



United States Sentencing Commission
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Federal Armed Career Criminals: Prevalence, Patterns, and Pathways





FEDERAL ARMED CAREER CRIMINALS

Prevalence, Patterns, and Pathways



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This report continues the Commission's work in the areas of federal firearms offenders and recidivism by providing updated and expanded analyses of armed career criminals in the federal criminal justice system.



Introduction

This report provides information on offenders sentenced under the Armed Career Criminal Act (hereinafter “the Act” or “the ACCA”)¹ using data collected by the United States Sentencing Commission (the “Commission”). This report provides an overview of the ACCA and its implementation in the federal sentencing guidelines. It also includes information on offender and offense characteristics, criminal histories, and recidivism of armed career criminals.

As part of its continuing duty to collect, analyze, and report sentencing data,² the Commission has published reports focusing both on career offender sentencing provisions and firearms offenders. In 2016, the Commission published its *Report to the Congress: Career Offender Sentencing Enhancements*.³ The *Career Offender Report* presented findings of the Commission’s multi-year study of statutory and guideline definitions relating to the nature of an offender’s prior convictions

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and analyzed the application and impact of the career offender guideline found at §4B1.1 (Career Offender) of the *Guidelines Manual*.

The Commission has issued two additional publications studying firearms offenders that included analyses of armed career criminals. In 2018, the Commission published *Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal Justice System*,⁴ which included analyses of the two statutes carrying a firearms mandatory minimum penalty, 18 U.S.C. § 924(c) (relating to using or possessing firearms in furtherance of drug trafficking or crimes of violence) and the ACCA, 18 U.S.C. § 924(e), as well as the impact firearms mandatory minimum penalties have on the Federal Bureau of Prisons (BOP) population. In 2019, the Commission published *Recidivism Among Federal Firearms Offenders*,⁵ which analyzed the recidivism of federal offenders convicted of firearms and ammunition offenses and included a snapshot of information for armed career criminals.

This report continues the Commission's work in the areas of federal firearms offenders and recidivism. It provides an overview of the ACCA, which provides for a 15-year mandatory minimum sentence for violations of 18 U.S.C. § 922(g) by offenders who have three or more previous convictions, committed on different occasions, for a "violent felony," a "serious drug offense," or both. This report discusses the Act and its implementation in the federal sentencing guidelines and provides updated and expanded analyses of armed career criminals from the Commission's earlier reports. It provides information on armed career criminals from data regularly collected by the Commission in its Individual Offender Datafiles. In addition, the report uses data from two of the Commission's special data collection projects to provide in-depth analyses of the nature and extent of the prior criminal history and recidivism of armed career criminals.







Armed career criminals represented less than one percent of the federal criminal caseload in FY2019.



Offenders subject to ACCA's 15-year mandatory minimum penalty received an average sentence of 206 months in FY2019.



90.4% of armed career criminals qualified for the three most serious Criminal History Categories.



Key Findings

- Armed career criminals consistently comprise a small portion of the federal criminal caseload, representing less than one percent of the federal criminal caseload. During the ten-year study period, the number of armed career criminals decreased by almost half, from 590 in fiscal year 2010 to 312 in fiscal year 2019.
- Armed career criminals receive substantial sentences. Offenders who were subject to the ACCA's 15-year mandatory minimum penalty at sentencing received an average sentence of 206 months in fiscal year 2019. Offenders who were relieved of the mandatory minimum for providing substantial assistance to the government received significantly shorter sentences, an average of 116 months in fiscal year 2019.
- Armed career criminals have extensive criminal histories. Even prior to application of the armed career criminal guideline, 90.4 percent of armed career criminals qualified for the three most serious Criminal History Categories under the guidelines, and almost half (49.4%) qualified for Criminal History Category VI, the most serious category under the guidelines.



83.7% of armed career criminals had prior convictions for violent offenses.



59.0% of armed career criminals released between 2009 and 2011 were rearrested within eight years.



The median time to rearrest was 16 months for armed career criminals.

- The overwhelming majority of armed career criminals had prior convictions for violent offenses. In fiscal year 2019, 83.7 percent of armed career criminals had prior convictions for violent offenses, including 57.7 percent who had three or more such convictions. Despite the predominance of violence in their criminal history, the most common prior conviction for armed career criminals was for public order offenses, with 85.3 percent having at least one such prior conviction.
- More than half (59.0%) of armed career criminals released into the community between 2009 and 2011 were rearrested within an eight-year follow-up period. When armed career criminals recidivated, their median time to rearrest was 16 months and the most serious common new offense was assault (28.2%).
- Recidivism rates of armed career criminals varied depending on whether they had prior convictions for violent offenses and the number of such prior convictions.
 - Nearly two-thirds (62.5%) of armed career criminals with prior violent convictions and no prior drug trafficking convictions, and more than half (55.0%) of armed career criminals with both prior violent and drug trafficking convictions were rearrested within the eight-year follow-up period. In comparison, only 36.4 percent of armed career criminals with prior drug trafficking convictions and no prior violent convictions were rearrested during the study period, but there were only 12 such offenders.
 - Furthermore, 61.7 percent of armed career criminals with three or more prior violent convictions were rearrested during the eight-year follow-up period compared to 48.9 percent of armed career criminals with one or two prior violent convictions.





Overview of Armed Career Criminal Act and Guideline Provisions

Offenders who violate 18 U.S.C. § 922(g) and are subject to enhanced penalties in the ACCA, as codified in section 924(e), constitute armed career criminals. The guideline implementing section 924(e) is §4B1.4 (Armed Career Criminal). This chapter provides a brief overview of the application of these provisions in sentencing armed career criminals.

The Armed Career Criminal Act

As part of the Comprehensive Crime Control Act, Congress established the Armed Career Criminal Act of 1984 in response to concerns that a small number of repeat offenders commit a disproportionate number of offenses.⁶ The Act focuses on the incapacitation of these habitual offenders by incarceration.⁷

The ACCA requires a 15-year mandatory minimum term of imprisonment for offenders who violate 18 U.S.C. § 922(g) and have three or more prior convictions⁸ for a “violent felony,” a “serious drug offense,” or both.⁹ Section 922(g) criminalizes the possession, receipt, or transport of a firearm by certain prohibited persons.¹⁰

Section 924(e) defines the terms “serious drug offense” and “violent felony.”¹¹ The term “serious drug offense” refers to offenses with a statutory maximum term of imprisonment of at least ten years that are (1) federal offenses under the Controlled Substances Act, the Controlled Substances Import and Export Act, or chapter 705 of title 46 (Maritime Drug Law Enforcement), or (2) state offenses that involve manufacturing, distributing, or possessing with intent to manufacture or



Who Qualifies Under ACCA?

↓
Offenders who violate 18 U.S.C. § 922(g)

AND

have three or more prior convictions for
a “violent felony,” a “serious drug offense,”
or both.



Section 922(g) criminalizes the possession, receipt, or transport of a firearm by certain prohibited persons.

distribute, a controlled substance, as defined in section 102 of the Controlled Substances Act.¹² The term “violent felony” means any crime punishable by more than one year of imprisonment, or act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by over one year of imprisonment if committed by an adult,¹³ that “has as an element the use, attempted use, or threatened use of physical force against the person of another,” or “is burglary, arson, or extortion, [or] involves use of explosives”¹⁴ The ACCA does not include a time or age limitation on the predicate convictions, except that the convictions occur prior to the instant offense.¹⁵

The provisions in the ACCA generate a great deal of litigation regarding which convictions under federal and state statutes qualify under the Act.¹⁶ This determination has been complicated by the categorical approach, an increasingly complex method for determining whether a prior conviction may serve as a predicate for ACCA purposes.¹⁷ As discussed below, this litigation appears to have impacted the number of armed career criminals sentenced during the time period studied.¹⁸

Additional Penalties for Armed Career Criminals

In addition to increased penalties under the ACCA, armed career criminals may be subject to increased penalties under other statutes or pursuant to congressional directives. As discussed below, some armed career criminals are subject to mandatory minimum penalties under 18 U.S.C. § 924(c) in addition to the penalties in the ACCA.¹⁹ Section 924(c) prohibits the use, carrying, or possession of a firearm during or in furtherance of a crime of violence or a drug trafficking crime.²⁰ Section 924(c) provides a mandatory consecutive²¹ penalty that ranges from five years to life imprisonment, with penalties that increase incrementally within that range if the firearm was used, if the offender possessed or the offense involved certain types of firearms, or if the offender has prior section 924(c) convictions.²²

Furthermore, Congress directed the Commission to “assure that the guidelines specify a sentence to a term of imprisonment *at or near the maximum term authorized*” for offenders who (1) are at least 18 years old, (2) have been convicted of a felony “crime of violence” or a controlled substance offense, and (3) have been previously convicted of two or more felonies, each of which is a “crime of violence” or such a controlled substance offense.²³ The Commission implemented this directive by promulgating the career offender guideline, §4B1.1 (Career Offender), which subjects offenders who reach career offender status to significantly higher guideline ranges.²⁴ Career offender status may affect the applicable guideline range for an armed career criminal.²⁵

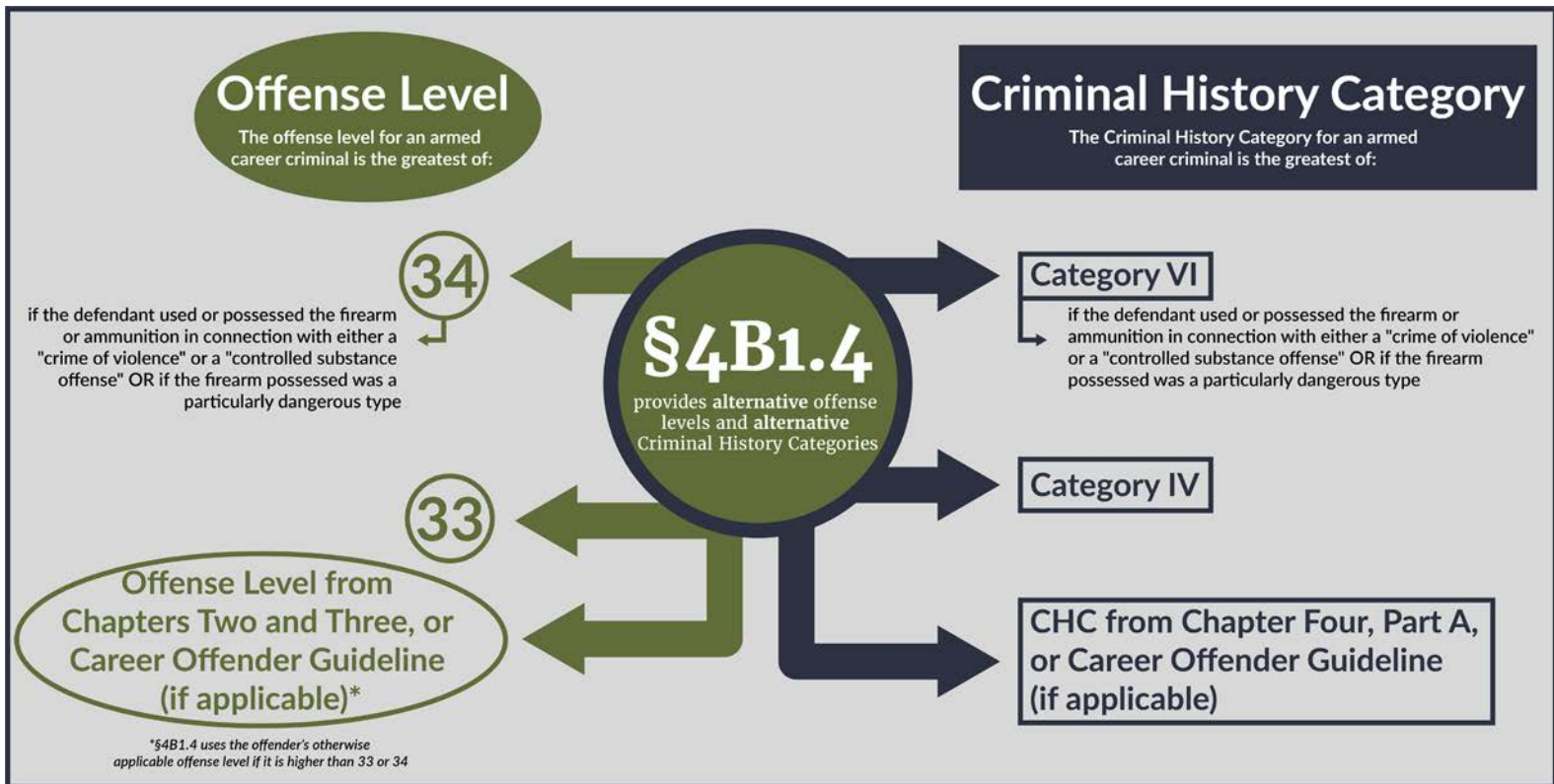


The Armed Career Criminal Guideline

The guideline implementing section 924(e) is §4B1.4. Section 4B1.4 provides alternative offense levels and alternative criminal history categories.²⁶ For the offense level, §4B1.4 assigns an offense level of 33, or 34 if the defendant used or possessed the firearm or ammunition in connection with a “crime of violence” or a “controlled substance offense,”²⁷ or if the firearm possessed was of a particularly dangerous type.²⁸ Alternatively, §4B1.4 uses the offender’s otherwise applicable offense level if it is higher than level 33 or 34.²⁹ For Criminal History Category (CHC), §4B1.4 assigns a CHC that is the greatest of: Category IV; Category VI if the defendant used or possessed the firearm

or ammunition in connection with a “crime of violence” or a “controlled substance offense,” or if the firearm possessed was of a particularly dangerous type; or the offender’s otherwise applicable criminal history category.³⁰

Counting prior convictions for purposes of the ACCA differs from the procedure for counting prior convictions pursuant to the guidelines.³¹ In particular, the time periods of counting prior sentences under the guidelines’ criminal history rules do not apply to the determination of whether a defendant is subject to an enhanced sentence under section 924(e).³² As a result, convictions that ordinarily would not count under the criminal history rules in the guidelines nevertheless trigger the mandatory penalty imposed by the ACCA.³³



Intersection with §2K2.1

As noted above, §4B1.4 instructs courts to use the offense level determined by applying Chapters Two and Three if it results in a higher offense level than the other alternatives set forth in §4B1.4(b).³⁴ As all armed career criminals are convicted under section 922(g),³⁵ the otherwise applicable Chapter Two guideline is §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition).³⁶ Generally, the base offense levels in §2K2.1 depend on the type of firearm, the number of prior felony convictions of crimes of violence or controlled substance offenses, and the defendant's statute of conviction.³⁷ Section 2K2.1 has six specific offense characteristics (SOCs) that provide increases based on aggravating factors, and one SOC that provides for a decrease if the defendant possessed the firearms or ammunition for a lawful sporting purpose and did not discharge or otherwise unlawfully use them.³⁸

Intersection with §2K2.4

If an armed career criminal has an additional count of conviction under section 924(c), the 924(c) count is sentenced under §2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes).³⁹ The §2K2.4 guideline provides specific rules that depend on the statute of conviction.⁴⁰ For convictions under section 924(c), the guideline sentence is the minimum term of imprisonment required by statute and Chapters Three and Four do not apply to the section 924(c) count.⁴¹

Relief from Mandatory Minimum Penalties through Substantial Assistance

Armed career criminals may receive relief from a mandatory minimum penalty if the prosecution files a motion based on the defendant's "substantial assistance" pursuant to 18 U.S.C. § 3553(e). If the government files a section 3553(e) motion, the court has the authority to impose a sentence below the mandatory minimum based upon the defendant's substantial assistance to the government in the investigation or prosecution of another person who has committed an offense.⁴²





Data Used for This Report

This report includes three data analysis chapters, providing a comprehensive and multifaceted examination of armed career criminals.

Chapter Five provides an examination of offenders sentenced as armed career criminals in fiscal year 2019 using data from the Commission's Individual Offender Datafile to provide an overview of offender and offense characteristics, guideline application, and sentencing outcomes for armed career criminals.⁴³ This chapter also includes selected ten-year trends for fiscal years 2010 to 2019.

Chapter Six provides an examination of the criminal histories of armed career criminals sentenced in 2019 using data from the

Commission's criminal history datafile to examine the type and extent of prior convictions of armed career criminals. This chapter also includes analyses of offenders' criminal history pathways to armed career criminal status.

Chapter Seven provides an examination of the recidivism of armed career criminals who reentered the community between 2009 and 2011 using data from the Commission's recidivism datafiles to examine the type and extent of rearrests of armed career criminals during an eight-year follow-up period. This chapter also includes analyses of the relationship between recidivism and criminal history pathways to armed career criminal status.



Who Are Armed Career Criminals?

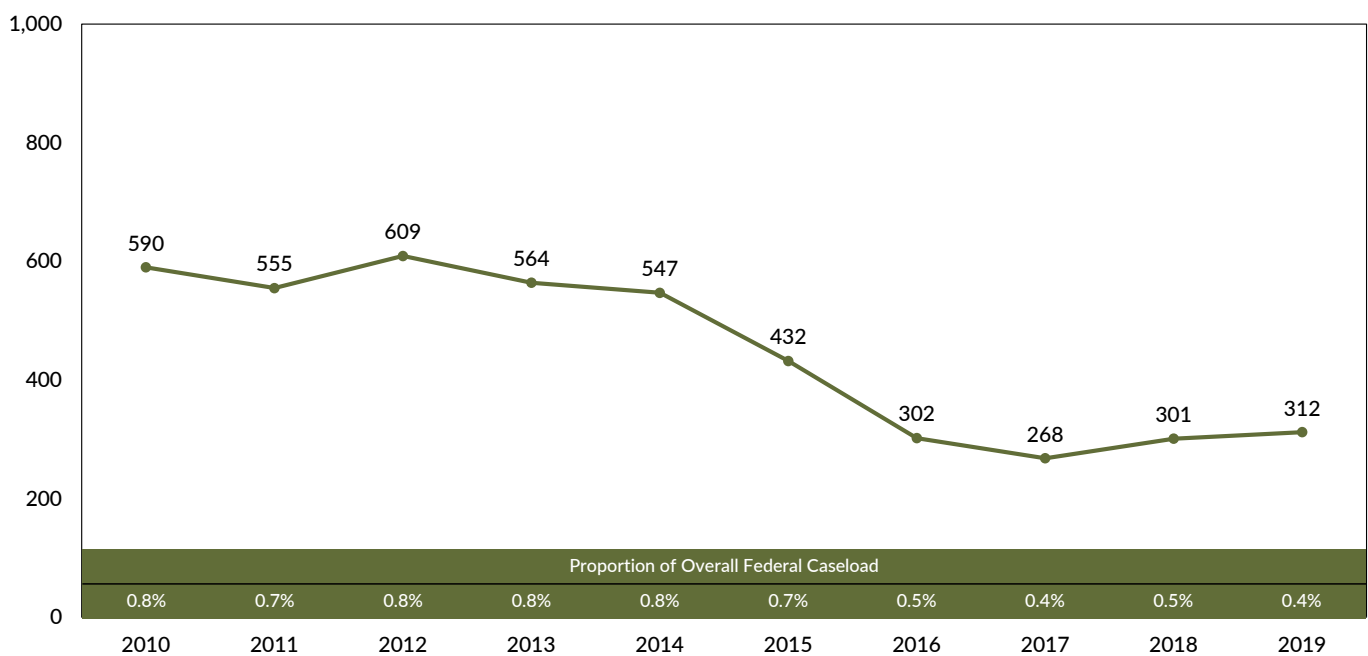
This chapter uses data from the Commission's fiscal year 2010 through 2019 Individual Offender Datafiles to provide information on armed career criminals, including offender characteristics, guideline application, and sentencing trends.

Number of Armed Career Criminal Convictions

Armed career criminals consistently comprise a small portion of the overall federal criminal caseload. Both the overall number and proportion of offenders sentenced as armed career criminals decreased by about half during the study period. The number of armed career criminals decreased from 590 in fiscal year 2010 to 312 in fiscal year 2019 (Figure 1).⁴⁴ Similarly, armed career criminals accounted for 0.8 percent of federal offenders sentenced in fiscal year 2010, compared to 0.4 percent in fiscal year 2019.

Litigation surrounding the ACCA appears to have impacted the number of armed career criminals sentenced during the time period studied. As discussed above, the provisions in the ACCA generate a great deal of litigation regarding which convictions under federal and state statutes qualify under the Act.⁴⁵ Noteworthy is the litigation culminating in the Supreme Court striking the residual clause as unconstitutionally vague in *Johnson v. United States* that effectively narrowed the criteria for predicate convictions.⁴⁶ Such litigation has reduced the predicates that can qualify under the ACCA, and, in turn, may have contributed to the decrease in the number of armed career criminals sentenced during the study period.⁴⁷

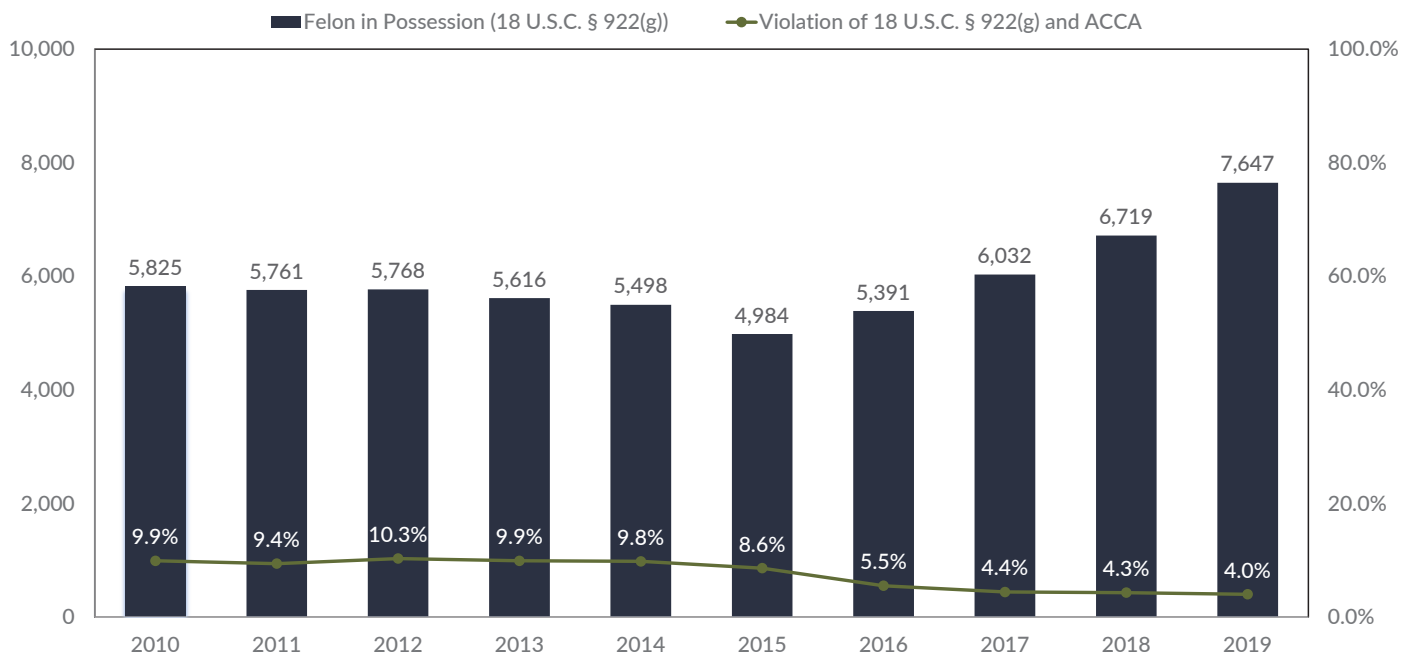
Figure 1
Number of Armed Career Criminals and as a Proportion of the Overall Federal Caseload
Fiscal Years 2010 - 2019



Armed career criminals consistently comprise a small portion of the federal criminal caseload, representing less than one percent of the federal criminal caseload. The number of armed career criminals decreased by almost half during the study period.



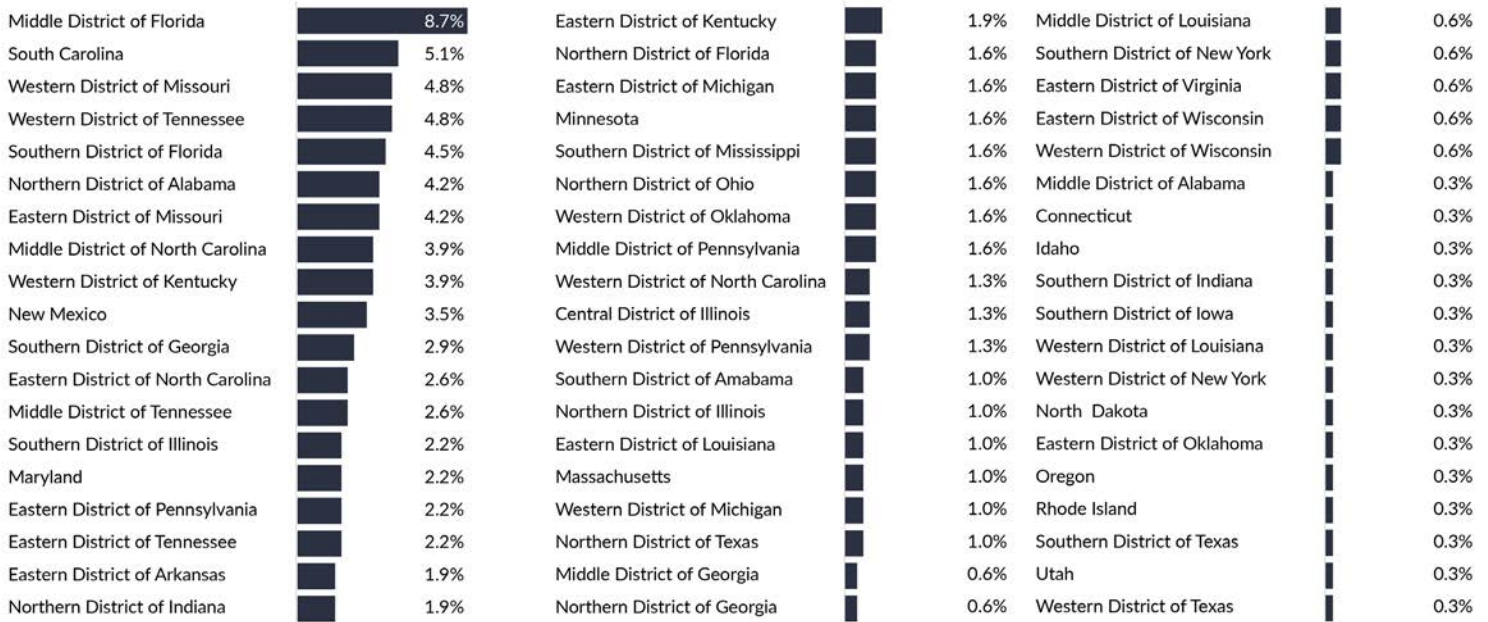
Figure 2
Armed Career Criminals as a Proportion of All Federal Felon
in Possession of a Firearm Offenders (18 U.S.C. § 922(g))
Fiscal Years 2010 - 2019



The decrease in the proportion of ACCA convictions during the study period is in contrast to an overall increase in the number of firearms convictions. As shown in Figure 2, the number of offenders convicted under section 922(g)⁴⁸ was relatively constant from 2010 through 2014, decreased slightly in 2015, and has increased steadily since that year. However, the proportion of section 922(g) offenders who also were convicted under the ACCA decreased by more

than half during that time. As shown in Figure 2, armed career criminals comprised 9.9 percent of offenders convicted under section 922(g) in fiscal year 2010, compared to 4.0 percent in fiscal year 2019. This decrease is likely attributable to a number of factors, including the impact of the uncertainty from circuit conflicts and ongoing litigation, discussed above, that led to Supreme Court decisions such as the *Johnson* decision.⁴⁹

Table 1
Prevalence of Armed Career Criminals in Each Federal Judicial District
Fiscal Year 2019



Geographic Distribution

In fiscal year 2019, 11 of the 94 federal judicial districts accounted for half (50.5%) of offenders sentenced as armed career criminals.⁵⁰ The largest concentration of armed career criminals was in the Middle District of Florida (8.7%) (Table 1). The remaining ten districts were: District of South Carolina (5.1%), Western District of Missouri (4.8%), Western District of Tennessee

(4.8%), Southern District of Florida (4.5%), Northern District of Alabama (4.2%), Eastern District of Missouri (4.2%), Middle District of North Carolina (3.9%), Western District of Kentucky (3.9%), District of New Mexico (3.5%), and the Southern District of Georgia (2.9%). In 14 districts, only one offender was sentenced as an armed career criminal. In 37 districts, zero offenders were sentenced as armed career criminals.⁵¹



Table 2
Offender Characteristics of Armed Career Criminals
Fiscal Year 2019

Offender Characteristics	
Race/Ethnicity	
Black	73.7%
White	15.7%
Hispanic	9.6%
Other	1.0%
U.S. Citizen	99.4%
Male	98.7%
Median Age	38 Years

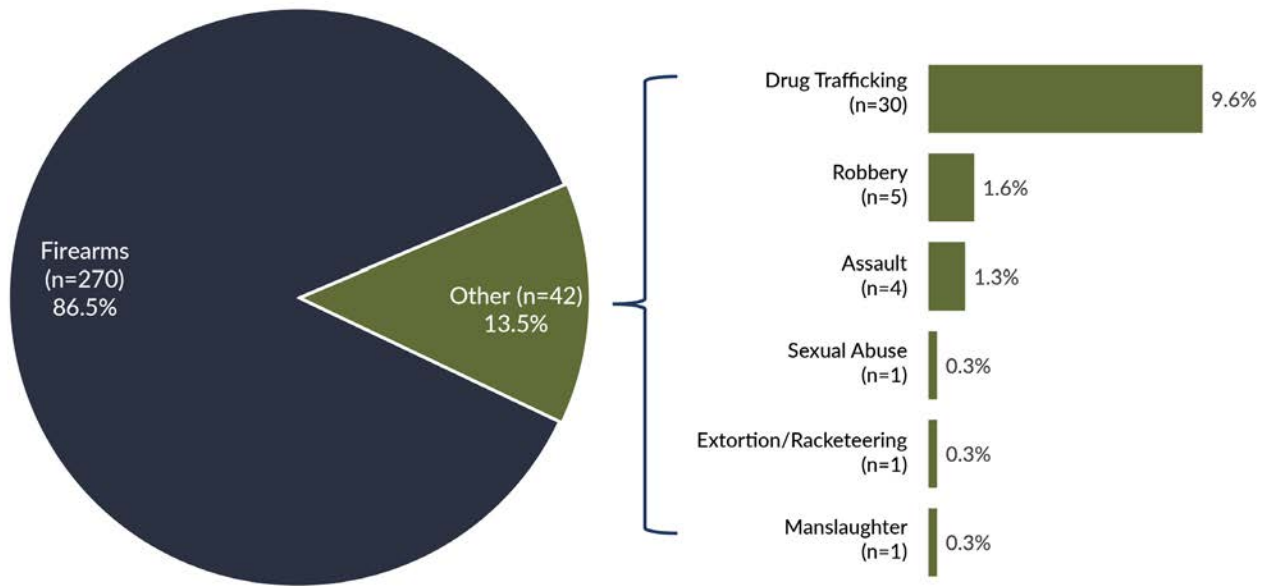
Offender Characteristics

Black offenders comprised nearly three-quarters (73.7%) of armed career criminals sentenced in fiscal year 2019 (Table 2).⁵² Smaller proportions of offenders were White (15.7%), Hispanic (9.6%), or Other races (1.0%).⁵³

Nearly all armed career criminals, 99.4 percent, were United States citizens, and nearly all armed career criminals, 98.7 percent, were male.

At sentencing, armed career criminals ranged from 21 to 74 years of age, with a median of 38 years of age.

Figure 3
 Primary Offense Type for Armed Career Criminals
 Fiscal Year 2019



Guideline Application

The majority (86.5%) of armed career criminals sentenced in fiscal year 2019 had §2K2.1 as the primary sentencing guideline (Figure 3).⁵⁴ However, 13.5 percent of armed career criminals had a primary sentencing guideline other than

§2K2.1.⁵⁵ Most of these offenders (9.6%) were sentenced for drug trafficking,⁵⁶ followed by robbery (1.6%), and assault (1.3%). Less than one percent of armed career criminals were sentenced for sexual abuse, extortion/racketeering, or manslaughter.⁵⁷



Table 3
Comparison of Criminal History Category for Armed Career Criminals Prior to and After Application of Armed Career Criminal Guideline (§4B1.4)
Fiscal Year 2019

CHC After Application of §4B1.4	TOTAL	CHC Prior to Application of §4B1.4					
		CHC I	CHC II	CHC III	CHC IV	CHC V	CHC VI
TOTAL	312	3	7	20	62	66	154
CHC IV	44	3	2	8	31	0	0
CHC V	37	0	0	0	0	37	0
CHC VI	231	0	5	12	31	29	154

Section 4B1.4 provides for a minimum CHC of IV, but most armed career criminals were in CHC VI, the most serious criminal history category.⁵⁸ Following application of the armed career criminal guideline, nearly three-quarters (74.0%) of armed career criminals were in CHC VI, followed by CHC IV (14.1%) and CHC V (11.9%). However, the overwhelming majority (90.4%) of armed career criminals qualified for the three highest CHCs prior to application of

the armed career criminal guideline. Nearly half (49.4%) of armed career criminals had sufficient criminal history points to qualify for CHC VI prior to application of the armed career criminal guideline, while approximately one-fifth were in both CHC V (21.2%) and CHC IV (19.9%). Table 3 shows the number of offenders in each CHC prior to and after application of the armed career criminal guideline.

Additional Penalties

The ACCA provides for a 15-year mandatory minimum term of imprisonment. Two additional penalties cover conduct similar to that proscribed in the ACCA that potentially expose armed career criminals to penalties in excess of the 15-year term: (1) section 924(c) and (2) Career Offender.⁵⁹

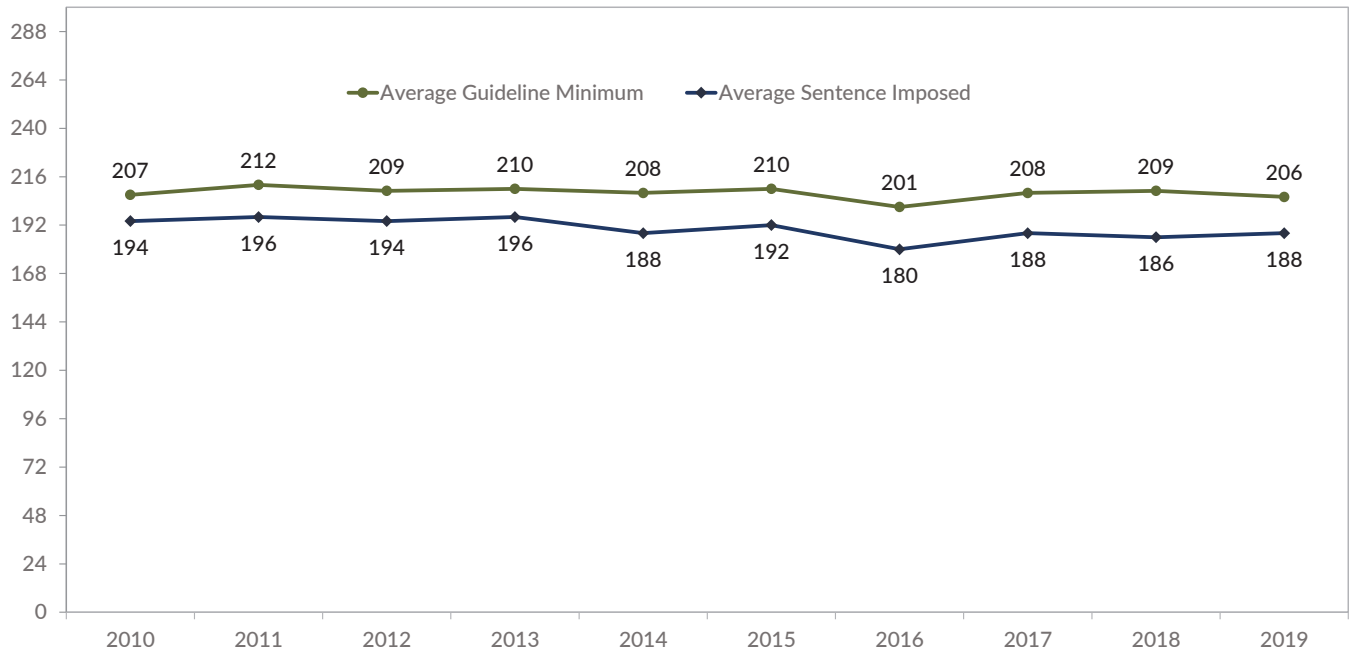
As discussed above, section 924(c) provides incremental, consecutive mandatory minimum penalties for the use, carrying, or possession of a firearm during or in furtherance of a crime of violence or a drug trafficking crime.⁶⁰ In fiscal year 2019, 30 of the 312 (9.6%) armed career criminals also had convictions under section 924(c) and were subject to additional mandatory minimum penalties. Of these 30 offenders, over three-quarters (n=23) were subject to

a consecutive five-year term. The remaining offenders were subject to a consecutive term of seven years (n=4) or ten years or longer (n=3).

In addition, offenders convicted of a felony “crime of violence” or “controlled substance offense” who have at least two prior felony convictions of either a “crime of violence” or a “controlled substance offense” are subject to higher guideline ranges under §4B1.1 (Career Offender), the guideline implementing the directive in 28 U.S.C. § 994(h).⁶¹ In fiscal year 2019, 47 of the 312 armed career criminals (15.1%) also qualified as career offenders and were subject to the offense level and CHC increases in §4B1.1. In addition, 18 of the 312 (5.8%) armed career criminals were subject to both penalty provisions with convictions under section 924(c) *and* career offender status.



Figure 4
Trend in Average Guideline Minimum and Average Sentence Imposed for Armed Career Criminals
Fiscal Years 2010 - 2019

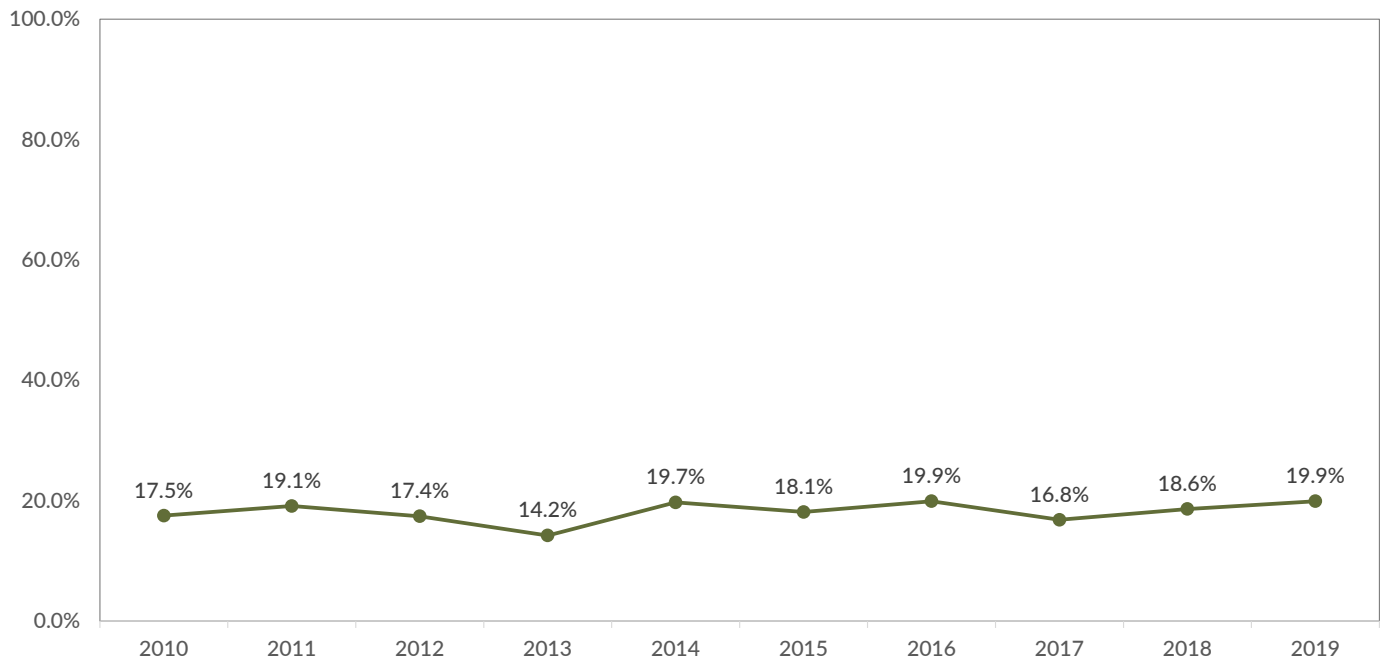


Sentencing Trends

The average guideline minimum and average sentence imposed for armed career criminals were relatively consistent during the ten-year study period. As shown in Figure 4, the average guideline minimum ranged from 201 months to 212 months and the average sentence ranged

from 180 months to 196 months.⁶² The average sentences imposed were consistently similar to the average guideline minimums, in large part because the 15-year mandatory minimum remained applicable at sentencing for the majority of armed career criminals during the time period.

Figure 5
Armed Career Criminals with Relief From Mandatory Minimum Sentence
Fiscal Years 2010 - 2019

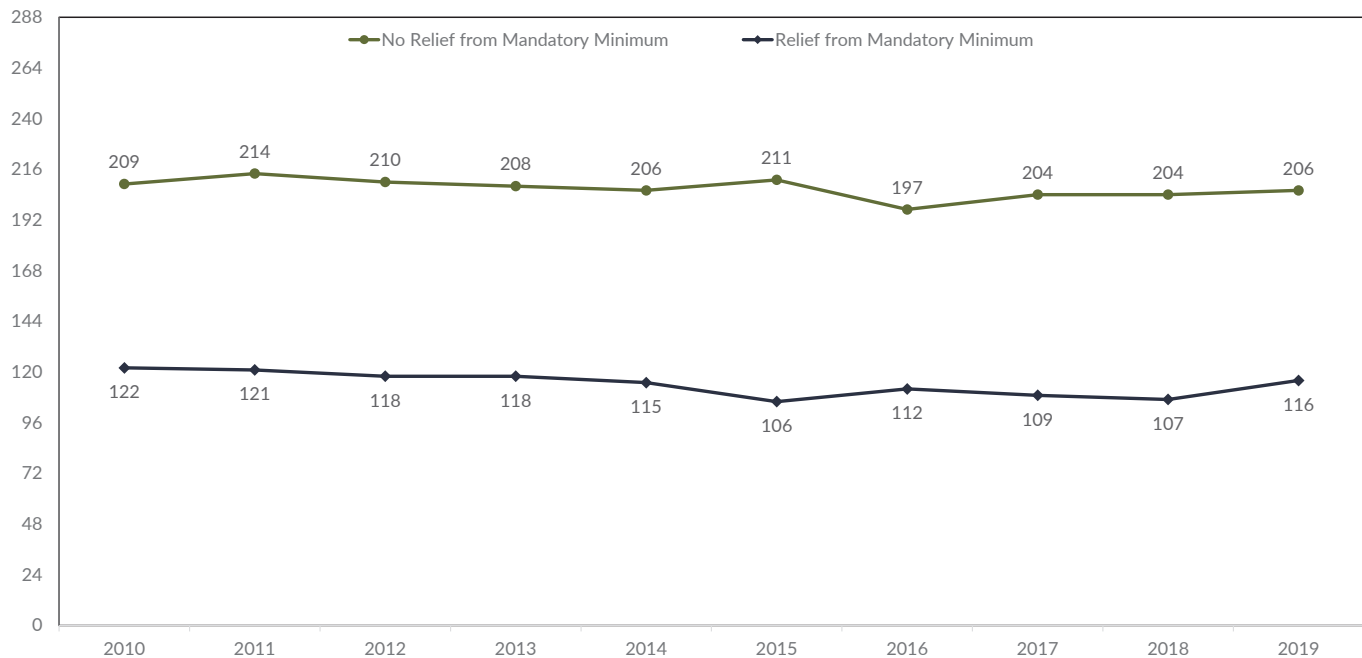


Some armed career criminals, however, did receive relief from the 15-year mandatory minimum penalty following a motion by the government pursuant to 18 U.S.C. § 3553(e) based on the offender's substantial assistance.⁶³ During the ten-year study period, nearly one-

fifth of armed career criminals were relieved from the mandatory minimum under this statutory provision, while the majority of offenders remained subject to the 15-year mandatory minimum penalty at sentencing (Figure 5).⁶⁴



Figure 6
Average Sentences for Armed Career Criminals by Relief Status
Fiscal Years 2010 - 2019

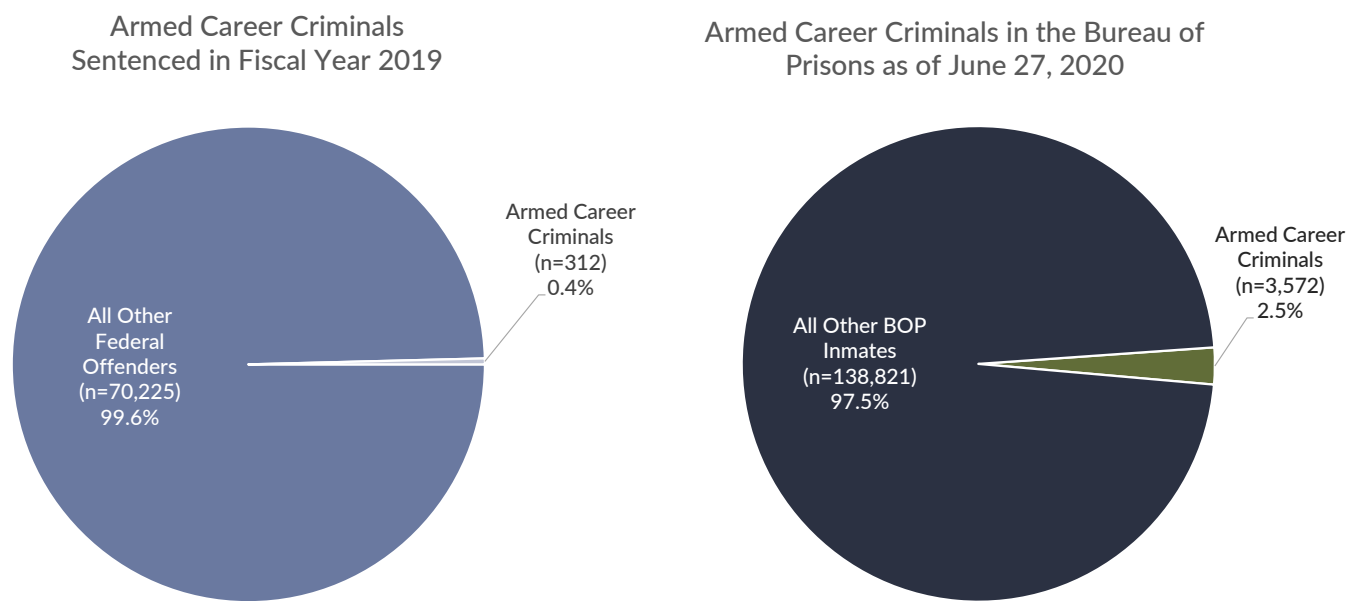


The average sentence imposed for armed career criminals who did not receive relief was substantially longer than for those who did receive relief. As shown in Figure 6, the average sentences generally were longer than the 15-year mandatory minimum for armed career criminals who remained subject to the mandatory minimum at sentencing, ranging from 197 months to 214 months. In comparison, imprisonment sentences for offenders who received relief from the mandatory minimum averaged ten years or less, ranging from 106 months to 122 months during the time period.

To further assess sentencing courts' consideration of ACCA penalties in relation to guideline ranges, the Commission examined the sentences imposed for the 3,321 armed career criminals

who remained subject to the 15-year penalty at sentencing.⁶⁵ In more than half (56.8%, n=1,885) of those cases, the guideline minimums were greater than the 15-year statutory mandatory minimum. Even though courts retained discretion to sentence below the guideline minimums, as long as the 15-year statutory minimum was met, most did not. The majority (61.3%) of courts imposed sentences longer than 15 years. The average sentence imposed for these offenders was 224 months, six months longer than the average guideline minimum of 218 months and nearly four years (44 months) longer than the 15-year mandatory minimum penalty. In contrast, just over one-third (38.7%) of courts imposed a 15-year (180 months) sentence.

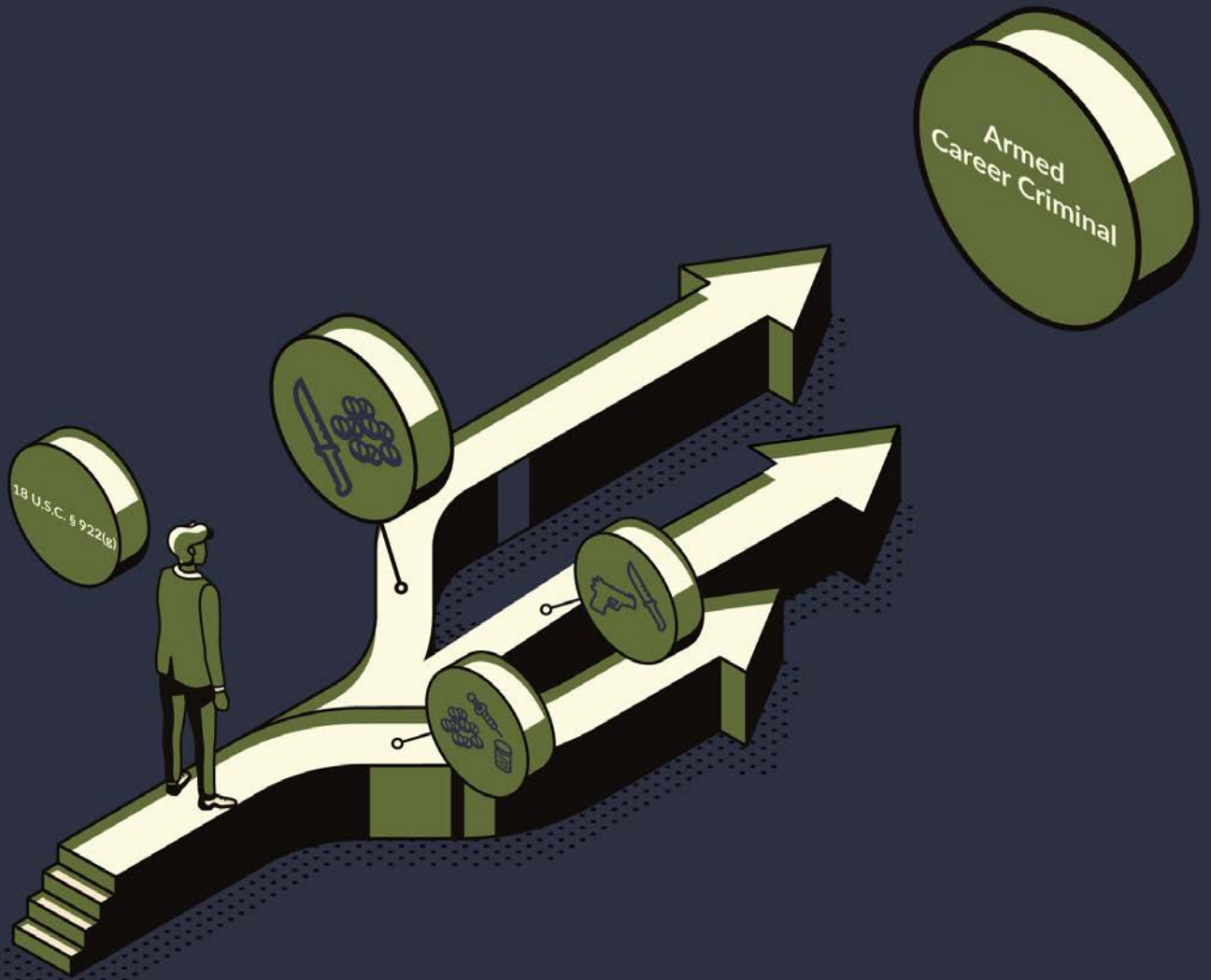
Figure 7
Comparison of Armed Career Criminals Sentenced Annually to
Armed Career Criminals in the Federal Bureau of Prisons Population



Armed Career Criminals in the Bureau of Prisons Population

Given the length of the sentences imposed and the relatively small portion of armed career criminals relieved of the mandatory minimum penalty, armed career criminals represent a slightly larger proportion of the overall federal prison population than their proportion of the annual

federal caseload. As demonstrated above, armed career criminals represent a very small portion of federal offenders sentenced each year (0.4% in fiscal year 2019). A total of 3,572 offenders in Federal Bureau of Prisons (BOP) custody as of June 27, 2020 were sentenced pursuant to the ACCA. This represented 2.5 percent of the total BOP population serving a sentence for a federal conviction at that time (Figure 7).⁶⁶





The Criminal History of Armed Career Criminals

Criminal History Datafile

In 2016, the Commission began collecting information on the number of convictions and the types of offenses in the criminal histories of federal offenders as part of an ongoing research project.⁶⁷ For this report, the Commission collected information from the criminal histories of 312 armed career criminals sentenced in fiscal year 2019 for whom complete documentation was submitted to the Commission.

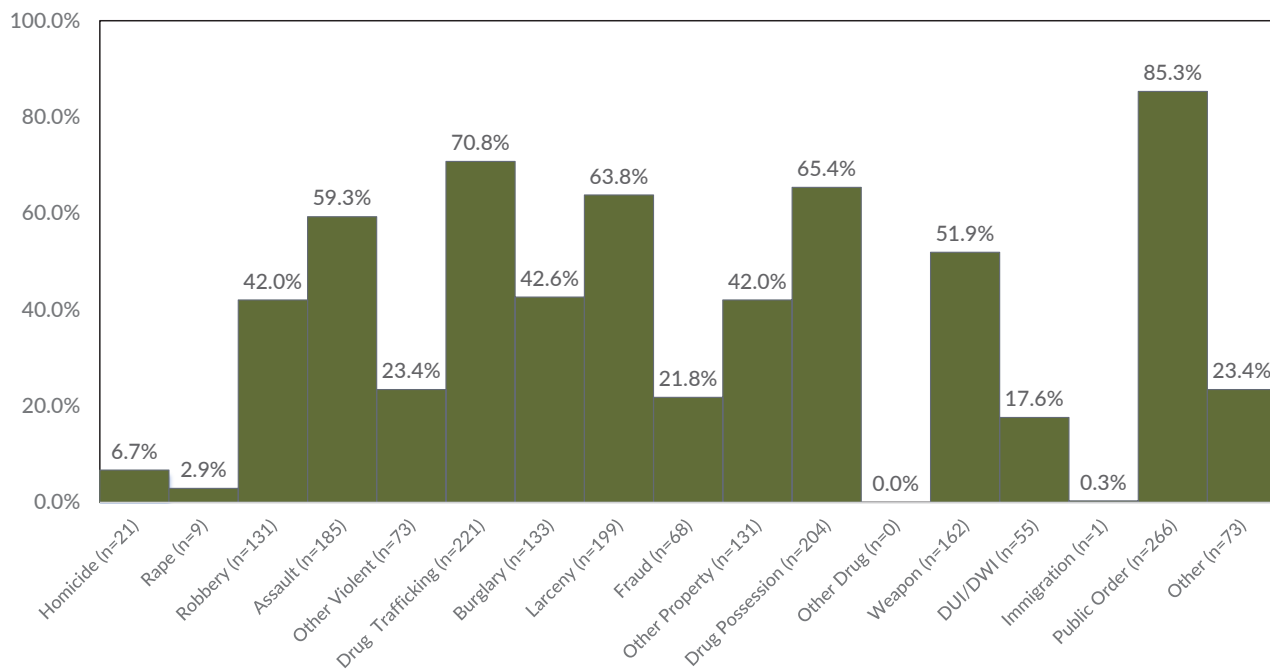
Type and Extent of Prior Criminal Convictions

Armed career criminals have extensive and diverse criminal histories. On average, armed career criminals

had 14 prior convictions overall, and an average of five prior convictions for predicate offenses. The most common prior conviction for armed career criminals was for a public order offense; the overwhelming majority (85.3%) of armed career criminals had at least one prior conviction for such an offense.⁶⁸ Drug trafficking was the second most common offense, consistent with its designation as a predicate offense under the ACCA; 70.8 percent of armed career criminals had at least one prior conviction for a drug trafficking offense, and 35.6 percent had three or more such convictions. Figure 8 shows the proportion of armed career criminals with at least one prior conviction for each of 17 offense types.⁶⁹



Figure 8
Type of Prior Convictions for Armed Career Criminals
Fiscal Year 2019



Overall, 83.7 percent of armed career criminals had at least one prior conviction for a violent offense and 57.7 percent had three or more such convictions.⁷⁰ Rates of prior convictions for specific types of violent offenses varied. More than half (59.3%) of armed career criminals had at least one prior conviction for assault, and equal proportions had prior convictions for burglary⁷¹ (42.6%) and robbery (42.0%). Fewer than one-quarter of armed career criminals had at least one prior conviction for an “other” type of violent offense (23.4%),⁷² homicide (6.7%), or rape (2.9%).

The prevalence of prior violent convictions among armed career criminals (albeit generally more serious) parallels findings in the Commission’s prior research on federal firearms offenders. The *Criminal History Report* demonstrated that firearms offenders were more likely to have violence in their criminal histories compared to other offender groups studied. A majority (62.0%) of firearms offenders had a prior conviction for at least one violent offense. Assault was the most common violent offense, with 47.7 percent of firearms offenders having at least one such prior conviction. One-fifth of firearms offenders had at least one prior conviction for robbery (20.7%), and less than five percent had at least one prior conviction either for homicide (4.2%) or rape (3.3%).⁷³

Criminal History Pathways to Armed Career Criminal Status

This section of the report examines the composition of armed career criminals' prior convictions to determine their pathways to armed career criminal status. As discussed above, an offender qualifies as an armed career criminal pursuant to the ACCA if the offender violates section 922(g) and has three or more convictions for a "violent felony," a "serious drug offense," or both.⁷⁴ The following analysis examines the combinations of prior convictions for violent felonies and serious drug offenses for armed career criminals sentenced in fiscal year 2019.

This analysis follows the pathways methodology the Commission used for its *Career Offender Report*. As discussed above, the career offender guideline applies to offenders whose instant offense of conviction is a felony "crime of violence" or a "controlled substance offense"

and have at least two prior felony convictions of either a "crime of violence," a "controlled substance offense," or both.⁷⁵ In the *Career Offender Report*, the Commission divided career offenders into three categories to distinguish among those individuals designated as career offenders based on the potential combinations of instant and prior offense provided for in the guideline: drug trafficking only, violent only, and mixed.⁷⁶ The analysis of these three categories of career offenders showed clear and notable differences between offenders whose instant and prior convictions consisted only of drug trafficking offenses and those who committed a violent offense. Specifically, the *Career Offender Report* demonstrated that career offenders who committed a violent offense had a more serious and extensive criminal history, recidivated at a higher rate, and were more likely to commit another violent offense in the future as compared to career offenders who only committed drug trafficking offenses.⁷⁷

Figure 9
Criminal History Pathways to Armed Career Criminal Status
Fiscal Year 2019

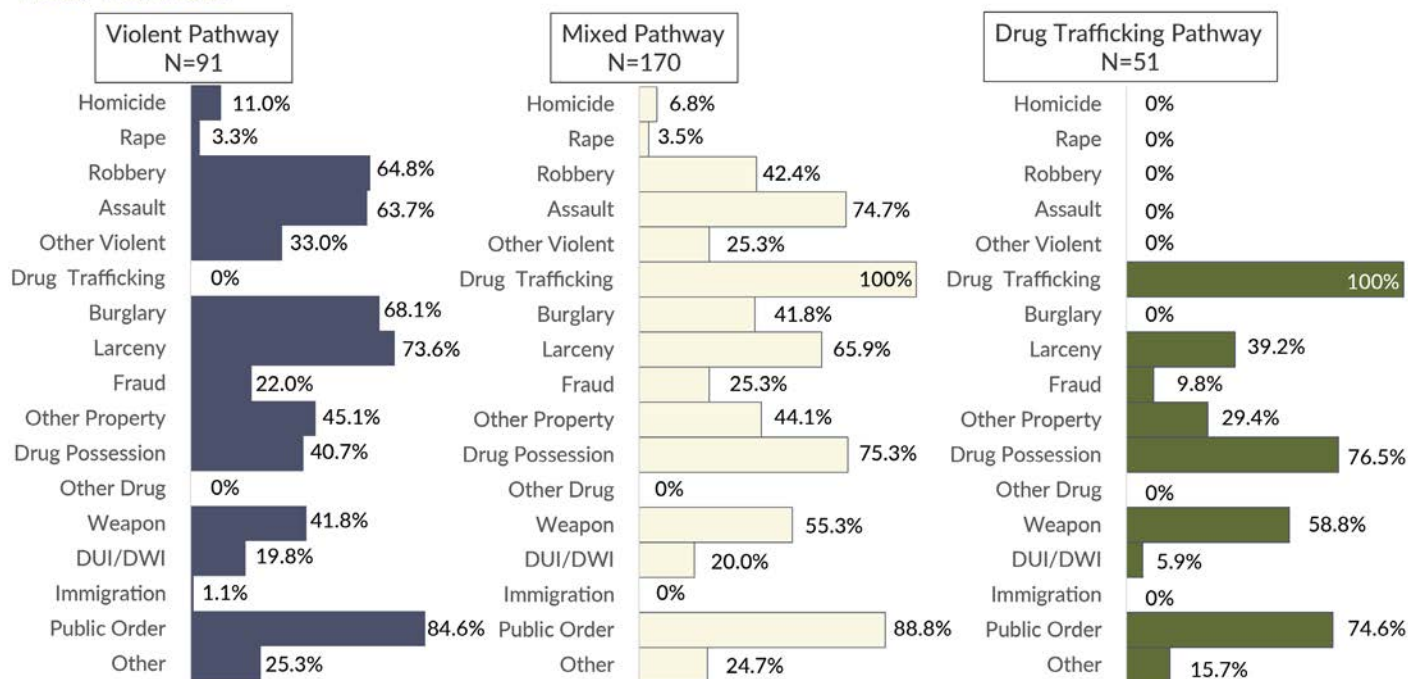


Prompted by its 2016 findings for career offenders, the Commission explored the pathways to armed career criminal status for offenders sentenced in 2019. This analysis classified armed career criminals into three pathway categories based on the criteria set forth in section 924(e):

- *Violent Pathway*, consisting of three or more prior convictions for a violent offense and no prior convictions for a drug trafficking offense;
- *Mixed Pathway*, consisting of any combination of prior convictions of three or more violent and/or drug trafficking offenses; and
- *Drug Trafficking Pathway*, consisting of three or more prior convictions for a drug trafficking offense and no prior convictions for a violent offense.

The overwhelming majority (83.7%) of armed career criminals sentenced in fiscal year 2019 had a prior conviction for a violent offense. As shown in Figure 9, more than one-quarter (29.2%) of armed career criminals were in the violent pathway and more than half (54.5%) were in the mixed pathway. Offenders in the drug trafficking pathway, with no prior convictions for a violent offense, comprised the remaining 16.3 percent of armed career criminals sentenced in fiscal year 2019.

Figure 10
Types of Prior Convictions for Armed Career Criminals in Each Pathway
Fiscal Year 2019



Aside from the distinctions established by the pathway definitions, there were differences among the three pathways comparing types of prior convictions (Figure 10). The prevalence and types of prior convictions among offenders in the three armed career criminal pathways mirrors the Commission’s previous findings for career offender pathways. In the *Career Offender Report*, the Commission demonstrated that career offenders who committed a violent offense had a more serious and extensive criminal history.⁷⁸ A similar pattern for armed career criminals is demonstrated here.

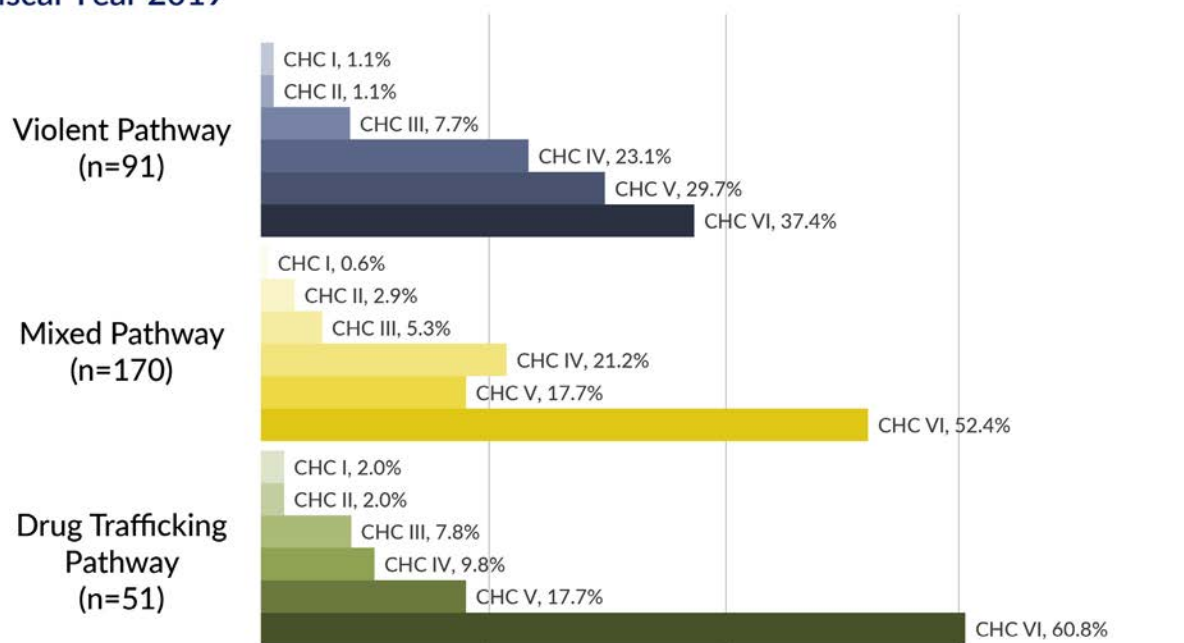
Armed career criminals in the drug trafficking pathway had less variation in their criminal histories compared to the other two groups of offenders, but they also had lower rates of prior convictions for most types of offenses. Armed career criminals in the drug trafficking pathway had the smallest portion of offenders with at least one prior conviction for larceny (39.2%), other property (29.4%), other offenses (15.7%),⁷⁹ fraud (9.8%), and DUI/DWI (5.9%). The only offenses for which armed career criminals in the drug trafficking pathway had the largest portion of prior convictions were drug possession (76.5%) and weapon offenses (58.8%).



By comparison, and aside from their prior violent convictions, armed career criminals in the mixed pathway had more extensive criminal histories than offenders in the drug trafficking pathway. The portion of armed career criminals in the mixed pathway with at least one prior conviction for larceny (65.9%), other property (44.1%), fraud (25.3%), other offenses (24.7%), and DUI/DWI (20.0%) was notably higher compared to drug trafficking pathway offenders.

Similarly, the portion of armed career criminals in the violent pathway with at least one prior conviction for larceny (73.6%), other property (45.1%), other offenses (25.3%), fraud (22.0%), and DUI/DWI (19.8%) was notably higher compared to offenders in the drug trafficking pathway. In turn, the portion of armed career criminals in the violent pathway with a least one conviction for burglary (68.1%), robbery (64.8%), other violent (33.0%), and homicide (11.0%) was higher compared to offenders in the mixed pathway.

Figure 11
Calculated CHC Prior to Application of §4B1.4 for Armed Career Criminals in
Each Criminal History Pathway
Fiscal Year 2019



Sentencing and Offense Characteristics for Offenders in Each Criminal History Pathway

This section provides comparisons of sentencing and offense characteristics for armed career criminals in each of the three criminal history pathways. As shown in Figure 11, most armed career criminals in each pathway qualified for the three highest CHCs prior to the application of §4B1.4(c). Based on the calculation of criminal history points under the guidelines, the overwhelming majority of offenders in the violent (90.2%), mixed (91.3%), and drug trafficking (88.3%) pathways were in the combined CHCs of IV, V, and VI.

However, the distribution of offenders across the three highest CHCs varied. More than half of armed career criminals in the mixed (52.4%)

and drug trafficking (60.8%) pathways were in the highest CHC of VI prior to the application of §4B1.4(c), compared to slightly more than one-third (37.4%) of offenders in the violent pathway. Correspondingly, a larger proportion of offenders in the violent pathway were in CHC IV (23.1%) and CHC V (29.7%) prior to the application of §4B1.4(c).

The seeming incongruity of comparatively less serious CHCs among arguably more serious, violent offenders is due to the more expansive rules for counting predicate convictions pursuant to the ACCA as compared to the rules for counting prior convictions pursuant to the guidelines. As discussed above, because of the differences in the rules governing priors, convictions that ordinarily would not count under the guidelines' criminal history rules



Table 4
Selected Sentencing Information for Armed Career Criminals in Each Pathway
Fiscal Year 2019

	Violent Pathway (n=91)	Mixed Pathway (n=170)	Drug Trafficking Pathway (n=51)
Average Guideline Minimum	203 months	208 months	206 months
Average Sentence Imposed	189 months	190 months	181 months
Relief from Mandatory Minimum	18.7%	20.0%	21.6%
Conviction Under 18 U.S.C. § 924(c)	9.9%	11.2%	3.9%
Career Offender (§4B1.1)	9.9%	16.5%	19.6%

nevertheless trigger the mandatory penalty imposed by the ACCA.⁸⁰ These differences have a distinct impact on prior violent convictions compared to prior drug trafficking convictions. For example, the 312 armed career criminals in this study had a total of 1,087 prior convictions involving at least one violent offense. Approximately half (52.0%) of those violent prior convictions did not qualify for criminal history points under the guidelines but could qualify as ACCA predicates. In comparison, the armed career criminals in this study had a total of 589 prior convictions involving at least one drug trafficking offense. Approximately one-third (32.6%) of those drug trafficking convictions did not qualify for criminal history points under the guidelines.⁸¹ Three of the 312 armed career criminals did not receive criminal history points for any prior violent or drug trafficking convictions.

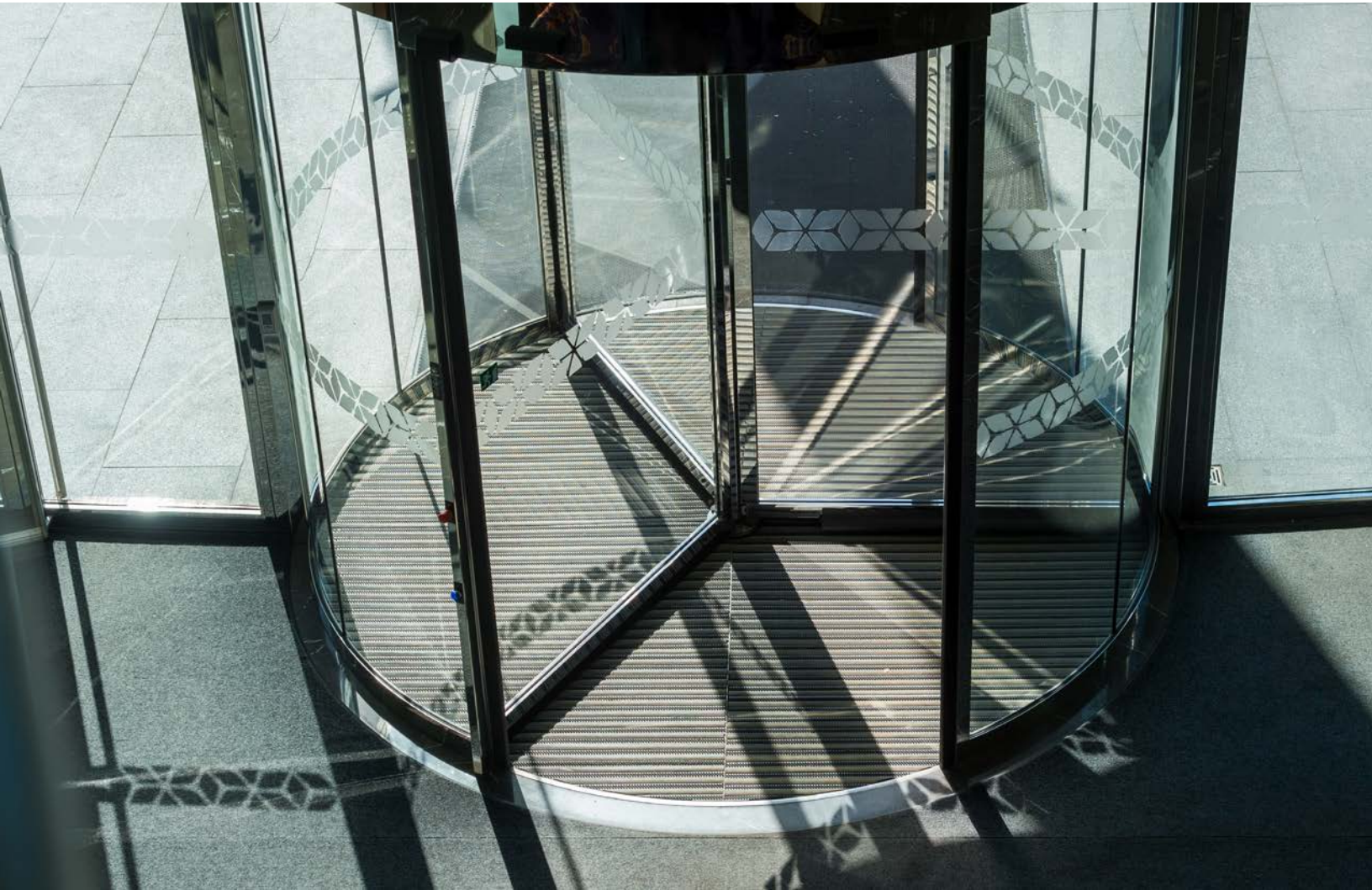
Sentencing outcomes were similar among armed career criminals in the three pathways. As shown in Table 4, the average guideline minimums ranged from 203 to 208 months, and the average sentences ranged from 181 to 190 months. Offenders in the drug trafficking pathway had the greatest difference between the average guideline minimum and the average sentence imposed. The average sentence imposed of 181 months for drug trafficking pathway offenders was 12.1 percent lower than the average guideline minimum of 206 months. By comparison, the average sentences imposed for violent (189 months) and mixed pathway (190 months) offenders were 6.9 percent and 8.7 percent lower than their average guideline minimums of 203 and 208 months, respectively. In addition, approximately one-fifth of offenders in each of the three criminal history pathways had relief from the 15-year mandatory minimum.

Additional Penalties

As described above, section 924(c) and the career offender guideline cover conduct similar to the proscribed conduct in the ACCA, and these provisions potentially expose armed career criminals to penalties in excess of the 15-year mandatory minimum penalty. Those additional penalties applied differently comparing offenders in the three pathways.

Armed career criminals whose prior convictions included *violent* offenses had higher rates of section 924(c) convictions in conjunction with their instant offense of conviction (9.9% for violent pathway and 11.2% for mixed pathway) compared to drug trafficking pathway offenders (3.9%).

Armed career criminals whose prior convictions included *drug trafficking* offenses qualified for career offender status at higher rates (16.5% for mixed pathway and 19.6% for drug trafficking pathway) compared to violent pathway offenders (9.9%).





Recidivism of Armed Career Criminals

Recidivism Datafile

This chapter of the report uses data from the Commission's ongoing recidivism studies⁸² to examine the recidivism of armed career criminals. For this study, the Commission initially identified and processed the criminal records of 884 offenders who had been sentenced as armed career criminals and were released from federal custody between 2009 and 2011.⁸³ Of those 884 offenders, 739 offenders were included in this study because they met the following criteria:

- United States citizens;
- Not reported dead, escaped, or detained;
- Pre-sentence investigation report submitted to the Commission;
- Valid FBI numbers; and⁸⁴
- Qualified for ACCA status at the time of the study.⁸⁵

Consistent with the Commission's prior recidivism studies of both firearms offenders and career offenders, recidivism in this study is defined as any rearrest for a new crime or for an alleged violation of the conditions of their supervision over a specified follow-up period.⁸⁶ An eight-year follow-up period was specified for purposes of this study. All rearrests within an eight-year period after release were counted for purposes of this study, including felonies, misdemeanors, and court and supervision violations.⁸⁷ Minor traffic offenses were excluded.

The Commission employed the same methods described in its *Criminal History Report* to compile criminal history data for the armed career criminals released between 2009 and 2011. The Commission processed the criminal history records for convictions that occurred prior to each offenders' conviction as an armed career criminal.⁸⁸



Table 5
Offender Characteristics for Armed Career Criminals Released Between 2009 and 2011

Offender Characteristics	
Race/Ethnicity	
Black	53.2%
White	40.9%
Hispanic	4.7%
Other	1.2%
Male	99.5%
Median Age (at sentencing)	36 Years
Median Age (at release)	47 Years

The following analysis provides offender characteristics and an examination of the overall recidivism rates during the eight-year follow-up period for the 739 armed career criminals identified for this study. For armed career criminals who recidivated during the study period, the analysis also examines the elapsed time from release to rearrest as well as the types of offenses at rearrest. Finally, this chapter provides two pathways analyses that examine more closely the relationship between the nature and extent of prior convictions and recidivism.

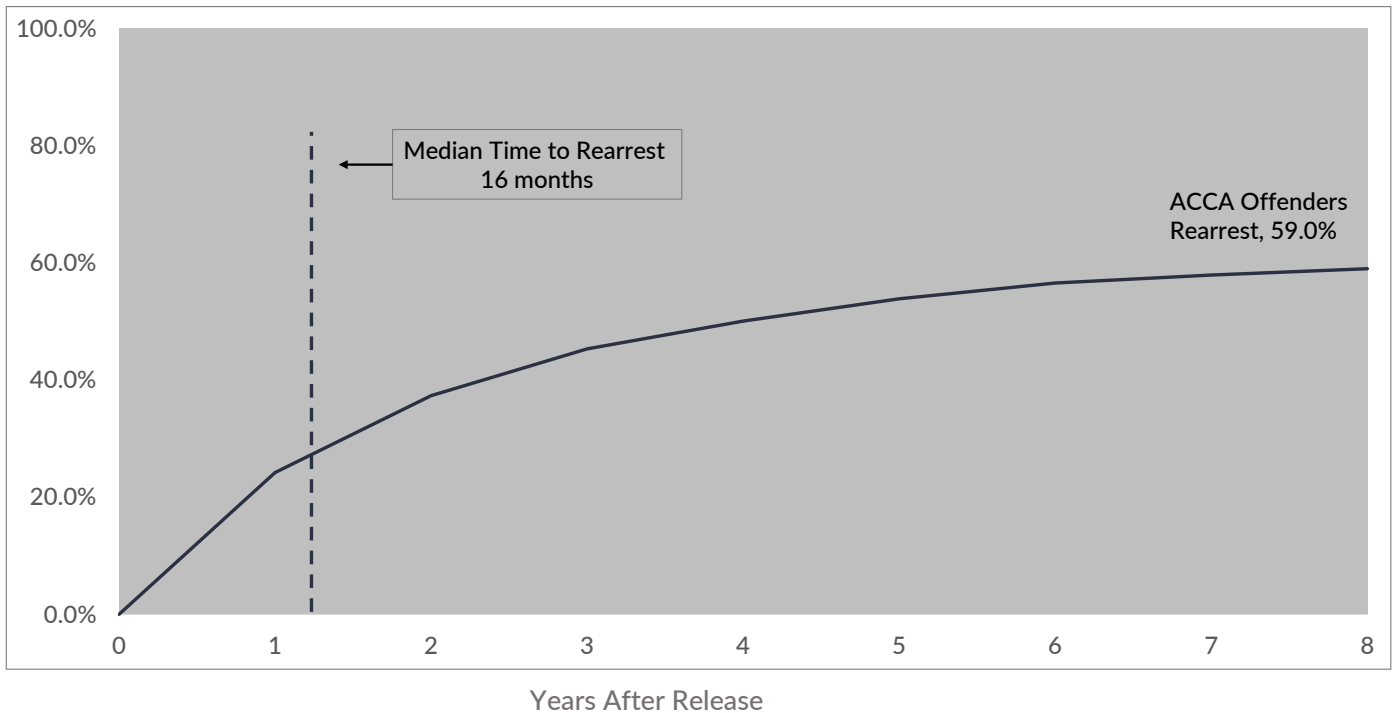
Offender Characteristics

Black offenders comprised slightly more than half (53.2%) of armed career criminals released between 2009 and 2011, and 40.9 percent were White (Table 5). Smaller proportions of offenders were Hispanic (4.7%), or Other races (1.2%).

Nearly all armed career criminals released between 2009 and 2011, 99.5 percent, were male.

At sentencing, the median age of armed career criminals was 36 years of age. At release, the median age of these offenders was 47, reflecting the penalties specified by the ACCA.

Figure 12
Time to First Rearrest for Armed Career Criminals Released Between 2009 and 2011



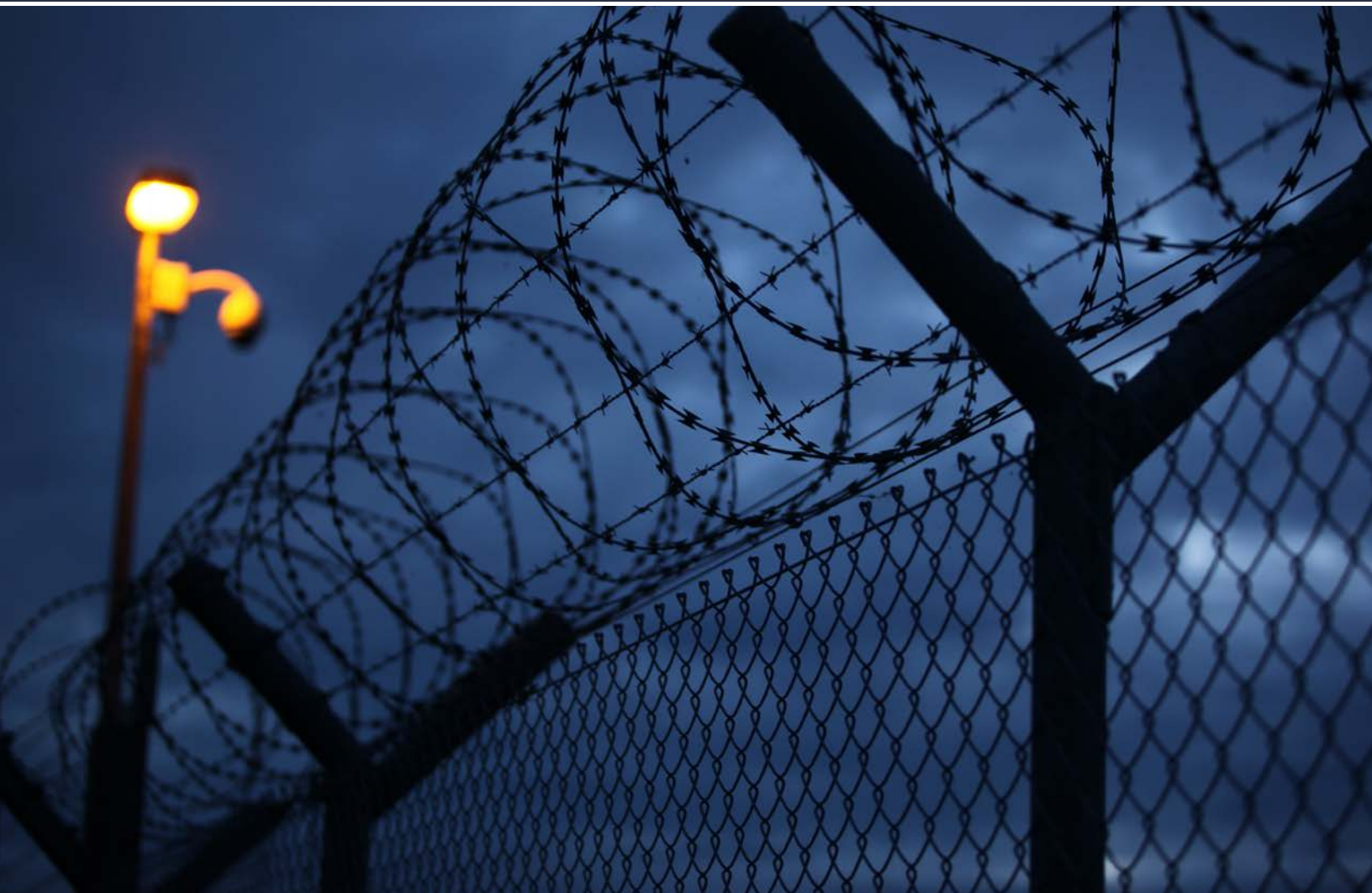
Extent, Timing, and Characteristics of Recidivism

More than half (59.0%) of armed career criminals released between 2009 and 2011 were rearrested within the eight-year follow-up period. For those offenders who were rearrested, the median number of rearrests was three.

The rearrest rate for armed career criminals released between 2009 and 2011 is somewhat lower than previous Commission findings for firearms offenders, a difference likely attributable to age differences between the offenders in the two studies. In its *Firearms Recidivism Report*, the Commission reported rearrest rates of more than two-thirds for both firearms offenders overall

(68.1%) and the small number of armed career criminals in the study (67.5%).⁸⁹ Notably, the median age at release was 34 years of age for the firearms offenders in that report. In contrast, the median age at release was 47 years for the armed career criminals in this report. The corresponding age and recidivism differences between offenders in the two studies reflect the well-documented finding that older offenders are less likely than young offenders to recidivate following release.⁹⁰

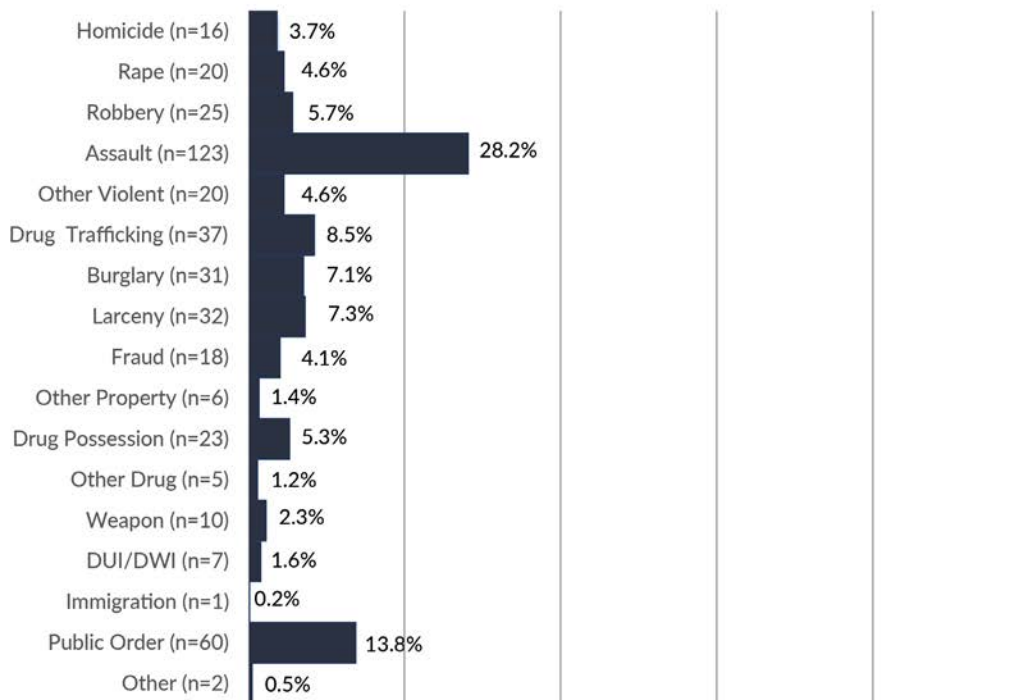
For one-half of armed career criminals in this study who were rearrested, the first arrest occurred less than one and one-half years following their initial release to the community.



Among those who were rearrested, the median time to rearrest was 16 months. During the first year following release into the community, 24.2 percent of armed career criminals were rearrested. As shown in Figure 12, in each of the subsequent years fewer offenders were rearrested for the first time than in the previous years. For example, 13.1 percent of armed career criminals were rearrested for the first time in the second year, and 8.0 percent were rearrested for the first time in the third year. Only 1.1 percent of armed career criminals who were not previously arrested recidivated for the first time in the eighth year.

These findings on timing of rearrest more closely reflect those reported in the Commission's *Firearms Recidivism Report* for firearms offenders as a whole, compared to armed career criminals. For offenders released in 2005, that study reported a median time to rearrest of 17 months for firearms offenders as a whole and 12 months for armed career criminals.⁹¹ In comparison, the *Recidivism Overview* reported a median time to rearrest of 21 months for all federal offenders released in 2005.⁹²

Figure 13
Most Serious Offense at Rearrest for Armed Career Criminals Released Between 2009 and 2011

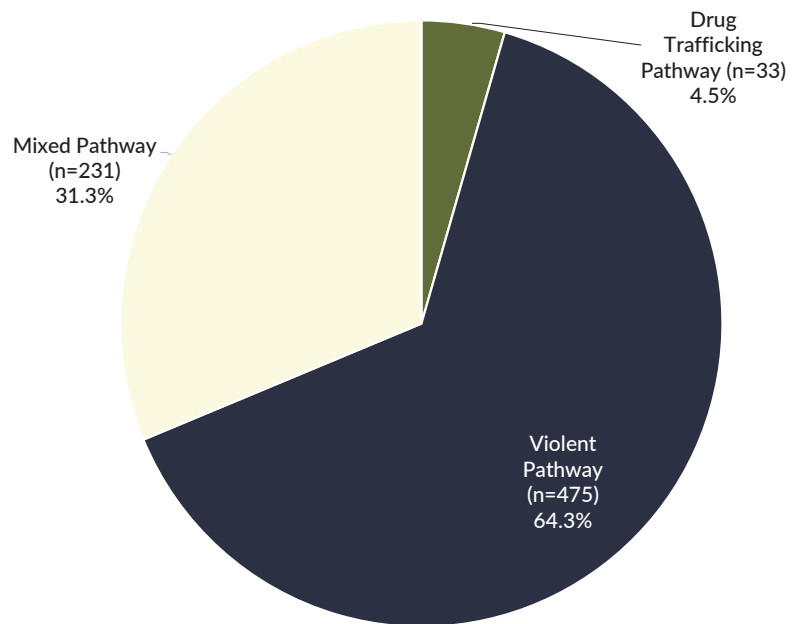


As shown in Figure 13, the largest proportion of armed career criminals in this study were rearrested for assault. Assault constituted the most common new offense for 28.2 percent of armed career criminals.⁹³ The second most common new offense for armed career criminals was for public order offenses (13.8%) followed by drug trafficking (8.5%).

The predominance of assault among rearrests for armed career criminals is consistent with the Commission’s previous recidivism findings for offenders released in 2005. The *Firearms Recidivism Report* demonstrated that assault was the most serious new charge for 33.3 percent of armed career criminals and 29.0 percent of firearms offenders overall.⁹⁴ In addition, the *Recidivism Overview* reported that 23.3 percent of all federal offenders who were rearrested had assault as their most serious charge.⁹⁵



Figure 14
Armed Career Criminal Pathways for Offenders Released Between 2009 and 2011



Pathways to Armed Career Criminal Status and Recidivism

This section of the report reprises the criminal history pathways analysis from the earlier criminal history chapter and examines the relationship of the nature and extent of prior convictions on the recidivism of armed career criminals. As with the previous analysis, the Commission divided the 739 armed career criminals released into the community between 2009 and 2011 into three pathway categories: violent, mixed, and drug trafficking.

The overwhelming majority (95.6%) of armed career criminals released between 2009 and 2011 had a prior conviction for a violent offense. However, in contrast to the criminal history analysis above, the majority of armed career criminals released between 2009 and 2011 were in the violent pathway as opposed to the mixed pathway. As shown in Figure 14, nearly two-

thirds (64.3%) of armed career criminals were in the violent pathway and nearly one-third (31.3%) were in the mixed pathway. Only 4.5 percent of the armed career criminals in the study were in the drug trafficking pathway and had no prior convictions for a violent offense.

The 4.5 percent of armed career criminals in the drug trafficking pathway comprise only 33 individual offenders. Such a small number of offenders prevents any meaningful analyses that could support reliable conclusions regarding recidivism of those offenders. However, the small number of offenders in the drug trafficking pathway underscores the predominance of prior convictions for violent offenses among armed career criminals. Because violence is pervasive in the criminal histories of armed career criminals, the following analyses focus only on offenders with violent prior convictions, with limited information for drug trafficking pathway offenders following thereafter.



Table 6
Recidivism of Armed Career Criminals in Violent and Mixed Pathways
for Offenders Released Between 2009 and 2011

	Violent Pathway (n=475)	Mixed Pathway (n=231)
Any Rearrest	62.5%	55.0%

The presence of prior convictions for violent offenses was associated with higher rates of rearrest as demonstrated by the high rates of recidivism in both the violent and mixed pathways. The majority of armed career criminals in each pathway were rearrested within the eight-year follow-up period: 62.5 percent of offenders in the violent pathway and 55.0 percent of armed career criminals in the mixed pathway.

The high rates of recidivism among offenders with prior violent convictions are consistent with the Commission's prior pathways research. The Commission's *Career Offender Report* demonstrated a relationship between violent pathways to career offender status and recidivism for offenders who reentered the community in 2005. Similar proportions of career offenders

in the violent only (69.0%) and mixed (69.4%) categories were rearrested during the study period.⁹⁶

Similarly, in its 2019 report *Recidivism Among Federal Violent Offenders*,⁹⁷ the Commission studied the recidivism rates of two categories of violent federal offenders released into the community in 2005. Those categories comprised:

- *Violent Instant Offenders*: who engaged in violent criminal conduct as part of their instant federal offense and
- *Violent Prior Offenders*: who were not categorized as violent offenders based on their instant federal offense, but who had been arrested for a violent offense in their past.⁹⁸



Table 7
Rearrest Characteristics of Armed Career Criminals in Violent and Mixed Pathways
for Offenders Released Between 2009 and 2011

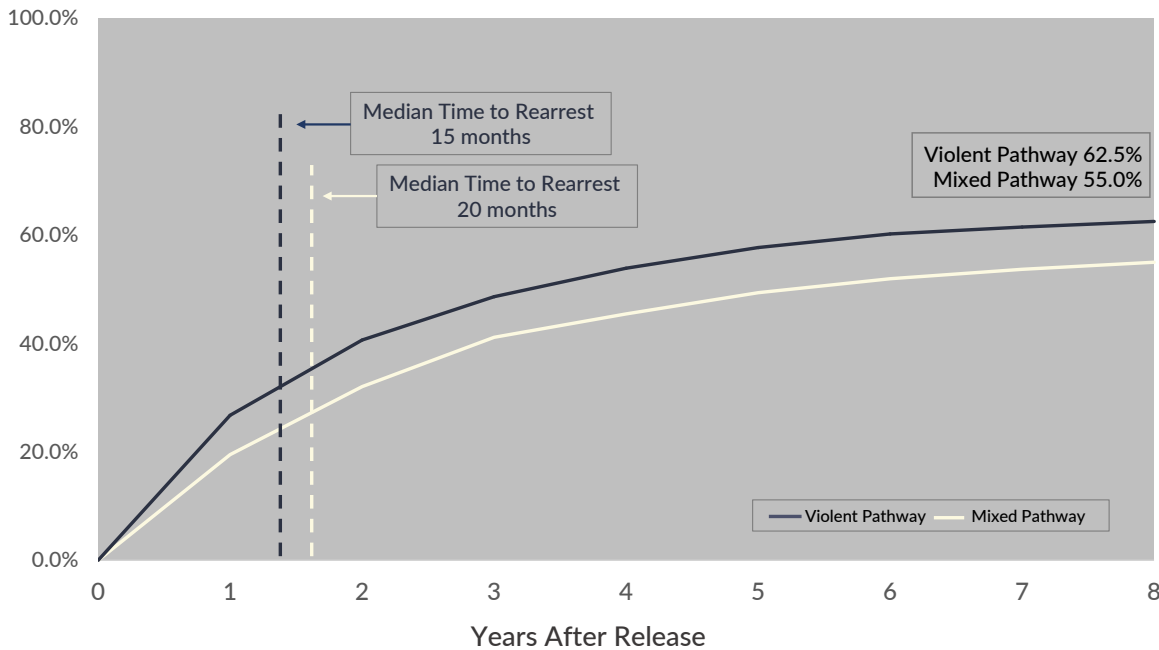
	Violent Pathway (n=297)	Mixed Pathway (n=127)
Median Time to First Rearrest	15 Months	20 Months
Median Number of Rearrests	3	3
Most Serious Rearrest Offense	Assault 28.3%	Assault 27.6%

During the eight-year follow-up period, violent instant offenders recidivated at a rate of 60.2 percent and violent prior offenders recidivated at a rate of 65.1 percent.⁹⁹ In comparison, the recidivism rate for non-violent federal offenders (who neither engaged in violent conduct during the instant federal offense nor were arrested for a violent crime in their past), was 39.8 percent.¹⁰⁰

Timing and Characteristics of Recidivism for Violent and Mixed Pathways

Armed career criminals in both pathways who recidivated generally did so more than one year after release. The median time to first arrest was 15 months for offenders in the violent pathway and 20 months for offenders in the mixed pathway (Table 7).

Figure 15
Time to First Rearrest for Armed Career Criminals in Violent and Mixed Pathways
for Offenders Released Between 2009 and 2011

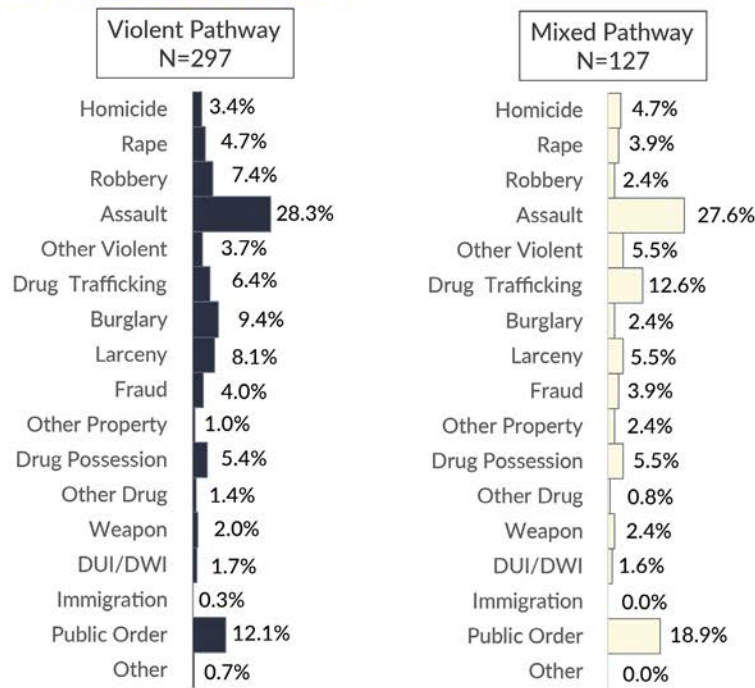


During the first year following release into the community, 26.7 percent of armed career criminals in the violent pathway were rearrested, compared to 19.5 percent of armed career criminals in the mixed pathway. As shown in Figure 15, fewer offenders in both pathways were rearrested in subsequent years for the first time than in the previous years.

The median number of rearrests for armed career criminals in the violent and mixed pathways during the eight-year follow-up period was three.



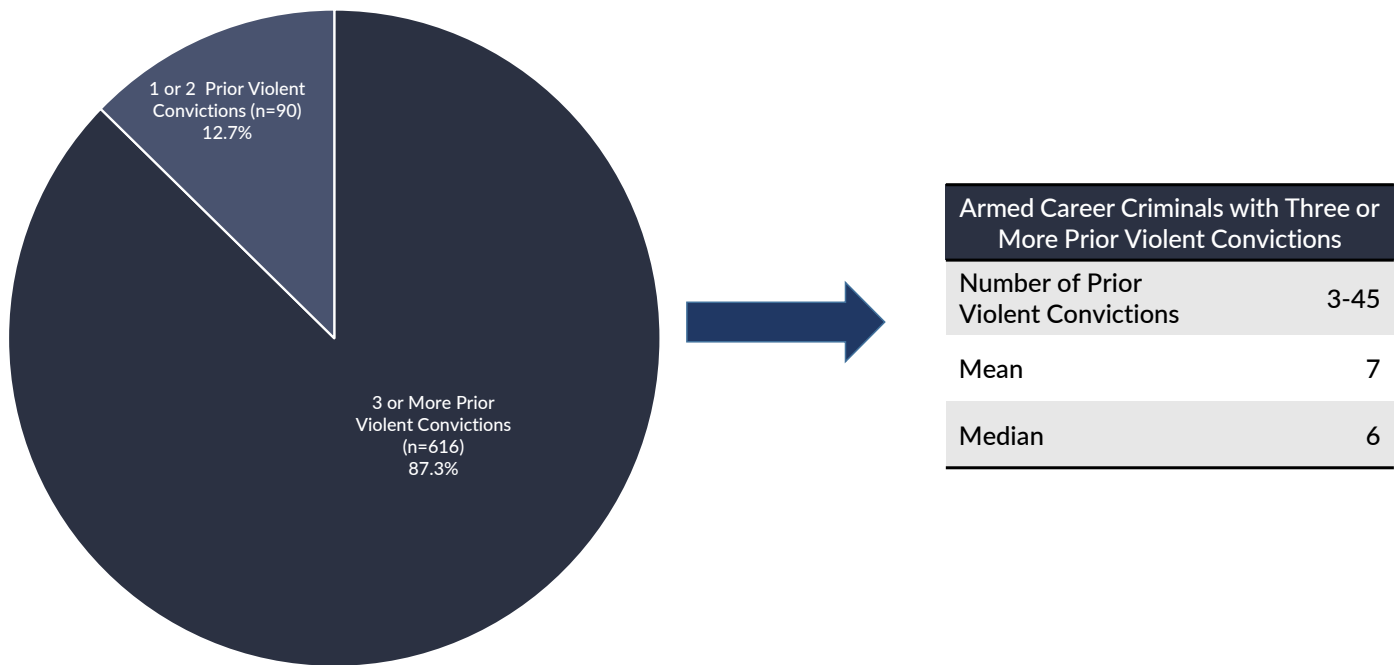
Figure 16
Most Serious Offense at Rearrest for Armed Career Criminals in Violent and Mixed Pathways for Offenders Released Between 2009 and 2011



Assault predominated rearrests for armed career criminals in both pathways. As shown in Figure 16, assault, was the most common new offense for 28.3 percent of offenders in the violent pathway and 27.6 percent in the mixed pathway. In addition, public order offenses were the second most common new offense for offenders in both pathways. Public order offenses constituted the most common new offense for 12.1 percent of offenders in the violent pathway and for 18.9 percent of offenders in the mixed

pathway. However, the most common new offenses rounding out the top five varied for each pathway. For offenders in the violent pathway, burglary (9.4%), larceny (8.1%), and robbery (7.4%) completed the top five most common new offenses. In contrast, drug trafficking (12.6%) was the third most common new offense for offenders in the mixed pathway. Other violent, larceny, and drug possession tied for fourth place (5.5%), followed by homicide (4.7%).

Figure 17
Extent of Prior Violent Convictions for Armed Career Criminals Released Between 2009 and 2011



Extent of Violence in Pathways to Armed Career Criminal Status and Recidivism

This section of the report provides a more detailed pathways analysis based on the number of prior violent convictions of armed career criminals. The Commission undertook this analysis to determine whether the previously demonstrated predictive relationship between violence and recidivism could be further refined.¹⁰¹ For this analysis, the Commission divided the 706 armed career criminals released from imprisonment between 2009 and 2011 with a prior conviction for a violent offense into two categories based on the number of such convictions:

- three or more violent convictions,
- one or two violent convictions.

Armed career criminals with prior violent convictions had a considerable number of such convictions. As shown in Figure 17, the overwhelming majority (87.3%) of armed career criminals with prior convictions for violent offenses had three or more such convictions.¹⁰² Therefore, the overwhelming majority of armed career criminals in the study could have qualified for ACCA status based solely on prior violent convictions.¹⁰³ The number of prior violent convictions for these offenders ranged from three to 45, with a median of six. In comparison, 12.7 percent of armed career criminals with a prior violent conviction had one or two such convictions.



Table 8
Recidivism of Armed Career Criminals By Extent of Prior Violent Convictions
for Offenders Released Between 2009 and 2011

	Three or More Prior Violent Convictions	One or Two Prior Violent Convictions
Any Rearrest	61.7%	48.9%
Median Time to First Rearrest	16 months	21 months
Median Number of Rearrests	3	4
Most Serious Rearrest Offense	Assault 27.6%	Assault 31.8%

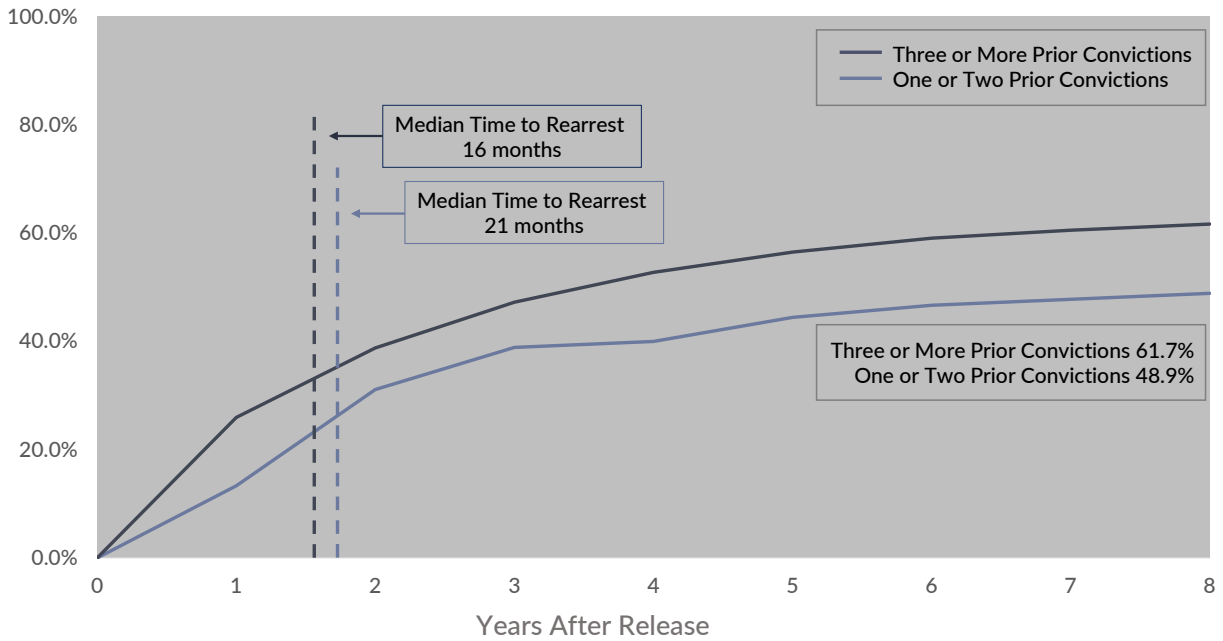
A larger number of prior violent convictions was associated with a higher rate of rearrest. As shown in Table 8, 61.7 percent of armed career criminals with three or more prior violent convictions were rearrested during the eight-year follow-up period, compared to 48.9 percent of armed career criminals with one or two prior violent convictions.

A larger number of prior violent convictions also was associated with earlier rearrest. The median

time to first arrest for offenders with three or more prior violent convictions was 16 months, compared to 21 months for offenders with one or two prior violent convictions.

Among armed career criminals who recidivated during the eight-year follow-up period, the median number of rearrests was three for offenders with three or more prior violent convictions, compared to a median of four rearrests for offenders with one or two prior violent convictions.

Figure 18
Time to First Rearrest for Armed Career Criminals By Extent of Prior Violent Convictions
for Offenders Released Between 2009 and 2011

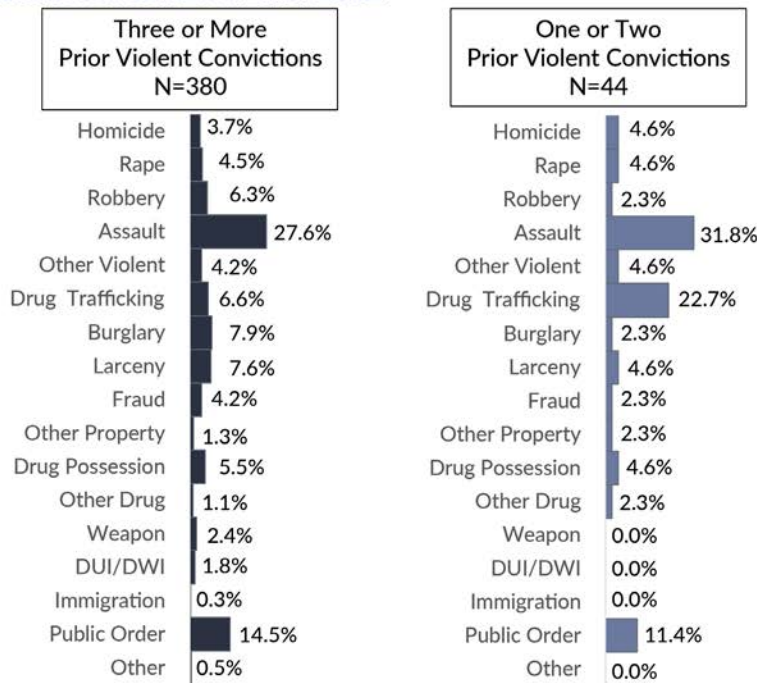


A larger portion of offenders with three or more prior violent convictions recidivated within the first year of release compared to offenders with one or two prior violent convictions. During the first year following release into the community, 26.0 percent of armed career criminals with three or more prior violent convictions were rearrested compared to 13.3 percent of offenders with one or two prior violent convictions. As shown in Figure 18, fewer offenders with three or more

prior violent convictions were rearrested for the first time in subsequent years than in the previous years. In comparison, Figure 18 shows the later timing of first rearrests for armed career criminals with one or two prior violent convictions. The largest portion, 17.8 percent, were rearrested for the first time in the second year after release. In general, fewer offenders with one or two prior violent convictions were rearrested for the first time in subsequent years.



Figure 19
Most Serious Offense at Rearrest for Armed Career Criminals By Extent of Prior Violent Convictions for Offenders Released Between 2009 and 2011



Assault predominated rearrests for both categories of armed career criminals with prior violent convictions. As shown in Figure 19, assault was the most common new offense for 27.6 percent of offenders with three or more prior violent convictions and 31.8 percent for offenders with one or two prior violent convictions. However, the second most common new offense differed between the two groups. Public order offenses constituted the second most common new offense for 14.5 percent

of offenders with three or more prior violent convictions compared to drug trafficking for 22.7 percent of offenders with one or two prior violent convictions. Rearrest rates for more serious offenses generally were similar for the two groups of offenders with the exception of robbery. Nearly three times as many offenders with three or more prior violent convictions were rearrested for robbery compared to offenders with one or two prior violent convictions, 6.3 percent and 2.3 percent, respectively.

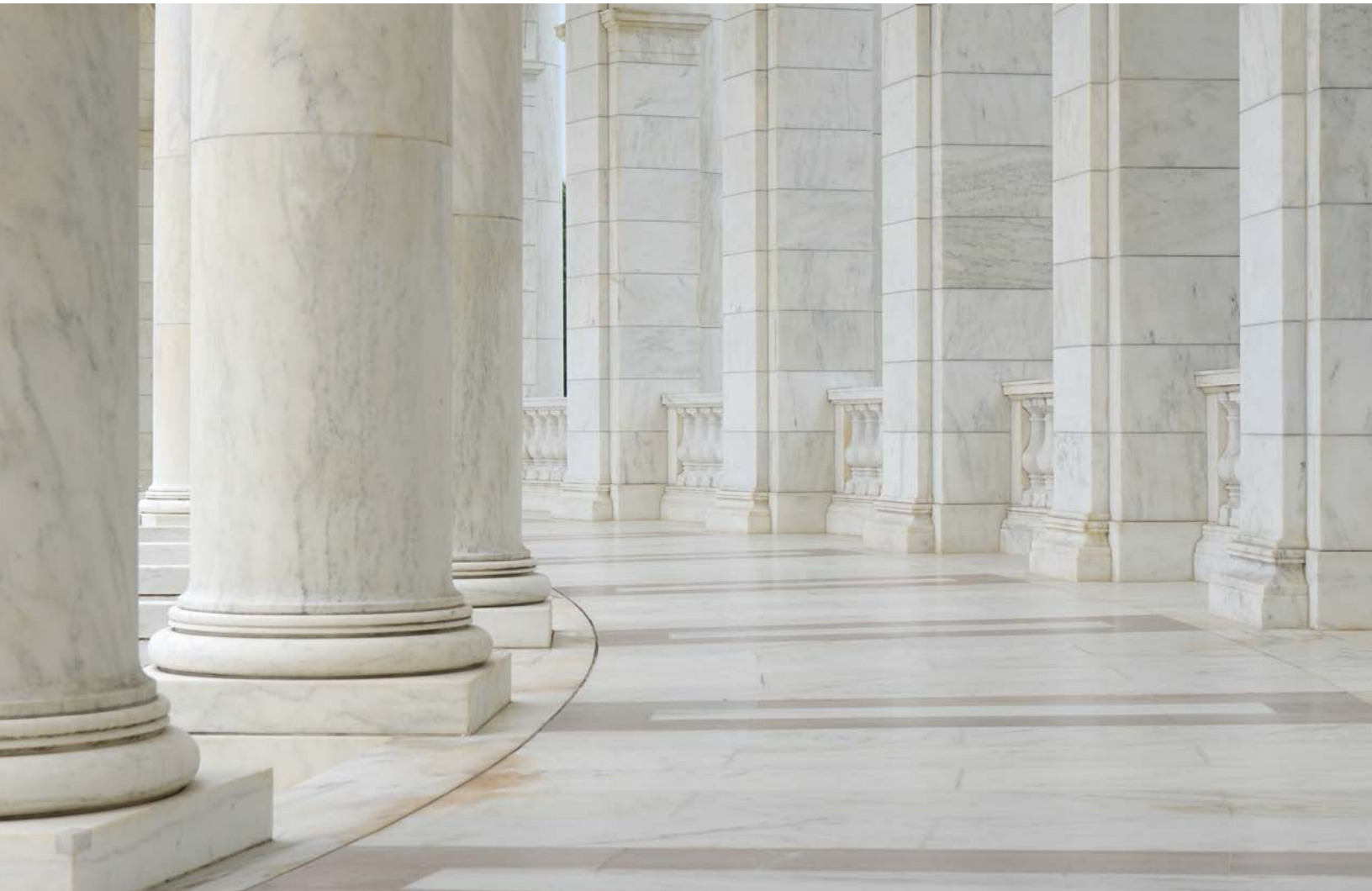
Armed Career Criminals in the Drug Trafficking Pathway

Armed career criminals who qualified based solely on prior drug trafficking convictions comprised a very small proportion (4.5%) of armed career criminals released between 2009 and 2011. As discussed above, the 33 individual offenders in the drug trafficking pathway were insufficient in number to conduct a meaningful analysis to support any reliable conclusions about recidivism regarding those offenders. Therefore, the Commission is providing the available, albeit limited, information for this group of offenders.

Slightly more than one-third, (36.4%, or 12 of 33) of the armed career criminals in the drug trafficking pathway were rearrested during the study period.¹⁰⁴ This rate is lower than previous Commission findings for drug trafficking offenders.

In its 2017 report, *Recidivism Among Federal Drug Trafficking Offenders*,¹⁰⁵ the Commission reported that half (50.0%) of drug trafficking offenders were rearrested.¹⁰⁶

The different recidivism rates, in part, are likely attributable to the small number of offenders in the current study, and, in part, to the age differences between the offenders in the two studies. The median age at release was 34 years of age for drug trafficking offenders in the *Drug Trafficking Recidivism Report*.¹⁰⁷ The drug trafficking pathway offenders in the current study were older, with a median age of 40 years at release. The corresponding age and recidivism differences between these two groups of offenders also are consistent with prior Commission findings that demonstrate lower recidivism rates among older offenders.¹⁰⁸





Conclusion

This report continues the Commission’s work on federal firearms offenders and recidivism. It provides information on armed career criminals in the federal criminal justice system including the history of the Act and its implementation in the federal sentencing guidelines. It also provides analyses of armed career criminals using data regularly collected by the Commission and data from two of the Commission’s special data collection projects.

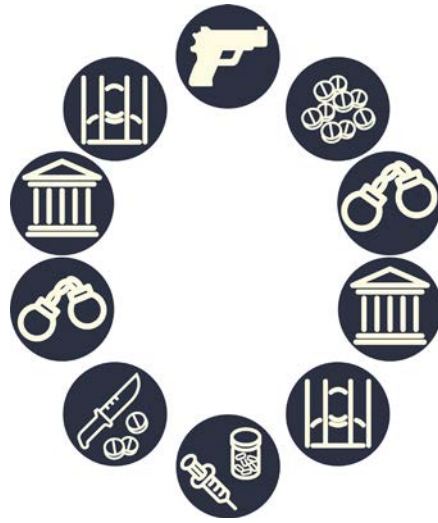
Armed career criminals comprise a small portion of the federal criminal caseload. During the ten-year study period, the number of armed career criminals decreased by about half from 590 in fiscal year 2010 to 312 in fiscal year 2019. During that time, the average sentences imposed for armed career criminals remained relatively consistent, ranging from 194 months in 2010 to 188 months in 2019.

Armed career criminals have extensive violent criminal histories. Notably, the presence and extent of prior violent convictions was associated with higher rates of recidivism. More than half of offenders in the violent

pathway (62.5%) and in the mixed pathway (55.0%) were rearrested within the eight-year follow-up period. Similarly, 61.7 percent of armed career criminals with three or more prior violent convictions were rearrested during the eight-year follow-up period compared to 48.9 percent of offenders with one or two prior violent convictions.

The relationship between the nature and extent of prior criminal history and recidivism has long been recognized by Congress and the Commission. This report continues the Commission’s work in this area in general, and particularly relating to its study of federal firearms offenders. This report focuses on a narrower subset of firearms offenders deemed to be “armed career criminals” in order to demonstrate the differences that exist among the different types of such offenders. That is, recidivism rates differ depending on the nature of the armed career criminals’ predicate offenses.





Appendix A

18 U.S.C. § 924(e)
The Armed Career Criminal Act

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term “serious drug offense” means—

- (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or
- (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;



- (B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—
- (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
 - (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and
- (C) the term “conviction” includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

USSG §4B1.4
Armed Career Criminal

- (a) A defendant who is subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e) is an armed career criminal.
 - (b) The offense level for an armed career criminal is the greatest of:
 - (1) the offense level applicable from Chapters Two and Three; or
 - (2) the offense level from §4B1.1 (Career Offender) if applicable; or
 - (3) (A) **34**, if the defendant used or possessed the firearm or ammunition in connection with either a crime of violence, as defined in §4B1.2(a), or a controlled substance offense, as defined in §4B1.2(b), or if the firearm possessed by the defendant was of a type described in 26 U.S.C. § 5845(a)*; or
(B) **33**, otherwise.*
- *If an adjustment from §3E1.1 (Acceptance of Responsibility) applies, decrease the offense level by the number of levels corresponding to that adjustment.
- (c) The criminal history category for an armed career criminal is the greatest of:
 - (1) the criminal history category from Chapter Four, Part A (Criminal History), or §4B1.1 (Career Offender) if applicable; or
 - (2) Category VI, if the defendant used or possessed the firearm or ammunition in connection with either a crime of violence, as defined in §4B1.2(a), or a controlled substance offense, as defined in §4B1.2(b), or if the firearm possessed by the defendant was of a type described in 26 U.S.C. § 5845(a); or
 - (3) Category IV.



Commentary

Application Notes:

1. This guideline applies in the case of a defendant subject to an enhanced sentence under 18 U.S.C. § 924(e). Under 18 U.S.C. § 924(e)(1), a defendant is subject to an enhanced sentence if the instant offense of conviction is a violation of 18 U.S.C. § 922(g) and the defendant has at least three prior convictions for a “violent felony” or “serious drug offense,” or both, committed on occasions different from one another. The terms “**violent felony**” and “**serious drug offense**” are defined in 18 U.S.C. § 924(e)(2). It is to be noted that the definitions of “violent felony” and “serious drug offense” in 18 U.S.C. § 924(e)(2) are not identical to the definitions of “crime of violence” and “controlled substance offense” used in §4B1.1 (Career Offender), nor are the time periods for the counting of prior sentences under §4A1.2 (Definitions and Instructions for Computing Criminal History) applicable to the determination of whether a defendant is subject to an enhanced sentence under 18 U.S.C. § 924(e).

It is also to be noted that the procedural steps relative to the imposition of an enhanced sentence under 18 U.S.C. § 924(e) are not set forth by statute and may vary to some extent from jurisdiction to jurisdiction.

2. Application of §4B1.4 in Cases Involving Convictions Under 18 U.S.C. § 844(h), § 924(c), or § 929(a).— If a sentence under this guideline is imposed in conjunction with a sentence for a conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a), do not apply either subsection (b)(3)(A) or (c)(2). A sentence under 18 U.S.C. § 844(h), § 924(c), or § 929(a) accounts for the conduct covered by subsections (b)(3)(A) and (c)(2) because of the relatedness of the conduct covered by these subsections to the conduct that forms the basis for the conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a).

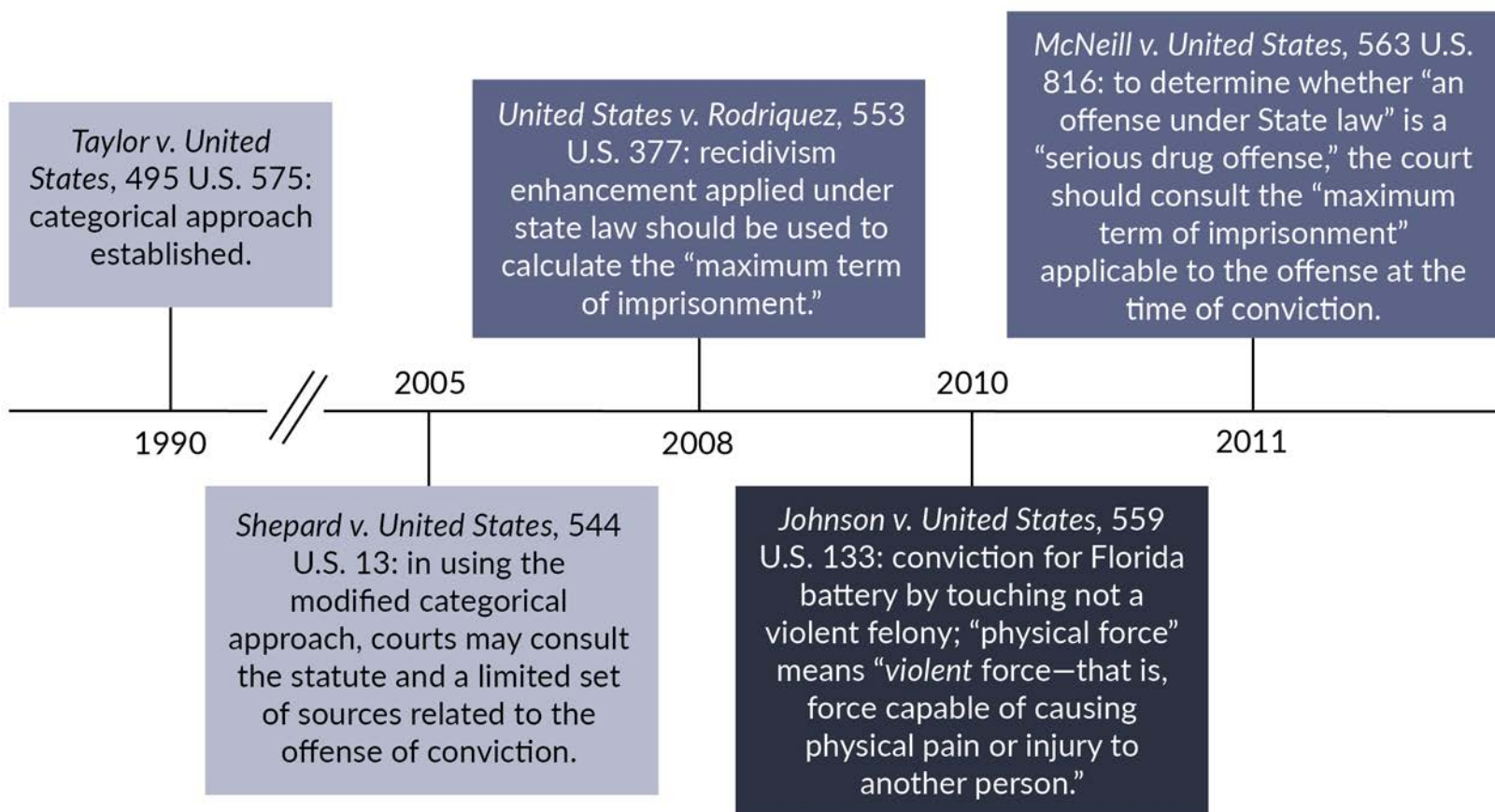
In a few cases, the rule provided in the preceding paragraph may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. § 844(h), § 924(c), or § 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a) (*i.e.*, the guideline range that would have resulted if subsections (b)(3)(A) and (c)(2) had been applied). In such a case, an upward departure may be warranted so that the conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a) does not result in a decrease in the total punishment. An upward departure under this paragraph shall not exceed the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a).

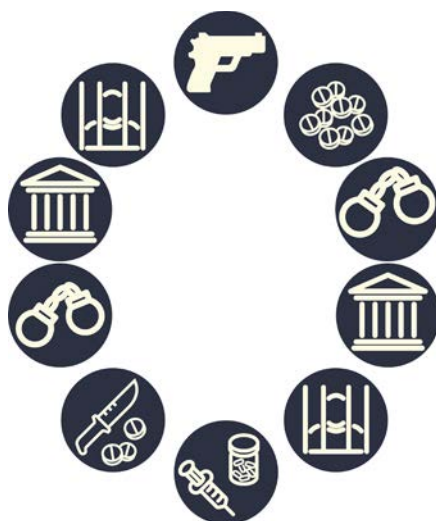
Background: This section implements 18 U.S.C. § 924(e), which requires a minimum sentence of imprisonment of fifteen years for a defendant who violates 18 U.S.C. § 922(g) and has three previous convictions for a violent felony or a serious drug offense. If the offense level determined under this section is greater than the offense level otherwise applicable, the offense level determined under this section shall be applied. A minimum criminal history category (Category IV) is provided, reflecting that each defendant to whom this section applies will have at least three prior convictions for serious offenses. In some cases, the criminal history category may not adequately reflect the defendant's criminal history; see §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).

<i>Historical Note</i>	Effective November 1, 1990 (amendment 355). Amended effective November 1, 1992 (amendment 459); November 1, 2002 (amendment 646); November 1, 2004 (amendment 674); November 1, 2018 (amendment 813).
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- Decision related to Categorical Approach
- Decision related to Violent Felony
- Decision related to Serious Drug Offense





Appendix B

Johnson v. United States, 576 U.S. 591: residual clause is unconstitutionally vague.

Stokeling v. United States, 139 S. Ct. 544: the elements clause covers robbery offenses that have as an element the use of force "sufficient to overcome a victim's resistance"; such force is capable of causing physical injury within the meaning of Johnson.

2013

2016

2015

2019

Descamps v. United States, 570 U.S. 254: courts may not apply modified categorical approach to indivisible statutes.

Welch v. United States, 136 S. Ct. 1257: invalidation of residual clause by *Johnson* applies retroactively to cases on collateral review.

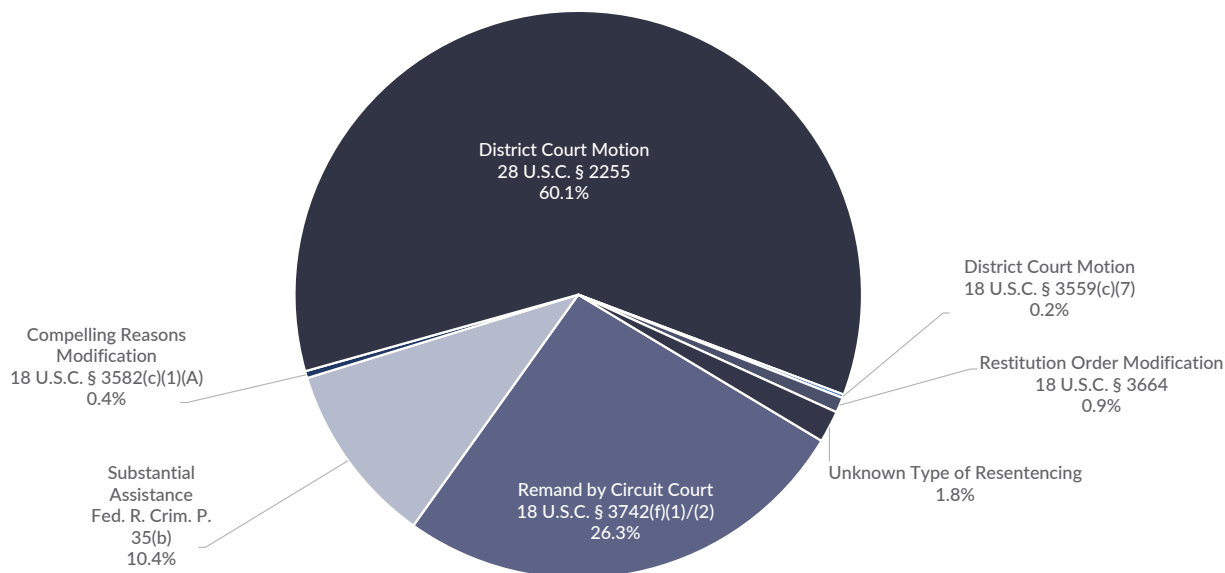
Mathis v. United States, 136 S. Ct. 2243: in divisibility analysis, courts must first inquire if the statute lists alternative elements or alternative means.





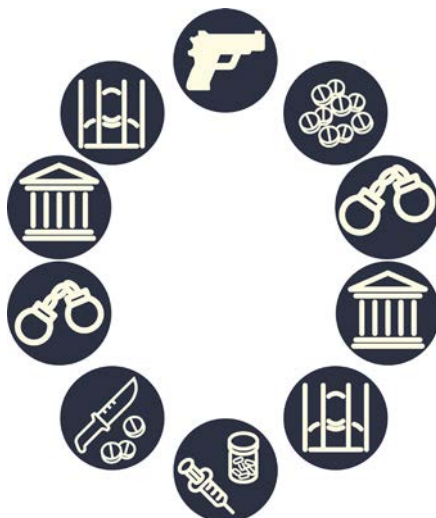
Appendix C

**Distribution of Armed Career Criminals by Type of Resentencing or Other Modification of Sentence
Fiscal Years 2010 - 2019**



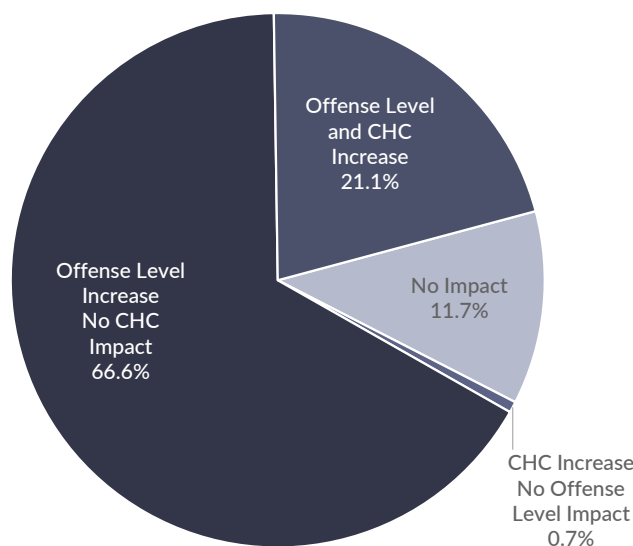
Note: This figure includes the 1,493 resentenced armed career criminals reported to the Commission. Modification of supervision conditions is a type of resentencing, but information was not collected for that type of case. Descriptions of variables used in this figure can be found in Appendix A of the Sourcebook. See U.S. SENTENCING COMM'N, 2019 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, at 198 (2019).





Appendix D

Impact of Armed Career Criminal Guideline (§4B1.4) on Offense Level and Criminal History Category
Fiscal Year 2019



Impact of the Armed Career Criminal Guideline (§4B1.4) on Guideline Sentencing Ranges

The Commission conducted an additional analysis to assess the impact of §4B1.4 on the guideline ranges of armed career criminals.

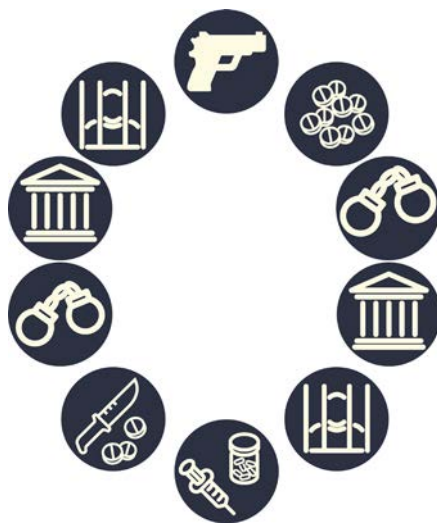
The armed career criminal guideline provides two mechanisms to establish guideline ranges consistent with the specifications in the ACCA. First, §4B1.4 stipulates a minimum offense level of 33 that provides for a guideline minimum corresponding to the ACCA's 15-year mandatory



minimum. Second, the guideline provides for a minimum CHC of IV to reflect that armed career criminals will have at least three prior convictions for serious offenses.

In fiscal year 2019, the armed career criminal designation affected the final guideline range for the majority (88.3%) of offenders sentenced under §4B1.4. For such offenders, the application of the armed career criminal guideline resulted in an increase in the otherwise applicable offense level, criminal history category, or both. As shown

in the figure, two-thirds (66.6%) of offenders had an increase in final offense level but were already in CHC IV or higher. Approximately one-fifth (21.1%) had an increase in both final offense level and CHC. Less than one percent (0.7%) had an increase in CHC but no change in final offense level. Finally, 11.7 percent of offenders had no change in final offense level or CHC as a result of application of the armed career criminal guideline.¹⁰⁹



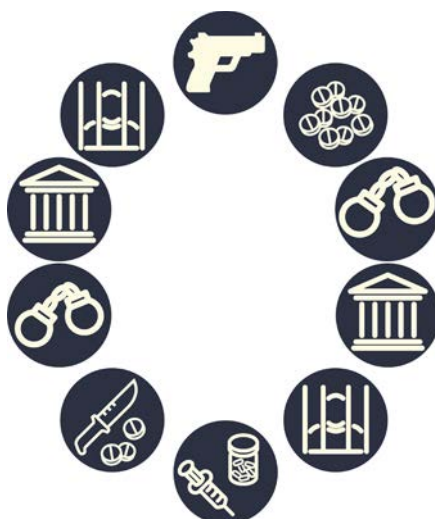
Appendix E

Rearrest Rates for Selected Variables for Armed Career Criminals Released Between 2009 and 2011

Criminal History Points	Total N	% Rearrested	Criminal History Points	Total N	% Rearrested
0	4	25.0	13	54	46.3
1	1	0.0	14	38	76.3
2	4	50.0	15	63	52.4
3	14	21.4	16	31	67.7
4	10	50.0	17	40	75.0
5	10	50.0	18	37	56.8
6	32	56.3	19	22	59.1
7	17	35.3	20	28	75.0
8	20	20.0	21	27	59.3
9	46	50.0	22	11	72.7
10	36	58.3	23	14	71.4
11	50	58.0	24	15	60.0
12	51	64.7	25+	61	80.3

Criminal History Category	Total N	% Rearrested
CHC IV	103	45.6
CHC V	89	61.8
CHC VI	540	61.7
Original Sentence Imposed		
Less than 5 years	18	55.6
5 years – less than 10 years	112	71.4
10 years – less than 15 years	93	66.7
15 years – less than 20 years	432	58.3
20 years or more	84	38.1
Age at Release		
Younger than 26 Years	1	100.0
26 to 30 Years	17	94.1
31 to 35 Years	50	68.0
36 to 40 Years	107	72.0
41 to 50 Years	302	67.9
Older than 50 Years	262	39.3





Endnotes

*The Commission would also like to acknowledge Jennifer Barrow for her contributions to the development of this publication. Jennifer served as the 2019-2020 Supreme Court Fellow assigned to the Commission and as a member of the team working on the Commission's Armed Career Criminal Act research.

1 18 U.S.C. § 924(e).

2 28 U.S.C. § 995(a)(12).

3 U.S. SENTENCING COMM'N, REPORT TO THE CONGRESS: CAREER OFFENDER SENTENCING ENHANCEMENTS (2016), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/criminal-history/201607_RtC-Career-Offenders.pdf [hereinafter CAREER OFFENDER REPORT].

4 U.S. SENTENCING COMM'N, MANDATORY MINIMUM PENALTIES FOR FIREARMS OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_Firearms-Mand-Min.pdf [hereinafter MANDATORY MINIMUM FIREARMS REPORT].

5 MATTHEW J. IACONETTI, TRACEY KYCKELHAHN & MARI MCGILTON, U.S. SENTENCING COMM'N, RECIDIVISM AMONG FEDERAL FIREARMS OFFENDERS (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190627_Recidivism_Firearms.pdf [hereinafter FIREARMS RECIDIVISM REPORT].

6 See Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837, Title II, Ch. XVIII § 1801-03; H.R. REP. NO. 98-1073, at 1, as reprinted in 1984 U.S.C.C.A.N. 3661, 3661 ("It has [] become increasingly clear that a large percentage of [crimes involving theft or violence] are committed by a very small percentage of repeat offenders.").

7 *Id.* at 3662 ("Both Congress and local prosecutors around the nation have recognized the importance of incapacitating these repeat offenders.").

8 Section 924(e) references 18 U.S.C. § 922(g)(1) in describing the framework for predicate convictions. Section 922(g)(1) refers to convictions "in any court of, a crime punishable by imprisonment for a term exceeding one year," a threshold punishment commonly associated with felony offenses. 18 U.S.C. 922(g)(1). See, e.g., U.S. SENTENCING COMM'N, *Guidelines Manual*, §2K2.1, comment. (n.1) (Nov. 2018) [hereinafter USSG] (defining "felony conviction" for purposes of the guideline as "a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year"). In addition, the term "conviction" includes "a finding that a person has committed an act of juvenile delinquency involving 'a violent felony.'" 18 U.S.C. § 924(e)(2)(C).

9 18 U.S.C. § 924(e). A court may not grant probation to an armed career criminal with respect to the conviction under section 922(g). *Id.* For reference, the full text of section 924(e) is provided in Appendix A.



10 18 U.S.C. § 922(g). Section 922(g) makes it unlawful for prohibited persons to possess any firearm or ammunition in or affecting commerce, or to ship or transport (or receive any firearm or ammunition which has been shipped or transported) in interstate or foreign commerce. *Id.* Prohibited persons include those previously convicted of a crime punishable by more than one year in prison, unlawful drug users, and those convicted of domestic violence misdemeanors, among others. *Id.*

11 While the ACCA originally covered only section 922(g) offenders with three prior convictions for robbery, burglary, or both, in 1986 Congress expanded the ACCA to cover broader categories of convictions, namely “violent felonies” and “serious drug offenses.” Career Criminals Amendment Act of 1986, Pub. L. No. 99–570, 100 Stat. 3207, Title III, Subtitle I, § 1402. In 1988, Congress amended the statute to clarify that these predicate convictions must be “committed on occasions different from one another” and to include acts of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment if committed by an adult. Anti-Drug Abuse Act of 1988, Pub. L. No. 100–690, 102 Stat. 4181, Title VI, Subtitle N, § 6451 and Title VII, Subtitle B, § 7056.

12 18 U.S.C. § 924(e)(2)(A).

13 A majority of circuit courts have held that the use of a juvenile adjudication of delinquency to enhance a sentence under section 924(e), even if the defendant did not have a right to a jury trial at the juvenile proceeding, does not violate *Apprendi v. New Jersey*, 530 U.S. 466 (2000). See *Welch v. United States*, 604 F.3d 408, 426 (7th Cir. 2010) (collecting cases and joining majority).

14 18 U.S.C. § 924(e)(2)(B). Prior to 2015, the ACCA included a “residual clause” in the definition of “violent felony,” which encompassed crimes that “otherwise involve[] conduct that presents a serious potential risk of physical injury to another.” In 2015, the Supreme Court in *Johnson v. United States* held that this “residual clause” was unconstitutionally vague and it has been stricken by the Court. *Johnson v. United States*, 576 U.S. 591, 595–97. The *Johnson* holding applies retroactively to cases on collateral review. *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016).

15 See *United States v. Keese*, 358 F.3d 1217, 1221 (9th Cir. 2004) (“The only time limitation supported by the language of the Armed Career Criminal Act is that the predicate convictions be ‘previous.’”); *United States v. Moody*, 770 F.3d 577, 580 (7th Cir. 2014) (“The district court . . . had no authority to ignore the [ACCA predicate] conviction because of its age or its underlying circumstances. Such considerations are irrelevant in determining predicate offenses under the Act.”). In contrast, as discussed below, the guidelines provide criminal history rules that include an age limitation on prior convictions. See *infra* notes 31–33 and accompanying text.

16 See *Dotson v. United States*, 949 F.3d 317, 318 (7th Cir. 2020) (“In recent years, federal courts have seen a floodtide of litigation over what qualifies as an ACCA predicate.”). See also, e.g., *United States v. Jordan* 812 F.3d 1183, 1185 (8th Cir. 2016) (Arkansas aggravated assault is not a violent felony); *United States v. Walton*, 881 F.3d 768, 775 (9th Cir. 2018) (defendant’s conviction for Alabama armed robbery is not a violent felony); *United States v. Cantu*, 964 F.3d 924, 934 (10th Cir. 2020) (convictions under Oklahoma statute are not “serious drug offenses” because statute includes the distribution of drugs that are not federally controlled).

17 See *Chambers v. United States*, 129 S. Ct. 687, 694–95 (2009) (Alito, J., concurring in the judgment) (“[T]he ‘categorical approach’ to predicate offenses has created numerous splits among the lower federal courts, the resolution of which could occupy this Court for years.”). The Supreme Court has issued numerous opinions on the ACCA and the categorical approach. For a more detailed analysis of Supreme Court case law on ACCA’s definitions, see U.S. SENTENCING COMM’N, PRIMER ON FIREARMS 15–19 (2020), https://www.ussc.gov/sites/default/files/pdf/training/primers/2020_Primer_Firearms.pdf [hereinafter FIREARMS PRIMER], and U.S. SENTENCING COMM’N, SELECTED SUPREME COURT CASES ON SENTENCING ISSUES (2019), <https://www.ussc.gov/sites/default/files/pdf/training/case-law-documents/2019-supreme-court-cases.pdf>. For a more detailed discussion of the categorical approach, see U.S. SENTENCING COMM’N, PRIMER ON CATEGORICAL APPROACH (2020), https://www.ussc.gov/sites/default/files/pdf/training/primers/2020_Primer_Categorical_Approach.pdf.

18 See *infra* notes 46–47 and accompanying text. See also, e.g., *Johnson*, 576 U.S. at 595–97 (striking residual clause); *Johnson v. United States*, 559 U.S. 133, 140 (2010) (narrowing definition of “physical force” for purposes of violent felonies to “violent force—that is, force capable of causing physical pain or injury to another person.”). Appendix B provides a timeline of selected Supreme Court decisions that clarified or may have affected the reach of the ACCA.

19 See *infra* p. 15.

20 18 U.S.C. § 924(c). For purposes of section 924(c), a “drug trafficking crime” is “any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.” 18 U.S.C. § 924(c)(2). A “crime of violence,” for purposes of section 924(c), is “a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. § 924(c)(3)(A). The Supreme Court recently struck down the residual clause found in section 924(c)(3)(B), which is similarly worded to the residual clause in the ACCA, as unconstitutionally vague. *United States v. Davis*, 139 S. Ct. 2319, 2336 (2019).

21 A court cannot sentence an offender to probation if he or she is convicted under section 924(c), and the court must order the section 924(c) terms to run consecutively. 18 U.S.C. § 924(c)(1)(D). Congress recently amended this provision to clarify that the prior § 924(c) conviction must have been final for the court to “stack” the § 924(c) counts. First Step Act of 2018, Pub. L. No. 115–391, 132 Stat.

5194, title IV, § 403(a). Previously, a defendant faced the 25-year minimum or life sentence based on counts of conviction rather than priors. See *Deal v. United States*, 508 U.S. 129 (1993) (holding that the mandatory stacking provisions in section 924(c) apply even if the prior conviction is not final and is instead alleged in the same indictment). For more information on the impact of the limitation on § 924(c) “stacking” following the enactment of the First Step Act, see U.S. SENTENCING COMM’N, *THE FIRST STEP ACT OF 2018: ONE YEAR OF IMPLEMENTATION* 34–40 (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200831_First-Step-Report.pdf.

22 Specifically, pursuant to § 924(c), unless a greater minimum sentence applies, a defendant convicted under section 924(c) is subject to a ten-year mandatory minimum for discharging a firearm, a 7-year mandatory minimum penalty for brandishing a firearm, or a 5-year mandatory minimum penalty otherwise. 18 U.S.C. § 924(c)(1)(A). If the firearm possessed was a short-barreled rifle or shotgun or semiautomatic assault weapon, the defendant faces a mandatory minimum of ten years of imprisonment. 18 U.S.C. § 924(c)(1)(B). If the firearm possessed is a machinegun or destructive device, section 924(c) requires the defendant to be sentenced to not less than 30 years in prison. *Id.* If the defendant violates this subsection after a prior conviction under section 924(c) has become final, the mandatory minimum sentence is 25 years of imprisonment, or life imprisonment if the firearm involved is a machinegun or destructive device or bears a silencer or muffler. 18 U.S.C. § 924(c)(1)(C). Notably, courts may consider mandatory sentences under § 924(c) when determining the sentence for the underlying predicate offense. *Dean v. United States*, 137 S. Ct. 1170, 1176–77 (2017) (“Nothing in §924(c) restricts the authority conferred on sentencing courts by §3553(a) and the related provisions to consider a sentence imposed under §924(c) when calculating a just sentence for the predicate count.”). For more information on mandatory minimum penalties for firearms offenses, including section 924(c), see *MANDATORY MINIMUMS FIREARMS REPORT*, *supra* note 4.

23 28 U.S.C. § 994(h) (emphasis added).

24 See USSG §4B1.1(b) and comment. (backg’d). The Commission additionally implemented §4B1.2 (Definitions of Terms Used in Section 4B1.1). See USSG §4B1.1, comment. (n.1). Pursuant to §4B1.1, offenders reach career offender status if (1) the defendant was at least 18 years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a “crime of violence” or a “controlled substance offense”; and (3) the defendant has at least two prior felony convictions of either a “crime of violence” or a “controlled substance offense.” For more information on career offender sentencing enhancements, see *CAREER OFFENDER REPORT*, *supra* note 3.

25 See *infra* notes 29–30 and accompanying text.

26 For reference, the full text of §4B1.4 is provided in Appendix A.

27 The terms “crime of violence” and “controlled substance offense” are defined in §4B1.2. USSG §4B1.4(b)(3)(A) and (c)(2). Section 4B1.4 adopts the definitions of “violent felony” and “serious drug offense” in section 924(e), but the alternative offense level in §4B1.4(b)(3)(A) and the alternative criminal history category in §4B1.4(c)(2) refer to the guidelines’ definitions of “crime of violence” and “controlled substance offense,” which differ from the definitions in the ACCA. USSG §4B1.4, comment. (n.1).

28 USSG §4B1.4(b)(3). Particularly dangerous firearms are those described by 26 U.S.C. § 5845(a), such as a short-barreled shotgun or rifle, machinegun, silencer, or destructive device. *Id.*

29 USSG §4B1.4(b)(1) and (b)(2). The otherwise applicable offense level is the offense level from Chapters Two and Three, or, if applicable, the offense level from §4B1.1. *Id.*

30 USSG §4B1.4(c). The otherwise applicable CHC is from Chapter Four, Part A or, if applicable, §4B1.1. USSG §4B1.4(c)(1). A minimum CHC of IV reflects that armed career criminals will have at least three prior convictions for serious offenses. USSG §4B1.4, comment. (backg’d).

31 The guidelines provide rules to determine the total number of criminal history points applicable to an offender’s prior convictions, which, in turn, determine the offender’s CHC in the Sentencing Table. See USSG §4A1.1 (Criminal History Category); USSG §4A1.2 (Definitions and Instructions for Computing Criminal History); Ch.5, Pt.A (Sentencing Table). The guidelines exclude certain prior convictions based on factors such as the type of offense (e.g., fish and game violations), disposition (e.g., diversionary dispositions without a finding of guilt), or remoteness of the conviction. See USSG §4A1.2. In contrast, the procedure for imposing an enhanced sentence under section 924(e) is not set forth by statute or regulation and may vary by jurisdiction. USSG §4B1.4, comment. (n.1). For a detailed overview of the criminal history rules, see U.S. SENTENCING COMM’N, *PRIMER ON CRIMINAL HISTORY* (2020), https://www.ussc.gov/sites/default/files/pdf/training/primers/2020_Primer_Criminal_History.pdf.

32 USSG §4B1.4, comment. (n.1) (time periods in §4A1.2 inapplicable to determination of whether defendant is subject to enhanced sentence under section 924(e)). In addition, the determination of whether prior related offenses constitute a single sentence differs from the “different occasions” inquiry under the ACCA. See *United States v. Hockenberry*, 730 F.3d 645, 668 (6th Cir. 2013) (“[W]e have held that the ACCA does not apply the same standards as §4A1.2(a)(2) of the Guidelines.”); *United States v. Ross*, 569 F.3d 821, 823 n.3 (8th Cir. 2009) (analysis of separateness of prior convictions different from analysis for different occasions under the ACCA).



33 In other words, under the guidelines' criminal history rules, certain offenses are not "counted" if the offense occurred remote-in-time in relation to the instant offense, but the ACCA has no such provision. As a result, prior convictions may not count for criminal history scoring pursuant to the guidelines but may make the offender eligible for ACCA status under the statute and the §4B1.4 guideline.

34 See *supra* note 29.

35 Section 924(e) is a sentencing enhancement for offenses under section 922(g) and does not constitute a separate criminal offense. See *Custis v. United States*, 511 U.S. 485, 490–91 (1994).

36 USSG App. A; see also USSG §2K2.1, comment. (n.12) (a defendant who violates section 922(g) and is subject to an enhanced sentence under section 924(e) is sentenced under §2K2.1 and constitutes an Armed Career Criminal under §4B1.4).

37 USSG § 2K2.1(a)(1)–(8). For an extensive overview of the application of §§2K2.1 and 2K2.4, see FIREARMS PRIMER, *supra* note 17, at 19–34 and 40–42.

38 USSG §2K2.1(b)(1)–(7). The guideline additionally provides a cross reference if the defendant used or possessed any firearm or ammunition *cited in the offense of conviction* in connection with the commission or attempted commission of other offenses (or the possession or transfer with knowledge it would be used or possessed for same), if the resulting offense level is greater than that determined under §2K2.1. USSG §2K2.1(c)(1).

39 USSG App. A.

40 USSG §2K2.4(a)–(c). The §2K2.4 guideline applies to offenders convicted of violating sections 844(h) (for offenses committed after November 18, 1988), 844(o), 924(c), and 929(a). *Id.* and USSG App. A. The Commentary provides additional special guideline application rules for sentencing offenders subject to the mandatory terms of imprisonment under these statutes. See, e.g., USSG §2K2.4, comment. (n.3) (in a case involving multiple counts, the sentence shall be imposed pursuant to §5G1.2(e) rather than Chapter Three, Part D); USSG §2K2.4, comment. (n.4) (if a sentence under §2K2.4 is imposed in conjunction with a sentence for an underlying offense, any weapon enhancement-SOCs for the possession, brandishing, use, or discharge of an explosive or firearm within the other guideline do not apply).

41 USSG §2K2.4(b). Additionally, if the defendant is convicted under section 924(c) and, as a result, is determined to be a career offender under §4B1.1, the guideline sentence is determined by §4B1.1(c). USSG §2K2.4(c).

42 18 U.S.C. § 3553(e). As directed by Congress, the Commission incorporated this mechanism for relief into the guidelines as a departure from the guidelines. See USSG §5K1.1 (Substantial Assistance to Authorities (Policy Statement)); 28 U.S.C. § 994(n) (directing Commission to create guidelines that "reflect the general appropriateness" of sentencing ranges below statutory mandatory minimums to account for a "defendant's substantial assistance").

43 The Commission collects and analyzes data on federal sentences to carry out its various statutory responsibilities. As authorized by Congress, the Commission's numerous research responsibilities include: (1) the establishment of a research and development program to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices, (2) the publication of data concerning the sentencing process, (3) the systematic collection and dissemination of information concerning sentences actually imposed and the relationship of such sentences to the sentencing factors in 18 U.S.C. § 3553(a), and (4) the systematic collection and dissemination of information regarding the effectiveness of sentences imposed. See 28 U.S.C. §§ 995(a)(12) and (14)–(16). The Commission collects information for every federal felony and Class A misdemeanor offense sentenced each year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case, including: (1) the charging document, (2) the plea agreement, (3) the Presentence Report, (4) the Judgment and Commitment Order, and (5) the Statement of Reasons form. For each case in its Individual Offender Datafile, the Commission routinely collects case identifiers, sentencing data, demographic variables, statutory information, the complete range of court guideline application decisions, and departure and variance information from these documents. See 28 U.S.C. § 994(w)(1).

44 Of the 761,772 offenders sentenced from 2010 through 2019, a total of 77,419 were excluded due to incomplete guideline application information. Of the remaining 684,353, a total of 679,873 were excluded because the offenders were not sentenced as armed career criminals. A total of 4,480 offenders are included in this study who violated section 922(g) and were sentenced pursuant to section 924(e) and USSG §4B1.4. Cases were excluded from some of the analyses due to missing information for variables required for those analyses. Because of the short two-year time frame, it is too soon to conclude whether the small increases in the number of armed career criminals sentenced since 2017 indicate the beginning of a meaningful upward trend or a minor fluctuation in the data.

45 See *supra* notes 16–18 and accompanying text.

46 *Id.* See also *Johnson v. United States*, 576 U.S. 591, 595–97 (2015); *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016) (making *Johnson* decision retroactive).

47 In light of the many relevant Supreme Court decisions spanning the time period studied, the Commission examined its fiscal year 2010 through 2019 resentencing datafiles to determine whether any of the armed career criminals in the study had been resentenced. The review indicated that 1,524 armed career criminals in the current study had been resentenced or had a modification of sentence as of 2019. The resentencing data do not include sufficient detail to determine whether the resentencings and modifications were associated with the offenders' armed career criminal status or ACCA-related litigation. Appendix C provides available information on the reasons for resentencing for these offenders. For additional information about the Commission's resentencing datafiles, see U.S. SENTENCING COMM'N, 2019 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2019) <https://www.usc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/AppendixA.pdf>. [hereinafter SOURCEBOOK].

48 See *supra* note 10.

49 See *supra* notes 16–18, 46–47 and accompanying text.

50 See also MANDATORY MINIMUM FIREARMS REPORT, *supra* note 4, at 37.

51 The federal judicial districts that did not sentence an armed career criminal in fiscal year 2019 were: District of Columbia, District of Maine, District of New Hampshire, District of Puerto Rico, Eastern District of New York, Northern District of New York, District of Vermont, District of Delaware, District of New Jersey, District of Virgin Islands, Western District of Virginia, Northern District of West Virginia, Southern District of West Virginia, Northern District of Mississippi, Eastern District of Texas, Southern District of Ohio, Western District of Arkansas, Northern District of Iowa, District of Nebraska, District of South Dakota, District of Alaska, District of Arizona, Central District of California, Eastern District of California, Northern District of California, Southern District of California, District of Guam, District of Hawaii, District of Montana, District of Nevada, District of Northern Mariana Islands, Eastern District of Washington, Western District of Washington, District of Colorado, District of Kansas, Northern District of Oklahoma, and District of Wyoming.

52 During the ten-year period, the proportion of Black offenders sentenced as armed career criminals increased from 63.8% to 73.7%, while the proportion of White offenders decreased by half, from 29.4% to 15.7%. The proportion of Hispanic offenders doubled from 5.3% to 9.6%, and the proportion of offenders who were Other races decreased from 1.5% to 1.0% during the time period. In contrast, the racial composition of the overall federal offender population remained constant during the time period with Black offenders consistently comprising approximately one-fifth of offenders. For example, in 2019, 20.2% of federal offenders were Black, 19.9% were White, 56.3% were Hispanic, and 3.6% were Other races.

53 The offenders comprising the Other race category were American Indian/Alaskan Native (n=2) and Asian or Pacific Islander (n=1).

54 The Commission uses the “primary sentencing guideline” to indicate the Chapter Two guideline that determined the final offense level. In cases with multiple guideline computations, the primary sentencing guideline is the guideline that ultimately explains the sentence. See generally USSG §1B1.1 (Application Instructions); see also, e.g., USSG Ch.3, Pt.D (Multiple Counts) (providing rules to determine single offense level encompassing all counts of conviction).

55 A total of 42 armed career criminals had a primary sentencing guideline other than §2K2.1. For 36 of these offenders, the primary sentencing guideline computation only involved guidelines other than §2K2.1, such as §2D1.1. See *supra* note 54. For the remaining six offenders, the primary sentencing guideline computation initially involved §2K2.1 but the offenders were subject to the cross reference at §2K2.1(c), which requires application of another guideline where the offender used or possessed any firearm or ammunition, cited in the offense of conviction, in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another offense. See *supra* note 38.

56 The primary drug types involved for the 30 armed career criminals sentenced for a drug offense were as follows: methamphetamine (50.0%), crack cocaine (20.0%), powder cocaine (16.7%), other type of drug (10.0%), and heroin (3.3%).

57 The sentencing guideline categories used in this report are the Type of Crime categories used in the Commission's Sourcebook of Federal Sentencing Statistics. See SOURCEBOOK, *supra* note 47, at 210.

58 See *supra* note 30 and accompanying text.

59 See *supra* discussion *Additional Penalties for Armed Career Criminals*.

60 See *supra* notes 20–22 and accompanying text.

61 See *supra* notes 23–25 and accompanying text.

62 Cases with guideline minimums of life were included in the guideline minimum average computations as 470 months. Cases with sentences of 470 months or greater (including life) were included in the sentencing average computations as 470 months.



- 63 See *supra* discussion *Relief from Mandatory Minimum Penalties through Substantial Assistance* (discussing courts' authority to impose a sentence below the mandatory minimum based upon the defendant's substantial assistance following government motion).
- 64 By comparison, in fiscal year 2019, 9.6% of all federal offenders received a departure from the guidelines based on the offender's substantial assistance.
- 65 A total of 3,676 offenders in the study did not receive relief and were subject to a mandatory minimum penalty at sentencing. Of these, 334 were excluded from this analysis that had convictions in addition to the ACCA that carried additional mandatory minimum penalties, up to, and including life (n=27). An additional 21 were excluded whose case documentation was insufficient to compare sentence imposed and mandatory minimum penalty.
- 66 As of June 27, 2020, there were 160,823 offenders in the custody of the Federal Bureau of Prisons. Of these, 144,121 were serving a sentence for a federal conviction. Commission records could be matched to 142,393 of these offenders and were used for this analysis. Another 16,702 offenders in BOP custody were pre-trial offenders, offenders sentenced in the courts of the District of Columbia, or military offenders. U.S. SENTENCING COMM'N, QUICK FACTS ON FEDERAL OFFENDERS IN PRISON (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/BOP_June2020.pdf.
- 67 For more information on how the Commission collects criminal history information, see TRACEY KYCKELHAHN & EMILY HERBST, U.S. SENTENCING COMM'N, THE CRIMINAL HISTORY OF FEDERAL OFFENDERS (2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180517_criminal-history.pdf. [hereinafter CRIMINAL HISTORY REPORT].
- 68 This analysis includes offenders with at least one prior conviction in each specified offense category. The "public order" category includes offenses that involve the public or occur in public areas, vice crimes, tampering with evidence, and obstruction of justice. It includes offenses such as disorderly conduct, public drunkenness, gambling, gang participation, harassment, possessing contraband in prison, resisting arrest without violence, and perjury.
- 69 As in previous publications, the Commission generally followed a ranking scheme used by the Bureau of Justice Statistics in prior recidivism research. See MATTHEW R. DUROSE ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 (2014), <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>. The primary modification made by the Commission was to increase the relative seriousness of drug trafficking offenses from their position in the original ranking, which correspondingly decreased the relative seriousness of property offenses.
- 70 For purposes of this analysis, the Commission identified offenses that are generally accepted as having some level of violence, including many of those offenses that courts have found to qualify as a "violent felony" under section 924(e)(2)(B). Prior violent convictions include those offenses classified as murder, unspecified manslaughter, non-negligent manslaughter, kidnapping, statutory rape, forcible sex offense, robbery, aggravated assault, simple assault, intimidating a witness, intimidation, hit and run with bodily injury, extortion, child abuse, burglary, arson, rioting, and any other unspecified violent offense.
- 71 Burglary is an enumerated "violent felony" in the ACCA. See *supra* text accompanying note 14.
- 72 The "other violent" category includes violent offenses that do not fit into any of the specific violent categories. It includes kidnapping, intimidating a witness, extortion, child abuse, arson, rioting, and any other unspecified violent offense.
- 73 CRIMINAL HISTORY REPORT, *supra* note 67, at 5.
- 74 See 18 U.S.C. § 924(e). See also *supra* discussion *The Armed Career Criminal Act*.
- 75 As discussed above, the definitions for the terms "crime of violence" and "controlled substance offense" provided in §4B1.2(a) and (b) differ from the definitions of "violent felony" and "serious drug offense" in the ACCA. See *supra* note 27.
- 76 For purposes of the *Career Offender Report* analysis, the Commission identified those offenses that are generally accepted as involving some level of violence, including many of those offenses that courts have found to qualify as "crimes of violence" under the career offender guideline. CAREER OFFENDER REPORT, *supra* note 3, at 28.
- 77 *Id.* at 26.
- 78 *Id.*
- 79 The "Other" category includes a variety of offenses that are unspecified or that do not fit into any of the other categories. This includes unspecified offenses such as accessory after the fact, conspiracy to commit a felony, and criminal facilitation. This category also includes specific offenses that do not fit into the other categories, such as money laundering, possession of child pornography, and fish, game, and wildlife violations.
- 80 See *supra* notes 31–33 and accompanying text.

81 The lack of criminal history points was primarily attributed to the “staleness” of prior sentences, where the prior sentences were imposed outside the applicable time period. See USSG §4A1.2(e). Courts cited §4A1.2(e) for 82.0% of the prior violent convictions that were not assigned criminal history points and for 70.3% of the prior drug trafficking convictions that were not assigned criminal history points.

82 KIM STEVEN HUNT & ROBERT DUMVILLE, U.S. SENTENCING COMM’N, *RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW* (2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf [hereinafter *RECIDIVISM OVERVIEW*].

83 The data utilized in the course of conducting analyses included in this section of the report includes information obtained pursuant to an interagency agreement with the Federal Bureau of Investigation, which prohibits the Commission from releasing the dataset.

84 Of the 884 offenders, 35 were excluded who did not meet the first four criteria.

85 The majority of offenders in this study were convicted and sentenced prior to some of the litigation that significantly impacted the scope of the ACCA. For example, the armed career criminals in this study were originally sentenced between 1991 and 2011, before the Supreme Court’s decisions in *Descamps v. United States*, 570 U.S. 254 (2013); *Johnson v. United States*, 576 U.S. 591 (2015); *Mathis v. United States*, 136 S. Ct. 2243 (2016); and *Welch v. United States*, 136 S. Ct. 1257 (2016). See Appendix B. In light of the litigation impacting the ACCA that transpired since this cohort of armed career criminals was sentenced and released, the Commission sought to determine the status of these offenders vis-à-vis the legal landscape at the time of this study. Additional legal documentation for these offenders was available in the Commission’s resentencing datafiles, and the Commission determined that 136 offenders in the study had been resentenced following their initial sentencing. See *supra* note 47. The Commission undertook the unique task of examining the resentencing records for those offenders to determine whether ACCA-related case law impacted the offenders’ prior status as armed career criminals. The examination revealed that the resentencing proceedings removed the armed career criminal status of 110 offenders. Because these 110 offenders no longer qualified for ACCA status following resentencing, they were excluded from this study. As a result, the recidivism analysis includes 739 armed career criminals who qualified for ACCA status at the time of this study.

86 FIREARMS RECIDIVISM REPORT, *supra* note 5, at 5. CAREER OFFENDER REPORT, *supra* note 3, at 39.

87 This study uses rearrest as the measure of recidivism due to the general underreporting of reconvictions and reincarcerations.

88 CRIMINAL HISTORY REPORT, *supra* note 67, at 14.

89 FIREARMS RECIDIVISM REPORT, *supra* note 5 at 14, 34.

90 KIM STEVEN HUNT & BILLY EASLEY, U.S. SENTENCING COMM’N, *THE EFFECTS OF AGING ON RECIDIVISM AMONG FEDERAL OFFENDERS* (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf. [hereinafter *AGE RECIDIVISM REPORT*]. See also *RECIDIVISM OVERVIEW*, *supra* note 82, at 23.

91 FIREARMS RECIDIVISM REPORT, *supra* note 5, at 34.

92 RECIDIVISM OVERVIEW, *supra* note 82, at 15.

93 Because the analysis focused only on the single most serious offense for each offender, a conviction for a more serious offense (such as assault or drug trafficking) is reported in lieu of any less serious offenses, such as drug possession. Accordingly, the data should not be interpreted to represent the overall frequency of the listed offense among prior convictions.

94 FIREARMS RECIDIVISM REPORT, *supra* note 5, at 19 and 34.

95 RECIDIVISM OVERVIEW, *supra* note 82, at 15, 17.

96 CAREER OFFENDER REPORT, *supra* note 3, at 42.

97 KIM STEVEN HUNT, MATTHEW J. IACONETTI, & KEVIN T. MAASS, U.S. SENTENCING COMM’N, *RECIDIVISM AMONG FEDERAL VIOLENT OFFENDERS* (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190124_Recidivism_Violence.pdf [hereinafter *VIOLENCE RECIDIVISM REPORT*].

98 *Id.* at 2.

99 *Id.* at 18, 30.

100 *Id.* at 11.



- 101 CAREER OFFENDER REPORT, *supra* note 3, at 42. VIOLENCE RECIDIVISM REPORT, *supra* note 97, at 11, 18, and 30.
- 102 The number of violent convictions includes each individual count of conviction comprising any single prior sentencing event, regardless of the presence of drug trafficking convictions.
- 103 Of the 616 armed career criminals with three or more prior violent convictions, 23.4% also had prior drug trafficking convictions.
- 104 The Commission determined that the median time to rearrest for the 12 offenders in the drug trafficking pathway was 11 months and that 21.2% (n=7) of the 33 offenders were rearrested during the first year following release into the community. The small number of offenders in this category precludes conclusions that could be generalized to a larger population.
- 105 LOUIS REEDT, KIM STEVEN HUNT, JAMES L. PARKER, MELISSA K. REIMER, & KEVIN T. MAASS, U.S. SENTENCING COMM'N, RECIDIVISM AMONG FEDERAL DRUG TRAFFICKING OFFENDERS (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170221_Recidivism-Drugs.pdf. [hereinafter DRUG TRAFFICKING RECIDIVISM REPORT].
- 106 *Id.* at 12.
- 107 *Id.* at 9.
- 108 AGE RECIDIVISM REPORT, *supra* note 90.
- 109 A total of 13 offenders were excluded from this analysis who were career offenders with convictions under 18 U.S.C. § 924(c). The guideline sentence for such offenders (offenders who are convicted of violating section 924(c) and as a result of that conviction, alone or in addition to another offense of conviction, are career offenders) is determined by §4B1.1(c) in lieu of the sentencing range that would have been established by other guideline calculations. *See supra* note 41.



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