



United States Sentencing Commission
March 2022

COMPASSIONATE RELEASE

THE IMPACT OF THE FIRST STEP ACT AND COVID-19 PANDEMIC





COMPASSIONATE RELEASE: THE IMPACT OF THE FIRST STEP ACT AND COVID-19 PANDEMIC

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Following enactment of the First Step Act of 2018, the U.S. Sentencing Commission began studying the Act's effect on the use of compassionate release.

1 Introduction

Section 3582(c)(1)(A) of title 18 of the United States Code (commonly referred to as the “compassionate release” provision) authorizes a court to reduce a defendant’s term of imprisonment for “extraordinary and compelling reasons.”¹ The First Step Act of 2018 (the “First Step Act” or “Act”)² amended section 3582(c)(1)(A) to allow a defendant to file a motion seeking compassionate release directly in federal court after satisfying an administrative exhaustion requirement.³ Before the First Step Act, the statute permitted only the Director of the Federal Bureau of Prisons (“BOP”) to file that motion on the defendant’s behalf.⁴

Following enactment, the Commission began studying the First Step Act’s effect on the use of compassionate release. First, the Commission published *The First Step Act of 2018: One Year of Implementation* (“*First Step Act Year One Report*”),⁵ which explored grants of compassionate release between December 21, 2018 and December 20, 2019 (“*First Step Year One*”). In calendar year 2020, the Commission began publishing data reports analyzing motions for compassionate release (“*Compassionate Release Data Report*”).⁶

This publication describes trends in compassionate release decisions during fiscal year 2020 (October 2019–September 2020), focusing on the continuing impact of the First Step Act and the more recent and dramatic impact of the SARS-CoV-2 (“COVID-19”) pandemic.⁷ It includes detailed information about the reasons courts cited to grant or deny section 3582(c)(1)(A) motions and, for offenders granted a sentence reduction, the nature of the relief received.⁸

The compassionate release landscape rapidly evolved in fiscal year 2020, with two notable developments. First, motions for compassionate release dramatically increased in the second half of fiscal year 2020, as COVID-19 became widespread. The Commission chose to study the fiscal year 2020 timeframe in part to compare the time periods before and after the emergence of COVID-19. Second, the Commission lost a voting quorum shortly after enactment of the First Step Act, preventing amendment of the compassionate release policy statement at §1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)).⁹ Because §1B1.13 and its commentary reflect the pre-First Step Act procedural requirement that a reduction may be granted only upon motion of the

Director of the BOP pursuant to 18 U.S.C. § 3582(c)(1)(A),¹⁰ most circuit courts have concluded that §1B1.13 is not “applicable” to offender-filed motions.¹¹ As a result, district courts in these circuits may independently identify “extraordinary and compelling reasons” under section 3582(c)(1)(A).¹² Nonetheless, the overwhelming majority of grants of compassionate release were based on a reason specifically described in the policy statement or a reason comparable to those specifically described reasons, like, for example, the health risks associated with COVID-19.¹³ This report first provides an overview of offenders who were granted or denied compassionate release in fiscal year 2020, examining geography, demographics, offense type, criminal history, and selected offense characteristics. Next, it focuses on offenders granted compassionate release, describing the reasons courts cited for granting relief and the nature of the relief received. Finally, it focuses on offenders denied relief in fiscal year 2020, describing the reasons courts cited for denying relief. Where appropriate, this report also highlights similarities and differences with the data in the Commission’s *First Step Act Year One Report* and with the composition of the federal prison population.¹⁴

“Offenders who sought relief” refers to the study group of offenders who were granted or denied compassionate release during the study period. It does not refer to all offenders who filed a motion seeking relief during the study period.

Notably, this report examines the use of compassionate release during the onset of the COVID-19 pandemic, an anomalous period in the evolution of compassionate release. Although facilitated by the First Step Act’s legal changes, the dramatic increase in both motions for, and grants of, compassionate release was a direct consequence of the pandemic. The overwhelming majority of compassionate release decisions studied in this report occurred during the second half of the fiscal year, after the onset of the pandemic. Fewer than seven percent of the offenders within the study group received a compassionate release decision during the first half of fiscal year 2020. And, after the study period ended, the number of offenders granted compassionate release substantially decreased, as did the number of compassionate release decisions overall.¹⁵ As a result, this report largely focuses on the early response to the COVID-19 pandemic and is not reflective of later trends in compassionate release, once COVID-19 vaccines became widely available, or predictive of future trends.

This report uses the terms “**compassionate release**,” “reduction in sentence under section 3582(c)(1)(A),” “sentence reduction,” and “granted relief” interchangeably, even though some offenders who received a reduction in sentence were not immediately released. It uses the term “**offenders who sought relief**” to refer to the study group of offenders who were granted or denied compassionate release during the report’s study period, and not to refer to all offenders who filed a motion seeking relief during the study period. In addition, the report refers to offenders who were granted compassionate release as “**Offenders Granted Relief**” and offenders who were denied compassionate release as “**Offenders Denied Relief**” for ease of readership.

2 Key Findings

Building on the *First Step Act Year One Report* and *Compassionate Release Data Report*, this report examines the use of compassionate release during fiscal year 2020. As part of this analysis, the Commission makes the following key findings:

1 Both the number of offenders who sought and the number of offenders who were granted compassionate release dramatically increased in fiscal year 2020, primarily in response to the COVID-19 pandemic.

- In fiscal year 2020, courts decided an 18 U.S.C. § 3582(c)(1)(A) motion for 7,014 offenders and granted a sentence reduction to 1,805 offenders (25.7%). The number of Offenders Granted Relief increased more than twelvefold from First Step Year One (145 offenders).¹⁶
- Most grants of compassionate release (95.0%) occurred during the second half of the fiscal year, as COVID-19 became widespread. Only 5.0 percent (n=91) of compassionate release grants occurred during the first half of the fiscal year.
- The number of Offenders Granted Relief increased each month between February and July 2020 (to a high of 403 Offenders Granted Relief) and then decreased during the final two months of the fiscal year (to 327 in August and 254 in September 2020).

2 The First Step Act's amendments to section 3582(c)(1)(A), which authorized the defendant to file a motion in federal court, helped facilitate the substantial increase in grants of compassionate release during the COVID-19 pandemic.

- In fiscal year 2020, 96.0 percent of Offenders Granted Relief filed their own motion.

3 For an overwhelming majority of Offenders Granted Relief in fiscal year 2020, courts cited reasons specifically described in the Commission's compassionate release policy statement (USSG §1B1.13), or reasons comparable to the reasons specifically described in the policy statement.

- Courts cited the health risks associated with COVID-19 as at least one reason for granting relief for 71.5 percent of Offenders Granted Relief.
- Courts cited a reason specifically described in the policy statement or another comparable reason other than COVID-19 as at least one reason for granting relief for nearly 20 percent of Offenders Granted Relief.

4 In the absence of an amended policy statement to provide guidance, there was considerable variability in the application of 18 U.S.C. § 3582(c)(1)(A) across the country.

- The likelihood that an offender would receive compassionate release substantially varied by circuit, from a grant-rate high of 47.5 percent in the First Circuit to a low of 13.7 percent in the Fifth Circuit.
- In fiscal year 2020, courts cited a reason related to length of the offender's sentence to support a grant for a small percentage (3.2%) of Offenders Granted Relief. Courts disagreed, however, about whether such reasons can present a legally permissible basis for granting relief under section 3582(c)(1)(A).¹⁷

5 An offender's age, the length of original sentence imposed, and the amount of time the offender had already served emerged as the central factors that impacted the likelihood an offender would be granted relief.

- Although older offenders represented a small portion of offenders who sought compassionate release, they were more likely to be granted relief compared to younger offenders. The grant rate was highest (61.5%) for offenders 75 years or older and lowest (below 20%) for offenders under 45 years old.
- With the exception of offenders who received original sentences of 240 months or longer, as the length of the offender's original sentence increased, the likelihood that the court would grant relief decreased (from 56.9% of offenders sentenced to a term of 12 months or less to 19.8% of offenders sentenced to a term of between 120 and 240 months). The grant rate for offenders who received an original sentence of 240 months or longer was 29.9 percent.
- Offenders Granted Relief had served an average of 80 months and 50.5 percent of their sentence, while Offenders Denied Relief had served an average of only 57 months and 39.0 percent of their sentence.

6 By contrast, an offender's race, Criminal History Category, and offense of conviction generally appeared to have little impact on the likelihood an offender would receive relief.

- Across racial groups, the grant rate varied by only 2.2 percentage points (from a high of 27.5% for Other race offenders to a low of 25.3% for White offenders).
- The grant rate varied by no more than 5.3 percentage points between offenders with the highest grant rate, in Criminal History Category (CHC) II (27.6%), and the lowest grant rate, in CHC III (22.3%).
- The grant rate varied by no more than 5.2 percentage points across the most common offense types, from a high of 28.8 percent for fraud offenders to a low of 23.6 percent for firearms offenders.
- Although they represented a small percentage of offenders who sought relief, the grant rates were generally much lower for offenders who were convicted of violent offenses.

7 Offenders Granted Relief received substantial reductions in their sentence, both in months and as a percentage of sentence.

- In fiscal year 2020, the average reduction in sentence for Offenders Granted Relief was nearly five years (59 months) and more than 40 percent (42.6%) of the offender's sentence.
- Courts granted somewhat longer reductions in sentence to offenders who were granted relief for reasons related to the Commission's policy statement other than COVID-19 (65 months and 44.0% of sentence) than to Offenders Granted Relief based specifically on the risk of contracting COVID-19 (54 months and 41.7% of sentence).
- The relatively small group of Offenders Granted Relief based on a sentence-related reason received an average reduction of 235 months, nearly four times longer than the reductions for Offenders Granted Relief overall.

3 Legal Background

Reductions in Sentence Under 18 U.S.C. § 3582(c)(1)(A)

Under 18 U.S.C. § 3582(c)(1)(A), a court is authorized to grant a reduction in sentence if three requirements are met. First, the offender must exhaust administrative remedies by submitting a request to the warden of the offender's facility.¹⁸ Second, the offender must demonstrate "extraordinary and compelling reasons" for a sentence reduction.¹⁹ Third, the court must find that relief is warranted under the section 3553(a) sentencing factors.²⁰ The statute also provides that a reduction must be consistent with "applicable policy statements issued by the Sentencing Commission."²¹

Prior to the First Step Act, only the Director of the BOP was authorized to file a motion seeking compassionate release on the offender's behalf.²² The First Step Act amended section 3582(c)(1)(A) to allow an offender to file that motion directly in federal court, after satisfying an administrative exhaustion requirement.²³

Commission Policy Statement at §1B1.13

Congress delegated the task of describing the term "extraordinary and compelling reasons" to the Commission through directives in 28 U.S.C. § 994(a)(2)(C) and (t).²⁴ The Commission's policy statement regarding sentence reductions under section 3582(c)(1)(A) appears at §1B1.13 of the *Guidelines Manual*.²⁵

Section 1B1.13 provides four categories of "extraordinary and compelling reasons": (A) the "Medical Condition of the Defendant"; (B) the "Age of the Defendant"; (C) "Family Circumstances"; or (D) "an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C)."²⁶ The "Medical Condition of the Defendant" category provides that the defendant must *either* be (i) suffering from a terminal illness;²⁷ or (ii) suffering from (I) a serious physical or medical condition, (II) serious functional or cognitive impairment, or (III) experiencing deteriorating physical or mental health because of the aging process, "that substantially diminishes the ability



of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.”²⁸ The “Age of the Defendant” category provides that the defendant must be 65 years or older, be “experiencing a serious deterioration in physical or mental health because of the aging process,” and have served the lesser of ten years or 75 percent of the offender’s term of imprisonment.²⁹ The “Family Circumstances” category provides that extraordinary and compelling reasons exist in the event of the “death or incapacitation of the caregiver of the defendant’s minor child” or “the incapacitation of the defendant’s spouse or registered partner” when the defendant is the only available caregiver.³⁰

Consistent with Congress’s directive to the Commission, §1B1.13 provides that rehabilitation “by itself” is not an extraordinary and compelling reason for sentence reduction under section 3582(c)(1)(A).³¹ Rehabilitation, however, can be considered in addition to another extraordinary and compelling reason.³²

As previously noted, at the time of this publication, the Commission has been unable to amend §1B1.13. Any amendment to the guidelines requires an affirmative vote of four Commissioners.³³ The Commission lost a voting quorum shortly after enactment of the First Step Act. As a result, §1B1.13 reflects the pre-First Step Act procedural requirement that the court may reduce a term of imprisonment only “upon motion of the Director of the Bureau of Prisons.”³⁴

§1B1.13 Application Note 1

Extraordinary and Compelling Reasons

- (A) **Medical Condition of the Defendant**
Suffering from a terminal illness;
or suffering from:
- (I) a serious physical or medical condition,
 - (II) serious functional or cognitive impairment, or
 - (III) experiencing deteriorating physical or mental health because of the aging process, “that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.”
- (B) **Age of the Defendant**
The defendant must be 65 years or older, be “experiencing a serious deterioration in physical or mental health because of the aging process,” and have served the lesser of ten years or 75 percent of the offender’s term of imprisonment.
- (C) **Family Circumstances**
“Extraordinary and compelling” reasons exist in the event of the “death or incapacitation of the caregiver of the defendant’s minor child” or “the incapacitation of the defendant’s spouse or registered partner” when the defendant is the only available caregiver.
- (D) **Other Reasons**
An extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C) as determined by the Director of the BOP.

Developments Following the First Step Act

In the wake of the First Step Act, courts continued to consider and grant relief for reasons described in the Commission's §1B1.13 policy statement. Although many district courts concluded that, in the absence of a post-First Step Act policy statement, they could identify other "extraordinary and compelling reasons,"³⁵ most offenders were granted relief for reasons generally comparable

to those specifically described in the policy statement. For example, the offender's heightened risk of contracting or experiencing serious complications from COVID-19 was the most frequently cited reason for granting compassionate release not specifically described in §1B1.13.³⁶ Courts often noted the parallel between this reason and the medical and age reasons specifically described in the policy statement.³⁷ In addition to the risk of contracting COVID-19, courts also granted compassionate release for other reasons

COMPASSIONATE RELEASE



Enacted as part of the Sentencing Reform Act of 1984 and expanded in 2018 to authorize the defendant to file on their own behalf.

Authorizes the court to "reduce the [defendant's] term of imprisonment" for "extraordinary and compelling reasons" on motion from the defendant after exhausting administrative remedies, or the Director of the Bureau of Prisons. Pursuant to Congressional directive, the Commission's policy statement at §1B1.13 describes what should be considered "extraordinary and compelling reasons" for a reduction in sentence.

Any reduction in sentence, including to time-served, is permanent, but courts have the authority to "impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment."

No expiration on the court's authority to consider and grant sentence reductions.



LAW



AUTHORITY



RELIEF



EXPIRATION



CARES ACT OF 2020

Enacted in March 2020, as a comprehensive response to the COVID-19 pandemic.

Expands the BOP's authority to place prisoners in home confinement based on criteria set forth in memoranda issued by the U.S. Attorney General during the statute's "covered emergency period." Courts do not have jurisdiction over implementation of CARES Act home confinement.

Provides for a change in placement, not a reduction in the length of sentence itself. The BOP, however, has some discretion over whether individual inmates serving sentences of home confinement at the end of the "covered emergency period" may remain on home confinement for the duration of their outstanding sentence or must return to prison.

The BOP's expanded authority is time-limited to the statute's "covered emergency period."

that are generally comparable to reasons specifically stated in the Commission’s policy statement.³⁸ Less frequently, courts granted relief for reasons related to the length of the offender’s sentence.³⁹

Circuit and district courts disagreed about whether certain reasons not stated in the Commission’s policy statement could ever constitute an extraordinary and compelling reason⁴⁰ and, if they could, under what circumstances.⁴¹ For example, shortly after the study period, a circuit split developed regarding whether reasons related to sentence length—and, in particular, the effect of nonretroactive changes in law—are a permissible basis for a sentence reduction under section 3582(c)(1)(A).⁴²

In March 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),⁴³ as a comprehensive response to the COVID-19 pandemic. Section 12003(b)(2) of the CARES Act expanded the BOP’s authority to place prisoners in home confinement during the statute’s “covered emergency period” based on criteria set forth in memoranda issued by the U.S. Attorney General.⁴⁴ The impact of the CARES Act is beyond the scope of this report, as it is separate and unrelated to the authority of the courts to grant compassionate release under section 3582(c)(1)(A). Courts do not have jurisdiction over requests for home confinement under the CARES Act, and the Commission is not charged with providing guidance about CARES Act implementation.⁴⁵ The BOP, however, has placed thousands of offenders in home confinement pursuant to its CARES Act authority between the date of enactment and the time of this report’s publication.⁴⁶

The reasons that courts cited for granting compassionate release are described in detail in Section 6.



Thousands of offenders were placed in home confinement pursuant to the Bureau of Prisons’s CARES Act authority between the date of enactment and the time of this report’s publication.

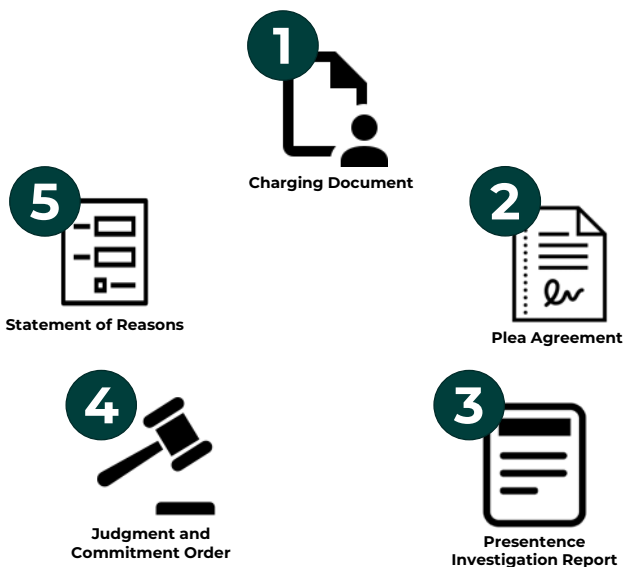
Because the courts do not have jurisdiction over requests for home confinement under the CARES Act, and the Commission is not charged with providing guidance about its implementation, the impact of the CARES Act is beyond the scope of this report.

4 Methodology

Document Collection Process

The Commission's Standard Document Collection

Pursuant to 28 U.S.C. § 994(w), after entry of judgment in a felony or Class A misdemeanor case, district courts must submit the following documents to the Commission: (1) the Presentence Report; (2) the Judgment and Commitment Order; (3) the Statement of Reasons form; (4) the indictment or other charging instrument; (5) any plea agreement; and (6) any other information the Commission finds appropriate.⁴⁷ The Commission analyzes these documents to collect demographic, conviction, sentencing, and guideline application information, as well as any other relevant information for each offender.



Collection Process for Compassionate Release Sentencing Documents

The Commission also receives sentencing documents for any sentence modifications, including sentence reductions granted pursuant to 18 U.S.C. § 3582(c)(1)(A). Most grants of compassionate release included in this report were submitted by the court to the Commission through its standard document collection process. The Commission identified a small number of additional grants through the process described below and included those within the data set for this publication.

Prior to October 1, 2020, the Commission generally received documentation only in cases in which the court granted a motion for compassionate release. As of October 1, 2020, after the Administrative Office of the United States Courts issued a form specific to compassionate release orders, the Commission requested that courts also begin submitting sentencing documentation for cases in which the court denied a motion for compassionate release.⁴⁸ As a result, for the report's study period, fiscal year 2020 (October 1, 2019–September 30, 2020), the Commission undertook a special collection effort to obtain sentencing documentation for denials of compassionate release



motions by searching court records on the Public Access to Court Electronic Records (PACER) website. To create a searchable group of offenders, the Commission received a list from the BOP of approximately 20,000 offenders who requested compassionate release at the administrative level between October 2019 and December 2020. Section 3582(c)(1)(A) contains an administrative exhaustion requirement, which requires that an offender first submit a request to the warden of the offender's facility before filing a motion in federal court. Every offender who seeks relief at the administrative level, however, will not subsequently file a motion in federal court. And, despite this administrative exhaustion requirement, some offenders filed directly with the court without first seeking administrative relief. The Commission cross-referenced

the BOP's list against the list of offenders for whom the Commission had already received compassionate release sentencing documentation and added any offender for whom it had not received sentencing documentation to its search group.

In light of PACER's limited search capabilities, the Commission developed a tool to identify and index⁴⁹ the docket sheets for offenders within the search group, which then allowed a keyword search of the docket sheets for a variety of compassionate release search terms. The Commission used search terms that were comprehensive but not overbroad to identify any case in which a compassionate release motion was filed in federal court, without returning an unreasonably large number of irrelevant entries.⁵⁰

The Commission then further identified the specific docket entries that contained documents reflecting the court's determination and reasoning through a secondary search. The secondary search identified every relevant docket sheet entry that included the words "order," "opinion," "amended judgment," "oral argument transcript," "hearing minutes," or "minute entry" that appeared after the first instance of a compassionate release search term.⁵¹ The tool extracted any documents that were attached to a minute entry containing one of the above search terms into the Commission's database for coding.

Nearly all denials of compassionate release included in this report were identified through this search and collection process.⁵² In addition, although courts submitted most grants of compassionate release directly, any grants of compassionate release that were identified in this process were also included. Offenders whose motions were voluntarily withdrawn, dismissed for jurisdictional reasons, or whose sentencing documents were sealed or otherwise inaccessible through PACER were excluded from the study group. In total, the study group included 1,805 offenders who were granted relief in fiscal year 2020 ("Offenders Granted Relief") and 5,209 offenders who were denied relief in fiscal year 2020 ("Offenders Denied Relief").⁵³

Six-District Audit

The Commission is aware that due to limitations created by PACER's records availability and interface, coupled with the parameters of this search process and possible variations in district-level naming conventions in PACER entries, the study group reflects some undercount of denials of compassionate release.⁵⁴

Using information provided by the U.S. Department of Justice ("DOJ"), the Commission conducted an audit of the compassionate release data from six federal districts (Maine, Rhode Island, Eastern District of Pennsylvania, Western District of Pennsylvania, Middle District of Florida, and Southern District of Florida) to determine the magnitude of any undercount. The audit demonstrated that the Commission's search tool accurately located approximately 90 percent of offenders who received a compassionate release decision within the study period, and whose sentencing documentation was searchable and accessible in PACER. A detailed explanation of the audit process and its results is provided in Appendix B.

The audit process also underscored the absence of a preexisting centralized repository for compassionate release data from the specific COVID-19 period that is the subject of this report. For example, as noted above, some offenders did not request relief from the BOP prior to filing a motion in federal court. Any offender who did not request relief from the BOP was not on the initial list the BOP provided to the Commission and, therefore, was not identifiable through the Commission's special collection process.⁵⁵ Additionally, the Commission's search process identified some offenders in the six audited districts who were not identified by the DOJ. As a result, the national dataset compiled for this report is among the most complete of its kind for the study period. These collection issues are unique to the COVID-19 period studied in this report. Since October 1, 2020, and going forward, courts will have access to the new compassionate release form order (AO 248) and will send both grants and denials directly to the Commission.



INCLUDED IN THE STUDY GROUP



EXCLUDED FROM THE STUDY GROUP

- ▶ Offenders whose motions were **decided during fiscal year 2020** (granted OR denied from October 1, 2019 through September 30, 2020).

- ▶ This **includes** offenders whose motions were denied for **failure** to:

- (1) **exhaust administrative remedies**;
NOTE: This also includes “dismissals” for failure to exhaust administrative remedies.
- (2) establish an “**extraordinary and compelling**” reason;
- (3) demonstrate that relief is warranted pursuant to the **18 U.S.C. § 3553(a) factors**; and/or demonstrate that the offender is **not a danger to the public**.

- ▶ Offenders whose motion was **decided after the end of fiscal year 2020**.

NOTE: Many motions that were filed in fiscal year 2020 were decided in fiscal year 2021.

- ▶ Offenders whose motions were voluntarily withdrawn or dismissed for jurisdictional reasons.
- ▶ Offenders denied relief who filed a motion in federal court without first requesting relief from the BOP.

NOTE: These offenders were not included in the BOP list the Commission used to conduct its denial search collection and, therefore, were not “findable” to the Commission.

Due to the practical limitations discussed above, there was a slight undercount of denials among the group of offenders whose sentencing documentation was searchable and accessible in PACER, and, as a result, the reported grant rates are also slightly overstated. Based on the demonstrated high accuracy of its search tool and observations made during the audit, the Commission believes the data from uncollected decisions would be insufficient to materially alter the trends discussed in this report.

Furthermore, the Commission emphasizes that this report is not intended to serve as an assessment of the workload of all or any one of the federal district courts or as a specific examination of the effect of the statute’s administrative exhaustion requirement. Instead, this study—which includes more than 7,000 offenders who sought compassionate release in fiscal year 2020—is designed to describe general trends in compassionate release over the course of fiscal year 2020, immediately preceding, and directly following, the emergence of the COVID-19 pandemic.

Compassionate Release Special Coding Project

The Commission conducted a special coding project to collect the reasons courts cited for granting or denying compassionate release and, for offenders granted relief, additional information about the nature of the relief received.

The study group for this special coding project included all 1,805 offenders who were granted compassionate release in fiscal year 2020 (“Offenders Granted Relief”) and a 40 percent proportionate stratified random sample (n=2,028) of offenders who were denied compassionate release (“Offenders Denied Relief”) in fiscal year 2020 (n=5,209).⁵⁶ To reflect the changes over the course of the year, the denial sample included 40 percent of offenders denied compassionate release during each month of the study period. In Section 5, which discusses the entire study group of offenders granted or denied relief in fiscal year 2020, “Offenders Denied Relief” refers to all offenders denied relief within the report’s study group (n=5,209). In Section 7, which discusses the sample of offenders denied relief, “Offenders Denied Relief,” refers to the *sample* of offenders denied relief (n=2,028).

For offenders within the special coding project study group, the Commission collected detailed reasons for the grant or denial of compassionate release from the court’s memorandum opinion and/or order. If a memorandum opinion or order was unavailable, the Commission obtained any reason(s) for the grant or denial from a separately attached minute entry or an argument transcript. If the court submitted only an amended

judgment and commitment order (which typically does not provide specific reasons why the offender was granted a sentence reduction),⁵⁷ and the Commission could not determine the reasons from that document, the Commission obtained additional available documents from PACER.

Data Analysis

This study counts each offender only once, as either an Offender Granted Relief or an Offender Denied Relief, regardless of the number of compassionate release motions filed by, or adjudicated for, that offender during fiscal year 2020.⁵⁸ Specifically, the study categorized any offender who received compassionate release in fiscal year 2020 as an Offender Granted Relief and any prior denials for that offender were not included in the analysis. Any offender who was denied compassionate release in fiscal year 2020 was counted as a single Offender Denied Relief; any additional denials for that offender were not considered in the analysis, nor was a subsequent grant if the grant occurred in fiscal year 2021, outside the study period.⁵⁹

Section 5 compares Offenders Granted and Offenders Denied Relief, based on data the Commission routinely collects for original sentencings or resentencings and for which the Commission received full documentation in accordance with 28 U.S.C. § 994(w). Sections 6 and 7 examine Offenders Granted Relief and Offenders Denied Relief, respectively, in greater detail. The special coding project referenced above was used to obtain the information reported in these sections.

Some offenders received compassionate release while serving a revocation sentence. These offenders had been released after serving their original sentence, violated the conditions of their supervision, and were returned to BOP custody.⁶⁰ For these offenders, the Commission used the revocation sentence to calculate the amount of time served and the amount of reduction. However, the report includes the original crime type and original sentence length for offenders serving a revocation sentence because it is usually more relevant than the nature of the supervision violation.⁶¹

In many Commission reports, life sentences and sentences exceeding 470 months are included in analyses as 470 months.⁶² Here, however, only life sentences were “capped” at 470 months. Long sentences of a specified length were not “capped” at 470 months because original sentence length, particularly as it relates to offenders who were sentenced to “stacked” penalties under 18 U.S.C. § 924(c) or enhanced drug penalties, was of specific interest in the context of compassionate release during fiscal year 2020.⁶³

Recent Reports on Compassionate Release



The First Step Act of 2018: One Year of Implementation

August 2020



Compassionate Release Data Reports

June 2021
July 2021
September 2021



Compassionate Release: The Impact of the First Step Act & COVID-19 Pandemic

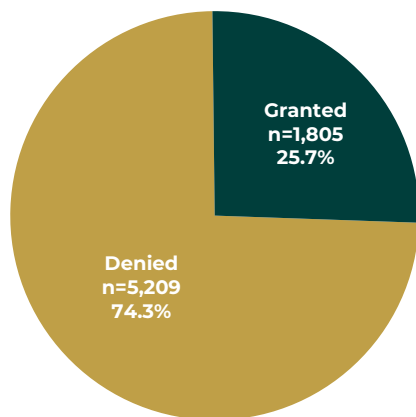
March 2022

5 Data Overview

This section describes all Offenders Granted Relief and all Offenders Denied Relief in fiscal year 2020, using data collected through the Commission's standard collection process. In this section "Offenders Denied Relief" refers to all offenders denied relief within the study group.

Offenders Granted or Denied Compassionate Release in Fiscal Year 2020

Figure 1. Compassionate Release Outcomes Fiscal Year 2020



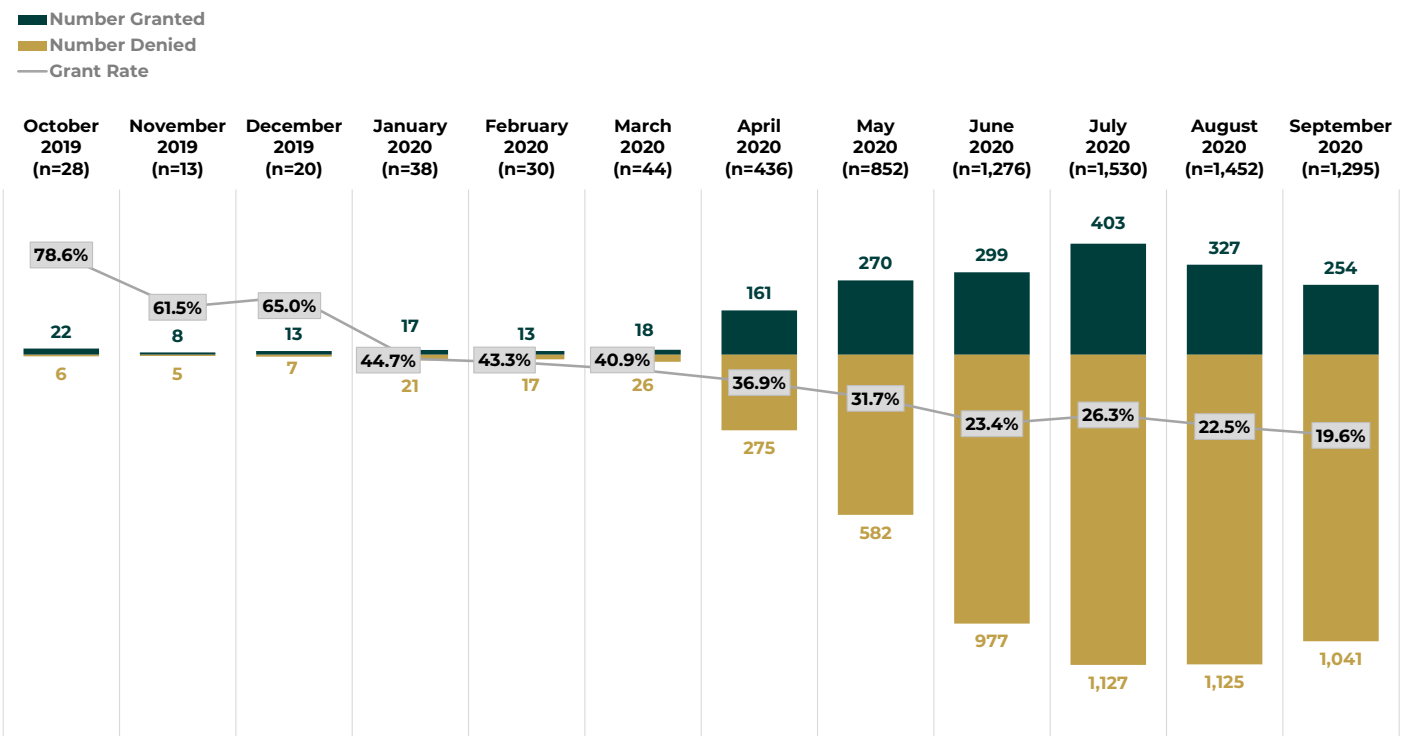
In fiscal year 2020, courts decided motions for a reduction in sentence under section 3582(c)(1)(A) for more than 7,000 offenders (n=7,014). Courts granted relief to one-quarter (25.7%) and denied relief to the remaining 74.3 percent of those offenders. Many offenders who filed a motion for compassionate release during fiscal year 2020 did not receive a decision until after the end of the fiscal year. Offenders whose motions were not decided until after the end of fiscal year 2020 are not included within this report's study group and will be the subject of future study.

The number of offenders granted compassionate release substantially increased compared to previous years, as a direct result of the COVID-19 pandemic and aided by the First Step Act's changes to section 3582(c)(1)(A). Courts granted relief to 24 offenders in fiscal year 2018 (prior to the Act and when only the Director of the BOP could file a motion) and to 145 offenders in First Step Year One, when offenders were newly authorized to file their own motion.⁶⁴ In fiscal year 2020, the number of Offenders Granted Relief increased more than twelvefold, to 1,805 offenders. Although the Commission did not collect denials of compassionate release prior to fiscal year 2020, as Figure 2 demonstrates, both grants and denials of compassionate release increased after the emergence of COVID-19.⁶⁵

When Were Offenders Granted or Denied Compassionate Release?

A month-by-month analysis of the number of offenders for whom courts decided a section 3582(c)(1)(A) motion demonstrates COVID-19's dramatic impact on the use of compassionate release. In the first quarter of fiscal year 2020, prior to the onset of the pandemic, courts decided compassionate release motions for relatively few offenders, and the number of Offenders Granted Relief exceeded the number of Offenders Denied Relief each month.

Figure 2. Offenders Granted and Denied Compassionate Release by Month Fiscal Year 2020



In the second quarter (beginning January 2020), grants and denials increased only slightly, and the number of denials began to exceed the number of grants. This slight increase from the first quarter may be partially attributable to the early stages of the pandemic.⁶⁶

Overall, during the first half of fiscal year 2020, courts granted a reduction to 91 offenders, which represents 5.0 percent of Offenders Granted Relief in fiscal year 2020. An even smaller percentage of offenders were denied a reduction during the first half of the fiscal year—only 1.6 percent (n=82) of Offenders Denied Relief overall.

Beginning April 2020, as COVID-19 became widespread, courts resolved substantially more compassionate release motions. The number of offenders for whom courts decided a compassionate release motion increased nearly 900 percent between March and April 2020 and

continued to increase each month between March and July 2020. After peaking in July (at 403 Offenders Granted Relief and 1,127 Offenders Denied Relief), the number of offenders began decreasing during the final two months of the fiscal year, though more substantially for Offenders Granted Relief. The number of compassionate release decisions began to decrease in the final two months of the study period, a trend the Commission expects to continue past the study period, as COVID-19 vaccines became available and the pandemic became better controlled.

The grant rate appeared to track the development of the pandemic and typically decreased as the total number of offenders seeking compassionate release increased. In each month during the first quarter of fiscal year 2020, the grant rate was above 60 percent. Although the grant rate decreased during the second and third quarters, it remained relatively high—above the overall grant rate (25.7%)—through the

earliest months of the pandemic (36.9% in April 2020 and 31.7% in May 2020). As the response to the pandemic progressed and transmission of the virus was better controlled, the grant rate further decreased. In June 2020, the grant rate (23.4%) was below the overall grant rate for the first time during the study period and remained below the overall grant rate for the rest of the fiscal year, except for July 2020 (26.3%). The grant rate decreased to its lowest point (19.6%) the last month of the fourth quarter (September 2020).

Who Filed the Compassionate Release Motion?

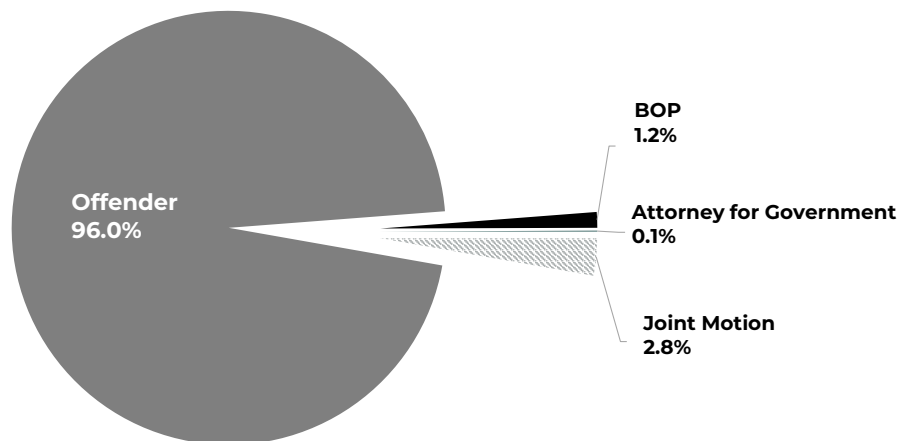
Offenders filed the overwhelming majority of compassionate release motions that were decided during fiscal year 2020. As demonstrated in Figure 3, 96.0 percent of Offenders Granted Relief filed their own motion,⁶⁷ and another 2.8 percent filed jointly with the attorney for the government.⁶⁸ The BOP filed the motion for 1.2 percent.⁶⁹ By comparison, in First Step Year One, 67.1 percent (n=96) of

Offenders Granted Relief filed their own motion, while the BOP filed the motion for 32.9 percent (n=47).⁷⁰ In fiscal year 2020, all Offenders Denied Relief filed their own motion.

Of Offenders Granted Relief who filed their own motion, the government opposed the motion for more than half (55.8%),⁷¹ the government did not oppose for one-quarter (25.4%), and the sentencing documents did not clearly indicate the government’s position for 17.9 percent of offenders.⁷²

Although the BOP filed few motions under section 3582(c)(1)(A), it did release thousands of offenders to temporary home confinement through the separate authority created by the CARES Act.⁷³ Offenders released to home confinement through the CARES Act are not included within this report’s study group, because these releases derive from a different statutory authority and reflect a change in placement rather than a reduction in sentence.⁷⁴

Figure 3. Origin of Compassionate Release Motions for Offenders Granted Relief
Fiscal Year 2020



Where Were Offenders Granted or Denied Compassionate Release?

During the study period, every federal district court ruled on at least one compassionate release motion.⁷⁵ As demonstrated in Figure 4, the distribution of offenders who sought compassionate release by circuit generally reflects the relative size of the federal circuits and their respective proportions of the federal prison population. However, compared to their proportion of the federal prison population, offenders within the Second Circuit were more likely to seek relief (10.8% of offenders who sought relief compared to 4.9% of the federal prison population), and offenders within the Fifth Circuit were less likely to seek relief (11.4% compared to 18.8%).⁷⁶

The largest proportion of Offenders Granted Relief were sentenced in district courts within the Ninth Circuit (17.3%), though offenders from the Ninth Circuit represented only 11.9 percent of offenders who sought relief. By contrast, 6.1 percent of Offenders Granted Relief were sentenced in district courts within the Fifth Circuit, which represented 11.4 percent of offenders who sought relief.

Figure 4. Proportion of Compassionate Release Offenders by Circuit
As of May 25, 2019, Fiscal Year 2020

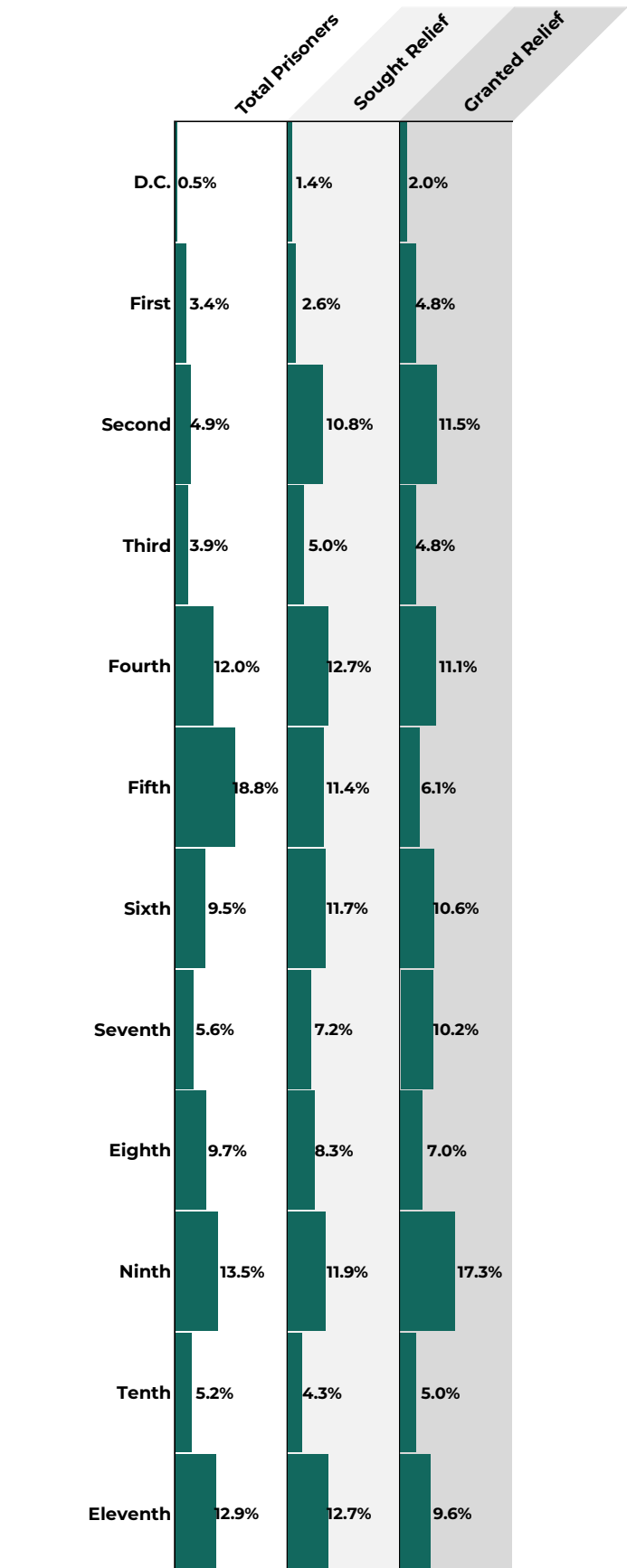
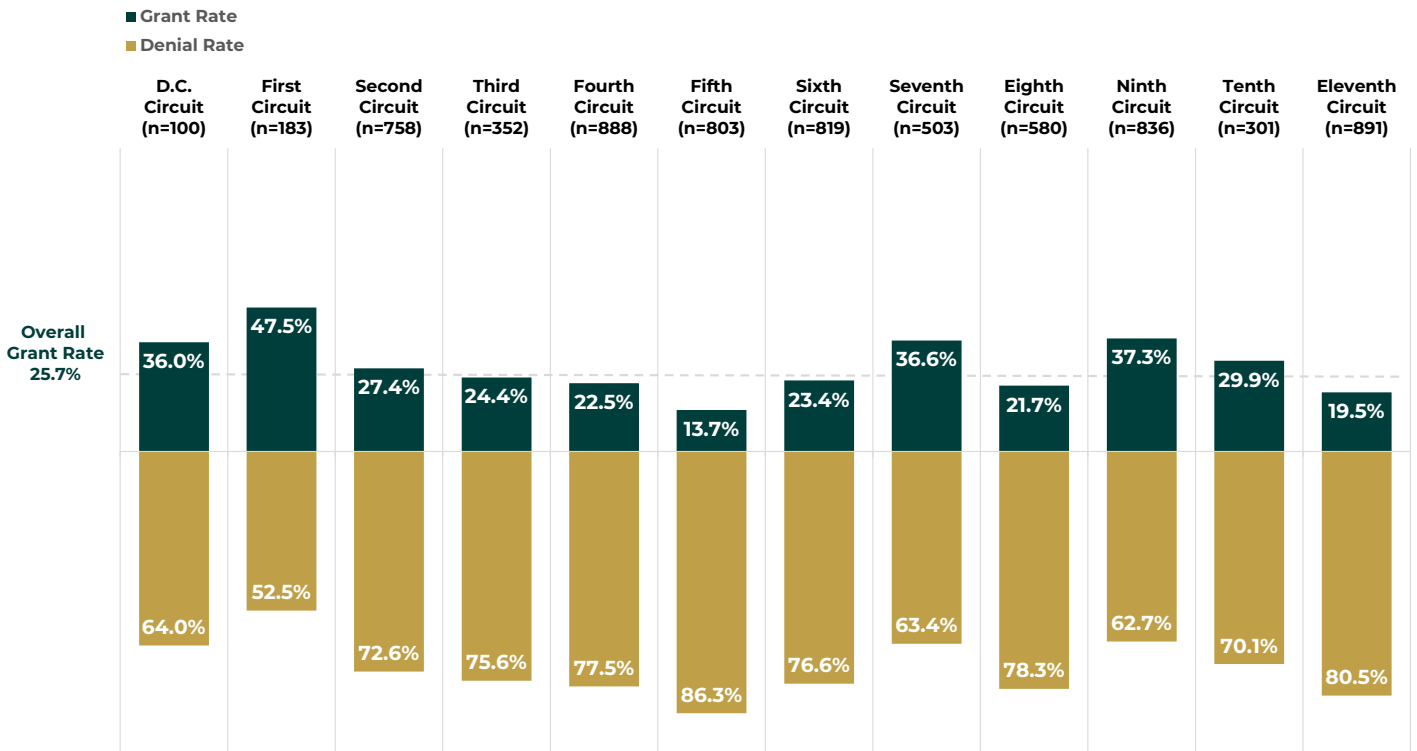


Figure 5. Grant and Denial Rates by Circuit
Fiscal Year 2020



The Commission also examined the grant rate within each circuit. Six circuits granted relief at a rate above the overall grant rate in fiscal year 2020 (25.7%)—the First (47.5%), Ninth (37.3%), Seventh (36.6%), D.C. (36.0%), Tenth (29.9%), and Second (27.4%) Circuits. The other six circuits granted relief at a rate below the overall grant rate—the Fifth (13.7%), Eleventh (19.5%), Eighth (21.7%), Fourth (22.5%), Sixth (23.4%), and Third (24.4%) Circuits. While some circuits, granted relief at a similar rate to the overall grant rate (25.7%), other circuits substantially deviated from the average. For example, the First Circuit’s grant rate was nearly double (47.5%) the overall grant rate, and the Fifth Circuit’s grant rate was only approximately half (13.7%) the overall grant rate.

Offender Demographics

Race, Gender, and Citizenship

The Commission examined the race, gender, and citizenship of offenders who sought compassionate release in fiscal year 2020. Offenders Granted and Offenders Denied Relief were nearly identical with respect to their racial composition. Black offenders represented the largest percentages of both Offenders Granted (44.2%) and Offenders Denied Relief (44.9%). White offenders represented the second largest percentages (34.6% of Offenders Granted and 35.3% of Offenders Denied Relief). Hispanic offenders comprised 17.3 percent of Offenders Granted and 16.3 percent of Offenders Denied Relief.

Figure 6. Offender Characteristics by Relief Status
Fiscal Year 2020

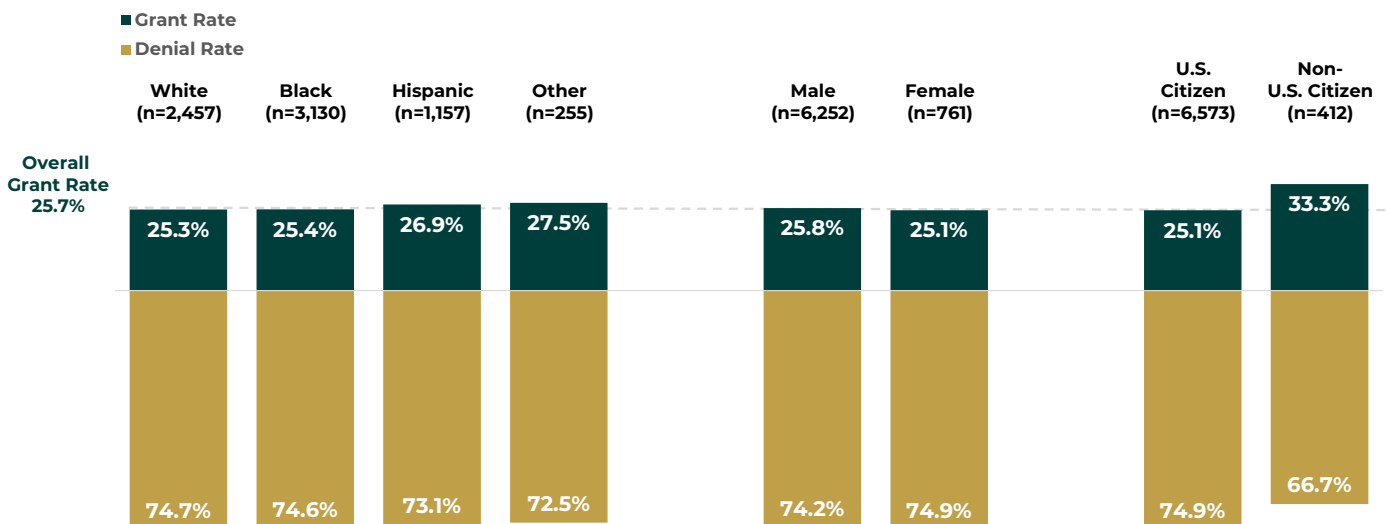


Among offenders who sought relief, White and Black offenders were overrepresented and Hispanic offenders underrepresented, compared to their respective proportions of the federal prison population (28.2%, 34.3%, and 33.7%, respectively).⁷⁷ As discussed below in the offense type analysis, the underrepresentation of Hispanic offenders among offenders seeking relief may be explained by the small number of immigration offenders who sought

compassionate release in fiscal year 2020.⁷⁸

Offenders Granted and Offenders Denied Relief were also similar with respect to their gender and citizenship status. Both groups were overwhelmingly male (over 89% each), consistent with the composition of the federal prison population.⁷⁹ Most were U.S. citizens (92.3% of Offenders Granted Relief and 94.7% of Offenders Denied Relief).⁸⁰

Figure 7. Grant and Denial Rates by Offender Characteristics
Fiscal Year 2020



The Commission also examined the grant rate by demographic group. As demonstrated in Figure 7, the grant rates were consistent across racial and gender categories. Across racial groups, the grant rate varied by only 2.2 percentage points (from a high of 27.5% for Other race offenders to a low of 25.3% for White offenders). The grant rates for male (25.8%) and female (25.1%) offenders varied by less than one percentage point. There was some variation in the grant rate based on citizenship status. Non-U.S. citizens had a higher grant rate (33.3%) than U.S. citizens (25.1%). Non-U.S. citizens, however, represented a small proportion of offenders who sought compassionate release (see Figure A1).

Age

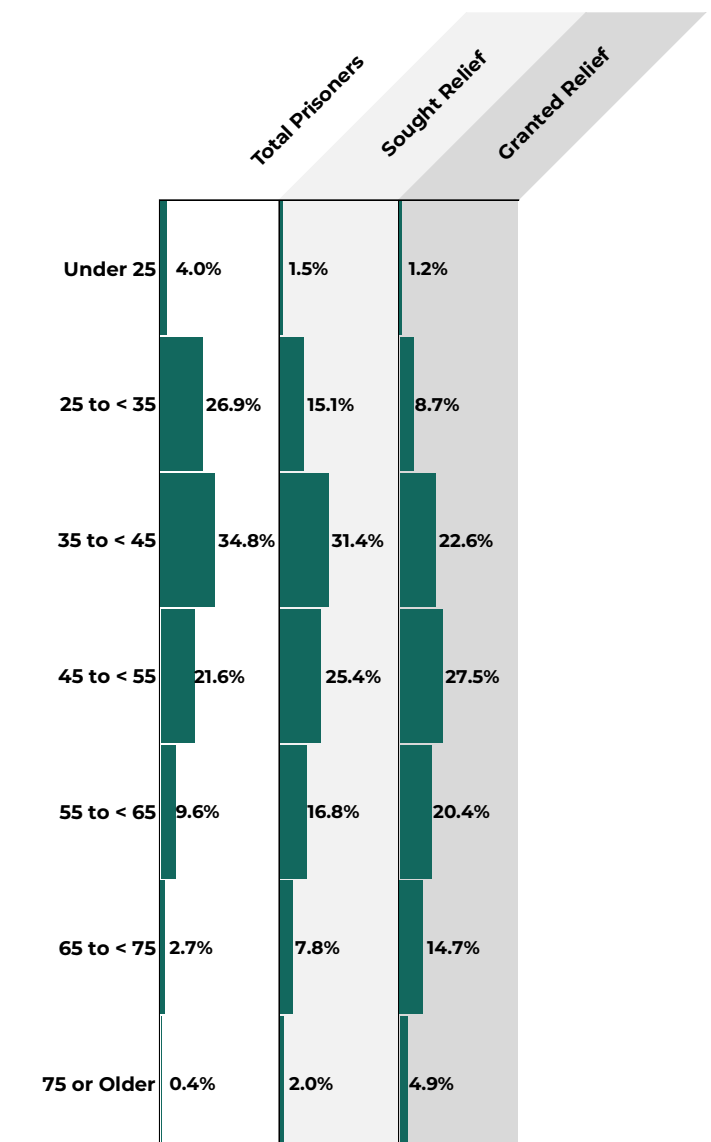
Age is a specific consideration under the §1B1.13 policy statement and was also identified as a risk factor in relation to COVID-19. Under the policy statement, an offender 65 years or older (who is also experiencing deteriorating health and has met a term of service requirement) is eligible for compassionate release.⁸¹ The Centers for Disease Control and Prevention identify “older adults” as a group at increased risk of becoming “severely ill” from COVID-19.⁸²

Consistent with the role of increased age as a factor supporting a grant of compassionate release, Offenders Granted Relief were generally older than

Offenders Denied Relief (on average 52 years old, compared to 45 years old).⁸³ Older offenders were both more likely to seek and more likely to be granted relief. As demonstrated in Figure 8, within each age bracket 45 years and older, a larger percentage of offenders sought relief compared to their respective proportion of the federal prison population, and a larger percentage of offenders were granted relief compared to the percentage that sought relief. The opposite was true for each age bracket under 45 years old. Nearly 20 percent (19.6%) of Offenders

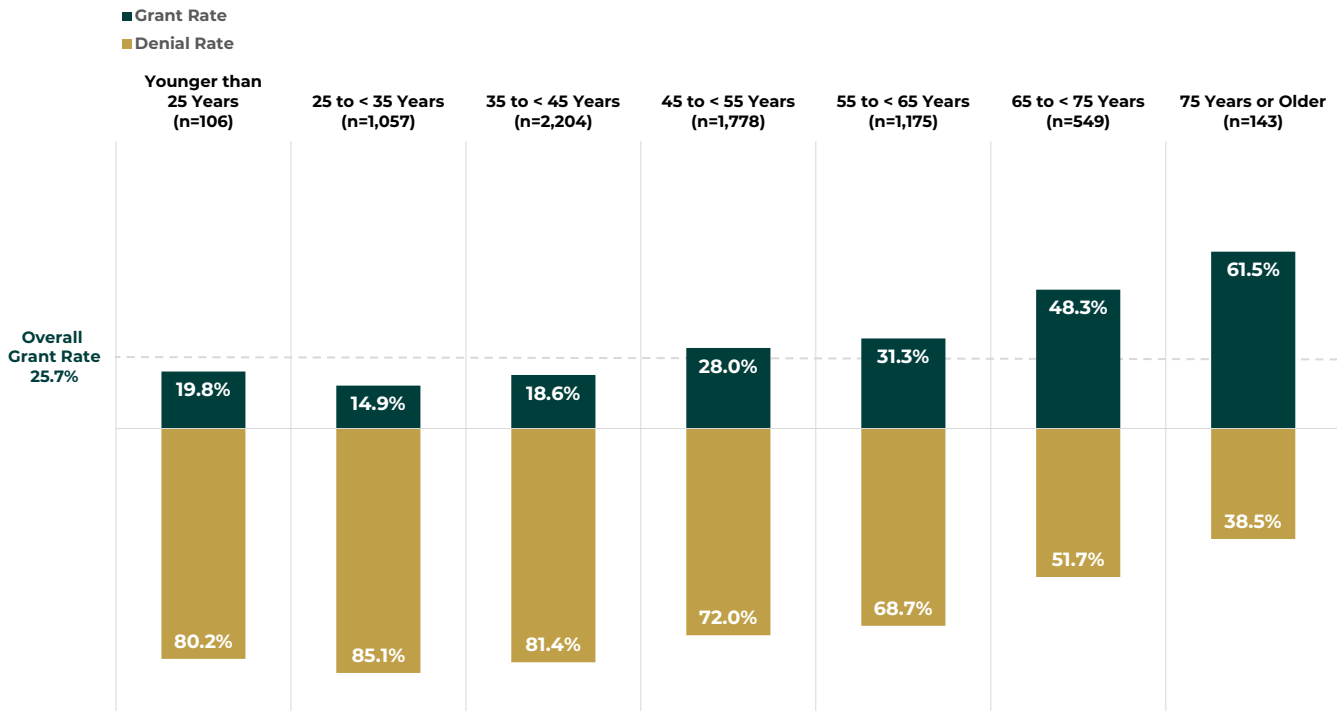
Figure 8. Proportion of Compassionate Release Offenders by Age

As of May 25, 2019, Fiscal Year 2020



Offenders Granted Relief were generally older than Offenders Denied Relief (on average 52 years old, compared to 45 years old).

Figure 9. Grant and Denial Rates by Age
Fiscal Year 2020



Granted Relief were 65 years or older, though they represented only 9.8 percent of offenders who sought relief and 3.1 percent of the federal prison population.

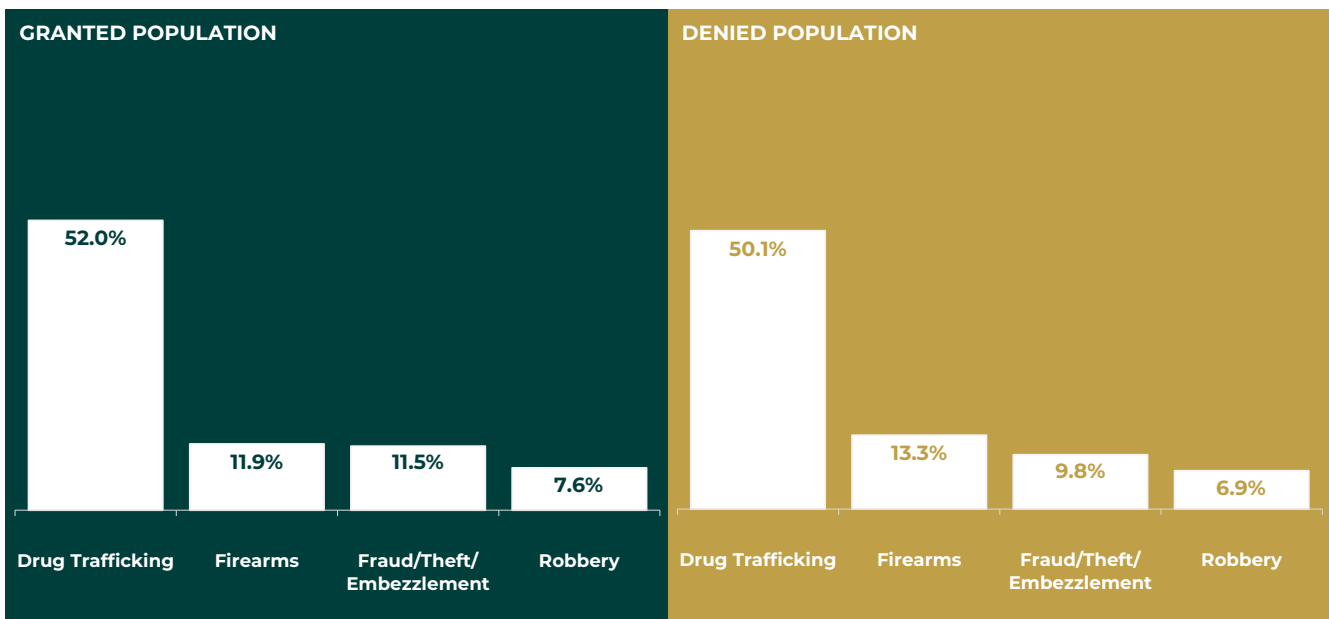
The Commission also examined the grant rate for offenders in each age bracket. Although relatively few offenders younger than 25 years old sought a reduction in sentence under section 3582(c)(1)(A), courts granted relief to nearly 20 percent (19.8%), a higher rate than that for offenders 25 to under 45 years old. Apart from this outlier, the grant rate increased in each older age bracket, to a high of 61.5 percent for offenders 75 years or older. Courts granted relief to offenders 65 to under 75 years old at a rate almost double the overall grant rate (48.3%). Thus, while older offenders represented a small percentage of offenders who sought relief, they were the most likely to receive relief.

Original Offense Type and Sentence

Offense Type

The Commission also analyzed the original offense of conviction for Offenders Granted and Offenders Denied Relief. The four most common offense types were the same for both groups, and, apart from the absence of immigration offenses, mirrored the most common offense types among all offenders in federal prison.⁸⁴ Of Offenders Granted Relief, 52.0 percent had been convicted of a drug trafficking offense, substantially more than had been convicted of the next most common offense type, a firearms offense (11.9%). Similarly, of Offenders Denied Relief, 50.1 percent had been convicted of a drug trafficking offense and 13.3 percent had been convicted of a firearms offense.⁸⁵

Figure 10. Most Common Offense Types by Relief Status
Fiscal Year 2020

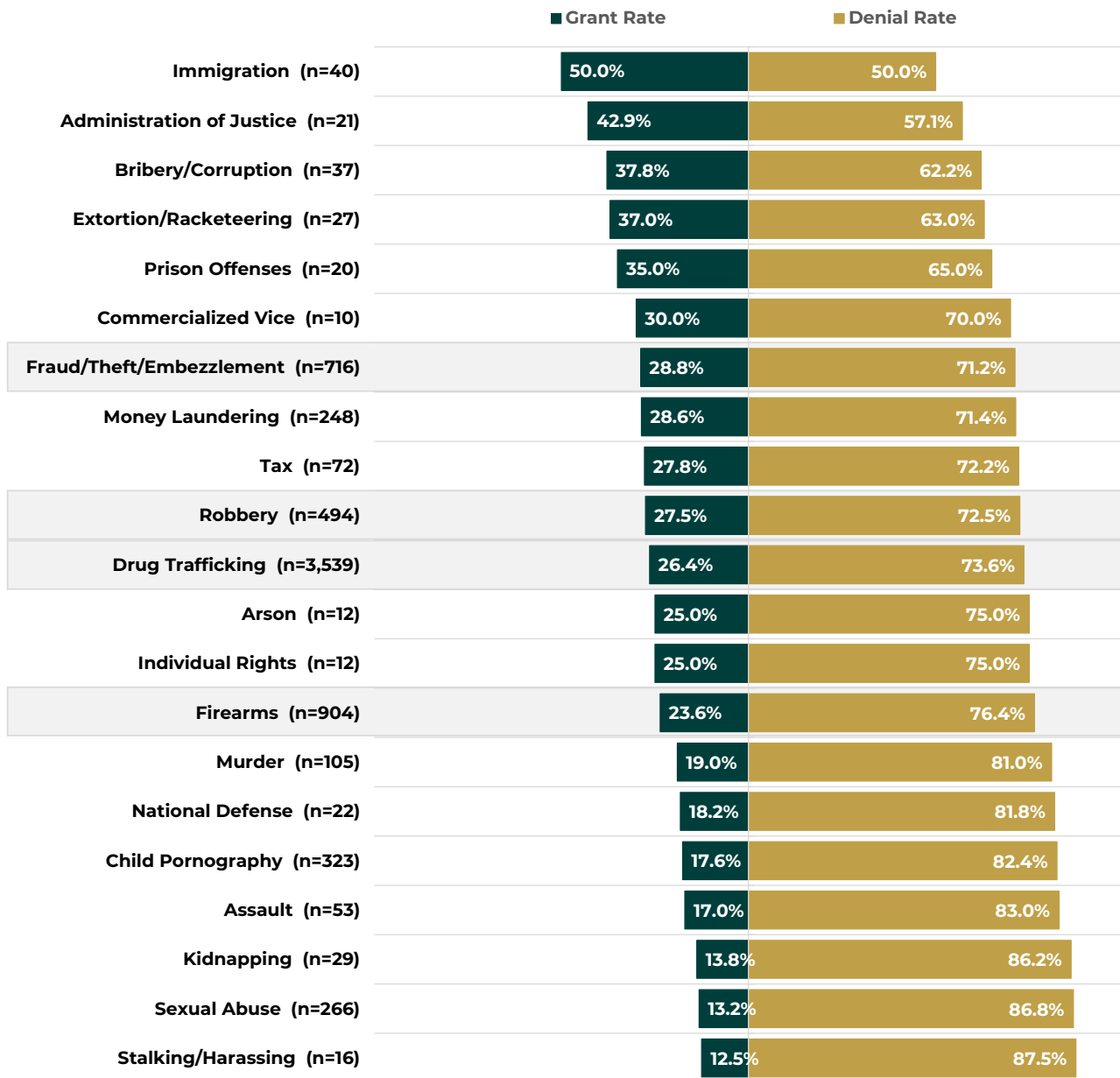


Although immigration offenses are the most common offense type among all federal offenders,⁸⁶ immigration offenders represented less than one percent (0.6%; n=40) of offenders for whom courts decided a motion for sentence reduction under section 3582(c)(1)(A) in fiscal year 2020.⁸⁷ Compared to other common offense types, immigration offenders are sentenced to relatively short terms of imprisonment—less than one year on average—and, therefore, represent a small portion of the federal prison population.⁸⁸ The small number of immigration offenders may also explain the underrepresentation of Hispanic and Non-U.S. citizen offenders among offenders seeking compassionate release.⁸⁹ For a full list of offense types among Offenders Granted and Offenders Denied Relief, including the grant rate by offense type, see Table A2.

As demonstrated in Figure 11, the likelihood of having a compassionate release motion granted varied little by the most common offense types. For the majority of offenders (those who had been convicted of one of the most common offenses among offenders seeking relief), the grant rate by offense type was similar to the overall grant rate (25.7%). For offenders convicted of the four most common offenses of conviction among offenders seeking relief, the grant rate varied by only 5.2 percentage points by offense type (from a high of 28.8% for fraud offenders to a low of 23.6% for firearms offenders).

Although representing a substantially smaller number of offenders, the grant rate was markedly higher for some offenses that were less common among offenders who sought relief.⁹⁰ Offenders convicted of an immigration offense were the most likely to be granted a sentence reduction (50.0%), followed by offenders convicted of an administration of justice offense (42.9%).

Figure 11. Grant and Denial Rates by Offense Type
Fiscal Year 2020

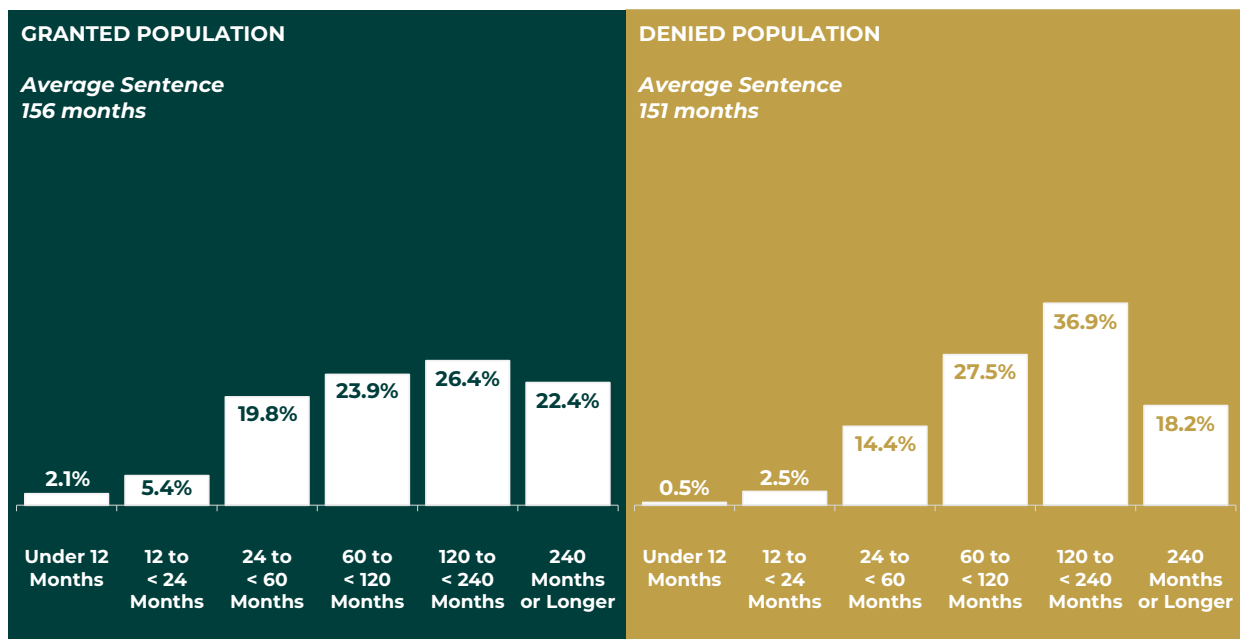


Most common offense types are highlighted for ease of review; offense types with fewer than ten total cases are not displayed in this figure. Visit Appendix A of this report for a full list of offense categories with grant and denial rates.

By contrast, the grant rate was often much lower for offenses against the person.⁹¹ The offenses with the highest *denial* rates were stalking/harassing (87.5%), sexual abuse (86.8%), kidnapping (86.2%), assault (83.0%), and child pornography (82.4%). Notably, the

number of offenders within these offense type categories varied substantially. For example, only 16 offenders were convicted of stalking/harassing, compared to 323 offenders convicted of child pornography.

Figure 12. Original Sentence Length by Relief Status
Fiscal Year 2020

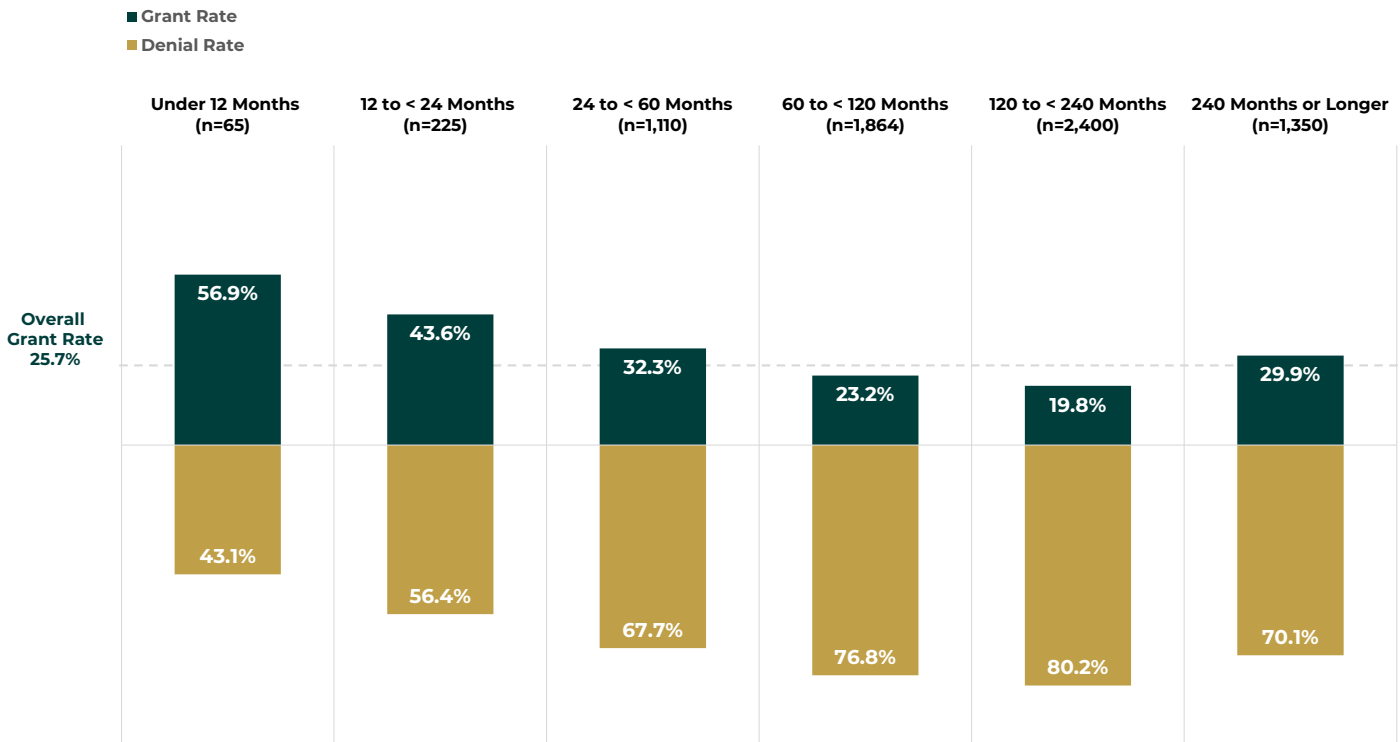


Average Original Sentence Length

The Commission analyzed whether original sentence length affected the likelihood that an offender would receive relief. Offenders Granted and Offenders Denied Relief received similar average sentences, differing by only five months (156 months for Offenders Granted Relief compared to 151 months for Offenders Denied Relief). As demonstrated in Figure 12 the distribution of original sentences for Offenders Granted and Offenders Denied Relief was also similar. For both groups,

the smallest proportion of offenders received a term of imprisonment less than 12 months (2.1% of Offenders Granted Relief and 0.5% of Offenders Denied Relief). Also for both groups, the largest proportion received a term of imprisonment between 120 and less than 240 months, although significantly more pronounced for Offenders Denied Relief (26.4% of Offenders Granted Relief compared to 36.9% of Offenders Denied Relief).⁹²

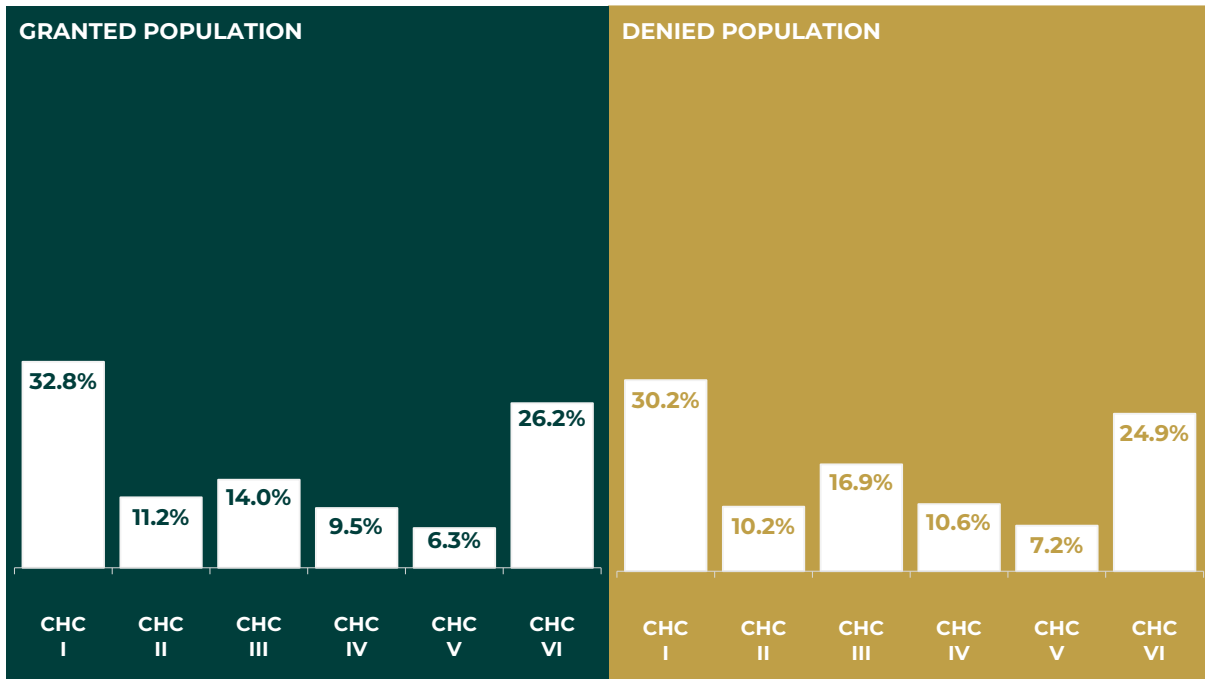
**Figure 13. Grant and Denial Rates by Original Sentence Length
Fiscal Year 2020**



The Commission also analyzed the grant rate by original sentence length. As demonstrated in Figure 13, as sentence length increased, the grant rate generally decreased. The relatively small group of offenders sentenced to a term of less than 12 months (n=65) had the highest grant rate (56.9%). Within each longer sentence bracket, the grant rate decreased, to a low of 19.8 percent for offenders sentenced to a term of

imprisonment between 120 and less than 240 months. However, offenders who received the longest sentences—240 months or longer—had a higher grant rate (29.9%) than offenders sentenced to a term of imprisonment between 60 and less than 120 months (23.2%) or 120 to less than 240 months (19.8%).

Figure 14. Criminal History Category by Relief Status
Fiscal Year 2020



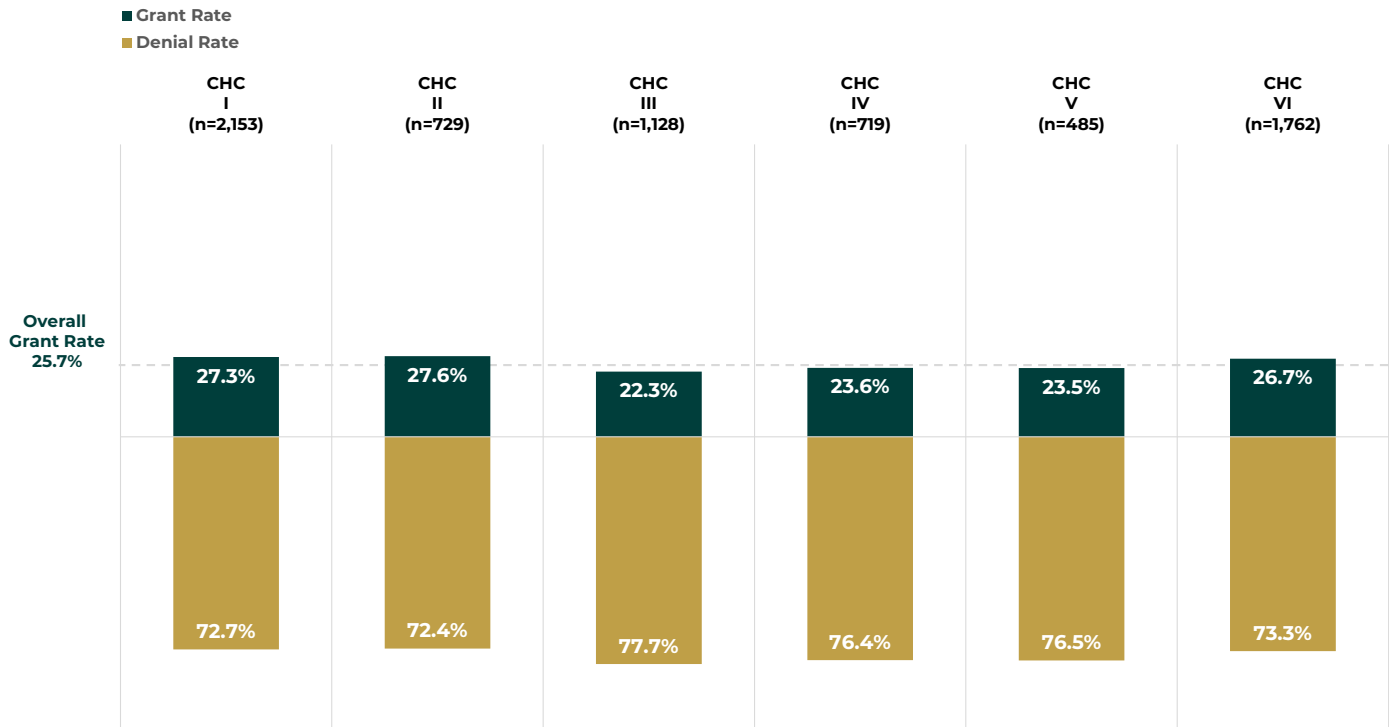
Criminal History

An offender's Criminal History Category (CHC) did not appear to affect the likelihood that the court would grant compassionate release. Of offenders within the study group, 30.9 percent were in CHC I, 10.4 percent in CHC II, 16.2 percent in CHC III, 10.3 percent in CHC IV, 6.9 percent in CHC V, and 25.3 percent in CHC VI.⁹³ As demonstrated in Figure 14,

Offenders Granted and Offenders Denied Relief had similar distributions by CHC. For example, similar proportions of Offenders Granted and Offenders Denied Relief were in CHC I (32.8% and 30.2%, respectively), the least serious CHC, and CHC VI (26.2% and 24.9%, respectively), the most serious CHC.

Figure 15. Grant and Denial Rates by Criminal History Category

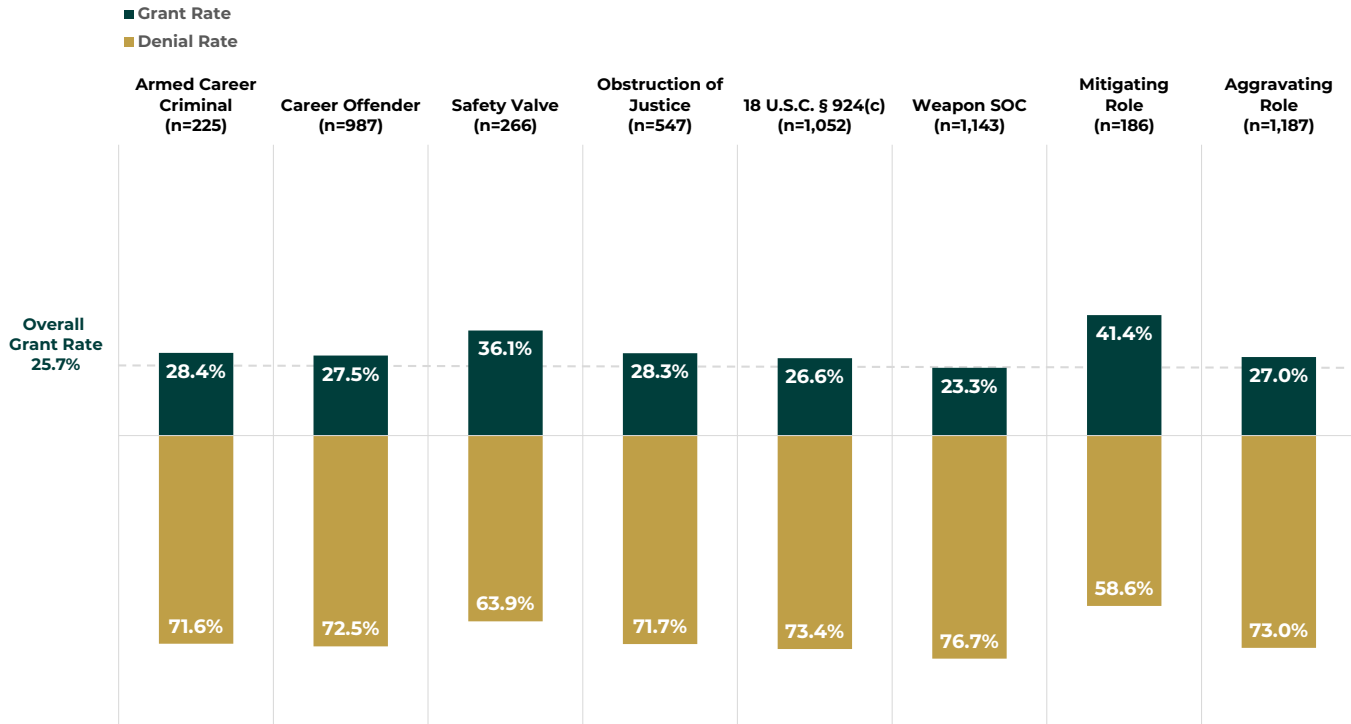
Fiscal Year 2020



The grant rate was generally consistent across CHCs, varying by only 5.3 percentage points between offenders with the highest grant rate in CHC II (27.6%) and the lowest grant rate in CHC III (22.3%). Notably, career

offenders,⁹⁴ who are included in CHC VI, were granted a reduction at the overall grant rate (25.7%)⁹⁵ and represent 15.8 percent of all Offenders Granted Relief.⁹⁶

Figure 16. Grant and Denial Rates by Sentencing Characteristics
Fiscal Year 2020



Select Sentencing Factors

The Commission studied whether the presence of selected sentencing factors affected the likelihood that an offender would receive compassionate release. As shown in Figure 16, the presence of most sentencing factors did not appear to affect whether an offender would be granted or denied compassionate release.⁹⁷ The grant rate for each group was similar to the overall

grant rate (25.7%). Only offenders who received a weapon enhancement at original sentencing were granted relief at a rate (23.3%) lower than the overall grant rate. The grant rate was higher for offenders who received a mitigating role adjustment (41.4%) or safety valve relief⁹⁸ (36.1%) at original sentencing, although they represented a relatively small portion of offenders who sought relief in fiscal year 2020.⁹⁹

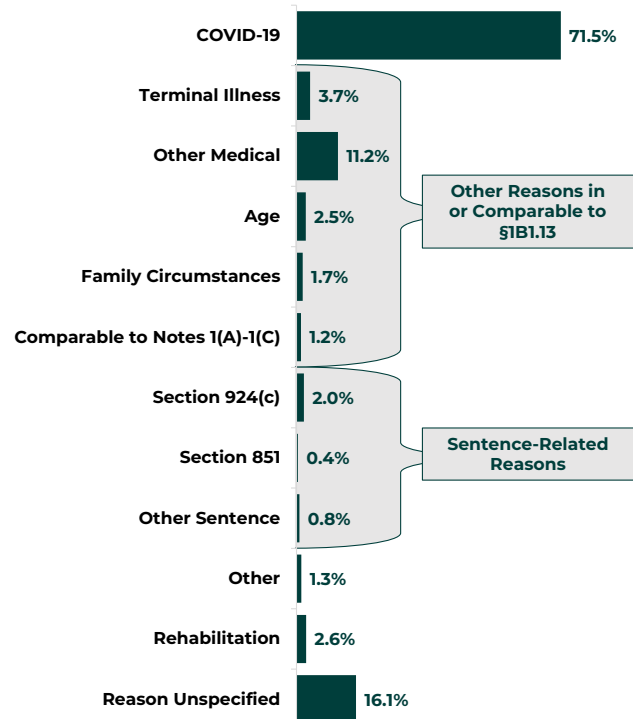
6 Offenders Granted Relief

The Commission reviewed the sentencing documentation for the 1,805 Offenders Granted Relief to collect the “extraordinary and compelling reasons” that courts cited to support granting sentence reductions and additional information about the nature of the relief granted. Courts often cited more than one reason for granting a motion. For example, in some cases the court cited the offender’s particularized risk of contracting COVID-19 and the offender’s medical condition as independent reasons to grant relief.¹⁰⁰ As a result, the reason categories are not mutually exclusive, and the percentages listed in Figure 17 exceed 100 percent.¹⁰¹

Reasons Supporting a Reduction in Sentence

As reflected in Figure 17, courts cited several different “extraordinary and compelling” reasons to support a reduction in sentence under section 3582(c)(1)(A) within three more general categories: (1) the risk of contracting or experiencing serious illness from COVID-19; (2) other reasons in or comparable to the specific reasons in the §1B1.13 policy statement; and (3) reasons outside the §1B1.13 policy statement, typically related to the length of the offender’s sentence. In 16.1 percent of cases, the sentencing documentation did not provide the court’s reason for granting a sentence reduction (“Reason Unspecified”).¹⁰²

Figure 17. Reasons Cited for Granting Relief Fiscal Year 2020



The Majority of Compassionate Release Grants Were Based on COVID-19

The overwhelming majority of grants under section 3582(c)(1)(A) were based, at least in part, on the risk of contracting or experiencing serious illness from COVID-19.¹⁰³ Courts cited the risk of contracting COVID-19 as at least one reason to grant a reduction for 71.5 percent of Offenders Granted Relief and as the only reason for 59.6 percent.¹⁰⁴

Although the risk of exposure to an illness is not specifically described as an “extraordinary and compelling” reason under the §1B1.13 policy statement, courts often found that it was comparable to the medical and age reasons described in the policy statement.¹⁰⁵ Moreover, courts frequently cited the offender’s medical condition or age *and* their increased risk of contracting COVID-19 as “extraordinary and compelling reasons” within the same case.¹⁰⁶

In addition, in the 16.1 percent of cases in which the reason for grant was not specified in the court’s sentencing documentation,¹⁰⁷ the Commission reviewed the offender’s compassionate release motion to collect the reasons the offender asserted were extraordinary and compelling. In three-quarters (75.5%) of these cases, the offender asserted the risk of COVID-19 as at least one reason warranting relief.¹⁰⁸

Courts Regularly Cited Other Reasons Within or Comparable to the Commission’s Policy Statement

Overall, courts cited reasons specifically described in the policy statement or a reason comparable to those specifically described reasons (other than COVID-19) for nearly 20 percent of Offenders Granted Relief.¹⁰⁹

Of the “extraordinary and compelling reasons” described in §1B1.13, courts cited—

- a **terminal illness** as at least one reason for granting relief for 3.7 percent of Offenders Granted Relief and the only reason for 2.9 percent;
- a **non-terminal medical condition** as at least one reason for granting relief for 11.2 percent of Offenders Granted Relief and the only reason for 3.8 percent;¹¹⁰
- the “**Age of the Defendant**” criteria as at least one reason for granting relief for 2.5 percent of Offenders Granted Relief and the only reason for 1.1 percent;¹¹¹ and
- “**Family Circumstances**” as at least one reason for granting relief for 1.7 percent of Offenders Granted Relief and the only reason for 0.9 percent.¹¹²

In addition, for 1.2 percent of Offenders Granted Relief, courts cited a reason comparable to those specifically described in the Commission’s policy statement (“Comparable to Notes 1(A)–1(C)”). The most common of these reasons was the offender’s need to provide care for a family member other than a minor child, spouse, or registered partner—most often a parent (n=18).¹¹³ This category also includes cases in which the court identified the correctional facility’s failure or inability to provide timely or adequate medical care as a reason in support of grant as a reason distinct from the underlying medical condition itself (n=4).¹¹⁴

Courts Rarely Cited Reasons Not Described in the Commission’s Policy Statement

In fiscal year 2020, courts also identified “extraordinary and compelling” reasons not provided in the Commission’s policy statement, typically related to the length of the offender’s sentence, but these reasons were cited relatively rarely. Courts cited a sentence-related reason as an “extraordinary and compelling” reason in support of a grant for 3.2 percent of Offenders Granted Relief.¹¹⁵ Most often, the court identified a nonretroactive change in law that would reduce the offender’s sentence were they sentenced today. Notably, circuit courts have disagreed about whether changes in law are a permissible basis for a sentence reduction under section 3582(c)(1)(A).¹¹⁶

Within the sentence-related reason category, courts cited the First Step Act’s changes to the 18 U.S.C. § 924(c) “stacked” firearm penalties as at least one “extraordinary and compelling” reason in support of a grant for 2.0 percent (n=36) of Offenders Granted Relief and the only reason for 1.2 percent (n=22).¹¹⁷ Section 924(c) establishes mandatory minimum penalties of varying lengths depending on how a firearm was

used, as well as a mandatory minimum penalty of 25 years for each “second or subsequent conviction” for an offense under the statute.¹¹⁸ The First Step Act limited the application of the 25-year penalty by providing that it applies only to defendants whose instant violation occurs after a prior section 924(c) conviction has become final (and not to multiple section 924(c) counts in the same case).¹¹⁹ Because this change applies only to defendants sentenced *after* enactment of the First Step Act, offenders previously sentenced to “stacked” penalties remain subject to the longer, unamended penalty.

Also within this category, courts cited the First Step Act’s changes to the enhanced drug penalties imposed pursuant to 21 U.S.C. § 851 as at least one “extraordinary and compelling” reason in support of a grant for 0.4 percent of offenders (n=7).¹²⁰ The First Step Act (1) narrowed the drug offenses that qualify as predicate offenses,¹²¹ and (2) reduced the length of the longest of the enhanced penalties, from 20 to 15 years (for offenders with one qualifying prior offense) and from life to 25 years (for offenders with two prior qualifying offenses).¹²² Like the changes

18 U.S.C. § 924(c) Penalties

18 U.S.C. § 924(c) Counts Per Indictment	Pre-First Step Act	Post-First Step Act
One Count	Mandatory Minimum of 5 years	Mandatory Minimum of 5 years
Two Counts	Mandatory Minimums of 30 years (5 years + 25 years)	Mandatory Minimums of 10 years (5 years + 5 years)
Three Counts	Mandatory Minimums of 55 years (5 years + 25 years + 25 years)	Mandatory Minimums of 15 years (5 years + 5 years + 5 years)

Common 851 Enhancements

Statutory Provision	Statutory Penalty	Old Enhanced Penalty	New Enhanced Penalty
21 U.S.C. § 841(b)(1)(A)	10-year Mandatory Minimum	20-year Mandatory Minimum (after one prior “felony drug offense” conviction)	15-year Mandatory Minimum (after one prior “serious drug felony” conviction)
		Life (after two or more prior “felony drug offense” convictions)	25-year Statutory Minimum (after two or more prior “serious drug felony” convictions)
21 U.S.C. § 841(b)(1)(B)	5-year Mandatory Minimum	10-year Mandatory Minimum (after one prior “felony drug offense” conviction)	10-year Mandatory Minimum (after one prior “serious drug felony” conviction)

to “stacked” section 924(c) penalties, these changes apply only to defendants sentenced *after* enactment of the First Step Act. Therefore, offenders who were sentenced before enactment remain subject to the longer unamended penalties, and some offenders, whose prior drug offense would no longer qualify as a predicate offense, remain subject to an enhanced penalty that would not apply at all were they sentenced today.¹²³

Courts cited other sentence-related reasons as “extraordinary and compelling” reasons supporting a grant for only 0.8 percent of offenders.¹²⁴ Examples of these sentence-related reasons include the First Step Act’s nonretroactive change to the statutory safety valve provision at 18 U.S.C. § 3553(f);¹²⁵ recent court decisions holding that attempt and conspiracy offenses do not qualify as predicate offenses under the career offender guideline;¹²⁶ and the fact that the offender was sentenced under a mandatory guideline system prior to *United States v. Booker*.¹²⁷

Courts cited a specific “extraordinary and compelling” reason other than the reasons discussed above for 1.3 percent of Offenders Granted Relief. The “Other” reasons include certain isolated events.¹²⁸ In many cases, the court identified a series of reasons that, taken together, formed extraordinary and compelling circumstances warranting relief.

Courts Cited Rehabilitation in Combination with Other Reasons

Congress’s directive to the Commission at 28 U.S.C. § 994(t) and the §1B1.13 policy statement each instruct that rehabilitation alone is not an “extraordinary and compelling” reason for a sentence reduction under section 3582(c)(1)(A).¹²⁹ Rehabilitation, however, may be considered in addition to another extraordinary and compelling reason.¹³⁰ Consistent with this instruction, courts did not grant relief based on an offender’s rehabilitation alone, but did cite the offender’s rehabilitation as an “extraordinary and compelling” reason in combination with at least one other reason for 2.6 percent of offenders. The other reason or reasons, however, were related to the policy statement in some cases but sentence-related (or both) in other cases.

Courts Often Cited COVID-19 in Combination with Other Reasons

While courts regularly cited the defendant’s heightened risk of contracting COVID-19 as the sole basis for granting compassionate release during fiscal year 2020, the pandemic also appeared to increase the frequency with which courts cited an additional, independent reason described in the §1B1.13 policy statement, particularly a medical condition. As demonstrated in Figure 18, when comparing year-to-year increases, medical reasons—including terminal illness and other non-terminal medical conditions—supported a grant for 15 offenders in fiscal year 2018, 118 offenders in First Step Year One, and 270 offenders in fiscal year 2020.¹³¹ Although representing fewer offenders, a similar pattern occurred when considering the increase in the number of offenders for whom the court cited the offender’s age or family circumstances as a reason for grant.

However, a substantial proportion of these increases were attributable to offenders for whom the court specifically cited another reason under the policy statement and COVID-19 as independent reasons for relief. For example, of the 270 offenders for whom a medical reason was cited in support of a grant, the risk of COVID-19 was also cited for 130 offenders. Thus, when excluding offenders for whom the court also cited COVID-19, a medical reason was cited in support of a grant for only 22 more offenders in fiscal year 2020 (140 offenders) than in First Step Year One (118 offenders).

Figure 18. Reasons Cited for Granting Relief by Year

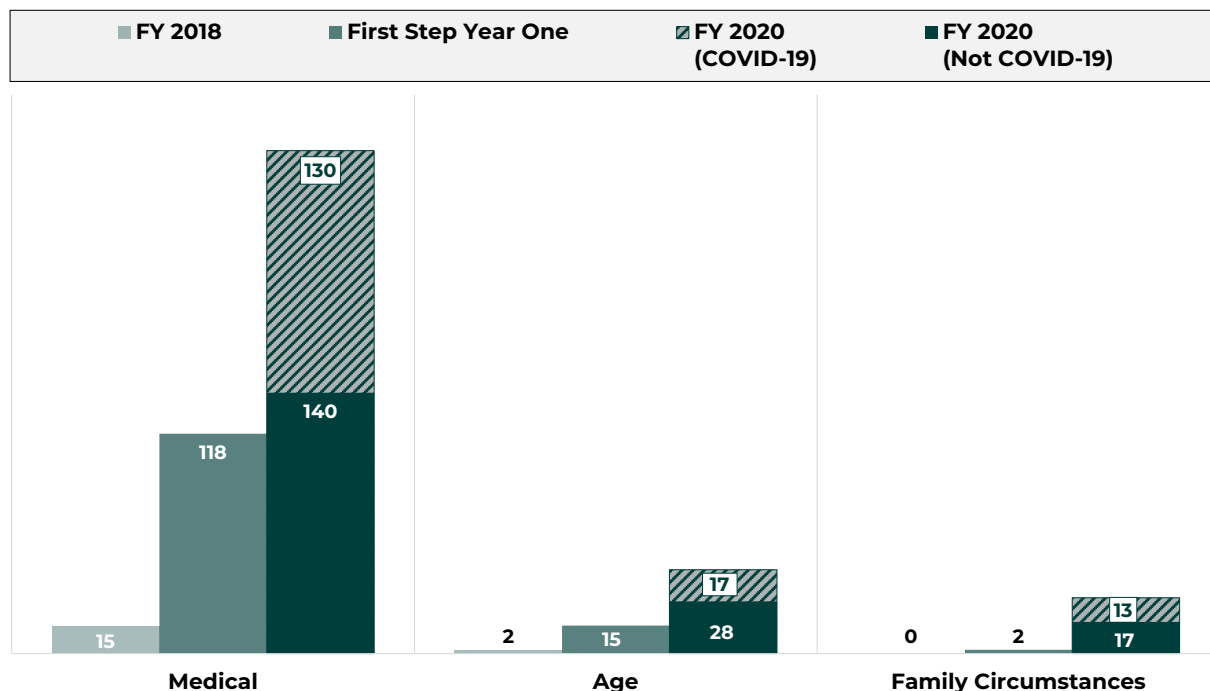
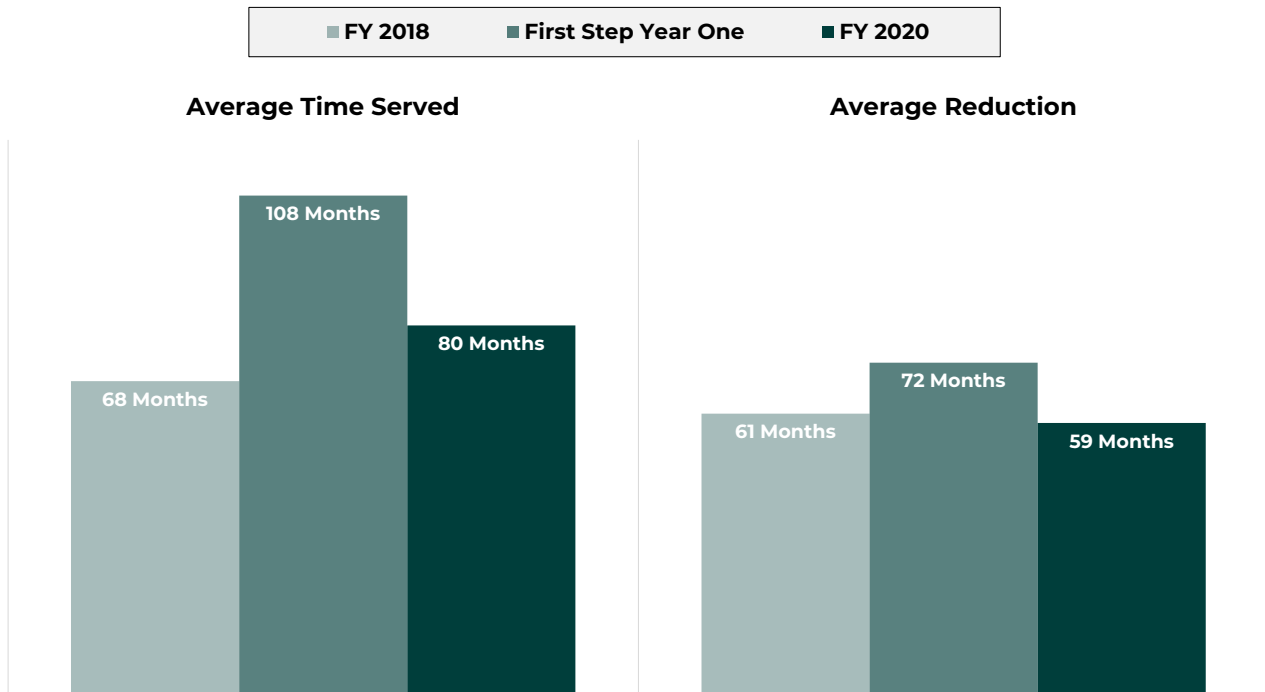


Figure 19. Average Time Served and Average Reduction by Year for Offenders Granted Relief



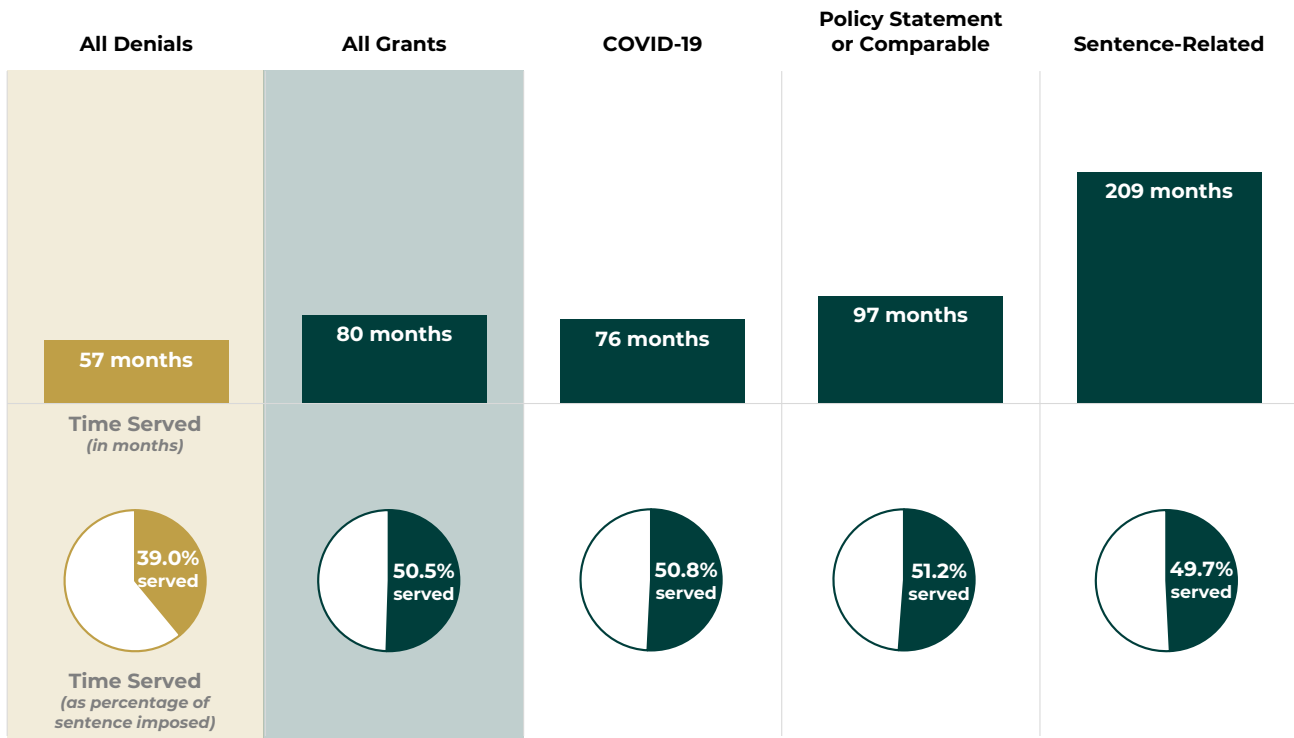
Even after accounting for the impact of COVID-19, the frequency with which courts cited reasons specifically described in the policy statement substantially increased. Compared to First Step Year One, the frequency with which courts cited age as a reason supporting a grant increased more than 85 percent, while family circumstances increased 750 percent. These trends should be considered with caution, however, because they reflect small numbers of offenders in many instances, and the existence of a pandemic may have influenced the court's decision even in cases in which the risk of COVID-19 was not expressly cited as a reason for granting relief.

Nature of Relief

Average Amount of Time Served and Average Reduction

In fiscal year 2020, Offenders Granted Relief had served, on average, 80 months of imprisonment.¹³² This reflects a decrease in the amount of time served by offenders granted compassionate release in First Step Year One (108 months) but is 12 months longer than offenders granted compassionate release in fiscal year 2018 (68 months).¹³³ The average reduction in sentence for Offenders Granted Relief was 59 months,¹³⁴ similar to the average reduction in fiscal year 2018 (61 months) but smaller than in First Step Year One (72 months).¹³⁵

Figure 20. Average Time Served by Grant Reason
Fiscal Year 2020



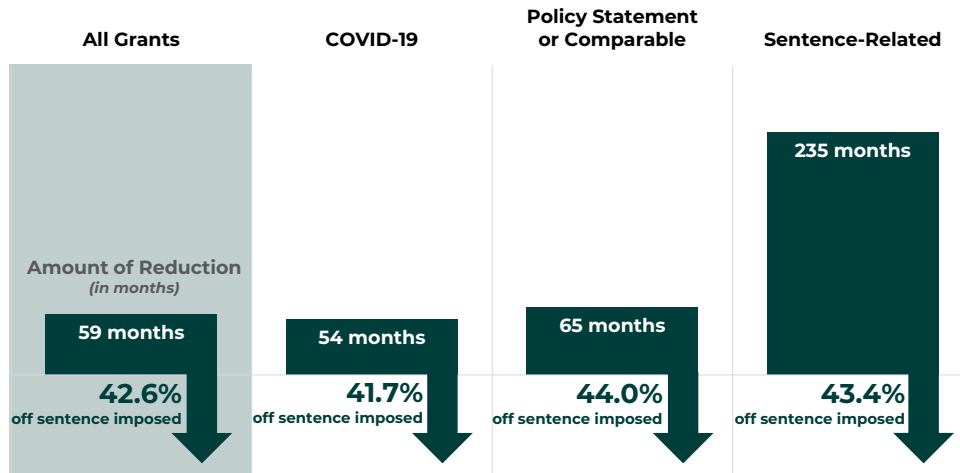
As demonstrated in Figure 20, Offenders Granted Relief had served more time than Offenders Denied Relief, both in months and as a percentage of their original sentence. Offenders Granted Relief served an average of almost two years longer than Offenders Denied Relief, 80 months compared to 57 months, and they served 50.5 percent of their original sentence compared to 39.0 percent for Offenders Denied Relief.¹³⁶

While the average time served for Offenders Granted Relief overall was 80 months, it significantly varied by the reason for grant. Offenders for whom courts cited COVID-19 as a reason for grant had served 76 months, compared to 97 months for Offenders Granted Relief based on another reason related to the policy statement. The relatively small

group of offenders for whom courts cited a sentence-related reason as at least one reason in support of a grant (n=58) had served the longest amount of time (209 months).¹³⁷ Because courts often cite more than one reason to support a grant, these groups are not mutually exclusive.

In contrast, the average percentage of sentence served varied little by the reason for grant. Of Offenders Granted Relief, the average percentage of sentence served varied by no more than 1.5 percentage points (from a low of 49.7% for Offenders Granted Relief based on a sentence-related reason to a high of 51.2% for Offenders Granted Relief based on a reason related to the policy statement other than COVID-19).¹³⁸

Figure 21. Average Sentence Reduction by Grant Reason
Fiscal Year 2020



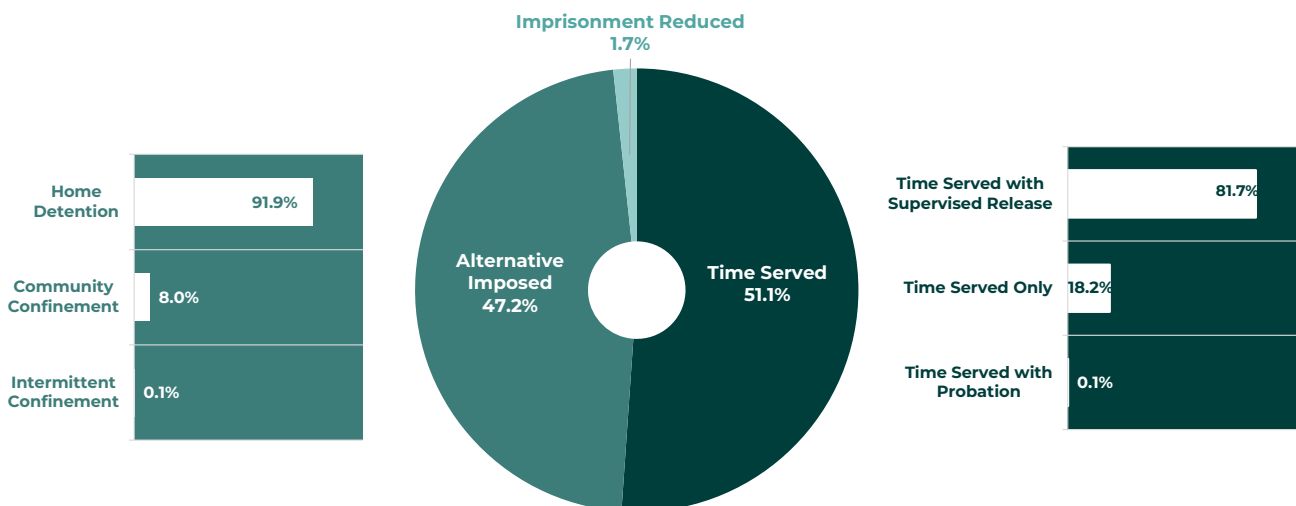
The amount of reduction was relatively consistent across most grant reason categories, with the exception of the sentence-related reason group. The average sentence reduction was 59 months for Offenders Granted Relief overall, 54 months for Offenders Granted Relief based on COVID-19, and 65 months for Offenders Granted Relief based on a reason related to the policy statement other than COVID-19. The notable exception is that Offenders Granted Relief based on a sentence-related reason received an average reduction of 235 months, nearly four times longer than the reductions for Offenders Granted Relief overall.¹³⁹

In contrast, the extent of the reduction was similar across all four groups (ranging from a high of 44.0% for the policy statement or comparable group to a low of 41.7% for the COVID-19 group).¹⁴⁰

Type of Sentence Imposed at Grant

Although commonly referred to as “compassionate release,” section 3582(c)(1)(A) authorizes a court to “reduce the term of imprisonment” and does not require immediate release.¹⁴¹ Section 3582(c)(1)(A) further provides that the court “may impose a term of probation or supervised release with or

Figure 22. Type of Sentence Imposed at Grant
Fiscal Year 2020



without conditions that does not exceed the unserved portion of the original term of imprisonment.”¹⁴²

As shown in Figure 22,¹⁴³ the overwhelming majority (98.3%) of Offenders Granted Relief were released from prison.¹⁴⁴ More than half (51.1%) were released without an alternative condition of confinement imposed (“Time Served” offenders), and nearly half (47.2%) were released with some alternative condition of confinement imposed (“Alternative Imposed” offenders).¹⁴⁵ The remaining 1.7 percent (n=31) received a reduction in sentence but remained incarcerated (“Imprisonment Reduced” offenders).

For Time Served offenders, the court typically imposed a term of supervised release (81.7%), and the average length of the supervised release term imposed was 62 months. The court granted a reduction to time-served without imposing a term of supervised release for the other 18.2 percent of offenders.¹⁴⁶

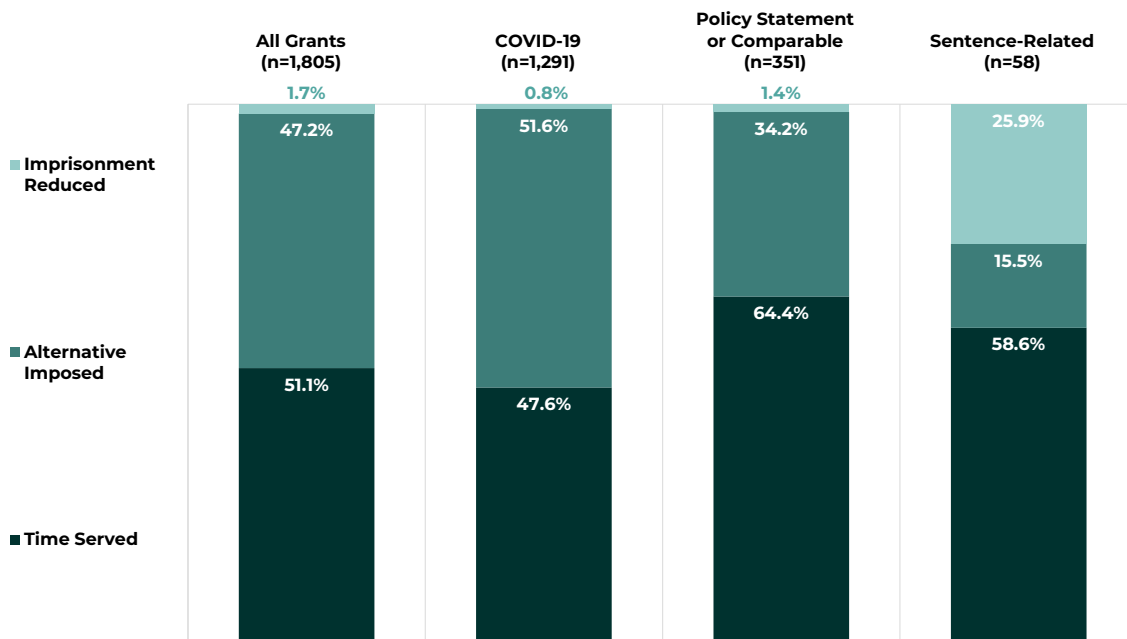
For Alternative Imposed offenders, the court typically imposed a term of probation with the condition of home detention (91.9%).¹⁴⁷ The average length of the home detention term imposed was 13 months.¹⁴⁸

For Imprisonment Reduced offenders (n=31), the average term remaining, post-reduction, was 84 months. Imprisonment Reduced offenders had long original sentences and often received compassionate release based at least in part on a sentence-related reason. The majority (61.3%) had original sentences of 240 months or longer, and nearly half (48.4%) were granted release based at least in part on a sentence-related reason.¹⁴⁹

Type of Sentence Imposed by Reason for Grant

The type of sentence courts imposed varied by the reason for grant. Offenders Granted Relief based on a reason specifically described in the policy statement or a reason other

Figure 23. Type of Sentence Imposed by Grant Reason
Fiscal Year 2020



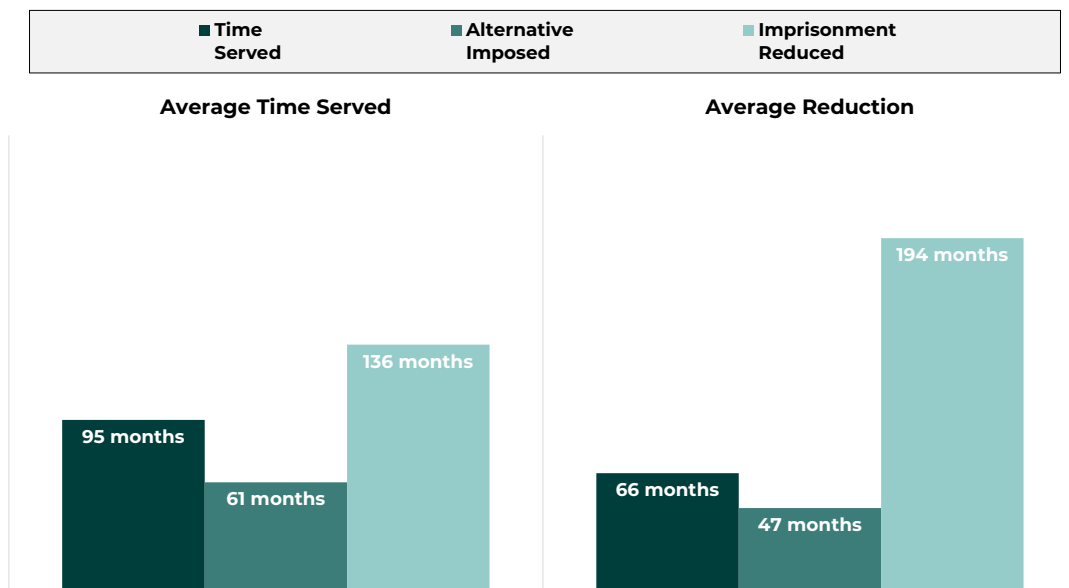
than COVID-19 comparable to a specific reason in the policy statement were most likely to receive a sentence reduction to time served (64.4% compared to 58.6% of Offenders Granted Relief based on a sentence-related reason and 47.6% of Offenders Granted Relief based on COVID-19) and were less likely to receive an alternative sentence compared to offenders who were granted relief based on COVID-19 (34.2% compared to 51.6%). Offenders Granted Relief based on a sentence-related reason were substantially more likely to receive a reduction in their term of imprisonment only (25.9%), compared to other groups (0.8% of Offenders Granted Relief based on COVID-19 and 1.4% of Offenders Granted Relief based on another reason in or comparable to the policy statement).

Average Amount of Time Served and Amount of Reduction by Type of Sentence Imposed at Grant

The average amount of time served varied by the type of sentence imposed at grant. Time Served offenders had served 34 months longer than Alternative Imposed offenders (95 months compared to 61 months). The small group of Imprisonment Reduced offenders had served longer than any other group (136 months).

The average amount of reduction was 19 months longer for Time Served offenders than Alternative Imposed offenders (66 months compared to 47 months). The reduction in sentence was longest for Imprisonment Reduced offenders (194 months), who had very long original sentences.

Figure 24. Average Time Served and Reduction by Type of Sentence Imposed at Grant
Fiscal Year 2020



7 Offenders Denied Relief

The Commission reviewed the sentencing documentation for a 40 percent proportionate stratified random sample of the offenders denied compassionate release (n=2,028) in fiscal year 2020 within the report's study group to collect the reasons that courts cited for denying relief.¹⁵⁰ In this section of the report, "Offenders Denied Relief" refers to offenders within that 40 percent sample.

The court may deny a motion for sentence reduction under section 3582(c)(1)(A) for procedural, substantive, or discretionary reasons.¹⁵¹ First, the court may deny a sentence reduction because an offender failed to exhaust administrative remedies.¹⁵² Second, the court may deny a sentence reduction because an offender failed to demonstrate extraordinary and compelling reasons warranting relief.¹⁵³ Third, the court may deny a sentence reduction if it concludes that relief is not warranted under the 18 U.S.C. § 3553(a) sentencing factors, or that the offender is a danger to the public under 18 U.S.C. § 3142(g) ("danger to the public"), or both.¹⁵⁴

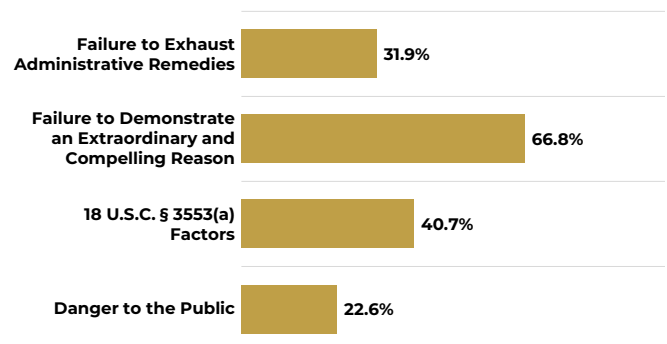
Courts may deny a motion seeking compassionate release for any of these reasons and do not have to address each of them or address them in order.¹⁵⁵ For example, the court can deny a motion based on the section 3553(a) factors without considering whether the

offender presented an extraordinary and compelling reason or exhausted administrative remedies.

Reasons for Denial

In fiscal year 2020, courts denied offenders relief for each of the reasons described above. Because courts often cited more than one of these reasons, the percentages reported in Figure 25 exceed 100 percent.¹⁵⁶

Figure 25. Reasons Cited for Denying Relief
Fiscal Year 2020



Courts cited the offender's failure to exhaust administrative remedies as a reason for denying relief for 31.9 percent of Offenders Denied Relief.¹⁵⁷

Courts cited the offender's failure to demonstrate an "extraordinary and compelling" reason warranting a sentence reduction as a reason for denying relief for approximately two-thirds (66.8%) of Offenders Denied Relief.¹⁵⁸

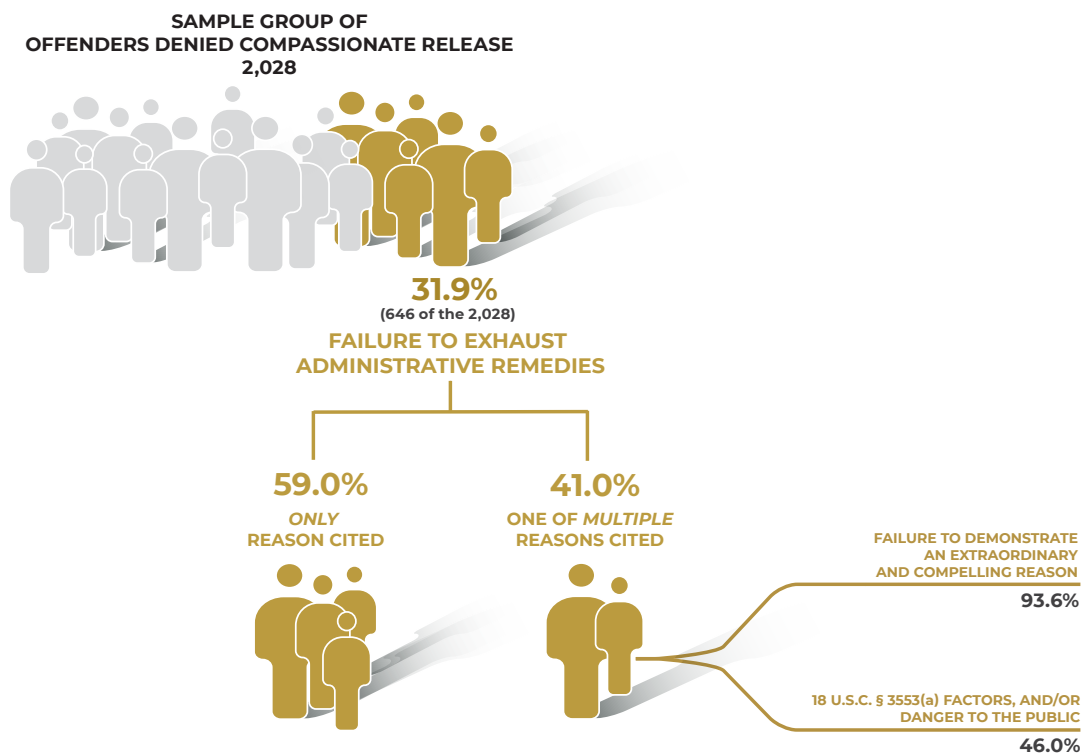
Courts determined that relief was not warranted under the 18 U.S.C. § 3553(a) factors for 40.7 percent of Offenders Denied Relief and cited the offender's risk of danger to the public for 22.6 percent. Courts often cited both the section 3553(a) factors and danger to the public as reasons for denying relief for the same offender (15.4%).¹⁵⁹

Failure to Exhaust Administrative Remedies

Courts cited the offender's failure to exhaust administrative remedies as a reason to deny relief for 31.9 percent of Offenders Denied Relief. As demonstrated in Figure 26 for more than half of these offenders, failure to exhaust was the *only* reason for denial (59.0%), while for the other 41.0 percent, the court cited at least one other reason for denial.

Of the offenders for whom failure to exhaust administrative remedies was one of multiple reasons for denial, failure to demonstrate an extraordinary and compelling reason was also a reason for denial for 93.6 percent. The section 3553(a) factors, danger to the public, or both, were also a reason for denial for 46.0 percent of Offenders Denied Relief.

Figure 26. Denials Based on Failure to Exhaust Administrative Remedies
Fiscal Year 2020



Failure to Demonstrate an Extraordinary and Compelling Reason Warranting Relief

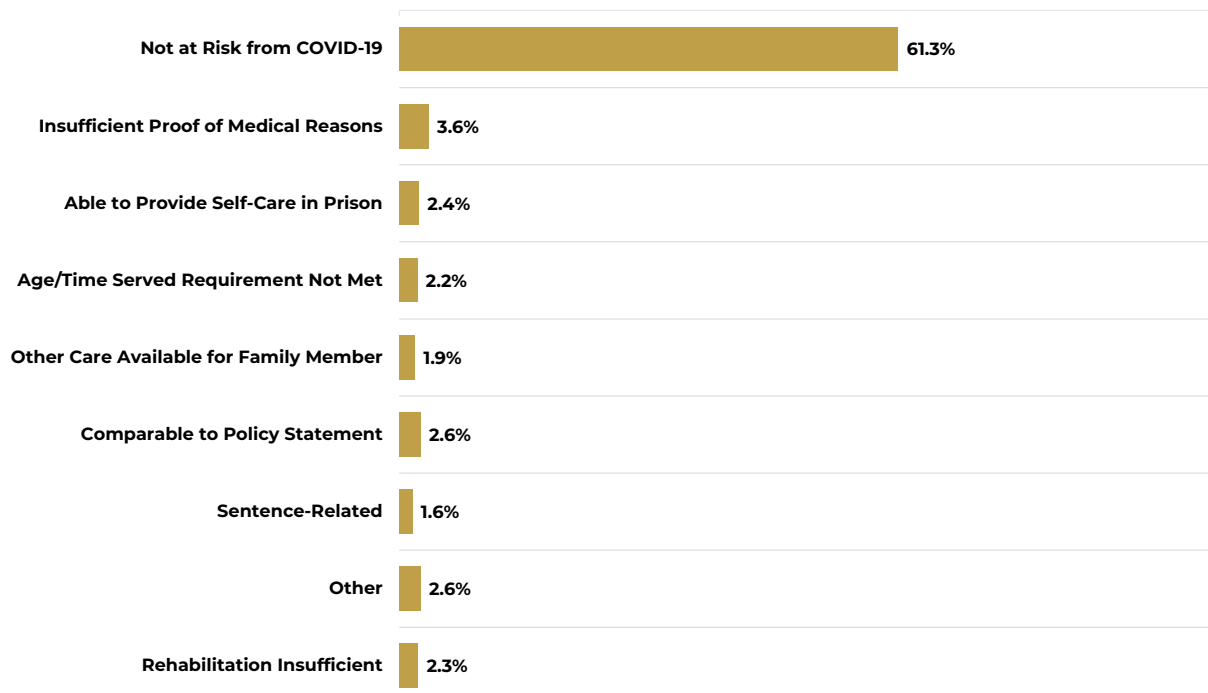
In fiscal year 2020, an offender's failure to demonstrate an "extraordinary and compelling" reason warranting relief was the most frequently cited basis for denying compassionate release (66.8%). Courts often found that multiple reasons asserted by the offender were not sufficiently "extraordinary and compelling" to warrant relief. As a result, the percentages listed for each specific reason in Figure 27 exceed the overall percentage of offenders for whom failure to present an extraordinary and compelling reason was a reason for denial.

As demonstrated in Figure 27, courts cited the offender's failure to demonstrate a sufficient risk of contracting COVID-19 as at least one reason for denying relief for the majority of Offenders Denied Relief (61.3%).¹⁶⁰

Of the "extraordinary and compelling reasons" specifically described within the policy statement—

- **Insufficient proof of an asserted medical reason** was cited as at least one reason for denying relief for 3.6 percent of Offenders Denied Relief.¹⁶¹ In these cases, the court typically found that the offender had not provided sufficient proof of the medical condition or that the medical condition was not sufficiently serious in nature.

Figure 27. Reasons Found Not Sufficiently Extraordinary and Compelling for Offenders Denied Relief Fiscal Year 2020



- **The ability to provide self-care** was cited as at least one reason for denying relief for 2.4 percent of Offenders Denied Relief.¹⁶² In these cases, the court typically found that the offender had demonstrated a medical condition but was still able to provide self-care within the correctional facility.
- **Failure to meet the minimum age or minimum length of service** requirement under §1B1.13 was cited as at least one reason for denying relief for 2.2 percent of Offenders Denied Relief.¹⁶³
- **The availability of other care for the offender’s minor child, spouse, or registered partner** was cited as at least one reason for denying relief for 1.9 percent of Offenders Denied Relief.¹⁶⁴

In addition, for 2.6 percent of Offenders Denied Relief, the court found that the offender failed to demonstrate that another reason comparable to a reason specifically described in §1B1.13 (other than COVID-19) was an “extraordinary and compelling” reason warranting a sentence reduction.¹⁶⁵ In some of these cases, the court denied relief because the reason the offender relied upon was not provided in the policy statement. In other cases, the offender had not demonstrated that the reason warranted relief under the circumstances.

Courts also denied relief because the offender failed to demonstrate that a reason not included in the Commission’s policy statement was an “extraordinary and compelling” reason. In these cases, the court concluded either that the asserted reason is *never* a permissible basis for a sentence reduction under section 3582(c)(1)(A) or that the offender’s specific case did not present “extraordinary and compelling” reasons warranting relief.

The offender’s failure to demonstrate that a sentence-related reason was “extraordinary and compelling” was cited as a reason to deny relief for 1.6 percent of Offenders Denied Relief (n=32).¹⁶⁶ A reason other than the reasons discussed above (“Other”) was cited as a reason to deny relief for 2.6 percent of Offenders Denied Relief.¹⁶⁷

As discussed above, §1B1.13 provides that rehabilitation alone is not an “extraordinary and compelling” reason, pursuant to a directive at 28 U.S.C. § 994(t).¹⁶⁸ As shown in Figure 27, for 2.3 percent of Offenders Denied Relief, the court cited insufficient rehabilitation as at least one reason for denying relief.¹⁶⁹ In these cases, the court either found that rehabilitation was not a sufficient legal ground for a sentence reduction or that the offender had not demonstrated sufficient or extraordinary rehabilitation.

These categories are described in detail above in Section 6.¹⁷⁰

Denials Based on the 18 U.S.C. § 3553(a) Factors or Danger to the Public

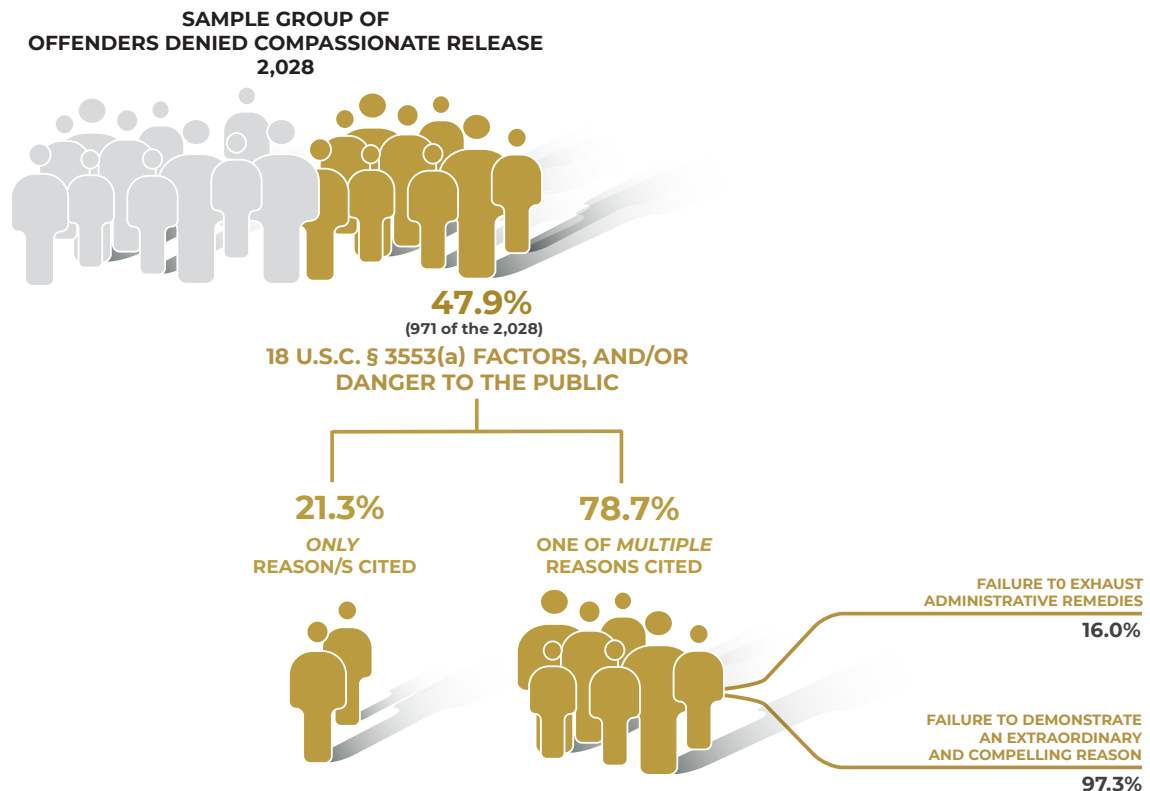
Finally, the Commission considered how often courts denied compassionate release for reasons related to the original offense and the need to protect the public. As discussed above, courts often cited both the 18 U.S.C. § 3553(a) factors and danger to the public as reasons for denial for the same offender. Because these two reasons are conceptually similar and were often cited together, the Commission combined them for purposes of this analysis.

As demonstrated in Figure 28, for nearly half (47.9%) of Offenders Denied Relief, the court cited either the 18 U.S.C. § 3553(a) factors or danger to the public

(or both) as at least one reason for denial. For most of these offenders (78.7%), the court cited at least one additional reason to deny relief, while for 21.3 percent the section 3553(a) factors, danger to the public, or both were the only reasons for denial.

Of the offenders for whom either the section 3553(a) factors or danger to the public was one of multiple reasons for denial, the court also cited the offender’s failure to exhaust administrative remedies as a reason for denial for 16.0 percent. For the overwhelming majority (97.3%), the court also cited failure to demonstrate an “extraordinary and compelling” reason as a reason for denial.

Figure 28. Denials Based on the 18 U.S.C. § 3553(a) Factors or Danger to the Public
Fiscal Year 2020



8 Conclusion

In fiscal year 2020, the COVID-19 pandemic dramatically affected the use of compassionate release. Nationwide, courts quickly responded to a surge of offender-filed motions. The number of offenders for whom courts decided a compassionate release motion increased nearly 900 percent between March and April 2020 and then continued to increase each month through July 2020. Overall, 1,805 offenders were granted compassionate release in fiscal year 2020, a twelvefold increase from First Step Year One.

Although many district courts concluded that absent an “applicable” policy statement, courts are permitted to identify “extraordinary and compelling reasons” other than those described in §1B1.13, most grants of compassionate release were based on reasons specifically described in the policy statement or a reason comparable to those specifically described reasons relating to medical, age, and family circumstances. For more than 70 percent of Offenders Granted Relief, courts cited the offender’s heightened risk of contracting or experiencing serious illness from COVID-19, typically in relation to the offender’s preexisting health conditions or increased age. Although the overwhelming majority of grants of compassionate release were for reasons specifically described in the policy statement or a reason comparable to those specifically described reasons, there was

considerable variability in the application of 18 U.S.C. § 3582(c)(1)(A) across the country. The rate at which offenders were granted relief substantially varied by circuit, and courts disagreed about whether certain reasons not specified in the Commission’s policy statement can present an “extraordinary and compelling” reason for a sentence reduction.

The study period examined in this report—unprecedented in many respects because of the COVID-19 pandemic—is unlikely to reflect a typical post-First Step Act year. The Commission will continue to monitor these legal and policy issues and publish updated compassionate release data reports and analyses as the pandemic wanes to provide appropriate points of comparison. The Commission’s ongoing compassionate release data collection going forward will benefit from the direct receipt of all compassionate release sentencing documentation and courts’ access to the uniform compassionate release order form. Despite examining an atypical year, the developing case law and data illuminate the growing need for a post-First Step Act compassionate release policy statement that can provide guidance to courts and facilitate greater uniformity in the application of section 3582(c)(1)(A).

Appendix A

Figure A1. Characteristics of Offenders in Federal Prison and Who Sought Relief
As of May 25, 2019, Fiscal Year 2020

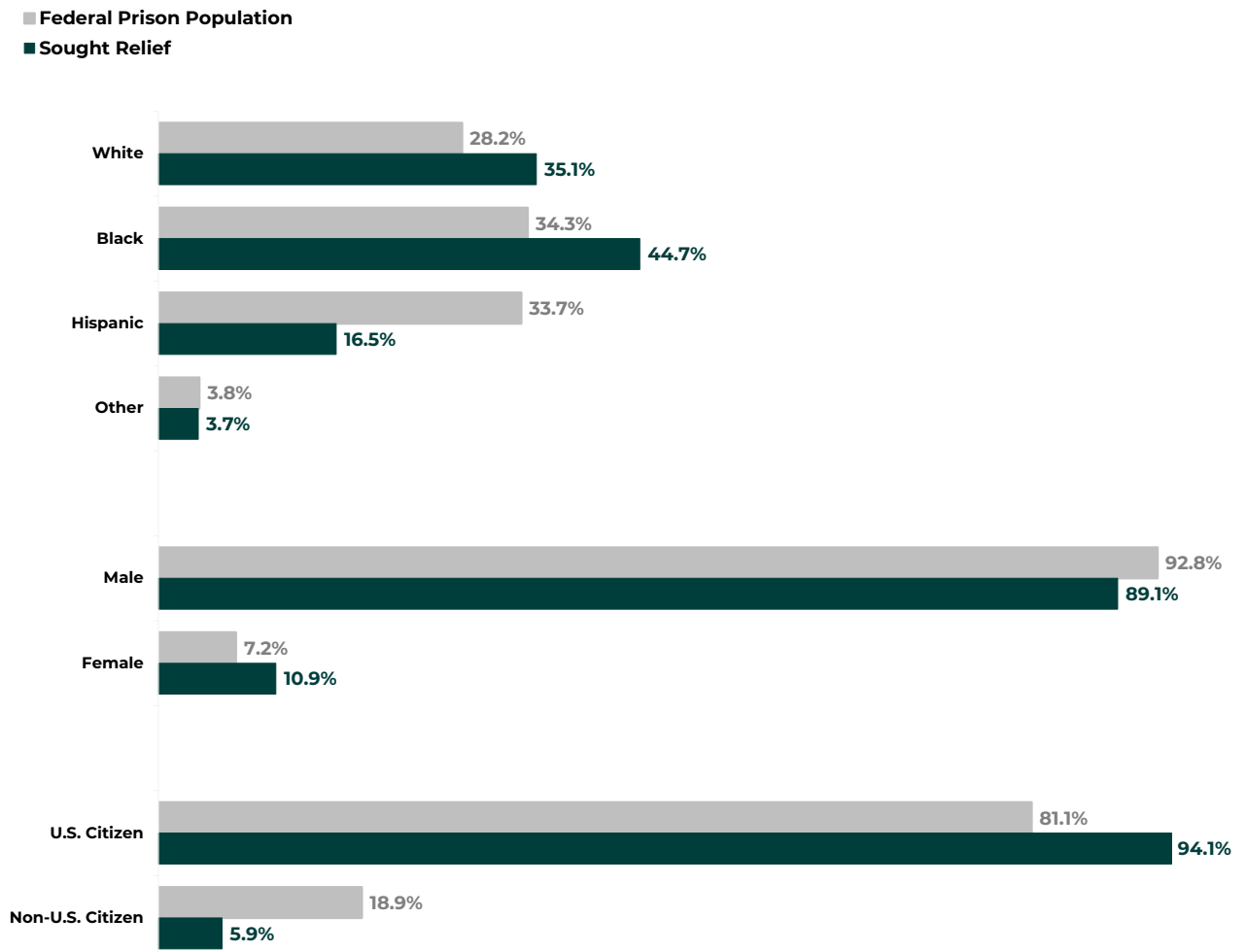


Figure A2. Original Sentence Length for Offenders in Federal Prison and Who Sought Relief As of May 25, 2019, Fiscal Year 2020

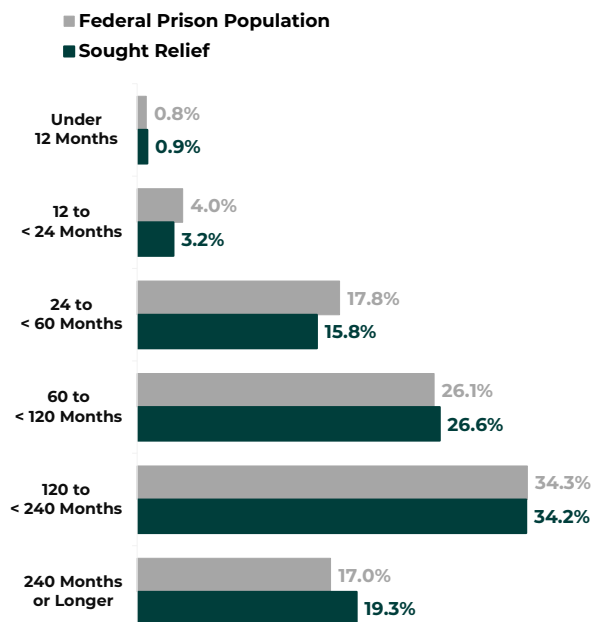


Figure A3. Criminal History Category of Offenders in Federal Prison and Who Sought Relief As of May 25, 2019, Fiscal Year 2020

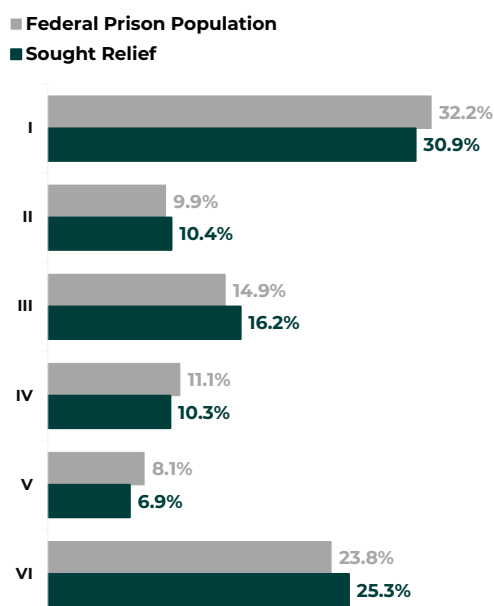


Figure A4. Percentage of Offenders for whom COVID-19 was Cited as a Reason for Relief Fiscal Year 2020

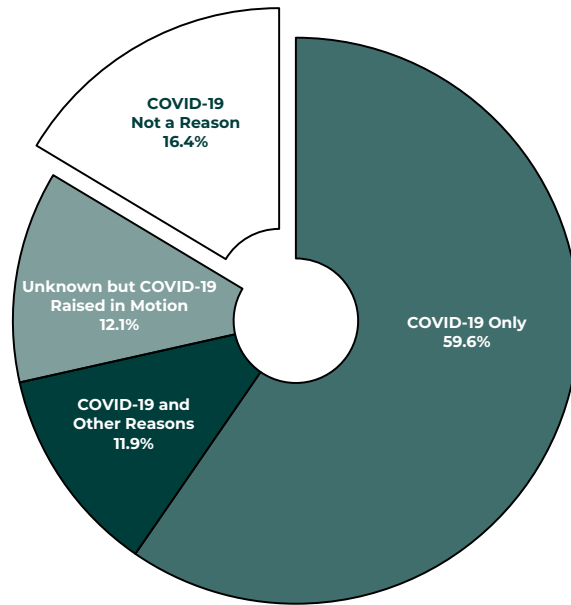


Figure A5. Type of Sentence Imposed at Grant by Circuit Fiscal Year 2020

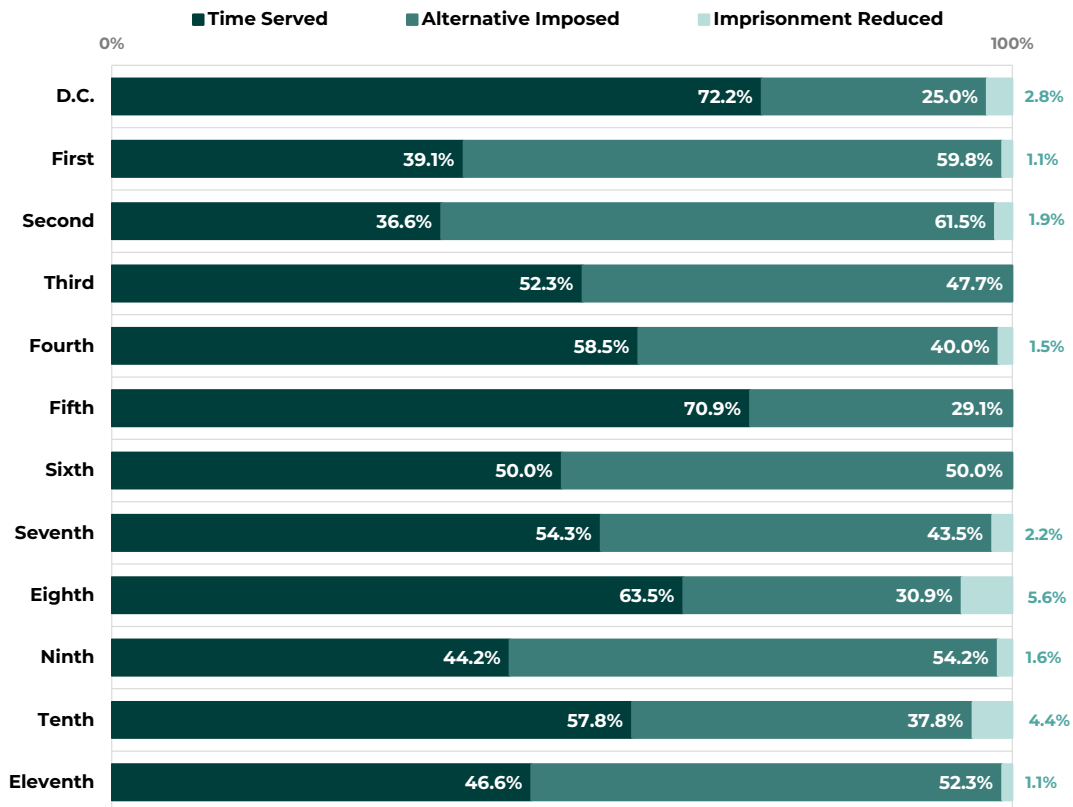


Table A1

GRANTS AND DENIALS IN EACH CIRCUIT AND DISTRICT
Fiscal Year 2020

CIRCUIT District	TOTAL	GRANTS		DENIALS	
		N	%	N	%
TOTAL	7,014	1,805	25.7	5,209	74.3
D.C. CIRCUIT	100	36	36.0	64	64.0
District of Columbia	100	36	36.0	64	64.0
FIRST CIRCUIT	183	87	47.5	96	52.5
Maine	46	6	13.0	40	87.0
Massachusetts	52	35	67.3	17	32.7
New Hampshire	44	13	29.5	31	70.5
Puerto Rico	9	8	88.9	1	11.1
Rhode Island	32	25	78.1	7	21.9
SECOND CIRCUIT	758	208	27.4	550	72.6
Connecticut	68	49	72.1	19	27.9
New York					
Eastern	138	33	23.9	105	76.1
Northern	49	8	16.3	41	83.7
Southern	388	80	20.6	308	79.4
Western	79	17	21.5	62	78.5
Vermont	36	21	58.3	15	41.7
THIRD CIRCUIT	352	86	24.4	266	75.6
Delaware	14	3	21.4	11	78.6
New Jersey	66	18	27.3	48	72.7
Pennsylvania					
Eastern	132	48	36.4	84	63.6
Middle	69	5	7.2	64	92.8
Western	67	12	17.9	55	82.1
Virgin Islands	4	0	0.0	4	100.0
FOURTH CIRCUIT	888	200	22.5	688	77.5
Maryland	137	63	46.0	74	54.0
North Carolina					
Eastern	124	42	33.9	82	66.1
Middle	76	6	7.9	70	92.1
Western	172	3	1.7	169	98.3
South Carolina	90	17	18.9	73	81.1
Virginia					
Eastern	155	39	48.7	116	74.8
Western	69	27	39.1	42	60.9
West Virginia					
Northern	25	2	8.0	23	92.0
Southern	40	1	2.5	39	97.5

Table A1 (cont.)

CIRCUIT District	TOTAL	GRANTS		DENIALS	
		N	%	N	%
FIFTH CIRCUIT	803	110	13.7	693	86.3
Louisiana					
Eastern	36	5	13.9	31	86.1
Middle	11	2	18.2	9	81.8
Western	21	7	33.3	14	66.7
Mississippi					
Northern	55	9	16.4	46	83.6
Southern	88	4	4.5	84	95.5
Texas					
Eastern	117	5	4.3	112	95.7
Northern	194	14	7.2	180	92.8
Southern	144	42	29.2	102	70.8
Western	137	22	16.1	115	83.9
SIXTH CIRCUIT	819	192	23.4	627	76.6
Kentucky					
Eastern	99	6	6.1	93	93.9
Western	40	4	10.0	36	90.0
Michigan					
Eastern	235	81	34.5	154	65.5
Western	53	7	13.2	46	86.8
Ohio					
Northern	130	30	23.1	100	76.9
Southern	43	16	37.2	27	62.8
Tennessee					
Eastern	97	15	15.5	82	84.5
Middle	69	26	37.7	43	62.3
Western	53	7	13.2	46	86.8
SEVENTH CIRCUIT	503	184	36.6	319	63.4
Illinois					
Central	95	36	37.9	59	62.1
Northern	188	82	43.6	106	56.4
Southern	18	7	38.9	11	61.1
Indiana					
Northern	55	12	21.8	43	78.2
Southern	73	15	20.5	58	79.5
Wisconsin					
Eastern	49	25	51.0	24	49.0
Western	25	7	28.0	18	72.0
EIGHTH CIRCUIT	580	126	21.7	454	78.3
Arkansas					
Eastern	21	2	9.5	19	90.5
Western	10	1	10.0	9	90.0
Iowa					
Northern	103	11	10.7	92	89.3
Southern	82	19	23.2	63	76.8
Minnesota	101	41	40.6	60	59.4
Missouri					
Eastern	100	17	17.0	83	83.0
Western	88	19	21.6	69	78.4
Nebraska	43	13	30.2	30	69.8
North Dakota	16	3	18.8	13	81.3
South Dakota	16	0	0.0	16	100.0

Table A1 (cont.)

CIRCUIT District	TOTAL	GRANTS		DENIALS	
		N	%	N	%
NINTH CIRCUIT	836	312	37.3	524	62.7
Alaska	30	16	53.3	14	46.7
Arizona	24	10	41.7	14	58.3
California					
Central	82	34	41.5	48	58.5
Eastern	94	20	21.3	74	78.7
Northern	112	57	50.9	55	49.1
Southern	78	51	65.4	27	34.6
Guam	4	3	75.0	1	25.0
Hawaii	87	16	18.4	71	81.6
Idaho	12	3	25.0	9	75.0
Montana	85	9	10.6	76	89.4
Nevada	34	17	50.0	17	50.0
Northern Mariana Islands	2	1	50.0	1	50.0
Oregon	55	39	70.9	16	29.1
Washington					
Eastern	42	10	23.8	32	76.2
Western	95	26	27.4	69	72.6
TENTH CIRCUIT	301	90	29.9	211	70.1
Colorado	78	13	16.7	65	83.3
Kansas	76	44	57.9	32	42.1
New Mexico	35	11	31.4	24	68.6
Oklahoma					
Eastern	14	1	7.1	13	92.9
Northern	6	2	33.3	4	66.7
Western	33	1	3.0	32	97.0
Utah	35	9	25.7	26	74.3
Wyoming	24	9	37.5	15	62.5
ELEVENTH CIRCUIT	891	174	19.5	717	80.5
Alabama					
Middle	30	4	13.3	26	86.7
Northern	41	10	24.4	31	75.6
Southern	45	4	8.9	41	91.1
Florida					
Middle	259	20	7.7	239	92.3
Northern	66	18	27.3	48	72.7
Southern	276	82	29.7	194	70.3
Georgia					
Middle	56	4	7.1	52	92.9
Northern	69	28	40.6	41	59.4
Southern	49	4	8.2	45	91.8

Table A2
GRANTS AND DENIALS BY TYPE OF CRIMEⁱ
Fiscal Year 2020

TYPE OF CRIME	TOTAL	GRANTS		DENIALS	
		N	%	N	%
TOTAL	7,000	1,795	25.6	5,205	74.4
Administration of Justice	21	9	42.9	12	57.1
Antitrust	2	2	100.0	0	0.0
Arson	12	3	25.0	9	75.0
Assault	53	9	17.0	44	83.0
Bribery/Corruption	37	14	37.8	23	62.2
Burglary/Trespass	2	0	0.0	2	100.0
Child Pornography	323	57	17.6	266	82.4
Commercialized Vice	10	3	30.0	7	70.0
Drug Possession	0	0	0.0	0	0.0
Drug Trafficking	3,539	934	26.4	2,605	73.6
Environmental	2	2	100.0	0	0.0
Extortion/Racketeering	27	10	37.0	17	63.0
Firearms	904	213	23.6	691	76.4
Food and Drug	1	0	0.0	1	100.0
Forgery/Counter/Copyright	9	5	55.6	4	44.4
Fraud/Theft/Embezzlement	716	206	28.8	510	71.2
Immigration	40	20	50.0	20	50.0
Individual Rights	12	3	25.0	9	75.0
Kidnapping	29	4	13.8	25	86.2
Manslaughter	3	1	33.3	2	66.7
Money Laundering	248	71	28.6	177	71.4
Murder	105	20	19.0	85	81.0
National Defense	22	4	18.2	18	81.8
Obscenity/Other Sex Offenses	7	3	42.9	4	57.1
Prison Offenses	20	7	35.0	13	65.0
Robbery	494	136	27.5	358	72.5
Sexual Abuse	266	35	13.2	231	86.8
Stalking/Harassing	16	2	12.5	14	87.5
Tax	72	20	27.8	52	72.2
Other	8	2	25.0	6	75.0

ⁱ There were ten cases missing original type of crime in the grants column and four cases missing original type of crime in the denials column.

Table A3

SPECIFIC GRANT REASONS IN EACH CIRCUIT AND DISTRICTⁱ
Fiscal Year 2020

CIRCUIT District	ALL GRANTS	COVID-19	§1B1.13 RELATED REASONS	SENTENCE- RELATED REASONS
		N	N	N
TOTAL	1,805	1,291	351	58
D.C. CIRCUIT	36	31	1	1
District of Columbia	36	31	1	1
FIRST CIRCUIT	87	60	12	2
Maine	6	6	2	0
Massachusetts	35	24	1	0
New Hampshire	13	9	1	0
Puerto Rico	8	4	3	0
Rhode Island	25	17	5	2
SECOND CIRCUIT	208	146	26	4
Connecticut	49	36	4	0
New York				
Eastern	33	23	8	3
Northern	8	5	0	0
Southern	80	60	10	0
Western	17	14	3	1
Vermont	21	8	1	0
THIRD CIRCUIT	86	59	17	1
Delaware	3	1	0	0
New Jersey	18	8	2	0
Pennsylvania				
Eastern	48	37	9	1
Middle	5	3	2	0
Western	12	10	4	0
Virgin Islands	0	0	0	0
FOURTH CIRCUIT	200	141	41	10
Maryland	63	44	9	4
North Carolina				
Eastern	42	31	14	0
Middle	6	6	1	0
Western	3	1	1	0
South Carolina	17	11	4	1
Virginia				
Eastern	39	30	7	3
Western	27	16	4	2
West Virginia				
Northern	2	1	1	0
Southern	1	1	0	0

Table A3 (cont.)

CIRCUIT District	ALL GRANTS	COVID-19	§1B1.13 RELATED REASONS	SENTENCE- RELATED REASONS
		N	N	N
FIFTH CIRCUIT	110	70	22	1
Louisiana				
Eastern	5	4	1	0
Middle	2	2	0	0
Western	7	5	2	0
Mississippi				
Northern	9	9	0	0
Southern	4	4	1	0
Texas				
Eastern	5	2	3	0
Northern	14	11	6	0
Southern	42	23	4	0
Western	22	10	5	1
SIXTH CIRCUIT	192	147	38	8
Kentucky				
Eastern	6	2	3	0
Western	4	3	1	0
Michigan				
Eastern	81	66	10	1
Western	7	6	2	0
Ohio				
Northern	30	26	4	6
Southern	16	13	3	0
Tennessee				
Eastern	15	12	5	0
Middle	26	15	7	1
Western	7	4	3	0
SEVENTH CIRCUIT	184	142	28	3
Illinois				
Central	36	33	2	0
Northern	82	62	13	1
Southern	7	3	3	1
Indiana				
Northern	12	11	1	0
Southern	15	7	5	0
Wisconsin				
Eastern	25	20	3	1
Western	7	6	1	0
EIGHTH CIRCUIT	126	86	21	6
Arkansas				
Eastern	2	2	0	0
Western	1	1	0	0
Iowa				
Northern	11	10	3	0
Southern	19	16	3	2
Minnesota	41	27	8	0
Missouri				
Eastern	17	10	2	1
Western	19	12	4	1
Nebraska	13	7	0	2
North Dakota	3	1	1	0
South Dakota	0	0	0	0

Table A3 (cont.)

CIRCUIT District	ALL GRANTS	COVID-19	§1B1.13 RELATED REASONS	SENTENCE- RELATED REASONS
		N	N	N
NINTH CIRCUIT	312	220	76	9
Alaska	16	11	3	0
Arizona	10	9	5	0
California				
Central	34	15	10	2
Eastern	20	14	5	1
Northern	57	43	11	2
Southern	51	37	10	3
Guam	3	3	1	0
Hawaii	16	13	6	0
Idaho	3	2	2	0
Montana	9	3	6	0
Nevada	17	15	1	0
Northern Mariana Islands	1	1	0	0
Oregon	39	23	6	0
Washington				
Eastern	10	9	2	0
Western	26	22	8	1
TENTH CIRCUIT	90	59	21	11
Colorado	13	10	2	0
Kansas	44	31	8	10
New Mexico	11	4	3	0
Oklahoma				
Eastern	1	1	1	0
Northern	2	1	1	0
Western	1	0	1	0
Utah	9	4	2	1
Wyoming	9	8	3	0
ELEVENTH CIRCUIT	174	130	48	2
Alabama				
Middle	4	3	1	0
Northern	10	7	2	0
Southern	4	3	2	0
Florida				
Middle	20	16	8	0
Northern	18	11	10	1
Southern	82	68	14	0
Georgia				
Middle	4	1	0	0
Northern	28	19	9	1
Southern	4	2	2	0

¹ Row totals may add to more than the total number of grants as offenders may have been granted relief for more than one reason.

Table A4

SELECT DENIAL REASONS IN EACH CIRCUIT AND DISTRICTⁱ
Fiscal Year 2020

CIRCUIT District	ALL DENIALS	EXHAUSTION	E&C	3553/SAFETY
		N	N	N
TOTAL	2,028	646	1,354	971
D.C. CIRCUIT	30	8	21	20
District of Columbia	30	8	21	20
FIRST CIRCUIT	47	6	32	26
Maine	17	5	12	7
Massachusetts	10	0	8	7
New Hampshire	15	0	8	9
Puerto Rico	1	0	1	1
Rhode Island	4	1	3	2
SECOND CIRCUIT	241	59	177	161
Connecticut	8	0	2	5
New York				
Eastern	46	11	35	28
Northern	20	7	14	12
Southern	128	30	92	91
Western	34	11	29	22
Vermont	5	0	5	3
THIRD CIRCUIT	107	33	58	42
Delaware	6	0	6	0
New Jersey	20	5	12	9
Pennsylvania				
Eastern	30	13	12	10
Middle	24	5	12	13
Western	24	7	16	10
Virgin Islands	3	3	0	0
FOURTH CIRCUIT	265	118	137	110
Maryland	33	10	19	16
North Carolina				
Eastern	34	6	8	28
Middle	22	9	17	10
Western	71	50	25	12
South Carolina	28	15	15	10
Virginia				
Eastern	41	18	28	19
Western	16	3	11	10
West Virginia				
Northern	9	6	5	2
Southern	11	1	9	3

Table A4 (cont.)

CIRCUIT District	ALL DENIALS	EXHAUSTION	E&C	3553/SAFETY
		N	N	N
FIFTH CIRCUIT	252	91	173	114
Louisiana				
Eastern	10	3	8	4
Middle	3	2	1	1
Western	4	2	2	0
Mississippi				
Northern	20	2	18	6
Southern	29	15	14	14
Texas				
Eastern	26	6	22	15
Northern	75	33	57	35
Southern	48	17	30	14
Western	37	11	21	25
SIXTH CIRCUIT	248	96	144	95
Kentucky				
Eastern	41	23	20	9
Western	13	6	5	4
Michigan				
Eastern	65	23	40	27
Western	14	4	12	6
Ohio				
Northern	44	10	28	21
Southern	7	2	5	4
Tennessee				
Eastern	30	17	15	10
Middle	17	2	11	11
Western	17	9	8	3
SEVENTH CIRCUIT	123	28	93	57
Illinois				
Central	26	1	22	18
Northern	37	11	26	19
Southern	4	2	2	2
Indiana				
Northern	19	4	16	9
Southern	17	0	14	2
Wisconsin				
Eastern	12	7	8	4
Western	8	3	5	3
EIGHTH CIRCUIT	154	46	115	69
Arkansas				
Eastern	10	5	4	8
Western	2	0	2	2
Iowa				
Northern	29	12	20	9
Southern	24	10	13	5
Minnesota	17	4	13	10
Missouri				
Eastern	29	9	25	13
Western	21	3	20	11
Nebraska	9	2	6	5
North Dakota	8	1	7	2
South Dakota	5	0	5	4

Table A4 (cont.)

CIRCUIT District	ALL DENIALS	EXHAUSTION	E&C	3553/SAFETY
		N	N	N
NINTH CIRCUIT	212	36	160	124
Alaska	4	0	4	4
Arizona	6	4	4	3
California				
Central	20	4	13	11
Eastern	32	9	20	16
Northern	21	0	17	15
Southern	12	5	5	6
Guam	1	0	1	1
Hawaii	25	2	20	16
Idaho	4	1	3	3
Montana	30	3	27	15
Nevada	8	1	7	5
Northern Mariana Islands	1	0	1	1
Oregon	5	0	5	3
Washington				
Eastern	12	2	10	6
Western	31	5	23	19
TENTH CIRCUIT	83	24	47	40
Colorado	29	5	20	12
Kansas	12	1	7	9
New Mexico	10	6	4	3
Oklahoma				
Eastern	7	3	4	4
Northern	1	0	1	0
Western	13	5	4	7
Utah	8	3	7	4
Wyoming	3	1	0	1
ELEVENTH CIRCUIT	266	101	197	113
Alabama				
Middle	8	2	2	2
Northern	11	4	11	6
Southern	18	9	13	5
Florida				
Middle	86	44	63	37
Northern	17	6	10	8
Southern	72	20	61	42
Georgia				
Middle	18	3	17	1
Northern	20	6	11	8
Southern	16	7	9	4

¹ Row totals may add to more than the total number of sample datafile denials as offenders may have been denied relief for more than one reason.

Appendix B

Audit Process

The Commission conducted an audit of the compassionate release data collected from six federal districts (Maine, Rhode Island, Eastern District of Pennsylvania, Western District of Pennsylvania, Middle District of Florida, and Southern District of Florida) to determine the magnitude of the study group's undercount of offenders denied compassionate release in fiscal year 2020. For each of these federal districts, the U.S. Department of Justice ("DOJ") provided a list of offenders who had filed a motion for compassionate release (or for other sentence modification) over a period that included the report's study period. In total, the Commission reviewed more than 4,000 cases identified by these six districts as potentially relevant to the Commission's study.

For each district, the Commission determined how many offenders identified by the DOJ met the report's inclusion criteria but were not included in its study group. To do so, the Commission compared the DOJ's list with the list of offenders included in the report's study group and excluded any offenders on the DOJ's list whose motions were decided outside the study period or who otherwise did not meet the study group's inclusion criteria. The majority of offenders on the DOJ's list were determined to be outside

of this report's scope (and therefore not undercounted) because their compassionate release motions were not decided within the study period (and were instead decided either after the study period or still had not been decided at the time of the audit). A smaller number of offenders was excluded from the undercount determination because they had requested a form of relief other than compassionate release, or they otherwise did not meet the study group's inclusion criteria (e.g., because their motions were voluntarily withdrawn or dismissed for jurisdictional reasons). Finally, offenders whose sentencing documentation was inaccessible because it was sealed or otherwise unavailable through PACER were excluded. A complete description of the study group's inclusion criteria appears in Section 4 (Methodology).

Audit Results

This report's study group includes 7,014 offenders who were granted or denied compassionate release in fiscal year 2020. Of these 7,014 offenders, 812 were sentenced within one of the six audited districts. Within these six districts, the DOJ's list included an additional 112 offenders who met the report's inclusion criteria but were not identified through the Commission's special document collection process. The study group's undercount ranged from

zero percent (in the Districts of Maine and Rhode Island) to nearly 16 percent (in the Eastern District of Pennsylvania). The average error rate, across the six audited districts, was 12.1 percent. Thus, overall, the Commission's search tool accurately located approximately 90 percent of "findable" offenders who received a compassionate release decision within the study period. Nearly all offenders (94.6%; n=106) on the DOJ's list who met the report's inclusion criteria but were not included in the study group had been denied compassionate release; only the remaining six offenders were granted compassionate release. The reasons that courts cited for denying relief in these additional cases mirror the reasons that courts cited for denying relief to offenders within the study group both in nature and frequency, and, as a result, inclusion of these additional offenders would not materially alter the trends discussed in this report.

The study group, however, also included offenders who were not identified on the lists provided by the DOJ. For the six audited districts, the study group included 177 offenders who were granted or denied compassionate release in fiscal year 2020 and were not identified on the lists provided by the DOJ. As such, while there was some undercount in light of the limitations in PACER, the Commission's search process ultimately yielded additional results that were not otherwise available in the study period.

The DOJ's lists also identified an additional 432 offenders within the six audited districts who were not included on the initial list provided to the Commission by the BOP but were granted or denied compassionate release in fiscal year 2020. An offender not on the list provided to the Commission by the BOP could not have been identified through the Commission's special collection process. The existence of this sizeable cohort of offenders who did not seek relief from the BOP is likely to be unique to the pandemic environment and the result, at least in part, of confusion surrounding the available avenues and process to seek home confinement during the pandemic. After reviewing these additional orders, the Commission determined that the reasons courts cited for denying relief to these offenders largely mirrored the reasons that courts cited for denying relief to offenders within the study group; however, there was a larger concentration of offenders for whom failure to exhaust administrative remedies was at least one reason for denial. However, because the court can deny a motion for any of the reasons discussed in this report, the reasons that courts cited for denying relief in these cases varied and, like the cases examined within the report, the court often cited multiple reasons to deny relief.

Endnotes

- 1 18 U.S.C. § 3582(c)(1)(A)(i) (authorizing a reduction in sentence for “extraordinary and compelling reasons,” provided that the “reduction is consistent with applicable policy statements issued by the Sentencing Commission” and “after consider[ation of the sentencing] factors set forth in section 3553(a), to the extent they are applicable”). This provision also allows for a reduction where “the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g).” *Id.* § 3582(c)(1)(A)(ii). Subsection (ii) is rarely used because most motions are brought under the less arduous requirements of subsection (i).
- 2 First Step Act of 2018, Pub. L. No. 115–391, § 603(b), 132 Stat. 5194, 5239. The First Step Act was enacted December 21, 2018.
- 3 *Id.* (codified at 18 U.S.C. § 3582(c)(1)(A)) (providing that the court may grant a reduction “upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier . . .”).
- 4 See 18 U.S.C. § 3582(c)(1)(A) (2017) (authorizing the court to grant a sentence reduction “[u]pon motion of the Director of the Bureau of Prisons”).
- 5 JULIE ZIBULSKY & CHRISTINE KITCHENS, U.S. SENT’G COMM’N, THE FIRST STEP ACT OF 2018: ONE YEAR OF IMPLEMENTATION (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200831_First-Step-Report.pdf [hereinafter FIRST STEP ACT YEAR ONE REPORT].
- 6 U.S. SENT’G COMM’N, COMPASSIONATE RELEASE DATA REPORT (2021), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20210928-Compassionate-Release.pdf> [hereinafter COMPASSIONATE RELEASE DATA REPORT] (covering January 1, 2020 through June 30, 2021).
- 7 COVID-19 is the commonly used name for the infectious disease caused by the SARS-CoV-2 virus. See World Health Org., *Coronavirus Disease (COVID-19)*, https://www.who.int/health-topics/coronavirus#tab=tab_1 (last visited Nov. 18, 2021).
- 8 Unlike the data report, this report is offender-based, rather than motion-based. In other words, for this report, offenders are included only once as either an Offender Granted Relief or an Offender Denied Relief, regardless of the number of motions adjudicated for that offender in fiscal year 2020. See *infra* notes 58–59 and accompanying text (discussing this report’s offender-based methodology).
- 9 U.S. SENT’G COMM’N, *Guidelines Manual*, §1B1.13 (Nov. 2021) [hereinafter USSG]. See 28 U.S.C. § 994(a) (requiring an affirmative vote of at least four members to promulgate guidelines and policy statements).
- 10 Consistent with the statute prior to the amendments made by the First Step Act, §1B1.13 provides that a reduction is available “[u]pon motion of the Director of the Bureau of Prisons” and “may be granted only upon motion by the Director of the Bureau of Prisons.” USSG §1B1.13; USSG §1B1.13, comment. (n.4).
- 11 See, e.g., *United States v. Andrews*, 12 F.4th 255, 259 (3d Cir. 2021) (holding that because “the text of the policy statement explicitly limits its application to Bureau-initiated motions . . . the existing policy statement is not applicable—and not binding—for courts considering prisoner-initiated motions” and noting that this conclusion “align[s] with nearly every circuit court to consider the issue.”); *United States v. Ruvalcaba*, No. 21-1064, 2022 WL 468925, at *3–6 (1st Cir. Feb. 15, 2022) (same); *United States v. Brooker*, 976 F.3d 228, 235 (2d Cir. 2020) (same); *United States v. McCoy*, 981 F.3d 271, 281–82 (4th

Cir. 2020) (same); *United States v. Shkambi*, 993 F.3d 388, 392–93 (5th Cir. 2021) (same); *United States v. Jones*, 980 F.3d 1098, 1107–11 (6th Cir. 2020) (same); *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020) (same); *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021) (per curiam) (same); *United States v. McGee*, 992 F.3d 1035, 1050 (10th Cir. 2021) (same); *United States v. Long*, 997 F.3d 342, 355 (D.C. Cir. 2021) (same). *But see* *United States v. Bryant*, 996 F.3d 1243, 1262 (11th Cir. 2021) (holding that the policy statement is applicable to motions filed by offenders), *cert. denied*, 142 S. Ct. 583 (2021). The Eighth Circuit had not ruled on this issue at the time this report went to print.

12 In *United States v. Brooker*, decided in late September 2020 toward the end of the Commission’s study period, the Second Circuit set forth the rationale that was ultimately adopted by most federal appellate courts. *Brooker* reasoned that the unamended policy statement is not “applicable” to offender-filed motions and, therefore, courts were not required to consider the policy statement when adjudicating them. *Brooker*, 976 F.3d at 234–36. Prior to *Brooker*, most district courts applied different reasoning with the same effect. For example, in *United States v. Beck*, the court likewise concluded that “[t]here [was] no policy statement applicable to motions for compassionate release filed by defendants under the First Step Act” and that the policy statement therefore did not “constrain the court’s independent assessment of whether ‘extraordinary and compelling reasons’” existed. 425 F. Supp. 3d 573, 579 (M.D.N.C. 2019). However, the court separately considered whether the reduction was consistent with the policy statement and reasoned that “[r]ead in light of the First Step Act, it is consistent with the old policy statement and with the Commission guidance more generally for courts to exercise similar discretion as that previously reserved to the BoP Director [under Application Note 1(D)] in evaluating motions by defendants for compassionate release.” *Id.* at 583; *see also* *United States v. Ramirez*, 459 F. Supp. 3d 333, 336–38 (D. Mass. 2020) (collecting cases considering whether courts have authority to identify other reasons under the “catch-all” provision at Application Note 1(D)).

13 See *infra* Section 6 (Offenders Granted Relief).

14 Unless otherwise noted, this report considers the federal prison population as of May 25, 2019, shortly before the study period began on October 1, 2019, as its point of comparison. U.S. Sent’g Comm’n, Offenders in Federal Custody as of May 25, 2019 Datafile (on file with the Commission); *see also* U.S. SENT’G COMM’N, QUICK FACTS ON FEDERAL OFFENDERS IN PRISON (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/BOP_May2019.pdf [hereinafter MAY 2019 QUICK FACTS].

First Step Year One and fiscal year 2020 overlap for nearly three months (October 1, 2019 through December 20, 2019). First Step Year One nonetheless provides the best comparison year during which offenders were authorized to file their own motion absent the additional effects of the COVID-19 pandemic. Any case decided within this overlapping period is reported for both First Step Year One and fiscal year 2020 and, therefore, does not affect the overall comparisons.

15 See COMPASSIONATE RELEASE DATA REPORT, *supra* note 6.

16 FIRST STEP ACT YEAR ONE REPORT, *supra* note 5 at 6, 47. First Step Year One refers to the first year after enactment of the First Step Act (December 21, 2018–December 20, 2019). *See supra* note 5 and accompanying text. The Commission did not collect compassionate release denials in First Step Year One because courts did not consistently submit sentencing documentation related to denials of compassionate release until October 2020. *See infra* Section 4 (Methodology).

17 The First, Fourth, and Tenth Circuits have held that reasons related to sentence length, including the effect a nonretroactive change in law would have on an offender’s sentence, are permissible bases for a reduction in sentence under section 3582(c)(1)(A). *See* *United States v. Ruvalcaba*, No. 21-1064, 2022 WL 468925, at *6–11 (1st Cir. Feb. 15, 2022); *United States v. McCoy*, 981 F.3d 271, 286 (4th Cir. 2020); *United States v. Maumau*, 993 F.3d 821, 837 (10th Cir. 2021); *United States v. McGee*, 992 F.3d 1035, 1047 (10th Cir. 2021). The Second Circuit suggested the same about “unusually” or “overly long” sentences in *dicta*. *See Brooker*, 976 F.3d at 237–38 (opining that the authority to reduce a sentence under section 3582(c)(1)(A) is “broad,” with only one statutory limitation, and that the defendant’s “age at the time of his crime and the sentencing court’s statements about the injustice of his lengthy sentence might perhaps weigh in favor of

a sentence reduction”). The Third, Seventh, and Eighth Circuits have each held that certain reasons related to a defendant’s sentence cannot be considered “extraordinary and compelling” under section 3582(c)(1)(A). *See, e.g.,* *United States v. Andrews*, 12 F.4th 255, 260–62 (3d Cir. 2021) (the “duration of a lawfully imposed sentence” and “nonretroactive changes to the § 924(c) mandatory minimums” are impermissible bases for a reduction under section 3582(c)(1)(A)); *United States v. Thacker*, 4 F.4th 569, 574 (7th Cir. 2021) (First Step Act’s nonretroactive change to section 924(c) penalties not a permissible basis for sentence reduction), *petition for cert. filed*, No. 21–877 (U.S. Dec. 14, 2021); *United States v. Crandall*, No. 20–3611, 2022 WL 385920, at *4 (8th Cir. Feb. 9, 2022) (“[W]e conclude that a non-retroactive change in law, whether offered alone or in combination with other factors, cannot contribute to a finding of ‘extraordinary and compelling reasons’ for a reduction in sentence under [18 U.S.C.] § 3582(c)(1)(A).”).

This issue is currently the subject of an intra-circuit conflict within the Sixth Circuit. *Compare* *United States v. McCall*, 20 F.4th 1108, 1114, 1116 (6th Cir. 2021) (holding that “a [district] court may consider a nonretroactive change in law as one of several factors forming extraordinary and compelling circumstances qualifying for sentence reduction under 18 U.S.C. § 3582(c)(1)(A)” and that *United States v. Owens*, 996 F.3d 755 (6th Cir. 2021) is the law of the circuit), *with* *United States v. Jarvis*, 999 F.3d 442 (6th Cir. 2021) (holding that district courts may not consider statutory changes in law even in combination with other reasons and identifying *United States v. Tomes*, 990 F.3d 500 (6th Cir. 2021) as binding precedent), *cert. denied*, 142 S. Ct. 760 (2022), *and* *United States v. McKinnie*, 24 F.4th 583 (6th Cir. 2022) (holding that nonretroactive judicial decisions may not form a permissible “extraordinary and compelling” reason); *United States v. Hunter*, 12 F.4th 555, 562–66 (6th Cir. 2021) (nonretroactive changes in the law, whether offered alone or combined with other personal factors, and any facts that existed at the time of sentencing, are impermissible bases for a sentence reduction under section 3582(c)(1)(A)).

18 *See supra* note 3 (discussing exhaustion requirement at 18 U.S.C. § 3582(c)(1)(A)). Most federal circuit courts to address the question have held that the exhaustion requirement is a non-jurisdictional, claim-processing rule that may be waived or forfeited by the government. *See, e.g.,* *United States v. Muhammad*, 16 F.4th 126, 130 (4th Cir. 2021) (“We conclude, as have many of our sister circuits, that the statute’s requirement that a defendant satisfy the threshold requirement before filing a motion in the district court is a non-jurisdictional claim-processing rule” and collecting cases for same). *But cf.* *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (“Given BOP’s shared desire for a safe and healthy prison environment, we conclude that strict compliance with § 3582(c)(1)(A)’s exhaustion requirement takes on added—and critical—importance.”). At the height of the pandemic, district courts also considered whether the exhaustion requirement could be waived because requiring it under the circumstances would be futile. *See, e.g.,* *United States v. Feiling*, 453 F. Supp. 3d 832, 836–40 (E.D. Va. 2020) (discussing cases analyzing whether exhaustion requirement was futile in the context of the pandemic alone, or in conjunction with the defendant’s specific circumstances).

19 18 U.S.C. § 3582(c)(1)(A); *see also* *United States v. Newton*, 996 F.3d 485, 488 (7th Cir. 2021) (“Although it has appeared only in nonprecedential opinions until now, we have also said that the movant bears the burden of establishing ‘extraordinary and compelling reasons’ that warrant a sentence reduction.”); *United States v. Hampton*, 985 F.3d 530, 533 (6th Cir. 2021) (“Section 3582(c)(1)(A)(i) requires [the movant] to demonstrate extraordinary and compelling circumstances warranting his release.”).

20 18 U.S.C. § 3582(c)(1)(A). Although section 3582(c)(1)(A) requires that the court consider the section 3553(a) factors only “to the extent that they are applicable,” courts typically articulate this consideration as a requirement. *Id.*; *see, e.g.,* *United States v. Elias*, 984 F.3d 516, 518 (6th Cir. 2021) (articulating consideration of the section 3553(a) factors as the third step in a “three-step inquiry” and explaining that if “each of those requirements are met, the district court” is permitted but not required to grant a reduction).

21 18 U.S.C. § 3582(c)(1)(A). Section 3582(c)(1)(A) also authorizes the court to reduce the sentence of a defendant at least 70 years of age who has served at least 30 years in prison pursuant to a sentence imposed under section 3559(c) if a determination is made by the Director of the Bureau of Prisons (“BOP”) that the defendant is not a danger to the safety of any other person or the community. *Id.* § 3582(c)(1)(A)(ii).

As previously noted, subsection (ii) is rarely used because most motions are brought under the less arduous requirements of subsection (i). *See supra* note 1.

22 *See supra* note 4 and accompanying text.

23 *See supra* notes 2–3 and accompanying text.

24 28 U.S.C. § 994(t) (“The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.”); *see also id.* § 994(a)(2)(C) (stating that the Commission shall promulgate general policy statements regarding “the sentence modification provisions set forth in section[] . . . 3582(c) of title 18”). These directives to the Commission and 18 U.S.C. § 3582 were enacted as part of the Sentencing Reform Act of 1984. *See* Sentencing Reform Act of 1984, ch. II, 98 Stat. 1837, 1987.

25 USSG §1B1.13.

26 USSG §1B1.13, comment. (n.1). Application Note 1(D) to §1B1.13, titled “Other Reasons,” provides “[a]s determined by the Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).” USSG §1B1.13, comment. (n.1(D)).

27 USSG §1B1.13, comment. (n.1(A)(i)). Terminal illness is defined as “a serious and advanced illness with an end of life trajectory.” USSG §1B1.13, comment. (n.1(A)(i)). The note further explains that “[a] specific prognosis of life expectancy (*i.e.*, a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.” *Id.* The Commission added this definition as part of its 2016 amendment to the Compassionate Release policy statement to clarify that a specific prognosis is not required (as it had been under the BOP’s Program Statement). USSG App. C, amend. 799 (effective Nov. 1, 2016). In the Reason for Amendment, the Commission explained that, “while an end-of-life trajectory may be determined by medical professionals with some certainty, it is extremely difficult to determine death within a specific time period” and, therefore, “the Commission concluded that requiring a specified prognosis (such as the 18-month prognosis in the [BOP’s] program statement) is unnecessarily restrictive both in terms of the administrative review and the scope of eligibility for compassionate release applications.” *Id.*

28 USSG §1B1.13, comment. (n.1(A)(ii)).

29 USSG §1B1.13, comment. (n.1(B)); *see also* USSG App. C, amend. 799 (effective Nov. 1, 2016) (adding this category).

30 USSG §1B1.13, comment. (n.1(C)).

31 USSG §1B1.13, comment. (n.3) (“Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.”); 28 U.S.C. § 994(t) (“Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.”).

32 *See* USSG §1B1.13, comment. (n.3); 28 U.S.C. § 994(t).

33 *See* 28 U.S.C. § 994(a) (requiring an affirmative vote of at least four members to promulgate guidelines and policy statements).

34 *See supra* note 10.

35 See *supra* notes 11–12 and accompanying text.

36 See *infra* p. 32 (discussing percentage of all Offenders Granted Relief for whom the risk of COVID-19 was a grant reason). Courts typically considered whether the offender was at heightened risk of contracting or experiencing serious illness from COVID-19 and the risk-level at the offender’s specific facility. See *United States v. Feiling*, 453 F. Supp. 3d 832, 841 (E.D. Va. 2020) (“In the context of the COVID-19 outbreak, courts have found extraordinary and compelling reasons for compassionate release when an inmate shows both a particularized susceptibility to the disease and a particularized risk of contracting the disease at his prison facility.”).

37 See, e.g., *United States v. Zuckerman*, 451 F. Supp. 3d 329, 334–36 (S.D.N.Y. 2020) (collecting cases considering the defendant’s medical conditions and age, in the context of COVID-19, under the Commission’s policy statement); *United States v. Nunez*, 483 F. Supp. 3d 280, 286 (E.D. Pa. 2020) (offender’s risk of serious illness or death from COVID-19 constitutes “extraordinary and compelling” reason consistent with Application Note 1(A)(ii)(I)); *United States v. Ennis*, EP-02-CR-1430-PRM-1, 2020 WL 2513109, at * 5–7 (W.D. Tex. May 14, 2020) (granting relief under Application Note 1(B) of the policy statement and concluding that “the risk posed by COVID-19 in connection with Defendant’s health conditions lead the Court to conclude that Defendant’s deterioration of physical health due to the aging process is particularly severe, and warrants relief”).

38 See *infra* p. 32 (discussing frequency of reasons “Comparable to Notes 1(A)–1(C)”).

39 See *infra* pp. 33–34 (discussing frequency of sentence-related reasons).

40 Compare, e.g., *United States v. Ben-Yhwh*, 453 F. Supp. 3d 1324, 1332 (D. Haw. 2020) (considering the §1B1.13 policy statement and concluding that “defendant’s age and medical condition, taken in concert with the COVID-19 public health crisis, constitute an extraordinary and compelling reason to reduce [his] sentence”), with *United States v. Dodd*, 471 F. Supp. 3d 750, 755 (E.D. Tex. 2020) (denying compassionate release because “[s]ection 1B1.13 describes what will be considered ‘extraordinary and compelling reasons’ for sentence reduction under section 3582(c)(1)(A)(i) and provides no basis for a reduction based on COVID-19”).

41 Compare, e.g., *United States v. Young*, 458 F. Supp.3d 838, 848 (M.D. Tenn. 2020) (“The court finds that the drastic change effected by the First Step Act’s amendment of § 924(c) constitutes an extraordinary and compelling reason for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A), at least when considered in conjunction with the other reasons [the defendant’s age and rehabilitation] discussed below.”), with *United States v. Logan*, 532 F. Supp. 3d 725, 734 (D. Minn. 2021) (expressing “significant reservations about allowing a defendant to use § 3582(c)(1)(A)(i) to take advantage of a change in the law that was not made retroactively applicable to that defendant” unless the defendant was “disadvantaged by a racially biased sentencing scheme” or “was unable to benefit from a retroactive change to that scheme because of an oversight”).

42 See *supra* note 17.

43 Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116–136, § 12003(b)(2), 134 Stat. 281, 516 (2020).

44 *Id.* The U.S. Attorney General, in two memoranda dated March 26th and April 3rd of 2020, set forth eligibility requirements for considering an inmate for home confinement, focusing on inmates who are older, have underlying health conditions, have served a certain percentage of their sentence, have a verifiable re-entry plan, and/or are classified as a minimum or low security risk. See Fed. Bureau of Prisons, *Frequently Asked Questions Regarding Potential Inmate Home Confinement in Response to the COVID-19 Pandemic*, <https://www.bop.gov/coronavirus/faq.jsp> (last visited Mar. 2, 2022).

45 See § 12003(b)(2), 134 Stat. at 516; see also *United States v. Saunders*, 986 F.3d 1076, 1078 (7th Cir. 2021) (the district court did not err by declining to review the defendant’s alternate request for a transfer to home confinement because “[t]he Bureau (and under the CARES Act, the Attorney General) has plenary control over its inmates’ “placement.”); *United States v. Houck*, 2 F.4th 1082, 1085 (8th Cir. 2021) (same).

46 As of March 2, 2022, the BOP had 5,603 inmates on CARES Act home confinement, and the total number of inmates placed on home confinement from the date of the memorandum until that date was 38,790. Fed. Bureau of Prisons, *Frequently Asked Questions Regarding Potential Inmate Home Confinement in Response to the COVID-19 Pandemic*, <https://www.bop.gov/coronavirus/faq.jsp> (last visited Mar. 2, 2022). Some of these offenders served the duration of their sentences in home confinement. On December 21, 2021, the U.S. Department of Justice Office of Legal Counsel issued an opinion concluding that the CARES Act affords the BOP with discretion over whether individual offenders currently serving their sentences under home confinement were required to return to prison at the end of the “covered emergency period,” reversing an earlier memorandum that concluded that the BOP would be required to recall all prisoners at the end of the period. See *Discretion to Continue the Home-Confinement Placements of Federal Prisoners After the COVID-19 Emergency*, 45 Op. O.L.C. 1, 2 (2021), <https://www.justice.gov/olc/file/1457926/download>. A statement accompanying the opinion indicated that the U.S. Department of Justice will engage in a rulemaking process that will further guide who can continue serving sentences on home confinement and who will be returned to prison. Press Release, Merrick B. Garland, Attorney General, U.S. Dep’t of Just., Statement by Attorney General Merrick B. Garland (Dec. 21, 2021), <https://www.justice.gov/opa/pr/statement-attorney-general-merrick-b-garland-0> (stating that he “directed the Department to engage in a rulemaking process . . . so that those who have made rehabilitative progress and complied with the conditions of home confinement, and who in the interests of justice should be given an opportunity to continue transitioning back to society, are not unnecessarily returned to prison.”). At the time of this report’s publication, the White House had also asked non-violent drug offenders on CARES Act home confinement with four years or less left to serve to submit applications to receive sentence commutations through clemency. See Off. of the Pardon Att’y, U.S. Dep’t of Just., *Frequently Asked Questions Regarding Biden Home Confinement Expedited Screening* (Dec. 7, 2021), <https://www.justice.gov/pardon/frequently-asked-questions>. Thus, the resolution of this issue for offenders still on home confinement remains ongoing.

47 28 U.S.C. § 994(w).

48 See U.S. COURTS, ORDER ON MOTION FOR SENTENCE REDUCTION UNDER 18 U.S.C. § 3582(c)(1)(A) FORM (AO 248) (effective Sept. 9, 2020), https://www.uscourts.gov/sites/default/files/ao_248.pdf.

49 Index searching, which is used by most common search engines, stores relevant documents within a structured format optimized to return search results quickly and accurately.

50 For example, these search terms included “compassionate release,” “3582(c)(1)(A),” “First Step Act /8 603,” and “time served /s reduction in sentence.”

51 The tool was designed to identify any sentencing document that articulated the court’s decision and reasoning that was docketed between the first appearance of a compassionate release search term and December 31, 2020. December 31, 2020 was chosen as an end date to capture any cases that might have been decided within, but filed after, the fiscal year 2020 study period.

52 In isolated and relatively rare instances, courts sent denials of compassionate release directly to the Commission. Offenders who were the subject of those orders are included in the report’s study group.

53 This report’s study group includes only offenders whose compassionate release motions were decided in fiscal year 2020, which is fewer than 20,000 offenders because: (1) some offenders who filed administratively never filed in federal court; and (2) some offenders who filed a motion in federal court either filed that motion or received a decision outside of the fiscal year 2020 study period. For example, this study does not include offenders on the BOP’s list who filed a compassionate release motion after the close of fiscal year 2020 or offenders who filed within fiscal year 2020 but did not receive a decision until after the close of the fiscal year. Cases that could not be classified as grants or denials were also excluded (n=242) from the study group. This includes cases that were voluntarily withdrawn or dismissed for jurisdictional reasons (for example because the offender (1) was released to home confinement through a different legal avenue, (2) was released upon serving the remainder of their sentence, (3) was not yet in BOP custody, (4) requested relief under the separate authority provided in CARES Act only, or (5) had a direct appeal pending) and cases for which the sentencing documentation was unclear about the status of the offender’s compassionate release motion. See also *supra* note 51 explaining the reason chosen for the December 2020 end date.

54 Documents were not captured in this search process if (1) they were not available on PACER (e.g., sealed documents, incomplete PACER dockets), (2) no document was attached in relation to a relevant search result (e.g., a docket entry titled “minute entry” without any document attached), or (3) the titles used by the offender and the court were not included in the Commission’s search terms (e.g., an offender titled the motion “Motion for Relief” and the court titled its order “Order Denying Relief”). To account for these known limitations, in addition to the audit of six specific districts, the Commission ensured that the number of denials within each district appeared consistent with the district’s size.

55 In addition, some offenders whose motions were denied in fiscal year 2020 would have requested relief at the administrative level before fiscal year 2020. These offenders were also not included in the initial list the Commission received from the BOP and, therefore, were not included in the Commission’s search.

56 The Commission obtained documentation for 5,390 denials, as classified at the initial coding phase. It removed any duplicate cases, those reclassified as a grant, and certain cases with multiple denials. The remaining 5,209 offenders were included within the denied population and formed the sampling frame from which the denial sample was drawn. Some cases originally selected for the sample were later removed because of an incorrect resentencing date or a change in denial status. For coding purposes, the denial status could change if, for example, the offender was granted compassionate release later in fiscal year 2020 after an earlier denial. The sample ultimately represented 38.9% of the denial population.

57 The Judgment and Commitment Order typically does not provide reasons why an offender was granted a sentence reduction. See U.S. COURTS, JUDGMENT IN A CRIMINAL CASE FORM (AO 245B) (effective Sept. 1, 2019), <https://www.uscourts.gov/sites/default/files/ao245b.pdf>; U.S. COURTS, AMENDED JUDGMENT IN A CRIMINAL CASE (AO 245C) (effective Sept. 1, 2019), <https://www.uscourts.gov/sites/default/files/ao245c.pdf> (providing checkboxes for court to indicate Reason for Amendment by listing the procedural mechanism through which the offender was granted relief [e.g., “Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b)),” “Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1)),” “Direct Motion to District Court Pursuant to 28 U.S.C. § 2255...”]). Effective September 9, 2020, the Administrative Office of the United States Courts issued a form specific to compassionate release orders, AO 248, titled “Order on Motion for Sentence Reduction Under 18 U.S.C. § 3582(c)(1)(A).” See *supra* note 48.

58 Apart from its exhaustion requirement, 18 U.S.C. § 3582(c)(1)(A) does not contain any limit on the number of times, or the timeframe in which, an offender can file a motion seeking relief. As a result, for some offenders, multiple motions were adjudicated within the study period.

59 Preliminary data indicates that 68 offenders who were denied a reduction in fiscal year 2020 were granted a reduction in fiscal year 2021. These grants were distributed over the course of the year, though more occurred during the first half of the fiscal year (13 in the first quarter; 24 in the second quarter; 22 in the third quarter; nine in the fourth quarter). U.S. Sent’g Comm’n, 2021 Compassionate Release Preliminary Datafile.

60 For a detailed description of violations of probation and supervised release and how they are sentenced, see COURTNEY R. SEMISCH, KRISTEN SHARPE & ALYSSA PURDY, U.S. SENT’G COMM’N, FEDERAL PROBATION AND SUPERVISED RELEASE VIOLATIONS 5–11 (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200728_Violations.pdf (providing a detailed analysis of supervision violations, including the types of supervision, the grade of violation, and resulting court actions).

61 For purposes of this report, the Commission determined that the original offense information would usually be the more relevant consideration, rather than the specific supervision violation.

62 See U.S. SENT’G COMM’N, 2020 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 203 (2021), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2020/2020-Annual-Report-and-Sourcebook.pdf> [hereinafter 2020 SOURCEBOOK] (describing “Length of Imprisonment” inclusions, exclusions, and cap of 470 months for life sentences and sentences greater than 470 months).

63 See *infra* notes 117–23 and accompanying text (explaining the First Step Act’s changes to “stacked” 18 U.S.C. § 924(c) firearm penalties and enhanced drug penalties imposed pursuant to 21 U.S.C. § 851).

64 See FIRST STEP ACT YEAR ONE REPORT, *supra* note 5, at 47.

65 See *infra* Figure 2. Most of the first quarter of fiscal year 2020 overlaps with First Step Year One (overlapping between October 1, 2019 through December 20, 2019). See *supra* note 14. There were only 18 offenders who were denied relief during the first quarter of fiscal year 2020.

66 The World Health Organization declared a pandemic on March 11, 2020. See World Health Org., WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 (Mar. 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-COVID-19---11-march-2020>.

The first denial citing the offender's failure to demonstrate sufficient risk of contracting or experiencing serious illness from COVID-19 (and, therefore, failure to demonstrate an "extraordinary and compelling" reason) occurred in January 2020, and the first grant based at least in part on the risk of contracting COVID-19 occurred in March 2020. Only denials within the sample (for which the Commission collected the specific reason or reasons for denial) were considered for this analysis. For more on the denial sample and the Commission's special coding project, see *supra* Section 4 (Methodology).

67 This publication uses the phrase "filed their own motion" to describe the offender as the filing party whether the offender filed on their own behalf or through the assistance of counsel. The Commission did not collect information about whether a motion was filed *pro se* or with the assistance of counsel.

68 Three offenders who were missing information about the origin of the motion were excluded from this analysis. Most joint motions were filed in the Eighth (30.0%; n=15) and Ninth (38.0%; n=19) Circuits. By contrast, no motions in the First, Second, Fifth, and Eleventh Circuits were joint motions. U.S. Sent'g Comm'n, 2020 Compassionate Release Publication Datafile.

69 An attorney for the government filed alone for a single (0.1%) offender.

70 FIRST STEP ACT YEAR ONE REPORT, *supra* note 5, at 47.

71 This includes opposition based on the merits, for failure to exhaust administrative remedies, or both.

72 For the remaining 16 Offenders Granted Relief (0.9%), the sentencing documents specifically indicated that no government response was filed.

73 See *supra* note 46 and accompanying text.

74 See *supra* notes 44–46 and accompanying text.

75 See *infra* Table A1 (all grants and denials by district).

76 U.S. Sent'g Comm'n, 2020 Compassionate Release Publication Datafile; see also *supra* note 14.

77 See *infra* Figure A1; see also MAY 2019 QUICK FACTS, *supra* note 14, at 1.

78 See *infra* note 89 (discussing large percentage of Hispanic offenders serving immigration sentences relative to other demographic groups).

79 Of federal offenders in prison as of May 2019, 92.8% were male. See *infra* Figure A1; see also MAY 2019 QUICK FACTS, *supra* note 14, at 1.

80 Relative to their proportion of the federal prison population (18.9%), Non-U.S. citizens were underrepresented among offenders seeking compassionate release (5.9%). See *infra* Figure A1. Like Hispanic offenders, this may be explained by the small number of immigration offenders who sought compassionate release. See *infra* notes 86–89 and accompanying text (discussing large percentage of Non-U.S. citizens serving immigration sentences relative to U.S. citizens).

81 See USSG §1B1.13, comment. (n.1(B)).

82 See Ctrs. for Disease Control & Prevention, *People with Certain Medical Conditions* (Feb. 25, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (“More than 81% of COVID-19 deaths occur in people over age 65. The number of deaths among people over age 65 is 97 times higher than the number of deaths among people aged 18–29.”). The CDC does not define “older adults” but states that “[t]he risk increases for people in their 50s and increases in 60s, 70s, and 80s. People 85 and older are the most likely to get very sick.” Ctrs. for Disease Control & Prevention, *COVID-19 Risks and Vaccine Information for Older Adults*, <https://www.cdc.gov/aging/COVID19/COVID19-older-adults.html> (last visited Nov. 29, 2021).

83 Age at the time of grant or denial was based on the date of birth reported in the original sentencing documents and the date of the compassionate release decision. There were two offenders missing information who were excluded from this analysis.

84 Among offenders in federal prison as of May 2019, the most common offenses were drug trafficking, firearms, robbery, immigration, child pornography, and fraud. See MAY 2019 QUICK FACTS, *supra* note 14, at 1.

85 The primary type of crime was based on the guideline and statute reported in the original sentencing documents received by the Commission. There were 14 offenders missing information on the primary type of crime who were excluded from this analysis. See the variable description for “Type of Crime” in Appendix A of the 2020 *Annual Report and Sourcebook of Federal Sentencing Statistics* for additional information on how primary crime type is determined. 2020 SOURCEBOOK, *supra* note 62, at 210–14.

86 See, e.g., 2020 SOURCEBOOK, *supra* note 62, at 45 fig.2 (immigration offenses represented 41.1% of all federal offenders in fiscal year 2020).

87 U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile.

88 Of immigration cases in fiscal year 2020, 82.7% involved illegal reentry and the average sentence imposed was eight months. See U.S. SENT’G COMM’N, QUICK FACTS ON ILLEGAL REENTRY OFFENSES (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Illegal_Reentry_FY20.pdf. Because immigration offenders are sentenced to relatively short terms of imprisonment, they represent a smaller portion of offenders in federal prison than they do of federal offenders sentenced within any given year. Immigration offenders represented 41.1% of all federal offenders sentenced in fiscal year 2020, but less than 4.8% of the federal prison population as of June 2020 (6,994 of 144,121 total offenders). See U.S. SENT’G COMM’N, QUICK FACTS ON FEDERAL OFFENDERS IN PRISON 1 (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/BOP_June2020.pdf.

89 Shortly before the beginning of the study period, nearly 20% of Hispanic offenders in federal prison were serving a sentence for an immigration offense, whereas less than one percent of Black, White, and Other race offenders were serving a sentence for an immigration offense. Similarly, nearly 30% of Non-U.S. citizen offenders in federal prison were serving an immigration sentence, whereas only 1.1% of U.S. citizen offenders in federal prison were serving a sentence for an immigration offense. U.S. Sent’g Comm’n, Offenders in Federal Custody as of May 25, 2019 Datafile (on file with the Commission). See also *supra* note 14.

90 Only offenses for which there were at least ten total offenders (considering both Offenders Granted and Offenders Denied Relief) were included in the figures within the report. For a full list of offense types among Offenders Granted and Offenders Denied Relief, including those that occurred fewer than ten times, see Table A2.

91 The one exception was the relatively high grant rate for Offenders Granted Relief who had been convicted of robbery (n=136), which was among the most common offense types among Offenders Granted Relief. The higher grant rate for robbery offenders may be due in part to their long sentences (326 months for Offenders Granted Relief convicted of a robbery offense, compared to 156 months for Offenders Granted Relief overall). U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile.

92 For offenders in federal prison and offenders who sought relief by original sentence length, see Figure A2.

93 See *infra* Figure A3. There were 38 offenders missing information who were excluded from this analysis.

The distribution of Offenders Granted Relief and Offenders Denied Relief by CHC was also consistent with that of the overall federal prison population. See MAY 2019 QUICK FACTS, *supra* note 14, at 1.

94 See USSG §4B1.1 (defining who qualifies as a “career offender” and providing for an automatic increase to CHC VI).

95 U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile; see also *infra* p. 30 (discussing grant rate by select sentencing factors).

96 U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile. There were 271 Offenders Granted Relief who were originally sentenced as career offenders, and 90 Offenders Granted Relief were excluded from this analysis because they did not have complete guideline application information. See also *infra* notes 97–99 and accompanying text (discussing grant rate by select sentencing factors).

97 The analyses for all sentencing characteristics except for the presence of an 18 U.S.C. § 924(c) weapons conviction were limited to cases that had complete guideline application information. Any offenders missing information on an individual characteristic were excluded from that portion of the figure.

98 Section 3553(f), commonly referred to as the “safety valve,” authorizes a court to impose a sentence without regard to any drug mandatory minimum penalty when the statutory criteria are met. 18 U.S.C. § 3553(f). The *Guidelines Manual* incorporates the safety valve in §§5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking), and 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical). The First Step Act expanded the statutory eligibility criteria in section 3553(f) by, among other things, extending eligibility to certain offenders who have up to four criminal history points excluding points resulting from a 1-point offense. The First Step Act, however, did not change the *Guidelines Manual* or provide emergency authority to the Commission to amend the guidelines to reflect the expanded criteria. See First Step Act of 2018, Pub. L. No. 115–391, § 402, 132 Stat. 5194, 5221.

Both offenders who received relief from a mandatory minimum penalty and offenders who were not convicted of an offense carrying a mandatory minimum penalty but received a 2-level guideline reduction for meeting the safety valve criteria were included in this analysis. Not all offenders would have been eligible for safety valve relief at original sentencing because only drug offenders or offenders sentenced under §§2D1.1 and 2D1.11 are eligible for safety valve relief.

99 The number of offenders who received the discussed sentencing factors vary. For example, there were a larger number of offenders who received a weapon SOC (n=1,143) than received safety valve (n=266). In addition, as discussed *supra* note 98, not all offenders are eligible for safety valve under 18 U.S.C. § 3553(f).

100 See, e.g., *United States v. Kissi*, 469 F. Supp. 3d 21, 33 n.6 (E.D.N.Y. 2020) (collecting cases granting relief based on the offender’s specific medical conditions that increase their risk of contracting or experiencing serious illness from COVID-19).

101 In fiscal year 2020, there were 1,805 offenders granted a sentence reduction. Figure 17 displays 2,076 reasons (including “Reason Unspecified”) because the documents for each offender may have cited more than one reason. The Commission collected only the reasons that courts specifically identified as “extraordinary and compelling reasons” to grant a sentence reduction. The Commission did not collect the factors courts considered in their analysis of whether a reduction was warranted under 18 U.S.C. § 3553(a). For example, courts routinely considered the offender’s rehabilitation as a factor weighing in favor of granting compassionate release under the section 3553(a) analysis. See, e.g., *United States v. Spencer*, 519 F. Supp. 3d 200, 213–14 (E.D. Pa. 2021) (“[E]vidence of post-sentencing rehabilitation is ‘highly relevant’ to the

[s]ection 3553(a) factors.” (citing *Pepper v. United States*, 562 U.S. 476, 491 (2011))). However, for purposes of this analysis, rehabilitation was identified as a reason for granting a sentence reduction only if the court discussed it as an “extraordinary and compelling” reason for granting relief.

102 In some of these cases, the court stated only that an “extraordinary and compelling” reason supported granting relief without specifying the reasons adopted, and, in others, the available documentation indicated only that the offender received a sentence reduction under section 3582(c)(1)(A).

103 Courts typically considered whether the offender was at high risk of contracting or experiencing serious illness as a result of contracting COVID-19 and the risk at the offender’s specific facility. *See supra* note 36.

104 U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile.

105 *See supra* note 37 and accompanying text.

106 *See infra* Figure 18.

107 *See supra* note 101 (describing “Reason Unspecified” cases).

108 Thus, when considering the reasons asserted in an offender’s motion for those cases in which the court’s reason for granting relief was not specified, COVID-19 appears to be a factor supporting grant for all but 16.4% (n=295) of Offenders Granted Relief. *See infra* Figure A4. As discussed in Section 5 (Data Overview), there were 91 grants of compassionate release during the first six months of fiscal year 2020 (October 2019–March 2020), which represent 5.0% of all grants in fiscal year 2020. Thus, when considering the time period in which offenders began seeking compassionate release based on COVID-19, grants of compassionate release not based at least in part on COVID-19 were relatively rare.

109 U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile. Courts cited more than one reason related to the policy statement for some offenders. As a result, the percentages listed for each specific reason within this category exceed the total percentage of offenders for whom the court cited a reason related to the policy statement.

110 Within this category, the court cited a serious physical or medical condition 182 times, a serious functional or cognitive impairment ten times, and deteriorating health due to the aging process 24 times. The number of reasons cited exceeds the number of offenders in this category because there were 11 offenders for whom the court cited more than one of the non-terminal medical provisions. In nine cases the court cited two of the three provisions, and in two cases the court cited all three provisions. Of these 11 offenders, non-terminal medical conditions were the only reason for relief for seven offenders and were one reason among other reasons for four offenders. U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile.

111 *See supra* Section 3 (Legal Background).

112 Within this category, the court cited the need to care for a minor child for 22 offenders, the need to care for a spouse or registered partner for seven offenders, and the need to care for both a minor child and a registered partner for one offender. U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile. There was one offender for whom the court cited the need to care for both a minor child and a spouse or registered partner. *See also supra* Section 3 (Legal Background).

113 U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile.

114 *Id.*; *see, e.g.*, *United States v. Shope*, No. 2:12-cr-48, 2020 U.S. Dist. LEXIS 155756, at *6–7 (S.D. Ohio Aug. 27, 2020) (concluding that the defendant’s physical condition and the mismanagement of his medical care, which had “contributed to the subsequent and irreversible loss of [defendant’s] leg,” and led the “Court to believe that [the defendant would] not receive the attention he require[d] while in [] custody . . . constitute[d] an extraordinary and compelling reason to reduce his term of imprisonment” (internal citations omitted)).

115 U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile.

116 See *supra* note 17 and accompanying text.

117 See First Step Act of 2018, Pub. L. No. 115–391, § 403, 132 Stat. 5194, 5221–22 (providing that the enhanced 25-year penalty applies to convictions under section 924(c) only after a prior conviction under the subsection “has become final”). Section 924(c) of title 18 of the United States Code, prohibits using or carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a “crime of violence” or “drug trafficking crime.” The statute defines a “crime of violence” as any felony that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another,” or “that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” A “drug trafficking crime” is defined as any felony that is punishable under the Controlled Substances Act, codified at 21 U.S.C. 801 et seq., or the Controlled Substances Import and Export Act, codified at 21 U.S.C. 951, et seq., or chapter 705 of title 46 of the United States Code. 18 U.S.C. § 924(c)(2)–(3).

There appear to be roughly 102 offenders within the study group who were subject to “stacked” 924(c) penalties. The Commission did not collect information about individual statutory minimum and maximum penalties for each count of conviction prior to fiscal year 1999. However, Commission datafiles prior to 1999 did include a variable identifying the total section 924(c) mandatory minimum imposed. For purposes of this analysis, offenders for whom a weapon mandatory minimum penalty of 300 months or more was imposed were initially identified as possibly subject to “stacked” 924(c) penalties. After staff reviewed the potential cases, there appear to be roughly 102 offenders within the study group who were subject to “stacked” 924(c) penalties. Of these 102 offenders, 59 were granted relief and 43 were denied relief.

118 The mandatory minimum penalty for a second or subsequent violation of section 924(c) is 25 years of imprisonment. See 18 U.S.C. § 924(c)(1)(C)(i). The mandatory minimum penalty for a second or subsequent violation increases to life imprisonment if the firearm involved was a machinegun or destructive device, or if it was equipped with a silencer or muffler. *Id.* § 924(c)(1)(C)(ii).

119 For more on the First Step Act’s changes to the “stacked” 25-year penalty imposed under section 924(c), and the impact of that change, see the Commission’s FIRST STEP ACT YEAR ONE REPORT, *supra* note 5, at 36–40.

120 The court cited changes to the section 851 penalties as the only reason for relief for two offenders. Section 851 provides the mechanism to impose enhanced mandatory penalties for drug trafficking offenders who were convicted of qualifying prior offenses. See 21 U.S.C. § 851 (“No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon.”).

121 First Step Act § 401 (codified at 21 U.S.C. §§ 841(b) and 960(b)) (narrowing the definition by replacing “felony drug offense” with “serious drug felony”).

A “serious drug felony” is defined as an offense described in 18 U.S.C. § 924(e)(2)(A) for which the defendant served a term of imprisonment of more than 12 months and was released from any term of imprisonment within 15 years of the instant offense. First Step Act § 401(a)(1). Section 924(e)(2)(A) defines “serious drug offense” as an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), chapter 705 of title 46 (Maritime Law Enforcement), or under State law, involving manufacturing, distributing, or possessing with intent to distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802), for which a maximum term of imprisonment is ten years or more. 18 U.S.C. § 924(e)(2)(A).

The term “felony drug offense” is defined as “an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.” 21 U.S.C. § 802(44). Certain state drug offenses that are classified as misdemeanors by the state but are punishable by imprisonment for more than one year qualify as a felony drug offense under this definition. See *Burgess v. United States*, 553 U.S. 124, 126 (2008).

The First Step Act also *expanded* the class of offenses that trigger an enhancement by adding “serious violent felony,” defined as an offense for which the defendant *served* a term of imprisonment of more than 12 months that is either a violation of 18 U.S.C. § 3559(c)(2) or 18 U.S.C. § 113 (Assaults within maritime and territorial jurisdiction), if the offense was committed in the maritime or territorial jurisdiction of the United States. First Step Act § 401(a)(1). This aspect of the First Step Act’s changes to section 851 penalties would not form the basis of an “extraordinary and compelling” reason for a sentence reduction, because it would increase rather than reduce a defendant’s sentence, were the defendant subject to an enhanced penalty on the basis of a “serious violent felony.”

122 First Step Act § 401 (codified at 21 U.S.C. §§ 841(b) and 960(b)). For more on the First Step Act’s changes to the penalties imposed pursuant to section 851 and the impact of those changes, see the Commission’s FIRST STEP ACT YEAR ONE REPORT, *supra* note 5, at 7–16.

123 These offenders remain subject to a penalty of 20 years or life, rather than ten years, for convictions under section 841(b)(1)(A), and a penalty of ten years rather than five for convictions under section 841(b)(1)(B). 21 U.S.C. § 841(b)(1)(A), (b)(1)(B) (2017).

124 There was one offender for whom the court cited more than one reason categorized as an “Other Sentence” reason.

125 The First Step Act expanded eligibility for safety valve relief by adding offenders convicted of maritime offenses and broadening the criminal history provision. First Step Act § 402 (codified at 18 U.S.C. § 3553(f)); *see also* United States v. Kissi, 469 F. Supp. 3d 21, 38–40 (E.D.N.Y. 2020) (noting that “the changes to the safety valve provisions would likely not be sufficient, on their own, to constitute extraordinary and compelling circumstances” but granting a reduction based on a combination of reasons, including the fact that the defendant would be eligible for safety valve relief following the First Step Act).

126 *See, e.g.,* United States v. Wahid, No. 1:14-cr-00214, 2020 WL 4734409, at *2–3 (N.D. Ohio Aug. 14, 2020) (citing COVID-19 and the sentencing disparity resulting from the Sixth Circuit’s clarification that the defendant’s conspiracy offenses cannot serve as the basis for career-offender status, which would make defendant’s guideline range 63–78 months rather than 168–210 months, as “extraordinary and compelling reasons” to grant a reduction). *Wahid* preceded the Sixth Circuit’s ruling in *United States v. Hunter* that changes in law cannot be considered an “extraordinary and compelling” reason under section 3582(c)(1)(A). United States v. Hunter, 12 F.4th 555, 564–72 (6th Cir. 2021) (holding that all non-retroactive changes in law and facts that existed at the time of sentencing are impermissible bases for a sentence reduction under section 3582(c)(1)(A)).

127 543 U.S. 220 (2005) (striking the mandatory provision of 18 U.S.C. § 3553(b)(1)); *see also* United States v. Vigneau, 473 F. Supp. 3d 31, 38 (D.R.I. 2020) (citing multiple sentence-related reasons, including the mandatory nature of the guidelines at the time the defendant was sentenced).

128 For example, the court cited as reasons for grant that one offender had erroneously been released early from prison and that another offender was a former police officer who had been violently attacked multiple times in prison. Although this category includes isolated events, some reasons in this category were cited more than once, including, for example: (1) that the offender would have been eligible for release to an alternative setting or have been receiving reentry services were it not for COVID-19 or another impediment; (2) the limited duration remaining on the offender’s sentence; and (3) the non-violent nature of the offender’s underlying offense. Although courts regularly considered these or similar factors when evaluating whether a sentence reduction was warranted under the section 3553(a) factors, this analysis includes only those instances in which the court identified the reasons discussed above as an “extraordinary and compelling” reason. This analysis does not include instances in which the court discussed similar factors within its discretion under section 3553(a). For reasons for grant by circuit and district, see Table A3.

129 USSG §1B1.13, comment. (n.3) (“Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.”); 28 U.S.C. § 994(t) (“Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.”).

130 *See* USSG §1B1.13, comment. (n.3); 28 U.S.C. § 994(t).

131 The court cited more than one provision within the non-terminal medical reasons category for 11 offenders. See *supra* note 110.

132 There were 56 offenders excluded from the months of time served analysis because the sentence start date was indeterminable. In those cases, the offender either had an additional state or federal sentence that delayed the offender from serving the original or violation sentence or the offender never started the sentence due to various reasons such as illness.

For most offenders, the time served calculation is determined using the date of original sentencing as the start point and the date of compassionate release resentencing as the end point. For offenders who did not begin serving the original sentence on the date of sentence and for whom the actual start date could be determined, the date that the offender began serving the original sentence was used as the start point. For offenders who completed serving their sentence for the original offense and were serving a revocation sentence after violating supervised release, the date the offender began serving the revocation sentence was used as the start date.

133 U.S. Sent'g Comm'n, First Step Year One Compassionate Release Datafile.

134 There were 125 offenders excluded from the amount of reduction analysis. Of these, 56 were excluded because the sentence start date was indeterminable, see *supra* note 132, and an additional 69 offenders who were sentenced to a term of life imprisonment were excluded because a reduction from "life" was not calculated.

The amount of reduction was calculated differently depending on the sentence imposed at grant. For "Time Served" offenders, the amount of reduction was calculated as the difference between the original sentence imposed (or the most recent sentence, if the offender received any previous sentence reduction) and the months of time already served. For "Alternative Imposed" offenders, the amount of reduction was calculated as the difference between the most recent sentence imposed and the combined months already served and months of alternative confinement imposed at compassionate release grant. Finally, for "Imprisonment Reduced" offenders, the amount of reduction was calculated as the difference between the most recent sentence imposed and the sentence imposed at compassionate release grant. For all groups, the revocation sentence was used if the offender was serving a revocation sentence. See *infra* pp. 39–40 (discussing offenders categorized by type of sentence imposed).

135 There was one offender excluded from the time served analysis for fiscal year 2018 and six offenders excluded from the time served analysis for First Step Year One. One additional case in fiscal year 2018 and 12 in First Step Year One were excluded from the amount of reduction analysis because they had been sentenced to a term of life imprisonment. See also *supra* note 134. In this report, long sentences of specific length were not capped at 470 months because the court's consideration of long sentences, and, in particular "stacked" 924(c) penalties and enhanced drug penalties, as a reason for granting compassionate release was of particular interest. In addition, offenders who received a sentence of life imprisonment were excluded from the average reduction and percentage of time served calculations, because a specific reduction amount and percentage of a "life" sentence could not be determined. As a result, the average amount of reduction for fiscal year 2018 and First Step Year One are different than reported in the *First Step Act Year One Report*, which determined the average reduction amount differently because it did not calculate the average percentage of sentence served or the extent of reduction. See *FIRST STEP ACT YEAR ONE REPORT*, *supra* note 5, at 66–67 n.145 (calculating the average reduction for offenders serving a life sentence and offenders serving a sentence of specified length greater than 470 months as the difference between 470 months and the amount of time already served). This difference in methodology did not change the overall trend reported above—reductions were longest in First Step Year One.

136 There were 56 Offenders Granted Relief and 24 Offenders Denied Relief who were excluded from the time served analysis because the sentence start date was indeterminable. In those cases, the offender either had an additional state or federal sentence that delayed the offender from serving the original or violation sentence or the offender never started the sentence due to various reasons (such as illness) and the start date could not be determined. An additional 69 Offenders Granted Relief and 18 Offenders Denied Relief were excluded from the percentage of time served analysis because they had been sentenced to a term of life imprisonment (*i.e.*, a percentage from "life" was not calculated). See *supra* notes 132, 134.

137 Offenders who were granted a reduction for a reason categorized as “other” (n=23) had served on average 92 months and 48.5% of their sentence. Three offenders were excluded from the percentage of sentence served analysis. See *supra* note 132 for how time served is calculated.

138 There were 125 offenders excluded from the percentage of time served analysis. See *supra* note 136.

139 There were 125 offenders excluded from the months of reduction analysis. See *supra* note 134.

140 There were 125 offenders excluded from the extent of reduction analysis. The percentage of sentence served and extent of sentence reduction do not equal 100% for the reported categories because many Offenders Granted Relief in fiscal year 2020 were granted relief with a continuing condition of confinement (prison or an alternative sentence). See *infra* note 145 and accompanying text.

141 18 U.S.C. § 3582(c)(1)(A) (“[T]he court, upon motion of the Director of the Bureau of Prisons . . . may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment)”).

142 *Id.*

143 Seventeen offenders received a sentence that included both home detention and community confinement. These 17 offenders are included in the “Community Confinement” category. Cases missing information about the type of sentence imposed were excluded from this analysis.

144 Cases in which the defendant was ordered released within 21 days or less were included within the “Time Served” category. The court typically ordered that the defendant be released in 14 days or less. Fourteen days were typically allotted for quarantine, while fewer (five or ten) were routinely allotted to ensure that a reentry plan was in place. In one case within this category, the court ordered that the defendant be released after more than 14 but less than 21 days.

145 Of the years studied, the high percentage of Alternative Imposed offenders was unique to fiscal year 2020. For example, in First Step Year One, only 7.0% (n=8) of Offenders Granted Relief received an alternative sentence, while 92.2% (n=106) received a time-served sentence. Only one offender (0.9%) received a reduction in the term of imprisonment only, without release. There were 30 offenders in First Step Year One missing information about the type of sentence imposed. U.S. Sent’g Comm’n, First Step Year One Compassionate Release Datafile.

146 Section 3582(c)(1)(A) provides that the term of supervised release may not “exceed the unserved portion of the original term of imprisonment.” 18 U.S.C. § 3582(c)(1)(A). The Commission did not analyze the relationship between the supervised release term imposed at grant of compassionate release and the length imposed at original sentencing.

147 An additional 17 offenders received a sentence that included both home detention and community confinement. These 17 offenders were included in the “Community Confinement” category.

148 All offenders in the home detention category and the 17 offenders who received a sentence that included both home detention and community confinement were included in this analysis. The type of sentence imposed also varied by the circuit in which the offender was resentenced. For example, within the D.C. Circuit, courts imposed an alternative sentence for only 25.0% (n=9) of Offenders Granted Relief, while courts within the Second Circuit imposed an alternative sentence for 61.5% (n=128) of Offenders Granted Relief. See *infra* Figure A5.

149 U.S. Sent’g Comm’n, 2020 Compassionate Release Publication Datafile.

150 See *supra* Section 4 (Methodology). As discussed in Section 4 (Methodology) and Appendix B, the Commission audited six federal districts to determine the magnitude of this report’s undercount of offenders who were denied compassionate release in fiscal year 2020. The Commission reviewed the compassionate release sentencing documentation for offenders identified by the DOJ who met the study group’s inclusion criteria but were not located through the Commission’s document collection process. The reasons courts cited for denying relief to these additional offenders mirrored the reasons that courts cited to deny relief to

offenders within the study group, both in nature and frequency, and would not materially alter the trends reported.

151 See *supra* Section 3 (Legal Background).

152 18 U.S.C. § 3582(c)(1)(A); see *supra* notes 3, 18 and *infra* note 157 (describing the administrative exhaustion requirement).

153 18 U.S.C. § 3582(c)(1)(A)(i).

154 *Id.* § 3582(c)(1)(A). Because courts often considered these two factors in tandem, they are combined for the relevant analyses in this section of the report.

In these proceedings, courts ordinarily consider whether a defendant is a danger to the public. Although it is not statutorily required for all cases under section 3582(c)(1)(A), it is included in the §1B1.13 policy statement. Compare 18 U.S.C. § 3582(c)(1)(A)(ii) (requiring that “a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g) for “three-strikes” offenders), with USSG §1B1.13(2) and USSG App. C, amend. 683 (effective Nov. 1, 2006) (“The policy statement provides that in all cases there must be a determination made by the court that the defendant is not a danger to the safety of any other person or to the community.”); see also *United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021) (*per curiam*) (“[T]he district court determined that [the defendant’s] release was unwarranted based on the 18 U.S.C. § 3553(a) factors and the danger she posed to the community as provided under 18 U.S.C. § 3142(g). This dangerousness finding is not statutorily required under 18 U.S.C. § 3582(c)(1)(A)(i) but is part of the Sentencing Commission’s policy statement in U.S.S.G. § 1B1.13(2).”). Section 3553(a)(2)(C) requires a similar consideration. 18 U.S.C. § 3553(a)(2)(C) (“[T]o protect the public from further crimes of the defendant”).

155 See *United States v. Hald*, 8 F.4th 932, 942–43 (10th Cir. 2021) (“[T]here is no reason to mandate any particular order for the three steps. If the most convenient way for the district court to dispose of a motion for compassionate release is to reject it for failure to satisfy one of the steps, we see no benefit in requiring it to make the useless gesture of determining whether one of the other steps is satisfied.”), *petition for cert. filed*, No. 21–6594 (U.S. Dec. 15, 2021).

156 The reason for denial could not be determined from the sentencing documentation for 2.9% (n=59) of Offenders Denied Relief. The reasons that courts cited for denying relief to offenders who met the study group’s inclusion criteria but were not identified in the Commission’s collection process mirror the reasons that courts cited for denying relief to offenders within the study group. See *supra* note 150. The reasons that courts cited for denying relief to offenders who were not on the BOP’s list also tracked the reasons that courts cited for denying relief to offenders within the study group, but there was a heavier concentration of offenders for whom failure to exhaust administrative remedies was at least one reason for denial. See Appendix B. Although most of the offenders who were not included on the BOP’s list likely did not exhaust administrative remedies, because the court can deny a motion for any of the reasons discussed in this report (and exhaustion can be waived), the reasons that courts cited for denying relief in these cases varied, and like the cases examined within the report, the court often cited multiple reasons to deny relief.

157 Courts applied this exhaustion requirement differently. See *United States v. Saladino*, 7 F.4th 120, 123–24 (2d Cir. 2021) (*per curiam*) (noting district and circuit court split on interpretation of “after . . . the lapse of 30 days from the receipt,” collecting cases for the same, and holding that exhaustion provision is a claim-processing rule that can be forfeited or waived); *United States v. Harris*, 505 F. Supp. 3d 1152, 1155–56 (D. Kan. 2020) (elaborating that, “one view concludes that ‘lapse’ refers to the failure of the warden to respond to defendant’s request In contrast, courts on the other side of the split read ‘the lapse of 30 days’ in § 3582(c)(1)(A) merely to require that defendant wait 30 days after requesting relief internally before bringing the action to court, regardless of whether the warden responds timely” (internal citation omitted)); *United States v. McNair*, 481 F. Supp. 3d 362, 366 (D.N.J. 2020) (collecting cases regarding district court disagreement on whether “issue exhaustion” is required); *United States v. Armstrong*, 474 F. Supp. 3d 654, 657 n.3 (M.D. Pa. 2020) (noting court division and collecting cases on whether exhaustion provision is a jurisdictional requirement that cannot be forfeited or waived or a claim-processing provision that can be forfeited or waived); see also *supra* note 18.

Offenders included in the study group who were denied relief for failure to exhaust administrative remedies (and were on the BOP list) either did not meet the exhaustion requirement as interpreted by the resentencing court or had requested relief from the BOP with respect to at least one of multiple motions but had not exhausted remedies with respect to the compassionate release motion decided within the report's study period. The study group did not include offenders who were not included in the initial list of offenders that the BOP provided to the Commission. See discussion *supra* Section 4 (Methodology) and *infra* Appendix B. The Commission's six-district audit confirmed that, for a large proportion of these offenders, the court cited failure to exhaust administrative remedies as at least one reason for denying relief. The percentage of offenders who were denied relief in fiscal year 2020 based at least in part on failure to exhaust administrative remedies, when considering these additional offenders, would be higher than the 31.9% reported above. However, courts did not exclusively deny relief on that basis or on that basis alone for these offenders.

158 For the other 33.2% of Offenders Denied Relief, the court denied for other reasons (e.g., failure to exhaust administrative remedies or the section 3553(a) factors). In some of these cases, the court considered whether the offender presented an "extraordinary and compelling" reason but did not decide the issue or expressly deny the motion based on a failure to demonstrate an "extraordinary and compelling" reason. In rare cases, the court affirmatively found that the defendant presented extraordinary and compelling reasons but denied the motion because the court concluded that relief was not warranted under the section 3553(a) factors or because the offender was a danger to the public. These instances were rare because, when a court denied based on the section 3553(a) factors, it typically addressed but did not rule on whether the defendant had presented extraordinary and compelling circumstances.

159 In addition, the court specifically cited the offender's post-conviction or post-sentencing conduct as a reason to deny relief—always in combination with the section 3553(a) factors, danger to the public, or both—for 1.3% of Offenders Denied Relief.

160 Courts cited the offender's failure to demonstrate a sufficient risk of contracting COVID-19 as the only reason for denying relief for 16.0% of Offenders Denied Relief. Courts required more than a generalized risk of contracting COVID-19. See *supra* notes 36, 103 and accompanying text.

161 This category includes insufficient proof of a terminal illness or any of the three other physical and medical categories in the Commission's policy statement. See USSG §1B1.13, comment. (n.1(A)) (terminal illnesses, serious physical or medical conditions, serious functional or cognitive impairments, or deteriorating physical or mental health because of the aging process).

162 See USSG §1B1.13, comment. (n.1(A)) ("The defendant is suffering from a terminal illness . . . a serious physical or medical condition . . . a serious functional or cognitive impairment, or [is] experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.").

163 See USSG §1B1.13, comment. (n.1(B)); see also *supra* note 29 and accompanying text.

164 See USSG §1B1.13, comment. (n.1(C)); see also *supra* note 30 and accompanying text.

165 For a full description of the "Comparable to Notes 1(A)–1(C)" category, see *supra* notes 112–14 and accompanying text.

166 The court cited the First Step Act's nonretroactive change to the section 924(c) "stacked" firearm penalties as a reason for denial for 15 offenders, the First Step Act's non-retroactive changes to enhanced drug penalties imposed pursuant to 21 U.S.C. § 851 for four offenders, and "other sentence" reasons for 13 offenders. See *supra* notes 117–19 and accompanying text (discussing the First Step Act's change to section 924(c) firearm penalties and consideration of that change within the context of compassionate release), notes 120–23 and accompanying text (discussing the First Step Act's changes to the enhanced drug penalties imposed pursuant to section 851 and consideration of those changes within the context of compassionate release), and notes 124–27 and accompanying text (discussing other sentence-related reasons).

167 The “Other” category includes certain specific, isolated reasons. The court found that a reason related to the offender’s underlying conviction did not present an “extraordinary and compelling” reason for four offenders within this category.

168 USSG §1B1.13, comment. (n.3); *see also supra* notes 31–32 and accompanying text.

169 The Commission considered only those cases in which the court considered whether the offender’s rehabilitation presented an “extraordinary and compelling” reason. Courts discussed the offender’s rehabilitation as part of the section 3553(a) analysis in many more cases. *See also supra* note 101.

170 For more detail on denial reasons by circuit and district, see Table A4.



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