



Path of Federal Criminality: Mobility and Criminal History

United States Sentencing Commission
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Almost one-third of the total federal offender population in FY 2018 had convictions in more than one state.

Introduction

The importance of criminal history in sentencing was emphasized by Congress in the requirement that federal courts consider criminal history as a factor when imposing sentences.¹ Further exemplifying the importance of criminal history, Chapter Four of the federal *Guidelines Manual* (Criminal History and Criminal Livelihood), is dedicated to providing guidance on calculating offenders' criminal history for the purpose of identifying the applicable guideline range.

The United States Sentencing Commission has long studied the application and impact of these criminal history rules in the federal system. The Commission has studied the general nature of offenders' prior criminal history and the criminal history of specific types of offenders (e.g., economic offenders).² Relatedly, the Commission has also conducted multiple studies regarding the relationship between offender criminal history and recidivism shortly after the enactment of the Sentencing Reform Act of 1984 (SRA). These studies have repeatedly highlighted the recognition that criminal history is one of the strongest predictors of future recidivism. Most recently, the Commission's report, *The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders* (2017), again highlights the relationship between criminal history and recidivism.³ In this report, the Commission found that recidivism rates increased as Criminal History Category increased from a low of 33.8 percent in Criminal History Category I to a high of 80.1 percent in Criminal History Category VI.

This study expands on prior Commission research by examining the geographic mobility of federal offenders. For this report, mobility is defined as having convictions in multiple states, including the location of the conviction for the instant offense.⁴ In doing so, this report adds to the existing literature on offender criminal history in two important ways. First, the report provides information on how mobile federal offenders are as measured by the number of offenders with convictions in multiple states. Second, the report provides information on the proportion of offenders with convictions in states other than the state in which the offender was convicted for the instant offense.⁵ This information has important policy implications. In the federal system, an offender's prior convictions may receive points if they occurred in any United States court system—whether federal, state, or military—and if they meet the requirements set forth in Chapter Four of the *Guidelines Manual*. The Federal system differs from many state court sentencing systems which, for the purpose of calculating criminal history scores, only include prior convictions committed in their state. This report provides information on the number of convictions potentially not captured in the calculation of criminal history scores when out-of-state convictions are excluded. Not including out-of-state convictions will affect the accuracy of criminal history scores which, as noted above, are important to judges in determining an appropriate sentence to impose.

Key Findings

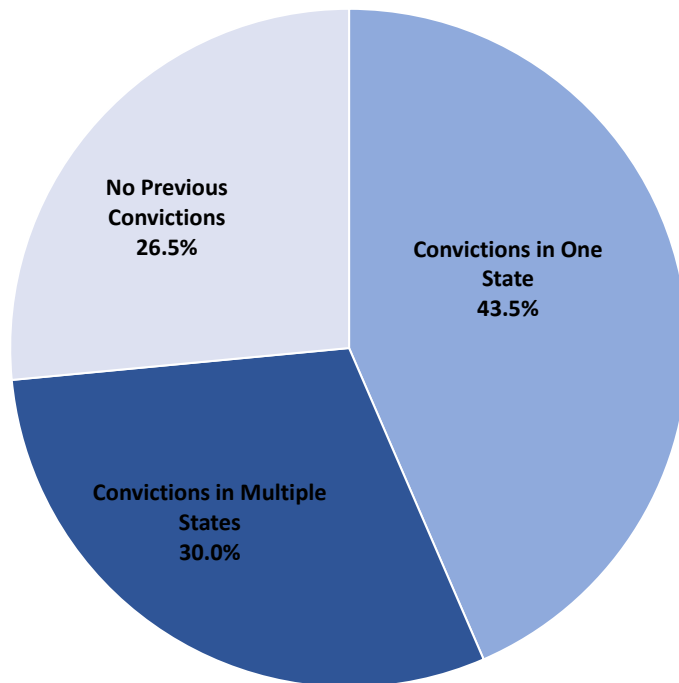
- Almost one-third (30.0%) of the total federal offender population in fiscal year (FY) 2018 had convictions in more than one state.
- The mobility of federal offenders varies by offender characteristics:
 - Immigration offenders were the most likely to have convictions in more than one state (38.7%), while child pornography offenders were the least likely (16.4%) to have convictions in more than one state.
 - Just under one-third (31.8%) of male offenders had convictions in two or more states compared to 17.8 percent of female offenders.
 - Hispanic offenders (31.0%) were the most likely to have convictions in more than one state, closely followed by White (29.3%), Black (28.5%) and Other race (27.8%) offenders.
- The percentage of offenders having convictions in states other than the state of their instant offense varied from a high of 59.1 percent in North Dakota to a low of 10.5 percent in the territory of Puerto Rico.
- A total of 13,904 FY 2018 offenders had out-of-state convictions that received criminal history points. Almost three-quarters of these offenders (73.9%) had a higher Criminal History Category due to these convictions.

Criminal History of 2018 Offenders

This report examines federal offender mobility in conviction patterns using the criminal history information for 64,178 offenders sentenced in FY 2018.⁶ For federal offenders with convictions in multiple states, this report provides comparisons by state of instant offense conviction, type of instant offense, and demographic characteristics to determine how offender mobility differs between subpopulations.

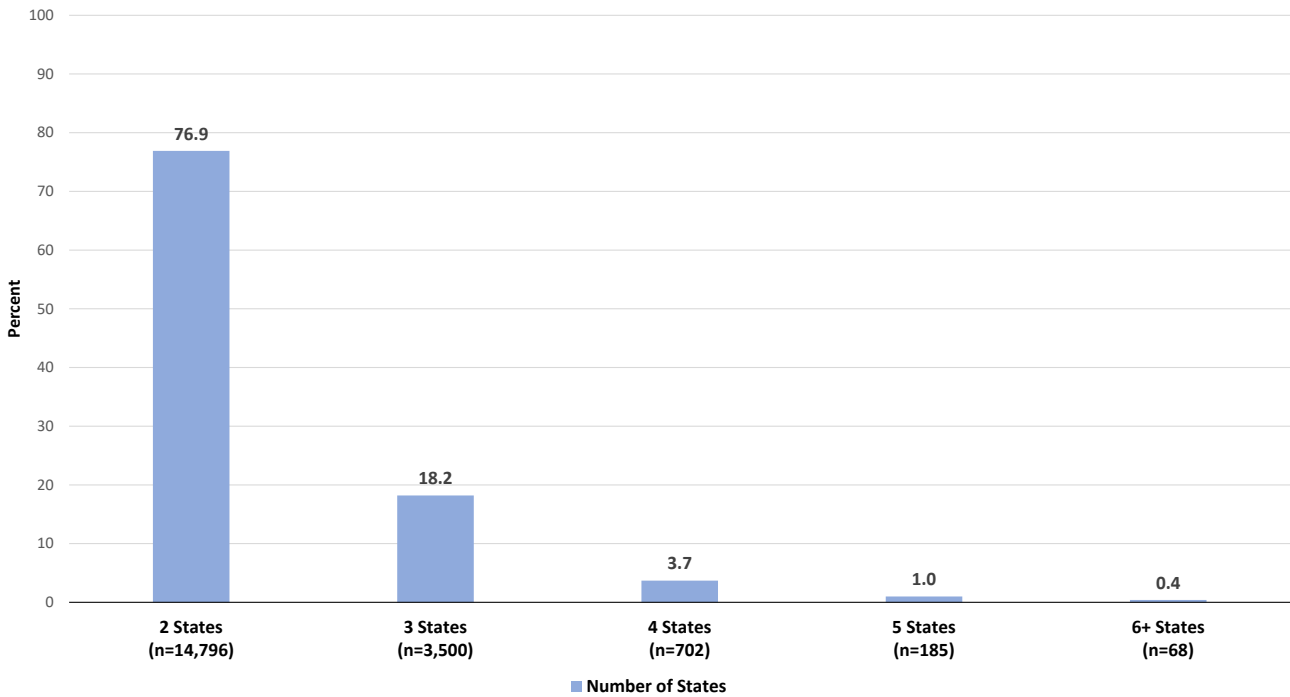
As demonstrated in other Commission studies, the majority of federal offenders have criminal history events countable under the guidelines. In fact, almost three-quarters (73.5%) of the 64,178 federal offenders had at least one conviction in their criminal histories in FY 2018. A smaller, but still notable percent of the federal offender population (30.0%) had convictions in more than one state. Figure 1 shows the distribution of convictions in more than one state for all offenders.

Figure 1. Convictions by Number of States/Territories



Just over three quarters (76.9%) of the 19,251 offenders with convictions in more than one state had convictions in two states. Approximately 18 percent had convictions in three states; 3.7 percent had convictions in four states, one percent had convictions in five states, and less than one percent (0.4%) had convictions in six or more states (See Figure 2).

Figure 2. Convictions in Multiple States



Location of Conviction

The percentage of offenders with convictions in more than one state varied considerably by the location of conviction for the instant offense. The percentage of offenders having convictions in states other than the state of their instant offense varied from a high of 59.1 percent in North Dakota to a low of 10.5 percent in the territory of Puerto Rico. Tables 1 and 2 shows the states with the highest percentage of out-of-state convictions and those with the lowest percentage of out-of-state convictions respectively.

Figure 3. Top and Bottom States/Territories for Multiple State Convictions⁷

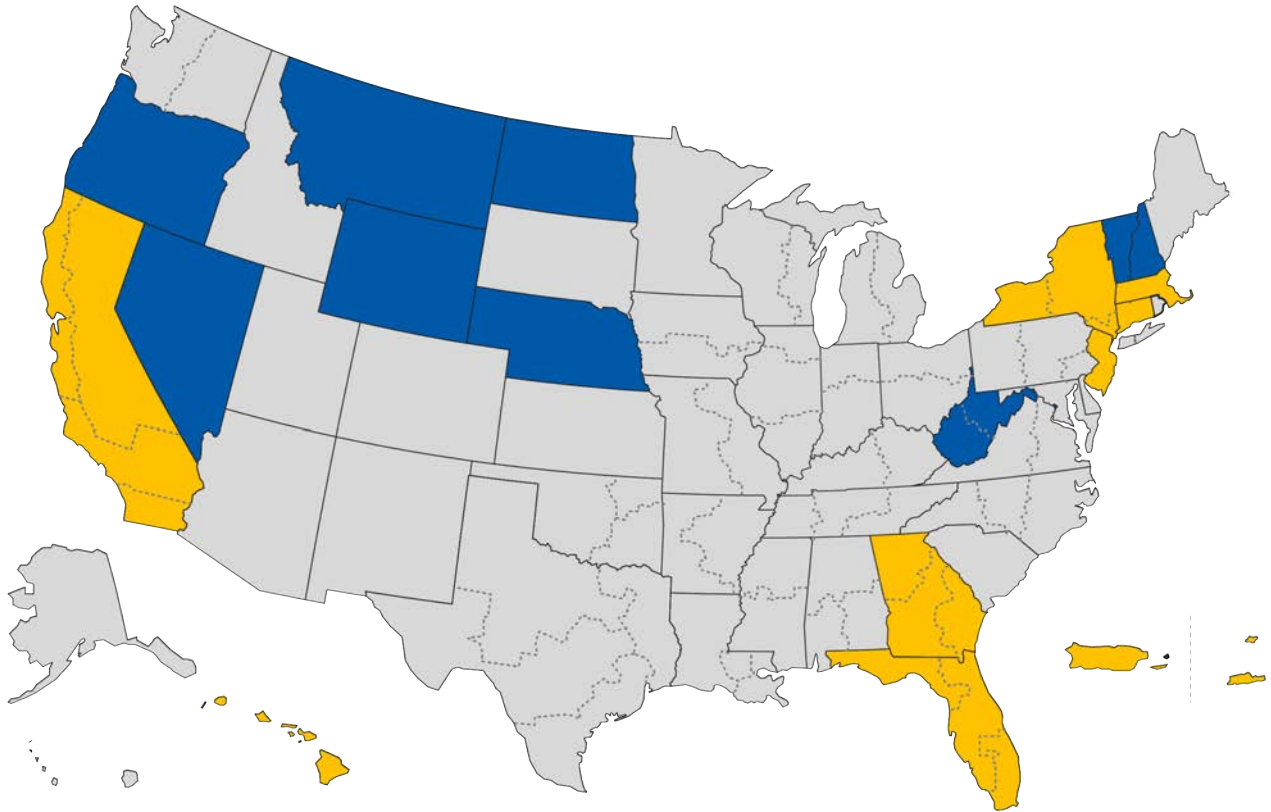


Table 1. Top Ten States/Territories for Multiple State Convictions

State	Percent with out of state convictions
ND	59.1%
MT	56.6%
WY	55.9%
DC	55.7%
WV	53.7%
OR	50.5%
VT	50.4%
NV	48.8%
NH	47.3%
NE	44.6%

Table 2. Bottom Ten States/Territories for Multiple State Convictions

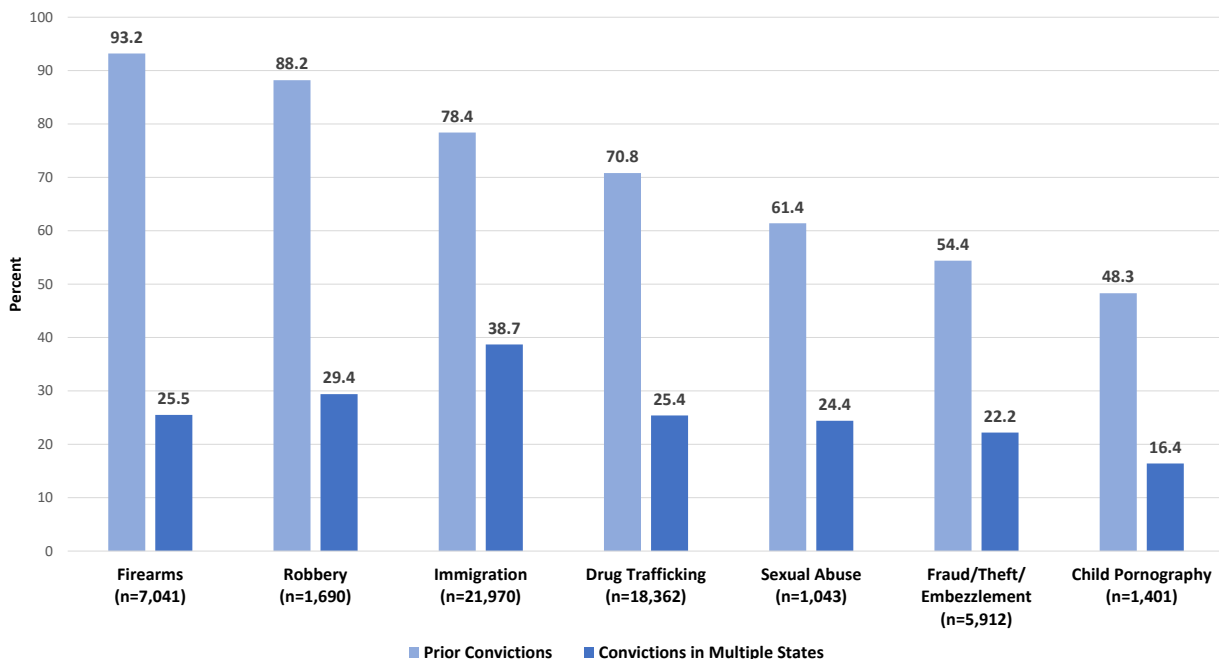
State	Percent with out of state convictions
PR	10.5%
CA	17.1%
VI	18.2%
CT	19.6%
HI	20.5%
FL	20.5%
NY	20.9%
MA	22.2%
NJ	23.9%
GA	25.6%

Instant Offense

The percentage of offenders with any prior convictions varies considerably by their type of instant offense. The Commission compared seven groups of offenders: firearms, robbery, immigration, drug trafficking, sexual abuse, fraud/theft/embezzlement, and child pornography possession offenders. These offenders comprise 89.5 percent of FY 2018 offenders. The majority of firearms offenders (93.2%) and robbery offenders (88.2%) had at least one prior conviction while less than half of child pornography possession offenders (48.3%) had a previous conviction (See Figure 4).

A similar pattern, although with less variation, is also seen in the percentage of offenders with convictions in multiple states across types of offenders. Approximately 40 percent (38.7%) of all immigration offenders had convictions in more than one state. Child pornography possession offenders were the least likely (16.4%) to have convictions in different states. The other groups of offenders varied from 29.4 percent (robbery offenders) to 22.2 percent (fraud/theft/embezzlement offenders) having convictions in multiple states (See Figure 4).

Figure 4. Prior Convictions and Convictions in Multiple States by Instant Offense

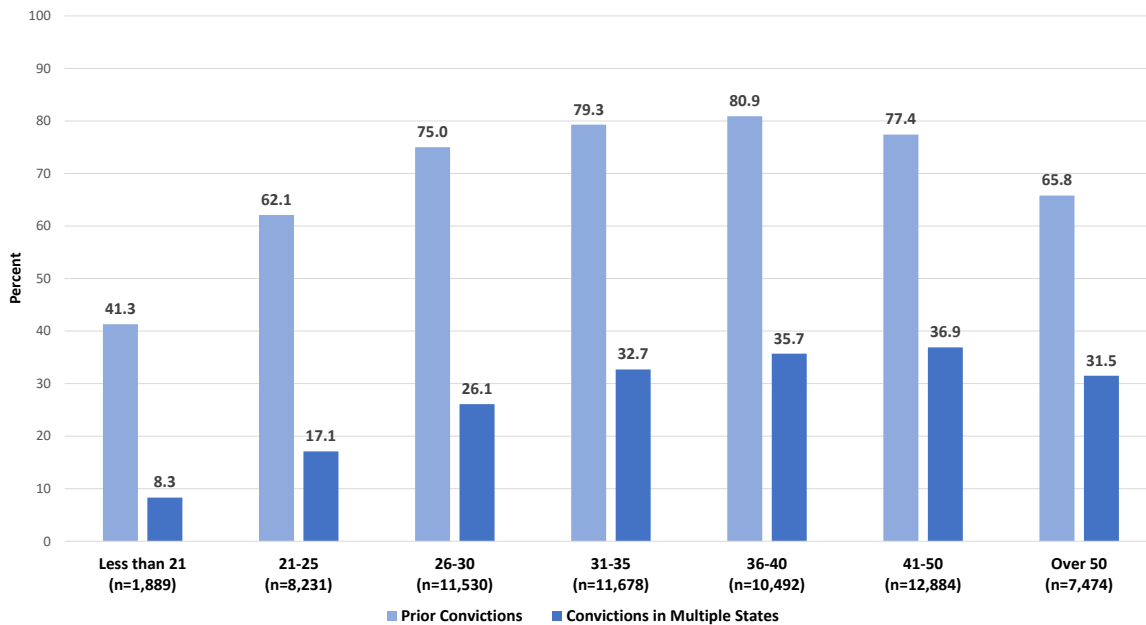


Age at Sentencing

The Commission grouped offenders into age categories to compare offenders across groups by age at sentencing. Figure 5 provides the comparisons. The percentage of offenders with criminal history increased with each age group from the less than 21 category (41.3%) to the 36 to 40 category (80.9%), but then declined to 77.4 percent for those age 41 to 50 and to 65.8 percent for offenders older than 50. These two age categories had a higher proportion of fraud offenders. As seen in the previous section, those offenders have less criminal history.

A slightly different pattern was found when examining the rate of conviction in multiple states. The percentage of offenders with convictions in more than one state increased with each age category from the less than 21 age group through the 41 to 50 group. For offenders less than 21, 8.3 percent had convictions in more than one state, while 36.9 percent of those age 41 to 50 had convictions in multiple states. Just under one-third (31.5%) of offenders over 50 had convictions in more than one state (See Figure 5).

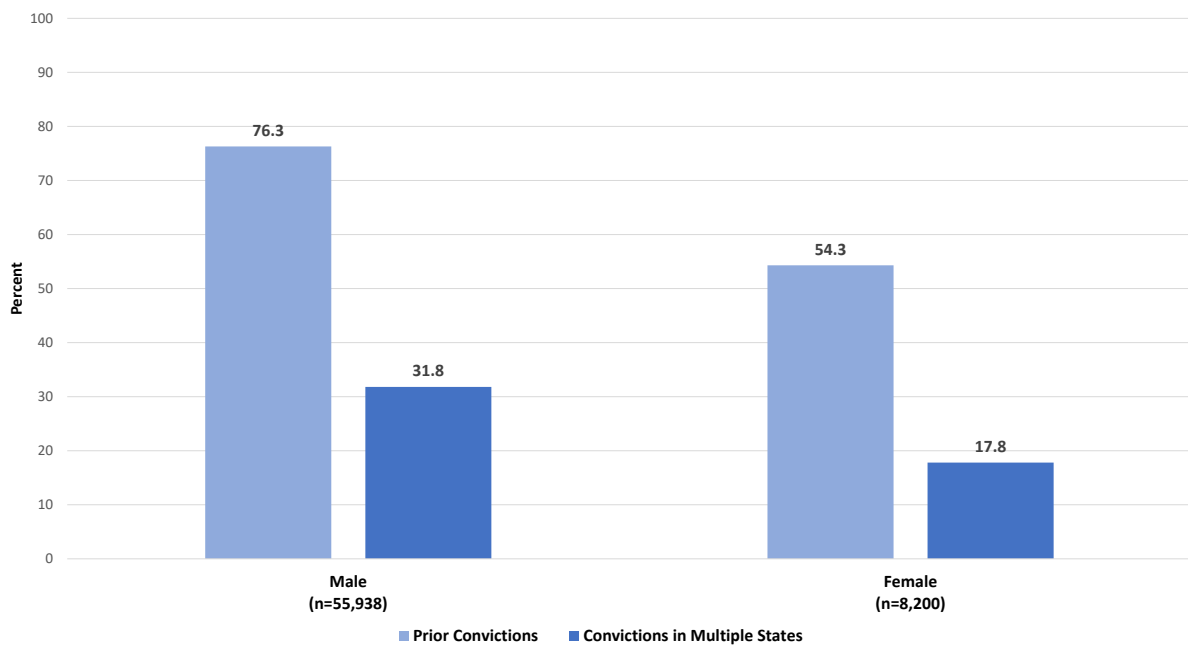
Figure 5. Convictions in Multiple States by Age at Sentencing



Gender

Males were more likely than females to have previous convictions and to have convictions in multiple states (See Figure 6). Just over three-quarters (76.3%) of male offenders had at least one prior conviction, while just over half (54.3%) of female offenders had at least one prior conviction. Similarly, male offenders were 14 percentage points more likely than female offenders to have convictions in multiple states (31.8% versus 17.8% respectively).

Figure 6. Convictions in Multiple States by Gender

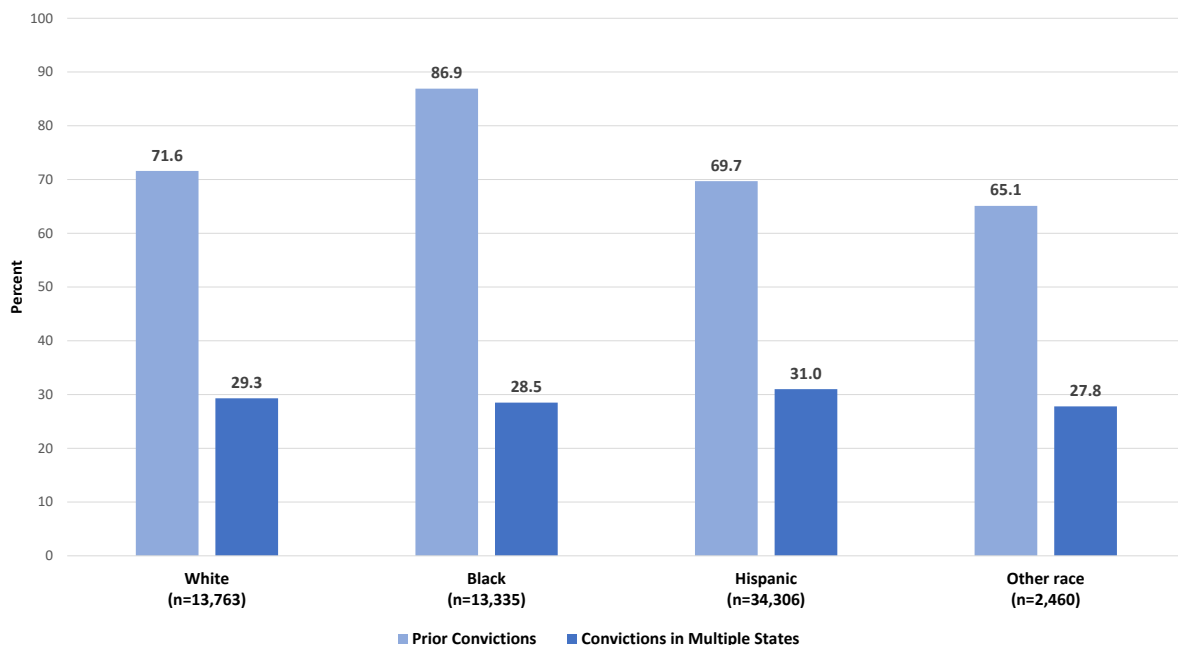


Race

Racial groups varied in their likelihood of having prior convictions (See Figure 7). Black offenders (86.9%) were the most likely to have a prior conviction, followed by White (71.6%), Hispanic (69.7%), and Other race (65.1%) offenders.

The percentage of offenders with convictions in multiple states did not vary substantially by race (See Figure 7). Hispanic offenders (31.0%) were the most likely to have convictions in multiple states, followed by White (29.3%), Black (28.5%), and Other race (27.8%) offenders.

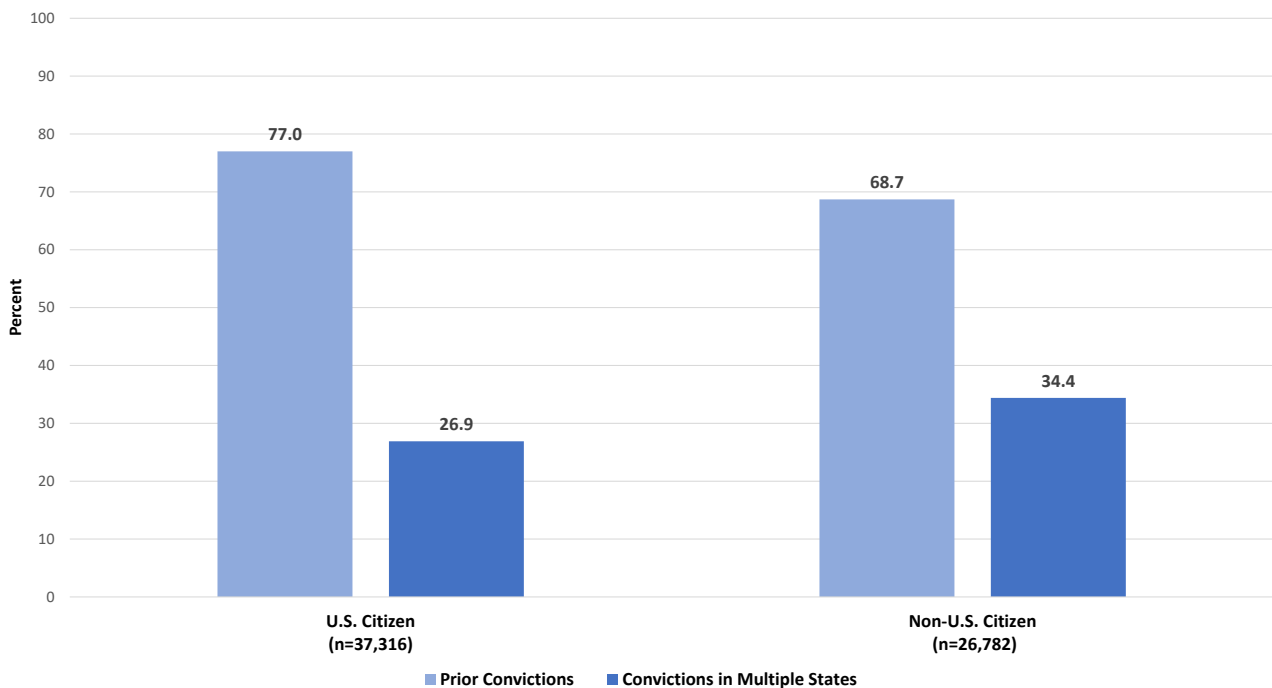
Figure 7. Convictions in Multiple States by Race



Citizenship

U.S. citizens were more likely to have prior convictions but less likely to have convictions in multiple states. Just over three-quarters (77.0%) of U.S. citizens had at least one prior conviction compared to 68.7 percent of non-U.S. citizens (See Figure 8). However, 26.9 percent of U.S. citizens had convictions in multiple states compared to 34.4 percent of non-U.S. citizens (See Figure 8). Hispanics and non-U.S. citizens are more likely to be convicted of immigration offenses, and, as noted above, immigration offenders are more likely to have convictions in multiple states.

Figure 8. Convictions in Multiple States by Citizenship Status



Impact of Out-of-State Convictions on Criminal History Score

As noted, the federal sentencing guidelines consider convictions originating in the various U.S. courts—federal, state, and military—in calculating an offender’s criminal history score. This is different from many state systems, which only include prior convictions in their jurisdiction. The Commission examined the degree to which out-of-state convictions in offenders’ criminal histories contributed to their criminal history score and their Criminal History Category.

In FY 2018, a total of 13,904 federal offenders had out-of-state convictions that received points under the Chapter Four rules of the Guidelines Manual. A third of these offenders (33.9%) received four or more points due to convictions in states other than the state in which the instant offense occurred. Three points were added due to out-of-state convictions for 22.0 percent of offenders, two points were added for 16.8 percent of offenders, and one point was added to 27.4 percent of offenders (See Table 3).

Table 3. Distribution of Points Due to Out of State Convictions

Number of Criminal History Points	Percent of Offenders
One Point	27.4%
Two Points	16.8%
Three Points	22.0%
Four or More Points	33.9%
TOTAL OFFENDERS	13,904

For many offenders, criminal history points from out-of-state convictions increased their resulting Criminal History Category. In fact, a higher Criminal History Category resulted for almost three-quarters (73.9%) of the 13,904 offenders who received additional points.⁸

Each column in Table 4 reflects the number of offenders who had a higher Criminal History Category due to out-of-state convictions that received points. In order to determine the impact of these convictions on Criminal History Category, the Commission recalculated

each offender’s Criminal History Category in the absence of out-of-state convictions, which is termed the “adjusted” Criminal History Category. The adjusted Criminal History Category is shown along the rows. For example, there were 1,121 offenders who were in VI, the highest category, in part because of an out-of-state conviction. If out-of-state convictions did not count under the guidelines, 24.2 percent of these offenders would be in Criminal History Category V. Another 10.9 percent would be in Criminal History Category IV, followed by 12.5 percent in Criminal History Category III, 37.8 percent in Criminal History Category II, and 14.6 percent in Criminal History Category I.

Table 4. Current and Adjusted CHC for Offenders Who Moved CHCs Due to Out of State Convictions

	Current CHC I N=0	Current CHC II N=2,749	Current CHC III N=3,240	Current CHC IV N=1,949	Current CHC V N=1,218	Current CHC VI N=1,121
Adjusted CHC I		100.0%	39.1%	24.0%	17.5%	14.6%
Adjusted CHC II			60.9%	39.0%	34.2%	37.8%
Adjusted CHC III				37.0%	17.2%	12.5%
Adjusted CHC IV					31.1%	10.9%
Adjusted CHC V						24.2%
Adjusted CHC VI						

Of the 1,218 offenders who were in Criminal History Category V, in part because of an out-of-state conviction, 31.1 percent would drop to Criminal History Category IV. Another 17.2 percent would drop to Criminal History Category III, 34.2 percent would drop to Criminal History Category II, and 17.5 percent would drop to Criminal History Category I.

Criminal History Category IV had 1,949 offenders in the category in part due to out-of-state convictions. Without these convictions 37.0 percent would drop to Criminal History Category III, 39.0 percent would drop to Criminal History Category II, and 24.0 percent would drop to Criminal History Category I.

Of the 3,240 offenders currently in Criminal History Category III, 60.9 percent could drop to Criminal History Category II, and 39.1 percent would drop to Criminal History Category I without out-of-state convictions. All 2,749 current Criminal History Category II would drop to Criminal History Category I.

Conclusion

Almost one-third of federal offenders sentenced in FY 2018 had convictions in more than one state. The mobility of these offenders varied by offender characteristics (e.g., gender, race, instant offense type, etc.). Immigration offenders (38.7%) were the most likely to have convictions in multiple states and child pornography possession offenders (16.4%) were the least likely to have convictions in multiple states. Male offenders (31.8%) were more likely than female offenders (17.8%) to have convictions in multiple states. Finally, non-U.S. citizens (34.4%) were more likely than U.S. citizens (26.9%) to have convictions in multiple states.

Of particular importance, this report highlights the effect out-of-state convictions have in the calculation of offenders' Criminal History Category. As noted, offenders' criminal history is an important factor judges consider when imposing a sentence. As highlighted in Table 4, a large portion of offenders with prior convictions would have their final Criminal History Category lowered if out-of-state convictions were not included in their Criminal History Category calculation. Further, the exclusion of out-of-state convictions in Criminal History Category calculations will inevitably have an adverse effect on the accuracy of Criminal History Category as a predictor of future recidivism. This is particularly important at the state level where jurisdictions often solely use convictions in their state to calculate criminal history categories. In such jurisdictions, it is important for policy makers to consider the mobility of offenders and subsequent effect on the calculation of criminal history scores.

Endnotes

* There were errors discovered in the advance online version of this report. On April 20, 2020, the errors were corrected in this PDF version and the report will appear correctly in the upcoming print issue. A list of the corrections is attached to the report.

1 18 U.S.C. § 3553(a)(1)

2 See TRACEY KYCKELHAHN & EMILY HERBST, U.S. SENTENCING COMM’N, *THE CRIMINAL HISTORY OF FEDERAL OFFENDERS* (2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180517_criminal-history.pdf; COURTNEY SEMISCH, U.S. SENTENCING COMM’N, *THE CRIMINAL HISTORY OF FEDERAL ECONOMIC CRIME OFFENDERS* (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200227_Crim-Hist-Econ.pdf.

3 See TRACEY KYCKELHAHN & TRISHIA COOPER, U.S. SENTENCING COMM’N, *THE PAST PREDICTS THE FUTURE: CRIMINAL HISTORY AND RECIDIVISM OF FEDERAL OFFENDERS* (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170309_Recidivism-CH.pdf.

4 For the purposes of this report, the term state includes states, territories, and the District of Columbia.

5 The Commission uses the term “instant offense” to refer to the federal conviction for which an offender is sentenced.

6 In FY 2018, the Commission received sentencing information on 69,425 convictions. Of those cases, 5,247 were removed due to incomplete information resulting in a final study cohort of 64,178.

7 States or territories in which fewer than 50 offenders were sentenced in fiscal year 2018 were omitted from this portion of the analysis.

8 Criminal History Category before application of enhancements such as the career offender enhancement at USSG §4B1.1 or the Armed Career Criminal Act.

Correction Notice

This version of the report includes the following changes from the advance online version of this report published on the Commission's website on April 14, 2020:

Page 1, last line, an apostrophe after the word "judges" was removed.

Page 2, in the second to last key finding, the percentage for North Dakota was changed from 59.2 to 59.1.

Page 4, line 3, the percentage was changed from 3.6 to 3.7.

Page 4, Figure 2, the percentage for the center bar was changed from 3.6 to 3.7.

Page 4, last paragraph, the percentage for North Dakota was changed from 59.2 to 59.1.

Page 5, map and Table 2, Georgia replaced Texas as one of the bottom ten states/territories for multiple state convictions.

Page 5, Table 2, the percentage for CA was changed from 17.3 to 17.1.

Page 5, Table 2, the percentage for FL was changed from 20.6 to 20.5.

Page 5, Table 2, the percentage for NY was changed from 21.3 to 20.9.

Page 5, Table 2, the percentage for MA was changed from 22.5 to 22.2.

Page 5, a new endnote 7 was added noting that "States or territories in which fewer than 50 offenders were sentenced in fiscal year 2018 were omitted from this portion of the analysis." The endnote previously numbered as 7 was renumbered as endnote 8.

Page 6, second paragraph, the first sentence was revised to read "A similar pattern, although with less variation, is also seen"

Page 11, the number for endnote 8 (which formerly was endnote 7) was added at the end of the sentence beginning "In fact, a higher Criminal History Category" No change was made to the text of the endnote itself.

Page 13, line 4, the percentage of child pornography possession offenders was changed from 16.7 to 16.4.

Page 13, first paragraph, line 7, the percentage of non-U.S. citizens was changed from 34.3 to 34.4.

Page 13, second paragraph, first line, the word "affect" was changed to "effect."

Page 14, endnote number 6, the number of convictions for which the Commission received information was changed from 69,245 to 69,425.



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