

**Court Involved Supervised Release
(Judges Need to Walk the Walk)**

**Richard M. Berman, U.S.D.J.
June 10, 2024**

Table of Contents

Executive Summary	1
I. Court Involvement in Supervised Release.....	5
II. Significant Outcomes	15
A. 86.6% Completion Rate.....	15
Extension of Supervision	16
Early Termination	17
B. 78.6% Employment.....	22
C. 82.2% Drug Treatment and Mental Health Counseling.....	25
D. Re-Offending.....	30
Rearrest Studies.....	31
Rearrest Outcomes	35
Return to Prison	37
Violation of Supervised Release	38
Revocation	42
III. Conclusion	47

Executive Summary

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

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

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

We have had these significant results:

(i) As of today, **201** supervisees actively participated in our court involved supervised release program. 152 supervisees are part of our Study Population; and 49 additional supervisees joined after the Study Population was defined.

(ii) **86.6%** successful completion of supervision. This includes **48.5%** of supervisees who completed supervision upon expiration of the term of supervision plus **38.1%** of supervisees who completed supervision through early termination.

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

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

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

(iv) **82.2%** of our Study Population actively participated in drug treatment and mental health counseling.³

(v) **17.1%** of our Study Population were rearrested over the first three years of supervision; **20.4%** were rearrested over the first five years of supervision. (Note: **45.3%** of rearrest charges were dismissed.)

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

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

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

³ We have not located comparable data from other studies.

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

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

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

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

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

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

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

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

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

* * *

I. Court Involvement in Supervised Release

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

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

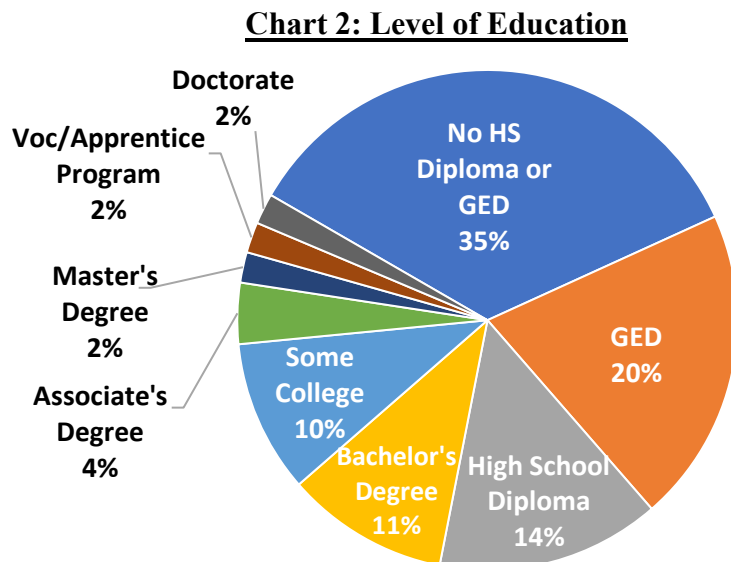
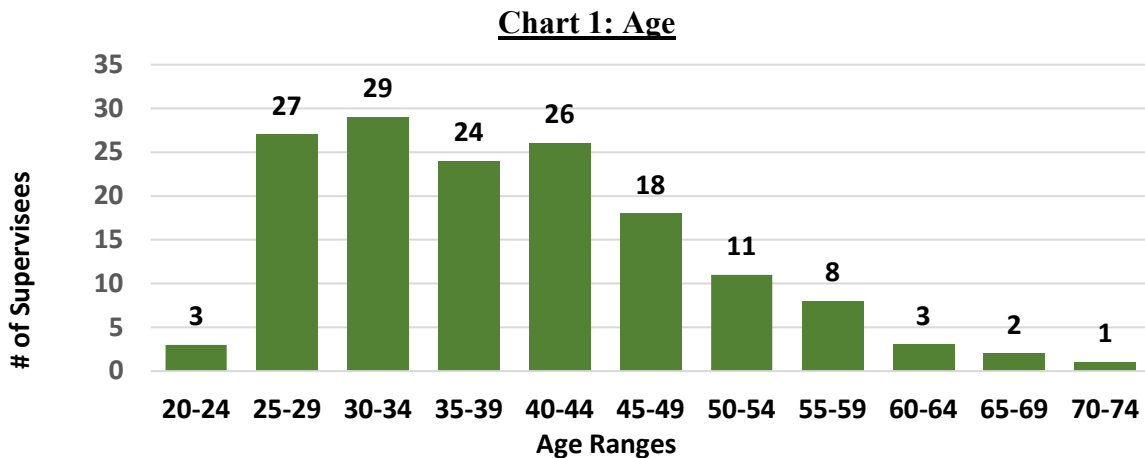


Chart 3: Criminal History Category

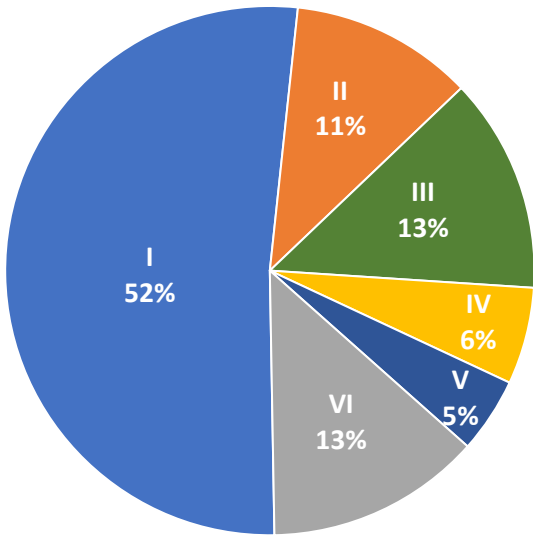


Chart 4: U.S. Probation Department PCRA (“Risk”) Categories

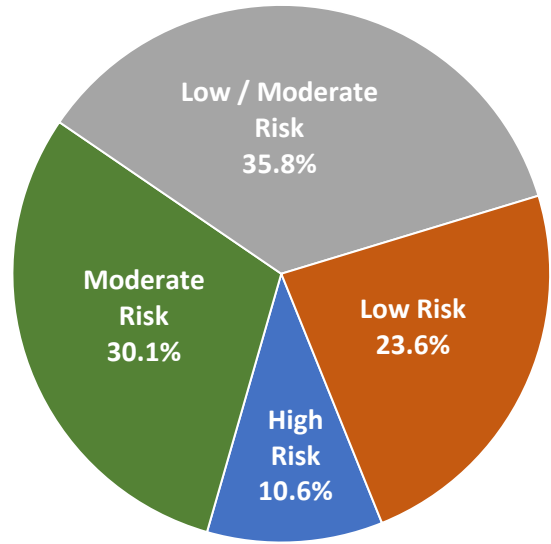


Chart 5: Crime of Conviction

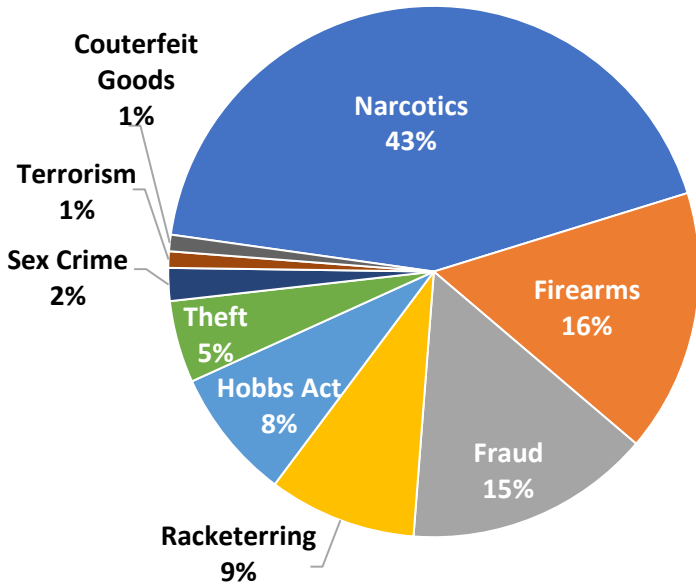


Chart 6: Term of Incarceration

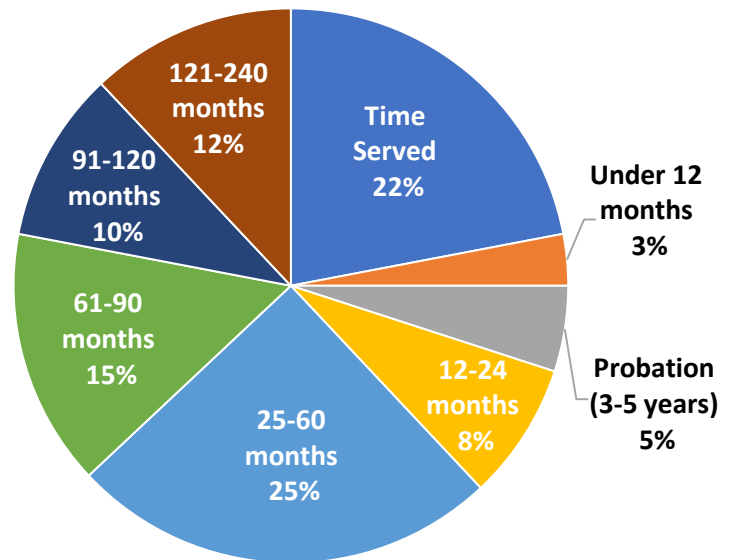
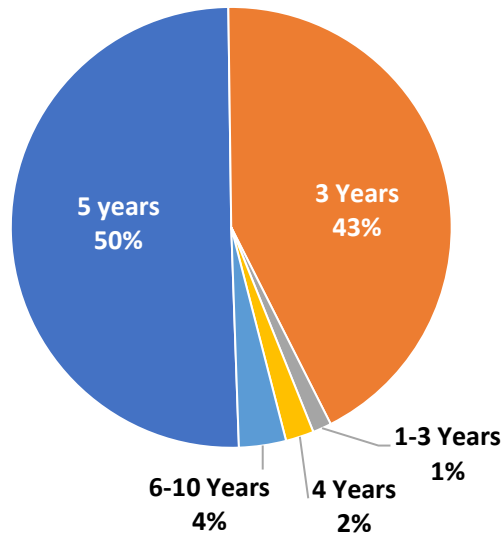


Chart 7: Term of Supervised Release



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

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

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

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

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

Case Study #1

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

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

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

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

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

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

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

Case Study #2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case Study #3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Significant Outcomes

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

A. 86.6% Completion Rate

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

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

Chart 8: Completion of Supervision

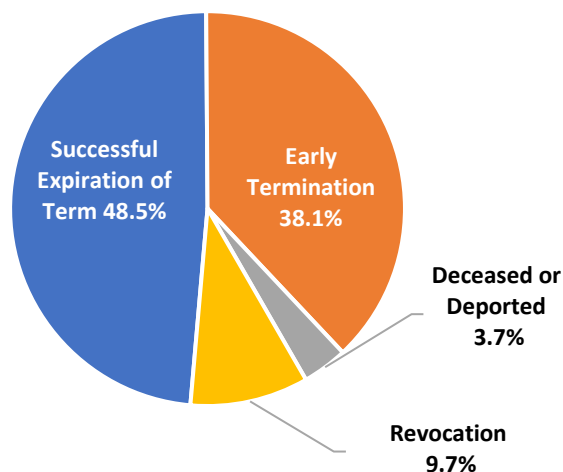
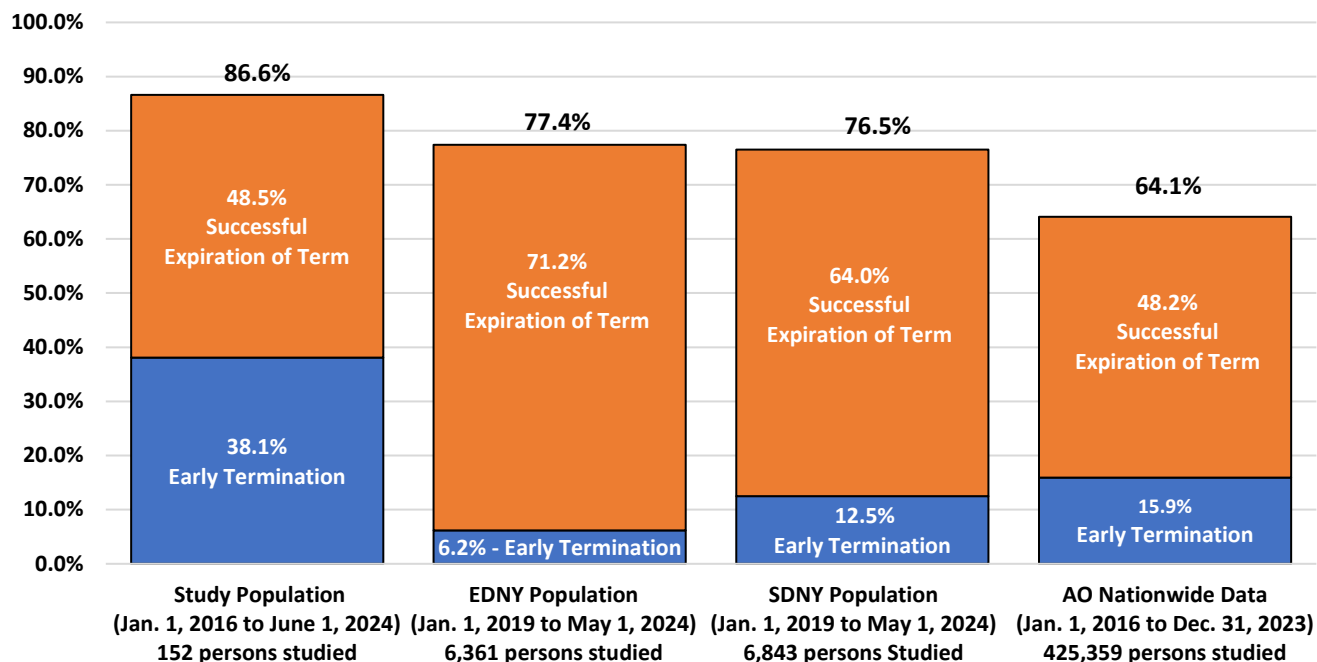


Chart 9 below reflects (i) the Study Population successful completions, (ii) Eastern District of New York successful completions, (iii) Southern District of New York successful completions, and (iv) nationwide successful completions as reported by the AO.⁵ See e.g., AO Table, *Post-Conviction Supervision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

Chart 9: Successful Completion of Supervision



Extension of Supervision

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

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

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

Early Termination

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

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

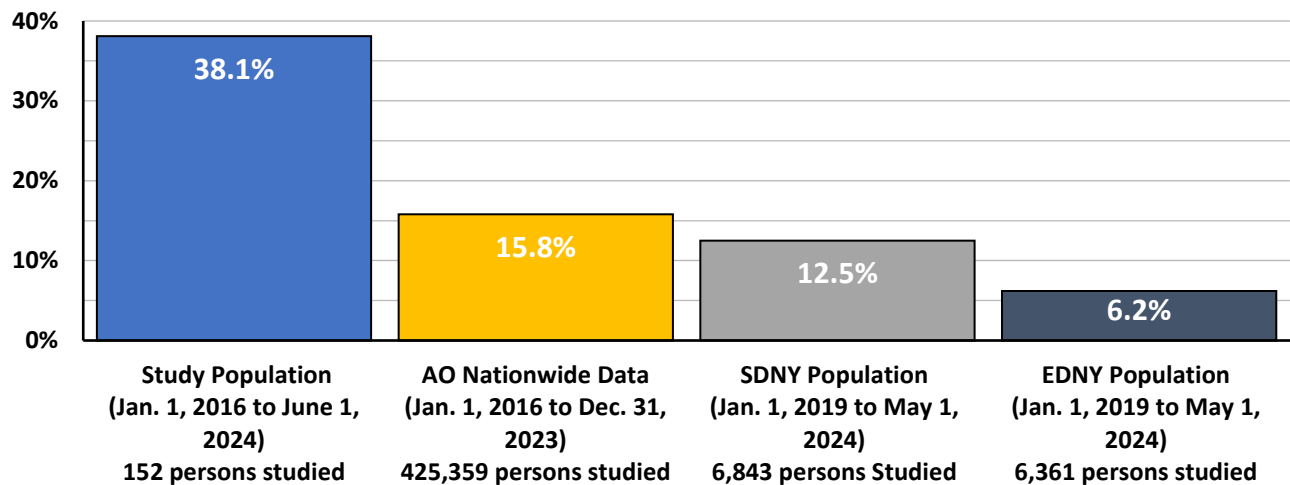
The appropriateness of early termination should be based on the releasee’s compliance with all conditions of supervision and overall progress in meeting supervision objectives or making progressive strides toward supervision objectives specific to the releasee that exhibit stable community reintegration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

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

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

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

Chart 10: Early Termination Rates



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

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

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

Case Study #4

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

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

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

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

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

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

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

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

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

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

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

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

Case Study #5

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

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

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

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

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

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

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

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

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

B. 78.6% Employment

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

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

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

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

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

Chart 11: Employment

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

Case Study #6

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

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

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

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

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

Case Study #7

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

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

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

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

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

C. 82.2% Drug Treatment and Mental Health Counseling

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

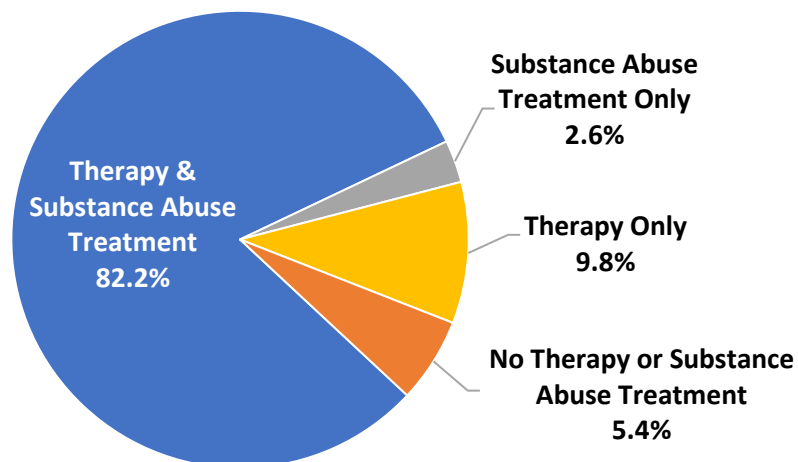
Similarly, people exiting prison with mental illness—who most often are not adequately treated while in prison—“are at heightened exposure to other risk factors such as substance abuse, homelessness, and other problems such as strained relationships that may in turn increase offending.” Nathan W. Link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

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

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

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

Chart 12: Therapeutic Counseling and/or Substance Abuse Treatment



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

Case Study #8

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

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

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

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

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

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

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

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

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

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

Case Study #9

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

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

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

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

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

D. Re-Offending

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

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

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

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

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

Rearrest Studies

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

U.S. Sentencing Commission Study

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

Bureau of Justice Statistics Study

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

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

Administrative Office of the U.S. Courts Study

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

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

Court Involved Supervision Study Population

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

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

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

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

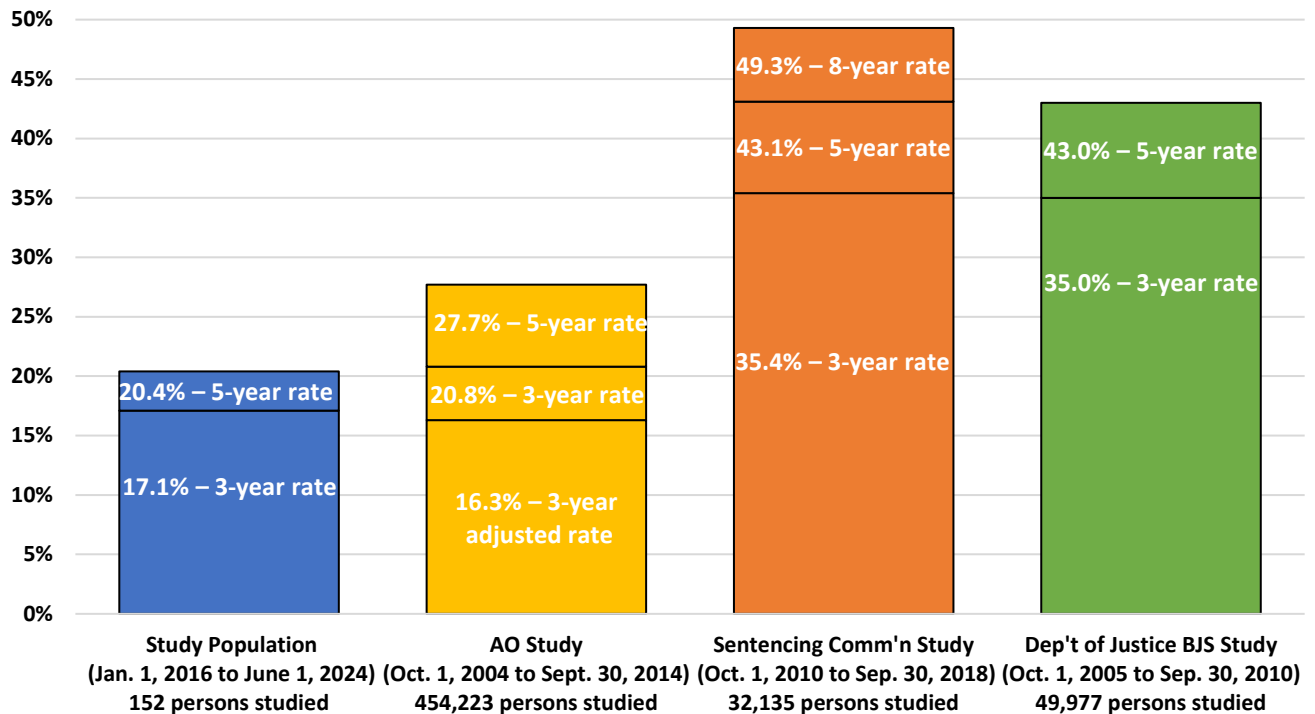
¹² To identify felony rearrests, we reviewed our case files for each supervisee and, as a cross check, we reviewed data generated by the U.S. Probation & Pretrial Services Automated Case Tracking System (“PACTS”).

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

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

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

Chart 13: Rearrests



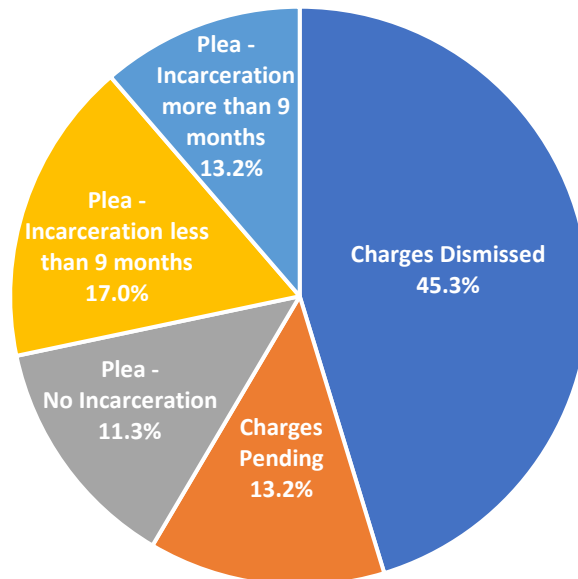
Rearrest Outcomes

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

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

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

Chart 14: Felony Rearrest Outcomes (Study Population)

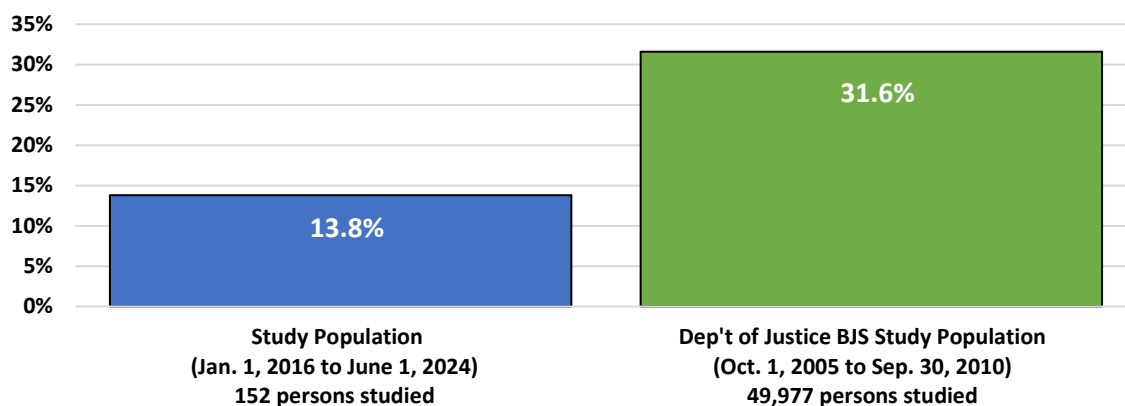


Return to Prison

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

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

Chart 15: Return to Prison



Violation of Supervised Release

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

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

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

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

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

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

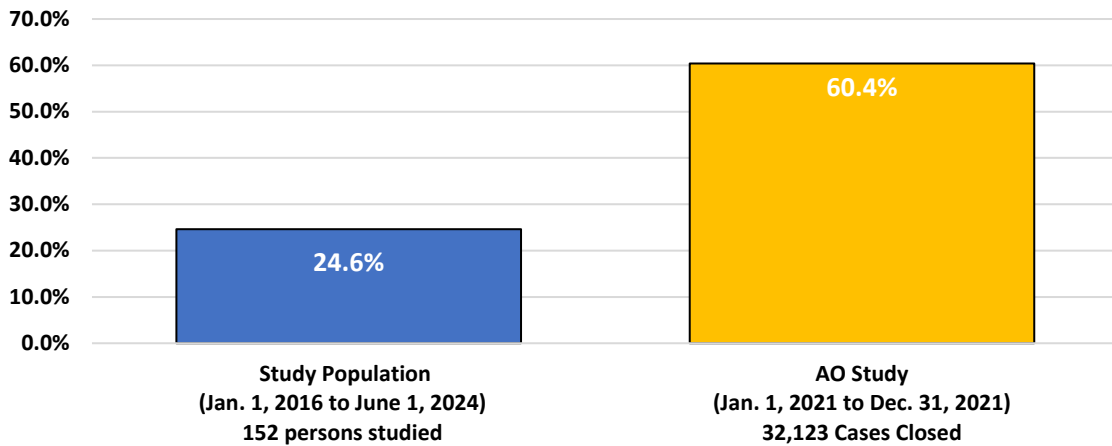
The Court’s objective in supervision is to help supervisees achieve successful reentry most often even when violations have been alleged. As Jacob Schuman points out, “perfect compliance with the conditions of supervision is difficult, if not impossible, and penalizing minor infractions may encourage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

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

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

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

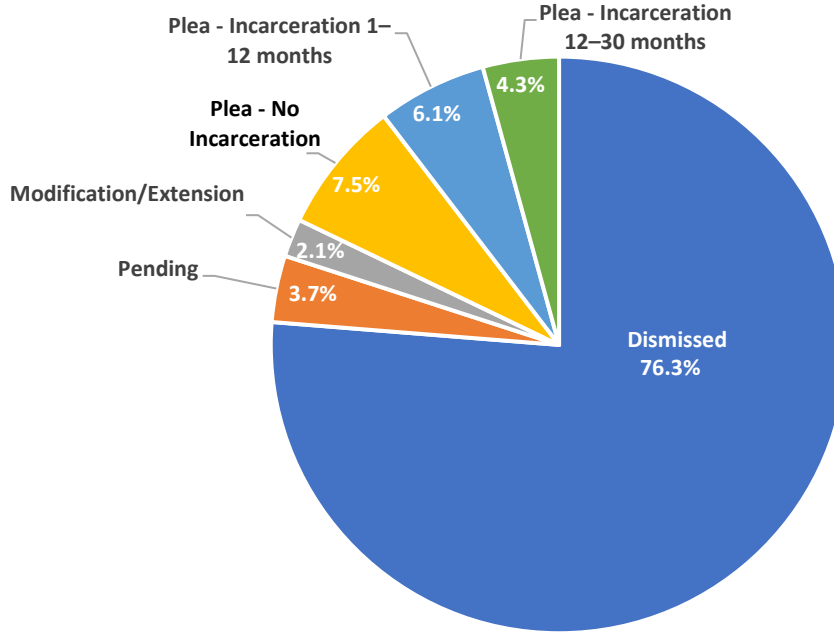
Chart 16: Violations



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

¹⁷ We have not located comparable data from other studies.

Chart 17: Study Population Violation Outcomes



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

Revocation

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

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

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

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

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

S. REP. 98-225 at 3307.

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

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

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

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

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

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

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

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

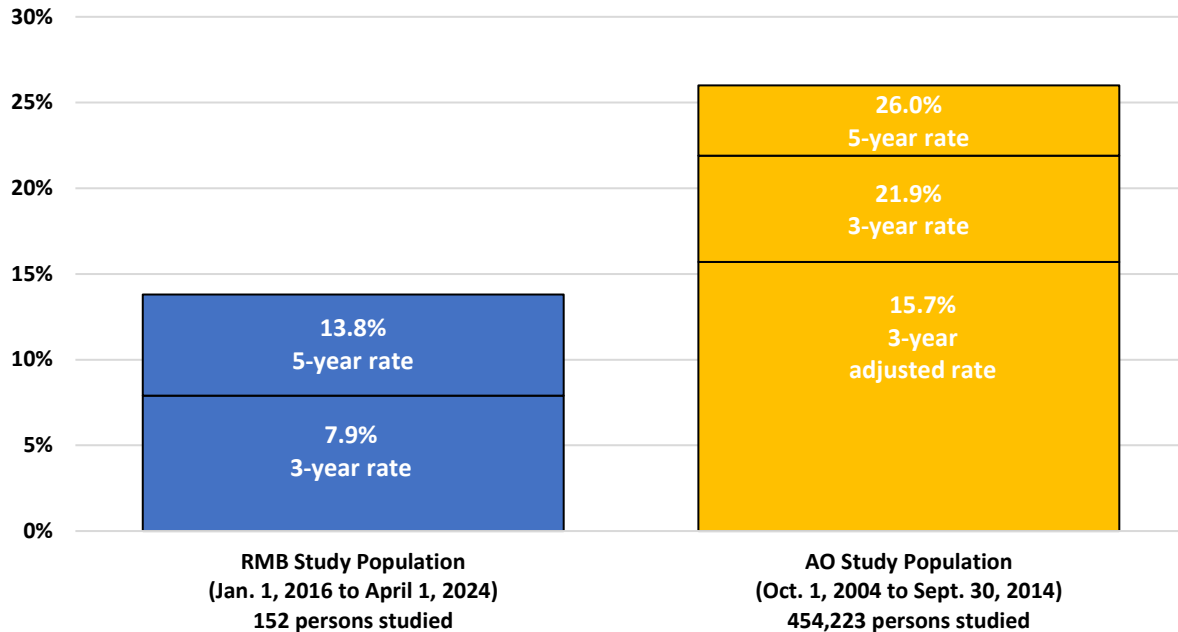
The 2015 AO Study found that **21.9%** of supervisees had their supervision revoked within three years of commencing supervision. It also found that **26.0%** of supervisees had their supervision revoked within five years. See 2015 AO Study at 6. The AO also adjusted 3-year revocations downward from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

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

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

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

Chart 19: Revocations



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

Case Study #10

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

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

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

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

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

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

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

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

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

III. Conclusion

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

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

* * *

Richard M. Berman
June 10, 2024