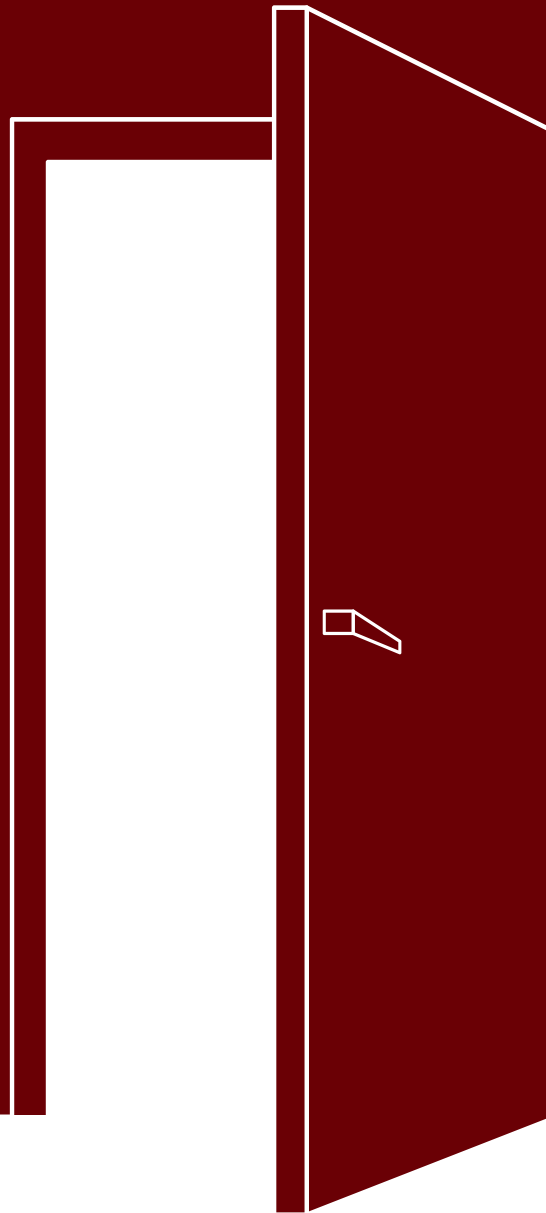




United States Sentencing Commission
September 2023



Federal Escape Offenses

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September 2023

United States Sentencing Commission

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This report provides the characteristics of individuals convicted of escape, then chronologically examines their criminal histories before the instant offense through their criminal behavior while on escape status. It also examines their alleged criminal behavior after being released into the community.

Introduction

Escape offenses comprise a very small portion of the federal case load. Nevertheless, escape offenses are noteworthy because of the nature of the crime, potential risks facing correctional officers, and public safety concerns.

This new publication expands upon the Commission's previous research on federal escape offenses. In 2008, the Commission published the *Report on Federal Escape Offenses in Fiscal Years 2006 and 2007*, in which the Commission found most individuals committed the escape offense by leaving a non-secure facility or failing to return to custody after being temporarily released, such as for unsupervised work release.¹ This report builds upon that previous work by examining individuals sentenced for escape in fiscal years 2017 through 2021. Although the Commission again found that more recent federal escape offenses rarely involved the use or threat of force and typically involved escaping from a non-secure facility, this report examined new information about actions of individuals during an escape offense, including new crimes they committed.

In this report, the Commission combines data it regularly collects² with data from a special coding project to provide a deeper understanding of escape offenses and the individuals who commit those crimes. The report provides the characteristics of individuals who commit escape offenses, then chronologically examines their criminal histories before the instant offense³ through their alleged criminal behavior while on escape status. Next it provides information on their subsequent sentencing. Finally, this report examines their criminal behavior after being released into the community by the recidivism rates of a cohort of individuals released from federal custody in 2010.

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Key Findings

1 Escape offenses accounted for less than one percent (0.4%) of all federal offenses between fiscal years 2017 and 2021.

2 Individuals sentenced for escape offenses had extensive and serious criminal histories.

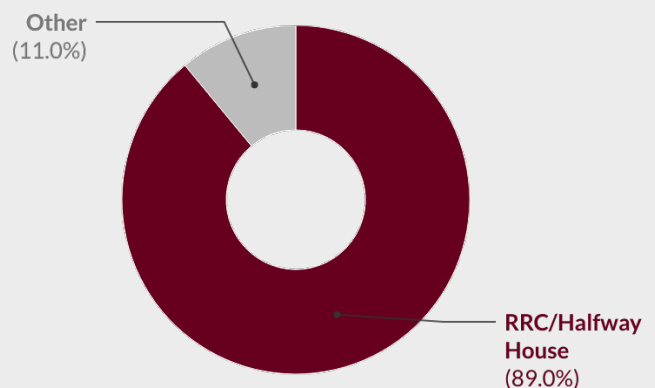
More than half (54.1%) were in the two most serious Criminal History Categories of V (20.6%) and VI (33.5%), compared to one-fifth (21.1%) of U.S. citizens sentenced in Criminal History Category V (7.3%) and Criminal History Category VI (13.8%).

Two-thirds (67.0%) had a prior conviction for a violent offense, nearly double that of other sentenced U.S. citizens (38.1%).

Approximately two-thirds (65.3%) were originally sentenced for a firearms offense (33.4%) or a drug trafficking offense (31.9%).

Approximately one-quarter (26.5%) had at least one prior conviction for escape.

3 Most federal escapes were from non-secure custody. The majority (89.0%) of individuals escaped from a Residential Reentry Center (*i.e.*, a halfway house).



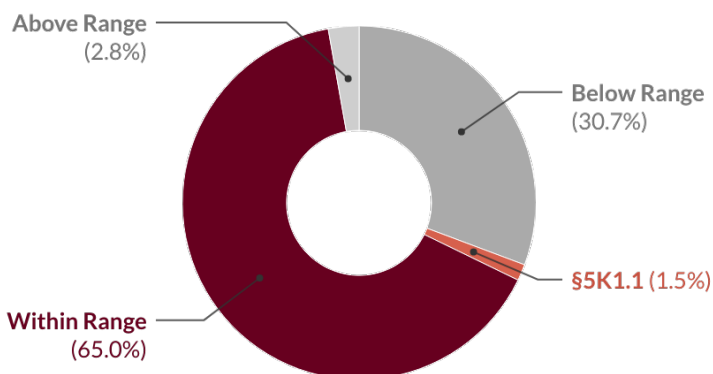
4 The median length of time that individuals sentenced for escape offenses remained at large was one month.

More than one-third (36.2%) were arrested for or alleged to have committed a crime while at large; one-fifth (20.8%) of those crimes were violent.

More than one-third (35.1%) were apprehended after concerted efforts by law enforcement. Approximately one-fifth (22.2%) were identified after being arrested for a new crime.

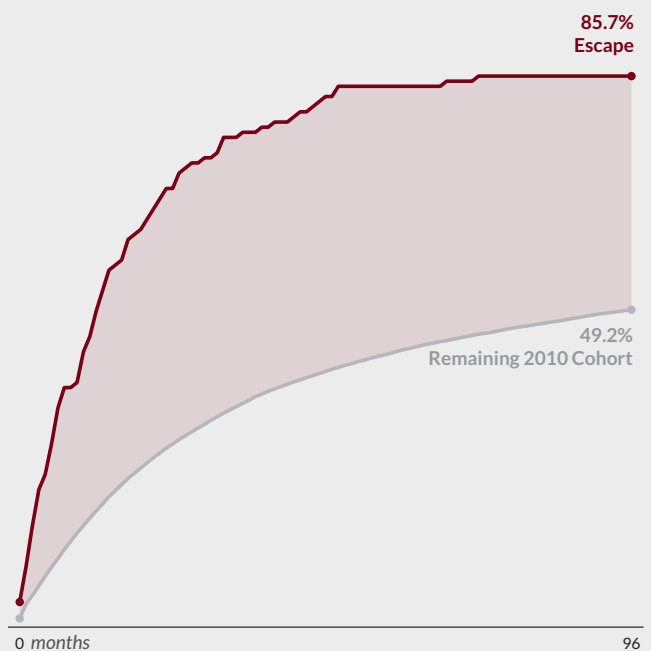
5 Nearly all (99.2%) individuals sentenced for an escape offense received a sentence of imprisonment. The average term of imprisonment was 12 months.

6 Nearly two-thirds (65.0%) of individuals sentenced for an escape offense were sentenced within the guideline range for their escape crime, compared to 40.2 percent of all other federally sentenced U.S. citizens.



7 The majority (85.7%) of individuals sentenced for an escape offense and released in 2010 were rearrested during an eight-year follow-up period, which was higher than individuals sentenced for any other type of federal offense. By comparison, one-half (49.2%) of all other individuals released in 2010 were rearrested during the same time period.

Individuals sentenced for escape offenses were rearrested sooner after release compared to other sentenced individuals. Their median time to rearrest was ten months, compared to 19 months for the remaining 2010 cohort.



Sentencing Guidelines

The sentencing guideline for escape offenses is found in Chapter Two, Part P, Subpart 1 (Escape, Instigating or Assisting Escape) of the *Guidelines Manual*.⁴ Section 2P1.1 provides two alternate base offense levels based on the individual's most serious conviction. A base offense level of 13 applies to individuals who are in custody or confinement by virtue of an arrest on a charge of felony, or conviction of any offense.⁵ A base offense level of 8 applies to all other individuals.⁶

Section 2P1.1 provides four Specific Offense Characteristics (SOCs); two that increase the offense level and two that decrease the offense level. Section 2P1.1(b)(1) provides for a 5-level increase "[i]f the use or the threat of force against any person was involved," and §2P1.1(b)(4) provides a 2-level increase "[i]f the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense."⁷ Section 2P1.1 provides two mutually exclusive SOCs for an offense level decrease. Subsection (b)(2) provides for an offense level decrease of seven or four levels (based on the applicable base offense level) if the defendant escaped from non-secure custody and returned voluntarily within 96 hours.⁸ Alternatively, subsection (b)(3) provides for a decrease of four or two levels (based on the applicable base offense level) if the defendant escaped from non-secure custody but did not voluntarily return within 96 hours.⁹ In both instances, the offense level decreases are only applicable for defendants who did not commit any federal, state, or local offense punishable by a term of imprisonment of one year or more while on escape status.¹⁰



Section 2P1.1 (Escape, Instigating or Assisting Escape)

Base Offense Level

§2P1.1(a)(1)

Individuals in custody or confinement by virtue of an arrest on a charge of felony, or conviction of any offense

Base Offense Level 13

§2P1.1(a)(2)

All other individuals

Base Offense Level 8

Specific Offense Characteristics

§2P1.1(b)(1)

Use or threat of force

5-level increase

§2P1.1(b)(2)

Escaped from non-secure custody and returned voluntarily within 96 hours

4 or 7-level decrease

§2P1.1(b)(3)

Escaped from non-secure custody but did not return voluntarily within 96 hours

2 or 4-level decrease

§2P1.1(b)(4)

Law enforcement, correctional officer, or DOJ employee

2-level increase

Data Overview

Figure 1. Trend in Escape Convictions, Fiscal Years 2017–2021

Fiscal Year	Total Number	Percent of Federal Sentencing Population
FY 2017	337	0.5%
FY 2018	308	0.4%
FY 2019	314	0.4%
FY 2020	248	0.4%
FY 2021	280	0.5%

Overview

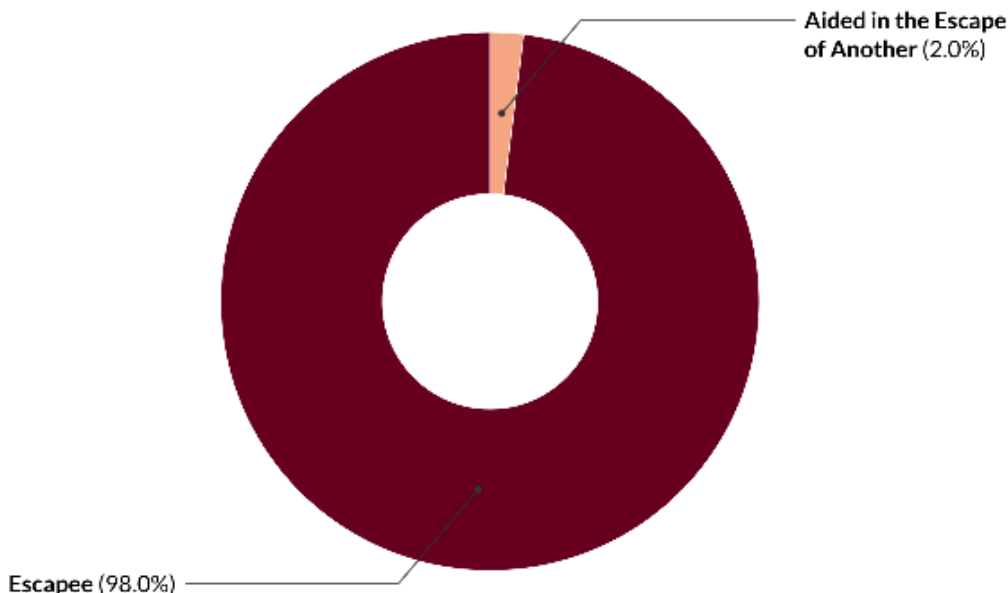
Individuals sentenced for an escape offense constitute a small proportion of the federal sentencing population. For purposes of this report, the Commission included any individual whose guideline calculation involved §2P1.1, regardless of whether it was the primary guideline. During the five-year study period, a total of 1,487 individuals met this inclusion criteria. Such individuals accounted for less than one percent (0.4%) of the federal sentencing population (Figure 1) in every year of the study. The number of escape cases peaked at 337 in fiscal year 2017 and decreased to a low of 248 in fiscal year 2020.¹¹ The number of escape cases increased to 280 during the last fiscal year.

The majority of individuals sentenced for an escape offense were convicted under one statute. Nearly all (98.1%) had at least one conviction under 18 U.S.C. § 751 (Prisoners in custody of institution or officer).¹² Less than one percent (0.9%) had at least one conviction under 18 U.S.C. § 752 (Instigating or assisting escape).¹³

Individuals Included in This Study

Almost all (95.4%) individuals convicted of escape in the federal system were sentenced under §2P1.1 as the primary sentencing guideline.¹⁴ The remaining 4.6 percent (n=68) of individuals with escape convictions had a primary sentencing guideline other than §2P1.1 due to a conviction for an offense in addition to the escape. The largest

Figure 2. Role of Individuals Sentenced for an Escape Offense, Fiscal Years 2017–2021



proportion of the 68 individuals were sentenced for a firearms offense (§2K2.1; n=17) or robbery (§2B3.1; n=15).¹⁵ The remaining 36 individuals were sentenced under 12 other Chapter Two guidelines. The analyses in this report included all individuals who were convicted of an escape offense, regardless of the primary sentencing guideline.¹⁶

The overwhelming majority (98.0%) of individuals sentenced under §2P1.1 had escaped or attempted to escape. The remaining two percent (n=29) aided or abetted the escape of another person (Figure 2).¹⁷ The few individuals convicted of aiding or abetting were excluded from subsequent analyses to focus on the individuals who escaped rather than the individuals who help them. The following analyses contains 1,458 individuals sentenced for an escape offense from fiscal years 2017 through 2021.

Individual Characteristics

Individuals sentenced for an escape offense differed from the overall federal sentencing population in their race and ethnicity. Thirty-two percent were Black, 28.8 percent were White, and 28.3 percent were Hispanic.¹⁸ In comparison, Hispanic individuals comprised the majority (54.7%) of all other sentenced individuals and smaller proportions were White (20.8%) or Black (20.7%) (Table 1). In addition, almost all individuals sentenced for an escape offense were U.S. citizens (97.7%), compared to 58.0 percent of all other sentenced individuals.

Individuals sentenced for an escape offense also differed from the overall federal sentencing population in educational attainment. The highest level of educational attainment for the majority (53.7%) was high school completion. In comparison, the largest proportion (46.9%)

Table 1. Individual Characteristics, Fiscal Years 2017–2021

Characteristics	Individuals Sentenced for Escape	Other Federally Sentenced Individuals	Other Federally Sentenced U.S. Citizens
Race/Ethnicity			
White	28.8%	20.8%	34.2%
Black	32.0%	20.7%	34.3%
Hispanic	28.3%	54.7%	25.8%
Other	10.9%	3.8%	5.7%
Gender			
Male	92.0%	87.2%	82.5%
Female	8.0%	12.8%	17.5%
Education			
Less than High School	34.1%	46.9%	28.3%
High School Graduate	53.7%	30.8%	40.8%
Some College	11.2%	16.7%	23.4%
College Graduate	1.1%	5.7%	7.5%
Citizenship			
U.S. Citizen	97.7%	58.0%	100.0%
Non-U.S. Citizen	2.3%	42.0%	0.0%
Average Age	36	36	37

of all other sentenced individuals did not complete high school. However, a smaller proportion of individuals sentenced for escape attended college (12.3%) compared to all other sentenced individuals (22.4%).

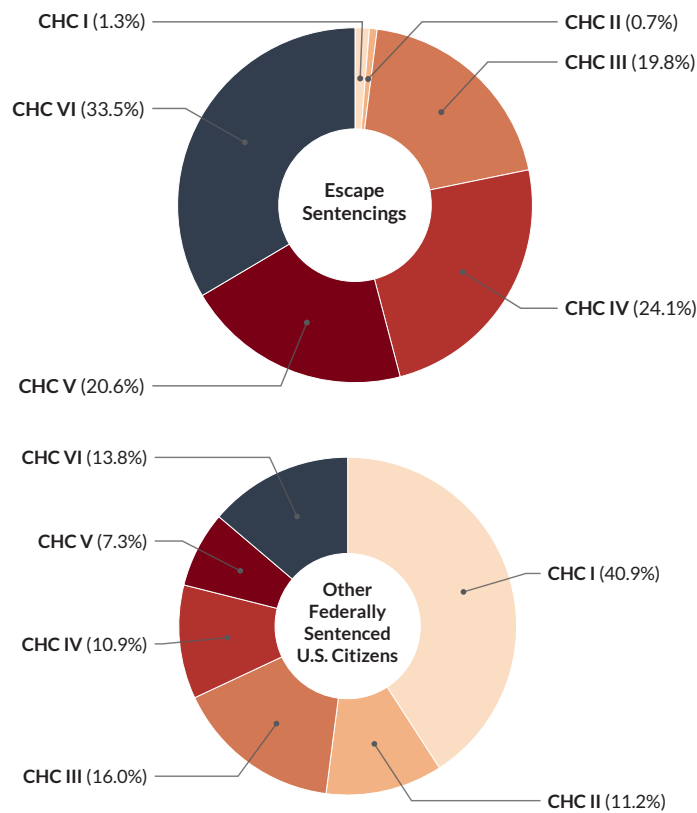
The two groups of individuals were similar in gender and age. Males comprised the majority of both individuals sentenced for an escape offense (92.0%) and all other sentenced individuals (87.2%). The average age for both groups was 36 years.

Some characteristics of individuals sentenced for an escape offense were more similar to those for other federally sentenced U.S. citizens. Table 1 provides information on these individuals.

Geographic Distribution

Individuals were sentenced for an escape offense in 87 of the 94 federal judicial districts from fiscal years 2017 through 2021. The five districts with the highest number were the Districts of Arizona (8.4%; n=123), Western Texas (6.7%; n=97), Southern Texas (6.2%; n=91), the District of Columbia (5.6%; n=81), and Kansas (4.0%; n=58). There were none in the Districts of Western Arkansas, Guam, Eastern Louisiana, Northern Mariana Islands, Northern Oklahoma, Eastern Oklahoma, or Vermont.

Figure 3. Criminal History Category, Fiscal Years 2017–2021



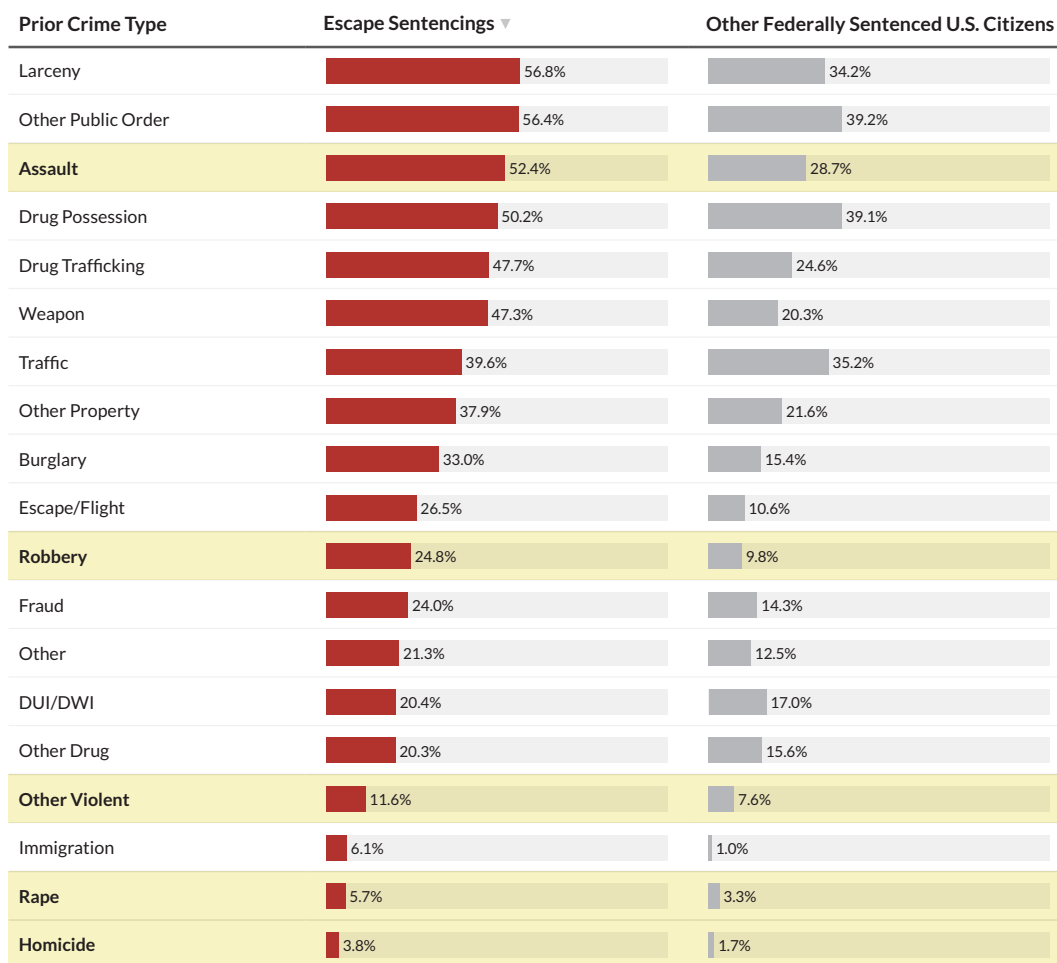
Criminal History

Individuals sentenced for an escape offense had serious criminal histories as measured by the overall number of criminal history points assigned. An individual’s criminal history score is based primarily on the type of sentence and length of any prior sentence of imprisonment, among other considerations.¹⁹ Courts assign one, two, or three criminal history points to qualifying prior sentences. Another provision, §4A1.1(d), added two points to the criminal history score of most individuals sentenced for an escape offense because they committed the escape offense while under another criminal justice sentence.²⁰ The total number of criminal history points determine an individual’s Criminal History Category (CHC), ranging from I to VI.²¹ The

number of criminal history points assigned to individuals sentenced for an escape offense ranged from zero to 42, with an average of eleven, which falls into CHC V.

Individuals sentenced for an escape offense had more extensive criminal histories than other federally sentenced individuals. More than half (54.1%) were assigned to the two most serious criminal history categories of CHC V (20.6%) and CHC VI (33.5%) (Figure 3).²² This is twice the rate (21.1%) of the remaining federally sentenced U.S. citizen population (7.3% in CHC V and 13.8% in CHC VI).²³ In contrast, more than half (52.1%) of remaining U.S. citizens were in the least serious criminal history categories of CHC I (40.9%) or CHC II (11.2%). In comparison, only two percent of individuals sentenced for an escape offense were in CHC I or II.

Figure 4. Prior Convictions, Fiscal Years 2017–2021



Yellow indicates violent prior conviction.
 Escape w/Violent Prior = 67.0%
 Other w/Violent Prior = 38.1%

Type of Criminal History

The extensive criminal histories of individuals sentenced for escape offenses often included violent prior convictions. Two-thirds (67.0%) had at least one prior conviction for a violent crime (Figure 4). That rate was substantially greater than the rate of prior violent convictions (38.1%) among remaining federally sentenced U.S. citizens.²⁴ They also had higher rates of conviction for each type of violent crime compared to remaining federally sentenced U.S. citizens. For example, more than half (52.4%) of individuals sentenced for

an escape offense had at least one prior conviction for assault, compared to 28.7 percent of remaining U.S. citizens. In addition, about one-quarter (24.8%) had a previous robbery conviction, more than twice the rate of remaining U.S. citizens (9.8%).

Individuals sentenced for an escape offense also had higher rates of prior convictions for all other types of crimes. More than half had at least one prior conviction for larceny (56.8%), other public order (56.4%), or drug possession (50.2%). In comparison, approximately one-third of

Figure 5. Original Crime Resulting in Custody, Fiscal Years 2017–2021

Crime Type	Percent ▼
Firearms	33.4%
Drug Trafficking	31.9%
Other	9.8%
Robbery	7.6%
Assault	5.3%
Immigration	4.7%
Prison Offenses	3.8%
Fraud	3.5%

remaining federally sentenced U.S. citizens had at least one prior conviction for each of the corresponding crimes (Figure 4). Notably, one-quarter (26.5%) of individuals sentenced for an escape offense had at least one prior conviction for escape, a rate two and one-half times greater than for other sentenced individuals (10.6%).²⁵

Original Federal Crime Type

Individuals sentenced for an escape offense were originally sentenced for a variety of offenses that resulted in their federal custody.²⁶ Two out of three were either originally in custody for a firearms offense (33.4%) or a drug trafficking offense (31.9%) (Figure 5).²⁷ Smaller proportions were in custody for the violent crimes of robbery (7.6%) and assault (5.3%). Across all crime types, nearly one in four (22.7%) were in custody for a supervised release revocation at the time of the instant escape.

Special Data Collection Project

The Commission undertook a special coding project to collect detailed information on conduct that is not available in the Commission’s annual datafiles.

Commission staff reviewed sentencing documents for the 1,458 individuals convicted of an escape offense during fiscal years 2017 through 2021.

The Commission collected information on use of force, the type of institution from which individuals escaped, the length of time at large, any criminal activity while at large, and the method of apprehension.

Table 2. Application of §2P1.1, Fiscal Years 2017–2021

§2P1.1 Application	Percent
Base Offense Level	
BOL 13 if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense	98.5%
BOL 8 otherwise	1.5%
Specific Offense Characteristics	
Used or threatened force against any person (+5 levels)	1.0%
Escaped from non-secure custody and voluntarily returned within 96 hours (-7 or -4 levels)	4.3%
Escaped from non-secure custody of a community corrections center, community treatment center, "halfway house," or similar facility (-4 or -2 levels)	69.0%
Law enforcement, correctional officer, or Department of Justice employee (+2 levels)	0.0%

Offense Characteristics

Application of Escape Guideline (§2P1.1)

As discussed previously, the escape guideline provides for alternate Base Offense Levels (BOLs) of 13 or 8. Nearly all individuals sentenced for an escape offense (98.5%) had the higher BOL of 13 applied because they were in custody for a felony arrest or conviction of any offense. Individuals with BOL of eight accounted for 1.5 percent (Table 2).

Aggravating conduct is rare among individuals sentenced for an escape offense, and therefore specific offense characteristics that increase penalties applied in a small proportion of cases (Table 2). During the study period, only 15 individuals (1.0%) had an offense level increase for the use or threat of force

against another person. The Commission's special data collection project indicated that nearly all (13 of the 15) individuals with the offense level increase used force against a person, while the remaining two individuals made threats. Ten of the 15 used or threatened to use force at the time of escape, as compared to at the time of apprehension. None of the individuals received an increase because they were a law enforcement or correctional officer or Department of Justice employee.

Most individuals sentenced for an escape offense received an offense level decrease for escaping from non-secure custody. More than two-thirds (69.0%) had an offense level decrease for escape from non-secure custody. A smaller proportion (4.3%) had an offense level decrease for escaping from non-secure custody *and* voluntarily returning within 96 hours.

Application of Reckless Endangerment During Flight (§3C1.2)

Chapter Three of the federal sentencing guidelines provides for offense level adjustments that can be applied regardless of the individual’s primary sentencing guideline. Relevant to this study is the provision in §3C1.2 (Reckless Endangerment During Flight) that provides for a 2-level increase “[i]f the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer.”²⁸ Only 1.2 percent (n=18) of individuals sentenced for an escape offense had an increase under §3C1.2, a rate comparable to all other sentenced individuals (1.1%).

Types and Security Levels of Institutions

As discussed above, the majority of individuals received a guideline reduction because they escaped from non-secure custody. However, under the sentencing guidelines, individuals who escape from non-secure custody do not receive the reduction if they commit a crime punishable by a term of imprisonment of one year or more while away from the facility.²⁹ To provide a more complete understanding of escape offenses, the Commission recorded the type of facility from which each individual escaped.³⁰ Most (89.0%) individuals escaped by leaving from or failing to report to a Residential Reentry Center (RRC; *i.e.*, a halfway house).³¹ Only 3.8 percent had been detained or incarcerated in a secure facility with perimeter fencing.³²

SPOTLIGHT ON RESIDENTIAL REENTRY ESCAPES

Residential reentry centers provide transitional housing for inmates preparing to return to the community.³³ They offer a variety of programs and services in structured environments.³⁴ RRCs are typically unsecured facilities, so inmates have a level of autonomy that is unavailable to inmates housed in secure facilities.

The Commission examined the timing of escapes for individuals in RRCs:

- Eight percent (n=104) of individuals assigned to a RRC failed to report.
- Of the individuals who escaped from an RRC, 11.8 percent did so within 15 days of arrival.
- Of the individuals who escaped from an RRC, nearly one-third (31.6%) did so within 16–60 days.
- A small proportion (3.4%) of individuals who escaped from the RRC did so within 15 days of their projected release date.³⁵
- The average time in custody at a RRC prior to escape was two months.

Figure 6. Security Level of Correctional Institution, Fiscal Years 2017–2021

Facility	Percent ▼
RRC/Halfway House	89.0%
BOP – Minimum Security Institution	5.6%
State/Local Jail	1.8%
During Arrest/Transport to Facility	1.2%
Other	1.0%
BOP – Medium Security Institution	0.5%
Medical Facility/Medical Furlough	0.5%
BOP – Low Security Institution	0.3%
BOP – High Security Institution	0.1%

Duration of Escape

The time individuals sentenced for an escape offense remained at large varied widely—from less than one day to 422 months (about 35 years).³⁶ The median duration of escape was one month. A small percentage (6.1%) of individuals were apprehended on the day they escaped. One-quarter (25.2%) were apprehended within one week of their escape. Nearly all (96.6%) were returned to custody within 36 months of escape (Figure 7).

Figure 7. Cumulative Percentage Duration of Escape, Fiscal Years 2017–2021

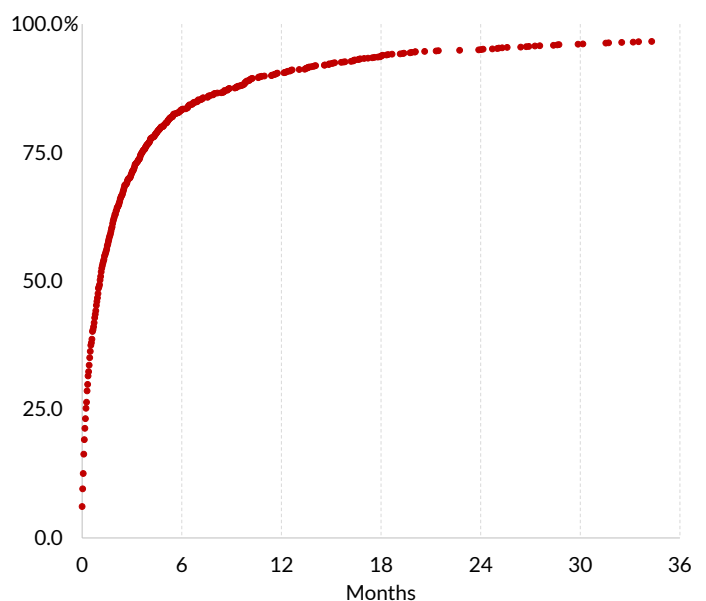


Figure 8. Means of Apprehension, Fiscal Years 2017-2021

Means of Apprehension	Percent ▼
Concerted effort by law enforcement	35.1%
Arrested for a new crime	22.2%
Individual self-surrendered	13.6%
Routine law enforcement activities	12.8%
Found coincidentally/non-crime related call for service	2.5%
Other	1.9%
Unable to determine	11.9%

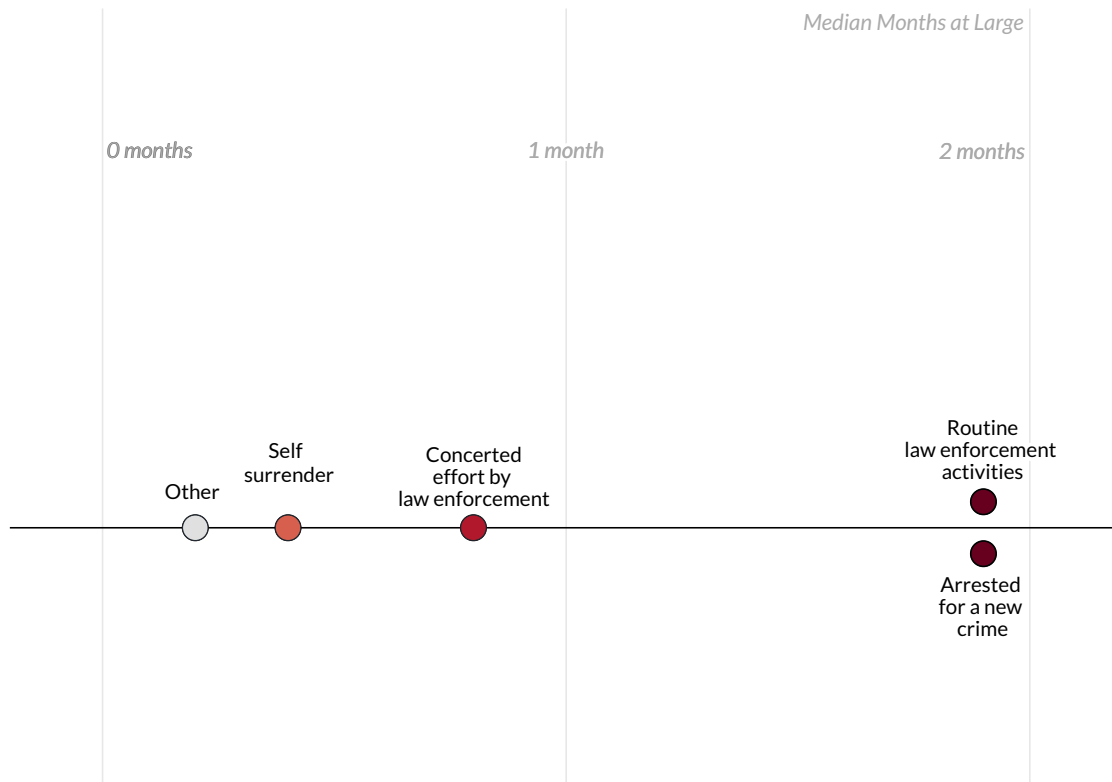
Apprehension

The majority of individuals sentenced for an escape offense were apprehended by law enforcement (Figure 8).³⁷ The largest proportion (35.1%) were apprehended following a concerted law enforcement effort to find the individual, such as a fugitive task force. An additional 22.2 percent were arrested for a new crime, at which time law enforcement discovered an escape warrant. Law enforcement discovered a smaller proportion of individuals through their routine professional activities, such as an unrelated traffic stop (12.8%).³⁸

Approximately one-in-seven (13.6%) individuals sentenced for an escape offense voluntarily returned to custody by self-surrendering. A small number of individuals were found coincidentally during a non-crime related call for service (e.g., a wellness check) (2.5%). The Commission was unable to determine how 11.9 percent were apprehended.

The duration of individuals' escape status varied based on their means of apprehension. Those individuals who were arrested for a new crime or apprehended during a routine law enforcement activity were at large for the longest amount of time. The median months at large for those two groups of individuals was approximately two months (Figure 9). The median time at large was less than one month for individuals apprehended through a concerted law enforcement effort. Self-surrendering individuals turned themselves in relatively quickly, with a median time of less than two weeks on escape status.

Figure 9. Median Months at Large by Means of Apprehension, Fiscal Years 2017–2021

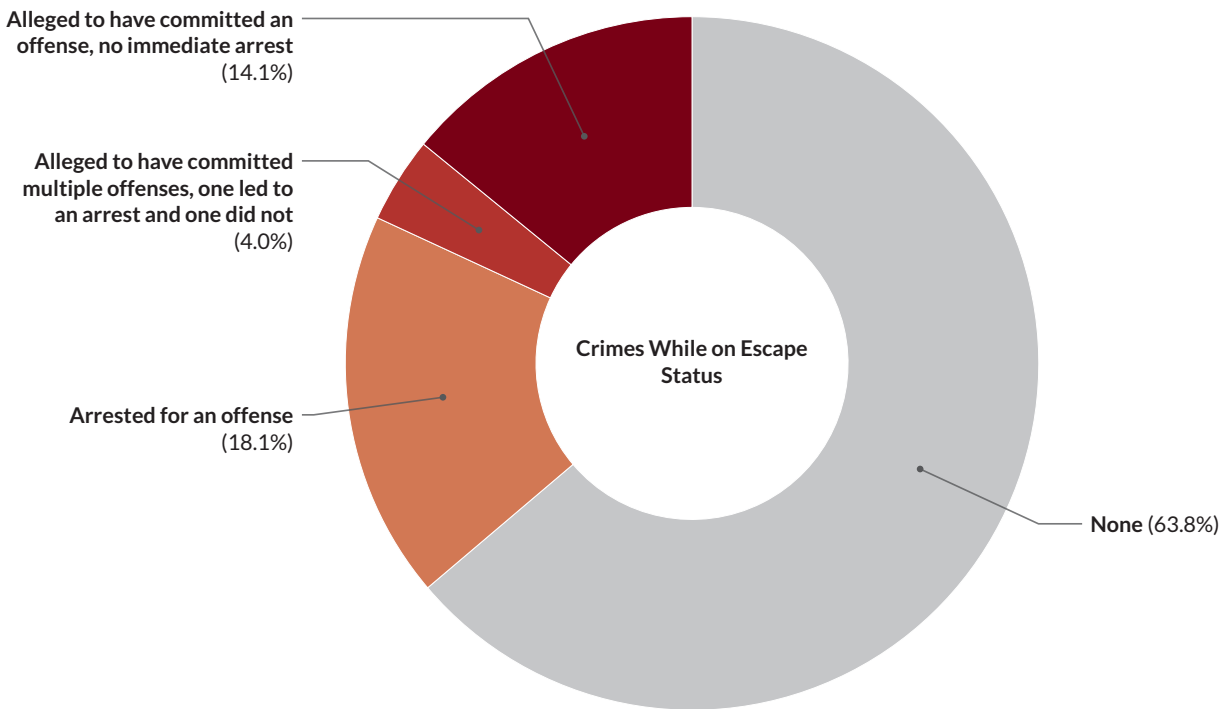


Criminal Behavior on Escape Status

The Commission assessed the criminal behavior of individuals while on escape status in two ways. As mentioned previously, the Commission identified whether the individual was arrested for an additional offense. Additionally, the Commission recorded whether the probation officer documented in the presentence report alleged criminal behavior on escape status that did not result in an arrest at the time of the crime. Information on the ultimate disposition of these alleged crimes was not available to the Commission.

A majority (63.8%) of individuals sentenced for an escape offense did not commit additional crimes while on escape status (Figure 10). However, more than one-third (36.2%; n=528) were either arrested for a crime or alleged to have committed another crime on escape status that was documented by the probation officer but did not result in arrest at the time of the crime. In one-fifth (20.8%; n=110) of these cases, the alleged crime was violent.

Figure 10. Crimes While on Escape Status, Fiscal Years 2017–2021



As discussed above, 22.2 percent (n=323) of individuals sentenced for an escape offense were apprehended during an arrest for a new offense. Of the 323 individuals, 70 were arrested for a violent offense (Figure 11).³⁹ Similar numbers of individuals were arrested for drug possession (n=77), other public order offenses (n=68), traffic offenses (n=63), and larceny (n=58). An additional 26 individuals were arrested for new escape-related offenses, such as attempting to evade arrest or attempting to elude a police vehicle.

Not all offenses committed by individuals on escape status resulted in an arrest at the time of the crime. Nearly one-fifth (18.1%; n=264) committed at least one offense while on escape status that did not result in an immediate arrest but was identified and detailed in the presentence report.⁴⁰ Of those 264 individuals, 52 committed a violent offense. Other frequent offenses included drug possession (n=94), weapon possession (n=47), and other public order offenses (n=40).

Figure 11. Crime Types While on Escape Status, Fiscal Years 2017–2021

Crime Type on Escape Status	Resulted in Immediate Arrest ▼	No Immediate Arrest
Drug Possession	23.8%	35.6%
Other Public Order	21.1%	15.2%
Traffic	19.5%	8.0%
Larceny	18.0%	6.8%
Assault	12.4%	12.9%
Weapon	10.5%	17.8%
Drug Trafficking	10.2%	5.7%
Other Property	9.9%	6.4%
Robbery	8.7%	6.4%
Escape/Flight	8.1%	4.6%
Burglary	4.0%	1.9%
Other Violent	3.7%	1.1%
DUI/DWI	3.4%	1.5%
Fraud	2.5%	1.9%
Other	1.6%	2.3%
Immigration	1.2%	6.8%
Other Drug	0.9%	0.0%
Homicide	0.9%	0.8%
Rape	0.0%	0.4%

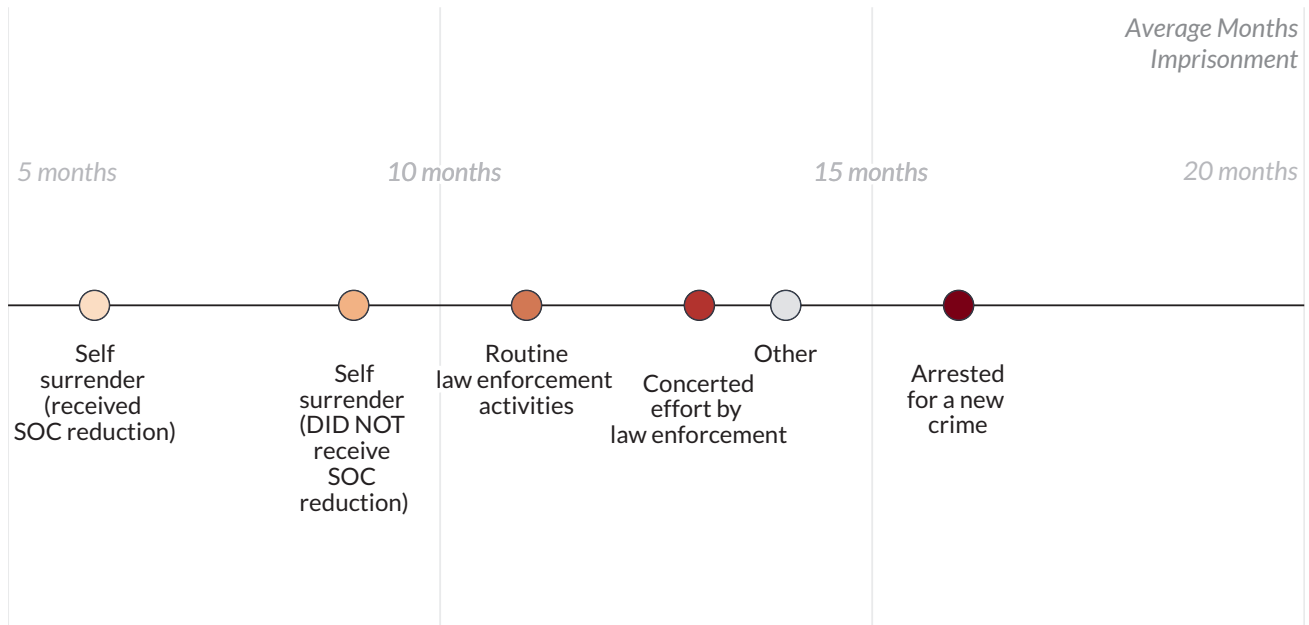
Yellow indicates violent crime type.
 Immediate Arrest w/Violent Crime = 21.6%
 No Immediate Arrest w/Violent Crime = 19.7%

Individuals sentenced for an escape offense were arrested for or otherwise alleged to have committed crimes that were consistent with their criminal histories. A majority (76.7%) of those who were alleged to have committed a new crime while at large had a prior conviction for the same offense type.

Sentencing Outcomes

Nearly all (99.2%) individuals sentenced under §2P1.1 received a term of imprisonment.⁴¹ The average length of imprisonment for these individuals was 12 months. Less than one percent (0.8%) were sentenced to a term of probation. The average term of probation was 39 months. The average final offense level for all §2P1.1 offenses was eight.⁴²

Figure 12. Average Months of Imprisonment by Method of Apprehension (§2P1.1 Offenses), Fiscal Years 2017–2021



Sentence Length

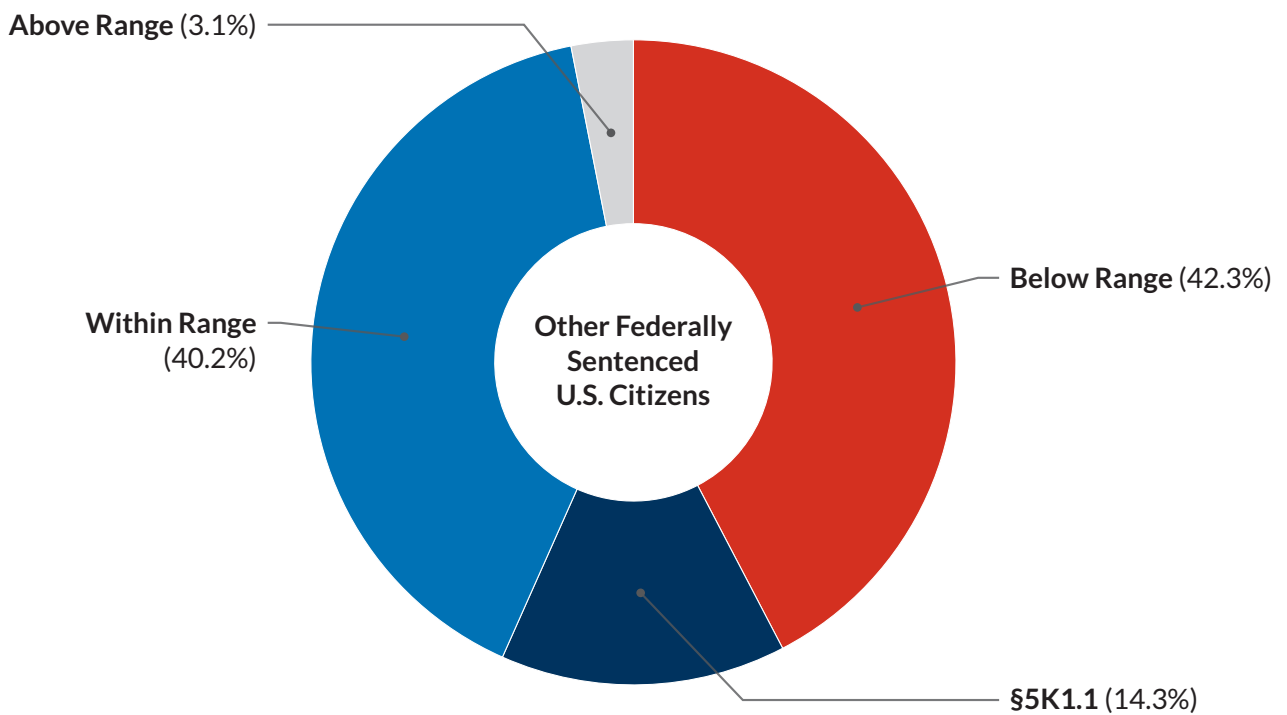
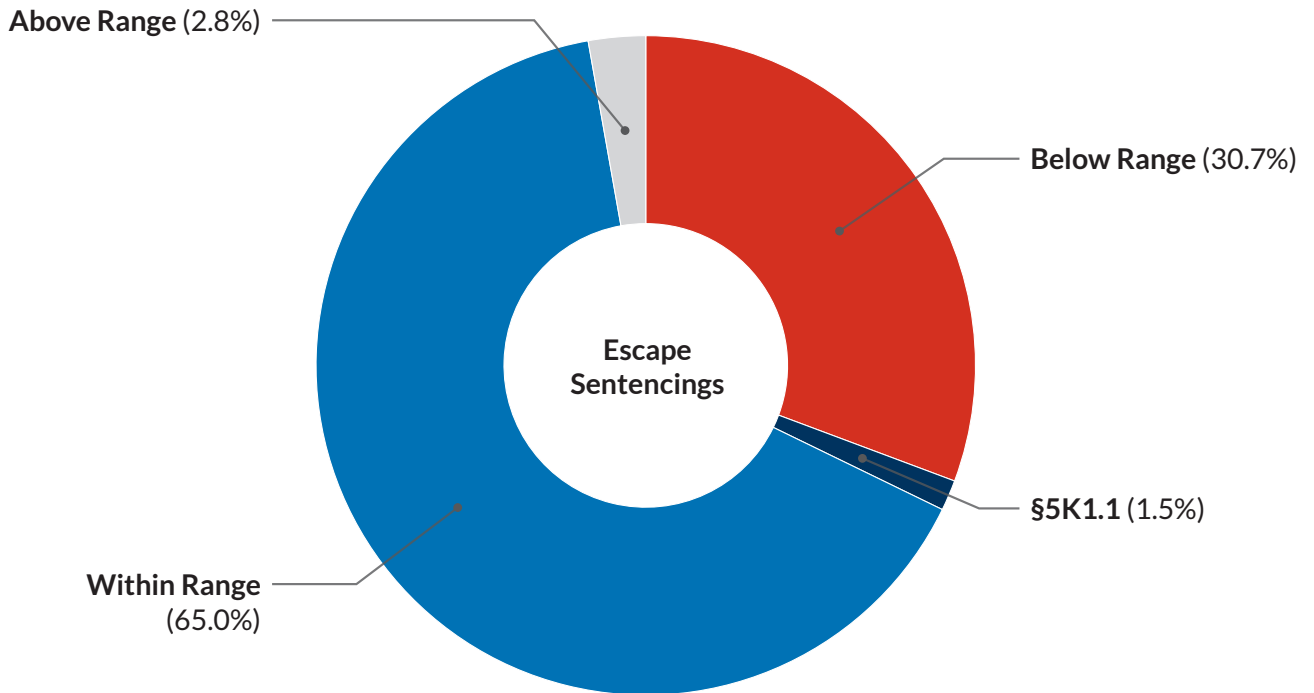
Sentences for escape offenses varied based on the method of apprehension.⁴³ Individuals sentenced for an escape offense who were arrested for a new crime had the longest average imprisonment sentence of 16 months (Figure 12). In comparison, the lowest average length of imprisonment was six months for individuals who met the criteria for a reduced base offense level for escaping from a RRC and turning themselves in within 96 hours.⁴⁴ The courts imposed an average imprisonment sentence of nine months on individuals who turned themselves in but were ineligible for the SOC level reduction.⁴⁵

Sentence Relative to the Guideline Range

Nearly two-thirds (65.0%) of individuals sentenced for an escape offense were sentenced within the guideline range between fiscal years 2017 and 2021 (Figure 13). In comparison, approximately forty percent (40.2%) of all other U.S. citizens sentenced during that period received a within range sentence. Conversely, fewer (30.7%) received a below range sentence, compared to all other sentenced U.S. citizens (42.3%).

The differing guideline application rates are partially attributable to differences in the rates of substantial assistance departures under §5K1.1 (Substantial Assistance to Authorities (Policy Statement)).⁴⁶ Less than two percent (1.5%) of individuals sentenced for an escape offense were granted a §5K1.1 departure, compared to 14.3 percent of all other U.S. citizens sentenced during that period.

Figure 13. Sentence Imposed Relative to the Guideline Range (§2P1.1 Offenses), Fiscal Years 2017–2021



Recidivism of Individuals Released in 2010



The Commission examined the rate at which individuals sentenced for an escape offense were rearrested upon completion of their sentences. The Commission previously released a series of recidivism reports examining a cohort of federally sentenced individuals released in 2010 with an eight-year follow-up period.⁴⁷ Using the data developed for that series of reports, this report augments the 2021 report, *Recidivism of Federal Offenders Released in 2010*,⁴⁸ by comparing individuals sentenced for an escape offense to those U.S. citizens sentenced for other offenses.

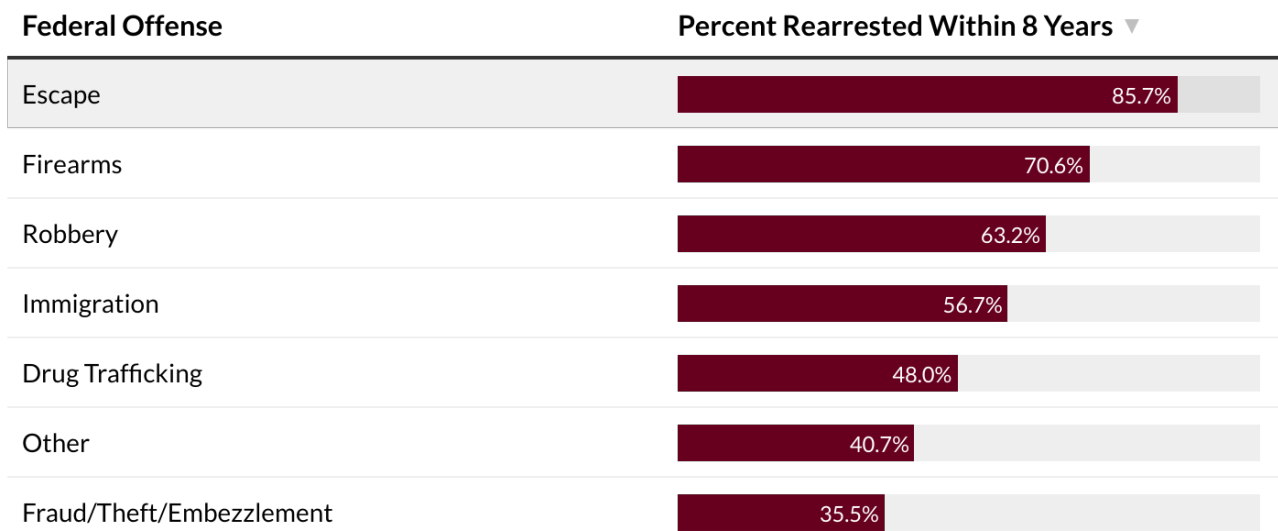
Methodology

In this report, the Commission repeats the methodology used in its previous recidivism reports.⁴⁹ Data in this section was obtained in cooperation with the Federal Bureau of Investigation (FBI), Federal Bureau of Prisons (BOP), and the Administrative Office of the United States Courts (AO). The BOP provided identifying information, release dates, and other pertinent information for the Commission to identify individuals released from prison. The AO provided identifying information, revocation information, and other pertinent information for individuals sentenced to probation. Through a data sharing agreement with the FBI's Criminal Justice Information Services Division,⁵⁰ the Commission processed state and federal criminal history records for the individuals in the study. The Commission combined these criminal records with data it routinely collects about individuals at the time of their original sentencing.

The final **2010 study cohort** comprised **32,135 individuals** who met the following criteria:

- United States citizens;
- Re-entered the community during 2010 after discharging their sentence of incarceration or by commencing a term of probation;
- Not reported dead, escaped, or detained;⁵¹
- Have valid FBI numbers located in criminal history repositories (in at least one state, the District of Columbia, or federal records).

Figure 14. Eight-Year Rearrest Rates of Federally Sentenced U.S. Citizens Released in 2010



This section provides an analysis of the 126 individuals originally sentenced under §2P1.1 and released from custody in 2010.⁵²

Recidivism Definition

Recidivism “refers to a person’s relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.”⁵³ Two measures are foundational to recidivism research: the type of event used to indicate a relapse into criminal behavior and the follow-up period. Consistent with the Commission’s prior research, this study uses rearrest as the measure of recidivism.⁵⁴ This study uses a follow-up period of eight years, in line with previous Commission reports.⁵⁵

Recidivism Findings

Individuals sentenced for an escape offense recidivated at a higher rate, more quickly, and for more serious offenses following their release into the community than other federally sentenced U.S. citizens. The large majority (85.7%) recidivated during the eight-year follow-up period compared to approximately one-half (49.2%) for all other individuals in the 2010 release cohort. Furthermore, as shown in Figure 14, the 85.7 percent recidivism rate for escape offenses was the highest of any offense type studied, with individuals sentenced for federal firearms (70.6%) and robbery (63.2%) offenses having the second and third highest, respectively.⁵⁶ Moreover, the recidivism rate for individuals originally sentenced for a federal escape offense was higher than individuals sentenced for federal violent offenses (63.8%).⁵⁷

Figure 15. Recidivism Event Type for Federally Sentenced U.S. Citizens Released in 2010

Rearrest Crime Type	Escape	Remaining 2010 Cohort
Assault	26.9%	20.7%
Administration of Justice	18.5%	15.5%
Larceny	11.1%	8.7%
Drug Trafficking	10.2%	11.3%
Drug Possession	5.6%	6.7%
Other Property	4.6%	2.4%
Robbery	4.6%	4.5%
Burglary	3.7%	2.7%
Other Drug	2.8%	4.8%
Fraud	2.8%	4.0%
Murder	2.8%	2.3%
DUI/DWI	1.9%	6.3%
Other Violent	1.9%	2.3%
Sexual Assault	1.9%	1.6%
Immigration	0.9%	0.9%
Other Unspecified	0.0%	1.7%
Public Order	0.0%	1.3%
Other Sex Offenses	0.0%	0.6%
Weapon	0.0%	1.9%

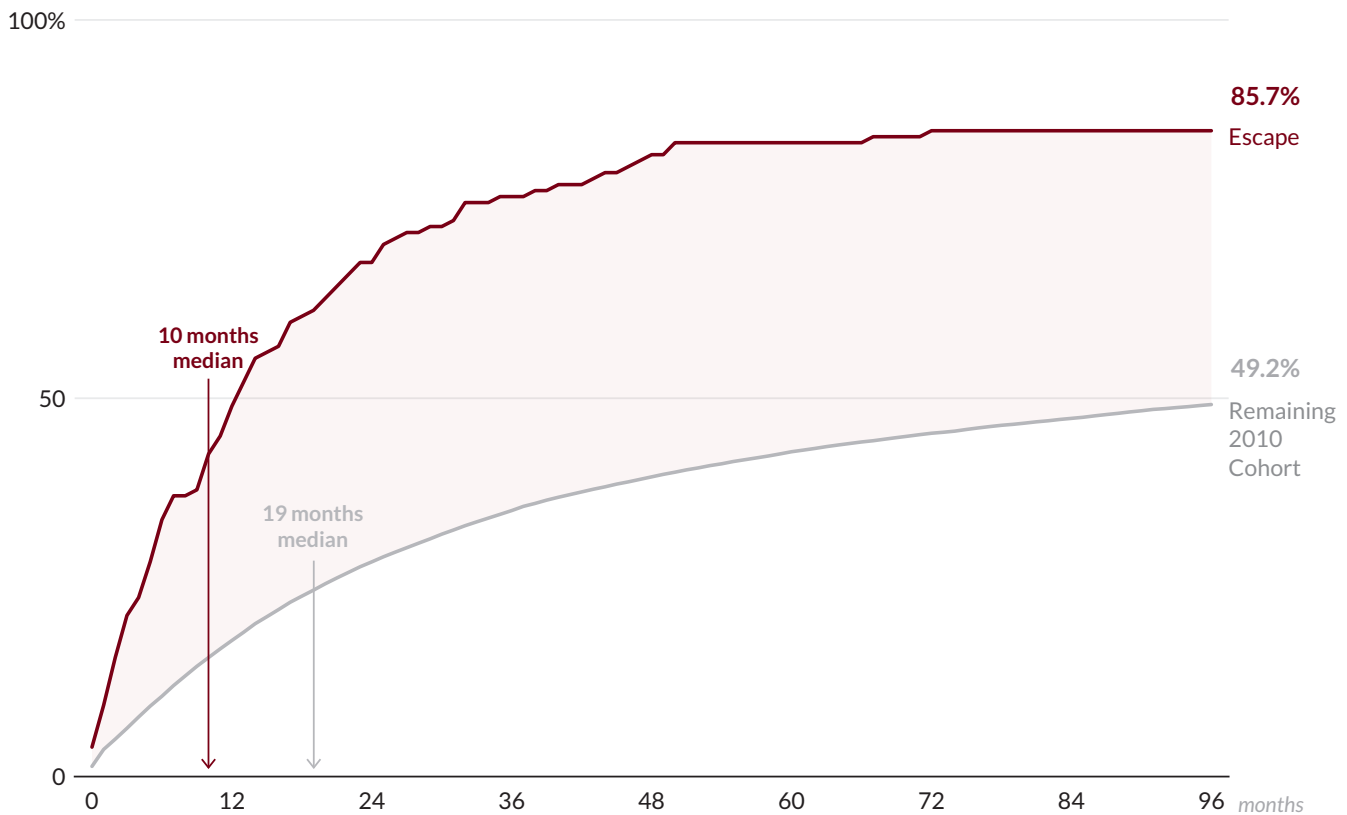
Yellow indicates violent rearrest.
 Escape w/Violent Rearrest = 38.0%
 Remaining 2010 Cohort w/Violent Rearrest = 31.4%

Recidivism Event Type

Individuals sentenced for an escape offense also had more serious recidivism events, compared to all other federally sentenced U.S. citizens.⁵⁸ More than one-third (38.0%) who recidivated were rearrested for a violent offense, compared to 31.4 percent of all other federally sentenced U.S. citizens released in 2010 (Figure 15). The largest proportion were rearrested for assault (26.9%), administration of justice offenses (18.5%), and larceny (11.1%).

In addition to having higher recidivism rates for more serious crimes, individuals sentenced for an escape offense also recidivated faster than other federally sentenced U.S. citizens. Their median time to rearrest was ten months compared to 19 months for all other federally sentenced U.S. citizens (Figure 16). Of those individuals who were rearrested, most (57.4%) recidivated within the first year after release.

Figure 16. Time to First Rearrest for Federally Sentenced U.S. Citizens Released in 2010



Conclusion

Consistent with the Commission's previous findings, the Commission in this study found that individuals sentenced for an escape offense rarely engaged in violence during their escape. However, in this study, the Commission provides important new information. A majority of individuals sentenced for an escape offense had serious and violent criminal histories. Also, while escape offenses typically did not involve the use of force or a weapon, many individuals sentenced for an escape offense were alleged to have committed another crime while on escape status. Additionally, the Commission found that these individuals recidivated at a higher rate, more quickly, and for more serious offenses than other federally sentenced individuals.

Endnotes

1 U.S. SENT'G COMM'N, REPORT ON FEDERAL ESCAPE OFFENSES IN FISCAL YEARS 2006 AND 2007 (2008). Commission materials cited herein are available on the Commission's website at www.usc.gov. This report was prompted by the Seventh Circuit's decision in *United States v. Chambers*, 473 F.3d 724 (7th Cir. 2007), *rev'd*, 555 U.S. 122 (2009). In *Chambers*, the Seventh Circuit considered whether the defendant's prior conviction for failure to report to a penal institution is a "violent felony" for purposes of 18 U.S.C. § 924(e), the Armed Career Criminal Act (the "ACCA"). Prior to 2015, the ACCA included a "residual clause" in the definition of "violent felony," which encompassed crimes that "otherwise involve[] conduct that presents a serious potential risk of physical injury to another." *Chambers*, 555 U.S. at 124 (citing 18 U.S.C. § 924(e)(2)(B)). In 2015, the Supreme Court in *Johnson v. United States* held that this clause (the "residual clause") in the definition of violent felony was unconstitutionally vague and it has been stricken by the Court. *Johnson v. United States*, 576 U.S. 591, 595–97 (2015).

2 The Commission collects and analyzes data on federal sentences to carry out its various statutory responsibilities. As authorized by Congress, the Commission's numerous research responsibilities include: (1) the establishment of a research and development program to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices; (2) the publication of data concerning the sentencing process; (3) the systematic collection and dissemination of information concerning sentences actually imposed and the relationship of such sentences to the sentencing factors in 18 U.S.C. § 3553(a); and (4) the systematic collection and dissemination of information regarding the effectiveness of sentences imposed. See 28 U.S.C. § 995(a)(12), (14)–(16). The Commission regularly collects information for every federal felony and Class A misdemeanor offense sentenced each year to carry out its various statutory responsibilities. 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.

3 In 2016, the Commission began collecting information on the number of convictions and the types of offenses in the criminal histories of federally sentenced individuals 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).

4 U.S. SENT'G COMM'N, *Guidelines Manual*, §2P1.1 (Nov. 2021) [hereinafter USSG].

5 USSG §2P1.1(a)(1).

6 USSG §2P1.1(a)(2).

7 USSG §2P1.1(b)(1), (b)(4).

8 USSG §2P1.1(b)(2).

9 USSG §2P1.1(b)(3).

10 USSG §2P1.1(b)(2), (b)(3).

11 The decrease in the number of individuals convicted of escape 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 individuals 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, FISCAL YEAR 2021, at 2 (2022).

12 18 U.S.C. § 751.

13 *Id.* § 752. A small number had convictions under one or more of the following statutes: 18 U.S.C. §§ 4 (Misprision of a felony), 1071 (Concealing person from arrest), 1072 (Concealing an escaped prisoner), 371 (Conspiracy), and 912 (False personation of an officer or employee of the United States). *See id.* §§ 4, 371, 912, 1071, 1072.

14 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* USSG Ch.3, Pt.D (providing rules to determine a single offense level encompassing all counts of conviction).

15 *See* USSG §§2K2.1, 2B3.1.

16 Individuals with primary guidelines other than §2P1.1 were excluded from later analyses on sentencing outcomes.

17 Fifteen of the 29 individuals who aided another’s escape were the intimate partners of the person who escaped. Twenty of the 29 aiders were female.

18 Cases were excluded from various analyses in this report due to missing information for the variables required for the relevant analyses. Of the 1,458, the Commission excluded ten due to missing information on race, seven due to missing information on citizenship, and 25 due to missing information on education.

19 *See* USSG Ch.4. Other considerations include the type of offense (certain minor offenses are excluded from the criminal history score) and the length of time between the prior sentence and the instant federal offense. The guidelines exclude certain prior convictions based on factors such as the type of offense (e.g., fish and game violations), disposition (e.g., diversionary dispositions without a finding of guilt), or remoteness of the conviction. *See* USSG §4A1.2.

20 USSG §4A1.1(d). Almost all (94.9%) had status points assigned to their criminal history score. Two points are added if the defendant committed any part of the instant offense (*i.e.*, any relevant conduct) while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. *See id.* “Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence.” USSG §4A1.1, comment. (n.4) (citing USSG §4A1.2(n)). “For the purposes of this subsection, a ‘criminal justice sentence’ means a sentence countable under §4A1.2 (Definitions and Instructions for Computing Criminal History) having a custodial or supervisory component, although active supervision is not required for this subsection to apply.” USSG §4A1.1, comment. (n.4).

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

22 A total of five had enhanced penalties under the guidelines based on their criminal history. Four individuals (0.3%) were sentenced as career offenders pursuant to §4B1.1, and one individual (0.1%) was sentenced as an armed career criminal pursuant to §4B1.4. *See* USSG §§4B1.1, 4B1.4.

23 As provided in Table 1, almost all are U.S. citizens (97.7%). Non-citizens generally have lower criminal history categories because sentences resulting from foreign convictions are not counted under the guidelines pursuant to subsection (h) of §4A1.2. *See* USSG §4A1.2(h). To provide a more relevant comparison, the criminal history analyses in this report are limited to U.S. citizens in the overall federal sentencing population.

24 Figure 4 shows individuals with at least one prior conviction in each specified category. Therefore, individuals who had convictions for more than one type of offense are represented in each relevant offense category. As such, the percentages shown do not sum to 100%.

25 The escape category includes crimes such as escape, flight, attempting to evade arrest, and attempting to elude a police vehicle.

26 The Commission used the prior primary sentencing guideline under which the individual was sentenced. Of the 1,458 individuals, 129 were excluded in this calculation because this information was unavailable.

27 Of the 1,329 with a primary sentencing guideline for the prior offense, 43 (3.2%) were in custody for a prior escape offense at the time of the instant escape.

28 USSG §3C1.2.

29 See *supra* notes 8–10 and accompanying text.

30 Some individuals escaped prior to being detained or incarcerated in a facility.

31 The large proportion of escapes from RRCs clarifies the predominance of U.S. citizens. See *supra* Table 1. Federal Bureau of Prison (BOP) policy prohibits deportable aliens from non-secure custody, specifying that non-U.S. citizen inmates “shall be housed in at least a low security level institution.” BOP Program Statement 5100.08, Inmate Security Designation and Custody Classification 9 (Sept. 12, 2006).

32 The Commission recorded if individuals who escaped from somewhere other than an RRC had to contend with secured perimeter fencing to escape.

33 ADMIN. OFF. OF THE U.S. CTS., RESIDENTIAL REENTRY CENTERS: REFERENCE GUIDE 5 (2020).

34 *Id.*

35 The Commission calculated projected release dates from information provided in the presentence report (PSR). Of the individuals who escaped from an RRC, the PSR did not include dates required for the calculation for 8.0% (n=104) individuals.

36 The Commission calculated time on escape status from information provided in the PSR. The time on escape status is the time between the date of escape and the date of apprehension; it does not measure when a warrant for escape was issued. Of the 1,458 individuals, 15 were excluded due to missing dates required for the calculation.

37 Nine percent (9.1%) attempted to evade detection by providing law enforcement a false name.

38 “Routine law enforcement activities” were defined as activities done through the course of daily professional law enforcement. The particular purpose of these professional activities was not to find that specific escaped individual (e.g., checking passengers’ identification during a traffic stop or observing an individual running from a police vehicle during a routine patrol).

39 Figure 11 shows individuals who committed at least one offense in each specified category. Therefore, individuals who committed more than one type of offense are represented in each relevant offense category. As such, the percentages shown do not sum to 100%.

40 Presentence investigation reports submitted to the Commission as part of its routine data collection activities indicated that 59 individuals who were arrested for a new offense also were alleged to have committed an additional offense while on escape status.

41 Individuals sentenced under a primary guideline other than §2P1.1 were excluded from the analyses in this section.

42 Almost all (98.6%) were granted a reduction for acceptance of responsibility. See USSG §3E1.1 (defining acceptance of responsibility).

43 Individuals sentenced to probation were excluded from this analysis.

44 See USSG §2P1.1(b)(2).

45 None of the individuals sentenced to a term of probation turned themselves in to law enforcement.

46 USSG §5K1.1.

47 See RYAN COTTER, U.S. SENT'G COMM'N, LENGTH OF INCARCERATION AND RECIDIVISM 2, 44 nn.6–8 (2022) (listing the Commission's series of recidivism reports on the cohort of federally sentenced individuals released in 2010).

48 RYAN COTTER, COURTNEY SEMISCH & DAVID RUTTER, U.S. SENT'G COMM'N, RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010 (2021) [hereinafter 2021 RECIDIVISM REPORT].

49 See *id.* at app. A, at 40.

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

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

52 There were 126 individuals sentenced under §2P1.1 as the primary sentencing guideline. There were 11 additional individuals with a §2P1.1 guideline calculation but were sentenced under another primary guideline.

53 Nat'l Inst. of Just., U.S. Dep't of Just., *Recidivism*, <https://nij.ojp.gov/topics/corrections/recidivism> (last visited May 4, 2023); see also MICHAEL D. MALTZ, RECIDIVISM 1, 54 (2001).

54 See 2021 RECIDIVISM REPORT, *supra* note 48, at 6.

55 *Id.* at 7.

56 The “other” crime category is 1.2% lower than in the 2021 *Recidivism Report*. See *id.* at 32. Individuals sentenced for an escape offense were categorized as “other” in that report.

57 See COURTNEY R. SEMISCH, CASSANDRA SYCKES & LANDYN ROOKARD, U.S. SENT'G COMM'N, RECIDIVISM OF FEDERAL VIOLENT OFFENDERS RELEASED IN 2010, at 42 (2022).

58 The Commission ranked each recidivism event by severity to analyze the most serious offense committed by individuals in the study. See 2021 RECIDIVISM REPORT, *supra* note 48, at 42 tbl.A (providing the rearrest offense categories and corresponding charges). Accordingly, the data should not be interpreted to represent the overall frequency of the listed offense among arrests. The categories may not sum to 100% due to rounding.



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