

UNIVERSITY OF MINNESOTA

PROBATION REVOCATION AND ITS CAUSES:

Profiles of State and Local Jurisdictions

A publication by the Robina Institute of Criminal Law and Criminal Justice

**HENNEPIN
COUNTY,
MINNESOTA**



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PROBATION REVOCATION AND ITS CAUSES: Profiles of State and Local Jurisdictions

A publication by the Robina Institute of Criminal Law and Criminal Justice

Hennepin County, Minnesota



By

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This report is the fourth in a series on:

***Probation Revocation and Its Causes:
Profiles of State and Local Jurisdictions***

PROBATION REVOCATION AND ITS CAUSES:

Profiles of State and Local Jurisdictions

Introduction

Adult Probation in Hennepin County is under the Department of Community Corrections and Rehabilitation. In 2014, there were 309 employees who worked in Adult Probation; 159 were supervising officers. The Department's annual budget was \$105.6 million. Monies for 80% of the budget come from local property taxes and program generated revenues. Ten percent of the revenue comes from the State Community Corrections Act and the remaining 10% comes from Federal, State, and local grants.¹

The crime index rate (includes both violent and non-violent crimes) for Hennepin County is 7,607 per 100,000. The crime index rate for the state of Minnesota is 6,449 per 100,000.

Table 1. Hennepin County Violent Crime Rates, 2014

Rate Per 100,000	Murder	Rape	Robbery	Aggravated Assault	Burglary	Larceny	Auto Theft	Total ³
Hennepin County	3	46	186	191	539	2,384	187	3,536

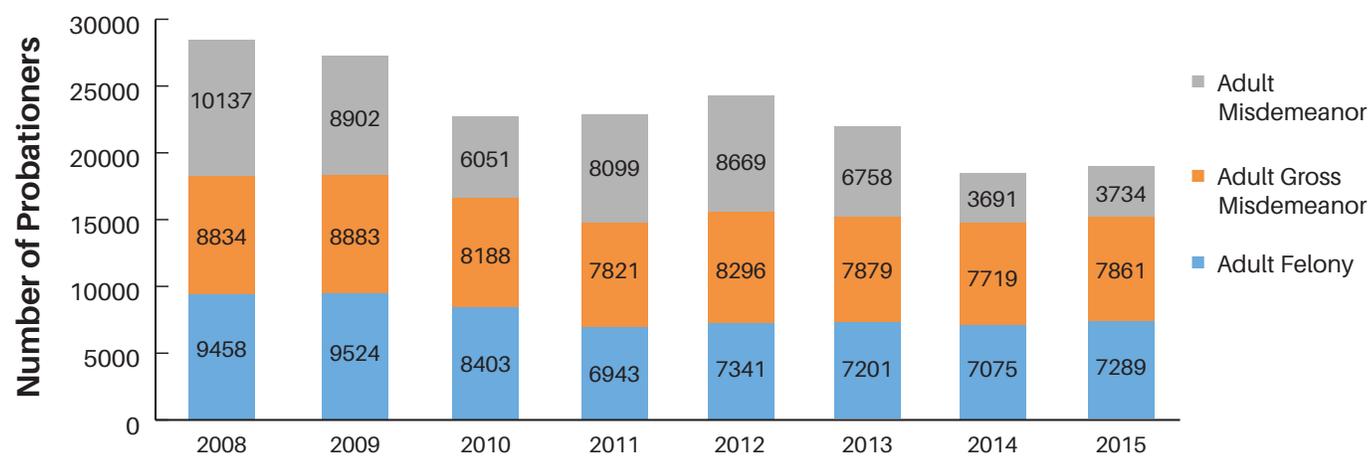
Source: State of Minnesota Department of Public Safety, 2014 Uniform Crime Report, <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2014-MN-Crime-Book>.

In 2014, there were 18,485 individuals on probation* (this includes probationers on supervised release, which is a form of post-prison supervision). This is a decrease from the previous year in which there were 21,838 individuals on probation. Overall, there has been a 37% decrease in the total supervision population with the Department of Community Corrections since 2008. This information is shown in figure 1.

*Note: Hennepin County refers to probationers as "clients." However, to remain consistent with previous reports in this series, the Robina Institute will use the term "probationer" throughout this report.

Hennepin County is the most populous county in the state of Minnesota. Hennepin County has a population of 1,223,146. In Hennepin County, 76% of the population is white, 13% are African American, 7% are Asian American, and 7% are Hispanic. The median income in Hennepin is \$65,033 which is above the median income for the state (\$58,476).²

Figure 1. Probationers by Conviction Level: 2008-2015



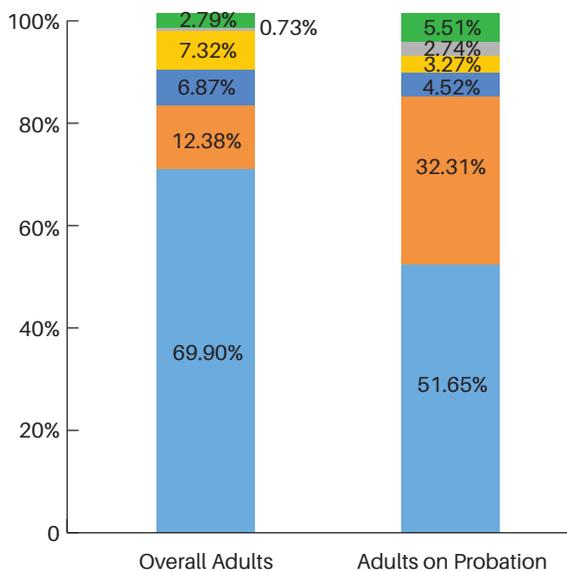
In 2015, the majority of probationers were male (77%). Though African Americans only make up 12% of the total population in Hennepin County they make up 32% of the population on probation; whites make up 51% of the probation population.

Risk Assessment Levels. Hennepin County first assess all probationers using the Hennepin County Pre-screener Assessment. Those that score at a certain level on the pre-screener assessment are given the Level of Service/Case Management Inventory (LS/CMI). A client's pre-screener score determines if they get a full assessment. Probationers who are at the felony gross misdemeanor or targeted misdemeanor level are assessed using the LS/CMI and there are plans in the near future to use the assessment for the majority of probationers to determine case planning. Of the probationers who were assigned a risk level in 2014, 3,200 clients were low risk, 591 were

moderate risk, and 1,625 were considered high risk.⁴ An additional 7,000 probationers were placed on administrative probation.

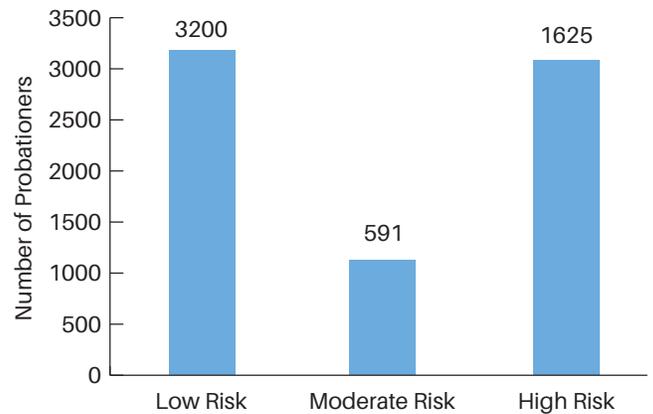
Currently though probationers with a high LS/CMI go to traditional supervision model of 50 cases to one probation officer. Medium risk level is a bit higher at a rate of 150 cases to one probation officer. Low risk involves minimal contact and check-ins are primarily conducted via a telephone call-in system. Probation officers with a low risk caseload supervise approximately 250 probationers. Hennepin County only had revocation data available on those revoked to prison and not those revoked to jail or the workhouse. In 2015, 109 probation cases were revoked to prison. It is not known if these were for technical violations, new charges, or a combination of both.

Racial Demographics of Hennepin County Probationers



■ Other ■ American Indian ■ Asian ■ Hispanic ■ African American ■ White

Risk Level of Probationers



Interview Data

The remainder of this report summarizes the views of approximately 82 people interviewed in Hennepin County, including approximately 41 probation officials (both supervisors and line officers), approximately 12 probationers, 19 public defenders, 7 judges and 3 city attorneys. City attorneys only handle misdemeanor cases so the view of felony probation is missing from the prosecutor's side. Several attempts were made to interview Hennepin County Attorneys but they never replied back. The interviews give important insight into the perspectives of those who participate in the probation system, but do not necessarily reflect the opinions or conclusions of the Robina Institute or the Hennepin County Probation Department. Many interview subjects are quoted directly, but the material below is presented in a way that protects the identities of the people interviewed.

Background: Judges in Minnesota have broad discretion for the imposition of probation conditions. Minnesota statutes require that conditions must be "reasonably related to the purposes of sentencing and must not be unduly restrictive of the probationer's liberty or autonomy."⁵ Special conditions may be imposed for certain offenses. In fact, specific conditions are mandated by law for some offenses, such as a DWI and certain domestic assault offenses.⁶

Summary of Views Expressed About Conditions

Individualization is necessary
There are too many conditions
Conditions are appropriate
Most probationers understand the conditions, but some question their fairness

Details from Interviews:

Individualization is Necessary

Many of the criminal justice officials believed conditions should be tailored to the risks and needs of the individual probationer. One judge explained how he tailored conditions to the individual.

"I try not to put restrictions or conditions on people unless I think they are necessary. I might put a restriction on somebody that's something like, don't associate with gang members or something because I know that's a huge problem for them. I'm not going to put it on somebody who doesn't associate with gangs, or someone who maybe knows a couple of gang members."

Some probation officers also noted the need for individualized conditions. In particular, one probation officer discussed the relationship between conditions and behaviors.

"Conditions are based on behavior. Those are the things that drive the conditions. Conditions are developed to address those behaviors and give the agent a baseline to work with the probationer. You have general probation conditions—can't use drugs, have to stay in contact with probation officer, have to maintain a residence that the PO knows about. The special conditions are related to the offense—for example, a person convicted of domestic violence incident, the condition will be geared towards programming."

However, many of the public defenders and a couple of probation officers felt that this individualization was not occurring. Several noted the prevalence of "boiler plate" or "cookie cutter" conditions, which leads to conditions unrelated to the underlying issues of the offense. Two public defenders described this approach in this way:

"I think it's become too standardized. So I don't think that any real thought is put into how certain conditions may benefit a certain client. I think if there's any kind of allegation that alcohol is involved then there's going to be a chemical dependency evaluation ordered. No use condition, all this stuff is going to get lumped on. They always order anger management regardless of whether there's a history of violence or anything like that. So I think some of these conditions have just become kind of rote."

"[F]ar too often we create barriers to people being successful. . .having nothing to do with whether they really are going to be threats to public safety, which is what probation conditions should be addressing."

One public defender described the plea agreement as a process that contributes to the imposition of conditions without individualization. Essentially, the probation conditions are set at the plea agreement, which occurs prior to the presentence investigation. As a result, the conditions are not based on any formal evaluation of the needs and risks of the offender.

"And at the time of the plea, the judges are filling in the forms prior to the presentence investigation, and prior to any argument by the parties, the sentencing form is filled out. So I think that tells you that it's not really tailored to the individual."

There Are Too Many Conditions

Several judges, public defenders, and probation officers thought there were too many conditions placed on probationers. They described these excessive conditions as onerous and disruptive in probationers' lives. These quotes from two different judges reflect that concern.

"Placing too many conditions on somebody or incarcerating them if they have a home and they have a job is really going to start them back down the slope of becoming dysfunctional. That's where I think we need to step back sometimes and think about what we're trying to accomplish with some of these conditions and with the use of revocation."

"I think that there are too many. And the reason that I say that is the majority of the people that we have are challenged anyway, just challenged in life. So there are people who are living in poverty, they don't have a lot of transportation options... most things that are available to them are harder to come by. I think if you give them two or three solid conditions that they think they can follow, you're going to have a lot better chance of them being successful."

Some of the public defenders were even more critical of the number of conditions, while others repeated the necessity for individualization.

"There's way too many. Everything is a condition. Everything is a condition. You must comply with everything your probation officer wants, first and foremost."

A few probation officers also perceived the number of conditions as onerous and disruptive, while adding that focusing on a few conditions is more beneficial. When asked about the number of conditions, these probation officers responded:

"Too many. I would never want to be in the legal system, seriously. I mean we have people going to [go to classes/treatment], random UA's, you have to have employment, and you have to see your therapist."

"I think there's too many because they're often times utilized in a sense that 'this sounds good. Like I'm giving them all these things.' When in essence we could concentrate on. . .a couple areas and that would probably be a better way to reduce the chance for recidivism. Versus loading them all up and then having to concentrate on making them be in compliance with their court order. And doing more of a checklist kind of thing. If we kind of highlighted their areas of risk, we could focus on those and it would work better than just doing the checklist."

A few public defenders and probation officers had issues with particular conditions, such as geographic restrictions, GED requirements, and cognitive skills training.

"I'm not real happy about geographic restrictions. That's something that can be part of the sentencing order and part of probation. I think that is, although it's been litigated, I still think it's a violation of our rights to travel and walk freely." – Public Defender

"[When] the geographical [restriction is] you can't go downtown, I'm like what? Without taking into consideration- the only hospital[] that see[s] some of these real low income folks is HCMC [which is located downtown], so they got to come down. Or. . .they got to come downtown to get their general assistance. They got to come downtown to get all things they need to live and I just told them in a probation condition that they can't come downtown? Well then how are they going to live?" – Public Defender

"Some judges gave crazy conditions, it's a setup. Setting a condition to complete their GED, that's not realistic. . . . Cognitive skills training is almost always a condition. Clients found it helpful in slowing down their thinking process but it's a twice a week class, three months long, problematic with job. It's a good idea, not great follow up and low practicality. Very few of these people have licenses." – Probation Officer

Conditions Are Appropriate

On the other hand, many probation officers felt the conditions were appropriate. These officers noted conditions vary greatly between caseload types, specialty courts, and across offense categories. Probation officers also noted their ability to ameliorate the excessive conditions by either removing conditions or helping the probationers manage the conditions.

"[Conditions] usually fit the offense. I think there are enough. Sometimes the court could do a better job. An assault case might get domestic abuse [treatment] and anger management, but I think it should be one or the other. That's where discretion can come in. If I don't see it as appropriate, I can approach the judge to get the condition changed. Usually the conditions fit."

"Problem solving court and mental health court, also with Veterans court, try to be mindful of that to not inundate people. [There is] the creativity to have balance."

"The conditions aren't going to set them up for failure, they're pretty basic things. Stay in contact with probation, live in Hennepin or Ramsey. Some people have family outside of there, we might make an exception. . . but it's pretty simple stuff besides 'no use,' which is the highest violated."

A judge, a public defender, and a prosecutor also viewed the conditions as appropriate, both in their number and their contribution to the larger goal of probation.

"Nine times out of ten I would say that I understand why the conditions get set. So I wouldn't say that there are too many or too few." – Public Defender

"As long as everybody is clear, you give them enough time to successfully finish programs, it's probably not too much. But. . . what's too much? The goal is to restore them [to] law abiding behavior so they don't come back. If they need these things, well then they need them. If they need them, then it's not too much." – Judge

"Well I think as a prosecutor I'm somewhat biased to thinking that there probably are the right amount. . . . I really see probation conditions as giving an offender an opportunity to make changes in their life so we

don't see them back in the system again on the same charge or on more serious charges. I think people tend to think of probation conditions as impediments for offenders. But I really think of it, try to think of it as an opportunity for people to get the assistance to make changes in their lives." – City Attorney

The need to address conditions one at a time was described as a pragmatic approach to relieving the burden of numerous conditions. A few probation officers used this approach and as one judge explained:

"I don't think it's too many as long as you understand that they can only do one [condition] at a time and I make that clear. First thing you need to do is get your treatment under control. You need to go into treatment, successfully complete it, don't use any alcohol or non-prescribed drugs, then once you're stabilized and all that we'll start looking at cognitive skills, mental health, therapy, anger management or whatever. As long as you're doing it in the right order. Unless you get your chemical health under control, what good is all these other programs and therapy?"

Most Probationers Understand the Conditions, but Some Question the Fairness

Almost all of the probationers interviewed indicated that their probation officer adequately explained the conditions of their probation and the consequences for failing to meet those conditions.

"They give you their requirements of you as far as being on probation. . . . That's what comes along at the beginning. They'll tell you what the requirements are as you continue on your journey." – Probationer

However, one probationer did not fully understand all of the conditions or the consequences. Rather than explaining all of the conditions specifically, the probation officer gave the probationer a sheet with the conditions on it. While the probationer understood the requirements to abide by the law and abstain from drugs and alcohol, she did not know about the travel restrictions.

Beyond a simple understanding of their conditions, most of the probationers also felt that those conditions were fair. However, some probationers felt certain conditions were unfair, particularly the conditions of no use of alcohol.

"I mean if the age limit is 21 and older to drink, why do I have to stop drinking just because I'm on probation. Now granted, I can understand if it was, you know, something that had to do with drinking like a DWI or something like that. Now that is understandable. But if it's a crime that has nothing to do with their alcohol, I don't understand that one." – Probationer

One probationer did not like the no weapons condition because she was concerned for her safety in her neighborhood. She felt that a self-defense device was necessary and should not violate the no weapon condition.

Term or Length of Probation

Background: The average length of probation in Hennepin County is among the lowest of the Minnesota counties. Table 2 shows the average length of probation for individuals sentenced to felony probation between 2010 and 2014 in Hennepin County. This does not necessarily represent how long the individuals actually serve on probation. The overall average for 10,216 felony cases was 39 months. Person, property, drug and other cases were all 37 or 38 months on average. Meanwhile felony DWI cases had an average length of 60 months and felony criminal sexual conduct cases had an average of 80 months.⁷

Table 2. Length of Felony Probation Sentences

County	Offense Type	Avg. Length of Stay (months)	Cases
Hennepin County	Person	37	3,024
	Property	37	3,246
	Drug	37	2,187
	Other	38	1,109
	DWI	60	405
	Crim Sex	80	245
	Total	39	10,216
Minnesota	Person	55	15,193
	Property	60	17,672
	Drug	80	13,696
	Other	50	4,937
	DWI	77	2,184
	Crim Sex	154	1,647
	Total	66	55,329

Details from Interviews:

Summary of Views Expressed About Term or Length of Probation

Terms should be individualized and could be shorter; all agree it is worse in other counties
Early discharge is beneficial, but could be used more often
Conditions should be accompanied by treatment or support

Terms Should Be Individualized and Could Be Shorter; All Agree It's Worse in Other Counties

As with the conditions, the need for individualization of probation lengths was expressed by numerous judges, probation officers, and attorneys. The most prevalent factors for individualization are offense category and criminal history.

"Again, it's going to depend on the person and it's going to depend on the crime. On a felony it's very typical to have a probationary period of three years, gross misdemeanor two years, and misdemeanor one year. For example, in the case of DWI's those can be longer. It really depends on the individual and how much supervision I'm estimating that that person is going to need." – Judge

Interviewees also mentioned several other important factors when determining probation lengths, such as client needs and risks, public safety, restitution payments, and the number of conditions and programs to be completed.

"I think it depends on the case and the situation that the clients are in at the time that they get charged and all the issues that they have. I mean, there's no blanket, no cookie cutter thing for our clients. Some people can do really well with a year of probation, 2 years probation, and you'll never see them again. Other people need that structure for a longer period of time." – Probation Officer

Similarly, some thought the conditions and/or the needs of the probationer should more directly guide the length of the probation term. Rather than a set amount of time, the probation length should be determined by these factors.

“Really what we ought to be doing is. . . I should be asking the probation officer, “What is a reasonable amount of time for this person to successfully complete all these conditions?” That should dictate how long probation is.” – Judge

“What I have seen with mental health issues is that one to two years is not appropriate. That is such a barrier for them. They can’t navigate through probation successfully, sometimes in some cases two years. What I’ve experienced is not appropriate. They end up needing so many other additional outside services, probably not for what they were sentenced for.” – Probation Officers

Numerous criminal justice officials interviewed believed the length of probation is generally appropriate.

“Three years I think is long enough for anyone to be on probation to actively change.” – Probation Officer

“Appreciate that Hennepin County looks at a fair amount of time. Enough time where we can get their needs met but not too much time.” – Probation Officer

“In general if they’re going to do the programming they have it done within the probationary period. If they’re not going to do it, I don’t think more time was going to make any difference anyhow.” – City Attorney

Several officials noted that the probation terms were too lengthy or could be shorter, but they were quick to note significantly longer terms in other Minnesota counties.

“Well let’s start with the felonies, I think 3 years is too long. I think that they got this rule of thumb of 3 years, but again it’s not specific, it’s not tailored to the circumstances or the people’s needs. It’s random. It’s just a random number that they slap on. And it’s not as bad as some of the [terms in] out-state. Sometimes you see people out-state with fifth degree possession and they’re on probation for 5, 7 years. So then you start to say “ok, I won’t complain.” But it’s still, think of where you were 3 years ago and how much has changed in your life in the past 3 years. And now I’m telling you to be beholden to this person or this institution for 3 whole years. I don’t think that 3 years is a horrible amount of time, if it’s tailored to the circumstances of the crime. Like I said, it’s definitely better than 5 or 7, so I wouldn’t want to go up in any way, but there are circumstances where it shouldn’t it even be that. It should just be a year maybe.” – Public Defender

“5th degree possession people should not be on probation for 3 years. Now I know other counties beyond Hennepin go even longer, right? They’ll go to the stat [utory] max, 5 years or 10 years.” – Public Defender

“The probation periods in Hennepin County are a lot shorter than elsewhere. I think you see crazy probation periods in Anoka County and Dakota County. But I do think that too often there’s this idea that there has to be a minimum number of years. In Hennepin the floor usually is 3 years and I think a lot of times, you can look at somebody and say, either they’re going to be successful or not successful far within that 3 year period.” – Public Defender

Early Discharge Is Beneficial, but Could Be Used More Often

Numerous judges, public defenders, and probation officers felt that early discharge was a beneficial tool for probation, which served as an incentive for probationers.

“Yeah, I use early discharge a lot. And I actually do it as an incentive for them. If you follow these terms and conditions of probation, I will let you off early. . . . Yeah, I tell them at sentencing.” – Judge

“It is being used more but there’s a limited number of judges who use it. I think it is great for many of my clients, and I push for it when it’s a viable option and when I know the players are at least open to the discussion. I ask for it all the time, but I know there are times I’m just not going to get it.” – Public Defender

However, several criminal justice officials also noted the infrequency of early discharges, whereas it was more common to place individuals on administrative probation. Administrative probation means that the individual has been removed from a supervised caseload with a probation officer and moved to an unsupervised caseload. The offender still has the conditions of probation, but no probation officer is supervising them to enforce those conditions. However, individuals on administrative probation still have their records monitored for any new police contact or criminal charges.

"I don't think early discharge happens very often at all. I think they use administrative probation more frequently than they do discharge. In part because probation can administratively, put somebody on administrative probation, they don't require a court order. They can just decide they're going to put somebody on administrative probation. Whereas to have a discharge they have to send something to the judge and justify it, so I can only think of a couple of my cases in 20 years where a probation officer has said, 'this is a case where probation should be discharged early.'" - Public Defender

I think it [early discharge] is [used] but it's not common. I think administrative probation is probably more common where you say, 'Okay you're not on an active caseload but if you were to reoffend you could be brought back in.'" - Judge

Some probation officers preferred to leave the decision of early discharge to the court or the judge's discretion.

"I take a stance that I don't advocate for it. I used to get that on a weekly request. My stance is that I am supervision but I am not advocating for them in court. I tell them I will forward a letter and I will tell the court what happened on probation but I remain neutral on that. I let the court handled that." - Probation Officer

"From my perspective, I leave those decisions up to the judge. If a judge is really pushing for early discharge, if they felt a person had satisfied all their conditions and it was appropriate for them to be discharged early, I allow them to make that decision. I do weigh in, but for the most part I can only recall one time in my career in about a nine or ten-year period where an early discharge, where one of my clients came to me about an early discharge. Even then in that situation I just kind of took it to the judge and was like 'What do you think?'" - Probation Officer

The decision about how to shorten the length of probation (early discharge vs. administrative probation) may have unintended consequences for the probationer. A few public defenders noted the "collateral consequences" of administrative probation. Individuals under administrative probation were subjected to the negative aspects of probation (sanctions and other collateral consequences) without access to the beneficial aspects of probation (resources and supervision). If probationers were given an actual early discharge, these collateral consequences would no longer apply to them. For example, while on administrative probation, an individual cannot vote. On the other hand, if given an early discharge from probation, they could vote. Public defenders also noted the collateral consequences for employment, housing, and criminal history points.

"And you think a lot of the collateral consequences, the disenfranchisement of people because they're on probation, I think that, most people think that there's no big deal, if you're on administrative probation what's the difference? But there are ways that it affects you and the rest of your life, where it's a tremendous difference. I think it's [early discharge] an under-utilized tool." - Public Defender

"In some of the other counties where you have 15 year probationary, they should get an early discharge if they've proven that they can stay out of trouble for 3 years or so. They shouldn't be stuck on probation for that long with all of the negative things that go with it. Doesn't really give them a chance to get away from it. And yeah, they should have early discharge, but they don't and I don't think that's fair." - Public Defender

Fees and Restitution

Background: In Hennepin County, probationers are assessed a one-time supervision fee, which ranges from \$125 to \$350. This general fee is referred to as the Adult Fields Services (AFS) fee. The amount of the fee is based on the offense level and whether the client is represented by a public defender. These amounts are summarized in Table 3. By Minnesota statute, the correctional fees must be used for correctional services, and the revenue created may not replace current sources of funding for correctional services. Moreover, these fees must be reasonably related to the defendant’s ability to pay and the actual cost of correctional services.⁸

Table 3. Probation Supervision Fees

Offense Type	Private Attorney and Pro Se Clients	Public Defender Clients
Misdemeanor	\$250.00	\$125.00
Gross Misdemeanor	\$300.00	\$150.00
Felony	\$350.00	\$175.00

Source: Hennepin County Probation Department Website: <http://www.hennepin.us/residents/public-safety/adult-probation>.

There may be additional fees assessed for treatment programs or other court mandated conditions. If a client is ordered to complete the one day DWI Program (DWIP), they are assessed a fee of \$375 dollars, or \$250 for Public Defender clients. There is also a drug testing fee that may be assessed upon sentencing or upon sentence modification. The drug testing fee is \$100 for private attorney or *pro se* clients and \$50 for Public Defender clients.

By statute, restitution is a priority over local correctional fees. Moreover, supervision fees cannot be collected until “the defendant is making reasonable payments to satisfy the restitution obligation.”⁹

Details from Interviews:

Summary of View Expressed About Fees and Restitution

There are many different types of fees and fines
Reactions to collections practices are mixed
No violations for failure to pay supervision and court fees, but possibly for program fees

There Are Many Different Types of Fees and Fines

The interviewees emphasized the differences between the various fees and fines, both in what they are for and how they are handled. Certain surcharges and court fines are mandated by state statute and cannot be waived, whereas other financial sanctions are department policies or at the discretion of the judge. Probationers also incur fees for services and programs that are contracted with private companies. These service fees are often applied on a sliding fee scale or possibly covered by the courts for indigent offenders.

“There are probation fees. I don’t know what they all are. The fees that I concern myself with are: there’s a surcharge of \$78 on every conviction, that’s mandated and I do impose that. There’s usually a mandatory minimum fine of \$50, I stay that whenever I can, like if someone’s getting a stay of execution or stay of imposition, so if they are successful on probation they don’t have to pay it. But if they get violated and end up executing the sentence, then that fine is imposed. It’s like stayed time. I know there are fees for electronic home monitoring and usually folks work directly with the EHM people.” – Judge

“So, if you talk to anybody here, we have all different type of fees. But I’ll say this, there are court fees, which judges do have some control over, like fines. We can stay a fine. We can suspend a fine. The probation fee is by statute. I can’t touch that. The workhouse booking fee, I can’t touch that. That’s by statute. So there’s certain fees that the legislature has said, ‘judge, you or anybody. This is the fee. You have nothing to do with this fee.’ The fines we’re pretty good at. There’s a surcharge that the judges kind of deal with. We all

have a different idea if legally we can do anything with the surcharge of 78 dollars. But really our, for judges, where we have the most discretion is on the fine. What we can do with the fine. And that's what we have discretion on. The other fees we can't do anything really about. Probation has some fee waivers that they can have for like electronic home monitoring. They might be able to help you with the fee for the one day DWI, the class. But overall, we don't, we can't really waive those fees." – Judges

Perhaps the most relevant and discussed fee for probationers is the supervision fee. In Hennepin County, probationers are assessed a supervision fee. According to one probation officer, the supervision fees are "mandated by our legislature, so they have to be imposed." One public defender also noted that the supervision fee is "not a condition of probation," thus it cannot be the basis of a violation.

Reactions to Collections Practices Are Mixed

In terms of collecting on these financial sanctions, the probation officers have a limited role in collection. For example, restitution and other court fees were recently moved from the probation department to the county attorney's office.

"We don't enforce, for example, fines, fees that are imposed by the court. We have nothing to do with those collections." – Probation Manager

"About 3+ years ago restitution was moved to the county attorney's office. It used to be ours for both determination and collection, and then it was moved. And so, we really have nothing to do with restitution anymore either." – Probation Officer

If a probationer is unable to pay the fees after a certain amount of time, then the unpaid fines and fees are sent to collections. Some collection occurs via a process known as revenue recapture. For example, when someone files for their tax refund, the Department of Revenue would automatically deduct the unpaid fees from their refund. As a result, probation officers are not responsible for collecting delinquent fees, nor are collections a major aspect of their job.

"The fees range from \$250-\$350. We don't deal with that a whole lot. Some people pay them but if not it goes to collections at the end [of their probation]."
– Probation Officer

"Yes, they have fees, but if they can't pay I'll never violate. It'll go to a collection agency. If they file for taxes it will just be taken from there." – Probation Officer

We did not ask probationers specifically about financial sanctions, but it is still worth noting that none of them mentioned fees or fines as a concern of probation. Probationers did not mention these financial sanctions even when asked generally about their probation officers, their experiences in the system, resources, and other general topics.

While the system of revenue recapture was generally considered a good system, especially compared to revocations for failure to pay, several public defenders illustrated the collateral consequences of the current system. These collateral consequences included the loss of professional licenses, wage garnishments, and negative impacts on credit scores.

"They can't be violated for not doing it, but there are a series of collateral consequences that affect your ability to have a driver's license, your ability to have other licenses and stuff, like barber license. [If] outstanding fees. . . are owed to the government, you lose your licensing. And then the question becomes, should somebody whose livelihood requires them to drive, or livelihood requires them to cut hair, or livelihood requires whatever the licensing is, be taken away because they don't pay a probation supervision fee. And does that undermine what probation is trying to get at, especially since employment is one of the major indicators for likelihood of being successful long term down the road. So I don't think there's the risk of revocation, but I do think the collateral consequences undermine somebody's likelihood to be successful." – Public Defender

"The court fees, they now go to resource recovery. So they go as a ding against their credit. I think when the change happened, I can't speak for the whole office but it was kind of like that mixed blessing kind of thing cause they weren't in jail for not paying the fees. They weren't dragged in court for not paying those fees, but we're all people living the middle class kind of life and understand the importance of having a valid credit score and a credit record and what those garnishments can do to a person in terms of trying to get housing and even employment some times. There are some employers now who check your background. So long term I'd rather [the fines and fees] just go away." – Public Defender

No Violations for Failure to Pay Supervision and Court Fees, but Possibly for Program Fees

Most of the interviewees firmly stated that probationers would not be violated for failure to pay financial sanctions.

"I've never seen a violation for failure to pay your supervision fee." – Judge

"I've been assured by probation that they will not violate somebody solely because they haven't paid the fee or fine. Cause there's other ways to take care of that." – Judge

"They do have to pay a fee, but I would not ask for a revocation for failure to pay a fee." – City Attorney

However, some officials noted that failure to pay for treatment or other programs could eventually lead to a violation or revocation. If an individual could not afford the program they would also be unable to attend the treatment. Subsequently, failing to attend the treatment program could then lead to a violation or revocation. Thus, these officials noted that failure to pay program fees could result in violations because the underlying issue is nonpayment. There was some dispute about this issue, as many officials stated that failure to pay any fee would never result in a violation.

"Well no, they can't violate them or revoke them for not paying, but what they do is they violate them and revoke them for not showing up and going. So it's essentially the same thing, but it's not. . . . Technically, they can't do that because that's kind of debtor's prison type. So they come up with something else if they want to do that. And they never really want to give them a chance to be heard about whether or not they can afford it. I think. . . if they want to. . . can find that they can afford it." – Public Defender

"But on the other hand, the one-day DWI program that I told you about? We have thousands of first-time DWI's in Hennepin County. There is a flat fee for that and it's expensive because contracted with outside agencies. It's maybe like \$257? There's a reduced fee for indigent clients that's still like \$145. If they can't pay that, I've seen them be violated. But the violation then, usually the consequence is that they'll have to do two days of STS. They wouldn't get violated and have to do 30 days in jail which is the typical stay time of a first time DWI." – Judge

Sanctions, Administrative Actions, and Treatment Services

Background: In Hennepin County, probation officers may respond to violations by handling them in house or by going to court. If they are handled in house, probation officers can restructure the conditions of probation by adding more conditions or adding more frequent check-ins. More conditions could include a community based treatment program or class, Sentence to Serve, community service, or electronic home monitoring. According to the proposed policy in Hennepin County, "sanctions conferencing provides a tailored and specific response to assist the client [to] become compliant without the delay and ordeal of appearing in court with its inherent adversarial process."¹⁰ Sanctions conferencing cannot be used when a new crime has been committed. The goals of sanctions conferencing are to provide positive change with sanctions that are individually tailored to the probationer. An additional goal is to avoid using the courts to respond to technical violations.

In violations, where the courts must be involved, the probation officer can either issue a summons or arrest and detain order. According to Hennepin County policy, a summons should be issued for a violation unless one of the following applies: 1) the probationer's whereabouts is unknown; 2) the probationer is unlikely to respond to a summons; 3) there are victim or community safety concerns.¹¹

Summary of Views Expressed About Sanctions, Administrative Actions, and Treatment Services

There are many community based alternatives, however there are several barriers to accessing these services

There are concerns over the number of arrest & detain warrants used

There is variation on when to use incarceration versus other sanctions

There is mixed support for sanctions conferencing and grids

Details from Interviews:

There are a lot of community based alternative to incarcerations, however there are several barriers to accessing these services.

Over half of the probation officers and judges thought there were a lot of community based alternatives available to probationers. It was believed that there were services to address the variety of needs that probationers had. One judge stated:

"I think in Minnesota - and certainly Hennepin County being the biggest county - there are a lot of folks who are really into alternatives to incarceration. There are many drug and alcohol programs, there's mental health programming, there's combined MICD [mental illness chemical dependency] programs out there. I think we try when it's available to use those tools."

A probation officer also had a similar view:

"I think there are good alternatives and treatment options, sentence to service, community programs. . . There's a decent amount of resources out there we can tap into."

A couple of interview participants referred to Hennepin County as the land of "10,000 treatment centers, not just 10,000 lakes." This was heard a couple of different times by different individuals. Those who thought there were ample community resources also tended to think Hennepin County and Minnesota overall were "resource rich." The following comments come from probation officers:

"I think that Minnesota is definitely a rehabilitation state and we try to find ways to integrate people back into the community since most people that end up in jail will eventually be in the community. I do think that we have a fair amount of resources for the people that we work with."

"We live in Minnesota, it is a resource rich community. There are a number of community based resources that will help."

"I think there's a fair amount. . . . I think we're resource rich in the Twin Cities area. I think there's a lot of alternatives, there's a lot of options in terms of chemical health and domestic programming and some of those things."

About half of the interview participants felt there were enough community resources but believed there were too many barriers that made it difficult for probationers to access these services. Barriers mentioned included lack of transportation to get to the resources, payment barriers related to health insurance, and/or rigid program criteria. One city attorney stated,

"I think we're really lucky in Minnesota compared to other parts of the country about how many programs people have to choose from. I think some of the difficulty is with cost and then transportation because some of the better programs - if you're a low income person - there might be tons of programs but if they don't offer a sliding fee scale, they're not really available to you. So I would love to see more programs that offer sliding fee scales to allow more people to participate."

At least 5 different interview participants mentioned concerns with the Rule 25 process. A Rule 25 is a chemical assessment that is used to make recommendations about the type of treatment program that would be most appropriate for the individual. There were concerns that some probationers were "falling through the cracks" with Rule 25's because they were not considered poor but they do not have enough money to pay for the Rule 25 or their private insurance will not cover it. One judge described how and why this is concern:

"I call the 'fall through the cracks' people, the people who aren't poor enough to get the Rule 25s, but they make just a little bit of money so that they can get private insurers. But then the insurers will make the orders, but then they won't pay for them. And then it becomes an issue because we can't get them into treatment or we can't get them the programming we initially anticipated."

Some agreed that there are a lot of treatment services in the metro area, however, a barrier to accessing them is that they often have long wait lists.

"I think there are a lot of treatment options. There can always be, there should always be more. Because I have a lot of clients waiting for beds to get into treatment. And treatment, I think everyone agrees, treatment is more effective than jail." - Public Defender

Some also mentioned a lack of employment resources to assist individuals who had criminal records. One probation officer stated:

"If one of their conditions is to obtain employment, who is going to hire felons, realistically? So I don't think we have. . .enough resources for that either."

In addition to employment barriers, probation officers also thought strict housing restrictions were a barrier to probationers.

"Mental health, drugs, anyone with any kind of crim[inal] sex conviction because there's just no place for these people to live."

Probationers also agreed they needed more community services to help them find jobs and housing.

"I think it sucks because do you know how hard it is with a felony on your record to get an apartment? They need to help with getting that. I don't know. I mean felonies on your record it makes it difficult to get a job and a place to live. And that's really hard for some people. Because a lot of people can change and do change. And there should be some kind of something out there too, where you can find it a little easier to get into an apartment. We need a place to live, as far as having felonies on your record."

Probationers, for the most part, thought it was difficult to access the community services and there simply was not enough for "felons." One probationer stated,

"There ain't even enough resources out here for the veterans. So they're damn sure ain't enough out here for felons. I mean they're trying to make jobs out here, you know. . .but hell sometimes depending on, it could be like they're felony friendly, but when you go to them it's a whole different story. You know what I'm saying?"

Other probationers would like job training assistance,

"I mean, yeah that would be nice, like a job training program. I don't know how they would go about it, but yeah that would be nice. You know, something to get us back into the working environment. Because me personally I've got a lengthy record and I don't have much of a job history. It's hard to find a good adequate job."

Criminal justice officials also mentioned there were not enough community based resources for specialized populations such as young men, probationers of color, probationers with mental health conditions, and probationers with specific drug problems, such as meth. The quotes below from judges and probation officers highlight these concerns.

Limited services for single men and young adults:

"For men who are single, or don't have children, it's hard to find housing. If you're talking about someone who's homeless, it's hard to find housing. Sometimes they have an issue even getting into health services if that's what the issue is. For women, yes there is an abundance of services but I've run into a lot of issue for men who don't have children and aren't married, they're single. I run into a lot of issues with that for outside services."

"I think there's a lot of barriers. For example, for young adults, for like 18 plus, there's just, they're not kids anymore. They're too young to be in the adult facilities, housing treatment. So they're kind of in a weird place since there just aren't a lot of services for them. So yeah, I don't think there are enough resources for this population."

Limited services for probationers of color:

"So I would say for young African American males, whether it's school programs or trade programs or things of that nature I think those are things that we could increase."

"Another thing I struggle with too as far as outside services: services for minorities, especially for those who English is a second language. So we're looking for a domestic violence program for a Korean speaking person. That can be a struggle. Or Nepali or you know what I mean. Those services are very limited."

Limited services for drug specific probationers:

"I wish there were better meth treatment programs, we don't have much. I don't think anywhere as a real good meth [program], we just sort of have CD and no one feels equipped I feel like, to deal with meth."

Alternatively, some interview participants believed there were not enough community based resources that could be used as alternatives to incarceration for probationers when there was a probation violation. On probation officer stated,

“No it seems like there’s a point where I don’t know what else to do when someone is returning to court or sometimes you just have to return into court because you are required, you are mandated to send a conviction that has to go to court. It would be nice to have another place to go. I don’t know what that is though. If it’s not treatment, if there’s another option, I think that would be worthwhile to look into. If someone had a great idea or there was a program that worked instead of jail.”

A few probation officers also mentioned that there is no type of day reporting center in the county and thought that would be nice to have. One probation officer mentioned that a local community agency does have a day reporting center, but it is limited on the number of participants that it takes. It was heard several times in the interviews that many probation officers felt their only options were electronic home monitoring or Sentence to Serve (STS). STS is a community service type of program provided by the county that allows probationers to pick up garbage along the highways and area roads as well as participate in other community service projects. A probation officer stated:

“It’s a situation where, really if we were going to look at an alternative to incarceration it would either be STS. . . . It’s either going to be STS hours or community service, or it’s going to be electronic home monitoring.”

There are Concerns over the Number of Arrest & Detain Warrants Used

When there is a violation and probation officers want to bring it forward to a judge, some probation officers use arrest and detain orders (A & D’s) whereas other use summons. When A & D’s are issued, probationers are arrested and detained in jail until their court date. A summons is a notification given to probationers of when they should appear in court for their violations hearing. It appeared to differ between probation officers as to when they would use A & D’s and when they would use a summons. One probation officer said they use an A & D when the probationer has not been in contact whereas a summons will be used when the probationer has committed a violation but they are still in contact with the probation officer.

After the interviews, it was learned that probation officers no longer draft Arrest & Detain (A & D) warrants or summons. The probation officers now complete an “Order to Appear” document for the court which is submitted with the probation violation report. Probation officers can make recommendations, but it is the signing judge who determines if the court will issue an A & D or a summons.

“Instead of arrest and detainments, instead of just sending the sheriff’s department to pick you up at your job and all that and embarrass you if you’ve been in contact with us and stuff like that and it’s a violation, I mean sometimes we’ll utilize that [a summons] and be like ‘well man, next time you come to court we’ll have a probation violation report ready for you. You don’t necessarily just have to go to jail, but we need to deal with this probation violation”

This probation officer went on to say that in severe violations or when there is concern of a new crime, they may issue an A & D.

Public defenders had the greatest concern regarding the number of A & D’s issued. Some stated that the Rules of Criminal Procedures clearly state when an A & D should be requested and when a summons should be used, but judges were too often just going along with the request of the probation officer.

“The rules of criminal procedure lay out the process for how to handle probation violations and when it should go out in a summons form or when it should go out in a warrant form. And I think that too often, especially since in Hennepin County there’s a signing judge who doesn’t have anything to do with the cases, too often people just rubber stamp a request from probation.”

One public defender felt most violations brought into court should be handled by issuing a summons. This person felt holding someone in jail disrupted their life too much.

“They should be summons, not arrest and detention orders. Absolutely, they should be, in the majority of circumstances, they should be summons to court. There’s no reason to do all of these A & D’s and bring them into custody and just shake up their entire lives. I mean these people are trying to get jobs, they’re trying to get to work. There’s all these collateral consequences from the convictions and then. . .they lose their job or they’re in jail for the weekend or they’re the only daycare source. To do an A and D is appalling, for most of these.”

It was also a concern when those A & D's included holding probationers without bail as described by one public defender:

"I would say 99.9% of our judges here in Hennepin, they hold clients without bail on probation cases, and that just makes everything more difficult because there's nothing we can do to get the client out of custody. And so we have a client languishing in jail and it just, it makes it more difficult."

While public defenders overwhelmingly had concerns with the use of A&D's and the use of no bail, such concern was not limited to public defenders. Some judges also had concerns with this overuse. One judge thought the probation officers should work more with probationers rather than just requesting holds without bail. This judge stated,

"Well my biggest issue is the hold without bail thing. I think that's horrible. I just think that they should work with these folks a little bit more. It's hard out there, especially when you're battling addiction, or you're battling poverty, you're battling homelessness. You're battling a number of things that seem absolutely overwhelming. And I give some of these defendants a lot of credit for even being able to do the little bit they can do. . . . And some of them are really reliant on their POs to be the support system that they need. And they're not getting that. And that to me is bothersome."

There is Variation on When to Use Incarceration versus Using Other Types Sanctions

For many probation officers, the use of incarceration either through jail, the workhouse, or prison, was considered a last resort. These mechanisms were used only after all other sanctions had been exhausted, and as one officer stated, probation officers believe it is their legal duty to attempt all community resources before recommending incarceration.

"Prison is the last resort. Doesn't come easy for any of the probation officers to recommend prison."

"Legally, you need to exhaust community based resources first. It's a show of good faith when you try to do that. I'm personally opposed to having mentally ill people incarcerated."

For the most part, probation officers were not opposed to using incarceration as a sanction. For these probation officers, it really depended on the individual circumstances

of the probationer. They believed some needed incarceration as an immediate sanction whereas for others they may have not used it. One probation officer stated:

"It's really hard for me to say a generalization because again, on a rare occasion I have recommended prison on a technical violation only. Every case is so different. I can have a violation where someone lost contact or fell out of contact. . . . So for someone like that, if they were picked up and apprehended, then to me that jail time is probably going to be appropriate and I wouldn't necessarily recommend any additional time."

Another probation officer had a similar viewpoint,

"Some may look at home monitoring and some may be looking at incarceration for the same crime but this is circumstantial."

A couple of probation officers felt their decision whether to incarcerate or not was based on safety and public risk. One probation officer stated,

"For me personally, I think the big determinate whether I'm going to take someone to custody or just bring them back to court and deal with it in other ways is the safety issue. You know if there's a personal or public safety risk, I think no matter what the violation is, that's kind of the point where I want to take someone in to prevent them from hurting themselves or potentially being a community safety risk and hurting someone else."

At least 2 probation officers said they would recommend incarceration for a technical violation, especially in cases where this is their second or third violation.

"The technical violations, depending on what they are, that's going to factor into whether I'm going to recommend jail. I factor in, is it the first one, second one, third one?"

There is Mixed Support for Sanctions Conferencing and Grids

Hennepin County recently implemented sanctions conferencing and the use of a sanctions grid. Interviewees were asked their views on this process. For the most part probation officers and some judges seemed to like the idea of sanctions conferencing and sanctions grids whereas some of the public defenders appeared to be optimistic yet cautious.

The judges who liked sanctions conferencing often said it was because they felt like it gave probation officers a lot more discretion. Additionally, it provided an immediate sanction to the probationer and eased court backlogs.

One judge summarized the benefits of sanctions conferencing and grids:

“By having sanctions grid, gives PO’s a lot more discretion. First of all it keeps a lot of cases out of court, doesn’t clog the system. But more importantly you get an immediate consequence. Ok, you left treatment, I’m going to give you 3 days of STS unless you want to go to court and fight it. They still have their due process rights if they want to fight it. But normally they don’t. . . . And it’s a fair consequence. So they’ll take it and they get the immediate consequence. It gives the PO a lot more kind of authority to be the PO and I told you to do this and you didn’t so here’s your consequence.’ So I think it’s good for the relationship between probationer and PO.”

Another judge noted sanctions conferencing is used frequently in juvenile court and would like to see it used more in adult probation.

“Now I think we could apply some of that stuff here. For example, we had a graduated sanctions grid down there [in juvenile court], so I would be fine with the POs being able to address dirty UAs and other things in a graduated sanction in non-person crimes. And I think sanctions not jail would be a good idea for that stuff, work squad, community service. . . . But I do think we could do a better job with that and I do think we could do a better job with avoiding jail in situations.”

A couple of the city attorneys were in favor of sanctions conferencing for minor offenses:

“I mean I guess if you’re talking about minor violations where you can, if you think you can get the person back on track by bringing them in, you know, I’m certainly agreeable. Our jails are very full. I mean, if it’s something that can be fixed without having to bring them back, then I would be agreeable. There are certain violations, I guess it would depend on what their definition of minor violations is, whether I would be agreeable to that or not.”

Another city attorney stated:

“I think it’s a nice idea because I think it gives an opportunity for some lower level violations to get addressed in a less punitive way.”

Probation officers liked the sanctions conferencing because of the immediate consequences. They felt the immediate consequences benefited the probationer and made the probationer more accountable.

Additionally, probation officers thought sanctions conferencing sped up the process. Instead of having ongoing court hearings to address the violation, they were able to deal with it immediately.

“The number one thing that comes up is that it [the violations process] is a drawn out process. A quick sanction affects the person the most. By drawing it out, the person becomes bitter and thinks that we are out to get them. Continual continuances disconnects the sanction from the violation. We have a first appearance where we just pick a day where we are going to just start talking. In Hennepin it is difficult getting everyone together but finding a way is important and probably would make less work. Speeding the process up is important.”

Since sanctions conferencing is relatively new in the county, the probation department was still in the process of developing the types of sanctions that could be available. It was hoped that ideas for sanctions could be both creative and also assist in getting the probationer back in compliance. One probation officer commented:

“Adding that as another tool for agents to use in terms of, you know, ‘Here’s something else that you can use’, whether that’s adding a condition to the probation that a judge approves of or, probably in an extreme situation, using sentence-to-service hours if there is something that would rise to that level, etc. But again, in terms of that sanctions conferencing, we’re really trying to use creativity in terms of what you have at your disposal that you can use or restructure about their probation that would potentially bring them to compliance and get them back on track.”

However, because of the sanctions grid, not everyone was in favor of sanctions conferencing. One probation officer stated they did not like it because they like to look at each person on a case by case basis. They stated:

“I am a case by case person. I don’t like the grids. I think it is good for a starting place but following into that too much can be a problem.”

Public defenders also tended to not agree with the sanctions conferencing. Some concerns were that probationers would not have a lawyer representing them at these conferences:

"I don't agree with those. I don't. I think that you should have a right to a lawyer there...let me just make that clear, you're talking about the probation officer can just sanction the person without any kind of hearing at all."

In addition to not having a lawyer present, other concerns were related to the framework from which probation officers viewed violations and that some probation officers were more punitive rather rehabilitative. A public defender stated:

"They weren't really talking about having a sanctions conference where all parties were involved. It was basically a way, my understanding of the model I saw, was that it was really a way of them cutting their time in court. Which is understandable, but again recall who I said I see in court. I see the people who are highly correctional versus the people who are highly rehabilitative, so then why would I trust those particular people with my clients in the sanctioning conference."

A different public defender had a similar view,

"It's going to depend on who the probation officer [is]; it's going to depend on what type of challenges and issues there are. They're going to talk about, they're going to deal with what some of our client's issues and needs are. [If] the idea is 'how do we sanction?' as opposed to 'how do we help this person and return them to law abiding behavior?' - which is actually the intention of probation. . .if we called it sanctions based, it already seems like we're starting off on the wrong foot."

Many of the probationers interviewed seemed to think sanctions conferencing was a good idea. They felt it would be good because it gave probationers second chances for mistakes and allowed them to have the power to be more accountable. One probationer stated,

"I think that's good. . . . Because it gives you more than one time to do it right. . . . It's like 'ok you didn't do it right this time so let's give you a little time to think

about it. Then we going to try it again after the thirty days. And if you can't do it right that time, well let's give you 60 to 90 see if you're going to figure it out then. Then you can have a little more time to think about it and come out and do something different. I like that."

Another probationer stated:

"At least you know what you're looking at. So basically the power is within you to, you know. You know if I do this, this is going to happen this time. I think that's a good idea."

Some probationers also liked it because they felt like it would be fairer to probationers and less dependent on who you had for a probation officer:

"I think that would be helpful and I think it would be much more fair to the person who is on probation. Yeah, because it's like, like I said it depends on the probation officer. If they're going to let them get away with it with a warning or if they just toss them in jail and let them sit there until they decide to let them out or until 30 or 60 days or whatever time they have hanging over their head."

A probationer shared why they liked the idea of sanctions conferencing and how it could have helped them,

"I think it's good. Especially if someone's working a good program where they're working a job and contributing not only to their family but to society. You know, I could say like in my past where I've been on probation like, there's a time where I might have had a little slip up and instantly I got violated. And boom I had to go to 90 days in the work house or whatever. It was just like wow, everything I had going just shot out the window. And then I go sit down for 90 days and then I get back out in the world and I don't have no job. I have nothing. And I'm like, I'm back to square one, where I'm struggling and my mentality is like "eff" the system. And then I want to go out there and break the law to get by, to survive. I just don't feel like it's necessary to throw someone in jail."

Motions, Judges, Hearings, and Revocations

Background: To initiate a probation revocation proceeding, the prosecutor or probation officer must submit a written report to the court showing probable cause to believe a probationer violated probation. At the initial appearance on the violation, the court must assign an interpreter if necessary, advise the probationer of the alleged grounds for revocation, advise the probationer of his or her rights, including the right to representation by counsel at all of the proceeding and set conditions of release (if they were incarcerated). 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 7 days unless waived by the probation. If the violation alleges a new crime, the revocation hearing may be postponed pending disposition of the criminal case.¹²

Summary of Views Expressed About Motions, Judges, Hearings, and Revocations

Beliefs about when to file a revocation varied

Concerns over the revocation calendar

Contrasting roles among judges, attorneys, and probation officers

Beliefs About When to File a Revocation Varied

Interview participants seemed to have different ideas about how quickly a violation should be brought before a judge. According to one judge the current practice, “varies wildly amongst probation officers.” The reason why it varied, this judge believed, was due to probation officer experience:

“Every probation officer brings his or her experience to bear on the client base that they have. Some have a higher tolerance for violations and may not violate them until they’ve dropped six dirty UA’s, somebody else might violate them on two or maybe even one, it just really depends.”

While each probation officer tended to have a different standard for when they brought a violation to a judge; a few judges were concerned that some probation officers moved too quickly while others took too long. One judge stated,

I think you have a group that brings them much too fast. And then you have another group that gives them more of an opportunity to get themselves together and sometimes wait a little bit too long.

However this judge went on to state they favor waiting longer to bring in violations.

“I’m actually more in favor of people who wait longer. I would rather that POs try to work with them a little bit before hauling them in. A lot of them are moving to violating really quickly. I think quicker than they really know them, which to me is not good. I tend to think that they should wait a little bit, and try work with them a little bit.”

A city attorney interviewed also felt that some moved too quickly while others maybe waited too long,

“It depends on the probation officer. For the most part, I think probation officers, probably most of them, try to work with their clients for a while before they file the violation so I think they do it in the appropriate time period in the majority of times. But there certainly have been some violations that I’ve seen that have been filed too quickly and some I’m like, “well why did they wait this long?”

However, another judge felt it depended on the circumstances on whether they wanted a probation officer to move quicker or wait longer to bring a violation forward.

“I think it depends on the circumstances. If it’s a departure from prison to probation, I would say I want to know about it pretty quick. Cause I’ve gone out on a limb and it’s based on the, usually on the assessment that the person is amenable to probation so they’re not. . . . For lower level stuff or people who don’t have a long criminal history, I think a lot of people commit crimes because of socioeconomic factors, chemical dependency, and all kinds of other issues. So the point of probation is to deal with that and the first dirty UA doesn’t necessarily mean it’s time to throw somebody in jail.”

A city attorney, however, wanted probation officers to move quicker:

"I think they should be filed quickly. I think sooner you get people back in, the swifter the consequence, the more likely it is you'll be in compliance."

On the part of probation officers, many of those interviewed felt they tended to wait longer to bring violations before a judge. Reasons for this were both the hopes of finding community resources to help address the problem but also to help ease the court burden by handling it internally first.

"If it's not public safety, if it's something you can balance both their needs, their rehabilitation without jeopardizing public safety, then let's try to work with the client and try all the tricks in our bag before bringing them to court and bogging down the court with yet another case."

Another probation officer stated:

"There's a sentiment that judges don't want to hear about every positive UA...It's not going to result in anything. PO's tend to have little restructures and interventions without involving court. Until they feel the quantity or severity is enough."

Many probationers interviewed stated they preferred to work with probationers and find alternative sanctions internally before going to the judge. However, when there were no other options, going before a judge was necessary.

"The individuals on probation think that is our goal to send them to prison and jack them up but I see it as my life is a lot easier when I don't have to do a revocation. I would much rather work with the client and not get involved in the court system. I would rather see if we can change supervision before getting to that step. But sometime it is necessary. . . as a last resort."

One public defender believed that probation officers waited too long to bring violations before the court.

"They wait too long. . . I'll have a client pick up a new felony charge or misdemeanor. . . then suddenly the PO comes out of the woodwork with a probation violation that's not just that he failed to remain law abiding based on the new charge but has a laundry list of over 2 years of worth of [stuff] they thought they were doing wrong."

This public defender went on to question why some sort of intervention was not included sooner.

"If they were screwing up this long, no wonder how they got to this situation where they picked up a new case, right? Why weren't you intervening? You're only intervening now because the clients' back before the court. . . I'm not saying file a violation every time they mess up, but do something proactive to help the person."

Concerns over the Revocation Calendar

Many interview participants discussed how the court calendar for violations is often long and backed up. Many participants also talked about how the violations calendar has changed in recent years. In the past, the judge who sentenced the case would also hear the revocation hearing. However, now there is a revocation calendar and revocations do not go back to the original judge. Several of the judges interviewed preferred the previous way of handling revocations rather than this current way. These judges felt like there was better accountability on the part of the probationer because they had to re-face the judge who sentenced them and explain why they did not follow the probation conditions given to them. One judge shared their views on the current process:

"We've changed the way we've done business. We used to make sure that when you're the judge that sentenced someone, all the revocations would come back to you. We don't do that anymore and I think that loses something in the accountability to the probationer and this particular judge."

Another judge had a similar view and felt it provided both accountability and continuity in the case.

"I think that the judges should own their own revocations. I know I'm in the minority view there. But I think if I put somebody on probation, and I'm a person who puts a lot of people on probation, that those people should come back to me so I can keep track of them and so that there's some continuity in terms of what I would do in a case. So if I pronounce a sentence and say "ok look, you need to follow this." The only way they'll take it seriously is if they come back and see me again and know it."

One judge thought having a revocation calendar made the whole process more impersonal.

“Well I think the one-size fits all thing is not good. I think the mass revocation calendars diminish accountability for everybody. When I go to do those calendars, the lawyers are in there, they don’t know anything about the cases, I don’t know anything about the cases. It’s all impersonal.”

Several probation officers also had concerns with the revocation calendar for some of the same reasons voiced by the judges. They felt probationers had more accountability and consistency when they had to go back to the judge who sentenced them. One probation officer said,

“I would like to see the same judge handle subsequent cases. I worked in [another state] where they did that, and it was pretty effective to have a client always go back in front of the same judge. I think the more we can have consistency in the specific people that the clients associate a particular role to, I think the better off we are. I think when we draw a line with a client, we are much more inclined to honor that line when we were the one who drew it and not someone else. . . they should go back to the same judge.”

A city attorney also agreed that at least for certain violations it should go back to the original judge for accountability purposes.

“Well with respect to certain violations, I would like to see them handled by the judge that sentenced them. I think the judges have a very hard job and I’m not saying that they’re going to remember every individual that they’ve sentenced, but there’s something about knowing that ‘ok you’re the defendant. I’m the judge. I sentenced you to something. You mess up. You come back and I say ‘well on x date I told you if you didn’t do this I was going to send you to jail.’ And I think there’s something about making that connection of ‘I’ve already told you. Not someone, not one of my colleagues told you. Not somebody might have told you. I told you.’ And I think that it would be helpful as far as making sure that violations were taken seriously.”

In addition to having different judges at the revocation hearing, public defenders also do not follow a case to revocation. There are only certain public defenders within the office that handle revocations. One public defender thought that having the case stay with the public defender when there was a revocation helped because there was

a relationship between the public defender and probationer. The public defender felt this was important for revocation hearings. This public defender stated:

“[I]n the past. . . in the cases where I think we’ve done the most, I’ve been able to do the most good on revocations, it was when the players remain the same.”

This public defender, however stated, that even though they do not keep the case once a revocation occurs, they communicate with the new public defender so they fully understand the case.

“Now one of the things that has been really a pleasant surprise is that we’ve effectively been able to communicate as defense attorneys, the story of the client, what the client needs, etcetera. And we’ve done that by keeping notes in our electronic case management system and the like and also being available, so that my colleagues who are doing the revocations are able to have that information. So that’s been good.”

It was heard through the interviews that the public defenders moved to having revocation teams because of the high volume of cases. They felt having a team of public defenders who handle only revocations was more efficient and effective.

Contrasting Roles among Judge, Attorneys, and Probation Officers

Interview participants discussed their roles in the revocation hearings and how the various roles can sometimes be helpful but at times cause tension. One judge summarized everyone’s role in the violation process:

“Everybody kind of has their own place in that system. Obviously if you’re the attorney for the defendant, your job is to advocate for the lightest sanction possible, etc. If you’re the prosecutor, again it depends on prosecutors, maybe you’re advocating to revoke them and send them to do their time. I would say the judges are neutral; we don’t have a horse in the race. We’re just trying to figure out, can this person’s needs be met while they’re on probation or do they really need a consequence that can only be given by having them incarcerated, or is this person not amenable to anything and the best thing we can do for the public is to take the person off the streets for a period of time. And the probation officers, their job is to try to help their probationers and have them become successful so everybody has kind of a different role in it.”

Another judge thought that having these different roles allowed there to be “healthy tension.”

“There is a . . . what I would like to call a healthy tension. You don’t want everyone to get along great. You want the public defenders to be aggressively representing their clients and pushing back at prosecutors who want to negotiate certain results, or me, I want this person to do treatment. . . so they’re pushing back because they are also representing their clients. With public defenders, their job isn’t to do what’s best for their client, it’s to represent the client, they’ll tell you that.”

This judge continued by stating:

“I’m between the prosecutor and the defense, but I rely a lot on probation because my feeling is they don’t have an interest in the outcome, they’re not on either side.”

These different roles and viewpoints in revocation hearings, however sometimes causes strains in the relationships between judges, probation officers, and both sides of attorneys. When asked if they felt listened to by the judges, one probation officer explained:

“No. Not the majority of the time. . . . I think they’re listening to the county attorney, which we don’t necessarily always agree with. I think they’re listening to the public defender. And I think that more, more outcomes are based on what is said in that court hearing, versus the totality of what’s included in a violation report.”

Another probation officer said,

“There are some judges who get the violations and they are going to do what they want to do. But I like when they listen to us.”

One probation officer felt the relationship between judges and probation officers had declined because of the introduction of e-filing and this led to less in-person conversation and collaboration.

“I think our relationship with the judges has really fallen to the wayside. I think that the e-filing, that kind of thing, I think our probation staffing levels have dropped significantly and so we don’t have the presence in the courtroom that we did at one time.”

While some probation officers did not feel listened to by the judges, public defenders also had similar views. They felt that some judges were too quick to take the side of probation officers.

“I think they [probation officers] end up having more power. The judges seem to, not all of them, some judges, there are some judges who have been doing this for a long time and they know what they want to do, but there are some judges who won’t even make a decision that is very easy, easy to me and the prosecutor, it’s a very easy decision, “oh no we have to hear what probation has to say about this.” So they have more power and I think some realize that and they wield it as much as they can.”

A different public defender had a similar view:

“I think judges defer too much to probation. I would like to see judges make decisions that are more independent of whatever feedback they get from probation. You know, consider what a probation officer has to say, just like you consider the prosecution side and just like you consider defense, but ultimately make your decision as a judge without just saying ‘well I defer to probation,’ which is just ridiculous.”

Another public defender said:

“Sometimes the judges kind of look at the probation officer like they are the person to talk to.”

A few public defenders also felt that prosecutors also deferred to probation officers.

“It seems like, at least in our division and our team, most of the prosecutors will defer to the probation officers. . . it seems like a lot of the judges kind of do the same, kind of deferring to the probation officers.”

A city attorney mentioned that judges often look to probation for their opinions.

“We have very good probation officers. And many times I will return to them and rely upon what their thoughts are for what my position will be with the court.”

There was also some tension expressed in the relationship between probation officers and public defenders. This tension was there for a variety of reasons including a lack of trust between the two parties, different personalities/philosophies, and concern over a lack of training.

One probation officer commented about the relationship with the public defenders:

“The public defenders? I don’t know I could go on and on about that. I don’t necessarily think there’s a ton of respect given to probation from that area specifically.”

A public defender believed the relationship was dependent on the philosophy of the probation officer.

“It depends, it’s a mixed bag, the probation process and dealing with probation revocation is completely dependent on who’s involved as far as what kind of probation officer is involved. The probation officer is going to really set the tone. If you’ve got a probation officer who is interested in working and reforming the client then it’s a really awesome, great process. If you have a probation officer who’s not invested in your client and is attempting to just close a case, then it’s, by asking for revocation, then it’s a sort of frustrating process. It seems like a crapshoot.”

Related to philosophies was the training of the probation officers as stated by one public defender:

“Another problem that I find with that is that frankly, probation officers don’t have the same training as we do. I find that white probation officers are more quick to violate their black clients than black probation officers working with the same race. And I’m sure that there’s training about that and to be aware of that would be huge.”

While sometimes relationships between the various parties were sometimes strained or tense, for others this was just part of the job and part of the process. One probation officer stated:

“Now do I disagree with some stuff sometimes, yeah. But obviously, that’s just the nature of that job. I don’t really see no changes. I kind of like the system that we have in place. I kind of like that, here in Hennepin, if you want to get a judge to truly weigh in and just really get the judge’s perspective, you can always just call their clerk and tell them what you’re struggling with or what you thought.”

A city attorney felt that working relationships and the outcomes of the case were most effective when everyone got along. This city attorney shared that in the past they all got along better but it is changing somewhat.

“You know we realized we each had a job to do but we also got along very well. We’d go out for drinks sometimes. We had a very collegial relationship. And I think some of the younger prosecutors and public defenders are more adversarial and I think that that’s going to hurt them all in the long run. And the most effective prosecutors and public defenders in my opinion are the ones that everyone likes because they’re nice to get along with.”

Another probation officer described everyone’s role but mentioned that in specialty courts there is more collaboration between the various parties.

“You know, the prosecutor’s looking for a lot of jail time, the public defender was looking just to get the person off or no jail time and setting things up with programming. In the specialty courts you have a much more collaborative feel to it. I mean there’s still some debate but I think that everyone kind of has the same goal there, where the goal was more focused on the client as opposed to focused on result.”

Summary

This profile describes the structure and operations of probation violations in Hennepin County. Hennepin County Probation is a large department with over 900 probation staff, 65 judges and many more public defenders, city and county attorneys. Interviews were only conducted with a small sample of professionals and probationers involved in probation violations and revocations. The county attorneys are also not represented in this profile as they declined participation in the interviews.

With a county of this size, there are obviously going to be differences in how violations and revocations should be handled. For some professionals, they felt there were too many conditions for probationers, others felt the number of conditions was appropriate, and while others felt that conditions needed to be more individualized. While there was variation on when to use a sanction versus when to use incarceration, most interviewees felt that there were enough community based alternatives to incarceration, however there were barriers to accessing those services. Interviewees felt more services were needed for specialized populations, including, probationers of color, probationers with specific offenses, and probationers with mental health disorders.

Many interviewees expressed a desire to streamline the revocation hearings. Several wanted it to go back to the “old” system of having the sentencing judge hear the revocation. One probation officer said:

“I’d like to go back to the old practice. You go back to the same sentencing judge [for a revocation hearing] . . . I’d prefer that same person go back to the same judge.”

Some felt the current violations process was too long and not effective or efficient for anyone involved. Each court date regarding the violations hearing was often continued to another court date.

A couple interviewees also mentioned more training is needed among all parties involved in the violations and revocations. One judge felt like probation officers needed more training and consistent training to better supervise probationers.

“What I would like to see is well-trained probation officers so that they have all the information, or as much information as they can have to supervise the individual that is in front of them.”

This judge went on to say that they believe most probationers are trained but wanted every probation officer to have the same type of training.

Some probation officers felt judges should be trained in specialized cases. One probation officer said,

“Judges should [be] trained and understand stats and assessments about. . . specific crimes.”

A part of this training was also about revisiting the purpose of probation. This was mentioned by judges, public defenders, and probation officers. Interviewees for the most part wanted the criminal justice system (even beyond probation) to be more rehabilitative and provide resources to probationers to better help them succeed.

“We need to be, as a society responsible for not throwing people away, but helping them reintegrate into society. . . It’s the idea, if they’re really on probation because we think they can be rehabilitated, we need to do a better job rehabilitating. And not just rehabilitating, but helping them transition. Maybe it’s housing or group homes, where they can actually make the transition. Jobs, income, teach them how to manage their income [and] finances. They’re kids. Teach them how to budget and live on their own. We all had to learn, right? Some of these people, a lot of them never learned how to do that. Setting them up to succeed, not just ‘o o o’Ok, you’re off probation. We’re done. See you never.’ But actually help them. Help them succeed.” – Judge

“I really would like to get away from sending people with addiction issues and mental health issues to prison. I just don’t think it’s a good place for them. I don’t think it’s a good use of our resources. And I think again it’s a disproportionate amount of people of color, of people with mental health issues, of people with trauma, women who have had to resort to sexual trafficking to support themselves and support their habit and survive. You know, I think those are not the people we want to fill our prisons with. And so I guess, if there was one thing, it would just be we have more resources to offer people and we don’t have to go to that.” – Probation Officer

Hennepin County is continuing to explore ways to handle violations and revocations. The sanctions conference is being piloted and may be expanded on in the future as a way to provide resources to the community.

END NOTES

- ¹ <http://www.hennepin.us/~media/hennepinus/your-government/budget-finance/documents/operations-book-public-safety-2016.pdf?la=en>
- ² <http://www.census.gov/quickfacts/table/LND110210/27053>
- ³ 2014 Uniform Crime Report, State of Minnesota Department of Public Safety (p. 158) <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2014-MN-Crime-Book.pdf>
- ⁴ Email from Danette Buskovich, Policy, Planning, & Evaluation Manager, Hennepin County Department of Community Corrections & Rehabilitation to author on May 6th, 2016.
- ⁵ See *State v. Friberg*, 435 N.W.2d 509, 515-16 (Minn. 1989) (stating that district courts have discretion in fashioning conditions of probation so long as they are “reasonably related to the purposes of sentencing and must not be unduly restrictive of the probationer’s liberty or autonomy. . . . The discretion of the trial court in establishing conditions of probation is reviewed carefully, however, when the conditions restrict fundamental rights”).
- ⁶ *E.g.*, Minn. Stat. Ann. § 169A.283 subd. 1 (2014) (requiring a person convicted of DWI to submit to the level of care recommended in the chemical use assessment report), and § 609.135, subd. 5 (2014) (requiring counseling if convicted of assaulting a spouse).
- ⁷ Minnesota Sentencing Guidelines Commission. (2016). *Length of Stayed Sentences: Sentenced 2010-2014*
- ⁸ Minn. Stat. § 244.18, subd. 6 (2016) (“Use of fees. The local correctional fees shall be used by the local correctional agency to pay the costs of local correctional services. Local correctional fees may not be used to supplant existing local funding for local correctional services.”) and subd. 2 (“Local correctional fees. . . . The local correctional fees on the schedule must be reasonably related to defendants’ abilities to pay and the actual cost of correctional services).
- ⁹ Minn. Stat. § 244.18, subd. 5. (2016) (“Restitution payment priority. If a defendant has been ordered by a court to pay restitution, the defendant shall be obligated to pay the restitution ordered before paying the local correctional fee. However, if the defendant is making reasonable payments to satisfy the restitution obligation, the local correctional agency may also collect a local correctional fee”).
- ¹⁰ Hennepin County Department of Community Corrections and Rehabilitation, *Sanctions Conference Proposal* (date unknown) (on file with author). See also Minn. Stat. §§ 244.196-.199 (2015) (establishing the authority and procedures for sanctions conferences).
- ¹¹ Hennepin County Department of Community Corrections and Rehabilitation Adult Field Services, *Court Presentation* PowerPoint Slide 20 (October 2014) (on file with author). See also Minn. R. Crim. P. 27.04, subd. 1 (setting forth the standard for use of a summons versus a warrant for probation violations).
- ¹² Minn. R. Crim. P. 27.04, subd.2 (2014).

About the Probation Revocation Project

The Robina Institute's Probation Revocation Project partners with city, county, and state jurisdictions to conduct research of community supervision and probation revocation practices in the United States. Outcomes of the first phase of this research include the publication of legal profiles in *Profiles in Probation Revocation: Examining the Legal Framework in 21 States* (2014), and publication of jurisdiction reports that include a close examination of probation practices, policies and procedures, data collection, as well as interviews with probation officers, probationers, judges, prosecutors, and public defenders to provide a comprehensive picture of how these specific jurisdictions manage probation and probation revocation practices.

Additionally, the Probation Revocation Project partners with select jurisdictions to assist with improving practices such as providing an analysis of fees and fines and assisting with developing sanctions and incentive grids for probation management. Partner jurisdictions include: The Bell County (Texas) Community Supervision and Corrections Department; the State of Massachusetts, Massachusetts Probation Services; Matagorda and Wharton County (Texas) Community Supervision and Corrections Department; the New York City Department of Probation; Hennepin County, Minnesota Adult Probation Offices; Ramsey County, Minnesota Adult Probation Offices; and the Minnesota Department of Corrections.



About the Robina Institute of Criminal Law and Criminal Justice

The Robina Institute brings legal education, theory, policy and practice together to achieve transformative change in punishment policies and practices. The Institute is focused nationally on sentencing guidelines, probation revocations, and parole release and revocations, and locally on the Minnesota criminal justice system.

The Robina Institute was established in 2011 at the University of Minnesota Law School thanks to a generous gift from the Robina Foundation. Created by James H. Binger ('41), the Robina Foundation provides funding to major institutions that generate transformative ideas and promising approaches to addressing critical social issues.

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