

U.S. Department of Justice  
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# Department of Justice Report on Resources and Demographic Data for Individuals on Federal Probation or Supervised Release



**The Report of the Department of Justice  
Pursuant to Section 15(h) of Executive Order 14074:**

**Resources and Demographic Data for Individuals on Federal Probation or Supervised  
Release**

**I. Introduction**

This report responds to Section 15(h) of Executive Order 14074. Section 15(h) directs the Department of Justice (“the Department”) to consult with the Administrative Office of the United States Courts (“the AO”), the United States Sentencing Commission (“USSC”), and the Federal Public and Community Defenders (“FPCD”), and coordinate with the Department’s Reentry Coordination Council and the Department’s Civil Rights Division to issue a report that provides data on: (i) the resources currently available to individuals on probation or supervised release, and the additional resources necessary to fulfill the employment, housing, educational, and reentry needs of this population; and (ii) the number of individuals on probation and supervised release revoked, modified, or reinstated for Grade A, B, and C violations, disaggregated by demographic data and the mean and median sentence length for each demographic category.<sup>1</sup>

Supervision, which includes probation,<sup>2</sup> parole,<sup>3</sup> and pretrial supervision, generally requires interaction with correctional officers and the satisfaction of conditions of release, such as restrictions on mobility and drug testing. Supervision allows justice system-involved individuals to remain in the community, in contrast to incarceration at a detention facility. However, supervision may also run the risk of imposing overly lengthy supervision terms, numerous and potentially burdensome requirements, and frequent surveillance, which, if too restrictive, can lead to unnecessary violations and reincarceration.

This report provides further available data on revocations of supervision in the federal system and resource needs, in response to Executive Order 14074. Applicable data limitations are also addressed.

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<sup>1</sup> Exec. Order No. 14074, 87 Fed. Reg. 32945. The Executive Order directed the AO, USSC, and FPCD to publish a report with disaggregated data by judicial district. Because existing procedures and systems do not mandate or have the ability to collect certain data at all or by judicial district, the Department, AO, USSC, and FPCD worked together to identify, translate, and obtain the best available data to respond usefully and meaningfully to the mandate of Section 15(h). This included the survey performed by FPCD, which is discussed in greater detail below.

<sup>2</sup> Probation is a sentencing option in federal and state courts. With probation, instead of sending an individual to prison, the court releases the person to the community and orders him or her to complete a period of supervision monitored by a U.S. probation officer and to abide by certain conditions. *See* United States Courts, Glossary of Legal Terms, <https://www.uscourts.gov/glossary> (last visited May 16, 2023).

<sup>3</sup> Parole is the release of an individual after the individual has completed part of his or her sentence in prison. When the parolee is released to the community, he or she is placed under the supervision. In the federal criminal justice system, the Sentencing Reform Act of 1984 abolished parole in favor of a determinate sentencing system in which the sentence is set by sentencing guidelines. *See id.*

## II. Background

In the federal criminal justice system, as an alternative to imprisonment, an individual may be statutorily eligible for probation, with a sentence that includes mandatory and/or discretionary conditions.<sup>4</sup> Separately, a term of supervised release after imprisonment may be required by statute or may be imposed at the discretion of the court.<sup>5</sup> An individual who has been sentenced to probation or supervised release is required to be supervised by a United States probation officer “to the degree warranted by the conditions specified by the sentencing court.”<sup>6</sup>

Supervision is a core responsibility of U.S. Probation and Pretrial Services and aims to provide individuals on supervised release an opportunity to reintegrate into the community following a period of incarceration, and in the case of probation, a punishment that is less severe -- and significantly less costly-- than imprisonment, but still provides accountability for criminality.<sup>7</sup> As of June 2022, there were approximately 124,000 people under federal supervision, 90% of these individuals (approximately, 110,000) were serving a term of supervised release, while 10% were sentenced to probation.<sup>8</sup>

Courts must impose a term of supervised release following imprisonment if required by statute.<sup>9</sup> In fiscal year 2022, nearly 53,000 people or 82 percent of federally sentenced offenders were sentenced to a term of supervised release.<sup>10</sup> Unless specifically provided otherwise by a federal criminal statute, the authorized terms of supervised release are: for a Class A or Class B felony, not more than five years; for a Class C or Class D felony, not more than three years; and for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.<sup>11</sup> Some exceptions include that supervised release terms range from two to ten years for certain drug offenses, and for certain federal “crimes of terrorism,” the courts must impose a term of

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<sup>4</sup> See 18 U.S.C. § 3561(a) (“A defendant who has been found guilty of an offense may be sentenced to a term of probation unless (1) the offense is a Class A or B felony and the defendant is an individual; (2) the offense is an offense for which probation has been expressly precluded; or (3) the defendant is sentenced to a term of imprisonment at the same time for the same or a different offense that is not a petty offense.”). The statutorily authorized terms of probation are one to five years for a felony; not more than five years for a misdemeanor; and not more than one year for an infraction. 18 U.S.C. § 3561(c). In addition, if an individual is found guilty of an offense described in section 404 of the Controlled Substance Act, 21 U.S.C. § 844, has no prior convictions relating to controlled substances, and has not previously been the subject of disposition under 18 U.S.C. § 3607, the court may place the individual, with the person’s consent, on probation for up to one year. 18 U.S.C. § 3607. A term of probation under § 3607 may result in dismissal of the proceedings if the individual is compliant with the conditions of probation.

<sup>5</sup> 18 U.S.C. § 3583(a).

<sup>6</sup> 18 U.S.C. § 3601.

<sup>7</sup> See Administrative Office of the United States Courts, Probation and Pretrial Services – Supervision, <https://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-services-supervision>, (last visited May 8, 2023).

<sup>8</sup> Administrative Office of the United States Courts, Statistics and Reports, *Table E-22- Federal Probation System Statistical Tables for the Federal Judiciary*, <https://www.uscourts.gov/report-names/statistical-tables-federal-judiciary>.

<sup>9</sup> 18 U.S. Code § 3583(a).

<sup>10</sup> United States Sentencing Commission, 2022 Sourcebook of Federal Sentencing Statistics, (2023) Table 18, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2022/Table18.pdf>

<sup>11</sup> 18 U.S. Code § 3583(b).

supervised release of any term of years or for life.<sup>12</sup> In fiscal year 2022, the mean term of supervised release was 48 months, and the median term was 36 months.<sup>13</sup>

Conditions of supervised release should be sufficient, but no more restrictive than necessary, to facilitate the execution of the sentence and the protection of the community.<sup>14</sup> There are some statutorily mandated conditions of supervised release, and additional conditions generally must: be reasonably related to sentencing factors under 18 U.S.C. § 3553(a); involve no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a); and be consistent with any pertinent policy statements issued by the U.S. Sentencing Commission.<sup>15</sup> In addition, federal supervision aims to reduce the risk and recurrence of crime and maximize defendant success during the period of supervision and beyond.<sup>16</sup> The goal for each person under supervision is “lawful self-management,” meaning individuals under supervision gain the tools to make personal determinations, without the oversight and support of the justice system, not to engage in criminal behavior.

U.S. Probation and Pretrial Services is a component of the U.S. district courts and an integral part of the federal criminal justice process at both the pretrial and post-conviction stages. U.S. Probation and Pretrial Services offices are located in 93 of the 94 U.S. district courts.<sup>17</sup> The Criminal Law Committee of the Judicial Conference of the United States oversees the U.S. Probation and Pretrial Services system, addressing such matters as the system’s operations, workload, funding, and resources, as well as employment standards for system employees and issues pertaining to the administration of criminal law.<sup>18</sup> The AO carries out the Judicial Conference’s policies and has delegated to U.S. Probation and Pretrial Services the responsibility to support the probation and pretrial services system, including developing system policies, supporting system programs, and reviewing the work of probation and pretrial services offices.<sup>19</sup>

Although U.S. Probation and Pretrial Services officers share a mission and operate under national policies, various aspects of the work and procedure implementation differ across the 93 districts.<sup>20</sup> For example, the number of officers in each district depends on the district’s workload, and officer workload is not the same in every district.<sup>21</sup> Increases in arrests generated by law enforcement priorities or operations can significantly increase criminal filings in a given

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<sup>12</sup> 18 U.S.C. § 3583(j).

<sup>13</sup> United States Sentencing Commission, 2022 Sourcebook of Federal Sentencing Statistics, (2023) Table 18, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2022/Table18.pdf>

<sup>14</sup> See 18 U.S. Code § 3583(d).

<sup>15</sup> *Id.*

<sup>16</sup> Administrative Office of the United States Courts, Probation and Pretrial Services Offices, Overview of Probation and Supervised Release Conditions (November 2016) at 5-6, <https://www.uscourts.gov/file/20262/download>.

<sup>17</sup> Probation and pretrial services for the District of the Northern Mariana Islands are provided by the District of Guam.

<sup>18</sup> See Administrative Office of the United States Courts, Probation and Pretrial Services – Mission, <https://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-services-mission> (last visited May 8, 2023).

<sup>19</sup> *Id.*

<sup>20</sup> See Administrative Office of the United States Courts, Probation and Pretrial Services – Supervision, *supra* note 15.

<sup>21</sup> *Id.*

district, impacting the workload of both judges and probation officers. In addition, the work of a federal probation officer in an urban area varies considerably from an officer in a rural or sparsely populated area; officers in less populated areas often travel long distances to fulfill their supervision responsibilities and may have access to fewer resources than their urban counterparts, especially for substance abuse or mental health treatment or employment assistance.<sup>22</sup>

Social science research suggests interventions to reduce criminal behavior should be rooted in empirical knowledge about the sources of criminal conduct and should target known predictors of crime and recidivism that can be changed (also known as “dynamic risk factors” or “criminogenic needs”).<sup>23</sup> In the terms of supervision, the district court may provide that the defendant “undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, as specified by the court, and remain in a specified institution if required for that purpose.”<sup>24</sup> The court has additional discretion to provide that the defendant “satisfy such other conditions as the court may impose.”<sup>25</sup>

### **III. Resources Available to Individuals on Probation or Supervised Release**

#### **A. AO Resources**

U.S. Probation and Pretrial Services spends significant resources on treatment programs that focus on needs and deficits directly related to the propensity to commit crime that can be addressed through rehabilitation. Data from the AO, as illustrated in **Appendix A**, reveals that U.S. Probation and Pretrial Services spends resources for education, employment, life skills, mental health and substance abuse treatment, among other programs. The data includes the associated costs for these resources for FY2018 through FY2022. Although Executive Order 14074 requested this data to be disaggregated by judicial district, due to data limitations this request cannot be actioned at this time.

As noted, the court may require supervised individuals to “undergo available medical, psychiatric, or psychological treatment.”<sup>26</sup> **Appendix A** reveals that treatment costs associated with substance abuse, sex offenses, and mental health-related conditions comprise the largest expenses for services offered by U.S. Probation and Pretrial Services to individuals on federal probation and supervised release. Additional information on these treatment services, as well as educational, vocational, and employment resources provided by U.S. Probation and Pretrial Services, is provided below.

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<sup>22</sup> *Id.*

<sup>23</sup> Administrative Office of the United States Courts, Probation and Pretrial Services Offices, Overview of Probation and Supervised Release Conditions, *supra* note 24 at 43.

<sup>24</sup> 18 U.S.C. § 3563(b)(9).

<sup>25</sup> 18 U.S.C. § 3563(b)(22).

<sup>26</sup> 18 U.S.C. § 3563(b)(9).

## 1. Substance Abuse and Substance Use Disorder Treatment

In FY22, U.S. Probation and Pretrial Services spent over \$37 million on substance abuse treatment.<sup>27</sup> Research reveals that substance use disorder is often interrelated with other resource needs.<sup>28</sup> Illicit substance use can, for example, interfere with relationships or hamper success at employment.<sup>29</sup> A district court may impose conditions or sentencing alternatives that require an individual to participate in drug testing and treatment.<sup>30</sup>

A thorough understanding of the nature and severity of the individual's substance use is an essential first step toward establishing an effective plan for correctional intervention. Individuals who come to supervision with a recent and well-documented history of substance use may not require the administration of a validated screening instrument; probation officers can utilize available documentation to make decisions about further assessment and treatment.<sup>31</sup> Individuals who come to supervision with indications of substance abuse or a distant history of substance use disorder require the administration of a comprehensive biopsychosocial intake assessment and report.<sup>32</sup>

Once an understanding of the nature and severity of the supervised individual's substance use has been determined, there are many services available for use by U.S. Probation and Pretrial Services offices to treat substance use disorder, as well as additional services available for co-occurring disorders.<sup>33</sup> Treatment options include detoxification, residential treatment, individual counseling, family counseling, group counseling, and medication. One or more of these services may be provided to a person who uses illegal drugs, abuses prescription drugs or alcohol, and/or suffers from a substance use disorder. These treatment services provide a means to address an individual's alcohol or drug use, aiming to address the underlying causes for certain behavior.

Both inpatient and outpatient substance abuse treatment options may be available, depending on the individual's geographic region.<sup>34</sup> Outpatient services, commonly known as community-based treatment services, often include therapy sessions or self-help groups. Inpatient treatment is generally more expensive than outpatient services, but may be the preferred method for individuals exhibiting particularly severe addiction.<sup>35</sup> Medication-assisted treatment (MAT) is another service available to persons on federal supervision and can provide the necessary physical stabilization to improve the success of treatment of substance use disorder when traditional therapies, in isolation, are not effective.<sup>36</sup>

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<sup>27</sup> See Appendix A.

<sup>28</sup> Administrative Office of the United States Courts, Probation and Pretrial Services Offices, Overview of Probation and Supervised Release Conditions, *supra* note 24 at 43.

<sup>29</sup> *Id.*

<sup>30</sup> See United States Sentencing Guidelines Manual § 5D1.3(d)(4) (2021), <https://www.uscourts.gov/sites/default/files/pdf/guidelines-manual/2021/GLMFull.pdf>.

<sup>31</sup> *Id.*

<sup>32</sup> Administrative Office of the United States Courts, Substance Use Testing & Substance Use Disorder Treatment Reference Guide (March 2020) at 6, [https://www.uscourts.gov/sites/default/files/substance\\_use\\_reference\\_guide\\_0.pdf](https://www.uscourts.gov/sites/default/files/substance_use_reference_guide_0.pdf).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 8.

In keeping with the statutory requirements of imposing the least restrictive conditions, as well as the Judicial Conference’s policy of applying the least restrictive interventions, U.S. Probation and Pretrial Services aims for the intensity of substance use disorder testing and/or treatment to match an individual’s specific needs.<sup>37</sup> Research indicates that providing services too intensely is detrimental to an individual’s compliance and will impact the intended outcomes.<sup>38</sup> Treatment interventions should be viewed as a continuum of care. Placement and movement within the treatment continuum should be based on ongoing assessments of current risk and aimed at how to best help the individual become capable of sustaining recovery.

Substance use testing and substance use disorder treatment can be expensive but are often less costly than detention or incarceration.<sup>39</sup> Moreover, experts agree that incarceration alone – without substance use disorder treatment – is generally ineffective at reducing drug use and addiction.<sup>40</sup> The AO typically pays for treatment when the treatment condition is imposed by the court; however, depending on the supervised individual’s financial stability, a judge may order the individual to pay for the cost of treatment partially or fully.<sup>41</sup> When an individual on prerelease custody is obtaining treatment services, the Bureau of Prisons (BOP) typically pays for those treatment services.<sup>42</sup>

## 2. Mental Health Treatment

A district court may also order that a defendant on supervised release participate in a mental health program.<sup>43</sup> In FY22, U.S. Probation and Pretrial Services spent nearly \$30 million on mental health resources.<sup>44</sup> Mental health disorders may range from anxiety and depression to bipolar disorder and schizophrenia. People on supervision who suffer from mental disorders often require more intensive monitoring and specialized treatment. After a period of detention or imprisonment, U.S. Pretrial and Probation Services attempts to provide a seamless transition of medical services, so the continuum of care is not broken.<sup>45</sup> This is especially important when managing mental health treatment.<sup>46</sup>

A thorough understanding of the supervised individual’s mental health needs and current status is an essential first step in establishing an effective supervision plan.<sup>47</sup> Further, the coexistence of both a mental illness and a substance use disorder, known as a co-occurring disorder, is common among people in treatment. People with mental illness are more likely to experience a

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<sup>37</sup> *Id.* at 10.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 13.

<sup>40</sup> See e.g. U.S. Dep’t of Health & Human Services, National Institutes of Health, National Institute on Drug Abuse, *Criminal Justice Drug Facts* (June 2020); <https://nida.nih.gov/download/23025/criminal-justice-drugfacts.pdf?v=25dde14276b2fa252318f2c573407966>.

<sup>41</sup> Administrative Office of the United States Courts, Substance Use Testing & Substance Use Disorder Treatment Reference Guide *supra* note 40 at 13.

<sup>42</sup> *Id.*

<sup>43</sup> See United States Sentencing Guidelines Manual *supra* note 38 at § 5D1.3(d)(5).

<sup>44</sup> See Appendix A.

<sup>45</sup> Administrative Office of the United States Courts, Probation and Pretrial Services Offices, Overview of Probation and Supervised Release Conditions, *supra* note 24 at 50.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

substance use disorder than those not affected by a mental illness.<sup>48</sup> Individuals on federal probation or supervised release with co-occurring disorders should receive services in an integrated fashion, when available, with the same clinician and/or team in the same location.<sup>49</sup> When an integrated treatment approach is not available, U.S. Pretrial and Probation Services tries to provide effective communication and consistency among the various treatment providers.<sup>50</sup>

Counseling services alone may not be effective in managing some mental health disorders. As with substance use disorder treatment, medications may provide the necessary symptom stabilization to improve the success of mental health treatment.<sup>51</sup> Reentry planning is especially important for those requiring ongoing psychotropic medication management. BOP provides individuals being released with up to a 90-day supply of all medications currently prescribed in an effort to provide consistency in care immediately after release.<sup>52</sup>

### 3. Sexual Offense Treatment

The purposes of sex offense-specific treatment are to help those who have committed sex offenses accept responsibility for sexually deviant thoughts and behavior; develop an increased level of recognition of sexual misconduct; and recognize the arousal patterns, fantasies, planning, and rationalizations of sexually deviant thoughts and behavior.<sup>53</sup> The physical and psychological harm caused by sex offenses is particularly traumatic; U.S. Probation and Pretrial Services prioritizes preventing new sex crimes from occurring.<sup>54</sup>

In FY22, U.S. Probation and Pretrial Services spent over \$33 million on sex offender treatment.<sup>55</sup> Among the various types of sex offense-specific treatments, cognitive-behavioral and medication are the most widely accepted treatment modalities.<sup>56</sup> Medication, however, is not appropriate for everyone with a history of sex offenses and is not an isolated treatment (i.e., it is administered in conjunction with psychotherapy). Group treatment is the preferred treatment modality, but individual sessions may be used in addition to group treatment to address specific issues that arise.<sup>57</sup>

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<sup>48</sup> U.S. Dep't of Health & Human Services, Substance Abuse and Mental Health Administration, *Co-Occurring Disorders and Other Health Conditions*, <https://www.samhsa.gov/medications-substance-use-disorders/medications-counseling-related-conditions/co-occurring-disorders#:~:text=The%20coexistence%20of%20both%20a.affected%20by%20a%20mental%20illness> (last visited May 8, 2023).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> U.S. Dep't of Justice, Federal Bureau of Prisons, BOP Program Statement 6360.02, Pharmacy Services (Oct. 2022), [https://www.bop.gov/policy/progstat/6360\\_002.pdf](https://www.bop.gov/policy/progstat/6360_002.pdf).

<sup>53</sup> Administrative Office of the United States Courts, Probation and Pretrial Services Offices, Overview of Probation and Supervised Release Conditions, *supra* note 24 at 85.

<sup>54</sup> *Id.*

<sup>55</sup> See Appendix A.

<sup>56</sup> Administrative Office of the United States Courts, Probation and Pretrial Services Offices, Overview of Probation and Supervised Release Conditions, *supra* note 24 at 86.

<sup>57</sup> *Id.*



#### 4. Educational, Vocational, and Employment Resources

In addition to medical, psychiatric, or psychological treatment that might be required by a district court, U.S. Probation and Pretrial Services also attempts to address other criminogenic needs, including deficits in educational, vocational, and employment skills. In FY22, U.S. Probation and Pretrial Services spent approximately \$10,000 on education resources, \$117,000 on employment resources, and nearly \$700,000 on resources related to life skills.<sup>58</sup>

Education can increase employability, the ability to obtain and maintain a job, and economic stability. Research shows that criminal behavior increases with frequent unemployment and longer periods of unemployment.<sup>59</sup> Conversely, meaningful, long-term employment enables desistance from crime.<sup>60</sup> Research further suggests recidivism is reduced with the development and maintenance of prosocial bonds related to employment, which may be facilitated through educational and vocational programs.<sup>61</sup>

Vocational training programs include classroom-based education, job training, and apprenticeships and may provide other life skill instruction to improve time management skills and work ethic. U.S. Probation and Pretrial Services recommends educational or vocational service-related conditions for individuals on federal probation or supervised release when there is a need to develop or enhance skills to obtain and maintain gainful employment.<sup>62</sup> These skills may include reading, writing, mathematics, computer use, or language proficiency. U.S. Probation and Pretrial Services may refer an individual directly to a contracted agency providing educational or vocational services, or the probation officer may collaborate with the state education or employment agency to facilitate placement.<sup>63</sup>

#### B. Justice Department Resources

The Department is committed to reducing and removing barriers to success for individuals with criminal records. The many hurdles to stability after justice system involvement negatively impact individuals, families and communities, and may exacerbate social and economic disadvantages more broadly, particularly for low-income communities and communities of color. Moreover, eliminating barriers associated with justice system involvement improves outcomes and reduces recidivism, thereby promoting public safety. Below are some of the ways the Department has utilized resources to facilitate successful outcomes for individuals on probation or supervised release.

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<sup>58</sup> See Appendix A.

<sup>59</sup> Administrative Office of the United States Courts, Probation and Pretrial Services Offices, Overview of Probation and Supervised Release Conditions, *supra* note 24 at 29.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 30.

<sup>62</sup> *Id.* at 70.

<sup>63</sup> *Id.*

## 1. Reentry Courts

Many U.S. Attorneys' Offices ("USAOs") have engaged in efforts to help formerly incarcerated individuals successfully reenter their communities. As of October 2022, the Federal Judicial Center reported that 147 federal problem-solving courts were operating across 64 federal judicial districts.<sup>64</sup> These courts vary by district and include "front-end" diversion, as well as reentry court programs.<sup>65</sup> The reentry programs allow the court to impose graduated sanctions prior to supervision revocation and utilize positive reinforcements to promote stability on supervision. Reentry courts typically involve a collaborative process with the district court judge, probation officer, assistant United States Attorney, assistant Federal Defender, and social service providers.

There is considerable variation within the reentry court model. Some reentry courts accept only volunteer participants, whereas others mandate participation by individuals whom U.S. Probation and Pretrial Services and the presiding judge believe need intensive supervision. Some reentry courts focus on individuals with a high probability of recidivism, as measured by the Risk Prediction Index ("RPI") score, whereas other courts are offered only to individuals with substance use disorders, or to specific populations, like veterans. Further, some reentry courts involve informal monthly meetings with a judge, whereas others include formal status hearings in a courtroom. Reentry courts regularly generate positive outcomes and allow judges to participate in successful supervision outcomes, rather than only presiding over cases where supervised individuals violate the conditions of their release.<sup>66</sup> Examples of current reentry courts are described in more detail below.

- Accelerated Community Entry ("ACE"): ACE is a program aimed at helping individuals released from federal custody reestablish themselves in the community as they embark on a term of supervised release monitored by the U.S. Probation Office and the U.S. District Court for the Western District of Michigan. In this mandatory reentry court, individuals with the highest recidivism risks are required to participate in the two-year program. The first year involves intensive supervision and monthly participation in court proceedings, followed by a second year of more traditional supervision.<sup>67</sup> ACE provides rewards for success, with successful completion resulting in a one-year reduction in the term of supervision.

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<sup>64</sup> U.S. Sentencing Commission, *Alternatives to Incarceration and Diversion Programs*, <https://www.usc.gov/guidelines/primers/alternatives-incarceration-and-diversion-programs> (last viewed May 16, 2023).

<sup>65</sup> Federal Probation, *A Viable Alternative? Alternatives to Incarceration across Seven Federal Districts*, [https://www.uscourts.gov/sites/default/files/83\\_1\\_2\\_0.pdf](https://www.uscourts.gov/sites/default/files/83_1_2_0.pdf) (describing "front-end" courts as problem solving courts based on the state drug court model).

<sup>66</sup> United States Sentencing Commission, National Symposium on Alternatives to Incarceration, Federal Problem Solving Courts (Views from the Practitioners), [https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/alternatives/20080714-alternatives/15\\_FINAL\\_FedProbSolvCourt\\_Practitioners.pdf](https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/alternatives/20080714-alternatives/15_FINAL_FedProbSolvCourt_Practitioners.pdf).

<sup>67</sup> United States District Court, Western District of Michigan, ACE Program, <https://www.miwd.uscourts.gov/ace-program> (last visited May 8, 2023).

- Supervision To Aid Reentry (“STAR”): Completion of STAR in the Eastern District of Pennsylvania can also result in a one-year reduction in the term of supervised release.<sup>68</sup> STAR is a voluntary program aimed at individuals with a significant risk of recidivism and/or history of violent crime.<sup>69</sup> The program works with a local community college and health care providers to meet participants’ needs related to employment, training, educational attainment, substance use, and other healthcare concerns. As part of its participation in the reentry court, the USAO partnered with local bar associations and law schools to provide STAR participants with free legal assistance for issues relating to credit repair, traffic court, license restoration, child custody, and business development.<sup>70</sup>
- Reentry Independence through Sustainable Efforts (“RISE”) and the Federal Veterans Court Program: The District of Utah established RISE, the first federal behavioral health court in 2008. RISE operates with a non-adversarial philosophy, with a focus on the overall mental health and stability of the participant as well as public safety.<sup>71</sup> Incentives, rewards, and sanctions are used to support constructive behavior change and participants are assisted with applications for local, state, and federal benefits for which they qualify (Medicaid, Social Security, housing, etc.).<sup>72</sup> The District of Utah also established the first federal veterans court focused on veterans with mental health needs in 2010.<sup>73</sup> The participants appear either by citation, on pretrial release, or post-conviction supervision.<sup>74</sup> With critical support from the Department of Veterans Affairs Veterans Justice Outreach coordinator, this program connects justice involved veterans with services in a collaborative model designed to address the root causes of criminal conduct and ensure veterans are linked to the programs and benefits they have earned.<sup>75</sup>

## 2. BOP Programming and Residential Reentry Centers

BOP aims to prepare individuals for release from the first day of incarceration.<sup>76</sup> In implementing the First Step Act,<sup>77</sup> BOP has initiated risk and needs assessments for every incarcerated person, as well as evidence-based recidivism reduction programs and productive

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<sup>68</sup> United States Probation Office, Eastern District of Pennsylvania, Programs & Services, Re-Entry Court, <https://www.paep.uscourts.gov/re-entry-court> (last visited May 8, 2023).

<sup>69</sup> *Id.*

<sup>70</sup> United States Sentencing Commission, National Symposium on Alternatives to Incarceration, *supra* note 73.

<sup>71</sup> United States Probation and Pretrial Services, District of Utah, Programs & Services, Supervision, Reentry Programs, Behavioral Health Court (RISE), <https://www.utp.uscourts.gov/rise-behavioral-court> (last visited May 8, 2023).

<sup>72</sup> *Id.*

<sup>73</sup> United States Probation and Pretrial Services, District of Utah, Programs & Services, Supervision, Reentry Programs, Veterans Court, <https://www.utp.uscourts.gov/veterans-court> (last visited May 8, 2023).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> See U.S. Dep’t of Justice, Federal Bureau of Prisons, Custody & Care, Reentry Programs, [https://www.bop.gov/inmates/custody\\_and\\_care/reentry.jsp](https://www.bop.gov/inmates/custody_and_care/reentry.jsp) (last visited May 9, 2023).

<sup>77</sup> First Step Act of 2018, Pub. L. No. 115 – 391.

activities that correlate to areas of need.<sup>78</sup> Individuals in BOP custody can participate in curriculum-based recidivism reducing activities aimed at preparation for their reentry to the community. The time credits system, created by the First Step Act, incentivizes individuals to participate in these education programs, vocational trainings, and work assignments, as recommended based on their needs assessments.<sup>79</sup>

The court may require that an individual under supervision “reside at, or participate in the program of, a community corrections facility (including a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of [supervision].”<sup>80</sup> BOP is provided annual appropriations for community confinement programs, associated policy development, and monitoring for contractual compliance for Residential Reentry Centers (“RRCs”). These appropriations include housing individuals who are placed in RRCs as a condition of probation, mandatory release, or supervised release. BOP reported an FY22 budget for RRC placements of \$347,090,200, with approximately 14,000 individuals placed at the end of FY22.

Placement in an RRC can serve multiple purposes for individuals under federal supervision, including providing housing and services for individuals transitioning from a custodial sentence with no identifiable or appropriate residence, or for individuals who unexpectedly become unhoused or experience an episode of housing instability during a term of probation or supervised release.<sup>81</sup> RRCs can also provide a structured living environment to help address relevant criminogenic needs. Before determining the appropriate placement (as some RRCs are less restrictive of residents’ mobility than others), U.S. Probation and Pretrial Services verifies the necessary services and level of confinement that will be available.<sup>82</sup>

Probation officers should communicate the purpose and goals of the placement to both the individual under supervision and the facility staff.<sup>83</sup> U.S. Probation and Pretrial Services is also expected to work with facility staff to identify correctional strategies during an RRC placement. In addition, probation officers should monitor progress toward programming goals through regular communication with the individual under supervision and facility staff.<sup>84</sup>

Resources available in an RRC placement include the following:

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<sup>78</sup> See U.S. Dep’t of Justice, Federal Bureau of Prisons, First Step Act Approved Programs Guide 26 (Aug. 2022), [https://www.bop.gov/inmates/fsa/docs/fsa\\_guide\\_0822.pdf](https://www.bop.gov/inmates/fsa/docs/fsa_guide_0822.pdf).

<sup>79</sup> *Id.* There are many disqualifying offenses and prior convictions in the First Step Act; accordingly, not every person serving a term of incarceration in BOP custody is eligible to receive Time Credits towards pre-release custody or supervised release. However, there are privileges associated with participation in recidivism reduction programs and productive activities for all in BOP custody.

<sup>80</sup> 18 U.S.C. § 3563(b)(11).

<sup>81</sup> Administrative Office of the United States Courts, Probation and Pretrial Services Offices, Overview of Probation and Supervised Release Conditions, *supra* note 24 at 75. Placement may also serve as a negative consequence or controlling intervention in response to noncompliance with conditions of release. *Id.*

<sup>82</sup> *Id.* at 76. Once the court imposes a condition requiring RRC placement, U.S. Probation and Pretrial Services submits a referral packet (including the court’s order of RRC placement, judgment form, and presentence report) to BOP, the agency that designates individuals to the appropriate facility. *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

- **Resident Case Management:** RRC contractors are required to develop Individualized Program Plans (“IPPs”) which address the resident’s needs and recidivism risks. In the IPP, the contractor identifies how they will prioritize and assist the resident in addressing specific program activities and a timetable of achievement of the identified goals.<sup>85</sup>
- **Employment:** RRC contractors develop and provide employment assistance with the focus on assisting the resident in finding viable employment based on their skills and capabilities. The contractors provide residents transportation at no cost or public transportation vouchers to assist in seeking and maintaining employment until the resident receives their first paycheck, and no longer meets the definition of indigent. RRCs can also provide services such as job placement resources, employment information assistance using computer-based technology, portfolio development, resume writing, and on-site job fairs.
- **Other Programs:** RRCs provide residents with an opportunity to acquire the necessary skills for self-improvement, and to practice law-abiding behavior. RRCs provide access to pre-release classes and programs (which vary by RRC and individual need) to assist the residents in locating employment, permanent residence development, and other self-improvement opportunities.

#### **IV. Additional Resources Necessary to Ensure that Reentry Needs are Fulfilled**

Despite the resources identified above, individuals reentering society following a period of either federal or state incarceration still face significant barriers.<sup>86</sup> As researchers have noted, 83% of individuals who spend time in state prison are arrested for a new crime at some point following their release from incarceration.<sup>87</sup> Forty-four percent of individuals released from state prison are arrested at least once within a year of release.<sup>88</sup>

In 2022, the Reentry Coordination Council (“RCC”), an interagency collaboration convened by the Attorney General and mandated by the First Step Act, released a report to Congress highlighting the significant barriers to reentry after incarceration.<sup>89</sup> The report noted that housing and food security are basic needs; yet, according to one study of individuals released from state prisons, 91% of people reported experiencing food insecurity,<sup>90</sup> and those same formerly incarcerated people were almost ten times more likely to experience homelessness than

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<sup>85</sup> *Id.* at 75-76.

<sup>86</sup> Much of the research related to outcomes for formerly incarcerated individuals is based on state populations.

<sup>87</sup> Alper, M., Duruse, M.R., & Markman, J. (2018), *Update on prisoner recidivism: A 9-year follow-up period (2005-2014)*, Washington, DC: Bureau of Justice Statistics.

<sup>88</sup> *Id.*

<sup>89</sup> U.S. Dep’t of Justice, *Coordination to Reduce Barriers to Reentry: Lessons Learned from COVID-19 and Beyond, Report to Congress from the Reentry Coordination Council* (Apr. 2022), <https://www.justice.gov/opa/press-release/file/1497911/download>.

<sup>90</sup> Emily A. Wang, et al., *A Pilot Study Examining Food Insecurity and HIV Risk Behaviors among Individuals Recently Released from Prison*, AIDS EDUC. PREV. (Apr. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3733343>.

the general public.<sup>91</sup> Among the same population, those who have been incarcerated more than once are thirteen times more likely to experience homelessness.<sup>92</sup> Meeting basic needs, such as food security and stable housing, is not only essential for survival, but also critical in helping formerly incarcerated individuals develop a sense of independence. Research confirms that the lack of stable housing following incarceration leads to a higher likelihood of rearrest and reincarceration.<sup>93</sup> Moreover, there is a growing body of evidence that shows that the provision of housing assistance, particularly when accompanied with supportive services, can help reduce recidivism and decrease involvement in the criminal justice system.<sup>94</sup>

The RCC also noted employment-related reentry barriers. Widespread use of criminal background checks has resulted in people with past convictions being effectively removed from the employment process.<sup>95</sup> In addition, formerly incarcerated people are more likely to suffer from educational deficits that negatively impact employment than the general population. They are almost twice as likely to lack a high school diploma and eight times less likely to complete college than the general public.<sup>96</sup>

Further, studies of individuals formerly incarcerated in state prisons have shown that almost 70 percent of people released from prison have drug or alcohol abuse problems.<sup>97</sup> However, only a small portion of those individuals with a substance use disorder receive treatment while incarcerated.<sup>98</sup> In addition, studies of state populations demonstrate that individuals who have been released with substance abuse problems are more likely to recidivate.<sup>99</sup> Notably, however, those who are enrolled in health care coverage when released are more likely to use community-based treatment services that could help reduce their chances of recidivating.<sup>100</sup>

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<sup>91</sup> Emily A. Wang, et al., *A Pilot Study Examining Food Insecurity and HIV Risk Behaviors among Individuals Recently Released from Prison*, AIDS EDUC. PREV. (Apr. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3733343>.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See, e.g., Kimberly Burrowes, *Can Housing Interventions Reduce Incarceration and Recidivism?* HOUSING MATTERS (Feb. 27, 2019), <https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism>; Leah A. Jacobs & Aarton Gottlieb, *The Effect of Housing Circumstances on Recidivism: Evidence from a Sample of People on Probation in San Francisco*, 47 CRIM. JUST. BEHAV. 1097-1115 (Sept. 2020), [ncbi.nlm.nih.gov/pmc/articles/PMC8496894/pdf/nihms-17434785](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8496894/pdf/nihms-17434785).

<sup>95</sup> See Michelle Natividad Rodriguez & Beth Avery, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, NAT'L EMP. LAW PROJECT, at 7 (Apr. 2016), <https://s27147.pcdn.co/wp-content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

<sup>96</sup> Lucius Couloute, *Getting Back on Course: Educational exclusion and attainment among formerly incarcerated people*, PRISON POLICY INITIATIVE (Oct. 2018), <https://www.prisonpolicy.org/reports/education.html>.

<sup>97</sup> Taxman, F. S., Perdoni, M.L., & Caudy, M. (2013), *The plight of providing appropriate substance abuse treatment services to offenders: Modeling the gaps in service delivery*, Victims and Offenders, 8, 70–93.

<sup>98</sup> See National Institute on Drug Abuse, *Criminal Justice Drug Facts*, (June 2022), <http://nida.hin.gov/publications/drugfacts/criminal.justice>.

<sup>99</sup> Berg, M. T., & Huebner, B. M. (2011), *Reentry and the ties that bind: An examination of social ties, employment, and recidivism*, Justice Quarterly, 28(2), 382–410; Baillargeon, J., Williams, B. A., Mellow, J., Harzke, A. J., Hoge, S. K., Baillargeon, G., & Greifinger, R. B. (2009), *Parole revocation among prison inmates with psychiatric and substance use disorders*, Psychiatric Services, 60, 1516-1521.

<sup>100</sup> See U.S. Dep't of Justice, Bureau of Justice Statistics, *Critical Connections: Getting People Leaving Prison and Jail the Mental Health Care and Substance Use Treatment They Need*, at 34 (Jan. 2017), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/publications/Critical-Connections-Full-Report.pdf>.

Executive Order 14074 requested information on the additional resources necessary to fulfill employment, housing, educational, and reentry needs in the federal supervision system.<sup>101</sup> To better understand the gaps in reentry needs for those on federal probation and supervised release, the Department engaged the Federal Public and Community Defenders (“FPCD”) to gather data. FPCD surveyed the 82 authorized federal defender organizations regarding the reentry needs of justice impacted individuals and received 247 responses, representing 56 districts.<sup>102</sup> Summaries of the survey results are described below, with additional results in **Appendix B**.

Survey respondents emphasized the importance of resources provided by U.S. Probation and Pretrial Services. Of the 247 respondents, 211 noted that their clients received support services from the agency while on probation and supervised release. More than half of the respondents also reported that clients received reentry support services from Medicaid or other publicly funded sources and private non-profit and community-based sources.

The FPCD survey revealed that the reentry support services currently provided do not fulfill the needs of their clients. Approximately forty-four percent of the attorneys reported their clients were “mostly left on their own” with respect to reentry. Approximately thirty-six percent of the respondents said that U.S. Probation and Pretrial Services “mostly helped” their clients access support services, and the remaining 52 respondents (approximately 21%) reported either that they were not able to form a firm conclusion on the question or that their experience varied depending on the client, probation officer, or other circumstances.

Poverty, transportation issues, lack of clinical support (for example, in the form of a social worker), unresponsive probation officers, and inadequate treatment program offerings were the top five structural obstacles to successful completion of supervision identified by the FPCD. In addition, respondents noted that their clients most prevalently needed, but did not have adequate access to housing resources, mental health services, and employment support.

Mental health and drug treatment offerings appear highly variable across federal districts. Some FPCD survey respondents reported that treatment services were adequately available in their districts; however, many others indicated that these treatment services were inadequate or unavailable in their districts.

## **V. Revocation Data for Individuals on Probation and Supervised Release**

Individuals on federal supervision can have their supervision term revoked for either failure to comply with supervision conditions or an arrest for new criminal activity. When a person on probation or supervised release fails to comply with release conditions -- often referred to as a “technical violation” -- that person can be sent back to federal prison. Technical violations encompass a range of activities through which an individual violates the terms of release,

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<sup>101</sup> Exec. Order No. 14074, *supra* note 1.

<sup>102</sup> *Id.* Although EO 14074 requested data disaggregated by judicial district, FPCD reported that a district-by-district breakdown of resource gaps would be a significant and timely endeavor for their limited resources, but FPCD was willing to generate a general survey the various Defender districts related to reentry resources to generate responsive data for the report.

including failing to report to a probation officer; failing a drug test; refusing to engage in mandated substance use, mental health, or sex offense treatment; and possessing weapons or other forms of contraband, such as illegal drugs, in circumstances where new criminal charges were not filed. Technical violations, however, do not include conduct related to committing new crimes.<sup>103</sup>

In response to Executive Order 14074, the AO provided data on several aspects of revocations from fiscal years 2021 and 2022.<sup>104</sup> The AO data revealed that most probation and supervised release cases are closed successfully either through an early or regular termination of the supervision term. However, for the nearly 60,000 cases closed during fiscal year 2021, almost 28% were terminated through a revocation. Fiscal year 2022 saw a slight increase in the percentage of revocations, at just over 30% of approximately 57,000 cases.

The data breaks down revocation rates by: demographic characteristics, including race and ethnicity, gender, and age; the types of revocation, including technical revocation or revocations based on criminal conduct (with or without a new arrest charge); sentences imposed after revocations; and data regarding post-revocation supervision for persons returned to federal supervision after revocation. *See Appendix C.* Key findings from the data are discussed below.

#### A. Revocation Rates by Demographic Characteristics

Race and ethnicity data was provided for the following categories: American Indians/Alaska Natives; Asian/Pacific Islanders; Black, not Hispanic; Hispanic, any race; and White, not Hispanic.<sup>105</sup> In both fiscal years 2021 and 2022, the highest revocation rates were for American Indians and Alaska Natives, the only group to have rates over 50% for both years reported (56.8% in fiscal year 2021 and 59.4% in fiscal year 2022). Asian/Pacific Islanders had the lowest revocation rates for both years (16.5% in fiscal year 2021 and 16.6% in fiscal year 2022). The rates for the remaining race/ethnicity demographics were similar in fiscal year 2021: 26.2% (White), 26.6% (Black), and 27.1% (Hispanic); and fiscal year 2022: 27.5% (White), 29.8% (Black), and 30.8% (Hispanic).

The gender demographic data revealed males were nearly two times more likely to have their supervised release revoked than females. The male revocation rate was 29.3% in 2021 and 32.2% in 2022; while the female rates were 17.8% (2021) and 19.8% (2022).

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<sup>103</sup> The AO noted that conduct leading to a technical violation is not always minor and, in some instances, may present a risk to public safety. Some cases closed by revocation may have both technical violations and new criminal conduct. Specifically, the court may have revoked supervision based upon a finding that a technical violation occurred; however, the conduct that resulted in the technical violation may have involved the commission of new criminal offenses. Moreover, some revocations for technical violations may occur after the court and/or the probation office has already used a series of lesser sanctions and interventions for a pattern of violations. Therefore, the AO cautioned that the characterization of a violation as being “technical” in nature should be considered in a broader context.

<sup>104</sup> *See Appendix C.* Although Executive Order 14074 requested data on the types of grade violations (that is, A, B, and C violations), the AO reported that information at this granular level is currently unavailable.

<sup>105</sup> The AO noted that there were persons included in an “other” not classified by race category, which was not listed in the ethnicity category, but the population was included in the totals related to other data classifications.



Consistent with USSC reports that determined recidivism rates for individuals 50 and older are significantly less than rates for individuals under the age of 50, the AO data revealed that revocation rates declined by age.<sup>106</sup> **Appendix C** has categories of analysis for populations under 20 years old; 20-29; 30-39; 40-49; and 50 years and older. Probationers and supervised releasees under the age of 20 were about three times more likely to have a revocation (46.7% in 2021 and 38.3% in 2022) than persons 50 years and older (14.5% in 2021 and 17% in 2022). In fact, individuals 50 years old and older represented the demographic least likely to have supervision revoked when compared to all other demographic categories in the AO data set.

## B. Types of Revocations

The AO data revealed that most supervised release and probation revocations were the result of technical violations, not additional criminal conduct. For those instances where the revocation was a result of criminal conduct, the AO was able to detail whether the conduct did or did not result in a new arrest charge. Among the cases revoked in FY21 and FY22, the majority, approximately two-thirds (66% in 2021 and 68% in 2022) were the result of a technical violation. The remainder were revoked because the individual under supervision engaged in criminal conduct resulting in an arrest charge (32.5% in 2021 and 31% in 2022). A small percentage of supervisees were revoked for criminal conduct that did not result in an arrest charge (1.5% in 2021 and 1.6% in 2022).

Among the race/ethnicity demographic categories, American Indians/Alaska Natives had the highest revocation rates for technical violations. In 2021 and 2022, respectively, 79.9% and 82.1% of American Indians/Alaska Natives were revoked for technical violations. This population also had the lowest percent of revocations resulting from a new arrest during the two years, between 19% and 17%. Asian/Pacific Islanders had similar but slightly lower technical revocation rates at approximately 79% for both years.

The data further revealed that Black supervisees had the lowest rates of revocations due to technical violations and the highest rates of revocations based on a new arrest charge. In 2021 and 2022, technical revocations for Black supervisees were 56.2% and 56.5%; approximately 42% in both years were revoked because of new criminal conduct. The percentage of Black supervisees revoked for criminal conduct that did not result in an arrest charge was low (1.7% in 2021 and 2.1% in 2022), but slightly higher than the percentages for all supervisees (1.5% in 2021 and 1.6% in 2022). White and Hispanic supervisees had similar rates of revocation for technical violations (ranging from 68% to 73%) and criminal conduct (27% to 30%).

Female revocation rates for technical violations were significantly higher than rates for males. In 2022, 79.1% of female supervisees were revoked for a technical violation and 19.7% were revoked based on a new arrest charge. That same year, 66.1% of male supervisees were revoked for technical violations and 32.3% for a new arrest charge. These percentages for both females

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<sup>106</sup> See United States Sentencing Commission, *Older Offenders in the Federal System* (July 2022), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220726\\_Older-Offenders.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220726_Older-Offenders.pdf). USSC found that the recidivism rate of individuals 50 and older (21.3%) was less than half that of those under the age of 50 (53.4%). USSC also found that recidivism events for older individuals were less serious, compared to those under the age of 50 and that older individuals take a longer time to recidivate, compared to their younger peers. *Id.*

and males were similar in 2021.

Among classifications by age, supervisees 50 and older had the highest revocation rates for technical violations as the only age group with percentages over 70%: 71.5% in 2021 and 73.6% in 2022. Relatedly, those 50 and older also had the lowest rates of being revoked because of criminal conduct that resulted in new arrest charges (26.4% in 2021 and 24.1% in 2022). For all the demographic categories considered (race/ethnicity, gender, and age), those 50 and older had the highest revocation rates for criminal conduct with no arrest charge (2.1% in 2021 and 2.3% in 2022). Revocations resulting from new criminal conduct that generated arrest charges occurred most frequently among supervisees between the ages of 20 and 29. 35.6% (2021) and 33.4% (2022) of supervisees between the ages of 20 and 29 had revocations based on new arrest charges.

### C. Sentences Imposed from Revocations

Executive Order 14074 also requested information on the lengths of sentences imposed as a result of revocations.<sup>107</sup> The AO reported that revocations almost always resulted in a sentence of incarceration (approximately 99%). The average sentence imposed was 9.7 months in 2021 and 9.5 months in 2022. Half of supervisees with revocations were sentenced to incarceration terms of seven months or more in 2021 and six months or more in 2022.

Comparing lengths of incarceration by race/ethnicity, Black supervisees were sentenced to the longest terms of incarceration for revocations, averaging 11.3 months in 2021 and 11.5 months in 2022. American Indians/Alaska Natives supervisees received the shortest sentences resulting from revocations: approximately 7 months in both years. The other race/ethnicity classifications had average revocation sentences ranging from 8 to 10 months.

The AO data further revealed that females were sentenced to shorter terms of incarceration for revocations. On average, revoked males were sentenced to 10 months of incarceration, while revoked females received seven months of incarceration.

Moreover, the average incarceration terms resulting from revocations generally increased with age. Persons under 20 revoked from supervision received average sentences of 6 months. In comparison, individuals 50 and older revoked from supervision received average incarceration terms of 12 months in 2021 and 11 months in 2022.

### D. Supervision After Revocation

After their sentences of incarceration, approximately 67% of all revoked probationers and supervised releasees were sentenced to a new supervision term. According to the data, half of those resentenced to a new supervision term received a sentence of 24 months of supervision or more and the average term was approximately 47 months.

In 2021, approximately 77% of Asians/Pacific Islanders, 73% of American Indians/Alaska

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<sup>107</sup> Exec. Order No. 14074, *supra* note 1.

Natives, 70% of Whites, and 69% of Hispanics with revocations were sentenced to new supervision terms. Only 61% of Black supervisees received new supervision terms after revocations. Similar patterns of persons being placed back onto federal supervision by a supervisee's race/ethnicity were revealed in 2022.

The median supervision terms imposed in 2021 and 2022 for most race/ethnicity demographics (Blacks, Hispanics, Whites) was 24 months. American Indians/Alaska Natives had longer median supervision terms of 27 to 28 months, as did Asian/Pacific Islanders with median supervision terms of 28 to 29 months. In contrast to the median sentences, data on average supervision sentences shows wider levels of variation by supervisee race/ethnicity. For example, in 2021, Whites and American Indians/Alaska Natives received average supervision sentences of approximately 70 months, while Blacks and Hispanics were sentenced to significantly shorter average supervision terms of approximately 32 months. Similar patterns were reflected in 2022.

The data revealed that females were five to six percentage points more likely to receive new supervision terms than males. Similar to the data related to race/ethnicity, there was little variation in the median supervision terms imposed. For both males and females, the median term was 24 months in 2021 and 2022. However, the average supervision sentences varied considerably by gender. The average sentences for both 2021 and 2022 were nearly two times higher for males (approximately 50 months) than females (approximately 28 months).

New supervision terms were imposed at relatively equal rates ranging from 66% to 69% for all age categories in fiscal years 2021 and 2022. In both 2021 and 2022, all age ranges had median sentences of 24 months, except supervisees 50 and older, whose median sentence was 29 months. The average length of supervision terms imposed varied by age groups and increased with an increase in age. Those 50 years and older received the longest average terms (89 months), while those under 20 received the shortest average terms (23 to 24 months).

## **VI. Policy Considerations/Recommendations**

Executive Order 14074 required the Department to submit an additional report in Section 15(f): *Rehabilitation, Reentry, and Reaffirming Trust: The Department of Justice Strategic Plan*. That report provides a strategic plan to advance the Departmental goals related to safely reducing criminal justice system interactions, supporting rehabilitation during incarceration, and facilitating reentry for people with criminal records. The policies and programs related to federal justice system efforts in that report will have impacts on the barriers and resources needed to successfully facilitate reentry discussed herein.

Below, are additional policy considerations that could also impact the experience of the federal supervision population and strengthen public safety. These considerations include supporting additional innovative models of supervision in the federal system, examining resources devoted to federal supervision and how we evaluate the process, and developing programs that target particularly vulnerable populations on federal supervision.

### **A. Innovative Models of Supervision**

Supervision and probation are meant to reduce the risk that a person will commit another criminal act and to support rehabilitation and reentry, not to serve as punishment or long-term incarceration for an offense. Consistent with statutory requirements of imposing the least restrictive conditions--as well as the Judicial Conference's policy--interventions, supervision, and any associated conditions should be aimed at rehabilitation, deterrence, and public safety.

Some contend that terms of federal supervision are too restrictive and should generally be reduced. There are a number of innovative models of supervision that aim to reduce the potential for revocations and additional justice system involvement for those on supervision, while continuing to protect the public. Examples discussed in detail below include the Dosage Probation model and reforms, including legislation, related to how courts handle technical violations.

### 1. Dosage Probation

The Department's National Institute of Corrections ("NIC") introduced a study of the Dosage Probation model. This model suggests that the length of supervision should be determined by the number of hours of intervention necessary to reduce risk, rather than an arbitrarily or customarily established amount of time (e.g., three years, five years, etc.).<sup>108</sup> NIC has implemented this model in select jurisdictions in California and Wisconsin and is currently testing statewide implementation of the model in Minnesota. If successfully implemented, the program has the potential to impact all medium to high-risk individuals on supervision in the state. Additional funding is needed to conduct research on the model's effectiveness, as well as more broadly implement the model in additional jurisdictions nationally.

The primary elements of NIC's Dosage Probation model include:

- Research-based, structured assessments are conducted to reliably assess risks and identify high and low-risk populations.
- Sentencing, supervision, correctional programming, reentry, and violation decisions are informed by assessed level of risk, criminogenic needs, and optimal dosage.
- Probation completion is linked to achievement of a dosage target rather than a fixed period of time, thereby incentivizing engagement in risk-reducing interventions.
- Probation terms and conditions emphasize risk-reducing interventions that target criminogenic needs.
- Officers and individuals on supervision collaborate to develop case management plans; interventions are designed to address the most influential criminogenic needs; dosage targets are set.
- Individuals on supervision are referred to programs and services that demonstrate the capacity to effectively address their needs, thereby incentivizing service providers to deliver evidence-based programs.

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<sup>108</sup> See Nat'l Institute of Corrections, *Dosage Probation: Rethinking the Structure of Probation*, at 16 (Jan. 2014), <https://s3.amazonaws.com/static.nicic.gov/Library/027940.pdf>.

- The amount of dosage received is tabulated over time and objective behavioral measures are used to gauge change.
- Probation officers are trained in core correctional practices; they are provided with ongoing coaching; and caseloads and workloads are “right-sized” so that officers have sufficient time to meaningfully engage supervisees face-to-face.
- Quality assurance and continuous quality improvement strategies are implemented to ensure the integrity of these evidence-based practices.

For those who meet their dosage target and who achieve objective behavioral indicators, under the NIC Dosage Probation model, probation is terminated, as opposed to terminating supervision at some point further down the road, when supervision time “runs out.”

While Dosage Probation has shown success at the state level, in the federal criminal justice system, the specific terms of probation and supervised release are often dictated by statute.<sup>109</sup> Accordingly, the introduction of behavioral indicators to denote termination would likely require statutory or legislative change. In addition, with buy-in from courts, there may be opportunities to implement aspects of this model for probation or supervised release when the conditions are specified by the sentencing court. Supervision models like this reward good behavior with early termination and encourage successful reentry. These models also focus supervisory resources on those most in need of them, promoting both fairness and efficiency.

## 2. Technical Violation Reform

Another consideration for systemic federal supervision reform would be to focus on technical violations. Data in this report revealed that technical violations make up the majority of federal revocations—approximately two-thirds. Moreover, the data revealed that those revocations almost always resulted in a sentence of incarceration (approximately 99%), with the average sentence over 9.5 months long.

One option, which many have championed, would be to strictly limit carceral sentences for technical violations. If courts were to eliminate carceral sentences and utilize other sanctions for technical violations – i.e. conduct that did not constitute new criminal conduct or result in arrest – it would greatly reduce the number of individuals who are reincarcerated while under supervision, providing a potential pathway to promote more successful reentry.

Short of eliminating carceral sentences for all technical violations, court could focus on reducing carceral sentences for individuals found to commit technical violations related to drug use. Some contend that criminalizing drug addiction, by revoking supervision and imposing a new term of incarceration, promotes a cycle of justice system involvement: supervision, relapse, and incarceration. To reduce this cycle (and continue to encourage pathways to substance use treatment) courts, and/or USAOs, could establish a policy to no longer seek revocation for individuals based on drug use.<sup>110</sup> Or, even more narrowly tailored, courts and/or USAOs could

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<sup>109</sup> 18 U.S.C. § 3583(a).

<sup>110</sup> The AO was unable to provide data illustrating the extent technical violation revocations resulted from drug use and/or possession, including the use or possession of marijuana.

no longer seek revocation based on marijuana use and/or possession. Such a policy would complement President Biden’s October 2022 announcement to pardon prior federal offenses of simple possession of marijuana.<sup>111</sup> In his proclamation, President Biden said, “no one should be in jail just for using or possessing marijuana.” He further noted that his clemency action would help relieve collateral consequences that thousands of people with prior federal marijuana convictions face by being denied employment, housing, or educational opportunities as a result their convictions.<sup>112</sup>

A change in USAO or court policy related to limiting incarceration for drug use (specific to marijuana or with broader terms), however, would have limited impact, as federal law currently dictates mandatory revocation if an individual under supervision tests positive for drugs more than three times.<sup>113</sup> Legislation would be needed to amend this mandatory revocation provision. Such legislation could provide judges with more discretion with regard to whether to revoke or to limit revocation of supervision to circumstances where the defendant possesses drugs with intent to distribute or commits felony possession, rather than misdemeanor conduct. Legislation could also provide sentencing judges with the opportunity to conduct an “individualized assessment” of how much supervised release is appropriate when they sentence a defendant and create a presumption of early termination for individuals who do not jeopardize public safety.

#### B. Probation Resources and Evaluation

**The FPCD survey results revealed that nearly all individuals on federal supervision receive support from U.S. Probation and Pretrial Services. While this report focuses on the resources that federal probation officers provide, it also notes that there are** aspects of the work and implementation that differ from district to district.<sup>114</sup> Over the last few decades, the number of individuals on supervision have increased dramatically, while resources for probation offices have not.<sup>115</sup> As a result, probation offices can experience high caseloads and may lack appropriate resources to assist individuals under supervision to address major causes of criminal system involvement, such as underemployment, inadequate and unstable housing, etc. Citations for technical violations, which nearly always result in subsequent incarceration, may require fewer resources than those needed to adequately address the needs of the supervisee. As previously noted, this is not an issue unique to the federal criminal system, state and local jurisdictions also reincarcerate significant percentages of supervised individuals for technical violations.<sup>116</sup> Accordingly, the American Bar Association urges federal, state, territorial and local governments, to create standards for the performance of probation or parole officers that

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<sup>111</sup> The White House, *Statement from President Biden on Marijuana Reform* (Oct. 6, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/>.

<sup>112</sup> *Id.* In the proclamation, President Biden also urged all Governors to do the same with regard to similar state marijuana offenses and asked the Secretary of Health and Human Services and the Attorney General to initiate the administrative process to review expeditiously how marijuana is scheduled under federal law.

<sup>113</sup> See 18 U.S. Code § 3583 (g)(4).

<sup>114</sup> See Administrative Office of the United States Courts, Probation and Pretrial Services – Supervision, *supra* note 15.

<sup>115</sup> American Bar Association, Resolution 604, *Nine Principles on Reducing Mass Incarceration*, at 17 <https://www.americanbar.org/content/dam/aba/administrative/news/2022/08/hod-resolutions/604.pdf>.

<sup>116</sup> See Council of State Gov’ts Justice Ctr., *More Community, Less Confinement, National Report*, *supra* note 11.

will consider, in addition to other appropriate factors, the number of individuals under an officer's supervision who successfully complete supervision.<sup>117</sup>

Some experts have suggested that because probation offices have an obligation to notify the court of violations, those offices are not best positioned to act in the best interests of the supervisee and their rehabilitation, or to focus on the broad resource needs faced by people after a criminal conviction, outside of mandatory conditions imposed by the court. It has thus been recommended that reentry resources should not come from federal criminal justice system participants, rather these critical resources should be community-based. As such, community-based reentry resources should be sufficiently funded so that justice involved individuals need not rely on criminal justice system actors for basic needs. Proponents argue that this model will promote better connection and integration into society and reduce continued contacts with the criminal justice system.

Community-based resources and resources not connected to the criminal legal system are also important when considering reentry once court-required supervision has concluded. Justice involved individuals should not be permanently tied to the correctional system for support. Accordingly, other sectors outside of the criminal justice system should work to make sure reentry resources are accessible to this population.

The RCC, which, as previously discussed, was convened by the Attorney General in compliance with the First Step Act, serves as an example of an interagency collaboration focused on broad resource support for those leaving incarceration. In addition to the Department, the RCC includes representatives from the Department of Housing and Urban Development, the Department of Labor, the Department of Education, the Department of Health and Human Services, the Department of Veterans Affairs, and the Department of Agriculture.<sup>118</sup> These federal agency partners engaged in an effort to collaboratively address barriers to reentry and provide recommendations to reduce those barriers. The collaboration resulted in an April 2022 report to Congress that highlighted the work of federal agencies and grantees, including innovative strategies to improve the ability of their programs and services to assist justice impacted individuals.<sup>119</sup> Many of these strategies were developed as a direct response to increased barriers experienced due to the COVID-19 pandemic. The report also proposed recommendations and considerations for actions that both RCC member agencies and Congress could take to further facilitate successful reintegration, with a particular focus on needs related to housing, food security, health care, education, and employment.<sup>120</sup> Interagency collaboration, like the RCC, continues to offer an opportunity to break down silos between federal agencies, and is crucial to reducing barriers to successful reentry. The Department of Justice will continue to collaborate with state, local, and federal partners, drawing on expertise and missions across many sectors of society, to identify effective solutions and promote resources for successful reentry.

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<sup>117</sup> American Bar Association, Resolution 604, *supra* note 121 at 18.

<sup>118</sup> First Step Act of 2018, *supra* note 84.

<sup>119</sup> U.S. Dep't of Justice, Coordination to Reduce Barriers to Reentry: Lessons Learned from COVID-19 and Beyond, *supra* note 95.

<sup>120</sup> *Id.*

### C. Targeting Vulnerable Communities

One of the policy recommendations in the RCC report to Congress involved the programmatic efforts of the Office of Veterans Affairs. The RCC noted that targeting services to specific populations can be a successful strategy for reentry and that this targeted strategy could be replicated to support other groups of people needing reentry services, such as American Indians and Alaska Natives.

The data in this report revealed that nearly 60% of American Indians and Alaska Natives supervisees had their supervision revoked, with a very high percentage -- approximately 80% -- revoked for technical violations.<sup>121</sup> The Department is committed to expanding our work with interested Tribal communities. The Department's Office of Justice Programs has worked to address Tribal needs through Second Chance Act grant programs, as well as through resources and opportunities specifically designed for Tribes.<sup>122</sup> In addition, NIC provides training and technical assistance opportunities for Tribal corrections; however, this work represents a very small portion of NIC's portfolio.<sup>123</sup>

American Indian and Alaska Native communities share common reentry needs with the larger justice-impacted population, such as stable housing, food security, and access to health care, education, and employment. However, the many unique cultural practices and diverse geographic locations presented in this population warrant different consideration when considering strategies to facilitate successful reentry and positive probation experiences. The Department will explore additional programs that benefit American Indian and Alaska Native populations on federal supervision. This endeavor could include developing both reentry and alternative to incarceration programs that are responsive to the unique cultural differences within federally recognized Tribes and recognize the possible operational challenges of law enforcement and corrections efforts on Tribal lands.