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# FEDERAL ROBBERY

Prevalence, Trends, and Factors in Sentencing







# **FEDERAL ROBBERY**

## **Prevalence, Trends, and Factors in Sentencing**

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# Table of Contents

<b>Introduction .....</b>	<b>1</b>
Key Findings.....	2
<b>Legal Background .....</b>	<b>4</b>
Federal Robbery Statutes.....	4
Federal Sentencing Guidelines.....	7
Enhanced Penalties for Robbery Offenders .....	8
<b>Data Overview .....</b>	<b>10</b>
Overview of Robbery Offenders .....	11
Offender Characteristics and Criminal History .....	14
Section 2B3.1 Specific Offense Characteristics .....	19
Sentencing Outcomes.....	20
Spotlight on Hobbs Act, Bank Robbery, and Carjacking .....	26
<b>Special Data Collection Project .....</b>	<b>28</b>
Robbery Events .....	28
Location and Property Taken .....	29
Participants and Weapons .....	30
Physical Force .....	31
Spotlight on Carjacking .....	33
<b>Conclusion .....</b>	<b>34</b>
<i>Appendices .....</i>	<i>35</i>
<i>Endnotes.....</i>	<i>42</i>

**Prior Commission research demonstrated that robbery offenders were rearrested at a higher rate and for more serious crimes than other violent offenders.**

**This report provides for the first time a comprehensive study of robbery offenders using fiscal year 2021 federal sentencing data.**

# Introduction

The United States Sentencing Commission (“the Commission”) has recently published a report on the recidivism of federal offenders who were sentenced for violent and non-violent offenses and released from incarceration or sentenced to a term of probation in 2010.<sup>1</sup> The Commission’s recidivism research demonstrated that federal offenders who were sentenced for violent offenses recidivated at a substantially higher rate than offenders sentenced for non-violent offenses (63.8% rearrest rate for violent offenders compared to 38.4% for non-violent offenders).<sup>2</sup> As part of that report, the Commission also observed that federal offenders who were sentenced for a robbery offense (“robbery offenders”) stood out among other violent offenders in terms of their rates of recidivism. Robbery offenders comprised the largest group of offenders with a violent instant federal offense and recidivated at a higher rate than other violent offenders (63.3% rearrest rate for robbery offenders compared to 57.3% for all other violent instant offenders).<sup>3</sup> Robbery offenders were also more likely to be rearrested and rearrested for more serious offenses compared to all other violent offenders.<sup>4</sup> The most common type of rearrest offense for robbery offenders was another robbery, followed by assault.<sup>5</sup>

This report builds upon the Commission’s observations regarding the high recidivism rates among federal robbery offenders by providing for the first time a comprehensive study of robbery offenders sentenced in fiscal year 2021. Combining data the Commission regularly collects<sup>6</sup> with data from a special data collection project, this report provides an analysis of the characteristics of robbery offenders, their criminal history, and their sentences imposed. This report also provides analyses on the prevalence of robbery offenses and how they were committed, including who was robbed, what was taken, the use or threatened use of physical force, the use of a firearm or other dangerous weapon, and whether any victim was injured or killed during a robbery.

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# Key Findings

**1** Robbery offenders have consistently comprised a small but increasing proportion of the federal criminal caseload.

- During fiscal years 2012 to 2021, the proportion of robbery offenders increased from 1.9 percent to 2.3 percent of the federal caseload.

**2** Hobbs Act robbery, bank robbery, and carjacking accounted for the overwhelming majority of robbery convictions during the ten-year study period. The prevalence of each of these types of robbery offenses changed over time.

- In fiscal year 2012, more than half (55.9%) of robbery offenders were convicted of bank robbery, compared to 35.5 percent who were convicted of Hobbs Act robbery. In contrast, in fiscal year 2021, more than half (54.2%) of robbery offenders were convicted of Hobbs Act robbery, compared to 29.2 percent of offenders who were convicted of bank robbery.
- The proportion of robbery offenders convicted of carjacking more than doubled during the study period from 4.5 percent in fiscal year 2012 to 11.7 percent in fiscal year 2021.

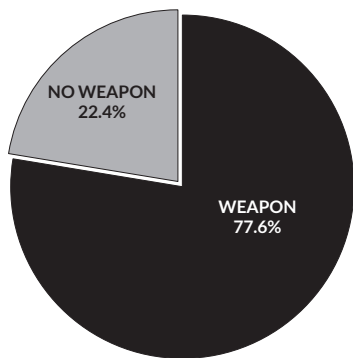
**3** Robbery offenders have criminal histories that are more extensive and more serious than other violent offenders.

- Only one-quarter (26.5%) of robbery offenders were in the least serious criminal history category, CHC I, compared to 40.7 percent of other violent offenders.
- At the other end of the spectrum, 19.5 percent of robbery offenders were in the most serious criminal history category, CHC VI, compared to 12.9 percent of other violent offenders. In addition, robbery offenders were more than twice as likely as other violent offenders to be sentenced as career offenders or armed career criminals (8.4% compared to 3.4%).
- Two-thirds (66.5%) of robbery offenders with prior convictions had at least one prior conviction for a violent offense, compared to 61.7 percent of other violent offenders.
- More than one-third (39.2%) of robbery offenders with prior convictions had at least one prior conviction for robbery, compared to 15.8 percent of other violent offenders.

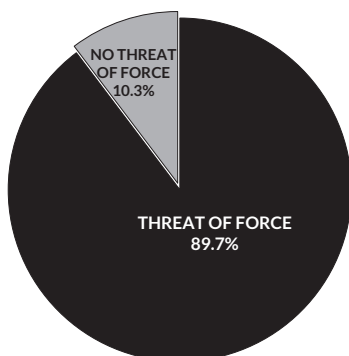


**4** Robbery offenders often engaged in dangerous aggravating conduct. In fiscal year 2021, a majority of robbery offenses involved dangerous weapons and threats of physical force against a victim.

- Over three-quarters (77.6%) of robberies involved dangerous weapons. Firearms were the predominant type of weapon—they were present in 79.8 percent of robberies involving weapons.



- The overwhelming majority (89.7%) of robberies involved a threat of physical force against a victim, and over one-quarter (25.7%) involved the use of physical force against a victim. A victim sustained bodily injury in 11.8 percent of robberies.



**5** Robbery offenders received substantial sentences—on average 105 months of imprisonment in fiscal year 2021—but sentences varied significantly depending upon whether the offender was also convicted under 18 U.S.C. § 924(c).

- A substantial proportion (40.6%) of robbery offenders sentenced in fiscal year 2021 also had a conviction under section 924(c) for using or carrying a firearm during the offense.
- The average sentence imposed for robbery offenders also convicted under section 924(c) was 155 months of imprisonment, compared to an average sentence of 71 months for robbery offenders without a section 924(c) conviction.
- Section 924(c) convictions also impacted the anchoring of sentences to the robbery guideline. The average sentence for robbery offenders convicted under section 924(c) was 28 months less than the average guideline minimum, compared to ten months for robbery offenders without a section 924(c) conviction.

# Legal Background

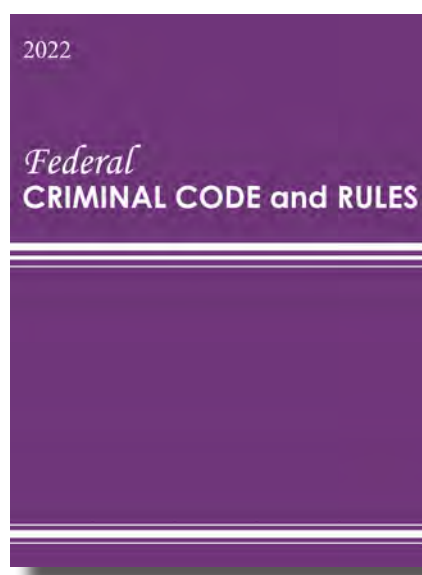
The crime of robbery is the taking of anything of value from a person by physical force or by instilling fear of serious bodily injury in the victim.<sup>7</sup> Robbery has been described as inherently violent because it necessarily involves a physical confrontation between the offender and the victim.<sup>8</sup> This section provides an overview of the federal robbery statutes and the most common types of robbery offenses sentenced in fiscal year 2021. This section also discusses sentencing guidelines for robbery offenders, statutory sentencing enhancements, and guideline recidivist provisions to which robbery offenders may be subject.

## Federal Robbery Statutes

The statutes in the United States Code proscribing most of the federal robbery offenses are in chapters 95 and 103 of title 18.<sup>9</sup> Chapter 95 (Racketeering) prohibits robbery interfering with commerce by threats or violence (“Hobbs Act robbery”).<sup>10</sup> Chapter 103 (Robbery and Burglary) covers several types of robbery, including bank robbery, robbery of United States mail, robbery of controlled substances, and carjacking.<sup>11</sup> Additional robbery offenses are found in chapter 111 (Shipping) of title 18, relating to robbery involving maritime navigation and fixed platforms,<sup>12</sup> and chapter 75 (Crimes, Other Offenses, and Forfeitures) of title 26, relating to robbery of property seized by the Internal Revenue Service.<sup>13</sup> The most common types of robbery offenses sentenced in fiscal year 2021 were Hobbs Act robbery, bank robbery, and carjacking, each of which is described in more detail below.



**The most common types of robbery offenses sentenced in fiscal year 2021 were Hobbs Act robbery, bank robbery, and carjacking.**



### **Hobbs Act Robbery (18 U.S.C. § 1951)**

The Hobbs Act, 18 U.S.C. § 1951, prohibits the obstruction or delay of commerce or movement of any item in commerce by robbery or extortion.<sup>14</sup> The Hobbs Act further prohibits committing or threatening “physical violence to any person or property in furtherance of a plan or purpose” to violate the statute and covers conspiracy and attempt to commit the offense as well as the substantive offense.<sup>15</sup> The statute defines robbery, in relevant part, as “the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury . . . .”<sup>16</sup>

The Hobbs Act is used to prosecute a wide range of criminal conduct.<sup>17</sup> Any effect on interstate or foreign commerce, even if slight or *de minimis*, is sufficient to satisfy federal jurisdiction.<sup>18</sup> As such, Hobbs Act robbery includes robberies of retail stores and commercial businesses,<sup>19</sup> drugs and drug proceeds,<sup>20</sup> and private residences (commonly known as “home invasions”) where the object of the robbery was an article or commodity that moves in interstate or foreign commerce, such as firearms, drugs, and drug proceeds.<sup>21</sup> Hobbs Act robbery is punishable by a statutory maximum term of imprisonment of 20 years, a fine, or both.<sup>22</sup> An attempt or conspiracy to commit a Hobbs Act robbery carries the same punishment as the substantive offense.<sup>23</sup>

### **Bank Robbery (18 U.S.C. § 2113)**

Section 2113(a) prohibits anyone from taking or attempting to take by force and violence, or by intimidation, money or other property from any bank, credit union, or savings and loan association.<sup>24</sup> In addition to prohibiting robbery of standalone banks, credit unions, and other financial institutions, the statute also prohibits robberies of banks, credit unions, and other financial institutions operating inside grocery stores, malls, and other retail businesses and commercial buildings.<sup>25</sup>

The statutory penalty for bank robbery under section 2113(a) is a maximum term of imprisonment of 20 years, a fine, or both.<sup>26</sup> The statutory penalty is higher for armed bank robbery under section 2113(d) if the offender assaults or puts in jeopardy the life of any person by the use of a dangerous weapon or device (a maximum term of imprisonment of 25 years, a fine, or both) and under section 2113(e) if the offender kills or abducts a person during the robbery or while avoiding or attempting to avoid arrest or confinement for the robbery (a minimum term of imprisonment of ten years, or, if death results, life imprisonment or a sentence of death).<sup>27</sup>

While section 2113 prohibits attempted bank robbery, there is no provision for conspiracy to commit bank robbery.<sup>28</sup> Conspiracy to commit bank robbery is prosecuted under the general federal conspiracy statute, 18 U.S.C. § 371, which provides for a maximum term of imprisonment of five years.<sup>29</sup> Thus, unlike Hobbs Act robbery, conspiracy to commit bank robbery is subject to a lower statutory maximum penalty than the substantive or attempted offense.



## ***Carjacking (18 U.S.C. § 2119)***

Section 2119 prohibits anyone from taking, or attempting to take, a motor vehicle from a person by force and violence or by intimidation, with the intent to cause death or serious bodily harm.<sup>30</sup> The offender need not take the vehicle across state lines for federal prosecution; it is sufficient for federal jurisdiction that the offender forcibly take or attempt to take a motor vehicle that has at some point been “transported, shipped, or received in interstate or foreign commerce.”<sup>31</sup>

Congress enacted the Anti Car Theft Act of 1992, the first federal carjacking statute, to combat a nationwide increase in motor vehicle thefts, including armed carjackings.<sup>32</sup> Congress subsequently enacted the Federal Death Penalty Act as part of the Violent Crime Control and Law Enforcement Act of 1994, which made carjacking punishable by death when a victim is killed during the commission of the offense.<sup>33</sup> Although not as prevalent as Hobbs Act robbery and bank robbery, the number of federal carjackings has more than doubled in the last ten years.<sup>34</sup>

The statutory penalty for carjacking is a maximum term of imprisonment of 15 years, a fine, or both.<sup>35</sup> The statutory penalty increases if the carjacking results in serious bodily injury to a victim (a maximum term of imprisonment of 25 years, a fine, or both) or death (a term of imprisonment for any number of years up to life, a fine, or both, or a sentence of death).<sup>36</sup> The federal carjacking statute does not include a provision for conspiracy to commit carjacking; offenders

who conspire to commit carjacking are prosecuted under section 371, which carries a statutory maximum term of imprisonment of five years.<sup>37</sup>

## ***Robbery-Related Statutes***

In addition to the more common robbery offenses discussed above, offenders may also commit robbery during or in furtherance of other crimes. For example, offenders involved in racketeering, in violation of 18 U.S.C. § 1962 (Racketeer Influenced and Corrupt Organizations (RICO)) or 18 U.S.C. § 1959 (Violent Crimes in Aid of Racketeering Activity (VICAR)), may commit robbery as part of their racketeering activity.<sup>38</sup> Section 1962 makes it unlawful for anyone who has received income from or is involved with a criminal enterprise that is engaged in or its activities affect interstate or foreign commerce through a pattern of racketeering activity or the collection of unlawful debt to conduct certain activities related to such criminal enterprise.<sup>39</sup> Section 1961 defines “racketeering activity” to include robbery under state law and Hobbs Act robbery.<sup>40</sup>

Similarly, section 1959 makes it a crime to commit any of the violent crimes listed in the statute for purposes of personal gain from a criminal enterprise engaged in racketeering activity, or for the purpose of joining, remaining with, or advancing in such criminal enterprise.<sup>41</sup> Section 1959 incorporates the RICO Act’s definition of “racketeering activity.”<sup>42</sup> Thus, like RICO, racketeering activity under section 1959 includes robbery under state law and Hobbs Act robbery.



## Sentencing Guidelines

### Section 2B3.1 (Robbery)

The offense guideline for robbery is found in Chapter Two (Offense Conduct), Part B, Subpart Three (Robbery, Extortion, and Blackmail) of the *Guidelines Manual*.<sup>43</sup> Section 2B3.1 provides for a base offense level of 20 and contains seven specific offense characteristics that increase the base offense level based on aggravating circumstances involved in the commission of the offense: (1) if the property of a financial institution or post office was taken or was the object of the offense; (2) if a firearm was discharged, or if a firearm or dangerous weapon was used, brandished, or possessed, or if a threat of death was made; (3) if any victim sustained bodily injury, serious bodily injury, or permanent or life-threatening bodily injury, or the degree of injury in between; (4) if any person was abducted or physically restrained; (5) if the offense involved carjacking; (6) if a firearm, destructive device, or controlled substance was taken or was the object of the offense; and (7) if the loss exceeded \$20,000.<sup>44</sup>



### Chapter Two, Part B, Subpart 3 of the *Guidelines Manual* (Robbery, Extortion, and Blackmail)

#### Specific Offense Characteristics

##### §2B3.1(b)(1)

*Property of a financial institution or post office taken or object of offense*  
**2-level increase**

##### §2B3.1(b)(2)

*Firearm discharged; firearm or dangerous weapon used, brandished, or possessed; or threat of death*  
**2- to 7-level increase**

##### §2B3.1(b)(3)

*Degree of bodily injury to any victim*  
**2- to 6-level increase**

##### §2B3.1(b)(4)

*Abduction or physical restraint of any person*  
**2- to 4-level increase**

##### §2B3.1(b)(5)

*Carjacking involved in the offense*  
**2-level increase**

##### §2B3.1(b)(6)

*Firearm, destructive device, or controlled substance taken or object of offense*  
**1-level increase**

##### §2B3.1(b)(7)

*Loss amount exceeded \$20,000*  
**1- to 7-level increase**

Section 2B3.1(c)(1) provides that “if a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).”<sup>45</sup> Section 2A1.1 has a base offense level 43 for which the guidelines specify a sentence of life imprisonment, irrespective of the offender’s Criminal History Category (CHC).<sup>46</sup>

Chapter Three adjustments may apply to robbery offenses depending on an offender’s conduct,<sup>47</sup> such as whether the offender has an aggravating or mitigating role in cases where there are multiple participants in the robbery offense.<sup>48</sup> In a case involving multiple counts of conviction for robbery, the offender’s offense level can be increased to account for the convictions of multiple robbery offenses.<sup>49</sup>

### ***Pathways to Application of §2B3.1***

The Statutory Index in Appendix A references most robbery statutes to §2B3.1.<sup>50</sup> However, there are other ways an offender convicted of a non-robbery statute may be sentenced under §2B3.1. For example, offenders convicted of conspiracy to commit a robbery under section 371 are sentenced under §2B3.1.<sup>51</sup> Offenders convicted of racketeering under section 1962 (RICO) or section 1959 (VICAR) may also be sentenced under §2B3.1 if the underlying criminal conduct is robbery.<sup>52</sup> Lastly, offenders convicted of being a felon in possession of a firearm

or ammunition, in violation of 18 U.S.C. § 922(g)(1), who committed such offense in connection with the commission or attempted commission of a robbery may be sentenced under §2B3.1.<sup>53</sup>

## **Enhanced Penalties for Robbery Offenders**

Robbery offenders sentenced under §2B3.1 may be subject to statutory sentencing enhancements and/or guideline recidivist provisions in conjunction with the robbery conviction.

### ***18 U.S.C. § 924(c) (Use or Carry a Firearm During a Crime of Violence)***

An offender who is convicted of a robbery offense that involved the use of a firearm may be convicted of a violation of 18 U.S.C. § 924(c) in addition to the robbery offense. Section 924(c) prohibits using or carrying a firearm or ammunition during and in relation to, or possessing a firearm or ammunition in furtherance of, a crime of violence or a drug trafficking crime.<sup>54</sup> Section 924(c) defines a “crime of violence” as a felony offense that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.”<sup>55</sup>

A violation of section 924(c) requires a mandatory minimum term of imprisonment ranging from five to ten years depending on whether the firearm was possessed (five years), brandished (seven years), or discharged (ten years), or is a



short-barreled rifle or shotgun or semi-automatic assault weapon (ten years).<sup>56</sup> The statutory minimum term of imprisonment increases to more than ten years if the firearm is a machinegun or a destructive device or equipped with a silencer or muffler (30 years), or if the offender was previously convicted of a violation of section 924(c) (25 years) and if the firearm involved is a machine gun or a destructive device or is equipped with a silencer or muffler (life imprisonment).<sup>57</sup> Sentences for a violation of section 924(c) must be imposed consecutive to any sentence for the underlying offense and any other sentences imposed, including sentences for multiple violations of section 924(c) in the same case.<sup>58</sup>

### **18 U.S.C. § 924(e) (Armed Career Criminal)**

An offender who is convicted of 18 U.S.C. § 922(g)(1) and sentenced under §2B3.1—either by cross reference from §2K2.1(c)(1)(A) or because the offender was convicted of both a robbery offense and section 922(g)(1)—who has three prior convictions for a “violent felony” or a “serious drug offense” or both may be sentenced as an armed career criminal pursuant to 18 U.S.C. § 924(e) (Armed Career Criminal Act (ACCA)).<sup>59</sup> Section 924(e) requires a mandatory minimum term of imprisonment of 15 years.<sup>60</sup>

### **Section 4B1.1 (Career Offender)**

An offender who is convicted of a robbery offense that qualifies as a “crime of violence” under the guidelines may be sentenced as a career offender.<sup>61</sup> The career offender guidelines at §§4B1.1 (Career Offender) and 4B1.2 (Definitions of Terms Used in Section 4B1.1) provide for enhanced offense levels and CHC for repeat violent offenders and drug traffickers.<sup>62</sup> Section 4B1.1 provides that an offender is a career offender if (1) the offender is at least 18 years old at the time of commission of the instant offense; (2) the instant offense of conviction is either a “crime of violence” or a “controlled substance offense” as those terms are defined in §4B1.2; and (3) the offender has at least two prior felony convictions of either a “crime of violence” and/or a “controlled substance offense.”<sup>63</sup> Section 4B1.2(a), in turn, defines a “crime of violence” as a felony offense that (1) “has as an element the use, attempted use, or threatened use of physical force against the person of another,” or (2) is one of a list of offenses that includes “robbery.”<sup>64</sup> A career offender’s CHC in every case is CHC VI.<sup>65</sup>



**An offender who is convicted of a robbery offense that qualifies as a “crime of violence” under the guidelines may be sentenced as a career offender.**

# Data Overview

## Trends



This part of the report includes five sections. The **first section** provides an overview of robbery offenders sentenced between fiscal years 2012 and 2021. This section uses data from the Commission’s Individual Offender Datafiles to provide an analysis of ten-year trends in the prevalence of robbery offenses.

## Outcomes



The **fourth section** provides an examination of sentencing outcomes. This section also includes an analysis of the impact of convictions under section 924(c) on sentences imposed for robbery offenders.



## Characteristics

The **second section** provides an overview of offender characteristics and criminal history.<sup>66</sup> This section includes comparisons of robbery offenders to other violent and non-violent offenders.



## Conduct

The **fifth section** provides an in-depth examination of the conduct of robbery offenders sentenced in fiscal year 2021. This section uses data from a special data collection project to examine the nature and characteristics of robbery events,<sup>67</sup> including the location and object of the robberies. This section also examines the nature of the conduct underlying the robbery events, including whether the offense involved threats of physical harm, use of weapons, or bodily injury to any victim.

## Guideline Application



The **third section** provides information on §2B3.1 specific offense characteristics, showing the application of the robbery guideline for offenders in this study.

## Overview of Robbery Offenders

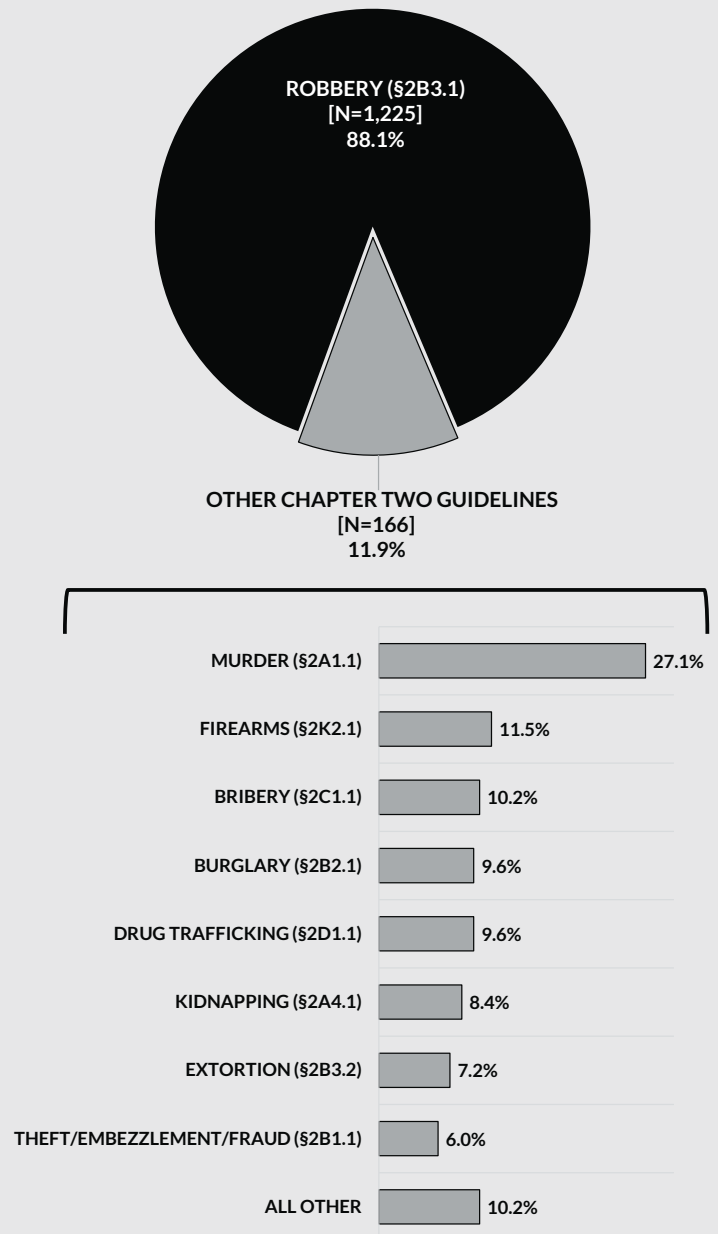
### Robbery Offenders Included in the Study

In fiscal year 2021, 57,287 offenders were sentenced for which the Commission received complete case documentation.<sup>68</sup> Of the 57,287 offenders, 1,393 were convicted of a robbery offense (2.4%). As shown in Figure 1, the overwhelming majority (88.1%) of offenders with a robbery conviction<sup>69</sup> were sentenced under §2B3.1.<sup>70</sup>

The remaining 11.9 percent (n=166) of offenders with robbery convictions had a primary sentencing guideline other than §2B3.1, because the cross reference at §2B3.1(c)(1) was applied or the case was sentenced under another Chapter Two guideline because the case involved other convictions (e.g., drug trafficking) in addition to robbery.<sup>71</sup> The largest proportion of the 166 offenders—more than one-quarter (27.1%)—were sentenced for murder (§2A1.1).<sup>72</sup> Of the 45 offenders sentenced under §2A1.1, 25 offenders were sentenced under §2A1.1 because a victim was murdered during a robbery. Offenders sentenced for firearms (§2K2.1) and bribery (§2C1.1) accounted for 11.5 percent and 10.2 percent, respectively.<sup>73</sup>

**For purposes of this report, the Commission focuses only on federal offenders sentenced under the robbery guideline at §2B3.1.<sup>74</sup>**

Figure 1. Primary Sentencing Guideline for Robbery Convictions  
Fiscal Year 2021





### Statutes of Conviction for Robbery Offenders in the Study

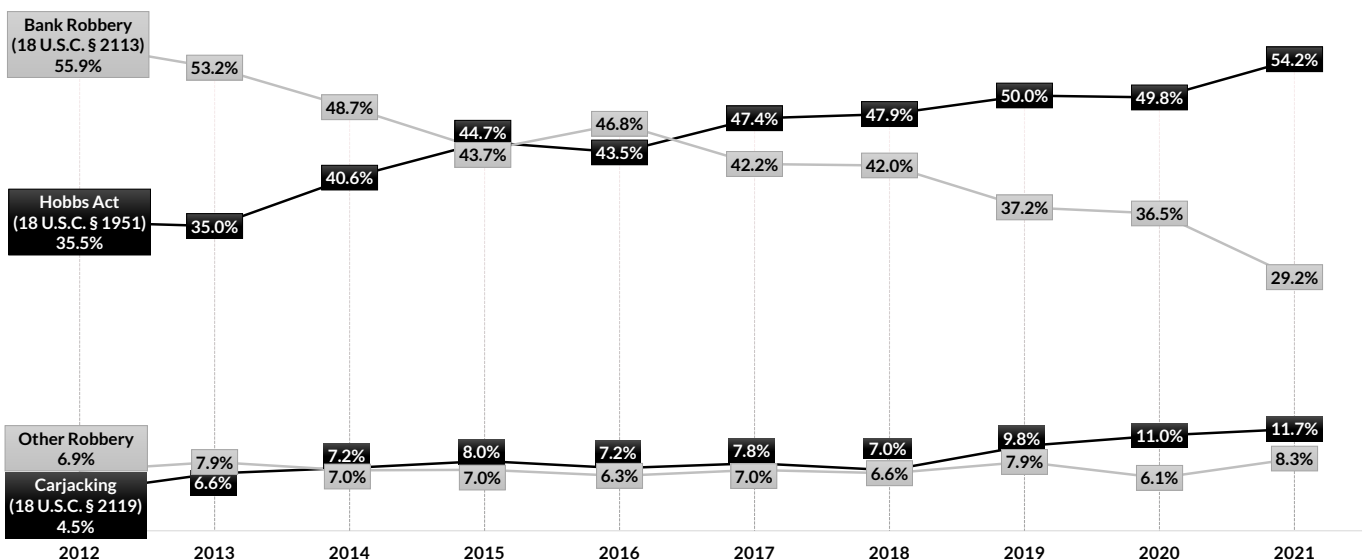
Three robbery statutes—Hobbs Act robbery, bank robbery, and carjacking—account for the majority of robbery convictions sentenced under §2B3.1.<sup>75</sup> However, the ten-year trend in robbery convictions shows a substantial shift in the types of robbery targets.<sup>76</sup> More than half (55.9%) of robbery offenders in fiscal year 2012 were convicted of bank robbery, compared to slightly more than one-third (35.5%) of robbery offenders convicted of Hobbs Act robbery.<sup>77</sup> However, by fiscal year 2021, the predominant types of robbery offenses reversed. In fiscal year 2021, more than half (54.2%) of robbery offenders were convicted of a Hobbs Act robbery while slightly more than one-quarter (29.2%) of robbery offenders were convicted of bank robbery (Figure 2).<sup>78</sup>

While not as prevalent as Hobbs Act robbery and bank robbery, the Commission’s data shows a substantial increase in the proportion of carjacking convictions among robbery offenders. From fiscal years 2012 to 2021, the proportion of robbery offenders with at least one conviction for carjacking more than doubled from 4.5 percent to 11.7 percent.<sup>79</sup> This increase in federal carjacking convictions is consistent with a reported increase in carjackings nationwide.<sup>80</sup>



**The ten-year trend in robbery convictions shows a substantial shift in the types of robbery targets.**

**Figure 2. Trend in Robbery Convictions**  
Fiscal Years 2012–2021



**Prevalence and Trends:  
Robbery, Other Violent, and  
Non-Violent Offenders**

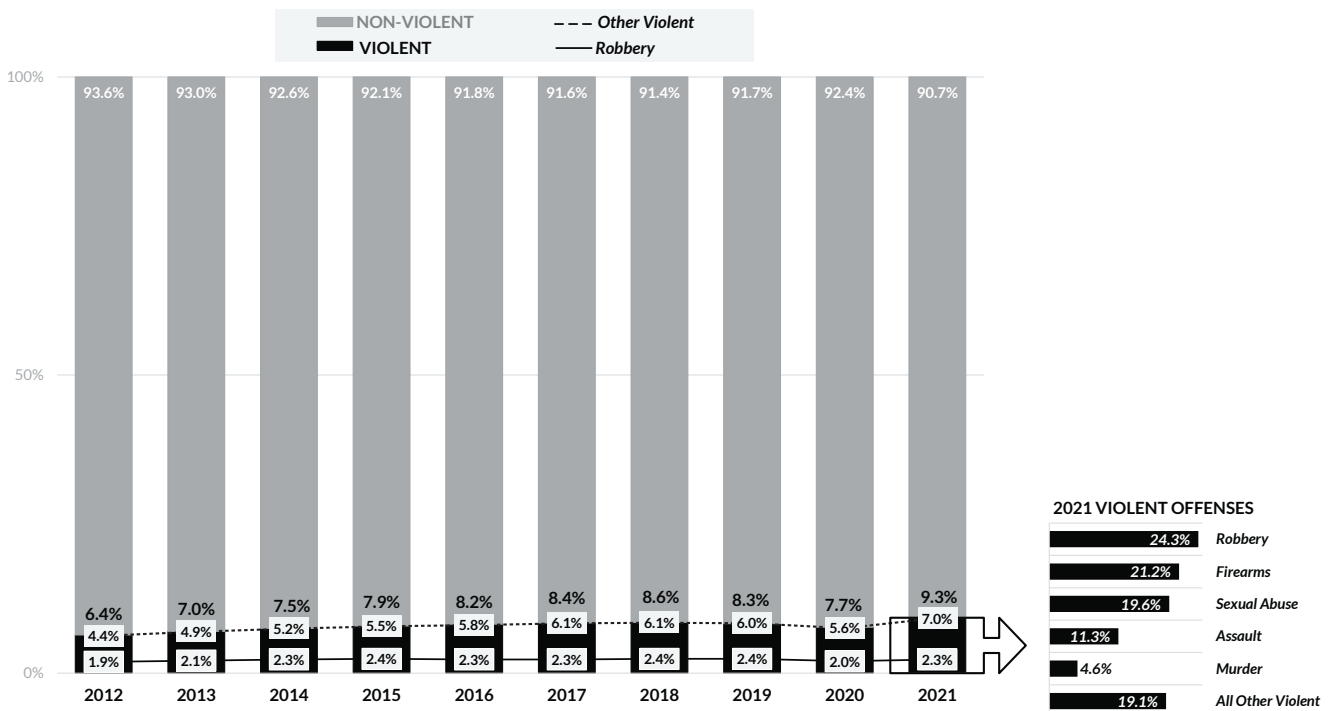
During the past ten years, robbery offenders have consistently comprised a small but increasing proportion of the federal caseload.<sup>81</sup> This trend is consistent with the trend for violent offenders overall. As shown in Figure 3, the prevalence of robbery offenders increased slightly from 1.9 percent to 2.3 percent and the prevalence of other violent offenders increased from 4.4 percent to 7.0 percent of the federal caseload.<sup>82</sup> By comparison, non-violent offenders have consistently comprised the overwhelming majority of offenders sentenced each year.<sup>83</sup>



**While a very small proportion of the overall caseload, robbery offenders account for the largest proportion of violent offenders.**

Despite comprising a very small proportion of the overall caseload, robbery offenders account for the largest proportion of violent offenders. As shown in Figure 4, robbery offenders accounted for nearly one-quarter (24.3%) of violent offenders sentenced in fiscal year 2021. Offenders sentenced for firearms (21.2%), sexual abuse (19.6%), and all other violent (19.1%)<sup>84</sup> offenses each accounted for about one-fifth of violent offenders sentenced in fiscal year 2021.

**Figure 3. Trend in Robbery, Other Violent, and Non-Violent Offenders  
Fiscal Years 2012–2021**





## Robbery offenders were unique among violent offenders across several characteristics.

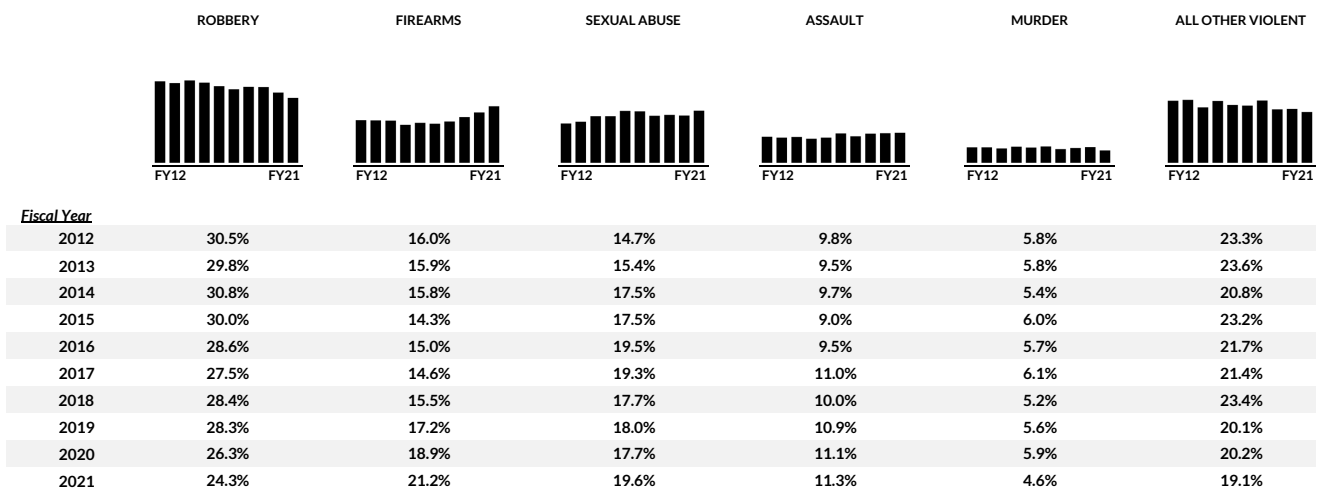
During the past ten years, robbery has consistently been the predominant violent offense type. However, the proportion of robbery offenders as a share of violent offenders has declined somewhat from 30.5 percent to 24.3 percent (Figure 4). This decrease was accompanied by a corresponding increase in the proportion of sexual abuse (14.7% to 19.6%) and firearms (16.0% to 21.2%) offenders. The proportion of offenders sentenced for other violent offenses either declined (all other violent and murder) or increased only slightly (assault).

## Offender Characteristics and Criminal History

### Offender Characteristics

As previously explored in the Commission’s study of violent offenders,<sup>85</sup> violent offenders differ from non-violent offenders across most characteristics, including race, citizenship, and education. As also observed, however, robbery offenders were unique among violent offenders in a number of ways, differing from other violent offenders across several characteristics. As shown in Figure 5, in fiscal year 2021, Black offenders comprised the largest proportion of robbery offenders (59.5%), and nearly equal proportions were White (18.3%) or Hispanic (17.1%).

**Figure 4. Trend in Violent Offense Types**  
*Fiscal Years 2012–2021*





In comparison, Black (32.3%) and White (32.8%) offenders comprised nearly equal proportions of other violent offenders, and 19.6 percent were Hispanic.<sup>86</sup>

United States citizens comprised the overwhelming majority of both robbery offenders (96.6%) and other violent offenders (94.0%). Male offenders comprised the overwhelming majority of robbery offenders (94.2%) and other violent offenders (93.4%).

More than half of offenders in each group graduated high school at minimum. However, robbery offenders had the lowest rates of college education (some college or graduating college, 19.1%), and other violent offenders had the highest rates (27.7%).

Robbery offenders were the youngest offenders sentenced in fiscal year 2021, with an average age at sentencing of 33 years, compared to an average of 35 years for other violent offenders. Figure 5 shows the largest proportion of robbery offenders, 43.0 percent, were aged 21 to 29 at the time of sentencing. In comparison, less than one-third (32.1%) of other violent offenders were in that age group at the time of sentencing. In addition, the proportion of robbery offenders under the age of 21 (6.9%) was more than twice as high as the proportion for other violent (2.7%) offenders.

**Figure 5. Characteristics of Robbery, Other Violent, and Non-Violent Offenders**  
Fiscal Year 2021

Offender Characteristics	ROBBERY OFFENDERS	OTHER VIOLENT OFFENDERS	NON-VIOLENT OFFENDERS
<b>Race/Ethnicity</b>			
Black	59.5%	32.3%	21.5%
White	18.3%	32.8%	21.9%
Hispanic	17.1%	19.6%	53.2%
Other	5.2%	15.4%	3.4%
<b>Citizenship</b>			
U.S. Citizen	96.6%	94.0%	63.5%
Non-U.S. Citizen	3.4%	6.0%	36.5%
<b>Gender</b>			
Male	94.2%	93.4%	86.0%
Female	5.8%	6.6%	14.0%
<b>Education</b>			
Less than High School	35.7%	30.2%	44.8%
High School Graduate	45.2%	42.1%	32.5%
Some College	17.4%	21.3%	17.1%
College Graduate	1.7%	6.4%	5.7%
<b>Age</b>			
Less than 21 Years Old	6.9%	2.7%	2.6%
21-29 Years Old	43.0%	32.1%	24.9%
30-39 Years Old	27.5%	37.2%	35.4%
40-49 Years Old	11.6%	16.4%	23.1%
50-59 Years Old	7.7%	7.9%	9.9%
60 Years and Older	3.3%	3.8%	4.0%
<b>Average Age</b>	33 Years Old	35 Years Old	37 Years Old

### Criminal History

Robbery offenders have more serious criminal history compared to other violent offenders. The greater severity of robbery offenders' criminal history is evident both in their CHC as measured by the guidelines, and in the extent and types of their prior convictions.

As shown in Figure 6, one-quarter (26.5%) of robbery offenders sentenced in fiscal year 2021 were in the least serious criminal history category, CHC I.<sup>87</sup> In contrast, greater proportions of both other violent (40.7%) and non-violent offenders (39.9%) were in CHC I. Robbery offenders comprised the largest proportion of offenders in the more serious criminal history categories, CHC III through VI. Additionally, in fiscal year 2021, the proportion of robbery offenders sentenced as career offenders or armed career criminals (8.4%) was more than twice as high as other violent offenders (3.4%).<sup>88</sup>

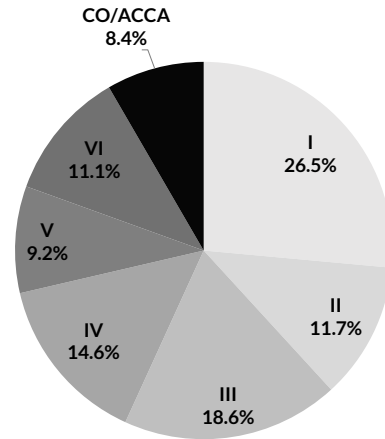


**Robbery offenders have more serious criminal history compared to other violent offenders.**

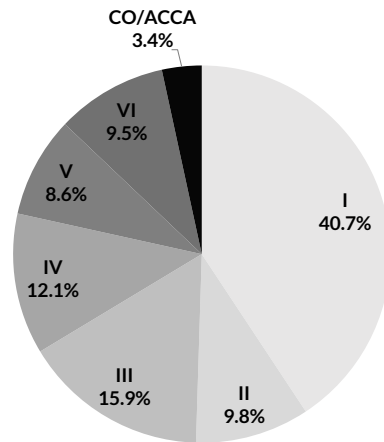
**Figure 6. Criminal History Category for Robbery, Other Violent, and Non-Violent Offenders**

Fiscal Year 2021

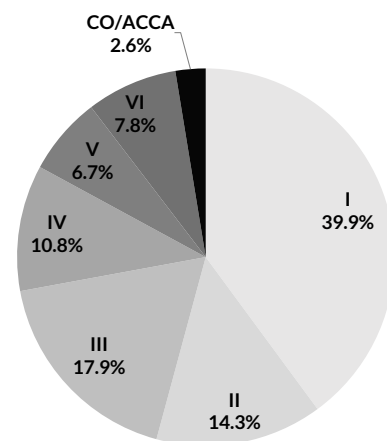
#### ROBBERY OFFENDERS



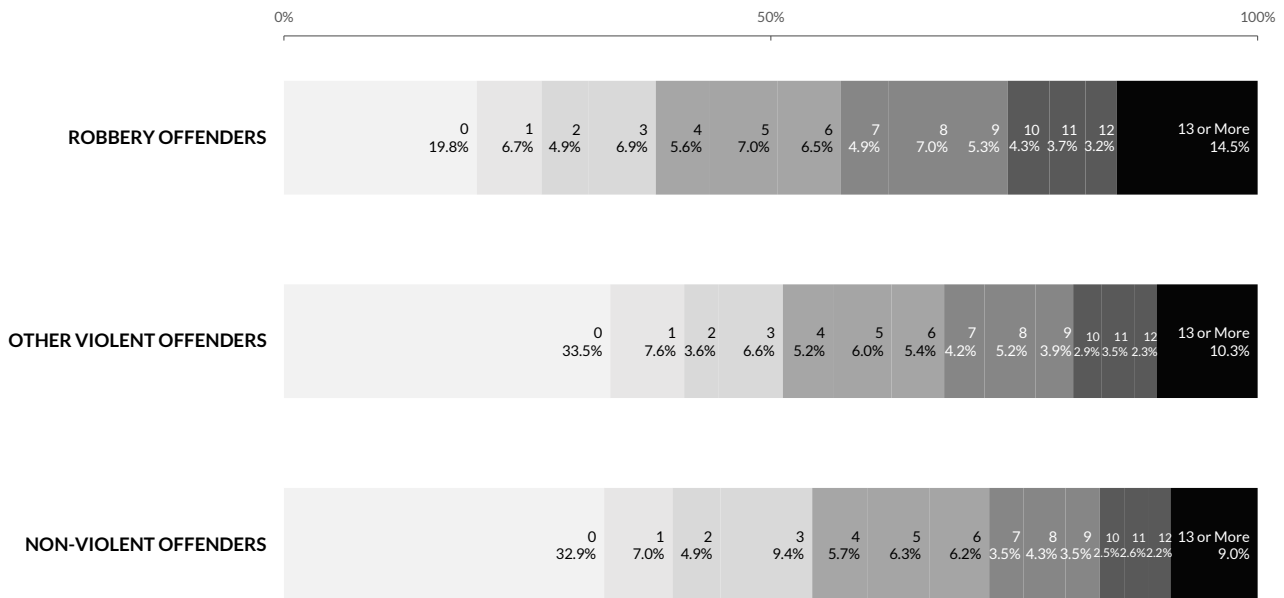
#### OTHER VIOLENT OFFENDERS



#### NON-VIOLENT OFFENDERS



**Figure 7. Criminal History Points for Robbery, Other Violent, and Non-Violent Offenders**  
Fiscal Year 2021

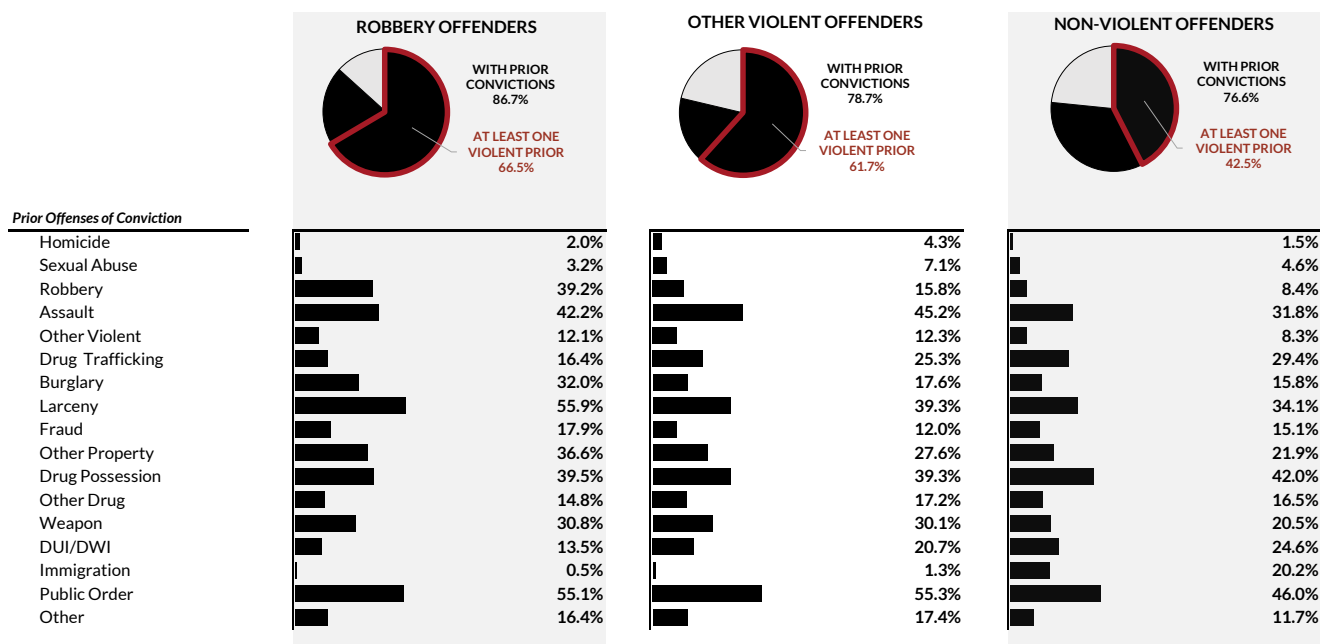


Comparing the criminal history points underlying the CHCs further highlights the serious nature of robbery offenders’ criminal history. Offenders with zero criminal history points had either no prior convictions or convictions that did not qualify for criminal history points.<sup>89</sup> As shown in Figure 7, in fiscal year 2021, less than one-fifth (19.8%) of robbery offenders had zero criminal history points. In contrast, one-third of other violent (33.5%) offenders had zero criminal history points assigned. In addition, the proportion of robbery offenders with 13 or more criminal history points (14.5%) was greater than other violent (10.3%) offenders.

In addition to having more extensive criminal history, robbery offenders were also distinguished by their prior convictions. Robbery offenders had higher rates of prior convictions and prior violent convictions compared to other violent and non-violent offenders.<sup>90</sup>

In fiscal year 2021, robbery offenders had a higher rate of prior convictions compared to other violent and non-violent offenders. As shown in Figure 8, 86.7 percent of robbery offenders had at least one prior conviction, compared to 78.7 percent of other violent offenders and 76.6 percent of non-violent offenders.<sup>91</sup>

**Figure 8. Prior Conviction Types for Robbery, Other Violent, and Non-Violent Offenders**  
Fiscal Year 2021



Among offenders with prior convictions, both robbery offenders and other violent offenders had a higher rate of prior violent convictions compared to non-violent offenders. Figure 8 shows that 66.5 percent of robbery offenders had at least one prior conviction for a violent offense, compared to 61.7 percent of other violent and 42.5 percent of non-violent offenders.

Robbery offenders' higher rates of prior violent convictions were primarily driven by their substantially higher rates of prior robbery convictions. More than one-third (39.2%) of robbery offenders had at least one prior conviction for robbery, a rate two and one-half times greater than other violent offenders (15.8%).

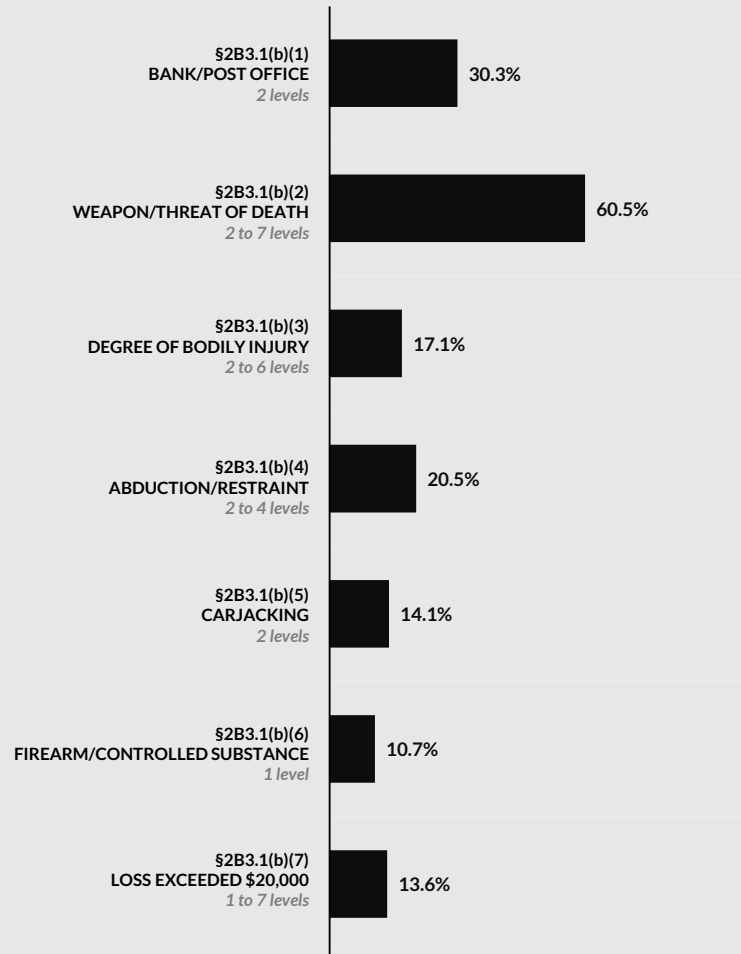
In addition to having the highest rates of prior robbery convictions, robbery offenders had the highest rates of prior convictions for offenses involving the taking of property without force or violence. Less than one-third (32.0%) of robbery offenders had at least one prior burglary conviction, compared to 17.6 percent of other violent offenders. Additionally, more than one-half (55.9%) of robbery offenders had at least one prior larceny conviction, compared to more than one-third (39.3%) of other violent offenders.

## Section 2B3.1 Specific Offense Characteristics

### Application Rates

A number of aggravating factors can impact robbery sentences. As previously discussed, §2B3.1 includes seven specific offense characteristics that increase the offender’s offense level based on various factors, including the object of the robbery and the use or threatened use of physical force.<sup>92</sup> As shown in Figure 9,<sup>93</sup> a majority of robbery offenders (60.5%) received an enhancement because the offense involved the discharge of a firearm, the use, brandishing, or possession of a firearm or dangerous weapon, or a threat of death.<sup>94</sup> Other enhancements related to force were applied less often. For example, one-fifth (20.5%) of robbery offenders received the enhancement for the abduction or physical restraint of any person.<sup>95</sup> Smaller proportions of robbery offenders received sentencing enhancements for bodily injury (17.1%) and carjacking (14.1%). Among sentencing enhancements related to the object of the robbery, the enhancement for taking the property of a financial institution or post office was applied most often (30.3%).

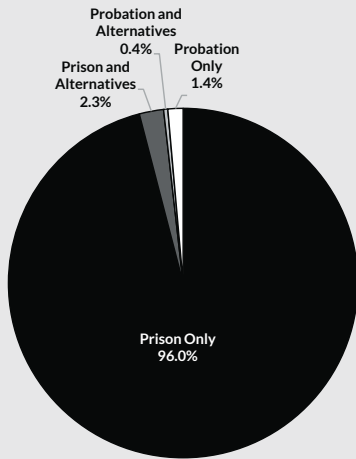
Figure 9. Specific Offense Characteristics  
Fiscal Year 2021



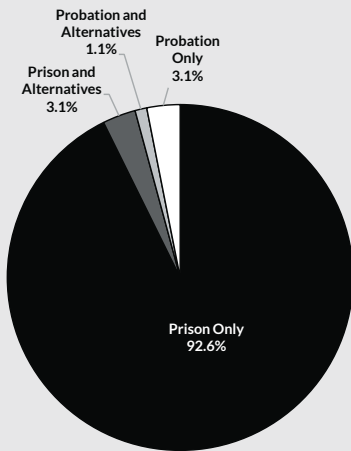


**Figure 10. Types of Sentences for Robbery, Other Violent, and Non-Violent Offenders**  
Fiscal Year 2021

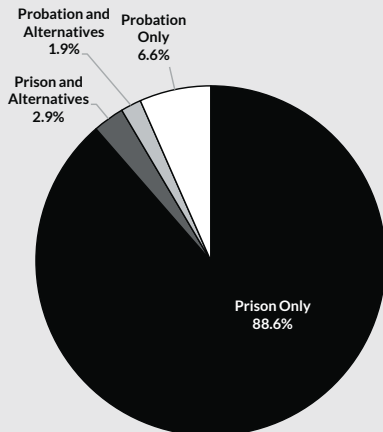
**ROBBERY OFFENDERS**



**OTHER VIOLENT OFFENDERS**



**NON-VIOLENT OFFENDERS**



## Sentencing Outcomes

As shown in Figure 10, nearly all robbery (98.3%) and other violent (95.7%) offenders were sentenced to a term of imprisonment in fiscal year 2021. The 98.3 percent of robbery offenders sentenced to a term of imprisonment included 96.0 percent sentenced to prison only and 2.3 percent sentenced to prison and an alternative.<sup>96</sup> An additional 1.4 percent were sentenced to a term of probation only.<sup>97</sup> Similarly, a total of 95.7 percent of other violent offenders were sentenced to a term of imprisonment (92.6% sentenced to prison only and 3.1% sentenced to prison and an alternative), with 3.1 percent sentenced to a term of probation only.

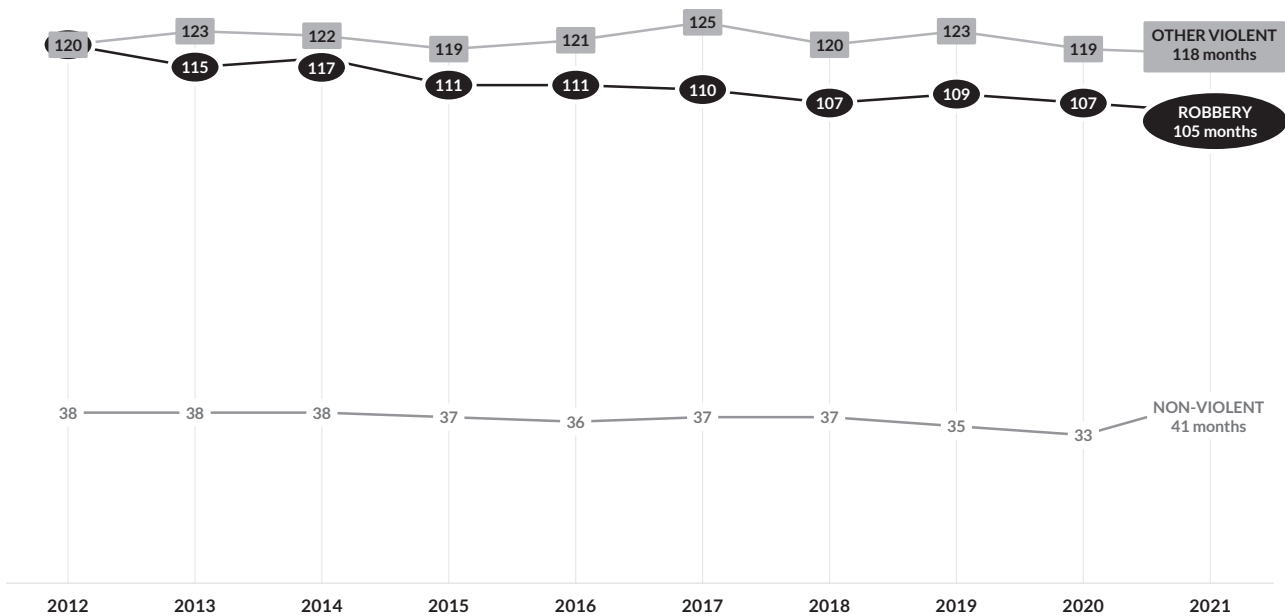


**The average sentence for other violent offenders has consistently been longer than the average sentence for robbery offenders.**

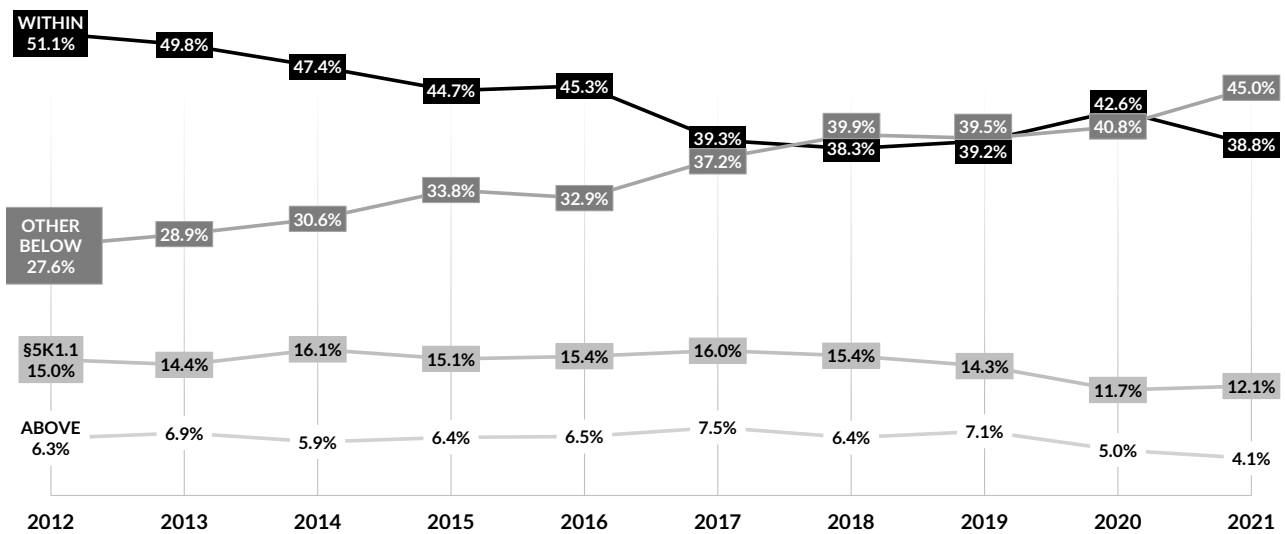
As shown in Figure 11, during the past ten years the average sentence for robbery offenders decreased from 120 months to 105 months.<sup>98</sup> With the exception of fiscal year 2012, the average sentence for other violent offenders was consistently longer than the average sentence for robbery

offenders and decreased slightly over time. In comparison, the average sentence for non-violent offenders was consistently about one-third the length of the average sentences for the other two groups of offenders.<sup>99</sup>

**Figure 11. Trend in Average Sentences for Robbery, Other Violent, and Non-Violent Offenders**  
Fiscal Years 2012–2021



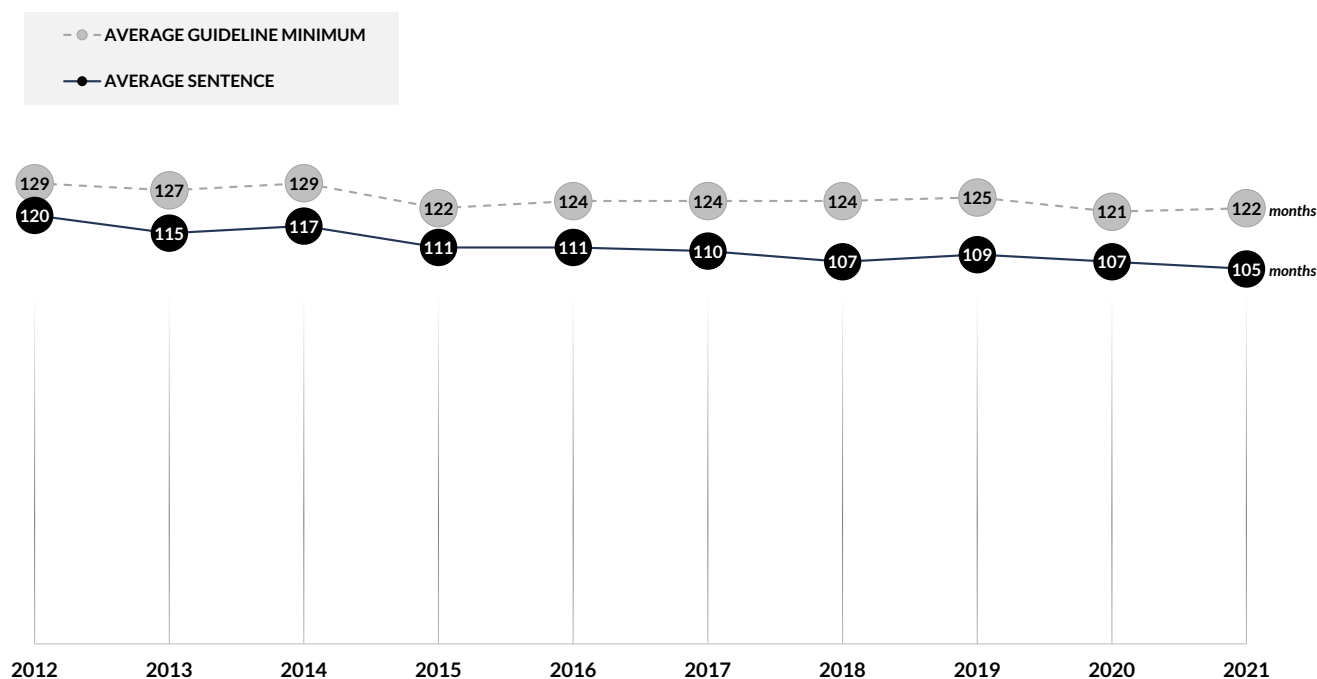
**Figure 12. Trend in Sentences Relative to the Guideline Range for Robbery Offenders**  
*Fiscal Years 2012–2021*



During the past ten years, a decreasing proportion of robbery offenders were sentenced within the applicable guideline range (Figure 12). Between fiscal years 2012 and 2021, the proportion of within-range sentences decreased from 51.1 percent to 38.8 percent. There was a corresponding increase in other below-range sentences from 27.6 percent to 45.0 percent.<sup>100</sup> The proportion of robbery offenders with \$5K1.1 departures varied, but ultimately decreased slightly from 15.0

percent to 12.1 percent. These trends mirror the trends for all federal offenders sentenced during the time period. For example, from fiscal years 2012 to 2021, the proportion of all federal offenders sentenced within the guideline range decreased from 52.4 percent to 42.8 percent.<sup>101</sup>

**Figure 13. Trend in Average Guideline Minimum and Average Sentence for Robbery Offenders**  
Fiscal Years 2012–2021



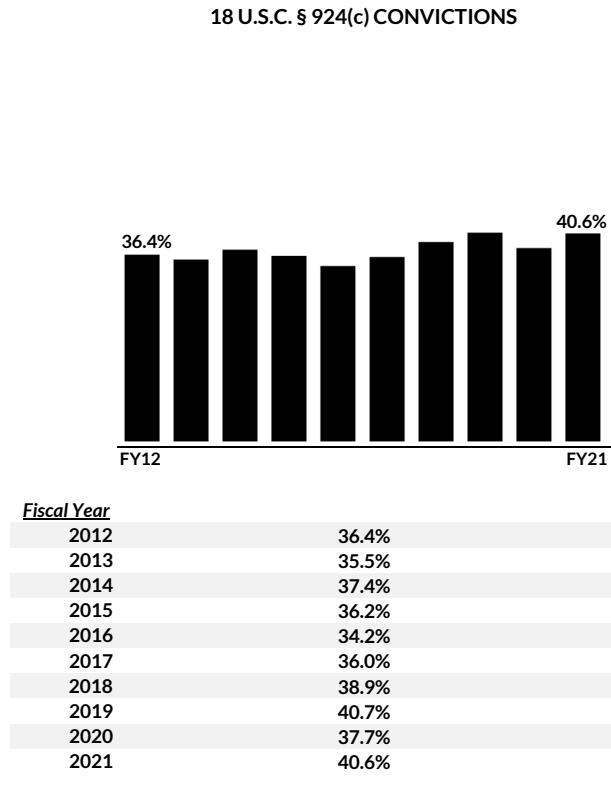
Both the average guideline minimum and average sentence for robbery offenders decreased during the past ten years. However, the average sentence decreased more, corresponding to the decrease in within-range sentences. The difference between the average guideline minimum and average sentence nearly doubled from nine months in fiscal year 2012 to 17 months in fiscal year 2021 (Figure 13).<sup>102</sup>

The decreases in both average sentence and average guideline minimum for robbery offenders were also impacted by trends for robbery offenders who were convicted of a violation of 18 U.S.C. § 924(c).<sup>103</sup> As shown in Figure 14, a substantial proportion of robbery offenders have consistently been convicted under section 924(c) during the past ten years.

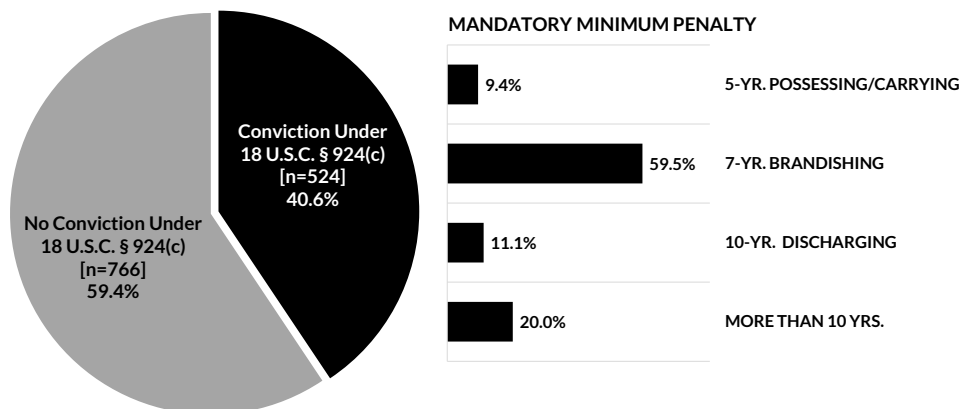
As shown in Figure 15, in fiscal year 2021, 40.6 percent of robbery offenders were convicted under section 924(c).<sup>104</sup> Among those offenders with section 924(c) convictions, the majority (59.5%) were subject to the seven-year mandatory minimum penalty for brandishing a firearm. Another one-fifth (20.0%) of section 924(c) offenders were subject to a term of more than ten years.<sup>105</sup>

Convictions under section 924(c) have a substantial impact on sentencing outcomes. Figure 16 shows the difference in sentencing trends for robbery offenders with and without a section 924(c) conviction. During the past ten years, the average sentence for section 924(c) robbery offenders decreased from 192 months to 155 months and the average guideline minimum decreased from 209 months to 183 months. Notably, the difference between the average sentence and the average guideline minimum increased during that time period. The difference between the average sentence and the average guideline minimum was 17

**Figure 14. Trend in Section 924(c) Convictions Among Robbery Offenders**  
Fiscal Years 2012–2021

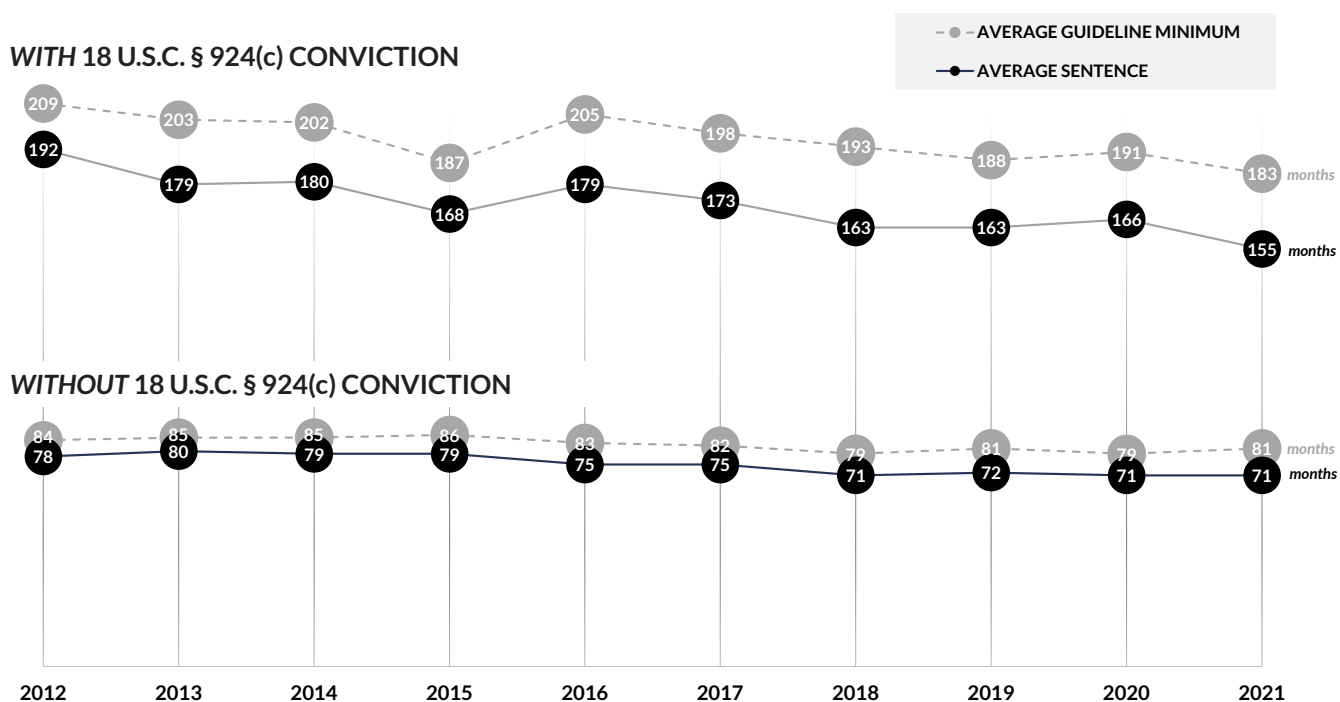


**Figure 15. Mandatory Minimum Penalties for Robbery Offenders Convicted Under Section 924(c)**  
Fiscal Year 2021





**Figure 16. Trend in Average Guideline Minimum and Average Sentence for Robbery Offenders by Section 924(c) Conviction**  
Fiscal Years 2012–2021



months in fiscal year 2012 and increased to a high of 30 months in fiscal year 2018; the difference decreased slightly to 28 months in fiscal year 2021.<sup>106</sup>

Sentencing trends for robbery offenders without a section 924(c) conviction differ from robbery offenders with a section 924(c) conviction in a number of ways. Absent the statutory mandatory minimum, sentences for non-section 924(c) robbery offenders were substantially shorter, averaging about 75 months. In addition, the average sentence for non-section 924(c) robbery offenders decreased only slightly during the past ten years from 78 months in fiscal year 2012 to 71 months in fiscal year 2021. The difference between the average guideline minimum and average

sentence has widened somewhat over time for non-section 924(c) robbery offenders from six to ten months. However, courts consistently sentence non-section 924(c) robbery offenders to sentences close to the guideline minimum.

The proximity of average sentences to average guideline minimums for non-section 924(c) robbery offenders demonstrates a strong anchoring of sentences to the robbery guideline; not only compared to robbery offenders with section 924(c) convictions, but also to the overall federal offender population. The average sentence of 48 months for all federal offenders sentenced in fiscal year 2021 was 15 months lower than the average guideline minimum of 63 months.

# Spotlight on Hobbs Act, Bank Robbery, and Carjacking

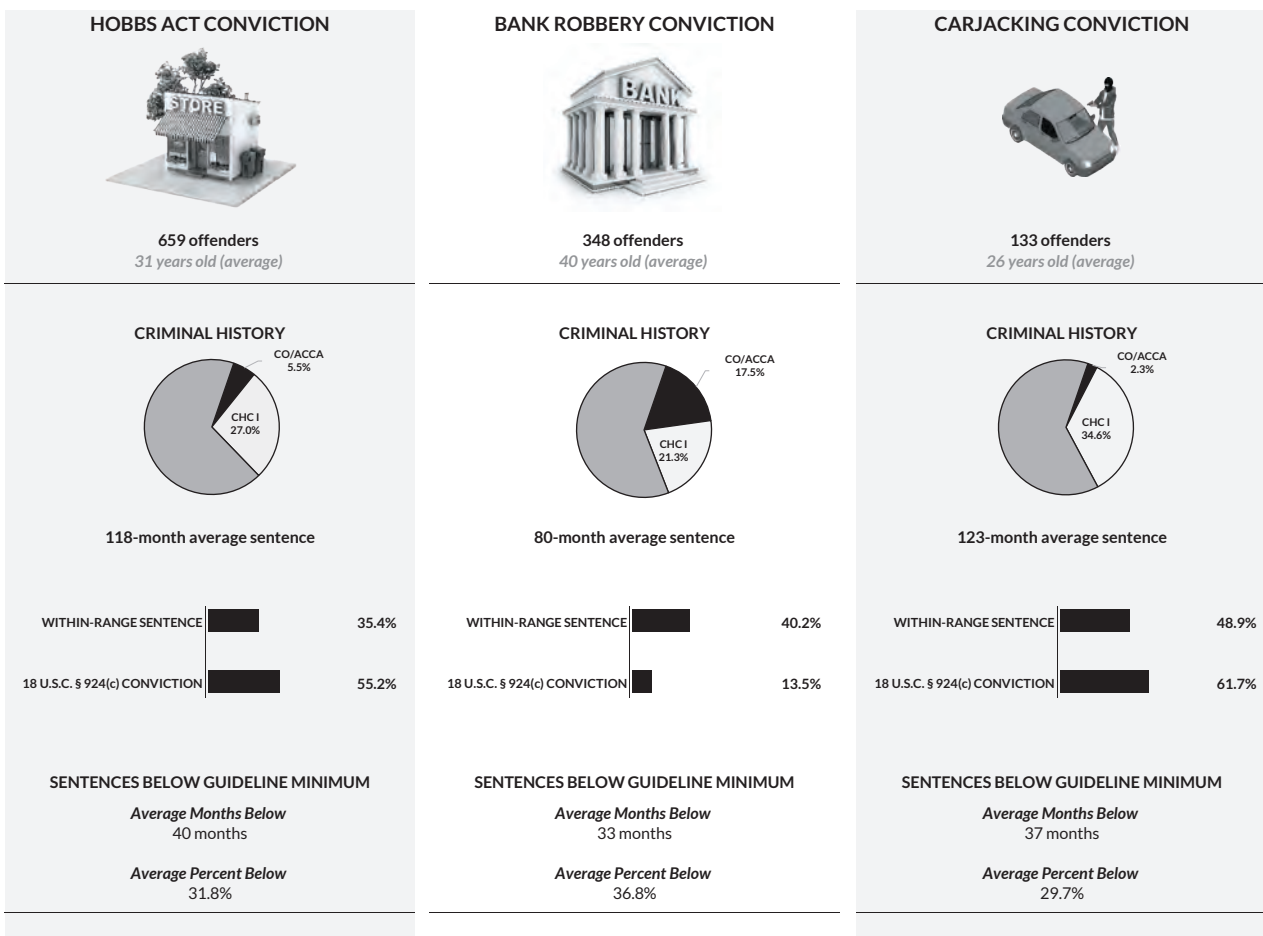
For more in-depth analyses of robbery offenders sentenced in fiscal year 2021, the Commission compared offenders convicted under the three most prevalent robbery statutes: Hobbs Act, bank robbery, and carjacking. Figure 17 provides comparison information for three mutually exclusive groups of robbery offenders, each with at least one conviction under each of the three robbery statutes but no convictions under more than one of the three statutes.<sup>107</sup>

## Quick Takeaways

- Bank robbery offenders were oldest, with an average of 40 years of age at sentencing, and carjacking offenders were youngest, with an average of 26 years of age at sentencing.
- A larger proportion of carjacking offenders were in the least serious CHC, CHC I.
- A larger proportion of bank robbery offenders were sentenced as career offenders or armed career criminals.
- Carjacking offenders had the longest average sentences imposed.
- Bank robbery offenders had the lowest rates of conviction under 18 U.S.C. § 924(c) and carjacking offenders had the highest rates of conviction under 18 U.S.C. § 924(c).
- Hobbs Act offenders had the lowest rates of within-range sentences.

**Figure 17. Comparison of Hobbs Act, Bank Robbery, and Carjacking Offenders**  
*Fiscal Year 2021*

Offenders with Non-Overlapping Robbery Convictions



# Special Data Collection Project

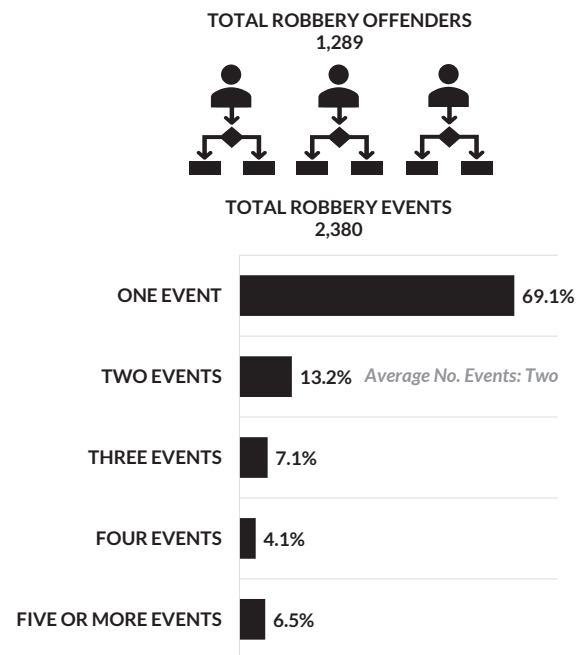
The Commission conducted a special data collection project to examine robbery offenders' conduct in more detail than provided by the statutes of conviction and application of the guideline specific offense characteristics. This data collection project included a review of case documents for the 1,289 offenders sentenced under the robbery guideline in fiscal year 2021.<sup>108</sup> The Commission collected information for all robbery counts of conviction (*i.e.*, robbery events) for each offender. Robbery events include convictions under substantive robbery statutes (*e.g.*, 18 U.S.C. § 1951) as well as robbery events underlying other counts of conviction, such as conspiracy (*e.g.*, 18 U.S.C. § 371). The Commission collected information for all robbery events under the umbrella of a single conspiracy conviction, robbery events that comprised underlying offenses for RICO and VICAR convictions, and robbery events in connection with convictions under section 922(g)(1).<sup>109</sup>

## Robbery Events

For each robbery event, the Commission determined the location of the robbery and what was taken. The Commission also collected information on the roles of the offender and any co-conspirators, threats and use of physical force, the involvement and type of weapons, as well as any victims who were injured or killed.

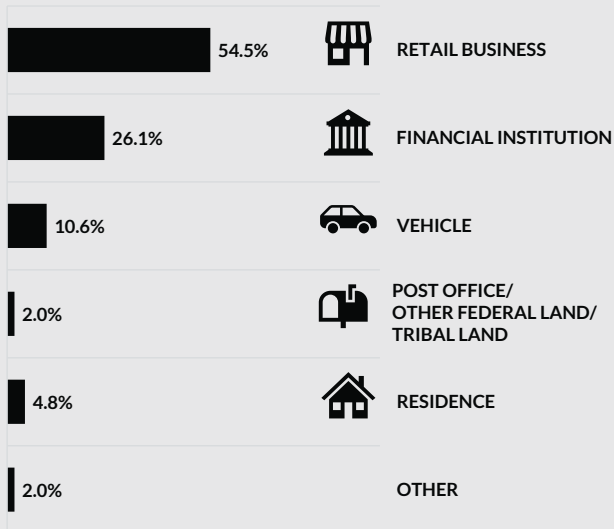
The 1,289 robbery offenders in the study were convicted of a total of 2,380 robbery events. As shown in Figure 18, over two-thirds of robbery offenders (69.1%) were convicted of a single robbery event. The greatest number of robbery events was 31 and the average number was two.

Figure 18. Robbery Events Per Offender  
Fiscal Year 2021



Greatest No. Events: 31

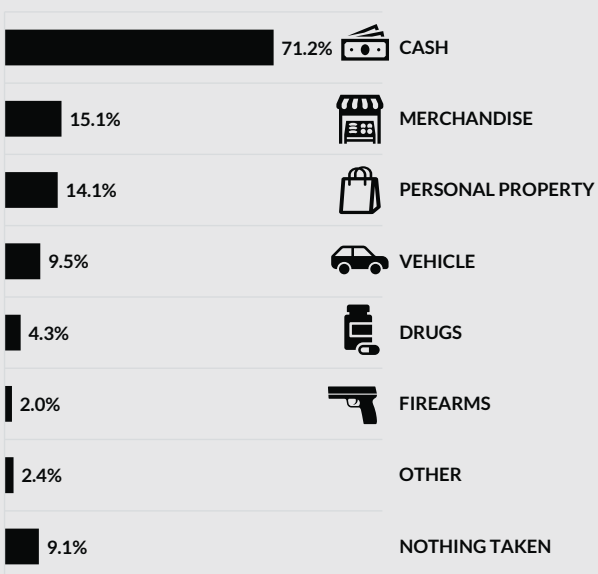
**Figure 19. Location of Robbery Events**  
Fiscal Year 2021



## Location

The majority of robbery events occurred at retail businesses (54.5%) and financial institutions (26.1%). Vehicles were the location of 10.6 percent of robberies, including both carjackings and robberies of armored vehicles (Figure 19).<sup>110</sup>

**Figure 20. Property Taken**  
Fiscal Year 2021

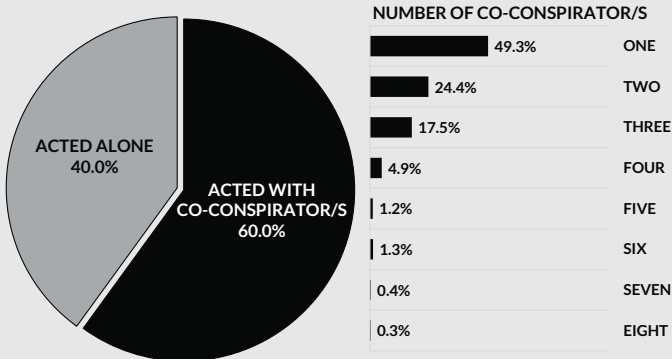


## Property Taken

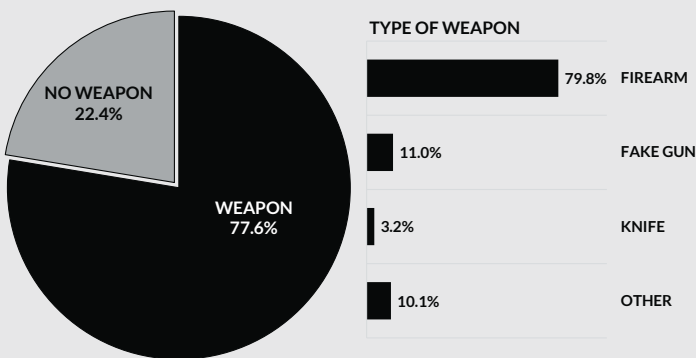
Consistent with the predominant locations of retail businesses and financial institutions, cash was taken in nearly three-quarters (71.2%) of robbery events. Merchandise and personal property were taken less often, in 15.1 percent and 14.1 percent of robbery events, respectively (Figure 20).<sup>111</sup>



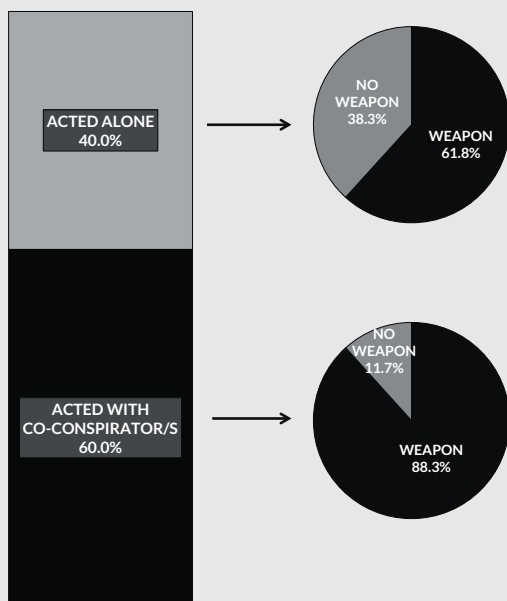
**Figure 21. Co-Conspirator Participation**  
Fiscal Year 2021



**Figure 22. Weapon Involvement**  
Fiscal Year 2021



**Figure 23. Participants and Weapon Involvement**  
Fiscal Year 2021



## Participants

Robbery events most often involved multiple participants, but large robbery conspiracies were uncommon. The majority (60.0%) of robbery events involved at least one co-conspirator acting with the offender. In those robbery events involving multiple participants, nearly half involved a single co-conspirator (Figure 21). Furthermore, the overwhelming majority (91.2%) of robbery events involving multiple participants involved three or fewer co-conspirators.

## Weapons

As shown in Figure 22, more than three-quarters (77.6%) of robbery events involved a weapon, and firearms were the most common type of weapon. Of the robbery events involving a weapon, more than three-quarters (79.8%) involved a firearm.<sup>112</sup> Other weapons, such as fake guns or BB guns, were used less often in robbery events.<sup>113</sup>

Weapons also were more prevalent in robbery events involving multiple participants. As shown in Figure 23, in 61.8 percent of robbery events involving a single offender, the offender had a weapon. By comparison, in 88.3 percent of robbery events involving multiple participants, at least one of the participants had a weapon, and in 27.7 percent of robbery events involving multiple participants, both the offender and at least one co-conspirator had a weapon.

## Physical Force

### Threats of Physical Force

As shown in Figure 24, the overwhelming majority of robbery events that involved threats of physical force involved such threats with a dangerous weapon—89.7 percent of robbery events involved a threat of physical force, and 83.6 percent of those threats involved a dangerous weapon.<sup>114</sup> Such threats included individuals brandishing, displaying, or claiming to have a weapon, as well as “racking” or cocking of a firearm, or firing into the air.

### Use of Physical Force

Despite the predominance of both threats of physical force and weapons in robbery events, the use of physical force was comparatively infrequent. As shown in Figure 25, one-quarter (25.7%) of robbery events involved the use of physical force against a victim. Physical contact between an offender and a victim was most common, occurring in nearly three-quarters (73.5%) of events involving the use of physical force. More than one-quarter (27.3%) of events involving the use of physical force involved discharging a firearm at a victim.<sup>115</sup>

The use of physical force, however, was more common during some types of robbery events. Approximately one-third of robbery events involving multiple participants (34.3%) and weapons (30.4%) also involved the use of physical force. Although small in number (n=115), the overwhelming majority (82.6%) of robbery events in residences (i.e., home invasions) involved the use of physical force, compared to less than half (41.0%) of robberies of vehicles and less than one-quarter (24.4%) of robberies of retail businesses.

Figure 24. Threat of Physical Force  
Fiscal Year 2021

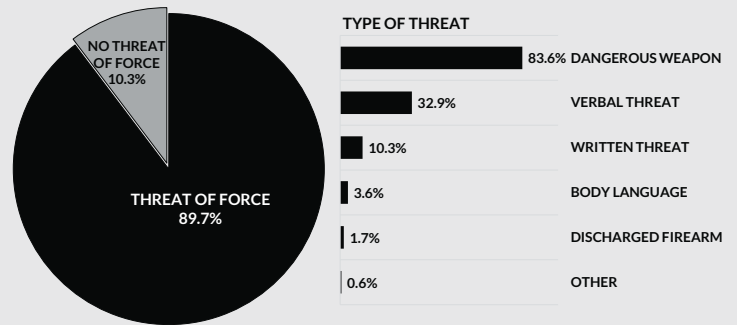
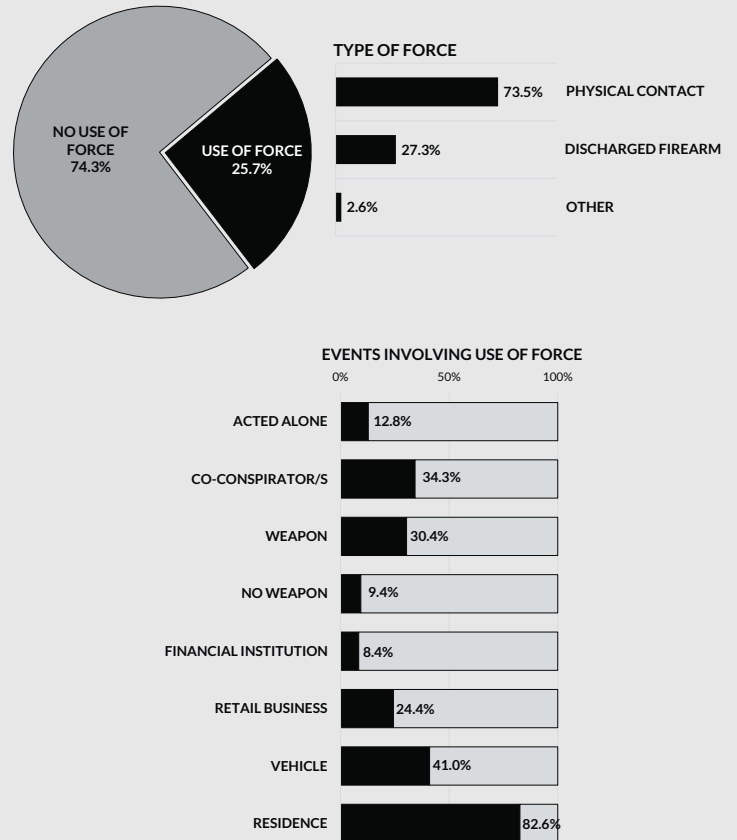
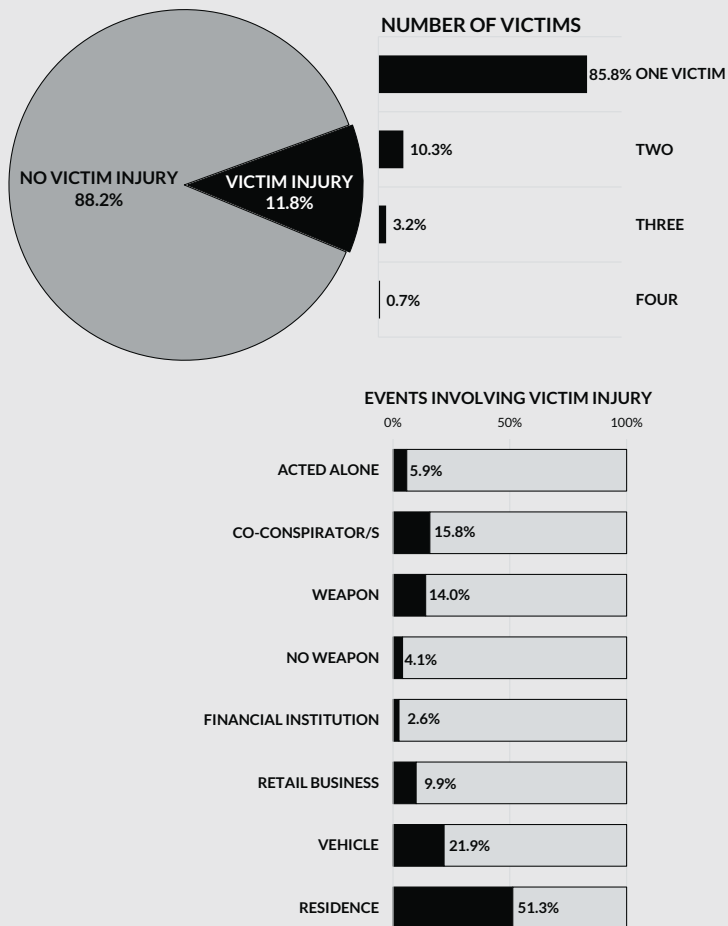


Figure 25. Use of Physical Force  
Fiscal Year 2021



**Figure 26. Bodily Injury to Victim**

Fiscal Year 2021



### **Bodily Injury**

A small proportion (11.8%) of robbery events resulted in a victim sustaining bodily injury.<sup>116</sup> As shown in Figure 26, among robbery events resulting in bodily injury to a victim, the overwhelming majority (85.8%) involved injury of a single victim. The rate of victim injuries varied depending on whether the offense involved multiple participants, whether a weapon was used, and the location of the robbery, reflecting the robbery events involving physical force described above.

Similar proportions of robbery events involving multiple participants (15.8%) and weapons (14.0%) involved victim injury. In addition, more than half (51.3%) of robbery events in residences involved victim injury, compared to approximately one-fifth (21.9%) of robberies of vehicles and 9.9 percent of robberies of retail business. Bodily injury to victims rarely occurred (2.6%) during bank robberies.

## Spotlight on Carjacking

As a separate analysis within the special data collection project, the Commission reviewed case documents for the 151 robbery offenders convicted of carjacking who were sentenced in fiscal year 2021. The 151 carjacking offenders were convicted of 203 separate carjacking offenses. Details of those offenses are summarized below.

### Quick Takeaways

- 80.8 percent of carjackings were committed spontaneously.
  - ◊ Another 16.8 percent were committed in connection with another offense (e.g., getaway).
  - ◊ Another 2.5 percent were committed for profit (e.g., chop shop).
- 15.3 percent of carjackings involved more than one victim (i.e., a passenger).
- 3.0 percent of carjackings involved a minor victim (either as the driver or a passenger).
- 6.4 percent of carjackings involved a victim being taken with the vehicle (including one minor).
- 16.3 percent of carjackings involved a high-speed chase.
- Carjacking offenders had the longest average sentences imposed.

# Conclusion

This report continues the Commission's recidivism research regarding federal offenders convicted of violent offenses by providing a comprehensive analysis of robbery offenders sentenced in fiscal year 2021. While robbery offenders consistently comprise a small proportion of the overall federal criminal caseload, they consistently comprise the largest proportion of violent offenders. As demonstrated throughout this report, robbery offenders are unique among federal offenders, including other violent offenders, in many regards. Robbery offenders have more extensive criminal histories than other federal offenders and were more likely to be sentenced as career offenders and armed career criminals than other offenders. Two-thirds (66.5%) of robbery offenders with prior convictions had at least one prior conviction for a violent offense, as compared to 61.7 percent of other violent and 42.5 percent of non-violent offenders with prior convictions.

In addition, the majority of robbery events sentenced in fiscal year 2021 involved dangerous weapons (77.6%), and the overwhelming majority of robbery events (89.7%) involved a threat of physical force against a victim. As a result of these aggravating factors, robbery offenders received substantial sentences. This is especially true for the substantial portion of robbery offenders who also had a conviction under 18 U.S.C. § 924(c) for use of a firearm during the robbery. The average sentence imposed for section 924(c) robbery offenders was 155 months of imprisonment compared to 71 months for robbery offenders without a section 924(c) conviction.



# Appendix A

## Selected Federal Robbery Statutes

<i>Section</i>	<i>Description</i>	<i>Penalties</i>
<b>CHAPTER 95 – RACKETEERING</b>		
18 U.S.C. § 1951	Interference with commerce by threats or violence (Hobbs Act)	0–20 years
<b>CHAPTER 103 – ROBBERY AND BURGLARY</b>		
18 U.S.C. § 2111	Robbery within special maritime and territorial jurisdiction of the United States	0–15 years
18 U.S.C. § 2112	Robbery of personal property belonging to the United States	0–15 years
18 U.S.C. § 2113(a), (d), (e)	Bank robbery	0–20 years; 0–25 years if dangerous weapon or device used to assault or put in jeopardy life of any person; 10 years–life if, while committing offense or fleeing or avoiding arrest or confinement or any attempt thereof, kills or abducts any person; or, if death results, death or life
18 U.S.C. § 2114(a)	Mail, money, or other property of United States (postal robbery)	0–10 years for first violation; 0–25 years for second or subsequent violation, or for wounding person with custody of mail or other government property or puts person’s life in jeopardy by use of dangerous weapon
18 U.S.C. § 2116	Robbery of any mail carrier service such as car, railway, steamboat, or vessel	0–3 years
18 U.S.C. § 2118(a), (c), (d)	Robbery involving controlled substances	0–20 years if replacement cost of materials taken is not less than \$500 or offender traveled in interstate or foreign commerce or used any facility in interstate or foreign commerce to facilitate offense, or offense resulted in death or significant bodily injury; 0–25 years if offender assaults another or uses a dangerous weapon; any term of years or life if death results; or 0–10 years for conspiracy
18 U.S.C. § 2119	Motor vehicles (carjacking)	0–15 years; 0–25 years if serious bodily injury results; or 0–life or death if death results

**CHAPTER 111 – SHIPPING**

18 U.S.C. § 2280	Violence against maritime navigation (seizes or exercising control over ship by force or threat)	0–20 years; or 0–life or death if death results
18 U.S.C. § 2281	Seizes or exercises control over a fixed platform by force or threat	0–20 years; or 0–life or death if death results

**CHAPTER 75 – CRIMES, OTHER OFFENSES, AND FORFEITURES**

26 U.S.C. § 7212(b)	Interference with IRS duties by force; forcible rescue of seized property	0–2 years
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# Appendix B

## Guideline and Application Rates for §2B3.1 (effective Nov. 1, 2021) Fiscal Year 2021<sup>117</sup>

### §2B3.1. Robbery

(a) Base Offense Level: **20**

(b) Specific Offense Characteristics

- (1) If the property of a financial institution or post office was taken, or if the taking of such property was an object of the offense, increase by **2 levels (30.3%)**.
- (2) (A) If a firearm was discharged, increase by **7 levels (5.6%)**; (B) if a firearm was otherwise used, increase by **6 levels (12.6%)**; (C) if a firearm was brandished or possessed, increase by **5 levels (16.0%)**; (D) if a dangerous weapon was otherwise used, increase by **4 levels (6.2%)**; (E) if a dangerous weapon was brandished or possessed, increase by **3 levels (10.3%)**; or (F) if a threat of death was made, increase by **2 levels (9.9%)**.
- (3) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

#### DEGREE OF BODILY INJURY INCREASE IN LEVEL

- (A) Bodily Injury, add **2 (10.1%)**
- (B) Serious Bodily Injury, add **4 (5.1%)**
- (C) Permanent or Life-Threatening Bodily Injury, add **6 (1.3%)**
- (D) If the degree of injury is between that specified in subdivisions (A) and (B), add **3 levels (0.6%)**; or
- (E) If the degree of injury is between that specified in subdivisions (B) and (C), add **5 levels (0.2%)**.

*Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed **11 levels**.*

- (4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by **4 levels (5.7%)**; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by **2 levels (14.8%)**.

- (5) If the offense involved carjacking, increase by **2 levels (14.1%)**.
- (6) If a firearm, destructive device, or controlled substance was taken, or if the taking of such item was an object of the offense, increase by **1 level (10.7%)**.
- (7) If the loss exceeded \$20,000, increase the offense level as follows:

LOSS (APPLY THE GREATEST)	INCREASE IN LEVEL
---------------------------	-------------------

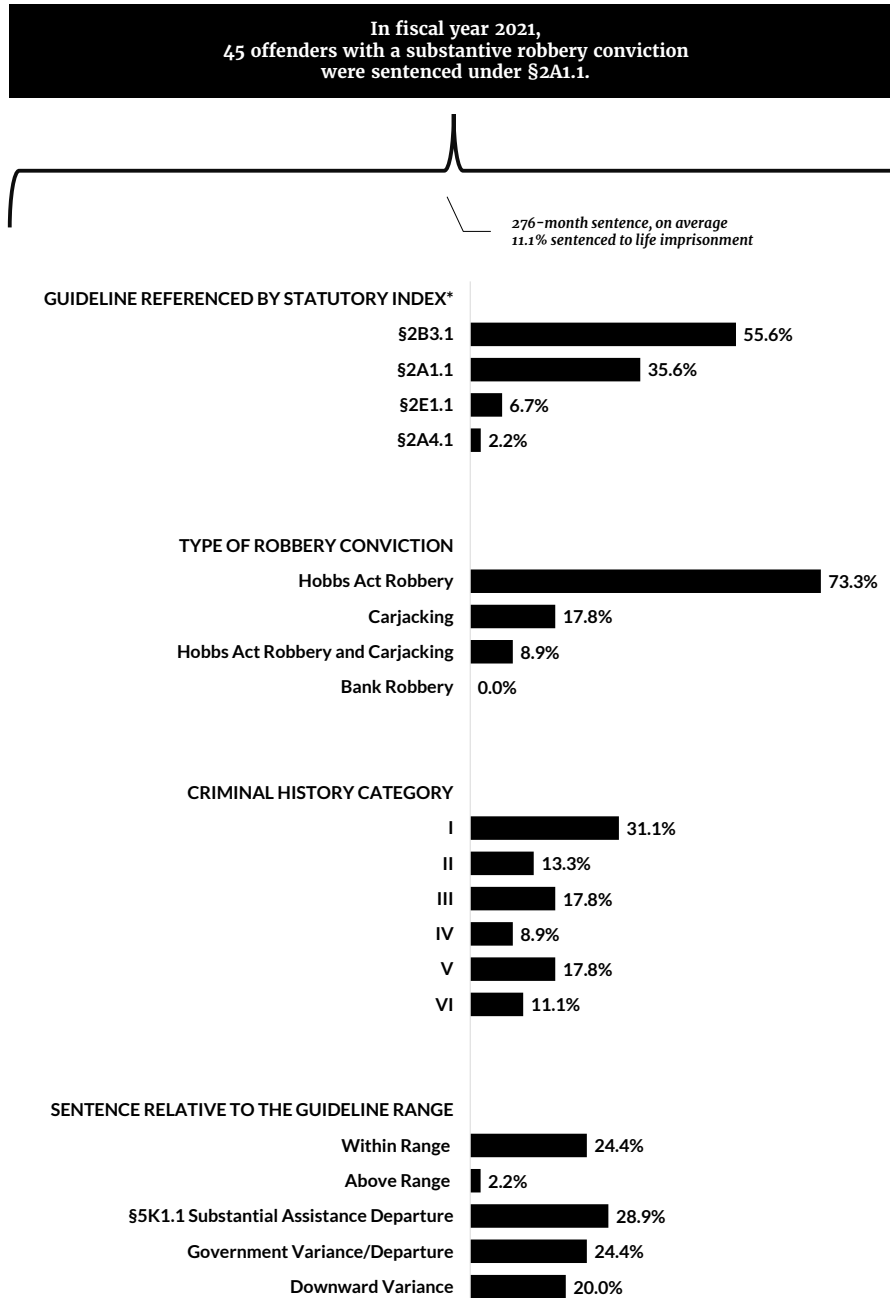
- |     |  |
|-----|--|
| (A) | \$20,000 or less, no increase <b>(86.4%)</b> |
| (B) | More than \$20,000, add <b>1 (9.5%)</b>      |
| (C) | More than \$95,000, add <b>2 (3.8%)</b>      |
| (D) | More than \$500,000, add <b>3 (0.3%)</b>     |
| (E) | More than \$1,500,000, add <b>4 (0.0%)</b>   |
| (F) | More than \$3,000,000, add <b>5 (0.0%)</b>   |
| (G) | More than \$5,000,000, add <b>6 (0.0%)</b>   |
| (H) | More than \$9,500,000, add <b>7 (0.1%)</b> . |

(c) Cross Reference

- (1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

# Appendix C<sup>118</sup>

## Offenders with Substantive Robbery Convictions Sentenced Under §2A1.1 Fiscal Year 2021



\*The guideline prior to cross reference application.

# Appendix D<sup>119</sup>

## Distribution of Robbery Offenders Across Federal Judicial Districts

Fiscal Year 2021

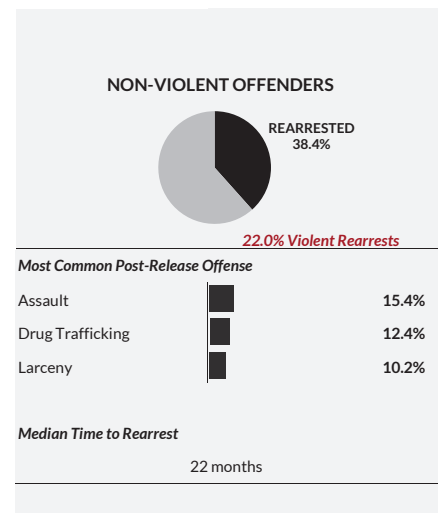
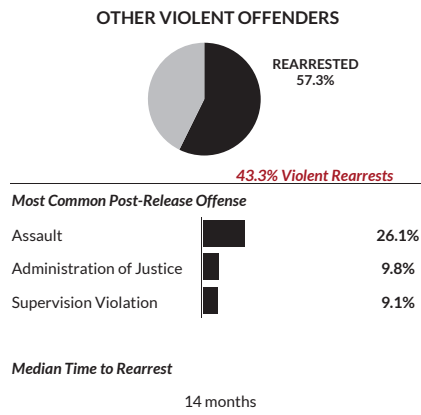
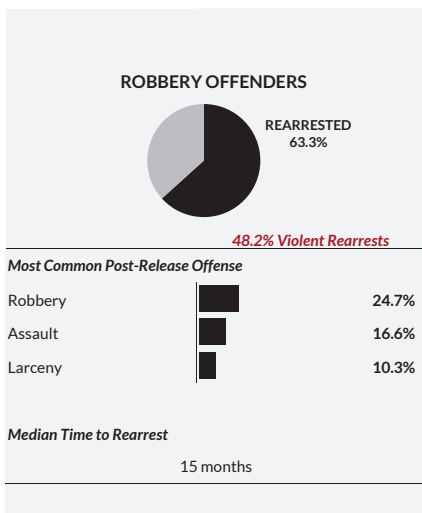
District		N	%	District		N	%
<b>TOTAL ROBBERY OFFENDERS</b>		<b>1,290</b>	<b>100.0</b>	<b>TOTAL ROBBERY OFFENDERS</b>		<b>1,290</b>	<b>100.0</b>
1	New York, Southern	63	4.9	48	Alabama, Middle	10	0.8
2	Puerto Rico	52	4.0	49	District of Columbia	10	0.8
3	Missouri, Eastern	44	3.4	50	Missouri, Western	10	0.8
4	North Carolina, Eastern	43	3.3	51	South Dakota	10	0.8
5	Texas, Southern	43	3.3	52	Georgia, Southern	9	0.7
6	Texas, Northern	39	3.0	53	Michigan, Western	9	0.7
7	Illinois, Northern	35	2.7	54	Mississippi, Southern	9	0.7
8	North Carolina, Western	35	2.7	55	Tennessee, Eastern	8	0.6
9	California, Central	33	2.6	56	Alaska	7	0.5
10	Maryland	31	2.4	57	California, Southern	7	0.5
11	Pennsylvania, Eastern	31	2.4	58	Nebraska	7	0.5
12	Florida, Southern	30	2.3	59	Oklahoma, Eastern	7	0.5
13	Tennessee, Western	30	2.3	60	Oklahoma, Western	7	0.5
14	New York, Eastern	27	2.1	61	Illinois, Central	6	0.5
15	Florida, Middle	24	1.9	62	Louisiana, Western	6	0.5
16	Minnesota	24	1.9	63	New York, Western	6	0.5
17	New Mexico	24	1.9	64	Wisconsin, Western	6	0.5
18	Ohio, Northern	24	1.9	65	Georgia, Middle	5	0.4
19	North Carolina, Middle	22	1.7	66	Hawaii	5	0.4
20	Oklahoma, Northern	22	1.7	67	Idaho	5	0.4
21	Tennessee, Middle	21	1.6	68	Iowa, Northern	5	0.4
22	Indiana, Southern	20	1.6	69	Maine	5	0.4
23	Kansas	19	1.5	70	New Hampshire	4	0.3
24	New Jersey	19	1.5	71	South Carolina	4	0.3
25	Oregon	19	1.5	72	Wyoming	4	0.3
26	Utah	18	1.4	73	California, Eastern	3	0.2
27	Wisconsin, Eastern	18	1.4	74	Kentucky, Eastern	3	0.2
28	Georgia, Northern	17	1.3	75	Pennsylvania, Middle	3	0.2
29	Alabama, Northern	16	1.2	76	Washington, Eastern	3	0.2
30	Michigan, Eastern	16	1.2	77	Arkansas, Eastern	2	0.2
31	Nevada	16	1.2	78	Delaware	2	0.2
32	Pennsylvania, Western	16	1.2	79	Florida, Northern	2	0.2
33	Colorado	15	1.2	80	Iowa, Southern	2	0.2
34	Indiana, Northern	15	1.2	81	Mississippi, Northern	2	0.2
35	Ohio, Southern	15	1.2	82	Montana	2	0.2
36	Alabama, Southern	14	1.1	83	New York, Northern	2	0.2
37	California, Northern	14	1.1	84	Rhode Island	2	0.2
38	Illinois, Southern	14	1.1	85	Vermont	2	0.2
39	Texas, Western	13	1.0	86	Louisiana, Middle	1	0.1
40	Virginia, Eastern	13	1.0	87	Washington, Western	1	0.1
41	Connecticut	12	0.9	88	West Virginia, Northern	1	0.1
42	Kentucky, Western	12	0.9	89	West Virginia, Southern	1	0.1
43	North Dakota	12	0.9	90	Virgin Islands	0	0.0
44	Texas, Eastern	12	0.9	91	Virginia, Western	0	0.0
45	Arizona	11	0.9	92	Arkansas, Western	0	0.0
46	Louisiana, Eastern	11	0.9	93	Guam	0	0.0
47	Massachusetts	11	0.9	94	Northern Mariana Islands	0	0.0



# Appendix E<sup>120</sup>

## Recidivism of Robbery, Other Violent, and Non-Violent Offenders Released in 2010

Fiscal Year 2021



## Endnotes

1 See COURTNEY R. SEMISCH, CASSANDRA SYCKES & LANDYN ROOKARD, U.S. SENT'G COMM'N, *RECIDIVISM OF FEDERAL VIOLENT OFFENDERS RELEASED IN 2010 (2022)* [hereinafter 2022 VIOLENT RECIDIVISM REPORT]; see also RYAN COTTER, COURTNEY SEMISCH & DAVID RUTTER, U.S. SENT'G COMM'N, *RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010 (2021)* [hereinafter 2021 RECIDIVISM OVERVIEW REPORT]; KIM STEVEN HUNT, MATTHEW J. IACONETTI & KEVIN T. MAASS, U.S. SENT'G COMM'N, *RECIDIVISM AMONG FEDERAL VIOLENT OFFENDERS (2019)* [hereinafter 2019 VIOLENT RECIDIVISM REPORT] (reporting on a separate cohort of federal violent offenders released in 2005). Commission materials cited herein are available on the Commission's website at [www.ussc.gov](http://www.ussc.gov).

2 2022 VIOLENT RECIDIVISM REPORT, *supra* note 1, at 5. The 2022 *Violent Recidivism Report* included analyses over an eight-year follow-up period of 3,020 federal offenders who engaged in violent criminal conduct as part of their instant federal offense, which was comprised of 1,306 robbery offenders and 1,714 other violent offenders. *Id.* at 36. The 18,252 non-violent offenders in the study were the point of comparison. *Id.* at 8.

3 *Id.* at 56; see also 2019 VIOLENT RECIDIVISM REPORT, *supra* note 1, at 27 (reporting a 66.8% rearrest rate for robbery offenders compared to 54.5% for all other violent instant offenders for the 2005 cohort).

4 The Commission ranked by severity the new offenses committed by the offenders in the study. As described in the 2021 *Recidivism Overview Report*, this severity ranking 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. See 2021 RECIDIVISM OVERVIEW REPORT, *supra* note 1, at 22.

5 2022 VIOLENT RECIDIVISM REPORT, *supra* note 1, at 56.

6 The Commission regularly collects information for every federal felony and Class A misdemeanor offense sentenced each year to carry out its various statutory responsibilities. See 28 U.S.C. § 995(a)(12), (14)–(16). Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: (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). The Commission extracts and codes data from these documents to compile its databases. For each case in its Offender Datafile, the Commission routinely collects sentencing data, demographic variables, statutory information, guideline application decisions, and departure and variance information.

7 See *United States v. Gattis*, 877 F.3d 150, 156–57 (4th Cir. 2017) (generic robbery is defined as the “misappropriation of property under circumstances involving [immediate] danger to the person” and the “immediate danger” element is satisfied by “the taking of property from a person or a person’s presence by means of force or putting in fear” (internal quotations and citations omitted)); see also *Stokeling v. United States*, 139 S. Ct. 544, 554 (2019) (“physical force” is force that is “sufficient to overcome a victim’s resistance”).

8 See *Stokeling*, 139 S. Ct. at 553 (concluding that “the force necessary to overcome a victim’s physical resistance is inherently ‘violent’” because “robbery that must overpower a victim’s will—even a feeble or weak-willed victim—necessarily involves a physical confrontation and struggle”); see also WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 141–43 (J.W. Jones trans., Lonang Inst. ed. 2005) (1769) (distinguishing “taking ... by force” or “putting [the victim] in fear” from “privately stealing,” and stating that this violence distinguishes robbery from other larcenies).

9 For a list of federal robbery statutes and penalties, see Appendix A.

10 18 U.S.C. § 1951.

11 *Id.* §§ 2113(a), (d), 2114, 2118, 2119.

12 *Id.* §§ 2280, 2281.

13 26 U.S.C. § 7212(b).

14 18 U.S.C. § 1951(a).

15 *Id.*

16 *Id.* § 1951(b)(1).

17 See, e.g., *Taylor v. United States*, 579 U.S. 301, 305–06 (2016) (“The language of the Hobbs Act is unmistakably broad. It reaches any obstruction, delay, or other effect on commerce, even if small, and the Act’s definition of commerce encompasses ‘all . . . commerce over which the United States has jurisdiction.’” (citations omitted)); *Stirone v. United States*, 361 U.S. 212, 215 (1960) (The Hobbs Act “speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence.”).

18 *Taylor*, 579 U.S. at 305–06; see also *United States v. Tuan Ngoc Luong*, 965 F.3d 973, 986–87 (9th Cir. 2020) (the Hobbs Act interstate commerce element is satisfied by *de minimis* effect on interstate commerce) (citations omitted), *cert. denied*, 142 S. Ct. 336 (2021).

19 See, e.g., *United States v. Bell*, 947 F.3d 49, 53 (3d Cir. 2020) (defendant convicted of Hobbs Act robbery for robbing a mobile telephone store); *United States v. Ayala*, 917 F.3d 752, 755 (3d Cir. 2019) (defendant convicted of Hobbs Act robbery for her role in robbing a jewelry store); *United States v. Harrington*, 108 F.3d 1460, 1469–70 (D.C. Cir. 1997) (Hobbs Act was properly applied to robbery of a local restaurant because the restaurant was a commercial business engaged in interstate commerce).

20 See, e.g., *Taylor*, 579 U.S. at 303 (holding that the “commerce” element of section 1951 is satisfied if the defendant robbed or attempted to rob a drug dealer of drugs or drug proceeds, stating “[b]y targeting a drug dealer in this way, a robber necessarily affects or attempts to affect commerce over which the United States has jurisdiction”); *Gonzales v. Raich*, 545 U.S. 1, 22 (2005) (holding that Congress has authority under the Commerce Clause to regulate the national market for marijuana, including the authority to proscribe the purely intrastate production, possession, and sale of this controlled substance).

21 See, e.g., *Taylor*, 579 U.S. at 303; *Gonzales*, 545 U.S. at 22.

22 18 U.S.C. § 1951(a).

23 *Id.*

24 *Id.* § 2113(a). Section 2113(f) defines a “bank” to include “any member bank of the Federal Reserve System and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States.” *Id.* § 2113(f).

25 *See, e.g.*, *United States v. Kelley*, 412 F.3d 1240, 1242–43 (11th Cir. 2005) (defendant convicted of bank robbery under section 2113(a) for robbing bank branch located inside a grocery store); *United States v. Farrow*, 277 F.3d 1260, 1261–62 (10th Cir. 2002) (same); *United States v. Freland*, 141 F.3d 1223, 1224–25 (7th Cir. 1998) (defendant convicted of armed bank robbery under section 2113(a) and (d) for robbing at gunpoint the courier of a bank branch temporarily operating out of a trailer facility located in the parking lot of a strip mall).

26 18 U.S.C. § 2113(a).

27 *Id.* § 2113(d), (e).

28 *Id.* § 2113.

29 *Id.* § 371; *see, e.g.*, *United States v. Lasseque*, 806 F.3d 618, 620 (1st Cir. 2015) (defendant who conspired to commit bank robbery was convicted under 18 U.S.C. § 371).

30 18 U.S.C. § 2119.

31 *Id.*; *see United States v. Martinez*, 49 F.3d 1398, 1401 (9th Cir. 1995) (concluding that the language “has been transported . . . in interstate” commerce applies to stolen motor vehicles that at some point in the past were transported in interstate commerce, even though they were not involved in interstate commerce at the time of the carjacking).

32 Pub. L. No. 102–519, 106 Stat. 3384; *see also* H.R. REP. NO. 102-851, pt.2, at 2 (1992) (statute provides for federal cooperation to prevent “carjacking” and motor vehicle theft; urging “[i]n view of the increase of motor vehicle theft with its growing threat to human life and to the economic well-being of the Nation” federal law enforcement to work with state and local officials “to investigate car thefts, including violations of section 2119 of title 18, United States Code, for armed carjacking,” and to prosecute as appropriate persons who violate the statute and other relevant Federal statutes).

33 *See* Federal Death Penalty Act of 1994, Pub. L. No. 103–322, § 60003(a)(14), 108 Stat. 1959, 1970 (amending section 2119 to authorize a penalty of death where a victim was killed during commission of the offense).

34 In March 2022, the United States Senate Committee on the Judiciary held a hearing on *Federal Support for Preventing and Responding to Carjackings*, during which the committee heard testimony on a surge in carjackings nationwide over the past few years. *See Federal Support for Preventing and Responding to Carjackings: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. 29 (2022) (statement of Sen. Chuck Grassley, Ranking Member, S. Comm. on Judiciary) (“The increase in this violent crime of carjacking is part of a very disturbing trend nationwide.”); *see also Federal Support for Preventing and Responding to Carjackings: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. 2 (2022) (statement of Chief Eddie Garcia, Chief of Police Dallas, Texas, Major Cities Chiefs Association) (“Perhaps most troubling, however, is that when looking at carjacking data over several years, the rates in these and other cities have more than doubled.”); *Federal Support for Preventing and Responding to Carjackings: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. 3–6 (2022) (statement of David J. Glawe, President and Chief Executive Officer, National Insurance Crime Bureau) (noting that the

country is facing “an unprecedented rise in vehicle thefts and carjackings over the past few years” and that the data on both vehicle thefts and carjackings highlights the disturbing and growing trend; noting further that in some of the worst cities carjackings have increased over 200% from 2019 to 2021).

35 18 U.S.C. § 2119.

36 *Id.*

37 *Id.* § 371.

38 Both the RICO Act and VICAR statute were enacted primarily to prosecute violent crimes committed by members of organized crime. See Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 901(a), 84 Stat. 922, 941 (codified at 18 U.S.C. §§ 1961-1968); see also S. REP. NO. 91-617, at 76 (1969) (explaining the purpose of the RICO statute is “the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce”); see also S. REP. NO. 98-225, at 304-07 (1983), as reprinted in 1984 U.S.C.C.A.N. 3182, 3483-87 (Section 1959 was enacted to combat “contract murders and other violent crimes by organized crime figures.”).

39 See 18 U.S.C. § 1962(a)-(c) (setting forth three substantive offenses requiring a pattern of racketeering activity or unlawful collection of debt); *id.* § 1962(d) (making it a crime to conspire to commit any of the three substantive offenses). Violations of section 1962 carry a statutory maximum term of imprisonment of 20 years (or for life if the violation is based on racketeering activity for which the statutory maximum penalty includes life imprisonment). See *id.* § 1963.

40 See *id.* § 1961(1)(A), (B) (defining “racketeering activity” to include, in pertinent part, “any act or threat involving ... robbery” which is chargeable under state law and is a felony and “any act which is indictable under . . . title 18, United States Code . . . section 1951 (relating to interference with commerce, robbery, or extortion)”).

41 *Id.* § 1959(a) (providing, in pertinent part, whoever “for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual” in violation of state or federal law, or attempts or conspires so to do, shall be punished). Section 1959 defines an “enterprise” to include “any . . . group of individuals associated in fact although not a legal entity, which is engaged in, or the activities of which affect, interstate or foreign commerce.” *Id.* § 1959(b)(2). Violations of section 1959 carry a statutory maximum sentence ranging from any term of imprisonment up to life depending on the type of underlying violent crime. See *id.* § 1959(a) (1)-(6).

42 See *id.* § 1959(b)(1) (“‘racketeering activity’ has the meaning set forth in section 1961 of this title”).

43 See U.S. SENT’G COMM’N, *Guidelines Manual*, App. A (Nov. 2021) [hereinafter USSG] (referencing federal statutes to Chapter Two offense guidelines). Most robbery offenders are sentenced under §2B3.1; however, some robbery offenders are sentenced under other Chapter Two guidelines depending on the circumstances of the offense and the offender. As such, some robbery statutes may be referenced in the Statutory Index to multiple Chapter Two guidelines. See, e.g., USSG App. A (referencing 18 U.S.C. § 1951 to §§2B3.1, 2B3.2, 2B3.3, and 2C1.1; referencing 18 U.S.C. § 2113(a) to §§2B1.1, 2B2.1, 2B3.1, and 2B3.2). Additionally, robbery offenders convicted of multiple crimes, related or unrelated to the robbery offense, may be sentenced under other Chapter Two guidelines based on the multiple-count grouping rules in Chapter Three, Part D. See USSG Ch.3, Pt.D.

44 USSG §2B3.1(a), (b)(1)–(7); *see also infra* Appendix B.

45 USSG §2B3.1(c)(1). The Commentary to §2B3.1 also provides for an upward departure where the offender intended to murder the victim. *See* USSG §2B3.1, comment. (n.5).

46 *See* USSG Ch.5, Pt.A (providing a sentencing table consisting of 43 offense levels that form the vertical axis and six CHCs that form the horizontal axis; an offender’s CHC is calculated by assigning points for prior criminal convictions, indicating the seriousness of the prior crime based on the length of the sentence imposed). Only three Chapter Two guidelines—first-degree murder, drug trafficking, and treason—of the more than 150 sentencing guidelines have a base offense level of 43, for which the guidelines specify a sentence of life imprisonment for all criminal history categories, CHC I–VI. *See* USSG §§2A1.1, 2D1.1, 2M1.1. A life sentence is also within the guideline range for a final offense level as low as 37, but only for the most serious criminal history category, CHC VI. *See* USSG Ch.5, Pt.A.

47 *See* USSG Ch.3, Pt.A, Pt.B, Pt.C.

48 *See, e.g.*, USSG §§3B1.1, 3B1.2.

49 *See* USSG §3D1.4 (providing rules for calculating an offender’s combined offense level when there are multiple counts of conviction).

50 *See* USSG App. A; *see also supra* note 43 (explaining that robbery offenders may be sentenced under other Chapter Two guidelines depending on the circumstances of the robbery offense and whether the offender was convicted of other crimes in addition to the robbery offense).

51 *See* USSG §2X1.1 (directing that the guideline to be applied for conspiracy is the Chapter Two guideline applicable to the underlying offense).

52 *See* USSG §§2E1.1 (providing that the base offense level for a RICO offense is the greater of 19 “or the offense level applicable to the underlying racketeering activity”), 2E1.3 (providing that the base offense level for a VICAR offense is the greater of 12 “or the offense level applicable to the underlying crime or racketeering activity”).

53 *See* USSG §2K2.1 (providing in subsection (c)(1)(A) that if the offender possessed the firearm or ammunition in connection with the commission or attempted commission of another offense, apply the Chapter Two guideline for the other offense pursuant to §2X1.1 if the resulting offense level is greater than the offense level under §2K2.1).

54 18 U.S.C. § 924(c)(1).

55 *Id.* § 924(c)(3)(A); *but see* *United States v. Taylor*, 142 S. Ct. 2015, 2020 (2022) (holding that attempted Hobbs Act robbery does not qualify as a “crime of violence” under section 924(c)(3)(A) because no element of the offense requires proof that the defendant used, attempted to use, or threatened to use force against a person or property).



56 18 U.S.C. § 924(c)(1). The statutory maximum term of imprisonment for a violation of section 924(c) is life imprisonment. *See* United States v. O'Brien, 560 U.S. 218, 238 (2010) (Stevens, J., concurring) ("Mandatory minimums may have a particularly acute practical effect in this type of statutory scheme which contains an implied statutory maximum of life. There is, in this [section 924(c)] case, no ceiling; there is only a floor below which a sentence cannot fall."); *see also* United States v. Turner, 389 F.3d 111, 120 (4th Cir. 2004) (when Congress fails to provide a statutory maximum, it "gives maximum discretion to the sentencing court," such that "the maximum is life imprisonment").

57 18 U.S.C. § 924(c)(1)(B)(ii), (C). Prior to enactment of the First Step Act of 2018, the 25-year penalty for a second or subsequent violation of section 924(c) applied when the violation occurred in the same case as the first violation of section 924(c). *See* First Step Act of 2018, Pub. L. No. 115-391, § 403, 132 Stat. 5194, 5221-22. The First Step Act limited the 25-year penalty by providing that such penalty applies only to offenders whose instant violation of section 924(c) occurred after a prior conviction under section 924(c) had become final. *Id.*

58 18 U.S.C. § 924(c)(1)(D) (prohibiting a sentence of probation or imposition of concurrent terms of imprisonment with a violation of section 924(c)). Violations of section 924(c) are referenced to §2K2.4 in the Statutory Index. *See* USSG App. A. Section 2K2.4 provides that if the offender, whether or not convicted of another crime, is convicted of violating section 924(c), "the guideline sentence is the minimum term of imprisonment required by statute" and "Chapters Three and Four [of the *Guidelines Manual*] shall not apply to that count of conviction." USSG §2K2.4(b).

59 18 U.S.C. § 924(e). The guideline implementing section 924(e) is §4B1.4. *See* USSG §4B1.4. Section 4B1.4 provides for enhanced offense levels and criminal history category for firearms offenders who used or possessed the firearm or ammunition in connection with a "crime of violence" or a "controlled substance offense," or if the firearm possessed was of a particularly dangerous type. *Id.*; *see also* USSG §4B1.2 (defining the terms "crime of violence" and "controlled substance offense").

60 18 U.S.C. § 924(e). As with section 924(c), the statutory maximum penalty for section 924(e) is life imprisonment. *See supra* note 56.

61 Courts have held that Hobbs Act robbery does not qualify as a "crime of violence" under the guidelines because the statute encompasses the use or threatened use of force against property and, therefore, does not match the definition of "crime of violence" in §4B1.2(a). *See, e.g.,* United States v. Scott, 14 F.4th 190, 194-96 (3d Cir. 2021); United States v. Hammond, 996 F.3d 374, 399 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 2646 (2022); United States v. Green, 996 F.3d 176, 181 (4th Cir. 2021); United States v. Eason, 953 F.3d 1184, 1194-95 (11th Cir. 2020); United States v. Camp, 903 F.3d 594, 600-04 (6th Cir. 2018); United States v. O'Connor, 874 F.3d 1147, 1153-58 (10th Cir. 2017); *see also* United States v. Peterson, 902 F.3d 1016, 1021-22 (9th Cir. 2018) (Washington robbery statute not a "crime of violence" under the guidelines because the statute encompasses injury to property); United States v. Edling, 895 F.3d 1153, 1156-58 (9th Cir. 2018) (Nevada robbery statute not a "crime of violence" under the guidelines because the statute encompasses injury to property).

62 *See* USSG §§4B1.1, 4B1.2.

63 USSG §4B1.1(a).

64 USSG §4B1.2(a). Section 4B1.2(a)(2) provides a list of enumerated offenses that constitute crimes of violence under §4B1.1: “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)(2) (emphasis added).

65 USSG §4B1.1(b).

66 See *supra* note 6 (explaining the information the Commission regularly collects).

67 Robbery “events” include convictions under substantive robbery statutes (e.g., 18 U.S.C. § 1951) as well as robbery offenses underlying other counts of conviction (e.g., 18 U.S.C. § 371).

68 U.S. SENT’G COMM’N, 2021 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 28 (2022) [hereinafter 2021 SOURCEBOOK].

69 Robbery convictions include at least one conviction under 18 U.S.C. §§ 1951, 2111, 2112, 2113(a), 2113(d), 2113(e), 2114(a), 2116, 2118(a), 2118(c)(1), 2118(c)(2), 2118(d), or 2119.

70 Of the 1,393 offenders, two were excluded from the analysis due to missing guideline application information. In addition, cases were excluded from various analyses in this report due to missing information for the variables required for those analyses.

71 See *supra* note 43 (explaining that robbery offenders may be sentenced under Chapter Two guidelines other than §2B3.1 based on various factors).

72 Appendix C provides additional information for the 45 robbery offenders sentenced under §2A1.1.

73 The majority (84.3%) of the 166 robbery offenders sentenced under other Chapter Two guidelines were referenced directly to those other guidelines. Twenty-five (15.1%) of the remaining offenders were initially referenced to §2B3.1, but were ultimately sentenced under §2A1.1 pursuant to the cross reference at §2B3.1(c)(1), because a victim was killed under circumstances that constituted murder during the commission or attempted commission of a robbery. One offender was sentenced under §2A1.2 (Second Degree Murder) by the court.

74 Offenders in this study had §2B3.1 as the primary sentencing guideline. The Commission uses the “primary sentencing guideline” to indicate the Chapter Two guideline that determined the final offense level. In cases with multiple guideline computations, the primary sentencing guideline is the guideline that ultimately explains the sentence. See generally USSG §1B1.1; see also, e.g., USSG Ch.3, Pt.D (providing rules to determine a single offense level encompassing all counts of conviction).

75 See *supra* notes 14–37 and accompanying text.

76 The number of offenders sentenced under §2B3.1 decreased from 1,632 in fiscal year 2012 to 1,290 in fiscal year 2021. This decrease is consistent with the decrease in the overall federal sentencing caseload. The total number of individual original cases reported to the Commission in fiscal year 2021 represents the lowest number of cases since fiscal year 1999. The number of offenders sentenced in the federal courts reached a peak in fiscal year 2011 and the number of cases reported in fiscal year 2021 was 33.5% below that level. U.S. SENT’G COMM’N, OVERVIEW OF FEDERAL CRIMINAL CASES 2 (2022).

77 The percentages in the categories sum to more than 100.0% due to multiple counts of conviction for some offenders. For example, in fiscal year 2021, 42 offenders had convictions under more than one of the three predominant robbery statutes. Specifically, 24 offenders had both Hobbs Act robbery and bank robbery convictions, 15 offenders had both Hobbs Act robbery and carjacking convictions, and three offenders had both bank robbery and carjacking convictions.

78 The decrease of bank robbery convictions may be related to several factors, including banks' use of security measures, such as teller-counter barriers, security guards, dye packs, GPS tracking devices, and access-controlled entry and exit doors (commonly called "man traps"), an increase in the use of mobile and online banking, and an increase in bank branch closures. See, e.g., 12 C.F.R. § 208.61 (2021) (requiring member banks of the Federal Reserve System "to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies, and to assist in the identification and prosecution of persons who commit such acts"); Fed. Bureau of Investigation, U.S. Dep't of Just., *Increased Use of Mobile Banking Apps Could Lead to Exploitation: Alert Number I-061020-PSA* (Jun. 10, 2020), <https://www.ic3.gov/media/Y2020/PSA200610> (stating that U.S. financial data studies indicate a surge in mobile banking since the beginning of 2020 and with social distancing, "Americans [are becoming] more willing to use mobile banking as an alternative to physically visiting branch locations"); Kimberly Kreiss, Bd. of Governors, Fed. Rsrv. Sys., FEDS Notes, *Bank Branches and COVID-19: Where are Banks Closing Branches during the Pandemic?* (Dec. 17, 2021), <https://www.federalreserve.gov/econres/notes/feds-notes/bank-branches-and-covid-19-where-are-banks-closing-branches-during-the-pandemic-20211217.htm> (stating that the COVID-19 pandemic may accelerate the steady rate of bank branch closings over the past decade and the increasing use of mobile or online banking for at least a portion of household banking needs).

79 The overall number of carjacking convictions also more than doubled from 73 convictions in fiscal year 2012 to 151 convictions in fiscal year 2021.

80 See *supra* note 34 and accompanying text.

81 Appendix D provides the distribution of robbery offenders in each of the 94 federal judicial districts.

82 An offender was classified as an Other Violent Offender if any of the following guidelines were applied from the *Guidelines Manual* at sentencing: §§2A1.1, 2A1.2, 2A1.3, 2A1.5, 2A2.1, 2A2.2, 2A2.3, 2A2.4, 2A3.1, 2A3.2, 2A3.3, 2A3.4, 2A4.1, 2A5.1, 2A5.2, 2A5.3, 2A6.1, 2A6.2, 2B3.2, 2D1.9, 2E1.1, 2E1.2, 2E1.3, 2E1.4, 2G1.2, 2G1.3, 2G2.1, 2G2.3, 2G2.6, 2H4.1, 2K1.3, 2K1.4, 2M5.3, 2M6.1, or 2X6.1. An offender was also classified as an Other Violent Offender if sentenced under certain provisions in §2K2.1 or 18 U.S.C. § 924(c). In cases where multiple Chapter Two guidelines applied because the offender had multiple counts of conviction for different offenses, an offender was classified as violent if any of the guidelines applied were for a violent offense, regardless of whether that guideline ultimately produced the highest offense level (*i.e.*, the primary sentencing guideline).

83 In fiscal year 2021, drug trafficking (33.5%) and immigration (32.6%) offenses comprised the largest portion of the non-violent category, followed by firearms (13.5%) and fraud/theft/embezzlement (8.8%). The remaining crime types each accounted for less than three percent of offenders.

84 All other violent offenses include other guidelines applied that are violent in nature, including, but not limited to: stalking/harassing, kidnapping, arson, and extortion/racketeering.

85 2022 VIOLENT RECIDIVISM REPORT, *supra* note 1, at 12.

86 The “Other Races” category is comprised of the following: (1) Robbery (67 offenders)—Native American/Alaskan Native (71.6%), Asian or Pacific Islander (25.4%), and Other races (3.0%); (2) Other Violent (615 offenders)—Native American/Alaskan Native (87.5%), Asian or Pacific Islander (10.7%), and Other races (1.8%); and (3) Non-Violent (1,746 offenders)—Native American/Alaskan Native (40.7%), Asian or Pacific Islander (50.4%), and Other races (8.9%).

87 Of the 57,287 offenders sentenced in fiscal year 2021, a total of 3,508 offenders were excluded from the CHC analysis due to incomplete guideline application information. Of the 3,508 offenders excluded from the CHC analysis, 12 were robbery offenders.

88 Nearly all of the 107 robbery offenders were sentenced as career offenders. Of the 107 robbery offenders, 104 robbery offenders were sentenced as career offenders only, two robbery offenders were sentenced as armed career criminals only, and one robbery offender was sentenced under both provisions. Of the 132 other violent offenders sentenced as career offenders or armed career criminals, 93 other violent offenders were sentenced as career offenders, 37 other violent offenders were sentenced as armed career criminals, and two other violent offenders were sentenced under both provisions. Of the 1,252 non-violent offenders sentenced as career offenders or armed career criminals, 1,030 non-violent offenders were sentenced as career offenders, 206 non-violent offenders were sentenced as armed career criminals, and 16 non-violent offenders were sentenced under both provisions.

89 See USSG §4A1.2(c)–(j).

90 In 2016, the Commission began collecting information on the number of convictions and the types of offenses in the criminal histories of federal offenders as part of an ongoing research project. For more information on how the Commission collects criminal history information, see TRACEY KYCKELHAHN & EMILY HERBST, U.S. SENT’G COMM’N, *THE CRIMINAL HISTORY OF FEDERAL OFFENDERS* 14 (2018).

91 In fiscal year 2021, the Commission’s Individual Offender Datafile included 57,287 cases. Criminal history and complete documentation information was available for 53,779 of these cases.

92 See *supra* notes 44–46 and accompanying text.

93 Of the 1,290 offenders sentenced under §2B3.1 in fiscal year 2021, 12 offenders were excluded from this analysis due to incomplete guideline application information.

94 Appendix B provides detail for specific offense level increases for each sentencing enhancement.

95 The application rates of the “abduction” and “physical restraint” enhancements may be affected by circuit splits among the United States Courts of Appeals regarding circumstances warranting application of each enhancement. See USSG §§2B3.1(b)(4)(A) (providing for a 4-level increase “if any person was abducted to facilitate commission of the offense or to facilitate escape”); 2B3.1(b)(4)(B) (providing for a 2-level increase “if any person was physically restrained to facilitate commission of the offense or to facilitate escape”); see also *United States v. Hill*, 963 F.3d 528, 530 (6th Cir. 2020) (recognizing a circuit split on whether the 4-level abduction enhancement applies if a victim was moved to a different location within the store or building being robbed or applies only if the victim was moved to a location different from the store or building being robbed); *United States v. Herman*, 930 F.3d 872, 874 (7th Cir. 2019) (recognizing a circuit split on whether the 2-level physical restraint enhancement applies if the victim was ordered at gunpoint not to move and was not otherwise physically restrained, such as being tied, bound, or locked up).

96 See USSG §5C1.1 (providing for alternative substitutes for imprisonment in applicable circumstances).

97 There were 23 robbery offenders sentenced to terms of probation only (18) or probation with alternatives (5). Courts sentenced the 23 offenders as follows: below range variance (39.1%), downward departure for substantial assistance under §5K1.1 (17.4%), government-sponsored departure (17.4%), government-sponsored variance (17.4%), or downward departure (8.7%).

98 During the ten-year period, a total of 32 robbery offenders, 901 other violent offenders, and 398 non-violent offenders were sentenced to imprisonment terms of life.

99 The increase in average sentence for non-violent offenders in fiscal year 2021 reflects the predominance of drug trafficking offenses, in particular methamphetamine trafficking offenses have the highest sentences among drug trafficking offenders. See 2021 SOURCEBOOK, *supra* note 68, at 46, 124–26.

100 Other below-range sentences include all other government and non-government sponsored departures and variances.

101 See 2021 SOURCEBOOK, *supra* note 68, at 86 fig.9.

102 Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. Cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. The information presented in this figure includes conditions of confinement as described in §5C1.1. See USSG §5C1.1. Guideline minimums also account for applicable statutory mandatory penalties.

103 See *supra* notes 54–58 and accompanying text.

104 By comparison, 8.3% (332 of 4,015) of other violent offenders sentenced in fiscal year 2021 were convicted under section 924(c). The distribution of applicable mandatory minimum sentences for the other violent offenders were as follows: five years (16.3%); seven years (27.1%); ten years (38.9%); and more than ten years (17.8%).

105 The mandatory minimum penalties for these offenders ranged from 144 months to 624 months of imprisonment and include convictions under the 30-year term as well as multiple consecutive penalties. See *supra* notes 56–58.

106 The fluctuations in the difference between average sentence imposed and average guideline minimum may be related to several factors, including Supreme Court decisions and government charging practices. See, e.g., *Dean v. United States*, 137 S. Ct. 1170, 1177 (2017) (sentencing courts are permitted to consider the sentence imposed under a mandatory minimum statute when calculating a just sentence for the underlying count); Memorandum from Jeff Sessions, Att’y Gen., U.S. Dep’t of Just. to U.S. Att’ys, U.S. Dep’t of Just. 1 (May 10, 2017) (rescinding previous 2013 charging policy allowing prosecutors discretion in deciding whether to charge offenses that impose mandatory minimum sentences and issuing a new policy requiring prosecutors to charge the “most serious, readily provable offense” available). For a discussion of the impact of Supreme Court case law and government charging decisions on mandatory minimum firearms offenses, see U.S. SENT’G COMM’N, MANDATORY MINIMUM PENALTIES FOR FIREARMS OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 8–10 (2018).

107 Robbery offenders with any combination of convictions for Hobbs Act robbery, bank robbery, and carjacking were excluded. A total of 43 offenders were excluded from the analysis comparing offenders with Hobbs Act robbery (section 1951), bank robbery (section 2113), and carjacking (section 2119) convictions who were convicted under more than one of the three statutes. The 43 offenders include 25 offenders with convictions under both sections 1951 and 2113, 15 offenders with convictions under both sections 1951 and 2119, and three offenders with convictions under both sections 2113 and 2119. However, offenders with multiple convictions under a single statute remained in the analysis.

108 One offender sentenced under §2B3.1 was excluded because the sole offense of conviction was a violation of 18 U.S.C. § 924(c) and the guideline sentence for such offenders is the minimum term of imprisonment required by statute. See USSG §2K2.4(b).

109 Stipulated and pseudo robbery counts that did not result in a conviction were excluded.

110 The “Other” category includes streets and parking lots, postal vehicles, and cluster mailboxes.

111 The 9.1% of robbery events in which nothing was taken include attempted or incomplete robberies and sting operations.

112 Chart sums to more than 100.0% due to the involvement of multiple types of weapons.

113 The “Other” category includes pepper spray, bear spray, and tools, among other weapons.

114 Chart sums to more than 100.0% due to the involvement of multiple types of threats.

115 Chart sums to more than 100.0% due to the use of multiple types of force.

116 “Bodily injury” includes serious bodily injury, permanent or life-threatening bodily injury, as well as death. Five robbery events (accounting for 0.2% of all robbery events) involved the death of a victim. Three of the deaths were caused by a co-conspirator and the offender was not present during the offense. Two of the deaths resulted from traffic accidents following high-speed chases related to carjackings.

117 Of the 1,290 offenders sentenced under §2B3.1, 12 offenders were excluded from the analysis due to incomplete guideline application information.

118 Of the 166 offenders convicted of a substantive robbery statute and sentenced in 2021 under a Chapter Two guideline other than §2B3.1, 45 offenders were sentenced under §2A1.1 and included in the graphic.

119 The appendix includes all 1,290 offenders sentenced in fiscal year 2021 with robbery (§2B3.1) as the primary guideline.

120 2022 VIOLENT RECIDIVISM REPORT, *supra* note 1, at 20, 25, 56.







## United States Sentencing Commission

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