HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE R. KLEMIN, CHAIRMAN
JANUARY 20, 2021

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PATRICK N. BOHN, DIRECTOR, NORTH DAKOTA PAROLE & PROBATION
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY HOUSE BILL 1177

My name is Pat Bohn and I am the Director for North Dakota Parole and

Probation, a division within the North Dakota Department of Corrections and

Rehabilitation (DOCR). I am here to testify on behalf of the department in support of
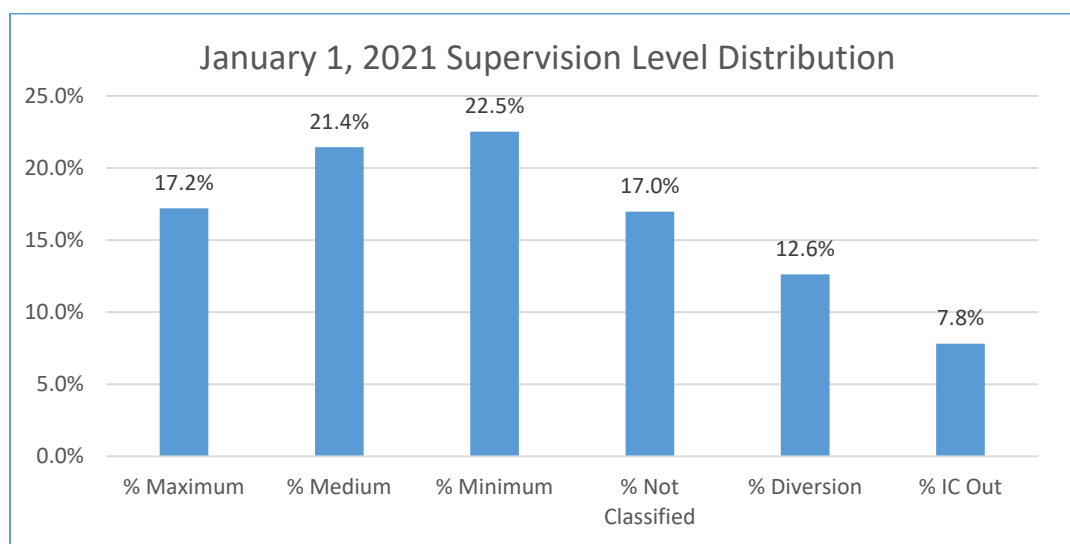
House Bill 1177.

Background:

North Dakota's community supervision caseload has grown 267% and the inmate

population 249% since 1992, while our state population has only grown by

approximately 19.4%. The correctional footprint in this country and state has continued

to grow disproportionately to our general population with what appears to be no end in

sight.
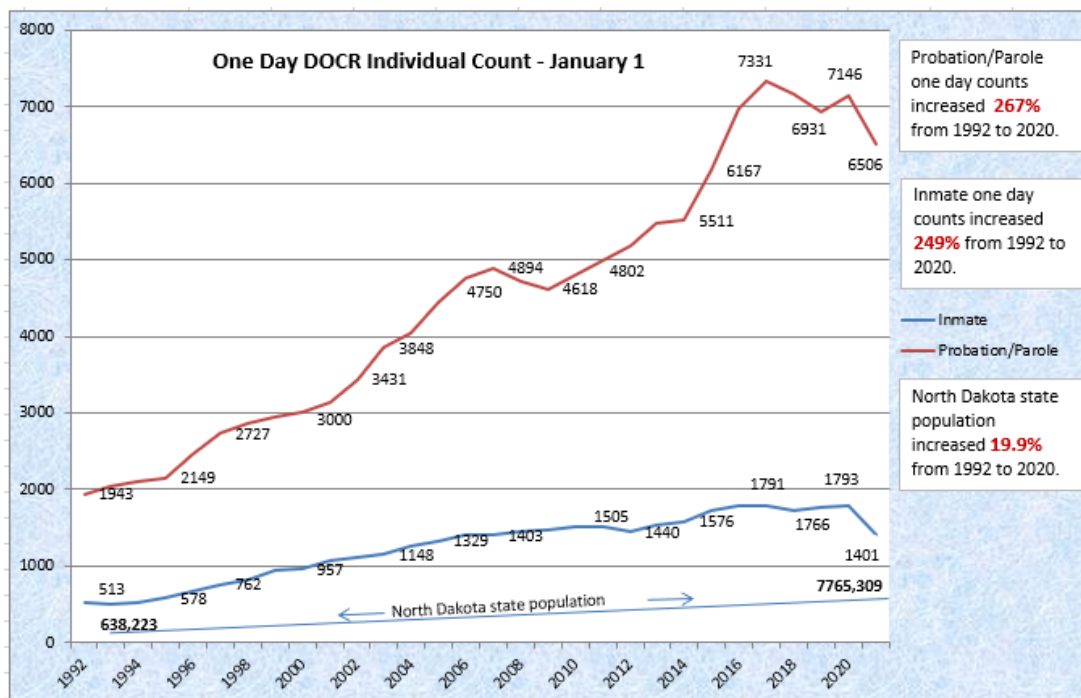
Note: Probation & Parole and Inmate percentage changes are based counts on March 2020 prior to impact of COVID-19.

Furthermore, officer to client caseloads average about 1:75 and the Master Plan 2021-2030 proposes caseloads of 1:40 primarily comprised of moderate to high-risk clientele[1].

This will allow staff more time to do intensive case management founded upon evidence-based practices (EBP). EBPs are those practices and programs that are researched-based and shown to statistically improve outcomes for people. The department has invested heavily in EBP by using actuarial assessments to establish contact standards and develop case plans that are risk-need-responsivity (RNR) driven and training our staff in Effective Practices In Community Supervision (EPICS). Targeting our time and resources towards those presenting higher-risk and dangerous and less time and resources towards those presenting as lower-risk is data-driven triage strategy. The proposed Earned Discharge process would join with EBP to further our efforts to spend more time with higher-risk individuals by responsibly curbing the growth of community supervision while continuing our commitment to public health and safety and codifying the idea of goal driven supervision.

January 1, 2021 Supervision Level Distribution

Category	Value
% Maximum	17.2%
% Medium	21.4%
% Minimum	22.5%
% Not Classified	17.0%
% Diversion	12.6%
% IC Out	7.8%

Note: See Appendix A for more information on Supervision Levels

[1] "North Dakota Department of Corrections and Rehabilitation Master Plan 2021 – 2030," Moss Group 2020.

Currently, the court defines the length of supervised probation at the time of sentencing. This is done with what the court "knows" at the time of sentencing along with the recommendations of the prosecutor and defense, but this has limitations. For instance, unless the court has a presentence investigation completed, which occurs in limited cases, the individual's actuarial risk is not known nor is there awareness of all the risk and needs the individual presents. I believe the North Dakota courts typically set reasonable lengths of probation but there is a heavy reliance on local sentencing practices based on history and culture that create disparities throughout the state. One piece of good news is that in a recent report by PEW using data from the Bureau of Justice Statistics Annual Probation and Parole Survey, North Dakota's average length of supervision was 18.4 months while the national average is just under 24 months with national ranges of 9 months in Kansas to nearly 5 years in Hawaii.[2]
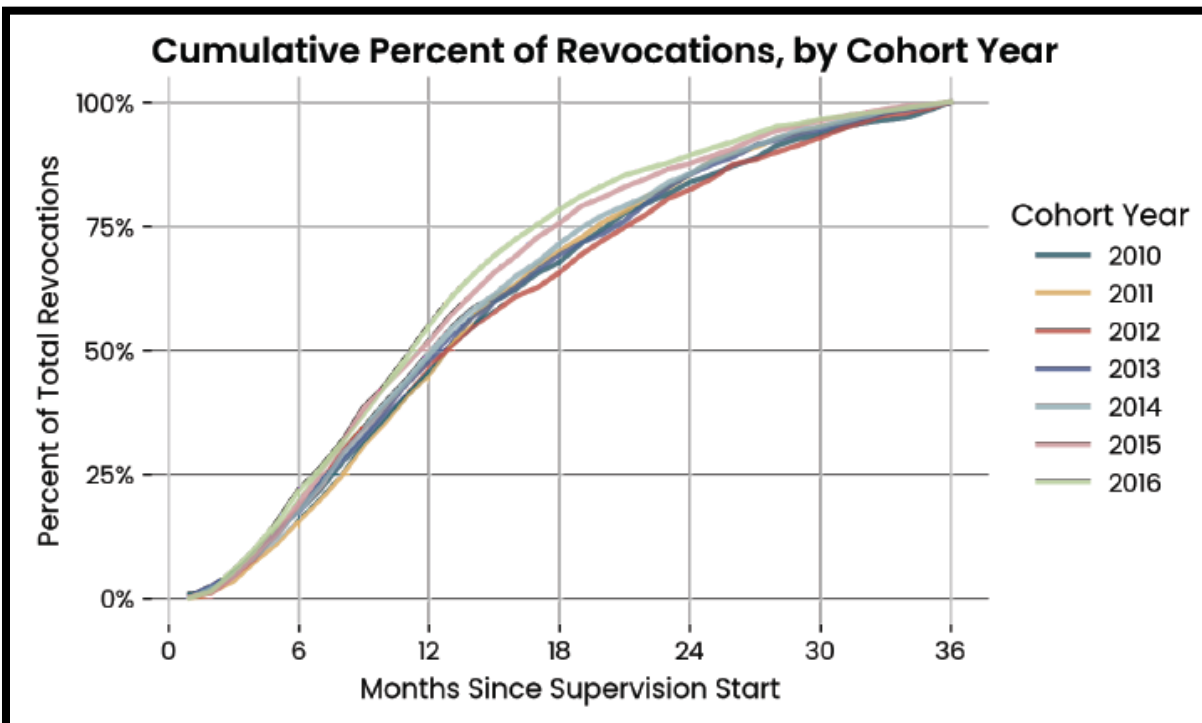
Under the current laws, the department cannot file a petition to terminate with the court without the prosecutor authorizing it. Historically it has been left to the officer and local practices to decide if and when to file a petition to terminate. Again, as you can imagine the differences in how officers determine whether a person should be able to get off supervision encompass a broad range of perspectives and then put a host of prosecutors on top of that and you get incredible disparities. In an effort to get our house cleaned up, in October 2018 we initiated an internal Early Termination Matrix. The matrix is a function of the length of the supervision period along with factors such as actuarial risk-score and whether a crime is considered violent or non-violent. Using a formula, we then compute a projected early termination date at the onset of supervision.

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[2] "States Can Shorten Probation Lengths and Protect Public Safety," PEW. Accessed January 5, 2021

Fundamentally, people who are on supervision for non-violent crimes and have a lower actuarial risk-score can attain their early term date sooner in their supervision period than someone who has a violent crime and high risk-score. Through this process we were able to improve our early termination rates from 8.1% from January 1, 2016 through December 31, 2018 (2-year period prior to year of implementation) to 12.3% from January 1, 2019 through December 31, 2020 (2-year period post year of implementation). Although we made improvements this process is still subject to the discretion of the prosecutor in order for it to get before the court.

To better understand the need to keep people on supervision I worked with one of our data partners, *Recidiviz*, to do analysis on supervision survival rates for North Dakota probationers. At a high-level, the key result is the latest cohort year with 3-year follow up (2016), about 55% of revocations occur by year 1 and almost 80% of revocations occur by 18 months.

Cumulative Percent of Revocations, by Cohort Year

Cohort Year	2010	2011	2012	2013	2014	2015	2016
Months Since Supervision Start							
6	17.5%	15.6%	18.2%	17.6%	18.2%	19.6%	21.8%
12	46.0%	45.1%	47.6%	48.4%	49.5%	51.9%	55.0%
18	67.7%	70.0%	65.7%	69.2%	71.5%	75.6%	78.4%
24	83.9%	85.4%	82.3%	85.5%	85.6%	87.6%	89.3%
30	93.6%	95.1%	92.8%	94.3%	95.0%	96.3%	96.6%
36	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Note: Additional analysis on survival rates by gender, race or ethnicity, age, risk-score, and violent vs non-violent offenses is available in Appendix B.

What this bill does:

This bill would authorize the DOCR to directly file a petition to terminate supervision with the court no sooner than nine months into the supervision period, if the terms of earning discharge have been met. This excludes sex offenses under N.D.C.C.12.1-20 and 12.1-27.2. The criteria are:

(1) Has served the longer of nine months of probation or the minimum mandatory probation period;

(2) Has satisfactorily met the following conditions of probation:

(a) Has not had the current period of probation revoked; and

(b) Has not been subject to intermediate measures during the six-month period before the petition to terminate probation was filed;

(3) Has no pending extraditable criminal charges; and

(4) Is in satisfactory compliance with restitution and reparation, if applicable.

A prosecutor can file for a hearing and the court can hold a hearing and make a determination of whether to continue the supervision period as is, modify the terms and conditions or terminate the supervision period.

This process can also further serve to engage and motivate the probationer to comply with terms of supervision including attending to treatment needs and paying off financial obligations to the best of their ability.

Closing:

This proposal is not a silver-bullet, but it does have some silver making up the bullet. As you know our system is complex and individuals are even more complex. I believe though that if we can be open to moving past history and culture and looking at some data and using EBP to support the work to make our communities safer and healthy while better managing existing resources, including reducing the number of people who end up in revocation status. Revocation status impacts individuals, families and communities. It also negatively impacts the resources of law enforcement, county and regional jails, the courts, and the DOCR.

APPENDIX A

Supervision Level Assignment Matrix

LSIR Cut Scores	Violent	Non-Violent
0-23	Low*	Diversion
24-29	Moderate	Low (Diversion Eligible)
30-38	High	Moderate
39+	High	High

*0-23 and Violent - Eligible for diversion after 12 months reassessment

Supervision Level Definitions:

Diversion Program: Classification in which minimum sentences are annually reviewed face-to-face to monitor compliance to terms and conditions of supervision. This review shall include the Criminal Justice Information System, National Crime Information Center, Criminal Warrant Information System criminal record check, fiscal inquiry, and compliance check on all court ordered conditions of supervision. Adults under supervision in diversion will be subject to random urinalysis testing for illegal drug use.

Minimum Supervision: Requires one face-to-face visit by the parole officer every third calendar month from the date of intake. One home visit is required by the Parole Officer with 90 days of intake.

Minimum Supervision: Requires one face-to-face visit by the parole officer every third calendar month from the date of intake. One home visit is required by the Parole Officer with 90 days of intake.

Maximum Supervision: One face-to-face visit is required by the parole officer every calendar month from the date of intake. One home visit is required by the parole officer within 90 days of intake and once every calendar year thereafter.

Non-Classified: Adults under supervision may be placed in a non–classified level if they are an absconder, if they are serving a sentence of incarceration for sixty days or longer or if a client is out of state pending an interstate compact transfer.

APPENDIX B

North Dakota Probation Period Revocation Analysis

Methodology

We used Recidiviz's supervision revocation metric to identify probation periods for which a person has a revocation. This includes both probation revocations that result in reincarceration and probation revocations for which the person remains in supervision.

For this analysis, we used the full set of probation periods that started between 2010-01-01 and 2016-12-31. This gives all periods a full 36 months to potentially revoke (prior to the start of 2020, which was excluded due to COVID)

Metrics

Cumulative Revocation Rate

For each category (year of supervision start, gender, race, age, assessment score, violent / non-violent), we calculated the cumulative percent of supervision periods that had a revocation within 36 months of the supervision start date (broken up by months since supervision start).

In the example below, 5% of supervision periods that started from Group A had a revocation within 6 months, 24% had a revocation within 24 months and 28% had a revocation within 36 months. This metric highlights differences in revocation rate across groups. In this example, Group B revokes at a higher rate.

| Example Group	Group A	Group B
Months Since Supervision Start		
6	5%	6%
12	13%	16%
18	20%	22%
24	24%	27%
30	27%	29%
36	28%	31%

Cumulative Percent of Revocations

For each category, we also calculate the cumulative percent of total revocations (that occurred within 36 months) broken up by month since supervision start date. In this metric, the denominator is the number of revocations in that group as opposed to the number of supervision periods in the cohort.

In the example below, 46% of the revocations by Group A occur within the first 12 months and 71% of the revocations by Group A occur within the first 18 months. This metric highlights differences in the timing of revocations across the categories, while holding differences in the magnitude of revocations constant. In this example below, revocations by Group B are occurring earlier (51% in the first 12 months versus 46%).

Example Group	Group A	Group B
Months Since Supervision Start		
6	16%	19%
12	46%	51%
18	71%	72%
24	86%	86%
30	96%	95%
36	100%	100%

Results

Cohort Year

Cumulative Revocation Rate, by Cohort Year
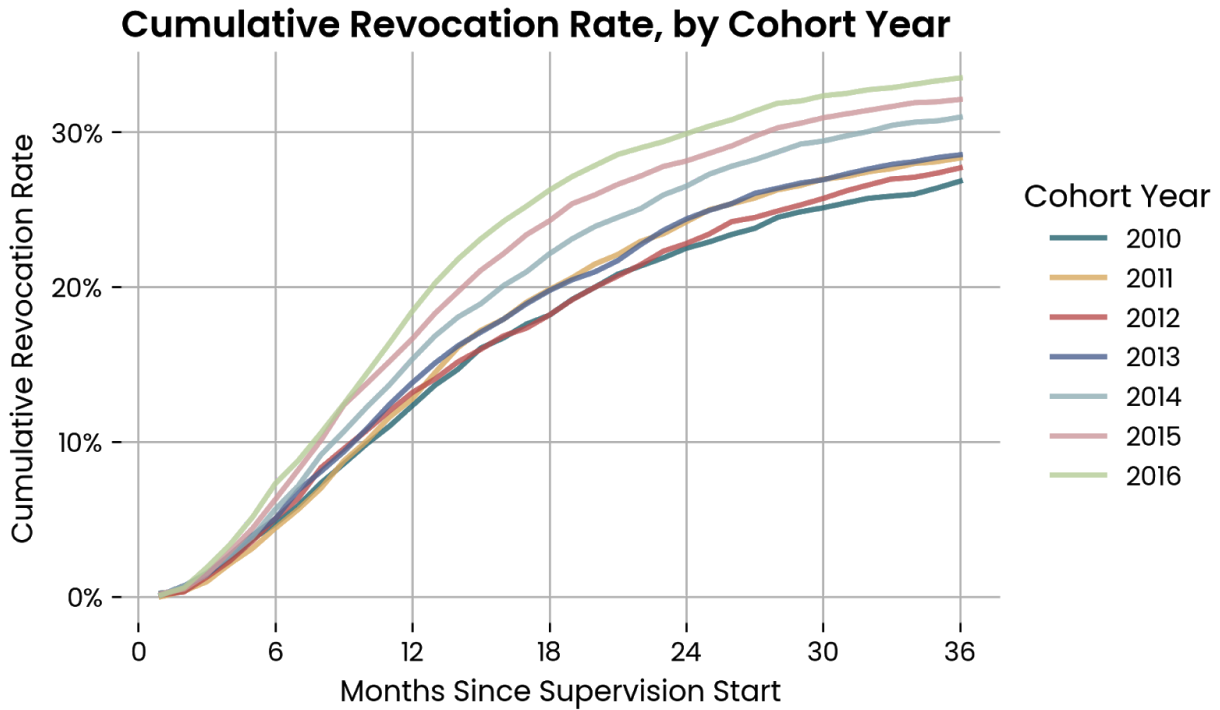
Cohort Year	2010	2011	2012	2013	2014	2015	2016
Months Since Supervision Start							
6	4.7%	4.4%	5.0%	5.0%	5.6%	6.3%	7.3%
12	12.3%	12.8%	13.2%	13.8%	15.3%	16.7%	18.4%
18	18.2%	19.8%	18.2%	19.8%	22.1%	24.3%	26.2%
24	22.5%	24.2%	22.8%	24.4%	26.5%	28.1%	29.9%
30	25.1%	27.0%	25.7%	26.9%	29.4%	30.9%	32.3%
36	26.8%	28.3%	27.7%	28.5%	31.0%	32.1%	33.5%

Cumulative Percent of Revocations, by Cohort Year

Cohort Year	2010	2011	2012	2013	2014	2015	2016
Months Since Supervision Start							
6	17.5%	15.6%	18.2%	17.6%	18.2%	19.6%	21.8%
12	46.0%	45.1%	47.6%	48.4%	49.5%	51.9%	55.0%
18	67.7%	70.0%	65.7%	69.2%	71.5%	75.6%	78.4%
24	83.9%	85.4%	82.3%	85.5%	85.6%	87.6%	89.3%
30	93.6%	95.1%	92.8%	94.3%	95.0%	96.3%	96.6%
36	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Gender

Cumulative Revocation Rate, by Gender

Gender	FEMALE	MALE
Months Since Supervision Start		
6	4.5%	6.0%
12	12.8%	15.7%
18	19.9%	22.3%
24	24.1%	26.5%
30	26.7%	29.3%
36	27.9%	30.8%

Cumulative Percent of Revocations, by Gender
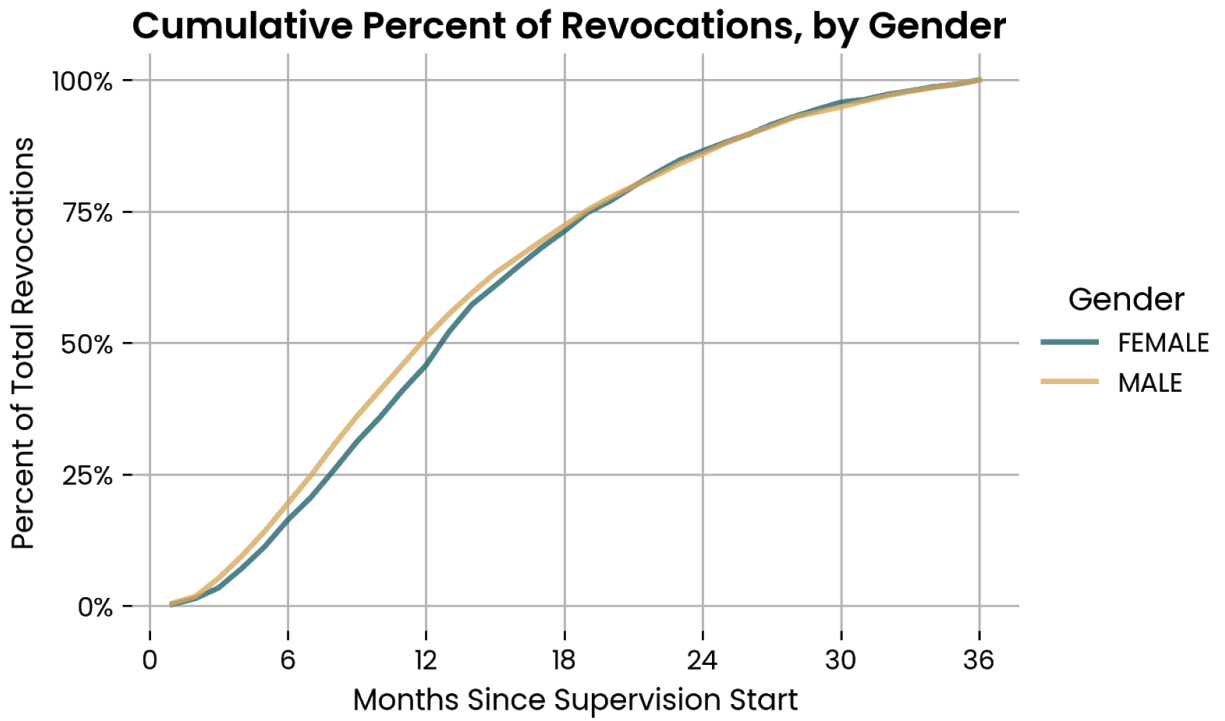
Gender	FEMALE	MALE
Months Since Supervision Start		
6	16.3%	19.4%
12	45.7%	51.0%
18	71.2%	72.3%
24	86.5%	86.0%
30	95.8%	94.9%
36	100.0%	100.0%

Race or Ethnicity
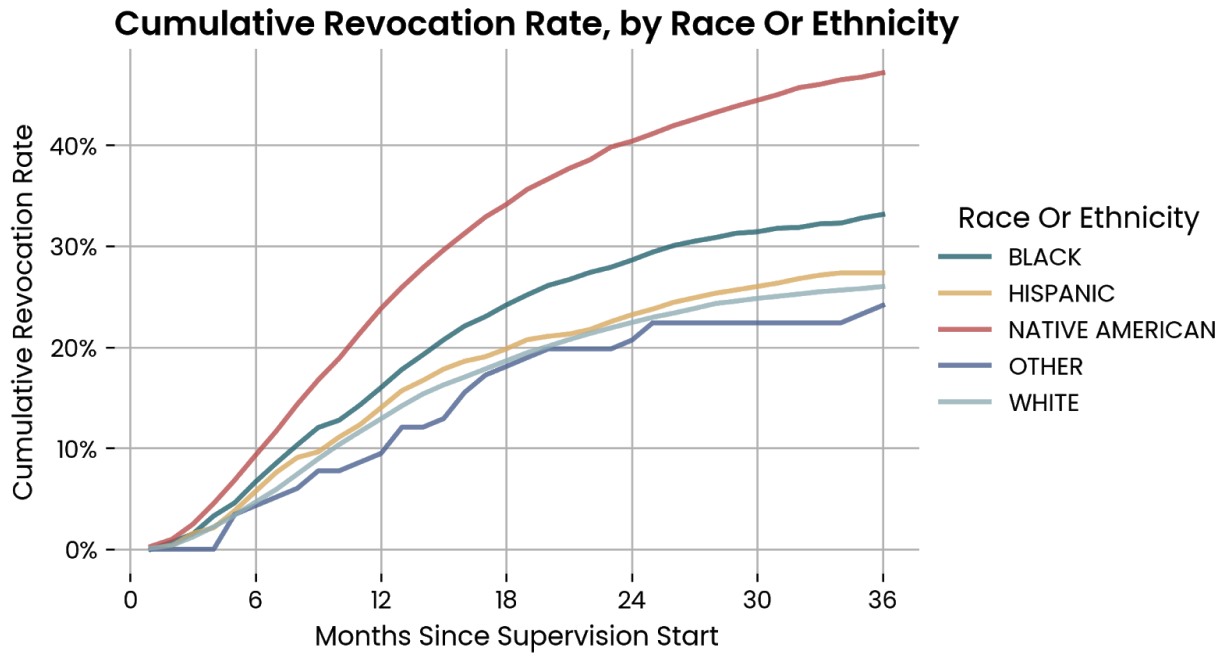
Cumulative Revocation Rate, by Race Or Ethnicity

Race Or Ethnicity	BLACK	HISPANIC	NATIVE AMERICAN	OTHER	WHITE
Months Since Supervision Start					
6	6.7%	5.7%	9.3%	4.3%	4.7%
12	16.0%	14.0%	23.8%	9.5%	12.9%
18	24.2%	19.8%	34.1%	18.1%	18.7%
24	28.6%	23.2%	40.4%	20.7%	22.4%
30	31.4%	26.0%	44.4%	22.4%	24.8%
36	33.1%	27.4%	47.2%	24.1%	26.0%

Cumulative Percent of Revocations, by Race Or Ethnicity
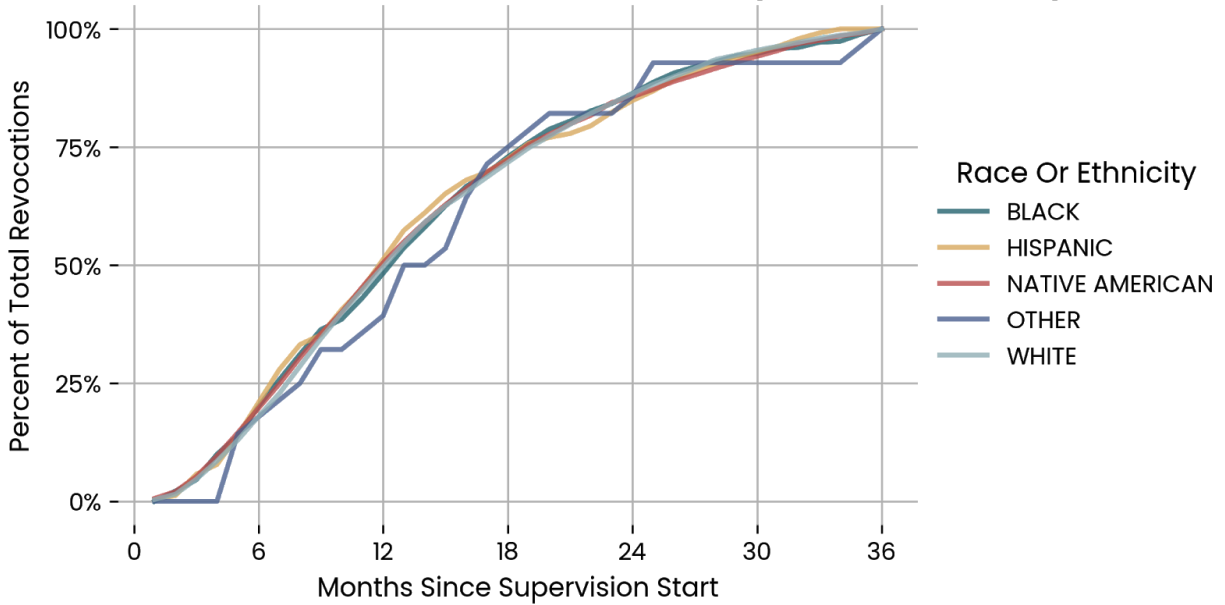
Race Or Ethnicity	BLACK	HISPANIC	NATIVE AMERICAN	OTHER	WHITE
Months Since Supervision Start					
6	20.1%	20.9%	19.7%	17.9%	18.0%
12	48.3%	51.2%	50.5%	39.3%	49.7%
18	72.9%	72.5%	72.4%	75.0%	71.8%
24	86.4%	84.8%	85.6%	85.7%	86.3%
30	94.8%	95.1%	94.2%	92.9%	95.5%
36	100.0%	100.0%	100.0%	100.0%	100.0%

Age

Cumulative Revocation Rate, by Age Bucket
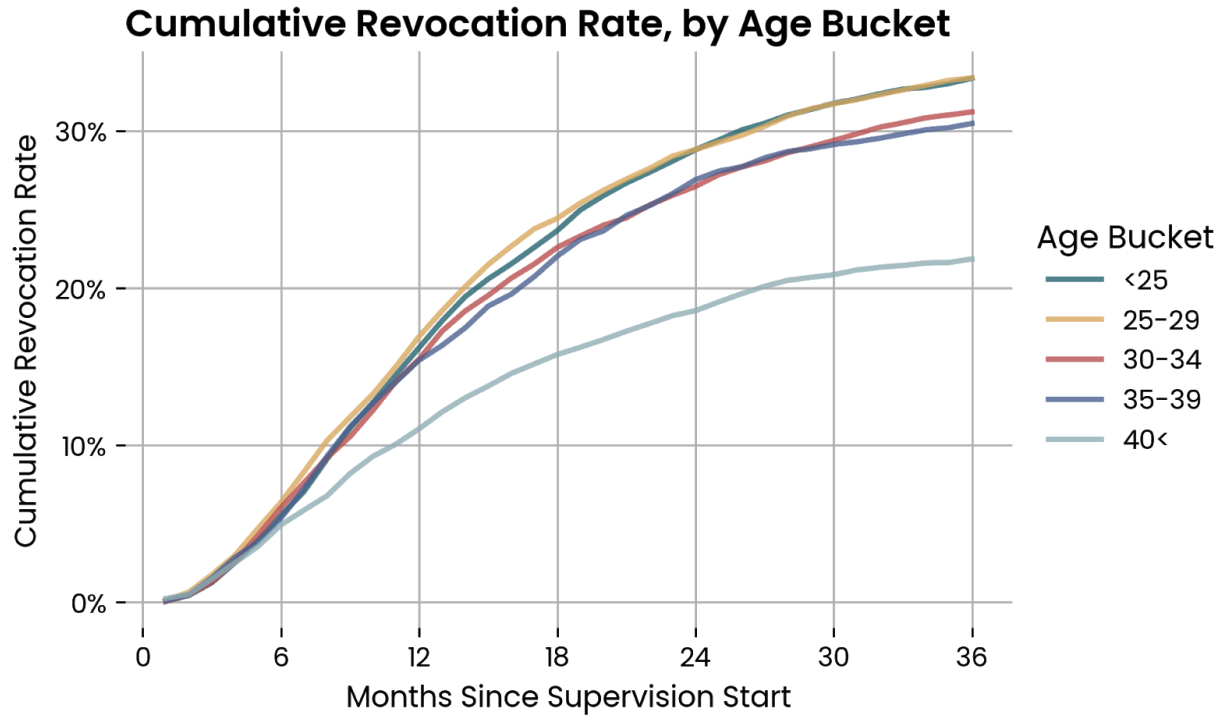
Age Bucket	<25	25-29	30-34	35-39	40<
Months Since Supervision Start					
6	5.5%	6.4%	6.0%	5.4%	4.9%
12	16.2%	16.9%	15.5%	15.4%	11.1%
18	23.7%	24.5%	22.6%	22.0%	15.8%
24	28.8%	28.8%	26.5%	26.9%	18.6%
30	31.8%	31.7%	29.4%	29.2%	20.9%
36	33.4%	33.4%	31.2%	30.5%	21.9%

Cumulative Percent of Revocations, by Age Bucket
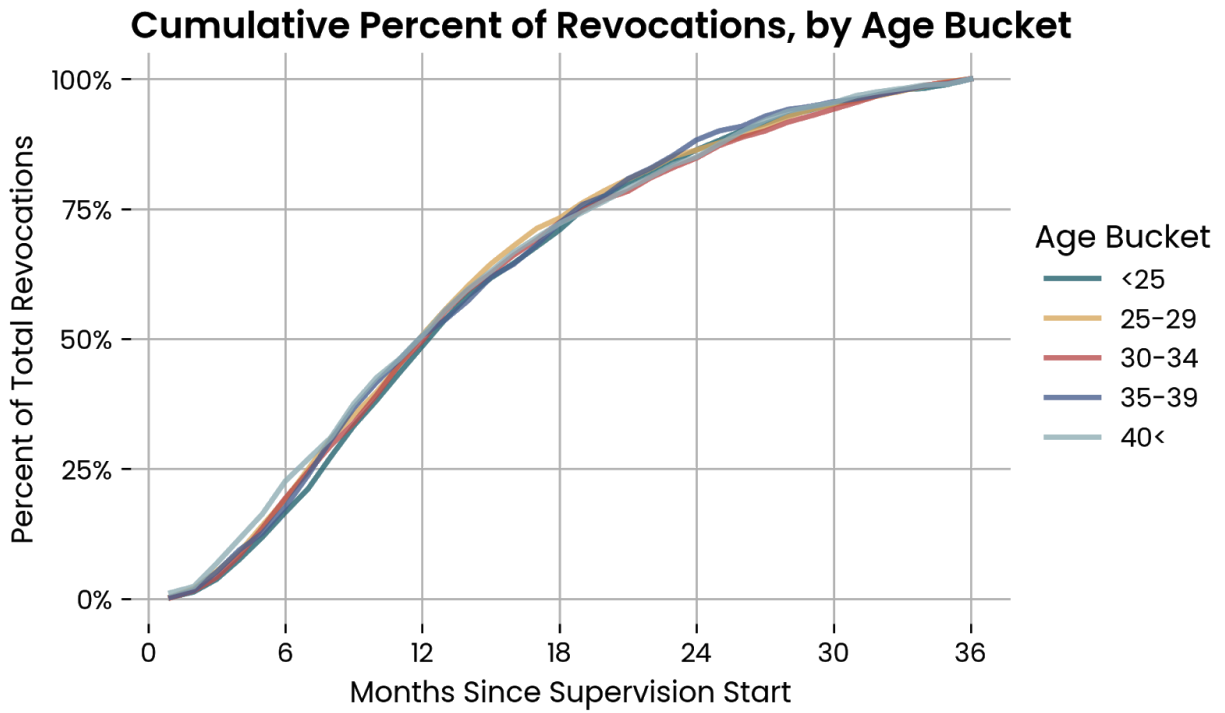
Age Bucket	<25	25-29	30-34	35-39	40<
Months Since Supervision Start					
6	16.6%	19.1%	19.3%	17.6%	22.6%
12	48.6%	50.7%	49.6%	50.6%	50.6%
18	70.9%	73.2%	72.4%	72.3%	72.2%
24	86.4%	86.3%	84.8%	88.3%	85.0%
30	95.2%	95.1%	94.2%	95.6%	95.5%
36	100.0%	100.0%	100.0%	100.0%	100.0%

Assessment Score

Cumulative Revocation Rate, by Assessment Score
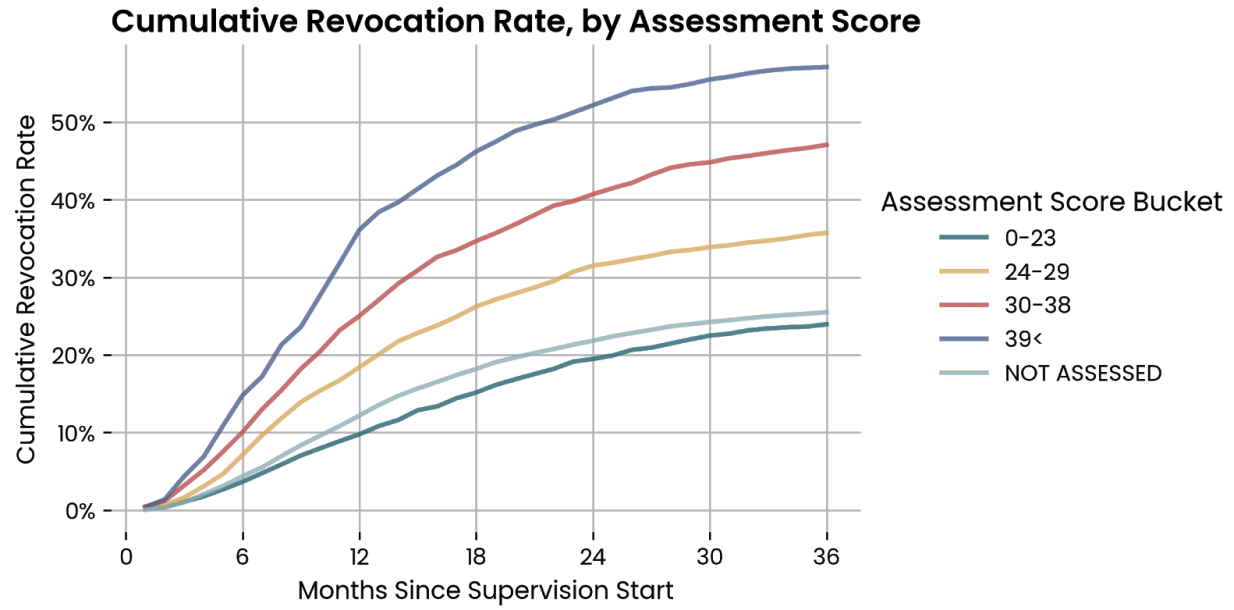
Assessment Score Bucket	0-23	24-29	30-38	39<	NOT ASSESSED
Months Since Supervision Start					
6	3.6%	7.1%	10.1%	14.8%	4.4%
12	9.8%	18.4%	25.0%	36.1%	12.2%
18	15.2%	26.2%	34.7%	46.2%	18.2%
24	19.5%	31.5%	40.7%	52.2%	21.8%
30	22.5%	33.9%	44.8%	55.5%	24.2%
36	23.9%	35.7%	47.1%	57.1%	25.5%

Cumulative Percent of Revocations, by Assessment Score
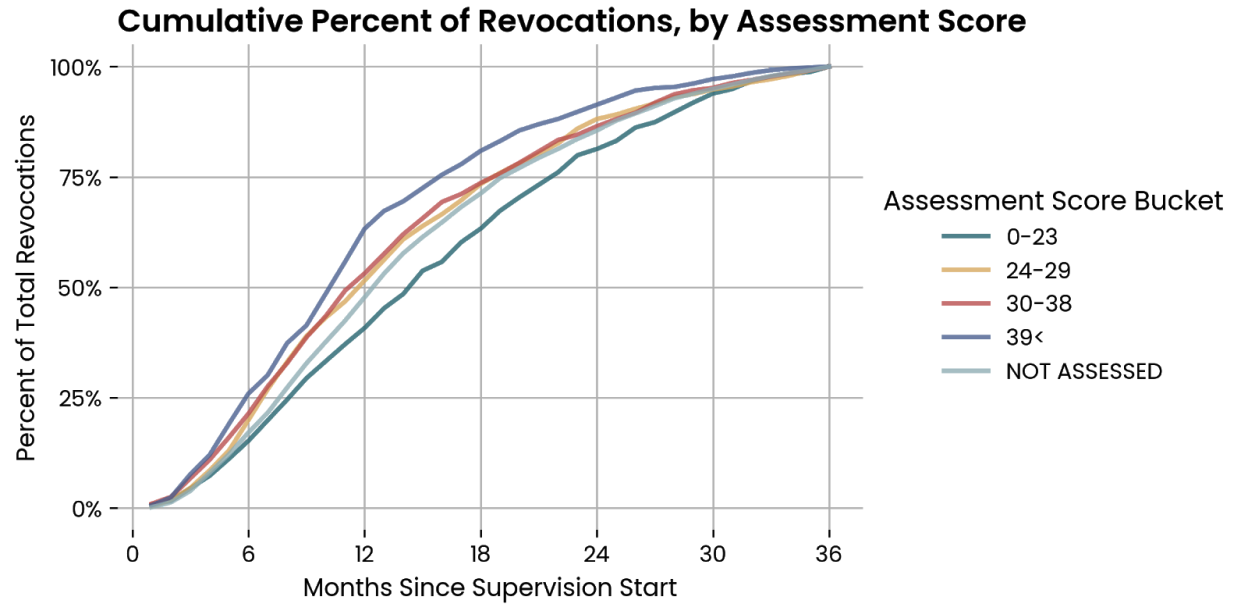
Assessment Score Bucket	0-23	24-29	30-38	39<	NOT_ASSESSED
Months Since Supervision Start					
6	15.2%	19.9%	21.4%	25.9%	17.1%
12	40.8%	51.5%	53.1%	63.3%	47.7%
18	63.3%	73.4%	73.6%	80.9%	71.3%
24	81.3%	88.1%	86.5%	91.4%	85.5%
30	93.9%	94.8%	95.2%	97.2%	95.0%
36	100.0%	100.0%	100.0%	100.0%	100.0%

Charge Type (Violent / Non-Violent)

Cumulative Revocation Rate, by Charge Type

Charge Type
— NON VIOLENT
— VIOLENT
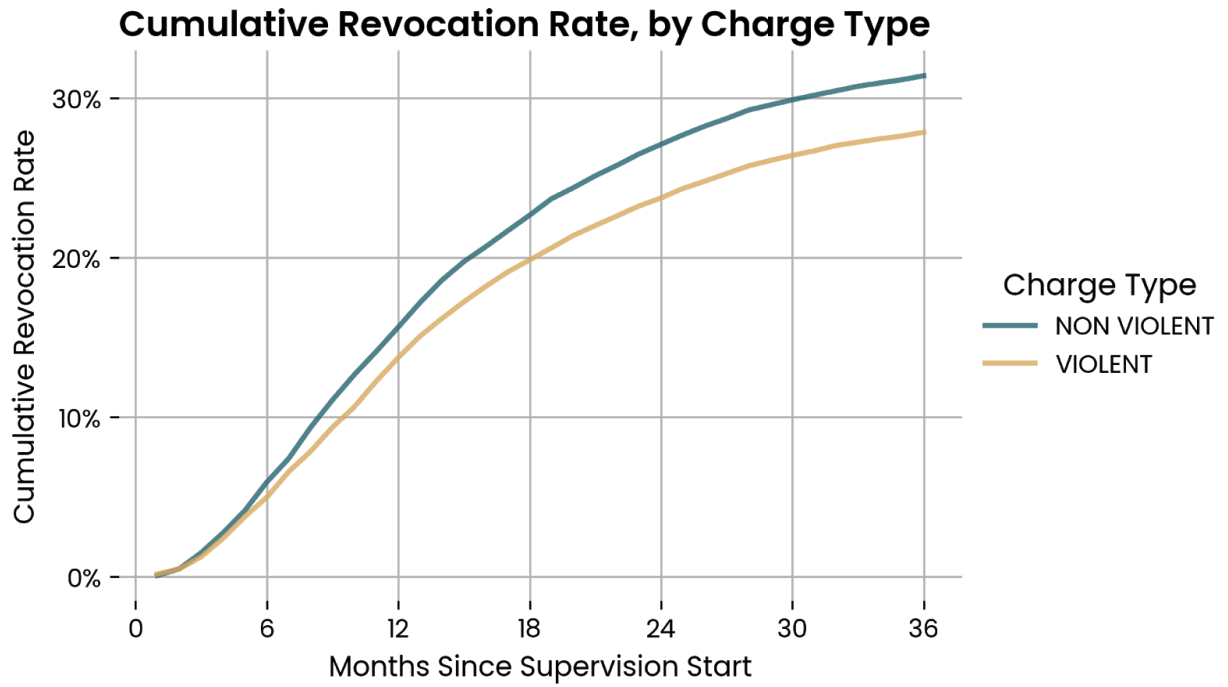
Charge Type	NON VIOLENT	VIOLENT
Months Since Supervision Start		
6	5.9%	5.0%
12	15.7%	13.7%
18	22.7%	19.9%
24	27.1%	23.8%
30	29.9%	26.4%
36	31.4%	27.9%

Cumulative Percent of Revocations, by Charge Type
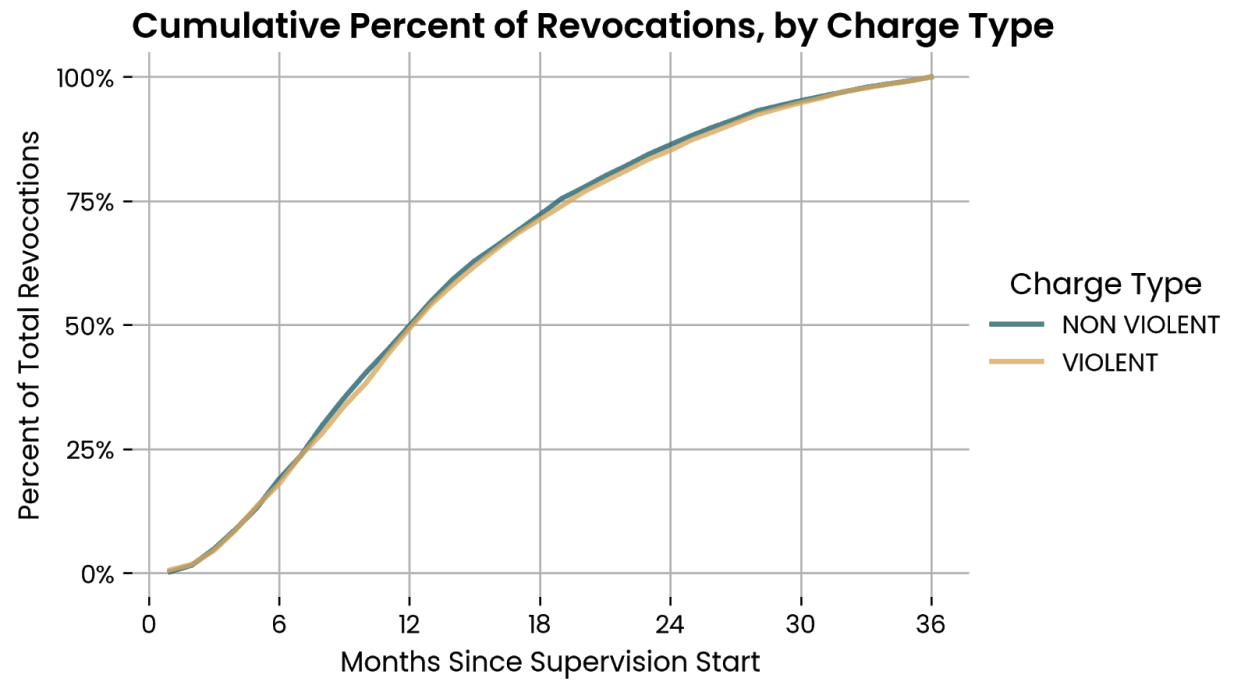
Charge Type	NON VIOLENT	VIOLENT
Months Since Supervision Start		
6	18.9%	17.9%
12	49.8%	49.3%
18	72.2%	71.3%
24	86.3%	85.2%
30	95.2%	94.8%
36	100.0%	100.0%