



Justice Center
THE COUNCIL OF STATE GOVERNMENTS

The Justice Reinvestment II Working Group Examination of Probation Earned Credit and Midpoint Review

*(Compilation of slides previously presented on
October 27, 2020, November 24, 2020, and
January 11, 2021)*

Vermont House Committee on
Corrections and Institutions

April 7, 2021

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Act 148 tasked the Justice Reinvestment II Working Group with evaluating the policy for people on probation earning one day of credit toward their suspended sentence for each day served in the community without a violation.

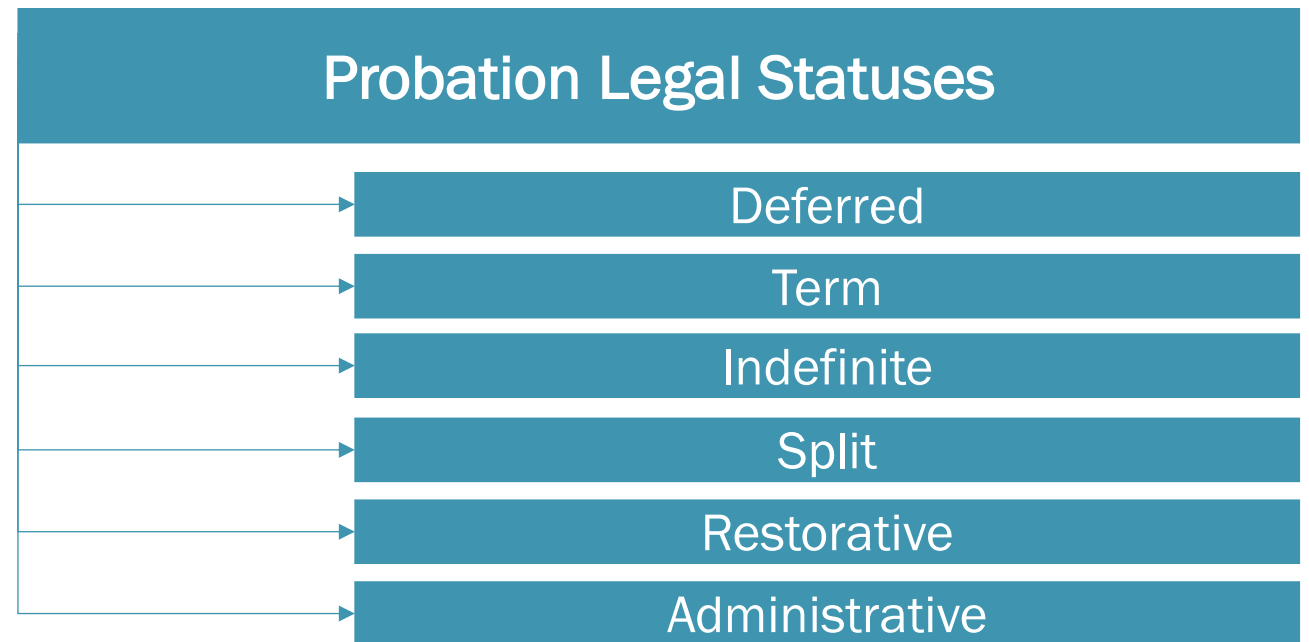
Other statutory considerations:

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

Under probation, a person who is found guilty of a crime, by verdict or plea agreement, is released by the court to community supervision.

Probation sentences include a defined probation term, as well as an underlying **minimum** and **maximum suspended incarceration sentence** to be served upon revocation.

There are several categories of probation in Vermont:



Probation in Vermont is administered by DOC, but the terms, conditions, releases, violations, and discharges of supervision are determined by the courts.



The Courts



The Vermont judiciary sentences people, sets conditions and terms of probation, and adjudicates probation violations and discharges.

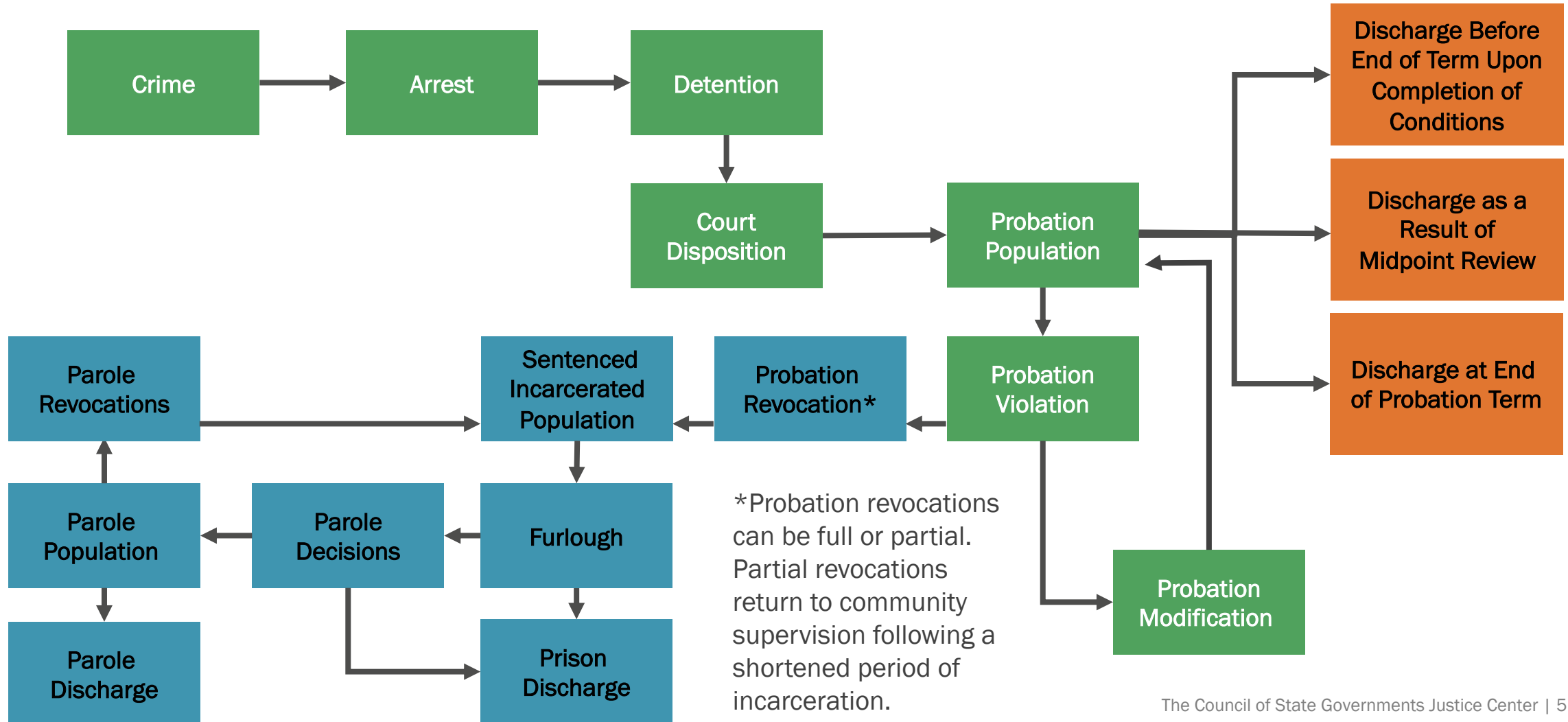


DOC



The DOC supervises all statuses of community supervision and files probation violations and requests for discharge with the courts.

A person's probation term can end through successful **discharge** or **revocation** to prison due to a violation.



Vermont has two mechanisms for discharging people on probation prior to the end of their imposed probation term.



Midpoint Review

At the midpoint of an individual's probation term, DOC conducts a case review and may submit a recommendation to the court for either discharge or a term reduction.

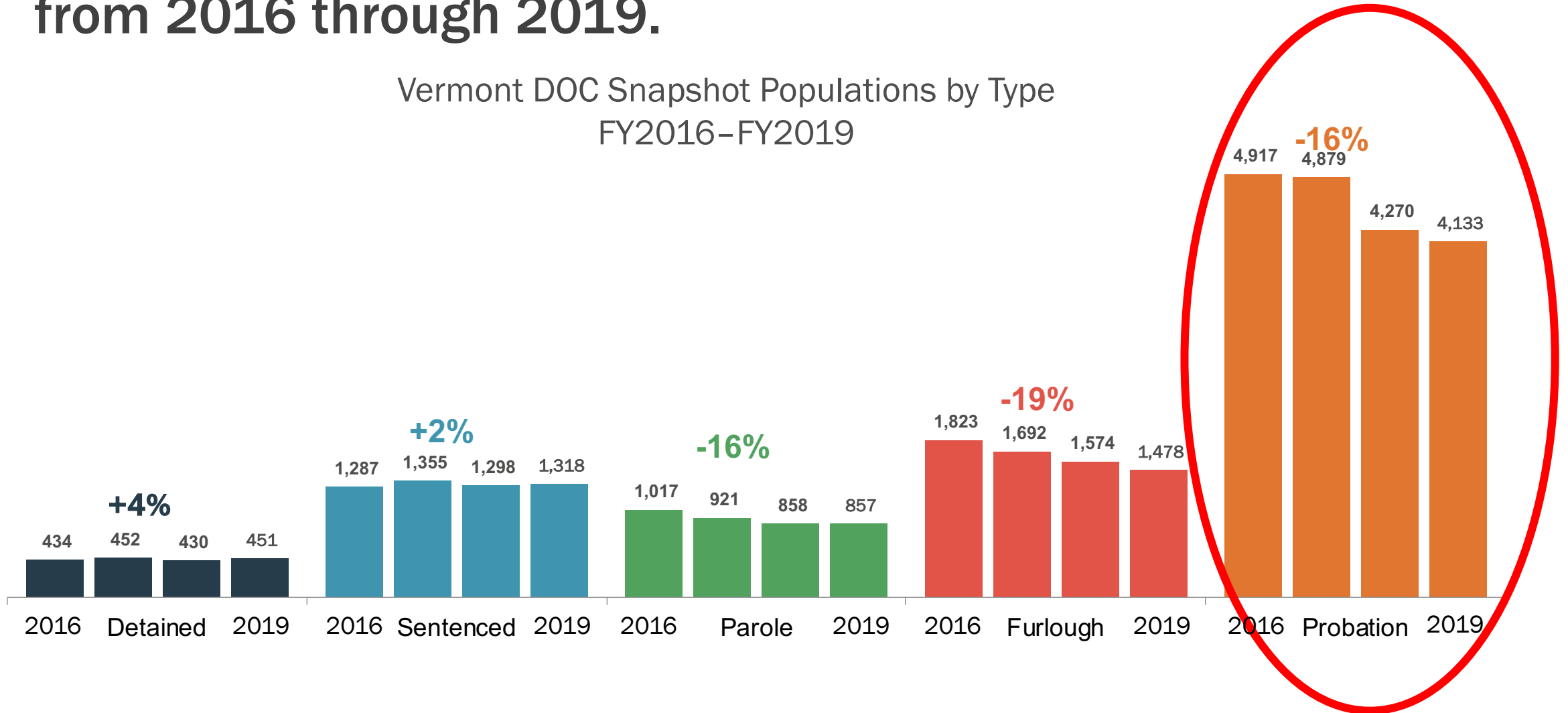


Discharge Upon Completion of Conditions

DOC may submit a recommendation to the court for early discharge when an individual has completed or complied with all the terms of their probation.

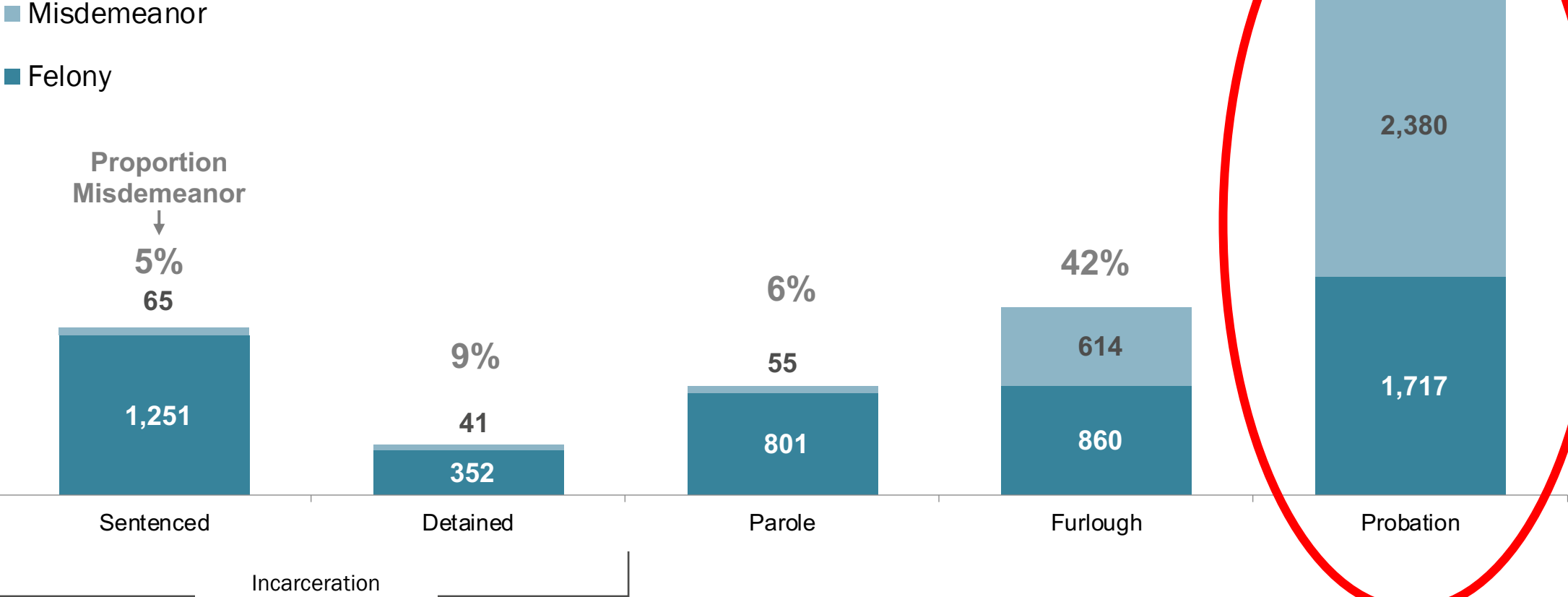
Vermont's probation population decreased 16 percent from 2016 through 2019.

Vermont DOC Snapshot Populations by Type
FY2016–FY2019



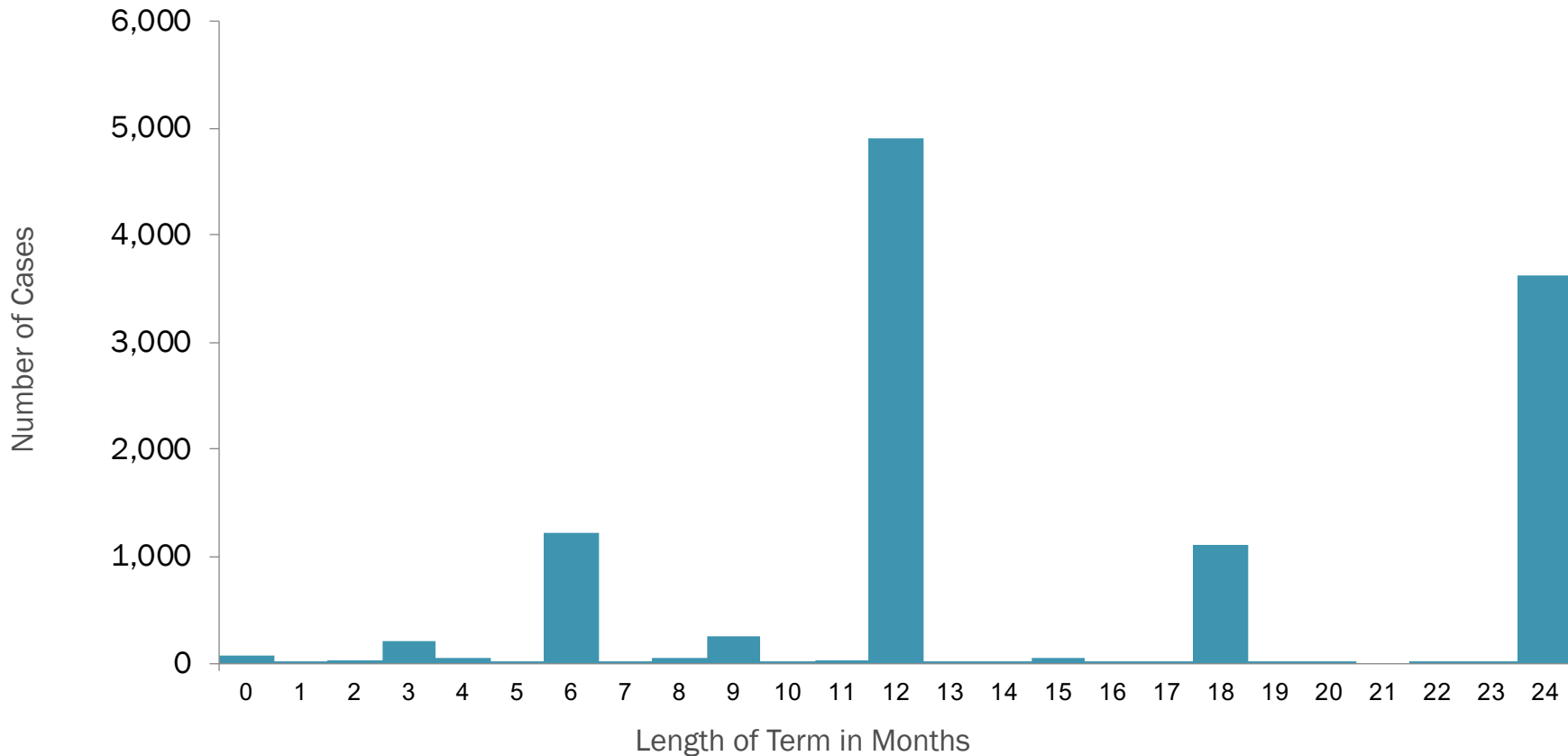
Most of Vermont's probation population consists of people convicted of misdemeanor offenses.

Vermont DOC Snapshot Populations by Type and Offense Level
FY2019



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

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

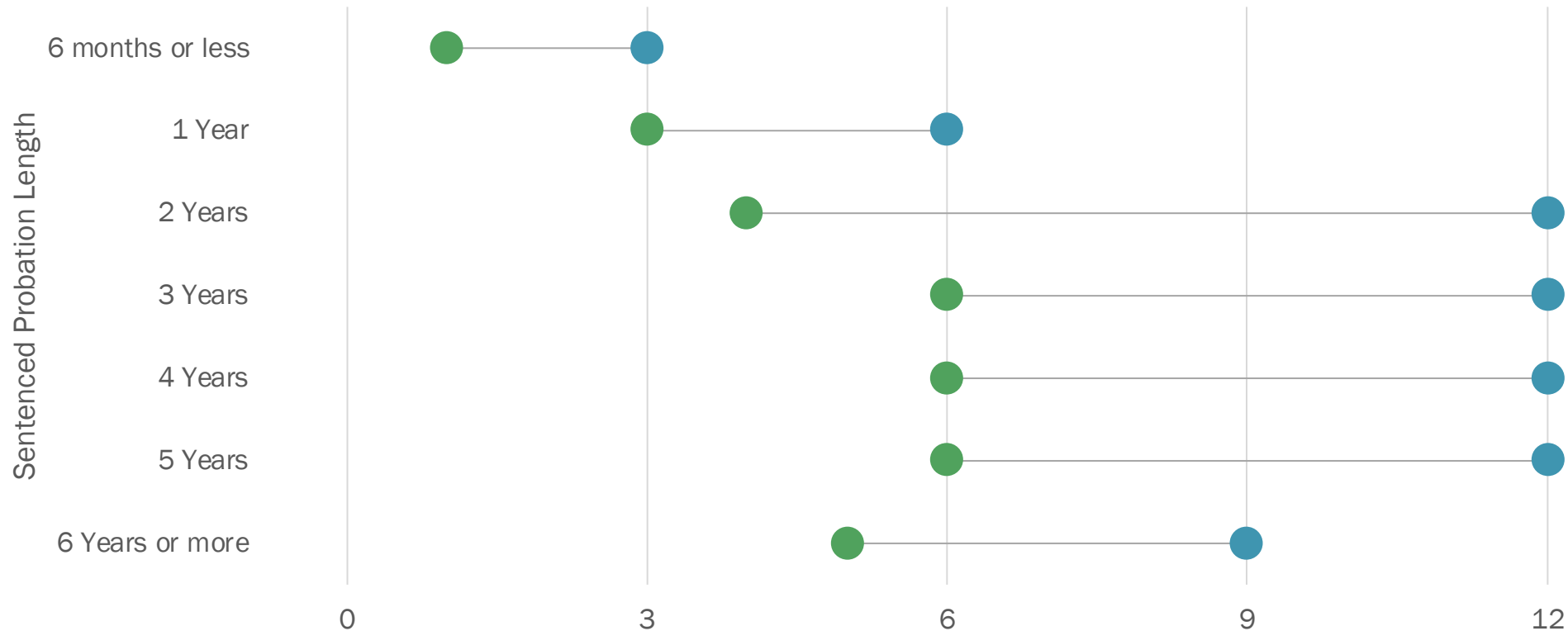


This consistency in relatively short misdemeanor probation sentences is likely due to Vermont state law, which states that misdemeanor sentences are not to exceed two years unless the court deems a longer period appropriate.

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

Minimum and Maximum

Misdemeanor Suspended Sentence Length
(Median, Months)



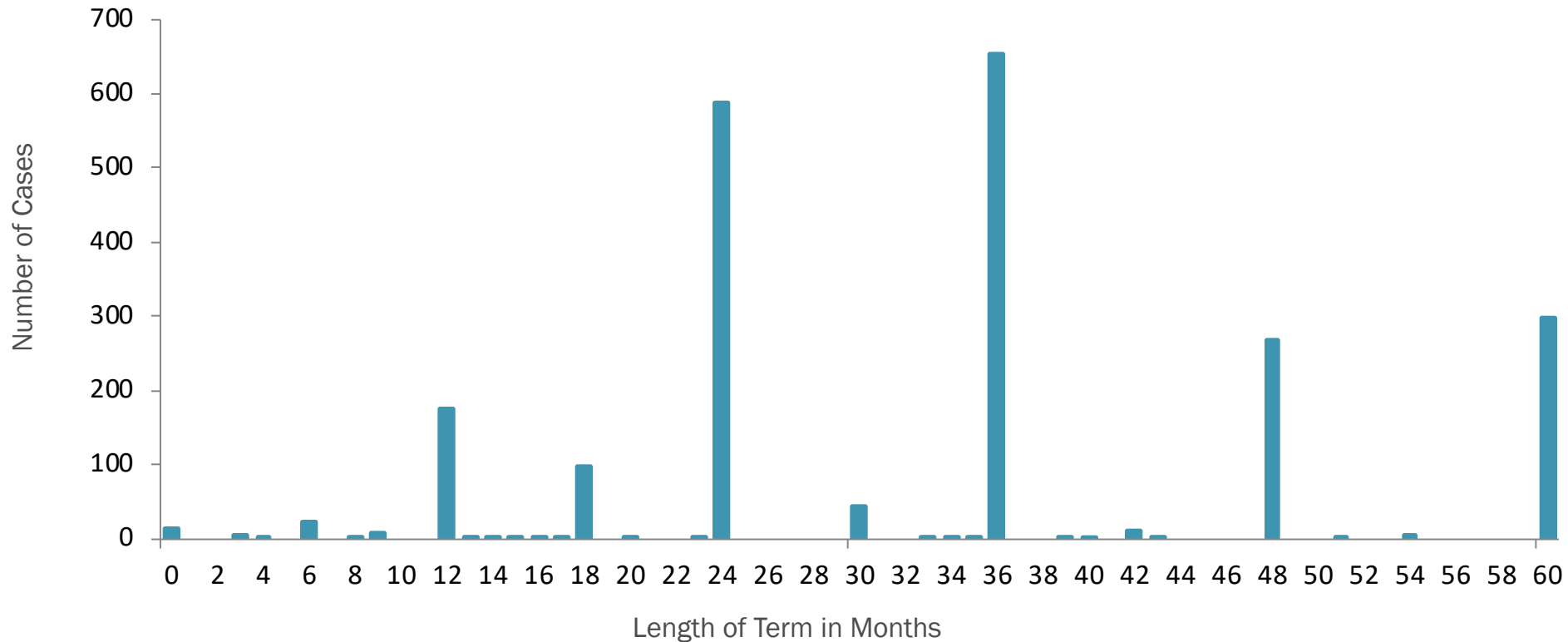
Overall, the median minimum suspended sentence is **three** months.

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

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

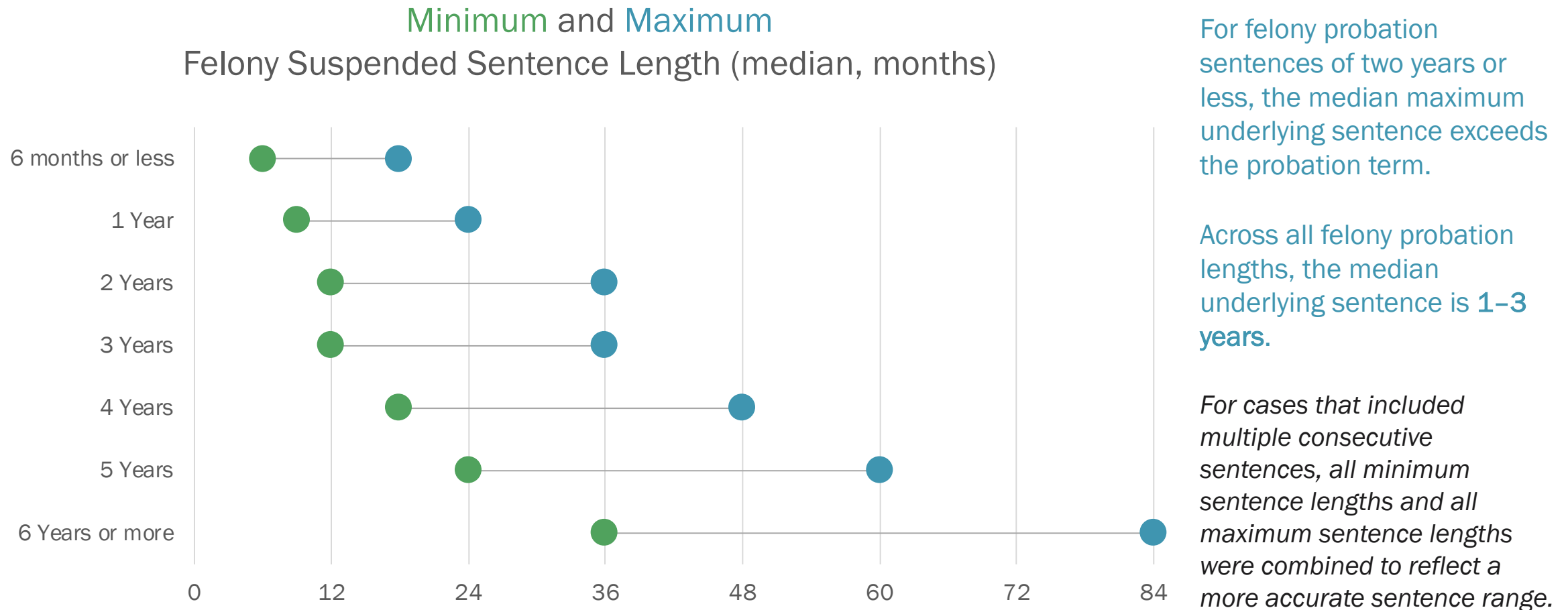
Nearly all felony probation sentences are less than five years.

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



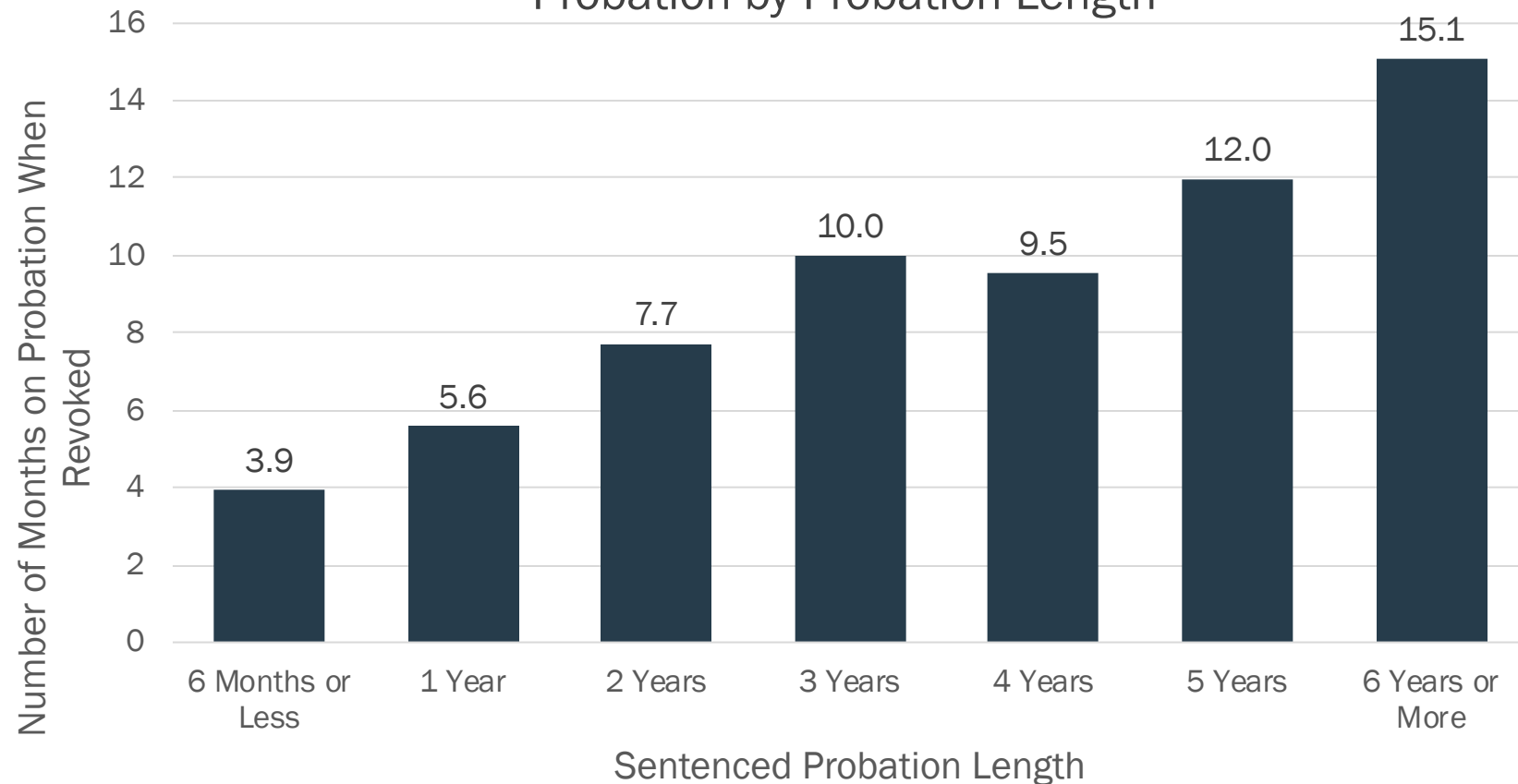
Statutory guidance states that felony probation sentences should generally not exceed four years unless the court deems a longer period appropriate.

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



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

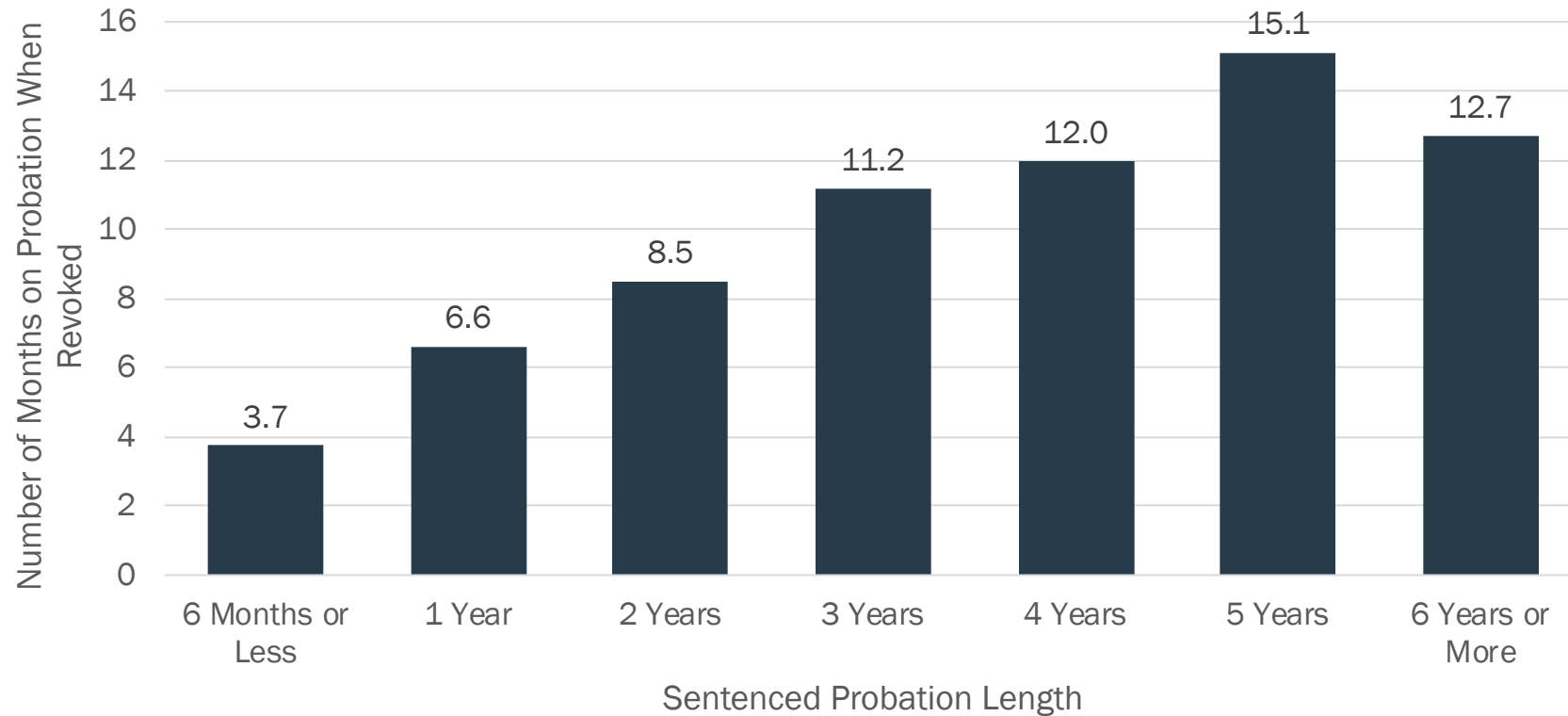
Average Time to Revocation for Misdemeanor Probation by Probation Length



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

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

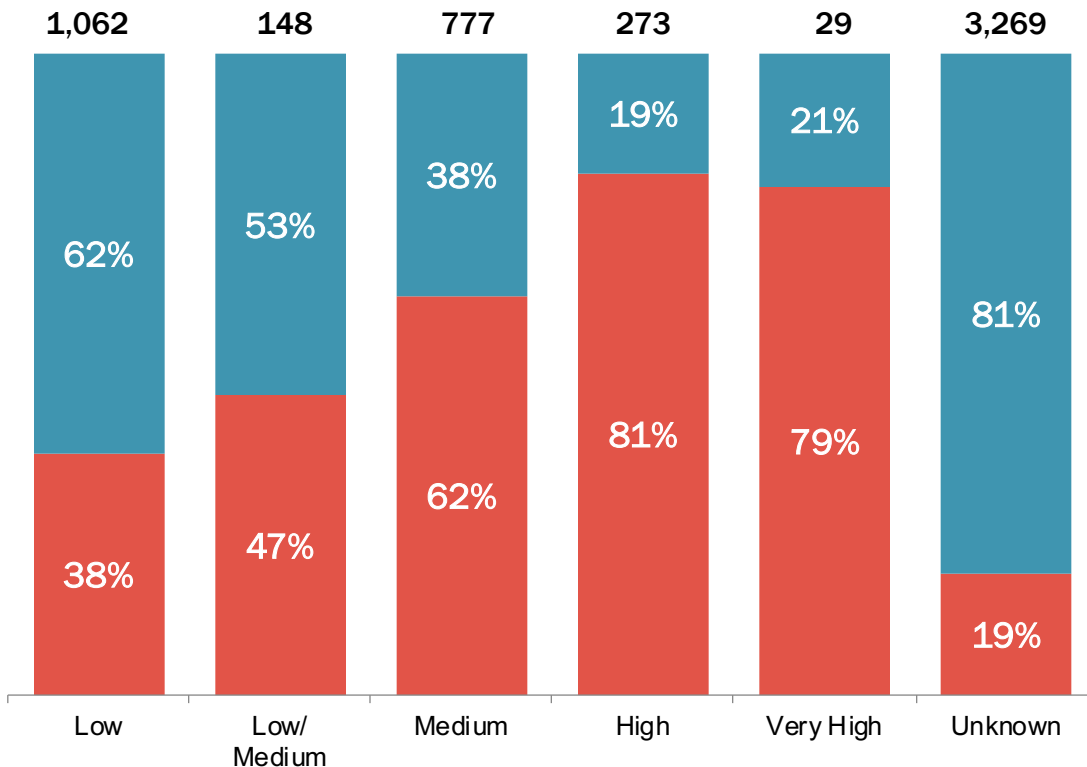
Average Time to Revocation for Felony Probation by Probation Length



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

Analysis of probation outcomes based on risk supports the need to focus resources on people most likely to reoffend.

Probation Success/Failure Outcomes by Risk Level
FY2017 – FY2019



Successes

Supervision Period Ended with Discharge

Failures

Supervision Period Ended with Stay in Detention or Incarceration

The large percentages of unknown risk assessments for probation populations are due to the use of an initial risk tool by DOC to screen out lower-risk people who do not need to receive the more involved ORAS assessment.

Because admission and release categories must be derived using DOC data, these analyses should be considered strong estimates.

Policies like probation earned credit and earned discharge can be structured to address several different policy goals.



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



Decrease probation term for people who are successful on probation.



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



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

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

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

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

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

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

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

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

In January 2021, based on previous working group discussions, members considered two primary policy options to address the goals of adopting a probation earned credit or earned discharge policy.

OPTION 1

Recommend that the legislature adopt a probation earned credit policy.

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



Option 1 was not adopted by the working group with comment.

Representation from the American Civil Liberties Union of Vermont stated that Options 1 and 2 (on the next page) should not be considered mutually exclusive and expressed support for adopting both options.

In January 2021, based on previous working group discussions, members considered two primary policy options to address the goals of adopting a probation earned credit or earned discharge policy.

OPTION 2

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

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



Option 2 was adopted by the working group with comment.

Representation from the Vermont Network Against Domestic and Sexual Violence stated the importance of honoring the rights of victims and ensuring that proper notification and communication processes are incorporated into any adopted policy.

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

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

Absent these probation, furlough, and parole supervision reforms, violation rates will remain high. By better addressing the multiple needs of people on supervision and investing in community resources, Vermont can increase supervision success while safely decreasing returns to incarceration.

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