

MEMORANDUM

February 18, 2025

To: United States Sentencing Commission

From: Paul A. Engelmayer, **PAC**
Chair, Criminal Law and Probation Committee
Southern District of New York Board of Judges

Thank you for the invitation to comment on the January 24, 2025 proposed revisions to the Sentencing Guidelines. This memorandum addresses changes proposed with respect to supervised release. I write on behalf of the criminal law and probation committee of the board of judges of the Southern District of New York. The committee consists of 13 judges (11 district and 2 magistrate judges). Relevant here, it is broadly responsible for the work of our Probation Department and for evaluating issues and practices that affect the criminal docket in this District.

Our committee opposes three proposed revisions with respect to supervised release.


First, we oppose the presumption that supervised release should end after one year. Our experience is that longer periods of supervision are often highly productive. They provide a means for our superb Probation Department to secure employment for supervisees, they enable the Probation Department to secure necessary treatment options (e.g., for mental health issues and drug addiction) for supervisees, they may deter recidivism, and they provide a mechanism to support restitution obligations. In recent years in our District, the supervised release framework has also provided a means of public protection in the area of domestic violence. Violation specifications have been increasingly brought and established in cases of domestic assaults that (often due to uncooperative victims) could not be established by state prosecutors but can be established by a preponderance as a VOSR. The sentences imposed for such violations have protected victims and stand to specifically deter recidivism. A one-year presumption wrongly presumes that these benefits are apt to lapse after one year of supervised release. The present practice, under which a district court can terminate supervision early – on the application of the Probation Department or a motion of the defendant – is flexible and works well.

Second, we oppose the guidance that judges conduct a reassessment of the special conditions imposed at sentencing promptly upon the defendant's release from prison. Realistically, a judge is unlikely at that point to have the information in hand to enable an informed reassessment of whether these conditions are merited. Any such reassessment is better undertaken later, with the input of the Probation Department, based on its experience supervising the defendant. Although a judge may elect to have a conference shortly upon release, a requirement of such a reassessment will needlessly burden busy courts.

Third, we oppose the proposal to convert certain standard conditions into special conditions. Doing so will burden judges by requiring them to make a record at sentencing of the factual basis for each such condition. It will also potentially invite litigation on this point. We are unaware of any problem in supervision caused by the present standard conditions.

Separately, with respect to other amendments under review, it is not the practice of our committee to review the substance of proposed USSG amendments generally, and our silence with respect to the other proposed amendments should not be taken as an endorsement of them. That said, our committee is in agreement that if the Commission adopts these, it should not make them retroactive. Such imposes a substantial administrative burden on judges, Probation Departments, and Clerks offices.

From:
To:
Subject:
Date:


RE: A Request from Judge Carlton W. Reeves, Chair, U.S. Sentencing Commission
Wednesday, January 29, 2025 5:12:40 PM

Thank you, Judge Reeves. I am grateful for the Commission's good work and your excellent leadership. After 40 years as a district court judge, I can tell you that one of the major deficiencies in our criminal justice system is the shortage of sentencing options for inmates who do not need a term of imprisonment. There is a critical shortage of half-way houses, treatment centers, re-entry programs, detention centers that allow for children to stay with their mothers, etc. Until the sentencing laws allowed judges discretion in fashioning sentences, these intermediate options were not relevant. In addition, the resources vested in the BOP for psychiatric help and other kinds of educational and social and therapeutic advancement are too few given the demand.

I hope this informal method of responding to your invitation to comment is acceptable.

With appreciation, Sarah Evans Barker, Judge, SD/IN

From: [REDACTED]
To: [REDACTED]
Subject: Supervised Release
Date: Wednesday, January 29, 2025 5:18:53 PM
Attachments: [REDACTED]

Dear Chairman Reeves,

In response to your email regarding pending Commission proposals, I am enclosing a 2024 report on our supervised release project and study.

I hope you find it helpful.

Richard M. Berman
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007
[REDACTED]

Court Involved Supervised Release

June 10, 2024

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Executive Summary

In this report, we provide data-based results from our court involved supervised release project. We conclude unequivocally that the proactive involvement of the sentencing judge in supervision is indispensable and appreciably improves community reentry following incarceration.¹ **By re-focusing their attention upon criminal case supervision, judges will make an enormous positive impact upon recidivism (re-offending).** *See, e.g.,* Nora V. Demleitner, *How to Change the Philosophy and Practice of Probation and Supervised Release*, 28 Fed Sent’g Rep. 231, 233 (2016) (“Interaction with the judge . . . is a crucial ingredient . . . and of special importance to the individual under supervision.”); Melissa Aubin, *The District of Oregon Reentry Court: An Evidence Based Model*, 22 Fed. Sent’g Rep. 39, 41 (2010) (“Judicial authority alone can motivate the participant to make progress in building recovery capital. . . . [J]udicial involvement corresponds with, and works to accomplish, the sentencing goals of rehabilitation, accountability, and protection of public safety.”). “[J]udges who become actively involved in supervision can provide impactful support to supervisees to facilitate a safe transition home.”² Emilia McManus, *Beyond Bars: Rethinking Substance Use Criminalization in Federal Supervised Release*, 51 Fordham Urb. L. J. 1181, 1212 (2024).

¹ **We are very grateful to the AO, the U.S. Sentencing Commission, and the U.S. Probation Office for providing us with helpful data and statistics.**

² *See also* Christopher Salvatore et al., *Reentry Court Judges: The Key to the Court*, 59 J. Offender Rehabilitation 198, 214–15 (2022) (“While the efforts of all members of the [] court team are vital to program success, studies have found the judge’s role is especially vital in the success of . . . court program participants.”); Edward Latessa, Shelley L. Johnson & Deborah Koetzle, *What Works (and Doesn’t) in Reducing Recidivism*, at 166–67 (2d ed. 2020) (“[I]nteractions between the judge and participants . . . allow[] time for the judge to inquire about progress, give meaningful feedback, and address concerns that may arise.”).

We have had these significant results:

- (i) As of today, **201** supervisees actively participated in our court involved supervised release program. 152 supervisees are part of our Study Population; and 49 additional supervisees joined after the Study Population was defined.
- (ii) **86.6%** successful completion of supervision. This includes **48.5%** of supervisees who completed supervision upon expiration of the term of supervision plus **38.1%** of supervisees who completed supervision through early termination.

By contrast, nationwide, **64.0%** of supervisees studied by the Administrative Office of the U.S. Courts (“AO”) completed supervision, including **48.2%** who completed supervision upon expiration of the term of supervision plus **15.8%** who completed supervision through early termination.

- (iii) **78.6%** of our Study Population found employment.

The nationwide employment percentage, by contrast, is **75.8%**; the SDNY employment percentage is **73.0%**; and the EDNY employment percentage is **72.6%**.

- (iv) **82.2%** of our Study Population actively participated in drug treatment and mental health counseling.³
- (v) **17.1%** of our Study Population were rearrested over the first three years of supervision; **20.4%** were rearrested over the first five years of supervision. (Note: **45.3%** of rearrest charges were dismissed.)

Nationwide, the rearrest percentages were **20.8%** over three years and **27.7%** over 5 years. The AO also publishes an adjusted 3-year rearrest rate to account for “risky” supervisees. The adjustment reduces the 3-year rearrest rate from **20.8%** to **16.3%**.

If our Study Population 3-year rearrest rate were to be reduced by the same (AO) percentage, our rearrest rate would be 13.4% over 3 years rather than 17.1%.

- (vi) **13.8%** of our Study Population supervisees returned to state or Federal prison. Return to prison is said to be one of the “most important” and reliable measures of recidivism. Gerald J. Stahler et al., *Predicting*

³ We have not located comparable data from other studies.

Recidivism for Release State Prison Offenders, Crim. Justice Behav. (Feb. 2013).

Nationwide, by contrast, **31.6%** of supervisees returned to prison, according to the U.S. Department of Justice, Bureau of Justice Statistics (“Bureau of Justice Statistics”).

- (vii) **24.6%** of our Study Population were charged with one or more violations of supervised release. **77.5%** were Grade C violations (the least serious grade); **13.6%** were Grade B violations; and **8.9%** were Grade A violations (the most serious grade).

Nationwide, the AO found, by contrast, that **60.4%** of supervisees were charged with one or more violations. The U.S. Sentencing Commission reports that, nationwide, **54.9%** of violations were Grade C, **31.5%** of violations were Grade B, and **13.6%** were Grade A violations.

Three additional features of our Supervised Release Program are especially noteworthy. First, **every** supervisee on our criminal docket participates in court involved supervision. The signature premise of our Program is that no one is excluded. Second, because court involved supervised release relies upon our very talented SDNY Probation Department professionals, supervision does not require significant additional expenditures. The main difference is that the judge is called upon to undertake a more active role in supervision than historically has been the case. Third, while we include several comparisons of our Study Population with other studies, we recognize that such comparisons are at best imprecise. It is difficult to compare outcomes because adequate data and statistics are not always collected and/or analyzed, and because studies vary widely in methodology, size, and eligibility.

The court involved supervised release process is not complicated and yet it is enormously rewarding. Judges are encouraged to apply their own (individual) experience and approach. *See* “Getting Started,” September 2021 Supervised Release Report Update (pages 6–8). The first order of business is usually to schedule an initial conference or hearing—**preferably during the first thirty days following incarceration**—in order to introduce the supervisee and the supervision

team, and to ensure that the supervisee has begun to fulfill any conditions of supervised release, including, for example, participation in mental health or drug programs. The court may also want to set early goals and objectives regarding housing and employment.

Court involvement in supervision entails conducting a series of hearings and conferences **proactively** throughout each supervisee's term of supervision. The actual number of proceedings is determined by the court (and the supervisee) but it is likely to range from at least 6 to 10 hearings per supervisee per year. This is in contrast to the historical norm of conducting a hearing only when the supervisee has been arrested and/or has violated the terms of supervision. *See* Joan Petersilla & Richard Rosenfeld, Co-Chairs, Committee on Community Supervision, *Parole, Desistance from Crime, and Community Integration*, at 63 (Nat'l Acad. Press. 2008).

Without doubt, the judge's proactive involvement helps to ensure that supervision and reentry are timely, successful, and safe. "The possibility of scaling up court involvement in supervised release is promising to make sure that supervisees are accessing critical support, leading to a safe return home. Implementing programs similar to [this one] across the country can ensure that supervisees are closer to succeeding rather than ultimately ending up back in prison." McManus, *supra* page 1, at 1214.

* * *

I. Court Involvement in Supervised Release

Since 2016, our chambers has been deeply involved in supervision (and related data collection) of all those persons we sentenced to incarceration and to supervised release. To measure the impact of court involvement—and to assess the potential for universal court involved supervision—we relied upon a Study Population of 152 supervisees. No supervisee was excluded, i.e., no matter the crime of conviction, family history, risk assessment, age, addiction, and/or health and mental health issues. We documented our results in written reports dated April 6, 2021, September 2, 2021, April 20, 2022, and October 12, 2022. This is our fifth detailed report.

Charts 1–7 below provide an overview of the Study Population:

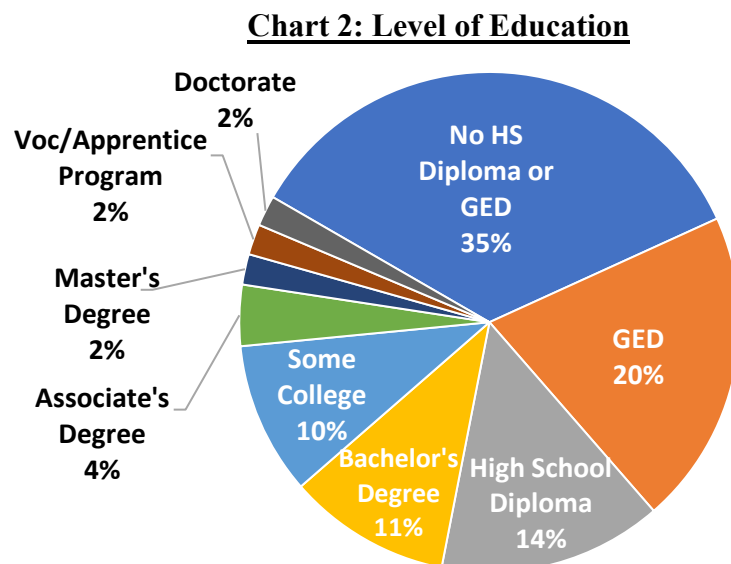
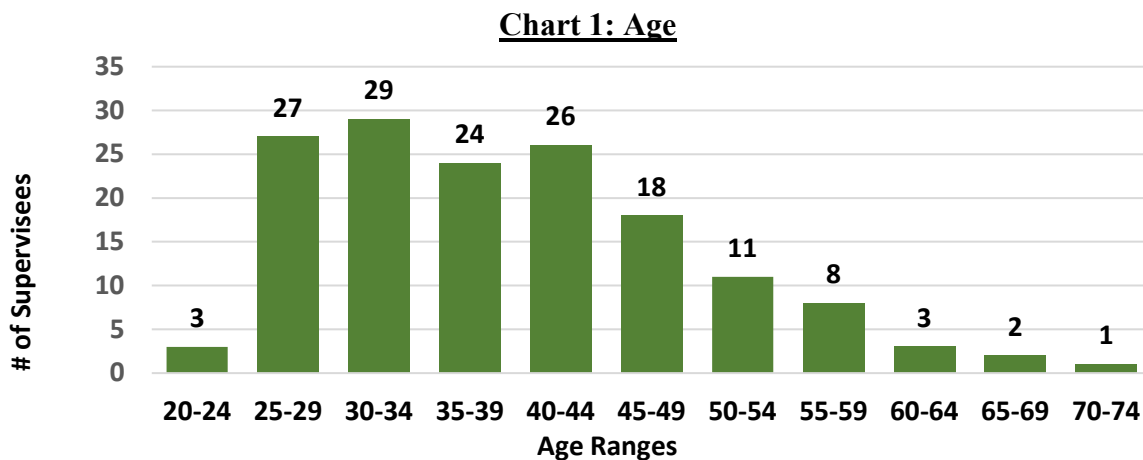


Chart 3: Criminal History Category

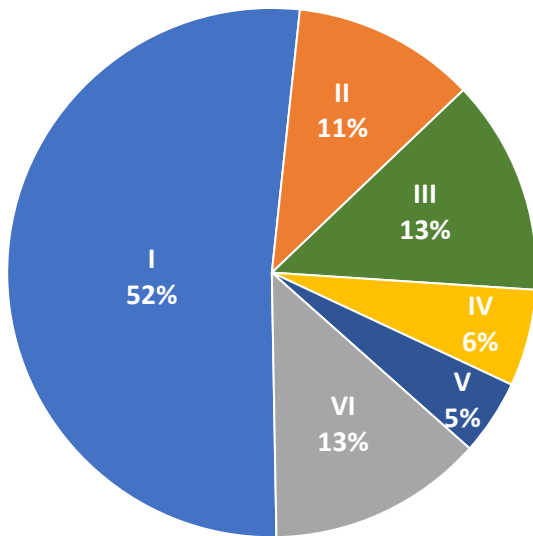


Chart 4: U.S. Probation Department PCRA ("Risk") Categories

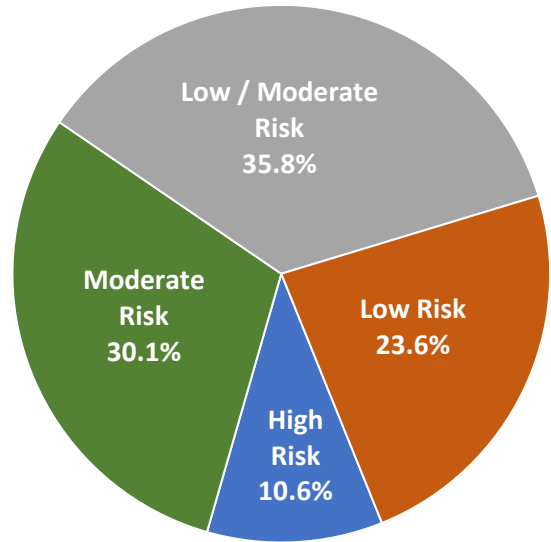


Chart 5: Crime of Conviction

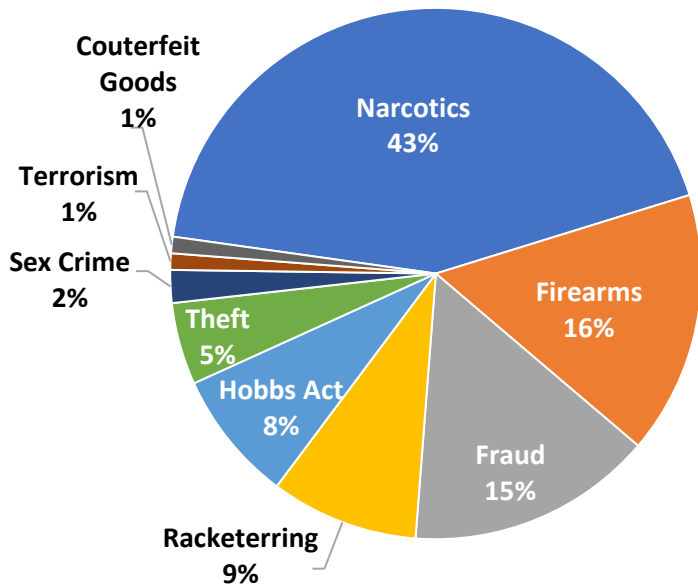


Chart 6: Term of Incarceration

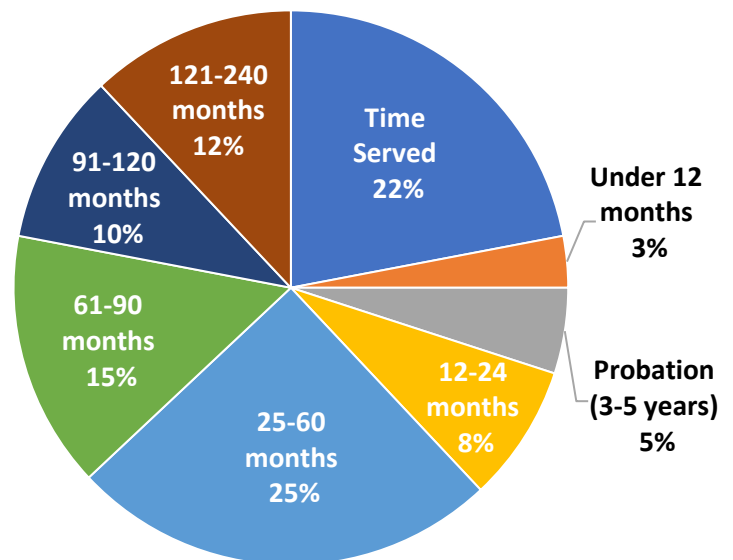
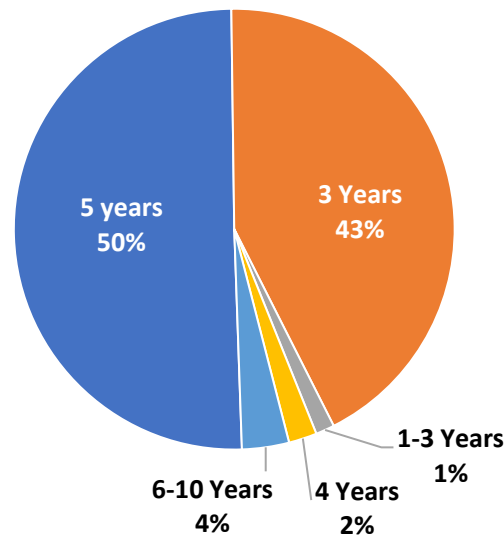


Chart 7: Term of Supervised Release



Court involved supervision includes a series of proactive individual hearings and conferences presided over by the sentencing judge. Participants (and supervised release team members) include the judge, the supervisee, the probation officer, defense counsel, the AUSA, and the treatment providers, including mental health and drug counselors. Hearings and conferences are transcribed and are public.

It is very helpful (and important) to hold the first hearing within 30 days of the supervisee’s release from prison in order to get everyone “on board” early. SDNY Probation Department’s assistance is vital in this process, and in our Court Involved Supervised Release Program, and they are requested to inform the Court immediately when a supervisee has been released from incarceration. At the first hearing, we describe the purpose of court involved supervision and seek to ensure that the supervisee understands the goals and conditions of supervision.⁴ Among other

⁴ Appellate courts have also increasingly focused upon supervised release, including implementation of “special conditions.” See *United States v. Sims*, 92 F.4th 115, 123 (2d Cir. 2024).

things, we inquire about where the supervisee is living and with whom; whether the supervisee has been enrolled in mental health and/or drug counselling; and whether the supervisee is pursuing employment.

We make clear that supervised release is **not** intended to be about punishment. It is, rather, to help the supervisee—in a positive way—to reintegrate into the community, safely and successfully. Nearly all supervisees grasp the purpose of court involved supervision almost immediately. Often, the supervisee will be informed that the Court has the authority, after a minimum of one year of supervision, to shorten the length of supervision if and when the Court finds that early termination is warranted. *See* 18 U.S.C. § 3583(e).

Case Study #1

The supervisee had been sentenced to 168 months of incarceration and 10 years of supervised release for conspiracy to distribute and possess with intent to distribute drugs, including methamphetamine. The Sentencing Guidelines range was 262 to 327 months of incarceration. Special conditions of supervision included weekly mental health counseling and drug treatment.

Court: This is our first supervised release hearing. . . . [We will] be involved in supervision on a . . . regular basis in the hopes that provides some additional assistance . . . in reentry. . . .

Probation Officer: At this early point, . . . [supervisee is] very resourceful, . . . and as far as pro-social activities, he's [especially] involved. . . . As long he maintains his level of motivation and continues to work on himself, I see him thriving As far as substance abuse and mental health treatment, he's going to [a treatment provider], which is where he has [received treatment] before. . . . So far, he has been attending actively. . . .

Supervisee: I'm really getting myself back in the groove. I'm doing very well. Physically, mentally, I feel better than I did [before sentencing]. . . .

Court: I have to say, you're in pretty good shape. You got yourself off to a good start. [Our goal] is to make this a positive experience and for you to succeed. . . . As we discussed, [you] have a ten year [term of] supervised release. There's a minimum of one year that, by law, has to be completed. Thereafter, I have discretion to reduce the term of supervised release according to the suggestions of [the supervised release team].

The frequency and agenda of hearings is up to the judge and the issues faced by the supervisee. There are usually at least 6 to 10 hearings per year per supervisee. The frequency will vary depending upon the challenges faced by the supervisee which may have to do with a wide range of issues such as employment, family, mental health and drug abuse treatment, physical health conditions, among others.

Occasionally, our hearings include collaboration with state court proceedings. If, for example, a supervisee is charged with a state crime during supervision, the Court will need to navigate the complexities of the supervisee's obligations to the state courts while simultaneously working out any Federal court issues.

Case Study #2

The supervisee was sentenced to 68 months of incarceration and 3 years of supervised release for robbery and attempted robbery (of fast-food shops). The Sentencing Guidelines range was 151 to 188 months plus one to three years of supervised release. Special conditions of supervised release included weekly mental health counseling (to deal with paranoid schizophrenia) and drug treatment (for alcohol and cocaine).

During his term of supervised release, the supervisee committed a state crime (robbery in the third degree) for which he pled guilty in state court. As a consequence, he was also charged with several (Federal) violations of supervised release (3 Grade A violations, 2 Grade B violations, and 4 Grade C violations). *See* 18 U.S.C. § 3583(d) ("The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision."). The state court ultimately agreed that if the supervisee successfully completed an inpatient treatment program, it would vacate his state felony guilty plea and accept a guilty plea to a misdemeanor.

Court: How are things going? If I recall from our last hearing . . . at least with respect to the state proceedings, there were three, four months to go and then on to the next phase [of rehabilitation and reentry]. . . .

State Defense Attorney: [Supervisee] is in the final phase of what's going on with the state case. He had a glowing update on the last court date. . . . So that's really great . . . because if all goes according to plan . . . , on his next court date, . . . the plea to his felony, which was a robbery in the third degree, will be vacated and he will be sentenced to a misdemeanor petit larceny. . . .

Court: What would be the next steps? I gather that's a key step at the state level

Federal Defense Attorney: Yes. So, I think that once he successfully completes that [state] program and . . . [the state] vacate[s] the plea to the felony [and] he gets sentenced on the misdemeanor, then we are probably in a position where we can then resolve our [Federal supervised release violation] proceeding [] in consultation with all the parties

Court: Does [supervisee] get to remain at [his current inpatient facility]? How would he get from there to . . . independent living or some sort of group living?

State Defense Attorney: It is my understanding that. . . they can stay and are encouraged to stay on until housing gets set up. . . . I believe that he is encouraged to stay until they can transition him directly into supportive housing. . . .

Supervisee: I have been approved for housing. . . . I start orientation for [training] for custodial maintenance. . . . Once I complete the training phase, I'm able to gain a job coach . . . to get permanent work. . . .

Court: That's very impressive to me. The entire team is responsible, and it's fantastic. But particularly, [supervisee], I'm amazed [how you are] on top of every aspect.

Supervisee: I couldn't do it without [everyone's] support. [Everyone's] support has been a benevolent blessing to me. You patiently allow me to go through my struggles and kept me in the program. I can't be more grateful—I'm very grateful.

During the COVID-19 pandemic, we conducted multiple (i.e., four to five) daily Zoom supervised release hearings. We have resumed in-person hearings post-pandemic but we also have, at the urging and consent of all the participants, continued to conduct at least some supervised release hearings virtually. *See National Center for State Courts, National Research Shows Support for Virtual Court Hearings* (Feb. 2, 2022) ("Most participants . . . noted various benefits to participating in court . . . virtually, including reduced barriers (e.g., transportation, time off from

work), reduced health risks, reduced anxiety, and increased comfort with court proceedings and treatment.”). Our experience is that “virtual” supervision is often most efficient and effective. It allows supervisees (more easily) to be able to go to work and to attend to family and supervision responsibilities without having to travel sometimes from outer boroughs to the court. Surprisingly perhaps, in addition to the substantial cost and time savings and the reduced wear and tear, virtual hearings seem to be at least as genuine as in-person proceedings. *See* Jaqueline Thompson, *Virtual Court Hearings Are Here to Stay Post-Pandemic, Survey Finds*, Nat’l L.J. (Aug. 18, 2021) (“[M]any of the pivots made [including virtual appearances] will far outlive the pandemic.”).

Treatment providers, in particular, almost always express a preference for virtual proceedings as they would be unable to travel to the courthouse to attend an in-person hearing.

Each hearing presents an opportunity for meaningful dialogue among the judge, the supervisee, and the other members of the supervised release team. *See* McManus, *supra* page 1, at 1213 (“The supervised release hearings allow the supervisees a chance to express their needs to the court and enables the court an opportunity to understand the complexities of an individual’s case—a novel feature of supervised release procedures.”). The objective is to engage with the supervisee toward the common goal of safe and successful reentry—and ultimately, to assist the supervisee in becoming untangled from the criminal justice system. *See* Jacob Schuman, *Revocation and Retribution*, 96 Wash. L. Rev. 881, 904 (“[T]he purpose of supervised release is to safely transition prisoners back to the community, not punish them for misconduct.”); Salvatore et al., *supra* page 1, at 214–15 (“[J]udges . . . have a significant opportunity to positively affect the lives of formerly incarcerated people who would have been previously abandoned to the criminal justice system with significant personal, community and taxpayer cost.”); *see* Aubin, *supra* page

1, at 42 (“The reentry court judge interacts with released individuals at a vulnerable moment, when access to prosocial networks and services aimed at reducing barriers to reentry is most critical [This enables the supervisee] to learn the lesson of avoiding future criminal behavior Judicial involvement in the reentry court context corresponds with, and works to accomplish, the sentencing goals of rehabilitation, accountability, and protection of public safety.”).

Case Study #3

The supervisee was sentenced to time served (23 months) and 5 years of supervised release for “conspiracy to distribute and possess with intent to distribute” drugs, including heroin, cocaine, fentanyl, and MDMA/ecstasy. The Sentencing Guidelines range was 188 to 235 months of incarceration plus 5 years of supervised release. Special conditions of supervision included weekly mental health counseling and participation in an inpatient substance abuse treatment program followed by residential “sober housing.”

Counselor: [Supervisee] continues to be compliant in all capacities [at the inpatient facility]. He continues to make progress with working on himself and attending all . . . groups. He’s completed Anger Management, Thinking for a Change, [and] Relapse Prevention, which are key groups here. . . .

Court: And what does it mean to complete, for example, anger management?

Counselor: Anger management is really to help a person to have more self-control and be able to manage their anger. . . . We all get angry. . . . What do we do with that anger? . . . There’s different things we can do that are appropriate and healthy . . . which is usually the opposite of how some of us, especially clients here, have reacted to their anger in the past . . . A lot of times, their reaction to that feeling has gotten them arrested, locked up. . . .

Court: I remember from the last session that [supervisee] actually had a very insightful perspective. . . . He said he does well in [inpatient treatment] environments His challenge . . . is the reentry phase. That is to say, coming back into the community, how does one do that [successfully]? . . .

Counselor: He’s got to be actively pursuing transitioning back into society and becoming an asset to society So, he’s got to find a job, . . . go to NA or AA meetings, build his sober support network. . . .

Court: How does this all sound to you . . . ? Are we going in the right direction?

Psychiatrist: Yes, I think we are. . . . I will speak with [Probation Officer] to . . . make sure that . . . we have the mental health component in place because he'll need ongoing abstinence-based treatment, as well as a specific psychiatric or addiction medicine intervention to make sure that his opiate addiction and his ADD conditions are well managed. . . .

Court: [Probation Officer], what role will you be playing in these various phases of recovery and reentry? . . .

Probation Officer: I have had conference calls with the counselor and [supervisee] to discuss adjustment to treatment and it seems like everything is going very well. . . . There are resources out there. We can . . . be there for him to support his reentry and ensure that he has a successful reentry.

Court: So, if I could turn to [supervisee] for a moment and to ask how you think everything is going Are you optimistic?

Supervisee: Yeah, I'm pretty optimistic at this time. I feel that this was a good placement and that I got a lot out of here. . . . The next phase of trying to go from the transitional housing to the community . . . seems like that'll be very helpful too with [resources]. . . . The housing piece is going to be my main challenge— . . . finding stable housing so I don't have to put myself into bad environments like shelters. . . .

Court: It looks like we're going in the right direction. We'll take it one . . . step at a time.

It cannot be overstated how much court involved supervision relies upon the already-in-place and talented professionals, structures, and resources, particularly of the SDNY Probation Department and the agencies they contract with. We recognize that Probation, in turn, is “an integral part of the judiciary; everything that probation does it does as an arm of the judiciary.” *Newton v. New Jersey*, No. 15-CV-6481, 2017 WL 27457 at *4 (D.N.J. Jan. 2, 2017).

We believe that district (and magistrate) judges will find it very rewarding if they become more involved in supervision. *See, e.g.*, discussion in *Court Involved Supervised Release* at 48 (October 12, 2022). We contend that supervised release is no less a court responsibility than is an arraignment, a plea, a trial, or a sentence. And, given that supervised release is often the “last best chance” to assist supervisees in safely and successfully reentering the community, supervised

release is as crucial and significant as any other phase of a criminal case. Professor Tina Maschi of Fordham University's Graduate School of Social Service (whose work focuses on reentry and who is also familiar with our study) stated that judicial involvement in supervised release "incorporates a much-needed holistic portrait of the perspectives of the supervisee, the parole or probation officer, and other associated professionals . . . to foster successful reintegration into society. It also has the serendipitous effect of reducing crime and recidivism."

II. Significant Outcomes

The Study Population has achieved significant positive outcomes in several important categories, including: (A) successful completion of supervision; (B) employment; (C) drug treatment and mental health counseling; and (D) re-offending (“recidivism”).

A. 86.6% Completion Rate

Our goal in supervision is to help supervisees reenter the community safely and successfully. Completion of one’s supervised release responsibilities is one of the best indicators of achieving that goal. *See, e.g.,* Laura M. Baber, *Inroads to Reducing Federal Recidivism*, 79 Fed. Prob. 3, 5 (Dec. 2015) (“successful completion” occurs when a supervisee’s term expires **or** supervision ended because the court granted early termination).

That **86.6%** of Study Population supervisees completed supervised release successfully is a huge achievement. Chart 8 below reflects the Study Population completions which includes **48.5%** who completed supervision in the at the expiration of the term, and **38.1%** who received early termination. The remaining Study Population completions (13.4%) include **9.7%** who had a revocation and no additional supervision imposed, and **3.7%** who were deported or are deceased.

Chart 8: Completion of Supervision

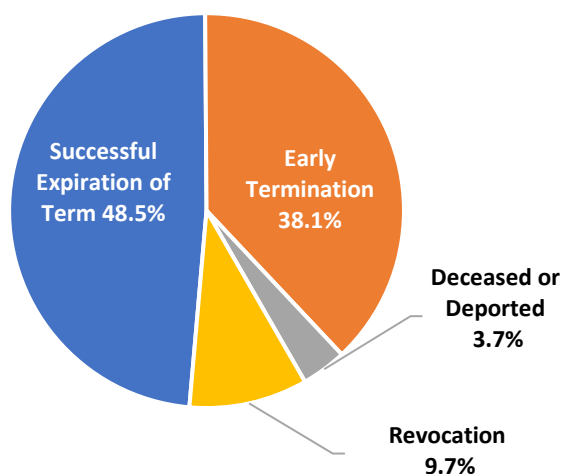
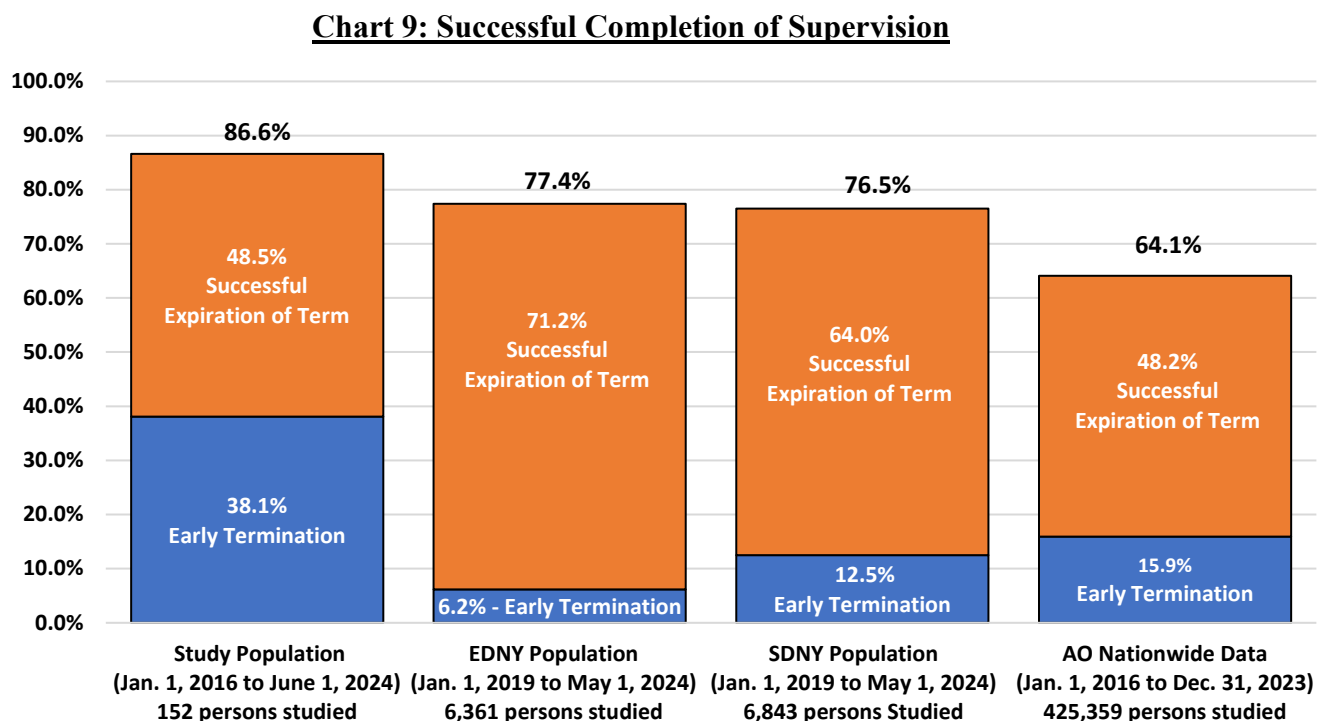


Chart 9 below reflects (i) the Study Population successful completions, (ii) Eastern District of New York successful completions, (iii) Southern District of New York successful completions, and (iv) nationwide successful completions as reported by the AO.⁵ See e.g., AO Table, *Post-Conviction Supervision Cases Closed With and Without Revocation, by Type* (Jan. 1, 2016 to Dec. 31, 2023).



Extension of Supervision

Four supervisees successfully completed supervision after the Court had extended their term of supervision by two, seven, seventeen, and twenty-one additional months, respectively, pursuant to 18 U.S.C. § 3583(e) (district courts may “extend,” “terminate,” or “revoke” a term of supervised release “after considering the factors set forth in section 3553”). See also *United States v. Morales*, 45 F.3d 392, 697–98 (2nd Cir. 1995) (“[T]he district court ultimately decided not to

⁵ The SDNY and EDNY data was provided by the U.S. Probation Office.

revoke supervised release. Instead, the court concluded . . . that it was more appropriate to extend the term of [the supervisee’s] supervised release by 22 months and add various release conditions regarding his education, employment, drug testing and association with gang members.”); Schuman, *Revocation and Retribution*, *supra* page 11, at 925 (2021) (A judge choosing to extend supervision must consider the rehabilitation of a supervisee, whereas a judge choosing to revoke supervised release must consider only “deterrence and incapacitation”) (citing *United States v. Lifshitz*, 714 F.3d 146, 150 (2d Cir. 2013)). Each of the four extensions was ordered by the Court with the support of the supervised release team.

Early Termination

The (late) Hon. Jack B. Weinstein, Eastern District of New York District, was very well versed in all aspects of supervised release, including early termination about which he stated: “I, like other trial judges, have in many cases imposed longer periods of supervised release than needed, and I, like other trial judges, have failed to terminate supervised release early in many cases.” *United States v. Trotter*, 321 F. Supp. 3d 337, 339 (E.D.N.Y. 2018); *see also* Pew, *Policy Reforms Can Strengthen Community Supervision*, at 30 (Apr. 2020). Our approach is to acknowledge and reward supervisees with early termination so long as they meet the requirements of early termination.⁶

⁶ The SDNY Probation Department’s early termination policy states as follows:

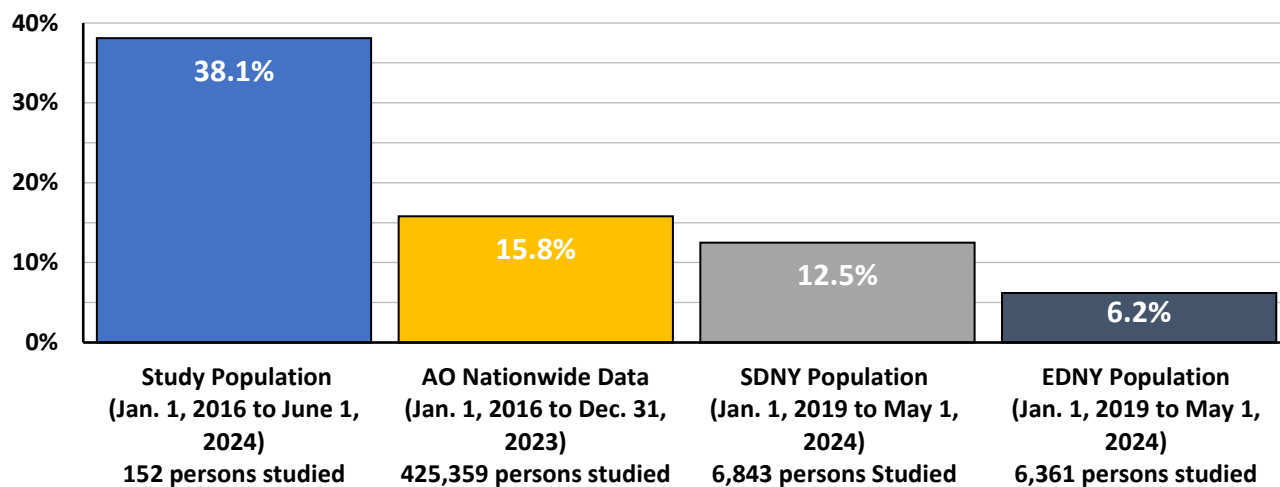
The appropriateness of early termination should be based on the releasee’s compliance with all conditions of supervision and overall progress in meeting supervision objectives or making progressive strides toward supervision objectives specific to the releasee that exhibit stable community reintegration (*e.g.*, residence, family, employment, health, social networks) during the period of supervision and beyond.

SDNY Probation Office Policy re: Early Termination from Probation and Supervised Release (March 5, 2018).

Early termination is an important incentive for supervisees. The court may “terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release,” assuming that early termination is “warranted by the conduct of the defendant released and in the interest of justice.” 18 U.S.C. § 3583(e); *see also Goal Based Supervision*, University of Minnesota, at 2 (July 2020). The Court reviews early termination applications—most often submitted in writing by the Probation Department—following a case-by-case analysis and (only) after considering the factors set forth at 18 U.S.C. § 3553(a).

Chart 10 below reflects the Study Population’s early termination rate of **38.1%**. It also includes the AO nationwide rate which is **15.8%**; the Southern District of New York rate which is **12.5%**; and the Eastern District of New York’s rate which is **6.2%**.⁷ *See* AO, Table, *Post-Conviction Supervision Cases Closed With and Without Revocation, by Type* (Jan. 1, 2016 to Dec. 31, 2023).

Chart 10: Early Termination Rates



After having reviewed the supervised release hearing transcripts, among other things, we estimate that in **over 90%** of Study Population cases where early termination was granted, early

⁷ The SDNY and EDNY data was provided by the U.S. Probation Office.

termination was supported by the “unanimous consent” of the supervised release team. In other words, in nearly all cases where the Court grants early termination, it is obvious to the (entire) supervised release team that the supervisee deserves to conclude supervision.

Case Study #4

The supervisee was sentenced to 120 months of incarceration and 5 years of supervised release for conspiracy to distribute and possess with intent to distribute drugs, including methamphetamine. The Sentencing Guidelines range was 151 to 188 months of incarceration plus 5 years of supervised release. Special conditions included weekly mental health counseling and drug treatment.

The Probation Department submitted a written recommendation describing the supervisee as “an ideal candidate for early termination.” Prob. Memo., dated May 18, 2021, at 3. He was compliant with the terms of supervision; he maintained full-time employment; and he was “progressing well in substance use treatment and . . . demonstrated sobriety.” In granting early termination, the Court reduced his 5-year supervised release term by 11 months.

Counselor: Things are going great. [Supervisee] is really consistent with his sessions. He maintains excellent attendance . . . He's very much open and cooperative in sharing anything that's going on . . . He's continually reinforcing coping skills. . . . There's no concern with any relapses or any kind of substance abuse, and it seems like every other area of his progress is currently stable. . . .

Court: I had mentioned the last time that I was anticipating if I got an application for early termination of supervision, that I would look favorably upon it, and . . . I did receive such an application from the Probation Department

Probation Officer: As I stated . . . , [supervisee] has been doing extremely well. His behavior and compliance have been consistent over the last several hearings that we've had in the past. He is working full-time. . . . We support . . . the early termination. . . .

Court [to supervisee]: I wanted to get your take . . . [about] what you've been [doing] for the last couple of years.

Supervisee: My supervision was very, very helpful due to . . . the programs that I went to, to the Probation Officer that I had, that we had great communication. Yourself as well, Your Honor, that never gave up on me, . . . that was very helpful Having a great counselor as well, going over there to continue to speak with her, everything has

just been working out pretty well. So, I really appreciate it. This has been actually a good supervising team, and . . . believe me, it's going to help me to other bigger and better things in the future in my life. Thank you so much. . . .

Court: Does anybody else, the Government, for example, want to comment? . . .

Government: I personally have been involved in this case with [supervisee] for about over the last two years, and each time, as the Court has mentioned, during those status conferences we've had, [supervisee] has done wonderfully, has been not only compliant but has taken advantage of the several opportunities and the services provided by the Probation Office, and [he] seems to be doing extraordinarily well, and . . . I wish nothing but the best for [him]. . . .

Defense Attorney: I feel so confident, Judge, that with your overseeing his transition to a member of society, I firmly believe he is going to continue to be a productive member of society . . .

Probation Officer: **We believe [supervisee] has done a great job and has shown us that anyone given the right support can turn things around.** He has definitely done that. (Emphasis added.)

Case Study #5

The supervisee was sentenced to 68 months of incarceration and 3 years of supervised release for being a felon in possession of ammunition. The Sentencing Guidelines range was 57 to 71 months of incarceration plus 1 to 3 years of supervised release. Special conditions of supervised release included weekly mental health counseling and drug treatment.

The Probation Department submitted a written recommendation for early termination which stated that the supervisee was living in “a stable residence,” maintaining “full-time employment as a plumber,” yielding “negative results for the use of illegal substances,” and “successfully complet[ing]” his mental health treatment sessions. In granting early termination, the Court reduced the 3-year term of supervised release by 12 months.

Court (District Judge): The most important issue for us to consider today is the application for early termination of . . . supervision I should point out that in considering supervised release and particularly early termination, it is our objective and our goal to grant early termination when the parties reach consensus. It's not a decision just by defense counsel or by the Court or by Probation, but rather—in **some 90% of our cases**—when we reach and achieve early termination, it's usually a unanimous decision (Emphasis added.)

The Probation Department has recommended that . . . supervision be terminated early. . . . Probation states that supervisee [] has made an excellent adjustment to the community and that, . . . there is no reasonably . . . foreseeable risk of physical or financial harm to the public. . . .

Court (Magistrate Judge): I can't say it much better. . . . I've been speaking to [supervisee] over the last two years, and it really was remarkable how every single session there was more and more good news to report, more personal growth, more maturity. . . . I sincerely appreciate how hard [supervisee] has worked at his personal growth [and] how committed he's been to communicating with Probation So, I continue to support the application that has been made for early termination.. . .

Supervisee: I just want to say, thank you, Your Honor. I feel very relieved right now. Thank you so much. . . .

Probation Officer: Probation wants to congratulate [supervisee] for being a productive member of the community and remaining in compliance with his conditions of supervision. Probation . . . support[s] this application. . . .

Early termination saves taxpayer money in addition to incentivizing successful re-entry. See Laura Baber & James Johnson, *Early Termination of Supervision: No Compromise to Community Safety*, 7 Fed. Prob. 17, 17 (Sep. 2013) (Early termination serves as “a measure to contain costs in the judiciary without compromising the mission of public safety.”). In August 2017, the AO reported that the average cost of supervision by probation officers was \$4,392 per supervisee per year (or \$5,551.31 in today's dollars). See Memorandum, Cost of Community Supervision, Detention, and Imprisonment, Administrative Office of the United States Courts (Aug. 17, 2017). We estimate that early terminations in the Study Population have saved the judiciary over \$311,000.⁸

⁸ The savings were calculated by (i) multiplying the number of Study Population supervisees who received early termination (51) by (ii) the length of time that their term of supervision was reduced (on average, 13.2 months or 1.1 years) by (iii) \$5,551.31 (51 x 1.1 x \$5,551.31).

B. 78.6% Employment

There is universal agreement that securing employment is a mainstay of successful supervision—and it is often part and parcel of avoiding recidivism. *See* Nathan W. Link et al., *Consequences of Mental and Physical Health for Reentry and Recidivism: Toward a Health-Based Model of Desistance*, 57 *Criminology* 544, 545 (2019). “Stable employment confers adult status and supports the achievement of . . . pro-social goals.” *Id.* at 548. Employment also “allows a returning [from prison] person to contribute to and develop social ties with their community.” David B. Muhlhausen, National Institute of Justice, *An Overview of Offender Reentry*, at 4 (Apr. 2018).

One of our Study Population supervisees recently put it this way:

I got work, [and] I feel like I’m doing something positive In the past, I’ve worked before, but I never had a [regular] job. . . . This is my first year filing a W-2. . . . I’ve never filed tax a day in my life, and in this year since I came out of jail, I’m able to file taxes now. . . . It feels good to actually feel like I’m doing something. I have a credit score now. Since I’ve came out of jail, I’ve changed myself and I feel like I’m doing well.

Our Supervised Release Program emphasizes employment, and, as reflected in the supervisee’s quote, supervisees are often enthusiastic about work. Between 2016 to 2023, on average, **78.6%** of the Study Population supervisees obtained employment. By “employed,” we mean: “People [who] did any work at all for pay or profit . . . includ[ing] all part-time and temporary work, as well as regular full-time year-round employment.” U.S. Bureau of Labor Statistics, *How the Government Measures Unemployment* at 4 (June 2014). If a supervisee is employed at the outset of a calendar year or obtained employment during a calendar year, the supervisee is considered employed. *See id.*

Chart 11 (below) reflects that the highest average rate of employment—among the Study Population, Southern District of New York supervisees, Eastern District of New York supervisees, and supervisees nationwide—was achieved by the Study Population.⁹

Chart 11: Employment

Year	Study Population	SDNY	EDNY	Nationwide
2023	77%	74%	72%	77%
2022	76%	73%	72%	77%
2021	67%	70%	69%	74%
2020	78%	72%	71%	74%
2019	79%	76%	75%	77%
2018	81%	75%	76%	76%
2017	86%	73%	75%	76%
2016	85%	71%	71%	75%
Average	78.6%	73.0%	72.6%	75.8%

Case Study #6

The supervisee was sentenced to 36 months of incarceration and 3 years of supervised release for conspiracy to manufacture and possess a destructive device. The Sentencing Guidelines range was 30 to 37 months of incarceration plus 1 to 3 years of supervised release. Special conditions of supervised release included weekly mental health counseling and drug treatment.

Probation Officer: As far as employment, that seems to be [supervisee’s] biggest motivation. . . . He started on the bottom, and he’s received two promotions. At this point, he holds a position as a research coordinator and project manager where he has been provided with more responsibilities. . . . At work they trust him to be able to handle [things] and oversee projects and ensure that they are followed through. . . .

Supervisee: I was an HVAC technician [when I was incarcerated]. When I was released, I partook in some courses at Columbia University. There was a business entrepreneurship course which led me to my initial interest into coding. [The next phase] was . . . boot camp. I excelled at that boot camp course and, the following semester, became a teaching assistant in the same course. I was then connected to . . . [a] data collection and tool company. . . . I feel very passionate about the work I do. . . . I’m very much happy to report.

⁹ The data was provided by the U.S. Probation Office.

At the same time, finding employment can present hurdles for supervisees because of their criminal records. And, for some, a lack of significant work history (and sometimes illegal income) prior to incarceration may be impediments. *See* Nat'l Inst. of Just., *An Overview of Offender Reentry*, at 4 (2018). Nationwide, people on supervision who obtain employment often work at several different jobs within short time periods, suggesting perhaps that supervisees sometimes find jobs that do not offer security or upward mobility. *See* E. Ann. Carson et al., *Employment of Persons Released from Federal Prison in 2010*, Bureau of Justice Statistics, (Dec. 2021) (supervisees held an average of 3.4 jobs within four years after their release from prison). Ensuring that supervisees find appropriate employment “requires a high level of coordination and collaboration between . . . practitioners and service providers.” *Id.*

Case Study #7

The supervisee was sentenced to 60 months of incarceration (the statutory mandatory minimum) and 5 years of supervised release for possession of a firearm during and in relation to a drug trafficking offense and a Hobbs Act Robbery. The Sentencing Guidelines range was 60 months of incarceration plus 5 years of supervised release. The supervisee had a limited employment history prior to his arrest and incarceration. While on supervised release, he enrolled in Commercial Driver's License (“CDL”) training.

Counselor: [Supervisee] has been . . . interested in a CDL training which would allow him to get employment. . . . The CDL is a wonderful credential that could open up all kind of doors for him and eventually could lead to him opening up his own business.

Probation Officer: This seems like a good employment opportunity. . . . If all of that works out, I don't see why we could not work with [him] so that he can obtain employment in his area of interest and supervise him effectively. . . .

Court [to supervisee]: What's your goal here? . . .

Supervisee: My goal is to stay focused on my development, my career . . . get my CDL, and start working as soon as possible so I could provide for my kid, my family, secur[e] a residence, and be[] productive to society. . . .

C. 82.2% Drug Treatment and Mental Health Counseling

One of the most critical objectives of court-involved supervision is to ensure that mental health counseling and/or drug treatment are provided for supervisees who need these services.¹⁰ People exiting prison “often identify drug use as the primary cause of many of their past and current problems including family, relationship, employment, legal, or financial problems.” Richard Rosenfeld et al., *The Limits of Recidivism: Measuring Success After Prison* at 90 (Nat’l Academy Sciences 2022). “[S]ubstance abuse treatment in a court supervised program can be expected to foster recovery and reduce recidivism.” Sara Gordon, *About a Revolution: Toward Integrated Treatment in Drug and Mental Health Courts*, 97 N.C. L. Rev. 355, 388–89 (2019) (emphasis added); see also John H. Bowman, IV et al., *Responding to Substance-Use-Relation Probation and Parole Violations*, 32 Crim. Justice Stud. 356, 357 (Sept. 2019) (“[E]ffective drug treatment is key to breaking the cycle of offending.”).

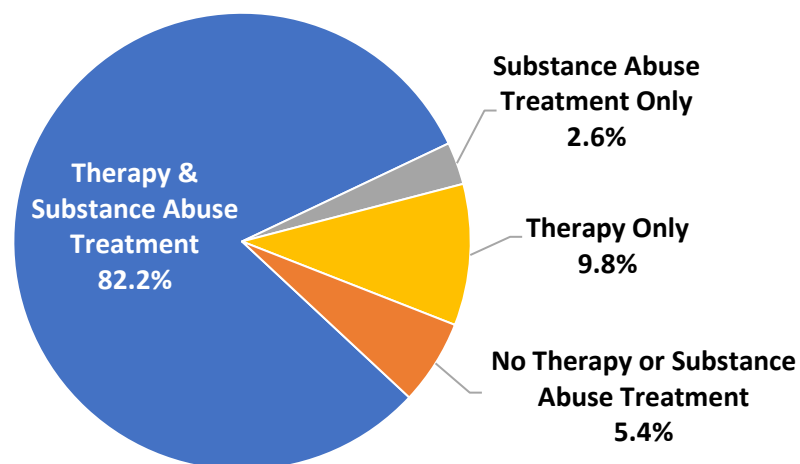
Similarly, people exiting prison with mental illness—who most often are not adequately treated while in prison—“are at heightened exposure to other risk factors such as substance abuse, homelessness, and other problems such as strained relationships that may in turn increase offending.” Nathan W. Link et al., *Consequences of Mental and Physical Health for Reentry and Recidivism*, 57 Criminology 544, 549 (2019). Thus, “[a]ny long-term sustainable approach to public safety . . . must confront and address the role of mental illness and addiction.” Craig Haney et al., *Justice That Heals: Promoting Behavioral Health, Safeguarding the Public, and*

¹⁰ See *United States v. Sims*, 92 F.4th 115, 120 (2d Cir. 2024) (“When a court imposes a term of supervised release, it also determines what conditions or restrictions are appropriate for that defendant. Courts are given broad latitude to design their own “special conditions,” so long as the courts, among other things, consider the goals of sentencing, including the need for the sentence to provide adequate deterrence, protect the public, and provide the defendant with needed services.”); see also 18 U.S.C. § 3583(c), (d).

Ending Our Overreliance on Jails at 15 (June 15, 2016) (emphasis added). Failure to address these issues in supervision may create “devastating effects to individuals, families, and society.” *Leading Change: Improving the Court and Community’s Response to Mental Health and Co-Occurring Disorders*, Nat’l Ctr. St. Ct., at 4 (Feb. 2021). **The lack of accessible mental health care in prisons only heightens the need to provide adequate mental health care during supervision.** See Christie Thompson & Taylor Elizabeth Eldridge, *Treatment Denied: The Mental Health Crisis in Federal Prisons*, The Marshall Project (Nov. 21, 2018) (“The number of federal prisoners receiving regular treatment for mental illness fell 35% [since May 2014] . . . [even though] the combined number of suicides, suicide attempts and self-inflicted injuries have increased 18 percent from 2015 . . . through 2017.”).

As shown in Chart 12 below, some **82.2%** of the Study Population participated in both drug treatment and mental health counseling; **9.8%** participated in mental health counseling only; and **2.6%** participated in drug treatment only. **5.4%** of the Study Population did not participate in drug treatment or mental health counseling.

Chart 12: Therapeutic Counseling and/or Substance Abuse Treatment



“Untreated substance use disorders among [supervisees] can lead to relapse and a path toward continued criminal behavior, which can lead to probation[] violations and an increased risk of reincarceration.” Rachel N. Lipari & Joseph C. Gfroerer, *Trends in Substance Use Disorders Among Males Aged 18 to 49 on Probation or Parole*, at 1 (Mar. 6, 2014). And, chronic use of drugs or alcohol “may lead to long-term neurological deficits that are also associated with decreased self-control and increased risk for violence. Moreover, drugs may serve as a direct motive for a crime.” Denis Yukhnenko et al., *Risk Factors for Recidivism in Individuals Receiving Community Sentences*, 25 CBS Spectr. 252, 254 (Apr. 2019).

Case Study #8

The supervisee was sentenced to 95 months of incarceration followed by 5 years of supervised release for “marijuana trafficking, extortion, conspiracy and illegal gambling” and “attempted assault in aid of racketeering.” Sent. Tr. at 3:20–24. The Sentencing Guidelines range was 78 to 97 months of incarceration plus 2 to 5 years of supervised release. Drug treatment was included as a special condition because the supervisee had been addicted to ketamine for the five years prior to his arrest.

Probation Officer: [Supervisee] tested . . . positive for Ketamine. . . . [He] admit[ted] to using the Ketamine due to stress. . . . [Supervisee] has been dealing with a lot of things. But he was previously attending substance abuse and mental health three times a week. . . .

Court [to supervisee]: What’s your take on how things are going? . . .

Supervisee: I went through a lot in the last couple weeks. . . . I made excuses before for my [relapses] . . . but . . . I honestly didn’t know how to deal with [everything]. . . .

Court: I understand. That is a rough time for anybody when that happens [death of a parent]. Are you feeling better about the [counseling]? . . .

Supervisee: Of course, a hundred percent. . . . [My counselor] got me through it. . . . I don’t talk about anything with anybody else. . . .

Court: You’ve put in a lot of work and it’s going to pay off. It probably already has. . . . My point of view is . . . you’re doing very well.

Supervisee: Yes. Totally different relationships than before I got sentenced, right, Judge? I was kind of nervous coming home and then running into you again. I didn't know. . . . Now I understand about the drug treatment you put me in. . . . [I]t's kind of good that I . . . didn't just [come] home and no treatment was done, and that would have been more of a problem with my relapse.

The research is crystal clear that supervised release programs which include a counseling component are “effective in supporting successful reentry.” National Institute of Justice, *Five Things about Reentry*, at 2 (Apr. 2023). Counseling can “restore self-esteem, impart tools and strategies for making more positive life choices, and help clients improve their decision making, social skills, moral reasoning, self-control, and impulse management.” *Id.* Mental health counseling is effective even for high-risk offenders, and some of the greatest effects were among those convicted of the most serious offenses. *See* Patrick Clark, *Preventing Future Crime with Cognitive Behavioral Therapy*, 265 NIL J. 22, 23 (Apr. 2010).

Treatment providers often participate directly in our supervised release hearings—**and their participation has been an enormous asset.** Treatment providers “serve a key role” in supervision by providing individualized care to best meet each supervisee’s needs. Tina Maschi & Dhweeja Dasarathy, *Aging with Mental Disorders in the Criminal Justice System: A Content Analysis of the Empirical Literature*, 63 Int’l J. Offender Therapy Compar. Criminology 2103, 2131 (2019). Their insights and suggestions are invaluable. *See* J. Steven Lamberti, *Preventing Criminal Recidivism Through Mental Health*, 67 Psych. Serv. 1201, 1209 (2016) (Collaboration among the court, probation, and treatment providers leads to “actively discuss[ing] their opinions and ideas in the interest of preventing recidivism.”). In addition to their clinical work with supervisees, treatment providers serve as another pair of educated eyes.

Case Study #9

The supervisee was sentenced to 60 months of incarceration followed by 5 years of supervised release for participating in a conspiracy to distribute and possess with intent to distribute drugs, including cocaine. The Sentencing Guidelines range was 151 to 188 months of incarceration plus 5 years of supervised release. Special conditions of supervision included weekly mental health counseling and drug treatment.

Court: [At] the last hearing . . . we had [supervisee's drug and mental health counselor bring us up to date], and I understand she's present with us again today. And she was . . . [conducting] weekly counseling sessions, including anger management and substance abuse treatment. . . .

Counselor: We've discussed some of the triggers in his environment and discussed with him . . . managing those triggers and alternatives to . . . medicating his feelings. . . . We've gone through anger management . . . and he's very aware of techniques to be able to manage his anger. . . .

Supervisee: [E]very time I talk to my [counselor], I feel better. So I don't want to give that up and get off track; you know what I'm saying? I want to keep [the] structure going.

Counselor: I agree. . . . I think that [counseling] has been beneficial [T]he focus would be on . . . his environmental issues, his daily living, managing his emotions or anything that comes up

D. Re-Offending

Repeat offending is often referred to as “recidivism.” *See* James L. Johnson, *Comparison of Recidivism Studies, AOUSC, USSC, and BJS*, 81 Fed. Prob. 52, 53 (June 2017) (The AO “has routinely defined recidivism as a return to crime.” The U.S. Sentencing Commission “has used the term recidivism to refer to a person’s relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.”).

A common measurement of re-offending is “rearrest,” which typically includes Federal and state arrests. We examine rearrest data here, but we caution that many professionals believe that rearrest alone is too narrow (and misleading) a concept. *See* Rosenfeld et al. (2022) at 30–31, 43–44. Therefore, we also include dispositions of rearrests (particularly dismissals) and return to prison following a rearrest. *See Return to Prison, infra* page 37.

We also consider the concept of “desistance.” “Desistance refers to why and how people stop committing crime. The key distinction between recidivism and desistance is that recidivism focuses on a “negative outcome, while desistance tracks positive outcomes that may result in reduced involvement in offending over time” *Id.* at 69. Desistance is “neither a quick nor easy process It can take considerable time, potentially many years, to change entrenched behaviours and the underlying problems.” *Id.*; *see also* Jeffrey Fagan, *Cessation of Family Violence: Deterrence and Dissuasion*, 11 Crime & Just. 377, 420 (1989) (“Desistance may be a process as complex and lengthy as the processes of initial [criminal] involvement.”). While “[t]he historical emphasis on recidivism . . . reflects, in part, a desire by researchers and institutions to establish a common ‘success rate’ indicator,” it is sometimes said that recidivism “fail[s] to capture the real changes that people returning from incarceration experience.” Rosenfeld et al. (2022) at 79.

Repeat offending is understandably a major concern of our communities and of our criminal justice system, especially when it entails violence. *See* Matt Dummermuth, *Reducing*

Recidivism in Release Offenders Improves Public Safety, Office of Justice Programs (June 10, 2019) (“High rates of recidivism greatly impact public safety and the victims affected by those new crimes, as well as the lives of offenders who are unable to break out of the cycle of repeat offending.”). According to Scott Anders, Deputy Chief Probation Officer of the Eastern District of Missouri, and Jay Whetzel, Probation Administrator, Administrative Office, as of June 2022, **“the men and women exiting federal prisons continue to be rearrested at an unacceptable rate.”** Scott Anders & Jay Whetzel, *The Reconstruction of Federal Reentry*, 34 Fed. Sentencing Rep. 282, 282 (June 2022) (emphasis added) (citing the U.S. Sentencing Commission’s rearrest rate of **49.3%** (over a period of eight years)—which broadly includes felonies and misdemeanors. It also includes violations of supervised release, probation, or state parole).

Rearrest Studies

The AO, the U.S. Sentencing Commission, and the Bureau of Justice Statistics contend that rearrest is “the most valid measure of frequency of offending that can be gained from official data sources.” David Weisburd & Chester Britt, *Statistics in Crim. Justice* at 24 (3d ed. 2007); *see also* U.S. Sentencing Commission, *Recidivism of Federal Offenders Released in 2010* at 6 (Sept. 30, 2021) (“2021 Sentencing Commission Study”); Laura M. Baber, *Inroads to Reducing Federal Recidivism*, 79 Fed. Prob. 3, 5 (Dec. 2015) (“2015 AO Study”); U.S. Department of Justice Bureau of Justice Statistics, *Recidivism of Offenders Placed on Federal Community Supervision in 2005: Patterns from 2005 to 2010* at 1 (June 2016) (“2016 BJS Study”). “Rearrest” refers to the first arrest that occurs during the term of supervised release measured over a span of time (often three and five years of supervision) because “persons in the early years of their supervision terms are more likely to fail than those who have survived to the latter years.” 2015 AO Study at 8.

U.S. Sentencing Commission Study

The U.S. Sentencing Commission Study, dated September 30, 2021, examined 32,135 Federal offenders who, following release from incarceration, began supervised release in 2010. The U.S. Sentencing Commission Study considers arrests for felonies and misdemeanors as well as arrests for “alleged violations” of supervised release, probation or state parole. 2021 Sentencing Commission Study at 6. Using this broad definition, the U.S. Sentencing Commission found that **35.4%** of supervisees were rearrested within three years of commencing supervision and that **43.1%** of supervisees were rearrested within five years. *See id.* at 21 The U.S. Sentencing Commission Study also provides an 8-year rearrest rate. **“Nearly half (49.3%) of [Federal] offenders released in 2010 were rearrested within the eight-year follow-up period.”** *Id.* at 20 (emphasis added).¹¹ The 8-year rearrest rate is “identical to the rearrest rate (49.3%) for federal offenders released in 2005.” *Id.* at 20.

Bureau of Justice Statistics Study

The Bureau of Justice Statistics Study, dated June 2016, examined 42,977 Federal offenders who, following release from incarceration, began supervised release in 2005. The Bureau of Justice Statistics Study considers arrests for felonies, misdemeanors, and violations of supervision. *See* 2016 BJS Study at 12–13. The Bureau of Justice Statistics found that **35.0%** of supervisees were rearrested within three years of commencing supervision, and that **43.0%** of supervisees were rearrested within five years. *See id.* at 3.

¹¹ Because the Sentencing Commission and the Bureau of Justice Statistics’ definitions of rearrest is broad, the Sentencing Commission and the Bureau of Justice Statistics “always show a higher level of recidivism than the AO,” thus making direct comparisons among these three agencies difficult. *See* Nora Demleitner, *The U.S. Sentencing Commission’s Recidivism Studies: Myopic, Misleading, and Doubling Down on Imprisonment*, 33 Fed. Sent’g Rep. 11, 15 (2020).

Administrative Office of the U.S. Courts Study

The AO Study, dated December 2015, examined 454,223 Federal offenders who, following release from incarceration, began supervised release between the years 2004 and 2014. The AO Study considers arrests **only** for felony offenses, as does our Study Population. *See* 2015 AO Study at 4–5 (“[A]rrests are defined as the first arrest for a serious offense [felony] that occurs for a supervisee. Minor offenses are excluded from the statistics.”). The AO found that **20.8%** of supervisees were rearrested within three years of commencing supervision, and that **27.7%** of supervisees were rearrested within five years. *Id.* at 5.

The 2015 AO Study also included (for the first time) “adjusted rearrest rates,” which are intended to reflect the “inherent risk of the offender population.” *Id.* at 4. According to the AO, adjustments are appropriate because “persons who enter federal supervision each year are at increased risk to recidivate,” i.e., such persons are causing a “**gradual upward pressure on rearrest and revocation rates.**” *Id.* at 5, 7 (emphasis added). The AO also found that “[t]he federal supervision population **is increasing in risk**, due in part to more extensive criminal histories of those convicted of federal crimes. As an illustration, the criminal history score of defendants who began supervision in FY 2005 increased from 4.61 to 5.62 in FY 2015.” *Id.* at 5 (emphasis added). Accordingly, the AO has adjusted downward the three-year rearrest rate from 20.8% to 16.3%. *See id.* at 7. The AO did **not** report any adjusted five-year rearrest rate. And, the AO concluded, after adjusting for “inherent risk of the offender population,” that “**recidivism . . . is decreasing.**” *Id.* at 4 (emphasis added).

Court Involved Supervision Study Population

Our Study Population rearrest rates, as reflected in Chart 13 on page 35 below, are based upon felony arrests (as was done in the AO study). We found that **17.1%** of supervisees were

rearrested over three years; and that **20.4%** were rearrested over five years.¹² The Court Involved Supervision Program felony rearrest rate includes arrests for Federal and state felonies. We do not include misdemeanors or violations of supervision principally because: (i) “states vary their practices regarding the extent to which misdemeanor and petty offenses are reported”; and (ii) “[a]rrests for technical violations are not indicative of new criminal behavior, but rather reflect an offender’s failure to comply with certain conditions of his or her supervision, such as testing positive for illegal drugs, failing to complete substance abuse treatment, or traveling outside of the area without prior permission.” Johnson, *Comparison of Recidivism Studies*, *supra* page 30, at 53. We do not utilize an adjusted rate.¹³

79.6% of Study Population supervisees were not rearrested during supervision. And, it also is noteworthy that 12 supervisees in the Study Population accounted for **60.0%** of all rearrests.¹⁴

Chart 13 on page 35 includes four different rearrest rates, namely our Study Population, the Administrative Office of the U.S. Courts study, the U.S. Sentencing Commission study, and the Bureau of Justice Statistics study. It is also important to note that arrests are cumulative over time. That is, if a person were arrested two years into his term of supervision, that arrest is included in both the three-year and five-year rates. “[T]he annual arrest percentage among released prisoners declines” each year after release. Matthew R. Durose & Leonardo Antenangel,

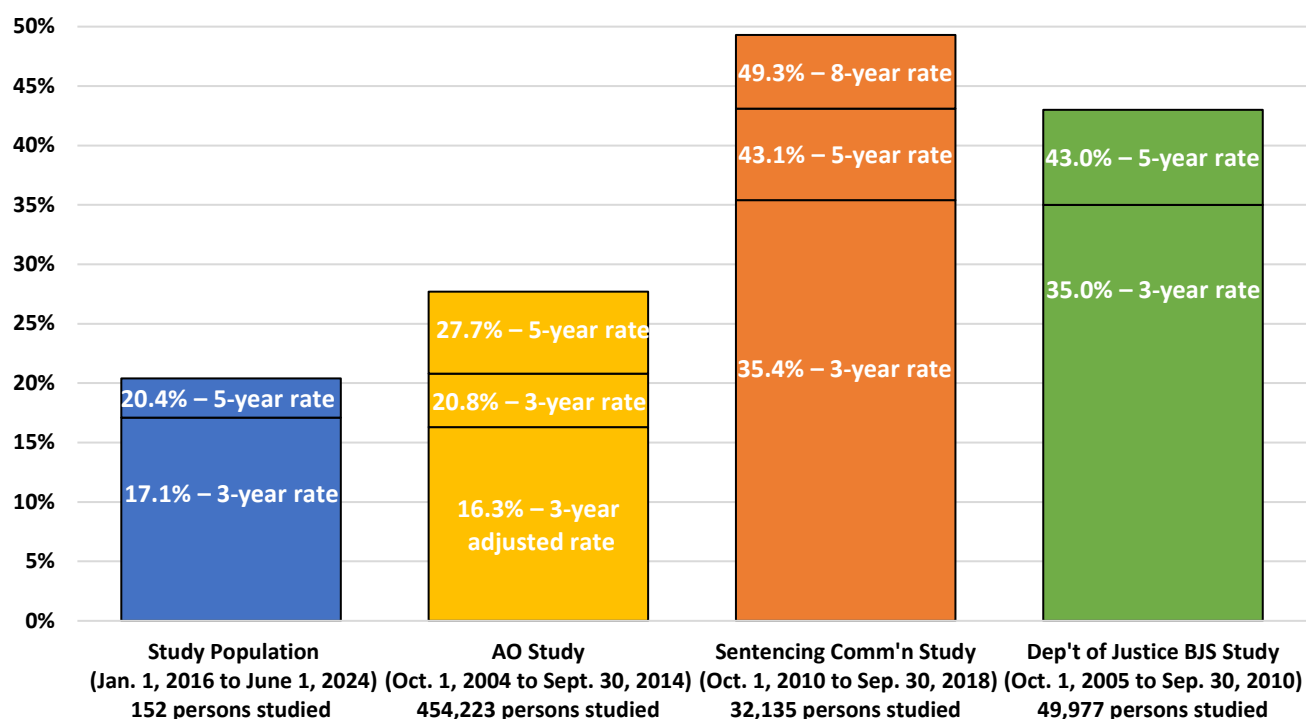
¹² To identify felony rearrests, we reviewed our case files for each supervisee and, as a cross check, we reviewed data generated by the U.S. Probation & Pretrial Services Automated Case Tracking System (“PACTS”).

¹³ As noted at page 33 *supra*, the AO adjusts its 3-year rearrest rate downward from 20.8% to 16.3%. If the Study Population’s 3-year rearrest rate were similarly to be reduced by the same percentage as the AO, our rearrest rate would be 13.4% over 3 years rather than 17.1%.

¹⁴ **It is important to reiterate that, because the U.S. Sentencing Commission and Bureau of Justice Statistics studies include misdemeanors and violations of supervision in their rearrest rates, Study Population and AO rates are not directly comparable to those more inclusive studies.**

Recidivism of Prisoners Released in 34 States in 2012, U.S. Bureau of Justice Statistics (July 2012); *see also* 2021 Sentencing Commission Study at 4 (“The largest proportion (18.2%) of offenders were rearrested for the first time during the first year following release. In each subsequent year, fewer offenders were rearrested for the first time than in previous years.”).

Chart 13: Rearrests



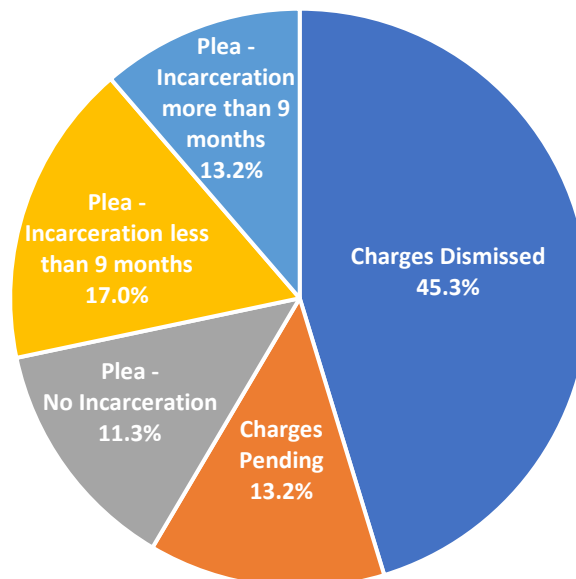
Rearrest Outcomes

We believe, as noted at page 30, that rearrests do not (alone) tell the whole story of re-offending. Rearrests do not, for example, reveal either rearrest dispositions or returns to prison. Rearrest is an imperfect measure and clearly “rearrests can overstate recidivism.” 2021 Sentencing Commission Study at 6; *see also* 2016 BJS Study at 1 (“[O]f those persons arrested, a smaller percentage are charged, and an even smaller percentage are imprisoned.”). Focusing on rearrests “presents the risk of counting events in which a crime did not occur or that did not result in a conviction.” Rosenfeld et al. (2022) at 45. Re-conviction, on the other hand, may “provide clear

evidence [whether] new criminal activity has been committed by someone with prior involvement in the criminal justice system.” Bureau of Justice Statistics, *Building Second Chances: Tools for Local Reentry Coalitions*, at 14 (Apr. 1, 2022). However, there “are trade-offs in using reconviction and rearrest data in measuring recidivism.” Rosenfeld et al. (2022) at 45. “A conviction offense reflects the ‘bargained’ or convicted offense behavior and not necessarily the behaviors that an individual engaged in. This bargained offense may be more or less serious than the underlying offense behavior.” *Id.*

Chart 14 below shows that **45.3%** of our Study Population rearrests resulted in dismissal and **13.2%** of rearrests are still pending. At the same time, **41.5%** resulted in guilty pleas (i.e., **11.3%** of rearrests resulted in a guilty plea with no incarceration, **17.0%** of rearrests resulted in a guilty plea and a sentence of less than 9 months of incarceration, and **13.2%** of rearrests resulted in a guilty plea and a sentence of between 9 to 97 months of incarceration).

Chart 14: Felony Rearrest Outcomes (Study Population)

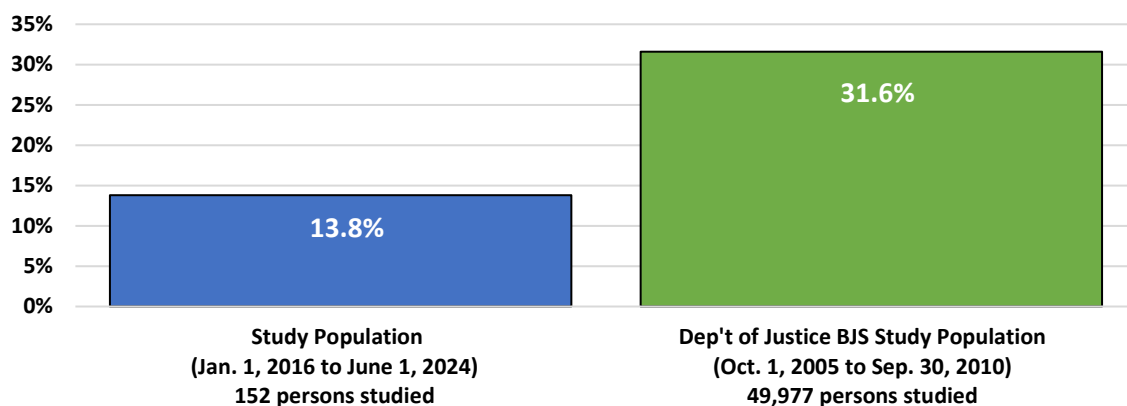


Return to Prison

A very important metric in the analysis of reoffending is whether supervisees “return to prison.” Return to prison “is an important indicator of recidivism to track because it generates a significant financial burden for local jurisdictions, which often are responsible for incarcerating people who have been revoked from community supervision. This measure also represents a significant burden to the individual who is reincarcerated, as time in a correctional facility disrupts engagement with treatment, employment, family, and more.” Bureau of Justice Statistics, *Building Second Chances*, *supra* page 36, at 14. In fact, “returning to prison represents arguably the worst and most costly outcome for a released offender.” Stahler et al., *Predicting Recidivism for Release State Prison Offenders*, *supra* page 2.

A return to prison is “the result of both criminal and noncriminal behavior (e.g., incarceration for certain supervision violations).” Bureau of Justice Statistics, *Building Second Chances*, *supra* page 36, at 14. The Bureau of Justice Statistics study shows that **31.6%** of supervisees nationwide return to prison within five years of the start of supervision. By contrast, **13.8%** of the Study Population returned to prison within five years of the start of supervision. In calculating the Study Population return to prison rate, we used the same definition used by the Bureau of Justice Statistics, namely, “an arrest for a new crime or a technical violation of a condition of release.”

Chart 15: Return to Prison



Violation of Supervised Release

Violations are “a critical issue in supervision law and policy.” *See* Jacob Schuman, *Criminal Violations*, 108 Virginia L. Rev. 1817, 1823 (Feb. 2022). A violation occurs when a supervisee fails to comply with a condition of supervised release.¹⁵ *See* U.S. Sentencing Commission, *Supervised Release*, at 5 (Mar. 2020). The Sentencing Guidelines classify three degrees of violations “based on the offender’s conduct and the punishment applicable to the offense underlying the violation.”¹⁶ Sentencing Commission, *Federal Probation and Supervised Release Violations*, at 31 (July 2020).

When a probation officer believes that a supervisee has violated a condition of supervision, the officer speaks with the supervisee and also (typically) informs the court. *See* 18 U.S.C. § 3603(8)(B); *see also* U.S.S.G. § 7B1.2 (“The probation officer shall promptly report to the court any alleged . . . violation,” unless such violation is “minor” and “non-reporting will not present an undue risk to an individual or the public . . .”). A report to the court includes a description of the

¹⁵ There are three categories of conditions, namely mandatory, standard, and special conditions. An example of a mandatory condition is that the supervisee must “not commit another Federal, State, or local crime.” 18 U.S.C. § 3583(d). Standard conditions include reporting as directed to the probation office and gaining employment. U.S.S.G. § 5D1.3(c). Special conditions are discretionary with the court and include, among others, substance abuse and mental health treatment. U.S.S.G. § 5D1.3(d)(4).

¹⁶ (1) **Grade A Violation** (the most serious grade) “is conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device of a type described in 26 U.S.C. § 5845(a); **or** (B) any other federal, state, or local offense punishable by a term of imprisonment exceeding twenty years;”
(2) **Grade B Violation** “is conduct constituting any other federal, state, or local offense punishable by a term of imprisonment exceeding one year;”
(3) **Grade C Violation** (the least serious grade) “is conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment of one year or less; **or** (B) a violation of any other condition of supervision.”

U.S. Sentencing Commission, § 7B1.1 *Guidelines Manual* (Nov. 2023) (emphasis added).

violation. *See id.* Once a probation officer notifies the court that a supervisee is alleged to have violated, the court assesses whether there is a legal basis for the violation and whether the supervisee intends to challenge the alleged violation. *See* 18 U.S.C § 3583(e)(3). In practice, a substantial number of Study Population violations were dismissed, withdrawn, or deferred. *See also* Hon. Stefan R. Underhill, D. Conn., *Closing the Back Door to Federal Prison*, *The Champion*, at 26 (May 2024) (“The drafters of the Constitution did not want to make it easy for the government to imprison American citizens. . . . Yet the imposition of prison sentences for supervised release violations provides an expedient way to reincarcerate persons for even minor conduct.”).

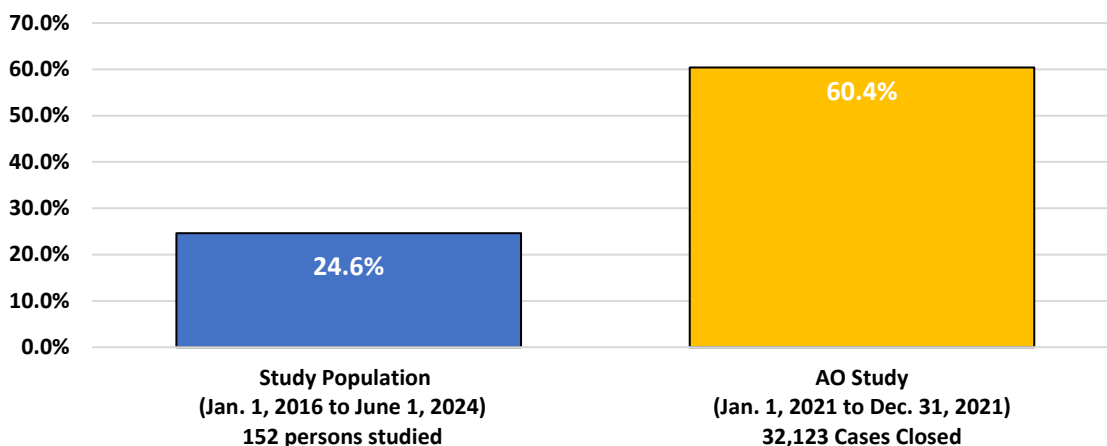
The Court’s objective in supervision is to help supervisees achieve successful reentry most often even when violations have been alleged. As Jacob Schuman points out, “perfect compliance with the conditions of supervision is difficult, if not impossible, and penalizing minor infractions may encourage recidivism rather than reintegration.” Schuman, *Criminal Violations*, *supra* page 38, at 1821; *see also* Reagan Daly et al., *Pathways to Success on Probation: Lessons Learned from the First Phase of the Reducing Revocations Challenge*, at 15 (2021) (“[P]eople with a history of substance use had violations filed at higher rates than those without these histories, and individuals who lacked housing or employment were far more likely to experience a [] revocation [of supervision]. Such needs elevate the risk of receiving a probation violation and/or revocation by making it difficult for people to adhere to conditions of probation.”).

When a supervisee incurs a violation, the Court will often seek to address the underlying cause as, for example, by modifying supervision conditions to include, for example, inpatient drug treatment or mental health counseling, if those modifications would help to treat the underlying issue(s). *See* ACLU Hum. Rts. Watch, *Revoked: How Probation and Parole Feed Mass Incarceration in the U.S.*, at 4 (2020); *see also* S. Rep. No. 98-225, at 38 (1983), (“[A]lmost

everyone involved in the criminal justice system now doubts that rehabilitation can be induced reliably in a prison setting.”)

A study conducted by the AO which analyzed the behavior of 32,123 supervisees, found that **60.4%** of supervisees were charged with a violation. See AO, *Just the Facts: Revocations for Failure to Comply with Supervision Conditions and Sentencing Outcomes* (June 14, 2022). By contrast, **24.6%** of the Study Population supervisees were charged with a violation.

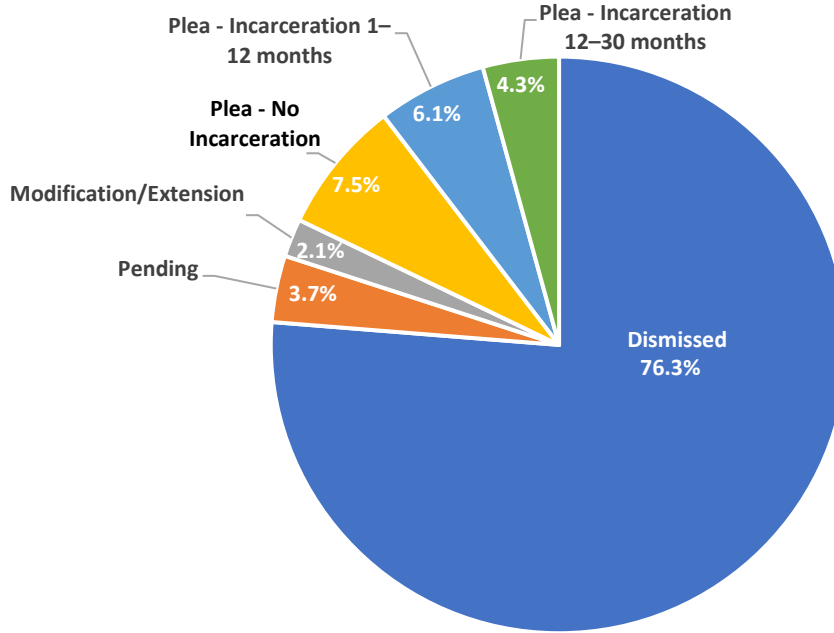
Chart 16: Violations



With respect to violations outcomes, Chart 17 below (on page 41) shows that **76.3%** of Study Population violations were dismissed; **7.5%** were resolved by a plea with no term of incarceration; **6.1%** were resolved by a plea with a term of incarceration between 1 and 12 months; **4.3%** were resolved by a plea with a term of incarceration between 12 and 30 months; **2.1%** were resolved by a plea and a modification of conditions of supervision or an extension of the term of supervision; and **3.7%** of violations are still pending.¹⁷

¹⁷ We have not located comparable data from other studies.

Chart 17: Study Population Violation Outcomes



In a study dated July 2020, the U.S. Sentencing Commission analyzed “108,115 violation hearings associated with 82,384 offenders” during the period 2013 to 2017. *See* United States Sentencing Commission, *Federal Probation and Supervised Release Violations*, at 2 (July 2020). The study found that **13.6%** of violations nationwide were Grade A violations (the most serious), **31.5%** were Grade B violations, and **54.9%** were Grade C violations (the least serious). *See id.* at 31. SDNY and EDNY violations were quite similar to each other and to our Study Population, but Study Population violations were significantly less serious overall. In SDNY, **15.8%** of violations were Grade A, **14.8%** of violations were Grade B, and **69.4%** were Grade C violations. In EDNY, **15.4%** of violations were Grade A, **14.5%** of violations were Grade B, and **70.1%** of violations were Grade C. Study Population results were that **8.9%** were Grade A violations, **16.6%** were Grade B violations, and **77.5%** were Grade C violations.

Revocation

Revocation of supervision means “canceling the supervision in response to the offender violating the terms of supervision **and** imposing a term of incarceration.” Glossary of Sentencing Terms, U.S. Sentencing Commission website (last visited Sept. 8, 2022) (emphasis added). “The term ‘revoke’ appears to be somewhat of a misnomer,” *United States v. Trotter*, 321 F. Supp. 3d 337, 346 (E.D.N.Y. 2018), and the Supreme Court has acknowledged that “Congress had used ‘revoke’ in an unconventional way,” *Johnson*, 529 U.S. at 695.

Revocation is not often necessary in our practice because we have been able (so far) to resolve most violations by adjusting or supplementing supervised release conditions rather than resorting to reincarceration. We do as best we can to work collectively with the supervisee, his probation officer, and his treatment providers, even if that means additional supervision, to avoid sending supervisees back to jail. *See* Hon. Stefan R. Underhill, *Closing the Back Door to Federal Prison*, *The Champion*, at 26 (May 2024) (“Supervised release revocation sentences create a back door to federal prison. Too often that back door is a revolving door that traps defendants in a cycle of imprisonment, release, violation, imprisonment, release.”). We firmly believe that revocation “leave[s] open the possibility of further supervised release.” *Johnson v. United States*, 529 U.S. 694, 695 (2000), and we have found that supervisees who have faced revocation have been able, nevertheless, to successfully complete supervised release. *See* 2015 AO Study at 4 (Revocations “may not be a failure—in the truest sense of the word—at all.”).

Revocations were not (initially) included in the Sentencing Reform Act of 1984 (“SRA”), when the Federal government abolished its parole system and replaced it with “supervised release.” *See* S. REP. 98-225 at 3307; 18 U.S.C. § 3583(c); Douglas A. Berman, *Reflecting on Parole’s Abolition in the Federal Sentencing System*, 81 Fed. Prob. 18, 19 (Sept. 2017) (“To the

drafters of the SRA, abolition of parole seemed a sensible and simple way to help create clearer and more certain and consistent federal sentencing decision-making.”). The Senate Report on the SRA confirmed that the primary goal of supervised release is to:

ease the defendant’s transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison for punishment or other purposes but still needs supervision and training programs after release.

S. REP. 98-225 at 3307.

In 1986, the SRA was amended to authorize courts to “revoke a term of supervised release.” Anti-Drug Abuse Act (“ADAA”) of 1986, P.L. 99-570, § 1006 (1986); *see also* 18 U.S.C. § 3583(e)(3). “Procedurally, the ADAA grafted the revocation mechanism for parole onto supervised release, ignoring the different theoretical roots of those systems.” Fiona Doherty, *Indeterminate Sentencing Returns: The Invention of Supervised Release*, 88 N.Y.U.L. Rev. 958, 1001 (2013).

Parole was based on early release from prison—by the grace of the parole board a person was conditionally released from prison, and the leniency could be “revoked.” [By contrast,] a person on supervised release has completed his or her prison term and is serving an independent term of supervision separately ordered by the court. **Supervised release is not being “revoked”; rather, a supervisee is being punished for violating conditions [of supervision].**

United States v. Trotter, 321 F. Supp. 3d 337, 346 (E.D.N.Y. 2018) (Weinstein, D.J.) (internal citation omitted) (emphasis added).

Revocation of supervision often appear harsh and even self-defeating. Revocation has been criticized as “a major driver of mass incarceration.” Schuman, *Revocation and Retribution*, *supra* page 11, at 885; *see also* Demleitner, *supra* page 1, at 232. Mandatory revocations were introduced by amendment to the SRA in 1988 and are “widely condemned provision[s] of federal law.” Aliza Hochman Bloom & Jacob Schuman, *It is Time to Reform Federal Supervised Release*, ACS Law

(Nov. 30, 2022). “[M]andatory revocations often create unfair and unwise results. . . . [A] credible argument can be made that Congress did not intend the current results of the revocation statutes.” George P. Kazen, U.S.D.J. for the Southern District of Texas, *Mandatory Revocation for Drug Use: A Plea for Reconsideration*, 6 Fed. Sent. Rep. 202, 202 (1994); see also United States Sentencing Commission, *Results of 2014 Survey of United States District Judges Modification and Revocation of Probation and Supervised Release* (2015).

Our approach to potential revocations is, wherever possible, to assess supervised release violations along with the supervisee’s capabilities to succeed through supervision and implementation of relevant and helpful conditions, such as further counseling.

[S]upervised release hearings . . . encourage stakeholders to work together. It upholds the mandate of the SRA by recognizing that the utility of revocations is doubtful because revocations terminate access to treatment, social support networks, and employment. The focus then moves away from the punitive operations of supervised release revocations that harm the supervisee and towards developing a team of practitioners concentrating on an individual’s success.

McManus, *supra* page 1, at 1213. When we opt for a longer view, our supervisees invariably demonstrate that they can succeed in supervision and achieve successful and safe reintegration into the community even where they may have slipped. “Current conceptions of recidivism tend to treat any return to crime as a failure, without distinguishing between failure as an end state or as part of a desistance process.” Rosenfeld et al. (2022) at 5.

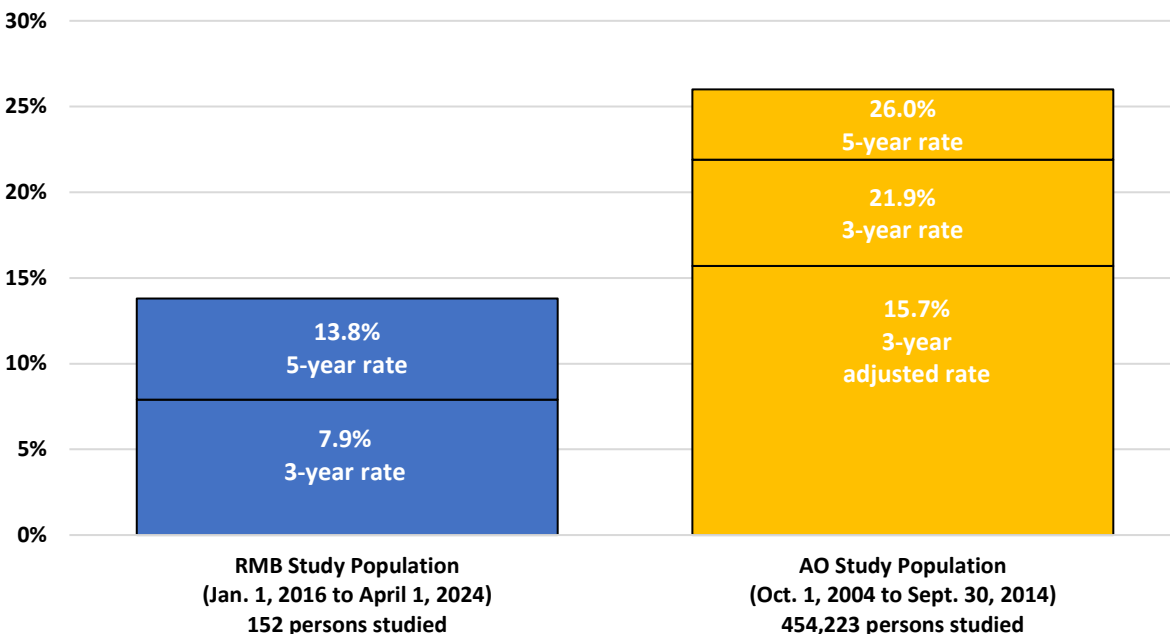
The 2015 AO Study found that **21.9%** of supervisees had their supervision revoked within three years of commencing supervision. It also found that **26.0%** of supervisees had their supervision revoked within five years. See 2015 AO Study at 6. The AO also adjusted 3-year revocations downward from **21.9%** to **15.7%**.¹⁸

¹⁸ The AO did not provide a five-year adjusted revocation rate.

By contrast, our Study Population revocation rates are **7.9%** over three years and **13.8%** over five years. If the Study Population 3-year revocation rate were to be adjusted and reduced by the same percentage as the AO, our 3-year revocation rate would be **5.7%** rather than **7.9%**.

Chart 19 below reflects the revocation rates of the AO and the Study Population.

Chart 19: Revocations



The outcomes of the Study Population supervisees who had their supervision revoked between 2016 and 2024 were as follows: ten supervisees completed an additional period of supervised release; six supervisees are still under supervision; three supervisees were re-sentenced to incarceration without any additional term of supervision; one supervisee transferred to another jurisdiction; and one supervisee passed away.

Case Study #10

The following colloquy reflects a supervisee’s success even after revocation.

The supervisee was sentenced to time served and 3 years of supervised release for “conspiracy to distribute and possess with intent to distribute cocaine.” The Sentencing Guidelines range was 46 to 57 months of incarceration plus 3 years of supervised release. Special conditions

included participation in weekly mental health counseling and drug treatment. Supervision was revoked for “leaving the judicial district without permission.” The supervisee was re-sentenced to time served followed by an additional 24 months of supervised release.

Probation Officer: [Supervisee] continues to do very well. . . . He continues to be employed . . . as a supervisor and he also started working as an Uber delivery driver just to supplement his income. . . . He continues to attend . . . weekly therapeutic counseling . . . which speaks to his continued focus to . . . getting back to his normal life and being a productive person in society and taking a strong father figure role for his younger son. . . . He’s doing very well, . . . and he’s scheduled to terminate supervision [next month]. . . .

Court: Just on that point, . . . a termination at the end of supervised release is a very positive event. In this case, it would mean that [supervisee] will have successfully completed . . . 5 year[s] of supervision . . . , so that’s really positive. . . . [Supervisee], I have a question for you. Overall, what has your experience on supervised release been like? . . .

Supervisee: It has helped me a lot in terms of straightening out my life. . . . I am in a better space. . . . I think that . . . all the good work that I have done, I am seeing the results now. I am happy. . . . Things are going well for me, better than any other time in my life that I can think of. . . .

Court: That’s great. . . . You have your whole life ahead of you. . . . Did you find that counseling and drug treatment was valuable? . . .

Supervisee: Yes, the treatment helped me a lot. . . . I think it has helped me avoid many things and it has also helped me with stress. It has helped me deal with things that could affect me [negatively].

Probation Officer: He’s very stable. . . . He has a very good understand of what it is he has to do to continue to do well, so I’m confident he can make those decisions on his own.

III. Conclusion

The data collected and presented in this report, coupled with our experience with the Study Population, support the conclusion that court involved supervision significantly improves outcomes for supervisees reentering the community. It also enhances the safety of the community. In summary, our Court Involved Supervised Release Program has achieved an **86.6%** supervision completion rate, including **38.1%** early terminations; **78.6%** employment; **82.2%** drug and mental health treatment; and comparatively fewer rearrests, fewer returns to prison, fewer revocations, and fewer (and less) serious violations. These achievements are there for the taking in exchange for a judicial presence throughout the term of supervision.

What is required is that judges fill a void of supervised release by proactively holding hearings and conferences on a regular basis with each supervisee. The work is not difficult but it is different from what happens historically and currently. We must re-focus our attention upon supervised release. The reward for improving reentry outcomes will be no less than safer communities. *See also* Jeffrey Fagan, *Legitimacy and Criminal Justice: Introduction to the Symposium*, Ohio State J. of Crim. L. 123, 136 (2008) (“[B]uilding the legitimacy of legal processes requires that actors with moral authority be part of the process.”). The fair and obvious conclusion is that judges who become actively involved in supervision—working hand in hand with dedicated and skillful probation officers and other professionals—absolutely will help to bring about safer communities.

* * *

Richard M. Berman
June 10, 2024

February 4, 2025

**Sentencing Guidelines Amendments:
January 24, 2025 Proposal for Supervised Release**

Thank you for this opportunity to comment on the January 24, 2025 proposed revisions to the Sentencing Guidelines. This memo addresses proposed amendments to supervised release Guidelines.

I oppose the adoption of the proposed changes discussed below. The only reason given for these proposed changes is to give judges additional discretion. These changes do not advance that goal. If adopted, these changes would significantly undercut the purpose and utility of supervised release.

Judges have sufficient discretion currently to impose an appropriate term of supervised release with conditions that fit the individual defendant. These changes impose a burden on judges and invite litigation over whether judges have complied with this altered regime. As troubling, the proposed changes would undermine the mission of supervised release to reduce recidivism, promote a successful reentry into society, and protect public safety.

In most instances, the need for a specific condition is perfectly clear from the record and obvious to the defendant and his counsel. Requiring the court to state the obvious serves no purpose except to lengthen the sentencing proceedings and invite litigation. Defense counsel can already object to any special conditions recommended in the PSR or proposed by the court at the sentencing, including by arguing that the condition is not needed for rehabilitation or the protection of the community.

The standard conditions should not be converted into suggestions for special conditions. Their elimination as standard conditions adds to the court's workload and does not serve the goals of rehabilitation or safety. Again, the elimination of a condition as a "standard" condition invites litigation over whether they should be imposed. I am unaware of any study suggesting that the standard conditions have created a problem in supervision.

While individual judges may wish to conduct a re-assessment at the beginning of supervision of the conditions of supervised release they imposed at sentence, it infringes on judicial discretion in case management to add the re-assessment recommendation as a policy statement to the Guidelines and is, I expect, beyond the proper scope of the Guidelines. Moreover, there is usually very little pertinent information available at the commencement of supervision to suggest a change in the previously imposed conditions. The Probation Department is authorized to seek changes in imposed conditions at any time during supervision, and of course, the defendant may seek changes too. If a judge chooses to conduct conferences with supervisees at an early point in supervision it is often for other purposes and may be restricted to conferences with those who have higher PCRA scores.

I strongly oppose any statement of a presumption that supervision should end after one year. It undermines the importance of supervision in assisting supervisees in a successful reentry and in protecting society. There is a significant incidence of recidivism among federal defendants, and if I remember correctly, the Commission has found that about 50% of the recidivism occurs within the first 18 months or so of supervision. Creating this presumption will add unnecessarily to the workload of the judiciary without any identified offsetting benefit. If judges had believed at the time of sentence that a shorter term of supervision was appropriate, they could have imposed a shorter term. There is already a mechanism in place for defendants for whom supervision no longer serves a purpose to obtain early termination of supervision.

Thank you for considering my views.

District Judge Denise Cote, S.D.N.Y.

From: Colleen McMahon [REDACTED]
Sent: Tuesday, February 18, 2025 10:37 AM
To: Chair [REDACTED]
Cc: Paul Engelmayer [REDACTED]
Subject: Proposed amendments to Sentencing Guidelines relating to supervised release

Dear Judge Reeves:

I understand that my colleague Paul Engelmayer, Chair of the Southern District of New York's Committee on Criminal Law and Probation, has sent to your attention a memorandum outlining that Committee's opposition to three proposed changes to the Sentencing Guidelines relating to supervised release. As the former Chief Judge of my district, which position gave me intimate familiarity with both the practices of judges in this district and the work of our superb Probation Department, I heartily concur in the positions taken in Judge Engelmayer's memorandum, and I encourage your Committee not to adopt the proposed changes discussed therein. It does little good to amend the guidelines in ways that will be routinely rejected by sentencing judges; and I assure you that this sentencing judge would rarely if ever concur with any presumption that a single year's post-incarceration supervision is sufficient, or conclude that it was possible to reassess the need for previously imposed special conditions in an informed manner at the time of release.

Colleen McMahon
United States District Judge

UNITED STATES DISTRICT COURT

**Northern District of West Virginia
1125 Chapline Street, Suite 2044
WHEELING, WEST VIRGINIA 26003**

JOHN PRESTON BAILEY
Judge

**304-233-1492
Facsimile 304-233-1495**

September 23, 2023

Honorable Carlton W. Reeves
United States District Judge
Chairperson U. S. Sentencing Commission
Thad Cochran Federal Courthouse
501 East Court Street, Room 5.550
Jackson, MS 39201-5002

Via Email

Re: Methamphetamine Guidelines

Dear Judge Reeves:

At the Judicial Conference, I told you that I would be writing to you concerning the proposed amendment to methamphetamine guidelines to do away with the distinction between regular methamphetamine and "ice."

I realize that I am a voice crying in the wilderness (*Vox clamantis in deserto*) but I feel the distinction is logical and valid, and is based on years of serving an area where meth was the drug of choice.

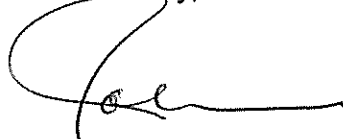
Low purity is usually the product of the "shake and bake" method or a kitchen lab, using materials gathered by "smurfs" who share in the product. These sources are incapable of producing the purity of "ice." Rather, "ice" is produced by the Mexican drug cartels, often using chemicals from China and using violence to protect their operations.

Accordingly, the distribution of "ice" helps finance the cartels and their attendant violence.

For these reasons, I have consistently rejected the argument that regular meth and "ice" should be considered the same.

Thank you for considering my arguments.

Sincerely,

A handwritten signature in black ink, appearing to read 'JPB', with a large, sweeping initial 'J'.

John Preston Bailey
United States District Judge

JPB/bjt

From: Sherri Lydon [REDACTED]
Sent: Sunday, February 9, 2025 2:48 PM
To: Chair [REDACTED]
[REDACTED]

Judge Reeves:

First, I appreciate the work you and the Commission have put into these amendments. I know these are complex issues, and I'm grateful for the thoughtful approach you've taken in trying to improve the Guidelines.

Supervised Release/Revocation: Allowing district judges discretion to waive supervised release in cases where the sentence exceeds one year—unless required by statute—makes sense. My concern is that this amendment could lead to more appeals, with defendants arguing the court failed to adequately justify supervision or its length. I have similar reservations about the revocation amendments. Without seeing this play out in practice, I wonder if judges will now be expected to provide even more justification at sentencing.

Drug Offenses: I'm not a fan of lowering BOLs for drug offenses, but that decision has already been made. My concern is what happens if the change is retroactive. One possible approach would be reducing the top range from 38 to 30. Aligning all meth BOLs with meth mixture BOLs makes sense, given the inconsistency in testing practices nationwide. As for the fentanyl misrepresentation amendment, the knowledge requirement is unrealistic, proving it is too difficult, and no judge wants the appellate risk of making a knowledge finding. That's why I prefer Option 3, which allows for a two-level increase if the defendant misrepresents the substance as something else.

Safety Valve: I'm skeptical of this amendment. I've seen defendants make weak claims of providing full and truthful information with little more than a few scribbled notes. Courts should handle this case by case, rather than treating written submissions and in person meetings as equivalent.

Again, I appreciate the time and effort you and the Commission have put into these proposed changes. Thank you for your work in tackling these difficult but important issues.

Best regards,
Sherri



Sherri A. Lydon
United States District Judge
District of South Carolina
[REDACTED]

From: [REDACTED]
To: [REDACTED]
Subject: FW: CLC's feedback to U.S. Sentencing Commission on recently proposed Guidelines amendments re supervised release
Date: Tuesday, February 18, 2025 10:21:40 AM
Attachments: [REDACTED]

Dear Judge Reeves,

You will have recently received the a memo from Judge Engelmayer of our court, and I just wanted to add that while I am not on the relevant committee, I wholeheartedly agree with its positions.

Thank you for the work you and the Commission are doing to update the Guidelines.

Best,

Cathy Seibel

Cathy Seibel
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

[REDACTED]



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December 19, 2024

U.S. Sentencing Commission

[REDACTED]
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Subject: Recommendations for Reforms, Aligning Federal Drug Sentencing Guidelines and Supervised Release with the Commission's Mission

Dear Members of the U.S. Sentencing Commission,

Thank you for inviting us and our colleagues from other organizations to speak with your staff on December 4, 2024. Bringing criminal justice advocates together to discuss ideas for more fair and just drug sentencing guidelines and successful reentry is an important step in the commission's efforts to serve the public interest. At Dream.Org, we believe in closing prison doors and opening doors of opportunity, and that some of our nation's most pressing challenges - like mass incarceration - can also become opportunities for common ground. Guided by a commitment to bipartisan collaboration and innovative solutions, we have brought together our Federal Advisory Council of directly impacted leaders, policymakers, and allies across political divides to advance reforms that create a fairer, safer, and smaller criminal justice system.

As part of our ongoing efforts to transform the criminal justice system, we urge the U.S. Sentencing Commission to adopt reforms to ***federal drug sentencing guidelines*** and ***supervised release policies***. These reforms align with the Commission's mission to promote fairness, consistency, and proportionality in sentencing, while advancing evidence-based practices that prioritize justice, equity, and public safety.

By addressing these critical issues, we can foster justice, reduce recidivism, and ensure that sentencing guidelines reflect the dignity and humanity of every individual. We have listed our recommendations below, beginning with our suggested reforms to federal drug sentencing guidelines.

1. Move Away From Weight-based Sentencing Frameworks

The Commission should move beyond weight-based sentencing frameworks, which currently overemphasize drug weight as a proxy for culpability. This approach often results in disproportionately harsh sentences for low-level offenders, such as couriers or individuals with limited roles in drug operations. Drug weight is influenced by market dynamics and does not always reflect a defendant's intent or actual harm caused. Reforming this approach to consider individual involvement, intent, and harm would align with the Commission's commitment to proportionality and fairness.

2. Prioritize Alternatives to Incarceration

There is a critical need to prioritize treatment and rehabilitation over punitive incarceration, particularly for individuals with substance use disorders. Recognizing addiction as a public health challenge rather than solely a criminal issue, sentencing guidelines should expand access to treatment-based alternatives, such as drug courts and diversion programs. Offering sentencing reductions for individuals actively participating in recovery programs, as well as increasing in-custody resources like medication-assisted treatment, aligns with the Commission's mission to reduce recidivism and promote public safety. We should also follow the science of addiction recovery, and recognize that a person's failure to complete a drug treatment on their first attempt does not mean we should give up on them.

3. Eliminate Crack Cocaine and Powder Cocaine Sentencing Disparity

The Commission should address long-standing disparities in drug sentencing. The crack versus powder cocaine disparity is one of the most egregious examples of inequity in federal sentencing guidelines. While past legislative efforts and a 2022 DOJ charging memo have narrowed this gap, achieving full parity is essential. Additionally, similar principles should be applied to sentencing for other substances, including methamphetamine and heroin, to ensure fairness across all drug types. Such efforts directly support the Commission's goal of eliminating disparities and fostering public confidence in the justice system.

4. Reform Methamphetamine Sentencing

Specific reforms to methamphetamine sentencing are also needed. Current guidelines disproportionately rely on purity levels, which are more reflective of market factors than of a defendant's intent or role. Weight thresholds for methamphetamine are also notably lower than those for other substances like heroin, leading to harsher penalties. Eliminating purity as a sentencing factor and adjusting weight thresholds for methamphetamine to align with other substances would enhance fairness and consistency in sentencing practices.

5. The Fentanyl Crisis is a Matter of Public Health

Dream.org believes that when addressing fentanyl, the opioid crisis demands a public health-centered approach rather than punitive policies that replicate the failures of the past. The overdose epidemic - which is emblematic of the crisis - has caused harm to communities throughout the country and our recently launched nationwide campaign, [Public Health Is Public Safety](#) seeks to address this crisis. Thus it is our contention that sentencing guidelines should emphasize prevention, treatment, and harm reduction strategies, such as community education programs, and access to naloxone. Efforts should focus on dismantling large-scale trafficking operations while avoiding mandatory minimums that disproportionately impact low-level offenders - who are often people in need of treatment. These steps align with the Commission's role in promoting fair and effective sentencing.

While our recommendations are responsive to the current fentanyl crisis it is important to note that when it comes to substance use of any kind, including but not limited to methamphetamine and cocaine, Dream.Org believes *all* substance use requires a comparable, public-health centered response.

6. Mens Rea Reform

Reforms to mens rea standards are also essential to ensuring justice and proportionality in sentencing. Current practices often fail to differentiate between intentional and unintentional involvement in drug offenses. Clear guidelines requiring proof of intent would better align sentencing with the principle of holding individuals accountable for their actual culpability.

Distinguishing between knowing and unknowing participation, particularly in cases of coercion or limited awareness, would reflect the Commission’s commitment to fairness.

People should not be sentenced to the same amount of time when they have different levels of culpability. The Government should have to have a heightened burden of proof and prove that defendants had awareness of the facts.

7. Reform Drug Conspiracy Sentencing

Similarly, reforms to drug conspiracy laws are necessary to ensure proportional accountability. These laws frequently hold defendants liable for the total drug quantities associated with a broader conspiracy, regardless of their knowledge or direct involvement. Limiting liability to the quantities an individual directly handled or knowingly participated in would result in more just outcomes. Additionally, requiring proof of awareness of the conspiracy’s scope before imposing enhanced penalties would align sentencing with the Commission’s principles of proportionality and fairness.

8. Pilot an Expansion of First Step Act Eligibility

The Commission should build on the success of the First Step Act by expanding its principles and scope to those individuals who are currently ineligible as a result of the crimes they committed. The Act’s emphasis on rehabilitation and reentry has achieved significant reductions in recidivism, with a 9% rate among eligible individuals, according to the 2024 First Step Act Annual Report. Here we challenge the Commission to pilot a program to expand eligibility for First Step Act programs to include currently excluded individuals and extend these benefits more broadly as described.

In addition to increasing access to risk reduction and reentry programs it is critically important to enhance the transparency of tools like PATTERN and SPARC-13 which would further the Commission’s mission to ensure equitable and effective sentencing practices.

Our ardent support for reforms to the supervised release guidelines, align with the Commission's role and mission to ensure fair sentencing practices and promote public safety.



Supervised release serves as a critical mechanism for oversight and a bridge to help individuals transition from incarceration to productive, law-abiding lives in their communities. These reforms emphasize evidence-based practices and aim to foster justice, reduce recidivism, and enhance community safety.

1. Expand Access to Drug Treatment, Employment, and Support Services

An individual's access to drug treatment, employment, and support services is essential for successful reintegration, and we must expand all such programs to make them more widely available. Likewise, comprehensive mental health care, substance use treatment, stable housing, and meaningful employment opportunities are foundational to addressing underlying issues that may lead to recidivism. It is important to note that relapse(s) should be treated as a health issue rather than a violation requiring incarceration, emphasizing treatment over punishment and fostering long-term recovery.

Restrictions that broadly prohibit work in certain industries or self-employment should be revised to open pathways to economic independence. Additionally, funding recovery and peer support programs can build networks of encouragement and accountability. It is also critical to align mandatory check-ins and program participation schedules with individuals' work hours to prevent job loss due to compliance conflicts.

Finally, implementing consistent Medicaid or equivalent health coverage before release from federal prisons will ensure continuity of care, especially in states lacking waivers.

2. Presumption of Early Release

The process for early termination of supervised release should be streamlined, with clear criteria and a transparent process for individuals who demonstrate sustained compliance, allowing them to earn early termination as a reward for positive behavior. Introducing a presumption of early release from supervision for individuals who remain in good standing and pose no danger to the community would significantly reduce caseloads. This approach not only rewards responsible behavior but also enables officers to dedicate more attention to individuals who require closer supervision.

3. Tailor Supervised Release Conditions to Individual Needs

Supervised release conditions must also be tailored to individual needs through personalized assessments that consider health, family responsibilities, and employment stability. Blanket restrictions, such as bans on technology or specific employment types, hinder reintegration and should be avoided. Furthermore, monitoring mechanisms must be incorporated to prevent racial disparities within the system.

4. Shift Toward Evidence-Based Practices

Shifting toward evidence-based practices, including positive reinforcement strategies, will encourage compliance through incentives rather than punitive measures, fostering motivation and supporting long-term behavioral change.

5. Address Barriers to Compliance

Barriers to compliance, such as excessive fees and fines, should be eliminated to reduce financial hardship and increase the likelihood of successful reintegration. This approach prioritizes rehabilitation over punitive financial measures and allows individuals to focus on rebuilding their lives.

6. Address Long-standing Inequities

Promoting racial and class equity within supervised release policies requires reviewing and revising practices that disproportionately impact individuals based on race or socioeconomic status. Regular assessments should be conducted to ensure equity in the application of conditions. And to the extent studies reveal the existence of disparities, policy change should be recommended. Moreover, officers should undergo implicit bias training and culturally competent supervision practices to foster fair treatment and equitable outcomes.

Public Outreach: As an organization that centers directly impacted people in all of our campaigns, we propose that the U.S. Sentencing Commission take proactive steps to enhance public awareness about its existence, purpose, and role. Specifically, the Commission should engage directly with communities across the country to provide education on its mission and goals.



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This initiative would inform the public, foster greater transparency, and create opportunities for community input. By doing so, the Commission can build trust, strengthen public understanding, and ensure its policies and practices align with the needs and concerns of the communities it serves. Dream.Org stands ready to assist the Sentencing Commission should it pursue such a project.

We appreciate the Commission including Dream.Org in the discussion and please know that it is our desire to continue conversations with the Commission in the coming session and beyond. We believe in the aims and purposes of the Commission and are committed to being a resource for the furtherance of your mission. Also know that as the Commission seeks to pull together an advisory board of formerly incarcerated individuals our Federal Advisory Council stands ready to participate.

Conclusion: At Dream.Org, we have witnessed the transformative power of second chances and the importance of creating pathways for individuals to rebuild their lives. Through bipartisan initiatives like the First Step Act and Dignity for Incarcerated Women campaigns, we have seen how bold and innovative solutions can lead to meaningful change.

Our recommendations to reform the federal drug sentencing guidelines and supervised release are aligned with the Commission's commitment to fairness and public safety while enabling individuals to contribute positively to their communities. By adopting these reforms, the Commission can advance its purpose while ensuring the supervised release system becomes a model for rehabilitation, accountability, and reduced recidivism. Thank you for considering these recommendations. We welcome the opportunity to provide further input or assistance as you move forward with these critical efforts.

Sincerely,
Janos Marton,
Chief Advocacy Officer,
Dream.Org



PERA

Federal Prison Education
and Reform Alliance

Jack T. Donson
Executive Director
Phone: 212 461-2252

Education and Support for the Justice Community and Advocacy for People in Federal Prison

Date: February 17, 2025

SUMMARY: Not imposing a term of supervised release will preclude people from earning First Step Act recredits and cost the government more money for incarcerating people for longer periods.

COMMENT: The preliminary proposal on Supervised Release (SR) changes where the Commission is proposing to discourage imposing SR on anyone who: (1) does not need SR due to their specific circumstances; and (2) who is or will be deported at the end of their carceral sentence. Specifically, the Commission asked for fee back on the "**unintended consequences**" that would impact a defendant's eligibility from the Commission's proposed changes in Chapter 5 of the Guidelines. See USSG Sec. 5D1.1(c) proposed changes.

By strongly discouraging SR for probable deportee's and those whose personal circumstances do not warrant a term of SR, those individuals who would **be otherwise eligible to earn FSA Time Credits under 18 U.S.C. Sec. 3632(d)(4)** would not be able to, specifically because:

18 U.S.C. Sec. 3624(g)(3) states the prisoners are to have the last year of their BOP custodial sentence converted to SR via the application of 365 credits (under Sec. 3632) If they have a term of SR included as part of their original sentence. Courts have interpreted this Section to prevent a prisoner from receiving any FSA credits if they were not sentenced to some amount of SR. **The preliminary proposal would prevent otherwise eligible prisoners from receiving FSA time credits no matter how much programming they do.**

For immigration cases, many individuals are extradited back to the US to face charges, others are seized on the high seas and paroled into the US to be charged, still others are here perfectly legal on visa's or as legal residents most of which are in the country legally and should not be subject to a final order of deportation until they have been seen by an immigration judge or proper process has been followed on issuing a "final order of removal." See 18 U.S.C. Sec. 3632(d)(4)(E)(i) which makes them FSA time credit ineligible only when they are subject to a final order of removal. It should be noted that people under direct appeal are currently being afforded the 365 days FSA credit and released early pending the final decision by the EOIR. The average cost of incarceration is nearly \$40,000.

If one of the purposes of the changes to the SR regulations is cost reduction, then as applied to certain sentences, not giving them some form of SR **would extend their carceral sentences and significantly cost more money to house and supervise them.**

Jack T. Donson, Executive Director

The Federal Prison Education and Reform Alliance
WWW.BOPERA.ORG

Public Comment - Proposed 2025 Amendments on Supervised Release and Drug Offenses

Submitter:

Paralegal Project

Topics:

Drug Offenses

Comments:

19 February 2025

Honorable Judges and Committee Members

you - the committee members - don't get it - you have sentenced addicts to such long terms of imprisonment - the reasons can be found by the offenses listed in their PSR/PSI - these addicts who have never been forced into rehab but instead have been arrested and charged with conspiracy, intent and Lord knows what else because the only way they can feed their habit is to work for their dealer often times getting sentences double what their dealer got. The government offer deals to the dealer to squeal on their supplier and higher ups so they get a lesser sentence but the addict has no one to squeal on (usually) so they get double punishment.

I once again am advocating for 24 month lockdown rehab with the same criteria as RDAP (which the court "recommends" so the BOP can deny them RDAP). So if you insist on making an addict serve this kind of time then the court should ORDER the BOP to put the addict in RDAP immediately and make consequences available against the BOP to the addict if not immediately placed in RDAP AND make the courts enforce the order. If you want to serve the public then you need to do a little more on the sentencing of addicts as addicts than as drug kingpins. Fair is fair but not under the current guidelines. An addict should never spend more time in prison than their dealer. Also there would be far less drug deaths if sentencing structure would change. If addicts got the RDAP program (or 24 month mandatory lockdown) – and as a reminder an inmate can sign out of RDAP which is why a 24 month lockdown rehab would be better - and include education and job training (and I am sure there are organizations that would provide this free of charge) then you get a productive citizen that cost the taxpayer \$53.5K per year for 2 years instead of 20 not counting yearly increases in BOP budget. This last year it is \$8.3 BILLION taxpayer dollars – your tax dollars, my tax dollars – EVERYONE'S tax dollars.

As a reminder the BOP wastes a lot of their budget – they are broke. Several of the prisons I

know about do not have food to feed the inmates properly, their buildings are in such disrepair they are closing them down and the overcrowding is worse now because the BOP won't release those eligible to go to home confinement but instead are moving the inmates to other overcrowded prisons. When Duluth closed the BOP moved the majority of the inmates were moved to Florence – no hot water, no heat, (I heard no a/c), limited food, no commissary, no sanitation supplies, the building is falling apart and the list goes on. The federal budget is already too big and your committee does more to increase it rather than looking for ways to economize but instead a lot to expand.

There needs to be an equitable way to sentence addicts (which come from an over-zealous medical community prescribing opioids without a remedy for the addiction they cause) and friends who get them hooked because being young and dumb is their only excuse. 60% of prison population is drug convictions. Society makes allowances for drug addicts (oh isn't that a shame attitude) rather than being proactive in solving the problem. Oh society has created a 'fix', plush rehab centers that cost thousands of dollars that addicts can't afford because they don't have college degrees and some not even a high school diploma therefore they're flipping burgers and spend a great deal on feeding their habit. Judges are partly responsible for this condition as they have addicts who have been in their court multiple times with no consequences (maybe a few days in county) and locking them up in county accomplishes nothing because there is no rehab in county. If there was a 24 month mandatory lockdown rehab after 2nd (or 3rd) visit to local court or anytime the Feds arrest an addict then our Federal Budget would be less – the BOP neglect and abuse would be much less and their control over how their sentence is served because the BOP would be made to observe the law and the needs of the BOP would be less because the there would be fewer population and hopefully a change is the way the BOP is operating. Addicts exacerbate the problems of the BOP - so why not do something about it instead of feeding the problem.

Be a problem solver – you can do it – if you want

Sincerely,

Paralegal Project

Submitted on: February 19, 2025



The Hood Exchange
1074 Astor Ave SW
Atlanta, GA 30310

February 19, 2025

United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002
Attn: Public Affairs – Priorities Comment

Dear United States Sentencing Commissioners,

My name is Sia Henry, and I am submitting this comment letter on behalf of the Hood Exchange. The Hood Exchange is introducing formerly-incarcerated Black populations to international travel, creating opportunities for them to connect with the African diaspora, learn about their history, begin to heal from racism and trauma, and develop plans to grow personally and professionally. I am writing today in response to the United States Sentencing Commission's (USSC) request for comments on the proposed amendments to drug offense sentences published on January 24, 2025.

I would like to start by commending this Commission for being bold and brave, listening to stakeholders, and embracing an approach to policy making more rooted in data, science, and sociological evidence. Recognizing that far too many people, especially those from historically oppressed and exploited communities, have been deeply harmed by our country's War on Drugs, the Hood Exchange applauds your willingness to do the important and long-overdue work of exploring revisions to the Drug Quantity Table (DQT).

Part A - Subpart 1 (Setting a New Highest Base Offense Level in Drug Quantity Table) Issues for Comment

- 1. Should the Commission consider setting the highest base offense level at another level? If so, what is the appropriate highest base offense level for the Drug Quantity Table?**

Decades of research have shown that, across the board, incarceration causes more harm than good. Incarceration does not improve public safety and has no association with reductions in



violent crime, rather, it may actually *increase* crime¹ and recidivism rates² in certain circumstances. In fact, this Commission itself has published reports indicating that, at the federal level, recidivism rates can be as high as 80%.³

Not only have prisons failed to improve public safety, they have also been found to have notably damaging psychological effects, both by causing new mental health issues and exacerbating existing ones, especially among those from and returning to highly oppressive social conditions.⁴ This is, in part, due to what many researchers have found to be high levels of violence and related traumatic events in carceral settings.⁵ Unfortunately, 2018 data from the Bureau of Justice Statistics shows prisons are only becoming more dangerous⁶. At least 35% of incarcerated men and 24% of incarcerated women have experienced some form of physical victimization behind bars, while 10% of men and 25% of women have been sexually victimized.⁷ According to a meta-analysis, traumatic events during incarceration, including victimization and abuse, solitary confinement, and coercion, were significantly positively correlated with post-traumatic stress disorder (PTSD) outcomes.⁸

Incarceration also has a residual, negative impact on the incarcerated person's family, especially their children⁹, and community.¹⁰ For instance, experiencing the incarceration of a parent is considered one of the ten Adverse Childhood Experiences on the ACEs questionnaire. Research

¹ Stemen, Don. The Prison Paradox: More Incarceration Will Not Make Us Safer. For the Record Evidence Brief Series, 2017. Retrieved from Loyola eCommons, Criminal Justice & Criminology: Faculty Publications & Other Works

² See, e.g., José Cid, "Is Imprisonment Criminogenic? A Comparative Study of Recidivism Rates between Prison and Suspended Prison Sanctions," *European Journal of Criminology* 6, no. 6 (2009), 459-80 (finding suspended sentences created a lower risk of reconviction than custodial sentences)

³ United States Sentencing Commission (2016). Recidivism Among Federal Offenders: A Comprehensive Overview. www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf

⁴ Wildeman, C., & Wang, E. A. (2017). Mass incarceration, public health, and widening inequality in the USA. *Lancet*, 389(10077), 1464-1474. [https://doi.org/10.1016/S0140-6736\(17\)30259-3](https://doi.org/10.1016/S0140-6736(17)30259-3); Sugie, N., & Turney, K. (2017). Beyond Incarceration: Criminal Justice Contact and Mental Health. *American Sociological Review*, 82(4).; Schnittker, J., Massoglia, M., & Uggen, C. (2012). Out and Down: Incarceration and Psychiatric Disorders. *Journal of Health and Social Behavior*, 53(4); Haney, C. (2001). The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment.

⁵ Dholakia, N. (2023). Prisons and Jails are Violent; They Don't Have to Be. <https://www.vera.org/news/prisons-and-jails-are-violent-they-dont-have-to-be>; Hopwood, S. (2021). How Atrocious Prisons Conditions Make Us All Less Safe. *Punitive Excess*.

⁶ Wang, L., & Sawyer, W. (2021). New data: State prisons are increasingly deadly places.

⁷ Widra, E. (2020). No escape: The trauma of witnessing violence in prison. <https://www.prisonpolicy.org/blog/2020/12/02/witnessing-prison-violence/>

⁸ Piper, A., & Berle, D. (2019). The association between trauma experienced during incarceration and PTSD outcomes: a systematic review and meta-analysis. *The Journal of Forensic Psychiatry & Psychology*, 30(5), 854-875.

⁹ Haney, C. (2001). From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities.

¹⁰ Beresford S, Loucks N, Raikes B. (2020). The health impact on children affected by parental imprisonment. *BMJ Paediatr Open*; 4(1):e000275. doi: 10.1136/bmjpo-2018-000275.



demonstrates both a correlation and a causal pathway between high ACEs scores and mental illness, with ACEs being correlated with depression, substance use disorders, anxiety, psychosis, personality disorders, and suicide.¹¹

Other countries that are economically similar to the United States have managed to incarcerate people for far shorter periods of time while realizing lower crime and recidivism rates (i.e., safer communities). In Norway and Finland, for example, imprisonment is only reserved for the most severe offenses with the maximum available sentence typically being no more than 21 years in Norway and 12 years plus probation in Finland. In both countries, the average prison sentence is less than one year.¹² Despite such significantly shorter sentences compared to the US, both Norway and Finland have recidivism rates between 20% and 30%.¹³

Given how damaging prisons can be for individuals and their communities while failing to improve public safety, incarceration can and should be used sparingly. Doing so also allows for significant cost savings that can then be reinvested into services and programs, like substance use treatment, that studies have found actually reduce recidivism and harm.

In light of this, of the presented options, we recommend the Commission elect Option 3, setting the new highest base offense level at 30. That being said, if the Commission is willing and able to set the highest base offense level even lower, we urge it to do so. After all, the guidelines already provide for aggravating factors that can significantly increase an individual's sentence far beyond the base offense level depending on the circumstances of each case.

2. The Commission seeks comment on whether it should instead consider reducing all base offense levels in the Drug Quantity Table. If so, to what extent? Should this reduction apply to all drug types and at all offense levels? Are there drug types for which the base offense levels should not be reduced or for which there should be a different base offense level reduction?

For the same reasons provided in response to Issue #1, the Commission should reduce all base offense levels in the DQT in proportion with the new, highest base offense level. This reduction should apply across all drug types. While different drugs have different physiological effects, there is limited to no evidence that longer sentences for seemingly more dangerous drugs deter their sale.

¹¹ Sheffler, J., Stanley, I., & Sachs-Ericsson. (2020). Chapter 4 - ACEs and mental health outcomes. In G. Asmundson & T. Afifi (Eds.), *Adverse Childhood Experiences* (pp. 47-69). Academic Press. <https://doi.org/10.1016/B978-0-12-816065-7.00004-5>

¹² Kristoffersen, R. (2024) *Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden 2018 - 2022*. University College of Norwegian Correctional Service.

¹³ Kristoffersen, R. (2024) *Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden 2018 - 2022*. University College of Norwegian Correctional Service.



The Commission, however, should consider further reducing base offense levels for cannabis and psychedelics (e.g., psilocybin, LSD, MDMA, ketamine, DMT, and ibogaine). These substances have relatively strong safety profiles; low potential for addiction; a growing body of research supporting their therapeutic benefits; and have garnered increasing political support at local, state, and federal levels. To date, 39 states have legalized medicinal cannabis while 24 have done so for its recreational use. Meanwhile, two states have allowed for regulated access to psilocybin and a growing number of municipalities have decriminalized psilocybin and other psychedelics.

Research has influenced many of these legislative shifts. Despite cannabis and most psychedelics continuing to be classified as Schedule I controlled substances, a growing body of research has found them to have promising potential in reducing, if not treating, debilitating mental health issues from PTSD to depression, substance use disorders, anxiety, and eating disorders. For example, Lykos Therapeutics has reported impressive safety and efficacy data in two Phase III clinical trials to support the approval of MDMA-assisted therapy for PTSD.¹⁴ Johns Hopkins Medicine has also completed waitlist-controlled pilot studies demonstrating the initial efficacy of psilocybin in treating major depressive disorder.¹⁵ Ultimately, as of March 2021, there were 70 registered studies investigating psychedelics for psychiatric disorders, though this number is sure to have since grown. Federal agencies are even beginning to take notice. The Food and Drug Administration (FDA) granted a breakthrough therapy designation to MDMA-assisted therapy in 2017, two breakthrough therapy designations for psilocybin in treatment-resistant depression in 2018 and major depressive disorder in 2019¹⁶, and the same status to an LSD formula for the treatment of generalized anxiety disorder in 2024.¹⁷ There has also been growing bipartisan

¹⁴ Lykos Therapeutics Announces FDA Acceptance and Priority Review of New Drug Application for MDMA-Assisted Therapy for PTSD (2024).
<https://news.lykospbc.com/2024-08-09-Lykos-Therapeutics-Announces-Complete-Response-Letter-for-Midomafetamine-Capsules-for-PTSD>

¹⁵ Johns Hopkins Medicine, Psilocybin Treatment for Major Depression Effective for Up to a Year for Most Patients, Study Shows (2022).
<https://www.hopkinsmedicine.org/news/newsroom/news-releases/2022/02/psilocybin-treatment-for-major-depression-effective-for-up-to-a-year-for-most-patients-study-shows>

¹⁶ Heal DJ, Smith SL, Belouin SJ, Henningfield JE. *Psychedelics: Threshold of a Therapeutic Revolution*. *Neuropharmacology*. 2023 Sep 15;236:109610. doi: 10.1016/j.neuropharm.2023.109610. Epub 2023 May 27. PMID: 37247807.

¹⁷ Joao L. de Quevedo. *FDA Grants Breakthrough Status to LSD Formula and Opens a New Frontier in the Generalized Anxiety Disorder (GAD) Treatment*, April 1 2024,
[https://med.uth.edu/psychiatry/2024/04/01/fda-grants-breakthrough-status-to-lsd-formula-and-opens-a-new-frontier-in-the-generalized-anxiety-disorder-gad-treatment/#:~:text=Legal%20Experts-,FDA%20Grants%20Breakthrough%20Status%20to%20LSD%20Formula%20and%20Opens%20a,Generalized%20Anxiety%20Disorder%20\(GAD\)%20Treatment&text=In%20a%20groundbreaking%20move%2C%20the,generalized%20anxiety%20disorder%20\(GAD\).](https://med.uth.edu/psychiatry/2024/04/01/fda-grants-breakthrough-status-to-lsd-formula-and-opens-a-new-frontier-in-the-generalized-anxiety-disorder-gad-treatment/#:~:text=Legal%20Experts-,FDA%20Grants%20Breakthrough%20Status%20to%20LSD%20Formula%20and%20Opens%20a,Generalized%20Anxiety%20Disorder%20(GAD)%20Treatment&text=In%20a%20groundbreaking%20move%2C%20the,generalized%20anxiety%20disorder%20(GAD).)



support to fund clinical trials exploring the use of psychedelics¹⁸ to treat traumatic brain injuries, depression, military sexual trauma, and post-traumatic stress disorder in veterans.¹⁹

- 3. Should the Commission retain some or all clauses in the mitigating role cap if it sets a highest base offense level at or below the current mitigating role cap? If so, what base offense levels should trigger the mitigating role cap? What is the appropriate decrease from those base offense levels?**

The Commission should retain all of the mitigating role cap clauses. Moreover, the highest base offense level for drug offenses is currently 38 with the mitigating role cap being applicable at level 32 or higher (i.e., the highest, seven levels for drug offenses). The Commission should maintain this range in its amendment. Therefore, if the new highest base offense level is 30, the mitigating role cap should trigger at level 24.

- 4. If the Commission were to promulgate Option 1, 2 or 3 from Subpart 1, should the Commission amend the chemical quantity tables at §2D1.11?**

Yes. The Commission should amend the chemical quantity tables to keep recommended sentences for Section 2D1.11 tied to but still less severe than the base offense levels in §2D1.1.

- 5. Part B of the proposed amendment would revise the Drug Quantity Table with respect to methamphetamine. If the Commission were to amend the Drug Quantity Table relating to methamphetamine, should that affect the Commission's consideration of a reduction of the highest base offense level in the Drug Quantity Table? If so, how?**

No. Again, the Commission should reduce the base offense levels for all substances on the Drug Quantity Table at the same rate while considering even further reductions for cannabis and psychedelics.

* * *

Part A - Subpart 2 (New Trafficking Functions Adjustment) Issues for Comment

- 1. The Commission has proposed that this specific offense characteristic decrease the offense levels by [2][4][6] levels. Should the adjustment be greater or lesser? Should the reduction be the same for all low-level trafficking functions?**

¹⁸ Referred to as “hallucinogenic substances” in the Controlled Substances Act.

¹⁹ Matt Saintsing, *The Potential Healing Power of Psychedelics*, November 27, 2023, <https://www.dav.org/learn-more/news/2023/veterans-and-the-new-psychedelic-renaissance/>



The Commission should decrease the offense level by six levels (or more) given that those carrying out low-level trafficking functions are often engaged in the least amount of harmful and/or violent activity. These people also tend to profit the least from trafficking and, therefore, their incentive to continue doing so is lower. For example, of those in the trafficking chain, having increased access to more lucrative, legal employment opportunities may be a sufficient deterrent from illegal activities compared to incarceration.

2. The Commission seeks comment on whether the new specific offense characteristic at §2D1.1(b)(17) properly captures low-level trafficking functions.

While the new specific offense characteristics sufficiently capture low-level trafficking functions, these should be offered as examples and not an exhaustive list to account for unique circumstances. Moreover, given that an individual's role may occasionally change for a limited amount of time, the language for §2D1.1(b)(17)(C) should be the less restrictive option proposed. That is, this section should read: "the defendant's primary function in the offense was performing any of the following low-level trafficking functions." In addition, for §2D1.1(b)(17)(C)(iii), the language should read: "one or more of the following factors is present . . ."

3. The Commission seeks comment on whether the distribution of retail or user-level quantities of controlled substances, when certain mitigating circumstances are present, merits a reduction. If so, what mitigating circumstances should the Commission provide?

The proposed mitigating factors with respect to distribution merit the same reduction as the other new specific offense characteristics. Allowing for this reduction will help stem the country's use of incarceration as our default approach to responding to mental illness and substance use disorders, both often factors contributing to an individual's involvement in user-level distribution²⁰. According to the National Institute on Drug Abuse, 65% of the prison population has an active substance use disorder (SUD), while an additional 20% did not meet the criteria for SUDs but were under the influence at the time of their crime.²¹ Meanwhile, about two in five incarcerated people have a history of mental illness, which is twice the prevalence of mental illness in the overall adult population.²²

²⁰ Semple, SJ. Strathdee, SA. Volkman, T. Zians, J. Patterson, TL. High on my own supply: correlates of drug dealing among heterosexually identified methamphetamine users. *Am J Addict.* 2011;20:516–24.

²¹ NIDA. (2020). Criminal Justice Drug Facts.

²² National Alliance on Mental Illness. Mental Health Treatment While Incarcerated. <https://www.nami.org/advocacy/policy-priorities/improving-health/mental-health-treatment-while-incarcerated/#:~:text=About%20two%20in%20five%20people,within%20the%20overall%20adult%20population.>



This reduction will also help address the nation's history of criminalizing survivors of sexualized and physical abuse and domestic violence. Arrest rates have been rising for women for the past 25 years, especially in drug charges where there has been a 216% increase in women while only having a 48% increase in men. About a quarter of women in jail are held on drug charges²³ while 75% of incarcerated women have been victims of domestic violence at some point in their life.²⁴ Researchers have pointed to the combination of financial instability and domestic violence as key factors contributing to this increase in women charged with drug offenses, the majority of whom are women of color and the wives, girlfriends, mothers, daughters, and sisters of men involved in the drug trade.²⁵

- 4. Section 2D1.1(a)(5) provides an additional decrease to the base offense level based on the application of the mitigating role adjustment at §3B1.2 (Mitigating Role). How should the Commission amend §2D1.1(a)(5) to account for the new low-level trafficking functions adjustment?**

The Commission should provide that, in any given case, between the Mitigating Role reduction and the new low-level trafficking functions adjustment, the reduction that allows for the lowest base offense level should be the one applied.

- 5. Section 2D1.1(a)(5) also sets forth a maximum base offense level of 32 based on the application of the 4-level reduction ("minimal participant") at §3B1.2(a). How should the Commission amend §2D1.1(a)(5) to account for the new low-level trafficking functions adjustment?**

If the new low-level trafficking functions adjustment allows for a lower base offense level than the minimal participation reduction, the new low-level trafficking functions adjustment should apply.

- 6. Subpart 2 includes a special instruction providing that §3B1.2 (Mitigating Role) does not apply to cases where the defendant's offense level is determined under §2D1.1. The Commission seeks comment on whether this special instruction is appropriate.**

The Commission should provide guidance that allows for the lowest base offense level.

²³ Herring, T. (2020). Since you asked: What role does drug enforcement play in the rising incarceration of women? <https://www.prisonpolicy.org/blog/2020/11/10/women-drug-enforcement/>

²⁴ Alessi, G. Maskolunas, K. Braxton, J. Murden, T. & Rhodes, R. (2023) Implementing Domestic Violence Peer-Support Programs in Jail: A Starting Point. safetyandjusticechallenge.org/wp-content/uploads/2023/07/2023DomesticViolencePeerSupportReport.pdf

²⁵ Harrell, M (2019). Serving Time for Falling in Love: How the War on Drugs Operates to the Detriment of Women of Circumstance in Poor Urban Communities of Color. www.law.georgetown.edu/mcrp-journal/wp-content/uploads/sites/22/2019/12/GT-GCRP190027.pdf



7. **Some guidelines provide an instruction to use the offense level from another Chapter Two offense guideline. This can result in a case in which the defendant is sentenced under a guideline other than §2D1.1 but the offense level is determined under §2D1.1. In such a case, the defendant could qualify for both a low-level trafficking functions adjustment under §2D1.1 and a role adjustment under Chapter Three, Part B. The Commission seeks comment on how it should address this issue.**

The Commission should provide guidance that allows for the lowest base offense level.

* * *

Call for Retroactive Application

There are roughly 63,000 people serving federal sentences for drug-related offenses. Some of those sentences range from several decades to life.²⁶ These sentences were based on previous and current iterations of the sentencing guidelines' Drug Quantity and Conversion Tables, which rely on outdated medical, scientific, and sociological information²⁷. Given the magnitude of the proposed changes in the guideline range, and in the interest of justice, upon moving forward with amending sentencing guidelines for drug offenses, we strongly urge the Commission to also amend relevant policy statements to permit relief under 18 U.S.C. §3582(c)(2). Specifically, any drug-related sentencing guideline amendments should be included in the list of covered amendments in §1B1.10(d) to indicate all of these new amendments should be applied retroactively. The Commission has elected to do this in connection with previous, drug-related amendments, most notably the 2007 Crack Cocaine Amendment, 2011 Fair Sentencing Act Guideline Amendment, and 2014 Drugs Minus Two Amendment.²⁸ We see no reason why the USSC should not do so again with respect to these new proposed amendments.

* * *

Sincerely,
Sia Henry
Executive Director, The Hood Exchange

²⁶ Federal Bureau of Prisons, (2025). *Offenses*. https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

²⁷ Not only do the current guidelines recommend disproportionately severe penalties, they have no basis in the actual risks posed by each substance, the realities of the illicit drug market, criminal culpability, or other public safety factors. (Jonathan Perez-Reyzin, Leslie Booher & Ismail Ali, *Unfinished Business: Revisiting the Drug Conversion Tables and Their Treatment of MDMA*, 35 Federal Sentencing Reporter 24–26 (2022); *see also*, Hon. Lynn Adelman, *Sentencing Drug Offenders Justly While Reducing Mass Incarceration*, 34 Federal Sentencing Reporter 2–11 (2021))

²⁸ *See* USSG, App. C, amend. 713 (Adding amend. 706 as amended by 711); USSG, App. C, amend. 759 (Adding amend. 750 in part); USSG, App. C, amend. 788 (Adding amend. 782).

Public Comment - Proposed 2025 Amendments on Supervised Release and Drug Offenses

Submitter:

Susan Conforti, Jewish

Topics:

Supervised Release

Drug Offenses

Comments:

Please use mercy to temper justice.

Submitted on: January 27, 2025

Public Comment - Proposed 2025 Amendments on Supervised Release and Drug Offenses

Submitter:

John Marshall, Rhode Island

Topics:

Supervised Release

Comments:

I would agree there remain many challenges in federal sentencing, however only see U.S. Probation as part of any potential solution vs. part of the problem. These amendments appear to be primarily focused on reducing and/or removing supervised release in many cases. While I cannot speak to the work of each of our 94 districts, I can for mine (and many others given my national work and experience, particularly in the 1st Circuit). Effective supervision positively impacts the lives of so many we supervise; breaking long cycles of abuse and misconduct. The byproduct of this work increases the number of productive members of our society, while improving community safety. It typically takes many years of criminal conduct for an individual to find their way into our federal court system. If sentenced to jail, they often come out worse off than when they went in. U.S. Probation is there to help individuals successfully re-enter society; removing obstacles, addressing needs, while holding them accountable to the orders of the Court, to any victims, their families, and for needed behavioral changes. This work does not happen overnight, often taking years to effectuate long-lasting benefits.

Reducing supervised release across the board, which is really what these amendments will do, shrinks the U.S. Probation workforce in a significant and long-term manner. I anticipate a dramatic negative impact on our work reducing recidivism and assisting those in our system to lead more productive lives. Doing so also impacts and limits our ability to serve our U.S. District Courts, whether that is at the pretrial phase (most districts are combined for both functions), at sentencing or during post-conviction supervision efforts, which often include our support of Court lead initiatives such as problem-solving courts across the country. With smaller staffs, come less funding, thus less treatment and rehabilitative services, including second chance act spending (for housing as an example) will be available.

This is an extremely concerning set of amendments as it negatively and most directly impacts a group that is doing the critical work of behavior change that has both short term and long-term positive consequences. If terms of supervised release are too long, the Courts already have the

necessary discretion in many cases to set limits as they see fit, both at initial sentencing and at revocation, in addition to the use of Early Termination, which immediately ends any term of supervised release upon order.

I ask that you please reconsider such a hard push to eliminate such a valuable tool. Thank you for your consideration.

Submitted on: February 5, 2025

Public Comment - Proposed 2025 Amendments on Supervised Release and Drug Offenses

Submitter:

Sheila Sullivan, The Body of Christ

Topics:

Drug Offenses

Comments:

Honorable Judge,

I am in full support of fair sentencing in drug cases and support any changes that will bring this result especially in methamphetamine cases. Thanks for listening. Respectfully submitted

Submitted on: February 21, 2025

Re: Response to Proposed Amendments to Chapter 7 of the United States Sentencing Guidelines

Dear Members of the Sentencing Commission,

I am writing to express my concerns regarding the proposed amendments to Chapter 7 of the United States Sentencing Guidelines. In the past I have been reluctant to respond to request for feedback from the Commission, as I felt the changes were already a foregone conclusion. However, currently, I feel that it is imperative that I provide feedback regarding these proposed amendments which appear to significantly reduce the consequences for violations of conditions of supervision. To the extent that this commission believes that hearing from a twenty-three-year veteran officer, who has significant experience in both the corrections and mental health fields, I would like to offer my thoughts on this matter.

As you all know, supervised release is a crucial mechanism in the criminal justice system, designed not only to reintegrate individuals into society but also to ensure compliance with the law post-incarceration. A well-functioning system requires a balance of support and accountability. If the consequences for violations are weakened, this balance is disturbed, sending the wrong message to individuals under supervision—that noncompliance is tolerable, and that the authority of the court is negligible.

Many individuals under our supervision have long histories of impulsivity, poor decision-making, and unstable lifestyles. Supervision conditions such as: drug tests, employment requirements, and treatment programs are designed to help them not only with specific issues in their lives but also to help them build a healthier law-abiding lifestyle. When violations go unaddressed, these individuals remain stuck in destructive habits and patterns of behavior that brought them before the Court in the first place. Appropriate judicial consequences reinforce the importance of accountability, sending the message that these conditions exist for a reason, and compliance is not optional. Additionally, as they pay attention to what happens to other individuals being supervised by the Court, it allows them to see that good behavior will be rewarded, while violations will lead to increased restrictions or incarceration.

Psychological research has repeatedly shown that when people believe punishment is certain and unavoidable, they are far less likely to engage in negative behaviors. This concept is simple to see, if any of you have been on a heavily patrolled piece of highway, where speeding is routinely met with a ticket, you'll notice that people get the message quickly and proceed through that area accordingly. People will change their behavior, even if for a short period of time, to avoid a negative consequence.

It is important to note, that true change in someone comes from “with-in” the person, not from “outside” the person. I have been able to show all my supervisees an “open door to some type of assistance with a problem” but ultimately only they can walk through the door. In fact, according to psychologists, there are “Four Stages of Readiness to Change,” that determine the overall likeliness for an individual to truly make a positive change in their life (such as to stop using illegal drugs), and they are as follows (ranked lowest to highest): 1) Being compelled by authority to change (lowest level); 2) Attempting change to appease loved ones; 3) Understanding and knowing intellectually that changing the behavior is in their best interest; and 4) Being both intellectually aware of the benefits and also being fully and deeply committed to making a permanent behavioral change.

As you may guess, most of the individuals we deal with fall into the first and lowest level, “being compelled by authority.” However, even though this is the lowest level, when combined with trying to avoid a consequence from the Court, I have been able to help a multitude of individuals make significant changes in their lives. Sometimes an individual returned to jail for violations, when they desired to “test” if the “compelling authority” was serious about requiring them to make these changes. However, every

single who eventually made these changes, thanked me and often the Court for “holding their feet to the fire” and keeping them on the right path. By doing so, these individuals developed new healthier lifestyles, often ones that were completely foreign to them, with new hobbies, new skills, and new friends. Despite initially making the changes because they were being told they had to do so, they began to see the benefits of these changes in their lives, and in the end were able to want that change permanently for themselves.

Therefore, the fear of consequence has often acted as a catalyst for transformation, forcing individuals to engage in rehabilitation, maintain employment, and comply with the terms of supervision when they otherwise would have continued a path of self-destruction. Without this clear structure of accountability, many of these individuals would have remained entrenched in negative behaviors, cycling in and out of the system. The impact of certain and proportional judicial responses cannot be overstated—when individuals understand that violations will lead to immediate and predictable sanctions, they are far more likely to take their supervision seriously and commit to real change.

Unfortunately, this rarely happens without a “compelling authority.” I have witnessed the ineffectiveness of judicial authorities, who falsely believe that leniency and overindulgent compassion will result in an individual feeling “grateful” and “fortunate” to the point of being willing making the necessary changes to their negative behavior patterns merely out an altruistic desire to be a better person. I have never seen this to be true in my thirty years of working with individuals in the criminal justice system.

Cognitive Behavioral Therapy for Criminal Offenders (which is taught in the Bureau of Prisons and in therapy sessions upon their release) teaches these individuals to link their actions with consequences, and to therefore “think” about the consequences prior to choosing a behavior. This form of therapy has shown to reduce recidivism, as it causes individuals to act in a less compulsive manner to avoid negative consequences. However, if there are “no” consequences, then I do not ask myself why an individual is continuing the same destructive behaviors, I ask, “why wouldn’t they continue?” It is working for them, as they are receiving no negative consequence for doing so There is no one enforcing the speed limit on the road!

While it is important to ensure fairness and proportionality in sentencing, significantly attenuating the penalties for violations risks undermining the entire system of supervised release and probation. The consequences of watering down Chapter 7 in the manner being proposed, is clearly to encourage judicial authorities to either simply ignore the violations all together, or issue mere warnings, rather than any meaningful consequences. This lack of enforcement will simply embolden individuals under supervision to disregard their conditions, knowing there are few real consequences. I fear the result will reduce federal probation to a meaningless bureaucratic process, rather than a tool for rehabilitation and accountability. Please do not let this happen and disregard the proposed changes to Chapter 7. Thank you for the opportunity to share my opinion.

Respectfully submitted,



Chris K. Whitver
Sr. United States Probation Officer
Southern District of Mississippi