



Public Data Presentation for Proposed Criminal History Amendment

January 2023

Narrated by

Cassandra Syckes

Research Associate

Office of Research and Data



Presentation Overview

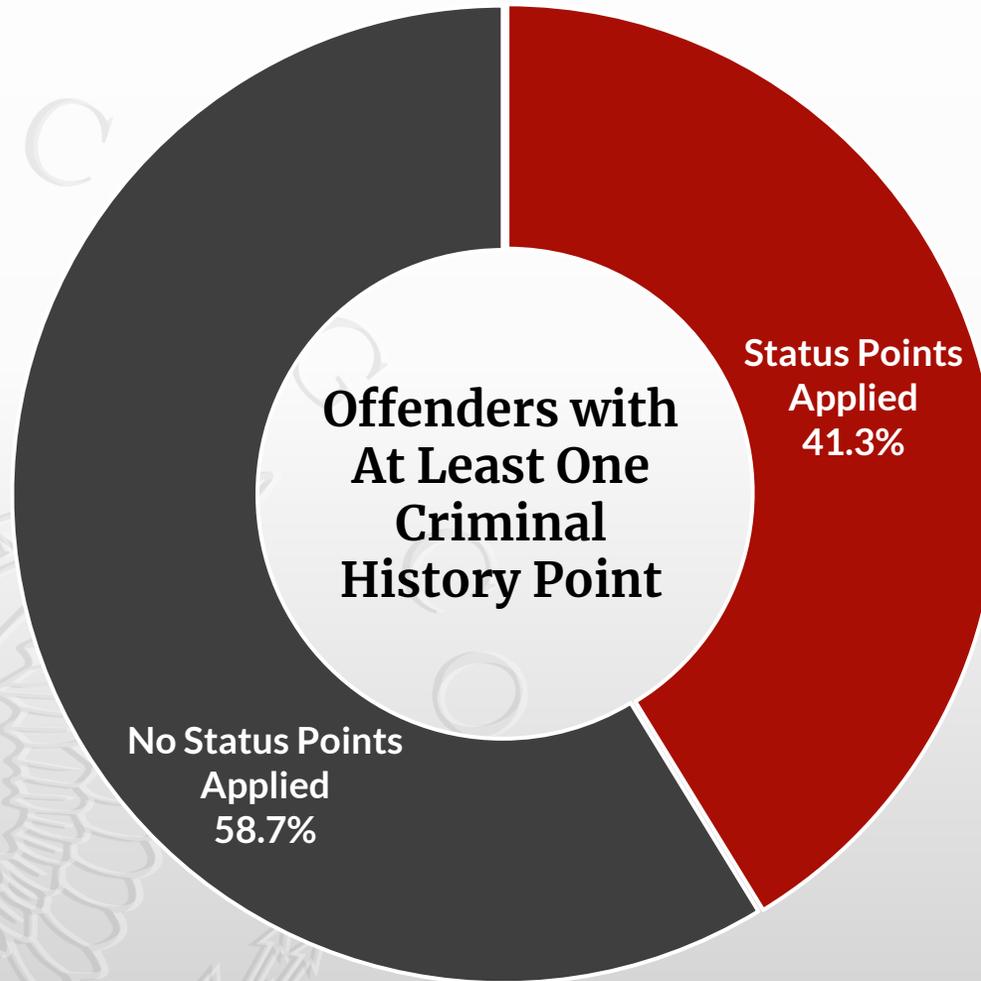
- **Proposed Criminal History Amendment**
 - Part A: “Status points” under subsection (d) of §4A1.1 (Criminal History Category)
 - Part B: Offenders with zero criminal history points including amended commentary on 28 U.S.C. § 994(j)
 - Part C: Simple possession of marihuana offenses



Part A: Status Points

Prevalence of Status Points

Fiscal Year 2021





Part A: Status Points

Proposed Amendment

Status Points Guideline

4A1.1 Criminal History

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

Status Points Proposed Amendment

Option 1

4A1.1 Criminal History

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

Accompanying Departure Provision in §4A1.1

Provides that a departure may be warranted in cases in which adding a point under §4A1.1(d) results in a Criminal History Category that substantially overrepresents the seriousness of the defendant's criminal history.

Status Points Proposed Amendment

Option 2

4A1.1 Criminal History

(d) Add **1** point if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

Accompanying Departure Provision in §4A1.1

Provides that a departure may be warranted in cases in which adding a point under §4A1.1(d) results in a Criminal History Category that substantially overrepresents or underrepresents the seriousness of the defendant's criminal history.

Status Points Proposed Amendment

Option 3

4A1.1 Criminal History

~~(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.~~

Adds Example of Upward Departure Provision in §4A1.3

The defendant committed the instant offense (*i.e.*, any relevant conduct to the instant offense under §1B1.3 (Relevant Conduct)) while under any criminal justice sentence having a custodial or supervisory component (including probation, parole, supervised release, imprisonment, work release, or escape status).

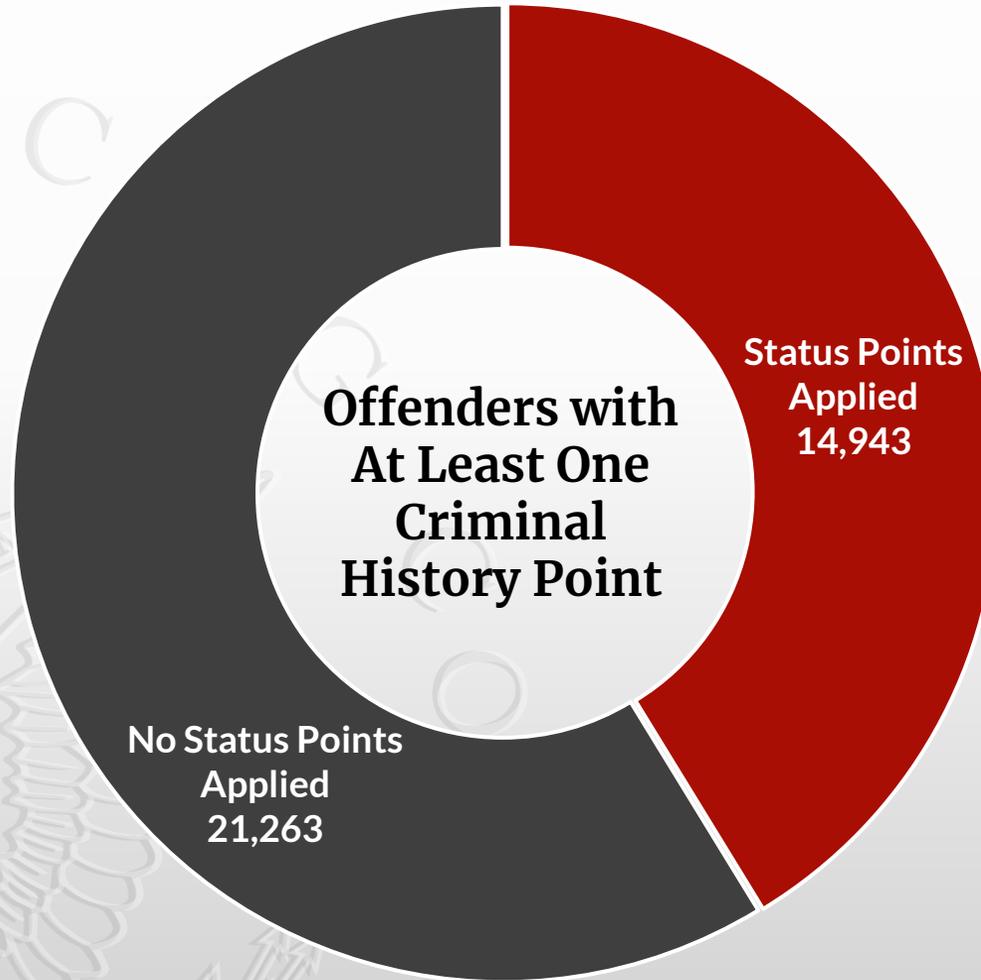


Part A: Status Points

Impact of Options

Prevalence of Status Points

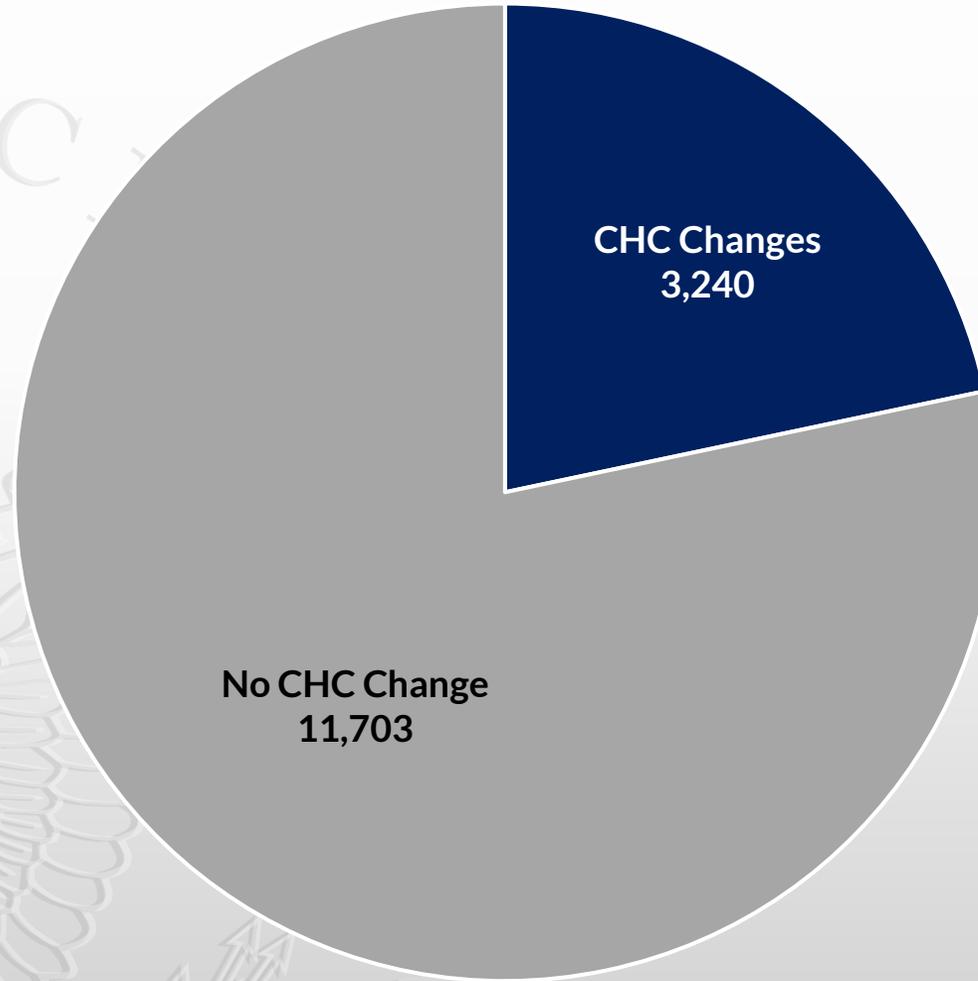
Fiscal Year 2021



Impact of Status Points on Criminal History Category

Fiscal Year 2021

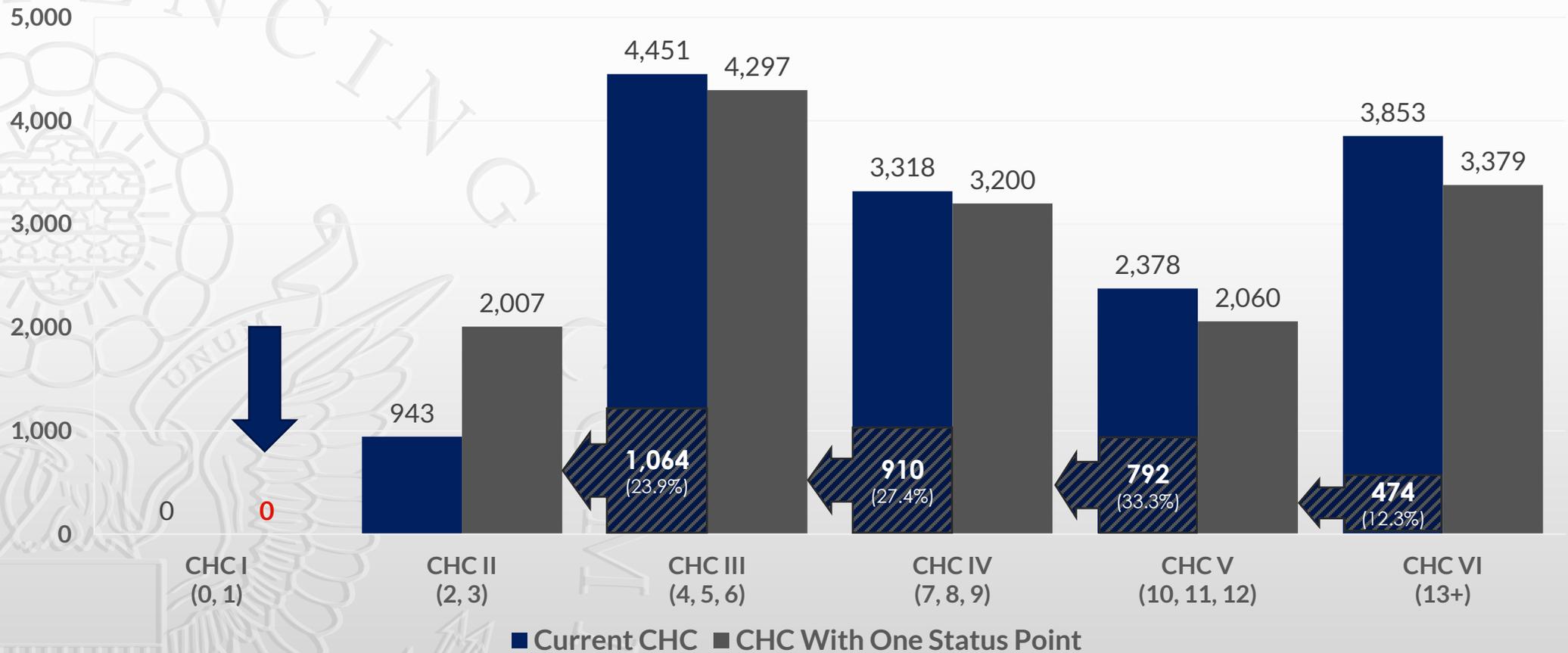
Option 2



Criminal History Category Movement Of Offenders Receiving Status Points

Fiscal Year 2021

Option 2



SOURCE: United States Sentencing Commission's FY2021 Datafile, USSCFY21.

Demographics of Offenders Receiving Status Points by Change in Criminal History Category

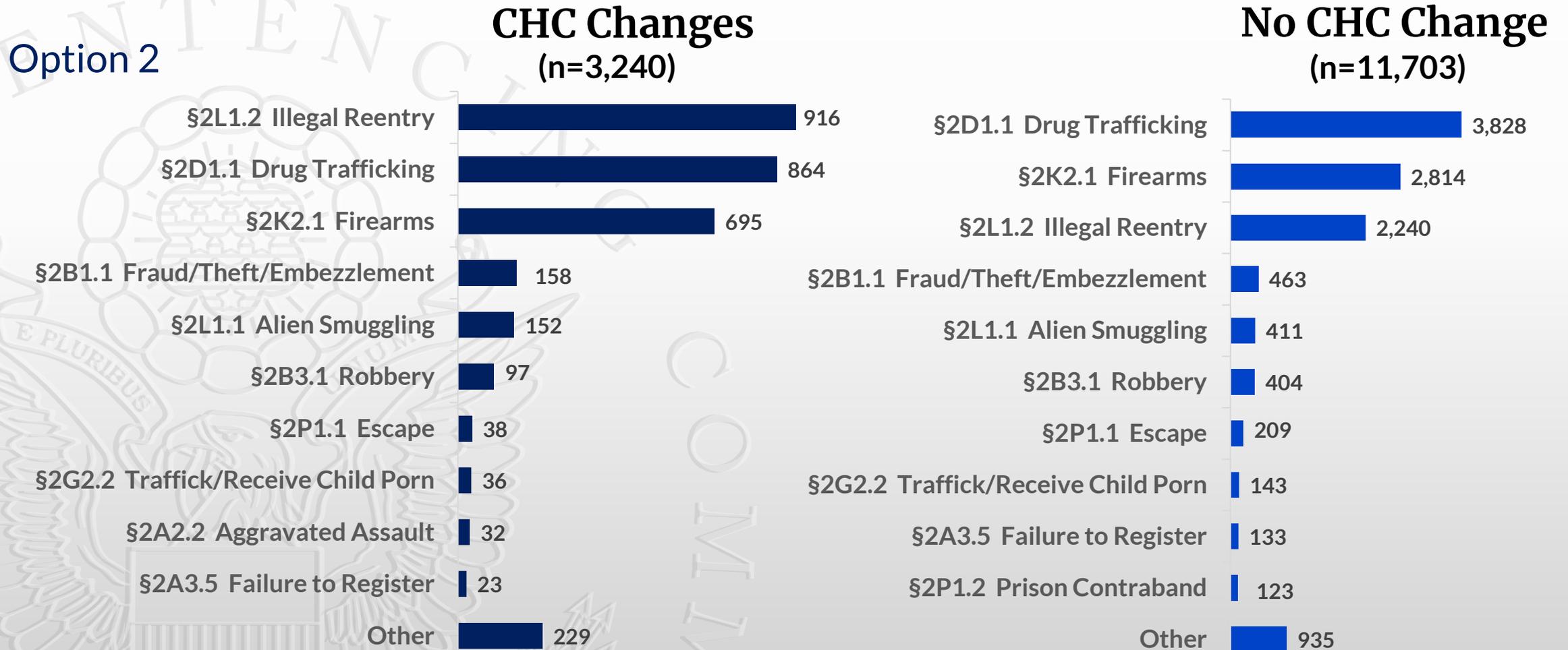
Fiscal Year 2021

Option 2

Demographic Characteristics	Status Points Offenders (n=14,943)	CHC Changes (n=3,240)	No CHC Change (n=11,703)
Gender			
Male	91.8%	90.6%	92.1%
Female	8.2%	9.4%	7.9%
Citizenship			
U.S. Citizen	76.0%	68.1%	78.2%
Non-U.S. Citizen	24.0%	31.9%	21.8%
Race/Ethnicity			
White	23.9%	19.4%	25.2%
Black	33.9%	30.6%	34.8%
Hispanic	38.5%	46.1%	36.4%
Other	3.7%	3.9%	3.7%
Education			
Less than High School	43.1%	50.0%	41.1%
High School Graduate	40.7%	35.2%	42.3%
Some College	14.6%	13.3%	15.0%
College Graduate	1.6%	1.6%	1.7%
Age at Sentencing			
Average	36 years	34 years	36 years

Most Commonly Applied Guidelines of Offenders Receiving Status Points

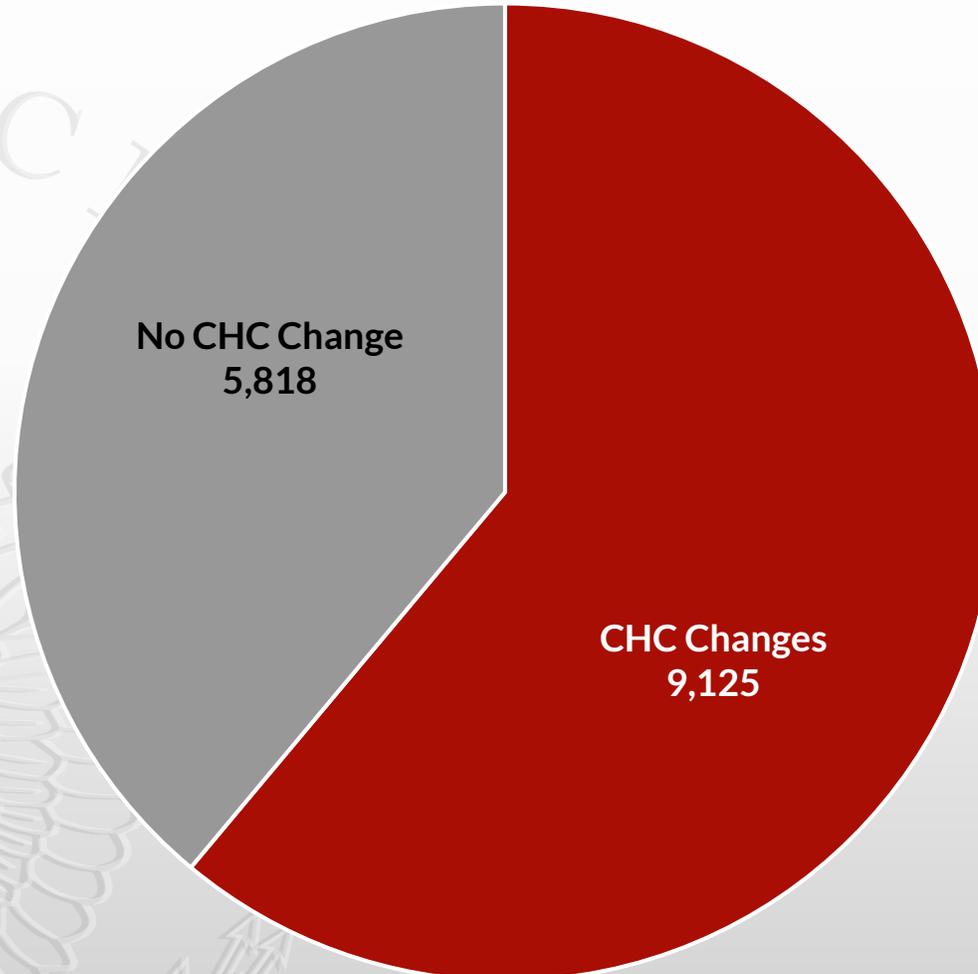
Fiscal Year 2021



Impact of Status Points on Criminal History Category

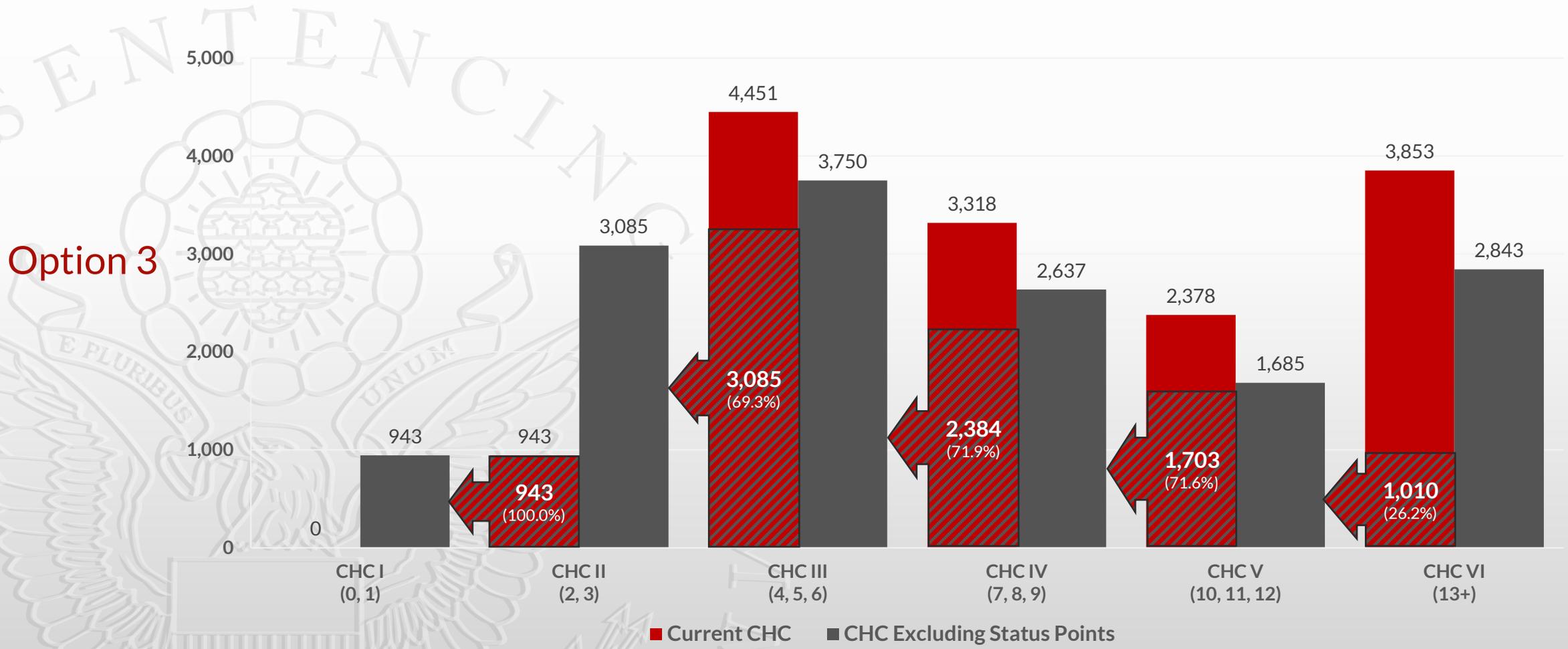
Fiscal Year 2021

Option 3



Criminal History Category Movement of Offenders Receiving Status Points

Fiscal Year 2021



SOURCE: United States Sentencing Commission's FY2021 Datafile, USSCFY21.

Demographics of Offenders Receiving Status Points by Change in Criminal History Category

Fiscal Year 2021

Option 3

Demographic Characteristics	Status Points Offenders (n=14,943)	CHC Changes (n=9,125)	No CHC Change (n=5,818)
Gender			
Male	91.8%	91.0%	93.0%
Female	8.2%	9.0%	7.0%
Citizenship			
U.S. Citizen	76.0%	70.2%	85.1%
Non-U.S. Citizen	24.0%	29.8%	14.9%
Race/Ethnicity			
White	23.9%	20.4%	29.3%
Black	33.9%	30.6%	39.0%
Hispanic	38.5%	45.2%	27.9%
Other	3.7%	3.8%	3.7%
Education			
Less than High School	43.1%	46.9%	37.1%
High School Graduate	40.7%	36.6%	47.1%
Some College	14.6%	14.6%	14.6%
College Graduate	1.6%	1.9%	1.3%
Age at Sentencing			
Average	36 years	35 years	36 years

Most Commonly Applied Guidelines of Offenders Receiving Status Points

Fiscal Year 2021

Option 3

CHC Changes
(n=9,125)

No CHC Change
(n=5,818)



Impact of Status Points Amendment

Summary

Option 1	<i>Departure Provision Only</i>	14,943 Departure Eligible Offenders
Option 2	<i>Reduce Status Points to 1 Add Departure Provision</i>	3,240 Offenders in Fiscal Year 2021 14,943 Eligible Offenders
Option 3	<i>Eliminate Status Points Add Departure Provision</i>	9,125 Offenders in Fiscal Year 2021 14,943 Eligible Offenders

Further Resources

§4A1.1(d). Two points are added if the defendant committed any part of the instant offense (i.e., any relevant conduct) while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence. See §4A1.2(n). For the purposes of this provision, a “**criminal justice sentence**” means any sentence under §4A1.2 (Definitions and Criminal History) having a custodial or supervisory component, although active supervision is not required to apply. For example, a term of unsupervised imprisonment to be included; but a sentence to pay a fine or to perform community service is not included. A defendant who commits a violation of a probation or supervised release condition warranting revocation is not to be treated as having been under a criminal justice sentence for purposes of this provision if that sentence is otherwise terminated or expired.



Revisiting Status Points

United States Sentencing Commission

June 2022



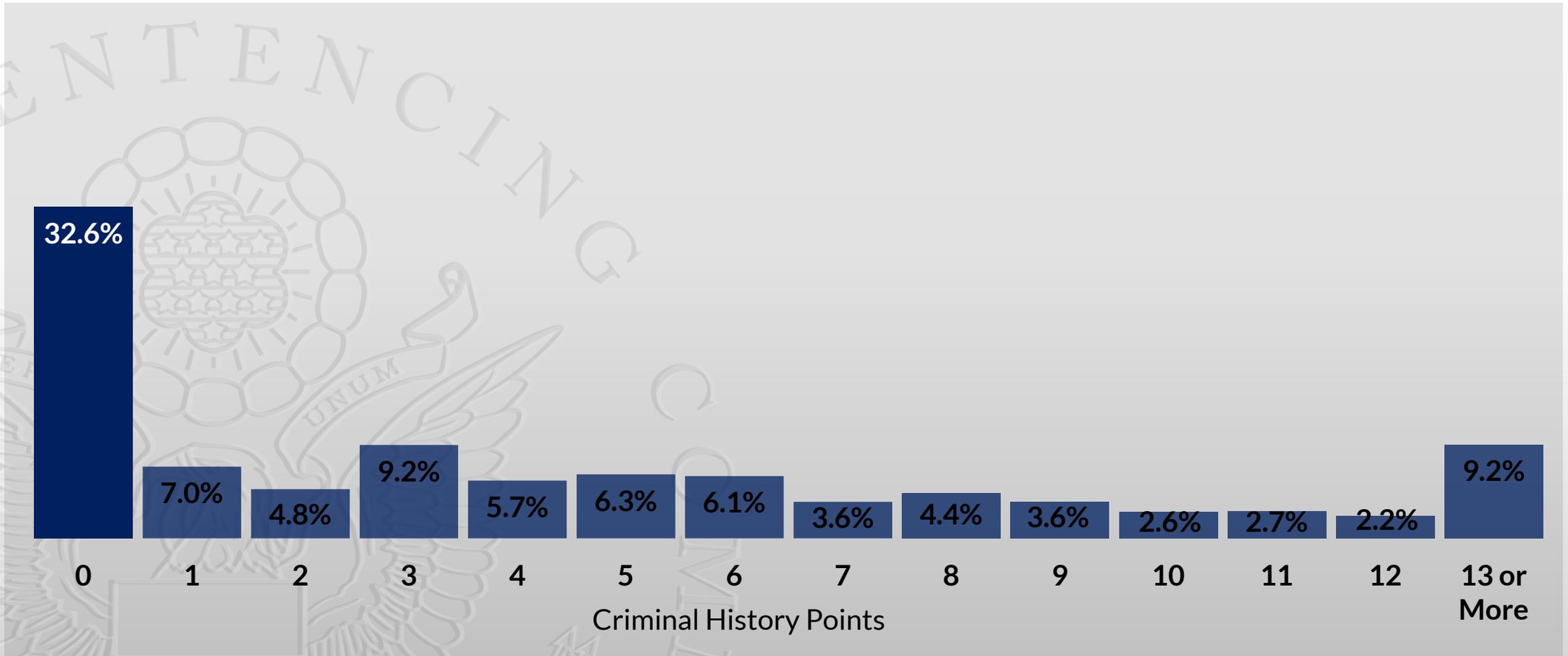
For more information on status points and offenders receiving status points, please see Revisiting Status Points at [ussc.gov](https://www.ussc.gov)



Part B: Zero-Point Offenders

Prevalence of Zero-Point Offenders

Fiscal Year 2021



SOURCE: United States Sentencing Commission's FY2021 Datafile, USSCFY21.

Recidivism of Federal Offenders Released in 2010

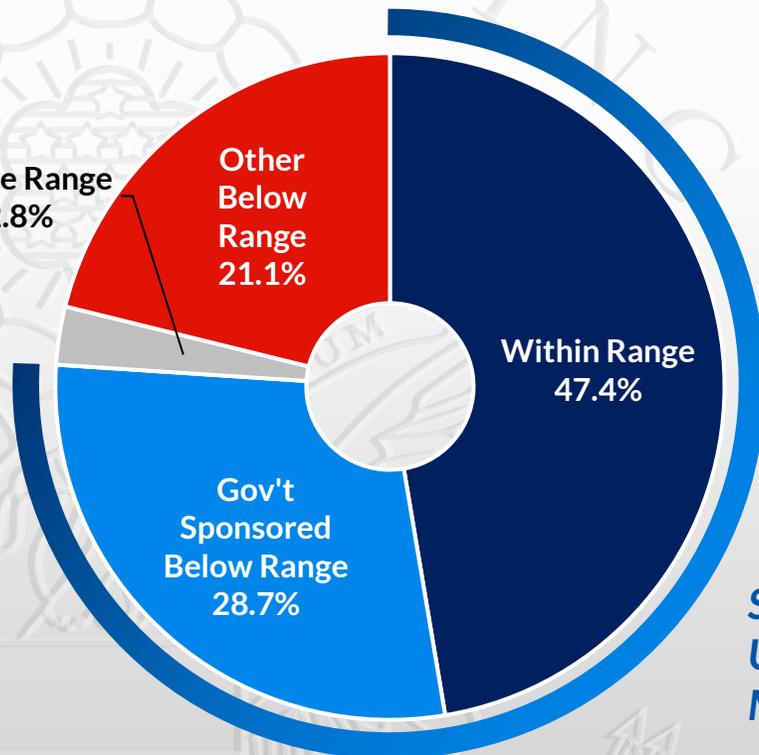


SOURCE: United States Sentencing Commission Recidivism of Federal Offenders Released in 2010 report.

Sentence Relative to the Guideline Range for Criminal History Category I Offenders

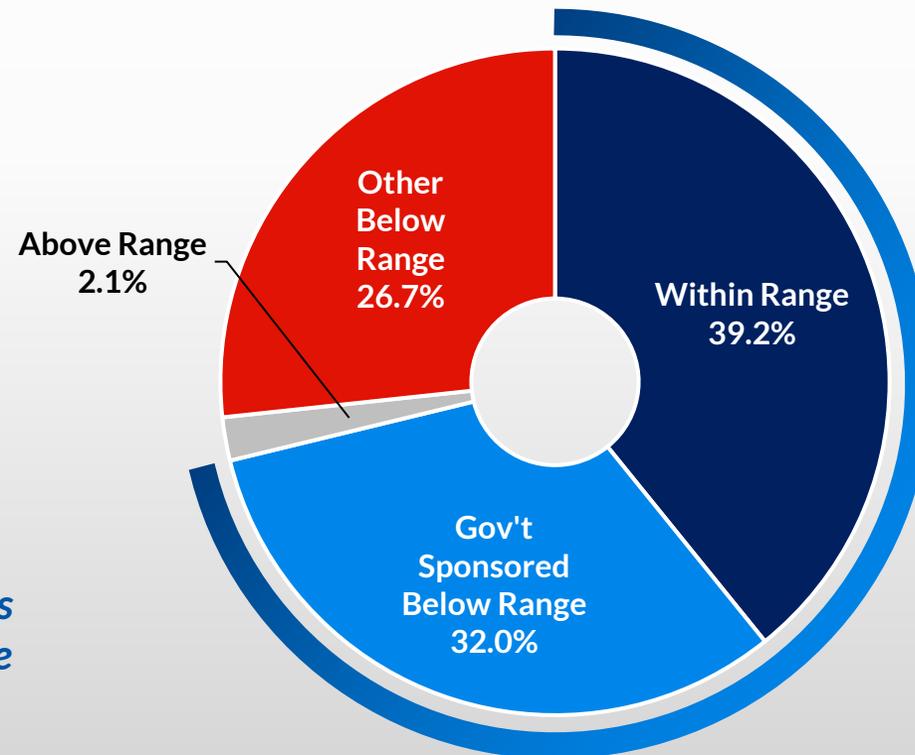
Fiscal Year 2021

One Point



Sentences Under the Manual

Zero Points



Sentences Under the Manual



Part B: Zero-Point Offenders

Proposed Amendment

Zero-Point Offenders Proposed Amendment

All Zero-Point Offenders or Offenders With No Convictions

4C1.1 Adjustment for Certain Zero Point Offenders

Option 1

(a)(1) the defendant did not receive any criminal history points from Chapter Four, Part A, *and had no prior convictions or other comparable judicial dispositions of any kind*

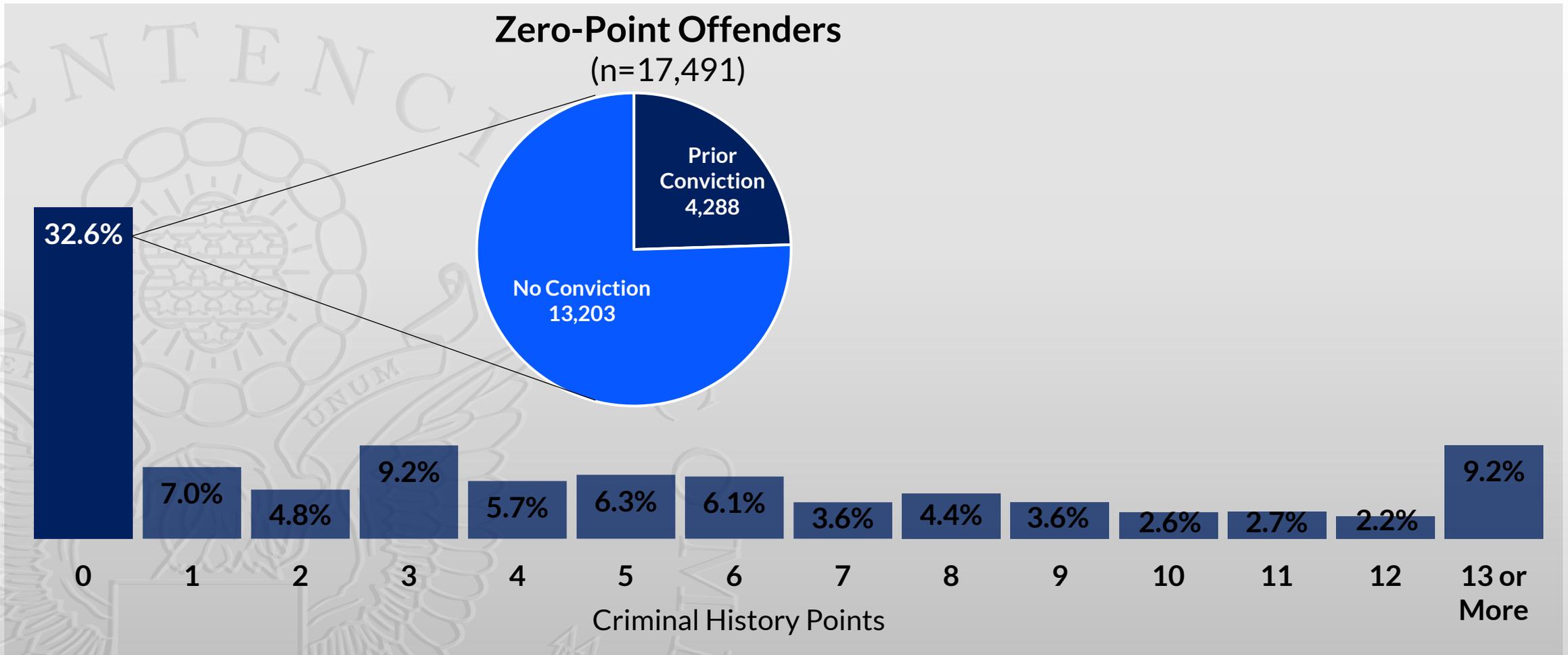
4C1.1 Adjustment for Certain Zero Point Offenders

Option 2

(a)(1) the defendant did not receive any criminal history points from Chapter Four, Part A

Prevalence of Zero-Point Offenders

Fiscal Year 2021



SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21 and FY2021 Datafile, USSCFY21.

Zero-Point Offenders Proposed Amendment

Eligibility Criteria for Options 1 & 2

4C1.1 Adjustment for Certain Zero-Point Offenders

- (a)(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (a)(3) the offense did not result in death or serious bodily injury;
- (a)(4) the defendant's acts or omissions did not result in substantial financial hardship to [one or more victims][five or more victims][25 or more victims];
- (a)(5) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848; and
- (a)(6) [the defendant is not determined to be a repeat and dangerous sex offender against minors under §4B1.5 (Repeat and Dangerous Sex Offender Against Minors)][the instant offense of conviction is not a covered sex crime];

decrease the offense level determined under Chapters Two and Three by [1 level][2 levels].

Zero-Point Offenders Proposed Amendment

Departure Provision for Option 2

4C1.1 Adjustment for Certain Zero Point Offenders

(a)(1) the defendant did not receive any criminal history points from Chapter Four, Part A

Accompanying Departure Provision in §4C1.1

An upward departure may be warranted if an adjustment under this guideline substantially underrepresents the seriousness of the defendant's criminal history. For example, an upward departure may be warranted if the defendant has a prior conviction or other comparable judicial disposition for an offense that involved violence or credible threats of violence.



Part B: Zero-Point Offenders

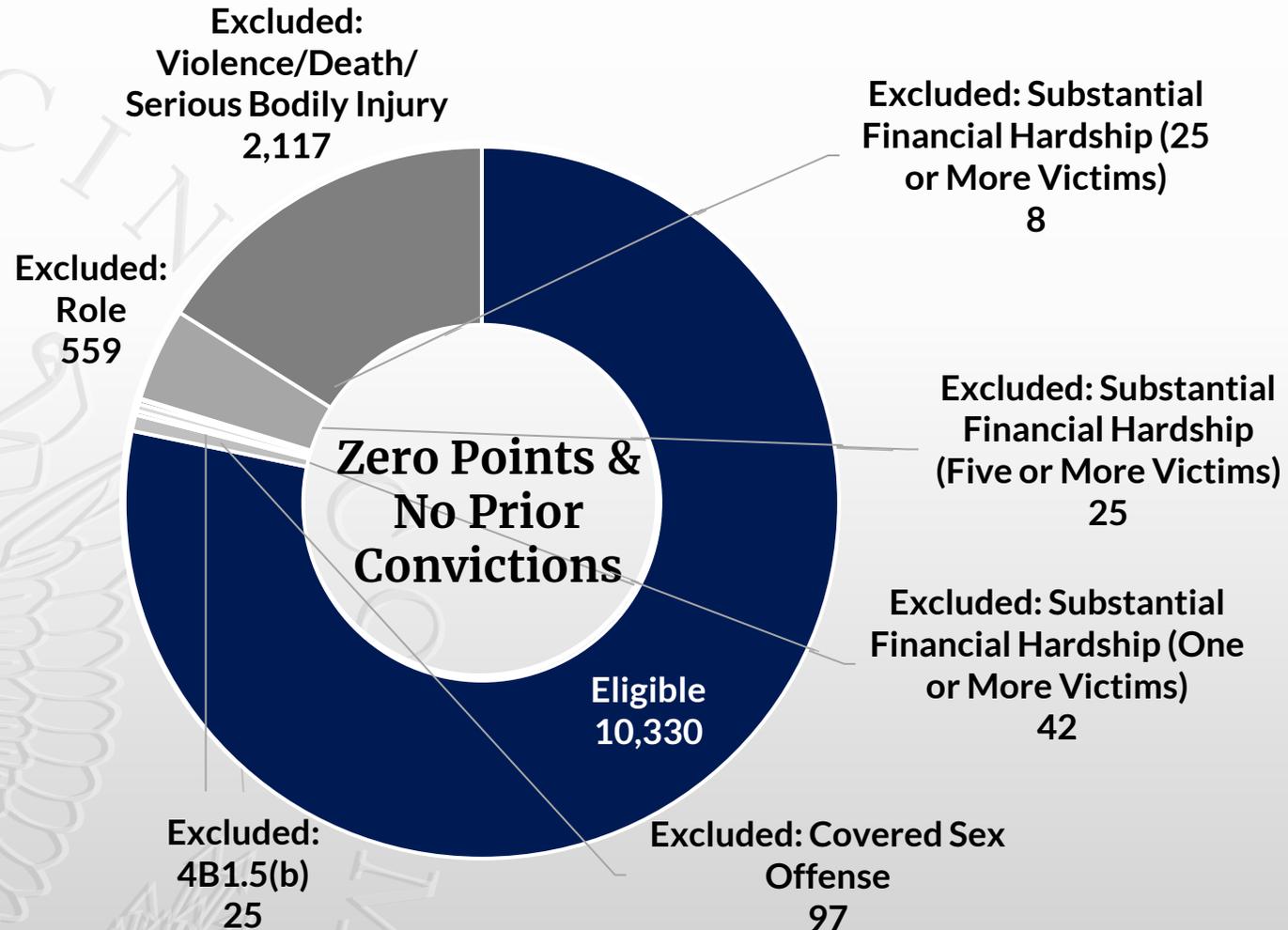
Impact of Options

Eligibility Criteria

Fiscal Year 2021

N=13,203

Option 1

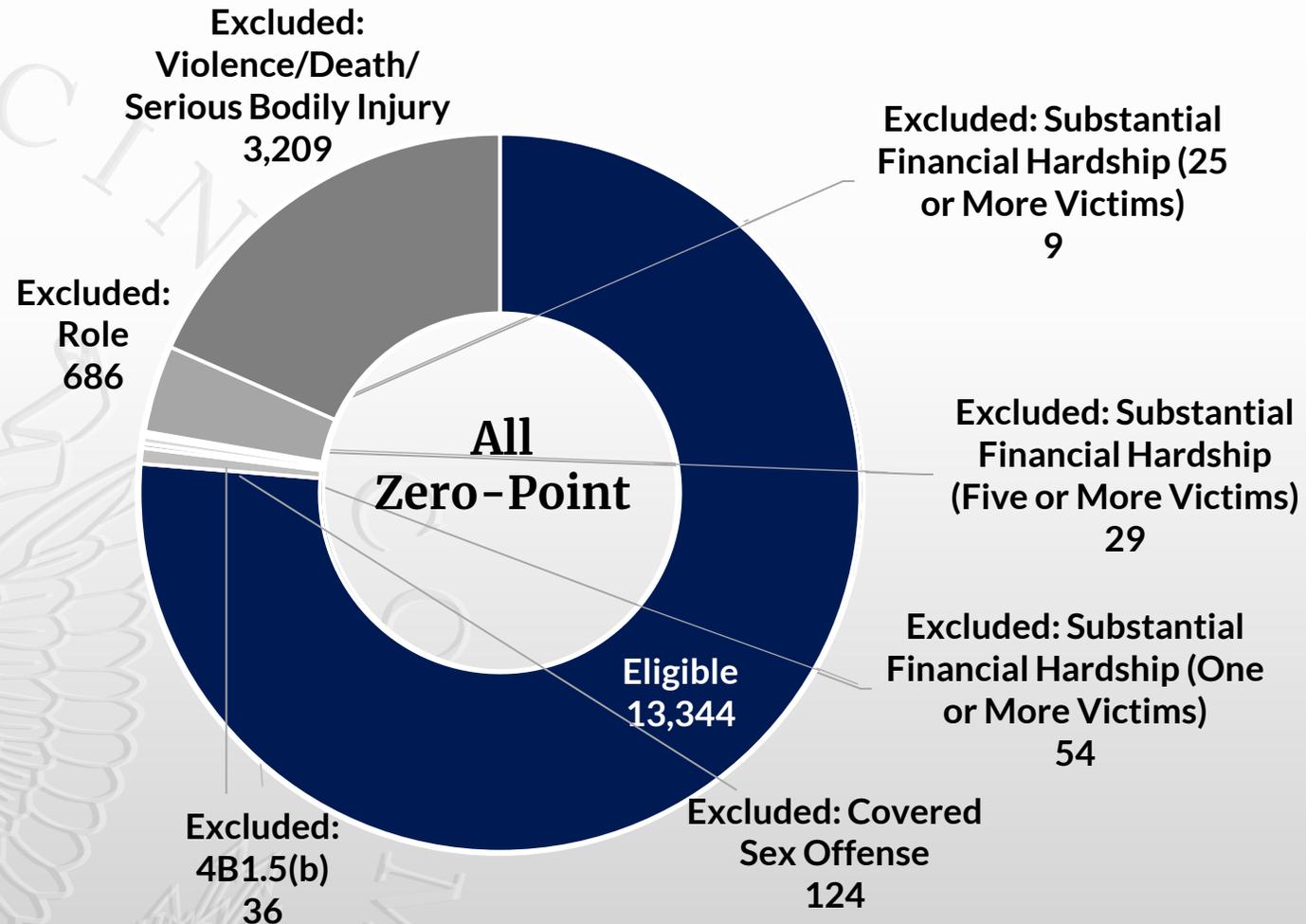


Eligibility Criteria

Fiscal Year 2021

N=17,491

Option 2

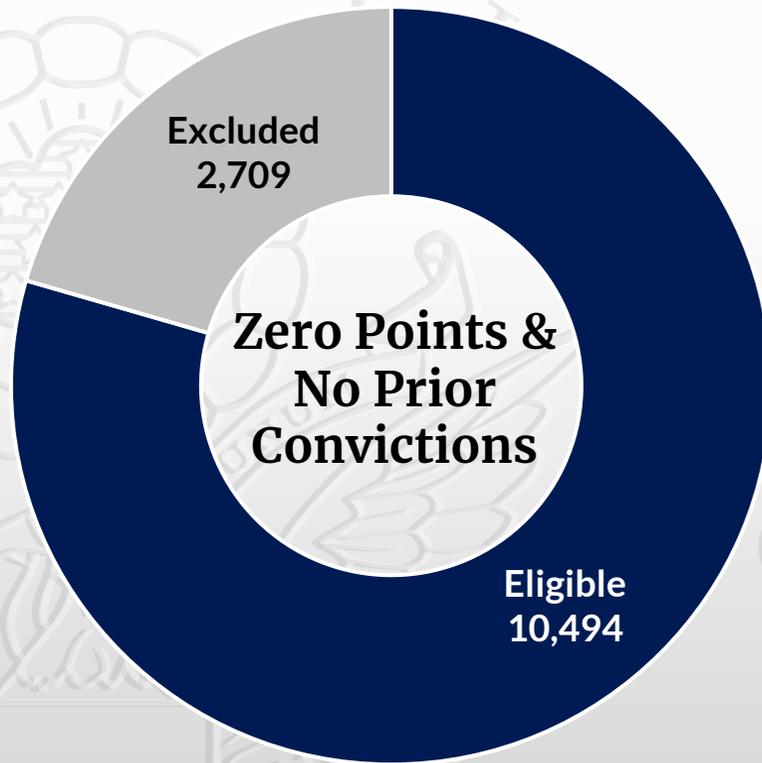


Eligibility Criteria

Fiscal Year 2021

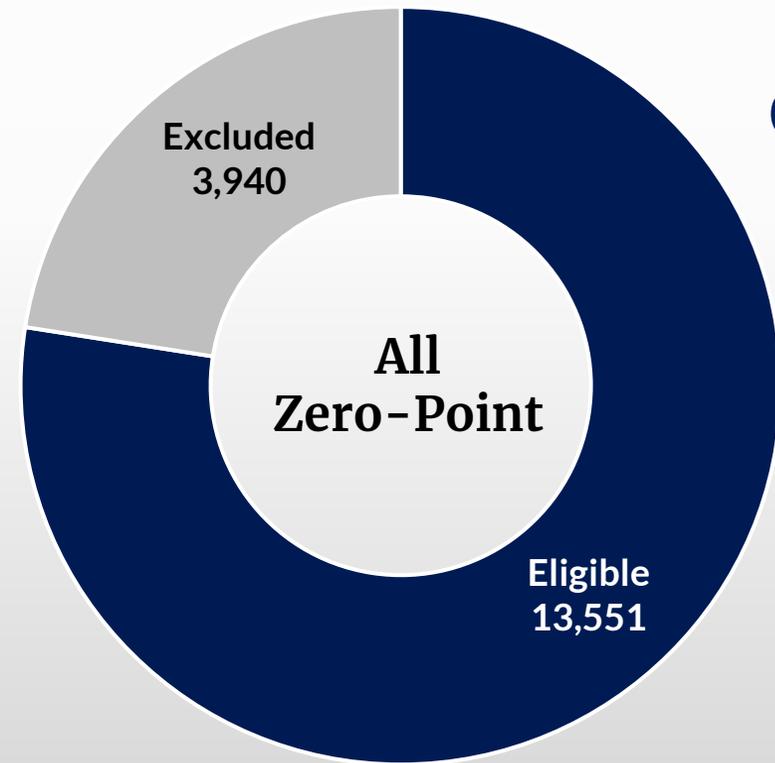
N= 13,203

Option 1



N= 17,491

Option 2

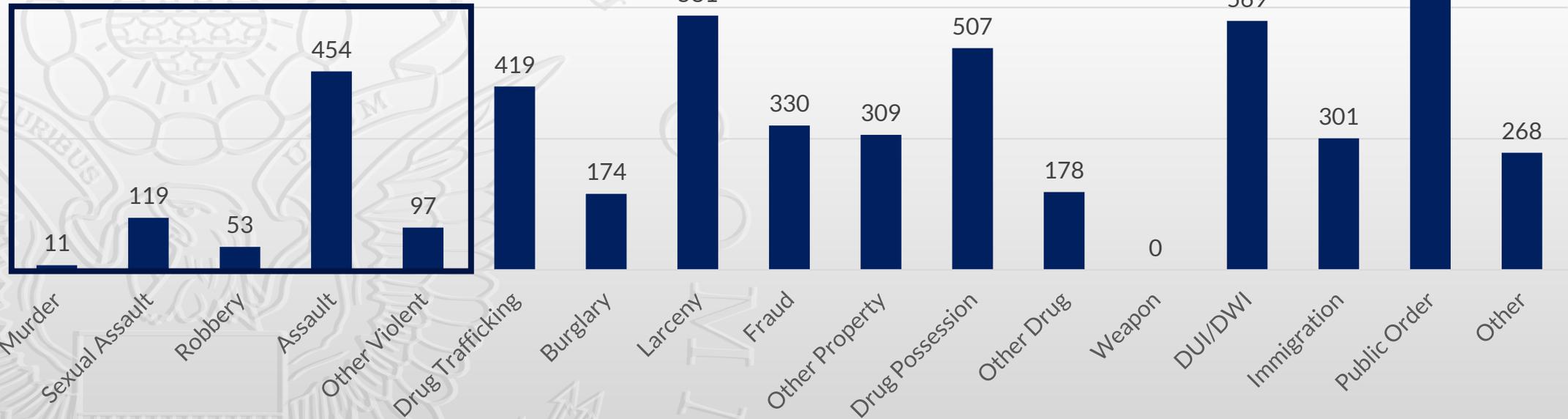


Eligible Zero-Point Offenders with Prior Convictions

Option 2

Fiscal Year 2021

673 Offenders
with at least one violent prior

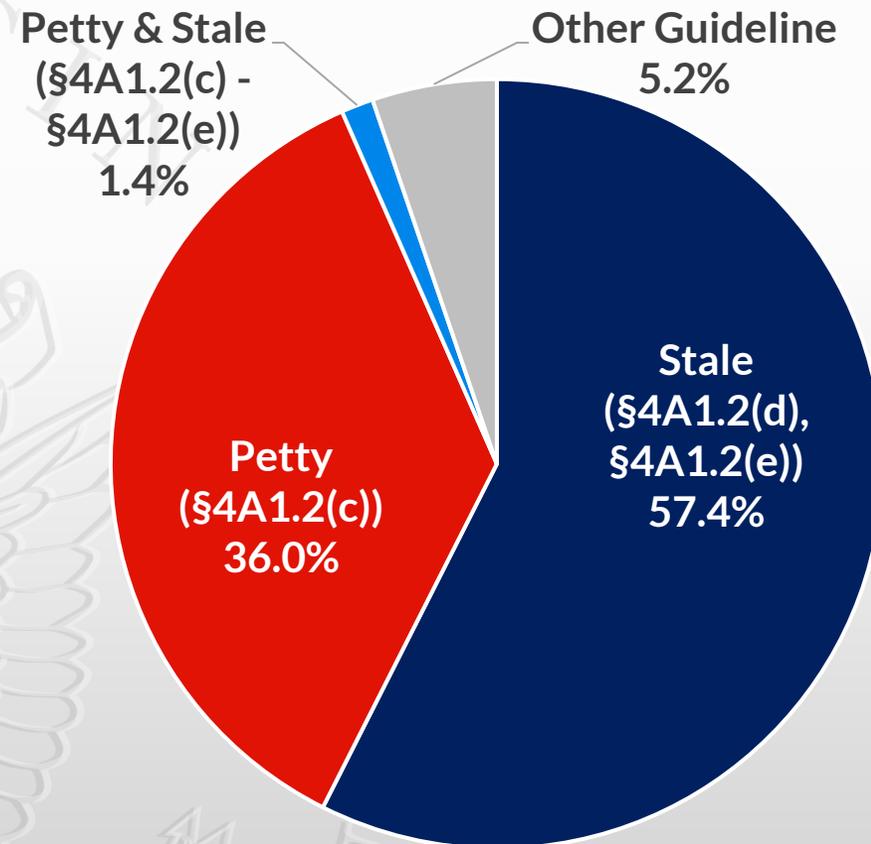


SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21 and FY2021 Datafile, USSCFY21.

Chapter Four Guideline Cited for Prior Convictions Among Eligible Zero-Point Offenders

Option 2

Fiscal Year 2021



Demographics of Eligible Zero-Point Offenders

Fiscal Year 2021

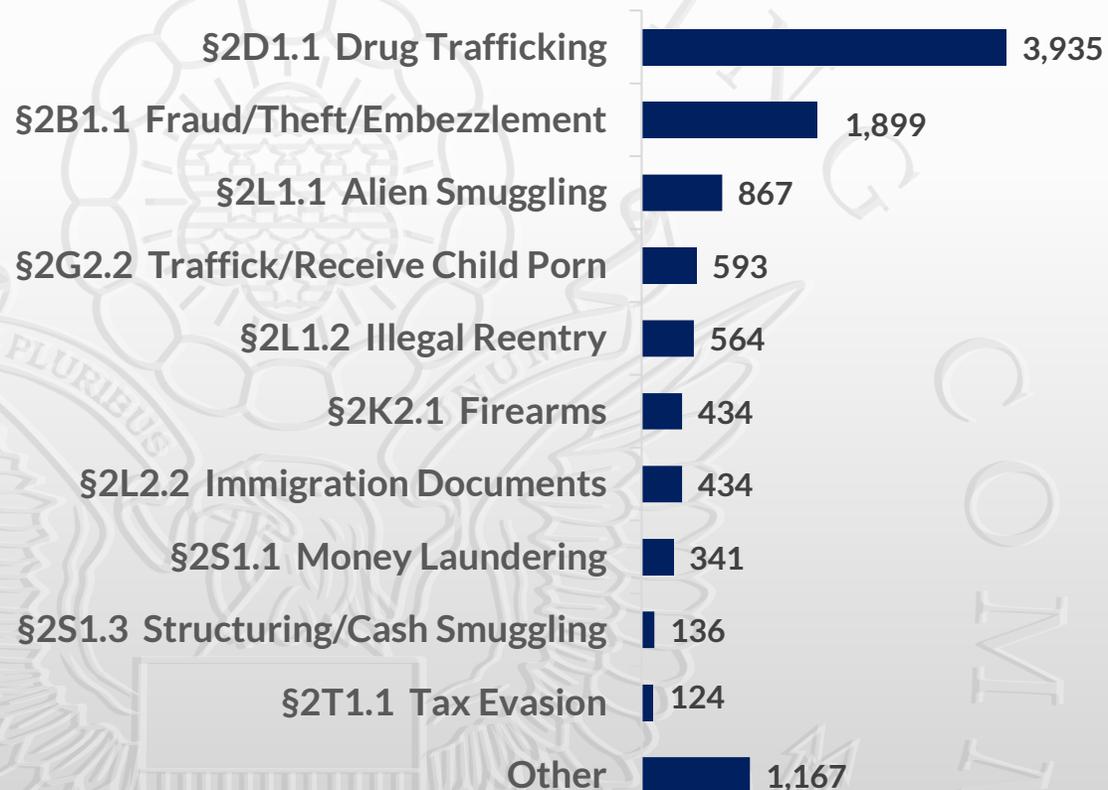
Demographic Characteristics	Zero Points & No Prior Convictions (n=10,494)	All Zero-Point (n=13,551)
Gender		
Male	74.7%	76.2%
Female	25.3%	23.8%
Citizenship		
U.S. Citizen	61.7%	61.8%
Non-U.S. Citizen	38.3%	38.2%
Race/Ethnicity		
White	24.7%	25.2%
Black	10.3%	11.1%
Hispanic	60.0%	58.5%
Other	5.1%	5.2%
Education		
Less than High School	35.1%	37.0%
High School Graduate	26.6%	26.8%
Some College	22.9%	22.5%
College Graduate	15.4%	13.7%
Age at Sentencing		
Average	36 years	38 years

SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21 and FY2021 Datafile, USSCFY21.

Most Commonly Applied Guidelines of Eligible Zero-Point Offenders

Fiscal Year 2021

Zero Points & No Prior Convictions (n=10,494)

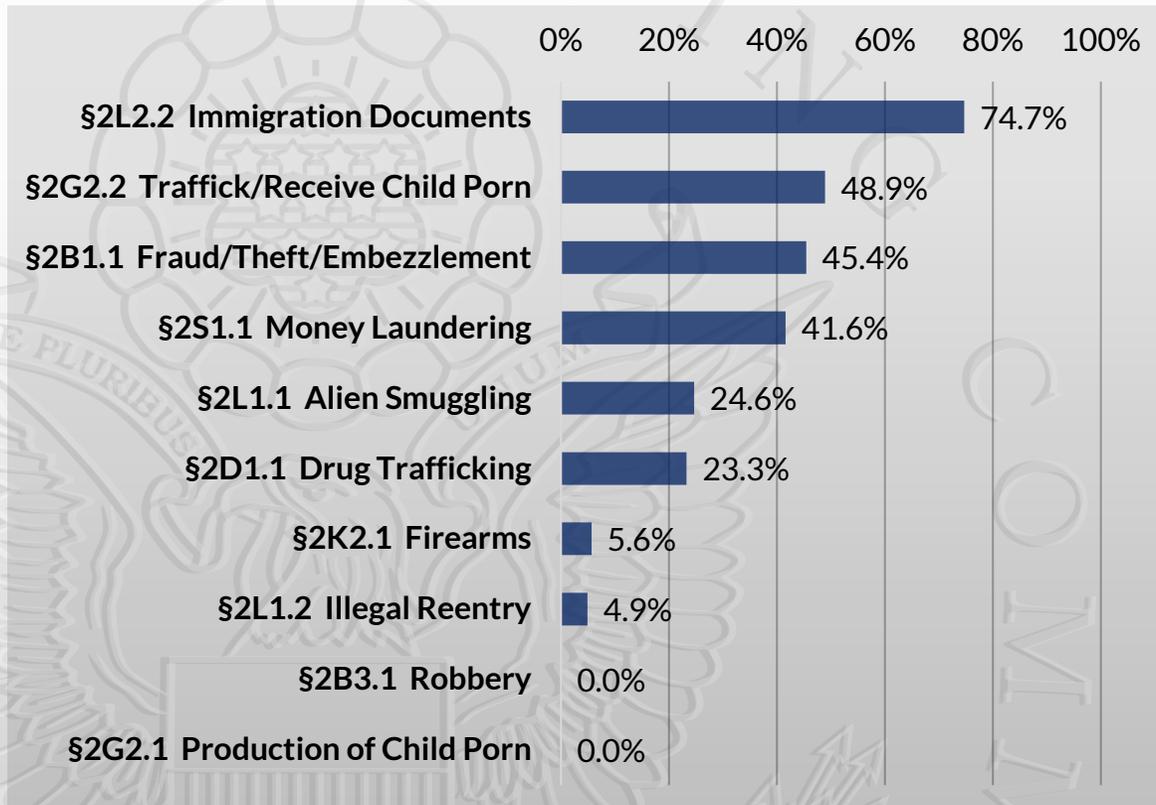


All Zero-Point (n=13,551)

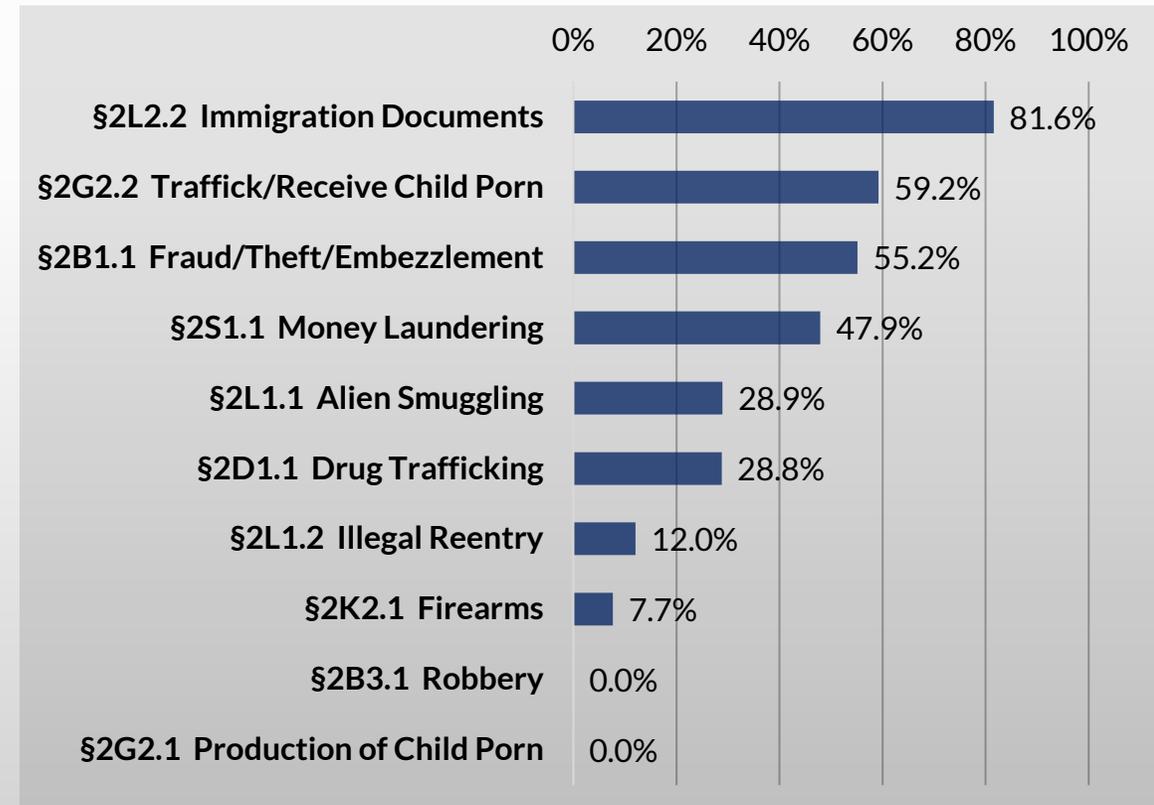


Rate of Eligible Zero-Point Offenders in the Ten Most Commonly Applied Guidelines Fiscal Year 2021

Zero Points & No Prior Convictions (n=10,494)



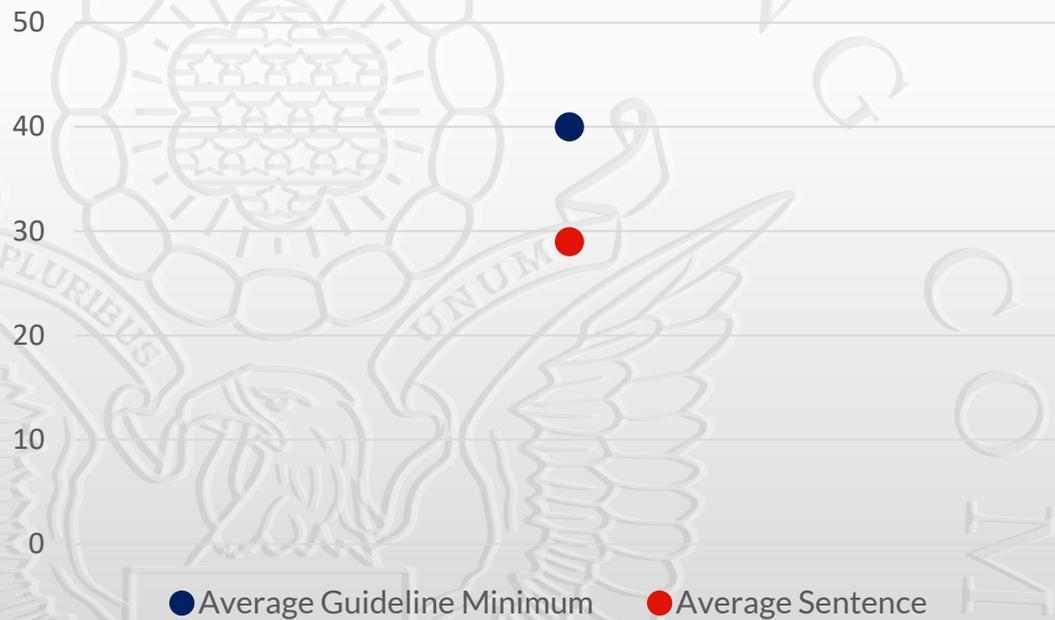
All Zero-Point (n=13,551)



SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21 and FY2021 Datafile, USSCFY21.

Current Average Guideline Minimum & Sentence for Eligible Zero-Point Offenders Fiscal Year 2021

Zero Points & No Prior Convictions (n=10,494)

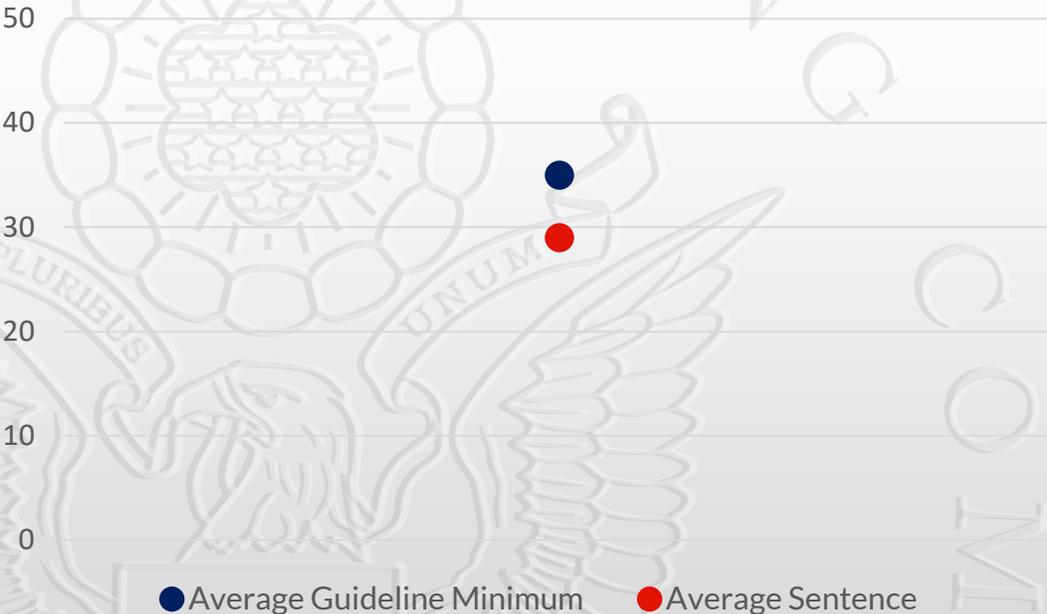


All Zero-Point (n=13,551)



Average Guideline Minimum & Sentence With 1-Level Reduction for Eligible Zero-Point Offenders Fiscal Year 2021

Zero Points & No Prior Convictions (n=10,494)



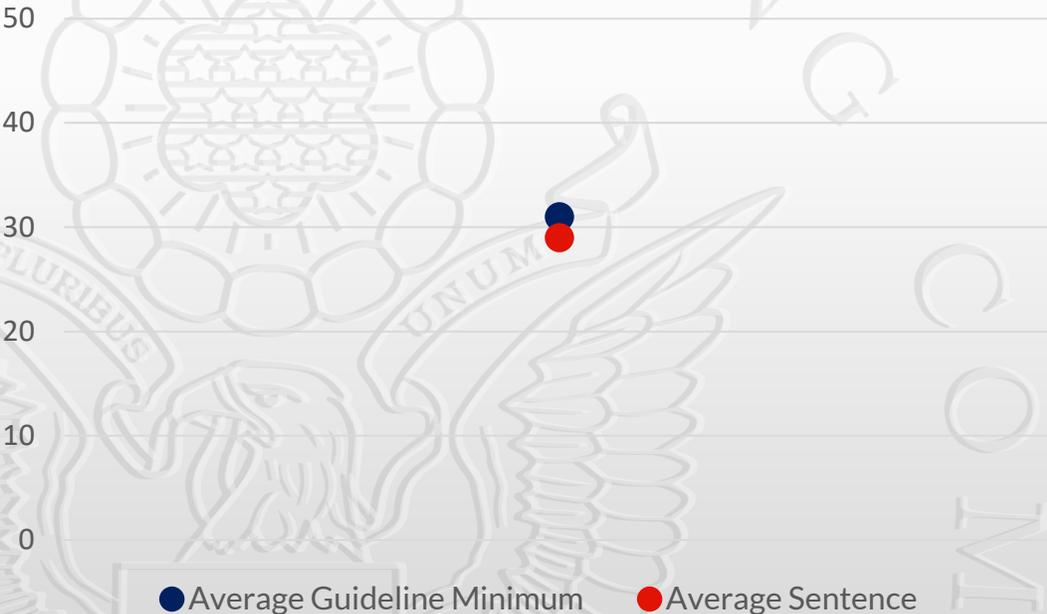
All Zero-Point (n=13,551)



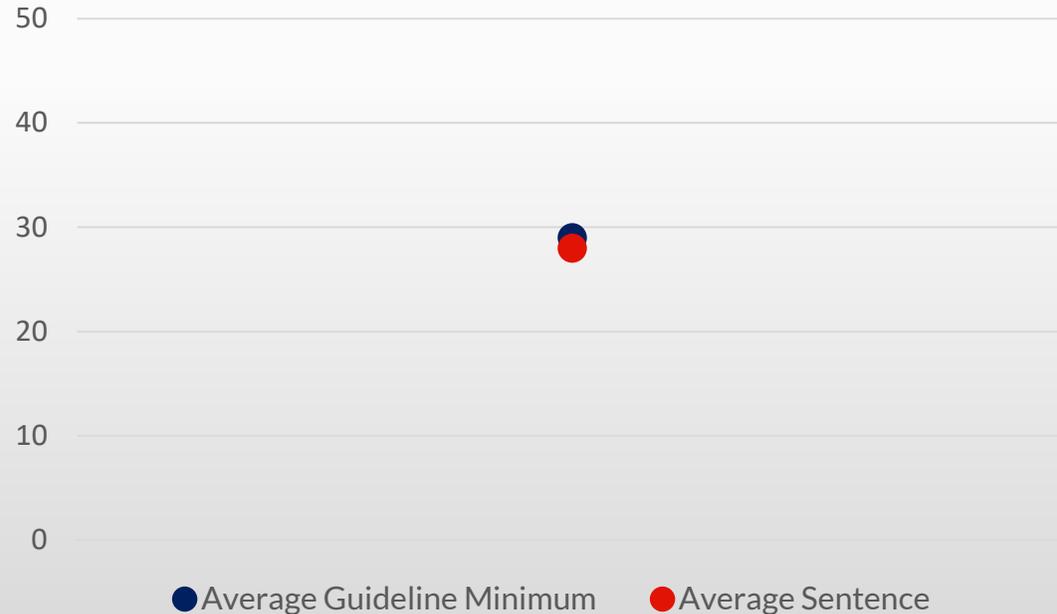
SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21 and FY2021 Datafile, USSCFY21.

Average Guideline Minimum & Sentence With 2-Level Reduction for Eligible Zero-Point Offenders Fiscal Year 2021

Zero Points & No Prior Convictions (n=10,494)



All Zero-Point (n=13,551)

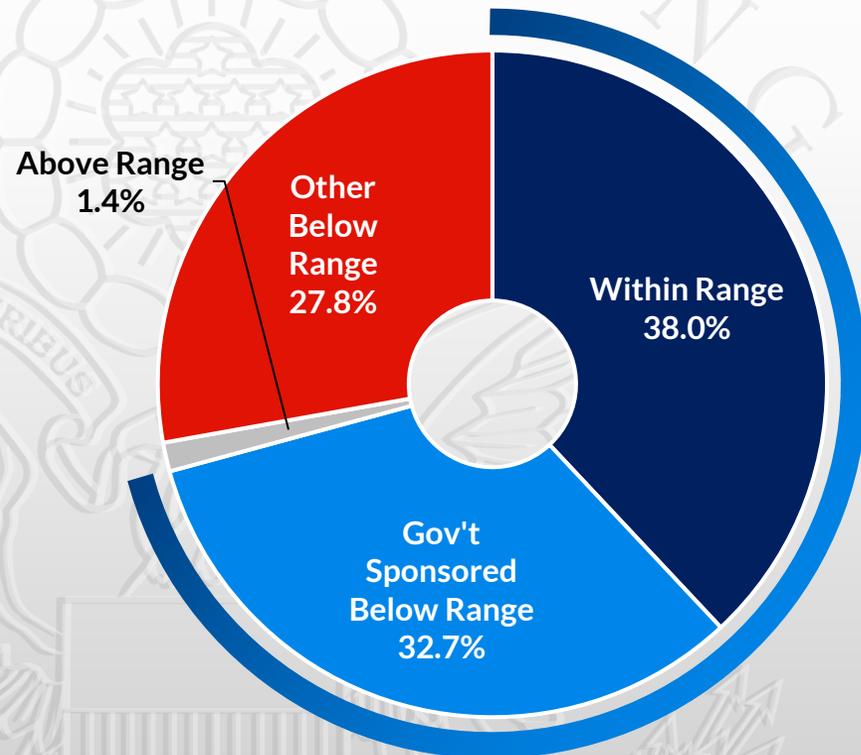


SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21 and FY2021 Datafile, USSCFY21.

Sentence Relative to the Guideline Range for Eligible Zero-Point Offenders

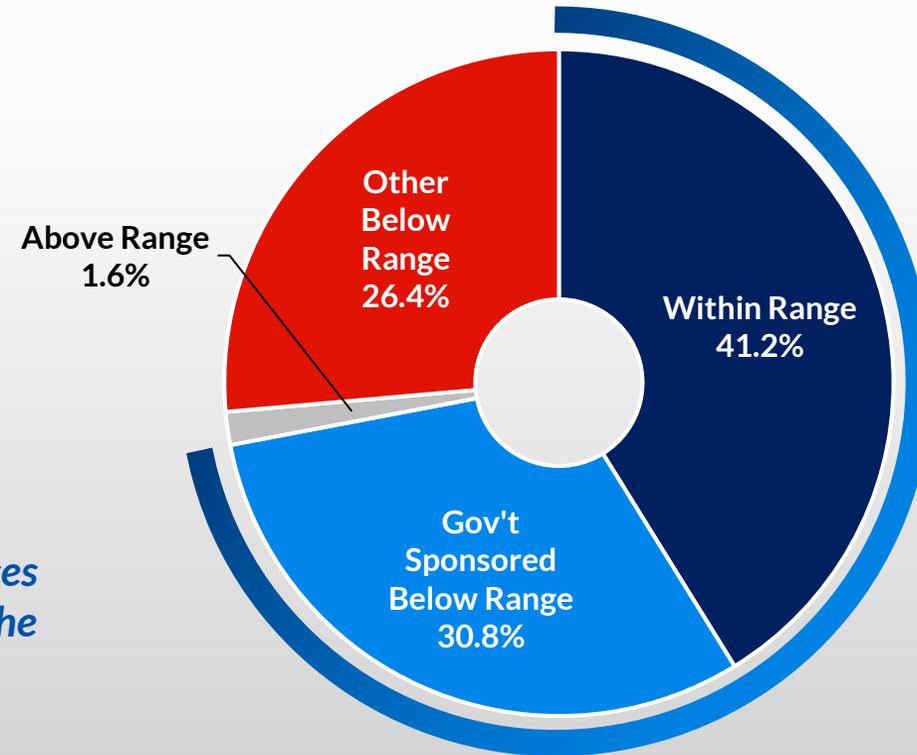
Fiscal Year 2021

Zero Points & No Prior Convictions (n=10,494)



Sentences Under the Manual

All Zero-Point (n=13,551)



Sentences Under the Manual

Impact of Zero-Point Offender Amendment

Summary

Option 1	<i>Zero-Point Offenders with No Prior Convictions</i> <i>- Eligible Offenders</i>	10,494 Offenders in Fiscal Year 2021
Option 2	<i>All Zero-Point Offenders</i> <i>- Eligible Offenders</i>	13,551 Offenders in Fiscal Year 2021

Impact of Zero-Point Offender Amendment

Summary

Option 1	<i>Zero-Point Offenders with No Prior Convictions</i> <ul style="list-style-type: none">- <i>Impacted Offenders</i>- <i>1-Level Reduction</i>- <i>2-Level Reduction</i>	10,494 Offenders in Fiscal Year 2021 8,369 Offenders 8,391 Offenders
Option 2	<i>All Zero-Point Offenders</i> <ul style="list-style-type: none">- <i>Impacted Offenders</i>- <i>1-Level Reduction</i>- <i>2-Level Reduction</i>	13,551 Offenders in Fiscal Year 2021 10,314 Offenders 10,340 Offenders



Part B:
28 U.S.C. § 994(j)

28 U.S.C. § 994(j) Directive

28 U.S.C. § 994(j) The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.

5C1.1 Imposition of a Term of Imprisonment, Note 4

If the defendant is a nonviolent first offender and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should consider imposing a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3). See 28 U.S.C. § 994(j). For purposes of this application note, a “nonviolent first offender” is a defendant who has no prior convictions or other comparable judicial dispositions of any kind and who did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense of conviction. The phrase “comparable judicial dispositions of any kind” includes diversionary or deferred dispositions resulting from a finding or admission of guilt or a plea of nolo contendere and juvenile adjudications.



Part B: **28 U.S.C. § 994(j)**

Proposed Amendment

Proposed Amendment

5C1.1 Imposition of a Term of Imprisonment, Note 4

(A)

If the defendant received an adjustment under §4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant's ***applicable guideline range is in Zone A or B*** of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is *generally appropriate*. See 28 U.S.C. § 994(j).

(B)

If the defendant received an adjustment under §4C1.1 (Adjustment for Certain Zero-Point Offenders), the defendant's ***applicable guideline range is in Zone C or D*** of the Sentencing Table, and the defendant's instant offense of conviction is not an otherwise serious offense, a departure to a sentence other than a sentence of imprisonment [may be appropriate][is generally appropriate]. See 28 U.S.C. § 994(j).

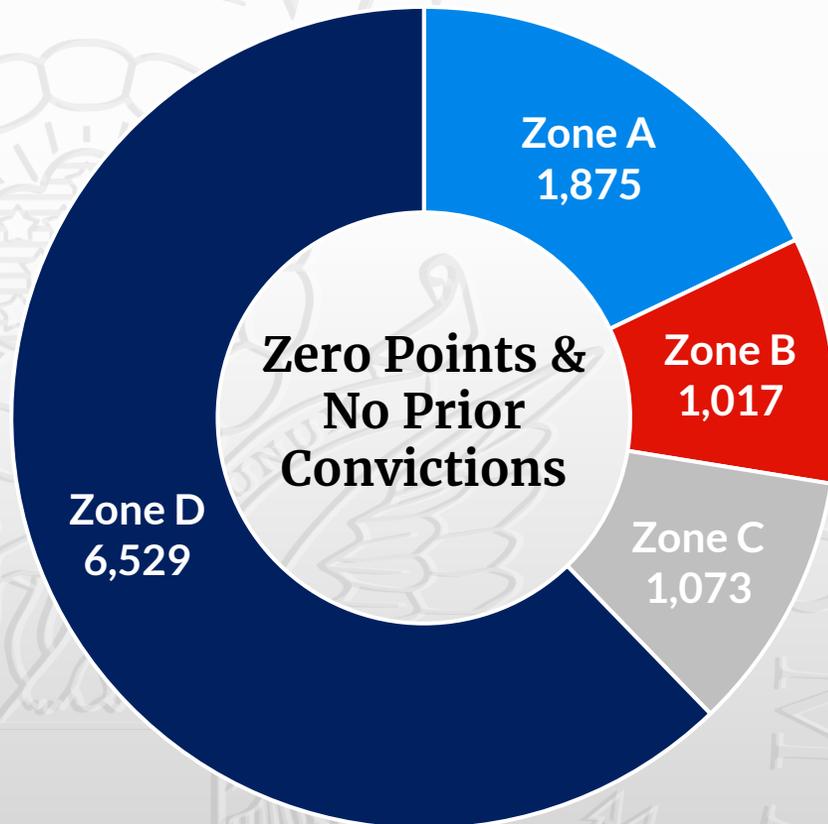
Confinement Options for Each Sentencing Zone Table

Zone	Confinement Ranges	Within Range Sentencing Options
A	0-6 months	<ul style="list-style-type: none">• Probation• Probation with a confinement condition• “Split” sentence of imprisonment followed by community confinement, home detention, or probation• Imprisonment
B	From 1-7 months to 9-15 months	<ul style="list-style-type: none">• Probation with a confinement condition• “Split” sentence of imprisonment followed by community confinement, home detention, or probation• Imprisonment
C	From 10-16 months to 12-18 months	<ul style="list-style-type: none">• “Split” sentence of imprisonment followed by community confinement• Imprisonment
D	From 15-21 months to life imprisonment	<ul style="list-style-type: none">• Imprisonment

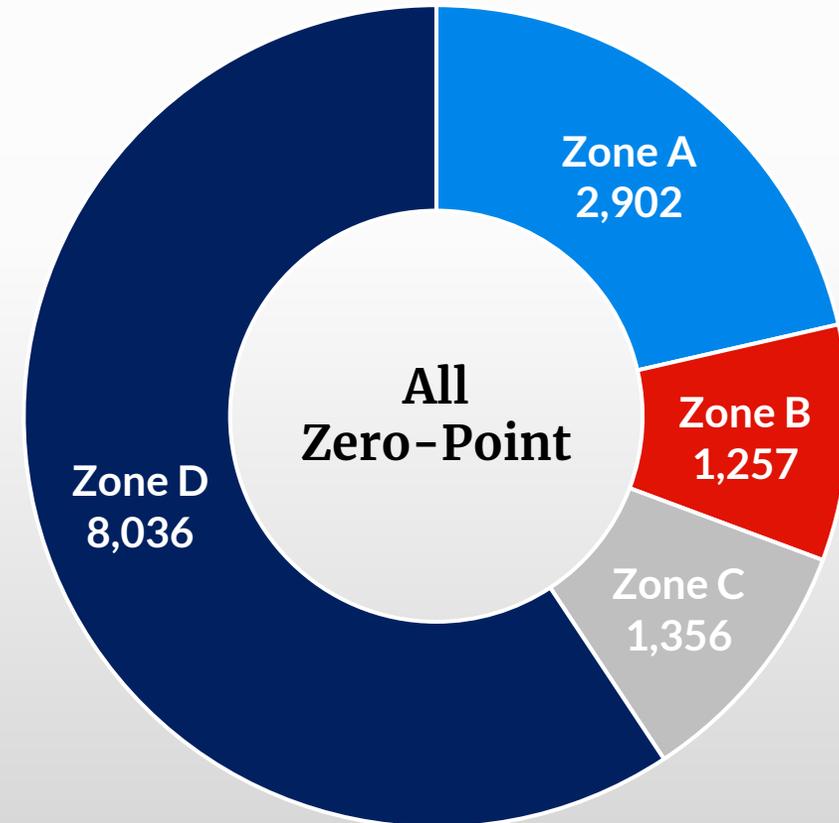
Zone of Eligible Zero-Point Offenders

Fiscal Year 2021

N= 10,494



N= 13,551





Part B: 28 U.S.C. § 994(j)

Impact of Options

Potential Eligibility for 28 U.S.C. § 994(j) Amendment Summary

Zero-Point Amendment Option 1	<i>Eligible Zero-Point Offenders with No Prior Convictions</i> <ul style="list-style-type: none"> - <i>Departure Eligible Offenders</i> - <i>Zones A & B</i> - <i>Zones C & D</i> 	10,494 Offenders in Fiscal Year 2021 3,257 Offenders 577 Offenders 2,680 Offenders
Zero-Point Amendment Option 2	<i>All Eligible Zero-Point Offenders</i> <ul style="list-style-type: none"> - <i>Departure Eligible Offenders</i> - <i>Zones A & B</i> - <i>Zones C & D</i> 	13,551 Offenders in Fiscal Year 2021 4,216 Offenders 747 Offenders 3,469 Offenders

Demographics of Departure Eligible 28 U.S.C. § 994(j) Offenders

Option 2

Fiscal Year 2021

Demographic Characteristics	All Impacted Offenders (N=4,216)	Zones A & B (N=747)	Zone C (N=651)	Zone D (N=2,818)
Gender				
Male	74.1%	61.2%	68.2%	78.9%
Female	25.9%	38.8%	31.8%	21.1%
Citizenship				
U.S. Citizen	100.0%	100.0%	100.0%	100.0%
Non-U.S. Citizen	0.0%	0.0%	0.0%	0.0%
Race/Ethnicity				
White	44.0%	27.3%	32.3%	51.1%
Black	16.3%	14.1%	24.1%	15.1%
Hispanic	32.5%	52.2%	36.9%	26.2%
Other	7.3%	6.5%	6.8%	7.6%
Education				
Less than High School	18.8%	29.1%	22.9%	15.1%
High School Graduate	30.2%	36.5%	32.2%	28.1%
Some College	28.9%	23.7%	29.1%	30.3%
College Graduate	22.1%	10.7%	15.9%	26.5%
Age at Sentencing				
Average	41 years	36 years	39 years	42 years

SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21 and FY2021 Datafile, USSCFY21.

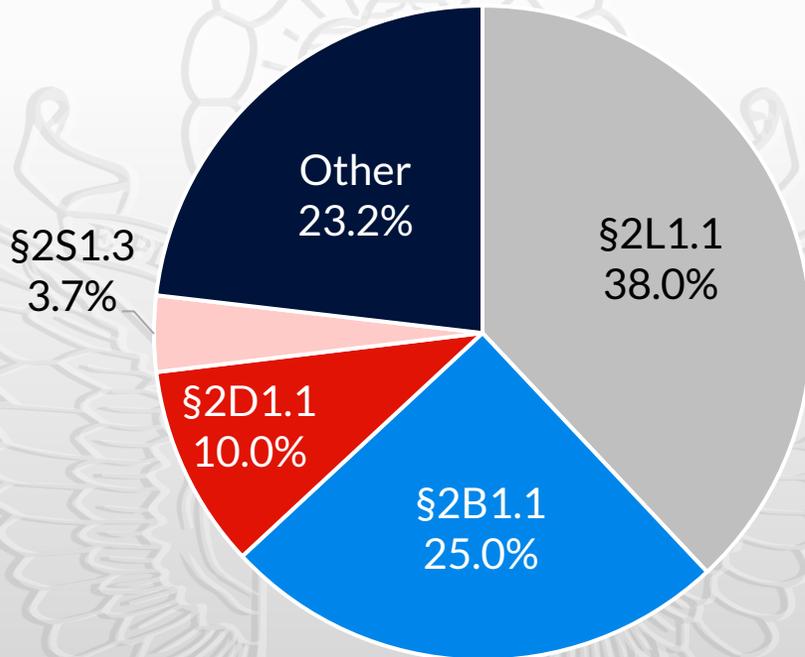
Primary Guideline by Zone for Departure Eligible 28 U.S.C. § 994(j) Offenders

Option 2

Fiscal Year 2021

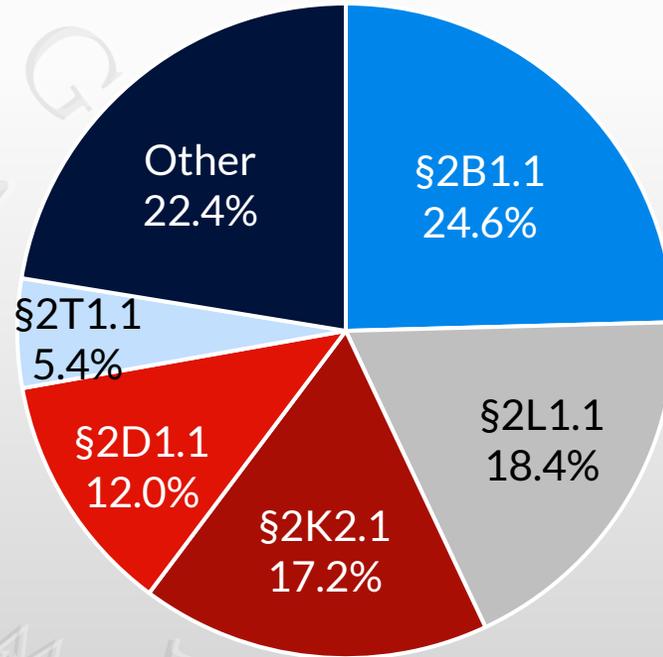
Zones A & B

(n=747)



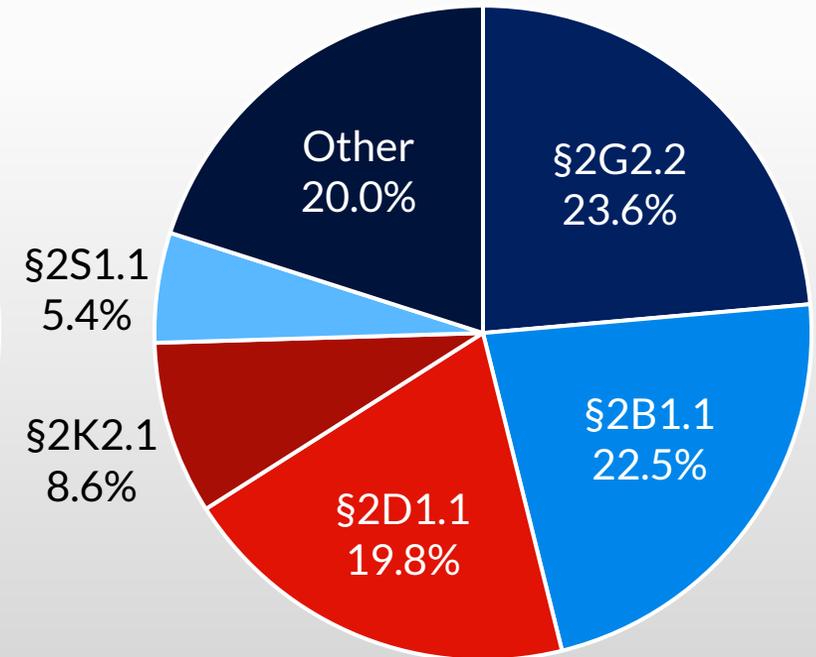
Zone C

(n=651)



Zone D

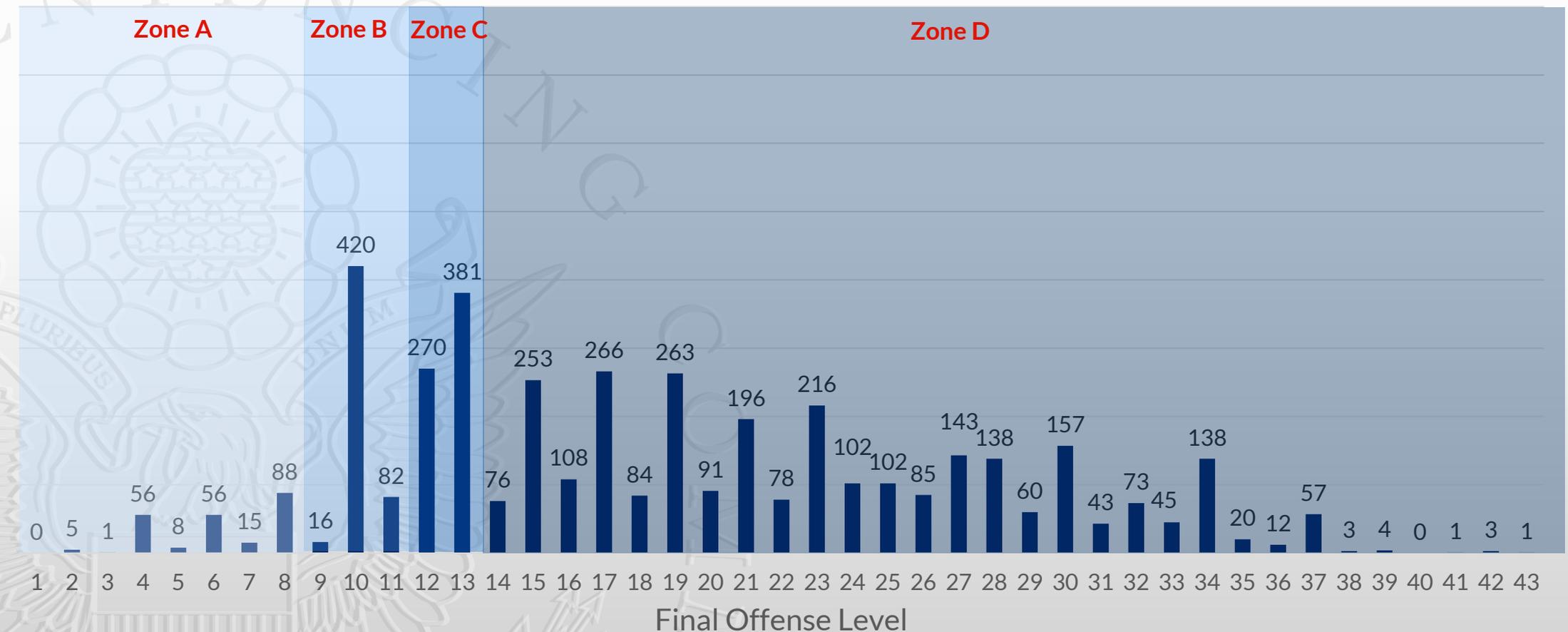
(n=2,818)



Final Offense Level and Zone for Departure Eligible 28 U.S.C. § 994(j) Offenders

Option 2

Fiscal Year 2021

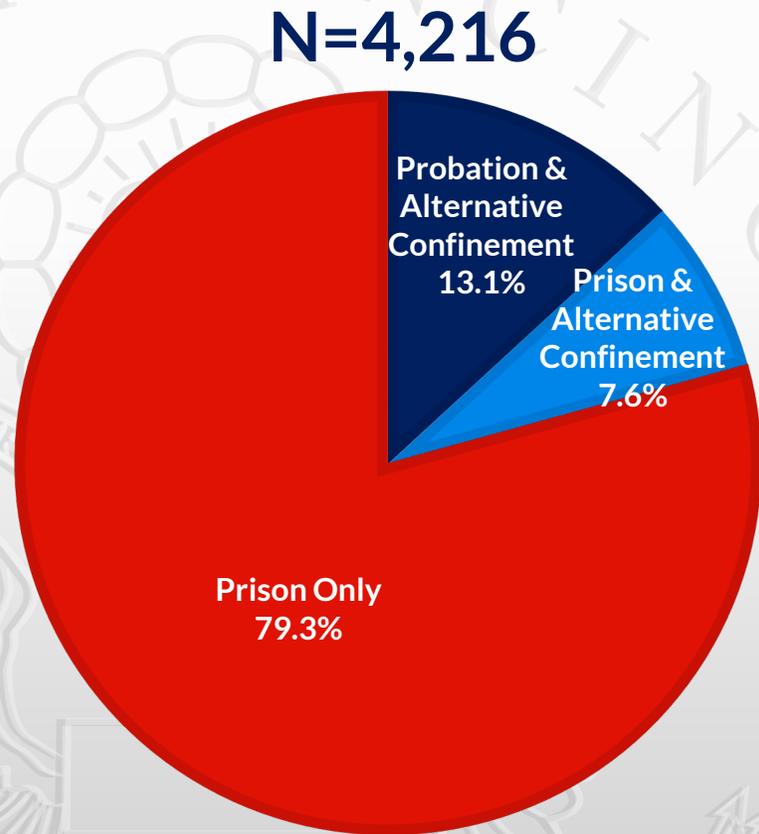


SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21 and FY2021 Datafile, USSCFY21.

Sentence Imposed by Zone for Departure Eligible 28 U.S.C. § 994(j) Offenders

Option 2

Fiscal Year 2021



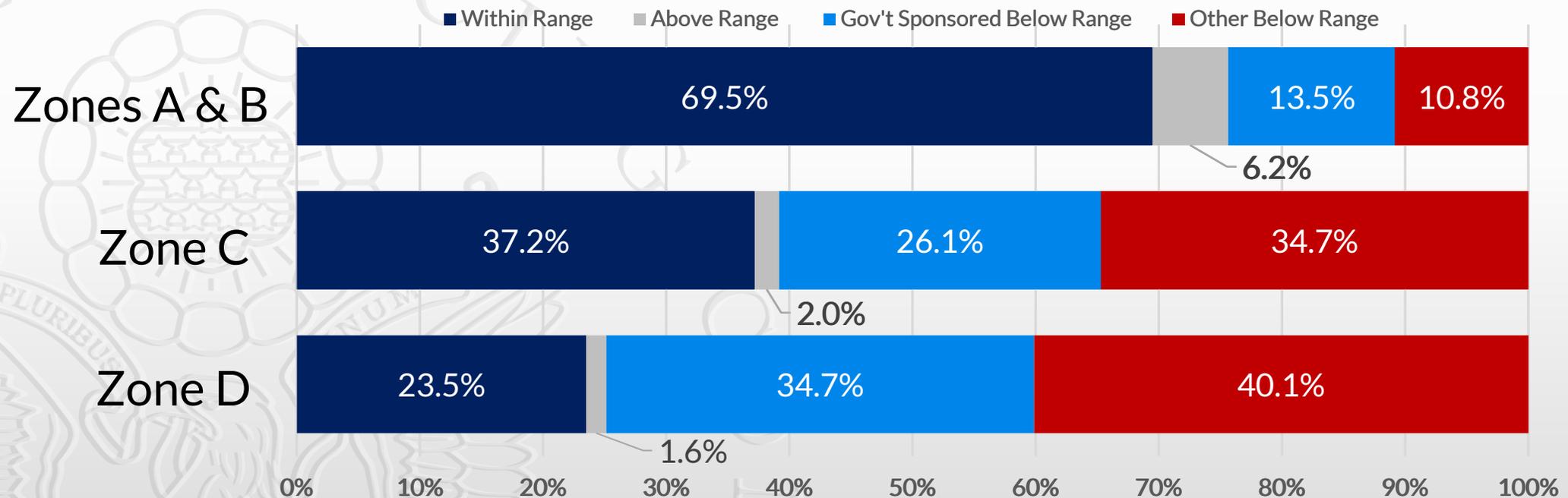
Zone	Probation & Alternatives		Prison & Alternatives		Prison Only	
	%	N	%	N	%	N
A & B	33.1%	247	6.8%	51	60.1%	449
C	23.7%	154	20.0%	130	56.4%	367
D	5.4%	153	4.9%	138	89.7%	2,527
Total	13.1%	554	7.6%	319	79.3%	3,343

Sentence Relative to the Guideline Range by Zone for Departure Eligible 28 U.S.C. § 994(j) Offenders

Option 2

Fiscal Year 2021

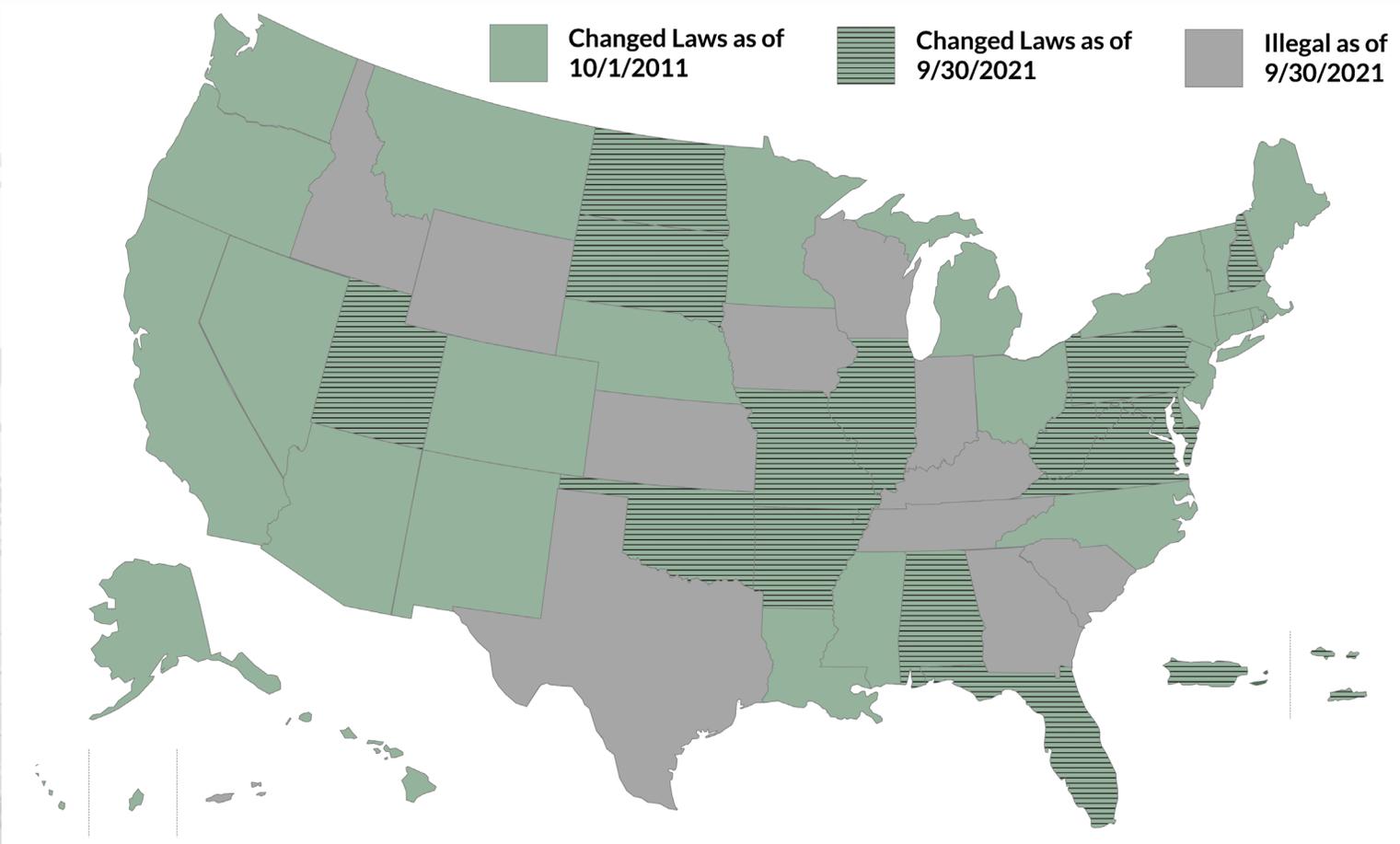
N=4,216





Part C: Simple Possession of Marihuana

Simple Possession of Marijuana



- In 2011, 28 states and territories permitted some use of marijuana
- In 2021, 44 states and territories permitted some use of marijuana

SOURCE: United States Sentencing Commission's 2022 Marijuana Simple Possession Special Coding Datafile.

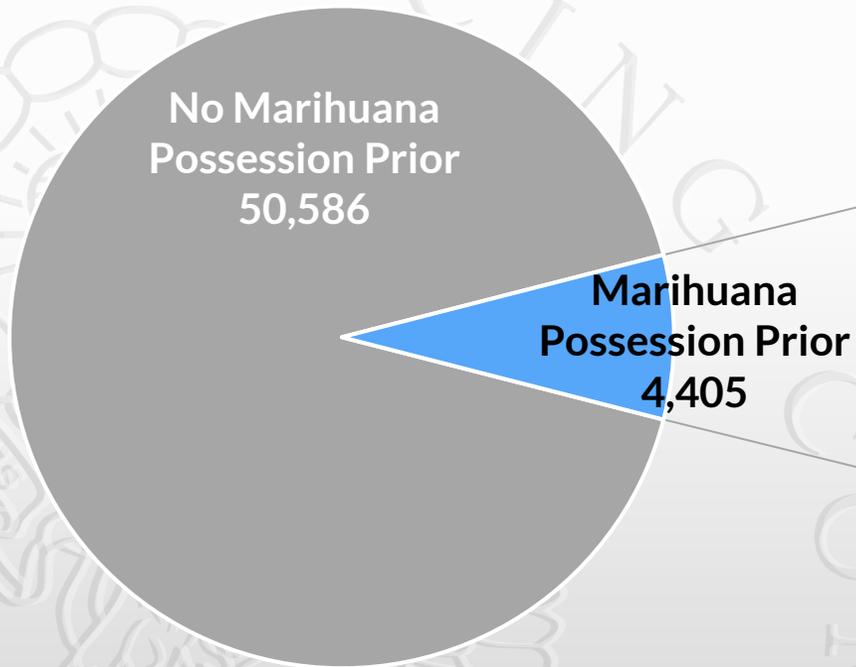


Part C: Simple Possession of Marihuana

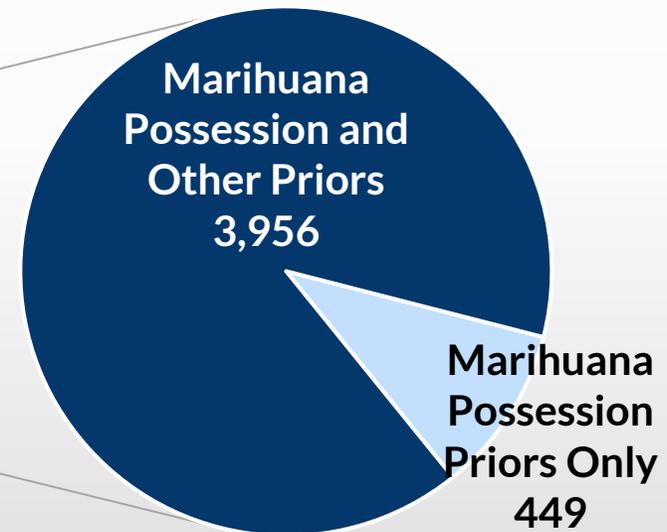
Who Are Simple Possession of Marihuana Offenders?

Simple Possession of Marihuana in Offenders' Criminal History

Fiscal Year 2021



Criminal History Events Assigned Points



Demographics of Offenders with Prior Convictions for Simple Possession of Marihuana

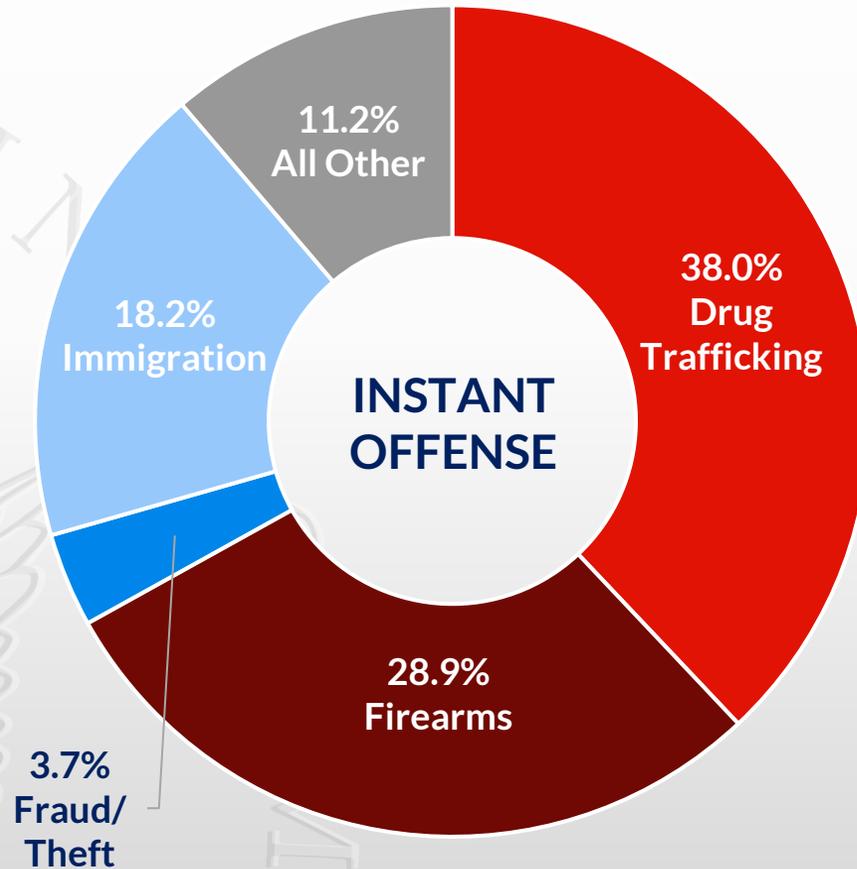
Fiscal Year 2021

Demographic Characteristics	Offenders with Marihuana Possession Prior Conviction (n=4,405)
Gender	
Male	93.5%
Female	6.5%
Citizenship	
U.S. Citizen	86.3%
Non-U.S. Citizen	13.7%
Race/Ethnicity	
White	19.5%
Black	47.0%
Hispanic	31.1%
Other	2.4%
Age at Sentencing	
Average	33 years

SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21, FY2021 Datafile, USSCFY21 and 2022 Marijuana Simple Possession Report Special Coding Datafile.

Instant Offense for Offenders With Prior Convictions for Simple Possession of Marijuana

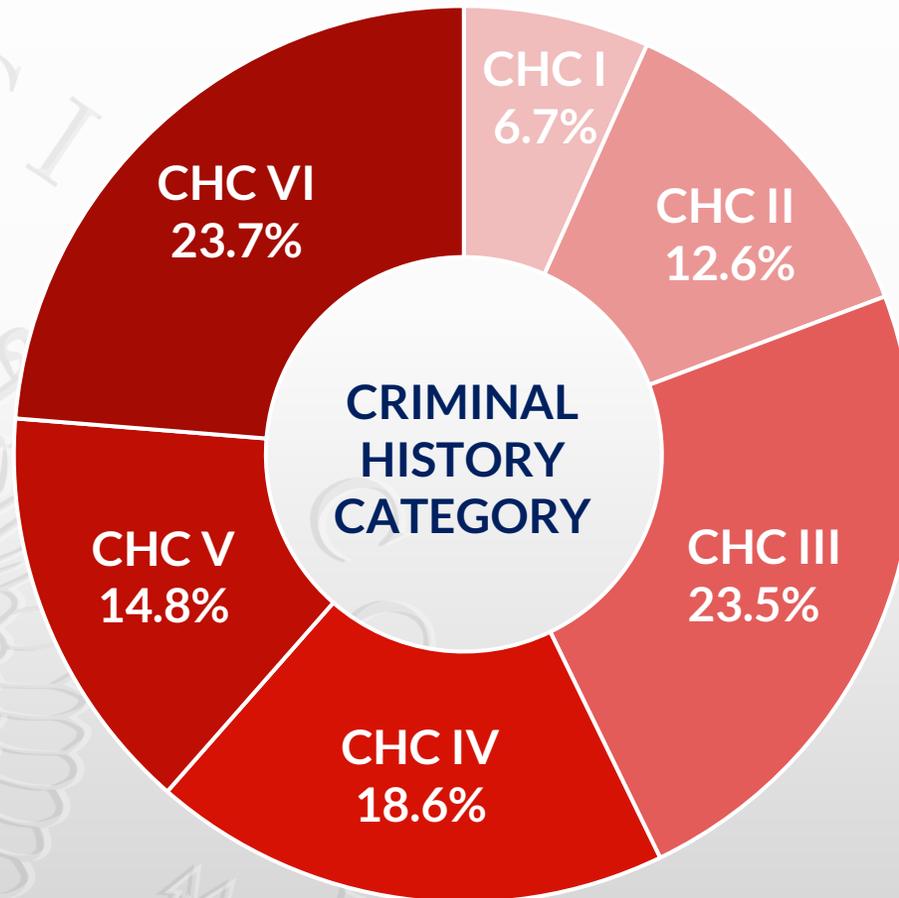
Fiscal Year 2021



SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21, FY2021 Datafile, USSCFY21 and 2022 Marijuana Simple Possession Report Special Coding Datafile.

Criminal History Category of Offenders with Prior Convictions for Simple Possession of Marijuana

Fiscal Year 2021



SOURCE: United States Sentencing Commission's FY2021 Criminal History Datafile, CHFY21, FY2021 Datafile, USSCFY21 and 2022 Marijuana Simple Possession Report Special Coding Datafile.



Part C: Simple Possession of Marihuana

Proposed Amendment

Proposed Amendment

Adds Example of Downward Departure Provision in §4A1.3

The defendant received criminal history points from a sentence for possession of marihuana for personal use, without an intent to sell or distribute it to another person.

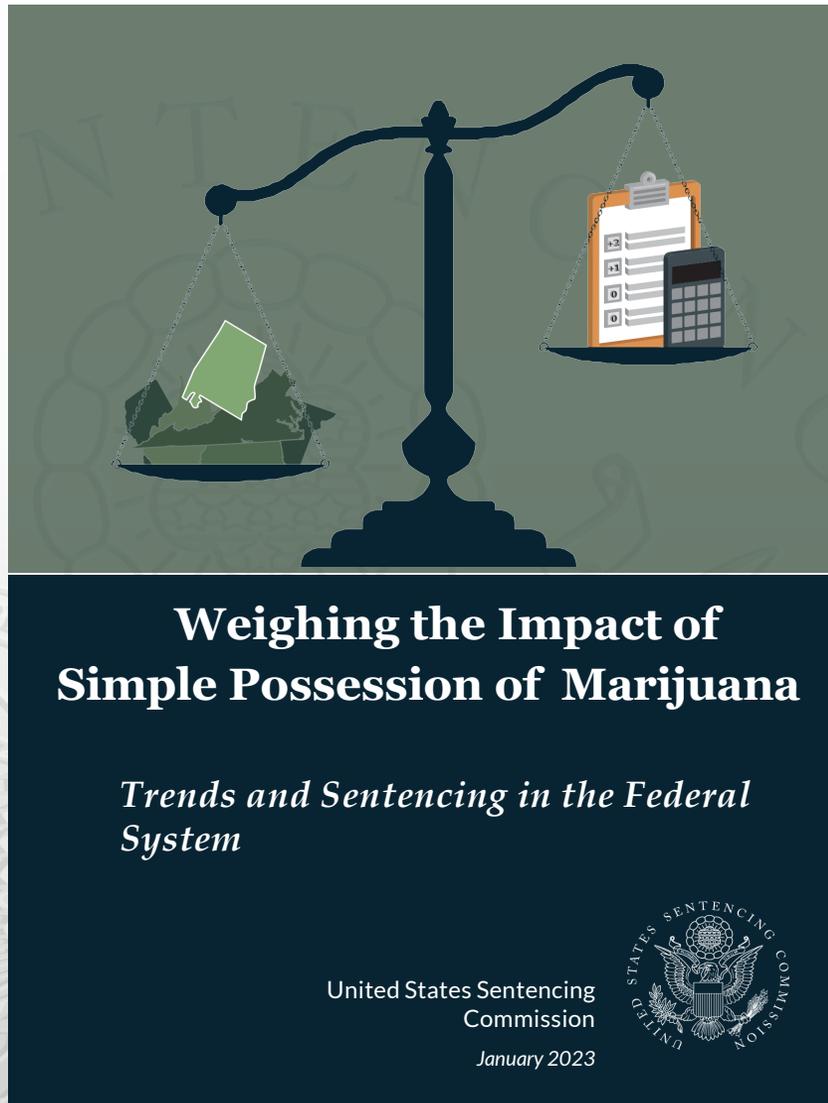
Potential Impact of Simple Possession of Marihuana Amendment

Fiscal Year 2021

Option 1 *Departure Provision*

4,405 Departure Eligible Offenders

Further Resources



For more information on simple possession of marijuana and the impact of marijuana possession prior convictions, please see *Weighing the Impact of Simple Possession of Marijuana* at ussc.gov



Submit public comment to the Commission via the
Public Comment portal or regular mail no later than
March 14, 2023

comment.ussc.gov

United States Sentencing Commission
Attention: Public Affairs
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC, 20002-8002



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