

Justice Reinvestment II Working Group

Report to the House and Senate
Committees on Judiciary and the
House Committee on Corrections
and Institutions
as per Section 21 of Act 148

January 15, 2021





Overview

- 1** Introduction and Working Group Priorities
- 2** Examination of Probation Earned Credit/Midpoint Review
- 3** Analysis on Mental Health and Substance Use Disorder
- 4** Opportunities for Reinvestment
- 5** Sustainability Options and Working Group Next Steps

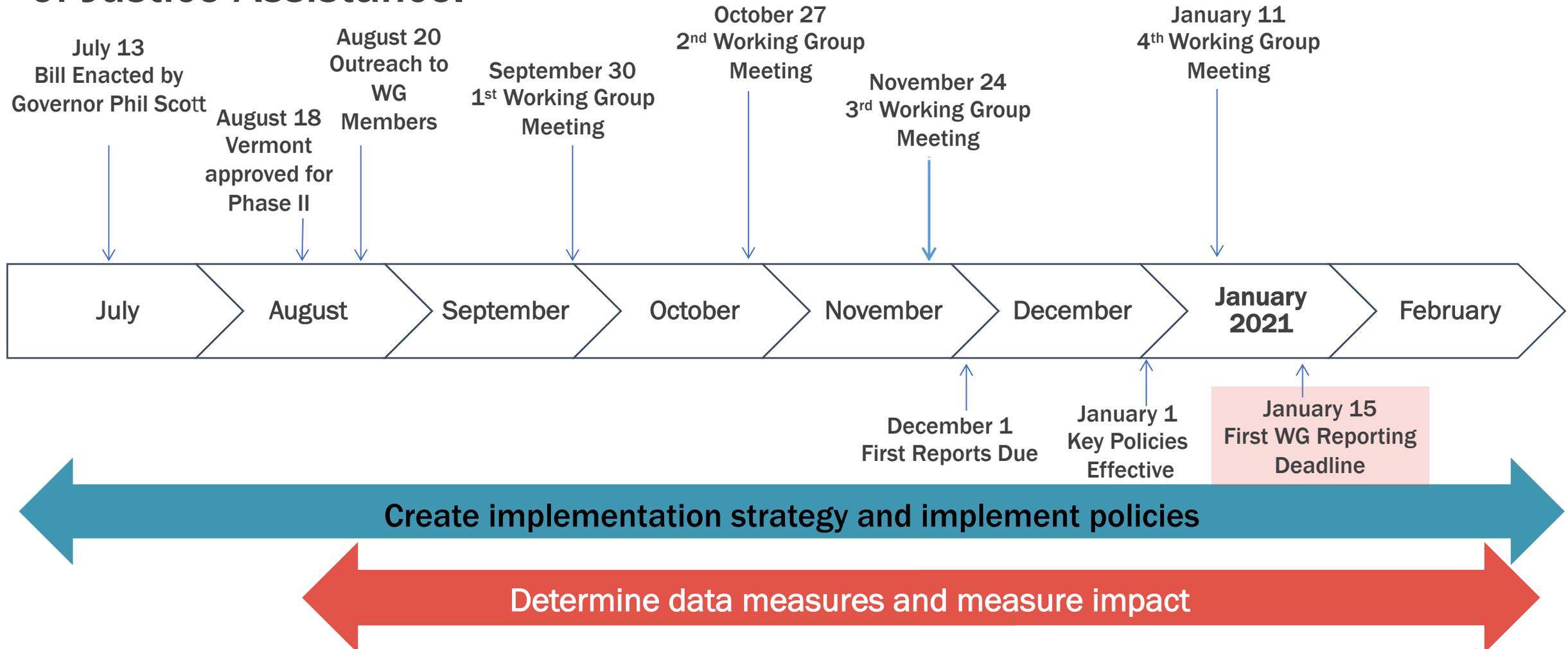
In June 2019, Vermont state leadership initiated a data-driven Justice Reinvestment process to identify and address criminal justice system challenges.

This process culminated in the enactment of Act 148 in July 2020 which included several significant policy reforms.

Act 148:

- Establishes presumptive parole.
- Streamlines the furlough system.
- Incentivizes good behavior among people who are incarcerated or on furlough by increasing earned good time.
- Requires additional data to be collected and reported about the use of the DOC's graduated sanctions policy
- Directs the Agency of Human Services to identify gaps in identifying and serving people in the criminal justice system who have mental health and substance use needs.
- Requires analysis related to demographics and sentencing to help Vermont better identify and reduce racial disparities in the criminal justice system.
- Continues the Justice Reinvestment II Working Group to oversee implementation of policy changes and study additional policy areas.

The enactment of Act 148 began the implementation phase of Vermont's Justice Reinvestment II initiative, which is supported by The Council of State Governments (CSG) Justice Center through funding from the Bureau of Justice Assistance.



To monitor implementation, Act 148 reconvened the Justice Reinvestment II Working Group.

<p>Justice Reinvestment II Working Group members</p>	<p>Paul L. Reiber Chief Justice, Supreme Court (Working Group Chair)</p>	<p>MaryJane Ainsworth Director, Vermont Parole Board</p>	<p>James Baker Commissioner, Dept. of Corrections</p>
<p>John Campbell Executive Director, Department of State’s Attorneys and Sheriffs</p>	<p>Xusana Davis Executive Director of Racial Equity, Governor’s Office</p>	<p>Kelly Dougherty Deputy Commissioner, Alcohol & Drug Abuse, Department of Health</p>	<p>Alice Emmons State Representative, Windsor-3-2 District</p>
<p>Patricia Gabel State Court Administrator, Supreme Court</p>	<p>Maxine Grad State Representative, Washington-7 District</p>	<p>Jaye Johnson Legal Counsel, Governor’s Office</p>	<p>James “Duff” Lyall Executive Director, ACLU of Vermont</p>
<p>Alice Nitka State Senator, Windsor District</p>	<p>David Scherr Co-Chief, Community Justice Division, Attorney General’s Office</p>	<p>Michael Schirling Commissioner, Department of Public Safety</p>	<p>Dick Sears State Senator, Bennington District</p>
<p>Kendal Smith Director of Policy Development and Legislative Affairs, Governor’s Office</p>	<p>Sarah Squirrell Commissioner, Department of Mental Health</p>	<p>Karen Tronsgard-Scott Executive Director, Vermont Network Against Domestic and Sexual Violence</p>	<p>Matt Valerio Defender General</p>

Act 148 also tasked the working group with studying and making recommendations related to several policy areas.

The working group prioritized the following four statutory tasks for their January 2021 report to the legislature:

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

With assistance from CSG Justice Center staff, members addressed these areas of study in four meetings between September 2020 and January 2021.



September 30

- Reviewed Act 148 – An act relating to justice reinvestment and discussed the group’s statutory duties.
- Scheduled future Justice Reinvestment meetings.



October 27

- Studied and discussed probation earned credit and related policy options.
- Reviewed Justice Reinvestment II Phase I findings on risk and needs assessments and mental health and substance use screens and assessments.



November 24

- Discussed existing mental health and substance use information sharing, care coordination, case management protocols and service challenges for people in the criminal justice system.
- Considered Justice Reinvestment funding and appropriation recommendations for the upcoming budget cycle.

January 11



- Discussed policy options related to probation earned credit and mental health and substance use disorder assessment and information sharing. Also discussed considerations for future reinvestments and sustainability.
- Addressed the findings outlined in Racial Disparities in the Criminal and Juvenile Justice Advisory Panel’s (RDAP) report to the legislature.
- Received an implementation updates from the Department of Corrections and the Parole Board.



Overview

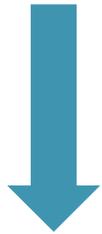
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Act 148 tasked the working group with evaluating the policy for people on probation earning one day of credit toward their suspended sentence for each day served in the community without a violation.

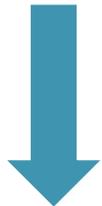
Other statutory considerations:

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

The working group reviewed four primary policy goals that a probation earned credit policy might aim to address and reviewed data analysis by CSG Justice Center staff about Vermont's probation system.



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



Decrease probation term for people who are successful on probation.



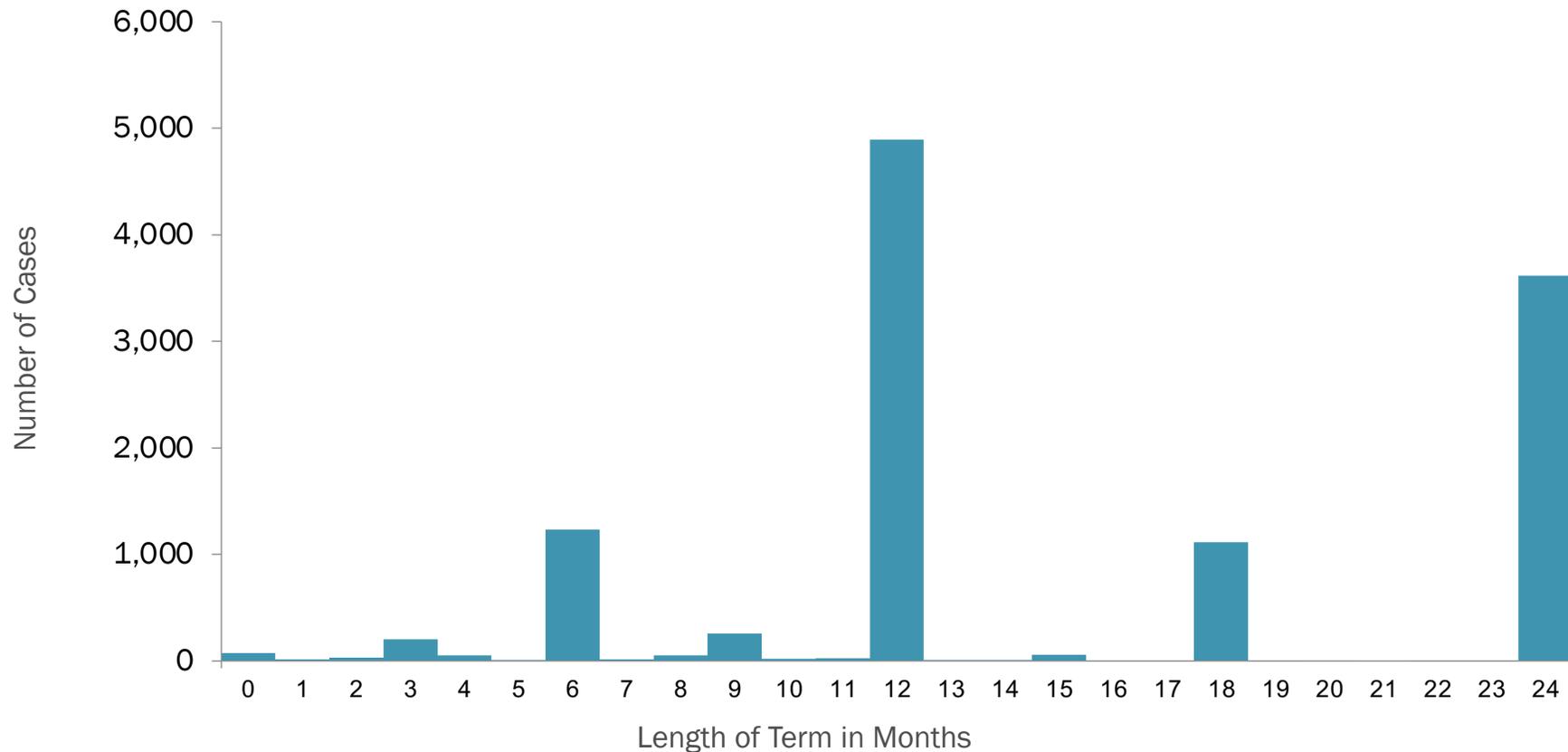
Provide people on probation an increased incentive for positive behavior change.



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

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

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

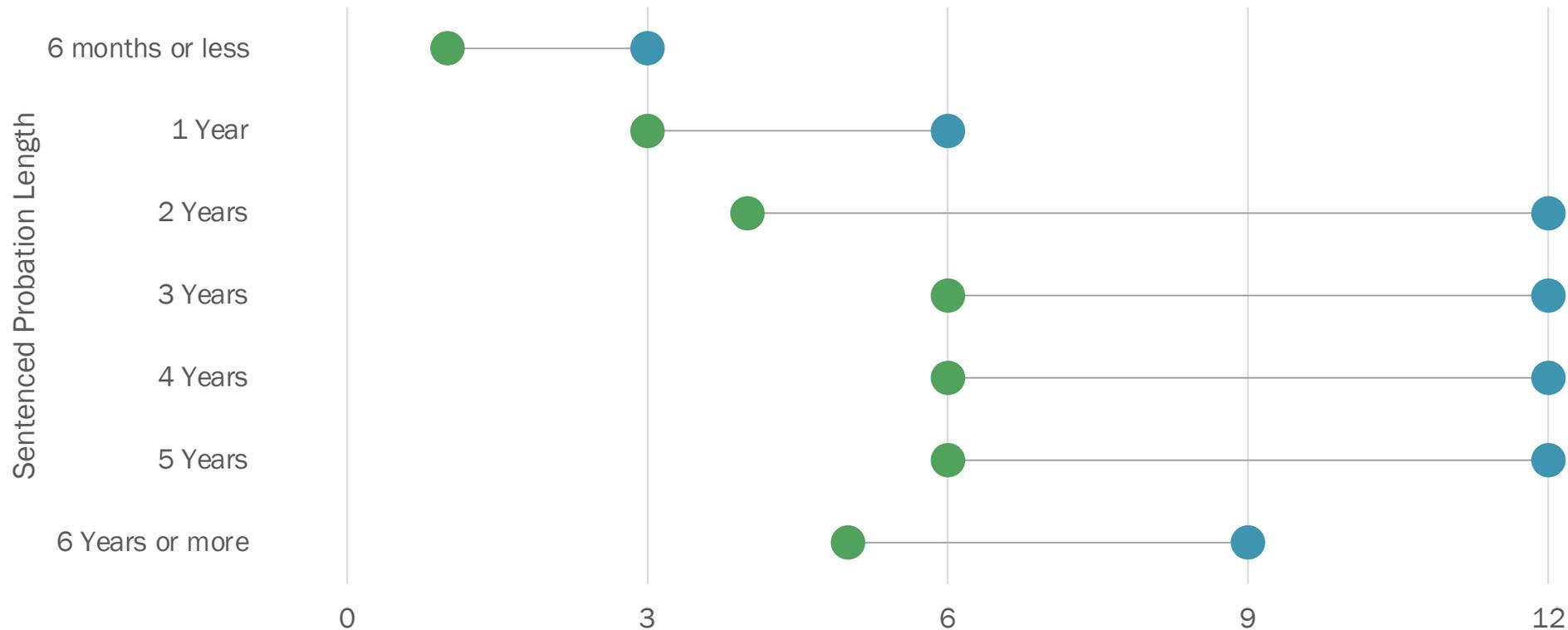


This consistency in relatively short misdemeanor probation sentences is likely due to Vermont state law, which states that misdemeanor sentences are not to exceed two years unless the court deems a longer period appropriate.

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

Minimum and Maximum

Misdemeanor Suspended Sentence Length
(Median, Months)



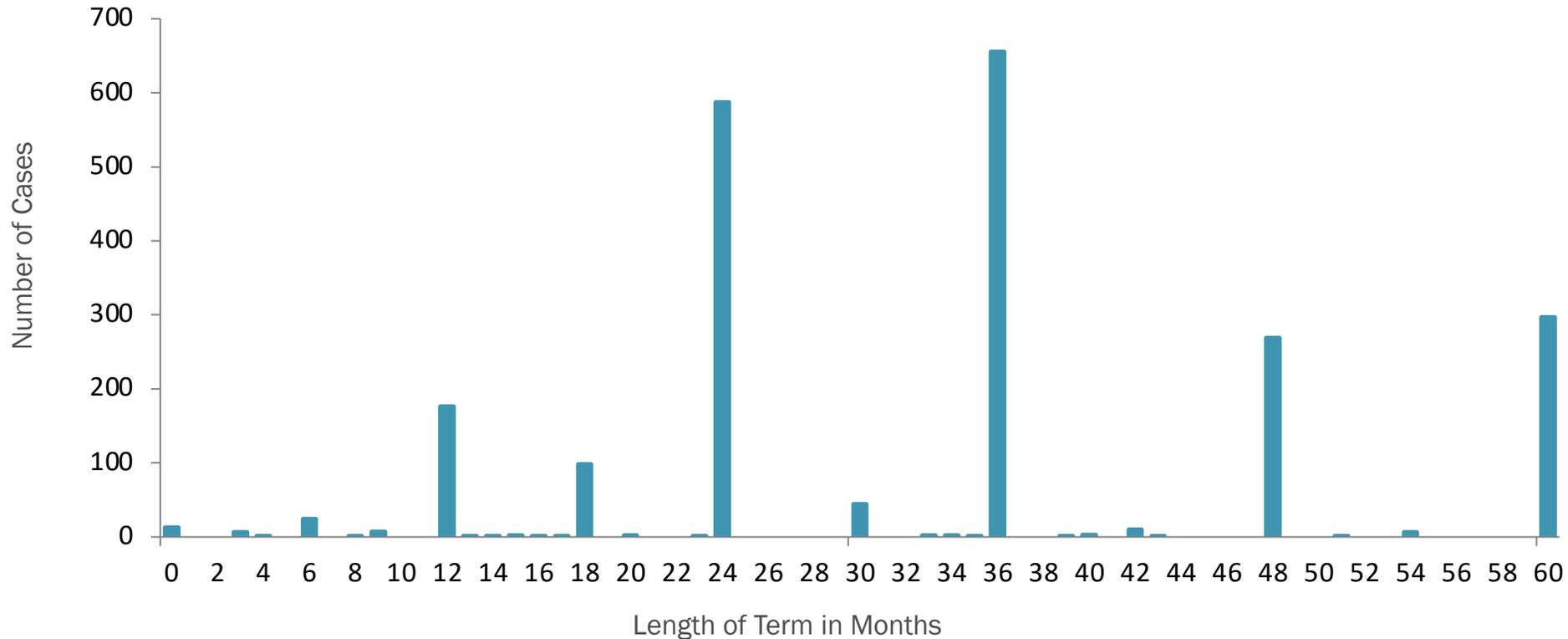
Overall, the median minimum suspended sentence is **three** months.

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

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

Nearly all felony probation sentences are less than five years.

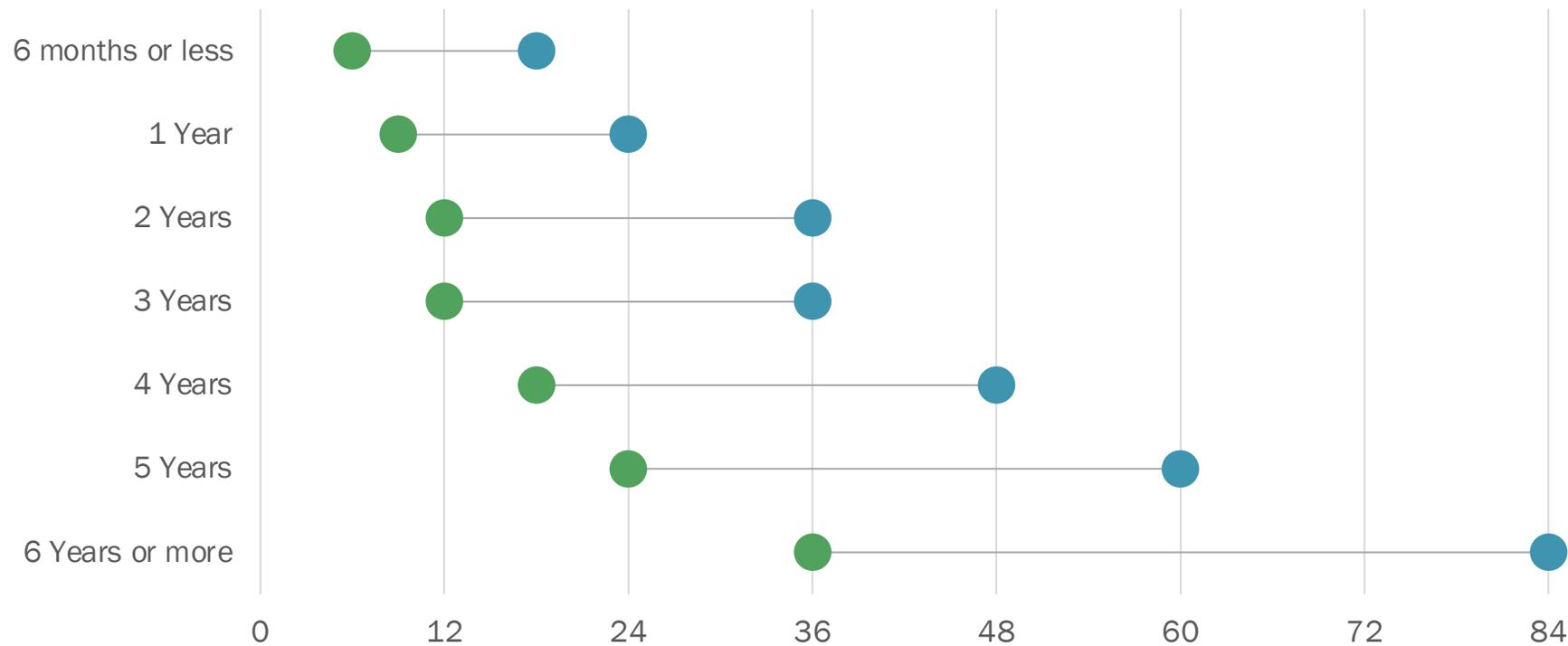
Felony Probation Term Length in Years by Number of Cases
FY2015–FY2019



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

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

Minimum and Maximum
Felony Suspended Sentence Length (Median, Months)

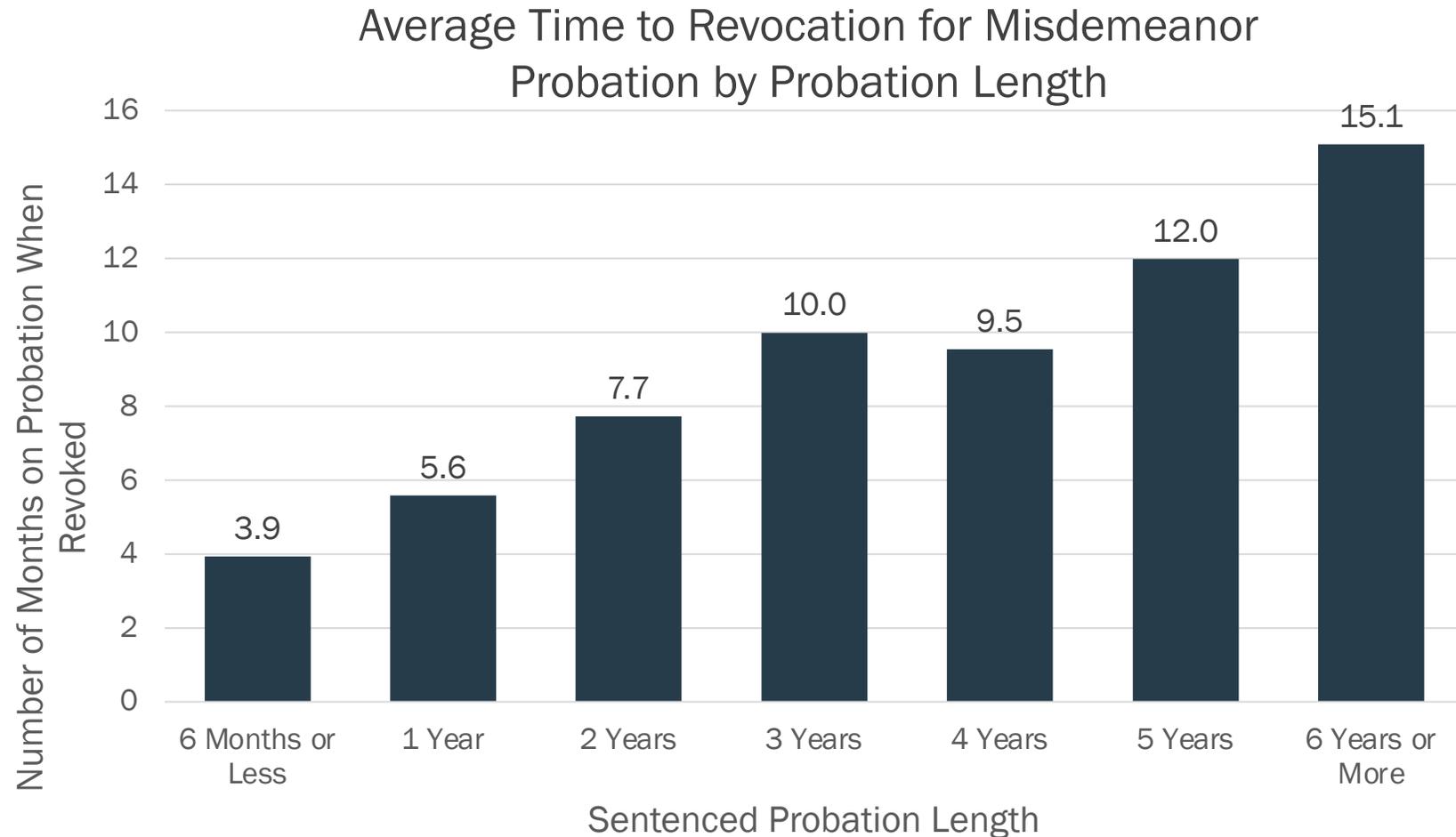


For felony probation sentences of two years or less, the median maximum underlying sentence exceeds the probation term.

Across all felony probation lengths, the median underlying sentence is **1-3 years**.

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.

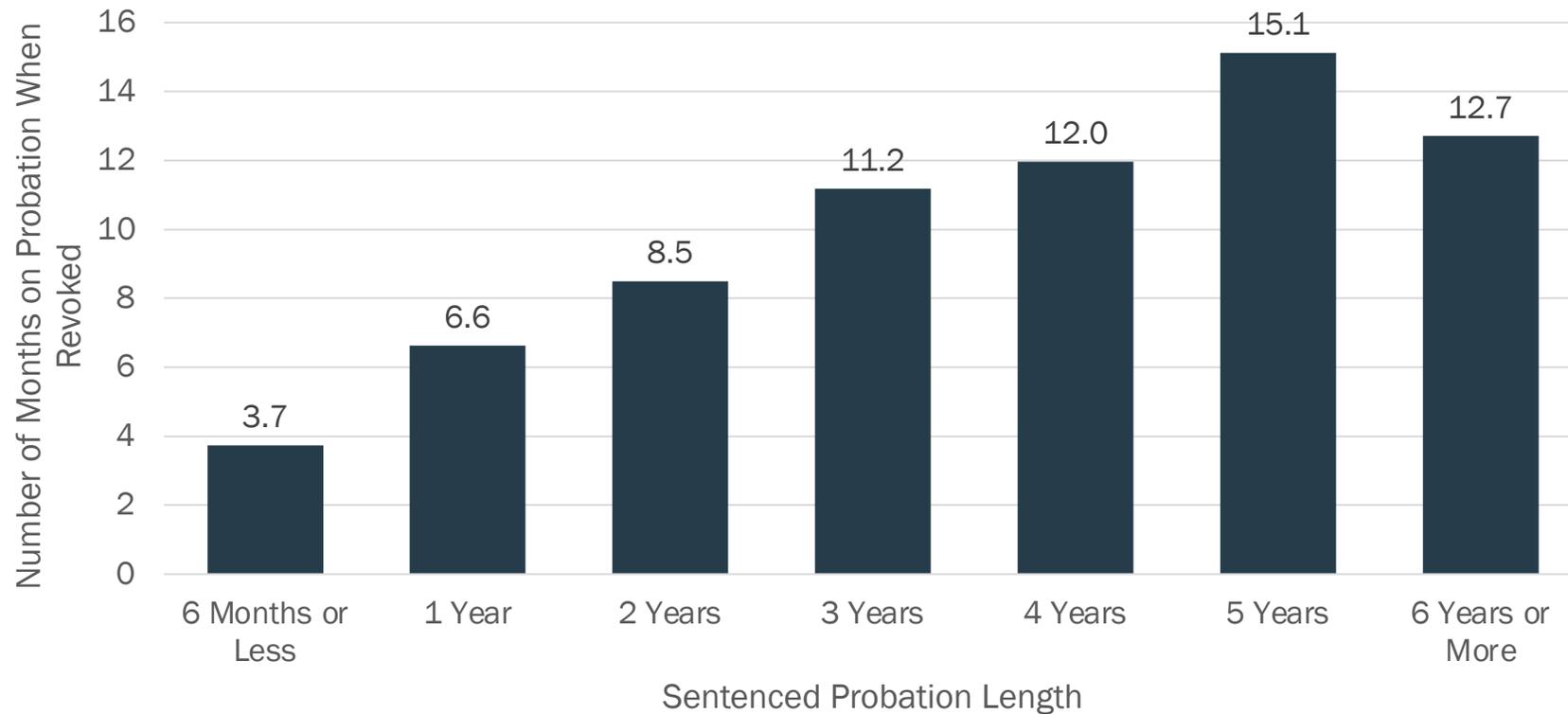
Most revocations for misdemeanor probation occur in the first half of the probation sentence.



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

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

Average Time to Revocation for Felony Probation by Probation Length



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

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

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

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

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

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

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

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

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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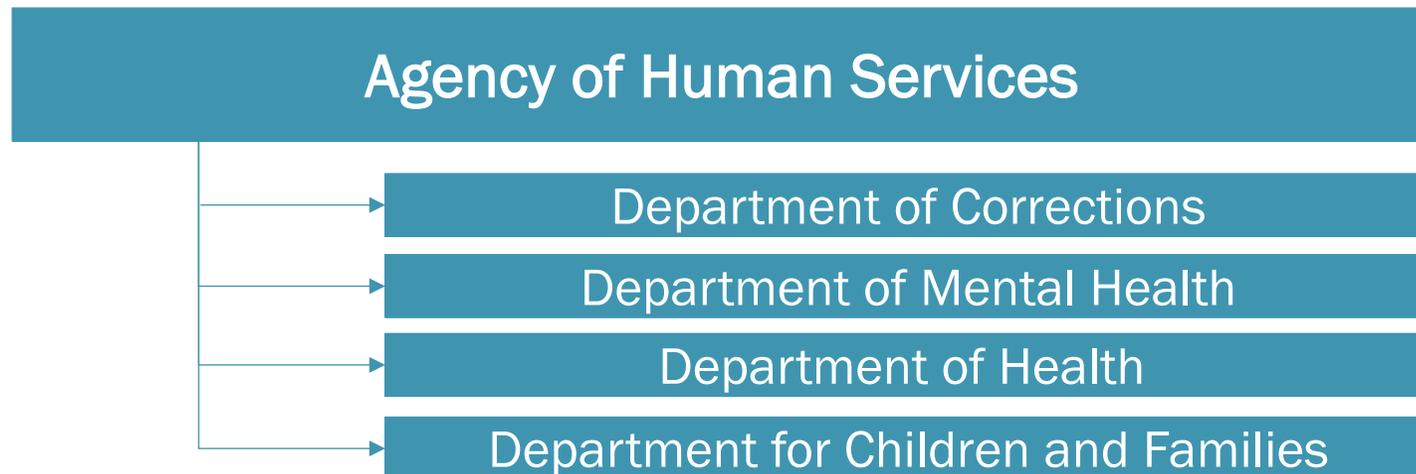
The working group prioritized three interrelated areas of study regarding mental health and substance use as outlined in Act 148 for their report to the legislature due January 2021.

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

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

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

This information was then used to inform the working group's statutory tasks related to studying and making recommendations regarding mental health and substance use system improvements.



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

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

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

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

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

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

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

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

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

In January, the working group adopted four recommendations related to mental health and substance use disorder for inclusion in their report to the legislature.

OPTION 1 - Administrative

Recommend that AHS convene representatives from each relevant department in the agency to develop and implement changes to policy and procedure that address barriers to information sharing and care coordination for supporting people in the criminal justice system with mental health and substance use needs. This AHS group could collaboratively modify agency policy and procedure to:

- Adjust provider contracts to supply structure to information sharing practices;
- Standardize AHS mental health and substance use needs information sharing between DOC and community providers, including the sharing of assessment results;
- Adopt a collaborative coordinated case planning model; and
- Identify opportunities for mental health/substance use and criminal justice cross-training.

OPTION 1 was adopted by the working group with one objection.

The Defender General registered an objection to Option 1 due to the Prisoner's Rights Office not being represented in the group to be convened by AHS for the purpose of developing and implementing policy and practice changes.

In January, the working group adopted four recommendations related to mental health and substance use disorder for inclusion in their report to the legislature.

OPTION 2 – Administrative

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



OPTION 2 was adopted by the working group without objection.

OPTION 3 – Legislative

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



OPTION 3 was adopted by the working group with comment.

The Department of Corrections stated that a pre-sentencing assessment process would be most effectively implemented through demonstration sites prior to a statewide rollout.

In January, the working group adopted four recommendations related to mental health and substance for inclusion in their report to the legislature.

OPTION 4 – Strategic

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



OPTION 4 was adopted by the working group without objection.



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The working group reviewed several strategic investments suggested by CSG Justice Center staff that would assist Vermont in fully realizing Justice Reinvestment II outcomes.

These were not voted on or adopted by working group members as reinvestment recommendations are not statutorily required until the [January 2022](#) report. Additionally, not all working group members would be able to adopt fiscal recommendations due to the nature of their positions or their need to further examine one or more aspects of the proposals.

FY2021 Reinvestment, as designated in enacted state budget

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

New FY2022 up-front funding and reinvestment

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

FY2022 Funding and Reinvestment CONTINUED

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

RDAP's full report as required in Act 148 can be found [HERE](#).



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The working group also discussed several ways for the working group to continue their Justice Reinvestment efforts through 2021 and beyond.

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

Working group members are currently tasked with completing three outstanding statutory duties by **January 15, 2022**.

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

The Justice Reinvestment II Working Group will reconvene on June 15, 2021 and continue meeting every other month through January 2022 when their second report to the legislature is due.

The working group expects to meet on June 15, August 17, October 12, and December 14, 2021 from 9:30am – 12:30pm.

CSG Justice Center staff will provide ongoing assistance to the working group through December 2021 with the intensity of support decreasing as the year progresses.

Recordings of all working group meetings, as well as copies of meeting presentations, may be found on the [Vermont Supreme Court's website](#).

For questions about this report, please contact Merrick Grutchfield at 802-828-6551 or merrick.grutchfield@vermont.gov