

# Research in Brief

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## Capping Probation Supervision Terms

### KEY POINTS

- There is no research that directly tests the relationship between establishing a cap on probation terms and probation outcomes.
- Research of medium quality that examines the effect of probation length on probation outcomes suggests that longer probation terms may not reduce re-offending, but may increase detection of non-compliance with probation conditions (i.e., technical violations).
- Because probation failure is inconsistently defined in the research, it is difficult to draw clear conclusions about how different outcomes (e.g., reoffending or technical violations) might be affected by probation length.

### Policy and Purpose

Probation caps are laws or rules that limit the length of time an individual must serve on probation. Determining the appropriate length of probation prompts many, sometimes competing, considerations, including holding the individual accountable for his or her offense, ensuring public safety, and allowing adequate time for rehabilitative programming. However, individuals supervised for lengthier terms have more exposure to failure and revocation. Over time, lengthy probation terms can result in larger probation populations and may have the unintended effect of increasing probation officer caseload sizes, thereby making it difficult to focus programming and services on those who are most at risk to reoffend. Supervision caps, or some other form of limitation on the length of supervision, are intended to promote the provision of services early in the supervision term, limit the probationer's exposure to failure for technical violations, and reduce the size of the supervision population.

## Summary of Research

**M**aximum probation lengths are typically established by state law, and the court can often impose a probation term anywhere below that stated maximum. Drawing from a Robina Institute study of the probation framework in twenty-one states, Watts<sup>1</sup> found that the most common maximum probation term for felony offenses was 5 years, with eight of the twenty-one states setting this maximum. However, the other states varied dramatically, with Washington capping felony probation at 1 year, Minnesota capping it at the statutory maximum penalty for the offense, which can be as high as 40 years, and Massachusetts setting no limit on the length of probation. For misdemeanor sentences, Watts also found variation, although within a narrower range, with many states choosing to cap probation at 1, 2, 3, and 5 years.

**There are no studies that examine the effects of implementing probation supervision caps.** Such a study might, for example, attempt to determine whether the implementation of a probation cap resulted in an increase or decrease in the rates at which individuals on probation committed new offenses or probation violations, but thus far, no such study has been done.

**Research suggests that longer probation terms may not reduce re-offending, but may increase detection of non-compliance with probation conditions (i.e., technical violations).** Among studies that have examined the factors that predict probation success or failure, there are four medium-quality studies that included the length of the probation term as one of those factors. Morgan's study<sup>2</sup> found that gender, marital status, employment, and prior convictions were significant predictors of probation failure, but that the length of probation was not significant. Another study by Sims and Jones<sup>3</sup> analyzed the length of probation sentences and the actual time served on probation (in many places, people might serve less time than sentenced because they were discharged early for doing well on supervision or they may be revoked from supervision). They found that as the length of the probation sentence increased, the probability of failure on probation increased. But as the number of months probationers actually served on probation increased, the odds of failing on probation decreased. The authors posited that probationers with longer probation sentences were likely more at risk for failure because they had been convicted of more serious offenses or had multiple prior convictions, whereas those who remained on probation longer were those who had settled into the routine of probation. This study also found that higher risk assessment scores increased the odds of failure on probation slightly more than lengthier probation

sentences, indicating that risk was a better predictor of failure than probation length. Sims and Jones' study, along with Morgan's, indicate that factors other than probation length explain more of the variation in probation outcomes.

Two studies<sup>4</sup> in Illinois examined the relationship between probation length and outcomes both for a cross-section of misdemeanor and felony probationers and a subset of individuals from the same sample who were convicted of violent offenses. Within the larger study, when controlling for other variables, the authors found that probation length was associated with an increase in the rates of revocation and technical violations, but failed to predict new arrest.<sup>5</sup> Looking at a subset of individuals convicted of violent offenses, Olson and Stalans<sup>6</sup> found that increases in probation length were associated with slightly increased odds of rearrest for those convicted of domestic violence offenses compared to those convicted of other violent offenses, but the authors found no relationship between probation length and revocation, technical violations, or revictimization. In this instance then, probation outcomes did vary by offense type. Probation length predicted rearrest for those convicted of domestic violence, but failed to predict any of the negative outcomes for people convicted of other violent offenses. At the same time across the larger group, longer probation terms were associated with revocations and technical violations, indicating that for the majority of offenses, longer supervision terms did not reduce recidivism but did increase the detection of noncompliance with probation conditions. These studies suggest that longer probation terms may not reduce re-offending, but may come with a collateral consequence of increasing detection of non-compliance for most individuals on probation.

**Because probation failure is inconsistently defined in the research, it is difficult to draw clear conclusions about how different outcomes (e.g., reoffending or technical violations) might be affected by probation length.** Multiple types of probation outcomes were combined into a single outcome variable in two of the studies and pulled apart in two of the studies. The studies by Morgan<sup>7</sup> and Sims & Jones<sup>8</sup> combined multiple outcomes including revocation, absconding, and reoffending, each of which could have been differently affected by probation length. In contrast, Olson and coauthors<sup>9</sup> utilized much more specific outcome measures and found significant relationships between probation length and revocation

and technical violations when looking across probationers convicted of all types of offenses and between probation length and rearrest for probationers convicted of domestic violence offenses. The mixed outcomes highlight the need for studies that clearly differentiate between new offending, which may relate more to public safety concerns, and other outcomes such as technical violations, which may relate more to compliance with probation conditions. Further, such separation will give policymakers a clearer idea of whether the method in which they choose to deploy their correctional resources is affecting the rates of recidivism (new crimes) or technical violations.

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#### Endnotes

- <sup>1</sup> Watts, A. L. (2016). Probation In-Depth: *The Length of Probation Sentences*. Minneapolis, MN: The Robina Institute of Criminal Law and Criminal Justice. Downloaded from <https://robinainstitute.umn.edu/publications/data-brief-probation-depth-length-probation-sentences>.
- <sup>2</sup> Morgan, K. D. (1994). Factors associated with probation outcome. *Journal of Criminal Justice*, 22(4), 341-353.
- <sup>3</sup> Sims, B., & Jones, M. (1997). Predicting success or failure on probation: Factors associated with felony probation outcomes. *Crime & Delinquency*, 43(3), 314-327.
- <sup>4</sup> Olson, D. E., & Lurigio, A. J. (2000). Predicting probation outcomes: Factors associated with probation rearrest, revocations, and technical violations during supervision. *Justice Research and Policy*, 2(1), 73-86; Olson, D. E., & Stalans, L. J. (2001). Violent offenders on probation: Profile, sentence, and outcome differences among domestic violence and other violent probationers. *Violence Against Women*, 7(10), 1164-1185.
- <sup>5</sup> Olson & Lurigio, 2000.
- <sup>6</sup> Olson & Stalans, 2001.
- <sup>7</sup> Morgan, 1994.
- <sup>8</sup> Sims & Jones, 1997.
- <sup>9</sup> Olson & Lurigio, 2000; Olson & Stalans, 2001.

The strength of the evidence reviewed in this brief is assessed according to our Evidence of Assessment Criteria and Hierarchy of Study Design, which are posted online: [robinainstitute.umn.edu/research-brief](http://robinainstitute.umn.edu/research-brief).