REFORM

March 3, 2025

Honorable Judge Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle N.E.
Suite 2-500
Washington D.C. 20002-8002

RE: Public Comment on USSC Proposed Amendments to Sentencing Guidelines Concerning Supervised Release

Dear Judge Reeves and fellow Commissioners:

On behalf of REFORM Alliance, a national organization that focuses exclusively on community supervision policies and practices around the country, we are pleased to submit the following comments regarding effective and essential amendments to the sentencing guidelines concerning supervised release.

Introduction

As Chief Policy Officer at REFORM Alliance, I work with our Chief Executive Officer Jessica Jackson and our Executive Leadership Team, under the direction of our Board, to advance public safety solutions through evidence-based policies and best practices in community supervision. At REFORM, we aim to transform community supervision by changing laws, systems, and culture to create real pathways to meaningful second chances. We believe that a justice system that holds people accountable and redirects them back to work and wellbeing leads to safer communities.

We work at all levels of the system, from local county departments up to state and federal government, even passing a resolution on social reintegration in the United Nations. We partner with local coalitions and public safety stakeholders, prioritizing unlikely allies, including law enforcement, employers, crime survivors, directly impacted advocates, experts, practitioners, and thought leaders to champion evidence-based policy solutions that make communities stronger and safer. REFORM's policies consistently prioritize common-sense supervision solutions that hold people accountable, incentivize good behavior, and encourage success and rehabilitation, all while strengthening families and making communities safer. A core function of REFORM's mission is our commitment to bipartisanship: every policy that we advance is supported by a bipartisan coalition. Even at the height of political polarization, we have found bipartisan consensus on supervision reforms by centering our solutions on public safety and community stability.

Since our founding in 2019, REFORM has built and led community coalitions to pass 18 bills in 11 states, including: California, Michigan, Louisiana, Virginia, Florida, Georgia, Mississippi, New York, New Jersey, Illinois, and Pennsylvania. These 18 bipartisan bills in 11 states create pathways for more than 800,000 people to exit the system over five years, marking a measurable step forward to safely transition people out of the criminal legal system and set them up for lasting success in the community.

REFORM has been an active leader in efforts to develop and advance the Federal Safer Supervision Act, bipartisan legislation championed by dozens of organizations, including Conservative Political Action Conference (CPAC) and Drug Policy Alliance, practitioners and stakeholders including the National Association of District Attorneys and the National Association of Public Defense, law enforcement leaders like Federal Law Enforcement Officers Association and the Major Cities Chiefs Association, and

sponsored in the Senate by Senator Coons and Senator Cornyn and in the House by Representative Hunt and Representative Ivey.[1] We are proud to be a part of the Safer Supervision Coalition, which has banded together, across political divides, to advance this legislation that prioritizes our public safety and shrinks government overreach and waste by right-sizing our supervised release system and refocusing our system on evidence-based practices that lead to long-term community success. The polices in SAFER Supervision were developed through extensive consultation with leading experts, practitioners, and stakeholders, drawing on the direct experiences of our partners with supervised release (with some partners serving supervised release and others serving as probation officers overseeing those on supervised release) to find consensus in evidence-based solutions that work for all of us. The proposed amendments to the guidelines regarding supervised release are wholly consistent with the aims and language in SAFER Supervision. For the reasons stated below, we strongly support both the SAFER Supervision Act and the proposed amendments to the guidelines regarding supervised release.

Individualized Assessments

The Commission's recognition of the urgent need to tailor and right-size the supervised release system reflects the consensus that our current policies fail to achieve their intended purpose of targeted support and monitoring while simultaneously falling far short of reaching the ultimate aims of deterring recidivism and safeguarding our communities.

At its core, the purpose of federal supervised release is to support rehabilitation and reentry upon release from prison. This makes supervised release distinct from other forms of supervision: Supervised release does not serve as a tool for early release (like parole) but applies only to people *already* released from prison. And, supervised release is ***explicitly prohibited from being ordered as a form of punishment*** but instead serves only to support successful reentry and advance community safety. Federal supervised release is therefore a unique and distinct form of supervision intended not to punish or to alter the term of incarceration, but instead ***to support reentry, encourage community stability and individual wellbeing, and deter recidivism.***

As of March 2023, there were more than 110,000 people on federal supervised release – costing taxpayers more than $500 million each year.[2] This number represents an exponential increase of 200% since 1995,[3] with current guidelines requiring supervised release in any case mandated by statute *or* when a defendant is sentenced to a period of incarceration that exceeds one year.[4] The result is a system that orders supervised release in almost all federal cases, leading to an overburdened system in which probation officers report that their caseloads are overwhelmed, reaching sometimes three to four times the recommended size. Probation officers report that their caseloads are packed with lower-risk individuals who may not need intensive supervision while simultaneously not having the time or resources to provide the close supervision and support that higher-risk individuals need to reintegrate into society safely. Not only is this overburdened system ineffective, it's also entirely inconsistent with the purpose it was created to serve:supervised release was intentionally designed as a precise tool to support successful reentry and advance community safety in *rare* cases where additional support was required after successfully serving a sentence of imprisonment. It was prohibited from use as a second punitive sentence, and instead must serve to deter recidivism or support reentry. The excessive overuse of

[1] Co-sponsors include: Senators Durbin, Lee, Booker, Tillis, Cramer, Wicker,and Lankford; Representatives Owens, Donalds, Armstrong, and Trone. More information on the SAFER Supervision Act and a full list of endorsing organizations and co-sponsors can be found here: https://safersupervision.com/safer-supervision-act/

[2] United States Courts. *Federal Probation System - Table E-2: Persons Under Post-Conviction Supervision*. March 31, 2023

[3] Pew Charitable Trusts (2017) *Number of Offenders on Federal Supervised Release Hits All-Time High*; United States Courts. *Federal Probation System - Table E-2: Persons Under Post-Conviction Supervision*. March 31, 2023

[4] USSG §5D1.1(a)(2)

supervised release has perverted its intended purpose and rendered it counterproductive to its ultimate goals. What was meant to be a purposeful, strategic intervention to ensure safety in communities while individuals work to successfully transition out of incarceration has become a default that ultimately fails to promote the goals of public safety, reduced recidivism, accountability, and successful reintegration.

Accordingly, we support the proposed amendment to §5D1.1, which would remove the requirement that courts impose supervised release when a sentence exceeds one year, and instead encourage courts to only impose supervised release "when and only when" an individualized assessment calls for such a decision. Such an individualized assessment would take into account the specific circumstances of an individual's original conviction; personal history; and an individual's medical, behavioral, educational, and/or psychological needs — all balanced against considerations for victim impact and public safety, providing a holistic perspective that is responsive to the individual and eschews the one-size-fits-*none* approach that impedes our current system.

A natural extension of this individualized approach (on whether to order supervised release) grounded in the court's discretion is a more tailored assessment of the appropriate ***length*** and ***conditions*** of supervised release– both factors that should be guided by the specific ***risks*** and ***needs*** underlying any given case in service of public safety and rehabilitative goals. In 2022, the average length of supervised release imposed was 48 months, even though research recommends that the most effective length of supervision is 18-24 months [5] The Commission's guidelines currently establish minimum terms not to exceed the statutory maximum for felonies falling under Classes A through E, and Class A misdemeanors. For felony convictions falling under Classes A and B, courts have the discretion to impose up to five years of supervised release; for Classes C and D, courts may impose up to three years of supervised release. In 2022, the average length of supervised release imposed was 48 months, even though research recommends that the most effective length of supervision is 18-24 months [6] By contrast, research shows that supervision can often have counterproductive effects for low-risk defendants, especially when terms exceed 1.5-2 years in length, making it harder for these individuals to avoid recidivism and reintegrate successfully into their families and communities.[7]

With respect to conditions, Section 5D1.3 of the Guidelines provide for mandatory and discretionary (including standard, special, additional) conditions. In addition to the eight mandatory conditions, the guidelines recommend thirteen additional standard conditions for supervised release terms, bringing the baseline to twenty-one total conditions. As the Prison Policy Institute notes, these conditions *by definition* are not tailored to individual needs or the underlying conviction.[8] Yet, individuals on supervised release – a system originally created to help people rehabilitate and reenter society successfully – are forced to remember and keep track of conditions that could have deleterious impacts on employment stability, financial stability, and caregiving responsibilities, while serving no rehabilitative purpose. Onerous supervision conditions undermine success and result in unnecessary, expensive incarceration for technical violations. When these conditions are broken, individuals on supervised release can face revocation and prison time for "technical" violations which can also include actions as innocuous as crossing jurisdictional lines without prior permission, switching jobs without prior approval, or missing a

[5] US Department of Justice. (2023) Department of Justice Report on Resources and Demographic Data for Individuals on Federal Probation or Supervised Release.; United States Sentencing Commission, "Fiscal Year 2021: Overview of Federal Criminal Cases" April 2022, p. 10.; Pew Charitable Trusts. (updated 2021). States Can Shorten Probation and Protect Public Safety
[6] US Department of Justice. (2023) Department of Justice Report on Resources and Demographic Data for Individuals on Federal Probation or Supervised Release.; United States Sentencing Commission, "Fiscal Year 2021: Overview of Federal Criminal Cases" April 2022, p. 10.; Pew Charitable Trusts. (updated 2021). States Can Shorten Probation and Protect Public Safety
[7] Pew Charitable Trusts (2020) *States Can Shorten Probation and Protect Public Safety | The Pew Charitable Trusts*
[8] https://www.prisonpolicy.org/reports/probation_conditions.html

meeting with a supervision officer. Research shows that supervision conditions bring little benefit when they are focused on rote compliance rather than promoting individual growth and development.[9] Indeed, a recent study on federal supervision conditions estimated that ***each additional condition decreased the chances of successful supervision compliance by 19%.***[10] Annually, around 10,000 people on supervised release are incarcerated for a supervision violation.[11] Thirteen percent of supervised release cases closed in 2021 were revoked solely for technical violations with no accompanying arrests for new crimes.[12] Technical violations that result in even short periods of reincarceration have far-reaching consequences that can threaten public safety, disrupt the workforce, harm employment,[13] fracture the family unit, and create housing instability. On top of this, a few recent studies have found that custodial sanctions for technical violations *do not outperform non-custodial, community-based sanctions* when trying to prevent future criminal activity.[14]

Recognizing these critical issues, REFORM is supportive of the Commission's proposed §§ 5D1.2, D1.3, and 5D1.4 amendments to (1) eliminate minimum terms and instead require courts to conduct individualized assessments when setting the term of supervised release, (2) to encourage courts to conduct individualized assessments when determining which conditions (other than those that are mandatory) are appropriate for supervised release; and (3) to encourage courts to revisit imposed conditions through an individualized assessment conducted soon after an individual's release from prison. Redesignating "standard conditions" as "examples of common conditions" would meaningfully dislodge any sort of notion that these conditions are a baseline that must be imposed alongside every order of supervised release, and encourage courts to more fully consider the necessity of each condition. Though statutorily discretionary, courts have noted that standard conditions are "essential to the functioning of the supervised release system[;] they are almost uniformly imposed by the district courts and have become boilerplate."[15] It appropriately and proactively encourages courts to take into account the perspectives of the individual on supervised release, the government, and the supervision officer as a means to best support the individual's rehabilitation and reintegration into their community.[16] Indeed, this level of judicial discretion would only reinforce what is clearly laid out in federal code: when imposing supervised release, courts may require additional, discretionary conditions *to the extent* those conditions are "reasonably related to" "the nature and circumstance of the offense and the history and characteristics

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[9] Arthur Rizer et al., "Realigning Probation with Our Values," *National Affairs,* 47 *(*Spring 2020). https://nationalaffairs.com/publications/detail/realigning-probation-with-our-values.

[10] DeLisi, M., Drury, A., & Elbert, M. (2021). Who are the compliant correctional clients? New evidence on protective factors among federal supervised releases. *International Journal of Offender Therapy and Comparative Criminology, 65,* 1536-1553. The total number of conditions in this study ranged from 0-18, with an average overall of 5.98. When split into groups, those who were compliant on supervised release had an average of 5.49 conditions and those who were non-compliant had 6.93.

[11] U.S. Courts. (2022). Just the Facts: Revocations for Failure to Comply with Supervision Conditions and Sentencing Outcomes; US Department of Justice. (2023) Department of Justice Report on Resources and Demographic Data for Individuals on Federal Probation or Supervised Release

[12] U.S. Courts. (2022). Just the Facts: Revocations for Failure to Comply with Supervision Conditions and Sentencing Outcomes.

[13] Studies assessing the impact of detention in the pretrial setting has shown that even short periods of incarceration can decrease formal sector employment and the receipt of other benefits. William Dobbie et al., "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges," *American Economic Review 108:2 (2018),* 201-240. https://www.aeaweb.org/articles?id=10.1257/aer.20161503.

[14] E.K. Drake and S. Aos, "Confinement for Technical Violations of Community Supervision: Is There an Effect on Felony Recidivism?" *Olympia: Washington State Institute for Public Policy*. (2012), https://www.wsipp.wa.gov/ReportFile/1106; E.J. Wodahl, J.H. Boman, and B.E. Garland, "Responding to Probation and Parole Violations: Are Jail Sanctions More Effective Than Community-Based Graduated Sanctions?," *Journal of Criminal Justice* 43, no. 3 (2015): 242-50, https://doi.org/10.1016/j.jcrimjus.2015.04.010. P. Villettaz, G. Gillieron, and M. Killias, "The Effects on Re-Offending of Custodial Vs. Non-Custodial Sanctions: An Updated Systematic Review of the State of Knowledge," *Campbell Systematic Reviews* 1 (2015), http://dx.doi.org/10.4073/csr.2015.1.

[15] United States v. Truscello, 168 F.3d 61, 63 (2d Cir. 1999)

[16] *See* Berman, Richard M., *Court Involved Supervised Release*, Southern District of New York, 10 June 2024

of the defendant" and "the need for the sentence imposed," among other factors.[17] Timing also matters. If the federal system is to serve the actual rehabilitative needs of individuals on supervised release, then it is appropriate for courts to revisit imposed conditions following a period of incarceration. It is at that point in time that judges would have greater insight into an individual's rehabilitative needs and any risk to public safety that they may or may not still pose.[18]

First Step Act

In its enumeration of Issues for Comment, the Commission is seeking feedback on the impact of the proposed amendments on the ability of individuals to benefit from earned time credits under the First Step Act, calling specific attention to 18 § U.S.C. 3624(g)(3).[19] Through the First Step Act, Congress took significant action to ensure men and women in federal prison return home to their communities rehabilitated and ready to work by expanding opportunities to earn time toward early release to ***prerelease custody or supervised release*** by completing evidence-based programs or productive activities. Accordingly, the language quoted in the Commission's Issues for Comment only addresses supervised release and does not provide full context. If a court were to decide that the imposition of supervised release is not needed in a particular case, an individual could still have any earned time credits applied to prerelease custody (including home confinement, a residential reentry center, or alternative means of monitoring) under the First Step Act.[20] Federal courts have also acknowledged the First Step Act's eligibility framework in a number of decisions.[21]

Ultimately, having previously considered amendments to sentencing guidelines concerning supervised release, the Commission should be guided by its own recognition of the impact of the federal system's overuse of supervised release on the lives of individuals on supervision. With the number of individuals on federal supervision at an all-time high, it is critically important for courts to be intentional when ordering someone to serve a term of supervised release. The Commission's amendments to would preserve eligibility under the First Step Act, allowing earned time credits to be applied to prerelease custody if supervised release is not ordered, while also safely reducing (through the elimination of unnecessary orders) the number of people on supervised release and ensuring that the rehabilitative needs of individuals are met.

Early Termination

Under Commentary to §5D1.2 of the current Guidelines, courts are merely encouraged to exercise their authority to reduce a supervision term through early termination "in appropriate cases." Under 18 U.S.C. §3583(e), courts are permitted to grant early termination "if it is satisfied that such action is warranted by the conduct of the defendant released and *the interest of justice*" (emphasis added). However, without additional guidance, there has been scant direction to courts, offering individuals on supervised release with little hope and few incentives to achieve the goals of supervised release. Indeed, this is made

[17] 18 U.S. Code § 3583(d); 18 U.S. Code § 3553. *See also Michael P. Kenstowicz, The Imposition of Discretionary Supervised Release Conditions: Nudging Judges to Follow the Law , 82 U. Chi. L. Rev. 1411, 1411-12 (2015)*, noting the tendency of sentencing judges to frequently impose the discretionary conditions recommended by the Guidelines without consideration for public safety or rehabilitation.

[18] *See* United States v. Trotter, 321 F. Supp. 3d 337 (E.D.N.Y. 2018)

[19] "SUPERVISED RELEASE.-If the sentencing court included as a part of the prisoner's sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632."

[20] 18 U.S.C. § 3632(d)(4)(A), (C); 18 U.S.C. §3624(g)(1); *See also* First Step Act of 2018 (P.L. 115- 391), https://www.bop.gov/inmates/fsa/docs/bop_fsa_rule.pdf.

[21] *See Sila v. Warden*, 2023 U.S. Dist. Lexis 43734 (C.D. Cal. Feb. 13, 2023); *Komando v. Luna*, 2023 U.S. Dist. Lexis 11477 (D.N.H. 13 Jan. 2023); *Parsons v. FCI, Berlin*, 2024 U.S. Dist. Lexis 146422 (D.N.H. 22 July 2024); *Szafian v. Warden R.D. Keyes*, 2022 U.S. Dist. Lexis 99332 (W.D. Wisconsin 3 June 2022); *Girven v. Smith*, 2023 U.S. Dist. Lexis 220718 (N.D. Tex. 12 Dec 2023)

apparent in the practices of multiple district courts, which have adopted the position of the Department of Justice in requiring extraordinary circumstances to support early termination. In *United States v, Wesley* (31 F.Supp.3d 77 (D.D.C. 2018)), the DOJ argued that while the individual had made progress, including maintaining employment, engaging in educational/vocational training, and remaining drug free, the efforts he made did not rise to the level of extraordinary circumstances needed to justify early termination. Ultimately, the Court praised the progress of the individual on supervised release, but noted that "mere compliance" was not enough to merit supervised release – the individual needed to have demonstrated "extraordinary circumstances." Similarly, in *United States v. Bouchareb* (76 F. Supp.3d 478 (S.D.N.Y. 2014), the Court denied an early termination request due to the failure of the defendant to present an "exceptional case" that would distinguish him from other compliant individuals on supervised release. However, the plain language of 18 U.S.C. 3583(e), which provides for early termination when "in the interest of justice," does not require extraordinary circumstances. And, in fact, appellate courts have recently affirmed that extraordinary, new, or unforeseen circumstances are *not* required and are not supported by statute. (*See United States v. Melvin, 978 F.3d 49 (3d Cir. 2020); United States v. Ponce, 22 F.4th 1045 (9th Cir. 2022*).

If we accept that supervision was ***never intended to be imposed as punishment***, then it should follow that early termination of supervision is appropriate when supervision is no longer serving non-punitive purposes. The proposed amendment would create a new section – §5D1.4 – which would directly provide for early termination of supervised release after expiration of one year (in accordance with statute) and following an individualized assessment that takes into account several enumerated factors, including an individual's "substantial compliance" with their supervision conditions. As noted above, in the absence of more, courts have required a show of extraordinary circumstances before granting early termination. This has meant that deserving individuals who have made meaningful strides to rehabilitate, rebuild their lives, and reintegrate into their communities have been denied the opportunity to actually move on from the criminal legal system. People on supervised release have already paid their debt to society, but they still aren't truly free until they've completed their term of supervision, which can last for years. Research has found that people under supervision rate opportunities to earn time off their term of supervision as the most meaningful of incentives.[22] In addition, length of stay studies of probation systems commissioned by PEW Charitable Trusts prove that supervision terms can be reduced with no negative impact on safety.[23]

We support and applaud the Commission's inclusion of "substantial compliance with all conditions of supervision" among the non-exhaustive list of proposed factors to be considered when assessing the appropriateness of early termination. "Substantial compliance" would reflect a system that has learned in supporting second chances that perfect should not be allowed to be the enemy of the good *and just* when there is nothing in federal law that requires it. Courts would benefit from additional language in the Commentary to the Guidelines further explaining what is intended by "substantial compliance," recognizing that successful rehabilitation does not mean perfect (or nearly perfect) compliance and is often not a linear path.

State-level reforms seeking to limit the length of supervision terms have made the case for related policies serving as a common sense approach to supervision and have provided useful evidence for effective cost

[22] Eric J. Wodahl, Brett E. Garland & Thomas J. Mowen (2017) Understanding the Perceived Value of Incentives in Community Supervision, Corrections, 2:3, 165-188, DOI: 10.1080/23774657.2017.1291314

[23] "States Can Shorten Probation and Protect Public Safety." The Pew Charitable Trusts, https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety#:~:text=The%20national%20average%20probation%20term,to%20five%20years%2C%20in%20Hawaii

savings and increased benefit to the community without negatively impacting public safety. By 2017, **at least ten states** had laws requiring a periodic review of probation cases to assess whether or not the individual can be discharged early.[24] And some states, such as Florida, have criteria to qualify for a presumption of early termination in statute.[25] As of 2021, **19 states adopted statutory policies to explicitly limit incarceration periods** for at least the first technical probation violation revocation event to at or under 180 days, with states like Utah, Nevada, and Michigan limiting incarceration for a first technical violation revocation to 30 days or less. And many other states have graduated administrative or statutory sanctions to limit revocation and reincarceration.[26] Many states also already offer different opportunities for early discharge from supervision. In addition, as of 2021, **18 states awarded individuals "earned time" credits for good behavior or the completion of recidivism-reducing activities** while on probation, including South Dakota, Kentucky, Texas, Arkansas, Alaska, among others.[27]

In passing state legislation, REFORM Alliance has actively pursued policies that streamline early termination practices, making them accessible for individuals on supervision. To that end, we are also supportive of the proposed guidelines under § 5d1.4 that would encourage courts to conduct assessments for early termination specifically upon the expiration of one year of supervision and throughout the remainder of an individual's supervision term. We recommend strengthening this guidance by establishing a timetable for subsequent assessments and requiring courts to provide feedback on denials of early termination so that individuals on supervised release have clarity on what they need to do going forward to earn early termination in the future. Such a timetable could be operationalized through the establishment of a presumption of early termination once an individual has spent a designated amount of time on supervised release and has fulfilled specific criteria. In establishing a timetable for early termination assessments, the Commission would be in alignment with at least ten states with laws requiring periodic review of probation cases to assess an individual's readiness for discharge.[28] In establishing a presumption in favor of early termination, the Commission would follow states like Florida, Georgia, Pennsylvania, and Vermont, which all have some form of a presumption in their supervision systems.[29] This would not only benefit individuals on supervised release who would have clear guidance from courts, but also ensure that the federal system is not keeping people on supervision longer than necessary and allow for the prioritization of resources for those who need it most.

Violations of Supervision and Mandatory Revocations

As this comment recognizes throughout, supervised release is intended to be a rehabilitative tool for individuals who have paid their debt to society following a period of incarceration. Unlike probation, which is imposed as a sanction or punishment in the alternative to incarceration, supervised release is ***explicitly prohibited from being ordered as a form of punishment*** and instead serves only to

[24] Pew Charitable Trusts, "States Can Shorten Probation and Protect Public Safety," December 3, 2020. https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety#:~:text=The%20national%20average%20probation%20term,to%20five%20years%2C%20in%20Hawaii.
[25] Fla. Stat. § 948.04(4).
[26] Jake Horowitz, "Five Evidence-Based Policies Can Improve Community Supervision, Pew Charitable Trusts, January 27, 2022. https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/01/five-evidence-based-policies-can-improve-community-supervision.
[27] Ibid.
[28] Pew Charitable Trusts, "States Can Shorten Probation and Protect Public Safety," December 3, 2020. https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety#:~:text=The%20national%20average%20probation%20term,to%20five%20years%2C%20in%20Hawaii.

[29] *See* Fla. Stat. § 948.04(4) (2024); GA Code § 42-8-37 (2024); 42 Pa. C.S. § 9774.1 (2023); 28 VT Stats § 251(2024).

support successful reentry and advance community safety. We are supportive of the Commission's bifurcation of probation and supervised release under a new Part C to Chapter 7 of the Guidelines, further emphasizing federal supervised release as a unique and distinct form of supervision intended not to punish or to alter the term of incarceration, but instead to support reentry, encourage community stability and individual wellbeing, and deter recidivism.

Current guidelines mandate revocation for Grade A or B violations, and give courts the option to revoke, extend, or modify the conditions of supervised release for Grade C violations. While Grade A and Grade B violations solely constitute federal, state, and local offenses punishable by a term of imprisonment exceeding one year, Grade C violations include federal, state, and local offenses punishable by imprisonment of one year or less *and* violations of *any other* conditions of supervision, including low level violations that are only technical in nature.[30]

Annually, around 10,000 people on supervised release are incarcerated for a supervision violation.[31] For the 12-month period ending March 31, 2022, technical violations were **the most common caus**e for revocations.[32] During this period, more than one third of individuals on supervised release had their supervision terminated with a revocation — of this population, **a staggering two thirds were terminated due to a technical violation.** Non-criminal, or "technical" violations of supervised release, such as missing a meeting with one's supervision officer, are the leading cause of revocation in the federal supervision system.[33] Twenty percent of supervised release cases closed in 2021 were revoked due to technical violations, with 13% percent of that number revoked solely for technical violations with no accompanying arrests for new crimes.[34] Between 2013-2017, the majority (54.9%) of supervision violations analyzed in one study were for less serious, Grade C offenses.[35] Yet courts revoked and sentenced more than 94% of people to prison, with an average term of 8 months, following a supervision violation hearing for a Grade C offense.[36]

Technical violations that result in even short periods of reincarceration have far-reaching consequences that can threaten public safety, disrupt the workforce, harm employment,[37] fracture the family unit, and create housing instability. On top of this, a few recent studies have found that custodial sanctions for technical violations *do not outperform non-custodial, community-based sanctions* when trying to prevent future criminal activity.[38] This makes sense. Individuals on supervision are already on the brink of or are

[30] U.S. SENT'G COMM'N, GUIDELINES MANUAL §7B1.1 (Nov. 2024)
[31] U.S. Courts. (2022). Just the Facts: Revocations for Failure to Comply with Supervision Conditions and Sentencing Outcomes; US Department of Justice. (2023) Department of Justice Report on Resources and Demographic Data for Individuals on Federal Probation or Supervised Release
[32] See "Table E-7A--Federal Probation System Statistical Tables for the Federal Judiciary (March 31, 2022), Administrative Office of the U.S. Courts.
[33] See "Table E-7A--Federal Probation System Statistical Tables for the Federal Judiciary (March 31, 2022), Administrative Office of the U.S. Courts.
[34] U.S. Courts. (2022). Just the Facts: Revocations for Failure to Comply with Supervision Conditions and Sentencing Outcomes.
[35] Grade C offenses are defined as 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. United States Sentencing Commission, "Federal Probation and Supervised Release Violations," July 2020, p. 38. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200728_Violations.pdf
[36] Ibid. p. 35
[37] Studies assessing the impact of detention in the pretrial setting has shown that even short periods of incarceration can decrease formal sector employment and the receipt of other benefits. William Dobbie et al., "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges," *American Economic Review 108:2 (2018)*, 201-240. https://www.aeaweb.org/articles?id=10.1257/aer.20161503.
[38] E.K. Drake and S. Aos, "Confinement for Technical Violations of Community Supervision: Is There an Effect on Felony Recidivism?" *Olympia: Washington State Institute for Public Policy*. (2012), https://www.wsipp.wa.gov/ReportFile/1106; E.J. Wodahl, J.H. Boman, and B.E. Garland, "Responding to Probation and Parole Violations: Are Jail Sanctions More Effective Than Community-Based Graduated Sanctions?," *Journal of Criminal Justice* 43, no. 3 (2015): 242-50, https://doi.org/10.1016/j.jcrimjus.2015.04.010. P. Villettaz, G. Gillieron,

currently experiencing poverty and financial stress, which can be exacerbated by incarceration for a technical violation. A study by the Brookings Institute, which analyzed the labor outcomes of U.S. prisoners found that **only *55 percent* of people released from prison had any earnings** after their release.[39]

Individuals can face *mandatory* revocation policies for drug use violations such as failing multiple tests in a year, even when commonsense dictates that incarcerating addicted individuals – rather than trying to find them better help in the community – is more likely to *hinder* their success than assist it. Indeed, federal and state prisons notoriously fail to provide needed addiction and mental health services even when they know someone has a diagnosed issue.[40] The federal system's response to drug abuse violations is disconnected from the realities of addiction and treatment. When analyzing closed cases last year, nearly one out of every three people on supervision were violated or had their supervision revoked primarily for drug offenses and other non-serious violations.[41] Addiction issues are complex and require both mental and physical treatment – treatment that federal and state prisons notoriously fail to provide.[42] Under current law, individuals on federal supervised release who possess a controlled substance, refuse to comply with ordered drug tests, or test positive for illegal drug use more than three times in a year have their supervision mandatorily revoked.[43] Thus, the legal system's response to addiction has been to punish rather than treat, perpetuating a cycle of "supervision, relapse, and incarceration."[44] Defaulting to incarceration for low level drug-related violations is a punitive approach that fails to take into account the treatment and rehabilitative needs of the individual and ultimately fails to advance our shared goals of community safety and security.

It is under this framework that we urge the Sentencing Commission to construct § 7C1.3 to mandate revocation ***only when statutorily required***, thus allowing courts the latitude to assess the appropriate response to a violation by an individual who is on a rehabilitative path. Anything short of this would continue the federal system's punitive approach to a system that was originally intended to support the reintegration of individuals into their communities. Supervised release's "promise of redemption" is undercut by the constant threat of incarceration for violations, creating an untenable paradox within the system.[45] Where someone has already paid their debt to society by serving time in prison for an offense, sanctions for violations of supervised release thus become about punishing the violation itself, with the threat of that punishment – loss of liberty – used as a cudgel by supervision officers and courts alike. It is under these dynamics that our supervised release system demands rehabilitation. Option 1 would allow

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and M. Killias, "The Effects on Re-Offending of Custodial Vs. Non-Custodial Sanctions: An Updated Systematic Review of the State of Knowledge," *Campbell Systematic Reviews* 1 (2015), http://dx.doi.org/10.4073/csr.2015.1.

[39] Adam Looney and Nicholas Turner, "Work and opportunity before and after incarceration" Brookings Institute, March 14, 2018. https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/.

[40] Bronson and Berzofsky, "Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-2012," Bureau of Justice Statistics, June 2017. https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf; Jack Tsai and Xian Gu, "Utilization of addiction treatment among U.S. adults with history of incarceration and substance use disorders," *Addiction Science and Clinic Practice* 14:9 (2019). https://link.springer.com/article/10.1186/s13722-019-0138-4

[41] Just the Facts: Revocations for Failure to Comply with Supervision Conditions and Sentencing Outcomes | United States Courts

[42] Bronson and Berzofsky, "Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-2012," Bureau of Justice Statistics, June 2017. https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf; Jack Tsai and Xian Gu, "Utilization of addiction treatment among U.S. adults with history of incarceration and substance use disorders," *Addiction Science and Clinic Practice* 14:9 (2019). https://link.springer.com/article/10.1186/s13722-019-0138-4

[43] 18 U.S. Code § 3583(g).

[44] Bloom, Aliza Hochman & Jacob Schuman, *It is Time to Reform Federal Supervised Release*, ACS Law (Nov. 30, 2022).

[45] Nora V. Demleitner, *How to Change the Philosophy and Practice of Probation and Supervised Release: Data Analytics, Cost Control, Focus on Reentry, and a Clear Mission* , 28 Fed. Sent'g Rep. 231, 232 (2016)

judges to take stock of an individual's case ***within the context of that individual's rehabilitative path*** by allowing for consideration of appropriate responses to violations other than incarceration that would not derail progress or trap them in a dangerous carceral loop of supervision to prison. To that end, we also support the adoption of Option 1 under § 7C1.4, which would grant courts the discretion to individually assess whether a term of incarceration, following a revocation, should be served concurrently or consecutively to any term of incarceration an individual is serving regardless of whether incarceration resulted from the same conduct that is the basis for revocation. This would be a meaningful and needed expansion of current practice which requires a term of imprisonment upon revocation to be served consecutively to any other sentence, even if both result from the same conduct. This has, in effect, allowed individuals on supervised release to be doubly sanctioned.

We appreciate the distinction offered in the proposed amendment carving out under § 7C1.1 a new category of violations (previously captured in Grade C) – Grade D, representing "a violation of any other condition of supervised release" that is not a federal, state, or local offense punishable by a term of imprisonment. We strongly encourage the Commission to provide for a presumption against revocation for technical violations, stating explicitly that revocation is generally not an appropriate response for non-criminal violations, unless public safety is implicated and/or alternative interventions fail. Violations of supervision conditions do not necessarily indicate whether someone is a public safety risk or will engage in future criminal activity.[46] In the face of repeated violations, graduated sanctions are a proven tool for achieving accountability and compliance with supervision conditions.

Conclusion

REFORM Alliance is grateful to the U.S. Sentencing Commission for its thoughtful consideration of these issues and continued engagement of key stakeholders in the development of these proposals. The Commission's proposals would make meaningful strides in strengthening the federal supervised release system and helping realign it with its original goals of supportive reintegration and rehabilitation for affected individuals alongside increased public safety and prosperity for communities across America – outcomes beneficial to all stakeholders.

Sincerely,

Erin D. Haney
REFORM Alliance
Chief Policy Officer

[46] The Pew Charitable Trusts, To Safely Cut Incarceration States Rethink Responses to Supervision Violations (July 2019).