



# **RECIDIVISM OF FEDERAL FIREARMS OFFENDERS RELEASED IN 2010**

**UNITED STATES SENTENCING COMMISSION**  
**November 2021\***



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# INTRODUCTION

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# INTRODUCTION



**This report provides an analysis of data on the recidivism of federal firearms offenders released from incarceration or sentenced to a term of probation in calendar year 2010.**

This report is part of the new series continuing the United States Sentencing Commission's recidivism research.<sup>1</sup> Through this series of reports the Commission is examining the recidivism of 32,135 citizen offenders who re-entered the community in 2010. In this report, the Commission provides an analysis of data on the recidivism of federal firearms offenders released from incarceration or sentenced to a term of probation in calendar year 2010. It combines data regularly collected by the Commission with Federal Bureau of Investigation (FBI) criminal history records from all state and federal agencies for the offenders for the study.<sup>2</sup>

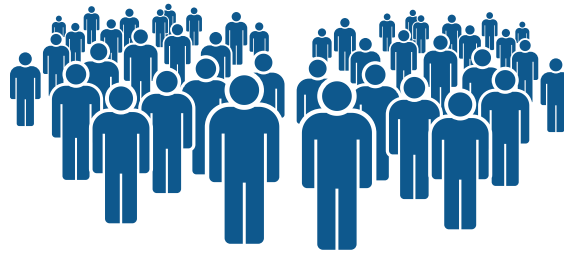
The Commission routinely studies recidivism among federal offenders as part of its continuing duty to collect, analyze, and report sentencing data.<sup>3</sup> In 2013, the Commission began a multi-year study of the recidivism of federal offenders. As part of this study, in 2016, the Commission published *Recidivism Among Federal Offenders: A Comprehensive Overview*,<sup>4</sup> which described the history of recidivism

research done by the Commission and described, among other findings from the study, the relationship between recidivism and an offender's age and criminal history. In 2019, the Commission published *Recidivism Among Federal Firearms Offenders*, which provided an analysis of recidivism of federal offenders convicted of firearms and ammunition offenses, as compared to all other offenders, for offenders released in calendar year 2005.<sup>5</sup>

## **Recidivism Among Federal Firearms Offenders**

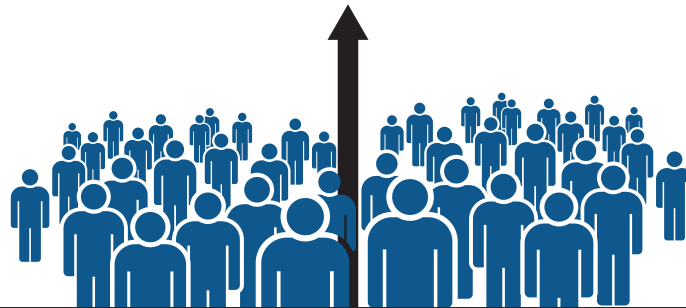
This report continues the Commission's work in studying the recidivism of federal firearms offenders by providing data relating to a new cohort of U.S. citizen federal firearms offenders who were released from prison or sentenced to probation in calendar year 2010. In this report, offenders in at least one of the following three categories are categorized as "firearms offenders":





**§2K2.1 Offenders**  
**n=4,435**

Offenders convicted under 18 U.S.C. § 922 for unlawful receipt, possession, or transportation of firearms or ammunition, and prohibited transactions involving firearms or ammunition.



**Federal Firearms Offenders**  
**n=5,659**  
Released from prison or sentenced to probation in calendar year 2010



**Career Offenders/ACCA Offenders**  
**n=311**

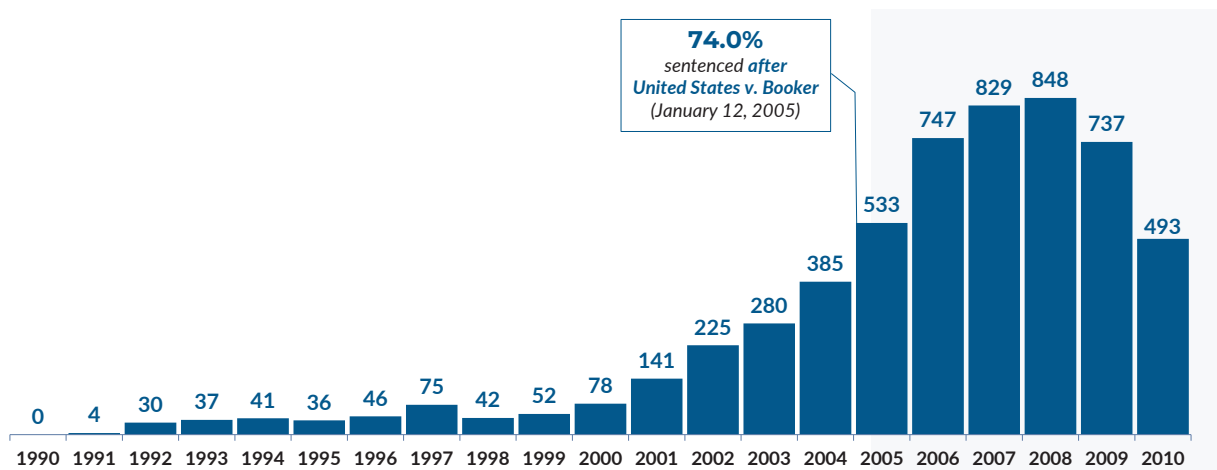
Offenders sentenced as career offenders pursuant to §4B1.1 who were convicted of a federal firearms offense as part of the instant offense, and 222 offenders sentenced pursuant to 18 U.S.C. § 924(e), Armed Career Criminals Act.



**Section 924(c) Offenders**  
**n=1,239**

Offenders convicted and sentenced under 18 U.S.C. § 924(c) who did not otherwise receive a career offender or ACCA sentencing enhancement.

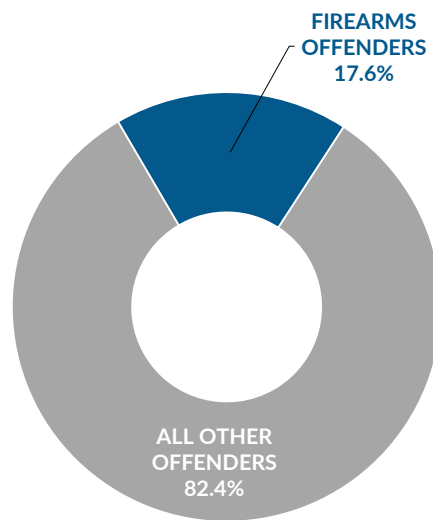
Figure 1. Calendar Year of Original Federal Sentencing for Federal Firearms Offenders Released in 2010



This analysis provides an opportunity to examine recidivism in the context of major changes in the federal criminal justice system. The offenders in this study were sentenced and released in conjunction with two significant transformations in federal sentencing and supervision. First, the Supreme Court’s January 12, 2005, decision in *United States v. Booker*<sup>6</sup> rendered the guidelines advisory. Firearms offenders in this study were sentenced between 1991 and 2010. Almost three-quarters (74.0%) were sentenced in 2005 or later. Therefore, the majority of these offenders were sentenced under the advisory guideline system which increased judicial discretion to impose sentences outside of the guidelines. Second, in 2009, the Administrative Office of the United

States Courts (AO) began implementing new evidence-based practices in offender supervision.<sup>7</sup> The Federal Probation and Pretrial Services Office (PPSO) adopted the Federal Post Conviction Risk Assessment (PCRA), a risk assessment tool that incorporates criminogenic factors related to recidivism to improve supervision outcomes.<sup>8</sup> This study was not designed to measure the effects of these sentencing and supervision changes. Nevertheless, by comparing the recidivism patterns of offenders released before and after these changes, it might provide some insight into the possible impact of increased judicial discretion and evidence-based supervision programs on recidivism.

Figure 2. Percentage of Firearms Offenders and All Other Offenders Released in Calendar Year 2010



As shown in Figure 2, the 5,659 firearms offenders sentenced under §2K2.1, sentenced as armed career criminals or career offenders, and offenders convicted under 18 U.S.C. § 924(c) are analyzed in comparison to 26,476 other offenders in this study, all of whom were sentenced for an offense other than firearms (*i.e.*, the “all other offenders”).<sup>9</sup> Firearms offenders analyzed in this report were sentenced<sup>10</sup> between fiscal year 1991 and the first quarter of fiscal year 2011, while all other offenders were sentenced between 1990 and the first quarter of fiscal year 2011.<sup>11</sup> All of the offenders in this report were released from federal custody (either from prison or by receiving a sentence of probation) in calendar year 2010.

The second section of this report discusses the structure of the sentencing guidelines, statutory provisions, and

sentencing guidelines applicable to firearms offenders. The third section compares firearms offenders and all other offenders by studying the offender, offense characteristics, and recidivism findings, including the offenders’ time to rearrest, most serious recidivism event, criminal history, sentence imposed, and age of firearms and all other offenders. The fourth section of this report details the offense characteristics, offender characteristics, and recidivism rates for offenders sentenced pursuant to §2K2.1. The fifth section studies offenders sentenced pursuant to the career offender guideline or ACCA, and, due to the small number of offenders, presents a limited set of analyses focusing on sentences imposed and recidivism rates. Finally, the sixth section analyzes the offender and offense characteristics, and recidivism rates, for offenders convicted under section 924(c).

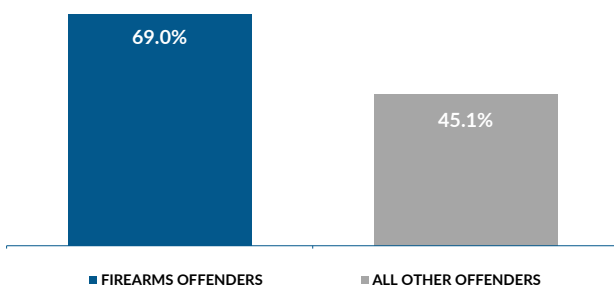
## KEY FINDINGS

**1** This study observed **substantial consistency** in the recidivism of firearms offenders across the two time periods, **2005 and 2010**, despite **two intervening major developments** in the federal criminal justice system: the Supreme Court's decision in *Booker* and increased use of evidence-based practices in federal supervision.

**2** **Firearms offenders recidivated at a higher rate than all other offenders.** Over two-thirds (69.0%) of firearms offenders were rearrested for a new crime during the eight-year follow-up period compared to less than half of all other offenders (45.1%).

**3** Firearms offenders and all other offenders who recidivated were rearrested for similar crimes. Of the firearms offenders who recidivated, assault was the most serious new charge for 25.9 percent of offenders followed by drug trafficking (11.0%). Similarly, of the all other offenders who recidivated, assault was the most common new charge (19.0%) followed by drug trafficking (11.4%).

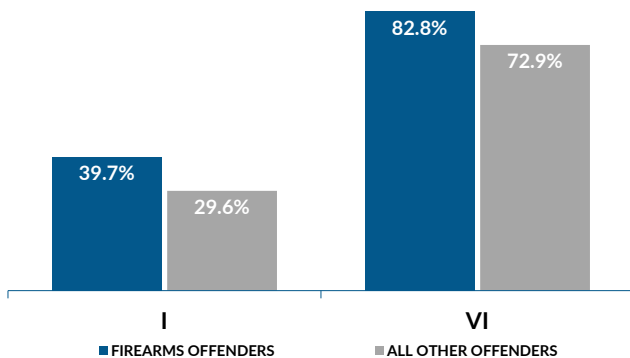
**RECIDIVISM RATE**



**4** Firearms offenders have **higher recidivism rates** than all other offenders in every Criminal History Category (CHC). Within most CHCs, this difference was about ten percentage points.

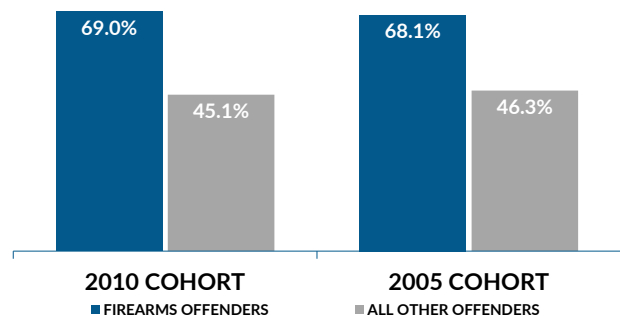
- In CHC I, 39.7 percent of firearms offenders recidivated compared to 29.6 percent of all other offenders.
- In CHC VI, 82.8 percent of firearms offenders recidivated compared to 72.9 percent of all other offenders.

**CRIMINAL HISTORY CATEGORY**



**6** The recidivism rates for firearms and all other offenders were highly similar for both the 2010 release cohort in this report and the 2005 release cohort previously studied. In the 2005 release cohort, 68.1 percent of firearms offenders recidivated compared to 46.3 percent of all other offenders. Similarly, 69.0 percent of firearms offenders in the 2010 release cohort recidivated compared to 45.1 percent of all other offenders.

**RECIDIVISM RATES, 2010 VS 2005**



**5** Firearms offenders recidivated at a **higher rate** than all other offenders in every age-at-release grouping. Firearms offenders recidivated at over twice the rate of all other offenders among those released after age 59 (31.1% compared to 14.5%).

# SCOPE OF ANALYSIS

## Offender Cohort

This report uses data from the Commission’s ongoing recidivism studies to provide a comprehensive analysis of the recidivism of all federal offenders who were released from federal prison or sentenced to probation in 2010. The offenders in the study cohort were identified in cooperation with the Federal Bureau of Prisons (BOP) and the Administrative Office of the United States Courts (AO). The BOP provided identifying information, release dates, and other pertinent information for the Commission to identify offenders released from prison. The AO provided identifying information, some revocation information, and other pertinent information for offenders sentenced to probation. The Commission compiled the identifying information for these offenders to obtain criminal records in partnership with the FBI.

The data used in this report combines data regularly collected by the Commission<sup>12</sup> with data compiled as part of a data sharing agreement with the FBI’s Criminal Justice Information Services Division.<sup>13</sup> Through an agreement with the FBI, the Commission collected and processed criminal history records from all state and federal agencies for the

## SUMMARY OF ANALYSIS

**2010**

YEAR OF RELEASE

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**32,135**

TOTAL OFFENDERS STUDIED

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**5,659**

FIREARMS OFFENDERS

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**8**

YEAR FOLLOW-UP

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offenders in the study.<sup>14</sup> The Commission then combined this criminal record data with data routinely collected about these offenders when they were originally sentenced. The final study group was comprised of 32,135 offenders who satisfied the following criteria:

- United States citizens;
- Re-entered the community during 2010 after discharging their sentence of incarceration or by commencing a term of probation in 2010;
- Not reported dead, escaped, or detained;<sup>15</sup>
- Have valid FBI numbers which could be located in criminal history repositories (in at least one state, the District of Columbia, or federal records).

## **Defining and Measuring Recidivism**

Recidivism “refers to a person’s relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.”<sup>16</sup> Recidivism measures can provide policy makers with information regarding the relative threat to public safety posed by various types of offenders, and the effectiveness of some public safety initiatives in deterring crime and rehabilitating offenders.<sup>17</sup> Recidivism measures are used by numerous public safety agencies to measure program performance and inform policy decisions on issues such as pretrial detention, prisoner classification and programming, and offender supervision in the community.<sup>18</sup>

Two measures are foundational to recidivism research, both of which can impact the outcomes of recidivism analyses. The first measure is the type of event used to indicate a relapse into criminal behavior. Recidivism is typically measured by criminal acts that resulted in the rearrest, reconviction, or reincarceration of an offender.<sup>19</sup> The second measure is the “follow-up period,” the period of time over which

events are counted following release into the community. Recidivism analysis begins with a starting event, such as release from prison into the community, following which recidivism events, such as arrests, are documented through the end of the follow-up period. Rearrests are most commonly used to measure recidivism because they are more consistently reported than reconvictions and reincarcerations.<sup>20</sup> The Commission used rearrest for this study for several reasons. Rearrest is the most commonly used measure of recidivism used by federal agencies in recent recidivism studies.<sup>21</sup> Federal agencies are using rearrest as the primary measure because it is a more reliable measure than reconviction and reincarceration due to the incomplete nature of disposition data.<sup>22</sup> Criminal records often fail to include reconvictions and reincarcerations because jurisdictions inconsistently report them. The records the Commission used to compile the data for this study reflect this inconsistency. For example, records for 44.1 percent of charges had no associated disposition information. For these reasons, the incomplete nature of disposition data used to identify reconviction and reincarceration events makes them unreliable measures of recidivism.

It should be noted that using rearrest does result in higher recidivism rates than reconviction or reincarceration. Not only are rearrests more consistently reported, but also the evidentiary standard for an arrest (probable cause) is less stringent than the evidentiary standard for a conviction and, therefore, incarceration (beyond a reasonable doubt). Because not all arrests result in conviction or incarceration, rearrests can overstate recidivism.<sup>23</sup> The Commission's rearrest measure also includes arrests for alleged violations (or revocations) of probation or state parole, which also can contribute to increased overall recidivism rates. The Commission, however, excluded rearrests for minor traffic offenses.

The second component of measuring recidivism is the "follow-up period," the period of time over which events are counted following release into the community. After a starting event—in this case, release from prison into the community or placement on probation—recidivism events are documented through the end of the follow-up period. The length of follow-up periods varies

across recidivism studies. Often, due to limitations on available data, some studies follow offenders for as little as six months. Other studies follow offenders for several years. Tracking offenders for a longer duration provides a more accurate estimate of recidivism or desistance from crime.<sup>24</sup> The Commission used an eight-year follow-up period for federal firearms offenders identified for this study as well as the three subgroups of firearms offenders discussed above.<sup>25</sup> For offenders who recidivated during the study period, the analysis examines the elapsed time from release to rearrest as well as the types of offenses at rearrest.



# **FIREARMS OFFENSES AND THE SENTENCING PROCESS**

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# FIREARMS OFFENDERS AND THE SENTENCING PROCESS

**Firearms offenders in this study were convicted of offenses found in chapter 44 (Firearms) of title 18, or chapter 53 (Machine guns, destructive devices, and certain other firearms) of title 26, of the United States Code.<sup>26</sup> Among other offenses, these statutes prohibit the possession, receipt, transportation, and use of firearms or ammunition.<sup>27</sup>**

In applying the sentencing guidelines, the initial step is to determine the offense guideline in Chapter Two (Offense Conduct) applicable to the offense of conviction by referring to the Statutory Index (Appendix A) in the *Guidelines Manual*.<sup>28</sup> Firearms offenses are sentenced primarily under Chapter Two, Part K, Subpart Two (Firearms).<sup>29</sup> After the applicable Chapter Two guideline is identified, an offense level is determined by calculating the Base Offense Level (BOL) along with applicable specific offense characteristics (SOC) and aggravating or mitigating adjustments.<sup>30</sup> Once an offense level is determined, the CHC for the particular offender is identified by assigning points for prior criminal convictions or acts of juvenile delinquency.<sup>31</sup> The criminal history points indicate the seriousness of the prior crime or crimes of conviction.

Once the final offense level and CHC are determined, the next step is to find the recommended guideline range in the Sentencing Table in Chapter Five (Determining the Sentence). The Sentencing Table consists of 43 offense levels that form the vertical axis and six CHCs that form the horizontal axis of the table.<sup>32</sup> The point on the Sentencing Table where the final offense level and the offender's CHC intersect is the recommended guideline range in months of imprisonment.<sup>33</sup>

## Section 2K2.1 Offenders

The first group of firearms offenders were those sentenced pursuant to §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), the most common guideline for offenders convicted of offenses involving firearms<sup>34</sup> or ammunition.<sup>35</sup>

A majority of the offenders sentenced under §2K2.1 were convicted under 18 U.S.C. § 922(g). This section prohibits the possession, receipt, or transport of a firearm by specified classes of people.<sup>36</sup> The classes are: (1) persons convicted of a crime punishable by imprisonment for a term exceeding one year, (2) fugitives, (3) unlawful users of or those addicted to controlled substances, (4) persons who have been adjudicated as a “mental defective” or who have been committed to a mental institution, (5) “alien[s] [] illegally or unlawfully in the United States” or, with exceptions, “alien[s] . . . admitted to the United States under a nonimmigrant visa,” (6) dishonorably discharged members of the Armed Forces, (7) U.S. citizens who have renounced their U.S. citizenship,<sup>37</sup> (8) persons subject to certain court restraining orders, and (9) persons who have been convicted in any court of a “misdemeanor crime of domestic violence.”<sup>38</sup> Another provision, 18 U.S.C. § 922(n), prohibits persons under indictment for a crime punishable by imprisonment for a term exceeding one year from shipping or transporting in interstate or foreign commerce any firearm or ammunition, or receiving any firearm or ammunition which has been shipped or transported

in interstate commerce.<sup>39</sup> Section 2K2.1 specifies that “prohibited person,” for purposes of the guideline, means any person described in 18 U.S.C. § 922(g) or (n).<sup>40</sup> A violation of section 922(g) has no mandatory minimum penalty and is punishable by a maximum term of imprisonment of ten years.<sup>41</sup> A violation of section 922(n) has no mandatory minimum penalty and is punishable by a maximum term of imprisonment of five years.<sup>42</sup>

Offenses involving the illegal purchase of a firearm for one person by another, commonly referred to as a “straw purchase,” are also sentenced under §2K2.1. “Straw purchase” offenses may be charged under section 922(a)(6) or section 924(a)(1)(A). Section 922(a)(6) prohibits any person from knowingly making any false statements in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, dealer, manufacturer, or collector with respect to any fact material to the lawfulness of the sale or the disposition of the firearm or ammunition.<sup>43</sup> A violation of section 922(a)(6) has no mandatory minimum penalty and is punishable by a maximum term of imprisonment of ten years.<sup>44</sup> Similarly, section 924(a)(1)(A) prohibits any false statement

or representation with respect to information required by chapter 44 to be in the records of federally licensed firearms dealers.<sup>45</sup> A violation of section 924(a)(1)(A) has no mandatory minimum penalty and is punishable by a maximum term of imprisonment of five years.<sup>46</sup>

Section 922(d) violations are also sentenced under §2K2.1.<sup>47</sup> Section 922(d) prohibits any person selling or otherwise disposing of any firearm or ammunition to any person knowing, or having reasonable cause to believe, that such a person is prohibited.<sup>48</sup> Typically, the offense involves transferring a firearm to a convicted felon.<sup>49</sup> A violation of section 922(d) has no mandatory minimum penalty and is punishable by a maximum term of imprisonment of ten years.<sup>50</sup>

Offenders convicted of offenses under the National Firearms Act, specifically those offenders convicted of an offense under 26 U.S.C. § 5861 (Prohibited acts) or who are subject to 26 U.S.C. § 5871 (Penalties), are also sentenced under §2K2.1.<sup>51</sup> Section 5861 restricts the possession, receipt, use, transfer, importation, and manufacture of particularly dangerous firearms such as machine guns and sawed-off shotguns. A violation of the National Firearms Act has no mandatory minimum penalty and is punishable by a maximum term of imprisonment of ten years.<sup>52</sup>

Section 2K2.1 applies to offenses related to stolen firearms or ammunition and manufacturing and dealing in firearms, among others.<sup>53</sup>

### **Guideline Provision**

Section 2K2.1 includes eight BOLs, determined by the type of firearm involved in the offense, the type and number of the offender's prior convictions, if any, and the offender's status as a person prohibited from possessing firearms.<sup>54</sup> This report analyzes two subgroups of offenders within §2K2.1.<sup>55</sup> The first subgroup, "*Prohibited Class*," are offenders prohibited from possessing a firearm, "straw purchasers," or offenders who transferred a firearm or ammunition to a prohibited person. A majority of *Prohibited Class* offenders were convicted under section 922(g) for possessing a firearm as a felon, commonly referred to as "felon in possession." The BOL for *Prohibited Class* offenders is 14, 20, or 24, depending on the number of prior felony convictions, if any, for a "crime of violence"<sup>56</sup> or "controlled substance offense."<sup>57</sup>

- **Base Offense Level 14:** Offenders assigned BOL 14 were (1) prohibited persons at the time the instant offense was committed, (2) offenders convicted under section 922(d), or (3) offenders convicted under one of the “straw purchaser” statutes, section 922(a)(6) or 924(a)(1)(A), where the offense was committed with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person. Offenders assigned BOL 14 do not have any prior felony convictions for a “crime of violence” or a “controlled substance offense.”

- **Base Offense Level 20:** Offenders assigned BOL 20 were (1) offenders who committed the offense subsequent to sustaining one felony conviction of either a “crime of violence” or a “controlled substance offense,” or (2) the offense involved a firearm described in the National Firearms Act or a semiautomatic firearm capable of accepting a large capacity magazine and the offender (a) was a prohibited person at the time the instant offense was committed, (b) was convicted under section 922(d), or (c) was convicted under one of the “straw purchaser” statutes where the offense was committed with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person.

- **Base Offense Level 24:** Offenders assigned BOL 24 committed the instant offense subsequent to sustaining at least two felony convictions of either a “crime of violence” or a “controlled substance offense.”

The second subgroup of offenders, the “*Prohibited Weapon*” offenders, were convicted of an offense involving a firearm described in the National Firearms Act, such as a machine gun, or a semiautomatic firearm that is capable of accepting a large capacity magazine.<sup>58</sup> The BOL for *Prohibited Weapon* offenders is 18, 22, or 26, depending on the number of prior felony convictions, if any, for a “crime of violence” or “controlled substance offense.”

- **Base Offense Level 18:** Offenders assigned BOL 18 were offenders whose offense involved a firearm described in 26 U.S.C. § 5845(a).<sup>59</sup> Offenders assigned BOL 18 do not have any prior felony convictions for a “crime of violence” or a “controlled substance offense.”

- **Base Offense Level 22:** Offenders assigned BOL 22 were offenders with at least one felony conviction of either a “crime of violence” or a “controlled substance offense” and the offense involved a semiautomatic firearm capable of accepting a large capacity magazine or a firearm described in 26 U.S.C. § 5845(a).

- **Base Offense Level 26:** Offenders assigned BOL 26 were offenders with at least two felony convictions of either a “crime of violence” or a “controlled substance offense” and the offense involved a semiautomatic firearm capable of accepting a large capacity magazine or a firearm described in 26 U.S.C. § 5845(a).

### **Career Offenders and Armed Career Criminals**

The second group of firearms offenders are “career offenders,” offenders sentenced pursuant to §4B1.1(Career Offender) who were convicted of a federal firearms offense as part of the instant offense, and “armed career criminals,” offenders sentenced pursuant to the ACCA.

An offender is a career offender if: (1) the offender was at least 18 years old at the time the instant offense was committed, (2) the instant offense is a felony that is either a “crime of violence” or a “controlled substance offense,” and (3) the offender has at least two prior felony convictions for either of those offenses.<sup>60</sup> “Crime of violence” and “controlled substance offense” are defined in §4B1.2.<sup>61</sup> The career offender guideline provides a table to determine the offense level for career offenders, which applies unless the offense level is greater than the one indicated in the table.

The offense level assigned in the table depends on the statutory maximum for the instant offense.<sup>62</sup> Once an offender qualifies as a career offender, application of the guideline generally increases the offender’s offense level. The offense levels provided in the table at §4B1.1(b) range from offense level 12 to offense level 37.<sup>63</sup> Application of the career offender guideline also generally increases the offender’s criminal history score. The guideline provides that an offender sentenced under the career offender guideline in every case is CHC VI, the highest CHC in the sentencing table.<sup>64</sup>

The ACCA requires 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,”<sup>65</sup> a “serious drug offense,”<sup>66</sup> or both.<sup>67</sup> The guideline that implements section 924(e) is §4B1.4 (Armed Career Criminal). Section 4B1.4 provides alternative offense levels and alternative criminal history categories. For the offense level, §4B1.4 assigns an offense level that is the greatest of (1) 33, (2) 34, if the firearm possessed was of a type described in 26 U.S.C. § 5845(a) or if the offender used or possessed the firearm or ammunition in connection with either a “crime of violence” or a “controlled substance offense,” or (3) the offender’s

otherwise applicable offense level.<sup>68</sup> For Criminal History Category, §4B1.4 assigns a CHC that is the greatest of: (1) Category IV; (2) Category VI if the firearm possessed was of a type described in 26 U.S.C. § 5845(a) or if the offender used or possessed the firearm or ammunition in connection with either a “crime of violence” or a “controlled substance offense”; or (3) the offender’s otherwise applicable criminal history category.<sup>69</sup>

### **18 U.S.C. § 924(c)**

The third group of firearms offenders are offenders convicted of 18 U.S.C. § 924(c) offenses.<sup>70</sup> 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.”<sup>71</sup> Section 924(c) imposes a mandatory consecutive 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.<sup>72</sup> Unless a greater minimum sentence applies, an offender convicted under section 924(c) is subject to a ten-year mandatory minimum for discharging a firearm, a seven-year mandatory minimum penalty for brandishing a firearm, or a

five-year mandatory minimum penalty otherwise.<sup>73</sup> If the firearm possessed was a short-barreled rifle or shotgun or semiautomatic assault weapon, the offender faces a mandatory minimum of ten years of imprisonment.<sup>74</sup> If the firearm possessed is a machine gun or destructive device, section 924(c) requires the offender to be sentenced to not less than 30 years in prison.<sup>75</sup> If the offender 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 machine gun or destructive device or bears a silencer or muffler.<sup>76</sup>

Prior to the First Step Act of 2018, the 25-year penalty for subsequent section 924(c) convictions applied to multiple counts of section 924(c) convictions in the same case.<sup>77</sup> The Act clarified that a prior section 924(c) conviction must have been final for the court to “stack” the sentence, however, the changes were not made retroactive.<sup>78</sup> Therefore, offenders in the 2010 release cohort were subject to the previous version of the statute, where an offender faced the 25-year minimum or life sentence based on multiple counts of conviction in the same case rather than after a prior conviction.

Offenders convicted of section 924(c) violations are sentenced under §2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes).<sup>79</sup> Pursuant to §2K2.4, the offender's guideline sentence is the minimum term of imprisonment required by statute.<sup>80</sup> Chapters Three and Four do not apply to section 924(c) counts of conviction.<sup>81</sup> If an offender is convicted of

another offense in addition to an offense under section 924(c), the guideline range for the additional offense is determined using the guideline applicable to that crime.<sup>82</sup> The resulting guideline range guides the sentence for the additional offenses, to which the court must add a consecutive sentence for the section 924(c) offense.<sup>83</sup>



# **FIREARMS AND ALL OTHER OFFENDERS**

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# FIREARMS OFFENDERS AND ALL OTHER OFFENDERS

## Offender and Offense Characteristics

### Demographics

The demographic characteristics of firearms offenders and all other offenders differ in several respects (Table 1). Black offenders constitute over half (52.8%) of the firearms offenders but only approximately one-third (32.1%) of all other offenders. White offenders were approximately one-third (34.0%) of firearms offenders but a larger share, 42.7 percent, of all other offenders. Hispanics were 10.8 percent of the firearms offenders and

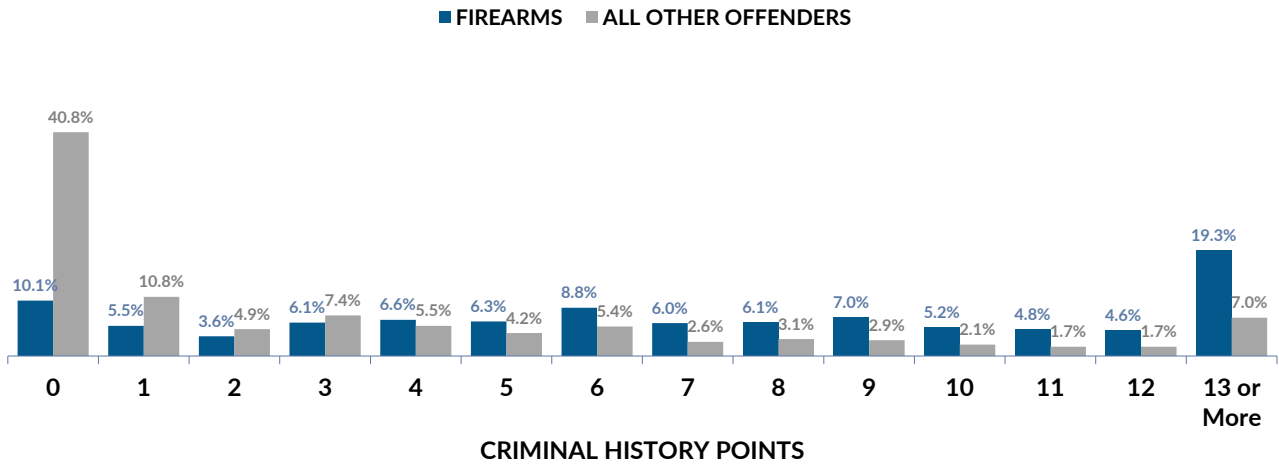
19.7 percent of all other offenders. Male offenders comprise the vast majority of firearms offenders (97.0%) and all other offenders (79.7%).

Firearms offenders were sentenced and released at a younger age than all other offenders. At the time of sentencing, the average age was 32 years for firearms offenders compared to 36 years for all other offenders (median 30 years and 34 years). At the time of release, the average age for firearms offenders was 36 years compared to 39 years for all other offenders (median 34 years and 37 years).

Table 1. Demographic Characteristics of Firearms Offenders and All Other Offenders Released in Calendar Year 2010

Offender Characteristics	FIREARMS	ALL OTHER OFFENDERS
<b>Race/Ethnicity</b>		
White	34.0%	42.7%
Black	52.8%	32.1%
Hispanic	10.8%	19.7%
Other	2.4%	5.5%
<b>Gender</b>		
Male	97.0%	79.7%
Female	3.0%	20.3%
<b>Age at Sentencing</b>		
Average	32 Years	36 Years
<b>Age at Release</b>		
Average	36 Years	39 Years
Median	34 Years	37 Years

Figure 3. Criminal History Points of Firearms and All Other Offenders



### Criminal History

Firearms offenders have more extensive criminal histories than all other offenders. Firearms offenders had an average of eight criminal history points (median seven points) compared to an average of four points (median one point) for all other offenders. Only 10.1 percent of firearms offenders accrued zero criminal history points compared to 40.8 percent of all other offenders. Conversely, 19.3 percent

of firearms offenders accrued 13 or more criminal history points compared to only 7.0 percent of all other offenders.

Accordingly, the highest CHCs applied to a greater percentage of firearms offenders than all other offenders. Only 15.3 percent of firearms offenders were in CHC I compared to over half of all other offenders (51.7%).<sup>84</sup> Conversely, over half of firearms offenders (53.7%) were placed in CHC IV-VI compared to only 21.4 percent of all other offenders in CHC IV-VI.

Figure 4. Criminal History Category of Firearms and All Other Offenders

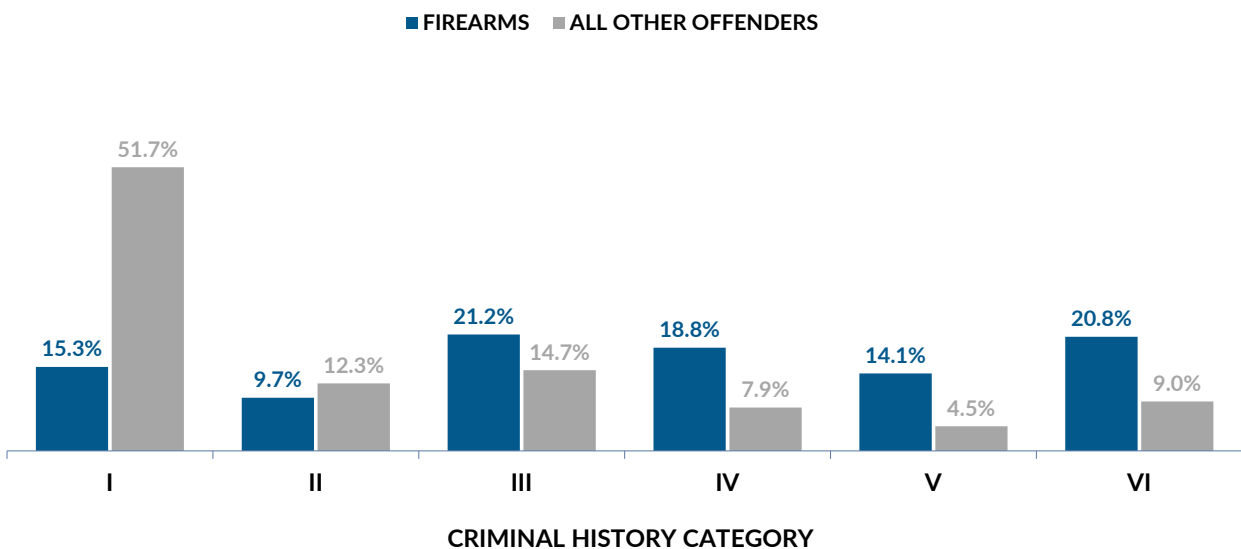
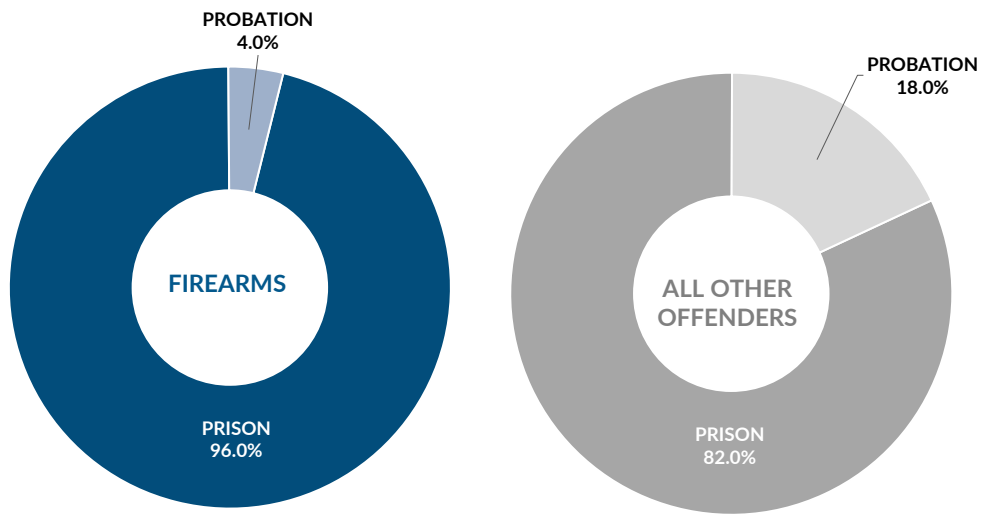


Figure 5. Sentences Imposed on Firearms and All Other Offenders

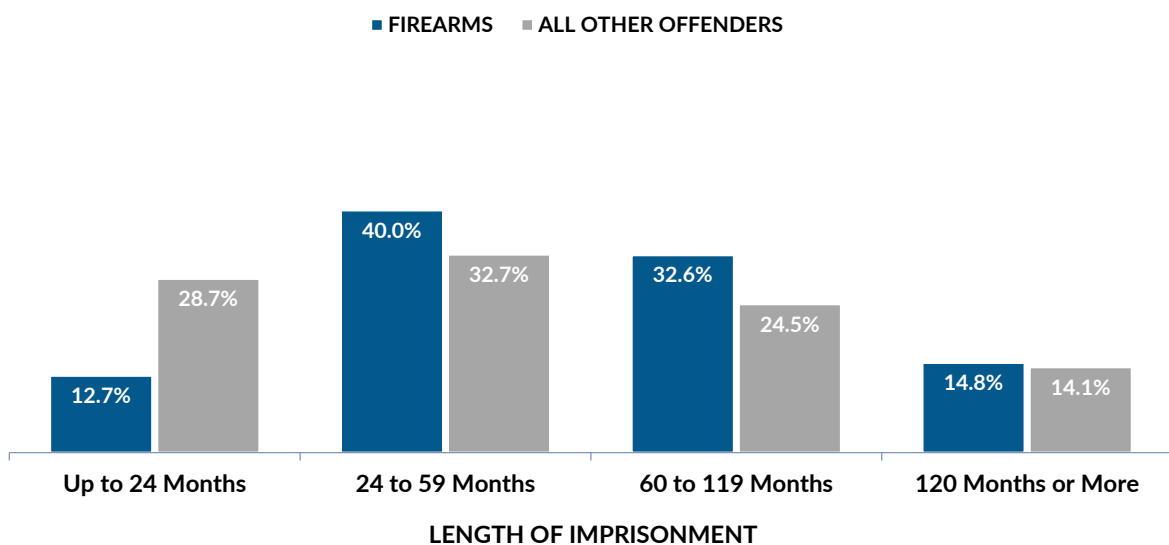


### Original Sentence

A greater percentage of firearms offenders received a sentence of imprisonment as compared to all other offenders.<sup>85</sup> Firearms offenders were sentenced to a term of imprisonment at a rate of 96.0 percent compared to 82.0 percent of all other offenders.

Of offenders sentenced to a term of imprisonment, firearms offenders received longer sentences than all other offenders. Firearms offenders received an average term of imprisonment of 70 months (median 57 months) compared to 57 months (median 41 months) for all other offenders. Of the firearms offenders sentenced to prison, firearms offenders

Figure 6. Sentence Length for Firearms and All Other Offenders



were less likely than all other offenders to receive a sentence of 24 months or less (12.7% compared to 28.7%, respectively). A greater share of firearms offenders received sentences between 24 and 59 months (40.0%) and 60 to 119 months (32.6%) as compared to all other offenders (32.7% and 24.5%, respectively). About an equal share of each group received a sentence of 120 months or more (14.8% percent of firearms offenders and 14.1% of all other offenders).

### Recidivism Findings

Firearms offenders recidivated at a higher rate than all other offenders. The rearrest rate for all firearms offenders was 69.0 percent compared to 45.1 percent for all other offenders (Table 2). In addition, firearms offenders who recidivated were

more likely to be rearrested for more new crimes than all other offenders who recidivated. Among offenders who recidivated, the median number of recidivism events (events occurring on separate days) was three for firearms offenders compared to two for all other offenders.

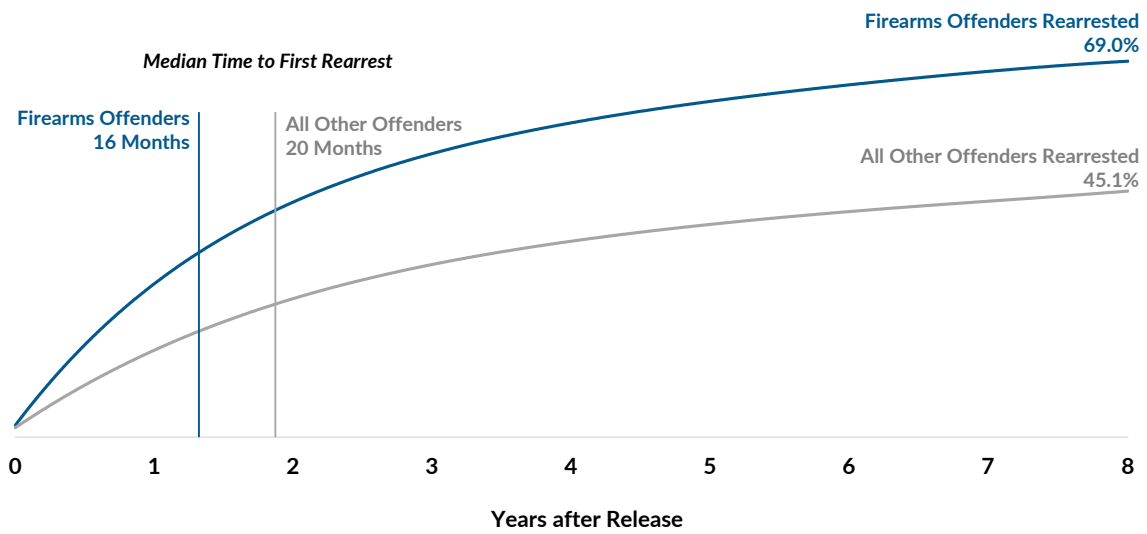
### Time to Rearrest

In addition to tracking offenders' recidivism rates, measuring the time in which an offender recidivated provides important information. For example, tracking the length of time between release into the community and the first recidivism event may assist policymakers or judges in determining an appropriate period of supervision after release.

Table 2. Overview of Firearms and All Other Offenders Recidivism Data

	FIREARMS	ALL OTHER OFFENDERS
Percent Rearrested	69.0%	45.1%
Median Months to Rearrest	16 Months	20 Months
Median Number of Rearrests	3	2
Most Common Post Release Offense	Assault (25.9%, n=1,011)	Assault (19%, n=2,270)

Figure 7. Time to First Rearrest of Firearms and All Other Offenders



Firearms offenders recidivated four months sooner than all other offenders (Figure 7). The median time to recidivism for firearms offenders was 16 months, meaning one-half of the firearms offenders were rearrested within 16 months of release, while the other half recidivated 16 months or more after release. Comparatively, the median time to recidivism for all other offenders was 20 months.

A substantial share of firearms offenders recidivated soon after release into the community. During the first year following release, 28.4 percent of all firearms offenders were rearrested for the first time. Rearrest rates declined thereafter. For example, 14.8 percent of firearms offenders were rearrested for the first time in the second year

compared to 9.1 percent of firearms offenders rearrested for the first time in the third year. Only 1.9 percent of firearms offenders were rearrested for the first time in the eighth year (Table 3).

All other offenders followed a similar pattern, albeit with a lower recidivism rate each year, as compared to firearms offenders. During the first year following release into the community, 16.0 percent of all other offenders recidivated for the first time. The recidivism rate fell to 9.5 percent of all other offenders in the second year and 6.3 percent in the third year. Only 1.8 percent of all other offenders recidivated for the first time in the eighth year (Table 3).

Table 3. Time to Rearrest for Firearms and All Other Offenders

Years After Release	FIREARMS			ALL OTHER OFFENDERS		
	N	%	Cumulative %	N	%	Cumulative %
One Year	1,606	28.4%	28.4%	4,234	16.0%	16.0%
Two Years	837	14.8%	43.2%	2,510	9.5%	25.5%
Three Years	513	9.1%	52.2%	1,666	6.3%	31.8%
Four Years	305	5.4%	57.6%	1,124	4.2%	36.0%
Five Years	232	4.1%	61.7%	831	3.1%	39.1%
Six Years	171	3.0%	64.7%	609	2.3%	41.4%
Seven Years	136	2.4%	67.1%	494	1.9%	43.3%
Eight Years	105	1.9%	69.0%	478	1.8%	45.1%

### Rearrests and Federal Supervision Status

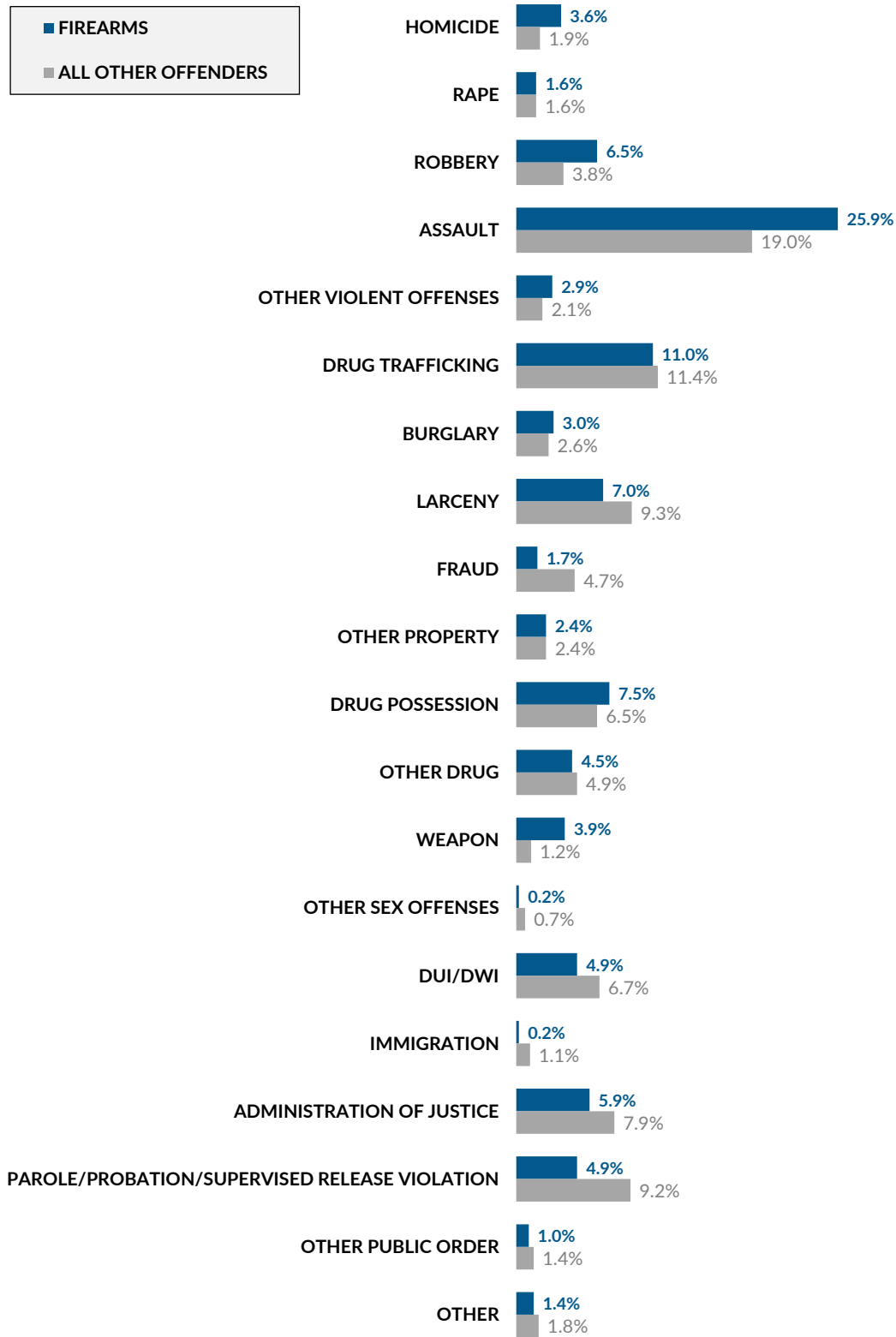
To further explore the issue of timing of rearrest, the Commission also examined rearrests relative to federal supervision status. While the data for this study included the length of supervision terms imposed, it did not include supervision status at the time of arrest. Therefore, for each rearrested offender, the Commission compared the length of supervision term imposed to the elapsed time prior to rearrest to provide a proxy of the offender’s supervision status at the time of rearrest.<sup>86</sup>

Almost all firearms offenders were sentenced to a term of supervision (99.8%), with an average length of 40 months (median 36 months). Based on the length of terms imposed, most offenders in the study were rearrested prior to the end

of those terms. Of those offenders who were sentenced to a term of supervision and rearrested, 77.5 percent were rearrested prior to the expiration of their originally imposed supervision term. The remaining 22.5 percent were rearrested after the expiration of their originally imposed supervision term.

Similarly, almost all offenders sentenced for other offenses were sentenced to a term of supervision (99.4%), with an average length of 45 months (median 36 months). Of those offenders who were sentenced to a term of supervision and rearrested, 75.9 percent were rearrested prior to the expiration of their originally imposed supervision term. The remaining 24.1 percent were rearrested after the expiration of their originally imposed supervision term.

Figure 8. Most Serious Offense at Rearrest, Firearms Offenders and All Other Offenders





### Most Serious Recidivism Event

The Commission used a severity ranking to analyze new offenses committed by the offenders in the study. This ranking was similar to the one used in the Commission’s 2016 *Recidivism Overview Report*<sup>87</sup> and presents new offenses in order of seriousness. If an offender was rearrested multiple times during the study period or had multiple charges in an arrest, the most serious offense according to this ranking was reported as the type of offense at rearrest.<sup>88</sup> Using this method, assault was the most common offense at rearrest for firearms offenders (25.9%) and all other offenders (19.0%). Drug trafficking was the second most common new charge for both firearms offenders (11.0%) and all other offenders (11.4%).

Firearms offenders, however, were more likely to be rearrested for homicide (3.6%) or robbery (6.5%) as compared to all other offenders (1.9% and 3.8%, respectively). Firearms and all other offenders were equally likely to be rearrested for rape, 1.6 percent of each group.

### Recidivism and Criminal History

An offender’s prior criminal history is one key aspect taken into consideration by the sentencing guidelines.<sup>89</sup> When formulating the criminal history scoring system, the Commission evaluated empirical research analyzing recidivism and career criminal behavior.<sup>90</sup> The Commission’s most recent research has confirmed the strength of the relationship between an offender’s prior record and recidivism.<sup>91</sup>

Figure 9. Rearrest Rates of Firearms and All Other Offenders by Criminal History Points

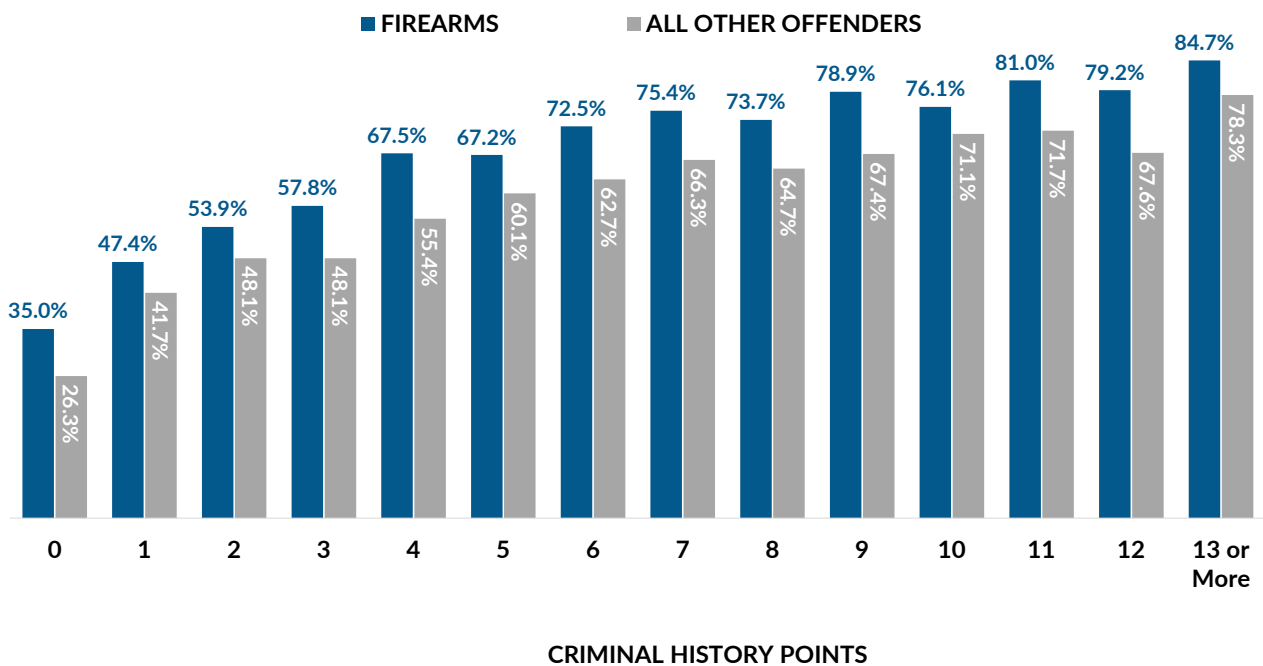
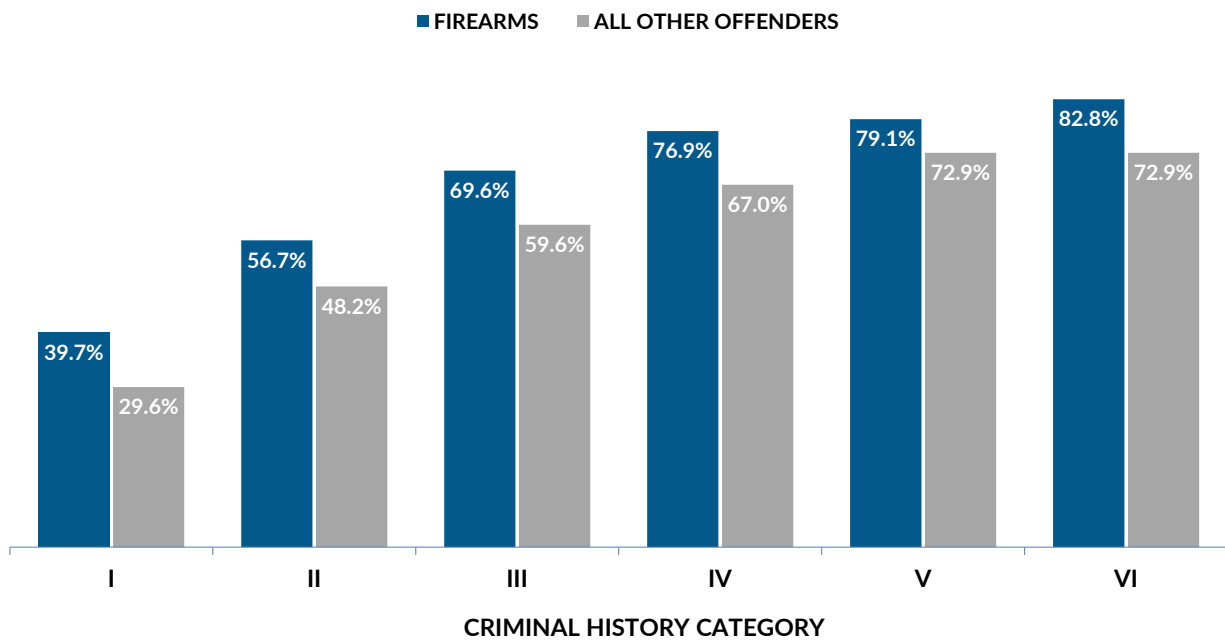


Figure 10. Rearrest Rates of Firearms and All Other Offenders by Criminal History Category

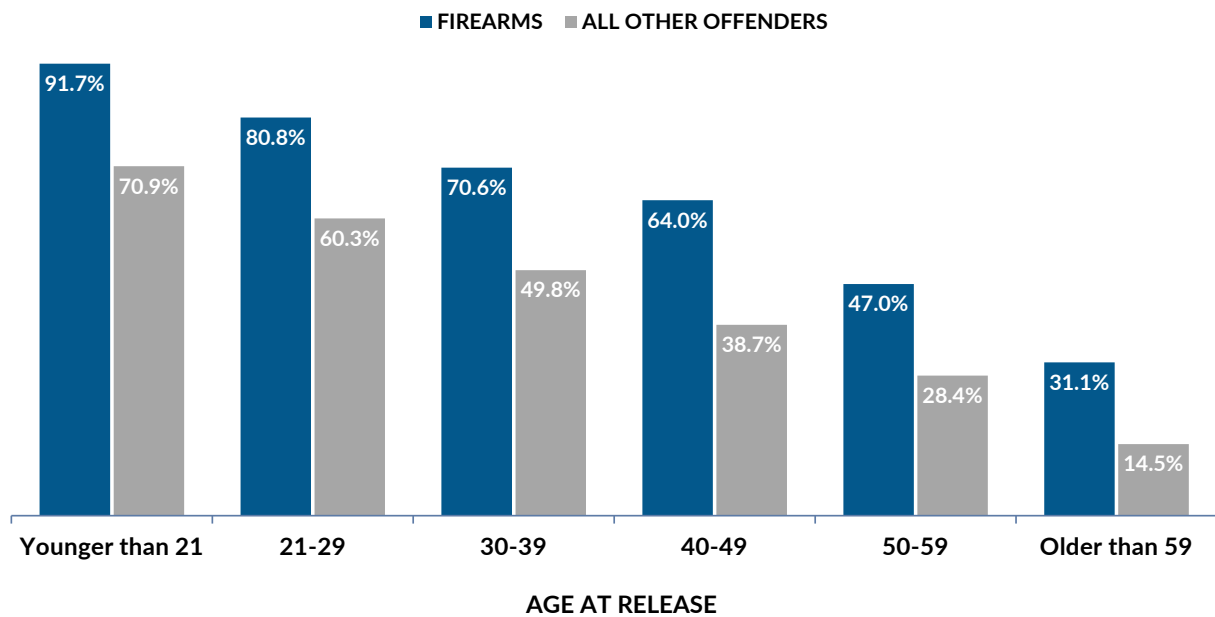


In the current study, recidivism rates for both firearms offenders and all other offenders correlated strongly with total criminal history score (Figure 9). Accordingly, because the number of criminal history points determines the CHC assigned, recidivism rates are also correlated with the CHC. As with total criminal history points, the data shows that the higher the CHC, the more likely an offender will recidivate. Recidivism rates among firearms offenders ranged from 39.7 percent for offenders who were in CHC I to 82.8 percent for those who were in CHC VI.

Although this correlation between recidivism and criminal history is demonstrated in both groups, differences

are seen when comparing the two groups to each other. As shown in Figure 10, firearms offenders have higher recidivism rates than all other offenders in every CHC. In CHCs I, III, IV, and VI the difference in recidivism rates between firearms and all other offenders was approximately ten percentage points.<sup>92</sup> In CHC I, firearms offenders recidivated at a rate of 39.7 percent compared to 29.6 percent. Likewise, in CHC VI firearms offenders recidivated at a rate of 82.8 percent compared to 72.9 percent for all other offenders. The smallest difference in recidivism rates between firearms and all other offenders was 6.2 percentage points in CHC V (79.1% for firearms offenders compared to 72.9% for all other offenders}.

Figure 11. Rearrest Rates of Firearms and All Other Offenders by Age at Release

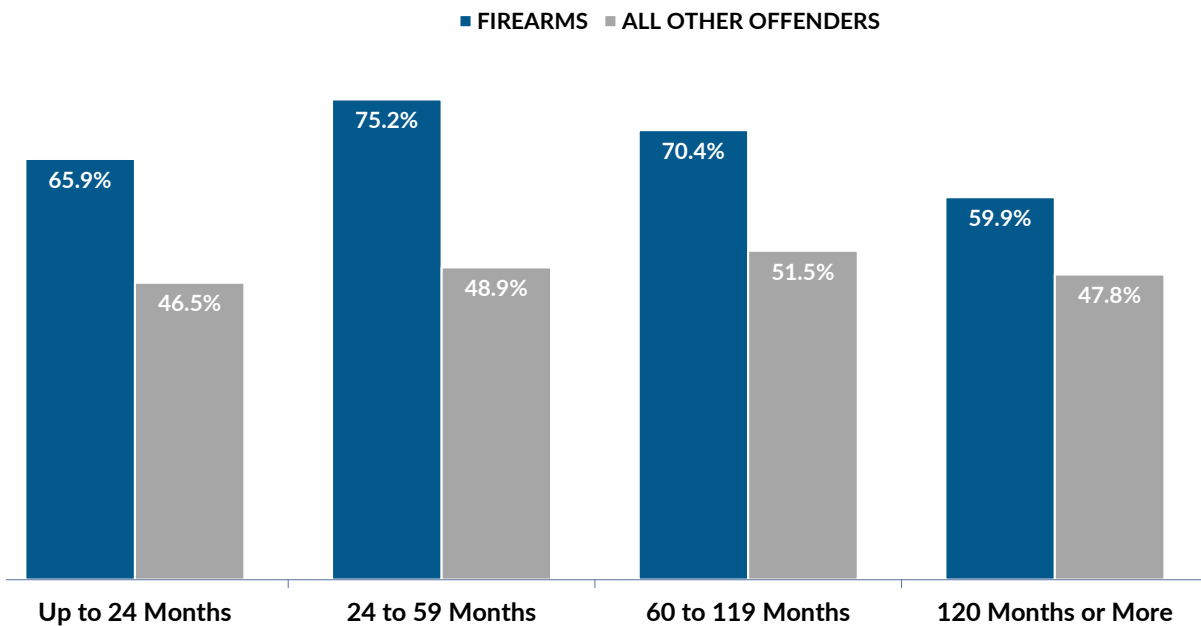


### Recidivism and Age

Firearms offenders recidivated at a higher rate than all other offenders in every age group at the time of release—approximately 20 percentage points higher in every age group. Recidivism rates for firearms offenders declined as age at release increased. Firearms offenders under age 21 recidivated at a rate of 91.7 percent, followed by declines of about ten percentage points for those aged 21 to 29 (80.8%) and those aged 30 to 39 (70.6%). Offenders aged 40 to 49 had a recidivism rate of 64.0 percent, followed by rates of 47.0 percent for those 50 to 59 and 31.1 percent for those aged 60 and over.

All other offenders exhibited the same pattern as firearms offenders—a continuous decline in recidivism rates as the age at release increased. All other offenders under age 21 recidivated at a rate of 70.9 percent, followed by a decline of approximately ten percentage points to 60.3 percent for those aged 21 to 29. Rates declined for each subsequent group, with the lowest rate of 14.5 percent for aged 60 and over.

Figure 12. Rearrest Rates of Firearms and All Other Offenders by Length of Imprisonment



**Recidivism and Sentence Imposed**

Firearms offenders recidivated at a higher rate than all other offenders regardless of the length of sentence imposed. However, the data did not show a clear relationship between sentence length and recidivism. For example, two-thirds of firearms offenders (65.9%) who received a sentence to the shortest terms of imprisonment of less than 24 months recidivated. The recidivism rates increased to 75.2 percent for firearms offenders who received a sentence between 24 and 59 months. The recidivism rates then declined for firearms offenders who received a sentence between 60 to 119 months (70.4%) and those who received a sentence of 120 months or more (59.9%).

The recidivism rate for all other offenders varied less among offenders based on the length of sentence imposed. Offenders sentenced to less than 24 months recidivated at a rate of 46.5 percent. All other offenders receiving a sentence between 24 and 59 months recidivated at a rate of 48.9 percent. Offenders receiving a sentence between 60 and 119 months recidivated at a rate of 51.5 percent and those sentenced to 120 months or more recidivated at a rate of 47.8 percent.

# **SECTION 2K2.1 OFFENDERS**

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# SECTION 2K2.1 OFFENDERS

*This chapter analyzes the offender characteristics and recidivism rates among the 4,043 offenders sentenced under §2K2.1 as the primary sentencing guideline, comparing the Prohibited Class offenders to the Prohibited Weapon offenders.<sup>93</sup>*

## Offender and Offense Characteristics

As discussed above, the *Prohibited Class* group comprised 3,655 offenders (1) prohibited from possessing a firearm or ammunition, (2) convicted under one of the “straw purchaser” statutes, or (3) who transferred a firearm or ammunition to a prohibited person. *Prohibited Class* offenders had a BOL of 14, 20, or 24 under §2K2.1. The 3,655 *Prohibited Class* offenders represent 11.4 percent of the 32,135 federal offenders released in calendar year 2010.

The *Prohibited Weapon* offenders comprise 388 offenders convicted of an offense involving a firearm described in the

National Firearms Act, 26 U.S.C. § 5845(a) (e.g., a machine gun), or a semiautomatic firearm that is capable of accepting a large capacity magazine, and had a BOL of 18, 22, or 26 under §2K2.1. *Prohibited Weapon* offenders represent only 1.2 percent of the federal offenders released in calendar year 2010.

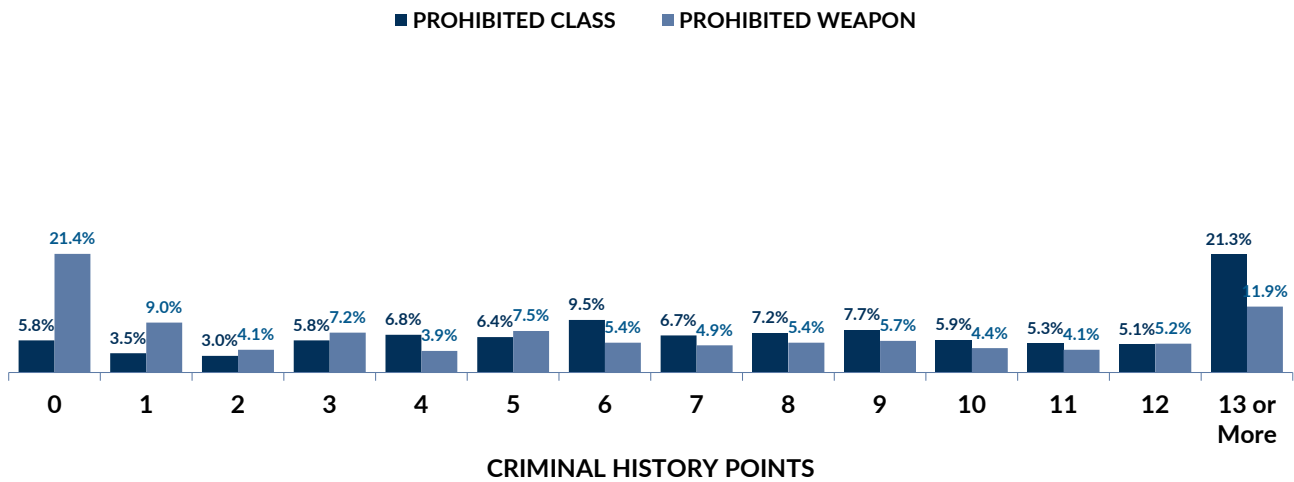
## Demographics

The demographic characteristics of the *Prohibited Class* and *Prohibited Weapon* offenders differ in several respects (Table 4). Black offenders constitute a majority of *Prohibited Class* offenders (53.8%) while White offenders constitute the largest group of *Prohibited Weapon* offenders (48.8%). The second largest group of

Table 4. Demographic Characteristics of Prohibited Class and Prohibited Weapon Offenders

Offender Characteristics	PROHIBITED CLASS	PROHIBITED WEAPON
<b>Race/Ethnicity</b>		
White	34.2%	48.8%
Black	53.8%	31.5%
Hispanic	9.8%	16.3%
Other	2.3%	3.4%
<b>Gender</b>		
Male	97.4%	97.7%
Female	2.6%	2.3%
<b>Age at Sentencing</b>		
Average	33 Years	33 Years
<b>Age at Release</b>		
Average	36 Years	36 Years
Median	34 Years	34 Years

Figure 13. Criminal History Points of Prohibited Class and Prohibited Weapon Offenders



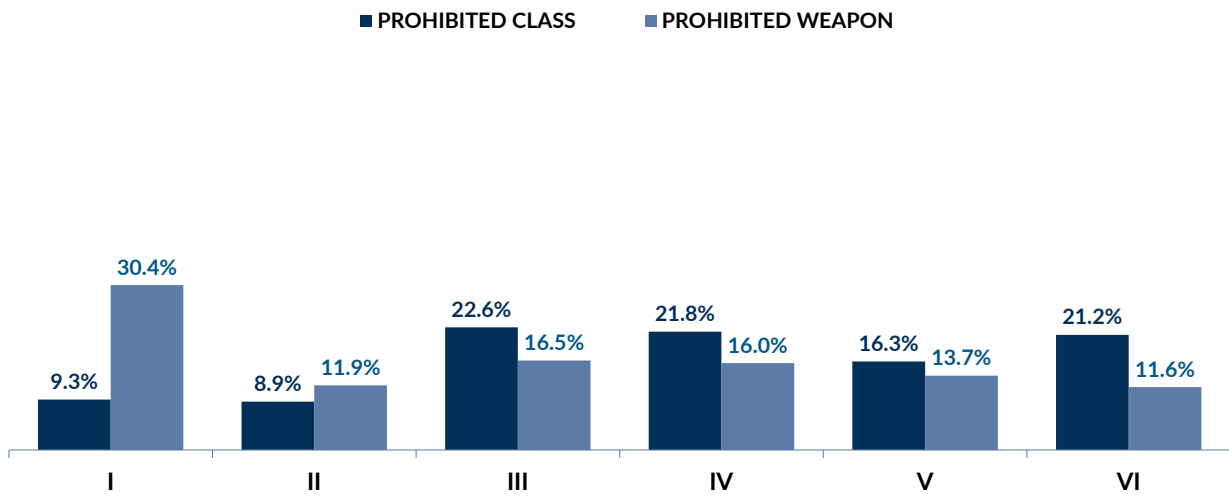
*Prohibited Class* offenders were comprised of White (34.2%), followed by Hispanic offenders (9.8%). The second largest group of *Prohibited Weapon* offenders was Black offenders (31.5%), followed by Hispanic offenders (16.3%). Male offenders comprise the overwhelming majority of both the *Prohibited Class* and *Prohibited Weapon* offenders at over 97 percent.

*Prohibited Class* offenders were the same age at sentencing and release as *Prohibited Weapon* offenders. The average age for both groups was 33 years at sentencing and 36 years at release.

### Criminal History

*Prohibited Class* offenders have more extensive criminal histories than *Prohibited Weapon* offenders (Figures 13 and 14). *Prohibited Class* offenders had an average of nine points (median eight points) compared to an average of six points (median five points) for *Prohibited Weapon* offenders. Only 5.8 percent of *Prohibited Class* offenders accrued zero criminal history points compared to 21.4 percent of *Prohibited Weapon* offenders. Conversely, 21.3 percent of *Prohibited Class* offenders accrued more than 13 criminal history points compared to 11.9 percent of *Prohibited Weapon* offenders.

Figure 14. Criminal History Category of Prohibited Class and Prohibited Weapon Offenders



Accordingly, a greater percentage of *Prohibited Class* offenders were placed in higher CHCs than *Prohibited Weapon* offenders. Only 9.3 percent of *Prohibited Class* offenders were in CHC I compared to 30.4 percent of *Prohibited Weapon* offenders. Conversely, 59.3 percent of *Prohibited Class* offenders were in CHC IV-VI compared to 41.3 percent of *Prohibited Weapon* offenders in CHC IV-VI.

### Original Sentence

The vast majority of *Prohibited Class* (94.9%) and *Prohibited Weapon* (90.5%) offenders received a term of imprisonment (Figure 15). Of offenders sentenced to a term of imprisonment,<sup>94</sup> most *Prohibited Class* offenders received shorter sentences than *Prohibited Weapon* offenders (Figure 16). *Prohibited Class* offenders received an

Figure 15. Sentence Imposed on Prohibited Class and Prohibited Weapon Offenders

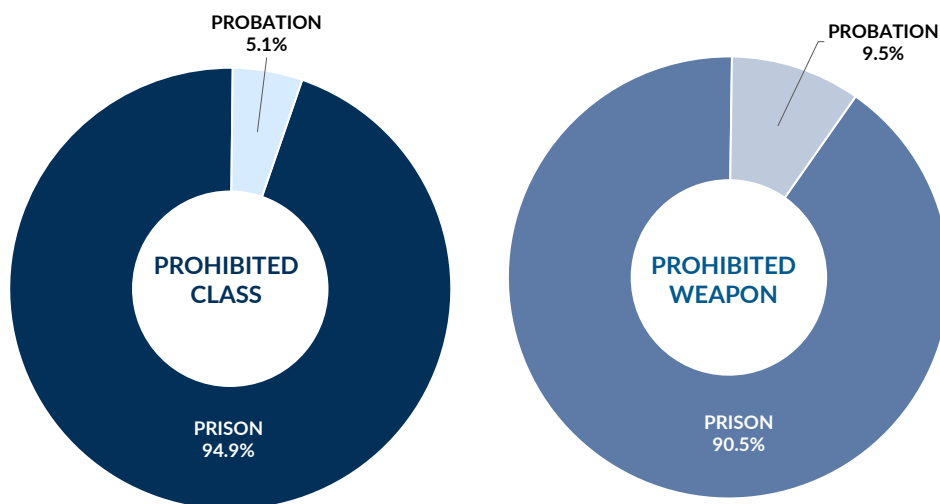
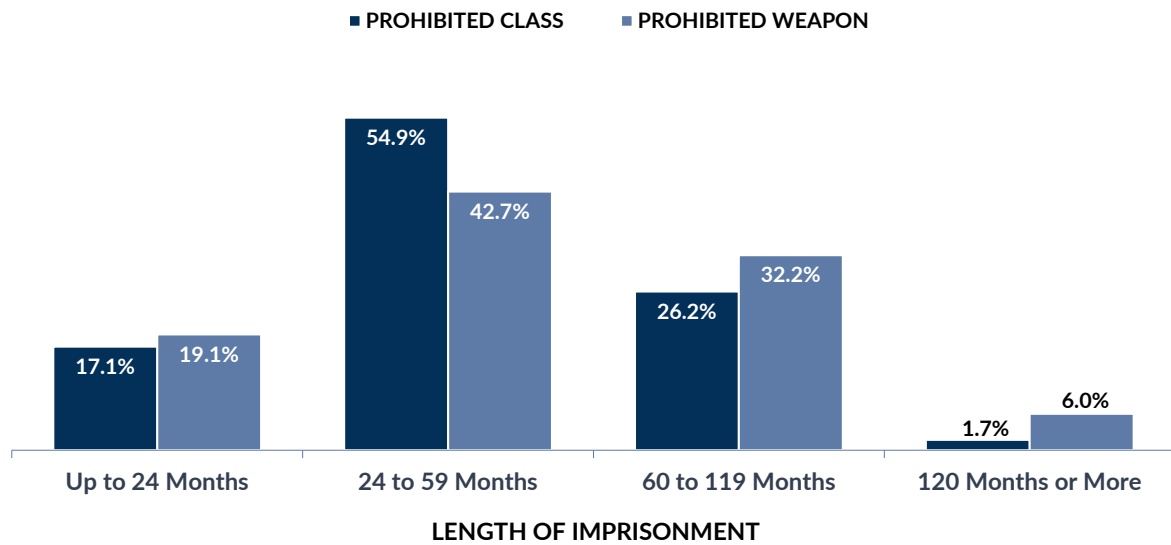




Figure 16. Sentence Length of Prohibited Class and Prohibited Weapon Offenders



average sentence of 47 months (median 41 months) compared to 55 months (median 46 months) for *Prohibited Weapon* offenders. A slightly smaller percentage of *Prohibited Class* offenders (17.1%) than *Prohibited Weapon* offenders (19.1%) received a sentence of less than 24 months. However, over half of *Prohibited Class* offenders received a sentence between 24 and 59 months (54.9%) compared to 42.7 percent of *Prohibited Weapon* offenders. *Prohibited Class* offenders were less likely than *Prohibited Weapon* offenders to receive the longer

sentences of 60 to 119 months (26.2% compared to 32.2%) and 120 months or more (1.7% compared to 6.0%).

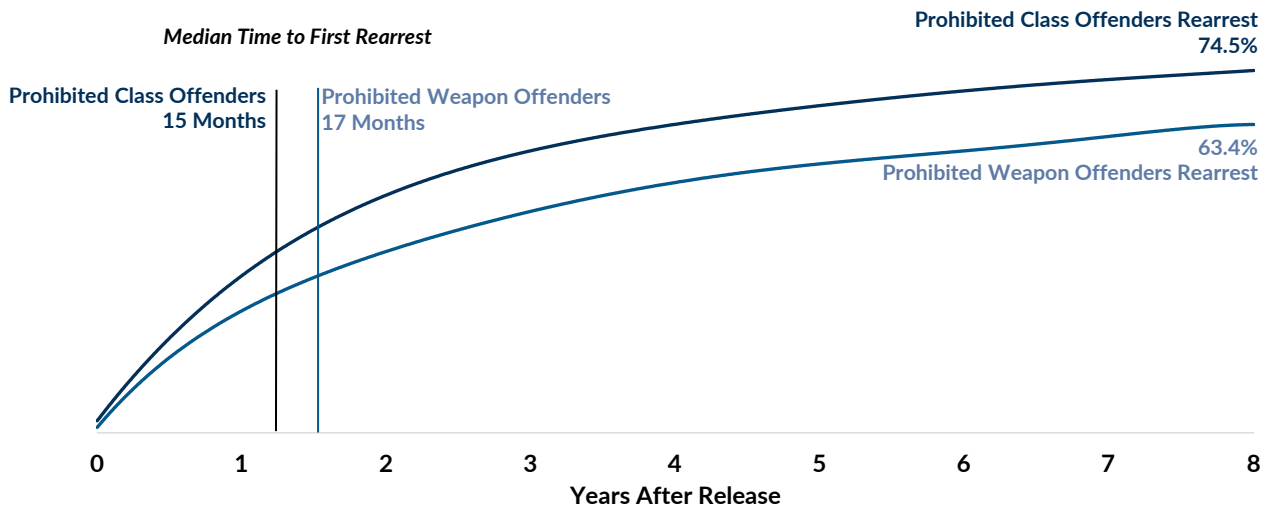
### Recidivism Findings

*Prohibited Class* offenders recidivated at a higher rate than *Prohibited Weapon* offenders (Table 5). The rearrest rate for *Prohibited Class* offenders was 74.5 percent compared to 63.4 percent of *Prohibited Weapon* offenders. Among both *Prohibited Class* and *Prohibited Weapon* recidivist offenders, the median number of recidivism events was three.

Table 5. Recidivism Rates for Prohibited Class and Prohibited Weapon Offenders

	PROHIBITED CLASS	PROHIBITED WEAPON
Percent Rearrested	74.5%	63.4%
Median Months to Rearrest	15 Months	17 Months
Median Number of Rearrests	3	3
Most Common Post Release Offense	Assault (27.3%, n=742)	Assault (26.0%, n=64)

Figure 17. Time to First Rearrest of Prohibited Class and Prohibited Weapon Offenders



### Time to Rearrest

*Prohibited Class* offenders recidivated two months sooner than *Prohibited Weapon* offenders. Among recidivist offenders, the median time to rearrest was 15 months for *Prohibited Class* offenders compared to 17 months for *Prohibited Weapon* offenders (Figure 17).

During the first year following release, 32.6 percent of *Prohibited Class* offenders recidivated for the first time. Rearrest rates declined thereafter (Table 6). For example, 16.6 percent of *Prohibited Class* offenders were rearrested for the first time in the second year, while 9.0 percent were rearrested for the first time in the third year. Only 1.9 percent of *Prohibited Class*

offenders were rearrested for the first time in the eighth year.

*Prohibited Weapon* offenders followed a similar pattern but recidivated at a lower rate than *Prohibited Class* offenders in the first two years following release. During the first year following release, 25.0 percent of *Prohibited Weapon* offenders recidivated for the first time. This rate fell to 11.6 percent in the second year and 9.0 percent in the third year. Only 2.3 percent of *Prohibited Weapon* offenders recidivated for the first time in the eighth year.

Table 6. Time to Rearrest of Prohibited Class and Prohibited Weapon Offenders

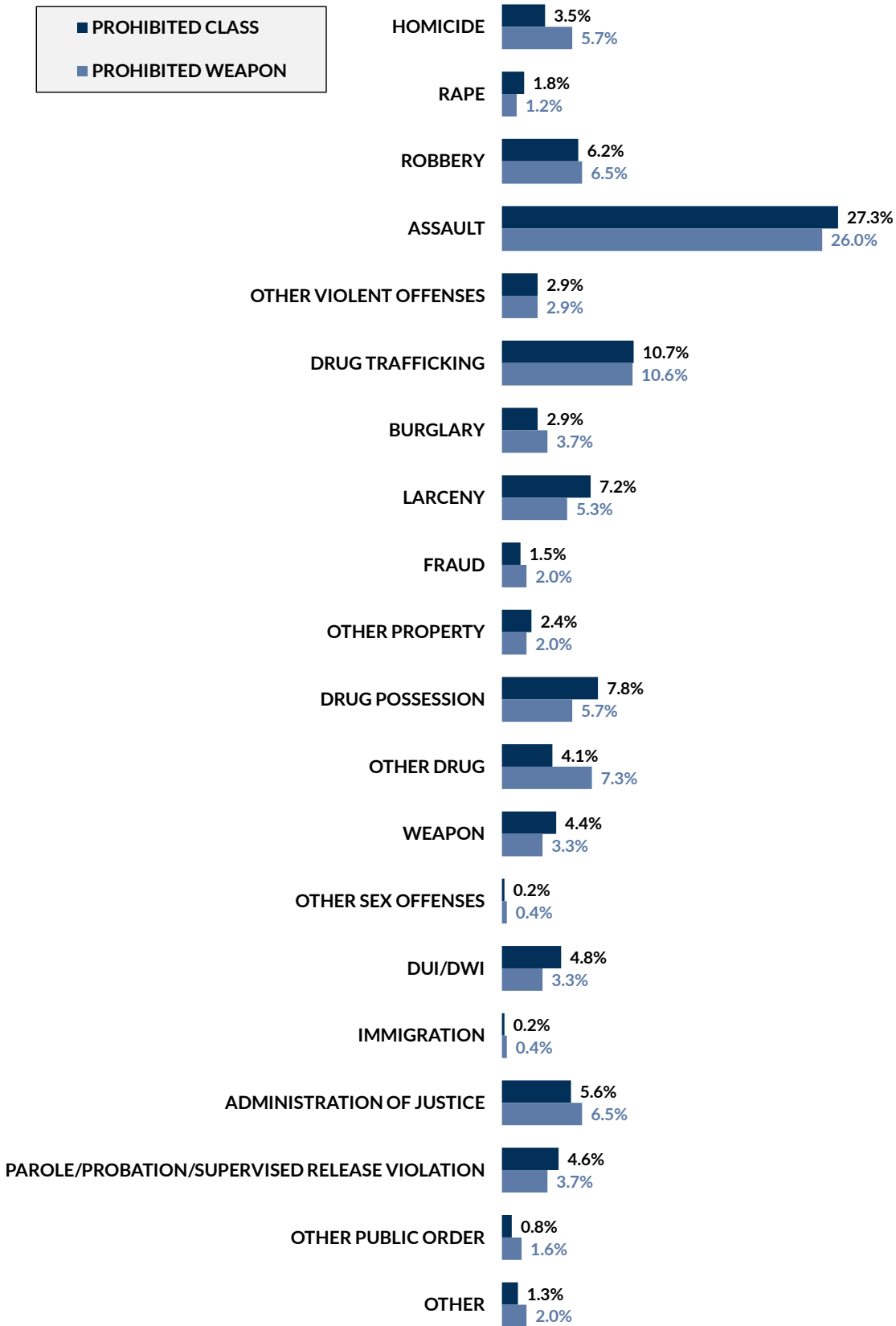
Years After Release	PROHIBITED CLASS			PROHIBITED WEAPON		
	N	%	Cumulative %	N	%	Cumulative %
One Year	1,191	32.6%	32.6%	97	25.0%	25.0%
Two Years	605	16.6%	49.1%	45	11.6%	36.6%
Three Years	328	9.0%	58.1%	35	9.0%	45.6%
Four Years	197	5.4%	63.5%	24	6.2%	51.8%
Five Years	137	3.7%	67.3%	14	3.6%	55.4%
Six Years	120	3.3%	70.5%	9	2.3%	57.7%
Seven Years	76	2.1%	72.6%	13	3.4%	61.1%
Eight Years	69	1.9%	74.5%	9	2.3%	63.4%

**Rearrests and Federal Supervision Status**

All *Prohibited Weapon* offenders and almost all *Prohibited Class* offenders (99.8%) were sentenced to a term of supervision, with an average length of 35 months (median 36 months for both groups) Of those offenders who were sentenced to a term of supervision and rearrested, 71.1 percent of *Prohibited Weapon* offenders were rearrested prior to the expiration of their originally imposed supervision term. The remaining 28.9 percent were rearrested after the expiration of their originally imposed supervision term. Similarly, 76.8 percent of

*Prohibited Class* offenders were rearrested prior to the expiration of their originally imposed supervision term. The remaining 23.2 percent were rearrested after the expiration of their originally imposed supervision term.

Figure 18. Most Serious Offense at Rearrest, Prohibited Class and Prohibited Weapons



### Most Serious Recidivism Event

When considering the single most serious offense type of all offenders who recidivated, *Prohibited Class* and *Prohibited Weapon* offenders were rearrested for similar crimes, with assault being the most common followed by drug trafficking (Figure 18). Among offenders who recidivated, 27.3 percent of *Prohibited Class* offenders and 26.0 percent of *Prohibited Weapon* offenders were rearrested for assault as the most serious offense. Drug trafficking was the most serious offense for 10.7 percent of *Prohibited Class* offenders and 10.6 percent of *Prohibited Weapon* offenders.

### Recidivism and Criminal History

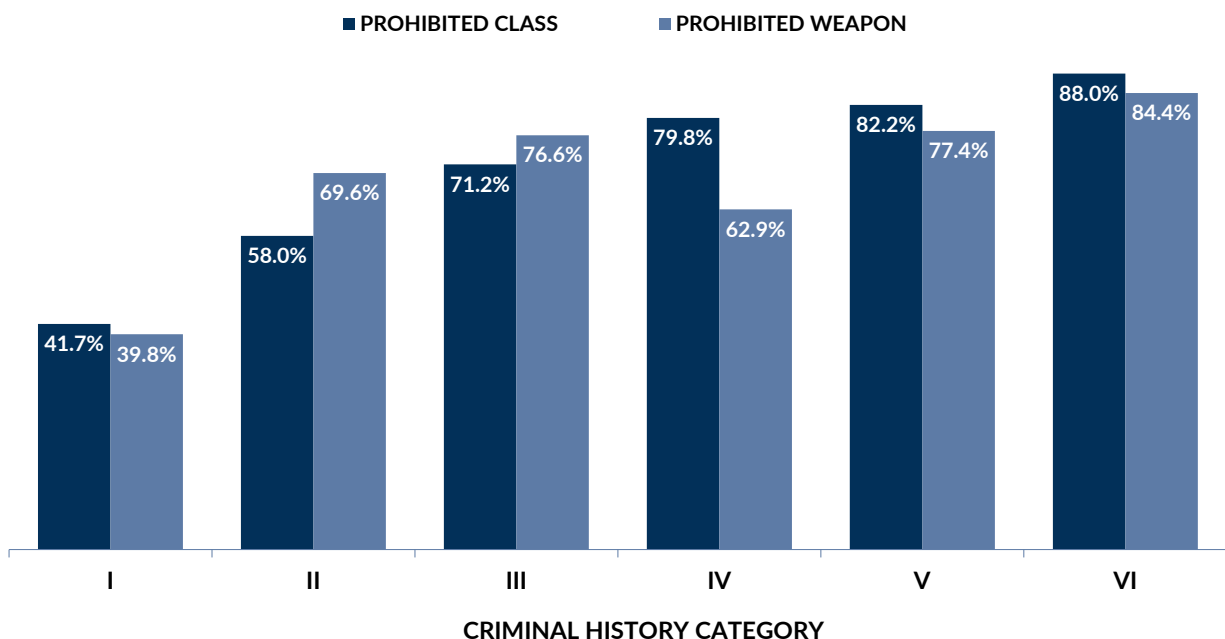
Recidivism rates for both *Prohibited Class* and *Prohibited Weapon* offenders were correlated with CHC (Figure 19). Recidivism rates among *Prohibited Class*

offenders ranged from 41.7 percent for those in CHC I to a high of 88.0 percent for those in CHC VI. Comparatively, recidivism rates among *Prohibited Weapon* offenders ranged from 39.8 percent for offenders assigned CHC I to 84.4 percent for those assigned CHC VI.

Within CHCs II and III, *Prohibited Class* offenders had lower recidivism rates than *Prohibited Weapon* offenders. In CHC II, 58.0 percent of *Prohibited Class* offenders were rearrested compared to 69.6 percent of *Prohibited Weapon* offenders, while in CHC III, 71.2 percent of *Prohibited Class* offenders were rearrested compared to 76.6 percent of *Prohibited Weapon* offenders.

However, in the higher CHCs, *Prohibited Class* offenders had higher recidivism rates. *Prohibited Class* offenders in CHC IV were rearrested 79.8 percent

Figure 19. Rearrest Rates for Prohibited Class and Prohibited Weapon Offenders by Criminal History Category



of the time compared to 62.9 percent of *Prohibited Weapon* offenders. In CHC V, 82.2 percent of *Prohibited Class* offenders were rearrested compared to 77.4 percent of *Prohibited Weapon* offenders while the rearrest rates in CHC VI were 88.0 percent compared to 84.4 percent.

### Recidivism and Age

*Prohibited Class* offenders recidivated at a higher rate than *Prohibited Weapon* offenders in every age group at the time of release. Almost all *Prohibited Class* offenders under age 21 recidivated (95.8%) while 83.3 percent of *Prohibited Weapon* offenders under age 21 recidivated.

Recidivism rates for each group decreases with age. For those offenders released between ages 21 to 29, *Prohibited Class* offenders were rearrested at a rate of 85.4 percent while 79.1 percent of *Prohibited Weapon* offenders were rearrested. For offenders aged 60 and over, recidivism rates fell to 29.8 percent of *Prohibited Class* offenders and 17.7 percent of *Prohibited Weapon* offenders. Both groups of firearms offenders had higher recidivism rates than all other offenders within each age group.

Figure 20. Rearrest Rates of Prohibited Class and Prohibited Weapon Offenders by Age at Release

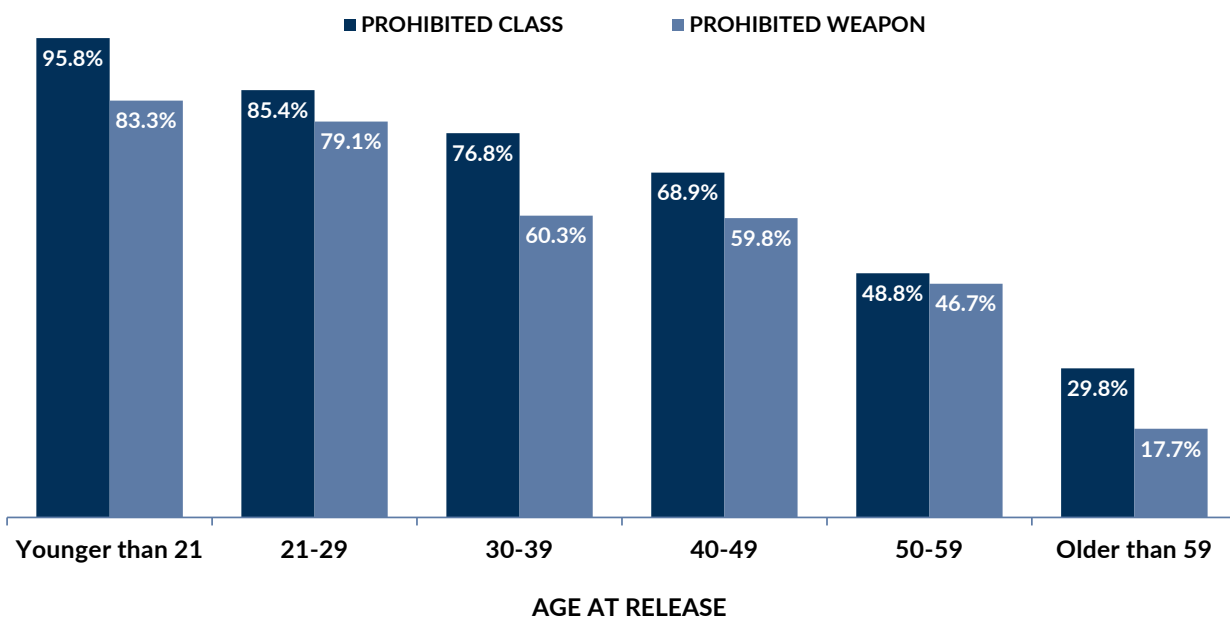
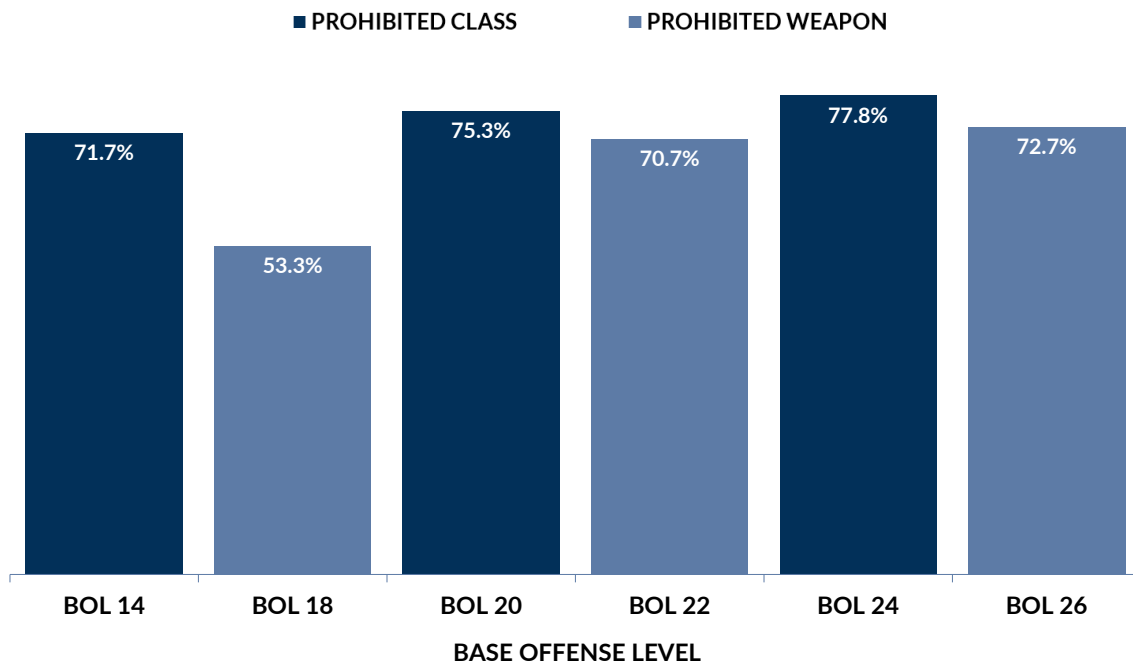


Figure 21. Rearrest Rates of §2K2.1 Offenders by Base Offense Level



### Recidivism and the Offender’s Federal Offense

For *Prohibited Class* and *Prohibited Weapon* offenders, higher recidivism rates correlated with higher BOLs, which, as discussed above, are assigned based on the number and type of prior convictions. These higher recidivism rates are likely due to the greater criminal history accrued by offenders in the higher BOLs.

The majority of offenders assigned BOL 14 violated section 922(g) based on a conviction for being a felon-in-possession of a firearm and therefore necessarily committed a prior crime. Accordingly, 87.2 percent of the offenders assigned BOL 14 accumulated criminal history points. Only 19.6 percent were placed in CHC I.

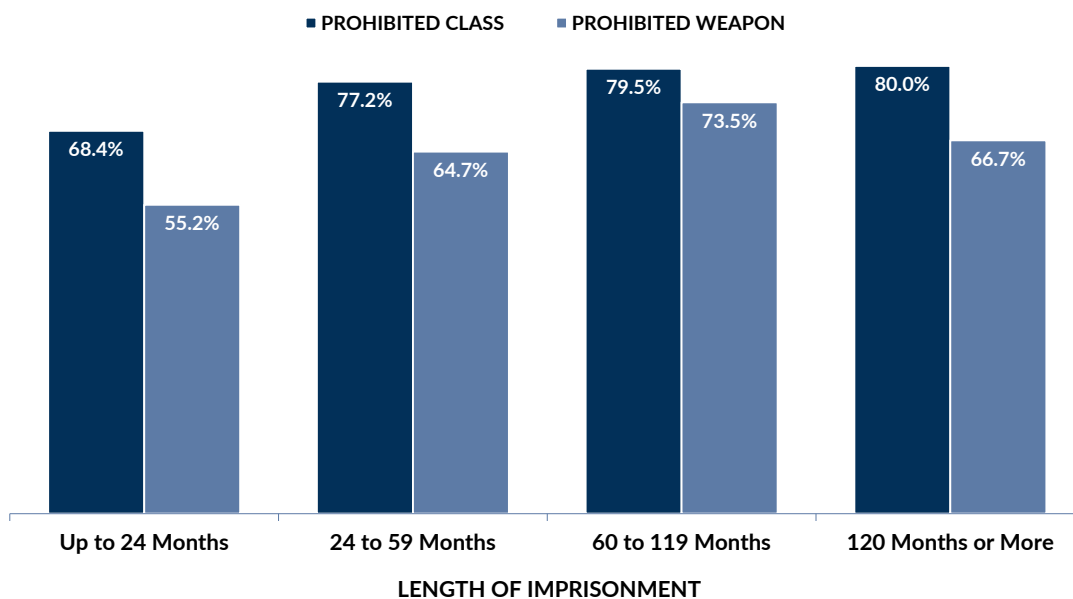
As previously noted, an offender’s criminal history score is a strong predictor of recidivism and each additional criminal history point is generally associated with a greater likelihood of recidivism.<sup>95</sup> This relationship between criminal history and recidivism is likely a factor associated with the high recidivism rate (71.7%) for *Prohibited Class* offenders assigned to BOL 14. The recidivism rates increase to 75.3 percent for *Prohibited Class* offenders assigned to BOL 20 (requiring one predicate offense for a “crime of violence” or “controlled substance offense”) and 77.8 percent for those assigned BOL 24 (requiring two predicate offenses for a “crime of violence” or “controlled substance offense”).

Comparatively, some *Prohibited Weapon* offenders had less extensive criminal histories. Of the *Prohibited Weapon* offenders assigned BOL 18, 46.2 percent had zero criminal history points and 64.5 percent were placed in CHC I. The *Prohibited Weapon* offenders assigned BOL 18, those having less extensive criminal history than other offenders sentenced under §2K2.1, had the lowest recidivism rate (53.3%). The recidivism rate increases 17.4 percentage points to 70.7 percent for *Prohibited Weapon* offenders assigned BOL 22 (requiring one predicate offense for a “crime of violence” or “controlled substance offense”). The recidivism rate increased to 72.7 percent for those assigned BOL 26 (requiring two predicate offenses for a “crime of violence” or “controlled substance offense”).

### Recidivism and Sentence Imposed

*Prohibited Class* offenders recidivated at a higher rate than *Prohibited Weapon* offenders regardless of sentence length (Figure 22). Among those sentenced to less than 24 months, *Prohibited Class* offenders were rearrested at a rate of 68.4 percent compared to 55.2 percent of *Prohibited Weapon* offenders. Recidivism rates increased for both groups of offenders who received a sentence between 24 and 59 months (77.2% for *Prohibited Class* offenders compared to 64.7% for *Prohibited Weapon* offenders). Among those sentenced to 60 to 119 months, *Prohibited Class* offenders recidivated at a rate of 79.5 percent compared to 73.5 percent for *Prohibited Weapon* offenders. For offenders sentenced to 120 months of imprisonment or more, 80.0 percent of *Prohibited Class* offenders were rearrested compared to 66.7 percent of *Prohibited Weapon* offenders.

Figure 22. Rearrest Rates of Prohibited Class and Prohibited Weapon Offenders by Length of Imprisonment





# **CAREER OFFENDERS AND ARMED CAREER CRIMINALS**

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# CAREER OFFENDERS AND ARMED CAREER CRIMINALS

*This chapter provides information on the recidivism rates of career offenders and armed career criminals. This report presents a limited set of analyses because of the small number of career offenders and armed career criminals released in calendar year 2010.<sup>96</sup>*

Career offenders sentenced for a firearms offense and armed career criminals constitute a small group of offenders in this study; 311 offenders in the 2010 release cohort and 5.5 percent of the 5,659 firearms offenders studied in this report.

Although these offenders constitute a small group, each is subject to higher guideline ranges (career offenders) and penalty ranges (armed career criminals) than other firearms offenders. For example, all 311 offenders sentenced as a career offender with an instant firearms offense or as an armed career criminal received a term of imprisonment. Career offenders

Figure 23. Sentence Length of Career Offenders and Armed Career Criminals

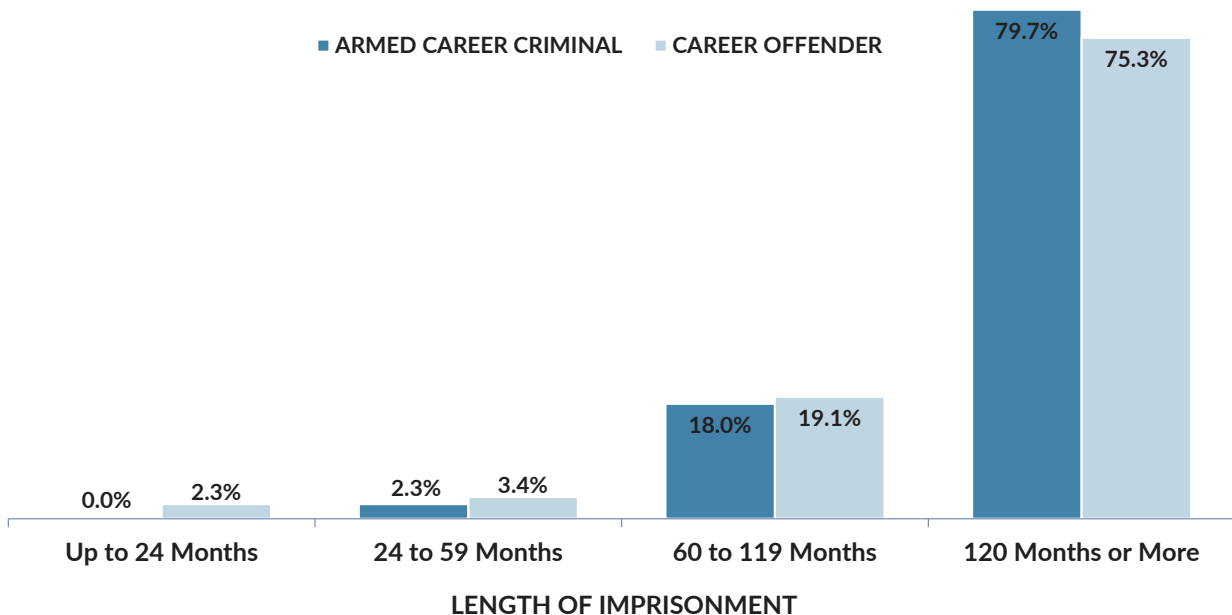


Table 7. Recidivism Rates for Career Offenders and Armed Career Criminals

	ARMED CAREER CRIMINAL	CAREER OFFENDER
Percent Rearrested	71.6%	61.8%
Median Months to Rearrest	18 Months	26 Months
Median Number of Rearrests	Assault (28.3%, n=45)	Assault (25.5%, n=14)

with an instant firearms offense had an average sentence of 172 months (median 160 months) while armed career criminals had an average sentence of 175 months (median 180 months). The substantial majorities of both groups received sentences of 120 months or more. While firearms offenders overall received a sentence of 120 months or more 14.8 percent of the time, almost 80 percent of armed career criminals and 75.3 percent of career offenders with an instant firearms offense received sentences of 120 months or more.

Armed career criminals recidivated at a higher and faster rate than career offenders with an instant firearms offense and firearms offenders overall. Armed career criminals had a recidivism rate of 71.6 percent as compared to 69.0 percent for firearms offenders overall. In contrast, career offenders with an instant firearms offense had a lower recidivism rate (61.8%) than firearms offenders overall. The median time to rearrest for armed career criminals was 18 months compared to 26 months for career offenders with an instant firearms offense. Consistent with other firearms offenders, assault was the most serious new charge for both armed career criminals (28.3%) and career offenders with an instant firearms offense (25.5%).



# **SECTION 924(c) OFFENDERS**

# SECTION 924(c) OFFENDERS

This chapter analyzes the offender characteristics and recidivism rates among 1,239 section 924(c) offenders not otherwise designated as career offenders or armed career criminals. This chapter compares these section 924(c) offenders to the other firearms offenders and provides analyses of the offense characteristics and recidivism rates of these offenders based on the nature of the instant offense and the offender's criminal history.

## Offender and Offense Characteristics

### Demographics

Black offenders constitute the majority of section 924(c) offenders (55.9%), followed by White offenders (28.4%) and Hispanic offenders (13.3%). Black offenders also constitute the majority of other firearms offenders (51.9%), followed by White offenders (35.6%) and Hispanic offenders (10.1%). Male offenders

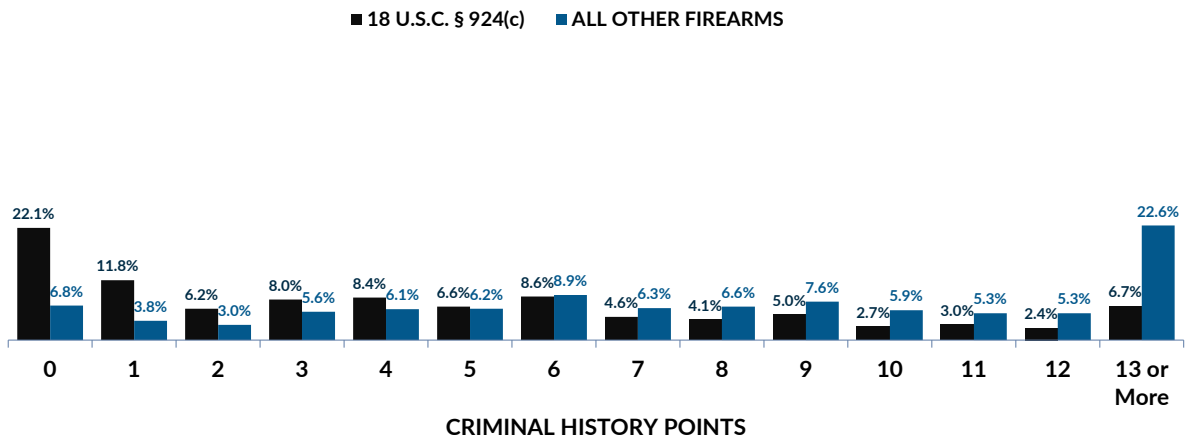
comprise the overwhelming majority of both section 924(c) offenders (94.9%) and other firearms offenders (97.7%).

Section 924(c) offenders were younger than other firearms offenders at sentencing. At the time of sentencing, the average age was 29 years for section 924(c) offenders compared to 33 years for other firearms offenders (median 27 and 30 years). However, at the time of release into the community, the average age for

Table 8. Demographic Characteristics of 18 U.S.C. § 924(c) Offenders and All Other Firearms Offenders

Offender Characteristics	18 U.S.C. § 924(c)	ALL OTHER FIREARMS
<b>Race/Ethnicity</b>		
White	28.4%	35.6%
Black	55.9%	51.9%
Hispanic	13.3%	10.1%
Other	2.4%	2.4%
<b>Gender</b>		
Male	94.9%	97.7%
Female	5.1%	2.3%
<b>Age at Sentencing</b>		
Average	29 Years	33 Years
<b>Age at Release</b>		
Average	36 Years	36 Years
Median	34 Years	34 Years

Figure 24. Criminal History Points of 18 U.S.C. § 924(c) Offenders



both section 924(c) offenders and other firearms offenders was 36 (median 34 years for both groups).

### Criminal History

Section 924(c) offenders had less extensive criminal histories than other firearms offenders (Figures 24 and 25) with an average score of five points (median four points) compared to an average

of nine points (median eight points) for other firearms offenders. Section 924(c) offenders were considerably more likely to be assigned zero criminal history points as compared to other firearms offenders (22.1% compared to 6.8%). Conversely, only 6.7 percent of section 924(c) offenders accrued 13 or more points compared to 22.6 percent of other firearms offenders.

Figure 25. Criminal History Category of 18 U.S.C. § 924(c) Offenders and All Other Firearm Offenders

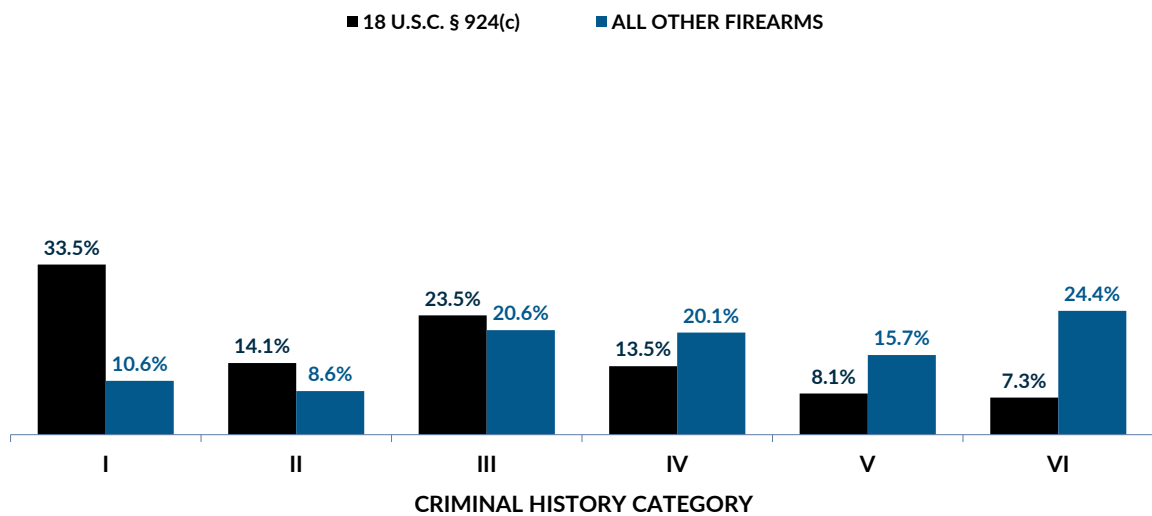
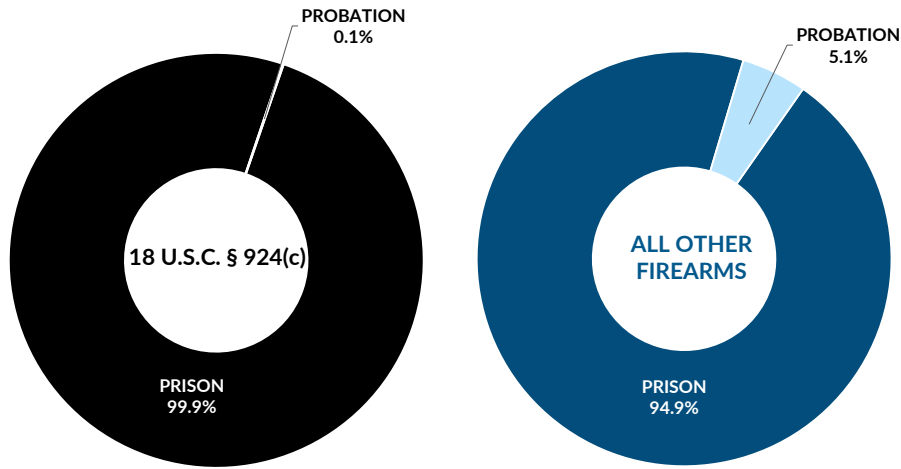


Figure 26. Sentences Imposed on 18 U.S.C. § 924(c) and all Other Firearms Offenders



Accordingly, a greater percentage of section 924(c) offenders (33.5%) were assigned CHC I compared to other firearms offenders (10.6%).<sup>97</sup> A smaller percentage of section 924(c) offenders were assigned to CHC IV-VI (28.9%) as compared to other firearms offenders (60.2%).

### Original Sentence

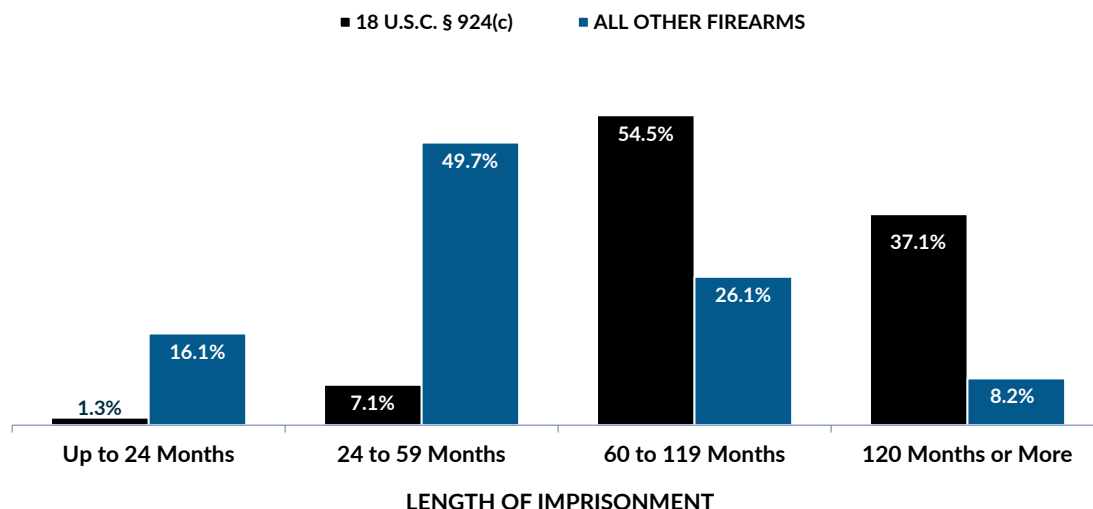
Almost all section 924(c) offenders (99.9%) received a sentence of imprisonment,<sup>98</sup> as did the substantial majority of other firearms offenders (94.9%) (Figure 26). Of the offenders sentenced to a term of imprisonment, section 924(c) offenders received longer sentences than other firearms offenders. Section 924(c) received an average sentence of 111 months (median 97 months). Only 1.3 percent of section 924(c) offenders received a sentence

under 24 months and 7.1 percent received a sentence between 24 and 59 months. More than half (54.5%) of 924(c) offenders received a sentence between 60 to 119 months and another 37.1 percent received a sentence of 120 months or more (Figure 27).

Comparatively, other firearms offenders received an average sentence of 58 months (median 46 months). Likewise, 16.1 percent of other firearms offenders received a sentence of less than 24 months and half (49.7%) received a sentence between 24 and 59 months. Only 26.1 percent of other firearms offenders received a sentence between 60 to 119 months and 8.2 percent received a sentence of 120 months or more.



Figure 27. Sentences Imposed on 18 U.S.C. § 924(c) and all Other Firearms Offenders



### Recidivism Findings

Section 924(c) offenders recidivated at a substantially lower rate than other firearms offenders. Just over half (55.4%) of section 924(c) offenders were rearrested compared to almost three-quarters (72.8%) of other firearms offenders.

Section 924(c) offenders and other firearms offenders were rearrested for the same median number of crimes. Among those who recidivated, the median number of recidivism events was three for both groups (Table 9).

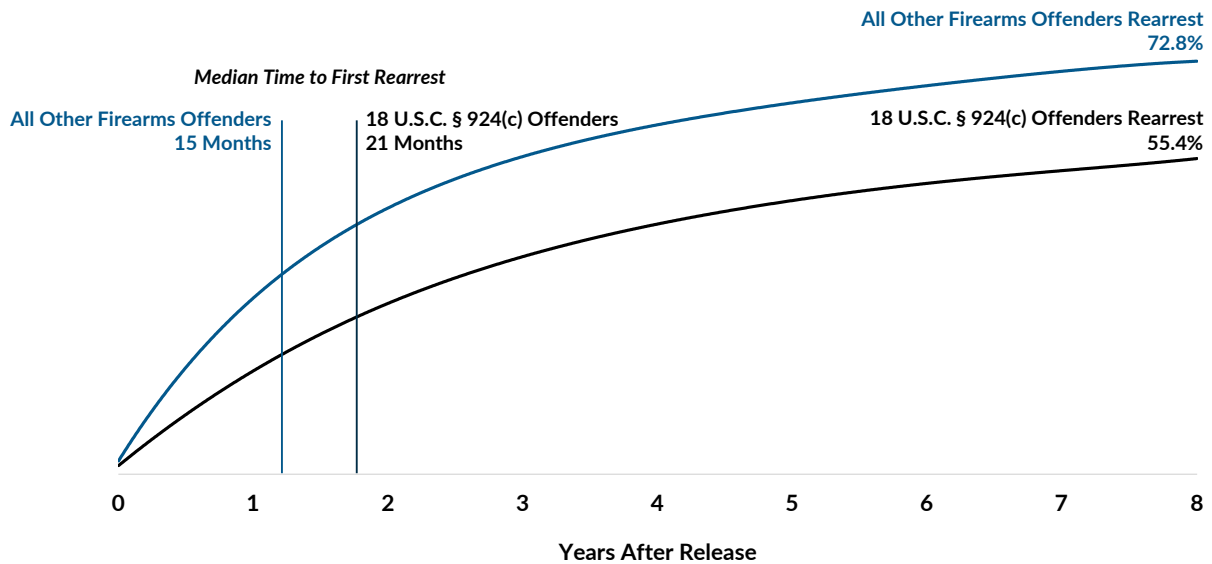
### Time to Rearrest

The median time to rearrest for section 924(c) offenders was six months later than the median time to rearrest for other firearms offenders (Figure 28). Specifically, the median time to recidivism for section 924(c) offenders was 21 months, meaning one-half of the section 924(c) offenders were rearrested within 21 months of release, while the other half recidivated in 21 months or more after release. Comparatively, half of other firearms offenders recidivated within 15 months of release, the median time to recidivism for other firearms offenders.

Table 9. Recidivism Rates for 18 U.S.C. § 924(c) Offenders and All Other Firearms Offenders

	18 U.S.C. § 924(c)	ALL OTHER FIREARMS
Percent Rearrested	55.4%	72.8%
Median Months to Rearrest	21 Months	15 Months
Median Number of Rearrests	3	3
Most Common Post Release Offense	Assault (20.1%, n=138)	Assault (27.1%, n=873)

Figure 28. Time to Rearrest for 18 U.S.C. § 924(c) Offenders vs. All Other Firearm Offenders



During the first year following release into the community, 18.4 percent of section 924(c) offenders recidivated for the first time (Table 10). Rearrest rates generally declined thereafter. For example, 11.9 percent of the section 924(c) offenders were rearrested for the first time in the second year, and 8.5 percent were rearrested for the first time in the third year. Only 1.8 percent of the section 924(c) offenders recidivated for the first time in the eighth year.

Other firearms offenders followed a similar pattern but recidivated more quickly. Almost one-third (31.2%) of all

other firearms offenders were rearrested during the first year following release into the community. As with section 924(c) offenders, the recidivism rates generally declined each subsequent year.

### **Rearrests and Federal Supervision Status**

Almost all section 924(c) offenders were sentenced to a term of supervision (99.6%), with an average length of 52 months (median 60 months). Based on the length of terms imposed, most offenders in the study were rearrested prior to the end of those terms. Of those offenders who were sentenced to a term of supervision

Table 10. Time to Rearrest for 18 U.S.C. § 924(c) Offenders vs. All Other Firearm Offenders

Years After Release	18 U.S.C. § 924(c)			ALL OTHER FIREARMS OFFENDERS		
	N	%	Cumulative %	N	%	Cumulative %
One Year	228	18.4%	18.4%	1,378	31.2%	31.2%
Two Years	148	11.9%	30.3%	689	15.6%	46.8%
Three Years	105	8.5%	38.8%	408	9.2%	56.0%
Four Years	66	5.3%	44.1%	239	5.4%	61.4%
Five Years	61	4.9%	49.1%	171	3.9%	65.3%
Six Years	26	2.1%	51.2%	145	3.3%	68.6%
Seven Years	30	2.4%	53.6%	106	2.4%	71.0%
Eight Years	22	1.8%	55.4%	83	1.9%	72.8%

and rearrested, 81.6 percent were rearrested prior to the expiration of their originally imposed supervision term. The remaining 18.4 percent were rearrested after the expiration of their originally imposed supervision term.

Similarly, almost all offenders sentenced for other offenses were sentenced to a term of supervision (99.8%), with an average length of 36 months (median 36 months). Of those offenders who were sentenced to a term of supervision and rearrested, 76.0 percent were rearrested prior to the expiration of their originally imposed supervision term. The remaining 24.0 percent were

rearrested after the expiration of their originally imposed supervision term.

**Most Serious Recidivism Event**

Section 924(c) offenders and other firearms offenders were rearrested for similar crimes (Figure 29). The most common new charge for section 924(c) offenders and other firearms offenders was assault (20.1% and 27.1%, respectively). The second most common new charge for section 924(c) offenders was drug trafficking (12.4%). Among other firearms offenders, drug trafficking (10.7%) was also the second most common new charge.

Figure 29. Most Serious Offense at Rearrest, 18 U.S.C. § 924(c) Offenders

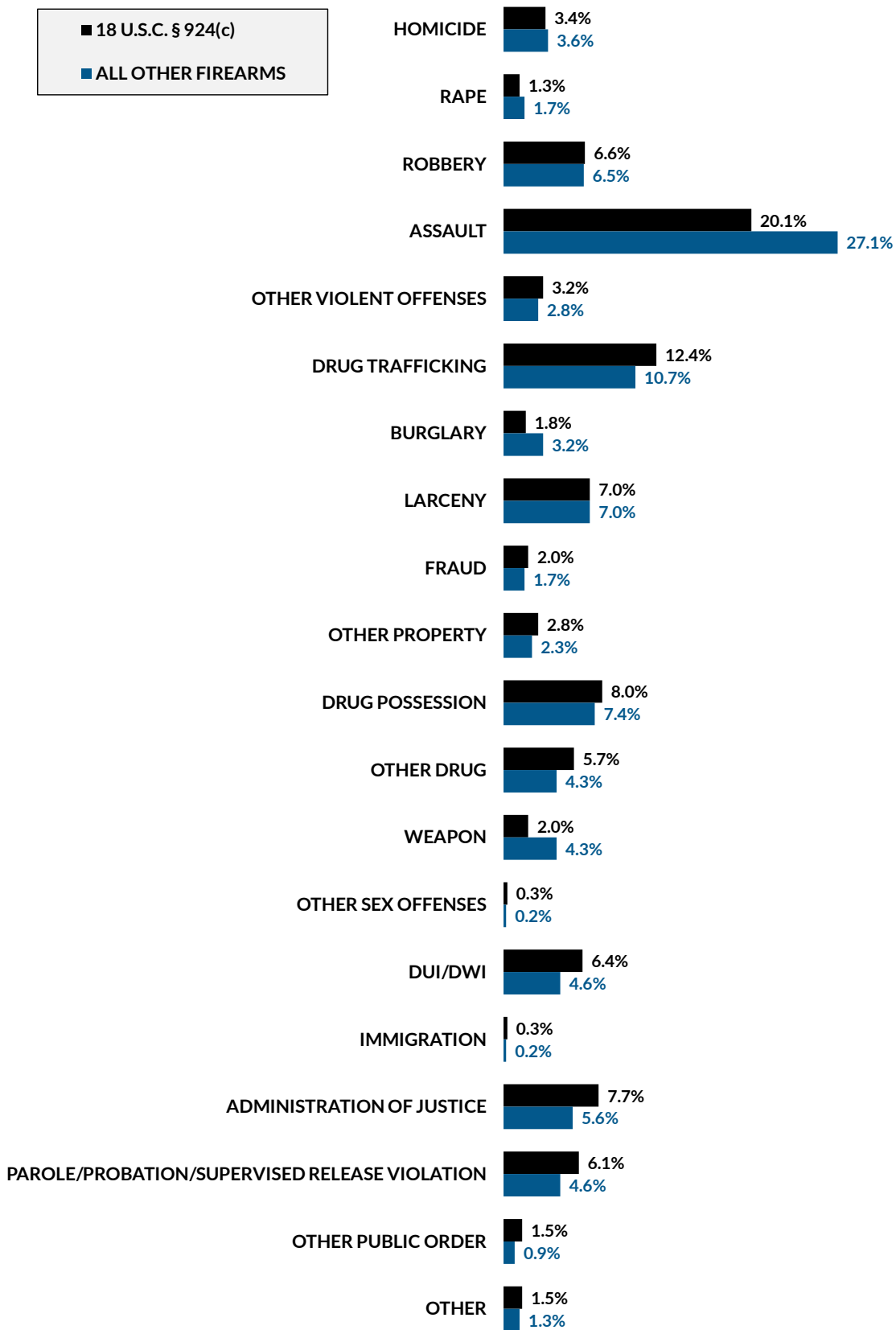
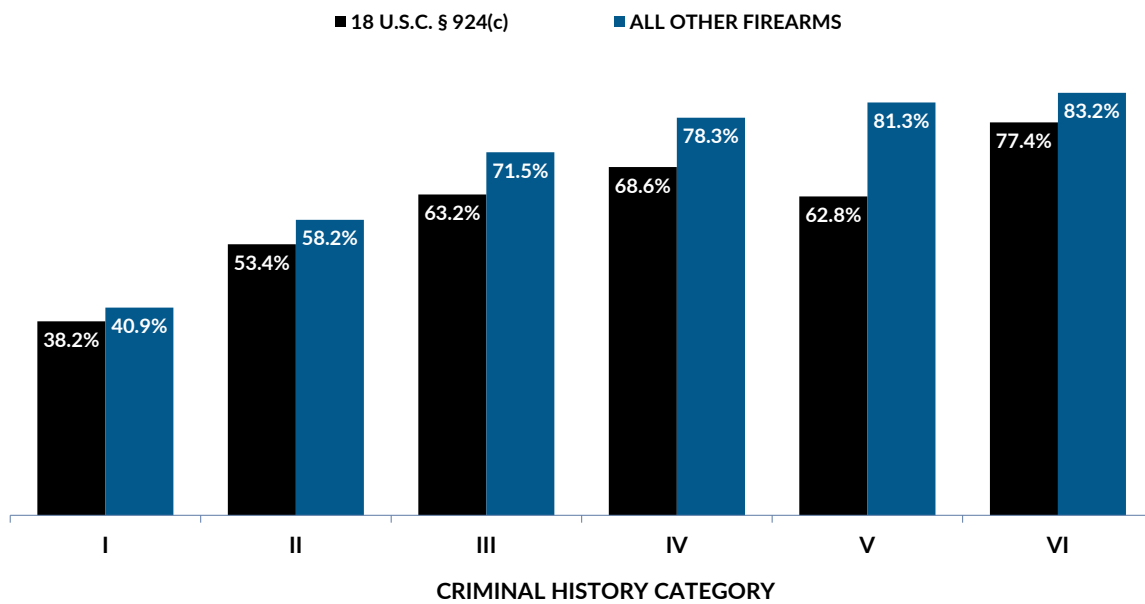


Figure 30. Rearrest Rates of 18 U.S.C. § 924(c) Offenders and All Other Federal Offenders by Criminal History Category

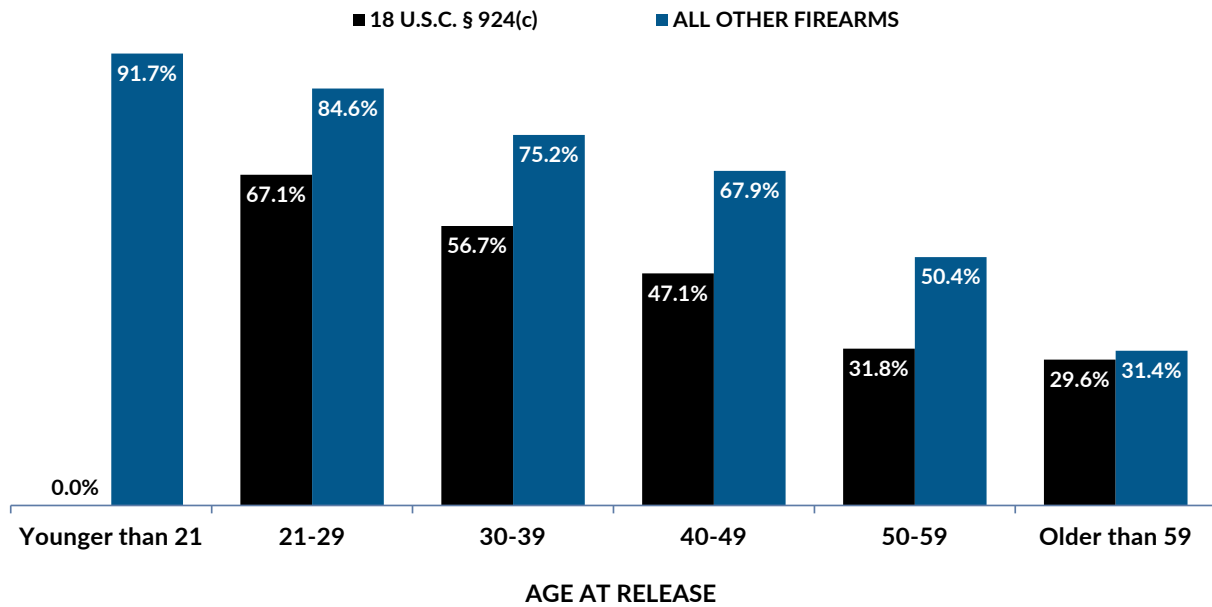


Similar recidivism rates for section 924(c) offenders and other firearms offenders were observed in the homicide, rape, or robbery categories (11.3% and 11.8%). Among 924(c) offenders, 3.4 percent had an arrest for homicide, 1.3 percent for rape, and 6.6 percent for robbery. Among other firearms offenders, 3.6 percent had an arrest for homicide, 1.7 percent for rape, and 6.5 percent for robbery.

### Recidivism and Criminal History

Recidivism rates for section 924(c) offenders were strongly associated with CHC.<sup>99</sup> Within each CHC, the recidivism rates for section 924(c) offenders are lower than the recidivism rates for other firearms offenders (Figure 30). Recidivism rates among section 924(c) offenders ranged from 38.2 percent for those in CHC I to a high of 77.4 percent for those in CHC VI. Comparatively, the recidivism rates among other firearms offenders ranged from 40.9 percent for those in CHC I to 83.2 percent for those in CHC VI.

Figure 31. Rearrest Rates of 18 U.S.C. § 924(c) Offenders and all Other Firearms Offenders by Age at Release



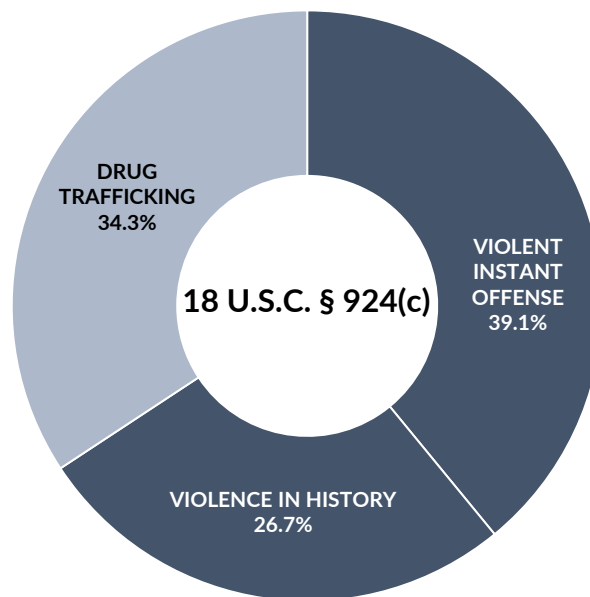
### Recidivism and Age

Similar to the other firearms offenders, age and recidivism for section 924(c) offenders are related. Specifically, as age increases, recidivism rates generally decrease for section 924(c) offenders and other firearms offenders.<sup>100</sup> As with criminal history, section 924(c) offenders recidivated at lower rates than other firearms offenders in every age group.

### 18 U.S.C. § 924(c) Convictions

As discussed above, a conviction under section 924(c) requires the use, or carrying of a firearm during and in relation to, or the possession of a firearm in furtherance of, “crime of violence” or a “drug trafficking crime.”<sup>101</sup> As in the Commission’s prior report on the recidivism of firearms offenders, this report compared two groups of section 924(c) offenders: (1) drug trafficking section 924(c) offenders, and (2) violent section 924(c) offenders. To be classified as a “drug trafficking section 924(c) offender,” the instant offense included a drug trafficking conviction and the offender had no prior arrests for a violent offense. To be classified as a “violent section 924(c) offender,” the

Figure 32. Percentage of Violent and Drug Trafficking 18 U.S.C. § 924(c) Offenders



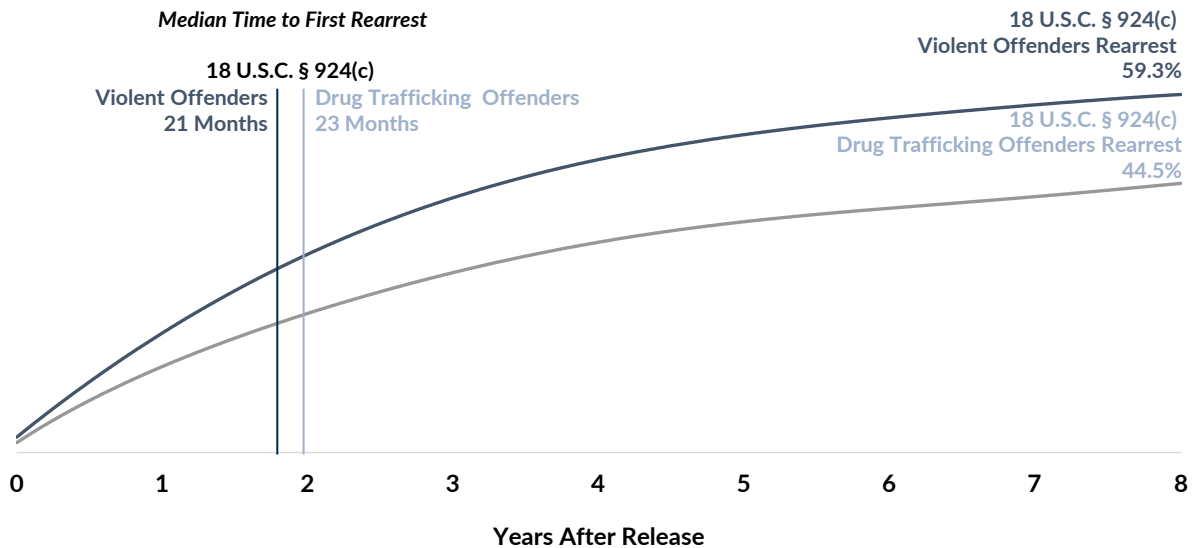
instant offense included a conviction for a violent offense or drug trafficking, but the offender was previously arrested for a violent offense.<sup>102</sup> This report retains the above classifications because, consistent with prior Commission research, offenders convicted of a violent instant offense and offenders who have a violent prior offense generally recidivate at a higher rate.<sup>103</sup>

As shown in Figure 32, two-thirds (65.8%) of section 924(c) offenders were classified as violent and 34.3 percent were classified as drug trafficking offenders. Among section 924(c) offenders, 39.1 percent had a violent instant offense and 26.7 percent had a drug trafficking instant offense and at least one violent prior arrest.

Table 11. Recidivism Rates for 18 U.S.C. § 924(c) Violent Offenders vs. Drug Trafficking Offenders

	18 U.S.C. § 924(c)	
	VIOLENCE	DRUG TRAFFICKING
Percent Rearrested	59.3%	44.5%
Median Months to Rearrest	21 Months	23 Months
Median Number of Rearrests	3	2
Most Common Post Release Offense	Assault (13.6%, n=83)	Assault and Drug Trafficking (13.6% each, n=21)

Figure 33. Time to First Rearrest of 18 U.S.C. § 924(c) Violent Offenders vs. Drug Trafficking Offenders



Among section 924(c) offenders, violent section 924(c) offenders were more likely to recidivate than drug trafficking 924(c) offenders. Violent section 924(c) offenders recidivated at a rate of 59.3 percent while drug trafficking offenders were rearrested at a rate of 44.5 percent. Among those who recidivated, violent section 924(c) offenders recidivated more than drug trafficking offenders. The median number of recidivism events was three for violent section 924(c) offenders compared to two for drug trafficking offenders (Table 11).

The median time to recidivism was two months sooner for violent section 924(c) offenders as compared to drug trafficking section 924(c) offenders (Figure 33). Among violent section 924(c) offenders who recidivated the median time to recidivism was 21 months, meaning that one-half of the violent section 924(c) offenders were rearrested within 21 months of their release, while the other half recidivated 21 months or more after their release. Comparatively, the median time to recidivism for drug trafficking section 924(c) offenders was 23 months.



Table 12. Time to First Rearrest of 18 U.S.C. § 924(c) Violent Offenders vs. Drug Trafficking Offenders

<u>Years After Release</u>	<u>18 U.S.C. § 924(c)</u>					
	VIOLENCE			DRUG TRAFFICKING		
	N	%	Cumulative %	N	%	Cumulative %
<i>One Year</i>	129	19.5%	19.5%	50	14.5%	14.5%
<i>Two Years</i>	88	13.3%	32.7%	30	8.7%	23.2%
<i>Three Years</i>	65	9.8%	42.5%	24	6.9%	30.1%
<i>Four Years</i>	39	5.9%	48.4%	14	4.0%	34.1%
<i>Five Years</i>	30	4.5%	52.9%	16	4.6%	38.7%
<i>Six Years</i>	15	2.3%	55.2%	5	1.4%	40.1%
<i>Seven Years</i>	16	2.4%	57.6%	6	1.7%	41.8%
<i>Eight Years</i>	11	1.7%	59.3%	9	2.6%	44.5%

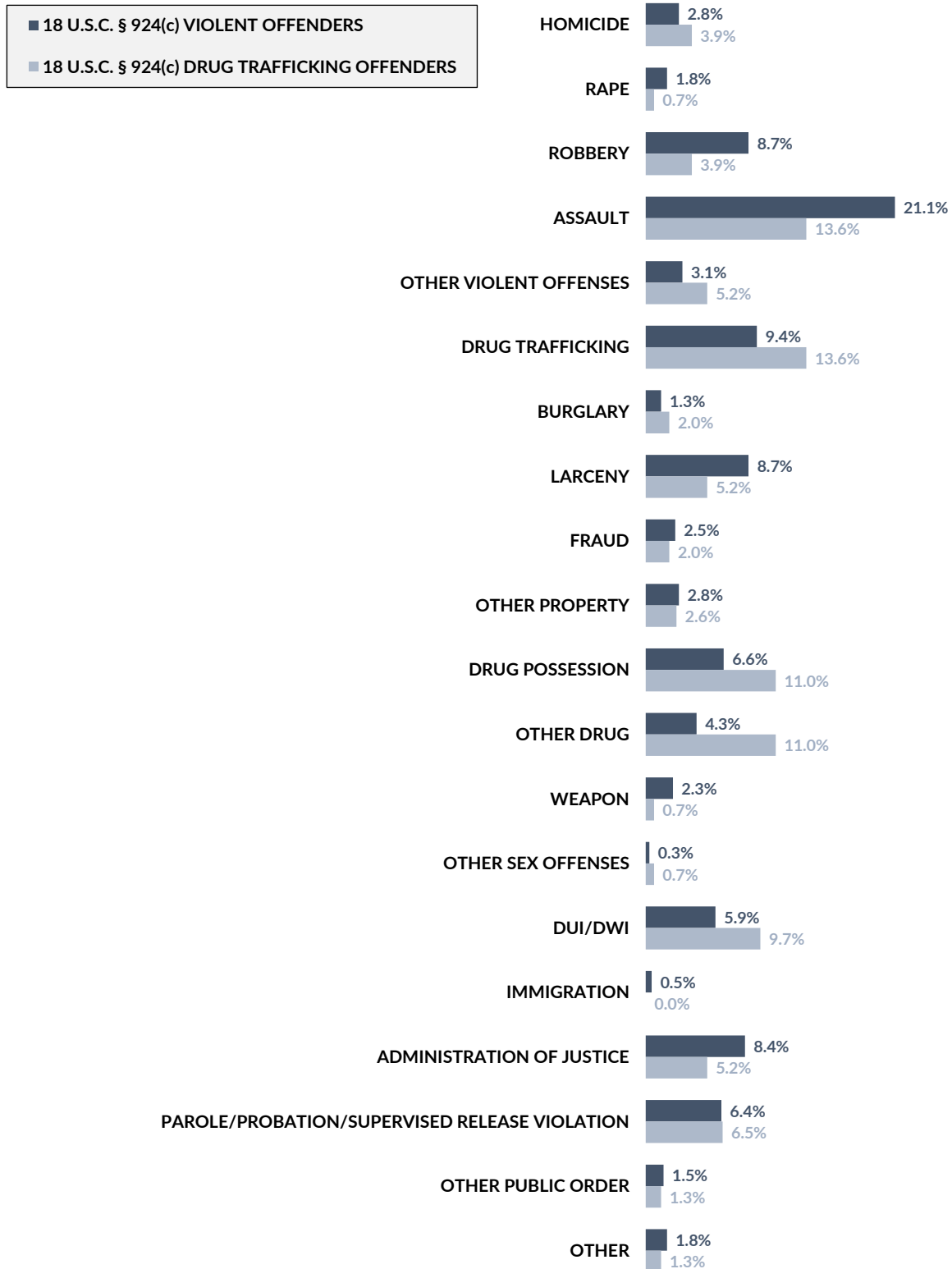
**Rearrests and Federal Supervision Status**

Almost all violent section 924(c) offenders were sentenced to a term of supervision (99.4%), with an average length of 53 months (median 60 months). Based on the length of terms imposed, most offenders in the study were rearrested prior to the end of those terms. Of those offenders who were sentenced to a term of supervision and rearrested, 83.0 percent were rearrested prior to the expiration of their originally imposed supervision term. The remaining 17.0 percent were

rearrested after the expiration of their originally imposed supervision term.

Similarly, almost all drug trafficking section 924(c) offenders were sentenced to a term of supervision (99.7%), with an average length of 54 months (median 60 months). Of those offenders who were sentenced to a term of supervision and rearrested, 79.9 percent were rearrested prior to the expiration of their originally imposed supervision term. The remaining 20.1 percent were rearrested after the expiration of their originally imposed supervision term.

Figure 34. Most Serious Offense at Rearrest, 18 U.S.C. § 924(c) Violent and Drug Trafficking Only Offenders





Compared to drug trafficking section 924(c) offenders, violent section 924(c) offenders who recidivated were more likely to be rearrested for a violent offense as their most serious offense, such as assault.

### ***Most Serious Recidivism Event***

Compared to drug trafficking section 924(c) offenders, violent section 924(c) offenders who recidivated were more likely to be rearrested for a violent offense as their most serious offense, such as assault.<sup>104</sup> Among the violent 924(c)

offenders who recidivated, 21.1 percent were rearrested for an assault as their most serious offense followed by 9.4 percent for drug trafficking. Drug trafficking section 924(c) offenders who recidivated were most likely to be rearrested for assault (13.6%) and drug trafficking (13.6%).

## COMPARISON WITH THE 2005 RELEASE COHORT

This section of the report compares the 2005 release cohort of firearms offenders, detailed in the Commission's prior report on the recidivism of firearms offenders, and the 2010 release cohort. The rearrest rates for the 2005 and 2010 cohorts were almost identical. Among all firearms offenders, 69.0 percent in the 2010 release cohort were rearrested compared to 68.1 percent in the 2005 release cohort.<sup>105</sup> Likewise, while 45.1 percent of all other offenders in the 2010 release cohort recidivated, a similar percentage of all other offenders (46.3%) in the 2005 release cohort recidivated.<sup>106</sup>

Consistent with prior Commission research, including the Commission's prior study of the recidivism of firearms offenders, criminal history and age at release continue to correlate with recidivism.<sup>107</sup> In both the 2005 and 2010 release cohorts, offenders with higher CHCs were more likely to recidivate than offenders in lower CHCs, and older offenders were less likely to recidivate than younger offenders.<sup>108</sup> Additionally, firearms offenders were generally rearrested at higher rates than all other offenders in the same CHC and age categories.

As in the 2005 release cohort, firearms offenders in the 2010 release cohort sentenced under §2K2.1 exhibited

differences in recidivism rates between *Prohibited Class* offenders and *Prohibited Weapon* offenders. In each cohort, *Prohibited Class* offenders recidivated at a higher rate and more quickly than *Prohibited Weapon* offenders.<sup>109</sup> Offenders sentenced under BOL 18 continued to recidivate at the lowest rate among offenders sentenced under §2K2.1.<sup>110</sup>

Violence in an offender's record also continues to correlate with recidivism. The recidivism rates for violent section 924(c) offenders in both the 2005 and 2010 release cohorts were very similar, (55.4% as compared to 59.3%). Similarly, the drug trafficking section 924(c) offenders had similar recidivism rates that were considerably lower than the violent section 924(c) offenders (43.0% in 2005 and 44.5% in 2010).<sup>111</sup> However, among offenders who recidivated, the median time to recidivism for the 2005 release cohort violent section 924(c) offenders was 11 months sooner than the drug trafficking section 924(c) offenders,<sup>112</sup> while this difference was only two months sooner for the 2010 release cohort.

# CONCLUSION

## CONCLUSION

This report continues the Commission's work in studying recidivism by providing data relating to federal firearms offenders released in calendar year 2010. The Commission found that, overall, firearms offenders recidivated at a higher rate than all other offenders and, consistent with prior Commission research, firearms offenders recidivated at higher rates than all other offenders in every CHC. Within most CHCs, the difference between firearms offenders and all other offenders was ten percentage points or more. In addition, firearms offenders recidivated at a higher rate than all other offenders in every age group at the time of release from custody. As observed in prior Commission research, strong associations between offenders' criminal history, age, and recidivism were identified.

This report also analyzed the offender characteristics and recidivism rates of different types of federal firearms offenders. Among those sentenced under §2K2.1, noticeable differences exist in the recidivism rates among the offenders. *Prohibited Class* offenders generally recidivated at a higher rate, and more quickly, than *Prohibited Weapon* offenders. Likewise, *Prohibited Class* offenders recidivated at a higher rate in every age category as compared to *Prohibited Weapon* offenders. Criminal history remains a strong predictor of the likelihood of recidivism for both groups. A substantial majority of both offenders in CHC VI recidivated, including 88.0 percent of *Prohibited Class* and 84.4 percent of *Prohibited Weapon* offenders.

This report compared section 924(c) offenders with other firearms offenders and violent section 924(c) offenders with drug trafficking only section 924(c) offenders. Section 924(c) offenders were considerably less likely to recidivate than other firearms offenders and were slower to be rearrested. Among section 924(c) offenders, those with a violent instant offense had considerably higher recidivism rates and recidivated more quickly than drug trafficking only section 924(c) offenders.

In comparing the 2010 release cohort with the 2005 release cohort, the data shows that, similar to offenders released in calendar year 2005, firearms offenders continued to recidivate at a higher rate, more quickly, and for more serious crimes than all other offenders. Importantly, this study observed substantial consistency in the recidivism of firearms offenders across the two time periods, 2005 and 2010, despite two intervening major developments in the federal criminal justice system: the Supreme Court's decision in *Booker* and increased use of evidence-based practices in federal supervision.

# APPENDICES

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## APPENDIX A

### Methodology

The Commission entered into a data sharing agreement with the FBI's Criminal Justice Information Services Division (CJIS) and the AO to provide the Commission with secure electronic access to criminal history records through CJIS's Interstate Identification Index (III) and International Justice and Public Safety Network (NLETS). Results received using this system provide an individual's Criminal History Record Information (CHRI) maintained by all U.S. states, the District of Columbia, U.S. territories, and federal agencies. Once the raw CHRI was obtained, the Commission organized and standardized the arrest and court disposition information into an analytical dataset. The resulting data contained CHRI for 32,135 offenders with valid identifying information and who were released in 2010.

### Identifying the Study Cohort

The study cohort includes all federal offenders who were U.S. citizens and released from federal prison after serving a sentence of imprisonment or placed on probation in 2010. For offenders released from prison, the BOP provided release dates and identifying information for all offenders released in 2010. The Commission identified offenders placed on probation in 2010 and, with the assistance of the AO, identified and removed offenders who died while on supervised release during the recidivism follow-up period.

### ***Processing the Criminal History Record Information***

The Commission entered into a data sharing agreement with the FBI's CJIS Division and the AO to acquire electronic records of offender CHRI. The AO extracted offender CHRI through its Access to Law Enforcement System (ATLAS) which provides an interface to III and NLETS. The III allows authorized agencies to determine whether any federal or state repository has CHRI on an individual. Agencies can then securely access specific state CHRI through NLETS. As a result, ATLAS collects CHRI from all state and federal agencies.

The ATLAS system returns the literal text in the Record of Arrest (RAP) sheets in the format in which the original records appear: dates of criminal justice system actions (*e.g.*, arrests); offense categories which indicate the charges in the terminology used by that agency (*e.g.*, text strings or numeric categories); subsequent action tied to arrest charges (*e.g.*, charges

filed by prosecutors, court findings of guilt, etc.); and sentencing and corrections information. All of these records are subject to availability from the originating source.

The ATLAS system also "parses" records from RAP sheets received from all 50 states, the District of Columbia, and federal agencies. Parsing records involves organizing key data elements into logical components, for example: arrest, court, and correctional events. Key data elements include offender identifiers, dates of key actions (*e.g.*, arrests and convictions), the criminal charges, and outcomes such as convictions and sentencing information when provided by the courts. The parsing process collates the multi-state records into a uniform structure, regardless of the state, for all individuals with a valid FBI number who were found in one or more repositories across the country.

### ***Standardizing the Criminal Records***

After acquiring offender CHRI, the Commission contracted with Integrity One Partners (IOP) to consolidate records for each offender and remove duplicative or extraneous material.<sup>113</sup> Following this preliminary process, IOP utilized a crosswalk created for the Commission's prior recidivism research<sup>114</sup> to standardize offense codes across states and federal agencies. The crosswalk was updated to standardize new offense codes not mapped in the original crosswalk. The crosswalk standardizes arrest and court codes, regardless of originating sources, into a common framework for analysis. This step was needed because criminal records repositories are primarily designed to store records in ways that accurately reflect the requirements of each state or federal repository, such as the criminal code for that jurisdiction. As a result, any

two repositories are likely to use many unique text strings to indicate the nature of the criminal charges and actions taken in response to those charges. Thus, standardizing the offense information was necessary for cross-jurisdictional analysis.

Within each arrest cycle, arrest charges were categorized using standardized codes. A charge severity index was created which incorporates both criminal law classification (e.g., felony or misdemeanor) and offense severity. Offenses were first classified into standardized subcategories. These subcategories were then further grouped for analytical purposes into one of 20 major crime categories in ranking order by severity.<sup>115</sup> For each offender, the most severe major crime category was identified in their arrest information. The rearrest categories and their underlying subcategories are provided in Table A.

Table A. Rearrest Offense Categories and Charges

<b>MURDER</b>	<i>Murder of public officer</i>
	<i>Murder</i>
	<i>Attempted murder</i>
	<i>Unspecified manslaughter/homicide</i>
	<i>Nonnegligent manslaughter/homicide</i>
<b>SEXUAL ASSAULT</b>	<i>Rape</i>
	<i>Forcible sodomy</i>
	<i>Fondling</i>
	<i>Statutory rape</i>
	<i>Luring minor by computer</i>
	<i>Other sexual assault</i>
	<i>Sexual assault unspecified</i>
<b>ROBBERY</b>	<i>Armed robbery</i>
	<i>Robbery unspecified</i>
	<i>Unarmed robbery</i>
<b>ASSAULT</b>	<i>Aggravated/felony assault</i>
	<i>Simple/misdemeanor assault</i>
	<i>Assault unspecified</i>
	<i>Assault of public officer</i>
	<i>Intimidation</i>
	<i>Hit and run driving with bodily injury</i>
	<i>Intimidating a witness</i>
<b>OTHER VIOLENT</b>	<i>Kidnapping</i>
	<i>Blackmail/extortion</i>
	<i>Rioting</i>
	<i>Child abuse</i>
	<i>Other violent offense</i>
	<i>Arson</i>

<b>DRUG TRAFFICKING</b>	<ul style="list-style-type: none"> <li><i>Trafficking cocaine/crack</i></li> <li><i>Trafficking heroin</i></li> <li><i>Trafficking marijuana</i></li> <li><i>Trafficking methamphetamine</i></li> <li><i>Trafficking other/unspecified controlled substance</i></li> </ul>
<b>BURGLARY</b>	<i>Burglary</i>
<b>LARCENY</b>	<ul style="list-style-type: none"> <li><i>Motor vehicle theft</i></li> <li><i>Grand/felony larceny</i></li> <li><i>Petty/misdemeanor larceny</i></li> <li><i>Larceny unspecified</i></li> <li><i>Receiving stolen property</i></li> <li><i>Trafficking stolen property</i></li> <li><i>Unauthorized use of vehicle</i></li> </ul>
<b>FRAUD</b>	<ul style="list-style-type: none"> <li><i>Fraud/forgery</i></li> <li><i>Identity theft</i></li> <li><i>Embezzlement</i></li> <li><i>Bribery</i></li> </ul>
<b>OTHER PROPERTY</b>	<ul style="list-style-type: none"> <li><i>Destruction of property</i></li> <li><i>Hit and run with property damage</i></li> <li><i>Trespassing</i></li> <li><i>Possession of burglary tools</i></li> <li><i>Other property offense</i></li> </ul>
<b>DRUG POSSESSION</b>	<ul style="list-style-type: none"> <li><i>Possession of cocaine/crack</i></li> <li><i>Possession of heroin</i></li> <li><i>Possession of marijuana</i></li> <li><i>Possession of methamphetamine</i></li> <li><i>Possession of other/unspecified controlled substance</i></li> </ul>
<b>OTHER DRUG</b>	<ul style="list-style-type: none"> <li><i>Unspecified cocaine/crack offense</i></li> <li><i>Unspecified heroin offense</i></li> <li><i>Unspecified marijuana offense</i></li> <li><i>Unspecified methamphetamine offense</i></li> <li><i>Unspecified other/unspecified drug offense</i></li> </ul>
<b>WEAPON</b>	<i>Weapon offense</i>
<b>OTHER SEX OFFENSE</b>	<ul style="list-style-type: none"> <li><i>Morals offense</i></li> <li><i>Indecent exposure</i></li> <li><i>Commercialized vice</i></li> <li><i>Contributing to the delinquency of a minor</i></li> </ul>
<b>DUI/DWI</b>	<ul style="list-style-type: none"> <li><i>Driving while intoxicated/under the influence, Substance unspecified</i></li> <li><i>Driving while intoxicated/under the influence, alcohol</i></li> <li><i>Driving while intoxicated/under the influence, drugs</i></li> </ul>
<b>IMMIGRATION</b>	<i>Immigration offense</i>

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	<p><i>Escape from custody</i></p> <p><i>Flight to avoid prosecution</i></p> <p><i>Warrant</i></p> <p><i>Contempt of court</i></p> <p><i>Failure to appear</i></p>
<b>ADMINISTRATION OF JUSTICE</b>	<p><i>Violation of restraining order</i></p> <p><i>Other court offense</i></p> <p><i>Prison contraband offense</i></p> <p><i>Sex offender registry offense</i></p> <p><i>Obstruction of justice</i></p>
<b>PROBATION/PAROLE/ SUPERVISED RELEASE VIOLATION</b>	<p><i>Parole violation</i></p> <p><i>Unspecified probation/parole violation</i></p> <p><i>Probation violation</i></p> <p><i>Family-related offense</i></p> <p><i>Drunkenness/vagrancy/disorderly conduct</i></p>
<b>PUBLIC ORDER</b>	<p><i>Invasion of privacy</i></p> <p><i>Liquor law violation</i></p> <p><i>Other public order offense</i></p> <p><i>Curfew violation</i></p>
<b>OTHER/UNSPECIFIED OFFENSES</b>	<p><i> Vehicular manslaughter/homicide</i></p> <p><i> Negligent (involuntary) manslaughter/homicide</i></p> <p><i> Habitual offender</i></p> <p><i> Runaway</i></p> <p><i> Truancy</i></p> <p><i> Ungovernability</i></p> <p><i> Status liquor law violation</i></p> <p><i> Miscellaneous status offense</i></p> <p><i> Other offense</i></p> <p><i> Unspecified inchoate offense</i></p> <p><i> Military offense</i></p> <p><i> Not applicable</i></p> <p><i> Unspecified offense</i></p>

# APPENDIX B

## Year Sentenced

The following tables provide information on the number of offenders sentenced by calendar year. Information is provided for the following groups: firearms offenders, all other offenders, *Prohibited Class* offenders, *Prohibited Weapon* offenders, section 924(c) offenders, and non-section 924(c) firearms offenders.

Table B-1. Number of Firearms Offenders by Year Sentenced

Year Sentenced	N	Cumulative%
1991	4	0.1%
1992	30	0.6%
1993	37	1.3%
1994	41	2.0%
1995	36	2.6%
1996	46	3.4%
1997	75	4.8%
1998	42	5.5%
1999	52	6.4%
2000	78	7.8%
2001	141	10.3%
2002	225	14.3%
2003	280	19.2%
2004	385	26.0%
2005	533	35.4%
2006	747	48.6%
2007	829	63.3%
2008	848	78.3%
2009	737	91.3%
2010	493	100.0%

Table B-2. Number of Non-Firearms Offenders by Year Sentenced

<b>Year Sentenced</b>	<b>N</b>	<b>Cumulative %</b>
1990	8	0.0%
1991	29	0.1%
1992	34	0.3%
1993	73	0.5%
1994	54	0.8%
1995	55	1.0%
1996	65	1.2%
1997	102	1.6%
1998	171	2.2%
1999	229	3.1%
2000	289	4.2%
2001	426	5.8%
2002	741	8.6%
2003	800	11.6%
2004	859	14.9%
2005	1,411	20.2%
2006	2,293	28.9%
2007	2,845	39.6%
2008	4,261	55.7%
2009	4,580	73.0%
2010	7,151	100.0%

Table B-3. Number of Prohibited Class Offenders by Year Sentenced

<b>Year Sentenced</b>	<b>N</b>	<b>Cumulative %</b>
1991	0	0.0%
1992	1	0.0%
1993	1	0.1%
1994	0	0.1%
1995	3	0.1%
1996	2	0.2%
1997	4	0.3%
1998	2	0.4%
1999	6	0.5%
2000	20	1.1%
2001	27	1.8%
2002	66	3.6%
2003	114	6.7%
2004	214	12.6%
2005	297	20.7%
2006	473	33.7%
2007	654	51.6%
2008	733	71.6%
2009	645	89.3%
2010	393	100.0%



Table B-4. Number of Prohibited Weapon Offenders by Year Sentenced

Year Sentenced	N	Cumulative %
1991	0	0.0%
1992	0	0.0%
1993	1	0.3%
1994	1	0.5%
1995	1	0.8%
1996	0	0.8%
1997	2	1.3%
1998	0	1.3%
1999	1	1.6%
2000	3	2.3%
2001	7	4.1%
2002	17	8.5%
2003	29	16.0%
2004	18	20.6%
2005	34	29.4%
2006	38	39.2%
2007	51	52.3%
2008	63	68.6%
2009	63	84.8%
2010	59	100.0%

Table B-5. Number of 18 U.S.C. 924(c) Offenders by Year Sentenced

Year Sentenced	N	Cumulative %
1991	3	0.2%
1992	16	1.5%
1993	9	2.3%
1994	20	3.9%
1995	15	5.1%
1996	20	6.7%
1997	38	9.8%
1998	30	12.2%
1999	37	15.2%
2000	46	18.9%
2001	84	25.7%
2002	118	35.2%
2003	111	44.2%
2004	141	55.5%
2005	177	69.8%
2006	206	86.4%
2007	86	93.4%
2008	36	96.3%
2009	15	97.5%
2010	31	100.0%

Table B-6. Number of Non-18 U.S.C. 924(c) Offenders by Year Sentenced

<b>Year Sentenced</b>	<b>N</b>	<b>Cumulative %</b>
1991	0	0.0%
1992	11	0.3%
1993	18	0.7%
1994	16	1.0%
1995	20	1.5%
1996	22	2.0%
1997	35	2.8%
1998	11	3.1%
1999	9	3.3%
2000	29	3.9%
2001	51	5.1%
2002	105	7.5%
2003	165	11.3%
2004	240	16.8%
2005	353	24.9%
2006	538	37.3%
2007	742	54.3%
2008	811	72.9%
2009	721	89.4%
2010	460	100.0%

# APPENDIX C

## Rearrest by Criminal History Points

The following tables provide information on the rearrest rates by offenders' criminal history scores. Information is provided for the following groups: firearms offenders, all other offenders, *Prohibited Class* offenders, *Prohibited Weapon* offenders, section 924(c) offenders, and non-section 924(c) firearms offenders.

Table C-1. Rearrest Rates Across Selected Variables  
Firearms Offenders

	Total	Rearrest %
<b>Total</b>	<b>5,659</b>	<b>69.0%</b>
<b>Criminal History Points</b>		
0	563	35.0%
1	308	47.4%
2	204	53.9%
3	341	57.8%
4	369	67.5%
5	351	67.2%
6	495	72.5%
7	333	75.4%
8	342	73.7%
9	394	78.9%
10	293	76.1%
11	268	81.0%
12	260	79.2%
13 or More	1,078	84.7%

Of the 5,659 firearms offenders, 60 were excluded in this analysis due to missing or incomplete information.

Table C-2. Rearrest Rates Across Selected Variables

Non-Firearms Offenders		
	<b>Total</b>	<b>Rearrest %</b>
<b>Total</b>	<b>26,476</b>	<b>45.1%</b>
<b>Criminal History Points</b>		
0	10,775	26.3%
1	2,851	41.7%
2	1,284	48.1%
3	1,964	48.1%
4	1,440	55.4%
5	1,103	60.1%
6	1,415	62.7%
7	694	66.3%
8	815	64.7%
9	772	67.4%
10	543	71.1%
11	435	71.7%
12	435	67.6%
13 or More	1,856	78.3%

Of the 26,476 ALL OTHER OFFENDERS offenders, 94 were excluded in this analysis due to missing or incomplete information.

Table C-3. Rearrest Rates Across Selected Variables

Prohibited Class Offenders		
	<b>Total</b>	<b>Rearrest %</b>
<b>Total</b>	<b>3,655</b>	<b>74.5%</b>
<b>Criminal History Points</b>		
0	212	36.3%
1	127	50.4%
2	109	55.1%
3	213	58.7%
4	248	69.4%
5	232	66.8%
6	345	75.7%
7	244	79.5%
8	263	77.6%
9	282	82.6%
10	216	80.6%
11	194	83.0%
12	186	83.9%
13 or More	779	87.8%

Of the 3,655 Prohibited Class offenders, five were excluded in this analysis due to missing or incomplete information.

Table C-4. Rearrest Rates Across Selected Variables

Prohibited Weapon Offenders

	<b>Total</b>	<b>Rearrest %</b>
<b>Total</b>	<b>388</b>	<b>63.4%</b>
<b>Criminal History Points</b>		
0	83	37.4%
1	35	45.7%
2	16	62.5%
3	28	75.0%
4	15	80.0%
5	29	72.4%
6	21	81.0%
7	19	57.9%
8	21	61.9%
9	22	63.6%
10	17	70.6%
11	16	93.8%
12	20	75.0%
13 or More	46	82.6%

Table C-5. Rearrest Rates Across Selected Variables

18 U.S.C. § 924(c) Offenders

	<b>Total</b>	<b>Rearrest %</b>
<b>Total</b>	<b>1,239</b>	<b>55.4%</b>
<b>Criminal History Points</b>		
0	262	33.2%
1	140	46.4%
2	73	53.4%
3	95	54.7%
4	99	63.6%
5	78	64.1%
6	102	61.8%
7	54	68.5%
8	49	63.3%
9	59	69.5%
10	32	62.5%
11	35	62.9%
12	28	60.7%
13 or More	79	81.0%

Of the 1,239 section 924(c) offenders, 54 were excluded in this analysis due to missing or incomplete information.

Table C-6. Rearrest Rates Across Selected Variables  
 Non-18 U.S.C. § 924(c) Firearms Offenders

	<b>Total</b>	<b>Rearrest %</b>
<b>Total</b>	<b>4,420</b>	<b>72.8%</b>
<b>Criminal History Points</b>		
0	301	36.5%
1	168	48.2%
2	130	54.6%
3	246	58.9%
4	270	68.9%
5	272	68.0%
6	391	75.7%
7	273	76.6%
8	288	76.4%
9	328	80.8%
10	256	78.5%
11	227	84.1%
12	229	81.7%
13 or More	972	85.4%

Of the 4,357 Non-section 924(c) firearm offenders, six were excluded in this analysis due to missing or incomplete information.

# **ENDNOTES**

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## ENDNOTES

\* This report was updated in February, 2022, to include information inadvertently omitted in the original release.

1 This report follows *Recidivism of Federal Offenders Released in 2010*, which was released in September of 2021. See RYAN COTTER, COURTNEY SEMISCH & DAVID RUTTER, U.S. SENT'G COMM'N, *RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010* (2021), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210930\\_Recidivism.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210930_Recidivism.pdf) [hereinafter 2021 RECIDIVISM OVERVIEW REPORT].

2 The FBI criminal history records were collected pursuant to a data sharing agreement with the FBI's Criminal Justice Information Services Division. See *infra* Methodology and Appendix A.

3 28 U.S.C. § 995(a)(12). The United States Sentencing Commission is an independent agency in the judicial branch of government. Established by the Sentencing Reform Act of 1984, its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress, the federal judiciary, and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues. See 28 U.S.C. §§ 994, 995.

4 See KIM STEVEN HUNT & ROBERT DUMVILLE, U.S. SENT'G COMM'N, *RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW* (2016), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/20160708\\_Recidivism-Overview.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/20160708_Recidivism-Overview.pdf) [hereinafter 2016 RECIDIVISM OVERVIEW REPORT]. In addition, the Commission has published numerous reports on recidivism specific to certain offenders, such as offenders receiving a retroactive sentence reduction and those convicted of drug trafficking offenses. See KIM STEVEN HUNT, DAVID RUTTER & TODD KOSTYSHAK, U.S. SENT'G COMM'N, *RETROACTIVITY & RECIDIVISM: THE DRUGS MINUS TWO AMENDMENT* (2020), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708\\_Recidivism-Drugs-Minus-Two.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708_Recidivism-Drugs-Minus-Two.pdf); LOUIS REEDT, KIM STEVEN HUNT, JAMES L. PARKER, MELISSA K. REIMER & KEVIN T. MAASS, U.S. SENT'G 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](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170221_Recidivism-Drugs.pdf).

5 MATTHEW J. IACONETTI, TRACEY KYCKELHAHN & MARI MCGILTON, U.S. SENT'G 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](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190627_Recidivism-Firearms.pdf) [hereinafter FIREARMS RECIDIVISM REPORT]. For data comparison purposes, this report uses the term "2005 release cohort" when referring to the groups of offenders analyzed in the *Recidivism Among Federal Firearms Offenders* report.

6 543 U.S. 220 (2005) (striking the mandatory provision of 18 U.S.C. § 3553(b)(1)).

7 Melissa Alexander, Bradley Whitley & Christopher Bersch, *Driving Evidence-Based Supervision to the Next Level: Utilizing PCRA, "Drivers," and Effective Supervision Techniques*, 78 FED. PROB. J. 2 (2014), [https://www.uscourts.gov/sites/default/files/probation\\_dec\\_2014\\_1219b.pdf](https://www.uscourts.gov/sites/default/files/probation_dec_2014_1219b.pdf); Jonathan E. Hurtig & Lisa Marie Lenart, *The Development of the Evidence-Based Practice Blue Print and Where We are Now*, 75 FED. PROB. J. (2011), [https://www.uscourts.gov/sites/default/files/federal\\_probation\\_journal\\_september\\_2011.pdf](https://www.uscourts.gov/sites/default/files/federal_probation_journal_september_2011.pdf).

8 PROB. & PRETRIAL SERVS. OFF., ADMIN. OFF. OF THE U.S. CTS., *AN OVERVIEW OF THE FEDERAL POST CONVICTION RISK ASSESSMENT 2* (2018), [https://www.uscourts.gov/sites/default/files/overview\\_of\\_the\\_post\\_conviction\\_risk\\_assessment\\_0.pdf](https://www.uscourts.gov/sites/default/files/overview_of_the_post_conviction_risk_assessment_0.pdf).



9 There was overlap between the categories of firearms. For example, 205 of the 222 ACCA offenders were also §2K2.1 offenders. For analysis purposes, the groups were generally placed in one category.

10 For purposes of this report, the term “sentence” refers to the original sentence imposed.

11 Each fiscal year begins October 1st of the preceding calendar year. For example, fiscal year 2011 began on October 1, 2010, and ended on September 30, 2011.

12 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), (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. See 28 U.S.C. § 994(w)(1). 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.

13 The data used to conduct the analyses in this report includes information obtained pursuant to an interagency agreement with the FBI, which prohibits the Commission from releasing the dataset.

14 Appendix A provides a detailed description of the data collection methodology.

15 This includes any offenders released from BOP on detainer, which ordinarily indicates transfer of custody to state court or to a state correctional facility following completion of their federal sentence.

16 Nat’l Inst. of Just., U.S. Dep’t of Just., *Recidivism*, <https://nij.ojp.gov/topics/corrections/recidivism> (last visited Sept. 15, 2021); see also MICHAEL D. MALTZ, *RECIDIVISM* 1, 54 (2001) [hereinafter MALTZ].

17 See MALTZ, *supra* note 16, at 7–20; see also RYAN KING & BRIAN ELDERBROOM, *URB. INST., IMPROVING RECIDIVISM AS A PERFORMANCE MEASURE* (2014), <https://www.bja.gov/Publications/UI-ImprovingRecidivism.pdf>.

18 See CHRISTOPHER T. LOWENKAMP, MARIE VANNOSTRAND & ALEXANDER HOLSINGER, *INVESTIGATING THE IMPACT OF PRETRIAL DETENTION ON SENTENCING OUTCOMES* (2013), [https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF\\_Report\\_state-sentencing\\_FNL.pdf](https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_state-sentencing_FNL.pdf).

19 See MALTZ, *supra* note 16, at 61–64; see also, Nat’l Inst. of Just., U.S. Dep’t of Just., *Measuring Recidivism* (Feb. 20, 2008), <https://nij.ojp.gov/topics/articles/measuring-recidivism>.

20 See MALTZ, *supra* note 16, at 55–60.

21 See, e.g., MARIEL ALPER, MATTHEW R. DUROSE & JOSHUA MARKMAN, *BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD (2005–2014)* (2018), <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf> [hereinafter ALPER]; Admin. Off. of the U.S. Cts., *Just the Facts: Post-Conviction Supervision and Recidivism* (Oct. 22, 2018), <https://www.uscourts.gov/news/2018/10/22/just-facts-post-conviction-supervision-and-recidivism#chart1>.

22 See MALTZ, *supra* note 16, at 55–60.

23 See *id.* at 56–58.

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24 See ALPER, *supra* note 21, at 14.

25 Offenders were excluded from various analyses in this report due to missing information for the variables required for those analyses.

26 See 18 U.S.C. §§ 921–931; 26 U.S.C. §§ 5861, 5871.

27 See *id.*

28 USSG §1B1.2.

29 See USSG App. A.

30 Specific offense characteristics, found in Chapter Two, relate to aggravating and mitigating factors specific to the offense. Chapter Three (Adjustments) addresses general aggravating and mitigating factors that are common across offense types.

31 See generally USSG §4A1.1(a)–(c). In addition, points are added if the offender committed the instant offense while under any criminal justice sentence in another case or if a prior sentence resulting from a conviction for a “crime of violence” did not receive criminal history points. USSG §4A1.1(d)–(e). Certain prior offenses are not counted, because they are minor in nature (*e.g.*, loitering, minor traffic infractions), they are not serious offenses and the sentence imposed was very low (*e.g.*, disorderly conduct, resisting arrest), or the offenses were remote in time (*e.g.*, the defendant was released from incarceration on the offense more than 15 years ago). See generally USSG §§4A1.1, 4A1.2. The CHCs range from CHC I, where offenders have 0 or 1 points, to CHC VI, where offenders have 13 or more points.

32 USSG Ch.5, Pt.A. The sentencing table is a grid with the seriousness of the offense measured on one axis and the offender’s criminal history measured on the other axis.

33 USSG Ch.5, Pt.A, comment. (n.1).

34 Section 2K2.1 defines the term “firearm” by reference to 18 U.S.C. § 921(a)(3): “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device” but does not include an “antique firearm.” 18 U.S.C. § 921(a)(3); USSG §2K2.1, comment. (n.1). In addition, a provision in the National Firearms Act defines “firearm” in a more limited way than does section 921(a)(3), and includes short-barreled shotguns, short-barreled rifles, machine guns, silencers, destructive devices, and “any other weapon . . . or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire.” See 26 U.S.C. § 5845(a), (e). Section 5845(a)’s definition excludes antique firearms and those found to be “primarily . . . collector’s item[s].” 26 U.S.C. § 5845(a).

35 Section 2K2.1 defines “ammunition” by reference to 18 U.S.C. § 921(a)(17)(A): “ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.” 18 U.S.C. § 921(a)(17)(A); USSG §2K2.1, comment (n.1).

36 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.*

37 See *id.* § 922(g)(5). As stated above, this study includes only U.S. citizens. Therefore, “alien[s] . . . illegally or unlawfully in the United States” convicted of violating 18 U.S.C. § 922(g) are not included in the report.

38 *Id.* § 922(g).

39 *Id.* § 922(n).

40 USSG §2K2.1, comment. (n.3).

41 18 U.S.C. § 924(a)(2). If, however, an offender violates section 922(g) and has three or more prior convictions for a “violent felony,” a “serious drug offense,” or both, that offender is subject to a 15-year mandatory minimum and a lifetime maximum term of imprisonment pursuant to the ACCA. 18 U.S.C. § 924(e).

42 *Id.* § 924(a)(1)(D).

43 *Id.* § 922(a)(6).

44 *Id.* § 924(a)(2).

45 *Id.* § 924(a)(1)(A).

46 *Id.* § 924(a)(1).

47 USSG App. A.

48 18 U.S.C. § 922(d). The statute delineates specified classes of persons similar to section 922(g) and includes persons under indictment for (or convicted of) a crime punishable by imprisonment for a term exceeding one year, fugitives, and persons previously convicted of a misdemeanor crime of domestic violence, among others. *Id.*

49 U.S. SENT’G COMM’N, PRIMER ON FIREARMS 4 (2021), [https://www.ussc.gov/sites/default/files/pdf/training/primers/2021\\_Primer\\_Firearms.pdf](https://www.ussc.gov/sites/default/files/pdf/training/primers/2021_Primer_Firearms.pdf).

50 18 U.S.C. § 924(a)(2).

51 Appendix A lists 26 U.S.C. §§ 5861(a)–(l) and 5871 as referenced to §2K2.1. USSG App. A.

52 Section 5871 is the penalty provision and applies to violations of chapter 53 (Machine guns, destructive devices, and certain other firearms). *See* 26 U.S.C. § 5871 (“Any person who violates or fails to comply with any provision of this chapter shall, upon conviction, be fined not more than \$10,000, or be imprisoned not more than ten years, or both.”).

53 Appendix A of the *Guidelines Manual* references the following statutes to §2K2.1: 18 U.S.C. §§ 371 (if the offense is a conspiracy to violate section 924(c)); 922(a)–(p), (r)–(w), (x)(1), 923, 924(a)–(b), (e)–(i), (k)–(o), 1715, 2332g; and 26 U.S.C §§ 5685, 5861(a)–(l), 5871. USSG App. A.

54 *See* USSG §2K2.1(a). Section 2K2.1 has SOCs that provide increases in the BOL based on aggravating factors and has one SOC that provides for a decrease. Section 2K2.1 includes an increase if (1) the offense involved more than two firearms, (2) the offense involved a destructive device, (3) any firearm was stolen or had an altered or obliterated serial number, (4) the offender engaged in the trafficking of firearms, (5) the offender possessed or used the firearm or ammunition in connection with another felony offense (or possessed same while leaving or attempting to leave the United States), and (6) a recordkeeping offense reflected an effort to conceal a substantive offense involving firearms or ammunition. Section 2K2.1 provides a decrease if the offender possessed all firearms and ammunition solely for lawful sporting purposes or collection and did not unlawfully discharge or use such firearms or ammunition. USSG §2K2.1(b)(1)–(7).

55 The subgroups in this report are categorized in the same manner as in the *Firearms Recidivism Report*, which studied offenders released in calendar year 2005. *See* FIREARMS RECIDIVISM REPORT, *supra* note 5, at 9–10.

56 “Crime of violence” has the meaning given that term in §4B1.2(a) and Application Note 1 of the

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Commentary to §4B1.2. USSG §2K2.1, comment. (n.1). Section 4B1.2 defines a “crime of violence” as “any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).” USSG §4B1.2(a).

57 “Controlled substance offense” has the meaning given that term in §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2 (Definitions of Terms Used in Section 4B1.1). USSG §2K2.1, comment. (n.1). Section 4B1.2 defines a “controlled substance offense” as “an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.” USSG §4B1.2(b).

58 Offenders assigned BOL 20 that were convicted under section 922(d) or under a “straw purchaser” statute for an offense that involved firearms described in the National Firearms Act or semiautomatic firearm that is capable of accepting a large capacity magazine are grouped in the *Prohibited Class* offenders for purposes of this report.

59 See *supra* note 34.

60 USSG §4B1.1(a).

61 See *supra* notes 56 and 57. The Commission’s 2016 *Report to the Congress: Career Offender Sentencing Enhancements*, among other things, chronicles changes made to these definitions over time. See U.S. SENT’G 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](https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/criminal-history/201607_RtC-Career-Offenders.pdf).

62 USSG §4B1.1(b).

63 *Id.*

64 *Id.* See also USSG Ch.5, Pt.A. If a career offender is convicted of an offense under 18 U.S.C. § 924(c), the guideline range is the greater of the range determined by a separate career offender sentencing table, or the range that results by adding the section 924(c) mandatory minimum penalty “to the minimum and the maximum of the otherwise applicable guideline range” determined for the non-section 924(c) counts. See USSG §4B1.1(c).

65 At the time the 2010 cohort was released, the ACCA defined a “violent felony” as any crime punishable by imprisonment for a term of more than 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 the same term if committed by an adult, that: (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (2) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another. 18 U.S.C. § 924(e)(2)(B) (2010). In 2015, the Supreme Court struck down the phrase “otherwise involves conduct that presents a serious potential risk of physical injury to another,” commonly referred to as the residual clause, as unconstitutionally vague. *Johnson v. United States*, 576 U.S. 591, 595–97 (2015). The Commission amended the career offender guideline following the *Johnson* decision, to, among other things, strike the residual clause to alleviate application issues. USSG App. C, amend. 798 (effective Aug. 1, 2016) (“While the Supreme Court in *Johnson* did not consider or address the sentencing guidelines, significant litigation has ensued regarding whether the Supreme Court’s holding in *Johnson* should also apply to the residual clause in §4B1.2 . . . The Commission determined that the residual clause at §4B1.2 implicates many of the same concerns cited by the Supreme Court in *Johnson*, and, as a matter of policy, amends §4B1.2(a)(2) to strike the clause.”).

66 At the time the 2010 cohort was released, the ACCA defined “serious drug offense” as an offense under the Controlled Substances Act, the Controlled Substances Import and Export Act, or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or an offense under state law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance for which a maximum term of imprisonment of ten years or more is prescribed by law. 18 U.S.C. § 924(e)(2)(A) (2010).

67 18 U.S.C. § 924(e)(1).

68 USSG §4B1.4(b)(1)–(3). The otherwise applicable offense level is the offense level from Chapters Two and Three, or, if applicable, the offense level from §4B1.1 (Career Offender). *Id.*

69 USSG §4B1.4(c). The otherwise applicable CHC is from Chapter Four, Part A or, if applicable, §4B1.1. USSG §4B1.4(c)(1).

70 Section 924(c) offenders who also qualify as a career offender are classified as career offenders in this report.

71 18 U.S.C. § 924(c). At the time the offenders in this report were released, the statute defined “drug trafficking crime” as “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) (2010). It defined “crime of violence” as “an offense that is a felony and—(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” *Id.* § 924(c)(3). The Supreme Court struck the residual clause in the definition of “crime of violence” in section 924(c) as unconstitutionally vague in 2019. *See United States v. Davis*, 139 S. Ct. 2319, 2336 (2019).

72 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). For more information on mandatory minimum penalties for firearms offenses, including section 924(c), see U.S. SENT’G 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](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_Firearms-Mand-Min.pdf).

73 18 U.S.C. § 924(c)(1)(A).

74 *Id.* § 924(c)(1)(B).

75 *Id.*

76 *Id.* § 924(c)(1)(C).

77 18 U.S.C. § 924(c)(1)(C) (2010) (“In the case of a second or subsequent conviction under this subsection, the person shall be sentenced to a term of imprisonment of not less than 25 years”); *Deal v. United States*, 508 U.S. 129 (1993) (mandatory stacking provisions in section 924(c) apply even if the prior conviction is not final and is instead alleged in the same indictment). This practice of charging multiple violations of section 924(c) within the same proceeding has commonly been referred to as “stacking” mandatory minimum penalties.

78 First Step Act of 2018, Pub. L. No. 115–391, § 403, 132 Stat. 5194, 5221–22 (striking “second or subsequent” and inserting “violation of this subsection that occurs after a prior conviction under this subsection has become final” and stating, “[t]his section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.”). For more information on the impact of the limitation on § 924(c) “stacking” following the enactment of the First Step Act, see U.S. SENT’G COMM’N, THE FIRST STEP ACT OF

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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](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200831_First-Step-Report.pdf).

79 USSG App. A.

80 USSG §2K2.4(b).

81 *Id.*

82 USSG §5G1.2(b).

83 USSG §5G1.2(a)–(b); §3D1.1(b). If the offender 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). *See also supra* note 64.

84 Information regarding criminal history points was missing for 154 offenders compared to 175 offenders missing information on CHC. Therefore, the percentage of offenders in a CHC category may differ slightly from the percentage with corresponding criminal history points.

85 The vast majority of offenders sentenced to probation conditioned on serving a term of imprisonment served that confinement in home detention or a halfway house rather than in jail or prison. Therefore, this report analyzes all offenders sentenced to probation, even if conditioned on a term of confinement, in the same group. For ease of analysis and presentation, this report presents recidivism rates for the two groups of offenders as the following: (1) offenders who received a probationary sentence and (2) offenders who received a sentence of imprisonment.

86 This measurement is based on the supervision term imposed at the time of original sentencing and does not account for any changes in supervision status following release. Such information was not available in the data used for this study. Therefore, if a court terminated an offender's supervision prior to the expiration of the term initially imposed, that offender would still be considered under supervision for this analysis. Alternatively, if a court extended an offender's supervision beyond the term originally imposed, that offender would be considered to have completed the supervision term for purposes of this analysis.

87 2016 RECIDIVISM OVERVIEW REPORT, *supra* note 4, at 9, 31 n.24.

88 Accordingly, the data should not be interpreted to represent the overall frequency of the listed offense among rearrests.

89 *See* USSG Ch.4, Pt.A, intro. comment. As the *Guidelines Manual* explains, in order “to protect the public from further crimes of the particular [offender], the likelihood of recidivism and future criminal behavior must be considered.” *Id.*

90 *Id.*

91 *See* 2021 RECIDIVISM OVERVIEW REPORT, *supra* note 1.

92 Albeit to a lesser degree, a similar difference in percentage points appeared for firearms offenders in CHC II, who recidivated at a rate of 56.7% compared to 48.2% for all other offenders.

93 The analyses in this chapter are limited to offenders for whom §2K2.1 produced the highest offense level (*i.e.*, the primary guideline). It excludes offenders who also received a career offender or ACCA enhancement.

94 *See supra* note 85.

95 *See* TRACEY KYCKELHAHN & EMILY HERBST, U.S. SENT'G COMM'N, THE CRIMINAL HISTORY OF FEDERAL OFFENDERS 9 (2018), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research->

publications/2018/20180517\_criminal-history.pdf. See also KIM STEVEN HUNT & BILLY EASLEY, U.S. SENT'G COMM'N, THE EFFECTS OF AGING ON RECIDIVISM AMONG FEDERAL OFFENDERS 25 (2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207\\_Recidivism-Age.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf).

96 For more information on the ACCA, its implementation in the guidelines, and in-depth analyses of armed career criminals, see COURTNEY R. SEMISCH, KRISTEN SHARPE & ALYSSA PURDY, U.S. SENT'G COMM'N, FEDERAL ARMED CAREER CRIMINALS: PREVALENCE, PATTERNS, AND PATHWAYS (2021), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210303\\_ACCA-Report.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210303_ACCA-Report.pdf). The report provides expanded analyses of armed career criminals from the Commission's earlier reports, information on armed career criminals from data regularly collected by the Commission, and 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.

97 Due to differences in documentation, the percentage of offenders in a CHC category may differ slightly from the percentage with corresponding criminal history points.

98 The court cited 18 U.S.C. § 3553(f) (safety valve) to sentence one offender below the mandatory minimum in section 924(c) and imposed a sentence of probation.

99 See FIREARMS RECIDIVISM REPORT, *supra* note 5, at 42.

100 See *id.* at 43 (Fig. 5.10).

101 See *supra* note 71 and accompanying text.

102 Section 924(c) offenders with a violent prior arrest were identified by reviewing criminal records provided by the FBI's Criminal Justice Information Services. The Commission categorized each of the offenders' criminal history events into standardized offense codes using a widely accepted standardization scheme used by the Bureau of Justice Statistics and used in other Commission studies. The Commission next identified certain categories as "violent." In making these classifications, 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 section 924(c) and the career offender guideline. For purposes of this analysis, violent prior offenses include offenses classified as one of the following: murder, attempted murder, unspecified manslaughter, non-negligent manslaughter, kidnapping, rape, statutory rape, fondling, other/unspecified sexual assault, armed robbery, unspecified robbery, unarmed robbery, sodomy, aggravated assault, assaulting a police officer, simple assault, unspecified assault, intimidation, blackmail/extortion, hit and run with bodily injury, child abuse, arson, and rioting.

103 KIM STEVEN HUNT, MATTHEW J. IACONETTI & KEVIN T. MAASS, U.S. SENT'G COMM'N, RECIDIVISM AMONG FEDERAL VIOLENT OFFENDERS 2-3 (2019), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190124\\_Recidivism\\_Violence.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190124_Recidivism_Violence.pdf).

104 The homicide, rape, robbery, assault, and "other violent" categories are classified as "violent" in this report.

105 See FIREARMS RECIDIVISM REPORT, *supra* note 5, at 14.

106 *Id.*

107 See *id.*

108 See *id.* and at 20, 22.

109 See *id.* at 27.

110 See *id.* at 31-32.

111 *Id.* at 45.

112 *Id.*

113 Instances of arrest or sentencing that appeared to be duplicates of existing events were removed by IOP. Minor traffic offenses (*e.g.*, speeding) and arrest entries occurring outside of the eight-year follow-up period were removed and therefore, not used to ascertain recidivism.

114 See 2016 RECIDIVISM OVERVIEW REPORT, *supra* note 4, Appendix B.

115 The major crime categories, as ranked by the Commission, beginning with the most serious were: murder, violent sexual assault/rape, robbery, assault, other violent offense, drug trafficking, burglary, larceny, fraud, other property offense, drug possession, other drug offense, weapons offense, other sex offense, driving under the influence, immigration, administration of justice offense, probation/parole/supervision release violation, other public order offense, and other unspecified offense. See *supra* Table A.







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