
Results of 2014 Survey of United States District Judges: Modification and Revocation of Probation and Supervised Release



UNITED STATES SENTENCING COMMISSION
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Results of 2014 Survey of United States District Judges



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Introduction

The Sentencing Reform Act of 1984 (SRA)¹ significantly changed the manner in which offenders convicted of federal crimes are punished by eliminating the system of indeterminate sentencing then in use, including the use of parole, and instituting in its place a system of determinate sentencing. Through the SRA, Congress created the United States Sentencing Commission as an independent agency in the judicial branch of government.

The SRA provided that the principal purposes of the Commission are to —

(1) establish sentencing policies and practices for the federal criminal justice system

that —

- incorporate the purposes of sentencing (*i.e.*, just punishment, deterrence, incapacitation, and rehabilitation);
- provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar criminal characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors; and
- reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process; and

(2) develop the means of measuring the degree to which sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing.²

The Commission accomplishes the first purpose principally through the promulgation of federal sentencing guidelines, informed in that effort by its ongoing research and data analysis activities. The Commission's research and data collection, and its dissemination of the results of that activity, also contribute significantly to accomplishing the second purpose.

In providing the authority by which the Commission could accomplish these purposes, Congress also authorized the Commission to collect and disseminate information regarding the effectiveness of sentences imposed; assist and serve in a consulting capacity to the federal courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices; and make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters.³

¹ Pub. L. No. 98-473, 98 Stat. 2019 (1987).

² 28 U.S.C. § 991(b).

³ See 28 U.S.C. § 995(a)(12), (16), (20).

On several prior occasions, the Commission has used surveys to canvass federal judges and others about their opinions on federal sentencing issues. Most recently, prior to the current survey, the Commission in 2010 undertook a survey of all United States district judges concerning their views and opinions on sentencing practices generally.⁴ The 2010 survey was the first survey of federal judges to elicit their views about federal sentencing under an advisory guidelines system.

In the 2014 survey, the Commission sought input from United States district judges as part of its multi-year review of federal sentencing practices pertaining to imposition and violations of conditions of probation and supervised release, including possible consideration of amending the relevant provisions in Chapter Five and Seven of the *Guidelines Manual*. The Commission contracted with NORC at the University of Chicago to administer a survey to district judges regarding their experiences and opinions in handling cases involving the modification or revocation of probation or supervised release. NORC administered the survey as a third party in order to protect the confidentiality of the responding judges.

The specific topic areas addressed in the survey included:

- Judicial experience with probation and supervised release violations;
- General questions about Chapter Seven of the *Guidelines Manual*;
- Purposes of sanctioning an offender for violating the conditions of supervision;
- Factors relevant to revocation and sentencing decisions;
- The role of the probation officer in the context of probation and supervised release violations;
- Adjudication of new law violations (including those involving personal use of illegal drugs);
- Adjudication of technical violations; and
- General questions about the *Guidelines Manual* overall.

A copy of the survey instrument is attached to this report as Appendix A.

Methodology

The survey instrument questioned all sitting district judges, both active and senior, regarding their experiences and opinions in handling cases involving the modification or revocation of probation or supervised release. The survey format included a combination of multiple-choice, open-ended, and Likert-scale questions.

The survey also included a series of hypothetical scenarios, which asked district judges to choose the most appropriate course of action based on particular details of hypothetical revocation hearings. Judges were also given the opportunity to provide general comments concerning the modification or revocation of federal offenders' terms of probation or supervised

⁴ See *Results of Survey of United States District Judges January 2010 through March 2010*, available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608_Judge_Survey.pdf.

release. Finally, a short section additionally asked opinions regarding the sentencing guidelines in general.

Judges were able to complete the survey through a web-based portal, as a hardcopy survey to be returned to NORC by mail (using a business reply envelope), or by e-mail or fax. Judges also had the option to complete the survey by telephone.

Survey Population

The Commission provided a list of all sitting United States district judges for inclusion in the survey, including those on senior status. Judges who had retired or were appointed to new positions prior to administration of the survey were not included. Additionally, during the course of data collection, some of the judges included in the population retired or were appointed to new positions, and were subsequently excluded from the study. The number of eligible respondents receiving the survey was 1,012.

Administration of the Survey

Judges were sent a pre-notification letter on September 22, 2014, signed by the Chair of the Commission. The letter was sent on Commission letterhead and served to introduce the survey and its purpose. One week later, the judges were sent a survey invitation letter along with a paper copy of the survey and a business reply envelope. This letter contained a hyperlink to the web survey and the judge's five-digit personal identification number (PIN) to access the survey online. Following the pre-notification and survey invitation letters, NORC made multiple rounds of follow-up by mail, e-mail, and phone. The follow-ups began on October 6, 2014, with a final e-mail reminder sent on November 25, 2014. A maximum of three phone calls were made to each judge, unless successful contact was made earlier.

Response Rate to the Survey

The survey period formally ended on November 28, 2014; however, all responses delivered to NORC by December 10, 2014, were accepted and included for purposes of this report. Of the 1,012 eligible district judges to whom the survey was sent, 665 submitted a completed survey to NORC (375 by web, and 289 by hard copy). In addition, 33 judges entered partial surveys by web, and otherwise did not communicate a wish to be excluded from the survey. Responses from these judges have been included in this report. The completed, plus partial, surveys total 698 responses, for a 69% response rate.

Of the 314 judges who did not complete the survey, 61 asked to be excluded from the survey. The most common reasons provided were lack of experience with violation cases in the last two years or so or lack of experience with these types of cases due to recent appointments.

Survey Results

Below is a series of tables that set out the results of the Commission's survey of district judges. These results present the answers given to the specific questions posed in the survey instrument.

I. Judicial Experience with Probation and Supervised Release Violations

Table 1. How many years have you been a United States District Judge?

# Years	Percent	Number
1	7%	48
2-5	17%	117
6-10	13%	89
11-15	18%	126
16-20	16%	111
21-25	13%	92
Greater than 25	16%	112
Total Responding		695
<i>Missing</i>		3

Table 2. In a typical year, approximately how many cases do you handle in which you find that offenders violated the conditions of their probation or supervised release (regardless of whether you modified or revoked their supervision)?

# Cases	Percent	Number
Less than 5	10%	66
6-10	16%	113
11-20	23%	162
More than 20	51%	350
Total Responding		691
<i>Missing</i>		7

Table 3. Please answer the next three questions based on your experience handling such cases during the past two years only.

	Percent Responding		Number Responding	Not Applicable	Missing
	Yes	No			
Table 3a. Have you handled any case of an offender on probation or supervised release in which you found that the offender violated one or more conditions of his/her supervision?	96%	4%	693	0	5
Table 3b. Have you modified the conditions of supervision of any federal offender on either probation or supervised release in response to one or more violations of the conditions of supervision?	98%	2%	664	26	8
Table 3c. Have you revoked the term of supervision of any federal offender on either probation or supervised release in response to one or more violations of the conditions of supervision?	97%	3%	665	26	7

II. Chapter Seven of the *Guidelines Manual* Generally

Table 4. In your cases in which offenders have violated the conditions of their supervision, to what extent have you generally followed the provisions in Chapter Seven concerning modifications and revocations of probation and supervised release?

Always	Usually	About Half the Time	Seldom	Never	Number Responding	Number Missing
9%	60%	18%	12%	1%	656	42

Table 5. Do you believe that the United States Sentencing Commission should significantly revise Chapter Seven in a manner that provides more options for judges to address offenders' violations of the conditions of their supervision (e.g., more alternatives to incarceration)?

Percent		Number Responding	Number Missing
Yes	No		
59%	41%	679	19

III. Purposes of Sanctioning an Offender for Violating the Conditions of Supervision

Table 6. Please identify the purposes of sanctioning an offender for violating the conditions of his/her supervision that you feel are appropriate. Please rank any factor(s) that you feel are relevant in order of importance to you, 1 being most relevant, and leaving irrelevant factors blank. Please use each ranking only once.)

Factors	Number at Each Rank							Number Irrelevant	Cumulative Percent of Ranks			Percent Ranked as Relevant	Percent Ranked as Irrelevant	Number Missing
	1	2	3	4	5	6	7		1	1+2	1+2+3			
Offender's breach of trust (see USSG, Chapter 7, Pt. A.3(b))	109	73	71	80	98	65	0	160	17%	28%	39%	75%	25%	42
Just punishment in view of the seriousness of the violation(s) and the offender's criminal history	276	136	71	72	41	10	0	50	42%	63%	74%	92%	8%	42
General deterrence	20	35	83	89	86	128	0	215	3%	8%	21%	67%	33%	42
Specific deterrence	81	175	163	98	51	7	0	81	12%	39%	64%	88%	12%	42
Incapacitation of the offender (public safety)	124	103	100	102	68	39	1	119	19%	35%	50%	82%	18%	42
Rehabilitation of the offender	97	119	126	88	68	57	0	101	15%	33%	52%	84%	16%	42
Other	3	1	2	1	0	0	3	647	0%	1%	1%	2%	98%	41

IV. Factors Relevant to Revocation and Sentencing Decisions

Table 7. Please identify the factors that you consider relevant in deciding whether to revoke an offender’s supervision based on one or more violation(s) of the conditions of supervision. (Please rank any factor(s) that you feel are relevant in order of importance to you, 1 being most relevant, and leaving irrelevant factors blank. Please use each ranking only once.)

Factors	Number at Each Rank						Number Irrelevant	Cumulative Percent of Ranks			Percent Ranked as Relevant	Percent Ranked as Irrelevant	Number Missing
	1	2	3	4	5	6		1	1+2	1+2+3			
The nature and seriousness of the violation(s)	621	26	10	3	1	0	1	94%	98%	99%	100%	0%	36
The nature and seriousness of the original federal offense(s) of conviction	18	130	136	118	141	6	113	3%	22%	43%	83%	17%	36
An offender’s criminal history	18	131	182	166	80	4	71	3%	23%	50%	88%	12%	46
An offender’s life history and personal characteristics	18	90	172	157	141	1	83	3%	16%	42%	88%	12%	36
The length of time that the offender has successfully complied with the conditions of supervision before committing a violation	26	271	111	98	109	2	45	4%	45%	62%	93%	7%	36
Other	4	3	7	1	2	5	640	1%	1%	2%	3%	97%	36

Table 8. Please identify the factors that you consider relevant in deciding on the type and length of sentence to impose after you have revoked an offender's supervision. (Please rank any factor(s) that you feel are relevant in order of importance to you, 1 being most relevant, and leaving irrelevant factors blank. Please use each ranking only once.)

Factors	Number at Each Rank						Number Irrelevant	Cumulative Percent of Ranks			Percent Ranked as Relevant	Percent Ranked as Irrelevant	Number Missing
	1	2	3	4	5	6		1	1+2	1+2+3			
The nature and seriousness of the violation(s)	611	34	11	3	1	0	3	92%	97%	99%	100%	0%	35
The nature and seriousness of the original federal offense(s) of conviction	18	132	132	105	147	2	127	3%	23%	42%	81%	19%	35
An offender's criminal history	18	160	176	178	63	4	54	3%	27%	54%	91%	9%	45
An offender's life history and personal characteristics	19	97	159	169	137	2	80	3%	17%	41%	88%	12%	35
The length of time that the offender has successfully complied with the conditions of supervision before committing a violation	30	219	144	103	118	3	46	5%	38%	59%	93%	7%	35
Other	5	3	3	4	3	4	641	1%	1%	2%	3%	97%	35

Table 9. If you answered Questions 7 or 8 that you believe an offender's criminal history is relevant to the decision to revoke or the decision of the length of a revocation sentence, which in your opinion is the better measure of criminal history?

Relevant Criminal History	Percent	Number
An offender's Criminal History Category at his/her original federal sentencing	18%	111
An offender's current Criminal History Category at the time of the revocation (recalculated pursuant to Chapter Four of the Guidelines Manual)	82%	492
Total Responding		603
<i>Criminal History Not Relevant</i>		41
<i>Otherwise Missing</i>		54

V. Miscellaneous Issues Related to Revocation and Modification

Table 10. Probation Violations vs. Supervised Release Violations. Chapter Seven treats violations of the conditions of probation and violations of the conditions of supervised release in an equivalent manner. Which of the following statements best reflects your opinion concerning whether probation violations should generally be treated in the same manner as supervised release violations? (Mark only one.)

Statements	Percent	Number
I agree that probation violations and supervised release violations should generally be treated in the same manner.	74%	500
I disagree. Probation violations should generally be treated less severely than supervised release violations.	8%	54
I disagree. Probation violations should generally be treated more severely than supervised release violations.	18%	120
Total Responding		674
<i>Missing</i>		24

Table 11. Mandatory Bases for Revocation. The current statutory scheme governing probation and supervised release violations includes the following five bases for mandatory revocation of probation or supervised release (subject to a limited exception for drug-related violations). In your opinion, should any of the following five types of violations require mandatory revocation under the statute?

Bases for revocation	Percent Responding		Number Responding	Number Missing
	Yes	No		
Table 11a. Illegal possession of a firearm	66%	34%	677	21
Table 11b. Illegal possession of a controlled substance	15%	85%	668	30
Table 11c. Failing more than 3 drug tests in one year	26%	74%	666	32
Table 11d. Refusal to take a drug test	38%	62%	664	34
Table 11e. For a sex offender on supervised release, the commission of a sex offense or kidnapping	87%	13%	678	20

In your opinion, should any of the following violations of the conditions of supervision be added to the list for mandatory revocation?

Bases for revocation	Percent Responding		Number Responding	Number Missing
	Yes	No		
Table 11f. Felony crimes of violence	66%	34%	680	18
Table 11g. Any crime of domestic violence, including misdemeanor offenses	19%	81%	668	30
Table 11h. Any sex offense	39%	61%	670	28
Table 11i. Absconding from supervision	45%	55%	674	24

Table 12. Modification vs. Revocation. Chapter Seven of the Guidelines Manual primarily addresses revocation of an offender’s term of supervision rather than modification of the conditions of an offender’s term of supervision. Should Chapter Seven be amended to provide more guidance about when and how to modify when a court decides not to revoke?

Percent		Number Responding	Number Missing
Yes	No		
56%	44%	676	22

Table 12a. Do you believe that Chapter Seven should provide recommendations about specific sanctions short of incarceration that could be imposed through modification of the conditions of supervision?

Percent		Number Responding	Number Missing/NA
Yes	No		
94%	6%	375	25/298

VI. Role of the Probation Officer

Role of the Probation Officer				
	Percent		Number Responding	Number Missing
	Yes	No		
Table 13. Do probation officers in your cases generally prepare updated presentence reports in cases in which offenders are facing potential modifications or revocations for violating the conditions of their supervision?	48%	52%	677	21
Table 14. In cases in which offenders are facing potential modifications or revocations for violating the conditions of their supervision, do probation officers generally provide you with Chapter Seven's recommended disposition of a case (including a sentencing range in the event of a revocation)?	97%	3%	678	20
Table 15. Do probation officers in your cases generally make a recommendation to you regarding the disposition of a case in which an offender is facing potential modification or revocation for violating the conditions of his/her supervision?	97%	3%	679	19

(If answered "Yes" to 15) Table 15a. How often do you follow the probation officers' recommended dispositions?

Percent					Number Responding	Number Missing/NA
Always	Usually	About Half the Time	Seldom	Never		
1%	54%	40%	4%	1%	648	29/21

VII. Adjudication of New Law Violations

Table 16. When an offender on supervision allegedly has violated the conditions of supervision by violating a state penal law (other than a petty misdemeanor), which of the following statements best describes your general response to the alleged violation?

Responses	Percent	Number
Commence a federal revocation proceeding to determine whether the offender committed the alleged state law violation, even if a charge is still pending in the state court system.	25%	172
Postpone a federal revocation proceeding until a state court has resolved the charge.	66%	444
Do not respond in any manner, regardless of the disposition of a state charge, because a state law violation is a matter for the state court and not the federal court.	1%	8
None of the above.	8%	51
Total Responding		675
<i>Missing</i>		23

Table 16a. If you postpone a federal revocation proceeding until a state court has resolved the charge, do you generally proceed based on the alleged state offense as a violation of the conditions of federal supervision only if the offender was convicted in the state court?

Percent		Number Responding	Number Missing/NA
Yes	No		
67%	33%	426	41/231

Table 17. Do you approach any specific types of new law violations (such as domestic violence or child sex offenses) differently from the general approach above?

Percent		Number Responding	Number Missing
Yes	No		
24%	76%	670	28

Table 17a. What types of new law violations do you handle differently? How do you handle such new law violations?

Offense(s) Noted	Action Noted					
	Immediate Revocation Hearing	Immediate or Special Attention (Unspecified)	Warrant or Hold	Await State Outcome	None Specified	Other
Violent Offenses (noted generally, with or without specific offenses mentioned)	8	10	3	1	11	1
Violent Offenses (noted generally, with or without specific offenses mentioned) Plus Additional Charges	9		1		4	
Domestic Violence and (Child) Sex Offenses/Child Abuse	3	3	1	2	7	1
Domestic Violence and (Child) Sex Offenses/Child Abuse Plus Additional Charges	2					
Domestic Violence	1	4		1		1
Domestic Violence Plus Additional Charges					2	
Sex Offenses/Child Sex Offenses	1	1		1	1	2
Sex Offenses/Child Sex Offenses Plus Additional Charges					1	
Offenses Involving Public/Victim at Risk	6	2			7	1
Other Offense		1	1		6	2

Table 18. Plea Bargaining Practices in Revocation Proceedings. In some cases when an offender has allegedly violated the conditions of supervision by committing both one or more “technical” violations and also a new law violation that is deemed more serious in nature than the technical violation, the parties at a revocation hearing negotiate a settlement, whereby the offender agrees to admit to a technical violation in exchange for the prosecutor’s agreement not to pursue the allegation of the new law violation. How often do such negotiated settlements occur in revocation cases appearing before you?

Percent					Number Responding	Number Missing
Always	Usually	About Half the Time	Seldom	Never		
1%	23%	22%	41%	14%	670	28

Table 19. Concurrent or Consecutive Revocation Sentences for New Law Violations. When offenders on federal supervision commit a new law violation, receive a prison sentence for that new law violation from a different court, and then appear before you at a revocation proceeding (at which you revoke based on the new law violation), do you generally impose a revocation sentence that is:

Choices	Percent	Number
Fully consecutive to the undischarged portion of the sentence for the new law violation	20%	130
Fully concurrent to the undischarged portion of the sentence for the new law violation	4%	29
Partially concurrent and partially consecutive to the sentence for the new law violation	6%	43
Varies depending on the individual circumstances of each case	70%	466
Total Responding		668
<i>Missing</i>		30

Table 20. Recommended Supervised Release. Considering all cases in which you have revoked an offender’s term of supervised release and imposed a sentence of imprisonment, how frequently have you imposed a term of “recommended” supervised release to follow the sentence of imprisonment if allowed by statute?

Percent					Number Responding	Number Missing/NA
Always	Usually	About Half the Time	Seldom	Never		
3%	54%	23%	17%	3%	646	25/27

Table 21. Credit for Street Time. There are some cases in which offenders have fully complied with the conditions of supervision for substantial periods of time (commonly called good “street time”) before violating conditions to a degree that results in a revocation. Considering all cases of a similar nature in which you have revoked supervision, how frequently have you considered an offender’s substantial good street time as a basis to reduce the sentence that would otherwise be imposed on revocation?

Percent					Number Responding	Number Missing/NA
Always	Usually	About Half the Time	Seldom	Never		
7%	42%	17%	29%	5%	631	27/40

Table 22. Swift and Certain Approach with Graduated Sanctions. One type of approach to responding to offenders’ violations of the conditions of their supervision involves what are commonly referred to as “swift and certain” sanctions. When such an approach is used, offenders typically receive swiftly-imposed sanctions for any detected violations, including a single failed drug test or a single missed appointment with a probation officer. Sanctions increase in severity for each subsequent violation (a process referred to as “graduated” sanctions), but generally sanctions tend to be relatively short (e.g., a month of home detention or two nights in jail) unless an offender commits a serious new law violation or engages in a multitude of relatively minor violations for which he/she previously received lesser sanctions.

Table 22a. Do you utilize such an approach in your cases?

Percent		Number Responding	Number Missing
Yes	No		
27%	73%	670	28

Table 22b. Regardless of whether you use such an approach in your cases, do you feel that such an approach works better than the current model reflected in Chapter Seven of the Guidelines Manual (which recommends sentencing ranges that are typically longer), at least for some offenders?

Percent			Number Responding	Number Missing
Yes	No	Insufficient Knowledge		
33%	16%	51%	680	18

Table 23. Collegial Strategy for Addressing Violations. Some districts are responding to offenders' violations of the conditions of their supervision through a collegial strategy rather than a traditional adversarial model. Such a collegial strategy involves representatives from the U.S. Attorney's office and the Federal Public Defender's Office, along with the court and probation office, collectively responding to offenders' violations of the conditions of their supervision. Typically, a multi-agency team reaches a consensus about what sanctions to impose based on an established list of graduated sanctions that are less severe than the penalties recommended in Chapter Seven of the Guidelines Manual. In such collegial programs, adversarial revocation proceedings typically occur only after several technical violations or an offender's commission of a serious new law violation.

Table 23a. Do you utilize such a strategy in your cases?

Percent		Number Responding	Number Missing
Yes	No		
14%	86%	668	30

Table 23b. Regardless of whether you use such a strategy in your cases, do you feel that such programs work better than the adversarial model reflected in Chapter Seven of the Guidelines Manual, at least for some offenders?

Percent			Number Responding	Number Missing
Yes	No	Insufficient Knowledge		
32%	16%	52%	678	20

Table 24. Revocation Sentencing Ranges. As noted in Questions 22 and 23, in some districts, courts sentence some offenders who violate the conditions of their supervision to custodial sentences well below the ranges set forth in the Revocation Table in USSG §7B1.4. The minimum range in §7B1.4 is 3-9 months. Should that section be amended to provide for minimum sentences of less than 3 months for certain types of less serious violations?

Percent		Number Responding	Number Missing
Yes	No		
67%	33%	678	20

VIII. Adjudication of Technical Violations

Table 25. In cases involving technical violations, how often do you attempt to address offenders' technical violations with responses short of revocation?

Percent					Number Responding	Number Not Applicable	Number Missing
Always	Usually	About Half the Time	Seldom	Never			
19%	58%	14%	8%	1%	655	19	24

Table 26. Should Chapter Seven of the Guidelines Manual be amended to provide that, for technical violations, revocation (and corresponding imprisonment) generally should be the last resort after less serious sanctions have been exhausted?

Percent		Number Responding	Number Missing
Yes	No		
65%	35%	674	24

IX. New Law Violations Involving Personal Use of Illegal Drugs

Table 27. In cases involving new law violations limited to offenders' use of illegal drugs, how often do you attempt to address these new law violations with responses short of revocation?

Percent					Number Responding	Number Not Applicable	Number Missing
Always	Usually	About Half the Time	Seldom	Never			
13%	51%	22%	13%	1%	648	21	29

Table 28. Should Chapter Seven of the Guidelines Manual be amended to provide that, for offenders' personal use of illegal drugs, revocation (and corresponding imprisonment) generally should be the last resort after less serious sanctions have been exhausted?

Percent		Number Responding	Number Missing
Yes	No		
58%	42%	655	43

X. Other New Law Violations

Other New Law Violations

	Percent					Number Responding	Number Not Applicable	Number Missing
	Always	Usually	About Half the Time	Seldom	Never			
Table 29. In cases involving new law violations for petty misdemeanors (e.g., minor shoplifting), how often do you attempt to address these new law violations with responses short of revocation?	16%	52%	19%	12%	2%	627	46	25
Table 30. In cases involving new law violations for non-petty misdemeanors (e.g., certain DWI offenses and nonaggravated assault offenses), how often do you attempt to address these new law violations with responses short of revocation?	6%	37%	27%	28%	3%	631	36	31
Table 31. In cases involving new law violations for less serious felonies (e.g., uttering a bad check for over \$500, a felony offense under many states' laws), how often do you attempt to address these new law violations with responses short of revocation?	5%	27%	26%	36%	5%	629	37	32
Table 32. In cases involving new law violations for more serious felonies (e.g., drug-trafficking offenses or crimes of violence), how often do you attempt to address these new law violations with responses short of revocation?	2%	5%	4%	49%	40%	650	23	25

XI. Impact of Offender Characteristics

Impact of Offenders' Characteristics and Circumstances on Decision to Revoke In Response to Violations. The following group of questions address the impact of offenders' personal characteristics and circumstances on your decision to revoke.

	Percent			Number Responding	Number Missing
	Yes, I would be unlikely to revoke	Yes, I would be somewhat less likely to revoke	No, this would not make me less likely to revoke		
Table 33. Would the fact that an offender suffers from a mental disability make you less likely to revoke (assuming his/her violations are related to that disability)?	24%	69%	7%	674	24
Table 34. Would the fact that an offender has a history of substance abuse problems and has shown a willingness to receive treatment make you less likely to revoke (assuming his/her violations are related to such problems)?	27%	65%	7%	676	22
Table 35. Would the fact that an offender is gainfully employed and would lose such employment if incarcerated make you less likely to revoke?	27%	67%	6%	677	21
Table 36. Would the fact that an offender has support from stable family members make you less likely to revoke?	10%	67%	23%	671	27
Table 37. Would the fact that an offender has dependents whom he/she supports make you less likely to revoke?	10%	63%	27%	670	28

Table 38. Please list any other personal characteristics or circumstances that, as a general matter, would make you less likely to revoke:

	Number*
1. History under supervision/Good track record on supervision	35
2. Good faith attempt/Trying or wants to succeed/Positive attitude	31
3. Maintained employment/Work history	26
4. Defendant or family health/Age and health/Disability	22
5. Seeking help/treatment/education, etc.	21
6. Honest about problem/Truthfulness with PO or court	14
7. Drug cases/Addiction problems	14
8. How far along in program/ History in treatment	13
9. Nature of the violation	13
10. Functioning member of the family/Caregiver/Provider	13
11. Mental disability/Mental health issue	10
12. Recommendation of PO	10
13. Guardian, mentor, or family support	9
14. Each case is unique/ too many characteristics or circumstances to count	9
15. Sincere contrition	8
16. History of public or military service	7
17. Non-violent offender/History of violence	7
18. Unusual event causing violation/Exception to the norm/Good reason or defense	6
19. Available options/Viable plan	5
20. Economic hardships	5
21. Not a danger to community	3
22. Cooperative with law enforcement/PO	3
23. Criminal history	3
24. Previous impact of lockup	2
25. Poor/broken home/single parent family vs. privileged background/upbringing or family dynamics	2
26. Making payments - restitution, fines, child support	2
27. Underlying conviction	2
28. State punishment received	2
29. Other	5

*number of judges responding who listed an offender's personal characteristic or circumstances that fit within one of the 29 categories

XII. Hypotheticals

Question 39. United States v. Davis

Edward Davis, age 39, is serving a five-year term of probation after being convicted of theft of mail (several items sent by Amazon, together valued at less than \$1,000) from an apartment complex's mailroom, in violation of 18 U.S.C. § 1708. Davis' Criminal History Category in his presentence report is V, including prior convictions for automobile theft, drug possession, and passing bad checks. Without justification, Davis missed his monthly appointments with his probation officer on two occasions during Davis' second year of supervision. After the second missed appointment, the court modified the conditions of Davis' supervision by imposing a condition of home detention from 7:00 p.m. to 7:00 a.m. for a period of three months. Six months later, Davis missed another appointment with his probation officer without justification. Since commencing his probation, Davis has worked full time as a janitor for a fast-food restaurant making minimum wage, lived with his mother, and paid child support for three minor children.

Chapter Seven recommends revocation in this case for Davis' repeated technical violations, see USSG §7B1.3, comment. (n.1), with a recommended sentencing range of 7-13 months. See USSG §7B1.4. Under USSG §7B1.3(c)(2), half of the minimum term of imprisonment could be served in community confinement or home detention. The statutory maximum sentence of imprisonment available on revocation is five years (the maximum for Davis' offense of conviction under 18 U.S.C. § 1708. See 18 U.S.C. § 3565(b)).

Question 39a. Based on the foregoing, which of the following dispositions do you believe would be the most appropriate:

Dispositions	Percent	Number
Revocation and imposition of a sentence of imprisonment in accordance with Chapter Seven's recommended range.	9%	56
Revocation and imposition of a sentence of imprisonment higher than Chapter Seven's recommended range.	0%	2
Revocation and imposition of a sentence of imprisonment lower than Chapter Seven's recommended range.	11%	70
Modification of the conditions of Davis' supervision (e.g., by requiring him to serve a period of community confinement in a halfway house) but no term of imprisonment.	68%	426
Neither revocation nor modification.	12%	76
Total Responding		630
<i>Missing</i>		68

Question 39b. (If Table 39a = 2 or 3) Please indicate the sentence length that you likely would impose:

Length	Percent	Number
Less than 1 month	12%	8
1 month	19%	13
2 months	16%	11
3 months	27%	18
4 months	12%	8
5 months	3%	2
6 months	8%	5
More than 13 months	3%	2
Total Responding		67
<i>Not Applicable</i>		558
<i>Missing</i>		73

Question 40. United States v. Johnson

Anthony Johnson, age 28, is serving a three-year term of supervised release after completing a 24-month prison sentence for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Johnson's Criminal History Category in his presentence report is IV, including prior state court convictions for possessing crack cocaine and marijuana, unauthorized use of a motor vehicle, and shoplifting. Within one week of commencing his federal supervision, Johnson tested positive for marijuana. With Johnson's agreement, the court modified the conditions of supervision by requiring participation in a 60-day out-patient drug treatment program, which Johnson successfully completed. Six months later, Johnson tested positive for cocaine and remorsefully admitted to smoking crack cocaine following his completion of the drug treatment program. Possession of crack cocaine is a felony under the state's law. Johnson is not married, has no dependents, and has held sporadic low-wage employment while on supervision. He lives with his older sister.

Although 18 U.S.C. § 3583(g) requires revocation for an offender's drug possession while on supervision, § 3583(d) creates an exception "from the rule of section 3583(g)" if a court, in its discretion, concludes that a substance abuse treatment program would better address the offender's violation. In addition, Chapter Seven recommends revocation in this case because possession of crack cocaine (which Johnson admitted) is a felony offense under state law (a Grade B violation), see USSG §§7B1.1(a)(2) & 7B1.3(a)(1), with a recommended sentencing range of 12-18 months. See USSG §7B1.4. The statutory maximum sentence of imprisonment is two years because Johnson's offense of conviction under 18 U.S.C. § 922(g) is a Class C felony. See 18 U.S.C. § 3583(e)(3).

Table 40a. Based on the foregoing, which of the following dispositions do you believe would be the most appropriate:

Dispositions	Percent	Number
Revocation and imposition of a sentence of imprisonment in accordance with Chapter Seven's recommended range.	22%	135
Revocation and imposition of a sentence of imprisonment higher than Chapter Seven's recommended range.	1%	4
Revocation and imposition of a sentence of imprisonment lower than Chapter Seven's recommended range.	27%	169
Modification of the conditions of Johnson's supervision (e.g., by requiring him to serve a period of community confinement in a halfway house) but no term of imprisonment.	48%	299
Neither revocation nor modification.	3%	20
Total Responding		627
<i>Missing</i>		71

Table 40b. (If 40a = 2 or 3) Please indicate the sentence length that you likely would impose:

Length	Percent	Number
1 month or less	6%	9
2 months	9%	14
3 months	24%	40
4 months	10%	17
5 - 6 months	36%	60
7 - 8 months	5%	8
9 - 11 months	8%	13
More than 18 months	2%	4
Total Responding		165
<i>Not Applicable</i>		454
<i>Missing</i>		79

Question 41. United States v. Smith

Robert Smith, age 38, is serving a five-year term of supervised release after completing an 87-month prison sentence for conspiracy to distribute methamphetamine in violation of 21 U.S.C. § 841(b)(1)(B). Smith's Criminal History Category in his presentence report is III, based primarily on a prior conviction for aggravated assault. While on federal supervision, Smith was convicted of shoplifting from an electronics store, a felony under state law because the item that he stole (a new "smart phone") had a retail value of over \$500. He received a sentence of 90 days in the county jail from the state court after pleading guilty. Smith has completed that state sentence. Until his arrest for shoplifting, Smith had worked full time as a plumber's helper (making \$12 per hour). His employer has stated that he would rehire Smith in the future.

Chapter Seven recommends revocation in this case because Smith committed a felony under state law (a Grade B violation), see USSG §§7B1.1(a)(2) & 7B1.3(a)(1), with a recommended sentencing range of 8-14 months. See USSG §7B1.4. Under USSG §7B1.3(c)(2), half of the minimum term of imprisonment could be served in community confinement or home detention. The statutory maximum sentence of imprisonment is three years because Smith's offense of conviction under 21 U.S.C. § 841(b)(1) (B) is a Class B felony. See 18 U.S.C. § 3583(e)(3).

Table 41a. Based on the foregoing, which of the following dispositions do you believe would be the most appropriate:

Dispositions	Percent	Number
Revocation and imposition of a sentence of imprisonment in accordance with Chapter Seven's recommended range.	24%	151
Revocation and imposition of a sentence of imprisonment higher than Chapter Seven's recommended range.	0%	2
Revocation and imposition of a sentence of imprisonment lower than Chapter Seven's recommended range.	26%	161
Modification of the conditions of Smith's supervision (e.g., by requiring him to serve a period of community confinement in a halfway house) but no term of imprisonment.	41%	259
Neither revocation nor modification.	9%	56
Total Responding		629
<i>Missing</i>		69

Table 41b. (If 41a = 2 or 3) Please indicate the sentence length that you likely would impose:

Length	Percent	Number
Less than 1 month	1%	2
1 month	9%	14
2 months	16%	25
3 months	31%	47
4 months	18%	28
5 months	4%	6
6 months	18%	28
More than 14 months	1%	2
Total Responding		152
<i>Not Applicable</i>		466
<i>Missing</i>		80

Question 42. United States v. Brown

Peter Brown, age 48, is serving a five-year term of supervised release after discharging a 262-month prison sentence for conspiracy to distribute cocaine and using a firearm in violation of 18 U.S.C. § 924(c) & 21 U.S.C. § 841(b)(1)(A). Brown’s Criminal History Category in his presentence report is VI, based on his status as a Career Offender. He had two prior convictions in state court for distributing cocaine and heroin, for which he had served two- and five-year state prison sentences. While on federal supervision, Brown tested positive for marijuana on two occasions during the first two years of supervision. The court modified the conditions of his supervision by requiring out-patient drug treatment, which Brown successfully completed. Thereafter, Brown was arrested for and ultimately convicted in state court for strong-armed robbery not involving bodily injury (i.e., forcibly snatching a woman’s purse after pushing her), a felony under state law. Brown received a 13-month sentence in the county jail after pleading guilty. Brown has discharged that state sentence. Before his robbery conviction, Brown was living with his girlfriend in her home and had held a succession of low-paying jobs through a “temp” agency and could obtain similar employment in the future. Brown has no dependents.

Chapter Seven recommends revocation in this case because Brown committed a felony crime of violence (a Grade A violation), see USSG §§7B1.1(a)(2) & 7B1.3(a)(1), with a recommended sentencing range of 51-63 months. See USSG §7B1.4(a) (providing for higher ranges for offenders whose violation was a felony crime of violence and whose federal offense of conviction was a Class A felony). However, the statutory maximum sentence of imprisonment is five years (60 months) because Brown’s offense of conviction under 21 U.S.C. § 841(b)(1)(A) is a Class A felony. See 18 U.S.C. § 3583(e)(3).

Table 42a. Based on the foregoing, which of the following dispositions do you believe would be the most appropriate:

Dispositions	Percent	Number
Revocation and imposition of a sentence of imprisonment in accordance with Chapter Seven’s recommended range.	45%	281
Revocation and imposition of a sentence of imprisonment lower than Chapter Seven’s recommended range.	48%	304
Modification of the conditions of Brown’s supervision (e.g., by requiring him to serve a period of community confinement in a halfway house) but no term of imprisonment.	5%	35
Neither revocation nor modification.	2%	11
Total Responding		631
<i>Missing</i>		67

Table 42b. (If 42a=2) Please indicate the sentence length that you likely would impose:

Length	Percent	Number
1 month-5 months	5%	15
6-11 months	15%	41
12-17 months	21%	60
18-23 months	9%	26
24 -29 months	26%	73
30-35 months	3%	9
36-41 months	17%	47
42-47 months	1%	2
48 months	3%	7
Total Responding		280
<i>Not Applicable</i>		327
<i>Missing</i>		91

XIII. Questions About the Federal Sentencing Guidelines Generally

Table 44. The following is a list of statements regarding federal sentencing and the guidelines in general. For each statement, check the one that best reflects your view.

Statements	Percent					Number Responding	Number Missing
	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree		
Table 44a. Overall, the federal sentencing guidelines have reduced unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct.	22%	55%	10%	8%	5%	657	41
Table 44b. Overall, the federal sentencing guidelines have increased certainty in meeting the purposes of sentencing.	21%	53%	13%	9%	4%	659	39
Table 44c. Overall, the federal sentencing guidelines have increased fairness in meeting the purposes of sentencing.	15%	47%	16%	14%	8%	649	49

Table 45. Which of the following sentencing systems do you think best achieves the purposes of sentencing?

Systems	Percent	Number
No guidelines, such as the system in effect before the federal sentencing guidelines became effective in 1987.	8%	53
Mandatory guidelines, such as the system in effect before the Supreme Court's decision in <i>United States v. Booker</i> , 543 U.S. 220 (2005).	2%	12
The current advisory guidelines system.	77%	509
A system of mandatory guidelines that comply with the Sixth Amendment (e.g., with facts supporting sentencing enhancements found by a jury beyond a reasonable doubt or admitted by the defendant), coupled with broader sentencing ranges than currently exist and fewer statutory mandatory minimum sentencing provisions.	13%	85
Total Responding		659
<i>Missing</i>		39

APPENDIX A
SURVEY INSTRUMENT

2014 Survey



United States Sentencing Commission Survey of United States District Judges

Purpose. The United States Sentencing Commission (USSC or the Commission) is conducting this survey to learn about judicial practices and opinions for handling cases involving the modification or revocation of probation or supervised release.

The Sentencing Reform Act of 1984 requires the Commission to promulgate “guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18.” 28 U.S.C. § 994(a)(3). The current policy statements concerning modifications and revocations are contained in Chapter Seven of the *Guidelines Manual*, the Introduction of which states: “The Commission views these policy statements as evolutionary and will review relevant data and materials concerning revocation determinations under these policy statements. Revocation guidelines will be issued after federal judges, probation officers, practitioners, and others have the opportunity to evaluate and comment on these policy statements.” USSG, Ch. 7, Pt. A.1. This survey will inform the Commission’s decision to amend the existing policy statements in Chapter Seven.

The survey questions address your experience in handling modifications and revocations of offenders’ terms of supervision, your opinions about certain aspects of modifications and revocations, and your practices and procedures in such cases. Some of the questions will present hypothetical cases in which offenders have violated the conditions of their supervision and seek your opinion on the most appropriate sanction. At the end of this survey, there will be an opportunity for you to provide additional comments about modifications and revocations if you wish.

Finally, following the survey questions about modifications and revocations, there are two survey questions about the federal sentencing guidelines generally (including the guidelines that apply to *original* sentencing proceedings as opposed to modifications and revocations of offenders’ terms of supervision). Those two questions also appeared in the Commission’s 2010 survey of federal district judges about the federal sentencing guidelines.

Confidentiality. The Commission has contracted with NORC at the University of Chicago (NORC) to conduct this survey. Your personal identifying information will be held in confidence by NORC, and will not be attached to your responses. An identification number will be attached to your responses and will be used by NORC to track completion status, to allow for reminders to those judges who do not initially respond, and to identify geographic regions. Your personal information will not be included in data provided to the Commission and will not be identified in any presentation of the results. The results of the survey will be reported only in the aggregate.

Terminology. Please refer to the following explanations when completing the survey:

Modification – Modifications, as referred to in this survey, are intended to be corrective or to sanction an offender for his/her violation, and include such requirements as drug abuse or mental health treatment, a period of home detention or community confinement, or short periods of intermittent confinement in a correctional facility (*e.g.*, two weekends in jail). Modifications, as used in this survey, do not include modifications for other non-corrective purposes (*e.g.*, allowing an offender to travel out-of-state for employment).

Technical violations - refer to violations of the conditions of supervision other than commission of new criminal offenses. They range from relatively minor violations (*e.g.*, failing to pay a monthly installment on a fine or failing to submit a monthly report) to more serious conduct (*e.g.*, refusing to participate in a court-ordered drug treatment program or absconding from supervision).

New law violations - refer to the commission of new crimes, whether misdemeanors or felonies, while on supervision.

Instructions

Instructions. Please complete this voluntary survey on-line at <http://connectcai.norc.org/go/JudgesSurvey>. Alternatively, you can complete this survey in hard-copy form and return it using the pre-paid envelope, or by faxing it to: 1-877-346-5693. Unless otherwise specified within a particular question, please mark your answers with an 'x'. This paper form should take approximately 20-25 minutes to complete. The on-line survey should take less time to complete, and may be completed in multiple sessions. The on-line survey will save entered responses and will open at the next unanswered question. A progress bar will display on each screen indicating how many questions are remaining. Please contact NORC at 1-877-467-0764 or JudgesSurvey@norc.org if you have any questions or concerns.

Judicial Experience with Probation and Supervised Release Violations

1. How many years have you been a United States District Judge?

Years

2. In a typical year, approximately how many cases do you handle in which you find that offenders violated the conditions of their probation or supervised release (regardless of whether you modified or revoked their supervision)?

- 1 Less than 5
2 6-10
3 11-20
4 More than 20

3. Please answer the next three questions based on your experience handling such cases **during the past two years only**.

- 3a. Have you handled any case of an offender on probation or supervised release in which you found that the offender violated one or more conditions of his/her supervision?

- 1 Yes
2 No → (If no, skip to Question 5)

- 3b. Have you **modified** the conditions of supervision of any federal offender on either probation or supervised release in response to one or more violations of the conditions of supervision?

- 1 Yes
2 No

- 3c. Have you **revoked** the term of supervision of any federal offender on either probation or supervised release in response to one or more violations of the conditions of supervision?

- 1 Yes
2 No

Chapter Seven of the Guidelines Manual Generally

4. In your cases in which offenders have violated the conditions of their supervision, to what extent have you generally followed the provisions in Chapter Seven concerning modifications and revocations of probation and supervised release?

- 1 Always
2 Usually
3 About Half the Time
4 Seldom
5 Never

5. Do you believe that the United States Sentencing Commission should significantly revise Chapter Seven in a manner that provides more options for judges to address offenders' violations of the conditions of their supervision (e.g., more alternatives to incarceration)?

- 1 Yes
2 No

Purposes of Sanctioning an Offender for Violating the Conditions of Supervision

6. Please identify the purposes of sanctioning an offender for violating the conditions of his/her supervision that you feel are appropriate. (Please rank any factor(s) that you feel are relevant in order of importance to you, 1 being most relevant, and leaving irrelevant factors blank. Please use each ranking only once.)

_____ Offender's breach of trust (see USSG, Chpt. 7, Pt. A.3(b))

_____ Just punishment in view of the seriousness of the violation(s) and the offender's criminal history

_____ General deterrence

_____ Specific deterrence

_____ Incapacitation of the offender (public safety)

_____ Rehabilitation of the offender

_____ Other → Please specify

Factors Relevant to Revocation and Sentencing Decisions

7. Please identify the factors that you consider relevant in **deciding whether to revoke** an offender's supervision based on one or more violation(s) of the conditions of supervision. *(Please rank any factor(s) that you feel are relevant in order of importance to you, 1 being most relevant, and leaving irrelevant factors blank. Please use each ranking only once.)*

_____ The nature and seriousness of the violation(s)

_____ The nature and seriousness of the original federal offense(s) of conviction

_____ An offender's criminal history

_____ An offender's life history and personal characteristics

_____ The length of time that the offender has successfully complied with the conditions of supervision before committing a violation

_____ Other → *Please specify*

8. Please identify the factors that you consider relevant in **deciding on the type and length of sentence to impose** after you have revoked an offender's supervision. *(Please rank any factor(s) that you feel are relevant in order of importance to you, 1 being most relevant, and leaving irrelevant factors blank. Please use each ranking only once.)*

_____ The nature and seriousness of the violation(s)

_____ The nature and seriousness of the original federal offense(s) of conviction

_____ An offender's criminal history

_____ An offender's life history and personal characteristics

_____ The length of time that the offender has successfully complied with the conditions of supervision before committing a violation

_____ Other → *Please specify*

9. If you answered Questions 7 or 8 that you believe an offender's criminal history is relevant to the decision to revoke or the decision of the length of a revocation sentence, which in your opinion is the better measure of criminal history?

- 1 An offender's Criminal History Category at his/her original federal sentencing; or
- 2 An offender's current Criminal History Category at the time of the revocation (recalculated pursuant to Chapter Four of the *Guidelines Manual*)

Miscellaneous Issues Related to Revocation and Modification

10. **Probation Violations vs. Supervised Release Violations.** Chapter Seven treats violations of the conditions of probation and violations of the conditions of supervised release in an equivalent manner. Which of the following statements best reflects your opinion concerning whether probation violations should generally be treated in the same manner as supervised release violations? *(Mark only one.)*

- 1 I agree that probation violations and supervised release violations should generally be treated in the same manner.
- 2 I disagree. Probation violations should generally be treated **less** severely than supervised release violations.
- 3 I disagree. Probation violations should generally be treated **more** severely than supervised release violations.

11. Mandatory Bases for Revocation. The current statutory scheme governing probation and supervised release violations includes the following five bases for *mandatory* revocation of probation or supervised release (subject to a limited exception for drug-related violations). In your opinion, should any of the following five types of violations require mandatory revocation under the statute?

- | | Yes | No |
|-----------------------------------------------------------------------------------------------------|----------------------------|----------------------------|
| 11a. Illegal possession of a firearm | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| 11b. Illegal possession of a controlled substance | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| 11c. Failing more than 3 drug tests in one year | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| 11d. Refusal to take a drug test | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| 11e. For a sex offender on supervised release, the commission of a sex offense or kidnapping | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |

In your opinion, should any of the following violations of the conditions of supervision be added to the list for mandatory revocation?

- | | Yes | No |
|----------------------------------------------------------------------------|----------------------------|----------------------------|
| 11f. Felony crimes of violence | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| 11g. Any crime of domestic violence, including misdemeanor offenses | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| 11h. Any sex offense | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| 11i. Absconding from supervision | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |

12. Modification vs. Revocation. Chapter Seven of the *Guidelines Manual* primarily addresses revocation of an offender's term of supervision rather than modification of the conditions of an offender's term of supervision. Should Chapter Seven be amended to provide more guidance about when and how to modify when a court decides not to revoke?

1 Yes

2 No → (If no, skip to Question 13)

12a. Do you believe that Chapter Seven should provide recommendations about specific sanctions short of incarceration that could be imposed through modification of the conditions of supervision?

1 Yes

2 No

Current Practices and Procedures. The following questions concern various issues of practice and procedure in cases in which an offender has violated the conditions of supervision, whether on probation or supervised release. Unless a question says otherwise, your answers should reflect your approach to offenders' violations of the conditions of supervision, regardless of whether your approach is consistent with the policy statements in Chapter Seven of the *Guidelines Manual*. Furthermore, unless a question says otherwise, your answers should reflect only your approach and not the approach of other judges in your division or district.

Role of the Probation Officer

13. Do probation officers in your cases generally prepare updated presentence reports in cases in which offenders are facing potential modifications or revocations for violating the conditions of their supervision?

1 Yes

2 No

14. In cases in which offenders are facing potential modifications or revocations for violating the conditions of their supervision, do probation officers generally provide you with Chapter Seven's recommended disposition of a case (including a sentencing range in the event of a revocation)?

1 Yes

2 No

15. Do probation officers in your cases generally make a recommendation to you regarding the disposition of a case in which an offender is facing potential modification or revocation for violating the conditions of his/her supervision?

1 Yes

2 No → (If no, skip to Question 16)

15a. How often do you follow the probation officers' recommended dispositions?

1 Always

2 Usually

3 About Half the Time

4 Seldom

5 Never

Adjudication of New Law Violations

16. When an offender on supervision allegedly has violated the conditions of supervision by violating a state penal law (other than a petty misdemeanor), which of the following statements best describes your general response to the alleged violation? (*Mark only one.*)

- 1 Commence a federal revocation proceeding to determine whether the offender committed the alleged state law violation, even if a charge is still pending in the state court system. → (**Skip to Question 17**)
- 2 Postpone a federal revocation proceeding until a state court has resolved the charge.
- 3 Do not respond in any manner, regardless of the disposition of a state charge, because a state law violation is a matter for the state court and not the federal court. → (**Skip to Question 17**)
- 4 None of the above. → (**Skip to Question 17**)

16a. If you postpone a federal revocation proceeding until a state court has resolved the charge, do you generally proceed based on the alleged state offense as a violation of the conditions of federal supervision only if the offender was *convicted* in the state court?

- 1 Yes
- 2 No

17. Do you approach any specific types of new law violations (such as domestic violence or child sex offenses) differently from the general approach above?

- 1 Yes
- 2 No → (**If no, skip to Question 18**)

17a. What type(s) of new law violations do you handle differently? How do you handle such new law violations?

18. Plea Bargaining Practices in Revocation

Proceedings. In some cases when an offender has allegedly violated the conditions of supervision by committing both one or more “technical” violations and also a new law violation that is deemed more serious in nature than the technical violation, the parties at a revocation hearing negotiate a settlement, whereby the offender agrees to admit to a technical violation in exchange for the prosecutor’s agreement not to pursue the allegation of the new law violation.

How often do such negotiated settlements occur in revocation cases appearing before you?

- 1 Always
- 2 Usually
- 3 About Half the Time
- 4 Seldom
- 5 Never

19. Concurrent or Consecutive Revocation Sentences for New Law Violations.

When offenders on federal supervision commit a new law violation, receive a prison sentence for that new law violation from a different court, and then appear before you at a revocation proceeding (at which you revoke based on the new law violation), do you generally impose a revocation sentence that is: (*Mark only one.*)

- 1 Fully *consecutive* to the undischarged portion of the sentence for the new law violation
- 2 Fully *concurrent* to the undischarged portion of the sentence for the new law violation
- 3 Partially concurrent and partially consecutive to the sentence for the new law violation
- 4 Varies depending on the individual circumstances of each case

20. Recommended Supervised Release.

Considering all cases in which you have revoked an offender’s term of supervised release and imposed a sentence of imprisonment, how frequently have you imposed a term of “recommended” supervised release to follow the sentence of imprisonment if allowed by statute?

- 1 Always
- 2 Usually
- 3 About Half the Time
- 4 Seldom
- 5 Never
- 6 Not Applicable

21. Credit for Street Time. There are some cases in which offenders have fully complied with the conditions of supervision for substantial periods of time (commonly called good “street time”) before violating conditions to a degree that results in a revocation. Considering all cases of a similar nature in which you have revoked supervision, how frequently have you considered an offender’s substantial good street time as a basis to reduce the sentence that would otherwise be imposed on revocation?

- 1 Always
- 2 Usually
- 3 About Half the Time
- 4 Seldom
- 5 Never
- 6 Not Applicable

22. Swift and Certain Approach with Graduated Sanctions. One type of approach to responding to offenders’ violations of the conditions of their supervision involves what are commonly referred to as “swift and certain” sanctions. When such an approach is used, offenders typically receive swiftly-imposed sanctions for any detected violations, including a single failed drug test or a single missed appointment with a probation officer. Sanctions increase in severity for each subsequent violation (a process referred to as “graduated” sanctions), but generally sanctions tend to be relatively short (e.g., a month of home detention or two nights in jail) unless an offender commits a serious new law violation or engages in a multitude of relatively minor violations for which he/she previously received lesser sanctions.

22a. Do you utilize such an approach in your cases?

- 1 Yes
- 2 No

22b. Regardless of whether you use such an approach in your cases, do you feel that such an approach works better than the current model reflected in Chapter Seven of the *Guidelines Manual* (which recommends sentencing ranges that are typically longer), at least for some offenders?

- 1 Yes
- 2 No
- 3 I don’t have sufficient knowledge about such programs to answer

23. Collegial Strategy for Addressing Violations. Some districts are responding to offenders’ violations of the conditions of their supervision through a collegial strategy rather than a traditional adversarial model. Such a collegial strategy involves representatives from the U.S. Attorney’s office and the Federal Public Defender’s Office, along with the court and probation office, collectively responding to offenders’ violations of the conditions of their supervision. Typically, a multi-agency team reaches a consensus about what sanctions to impose based on an established list of graduated sanctions that are less severe than the penalties recommended in Chapter Seven of the *Guidelines Manual*. In such collegial programs, adversarial revocation proceedings typically occur only after several technical violations or an offender’s commission of a serious new law violation.

23a. Do you utilize such a strategy in your cases?

- 1 Yes
- 2 No

23b. Regardless of whether you use such a strategy in your cases, do you feel that such programs work better than the adversarial model reflected in Chapter Seven of the *Guidelines Manual*, at least for some offenders?

- 1 Yes
- 2 No
- 3 I don’t have sufficient knowledge about such programs to answer

24. Revocation Sentencing Ranges. As noted in Questions 22 and 23, in some districts, courts sentence some offenders who violate the conditions of their supervision to custodial sentences well below the ranges set forth in the Revocation Table in USSG §7B1.4. The minimum range in §7B1.4 is 3-9 months. Should that section be amended to provide for minimum sentences of less than 3 months for certain types of less serious violations?

- 1 Yes
- 2 No

Judicial Responses to Violations. The following series of questions ask about your general approach to responding to offenders' violations, including the decision to revoke and the impact of offender characteristics.

Technical Violations

25. In cases involving technical violations, how often do you attempt to address offenders' technical violations with responses short of revocation?
- 1 Always
 2 Usually
 3 About Half the Time
 4 Seldom
 5 Never
 6 Not Applicable
26. Should Chapter Seven of the *Guidelines Manual* be amended to provide that, for technical violations, revocation (and corresponding imprisonment) generally should be the **last resort** after less serious sanctions have been exhausted?
- 1 Yes
 2 No

New Law Violations Involving Personal Use of Illegal Drugs

27. In cases involving new law violations limited to offenders' use of illegal drugs, how often do you attempt to address these new law violations with responses short of revocation?
- 1 Always
 2 Usually
 3 About Half the Time
 4 Seldom
 5 Never
 6 Not Applicable
28. Should Chapter Seven of the *Guidelines Manual* be amended to provide that, for offenders' personal use of illegal drugs, revocation (and corresponding imprisonment) generally should be the **last resort** after less serious sanctions have been exhausted?
- 1 Yes
 2 No

Other New Law Violations

	Always	Usually	About Half the Time	Seldom	Never	Not Applicable
29. In cases involving new law violations for petty misdemeanors (e.g., minor shoplifting), how often do you attempt to address these new law violations with responses short of revocation?.....	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	6 <input type="checkbox"/>
30. In cases involving new law violations for non-petty misdemeanors (e.g., certain DWI offenses and non-aggravated assault offenses), how often do you attempt to address these new law violations with responses short of revocation?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	6 <input type="checkbox"/>
31. In cases involving new law violations for less serious felonies (e.g., uttering a bad check for over \$500, a felony offense under many states' laws), how often do you attempt to address these new law violations with responses short of revocation?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	6 <input type="checkbox"/>
32. In cases involving new law violations for more serious felonies (e.g., drug-trafficking offenses or crimes of violence), how often do you attempt to address these new law violations with responses short of revocation?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	6 <input type="checkbox"/>

Impact of Offenders' Characteristics and Circumstances on Decision to Revoke in Response to Violations. The following group of questions address the impact of offenders' personal characteristics and circumstances on your decision to revoke.

	Yes, I would be unlikely to revoke	Yes, I would be somewhat less likely to revoke	No, this would not make me less likely to revoke
33. Would the fact that an offender suffers from a mental disability make you less likely to revoke (assuming his/her violations are related to that disability)?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
34. Would the fact that an offender has a history of substance abuse problems and has shown a willingness to receive treatment make you less likely to revoke (assuming his/her violations are related to such problems)?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
35. Would the fact that an offender is gainfully employed and would lose such employment if incarcerated make you less likely to revoke?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
36. Would the fact that an offender has support from stable family members make you less likely to revoke?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
37. Would the fact that an offender has dependents whom he/she supports make you less likely to revoke?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
38. Please list any other personal characteristics or circumstances that, as a general matter, would make you less likely to revoke:			
<hr/> <hr/>			

Hypotheticals. The following questions are based on four short factual hypotheticals that seek to determine your views concerning how Chapter Seven of the *Guidelines Manual* addresses revocations, including sentences upon revocation. Regarding each hypothetical case, the current version of Chapter Seven recommends revocation and a sentence of imprisonment (although in some cases, Chapter Seven provides the option of imposing home detention or community confinement for a portion of the revocation sentence pursuant to USSG § 7B1.3(c)). Following each hypothetical, the applicable guideline ranges from USSG § 7B1.4 (Revocation Table) will be noted. You will be asked whether you would impose a sentence within the guideline range or, instead, respond to the violation(s) in a different manner. Please answer those questions based on how you believe you would respond to the violations as if they had occurred in real cases with the same basic facts. Your answers should reflect your approach to offenders' violations of the conditions of supervision, regardless of whether your approach is consistent with the policy statements in Chapter Seven of the *Guidelines Manual*.

For each vignette, assume that the defendant is a U.S. citizen with a high school diploma or its equivalent. Further assume that the court has *not* previously revoked the defendant's supervision and that only the violations mentioned have occurred.

39. United States v. Davis

Edward Davis, age 39, is serving a five-year term of probation after being convicted of theft of mail (several items sent by Amazon, together valued at less than \$1,000) from an apartment complex's mailroom, in violation of 18 U.S.C. § 1708. Davis' Criminal History Category in his presentence report is V, including prior convictions for automobile theft, drug possession, and passing bad checks. Without justification, Davis missed his monthly appointments with his probation officer on two occasions during Davis' second year of supervision. After the second missed appointment, the court modified the conditions of Davis' supervision by imposing a condition of home detention from 7:00 p.m. to 7:00 a.m. for a period of three months. Six months later, Davis missed another appointment with his probation officer without justification. Since commencing his probation, Davis has worked full time as a janitor for a fast-food restaurant making minimum wage, lived with his mother, and paid child support for three minor children.

Chapter Seven recommends revocation in this case for Davis' repeated technical violations, see USSG §7B1.3, comment. (n.1), with a recommended sentencing range of **7-13 months**. See USSG §7B1.4. Under USSG §7B1.3(c)(2), half of the minimum term of imprisonment could be served in community confinement or home detention. The statutory maximum sentence of imprisonment available on revocation is **five years** (the maximum for Davis' offense of conviction under 18 U.S.C. § 1708. See 18 U.S.C. § 3565(b)).

39a. Based on the foregoing, which of the following dispositions do you believe would be the most appropriate:
(Mark only one.)

- 1 Revocation and imposition of a sentence of imprisonment in accordance with Chapter Seven's recommended range. → (If checked, skip to Question 40)
- 2 Revocation and imposition of a sentence of imprisonment *higher* than Chapter Seven's recommended range.
- 3 Revocation and imposition of a sentence of imprisonment *lower* than Chapter Seven's recommended range.
- 4 Modification of the conditions of Davis' supervision (e.g., by requiring him to serve a period of community confinement in a halfway house) but no term of imprisonment. → (If checked, skip to Question 40)
- 5 Neither revocation nor modification. → (If checked, skip to Question 40)

39b. Please indicate the sentence length that you likely would impose:

Enter amount: Circle time frame: days weeks months years

40. United States v. Johnson

Anthony Johnson, age 28, is serving a three-year term of supervised release after completing a 24-month prison sentence for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Johnson's Criminal History Category in his presentence report is IV, including prior state court convictions for possessing crack cocaine and marijuana, unauthorized use of a motor vehicle, and shoplifting. Within one week of commencing his federal supervision, Johnson tested positive for marijuana. With Johnson's agreement, the court modified the conditions of supervision by requiring participation in a 60-day out-patient drug treatment program, which Johnson successfully completed. Six months later, Johnson tested positive for cocaine and remorsefully admitted to smoking crack cocaine following his completion of the drug treatment program. Possession of crack cocaine is a felony under the state's law. Johnson is not married, has no dependents, and has held sporadic low-wage employment while on supervision. He lives with his older sister.

Although 18 U.S.C. § 3583(g) requires revocation for an offender's drug possession while on supervision, § 3583(d) creates an exception "from the rule of section 3583(g)" if a court, in its discretion, concludes that a substance abuse treatment program would better address the offender's violation. In addition, Chapter Seven recommends revocation in this case because possession of crack cocaine (which Johnson admitted) is a felony offense under state law (a Grade B violation), see USSG §§7B1.1(a)(2) & 7B1.3(a)(1), with a recommended sentencing range of **12-18 months**. See USSG §7B1.4. The statutory maximum sentence of imprisonment is **two years** because Johnson's offense of conviction under 18 U.S.C. § 922(g) is a Class C felony. See 18 U.S.C. § 3583(e)(3).

40a. Based on the foregoing, which of the following dispositions do you believe would be the most appropriate:
(Mark only one.)

- 1 Revocation and imposition of a sentence of imprisonment in accordance with Chapter Seven's recommended range. → (If checked, skip to Question 41)
- 2 Revocation and imposition of a sentence of imprisonment *higher* than Chapter Seven's recommended range.
- 3 Revocation and imposition of a sentence of imprisonment *lower* than Chapter Seven's recommended range.
- 4 Modification of the conditions of Johnson's supervision (e.g., by requiring him to serve a period of community confinement in a halfway house) but no term of imprisonment. → (If checked, skip to Question 41)
- 5 Neither revocation nor modification. → (If checked, skip to Question 41)

40b. Please indicate the sentence length that you likely would impose:

Enter amount: Circle time frame: days weeks months years

41. United States v. Smith

Robert Smith, age 38, is serving a five-year term of supervised release after completing an 87-month prison sentence for conspiracy to distribute methamphetamine in violation of 21 U.S.C. § 841(b)(1)(B). Smith's Criminal History Category in his presentence report is III, based primarily on a prior conviction for aggravated assault. While on federal supervision, Smith was convicted of shoplifting from an electronics store, a felony under state law because the item that he stole (a new "smart phone") had a retail value of over \$500. He received a sentence of 90 days in the county jail from the state court after pleading guilty. Smith has completed that state sentence. Until his arrest for shoplifting, Smith had worked full time as a plumber's helper (making \$12 per hour). His employer has stated that he would rehire Smith in the future.

Chapter Seven recommends revocation in this case because Smith committed a felony under state law (a Grade B violation), see USSG §§7B1.1(a)(2) & 7B1.3(a)(1), with a recommended sentencing range of **8-14 months**. See USSG §7B1.4. Under USSG §7B1.3(c)(2), half of the minimum term of imprisonment could be served in community confinement or home detention. The statutory maximum sentence of imprisonment is **three years** because Smith's offense of conviction under 21 U.S.C. § 841(b)(1)(B) is a Class B felony. See 18 U.S.C. § 3583(e)(3).

41a. Based on the foregoing, which of the following dispositions do you believe is the most appropriate:
(Mark only one.)

- 1 Revocation and imposition of a sentence of imprisonment in accordance with Chapter Seven's recommended range. → (If checked, skip to Question 42)
- 2 Revocation and imposition of a sentence of imprisonment *higher* than Chapter Seven's recommended range.
- 3 Revocation and imposition of a sentence of imprisonment *lower* than Chapter Seven's recommended range.
- 4 Modification of the conditions of Smith's supervision (e.g., by requiring him to serve a period of community confinement in a halfway house) but no term of imprisonment. → (If checked, skip to Question 42)
- 5 Neither revocation nor modification. → (If checked, skip to Question 42)

41b. Please indicate the sentence length that you likely would impose:

Enter amount: Circle time frame: days weeks months years

42. United States v. Brown

Peter Brown, age 48, is serving a five-year term of supervised release after discharging a 262-month prison sentence for conspiracy to distribute cocaine and using a firearm in violation of 18 U.S.C. § 924(c) & 21 U.S.C. § 841(b)(1)(A). Brown's Criminal History Category in his presentence report is VI, based on his status as a Career Offender. He had two prior convictions in state court for distributing cocaine and heroin, for which he had served two- and five-year state prison sentences. While on federal supervision, Brown tested positive for marijuana on two occasions during the first two years of supervision. The court modified the conditions of his supervision by requiring out-patient drug treatment, which Brown successfully completed. Thereafter, Brown was arrested for and ultimately convicted in state court for strong-armed robbery not involving bodily injury (i.e., forcibly snatching a woman's purse after pushing her), a felony under state law. Brown received a 13-month sentence in the county jail after pleading guilty. Brown has discharged that state sentence. Before his robbery conviction, Brown was living with his girlfriend in her home and had held a succession of low-paying jobs through a "temp" agency and could obtain similar employment in the future. Brown has no dependents.

Chapter Seven recommends revocation in this case because Brown committed a felony crime of violence (a Grade A violation), see USSG §§7B1.1(a)(2) & 7B1.3(a)(1), with a recommended sentencing range of **51-63 months**. See USSG §7B1.4(a) (providing for higher ranges for offenders whose violation was a felony crime of violence and whose federal offense of conviction was a Class A felony). However, the statutory maximum sentence of imprisonment is **five years (60 months)** because Brown's offense of conviction under 21 U.S.C. § 841(b)(1)(A) is a Class A felony. See 18 U.S.C. § 3583(e)(3).

42a. Based on the foregoing, which of the following dispositions do you believe is the most appropriate:
(Mark only one.)

- 1 Revocation and imposition of a sentence of imprisonment in accordance with Chapter Seven's recommended range. → (If checked, skip to Question 43)
- 2 Revocation and imposition of a sentence of imprisonment *lower* than Chapter Seven's recommended range.
- 3 Modification of the conditions of Brown's supervision (e.g., by requiring him to serve a period of community confinement in a halfway house) but no term of imprisonment. → (If checked, skip to Question 43)
- 4 Neither revocation nor modification. → (If checked, skip to Question 43)

42b. Please indicate the sentence length that you likely would impose:

Enter amount: Circle time frame: days weeks months years

Comments About Modifications and Revocations

43. Please provide any other comments that you wish to make concerning the modification or revocation of federal offenders' terms of probation or supervised release.

Questions About the Federal Sentencing Guidelines Generally

In addition to the foregoing questions about modifications and revocations, the Commission also wishes to know your opinion about the federal sentencing guidelines generally, including the guidelines applicable to *original* sentencing proceedings. The following two questions concern the sentencing guidelines generally.

44. The following is a list of statements regarding federal sentencing and the guidelines in general. *For each statement, check the one that best reflects your view.*

	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
44a. Overall, the federal sentencing guidelines have reduced unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
44b. Overall, the federal sentencing guidelines have increased certainty in meeting the purposes of sentencing.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
44c. Overall, the federal sentencing guidelines have increased fairness in meeting the purposes of sentencing.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

45. Which of the following sentencing systems do you think best achieves the purposes of sentencing? (*Mark only one.*)

- 1 No guidelines, such as the system in effect before the federal sentencing guidelines became effective in 1987.
- 2 Mandatory guidelines, such as the system in effect before the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005).
- 3 The current advisory guidelines system.
- 4 A system of mandatory guidelines that comply with the Sixth Amendment (e.g., with facts supporting sentencing enhancements found by a jury beyond a reasonable doubt or admitted by the defendant), coupled with broader sentencing ranges than currently exist and fewer statutory mandatory minimum sentencing provisions.

Thank you for completing the survey.

Please return the survey using the pre-paid envelope or by faxing it to: 1-877-346-5693.