

Supervised Release Report

A. Background Including Study Population

My chambers has been developing a focused but also relatively informal process to coordinate and oversee all of our supervised release and probation cases.¹ The goal is to best utilize the court's authority and involvement to help bring about a positive integrative impact, focusing primarily upon supervisees' active participation in mental health and drug counseling, avoidance of unlawful conduct, employment, and early termination. "The primary purpose of supervised release is to ease the defendant's transition into the community. . . Supervised Release is not intended to punish or incapacitate. . ." *Quinones v. United States*, 936 F. Supp 153, 155 (SDNY 1996)(Cedarbaum, D.J.) "The fundamental purpose 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.'" *United States v. Bethea*, 2015 WL 13776431, at *1 (S.D.N.Y. Dec. 7, 2015) (Chin, D.J., sitting by designation) (quoting *United States v. Aldeen*, 792 F.3d 247, 252 (2d Cir. 2015)).

To be sure, the court recognizes that the key relationship in supervised release is between the supervisee and his or her probation officer. "The United States Probation Department ('Probation') monitors individuals on supervised release and can help a supervisee with his or her reintegration into lawful society by providing drug and alcohol treatment, mental health

¹ I had a lot of help in preparing this report, including from my law clerks and interns and my judicial assistant. Richard M. Berman, USDJ.

counseling, vocational training, and many other services to help reduce risks of recidivism. Following a term of incarceration, successful reintegration into the community is paramount.” *United States v. Thomas*, 346 F. Supp. 3d 326, 328 (E.D.N.Y. 2018) (Weinstein, D.J.). In the SDNY, we are fortunate to have a probation department of well trained, dedicated, and empathetic professionals who are up to the task. Chief U.S. Probation Officer Michael Fitzpatrick and his team have provided invaluable assistance and information to us in preparing this report.

The report focuses upon the five-year period January 1, 2016 to December 31, 2020. The **152** supervisees included in this study have had at least one court session (and often more) during that period. All persons on supervision are included. The only criteria for participation is that the supervisee was sentenced by me.² We developed a hearing format (open to the public) which includes testimony and exhibits as well as a written transcript. At each hearing, the supervisee actively participates, along with the probation officer, the therapist and/or drug counselor, and defense and government counsel. The court proactively joins in throughout the hearing, providing support and proposing goals and options. There is no control group in this study.

Our approach to supervision is hardly unique. It relies almost entirely upon the existing federal supervised release structure and resources and upon the people who are most familiar with each supervisee. And, while the probation officer-supervisee relationship is often the lynchpin, the therapists and counselors, defense counsel and prosecutors, most assuredly, all have important roles to play. The judge who has had responsibility for the

² Cases which may be transferred from other courts are also included.

underlying criminal case is in a very good position to help coordinate the delivery of supervision services and to help ensure a successful reentry into the community. “Judges leading these courts, and the others who participate, have an opportunity to interact with former prisoners and see the challenges they face in obtaining jobs, housing, and stability after spending years in prison.” Sarah Russell, *Second Looks at Sentences Under the First Step Act*, 32 Fed. Sentencing R. 76, 80 (Dec. 2019). “The judge’s engagement in the ongoing [supervised release] process is a significant force in a positive outcome that includes better lives and decreased recidivism for participants (and thus enhanced community safety).” *United States District Court for the Northern District of California Interagency Agreement for the Creation of Re-Entry Court*, at 2, available at https://www.cand.uscourts.gov/wp-content/uploads/court-programs/reentry-court/Interagency_Agreement_For_Re-entry_Court_12-3-10.pdf.³

I am confident that the existing supervisory release framework and resources — actively overseen by the court — helps to bring about positive post-incarceration outcomes. During the period 2016 to 2020, we conducted 769 supervised release hearings involving 152 supervisees (“Study Population” or “RMB Study Population”). The increased level of court involvement was at least as important — and, in my personal opinion, at least as rewarding — as the court’s more traditional role in earlier stages of criminal cases.

It should also be noted that there are other innovative programs hard at work improving the odds and opportunities for successful community integration (post-incarceration). The SDNY’s Reentry Through Intensive Supervision and Employment Court (RISE) is such a

³ The report includes comments from participants and a series of demonstrative charts and relevant statistical data.

program. RISE, which counts employment among its other goals and objectives, recently graduated 15 of its supervisees, 93% of whom are employed. These programs and organizations must continue to play their very important role.

B. Supervised Release Hearings (In the Words of the Participants)

- **Court**

At the initial hearing, the court describes the process, and emphasizes that supervised release hearings are not intended to be about punishment. Here are two examples:

(1) “[T]he most important message that I can send at the first hearing is that . . . the period of supervision is designed to . . . be helpful to the person being supervised. It's not intended to be a punitive aspect of the case. . . This is something that follows incarceration and the whole theme and objective of this proceeding is to assist people in reentering the community. . . . [The] goal is to . . . make sure that the persons being supervised are getting the services that they might need. . .

[M]y understanding [is] that things are going quite well [in your case]. I'm delighted to hear it. You might be interested to know that in [cases where a supervisee is doing well] . . . we [often] terminate[] supervision earlier than its normal expiration. I would hope to be able to do the same thing in this case. . . .”

(2) “[I]n my judgment, supervised release is often the most critical aspect of our federal criminal justice system. It’s the time following incarceration and it is devoted not to punishment but, rather, to reintegration into community . . . And [it is] also devoted . . . to services that we try to make available, or make sure are available during supervision, including therapy, counseling, mental health, drug rehab, testing, [among others] . . . It’s the criminal justice system’s way of . . . help[ing] someone become integrated back into society to the extent that they need that help.”

See also:

(3) “There is a letter also . . . from the probation department. I am going to [ask] the probation officer in a minute [to] bring us up-to-date, [] it describes a domestic violence issue, which I am not determining what happened, because I don't know really, but there are some allegations. [] I do want to say -- and the domestic violence issues that the probation department talks about are being

addressed, I think, very responsibly by [supervisee], that is to say, he and his partner have gone into therapy, couples counseling, and I think that is a very mature. So I think that [supervisee] has addressed or is addressing the issue in a very responsible and mature way . . . it may well mean that we can't terminate supervision early, which, by the way, is intended to be completed . . . not very far off. But anyway, it seems that the issue is being approached in a serious and mature manner. . . I am not going to grant any application for early termination; and, indeed, at the beginning of today's proceeding, I think the probation officer himself did have communication with [supervisee], who seems to anticipate that there won't be early termination, [] we will take it step by step, being aware that the end date of supervision is [coming up] this year."

- **Probation Officer**

Often, the probation officer leads off and presents an update of key issues in supervision such as addiction, mental health, home life and employment. (A written status report is often (also) submitted.) Here are five examples:

(1) **P.O.:** "I'm happy to inform at this time we've made progress in all areas as directed as per our last hearing before your Honor. On the housing front, I believe, I talked to [supervisee], I spoke with his counselor. They see progress in terms of VA [Veterans Administration] documentation of his actual eviction that was required for the VA to actually provide him with housing. So I believe that paperwork should be received by [defense] counsel shortly. I want to commend counsel for doing that, that was not something that was normal in this federal process. They made great strides in that. Secondly, [supervisee] was referred to treatment that afternoon of our last hearing, and he was placed in treatment that afternoon . . . He successfully engaged in treatment. He attended individual counseling sessions by Zoom. They say he's made progress, which is also piggybacking off the progress from his last outpatient treatment program. So, that's worked fairly well for him with his anger management and also with his drug use. I'll call him down for testing shortly. And lastly, he continues to work. Because of the ramp-up with COVID and with the housing situation, [supervisee] said he's not planning to move [out of state] as he thought, but I commended him for figuring out what's more important and what's not, and he maintains employment. So I am happy to report he is making progress, your Honor. . . He's doing deliveries, uptick since the COVID pandemic. So he's been doing Door Dash."

(2) **P.O.:** "I made contact with [supervisee]. We met him at the courthouse and we transported him to [the intake facility]. That whole process took approximately

two hours. During that time I talked extensively with [him]. His head appeared to be in the right place. He seemed to be in good spirits. He understood what he was trying to do, which was to get sober and trying to get clean and get himself together. So we walked with him into the facility, upstairs to the second floor, and I sat with him until he was registered and he was getting photo ID. I left him my business card with instructions to contact me upon his arrival at [the inpatient treatment facility]. From December [] through January [] I was unable to verify his attendance over the phone . . . because whoever I called, they said that [the] appropriate counsel[or] wasn't available. So on January 4th I went over directly to the facility to try to ascertain [supervisee's] status. Security wouldn't let me in and they wouldn't let me speak to a case manager and they wouldn't let me speak to [supervisee]. They wouldn't confirm if he was there or not. So I left my card with staff, with the appropriate case manager to contact me.

About 90 minutes later I get a call from [supervisee] from a[n unknown] number. I asked him where he is. He said he's somewhere in Manhattan. I asked what is going on, how come he's not in the program. He said he left . . . [the intake facility] because a person or persons unknown were trying to assault him. He said at that time he tried to get into other detox inpatient programs to no avail. I said: How come? He said the same people, various white vehicles follow me around everywhere I go, from bus stops to train stations, on the streets. He couldn't describe these people. He said this network is big and out to get him for unknown reasons.

And I asked why it took [] days to contact me about what is going on. He said he believed he was hallucinating so he didn't call me, but that day he called me he decided he wasn't hallucinating. So he called me several times from various locations in Manhattan and the Bronx saying he needs help. . .

That whole day he called me about 12, 13 times. Each time he sounded worse than before. Sounded like he was deteriorating. He didn't sound like he was in his right mind. Even when he used to call me before when he was actively using heroin and opiates, he never sounded this way. So at this point I believed he was a danger to himself and others, and the fact he was on the 72-hour hold, I requested a warrant from the Court. Since that time I have not heard from him or located him. The marshals attempted to make contact and locate him. They went up there . . . and the staff advised -- the psych ward said they let him go the day before. Since that time I have not heard from him and his whereabouts are unknown.”

- (3) **P.O.:** “It's time for, I think, [supervisee] to move on. [Her counselor] has more or less transitioned and is there for her and transitioned her to other types of services. She is seeking [an]other type of mental health treatment . . . so she

has the services ready for her. She's ready to be off supervised release and, you know, we're really supportive of her, and I think it's just time for her to move on."

Court: "Okay. I appreciate that. I will say, . . . I think you [probation officer] and your [department] have done an outstanding job in the context of this supervision. It hasn't always been easy, but I think you performed at the highest possible level with respect to [supervisee] so I appreciate that."

- (4) **P.O.:** "So I just wanted to start off by saying that I supervised [supervisee] since he was first released from the BOP when he got to the halfway house. I went to meet him there. I made my introductions and told him what to expect. I also had an opportunity to speak with staff members at the BOP. Before he had even started to appear, supervision staff members had positive things to say about him. He was complying and following the rules of halfway house and they had no issues with him.

For me, that is always something that I like to hear because it gives me an idea of what to expect from an individual once they start their term of supervised release. Once [he] did start his term of supervised release, in my opinion I thought he did a pretty good job overall. When he fell short, we had a conversation about that and he was willing to accept the consequences of his actions. We moved past that and [he] focused on building his career, establishing relationships and rebuilding his relationships with his family and also growing his own family. So just in looking back at where he started and where he is now, I can say that I am pleased with his progress. I am proud [about] what he has accomplished and I am happy to hear, when I do speak with officers in [his district of supervision], that he has done well. I have been in contact with pretty much every officer that [he] had . . . Overall I think [he] has done very well and he has done what is expected of him. I know that the Court is considering early termination . . . he has made significant progress with that weekly so we do believe that he would be a good candidate for early termination."

- (5) **P.O.:** "[Supervisee] has adjusted well once he got out of custody. . . . [A]lmost immediately, he got employment. And he is currently in the process of moving up in his employment. He's working on getting [a] certain certification[], his [Commercial Driver's License] taken care of so that he can move up further in the [vehicle] towing [business]. Last time we spoke about his job, he was riding second chair in the vehicle while awaiting certifications. So since then, he has been promoted. I couldn't ask for more [from] him. He has remained in compliance, and his family has been very supportive of his transition to the street. . . . [His] drug tests have been negative as far as substance abuse use, and his housing situation . . . he is living at home with his wife and children. . . He is working on establishing a more dynamic family relationship with his

child . . . But unfortunately, due to the pandemic, he has not been able to travel up there, and they have not been able to travel down here without having to deal with quarantine issues. . .”

- **Supervisee**

The person being supervised is usually the next to speak and often brings us up to date about how he or she is doing. (Supervisees are not under oath.) Here are five examples:

(1) **Supervisee:** “[It’s a] [t]otally different relationship[] than before I got sentenced, right, [Judge] Berman? I was kind of nervous coming home and then running into you again. I didn’t know. It was a totally different approach from you to me. So I mean, I’ve been nothing but happy with the way you are rehabilitating. You know, it is a different approach. I was kind of scared because of how all the sentencing went, and now I understand about the drug treatment you put me in. And it’s kind of like -- it’s kind of good that I didn’t get -- I didn’t [] just [get] home and no treatment was done, and that would have been more of a problem with my relapse.

(2) **Supervisee:** “Counseling has been helping me a lot. And I’ve grown so much because of the [probation] counselor. I may not like it, but who wouldn’t. It’s helping out. It’s helping me out . . . I see things differently, do you know what I’m saying? I’ve been tested before on the street not too long ago. And I do know how to get away from it, get out of it, you know what I’m saying, the right way . . . And besides, with the situation [with] my sister . . . and my mother sick now, you know, it’s also help[ing] me become strong and understand things. And also I learn how to be a better husband that I never knew how to be. So my wife’s in love with me even more now. Then I know how to -- learn how to be a better father to my [] daughters, you know? She’s upset with me because I’m becoming to be a better father because I’m spoiling them. But I’m giving them something my father never gave me. My father never raised me. So, you know, to see my daughters clinging on to me and sleep in my bed every day, my wife’s a little jealous. But this is my kids, you know? And this is what makes me happy, my daughters.”

(3) **Supervisee:** “Everything’s just been going well. I’m just -- just relieved, you know, that everything is working out because I tend to end up with bad luck for some reason. But everything’s been going well, and I’m happy, you know, that I’m detoxing off the methadone because it’s something that, you know, I didn’t want to get on, but I really did need it at the time. But now I’m trying to teach myself, you know, with my therapist when I’m off of probation and

everything, to learn how to live, you know, without drugs, you know? So that's what we're working on. So I'll -- hopefully I get off [methadone] and things will go much better after that."

- (4) **Supervisee:** "[W]hen I first came home [following incarceration], honestly, to speak to your Honor, I was kind of like, like, oh, why [is] this pressure [] being put on me. You know what I'm saying? I did my time. But as time goes by and I'm working with you and working with the [probation officer], and everybody and it's not like I'm being punished, it's like more [] help. You know what I'm saying? . . . It is more like -- this probation, I can honestly say[.]

[L]ike I have a codefendant, I don't know if I would be wrong for saying this, but he still calls me because he's locked up, he's still incarcerated. He be calling me and I be trying to tell him like we have positives. I be telling him how to go about it, like the probation is like -- federal probation is what you make of it. You know what I'm saying? . . . And I'm trying to tell him like if you going to come out and do this, stick with that. Go to work, go to get a job, you'll be good. You know what I'm saying? It is what you make of it. It is not bad. They help you in every step of the way. They here to help you, but some people don't look at it like that."

- (5) **Supervisee:** "Good morning, your Honor. I will say a few things that I think are important for me to tell you. One is that I'm not the same man who walked in here almost seven years ago. I think if I had been left to my own devices, I would be dead right now. I'm one of those addicts who doesn't know how to stop. And if you were to further the curve on which I was headed, there is no question in my mind that I simply wouldn't be here. . . I'm eternally grateful because I know where I would be if I had not been brought through the criminal justice system. It certainly was not easy, especially when you combine it with some of the things that were happening in my personal life. But my job was to complete the terms of the [supervised release]. [My former defense counsel] pulled me aside right after my sentencing five years ago. We went right into one of these rooms. I sat here and he said: You can treat this as a punishment, and you can carry it like a heavy weight on your shoulders, or you can embrace it and make the most out of it and it will improve, and I took his advice. . .

I really took that to heart. I think that this could have been -- I could have made it painful and I didn't because I got good guidance, and good guidance is what I had been lacking for quite a long time. I came in here broken, feeling hopeless, very much alone, isolated, and addiction will do that. And being put into treatment and being held accountable through random drug tests and through reporting to your Honor and attending 12-step meetings, all of the

things that I did, my therapist, my psychiatrist, gave me a community of support that I was completely lacking, and here I stand today. I could not have envisioned that I would be here in this position today, a totally changed man. I'll just conclude that I'm extremely grateful."

Court: "You look good. You sound good. The report is good. I think you give us a little too much credit. We are just a vehicle or the mechanisms. But in recovery it's the individual who has to do the hard work, which you've done. I think it's great story so far, and I wish you all the best of luck going forward. I'm delighted to allow the supervised release to terminate . . . because you've earned it."

- **Therapist**

The therapist's viewpoint is increasingly included in the hearings. Their input is invaluable.

(1) **Therapist:** [S]ince the last court hearing [supervisee] continued to make great strides in treatment. And he [] still maintains two jobs. He is very compliant. There are no psychiatric symptoms present. There is no anxiety. There is no depression. He is very motivated to continue to move forward with his life in a positive manner. He applies consequential thinking [before] acting on things. In other words, he is thinking things out and making proper choices. At this particular time, my clinical opinion is that it would be safe to say that he could definitely drop it [therapy] down to bimonthly without any issue. If any issue arises, because we work so closely with Probation, he can always be quickly increased again. But it comes to a point where he has made this amount of progress to keep him weekly might actually start to be counterproductive and then it becomes more — you know, he is trying to move forward and one thing that we don't want to do is — we want to still be able to provide the support system but not hold him back.

The only other thing, your Honor, is we would like to see [supervisee] of course continue down this road, and I believe that he will, and hopefully work towards a successful discharge from treatment maybe approximately five to six months down the road, if he continues on this course. As I said, we can also get to a point where treatment becomes too saturated and then [] the client starts to feel it is a chore especially if they are not struggling with any type of symptoms or feel that they want to try it without the support system. I think that what we need to do is look at this for the next six months of him coming in twice a month and him having to make all of his sessions. Because sometimes the tendency is when someone drops down twice a month, they get

a little lax, and then [supervisee] needs to understand he will be immediately increased again to weekly if there is a failure of compliance and then we can evaluate in six months and see how he is doing if that is okay with the Court and potentially see where he is at six months from now.

- (2) **Therapist:** So I have been [supervisee's] counselor for a little over a month now. He was under the care of another counselor that was here, . . . but he transferred over to me. And from what my understanding is, he had a long, extensive history of, you know, issues within the courts and issues outside, which I do understand. But I feel like I gathered a lot of information from the psychiatrist, [] after he completed the psychiatric evaluation, I did speak with him. I did take into consideration what [the probation officers] had asked me. So I did speak with him in regards to it. He does feel like he could succeed. It is just a matter of getting him to really attend to the issues at hand. He said that while he does report having anxiety, he does feel like that anxiety is more induced by the fact that he feels he's constantly under pressure from the courts, under pressure from probation, to do certain things that he feels he's not able to do. So he just feels like that anxiety is due in part to that, which is I completely understand and agree with because anybody who is on probation would fear the worst.

So he does feel like in order for him to acclimate better into society, he does need to take part in things. He does feel like he could be successful in this level of care for the time being unless anything substantial comes about where it would require him to be placed in a higher level of care, but he does feel like right now he would need outpatient with intensive care, which we have been trying to provide for [him]. He is placed in an intensive outpatient group which takes place from Mondays to Wednesdays from 8 a.m. to 9:30 a.m. And the way in which I'm going to try and go about it is after he does go to groups, I highly recommend to [him] that he attends these groups in person because it gives him the opportunity to get out, separate himself from, you know, where he's living at, which he does feel like it is a high stress factor for him. So, I highly recommend for him to come in for these groups. And the way in which it is going to work is he does have to complete two units of co-occurring counseling a week. So, I was thinking maybe 30 minutes a week with me and then 30 minutes a week with one of our certified mental health therapists to really try and help him understand, you know, the issues that were found from [the] psychiatric evaluation . . . which would include the diagnosis of major depressive order recurrent episode.

- **Defense Counsel & AUSA**

By their choice, counsel usually have somewhat less to say in supervised release hearings than they do during other criminal proceedings. But they are also very helpful, in fact instrumental, as shown in these examples:

(1) **Defense Counsel (CJA):** “So, your Honor had asked me . . . to see if I could coordinate with the Bronx [criminal court] to try and resolve that [recent arrest case]. Your Honor had mentioned a switchblade. I don't believe it was a switchblade. But at any rate, whatever -- I was able to get . . . a[n] [Adjournment in Contemplation of Dismissal or ACD] -- he was able to have his case put on the virtual calendar for that. It was a desk appearance ticket. It got adjourned a couple of [times]. I was able to get in touch with the Bronx [public] defender who handles those cases in court and he reached out to [supervisee], and between the three of us we were able to explain to the District Attorney the situation. And she ultimately gave him. . . an adjournment in contemplation of dismissal. But my understanding was it was an immediate dismissal after that, given the circumstances in that [supervisee] was coming from work and that apparently the sign wasn't clearly posted not to be in the park. So, ultimately she dismissed the case. So, that's been resolved, the Bronx matter.

And just since I have the floor for a second, I just want to thank the Court for its continued interest and involvement in [supervisee]’s situation. I agree and concur with what the Court said earlier that I think this is really helpful and lets us get in kind of, particularly defense counsel, early on to kind of resolve some of these situations before they become bigger situations.”

(2) **Defense Counsel (CJA):** “First of all, I don't disagree with anything the Court said in terms of mental health issues being at the core of the question before the Court. Having a thorough, and complete, and in-depth mental health evaluation with a treatment plan, a coordinated treatment plan, that includes medication, talk therapy, for lack of a better word, and sort of a structured life, which could come through getting good mental health treatment, is the key to [supervisee]’s happiness and his ability to comply with conditions of release. It's not something he resists at all. . . I have had several conversations with [probation and the government] about how to accomplish this. . . I spoke with [supervisee]’s counselor there . . . and the evaluation is set up for tomorrow. [The counselor] informed me that it would be both to determine -- the evaluation would be by a psychiatrist on staff at [the facility], it would be both to determine [supervisee]’s mental health status and his medical [needs]. . . So,

I have no objection . . . of the Court ordering some mental health evaluation. And I think there are ways that the Court can accomplish that, and that should be separate[] from the issue of whether [supervisee] needs to be remanded. . . I've had that done on an outpatient basis and in aid of sentencing in other cases. Your Honor could provide CJA funds to have that done, the Court can order a psychiatric evaluation under 18 U.S.C. 3552(b) — I think that would provide the authority.

In terms of [his] compliance for the last week or ten days with the terms of his supervision, he did enter and complete detox. My understanding, based on looking at medical records, is that was from [the] 12th to [the] 15th. The next day, which was yesterday, he did report to the facility. I've confirmed this with [his] counselor there. The schedule for [supervisee] going forward is going to be or is now set at Monday, Tuesday, Wednesday, group sessions. . . [He] is also supposed to have an individual session . . . from 9:30 to 10:30 a.m. After the psychiatric evaluation takes place, [he] will be assigned a mental health therapist at [the facility], and that person would sort of coordinate with [his counselor], so that [his counselor] would ease out of providing mental health counseling and more specifically address [supervisee]'s drug treatment needs, but there is a structure set there for the intensive therapy that the Court was looking for and for a psychiatric evaluation. And [supervisee] has completed detox. . . I think the immediate issue before the Court is you need a psychiatric evaluation, and a thorough and complete one, and that can be accomplished in the community, and I would say that that's the appropriate course here."

- (3) **AUSA:** "Your Honor, I don't have anything to add. I am pleased as you to hear that . . . supervised release is going so well and I wish him the best of luck in his future life."
- (4) **AUSA:** "Your Honor, it all seems very positive, and [supervisee] continues to impress us."
- (5) **AUSA:** "As your Honor mentioned, [supervisee's] progress has been exceptional, and we would join in the Court's and in probation's view that early termination of supervised release would be appropriate."

C. Early Termination of Supervision

Early termination serves as an important incentive and a reward for successful supervision. It is often a welcome counter-point to the severity of prior incarceration. We have

granted early termination — with some fanfare — in **34%** of the cases.⁴ See also 18 U.S.C. § 3583(e)(1) (“The court may . . . terminate a term of supervised release . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.”). See also SDNY’s March 5, 2018 *Policy of Early Termination* (“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 . . . stable community reintegration (e.g. residence, family, employment, health, social networks) during the period of supervision and beyond.”).

The following are several hearing interactions concerning early termination.

(1) **Court** [to Supervisee]: “[W]e had this conversation back in July. My point was that I acknowledge, as all of us do, including the probation officer, . . . who has done a terrific job in this case, how pleased everybody is that things have worked out for you . . . I am quite pleased to terminate your supervision. It's a year plus [of early termination] and that is in recognition of all the hard work that you have put in. . .”

Supervisee: “I don't know what to say. I'm just happy to be -- the recognition. Thank you to everybody.”

Court: “We are delighted to make a little bit of a fuss about it because in many cases it doesn't work out quite as smoothly. And when it does, we want to bring everybody's attention to that fact.”

(2) **Court**: “[W]hat’s your experience of how things are going for you?”

Supervisee: “Feeling great . . . work has drastically picked back up like pre-COVID work, so just overwhelmed with work, so everything is, yeah, really good. So I'm happy about that. I'm supposed to activate my book tour I've been educating a lot of the youth on financial literacy, which I mentioned on the last call. So, I kind of like that, where that calling is taking me as well. So, things are going really great. So I think it was two years ago we ended the therapy sessions, on your order, but I keep in contact with her just because I grew a bond with her and she knew a lot of personal things with me.”

Court: “That’s great. So, really, that's really what I was exploring. . . I'm going to, then, effective today, terminate formal probation. Whatever

⁴ Our practice includes the award of a written Certificate of Early Completion of Supervised Release.

obligations or meetings with the financial litigation unit need to take place, I'm sure you'll get those [done]. And all I can say, [] is, I wish you the very best of luck and good fortune and good health going forward."

- (3) **Court:** "You know . . . from my perspective, and you know as well as anybody, a lot of times supervision is a rocky road . . . This [case] is, to my mind, a good example of what we are trying to accomplish. Of course going forward it is going to be up to [you]. But anyway . . . this is what we hope to accomplish. What I am planning to do is the following. For one thing, I think there needs to be another meeting of [you] with Probation, the final meeting, and I was hoping that that could happen this week, still. Today is Wednesday. So either today, perhaps, tomorrow, or Friday. And then what I thought I would do is, I would terminate supervision as soon as that final meeting takes place, and I would make the termination effective this Friday . . . and [supervisee] would have on his record that his termination ended early albeit, you know, it's coming up to the close of termination in any event, but it would be totally accurate for [us] to say that his supervised release was terminated early because he did all the right things and made all the right moves."

Government: "I think the government's position with respect to early termination of supervised release is that we would defer to [the] . . . Court and probation's view on it, in light of the fact that it is so close to the ultimate end date of supervision. And with respect to [supervisee], I think it is just the government's wish, hope, that he avails himself of help and support systems that are in place to ensure that he doesn't lapse back into conduct similar to what took place in this case in and his prior case."

Supervisee: "Well, I'm just very pleased at what we are discussing here, and I definitely would like to move forward in every way that we have all discussed, including in whatever follow-up meeting occurs with probation Thursday or Friday or whenever. I just want to assure you, your Honor, that even if it becomes discharged, I want to still maintain whatever connection to you through, you know, [my attorney] and provide you with any input of whatever progress that I am achieving post supervised release, so you can continue to get whatever updates you need or wish to learn more about."

Court: "I would be happy to hear it. So I think, then, with my sincerest wishes for your good luck and good health . . . and success out there in the community, I think it's been a bit of a long haul, but a successful one, in my opinion, so with that, I am happy to adjourn today's conference and the record will speak for itself. . . And, again, we wish you, [] the best of luck going forward."

D. Questions Pertaining to the Court's Supervised Release Program

(1) Is there selection criteria for entering the program?

No. There is no selection — or exclusion — criteria for this modest supervised release project. All 152 supervisees who had criminal cases assigned to the court are included in the project which spans 2016-2020. The only criteria is that supervisees were originally sentenced by me (or, occasionally, another district judge).

(2) Why did different people have different numbers of hearings? (Did they quit? Was it unnecessary?)

The Court is attuned to finding the appropriate number of hearings, realizing that too many hearings may be as challenging as too few.

The number of hearings each supervisee has is determined (albeit unscientifically) by the Court with input from the Probation Department and the parties. Generally, it is a function of how well supervisees have met the conditions of their supervised release (e.g., drug treatment) and otherwise adjusted to reentry into the community.

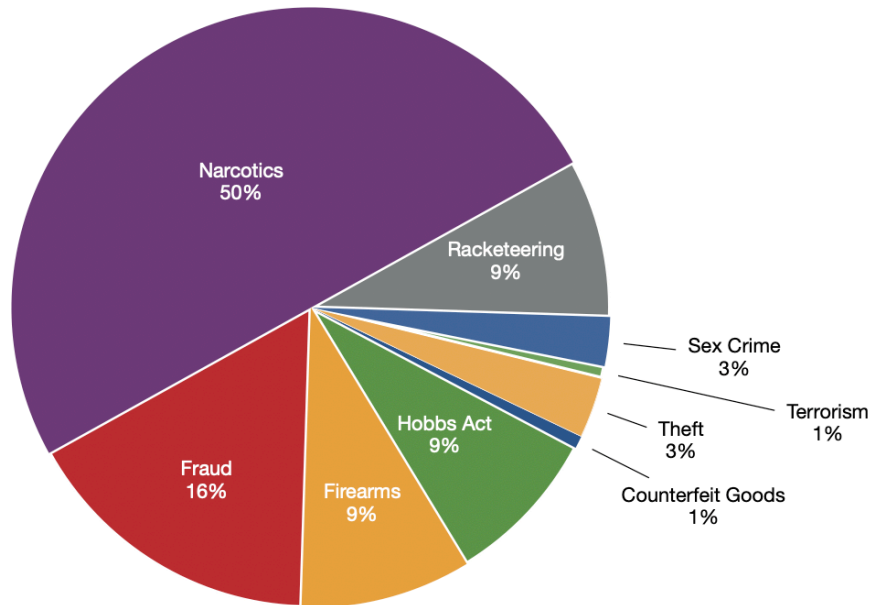
Supervisees who are experiencing a “crisis” or significant issues seem to benefit from additional hearings. By contrast, individuals who are classified (by Probation) as “low-risk” often have fewer hearings.

During the 2020 calendar year, the Court was able to conduct 194 supervised release hearings, which was substantially more than in any prior year. The increase is largely attributable, in my opinion, to the relative efficiency of virtual (telephonic) court proceedings during the pandemic.

(3) What kinds of crimes did the Study Population commit? How long did they serve?

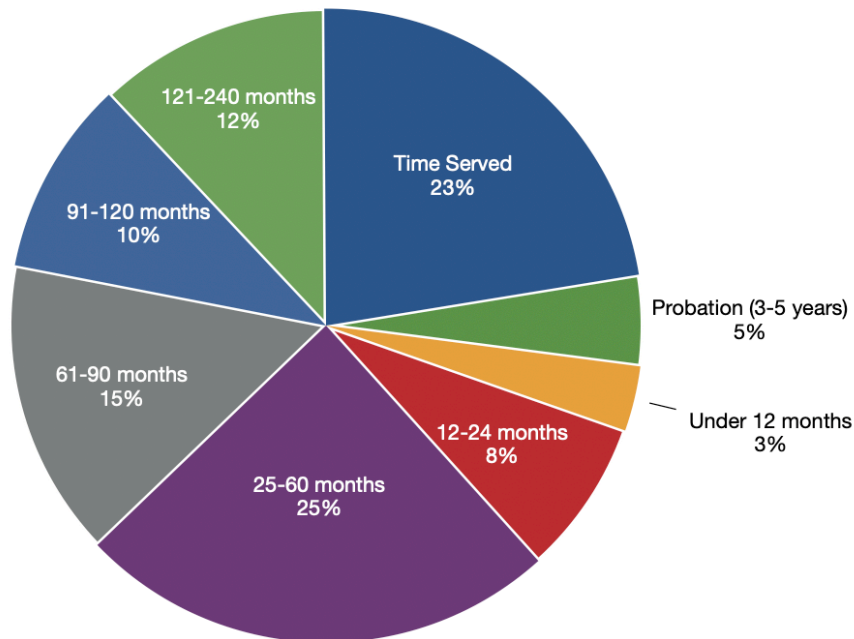
See the following two charts.

Crime of Conviction⁵



⁵ The information for this chart and the chart on p 18 was derived from the supervisees' judgment of conviction.

Length of Sentence/Incarceration



(4) How do the outcomes of the program compare with outcomes from people who did not receive this kind of support?

It is difficult to compare outcomes, including with other reentry programs and projects. Adequate (and comparable) data and statistics are not always collected and/or analyzed. Projects and programs vary in methodology, size and eligibility to participate. However, some comparative data is presented and reflected in the charts at pp. 32, 33, 35 below.

(5) Were there specific interventions that seemed most helpful (i.e. housing or drug treatment or counseling?)

Mental health and substance abuse counseling and treatment appear to be most helpful to many supervisees. And, participation of therapists and drug counselors is a key component of our hearings. (We have noticed an increasing emphasis upon CBT (Cognitive Behavioral Therapy) as opposed, for example, to more traditional talk therapy.)

We have frequently identified drug counseling and treatment at sentencing, and often included one or both as a “special condition” of supervised release. For example, the court will often include the following language in the Judgment of Conviction:

“[Defendant is] required to participate in weekly therapeutic counseling by a licensed therapist. . . In addition, he will be required - and this condition is following an exam.

If the probation department determines that there [is] a substance abuse issue, then he'll be required, in addition to therapeutic counseling, to [participate in] a program approved by the probation [department] for substance abuse; and that program shall include testing to determine whether he has reverted to the use of drugs or alcohol, if that is or was a problem in the first place.”

At two relatively recent supervised release hearings, the importance of therapy was apparent:

(1) “**Supervisee:** [N]ow I have a new therapist. . . I have to start all over again with her because [my previous one] left.

Court: I see. . . And that was working out as a good relationship?

Supervisee: Yes.

Court: When did she go? . . . Did she leave the agency, or what happened to her?

Probation Officer: Your Honor, if I can just interject. She was actually promoted at the agency that she's at.

Court: And, [supervisee] have you started with the new therapist already? Have you had sessions?

Supervisee: Yes. . . [Today] will be my third session with her.

Court: I see. And so far so good, would you say?

Supervisee: Yeah, it's okay. I just got to get used to her.”

(2) “**Probation Officer:** As far as [supervisee's] treatment, he continues to remain compliant. I have been in contact with . . . his counselor . . . And earlier this week, [his counselor] confirmed that [supervisee] continues to participate in twice-a-week sessions with him over the phone. They've maintained contact regularly and discussed any kind of stressors that [supervisee] may be dealing with related to the situation with his mother and obviously the passing of his stepfather.”

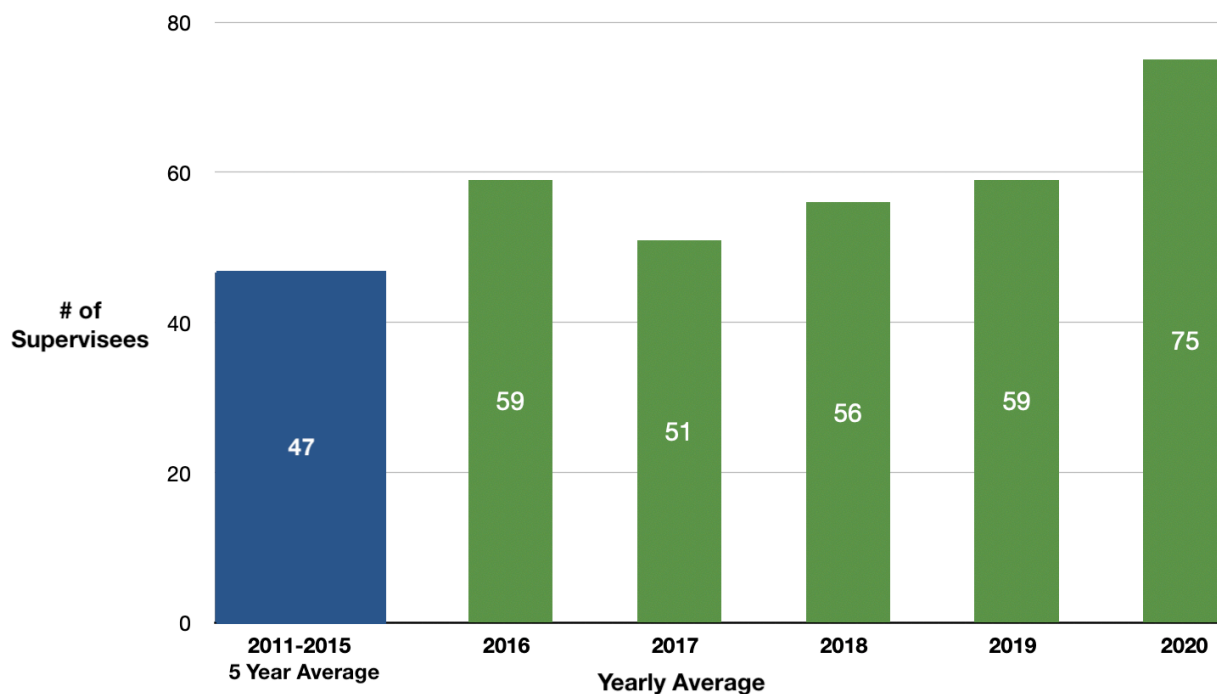
E. Supervised Release Charts & Statistics

Pages 1-15 of this Report include testimony from supervised release hearings. Pages 15-19 include questions recently posed about the supervised release project.

Equally important, the Report also includes at pages 20-38 nineteen (19) charts illustrating relevant data and statistics (and some comparisons).

Chart 1

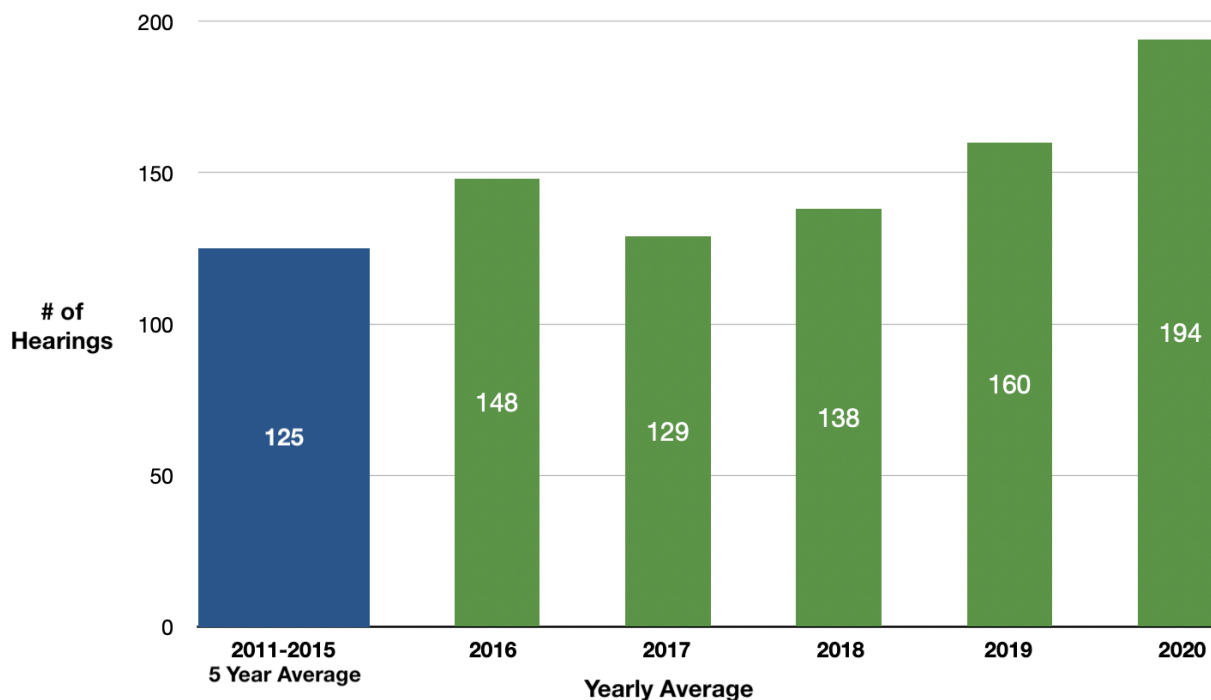
Number of Supervisees (152) Who Participated in Hearings from 2016-2020 Compared to the Court's 5 Year Average for 2011-2015



Note: The Study Population includes 152 persons being supervised during the period January 1, 2016 to December 31, 2020, and who had at least one supervised release hearing during that period. Any supervisee who did not have a hearing during that period was not included in the Study Population.

Chart 2

Number of Supervised Release Hearings (769) Held from 2016-2020 Compared to the Court's 5 Year Average for 2011-2015



Note: The number of hearings has steadily increased. The especially marked increase in hearings held in 2020 (194) is in large measure attributable to the efficiency of virtual (telephonic) proceedings during the COVID-19 pandemic.

Supervisee Demographics

Chart 3

Sex

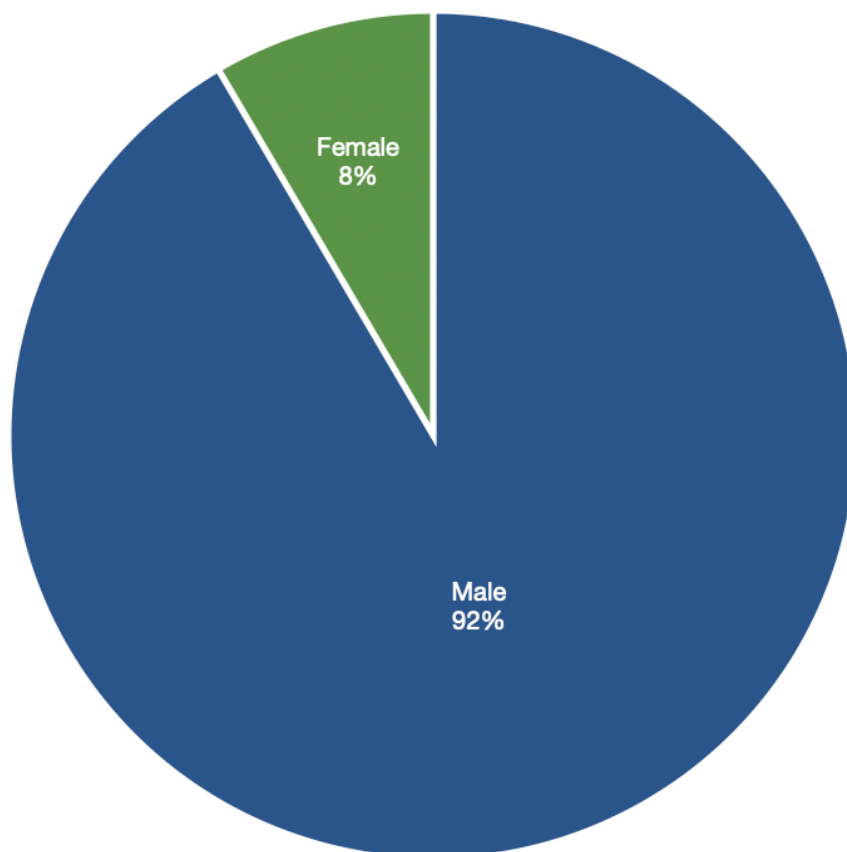


Chart 4

Race/Ethnicity

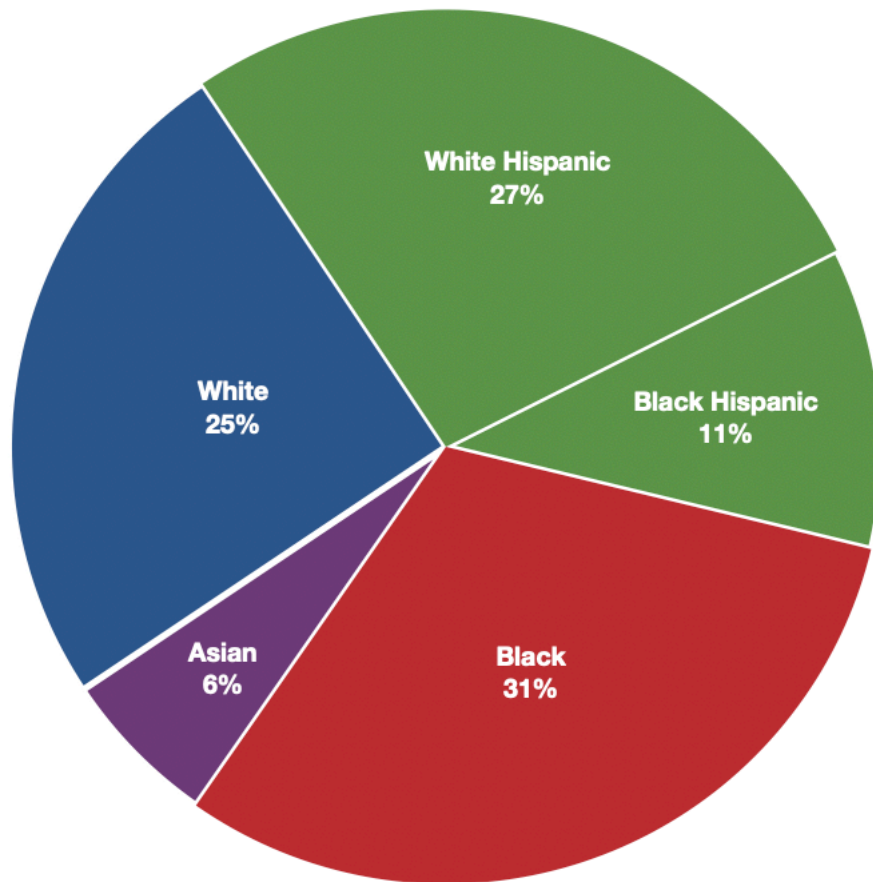


Chart 5

Age of Supervisees at Start of Supervision

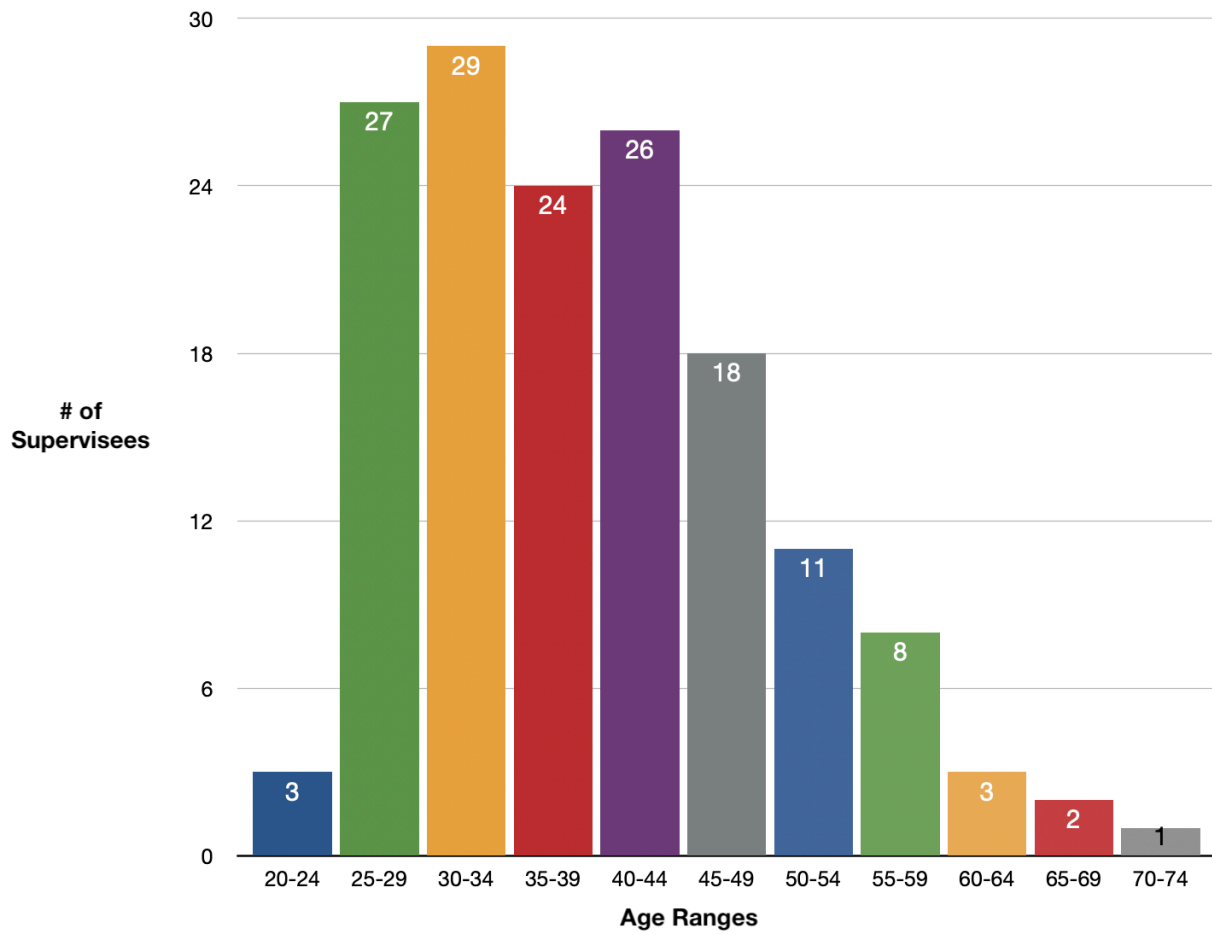


Chart 6

**Length of Term of Supervised Release
Imposed at Original Sentencing**

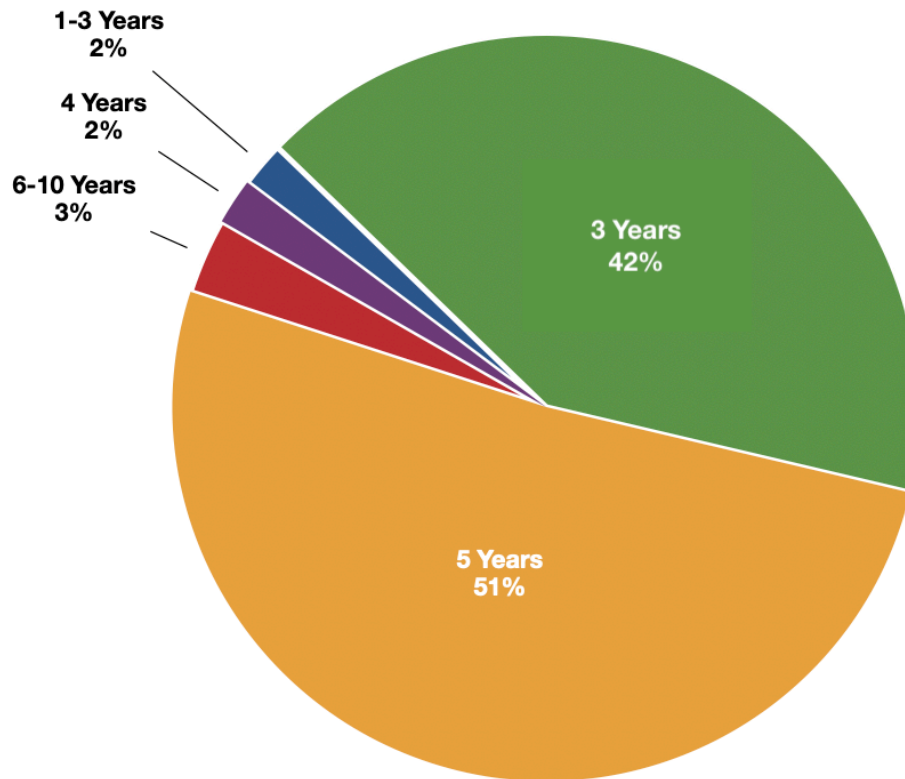
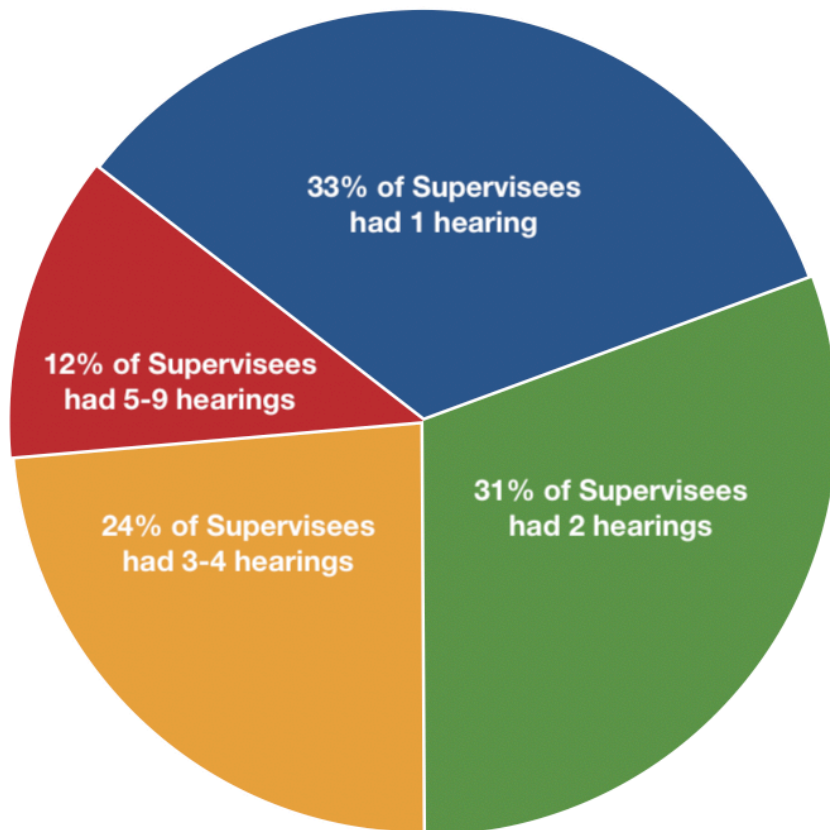


Chart 7

2016

148 Supervised Release Hearings Held

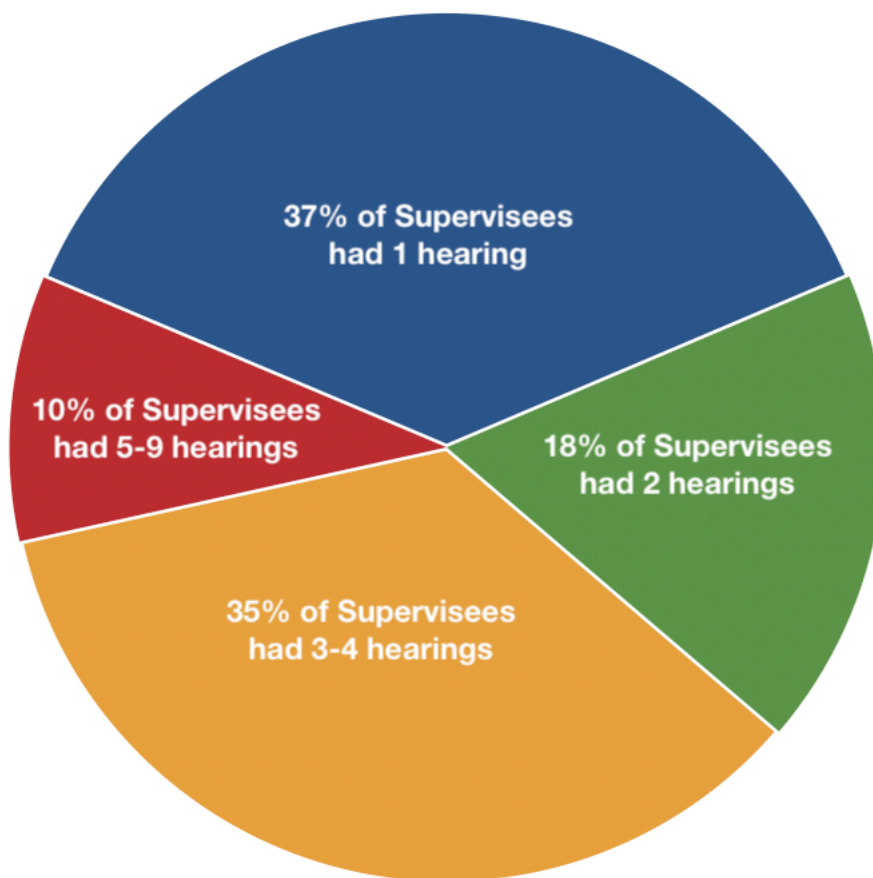


Note: In 2016, 148 supervised release hearings were held in which 59 supervisees participated. 20 supervisees (33%) had one hearing; 18 supervisees (31%) had two hearings; 14 supervisees (24%) had three or four hearings; and 7 supervisees (12%) had five to nine hearings.

Chart 8

2017

129 Supervised Release Hearings Held

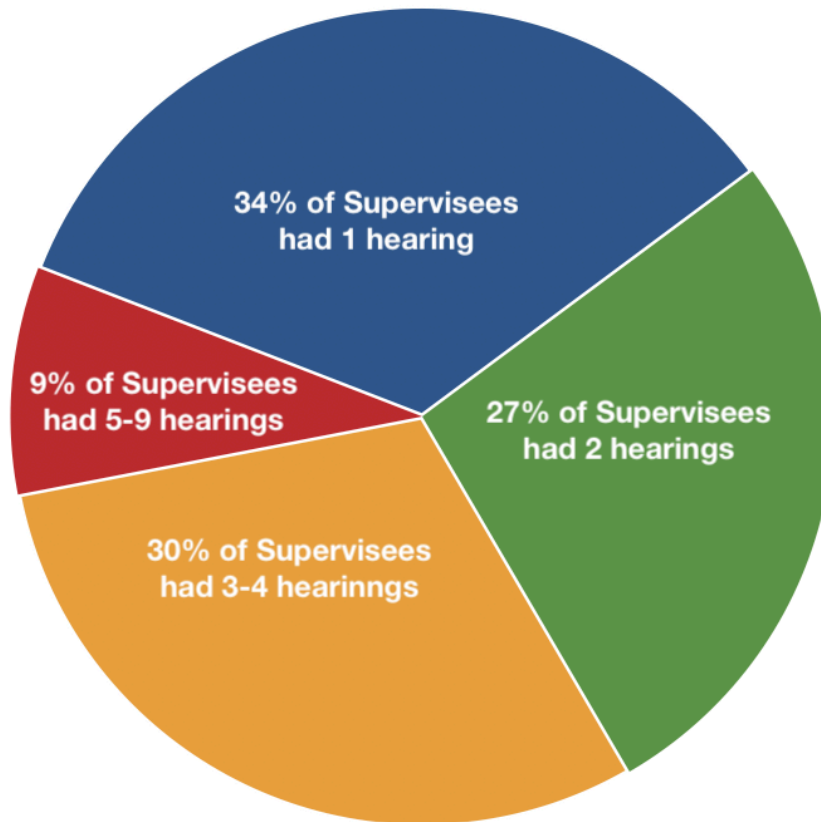


Note: In 2017, 129 supervised release hearings were held in which 51 supervisees participated. 19 supervisees (37%) had one hearing; 9 supervisees (18%) had two hearings; 18 supervisees (35%) had three or four hearings; and 5 supervisees (10%) had five to nine hearings.

Chart 9

2018

138 Supervised Release Hearings Held

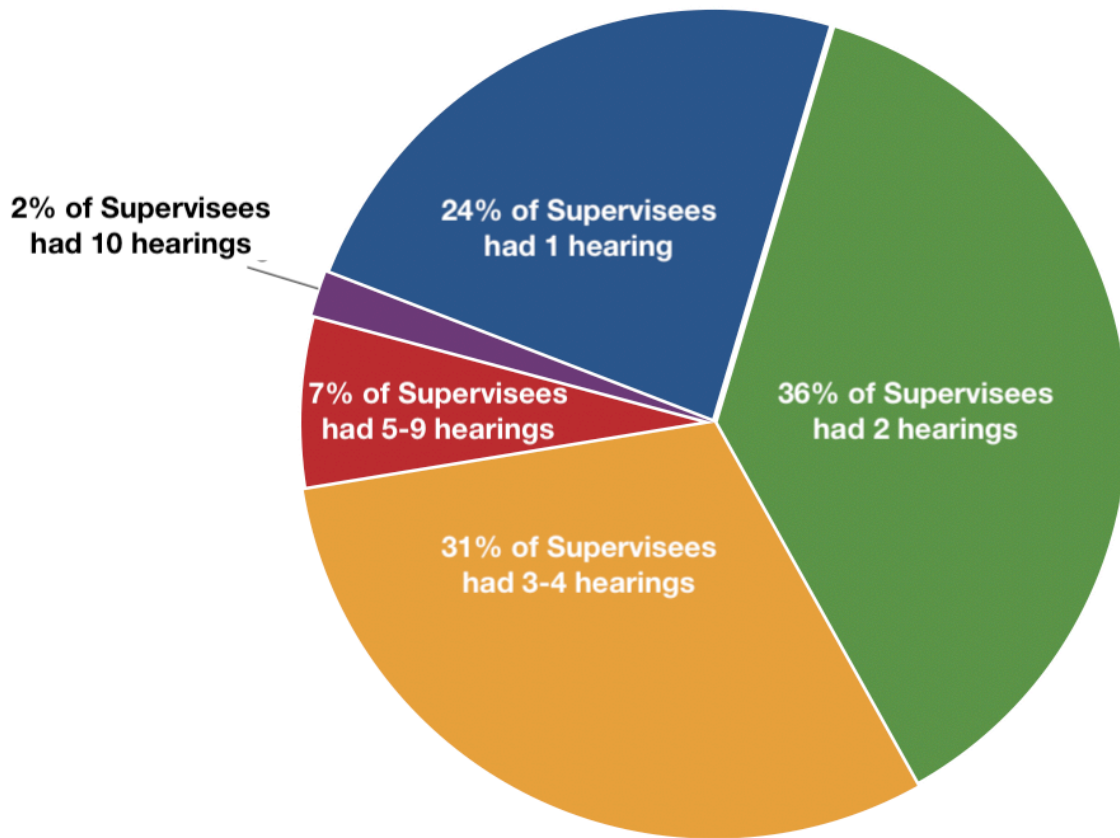


Note: In 2018, 138 supervised release hearings were held in which 56 supervisees participated. 19 supervisees (34%) had one hearing; 15 supervisees (27%) had two hearings; 17 supervisees (30%) had three or four hearings; and 5 supervisees (9%) had five to nine hearings.

Chart 10

2019

160 Supervised Release Hearings Held

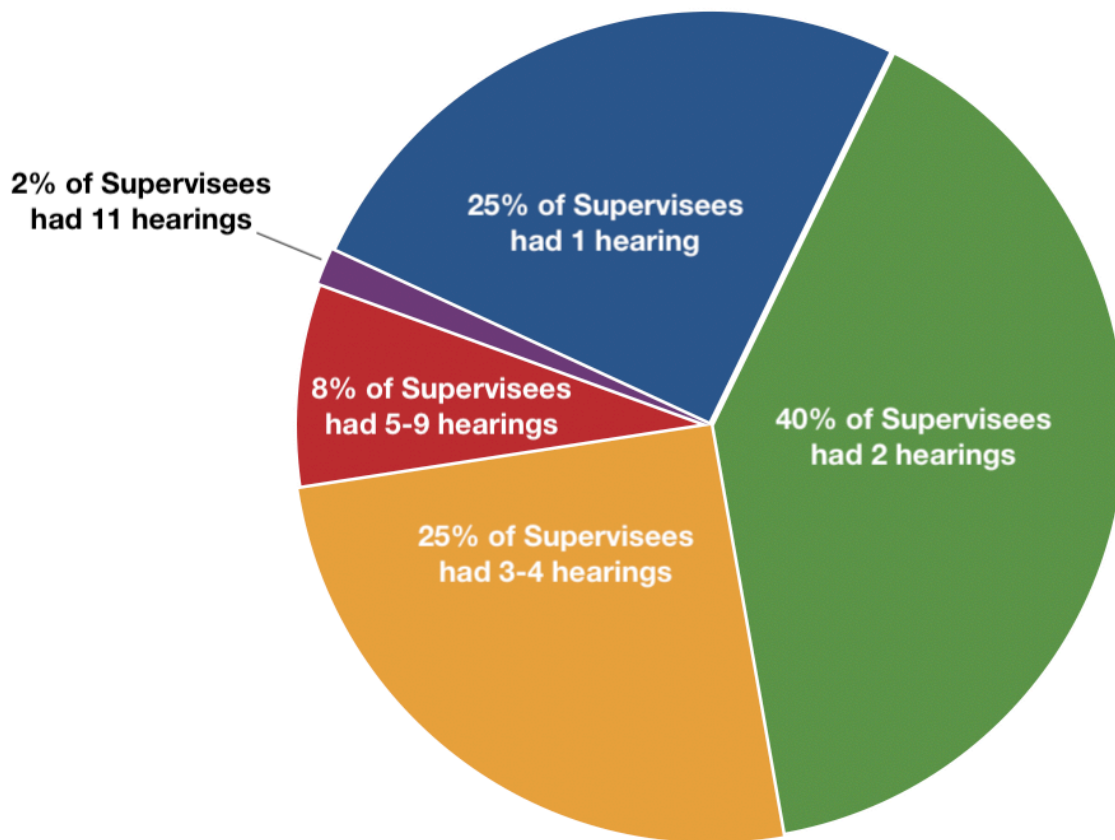


Note: In 2019, 160 supervised release hearings were held in which 59 supervisees participated. 14 supervisees (24%) had one hearing; 22 supervisees (36%) had two hearings; 18 supervisees (31%) had three or four hearings; 4 supervisees (7%) had five to nine hearings; and 1 supervisee (2%) had ten hearings.

Chart 11

2020

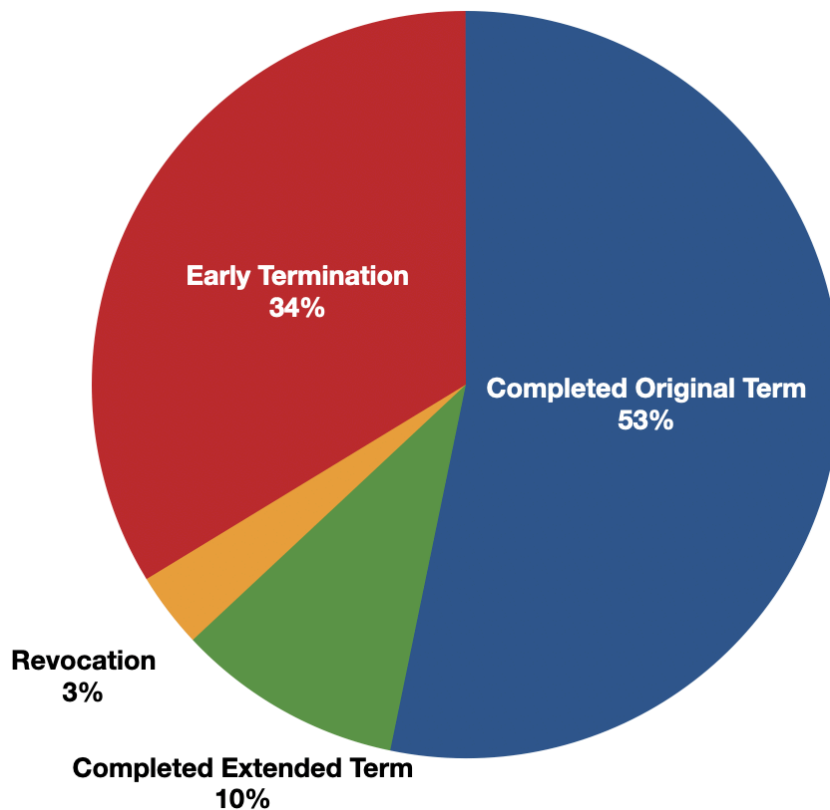
194 Supervised Release Hearings Held



Note: In 2020, 194 supervised release hearings were held in which 75 supervisees participated. 19 supervisees (25%) had one hearing; 30 supervisees (40%) had two hearings; 19 supervisees (25%) had three or four hearings; 6 supervisees (8%) had five to nine hearings; and 1 supervisee (2%) had eleven hearings.

Chart 12

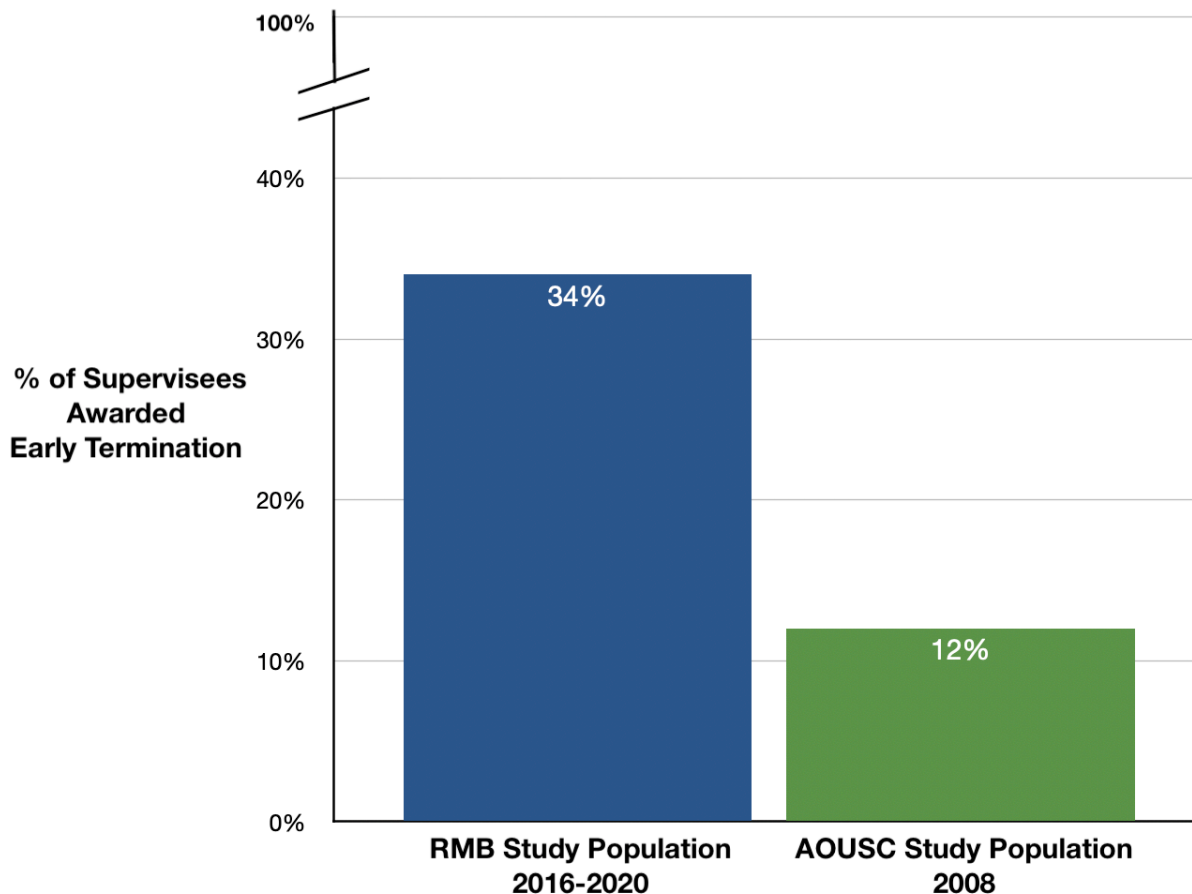
Reasons for Termination of Supervised Release



Note: This chart reflects that **34%** of the terminations were early. As noted at pp 13-15 above, early termination is important in supervised release proceedings. It is provided for at 18 U.S.C. § 3583(e)(1): the court may terminate supervised release and discharge the defendant at any time after the expiration of one year of supervision if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice. See also SDNY’s March 5, 2018 *Policy of Early Termination*. (“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 . . . stable community reintegration (e.g. residence, family, employment, health, social networks) during the period of supervision and beyond.”)

Chart 13

Early Termination Comparison

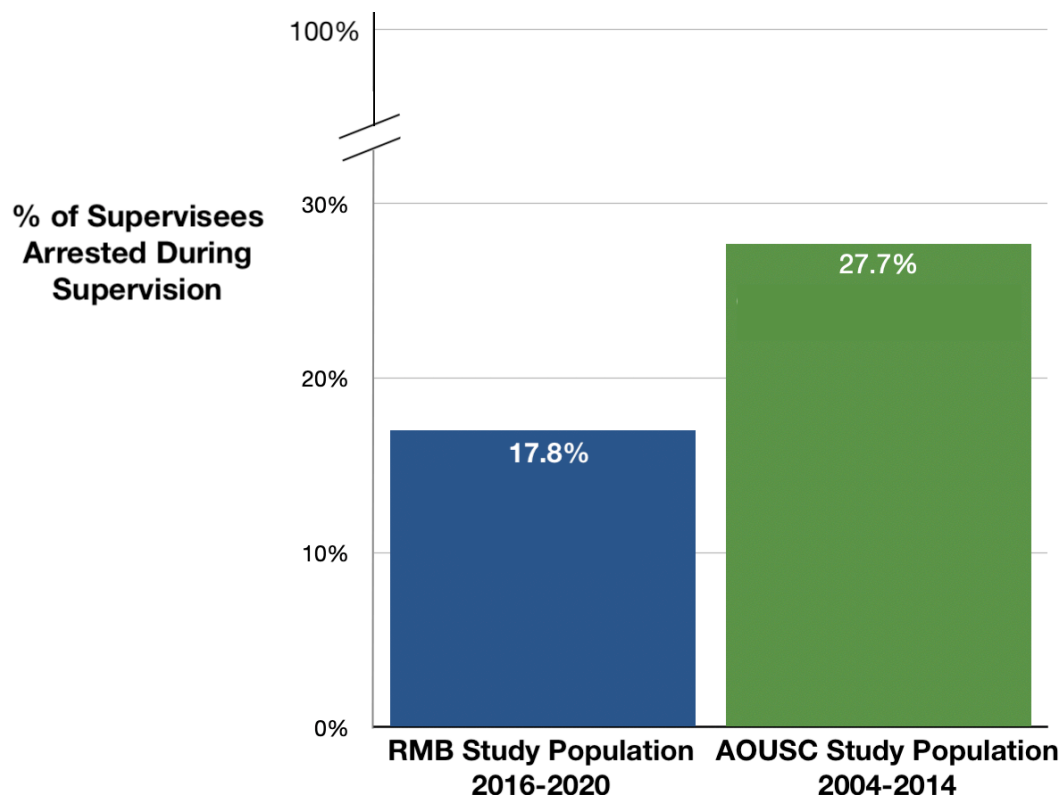


Note: The Court grants early termination by issuing a written order and orally during a supervised release hearing. A Certificate of Early Completion of Supervised Release is also issued to the supervisee.

By Comparison, a study conducted by the United States Sentencing Commission of 35,724 supervised release cases closed in fiscal year 2008 nationwide reported **12%** early terminations. (“AOUSC Study”). *See Federal Offenders Sentenced to Supervised Release*, United States Sentencing Commission (July 2010), at pp. 61-62.

Chart 14

Felony Arrest Comparison

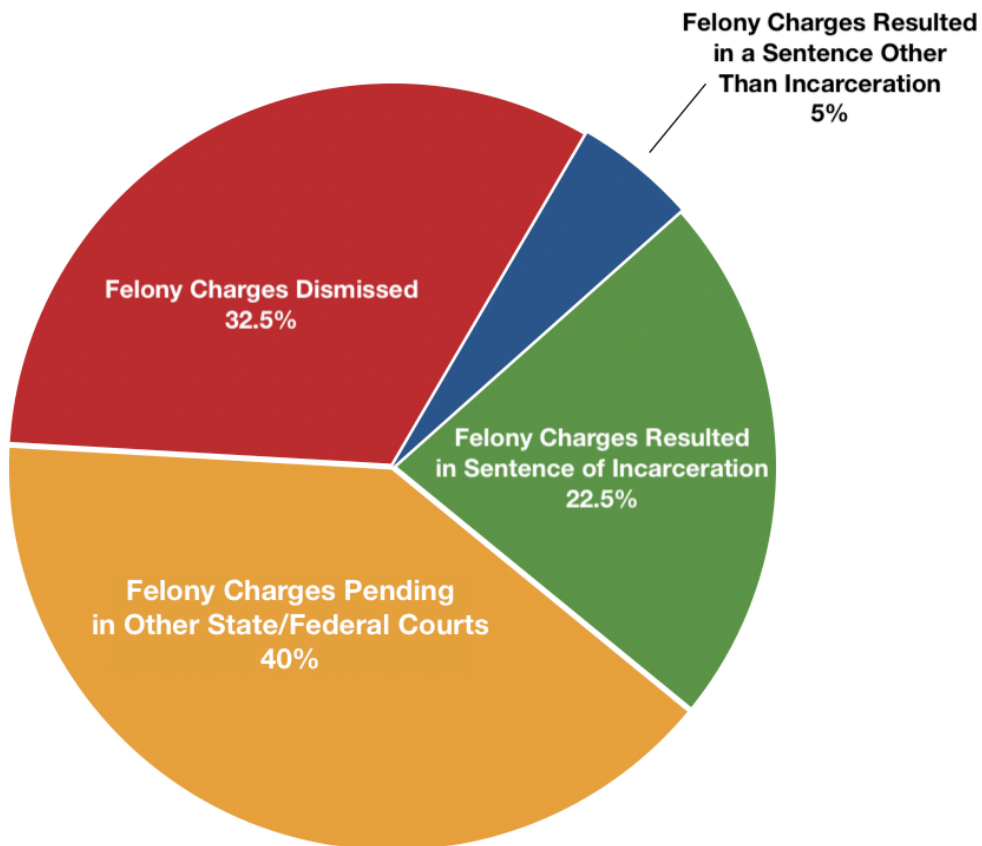


Note: This chart shows that **17.8%** of RMB Study Population supervisees (or 27 individuals) were arrested for a felony while on supervision. To make this determination we reviewed data generated by the U.S. Probation & Pretrial Services Automated Case Tracking System (“PACTS”) which includes any arrests or criminal charge filed during a supervisee’s term of supervision. As a cross check, we (also) reviewed case files for each supervisee, including the daily docket and supervised release hearing transcripts.

The chart also shows that the Administrative Office of the U.S. Courts (“AO”) has found that **27.7%** of its Study Population were arrested for a major offense (the equivalent of a felony) during supervision. This outcome was based upon the nationwide supervised release study entitled “Inroads to Reducing Federal Recidivism”, which measured arrest rates for “major offenses” over the period October 2004 to September 2014. The AO Study Population included 454,223 supervisees. “Major offenses” were defined as “felony offenses or felony equivalent offenses.” See Laura M. Baber, “Inroads to Reducing Federal Recidivism,” *Federal Probation* (December 2015) at p.5. “Data were drawn from the Probation and Pretrial Services Automated Case Tracking System (PACTS) of December 1, 2014. . . For purposes of this study, arrests are defined as the first arrest for a serious offense that occurs for a supervisee.” *Id.* at 5.

Chart 15

Felony Arrest Outcomes (RMB Study Population)

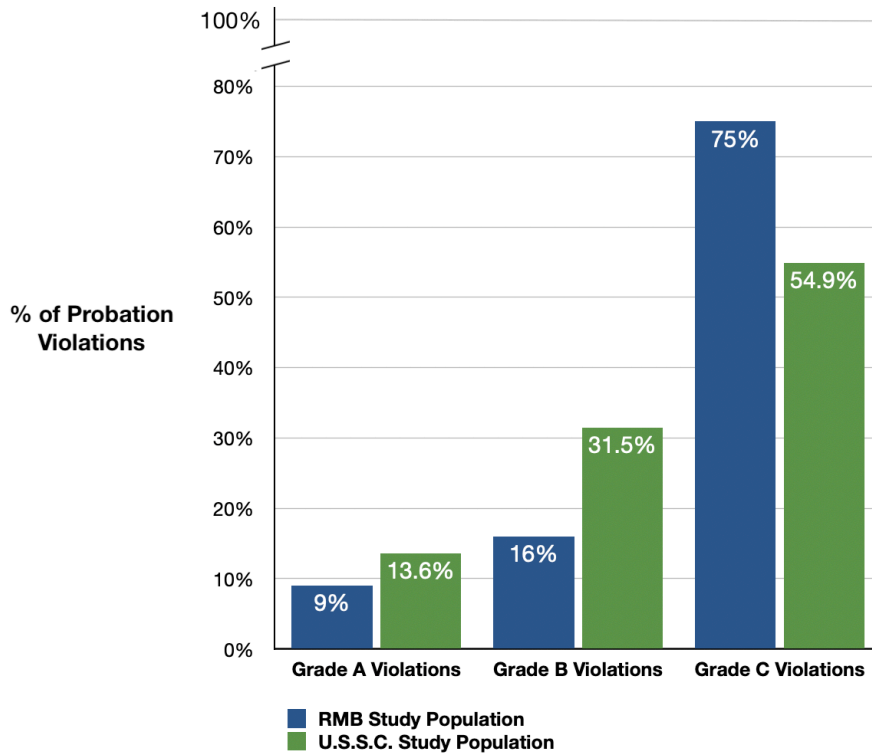


Note: This chart tracks the dispositions of the felony arrests incurred by 27 supervisees in the RMB Study Population. These 27 supervisees accounted for 40 felony arrests, *i.e.* 10 supervisees had more than one felony arrest. The chart reflects the disposition of the felony charges lodged based upon the 40 arrests.

We reviewed the PACTS data generated by the U.S. Probation Department. The data reflects whether a supervisee was arrested during supervision and whether the arrest was for a felony (or non-felony). It also tracks the dispositions of criminal charges filed during supervision. As a cross check, we (also) reviewed case files for each supervisee, including the docket and supervised release hearing transcripts.

Chart 16

Probation Violation Comparison



This chart compares the three levels of probation violations incurred by the RMB Study Population with the United States Sentencing Commission (U.S.S.C) Study Population.

Of the RMB Study Population, 40 supervisees had (collectively) 302 probation violations filed against them: **9%** were Grade A violations (the most serious category); **16%** were Grade B violations; and **75%** were Grade C violations (the least serious category). It should be noted that 9 of the 40 supervisees accounted for 152 (or 50%) of all 302 probation violations.

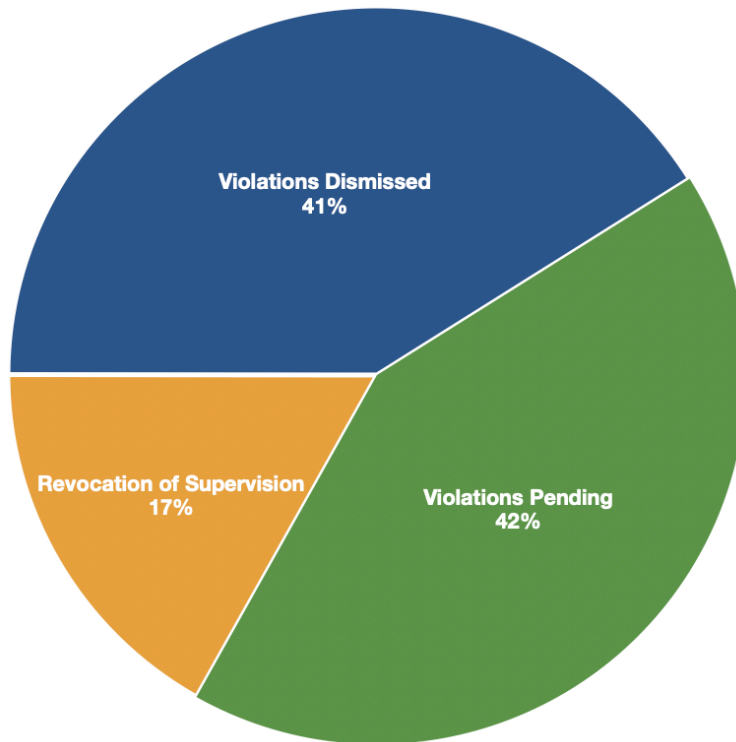
In the U.S.S.C. Study Population, 82,384 supervisees had (collectively) 108,115 violations filed against them over the five year period (2013-2017). **13.6%** were Grade A violations; **31.5%** were Grade B violations; and **54.9%** were Grade C violations. See U.S.S.C. “Federal Probation and Supervised Release Violations,” (June 2020) at 2, 15.

A, B & C violations are defined as follows:

- Grade A — “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.” See U.S.S.G. § 7B1.1
- Grade B — “conduct constituting any other federal, state, or local offense punishable by a term of imprisonment exceeding one year” Id.
- Grade C — “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.” Id.

Chart 17

Probation Violation Outcomes (RMB Study Population)

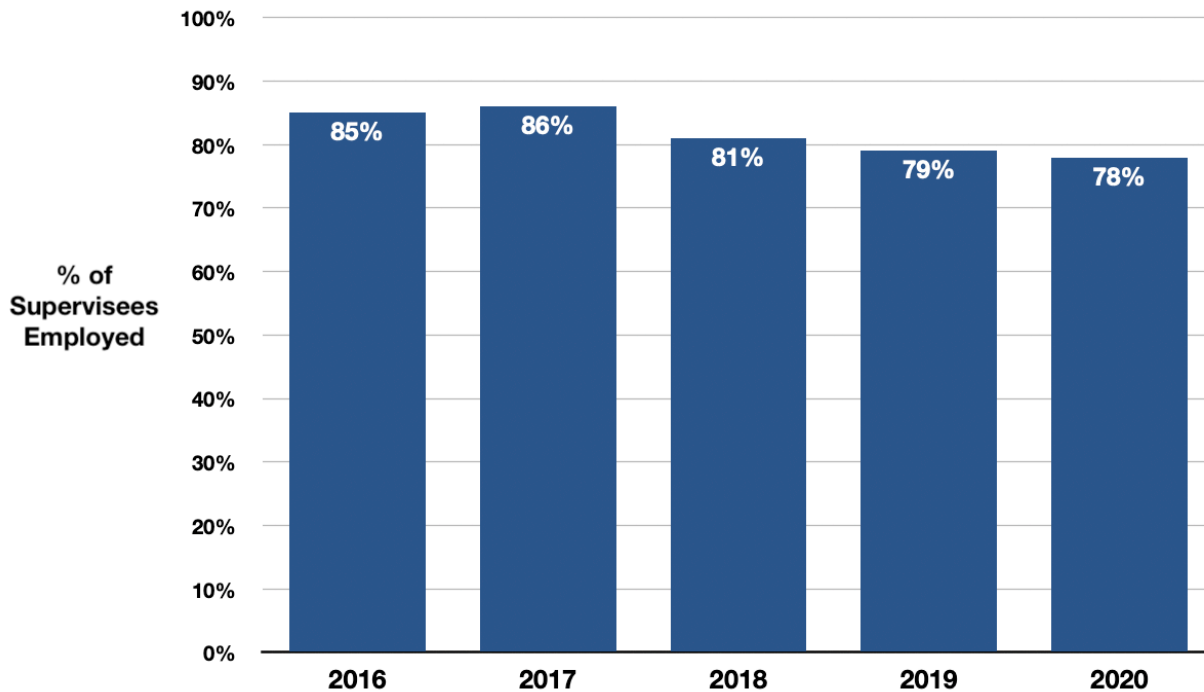


This chart reflects the dispositions of all 302 probation violations in the RMB Study Population.

- 127 violations (or 42%) are pending. 5 supervisees account for 80 (or 63%) of all pending violations.
- 124 violations (or 41%) were dismissed.
- 51 violations (or 17%) resulted in revocation of supervised release, as follows:
 - 30 violations (sustained by 8 supervisees) resulted in incarceration. 4 supervisees received concurrent sentences of incarceration i.e. these supervisees were already incarcerated because of convictions sustained in other state/federal courts.
 - 15 violations (sustained by 6 supervisees) resulted in extended terms of supervision i.e. these supervisees were sentenced to time served plus an additional term of supervised release.
 - 6 violations (sustained by 6 supervisees) resulted in termination of supervision i.e. these supervisees were sentenced to time served with no additional term of supervised release.

Chart 18

Employment **Supervisees Had or Obtained Employment (2016-2020)**



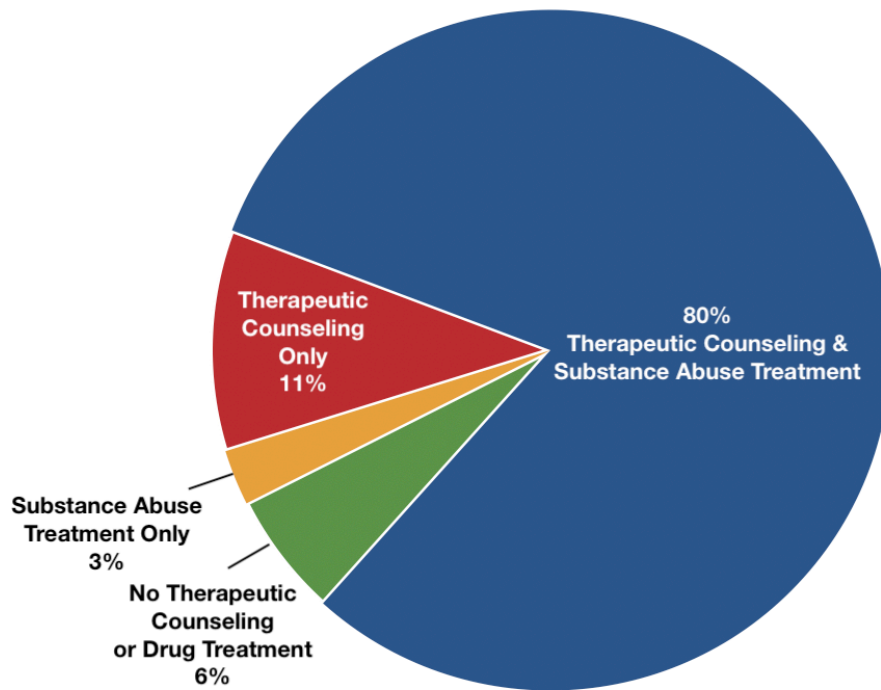
This chart reflects the percentage of supervisees who either had or obtained employment in a calendar year. “Employment” or “employed” means: “People [who] did any work at all for pay or profit . . . This includes all part-time and temporary work, as well as regular full-time year-round employment.” See U.S. Bureau of Labor Statistics, “How the Government Measures Unemployment,” (June 2014) at p.4.

In determining employment status, we reviewed the case files of each supervisee; along with the files generated by the U.S. Probation Department in PACTS; and supervised release hearing transcripts. If a supervisee was employed at the outset of a calendar year or obtained employment during a calendar year, the supervisee was considered “employed”.

The U.S. Probation Department also defines employment as “full-time and part-time work”. See Probation and Pretrial Services Automated Case Tracking System (“PACTS”). The Probation Department also generates daily reports reflecting the employment status of supervisees nationwide. These reports capture the percentage of supervisees who were employed on each day of the calendar year.

Chart 19

Supervisees Who Participate in Therapeutic Counseling and/or Substance Abuse Treatment



Note: At the time of sentencing, the Court often includes mental health therapy and drug or alcohol treatment as a “special condition” of supervision based largely upon the Presentence Report. Mental health therapy may include weekly individual and/or group sessions. Drug or alcohol treatment may also be weekly and includes testing for the use of drugs or alcohol. It refers to inpatient or outpatient counseling.

Mental health and drug counseling are sometimes provided by the same agency or even the same therapist on a “co-occurring” basis. Counseling during the COVID-19 pandemic has often been virtual (by Zoom or telephonic, for example).

The chart above shows that 123 supervisees or 80% of the RMB Study Population participated in therapeutic counseling and substance abuse treatment; 16 supervisees (11%) participated in therapeutic counseling; and 5 supervisees (3%) participated in substance abuse treatment. 9 supervisees (6%) did not participate in therapeutic counseling or substance abuse treatment.

Dated: April 6, 2021

© 2021 Hon. Richard M. Berman