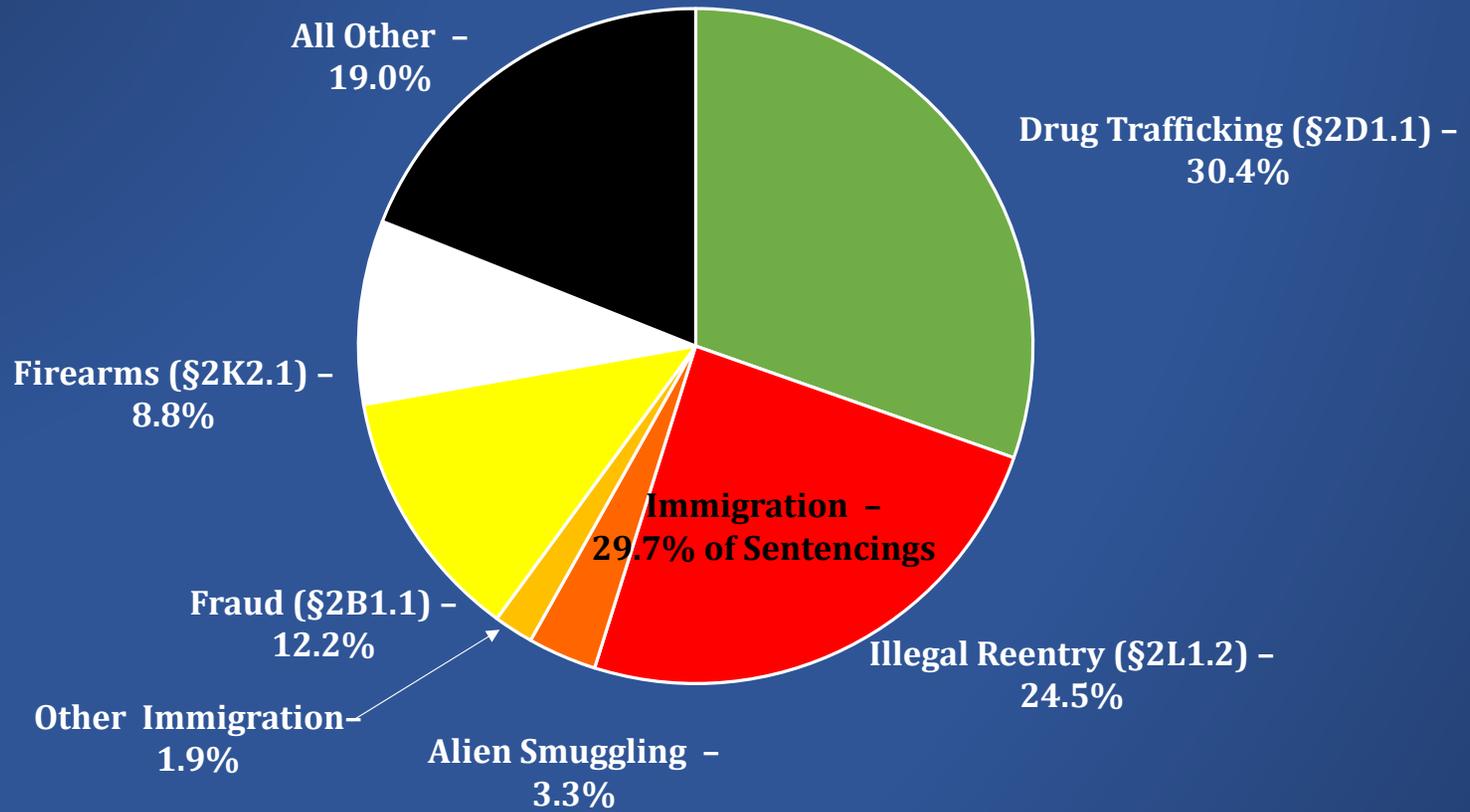




# Proposed Amendments to Immigration Guidelines

# Most Frequent Guidelines Applied Fiscal Year 2014



• SOURCE: United States Sentencing Commission 2014 Data file USSCFY2014.



# Proposed Amendment §2L1.1 - ALIEN SMUGGLING



## Department of Justice Concerns

4

- Alien smuggling operations are more likely to be “lucrative,” larger-scale enterprises associated with organized crime;
- The smuggling of “unaccompanied minors” leads to the minors being “subject to a multitude of abuses...including sexual assault, extortion and other crimes”; and
- Expand the current definition of “minor” to include 16 and 17 year olds.



# Highlights of §2L1.1 Proposed Amendment

5

- Revises the alternative base offense levels
  - Option One: increases BOL (a)(3) from 12 to 16
  - Option Two: increases BOL (a)(3) from 12 to 16 only if defendant smuggled, transported, or harbored as part of an ongoing commercial activity



## Highlights of §2L1.1 Proposed Amendment

6

- Addresses unaccompanied minors at §2L1.1(b)(4)
  - Expands application of enhancement from defendant-based to offense-based
  - Revises definition of minor to include 16 and 17 year olds
- Clarifies that the 4-level enhancement for “serious bodily injury” at §2L1.2(b)(7) applies if the offense involved criminal sexual abuse



## §2L1.2 - ILLEGAL REENTRY



## Current Illegal Reentry Guideline- §2L1.2

8

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

**+16**



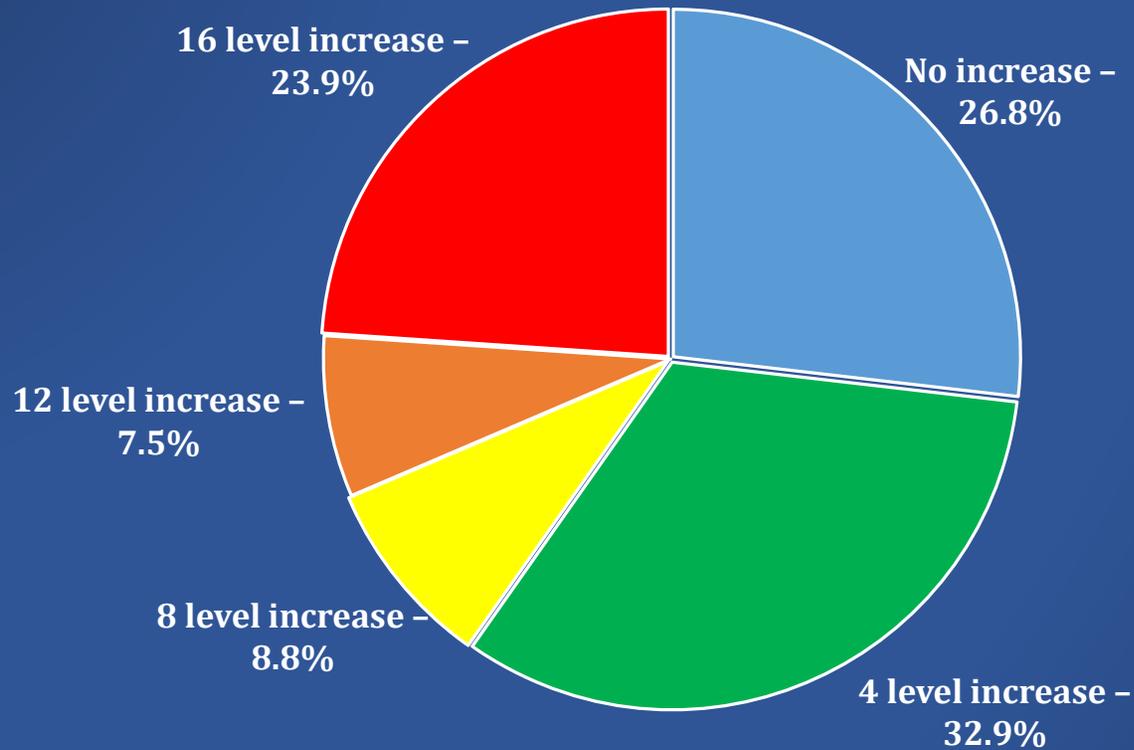
## Current Illegal Reentry Guideline- §2L1.2

9

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



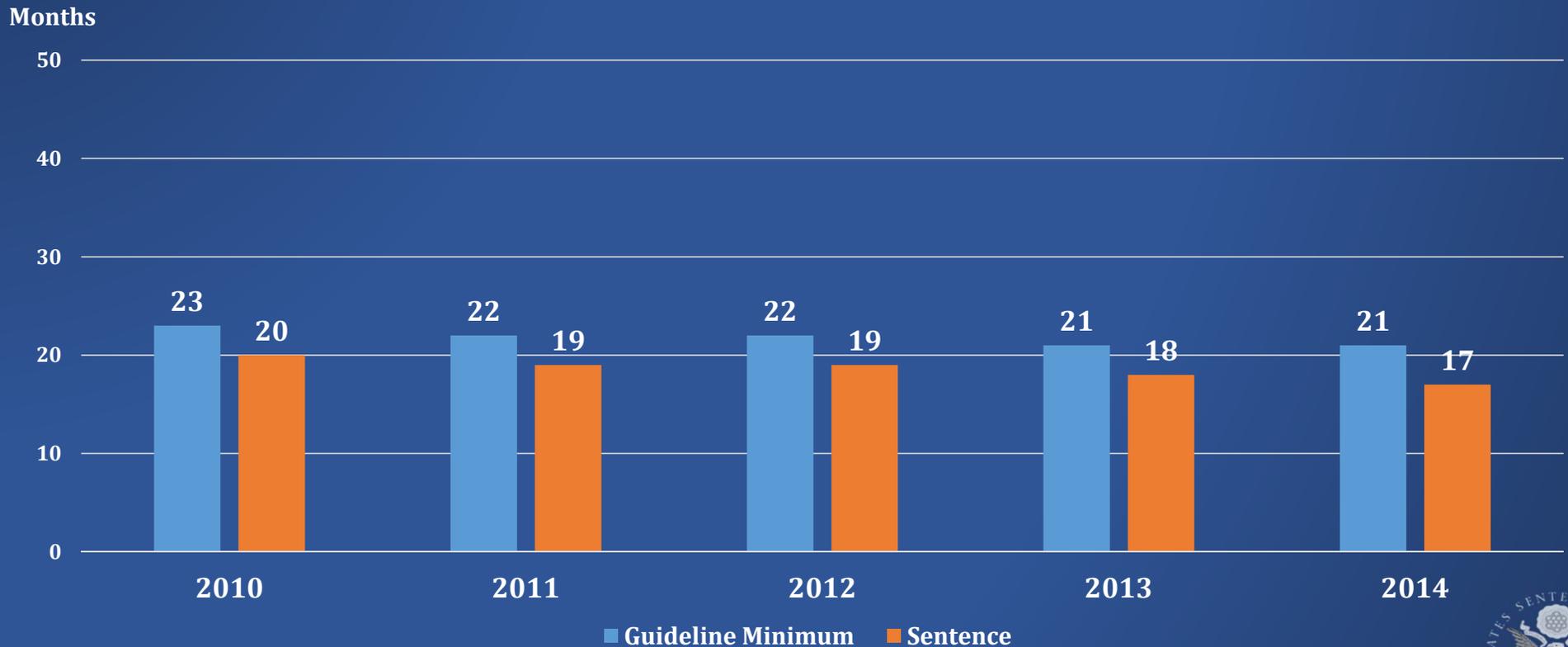
## Distribution of Illegal Entry Defendants by Current §2L1.2 (b)(1) Level



- SOURCE: United States Sentencing Commission 2014 Data file USSCFY2014.



## Average Guideline Minimum and Average Sentence Illegal Reentry Defendants Fiscal Years 2010 - 2014



• SOURCE: United States Sentencing Commission 2010 to 2014 Data files USSCFY10 - USSCFY14.

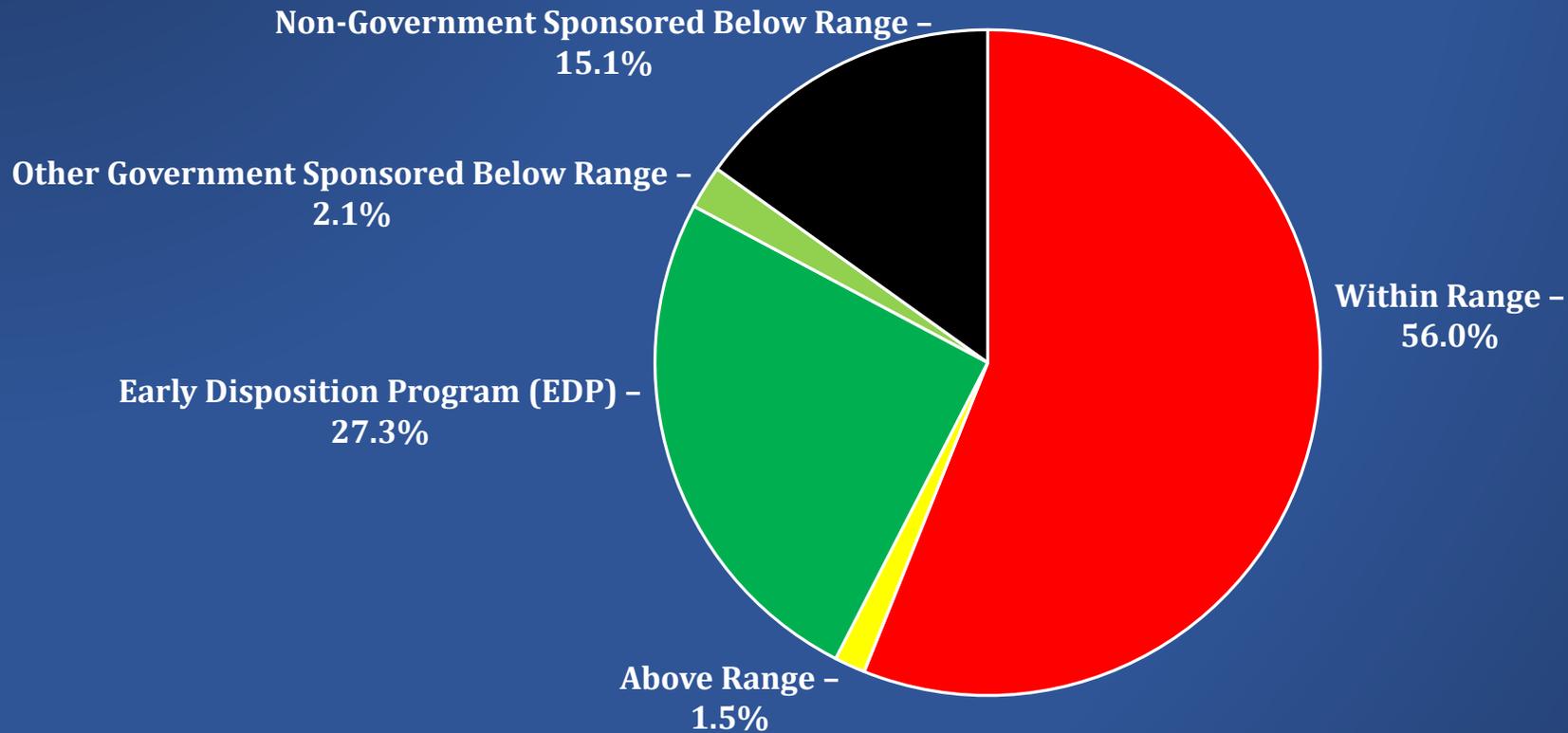


## Reasons for Examining Illegal Reentry

- Comment that calculating the guideline is too complicated and gives rise to frequent litigation because of the “categorical approach”;
- Concern that 16-level enhancement for prior felonies listed at subsection (b)(1)(A) is overly severe and inconsistently applied; and
- Commission research suggesting additional factors regarding the dangerousness and culpability of the defendant that may be relevant.



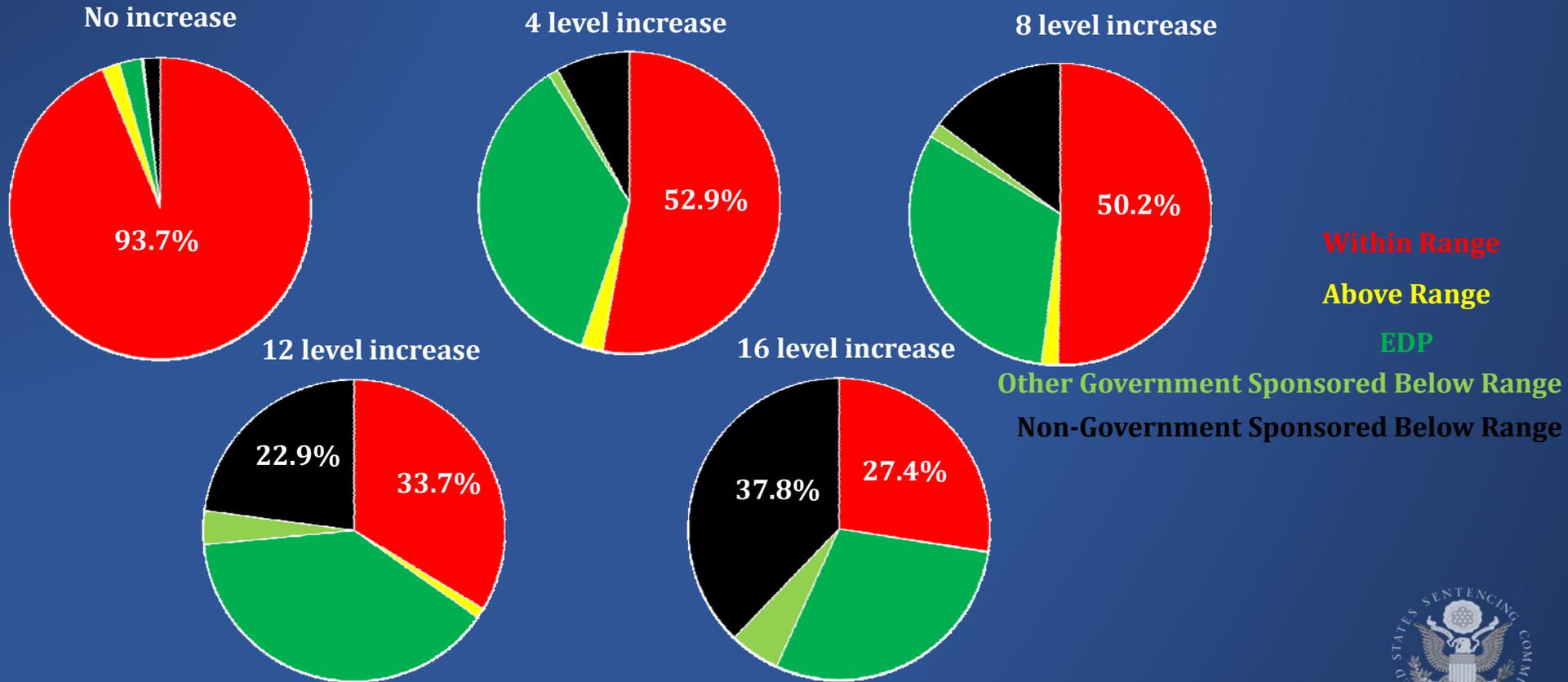
# Position of the Sentence Imposed Relative to the Guideline Range for Illegal Reentry Fiscal Year 2014



• SOURCE: United States Sentencing Commission 2014 Data file USSCFY2014.



# Position of the Sentence Imposed Relative to the Guideline Range by (b)(1) Enhancement Level – Illegal Reentry Fiscal Year 2014



• SOURCE: United States Sentencing Commission 2014 Data file USSCFY2014.



# Commission Research Project Fiscal Year 2013 Data



## Commission Research Project Fiscal Year 2013 Data

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



## Commission Research Project Fiscal Year 2013 Data

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



# Commission Research Project Fiscal Year 2013 Data

## “Illegal Reentry Offenses”

This report may be found on the Commission’s home page at:

[www.ussc.gov](http://www.ussc.gov)



# Proposed Amendment for §2L1.2 – ILLEGAL REENTRY



## How the Proposed Amendment Responds to Concerns

- Simplifies guideline calculation by eliminating the “categorical approach” and basing enhancements for prior criminal convictions on the length of sentence imposed;
- Reduces level of enhancements for felony convictions prior to first deportation;
- Accounts for additional factors relevant to culpability and dangerousness: multiple prior illegal entry convictions and felony convictions occurring after reentry; and
- Does NOT change average guideline minimum.



## First Factor: Number of Prior Illegal Reentry Convictions

- Proposed alternative base offense levels:
  - (a)(1) – Two or more illegal reentry convictions **[14]**
  - (a)(2) – One prior illegal reentry conviction **[12]**
  - (a)(3) – No prior illegal reentry convictions **[10]**



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

- (b)(1)– If before the first deportation, the defendant sustained:
  - Felony conviction with sentence  $\geq$  24 months imposed **[+8]**
  - Felony conviction with sentence of 12 to 23 months imposed **[+6]**
  - Felony conviction with sentence  $<$  12 months imposed **[+4]**
  - 3+ misdemeanor convictions involving drugs, crimes against the person or both **[+2]**
- For the enhancement to apply, the conviction must receive criminal history points
- Do not count illegal reentry convictions for this enhancement



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

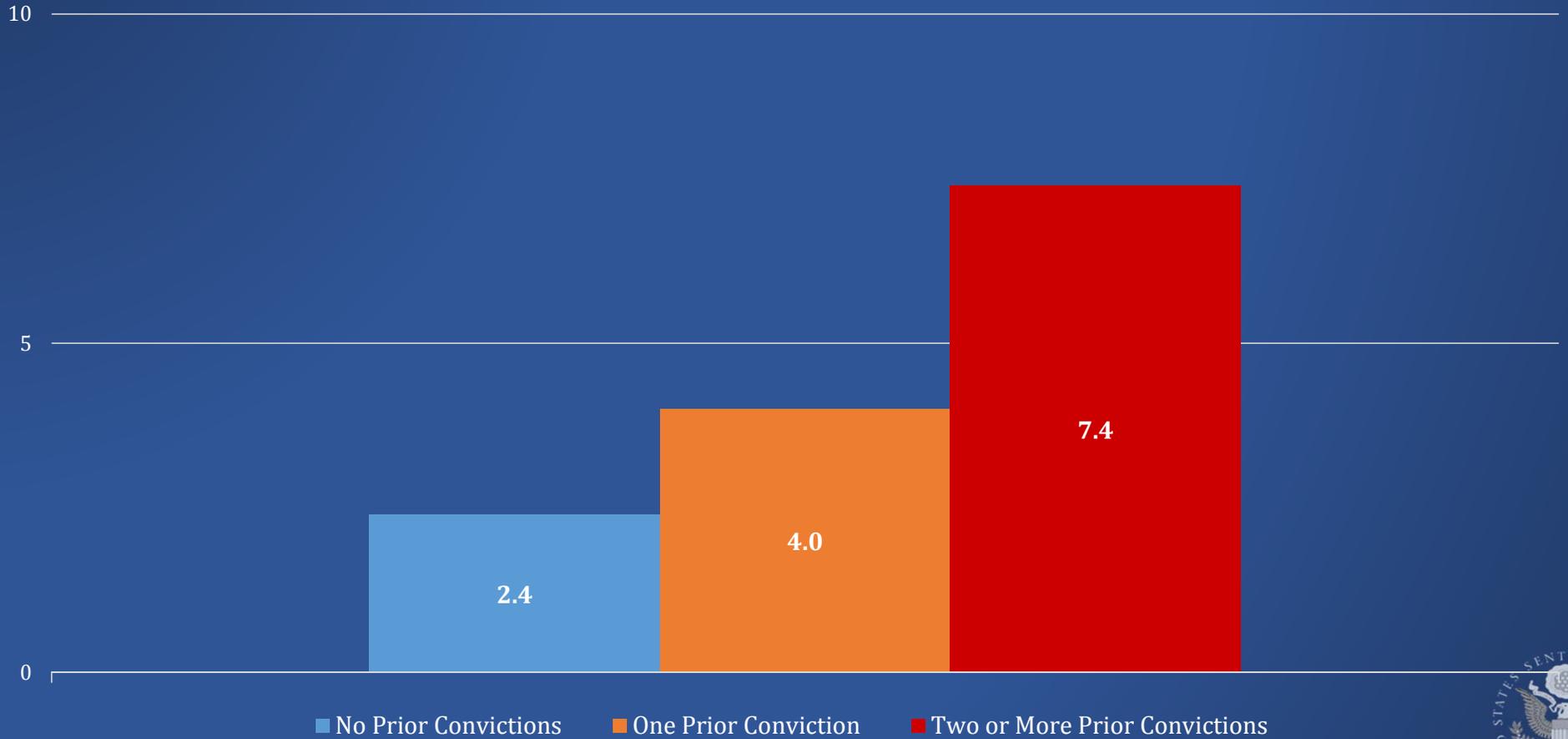
- (b)(2) – If after the first deportation, the defendant sustained:
  - Felony conviction with sentence  $\geq$  24 months imposed **[+8]**
  - Felony conviction with sentence of 12 to 23 months imposed **[+6]**
  - Felony conviction with sentence  $<$  12 months imposed **[+4]**
  - 3+ misdemeanor convictions involving drugs, crimes against the person or both **[+2]**
- For the enhancement to apply, the conviction must receive criminal history points
- Do not count illegal reentry convictions for this enhancement



# Proposed Amendment Base Offense Level

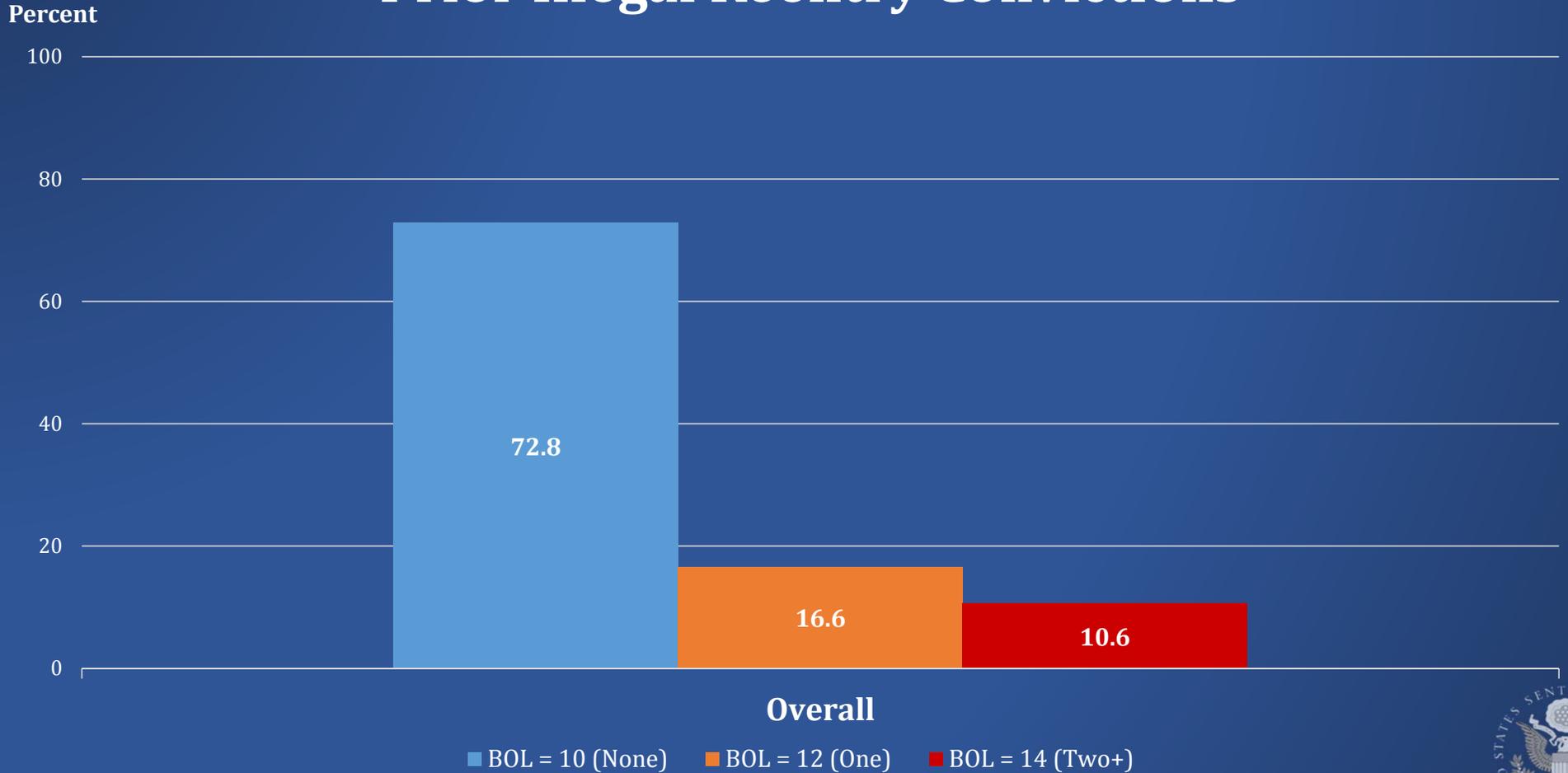
# Average Number of Deportations by Number of Illegal Reentry Convictions

Average Number of Deportations



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

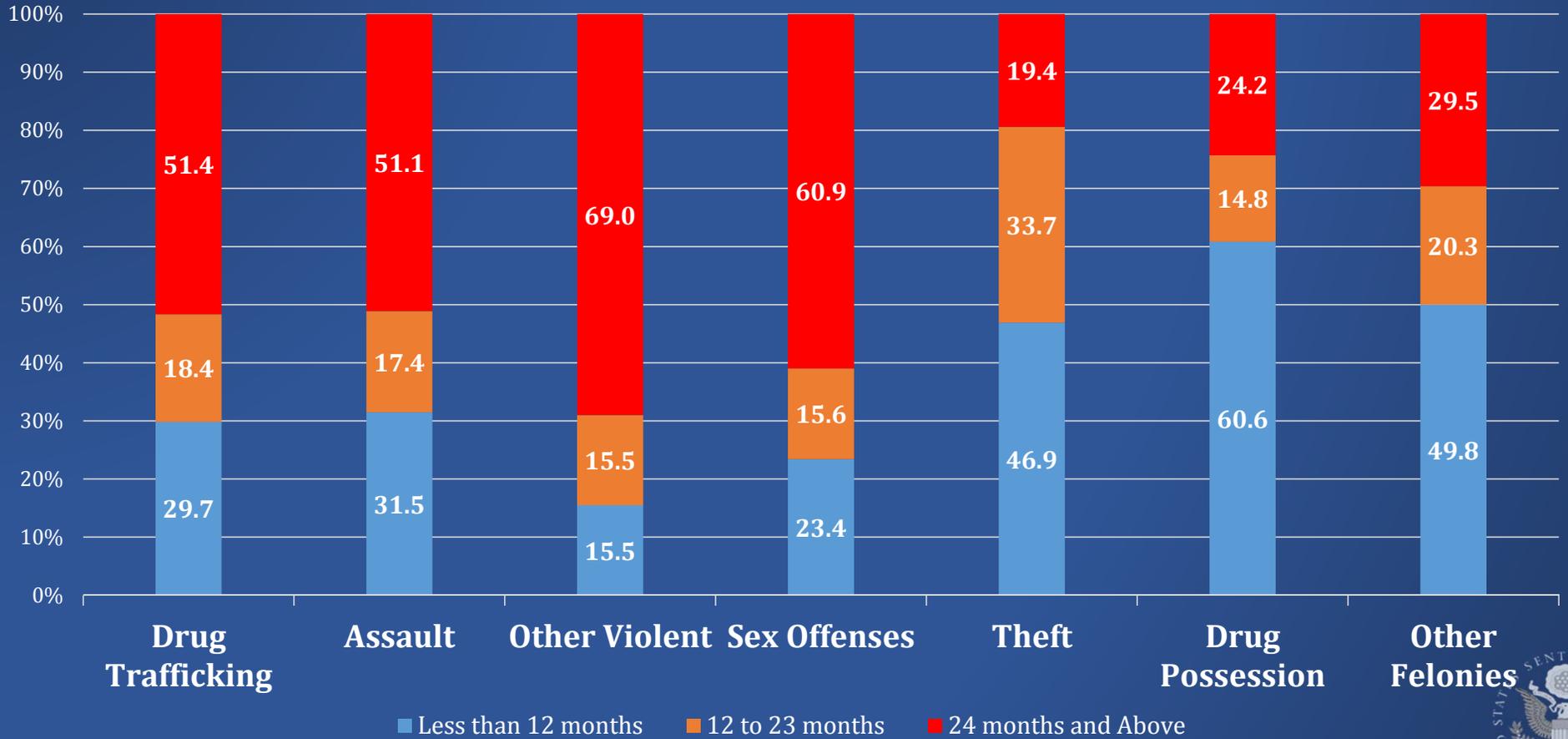
# New Base Offense Level Based on Prior Illegal Reentry Convictions



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

## **Proposed Amendment Specific Offense Characteristics**

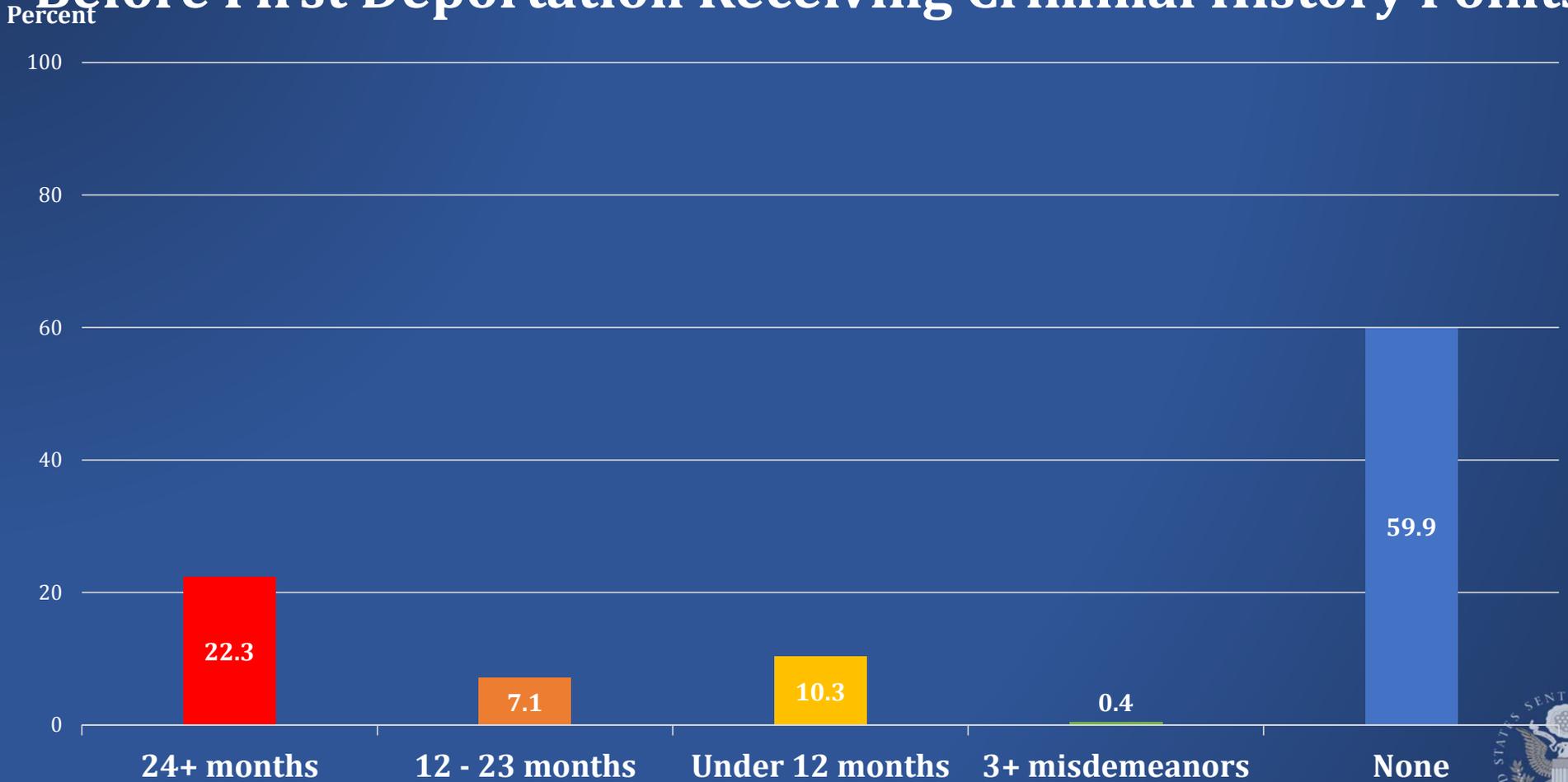
# Average Sentence Length for Prior Felony Convictions: Offenses Receiving Criminal History Points by Major Offense Types



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



# New (b)(1) – Longest Sentence Length for Felony Convictions Before First Deportation Receiving Criminal History Points



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



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

Percent

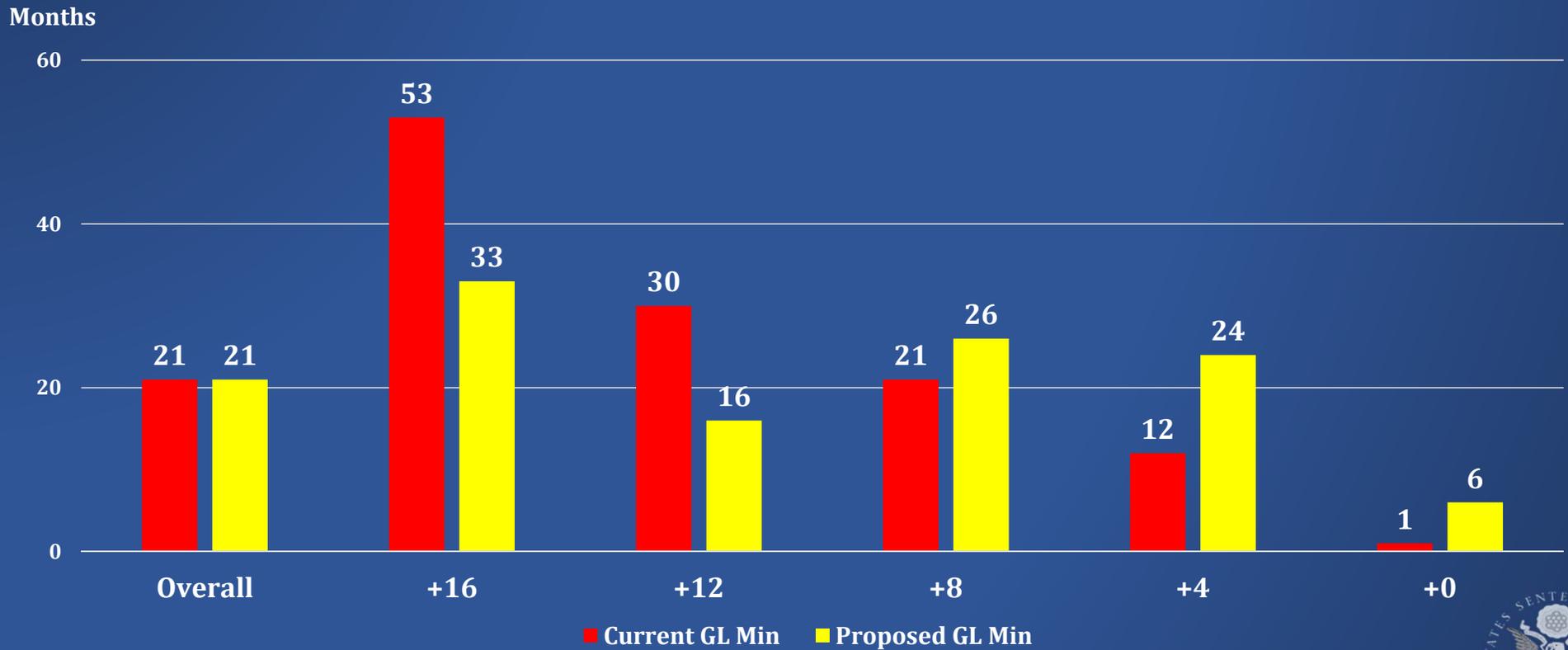


SOURCE: United States Sentencing Commission 2013 Illegal Reentry Special Coding Project Data.



**Proposed Amendment  
Change in Average Guideline Minimum**

# Illegal Reentry Proposed Amendment Change in Average Guideline Minimum



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



# Public Comment

- The proposed amendments and Issues for Comment are available online on the Commission's home page at :

[www.ussc.gov](http://www.ussc.gov)

- The Commission welcomes all public comment on these proposals. Please email them by March 21, 2016 to:

[Public\\_Comment@ussc.gov](mailto:Public_Comment@ussc.gov)



