

# **Study of Earned Compliance Credit: Recommendations for Minnesota**

**2017 Report to the Legislature**



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## 2 EXECUTIVE SUMMARY

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The 2016 Minnesota Legislature directed the Department of Corrections (DOC) to study and make recommendations related to implementing an Earned Compliance Credit program for the state. The concept was based on earned compliance programs enacted in other states. These programs provided early discharge options to compliant individuals in order to reduce probation caseloads and allow supervising agents to focus on the highest risk individuals under supervision.

The DOC invited key stakeholders to participate in a work group to review early discharge practices in other states and analyze options for Minnesota. The stakeholder group met over the course of 6 months and formed consensus in several areas as outlined in this report. In analyzing available data and current practice in probation and supervised release, the work group identified many areas of concern that would need to be addressed prior to any implementation of an Earned Compliance Credit program for Minnesota. Some of the key areas of concern include: existing disparities in pronounced probation sentences, the need for clarity and agreement between the courts, prosecutors and corrections, the need for technology enhancements to manage earned compliance credit, impact on existing early discharge policies, and role of victim input. After review and discussion, the work group provided key facts for consideration with the understanding that any changes to Minnesota's process of supervising individuals convicted of crimes needs to balance research-based approaches for ensuring public safety with possible program costs and/or cost savings.

Recognizing that, the Commissioner of Corrections offers the following recommendations:

- Earned Compliance Programs are not appropriate for Minnesota probation or supervised release
- Felony probation sentence length caps should be standardized using the legislative process
- Felony probation sentencing guidelines should be studied and recommendations provided to the legislature
- Resources need to be allocated to address geographic disparities in programming options

The DOC, along with our county and state partners, will continue to focus on providing public safety through effective offender change, which is a critical part of the DOC's mission:

*Reduce recidivism by promoting offender change  
through proven strategies during safe and secure incarceration  
and effective community supervision.*

### 3 INTRODUCTION

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The 2016 Minnesota Legislature passed legislation requiring the DOC to study and make recommendations related to the feasibility of implementing an earned compliance credit policy for offenders on probation and supervised release in Minnesota.<sup>1</sup>

Earned Compliance Credit (ECC) programs are based on research showing that individuals may respond best to a combination of rewards and sanctions.<sup>2</sup> In addition, (although without specific research currently that validates this) interviews with parolees have suggested in some jurisdictions that the prospect of early discharge provides a strong incentive to comply with monitoring conditions or to participate in correctional programming.<sup>3</sup> Support for ECC programs also point to the possibility of reducing caseloads for probation and supervision agents, allowing them to focus on higher risk individuals.

While several proposals for ECC policy changes emerged during the 2016 legislative session, the end result was a bill requiring the DOC to conduct a study and make recommendations using Senate File No. 2667 as the starting point of the study.

Senate File No. 2667 was originally intended to establish an ECC program for persons under correctional supervision. The credits earned were to be computed monthly and, for probationers, awarded by the court. The bill defined compliance credit as 30 days for each full calendar month that a supervised individual does all of the following:

- 1) Fulfills the terms of the individuals case plan;
- 2) Has no new arrests; and
- 3) Complies with the timetables related to progress in treatment and to making scheduled payments for restitution, child support, fines, and other financial obligations.

While ECC is intended to apply only to those individuals in compliance with their supervision requirements, it would be hoped that the presence of an early discharge incentive might possibly also reduce violations of their supervision conditions.

The Commissioner of Corrections appointed key stakeholders and practitioners to study the concept of earned compliance and develop recommendations to present to the legislature. The full committee began meeting in August 2016 and subsequently met an additional five times between August and December 2016.

This report summarizes the work of the group, data reviewed, and recommendations for consideration.

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<sup>1</sup> Laws of Minnesota 2016, Chapter 147 – H.F. No. 3590.

<sup>2</sup> Madeline M. Carter, *Behavior Management of Justice-Involved Individuals: Contemporary Research and State-of-the-Art Policy and Practice*, National Institute of Corrections (January 2015), <https://s3.amazonaws.com/static.nicic.gov/Library/029553.pdf>.

<sup>3</sup> Joan Petersilia, "Employ Behavioral Contracting for 'Earned Discharge' Parole," *Criminology & Public Policy* 6, no. 4 (2007): 807–14, <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=242585>.

## 4 WHAT IS EARNED COMPLIANCE CREDIT

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Earned compliance is a correctional practice that is designed to incentivize probationers or parolees (i.e., supervised releases) to adhere to the conditions of supervision. At its core, earned compliance is a more specific form of an early discharge program. An earned compliance program sets forth clear expectations that individuals will follow supervision conditions and establishes a formula where they can earn reductions in the lengths of their supervision terms for that compliance. For example, a probationer might earn 30 days of credit towards a reduced term for every 30 days of compliance with the conditions of supervision. Earned compliance programs are based on research showing that individuals on supervision respond best to a combination of rewards and sanctions.<sup>4</sup> Such a program can result in reduced caseloads by allowing compliant individuals to earn an early discharge. As a result, the remaining caseload may be comprised of individuals most at risk of reoffending, and most in need of the supervising agent's attention.

It should be noted that although this Committee's charge was to study the feasibility of earned compliance for both probation and supervised release, few states utilize earned compliance for post-prison supervision (i.e., supervised release or parole). Sections 4.1 and 4.2 below will therefore focus on earned compliance for probation, and a separate section addressing post-prison supervision will follow (Section 4.3).

### 4.1 ANALYSIS OF EARNED COMPLIANCE LAWS IN OTHER STATES

As of the time of this study, 11 states had enacted laws related to an earned compliance program. Analysis of the different state statutes revealed several key policy questions inherent in the development of any earned compliance program. The following sections identify those key policy questions and then describe how the 11 states addressed them. A chart detailing the findings described in this section is located in Appendix B.

#### 1. *How much credit is earned?*

The first question to be addressed is how much credit a probationer will have the opportunity to earn towards a reduction in the probation term. If the amount of credit is significant, it can have the effect of dramatically reducing probation terms, in some cases cutting the term in half. As such, the amount of credit that can be earned can have the potential for positive effects – serving as a major incentive for compliance with probation – and can also have the potential for negative effects – in some cases, shortening probation so much as to impact the ability of the probationer to complete treatment programs.

The majority of the states with ECC programs (5 of 11) offer 30 days of credit for every month of compliance. The next largest group (3 states) offers 20 days for every 30 days of compliance. Mississippi is somewhat unique in that the number of days of credit is equal to the number of days in the month of compliance. Nevada and Texas take a different approach, tying shorter credit amounts to specific aspects of compliance. For example, in Nevada, the offender can earn 10 days for each month current on payment of supervision fees, and fines and fees ordered by the court. The offender can then earn an additional 10 days for each month employed or engaged in an approved rehabilitation or education

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<sup>4</sup> See, e.g., American Probation and Parole Association, Nat'l Center for State Courts, The Pew Charitable Trusts, *Effective Responses to Offender Behavior: Lessons Learned for Probation and Parole Supervision* (2013), available at <https://www.appa-net.org/eWeb/docs/APPA/pubs/EROBLLPPS-Report.pdf>.

program. Texas takes a much more complex approach, awarding differing numbers of days for earning educational degrees, making full payment of court costs, fines, attorneys' fees and restitution, and successfully completing treatment or rehabilitation programs.

2. *How is credit awarded/administered?*

A second key policy question is how to award and administer credit. States can take two approaches. They can require that credit actively be earned, meaning that the probation officer is regularly checking for compliance with conditions and regularly recording such compliance. Or, in contrast, states can presume that credit will be earned, and allow credit to accrue automatically unless there is some indicator of noncompliance such the filing of a probation violation.

Credit is typically awarded and tracked by the corrections entity responsible for supervision of the offender. This was true for 8 of the 11 states. And in nearly every system, the award of credit is automatic, meaning specific court approval is not required. But in a few states, the court is actively involved in awarding credit as it is earned. In Texas, for example, the court must verify completion of the programs and activities for which an offender can earn credit.

Most statutes do not get into the mechanics of how often the sentence is recalculated to reflect the impact of the credit on the probation term; but of those that do, twice a year or every six months is the more frequent standard. It is thought to be better to specify *some* time period for this accounting so that the probationer has adequate notice as to how much credit has been earned and what the new probation end date is, based on the awarding of that credit.

3. *Are any conviction offenses excluded from eligibility for the earned compliance program?*

Nearly all of the statutes establishing earned compliance programs in other states also set parameters for excluding probationers with convictions for certain specified offenses from the program. Five states exclude misdemeanor convictions, most likely because the probation terms for such offenses are already short. Seven states exclude probationers who have been convicted of sex offenses. From there, the types of offenses that might be excluded vary, with some excluding DWI offenders, those convicted of kidnapping, or those convicted of "violent crimes" or the most serious classes of felonies. Some states also exclude offenders who have been placed on lifetime probation.

4. *Must the offender be current on financial obligations?*

An important question to be answered when developing an earned compliance program is whether "compliance" as it is defined within the program requires that the offender be current on financial obligations. Five of the eleven states that currently have earned compliance programs specifically require this. The other six states articulate a general requirement to be in compliance with all conditions of supervision, which would presumably include being current on financial obligations, but which may also leave room for interpretation. For example, if a probationer is making a "good faith" effort to pay his or her financial obligations, and is consistently paying *something*, but is falling short of the required installment each month, that might be considered compliant in some jurisdictions. As further discussed

later in Section 4.2, gaining clarity and agreement on what it means to be compliant with financial conditions is extremely important when implementing an earned compliance program because it can quickly become a sticking point that creates tension and disagreement between the court, probation office, and prosecutor.

#### 5. *Is there denial or forfeiture of credit?*

Another policy consideration is whether there should be any limits on earning credit. Can time be denied up front under certain conditions? And once earned, can credit be forfeited or rescinded? The eleven states take varying approaches to these questions. Six states take the denial approach; their statutes set forth affirmative requirements for earning credit, and if those requirements are not met, the credit is denied. Within this group, a few set forth very specific circumstances under which credit cannot be earned (e.g., absconding). Three states take a forfeiture approach; their statutes set forth conditions that will result in forfeiture of credit that has already been earned (e.g., a probation violation), and none of these three states permit the probationer to appeal the forfeiture decision. Two states have both elements in their system: credit can be denied up front and it can also be forfeited on the back end. Only one state – South Dakota – specifically states that credit cannot be forfeited once it is earned.<sup>5</sup>

Though states have written their statutes differently, certain conditions appeared to be common grounds for denial or forfeiture of credit. Six states specify that a violation of the conditions of supervision is grounds for denial or forfeiture, and an additional two specify that denial or forfeiture is triggered by probation revocation. It is important to note that both of these conditions – violation or revocation – require formal court action to trigger the denial or forfeiture of credit, which is different from a finding by the probation officer that the probationer failed to comply with conditions in any given month, though the failure may not have been significant enough to trigger court action. This leaves open the possibility that a probationer may not be in perfect compliance with the conditions of supervision, but may nonetheless be earning credit. As discussed in below, this underscores the importance of coming to a clear agreement within the criminal justice system as to what compliance means for purposes of this program. Within the states that utilize a formal probation violation as a trigger for denial or forfeiture of credit, a few also specify that the probationer cannot earn credit while court action on the violation is pending. After probation violations and revocations, the next most common reasons for denial or forfeiture of credit were not being current on financial obligations (4 states) or committing a new crime (3 states).

#### 6. *Is court process required to effect early discharge from probation?*

Nearly every jurisdiction explicitly requires court action to formalize an early discharge from probation based upon the credit earned, but it appears that only minimal process is necessary, and in some cases, a paper review may be adequate. One state – Arkansas – permits the prosecutor an opportunity to object to the discharge, which triggers a review hearing.

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<sup>5</sup> South Dakota law also prevents the court from imposing a sanction that extends the term of probation, so the limitation that credit cannot be forfeited is a firm change in the length of probation. 2013 South Dakota Codified Laws, Title 24, Chapter 15A, §24-15A-50.

## 4.2 KEY TAKEAWAYS FROM IMPLEMENTATION OF EARNED COMPLIANCE IN OTHER STATES

After gleaning the above information from a review of earned compliance statutes in other states, members of the Earned Compliance Committee were anxious to learn more about how earned compliance had been implemented in other states and what challenges and opportunities arose during that process. The Committee was able to obtain input from representatives in six of the eleven states: Arizona, Arkansas, Maryland, Missouri, Texas, and Utah. From this input, several themes emerged.

### 1. *Clearly Define Compliance*

Nearly every jurisdiction recognized that probationer behavior exists on a continuum that can range from perfect compliance with every condition of supervision on one end to behavior that rises to the level of a probation violation on the other end. In between the two extremes, the probationer might commit minor infractions, like missing an appointment, or paying some, but not all, financial obligations. Corollary to this, the probation officer's response to noncompliance is on a continuum ranging from a stern talk or warning to restructuring conditions to filing a probation violation action. In Maryland, where the statute was originally written to require "full compliance" with the conditions of supervision, probation officials struggled to determine if the language required a rigid application. Could they continue to address these less serious violations informally, or did the statute require that they file a violation report?

Both of the continuums described above already exist in regular probation. But when an earned compliance program is instituted, the range of probationer behavior and probation officer responses become more visible to all actors in the system, and if there is not agreement as to what compliance means (and therefore when credit will be earned) and what responses are appropriate for noncompliance (including denial or forfeiture of credit and formal probation violation processes), then tension and distrust can build within the system. Jurisdictions that experienced these tensions recommended getting buy-in from judges, prosecutors, and defense attorneys by including them when defining compliance.

Several jurisdictions specifically recommended excluding financial conditions from the definition of compliance. These jurisdictions felt that too many probationers were being barred from earning credit based upon an *inability* (as opposed to *unwillingness*) to pay fines and fees. It should be noted that in Minnesota, payment of fines and fees ordered at sentencing is not a condition of probation; such financial obligations are sent to collections for nonpayment, and cannot trigger a probation violation.<sup>6</sup> However, payment of restitution is still a probation condition.<sup>7</sup> Moreover, some conditions of probation have program fees and testing fees associated with them that could prevent a probationer from engaging with the program and complying with the condition. Thus, a discussion about how to handle noncompliance stemming from an inability to pay would still need to take place in Minnesota.

Related to this, some states struggled with whether to award credit if a probationer complies with the conditions of supervision while a probation violation hearing is pending. At times, the interval between the filing of the probation violation and the actual hearing can be quite lengthy, and there was disagreement as to whether a probationer should be rewarded for good behavior during this period. In at least one state – Missouri – there were instances where courts actively prolonged the probation violation

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<sup>6</sup> Minn. Stat. § 609.104 (2016).

<sup>7</sup> Minn. Stat. § 609.135, subd. 1a (2016).



process in order to stop the clock on the probationer's ability to participate in the earned compliance program and to achieve an early discharge. In two such cases, it was necessary for appellate courts to intervene.<sup>8</sup>

All of the experiences above underscore the need to both think carefully about how compliance is defined in the statute (is it actively earned or is it earned based upon the absence of violations?) and how compliance is understood by all actors in the system when an earned compliance program is implemented.

## 2. *Address Prosecutorial and Judicial Perspectives in the Law*

Related to the issue of compliance, some jurisdictions reported that implementing earned compliance raised separation-of-powers-like issues. For example, in Arkansas, probation departments initially had authority to award credits and discharge probationers on their own. But prosecutors were uncomfortable with this arrangement, so they sought a legislative change that would permit them the right to object to early discharge. Now, prosecutors who wanted to appear tough on crime routinely object to early discharge, essentially nullifying the program in their jurisdictions. Missouri reported that some judges were sentencing offenders to prison more frequently than they had before because they felt that the earned compliance system was undercutting their sentences. And Maryland reported that they were not seeing caseload reductions to the degree expected because the law was written to give judges discretion to discharge early, and many judges simply were not doing so, even when there were no violations or reasons to otherwise question that the probationer had been compliant with the conditions of supervision.

In each of these situations, earned compliance seemed to be perceived as an affront to the traditional roles of prosecutor, judge, and probation. By placing responsibility for tracking and awarding earned credit with the probation department, the systems seemed to be shifting authority from the prosecutor and judge to probation. But the evocation of such a strong response also indicated that the actors on the front end of the system were getting very little feedback about what was happening on the back end of the system. Judges were unfamiliar with probation practices and responses, and seemed to be surprised to learn that not every act of noncompliance was being filed as a probation violation. Judges also perceived that long periods of active supervision were necessary to serve public safety, and were not always aware that low risk probationers were often moved to administrative caseloads where there is little, if any, supervision.

Jurisdictions that reported these issues had several suggestions to offer. First, they suggested that feedback mechanisms be developed to inform judges, prosecutors and defense attorneys of case outcomes on a more regular basis. This could be as simple as a report that might include the numbers of cases on active vs. administrative supervision, a breakdown of supervision levels, numbers receiving early discharge, and overall compliance rates. And such reporting should regularly include recidivism and revocation rates to help provide a better overall picture of whether probation sentences were serving public safety. Second, they recommended that the law governing earned compliance be drafted to allow for the occasional exercise of judicial and/or prosecutorial discretion at the individual case level. For example, the law might permit the judge to exempt an individual from the earned compliance program and for the prosecutor to argue for such an exemption when, for instance, an individual has already been on probation in the past or when the crime committed was more serious than the typical case.

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<sup>8</sup> See *State ex rel. Parrott v. Martinez*, 496 S.W.3d 563 (Mo. Ct. App. 2016); *State ex rel. Amorine v. Parker*, 490 S.W.3d 372 (Mo 2016).

### 3. *Implement a Robust Case Management/Compliance Tracking System*

By far, the greatest indicator of satisfaction with an earned compliance system seemed to be whether the probation case management system made the job of tracking compliance easier or more work for probation officers. And often, this again related back to whether compliance was defined as something to be actively earned or as the absence of violations. In Maryland, for example, probation officers must record the answers to four questions for every probationer on a monthly basis: (1) have there been any new arrests; (2) has the probationer violated a no contact order; (3) is the probationer current on payments; and (4) is the probationer current in completing supervision requirements (catchall provision)? This approach has proven to be very time consuming, so work is underway to reprogram the system so that more is done automatically (e.g., the system will award time automatically and look for events and data points to indicate when time should *not* be awarded). Arizona also requires affirmative input regarding compliance, but their system is set up so that officers are not required to make such entries more often than they are seeing the probationer. The Utah system takes a different approach, requiring officers only to document *noncompliance*; the system assumes compliance and awards credit otherwise. Arkansas started out requiring officers to input data indicating affirmative compliance every month, but when that proved to be too much work, changed their system so that they now take an approach that is more similar to Utah. Once the probationer has served half of the pronounced term of probation, the system will automatically run a check to see if the individual may be eligible for early discharge, and if so, generate a report for the probation officer's review. The probation officer will verify whether the probationer has met the conditions enumerated in the statute (not conviction for an excluded offense, not more than two violations, no new arrests, current on financials), and if so, refer the case for early discharge.

Missouri experienced multiple pain points in implementing earned compliance. Officers had to initially do all of the calculations manually. When upgrades were finally made to their case management system, it was quickly determined that the upgrades were not working as expected, so probation departments had to do continuous audits to ensure accuracy. The entire experience was further complicated by the fact that the Missouri system includes complex rules about when the ability to earn credit starts and stops. The rules are so complex that the Parole and Probation Department for the state had to establish a hotline to assist agents in calculating credits in complicated cases.

All of these experiences suggest that thought should be given ahead of time as to how the earned compliance program will be implemented and whether probation officers will be required to affirmatively track compliance or whether the probation department's case management system can be programmed to instead link to other state and local systems to locate instances of noncompliance. One option to ensure a more successful launch is to delay the effective date of the law to allow for time to create and/or reprogram the case management system.

### 4. *Educate Probationers about Earned Compliance Program Up Front*

Those programs that seemed to experience some success with earned compliance emphasized the importance of educating probationers up front about the possibility of earning credit towards a reduced probation term. Utah shared a set of posters that the state utilizes to help communicate the program to probationers. Maryland explained that figuring out how best to communicate to officers the importance of explaining the program up front and making sure it *has* been communicated has been a training issue. But Maryland has also struggled with the fact that judges do not always grant early discharge, which

further complicates communication with probationers. The message is “work hard and you *may or may not* get your supervision term reduced.”

Most states indicated that when earned compliance is implemented well, and probationers understand what they need to do in order to be considered compliant, the program can be a significant incentive for probationers to engage in their case plan. In an initial evaluation of the earned compliance program, Utah surveyed probationers and found that 70% of respondents indicated that incentives motivated them to do better, and that the majority of probationers preferred a reduction in the term or probation or in other requirements such as reporting frequency over other possible incentives such as verbal praise or monetary rewards.<sup>9</sup>

Some states also indicated that an earned compliance program can be the impetus for probation officers to engage with probationers sooner. But one potential drawback is that an earned compliance program can result in an unintentional shift where those who have shorter probation terms might get more attention from probation officers than those who have committed more serious offenses or who are high risk/high needs because the officers feel the time pressure more acutely with these individuals. This is in direct contradiction with best-practice research related to focusing resources on those at highest risk to reoffend.

#### 5. *Earned Compliance Evaluation*

It should be noted that the committee was able to review an evaluation report for the earned compliance program in Missouri.<sup>10</sup> The committee was not aware of similar evaluations in the other states.

In Missouri, the earned compliance program is open to those convicted of felony drug offenses or Class C or D felonies (the two least severe categories) and who had served at least two years under community supervision. Based on these criteria, for the duration of the study, 40% of the supervised population was eligible to earn compliance credits. Most credit recipients were nonviolent (41% drug; 27% property; 12% DWI), and 90% of those who received credit were low to medium risk to reoffend.

The Missouri program was established in 2012, and the evaluation covered the first three years of the program. The evaluation found that 36,000 probationers reduced their supervision terms by an average of 14 months, and that this average was approaching a full two years (48 months) by end of evaluation. The supervision population was reduced by nearly 18% (13,000 individuals) from August 2012 to June 2015. And the average supervision caseloads were reduced from 70 in 2012 to 59 in 2015. Recidivism rates remained relatively constant: 2.3 % of those who earned credits had a new conviction within one year of discharge compared with 2.2% of the comparison group;<sup>11</sup> 5.7% had a new conviction within two years of discharge, compared with 5.6% in the comparison group.

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<sup>9</sup> The University of Utah, Utah Criminal Justice Center, *Piloting Utah’s Response and Incentives Matrix: Results from Staff and Stakeholder Surveys* at pg. 9 (Sept. 2015).

<sup>10</sup> The Pew Charitable Trusts, *Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety* (Aug. 2016) available at [http://www.pewtrusts.org/~media/assets/2016/08/missouri\\_policy\\_shortens\\_probation\\_and\\_parole\\_terms\\_protects\\_public\\_safety.pdf](http://www.pewtrusts.org/~media/assets/2016/08/missouri_policy_shortens_probation_and_parole_terms_protects_public_safety.pdf).

<sup>11</sup> The comparison group consisted of probationers who were discharged before the earned compliance policy went into effect. Pew employed propensity score matching to ensure the two groups were comparable in average age, race, sex, criminal history, risk, and offense type.

### 4.3 EARNED COMPLIANCE FOR POST-PRISON SUPERVISION

The Earned Compliance Committee was also tasked with studying the feasibility of earned compliance for supervised release. The policy considerations described above for earned compliance programs as applied to probation are similar to the policy considerations that arise in the post-prison supervision context. This section will focus on only those aspects that are unique to post-prison supervision. A chart detailing the findings described in this section is located in Appendix C.

Of the 11 states that currently have earned compliance programs in place, only five utilize it for post-prison supervision: Arkansas, Maryland, Mississippi, Missouri, and Utah. Though three of the five states currently have sentencing guidelines (and one state formerly had them), none of the states is fully comparable to Minnesota because all five utilize a parole board to determine release from prison. Minnesota is a *determinate* sentencing state, meaning that the sentence pronounced in court is an accurate representation of the sentence that the individual will actually serve. State law requires that when a prison sentence is pronounced, the individual will serve two-thirds of the sentence in confinement and one-third on supervised release.<sup>12</sup> By contrast, the five states that have earned compliance programs for parole supervision fall somewhere on the *indeterminate* sentencing end of the spectrum, meaning that even if the judge pronounces a specific sentence, the parole board ultimately determines what proportion of that sentence will be served in prison and what proportion will be served on parole. And if the court pronounces a sentencing range (e.g., 2 to 10 years), then the parole board will ultimately determine sentence length as well.

The Earned Compliance Committee was especially interested in gaining an understanding of how earned compliance for post-prison release works in conjunction with sentence length. Given that the sentence in Minnesota is a fixed term, and that the court rather than the DOC is the only entity that has the authority to change that term, the Committee wondered how early discharge is accomplished in the other states. The answer is dependent on how sentences are pronounced in court, and the role that sentencing guidelines play within the jurisdiction.

In two of the states – Mississippi and Missouri – there are no sentencing guidelines, so the sentence is at the discretion of the court. Once the offender serves the minimum term prescribed by statute, the offender may be eligible for parole. In two of the sentencing guidelines states – Arkansas and Maryland – the sentencing guidelines establish the maximum sentence for the offense, and after the offender serves the minimum prescribed by statute, the offender may be eligible for parole. In the third sentencing guidelines state – Utah – the court makes the in/out (prison or probation) decision but does not pronounce a specific sentence length, and the parole board determines eligibility for release. The sentencing guidelines serve as a guide to the Utah Parole Board by setting forth the typical time served for the offense based on its severity and the offender’s criminal history, and the parole board typically follows these terms when making its release decisions.

In every state except Utah, the parole term is equal to the unserved balance of the pronounced prison sentence. In Utah, specific terms of parole are required by statute. In three of these states – Mississippi, Missouri, and Utah – the Parole Board has full authority to effect the discharge. But these are fully indeterminate states where the parole board already has effective control over the length of the prison term and parole term. Arkansas and Maryland appear to be more comparable to Minnesota because of

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<sup>12</sup> Minn. Stat. § 244.101, subd. 1; § 244.05, subd. 1b (2016).

how their sentencing guidelines work.<sup>13</sup> In Arkansas, where the sentencing guidelines establish the maximum term, because a fixed maximum sentence is pronounced by the court, early discharge from that sentence can only be granted by the court.<sup>14</sup> Maryland takes a completely unique approach. As in Arkansas, the sentencing guidelines in Maryland set the maximum sentence. Once the time served and credits earned equal the parole term, the individual is placed on *abatement* until the original expiration of the sentence term. Abatement is a status under which the individual is effectively off supervision, but is still under the jurisdiction of the state. The individual is not required to report to an officer or to pay supervision fees, and the individual is also no longer subject to any supervision conditions except that the individual cannot leave the state without permission. As such, the earned compliance program in Maryland is the only program that retains the original sentence length pronounced by the court.

The takeaway from the Committee's study of earned compliance in the context of supervised release is that if such a program were put in place in Minnesota, statutory changes would be required to either require court process to effect early discharge or to establish a non-supervision status similar to Maryland's abatement status for individuals who successfully comply with the conditions of supervised release. Additionally, all of the other policy concerns and implementation issues that were raised in the probation context would need to be addressed in the supervised release context.

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<sup>13</sup> In both states, the sentencing guidelines are advisory, so the courts are free to impose the guidelines sentence, or any other sentence authorized by law.

<sup>14</sup> It should be noted that the prosecutor and Parole Board can object to the discharge.

## 5 MINNESOTA PROBATION AND SUPERVISED RELEASE

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### 5.1 HOW CORRECTIONAL SUPERVISION WORKS IN MINNESOTA

In Minnesota, probation is a court-ordered sanction imposed as either an alternative to confinement (e.g., prison or jail) or in conjunction with confinement or some form of intermediate sanctions.<sup>15</sup> Upon conviction a judge may order probation and “stay” a prison sentence based on various requirements to comply with conditions of supervision.<sup>16</sup> Courts have broad discretion with respect to the length of felony probation and may pronounce terms for up to 4 years, or up to the maximum prison term that could be imposed, whichever is longer. The only exceptions are when the law requires a sentence of life imprisonment or a mandatory minimum prison sentence. Broad judicial discretion and lack of consistency in early discharge policies creates disparities in probation terms. For example, the average pronounced probation term in the Fourth Judicial District is 38 months, versus the average pronounced in the Seventh Judicial District is 87 months.<sup>17</sup>

A reliance on community supervision is a strong component of Minnesota’s criminal justice response. Felony probation supervision is provided by the DOC in 54 counties of the state. In the remaining 33 counties, felony probation is provided by 18 jurisdictions formed under the Community Corrections Act (CCA).<sup>18</sup> A number of these jurisdictions and DOC districts provide supervision in multiple counties and judicial districts. Each supervising agency has policies regarding level of supervision, contact standards, services/interventions, violations and policies for early discharge from probation. There currently are no laws guiding policies related to early discharge; as a result, varying practices have developed across the state. Courts do have the authority to extend probation terms up to two years, if the offender has failed to pay restitution or up to three years if the offender has not completed court ordered treatment prior to the expiration of the original term.<sup>19</sup>

Minnesota is considered a determinant sentencing state. Under this system there is no parole board and no time off for good behavior. Instead, an appointed commission in conjunction with legislative approval and public hearings create a sentencing grid that determines the presumptive sentence for felony offenses. The intent is to promote uniform and proportional sentencing.<sup>20</sup> Under this model, individuals who receive a prison sentence serve two-thirds of that sentence in prison and the remaining one-third in the community on supervised release. Supervised release is the ultimate responsibility of the DOC, although CCA agencies may provide the actual supervision in some areas of the state. Unlike probation, there are no early sentence discharge options for those who received a prison commitment.

Due in part to federal reporting requirements, the DOC has been reporting annual probation snapshot numbers for over 25 years. Overall probation numbers have seen a decline in recent years with Minnesota still reserving prison beds for the most serious offenses. The following graph represent the number of individuals on probation in Minnesota for the past twelve years. After peaking in 2006 with

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<sup>15</sup> Intermediate sanctions are those system responses that fall between prison and probation in their severity and intrusiveness.

<sup>16</sup> In these situations, the sentences indicate a “stay” of either the imposition or execution of a prison sentence.

<sup>17</sup> Minnesota Sentencing Guidelines Monitoring Data, October 16, 2016.

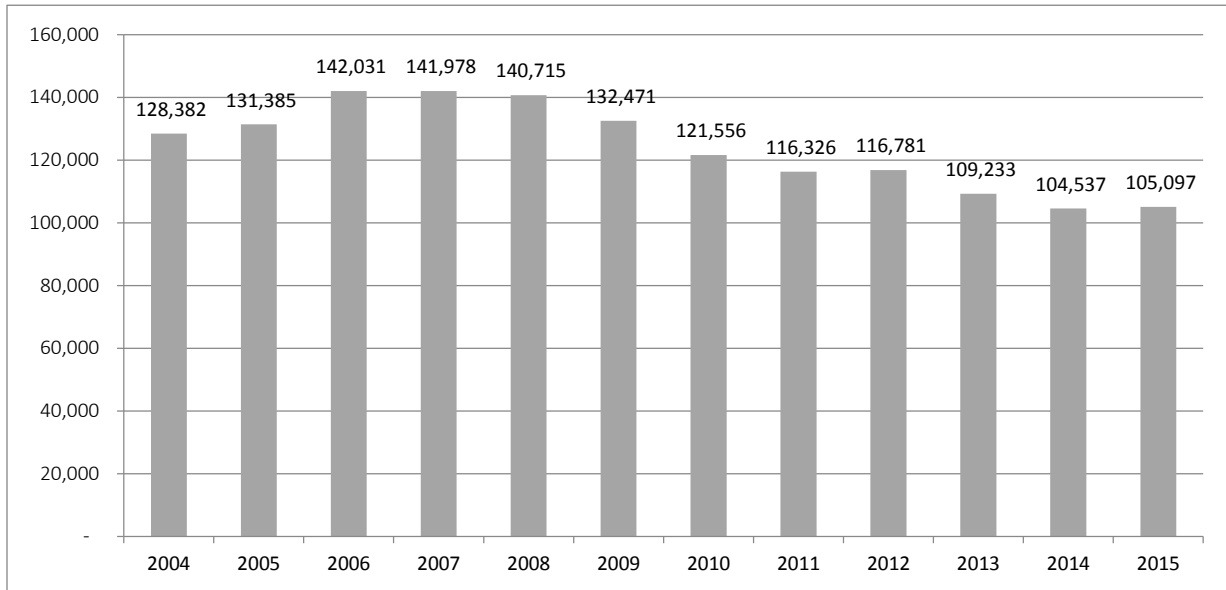
<sup>18</sup> Minn. Stat. § 401. Community Corrections.

<sup>19</sup> Minn. Stat. § 609.135.

<sup>20</sup> Minnesota Sentencing Guidelines Commission, available at <http://mn.gov/sentencing-guidelines/guidelines/about/>.

over 142,000 individuals on probation statewide, the 2015 snapshot showed a 26% decrease from the 2006 totals (the majority of this decrease occurred in misdemeanor and juvenile probation).

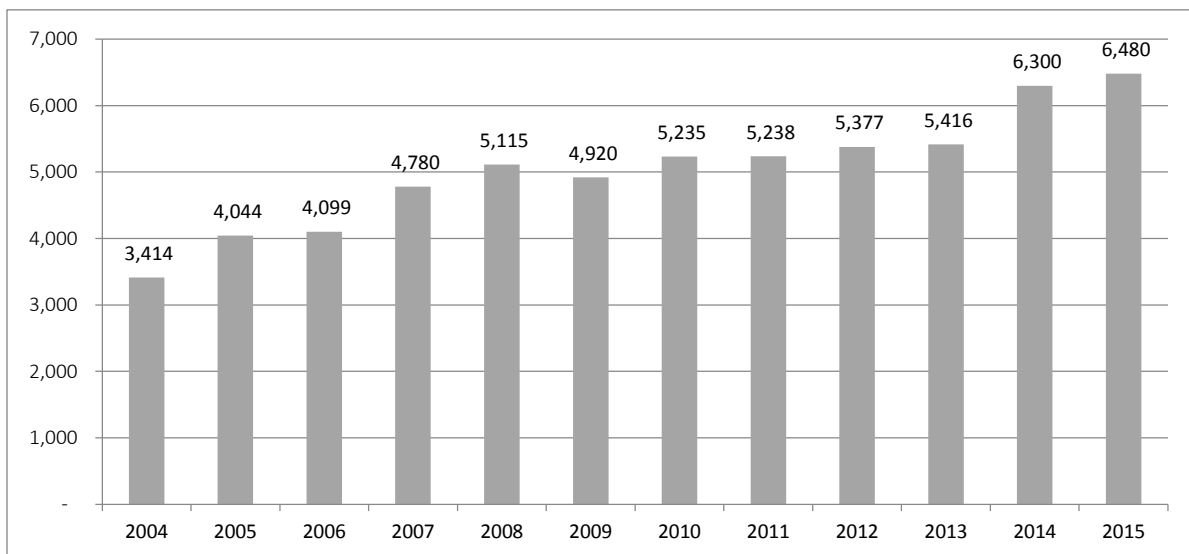
**Figure 1: Minnesota Total Probation Population 2004 to 2015 (as of December 31)**



Source: MN DOC Annual Probation Surveys

Minnesota typically ranks in the bottom four of states for prison incarceration rate.<sup>21</sup> However, while probation numbers have been declining since 2006, the numbers of individuals on supervised release following a prison term have seen a steady increase. The 2015 year end snapshot shown below illustrates a 58% increase since 2006.

**Figure 2: Minnesota Total Supervised Release Population 2004 to 2015 (as of December 31)**

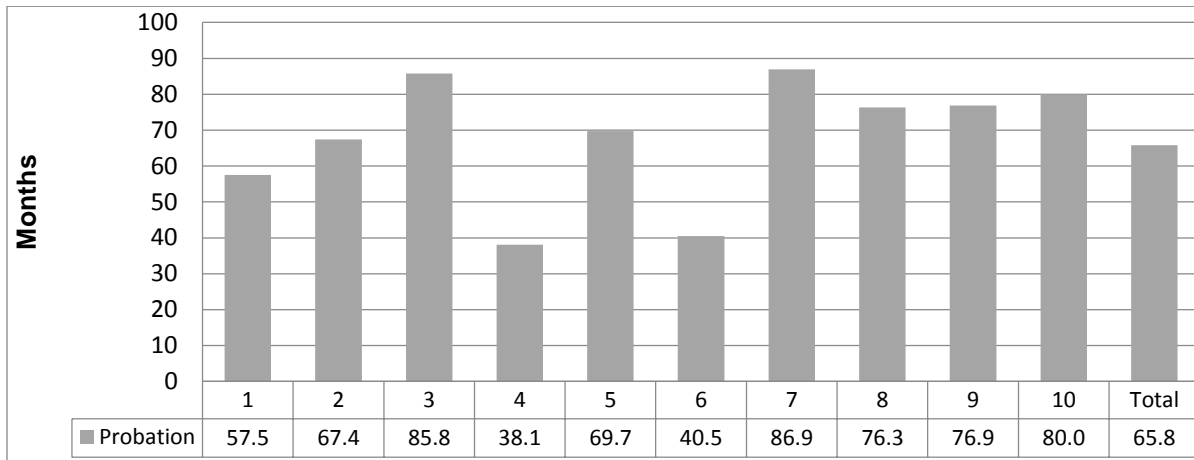


Source: MN DOC Annual Probation Surveys

<sup>21</sup> The Sentencing Project, State Imprisonment Rate Comparison, available at <http://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR>.

Public and victim input is an important component of Minnesota’s criminal justice system, in fact, victim input is statutorily required at the pre-disposition stage.<sup>22</sup> Victims also have a right to be notified when offenders are released from incarceration.<sup>23</sup> However, the variance in sentence lengths across the state creates inequities and confusion for victim and public expectations. According to the Minnesota Sentencing Guidelines Commission, the average felony probation sentence pronounced in 2014-2015 ranged from 40 months to over 86 months statewide<sup>24</sup> as evidenced by the graph below.

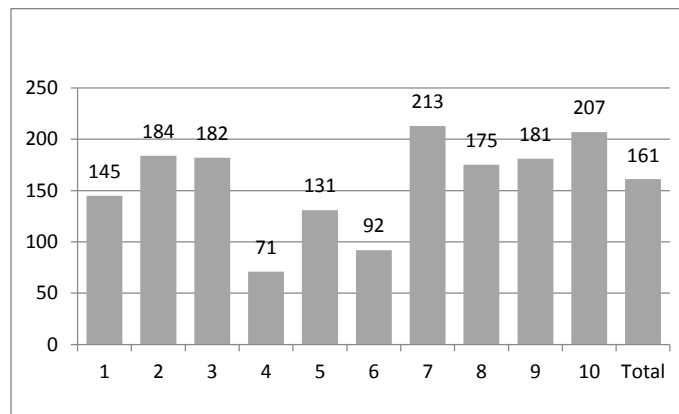
**Figure 3: Average Pronounced Probation Length in Months by Judicial District: Felonies Sentenced 2014-2015**



Source: MN Sentencing Guidelines Commission Monitoring Data

Sentencing length disparities are seen by district not only in an overall sense as noted above, but also vary by specific offense types. Details are provided in Appendix E, with the average probation sentence for a felony sex offense conviction (CSC) ranging from 71 months to 213 months based on judicial district during that reporting period.<sup>25</sup>

**Figure 4: Average Pronounced Probation Sentence in Months by Judicial District for CSC 2014-2015**



Source: MN Sentencing Guidelines Commission Monitoring Data

<sup>22</sup> Minn. Stat. § 611A. Crime Victims: Rights, Programs, Agencies.

<sup>23</sup> Minn. Stat. § 611A.06.

<sup>24</sup> Minnesota Sentencing Guidelines Monitoring Data, October 17, 2016.

<sup>25</sup> Ibid.



## 5.2 EARLY DISCHARGE POLICIES AND PRACTICES IN MINNESOTA

### 1. Probation

In Minnesota there are no statutory or rule provisions that govern a procedure for early discharge from probation. Early discharge from probation is under the express authority of the court and all early discharges must have court approval. All jurisdictions providing for felony probation supervision (DOC and CCA) have policies that spell out requirements an offender must meet for a recommendation for early discharge. These policies are typically informed by the local judiciary and prosecutors as to what the requirements are and if there are any specific exclusions from early discharge.

The committee reviewed and discussed county and agency-specific early discharge policies and found that while no two policies are exactly alike, there are several common factors: separate requirements for non-person (non-violent) crimes and crimes of violence (crimes against persons), all special requirements and conditions must be met, minimum time on probation established, must remain violation free during a specified time period, risk level assessment, no new or pending criminal convictions, full payment of restitution and fees and program completion and adjustment. Additionally, some policies contain exclusions for individuals on probation for certain crimes such as; sex offenses, felony DWI offenses and domestic assault/violation of protection orders (OFP). As noted earlier these policies are informed by local judiciary and prosecutors and reflect their input as to how early discharges will be addressed.

It should also be noted that the DOC policy for early discharge from probation is consistent in all 54 counties in which the DOC provides felony supervision. CCA agencies operating under joint powers agreements with multiple counties have one consistent policy for all of the counties included in their jurisdiction and those operating in a single county each have a policy for early probation discharge.

Although early discharge policies differ across the state, there are also significant differences to pronounced sentences across jurisdictions. The data compiled by the Minnesota Sentencing Guidelines Commission shows a wide variety of pronounced probation lengths based on county and judicial districts. The following ranges show the low and high pronounced sentence lengths based on categories of offenses across judicial districts.

**Table 1: Pronounced Range of Minnesota Probation Sentences Calendar Years 2014-2015**

Offense Type	Pronounced Range
Person	37 - 66 months
Property	37 - 76 months
Drug	37 - 121 months
DWI	53 – 89 months
Sex	80 – 194 months
Other	36 – 60 months

Source: Minnesota Sentencing Guidelines Monitoring Data

It is not known whether the differences in pronounced sentences across jurisdictions have a correlation with the agency's respective discharge policies.

In 2014, the Robina Institute of Criminal Law and Criminal Justice published a report that reviewed probation lengths in 21 states,<sup>26</sup> the purpose of which was to gain understanding of the laws and processes governing probation revocation in a cross-section of states. The report found that in many states, there are statutory limitations as to the length of the original sentence as well as whether and under what circumstances probation can be extended.<sup>27</sup> Table 2 below illustrates the variance for felony probation maximum lengths across the 21 states studied.

**Table 2: Felony Probation Lengths as studied in 21 States<sup>28</sup>**

Max. Length of Felony Probation	States
1 year	WA
2 years	FL
3 years	UT
4 years	ME
5 years	AI, IA, MO, MS, NY, NC, OH, OR
7 years	AZ
10 years	TX
Discretionary	CO, MA
Maximum Term	CA, MN, PA, WI
Unclear	IN

We do know that during the two year period 2014-2015, over 12,000 adult felony probation cases were closed in Minnesota (representing 11,703 individuals). And despite differences in pronounced sentences lengths, early discharge policies and local philosophy on probation supervision, data from that time period indicate that when early discharge is defined as “discharged 365 days or more prior to sentence expiration”, 40% of statewide adult felony probation cases were discharged early. Over 5,100 cases (40%) were discharged more than a year prior to their pronounced sentence expiration date with the average being 47.7 months early. Table 3 below illustrates the range of early discharges.

**Table 3: Adult Felony Early Discharges by Months, 2014-2015**

Months Discharged Early for Calendar Years 2014 and 2015			
Months Closed early	2014	2015	Total
12 to 47	1,817	2,006	3,823
48 to 83	340	330	670
84 to 119	127	137	264
120 Plus	212	171	383
Grand Total	2,496	2,644	5,140

Source: Statewide Supervision System

<sup>26</sup> Robina Institute of Criminal Law & Criminal Justice, Profiles in Probation Revocation: Examining the Legal Framework in 21 states (2014). Available at <http://robina.institute.umn.edu/publications/profiles-probation-revocation-examining-legal-framework-21-states>.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

Not surprisingly, the most frequent (60%) type of cases receiving an early discharge were drug and property crimes.

**Table 4: Adult Felony Early Discharges by Offense Type, 2014-2015**

Offense Type	Number/% of Total
Drugs	1,812 (35%)
Theft	611 (12%)
Assault	520 (10%)
Burglary	370 ( 7%)
DWI	301 ( 6%)
Forgery/Counterfeiting	300 ( 6%)

Source: Statewide Supervision System

After reviewing available data and extensive discussion, the Committee acknowledged that the major issue for probationers in Minnesota appears to be the disparity in pronounced sentence lengths. As noted earlier, felony probation lengths vary greatly by judicial district and by offense type. In addition, every probation agency in Minnesota has policies in place to allow for compliance-based early discharge from probation. And, in fact, over 40% of felony cases closed were discharged over a year prior to the original sentence expiration date.

An earned compliance program implemented alone would not address sentence disparities without corresponding legislative changes related to sentence caps or sentence lengths.

## 2. *Supervised Release*

As a determinate sentencing state, individuals who receive an imposed prison sentence (e.g., are committed to the commissioner of corrections) serve two-thirds of their sentence incarcerated and one-third on supervision in the community. Sentences are governed by the Minnesota sentencing guidelines<sup>29</sup> and directed by statute. Minnesota statute and rule do not provide provisions for early discharge from supervised release. Additionally some specific sentences include the provision of additional supervision time known as “conditional release term” which may be applied for certain individuals upon release from prison.<sup>30</sup> Conditional release terms may be for “lifetime” in certain cases. In all cases early discharge from a commitment to the commissioner would require a sentencing modification by the courts, statutory changes, guidelines changes, or a combination of all of these.

Data provided by the Minnesota Sentencing Guidelines Commission indicates that in 2014 and 2015 offenders with presumptive prison sentences (excluding life sentenced offenders) serve an average of 16.7 months on supervised release as shown below.

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<sup>29</sup> Minnesota Sentencing Guidelines and Commentary, November 17, 2016 update, available at [http://mn.gov/msgc-stat/documents/2016%20Guidelines/11\\_17\\_2016\\_Update\\_August2016\\_Guidelines.pdf](http://mn.gov/msgc-stat/documents/2016%20Guidelines/11_17_2016_Update_August2016_Guidelines.pdf).

<sup>30</sup> Ibid.

**Table 5: Average 2014-2015 Sentence Lengths for Presumptive Prison Dispositions (by Offense Type)**

Offense Type	Number of Offenders	Avg. Pronounced Sentence in Months		
		Total	Serve	Release
Criminal Sexual Conduct	388	131.6	88.2	43.4
Other Person	2,270	55.5	37.2	18.3
Property	1,486	27.7	18.6	9.1
Drug	1,626	53.8	36.0	17.8
DWI	398	51.6	34.6	17.0
Other	1,112	37.2	24.9	12.3
Total	7,280	50.5	33.8	16.7

Source: Minnesota Sentencing Guidelines Monitoring Data

In contrast, offenders with presumptive non-prison dispositions serve an average of 5.2 months on supervised release.

**Table 6: Average 2014-2015 Sentence Lengths for Presumptive Non-Prison Dispositions (by Offense Type)**

Offense Type	Number of Offenders	Av. Pronounced Sentence in Months		
		Total	Serve	Release
Criminal Sexual Conduct	28	40.6	27.2	13.4
Other Person	206	17.5	11.7	5.8
Property	314	16.4	11.0	5.4
Drug	668	14.0	9.4	4.6
DWI	4	44.0	29.5	14.5
Other	86	14.4	9.6	4.7
Total	1,306	15.8	10.6	5.2

Source: Minnesota Sentencing Guidelines Monitoring Data

It should be noted that individuals committed to the commissioner tend to be the state's more serious offenders. In 2016, the average number of prior criminal convictions for individuals incarcerated in a DOC facility was 10.8, with the average number of prior felony convictions being 4.3. Over 78% of those incarcerated individuals have previously been convicted of a violent offense.<sup>31</sup>

Many individuals released from prison still have unmet treatment requirements and/or criminogenic needs that should be addressed. Research has shown that successful community reintegration is highly dependent on targeting those needs.<sup>32</sup> The supervised release term provides an opportunity for corrections agents to hold offenders accountable, but more importantly offers opportunities for the more successful emphasis on motivation and behavior change,<sup>33</sup> including participating in various programs proven to reduce recidivism, such as chemical dependency or sex offender treatment, while still under supervision.

<sup>31</sup> MN Department of Corrections, MnSTARR 2.0.

<sup>32</sup> National Institute of Corrections, The Principles of Effective Interventions, available at <http://nicic.gov/theprinciplesofeffectiveinterventions>.

<sup>33</sup> Motivating Offenders to Change, National Institute of Corrections, June 2007, available at <http://static.nicic.gov/Library/022253.pdf>.

## 6 2011 EVIDENCE-BASED PRACTICES LEGISLATIVE REPORT

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The 2009 Minnesota Legislature directed the DOC to assess the use of Evidence-Based Practices and opportunities for greater implementation in community supervision.<sup>34</sup> The report included a requirement to review options related to implementing an earned compliance credit program. The final report was submitted to the Legislature in December 2010 and contains similar discussion to the work of the current committee.<sup>35</sup>

At that time, the report found that “The DOC and 38 percent of CPO and CCA counties have policies and/or procedures governing early discharge recommendations. Among counties that have a discharge policy, great variation is seen regarding qualifying offenders and when eligibility is achieved. Eligibility for early discharge is largely confined to adult felons and, to a limited extent, adult gross misdemeanants. There appears to be no early discharge policy for adult misdemeanants and juveniles, presumably because misdemeanants receive relatively short duration probation periods and often minimal supervision, and juvenile probation terms are reviewed every six months by law.”<sup>36</sup>

The report identified fiscal, structural, and statutory barriers<sup>37</sup> as follows, all of which are still applicable:

- ➔ Fiscal barrier: Would result in a loss of supervision fees used to fund operations
- ➔ Structural barrier: Judicial discretion, impacted by local practice, etc.
- ➔ Structural barrier: Political and geographic differences statewide
- ➔ Structural barrier: Case plan automation, utilization and content still lacking
- ➔ Structural barrier: No software technology available for monitoring and notification
- ➔ Statutory barrier: M.S. §609.02, Subd.15 permits early discharge but does not compel sentencing courts to do so

In addition to identifying barriers, the final report also presented two ideas that could assist in addressing barriers. Those suggestions were to limit supervision based on appropriately identifying the individual’s risk to reoffend as well as implementing a model policy providing compliant non-predatory offenders with 20 days of credit each month. However, there were no proposed solutions to address the political, geographic or technology concerns.

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<sup>34</sup> Minnesota Laws 2009, Chapter 59, Article 4, Section 8.

<sup>35</sup> Minnesota Department of Corrections, Study of Evidence-Based Practices in Minnesota, available at <http://www.doc.state.mn.us/PAGES/files/large-files/Publications/legislative-reports/12-10EBPreport.pdf>.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

## 7 WORK GROUP DISCUSSION AND CONCLUSIONS

The work group began meeting in August 2016 and focused meetings on identifying implementation examples from other states, collecting policies and data from Minnesota processes and discussing various options and recommendations. Those discussions are summarized in previous sections and the appendices. In addition, an informal survey of work group members was conducted to provide a gauge of the group’s support or concerns for implementation of an ECC program in Minnesota.

Most members felt that there are significant disparities in pronounced felony probation sentences, but were less certain that an earned compliance program was appropriate for the state.

There were a number of items that the group agreed on. These items are listed below, although in no specific priority order:

Area of Agreement	Additional comments
Statutory probation sentence lengths lead to pronounced sentences that are unnecessarily long to accomplish public safety goals.	The Rubina Institute study noted that unnecessarily lengthy terms of probation may not benefit any of the stakeholders. <sup>38</sup> In addition, a 2014 study by the Center for Effective Public Policy suggested matching probation length to offender risk level and concluding the probation term after important rehabilitative goals and program successes were accomplished. <sup>39</sup>
Sentences resulting from high statutory maximums drive disparities in probation length.	In Minnesota pronounced probation can range from 4 years to 40 years in length.
Regional disparities create barriers for compliance with conditions and case plans.	The lack of appropriate programming, transportation, and other essential services would make it difficult for individuals to meet case plan goals and thus qualify for early discharge.
Adding an ECC program on top of disparities is not helpful.	Merely adding an early discharge program would not (a) resolve any resource or other disparity and would, in fact, create other issues and problems.
Current early discharge policies are not sufficient to address disparity issues.	While most counties/jurisdictions have early discharge policies for probation, these alone cannot overcome the geographical disparities and political differences.
Early discharge policies themselves vary greatly across the state.	Early discharge policies, as well as other correctional policies, are informed and set based on local jurisdictional philosophies and influenced by prosecutors, the courts and public sentiment.
Compliance with financial conditions as a requirement would create additional barriers and disparities and legal issues.	Economically disadvantaged offenders could be compliant with all other conditions and still not qualify for early discharge. This could further increase racial disparities in the criminal justice system given the already existing disparities in employment, housing, transportation, etc.
ECC is not currently an appropriate process for MN supervised release.	Minnesota’s determinate sentencing already has well defined supervised release terms which often allow time for offenders to comply with program and treatment needs while on supervision.

<sup>38</sup> Robina Institute of Criminal Law & Criminal Justice, Profiles in Probation Revocation: Examining the Legal Framework in 21 states (2014). Available at <http://robinainstitute.umn.edu/publications/profiles-probation-revocation-examining-legal-framework-21-states>.

<sup>39</sup> Center for Effective Public Policy, Dosage Probation: Rethinking the Structure of Probation Sentences (2014). Available at <https://www.fppoa.org/sites/default/files/dosage.pdf>.

Area of Agreement	Additional comments
ECC in other states has shown mixed results; implementation issues experienced in other states would be experienced here.	Several issues were evident with ECC implementation in other states. Primary concerns include the need for data systems designed to address awarding of credit, agents spending more time accounting for awarding or taking away credit as opposed to interventions proven to reduce recidivism.
Victim input should be incorporated into any early discharge program design.	<ul style="list-style-type: none"> <li>·ECC should not be applied to supervised release or intensive supervised release due to the shorter lengths of supervision time (leaving less time to complete programming).</li> <li>·Any reliance on assessment/screening tools must take intimate partner violence risk factors into consideration.</li> <li>· Victim input is critical during pre and post-conviction processes.</li> <li>·Any consideration for ECC must take into consideration the importance of enhancing victim notification rights beyond release, throughout supervision and any subsequent processes, such as ECC.</li> </ul>

In addition to these items on which the group was able to reach consensus, several key concerns were identified as needing additional discussion, consideration, and/or study before any sort of earned compliance program should be considered in Minnesota:

- Managing sentence length disparities through use of statutory sentence caps.
- Using felony probation guidelines to address consistency and disparities (or should other alternatives be considered).
- While compliance with conditions is a reasonable goal, there is a lack of evidence in the literature to suggest that compliance with conditions has a positive impact on public safety. The group discussed the use of a supervision model that focuses more on factors that are likely to result in behavior change and using other, more promising, practices to better address public safety, etc. (e.g., current evidence-based-practice tools and efforts)
- The role that victim input should or would play in any individual case.
- The impact that program length (e.g., sex offender treatment requires longer time to complete) could or should have in setting probation lengths.
- Whether any specific offenses should be excluded (while there was much agreement on excluding felony sex offenses, other offense exclusions would need additional study).
- Consideration given to criteria for exclusion versus specific offense exclusion.
- The role that treatment completion should play in determining early discharge.
- The technical infrastructure required for case planning, calculating credit, etc.

## 8 DEPARTMENT OF CORRECTIONS RECOMMENDATIONS

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Minnesota is nationally recognized as a leader in the field of corrections and was an early adopter of “evidenced based practices”. As a state we have a long held belief that prison should be used only for those deemed to be the most dangerous and who present a threat to public safety. We rely heavily on community supervision for offenders who can benefit from interventions as provided by corrections agents, community based programs and treatment providers. These alternatives or intermediate sanctions are why our incarceration rate remains one of the lowest in the country. However, it must also be recognized that Minnesota has significant racial disparities in its criminal justice and corrections systems. Changes to the criminal justice and corrections systems must be thoroughly examined and vetted prior to any implementation so as to prevent unintended consequences.

After careful consideration of the literature as well as the discussion and information provided by the Work Group, the following recommendations are made for your consideration:

- Earned Compliance Programs may not be appropriate for Minnesota probation or supervised release at this time

The significant disparities in pronounced probation sentences that exist across judicial districts present a barrier that must be resolved prior to any implementation of an ECC program. As evidenced in some states with ECC, it has resulted in some prosecutors and courts increasing probation sentences to offset any credit that would be awarded. In Minnesota, judicial districts that may already be sentencing at a lower rate than others may feel the need to increase probation terms. Judicial districts with longer pronounced probation sentences may also consider increasing probation terms to offset credit as the philosophy of the prosecutors and courts may be more conservative and not open to reducing probation lengths. Any implementation of ECC for felony probation would require further study, clarity in the roles of probation, prosecutors and the courts, and clarification of how the program would apply uniformly across all judicial districts without creating even more disparities.

As a determinant sentencing state, Minnesota has clearly defined sentence lengths which are relatively short as noted in this report. Many offenders from prison are in need of programs, treatment and services which are available in the community while on supervision. Conditions of release are the mechanism by which corrections agencies enforce participation. While ECC may provide incentives for compliance, many barriers to program participation such as; waiting lists, length of time for completion, cost, and availability are barriers that must be resolved prior to any implementation. In addition, any changes in a sentence expiration date would require a sentence modification by the court as the commissioner does not have statutory authority to change a sentence.

- Felony probation sentence length caps should be standardized using the legislative process

The consensus of the work group was that felony probation lengths are often longer than what is necessary to address the risks and needs of the offender. When offenders have completed rehabilitative programming and other conditions of probation, they are often moved to lower levels of supervision. At this point a lengthy felony probation term results in disenfranchisement



of citizens through collateral consequences preventing civic engagement through voting and unnecessary barriers to employment and housing which may negatively impact successful completion of probation.

- Felony probation sentencing guidelines should be studied and recommendations provided to the legislature

Some states with similar systems to Minnesota's sentencing guidelines have enacted probation guidelines and which are incorporated on a grid much like the one used by the courts to determine sentence lengths. The consensus of the working group was that this may be a way to reduce the disparities in felony probation as currently exist across the state. This would require further study by the guidelines commission to determine appropriate probation ranges for felony offences and should incorporate matching probation length to risk level.

- Resources need to be allocated to address geographic disparities in programming options

Significant resource gaps still exist statewide. This is especially evident in the lack of effective programming options needed to ensure offenders are able to successfully complete their supervision terms. These resource disparities impact the ability to successfully reintegrate individuals convicted of crime back into the community -- with or without the implementation of an ECC program.

The mixed results in states with ECC programs point out the lack of certainty that ECC would be an appropriate direction for Minnesota. It is clear that there would be a need for more thorough study, clarification and agreement by stakeholders on how a program would operate prior to any implementation. This along with the need to resolve the existing disparities in felony probation sentences to prevent increasing these disparities and other negative impacts would also need to be addressed prior to moving forward with any implementation of ECC in Minnesota.

I want to acknowledge and thank the working group for their time and effort in putting together this report and recommendations. It is important that we continue with research and study of promising practices in the area of probation and supervised release to ensure that we are using proven practices to reduce recidivism and improve public safety for all Minnesotans.

Tom Roy Commissioner

## APPENDIX A: WORKGROUP REQUESTED PARTICIPANTS

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Tom Adkins, Washington County, MACCAC Representative

Ryan Erdman, MACCAC Executive Director

Travis Gransee, Dodge-Fillmore-Olmsted, MACCAC Representative

Jim Franklin, Executive Director, MN Sheriffs' Association

Lisa Frenette, MN Association of County Probation Officers

Jim Jones, Acting Executive Director, Indian Affairs

Safia Khan, MN Coalition for Battered Women

Tim MacMillan, Isanti County Court Services

Kelly Mitchell, Executive Director, Robina Institute, University of Minnesota

Rich Molitor, Nicollet County Probation

Dr. Louis Porter, Council for Minnesotans of African Heritage

Bob Small, Executive Director, MN County Attorney Association

Nathan Reitz, Executive Director, MN Sentencing Guidelines Commission<sup>40</sup>

Janet Marshall, State Court Administration<sup>41</sup>

William Ward, State Public Defender, Minnesota Board of Public Defense

### **DOC Representatives:**

Ron Solheid, Deputy Commissioner, Community Services

Al Godfrey, Field Services Director

Kathleen Lonergan, Government Relations Director

Deb Kerschner, Director, Planning and Performance

Rebecca Holmes-Larson, Executive Director, Hearings and Release

Lydia Newlin, Victim Assistance and Restorative Justice Program Manager

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<sup>40</sup> No opinions or recommendations expressed in this report should be construed as reflecting the views of the Minnesota Sentencing Guidelines Commission.

<sup>41</sup> No opinion or recommendations expressed in this report should be construed as reflecting the views of the Minnesota Judicial Branch.

## APPENDIX B: KEY FACTORS IN OTHER STATES' EARNED COMPLIANCE CREDIT STATUTES FOR PROBATION

**Table 1. Arizona through Missouri**

Key Factors	AR	AZ	DE	MD	MS	MO
Applicable to probation or parole?*	Both	Probation	Probation	Both	Both	Both
Any offenses excluded from eligibility?	Yes <sup>42</sup>	Yes	Yes <sup>43</sup>	Yes <sup>44</sup>	Not specified	Yes
When can the offender start earning credits?	Immediately	Not specified	Not specified	Not specified	After the first full calendar month of compliance	After the first full calendar month of compliance
How much time is earned?	30 days for every month of compliance	20 days for every 30 days of compliance	30 days credit for 30 days of compliance – not to exceed half of sentence	20 days for every month of compliance	Credits equal to no. of days in month of compliance	30 days for every month of compliance
Who awards it?	Dept. of Community Corrections	Court	Unclear; may be Dept. of Corrections	Division of Parole and Probation (as of Oct 2016)	Comm'r of Corrections	Div. of Probation and Parole
Is the award automatic or is review required?	Automatic	Not specified	Not specified	Automatic (as of Oct 2016)	Automatic	Automatic
How often is the probation term recalculated?	Monthly	Not specified	Not specified	Not specified	Credit applied w/in 30 days; sentence recalculated every 6 mos	At least twice a year

<sup>42</sup> Excluded offenses are: sex offenses requiring registration; a felony involving violence (as defined in statute); kidnapping; manslaughter; driving or boating while intoxicated; Class A felonies other than controlled substances; all Class Y felonies. Ark. Code Ann. § 16-90-1302 (West 2016).

<sup>43</sup> Excluded offenses are: sexual offenses; violent felonies; restitution-only probation; other offenses as designated by the Department of Corrections in its rules. 11 Del. Code § 4383(d) (2016).

<sup>44</sup> Excluded offenses are: crimes of violence; sex offenses; certain controlled substance offenses; offenses requiring registration; individuals transferred into or out of the state. Md. Code Correc. Servs. § 6-117 (West 2016).

Key Factors	AR	AZ	DE	MD	MS	MO
Must the offender be current on financial obligations?	Unclear; offender must comply with court-ordered conditions	Yes	Unclear; offender must comply with conditions	Yes, but only for the offenses for which earned compliance is being accrued	Unclear; offender must be in compliance with conditions	Unclear; compliance defined as absence of violation report or revocation proceeding
Can earned time be denied or forfeited?	Forfeited	Forfeited	Forfeited	Denied	Denied	Both
What conditions result in the denial or forfeiture of credit?	Conviction of another felony while on probation	Probationer is found in violation of a probation condition	Conviction of a new crime; revocation of probation	New arrests; violates no contact condition; not current on financial obligations; not current on completing other probation conditions	Cannot accrue in the months in which a violation is filed and court action is pending; offender has absconded; serving incarceration term in technical violation center	Cannot accrue in the months in which a violation or motion to revoke has been filed and court action is pending; offender has absconded  Credits rescinded if probation is revoked or probationer placed in 120-day program
Is forfeiture or denial subject to appeal or review?	No	Not specified	Not specified	Not specified	Not specified	No
Is court process required for early discharge based on earned compliance credit?	Yes. <sup>45</sup> Dept. must file petition for discharge with the court	Yes. Court reviews upon probation officer recommendation	Unclear	Yes. Ct may adjust term based on rec. by Div. Of Prob. & Parole <sup>46</sup>	Yes	Yes, and offender must serve 2 years before eligible
Can anyone object?	Yes. Prosecutor or Parole Board	Not specified	Not specified	Not specified	Not specified	Not specified

<sup>45</sup> Ark. Code Ann. § 16-90-1304(a)(4) (West 2016).

<sup>46</sup> Note that with passage of the Justice Reinvestment Act, earned compliance typically results in abatement, which is defined as an end to “supervised” probation, but not an end to the term itself. The court must order a change in term in order to achieve discharge. 2016 Md. Laws ch. 515.

**Table 2. Nevada through Utah**

Key Factors	NV	SC	SD	TX	UT
Applicable to probation or parole?*	Probation	Both	Probation	Probation	Both
Any offenses excluded from eligibility?	Probably not. Applies to all felonies and gross misdemeanors.	No, but must be on supervision > 1 year to be eligible	Yes. <sup>47</sup>	Yes	Not specified
When can the offender start earning credits?	Not specified	Immediately	Immediately	Not specified	Not specified
How much time is earned?	10 days for ea. mo. current on financials; 10 days for ea. mo. active employment, rehab., or education program	20 days for every 30 days of compliance	30 days for each full calendar mo. of compliance	Multiple time periods possible based on completion of court-ordered conditions	30 days for each month of compliance
Who awards it?	Div. of Probation and Parole	Dept. of Probation, Parole & Pardon Servs.	Court services officer	Court	Dept. of Corrections
Is the award automatic or is review required?	Automatic	Automatic	Automatic	Review required	Automatic
How often is the probation term recalculated?	Not specified	Every 30 days	Credit applied monthly; probationer notified of adjusted discharge date every 6 mos.	Once when it appears enough credits have accumulated to warrant the court's attention	Not specified
Must the offender be current on financial obligations?	Yes	Yes	Unclear; must be in compliance with probation terms	Yes	Unclear; earned for mos. without violation of conditions
Can earned time be denied or forfeited?	Denied	Denied	Denied but not forfeited <sup>48</sup>	Both	Denied

<sup>47</sup> Excluded offenses are: sex offenses; violation of registration requirements; violation of community safety zone requirements. S.D. Cod. Laws § 23A-48-17 (2016).

<sup>48</sup> S.D. Cod. Laws § 23A-48-22 (2016).

Key Factors	NV	SC	SD	TX	UT
What conditions result in the denial or forfeiture of credit?	Not current on financial obligations; not actively engaged in employment, rehab., or education program	Noncompliance as determined by Dept. of Probation, Parole & Pardon Servs.  Specifically includes fulfillment of conditions, no new arrests, and current on financials	Cannot earn credit for a partial month or last full month of probation; any month in which violation is pending; probationer is incarcerated as part of sentence or sanction; probationer has absconded; disqualifying conduct as ID'd on graduate response grid	Credit cannot be awarded unless probationer is current on financial obligations and has fully paid restitution  Credit can be forfeited if probation violation found by the court	Violation of terms of probation agreement
Is forfeiture or denial subject to appeal or review?	Not specified	No	Credit denial reviewable by chief court services officer of judicial circuit <sup>49</sup>	Not specified	Not specified
Is court process required for early discharge based on earned compliance credit?	Yes <sup>50</sup>	Yes	Not specified	Yes	Yes
Can anyone object?	Not specified	Not specified	Not specified	Not specified	Not specified

\* This is the only place parole will be addressed in this table; some of the answers to the other questions may vary in the parole context.

<sup>49</sup> S.D. Cod. Laws § 23A-48-21 (2016).

<sup>50</sup> Nev. Rev. Stat. § 176A.850 (West 2015).

## APPENDIX C: KEY FACTORS IN OTHER STATES' EARNED COMPLIANCE CREDIT STATUTES FOR PAROLE

Key Factors	AR	MD	MS	MO	UT
<b>Does the state have sentencing guidelines?</b>	Yes. AR has voluntary sentencing guidelines, which set the maximum sentence, but release is determined by the Parole Board	Yes. MD has advisory guidelines, which set the maximum sentence, but release is determined by the Parole Board	No.	Not any longer. MO had sentencing guidelines until 2013.	Yes. UT guidelines are used to determine whether prison or probation is appropriate. Parole Board Determines length of sentence
<b>When is the offender eligible for parole?</b>	After serving 30-70% of max sentence, depending on offense (some must be served in full)	After serving 25-50% of max sentence, depending on the offense (some must be served in full)	After serving 25-50% of max sentence, depending on the offense (some must be served in full)	After serving 15-85% of sentence, depending on the offense	The Parole Board determines eligibility for release. The Sentencing Guidelines indicate the typical time served for offenses and offenders with similar characteristics, and this serves as a guide for the timing of parole release

Key Factors	AR	MD	MS	MO	UT
<b>Is the parole term the unserved balance of the prison term?</b>	Yes	Yes	Yes	Yes, but Parole Board can review for early discharge after 3 to 5 years, depending on the offense	Somewhat. Specific terms of parole are required by statute, but the combination of parole and time served in confinement cannot exceed the maximum sentence for the offense
<b>Any offenses excluded from eligibility for earned compliance?</b>	Yes <sup>51</sup>	Yes <sup>52</sup>	Not specified	Yes	Unable to locate in statute, but yes, according to interview
<b>When can the offender start earning credits?</b>	Immediately upon transfer from prison to community supervision	Not specified	After the first full calendar month of compliance	After the first full calendar month of compliance	Not specified
<b>How much time is earned?</b>	30 days for every month of compliance	20 days for every month of compliance	Credits equal to no. of days in month of compliance	30 days for every month of compliance	30 days for each month of compliance
<b>Who awards it?</b>	Dept. of Community Corrections	Division of Parole and Probation (as of Oct 2016)	Dept. of Corrections	Div. of Probation and Parole	Dept. of Corrections
<b>Is the award automatic or is review required?</b>	Automatic	Automatic (as of Oct 2016)	Automatic	Automatic	Automatic
<b>How often is the parole term recalculated?</b>	Monthly	Not specified	Credit applied w/in 30 days; sentence recalculated every 6 months	At least twice a year	Not specified
<b>Can earned time be denied or forfeited?</b>	Forfeited	Denied	Denied	Both	Denied

<sup>51</sup> Excluded offenses are: sex offenses requiring registration; a felony involving violence (as defined in statute); kidnapping; manslaughter; driving or boating while intoxicated; Class A felonies other than controlled substances; all Class Y felonies. Ark. Code Ann. § 16-90-1302 (West 2016).

<sup>52</sup> Excluded offenses are: crimes of violence; sex offenses, certain controlled substance offenses; offenses requiring registration; individuals transferred into or out of the state. Md. Code Correct. Servs. § 6-117 (West 2016).



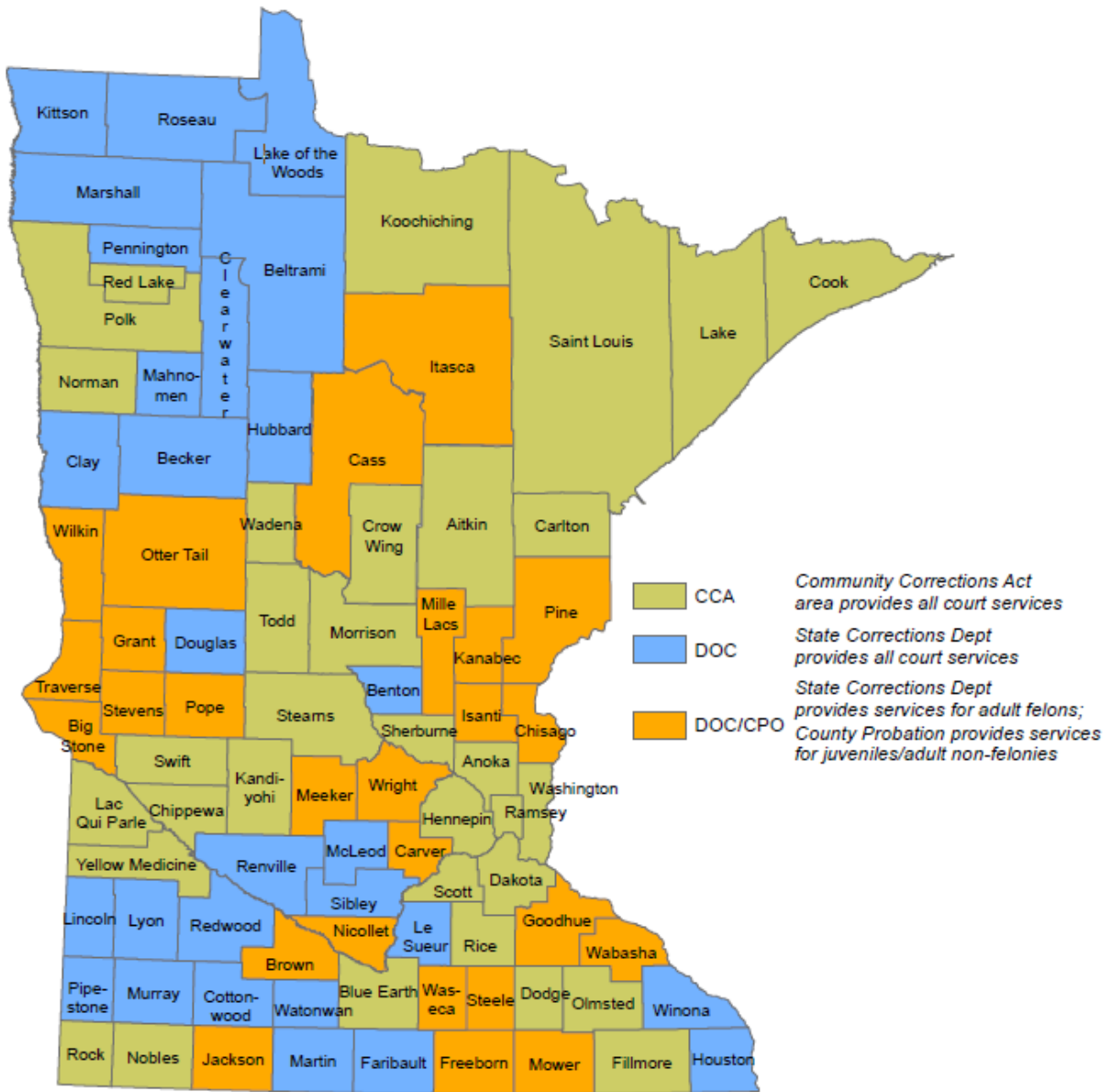
<b>Key Factors</b>	<b>AR</b>	<b>MD</b>	<b>MS</b>	<b>MO</b>	<b>UT</b>
<b>What conditions result in the denial or forfeiture of credit?</b>	Conviction of another felony while on parole	New arrests; violates no contact condition; not current on financial obligations; not current on completing other parole conditions	Cannot accrue in the months in which a violation report is pending with the Parole Board; offender has absconded; serving incarceration term in technical violation center	Cannot accrue in the months in which a violation or motion to revoke has been filed and Parole Board action is pending; offender has absconded  Credits rescinded if parole is revoked	Violation of terms of parole agreement
<b>Is forfeiture or denial subject to appeal or review?</b>	No	Not specified	Not specified	No	Not specified
<b>When is the parolee eligible for discharge?</b>	When the accumulation of served and earned time equals the total sentence imposed by the court	Expiration of sentence; when time served on parole and earned time equal the supervision term, the individual is placed on abatement (no reporting req., no supervision fee, cannot leave state without permission) until expiration	When time served on parole plus earned discharge time equal the total parole term	When the combination of the time served on parole and earned compliance credits satisfy the term of parole, so long as individual has served at least 2 years on parole	When earned credits plus time served on parole without a violation equal the parole term

<b>Key Factors</b>	<b>AR</b>	<b>MD</b>	<b>MS</b>	<b>MO</b>	<b>UT</b>
<b>Is court process required for early discharge based on earned compliance credit?</b>	Yes. <sup>53</sup> Dept. must file petition for discharge with the court	Yes. Ct may adjust term based on rec. by Div. Of Prob. & Parole. <sup>54</sup> But note that most discharges occur at end of sentence (after abatement)	No. Parole Board has authority to discharge once parolee reaches eligibility	No. Parole Board has authority to discharge once parolee reaches eligibility	No. Board of Pardons and Parole has authority to terminate
<b>Can anyone object?</b>	Yes. Prosecutor or Parole Board	Not specified	Not specified	Not specified	Board can delay termination if it would interrupt completion of a necessary treatment program

<sup>53</sup> Ark. Code Ann. § 16-90-1304(a)(4) (West 2016).

<sup>54</sup> Note that with passage of the Justice Reinvestment Act, earned compliance typically results in abatement, which is defined as an end to “supervised” probation, but not an end to the term itself. The court must order a change in term in order to achieve discharge. 2016 Md. Laws ch. 515.

# APPENDIX D: MINNESOTA PROBATION DELIVERY SYSTEM MAP



Source: Minnesota Department of Corrections, Field Services

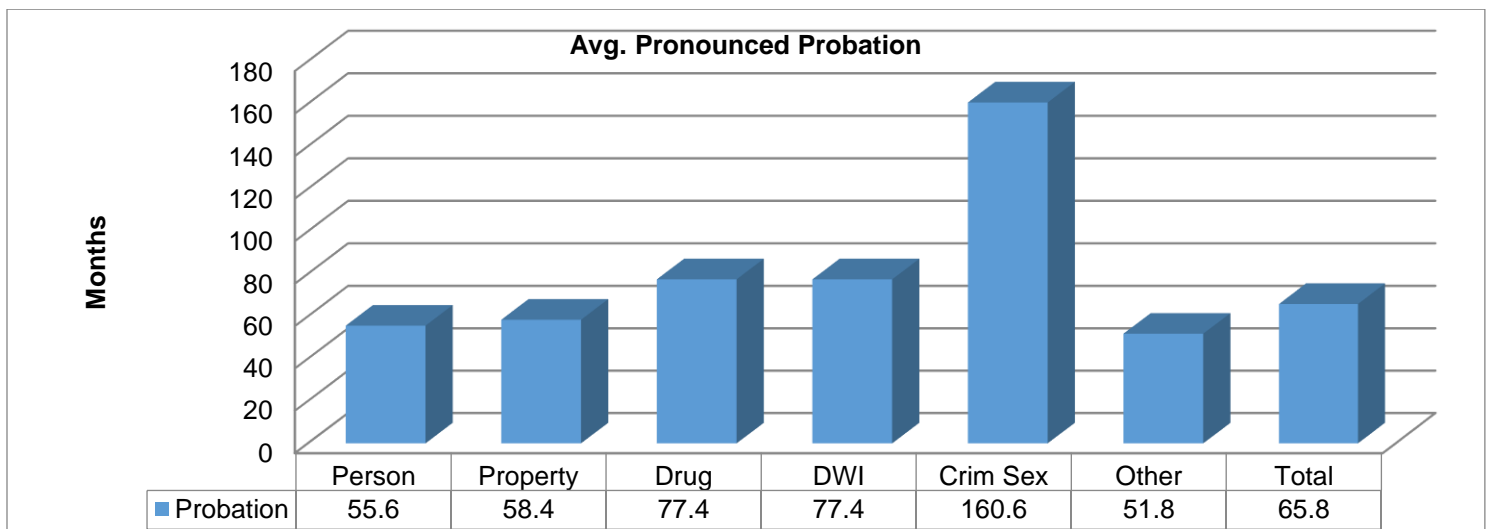
## APPENDIX E: AVERAGE PRONOUNCED PROBATION SENTENCES BY JUDICIAL DISTRICT AND OFFENSE

### Length of Stayed Sentences: Sentenced 2014-2015

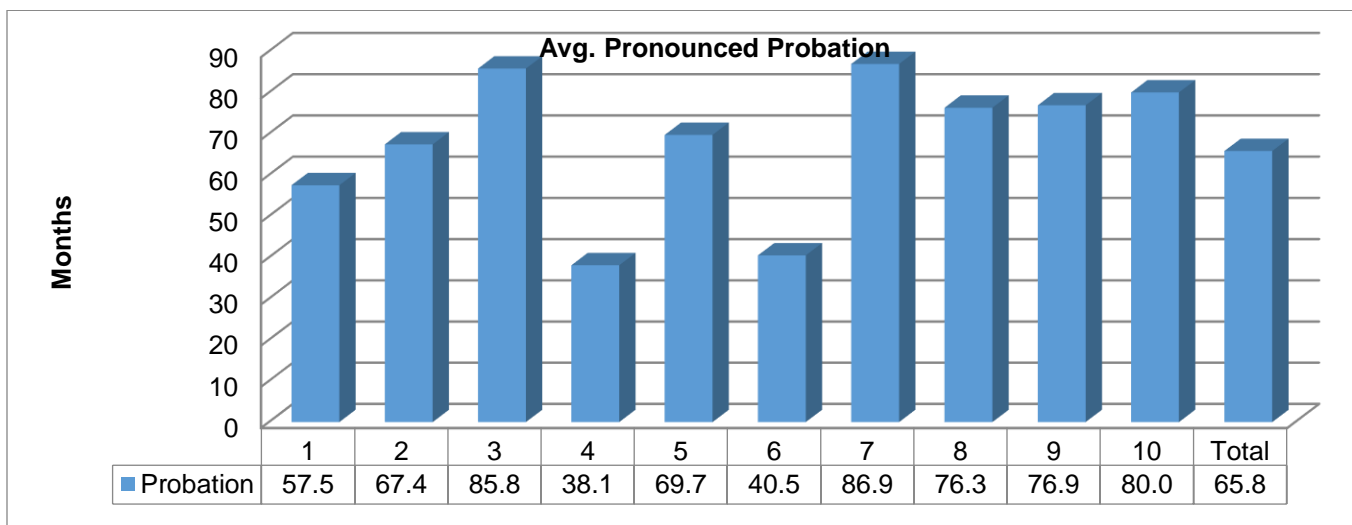
*Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.*

Figure 1 displays the average pronounced length of probation from 2014-2015, by offense type, for offenders sentenced for felony offenses. MSGC has no information on how long offenders actually serve on probation before they are discharged. Probation terms for felony offenses that received misdemeanor or gross misdemeanor sentences are included. 6% of the offenders placed on probation for felony offenses received a M/GM sentence during this period. Criminal sexual conduct offenses received significantly longer probation terms when compared to other offense types.

**Figure 1: Avg. Pronounced Probation Length by Offense Type: Felonies Sentenced 2014-2015**

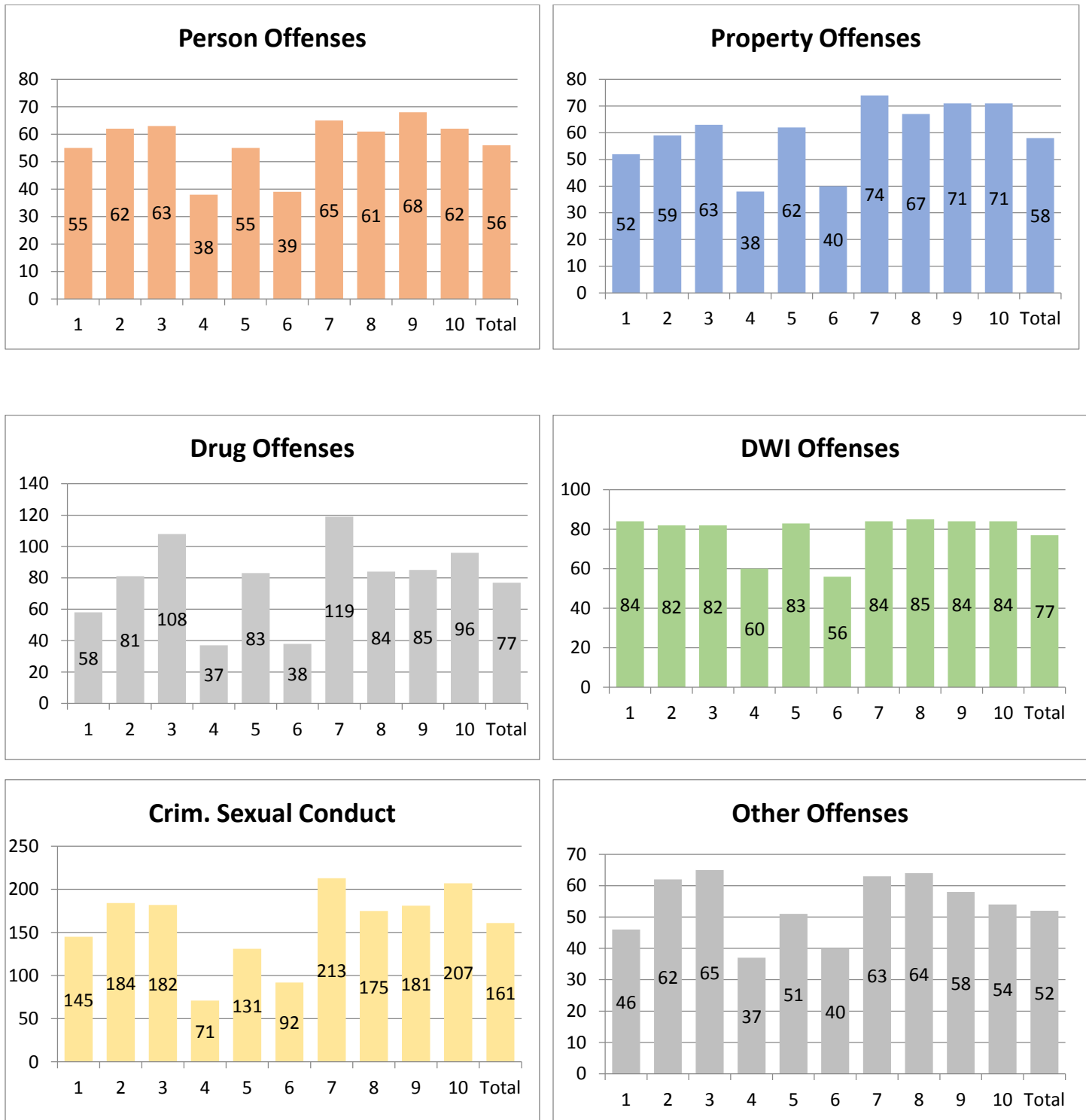


**Figure 2: Avg. Pronounced Probation Length by District: Felonies Sentenced 2014-2015**



The following set of graphs display the average pronounced probation terms by offense type and judicial district. For example, from 2014-2015, the average pronounced probation term for person offenses in District 1 was 55 months. Sex offenses have the longest average pronounced probation term.

**Figure 3: Avg. Pronounced Probation Term by District for Each Offense Type**



Source: Minnesota Sentencing Guidelines Commission, Monitoring Data