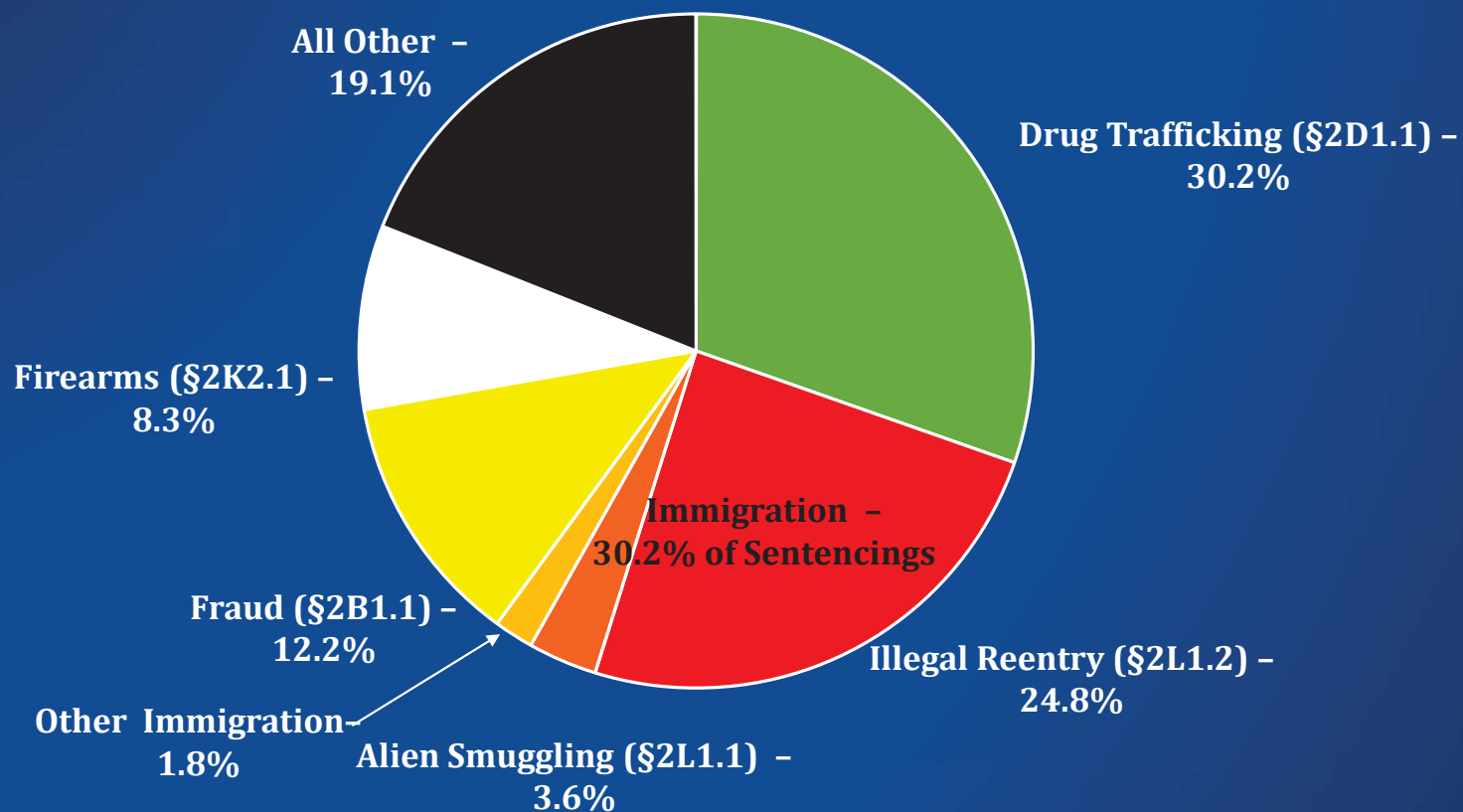




Amendment to the Illegal Reentry (§2L1.2) Guideline

Most Frequent Guidelines Applied Fiscal Year 2015



• SOURCE: United States Sentencing Commission 2015 Data file USSCFY2015.



Current Illegal Reentry Guideline- §2L1.2

3

- Base Offense Level **8**
- If the defendant was deported, or unlawfully remained in the U.S. after –
 - Felony drug trafficking offense with sentence imposed greater than 13 months, crimes of violence, a firearms offense, child pornography offense, a national security or terrorism offense, a human trafficking offense or an alien smuggling offense

+16



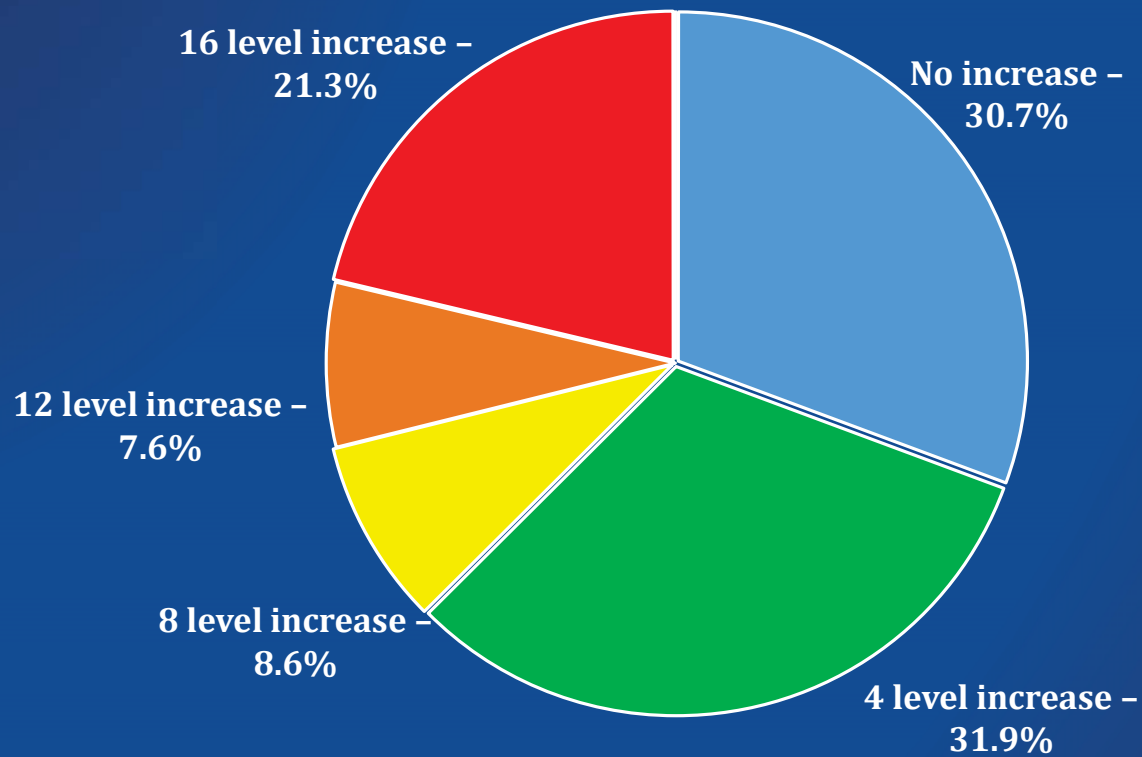
Current Illegal Reentry Guideline - §2L1.2

4

- If the defendant was deported, or unlawfully remained in the U.S. after –
 - Felony drug trafficking offense with sentence of 13 mos. or less imposed or a +16 offense that did not receive criminal history points **+12**
 - Aggravated felony conviction or a +12 offense that did not receive criminal history points **+8**
 - Any other felony conviction or 3+ misdemeanors that are crimes of violence or drug trafficking crimes **+4**



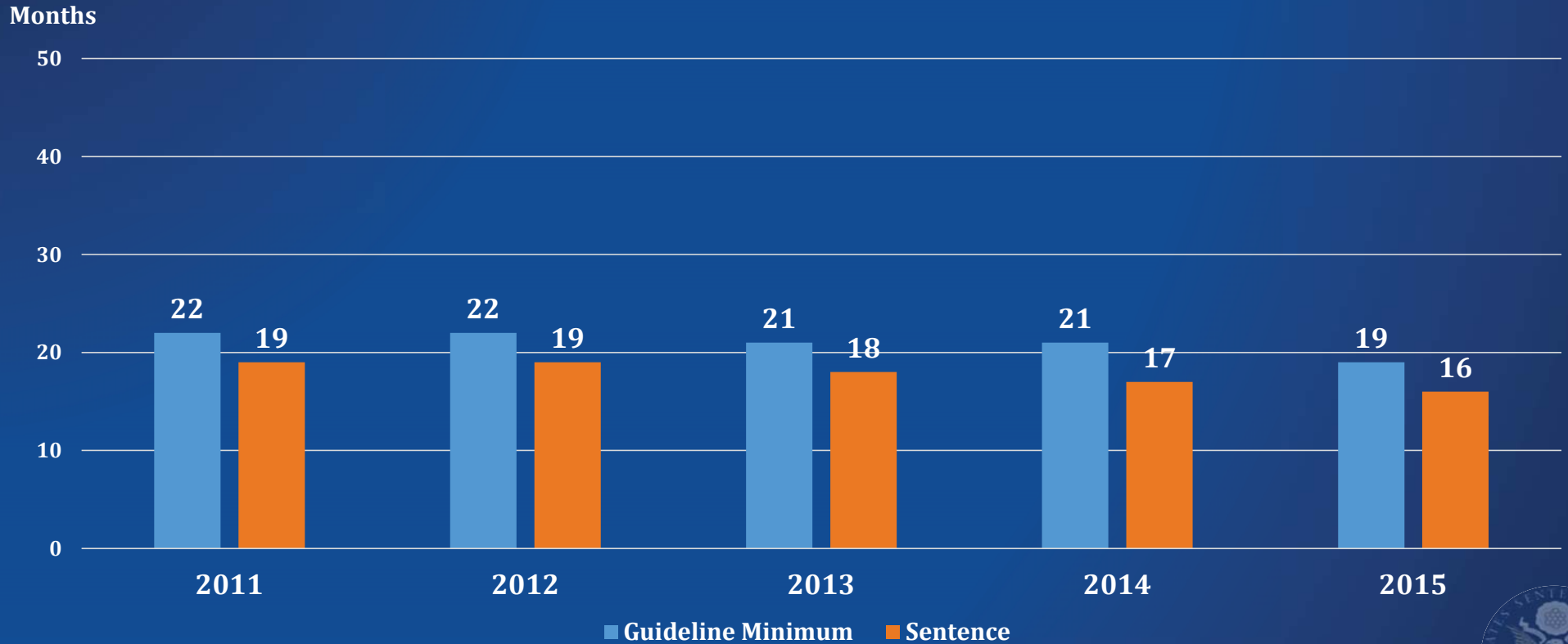
Distribution of Illegal Reentry Defendants by Current §2L1.2 (b)(1) Level



• SOURCE: United States Sentencing Commission 2015 Data file USSCFY2015.



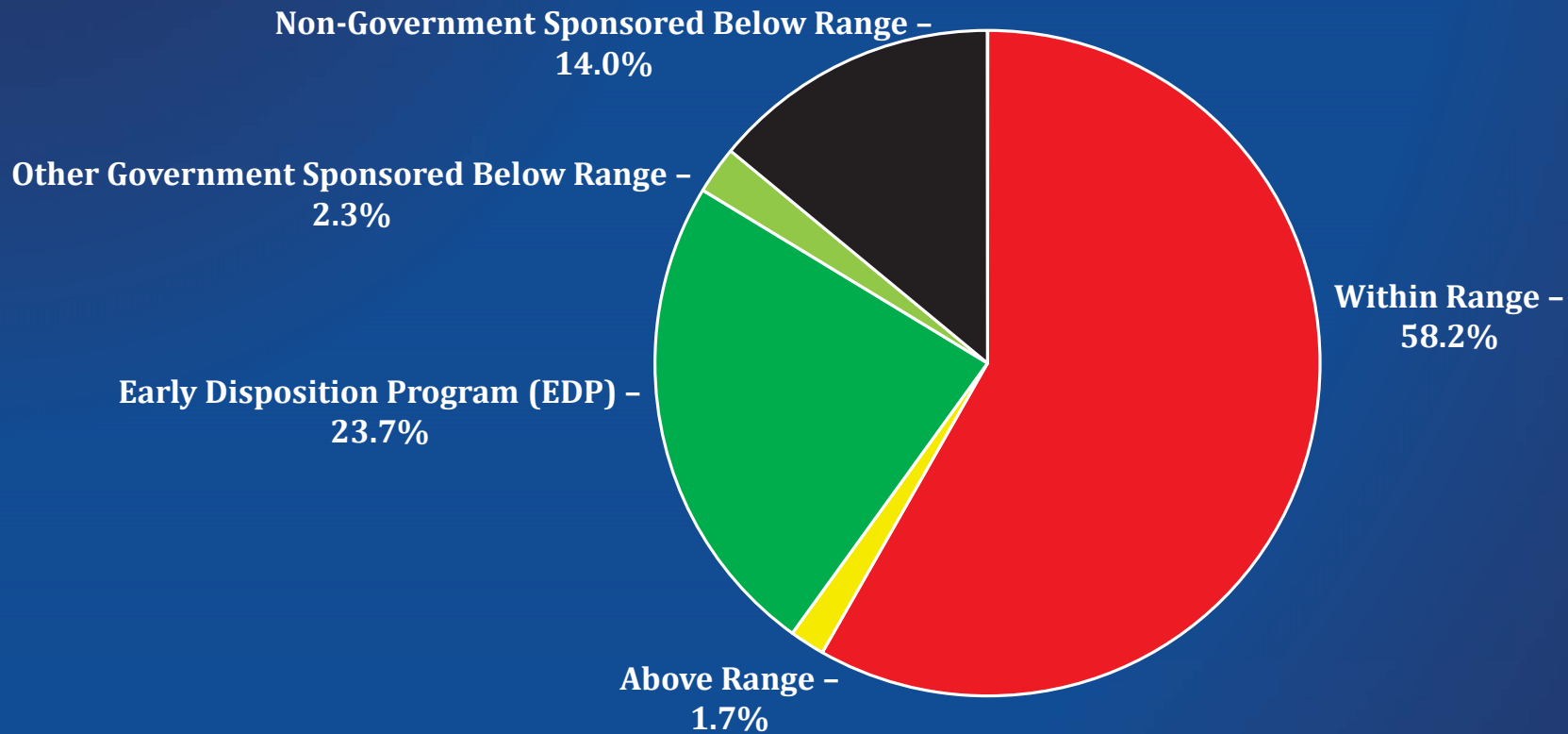
Average Guideline Minimum and Average Sentence Illegal Reentry Defendants Fiscal Years 2011 - 2015



• SOURCE: United States Sentencing Commission 2011 to 2015 Data files USSCFY11 - USSCFY15.



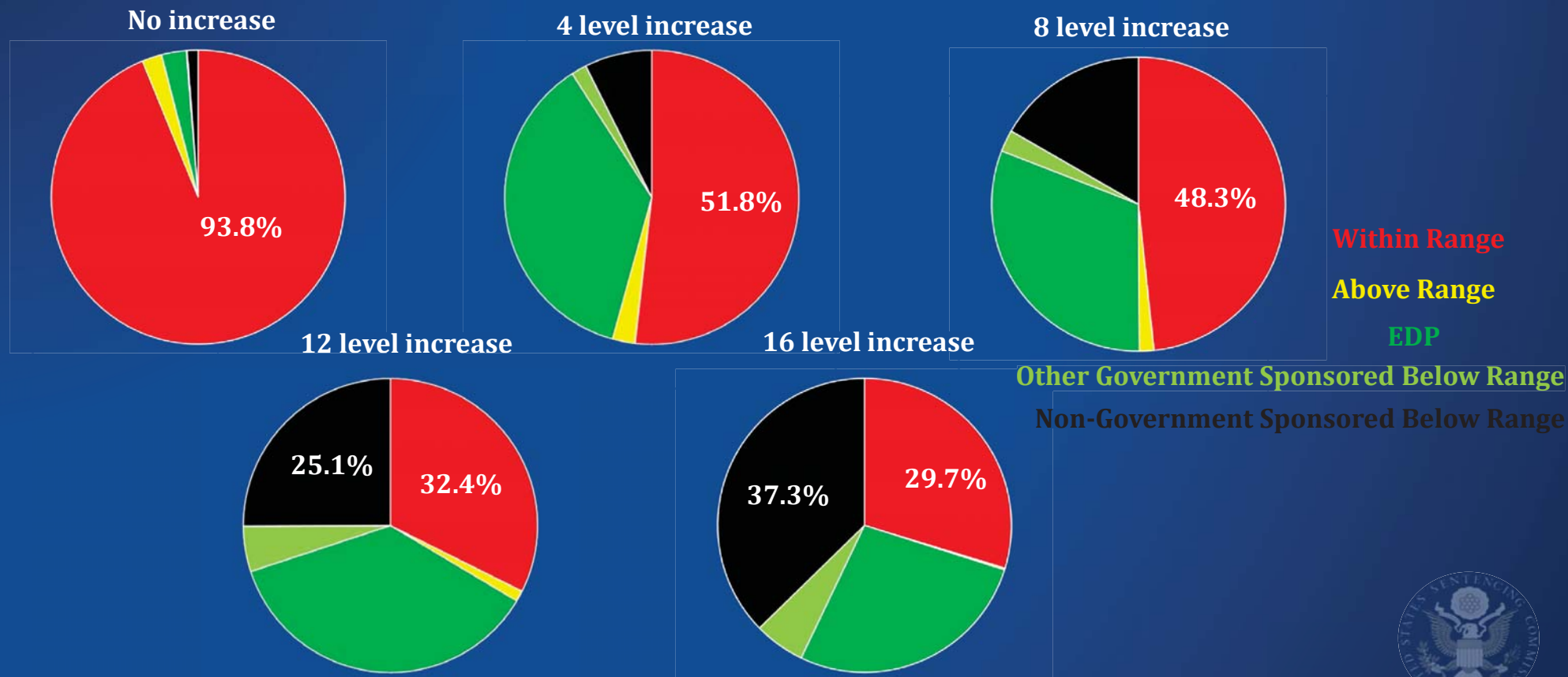
Position of the Sentence Imposed Relative to the Guideline Range for Illegal Reentry Fiscal Year 2015



• SOURCE: United States Sentencing Commission 2015 Data file USSCFY2015.



Position of the Sentence Imposed Relative to the Guideline Range by (b)(1) Enhancement Level – Illegal Reentry Fiscal Year 2015



• SOURCE: United States Sentencing Commission 2015 Data file USSCFY2015.



Commission Research Project Fiscal Year 2013 Data



Commission Research Project Fiscal Year 2013 Data

- 10% Sample of cases with all documentation from Fiscal Year 2013;
- 1,897 Cases coded:
 - All offenses that received criminal history points;
 - Date of first and last deportation; and
 - Number of deportations.



Commission Research Project Fiscal Year 2013 Data

- 69.7% had a prior conviction *before* their first deportation;
- 61.9% had a prior conviction *after* their first deportation;
- 27.2% of defendants had a prior illegal reentry conviction; and
- The average number of deportations was 3.2 per defendant.



Commission Research Project Fiscal Year 2013 Data

“Report: Illegal Reentry Offenses”

This report may be found on the Commission’s website:

www.ussc.gov



Amendment for §2L1.2 – ILLEGAL REENTRY



How the Amendment Responds to Concerns

- Simplifies guideline calculation by eliminating the “categorical approach” and basing enhancements for prior criminal convictions on the length of sentence imposed;
- Accounts for prior criminal conduct committed by the defendant in a broader and more proportionate manner:
 - Reduces the level of the most severe enhancements in the current guideline
 - Includes a new enhancement for prior illegal reentry convictions
 - Has separate enhancements for prior felony convictions occurring before and after a defendant’s first order of deportation



Promulgated Illegal Reentry Amendment - §2L1.2

- Base Offense Level **8**
- Specific Offense Characteristics
 - (b) (1) Considers the number of illegal reentries **[+4] or [+2]**
 - (b)(2) Considers the convictions before the defendant's first order of deportation **[+10], [+8], [+6], [+4], or [+2]**
 - (b)(3) Considers the convictions occurring after the defendant's first order of deportation **[+10], [+8], [+6], [+4], or [+2]**



First Factor: Number of Prior Illegal Reentry Convictions

New (b)(1):

- (b)(1)(A) – One or more felony illegal reentry convictions
 [+4]
- (b)(1)(B) – Two or more misdemeanor illegal entry convictions
 [+2]
- For the enhancement to apply, the conviction must receive criminal history points



Second Factor: Length of Prior Sentence Before First Order of Deportation

- (b)(2)– If before the first order of deportation, the defendant sustained:
 - Felony conviction with sentence of ≥ 5 years imposed **[+10]**
 - Felony conviction with sentence of ≥ 2 years imposed **[+8]**
 - Felony conviction with sentence of > 13 months imposed **[+6]**
 - Any other felony conviction **[+4]**
 - 3+ misdemeanor convictions for drug trafficking or crimes of violence, or both **[+2]**
- For the enhancement to apply, the conviction must receive criminal history points
- Do not count illegal reentry convictions for this enhancement



Third Factor: Length of Prior Sentence After First Order of Deportation

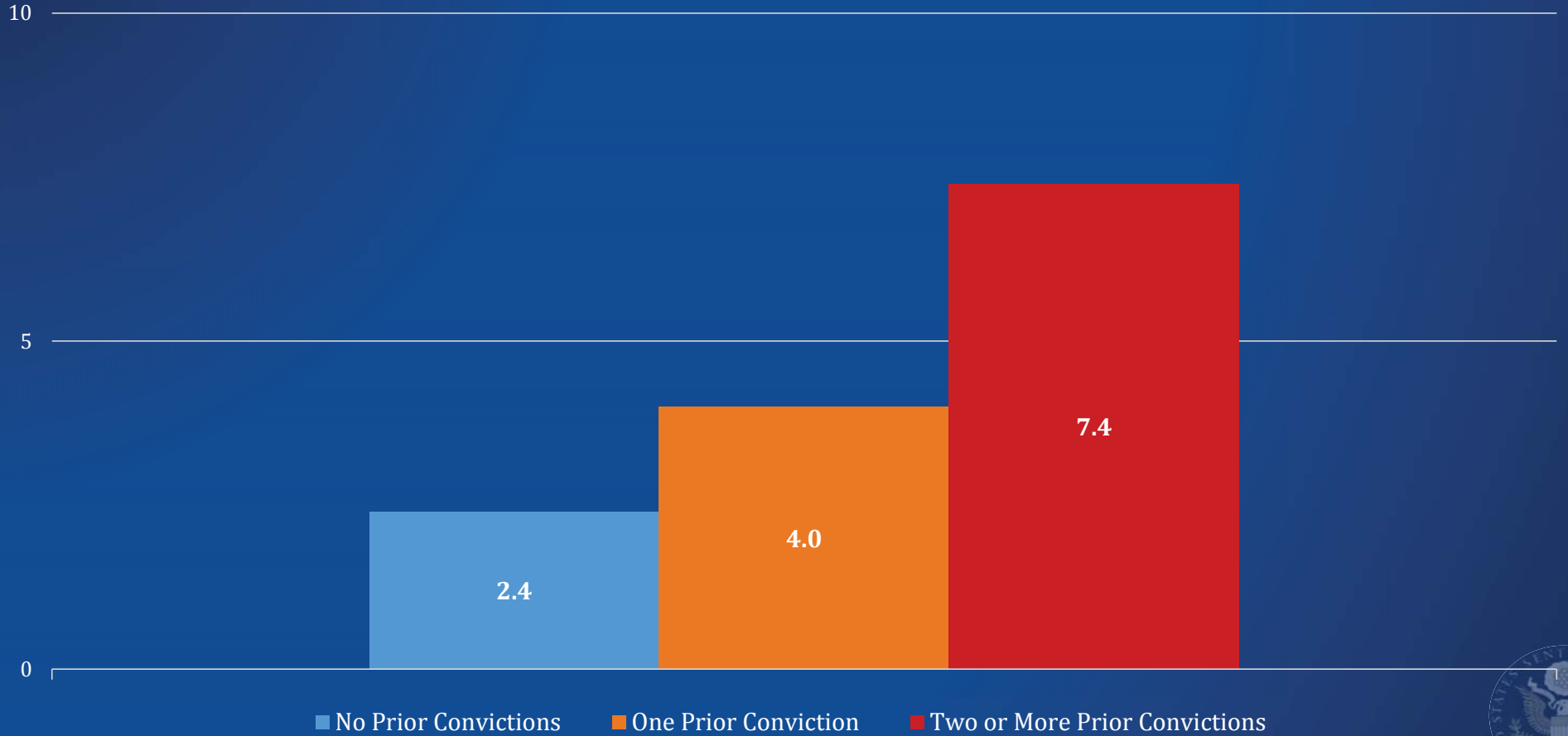
- (b)(3)– If after the first order of deportation, the defendant sustained:
 - Felony conviction with sentence of ≥ 5 years imposed **[+10]**
 - Felony conviction with sentence of ≥ 2 years imposed **[+8]**
 - Felony conviction with sentence of > 13 months imposed **[+6]**
 - Any other felony conviction **[+4]**
 - 3+ misdemeanor convictions for drug trafficking or crimes of violence, or both **[+2]**
- For the enhancement to apply, the conviction must receive criminal history points
- Illegal reentry convictions do not count for this SOC



Effect of the Amendment

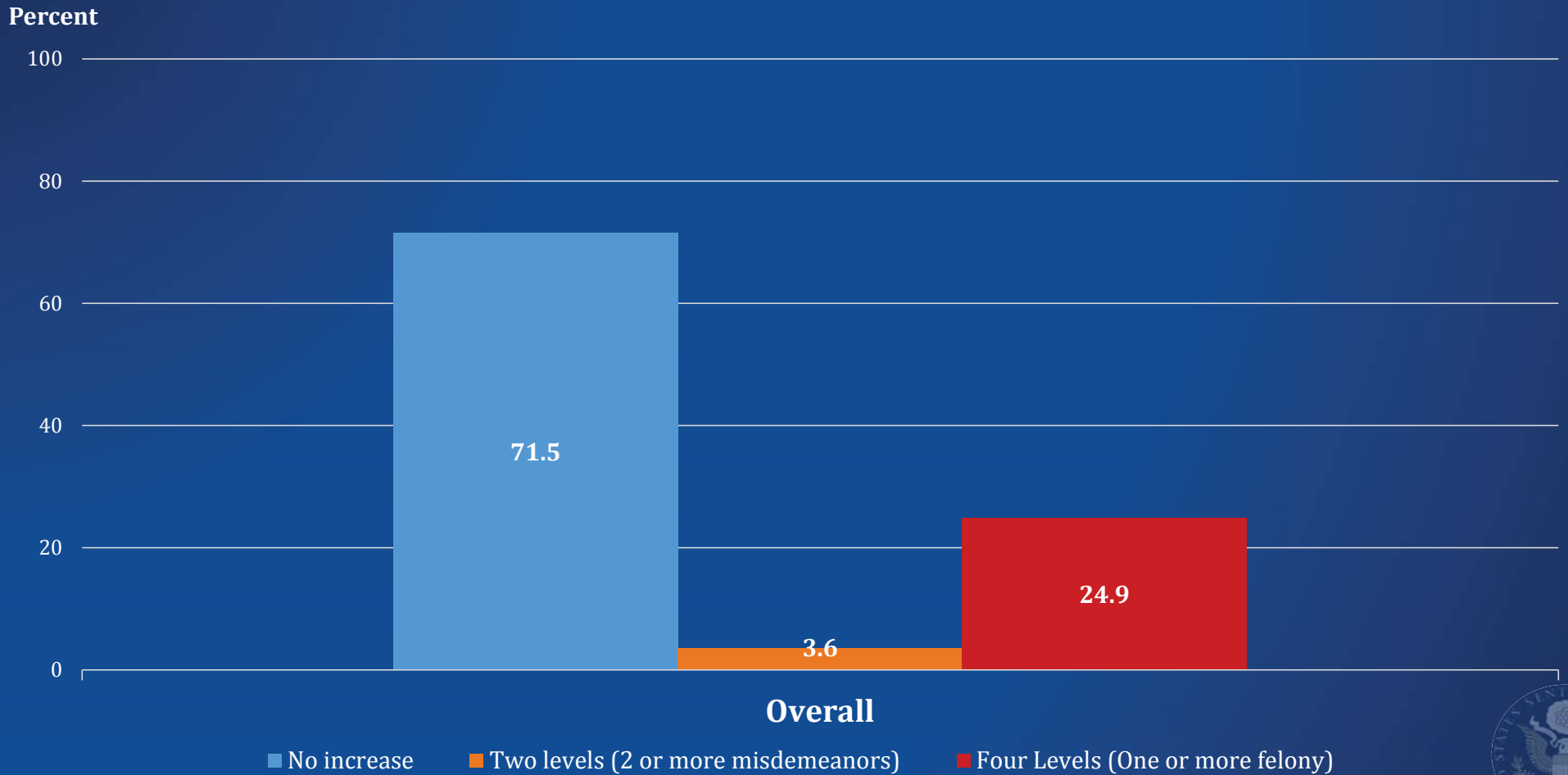
Average Number of Deportations by Number of Illegal Reentry Convictions

Average Number of Deportations



SOURCE: United States Sentencing Commission 2013 Illegal Reentry Special Coding Project Data.

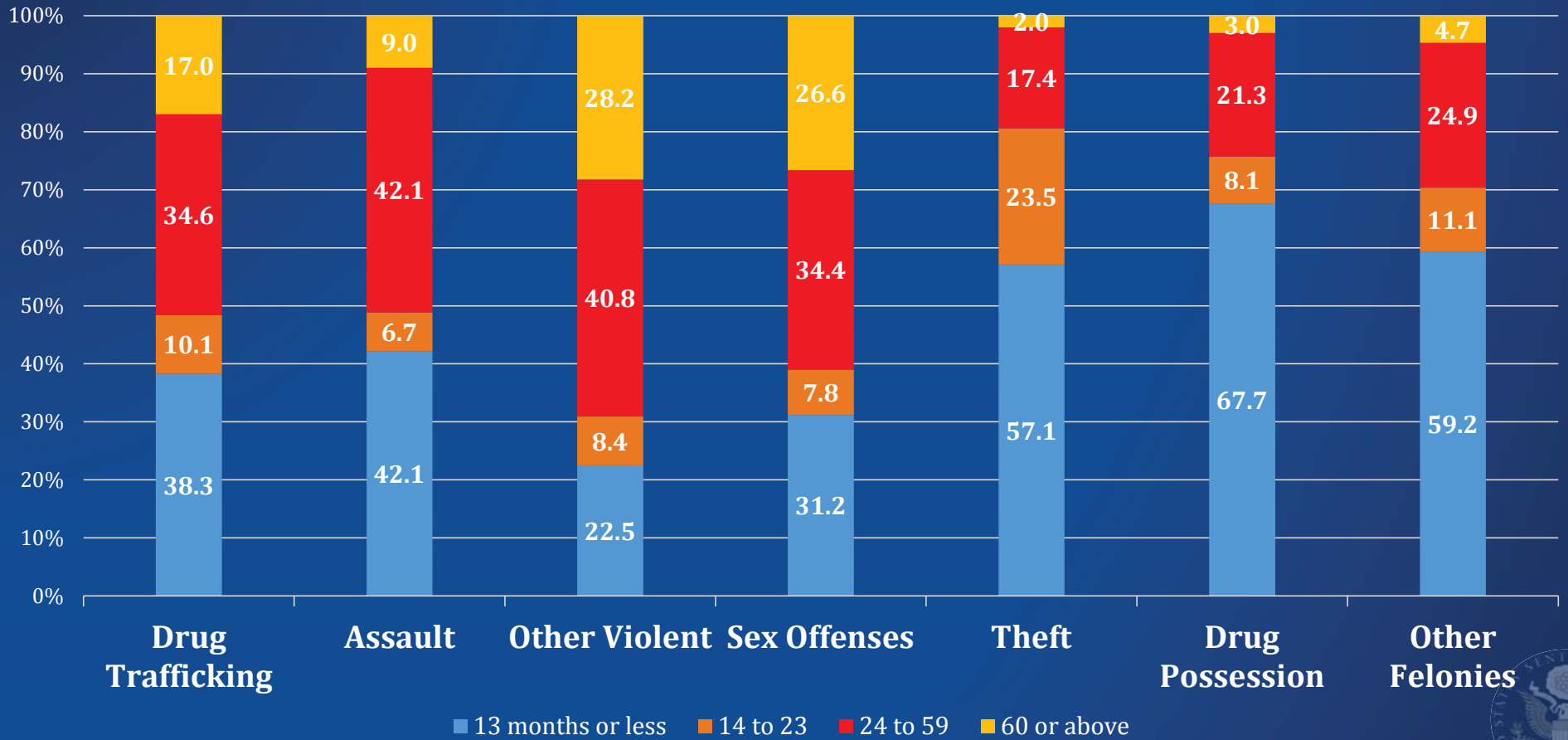
New (b)(1) Based on Prior Illegal Reentry Convictions



SOURCE: United States Sentencing Commission 2013 Illegal Reentry Special Coding Project Data.



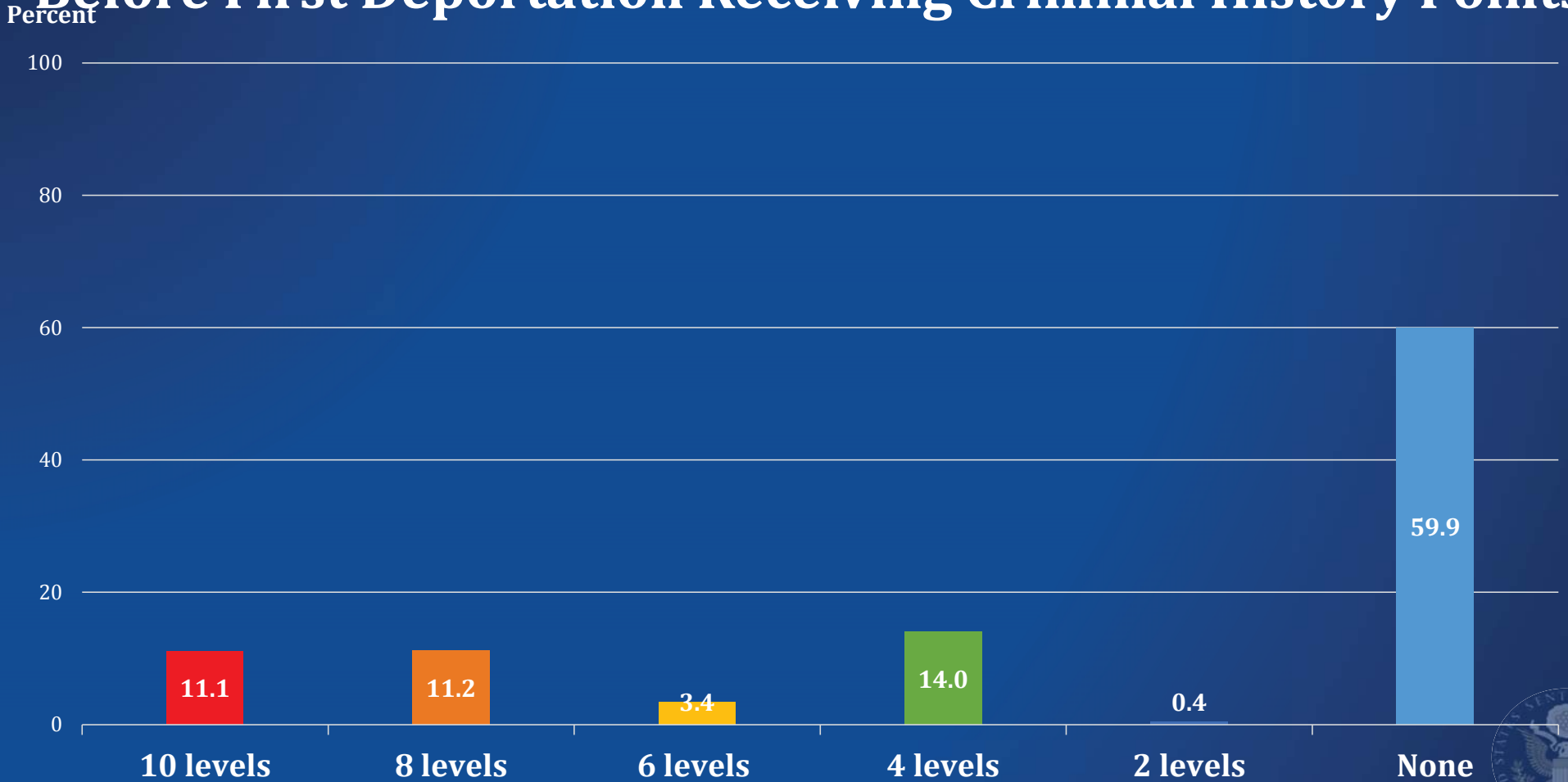
Average Sentence Length for Prior Felony Convictions: Offenses Receiving Criminal History Points by Major Offense Types



SOURCE: United States Sentencing Commission 2013 Illegal Reentry Special Coding Project Data.



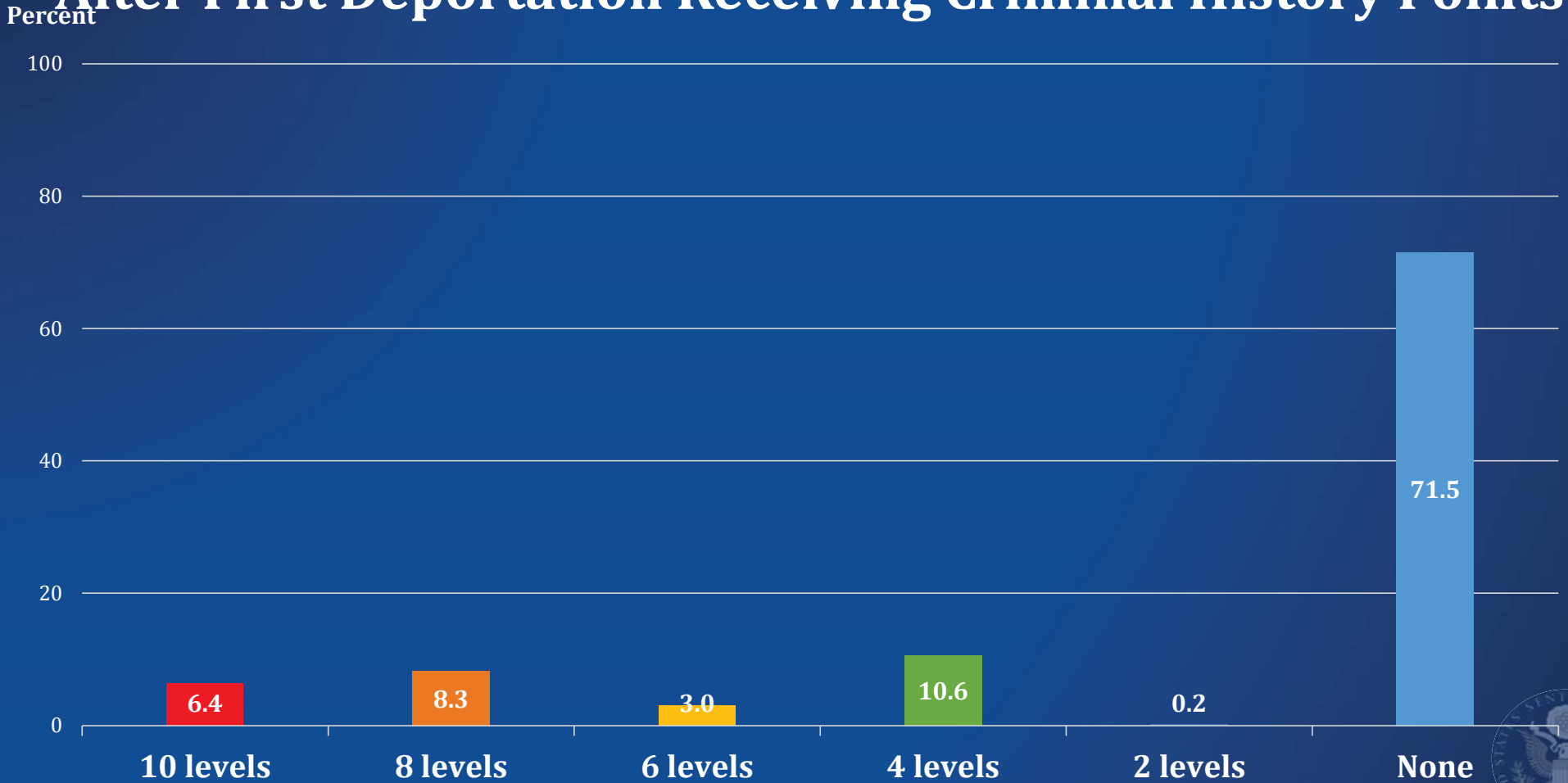
New (b)(2) – Longest Sentence Length for Felony Convictions Before First Deportation Receiving Criminal History Points 23



SOURCE: United States Sentencing Commission 2013 Illegal Reentry Special Coding Project Data.



New (b)(3) – Longest Sentence Length for Felony Convictions After First Deportation Receiving Criminal History Points

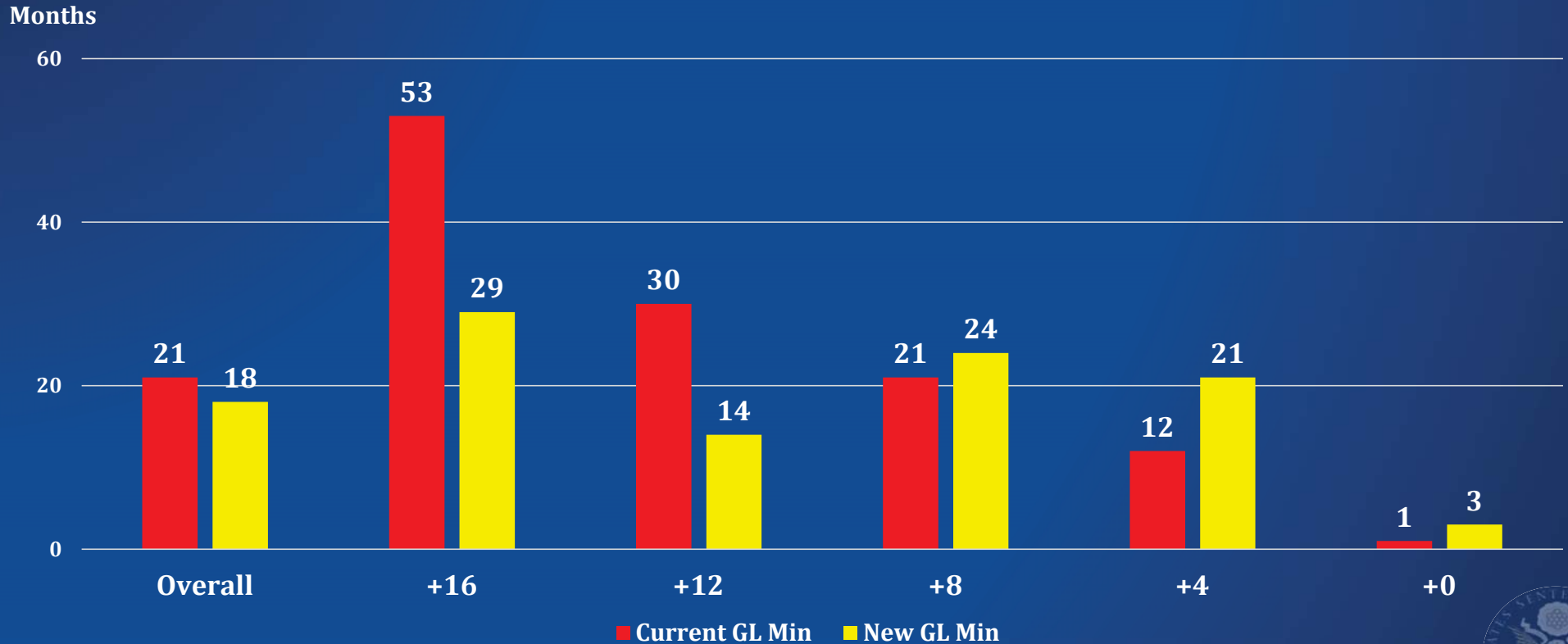


SOURCE: United States Sentencing Commission 2013 Illegal Reentry Special Coding Project Data.



Amendment
Change in Average Guideline Minimum

Illegal Reentry Amendment Change in Average Guideline Minimum



• SOURCE: United States Sentencing Commission 2013 Illegal Reentry Special Coding Project Data.



