

# Federal Supervised Release Revocation for Drug Use: The Rest of the Story

*Janette Sheil*

*Administrative Office of the U.S. Courts*

*Medha Patel*

*University of Colorado, Boulder*

*David Cook*

*Administrative Office of the U.S. Courts*

**IN THE AGE** of evidence-based practices and correctional reform, the importance of accurate community corrections data is paramount. Data informs decision makers creating laws, criminal justice policies, and budgets. If the data is incorrect or taken out of context, law or policy makers could be missing valuable information. This is especially true when trying to understand the data related to technical violations (which are violations of court-imposed conditions of supervision), rather than behavior resulting in an arrest or new criminal charge while on supervision.

One perspective suggests that technical violations are a major contributor to the ballooning prison population (Hagar, 2017; The New York Times, 2018; Steen, Opsal, Lovegrove & McKinzey, 2012). The U.S. experienced a significant rise in incarceration rates from just under 200,000 people in prison in 1972 to 1.56 million in 2014 (Pfaff, 2017). The prison population crisis and the resulting financial burden on the state and federal correctional systems drove researchers to closely examine the causes behind the increase, including taking a closer look at parole (Schwartzapell, B. 2019; Harding, Morenoff, Nguyen & Bushway, 2017). One article stated that technical violations, such as drug use, made up almost 30 percent of all prison admissions nationwide (Harding, Morenoff, Nguyen & Bushway, 2017). In fact, some argued that putting persons released from incarceration on post-release supervision

is a criminogenic factor contributing to the “revolving door” of incarceration, especially when former inmates are returned to prison based on a failed drug test (Harding, Morenoff, Nguyen & Bushway, 2017; Schuman, 2018). In line with this thinking, the media would have the public believe that the correctional system is geared toward monitoring for failure and recommending revocation at the first sign of noncompliance (Schuman, 2018; Bala, 2018). But is that what is really happening in the federal probation system?

During the 12-month period ending September 30, 2018, a total of 12,128 cases closed on federal probation were revoked for technical violations (Table E-7A – AOUSC, 2018). This was 22 percent of the 55,138 cases closed on federal supervision during that period. Putting this in perspective, as of September 30, 2018, there were 129,706 people under post-conviction supervision (Table E-2 – AOUSC, 2018). Whether probation officers are recommending revocation for technical violations at the first sign of non-compliance is harder to quantify.

To uncover the federal version of what happens before somebody is revoked for technical violations, the Administrative Office of the U.S. Courts (AO), Probation and Pretrial Services Office (PPSO), conducted an exploratory review of case data related to persons

on a term of supervised release<sup>1</sup> who were revoked for drug use, which is a technical violation. Modest results suggest that while the numbers may ostensibly support the assumption that some releasees are revoked for one or two technical violations, such as drug use, a closer look at the data tells a different story.

## **Other Perspectives About Technical Violations**

The numbers related to technical violations are elusive. Fordham University law professor John Pfaff (2017) argues that technical parole violations are largely overstated as an explanation for mass incarceration. He points out that the data related to parole violations is difficult to quantify because it is hard to know how the person violated the terms and conditions. In many cases, the violator may have also committed a new offense, but the prosecutor pursued a parole violation over the new crime because the parole violation was easier to prove. It is a challenge to determine the basis for the data that may give the impression that officers are recommending revocation for potentially minor technical violations (Sieh, 2003).

The Bureau of Justice Statistics periodically conducts a survey of state and federal prison inmates that asks questions about information

<sup>1</sup> Federal Supervised Release came into effect as a means to impose post-prison supervision after federal parole was abolished in 1987.

not readily available from court records (Bureau of Justice Statistics, 2004). The survey revealed that of those who were returned to prison for a parole violation, over two-thirds admitted it was for a new crime and less than 10 percent due to a failed drug test.

The difficulty is that the data that would paint an accurate picture of how a person was supervised is not available to the public, especially data at the federal level. The only information available is the court records and aggregate data (Table E-7A – AO, 2018) that only show the final judicial decision. What is omitted are officers' efforts to help the person on supervision find employment, reconnect with family, abate their substance use disorders, understand their actions and cognitive processes contributing to negative behavior, and other efforts to help offenders succeed (AO, 2019; Robinson et al., 2012). Moreover, a simple technical violation may mean more is happening. For example, failure to report may mean the individual absconded from supervision and cannot be found. This may also mean the person was meeting with fellow gang members or this is the third time he or she left the district without permission and is under law enforcement investigation for drug trafficking. A revocation for drug use may result after a supervisee left a residential treatment center and overdosed on heroin. These are just a few examples, but there are almost always more factors that contribute to a revocation for a technical violation. One study conducted on a state jurisdiction probation population showed that there are dynamics involved with technical revocations not frequently addressed in literature (Stevens-Martin, Oyewole, & Hipolito, 2014).

## U.S. Probation's Story

The U.S. probation system has never relied just on monitoring to supervise persons on supervision, and since 2009 has embraced evidence-based practices as its driving force toward helping persons on supervision achieve success. The development of actuarial risk assessments and teaching officers skills that have greater effect on reducing recidivism support the agency's mantra of incorporating monitoring, restrictions, and interventions as a holistic approach toward supervision. Federal probation's response to noncompliance is also woven into this framework. U.S. probation's national procedures guide officers to implement community-based responses unless the noncompliance is part of a pattern indicating a threat to community safety, or

revocation is required by law. From an officer's perspective, a lot of effort goes into working with an individual on supervision.

In the federal system, somebody with a history of prior illegal substance use will usually receive a condition for substance abuse treatment and testing as a condition of supervision. Of the nearly 130,000 persons on federal supervision in fiscal year 2017, over 73,000 had treatment conditions and over 26,000 were enrolled in judiciary-funded substance abuse treatment (Table S-13 – AOUSC, 2018). Additional individuals participated in treatment funded by their own insurance and/or received free services. The officer then works with the treatment provider to help ensure that the person's treatment needs are met and the person is actively engaging in the program. At the same time, the officer monitors the individual for potential drug use, criminal associations, or new crime.

Officers generally work with persons on supervision for three to five years, so they have time to effect change. During that time frame, officers expect that supervisees will make mistakes, considering some of the challenges they face. The goal of supervision is to encourage the individual to recognize, accept responsibility for, and correct any noncompliant behavior, including technical violations, before they thwart the person's successful completion of supervision. The officer can help the person do this by imposing intermediate sanctions before getting to the point of recommending revocation of supervision and return to incarceration. Incarceration is the last resort, not the first one.

Some instances of noncompliance require immediate notification and revocation. The statute mandates revocation if the person under supervision refuses to comply with illegal controlled substance use testing or if he or she tests positive for use of illegal controlled substances more than three times over the course of one year (18 U.S.C. § 3565(b) and 3583(g)). If the violation is not a safety threat or statutory mandate, a more appropriate community-based response to drug use may include more frequent drug testing to determine the extent of use, enrolling in treatment, referrals to self-help groups, and/or modifications of court-ordered conditions to include more restrictive monitoring. The idea is to help individuals abate their drug use before they harm themselves or others.

## The Review and Analysis

To review the data and learn about potential

factors that may affect the officer's decision to recommend revocation, PPSO conducted an exploratory review of case data related to persons on a term of supervised release who were revoked for drug use. PPSO specifically examined cases that had only one positive urinalysis recorded in the Probation and Pretrial Services Case Tracking System (PACTS). PPSO staff wanted to determine if 1) this data is accurate, and 2) there were other factors contributing to the officer's decision to file a petition to the court recommending revocation, such as new arrests that were not adjudicated or a history of noncompliance.

For this review, three PPSO staff and 16 U.S. probation or pretrial services officers from multiple districts were asked to complete a questionnaire for 205 federal supervised release cases that denoted the case as revoked for drug use and showed either zero or one positive urinalysis in PACTS. It is not surprising that a case could be revoked with zero positive urinalyses, because positive urinalyses might be based on the person's admission of drug use, tests collected at the treatment provider's location, or based on an arrest associated with illegal substance use, such as a Driving Under the Influence charge.

The answers to many of the questions for this review were not easily extracted from PACTS and, therefore, required reviewing each electronic case file. The reviewers looked at the judicial revocation orders, the officer's chronological case activity record, and other case documents and compared that information to the revocation code in PACTS to determine if the revocation code was accurate.

Reviewers looked at each case to determine if the code of "Technical Violation" matched the actual revocation-adjudicated charge on the revocation judgement order. The other choices available to the staff entering the revocation code include New Arrest/Charge and Criminal Conduct-No New Arrest/Charge. If the choice of "Technical Violation" was correct, the reviewers then had to determine if the type of technical violation of "Drug Use" was correct. The possible sub-choices, or reasons, for a technical violation presented in order from most severe to less severe, are:

- 1) Absconding
- 2) Drug Use
- 3) Non-payment of Financial Condition
- 4) General Violation

Then, all cases that were listed as revoked for a new charge or arrest were removed from the sample, regardless of whether there was a coding error or not, so we could take a closer

look at those revoked for technical violations. Whether the case was coded correctly or not did not matter for this exercise, because once we backed out the new charge/arrests, the only cases left would be those with technical violations, whether they were for drug use, absconding, or general violations. Since there were 48 cases with at least one new charge or arrest, this left 157 cases that were revoked for some type of technical violation.

Seven factors were identified that may have contributed to why the person on supervision was revoked for drug use. The factors were selected based on the previous experience from the probation officers involved in the review. Other factors may exist, but this was a starting point. The reviewers were asked to review the case file and answer the following questions:

- Was the revocation code entered correctly?
- Was the person in substance use disorder treatment during the current term of supervision?
- Were other technical violations charged?
- Were there positive urinalyses for more than one illegal drug type (e.g., opiates and amphetamines, or cannabinoids and amphetamines)?
- Did the person test positive on three or more drug tests?
- Was the person likely not amenable to supervision (failure to report, lying to the officer, absconding, unsuccessful termination from the reentry center, failure to participate in treatment)?
- Did the officer report previous acts of noncompliance to the court on any federal supervised release term (Noncompliance report with no action requested or condition modification request)?
- Did the person have a new arrest(s) while on another term of federal supervision?
- Was the person previously revoked while on federal supervision?

The last three questions encompass previous terms of federal supervision because they show a history of failure on federal supervision, indicating that the current drug use is not the first time the person demonstrated noncompliance.

To understand if many factors may affect the decision to petition for revocation, the review team looked at the cases that showed revocation for technical violations and calculated how many cases had 1 factor present, 2 factors present, 3 factors present, and so on. When looking at the results, readers need to understand that these elements are not

necessarily mutually exclusive; instead, they likely build upon each other to show the intensity of the response needed.

The resulting responses were collected, collated on one spreadsheet, cleaned, and analyzed using Stata.

## Results

Related to the accuracy of the data, the reviewers found that although all the cases were accurately coded as a revocation, 63, or 31 percent of the 205 cases, had the incorrect revocation reason. Of those entries, 21 should have been coded as “New Arrest/Charge,”<sup>2</sup> because the person was arrested, and the court found the defendant guilty of violation of the mandatory condition to not commit another federal, state, or local crime; 31 cases should have been coded as Absconding (Table 1), because the person was unavailable for supervision.

### Removing New Arrests

After backing out 21 cases that should have been coded as new arrests and 27 cases that listed a new arrest or charge on the petition for a warrant that was not adjudicated, that leaves 157 cases that were truly revoked for technical violations (Table 2).

### Treatment

Nearly 75 percent of the persons in this sample received treatment services at some time during the current supervision term, and 134 or 66 percent of them were in treatment on or about the time the violations were reported to the court.

<sup>2</sup> U.S. probation recidivism rates are measured using data directly from the Federal Bureau of Investigations, rather than PACTS.

**TABLE 1**

Reasons for Code Errors n = 63		
	Frequency	Percent
New Charges/Arrests	21	33.3
Absconding	31	49.2
General (general, e.g., failure to participant in treatment, failing to report, location monitoring violations, etc.)	11	17.5

**TABLE 2**

New Arrest(s) Charged on Petition n=205		
New Arrests?	Frequency	Percent
Yes (closing code incorrect. Should have been coded as new charge/arrest)	27	13.2
Yes (new criminal conduct not ruled on)	21	10.2
No (no new charge/arrest)	157	76.6

## Additional Factors Influencing Drug Use Revocation

Table 3 (next page) shows seven factors that potentially influence the officer's decision to recommend revocation. The table shows the frequency and percentage of occurrence for the factor on all 157 cases.

A quick look at the results shows several factors that were present in at least 75 percent of the cases: Other technical violations were charged, and the officer reported previous noncompliance to the court. Another high-scoring factor was that the person was likely not amenable to supervision.

### Combination of Factors

Table 4 (next page) shows the frequency of cases with multiple factors present on the 157 cases that showed revocation for technical violations. For example, 3 cases had 1 factor present and 6 cases had 2 factors present and so on.

The results showed that nearly a third of the cases (28.66) reviewed had 5 factors present. Additionally, 125 cases or 80 percent had at least 4 combinations of factors. Moreover, there are very few cases (9) with only one or two of the factors.

## Discussion

The decision to submit a petition and revoke a person on supervision is based on many factors that have implications for the prison population. However, despite suggestions by the media and other agencies that the number of technical violators significantly contributes to the prison population, this information should be examined in context from a systemic perspective. This exploratory review sought to determine if the media and other agencies' views were accurate or if there

were factors or a combination of factors that contributed to the decision to recommend revocation. We caution against generalizing our results too broadly, as they are based on an admittedly small and limited sample, and examine just a few factors.

The results show that a third of the cases reviewed had some type of data error; of those errors, 21 should have been coded as “New Arrest/Charge” because the person was arrested, and 31 cases should have been coded as Absconding. This number may be high because the staff entering data into the case management system are making errors or the reviewers who coded the question in this review entered it incorrectly. Regardless, it shows that some cases are being revoked for violations that are more serious than just one or two technical violations.

These results should prompt agency leads to consider incorporating periodic data reviews of their outputs, including the data elements captured. What made sense ten years ago may no longer apply today. Perhaps there is a better process to track individuals who abscond. Watching for operational drift is also critical. Safety expert James Reason (2000) points out that error is an inevitable part of the human condition, and “We cannot change the human condition, but we can change the conditions humans operate in.” Continually examining data outcomes helps identify any conditions that may be contributing to errors, such as how the data are collected or how the person entering the data is trained. With new personnel rotating in and out of positions, it is likely that diversions from procedures, sometimes called practical drift (Snook, 2002), will occur, and in normal operations, drift may go unnoticed. Hence, agencies should review data integrity related

to critical operational outcomes, especially those that are used for budgetary, legislative, and evidence-based outcome purposes. Once trends producing errors are identified, the organization should keep asking why those errors are being made, potentially using a root cause analysis process (Okes, 2009), and address them accordingly. Regardless, further evaluation will be conducted to determine if this level of error is truly occurring and, if so, how it should be rectified.

This review found that other factors examined existed for cases getting revoked for technical violations. In at least 75 percent of the cases reviewed, other technical violations were charged, and the officer reported previous noncompliance to the court. Another factor present was that the person was likely not amenable to supervision. For example, if the individual lies to the officer and does not try to change his or her behavior, it would be difficult to keep giving the person more chances to change. Also, if the officer cannot monitor the person’s behavior because he or she is not available for supervision or is disregarding the officer’s requests, the officer would have difficulty ensuring that the public is not at risk.

Finally, the results showed that the cases revoked were likely to have multiple factors present in addition to a single incident of drug use, as there were very few cases (9, or 6 percent) reviewed with only one or two of the factors, 80 percent with at least 4, and almost 20 percent having all 7 factors. This demonstrates that there are likely multiple factors present at the time of the decision to recommend revocation. What we don’t know, however, is whether the presence of multiple factors directly correlates with the decision to recommend revocation, as we did not include

a comparison group of those who successfully completed supervision. Another interesting study could be to examine groupings of factors to determine if some go hand in hand. At the very least, this exercise opened the door for a deeper, controlled examination of the factors influencing officers’ (and potentially the court’s) decision-making related to revocations on a larger population that includes all technical violations.

It is important for analysts and journalists to look beyond the data when researching the numbers supporting their ideas. Although the data may suggest one thing, supervision is more complicated than simply revoking someone for one or two instances of illegal substance use. The federal probation system spends an enormous amount of time and resources tailoring supervision to meet the needs of those released from incarceration. Nearly 75 percent of the persons in this sample received treatment services at some time during the current supervision term, and 66 percent of them were in treatment on or about the time the violations were reported to the court. This shows the extent of the effort U.S. probation officers expend to assist individuals with their substance abuse challenges.

This approach encourages graduated community-based sanctions in response to minor violations of supervision, giving the person a chance to correct negative behavior. This review showed that despite the assumptions of some, federal probation officers likely consider many different factors when recommending revocation; revocation, especially for technical violations, surfaces as a final alternative available to them after other means of bringing about success have been tried.

**TABLE 3**

Additional Factors* on Case with No New Charge/Arrest n= 157		
Factor	Frequency	Percentage
Other technical violations were charged	125	79.6
Positive urinalysis for more than one illegal drug type (e.g., opiates and amphetamines, or cannabinoids and amphetamines)	58	36.9
Tested positive on three or more drug tests	78	49.6
The person was likely not amendable to supervision (failure to report, lying to the officer, absconding, unsuccessful termination from the reentry center, failure to participate in treatment)	117	74.5
The officer reported previous noncompliance to the court (all supervision terms) (Noncompliance report with no action requested or condition modification request)	122	77.7
New arrest(s) while on another term of federal supervision	65	41.4
The person was previously revoked while on federal supervision	101	64.3

\*Factors not mutually exclusive

**TABLE 4**

How Many Factors Present	Frequency (# of cases with that # of factors)	Percent
1	3	1.91
2	6	3.82
3	23	14.65
4	31	19.75
5	45	28.66
6	18	11.46
7	31	19.75

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