Federal Probation and Supervised Release Violations

United States Sentencing Commission

July 2020

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JULY 2020

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For the first time, the Commission is reporting data collected from documents related to revocation hearings.

Introduction

This report provides information on violations of federal probation and supervised release using data collected by the United States Sentencing Commission. For the first time, the Commission is reporting data collected from documents related to revocation hearings. Combined with data the Commission regularly collects, this report analyzes the characteristics of supervision violations and the outcomes of violation proceedings provided in documents sent to the Commission by the courts.

As part of the Sentencing Reform Act of 1984,[1] which created the Commission and charged it with establishing the federal sentencing guidelines system,[2] Congress prospectively eliminated federal parole and established different supervision options in federal sentencing. Among other things, the Act made probation a sentence in itself, whereas probation previously functioned as a stay of the imposition or execution of a sentence.[3] In addition, the Act created a new form of post-imprisonment supervision: supervised release.[4] As part of its overall work in response to the Act, the Commission addressed the new supervision options in the federal sentencing guidelines. Specifically, Chapter Five and Chapter Seven of the *Guidelines Manual*[5] provide guidelines and policy statements for federal courts to address terms and conditions of probation and supervised release and violations of each type of supervision.

As part of its continuing duty to collect, analyze, and report sentencing data,[6] the Commission has previously published two reports that focused on probation and supervised release. In 2010, the Commission published *Federal Offenders Sentenced to Supervised Release*,[7] which provided a comprehensive review of the legal and data issues related to the imposition, modification, and revocation of supervised release. In 2019, the Commission published *Revocations Among Federal Offenders*,[8] which explored some of the guidelines' criminal history rules that affect an

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offender's criminal history score and Criminal History Category (CHC)—rules regarding the revocation of terms of probation, parole, supervised release, special parole, and mandatory release. The 2019 Revocation Report analyzed the prevalence and nature of revocations in the criminal history of federal offenders and explored the impact of revocations on an offender's eligibility for safety valve relief and application of the career offender enhancement.[9]

This report continues the Commission's work in the area of violations of probation and supervised release. Specifically, this report discusses the guidelines and policy statements that address supervision and provides several analyses of violations of federal supervision using data collected by the Commission. Between 2013 and 2017, the Commission collected data on cases in which federal courts ruled on supervision violation petitions that resulted in violation hearings. During that time, the courts ruled in 108,115 violation hearings associated with 82,384 offenders. This report provides information on the prevalence and types of supervision violations and characteristics of violating offenders based on an analysis of the documents from the violation hearings. It also compares supervision violators to the overall federal offender population using data from the Commission's individual offender datafile for offenders whose original sentence was probation or included a term of supervised release (hereinafter "offenders originally sentenced" to supervision, "offenders at original sentencings," or offenders "sentenced to supervision") during the same time period.

Key Findings

Nationally, the number of individuals under supervision was relatively stable during the study period, ranging from 130,224 to 136,156 during the five years. Half of the individuals under supervision, however, were concentrated in only 21 of the 94 federal judicial districts.

Nationally, the rate of violation hearings for individuals on supervision also was relatively stable, ranging from 16.2 to 18.4 percent during the five years, with an overall rate of 16.9 percent. The prevalence of supervision violations, however, varied considerably among the federal judicial districts.

Violations accounted for more than one-third of individuals on supervision in the Southern District of California (42.1%), District of Minnesota (37.4%), Western District of Missouri (34.3%), District of Arizona (33.7%), and District of New Mexico (33.4%). In contrast, violations accounted for less than five percent of individuals on supervision in the Districts of Connecticut (4.5%) and Maryland (4.7%).

Supervision violators tended to have committed more serious original offenses than federal offenders whose original sentence was probation or included a term of supervised release during the same time period.

For example, the rates of supervision violators originally sentenced for violent and firearms offenses (7.9% and 20.4%, respectively) were approximately twice as high compared to offenders originally sentenced during the study period (3.7% and 12.8%, respectively), a finding which is consistent with prior Commission recidivism research.

Drug offenses were the most common primary offense type for both supervision violators and federal offenders whose original sentence was probation or included a term of supervised release during the same time period. There were, however, notable variations by drug type.

For example, crack cocaine offenders accounted for only 9.9 percent of drug offenders whose original sentence was probation or included a term of supervised release, but they accounted for almost one-third (32.1%) of supervision violators, a greater proportion than any other drug type. The disproportional representation of crack cocaine offenders among supervision violators is consistent with prior Commission recidivism research. On the other hand, drug offenders who received the safety valve at their original sentencing were underrepresented among supervision violators (19.1% compared to 30.7%), a finding that also is consistent with prior Commission recidivism research.

Supervision violators tended to have more serious criminal histories than federal offenders whose original sentence was probation or included a term of supervised release.

Approximately one-quarter (24.6%) of offenders with supervision violations were in the lowest Criminal History Category (CHC I) at the time of their original sentencing compared to almost half (44.9%) of offenders whose original sentence was probation or included a term of supervised release during the study period. On the other end of the spectrum, 18.3 percent of offenders with supervision violations were in the highest Criminal History Category (CHC VI) at the time of their original sentencing compared to 9.9 percent of offenders whose original sentence was probation or included a term of supervised release during the study period. This pattern is consistent with prior Commission recidivism research.

The majority of supervision violations were based on the commission of an offense punishable by a term of one year or less or a violation of another condition of supervision not constituting a federal, state or local offense (Grade C Violation).

More than half (54.9%) of violations were Grade C (the least serious classification), nearly one-third (31.5%) were Grade B, and 13.6 percent were Grade A (the most serious classification).

Offenders who were originally sentenced for more serious offenses tended to commit more serious supervision violations.

For example, over four-fifths of the Grade A violations were committed by offenders originally sentenced for drug offenses (52.0%), firearms offenses (24.5%), or violent offenses (6.3%).

Offenders who violated their conditions of supervision typically did so within the first two years.

On average, 22 months elapsed from the time supervision commenced to the commission of the supervision violation, but the elapsed time was notably longer for Grade A violations (the most serious) at 33 months.

The majority of supervision violators were sentenced in accordance with the Chapter Seven Revocation Table.

More than half (59.8%) were within the applicable range, just over one-quarter (29.1%) were below the range, and 11.1 percent were above the range. Courts tended to impose sentences within the applicable guideline range less often for more serious supervision violations. For example, for Grade A violations (the most serious classification), 39.4 percent were sentenced within the applicable range, and 54.2 percent were sentenced below the range. In contrast, for Grade C violations (the least serious classification), 63.6 percent were sentenced within the range, and 22.1 percent were sentenced below the range.

Violations of Probation and Supervised Release in the Federal System

The Commission promulgated guidelines in Chapter Five, Parts B (Probation) and D (Supervised Release), and policy statements in Chapter Seven (Violations of Probation and Supervised Release) in the *Guidelines Manual*[10] to provide guidance to federal courts on the imposition of probation and supervised release and addressing violations of each.[11] The following section provides an overview of the laws, guidelines, and policy statements that relate to probation and supervised release, different types of violations, and the possible outcomes following violations of these two types of supervision.

Probation

The Sentencing Reform Act of 1984 ended the authority of federal courts to impose probation as a stay of imposition or execution of a sentence and instead recognized probation as a sentence in itself. A sentence of probation may be used as an alternative to incarceration, is subject to terms and conditions, and constitutes a final judgment.[12] Although a court may terminate a term of probation early after considering the factors in 18 U.S.C. § 3553(a), the court also has the authority, discussed below, to extend or revoke a probation sentence for an offender in certain circumstances.[13]

Sections 3561 through 3566 of title 18, United States Code, and Chapter Five, Part B of the *Guidelines Manual* provide rules for sentences of probation. Under 18 U.S.C. § 3561, a federal offender may receive a sentence of probation unless: (1) the offender is an individual and the offense is a Class A or B felony; (2) probation is statutorily precluded; or (3) the offender is sentenced to prison for the same or a different offense that is not a petty offense.[14] Subject to statutory restrictions, §5B1.1 provides for a sentence of probation for guideline ranges that fall into Zones A or B of the sentencing table.[15] Section 5B1.1(a)(1) authorizes a sentence of probation for offenders whose applicable guideline range is in Zone A.[16] For offenders whose guideline range falls into Zone B, §5B1.1(a)(2) authorizes probation as long as the court additionally requires a term of intermittent confinement, community confinement, home detention, or a combination of same, as provided in §5C1.1(c)(3), that satisfies the minimum term of imprisonment for the guideline range.[17] The guidelines do not authorize a sentence of probation for offenders whose sentencing ranges fall into Zones C or D.[18]

Terms and Conditions of Probation

If probation is statutorily available, courts must determine the appropriate term of probation. Section 3561(c) authorizes the following terms of probation: (1) one to five years for a felony; (2) not more than five years for a misdemeanor; and (3) not more than one year for an infraction.[19] Pursuant to §5B1.2, the sentencing guidelines provide that, for a final offense level that is six or more, the term shall be one to five years.[20] For cases with an offense level that is less than six, the term of probation shall be no more than three years.[21]

The court must include several conditions to any term of probation pursuant to 18 U.S.C. § 3563. For any offense, the court must order the offender not commit another criminal offense during the term of probation.[22] For felony offenses, the court must also order the defendant to pay restitution or perform community service unless the court has imposed a fine under 18 U.S.C. § 3551, *et seq*., or extraordinary circumstances make such a condition unreasonable.[23] Finally, as a condition of a probation sentence, the court must order the offender to:

- Refrain from unlawful possession or use of controlled substances;
- Submit to drug testing;[24]
- Pay restitution in a manner consistent with federal statutes;
- Pay the required special assessment;
- Pay fines according to an installment schedule (if applicable);
- Notify the court of material economic changes affecting his or her ability to pay any restitution, fees, and fines; and
- Submit to DNA testing if authorized by and as provided in 34 U.S.C. § 40702.[25]

For offenses involving domestic violence, the court must additionally require the offender to attend a rehabilitation program,[26] and for those offenses which require sex offender registration, the court must require compliance with the Sex Offender Registration and Notification Act (SORNA).[27] The mandatory conditions listed in §5B1.3(a) (Conditions of Probation) track the mandatory conditions required by section 3563.

In addition to the above mandatory conditions, the court has the authority to impose other conditions of the offender's probation. The court may impose discretionary conditions on the offender, such as working at suitable employment, refraining from possessing a firearm, undergoing treatment, or remaining within the jurisdiction of the court.[28] The guidelines provide discretionary, standard, special, and additional conditions that the court may impose.[29]

Supervised Release

Supervised release, in contrast to probation, is not a sentence in itself, but is part of an offender's original sentence. Supervised release is not imposed for purposes of punishment. Instead, the purpose of supervised release is to facilitate an offender's reentry into society following a term of imprisonment.[30] Under 18 U.S.C. § 3583, a federal court *may* impose a term of supervised release following a sentence of imprisonment for any felony or misdemeanor but *must* impose a term of supervised release if it is required by statute or if the offender is convicted, for the first time, of a domestic violence crime.[31] Additionally, a court must consider certain factors in 18 U.S.C. § 3553(a) in determining whether a term of supervised release is appropriate.[32]

Section 5D1.1(a) provides that courts shall order a term of supervised release when required by statute or, except as provided in §5D1.1(c), when a prison sentence imposed exceeds one year.[33] Pursuant to §5D1.1(b) and (c), the court may order a term of supervised release in any other case; however, ordinarily it should not impose a term where it is not required by statute and the defendant is an alien likely to be deported following imprisonment, unless the court determines that a term would provide an added measure of deterrence and protection based on the facts and circumstances of the case.[34] The Commentary to §5D1.1 provides further recommendations to courts in imposing supervised release terms that depend upon the offense and offender characteristics.[35]

Terms and Conditions of Supervised Release

If the court imposes a term of supervised release, it determines the appropriate term by reviewing (1) any applicable statutes for the offense of conviction, (2) 18 U.S.C. § 3583(b), and (3) §5D1.2. Section 3583(b) authorizes the following terms of supervised release: (1) not more than five years for a Class A or B felony; (2) not more than three years for a Class C or D felony; and not more than one year for Class E felonies and misdemeanors (other than petty offenses).[36] Section 5D1.2 provides similar terms depending upon the class of felony offense.[37] Courts should consider the factors listed in 18 U.S.C. § 3583(c) and §5D1.1 in determining the length of a supervised release term.[38]

The mandatory conditions for a term of supervised release are similar to those required for probation. Section 3583(d) requires courts to order offenders to refrain from committing any crimes, possessing or using controlled substances, and, among other conditions, to submit to drug testing and pay restitution.[39] In addition to the mandatory conditions, the guidelines provide discretionary, standard, special, and additional conditions the court may impose in formulating an appropriate supervised release term.[40]

Violations of Probation or Supervised Release

Sections 3565 (Revocation of probation) and 3583 (Inclusion of a term of supervised release after imprisonment) of title 18, Federal Rule of Criminal Procedure 32.1 (Revoking or Modifying Probation or Supervised Release), and Chapter Seven (Violations of Probation and Supervised Release) of the *Guidelines Manual* provide rules for federal courts to follow in determining the appropriate outcome following an offender's violation of probation or supervised release. Under these rules, if an offender violates a condition of supervision, the court may continue supervision by extending the term or modifying its conditions, or it may revoke the offender's term of supervision. The following sections detail the procedure courts follow to determine whether an offender has violated probation or supervised release and the appropriate sentence following a violation.

Procedure for Determining a Supervision Violation under Rule 32.1

The sentencing court retains jurisdiction over an offender while on probation or supervised release.[41] Pursuant to Federal Rule of Criminal Procedure 32.1, once a probation officer notifies the court of jurisdiction that an offender is believed to have violated one or more conditions of probation or supervised release,[42] the offender may be summoned or arrested.[43] Thereafter, the court must conduct a series of hearings to determine whether a violation has occurred: an initial appearance, a preliminary hearing, and a revocation hearing.[44]

If the court finds that probable cause exists to believe a violation has occurred or if the offender waives preliminary hearing, the court must conduct a revocation hearing within a reasonable time.[45] An offender may waive a revocation hearing, admit to the alleged violation, and proceed directly to the court's ruling on whether to modify or revoke the term of supervision.[46] Should the offender deny the alleged violation, the court must hold a full hearing. A revocation hearing is not a formal trial and the Federal Rules of Evidence do not apply,[47] provided the evidence has sufficient indicia of reliability.[48] To revoke probation or supervised release, the court must find by a preponderance of the evidence that the offender violated the conditions of his or her probation or supervised release.[49]

Probation Violations under 18 U.S.C. § 3565

Section 3565 and Chapter Seven of the *Guidelines Manual* apply to revocations of probation. Section 3565 provides that a court may continue or revoke an offender's probation term if the offender violates any condition of probation prior to its expiration.[50] The court must hold a hearing pursuant to Rule 32.1, detailed above, and consider the factors in 18 U.S.C. § 3553(a).[51] Section 3565 requires the

court to revoke the offender's probation and impose a sentence that includes imprisonment if the offender (1) possesses a controlled substance; (2) possesses a firearm in violation of federal law or his or her probation conditions; (3) refuses to comply with drug testing as required by section 3563(a)(4); or (4) tests positive for illegal controlled substances more than three times within a year.[52] Upon resentencing following a revocation of probation, the defendant may be subject to the same penalties that existed during the original sentencing proceeding.[53]

Supervised Release Violations under 18 U.S.C. § 3583

Section 3583 and Chapter Seven of the *Guidelines Manual* apply to supervised release revocations.[54] Pursuant to section 3583(e), unless there is a statute that requires the court to revoke an offender's supervised release following a violation, the court may extend the term with or without modifying the offender's conditions of supervised release.[55] Specifically, section 3583(e) allows the court, after considering certain factors in section 3553(a), to extend a term of supervised release if less than the maximum term was imposed, to modify the conditions pursuant to the Federal Rules of Criminal Procedure and other provisions of section 3583, to order the offender to home detention during certain hours, and to order the offender to submit to electronic monitoring.[56]

Section 3583(e) also allows the court to revoke the term of supervised release if it finds by a preponderance of the evidence that the offender violated one or more conditions. The court may, upon revocation, require the offender to serve a term of imprisonment consisting of all or part of the statutorily authorized term without credit[57] for time served on post-release supervision.[58] Except for certain violations and certain offenses of conviction, the court may only require an offender to serve up to five years' imprisonment if the offense that resulted in the term of supervised release is a Class A felony, up to three years for Class B felonies, up to two years for Class C or D felonies, and up to one year for all other cases.[59] If the court imposes a sentence of imprisonment upon revocation, the court may also impose a term of supervised release following the imprisonment as long as the term does not exceed the term authorized for the original offense.[60]

Section 3583(g) requires the court to revoke an offender's supervised release in certain circumstances. Similar to mandatory probation revocations, the court must revoke an offender's supervised release and impose a sentence of imprisonment if an offender (1) possesses a controlled substance;[61] (2) possesses a firearm in violation of federal law or his or her supervised release conditions; (3) refuses to comply with drug testing as required by his or her conditions; or (4) tests positive for illegal controlled substances more than three times within a year.[62] The term upon revocation of supervised release is limited to those set forth in section 3583(e)(3).[63]

Prior to the Supreme Court's decision in *United States v. Haymond*,[64] section 3583(k) required the court to revoke an offender mandated to register as a sex offender under SORNA who commits certain offenses[65] and impose a mandatory minimum punishment of five years in prison.[66] The Supreme Court held that this section of the statute, as applied, violates the Fifth and Sixth Amendments of the Constitution.[67]

Chapter Seven of the *Guidelines Manual*

Chapter Seven of the *Guidelines Manual* consists of policy statements issued by the Commission that give courts guidance in determining the appropriate punishment for violations of probation and supervised release.[68] Violations of probation and violations of supervised release are treated as functionally equivalent for purposes of the policy statements in Chapter Seven.[69] Further, the policy statements in Chapter Seven provide three grades of violations of probation and supervised release by level of seriousness.[70] The grade of the violation, along with the offender's criminal history at the time of initial sentencing, establishes the offender's range of imprisonment upon revocation.[71]

Classification of Violations

Section 7B1.1 (Classification of Violations (Policy Statement)) provides the following grades for violations of probation and supervised release:

- **Grade A Violations** — 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**;

- **Grade B Violations** — conduct constituting any other federal, state, or local offense punishable by a term of **imprisonment exceeding one year**;

- **Grade C Violations** — 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.[72]

The grade of violation is based upon the offender's conduct, not his or her offense of conviction (if any) for the crime constituting the violation.[73] Furthermore, depending on type of weapon involved, a violation involving a firearm can be a Grade A or B violation.[74]

Revocation Table

Grade of Violation		Criminal History Category I	II	III	IV	V	VI
Grade C		3-9	4-10	5-11	6-12	7-13	8-14
Grade B		4-10	6-12	8-14	12-18	18-24	21-27
Grade A	(1)	Except as provided in subdivision (2) below:					
		12-18	15-21	18-24	24-30	30-37	33-41
	(2)	Where the defendant was on probation or supervised release as a result of a sentence for a Class A felony:					
		24-30	27-33	30-37	37-46	46-57	51-63

Section 7B1.3(a) provides that a court shall revoke an offender's term of probation or supervised release upon finding a Grade A or B violation, and it may extend and/or modify or revoke a term of probation or supervised release upon finding a Grade C violation.[75] Grade C violations that do not constitute criminal offenses are considered "technical" violations.[76]

The Revocation Table

Upon revocation, the guidelines recommend, through the revocation table in §7B1.4(a) and subject to the statutory limits delineated in §7B1.4(b), terms of imprisonment outlined in the table above.[77]

Section 7B1.4(b) provides guidance on how the above recommended ranges operate alongside statutory maximum or, if applicable, statutory minimum sentences.[78] As noted in the Revocation Table and in §7B1.4, Application Note 1, the CHC is the same CHC determined at the offender's original sentencing.[79] Departures from the revocation range may be warranted in cases involving (1) other criminal sentences unrelated to the violation following the grant of federal supervision; (2) Grade C violations indicating high risk of new felonious conduct; (3) departures given under §4A1.3 (Departures Based on Inadequacy of Criminal History Category) during the original sentencing; or (4) where the original sentence was the result of a downward departure.[80]

Service of Terms of Imprisonment

The guidelines provide several sentencing outcomes for the court to consider depending upon the grade of violation and whether the offender is convicted of another federal offense. For Grade A violations, the guidelines recommend service of a term by imprisonment. Conversely, for Grade B or C violations, the guidelines provide that the offender may satisfy the recommended minimum prison term through community confinement or home detention.[81] For offenders who violate supervised release and are convicted of another federal offense, the guidelines recommend that any revocation sentence be imposed to run consecutive to the sentence for the other federal offense.[82]

Data Collection and Methodology

Original Sentencing Data – Individual Offender Datafile

The Commission collects and analyzes data on federal sentences to carry out its various statutory responsibilities. As authorized by Congress, the Commission's numerous research responsibilities include: (1) the establishment of a research and development program to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices, (2) the publication of data concerning the sentencing process, (3) the systematic collection and dissemination of information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, and (4) the systematic collection and dissemination of information regarding the effectiveness of sentences imposed.[83]

The Commission regularly collects information for every federal felony and Class A misdemeanor offense sentenced each year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: (1) the charging document, (2) the plea agreement, (3) the Presentence Report, (4) the Judgment and Commitment Order, and (5) the Statement of Reasons form.[84] The Commission extracts and codes data from these documents for input into various databases. For each case in its Offender Datafile, the Commission routinely collects case identifiers,[85] sentencing data, demographic variables, statutory information, the complete range of court guideline application decisions, and departure and variance information. This report uses data from the Commission's 2013–2017 Offender Datafiles to provide information on offenders whose original sentence was probation or included a term of supervised release as a comparison to supervision violations as described below.

Supervision Violations Data

As a supplement to its research activities, the Commission implemented a data collection system to track violations of federal probation and supervised release from fiscal years 2013 through 2017. This project differed from the Commission's regular data collection primarily because, unlike original sentencings, courts do not use a standardized reporting system for sentences imposed following violations. Because the courts differ in reporting practices, the Commission sought to determine the overall proportion of violation documents received from the courts. In order to make this determination, the Commission compared

the number of violations for fiscal year 2017 in which the court ordered the supervision revoked to data on revocations collected by the Administrative Office of the United States Courts for that same fiscal year. This analysis indicated that the Commission had received 88.7 percent of all revocations during that period.

During the five-year period studied, the Commission received 108,115 reports of violation decisions from the courts. The documents the Commission received include: (1) the violation report, (2) the motion for revocation or petition for warrant of arrest or summons, (3) the waiver of hearing, (4) the summary of violation hearing, (5) the Judgment and Commitment Order, and (6) revocation worksheets. The Commission collected all available information for each of the violation cases, including case identifiers, the offender's supervision status at the time of the violation, the grade of the violation, whether the offender admitted to the violation, and the sentence imposed by the court for the violation.[86] The Commission then matched the violation data to each offender's existing original sentencing data in its Offender Datafile to facilitate comprehensive analyses of these federal court actions.[87]

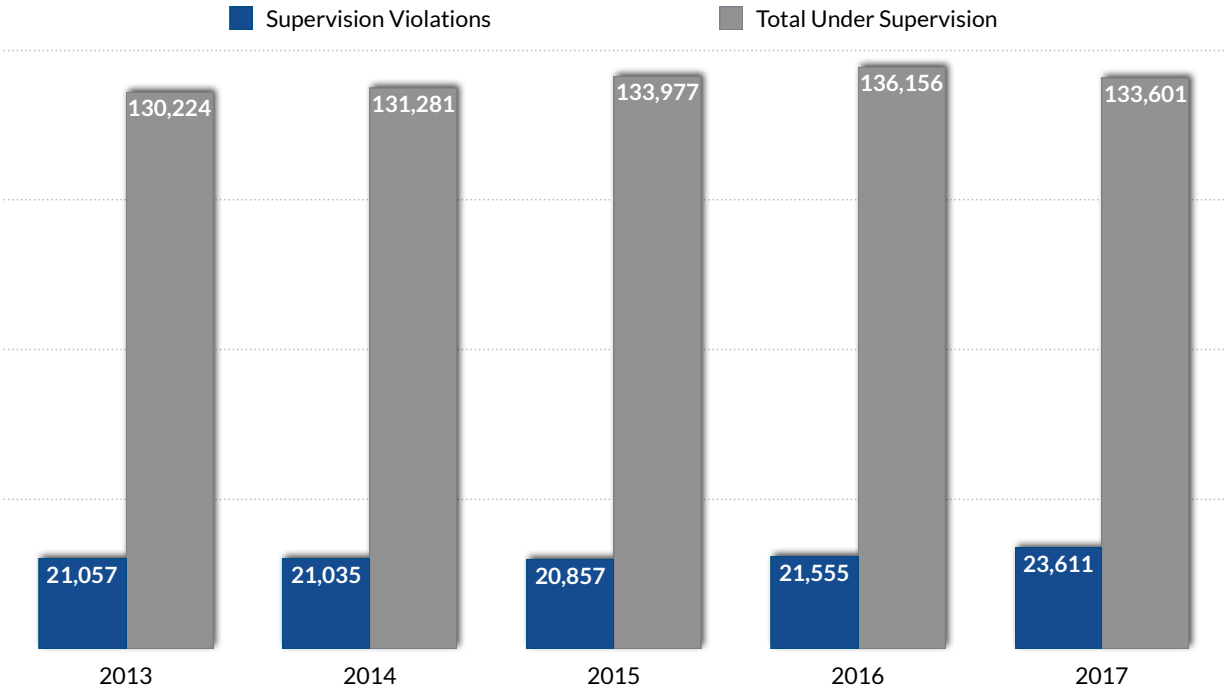
The following sections provide information on violations of federal probation and supervised release from fiscal years 2013 to 2017.[88] The first part provides a description of the scope and distribution of probation and supervision violations. Next follows a series of comparisons of offender, offense, and sentencing information for supervision violations and offenders originally sentenced to probation or a term of supervised release in the Commission's individual datafile during the same time period. The concluding analyses provide information on the types, timing, and sentencing outcomes of violation hearings.

The second part of this study compares offenders who violated supervision to offenders originally sentenced during the same time period whose sentence was probation or included a term of supervised release.[89] As such, the point of comparison for this study is the federal offender population originally sentenced to terms of supervision in the same fiscal year as the violation proceedings. The federal court criminal docket comprises a wide variety of daily proceedings. Among them are sentencing hearings for offenders alleged to have violated a term of probation or supervised release and original sentencing hearings for offenders convicted of crimes. Comparing the two groups provides insight into the offenders and offenses that came before the courts on any given day during the five-year period under study. Comparing the two groups also provides an opportunity to examine the similarities and differences of federal offenders sentenced to terms of supervision but at very different stages in the legal process.[90]

The following sections focus exclusively on the Commission's newly available data on federal probation and supervised release violations—information on the characteristics of the violations and hearing outcomes.

Geographic Distribution

Figure 1. Supervision Violations Reported to the U.S. Sentencing Commission and Federal Offenders Under Post-Conviction Supervision



Between fiscal years 2013 and 2017, both the overall number of supervision violations and the number of individuals under supervision remained consistent. As shown in Figure 1, districts reported an average of about 21,600 violations per year to the Commission. Similarly, the total number of offenders on probation or supervised release averaged about 133,000 per year.[91] Despite the overall consistency, the prevalence of both supervision violations and offenders under supervision varied considerably by district.

Sixteen of the 94 districts accounted for half (50.5%) of the supervision violations during the time period (Table 1).[92] Two Texas districts reported the largest number of violations during the time period, with more than 8,000 violations in both the Southern District (8,797) and the Western District (8,225). The Southern and Western Districts of Texas together accounted for more than 15 percent of violations during the time period.

Table 1. Supervision Violations in Each Federal Judicial District
Fiscal Years 2013-2017

District	Supervision Violations		
	Number	Percent	Cumulative Percent[92]
TOTAL	**108,115**	**100.0**	
Southern Texas	8,797	8.1	8.1
Western Texas	8,225	7.6	15.7
Arizona	6,526	6.0	21.8
Southern California	5,758	5.3	27.1
Western Missouri	3,052	2.8	29.9
Eastern Missouri	2,962	2.7	32.7
New Mexico	2,532	2.3	35.0
Minnesota	2,250	2.1	37.1
Western North Carolina	2,225	2.1	39.2
Southern Florida	1,905	1.8	40.9
Eastern Virginia	1,882	1.7	42.7
Eastern Tennessee	1,834	1.7	44.4
South Carolina	1,677	1.6	45.9
Middle Florida	1,661	1.5	47.4
Northern Texas	1,657	1.5	49.0
Western Washington	1,651	1.5	50.5
Remaining 78 Districts	53,521	49.5	100.0

The number of offenders on probation or supervised release varied more widely across districts than the number of violations, but some similar patterns remained. As shown in Table 2, 21 of the 94 federal judicial districts accounted for half (50.9%) of the offenders under supervision during the time period.[94]

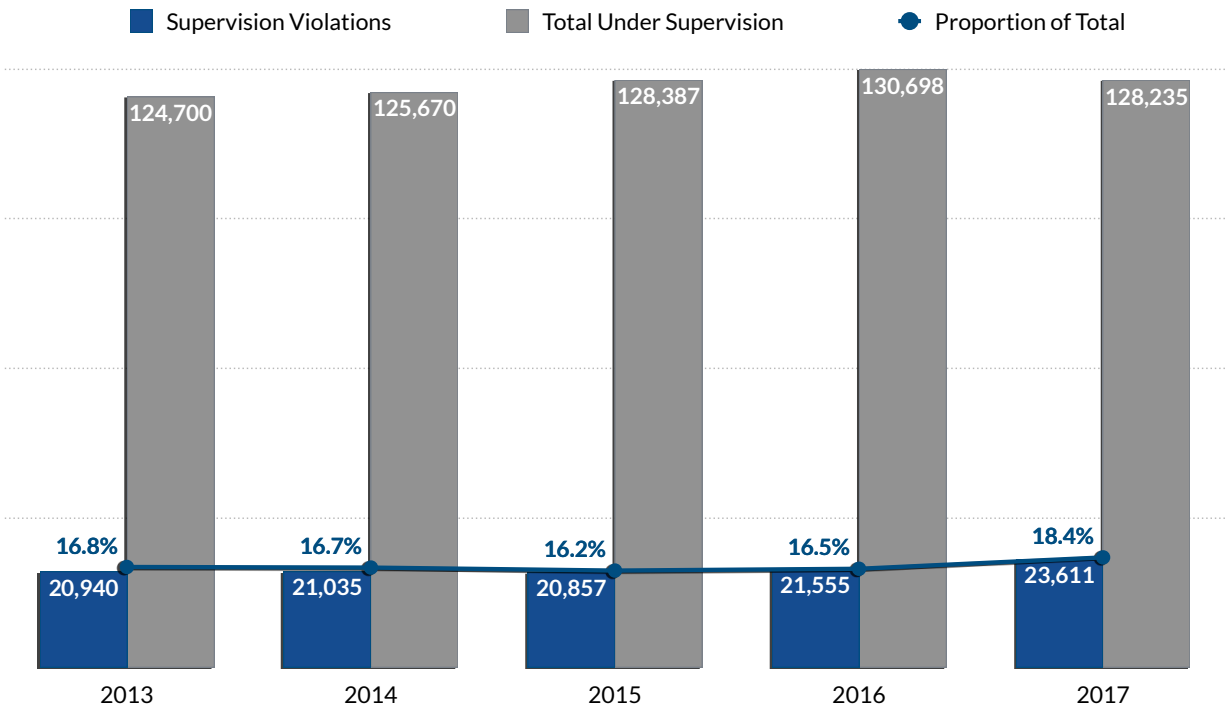
Some of the districts with the largest number of individuals under supervision also had the largest number of violations. Ten districts were in the top 50 percent of both categories: District of Arizona, Southern District of California, District of South Carolina, Middle District of Florida, Southern District of Florida, Eastern District of Missouri, Northern District of Texas, Southern District of Texas, Western District of Texas, and the Eastern District of Virginia.

Table 2. Individuals Under Supervision in Each Federal Judicial District
Fiscal Years 2013-2017

District	Individuals Under Supervision		
	Number	Percent	Cumulative Percent
TOTAL	**665,239**	**100.0**	
Southern Texas	31,352	4.7	4.7
Central California	27,549	4.1	8.9
Western Texas	27,321	4.1	13.0
Southern Florida	24,472	3.7	16.6
Middle Florida	20,139	3.0	19.7
Arizona	19,347	2.9	22.6
Maryland	15,852	2.4	25.0
Eastern New York	15,188	2.3	27.2
Northern Texas	14,902	2.2	29.5
Southern New York	14,805	2.2	31.7
Southern California	13,677	2.1	33.8
South Carolina	13,448	2.0	35.8
Eastern Virginia	13,175	2.0	37.8
Eastern Pennsylvania	12,804	1.9	39.7
Northern Illinois	12,761	1.9	41.6
Puerto Rico	11,807	1.8	43.4
New Jersey	11,693	1.8	45.1
Eastern Missouri	10,173	1.5	46.7
Northern Ohio	9,462	1.4	48.1
Northern California	9,359	1.4	49.5
Northern Georgia	9,291	1.4	50.9
Remaining 73 Districts	326,662	49.1	100.0

The violation data presented in this report are somewhat incomplete because they exclude an unknown number of probation and supervised release violations from the Central District of California.[95] For most districts, the number of supervision violations reported to the Commission was generally consistent with the number of individuals under supervision indicated by the Administrative Office of the U.S. Courts. The Central District of California, despite consistently having the second highest number of offenders under supervision, did not submit violation documents for most of the time period under study. Because of the lack of data from the district, Central District of California cases have been removed from the remaining analyses in this report.[96]

Figure 2. Supervision Violations as a Proportion of Total Individuals Under Federal Post-Conviction Supervision



The Commission compared the number of violations for fiscal year 2017 in which the court ordered the supervision revoked to data on revocations collected by the Administrative Office of the United States Courts for that same fiscal year. Excluding the Central District of California from this analysis, the Commission's files matched 90.9 percent of the revocations in the Administrative Office's files.

The overall numbers of probation and supervised release violations and individuals under supervision depict each federal judicial district's supervision caseload. To enable more practical comparisons of each district's caseload, the Commission calculated the proportion of violations reported as a share of the number of individuals under supervision. Overall, the share of violations reported to the Commission accounted for 16.9 percent of the total individuals under supervision, ranging between 16.2 and 18.4 percent during each of the five years (Figure 2).

Table 3. Proportion of Supervision Violators Within Each Federal Judicial District
Fiscal Years 2013-2017

District	Proportion	District	Proportion	District	Proportion
Southern California	42.1%	Colorado	17.6%	Southern Indiana	11.1%
Minnesota	37.4%	Southern Alabama	17.6%	Eastern Oklahoma	10.8%
Western Missouri	34.3%	Central Illinois	17.5%	Northern California	10.8%
Arizona	33.7%	New Hampshire	17.5%	Northern Mississippi	10.8%
New Mexico	33.4%	Eastern Texas	16.6%	Northern Alabama	10.7%
Utah	31.8%	Idaho	16.3%	Southern Ohio	10.5%
Montana	30.1%	Nebraska	16.1%	Northern Florida	9.8%
Western Texas	30.1%	Rhode Island	16.1%	Eastern California	9.6%
Eastern Missouri	29.1%	Northern Mariana Islands	15.9%	Middle Tennessee	9.3%
Kansas	28.5%	Northern New York	15.5%	Eastern New York	9.2%
Southern Texas	28.1%	Western Tennessee	15.2%	Western Pennsylvania	9.1%
Western Oklahoma	28.0%	Northern Ohio	14.8%	Eastern Michigan	9.0%
Western North Carolina	27.9%	Alaska	14.3%	District of Columbia	9.0%
Oregon	27.5%	Eastern Virginia	14.3%	Western Louisiana	9.0%
South Dakota	27.3%	Eastern Arkansas	14.2%	Western Kentucky	8.9%
Maine	26.9%	Southern Mississippi	14.1%	Eastern Pennsylvania	8.7%
Western Washington	26.4%	Northern Oklahoma	14.0%	Virgin Islands	8.6%
Wyoming	25.4%	Eastern North Carolina	13.7%	Delaware	8.6%
Southern Illinois	23.4%	Middle Pennsylvania	13.7%	Southern New York	8.5%
North Dakota	23.4%	Nevada	13.6%	Middle Florida	8.2%
Eastern Kentucky	23.3%	Northern Indiana	12.7%	Eastern Louisiana	8.2%
Eastern Wisconsin	22.9%	Middle North Carolina	12.5%	Middle Louisiana	8.2%
Southern West Virginia	22.4%	Massachusetts	12.5%	Middle Georgia	7.8%
Eastern Tennessee	22.3%	South Carolina	12.5%	Southern Florida	7.8%
Northern West Virginia	21.8%	Western Arkansas	12.0%	New Jersey	7.2%
Northern Iowa	20.6%	Western New York	12.0%	Middle Alabama	7.1%
Hawaii	20.2%	Western Wisconsin	11.3%	Northern Illinois	6.7%
Southern Georgia	19.7%	Western Virginia	11.3%	Northern Georgia	6.7%
Vermont	19.2%	Guam	11.1%	Puerto Rico	6.1%
Eastern Washington	18.8%	Southern Iowa	11.1%	Maryland	4.7%
Western Michigan	17.9%	Northern Texas	11.1%	Connecticut	4.5%

The proportion of violations varied considerably across districts. As shown in Table 3, during the five year time period, more than one-third of individuals on supervision within the district committed a violation in the Southern District of California (42.1%), District of Minnesota (37.4%), Western District of Missouri (34.3%), District of Arizona (33.7%), and District of New Mexico (33.4%). In contrast, less than five percent of individuals on supervision committed a violation in the Districts of Connecticut (4.5%) and Maryland (4.7%).

Offender Characteristics

Table 4. Federal Offender Characteristics
Fiscal Years 2013-2017

Offender Characteristics	Supervision Violators	Sentenced to Supervision
Race/Ethnicity		
White	31.3%	26.7%
Black	33.8%	24.0%
Hispanic	28.0%	44.8%
Other	6.9%	4.6%
U.S. Citizen	86.3%	68.4%
Male	89.3%	85.2%
Average Age	37 Years	37 Years

Race and citizenship patterns were different for supervision violators compared to offenders at original sentencings from fiscal years 2013 to 2017, but gender patterns were the same. Supervision violators were equally distributed across three race categories. As shown in Table 4, approximately one-third of supervision violators were Black (33.8%), White (31.3%), or Hispanic (28.0%). In contrast, Hispanic offenders predominated (44.8%) among offenders at original sentencings. Similar portions of those offenders were White (26.7%) or Black (24.0%).

The proportion of U.S. citizens also differed for each group of offenders. Supervision violators overwhelmingly comprised U.S. citizens (86.3%), compared to 68.4 percent of offenders at original sentencings. The smaller proportion of non-citizens among supervision violations results, to some extent, from the lower rate in which courts impose terms of supervised release for non-citizen offenders sentenced to prison. This is, in part, because of the recommendation in §5D1.1 against the imposition of a term of supervised release when a term not required by statute and the offender is likely to be deported following imprisonment.[97] To illustrate, nearly one-fifth (19.3%) of federal offenders sentenced to prison during the time period were *not* sentenced to supervised release and the overwhelming majority (94.2%) of those offenders were non-citizens.

The two groups of offenders were nearly identical in terms of gender and age. Males constituted the majority of both supervision violators (89.3%) and offenders at original sentencings (85.2%). In addition, the average age for both groups was 37.[98]

Primary Offense Types and Characteristics

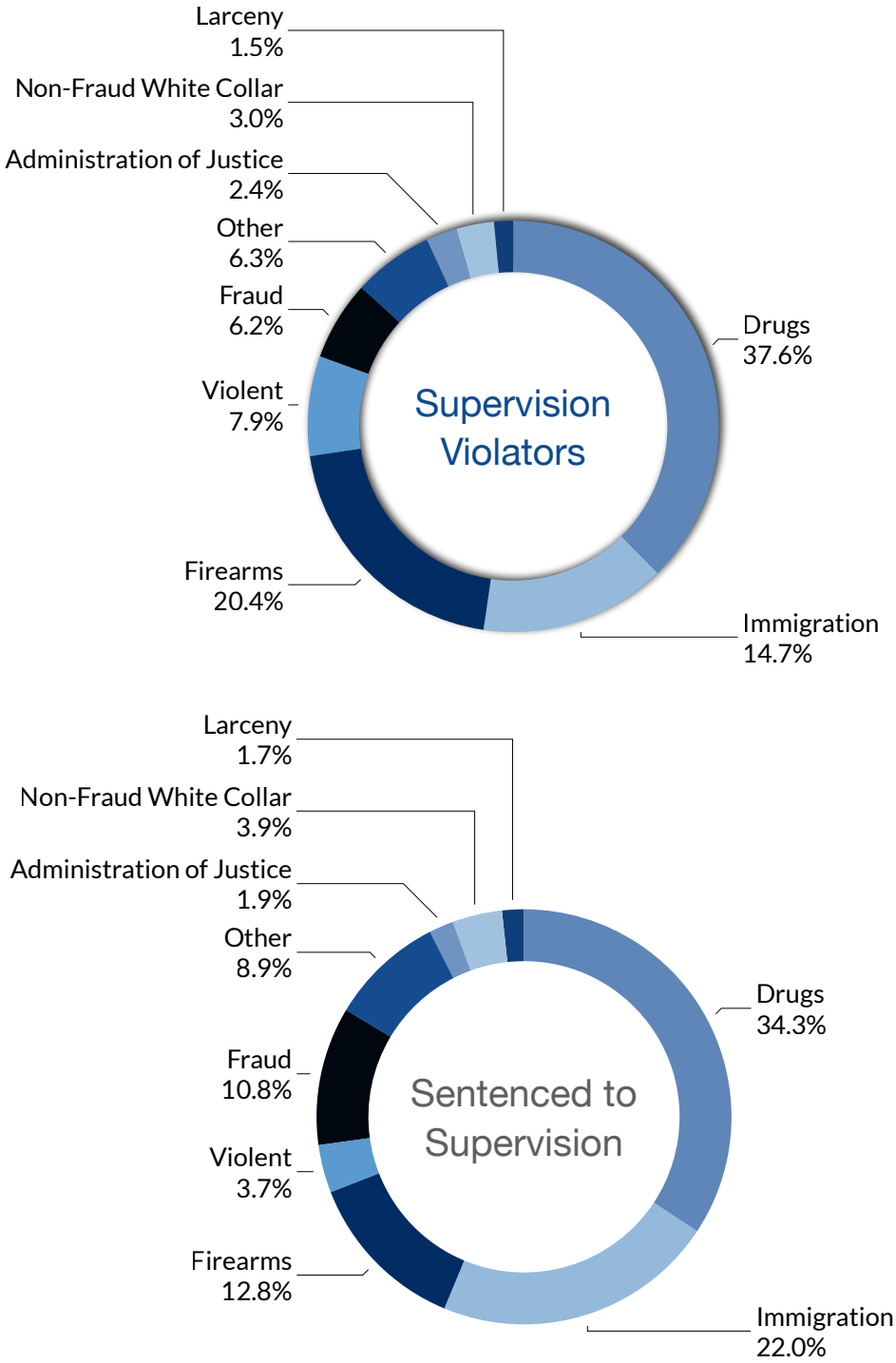
This section continues the comparisons of supervision violations to original sentencings. For supervision violations, the primary offense type is the offense for which the offender was originally sentenced to probation or supervised release, not the offense that constituted the violation.

Although there are some similarities in the offense types for the two groups of offenders, federal supervision violators demonstrated somewhat more serious offense patterns. Figure 3 shows the primary offense types for both groups of offenders. Each group of offenders had similar rates of drug, fraud, non-fraud white collar, larceny and other types of offenses.[99] However, the rates of supervision violators originally sentenced for violent and firearms offenses (7.9% and 20.4%, respectively) were approximately twice as high compared to offenders at original sentencings during the time period (3.7% and 12.8%, respectively). In contrast, the rates of immigration offenses were lower for supervision violators (14.7%) compared to offenders at original sentencings (22.0%). The lower rate of immigration offenses among supervision violations also is related to the low rate in which courts impose terms of supervised release for non-citizen offenders sentenced to prison. While both U.S. citizens and non-citizens committed immigration offenses, non-citizens account for a vast majority of those offenses and, consequently, for the majority of violations among immigration offenders.[100]

The patterns of firearms and violent primary offenses among supervision violators evoke parallels to previous findings in the Commission's recidivism research. In its 2016 publication, *Recidivism Among Federal Offenders, A Comprehensive Overview*,[101] the Commission studied offenders who were either released from federal prison after serving a sentence of imprisonment or placed on a term of probation in 2005. Among other things, the Commission found that the type of federal crime that led to an offender's original conviction was also related to their likelihood of reoffending. Firearms offenders were most likely to be rearrested (68.3%) followed closely by robbery offenders (67.3%). Fraud offenders were least likely to be rearrested (34.2%).[102]

The Commission's continued recidivism research further underscores these similarities. Two additional studies published in 2019, *Recidivism Among Federal Violent Offenders*[103] and *Recidivism Among Federal Firearms Offenders*[104] demonstrated substantially greater recidivism rates comparing each respective group of offenders to all other federal offenders. Specifically, the Recidivism Violence Report demonstrated that 60.2 percent of

Figure 3. Primary Offense Types of Federal Offenders
Fiscal Years 2013-2017



offenders sentenced for a violent instant offense were rearrested within eight years of release, compared to 39.8 percent of all other federal offenders.[105] Similarly, the Recidivism Firearms Report demonstrated that 68.1 percent of federal firearms offenders were rearrested during the same time period, compared to 46.3 percent of all other federal offenders.[106]

Drug Offenses

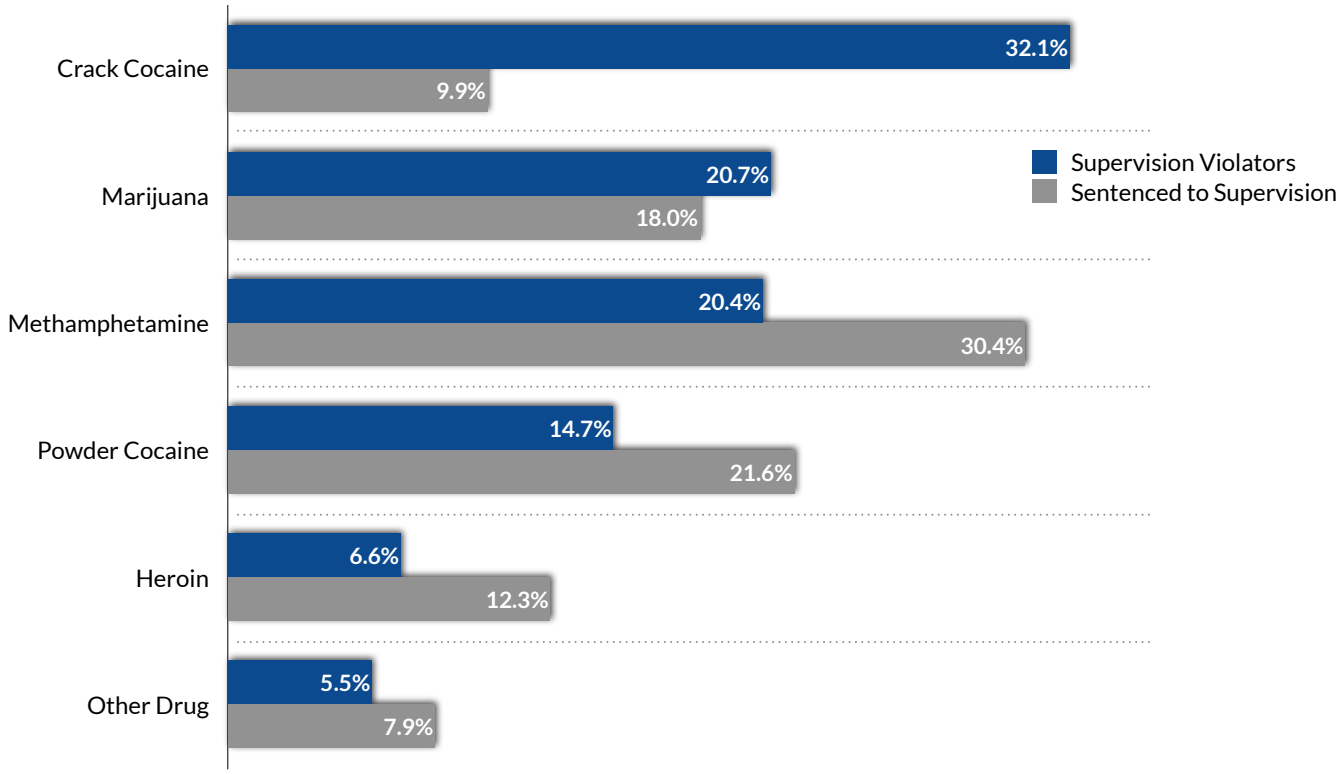
The primary drug type differed between the two groups of offenders. Although drug offenses were the predominant primary offense type for both groups of offenders, the predominant *drug type* was different for each group. Nearly one-third (32.1%) of original drug sentences for supervision violators were for crack cocaine (Figure 4). Similar proportions involved marijuana (20.7%) and methamphetamine (20.4%), followed by powder cocaine (14.7%). The smallest portion of drug offenses involved heroin (6.6%) and other types of drugs (5.5%).[107] In contrast, the largest portion of drug sentences among offenders at original sentencings during the time period were for methamphetamine (30.4%), followed by powder cocaine (21.6%), marijuana (18.0%), and heroin (12.3%). The smallest portion of drug offenses for these offenders involved crack cocaine (9.9%) and other types of drugs (7.9%).

The drug type patterns for supervision violations were similar to drug type patterns reported by the Commission in its previous recidivism research. Specifically, the large proportion of original sentences for crack cocaine offenses among supervision violators is consistent with the Commission's findings for recidivist drug offenders. In its 2017 publication, *Recidivism Among Federal Drug Trafficking Offenders*,[108] the Commission reported that crack cocaine offenders recidivated at the highest rate (60.8%) of any drug type, while powder cocaine offenders recidivated at the lowest rate (43.8%).[109]

Some drug offenders were eligible for sentence reductions under the "safety valve" provisions of section 3553. During the period studied, the safety valve statute provided that the court shall impose a sentence pursuant to the sentencing guidelines without regard to the otherwise applicable statutory minimum for offenders who meet the statutory criteria.[110] Specifically, following a government motion, offenders who (1) had no more than one criminal history point, (2) did not use violence or possess a dangerous weapon in connection with the offense, (3) were not organizers or leaders or engaged in a continuing criminal enterprise, (4) whose offense did not result in death or serious bodily injury to any person, and, (5) by the time of sentencing, truthfully provided to the Government all relevant information, were eligible for safety valve relief.[111]

The two groups of offenders differed in rates of safety valve reductions. As shown in Table 5, less than one-fifth (19.1%) of supervision violators originally sentenced for a drug offense received a sentence reduction for safety valve, compared to nearly one-third (30.7%) of drug offenders originally sentenced during the time period.[112] The low rates of safety valve application among supervision violators

Figure 4. Primary Drug Type of Federal Offenders
Fiscal Years 2013-2017



also are consistent with previous recidivism findings. The Drug Recidivism Report demonstrated an inverse association between safety valve reductions and recidivism rates. Offenders who did *not* qualify for a safety valve reduction had *higher* recidivism rates compared to offenders who did qualify (55.7% compared to 40.5%). The report continues to explain that the lower rate of recidivism among offenders who received a safety valve reduction was largely attributable to the minimal criminal history required to receive the safety valve reduction.[113] Criminal history is addressed for all offenders in the section below.

Weapons

Returning to comparisons of all offenders in each group, the two groups of offenders had generally similar offense characteristics (Table 5). There were small differences regarding weapon involvement between supervision violators and offenders at original sentencings. Weapon involvement was determined by the application of a weapon-related specific offense characteristic or a conviction under 18 U.S.C. § 924(c).[114] Weapon involvement was similar for both supervision violators (11.3%) and offenders at original sentencings (10.0%).

Table 5. Offense Characteristics of Federal Offenders
Fiscal Years 2013-2017

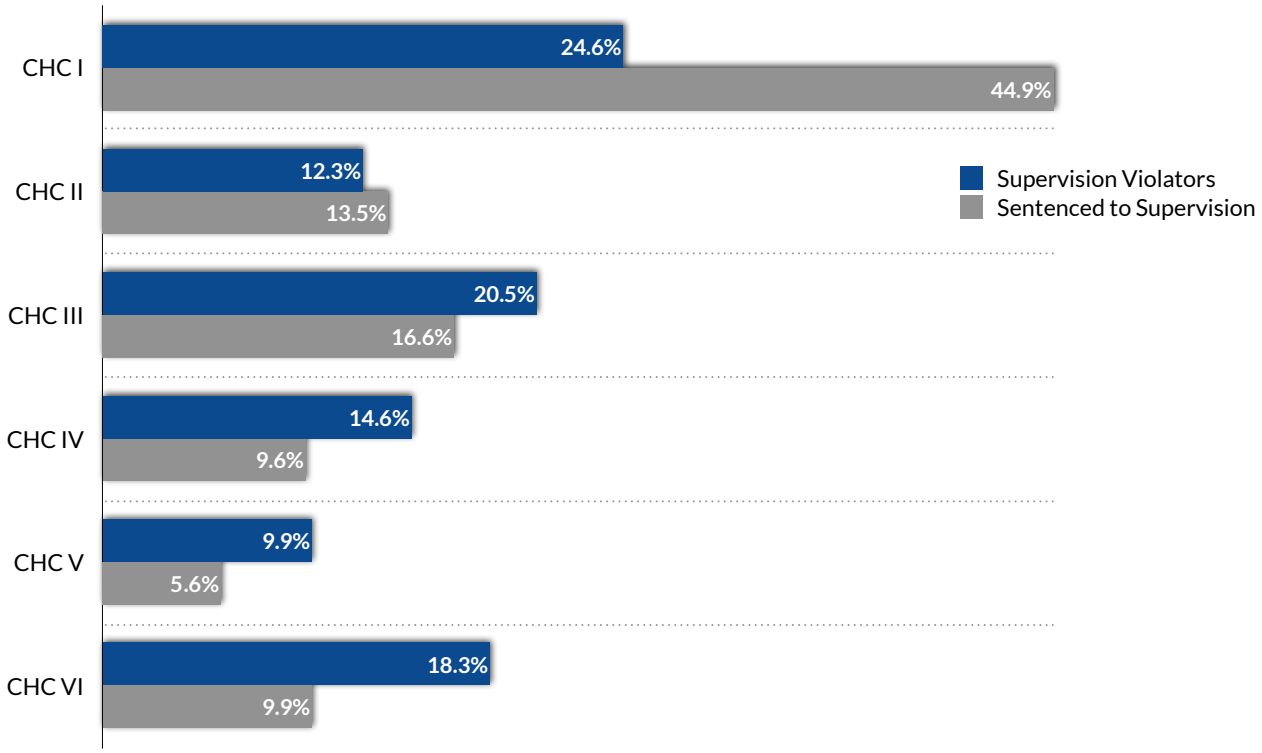
Offense Characteristics	Supervision Violators	Sentenced to Supervision
Safety Valve *(drug offenders only)*	19.1%	30.7%
Weapon Enhancement	11.3%	10.0%
Aggravating Role	2.8%	5.5%
Mitigating Role	6.9%	7.9%

Role in the Offense

The extent of individual offender culpability also was similar for supervision violators at the time of their original sentencing and for offenders originally sentenced during the time period. Chapter Three of the *Guidelines Manual* provides for offense level adjustments that account for an offender's role in the offense. Relevant to this study, Chapter Three provides adjustments for offenders whose conduct constitutes an aggravating role (§3B1.1) or a mitigating role (§3B1.2) in the offense. Section 3B1.1 provides 2- to 4-level increases for offenders who acted in an aggravating role in the offense.[115] Specifically, §3B1.1 provides for a 4-level increase for an offender who was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, a 3-level increase for a manager or supervisor of criminal activity that involved five or more participants or was otherwise extensive, and a 2-level increase to an organizer, leader, manager, or supervisor in any criminal activity than otherwise described.[116] Conversely, §3B1.2 provides decreases for offenders who acted in a mitigating role in the offense, depending on whether the offender's role was minor (2-levels), minimal (4-levels), or in-between (3-levels).[117]

As shown in Table 5, both role adjustments applied to a very small portion of offenders in each group. Less than six percent of both supervision violators (2.8%) and offenders originally sentenced during the time period (5.5%) had offense level increases based on an aggravating role in the offense.[118] A slightly larger portion of each had offense level reductions for mitigating role: 6.9 percent of supervision violators and 7.9 percent of offenders at original sentencings.[119]

Figure 5. Criminal History Category of Federal Offenders
Fiscal Years 2013-2017



Criminal History

The two groups of offenders had notably different criminal histories. Chapter Four of the *Guidelines Manual* provides for the calculation of a criminal history score based on the status and length of an offender's prior sentences.[120] That calculation results in a Criminal History Category for each offender, ranging from I to VI. The criminal histories for supervision violators at the time of their original sentencing were more serious than for offenders originally sentenced during the time period. As shown in Figure 5, only one-quarter (24.6%) of supervision violators were in CHC I at the time of their original sentencing, compared to close to one-half (44.9%) of offenders originally sentenced during the time period. The proportion of offenders in the next highest CHC of II were nearly equal, but the proportion of supervision violators was higher in each of the four higher CHCs. The proportion of supervision violators in CHC VI, 18.3 percent, was nearly twice that for offenders at original sentencings of 9.9 percent.[121]

The more serious criminal histories among supervision violators parallel the Commission's previous recidivism findings. In both the Recidivism Overview and in its 2017 publication *The Past Predicts the Future: Criminal History and Recidivism*

of Federal Offenders,[122] the Commission demonstrated that CHC is a strong predictor of recidivism. Rearrest rates steadily increased from a low of 33.8 percent for offenders in CHC I to a high of 80.1 percent for offenders in CHC VI.[123]

In addition to CHC, the guidelines provide for enhanced penalties for two categories of career offenders. First, §4B1.1 (Career Offender) provides enhanced penalties for offenders with an instant conviction for a felony crime of violence or a controlled substance offense and who have at least two prior felony convictions for such offenses.[124] The proportion of career offenders was very small and was similar for both supervision violators (3.8%) and offenders at original sentencings (3.6%).

Second, §4B1.4 (Armed Career Criminal) provides enhanced penalties for armed career criminals pursuant to 18 U.S.C. § 924(e), the Armed Career Criminal Act (ACCA). The ACCA and, in turn, §4B1.4, provides increased sentences for offenders convicted under 18 U.S.C. § 922(g) who have at least three prior convictions for a "violent felony" or "serious drug offense."[125] The application rates for this provision mirror those for career offender. The proportions of armed career criminals were even smaller for both supervision violators (1.5%) and offenders at original sentencings (0.8%).

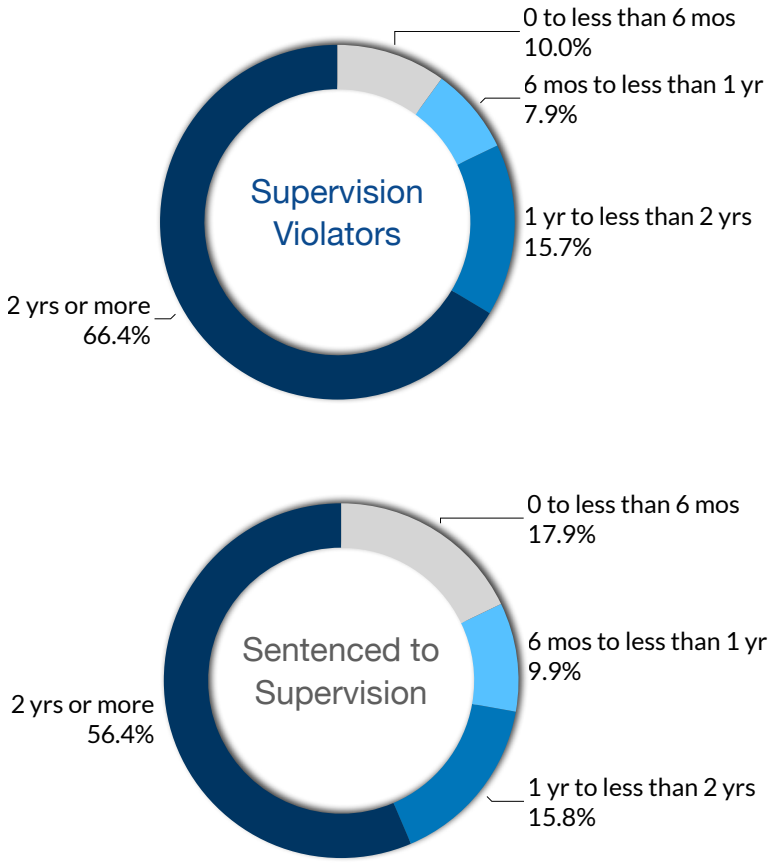
Types and Lengths of Sentences Imposed

Table 6. Types of Sentences Imposed on Federal Offenders
Fiscal Years 2013-2017

Sentence Types	Supervision Violators	Sentenced to Supervision
Prison Only	89.5%	85.0%
Prison and Alternatives	3.9%	3.4%
Probation and Alternatives	2.3%	3.0%
Probation Only	4.3%	8.6%

Although the rates of imprisonment for both groups of offenders were similar, supervision violators had somewhat longer original terms of imprisonment and supervision imposed than did offenders at original sentencings during the time period. The overwhelming majority (and nearly equal portions) of offenders in each group were originally sentenced to prison (Table 6), but the terms imposed were slightly different. The average sentence originally imposed was 54 months for supervision violators and 50 months for offenders at original sentencings.

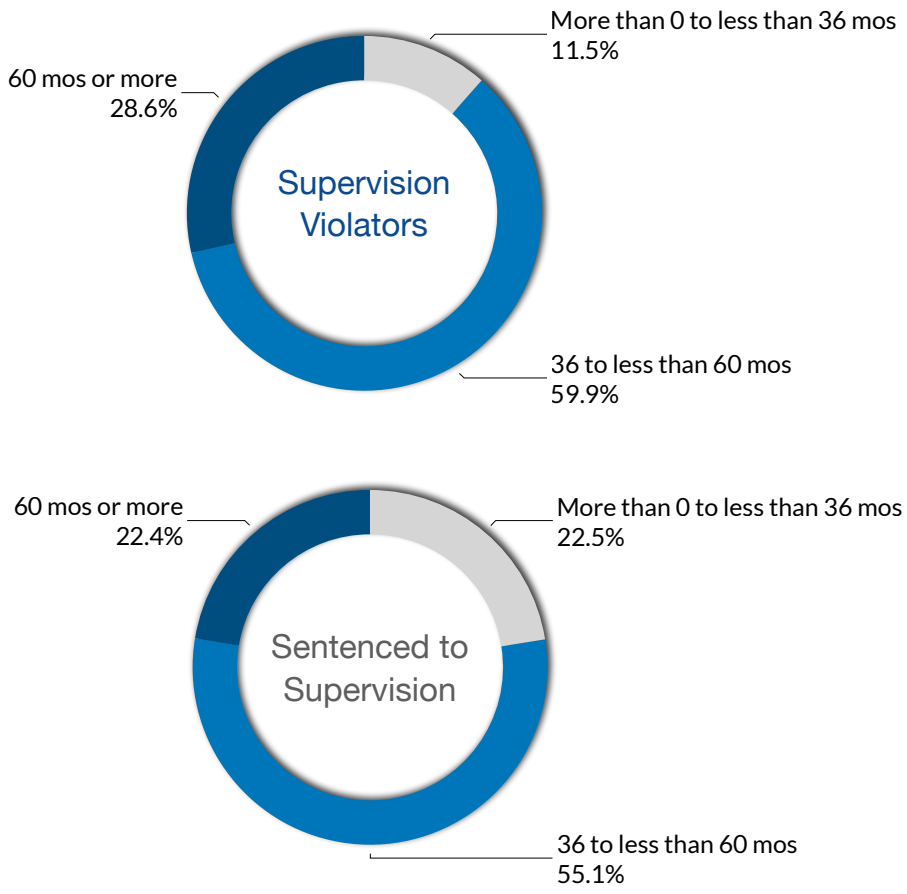
Figure 6. Length of Imprisonment at Original Sentencing
Fiscal Years 2013-2017



Two-thirds (66.4%) of supervision violators were originally sentenced to terms of imprisonment of two years or longer, compared to just over half (56.4%) of offenders originally sentenced during the time period. Furthermore, only 10.0 percent of supervision violators originally had sentences of zero to six months' imprisonment, which was less than the rate of such sentences for offenders originally sentenced during the time period (17.9%) (Figure 6).[126]

The length of supervision terms imposed also varied to some extent between the two groups. There was little difference in the average term of supervision for the two groups. The average term of supervision originally imposed for supervision violators was 45 months. This compares to an average of 41 months for offenders originally sentenced to supervision during the time period. However, longer supervision terms were more common for supervision violators.[127] Figure 7 shows a

Figure 7. Length of Supervision Imposed at Original Sentencing
Fiscal Years 2013-2017



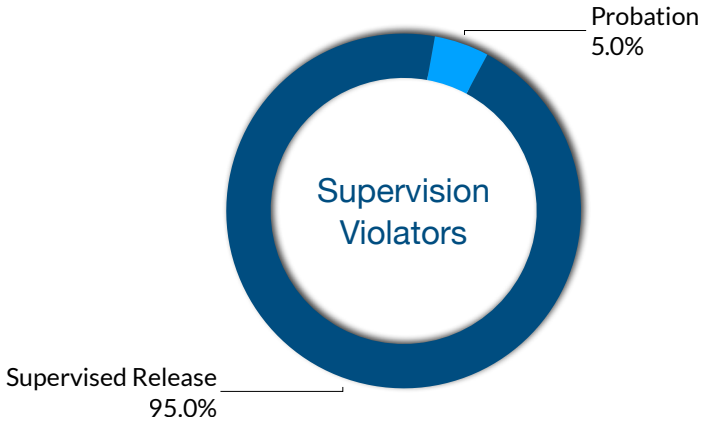
comparison of the length of probation and supervised release terms imposed for each group. Half as many supervision violators (11.5%) originally were sentenced to less than 36 months of supervision compared to offenders at original sentencings (22.5%). Among supervision violators, 28.6 percent originally were sentenced to 60 months or more of supervision and 59.9 percent were sentenced to between 36 and 60 months.

The rates of these longer terms were somewhat lower for offenders at original sentencings with 22.4 percent sentenced to 60 months or more of supervision and 55.1 percent sentenced to between 36 and 60 months.

Characteristics of Federal Supervision Violations

This section focuses exclusively on the data collected from violation records submitted to the Commission from hearings conducted from 2013 to 2017 and analyzes the types, timing, and sentencing outcomes of violation hearings.

Figure 8. Types of Supervision Violations
Fiscal Years 2013-2017



A total of 82,270 offenders accounted for the 107,998 violation hearings during the five-year period. As such, an overwhelming majority of offenders, 93.2 percent, had only one violation hearing. The largest number of violation hearings for an offender in a single year was nine. Offenders admitted to the alleged violation in 81.9 percent of the violation cases.[128] In addition, the majority (87.0%) of violation hearings reported to the Commission were held in the same federal judicial district where the original sentence was imposed.[129]

Types of Violations

As shown in Figure 8, violations of supervised release (95.0%), rather than probation (5.0%), accounted for the overwhelming majority of violation hearings during the time period. Although violations of supervised release comprised most of the supervision violations, both types of violation are treated as functionally equivalent for purposes of the policy statements in Chapter Seven. Regardless of the type of supervision violated, violations are categorized into one of three grades for purposes of Chapter Seven.[130]

Figure 9. Grades of Supervision Violations
Fiscal Years 2013-2017

Grades of Violations

As discussed earlier, the guidelines classify supervision violations into three grades based on the offender's conduct and the punishment applicable to the offense underlying the violation. Grade A violations are the most serious violations and include conduct constituting violent, firearms, or drug offenses punishable by more than one year of imprisonment, and all other offenses punishable by more than 20 years of imprisonment. Grade B violations include conduct consisting of offenses punishable by more than one year of imprisonment. Grade C violations are the least serious and include conduct constituting an offense punishable by one year or less of imprisonment, or any other violation of a condition of supervision.

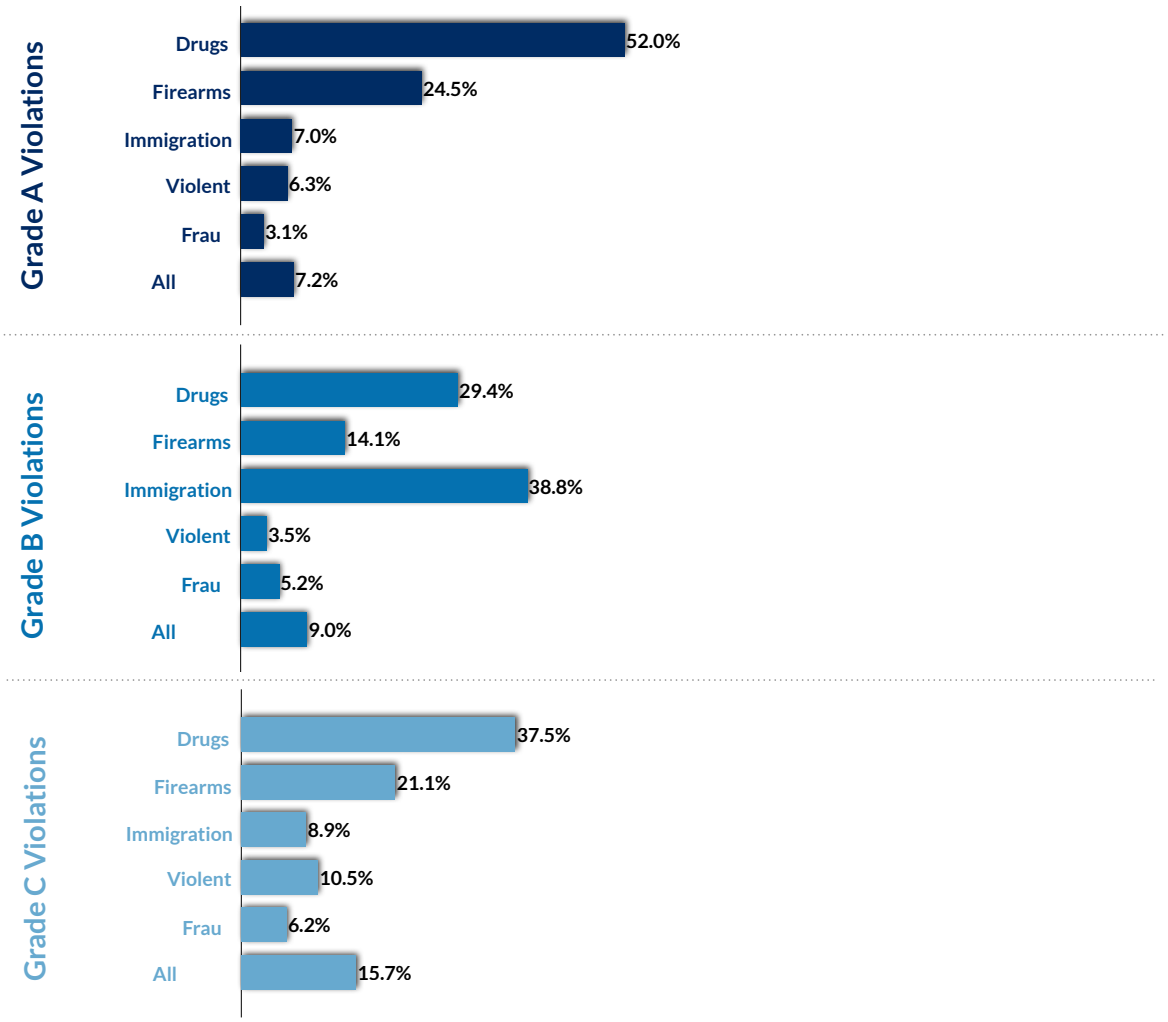
As shown in Figure 9, more than half (54.9%) of violations were Grade C and nearly one-third (31.5%) were Grade B. The smallest proportion of violations, 13.6 percent were the most serious, Grade A.[131]

Primary Offense Type

Different proportions of primary offense types comprised the three grades of violation. The primary offense type is the offense for which the offender was originally sentenced to probation or supervised release, not the offense constituting the violation. Figure 10 shows the make-up of primary offense types for offenders who committed each grade of violation.[132]

Three-quarters (76.5%) of Grade A violations were committed by offenders who originally were sentenced for drug (52.0%) and firearms (24.5%) offenses. Grade A violations were committed by nearly equal proportions of offenders originally sentenced for violent (6.3%), immigration (7.0%), and other types of offenses (7.2%). Offenders originally sentenced for fraud offenses accounted for the smallest portion of Grade A violations.

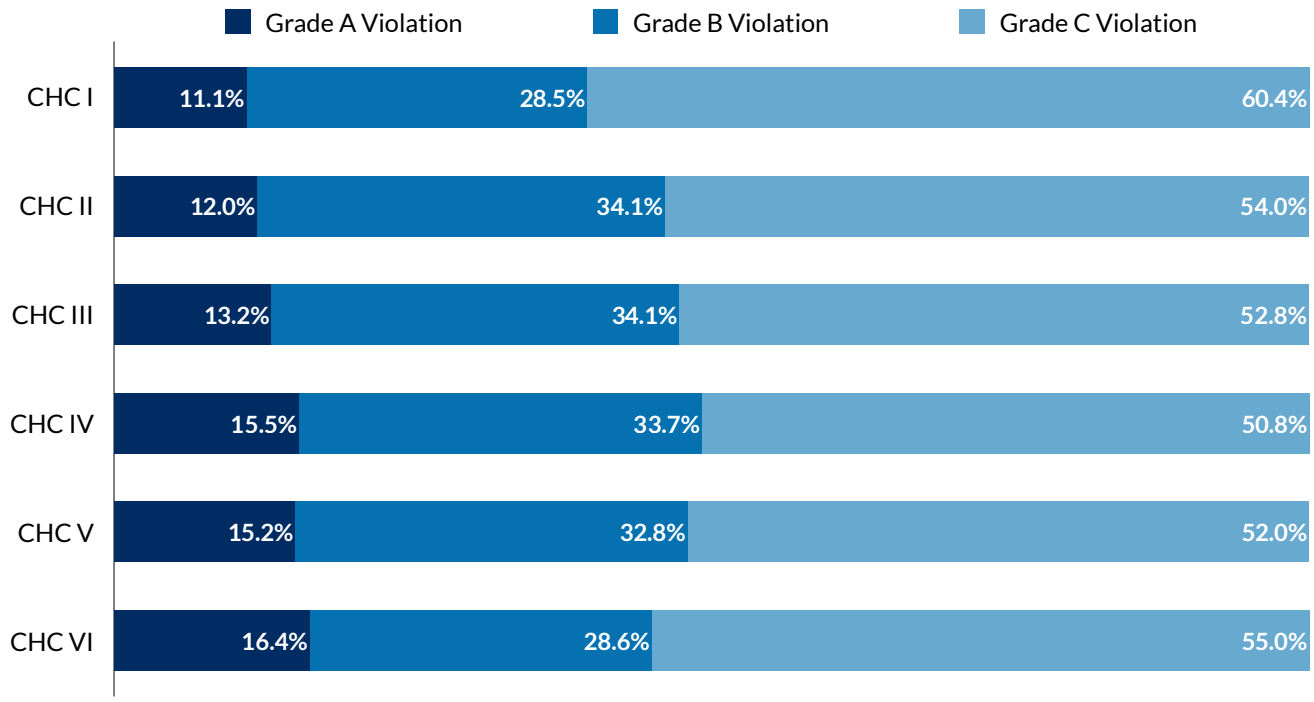
Figure 10. Original Offense Type and Grade of Violation
Fiscal Years 2013-2017



The composition of primary offense types was notably different for Grade B violations. The largest portion, 38.8 percent, of Grade B violations were committed by offenders who originally were sentenced for an immigration offense. Combined, a similar proportion of Grade B violations, 43.5 percent, were committed by offenders originally sentenced for drug (29.4%) and firearms (14.1%) offenses.

Grade C violations included a somewhat broader share of primary offense types compared to the other two grades. Grade C violations also were committed predominantly (58.6%) by offenders originally sentenced for drug (37.5%) and firearms (21.1%) offenses, but also included larger proportions of offenders originally sentenced for fraud (6.2%), violent (10.5%), and other types of offenses (15.7%). Offenders originally sentenced for immigration offenses accounted for 8.9 percent of Grade C violations.

Figure 11. Criminal History Category and Grade of Violation
Fiscal Years 2013-2017



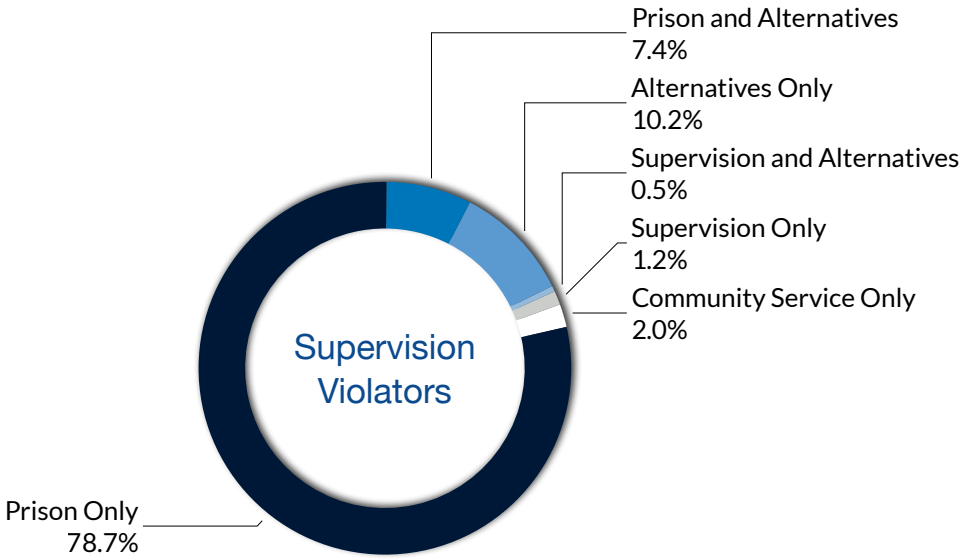
Criminal History Category

In cases involving a finding of a Grade A violation, the violators tended to have somewhat more serious criminal histories, but the patterns were mixed. As shown in Figure 11, CHC VI offenders had the highest rates of Grade A violations (16.4%). In comparison, CHC I offenders had the lowest rate of Grade A violations (11.1%). The rates of Grade B violations were the same for CHC VI (28.6%) and CHC I (28.5%) offenders. However, the rates of Grade B violations were highest for offenders in CHCs II–V, averaging about one-third of offenders in each of those categories. The majority of violations in each CHC were Grade C violations, with the highest rates for CHC I (60.4%) and CHC VI (55.0%).

Time to Violation

Offenders who violated their conditions of supervision typically did so within the first two years. On average, 22 months elapsed from the time supervision commenced to the commission of the violation. The elapsed time was notably longer for the most serious grade of violation. On average, nearly three years (33 months) elapsed prior to Grade A violations. The less serious violations occurred earlier, on average, in an offender's supervision term. The average time elapsed prior to Grade B and Grade C violations was less than two years, 23 months and 20 months, respectively.

Figure 12. Outcomes of Supervision Violation Hearings
Fiscal Years 2013-2017



Outcomes of Violation Hearings

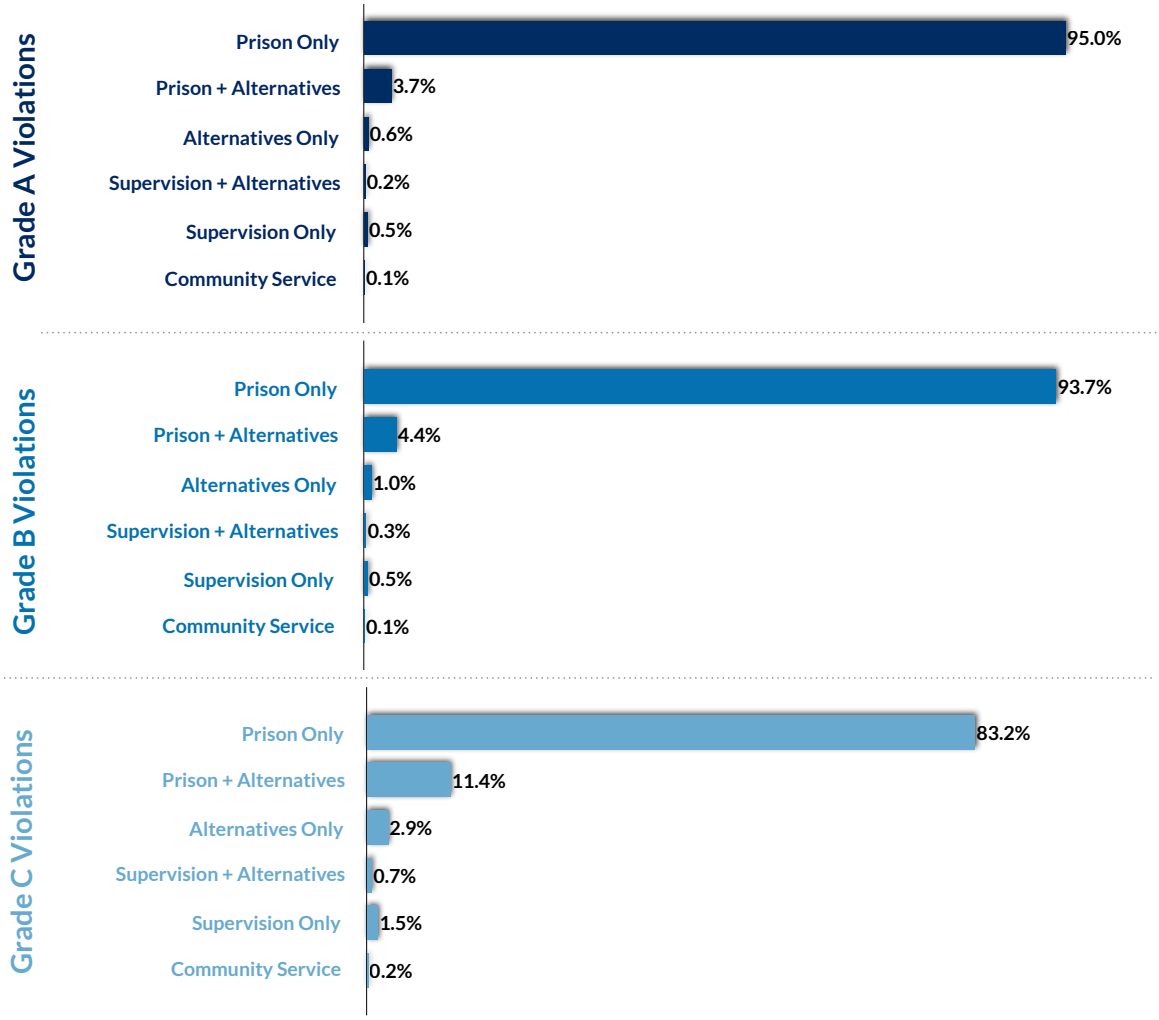
Courts primarily imposed prison terms at violation hearings. As shown in Figure 12, courts sentenced most supervision violators to prison only (78.7%) or prison with an alternative type of confinement (7.4%). Courts sentenced an additional 10.2 percent of the violators to an alternative type of confinement only, and 0.5 percent to an alternative type of confinement with a condition of supervision. Only 3.2 percent were sentenced to either supervision only (1.2%) or community service only (2.0%). The average term of imprisonment imposed at violation hearings was 11 months.

Grades of Violation

As discussed earlier, Chapter Seven of the *Guidelines Manual* provides procedural instructions to the court according to the grade of violation. The guidelines provide that the court *shall* revoke probation or supervised release for findings of Grade A or Grade B violations. However, for Grade C violations, the guidelines instruct that the court *may* revoke probation or supervised release *or* extend the term of probation or supervised release *and/or* modify the conditions of supervision.[133]

To some extent, the types of sentences imposed for each grade of violation reflect implementation of these guideline provisions. Nearly all Grade A and Grade B violations involved a revocation, as those offenders were almost exclusively sentenced to imprisonment. The overwhelming majority of sentences for Grade A (95.0%) and Grade B (93.7%) violations were for prison only. Smaller proportions of sentences for Grade A (3.7%) and Grade B (4.4%) violations were for prison and an alternative type of

Figure 13. Violation Hearing Outcomes by Grade of Violation
Fiscal Years 2013-2017



confinement. The imprisonment rate was somewhat lower for Grade C violations. This lower rate reflects, in part, the sentencing options available to courts for Grade C violations. Courts sentenced the majority (83.2%) of Grade C violations to prison only. An additional, 15.0 percent of Grade C violations resulted in a sentence involving imprisonment with an alternative type of confinement (11.4%), an alternative type of confinement only (2.9%), or an alternative type of confinement with a condition of supervision (0.7%) (Figure 13).

The average terms of imprisonment imposed at revocation hearings varied for the three grades of violation. Courts sentenced Grade A violations to an average of 21 months imprisonment. By comparison, courts sentenced Grade B and C violations to average terms of imprisonment of 12 months and eight months, respectively.

Figure 14. Supervision Violation Sentences Relative to the Revocation Table
Fiscal Years 2013-2017

Sentences Relative to the Revocation Table

The Revocation Table at §7B1.4(a) provides grade-based sentencing guidance to the court. The table establishes imprisonment ranges for revocations based on the grade of violation and the offender's CHC at the time of original sentencing. The table provides for alternatives to incarceration for Grade C violations and some Grade B violations. In addition, the table provides a more punitive array of imprisonment ranges for Grade A violations committed while the offender was on probation or supervised release as a result of a sentence for a Class A felony.

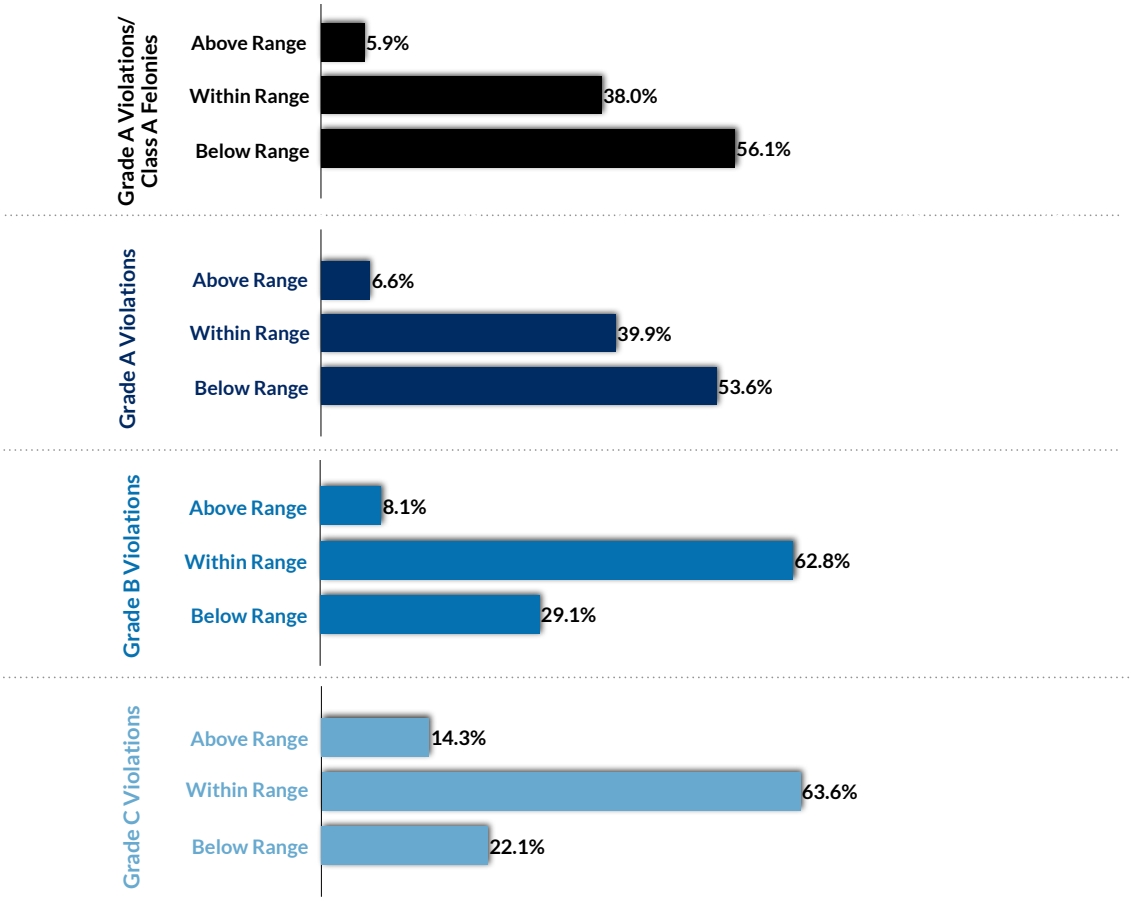
In most cases, courts sentenced violators in accordance with the Revocation Table. More than half (59.8%) of sentences were within the table ranges (Figure 14). Just over one-quarter (29.1%) of sentences were below the range, and 11.1 percent were above the range.[134]

Grades of Violation

Sentences relative to the Revocation Table range varied substantially for the different grades of violation. Grade A violations had much higher below range rates compared to Grade B and Grade C violations.

As noted above, the guidelines distinguish between Grade A violations for purposes of the Revocation Table and provide more punitive imprisonment ranges for Grade A violations under supervision for a Class A felony. Of the 10,992 identified Grade A violations, one-quarter (25.9%) were under supervision for a Class A felony and subject to the higher ranges. The remaining 74.1 percent of Grade A violations did not have a Class A felony conviction.

Figure 15. Sentences Relative to the Revocation Table by Grade of Violation
Fiscal Years 2013-2017



As shown in Figure 15, sentences relative to the Revocation Table ranges were nearly identical for each type of Grade A violation. Courts sentenced over one-third of Grade A violations committed while under supervision for a Class A felony (38.0%) and other Grade A violations (39.9%) within the Revocation Table range, while more than half of each (56.1% and 53.6%, respectively) were sentenced below the range. Rates of above range sentences were low for both types of Grade A violations, 5.9 percent for those with Class A felonies, and 6.6 percent for the other Grade A violations. Sentences relative to the Revocation Table range for Grade B and Grade C violations differed substantially from Grade A violations. Courts sentenced nearly two-thirds of Grade B (62.8%) and Grade C (63.6%) violations within the Revocation Table range and approximately one-quarter of each grade below the range (29.1% and 22.1%, respectively). Grade B and C violations had higher rates of sentences above the Revocation Table range, 8.1 percent and 14.3 percent, respectively.

Table 7. Prevalence of Within Range Sentences Across the Revocation Table
Fiscal Years 2013-2017

	Revocation Table Criminal History Category					
Grade of Violation	**I**	**II**	**III**	**IV**	**V**	**VI**
Grade C	69.3	67.5	63.6	65.8	56.4	54.9
Grade B	72.0	74.4	67.1	62.3	51.8	43.2
Grade A	58.3	51.0	56.4	47.5	12.1	11.9
Grade A (Class A Felony)	47.8	37.6	40.3	36.0	34.7	30.1

High Within Range Rates — Low Within Range Rates

As noted previously, the Revocation Table provides ranges based on both grade of violation and CHC at the time of original sentencing. Table 7 shows a comparison of within range sentencing rates that accounts for both factors. More than half of Grade C violations were sentenced within the range, regardless of CHC. All of the sentencing ranges for Grade C violations provide for the substitution of alternative types of confinement for some or all of the term of incarceration. A large portion of Grade B sentences also were within the range. The lowest rates of within range sentences for Grade B violations were for CHC IV, V, and VI, sentencing ranges that are not eligible for alternative types of confinement.[135]

The two types of Grade A violations had very different patterns of within range sentences when accounting for CHC. The overall within range rates for Grade A violations of 39.9 percent and 38.0 percent for those with Class A felonies mask substantial differences for the different CHCs. A large proportion of Grade A violations in CHC I–IV were sentenced within the range. However, only about 12 percent of sentences for Grade A violations in CHC V and VI were within range. By comparison, within range sentences for Grade A violations with Class A felonies were relatively consistent across CHCs. Fewer than half of Grade A violations with Class A felonies were sentenced within the range, and the rate decreased somewhat steadily for higher CHCs.

Conclusion

This report analyzes information collected on federal probation and supervised release violations that occurred in fiscal years 2013 to 2017. This report provides data regarding offense characteristics, offender characteristics, violation types, and hearing outcomes for violations of probation and supervised release, and presents data comparing offender and offense characteristics of supervision violators and offenders at original sentencings.

Nationally, the number of individuals under supervision was relatively stable during the study period, however, half of the individuals under supervision were concentrated in only 21 of the 94 federal judicial districts. Nationally, the rate of violation hearings for individuals on supervision also was relatively stable, with an overall rate of 16.9 percent. The prevalence of supervision violations, however, varied considerably among the federal judicial districts ranging from more than one-third of individuals on supervision in some districts to below five percent of individuals on supervision in others.

The primary offense types and criminal histories of supervision violators were somewhat more serious than those for offenders at original sentencings. Those differences were apparent in the longer average sentences originally imposed for offenders who violated supervision.

This report provides a detailed analysis of supervision violations, including the types of supervision, the grade of violation, and resulting court actions. Supervised release, rather than probation, accounted for the overwhelming majority of supervision violations (95.0%). In general, violations were comparatively non-serious. More than one-half were Grade C violations, the least serious type. In addition, the majority of supervision violators were sentenced in accordance with the Chapter Seven Revocation Table. This report is intended to provide data regarding offense characteristics, offender characteristics, violation types, and hearing outcomes for violations of probation and supervised release.

Endnotes

1 Pub. L. No. 98–473, 98 Stat. 1987 [hereinafter "the Act"].

2 *See, e.g.*, 18 U.S.C. § 3553(b); 28 U.S.C. §§ 991–998.

3 S. Rep. No. 98–225, 98th Cong., 1st Sess. 55 at 59 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3242.

4 *Id.* at 3305–08 ("The term of supervised release is very similar to a term of probation, except that it follows a term of imprisonment and may not be imposed for purposes of punishment or incapacitation since those purposes will have been served to the extent necessary by the term of imprisonment.").

5 U.S. Sentencing Comm'n, *Guidelines Manual* (Nov. 2018) [hereinafter USSG].

6 28 U.S.C. § 995(a)(12).

7 U.S. Sentencing Comm'n, Federal Offenders Sentenced to Supervised Release (2010), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20100722_Supervised_Release.pdf [hereinafter 2010 Supervised Release Report].

8 Tracey Kyckelhahn & S. Alexander Maisel, U.S. Sentencing Comm'n, Revocations Among Federal Offenders (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190131_Revocations.pdf [hereinafter 2019 Revocation Report].

9 *Id.* at 24–29.

10 The Commission promulgated guidelines and policy statements in response to directives in 28 U.S.C. § 994. Sections 994(a)(1) and (a)(2) direct the Commission to promulgate and distribute guidelines and policy statements that determine whether probation or supervised release should be imposed, and, if so, any appropriate terms and conditions of said term. Section 994(a)(3) further requires the Commission to promulgate "guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18." 28 U.S.C. § 994.

11 *See* USSG Ch.7.

12 18 U.S.C. § 3562(b).

13 18 U.S.C. §§ 3564, 3565.

14 18 U.S.C. § 3561. Class A or B felonies are offenses that involve maximum sentences of life imprisonment or death, or 25 years of imprisonment or more, respectively, and courts must consider the factors in 18 U.S.C. § 3553(a) in determining whether probation, in addition to the terms and conditions of such probation, is appropriate. *See* 18 U.S.C. §§ 3553(a), 3559, and 3562(a).

15 Zone A is limited to guideline ranges of zero to six months. Zone B includes guideline ranges encompassing 1–15 months of imprisonment, depending upon the final offense level and the offender's Criminal History Category (CHC). USSG Ch.5, Pt.A (Sentencing Table).

16 USSG §5B1.1(a)(1). The guidelines, including the provisions of Chapter Five, became advisory following the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005). The policy statements in Chapter Seven have always been advisory. *See* 2010 Supervised Release Report, *supra* note 7, at 6 n.25, 40 n.196; USSG Ch.7, Pt.A.

17 USSG §5B1.1(a)(2) and comment. (n.1(B)).

18 USSG §5B1.1, comment. (n.2).

19 18 U.S.C. § 3561(c).

20 USSG §5B1.2(a)(1).

21 USSG §5B1.2(a)(2).

22 18 U.S.C. § 3563(a).

23 *Id.* If the court finds the presence of such extraordinary circumstances on the record, it shall impose one or more of the other discretionary conditions as listed in subsection (b). *Id.*

24 The prohibition of the use of controlled substances and subsequent testing can be waived or suspended if the PSR or other information reliably indicates the defendant is low risk for substance abuse. If the court imposes this condition, the defendant must submit to testing within 15 days of release and at least two times thereafter. *Id.*

25 *Id.*

26 *Id.* "Domestic violence crime" is "a crime of violence for which the defendant may be prosecuted in a court of the United States in which the victim or intended victim is the spouse, former spouse, intimate partner, former intimate partner, child, or former child of the defendant, or any other relative of the defendant." 18 U.S.C. § 3561(b).

27 18 U.S.C. § 3563(a)(8).

28 18 U.S.C. § 3563(b).

29 USSG §5B1.3(b)–(e).

30 *See* S. Rep. No. 98–225, 98th Cong., 1st Sess. 55 at 125.

31 18 U.S.C. § 3583(a). Convictions for drug trafficking offenses and certain kidnapping and sex offenses require a term of supervised release. *See*, *e.g.*, 21 U.S.C. §§ 841, 846.

32 18 U.S.C. § 3583(c). The statute lists the following provisions from 18 U.S.C. § 3553(a) for courts to consider: (a)(1) (nature and circumstances of the offense and the history and characteristics of the defendant), (a)(2)(B) (deterrence), (a)(2)(C) (protect the public), (a)(2)(D) (provide defendant with needed educational or vocational training), (a)(4) (kinds of sentences and sentencing range established for offenses and offender by the Commission), (a)(5) (Commission policy statements), (a)(6) (avoiding unwarranted sentence disparities), and (a)(7) (restitution).

33 USSG §5D1.1(a).

34 USSG §5D1.1(b), (c); USSG §5D1.1, comment. (n.5).

35 Specifically, the Commentary states that a court may not impose a term of supervised release, and thereby depart from the §5D1.1 guideline, if (1) supervised release is not required by statute, (2) the court considers the factors in Application Note 3, and (3) the court finds that supervised release is unnecessary. USSG §5D1.1, comment. (n.1). Application Note 2 provides that a court may impose a term of supervised release in any other case after considering the factors in Application Note 3. USSG §5D1.1, comment. (n.2). The non-exhaustive list of factors provided in Application Note 3 include the statutory factors in § 3583(c) and § 3553(a), the offender's criminal history, any substance abuse issues, and any issues involving domestic violence. USSG §5D1.1, comment. (n.3).

36 18 U.S.C. § 3583(b). Courts are authorized to impose any term of years, including a lifetime term, of supervised release for defendants convicted of terrorism predicate offenses. 18 U.S.C. § 3583(j).

37 *See* USSG §5D1.2 (providing for, among other terms, two to five years for Class A or B felonies, one to three years for Class C or D felonies, and one year for Class E felonies and Class A misdemeanors). Notably, offenders who qualify for safety valve relief are exempt from statutory minimum terms of supervised release. *See* USSG §5D1.2, comment. (n.2); USSG §5C1.2, comment. (n.9) ("A defendant who meets the criteria under this section is exempt from any otherwise applicable statutory minimum sentence of imprisonment and statutory minimum term of supervised release."). *See also* USSG §5C1.2; 18 U.S.C. § 3553(f). Relief from mandatory terms also may be available through 18 U.S.C. § 3553(e) and §5K1.1 (Substantial Assistance to Authorities (Policy Statement)).

38 USSG §5D1.2, comment. (n.4). *See supra* notes 32–35 and accompanying text.

39 18 U.S.C. § 3583(d). Intermittent confinement may only be used for supervised release as a condition upon violation. *Id. See also* USSG §7B1.3, comment. (n.5).

40 USSG §5D1.3(b)–(e). The standard, special, and additional conditions in §5D1.3(c)–(e) are similar to the conditions listed in §5B1.3(c)–(e).

41 18 U.S.C. § 3601. A court's jurisdiction, however, may be transferred to another district court in the district where the offender is required or permitted to proceed on probation or supervised release with the concurrence of such court. 18 U.S.C. § 3605.

42 Section 7B1.2 requires notification of violations unless certain circumstances are met. This notification requirement, along with the classifications of violations, are discussed in more detail below. *See infra* notes 71–75 and accompanying text.

43 *See* Fed. R. Crim. P. 32.1.

44 *Id.*

45 Fed. R. Crim. P. 32.1(b)(2).

46 *Id.* When an offender waives a revocation hearing and admits to the alleged violations, the court's duty is simply to ensure that the admission was counseled and voluntary. United States v. Broce, 488 U.S. 563, 569 (1989).

47 Fed. R. Evid. 1101(d)(3).

48 *See*, *e.g.*, United States v. Colón-Maldonado, 953 F.3d 1, 9–10 (1st Cir. 2020); United States v. Pritchard, 579 F. App'x 513, 519 (7th Cir. 2014) (citing USSG §6A1.3).

49 18 U.S.C § 3583(e)(3) (supervised release violations). *See also* Johnson v. United States, 529 U.S. 694, 700 (2000). For probation violations, the statute does not state the burden of proof required; however, several circuit courts have applied a preponderance of the evidence standard. *See*, *e.g.*, United States v. Teran, 98 F.3d 831, 836 (5th Cir. 1996); United States v. Bujak, 347 F.3d 607, 609 (6th Cir. 2003).

50 18 U.S.C. § 3565(a).

51 *Id. See also* Fed. R. Crim. P. 32.1; 18 U.S.C. § 3553(a).

52 18 U.S.C. § 3565(b). *See also* USSG §7B1.4, comment. (n.5). If an offender fails a drug test pursuant to a condition, the court shall consider whether the availability of substance abuse programs, or an offender's participation in such a program, warrants an exception to mandatory revocation. 18 U.S.C. § 3563(a); USSG §7B1.4, comment. (n.6).

53 *See* 18 U.S.C. § 3565(a) ("If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may . . . revoke the sentence of probation and resentence the defendant under [sections 3551 *et seq.*].").

54 *See* 18 U.S.C. § 3583(d), (e), (g)–(i), and (k).

55 18 U.S.C. § 3583(e). Issuance of a violation warrant or summons prior to the expiration of the term extends its expiration to allow for adjudication of the matter, subject to the limitations in § 3583(h). 18 U.S.C. § 3583(i).

56 18 U.S.C. § 3583(e).

57 *Id. See also* USSG §7B1.5 (providing no credit shall be given towards sentences of imprisonment for probation or post-release supervision previously served).

58 18 U.S.C. § 3583(e). The statute lists the same factors listed in *supra* note 32 that the court must consider in revoking a term.

59 *Id.*

60 18 U.S.C. § 3583(h). Specifically, section 3583(h) states, "[t]he length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release." *See also* USSG §7B1.3(g)(2) (same). Sections 5D1.1–1.3 apply to any new term of supervised release. USSG §7B1.3(g)(1).

61 Some circuits have held that the use of a controlled substance equates to possession of that controlled substance, which, as stated above, requires revocation. *See* United States v. Crace, 207 F.3d 833, 835 (6th Cir. 2000) (upholding district court's mandatory revocation of supervised release term based upon positive drug test and admission of use of a controlled substance); United States v. Cordero, 271 F. App'x 336 (4th Cir. 2008) ("Under [section 3583(g)(1)], revocation of supervised release is mandatory if the defendant possessed a controlled substance in violation of the terms of his supervised release. Proof that a defendant intentionally used a controlled substance is sufficient to establish possession of that substance within the meaning of § 3583(g)."). Courts have addressed the resulting conflict between subsections 3583(g)(1) and (g)(4),

in that mandatory revocation would apply for one positive drug test unless subsection (d) applies, in different ways. *See, e.g.*, United States v. Hammonds, 370 F.3d 1032, 1037 (10th Cir. 2004) ("We believe the mens rea requirement in subsection (g)(1), requiring the government to prove . . . the defendant knowingly and voluntarily used the drug revealed by the drug test, sufficiently distinguishes it from subsection (g)(4) so that the latter provision may apply in circumstances where the former does not."); *Crace*, 207 F.3d at 835 ("We believe that the district court was correct in finding that it was required by 18 U.S.C. § 3583(g) to revoke . . . unless the defendant could come under the exception in 18 U.S.C. § 3583(d)."); United States v. Pierce, 132 F.3d 1207, 1208 (8th Cir. 1997) ("'Although a court may find possession based on a positive drug test (as it did in this case), it is not required to do so and the court may provide for treatment without revoking the offenders' [sic] release.' We believe this language is clear and to the point. The district court had the discretion to provide for treatment rather than imprisonment."). The reasoning by the courts likely extends to probation revocations under subsections 3565(b)(1) and (b)(4) given the similar language in those subsections.

62 18 U.S.C. § 3583(g). *See also* USSG §7B1.4, comment. (n.5). For an offender who fails a drug test, the court shall consider whether the availability of substance abuse programs, or an offender's participation in such a program, warrants an exception to mandatory revocation. 18 U.S.C. § 3583(d); USSG §7B1.4, comment. (n.6).

63 *Id.*

64 139 S. Ct. 2369 (2019).

65 Chapter 109A, 110, 117, section 1201 or 1591 offenses punishable by more than one year. 18 U.S.C. § 3583(k).

66 *Id.*

67 *Haymond*, 139 S. Ct. at 2373.

68 For this chapter, the Commission issued policy statements rather than guidelines because policy statements are expressly authorized by 28 U.S.C. § 994(a)(3) and they allow greater flexibility for the Commission and the courts. The policy statements reflect the Commission's view that the sanction for violations should reflect the defendant's "breach of trust," and take into account, to a limited degree, the seriousness of the underlying violation and the offender's criminal history. *See* USSG Ch.7, Pt.A.

69 USSG Ch.7, Pt.B, intro. comment. ("Because these policy statements focus on the violation of the court-ordered supervision, this chapter, to the extent permitted by law, treats violations of the conditions of probation and supervised release as functionally equivalent."). *See also* USSG Ch.7, Pt.A.

70 USSG Ch.7, Pt.A(4).

71 *Id.*

72 USSG §7B1.1. If an offender has more than one violation, the court uses the most serious grade of violation. *Id.*

73 USSG §7B1.1, comment. (n.1). The terms "crime of violence" and "controlled substance offense" are defined in §4B1.2 (Definitions of Terms Used in Section 4B1.1). USSG §7B1.1, comment. (n.2, 3).

74 For example, a firearm described in §7B1.1(a)(1)(iii) includes, but is not limited to, certain shotguns and rifles, machine guns, silencers, and destructive devices, and possession of such a firearm or device constitutes a Grade A violation. USSG §7B1.1(a)(1)(iii) and comment. (n.4). In contrast, possession of a firearm not included in §7B1.1(a)(1)(iii) by a felon generally constitutes a Grade B violation. USSG §7B1.1, comment. (n.5).

75 USSG §7B1.3(a). Revocation is recommended for Grade C violations where the defendant has been continued on probation or supervised release previously following a supervision violation. USSG §7B1.3, comment. (n.1).

76 Pursuant to §7B1.2, probation officers must promptly report alleged violations to the court unless the violation is a Grade C violation that the probation officer determines is a minor violation that is not part of a pattern, and that failure to report the violation would not create an undue risk to another or violate court directives. USSG §7B1.2. An example of a minor violation fitting this criterion is one instance of failure to report or a minor traffic violation.

77 USSG §7B1.4.

78 USSG §7B1.4(b). For example, §7B1.1(b)(2) provides that, where a minimum term of imprisonment is required by statute and that minimum term is greater than the maximum of the applicable range in the revocation table, the minimum term required by statute is substituted for the applicable range.

79 USSG §7B1.4(a); USSG §7B1.4, comment. (n.1).

80 USSG §7B1.4, comment. (n.2–4).

81 USSG §7B1.3(c).

82 *See* USSG §7B1.3(f). *See also* USSG §§7B1.3(d) and 7B1.5 (discussing unpaid fines and restitution; unserved terms of intermittent confinement, community confinement, home detention; and recommended prohibition of time credits).

83 28 U.S.C. §§ 995(a)(12) and (14)–(16).

84 28 U.S.C. § 994(w)(1).

85 Case identifiers include, but are not limited to, defendant name and case docket number.

86 Courts submitted a Judgment and Commitment Order for nearly all violations in the Commission's datafiles. However, because the 94 judicial districts do not use a standardized reporting system for violation cases, submission rates were lower for the other types of documents, ranging from 13.4% submitting violation hearing waivers to 81.9% submitting the motion for revocation or petition for an arrest warrant or summons. Because of the range of documentation provided, some violation records have more complete information than others.

87 The supervision violation datafile consists of cases in which the court ruled on a violation petition. In the event of multiple violations during the time period, a single individual offender could be represented in the datafile more than once but with records specific to each violation proceeding. Offenders with multiple violations also could appear in multiple years' datafiles. In addition, offenders who had an original sentencing hearing and a revocation hearing during the five-year period would appear in both datafiles.

88 In fiscal years 2013–2017, the Commission's supervision violation datafile included 108,115 cases. Cases were excluded from various analyses in this report due to missing information for the variables required for those analyses.

89 In fiscal years 2013–2017, the Commission's individual offender datafiles included 361,489 cases. A total of 63,828 cases were excluded from this analysis that did not involve a sentence of probation or include a term of supervised release or that were missing information on the imposition of a term of supervision. In addition, cases were excluded from various analyses in this report due to missing information for the variables required for those analyses.

90 This analysis uses the federal offender population whose original sentence was probation or included a term of supervised release as a comparison group. An alternative approach would have been a comparison of offenders sentenced in the same year who commit violations to those who did not commit violations. That approach was impracticable in this instance. The 108,115 violations offenders in this study were originally sentenced over a period of nearly 30 different fiscal years (1989 through 2017). Compiling data for the comparison group of offenders who did not violate supervision during that time period was not feasible.

91 *See* U.S. Courts, *Caseload Statistics Data Tables* E-2 (2013–2017), https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables. Only data for persons on probation or supervised release were included.

92 See Appendix A for table showing all 94 districts.

93 "Cumulative Percent" is the proportion of total violations following the addition of each district in the table.

94 See Appendix B for table showing all 94 districts.

95 Record comparisons did not reveal similar undercounts for any other districts, but it is possible that an unknown number of violations were unreported by any number of districts.

96 Of the 108,115 supervision violations, a total of 117 cases from the Central District of California were excluded. Of the 297,661 original sentences of probation and supervised release, a total of 5,825 cases from the Central District of California were excluded.

97 *See supra* note 34 and accompanying text.

98 The average age for supervision violators at the time of sentencing for the original offense was 32 years.

99 The primary offense types used in this report include: violent crimes (murder, manslaughter, kidnapping, sexual abuse, assault, robbery, and arson), drugs (drug trafficking, communication facility, and simple possession), firearms, larceny, fraud, non-fraud white collar (embezzlement, forgery/counterfeiting, bribery, tax offenses, and money laundering), immigration, administration of justice, and other offenses (burglary, auto theft, racketeering/extortion, gambling/lottery, civil rights, pornography/prostitution, prison offenses, environmental/game/fish/wildlife offenses, national defense, antitrust, food/drug, and traffic/other). For additional information see U.S. Sentencing Comm'n, 2017 Sourcebook of Federal Sentencing Statistics (2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2017/2017SB_Full.pdf.

100 U.S. Sentencing Comm'n, 2019 Sourcebook of Federal Sentencing Statistics, Table 9 (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/2019-Annual-Report-and-Sourcebook.pdf. The Commission's previous offense categories are used in this report by necessity, but the most recent offense categories are referenced for this comparison.

101 Kim Steven Hunt & Robert Dumville, U.S. Sentencing Comm'n, Recidivism Among Federal Offenders: A Comprehensive Overview (2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf [hereinafter Recidivism Overview].

102 *Id.* at 20.

103 Kim Steven Hunt, Matthew J. Iaconetti, & Kevin T. Maass, U.S. Sentencing Comm'n, Recidivism Among Federal Violent Offenders (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190124_Recidivism_Violence.pdf [hereinafter Recidivism Violence Report].

104 Matthew J. Iaconetti, Tracey Kyckelhahn & Mari McGilton, U.S. Sentencing Comm'n, Recidivism Among Federal Firearms Offenders (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190627_Recidivism_Firearms.pdf [hereinafter Recidivism Firearms Report].

105 Recidivism Violence Report, *supra* note 103, at 21.

106 Recidivism Firearms Report, *supra* note 104, at 18.

107 The supervision violators in this study were originally sentenced between 1989 and 2017. Because the prevalence of crack cocaine offenders has decreased substantially over time, the Commission also analyzed the proportion of crack cocaine offenders whose original sentence was probation or included a term of supervised release dating back to 1992 (the first year the Commission collected information on drug type). The proportion of crack cocaine offenses varied widely for both groups during that time period ranging from 10.1% to 61.2% for supervision violators and from 7.8% to 26.6% for the overall federal drug offender population at original sentencings. Nevertheless, considering the entire time period, the proportion of crack cocaine offenders among supervision violators was nearly double the proportion of offenders originally sentenced for crack cocaine over the longer time period, 32.1% compared to 18.8%.

108 Louis Reedt, Kim Steven Hunt, James L. Parker, Melissa K. Reimer & Kevin T. Maass, U.S. Sentencing Comm'n, Recidivism Among Federal Drug Trafficking Offenders (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170221_Recidivism-Drugs.pdf [hereinafter Drug Recidivism Report].

109 *Id.* at 27 and 41.

110 18 U.S.C. § 3553(f) (2017). Because the relevant time period ended in fiscal year 2017, the offenders were subject to a version of section 3553(f) that preceded the amendments enacted by First Step Act of 2018. *See* Pub. L. No. 115–391, § 402, 132 Stat. 5194 (2018).

111 *Id.* During the time period under study, the safety valve provisions applied to offenses under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. §§ 841, 844, 846) and section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. §§ 960, 963).

112 Analyses of application of specific guideline provisions is limited to cases for which the Commission received complete guideline application information.

113 Drug Recidivism Report, *supra* note 108, at 17.

114 To determine weapon involvement, the Commission included the application of a guideline enhancement for weapon involvement, any conviction under 18 U.S.C. § 924(c), or both. The data on weapon involvement does not include: (1) cases in which a weapon is present in the offense, but the offender was not convicted of 18 U.S.C. § 924(c) or did not receive a weapon-related sentencing enhancement, (2) cases in which the specific enhancement can be applied for multiple reasons (for example, the specific enhancement can be applied if the offense involved either physical contact or if a dangerous weapon was possessed), or (3) cases sentenced as weapon offenses under USSG Chapter Two, Part K (unless they were convicted of 18 U.S.C. § 924(c)).

115 USSG §3B1.1.

116 *Id.*

117 USSG §3B1.2.

118 For supervision violators with an offense level increase for Aggravating Role, the breakdown was as follows: 2-level increase, 51.1%; 3-level increase, 23.0%; 4-level increase, 25.9%. For offenders at original sentencings with an offense level increase for Aggravating Role, the breakdown was as follows: 2-level increase, 41.6%; 3-level increase, 24.9%; 4-level increase, 33.5%.

119 For supervision violators with an offense level decrease for Mitigating Role, the breakdown was as follows: 2-level decrease, 78.8%; 3-level decrease, 6.5%, 4-level decrease, 14.6%. For offenders at original sentencings with an offense level decrease for Mitigating Role, the breakdown was as follows: 2-level decrease, 75.9%; 3-level decrease, 6.5%, 4-level decrease, 17.7%.

120 *See generally* USSG Ch.4.

121 As noted, the comparison group of offenders originally sentenced during the time period comprises a larger proportion of non-citizens. Non-citizens generally have lower CHCs due to the fact that sentences resulting from foreign convictions are not counted under the guidelines pursuant to §4A1.2(h). However, the citizenship composition has a limited overall impact on the distribution of CHC for offenders originally sentenced during the time period. The CHC distribution for U.S. citizens was as follows: CHC I (45.4%), CHC II (11.4%), CHC III (15.1%), CHC IV (9.3%), CHC V (5.9%), CHC VI (12.9%). The CHC distribution for non-citizens was as follows: CHC I (43.3%), CHC II (18.0%), CHC III (19.9%), CHC IV (10.4%), CHC V (5.0%), CHC VI (3.4%).

122 Tracey Kyckelhahn & Trishia Cooper, U.S. Sentencing Comm'n, The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170309_Recidivism-CH.pdf.

123 *Id.* at 7-8; Recidivism Overview, *supra* note 101, at 18–19.

124 USSG §4B1.1.

125 *See* 18 U.S.C. § 924(e); USSG §4B1.4.

126 Similar proportions of supervision violators (30.3%) were subject to a mandatory minimum penalty at the time of their original sentencing compared to offenders originally sentenced during the time period (26.3%).

127 A very small proportion of supervision violators (0.7%) and offenders at original sentencings (1.2%) were sentenced to supervision terms of life.

128 An offender may admit or deny a violation. If the defendant denies the allegation, the court must conduct an evidentiary hearing then make a finding on the violation. If the offender admits to the allegation, the court need not hold an evidentiary hearing, but it must decide if revocation is warranted following the admission. *See supra* note 46 and accompanying text.

129 The court, in imposing any discretionary conditions on the offender's supervision, may order the offender to remain within the jurisdiction of the court unless granted permission to leave by either the court or a probation officer. *See* 18 U.S.C. §§ 3583(d) and 3563(b)(14).

130 *See supra* notes 69, 72 and accompanying text.

131 Of the 107,998 violations, a total of 26,914 (24.9%) were missing information on grade of violation and were excluded from the grade-based analyses. The rates of missing grade of violation varied widely by federal judicial district, ranging from 0.0% to 99.1%. Grade of violation was missing for nearly all violation records from the Eastern District of Texas (99.1%), District of Montana (98.8%), Western District of Washington (97.0%), Southern District of Iowa (96.2%), and District of Hawaii (95.3%).

132 The figure is limited to the five largest primary offense types, each accounting for more than 5% of the total.

133 *See supra* note 75 and accompanying text.

134 The Commission did not collect information on sentence relative to the Revocation Table range from the hearing documentation. The Commission regularly collects information on whether the court imposed a sentence outside the guideline range and if so, the reasons for imposing such a sentence. That information is collected from the Statement of Reasons form submitted by the court. Because courts do not use a standardized reporting system for violation hearings, the position of the sentence relative to the Revocation Table range was determined by comparing the sentence imposed to the applicable range for each grade and CHC combination (and Class A felony for Grade A violations). This determination accounted for the provisions in §7B1.3(c) that provide for alternatives to incarceration for Grade C violations and some Grade B violations based on the minimum term of imprisonment specified in the table. They do not, however, account for the provisions relating to statutory minimum and maximum terms, as that information was not collected from the violation records.

135 *See supra* note 81 and accompanying text.

Appendix A: Supervision Violations in Each Federal Judicial District Fiscal Year 2013-2017

District	Supervision Violations Number	Percent	Cumulative Percent
TOTAL	**108,115**	**100.0**	
Southern Texas	8,797	8.1	8.1
Western Texas	8,225	7.6	15.7
Arizona	6,526	6.0	21.8
Southern California	5,758	5.3	27.1
Western Missouri	3,052	2.8	29.9
Eastern Missouri	2,962	2.7	32.7
New Mexico	2,532	2.3	35.0
Minnesota	2,250	2.1	37.1
Western North Carolina	2,225	2.1	39.2
Southern Florida	1,905	1.8	40.9
Eastern Virginia	1,882	1.7	42.7
Eastern Tennessee	1,834	1.7	44.4
South Carolina	1,677	1.6	45.9
Middle Florida	1,661	1.5	47.4
Northern Texas	1,657	1.5	49.0
Western Washington	1,651	1.5	50.5
Oregon	1,566	1.5	51.9
Kansas	1,550	1.4	53.4
Utah	1,426	1.3	54.7
Northern Ohio	1,401	1.3	56.0
Eastern New York	1,397	1.3	57.3
Montana	1,298	1.2	58.5
Eastern Wisconsin	1,280	1.2	59.7
Eastern Texas	1,261	1.2	60.8
Southern New York	1,256	1.2	62.0
Eastern North Carolina	1,252	1.2	63.2
Eastern Kentucky	1,224	1.1	64.3
Western Oklahoma	1,180	1.1	65.4
South Dakota	1,142	1.1	66.4
Eastern Pennsylvania	1,114	1.0	67.5
Colorado	1,023	1.0	68.4
Southern Illinois	1,017	0.9	69.4
Nebraska	1,008	0.9	70.3
Northern California	1,007	0.9	71.2
Southern Alabama	987	0.9	72.1
Western Tennessee	971	0.9	73.0
Southern Ohio	908	0.8	73.9
Massachusetts	889	0.8	74.7

District	Supervision Violations Number	Percent	Cumulative Percent
Southern Georgia	872	0.8	75.5
Eastern California	857	0.8	76.3
Middle North Carolina	856	0.8	77.1
Northern Illinois	854	0.8	77.9
New Jersey	840	0.8	78.7
Southern West Virginia	773	0.7	79.4
Eastern Michigan	768	0.7	80.1
Nevada	764	0.7	80.8
Northern West Virginia	759	0.7	81.5
Central Illinois	752	0.7	82.2
Northern New York	744	0.7	82.9
Maryland	742	0.7	83.6
Hawaii	737	0.7	84.2
Northern Iowa	737	0.7	84.9
Puerto Rico	724	0.7	85.6
Western New York	707	0.7	86.2
Western Michigan	647	0.6	86.8
Western Virginia	645	0.6	87.4
Northern Alabama	641	0.6	88.0
Northern Georgia	620	0.6	88.6
Southern Mississippi	611	0.6	89.2
Western Pennsylvania	607	0.6	89.7
Maine	602	0.6	90.3
Eastern Washington	589	0.5	90.8
Eastern Arkansas	584	0.5	91.4
Wyoming	534	0.5	91.9
North Dakota	514	0.5	92.3
Middle Pennsylvania	501	0.5	92.8
Southern Iowa	497	0.5	93.3
Northern Indiana	472	0.4	93.7
Idaho	437	0.4	94.1
Northern Florida	429	0.4	94.5
Southern Indiana	425	0.4	94.9
Eastern Louisiana	394	0.4	95.3
Northern Oklahoma	372	0.3	95.6
Western Louisiana	355	0.3	95.9
Middle Tennessee	339	0.3	96.2
Western Kentucky	337	0.3	96.6
Rhode Island	328	0.3	96.9

District	Supervision Violations Number	Percent	Cumulative Percent
District of Columbia	321	0.3	97.2
Northern Mississippi	308	0.3	97.4
New Hampshire	306	0.3	97.7
Middle Georgia	290	0.3	98.0
Connecticut	283	0.3	98.3
Alaska	259	0.2	98.5
Vermont	259	0.2	98.7
Western Arkansas	239	0.2	99.0
Western Wisconsin	211	0.2	99.2
Middle Alabama	201	0.2	99.3
Middle Louisiana	162	0.2	99.5
Eastern Oklahoma	149	0.1	99.6
Delaware	119	0.1	99.7
Central California	117	0.1	99.8
Guam	93	0.1	99.9
Virgin Islands	53	0.1	100.0
Northern Mariana Islands	28	0.0	100.0

Appendix B: Individual Offenders Under Supervision in Each Federal Judicial District Fiscal Year 2013-2017

	Individuals Under Supervision		
District	Number	Percent	Cumulative Percent
TOTAL	**665,239**	**100.0**	
Southern Texas	31,352	4.7	4.7
Central California	27,549	4.1	8.9
Western Texas	27,321	4.1	13.0
Southern Florida	24,472	3.7	16.6
Middle Florida	20,139	3.0	19.7
Arizona	19,347	2.9	22.6
Maryland	15,852	2.4	25.0
Eastern New York	15,188	2.3	27.2
Northern Texas	14,902	2.2	29.5
Southern New York	14,805	2.2	31.7
Southern California	13,677	2.1	33.8
South Carolina	13,448	2.0	35.8
Eastern Virginia	13,175	2.0	37.8
Eastern Pennsylvania	12,804	1.9	39.7
Northern Illinois	12,761	1.9	41.6
Puerto Rico	11,807	1.8	43.4
New Jersey	11,693	1.8	45.1
Eastern Missouri	10,173	1.5	46.7
Northern Ohio	9,462	1.4	48.1
Northern California	9,359	1.4	49.5
Northern Georgia	9,291	1.4	50.9
Eastern North Carolina	9,129	1.4	52.3
Eastern California	8,931	1.3	53.6
Western Missouri	8,896	1.3	54.9
Southern Ohio	8,688	1.3	56.3
Eastern Michigan	8,497	1.3	57.5
Eastern Tennessee	8,223	1.2	58.8
Western North Carolina	7,981	1.2	60.0
Eastern Texas	7,603	1.1	61.1
New Mexico	7,583	1.1	62.2
Massachusetts	7,123	1.1	63.3
Middle North Carolina	6,841	1.0	64.3
Western Pennsylvania	6,679	1.0	65.4
Western Tennessee	6,380	1.0	66.3
Connecticut	6,341	1.0	67.3
Nebraska	6,267	0.9	68.2
Western Washington	6,264	0.9	69.1
Minnesota	6,018	0.9	70.1
Northern Alabama	6,007	0.9	71.0

District	Individuals Under Supervision		
	Number	Percent	Cumulative Percent
Western New York	5,894	0.9	71.8
Colorado	5,797	0.9	72.7
Western Virginia	5,713	0.9	73.6
Oregon	5,696	0.9	74.4
Nevada	5,630	0.8	75.3
Southern Alabama	5,617	0.8	76.1
Eastern Wisconsin	5,585	0.8	77.0
Kansas	5,440	0.8	77.8
Eastern Kentucky	5,249	0.8	78.6
Northern New York	4,799	0.7	79.3
Eastern Louisiana	4,790	0.7	80.0
Utah	4,482	0.7	80.7
Southern Iowa	4,468	0.7	81.4
Southern Georgia	4,432	0.7	82.0
Northern Florida	4,364	0.7	82.7
Southern Illinois	4,346	0.7	83.3
Southern Mississippi	4,323	0.6	84.0
Montana	4,309	0.6	84.6
Central Illinois	4,302	0.6	85.3
Western Oklahoma	4,219	0.6	85.9
South Dakota	4,176	0.6	86.5
Eastern Arkansas	4,119	0.6	87.2
Western Louisiana	3,950	0.6	87.7
Southern Indiana	3,833	0.6	88.3
Western Kentucky	3,783	0.6	88.9
Middle Georgia	3,708	0.6	89.4
Northern Indiana	3,707	0.6	90.0
Middle Pennsylvania	3,657	0.5	90.6
Hawaii	3,648	0.5	91.1
Middle Tennessee	3,636	0.5	91.7
Western Michigan	3,619	0.5	92.2
Northern Iowa	3,575	0.5	92.7
District of Columbia	3,567	0.5	93.3
Northern West Virginia	3,474	0.5	93.8
Southern West Virginia	3,445	0.5	94.3
Eastern Washington	3,126	0.5	94.8
Northern Mississippi	2,864	0.4	95.2
Middle Alabama	2,827	0.4	95.6
Idaho	2,684	0.4	96.0
Northern Oklahoma	2,653	0.4	96.4
Maine	2,237	0.3	96.8
North Dakota	2,199	0.3	97.1
Wyoming	2,102	0.3	97.4
Rhode Island	2,042	0.3	97.7
Western Arkansas	1,984	0.3	98.0
Middle Louisiana	1,984	0.3	98.3
Western Wisconsin	1,862	0.3	98.6
Alaska	1,805	0.3	98.9

District	Individuals Under Supervision		
	Number	Percent	Cumulative Percent
New Hampshire	1,752	0.3	99.1
Delaware	1,391	0.2	99.3
Eastern Oklahoma	1,376	0.2	99.6
Vermont	1,346	0.2	99.8
Guam	835	0.1	99.9
Virgin Islands	614	0.1	100.0
Northern Mariana Islands	176	0.0	100.0

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