

LEGAL ISSUES

Most Jan. 6 defendants get time behind bars, but less than U.S. seeks

Three years after the Capitol attack, more than half of the roughly 1,200 people charged in the largest investigation in U.S. history have been sentenced.

By [Tom Jackman](#) and [Spencer S. Hsu](#)

January 5, 2024 at 10:00 a.m. EST

Three years after the Capitol attack, federal judges in Washington have sentenced more than half of the roughly 1,200 people charged in the largest investigation in U.S. history and have handed down lighter punishments for [Jan. 6](#) assault convictions compared with similar assault cases nationally, a Washington Post analysis shows.

Judges have ordered prison time for nearly every defendant convicted of a felony and some jail time to about half of those convicted of misdemeanors.

But in the vast majority of the more than 700 sentencings to date, judges have issued punishments below government guidelines and prosecutors' requests. Though more than 60 percent of the defendants sentenced so far have received jail or prison terms, the judges have gone below federal sentencing guidelines in 67 percent of the cases, Post data shows. Nationally, federal judges go below the advisory guidelines about 51 percent of the time, according to federal statistics.

As Capitol riot prosecutions enter their fourth year, here is a look at what has happened to defendants so far.

WHAT TO KNOW

- ◆ [What has happened with people who have been arrested?](#)
- ◆ [What has happened with rioters who have gone to trial?](#)
- ◆ [What have sentences looked like?](#)
- ◆ [What have judges done with sentencing recommendations and guidelines?](#)

- ◆ What does the court say?
- ◆ Has the political party of the judges been a factor in sentencing?

What has happened with people who have been arrested?

There have been about 1,235 people charged with breaking the law at the Capitol on Jan. 6, according to the U.S. attorney's office in Washington. After more than 900 were arrested in the first two years following the attack, only about 300 were arrested in 2023. More arrests are expected in 2024, as the FBI and Justice Department on Thursday renewed calls for help identifying about 80 more violent riot suspects in addition to about 450 already charged for assaulting officers.

The arrests remain evenly divided for data as of Jan. 2: about half of the defendants have been charged with at least one felony, such as assaulting police or obstructing the congressional proceeding, and half have been charged with misdemeanors such as trespassing or disorderly conduct.

What has happened with rioters who have gone to trial?

Of the 131 trials so far, more than half of the defendants have tried their luck with a judge, rather than a D.C. jury.

Of 74 bench trials, there have been 72 convictions. Judge Trevor N. McFadden acquitted a man in 2022 of entering a restricted building after the man argued police did not keep him out of the building, and in 2023 Judge Amit P. Mehta acquitted a man who claimed he had been misled by the Oath Keepers into believing the group intended to serve as peacekeepers at the Capitol.

Of 57 jury trials, the government has obtained 57 convictions, according to Post data. Juries have acquitted some defendants of some charges, including major charges in the Oath Keepers and Proud Boys cases, but no defendant has escaped a D.C. jury without at least one conviction.

In addition to the trials, 714 defendants have pleaded guilty as of early December, according to the U.S. attorney's office.

What have sentences looked like?

Sentencings greatly increased in 2023, with nearly 370 defendants sentenced in one year, after less than 360 were sentenced in the previous two years. And the percentage of people receiving terms of incarceration increased from 56 percent to 64 percent as more serious felony cases were completed.

For those charged with lesser misdemeanors, about half received a jail sentence averaging 58 days, while about a third received probation and 18 percent were ordered to spend time in home confinement. The incarceration rate for Jan. 6 misdemeanants is higher than for other federal misdemeanants because it came in the context of a mob assault that helped make the breach possible. For those convicted of felonies, 94 percent were ordered behind bars, a consistent rate every year.

Of 244 felony sentencings for all charges, the average sentence has been 41 months, or about 3½ years, The Post's data shows. For those who pleaded guilty, the average felony sentence is now about 2½ years, but those who were convicted at trial received an average of 5 years in prison.

The overall averages rose dramatically in 2023 because sentencings were held for members of the Oath Keepers and Proud Boys convicted of seditious conspiracy for organizing far-right groups that sparked the breach of the building and disrupting the peaceful transfer of presidential power. Ex-Proud Boys leader Enrique Tarrio received a sentence of 22 years, and former Oath Keepers head Stewart Rhodes was sentenced to 18 years, as was Proud Boys member Ethan Nordean. The three men have received the stiffest sentences in the investigation to date.

The average sentence for those convicted of assaulting a police officer is more than 45 months, The Post's data shows. The average sentence for those convicted of obstructing an official proceeding has been 39 months. Nearly 400 defendants have been placed on probation, either as their full sentence or after their incarceration, for periods that extend beyond this November's presidential election.

But there are many examples of defendants who received far less than prosecutors sought, for serious offenses. Federal sentencing guidelines called for a sentencing range of 78 to 97 months for Edward F. Rodriguez of New York, who showered bear spray into multiple officers' eyes. Prosecutors recommended 88 months, and several officers testified at Rodriguez's sentencing about his impact, but Judge Dabney L. Friedrich imposed a 36-month term, citing Rodriguez's mental health needs.

Bobby W. Russell, of Falkville, Ala., fought furiously with police at several points on the Capitol grounds and spent more than three hours there on Jan. 6. He had four prior felony convictions, including a case where he allegedly punched a police officer in the head, court records show, and his sentencing guidelines suggested a range of 27 to 33 months. Prosecutors asked for 30 months, but Mehta imposed a term of 12 months and one day after the defense cited Russell's remorse, recovery from drug addiction and community service role.

What have judges done with sentencing recommendations and guidelines?

Federal sentencing guidelines are based in part on how similar crimes have been sentenced, while also factoring in a defendant's criminal history. Judges receive proposed guideline ranges from the federal probation office, the prosecution and the defense, and then determine what the "guideline range" of months is. But the guidelines are advisory and judges can go above or below them without having to supply a reason.

Prosecutors in Jan. 6 cases have typically called for sentences in the middle of the guideline ranges, occasionally seeking a “high-end sentence” for severe cases. But the judges have only accepted the prosecutors’ recommendations in 10 percent of sentencings, while going below the recommendations in 86 percent of felony cases.

“I think what we are seeing here,” said Jay E. Town, a former U.S. attorney for northern Alabama, “is that the judges set a benchmark for sentences for particular offenses in the early cases. That benchmark becomes the standard for future cases.” Town said that “judges across the country routinely go beneath the guidelines.”

Mark H. Allenbaugh, a former attorney for the U.S. Sentencing Commission who has written extensively about sentencing policy and criminal justice, said the D.C. court’s record of going below sentencing guidelines in two-thirds of Jan. 6 cases “is a very significant below-guideline rate, particularly for such a high-profile group of defendants that caused an insurrection.”

Commission data show that the D.C. court’s sentences for Jan. 6 defendants who assaulted police is below the national average. Since Jan. 6 cases began, the average sentence imposed by D.C. federal judges in the Capitol attack under guidelines for serious assaults climbed to 46 months from 41 months but is still below the nationwide average of 51 months in 2022.

“In Jan. 6 cases, I’m not surprised that the judges consistently go below the recommendations,” said Carmen D. Hernandez, a defense attorney who has represented multiple Jan. 6 defendants. “For the most part, the Jan. 6 cases are overcharged vis a vis the usual demonstration case where people disrupt a congressional or Supreme Court hearing. Most of those are only charged with misdemeanors or sometimes are offered deferred prosecution agreements. So D.C. judges have some experience and also tolerance for the average person who was present inside the Capitol on Jan. 6.”

What does the court say?

Chief U.S. District Judge James E. Boasberg defended the court’s sentencing practices. In an interview, he said prosecution sentencing recommendations usually fall in the middle of the federal guidelines to counterbalance a defendant’s request for leniency.

“Most judges believe that the government sentencing recommendation should be what the government actually believes the just sentence should be,” Boasberg said, “rather than a number that will lead the judge to the correct number.”

U.S. Attorney Matthew M. Graves said the government’s requests have been consistent with its practice in other federal prosecutions.

“It is our view that in the overwhelming majority of the cases we prosecute, the appropriate sentence is a sentence consistent with the sentencing guidelines,” Graves said in a statement.

Boasberg said sentencing Jan. 6 cases is difficult “in part because the statutes cannot always present a precise link to the conduct at issue. They were not written with this type of conduct in mind.”

A key example of this is the felony “obstruction of an official proceeding” law prosecutors have used to charge hundreds of Jan. 6 rioters as well as former president Donald Trump. The law was originally crafted by Congress to deal with destruction of evidence in the wake of the Enron prosecutions, not an insurrection. Most D.C. judges and a federal appeals court have allowed the obstruction charge to be used for Jan. 6 cases but one has not, resulting in a fight that is headed to the U.S. Supreme Court.

Has the political party of the judges been a factor in sentencing?

The sentencings by the 15 judges appointed by Democratic presidents are not much different from the nine appointed by Republicans. Those appointed by Democrats have imposed jail or prison sentences in 65 percent of the cases, compared with 63 percent of cases sentenced by Republican appointees, according to Post data.

“I think it is generally true that liberal and conservative federal judges follow the guidelines,” said Town, a prosecutor who was appointed by Trump. He said “the Jan. 6 defendants have been treated fairly. Most have pleaded guilty, which indicates the plea deal they were offered was fair as well.”

Four Trump appointees have imposed incarceration in 57 percent of cases, compared with 67 percent for nine Obama appointees and three George W. Bush appointees. Three Biden appointees have imposed jail or prison only 20 percent of the time, but they have heard only 30 cases and four felonies.

Only one active judge has sent every single defendant to jail or prison: Tanya S. Chutkan, the judge handling the D.C. prosecution of Trump, has ordered all 39 of her defendants behind bars.

Of the four judges who have gone below the government’s recommendation in every case, two are Republican appointees: John D. Bates and Richard J. Leon; and two are Democratic appointees: Rudolph Contreras and Ana C. Reyes. Three of the four judges who have gone below the recommendation are Democratic appointees: Mehta, Randolph D. Moss and Jia M. Cobb, while Republican appointee Timothy J. Kelly also has largely rejected the prosecution’s requests.

“I don’t believe that there is any ideological divide in imposing sentences in Jan. 6 cases between judges approved by presidents of different parties,” Boasberg said.

Sentencing data is current through Jan. 2 and reflects cases in D.C. federal court only, not those charged with misdemeanors in D.C. Superior Court.