

Understanding Probation Violations and Disrupting the Revocation Pathway in Ramsey County, Minnesota

A REPORT FOR THE REDUCING REVOCATIONS CHALLENGE

Submitted by the Robina Institute of Criminal Law and Criminal Justice
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I. Executive Summary

Ramsey County Community Corrections (RCCC) and the Robina Institute of Criminal Law and Criminal Justice partnered to participate in the Reducing Revocations Challenge, a national initiative of Arnold Ventures and the CUNY Institute for State and Local Governance dedicated to understanding the drivers of probation revocations and identifying ways to reduce them when appropriate. The study involved two broad questions. First, *what is the pathway to revocation for people on probation in Ramsey County?* Second, *what are the drivers of revocations in Ramsey County?* Drawing from three sources of information—a legal and policy review, data regarding a cohort starting probation in 2016, and interviews with criminal justice system stakeholders—the primary goals were to identify the factors driving revocations and to collaborate with other stakeholders and members of the community to identify changes in policy and practice that can reduce probation revocations and lead to better outcomes for individuals on probation while protecting public safety.

Who is most likely to be violated and/or revoked?

This study included all people who started probation in Ramsey County, Minnesota in 2016— a total of 3005 individuals—and followed their progress for two years. The sample included people who were on probation for felonies (28%), gross misdemeanors (28%), and misdemeanors (43%). Within the full sample, 60% had no probation violations filed during the observation period; 40% had one or more probation violations.

Offense Level

- More than half of people on probation for a felony had at least one probation violation compared to about a third of people on probation for a gross misdemeanor or misdemeanor (57% versus 32%).

- Of those with a violation, a much greater proportion of people on probation for a misdemeanor/gross misdemeanor were actually revoked compared to people on probation for a felony (44% of the gross misdemeanors/misdemeanors with a violation versus 19% of the felonies with a violation).

Probation Length

- The length of probation did not have a meaningful association with violations or revocations in felony cases. But in misdemeanor and gross misdemeanor cases, people with the shortest sentences—12 months or less—had greater odds of being revoked, holding all else constant.

Risk and Supervision Level

- The rates of probation violations and revocations increased as supervision level increased from low to high. But in regression models, supervision level was a significant predictor of the first violation for gross misdemeanor and misdemeanor cases but not for felonies. For felonies, supervision may not have been significant due to the inclusion of risk assessment scores. For felonies, the odds of a probation violation being filed were higher for people assessed as medium risk and high risk compared to people assessed as low risk.

Race

- At the felony level, race was not associated with the filing of violations, but people who were Black and Native American had greater odds of being revoked than people who were white.
- For misdemeanors and gross misdemeanors, people who were Black and Native American had higher odds of getting a probation violation compared to people who were white, but the odds of revocation are actually *lower*, suggesting the courts may be correcting for the disproportionately high rate at which people who are Black and Native American receive violations.

Why do violations and revocations happen?

Four main types of noncompliance accounted for 88% of all first probation violations and often appeared in combination with one another in the probation violation report. These included: new crime (28% of cases), failure to maintain contact with the probation officer (29%), programming or treatment noncompliance (13%), and substance use or positive and/or missed drug tests (18%). The same four reasons accounted for 90% of the revocations.

New Crimes versus Technical Violations

- Interviews of criminal justice practitioners revealed a strong perception that new crimes drove revocations in Ramsey County. New crimes accounted for 28% of violations and 41% of revocations. While this was one of the largest single reasons for probation violations, technical offenses made up a larger proportion of violations overall.
- Looking at outcomes for the first probation violation, when the violation was a new crime, the odds of revocation were 31% to 51% higher than for other types of technical violations. Thus, although new crimes did not make up the majority of violations, people whose violation was commission of a new crime were more likely to be revoked.
- Interviews also indicated a strong perception that persistent noncompliance (or technical violations) drove revocations, but some indicated that such noncompliance may be caused by underlying issues such as substance abuse problems, homelessness, or poverty. Several interviewees suggested that these types of noncompliance could be reduced by addressing the basic needs of people on probation.

Failure to Maintain Contact

- Failure to maintain contact with the probation officer accounted for 29% of probation violations and 23% of revocations. Failure to maintain contact was the most common reason for a violation; particularly for felonies where 36% of violations listed it as the main reason. Interviews revealed that failure to maintain contact may encompass myriad issues, including those related to homelessness, mental health, and chemical dependency.

Programming or Treatment Noncompliance and Substance Use and Positive or Missed Drug Tests

- Programming or treatment noncompliance accounted for 13% of first probation violations. Substance use and positive or missed drug tests accounted for 18%. At the GM/M level, where people are primarily on probation for DWI, after new offenses, these reasons were the most common for violations and revocations (36% of violations; 29% of revocations).

Jail as the Default Sanction

- The majority of revocations resulted in local incarceration (58%). Additionally, in cases where the violation was found and probation was continued, more than half (57%) also received some period of local confinement. Thus, jail is the default sanction for a violation.

What are the potential solutions?

Below is the full list of recommendations stemming from the work in this project. Some recommendations are designed to respond directly to the drivers of revocation in Ramsey County. Others are designed to focus more broadly on ways to encourage the success of people on probation. A fuller discussion is located in Section VI of this report.

1. *Reprioritize Probation Violations*
The court should consider assigning regular space on the docket to address probation violations and prosecutors should be made available to attend probation violation hearings.
2. *Delve More Deeply into Both Criminal and Technical Violation Reasons*
Violations involving new crimes should be more carefully evaluated to determine the types and relative risk of the crimes committed and to determine which merit jail time. More work is needed to understand and respond to technical violations involving failure to maintain contact. And RCCC and criminal justice partners may need to reconsider how DWI cases are handled.

3. *Reconsider the Use of Jail*

Work with criminal justice partners to develop new guidelines for the use of jail as a sanction, addressing both when it is used and to what degree.

4. *Focus on Addressing the Basic Needs of People on Probation*

Integrate probation with social services and make direct handoffs rather than referrals to other services in the county.

5. *Use Memos and Probation Review Bench Warrants More Effectively*

Both the RCCC data and surveys indicate alternative responses to violations, including memos to the court and probation review bench warrants (aka PRBWs; a low-stakes warrant used to engage with people on probation who have failed to maintain contact with their officer), had the potential to curb formal violations and subsequent revocations. It is recommended that RCCC engage in further discussions about when and how to use these options, and consider studying their effectiveness more directly.

6. *Build in a Feedback Loop to Ensure All Relevant Criminal Justice Practitioners are Aware of Probation Successes as Well as Failures*

A major theme that surfaced early in the project is that everyone in the system except probation officers has a skewed view of what happens on probation because they only see the individuals who return to court with a probation violation. To address this, RCCC should build in a feedback loop, and regularly provide information about probation success rates to the other actors in the system, and the larger community.

7. *Provide for Justice System Actor Accountability by Continuing Collaboration*

The strength of this project was criminal justice system actors, members of the community, and formerly incarcerated individuals were at the table and actively participating via the project Advisory Committee. Through continued collaboration, these actors can work together to hold each other accountable for their decisions and work to address areas in need of change.

II. Introduction

St. Paul (Ramsey County) and Minneapolis (Hennepin County) are often referred to as the “twin cities,” yet their probation revocation rates are far from identical. Ramsey County has the second largest probation population in the state. From 2002 to 2016 there were 20,400 individuals sentenced to felony probation in Ramsey County (Minnesota Sentencing Guidelines Commission, 2019). Through the end of 2017, 4,174 (20.5%) individuals were revoked. By comparison, in Hennepin County, which is demographically similar to Ramsey County in general and in the probation population, 31,044 individuals were placed on felony probation, but just 11.6% (3,602) were revoked over the same period. Because of this difference, Ramsey County Community Corrections (RCCC), the agency responsible for supervising people on probation in Ramsey County, initiated a partnership with the Robina Institute of Criminal Law and Criminal Justice (the Robina Institute) in 2018 to analyze data to explore this issue. In this preliminary work, the Robina Institute analyzed a snapshot of probation violations filed in 2015 and 2016. The analyses uncovered some unsettling findings, which included disparities in probation violations by race in addition to a complex set of relationships between supervision and sentencing characteristics that made it difficult to disentangle factors driving revocations. As a result, RCCC sought to collaborate with the Robina Institute for a second phase of work. The primary goals were to identify the factors driving revocations and to collaborate with other stakeholders and members of the community to identify changes in policy and practice that can reduce probation revocations and lead to better outcomes for individuals on probation while protecting public safety. This report sets forth the findings from that collaboration.

III. Research Plan Overview

The Robina Institute and RCCC aligned the project with the goals outlined in the Reducing Revocations Challenge (RRC) and added a collaborative component with other probation stakeholders and the community. The research plan included analyses that used quantitative and qualitative sources to study drivers of probation revocations in Ramsey County, in addition to a review of policies related to probation and revocations. Additionally, the project incorporated in-depth case file review as needed when research findings suggested additional exploration into a topic.

The main research team included staff from the Robina Institute and RCCC. The project also included an advisory committee, which was composed of people who represent other court actors who make decisions concerning revocations, members of the community that represented agencies and organizations working with individuals on probation, and formerly justice involved individuals. A list of the advisory committee members can be found in Appendix A. The advisory committee’s role was to review findings from the different research activities in order to provide insight and suggestions for additional areas of analysis. The Robina Institute and RCCC, in collaboration with the advisory committee, used the research from this project to identify strategies to disrupt the revocation pathway for people on probation supervision in Ramsey County.

Research Questions

There are two broad research questions designed to uncover drivers of revocations in Ramsey County, Minnesota. First, *what is the pathway to revocation for people on probation in Ramsey County?* Second, *what are the drivers of revocations in Ramsey County?* Because the revocation process in and of itself is a complex process of decisions made across multiple agencies that rely on a mixture of discretion, policy, and law, the first research question seeks to clarify this process before identifying factors contributing to that process.

Data Sources

Three different sources of data were used to answer our two research questions. These included: 1) legal and policy review; 2) an electronic dataset created by RCCC with data obtained from the RCCC case management system and in-depth paper file review; and 3) qualitative interviews of people who work in the criminal justice system and whose decisions impact the revocation pathway.¹ All three sources were used in an iterative manner to answer the two research questions. The data painted a picture of actual outcomes, and was used to test perceptions stated in the interviews against the outcomes observed in the data. The interviews were used to compare the revocation process in reality and practice to expectations outlined in policy. And additional file review was used to look-up data elements that were identified as important in the interviews and policy review. For example, interviews brought up different policies and practices around two types of warrants used in probation violation hearings that could create potential differences in outcomes for the hearings. As a result, RCCC research staff went into files to pull this information and add it to the dataset for analysis.

Legal and Policy Review

We conducted a review of the statutes, rules, and agency-level policies that govern probation in Ramsey County.² These authorities establish the framework within which probation and probation revocations operate, though actual practices may differ. The legal review was performed independently by conducting a review of the statutes and rules of criminal procedure that govern probation and probation revocation. For the policy review, we requested that RCCC provide all policies related to the supervision of people on probation. At times during the interviews, we heard about additional policies that may not have been originally provided, so we requested those as we became

aware of them. In some instances, the items requested turned out to be informal policies or policies that were in development, but that had not yet been enacted. For the most part, we report here on policies that were actually enacted and in force rather than those in development.

Probation Cohort Data

The probation cohort analysis was conducted with an administrative dataset created specifically for this project by RCCC research staff. The sample was created from probation and court files for all adults who started probation in Ramsey County during 2016. Some of this data was electronic (i.e., demographics, offense information), however, many of the data elements on probation violations and their dispositional outcomes were hand-coded by RCCC staff from paper files. Probation violations and their outcomes were tracked for up to two years from the start of probation for each person in the dataset. In the analyses, the unit of analysis is the person (as opposed to the probation case or the probation violation). Outcomes include probation violations and revocation outcomes. Violations are defined as official probation violations filed by a probation officer (therefore excluding misbehavior that did not result in a formal violation). Revocations include decisions by the judge to execute a sentence to jail or prison as well as a decision to discharge probation. We included discharges in with revocations based on findings from the interview portion that suggest discharges are the result of a “failed” probation term where it is decided it is not a good use of resources to continue probation. Therefore, while discharges may be a positive outcome for some probationers, they ultimately represent a negative result.

In prior research that the Robina Institute and RCCC conducted on this topic, the research team encountered limitations in identifying drivers of revocations and disentangling complicated or correlated relationships between

¹ Our original plan was to also interview people on probation. Because of the pandemic, we were unable to secure approval to move forward with those interviews within the timeframe for this project. RCCC and Robina are moving forward with those interviews to refine these findings and recommendations, but that information is not included in this report.

² Though RCCC also supervises people on supervised release (Minnesota’s version of parole), because the focus of this project is probation, this policy review does not include the laws, rules, and policies governing supervised release. Moreover, because supervised release is managed by the Minnesota Department of Corrections (DOC), RCCC can provide input regarding such policies, but cannot change its practices without approval from DOC.

supervision variables. As a result, the dataset was developed so a trajectory of supervision could be analyzed. Since most violations occur within the first year and a half of supervision, data on probation violations was tracked for up to two years. Because early models indicated that the predictors might be different for different offenses levels—felonies versus gross misdemeanors and misdemeanors—we divided the sample and ran separate models by offense level. In the results, the samples are referred to as the GM/M sample, which includes people sentenced to probation for either a gross misdemeanor or misdemeanor offense, and the felony sample. All data elements used in the analyses and the analysis techniques are included in Appendix B.

Interviews

The purpose of the interviews was to understand revocation practices and policies from people who work in the criminal justice system. We conducted interviews of a variety of criminal justice practitioners. A majority of the interview questions were asked with the purpose of creating and clarifying the revocation pathway based on the roles and perspectives that different people involved in the system have for this process. These interviews were important since there are multiple decision points that impact revocations, and the different actors have varying amounts of discretion at each of these points. Additionally, many actors involved in the revocation process have different goals and as such, it was important to capture their perspective on this process. The remaining questions focused on asking people their perceptions and perspectives about what was responsible for driving revocations in Ramsey County and what suggestions they had for interrupting the revocation pathway.

We conducted interviews with a total of 44 people from across the criminal justice system. The system actors included 22 probation officers and probation supervisors, 6 judges, 6 prosecutors (from both the county and city

prosecutor agencies),³ 3 public defenders, and 7 providers of treatment or services in the community. For each group, we approached agency heads and asked them to identify potential interviewees who had experience with sentencing, probation, and probation revocation. Our goal was to interview people who could help illuminate the revocation pathway rather than obtaining representative samples of people working in the various offices. For the probation officer and supervisor group, we strove to interview people who worked in a variety of units and had varying levels of experience. This helped us capture the variety of supervision styles that are dependent on supervisor, unit location, or offense type (some units are specialized). For prosecutors and defense attorneys, we strove to interview people who had experience in handling probation revocation hearings because the attorneys in these offices tend to specialize, and it would not have been helpful to interview people who handled first appearances but never handled revocations.

Initially, the plan was to interview people in-person but due to University IRB restrictions related to COVID, the interviews were conducted remotely via telephone or Zoom (online platform). The interviews were digitally recorded and transcribed. The interview transcripts were then analyzed using NVivo software. First round coding involved creating codes for each of the major decision points in the sentencing to revocation pathway, using the interview guide as a reference point. During this pass, NVivo codes were also created to mark unexpected concepts or ideas that arose in the interviews. These codes were then collapsed and reorganized to reflect the major themes that arose during the interviews. The second round of coding involved analyzing each theme to develop sub-themes and to discern whether there was variation within the themes with regard to how different actors viewed the concepts being explored. The results from each theme were then summarized in report form.

³ In Ramsey County, the county prosecutor handles felony cases and the city prosecutor handles gross misdemeanor and misdemeanor cases.

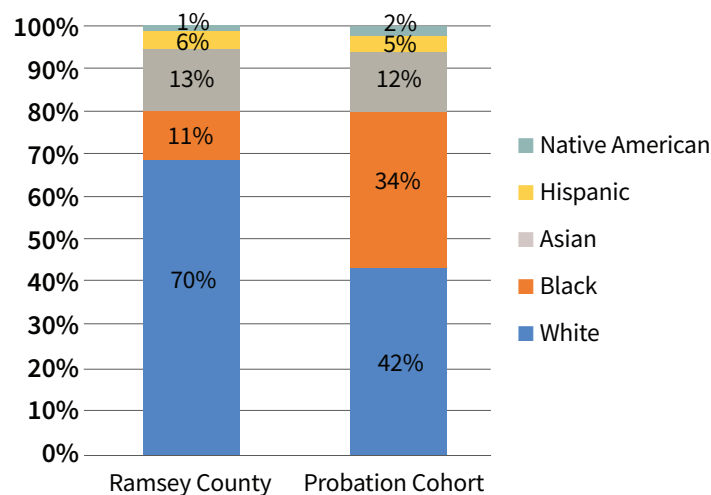
IV. Findings

In this section, we present our major findings for this project. We begin with a description of the 2016 probation cohort sample as well as a big picture overview of the revocation pathway as seen in the probation cohort and survey datasets. Understanding the population of interest and the pathway as a whole sets the stage for the rest of the findings where we will discuss stages of the pathway in turn. Finally, we will end with a discussion of the overall drivers of probation violations and revocations.

Probation Cohort Demographics

To learn more about how a person proceeds through probation, we included in our study everyone who started probation in 2016, a total of 3,005 people. As shown in Table 1, about three-fourths of those starting probation in 2016 were male and one-fourth were female. The average age of a person on probation was 34. Looking at race and ethnicity, the two largest groups in the probation cohort were those who were white (42%) and those who were Black (34%). In general, however, the race and ethnicity of people on probation did not reflect the race and ethnicity of people living in Ramsey County in that the people who were white were underrepresented (42% vs 70%, respectively), and people who were Black were overrepresented (34% vs 11%, respectively) (see Figure 1).

Figure 1. Race for the 2016 Census Population Estimates⁴ for Adult (over 18) in Ramsey County Compared to the Probation Cohort



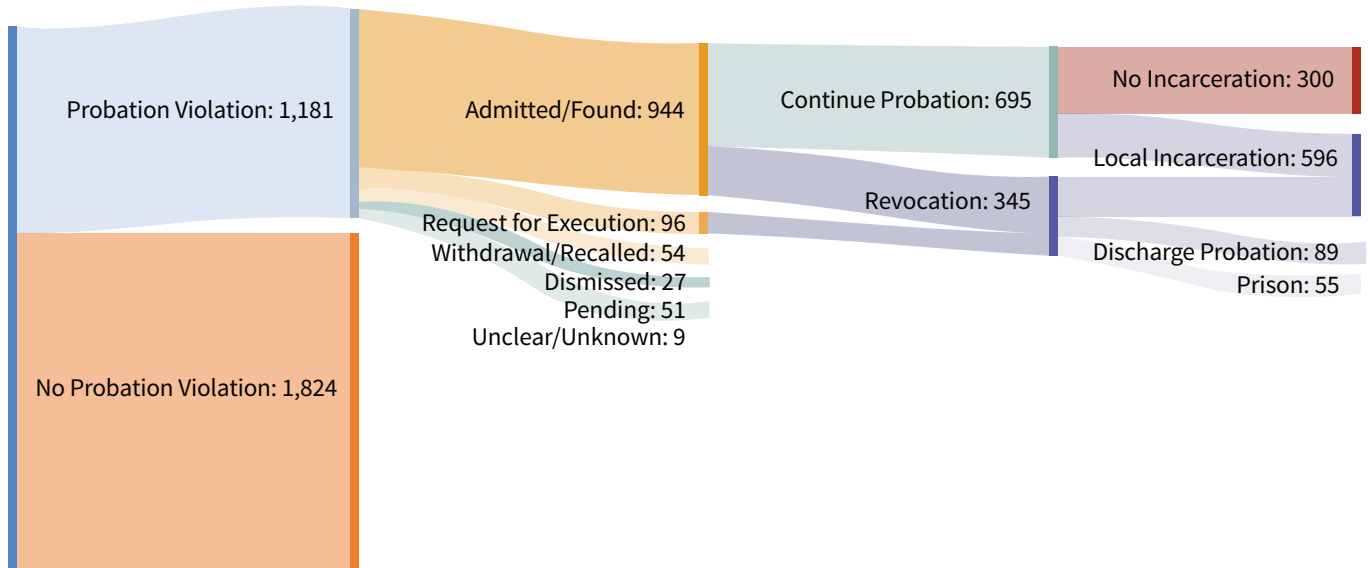
The Probation Pathway Overall

Figure 2 shows the high level outcomes for the probation cohort, which will be explained in more detail in the sections that follow. About 40% of probationers in the cohort had at least one violation during the observation period. The majority of the violations were admitted or found and/or the probationer requested an execution of their

Table 1. Demographics of Probation Cohort

Variable	Total Sample Freq (Percent)	Felony Sample Freq (Percent)	GM/M Sample Freq (Percent)
Total Sample	3,005	853	2,152
Gender			
Male	2,278 (76%)	649 (76%)	1,629 (76%)
Female	727 (24%)	204 (24%)	523 (24%)
Age – Mean (SD)	34 (SD: 12)	34 (SD: 11)	34 (SD: 12)
Race			
White	1,264 (42%)	324 (38%)	940 (44%)
Black/African American	1,024 (34%)	340 (40%)	684 (32%)
Asian	346 (12%)	89 (10%)	257 (12%)
Hispanic	158 (5%)	39 (5%)	119 (6%)
Native American	75 (3%)	33 (4%)	42 (2%)
Multi-Racial	68 (2%)	18 (2%)	50 (2%)
Unknown/Missing	92 (3%)	10 (1%)	82 (4%)

Figure 2. Overview of Probation Outcomes



sentence, and of those, about one-third were revoked, and two-thirds were continued (or reinstated) on probation. Though a large contingent of those violations admitted or found received no incarceration in response to the violation (28%), most individuals received some form of

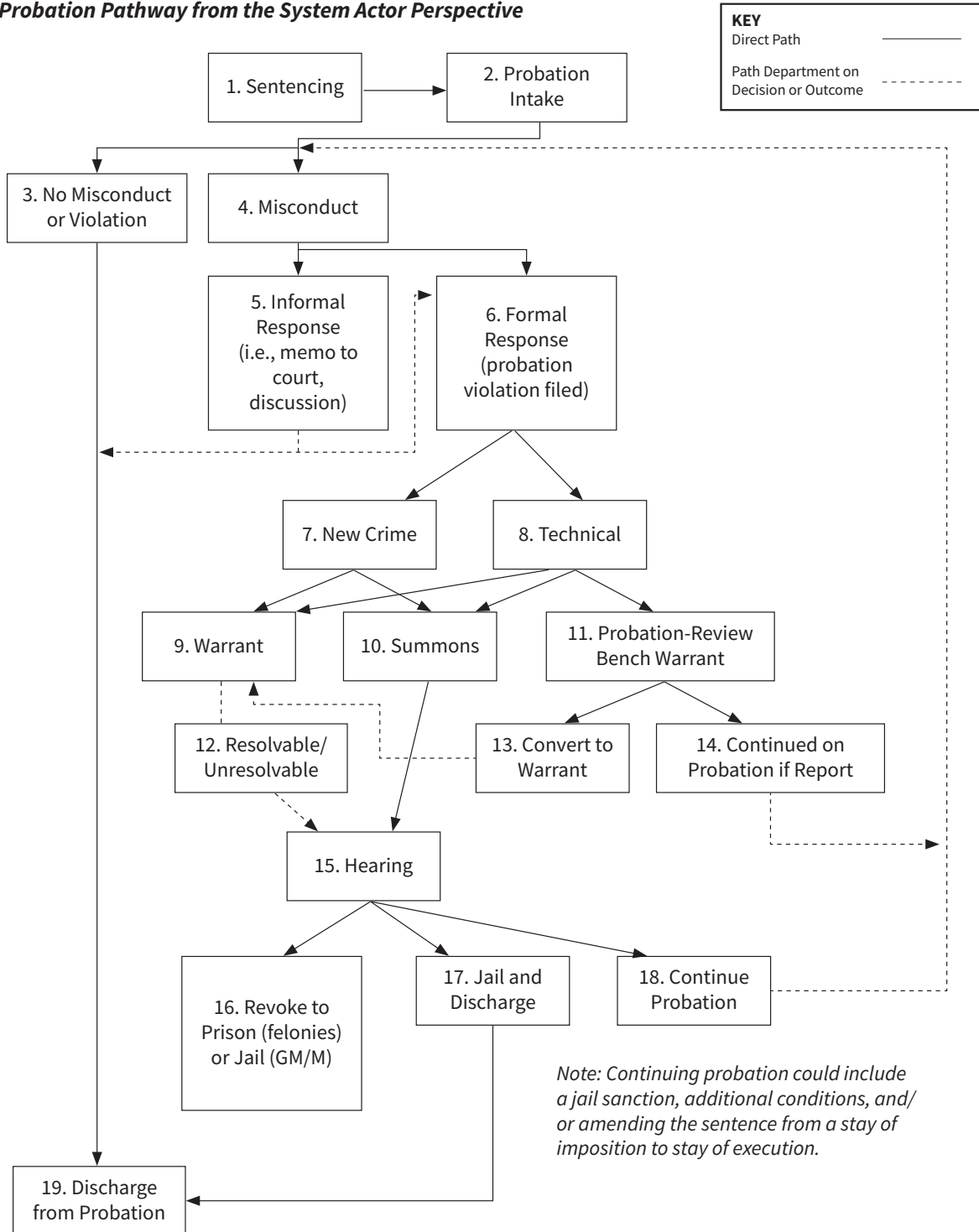
incarceration, either as a sanction for the violation or as a consequence of being revoked. About one quarter of revocations resulted in a discharge from probation rather than incarceration.

⁴ National Center for Health Statistics (2020). Vintage 2019 postcensal estimates of the resident population of the United States (April 1, 2010, July 1, 2010-July 1, 2019), by year, county, single-year of age (0, 1, 2, ..., 85 years and over), bridged race, Hispanic origin, and sex. Prepared under a collaborative arrangement with the U.S. Census Bureau. Available online from https://www.cdc.gov/nchs/nvss/bridged_race.htm as of July 9, 2020, following release by the U.S. Census Bureau of the unbridged Vintage 2019 postcensal estimates by 5-year age groups.

Figure 3 reflects the probation pathway as we came to understand it by pulling together the legal and policy review, probation cohort data, and interviews. The rest of the findings are presented in an order that reflects this pathway. Each of the major steps in the pathway are denoted by number, and throughout this section, an effort will

be made to refer back to that number to help center the reader on what occurs at each step. For each step, we first present the legal and policy framework, then present the data, and information from interviews. In a few areas, not all three sources of information were available to describe the steps, so only those available are presented.

Figure 3. Probation Pathway from the System Actor Perspective



Sentencing (Step #1)

Legal and Policy Framework

In Minnesota, crimes are classified into one of three offense levels: misdemeanor, gross misdemeanor, and felony. RCCC supervises people on probation for convictions at all three offense levels. Of the three, felony offenses are the most serious. The offense levels are defined according to their maximum punishments as follows.

- A felony is a crime for which a prison sentence of more than one year may be imposed.
- A gross misdemeanor is a crime punishable by 91 to 365 days in jail or a fine of \$1001 to \$3000.
- A misdemeanor is a crime punishable by up to 90 days in jail or a fine of up to \$1000.⁵

Upon conviction, the court can impose a sentence within the incarceration and fine limits defined by law, or it can *stay imposition or execution* of sentence and place the individual on probation.⁶

There is no guidance in the law as to whether the court should impose and execute a sentence or place a person on probation for a gross misdemeanor or misdemeanor offense. For felonies, the decision is governed by the Minnesota Sentencing Guidelines. As shown in Figure 4, the Guidelines are based on a grid structure. The vertical axis of the Grid represents the severity of the offense for which the individual was convicted. The horizontal axis represents a measure of the individual's criminal history, which is a composite score derived from the number and weight of prior felony, gross misdemeanor, and misdemeanor convictions, prior juvenile adjudications, and whether an individual committed the offense while under some form of custody status (i.e., while on probation, while in jail, etc.).⁷

The presumptive guidelines sentence is found in the cell where the individual's criminal history score and the severity level of the offense intersect. For cells in the gray-shaded area of the grid, the guidelines recommend a stayed sentence (probation). For cells in the non-shaded area of the grid, the guidelines recommend a prison sentence. The bolded black line on the grid represents the "disposition line," which indicates the demarcation between recommended probation and prison sentences.

Figure 4. Excerpt of Two Rows from Minnesota Sentencing Guidelines Standard Grid

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>Italics</i>)		Criminal History Score						
		0	1	2	3	4	5	6 or more
<i>Agg. Robbery; 1st Degree; Burglary, 1st Degree (w/ Weapon or Assault)</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI; Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84</i>

⁵ Minn. Stat. § 609.02, subd. 2 (2019).

⁶ Minn. Stat. § 609.135, subd. 1 (2019). It should be noted that some individuals can be placed on probation *before* conviction. This is accomplished through a stay of adjudication, which involves withholding the conviction and placing the individual under a period of supervision. Typically, if the person successfully completes probation, the charges will be dismissed. The most common type of stay of adjudication is that applied to people convicted of drug offenses under Minnesota Statutes, section 152.18 (2019), but such stays can be imposed in other cases by operation of inherent judicial authority. *State v. Krotzer*, 548 N.W.2d 252 (Minn. 1996).

⁷ Minn. Sent. Guidelines § 2.B (2020).

Regardless of offense level, imposition of a probation sentence includes four key decision points: (1) whether the probation term will be supervised or unsupervised; (2) the type of stay that will be imposed; (3) the length of the probation term; and (4) the conditions a person will have to comply with while on probation.

State law provides that the court “may place the defendant on probation *with or without supervision*.”⁸ Additionally, the Legislature encourages that the last year of probation for certain gross misdemeanors and misdemeanors be unsupervised.⁹ There is no other guidance in the law as to how supervised and unsupervised probation differ. Practically, if a person is sentenced to unsupervised probation, there will be no oversight during the probation period, but if a person is sentenced to supervised probation, RCCC will provide oversight during the period of probation.

The second decision in setting the probation sentence is the type of stay, which can be a *stay of imposition* or a *stay of execution*. To understand what these terms mean, it is first important to understand that there are two steps in sentencing: the imposition of the sentence and the execution of the sentence. The imposition of sentence occurs when the court pronounces a sentence, which often includes a jail or prison term. An imposed sentence is executed when a person is required to actually serve that time in jail or prison. A stay can occur at either of these points. A *stay of imposition* occurs when the court accepts and records a finding or plea of guilty but does not impose (or pronounce) a sentence. A *stay of execution* occurs when the court accepts and records a finding or plea of guilty and pronounces a jail or prison sentence, but suspends the service of that incarceration for a period of time.¹⁰ There is no statute or rule that governs when each type of stay is appropriate. For felonies, the Minnesota Sentencing Guidelines recommend stays of imposition for people who have been convicted of lower severity offenses and who have lower criminal history scores,¹¹ but this recommendation is not binding on the court. The two different types of stays

have differing collateral consequences. When a person has been convicted of a felony, gross misdemeanor, or misdemeanor and is given a stay of execution, the offense will remain at that conviction level on one’s criminal record. But by law, if a person is given a stay of imposition for a felony or gross misdemeanor conviction and then successfully completes probation, the conviction will be deemed a misdemeanor.¹² Thus, a stay of imposition can result in a reduced conviction level for gross misdemeanor and felony offenses whereas a stay of execution cannot.

The third decision in setting a probation sentence is the length of the probation term. State law limits the probation term as follows:

- **Felony** – Prior to August 2020, not more than four years or the statutory maximum punishment, *whichever is longer*.¹³ As of August 2020, not more than five years or the length of the statutory maximum punishment, *whichever is less*, unless the court identifies and articulates substantial and compelling reasons to support a departure.¹⁴
- **Gross misdemeanor** – Six years for driving while impaired, criminal vehicular operation, and criminal sexual conduct offenses. Two years for all other gross misdemeanor level offenses.
- **Misdemeanor** – Two years for driving while impaired, interference with privacy, obscene or harassing telephone calls, indecent exposure, and domestic assault offenses. One year for all other misdemeanor level offenses.¹⁵

Finally, when the court places a person on probation, the court may impose “terms the court prescribes, including intermediate sanctions when practicable.”¹⁶ The “terms” noted in statute are more commonly referred to as the conditions of probation, which are requirements the individual must fulfill or comply with while on probation.

⁸ Minn. Stat. § 609.135, subd. 1 (2019) (emphasis added).

⁹ Minn. Stat. § 609.135, subd. 2 (b), (d) (2019).

¹⁰ Minn. Sentencing Guidelines § 1.B.19 (2020).

¹¹ Minn. Sentencing Guidelines § 3.A.1 (2020).

¹² Minn. Stat. 609.13, subd. 1 (2019).

¹³ Minn. Stat. § 609.135, subd. 1 (2019) (emphasis added).

¹⁴ Minn. Sentencing Guidelines § 3.A.2(a) (2020) (emphasis added).

¹⁵ Minn. Stat. § 609.135, subd. 1 (2019).

¹⁶ Minn. Stat. § 609.135, subd. 1 (2019).

They may be administrative (e.g., maintaining contact with probation officer) or relate to treatment or monitoring (e.g., submit to random urinalysis testing or attend cognitive behavioral therapy). For felonies, the judge will assign a set of ten standard conditions¹⁷ and may assign additional conditions depending on the person, the offense, assessment results, probation recommendations, or other factors. There is no policy establishing standard conditions for gross misdemeanor and misdemeanor probation. The conditions can include up to one year in jail.¹⁸

Probation Cohort Data

Since the probation cohort consists only of people who were on supervised probation, there is no data on the number of people who receive unsupervised probation. As shown in Table 2, nearly three-fourths (72%) of probationers were on probation for a misdemeanor or gross misdemeanor level offense while the rest (28%) were on probation for a felony level offense. More than half of the GM/M sample were on probation for a DWI offense (52%) with an additional one-quarter being on probation for a

Table 2. Descriptive statistics for court related characteristics of individuals

Variable	Total Sample Freq (Percent)	Felony Sample Freq (Percent)	GM/M Sample Freq (Percent)
Total Sample	3,005	853	2,152
Offense Level			
Felony	853 (28%)	853 (100%)	-
Gross Misdemeanor	873 (29%)	-	873 (41%)
Misdemeanor	1279 (43%)	-	1279 (59%)
Offense Type			
Person/Violent	818 (27%)	303 (36%)	515 (24%)
Property	373 (12%)	279 (33%)	94 (4%)
Drug	179 (6%)	175 (21%)	4 (<1%)
DWI	1148 (38%)	24 (3%)	1124 (52%)
Traffic	154 (5%)	0 (0%)	154 (7%)
Disorder	281 (9%)	29 (3%)	252 (12%)
Sex	52 (2%)	43 (5%)	9 (0%)
Presumptive Disposition			
Commitment to Prison	-	182 (21%)	-
Stayed Sentence	-	667 (78%)	-
Unknown	-	4 (1%)	-
Probation Sentence Type			
Stay of Execution	2526 (84%)	476 (56%)	2050 (95%)
Stay of Imposition	479 (16%)	377 (44%)	102 (5%)
Probation Length (Months)			
12 or Less	1198 (40%)	3 (<1%)	1195 (56%)
13-24	915 (31%)	18 (2%)	897 (42%)
25-36	195 (7%)	165 (19%)	30 (1%)
37-48	37 (1%)	7 (1%)	30 (1%)
49-60	463 (15%)	463 (54%)	0 (0%)
61 or More	197 (7%)	197 (23%)	0 (0%)
Conditions – Mean(SD)	16.26 (3)	17.13 (3)	15.91 (3)

¹⁷ The standard conditions of felony probation were set by Judicial Council Policy #522, available at https://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/Policies/500/522-Standard-Conditions-of-Probation.pdf?ext=.pdf.

¹⁸ Minn. Stat. § 609.135, subd. 4 (2019).

person or violent offense (24%). Felonies tended to be for person/violent offenses (36%), property offenses (33%) or drug offenses (21%).

Sentencing for felony offenses is governed by the sentencing guidelines. Within the felony sample, over three-fourths (78%) had a presumptive stayed disposition (meaning, the sentencing guidelines recommended probation) and the rest had a presumptive disposition of commitment to prison. Thus, a large proportion (21%) of people on probation for a felony sentence received a dispositional departure and were sentenced to probation when the sentencing guidelines recommended prison.

Most probationers were given a stay of execution (84%). However, there was variation by offense level. For felonies, just over half (56%) received a stay of execution and the rest received a stay of imposition. For the GM/M group, nearly everyone (95%) received a stay of execution. This is likely because for misdemeanors there is no benefit from receiving a stay of imposition like there is for felonies, where a stay of imposition can result in a reduced conviction level at the end of the probation term.

The length of probation reflects our expectations from policy. At the time our probation cohort was sentenced, felony probation terms could be 4 years up to the statutory maximum sentenced, and gross misdemeanor and misdemeanor sentences could be 1 to 6 years, depending on the offense. The majority of people sentenced to probation for gross misdemeanor or misdemeanor offenses had probation terms of 1 (56%) or 2 (42%) years. In the felony group, a little more than half (54%) had a probation term of about 5 years. However, about 23% of people had probation terms longer than 5 years.

Individuals on felony probation automatically have ten standard conditions to follow while those on GM/M probation do not have standards set by policy. Despite this, there appears to be little difference in the number of conditions given by offense level, with the felony cases having an average of 17 conditions assigned and the GM/M cases having an average of 16 conditions assigned. We are not able to determine what the specific conditions were for people in the cohort.

Interviews

In Ramsey County, unsupervised probation is colloquially referred to as “probation to the court.” RCCC supervises people who have been sentenced to a period of “supervised probation;” there is no oversight for people who are on probation to the court. Respondents indicated that probation to the court is primarily used for misdemeanor-level offenses, including DWI in those cases where the person has already completed the expected conditions of probation by the sentencing date. As one prosecutor described it, probation to the court is generally used “when there’s not a lot to do beyond keeping your nose clean for a year.”

Respondents articulated several different instances when a stay of imposition might be the preferred sentence, but because the answers varied so much, what became clear is that there is no policy driving the decision. For example, one person stated a stay of imposition might be appropriate for people who do not have much prior criminal history or for felonies that are at severity level three or lower. A judge noted that the type of stay is usually negotiated as part of the plea agreement, so this is not an area where judges typically exercise discretion.

There was slightly more clarity with regard to when a stay of execution would be appropriate. Nearly all misdemeanor sentences will be pronounced as stays of execution because there is no benefit under the law to pronouncing a stay of imposition in these cases; the conviction cannot be reduced to lower than a misdemeanor. There is some potential for a gross misdemeanor conviction to be reduced to a misdemeanor if the court were to pronounce a stay of imposition rather than a stay of execution, but those we interviewed rarely discussed this situation. The real dividing line was for felony sentences. Since the type of stay has a huge potential benefit in these cases, judges were more thoughtful about the type of stay when sentencing felonies. The one time when judges indicated they would unequivocally pronounce a stay of execution for a felony was when they were giving the person a dispositional departure (imposing a probation sentence when the sentencing guidelines call for prison). For all other felonies, a stay of execution is the default sentence type when the factors that would justify a stay of imposition are not present.

A third type of stay discussed by respondents was a stay of adjudication. This type of stay occurs *pre-conviction*. The court may or may not accept a guilty plea, but the court will not record it, and no conviction will occur. People given this type of stay can also be placed on a period of supervision and given conditions with which to comply. But if they have a violation during the supervision term, the next step is to enter a conviction and proceed to a sentencing hearing. Since there were only a few such cases in the quantitative study, no questions were asked about this situation beyond when such a sentence might be imposed. Judges indicated that stays of adjudication tend to be given when the person is a first-time offender or when the goal is to help the person avoid having a criminal record. Most judges indicated that they would like to be able to issue stays of adjudication more often, but noted the law only permits them in very narrow circumstances, and prosecutors rarely agree to them.

When discussing conditions, most judges interviewed agreed that the standard conditions for felonies were generally reasonable and followed without question in most instances. It was also mentioned that in Ramsey county five standard conditions are given for gross misdemeanors and misdemeanors, though this appears to have been set by judicial practice rather than policy. The conditions include: 1) following the probation officer's instructions on reporting and attending meetings; 2) maintaining truthful and prompt communication with the probation officer; 3) remaining law abiding; 4) reporting any arrest within 72 hours; and 5) keeping the probation officer informed of residence and employment and making no changes to either without consent. Judges listed multiple considerations when making decisions on conditions including: the criminal charge, the victim's input, the needs of the person on probation, and the recommendations of lawyers and probation officers.

Probation Intake (Step #2)

Legal and Policy Framework

When a person is sentenced to probation, that person is assigned to a specific supervision unit within RCCC. RCCC is divided into multiple units, each with its own specialty. Table 3 sets forth the main supervision units and provides a description for each. It should be noted that the RCCC policy establishing unit assignments is not up to date. The policy indicates that there is a Welfare/Unemployment Fraud unit, but such a unit apparently never existed. Moreover, the Restitution Unit, which once oversaw people ordered by the court to pay a specific amount of restitution, no longer exists. Finally, the policy contains no reference to the new Community Alternatives Unit, which oversees people in problem solving courts and the community monitoring program.

There are additional details not included in the table that determine case assignment when a person falls into multiple categories or when individuals are being supervised from other counties or other states. Some of the units listed here may not be relevant to the Reducing Revocations Challenge because they do not involve active supervision, or because they involve people on supervised release (Minnesota's equivalent of parole).¹⁹ As stated in the case assignment policy, "[t]he ultimate goals of case assignment are to match client needs with the community corrections goals of reducing recidivism and promoting offender rehabilitation."²⁰

RCCC uses actuarial assessments as a component of evidence-based practices. RCCC uses the LS/CMI,²¹ which is a dynamic actuarial risk and needs assessment tool, to categorize individuals' risk to reoffend and to identify criminogenic needs. An assessment is initially done at the time of the pre-sentence investigation, if ordered, or within 60 days of assignment to probation if there is no PSI. However, assessments are never performed on cases involving misdemeanor theft or DWI, prostitution, no proof

¹⁹ RCCC also has a PSI Unit, which is responsible for performing pre-sentence investigations when ordered by the court.

²⁰ RCCC Adult Division Policy Number CM 14.5a FSAP.

²¹ RCCC currently utilizes the LS/CMI to assess for general recidivism and criminogenic needs. For information about this tool, see https://www.assessments.com/assessments_documentation/LSCMI_Tech_Brochure.pdf.

of insurance, non-alcoholic-related traffic offenses, dogs at large, or underage consumption. People who have been convicted of felony- and gross misdemeanor-level offenses must be reassessed nine months after sentencing and annually thereafter.²²

Risk assessment results tie into case assignment procedures in that individuals assessed as low risk are generally assigned to the PRC, individuals assessed as medium risk are assigned to the PRC or specialty units (i.e., domestic abuse, DWI), and individuals assessed as high are assigned to geographic field offices.²³

Table 3. Case Assignment²⁴

Unit Name	Description
Intake	The intake unit manages individuals who are in some sort of transition, including people convicted in Ramsey County who will reside in and be supervised by other counties, people on supervised release who have a companion probation case, people serving time in a federal prison, and people who will be transferring to or from another state.
Spruce Tree West	This unit manages people with misdemeanor- through felony-level criminal sexual conduct cases, prostitution-related cases, child pornography, kidnapping, and false imprisonment, and people who are otherwise required to register as sexual or predatory offenders.
Spruce Tree East/North	These units manage people on supervised release from prison (Minnesota's version of parole). Spruce Tree East manages individuals on intensive supervised release, which is geared towards the highest-risk individuals, whereas Spruce Tree North manages people on supervised release.
Domestic Abuse	This unit manages all new domestic abuse cases involving partner violence, including cases involving convictions for non-domestic abuse offenses that nonetheless fit this category. Other conviction offenses include fifth-degree assault, disorderly conduct, violation of an order for protection, criminal damage to property, and terroristic threats.
DWI	The DWI unit supervises all individuals convicted of felony-level DWI as well as individuals with lower level convictions who have had three or more DWI's within their lifetime.
Geographic Field Offices	Field supervision units manage individuals with misdemeanor- through felony-level convictions who are classified as high risk but who are not assigned to a specialty caseload. There are multiple field locations based upon geographic regions within Ramsey County. Individuals are assigned to these offices primarily based upon their most current address (i.e., place-based supervision), except that one particular field office handles people with gang-related conditions. People on probation who are homeless are assigned to field offices on a rotating basis.
Probation Reporting Center (PRC)	This unit supervises most individuals with misdemeanor- and gross misdemeanor-level convictions, except those classified as high risk to reoffend, as well as some felony-level cases not otherwise assigned to specialty units that are classified as medium to low risk.
Community Alternatives Unit	This unit supervises people in problem solving courts and the community monitoring program.

²² RCCC Adult Division Policy Number CM 14.4a FSAP.

²³ See RCCC Adult Division Policy Number CM 14.4a FSAP (supervision and risk level); RCCC Adult Division Policy Number CM 14.5a FSAP (supervision unit assignment).

²⁴ RCCC Adult Division Policy Number CM 14.5a FSAP.

Table 4 below describes the supervision information for people in the study. The type of supervision and risk level of people on probation varied a great deal by offense level. Supervision units fall under three categories; field/specialty units, group reporting (i.e., the PRC), and other/probation transferred (the intake unit). Field supervision would involve more one-on-one interaction and more frequent contacts whereas group reporting would involve telephone check-ins and less frequent interaction with a probation officer. The intake unit is unique in that it supervises people during the transition to a permanent unit as well as people who have a concurrent supervised release (parole) term, and people from other states or counties who are residing in Ramsey County. In the felony sample, most were supervised in a field or specialty unit (72%) whereas in the GM/M sample, approximately half (53%) of the people were supervised in a group reporting setting while only about a third (38%) were supervised in a field setting.

About half (56%) of people on probation for felony offenses had a high supervision level. This proportion lines up with approximately half (51%) being assessed as high risk to reoffend on the LS/CMI. More than half (62%) of the individuals in the GM/M sample were supervised at a low supervision level (which is in part associated with group reporting). There was not enough risk assessment information for the GM/M data to describe their risk or use it in the later analyses for probation violations and revocations.

No Misconduct or Violation (Step #3)

Probation Cohort Data

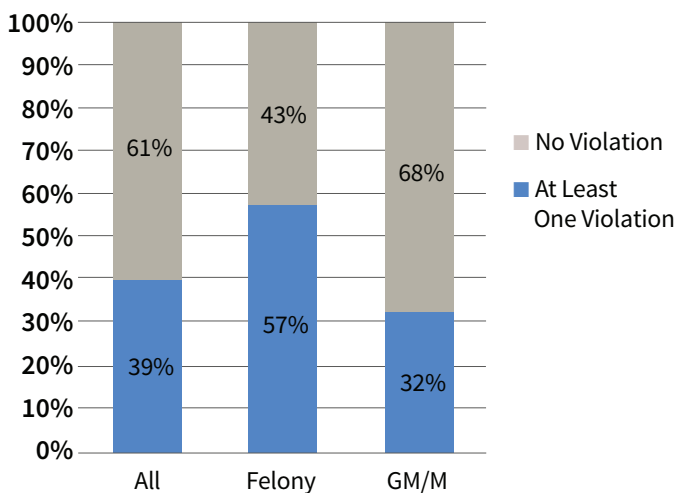
Most (60%) individuals in the probation cohort never had a probation violation filed during the period of observation. This varied by offense level with 43% of people in the felony sample having no formal probation violation and

Table 4. Descriptive statistics for supervision related characteristics of individuals

Variable	Total Sample Freq (Percent)	Felony Sample Freq (Percent)	GM/M Sample Freq (Percent)
Total Sample	3,005	853	2,152
Supervision Type			
Field/Specialty Unit	1437 (48%)	611 (72%)	826 (38%)
Group Reporting	1260 (42%)	124 (15%)	1136 (53%)
Other/Probation Transferred	308 (10%)	118 (14%)	190 (9%)
Unit			
800 (field)	198 (7%)	140 (16%)	58 (3%)
Central (field)	186 (6%)	132 (16%)	54 (3%)
Domestic Abuse (Specialty)	586 (20%)	132 (16%)	454 (21%)
DWI Unit (Specialty)	223 (7%)	20 (2%)	203 (9%)
Intake	308 (10%)	118 (14%)	190 (9%)
Probation Reporting Center	1260 (42%)	124 (15%)	1136 (53%)
Spruce South (field)	171 (6%)	136 (16%)	35 (2%)
Spruce West (field)	73 (2%)	51 (6%)	22 (1%)
Supervision Level			
Low	1490 (50%)	150 (18%)	1340 (62%)
Medium	230 (8%)	91 (11%)	139 (7%)
High	936 (31%)	479 (56%)	457 (21%)
Unknown	349 (12%)	133 (16%)	216 (10%)
LSCMI Risk Level			
Low	565 (19%)	206 (24%)	359 (17%)
Medium	214 (7%)	118 (14%)	96 (5%)
High	672 (22%)	431 (51%)	241 (11%)
No Assessment Returned	1554 (52%)	98 (12%)	1456 (68%)

68% of people in the GM/M sample having no probation violation (Figure 5). Some individuals may have committed some form of misconduct that did not result in a formal violation. While we cannot use this data to directly measure misconduct without a formal violation, alternative actions like memos (discussed in a later section) do indicate that a portion of the sample with no formal probation violations did have some sort of misconduct that was addressed in an alternative way.

Figure 5. Probation Violations Filed by Offense Level



Misconduct (Step #4)

Legal and Policy Framework

Response to Offender Misconduct Protocol (ROMP)

RCCC has developed a response grid—the Response to Offender Misconduct Protocol (ROMP)—to identify appropriate actions to take when people on probation violate the conditions of supervision. The ROMP is intended to promote consistency and proportionality in responding to violations.²⁵ The ROMP differentiates responses to misconduct based upon the risk level of the individual (low/minimum, medium, high, very high) and the seriousness of the mis-

conduct (low, medium, serious). Risk is determined by the most recent assessment completed for the individual.²⁶ The probation officer will rank the severity of misconduct based upon definitions within the ROMP.²⁷

- Misconduct is generally categorized as low when the behavior is less serious, or the first time it occurs. Examples of low misconduct include conviction of a misdemeanor or gross misdemeanor traffic offense, failing to complete a chemical dependency or mental health assessment, one positive drug or alcohol test, failure to obtain employment or attend school full time, or leaving the state without permission.²⁸
- Medium misconduct involves repeated instances (two or three) of low-level misconduct, as well as other actions that are considered more serious. Examples of medium misconduct include conviction of a misdemeanor or gross misdemeanor offense, two or three positive drug or alcohol tests, a second failure to obtain a chemical dependency or mental health assessment, willful nonpayment of restitution (when one has the ability to pay), failure to appear at intake or for a sanctions conference, failure to keep an agent updated as to one's current address, unintended contact with prohibited persons (e.g., victim, children), and contact with gang members.²⁹
- Misconduct is categorized as serious when there are multiple instances (four or five) of low-level misconduct or when the person on probation engages in more serious actions that may have public safety implications. Examples of serious misconduct include conviction of a felony offense or a new DWI, four or more positive drug tests in 60 days, refusal to enter or complete chemical dependency treatment, refusal to allow a search of one's property or residence, possession of a firearm, willful contact with prohibited persons (e.g., victim, children), and absconding from supervision.³⁰

²⁵ RCCC Adult Division, ROMP Manual at 3 (2015). See also RCCC Adult Division Policy Number CM 14.7a FSAP.

²⁶ When multiple assessment tools have been utilized, risk is assigned based on the highest scoring assessment. RCCC Adult Division, ROMP Manual at 9 (2015).

²⁷ RCCC Adult Division, ROMP Manual at 9 (2015).

²⁸ RCCC Adult Division, ROMP Manual at 6-7 (2015).

²⁹ RCCC Adult Division, ROMP Manual at 6-7 (2015).

³⁰ RCCC Adult Division, ROMP Manual at 6-7 (2015).

For those behaviors where the severity of misconduct increases due to the number of times the behavior occurs, the ROMP requires that there must have been interventions between incidents in order for them to be categorized at a higher severity. The ROMP also includes a list of aggravating factors that may increase the severity of the misconduct or justify a response outside of the applicable range (i.e., significant history of assaults, weapons offenses, or stalking, multiple failed interventions, or a lengthy time on a warrant). There are also mitigating factors that may justify moderating the sanction (i.e., working towards sobriety, having a support system or stable employment and housing).³¹

The risk level and misconduct seriousness are arrayed on a response grid. As shown in Figure 6, the cells in which risk and misconduct seriousness intersect are color coded green, yellow, orange, and red. These color-coded ranges dictate the severity of the response.

Figure 6. Response Matrix³²

Risk	Low Misconduct	Medium Misconduct	Serious Misconduct
Minimum	Green	Green	Yellow
Medium	Green	Yellow	Orange
High	Yellow	Orange	Red
Very High	Orange	Red	Red

- Options in the green range include low level sanctions such as a verbal warning, increased reporting or drug/alcohol testing frequency, or a memo to the judge reporting the behavior.
- Options in the yellow range include all sanctions in the green range plus additional more serious actions such as a sanctions conference or probation review bench warrant. The presumption in the yellow range is for imposition of an informal sanction or sanctions conference; arrest and court appearances should be a last resort.

- Options in the orange range include the more serious options in the yellow range as well as a probation violation warrant and significant incarceration sanctions. Incarceration is considered appropriate for individuals engaged in serious misconduct that present a danger to themselves or the community or when other interventions have failed. Incarceration is considered less appropriate if the person has a stable residence or income, is engaged in pro-social activities, or is otherwise cooperating with probation expectations.
- When misconduct falls in the red range, the presumption is that the person will be returned to court on a probation violation. If probation will be continued, the recommended incarceration sanctions are 30 days for a misdemeanor offense or 90 days for a gross misdemeanor or felony offense. Despite the presumption that misconduct in this range will result in a probation violation, the ROMP does call for avoiding court if the person has a stable home or income, engages in regular prosocial behavior, or has otherwise been cooperative with probation expectations.
- There are also two blue range responses (not shown on the grid); probation officers must immediately request a hold or warrant and return to court for individuals on probation who have committed new gross misdemeanor- or felony-level person offense or who have had willful contact with prohibited persons (e.g., victims, children).³³

The responses in the ROMP are considered appropriate for all cases unless there are mitigating and aggravating factors that might justify an alternative response. Mitigating factors include things like working towards sobriety, stable income or housing, or willingness to take responsibility and address the issues that resulted in the violation. Aggravating circumstances include things like having a significant violent criminal history, failing multiple interventions, and engaging in misconduct within a short time after release from jail. Alternative responses based on mitigating or aggravating factors must be approved by a supervisor.³⁴

³¹ RCCC Adult Division, ROMP Manual at 19-20 (2015).
³² RCCC Adult Division, ROMP Manual at 10 (2015).
³³ RCCC Adult Division, ROMP Manual at 10-18 (2015).
³⁴ RCCC Adult Division, ROMP Manual at 3, 19-20 (2015).

Sanctions Conferences

In 2003, Minnesota enacted a law allowing for sanctions conferences to address technical violations of probation, though the procedure did not appear to be in use at the time of this study.³⁵ Under this law, technical violations are defined as “any violation of a court order of probation, except an allegation of a subsequent criminal act that is alleged in a formal complaint, citation, or petition.”³⁶ The law permits the probation department to initiate a sanctions conference when the agency has reason to believe the person on probation has committed a technical violation.³⁷ The individual then has the prerogative to participate in the sanctions conference or proceed instead with a judicial hearing. In order to participate, the individual must agree to admit to or not contest the violation and waive his or her trial and representation rights. If the person chooses to participate, the probation officer will propose a sanction to respond to the misconduct and explain that failure to complete the sanction could result in additional sanctions or commencement of revocation proceedings.³⁸ At the conclusion of the sanctions conference, the probation officer will provide a report to the court detailing the misconduct, copies of the notice provided to the person on probation, the person’s acknowledgment of receipt of the sanctions conference form, and the person’s agreement to participate in the sanctions conference, as well as the recommended sanction. If the court confirms the recommended sanction, it will go into effect; if the court does not, the matter will proceed to a probation revocation hearing.³⁹

The ROMP incorporates the sanctions conference process. Sanctions conferences are appropriate when the combination of the seriousness of the misconduct and the person’s risk level fall into the green, yellow, or orange ranges on the response matrix.⁴⁰ However, Appendix D in the ROMP indicates the Ramsey County bench has altered

the statutory process to require the probation officer to obtain approval from the sentencing judge *before* the sanctions conference commences.⁴¹ This procedure is in conflict with state law, which places the power to move forward with a sanctions conference or probation revocation hearing in the hands of the person on probation.⁴²

Community Monitoring Program

The Community Monitoring Program is an alternative to incarceration program commenced in August 2018 that allows individuals who are sentenced to serve up to 90 days in the Ramsey County Correctional Facility and who meet a certain risk profile to serve that time in the community. Community monitoring options include a period of alcohol monitoring, electronic home monitoring plus alcohol monitoring, or a lock down period (limited movement) with or without the ability to attend work, school, or treatment. The program seems to be primarily geared towards individuals with chemical dependency issues.

Interviews

Misconduct occurs when an individual fails to comply with or complete the conditions of probation. The probation officer is the first actor in the system to become aware of misconduct, and often, may be the only actor who needs to address the misconduct with the probationer. Probation officers noted four strategies that they typically use to prevent misconduct: (1) setting expectations about what is required of a person while on probation; (2) establishing rapport with the person on probation; (3) identifying and removing barriers; and (4) using warnings when a person starts to veer off course.

When I initially meet with clients, we review their conditions of probation, things that they need to comply with. While reviewing each one of those conditions, one of the questions I ask would be, “What barriers do you

³⁵ See Minn. Stat. §§ 244.196-244.1995 (2019).

³⁶ Minn. Stat. § 244.196, subd. 6 (2019).

³⁷ Minn. Stat. § 244.197 (2019).

³⁸ Minn. Stat. § 244.1995 (2019).

³⁹ Minn. Stat. § 244.198 (2019).

⁴⁰ See RCCC Adult Division, ROMP Manual at 10 (2015).

⁴¹ RCCC Adult Division, ROMP Manual at 25 (2015).

⁴² Compare RCCC Adult Division, ROMP Manual at 25 (2015) (setting forth procedure approved by Ramsey County bench requiring court approval to move forward with a sanctions conference) with Minn. Stat. §§ 244.197, subd. 3 (requiring the person on probation to declare in writing their intention to participate in the sanctions conference); 244.198, subd. 1 (setting forth the procedures if the person chooses to participate, and requiring that the court be provided documentation of the person’s election to participate in the conference); 244.199 (providing for a revocation hearing if the person chooses not to participate); 244.1995 (requiring the person on probation to be informed that choosing *not* to participate in the conference will not automatically result in a recommendation for revocation).

face that will make it difficult for you to comply with this particular condition of probation?” We’ll take abstaining for an example. Joey, who was at home, and all of Joey’s family members use and abuse drugs and alcohol. The client and I would then ask, “Well what are your options here? Are you able to move out? Yes or no. No. No? What can you do to make sure that you are abstaining from the drugs and alcohol so that you are abiding by the conditions of your probation?” We’ll process that.... Or if it’s getting to treatment, your court ordered to complete treatment, “what transportation options do you have? How can that be addressed?” With each particular condition of probation, the clients and I discuss barriers and approaches that they can use to overcome those barriers. – Probation Officer

Probation officers noted three ways that misconduct comes to their attention (presented in order of frequency of discussion): (1) the person is arrested for a new offense; (2) the person experiences some issue related to treatment, including not obtaining an assessment, not attending treatment, or acting out in or being terminated from the program; or (3) the person misses one or more check-ins with the probation officer.

The manner in which the probation officer will respond to misconduct depends on whether it is a technical violation (not following conditions of probation) or a new offense. The ROMP requires filing a violation when a person commits a new person or violent offense, and most indicated that they follow this policy. Responses to other types of violations involve more discretion.

According to interviewees, the ROMP was developed to encourage consistency and equity in probation officer responses. As one probation officer explained it, the ROMP has been part of a more fundamental shift within the office.

...years ago, you started your job and your main job was to look for people making mistakes. You were trying to catch them making a mistake. It’s really, I feel, shifted over—especially the last 10 years—into more of a model of, “Let’s really work with people to be successful because they’re just people.” – Probation Officer

Probation officers noted that the responses in the ROMP are, for the most part, based in common sense, and represent what they would do anyway. For this reason, probation officers may not refer to it every time a person on probation commits misconduct. As one probation officer said, “I have been doing this job long enough that I kind of know offhand. I don’t normally even have to look at the grid to know what a fair or appropriate response is.” Thus, there is a sense that probation officers have internalized the guidance provided in the ROMP, and this could either be because officers have had repeated experience in working with the ROMP or because the ROMP was developed from their experience. But even for officers who said they did not always need to look at the ROMP, the ROMP provided value.

The ROMP is not used in treatment courts or the Probation Reporting Center (PRC); in the former case because there are other national standards that dictate probation officer response; in the latter case because the ROMP is risk-based and most probationers supervised in the PRC do not have a risk assessment. Judges, prosecutors, and defense attorneys were either unaware of the ROMP or knew very little about it.

Though the ROMP provides recommended responses based on risk and seriousness of the misconduct, it also allows for the use of alternative responses when justified by mitigating and aggravating factors.⁴³ When asked if they ever depart from the recommendations in the ROMP, many officers indicated that they did, more often in the direction of mitigating the response than aggravating it. Most of the reasons offered for mitigation were recognized as factors supporting a mitigated response in the ROMP policy. For example, two probation officers mentioned that they will depart if the person has stability in work, school, or family support, and this type of stability is a recognized mitigating factor. Similarly, two probation officers noted that they would depart if the person is working towards sobriety, which is also a recognized mitigating factor. Two instances when probation officers said they would depart from the recommendations that are not explicitly recognized in the ROMP are when people are facing significant barriers or when people demonstrate a strong motivation to change. The former recognizes that noncompliance with

⁴³ RCCC Adult Division, ROMP Manual at 3, 19-20 (2015).

the conditions of probation can sometimes be beyond the individual's control. The latter recognizes that for some, probation is a struggle, and acknowledges the effort being made even if the person is unable to fully comply with the conditions of probation.

The main thing that comes to my mind in that scenario is if someone had significant barriers, if they can't afford a program that they're court-ordered to complete. That's a huge barrier in my eyes and I don't think it's fair that people would potentially be violated or have a warrant issued for their arrest because they can't afford something. – Probation Officer

They're showing — based off of all your conversations with them — they're displaying that change talk. They're heading in the direction where they're showing you or telling you that they want to change and just need a little extra help. – Probation Officer

Probation officers had mixed perceptions about the ROMP. Many thought it was a useful tool that helped them refrain from responding emotionally in frustrating situations. But some felt it was too rigid and confining, or that it did not add value because it recommended what they would have done anyway based on their experience.

The ROMP is a nice guide in that it gives some structural reminders, or as you're... it slows you down from that moment of frustration of, "I'm actually going to go to a PV" to, "Okay, slow down. Like, what really is going on?" I refer to it, but I don't... it's not my bible, but it's definitely... sometimes I look at it just to make sure I'm doing the right thing for the defendant in the case. – Probation Officer

I don't like operating within a box. I guess it [the ROMP] was something where they could get a more conformed type of response. Being an old guy, I don't like to be... I guess I have confidence in my decision-making. – Probation Officer

Interestingly, the individuals who talked about the ROMP being too rigid seem to be in agreement with those who work within the ROMP and depart when necessary based on mitigating and aggravating circumstances. Both groups made the point that individual circumstances sometimes require responses that are different from those provided in the ROMP. The difference is that one group openly states that they do not follow the ROMP whereas the other group has learned to work within the policy to achieve similar results. As noted by one probation officer who supported use of the ROMP, the ROMP is intended to be a guide rather than a set, rigid, policy. It provides a standard response, but also allows consideration of aggravating and mitigating circumstances that may warrant a different response. Thus, from this officer's point of view, some of the objections and resistance to the ROMP may be the product of not fully understanding how it should be used.

Informal Responses (Step #5)

Legal and Policy Framework

As explained above, the ROMP contains a range of responses to probation misconduct, and the responses are proportional to the seriousness of the misconduct and the risk level of the individual on probation. Nearly all of the responses in the green range on the response matrix are informal. At this level such interventions can include things like a verbal warning, increasing reporting frequency, and making an unannounced field visit.⁴⁴ The green through orange ranges also include a memo to the judge as one of the informal (less than a violation) responses. A memo to the judge is the presumptive response under the ROMP when the misconduct involves a new criminal conviction or failure to complete a special condition of probation.⁴⁵

Probation Cohort Data

Our cohort data indicates that memos were used in about 11% of probation cases. The majority of these memos fell under two categories: "info for review" which appear to be used to inform the judge of misconduct without filing a violation, and "review and response" which appear to

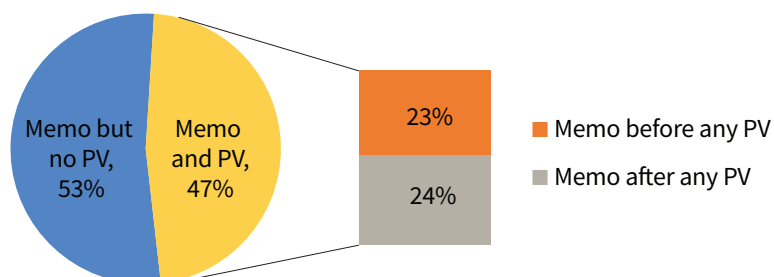
⁴⁴ RCCC Adult Division, ROMP Manual at 10-15 (2015).

⁴⁵ RCCC Adult Division, ROMP Manual at 12 (2015).

be used to ask the judge to confirm the probation officer’s chosen course of action (see additional explanation in the Interviews section). A little more than one fourth of memos were categorized as “info for review” while most (72%) were categorized as “review and response.” The DWI unit used memos the most often; 30% of probation cases in the DWI unit had at least one memo attached. Other units used memos in about 9-13% of their probation cases.

Slightly more than half (53%) of cases with a memo did not have a subsequent probation violation (Figure 7). This could indicate that memos serve as an adequate intervention method that curtails formal violations. For the 47% of cases with memos that also had violations, the probation cohort data did not contain any information about the reason the memo was filed so we were not able to determine whether the memos and violations were related to the same incident of misconduct or whether the memos and violations involved completely separate incidents of misconduct. But the timing of the memos in relation to the violations could be informative. About half of the violations occurred *after* the memo was filed and half occurred *before* the memo was filed. For those cases in which the violation was filed after the memo, this may indicate that the memo intervention was not effective at curbing the misconduct and therefore did not prevent the formal violation. In those cases where the violation occurred *before* the memo was filed, this could suggest that probation officers who employ memos may be using a “clean slate” approach after each violation; they are willing to use a low-level intervention even after the person has had a formal violation. However, because we lacked information about the content of the memos, no clear conclusions can be drawn about how they are used and whether they are effective.

Figure 7. Order of Memos and Probation Violations



Interviews

While the ROMP may not be well-known across all justice system partners, memos are a frequently used means of communication between probation officers and the court. As interviewees described it, memos tend to be written in two distinct circumstances: (1) when the person on probation is engaging in persistent misconduct or noncompliance but does not appear to be a threat to public safety; (2) when the person has committed a new non-person offense.

When the misconduct involves commission of a new offense, the probation officer uses the memo to ask the court if the violation should be filed at the time of charging or after conviction, or if the court wants to avoid filing a violation altogether. If the court responds to the memo requesting a probation violation, the probation officer will do that.

For technical violations, the purpose of such memos appears to be to get a second opinion from the court as to whether the noncompliant behavior rises to the level of a violation, a sort of check on the decision making process of the probation officer. As one officer said, “I’m more likely to write a memo if I’m not going to file because that’s their decision about the fact, not mine.” These seem to be the tough cases, involving repeated minor noncompliance or misconduct, where probation officers tend to have the opinion that they can still work with the person, but also want cover should anything go wrong. The memo documents the noncompliant behavior, but allows probation officers to keep the case under their supervision and try something different, such as moving the person to a different treatment program.

I like the review and response memos, which is the no-action one I’m talking about. I like to know that the court received it and that they agree, and then they have their signature on there. Right? That they signed it and agree that it’s okay not to take any action.
 – Probation Officer

The memo also appears to work as a form of persuasion for the probationer to correct noncompliant behavior.

I will tell the people that are in that boat, “Look, I reached out to your judge. Your judge is currently aware of this. Here’s your opportunity.” – Probation Officer

When the memos involve technical violations, judges seemed to universally agree that they tended to approve the probation officer’s request to continue working with the individual.

I would much rather give a person a chance to take care of business and then show me that they can, than to kind of jump real quick and impose some sanction as though they just can’t do it, so that’s kind of how I look at it. – Judge

For memos involving new crimes, the judges had mixed views, with some articulating situations in which it did not make sense to pursue a probation violation when the person had already addressed the situation, and others expressing frustration at the missed opportunity to intervene.

I think this is a theory point where Probation and I may disagree. I think that there should be sort of different responses for violations of the law. If I were to say at a bare minimum what I think Probation should do, it would be keep people law-abiding...I hear about somebody’s conviction well after the conviction happens. Probation says, “It’s sort of low-level and we don’t actually have that much contact with this person either. If you want to see them, we can. But also we want to note that we’re not going to ask for any more jail time and we don’t have a real good sanction. Please, Judge, do you really want to see this person?” If you’re a rational actor within that system, you’re kind of thinking, “Well, yeah. Good point, right?” Do I really want to see this person if it’s going to be that much work and the end result is, as a judge, I’m going to tell them, “You shouldn’t have done that?”... the criminal justice system...has this real feeling of random inputs, random responses, and that the times don’t meet up well. The lag time becomes the more important salient factor. – Judge

It is important to note that none of the interviewees mentioned sanctions conferences, except those who were directly asked. Thus, this statutory procedure does not appear to be used in Ramsey County.

Formal Response (Probation Violation) (Step #6)

Probation Violation for New Crime (Step #7) vs Technical Violation (Step #8)

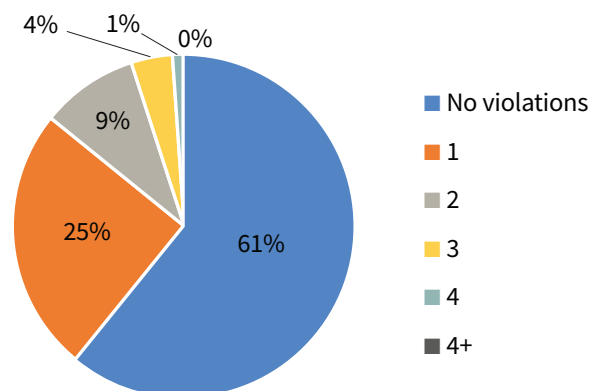
Legal and Policy Framework

In some cases, the probation department will determine that it is necessary to bring the individual back to court to address one or more probation violations. To initiate a probation violation hearing, the prosecutor or probation officer must submit a written report to the court showing probable cause to believe a probationer violated probation, meaning the individual failed to comply with the conditions of probation.⁴⁶ In Minnesota, a violation can be filed up to six months after the probation term ends.⁴⁷

Probation Cohort Data

In the 2016 probation cohort, 39% had at least one violation filed with a higher percentage (57%) being filed for the felony group than for the GM/M group (32%). Of those who had a probation violation, 52% of the felony sample and 73% of the GM/M sample had just one violation during the two-year observation period. As shown in Figure 8, some individuals in the sample had multiple violations.

Figure 8. Number of Probation Violations within 2 Year Observation Period

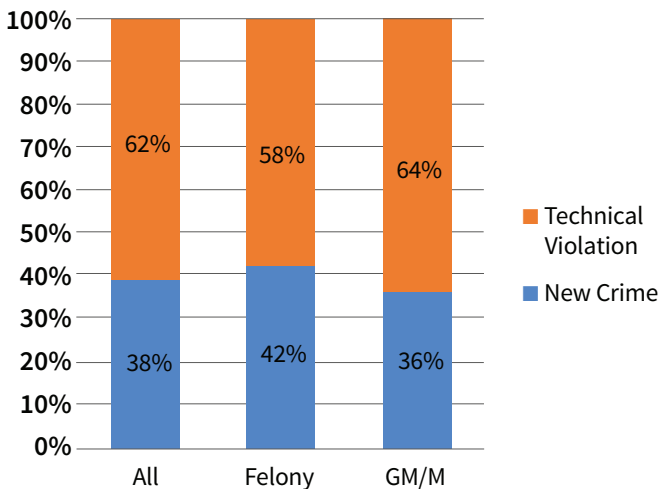


⁴⁶ Minn. R. Crim. P. 27.04, subd. 1 (2020).

⁴⁷ Minn. Stat. § 609.14, subd. 1(b) (2019).

The cohort data includes the reason or reasons that the probation violation was filed. Looking just at the first probation violation, in a little over one third (38%) of cases, the reasons included new crime as a violation reason, either alone or in combination with other reasons. Slightly more felonies than GM/M cases had new crime as a violation reason (42% vs 36%, respectively). In contrast, most of the violations were for technical reasons, meaning they involved non-compliance with a condition of probation but did not include commission of a new offense (see Figure 9).

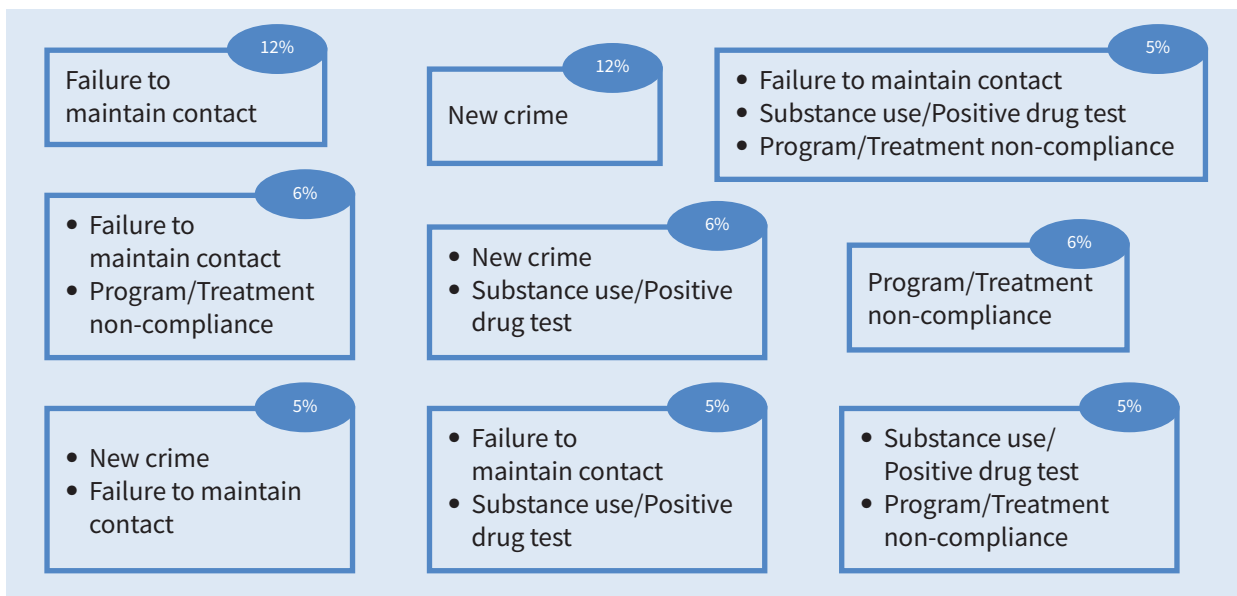
Figure 9. New Crime Versus Technical Violations



Looking at the specific reasons for the violations, four reasons—either alone or in combination—accounted for the majority of violations: new crimes, failure to maintain contact (with the probation officer), substance use/positive drug testing, and programming or treatment non-compliance. Figure 10 shows the nine most frequently observed combinations of probation violation reasons. Taken together, these combinations comprised two-thirds of probation violations filed. Failure to maintain contact and new crime were cited most frequently as the sole reason for the violation (in 12% and 11% of cases, respectively). Failure to maintain contact was also present in four other combinations of reasons while new crime was present in two additional combinations. Substance use issues were present in four of the combinations, and programming or treatment issues were present in four combinations. Thus, overall, this examination of probation violation reasons reveals that these four reasons represent the primary issues that must be addressed in order to disrupt the probation violation pathway.

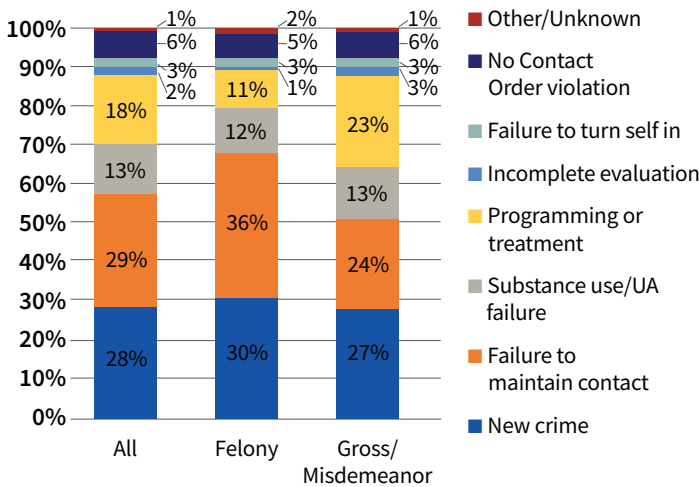
The cohort data also identifies the “driver reason,” which was the main reason for the violation as determined by independent coders. The driver reasons for the first probation violation were relatively evenly split into thirds: violations for new crimes (34% of violations), violations for failure to maintain contact (29%), and violations for either substance use/positive drug test or programming and treatment non-compliance (32%) (Figure 11). The felony and GM/M samples had similar percentages of “new

Figure 10. Combinations of Probation Violation Reasons



crime” violations but differed for the other reasons. Felony cases had a larger percentage of violations resulting from failure to maintain contact (36% vs 24%) and GM/M cases had about twice as many violations for programming or treatment non-compliance (23% vs 11%). It is noteworthy that while “new crime” is a reason listed in 38% of probation violations filed, it is only considered the driver reason in 28% of cases. This indicates that what motivates the filing of probation violations goes beyond the simple dichotomy of new crime versus technical offenses. As shown in the interview section below and in the discussion about memos above, the type of crime, which we did not have in our data, also plays a role in how the violation is handled.

Figure 11. Driver Reason for the First Probation Violation



Figures 12 and 13 show probation violations by race and offense level. Across both the felony and GM/M samples, people who were Black and Native American received proportionally more probation violations than people who were white, Asian, or Hispanic.

Interviews

As discussed earlier, the ROMP provides some guidance as to when filing a probation violation may be appropriate, and in some cases, the communication between the probation officer and the judge can be the deciding factor. But for the most part, the decision is solely at the discretion of the probation officer, with approval from their supervisor; prosecutors are never involved at this stage.

As respondents noted, the decision to file a violation with the court is not always clear cut. Most probation officers talked about the decision as a balancing act or a weighing of options, but nearly always within the frame of the policies and goals of probation.

It’s always the balance of, “Okay, how long could I let this go? What action can I take to get this person back under compliance? Have I exhausted all my options? Does a warrant need to get out there as soon as possible because of the nature of this person’s offense or threat?” – Probation Officer

Figure 12. Probation Violations by Race for Felony Offenses

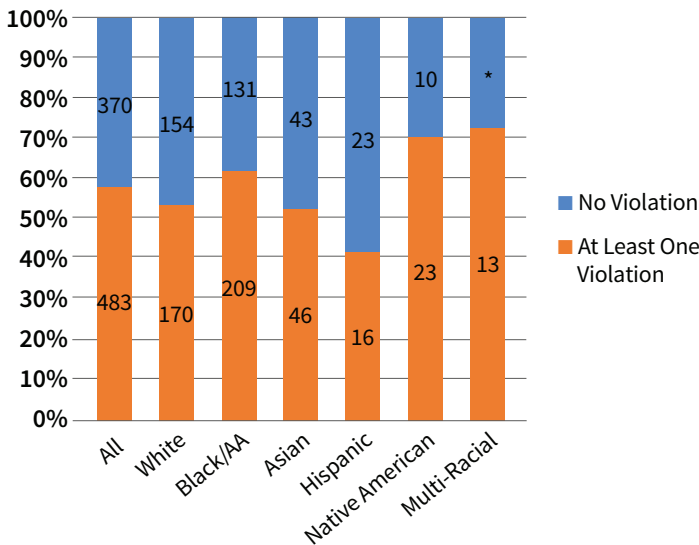
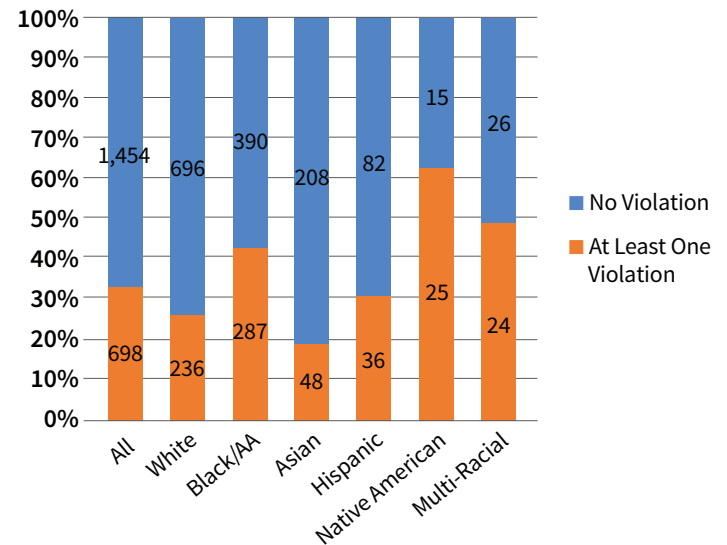


Figure 13. Probation Violations by Race for GM/M Offenses



* Indicates fewer than 5 people in group.

A major theme that emerged with regard to the filing of a probation violation is that new offenses and technical violations are handled differently. Therefore, in this section, the decision for each is discussed separately.

New Offenses

The commission of a new crime presents a distinct set of issues regarding whether and when to file a probation violation. All probation sentences include a condition of “remain law abiding” so committing a new offense automatically violates probation. However, because a person is innocent until proven guilty, the conundrum facing probation officers is whether to file a violation at the time of charging, before the allegations have been proven, or to wait and file the violation upon conviction.

If the new offense is a person or violent offense, the policy is unequivocal; a probation violation must be filed as soon as the person is charged with the offense.⁴⁸ Prosecutors seemed to favor the rule about filing probation violations right away on person offenses. However, both prosecutors and defense attorneys pointed out that it can get tricky to proceed on the new offense and probation violation at the same time because it can raise proof issues in the proceeding on the new offense; a probation violation requires a lower standard of proof (clear and convincing evidence) than conviction (proof beyond a reasonable doubt).

For other types of offenses, there appeared to be more discretion. For example, some probation officers said they would wait until conviction to file a probation violation for lower level offenses such as theft, shoplifting, check forgery, and drug use. And for some traffic violations, such as driving without a license, which can be converted to a petty misdemeanor upon payment of a fine, probation officers said they would never file a violation. As discussed above, a middle ground response was to submit a review and respond memo to the court to determine whether the violation should be addressed immediately at the time of charging, or later at the time of conviction.

For the most part, judges did not seem to dwell on *whether* a violation should be filed when the violation was an allegation of a new offense; they seemed to agree that it should. Additionally, judges seemed to be in agreement

that even if filed, the probation violation should be put on hold until guilt or innocence could be determined on the new offense.

I think it's a fair system. I think it's we can't put the defendant in a position to have to admit the new crime when that's still pending. Obviously, the rules provide for that specific provision, that the probation violation can be delayed until the new crime is resolved, which is only fair to do to the defendant rather than require them to admit or deny the violation without having had the due process of the underlying crime that is the cause of the violation. – Judge

Instead, the more pertinent consideration that judges talked about was whether the individual should be held in custody or released pending resolution of the new charge. This issue is discussed further in the sections titled Warrants (Steps #9, 12), Summons (Step #10), Probation Review Bench Warrants (Steps #11, 13, 14).

Technical Violations

Technical violations occur when a person violates the conditions of probation but does not engage in new criminal conduct. Determining when to file a violation in these cases requires a great deal more discretion, and as a result, there is more variation in how probation officers respond to such misconduct. One cluster of cases discussed by probation officers were those in which the probationer has multiple low-level violations or, as one probation officer put it, “constant non-compliance.” These incidents might occur over a period of time, such as weeks or months, or they might present as serial misconduct.

Did they have a misconduct, they realized it, they took responsibility and they're addressing it? That's going to get a totally different response from me, as opposed to a client who is increasing their level of misconduct and non-compliance, and are not responding to attempts to regain compliance. – Probation Officer

One probation officer described a situation in which a person had done some aspect of every condition, but had not really completed any of them: the person was not meeting with the probation officer but was calling in, the person

⁴⁸ RCCC Adult Division, ROMP Manual at 10 (2015).

was sporadic in drug testing so it was difficult to tell if the person was using, and the person did an entire treatment program except the victim panel on the last day.

He's sort of maintaining contact. He's sort of drug testing. He's sort of completing the program, but he hasn't really done what he was supposed to do. – Probation Officer

These types of noncompliance are harder for probation officers because the probationers are engaging in multiple acts of misconduct or are not fully complying with the conditions of probation, but they also do not represent a threat to public safety. The tipping point regarding the decision to file a violation for persistent misconduct may simply be the number of incidents.

If it's a series of low-level misconducts and we've gone through the role clarification, we've gone through expectations as to what compliance is or what non-compliance looks like with the client, and we've given the verbal reprimand how that hasn't done anything... maybe have been doing it several times and that hasn't done anything. I have utilized all the responses available, say having them check in more frequently, coming in for office visits more quickly... if those responses have not facilitated some change at that point in time, I would look at having to do a probation violation. – Probation Officer

Interviewees said that a probation violation for technical violations typically contains multiple allegations. Sometimes the allegations represent multiple acts of misconduct over a period of time, indicating that the probation officer was attempting to work with the person on probation until too many incidents stacked up. In other cases, the allegations might be related, such as when one act of noncompliance leads to another (e.g., testing positive on a drug test and then missing the next appointment) or when one event results in multiple violations.

There are a lot of them that will come in clusters, but usually it's because the actual behavior of the client can be considered multiple violations. What the client might have done is got kicked out of treatment for having two positive UAs. That is a violation of no use. It's a violation of testing. It's a violation of following the

chemical use recommendation for treatment. You'll see all three violations filed, but really it's kind of one thing. – Defense Attorney

Alternatively, even if officers would ordinarily prefer not to file a violation because of the low-level nature of the misconduct, they may reach a point where they must file because they are running out of time on the probation sentence.

I would have continued to give that person opportunities to try to complete these things because you're not committing new offenses and you're not a risk to public safety because you're not having police contact. That's my bigger thing. Now, I don't have any time left to give you these opportunities and we've had conversations about them. Now it's really up to the judge... – Probation Officer

Addiction Issues

Addiction issues seemed to present the hardest cases, especially for probationers who were persistent users during the period of probation. For the most part, probation officers seemed to want to work with people who are struggling with addiction. But there were limits. Probation officers were less likely to file a violation on people who continued to use but who maintained contact and tried to stay engaged with their case plan.

When you've got somebody that's coming in, struggling with use, and being open and honest about what's going on, but making that effort, they're going to be given that opportunity to get back on track. – Probation Officer

The other stuff is maybe they're struggling in chemical dependency stuff, they're not doing their UAs, they're in outpatient treatment...whatever. I'm working with that stuff. If they want to keep working on their sobriety, their chemical dependency, their mental health, I'll work with that until I'm blue in the face with them, as long as they want to do that. – Probation Officer

Some officers seemed to have a calculus, stating they would try treatment three or four times before filing a violation. For others, whether to file a violation when substance abuse issues were at the root of the miscon-

duct hinged on how they perceived the behavior of the probationer, with some officers focusing on whether the probationer appeared to be defiant or unwilling to engage in treatment, and other officers focusing on probationers' readiness for treatment.

As far as when I would consider filing a violation is if we've had numerous discussions and the person has been given ample time to say they say they want to quit themselves. "Okay. Have at it. We'll test." And then if they're demonstrating an inability to stop using, then it will be, "Okay, let's get a CD assessment, see if we can get you some services." It's really only when they become defiant or recalcitrant about complying with services that a violation would be filed. – Probation Officer

If they're not going to change their using behavior, I can't make that happen. I can help them and lead them. I feel like going to jail or the threat of jail doesn't work, I don't think. They have to be ready for it. Sometimes my clients are ready for it and sometimes they aren't. Sometimes they'll get off probation and I'll be saying in the discharge that, "They continue to struggle with drug use, but we've tried this, this, and this." But they'll continue to struggle and hopefully they don't get in any more trouble with the law. It depends. I don't know. It's not a perfect science, I guess, with people. – Probation Officer

Others seemed to hinge their response on public safety, filing a violation either when the person's drug or alcohol use was so out of control that they were perceived to be a threat to themselves or others, or when a person was on probation for a serious or violent offense, indicating that the person was already more dangerous, and that drug or alcohol abuse might heighten that threat.

Prosecutors had the perception that probation officers sometimes waited too long in filing a probation violation for substance abuse issues.

They seem to be waiting longer before they pull the trigger...I think the agents are very patient. They'll wait and try to get somebody back into treatment before they file a violation. They'll try to get somebody sober before they file a violation. I would say, for the

most part, I have seen tremendous patience. There's some times judges are even irritated with the agents like, "Why did you wait so long to file a violation?"

– Prosecutor

Absconding (Failure to Maintain Contact)

Absconding is of special interest to the national study within which this project is situated, so we asked interviewees to talk specifically about this topic. "Absconding" has no formal definition in the law, but was defined by interviewees as a probationer being out of contact with the probation officer and not coming to meetings for a given amount of time. In Minnesota, absconding is referred to as "failure to maintain contact" rather than "absconding."

Probation officers generally say that they give between one and three months or around two missed appointments before they consider their client to have absconded. It should be noted, however, that the frequency of appointments varies by supervision type, so although officers generally referenced two appointments, this could indicate varying lengths of time ranging from a week or two to several months.⁴⁹ Initially, probation officers attempt to contact absconding clients by phone then by formal letter. Some respondents mentioned they may attempt other communication methods such as email, in-person checks, reaching out to emergency contacts, or social media.

There are multiple factors that influence how respondents say they handle absconding. For one judge, it was important to differentiate between being out of contact willfully and being out of contact due to other circumstances.

*For me, absconding is that you intentionally picked up and left and went to Ohio, all right? Not that you are not calling or aren't living where you said you were living, because it's a poor population, so you may not have a phone. You may have lost your phone. You may have been evicted. You may be homeless. You may be looking for another place to live, you needed to move in with Uncle Harry for a while. Whatever it might be, that to me is different than absconding. Absconding, to me, is an intentional act that you say, "H**l with this. I'm out of here. I'm leaving the state." Or, "I'm going to hide." The vast majority of people, frankly, are in plain view. They just have decided not to return phone calls, or are*

⁴⁹ RCCC Adult Division Policy Number CM 14.6a FSAP.

unable to, or don't have the transport to get where they need to be. To answer your question, if they're actually absconding, then, yeah, we treat those differently than, "I haven't had contact with the defendant for six months." Or something like that. – Judge

Other respondents also considered the reasons for absconding. Respondents mentioned homelessness, mental health, and chemical dependency as factors that influenced absconding.

...the people who are intentionally absconding seem to be few and the people who are absconding frequently are the people who are struggling with things like mental illness and homelessness, maybe both. The other thing that I look at, and unfortunately it seems like it's so many of the cases — whether or not there's a drug charge involved — is chemical dependency. When I see absconding, I don't think much about absconding. – Prosecutor

Generally, probation officers said they are more lenient with delayed contact when these countervailing issues were involved.

What I do tend to do is give the homeless clients a little bit more time just because a lot of my clients on my caseload typically tend to reach out at some point, so I'll give them a little extra time. – Probation officer

It would differ based on the client. Again, if I have someone who is mentally ill, I might try a little longer to try to get them in. Some people have TBIs, traumatic brain injuries, so they have issues with remembering things. I might try to give them more time to try to get in before I would request a warrant for them. – Probation officer

Often, decisions on when to file a violation after a client absconds revolve around public safety concerns. There were mixed views on how risk level should impact absconding with some saying they are quicker to file a violation and others saying that risk level is not a factor. Instead, respondents mentioned non-compliant behavior, such as police contact due to new offenses, incomplete programming, or contact with the victim, as being the most important factor to hasten a response to absconding.

It's not cookie-cutter material. Some clients because... if just missing an appointment with me is the only thing and otherwise I have got no other signs of violations, then I'm probably going to work a little longer with that. But if I got somebody who has just quit showing up with me and I'm getting police reports regarding chemical use or harassing behaviors, things along those lines, I'm probably going to give them two missed appointments and then I'm going to contact the courts. – Probation officer

Some respondents listed strategies they used to prevent their clients from absconding in the future. Most commonly, probation officers emphasize the importance of remaining in contact during their first meeting with their clients. They explain to their clients that contact is the necessary minimum step and assure them that if they remain in contact it will allow probation officers to work with them if there are violations, rather than have them incarcerated.

They're basically informed that if you're reporting and if you respond to our communications, then there's a good chance that we could continue to work with you. Period. – Probation Officer

I like to demonstrate to clients that they actually have a great deal of power in how things go. Yeah. They can make a mistake, but how they address that mistake when they let me in on that mistake, and how we move forward from that mistake determine what happens from there. – Probation Officer

Probation officers might also frame contact and appointments as being beneficial to people on probation, as opposed to being burdensome, by explaining how keeping in contact decreases the need for the officer to follow up and means that supervision can be less strict.

The more we keep this contact, the less I'm going to be knocking on your door and in your life all of the time. – Probation Officer

Some respondents mentioned that they believed maintaining good relationships with clients was paramount to decreasing absconding.

Well, just trying to keep an open communication line. When somebody does things against their conditions, you don't always have to jump down their throat immediately when it happens. Just creating a working relationship where they feel they can trust you and that you're actually trying to help them. That's the best way on the frontend, I think, to try to avoid [absconding].
– Probation Officer

Finally, probation officers mentioned the importance of working through barriers to maintaining contact, such as transportation or work schedules. For example, one officer described how when they started allowing probationers to reschedule appointments, absconding levels decreased.

I really try to emphasize with my clients that it's always okay to reschedule your appointment with me. Just call ahead of time rather than not showing up. I have had good success with clients doing that rather than if they are having a bad day, if you don't have transportation, whatever it is, instead of them just now showing up.
– Probation Officer

If the probation officer is still unable to get in contact with the probationer after multiple attempts by phone and letter, they generally have two options on how to proceed: a probation-review bench warrant, or a probation violation. While some respondents said they go straight to a probation violation regardless of the circumstances, most said they would use a probation-review bench warrant initially to try to restore contact with the probationer. This option is discussed further in the section entitled Warrants (Steps #9, 12), Summons (Step #10), Probation Review Bench Warrants (Steps #11, 13, 14).

Supervisors as Gatekeepers

Probation supervisors appear to fill a gatekeeping function with regard to probation violations because they must review and approve the violation before it can be filed. All agreed that there are some types of violations, such as commission of a new offense, that are “cut and dried,” and do not require much supervisory oversight. But for technical violations, there was more variation in how probation officers described the involvement of supervisors. Some probation officers indicated that they notify their supervisor at the first sign of trouble, mean-

ing, they actively work to keep their supervisor apprised of the fact that a probationer is struggling to comply with the conditions of probation. Other probation officers noted that they wait longer, only bringing the issues to their supervisor's attention when they are at the point of wanting to file a violation. Several officers mentioned a “case consult,” which is when they'll talk through the situation with their supervisor or a colleague. Most probation officers seemed to prefer to make their violation decisions independently, but those who talked about case consults viewed them as an opportunity to review what has been tried so far, brainstorm options, and weigh the pros and cons of continuing to work with the probationer versus filing a violation with the court.

A lot of times, I'll go and I'll talk with my supervisor — so we'll do a case consult — and I'll just tell them my business, what's going on with the person, this is what we've tried, and just tell them, like, “I'm struggling with doing the violation because of...” whatever...Because lot of times I'll have an idea of a direction I want to go, but then I'm like, “Well, what if we do this? Then...” And so I'll just go listen. I'll just go talk it out with [my supervisor] and kind of see what our options are. [My supervisor] does a really good job where, “Well, we could do this and this could potentially be the outcome. We could do this...” We just go through each scenario and then just try to figure out what the best option is. We decide on plan A. Then if the client doesn't comply with that situation, then it's like, “Okay, then we're going to do the violation at that point.” – Probation Officer

A small minority of the probation officers we interviewed seemed not to rely on or interact much with their supervisor. These officers were confident their requests to file a violation had never been denied. The rest of the probation officers interviewed seemed to recall that their supervisors generally approving their decisions to file probation violations, though the supervisors might occasionally suggest tweaks to the recommendations (i.e., suggesting electronic monitoring rather than jail).

External Perceptions

Despite all of the decision rules discussed above about when to file a violation, defense attorneys, who attend every probation revocation hearing, thought that the decision was really probation officer dependent. They

perceived that some probation officers really tried to work with probationers while others were more strict, and quicker to file a probation violation.

Most probation officers, I think, will informally deal with issues before they file a violation. I think some probation officers will deal with quite a bit of issues, like person's left treatment, but they got a new Rule 25 done, and they got back into treatment, and so they'll give a lot more leeway. I think other ones are more willing to just be like, "Well, you didn't do what I said. I'm done with you." You know, "I'm filing that violation."... I think it's so probation officer-dependent, which can be pretty frustrating. Sometimes I see names and some probation officers, whether it's fair or not, I'll give more credence to, because, from prior experience, I know that they really work with their people. Sometimes I see names being like, "Of course. They file a violation about everything."... It's so based on personalities, and maybe the connection they have or they don't have.

– Defense Attorney

Warrants (Steps #9, 12), Summons (Step #10), Probation Review Bench Warrants (Steps #11, 13, 14)

Legal and Policy Framework

According to court rule, when a probation violation is filed with the court, “the court must issue a summons unless the court believes a warrant is necessary to secure the probationer’s appearance or prevent harm to the probationer or another.”⁵⁰

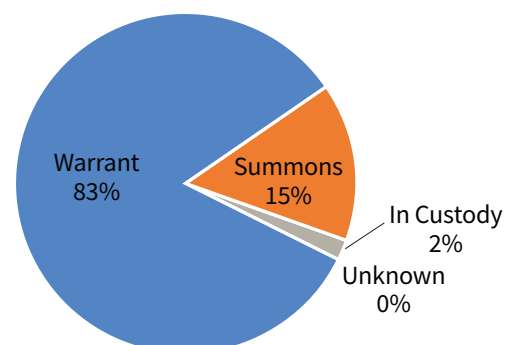
The terminology used within RCCC is somewhat different than the Rule of Criminal Procedure. The ROMP provides guidance as to the mechanism for bringing a person who has violated probation conditions into court based on the seriousness of the misconduct and the risk level of the individual.

- A “walk-in” is equivalent to a summons under the rule, and is deemed appropriate for misconduct falling into the yellow or orange range on the ROMP when the person agrees to appear in court and the person contests the violation or refuses to participate in a sanctions conference or the sanction requires court action (e.g., imposition of a fine or jail time).⁵¹
- A “probation review bench warrant” is deemed appropriate in the ROMP for misconduct falling in the yellow or orange range when the person on probation fails to appear for a sanctions conference or intake or when a brief period of custody is necessary to meet with the person to discuss their behavior.⁵² This type of warrant is not explicitly spelled out in the Rules of Criminal Procedure.
- A “PV warrant” is deemed appropriate in the ROMP for misconduct falling into the orange or red range. It is not further defined in the ROMP but is presumably equivalent to a regular warrant under the Rules of Criminal Procedure. Though the ROMP is not explicit, this is likely the type of warrant used for violations falling into the blue range as well.⁵³

Probation Cohort Data

The probation cohort data includes information on the probation officer’s recommendation for warrants or summons but not what was ultimately issued by the court. In contrast to the emphasis in court rule that summons should be the default, most (83%) probation violations include a request for a warrant (see Figure 14). Broken down by offense level, 91% of felony probation violations and 77% of GM/M probation violations include a request for a warrant.

Figure 14. Use of Warrants versus Summons



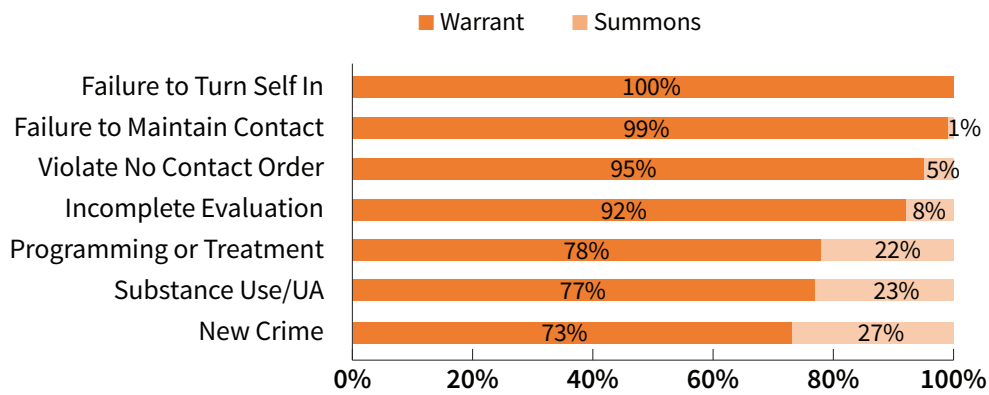
⁵⁰ Minn. R. Crim. P. 27.04, subd. 1 (2020).

⁵¹ RCCC Adult Division, ROMP Manual at 10, 12 (2015).

⁵² RCCC Adult Division, ROMP Manual at 10, 12 (2015).

⁵³ RCCC Adult Division, ROMP Manual at 10, 12 (2015).

Figure 15. Warrants versus Summons by Violation Driver

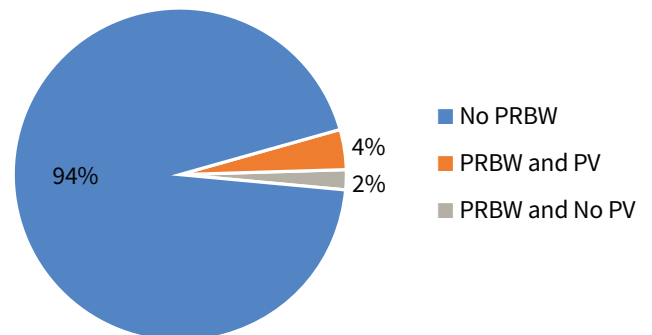


As shown in Figure 15, warrants are nearly always requested when the probation violation involves lack of engagement with probation, such as when the person fails to maintain contact with the probation officer or does not follow through with completing an evaluation (i.e., for substance use or mental health issues). Warrants were requested somewhat less often (about 75%) for probation violations involving new crimes, substance use/positive urinary analysis, and programming or treatment failure. As explained in the interview section below, this may reflect instances where the person committed misconduct, but continued to maintain contact with the probation officer or did not present a threat to public safety. The fact that summons were requested more frequently for violations that involved commission of new crimes may sound counterintuitive, but as explained in the interview section, this typically occurred because there may be a delay in filing a violation until the person has been convicted of the offense. In these cases, the person would be issued a summons to appear to address the violation on the same day as the sentencing for the new offense.

Probation review bench warrants represent a unique hybrid between an informal and formal response because they are used to bring a person into court to address a violation, but the person usually does not actually interact with the judge (see explanation under Interviews); they are functionally equivalent to a dismissal of the violation. While probation review bench warrants were mentioned by interviewees from across the criminal justice system (probation officers, judges, and defense attorneys) only 6% of cases in the probation cohort have a probation

review bench warrant attached (Figure 16). One-fourth of cases with a probation review bench warrant have no subsequent violation, which indicates that they have the potential to successfully resolve an issue of absconding in certain cases. For those that have a violation subsequently filed, looking just at the first probation violation, 45% have failure to maintain contact with the probation officer as the main reason for the violation, and 85% include failure to maintain contact as one of the reasons. Thus, maintaining engagement with probation and with the probation officer continues to be an issue for many of the individuals for which a probation review bench warrant was initially used. Much like how memos are used more commonly by one unit (DWI) compared to the others, probation review bench warrants appear to be utilized the most by two units: the intake unit and the probation reporting center. These units have a probation review bench warrant issued for 9-12% of their cases while, in contrast, other units have less than ten cases each where they are used.

Figure 16. Probation Review Bench Warrants (PRBW) and Probation Violations (PV)



Interviews

When filing the probation violation, the probation officer will make a recommendation whether the court should issue a summons or warrant, and the judge reviewing the probation violation will make the decision which method to order. System actors colloquially referred to a summons as a “walk-in” hearing. In line with the data, most actors in the system perceived that warrants are recommended in most cases.

I would say that very rarely do we see someone on supervised probation summoned for a hearing on a violation. For somebody on unsupervised probation, almost always it's going to be an initial summons. For someone on supervised probation, it's always going to be an initial warrant. – Defense Attorney

I would say a good chunk of them are in custody, like we issue a warrant for them and have them brought in on the violation... for me, I should say. That is the majority probably. I think part of that is because I usually have given people enough opportunity before bringing them back on a violation that I feel like we need to give a clear message here that this behavior is not acceptable. – Probation Officer

Probation officers stated they will request a warrant in three main situations. Warrants are always requested when the violation is a new person or violent crime; however, in these situations, the person may already be in custody due to being arrested for the new crime. Second, warrants may be requested when the probation violation is technical, but the person is perceived to be a threat to public safety, which typically means the person is on probation for serious person crime or is unable to stop using drugs or alcohol. Finally, warrants are often requested when the person is out of contact with the probation officer. Some officers limited the use of warrants for failure to maintain contact to situations where the person had already been brought in on a probation review bench warrant or the probation review bench warrant had been active for three months or longer.

Probation officers articulated three main situations when they would request a summons. First, a summons may be appropriate when the probation violation is technical and involves low-level misconduct. Second, a summons may

be appropriate when the probation violation is technical but the person has maintained contact with the probation officer. Summons would typically only be issued for new crime violations in the unique circumstance where the person is out of custody and a sentencing hearing has been scheduled; in these situations the probation officer will request a summons for the same court date as sentencing on the new offense.

Though probation officers can recommend a warrant versus a summons, it is the judge who reviews the probation violation who determines which method to use to bring the person on probation before the court. Most judges articulated a rubric wherein they would typically issue a warrant if the allegation was a new offense or some other allegation that appeared to impact public safety, and would consider a summons if the violation more technical in nature. One judge indicated, however, that this area should be rethought, and that judges and probation officers should work towards building in a preference for issuing summons.

But I do think my overall sense is — and I have been away for a couple years, but coming back to it — we issue too many warrants. I think we could probably be a little bit more aggressive in trying to give people an opportunity to do the walk-in. Maybe that's a matter of Probation just telling them, “You're going to see a judge because of what's happened here. You have a choice, whether you want to agree to come to court voluntarily or whether we're going to issue a warrant.” Then you have to have Probation to push that, encourage them, and give them an opportunity to come for a walk-in. That tells you a lot if they're willing to come in, not knowing the consequence, right? That gives me some sense that, “Okay, well maybe we can work with this person.” – Judge

The one area where probation officers and judges seem to be at odds is with probation violations for failing to maintain contact. Probation officers frequently request warrants in these situations, but judges indicated that they frequently issue summons. Probation officers seem to be stating that they are out of options and need the warrant to help locate the person on probation. Several articulated the matter as an issue of public safety. In contrast, the judges did not see failure to maintain contact as a serious

violation, and tended to downgrade its importance. As explained in the section on absconding, one judge had the perception that most probationers are hiding in “plain view.” In contrast, judges were much more in favor of the probation review bench warrant procedure.

The primary goal of a probation review bench warrant, also colloquially referred to as a “blue warrant,” is to reestablish contact with the probationer. In some cases, these are individuals who were sentenced and then never reported to the probation department. In other cases, these are individuals with whom probation officers have lost contact. Probation officers described probation review bench warrants as a “wake up call” designed to get the probationer’s attention.

If the person is picked up on this type of warrant, they meet with the probation officer on duty at the Law Enforcement Center, update their contact information, and set a time to meet with their probation officer. If they show up for that meeting, probation continues as usual (Step #14). If they do not show up, the probation officer will file a probation violation and request a warrant (Step #13). A probation review bench warrant will convert to a regular warrant if active for three months.

Judges also saw probation-review bench warrants as a sort of wake up call, and were generally in favor of the process.

I think they’re fine. Yeah. I think it sends a message to the client, “You’re accountable. You can’t just be out of touch, but you have a probation officer who is willing to cut you some slack by having you come in and not be held until the judge can see you.” I think that’s a good thing and hopefully most of the time it gets folks’ attention. They realize, “Hey, this isn’t a game. I can’t just walk away. This thing isn’t going to go away.” – Judge

Though the probation-review bench warrant seems to be an innovative way to deal with lack of contact, one probation officer cautioned that, depending when the arrest is executed, the procedure could cost a person their job.

Oh, a blue warrant. One of the silliest things, I think, that we have because it takes someone into custody that has otherwise not risen to the level of a formal warrant and it could cost them their job. I get the idea of just saying, “Hey, you need to be in contact with probation and we need your address and stuff.” But if they’re the lowest-risk people, which is what a blue warrant should be done on, they’re likely employed and that warrant can likely have them be tardy from work – which could get them fired – so it’s kind of counter-intuitive. I have never used a blue warrant in my life. – Probation Officer

Resolvable vs Unresolvable (Step #12)

Legal and Policy Framework

When a person is taken into custody for a probation violation, at the first appearance before the court, the Rules of Criminal Procedure state that the person can be released pending the violation hearing. In deciding conditions of release, the court must take into consideration all of the factors that would have been considered when the person was originally charged with the crime for which they are on probation (i.e., criminal history, ties to the community, employment and family ties). Additionally, at the probation violation stage, the court must consider “the risk the probationer will flee or pose a danger to any person or the community,” and the burden of establishing these risks is on the probationer.⁵⁴

Interviews

Several respondents described a procedural oddity that they characterized as being unique to Ramsey County. They said that cases up for a first appearance at the Law Enforcement Center⁵⁵ will be designated as “resolvable” or “unresolvable” by the judge who issued the warrant on the violation. Resolvable cases are those that can proceed as usual. The probationer can make a first appearance, admit or deny the allegations, and if they admit to the violation, can potentially resolve it (receive a sanction) that day.

⁵⁴ Minn. R. Crim. P. 27.04, subd. 2(3).

⁵⁵ The Law Enforcement Center is facility that includes holding cells for people who have been arrested on new charges or warrants and a courtroom to allow for first appearances in an expedited manner. It is separate from the main courthouse, and is located just outside of the downtown area.

Unresolvable cases are those that cannot proceed that day. The cases are designated as unresolvable because the original sentencing judge indicated that they wanted to personally preside over the probation revocation hearing. Some judges limit this procedure to cases that were given a dispositional departure;⁵⁶ others use it more broadly. When cases are designated as unresolvable, the judges at the Law Enforcement Center (LEC) do not decide release conditions, though the Rules of Criminal Procedure would seem to permit such action,⁵⁷ and continue to hold the person in jail until the person can make an appearance on the original sentencing judge’s calendar. When asked about this, most judges stated that it was out of deference to the judge with authority over the case. One judge offered that judges may be concerned about losing jurisdiction, while another judge pointed to distrust that that the person will come back to court if released.

I think that there are some people that believe that if you release that person... particularly when probation has expired. Say the violation was filed six months ago, but you’re still in on the violation because we just caught up with you. There are some of my colleagues that say you lose jurisdiction when you let them go. You can’t... because then it’s gone. – Judge

I don’t know why we have to have that process. I think their concern is that if you let them out, knowing there is going to be a contested hearing, we would not see them again. That may be the case. That’s possible. That’s possible. But to wait a few days... yeah. That is you’ve pointed out, in my view, the weakness in that system. I think we should, at least, probably when we reinstate it — if we do after COVID — think seriously about getting this case back to that judge sooner or at least allowing some discretion to perhaps conditionally release the person, depending on the case. – Judge

The practical effect of this procedure is that people can spend up to an additional week in jail waiting for an opening on the original sentencing judge’s calendar.

It’s crappy because some of these folks, just out of bad luck, they get picked up on Thursday evening. [If the] judge does sentencings and probation violations on Friday afternoon, and then routinely says it’s not resolvable in the law enforcement center, that person has to sit in jail for a week and it may be something that could easily be resolvable without him or her doing any time, but you have taken that away. – Judge

All judges noted, however, that the pandemic has put an end to this practice, at least temporarily. Because of the temporary shutdown of the courts, and the changes to procedures resulting from the shift to electronic hearings, the courts are facing a backlog of cases, and as one judge stated, no longer have the “luxury” of continuing this practice.

Probation Revocation Hearing (Step #15)

Legal and Policy Framework

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 seven days unless waived by the probationer. If the violation alleges a new crime, the revocation hearing may be postponed pending disposition of the criminal case.⁵⁸

If the violation is proven, the court must make findings on the three “Austin factors”⁵⁹ in order to revoke probation. The court must: (1) specifically identify the condition or conditions violated; (2) find that the violation was intentional or inexcusable; and (3) find that the policies favoring probation no longer outweigh the need for confinement.⁶⁰ The ROMP acknowledges the necessity of finding the Austin factors and includes instructions from the County Attorney’s Office stating, “The Court must also state the facts that constitute the factors, so both of our offices need to provide them to the court.”⁶¹ The ROMP manual also contains sample language for how to report the violation

⁵⁶ A dispositional departure occurs when, for the felony offense, the sentencing guidelines recommend a prison sentence, but the judge orders a probation sentence.

⁵⁷ See Minn. R. Crim. P. 27.04, subd. 2(3) (setting forth the procedure for determining release conditions at the first appearance on a probation violation)

⁵⁸ Minn. R. Crim. P. 27.04, subd. 2 (2020).

⁵⁹ The required considerations are referred to as the Austin factors because they were established by the Minnesota Supreme Court in its decision in *State v. Austin*, 295 N.W.2d 246 (Minn. 1980).

⁶⁰ *State v. Austin*, 295 N.W.2d 246 (Minn. 1980). See also *State v. Modtland*, 695 N.W.2d 602 (Minn. 2005) (reaffirming that district courts must make the Austin findings on the record before revoking probation).

⁶¹ RCCC Adult Division, ROMP Manual at 26 (2015).

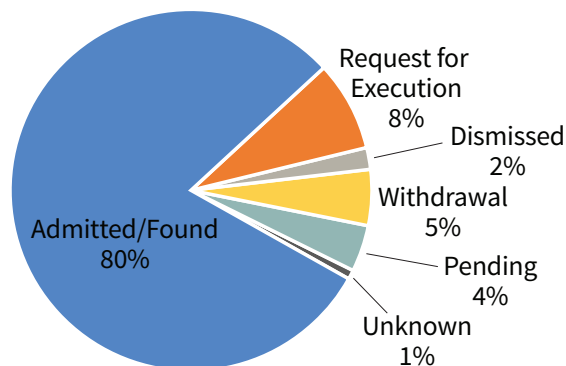
to the court in a way that incorporates the facts needed for findings on the *Austin* factors.⁶² Practically, most probation violations settle by plea agreement in which the person on probation admits to the violations.

Under Minnesota law, a person on probation also has the right to refuse probation and demand execution of the sentence when the conditions of probation make probation more onerous than incarceration.⁶³ This means the person could request that probation be revoked so they can instead serve the jail or prison portion of their sentence. For felonies, state law says the person cannot demand execution if the prison sentence is nine months or less, except when they would be serving that time concurrent with another felony sentence that is longer than nine months.⁶⁴ But practically, in these situations, the courts can honor the demand for execution by ordering the person to serve the time locally rather than in prison.

Probation Cohort Data

The probation cohort data does not indicate whether the violations were heard as part of a contested or uncontested hearing, but interviewees perceived that the rate of contested hearings was low. In the vast majority of probation violations (80%), the allegations are admitted by the person on probation or found by the court. In some cases (8%), the defendant requests for their sentence to be executed. Less than 2% of probation violations are dismissed. This indicates that judges are in agreement on the validity of probation violations as perceived by probation officers. The other 10% of cases in our sample were either withdrawn (5%), pending (4%), or unknown (1%) (Figure 17).

Figure 17. Disposition Outcomes for First Probation Violations



⁶² RCCC Adult Division, ROMP Manual at 26-27 (2015).

⁶³ See *State v. Rasinski*, 472 N.W.2d 645 (Minn. 1991).

⁶⁴ Minn. Stat. § 609.135, subd. 7 (2020).

Interviews

The probation revocation hearing is where the person on probation admits or denies the allegations of the probation violation, and the court determines an appropriate resolution for the violation. If the person admits, or if the court finds the violation is proven after a hearing, the court will impose a sanction. If the person denies the allegations in the probation violation, it will move on to a contested hearing. Those interviewed perceived that most admit the violation and contested hearings are rare.

Defense attorneys attend all probation violation hearings. People who have been arrested on a probation violation make a first appearance at the law enforcement center within 36 hours of their arrest. The public defender's office staffs the law enforcement center and screens people who have been arrested for public defender eligibility. Defense attorneys in this situation have little to no time to prepare for the hearing.

Those you have no prep on. You walk back in, list off the allegations, and read the report. I read the report to the client and that's the first time I'm reading it, just because it's just been handed to me and it's also the first time the client's hearing it. I'm meeting the client and I don't know what's going on in other counties, or anything about this person, because I haven't had time to look into it. – Defense Attorney

In other cases, the defense attorney will learn of a violation because they are covering the sentencing calendar on which the violation hearing is scheduled. For these cases, defense attorneys typically have more notice: sometimes a day, sometimes a couple of days to a week.

A day to a week is a lot of time in public defender land. Those cases are nice because you're actually able to go through, prep them, and figure out custody credit, and start digging through files, and reading, maybe, old PSIs or the past probation violation memorandums if they have their prior PVs. I feel like I can get a little bit of a better grasp of the larger picture. You can see if there's new charges in other counties and kind of sort through it. – Defense Attorney

Prosecutors attend only contested hearings. There are two prosecutor offices in Ramsey County: the City Attorney's Office, which prosecutes misdemeanors and gross

misdemeanors; and the County Attorney’s Office, which prosecutes felonies. For the most part, prosecutors only become aware of probation violations in two circumstances: when the person on probation denies the violation and it moves to a contested hearing, or when it is scheduled for a first-appearance on a sentencing calendar. Whether the case is a contested hearing or a first-appearance on a sentencing calendar, in both of these situations, the attorney typically has at least a day or two notice of the hearing. Thus, prosecutors are rarely handling probation violations on the fly as defense attorneys do when they appear with the probationer at the law enforcement center.

Probation officers stated they attend hearings if they are seeking revocation or if the recommendation is complicated. Otherwise, a probation officer from the Intake unit will cover the hearing. Because prosecutors are rarely present, probation officers must make the arguments necessary to support their recommendations, including arguments that the *Austin* factors⁶⁵ have been met and support revocation. Defense attorneys saw this as an unauthorized practice of law; at least one probation officer noted that it is harmful to the rapport established with the person on probation.

What stinks about that is the county attorneys don’t staff that. Probation ends up a lot of the times ruining their rapport with their client because they have to be the prosecutor and the probation officer. – Probation Officer

...one of the biggest issues I see with our probation violation calendar that we staff at the Law Enforcement Center is that there is not a representative from the state. The probation department stands up and makes Austin factor arguments, which is arguably them practicing law, and making positions about release. There aren’t attorneys for the State of Minnesota, from either the city entities for misdemeanors or gross misdemeanors, or the county, for felony, entities. We are advocating for clients with no counterpart to actually sit down and have a conversation with. – Public Defender

The majority of people facing a probation violation admit to the allegations. Entering an admission is similar to entering a guilty plea; once an admission is entered, the

court has merely to pronounce a sanction for the violation. In contrast, if a person denies the allegations, then the case will proceed to a contested hearing, during which the prosecutor must prove by clear and convincing evidence that the person violated probation. In general, people on probation tend only to contest the violation when it involves an allegation they committed a new crime.

I think that they often admit very readily things like, “I got kicked out of treatment. I didn’t do this. I didn’t turn this in. I missed this office visit.” That kind of stuff almost always. Things like pending new charges, almost never. Or things like any kind of weapon possession because it can be problematic outside of the probation violation. – Defense Attorney

For me, the pattern I see is individuals who have multiple violations — and so this is the second, the third, the fourth violation on the file — and who are facing a significant term of imprisonment. Those are the folks who contest. – Prosecutor

More rarely, defense attorneys will counsel their clients to contest the allegation when they feel certain there are relevant mitigating factors, but this can be a difficult conversation because contesting the violation could mean spending more time in jail.

I also, if it’s a situation where I think we have mitigating factors or we have mitigating evidence that we can present, will try to convince people to deny and give me some more time to look into that for them. I always use the analogy in those circumstances, “Have you ever squeezed too much toothpaste out of your toothpaste tube and tried to put it back? Because it’s damn near impossible. So sometimes you need to have some short-term pain of sitting in the jail for long-term gain, if it means we can keep you out of prison.”... I had a guy who got shot, so he wasn’t in communication with his probation officer because he was shot. There was a news article about him being shot, so I was like, “No. We’re not signing off for you to go to prison. You need to give me a minute.” Ultimately, he wasn’t sent to prison because I convinced him to give me some time. – Defense Attorney

⁶⁵ The required considerations are referred to as the *Austin* factors because they were established by the Minnesota Supreme Court in its decision in *State v. Austin*, 295 N.W.2d 246 (Minn. 1980). The court must: (1) specifically identify the condition or conditions violated; (2) find that the violation was intentional or inexcusable; and (3) find that the policies favoring probation no longer outweigh the need for confinement.

Probation Violation Outcomes (Steps #16, #17, and #18)

Legal and Policy Framework

When a violation has been proven, the court has several re-sentencing options, depending on the type of stay originally pronounced (Table 5). The court can continue probation under the same or amended terms, which may include adding intermediate sanctions (i.e., a short stay in jail, electronic monitoring). The court can also execute the incarceration term or “level up” by imposing a more serious probation sentence (i.e., move from a stay of imposition to a stay of execution). It should be noted that a person on probation also has the right to demand execution of the sentence⁶⁶ except when the person has less than nine months to serve in prison on a felony sentence.⁶⁷ If the court determines the violation has not been proven, the probation revocation proceedings are dismissed, and probation must continue under the terms previously ordered.⁶⁸

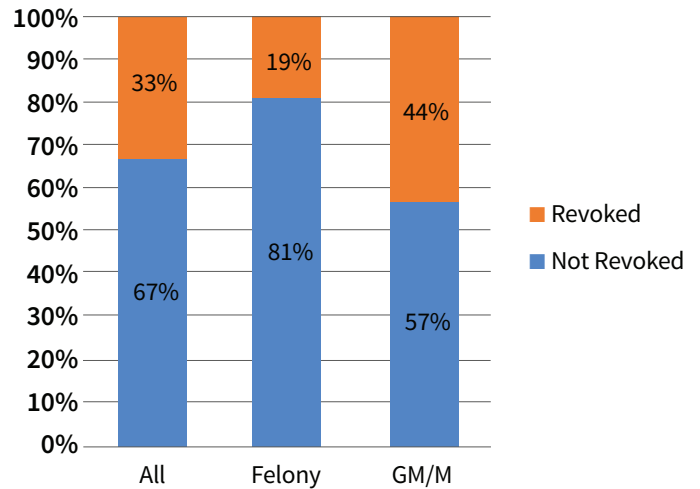
Table 5. Sentencing Options for Probation Revocation

Stay Type	Re-Sentencing Options ⁶⁹
Stay of Execution	<ul style="list-style-type: none"> Execute incarceration time Continue stay of execution with the same or amended conditions
Stay of Imposition	<ul style="list-style-type: none"> Impose and execute sentence Impose sentence but stay execution, and continue probation with the same or amended conditions Continue the stay of imposition with the same or amended conditions

Probation Cohort Data

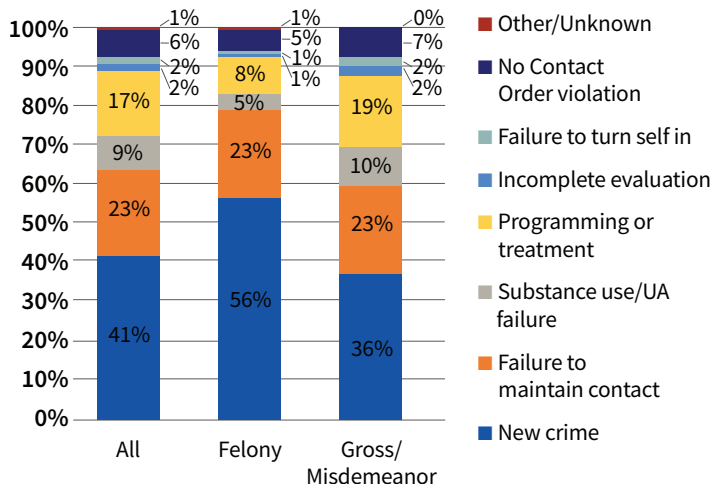
Overall, about one third of probation violations that were found/admitted resulted in revocation. But this varied dramatically by offense level with just 19% revoked in the felony sample and 44% revoked in the GM/M sample (Figure 18).

Figure 18. Revocations for First Probation Violations



Looking at the driver (main) reason for the violation, new crimes account for a larger percentage (41%) of first probation violations that resulted in revocation (Figure 19). By offense level, a new crime was the driver reason for revocation in over half (56%) of the felony cases and just over one third (36%) of the GM/M cases. New crimes made up a greater proportion of the revocations than the original violations. For example, in the felony sample, new crimes were the driver reason in 30% of probation violations (Figure 11), but accounted for 56% of the revocations. For the GM/M sample, new crimes were the driver reason in 28% of the violation (Figure 11), but accounted for 36% of the revocations. This indicates that new crimes may have

Figure 19. Revocation for First Probation Violations by Driver



⁶⁶ *State v. Randolph*, 316 N.W.2d 508 (Minn. 1982).

⁶⁷ Minn. Stat. § 609.135, subd. 7 (2020).

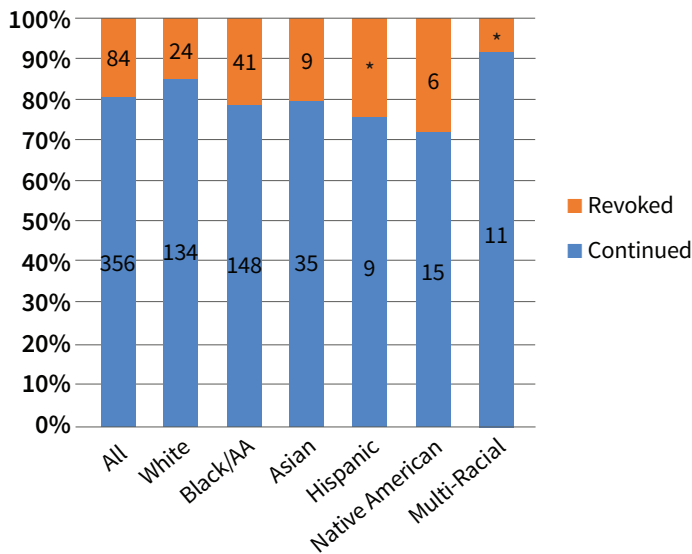
⁶⁸ Minn. R. Crim. P. 27.04, subd. 3 (2020).

⁶⁹ See Minn. R. Crim. P. 27.04, subd. 3 (2020); Minn. Stat. § 609.14, subd. 3 (2019).

had a strong influence on revocation decisions. The other three common drivers (failure to maintain contact with the probation officer, substance use/positive drug test, and programming and treatment non-compliance) all account for a decreased percentage of violations that result in revocation compared to probation violations in general.

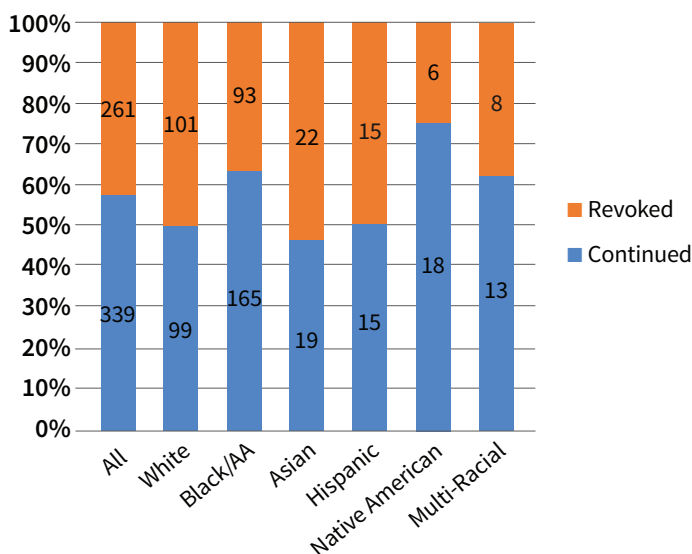
Figures 20 and 21 show revocations by race for the felony and GM/M samples. For felonies, the rates of revocation were similar across all races, though slightly higher for

Figure 20. Revocation Rates by Race for Felonies



* Indicates fewer than 5 people in group.

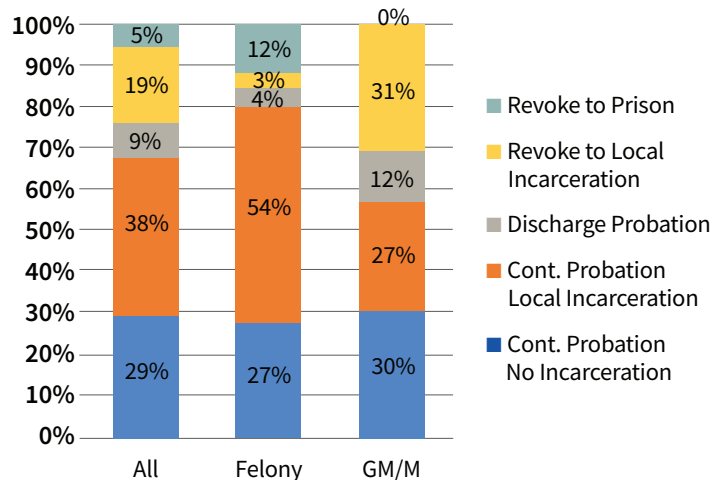
Figure 21. Revocation Rates by Race for GM/M Cases



people who were Hispanic or Native American. The rates of revocation varied more at the GM/M level. People who were Black and Native American were revoked at lower rates than people who were white, Asian, and Hispanic.

In the felony sample, 12% of violations resulted in revocation to prison, 3% were revoked to local incarceration, and 4% were discharged, which is further explained in the interview section. Most violations (81%) resulted in continuation of probation, with about 54% also receiving a sanction of local incarceration. In the GM/M sample, 31% of violations resulted in revocations to local incarceration and 12% discharged. Of the 57% that were continued, 27% included a sanction of some local incarceration (Figure 22).

Figure 22. Revocation Outcomes for First Probation Violations



As explained in the interview section below, probation officers perceived that for technical violations, they usually recommended continuing probation and rarely recommended revocation; however, this perception was not fully supported by the cohort data. In our sample, probation officers did recommend continuing probation more often for technical violations than for violations involving new crimes – about two-thirds of the time for technical violations compared to about half the time for new crimes -- but they recommended revocation a fair amount even for technical violations (36% of technical violations) (Figure 23). In the felony sample, revocation was recommended

in 32% of cases where the violation involved a new crime and in 11% of cases involving only technical violations. In the GM/M sample, revocation was recommended at a higher rate; 63% of the time for violations involving new crimes and 54% for technical violations. In this data set, a recommendation for revocation includes those cases in which the probation officer recommended that the person serve a short jail sanction following by discharge. However, it should be noted that a recommendation to discharge probation accounted for only 1-2% of revocation recommendations; that is, most revocation recommendations were revocation to jail or prison.

Interviews also indicated that probation officers believed the court followed their recommendations the majority of the time though a few felt that recommendations were only followed 40-50% of the time. We broke these results down into three offense categories: felony, gross misdemeanor, and misdemeanor as there was some notable differences between gross misdemeanors and misdemeanors (Figure 24). The cohort data indicates that court decisions exactly mirrored probation officer recommendations in felony cases. Court decisions were also extremely close in gross misdemeanor cases, with the court choosing to continue probation in slightly more cases (70% vs. 65%, respectively) and therefore revoke cases in slightly fewer cases than recommended (30% vs. 35%, respectively). But for misdemeanor cases, the court's decision varied much more widely from the probation officer recommendation with the court choosing to continue probation in 46% of cases, compared to the 25% of cases in which continuance had been recommended, and thus revoking in only 54% of cases, compared to the 75% of misdemeanor cases in which revocation had been recommended. This 21-percentage-point swing represents a sharp disagreement between the court and probation department about how to address probation violations for misdemeanor offenses.

Figure 23. Recommended Outcome by Offense Level and Crime

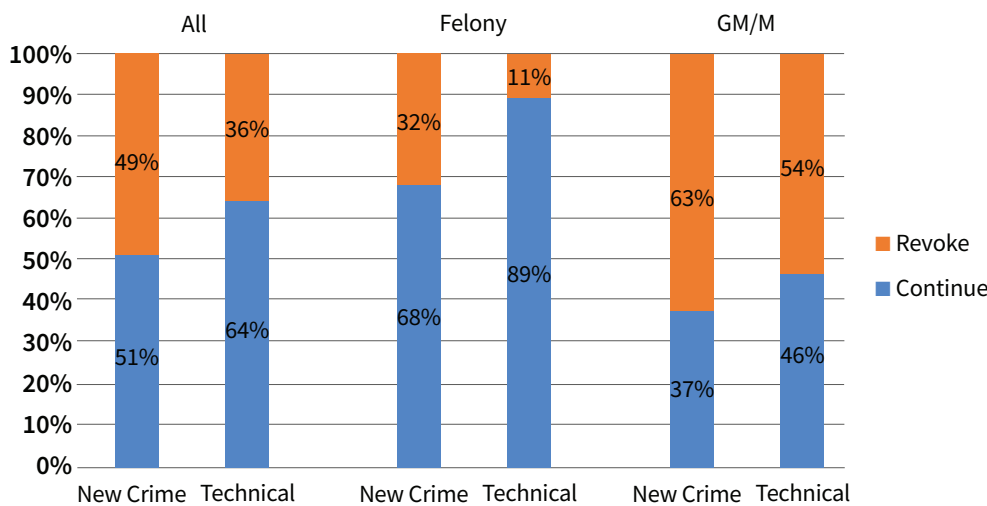
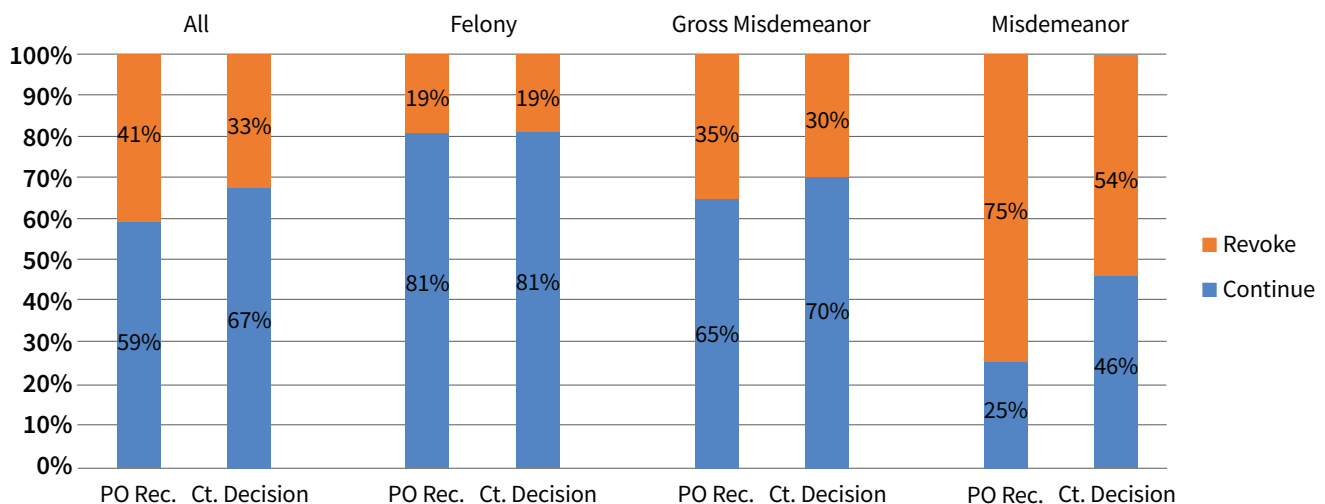
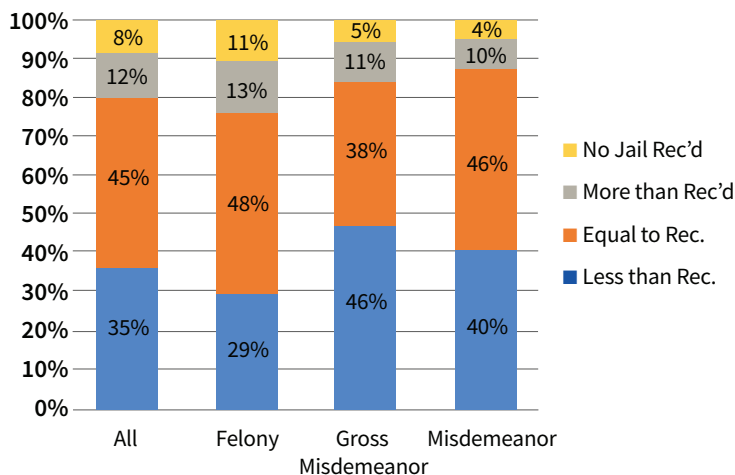


Figure 24. Probation Officer Recommendations Compared to Court Decisions



When the outcome is continuing probation with local incarceration, in close to half of the cases (48%), the court will impose the recommended amount of jail time. When the court-ordered sanction differs from the recommended jail time, the court is much more likely to impose less jail time than recommended (35% of the time); it is more rare for the judge to impose more jail time than recommended (12% of the time) (Figure 25). When the court imposes a different amount of jail time in either direction (more time or less time) the average difference is about two months (59 days under and 65 over).

Figure 25. Comparison of Actual and Recommended Jail Sanctions Reason



Interviews

When discussing probation violation hearing outcomes, respondents mentioned all of the possibilities noted in the legal and policy framework—continuing probation with or without a jail sanction, changing the stay type from a stay of imposition to stay of execution, revoking probation and executing a jail or prison term—and added one more: imposition of a jail sentence followed by discharge from probation. Interestingly, they referred to all of these options at one point or another as “revocation.” Thus, revocation was revealed through the interviews to be a nuanced concept that did not have a common definition across actors in the criminal justice system. This may be due in part because the Rules of Criminal Procedure allow for so many potential responses by the court upon finding a violation has been proven (see Table 5). Respondents seemed pretty clear when talking about felonies that revocation meant sending the person to prison.

But for misdemeanors and gross misdemeanors, the line between using the Ramsey County Correctional Facility (aka RCCF, i.e., jail) as a consequence for the violation versus as a form of revocation was murkier, likely because the person on probation would be sent to the same location in either case. There was general agreement though that when sanctions were imposed that were less than the full amount of the stayed prison or jail sentence, they were usually intended to impose a consequence or punishment for the violation rather than to revoke.

Revocation

Most probation officers indicated that they rarely request full revocation of the sentence; however, there are instances where revocation is appropriate. Overwhelmingly, probation officers indicated that they will recommend revocation when a person has committed a new offense.

This theme relating to new crimes carried over to prosecutors and defense attorneys. Prosecutors also thought that new crimes were more likely to merit revocation.

One of the things I'm greatly concerned about is recidivist behavior. If you have a defendant who's demonstrated time and again that they're just not going to live within the boundaries of the law on probation and they continue to break the law, why are we continuing to keep them on probation? – Prosecutor

Defense attorneys stated that, as a rule, they would not support revocation unless their clients asked for it. However, two defense attorneys stated that as citizens, they understand why revocation is sought in cases where probationers have committed serious or violent crimes.

I should say [as a] community member [I have] thought that revocation is appropriate. I still pushed against that, but it's the folks who can't be in the community and be safe, can't comply with their conditions, get new really serious charges. We have a lot of gang activity in Saint Paul. We have a lot of gun crimes in Saint Paul. People who are on probation for serious violent offenses like aggravated robberies or assaults with weapons, who then get subsequent charges, or are with people they're not supposed to be with. – Defense Attorney

After new crimes, there was less agreement on situations in which revocation might be appropriate. Prosecutors and defense attorneys did not identify other circumstances that might warrant revocation. And probation officer views were mixed, with a few mentioning that revocation may be necessary to address repeated drug use or non-compliance, or failure to maintain contact.

...if we've gone back to court four times because they continue to use and aren't willing to address their use.
– Probation Officer

I have exhausted all the tools in my toolbox and all the tricks that I have, and have not been able to gain compliance. – Probation Officer

Most of the judges interviewed preferred continuing probation to revocation, and some had very little experience with ordering revocation. For these reasons, judges had less to say about which cases warrant this more serious consequence. For one judge, the decision to revoke to prison (for felonies), was a grave one.

I ask myself. When I make the decision to send somebody to prison, have to be really centered in that decision before I take somebody's liberties away obviously. I have to be confident that everybody agrees that we have exhausted all of our possible remedies. Because it's a societal failure. Right? We've failed when we send somebody to prison. Are we prepared to acknowledge that and prepared to admit our collective failure? That's kind of the question I ask everybody in the room.
– Judge

One judge brought the bigger picture into focus, stating that because of more recent attention on its high revocation rate, Ramsey County has been revoking fewer people—here, referring to a full execution of the incarceration portion of the sentence—but people are still serving significant jail sanctions. Thus, this judge was concerned that being more intentional about withholding revocation may have had the unintended consequence of people serving more time in local incarceration.

Interviewee: The first Robina Study came out and it rocked Ramsey County in a really positive way. Probation made a bunch of changes, but identified some benchmarks that changed what your data set would look like, but didn't change the outcomes that we're getting. By that I mean, you should see that there are substantially less revocations...because Probation stopped asking for revocations. They started to ask for 180 days, so serve the time, discharge, and cut out the supervised release period time on a ton of cases. If you're looking at structures, I'd be really curious what their supervised release program looks like because I think we actually started sending less people to prison, continued the amount of people spending time in custody, and probably didn't actually get the result that we were hoping.

Interviewer: And just shifted it to the county rather than the state?

Interviewee: Exactly. I guess I'm very excited because I would expect your data points to say that. I really want to be careful of it being a victory lap because it just changed the focus. Because the big question that came out of your first study was why are you revoking so many people? Our answer was, "Well, we're not going to revoke so many people." But I think the secondary question is really, "If you sort of had a universe of what would you do, what would probation look like? What is the goal?" I think that's the problem that Probation struggles with, the bench struggles with, is really what is the goal? – Judge

Continuance of Probation With or Without Sanctions

Most probation officers indicated that they usually recommend continuance on probation, sometimes with additional sanctions or conditions. One officer described the decision whether to recommend continuance or revocation in terms of the number of violations.

Usually first probation violation, you're still recommending that probation be continued. Usually second. It's when you're getting to third, fourth, and fifth PVs, where they're continuing the same behaviors, that's where you're either recommending time and discharge or you're recommending something more significant.
– Probation Officer

Judges seemed to have a similar view, with most saying they would typically favor continuing probation unless the person was committing new crimes or repeatedly failing to comply with probation.

I almost always favor continuing a person on probation, unless they have committed a crime or when their resistance to complying with conditions of probation is such that I decide this is a waste of time. If I haven't gotten to the point where I feel like this is a waste of time or we can't have you in the community anymore, if I haven't hit that point, then I'm favoring probation, continuing them on probation. – Judge

Jail time was the most frequent sanction mentioned in conjunction with continuing probation, and much of the discussion revolved around this. In terms of the length of jail time, the ROMP recommends 30 days for a misdemeanor offense or 90 days for a gross misdemeanor or felony offense.⁷⁰ However, one probation officer stated a more unwritten rule for jail time.

I think there is this expected progression of 30 days on the first PV, 60 on the second, and 90 on the third. – Probation Officer

Interviewees mentioned three distinct ways that jail might be used to respond to a violation. First, jail may serve as an immediate consequence or “wake up call” for the non-compliant behavior.

In most cases, when you feel like there's still room and time to work with them, that you just feel they need an immediate consequence for the behaviors that they're showing right then and then you can continue to work with them after that. I always tell my clients like, “Once this violation is done, you get a fresh start. You're a clean slate again and we're working from the beginning time almost.” – Probation Officer

The agents are not always asking for a jail sanction. They simply want the assistance of the court. They want the court to intervene and tell the person how important it is for he or she to get these things done

and sort of have a tough talk with them about getting it done....Usually if they're back a second time, I'm going to say there needs to be a consequence to incentivize her to get the stuff done and then the penalty just should increase if it doesn't result in different behavior.
– Prosecutor

Second, a fair number of probation officers mentioned jail as an opportunity to address substance use issues. Many probation officers noted that the RCCF has excellent programming, so they saw jail time as a way to force probationers to confront substance use issues, to get updated assessments, maintain sobriety for a period of time, and begin a new round of treatment.

Another time that I might feel strongly about recommending some time in jail is if a person has been... because if I look at public safety I also, I'm sometimes including that person's own safety in that. If a person is using methamphetamine every single day and looks horrible, and is on the streets and maybe shooting up, I will recommend, “Your Honor, let's keep him in custody and have him do a treatment program in jail because they have a history of not following through with treatment by leaving or not going, or continuing to use while they're in treatment.” That's another instance when I might make a recommendation to serve 90 days and then continue probation. But let's do treatment in custody where they have to do it. – Probation Officer

One probation officer had the perspective that the use of jail to treat substance abuse was driven by judges rather than probation officers.

Then, again, there's other judges who will send a person to the [RCCF] for a year because they can't stay clean, but that's the only thing they do is not stay clean. They think forced sobriety because treatment isn't working. Well, I get it, but I also think... well, it doesn't matter what I think... – Probation Officer

Prosecutors mentioned substance use issues in this context too, but saw jail as a way station until the person could get into an in-patient treatment program.

⁷⁰ RCCC Adult Division, ROMP Manual at 16 (2015).

The typical scenario is an individual who is drug-dependent and they've been on a bender — so they've been raging on whatever their drug of choice is — and so you have these new offenses or behaviors that are triggered by that substance use. In those cases, sometimes I advocate for jail time, but then with early release to treatment, so the purpose of that being just to interrupt the bender and then get this person transferred directly into a chemical dependency treatment facility. Sometimes I think about incarceration as a tool to try to get this person to a better place. – Prosecutor

While defense attorneys recognized that substance use issues could be at the root of noncompliant behavior, they did not see jail as the solution, stating instead that every effort should be made to keep the person in the community.

If clients have largely remained law-abiding and the allegations are failing to abstain and that they've tested positive — or if they're failing to remain law-abiding, but what I would consider to be either crimes of homelessness or crimes of addiction that aren't violent in any nature, that are not person crimes, and are clearly a result of addiction, and the clients really want to continue trying to get sober — I think we should be doing everything we can to keep those people in the community and give them the resources or get them in a position where they can address the underlying issue. – Defense Attorney

Finally, some probation officers noted that they might request jail as a means of completing the probation sentence. For some, this use of jail was a simple calculus. If the person had already served most of their sentence due to other violations, then it made sense to have the probationer serve the balance of their sentence in the RCCF rather than being revoked.

Normally we don't make that recommendation [revocation]. Normally we'll make a recommendation that they do some local time and be discharged if they're not able to comply. – Probation Officer

Judges also recognized this calculus, as demonstrated in the following two exchanges. The first judge reiterates the rationales offered by probation officers. The second also adds the idea that in cases where probationers use up the suspended jail or prison term time by serving shorter sanctions on multiple violations, eventually the sentence loses its value as a deterrent.

... if I think there is any benefit to future supervision, then that's when future supervision, I think, should remain in place. I will say that probation oftentimes does make a recommendation for the workhouse [RCCF] time and discharge. But usually probation is doing that when one of two things is true: 1) They're close to the end of their natural expiration on probation; or 2) they just haven't been amenable to probation at all and I think probation feels like it's not worth the resource time, and there is some sanction that comes. – Judge

When I'm looking at that probation officer's recommendation, I'm looking at, "How much time do we have hanging over this person's head? How much more time?" If there is not much more time, let's say the person has served so much time with probation violations that there is only a couple more months, I might very well just say, "Well, let's just execute. We're just going to execute this sentence and hopefully you'll take advantage of the programming while you're at the workhouse [RCCF]. When you're done, you're done."... it doesn't make sense in that circumstance to put the person back out in the community and then have them participating in some type of programming when there really is no significant consequence hanging over their head if they don't. – Judge

Prosecutors were also familiar with the jail and discharge response, but one described it as an alternate way to achieve accountability for low-level crimes without resorting to revocation.

The next group which has really been happening more is somebody might be on probation for a low-level burglary or receiving stolen property, or criminal damage to property, and maybe they hate probation or they can't stay sober or whatever it is. They keep reoffending,

but its stealing stuff from Cub Foods, or whatever it is. The judges in the last couple of years have basically stopped altogether sending people to prison on those types of offenses. I hardly ever see revocation on those offenses anymore. Instead, what they do is they do a chunk of workhouse [RCCF] time and they're discharged. They basically say, "Please try to get some of this programming at the workhouse [RCCF]. Whether it's your fourth violation, your fifth violation, I can't put you back on probation, but I'm also not going to send you to prison for those underlying offenses." I'm okay with that. – Prosecutor

At least one defense attorney thought the jail recommendations were less nuanced, serving instead as the “go to” response for probation violations.

I think that the majority of them are treated as, “This needs punitive action.”...But I am hard-pressed to think of more than a few occasions where I've gone to court and the recommendation has been something other than, “They should go to jail.” It's not... “they sat in jail for five days...This is enough.” It is a minimum, go serve 30 days, go serve 120 days....I always see the recommended consequence being the same. – Defense Attorney

After jail, interviewees indicated that the most common sanction requested was the Community Monitoring Program (wherein the probationer is monitored more closely, required to use an electronic home monitor, or required to be confined to a smaller area during a lockdown period). A defense attorney spoke favorably about the program noting that the cost-free model makes it more accessible to probationers and provides an alternative to incarceration for those who previously could not afford such programming.

Stay of Imposition to Stay of Execution

For felony offenses especially, an interim outcome between continuance and revocation is to amend the type of sentence from a stay of imposition to a stay of execution. This action is sometimes colloquially referred to as revoking the stay of imposition. The consequence is that the conviction will not be reduced to a misdemeanor upon discharge from probation. Those interviewed did

not seem to be able to articulate a pattern for when this might occur, stating instead that such decisions were often dependent on the judge and probation officer. A few respondents noted that in the past, the court would often amend the sentence upon the first violation, but that in the last few years, it has become more likely that it would take two or three violations.

...all this stuff has totally changed in the last couple of years and judges will give people multiple chances on stays of adjudication and stays of imposition before those things are revoked. I think it's probably a third violation these days... – Prosecutor

It used to happen on their first probation violation and that was primarily because probation was like, “You had your chance at a stay of imp. We want that vacated in a stay of ex.” I don't see it as frequently, which is good. I don't see it being recommended as frequently from Probation either, but that's probably within the last year that that change has happened in my mind, if what I can remember. – Public Defender

Judges seemed to hinge the decision on the type or numbers of violations, stating that they would be less likely to amend a stay of imposition to a stay of execution for technical or first-time violations, but that they would be more likely to do so when the violation was a new offense.

Agreement with Probation Officer Recommendations

Prosecutors rarely attend probation violation hearings unless they are contested. Therefore, they have less involvement at the probation revocation stage. However, to the extent that they do participate in such hearings, prosecutors indicated that probation officer recommendations carry a great deal of weight with them, and that they generally support the probation officer's recommendations.

I know, personally, it carries great weight with me.... A probation officer is in the best position to know the history of this individual, right? They've either been working with them or haven't because the person hasn't shown up. They're the eyes and ears that get to report back not only to us, but to the defense attorney and to the judge. I want to hear what they're saying and that's always my starting point. – Prosecutor

While we do negotiate to resolve these things, we're generally following Probation's lead. – Prosecutor

In contrast, defense attorneys are always present at probation violation hearings, so they have more experience with reviewing probation officer recommendations. Their impression was that prosecutors always support probation officer recommendations. But their own views of probation recommendations were more mixed.

I think this is a probation officer-dependent one. Sometimes I look at them and I'm like, "Oh, that's a gift." Or, "That's a very reasonable recommendation." Then other times, it's just mind-boggling.... Probation will sometimes come to court with a better recommendation for the client because perhaps they went and saw the client in custody — between the time they got picked up and the PV hearing — and found out a little bit more about what was going on and then kind of rethought what they think is appropriate, so I don't know. It's all over the place. Sometimes I think [the recommendations are] very reasonable and sometimes I think they're just totally insane. – Defense Attorney

The majority of probation officer respondents thought the court followed probation officer recommendations most of the time. They tended to use phrases like “almost always” or “more often than not” to describe this. At the same time, however, a fair number of respondents noted that the court was often likely to impose less jail time as a sanction than recommended. Often respondents indicated that the court might cut the jail time in half or reduce it by 30 days (e.g., “you ask for 120, they give you 90”).

A smaller subset of respondents said that the court only followed the probation officers' recommendations about half of the time or less than 40% of the time, and all of these respondents indicated that the court often imposed less jail time. Thus, whether a probation officer had the impression that the court followed their recommendations seemed to be a matter of perspective. Those who had the impression that the court mostly followed their recommendations seemed to be looking for general adherence to the recommendations even if the court did not impose exactly what they asked for. This was evidenced

by the fact that slightly less than half of those who said the court mostly followed the probation officer's recommendations also said that the court imposed less jail time than recommended. But others expected stricter adherence and considered the court's action to be counter to their recommendations if the court continued probation as recommended but then imposed less jail time than requested. One respondent captured the sentiment this way:

I can imagine the people that say 50-50 are the ones that maybe have a harder time that it doesn't go the way they recommended it. But...it's not personal, it's not a win or lose type of situation. – Probation Officer

This theme from the interviews also indicates that judges have an appetite for imposing less jail time than is typically recommended. It may be that judges are mediating between what is asked for by probation officers and what is asked for by defense attorneys.

I would say the majority of the time we can split the baby, where if probation is asking for 180 and we ask for 60, then we might get 90 to 120. I think generally they fall somewhere in between what Probation asks for and what we ask for. – Defense Attorney

Alternatively, the judges that are currently on the bench may simply have a different view from probation officers as to how much jail is needed when sanctioning individuals for probation violations.

But I'm just not sure that short-term consequences are particularly meaningful. In fact, the risk of things getting worse for that defendant and their families outweighs the benefit to a short-term consequence. I rarely look at anything under 45 days. If I'm thinking about that, then I'm far more likely to just do an interim consequence of 30 days on community monitoring and then discharge. Again, I'm just not convinced that from a sort of small correctional place that 7 or 14 days is beneficial to anybody. In fact, I think people pick up bad behaviors when they do those short consequences. It's not enough time for the professionals to really reach the person. I'm just far more likely to do community monitoring and then discharge. – Judge

I think I'm [reducing the consequence in some way] a little bit more now in part because often the consequence is that they want them to serve some jail time. Philosophically, I don't think that really helps all that much usually. I mean, sometimes a little bit. But I am also, having come back to criminal... it does seem a sea change, I'm sensing from prosecutors, the defense counsel. The group though that doesn't appear to have gotten the memo yet is Corrections and Probation. It seems like they are kind of doing the same recommendation they have always had. I don't sense that there is kind of a change in "well, we want to try to do something a little differently." – Judge

Overall, from the judges' perspective, the probation officer's recommendation is an important consideration. But most judges also made it clear that they make independent decisions based on all of the information available to them.

So, yes, I consider the probation officer's recommendation. There are some probation officers who have little bit more credibility with me than others, but I'm really looking more at what I think is the best way to position this person for success. I would say sometimes I go with the probation officer in lockstep, sometimes I don't, and I go against what they're recommending, and sometimes there's a middle ground. A bit of what you're asking for and a little bit what he's asking. It's really a case-by-case basis. – Judge

V. Drivers of Revocation

Up to this point, we have examined multiple decision points at which individual acts of discretion by multiple actors in the system could set someone on a path towards revocation or successful completion of probation. In this section, we zoom out and use the probation cohort data and interviews to look at the big picture. In the first section, we use regression to look at multiple variables at once to determine which result in higher odds of revocation. In the second section, we hear the perceptions of people from across the criminal justice system as to what drives revocation in Ramsey County.

Probation Cohort Data

Using our cohort data, we can model what factors predict first probation violations and revocations for those violations. We do this using probit models, which measure the association between each variable and the outcomes while holding all other variables constant. Thus, these models measure the odds of a factor resulting in a violation or a revocation independently of other factors. These odds are expressed in the tables as the "odds ratio." For each variable, odds that are greater than one represent increased odds of a probation violation or revocation (e.g., 1.2 means the odds of revocation are 20% greater). Odds that are less than one represent decreased odds of a probation violation or revocation (e.g., .80 means the odds of revocation are 20% lower).

We used a special technique called the Heckman two-step correction to separate out what predicts probation violations and what predicts revocations. In other words, the revocation models are what predicts the court's decision to revoke independent of what predicts violations. This means that certain groups (like racial minorities) may have higher odds of a revocation when not controlling for their odds of getting a violation, but lower odds of revocation when controlling for the odds of getting a violation. We considered only the first probation violations, and revocations for them, in this analysis because looking at all violations and revocations would oversample certain individuals with multiple violations and would make it difficult to understand where disparities are occurring in the overall process. We set up our models so they independently

predict each outcome. The variables included in the probit models as well as a more detailed explanation of the analysis techniques used is available in Appendix B.

Factors Predicting Probation Violations: Demographic Characteristics

Starting discussion of the models first with the demographic variables, the findings showed meaningful differences by race only in the GM/M sample (Table 6). Black or African American individuals had 38% higher odds of having a probation violation filed than similar white individuals, and people who were Native American had 142% higher odds of having a violation filed. Conversely, people who were Asian had 23% lower odds than similar white individuals of having a violation filed. In contrast, there were no significant differences between racial groups for the felony sample (Table 7). This indicates that our understanding of the relationship between race and violations needs to take into consideration offense level.

Factors Predicting Probation Violations: Court Related Characteristics

Turning next to court characteristics, most findings were in line with expected relationships but a few variables including probation length and offense level had somewhat unexpected correlations. For the felony sample (Table 7), there was no significant difference in probation violations between presumptive disposition types. Sentences with a stay of execution had higher odds of having a violation filed than those with a stay of imposition (35% higher odds in the GM/M sample; 33% higher odds in the felony sample). Moreover, as expected, the odds of a probation violation increased as LS/CMI risk increased in the felony sample.

Findings for probation length differed by offense level. In the GM/M sample (Table 6); probation terms over a year had more than double the odds of resulting in a probation violation. This may simply be reflective of the patterns we saw in the descriptive statistics showing that GM/M cases were more likely to be revoked overall. In contrast, the analysis of felony cases (Table 7) showed a relationship in

the opposite direction; longer probation terms (5 years or more) had 31% lower odds of a probation violation than shorter sentences (3 years or less). This may reflect findings Robina has made in other studies⁷¹ that most revocations at the felony level, if they occur, happen within the first two years of probation; thus, it is likely that a person who has remained on probation into the fifth year has simply figured out how to manage being on probation.

Offense level showed an interesting correlation in the GM/M sample. Surprisingly, despite misdemeanors being less serious than gross misdemeanors, misdemeanors have more than double the odds (117% higher) of a probation violation than gross misdemeanors (Table 6). Since this difference is net of differences in probation length, offense type, and supervision level, it is unclear what is driving the increase in violations for the misdemeanor sample.

Factors Predicting Probation Violations: Probation-Related Characteristics

We also considered two supervision variables in the models; unit and level of supervision. Both the GM/M and felony models showed the intake unit to significantly differ from field units in odds of a probation violation (Table 6 & 7). However, the GM/M sample showed an increase in odds (almost double) and the felony sample showed a 30% decrease in odds of getting a probation violation. In the GM/M model, as expected, the odds of a violation increased as supervision level increased (Table 6). However, it is important to note that most people in the GM/M sample were on a low supervision level (Table 4), so probation officers may have had heightened awareness of those on higher supervision levels. In the felony sample the odds of getting a probation violation did not differ significantly by supervision level (Table 7). But most people on probation for a felony were on high supervision (Table 4), so most on felony probation were likely supervised in the same manner. Furthermore, the felony model includes risk level which is highly correlated with supervision level and may account for the lack of significant differences.

⁷¹ See, e.g., *Examining Prosecutor Perspectives and Practices on Probation In Ramsey County*, Robina Institute, forthcoming (2021).

Table 6. Odds of Probation Violation for Gross Misdemeanor and Misdemeanor Offenses (N=2152)

Independent Variables	B	SE	Odds Ratio
Age (years)	-.01	.00	.99***
Gender (reference: Male)			
Female	-.09	.07	.92
Race (reference: White)			
Black or African American	.32	.07	1.38***
Asian	-.26	.11	.77*
Hispanic	.05	.14	1.05
Multi-Racial	.39	.19	1.48*
Native American	.88	.22	2.42***
Stay type (reference: Execution)			
Imposition	-.43	.17	.65*
Sentence length (reference: Up to 12 months)			
13 - 24 months	.94	.12	2.56***
25 - 48 months	.72	.23	2.06***
Offense level (reference: Gross Misdemeanor)			
Misdemeanor	.78	.12	2.17***
Offense type (reference: Person or Violent, Sex)			
Property and Drug	.34	.17	1.40*
DWI	-.11	.12	.89
Traffic	-.34	.17	.71*
Disorder	-.20	.11	.82†
Supervision unit (reference: Field)			
Domestic Abuse Unit	.16	.14	1.18
DWI Unit	-.29	.17	.75†
Probation Reporting Center	.14	.18	1.15
Intake	.66	.18	1.94***
Supervision level (reference: Low)			
Medium	.56	.17	1.75***
High	.90	.14	2.47***
Constant	-1.31	.23	.27***

†<.1; *p<.05; **p<.01; ***p<.001

Table 7. Odds of Probation Violation for Felony Offenses (N=853)

Independent Variables	B	SE	Odds Ratio
Age (years)	-.02	.00	.98***
Gender (reference: Male)			
Female	-.15	.11	.86
Race (reference: White)			
Black or African American	.13	.11	1.14
Asian	-.05	.16	.95
Hispanic	-.27	.24	.76
Multi-Racial	.42	.35	1.52
Native American	.32	.24	1.37
Presumptive disposition (reference: Stay)			
Commit	-.07	.13	.94
Stay type (reference: Execution)			
Imposition	-.27	.11	.77*
Sentence length (reference: 36 months or less)			
37 – 60 months	-.11	.12	.90
61 or more months	-.38	.15	.69*
Offense type (reference: Person or Violent)			
Property	.12	.14	1.13
Drug	.20	.15	1.22
DWI	-.72	.44	.49
Disorder	-.37	.29	.69
Sex	.53	.31	1.70†
LS/CMI total score (reference: Low)			
Medium	.45	.16	1.56**
High	.64	.18	1.90***
No Assessment	.36	.21	1.43†
Supervision unit (reference: Field)			
Domestic Abuse Unit	.08	.16	1.08
DWI Unit	.07	.44	1.07
Probation Reporting Center	.10	.29	1.10
Intake	-.35	.15	.70*
Field (predatory sex offenses)	-.27	.27	.77
Supervision level (reference: Low)			
Medium	.34	.31	1.40
High	.40	.29	1.50
Constant	.32	.35	1.38

†<.1; *p<.05; **p<.01; ***p<.001

Factors Predicting Revocation Outcomes

We next utilized probit models to determine which factors predicted the odds of revocation. These models included all the variables in the models predicting probation violations with the exceptions of supervision level and LS/CMI score. These were excluded because it was necessary to exclude at least one variable from the violations model when running the revocation model (see Appendix B) in order to differentiate between the factors affecting the probation officer's decision to file a violation and the court's decision to revoke based on that violation. We chose to exclude supervision level and LS/CMI score because we were told judges are not provided with this information, so these variables theoretically should not have affected the revocation decision though they may have been highly relevant to the decision to file a violation. Additionally, we included the probation violation driver to measure the purpose of the probation violation (broken into three categories: "New crime", "No contact with the probation officer", and "other technical reason"). As with the probation violation models, we will discuss the variables in three sections; demographic characteristics, court-related characteristics, and probation-related characteristics.

Factors Predicting Revocation Outcomes: Demographic Characteristics

The relationships between racial groups and revocation were noteworthy in that they did not parallel how they predict the filing of a probation violation. In the GM/M sample, people who were Black or African American and Native American had decreased odds (27% and 57% lower, respectively) of getting a revocation compared to similar white individuals (Table 8). This is in contrast to the filing stage where people who were Black and Native American actually had increased odds of having a probation violation filed. Race was not a significant predictor of probation violation for the felony sample; however, it is a significant predictor of revocation for certain groups. Black or African American individuals had 40% higher odds and Native American individuals had 103% higher odds of being revoked for the first violation in comparison to white individuals (Table 9). This illustrates that the relationship between race and the revocation pathway is nuanced and specific depending on offense level and the decision point. It should be mentioned that revocation rates for the GM/M sample are still higher for black and Native American individuals even though they have lower odds than

white individuals when focusing on the judge decision alone (see Figure 21). This is because these populations are over-represented in probation violations being filed.

Factors Predicting Revocation Outcomes: Court-Related Characteristics

Most court-related characteristics were not significantly related to the likelihood of revocation. Disposition, offense level, and offense type were not significant predictors in either model. Stay type was not significant in the GM/M model but stays of execution had 51% higher odds of revocation than stays of imposition in the felony sample (Table 9). The most notable relationship was between probation length and revocation outcome in the GM/M sample. In the previous model (Table 6), the likelihood of a probation violation being filed increased as the length of probation increased. In contrast, the likelihood of revocation decreased as probation length increased (Table 8). Part of this is due to the model only showing revocations for the first probation violation; rates of revocation are similar when all revocations are considered. That being said, considering cases with longer probation terms were more likely to get a probation violation, it is interesting to see that they are less likely to be revoked for that violation. Probation length was not significant in the felony model.

Factors Predicting Revocation Outcomes: Probation-Related Characteristics

While the intake unit had significant differences from other units in probation violation filings, none of the units had significantly higher or lower odds of a revocation for the first violation. This implies that judges do not differentiate cases by unit when making revocation decisions. Interviewees mentioned that many units have intake probation officers handle revocation hearings so judges may not even be aware of the unit to which a given individual is assigned.

The driver of the violation was a strong predictor of revocation in both models. Technical violations had between 31% and 51% lower odds of resulting in a revocation compared to a violation based on a new crime committed (Table 8 & 9). There was no significant difference between "no contact with probation officer" and other technical drivers when models were run with a different reference group. This supports the views of interviewees that new crimes are a significant driver of revocations.

Table 8. Odds of Revocation on First Probation Violation for Gross Misdemeanor and Misdemeanor Offenses (N=2152)

Independent Variables	B	SE	Odds Ratio
Age (years)	.00	.01	1.00
Gender (reference: Male)			
Female	-.05	.13	.95
Race (reference: White)			
Black or African American	-.32	.13	.73*
Asian	.26	.22	1.29
Hispanic	-.20	.24	.82
Multi-Racial	-.20	.30	.82
Native American	-.84	.32	.43**
Stay type (reference: Execution)			
Imposition	-.19	.36	.83
Sentence length (reference: Up to 12 months)			
13 - 24 months	-1.41	.21	.24***
25 - 48 months	-1.74	.39	.18***
Offense level (reference: Gross Misdemeanor)			
Misdemeanor	-.40	.22	.67 [†]
Offense type (reference: Person or Violent, Sex)			
Property and Drug	-.18	.25	.84
DWI	.28	.21	1.32
Traffic	.30	.32	1.35
Disorder	-.01	.20	.99
Supervision unit (reference: Field)			
Domestic Abuse Unit	-.02	.19	.98
DWI Unit	-.26	.30	.77
Probation Reporting Center	.21	.27	1.23
Intake	-.06	.24	.95
Violation Driver (reference: New Crime)			
No contact with Probation Officer	-.37	.14	.69**
Other	-.41	.12	.66***
Constant	1.39	.45	4.02**
Athrho	-.37	.41	.69
Rho	-.35	.36	.70

[†]<.1; *p<.05; **p<.01; ***p<.001

Table 9. Odds of Revocation on First Probation Violation for Felony Offenses (N=853)

Independent Variables	B	SE	Odds Ratio
Age (years)	-.02	.01	.98**
Gender (reference: Male)			
Female	-.15	.16	.86
Race (reference: White)			
Black or African American	.34	.15	1.40*
Asian	.36	.25	1.43
Hispanic	-.01	.35	.99
Multi-Racial	-.16	.49	.85
Native American	.71	.32	2.03*
Presumptive disposition (reference: Stay)			
Commit	-.05	.18	.96
Stay type (reference: Execution)			
Imposition	-.72	.17	.49***
Sentence length (reference: 36 months or less)			
37 – 60 months	-.05	.18	.95
61 or more months	-.22	.23	.80
Offense type (reference: Person or Violent)			
Property	.20	.19	1.22
Drug	.30	.20	1.35
DWI	-.77	.67	.46
Disorder	.56	.45	1.75
Sex	.14	.44	1.15
Supervision unit (reference: Field)			
Domestic Abuse Unit	-.20	.23	.82
DWI Unit	.45	.60	1.57
Probation Reporting Center	-.48	.25	.62 [†]
Intake	.04	.22	1.04
Field (predatory sex offenses)	-.15	.35	.86
Violation Driver (reference: New Crime)			
No contact with Probation Officer	-.70	.17	.49***
Other	-.69	.18	.50***
Constant	-.06	.37	.94
Athrho	1.44	2.72	4.23
Rho	.89	.54	2.45

[†]<.1; *p<.05; **p<.01; ***p<.001

Interviews

In order to learn about what people working in the criminal justice system perceived to be driving revocations, we asked interviewees: “From your perspective, what do you think are the biggest drivers of revocation in Ramsey County?” Respondents offered perspectives related to the behaviors or circumstances of people on probation, behaviors of probation officers and their relationships with people on probation, and several systemic issues.

One set of drivers identified by respondents related to the behavior or circumstances of people on probation. Many respondents stated that most revocations occur when the probationer commits a new criminal offense, particularly offenses against persons. As one interviewee put it:

The bulk of the revocations that we have are as a result of new offenses and so the question is, “Why are we having new offenses?” [...] Sometimes it’s just that they’ve become so ingrained in a behavior that it’s just hard to change fast enough before they commit another one. – Probation Officer

Second, respondents pointed to persistent noncompliance—not completing programs, missing appointments, not maintaining a job—as a driver of revocation. Respondents were mixed in what they said accounts for noncompliance, with some pointing to underlying factors like chemical dependency or other difficulties related to poverty while others said that people on probation fail simply because they don’t want to comply.

Offender behavior. That’s what drives it. That’s what we’re responding to. I will only respond to what my client is putting on the table and they’re only going to really take me where they want to go. If they’re people that are struggling and really want help, and they’re trying to make changes and they’re trying to address things, the resources are there. I’ve never really had trouble getting people for any need, or getting them in for assessments, or having some ridiculous wait time. That hasn’t been an issue. – Probation Officer

The few ones that we see are just sometimes people just don’t have any reasons for it other than they just don’t want to do it. It just does not apply to them. – Prosecutor

I don’t think people understand what it takes to actually have your probation revoked. It takes a lot. We exhaust every possible option that we can to try to help these people along and to get them to move on. But at some point — and it’s my opinion — in time, you can’t just keep doing the same things over and over and just let them ride and let them ride. I don’t think that’s good. – Probation Officer

Many respondents pointed to chemical dependency as a driver of revocations. Probationers with serious addictions may fail drug tests or have difficulty completing programming, and the programs may be inadequate in length or individualization to address their needs.

...the thing that I think about is when we get this chemical dependency evaluation, what does that consist of? How well does it measure the individual? Do we get good data back from that? Then does that point us to the best possible resources for that individual and then are those resources available? I wonder is that the case when these things are prescribed or is this going back to a menu of resources that are a lot of one-size-fits-all? – Prosecutor

Related to chemical dependency, some probationers may also have difficulty with compliance if they have mental health issues unless they receive the necessary services.

I wish we had better tools, especially for the people who have significant mental illness but not enough to be deemed incompetent, the people who are kind of on the edge there. – Prosecutor

If there’s a severe and persistent mental illness, that person is not going to be successful across the board on probation unless they got case management services. They just can’t keep an appointment. They can’t take their meds daily, so just a realistic outlook on that. – Probation Officer

Respondents mentioned how poverty may drive revocations in multiple ways. Probationers may not have the money to make payments for court fines and fees, as well as the necessary co-payments and fees required to comply with probation conditions like out-patient treatment

and electronic monitoring. Moreover, poverty makes it difficult for people to comply with probation in general because they are dealing with larger life concerns.

Most of my clients live in a world that's very much about today. "Where am I going to be today? Where am I going to sleep today? Where am I going to eat today? Who am I going to call today? Where am I going to go today?" The more long-term planning presents challenges, even when it comes to contact, because they may have a phone number that works today, but that phone number is not going to be on in three months. – Public Defender

I wish that we could adopt some of the models that we see elsewhere to provide more assistance to people who really need it, to get just the basic foundation for stability, for housing, for assistance, for a caseworker, for chemical dependency treatment. – Community Service Provider

Related to poverty, multiple respondents mentioned that homelessness can make it difficult for some individuals on probation to maintain contact with their probation officer and leaves individuals more prone to violations for behaviors like loitering or public drinking.

I think another big issue is homelessness. Sometimes I just feel like if we expended the resources by giving them a little studio apartment and sticking them in there, that would solve the vast majority of the issues. That's for lower-level offenders that keep getting picked up on trespassing because they're on the light rail, or drinking out in public. But if they had a place to go and lay their head at night, this would solve all of these issues. – Public Defender

The sense that I get about probationers and defendants is that it's never one issue, right? It might be chemical dependency, plus housing, plus employment, plus who knows what else. I wonder how well those various needs are being addressed. Homelessness, I think, is a good example of that. You can have somebody who goes to the chemical dependency treatment, but they're homeless. Even if they address a chemical dependency issue, homelessness I think is a profound indicator that it's going to be difficult for that individual to be successful on probation. – Prosecutor

Homelessness is a particular issue for people convicted of offenses that label them as predatory offenders because there are stringent restrictions on where they can live.

I always think that we just don't just have enough resources, especially like housing, and especially for predatory offenders and people with sex offenses on their records. Their options of getting decent housing in the community are slim to none, so they usually end up having to live with family members if they can live there. Because if there's minors in the house, often times they can't. Or they end up renting rooms from slumlords and the entire building is full of people who are just bad eggs and a lot of criminal associations, and drugs, and gangs. – Probation Officer

A second set of drivers of probation revocation identified by respondents related to how probation officers respond to misconduct and relate to people on probation. Those interviewed said that certain probation officers, particularly those with longer careers, may have a more punitive philosophy due to differences in training and past policies. Several people referred to this as an "old school mindset," and indicated that it is systemic, extending to the bench. But multiple people interviewed also commented that these mindsets have been "shifting," indicating that how probation officers perceive and respond to probation violations may also be changing.

Old school ideology. Pound of flesh mindset with the bench and agents. I mean, let's all know what we do too. Eighteen years ago, if I had talked to an adult probation officer, it sounded a lot different than it does today. There's very few of that mindset around. They still exist. There're still some out there. But some people have really tough caseloads, so I get why maybe they get to that point and why they struggle. But the driver is that old-school mentality of just a pound of flesh and we'll teach him a lesson, losing sight of what I've been talking about, the human factor, that they're people, and that they have families, and that they're somebody's son or daughter and like... I think in the past it was like, "Tough shit. You shouldn't have done that. You're going to jail." Yeah. There's been... I'm not going to point a finger because I want to own our much of it too. But if I had my biases, I think the courts have just been more, how do I say it, 'fear-based'. – Probation Officer

I just think in the past we just thought after so many tries it's prison time. I really just think it's shifting. I just remember as a PO it's like, "Okay. After a third probation violation, you're out of there." We had this number three in mind and we used to just go with it. Departure cases. If there was a person on probation that had a downward departure or what have you, it was like that one-strike guide. If you mess up, prison, automatically. That was our mindset, but I think it's shifting now.

– Probation Officer

Respondents also pointed to the relationship between probation officers and people on probation as a driver of revocation. They noted that probation officers vary in terms of the relationships they are able, or willing, to foster with probationers.

Then, of course, just like people-wise, there are some people who will work their case very well and there are some people who are like, "I'm not going to deal with that because he's problematic. I don't want to deal with him." It's a catch-22...I am seeing probation officers who are willing to work with them to make sure that after probation you have really followed through on the treatment. I think you have some probation officers who are not willing to go the extra step and that's maybe why you would have more revocations. It all depends on the individual basis. – Prosecutor

But I also, in my experience, see probation officers and their clients butt heads...Then I think that instead of wanting to work with the client, it's just that, "He's not going to follow me, not going to listen to me. Let me just send it," instead of staying and wanting to work with them. – Probation Officer

Officers vary in their tolerance for people on probation who are particularly difficult, and may struggle when they do not have the tools to work with them effectively. As one probation officer put it, "Sometimes it could be your level of exhaustion with the client."

People being at their wits' end sometimes saying, "We've tried all these different options and this person continues to pick up new cases." Sometimes I think it's just — and I've heard Probation say it — of like, "We just need to clear up and close these files." You're like, "You're talking about a person," and clearing up and

closing a person, like you don't want this paperwork on your desk ...but...Sometimes I think some of our clients can be incredibly difficult to work with — and I think that's a hard one — where I can imagine they're not the easiest people to supervise on probation. I think that's sometimes where you get these recommendations that seem kind of crazy given the allegations and it's, "I understand that this person's hard to work with, but that doesn't mean your work's done." Sometimes I do feel like Probation just wants to shut the case, move on, and be done with that person. – Public Defender

We all have our own threshold. As much as we want to be professional, and as much as we want to utilize programming, our toolbox of EBP, motivational interviewing, at some point we all hit the wall. It's like a marriage or raising kids. You get reactive and then keep wanting to pull the plug. – Probation Officer

For others, their level of tolerance may stem from frustration when they feel people on probation are not working with them or when probation officers feel probationers do not respect or appreciate the opportunity they have been given with a probation sentence.

I think that's a driver is the people who have really been given a "get out of prison free" card and have spit on it. That pisses people off, I think. – Probation Officer

Additionally, some thought caseload size played a role, stating that officers with large caseloads may be quicker to revoke due to a lack of time or resources available to spend on difficult probationers.

I think that's probably a pretty big driver is the bigger their caseload, the thinner their resources are spread and the less patience they're going to have for the people who are blowing them off. I think that's understandable. – Prosecutor

Multiple interviewees offered a different perspective, pointing to a third category of drivers of probation revocation: systemic issues. Respondents commented that there may be racial bias and a lack of cultural understanding and connection between probation officers and people on probation. In other words, the inability of probation officers to connect in meaningful relationships may be driven by differences in race and culture between probation

officers and people on probation, and the fact that the demographics of probation officers are not reflective of the communities in which they work.

My colleagues will say “the experience I have is I have supervised all these Black offenders.” Well, that’s not being culturally competent. The only experience you have with the African American community is in Corrections. – Probation Officer

I supervised this 35-year-old Black male and I said, “What was the most important thing to you? You’ve been in the system for some years as a juvenile. What was the most important thing to you when you got put on probation again?” He says, “The race of my PO.” That’s a big deal. That’s the most important thing to him. He was a Black male client. What he expects is to be jerked around or sent to prison based on the race of his PO. That’s significant. – Probation Officer

One individual noted the role of racial trauma, and suggested that the solution is for probation officers to recognize those experiences and treat every person on probation with compassion.

Racial rage and anger look the same, but they aren’t the same. I can go to anger management class, go through it with flying colors, and still end up with a problem later on because I never got a chance to deal with that accumulation of being degraded and devalued not only within my everyday work, but by the system itself. The system is just another level of devaluating me as a Black man, which feeds my rage. If I didn’t recognize my rage, then my rage ends up being my worst nightmare. – Community Service Provider

One person also pointed out that there may be language as well as race and cultural barriers because not all people on probation speak English as their primary or first language.

There could be also a language issue and so maybe if they are enforcing somebody who is not an English speaker or have their own biases, it might be difficult for that person to follow through on those recommendations to understand...I think if you can have somebody who is speaking the language or understands the culture, that will help really educate and show the

defendant while they’re on probation what your expectation are. The better they are to help, I think, the better and more successful somebody will be on probation.

– Prosecutor

A few probation officers suggested there had been discriminatory hiring practices rather than a shortage of diversity in the pool of individuals who would be qualified for positions as probation officers; others indicated that hiring non-white probation officers simply had not been a priority.

...our department has done a poor job of having a diverse department. Fifty percent of the agents should be people of color. It’s not just African Americans. I have seen it with the Hispanic population, Native American population...The leadership in our department hasn’t been a priority to them. It’s only been the priority to the point of “we don’t want that bad press.” It’s only recently that they have begun to embrace, “Oh, yeah, I guess we should represent the community we serve.” – Probation Officer

It’s not a recruiting issue, it’s a hiring issue. They need to have more Blacks in decision-making positions. There are qualified people. Ramsey County Corrections has a reputation in the State of Minnesota as not being good to people of color as employees and not hiring them. People are not interested in working for the county. – Probation Officer

Other systemic issues included underutilization of alternatives to revocation and more active oversight of cases. Some suggested that revocations occur because Ramsey County underutilizes transfers into drug court for people struggling with addiction or sanctions conferences for low-level violations.

I also think there’s an overriding frustration that we can’t put as many people into treatment courts as we would like to. The beauty of treatment court is that you can put anybody in treatment court on a probation violation regardless of the offense since there’s disqualifying offenses at the front end. But once somebody is on probation and they really are having trouble staying sober, you can use treatment court regardless of what offense they’re being supervised on. – Prosecutor

Finally, some noted that higher revocation rates may be partially related to there being more active oversight of cases in Ramsey County. Respondents said that more cases are on active supervision compared to neighboring Hennepin County, and respondents perceived that there is more involvement by the bench in monitoring progress on probation.

In Hennepin County, there's so many people on probation and so few resources that if you get certain offenses you're automatically on unsupervised probation. They're not even really monitoring a lot of people, so maybe that's why their revocation rates might be lower is because they've got huge caseload of people that aren't even watched. – Probation Officer

We are on top of our cases and we do tend to have a bench that is actively involved and wants to be made aware of misconduct. That, I think, are the drivers of why we might have more violations than what we should have. – Probation Officer

One aspect of the system that did not appear to be an issue was the availability of treatment and programming. Respondents generally agreed that there are numerous programs and resources available in Ramsey County, and that the greater challenge is maintaining awareness of all of the programming and matching it to individual needs. But there were still areas they felt could be improved. Rather than establishing more treatment programs, for example, one person noted that it would be helpful to have services dedicated to helping people on probation obtain identification cards, social security cards, and insurance. It was also noted that the services that exist already should be more integrated with the probation office to facilitate “warm handoffs” between probation and available programming or services.

I would say what leads to [revocations] is the lack of connection between the community and our department. We cannot walk our clients to get services — and this isn't all on us. I'm just saying — that they need because it's too disjointed. There aren't good enough handoffs, but resources impact that quite a bit...I would love to see a GED program having meetings in our unit like we used to...I would love to have a variety of community resources periodically coming into our units, where we could just hand them off to that provider, kind of be the icebreaker. – Probation Officer

VI. Discussion and Recommendations

This report paints a comprehensive picture of the revocation pathway in Ramsey County, Minnesota, drawing on information from a legal and policy review, data analysis, and interviews. In this section, we discuss some of the implications of the findings above, and provide recommendations for improving outcomes for people on probation in Ramsey County.

Reprioritize Probation Violations

Practitioner interviews revealed that probation violation hearings are deprioritized by the system. Probationers are deprioritized when their cases are marked as unresolvable and they are forced to spend additional time in jail waiting for an available slot on the sentencing judge's calendar. Probation violation hearings have no regular timeslot on the court calendar, and are often squeezed in after first appearances or sentencings. Moreover, they may not be attended by all relevant probation and court actors. It appears that prosecutors rarely attend probation violation hearings except when violations are contested by the person on probation. Conversely, defense attorneys attend all probation violation hearings, but have little time to prepare before the person on probation must appear before the judge. And because there is no prosecutor present, defense attorneys have no one with which to broker an agreement regarding resolution of the violation, and probation officers face injuring their relationships with clients by being forced to argue to the court for revocation. While there is always a probation officer present at the hearings, the officer may be a representative from the intake unit who is covering the hearing rather than the officer who filed the violation. Due to the lack of prioritization, probation violation hearings may suffer from insufficient representation, both on the side of the state and the person on probation, resulting in rote outcomes that follow the probation officer's recommendations even in contested cases.

In order to promote the success of people on probation, it is recommended that probation violations be *reprioritized* by the system. The court should permanently discontinue its practice of marking cases as unresolvable, or, if the sentencing judge does want to hear the violation, the

court should at least permit the judge presiding over the first appearance to determine release conditions pending a later hearing with the sentencing judge. The court should also consider assigning regular space on the docket to address probation violations. Prosecutors should consider ways to make attorneys available to attend probation violation hearings, at a minimum, to address plea bargaining needs, and to address the court when revocation is the recommended disposition.

Delve More Deeply into Both Criminal and Technical Violation Reasons and Reconsider the Use of Jail

Practitioners who were interviewed for this study indicated a clear perception that new crimes drove revocations in Ramsey County. They also indicated a clear perception that technical probation violations (non-compliance not involving a new crime) were treated differently than probation violations involving new criminal behavior. This perception was so strong that the probation pathway in Figure 3 includes this distinction between technical and new crime violations. But as explained here, what the data revealed is that there are *two* two-track systems. The first involves differential treatment for technical versus new crime violations. The second involves differential treatment by offense level. Because these two tracks are nested, the end result is that although new crimes are more likely to be revoked at all offense levels, it is also true that violations at the GM/M level are more likely to be revoked...period.

First, a fair number of probation violations—just under a third—involved new crimes. While this was one of the largest single reasons for probation violations, technical offenses made up a larger proportion of violations overall. Looking at outcomes for the first probation violation, when the violation was a new crime, the odds of revocation were 31% to 51% higher than for technical violations. Thus, although new crimes did not make up the majority of violations, people whose violation was commission of a new crime were more likely to be revoked. In those cases, few in the county disagreed that the new criminal

behavior should carry consequences. But we did not have any information in this study about what types of new crimes were committed, and therefore were not able to discern the extent to which the new criminal behavior suggested legitimate risk to public safety or whether some of that criminal offending might be related to the other issues identified as potential drivers of revocation (e.g., poverty, homelessness, or substance use). For example, if some new offenses are repeat DWI or drug offenses, then that would suggest that better addressing substance use issues could also decrease reoffending. Therefore, it may be beneficial to review the files to learn more about the types of new crimes committed by the probation cohort.

Second, although overall, technical violations are treated differently than new crimes, the types of technical violations also differed by offense level and present different issues to be addressed. At the felony level after new offenses, the largest group of technical violations and revocations was for failure to maintain contact (36% of the violations, Figure 11; 23% of the revocations, Figure 19). And as shown in Figure 10, failure to maintain contact also showed up frequently in combination with other types of violations. Some probation officers tended to see failure to maintain contact as a public safety issue, but judges did not seem to think the issue was as serious, even going to far as to suggest that some probationers are hiding in plain sight. The interviews revealed that failure to maintain contact may encompass myriad issues, including homelessness, mental health, and chemical dependency. For people on probation who are struggling with basic needs, maintaining contact with their probation officer may not be a priority, and in some cases, may not be possible. Thus more work is needed to understand why failure to maintain contact occurs and to develop responses that address these nuanced situations. One simple solution may be to institute email or text reminders about probation appointments. A pilot project to reduce failure to appear for court appearances in Hennepin County resulted in a 25% reduction in the use of bench warrants.⁷² Taking a similar approach in probation may be effective in reducing failure to maintain contact.

⁷² See Podkopacz, M. R. (2019). Using Reminders to Reduce Failure to Appear in Court. Available at https://www.mncourts.gov/mncourtsgov/media/fourth_district/documents/Research/Hennepin-County-Court-eReminders-Project-September-2019.pdf.

At the GM/M level, after new offenses, violations involving program/treatment non-compliance or substance use/positive drug test issues were the largest group of violations and revocations (36% of violations, Figure 11; 29% of revocations, Figure 19). Most people are on probation for DWI offenses. Yet RCCC policy specifically provides that assessments are never done on misdemeanor DWI cases. As a result, only a fraction of these cases are actually supervised by the DWI unit; most are under group reporting at the PRC. The interviews indicated that DWI cases have a rote set of conditions, and that often, attorneys work with clients to complete those conditions prior to sentencing. While all of this may result in an efficient court flow, it may also be short-circuiting the opportunity to identify individuals who have real substance use needs and to match them to evidence-based programming designed to address their specific issues. For that reason, it is recommended that RCCC reconsider how DWI cases are handled. It may be useful to implement a DWI screener tool to better identify probationer needs. And further discussions should be had with criminal justice partners about how to balance efficient case processing with screening to promote better outcomes for people on probation.

Although it is true that overall, violations involving new crimes are treated differently than technical violations, it is also true that violations and revocations are treated differently by offense level. For felonies, the probation violation is the sanction. Or at least that appears to be how violations are being used. More than half of people in the felony sample (57%) had at least one violation, but of those, 81% were continued and only 19% were revoked. For those continued, one-third had no local incarceration sanction, but two thirds did. Thus, filing a violation does not appear to be about seeking revocation to prison, but about getting the person in front of the court and imposing some sort of consequence for the person's misconduct. In felony cases, a jail sanction is the default consequence.

In contrast, for gross misdemeanors and misdemeanors, the goal appears to be revocation. Though proportionally fewer violations were filed for this population (32%), almost half (44%) ended in revocation, and the odds of revocation were higher for those with the shortest probation terms (up to 12 months). Of those that were not revoked, almost half (47%) received a jail sanction. The practical effect of these outcomes is that there appears to be less tolerance for misconduct in GM/M cases than in felony

cases. This may be because there is less time to work with people who are on probation for GM/M cases. Or, it may be that jail is the default sanction for all violations, and that at the GM/M level, because jail as a "sentence" and jail as a "sanction for the violation" would be similar in length and served in the same place, it makes just as much sense to revoke the case as to continue it and impose a jail sanction. Thus, more discussion is needed to determine what may be driving these differences in treatment by offense level.

Relatedly, more discussion is needed regarding the use of jail (or the RCCF, as it is called in Ramsey County). Here, there are two issues: the length of jail sanctions, and the use of jail to address addiction. With regard to the length of jail sanctions, the interviews indicated that jail sanctions are articulated in months rather than days or weeks. These lengthy jail terms can have significant consequences for individuals in terms of their ability to maintain employment, education, and housing. It was noted by people from several sectors in the criminal justice system that the pandemic has forced everyone to rethink which types of violations really merit jail time, and in those cases, how much jail time is necessary to impose an adequate consequence for the violation. It is therefore recommended that RCCC work with its partners to develop new guidelines for the use of jail as a sanction, addressing both when it is used and to what degree.

Second, many people interviewed noted that for people in a substance use crisis, jail is often used as a way station to help them immediately address their substance use in a controlled environment while awaiting a bed in an in-patient treatment facility. Interviewees noted that the County had invested heavily in augmenting treatment in the RCCF, and the facility's reputation for services seemed to drive the view that jail was an appropriate response to substance use crises. In some cases, a person in crisis may present a public safety threat (e.g., a person who commits domestic abuse while drunk), and in these cases, using jail as a way station may be appropriate. But when addiction is the driving reason for the violation, it seems the person would be better served to address the substance use issue directly without the punitive experience of jail. For that reason, RCCC should work with the County to address treatment bed availability issues, and develop processes for facilitating entry into treatment rather than jail for these individuals.

Focus on Addressing the Basic Needs of People on Probation

Related to the distinction between new crime and technical violations, practitioners also perceived that persistent noncompliance drove revocations, but some indicated that such noncompliance may be caused by underlying issues such as substance abuse problems, homelessness, or poverty. Several interviewees suggested that more attention should be paid to addressing basic needs, which could potentially be achieved by better integrating probation with social services. There was no suggestion that probation officers should be addressing such needs, but that because they are working closely with probationers, probation officers are often in the best position to identify needs. Rather than make referrals, it was suggested that probation officers should be making direct handoffs to other services in the county. Thus, it is recommended that RCCC develop better integration with social services.

Address Racial Disparities in Outcomes

Race was an important finding in both the data and interviews. Race appears to have a strong association with violations and revocations for people who are Black and Native American. The odds of a probation violation are higher for these groups across offense levels compared to similar white individuals. However, the odds of revocation for first probation violations were dependent on offense level. The odds of revocation were higher for Black and Native American individuals in felony cases. But the odds of revocation were lower for Black and Native American individuals in GM/M cases. The finding for misdemeanors and gross misdemeanors may represent a “correction” by the court because people who were Black and Native American also had disproportionately more probation violations.

Although the data could provide no further insight as to why these differences by race occurred, interviewees commented that it may be difficult for probation officers and people on probation to connect in meaningful relationships because of differences in race and culture and the fact that the demographics of probation officers are not reflective of the communities in which they work.

Thus, it is recommended that RCCC continue its efforts to recruit and retain probation officers who are Black, Hispanic, Asian, and Native American. Some interviewees suggested having a more intentional approach to assigning probationers to probation officers. Members of the advisory committee also suggested that RCCC consider developing and implementing community navigator positions, in which people formerly or currently on probation could serve as mentors and points of contact to others on probation. The goal would be to provide peer-to-peer support in navigating through the probation sentence. It is further recommended that the phase of this project aimed at interviewing people on probation, which was severely delayed due to the pandemic and not included in this report, be completed so that RCCC can learn more directly how probationers experience racial inequities and develop strategies informed by those experiences.

Reconsider How Memos and Probation Review Bench Warrants are Used

Two less formal responses to misconduct involved submitting a memo to the court and requesting a probation review bench warrant (PRBW). These responses were mentioned frequently in the interviews and seems to enjoy widespread support. However, a review of the data showed that these responses may not be used as often as they could be. Further, with regard to PRBWs, it was unclear whether the response was functionally similar to a warrant, resulting in arrest, and whether such warrants were actively pursued or simply acted upon if the person was picked up by law enforcement for another reason. Though PRBWs can head off a formal violation, depending on how they are executed, some interviewees were concerned that they may be just as impactful as a regular warrant. Both memos and PRBWs appeared to have potential, but the data we had was not detailed enough to say definitively whether either option was effective in avoiding a formal probation violation. For that reason, it is recommended that RCCC engage in further discussions about when and how to use these options, and consider studying their effectiveness more directly.

Build in a Feedback Loop

A major theme that surfaced early in the project is that everyone in the system except probation officers has a skewed view of what happens on probation. Probation officers work with everyone who is sentenced to supervised probation. They see the successes and the failures. But everyone else in the system—judges, prosecutors, defense attorneys—only see the failures because after sentencing, they only see the probationer again if that person has a probation violation. Because judges, prosecutors, and defense attorneys have no other source of feedback, they are not operating with a full picture about what works in probation practice. To address this, RCCC should build in a feedback loop, and regularly provide information about probation success rates to the other actors in the system, and the larger community. This feedback loop could take the form of a report and/or regular updates at joint meetings. Alternatively, Ramsey County could consider instituting regular “hearings” (e.g., once a month or once a quarter) to celebrate probationers’ discharge from probation. Similar to a drug court graduation, an official discharge hearing could give people in the community and criminal justice system an opportunity to celebrate the success of people exiting the system and inspire individuals who are just starting probation that they will have support while serving their sentence.

Provide for Accountability by Continuing Collaboration

Another theme that emerged was the multifaceted nature of the probation pathway. The probation pathway involves multiple decision points at which people working in different parts of the criminal justice system exercise discretion. The court has discretion in deciding the parameters of the sentence and the conditions of probation. The probation officer has discretion in how they work with individuals, how they respond to misconduct, when they file a probation violation, whether to request a warrant or summons, and what sanction to recommend to the court. Prosecutors have discretion as to whether they will engage in the probation violation hearing. Defense attorneys have very little discretion, but they play an important role in advising the person on probation whether to admit to or contest the violation. And at the end of the process, the

judge has discretion whether to revoke or continue probation, and if continued, whether to sanction the individual or change the conditions of probation. There are so many different decisions along the revocation pathway that no single change to the system is likely to significantly impact overall revocation outcomes. But for each person on probation, each decision point is a potential “intercept” where a different decision could significantly impact a single person’s trajectory. For that reason, it is extremely important for each actor in the system to constantly examine their role and how they exercise discretion within that role.

The strength of this project is that all of the actors are at the table and participating in the Advisory Committee. Throughout the life of the project, the Advisory Committee has had frank and thoughtful discussions about many of the problem areas that were uncovered during the legal and policy review, data analysis, and interviews. Through such collaboration, the system actors can work together to hold each other accountable for their decisions and work to address areas in need of change. For that reason, it is recommended that RCCC continue this collaboration in this or a similar form.

VII. Appendices

Appendix A: Reducing Revocations Challenge, Ramsey County - Advisory Committee

- **Judge Reynaldo A. Aligada, Jr.**, Second Judicial District – Ramsey County
- **Leah Bower**, Ramsey County Community Corrections (Research and Evaluation Supervisor)
- **Prince-Andre Corbett**, Ramsey County (Racial and Health Equity Administrator)
- **Gregory Ellis**, MN Dept. of Human Services (Learning and Development Training Specialist)
- **Michelle Finstad**, Ramsey County Community Corrections (Interim Deputy Director, Administrative Services)
- **James Fleming**, Second Judicial District – Ramsey County (Chief Public Defender)
- **Lily Hanrath**, Robina Institute (Research Fellow)
- **Erin Harbinson**, Robina Institute (Research Scholar)*
- **Edward Hauck**, Ramsey County Community Corrections (Planning and Evaluation Analyst),
- **Corey Hazelton**, Ramsey County Community Corrections (Assistant Deputy Director, Adult Services)
- **Zachary Hylton**, Ramsey County (Senior Policy Analyst, Policy and Planning Division)
- **Lyle Iron Moccasin**, Takoda (Takoda Works Recruitment Coordinator)
- **Scott Kelly**, Second Judicial District – Ramsey County (Court Operations Manager, Criminal Division)
- **John Klavins**, Ramsey County Community Corrections (Director)
- **Julia Laskorunsky**, Robina Institute (Research Scholar)
- **Monica Long**, Ramsey County Community Corrections (Deputy Director, Adult Services)
- **Jessica McConaughy**, Saint Paul City Attorney’s Office (Deputy City Attorney)
- **Malissa McCrea**, Ramsey County Community Corrections (Probation Officer)
- **John Miller**, Ramsey County Community Corrections (Supervisor, Adult Probation)
- **Kelly Mitchell**, Robina Institute (Executive Director)
- **Lyndsey M. Olson**, City of Saint Paul (City Attorney)
- **Alan Parkhurst**, American Indian Family Center (Father and Men’s Outreach Specialist)
- **Elizabeth Reetz**, Ramsey County Community Corrections (Assistant Superintendent, Ramsey County Correctional Facility)
- **Jennifer Schuster-Jaeger**, Ramsey County Community Corrections (Deputy Director, Administrative Services)*
- **Cory Tennison**, Ramsey County (Assistant County Attorney)
- **Justin Terrell**, Council for Minnesotans of African American Heritage (Executive Director)*
- **Mariah Wilberg**, Formerly Incarcerated Person/Ramsey County Corrections Advisory Board Member

*These individuals left their positions during the life of the project.

Appendix B: Variables and Analysis Techniques

Independent Variables

Data includes information on key demographics for each person including age, gender, and race/ethnicity. Data elements from the offense and sentencing included: offense level, offense type category, random de-identified judge identifier, sentence length, probation type (stay of execution or imposition),⁷³ dispositional departure, and number of conditions. Variables related to probation include: supervision level, supervision unit, supervision type (i.e., field, group reporting), and risk assessment level and score (LS/CMI). We also consider additional variables related to probation violations including: memos, warrants and summons, probation officer recommendations, and driving reasons for the violation. In the regression models, all variables are included except number of conditions, memos, warrants and summons, and probation officer recommendations due to either collinearity issues or small cell sizes. Driving reasons were included in the revocation models but not the probation violation models.

Dependent Variables

There are two types of outcome variables we considered from the probation cohort data. The first set of analyses examine predictors of probation violations. This is coded as a dichotomous variable, where someone is categorized as “yes” if they had at least one probation violation filed within the two years from the start of probation. The second outcome variable is revocation, which is coded as a dichotomous variable in which anyone who had a revocation at least two years from the start of probation is categorized as “yes”. In Ramsey County, theoretically there are three possible outcomes for a probation violation disposition: revocation from supervision (revoked to jail or prison, depending on the offense level), continued on probation (with or without a jail sanction), or a discharge with no further time. The category for “discharge with no further time” is collapsed into the revocation category for two primary reasons. One, very few people in the whole sample received this outcome, making it difficult to study as an outcome in a regression model. Second, discussion with RCCC staff and interviews from the qualitative data indicated that this practice was done most often with a similar “intent” of a revocation.

Probation Cohort Data Analysis Techniques

The data are described using frequencies and percentages, or means and standard deviations depending on the level of measurement for the variable. Different models were developed using probit regression to identify variables that were significant (at least $p < .05$) in predicting the dichotomous outcomes of violations and revocations.

⁷³ A *stay of imposition* occurs when the court accepts and records a finding or plea of guilty but does not impose (or pronounce) a sentence. A *stay of execution* occurs when the court accepts and records a finding or plea of guilty and pronounces a jail or prison sentence, but suspends the service of that incarceration for a period of time. By law, if a person who is given a stay of imposition for a felony or gross misdemeanor conviction successfully completes probation, the conviction will be deemed a misdemeanor.

We wanted to ensure that our multinomial models used to predict the filing of probation violations and revocations were robust to interpretation. To do this we went through multiple steps to account for offense specific variables, missing data, selection effects, and multi-collinearity.

First, the data was separated into two samples; one with the GM/M cases and one with the felony cases. Certain variables are either not included in both models, or operationalized slightly differently due to differences in the relevance and sample size for certain variables. Three variables are included for only one sample; one in the GM/M sample and two in the felony sample. First, offense level was included in the GM/M sample to compare gross misdemeanor and misdemeanor cases. Second, presumptive disposition and LS/CMI risk score were only included in the felony sample as the GM/M sample does not have presumptive dispositions and the majority (68%) do not have risk scores calculated. There are also three variables we operationalized slightly differently between samples. For offense type, sex crimes were included with person and violent crimes and drug crimes were bundled with property crimes in the GM/M sample due to there being too small a number of cases to consider independently (there were only 9 sex crimes and 4 drug crimes). We separated out the predatory sex field unit from other field units in the felony sample as we felt this unit had distinctive characteristics that may differentially relate to violation and revocation risk. Finally, sentence length was divided based on the common sentence lengths within each sample.

Second, the models were then imputed to account for missingness on race, supervision level, and, for the felony sample, presumptive sentence. Race and presumptive sentence were both missing for less than 4% of cases at most for each sample but supervision level was missing for 10% of the GM/M sample and 16% of the felony sample. Due the relationship of supervision level to other variables like risk score and unit, we are confident in our ability to accurately predict the correct supervision level for those cases.

Third, we wanted to be able to look at revocation accounting for the selection effect of having or not having a probation violation filed. There may be people on the margins who did not have a probation violation filed but would have gotten revoked and people who did have a probation violation filed who wouldn't have had one if they were in a different group (such as being a different race). In other words, the likelihood of revocation is *conditional* on a probation violation being filed. If we were to model revocations without taking this conditional selection into account, the relationship of the variables to the outcome would include the impact of probation violations. This means any significant relationship may be a true difference in revocations, but it may also be a difference in probation violations being filed. Because we cannot control for every selection, we consider only revocations from the first violation. In order to predict revocations after one violation, we used a Heckman two-step correction. This correction accounts for the differences in likelihood of getting a probation violation and predicts revocation balancing for that likelihood. As implied by the name, the model uses a two steps: 1) A probit model is run with probation violation set as the dependent variable and all variables of interest included in the model; 2) An *exclusion restriction* is selected from the probation violation model. This is a variable that predicts the first outcome (a probation violation being filed) but only impacts the second outcome incidentally through the relationship to the first outcome. We use supervision level as our exclusion restriction in both models as well as the LSCMI risk level in the felony models. These variables are good exclusions as they are facts of a case that are known to the probation officer but not generally known to the judge. This means that supervision level should not impact the judges' decision directly. The final revocation model shown includes a rho and athrho (a transformed version of the rho) which indicates whether the probation violation and revocation models are correlated. Neither the felony nor GM/M models have a significant value for the rho which indicates our prediction of revocations is independent of the likelihood of getting a probation violation filed.

Finally, fourth, the models were examined for multi-collinearity by using the VIF values; in cases where variables had high multi-collinearity, a decision was made to pick the most reliable data element and select a measure that would be most informative for interpretation. For example, the models initially included “number of conditions” as a variable but due to a high VIF (likely because it relates to the supervision unit and risk score) we did not include it in the final model. Additionally, “offense type” and “supervision unit” have slightly different categories in the GM/M models and Felony models due to a small number of cases falling in a particular category resulting in unreliable estimates. Additionally, some variables were tested in other variations of models but dropped to increase the degrees of freedom available or because they did not meet the requirements for imputation. The use of imputation and the Heckman correction, which uses robust standard errors, made it more difficult to include every variable of interest. Variables tested but ultimately not included are: sentencing judge (removed due to degrees of freedom: not a significant predictor), warrant type in the revocation models (removed due to inability to impute: not significant in non-imputed models), and PO recommendation for revocation (removed due to inability to impute: significant, positive predictor in non-imputed models).

Appendix C. Additional Recommendations

This study uncovered numerous smaller areas in need of attention that did not merit a fuller discussion in the report. Briefly, we recommend the following.

1. Consider establishing policy about when to recommend summons instead of warrants for probation violations.
2. Revise the ROMP as follows:
 - a. Consider adding incentives to the response grid.
 - b. Revise the sanctions conference procedure so that it restores the power of participation to people on probation, and utilize sanctions conferences more often.
 - c. Formally incorporate the alternatives to incarceration law into the ROMP.
 - d. Make sure the ROMP work for all units, including the Probation Reporting Center.
 - e. Provide training on the ROMP so everyone understands how to use it and that it does not impede their ability to get the result they want; they can still use their experience to drive results.
 - f. Explain the ROMP to external partners and keep them up to date on changes to procedures.
3. Revise the early discharge policy so it is easier to use (simplify it), and use it as an incentive for people on probation by informing them up front what they need to do to earn early discharge.