



Federal Sentencing of Career Offenders

Report to the Congress: Career Offender Sentencing Enhancements

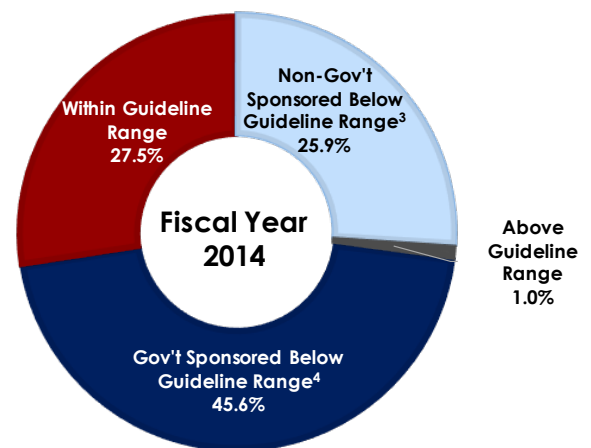
Overview

The United States Sentencing Commission was directed by Congress to set sentencing guidelines for repeat violent offenders or repeat drug trafficking offenders, known as “Career Offenders,” at or near the statutory maximum penalty.¹ Tracking statutory criteria, a defendant qualifies as a Career Offender in the sentencing guidelines if 1) the defendant was at least 18 years of age at the time he or she committed the instant offense; 2) the instant offense is a felony that is a crime of violence or a controlled substance offense; and 3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.² Following a multi-year examination of the application and impact of the Career Offender guideline, the Commission amended the guidelines and published a comprehensive report recommending statutory changes (*Report to the Congress: Career Offender Sentencing Enhancements*). Below are some key findings and recommendations of the full report.

Report Highlights

- While career offenders account for just 3% of the annual federal caseload, they account for more than 11% of the federal prison population due to their lengthy prison sentences (on average, more than 12 years, or 147 months, in prison).
- Career offenders often receive sentences below the guideline range (often at the government's request), especially when they qualify as career offenders on the basis of drug trafficking offenses alone (“drug trafficking only” pathway).

Sentences Relative to the Guideline Range for Career Offenders



Guideline Minimum & Sentence Imposed by Career Offender Pathway⁵

Pathway	Average Guideline Minimum	Average Sentence Imposed
Drug Trafficking Only	207 months (17.3 years)	134 months (11.2 years)
Mixed	212 months (17.7 years)	145 months (12.1 years)
Violent Only	209 months (17.4 years)	179 months (14.9 years)

- Although career offenders with a violent instant or prior offense often have more serious criminal histories, the career offender directive has the most significant impact on drug trafficking offenders because they often carry higher statutory maximum penalties than some violent offenses.⁶
- Despite similar average guideline minimums, “drug trafficking only” career offenders are generally sentenced less severely than other career offenders. In these cases, federal judges impose sentences similar to the sentences recommended in the guidelines for the underlying drug trafficking offense.

Recidivism of Career Offenders

- While career offenders, as a group, tend to recidivate at higher rates than non-career offenders, the Commission found a lower recidivism rate among career offenders qualifying on the basis of drug trafficking offenses alone (see the “drug trafficking only” group in the table below).
- In addition to having a more serious and extensive criminal history, career offenders who have committed a violent offense recidivate at a higher rate and are more likely to commit another violent offense in the future (see the “violent only” and “mixed” groups in the table below).

U.S. Sentencing Commission’s Recidivism Study Cohort Followed For Eight Years After Release in 2005⁷

	Drug Trafficking Only	Mixed	Violent Only
Recidivism Rate	54.4%	69.4%	69.0%
Median Time to Recidivism	26 Months	20 Months	14 Months
Most Serious Post-Release Event (%)	Drug Trafficking (26.5%)	Assault (28.6%)	Robbery (35.3%)

U.S. Sentencing Commission Recommendations

- The career offender directive should be amended to differentiate between career offenders with different types of criminal records, and is best focused on those offenders who have committed at least one “crime of violence.”
- Career offenders qualifying only on the basis of “drug trafficking offenses” should not categorically be subject to the significant increases in penalties required by the career offender directive.
- To achieve greater clarity and judicial efficiency in these cases, Congress should adopt a single, uniform definition of “crime of violence.” The Commission’s recent amendment to the guideline definitions referenced in the career offender guideline provides a good framework for this change.⁸

Endnotes

1. See 28 U.S.C. § 994(h).
2. See USSG §§ 4B1.1, 4B1.2.
3. “Non-Government Sponsored Below Range” consists of cases in which the defendants were sentenced below the applicable guideline range that are not classified as a government sponsored below range sentence.
4. “Government Sponsored Below Range” consists of cases in which a reason for a sentence below the range was attributed to the government, including, for example, substantial assistance (USSG §5K1.1), Early Disposition Program (USSG §5K3.1), and below range sentences pursuant to a plea agreement or other government motion.
5. For more information on pathways to becoming a career offender, see REPORT TO THE CONGRESS: CAREER OFFENDER SENTENCING ENHANCEMENTS, at 26.
6. See 21 U.S.C. § 841 (b) (providing for up to life imprisonment for certain drug offenses).
7. For a discussion of the 2005 cohort, see REPORT TO THE CONGRESS: CAREER OFFENDER SENTENCING ENHANCEMENTS, at 38, and App. C.
8. See USSG App. C, amend. 798 (effective August 1, 2016).

SOURCE: Recidivism and Criminal History Datafiles.

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