



Federal Offenders Who Served in the Armed Forces

United States Sentencing Commission
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United States Sentencing Commission



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The Department of Veterans Affairs estimates that there are more than 19 million Americans who are veterans.

Over 10,000 veteran offenders were in the custody of the Federal Bureau of Prisons at the end of 2019, accounting for almost six percent of all BOP inmates.

Introduction

The Department of Veterans Affairs estimates that there are more than 19 million Americans who are veterans.¹ Since 9/11, almost four million Americans have served in uniform, with about 2.5 million deployed overseas to a combat zone.² As of end of 2016, the Bureau of Justice Statistics of the U.S. Department of Justice estimated that there were 107,400 veterans in federal and state prisons, including local jails.³ Over 10,000 veteran offenders were in the custody of the Federal Bureau of Prisons at the end of 2019, accounting for almost six percent of all BOP inmates.⁴ Veterans in state prisons accounted for 7.9 percent of all state prisoners,⁵ a decrease from a high of 24.0 percent of all persons incarcerated in state prisons and 25.0 percent of all persons incarcerated in jails in 1978.⁶

The question of whether and to what extent military service should be considered in determining the appropriate sentence for veteran offenders has long been discussed in the criminal justice system. The United States Supreme Court has observed that the nation has “a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines.”⁷ In a recent article, United States Circuit Judge Michael Daly Hawkins noted, “There is widespread public acceptance of the notion that military veterans should be treated differently in many respects from their civilian counterparts. This acceptance may be attributable to a general respect for the sacrifice of members of an all-volunteer force and the knowledge that today’s veteran may have been subjected, even repeatedly subjected, to life threatening events the general public may never know.”⁸

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**FEDERAL PRISONERS IN THE BUREAU OF PRISONS
174,391**



**VETERANS
10,252
5.9%**

As discussed in more detail below, courts are statutorily required to consider an offender’s history and characteristics, including military service, in determining the appropriate sentence.⁹ In this regard, the United States Sentencing Guidelines specifically authorize judges to consider an offender’s prior military service when determining whether to depart from the federal sentencing guidelines. This report provides an analysis of the relatively small number of veterans each year who are sentenced for a federal felony or Class A misdemeanor offense, most often committed well after they left military service. In particular, the report examines federal offenders with prior military service who were

sentenced in fiscal year 2019, the crimes they committed, and an assessment of whether that prior service was given special consideration at sentencing.

Since most veteran offenders are sentenced for offenses other than federal felony or Class A misdemeanor offenses and, therefore, not reflected in the Commission’s data, the report also discusses how many states, and even a few federal districts have established specialized courts for less serious offenses to provide veterans with additional opportunities for rehabilitation and reentry into the community.

Key Findings

- In fiscal year 2019, 4.4 percent of all U.S. citizens sentenced in the Federal courts for a felony or Class A misdemeanor had served in the military. For these offenders, the average length of time between separation from the military and the sentence for the federal offense was 23 years.
- The most common crime type committed by both veteran offenders and citizen offenders overall was drug trafficking (25.0% and 37.6%, respectively). Veteran offenders, however, committed child pornography offenses more than four times as often as citizen offenders overall, 11.6 percent compared to 2.7 percent, and sex abuse offenses more than twice as often, 6.7 percent compared to 2.4 percent.
- The sentences imposed on veteran offenders and citizen offenders overall were similar in terms of type of sentence imposed and average sentence imposed. For veteran offenders, 79.2 percent received a sentence of imprisonment compared to 83.9 percent of all citizen offenders, and the average sentence for veteran offenders was 64 months compared to 62 months for all citizen offenders.
- Although veteran offenders were more likely to be sentenced below the applicable guideline range (38.9% received a downward variance compared to 31.8% of all citizen offenders), military service does not appear to have a significant influence on the sentences imposed. The court specifically cited an offender's military service as a reason for the sentence imposed in only 15.0 percent of cases involving veteran offenders.
- When the court did cite an offender's military service as a reason for the sentence, it was almost always for service that the military had characterized as honorable.
- Only two other offender characteristics were correlated with sentences where a court cited the offender's military service as a reason. Two-thirds (66.9%) of the offenders whose military service was cited by the court indicated that they had some history of mental health problems, compared to 51.1 percent for veteran offenders generally. Also, more than half (54.8%) of the offenders whose service was cited by the court had served in a combat zone, compared to 22.6 percent for all veteran offenders.

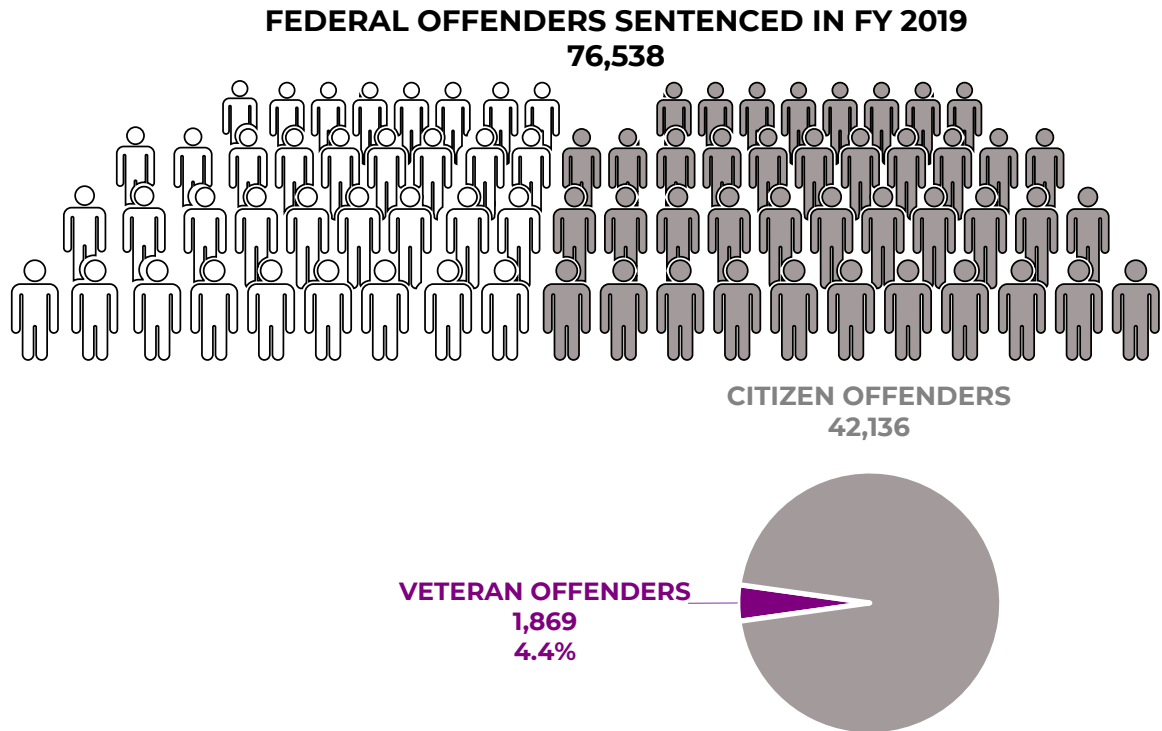
The Legal Framework for Providing Special Consideration to Veterans at Sentencing



Congress requires courts to consider several factors when determining the sentence to be imposed in federal cases, among them the “history and characteristics of the defendant.”¹⁰ Courts are also required to consider the sentencing range recommended in the federal sentencing guidelines promulgated by the United States Sentencing Commission. In its *Guidelines Manual*, the Commission states, “Military service may be relevant in determining whether a departure is warranted, if the military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines.”¹¹

The Supreme Court has echoed the propriety of such consideration by the courts in specific circumstances. In 2009, the Supreme Court held, in *Porter v. McCollum*, that a lawyer provides ineffective assistance of counsel if he or she does not investigate a client’s military service and present aspects of it as potential mitigating factors.¹² The Court held that not only was it relevant that the veteran-defendant had “extensive combat experience” and had “served honorably under extreme hardship and gruesome conditions,” but also “that the jury might find mitigating the intense stress and mental and emotional toll that combat took” on the defendant.¹³

The Sentencing of Veterans Convicted of Federal Offenses



The Commission does not regularly collect information on the military status of federal offenders. To explore whether an offender’s military status had an impact at sentencing, the Commission conducted a specialized coding and analysis project. The Commission used optical recognition software to search the presentence investigation reports for all offenders sentenced in fiscal year 2019.¹⁴ Using this software, the Commission identified all cases with a specific reference to an offender’s military status or which contained key words that might indicate prior military service (e.g., veteran, military, Army, Iraq). Additionally, the Commission identified all cases where the sentencing court had cited section 5H1.11 of the sentencing guidelines as a reason for the sentence.¹⁵ Commission staff then

examined each of the cases identified to verify the offender’s prior military service and, for those who had served, to record specific items about that military service and whether the court had indicated that the offender’s military service was a reason for the sentence imposed. Staff also recorded information on other offender characteristics for these offenders, such as alcohol abuse, illegal substance use, mental health status, and employment history.

In fiscal year 2019 the Commission received sentencing information on 76,538 felony or Class A misdemeanor offenses.¹⁶ Slightly more than half of the offenders in these cases (55.1%) were citizens.¹⁷ Of those 42,136 citizen offenders, 1,869 offenders (4.4%) had served in the military.¹⁸

Demographics and military service of veteran offenders

The demographic characteristics of veteran offenders differed from the federal offender population in several respects. All the veteran offenders in the study were citizens and all were men. In comparison, in fiscal year 2019, almost half (44.6%) of all federal offenders were non-citizens, and 12.3 percent were women.

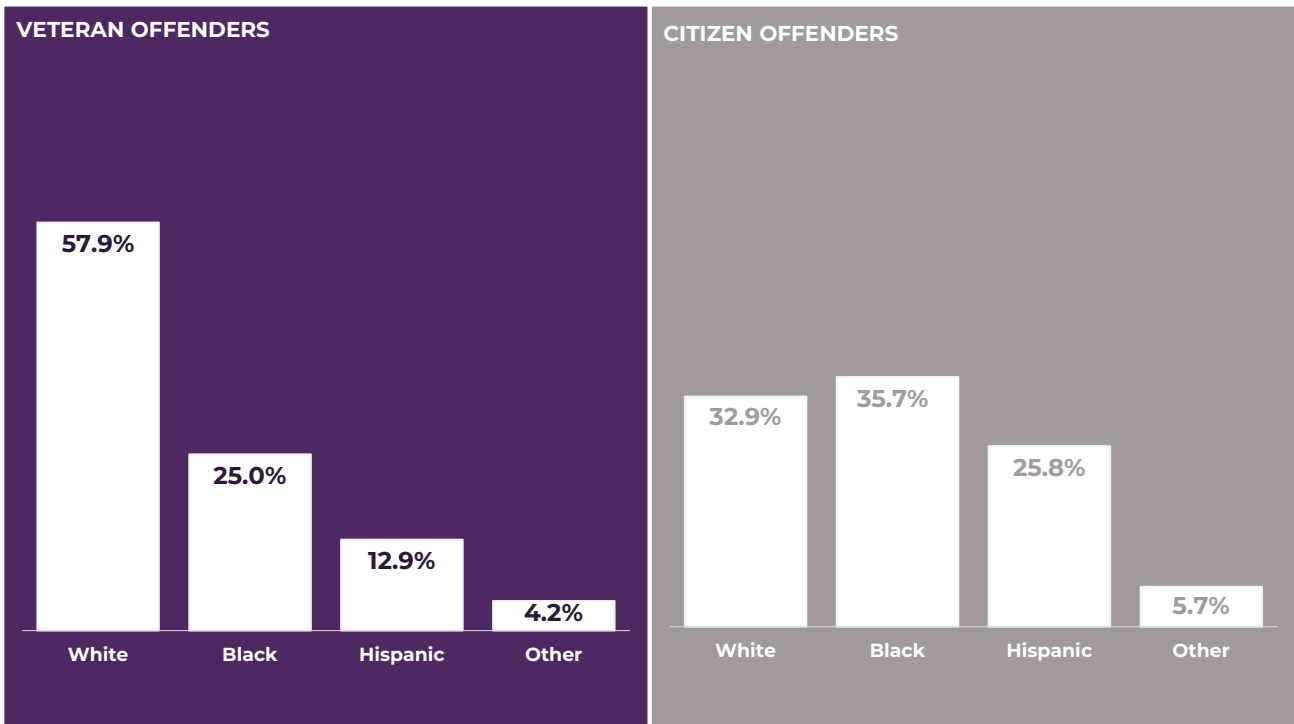
Focusing on citizen offenders, the race of veteran offenders in the study differed from citizen offenders overall. The majority of veteran offenders sentenced in fiscal year 2019 were White (57.9%), followed by Black (25.0%), Hispanic (12.9%), and Other

(4.2%). In contrast, the composition of citizen offenders overall was more evenly distributed by race. For all citizen offenders the race distribution was 32.9 percent White, 35.7 percent Black, 25.8 percent Hispanic, and 5.7 percent Other races.

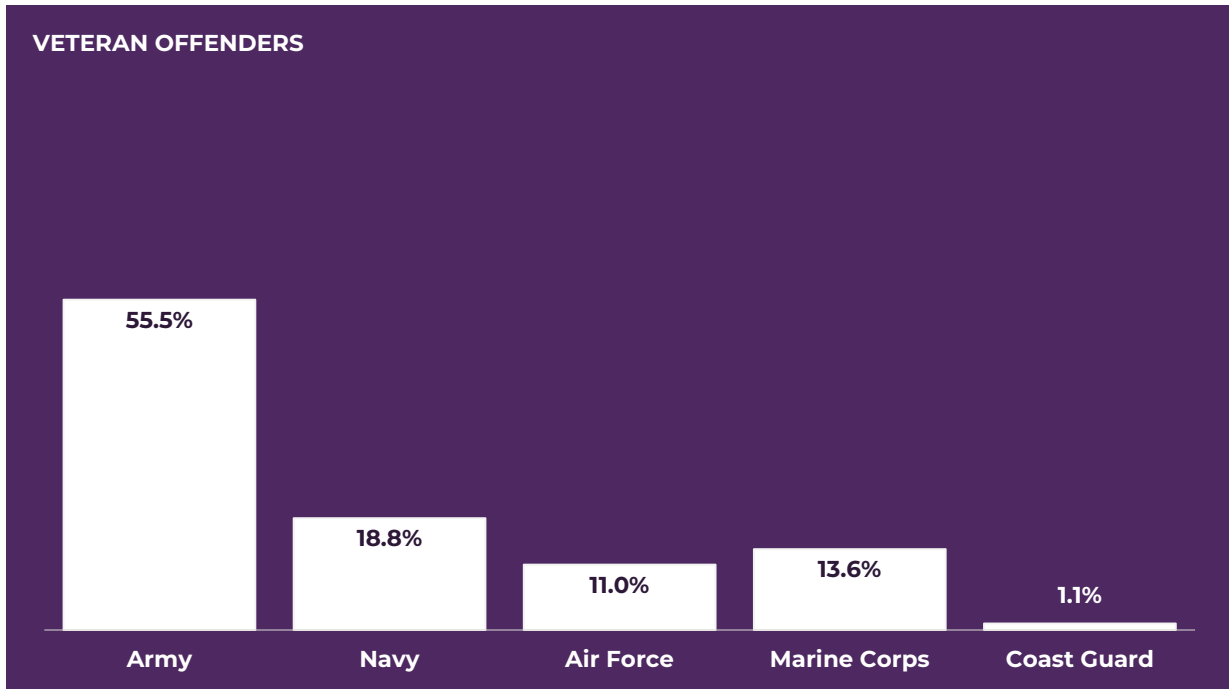


Veteran offenders tended to be older and more educated than citizen offenders overall.

RACE



BRANCH OF MILITARY SERVICE



Veteran offenders also tended to be older and more educated than citizen offenders overall. The average age of veteran offenders was 47, compared to 37 for citizen offenders. Among veteran offenders, just 3.0 percent had less than a high school education,¹⁹ and 38.9 percent had graduated from high school. Another 42.4 percent of veteran offenders had some college education while 15.7 percent were college graduates. Among citizen offenders generally, 30.2 percent had less than a high school education, while 40.7 percent had graduated high school. Although 22.1 percent of citizen offenders had some college education, only 7.0 had graduated from college.

More than half of the offenders in the study (55.5%) had served in the United States Army, followed by the Navy (18.8%), Marine Corps (13.6%), Air Force (11.0%), and Coast Guard (1.1%). Of all the offenders in the study, approximately one-quarter (25.8%) had served in a Reserve Component of the military at some point in their career. Almost all the offenders (94.5%) were enlisted persons while in the military.²⁰



More than one-in-five veteran offenders participated in a combat operation.

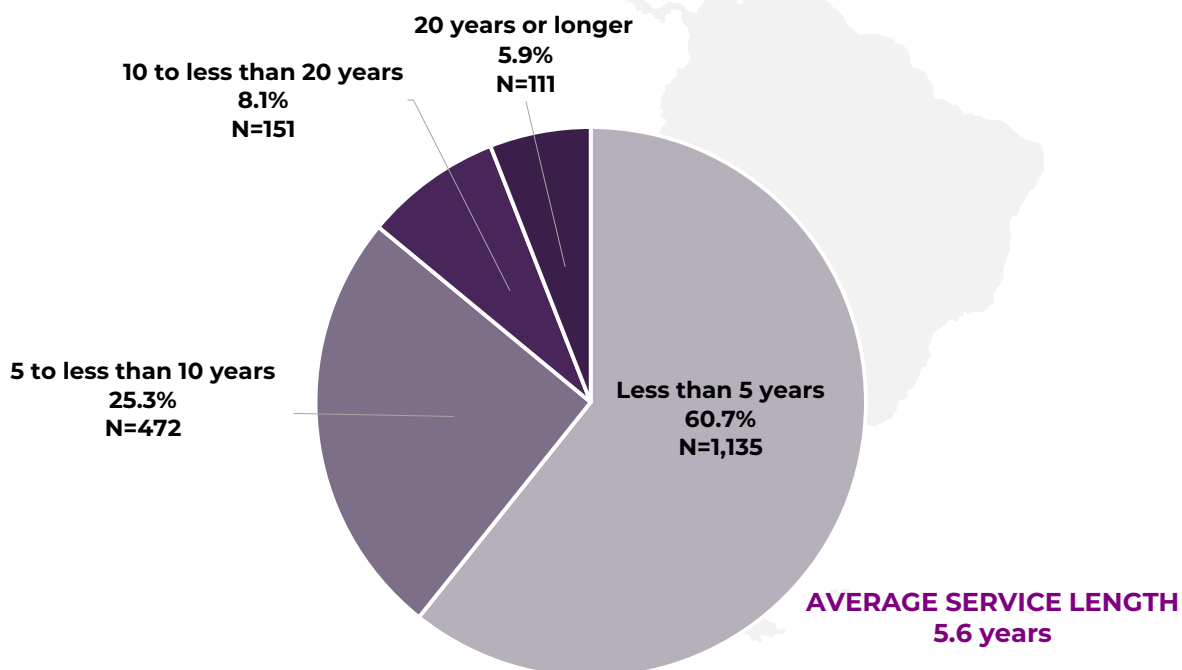
The majority of the offenders (60.7%) had served for less than five years. The average length of service was 5.6 years.

Of the 1,869 veteran offenders sentenced in fiscal year 2019, more than one-in-five (20.4%, or 381) had participated in a combat operation. Veterans of the war in Iraq were the most common. Of the 381 veterans who had served in a combat zone, 168 had served in Iraq. Veterans of the war

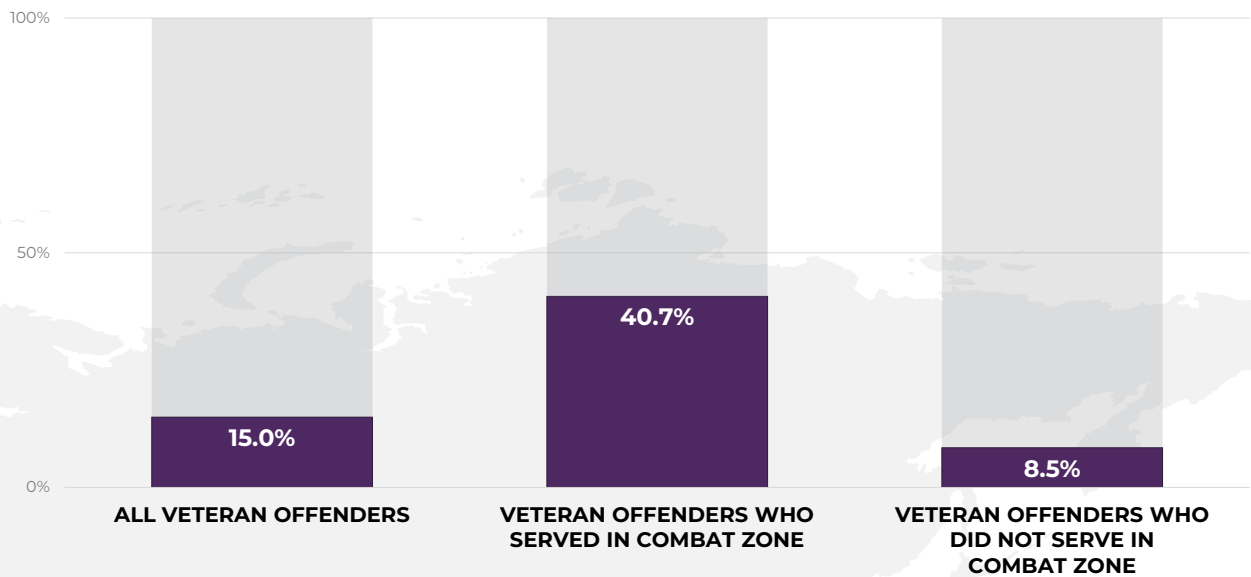
in Afghanistan were next most common (78),²¹ followed by Desert Shield/Desert Storm (68) and Vietnam veterans (61).

Of the 1,869 veteran offenders sentenced in fiscal year 2019, only 4.0 percent (74) reported being physically injured in combat. However, this number represents almost one-in-five (19.4%) of the 381 veterans who had served in a combat zone.

LENGTH OF MILITARY SERVICE



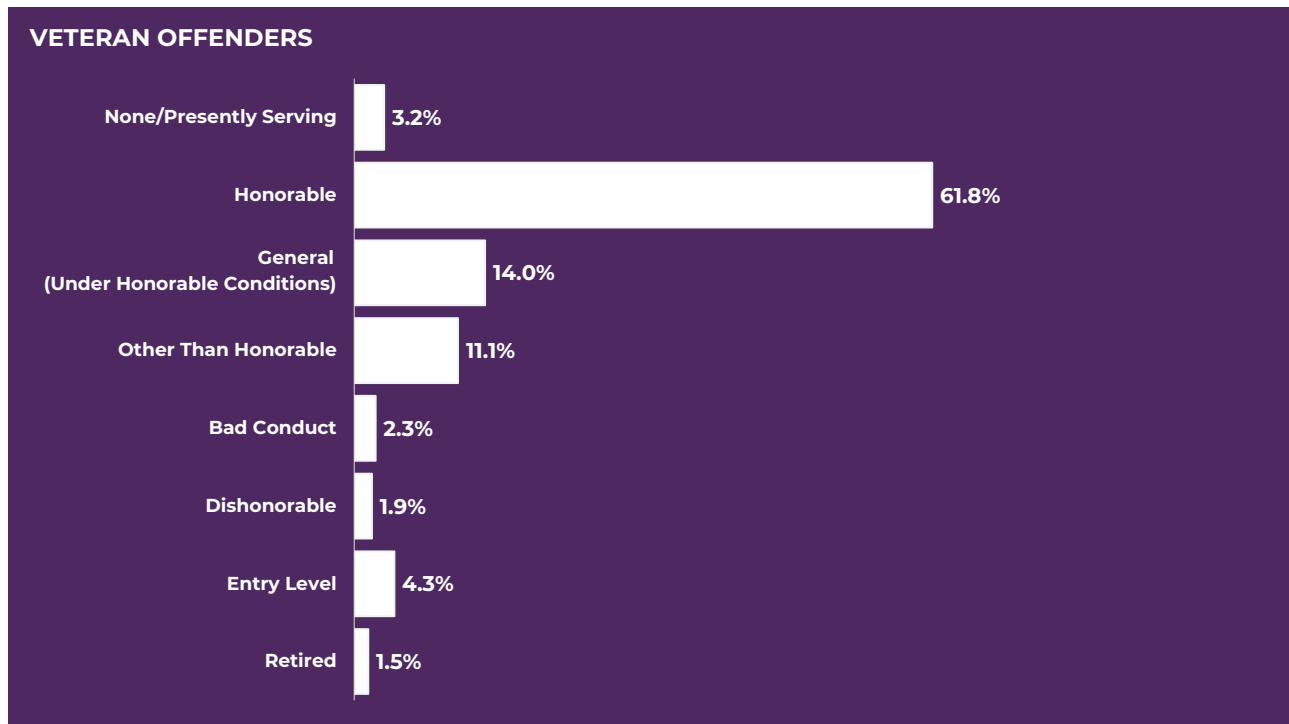
RATE OF POST-TRAUMATIC STRESS REPORTED BY VETERAN OFFENDERS



In addition to physical injury, many veterans report suffering from post-traumatic stress.²² Of the 1,869 veteran offenders sentenced in fiscal year 2019, 281 reported suffering from post-traumatic stress related to military service. The incidence of post-traumatic stress was not limited to offenders who had served in a combat zone, although the rates at which veteran offenders reported post-traumatic stress differed significantly depending on whether the veteran had served in a combat zone. Of the 381 veteran offenders who had served in a combat zone, 40.7 percent (155) reported suffering from post-traumatic stress. In contrast, of the 1,488 veteran offenders who did not report serving in a combat zone, 127 reported post-traumatic stress related to military service.

As discussed below, among the reasons often cited for considering military service at sentencing are that veteran offenders often have high incidences of alcohol abuse, substance abuse, and mental health problems related to their military service.²³ Of the veteran offenders in this study, 13.1 percent indicated that they had abused alcohol at some time prior to their federal offense, while 66.7 percent indicated that they had used illegal substances. Half (51.1%) indicated that they had some history of mental health problems, a rate much higher than the rate for post-traumatic stress alone.

CHARACTERIZATION OF MILITARY SERVICE



Separation from the military of veteran offenders

Time away from service varied significantly, but on average, offenders committed the instant federal offense well after they left military service. The year of separation for veteran offenders from military service ranged from 1956 to 2019.²⁴ The largest proportion of veteran offenders separated from service in 1997 and in 2018; however, the 52 offenders who separated in each of those years accounted for just 2.9 percent of all offenders in the study for whom information on the year of separation was available. Additionally, 52 offenders were still in the military at the time of their arrest or sentencing. The average length of time between separation from the military and the sentence for the federal offense was 23 years.

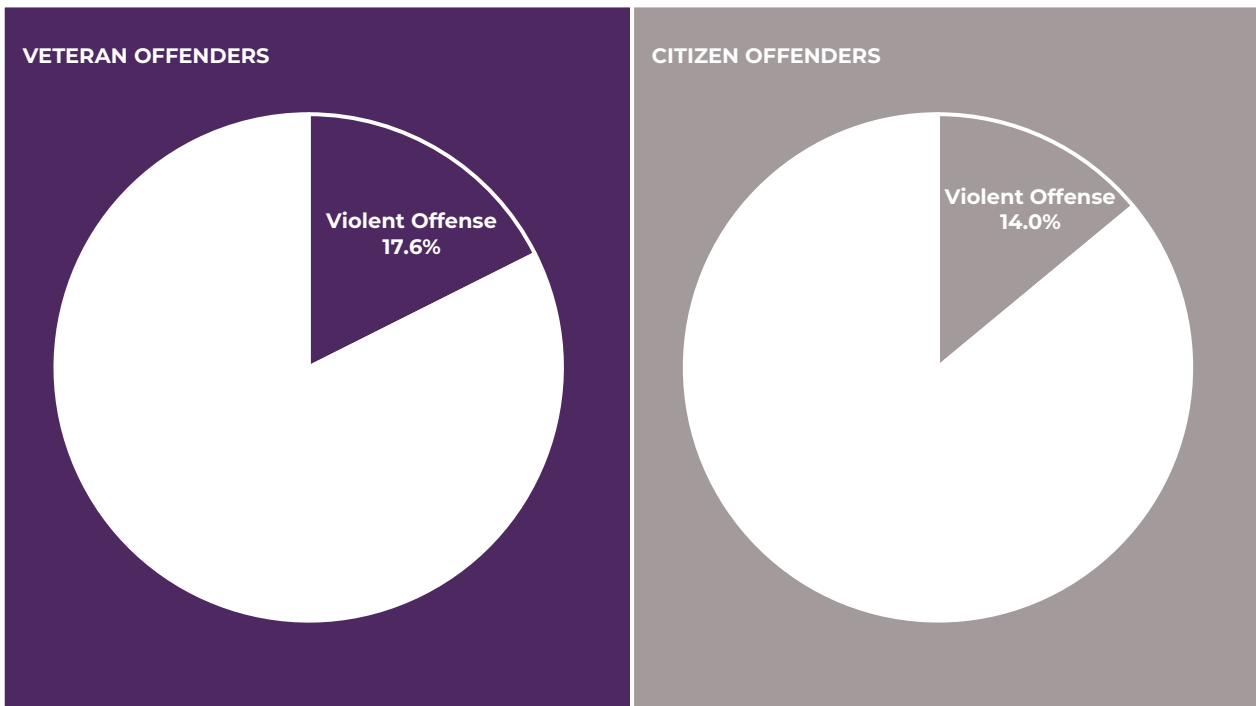
Three-quarters of the offenders in the study (77.3%) were separated from military service under honorable conditions. More than 60 percent of the offenders in the study (61.8%, n=1,009) received an honorable discharge at the conclusion of their military service. Another 14.0 percent received a “general (under honorable conditions)” characterization. Conversely, 15.3 percent (249) of the offenders in this study were involuntarily separated from military service; most of whom (181 offenders) received an “other than honorable” discharge. Of all 249 offenders involuntarily separated from the military, 68 received a “punitive discharge,” which is imposed only after conviction at a court-martial.²⁵

Another 70 offenders received an entry-level or otherwise “uncharacterized” discharge, meaning that they failed to complete initial entry training or experienced some problem shortly thereafter that prevented them from fulfilling their service obligation. Also, 24 offenders in the study had retired from the military, meaning that they had served long enough to receive retirement pay.²⁶ Finally, 52 offenders in the study were still in the military at the time of their arrest or sentencing for their federal crime.

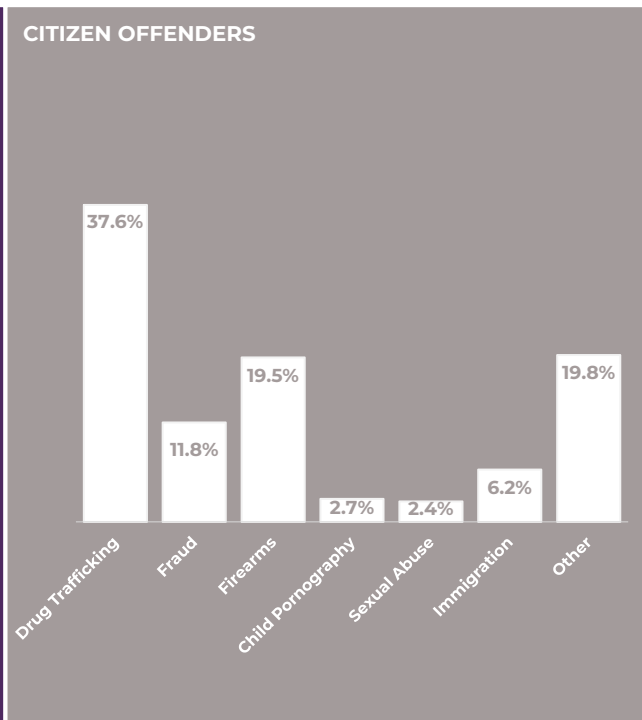
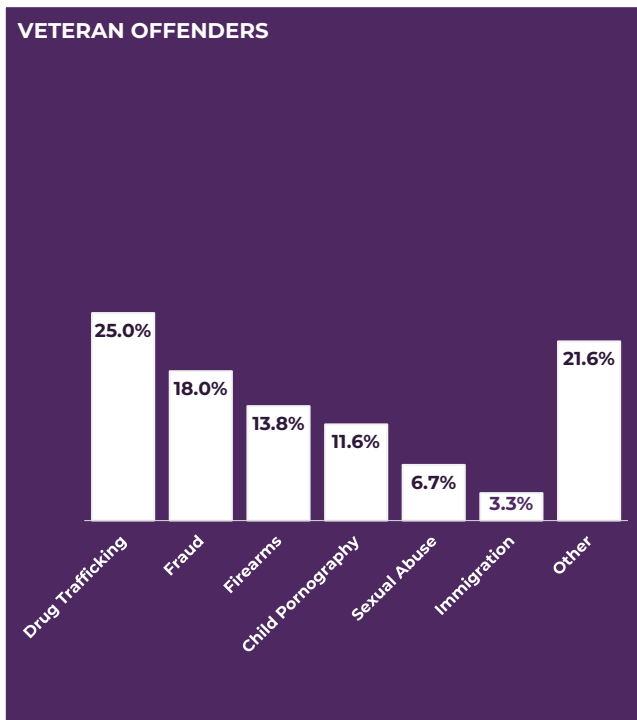
The type of crimes and sentences imposed in cases with veteran offenders

Most veteran offenders in the study (95.8%) were convicted of a felony offense and 17.6 percent committed a violent crime. This rate was very similar to all citizen offenders sentenced in fiscal year 2019, where 95.8 percent were convicted of a felony offense and 14.0 percent were convicted of a violent crime. However, the types of crimes committed by veteran offenders differed from those of citizen offenders in several important ways.

VIOLENT CRIMES



CRIME TYPES

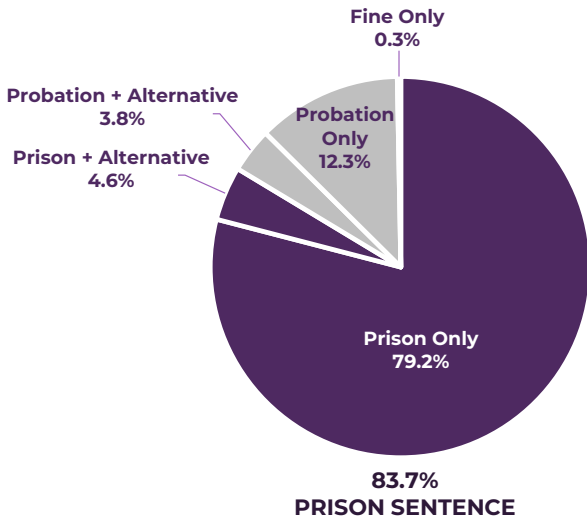


The most common type of crime among both veteran and citizen offenders was drug trafficking, although less often for veteran offenders at 25.0 percent compared to 37.6 percent of citizen offenders overall. However, the next two most common specified crime types were in reverse order for these two groups. For veteran offenders, the second most common specified crime type was fraud at 18.0 percent followed by firearms at 13.8 percent, whereas for citizen offenders the second most common specified crime type was firearms at 19.5 percent followed by fraud at 11.8 percent.

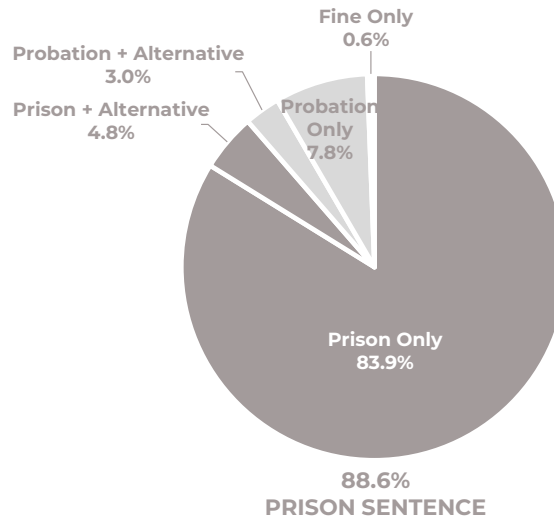
The most significant differences in crime type between veteran and citizen offenders, however, were the frequencies of child pornography and sexual abuse offenses. Veteran offenders committed a child pornography offense more than four times as often as citizen offenders overall, 11.6 percent compared to 2.7 percent. Furthermore, veteran offenders committed sexual abuse offenses more than twice as often as citizen offenders overall, 6.7 percent compared to 2.4 percent.

SENTENCE TYPES

VETERAN OFFENDERS



CITIZEN OFFENDERS²⁷



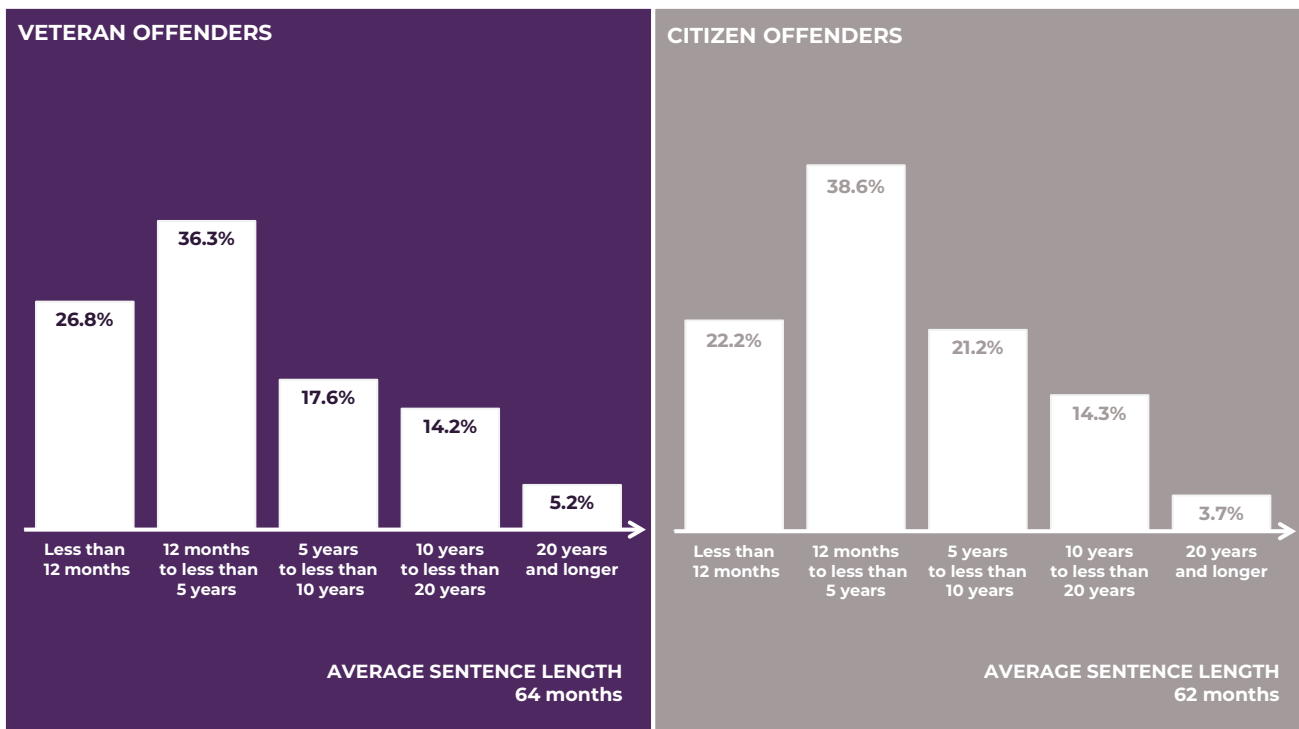
In general, the sentences imposed on veteran offenders and other citizen offenders were similar both in the type of sentence imposed and the average sentence. Of the 1,869 veteran offenders in the study, 79.2 percent were sentenced to a “prison only” sentence. Another 12.3 percent of offenders received a sentence of probation only. Of the remaining offenders, 4.6 percent received a sentence of prison and an alternative to prison, while 3.8 percent received a probation sentence that also included conditions of confinement. Five offenders were sentenced to a fine as the only punishment.

Among all citizen offenders sentenced in fiscal year 2019, 83.9 percent were sentenced to a prison only sentence. Another 7.8 percent received a sentence of

probation only, while 4.8 percent received a sentence of prison and an alternative to prison, and 3.0 percent received a probation sentence that also included conditions of confinement. A fine was the only punishment imposed in 248 cases involving citizen offenders.

The average sentence for veteran offenders in the study was 64 months, however, sentences were widely distributed. Just over one-quarter (26.8%) of offenders received a sentence of less than 12 months and 36.3 percent received a sentence of between 12 months and five years. The remaining 37.0 percent were sentenced to more than five years in prison. Of those, 98 offenders, accounting for 5.2 percent of all offenders in the study, were sentenced to 20 years or longer.

SENTENCE LENGTH

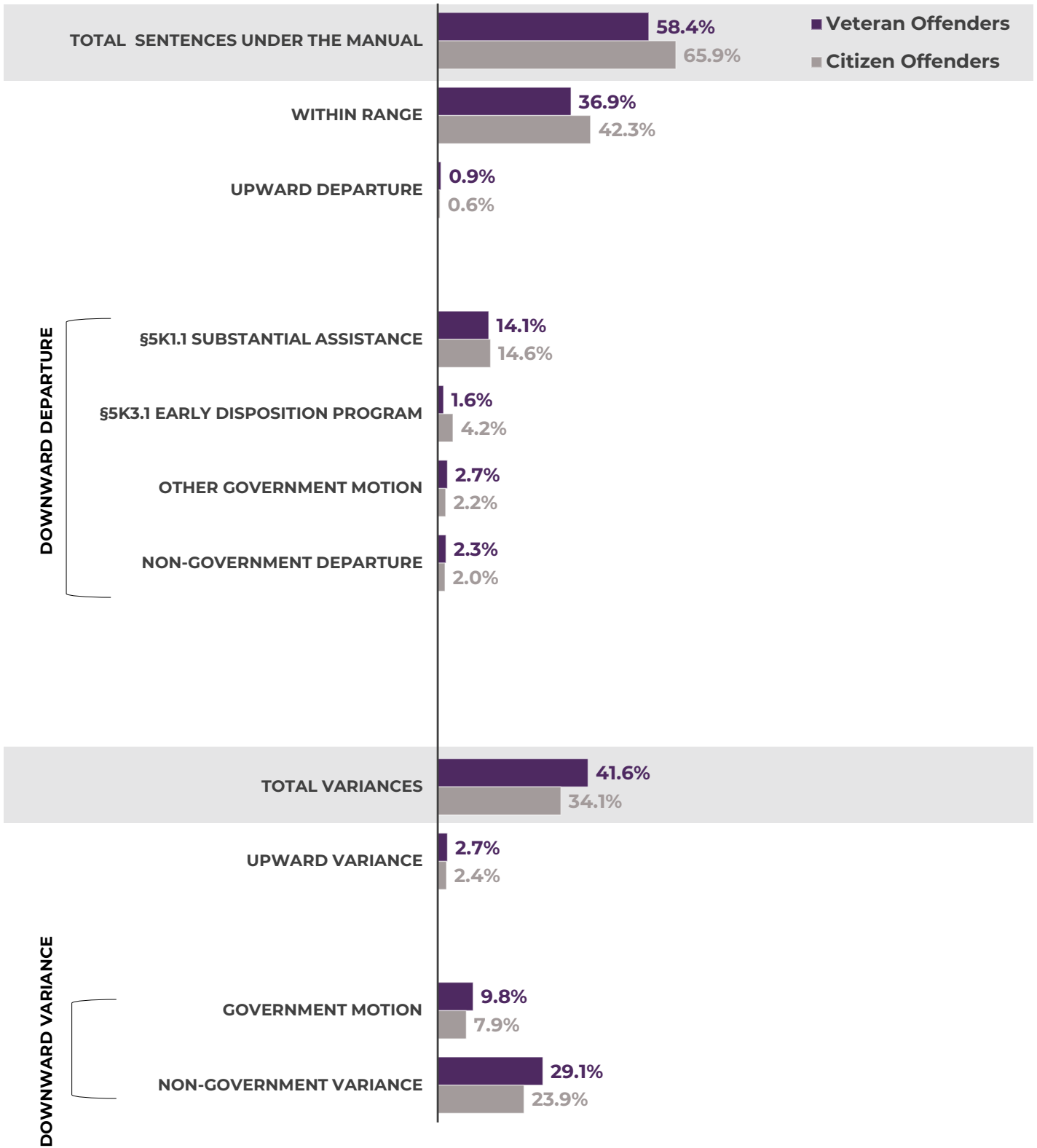


The average sentences for all citizen offenders were similar to veteran offenders and also widely distributed. Among citizen offenders sentenced in fiscal year 2019, the average sentence was 62 months. Just over one-in-five offenders (22.2%) received a sentence of less than 12 months, 38.6 percent received a sentence of between 12 months and five years, and the remaining 39.2 percent were sentenced to more than five years in prison. Of those, the remaining 1,473 offenders were sentenced to 20 years or longer.

Veteran offenders were more likely to be sentenced below the guideline range than citizen offenders generally, because they were more likely to receive a downward departure or variance. In fiscal year 2019, 36.9 percent of veteran offenders were sentenced within the applicable guideline

range, compared to 42.3 percent of all citizen offenders. Veteran offenders were more likely to receive either a government or non-government sponsored variance. In total, 38.9 percent of veteran offenders received such a sentence compared to 31.8 percent of citizen offenders. Similarly, veteran offenders were more likely to receive a downward departure, at 5.0 percent compared to 4.2 percent for citizen offenders. Relatively similar rates of both groups received downward departures as a result of substantial assistance to the government, at about 14 percent. Another 1.6 percent of veteran offenders and 4.2 percent of citizen offenders received a lower sentence because they agreed to participate in an early disposition program (EDP), which would expedite the sentencing in their case.

POSITION OF SENTENCE RELATIVE TO THE SENTENCING GUIDELINE RANGE



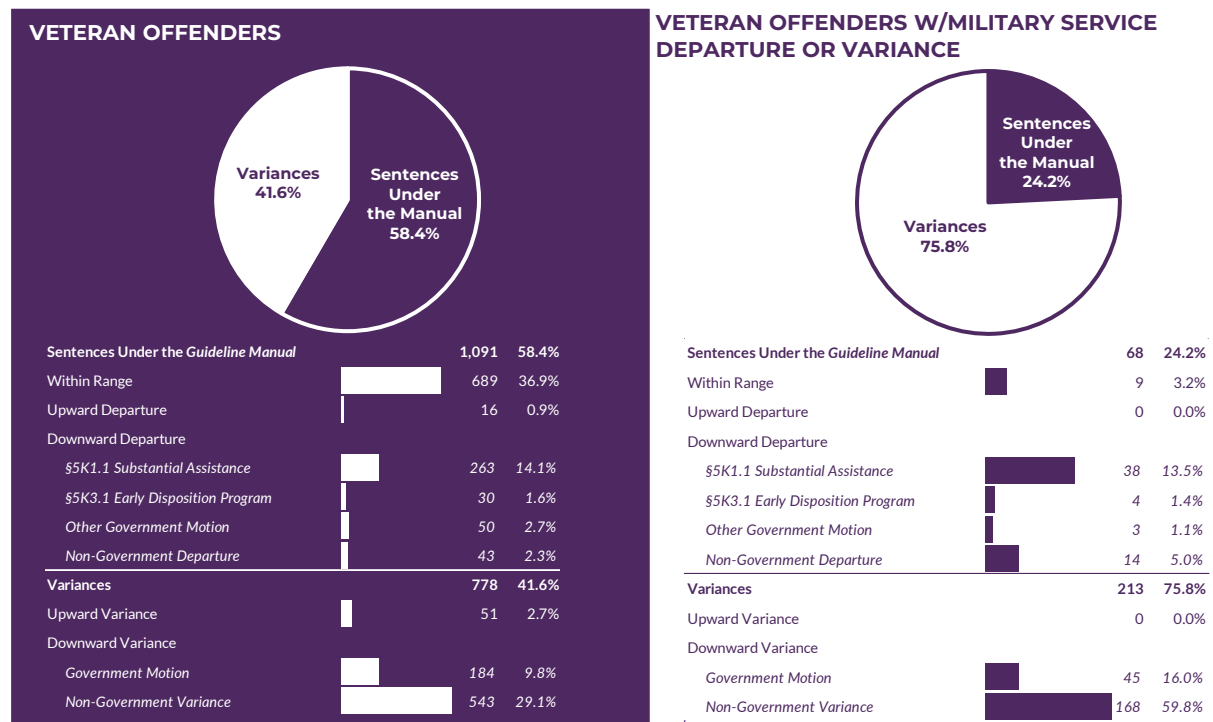
United States Sentencing Commission

The differences in below-range sentences were not correlated with the sentences for any particular crime type. For example, in drug trafficking offenses, veteran offenders received a below guideline sentence for a reason other than substantial assistance or participation in an EDP program in 37.4 percent of all cases compared to 35.2 percent of all citizen cases. Among fraud offenses, veteran offenders received a below guideline sentence in 41.2 percent of all cases compared to 40.0 percent of all citizen cases. There was some larger difference in firearm cases, where veteran offenders received a below guideline sentence for a reason other than substantial assistance or participation in an EDP program in 43.4 percent of all cases compared to 33.9 percent of citizen cases.

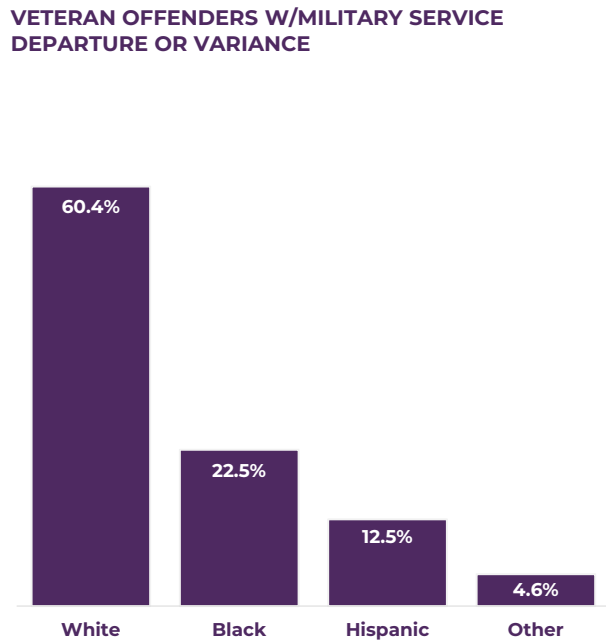
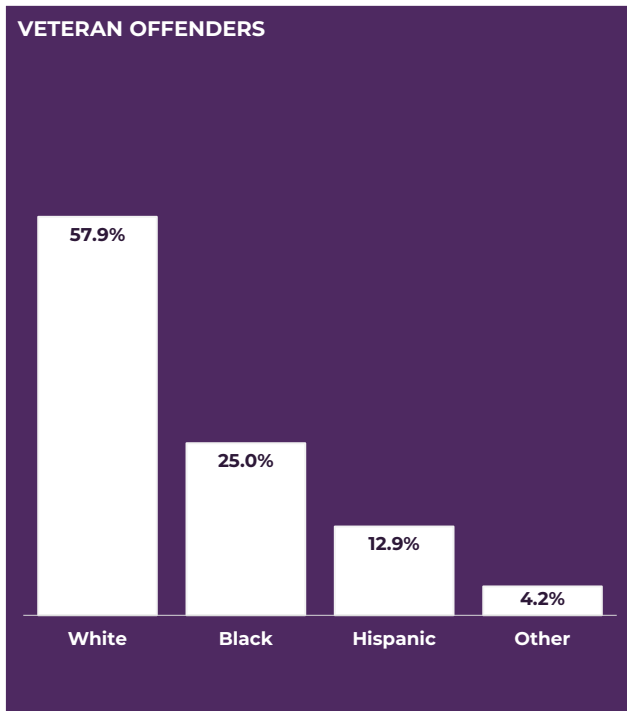
Military service as a reason for the sentence imposed

Of the 1,869 cases in the study, the court indicated that the offender's military service was the reason, or one of the reasons, for the sentence in 281 cases, or 15.0 percent.²⁸ Of those 281 sentences, 213 were variances from the guidelines and 14 were departures for reasons other than those initiated by the government.²⁹ In 38 cases, the offender's sentence was reduced from the guideline range because he provided substantial assistance to the government, but the court also noted the offender's military service as a reason for the sentence. Similarly, in four cases the offender agreed to participate in an EDP, but the court also noted the offender's military service as an additional reason for the sentence.

POSITION OF SENTENCE RELATIVE TO THE SENTENCING GUIDELINE RANGE



RACE



In nine of the 281 cases, the sentence imposed was within the guideline range but, presumably, at a lower point within that range than would have been the case absent the court’s consideration of the offender’s military service.³⁰ Consistent with that presumption, in all nine cases the sentence imposed was at the bottom of the guideline range, or was a sentence involving probation or another alternative to incarceration authorized by the guidelines.

More than two-thirds (70.5%) of the offenders whose military service was cited as a reason for the sentence received a prison only sentence, slightly lower than veteran offenders generally (79.2%). Another 15.0 percent received a probation only sentence, slightly higher than all veteran offenders (12.3%). The sentences imposed on these 281 offenders were

generally shorter than for all veteran offenders. Of the 281 offenders, 33.5 percent received a sentence of less than 12 months while another 40.2 percent received sentences of 12 months to less than five years. The remaining 26.3 percent of these offenders received a sentence of more than five years and ten of those offenders (3.6%) received a sentence of 20 years or longer. As discussed above, 26.8 percent of veteran offenders received a sentence of less than 12 months, while 36.3 percent received a sentence of between 12 months and five years.

Few offender or offense characteristics were correlated with the courts citing an offender’s military service as a reason for the sentence. For example, of the offenders whose military service was given as a reason for the sentence, 60.4 percent were White, 22.5 percent were Black, 12.5

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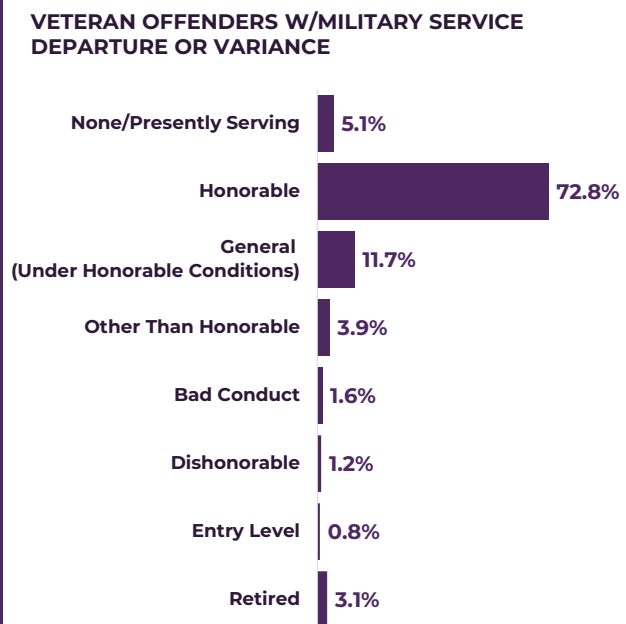
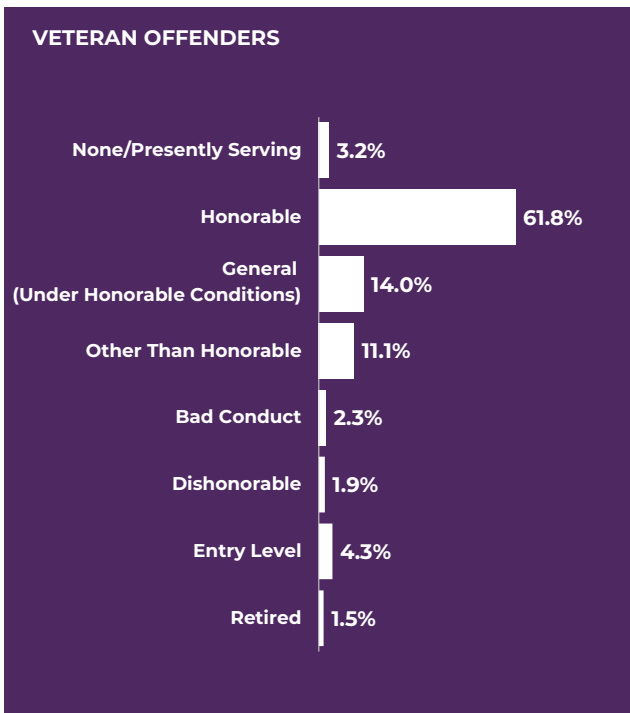
percent were Hispanic, and 4.6 percent were an Other race. These rates were consistent with those for veteran offenders generally.

The type of crime committed by the offenders whose military service was cited by the court as a reason for the sentence also was similar to those committed by veteran offenders generally. Among the 281 offenders whose service was cited by the court, 25.3 percent had committed a drug trafficking offense, the same percentage for all veterans in the study. Another 21.0 percent were sentenced for fraud, compared to 18.0 percent for veteran offenders generally. Another 16.4 were sentenced for child pornography, a slightly higher percentage than the 11.6 percent among all veterans. Twelve and a

half percent committed firearms offenses, similar to the 13.8 percent among all veteran offenders. As a group, 15.0 percent of the offenders whose military service was a reason for the sentence were convicted of a violent offense, compared to 17.6 percent for all veteran offenders.

There was no correlation between the length of time since discharge from military service to the commission of a federal offense among those cases in which military service was cited as a reason for the sentence. While 26.6 percent had served in the military as recently as five years before the date of the federal offense, more than half (58.2%) of those offenders had been discharged 20 years or longer before they were sentenced for their federal offense. The average length of

CHARACTERIZATION OF MILITARY SERVICE



time between separation from the military and the sentence for the federal offense was 19 years, only slightly less than the 23 years for veteran offenders generally.

Although alcohol and substance abuse are often cited as a reason for special treatment of veteran offenders,³¹ these factors did not appear correlated with the sentence imposed on veteran federal offenders. Among the offenders whose military service was cited as a reason for the sentence, the percentage of those who indicated that they had abused alcohol at some time prior to their federal offense (14.4%) was comparable to the rates for all veteran offenders (13.1%). The rate of illegal substance use among offenders whose service was cited by the court (57.6%) also was similar to the rates for veteran offenders generally (66.7%).

Some offender characteristics did appear to be correlated with the court citing the offender's military service as a reason for the sentence. Two-thirds (66.9%) of the offenders whose military service was cited by the court indicated that they had some history of mental health problems, a rate much higher than the rate for veteran offenders generally (51.1%). Also, more than half (54.8%) of those offenders whose service was cited by the court had served in a combat zone, a rate more than twice that for veteran offenders generally.

Additionally, most of the offenders whose military service was a reason for the sentence had served honorably. Three-quarters (75.9%) of those offenders whose service was the reason, or one

of the reasons, cited for the sentence had received an honorable discharge or were retired, compared to 63.3 percent for all veteran offenders in the study.³² Another 11.7 percent of offenders who received credit for their military service at sentencing separated from the military "under honorable conditions" through a general discharge. Only 17 (6.6%) separated from the military under less than honorable conditions, with seven of those (2.7%) receiving a punitive discharge.³³ In contrast, 15.3 percent of all the veteran offenders in the study separated under less than honorable conditions, including 4.2 percent through a punitive discharge. Thirteen offenders (5.1%) were still in the military at the time of their federal offense, compared to 3.2 percent of all veteran offenders.



Two-thirds of the offenders whose military service was cited by the court indicated that they had some history of mental health problems, a rate much higher than the rate for veteran offenders generally.

The Increasing Use of Veterans' Courts

As discussed above, most veteran offenders are sentenced for offenses other than federal felony or Class A misdemeanor offenses and, therefore, not reflected in the Commission's sentencing data beyond the scope of this report. In the past two decades, however, numerous "problem-solving courts"³⁴ were established to hear criminal cases involving these other groups of veteran offenders. This section discusses these specialized courts, which are usually found in state and local court systems and typically involve a separate docket in a court, or even a separate division of a court.³⁵

Among the justifications for specialized veterans' courts is the view that veterans may have difficulty adjusting to civilian life due to their military service. Recent studies have found that veterans identified alcohol and drug use, difficulty adjusting after the service, and economic disadvantage as the main contributors to their criminal justice involvement.³⁶ One study noted that substance abuse, long associated with criminal activity, often was caused or exacerbated by trauma veterans encountered in the military.³⁷ By some estimates, more than one-quarter of veterans from the most recent conflicts have symptoms of PTSD, depression, or traumatic brain injury.³⁸ Some veteran

offenders found adjusting to civilian life difficult when they could not find meaningful work, or work that provided the structure and accountability they were used to in the military.³⁹ Veterans who are involuntarily discharged can face disadvantages in finding jobs which, in turn, can lead to economic hardships and, eventually, crime. Finally, an additional justification for veterans' treatment courts is that almost no veterans had criminal convictions prior to their military service.⁴⁰

The first veterans' court opened in a state court in Buffalo, New York in 2008.⁴¹ By 2012, the Bureau of Justice Statistics counted 133 veterans' courts.⁴² At that time, at least 32 states had a veterans' court, and some states had several, in different jurisdictions.⁴³ The majority of the judges who presided over a veterans' court also presided over another type of specialty court, such as a drug court.⁴⁴ A more recent non-government study puts the number of veterans' courts at more than 400.⁴⁵

Veterans' courts have been described as a hybrid between drug courts and mental health courts and typically provide services to offenders, who often need treatment for substance abuse issues and mental health concerns, while also addressing the specific cultural needs of veterans. These

courts are distinct from other problem-solving courts in that they usually include representatives from the Department of Veterans Affairs, called “veterans justice outreach coordinators,” as well as mentors who also had served in the military.⁴⁶

Veterans’ treatment court programs are typically small, dealing with a limited caseload. Veterans’ treatment courts vary in the eligibility criteria for participation. For example, some courts will not include offenders who have been charged with a felony or with a violent crime of any type. Even among those courts that do not categorically exclude all felony offenders, almost two-thirds have exclusions for at least one type of felony charge. For example, one-quarter of veterans’ treatment courts exclude offenders charged with a sex offense, and 17 percent exclude any offender charged with homicide.⁴⁷ Some veterans’ courts exclude offenders who did not serve honorably while in the military. For example, one recent study noted that 35 percent of veterans’ treatment courts excluded offenders who had received a dishonorable discharge (the most serious type of punitive discharge), and over 20 percent excluded offenders who had received any type of punitive discharge (*i.e.*, a bad conduct discharge or a dishonorable discharge).⁴⁸

Although most veterans’ treatment courts exist at the state and local level, at least five federal courts have created a veterans treatment program. The first of these was established in 2010 by Magistrate Judge Paul Warner of the District of Utah.⁴⁹

Veterans court programs have also been used in the District of Arizona, the Northern District of Illinois (Chicago), the Eastern District of Virginia (Norfolk/Newport News), and the Western District of Virginia (Roanoke).⁵⁰ Most of these federal programs involved offenders convicted of misdemeanor offenses, although some felony offenders participated while on supervised release following incarceration. Each of the federal programs were relatively small, involving eight to 15 veteran offenders at any one time.

Congress also has recognized the role of veterans’ courts. In 2019, it passed the Veterans Treatment Court Coordination Act of 2019 to “ensure coordination in the federal funding for veterans courts.”⁵¹ The Act authorized the Attorney General to establish and carry out a veterans treatment court program, providing grants and technical assistance to court systems that adopted or filed a notice of intent to establish such a program. The purpose of the bill as stated was to ensure that the Department of Justice (DOJ) maintain a single office to coordinate the provision of grants for training and technical assistance to help state local and tribal governments develop and maintain veterans’ treatment courts.⁵²

Even before 2019, some of the congressional funding for problem-solving courts were directed to veterans’ courts. In 2006, the DOJ awarded over \$4 million in grants for programs designed to “rehabilitate and reduce recidivism among

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military veterans.”⁵³ Most of this funding went to veterans’ treatment courts. Since 2013, DOJ has awarded \$116 million in grants for veterans’ treatments court and related programs. In 2020, DOJ’s Office of Justice Programs announced that it had awarded \$96 million to fund “drug and veterans treatment courts” of which \$23 million went for veterans’ courts.⁵⁴ In 2021, DOJ provided \$25 million of additional funding.

The special needs of veterans convicted of offenses has also been recognized by the corrections community. The National Institute of Corrections (NIC), a component of the DOJ, has released a series of publications that discusses the correctional benefit of housing veterans together. NIC explained that the goal of the veterans-only housing units was to “prevent recidivism as a general goal and improve the safety of the public as well as law enforcement officers, state corrections officers, and inmates by reigniting a sense of military culture and

values among incarcerated veterans.”⁵⁵ As NIC stated in one of its reports on the topic, “by housing veterans together in an environment that inspires military culture, values, and a sense of brotherhood or sisterhood, these units are not only promoting safety improvements, but also restoration, healing, and growth in a way that may not have been possible via general population housing.”⁵⁶

While veterans-only housing units are primarily found in state correctional facilities, at least three federal prisons have established separate housing facilities for veterans. The Federal Correctional Institution in Morgantown, West Virginia and the two United States Penitentiaries in Sumter County, Florida each operate a separate housing unit for veterans.⁵⁷

Conclusion

The Commission's study found that, in cases where the federal sentencing guidelines applied, a veteran's military service seldom was cited as a reason for the sentence imposed. In fiscal year 2019, just 4.4 percent of all U.S. citizens sentenced in the federal courts for a felony or Class A misdemeanor had served in the military. Half of those offenders reported some history of mental health problems, with 15.0 percent of all sentenced veteran offenders suffering from post-traumatic stress related to their military service. Approximately one-fifth of all sentenced veteran offenders had participated in a combat operation of some type, mostly commonly in Iraq or Afghanistan.

In 15.0 percent of the cases involving a veteran offender, the court cited the offender's military service as a reason for the sentence imposed. In almost all those cases the sentence imposed was below the applicable sentencing guideline range. More than half of those offenders had served in a combat zone, twice the rate of veteran offenders generally. Also, those offenders were more likely to suffer from mental health problems than veteran offenders generally, although the mental health problems were not always directly attributable to their military service. Finally, virtually all the offenders who whose military service was cited as a reason for the sentence had served honorably in the military.

Endnotes

* *The author served in the United States Army Reserve as a member of The Judge Advocate General's Corps from 1996 to 2021.*

1 NAT'L CTR. FOR VETERANS ANALYSIS AND STAT., U.S. DEP'T OF VETERANS AFFS., https://www.va.gov/vetdata/Veteran_Population.asp [hereinafter VA STATS]. For that count, the VA included any person who had served in the Armed Forces. That expansive definition is used throughout this report.

2 DEANNE BENOS, BERNARD EDELMAN & GREG CRAWFORD, NAT'L INST. OF CORR., U.S. DEP'T OF JUST., BARRACKS BEHIND BARS II, at xiii (2019) [hereinafter BARRACKS BEHIND BARS].

3 LAURA M. MARUSHACK, JENNIFER BRONSON & MARIEL ALPER, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., VETERANS IN PRISON 1 (2021), <https://bjs.ojp.gov/content/pub/pdf/vpspi16st.pdf> [hereinafter MARUSHACK]. This number was a decrease from an estimated 181,000 in 2012. JENNIFER BRONSON, E. ANN CARSON & ANN MARGARET NOONAN, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., VETERANS IN PRISONS AND JAILS, 2011 – 12, at 1 (December 2015), <https://bjs.ojp.gov/content/pub/pdf/vpj1112.pdf> [hereinafter BRONSON].

4 BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., FEDERAL PRISONER STATISTICS COLLECTED UNDER THE FIRST STEP ACT, 2020, at 4 tbl.1 (2021), <https://bjs.ojp.gov/content/pub/pdf/fpscfsa20.pdf>.

5 MARUSHACK, *supra* note 3, at 4 tbl.2.

6 BRONSON, *supra* note 3, at 1.

7 *Porter v McCollum*, 558 U.S. 30, 43-44 (2009) (per curiam). The Court noted the veteran defendant in the case had “extensive combat experience” and “had served honorably under extreme hardship and gruesome conditions,” but also “that the jury might find mitigating the intense stress and mental and emotional toll that combat took” on the defendant. *Id.*

8 Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO STATE J. CRIM L. 563, 569 (2010).

9 18 U.S.C. § 3553(a)(1).

10 *Id.*

11 U.S. SENT'G COMM'N, *Guidelines Manual*, §5H1.11 (2018) [hereinafter USSG]. This section of the guidelines was amended in 2010 to draw a distinction between military service and civic or charitable works and other forms of public service, which “are not ordinarily relevant in determining whether a departure is warranted.” Prior to the amendment, military service also was deemed to not be ordinarily relevant in determining whether to depart from the sentencing range provided under the guidelines. The Commission cited the *Porter* decision in its “Reason for Amendment” explaining the change in policy made through Amendment 739. USSG App. C, amend. 739 (effective Nov. 1, 2010).

12 *Porter*, 558 U.S. at 39–40.

13 *Id.* at 43–44.

14 The courts are required to submit to the Commission the presentence investigation report, along with four other documents, for every felony or Class A misdemeanor in which an offender is sentenced each year. See 28 U.S.C. § 994(w)(1).

15 See *supra* note 11 and accompanying text.

16 See U.S. SENT'G COMM'N, 2019 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2020), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/2019-Annual-Report-and-Sourcebook.pdf>.

17 *Id.* at 52, tbl.9. While the vast majority of service members are citizens, some legal permanent residents also serve in the Armed Forces. However, none of the offenders in this study were non-citizens.

18 Another 83 offenders had served in the military of a foreign country before coming to the United States. In most of these cases the offender self-reported their military service and did not present military records to the court. In none of these cases did the court cite the offender's service in a foreign military as a reason for the sentence imposed. Accordingly, those 83 offenders were not included in the analysis in this report.

19 Since the military draft was abolished, the services have required all applicants to be a high school graduate or to have passed a General Educational Development Test (GED). See, e.g., U.S. Air Force, *How to Join*, <https://www.airforce.com/how-to-join/prepare-for-success/meet-requirements/>; U.S. Marine Corps, *Become a Marine*, <https://www.marines.com/become-a-marine/requirements/general.html>.

20 Enlisted persons are those servicemembers who rank below commissioned officers and warrant officers. In most instances, they sign contracts to serve for fixed periods of time (e.g., four years). The Department of Veterans Affairs estimates that 93.6% of all veterans were enlisted servicemembers. VA STATS, *supra* note 1.

21 Some offenders served in both Iraq and Afghanistan during multiple deployments.

22 The term "post-traumatic stress" is used in this report to include self-reports by veterans of the mental health problems they had encountered. Post-traumatic stress disorder (PTSD) is a diagnosis made by a mental health professional. See generally, U.S. DEP'T OF VETERANS AFFS., PTSD: National Center for PTSD, https://www.ptsd.va.gov/understand/what/ptsd_basics.asp. Additionally, some leaders on veterans issues have advocated for removing the word "disorder" from the term to emphasize that the condition is the result of an injury. See, e.g., George W. Bush Presential Center, *Changing the Dialog of PTS*, <https://www.bushcenter.org/publications/articles/2018/06/pts-changing-the-dialogue.html>.

23 See *infra* notes 36–40 and accompanying text.

24 Veterans who serve long enough to earn a retirement are not separated from the military but are "transferred" to a status within the military known as the Retired Reserve. The term "separation" as used in this report includes the year in which veterans receiving retired pay were transferred to the Retired Reserve.

25 There were 37 offenders who had received a bad conduct discharge and 31 offenders who had received a dishonorable discharge. For a summary of each type of discharge, see generally Kevin Lonergan, U.S. Army, *Service Discharges*, https://www.army.mil/article/73343/service_discharges_dd_form_214_explained.

26 In general, servicemembers must serve at least 20 years to be eligible for retired pay. However, retired veteran offenders were not necessarily over the age of 65. Persons who join the military at age 18 and remain on active duty continuously can begin receiving retirement pay at age 38.

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27 The percentages in this and subsequent figures may not add to 100% due to rounding.

28 Courts are required to indicate the reason or reasons for a sentence in open court when the sentence is imposed. 18 U.S.C. § 3553(c). When the sentence imposed is outside the guidelines range, the court is also required to state its reason or reasons in writing on a Statement of Reasons Form (SOR). *Id.* at 3553(c)(2). The SOR is one of the court documents required to be submitted to the Commission in every felony and Class A misdemeanor case. *See supra* note 14. For a copy of the SOR, see U.S. COURTS, STATEMENT OF REASONS FORM (AO 245SOR) (effective Sept. 1, 2015), <https://www.uscourts.gov/sites/default/files/ao245sor.pdf>.

29 In general, the government must affirmatively request the court to depart below the guideline ranges to recognize an offender's substantial assistance to the government or participation in an Early Disposition Program. *See* USSG, §§ 5K1.1, 5K3.1.

30 Courts are not required to report to the Commission on the SOR form the reason for the position of a sentence within the applicable guideline range. Therefore, it is possible that the military service of other offenders was considered in determining where within the guideline range the court imposed the sentence but not noted on the SOR form.

31 *See infra* notes 36–40 and accompanying text.

32 In general, only servicemembers who serve honorably for a required length of time (usually 20 years) are eligible to receive retired pay. *See generally*, U.S. Army, *My Army Benefits, Retired Pay*, <https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Retired-Pay?serv=128>.

33 Two offenders received an entry-level discharge, which is given to those who do not complete basic combat training or advanced individual training, or experienced some problem shortly thereafter that prevented them from fulfilling their service obligation. For more information on types of discharge, see *supra* note 25.

34 Problem-solving courts are specialized dockets within the criminal justice system that seek to address the underlying problems contributing to certain criminal offenses. Nat'l Ctr. for State Cts., *Problem-Solving Courts*, <https://www.ncsc.org/topics/alternative-dockets/problem-solving-courts/home>. The most widely recognized problem-solving court is the drug court, but many other types of problem-solving courts have been created. *Id.*

35 The specialized court movement is based, in part, on the belief that some groups of offenders need services or responses that may not be readily accessible and that specialized courts are better able to connect offenders to those services. Julie Marie Baldwin, *Investigating the Programmatic Attack: A National Survey of Veterans Treatment Courts*, 105 J. CRIM. L. & CRIMINOLOGY 705, 712 (2016) [hereinafter Baldwin].

36 Kelli E. Canada & Clark Peters, "They Teach You How to Weather the Storm, but They Don't Teach You How to Dance in the Rain:" *Veterans' Perspectives on the Pathways to Criminal Justice Involvement*, 5 J. QUALITATIVE CRIM. JUST. & CRIMINOLOGY 8 (2017) [hereinafter Canada & Peters]. *See also* Kraig J. Knudsen & Scott Wingenfeld, *A Specialized Treatment Court for Veterans with Trauma Exposure: Implications for the Field*, CMTY. MENTAL HEALTH J., Feb. 15, 2015 ("The results suggest that veterans involved in the Veterans Treatment Court programs experienced significant improvement in PTSD, depression, substance abuse, overall functioning, emotional wellbeing, relationships with others, recovery status, social connectedness, family functioning, and sleep."); Baldwin, *supra* note 35, at 707–11 (discussing veterans' issues in detail).

37 Canada & Peters, *supra*, at 12. *See also* Julie Marie Baldwin, *Whom Do They Serve: A National Examination of Veterans Treatment Court Participants and Their Challenges*, 28 CRIM. J. POL'Y REV. 515, 518–19 (2017) (noting that the interrelationship of substance abuse to mental health problems among veterans has been known as far back as the Civil War).

- 38 Baldwin, *supra*, at 518; Knudsen & Wingenfeld, *supra* note 36, at 1.
- 39 Canada & Peters, *supra* note 36, at 3–4. See also R. Tyson Smith & Gayla True, *Warring Identities: Identity Conflict and the Mental Distress of American Veterans of the Wars in Iraq and Afghanistan*, 4 SOC'Y & MENTAL HEALTH 147 (2014).
- 40 NAT'L INST. OF CORR., U.S. DEP'T OF JUST., VETERANS TREATMENT COURTS, A SECOND CHANCE FOR VETS WHO HAVE LOST THEIR WAY, at v (2016), <https://info.nicic.gov/jiv/sites/info.nicic.gov/jiv/files/030018.pdf>.
- 41 Nat'l Ctr. for State Cts., *Information & Resources, Trending Topics, Veterans treatment courts*, <https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/veterans-treatment-courts>.
- 42 SUZANNE M. STRONG, RAMONA R. RENTALA & TRACEY KYCKELHAHN, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., CENSUS OF PROBLEM-SOLVING COURTS, 2012 (2016), <https://bjs.ojp.gov/content/pub/pdf/cpsc12.pdf> [hereinafter 2012 PROBLEM-SOLVING COURT CENSUS].
- 43 Baldwin, *supra* note 35, at 721, 738 tbl2.
- 44 *Id.* at 727. In 2012, the Bureau of Justice Statistics counted 3,052 problem-solving courts in the United States. 2012 PROBLEM-SOLVING COURT CENSUS, *supra* note 42, at 1.
- 45 Samantha Luna & Allison D. Redlich, *A National Survey of Veterans Treatment Court Actors*, 32 CRIM J. POL'Y REV. 132 (2021).
- 46 Anne S. Dowds, Eileen M Ahlin, Daniel Howard & Sarah Stiegerwalt, *Varieties of Veterans Courts: A Statewide Assessment of Veterans Treatment Court Components*, 28 CRIM J. POL'Y REV. 740 (2017).
- 47 Baldwin, *supra* note 35, at 742 tbl.6.
- 48 *Id.*
- 49 See also U.S. Dist. Ct., Dist. of Utah, *Veterans Court*, <https://www.utd.uscourts.gov/veterans-court>.
- 50 The programs in the Districts of Arizona, Northern Illinois, Utah, and Eastern Virginia continue to operate.
- 51 Pub. L. No. 116–153, 134 Stat. 688 (2020).
- 52 § 3, 134 Stat. at 688.
- 53 Press Release, U.S. Dep't of Just., Justice Department Announces over \$4 Million in Grants to Rehabilitate and Reduce Recidivism Among Military Veterans (Sept. 20, 2016), <https://www.justice.gov/opa/pr/justice-department-announces-over-4-million-grants-rehabilitate-and-reduce-recidivism-among>.
- 54 Press Release, Bureau of Just. Assistance, U.S. Dep't of Just., Justice Department Awards \$96 Million to Fund Drug and Veterans Treatment Courts (Nov. 10, 2020), <https://bja.ojp.gov/news/justice-department-awards-96-million-fund-drug-and-veterans-treatment-courts>.
- 55 BARRACKS BEHIND BARS, *supra* note 2, at 1-2.
- 56 *Id.* at xvi.
- 57 NAT'L INST. OF CORR., U.S. DEP'T OF JUST., *Prisons and Jails with Dorms for Veterans*, <https://info.nicic.gov/jiv/node/27>.

Appendix

	Veteran Offenders		Citizen Offenders		Veteran Offenders w/Military Service Departure or Variance	
	N	%	N	%	N	%
Race						
White	1,079	57.9	13,137	32.9	169	60.4
Black	465	25.0	14,259	35.7	63	22.5
Hispanic	240	12.9	10,287	25.8	35	12.5
Other	79	4.2	2,266	5.7	13	4.6
	Missing=6		Missing=234		Missing=1	
Branch of Service						
Army	1,031	55.5				
Navy	349	18.8				
Air Force	205	11.0				
Marine Corps	252	13.6				
Coast Guard	21	1.1				
	Missing=11					
Length of Service						
Less than 5 years	1,135	60.7				
5 to less than 10 years	472	25.3				
10 to less than 20 years	151	8.1				
20 years or longer	111	5.9				
	Missing=0					
Post-Traumatic Stress of Offenders Who Served in a Combat Zone						
No	226	59.3				
Yes	155	40.7				
	Missing=0					
Post-Traumatic Stress Not Due to Service in a Combat Zone						
No	1,361	91.5				
Yes	127	8.5				
	Missing=0					
Total Offenders with Post-Traumatic Stress from Military Service[i]						
No	1,588	85.0				
Yes	281	15.0				
	Missing=0					

[i] One offender reported post-traumatic stress from both service in a combat zone and from events unrelated to his service in a combat zone.

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Characterization of Military Service	Veteran Offenders		Veteran Offenders w/Military Service Departure or Variance	
	N	%	N	%
None/Presently Serving	52	3.2	13	5.1
Honorable	1,009	61.8	187	72.8
General (Under Honorable Conditions)	228	14.0	30	11.7
Other Than Honorable	181	11.1	10	3.9
Bad Conduct	37	2.3	4	1.6
Dishonorable	31	1.9	3	1.2
Entry Level	70	4.3	2	0.8
Retired	24	1.5	8	3.1
	Missing=237		Missing=24	

Sentence Relative to Guideline Range	Veteran Offenders		Citizen Offenders		Veteran Offenders w/Military Service Departure or Variance	
	N	%	N	%	N	%
Sentences Under the Guidelines Manual	1,091	58.4	26,312	65.9	68	24.2
Within Range	689	36.9	16,887	42.3	9	3.2
Upward Departure	16	0.9	227	0.6	0	0.0
Downward Departure						
§5K1.1 Substantial Assistance	263	14.1	5,848	14.6	38	13.5
§5K3.1 Early Disposition Program	30	1.6	1,668	4.2	4	1.4
Other Government Motion	50	2.7	885	2.2	3	1.1
Non-Government Departure	43	2.3	797	2.0	14	5.0
Variations	778	41.6	13,648	34.1	213	75.8
Upward Variance	51	2.7	961	2.4	0	0.0
Downward Variance						
Government Motion	184	9.8	3,151	7.9	45	16.0
Non-Government Variance	543	29.1	9,536	23.9	168	59.8
	Missing=0		Missing=223		Missing=0	

Federal Offenders Who Served in the Armed Forces



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