

New York Law Journal

New York Law Journal – 7-9-2013

[Bill Would Give Judges Discretion Over Length of Probation Terms](#)

By JEFF STOREY

State judges would have discretion to establish the length of probation terms under legislation that its backers describe as a "pragmatic" reform recently endorsed by the Legislature.

The bill, which must be signed by Governor Andrew Cuomo before it becomes law, would give authorities the flexibility to "focus on people who need probation the most when they need it," Vincent Schiraldi, New York City's probation commissioner, said in an interview.

15,587

NYC probationers for felonies

674

Are serving more than 5 years

8,628

NYC probationers for misdemeanors

235

Are serving more than 3 years

Under the Penal Law, all adult probation terms are at least five years for felonies; some probationers serve longer terms. The mandated term for Class A misdemeanors is three years.

The new measure, **S4664/A4582**, would permit probation terms of three, four or five years for felonies, excluding sex offenses and certain high-risk cases, and of two or three years for misdemeanors.

The proposal is supported by the court system and the District Attorneys Association of the State of New York.

"Judges will welcome this change, if approved, because it permits judges to tailor the length of probation sentences to severity of the conviction and to the risk factors posed by the offender, e.g., prior criminal history, degree of culpability and risk of re-offense," Brooklyn Supreme Court Justice Barry Kamins, cochair of the state Sentencing Commission, said in an email.

Schiraldi said that probation anticipates that judges, guided by "evidence-based principles," would use the new flexibility to sentence certain defendants "to shorter probation terms that better reflect the nature of their crimes and the risk to public safety."

"The task of keeping our communities safe is too important—and our resources are too precious—to have New York City's courts and public safety agencies bogged down by policies that do little or nothing to prevent crime," Mayor Michael Bloomberg said in a statement. "The passage of this legislation will free judges to make decisions regarding probation terms based on the evidence before them. It will also free the Department of Probation to focus more attention on those clients who pose the greatest risk to public safety and respond most dramatically to new opportunities and resources."

The measure's backers point out that research shows that most probation violations occur in the first 18 months after probation starts and that the impact of community supervision begins to wane afterward.

The bill also would give judges additional tools to address people's behavior once they have been placed on probation. Now, judges can either revoke the probation of a defendant who violates its conditions, resulting in jail time, or place him or her back on probation.

Under the bill, a judge could impose a longer probation period up to the maximum if a defendant did not receive the maximum in the first place.

The discretion in setting probation terms would apply statewide, but another part of the bill would apply only in New York City.

Probation departments statewide are now required to conduct presentence investigations and prepare written reports for all individuals convicted of felonies and all those convicted of misdemeanors who face a sentence of more than 180 days.

The bill would amend the Criminal Procedure Law to waive that requirement in New York City where a negotiated sentence of imprisonment for under 365 days has been reached. Judges would retain the discretion to order a report if they deem it necessary.

Rocco Pozzi, Westchester County's probation commissioner, said that upstate probation officials support the term discretion, but oppose the differential treatment for presentence reports.

"It's really not fair" that the upstate agencies would remain saddled with an expensive and time-consuming mandate that has little impact on sentencing, he said.

The bill was sponsored by Assemblyman Daniel O'Donnell, D-Manhattan, and Senator Martin Golden, R-Brooklyn. It was passed unanimously in the Senate and by a 110-33 vote in the Assembly.

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