



Justice Center

THE COUNCIL OF STATE GOVERNMENTS

Justice Reinvestment in Vermont

Fourth Post-Enactment Presentation to the Justice Reinvestment II Working Group

January 11, 2021

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Justice Center

THE COUNCIL OF STATE GOVERNMENTS

We are a national nonprofit, nonpartisan organization that combines the power of a membership association, serving state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities.

How We Work

- We bring people together
- We drive the criminal justice field forward with original research
- We build momentum for policy change
- We provide expert assistance

Our Goals

- Break the cycle of incarceration
- Advance health, opportunity, and equity
- Use data to improve safety and justice



A data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism

The Justice Reinvestment Initiative is supported by funding from the U.S. Department of Justice's Bureau of Justice Assistance (BJA) and The Pew Charitable Trusts.



Overview

1

**Policy Option and Report
Planning**

2

**Mental Health and
Substance Use Disorder**

3

**Probation Earned
Credit/Midpoint Review**

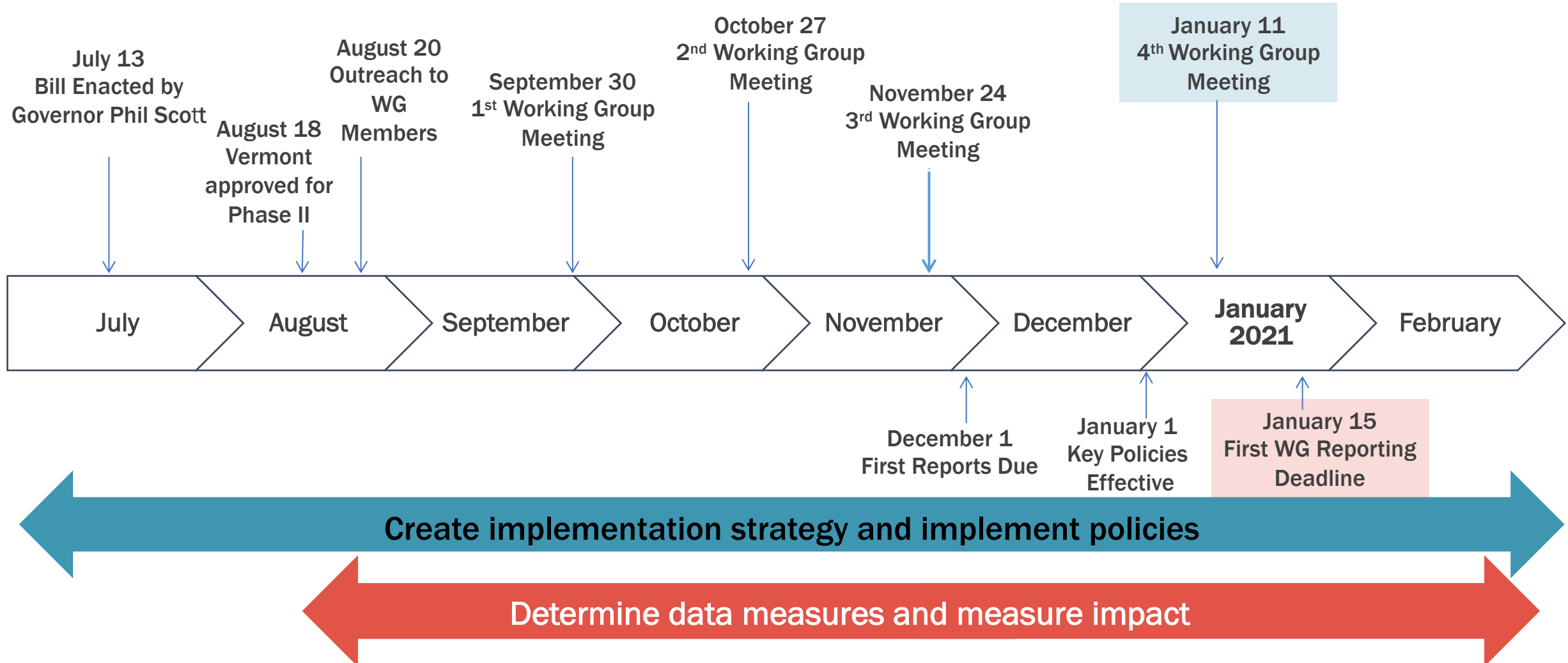
4

Reinvestment

5

**Implementation and
Sustainability**

This is the fourth working group meeting before the January 15, 2021, reporting deadline.



The working group will discuss policy options for their January report to the legislature and receive Justice Reinvestment II implementation updates.

January 11



- Discuss policy options related to probation earned credit, mental health and substance use disorder, reinvestment, sustainability, and implementation.
- Address the findings outlined in Racial Disparities in the Criminal and Juvenile Justice Advisory Panel's (RDAP) report to the legislature.
- Receive an implementation update from the Department of Corrections and the Parole Board.
- Discuss future working group meetings.

Act 148 requires the working group to study and make recommendations for legislative action related to several policy areas by January 15, 2021.

The working group prioritized four specific statutory tasks for this report:

1. Study earned time for people on probation and explore other related policy options.
2. Identify ways to increase Department of Corrections (DOC) and community provider risk and needs assessment information sharing to help inform plea agreement, sentencing, and revocation decisions.
3. Determine screening, assessment, case planning, and care coordination gaps for people with complex mental health and substance use issues in the criminal justice system and recommend system improvements.
4. Identify new or existing tools to identify risk factors that can be targeted with treatment and services.

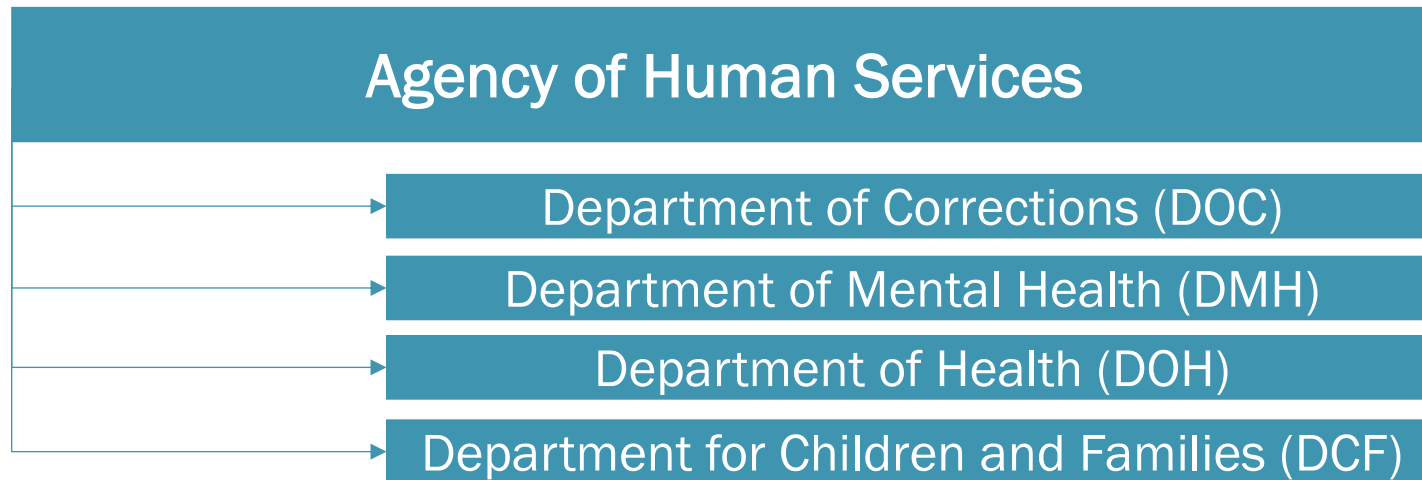


Overview

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- 2 Mental Health and Substance Use Disorder
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- 5 Implementation and Sustainability

Act 148 directs the Agency of Human Services (AHS) to work with CSG Justice Center staff to report current mental health and substance use assessments, case planning, and information sharing practices.

AHS, with the support of CSG Justice Center staff, took a collaborative, cross-system approach to gathering the information required in Section 22 of Act 148.



Other important stakeholders include the Parole Board and courts who need mental health and substance use information to make critical decisions as a person moves through the criminal justice system.

Vermont already has most assessment and screening processes in place for identifying mental health and substance use needs as people move through the criminal justice system.

	Detained	Sentenced	Furlough/Parole	Probation
Substance Use Screener (Primarily DOC)	✓	✓	✓	✓
Mental Health Screener (Primarily DOC)	✓	✓	✓	
Follow-up clinical assessment when appropriate (If incarcerated, conducted by DOC. If under community supervision, conducted by community provider.)		✓	✓	✓

Although Vermont has treatment case planning policies in place, people are still inconsistently connected to community-based mental health and substance use treatment services.

- There are challenges to sharing relevant mental health and substance use information and coordinating care between DOC and community-based providers, which can negatively impact overall case planning and subsequent treatment and programming referrals.
- Some DOC supervision offices have built strong relationships with local services and leverage these connections to help clients connect with available services. However, this is not consistent across Vermont, resulting in geographic variations in care coordination.
- For people with co-occurring disorders on Medication Assisted Treatment (MAT), there is often a lack of coordination for mental health treatment across providers and supervision.
- Assessment and screening results are not consistently shared between DOC (health care contractor, DOC facility reentry case workers, and supervision officers) and community-based providers to inform case management and care coordination.

Mental health and substance use information sharing between DOC, community-based providers, and the Parole Board is inconsistent across Vermont.

- Current information sharing between supervision officers and community providers is generally based on relationship rather than established processes or policies and therefore varies widely across the state.
- AHS does not have an “umbrella” information sharing policy that governs how its departments share information to support people with mental health and substance use needs in the criminal justice system who are served by more than one department.
- For people who are sentenced straight to probation, there is less mental health and substance use assessment and screening information available to inform supervision conditions than for people transitioning to furlough or parole.

Vermont faces several challenges to improving information sharing and care coordination.

- Real and perceived limitations related to federal privacy laws and regulations, including the Health Insurance Portability and Accountability Act (HIPPA) and 42 CFR Part 2
- Inconsistent knowledge among DOC staff, Parole Board, and other criminal justice stakeholders regarding evidence-based practices for serving people with substance use and mental health needs
- Inconsistent knowledge among community-based providers about serving people in the criminal justice system
- Lack of resources to address geographic disparities in mental health and substance use disorder health services
- Lack of resources to increase information sharing to inform supervision conditions pre-sentencing

The working group prioritized three interrelated areas of study regarding mental health and substance use for their report to the legislature due **January 15, 2021**.

1. Determine screening, assessment, case planning, and care coordination gaps for people with complex mental health and substance use issues in the criminal justice system and recommend system improvements.
2. Identify ways to increase DOC and community provider risk assessment information sharing to help inform plea agreement, sentencing, and revocation decisions.
3. Identify new or existing tools to identify risk factors that can be targeted with treatment and services.

The working group may consider several options to target mental health and substance use needs in their January report to the legislature.

OPTION 1 - Administrative

- Recommend that AHS convene representatives from each relevant department in the agency to develop and implement changes to policy and procedure that address barriers to information sharing and care coordination for supporting people in the criminal justice system with mental health and substance use needs.
- This AHS group could collaboratively modify agency policy and procedure to:
 - Adjust provider contracts to supply structure to information sharing practices;
 - Standardize AHS mental health and substance use needs information sharing between DOC and community providers, including the sharing of assessment results;
 - Adopt a collaborative coordinated case planning model; and
 - Identify opportunities for ongoing mental health/substance use and criminal justice cross-training.

The working group may consider several options to target mental health and substance use needs in their January report to the legislature.

OPTION 2 - Administrative

- Recommend that DOC use a validated mental health screening tool for people sentenced directly to misdemeanor probation.

OPTION 3 – Legislative

- Recommend that the legislature require DOC to develop a brief report that will be provided to judges before sentencing to inform condition setting for all felony probation cases. This report should include risk and need assessment results, mental health and substance use disorder screening results, and criminal history.

OPTION 4 – Strategic

- Recommend that DOC explore hiring licensed clinicians to be placed in local supervision offices to administer mental health and substance use screenings and assessments, as well as liaise with community-based treatment providers.



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Act 148 tasks the working group with evaluating the policy for people on probation earning one day of credit toward their suspended sentence for each day served in the community without a violation.

Other statutory considerations:

1. How to implement this policy without impacting probation term or suspended sentence lengths
2. Whether credit should apply to both maximum and minimum suspended sentences
3. Whether credit accrual equal to the imposed or statutory maximum term should result in discharge
4. Whether misdemeanor probation terms should be limited to two years or if the court should have discretion to impose a longer sentence
5. Additional options for early discharge from probation, including options modeled after Vermont's current midpoint review process

In October, the working group reviewed four primary policy goals that a probation earned credit policy might aim to address.



Decrease length of incarceration for people who were successful on probation for a period and then revoked to prison.



Decrease probation term for people who are successful on probation.



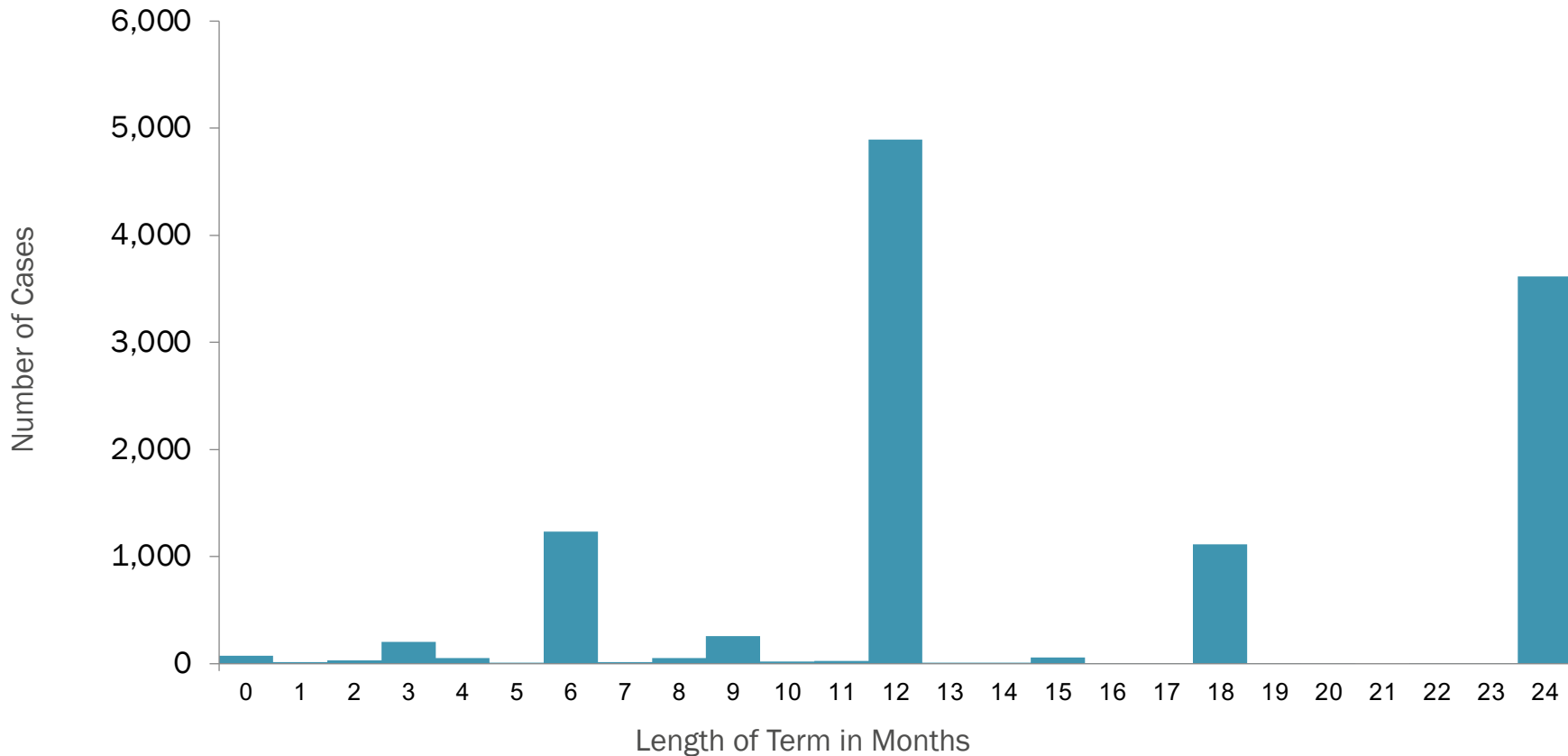
Provide people on probation an increased incentive for positive behavior change.



Increase probation resources available for focusing on those most likely to reoffend.

Misdemeanor probation sentences are often approximately one year in duration, and nearly all are two years or less.

Misdemeanor Probation Term Length in Months by Number of Cases
FY2015–FY2019

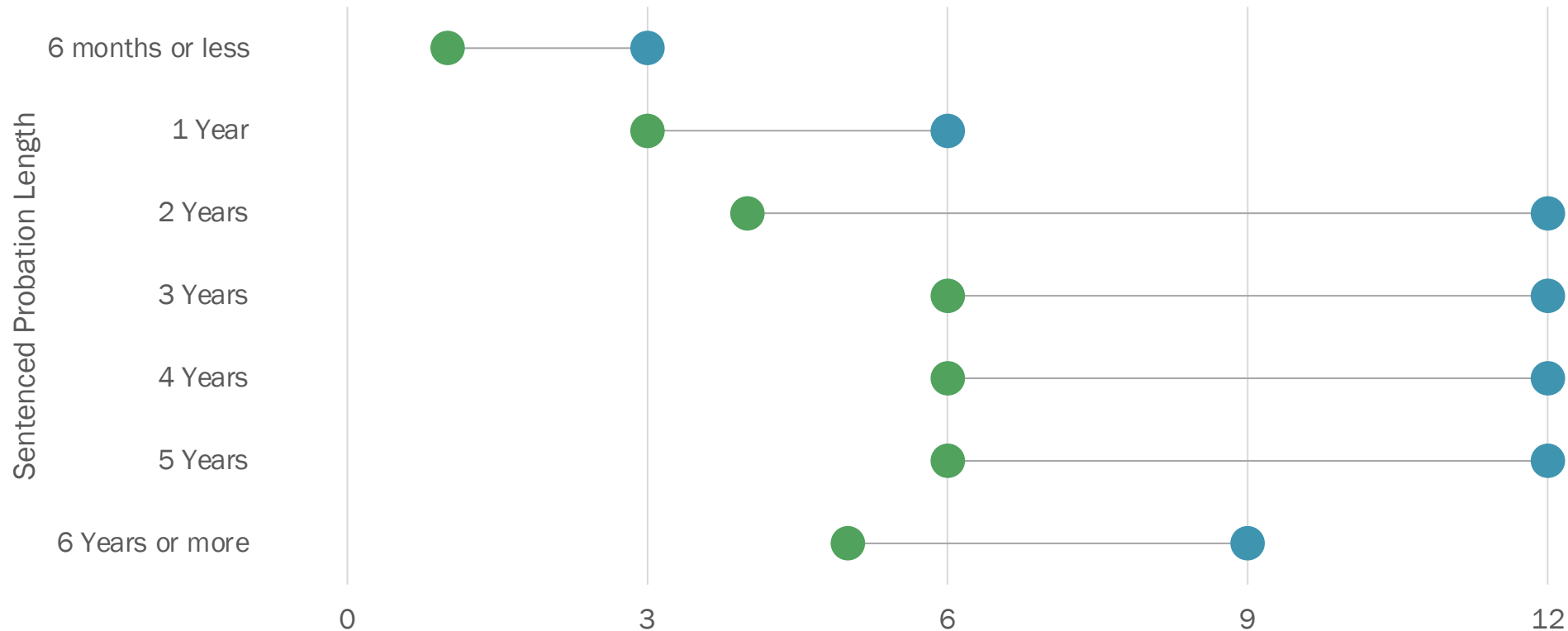


This consistency in relatively short misdemeanor probation sentences is likely due to Vermont state law, which states that misdemeanor sentences are not to exceed two years unless the court deems a longer period appropriate.

Underlying suspended incarceration sentences are generally significantly shorter than misdemeanor probation terms.

Minimum and Maximum

Misdemeanor Suspended Sentence Length
(Median, Months)



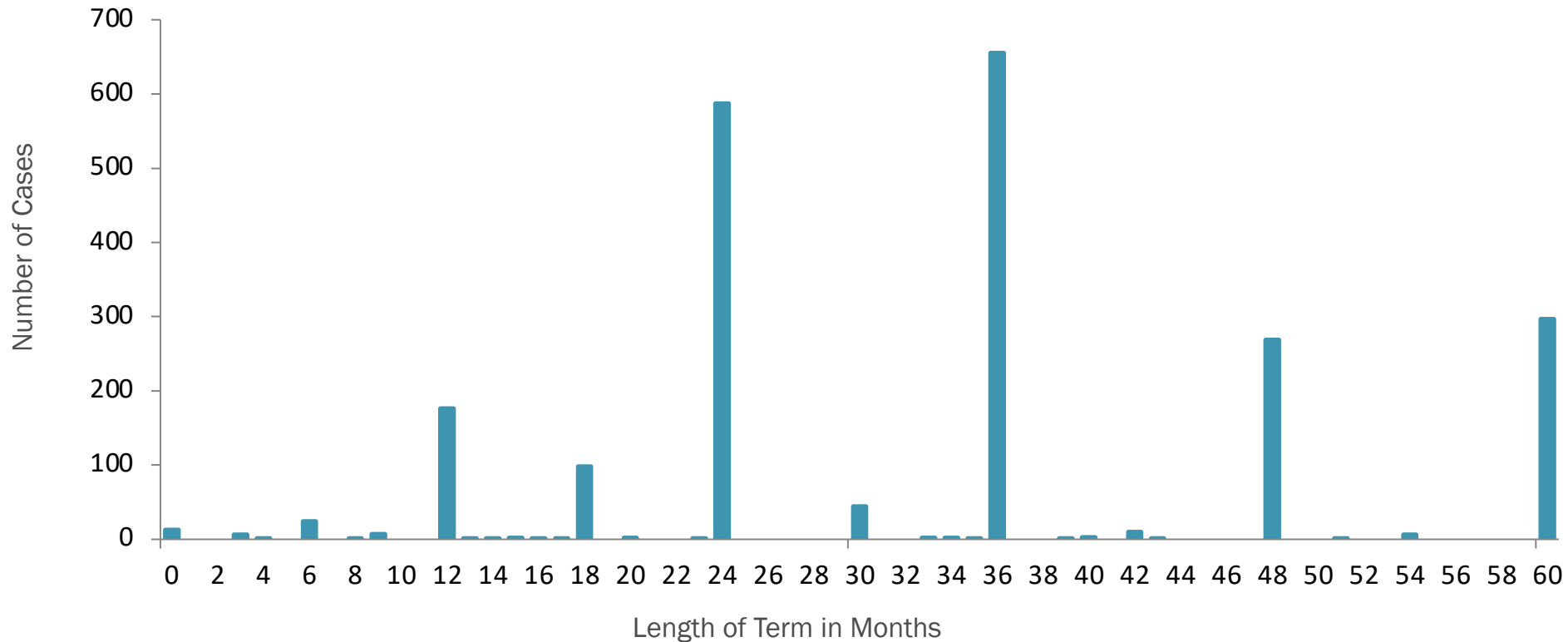
Overall, the median minimum suspended sentence is **three** months.

The median maximum suspended sentence is **nine** months.

For cases that included multiple consecutive sentences, all minimum sentence lengths and all maximum sentence lengths were combined to reflect a more accurate sentence range.

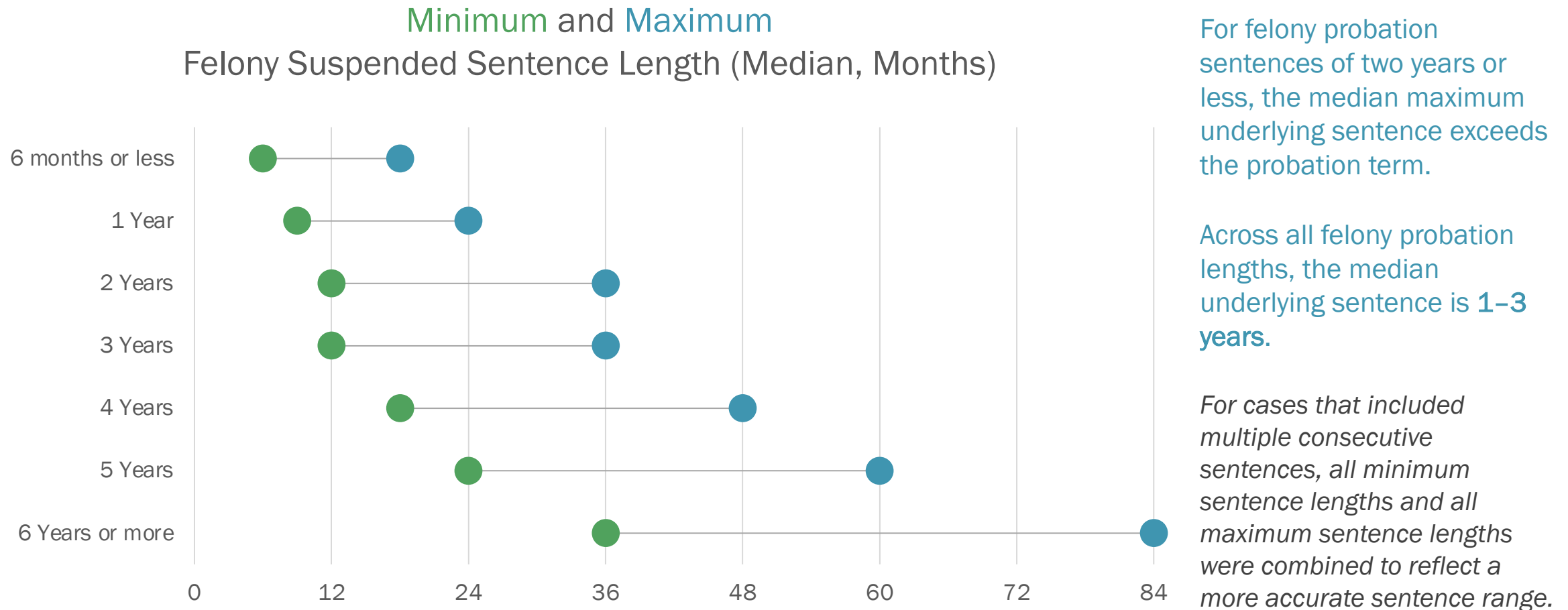
Nearly all felony probation sentences are less than five years.

Felony Probation Term Length in Years by Number of Cases
FY2015–FY2019



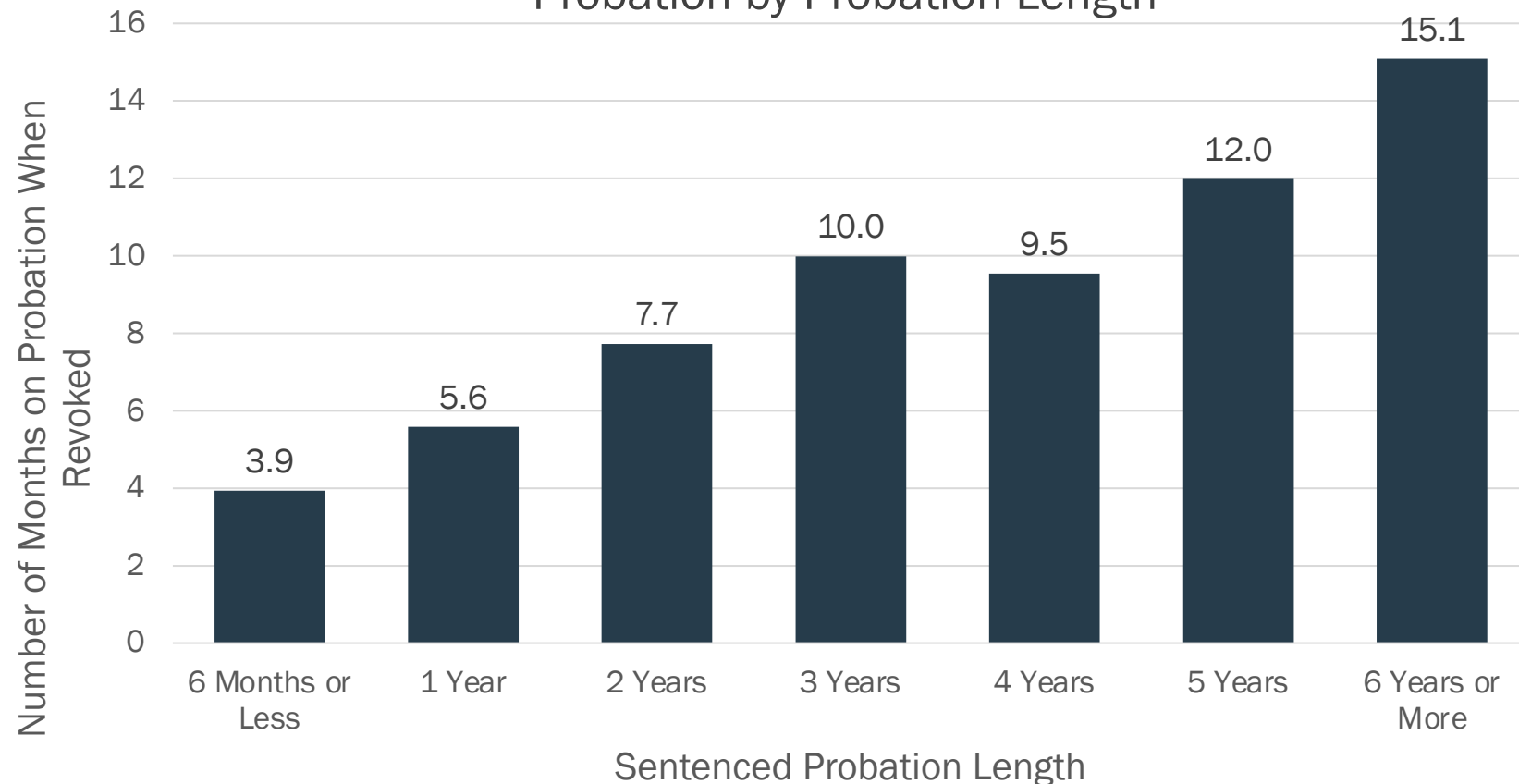
Statutory guidance states that felony probation sentences should generally not exceed four years unless the court deems a longer period appropriate.

Maximum suspended incarceration sentences are the same length as the probation term for felony probation sentences of over two years.



Most revocations for misdemeanor probation occur in the first half of the probation sentence.

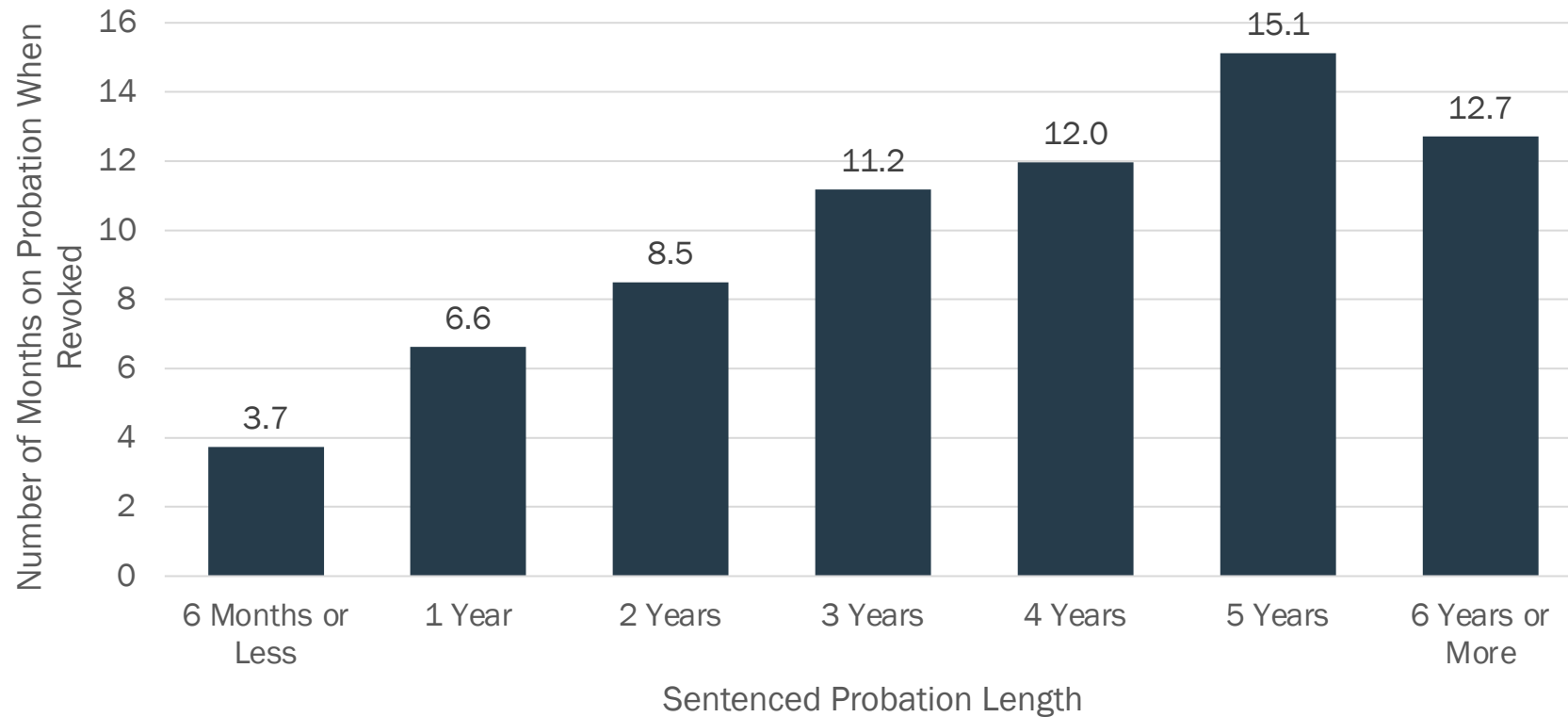
Average Time to Revocation for Misdemeanor Probation by Probation Length



On average, a person on misdemeanor probation, across all sentence lengths, is revoked in their seventh month of supervision.

Similar to misdemeanor probation, most revocations on felony probation occur in the first half of the probation sentence.

Average Time to Revocation for Felony Probation by Probation Length



On average, a person on felony probation, across all sentence lengths, is revoked in their 11th month of supervision.

38 states have some form of earned compliance credits or earned discharge for people on community supervision, but their policies and practices vary considerably.

For Vermont, additional information would be required to fully analyze how these types of policies would impact the probation population:

- How often and for how long are probation terms extended as a result of a violation?
- How do the imposition of minimum and maximum suspended sentences correlate with the amount of time someone spends in prison on a revocation?
- What are the outcomes for people on probation who are revoked to prison and placed on furlough or parole?
- When are people discharged in relation to their imposed probation term?
- How often are early discharge mechanisms currently used?
- What are the challenges to fully utilizing early discharge mechanisms?

Although CSG Justice Center staff did not have data to analyze the current midpoint review process or project impacts of a probation credit accrual or earned discharge policy, national data demonstrates benefits to safely reducing probation terms.

Released on December 3, 2020, a Pew study found that “many people on supervision serve longer terms than are necessary for public safety.”

This study recommends state policymakers adopt similar policies to what Vermont is considering:

- **Goal-based supervision** to prioritize outcomes as opposed to time-based supervision
- **Earned compliance credits** to promote positive behavior, encourage compliance, increase successful supervision outcomes, and reduce caseloads
- **Automatic review of supervision** to ensure that states use clear and definable guidelines to determine eligibility for earned discharge to ensure fairness

Based on previous working group discussions, there are two primary policy options members may consider to address the goals of a probation earned credit policy.

OPTION 1

Recommend that the legislature adopt a probation earned credit policy.

- Apply probation earned credit to the underlying minimum sentence.
- Apply probation earned credit to the underlying minimum sentence until there are only 15 or 30 days remaining to ensure a minimum term of incarceration available for revocation, if needed.

OPTION 2

Recommend that the legislature adopt modifications to Vermont's midpoint review process to make it more presumptive and encourage its use, using a model of earned discharge policies from other states, such as Montana.

Based on previous working group discussions, there are two primary policy options members may consider to address the goals of a probation earned credit policy.

OPTION 2 CONTINUED

- Modify statutory language from “[DOC] may file a motion” to “[DOC] shall file a motion.”
- As in Montana, require judges to grant a request for discharge unless they determine it is not in the best interest of the person on probation or would present an unreasonable risk of danger to the victim of the offense.
- Set up additional opportunities for people who were not approved for discharge at the midpoint of their sentence to again be recommended for discharge later in their sentence if they are compliant with the conditions for supervision.

Regardless of potential legislative or administrative policy changes, Vermont must address supervision improvements to reduce technical violations that result in prison revocations.

- Strengthen the effectiveness of violation responses for people on community supervision through consistent use of graduated sanctions and formalize the use of incentives in supervision practices to promote positive behavior change.
- Ensure people receive the services they need to be successful by increasing cross-system understanding of the criminogenic, mental health, and substance use needs of people in the justice system.
- Increase community-based resources for people on supervision with mental health and substance use needs.

Absent these probation, furlough, and parole supervision reforms, violation rates will remain high.

By better addressing the multiple needs of people on supervision and investing in community resources, Vermont can increase supervision success while safely decreasing returns to incarceration.



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Vermont should pursue ongoing strategic investments in community-based resources to fully realize Justice Reinvestment outcomes.

FY2021 Reinvestment, as designated in enacted state budget

- Invest out-of-state bed savings in domestic violence intervention programming.

New FY2022 up-front funding and reinvestment

- **\$200,000** to maintain investments in domestic violence intervention programming
 - ✓ Continue support for the Vermont Council on Domestic Violence statewide intervention programming.
 - ✓ Reduce reliance on fee-for-service funding.
- **\$400,000** to target gaps in mental health and substance use community services for people on supervision
 - ✓ Expand community-based services for the non-Serious Mental Illness (SMI) population and people with substance use or co-occurring disorders.

Vermont should pursue ongoing strategic investments in community-based resources to fully realize Justice Reinvestment outcomes.

FY2022 Funding and Reinvestment CONTINUED

- **\$300,000** to strengthen transitional housing options and efficacy
 - ✓ Provide training to increase provider adherence to best practices.
 - ✓ Create a funding pool to decrease risk for participating landlords.
 - ✓ Explore assessment tools to identify housing needs for the corrections population.
- Sufficient funding to increase data-driven decision-making by improving DOC's data system
 - ✓ Improve DOC's ability to regularly collect, analyze, and share data.
- Support the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel's (RDAP) recommendation to create a three-person body charged with the definition, collection, and analysis of data pertaining to racial disparities across the juvenile and adult criminal justice systems.



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CSG Justice Center Phase II implementation assistance continues into 2021 with two main types of support to Vermont.

1. Technical assistance provided at no cost to Vermont:

- Lasts approximately 12–24 months, with the greatest intensity of support offered during the first year of implementation. CSG Justice Center support will end in **December 2021**.
- Vermont must continue reporting agreed-upon data metrics to the CSG Justice Center for two years after Phase II ends.

2. Possible one-time funding:

- A non-competitive grant funding opportunity of up to \$500,000 to remove barriers to implementation and improve Vermont's capacity to monitor progress and outcomes

CSG Justice Center staff are currently working with Vermont stakeholders to identify key metrics and establish benchmarks for monitoring progress.



In Vermont, state monitoring will track key outcome measures related to the incarcerated and supervised population, presumptive parole implementation, and the use of positive and negative reinforcements.

Vermont state agencies have six months from Phase II approval to apply for funding, which may be submitted in two applications for a combined total of \$500,000.

Category 1 Applications

Provides for up-front needs including key personnel and other time-sensitive requests

Category 2 Applications

Supports needs identified early in implementation

All subaward applications must be collaborative and focused on building agency capacity to support the effective implementation of Justice Reinvestment policies. Applications must follow federal grant rules and guidance for allowable expenses.

All subaward funding must be spent by December 31, 2021.

Vermont agencies are working with CSG Justice Center staff to develop and submit a comprehensive subaward application by February 2021.

Training for Parole Board members related to use of risk assessments.

AHS cross-department training focused on improving organizational-level collaboration to support shared clients who are in the justice system and have mental health and/or substance use needs.

Training on evidence-based housing practices for providers selected through DOC's upcoming Request for Proposal process.

Training for supervision officers on evidence-based correctional practices.

Training for supervision officers and community providers on engaging people on supervision with complex mental health and substance use needs.

Investments in improving DOC and Parole Board data collection and analysis processes.

Estimated total for trainings: \$150 – 200K

Estimated remaining subaward funds: \$300 – 350K

The working group should consider ways to support the ongoing implementation of Justice Reinvestment efforts.

Sustainability recommendations the working group could adopt:

1. Provide in-state staff with support for ongoing Justice Reinvestment II Working Group meetings in 2021 and beyond to support oversight of Justice Reinvestment implementation and the group's continued ability to discuss and analyze criminal justice data.
2. Establish a regular meeting schedule for the working group to monitor Justice Reinvestment implementation through 2022 and beyond.
3. Consider reevaluating the duties of the working group in Act 148 to ensure that they further the goals of Justice Reinvestment II implementation and appropriately align with the working group's ongoing staffing capacity.

Working group members are currently tasked with completing three outstanding statutory duties ahead of their second reporting deadline on January 15, 2022.

1. Study the efficacy of using probation as a presumptive sentencing structure for certain types of offenses for which connections to community-based programming to lead to better outcomes.
2. Evaluate the policy of parole eligibility for older incarcerated adults who are not serving a sentence of life without parole and who have served a portion of their sentence but not the minimum term.
3. Report to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions with its findings and any recommendations for legislative action on or before January 15, 2022.

Thank You!

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