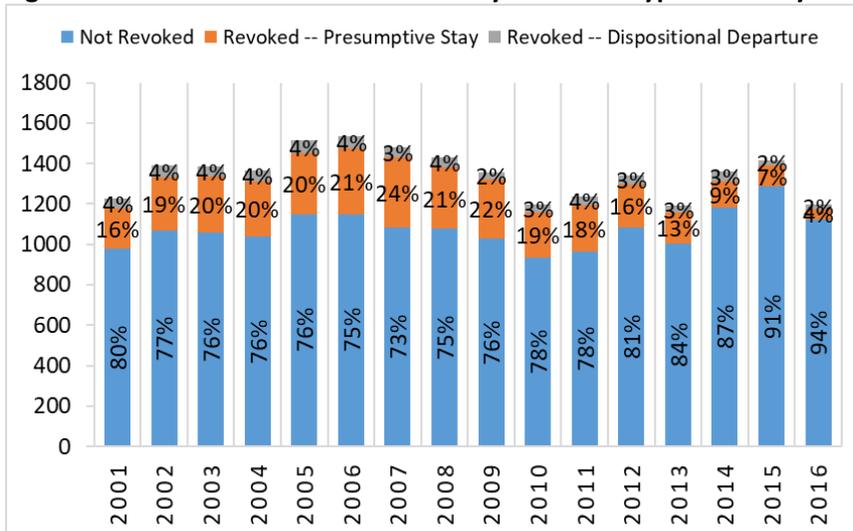


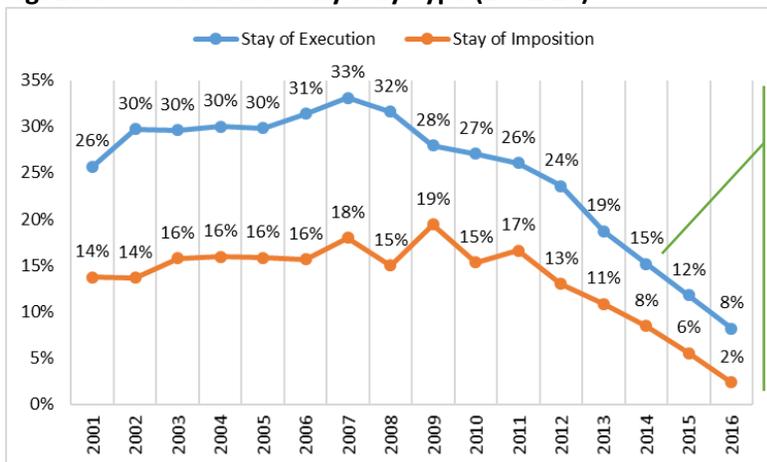
Fig. 13. Revocation Rate Broken Down by Sentence Type—Ramsey County (2001-16)



E. Probation Revocations by Stay Type

Stays of execution are consistently revoked at higher rates than stays of imposition (Fig. 14). This data set includes only the first disposition, so all of the stays of execution represent the original sentence rather than a step up from a stay of imposition. It is possible that for cases involving a stay of imposition, the more common response to a violation is to impose a prison sentence but stay execution.

Fig. 14. Revocation Rates by Stay Type (2001-16)



Rates from 2013-16 are artificially low because not enough time has passed to see the true picture for each annual cohort.

F. Time to Revocation

In Ramsey County, over the entire study period, 4,255 people were revoked. Of those individuals, three-quarters had probation terms of five years or less and one-quarter had probation terms longer than five years. As Figure 15 shows, for individuals with a probation term of five years or less, probation revocations rise steeply in the first year and then begin to drop off. Two-fifths of revocations (42%) occur in the first year. Nearly three-quarters of revocations (74%) occur by the end of the second year. The revocation rate continues to decline in the third and fourth year until it reaches almost zero by the

fifth year. By the end of the fifth year, 98% of all revocations have occurred; any that occur later are likely due to there being probation extensions, or violations that are filed within six months of the end of the probation term. For individuals with probation terms of greater than five years, the revocation rate increases in the first year and then plateaus until the end of the second year when it starts a moderate decline. Twenty-seven percent of this group are revoked by the end of the first year, and 55% are revoked by the end of the second year. By the end of the fifth year, 93% of revocations have already occurred. Like those sentenced to probation terms of less than five years, following the fifth year, the revocation rate is almost zero.

A similar pattern can be seen for revocations in Hennepin County (Fig. 16), though here, the comparisons are between probation terms that are greater than three years or three years or less since those are the more relevant cut points given Hennepin’s sentencing practices.

The revocation patterns in Ramsey County and Hennepin County demonstrate that the majority of probation revocations occur within the first two years of probation, and that, regardless of the length of the probation term, few revocations occur more than five years after the start of probation.

Fig. 15. Time to Revocation by Probation Length (>5 years; <=5 years)—Ramsey County (2001-16)

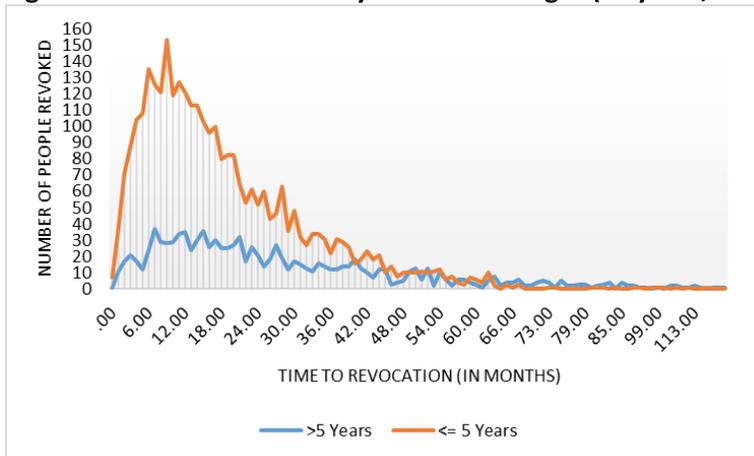
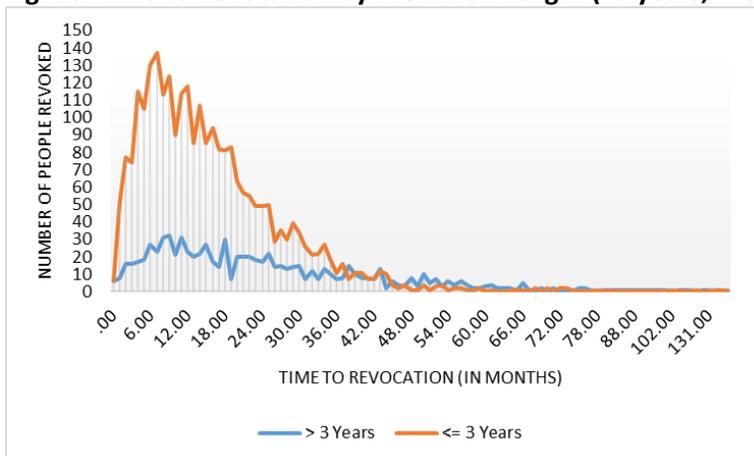


Fig. 16. Time to Revocation by Probation Length (>3 years; <=3 years)—Hennepin County (2001-16)



PART FIVE: Qualitative Interviews

To gain a better understanding of how individuals who work in the Ramsey County Attorney's Office think about probation sentences, and how they develop recommendations to the court about the various aspects of probation sentences, we next conducted qualitative interviews. Leadership in the office invited individuals from the various units handling adult felony cases, including those who handle initial appearances, pretrial and trial, and sentencing, as well as those who work directly with victims. We interviewed thirteen individuals over three days. Interviews averaged approximately 30 minutes and the interviewers followed a questionnaire they developed throughout the course of the interview. The interviews were transcribed and analyzed using NVivo software. Following are the key points that were learned from the interviews.

A. Purpose of Probation; Prosecutor, Community, and Victim Expectations

When asked about the purpose of probation, prosecutors articulated several interrelated purposes. Most saw probation as an opportunity to help individuals return to lawful behavior by providing them access to treatment or services to correct the behavior that led to criminal offending. When viewed in this light, probation provides both an opportunity to "meet them where they're at, and help them kind of lift up from where they're at" and a means of preventing recidivism. As one person put it,

"Whatever it is that's caused this person to come into the system, we want to fix it so we don't see it again. 'Cause it saves time, it saves money, it saves heartache, it saves, you know, victims."

To many, rehabilitation and accountability went hand in hand, with probation serving not only as the vehicle for people to receive needed services but also as leverage to ensure that people on probation do the work to address and account for their criminal behavior.

"I would say the purpose of a probation sentence is to ensure that offenders are held accountable while in the community, ensuring that they follow through with the conditions that are related to why they may have committed the offense."

"...they've got some accountability through a probation officer, they've got some incentives obviously to be doing the things that we've put in place to help them be successful, or there is a correctional consequence."

"Defendants or offenders who are sentenced to probation hopefully feel that they, you know, have the responsibility that they need to follow through with the certain conditions while they're on probation."

Finally, probation was seen as providing a monitoring function, a means of protecting victims and the community. But even when articulating this monitoring function, the focus tended to be on long-term change and prevention of future crime. Thus, the persons we interviewed in the Ramsey County Attorney's Office seem to view probation as a means to an end, a sentence aimed at prevention and long-term public safety.

"[Probation involves] having a probation agent supervise that individual so that they are minding their Ps and Qs and remaining law abiding and kind of keeping that person on

track, potentially allowing them to make better choices. And to hopefully never return to the criminal justice system.”

“We’re trying to make sure they stay on the straight and narrow. And ideally, I suppose, and even optimally, can they change in some way? Might they change something in their behavior that might make them less likely to reoffend?”

“I think successful probation would provide both the accountability piece that the public would expect, the victim, the person aggrieved by the criminal behavior that the offender committed. That they could look and say, ‘okay I feel like justice was done as it related to the act that I suffered.’ As well as providing opportunities for that offender to change his or her behaviors, the lifestyle that led to the criminal behavior in the first instance.”

The purposes articulated by interviewees related closely to how they understood success on probation. To some, probation success was defined as completing programming or paying off restitution. But for most, success is when “we don’t see him again; he’s not breaking the law.” Thus, in a system where the primary feedback loop is negative—re-offense or probation violations—success is merely the absence of failure.

“When we come up with a solution that scares the person into fixing what’s going on or getting treatment so they don’t reoffend, I don’t get - you know, no flag pops up and says, ‘hooray you did the right thing,’ which is - can be frustrating ‘cause the ones that you see are the ones that you weren’t able to reach.”

When asked what they expect is happening during the probation term, many saw probation as an opportunity to connect people with resources. In some cases, those resources related directly to the causes of offending such as substance abuse, but a few also saw probation as an opportunity to connect a person with basic needs such as housing. Most interviewees commented specifically on the role of the probation officer, and here the expectations were that the probation officer would be checking in on the person regularly, matching the probationer to needed services, helping to navigate the system, and serving as a guide and source of positive structure.

“I’m expecting for there to be a personal - a person who is checking in with this person. I’m expecting them to have a liaison...in my head, when I’m saying, ‘please put this person on probation, and do all these things,’ I’m expecting them to have somebody to help them and guide them through the process.”

But interviewees also seemed to view probation as a more lenient sanction—a break—during which it was expected that probationers would be engaging in self-reflection and change. For this reason, it was extremely important to interviewees that probation officers let prosecutors know when things are not going well so they can respond appropriately.

“I would hope that they are reflecting on the opportunity they have been granted. I would hope that the defense attorney was able to explain that. Depending on if it was a gift like ‘hey this was a huge chance that you were going to prison but you are being granted probation.’ Or if they are just in the probationary area of the grid that like ‘hey

stop doing this, it's going to continue to get worse.' I would hope that realistically but I know that there are far too many complex things that intersect in people's lives whether that's poverty or chemical dependency. Any number of things that might prevent someone from being successful during probation [and] once someone has completed their probationary sentence that they may be right back into the system. But I think that's the hope that everyone takes advantage of the system and programming and is able to jump through those hoops and never return again."

When asked what victims and the community expect to happen on probation, interviewees were mixed in their responses. When speaking about the community at large, interviewees seemed to have a shared perception that the community does not understand probation.

"A lot of people in my life, they have no concept that probation exists or that people are on probation or that there are all these people that have criminal histories that are just living regular lives and you're not going to notice the difference, except that they have a probation officer. So I don't know that the community really thinks about it."

But when speaking about victims, interviewees thought that the expectations were clearer. One person noted that above all other expectations, victims "expect to be the last victim. Like, if this person gets probation, this shouldn't happen again." Additionally, when speaking about victim expectations, most interviewees focused on probation as a monitoring function, both in terms of ensuring public safety and ensuring that probationers comply with conditions. In contrast to how prosecutors spoke about their own expectations for probation, here, interviewees tended to describe probation with phrases like "meaningful consequence" and being akin to "big brother," indicating that prosecutors may experience a tension between what they feel is necessary to be responsive to the needs of victims and the rehabilitative function of probation.

"I also think victims sometimes just need to know that the suspect is being watched or monitored, might be a better word than watching. But you know, like monitoring what they're up to and checking in with them, and I think that provides some reassurance to victims."

"I think they look to them to give them a meaningful consequence, and they look - well, I know that the court is the one doing that, but I think the public looks to them to make sure that they follow it and to keep an eye on them."

"Uh, I think they expect defendants to be monitored and to be checking in continuously, ensuring like that they have a job, or they're - they have - or they're going to school, or somehow being you know, a contributing member in society, that they're not committing offenses, that, you know, no arrests. Just ensuring that communities are safe, while they're being monitored in the community."

Others noted differences in victim expectations by type of crime, with victims of domestic abuse often desiring the probationer to get help whereas victims of crimes like car theft may simply be seeking punishment and restitution. One person saw the dividing line as whether the victim knows the probationer rather than the type of crime. When victims know the probationer, they typically want that

person to get help; when they do not know the probationer, “there’s no connection...[and] they want often times, very, I don’t want to say severe, but serious, significant consequences.”

“I don’t know that they want to see that probation is punitive, but they do want to see that it’s a meaningful experience to help make change.”

“I don’t think they view probation as having anything to do with public safety. I think they view probation as someone who’s keeping an eye on someone, and sometimes a resource for the victim, you know, to call on people if they’re not doing what they’re supposed to be doing. Can you help us with this situation? A lot of our probation officers *do* actively work with the victims as well. But I think they just kind of view probation as an incentive for someone to get help rather than going to prison.”

“But there’s also a tremendous number of victims that want these defendants to get help. To get treatment, whether it’s chemical dependency treatment, or mental health treatment. You’d be surprised at the number of victims of domestic, of violence, whether it’s an assault, or a violation of a no contact order, or an order for protection, that say, we don’t want him to go to prison, we want him to get help. It’s really kind of amazing to me. So, I guess to sum up by saying, I guess, the victims want the defendants to follow the law, and to remain on the straight and narrow, and hopefully, again, that might result in them improving themselves.”

B. Establishing the Parameters of a Probation Sentence

When a person is sentenced to probation, the court has three key decisions to make: whether to order a stay of imposition or stay of execution, the length of the probation term, and the conditions of probation. Following are responses about each of these three key areas.

1. Stay of Imposition Versus Stay of Execution

When asked whether and how prosecutors play a role in recommending the type of probation—stay of imposition versus stay of execution—the responses of those interviewed were a mix of office policy and expediency. Several interviewees stated that the office policy is to offer a stay of imposition for a first-time felony except when the case involves a DWI or criminal sexual conduct offense or when the sentencing guidelines recommend a prison sentence. One person noted that the office policy used to be that stays of imposition would not be offered for person offenses, but the person was not sure if that was still the case.

Along with office policy, many interviewees talked about the importance of the offer in bringing the case to a quick resolution. At the time of the initial offer, the goal is to get the person to take the offer so the case will not go to trial. Interviewees were unclear whether the office policy is generally followed in making offers or whether other considerations are more paramount at that stage. But several noted that the decision is being made with less information so if the case is passed onto the trial attorneys, they may learn additional information that supports changing the offer in a way that is more appealing to the defendant, and this may include offering a stay of imposition over a stay of execution. Sometimes the facts of the case can dictate whether prosecutors offer a stay of imposition or stay of execution (e.g., did the defendant violate the no contact order because the defendant was homeless and the victim

offered him a place to sleep or because the defendant was banging on the victim's door demanding entry?). But regardless of how prosecutors come to recommend the probation type, nearly everyone saw a stay of imposition as an effective tool and incentive.

"But then also I think the stay of imposition versus stay of execution thing, right, when you do a stay of execution, you're making someone a permanent felon for the rest of their lives, right, potentially affecting employment, housing. You're also maybe creating a disincentive for them to do well on probation, it's - it is what it is, it's a permanent felony. Stay of imposition is a brilliant concept I think, in the sense of, you're incentivizing somebody to do what their PO is telling them what to do, and you're giving them a chance to not have that permanent mark, so I think that's also part of being smart on public safety, right? You're not villainizing the criminal justice system completely to people. I don't think people like us, necessarily, right? But at least you're maybe creating a situation where somebody might believe we're trying to do what's right, and not just pound everybody."

"A stay of imposition is one of many tools that prosecutors have that I think leave um, put incentives in a good place. You know, if you are, if you agree to a stay of imposition that's, and the defendant does everything they're supposed to do, it goes one way. If you agree to a stay of imposition of sentence, and the defendant doesn't do that, you've really lost almost nothing, almost nothing I think. You know, you, uh, you don't lose enhanceability. I don't think you even lose guideline points. I think it still counts under the guidelines as a felony."

2. Probation Length

With regard to the length of probation, there seemed to be a general misunderstanding among interviewees about the governing law. Several interviewees indicated that the length of probation is determined by the sentencing guidelines. And several others indicated that the length of probation is delineated in statute for each crime. A few respondents stated that the default probation length is the statutory maximum punishment for the offense. Taken together, these responses indicate that at some point the office policy may have been to seek the statutory maximum punishment as the probation term, and that over time the policy may have morphed through training and practice so that it came to be understood as the state of the law. The following quote embodies this mixing of concepts:

"So, my understanding is that the length of probation is what's set for by the sentencing guidelines, so per offense type or you know the statute that applies to it. It'll have just on the complaint - when you see a complaint and it has the charge, it'll have a fine of up to thirty thousand and up to ten years - the maximum sentence or whatever, so that would be generally what the probationary term is."

Because the different stages of prosecution (e.g., first appearance, pretrial motions, trial, sentencing) are assigned to different people within the office, those responsible for each stage have a different understanding of how probation length is set. Those making initial offers typically do not concern themselves with probation length. The assumption made at this stage is that defense attorneys will argue for a shorter term at sentencing. Attorneys handling the pretrial stage feel they do not have authority to change the terms of the plea. And attorneys handling sentencing typically defer to the

recommendation of the probation department as to the length of probation. Looked at from this point of view, the length of probation seemed to be the point of least concern to those interviewed and whatever length is imposed seems to be a default position rather than a deliberate sentencing recommendation. But attorneys in the office also specialize by offense type. Looked at from this view, those handling lower-level felonies actively questioned whether probation should be three or five years. Those handling serious and violent felonies wanted the benefit of longer probation terms for monitoring purposes and to make the victim feel safer, especially when probation resulted from a downward dispositional departure. Thus, whereas there appeared to be active conversation about probation length with regard to lower-level felonies, the default statutory maximum sentence still seemed to be appropriate for more serious felonies.

“I think that some of the - like some of the lower level felonies are a little easier, especially if somebody hasn’t previously been on probation, or something about the facts seem kind of confined. There’s not a lot to do to make up for what they did, except maybe pay restitution, or do a treatment or program. And if that programming only takes a few months, then some period of time to just show - whether it’s just sobriety, or maintaining their - taking their medications, or whatever. I think those are easy calls. Ones that seem like they should be easy, but are just kind of hard to figure out how do you define the length upfront are the terms that are like twenty year terms or fifteen year terms. And part of the difficulty is that those are offenses that if they have that long of a probation period, those are offenses that are presumptive prison commits, so somebody deciding punishment decided that that is such an indication of public safety that even - well that this offense is one that should go to prison, so it’s that - how do you think about the risk that you’re taking, and how long is long enough to feel like you’re taking a reasonable risk and still assuring that if the person offends in an important way, that they can still be held accountable. So, that’s one where I feel like it would be great if somebody had the answers on it.”

Regardless of how the length of probation is determined, there was general consensus among those interviewed that people are being discharged early and that they *should* be discharged if they are doing everything right.

“...as prosecutors I think we believe in the idea that there should be the opportunity if somebody is doing well and they’ve addressed all the things that probation expects of them, that they should be able to be done, and not just continue showing that they live crime-free for the next fifteen years.”

“...sometimes I will say, listen, I think the full five years is appropriate. If they’re doing well and they can demonstrate to probation that they’re doing well, probation will do the right thing. And I have a lot of trust in our probation department that that’s accurate, so that makes it a little easier for me to kind of hold my ground if I think it’s appropriate.”

One person explained that the probation department typically seeks discharge after three years if the person has been serving that time without incident. Many interviewees acknowledged that the prosecutor’s office has a minimal role if any in the discharge process, in part because they lack up-to-date information about the probationer. Related to that, because prosecutors lack a positive feedback

loop, at least one person raised a question as to the frequency of early discharge and how that affects the actual duration of probation. And another expressed a desire for more information about cases in which the probation department seeks early discharge.

“I mean, how many people are successfully discharged from probation? I don’t think I’ve ever seen those numbers...how many are discharged early, because that would impact - if I’m asking for ten years and nobody’s ever getting ten years’ probation because they’re all being discharged at five years, then why am I asking for ten years? But then if I always ask for five years and they’re all getting discharged at two and a half, then why am I asking for five years? You know, is the probationary sentence that’s imposed - does it actually - is it ever completed?”

“And I think over time that would be part of the education of the prosecutor as to how these decisions, how these recommendations are being made and we could understand that and ultimately trust the experts. We all have a role to play. We’re not probation officers. We’re not skilled in that and I think it would be great if we have a system where we understand, like they fully understand how we work. I think just sharing that so we could trust each other’s decisions more fully. And just be made aware of them too, which I don’t think happens now just because it doesn’t.”

A few people noted a relationship between probation failure and probation length, concluding that longer probation terms are unnecessary to capture probation failure.

“I think if someone’s gonna mess up on probation, they’re going to do it sooner rather than later, so if they’re on for twenty years, it kind of seems silly to me.”

“And in my experience, people don’t stay on probation that long. They either mess up or get discharged early. So, nobody who’s supposed to be on probation for twenty years is really on probation for twenty years, so it’s meaningless. I think three years of probation is plenty, even for felonies. If there are no violations, I think the reason to have a longer sentence is if at first you don’t succeed, but you don’t want to send them to prison, you still have more time to try to achieve the goals. So in that sense, having ten years of probation with the expectation that if you’re doing well, you get off early, and if you’re not, we have up to ten years to keep working on this, makes sense - but just out of the gate ‘hey you committed this crime, therefore you are going to be on probation for the rest of your life’ doesn’t make sense to me.”

In summary, it appears that probation terms are largely set according to the statutory maximum sentence, except that there appears to be more negotiation and discussion around three-year probation terms for lower-level felonies, which in the past would have received five-year terms. Probation terms for more serious felonies may still be tracking with the statutory maximum sentence, though shorter lengths are sometimes part of the plea agreement or argued for by the defense attorney at sentencing. Most interviewees agree with the concept of early discharge but acknowledge that the prosecutor’s office plays a minor role, if any, in this process. Finally, prosecutors expect that people get discharged from supervision early, even with longer probation terms, but they do not receive data or verification as to whether or not that happens in practice.

3. Probation Conditions

When asked about conditions, nearly everyone talked about the importance of consulting victims. State law provides that the victim has the right to inform the court of any objections to the plea agreement or disposition, and that if the victim cannot be present at the hearing, the prosecutor has a duty to communicate those objections to the court (Minn. Stat. § 611A.03, subd. 1(2)). Thus, understanding the victim's perspective is an important part of the prosecutor's role in sentencing. Those interviewed indicated that in cases in which the victim knows the defendant, the victim often has good insight into what the person needs. But in other cases, victims may request conditions that do not align with current practice. In these situations, prosecutors sometimes feel pressure to ensure that victim input is represented in the terms of the plea agreement. Others maintained that they are able to separate what the victim is asking for from their own position.

“And we do that based on upon things - I think we're best at it when the victims tell us things that they - victims who know the individuals tell us things that they think the person needs to address their behavior. But kind of as I was saying earlier, I think that prosecutors have a tendency to suggest a laundry list of things, and we aren't trained in risk assessment. You know, so I think we say things that make us feel better about the impact we're hoping to have. We want to believe that we're achieving justice for victims and thinking about what offenders need, but sometimes, even in that well-meaning place, we end up recommending things that maybe don't make sense to professionals that know what they're doing. So, um, typically what happens like if it was resolved by a plea agreement is that we might list some things that we feel are important for plea agreement - I mean, for probation, and the defendant agrees to it, but sort of with the idea that if the presentence investigation comes back and doesn't recommend any of those things, that the judge isn't going to order it and the prosecutor is probably not going to insist on it.”

“And prosecutors - you know, we don't have clients, and so we have a responsibility to make sure that the victims' input is heard, but it doesn't necessarily mean that we present it in a way that it's also what we are asking for. So we take very seriously what a victim wants, but if it's at odds with what we think is the right thing to do, we would still advocate for what we think is right.”

Typically, when a person is convicted of a felony offense, the probation department will have six weeks to complete a presentence investigation report, and that report will include recommendations for conditions. Minnesota has standard conditions that are ordered for every felony conviction, and then special conditions may be ordered over and above those. Even special conditions are usually somewhat general, calling for a particular type of assessment and then requiring the defendant to follow all recommendations resulting from that assessment. Conditions of probation may enter into the plea at any point in the process. But responses were mixed as to how actively involved the office gets in recommending conditions, with some saying they leave it to the probation department and never get involved and others saying that they will actively push for specific programming, language-specific programming, or trauma-informed care.

Other factors that may affect the conditions imposed are the propensities of the particular judge or the circumstances of the offense.

“...once you get to know a judge you appear in front of, you know what they tend to add to those standard conditions. Like if you appear in any of the judges that do the drug courts, they’re so familiar with the treatment programming and doing UA’s, they will order them in any case they see - they think applies, even if the attorneys are like ‘well, no it’s fine, you don’t need to,’ the judges can do it anyways. So I - and I see judges not order something when they think that it’s silly. So I can agree on something, but the judge can still do what they want.”

“A lot of times just the circumstances of the offense will dictate some of the conditions, so if someone’s drinking when they commit a crime, using drugs when they commit a crime, obviously that’s a need that we’ve identified just based on the police reports. Violent crimes certainly lend themselves to some type of anger management or domestic violence counseling when we’re seeing, *any* time of violence, you know, that’s just a pretty standard condition. Sometimes, maybe it’ll be a fleeing a police officer with no other indicators that there’s an issue, but they’ll have seven DWI’s and a bunch of drug cases, and so we’ll be able to kind of infer that there’s something going on that maybe isn’t directly related to the offense for which they’re being sentenced on but is an area that this person needs to address.”

A few individuals indicated that conditions should be more particularized to the defendant.

“So I think, I think probation should be more individualized than it is. It should be viewed more of, instead of okay, so these are the conditions that you and a million other people get, these are your conditions. And we’ve looked at you, and we’ve looked at your crime, and we’ve looked at your needs, and this is what this, you know, assessment tool or the group thinks would be beneficial for you, and for public safety, and not just have a checkbox, checkbox, checkbox for everybody.”

“And that the terms that are established should be turned into something that will promote a positive outcome for the probationer... I think whatever the condition should be meaningfully tied into whatever the offender’s behavior, the behavior needs to be corrected.”

And just as interviewees saw the overall purpose of probation as serving the twin goals of monitoring and long-term behavioral change, so too did interviewees see the purpose of probation conditions.

“So, having increased consequences hanging over their head to keep them following the rules.”

“Well I think by matching the right services with the person, if the person is successful, then public safety should be just a natural outcome, with some bumps in the road, because that’s natural, right?”

In summary, probation conditions were not considered to be a large part of the prosecutor’s role in recommending the parameters of a probation sentence. At the initial appearance, prosecutors have too little information with which to recommend conditions, though they may make obvious recommendations such as requiring a chemical use assessment. During the pretrial and trial stage,

probation conditions might be articulated as a means of including victim input, but not necessarily as prosecutor recommendations. And at sentencing, there is deference to the conditions articulated in the PSI. But in general, conditions are seen as being pretty standard, and there was some indication that better results might be obtained if conditions were more individualized.

C. Probation Violations

When asked about probation violations, most of those interviewed indicated that the prosecutor's office largely does not handle violations at the first appearance (the "admit/deny" stage). Probation violations are filed by the probation department and generally include recommended consequences.

"Unless, because, I kinda hinted at this before, the courts are pretty deferential to probation once a person is put on probation. I think every once in a while an attorney coming to a probation violation might tip the scale one way or another, but usually we're not opposed to what probation wants to do and usually a probation officer will be like 'this is why I want to do this, or this is why I want to do this.' Usually we're kind of on the same page, so I think, um, resource-wise, it's kind of been the policy of our office to, we have our law clerks handle them. We do have some probation officers in our sexual assault unit and our gang unit that will reach out to prosecutors if they feel that maybe they're asking for something that's really significant or maybe they don't think the judge will do it, or they feel they need some extra support, but usually the violation component is dealt with by the probation officer and the judge because the probation officer is the one that's been working with them, knows how they've been doing, um, and we're kinda there in a supportive role and to handle if it goes to a contested proceeding."

"I would say 95% of the time, we join in whatever the recommendation of probation is, and then of course if the defendant denies his probation violation, except for a contested probation violation hearing, and that's where we really truly get involved."

"I think that's an area that really I would be okay if corrections owned that completely, you know? As long as we all understood what the methodology was..."

When the violations are contested or if there is a new charge, the County Attorney's Office becomes involved. Law clerks often handle contested hearings when the violations are routine. More complicated violations are handled by attorneys assigned to the Sentencing Unit. When there is a new charge, the attorney prosecuting the new charge also handles the violation. The fact of a probation violation does not generally change the initial plea process because at that point, the probation case merely represents an aspect of criminal history. For attorneys working later in the process—at the pretrial, trial, or sentencing phase—the interrelationship of the new charge and violation can play a role in settling the case.

"...sometimes it makes it easier cause we know they're going to prison, so they just plead guilty on mine, because they're - it's already gonna go. So it can make it easier or harder."

Violations also come to the attention of attorneys in the office when they are contested.

“But the absolute bulk of them that get set, and I one-hundred percent would say, the vast majority of them, once they actually get litigated, like the one I had yesterday, are your ones where we’re seeking prison and revocation, and you’re talking about it’s somebody’s you know second or third probation violation.

When asked what they feel are appropriate responses to probation violations, interviewees had a range of responses. At one end of the spectrum, those interviewed indicated that the violation process could be helpful in getting a person back on track, even if probation was not revoked.

“...we’ve given people a chance by putting them on probation, and if they’re not doing their part of showing up at the appointments or doing the treatment, or abstaining, then they need a reality check, a reminder that they’re looking at X amount of prison or having a felony permanently on their record if they continue screw up – so it’s - you know, the stick comes out. We’ve given them the carrot and there’s the stick hanging over their head, and so sometimes having a judge being forced to come to court in custody and having a judge yell at you and immediately release you and say ‘okay, try again’ is enough, and so a lot of times, I don’t need the entire weight of the sentence to come down. It’s just, you know, some more assistance. You’re back to square one, but it’s more serious now.”

“You know, I [pause] I suppose sometimes the defendants have to understand that this is serious. And if you have not complied with these opportunities that you have been given to basically stay out of custody, ok, and if you think you can skate through this, you are sadly mistaken and off you go. And might not that be good for some of these people to understand that these are consequences and when you’re told by the court to do something, that’s not an option. That is not an option for you. So, I’m not saying you send a message, but the defendant has to know that this is serious.”

At the other end of the spectrum, interviewees indicated a preference for giving stronger responses for violations in cases in the presumptive sentence was prison but the person had been given probation.

“I think the people who got a deviation from the guidelines and got probation when the guidelines dictated prison, they’re on a much shorter leash. The judges are going to be less sympathetic to them not taking care of business because they should have gone to prison in the first place and they were essentially given the keys to their freedom by being put on probation saying hey, you need to take care of business or that’s where you’re going, and that’s where you should’ve gone in the first place. Um, so I think that’s a big factor right off the bat.”

And some indicated an understanding that because the probation department had already given a person several chances before filing the violation, revocation was generally warranted when the violation was filed with the court.

“So we’re talking a little bit about that, you know a short leash. And sometimes, some people really do need that and most people don’t. You know, so - and you know as I’ve tried to be more progressive in my own thought about things, and I don’t as much - I

think giving someone a few extra chances is good. You know, I think our probation department does that even though before they file the first PV, so I've never seen a situation where I thought they acted too quickly. They've always really tried to work with the person and give them some leeway when they're first adjusting. You know, kinda realizing the ropes, you know, and you know they'll overlook things, overlook things, and then they'll file one. And so I guess I've had a sense that by the time a probation violation is filed, there's really a sense that it's not 'whoops I made a mistake,' or 'I was trying, I just can't get it right now,' it's 'eff you.' [Laughs] You know, or it's just 'I'm not gonna do this,' and it's just starting to be a sign of somebody who is not amenable to probation. So it's just, it's more of a sort of hacked up rebellion or whatever."

But when talking to victims, the emphasis would be on the egregiousness of the violation.

"And people want to think that if they violate their probation in any way whatsoever then okay they are going to prison. So I make sure to explain to people on the front end that if they are given this probationary sentence and this is what they are facing, then yes this prison sentence is hanging over their head but it takes either a fairly egregious violation to serve that prison sentence, because usually it will start small like 'Oh I didn't call back that probation agent' or something like that or I didn't set up whatever meeting."

Thus, with regard to probation violations, it appears that those in the office generally believe that a person should be given a few chances to get back on track if the violations are fairly minor. But when the violations are more egregious, involve a new offense, or when minor violations begin to stack up, revocation is more likely to be appropriate. But there is less tolerance for probation violations for people who were given a mitigated dispositional departure, and in these instances, interviewees felt a stronger response was usually warranted.

PART SIX: Recommendations

This study examined the role of prosecutors in the Ramsey County Attorney's Office in influencing the contours of felony probation sentences. The main target of this study was to determine how prosecutors view and influence the length of probation, but the study also included an examination of the other key components of a felony probation sentence, namely the probation type (stay of imposition versus stay of execution) and conditions of probation, as well as the role of prosecutors in the probation violation process. This section pulls the information together to offer recommendations.

1. *Formalize the goals of the office by bringing staff together to identify them and tie office policy to these goals.*

Almost consistently throughout interviews, attorneys identified two goals for probation: 1) supervision and monitoring for public safety, and 2) providing services and treatment for rehabilitation purposes. If the office has not already done so, leadership should bring all staff together to talk about these two main goals for probation in order to acknowledge the shared objectives across all staff in the office for probation sentences. Moving forward, the office should talk about policies they implement within the agency in terms of how they help staff accomplish these goals. Where possible, these goals should be operationalized with data so that the office can link policy changes to outcomes they desire. For

example, if the office wants to talk about how probation length impacts public safety, they can look at how recidivism tracks with various probation lengths. Along with this, the office could look at how probation length impacts the success of people on probation in treatment programs or obtaining employment, in addition to other treatment needs associated with rehabilitative goals.

2. *Develop a feedback loop for probation outcomes to gain regular input about what works in sentencing.*

As the interviews in this report indicate, people working in the Ramsey County Attorney's Office have perceptions about what works in probation, but lack information about actual practices or trends. For example, many expect that individuals are regularly discharged early from probation if they do well, but are unsure how often this actually occurs. It is not unusual in the courts for people to be aware of failures but not successes because of the lack of data collected or shared. Prosecutors may know when someone "failed" because they are back for another case, but they do not know what worked for them for the short-term nor do they know about the reasons why many others did not return to the criminal justice system. As this report demonstrates, there is already data available that the office could look at to examine trends in probation from sources such as MSGC. The office should also collaborate with the courts and community corrections to learn more about other trends with people on probation in their county. These data sources can serve as a feedback loop for prosecutors so they can understand how probation and court decisions are impacting the people they interact with in the system.

3. *Clarify the policy about when a stay of imposition versus a stay of execution is appropriate as an initial sentence.*

Interviewees indicated that a stay of imposition is a valuable tool for resolving cases and of great benefit to defendants. Yet there was less consistency in interviewee responses about when it was appropriate to offer a stay of imposition, with some indicating that the policy is to offer the disposition for a first-time felony except when the case involves a DWI or criminal sexual conduct offense or when the sentencing guidelines recommend a prison sentence. This decision is critical given that individuals who receive stays of execution experience revocation rates that are often double the rates of revocation for those who receive stays of imposition. More analysis would need to be done to determine why these revocation rates differ, but a good place to start that inquiry would be to discuss internally how such decisions are made and whether there are qualitative differences (i.e., offense type, seriousness) in the types of cases that typically receive each type of sentence.

4. *Develop and communicate a clearer policy on probation length.*

Currently, some staff misunderstand their role or ability to impact probation length in pleas and sentence recommendations. Staff should review the legal rules on their role in setting probation length and what those timeframes are and receive training on them to improve consistency in interpreting this policy. One particular point that staff need clarification on is the purpose of setting longer probation terms. The quantitative and qualitative data demonstrate that probation length is partly associated with offense seriousness or certain offense types. One goal that was not articulated in the qualitative interviews that seems to appear in the data is the role of punishment from a retributive standpoint or function. As mentioned previously, staff believe probation should protect the public with monitoring (more of a deterrent function) and connect people to resources (a rehabilitative function), yet probation lengths appear to be guided primarily by retributive concerns by imposing longer terms based on

increases in the severity level or statutory maximum punishment for the offense. As suggested earlier, staff should have a policy discussion on goals for the office and develop policy from those goals.

Regarding probation length specifically, the data in this report demonstrates that after a certain point, there are fewer public safety benefits to additional years on probation. The risk for recidivism is greatest in the first year and a half. And the majority of revocations occur within the first two years. After five years, the rates of recidivism and revocation failures drop dramatically. Both short- and long-term recidivism rates in Hennepin County and Ramsey County are very similar but in Hennepin County, probation rarely exceeds five years, suggesting that the longer terms are not garnering public safety benefits. Therefore, it may be appropriate to consider the following parameters when setting probation length policy:

- Most cases are already receiving probation terms of 5 years or less. For those that are currently receive 5 years, consider whether 3 years might be adequate in certain circumstances.
- For those that receive probation terms of more than 5 years, consider whether 5 years might be appropriate in certain circumstances.

In both situations, consider tying the policy to risk and needs. Research indicates that “[to] have the greatest impact on recidivism, length of supervision and services provided should be clearly tied to an offender’s risk level.”¹⁶ Thus, individuals who are lower risk to reoffend may be good candidates for shorter probation terms. And for individuals who require treatment or services, the length of programming or average time for successful treatment may provide useful benchmarks for probation length. Consider collaborating with the probation department to determine what information could be made available to prosecutors at various points in the case to facilitate these considerations. It should be noted that there may be cases where there are other reasons to justify longer probation terms such as offense seriousness or other unique characteristics about the person in which the longer term is not solely for preventing recidivism. In these cases, staff should use their professional judgment to recognize there are exceptions, and that certain people may warrant different treatment.

5. *Develop policy on when and how to seek specific probation conditions.*

There was also little certainty among those interviewed about the prosecutor’s role in seeking specific probation conditions. Probation conditions were not considered to be a large part of the prosecutor’s role in recommending the parameters of a probation sentence. Yet there was some indication that better results might be obtained if conditions were more individualized. Research indicates that programs and services should target criminogenic needs, which are dynamic risk factors of the individual that are associated with their likelihood of reoffending and that can be changed with appropriate intervention.¹⁷ Thus, beyond the standard 10 conditions that are imposed in every felony case and any special conditions that may be needed for public safety reasons (e.g., a no contact order), a primary consideration for probation conditions should be targeting them towards the individual’s criminogenic

¹⁶ Lowenkamp, C. T., Latessa, E. J., & Holsinger, A. M. (2006). The risk principle in action: What have we learned from 13,676 offenders and 97 correctional programs?. *Crime & Delinquency*, 52(1), 77-93, at 90.

¹⁷ Andrews, D. A. and Bonta, J. (2010). *The Psychology of Criminal Conduct*, (5th ed.). Mathew Bender & Company, Inc. New Providence, NJ; Andrews, D. A., Bonta, J. and Hoge, R. D. (1990). Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice and Behavior*, 17, 19-52.

needs. Here too, it would be helpful to collaborate with the probation department to determine when assessment information can be made available to facilitate this consideration.

Some interviewees gave a lot of weight to victim input in consideration of conditions or treatment needs, yet at times this kind of approach might conflict with best practices to develop successful treatment approaches for people on probation. The office should clarify the role of victims during decisions related to probation and make sure staff working with victims can explain these practices clearly and how they will support public safety, while also giving victims a clear voice in the sentencing process.

6. *Collaborate with other Ramsey County probation stakeholders such as Ramsey County Community Corrections, judges sentencing criminal cases in the district, and others who impact probation sentences.*

Several recommendations above suggest collaboration with other departments within Ramsey County. In some cases, these recommendations are made to facilitate data and information sharing so that prosecutors in the office can get a clearer picture of what works. But beyond that, other agencies in the county would benefit from hearing the goals of the Ramsey County Attorney's Office so as to develop a collaborative, county-wide approach to supporting probation effectiveness. Further, this collaboration could include the dissemination or communication of goals of the office and policy changes to create transparency for the stakeholders and the community, which would increase the trust and support for the office.