Revisiting Status Points

United States Sentencing Commission

June 2022

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June 2022

United States Sentencing Commission

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This report examines the application and significance of status points, and considers the extent to which status points contribute to the criminal history score's prediction of rearrest.

Introduction

Criminal history plays a pivotal role in determining an offender's sentencing range under the guidelines.[1] Courts calculate a criminal history score for each offender by assigning one, two, or three points to any qualifying prior sentences.[2] In addition, if the offender committed the instant federal offense while still serving a sentence in another case (for example, while on probation or parole), two more points are added.[3] These additional points, outlined in §4A1.1(d), are commonly referred to as "status points."

In 2005, the United States Sentencing Commission examined status points as part of a broader analysis of how well the guidelines' criminal history computation predicts recidivism.[4] This report revisits status points with greater focus and examines their application and significance. The report begins by outlining how criminal history is calculated under the guidelines and by reviewing prior Commission research on the association between criminal history and recidivism. The report then examines how many offenders received status points in the last five fiscal years and compares them to offenders who did not receive status points. Next, the report analyzes the rearrest rates for offenders with and without status points who were released from prison or began a term of probation in 2010. Finally, the report considers how much status points contribute to the criminal history score's prediction of rearrest.

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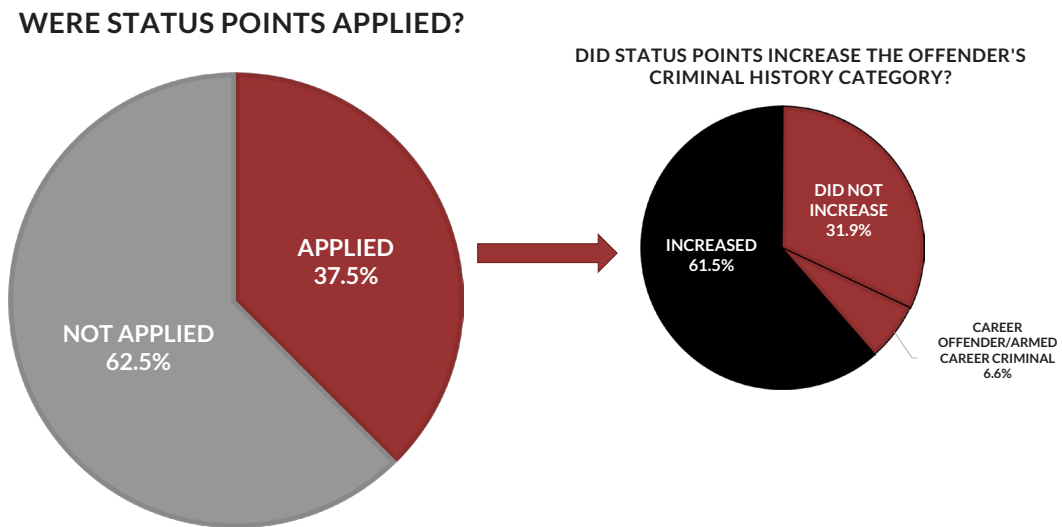*Office of General Counsel*

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Key Findings

In the last five fiscal years:

- Over one-third of federal offenders (37.5%) received two "status points" under §4A1.1(d) as part of their criminal history scores. For 61.5 percent of such offenders, the inclusion of the two points resulted in a higher Criminal History Category.

WERE STATUS POINTS APPLIED?

DID STATUS POINTS INCREASE THE OFFENDER'S CRIMINAL HISTORY CATEGORY?

APPLIED
37.5%

NOT APPLIED
62.5%

DID NOT
INCREASE
31.9%

INCREASED
61.5%

CAREER
OFFENDER/ARMED
CAREER CRIMINAL
6.6%

- The vast majority of offenders who received status points (92.6%) had criminal history scores that placed them in Criminal History Category III and higher, compared to a little less than half of offenders who did not receive status points (47.0%).

- Offenders who received status points had an average of seven criminal history points for qualifying prior sentences (*i.e.*, before adding in two status points). Offenders without status points had an average of five criminal history points for prior sentences, accounting for their total criminal history scores. Most offenders with status points (71.5%) would be in Criminal History Category III or higher based solely on their prior sentences.

Among offenders who were released in 2010:

- Those who received status points were rearrested at similar rates to those without status points who had the same criminal history score. For example, among offenders whose criminal history score was seven, 69.6 percent of those with status points and 70.4 percent of those without status points were rearrested in the eight years after release.

- Three-fifths (61.1%) of offenders who received status points had five or more criminal history points for prior sentences (*i.e.*, before adding in two status points). These offenders had a statistically similar rearrest rate to offenders without status points who had the same number of points for prior sentences.

- The remaining two-fifths (38.9%) of offenders who received status points had one to four criminal history points for prior sentences (*i.e.*, before adding in two status points). These offenders had a statistically higher rearrest rate than offenders without status points who had the same number of points for prior sentences.

- Status points only minimally improve the criminal history score's successful prediction of rearrest—by 0.2 percent. With status points included in the calculation for eligible offenders, the score successfully predicts rearrest 65.1 percent of the time, compared to 64.9 percent of the time with status points removed.

**WHAT PERCENT OF THE TIME DOES THE
CRIMINAL HISTORY SCORE
CORRECTLY PREDICT REARREST?**

65.1%	64.9%
FULL CRIMINAL HISTORY SCORE	CRIMINAL HISTORY SCORE WITH STATUS POINTS REMOVED
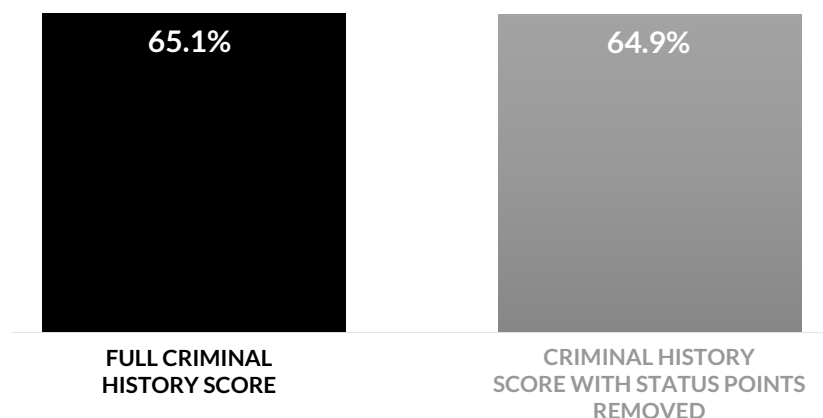
Criminal History Calculation

Accounting for an offender's criminal history in the guidelines addresses several statutory purposes of sentencing.[5] Those purposes include the need for the sentence "(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; [and] (C) to protect the public from further crimes of the defendant."[6] The guidelines' criminal history score thus considers recidivism risk as well as culpability and deterrence.[7]

Criminal history scores determine offenders' placement in one of six Criminal History Categories (CHC).[8] Courts determine an offender's sentencing guideline range by using the Sentencing Table in Chapter Five, Part A of the *Guidelines Manual*, which combines an offender's CHC with the offense level calculated for the offender's conviction.[9]

To calculate a criminal history score, courts assign one, two, or three points to qualifying prior sentences under §4A1.1(a)–(c).[10] One point also is added under §4A1.1(e) for any prior sentence resulting from a crime of violence that was not otherwise already assigned points.[11] In addition, offenders who committed the instant offense (the offense for which they currently are being sentenced) while under "any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status" receive two "status points" under §4A1.1(d).[12]

Only offenders who were under any "criminal justice sentence" at the time of the instant offense may be assigned status points.[13] A "criminal justice sentence" means "a sentence countable under §4A1.2 (Definitions and Instructions for

Guidelines Manual, **Chapter Four**
(Criminal History Calculation)

Criminal History Category (CHC)	I	II	III	IV	V	VI
Total Criminal History Points	(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)

§4A1.1(a)   **+3 points**
for each prior sentence of imprisonment exceeding one year and one month.

§4A1.1(b)   **+2 points**
for each prior sentence of imprisonment of at least sixty days not counted in (a).

§4A1.1(c)   **+1 point**
for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection.

§4A1.1(d)   **+2 points**
if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

§4A1.1(e)   **+1 point**
for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was treated as a single sentence, up to a total of 3 points for this subsection.

Computing Criminal History) having a custodial or supervisory component."[14] Therefore, only offenders with at least one criminal history point (*i.e.*, with at least one countable sentence) may be assigned status points.[15] Determining whether an offender was under a "criminal justice sentence" often is a fact-specific inquiry.[16]

Prior Commission Research

The Commission has periodically evaluated the effectiveness of the guidelines' criminal history calculation as a predictor of recidivism. Beginning in 2004, the Commission released a series of research papers on the recidivism of federal offenders sentenced in fiscal year 1992.[17] The first report in the series found that offenders in higher CHCs were more likely to reoffend in the two years following release than those in lower categories.[18] The study also found that, in general, as the number of criminal history points increased, the recidivism rate also increased.[19] The study further determined that both CHCs and criminal history points correctly predicted whether an offender would be rearrested over two-thirds of the time, a statistically significant difference from a purely random 50/50 chance of correctly predicting recidivism.[20]

Another report in the series examined the various components of the criminal history score in more detail.[21] At the time, the criminal history score also included a provision known as "recency points," whereby offenders were assigned one or two additional points if the instant offense was committed less than two years after release from a prior term of imprisonment.[22] The study found that the full criminal history score, with all components included, successfully predicted rearrest 69.9 percent of the time.[23] The study further found that if both status points and recency points were removed, the score still would successfully predict rearrest 69.8 percent of the time.[24] In short, status points and recency points together improved prediction of rearrest by only 0.1 percent.

The Commission subsequently eliminated recency points from §4A1.1 in a 2010 amendment to the *Guidelines Manual*.[25] The Commission explained that "[r]ecent research isolating the effect of §4A1.1(e) [*i.e.*, recency points] on the predictive ability of the criminal history score indicated that consideration of recency only minimally improves the predictive ability."[26] In addition, with respect to the criminal history score's aim of addressing culpability, the Commission noted that "[p]ublic comment and testimony indicated that defendants who recidivate tend to do so relatively soon after being released from prison but suggested that, for many defendants, this may reflect the challenges to successful reentry after imprisonment rather than increased culpability."[27] Finally, the Commission noted that its "data indicated that many of the cases in which recency points apply are sentenced under Chapter Two guidelines that have provisions based on criminal history. The amendment responds to suggestions that recency points are not necessary to adequately account for criminal history in such cases."[28]

In the years following the 2010 amendment, the Commission has continued to study the recidivism outcomes of federal offenders sentenced under the guidelines. In studies of federal offenders released from prison or placed on probation in 2005 and 2010, the Commission consistently found that rearrest rates were closely associated with criminal history, with higher rearrest rates being associated with higher criminal history scores and higher CHCs.[29]

The Commission also has assessed the relationship between certain components of the criminal history score and rearrest.[30] The Commission found that offenders with only one-point prior sentences were rearrested less often in the eight years after release than those with two- and three-point prior sentences.[31] The Commission did not separately assess the rearrest rates of offenders who had been assigned status points in that study.

Application of Status Points

To better understand who is assigned status points under §4A1.1(d), the Commission analyzed data on offenders sentenced between fiscal years 2017 and 2021.[32] A total of 334,688 offenders were sentenced in those five fiscal years.[33] Of that total, 203,499 offenders were assigned at least one criminal history point and therefore could have received status points if they committed the instant offense while under any criminal justice sentence. Among those with at least one criminal history point, 37.5 percent (n=76,337) were assigned status points ("status offenders"). The remaining 62.5 percent (n=127,162) did not receive status points ("non-status offenders") (Figure 1).

Figure 1. Application of Status Points (§4A1.1(d))
Fiscal Years 2017–2021

STATUS POINTS APPLIED 37.5%

NO STATUS POINTS APPLIED 62.5%
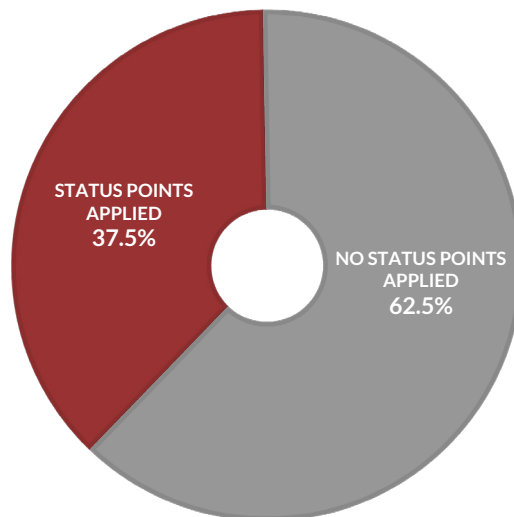
Comparison of Status Offenders and Non-Status Offenders

Demographic Characteristics

Status offenders differed from non-status offenders in terms of certain demographic characteristics (Table 1). Hispanic offenders represented the largest proportion in both groups, but they represented a smaller share of status offenders (41.1%) than non-status offenders (57.8%) offenders. In addition, status offenders were more likely to be U.S. citizens (72.5%) than non-status offenders (53.6%). These differences may be attributable to the fact that U.S. citizen offenders have more countable prior sentences (median of 4) than non-U.S.

citizens (median of 2). Non-U.S. citizens may have had additional foreign sentences, but such sentences may not be known to the court and are not counted under the guidelines.[34]

Status offenders and non-status offenders were very similar in terms of gender and age. Nearly all status offenders (92.1%) and non-status offenders (91.2%) were male. The average age at sentencing for status offenders was 36 years compared to 37 years for non-status offenders. Status offenders tended to have more education, with 55.1 percent having graduated from high school, as compared to 45.3 percent of non-status offenders.

Table 1. Demographic Characteristics
Fiscal Years 2017–2021

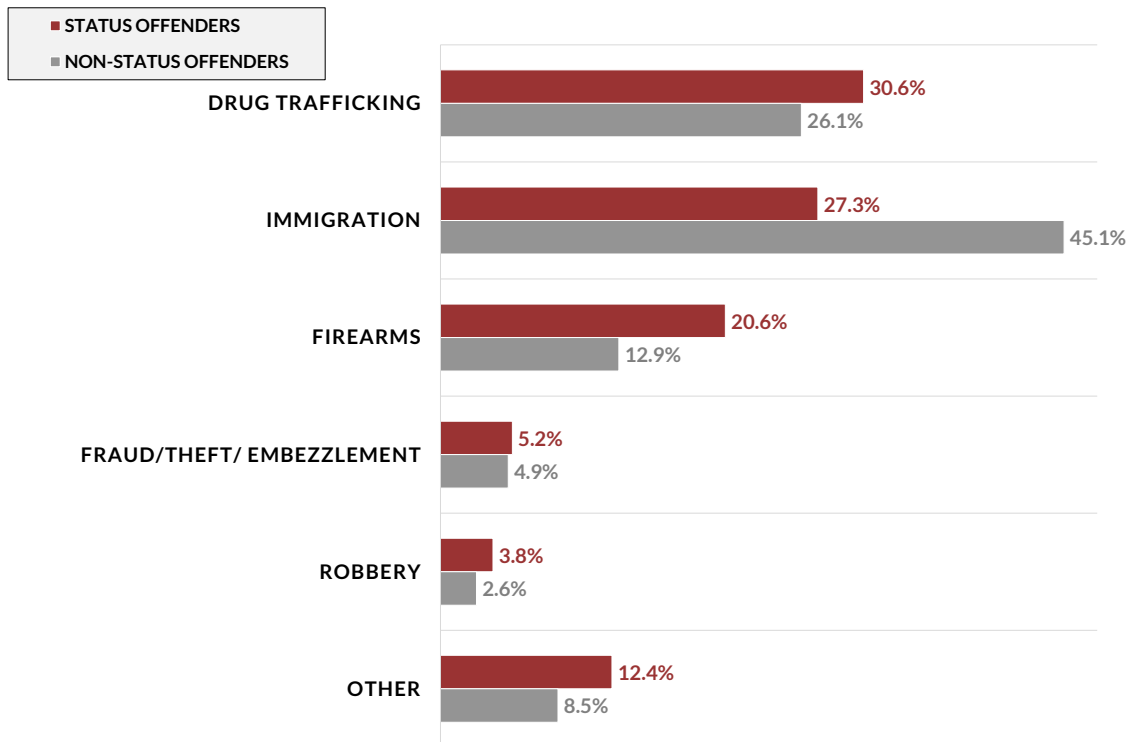|	STATUS OFFENDERS	NON-STATUS OFFENDERS
Race/Ethnicity		
White	22.7%	17.6%
Black	32.7%	21.7%
Hispanic	41.1%	57.8%
Other	3.5%	2.9%
Citizenship		
U.S. Citizen	72.5%	53.6%
Non-U.S. Citizen	27.5%	46.4%
Gender		
Male	92.1%	91.2%
Female	7.9%	8.8%
Age at Sentencing	36 years (average)	37 years (average)
Education		
Less than High School	44.9%	54.7%
High School Graduate	39.2%	29.5%
Some College	14.2%	13.6%
College Graduate	1.7%	2.2%

Crime Type

Most status offenders and non-status offenders were convicted of one of five crime types: immigration, drug trafficking, firearms, fraud/theft/embezzlement, or robbery (Figure 2). However, the distribution of these crime types differed between status offenders and non-status offenders. Among status offenders, the most common crime type was drug trafficking (30.6%), followed by immigration (27.3%). Among non-status offenders, immigration offenses were the most common, accounting for nearly half of such offenders' convictions (45.1%), while drug trafficking comprised slightly more than one-quarter (26.1%) of the convictions. Approximately one-fifth (20.6%) of status offenders were convicted of a firearms offense, as compared to 12.9 percent of non-status offenders.

Criminal History

Status offenders' criminal histories included convictions for a variety of crime types (Figure 3).[35] These prior convictions are not necessarily the offenses that resulted in the application of status points. The most common prior convictions were for public order offenses (54.0%) and drug possession (49.1%). Over one-third (38.5%) of status offenders previously were convicted of assault; a similar proportion (36.1%) had a prior drug trafficking conviction.

The most common prior convictions for non-status offenders also were public order offenses (41.3%) and drug possession (37.3%). Nearly 30 percent (29.5%) had a prior assault conviction and approximately one-quarter (24.3%) had a prior drug trafficking conviction.[36]

Figure 2. Most Common Crime Types
Fiscal Years 2017–2021

STATUS OFFENDERS
NON-STATUS OFFENDERS

DRUG TRAFFICKING — 30.6% / 26.1%
IMMIGRATION — 27.3% / 45.1%
FIREARMS — 20.6% / 12.9%
FRAUD/THEFT/ EMBEZZLEMENT — 5.2% / 4.9%
ROBBERY — 3.8% / 2.6%
OTHER — 12.4% / 8.5%

Figure 3. Types of Prior Convictions
Fiscal Years 2017–2021

■ STATUS OFFENDERS
■ NON-STATUS OFFENDERS

	STATUS OFFENDERS	NON-STATUS OFFENDERS
HOMICIDE	2.3%	1.4%
RAPE	5.1%	3.8%
ROBBERY	13.3%	7.5%
ASSAULT	38.5%	29.5%
OTHER VIOLENT	10.6%	7.3%
DRUG TRAFFICKING	36.1%	24.3%
BURGLARY	20.8%	13.4%
LARCENY	42.3%	29.8%
FRAUD	18.5%	13.1%
OTHER PROPERTY	27.8%	19.8%
DRUG POSSESSION	49.1%	37.3%
OTHER DRUG	19.2%	13.3%
WEAPON	27.7%	16.1%
DUI/DWI	26.2%	25.9%
IMMIGRATION	16.5%	28.5%
OTHER PUBLIC ORDER	54.0%	41.3%
TRAFFIC	42.7%	35.3%
OTHER	15.4%	10.2%
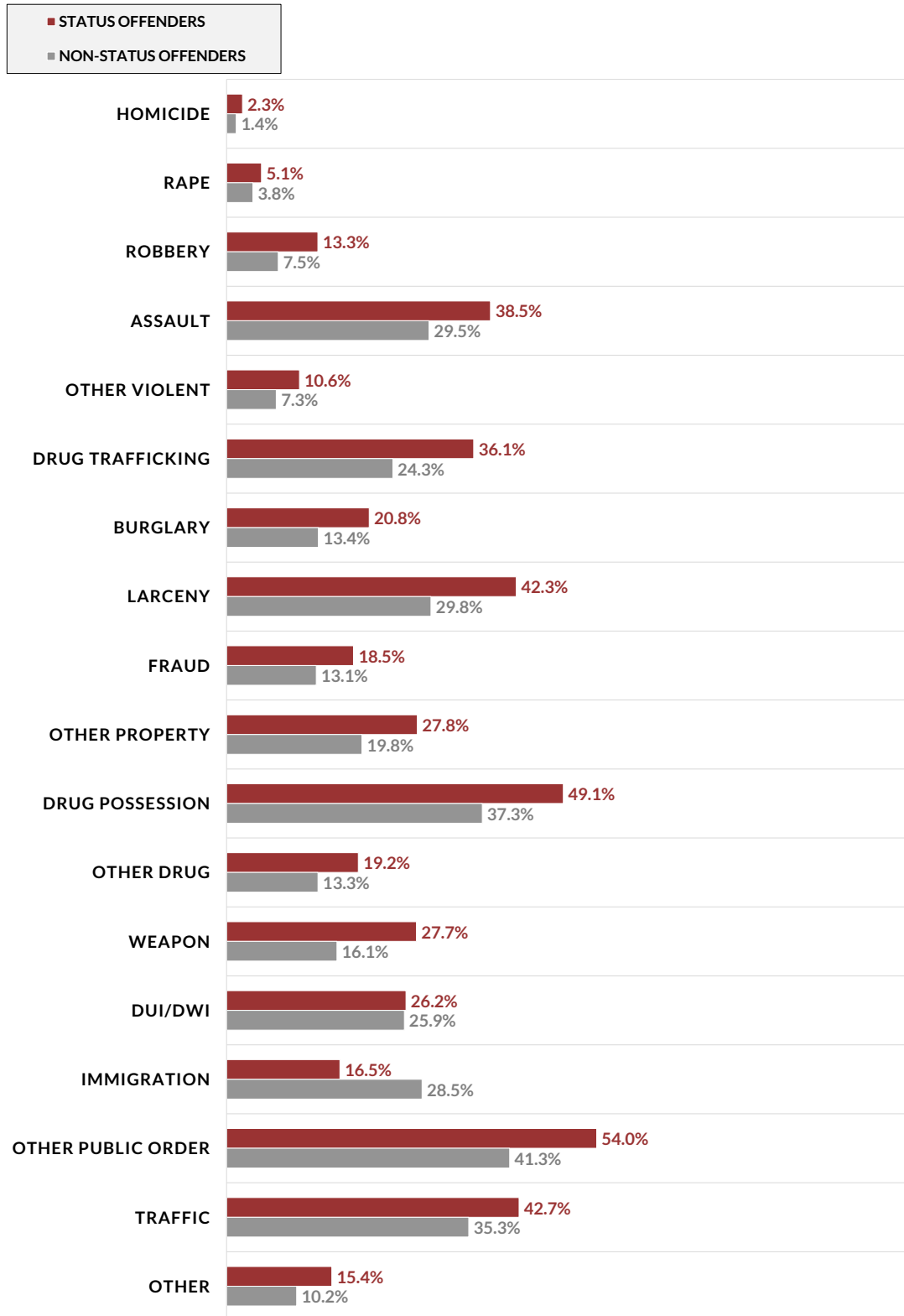
Status offenders and non-status offenders had different criminal history calculations under the guidelines. Only offenders with at least one criminal history point for a prior sentence may be assigned status points. Therefore, all status offenders have at least three criminal history points (at least one for a prior sentence plus two status points). Status offenders' average total criminal history score (9) was nearly double that of non-status offenders (5).

Because they have at least three points, status offenders cannot be in CHC I, which applies to offenders with no criminal history points or one criminal history point. Only 7.4 percent of status offenders were in CHC II, which applies to offenders with two or three criminal history points (Table 2). The vast majority of status offende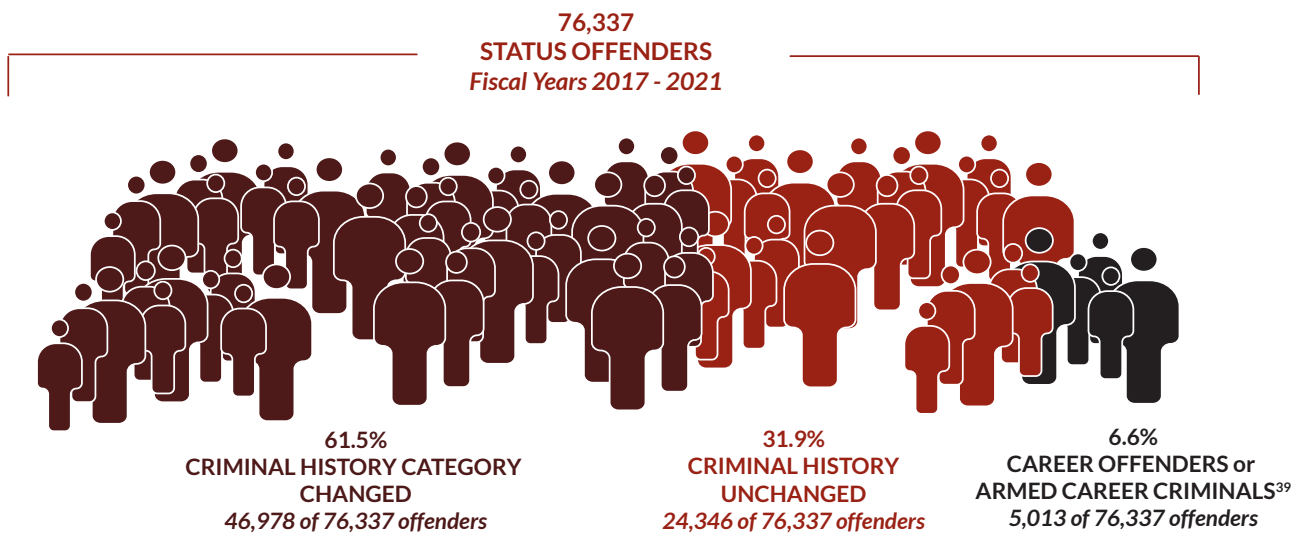rs (92.6%) were in CHC III or higher, with the greatest proportion in CHC III (30.7%). Nearly one-quarter of status offenders (24.7%) were in CHC VI, the highest Criminal History Category. By contrast, less than half (47.0%) of non-status offenders were in CHC III or higher. Over half of non-status offenders (53.0%) were in CHC I or CHC II, the lowest Criminal History Categories.

Status offenders have, on average, more criminal history points (7) for prior sentences under §4A1.1(a)-(c) and (e) than non-status offenders (5).[37] For non-status offenders, such points comprise their total criminal history scores, whereas status offenders' total criminal history scores include the two additional points under §4A1.1(d). Most status offenders (71.5%) would be in CHC III or higher based solely on points under §4A1.1(a)-(c) and (e) (*i.e.*, without adding in status points) (Table 2).[38]

Table 2. Criminal History Score
Fiscal Years 2017–2021

Criminal History Score	STATUS OFFENDERS		BEFORE ADDING STATUS POINTS		NON-STATUS OFFENDERS
Average		*9 points*		*7 points*	*5 points*
Median		*8 points*		*6 points*	*3 points*
Criminal History Category					
Category I		*0.0%*		*7.4%*	*22.4%*
Category II		*7.4%*		*21.2%*	*30.6%*
Category III		*30.7%*		*25.7%*	*22.6%*
Category IV		*22.3%*		*16.8%*	*10.9%*
Category V		*14.9%*		*10.4%*	*5.5%*
Category VI		*24.7%*		*18.6%*	*8.0%*

Figure 4. Impact of Status Points on Criminal History Category
Fiscal Years 2017–2021

**76,337
STATUS OFFENDERS**
Fiscal Years 2017 - 2021

**61.5%
CRIMINAL HISTORY CATEGORY
CHANGED**
46,978 of 76,337 offenders

**31.9%
CRIMINAL HISTORY
UNCHANGED**
24,346 of 76,337 offenders

**6.6%
CAREER OFFENDERS or
ARMED CAREER CRIMINALS**[39]
*5,013 of 76,337 offenders*

**The increase in total criminal history score
due to status points resulted in a higher CHC
for some status offenders.**

**Of the 76,337 status offenders sentenced between
fiscal years 2017 and 2021, nearly two-thirds (61.5%)
were placed in a higher CHC due to the inclusion of
status points (Figure 4).**

Sentence Imposed

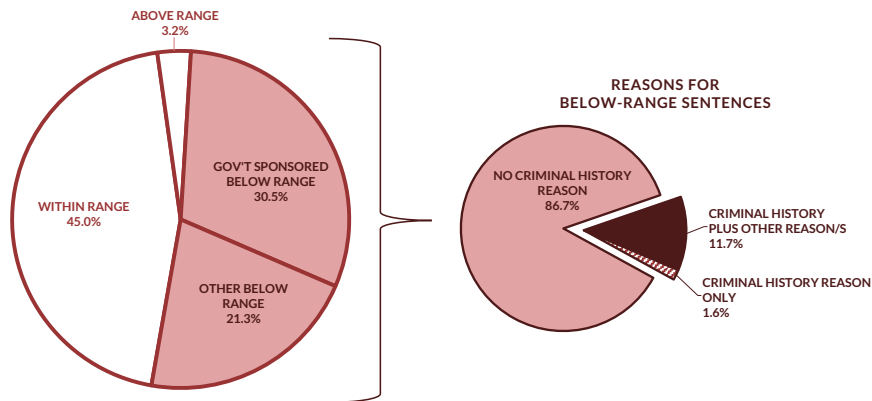**Figure 5. Sentence Imposed**
Fiscal Years 2017–2021
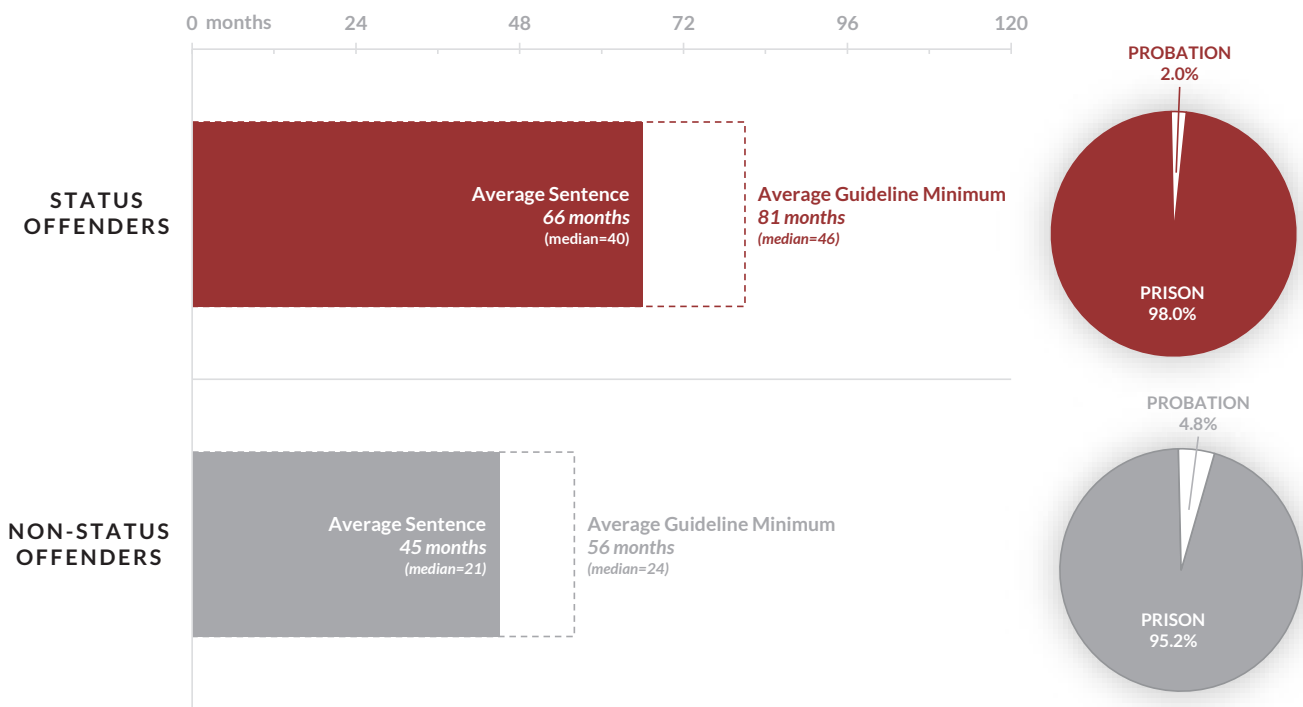
Status offenders' higher CHCs, the product of both status points and a higher number of criminal history points for prior sentences, translate into higher guideline ranges.[40] As Figure 5 shows, the average guideline minimum (the minimum of the guideline sentencing range) was higher for status offenders (81 months) than non-status offenders (56 months). The average prison sentence imposed for status offenders was 66 months, which is 21 months longer than the average for non-status offenders (45 months).

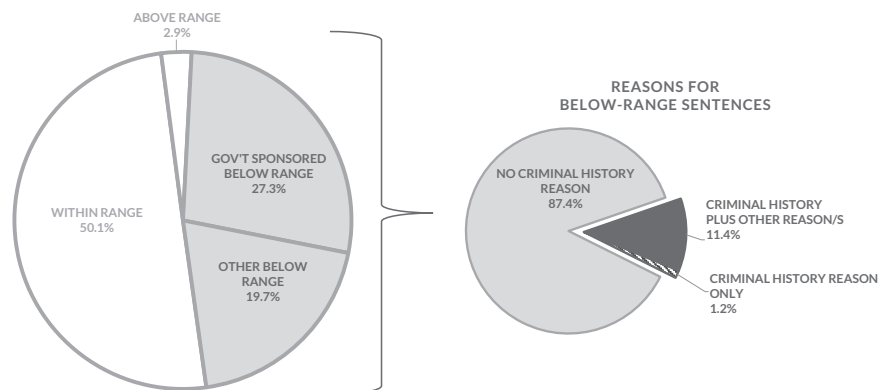The sentence imposed relative to the guideline range was similar for status offenders and non-status offenders. Approximately half of status offenders (45.0%) and non-status offenders (50.1%) received sentences within the guideline range (Figure 6). Status offenders received a below-range sentence (either government-sponsored or otherwise) in 51.8 percent of cases, compared to 47.0 percent of non-status offenders.

**Figure 6. Sentence Imposed Relative to the Guideline Range
and Reasons for Below-Range Sentences**
Fiscal Years 2017–2021

STATUS OFFENDERS

ABOVE RANGE
3.2%

REASONS FOR
BELOW-RANGE SENTENCES

WITHIN RANGE
45.0%

GOV'T SPONSORED
BELOW RANGE
30.5%

OTHER BELOW
RANGE
21.3%

NO CRIMINAL HISTORY
REASON
86.7%

CRIMINAL HISTORY
PLUS OTHER REASON/S
11.7%

CRIMINAL HISTORY REASON
ONLY
1.6%

NON-STATUS OFFENDERS

ABOVE RANGE
2.9%

REASONS FOR
BELOW-RANGE SENTENCES

WITHIN RANGE
50.1%

GOV'T SPONSORED
BELOW RANGE
27.3%

OTHER BELOW
RANGE
19.7%

NO CRIMINAL HISTORY
REASON
87.4%

CRIMINAL HISTORY
PLUS OTHER REASON/S
11.4%

CRIMINAL HISTORY REASON
ONLY
1.2%

When the Commission eliminated recency points from the criminal history score in 2010, it noted that a multi-year review showed that "criminal history issues are often cited by sentencing courts as reasons for imposing non-government sponsored below range sentences, particularly in cases in which recency points were added to the criminal history score."[41] In the current analysis, the Commission considered whether the same trends apply to status offenders.

For status offenders who received a below-range sentence, sentencing courts cited criminal history as the reason in 13.3 percent of the cases (Figure 6). However, this percentage was very similar to the proportion of sentencing courts who cited criminal history as the reason for a below-range sentence for non-status offenders (12.6%). Accordingly, the rate at which status offenders were sentenced below the guidelines range was not disproportionately due to their criminal history score—including status points.[42]
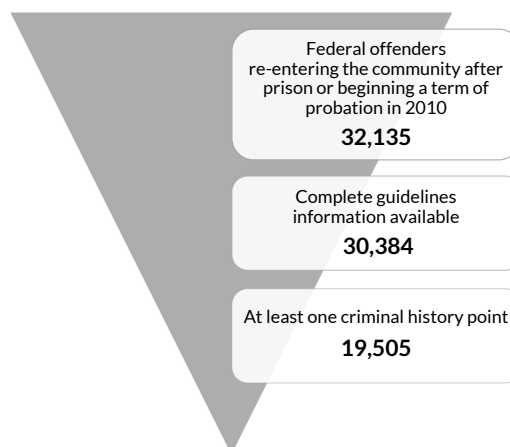
Rearrest Rates

Federal offenders re-entering the community after prison or beginning a term of probation in 2010
32,135

Complete guidelines information available
30,384

At least one criminal history point
19,505

The Commission has examined the relationship between criminal history and rearrest rates on several occasions.[43] In the most recent research series, which evaluated recidivism among federal offenders released from prison or placed on probation in 2010,[44] the Commission found that higher criminal history scores and higher CHCs were associated with increased rearrest rates.[45] However, those studies did not separately analyze the rearrest rates for offenders whose criminal history scores included status points.

This report examines the rearrest rates for a subset of the federal offenders who were released from prison or began a term of probation in 2010 who had at least one criminal history point (n=19,505) and thus could potentially receive status points. The offenders included in this subset were all U.S. citizens. An eight-year follow-up period was used to assess any post-release rearrests.[46]

Status offenders and non-status offenders with the same criminal history score had similar rearrest rates in the eight years following release (Figure 7). For example, 69.6 percent of status offenders with a criminal history score of seven were rearrested, as were 70.4 percent of non-status offenders with that score. Of those with a criminal history score of 12, 72.6 percent of status offenders and 72.4 percent of non-status offenders were rearrested. While rearrest rates rose as the criminal history score increased, the differences in rearrest rates between status offenders and non-status offenders within each criminal history score were not statistically significant.[47]

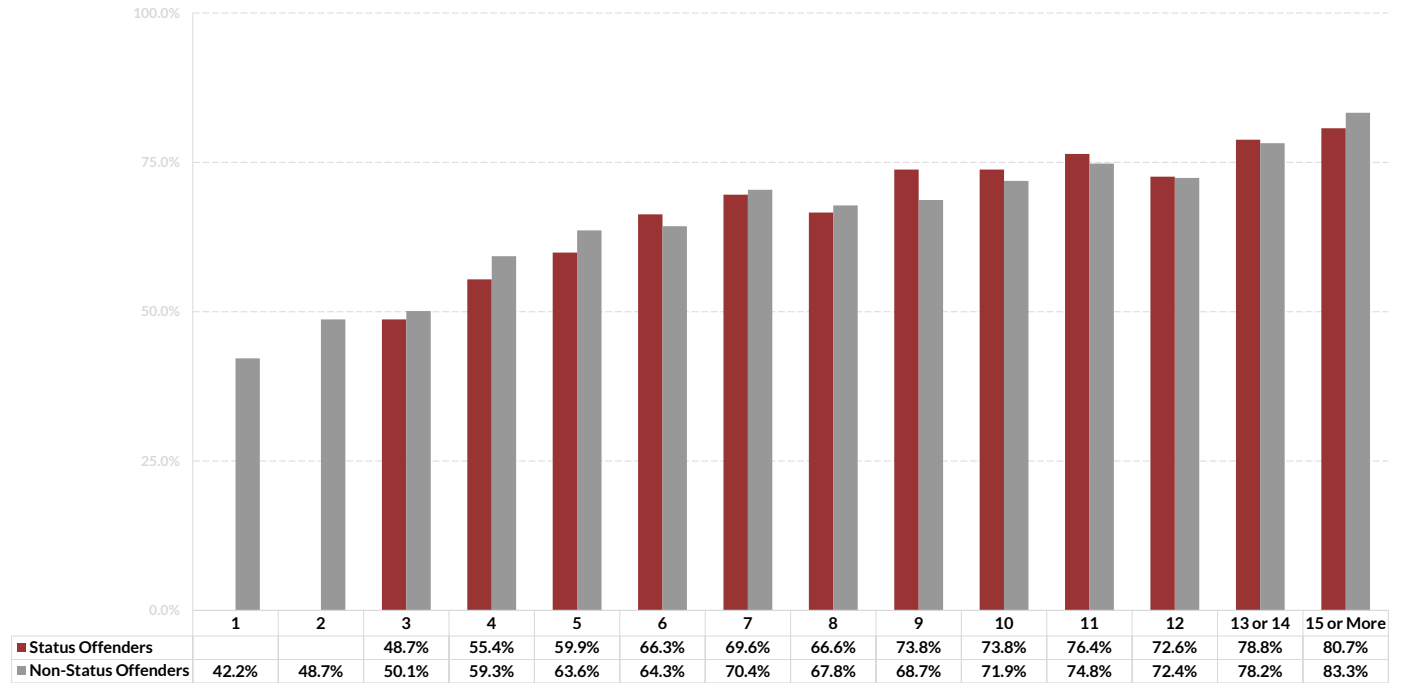The Commission also compared the rearrest rates of status offenders and non-status offenders based on the number of criminal history points received for qualifying prior sentences under §4A1.1(a)-(c) and (e) (*i.e.*, before adding in two status points). For non-status offenders, points from qualifying prior sentences accounted for their total criminal history scores, whereas status offenders' total criminal history scores included the two additional points under §4A1.1(d).
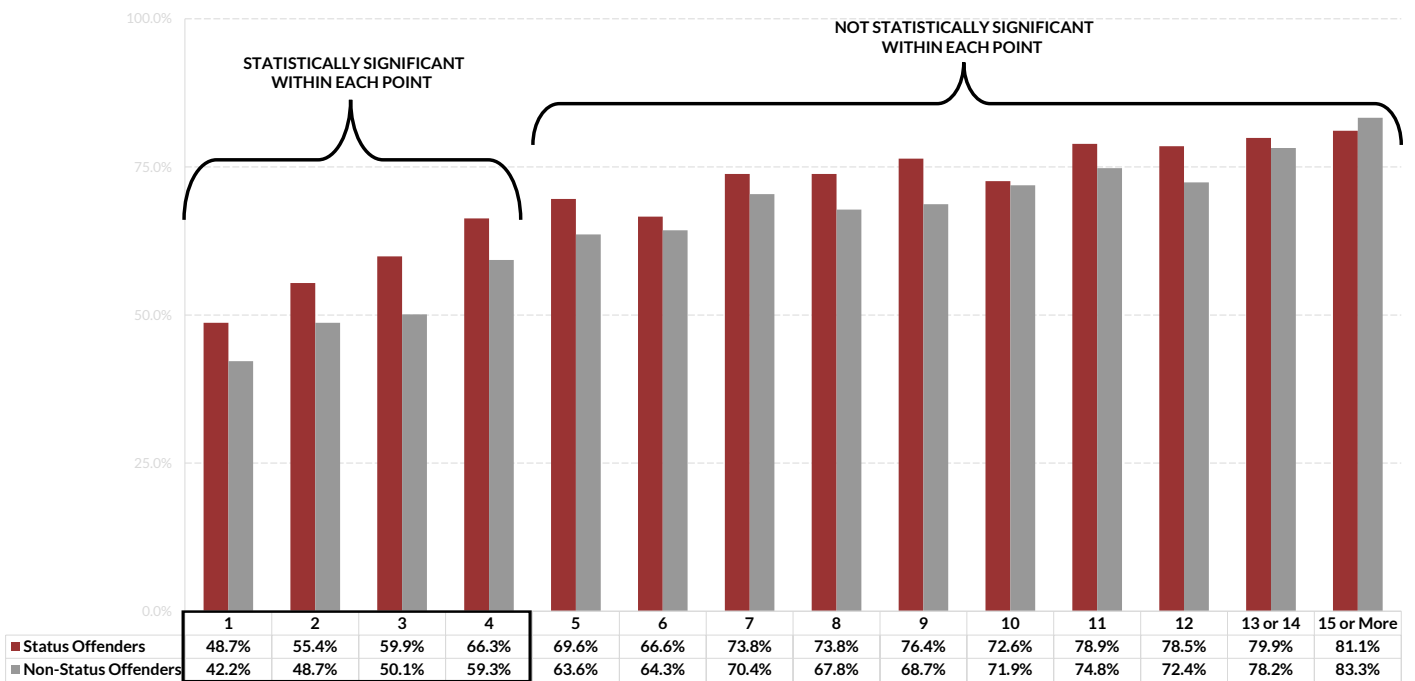
The majority of status offenders (61.1%) had five or more criminal history points for prior sentences under §4A1.1(a)-(c) and (e). For these status offenders, the fact that they committed the instant federal offense while under another criminal justice sentence did not affect their likelihood of rearrest. There were no statistically significant differences in rearrest rates between these status offenders and non-status offenders with the same number of points for prior sentences.[48] For example, 72.6 percent of status offenders with ten points for prior sentences were rearrested, as were 71.9 percent of non-status offenders (Figure 8).

Status offenders with one to four points for prior sentences under §4A1.1(a)-(c) and (e) (38.9%) had higher rearrest rates than non-status offenders with the same number of points for prior sentences, and the differences were statistically significant.[49] For example, 59.9 percent of status offenders with three points for prior sentences were rearrested, as compared to 50.1 percent of non-status offenders.

Figure 7. Rearrest Rates by Criminal History Score
Offenders Released in 2010

	1	2	3	4	5	6	7	8	9	10	11	12	13 or 14	15 or More
Status Offenders			48.7%	55.4%	59.9%	66.3%	69.6%	66.6%	73.8%	73.8%	76.4%	72.6%	78.8%	80.7%
Non-Status Offenders	42.2%	48.7%	50.1%	59.3%	63.6%	64.3%	70.4%	67.8%	68.7%	71.9%	74.8%	72.4%	78.2%	83.3%

Figure 8. Rearrest Rates by Criminal History Points for Prior Sentences Under §4A1.1(a)-(c) and (e)
Offenders Released in 2010

STATISTICALLY SIGNIFICANT
WITHIN EACH POINT

NOT STATISTICALLY SIGNIFICANT
WITHIN EACH POINT

	1	2	3	4	5	6	7	8	9	10	11	12	13 or 14	15 or More
Status Offenders	48.7%	55.4%	59.9%	66.3%	69.6%	66.6%	73.8%	73.8%	76.4%	72.6%	78.9%	78.5%	79.9%	81.1%
Non-Status Offenders	42.2%	48.7%	50.1%	59.3%	63.6%	64.3%	70.4%	67.8%	68.7%	71.9%	74.8%	72.4%	78.2%	83.3%

Prediction of Rearrest

The Commission also evaluated whether the inclusion of status points improved the criminal history score's prediction of rearrest. A 2005 Commission study found that the criminal history score correctly predicted whether an offender would be rearrested over two-thirds of the time, but that the inclusion of status points and recency points in the criminal history score improved that predictiveness by only 0.1 percent.[50]

To revisit the impact of status points, the Commission compared two data points:

(1) How well the combined criminal history score *with* status points predicts rearrest; and

(2) How well the combined criminal history score *without* status points predicts rearrest.

In making this comparison, the Commission used data from the subset of federal offenders released from prison or placed on probation in 2010 described above (n=19,505). Notably, this dataset includes a longer follow-up period for assessing rearrest (eight years) than the earlier 2005 study on criminal history score (two years).

To assess whether a tool (here, the criminal history score) can successfully predict an outcome (here, rearrest), it is helpful to consider two ends of the spectrum. In a perfect world, the criminal history score would correctly predict whether someone is rearrested 100 percent of the time. At the opposite end, if the criminal history score is completely random as a predictor, then 50 percent of the time it would correctly predict rearrest and 50 percent of the time it would incorrectly predict rearrest.

To evaluate whether the inclusion of status points improves the criminal history score's prediction of rearrest, the Commission used logistic regressions to produce Receiver Operating Characteristic (ROC) curves and the corresponding Area under the Curve (AUC) scores. An AUC score of 1.0 represents perfect prediction of rearrest. An AUC score of 0.5 represents no predictive ability.

To measure the impact of status points on prediction, the Commission compared the AUC scores for the criminal history score with and without status points.[51] The first model used three components to compute the AUC score:

(1) The sum of points an offender received for one-, two-, and three-point offenses under §4A1.1(a)–(c);

(2) Any status points imposed under §4A1.1(d); and

(3) The number of points for prior sentences resulting from a crime of violence under §4A1.1(e).

The second model removed the status points component, and looked solely at points for qualifying prior sentences.[52]

The AUC score for the model with all components of the criminal history score included was 0.651 (Figure 9). Therefore, based on the total criminal history score an offender had under §4A1.1(a)–(e), the criminal history score correctly predicted if an offender would be rearrested 65.1 percent of the time.

Removing status points had no statistically significant impact on the ability of the criminal history score to predict rearrest. Removing status points (§4A1.1(d)) from the statistical model produced an AUC score of 0.649 (Figure 10). Thus, without status points, the total criminal history score correctly predicted rearrest 64.9 percent of the time. Therefore, the inclusion of status points in the criminal history score improved successful prediction of rearrest by less than 0.2 percent, and the difference between the two models was not statistically significant. Notably, these findings are comparable to the 2005 Commission study of the criminal history score.[53]

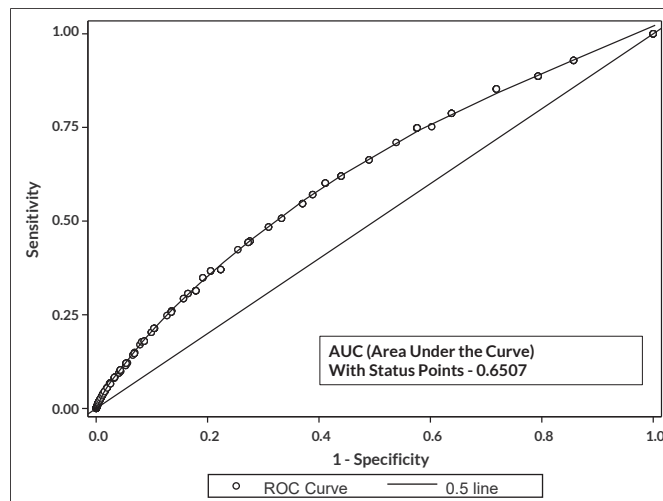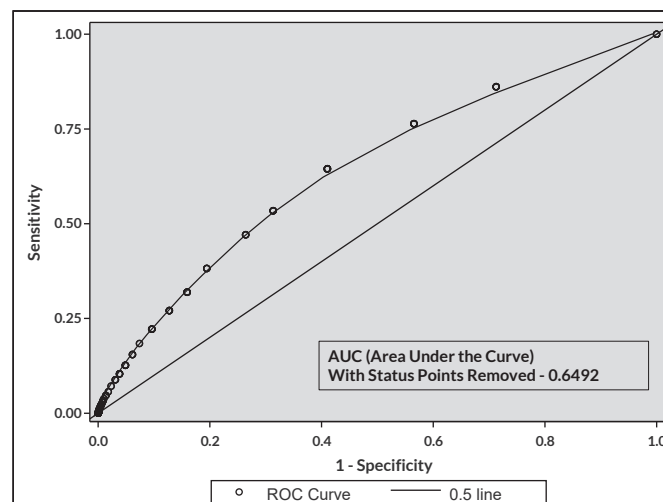**Figure 9. Predicting Rearrest with All Components of Criminal History Score**

Figure 10. Predicting Rearrest with Status Points Removed from Criminal History Score

NOTE: AUC Difference = 0.0015, *df* = 1, chi-square = 0.75, *p* = 0.39

Conclusion

In the last five fiscal years, one-third of federal offenders received two "status points" under §4A1.1(d) for committing the instant offense while under a criminal justice sentence. As a result of receiving such status points, 61.5 percent of status offenders moved to higher CHCs, which in turn resulted in higher guideline ranges.

Despite the sentencing impacts resulting from the application of status points, the status points provision only minimally improves the overall recidivism predictivity of the criminal history score. Similar to findings from an earlier Commission study, the current analysis found that status points improve the score's prediction of rearrest by only 0.2 percent. With the inclusion of status points, the overall criminal history score successfully predicts rearrest for every 6,507 out of 10,000 offenders. Were status points removed, the score would successfully predict rearrest for 6,492 out of 10,00 offenders.

Thus, status points improve the criminal history score's successful prediction of rearrest for only 15 out of 10,000 offenders. While the inclusion of status points in the criminal history score may address culpability and other statutory purposes of sentencing, status points do not significantly improve the score's prediction of rearrest.

Appendix A - 2010 Release Cohort Rearrest Data Methodology

The Commission entered into a data sharing agreement with the FBI's Criminal Justice Information Services Division (CJIS) and the Administrative Office of the US Courts (AOUSC) to provide the Commission with 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). Once the raw CHRI was obtained, the Commission organized and standardized the arrest and court disposition information into a dataset.

Initially, the 2010 cohort contained 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;

- Have valid FBI numbers that could be found in criminal history repositories (in at least one state, the District of Columbia, or federal records).[54]

For this report, only offenders who had complete sentencing information and at least one criminal history point were included. The resulting sample included 19,505 federal offenders.

Table A-1. Offender Characteristics
Offenders Released in 2010

Race/Ethnicity	STATUS OFFENDERS	NON-STATUS OFFENDERS
White	35.1%	38.9%
Black	46.9%	40.1%
Hispanic	14.2%	16.6%
Other	3.8%	4.3%
Citizenship		
U.S. Citizen	100.0%	100.0%
Non-U.S. Citizen	0.0%	0.0%
Gender		
Male	90.3%	85.7%
Female	9.7%	14.2%
Age at Sentencing	33 years (average)	35 years (average)
Education		
Less than High School	41.3%	38.8%
High School Graduate	41.9%	39.8%
Some College	15.0%	18.4%
College Graduate	1.9%	3.0%
Criminal History Points		
Average	9 points	5 points
Median	8 points	3 points
Criminal History Category		
Category I	0.0%	27.6%
Category II	9.3%	25.7%
Category III	29.2%	20.7%
Category IV	21.2%	10.1%
Category V	14.5%	5.7%
Category VI	25.9%	10.2%

Appendix B - 2010 Release Cohort Rearrest Data

Table B-1. Rearrest Rates for Status Offenders and Non-Status Offenders Released in 2010 by Criminal History Score

Criminal History Score	STATUS OFFENDERS	NON-STATUS OFFENDERS	df	chi-square	p value
1 point	--	42.2%	--	--	--
2 points	--	48.7%	--	--	--
3 points	48.7%	50.1%	1	0.38	0.54
4 points	55.4%	59.3%	1	2.48	0.12
5 points	59.9%	63.6%	1	2.00	0.16
6 points	66.3%	64.3%	1	0.78	0.38
7 points	69.6%	70.4%	1	0.08	0.78
8 points	66.6%	67.8%	1	0.18	0.67
9 points	73.8%	68.7%	1	3.04	0.08
10 points	73.8%	71.9%	1	0.32	0.57
11 points	76.4%	74.8%	1	0.20	0.65
12 points	72.6%	72.4%	1	0.00	0.97
13-14 points	78.8%	78.2%	1	0.03	0.86
15 or more	80.7%	83.3%	1	1.72	0.19

Table B-2. Rearrest Rates for Status Offenders and Non-Status Offenders Released in 2010 by Criminal History Points for Prior Sentences (§4A1.1(a)–(c), (e))

Criminal History Score	STATUS OFFENDERS	NON-STATUS OFFENDERS	df	chi-square	p value
1 point	48.7%	42.2%	1	10.94	< .01*
2 points	55.4%	48.7%	1	8.21	<.01*
3 points	59.9%	50.1%	1	19.58	<.01*
4 points	66.3%	59.3%	1	11.20	<.01*
5 points	69.6%	63.6%	1	4.36	0.04
6 points	66.6%	64.3%	1	0.80	0.37
7 points	73.8%	70.4%	1	1.56	0.21
8 points	73.8%	67.8%	1	3.87	0.05
9 points	76.4%	68.7%	1	5.68	0.02
10 points	72.6%	71.9%	1	0.04	0.84
11 points	78.9%	74.8%	1	1.27	0.26
12 points	78.5%	72.4%	1	2.29	0.13
13-14 points	79.9%	78.2%	1	0.27	0.60
15 or more	81.1%	83.3%	1	1.08	0.30

* The Commission uses a cutoff of p < .01 to determine statistical significance.

Endnotes

1   *See* U.S. Sᴇɴᴛ'ɢ Cᴏᴍᴍ'ɴ, *Guidelines Manual*, Ch.5, Pt.A (Nov. 2021) [hereinafter USSG] (combining Criminal History Category with final offense level to determine a sentencing range).

2   *See* USSG §§4A1.1(a)–(c), (e), 4A1.2.

3   USSG §4A1.1(d) ("Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.").

4   *See* Lɪɴᴅᴀ Dʀᴀᴢɢᴀ Mᴀxꜰɪᴇʟᴅ ᴇᴛ ᴀʟ., U.S. Sᴇɴᴛ'ɢ Cᴏᴍᴍ'ɴ, A Cᴏᴍᴘᴀʀɪsᴏɴ ᴏꜰ ᴛʜᴇ Fᴇᴅᴇʀᴀʟ Sᴇɴᴛᴇɴᴄɪɴɢ Gᴜɪᴅᴇʟɪɴᴇs Cʀɪᴍɪɴᴀʟ Hɪsᴛᴏʀʏ Cᴀᴛᴇɢᴏʀʏ ᴀɴᴅ ᴛʜᴇ U.S. Pᴀʀᴏʟᴇ Cᴏᴍᴍɪssɪᴏɴ Sᴀʟɪᴇɴᴛ Fᴀᴄᴛᴏʀ Sᴄᴏʀᴇ (2005) [hereinafter 2005 Cʀɪᴍɪɴᴀʟ Hɪsᴛᴏʀʏ Cᴀᴛᴇɢᴏʀʏ Rᴇᴘᴏʀᴛ]. Commission materials cited herein are available on the Commission's website at www.ussc.gov.

5   USSG Ch.4, Pt.A, intro. comment (citing 18 U.S.C. § 3553(a)(2)).

6   18 U.S.C. § 3553(a)(2)(A)–(C).

7   *See generally* USSG Ch.4.

8   *See* USSG Ch.5, Pt.A.

9   *Id.*

10   USSG §§4A1.1(a)–(c), 4A1.2. Three-point prior sentences typically stem from state or federal felony convictions that are more serious than those for which the sentences imposed was assigned two points or one point. *See generally* Tʀᴀᴄᴇʏ Kʏᴄᴋᴇʟʜᴀʜɴ & Eᴍɪʟʏ Hᴇʀʙsᴛ, U.S. Sᴇɴᴛ'ɢ Cᴏᴍᴍ'ɴ, Tʜᴇ Cʀɪᴍɪɴᴀʟ Hɪsᴛᴏʀʏ ᴏꜰ Fᴇᴅᴇʀᴀʟ Oꜰꜰᴇɴᴅᴇʀs (2018).

11   USSG §4A1.1(e).

12   USSG §4A1.1(d).

13   *Id.*

14   USSG §4A1.1, comment. (n.4). Not all prior sentences are counted under §4A1.2. For example, sentences imposed by foreign courts or tribal courts are not counted, nor are sentences for expunged convictions. Prior sentences for many petty and other minor convictions are never assigned points. In addition, some prior sentences are deemed too remote in time and are not counted. *See* USSG §4A1.2(c)(2), (e), (h).

15   Commission data indicates that in approximately ten cases each year, courts applied status points to offenders who had no countable sentences. *See also, e.g.*, United States v. Abeyta, 877 F.3d 935, 944 (10th Cir. 2017) (defendant's prior conviction was not countable, so "he did not commit the instant offense while on probation for a countable offense under [] §4A1.1(d)"); United States v. Brown, 865 F.3d 566, 575 (7th Cir. 2017) (defendant's prior traffic offense was not countable and thus the defendant should not have received two points under §4A1.1(d)).

16   Common factual disputes include whether the prior sentence had a supervisory component, the range of time covered by the prior sentence, and whether the instant offense, including any relevant conduct, occurred during the prior sentence. *See, e.g.*, United States v. Madrid-Becerra, 14 F.4th 1096, 1101 (9th Cir. 2021); United States v. Lee, 950 F.3d 439, 444 (7th Cir. 2020); United States v. Brown, 909 F.3d 698, 700 (4th Cir. 2018); *see also* United States v. Barnes, No. 20–2811, 2021 WL 4484912, at *2 (2d Cir. Oct. 1, 2021).

17   *See* Lɪɴᴅᴀ Dʀᴀᴢɢᴀ Mᴀxꜰɪᴇʟᴅ ᴇᴛ ᴀʟ., U.S. Sᴇɴᴛ'ɢ Cᴏᴍᴍ'ɴ, Mᴇᴀsᴜʀɪɴɢ Rᴇᴄɪᴅɪᴠɪsᴍ: Tʜᴇ Cʀɪᴍɪɴᴀʟ Hɪsᴛᴏʀʏ Cᴏᴍᴘᴜᴛᴀᴛɪᴏɴ ᴏꜰ ᴛʜᴇ Fᴇᴅᴇʀᴀʟ Sᴇɴᴛᴇɴᴄɪɴɢ Gᴜɪᴅᴇʟɪɴᴇs (2004).

18   *Id.* at 6.

19   *Id.* at 8.

20   *Id.* at 10, 25–26.

21   *See* 2005 Criminal History Category Report, *supra* note 4.

22   *See* U.S. Sent'g Comm'n, *Guidelines Manual*, §4A1.1(e) (Nov. 2009) ("Add 2 points if the defendant committed the instant offense less than two years after release from imprisonment on a sentence counted under (a) or (b) or while in imprisonment or escape status on such a sentence. If 2 points are added for item (d) ["status points"], add only 1 point for this item.").

23   2005 Criminal History Category Report, *supra* note 4, at 26.

24   *Id.*

25   *See* USSG App. C, amend. 742 (effective Nov. 1, 2010).

26   *Id.*

27   *Id.*

28   *Id.; see also* U.S. Sent'g Comm'n, Computation of "Recency" Criminal History Points Under USSG §4A1.1(e) (2010).

29   *See* Ryan Cotter, Courtney Semisch & David Rutter, U.S. Sent'g Comm'n, Recidivism of Federal Offenders Released in 2010 20, 25–29 (2021) [hereinafter Recidivism of Federal Offenders]; Tracey Kyckelhahn & Trishia Cooper, U.S. Sent'g Comm'n, The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders 7–8 (2017) [hereinafter Past Predicts the Future]; Kim Steven Hunt & Robert Dumville, U.S. Sent'g Comm'n, Recidivism Among Federal Offenders: A Comprehensive Overview 18–19 (2016).

30   Past Predicts the Future, *supra* note 29, at 10–11.

31   *Id.* at 10 ("For offenders with only one-point sentences in their criminal history, 53.4 percent were rearrested compared to 71.3 percent for offenders with at least one two-point sentence and 70.5 percent for offenders with at least one three-point sentence.").

32   The Commission collects data from sentencing documents sent directly from federal courts. Within 30 days of the entry of judgment in a criminal case, the chief judge of each sentencing court is required to submit the following to the Commission: (1) the Judgment and Commitment Order; (2) the Statement of Reasons (SOR); (3) any plea agreement; (4) the indictment or other charging document; (5) the Presentence Report; and (6) any other information the Commission finds appropriate. From this information, the Commission identifies offenders' demographics, guideline applications, criminal histories, and sentences.

33   Of these 334,688 offenders, 24,984 offenders were omitted from the analysis because the Commission did not receive complete sentencing information. An additional 106,077 offenders were omitted because the offender did not have contact with law enforcement and/or did not have any countable criminal history points. A further 52 offenders were omitted because the sum of §4A1.1(a)–(e) (and, formerly, (e) ["recency points"]), if sentenced prior to the 2010 *Guideline Manual*) did not equal the coded criminal history score. A total of 63 offenders were omitted because their CHC was incorrect based on their criminal history score and they were not sentenced under career offender, armed career criminal, sex offender enhancements, or terrorism enhancements. Finally, 13 offenders were omitted because they were duplicated in sequential fiscal years.

34   *See* USSG §4A1.2(h).

35   The crime types listed are not mutually exclusive, meaning that some status offenders have convictions for more than one of the listed crime types. For the same reason, the percentages shown do not sum to 100 percent; rather, each bar represents the share of status offenders who had a prior conviction for that crime type.

36   Non-status offenders who were not citizens (46.4%) may have had other prior foreign convictions that were not known to the courts.

37   *See* USSG §4A1.1(a)–(c), (e).

38   The "BEFORE ADDING STATUS POINTS" totals in Table 2 reflect points for prior sentences under §4A1.1(a)-(c) and (e). The percentages noted in the text may not match those in the figure due to rounding.

39   Career offenders and armed career criminals are treated differently for purposes of their CHC calculations. Career offenders are placed in CHC VI regardless of the number of criminal history points. USSG §4B1.1(b). The CHC for an armed career criminal is the greatest of: (1) the CHC from Chapter Four, Part A of the *Guidelines Manual* or the career offender guideline at §4B1.1, if applicable; (2) Category VI if the defendant used or possessed a firearm in connection with either a "crime of violence," or a "controlled substance offense," or if the firearm possessed by the defendant was of a type described in 26 U.S.C. § 5845(a); or (3) Category IV. USSG §4B1.4(c).

40   *See* USSG Ch.5, Pt.A.

41   USSG App. C, amend. 742 (effective Nov. 1, 2010).

42   The Commission deems a downward departure or variance to be based on criminal history largely based on the options available on the SOR form completed by courts at sentencing. *See supra* note 32. Status points are not a listed option for a departure or variance on the SOR form. However, judges may include status points as a reason in their additional remarks on the form.

43   *See supra* note 29 and accompanying text.

44   Federal offenders were "released in 2010" if they reentered the community that year after a period of imprisonment or began a term of probation that year. *See* Recidivism of Federal Offenders, *supra* note 29.

45   *Id*.

46   *See id*. at 40–41 (further discussion of the study methodology is provided in Appendix A).

47   Chi-square tests were used to determine if any differences in the percentage of offenders rearrested within each criminal history score were significant. The Commission uses a cutoff of $p < .01$ to determine statistical significance. See Appendix B for significance tests.

48   See Appendix B for significance tests.

49   See Appendix B for significance tests.

50   *See* 2005 Criminal History Category Report, *supra* note 4.

51   The analysis compared the AUCs from two logistic regression models and corresponding ROC curves.

52   While some offenders in the data subset also received recency points because they were sentenced before such points were eliminated from the criminal history score effective November 1, 2010, recency points were excluded in this analysis to focus on the components of the criminal history score in the current *Guidelines Manual*.

53   *See* 2005 Criminal History Category Report, *supra* note 4, at 26.

54   *See* Recidivism of Federal Offenders, *supra* note 29, at 8.

§4A1.1(d). Two points are added if the defendant committed any part of the instant offense (*i.e.*, any relevant conduct) while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence. *See* §4A1.2(n). For the purposes of this subsection, a **"criminal justice sentence"** means a sentence countable under §4A1.2 (Definitions and Instructions for Computing Criminal History) having a custodial or supervisory component, although active supervision is not required for this subsection to apply. For example, a term of unsupervised probation would be included; but a sentence to pay a fine, by itself, would not be included. A defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding... violation war... sentence for... otherwise cou... absent such w...

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