

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

**RAMSEY COUNTY,
MINNESOTA**

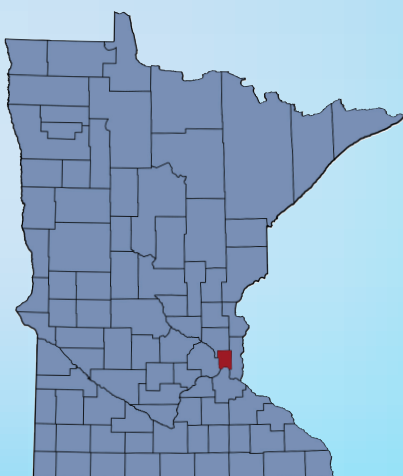


ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

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Ramsey County, Minnesota



By

Authors: Ebony L. Ruhland & Mariel E. Alper

Contributors: Kelly Lyn Mitchell, Jason P. Robey, and Alexis Lee Watts

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This report is the third 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

The Ramsey County Community Corrections Department services adult probation for Ramsey County, Minnesota.¹ This report focuses on the delivery of service to adult probationers. But in addition to the Adult Division, Ramsey County Community Corrections includes 4 other divisions including: Administrative Services, Adult Institutions; Juvenile Services; and Community Relations and External Affairs. In the Adult Division there are 180 full time equivalent employees,² including approximately 125 probation officers, dispersed over 14 units. The Adult Probation Division supervises individuals placed on probation at sentencing as well as those released from prison and placed on Intensive Supervised release or supervised release (which is similar to parole). The Community Corrections annual budget is about \$65,000,000 and just under a third of the annual budget is dedicated to adult probation, including those on supervised and intensive supervised release.³

Ramsey County, which includes the city of Saint Paul, and a portion of the Minneapolis-Saint Paul metro area, is the 2nd largest county in Minnesota (out of 87) with a population of 532,655. Ramsey County is the smallest county in the state and also the most heavily populated. Seventy-one percent of the population is white, 12% are African American, 13% are Asian American, 7% are Hispanic, and 3% are 2 or more races. The median income in Ramsey County is \$54,247 which is below the median income for Minnesota as a whole (\$59,836).

Source: United States Census Bureau, Ramsey County Minnesota 2014, <http://quickfacts.census.gov/qfd/states/27/27123.html>.

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

2014 Violent Crime Rates for Ramsey County and the State of Minnesota

Rate Per 100,000	Murder	Rape	Robbery	Aggravated Assault	Burglary	Larceny	Auto Theft	Total
Ramsey County	3	43	137	243	662	2,199	486	3,773
Minnesota	2	37	67	122	378	1,759	151	2,516

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>.

The Minnesota courts are authorized to impose community supervision terms as followed:

- Felony: Up to 4 years or up to the maximum prison term that could be imposed for the offense, whichever is longer.
- Gross misdemeanor DWI or certain felony criminal vehicular offenses: Up to 6 years.
- All other gross misdemeanors or certain domestic assault-related misdemeanors: Up to 2 years.
- All other misdemeanors: Up to 1 year.

Source: Minn. Stat. § 609.135, subd. 2 (2015).

In 2014, there were 12,572 individuals on probation in Ramsey County (excluding individuals on intensive supervised release and supervised release).⁴ In that same year, the probation supervision rate was 3,080 per 100,000 adult residents in Ramsey County. For those on probation in 2014, approximately 40% had been on probation 3 or more years. Below are the most common offenses for which probationers were under direct supervision in 2014 (data is shown for 10,626 probationers; offense data was unavailable for 1,946 probationers).

Most Common Offenses for Which Probationers Were Supervised

Offense	Percent
Felonies	
Drugs	27%
Assault	12%
Theft	11%
Assault - Domestic	8%
Misdemeanor	
DWI	45%

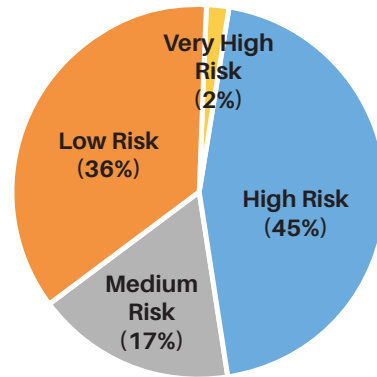
Source: Probation Survey Report for Ramsey County Adult Probation, 2014.

The majority of individuals on probation in 2014 were male (77%). Nearly half were under 30 years of age, with 18-24 year olds comprising 27% of the population, and 25-29 year olds comprising 20% of the population.⁵

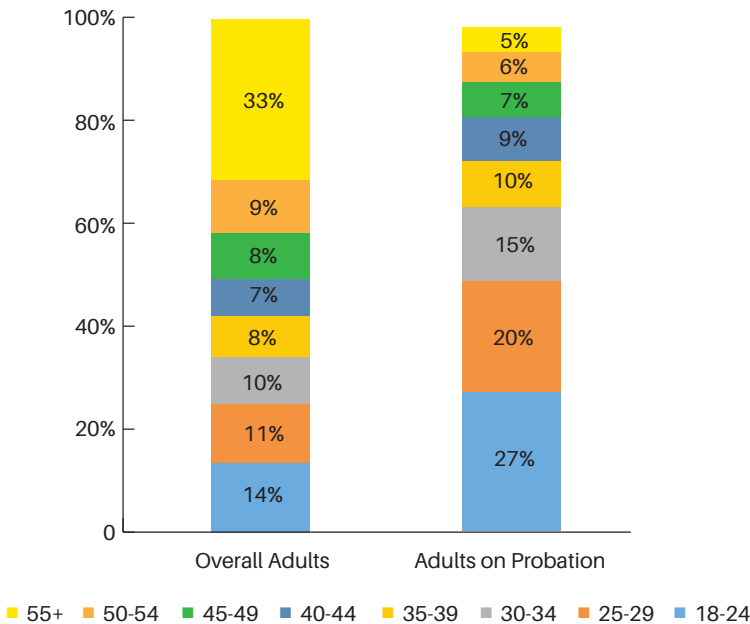
Minority probationers were overrepresented in the probationer population compared to the adult population living in Ramsey County. Forty-five percent of probationers were white (compared to 71% of the population); 34% were African American (compared to 11% of the population), and 5% were Hispanic (compared to 7% of the population).

Ramsey County has been using the Level of Service/Case Management Inventory (LS/CMI) risk/need instrument since 2012.⁶ This assessment measures risk for offending, identifies needs to be focused on during probation, and analyzes behavior changes. Scores along with current conviction, criminal history, and criminogenic needs are used to place probationers on low risk, medium risk, high risk, or very high risk caseloads. This assessment is given to all individuals referred to Ramsey County for a pre-sentence investigation. Additional cases that are received from other jurisdictions and have not previously received a LS/CMI will have one completed by the probation officer. It is expected that a reassessment of the LS/CMI is conducted during a 9-month follow-up, and then on an annual basis, or at discharge. Of those individuals who received the LS/CMI forty-five percent of probationers who received

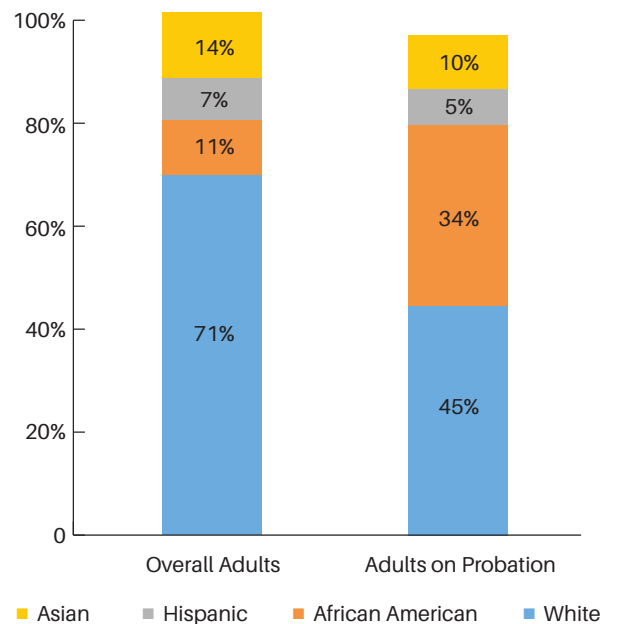
Probationer Supervision by Risk Level



Age Demographics of Ramsey County



Racial Demographics of Ramsey County



the LS/CMI (including those on supervised release and intensive supervised release) are considered high risk; 36% of probationers are considered low risk.

Probationers convicted of domestic abuse, sex offenses, or DWI receive additional specialized risk assessments. Probation officers who supervise high risk caseloads have fewer cases and more time to spend supervising the probationers. Low-risk probationers are monitored either by the Probation Reporting Center, in group settings, or on a caseload. They are given fewer interventions based on the research that less involvement is better for low-risk populations.

A core goal of the Adult Probation Unit is to maintain low caseloads. Caseload size, however, differs depending on the type of caseload an officer has. Medium risk caseloads for officers range from 75 to 100 probationers; high risk offender caseloads for officers range from 50 to 70 cases. Intensive supervised release caseloads are capped at 15 cases.

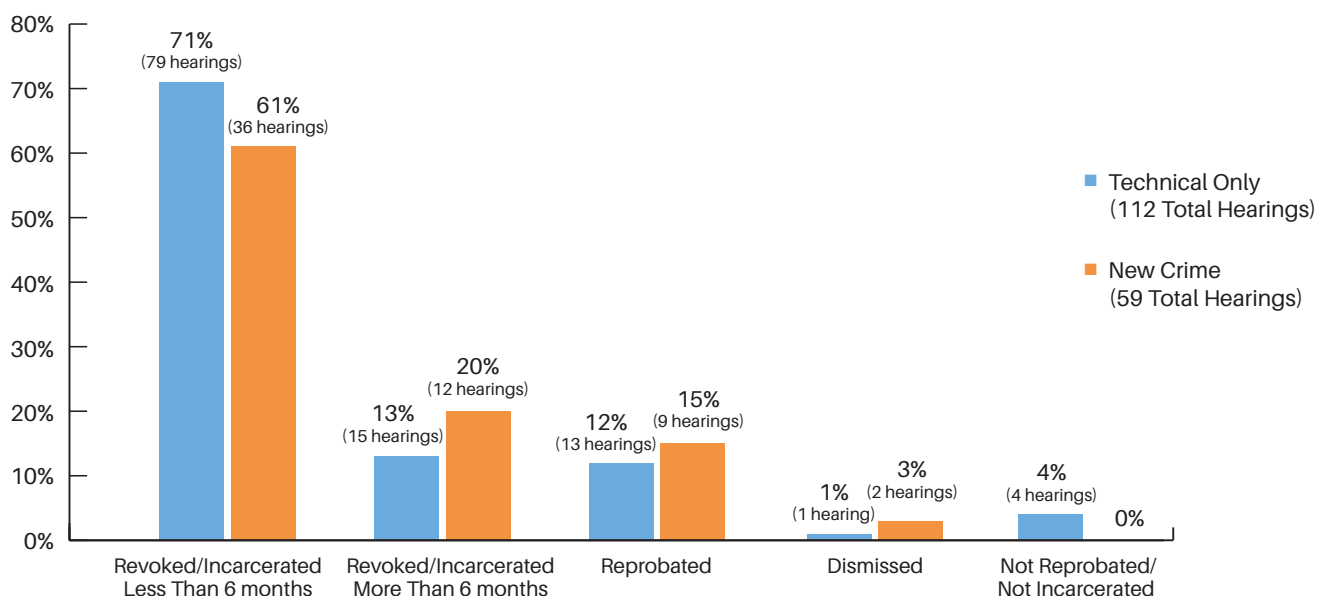
When a violation occurs in Ramsey County, probation might handle the violation in-house by using a sanctions grid. Or, it might file a probation violation with the court. To initiate a probation revocation proceeding, the prosecutor or probation officer must submit a written report to the court showing that there is probable cause to believe a probationer committed a probation violation.

The court must then issue a summons unless the court determines that a warrant is needed to ensure the probationer's appearance in court or to prevent harm to the probationer or another. The initial hearing is to ensure the probationer knows and understands his or her rights. After the initial hearing, the revocation hearing must be held within a reasonable time if the probationer is in the community. If the probationer is incarcerated, the revocation hearing must be held within 7 days after the initial hearing unless waived by the probationer. If the violation alleges a new crime, the revocation hearing may be postponed pending the disposition of the criminal case.⁷

For offender behavior or criminality that results in a violation of probation conditions but that does not result in new felony new conviction, Ramsey County has a relatively high revocation rate compared to the statewide average. For offenders sentenced from 2001 to 2012 and revoked through the end of 2013, the revocation rate for such violations was 22.2% compared to the statewide average of 16.2%.

Source: Minnesota Sentencing Guidelines Commission, *Probation Revocations: Offenders Sentenced from 2001 - 2012 and Revoked to Prison at 4, 16-17* (Jan. 2015), http://mn.gov/sentencing-guidelines/assets/2013_Revocation%20Report_tcm30-31275.pdf.

Process Analysis of Violation Hearings in Ramsey County Outcomes for a Sample of 171 Revocation Hearings



The Robina Institute analyzed a snapshot of revocation hearings over a one month period (January 2013). During that month there were 171 revocation hearings; 112 were for technical violations and 59 were for new crimes. The outcome for the majority of the hearings was incarceration of less than 6 months (71% for technical violations and 61% for new crimes). Twenty percent of violations for new crimes resulted in incarceration for over 6 months while only 13% of technical violations received incarceration time over 6 months.

Interview Data

The remainder of this report summarizes the views of 36 people interviewed in Ramsey County, including approximately 10 probation officials (both supervisors and line officers), 6 probationers, and several others including judges, public defenders and county attorneys. The interviews give important insight into the perspectives of those who participate in the county's probation system, but do not reflect the opinions or conclusions of the Robina Institute. Many interview subjects are quoted directly, but the material below is presented in a way that protects the identities of the people interviewed.

We have organized the narrative to reflect the following topics: (1) conditions of probation, (2) length of probation terms, (3) fees and restitution, (4) sanctions, administrative actions, and treatment services, and (5) motions, judges, hearings, and revocations.

Background: Minnesota judges have broad discretion in setting the terms of probation.⁸ Ramsey County has 10 general conditions of probation that are commonly set in both felony and misdemeanor level cases. Common conditions include making regular contact with a probation officer and abiding by state and local laws. If needed, special conditions can also be added. DWI offenders, domestic violence offenders, and sexual offenders may face special conditions of probation related to the nature of their offense, and some of these conditions are mandated by law.⁹

Summary of Views Expressed About Probation Conditions

There are too many conditions.

Current conditions are too generic and not individualized.

1. Conditions of Probation

Detail from Interviews

There are too many conditions.

Several interviewees expressed concern that probationers are given too many conditions, and that because there are so many, probationers cannot successfully follow all of them. One public defender shared this concern and even shared an example of a probationer who wanted to go to prison because the conditions were too much for the probationer to handle:

"Our clients, they have so many obstacles in so many ways that too many requirements, they just get overwhelmed. . . I had a client recently that just said 'fine whatever send me to prison, come get me on a warrant.' He was just too overwhelmed to even think about complying with the conditions of probation."

Additionally, the individual barriers experienced by many probationers made following the numerous conditions even harder. One probation officer commented:

"A lot of times you get clients into the system and then you get 16 different conditions. If I was on probation, I would violate every other month. They force people to get their diploma. For people to get employment. How can you force them to get employment when they don't have the skills? And with the economy in the last couple years, a highly educated person has a hard time finding employment. . . Sometime clients all they do is walk, eat, and breathe."

Short probation sentences can also make it difficult to meet the high number of conditions. One probation officer expressed this by stating, "It's crazy. . . judges give 10 or 12 conditions. . . but only have [sentences of] 1 or 2 years for misdemeanors." Another probation supervisor stated,

"When you think about stages of change and how someone goes through the process, when a judge imposes an extensive list of conditions they want immediate change. Part of it with conditions is how long are they on probation? In one year, [a probationer] cannot meet 15 conditions, especially when taking into account other factors like homelessness."

Current conditions are too generic and not individualized.

In addition to there being too many conditions, many of the public defenders and some of the probation officers who were interviewed felt that the standard conditions were too generic. Instead of having a generic list of 10 conditions, they felt it was better to have conditions that were personalized and based on the individual’s needs and offense. By focusing on the offense and the individual needs, probation conditions will have a greater impact on the probationer. One public defender stated:

“The conditions should be germane to the offense. It should be germane to the person’s resocialization or whatever you want to call it. I think by and large we have a lot of conditions here imposed upon people and they may not have any real impact on the person’s capacity to sort of walk the straight and narrow.”

Another public defender stated that the “one size fits all” approach loses sight of the purpose of setting conditions:

“The State Judicial Council has a . . . homogenized list of conditions for felony offenders that they would like to see all the judges impose. There are 10 of them. Sentencing conditions are supposed to be individualized for the particular offender who is being sentenced. This homogenized one size fits all list doesn’t do that.”

The probation officers tended to agree with the viewpoint that conditions should be individualized. Responses heard included the following:

“[Conditions] should be reasonable and should be tied to the offender’s circumstances, what makes sense to them.”

“They [conditions] need to happen from person to person.”

“Standards are very general. . . I don’t really think the bench is really looking at what is going on with the person.”

One judge thought it was due to lack of programming that made it hard to tailor conditions:

“It is hard to tailor the programming of probation to fit the unique needs of people. So we end up having the problem of too many or too few conditions.”

2. Length of probation

Background: As noted in the callout box in the introduction, the length of a probationary sentence generally corresponds to the seriousness of the conviction offense. Though there is no statute that allows for early termination of probation, many Minnesota counties allow the probation period to be shortened based on good conduct.¹⁰

Summary of Views Expressed About the Length of Probation Terms

- Criminal justice officials sometimes felt that the probation sentences were too long.
- Early discharged is used when possible, and can serve as an incentive for the probationer.

Details from Interviews

Criminal justice officials sometimes felt that the probation sentences were too long.

While almost none of the respondents felt that probation sentences were too short, many expressed that they felt that sentences were too long. Several gave anecdotes of probationers with very long sentences:

“I had a guy who was given 30 years probation. That was absolutely ridiculous. I would say 2 to 5 years is sufficient in my mind and from my experience.”

Another said: “We have someone who has been on probation since the 70s and only comes in quarterly and has never done another thing. . . [but] because of the severity of the offense (it was a murder), cannot get off [probation].”

A third said, “. . . gosh, I got people who have been on probation 30 to 40 years.”

Several officers also felt that the appropriate length of the probation sentence depended on individual characteristics including the severity of the offense and the individual’s needs. One probation officer explained,

“The appropriate length is very independent. Some people get 5 years but are doing phenomenally after 2, and we can early discharge. But, for others, 5 years is not enough. We can’t add time.”

A public defender explained that there is often not a good answer:

“it depends on the severity of the offense, what their needs are. If you really take the evidence-based practices to heart, someone who commits a misdemeanor may need 10 years because their needs are great, but their crime is not severe. But, then you miss proportionality.”

Another probation officer stated:

“When I receive a client and some of them I can look at the file and say 4 years is a long time for someone who is otherwise stable, [while for] others [who have a sentence of] only a year I can look at the file and see they don’t have the motivation to complete what they need to.”

A public defender explained that long probation sentences are not a good policy:

“I understand why they want to have some people on probation for 20 years; I do understand that there are certain sex offenses and things of that nature that are different from others. I don’t understand 15, 20, 10-year probations for normal, garden variety kinds of things. . . I think it can cast sort of a sense of hopelessness, and it implies that this is never going to be over. Ramsey County has a tendency to generally state the maximum current probation and I don’t know that that’s a good policy.”

Another public defender felt that long probation sentences often were the result of maximum sentences being imposed. For example, if a crime could be punished by a maximum sentence of 20 years in prison, then the probation sentence given would be 20 years:

“Well, now I think that is an issue in that a lot of judges act like their hands are tied because they just put clients on for the statutory max. So you know an aggravated robbery, you know first time, is like 20 years which is absurd. I mean honestly you know within the first year whether someone is going to be successful or not. So to put them on for those long period[s] of time [] is ridiculous. But a lot of judges won’t use their discretion.”

Early discharged is used when possible, and can serve as an incentive for the probationer.

Several probation officers reported that early discharge from probation is commonly used. One probation supervisor explained,

“We have a wide range of lengths [of probation sentences]; we also have the option to do early discharge, so what we have in Ramsey county is very appropriate.”

Another probation officer noted:

“If the probationer is doing well on probation and doing what they should be doing, then I think we should look at early discharge.”

A third probation officer explained that early discharge was used when possible:

“Probationers want to get off probation early and from the beginning we look at what they need to do get off probation early. People can get early discharge when they have fees and restitutions. I have people on probation for 20 years and I tell them they won’t be on for 20 years; they will be either be off early or in prison.”

One judge said early discharge is used for individuals who have been sentenced to long probation terms but have successfully completed their conditions.

“If they’re successful on probation, I mean they can be discharged early. There are some cases that call for a 20 year probationary period; that seems a bit excessive. Particularly if it’s a nonviolent offense. So [I] do make a point of reducing [it].”

On the other hand, a probation officer that worked with a higher risk caseload explained:

“Early discharge is not used a lot in my unit because they are often reoffending. In other places, early discharge is the norm. . .”

A judge believed that the courts and probation do not use early discharge enough as an incentive.

“I think we don’t use early discharge enough in terms of a carrot. . . When I think, sometimes, I think we could do a better job of using the [early] discharge, early discharge as a carrot.”

A public defender suggested that early discharge may act as an incentive for the probationer:

“We have early discharge so [we] have incentives for people who do invest and make changes in their lives. We don’t have a lot of rewards that we can hand these guys, and this is one. . . I think in general, people work really hard to get early discharge. It is the carrot at the beginning of probation. Not focusing on getting off probation as the goal—it is more than that—trying to achieve a deeper sense of life changes that will sustain them. We are helping them find the person they want to be that will keep them from committing crimes in the future. If they have restitution, I cannot do early discharge, but at expiration can get them off. I can

remember 1 case in 3 years where the only violation was not paying restitution. But, we get many phone calls from victims for not getting restitution. But, most of our clients are indigent. We will move it to a civil issue and have them moved off of probation. . . [Early discharge is] almost formulaic. On a 5 year [probation sentence], maybe at 2.5 years someone does well, early discharge is used. . . The client still starts out with the impression they have 5 years, 10 years, 15 years (the full sentence). I think in some ways for the client. . . they're given incentives to try to complete probation successfully. I think generally, we offer discharge rather than incentives."

3. Fees and Restitution

Background: The Department of Corrections may charge Minnesota offenders certain probation-related fees.¹¹ Jurisdictions in Minnesota are also allowed, but are not required, to impose "local correctional fees," including probation supervision fees.¹² These fees can be collected anytime while the probationer is serving a sentence of probation or after discharge from sentence. DOC or local fees may be waived if it is determined that the offender does not have the means to pay, the likelihood of getting the payments are poor, or there are other extenuating circumstances that justify a waiver.¹³

Summary of View Expressed About the Length of Fees and Restitution

Probationers have supervision fees but would not be violated for not paying them.

Details from Interviews:

Probationers have supervision fees but would not be violated for not paying them.

Probationers are assessed a probation supervision fee. When asked how much it was, most criminal justice officials interviewed said it was around \$300.00 a year.

These fees are used to "offset the cost of probation" and they "started about 10 years ago" according to an interview participant. Probationers may have to pay other fees, fines, and restitution. Some of the domestic violence classes also assess a small program fee. One probation officer said probationers are not required to pay for urinalysis tests or public defender services if they are indigent. The officers also mentioned that probationers could request to have restitution waived if they will not ever be able to pay it. A public defender, however, assumed restitution fees were a higher priority, "I know that restitution is given a higher priority than probation fees."

Supervision fees do not appear to be collected aggressively. If probationers cannot pay their fees, "it comes off their taxes."

One public defender stated:

"I'm unaware of anyone being violated for an inability to pay fees."

The probationers interviewed also did not speak about fees. Some mentioned they had fines and restitution to pay but were not aware of a probation supervision fee. One probationer even said:

"[T]here is no such thing as paying fees for probation."

While probationers may not be violated if they cannot pay their fees, one probationer who reported having difficulty paying them stated that nonpayment would affect his ability to graduate from drug court. He said:

"I was having issues [finding employment] because of my past record; any fees and fines I had in the past, they added to my court fees. I will not graduate drug court until that is paid."

Two judges were opposed to fees all together and believed they should not be ordered. This was believed because most individuals on probation were poor and were unable to pay any sort of fee. One judge commented:

"I'm not a big fan of the probationary fee. I don't believe probation collects it and what happens is I believe it just goes into collections against people, which is a bit of insult to injury. . . when you think about it."

4. Sanctions, Administrative Actions, and Treatment Services

Background: A sanctions grid titled the Response to Offender Misconduct Project (ROMP), was created and implemented in 2012. The grid was revised in 2015. The grid strives to, “increase consistency in responses to misconduct and adherence to the model; identify appropriate responses to misconduct beyond incarceration; target resources to high risk offenders; and describe how we respond to a misconduct and adjust practice based on the evidence” (Ramsey County Agent Reference Guide, 2012). In the grid are a range of types of offender misconduct. These misconduct actions are divided into various categories which include categories for: new convictions/arrests; treatment and programming misconduct; supervision conditions/misconduct; person-related misconduct (i.e. contact with gang members, leaving state without permission, etc.); and reporting misconduct. The conduct for the multiple categories is further divided into levels of low misconduct, medium misconduct, and serious misconduct. The misconduct policy includes a detailed list of definitions as well as a range of options to enforce depending on the level of misconduct. It is also color coded to identify the seriousness of the misconduct with green meaning minimum or medium risk, yellow indicating high risk, and orange/red meaning very high risk.

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

The sanctions grid is helpful for providing options and consistency.

There are many alternatives to incarceration, but they are being under-utilized.

Incarceration may or may not be a good tool to use as a sanction.

Details from Interviews:

The sanctions grid is helpful for providing options and consistency.

Most probation officers that were interviewed found the sanctions grid to be helpful in giving them a number of options for sanctioning probationers who violated conditions of probation. Some supervisors mentioned that, when the grid was first implemented, probation officers did not really like the sanctions grid because they thought it would be restrictive; but, once they saw the myriad options available to them, they found the grid to be useful.

One probation supervisor stated:

“P.O.’s disliked the grid. . . but eventually what seemed like a lack of options now seemed like additional options.”

Others liked the sanctions grid because it promoted consistency in the handling of violations. As one officer reported:

“Consistency in how we are doing them [sanctions]. . . can give them [probationers] more support and help them out in the community.”

Another probation officer reported improvements in recidivism:

“I use them all the time. I find my violations and recidivism rates have plummeted. [Violations are] very few and far between.”

Some probation officers go over the sanctions grid with their clients when they enter probation because they felt that doing so better prepared probationers to know what to expect. Probation officers described how they use the sanctions grid with their clients in the following ways:

“My probationers know if they are going to have a probation violation they know why and the reason I am recommending what I am recommending.”

“I feel it is building a working alliance with the clients. . . They know if they [the probationer] do this, this was what they [the probation officer] told me was going to happen. It is really important for them to know where they stand. They are fully aware and have a lot of options.”

There are many alternatives to incarceration, but they are being under-utilized.

For the most part, probation officers felt that there were sufficient alternatives to incarceration, and that there were numerous resources in the community that could help probationers.

One probation officer listed the variety of services available which included:

“Housing services and day reporting, breathalyzer, mentoring, education, employment services. . . and anger management.”

One public defender agreed about the availability of community based alternatives to incarceration, but felt that it took a great deal of effort by probation officers to get probationers connected to and engaged with the services. This public defender stated:

“I mean there [is] plenty of programming. The issue is probation agents at some level do have to hold our clients’ hands, particularly in the initial stages to get them connected and engaged with programming. But once the clients do. . . you know once they get a job their outlook is totally different and it gives them self-esteem, money, I mean so many things.”

Several of the probation officers interviewed agreed that there are services available in the community but they are being under-utilized for a variety of reasons. One supervisor stated, *“we are not utilizing alternatives to incarceration to the extent that we need to.”* A few thought the probation department should actively examine why community alternatives were being under-utilized. As one supervisor said, *“we need to look at what barriers stop referrals.”* Some thought probation officers were not aware or knowledgeable about the range and number of services available. Several officers reported that it is the responsibility of the probation officer to know what is available in the community, so this need for individual knowledge may contribute to the underutilization of available services.

One probation officer stated:

“Agents are getting practice at using those [resources]. I think we are still on that curve of adapting and being aware of what they are.”

This individual went on to say there are a lot of services to help probationers meet their basic needs but not needs related to mental health.

“Even with all the community resources out there, the mental health world doesn’t have a place to deal with the criminal justice involved clients, and we aren’t prepared to deal with the mental health problems here. There are a lot of holes”

Incarceration may or may not be a good tool to use as a sanction.

Even though many believed that there were enough community based alternatives to incarceration, some probation officers found incarceration in either jail or prison to be more appropriate for certain probationers. One probation officer with this view stated:

“I think we do [have a lot of community resources] but I find incarceration invaluable because it’s the only place we can put someone where they can’t get high. In treatment, you’ll walk away because your drug is in charge of me. If I can get you in jail, you can get it out of your system.”

This probation officer went on to say that there were also good programs available inside the correctional facility:

“Our correctional facility here is phenomenal and offers a lot of programs that other places don’t offer. If someone wants the help that is really the best place to go.”

Other probation officers stated that jail can be a good tool to use for a “time out.”

One probation officer said:

“Jail time can help take a timeout and make someone realize they don’t want to go to prison.”

Another stated:

“One or two days in jail and reset conditions might be appropriate for some people.”

Others felt that incarceration was not an appropriate way to deal with many violations and that incarceration is currently being used too often. One public defender believed that prisons were becoming the solution to everything.

This individual stated:

“We’ve become a prison industrial society. I mean our solution to everything is to let the prisons and then corrections people deal with it. That is not the solution.”

Another public defender believed that it was really important search to for methods other than incarceration to change probationers’ behaviors because jail is not productive and can actually make probationers worse:

“I see incarceration as a really important step in a person’s life. I believe that the more we can find other ways of sort of redirecting people’s behaviors without putting them in jail, the better off we are. Jail tends to. . . we put them around other people who are often people not engaged in productive activity. Rather than the saint making the sinners saints, the sinners are making the saints sinners.”

This public defender further elaborated:

“I think we’d do better to find more creative resources in the community, especially in terms of some restorative justice options to pay back the community in which people live.”

5. Motions, Judges, Hearings, and Revocations

Background: To initiate parole revocation, a prosecutor or parole officer must submit a written report to the court showing probable cause that a probation violation has occurred.¹⁴ The deadline to submit a written report for the purposes of revocation is six months after the stay of sentence ends.¹⁵ In response to the report, a judge may issue a summons to appear.¹⁶ However, a judge may issue a warrant for the probationer if arrest is deemed necessary to secure a court appearance or to prevent harm.¹⁷

At an initial appearance, the probationer may be assigned a public defender if necessary. The probationer must be informed of the basis for the violation and of their rights during the initial hearing, including the right to a revocation hearing within a reasonable time and the right to an appeal. The probationer will then be asked to admit or deny the alleged probation violation.¹⁸

If the probationer admits to the violation, the court can decide what the penalty will be, including probation revocation. If the probationer does not admit to the probation violation, the court will consider whether or not to release the probationer pending a revocation hearing. If a probationer is in custody, the revocation hearing must be held within 7 days. However, the hearing may be postponed if the revocation is based on new charges, pending resolution of the new case.¹⁹ If no probation violation is found, the court must dismiss the case and allow the probationer to continue on probation as before.²⁰ If a probation violation is found, courts may consider many alternatives to revocation. Probation cannot be revoked unless the court: 1) specifically identifies the probation condition or conditions violated; 2) finds that the violation is intentional or inexcusable; and 3) finds that the policies favoring probation no longer outweigh the need for confinement.²¹

Summary of View Expressed About Motions, Hearings, and Revocations

Each party has a unique role in the revocation process.

Revocations are generally used as the last resort, after every option has been tried.

The decision to bring a violation to the court is an individualized decision based on the probationer.

Probation officers and public defenders have mixed views about their relationships with judges.

Details from Interviews

Each party has a unique role in the revocation process.

Prosecutors, public defenders, and probation officials noted that each of the groups has a specific role in the revocation process.

One public defender stated:

“There is a role for prosecutors and there is a role for probation and they should be different.”

One of the probation supervisors explained that some violations, such as a first failure to report, are handled by using the sanctions grid. However, an actual violation occurs when an action results in the probation officer filling out a violation form.

The prosecutors play a limited role in the revocation process and they felt that their main function is to support whatever the probation office recommends.

“At the probation violation we just send law clerks because we [attorneys] are kind of irrelevant. If it is a technical violation then it really is just a conversation between the defense attorneys and probation officers and our position is whatever the probation officer wants, that is what we want.”

Several public defenders also supported this description of the prosecutors’ role in the revocation process.

“95% of the time [the prosecutor will] just say, ‘I agree with probation’s recommendation.’ On more serious cases they might try to add a few words just to support what the probation officer says but other than that they usually stay silent and don’t say much.”

One public defender felt that probation took too much of the role of prosecutor.

“My impression is that sometimes when I get out of probation violations, probation is just another word for prosecutor. It should be a different function with separate goals but it just seems like. . . my impression is they’re one in the same and that’s not really the way it should be. . .”

Initial hearings for individuals incarcerated for a violation must occur quickly within 48 hours; just like any other person charged with a crime. According to one public defender, some of the violations can be resolved at that initial hearing and some are unresolved and are put on a judge’s calendar. The probationer is entitled to a hearing on the violation within seven days of the initial appearance. One public defender said, “. . . that’s a very, very, very short period of time for everybody.” Public defenders usually don’t receive the paperwork from the initial hearing for 4-to-5 days, so there is little time to prepare for the next appearance.

“That’s just the nature of the beast. Everyone here is working hard. No one is deliberately leaving papers in their trunk for three days. It gets turned in, it gets processed; it just takes 4-5 calendar days for that to happen. It’s just the way it is. But again, it makes it very difficult to do much within that next couple of days.”

Revocations are generally used as the last resort, after every other option has been tried.

Among several probation department employees, prosecutors, and public defenders, the consensus was that revocations were used as the last resort, only after every other option has been tried to resolve the problem.

The philosophy of the probation department was to reserve the most harsh and restrictive punishment for offenders who were a danger to themselves or others as there are better ways to spend service dollars than using unnecessary jail; punishment has its place but it should be thoughtful. One probation officer explained:

“Before we even hit the probation violation, the client and I are talking. Every session we are looking at the conditions and providing resources. I’m going to do a lot of interventions before we go to a violation. A violation is the last resort unless it is a person offense.”

When a violation is filed and a probationer is in front of a judge, the disposition does not necessarily have to include jail or prison; it could be additional conditions. However, as all other options have been mostly exhausted by that point, the hearing usually results in incarceration. One probation officer explained that the violation is filed once the probationer is not going to be able to change themselves:

"I probably wait on the cusp of too long because people often turn things around themselves and they learn more from that than me putting someone in jail for ninety days. We definitely don't file too quickly."

One prosecutor noted that the probationers who get to the point of a violation hearing need more than a "speech about hanging out with the wrong crowd" to change their behavior. The perspective is that the typical probationer in this situation, "has already been to prison three times. Now he's been violated 3 times and he has committed a new burglary on the 4th time."

However, a few respondents felt that revocations were used too soon, before all other options had been exhausted. One public defender noted that there is some variation between probation officers. Some were described as quick to pull the trigger and filing a violation as soon as there is an infraction. Others were described as letting several apparent violations pile up with warnings until something tips the scale, at which point all of the allegations are included in the violation hearing.

One public defender also felt that the tolerance for filing violations varied by probation officer:

"Minnesota has case law that essentially says probation has to exhaust all of their resources and the judge has to make a determination that the person is no longer amendable to probation. So you know somebody has had multiple opportunities or the violations are violent violations; you know, then I get when they want to execute a sentence. I think sometimes, some probation agents are way too fast and just giving up on a client. I think a positive UA, a new misdemeanor charge, you know something rather minimal doesn't warrant the probation agent coming in and saying execute the prison sentence, particularly on felonies."

One prosecutor felt that more supervision would minimize violations:

"One of the things probation doesn't do well, is if someone is doing well there is no real check in and then all of sudden they get arrested and then all this stuff comes out that the probation officer did not know about and if the probation officer would have checked in..."

Concern over collateral consequences was another reason for using revocations as a last resort.

Probation officers are also aware of the collateral consequences of a revocation and hope that the judge considers those consequences when considering a revocation:

"I have seen a probation officer, at end of a 5 year sentence, drug test someone who tests positive for marijuana who gets new sentence. The result is the person loses their job and home; was it worth it? What harm was this person causing?"

In addition, a public defender and a prosecutor felt that filing a violation could lead to absconding:

"A warrant is being issued and they know they are going to be taken in and they go off the radar."

"What I have seen is the guy misses a few UA's and then has dirty one and falls off the radar and then a warrant issued and a few months later they find him and then fell completely off of probation because he feels it isn't going to matter anymore."

However, a few respondents felt that revocation hearings are more common than in the past. One public defender explained:

"I'll just tell you anecdotally, I've been in for 15 years now. For the first 15 years we didn't have to assign an attorney to a probation violation, there was one who often helped with it and of course now we have to schedule an attorney for every judge's sentencing calendar in probation violations because they have just become a norm."

Another public defender, who had worked in another state previously, observed that violations hearings were much more common in Minnesota than in other states:

"I'm just astounded by the volume of probation violation practice that goes on here. It creates difficulty in terms of resource management, obviously. It's like it's always been kind of the orphan child of the judicial system."

The decision to bring a violation to the court is an individualized decision based on the probationer.

Several probation officers indicated that there is not a one size fits all response to a violation. When deciding whether to bring a violation to court, the probation officers considered characteristics about the individual probationer. One probation officer explained:

"[When to bring a violation before a judge is a] difficult question to answer because everyone is different. . . For example, I have a woman who just cancelled an appointment with me, [and who has] mental health and chemical health issues, 3 children, in a CD treatment and for the last four months only gone to treatment 3 times, counselor thinks she is OD-ing on pain meds. Right now I am thinking what can I do? I can look at the grid and I think the grid said something like do the warning or chemical assessment, but the question is what I am going to do? Should I do a probation violation or should I work with the counselor. With this particular person, I am looking at what is going to be the best. Jail would give her a timeout but I got [to] look at the children."

Another probation officer felt that if a person is willing to address his or her substance abuse or seek treatment, the violation might not need to go to a judge. However, this officer noted that if the person has repeated violations, the probationer needs to see a judge.

For another probation officer, the issue of whether to bring someone from his high risk caseload to a judge depended on the question of public safety:

"[If] someone is reoffending or actively using meth. . . it becomes a safety issue. You are killing yourself and efforts at treatment have not been successful. Or, they are reoffending and are harming themselves or more likely others so we need to wrap them up and keep them safe."

One public defender felt that the relationship between the probationer and probation officer affected whether a violation will be brought to court:

"I think if the client is connected with the probation, the agent is able to deal with it outside of court. I think if there is no relationship then the agent is quick to go into court and to file something and get the judge to intervene."

Probation officers and public defenders have mixed views about their relationships with judges.

Probation officers described their relationships with judges as a mix of good and bad, depending on the judge. One officer explained:

"We have 29 judges and 29 personalities and every single one of them is different. There are some judges that are very anti-probation and view us as the bad guys and there are some that are very pro-probation. Has more to do with the judge than the ongoing relationship. Some judges, I am fine to call and see how they want me to handle something, but other judges don't want to have anything to do with us."

In addition, technology has changed the manner of communication between probation officers and judges; many probation officers felt that this change was not a good one. One probation supervisor explained that the relationship:

". . . could use some improvement. For the majority, it is good, but for a few it is a strained relationship and those are the most visible. There is an element of distrust and lack of communication, partially because we have less face time because of greater use of technology."

One public defender felt that email allowed probation and judges to communicate more:

". . . a lot of times you don't know a lot of behind the scenes. I mean those agents are constantly emailing the judges, in chambers with judges, all those things that we are never privy too. So you know there are conversations going on that we don't know."

One probation supervisor, who had been with the department just a few months, had limited communication with judges and said:

". . . most of my interactions have been with clerks. It is usually by the memos. I am not having a lot of communication with the judges, it usually by memo and clerks."

Another probation officer describes his or her experience:

"We communicate in meetings. I get email from judges and prosecutors on how we are going to deal with the client. Not every judge is willing to do that and not every probation officer is willing to go out and make relationships with judges. Warrants are now a click of button whereas in the past, would have to walk to the warrant judge and have a conversation with the judge and hear what we have been doing, what we have done but now it is not like that. Technology has put up a barrier for that communication."

Public defenders had a similar perspective on their own relationship with judges: mostly good though not perfect.

One explained:

"I think they're good. We have our disputes but we see so much of each other."

A few probation officials felt that they had better relationships with judges who were open to change or who were newer. One member of the probation department said:

"The bench has operated a certain way for decades; a few newer judges are open to reason but are pushing against existing culture."

Another officer noted:

"Aside from a couple that struggle with changing of the time, different ways of dealing with things, some are stuck in the 80's or they are on their high horse and think what they say is gospel but I have judges in the mental health court and I think they are great."

Similarly, a public defender felt that relationships with the newer judges were stronger:

"For me I think, the judges are fine. I actually have some cautious optimism that some of the newer judges that have come in in the last three to five years are beginning what I think is going to be a shift away from the retribution and just throwing people in jail, a little more recognition of the nuanced problems that people present. I think some of these newer judges are getting it and are going to be doing some good things as their careers move forward. I don't have problems with the judges."

A few respondents also felt that probation officers and judges had to carefully navigate the balance of power.

One probation supervisor explained:

"Judges don't want to feel like you aren't giving them information so I always tell probation officers to over-share."

Another official explained:

"We could do a lot more if we had more judicial buy-in; but judges are worried about losing decision-making and giving it to probation. [Sanction conferences are] prescribed in law, to deal with lower-level misconduct, which may result in program or community service. In these, probation officers advise them, but judges push back because of time involved and loss of power. Judges would like everything in court; when [we] eventually get to court after other minor violations, judges question why [we] didn't bring [in the offender] sooner."

Overall, many judges felt that relationships between the court and the probation department were improving. Frequent communication was an important factor for good relationships between judges and probation.

"I think if we're [judges/probation] both. . . understanding why things are happening you develop a trust relationship and a respect for the people appearing in front of you, that they're working their program, they're managing their clients. They understand their needs."

This judge went on to say when there is frequent communication, judges *"tend to give them [probation officers] discretion. . . their credibility [has] more weight."*

Judges wanted ongoing communication and good working relationships between themselves and the probation department:

"I want to have a good working relationship with probation because I want them to bring in folks in early and often for violations. . . . So I like the POs to bring people in often. I like them to stay in touch with me."

Summary

This profile describes how probation violations and revocations work in Ramsey County. Due to the size of the county, the interviews are only from a sample of representatives involved in probation violations and revocations. Interviewees commented that because Ramsey is a large county with over 12,000 individuals on probation, caseloads can be high, and at times there can be a great deal of work. Interview participants shared the importance of all players in the criminal justice system working as a team to handle the high volume of cases. However, working together and being on the same page was sometimes a challenge. When the interview participants were asked what they would like to change about how probation violations are currently handled in Ramsey County, many expressed an interest in improving the relationships between probation officers, attorneys, and judges. One probation officer stated they would like to have increased communication with judges and that they would like judges to trust the probation department more – specifically, to trust that the probation department is using evidence-based practices to the best of their ability.

A public defender wanted to work more collaboratively with the probation department and to have access to their information during violation proceedings:

“For starters, I would like for the probation department to stop being so unwilling to give us their files. I think that the initial appearance on a probation violation, they should have copied their entire probation file for this person, everything, and given it to us.”

A public defender wanted judges to recognize that an individual’s failure to comply with probation conditions does not reflect back on the judge. He or she felt that it was about the probationer, not the court.

“The first thing I’d like to do is depersonalize the process. To stop judges from saying, ‘you violated the terms of my probation.’ Our clients don’t try to offend the judge.”

To improve communication and trust among all parties it was suggested by a probation officer that there be, *“more joint training with county defenders, public attorneys, and [probation officers].”*

To help with heavy workloads, it was suggested by a few attorneys that Ramsey County move away from issuing warrants for violations, with the idea being that Ramsey County would issue a summons and then schedule a court date. Many attorneys believed this would help because they would then no longer have to rush in preparation for a violation hearing within 48 hours. Additionally, it was felt by some that with the current process of issuing warrants, jail was being overutilized and had real consequences for individuals.

An interviewee stated:

“Would be nice if the jail piece wasn’t always immediate because it sets people back. If they are employed or have families, and have to turn themselves back into jail for 17 days”

Ramsey County tries to explore ways to improve how probation violations are handled. They are continually monitoring and updating the sanctions grid. They continue to partner with community-based organizations to help provide services that can not only be used as sanctions but to also help probationers get the services they need. Everyone interviewed had an interest in exploring ways that all parties can work together to be more effective.

END NOTES

- ¹ In preparation of this report, site visits were made to Ramsey County Probation Offices.
- ² Ramsey County, Minnesota County Managers 2016-2017 Proposed Budget.
- ³ Ramsey County, Minnesota County Managers 2016-2017 Proposed Budget.
- ⁴ Email from Leah Bower, Research and Evaluation Director, Ramsey County Community Corrections to author on December 14th, 2015 (on file with author).
- ⁵ 2014 Ramsey County Community Corrections 2014 Fact Sheets.
- ⁶ Ramsey County Community Corrections 2016-2017 Comprehensive Plan.
- ⁷ Minn. R. Crim. P. 27.04, subd.2 (2014); Robina Institute of Criminal Law and Criminal Justice, *Profiles in Probation Revocation: Examining Legal Framework in 21 States* at 47-48 (2014).
- ⁸ See, e.g. *State v. Friberg*, 435 N.W.2d 509 (Minn. 1989); *State v. Franklin*, 604 N.W.2d 79 (Minn. 2000).
- ⁹ Robina Institute of Criminal Law and Criminal Justice, *Profiles in Probation Revocation: Examining Legal Framework in 21 States* at 47 (2014).
- ¹⁰ *Id.* at 46.
- ¹¹ Minn. Stat. § 241.272 (2015).
- ¹² Minn. Stat. § 244. 18 (2015).
- ¹³ Minn. Stat. §§ 244. 18, subd. 4; 241.272, subd. 4 (2015).
- ¹⁴ Minn. R. Crim. P. 27.04, subd. 1(a) (2015).
- ¹⁵ Minn. Stat. § 609.14, subd.. 1(b) (2015).
- ¹⁶ Minn. R. Crim. P. 27.04, subd. 1(b) (2015).
- ¹⁷ *Id.*
- ¹⁸ Minn. R. Crim. P. 27.04, subd. 2 (2015).
- ¹⁹ *Id.*
- ²⁰ Minn. R. Crim. P. 27.04, subd. 3(2)(a) (2015).
- ²¹ *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980).

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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UNIVERSITY OF MINNESOTA LAW SCHOOL | 229 19TH AVE SOUTH | N160 MONDALE HALL | MINNEAPOLIS, MN 55455
ROBINA@UMN.EDU | WWW.ROBINAINSTITUTE.UMN.EDU



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OF CRIMINAL LAW AND CRIMINAL JUSTICE