

Agenda for Community Supervision Subgroup #2

October 18, 2017

Subgroup Goal:

Develop recommendations to broader SROC that achieve the following:

- Reduce the supervision population
- Protect public safety
- Control corrections spending

Today's Policy Discussion:

- Strengthening Collection of Restitution and Other Financial Obligations
- Incentives
- Length of supervision

Calendar:

1. Workgroup meeting #3: 11/8, 10:30am – 12:30pm (Columbia)
2. Full SROC Report-Out Meeting: 11/8, 2pm (Columbia)
3. Workgroup meeting #4: 12/6, 10am (Charleston)
4. Full SROC Final Meeting: 12/13, 10am (Columbia)

Policy Discussion: Strengthening Collection of Restitution and Other Financial Obligations

Research Principles for Restitution and Financial Obligations:

1. Restitution is a vital part of making a victim whole again, both financially and emotionally. Research shows that, for victims, restitution can increase satisfaction in the criminal justice system.¹
 - Several studies also show that a clearer understanding of the restitution process increases victim satisfaction.²
 - For people who have committed crimes, it can play an important role in holding them accountable for their actions.
2. There is a greater likelihood that people will pay off their criminal justice obligations when their ability to pay is considered in determining them.
 - A survey of restitution directors found that people are more likely to pay their restitution in full when their means are assessed, both at the point of determining the amount of the award, and in determining the appropriate response when the offender is delinquent.³
 - Often a lack of information about income and assets results in fines and fees that are either too high, resulting in amounts beyond what people can pay, or too low, such that the sentence does not achieve its intended retributive effect.⁴
3. When financial obligations become overwhelming, it can create barriers to successful reentry.
 - Offenders returning to the community can owe as much as 60% of their income to criminal justice debts.⁵
 - Substantial debt compared to a person's earning power can result in housing, food, and medication instability; decreased ability to support children; and an increased likelihood of criminal justice involvement to obtain money.⁶

¹ National Crime Victim Law Institute (2013), "Ensuring Full Restitution for Crime Victims: Polyvictims as a Case Study in Overcoming Causation Challenges," <https://law.lclark.edu/live/files/15462-ensuring-full-restitution-for-crime>; Theodore R. Sangalis, "Elusive Empowerment: Compensating the Sex Trafficked Person Under the Trafficking Victims Protection Act," *Fordham Law Review*, (2011) <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4658&context=flr>; Jo-Anne Wemmers and Marisa Canuto, Department of Justice Canada, "VICTIMS' EXPERIENCES WITH, EXPECTATIONS AND PERCEPTIONS OF RESTORATIVE JUSTICE: A Critical Review of the Literature" (2002) http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr01_9/rr01_9.pdf.

² R. Barry Ruback, Penn State University, Cares, Alison C., Central Connecticut State University, and Hoskins, Stacy. N., Penn State University, "Crime Victims' Perceptions of Restitution: The Importance of Payment and Understanding," (2008) <http://pacrimstats.info/PCCDReports/EvaluationResearch/Completed%20Research/Victims%20Services/Restitution/Crime%20Victim%27s%20Perceptions%20of%20Restitution.pdf>; Wemmers and Canuto (2002).

³ American Bar Association Criminal Justice Section Victim Witness Project (1989), "Improving Enforcement of Court-Ordered Restitution," <https://ncsc.contentdm.oclc.org/digital/collection/criminal/id/253>; R. Barry Ruback and Mark H. Bergstrom, "Economic Sanctions in Criminal Justice : Purposes, Effects, and Implications," (2006), *Criminal Justice and Behavior* 33: 242, <http://www.center-school.org/restitution/pdf/EconomicSanctionsInCriminalJusticePurposesEffectsAndImplications.pdf>.

⁴ R. Barry Ruback and Mark H. Bergstrom, "Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications," (2006), *Criminal Justice and Behavior* 33: 242, <http://www.center-school.org/restitution/pdf/EconomicSanctionsInCriminalJusticePurposesEffectsAndImplications.pdf>.

⁵ Harris, Evans & Beckett (2010), "Drawing Blood from Stones," <https://csqjusticecenter.org/wp-content/uploads/2013/07/2010-Blood-from-Stones-AJSj.pdf>

⁶ Harris, Evans & Beckett (2010).

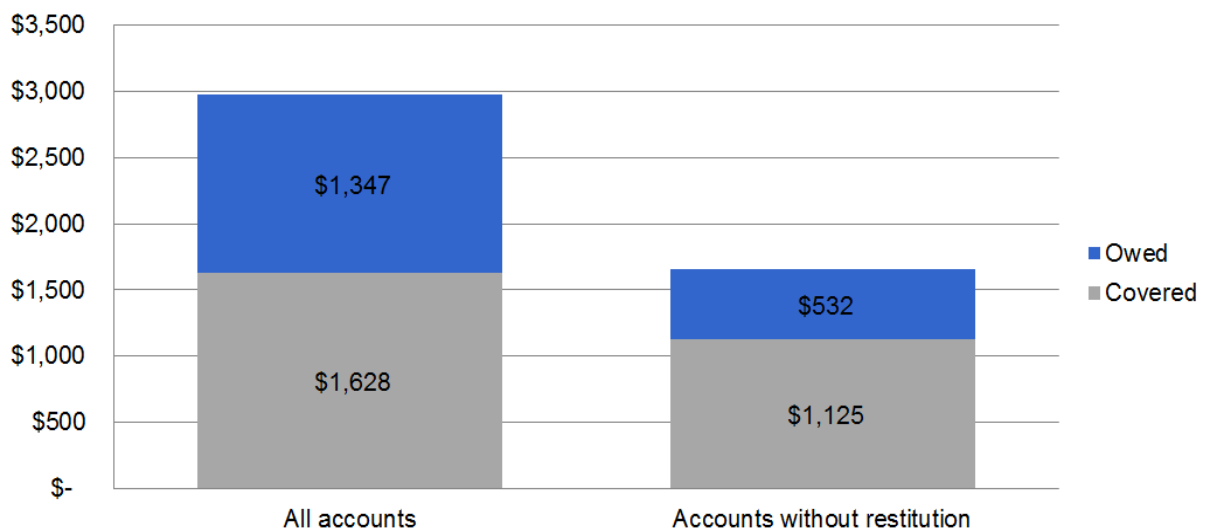
- One recent study showed that high financial penalties increased the likelihood of recidivism for juveniles.⁷

South Carolina Data Findings:

1. On average, people who left supervision in 2016 had nearly \$3,000 in financial obligations.
2. Of those who left supervision in 2016, 23% of them had restitution obligations on supervision
- 3.

On Average, 55% of a Supervisee’s Financial Obligations Were Covered By End of Supervision

Average Amount of Obligations Per Supervisee, Supervision Closures, FY 2016



Current South Carolina Practices:

1. Judges determine restitution amount and length of supervision.
 - a. A restitution hearing, to determine the restitution amount, will only occur when there are disagreements about what is owed.⁸
 - b. Judges are not required to assess the financial resources of the defendant nor the ability of the defendant to pay.⁹
2. If the sentence does not include probation, the judge or the clerk of court determines the rate of payment, with no statewide requirements and varying practices across the state.¹⁰

⁷ Alex R. Piquero, Ph.D. University of Texas at Dallas & Wesley G. Jennings, Ph.D. University of South Florida, Justice System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders (June 2016) available at <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study.pdf>

⁸ S.C. Code Ann. § 17-25-322

⁹ S.C. Code Ann. § 17-25-322

¹⁰ Richland and Laurens Counties Clerk of Courts, interviewed October 2017.

3. If the sentence does include probation, PPP agents use a formula to determine the monthly payment. This includes: restitution, 20% restitution collection fee, court fines and fees, supervision fee(s), a public defender fee, a DNA fee, drug test fee, and other fees depending on the type of supervision.¹¹
 - a. The total amount is then divided by the length of supervision, providing a monthly payment amount.
4. If a supervisee fails to pay, PPP has some limited abilities to restructure payments¹²:
 - a. PPP can reduce supervision fees, but only by half and for 12 payments; and
 - b. Once payments are in arrears, if hardship or disability is found as a cause, PPP can exempt six payments.

Policy Options:

To strengthen collection of restitution:

- Require a court restitution hearing¹³ at sentencing to determine a reasonable restitution amount, ensuring the victim and defendant receive accurate expectations, clear instructions, and an achievable result.
- Require that restitution be fully collected prior to the collection of other types of criminal justice debt obligations.

To strengthen collection of other financial obligations:

- Enable PPP to base payments on supervisees' incomes:
 - Option A: Tailor monthly payments to the person's net monthly income, which is information that PPP already collects.
 - Option B: Cap fees at a certain dollar amount for those who qualify as indigent.
 - Option C: Set fees at a proportional rate for everyone, such as one day's pay per month.
- Further incentivize restitution and fee payment by evaluating payment success after a certain period of time and, if positive, reducing or stopping payments.

Louisiana, 2017: For those who are determined to be indigent, people on supervision owe one day's pay per month to cover all fees and fines, with restitution prioritized. As an incentive, if people successfully make full payments for 12 months, the rest is forgiven.¹⁴

¹¹ South Carolina Department of Probation, Parole and Pardon Services Policy & Procedure Nos. 116 and 602

¹² South Carolina Department of Probation, Parole and Pardon Services Policy & Procedure No. 118

¹³ S.C. Code Ann. § 17-25-322

¹⁴ Louisiana Act 260, <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1051827>

Overall Supervision Research Discussion:

Recidivism Reduction Principles:

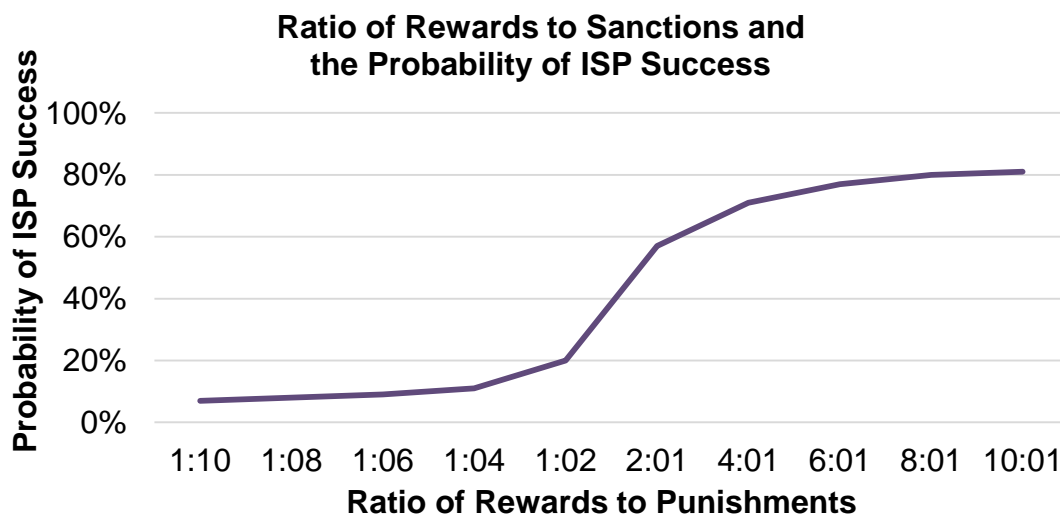
- Risk, Needs, Responsivity
 - Who to target
 - What to target
 - How to target
- Use Incentives and Sanctions to Respond to Behavior
 - Swift, certain, and proportionate sanctions
- Frontload Resources
- Balance Supervision With Treatment
- Monitor Quality, Fidelity, and Outcomes

Policy Discussion: Strengthen Supervision through Incentives

Research Principle:

Use Incentives and Sanctions to Respond to Behavior

- Research shows that administering rewards in proportionally higher numbers than sanctions produces the best results, especially when a ratio of four or more rewards for every sanction is achieved.¹⁵
- Evidence-based supervision systems:
 - Provide incentives for meeting case-specific goals of supervision to enhance individual motivation.
 - Develop a continuum of rewards to round out the continuum of sanctions.

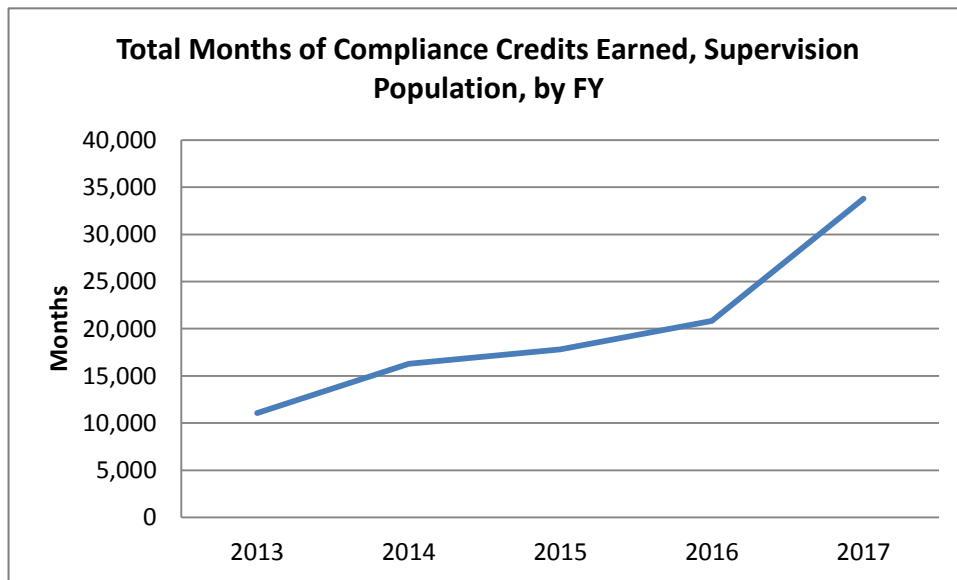


¹⁵ Wodahl, Garland, Culhane & McCarty (2011), *Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-based Corrections*

- Compliance credits, a type of incentive which allows supervisees to earn time off their sentences, have been shown to reduce people’s sentences while providing incentives for positive behavior change and freeing up resources to be used for people at a higher risk to reoffend.¹⁶

Current Incentives Practices and Data:

1. With the enactment of S. 1154, most people on supervision in South Carolina are eligible to earn time off their sentence for complying with the terms of supervision.¹⁷
 - a. People with sentences of over a year for an offense committed on or after January 1st, 2011, can earn 20 days off for every 30 days served in compliance with the rules of supervision.
2. In 2016, just 8% of total supervision closures ended early due to compliance credits.
3. However, the total number of compliance credits earned has increased. One policy change enacted in early 2017, allowing people to earn credits with up to 3 months of unpaid financial obligations, could be a factor in the acceleration of compliance credits earned this year.



4. While probation and parole agents apply a variety of escalating sanctions based on type of violation, there are limited numbers and types of incentives. The available incentives are compliance credits and early release.

¹⁶ Petersilia, J. (2007). Employ behavioral contracting earned discharge parole. *Criminology and Public Policy* (6)(4): 807-14.

¹⁷ 24-21-280

State Examples:

1. Mississippi

- Allows probationers and parolees to earn 30 days of credit for each month of compliance.¹⁸
- The conditions that result in denials of credit are the following:
 - Violations of conditions while court action is pending
 - Absconding, or
 - Jail due to a technical violation
- There is no specific mention of a requirement for financial obligations being up to date.¹⁹

With the passage of this policy:

- Mississippi's community corrections population has dropped 19% between June 2014 and June 2016.
- Additionally, public safety outcomes have improved: 10% more probationers were successfully discharged than in 2014.

2. Arkansas

- Allows probationers and parolees to earn 30 days of credit for each month of compliance.²⁰
- The only condition that results in forfeitures of credit is a new felony conviction.²¹

3. Missouri

- Allows probationers and parolees to earn 30 days of credit for each month of compliance.²²
- The conditions that result in denials or forfeitures of credit are the following:
 - Violations of conditions while court action is pending or
 - Absconding
- There is no specific mention of a requirement for financial obligations being up to date.²³

The implementation of these policies has:

- Decreased the average supervision term by 14 months
- Brought the average probation and parole officer caseload down from 70 (2012) to 59 (2015).

4. Utah

- Allows probationers and parolees to earn 30 days of credit for each month of compliance.²⁴
- The conditions that result in denials of credit are violations of conditions or case plan.
- There is no specific mention of a requirement for financial obligations being current.²⁵

¹⁸ Miss. Code Ann. § 47-7-40

¹⁹ <https://www.leg.state.mn.us/docs/2017/mandated/170126.pdf>

²⁰ A.C.A. § 16-90-1303

²¹ <https://www.leg.state.mn.us/docs/2017/mandated/170126.pdf>

²² Missouri Revised Statutes Section 217.703.1

²³ <https://www.leg.state.mn.us/docs/2017/mandated/170126.pdf>

²⁴ Utah Code Ann. § 64-13-21

²⁵ UT Policy & Procedure

5. Alaska

- Allows probationers and parolees to earn 30 days of credit for each month of compliance.²⁶
- The conditions that result in denials of credit are the following:
 - Violations of conditions
 - Only financial violations are deliberate failure to pay child support, court-ordered fines or fees, and restitution.
- There are no probation fees in Alaska.²⁷

6. Louisiana

- Allows probationers and parolees to earn 30 days of credit for each month of compliance.²⁸
- Compliance credits are awarded up front in Louisiana, and taken away due to noncompliance for higher-severity violations as a part of the administrative sanctions grid.
 - Including failure to pay restitution for more than three months, but not including failure to pay fees.²⁹

²⁶ Alaska Stat. § 33.16.270

²⁷ AK Policy & Procedure

²⁸ La. R.S. § 15:574.6.1; La. C.C.R.P. Art. 895.6

²⁹ LA Policy & Procedure

Policy Options:

Expand the use of compliance credits to feel the full effects of this evidence-based policy:

1. Limit the definition of “noncompliance” to those who *willfully* refuse to pay their financial obligations (as opposed to those who are *unable* to pay 3 months or more.)

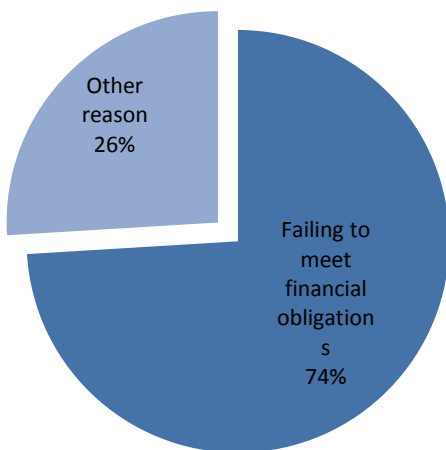
a. For people on supervision in FY2014³⁰:

- i. 41.2% of them made under \$10,000
- ii. 17.8% made \$10,000 to \$15,000
- iii. 27.3% made \$15,000 to \$25,000
- iv. 13.4% made more than \$25,000

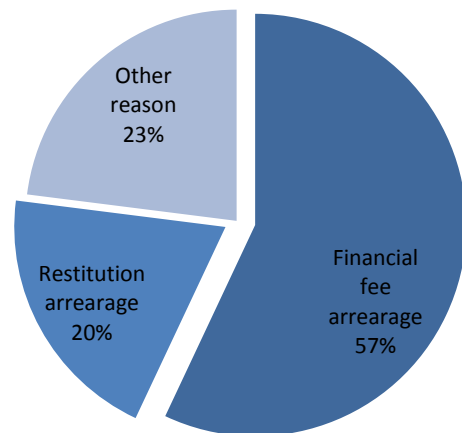
} 86.3% of people on supervision in 2014 made \$25,000 or less

b. The primary reason for 74% of compliance credit denials in 2016 were failing to meet financial obligations. Of that 74%, just 20% are from failing to pay restitution.

Compliance credits denied, by primary denial reason, FY 2016



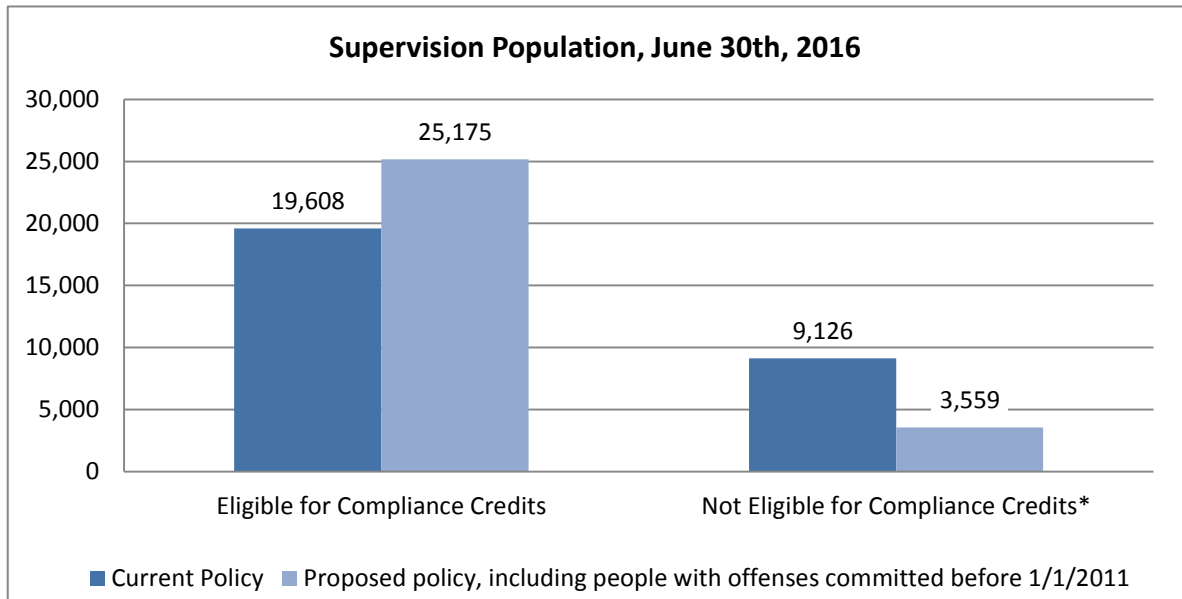
Compliance credits denied, by primary denial reason, FY 2016



2. Open up eligibility for compliance credits to those whose aggregate sentences on supervision are 6 months or greater (up from those whose aggregate sentences are greater than 1 year).

³⁰ 2014 Fiscal Year Economic Impact Analysis of the 2010 SRA, Department of Probation, Parole and Pardon Services; Income breakdown includes persons who are receiving wages, those receiving government benefits, and those who are unemployed or not earning any income.

3. Expand compliance credits to those currently on supervision with offenses before January 1st, 2011.
 - i. With this policy change, approximately 5,600 people would become eligible for compliance credits as of June 30th, 2016.



**This estimate uses the active case sentence length to determine eligibility. If a person has consecutive cases with an aggregate term greater than one year, he or she would also be eligible. Of those who committed offenses before January 1st, 2011 only 2% had an active case sentence length that was not greater than one year.*

4. Expand compliance credits to 30 days of credit for each month of compliance (up from 20).
5. Implement training for agents on compliance credits.

Additional Policy Option:

Implement a continuum of small incentives to match the violation matrix that is already in existence, for example: increased or eliminated curfew, waived supervision fees, and/or verbal recognition.

Policy Discussion: Supervision Length

Research Principle:

Frontload Resources

- Focus supervision and programming resources during the initial weeks and months following release from prison when violations and arrests are most likely to occur.³¹
 - Focus resources where they can have the biggest impact.
- Initial studies show that recidivism decreased when supervision length was in accordance with the risk principle.³² For example, people who test as high risk are often recommended to have 200 or more hours of programming and those at medium risk are recommended to have 100.
 - One report uses a conceptual model to show that 300 hours could take two years to complete. This could increase depending on the engagement of the person on supervision.³³

Risk Level	Dosage Target	Dosage Hours of Supervision Agent Intervention	Dosage Hours of Services
High	300 hours	45 minutes/week for 24 months Total hours: 78	6 hours/week for 6 months + 90 minutes/week for 12 months Total hours: 216

Current Practices and Data:

1. **Length of stay on supervision has inched up** since 2010.
2. **Maximum probation length is 5 years across all felony and misdemeanor classes** (misdemeanor classes A through C, felony levels A through F, as well as unclassified offenses).³⁴

National Context:

- Many states have graduated probation maximums that align closely with types of offenses or offense classes.
- Many states differentiate probation lengths by felonies and misdemeanors.
- Some, like South Carolina, have a flat maximum cap.

³¹ National Research Council (2007)

³² Lowenkamp, C. T., Pealer, J., Smith, P., & Latessa, E.J. (2006). "Adhering to the risk and needs principles: Does it matter for supervision-based programs?" *Federal Probation*, 70, 3-8.

³³ National Institute of Corrections, (2014). "Dosage Probation: Rethinking the Structure of Probation Sentences."

³⁴ S.C. Code Ann. § 24-21-440

Average Maximum Probation Sentence Lengths of State Statutes (Neighbors in Orange)

States that Split by Felonies and Misdemeanors			
<i>12 states</i>			
<u>State</u>	<u>Max. Term Felonies</u>	<u>Max. Term Misdemeanors</u>	<u>Discretion/Notes</u>
AL ³⁵	5 years	2 years	
CA ³⁶	5 years	3 years	Cannot exceed max. statutory sentence for offense.
DE ³⁷	2 years (violent felonies)	Non-violent felonies, non-health and drug offenses: 1 year	Health and Safety Code violations including drug offenses: 18 months; Court may order a longer term for violent offenses, sex offenses, or to ensure restitution; 90-day extension for substance abuse treatment available.
FL ³⁸	2 years	6 months or 1 year if alcohol-related	Intensive supervision: 2 years or statutory maximum, whichever is less; Misdemeanor maximum can be overridden by judge.
IA ³⁹	5 years	2 years	
KY ⁴⁰	5 years	2 years	Includes probation term and extension, but no max. for restitution.
MI ⁴¹	5 years	2 years	Exceptions: misdemeanor stalking or child abuse (5 years); aggravated stalking and certain sex offenses (no limit)
MO ⁴²	5 years	2 years	Infractions: 1 year; Maximums include any extension.
NE ⁴³	5 years	Second misdemeanors: 5 years First misdemeanors: 2 years	
NV ⁴⁴	5 years	3 years	Misdemeanor category includes gross misdemeanors, specialized treatment programs, and certain first-time drug offenses
NH ⁴⁵	5 years	2 years (Class A misdemeanors)	
UT ⁴⁶	3 years	Class A misdemeanors: 3 years Class B, C, and	No max. for outstanding restitution.

³⁵ Ala. Code § 15-22-54(a)

³⁶ Cal. Penal Code § 1203.1(a); Cal. Penal Code §1203a

³⁷ Del. Code Ti. 11, § 4333

³⁸ Fla. Stat. § 948.04; Fla. Stat. § 948.01(4); Fla. Stat. § 948.15

³⁹ Iowa Code § 907.7

⁴⁰ Ky. Rev. Stat. § 533.020(4)

⁴¹ Mich. Compiled Law § 771.2; Mich. Compiled Law § 771.2(a)

⁴² Mo. Rev. Stat § 559.016

⁴³ Neb. Rev. Stat. § 29-2263

⁴⁴ Nev. Rev. Stat. § 176A.500

⁴⁵ N.H. Rev. Stat. § 651.2(V)(a)

⁴⁶ Utah Code § 77-18-1(10)

		infractions: 1 year	
States with One Flat Maximum <i>6 states</i>			
<u>State</u>	<u>Max. Term</u>	<u>Discretion/Notes</u>	
GA ⁴⁷	2 years	Exception: Street Gang Terrorism and Prevention Act (5 years) No max. for outstanding restitution.	
MS ⁴⁸	5 years	Max. includes extension. Exception: failure to pay child support.	
NC ⁴⁹	5 years	May be extended up to 3 additional years for restitution or treatment.	
OH ⁵⁰	5 years		
OK ⁵¹	2 years	Sex offenders excluded. Terms can be extended up to the maximum sentence if public interest will be served.	
WV ⁵²	5 years	Maximum includes probation term and extension.	

States that Split by Felonies and Misdemeanors <i>12 states</i>	
Felony average maximum length	4.33 years
Misdemeanor average maximum length	1.875 years
States with One Flat Maximum <i>6 states</i>	
Average maximum length	4 years
South Carolina Flat Maximum⁵³	
Maximum length	5 years

⁴⁷ Ga. Cod e§ 42-8-34.1(g)

⁴⁸ Miss. Code § 47-7-37

⁴⁹ N.C. Gen. Stat. § 15A-1342

⁵⁰ Ohio Rev. Code § 2929.15; Ohio Rev. Code § 2929.25

⁵¹ § 22-991a(E)

⁵² W.V. Code § 62-12-11

⁵³ S.C. Code Ann. § 24-21-440 (Maximum includes probation term and extension.)

Examples of States that have Recently Lowered their Probation Terms

Louisiana: 2017

Pre-2017		2017 Legislative Session Change	
Offense Type or Category	Probation Maximum	Offense Type or Category	Probation Maximum
Eligible felonies	5 years	Eligible violent felonies	5 years
		Eligible nonviolent felonies	<u>3 years</u>
Eligible misdemeanors	2 years	Eligible misdemeanors	2 years

Hawaii: 2012

Pre-2012		2012 Legislative Session Change	
Offense Type or Category	Probation Maximum	Offense Type or Category	Probation Maximum
Eligible class A felonies	10 years	Eligible class A felonies	10 years
Eligible class B or class C felonies	5 years	More serious class B or class C felonies ⁵⁴	5 years
		Less serious class B or class C felonies	<u>4 years</u>
Eligible misdemeanors ⁵⁵	1 year	Eligible misdemeanors ⁵⁶	1 year
Eligible petty misdemeanors ⁵⁷	6 months	Eligible petty misdemeanors ⁵⁸	6 months

Hawaii Three-Year Recidivism Rate⁵⁹: (felony probationers)

2010	52.3%
2011	50.9%
2012	47.4%
2013	45.5%

Hawaii Probation Population⁶⁰:

2010	20,874	Down 6%
2011	22,316	
2012	22,211	
2013	21,576	
2014	20,931	
2015	20,912	

⁵⁴ This includes probation eligible criminal homicide offenses, sexual offenses, child abuse, offenses against the family or incompetents, prostitution, promoting prostitution, and sex trafficking. 706-623(1)(b)

⁵⁵ Up to two years for temporary restraining order, violation of an order for protection, or abuse of family or household members.

⁵⁶ Up to two years for temporary restraining order, violation of an order for protection, or abuse of family or household members.

⁵⁷ "up to one year may be imposed upon a finding of good cause" 706-623(1)(d)

⁵⁸ "up to one year may be imposed upon a finding of good cause" 706-623(1)(d)

⁵⁹ 3-year rearrest rates for probation starts; Hawaii 2017 Recidivism Report, accessible at: <https://icis.hawaii.gov/wp-content/uploads/2017/06/Hawaii-Recidivism-Report-2016.pdf>

⁶⁰ Bureau of Justice Statistics, Corrections Statistical Analysis Tool, Hawaii

Policy Options⁶¹:

1. **Reduce maximum term of probation:** Reduce the maximum for a term of probation.
2. **Create graduated probation maximums:** Tier offenses and lower probation maximums by offense severity.

Class⁶²	Max. Probation Length
Unc. Felony	5 years
Felony class A	5 years
Felony class B	5 years
Felony class C	5 years
Felony class D	5 years
Felony class E	5 years
Felony class F	5 years
Unc. Misd	5 years
Misd. A	5 years
Misd. B	5 years
Misd. C	5 years

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Class	Max. Probation Length
Unc. Felony	5 years
Felony class A	5 years
Felony class B	3 years
Felony class C	3 years
Felony class D	2 years
Felony class E	2 year
Felony class F	1 year
Unc. Misd.	6 months
Misd. A	6 months
Misd. B	6 months
Misd. C	6 months

⁶¹ Probation maximums are tied to suspended sentencing maximums, and these policy ideas would only affect probation.

⁶² S.C. Code Ann. § 16-1-10