

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

AN EXECUTIVE SUMMARY OF THE REPORT FOR THE
REDUCING REVOCATIONS CHALLENGE

Submitted by the Robina Institute of Criminal Law and Criminal Justice
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Thanks also to the Reducing Revocations Challenge Advisory Committee. Comprised of people from across the system, including probation, prosecution, defense, community service providers, and justice-involved individuals, the Advisory Committee was an integral part of this project, providing feedback and advice, asking really good questions, and constantly challenging us to rethink our assumptions.

Finally, thanks to the leadership of Ramsey County Community Corrections (RCCC) for engaging with us in this project. This report is the culmination of more than four years of continuous engagement between the Robina Institute and RCCC, and stems from a sincere desire by the leadership to promote better outcomes for people on probation in Ramsey County.

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*

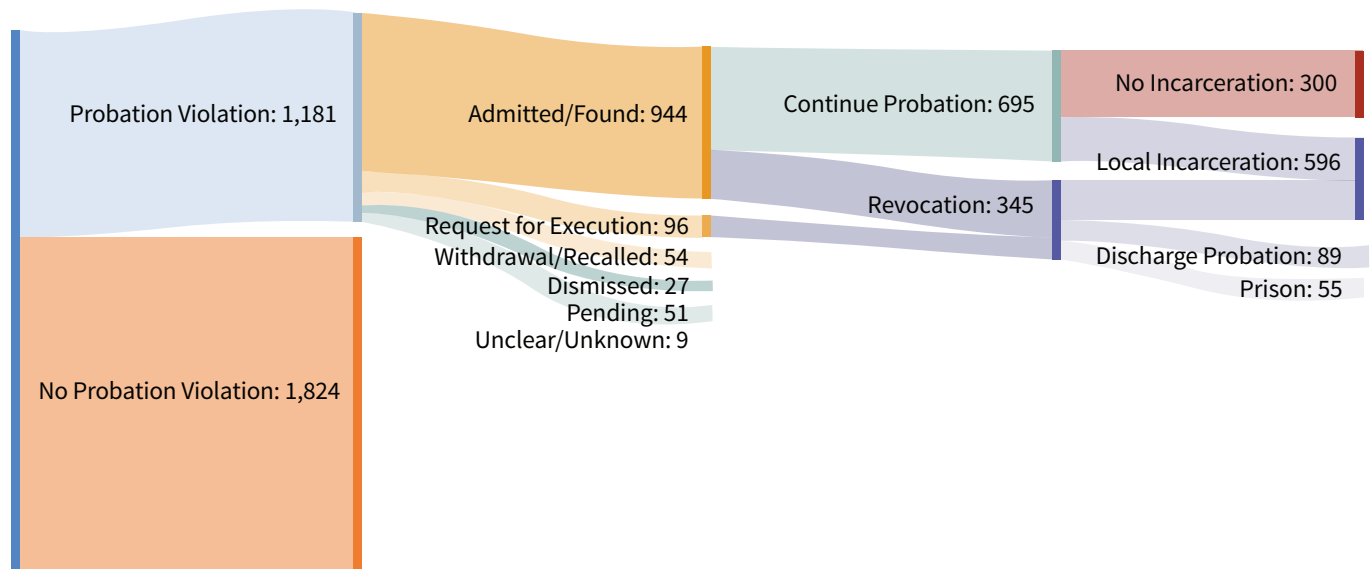
The strength of this project was criminal justice system actors, members of the community, and formerly incarcerated individuals were at the table and actively participating via the project Advisory Committee. Through continued collaboration, these actors can work together to hold each other accountable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

The Probation Pathway Overall

This figure shows the high level outcomes for the probation cohort. 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 sentence, and of those, about one-third were revoked, and two-thirds were continued (or reinstated) on probation.

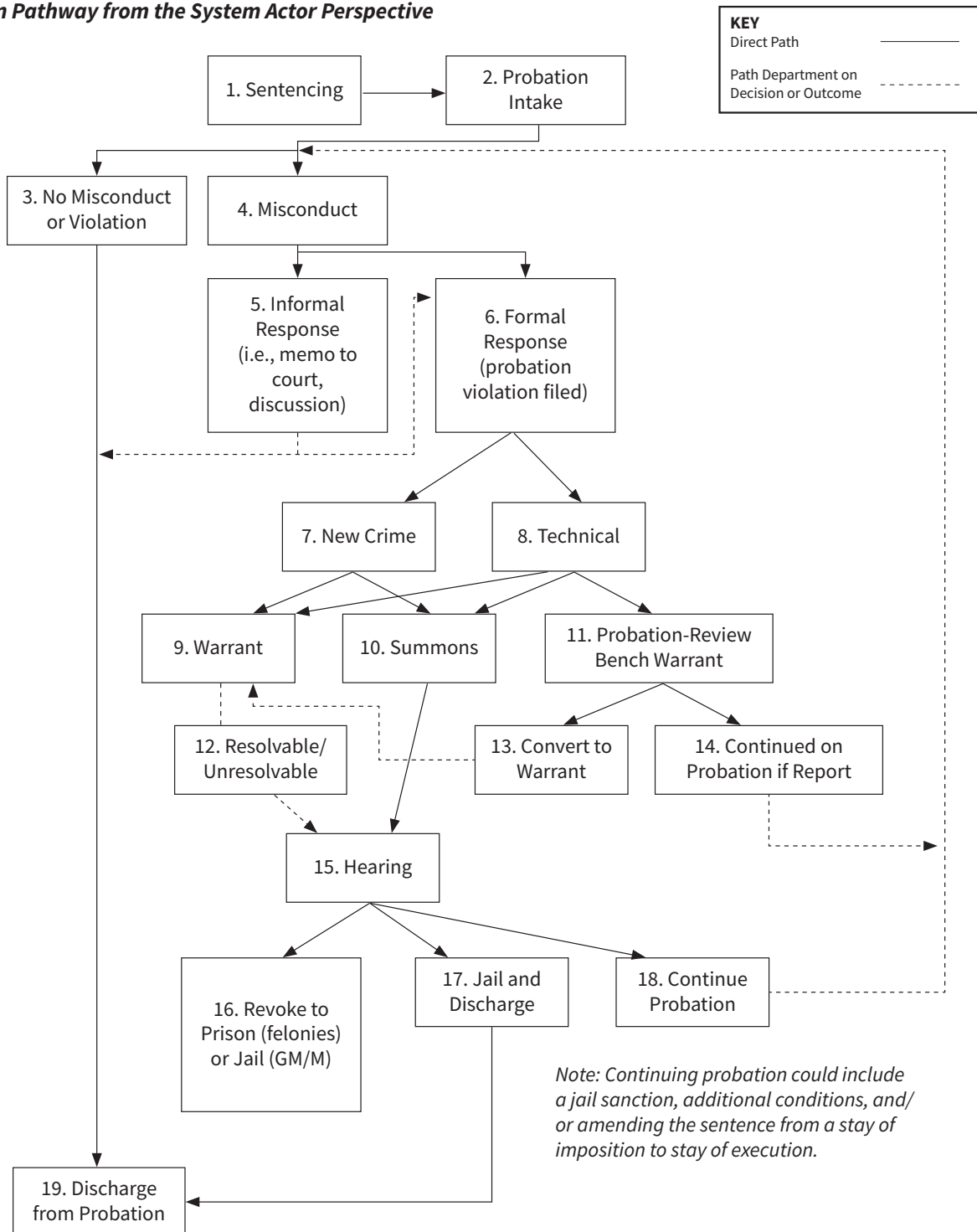
Though a large contingent of those violations admitted or found received no incarceration in response to the violation (28%), most individuals received some form of incarceration, either as a sanction for the violation or as a consequence of being revoked. About one quarter of revocations resulted in a discharge from probation rather than incarceration.

Overview of Probation Outcomes



This figure reflects the probation pathway as we came to understand it by pulling together the legal and policy review, probation cohort data, and interviews. Read the full report to learn more about what happens at each step along the pathway.

Probation Pathway from the System Actor Perspective



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, 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.

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

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.

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.