



United States Sentencing Commission

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What Do Federal Firearms Offenses Really Look Like?



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This report examines how firearms offenses were committed, including whether the offenses involved violence, and whether the offenders have a history of engaging in violent criminal behavior.

Introduction

This report provides in-depth information on federal firearms offenders sentenced under the primary firearms guideline, §2K2.1.¹ The Commission has published reports on various aspects of firearms offenses, including reports on armed career criminals, mandatory minimum penalties, and firearms offenders' recidivism rates.² The Commission's prior research shows that firearms offenders are generally younger, have more extensive criminal history, and are more likely to commit a new crime than other offenders. The Commission's previous research also shows that firearms offenders are more likely than other offenders to engage in violent criminal behavior. This publication continues the Commission's work and provides detailed information about offenders sentenced under §2K2.1.

Section 2K2.1 is historically one of the most frequently applied guidelines and its application has accounted for an increased percentage of the federal caseload in recent years. Section 2K2.1 covers offenses involving the unlawful receipt, possession, or transfer of firearms, as well as offenses involving prohibited weapons and stolen firearms.³ While use or possession of a firearm during and in relation to a crime of violence or controlled substance offense is covered by a different guideline, §2K2.1 covers conspiracies to do the same.

Most offenders sentenced under §2K2.1 were prohibited from possessing a firearm, usually because of a prior felony conviction. Although the status as a prohibited person is a common thread among the majority of §2K2.1 offenders, many §2K2.1 offenders engaged in aggravating conduct. This report examines how the offenses were committed, whether the offenses involved violence, and whether the offenders have a history of engaging in violent criminal behavior. This report also provides data on offender and offense characteristics, and sentences imposed for the firearms crimes committed by offenders sentenced under §2K2.1.

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Key Findings

1 Firearms offenses are among the most common crimes prosecuted and sentenced in federal court.

- Section 2K2.1 was the **third most frequently applied guideline** in fiscal year 2021.
- Section 2K2.1 cases have **increased by 45.3 percent since fiscal year 2015**, from 5,325 to 7,735 cases in fiscal year 2021.
- Section 2K2.1 offenders represent **40 percent of the caseload in five districts**.

2 The guidelines exert a strong influence on the sentences imposed in firearms cases.

- In fiscal year 2021, **half (49.6%)** of the felony offenders sentenced under §2K2.1 received a **sentence within the guideline range**, which is approximately ten percentage points higher than the within guideline range rate for all other offenders.

3 Firearms offenders sentenced under §2K2.1 have criminal histories that are more extensive and more serious than other offenders.

- Firearms offenders were **more than twice as likely to have a prior conviction for a violent offense** compared to all other offenders (60.6% compared to 29.0%).

4 The vast majority of firearms offenders (88.8%) sentenced under §2K2.1 were prohibited from possessing a firearm.

- Prohibited persons include offenders with a **prior felony conviction** or status in another prohibited class, such as **aliens** unlawfully in the United States, **fugitives** from justice, or persons who **unlawfully use or are addicted to controlled substances**.

5 In addition to most §2K2.1 offenders being prohibited from possessing a firearm, firearms offenders often engaged in aggravating criminal conduct.

- In more than **one-quarter** of §2K2.1 cases, the firearm facilitated, or had the potential to facilitate, **another felony offense** (most commonly drug trafficking).
- In **11.0 percent** of §2K2.1 cases, an offender or co-participant **discharged a firearm**. In these cases, **death resulted in 4.1 percent** of the cases and **injury to another person in 18.3 percent** of the cases.

6 Firearms offenses often involved stolen firearms or particularly dangerous weapons.

- Approximately **one-third (32.4%)** of the offenders prohibited from possessing a firearm committed an offense involving a **stolen firearm** or firearm with an **altered or obliterated serial number**.
- Nearly **one-quarter (23.6%)** of the offenders prohibited from possessing a firearm committed an offense involving a **prohibited weapon** (such as a sawed-off shotgun or machine gun).

7 The average sentence for §2K2.1 firearms offenders varied depending on the presence of aggravating factors.

- Prohibited persons who did not engage in aggravating conduct received an average sentence of 35 months. Courts imposed longer sentences on prohibited persons whose offenses involved:
 - a **stolen firearm** or a firearm with an **altered or obliterated serial number** (55 months);
 - a **prohibited weapon** (such as a sawed-off shotgun or machine gun) (58 months);
 - **trafficking** in firearms (62 months); or
 - the use of, or conspiracy to use, a firearm in **connection with a crime of violence or drug trafficking crime** (119 months).

Legal Background

Statutory Overview

Federal law prohibits the possession and sale of firearms or ammunition to restricted classes of people; regulates the importation, exportation, manufacture, and transfer of firearms and ammunition; and bans possession of certain firearms such as sawed-off shotguns and machine guns. The firearms offenders discussed in this report were convicted of offenses found in chapter 44 (Firearms) of title 18, or chapter 53 (Machine guns, destructive devices, and certain other firearms) of title 26, of the United States Code. Violations of the chapter 44 firearms offenses sentenced under §2K2.1 generally carried statutory maximum sentences of five or ten years of imprisonment before application of recidivist enhancements for offenders analyzed in this report.⁴ Violations of the chapter 53 firearms offenses sentenced under §2K2.1 carry statutory maximum sentences of ten years' imprisonment.⁵ This section describes the most common statutes of conviction for offenders sentenced under §2K2.1.

Prohibited Person

The vast majority of the offenders sentenced under §2K2.1 were convicted under 18 U.S.C. § 922(g). Section 922(g) prohibits the possession, receipt, or transport of a firearm or ammunition by specified classes of people.⁶ The classes are: (1) persons convicted of a crime punishable by imprisonment for a term exceeding one year (*i.e.*, felons); (2) fugitives; (3) unlawful drug users; (4) persons who have been adjudicated as a "mental defective" or who have been committed to a mental institution; (5) aliens illegally or unlawfully in the United States, or, with exceptions, aliens admitted to the United States under a nonimmigrant visa; (6) persons discharged from the Armed Forces under dishonorable conditions; (7) United States citizens who have

renounced their citizenship; (8) persons subject to certain court restraining orders; and (9) persons who have been convicted in any court of a "misdemeanor crime of domestic violence."⁷ Most §2K2.1 offenders are convicted of subsection (g)(1) because they possessed a firearm and had a prior felony conviction.

Another provision, 18 U.S.C. § 922(n), prohibits persons under indictment for a crime punishable by imprisonment for a term exceeding one year from shipping or transporting in interstate or foreign commerce any firearm or ammunition, or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.⁸

Prohibited Weapons

Offenders convicted of offenses under the National Firearms Act, specifically those offenders convicted of an offense under 26 U.S.C. § 5861 (Prohibited acts), are also sentenced under §2K2.1.⁹ Section 5861 restricts the possession, receipt, use, transfer, importation, and manufacture of prohibited firearms such as sawed-off shotguns and machine guns.¹⁰ Section 922 also prohibits the possession and transfer of machine guns and of firearms that are not detectable by x-ray.¹¹

Straw Purchase and False Statements

Offenders convicted of illegally purchasing a firearm or ammunition for another person, commonly referred to as “straw purchasers,” are sentenced under §2K2.1. Section 922(d) prohibits any person from selling or otherwise disposing of any firearm or ammunition to any person knowing, or having reasonable cause to believe, that such a person is prohibited from possessing or receiving a firearm.¹² Typically, the offense involves transferring a firearm to a convicted felon.¹³

Offenses criminalizing false statements in acquiring a firearm or ammunition are also referenced to §2K2.1. Section 922(a)(6) prohibits any person from knowingly making any false statement in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, dealer, manufacturer, or collector with respect to any fact material to the lawfulness of the sale or the disposition of the firearm or ammunition.¹⁴ Similarly, section 924(a)(1)(A) prohibits any false

statement or representation of information required by chapter 44 to be in the records of federally licensed firearms dealers.¹⁵ These statutes are used to prosecute straw purchasers who falsely claim to be purchasing a firearm on their own behalf.

Firearms Trafficking

Trafficking in firearms is prohibited by various statutory provisions in 18 U.S.C. § 922, as well as 26 U.S.C. § 5861(a) and (j), which proscribe trafficking of prohibited weapons.¹⁶ For example, section 922(a)(1)(A) prohibits anyone, except licensed dealers, from engaging in the business of importing, transporting, or dealing in firearms or ammunition.¹⁷

Stolen Firearm or Altered or Obliterated Serial Number Offenses

Section 2K2.1 additionally applies to offenders convicted of offenses related to stolen firearms or firearms with an altered or obliterated serial number charged under 18 U.S.C. § 922(j), (k), or (u).¹⁸

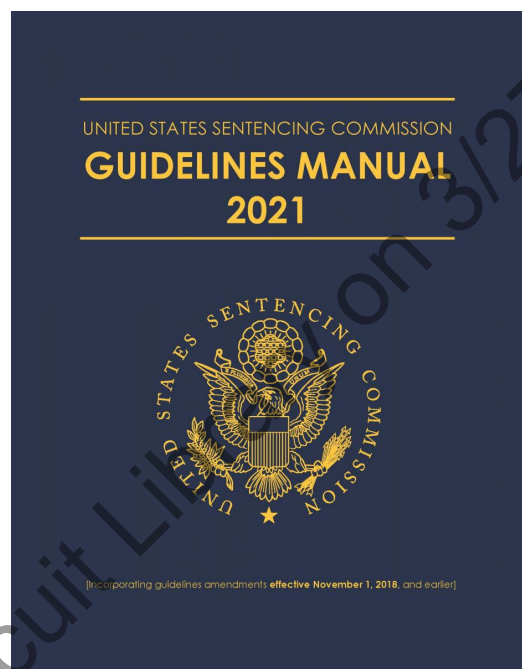
Conspiracy to Use Firearm in Furtherance of or in Connection with a Crime of Violence or Drug Trafficking Crime

Some offenders are sentenced under §2K2.1 for convictions under section 924(o), which proscribes conspiracy to violate 18 U.S.C. § 924(c),¹⁹ which prohibits the use of a firearm during or in relation to a crime of violence or drug trafficking crime. Section 924(c) offenses are referenced to §2K2.4 and were excluded from this report if they were the sole offense of conviction.

Guideline Provisions

As noted, firearms offenses are sentenced primarily under Chapter Two, Part K, Subpart Two (Firearms). The base offense level for §2K2.1 depends principally on the statute of conviction, number of prior felony convictions for crimes of violence or controlled substance offenses, and the type of firearm²⁰ or ammunition involved in the offense.²¹ The base offense level can range from 6 (for certain offenses, many of them misdemeanors) to 26 (for offenses involving prohibited firearms, and where the offender has two or more prior convictions for a crime of violence or controlled substance offense).²²

Section 2K2.1 includes enhancements if the offense involved: (1) three or more firearms; (2) a destructive device;²³ (3) a stolen firearm or a firearm with an altered or obliterated serial number; (4) trafficking of firearms; (5) possessing or using a firearm or ammunition in connection with another felony offense; (6) possessing a firearm while leaving or attempting to leave the United States or transferring a firearm with the knowledge that it would be exported; or (7) an effort to conceal a substantive offense involving firearms or ammunition in record keeping.²⁴ The guideline also contains a reduction for certain offenders who possessed firearms or ammunition solely for sporting purposes or collection.²⁵



If the offender used or possessed any firearm or ammunition cited in the offense of conviction in connection with the commission or attempted commission of another offense, §2K2.1(c)(1) instructs the court to use the most analogous offense guideline, for example, homicide (§2A1.1), if death resulted and if the resulting offense level is higher than that provided in §2K2.1.²⁶ Offenders who were convicted of a firearms offense but were sentenced under another primary guideline are not included in this report.

Methodology

This report analyzes data regularly collected by the Commission combined with information collected through a special coding project to examine §2K2.1 offenders and offense characteristics. This report uses data from the Commission's fiscal years 2007–2021 Individual Offender Datafiles in which §2K2.1 was the primary sentencing guideline and for which the Commission received complete documentation. This report excludes firearms offenders convicted solely of an offense under 18 U.S.C. § 924(c).

The Commission's Standard Document Collection

To fulfill its statutory responsibilities, the Commission collects and analyzes data on federal sentences for every federal felony and Class A misdemeanor offender sentenced each year.²⁷ Courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: (1) the charging document; (2) the plea agreement (if applicable); (3) the Presentence Report; (4) the Judgment and Commitment Order; and (5) the Statement of Reasons form.²⁸ The Commission routinely extracts and codes data from these documents, including sentencing data, demographic variables, statutory information, guideline application decisions, and departure and variance information.



Criminal History Collection

The Commission expanded its collection of criminal history information using recent technological improvements. The annual Individual Offender Datafiles include the criminal history points and criminal history category (CHC) calculated under the guidelines. The criminal history dataset provides additional information on prior offenses committed, the points assigned to those convictions under the federal sentencing guidelines, and the types of offenses that did not receive points. For this report, the Commission analyzed the criminal history information of §2K2.1 offenders sentenced in fiscal year 2021 for whom complete documentation was submitted to the Commission.

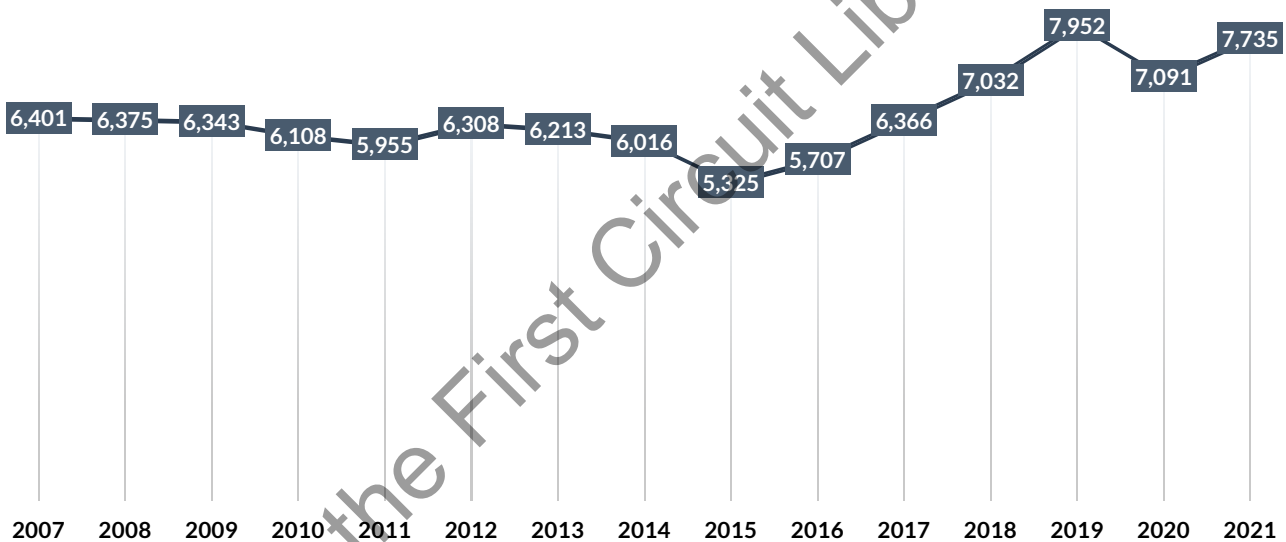
Firearms Special Coding Project

The Commission also undertook an extensive special coding project to collect and analyze data on §2K2.1 offenders beyond the information the Commission regularly collects and reports in the annual *Sourcebook of Federal Sentencing Statistics*. The Commission analyzed a 25 percent random sample of cases in which felony offenders were sentenced under §2K2.1 in fiscal year 2021 for which courts submitted sufficient sentencing documentation. The resulting data provides a more complete picture of §2K2.1 offenders and offenses.

Overview of §2K2.1 Offenders

This section provides data analyses of offenders sentenced under §2K2.1, focusing on offender and offense characteristics. The analyses in this section include data on offenders sentenced from fiscal years 2007 to 2021 under a *Guidelines Manual* effective November 1, 2004, or later for whom the Commission received complete documentation. The analyses provide a snapshot of fiscal year 2021 data and highlight selected trends over a 15-year period.

Figure 1. TREND IN NUMBER OF §2K2.1 OFFENDERS



Number of Cases

Firearms offenders sentenced under §2K2.1 consistently represent a significant percentage of the overall federal caseload. Of the 57,287 offenders sentenced in fiscal year 2021 with complete case documentation sent to the Commission,²⁹ 13.5 percent (7,735 offenders) were sentenced under §2K2.1 as their primary guideline (Figure 1). Accordingly, §2K2.1 was the third most frequently applied guideline in fiscal year 2021 following

§2D1.1 (Drug Trafficking) and §2L1.2 (Illegal Reentry).³⁰

The number of firearms cases sentenced under §2K2.1 has increased markedly over the past six years. Since fiscal year 2015, the number of firearms offenders sentenced under §2K2.1 has increased by 45.3 percent (from 5,325 to 7,735 offenders) (Figure 1).

The remainder of the report focuses on felony offenders sentenced under §2K2.1, excluding offenders sentenced under the career offender guideline, Armed Career Criminal Act, and offenders convicted solely of an offense under 18 U.S.C. § 924(c). Of the 7,735 §2K2.1 offenders sentenced in fiscal year 2021, 7,373 §2K2.1 offenders are analyzed in the remainder of the report.³¹

Table 1. §2K2.1 OFFENDER CHARACTERISTICS
Fiscal Year 2021

Offender Characteristics	§2K2.1 Offenders	All Other Offenders
Race/Ethnicity		
White	24.4%	22.2%
Black	54.5%	16.9%
Hispanic	17.8%	56.5%
Other	3.3%	4.4%
Gender		
Male	96.2%	85.2%
Female	3.8%	14.8%
Citizenship		
U.S. Citizen	96.1%	60.8%
Non-U.S. Citizen	3.9%	39.2%
Age		
Less than 25 Years Old	15.5%	11.1%
25-34 Years Old	45.6%	33.4%
35-44 Years Old	27.1%	31.0%
45-54 Years Old	8.5%	16.0%
55+ Years Old	3.4%	8.5%
Average Age	34 Years Old	38 Years Old

Offender Characteristics

Firearms offenders sentenced under §2K2.1 differ from the general federal offender population with respect to multiple demographic factors. In fiscal year 2021, a majority of firearms offenders were Black (54.5%) and U.S. citizens (96.1%) (Table 1). Nearly all were male (96.2%). In contrast, a majority of all other federal offenders were Hispanic (56.5%), 60.8 percent were U.S. citizens, and 85.2 percent were male.

Firearms offenders were sentenced at a younger age than all other offenders. The average age of firearms offenders was 34 years old, while the average age of all other federal offenders sentenced in fiscal year 2021 was 38 years old. The majority of firearms offenders were under 35 when sentenced (61.1%), while a majority of all other offenders were 35 or older when sentenced (55.5%).

Geographic Distribution

Firearms cases make up a significant portion of the federal caseload in certain districts. Of the 7,373 cases in fiscal year 2021, the following five districts had the highest number of §2K2.1 cases: Eastern District of Missouri (453 cases), Northern District of Texas (268 cases), Western District of Texas (267 cases), Northern District of Ohio (220 cases), and Eastern District of North Carolina (216 cases) (Figure 2).

Section 2K2.1 offenders represent 40 percent or more of the caseload in five districts. The five districts where §2K2.1 cases made up the highest percentage of the district’s overall caseload include the Eastern District of Missouri (45.7%), Middle District of Alabama (43.2%), Northern District of Indiana (40.8%), Middle District of Tennessee (40.4%), and Western District of Missouri (39.7%).

Figure 2. GEOGRAPHIC DISTRIBUTION OF §2K2.1 CASES
Fiscal Year 2021

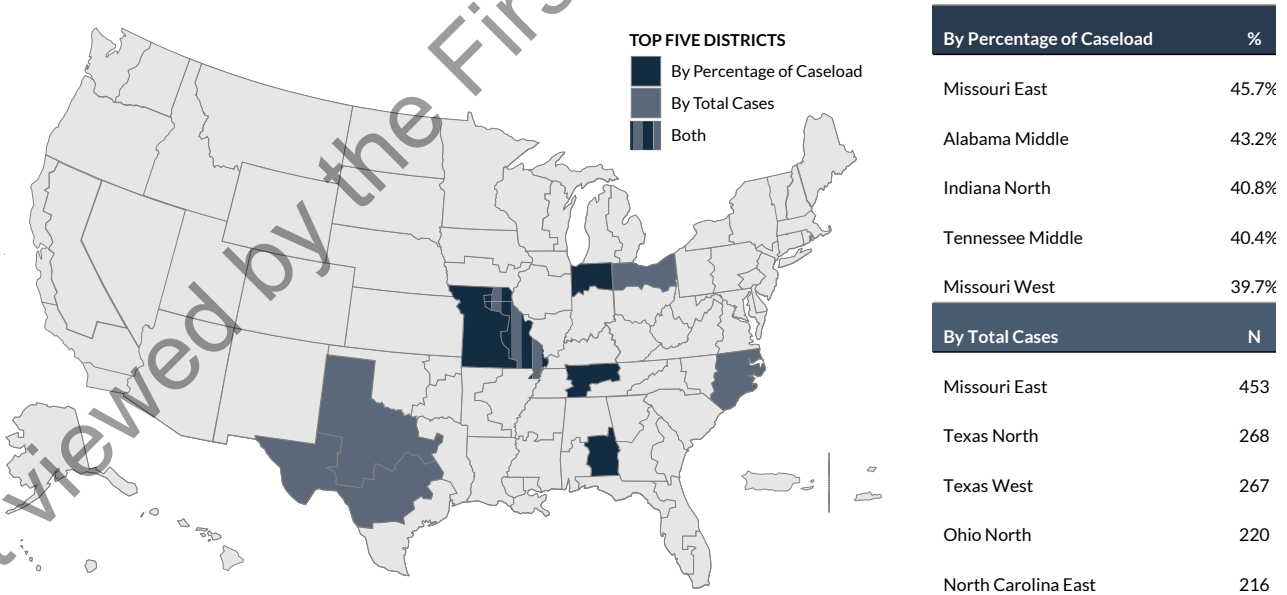
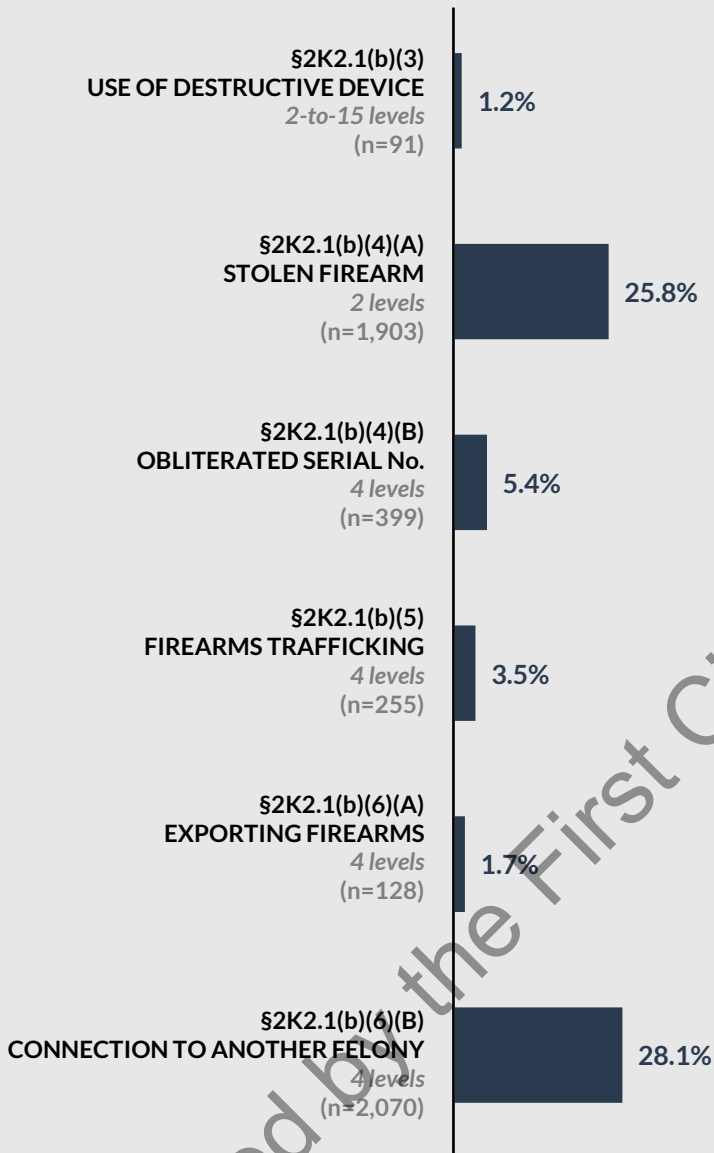


Figure 3. §2K2.1 ENHANCEMENTS
Fiscal Year 2021



Specific Offense Characteristics

Section 2K2.1 enhancements based on aggravating circumstances applied to varying degrees in fiscal year 2021. The most frequently applied enhancement was for offenses involving a stolen firearm or one with an altered or obliterated serial number, which applied in nearly one-third (31.2%) of the cases (Figure 3).³² This enhancement reflects both the increased likelihood that the firearm will be used in the commission of a crime and the difficulty in tracing firearms with altered or obliterated serial numbers.³³ Section 2K2.1(b)(4)(A), providing a 2-level enhancement if the offense involved a stolen firearm, applied in 25.8 percent of the cases, while §2K2.1(b)(4)(B), a 4-level enhancement for offenses involving firearms with altered or obliterated serial numbers, applied in 5.4 percent of the cases.

The next most common enhancement, a 4-level increase at §2K2.1(b)(6)(B), applied in more than one-quarter (28.1%) of the cases. This enhancement applies when the firearm facilitated, or had the potential to facilitate, another felony offense.³⁴ Common scenarios in which the enhancement applies include burglaries and drug offenses. The enhancement applies to an offender who takes a firearm during the course of a burglary, even if the offender did not engage in any other conduct with that firearm during the course of the burglary.³⁵ The provision also applies in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug manufacturing materials, or drug paraphernalia.³⁶ The Commission

Figure 4. ENHANCEMENT FOR NUMBER OF FIREARMS
Fiscal Year 2021

determined that application of the enhancement is warranted in these cases because the firearm has the potential to facilitate another felony offense.³⁷ The last section of this report, discussing the results of Commission’s special coding project, includes an analysis of the type of other felony offenses offenders committed in conjunction with the §2K2.1 offense in a sample of cases.

The enhancements for trafficking firearms (3.5%), exporting firearms (1.7%), and offenses involving destructive devices (1.2%) were applied infrequently (Figure 3).

Section 2K2.1(b)(1) also provides a tiered enhancement ranging from a 2- to 10-level increase if the offense involved three or more firearms. The vast majority of firearms offenses (80.3%) involved one or two firearms and, therefore, the offender did not receive the enhancement (Figure 4). Of the remaining 19.7 percent of cases, the enhancement applied most frequently when the offense involved 3–7 firearms (12.5%) or 8–24 firearms (4.9%). Comparatively few offenders received the enhancement for an offense involving 25–99 firearms (2.1%) or 100 or more firearms (0.2%).

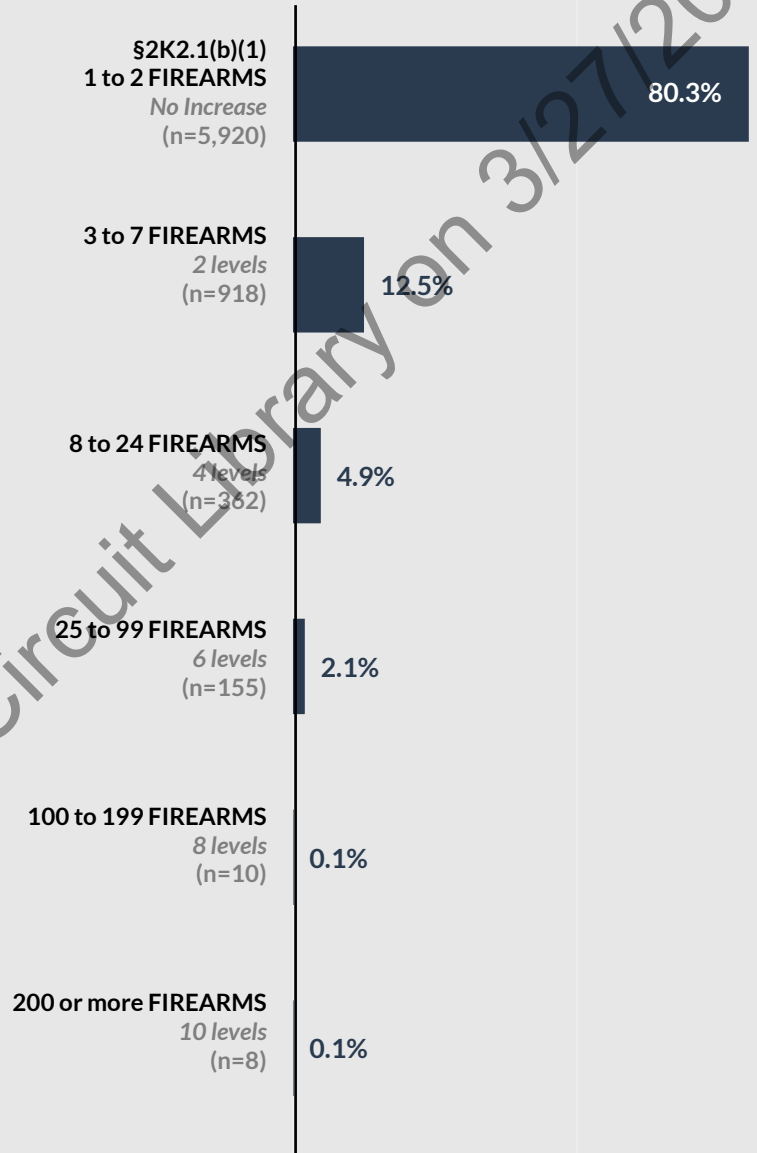


Figure 5. SENTENCES IMPOSED
Fiscal Year 2021



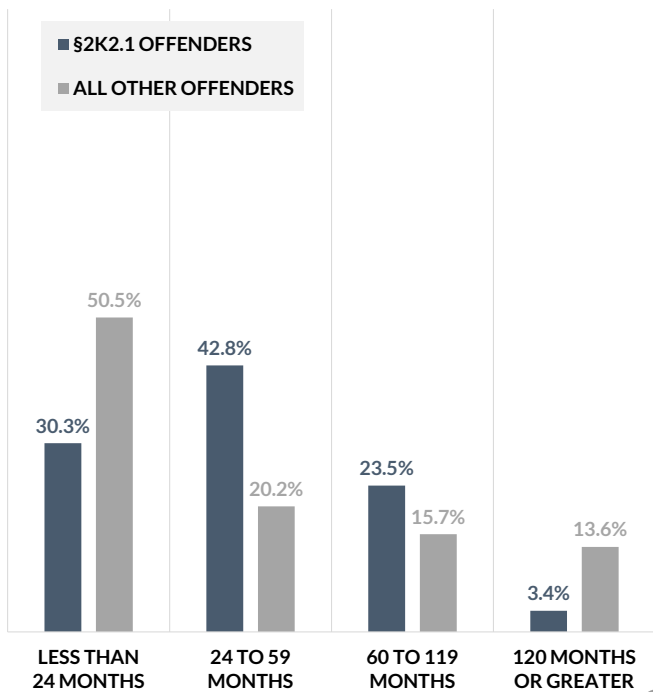
Sentence Length and Guideline Minimum

Like most offenders in the federal system, almost all firearms offenders sentenced under §2K2.1 received a term of imprisonment. In fiscal year 2021, a comparable percentage of firearms offenders (94.1%) and all other offenders (92.6%) were sentenced to a term of imprisonment (Figure 5).

Firearms offenders received shorter sentences than all other offenders on average. The average sentence imposed for §2K2.1 offenders was 42 months. Comparatively, the average sentence imposed for all other offenders was 48 months in fiscal year 2021.

As discussed above, most firearms offenders sentenced under §2K2.1 in fiscal year 2021 were subject to a ten-year statutory maximum sentence. Among offenders sentenced to less than ten years of imprisonment, §2K2.1 firearms offenders received longer sentences than other offenders. For example, nearly one-quarter (23.5%) of §2K2.1 offenders were sentenced to a term of imprisonment between 60 and 119 months compared to 15.7 percent of all other offenders (Figure 6). Likewise, 42.8 percent of §2K2.1 offenders received a sentence between 24 and 59 months compared to 20.2 percent of all other offenders. Firearms offenders received sentences of less than 24 months at a considerably lower rate than other offenders (30.3% compared to 50.5%).

Figure 6. SENTENCE LENGTH DISTRIBUTION
Fiscal Year 2021



Sentences Relative to the Guideline Range

The guidelines exert a strong influence on sentences imposed in firearms cases. Half of the firearms offenders sentenced under §2K2.1 (49.6%) received a sentence within the guideline range, which is 9.7 percentage points higher than the within range rate for all other offenders (39.9%) sentenced in fiscal year 2021 (Figure 7). Accordingly, a smaller percentage of firearms offenders sentenced under §2K2.1 received a sentence below the guideline range compared to all other offenders. Of the 7,373 §2K2.1 offenders sentenced in fiscal year 2021, 9.2 percent received a departure below the guideline range, including 2.8 percent who received a

Figure 7. §2K2.1 SENTENCES RELATIVE TO THE GUIDELINE RANGE
Fiscal Year 2021

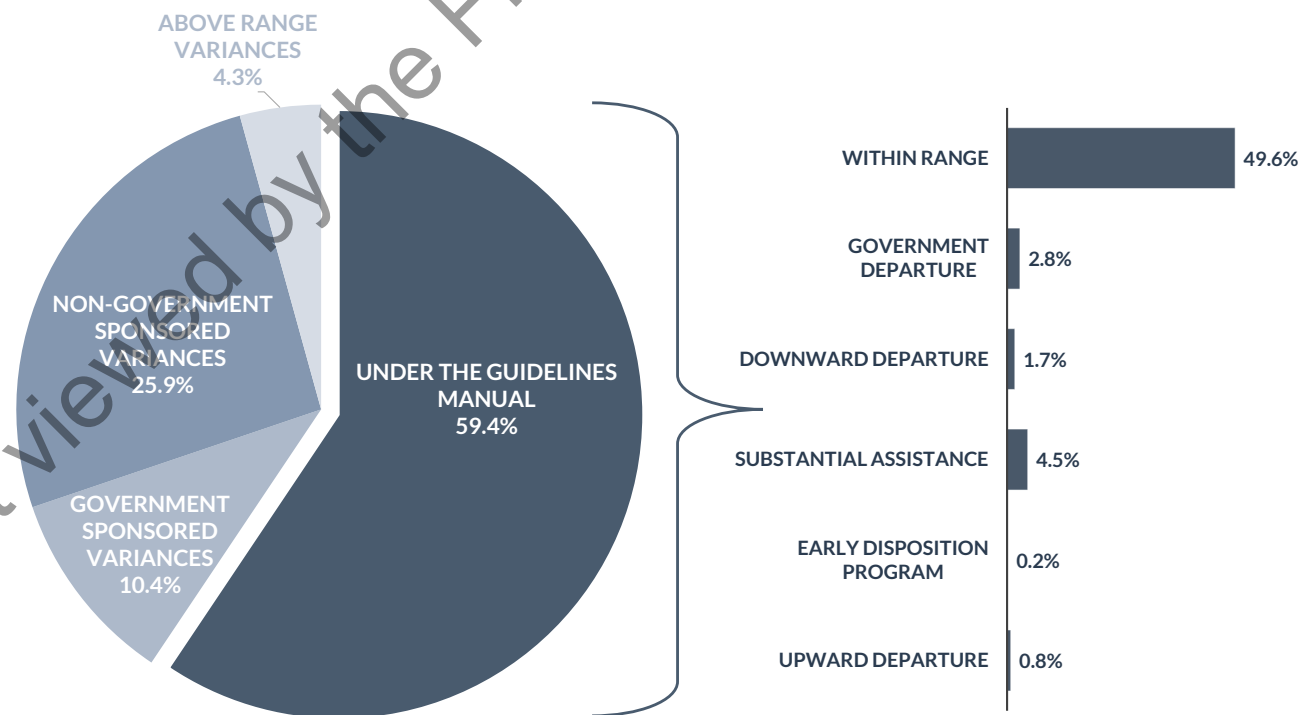
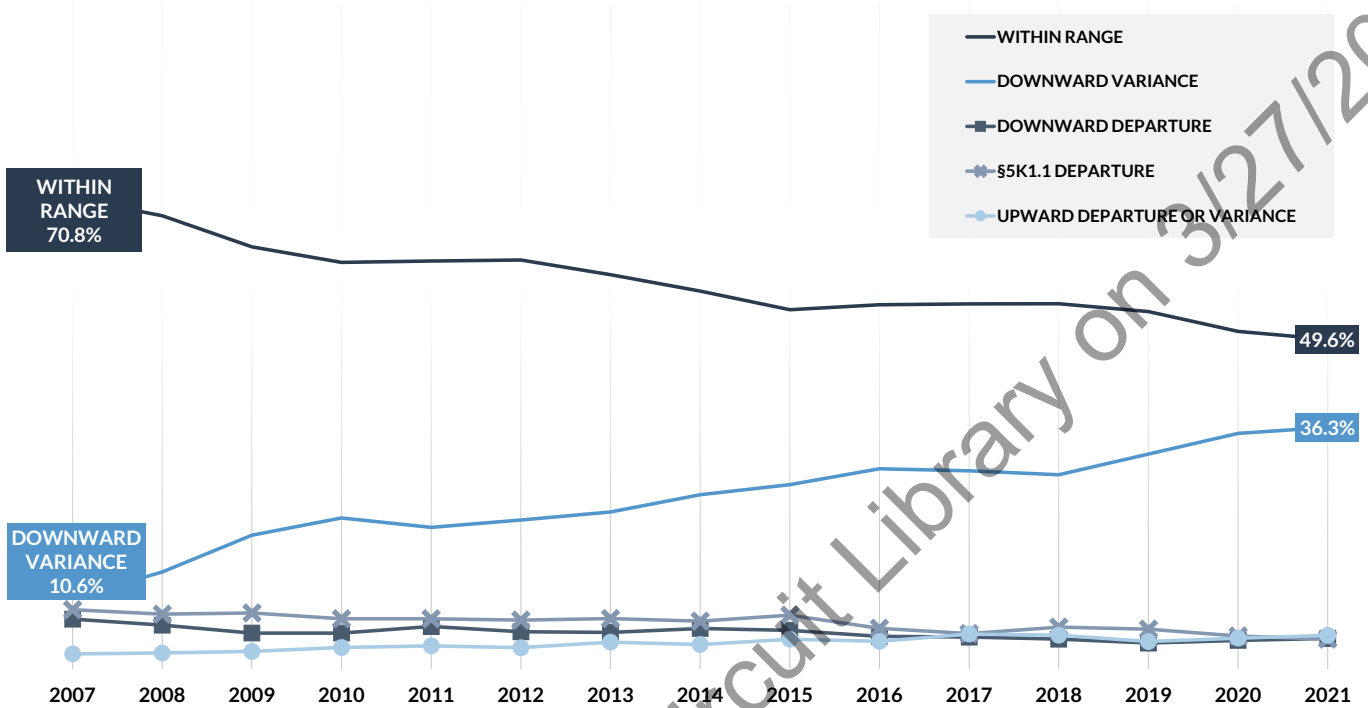


Figure 8. TREND IN §2K2.1 SENTENCES RELATIVE TO THE GUIDELINE RANGE



government sponsored departure,³⁸ 1.7 percent who received a non-government sponsored departure, and 4.5 percent who received a downward departure based on substantial assistance to the government under §5K1.1. Relatively few firearms offenders (0.8%) received a departure above the applicable guideline range.

Most of the firearms offenders sentenced below the guideline range received a variance under 18 U.S.C. § 3553(a).³⁹ There were more than twice as many non-government sponsored variances below the guideline range (25.9%) as there were government-sponsored variances (10.4%) for §2K2.1 offenders sentenced in fiscal year 2021. Variances above the applicable guideline range were infrequent for §2K2.1

offenders (4.3%), but were more than double the rate for all other offenders sentenced in fiscal year 2021 (1.8%).

Although firearms offenders are sentenced within the guideline range at a higher rate than other offenders, the percentage of cases in which the offender was sentenced below the guideline range has increased over time. From fiscal years 2007 to 2021, the rate of within range sentences decreased from 70.8 percent to 49.6 percent, while the rate of downward variances increased from 10.6 percent to 36.3 percent (Figure 8). The rates of downward departures, substantial assistance departures under §5K1.1, and upward departures or variances has remained relatively steady over the last five years, hovering between four and six percent of the cases.

Despite a growing number of firearms offenders sentenced below the guideline range, the influence of §2K2.1 on the average sentence imposed nevertheless shows that the guideline has a strong anchoring effect on the sentences for this group of offenders. When courts sentence §2K2.1 offenders below the guideline range, the extent of the reduction below the range is smaller compared to other offenders. In fiscal year 2021, the average sentence (42 months) for §2K2.1 offenders was only five months, or 10.6 percent, below the bottom of the average guideline range (47 months)—that is, the average guideline minimum (Figure 9). In comparison, the average sentence length for all other offenders (48 months) was 17 months, or 26.1 percent, below the average guideline minimum (65 months).

The influence of §2K2.1 on the average sentence imposed has generally remained stable over time, with the average sentence imposed adhering closely to the average guideline minimum. Over a 15-year period, the average guideline minimum ranged from a low of 44 months (fiscal year 2007) to a high of 50 months (fiscal year 2015) (Figure 9). During the same time period, the difference between the average guideline minimum and average sentence imposed varied only slightly, ranging from one month (fiscal year 2007) to five months (fiscal years 2014 and 2021).

Figure 9. TREND IN §2K2.1 AVERAGE SENTENCE AND AVERAGE GUIDELINE MINIMUM

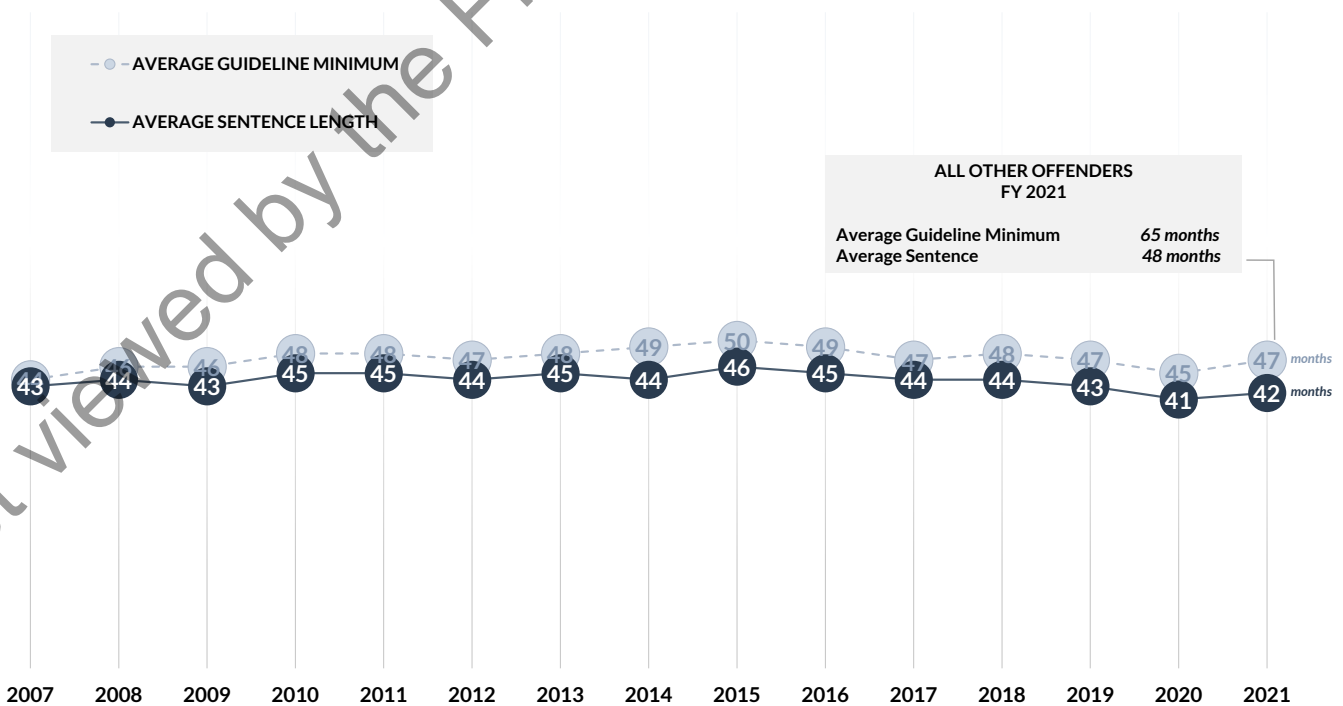
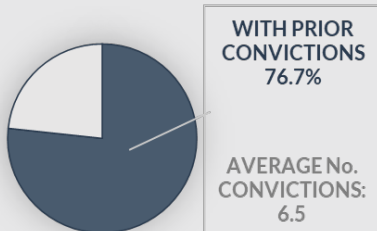
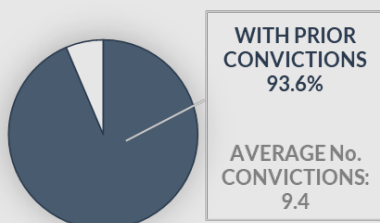


Figure 10. PREVALENCE OF PRIOR CONVICTIONS
Fiscal Year 2021

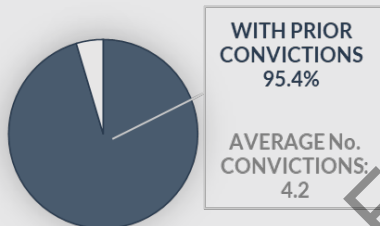
ALL OFFENDERS



§2K2.1 OFFENDERS



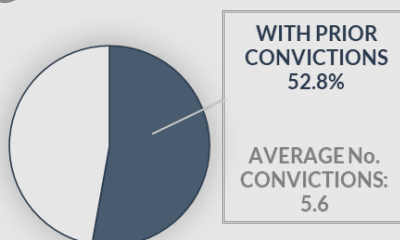
§2L1.2 OFFENDERS



§2D1.1 OFFENDERS



§2B1.1 OFFENDERS



Criminal History

The Commission collects information on the number of convictions and the types of offenses in the criminal histories of federal offenders as part of an ongoing research project. For this report, the Commission collected information on the criminal histories of the 7,373 offenders sentenced under §2K2.1 in fiscal year 2021 for whom complete documentation was submitted to the Commission.

Firearms offenders have more extensive criminal histories than other federal offenders. Of the felony §2K2.1 offenders sentenced in fiscal year 2021, 93.6 percent had at least one prior conviction (Figure 10). Among the offenders sentenced under the other most commonly applied guidelines, the prevalence of prior convictions varies substantially. That rate of prior convictions for immigration offenders who illegally reentered the United States (95.4%) is comparable to firearms offenders, but the rate is significantly lower for drug trafficking offenders (72.9%) and fraud offenders (52.8%). This difference is partly explained by the fact that a prior conviction is an element of the offense of conviction for most §2K2.1 offenders and most §2L1.2 offenders illegally reentered the country following a conviction.

In addition, among offenders with prior convictions, §2K2.1 offenders had the highest average number of convictions. Firearms offenders had an average of 9.4 prior convictions, compared to 7.7 for drug trafficking offenders, 5.6 for fraud offenders, and 4.2 for immigration offenders.

Instant Offense and Criminal History Category

Firearms offenders have higher criminal history scores and are placed in higher criminal history categories (CHCs) than other offenders as a result of the incidence of prior criminal convictions. In fiscal year 2021, 53.1 percent of §2K2.1 offenders were assigned to CHCs IV, V, or VI (the highest categories) (Figure 11). By contrast, less than one-quarter (22.4%) of all other offenders were assigned to those categories. Only 14.9 percent of §2K2.1 offenders were assigned to CHC I (the lowest category), while 44.6 percent of all other offenders were in CHC I.

Type of Prior Convictions

Firearms offenders were also more likely to have violence in their criminal histories than other offenders. A majority (60.6%) of firearms offenders had at least one prior conviction for a violent offense, which is more than twice the rate of violent prior convictions for other offenders (Figure 12).⁴⁰ Comparatively, only 29.0 percent of all other offenders had a prior conviction for a violent offense.

Figure 11. CRIMINAL HISTORY CATEGORY Fiscal Year 2021

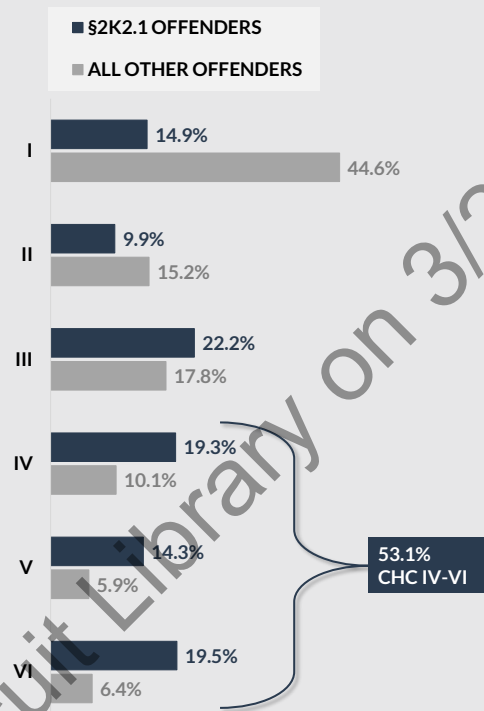


Figure 12. OFFENDERS WITH VIOLENT PRIOR CONVICTIONS Fiscal Year 2021

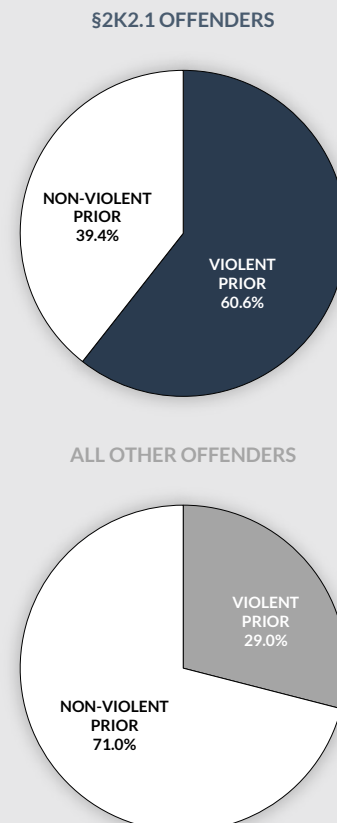
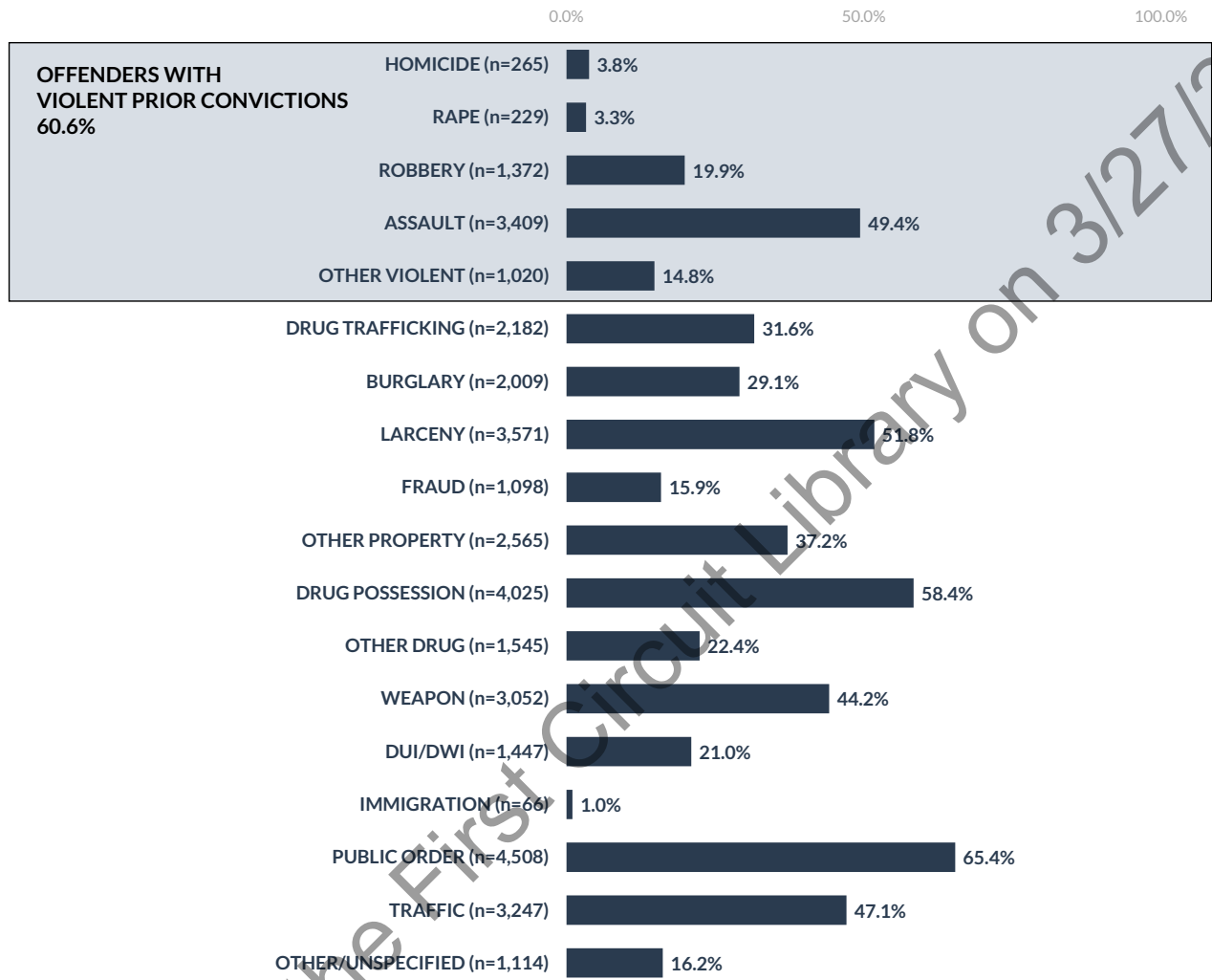


Figure 13. TYPE OF PRIOR CONVICTIONS AMONG §2K2.1 OFFENDERS
 Fiscal Year 2021



Among §2K2.1 offenders with prior convictions, assault was the most common violent offense, with nearly half of §2K2.1 offenders (49.4%) having a prior conviction for assault (Figure 13). Robbery was the next most common violent prior offense, with one-fifth of §2K2.1 offenders (19.9%) having a prior conviction. Nearly equal proportions of §2K2.1 offenders had prior convictions for homicide (3.8%) and rape (3.3%). Approximately 15 percent of §2K2.1 offenders had at least one prior conviction for an unspecified or “other” type of violent offense (14.8%).⁴¹

Despite the relatively high number of §2K2.1 offenders with prior violent convictions, the most common prior offense among §2K2.1 offenders was a public order crime, with 65.4 percent having at least one such prior conviction. More than half of §2K2.1 offenders also had a prior conviction for drug possession (58.4%) or larceny (51.8%). Notably, nearly half of the §2K2.1 offenders had previously been convicted of a weapons offense (44.2%).

Prior Violent and Drug Trafficking Convictions

The Commission previously examined whether distinctions can be made among certain firearms offenders, including armed career criminals and career offenders, based on the nature of their prior offenses. Among firearms offenders sentenced under the Armed Career Criminal Act or career offender guideline,⁴² the Commission’s research showed clear and notable differences between offenders whose prior convictions included drug trafficking offenses and those who committed a violent offense.⁴³

This section of the report continues the Commission’s examination of the composition of offenders’ prior convictions with an analysis of §2K2.1 offenders’ prior convictions. This analysis classifies §2K2.1 firearms offenders sentenced in fiscal year 2021 into four categories based on the type of prior convictions, if any, in their criminal history:

- **Violent Prior Offenders** includes those offenders with at least one prior conviction for a violent offense and no prior convictions for a drug trafficking offense.
- **Drug Trafficking Prior Offenders** includes those offenders with at least one prior conviction for a drug trafficking offense and no prior convictions for a violent offense.
- **Mixed Prior Offenders** includes those offenders with prior convictions for both violent and drug trafficking offenses.
- **Neither Prior Offenders** includes those offenders with no prior violent or drug trafficking convictions. This group also includes firearms offenders with no prior convictions whatsoever.

The majority of firearms offenders (60.6%) sentenced in fiscal year 2021 had a prior conviction for a violent offense. As shown in Figure 14, 42.4 percent of §2K2.1 offenders had a violent prior conviction (and no prior drug trafficking conviction), and almost one-fifth (18.2%) of the firearms offenders had been previously convicted of both violent and drug trafficking offenses.

Figure 14. COMPOSITION OF PRIOR CONVICTIONS AMONG §2K2.1 OFFENDERS
Fiscal Year 2021

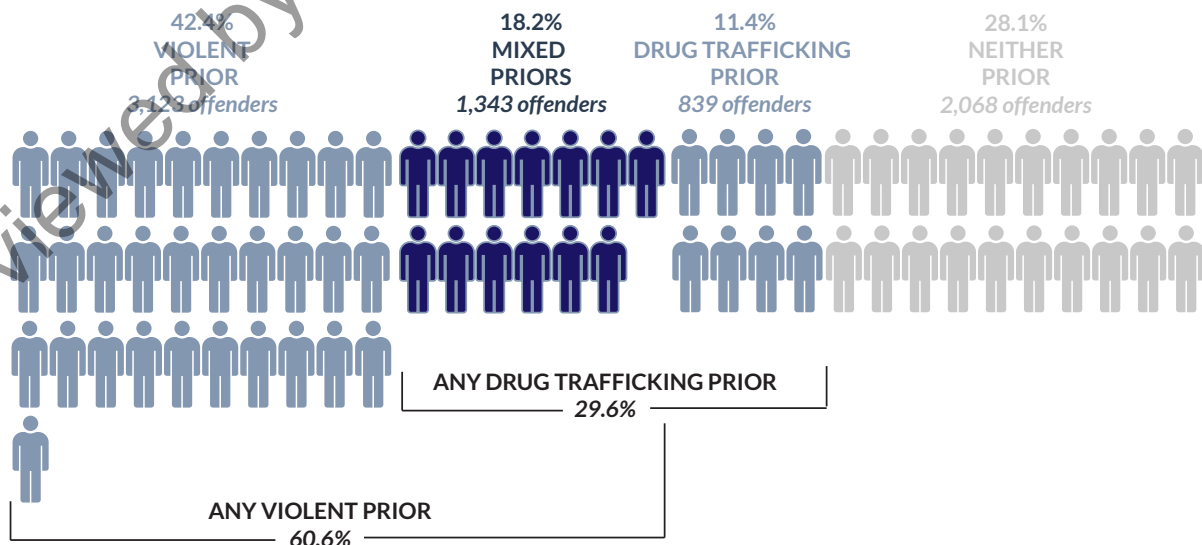
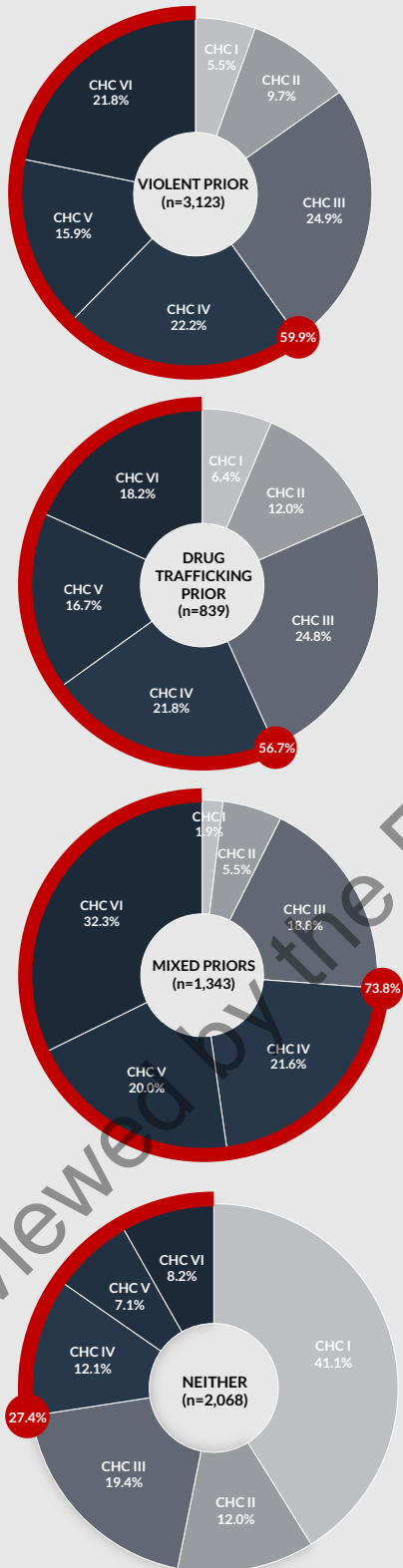


Figure 15. §2K2.1 CRIMINAL HISTORY CATEGORY BY PRIOR CONVICTIONS
Fiscal Year 2021



Nearly thirty percent of §2K2.1 offenders (29.6%) had a prior drug trafficking conviction—combining the 18.2 percent of offenders who had both prior violent and drug trafficking convictions with 11.4 percent of §2K2.1 offenders who had a prior drug trafficking conviction (but no prior conviction for a violent offense). The remaining 28.1 percent of §2K2.1 offenders had no prior convictions for either drug trafficking or violent offenses.

Criminal History Category by Prior Offense Type Grouping

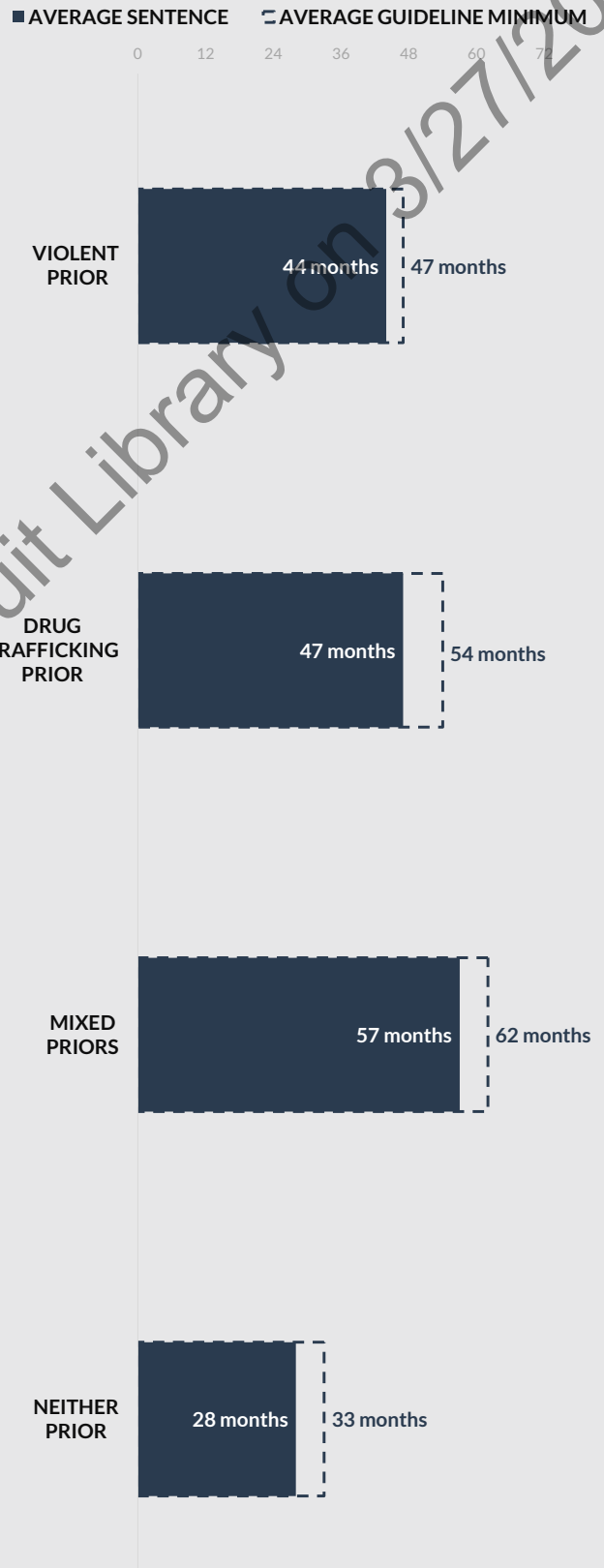
The majority of firearms offenders with prior convictions for either a violent or drug trafficking offense qualified for the three highest criminal history categories in fiscal year 2021. Those firearms offenders with both types of prior convictions were placed in CHCs IV, V, or VI at the highest rate. Nearly three-quarters (73.8%) of the *Mixed Prior Offenders* with prior convictions for both a drug trafficking offense and violent offense were in CHCs IV, V, or VI (Figure 15). Comparatively, *Violent Prior Offenders* (59.9%) and *Drug Trafficking Prior Offenders* (56.7%) were in the highest CHCs in less than 60 percent of the cases. The difference was most marked in CHC VI, the highest category. Firearms offenders with a prior conviction for both a violent offense and a drug trafficking offense were in CHC VI at a rate over ten percentage points higher, with nearly one-third (32.3%) of the *Mixed Prior Offenders* in CHC VI, compared to 21.8 percent of *Violent Prior Offenders* and 18.2 percent of *Drug Trafficking Prior Offenders*.

Conversely, most §2K2.1 offenders (72.6%) without prior violent or drug trafficking convictions were in the three lowest criminal history categories in fiscal year 2021. This group also includes offenders with no prior convictions of any kind.

Prior convictions for certain violent offenses and drug trafficking crimes can impact the offender’s guideline range both by increasing the base offense level and the criminal history score. The base offense level for §2K2.1 offenders increases if the offender had one or more prior convictions for a crime of violence⁴⁴ or controlled substance offense,⁴⁵ and those prior convictions also receive criminal history points. Accordingly, the average guideline minimum and average sentence imposed in fiscal year 2021 were the longest for firearms offenders who had a prior conviction for both a drug trafficking offense and a violent crime. The *Mixed Prior Offenders* with both types of prior convictions had a higher average guideline minimum (62 months), compared to *Violent Prior Offenders* (47 months) and *Drug Trafficking Prior Offenders* (54 months) sentenced under §2K2.1 (Figure 16). Relatedly, the average sentence for *Mixed Prior Offenders* with both types of prior convictions (57 months) is higher than the §2K2.1 offenders with only either prior drug trafficking convictions (47 months) or prior violent convictions (44 months).

Comparatively, §2K2.1 offenders with neither a prior violent nor drug trafficking conviction had the lowest average guideline minimum and average sentence imposed. The average guideline minimum (33 months) and average sentence (28 months) were significantly lower than for firearms offenders with prior convictions for a violent crime or drug trafficking offense.

Figure 16. §2K2.1 AVERAGE SENTENCE AND GUIDELINE MINIMUM BY PRIOR CONVICTIONS
Fiscal Year 2021



Classification of Firearms Offenders

This section focuses on firearms offenders who were classified as prohibited persons based on their statute of conviction (i.e., 18 U.S.C. § 922(g), (n)) or application of the guidelines.⁴⁶ This section discusses characteristics of prohibited persons and their offenses. This section concludes with a brief analysis of firearms offenders who were not classified as prohibited persons.

Prohibited Person Offenses

Of the 7,373 §2K2.1 firearms offenders sentenced in fiscal year 2021, nearly 90 percent (88.8%) (n=6,549), belonged to a restricted class of persons prohibited by law from possessing a firearm or ammunition (Figure 17).

Most of the 6,549 offenders were prohibited from possessing a firearm or ammunition because they had a prior felony conviction (79.0%). Five percent of

the offenders (5.3%) were prohibited from possessing a firearm because they were illegal drug users or addicted to controlled substances at the time of their offense. Although less common, approximately three percent of the offenders were prohibited from possessing a firearm because they were aliens unlawfully in the United States or were admitted to the United States under a nonimmigrant visa.

Figure 17. NATURE OF §2K2.1 PROHIBITED PERSON OFFENSES
Fiscal Year 2021

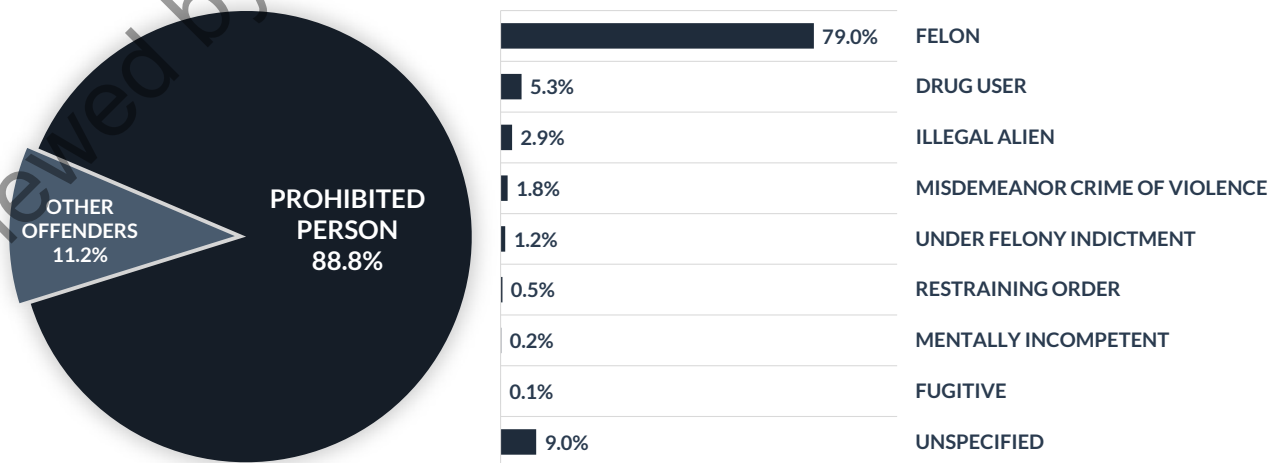
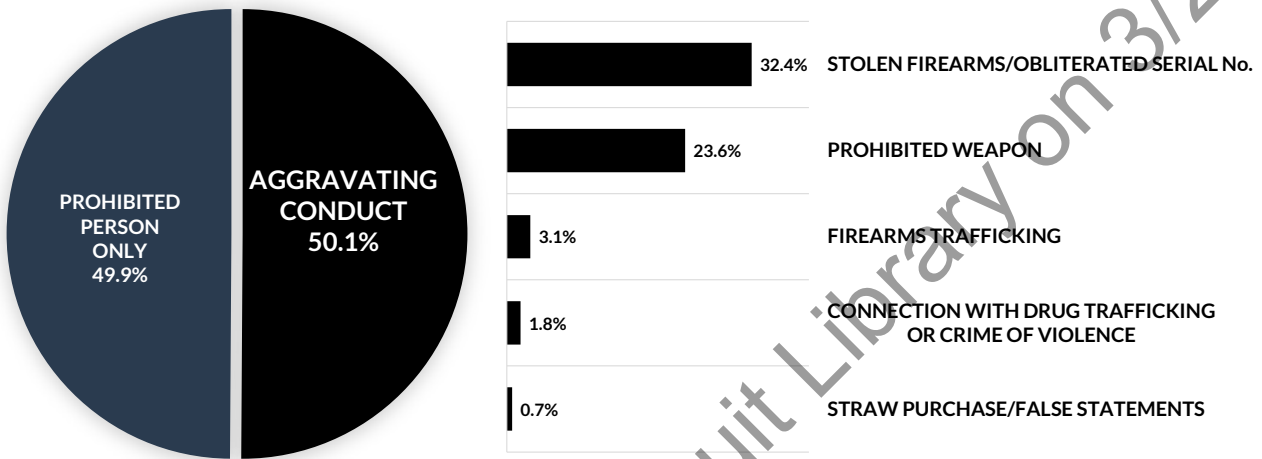


Figure 18. AGGRAVATING CONDUCT OF §2K2.1 PROHIBITED PERSONS
Fiscal Year 2021

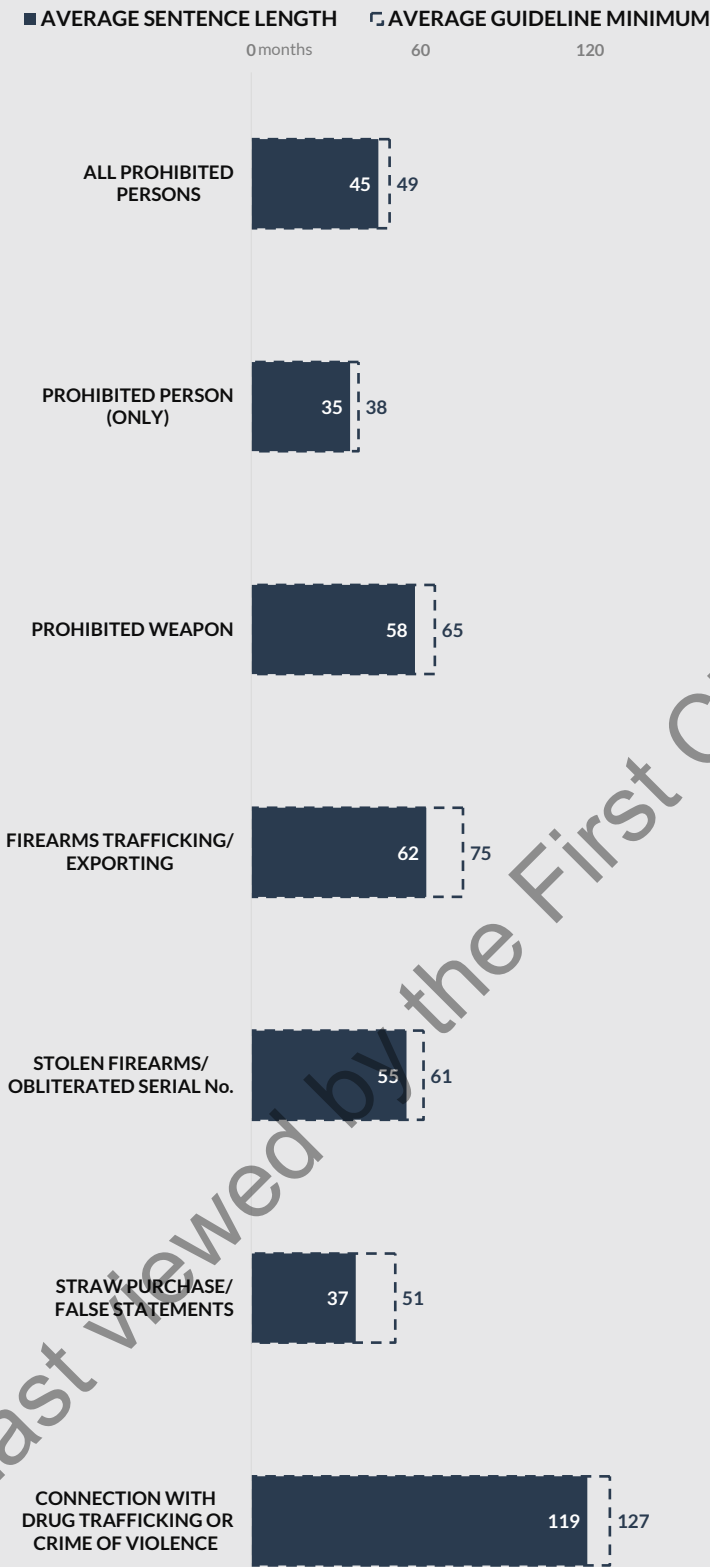


The Commission analyzed the conduct of these prohibited persons to gain a better understanding of the offenses. Specifically, the Commission analyzed the nature of the weapon involved in the offense and whether the offender otherwise trafficked or used firearms.

Of the 6,549 prohibited persons, 49.9 percent did not engage in additional aggravating conduct, that is, their status as a prohibited person solely formed the basis of the conviction and applicable guideline calculation (Figure 18). However, half (50.1%) of prohibited persons were convicted of another offense or engaged in additional aggravating conduct as

determined by the court and reflected in the guideline calculation. In nearly one-third (32.4%) of the cases in fiscal year 2021, the offense involved a stolen firearm or a firearm with an altered or obliterated serial number. In nearly one-quarter (23.6%) of the cases, the offense involved a prohibited weapon such as a sawed-off shotgun or machine gun. A smaller share of prohibited persons also trafficked firearms (3.1%), or used, or conspired to use, the firearm in connection with a drug trafficking offense or a crime of violence (1.8%). A very small number of prohibited person cases involved straw purchases or a false statement when purchasing a firearm (0.7%).

Figure 19. AVERAGE SENTENCE AND GUIDELINE MINIMUM OF §2K2.1 PROHIBITED PERSONS
Fiscal Year 2021



The average guideline minimum and sentence imposed for prohibited persons varied based on the presence of aggravating factors. Among all offenders who were classified as prohibited persons in fiscal year 2021, the average guideline minimum was 49 months and the average sentence was 45 months (Figure 19). Among prohibited persons, those whose offense did not involve any aggravating factors had a shorter average guideline minimum (38 months) and average sentence (35 months) than those whose offenses involved additional aggravating factors.

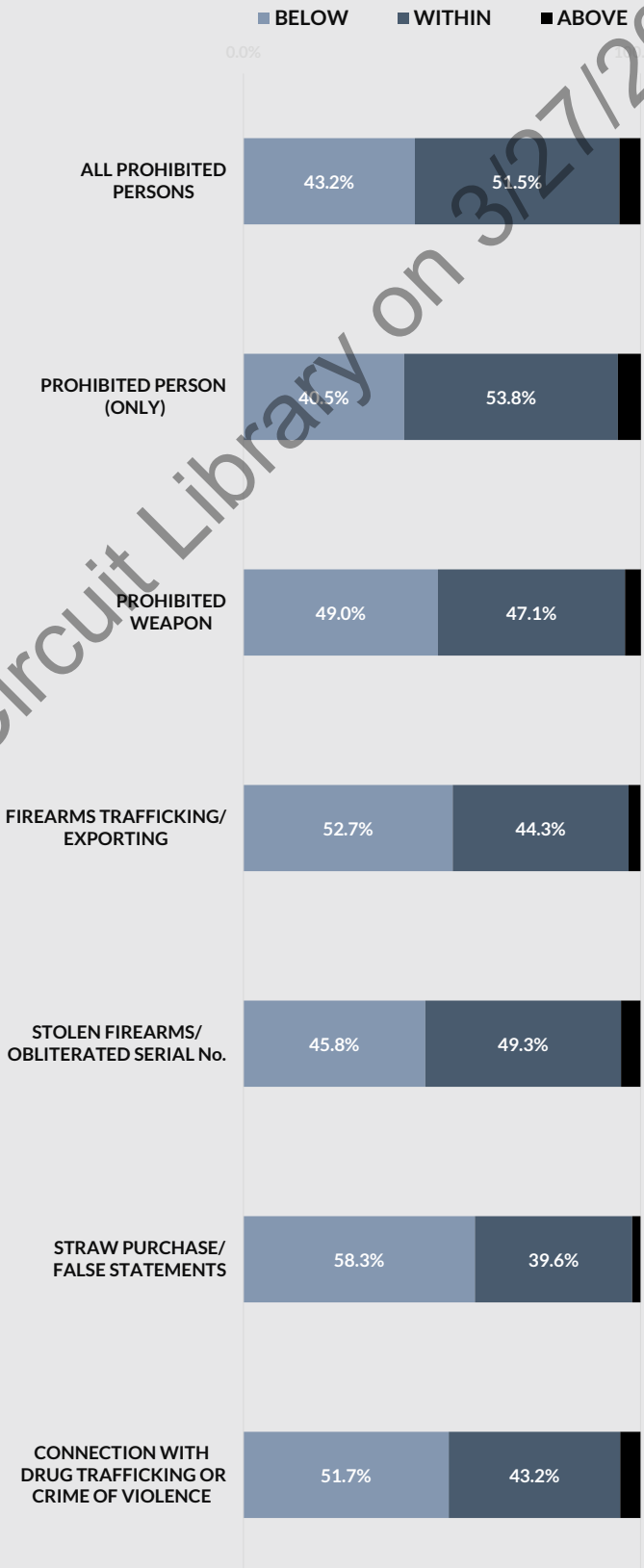
As discussed above, §2K2.1 includes enhancements for offenses involving a prohibited weapon (the base offense level increases) and for offenses involving a stolen firearm (2-level increase) or a firearm with an altered or obliterated serial number (4-level increase).⁴⁷ Accordingly, the offenders whose offenses involved a prohibited weapon, or a stolen firearm or a firearm with an altered or obliterated serial number had higher average guideline minimums (65 months and 61 months, respectively) than those whose offenses did not involve aggravating circumstances (38 months). For the nearly one-quarter of the prohibited person cases that involved a prohibited weapon, the average sentence (58 months) was 23 months longer than for prohibited persons whose offense did not involve any additional aggravating factors (35 months). Likewise, for the nearly one-third of the prohibited person cases that involved a stolen firearm or a firearm with an altered or obliterated serial number, the average sentence (55 months) was 20 months longer than for prohibited persons whose offense did not involve aggravating conduct (35 months).

A 4-level increase for §2K2.1 offenders who trafficked⁴⁸ or exported⁴⁹ firearms also affected the sentencing outcomes. The 3.1 percent of the prohibited persons whose offense involved trafficking or exporting had nearly double the average guideline minimum (75 months) and sentence (62 months) compared to prohibited persons who did not engage in other aggravating conduct (38 months and 35 months, respectively).

Prohibited persons sentenced under §2K2.1 who conspired to or used a firearm in connection with a crime of violence or drug trafficking offense comprised a small percentage of the offenders (1.8%). However, they had the highest average guideline minimum (127 months) and longest average sentence (119 months) of all §2K2.1 offenders.

Although prohibited persons who did not engage in other aggravating conduct had the shortest average sentence imposed (35 months), those offenders were sentenced within the guideline range at a higher rate (53.8%) than all other prohibited persons (Figure 20). The within guideline range rate for the prohibited persons whose offenses involved aggravating conduct in fiscal year 2021 ranged from 49.3 percent (stolen firearms/obliterated serial number) to 39.6 percent (straw purchases and false statements). Notably, offenses that involved firearms trafficking and straw purchases or false statements were sentenced below the guideline range at the highest rate (52.7% and 58.3%, respectively). By the nature of the crime, firearms trafficking offenses typically involved at least one other co-participant. Accordingly, the §5K1.1 rate for providing substantial assistance in the prosecution of another individual was highest among traffickers (11.4%), at more than three times the rate for all prohibited persons (3.7%).

Figure 20. SENTENCE RELATIVE TO THE GUIDELINE RANGE FOR §2K2.1 PROHIBITED PERSONS
Fiscal Year 2021



Other Firearms Offenders

Of the 7,373 §2K2.1 offenders sentenced in fiscal year 2021, 824 offenders were not a member of a restricted class that prohibited them from possessing a firearm, comprising 11.2 percent of all §2K2.1 offenders in the study (Figure 21). Most §2K2.1 offenders who were not prohibited from possessing a firearm were straw purchasers or made false statements in the purchase of a firearm (43.7%). One-third (33.9%) of the 824 offenders participated in offenses involving stolen firearms or firearms with an altered or obliterated serial number, while 30.5 percent of the offenses involved trafficking of firearms, and 27.2 percent involved a prohibited weapon.

Figure 21. AGGRAVATING CONDUCT OF OTHER §2K2.1 OFFENDERS
Fiscal Year 2021

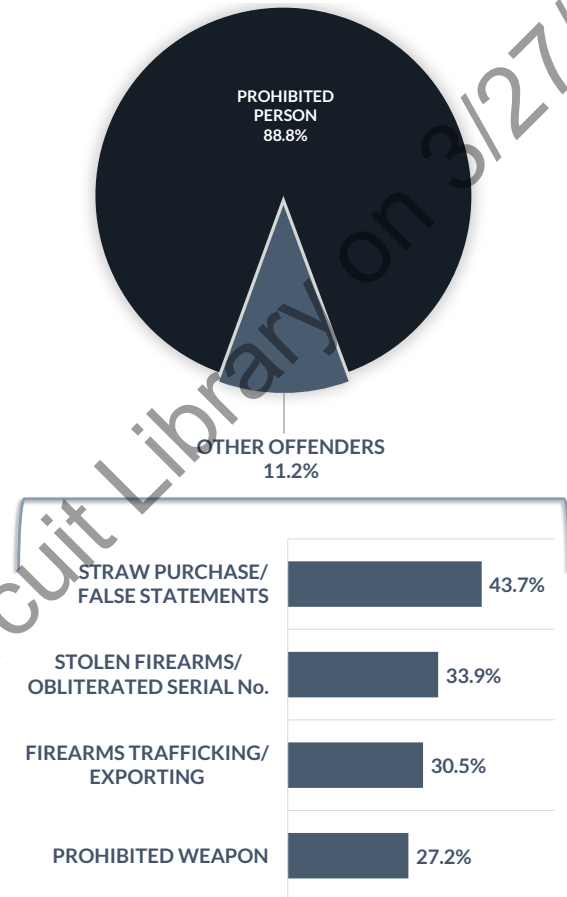


Figure 22. AVERAGE SENTENCE AND GUIDELINE MINIMUM OF OTHER §2K2.1 OFFENDERS
Fiscal Year 2021



The sentencing outcomes were less severe for offenders who did not belong to a restricted class compared to those who did. The average guideline minimum in fiscal year 2021 was 30 months for offenders who were not a member of a restricted class, compared to 49 months for prohibited persons (Figure 22). The average sentence of 21 months was less than half for this group of firearms offenders compared to 45 months for prohibited persons.

Special Coding Project Data Analysis

This section provides additional insight into the nature of the §2K2.1 offenders' criminal conduct, the risk of harm posed by the offenders, and the events leading to the offenders' apprehension by law enforcement. The Commission conducted a special coding project of a 25 percent random sample (n=1,796) representative of the 7,373 §2K2.1 offenders sentenced in fiscal year 2021 (Figure 23).⁵⁰

The Commission analyzed the types of other felonies committed in connection with the firearms offense (if any), whether the offender threatened or physically contacted another person, and whether the offender or a co-participant used a firearm during the instant offense. Additionally, the Commission analyzed the events that led to the offender's arrest for the instant offense.

Figure 23. FIREARMS SPECIAL CODING PROJECT
Fiscal Year 2021, 25% Random Sample

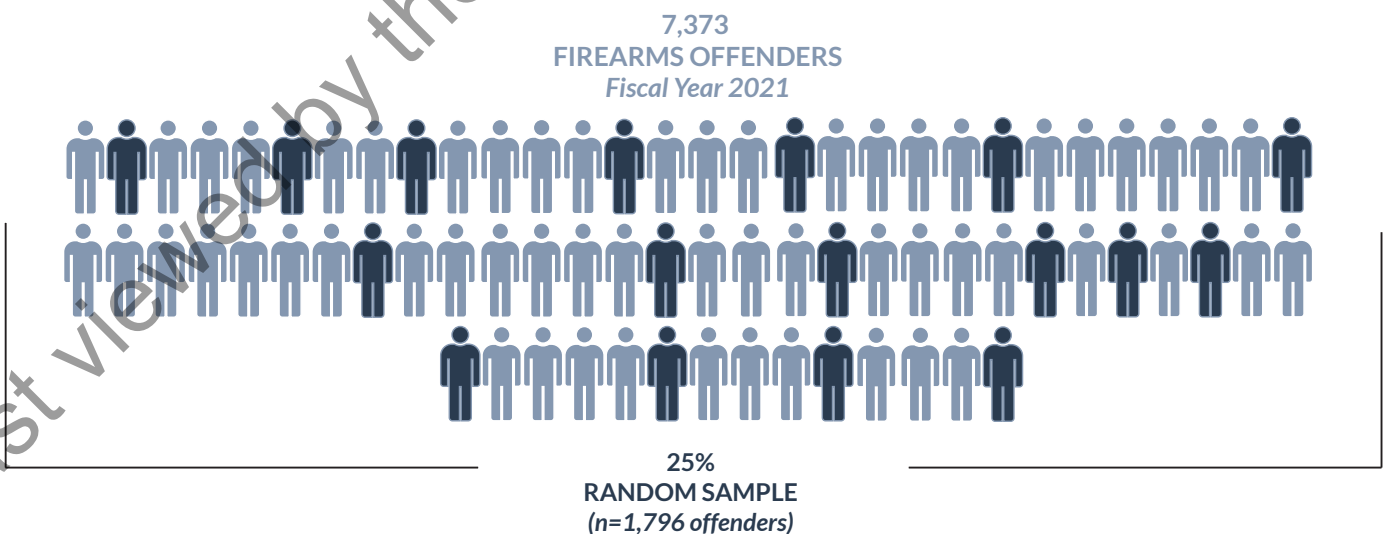
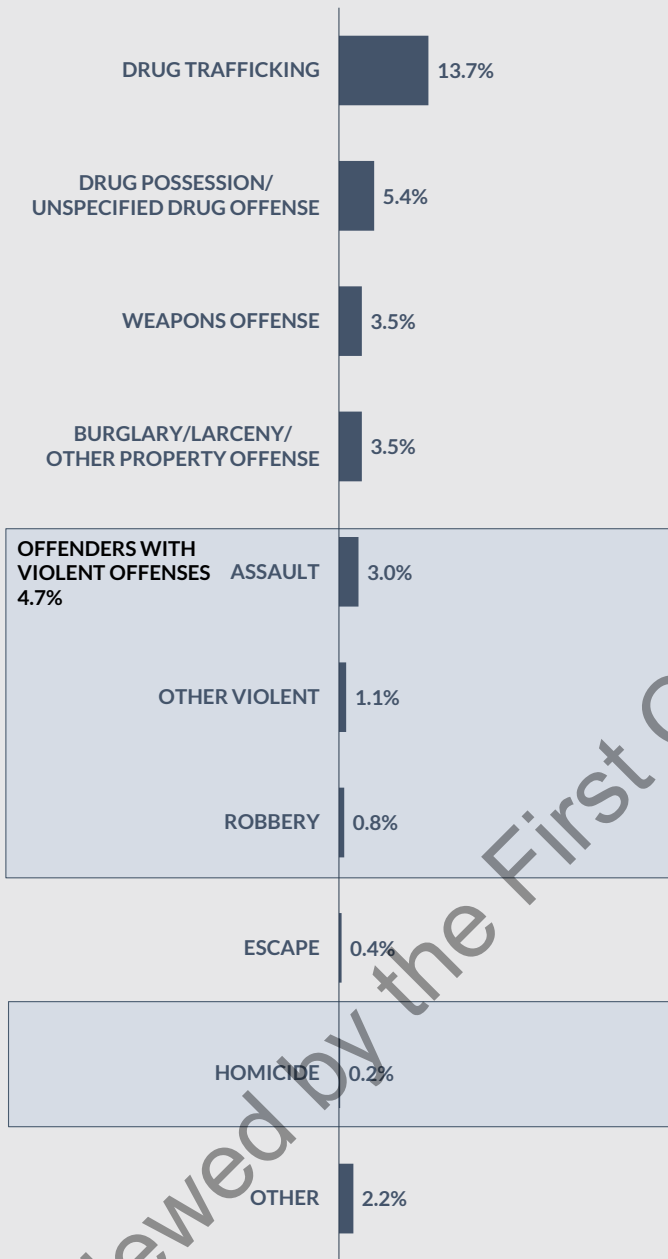


Figure 24. TYPE OF FELONY OFFENSE IN CONNECTION WITH FIREARMS OFFENSE
Fiscal Year 2021 Sample



Firearm Facilitated Another Felony Offense

As discussed above, §2K2.1(b)(6)(B) provides for a 4-level increase for cases involving a firearm that facilitated, or had the potential to facilitate, another felony offense.⁵¹ For subsection (b)(6)(B) to apply, the court must find that the offender committed another felony offense by a preponderance of the evidence; the offender need not have been convicted of the other felony offense.⁵²

Nearly one-third of the firearms offenders in the sample (29.1%) received a 4-level increase at §2K2.1(b)(6)(B) because they used, possessed, or transferred a firearm that facilitated, or had the potential to facilitate, another felony offense.⁵³ Drug offenses were the most common felonies committed in connection with the firearms offense (Figure 24). Of the firearms offenders in the sample, 13.7 percent committed a drug trafficking felony, and 5.4 percent committed a felony drug possession or unspecified drug offense in connection with the instant firearms offense. Firearms offenders in the sample committed one or more violent offenses such as homicide, robbery, or assault in connection with the firearms offense in 4.7 percent of the cases.⁵⁴ Assault was the most common (3.0%) type of violent offense.

Risk of Harm Involved in the Offense

The Commission used two measures to examine whether the offense involved a risk of harm to others. First, the Commission analyzed whether the offender threatened or engaged in physical contact with another person during the instant offense. In 4.3 percent of the cases, the firearms offender made physical contact with another individual during

the instant offense, and in 1.7 percent of cases the offender made physical contact with law enforcement while being arrested (Figure 25). In 7.8 percent of cases, the offender made a threat against another person during the commission of the offense or during arrest.

As a second measure, the Commission analyzed whether the offender or a co-participant used a firearm, and, if so, whether it caused physical harm. In 16.7 percent of cases in the sample, an offender or co-participant either brandished (5.7%) or discharged (11.0%) a firearm (Figure 26). Of the cases in which an offender or co-participant discharged a firearm, death resulted in 4.1 percent of the cases. In another 18.3 percent of the cases, the discharge caused physical injury to another individual, and in 3.6 percent of the cases, the offender or co-participant caused a self-inflicted injury by discharging the firearm. There was no physical harm to a person in the remaining cases (74.1%) in which an offender or co-participant discharged a firearm.

Offender Conduct Leading to Arrest

As discussed throughout the report, most firearms offenders sentenced under §2K2.1 were convicted of the offense because of their status as a prohibited person. Because status is core to the crime, the fact of conviction does not speak to the nature of the circumstances leading to offenders' apprehension. Accordingly, the Commission examined the conduct that ultimately led to the offender's arrest and prosecution for the instant offense. As part of this analysis, the Commission analyzed the reason for law enforcement's interdiction to assess whether the offender engaged in other criminal activity, whether the offender engaged in violent behavior, or whether the offender used a firearm.

Figure 25. PHYSICAL CONTACT OR THREATS DURING FIREARMS OFFENSE BY OFFENDER
Fiscal Year 2021 Sample

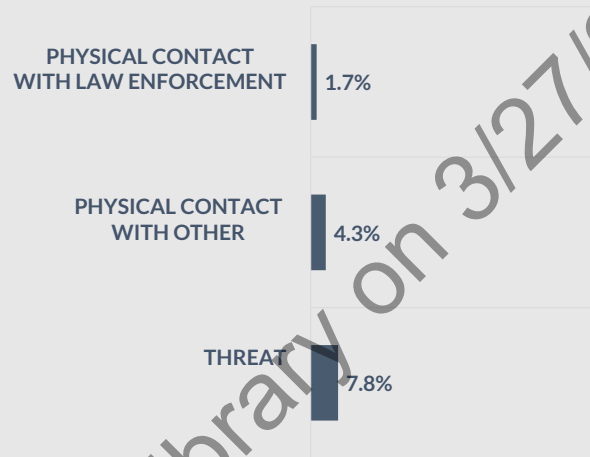
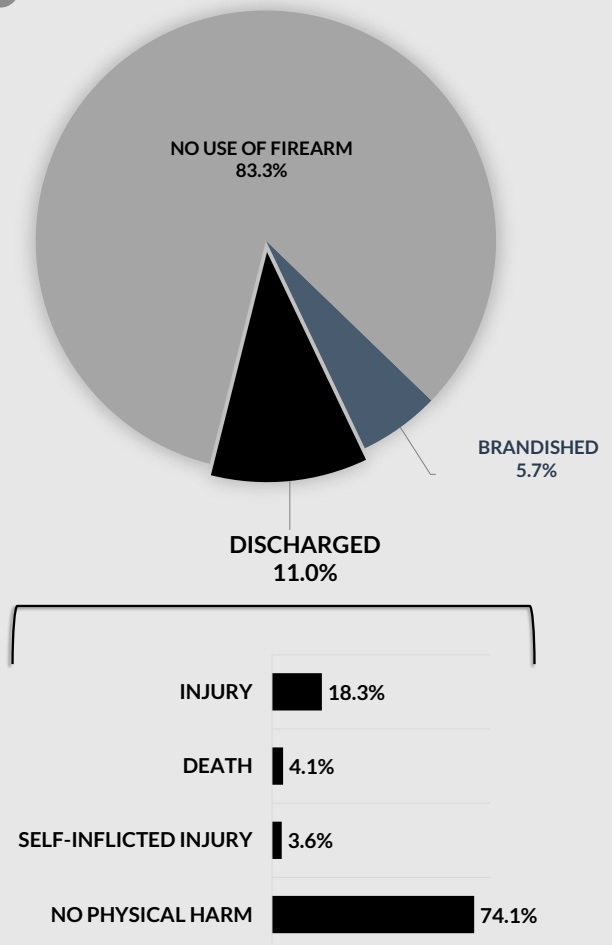


Figure 26. USE OF FIREARM DURING OFFENSE BY OFFENDER OR CO-PARTICIPANT
Fiscal Year 2021 Sample



Most commonly, §2K2.1 offenders (43.9%) were arrested for the instant offense following a proactive, targeted investigation conducted by law enforcement after receiving allegations of a crime (almost always an allegation other than the offender's status as a prohibited person) (Figure 27). The investigations most often centered on criminal activity involving firearms (40.3%) or drugs (30.2%).⁵⁵ In other instances, law enforcement arrested the firearms offender as part of an investigation in response to other criminal acts, such as burglaries (20.7%) or robberies (4.1%).⁵⁶

Another group of offenders were arrested and convicted of the firearms offense following routine police patrol. In over one-quarter of the cases in the sample, firearms offenders were arrested and convicted of the instant firearms offense following either a traffic stop (20.5%) or routine street patrol (7.0%). The traffic stops included both moving and non-moving violations but excluded driving under the influence.⁵⁷

The Commission also identified cases in which the offender's or a co-participant's use of a firearm led to law enforcement's interdiction. In nearly ten percent of the cases (9.1%), law enforcement arrested the offender following a report of a discharged firearm. In another 7.1 percent of the cases, a witness alerted law enforcement that the offender possessed a firearm, which led to the offender's arrest.

A small proportion of firearms offenders were arrested because the offender had an active warrant (5.1%) or the offender was found in possession of

EVIDENCE GATHERED FROM SOCIAL MEDIA BY LAW ENFORCEMENT

In approximately five percent of the §2K2.1 cases in the sample, law enforcement gathered evidence via social media indicating that the offender was involved in illegal activity or committed a crime.

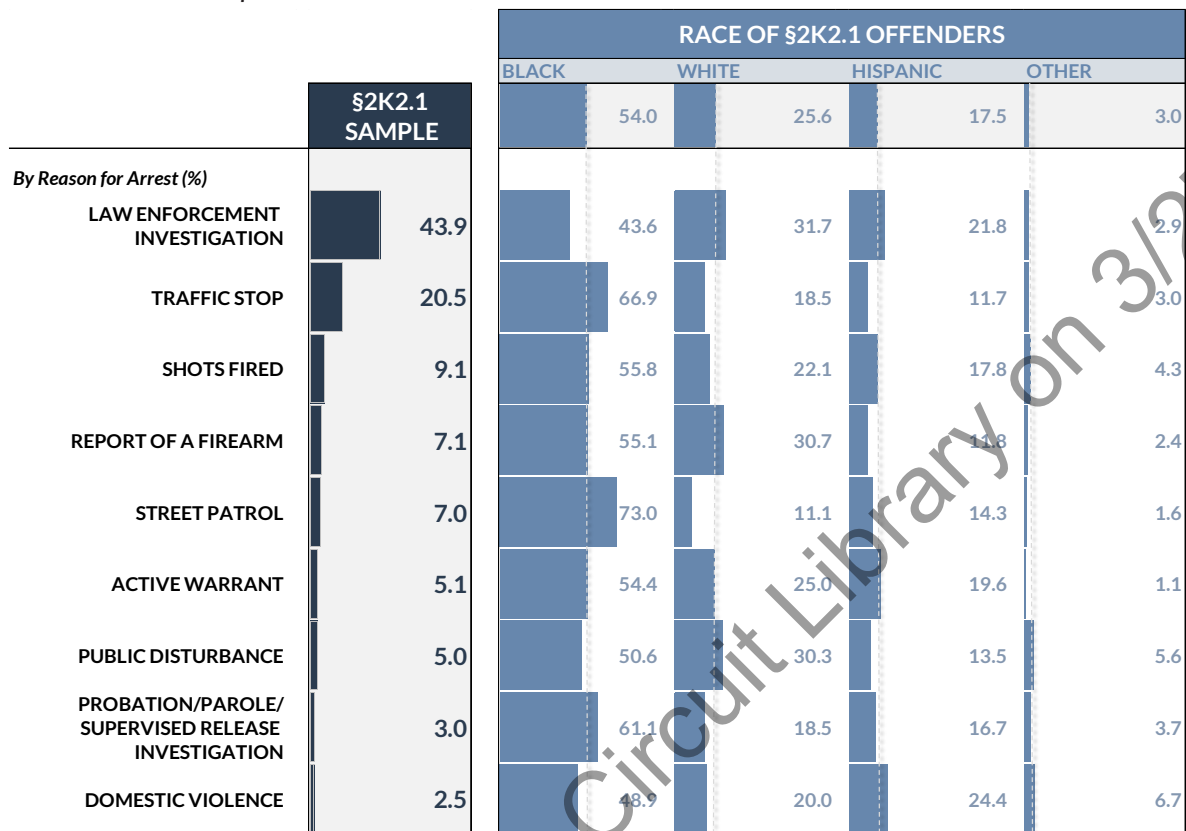
Most often, the offender displayed photos or videos of the firearm that formed the basis of the conviction, or the offender possessed or used illicit controlled substances.

In other instances, the locational feature on social media helped law enforcement track down the perpetrator to make an arrest.

a firearm while on supervision for a prior conviction (3.0%). Additionally, a small proportion of offenders were arrested because they caused a public disturbance (5.0%), or in response to a report of domestic violence (2.5%).

Concerns over racial disparities in sentencing practices have been well-documented and were one of the factors Congress sought to address in passing the Sentencing Reform Act of 1984.⁵⁸ Furthermore, the use of race as a key factor in deciding whether to make a traffic stop is an issue that has been litigated in courts and has received attention from the federal government for decades.⁵⁹ Accordingly, the Commission's finding that 27.5 percent of the §2K2.1 offenders in the study were arrested for the instant offense following a traffic stop or routine patrol provides an avenue to examine the racial demographics of the offenders based on the reason for arrest.

Figure 27. NATURE OF ARREST EVENT LEADING TO §2K2.1 CONVICTION
 Fiscal Year 2021 Sample



Although prior research has shown that Black and Hispanic people are stopped by police more often than White people, challenges persist in trying to account for all of the factors that lead to law enforcement effectuating a traffic stop.⁶⁰ Moreover, the Commission’s analysis in this report is limited to descriptive statistics regarding a 25 percent sample of firearms offenders sentenced in a single fiscal year. Therefore, the Commission’s findings may not be easily generalized to the broader population and should not be considered a comprehensive analysis of racial demographics and arrest rates.⁶¹

The Commission’s analysis revealed racial differences between the 27.5 percent of firearms offenders arrested following a routine police patrol compared to firearms offenders who were arrested for other

reasons. Black offenders comprised 54.0 percent of the firearms offenders in the sample, White offenders were a quarter (25.6%), Hispanic offenders comprised 17.5 percent, and offenders of an “Other race” were 3.0 percent (Figure 27). In two categories, the offenders’ race deviated more than ten percentage points from the overall average in the sample. Black firearms offenders represented a higher share of arrests following law enforcement conducting a routine street patrol (73.0%) and traffic stops (66.9%) compared to the overall percentage of Black firearms offenders in the sample. Arrests that followed routine street patrols and traffic stops represent a 19.0 and 12.9 percentage point increase, respectively, compared to the baseline of 54.0 percent Black firearms offenders in the sample.

Conclusion

This report provides the Commission's most in-depth study of federal firearms offenders sentenced under §2K2.1 to date. As the number of firearms offenses has risen in recent years, this report provides insight and detail that may prove useful to both policymakers and those who study federal criminal justice statistics.

Most firearms offenders sentenced under §2K2.1 were convicted because of their status as a prohibited person. Nevertheless, although the offender's status is core to the crime, the circumstances underlying such crimes varied considerably. Many offenses involved aggravating factors. Approximately one-third of the cases involved stolen firearms or a firearm with an altered or obliterated serial number, and nearly one-quarter involved a prohibited weapon (such as a sawed-off shotgun or machine gun). Firearms were also often used in the conjunction with another felony offense. More than one-quarter of §2K2.1 offenders used the firearm to facilitate another felony offense, most commonly, a drug trafficking felony. Finally, such crimes at times involved actual or threatened harm to another, including injury or death resulting from a discharged weapon.

Section 2K2.1 offenders have more extensive criminal histories than other federal offenders. For example, compared to other major crime types (drug trafficking, immigration, and fraud), §2K2.1 offenders have more prior convictions and for more serious crimes. The proportion of §2K2.1 firearms offenders who had a prior conviction for a violent offense (60.6%) is more than double the rate of other offenders (29.0%). Firearms offenders who committed the offense with aggravating factors, and those with extensive criminal histories, received longer average sentences than other firearms offenders.

Courts sentence firearms offenders within the guideline range at a higher rate than other offenders. Half of the §2K2.1 offenders (49.6%) received a sentence within the guideline range, which is 9.7 percentage points higher than the within range rate for all other offenders (39.9%) sentenced in fiscal year 2021. When courts do sentence §2K2.1 offenders below the guideline range, the extent below the range is minimal. Over the last 15 years, the average reduction below the guideline range varied only slightly, from one to five months below the range.

Endnotes

- 1 U.S. SENT'G COMM'N, *Guidelines Manual*, §2K2.1 (Nov. 2021) [hereinafter USSG].
- 2 See COURTNEY R. SEMISCH, KRISTEN SHARPE & ALYSSA PURDY, U.S. SENT'G COMM'N, *FEDERAL ARMED CAREER CRIMINALS: PREVALENCE, PATTERNS, AND PATHWAYS (2021)* [hereinafter 2021 ARMED CAREER CRIMINALS REPORT]; TRACEY KYCKELHAHN, KRISTEN SHARPE & AMANDA KERBEL, U.S. SENT'G COMM'N, *RECIDIVISM OF FEDERAL FIREARMS OFFENDERS RELEASED IN 2010 (2021)*; MATTHEW J. IACONETTI, TRACEY KYCKELHAHN & MARI MCGILTON, U.S. SENT'G COMM'N, *RECIDIVISM AMONG FEDERAL FIREARMS OFFENDERS (2019)*; U.S. SENT'G COMM'N, *MANDATORY MINIMUM PENALTIES FOR FIREARMS OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2018)*. Commission materials cited herein are available on the Commission's website at www.ussc.gov.
- 3 USSG §2K2.1.
- 4 18 U.S.C. § 924(a)(1), (a)(4), (f) (offenses carrying a statutory maximum sentence of five years); *id.* § 924(a)(2), (a)(6)(B), (h), (i), (k)–(n) (2018) (offenses carrying a statutory maximum sentence of ten years). The Bipartisan Safer Communities Act, Pub. L. No. 117–159, 136 Stat. 1313 (2022), increased the maximum penalties for several firearms offenses from ten to fifteen years of imprisonment. All of the offenders analyzed in this report were sentenced prior to the enactment of the Bipartisan Safer Communities Act.
- 5 26 U.S.C. § 5871.
- 6 18 U.S.C. § 922(g). Section 922(g) makes it unlawful for prohibited persons to possess any firearm or ammunition in or affecting commerce, or to ship or transport any firearm or ammunition (or receive any firearm or ammunition which has been shipped or transported) in interstate or foreign commerce. *Id.*
- 7 *Id.* A violation of section 922(g) has no mandatory minimum penalty and, prior to the Bipartisan Safer Communities Act, was punishable by a maximum term of imprisonment of ten years. 18 U.S.C. § 924(a)(2) (2018). If, however, an offender violates section 922(g) and has three or more prior convictions for a “violent felony,” a “serious drug offense,” or both, that offender is subject to a 15-year mandatory minimum and a lifetime maximum term of imprisonment pursuant to the Armed Career Criminal Act. 18 U.S.C. § 924(e). Figure 1, providing the total number of offenders sentenced under §2K2.1, includes armed career criminals. All other analyses in this report exclude offenders sentenced to the 15-year mandatory minimum under the Armed Career Criminal Act. For additional information on offenders sentenced under the Armed Career Criminal Act, see *supra* note 2.
- 8 18 U.S.C. § 922(n). A violation of section 922(n) is punishable by a maximum term of imprisonment of five years. *Id.* § 924(a)(1)(D).
- 9 USSG App. A. Appendix A references 26 U.S.C. §§ 5861(a)–(l) and 5871 to §2K2.1.
- 10 26 U.S.C. § 5861. A violation of the National Firearms Act has no mandatory minimum penalty and is punishable by a maximum term of imprisonment of ten years. See *id.* § 5871 (“Any person who violates or fails to comply with any provision of this chapter shall, upon conviction, be fined not more than \$10,000, or be imprisoned not more than ten years, or both.”).
- 11 18 U.S.C. § 922(o), (p). Section 922(p) is punishable by a maximum term of imprisonment of five years, while section 922(o) is punishable by a maximum term of imprisonment of ten years. See *id.* § 924(a)(2), (f).
- 12 *Id.* § 922(d). The statute delineates specified classes of persons similar to section 922(g) and includes persons under indictment for (or convicted of) a crime punishable by imprisonment for a term exceeding one year, fugitives, and persons previously convicted of a misdemeanor crime of domestic violence, among others. *Id.*
- 13 See, e.g., *United States v. Francis*, 891 F.3d 888, 891–92, 895 (10th Cir. 2018) (defendant violated section 922(d) when he purchased a firearm for a convicted felon); *United States v. Henry*, 819 F.3d 856, 862

(6th Cir. 2016) (defendant violated section 922(d) by selling a firearm to a convicted felon).

14 18 U.S.C. § 922(a)(6). A violation of section 922(a)(6) has no mandatory minimum penalty and is punishable by a maximum term of imprisonment of ten years. *Id.* § 924(a)(2).

15 *Id.* § 924(a)(1)(A). A violation of section 924(a)(1)(A) has no mandatory minimum penalty and is punishable by a maximum term of imprisonment of five years. *Id.*

16 26 U.S.C. § 5861(a), (j); *see also* 18 U.S.C. § 922.

17 18 U.S.C. § 922(a)(1)(A).

18 *Id.* §§ 922(j), (k), (u). Violations of stolen firearms offenses carry statutory maximum sentences of ten years' imprisonment. *Id.* § 924(a)(2), (i)(1), (l)–(m). Violations of firearms with an altered or obliterated serial number offenses carry five-year statutory maximum sentences of imprisonment. *Id.* § 924(a)(1)(B).

19 *Id.* § 924(o). Section 924(o) carries a statutory maximum term of 20 years imprisonment, but if the firearm is a machine gun or destructive device or is equipped with a firearm silencer or muffler, the statutory maximum is any term of years or life. *Id.*

20 Section 2K2.1 defines the term “firearm” by reference to 18 U.S.C. § 921(a)(3): “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device” but does not include an “antique firearm.” 18 U.S.C. § 921(a)(3); USSG §2K2.1, comment. (n.1). The National Firearms Act defines “firearm” in a more limited way than section 921(a)(3), as short-barreled shotguns, short-barreled rifles, machine guns, silencers, destructive devices, and “any other weapon . . . or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire.” *See* 26 U.S.C. § 5845(a), (e). Section 5845(a)'s definition excludes antique firearms and those found to be “primarily . . . collector's item[s].” 26 U.S.C. § 5845(a).

21 Section 2K2.1 defines “ammunition” by reference to 18 U.S.C. § 921(a)(17)(A): “ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.” 18 U.S.C. § 921(a)(17)(A); USSG §2K2.1, comment. (n.1).

22 *Compare* USSG §2K2.1(a)(8) (base offense level 6), with USSG §2K2.1(a)(1) (base offense level 26).

23 Destructive devices include explosives and incendiaries, among other things. *See* USSG §2K2.1, comment. (n.1); 18 U.S.C. § 921(a)(4); 26 U.S.C. § 5845(f).

24 USSG §2K2.1.

25 USSG §2K2.1(b)(2).

26 USSG §2K2.1(c)(1).

27 As authorized by Congress, the Commission's numerous research responsibilities include: (1) the establishment of a research and development program to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices; (2) the publication of data concerning the sentencing process; (3) the systematic collection and dissemination of information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in section 3553(a) of title 18; and (4) the systematic collection and dissemination of information regarding the effectiveness of sentences imposed. 28 U.S.C. § 995(a)(12)–(16).

28 *Id.* § 994(w)(1).

29 U.S. SENT'G COMM'N, 2021 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 8 (2022).

30 *Id.* at 70 tbl.20.

31 Of the 7,735 cases for offenders sentenced under §2K2.1, 40 cases were excluded due to missing information. An additional 322 cases were excluded because the offender was sentenced under the career offender guideline, Armed Career Criminal Act, or the offender was convicted solely of a misdemeanor offense.

32 USSG §2K2.1(b)(4)(A)–(B).

33 See USSG App. C, amend. 374 (effective Nov. 1, 1991); USSG App. C, amend. 691 (effective Nov. 1, 2006).

34 USSG §2K2.1(b)(6)(B).

35 USSG §2K2.1, comment. (n.14).

36 *Id.*

37 *Id.*; USSG App. C, amend. 691 (effective Nov. 1, 2006).

38 “Government-sponsored” departures include cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant. Substantial assistance motions filed by the prosecution are categorized separately.

39 Variance cases are those in which the sentence was outside the guideline range where the court did not cite any guideline reason for the sentence.

40 For purposes of this analysis, the Commission identified offenses that are generally accepted as having some level of violence. Prior violent convictions include those offenses classified as murder, unspecified manslaughter, non-negligent manslaughter, kidnapping, statutory rape, forcible sex offense, robbery, aggravated assault, simple assault, intimidation, hit and run with bodily injury, extortion, child abuse, arson, rioting, and any other unspecified violent offense. For more information on how the Commission collects criminal history information, see TRACEY KYCKELHAHN & EMILY HERBST, U.S. SENT'G COMM'N, THE CRIMINAL HISTORY OF FEDERAL OFFENDERS (2018).

41 Some offenders had a prior conviction for more than one type of violent offense. Therefore, the cumulative percentage of the violent prior offenses listed in Figure 13 exceeds 60.6%.

42 See USSG §§4B1.1, 4B1.4 (guidelines defining career offenders and armed career criminals).

43 See 2021 ARMED CAREER CRIMINALS REPORT, *supra* note 2; U.S. SENT'G COMM'N, REPORT TO THE CONGRESS: CAREER OFFENDER SENTENCING ENHANCEMENTS (2016).

44 “‘Crime of violence’ has the meaning given that term in §4B1.2(a) and Application Note 1 of the Commentary to §4B1.2.” USSG §2K2.1, comment. (n.1). See USSG §4B1.2(a) (defining “crime of violence” as “any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson,

extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c)").

45 "Controlled substance offense' has the meaning given that term in §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2 (Definitions of Terms Used in Section 4B1.1)." USSG §2K2.1, comment. (n.1). See USSG §4B1.2(b) (defining "controlled substance offense" as "an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense").

46 See USSG §2K2.1, comment. (n.3); USSG §2K2.1(a)(4)(B), (a)(6)(A).

47 USSG §2K2.1(b)(4).

48 Section 2K2.1(b)(5) provides a 4-level increase if the defendant trafficked in firearms. USSG §2K2.1(b)(5). Application Note 13(A) explains that this enhancement applies when two elements are met: the defendant must have "transported, transferred, or otherwise disposed of two or more firearms to another individual, or received [such] firearms with the intent to [do so]" and the defendant must have known or had reason to believe such conduct would result in the firearms being transferred to an individual who (i) could not legally possess the firearm, or (ii) intended to use or dispose of the firearm unlawfully. USSG §2K2.1, comment. (n.13(A)).

49 Section 2K2.1(b)(6)(A) provides for a 4-level increase where the defendant "possessed any firearm or ammunition while leaving or attempting to leave the United States" or possessed or transferred the same with knowledge, intent, or reason to believe it would be transported outside the United States. USSG §2K2.1(b)(6)(A).

50 The 25% sample includes felony §2K2.1 offenders with complete guideline information, those who were classified as a prohibited person as well as the other firearms offenders. The sample excludes offenders sentenced under the career offender guideline, Armed Career Criminal Act, and offenders convicted solely of an offense under 18 U.S.C. § 924(c). It also excludes offenders who were sentenced under another Chapter Two guideline after applying the cross-reference provision under §2K2.1(c)(1).

51 USSG §2K2.1(b)(6)(B).

52 See, e.g., *United States v. Hemsher*, 893 F.3d 525, 534–35 (8th Cir. 2018).

53 The offender could have used, possessed, or transferred a firearm to facilitate more than one felony offense. Therefore, the cumulative percentage of crimes listed in Figure 24 exceeds 29.1%.

54 The offender could have used, possessed, or transferred a firearm to facilitate more than one violent offense. Therefore, the cumulative percentage of violent offenses listed in Figure 24 exceeds 4.7%.

55 If two or more encounters occurred simultaneously, for example, a report involving a firearm and domestic violence, both reasons were recorded.

56 Of the 1,796 offenders in the sample, the Commission identified more than one reason that led law enforcement to arrest the offender in 13.1% of the cases.

57 An additional 0.9% of the offenders were arrested for driving under the influence.

58 See Brent E. Newton & Dawinder S. Sidhu, *The History of the Original United States Sentencing Commission, 1985–1987*, 45 *HOFSTRA L. REV.* 1167, 1180–81 (2017). The Commission's prior research has

revealed certain racial disparities in sentencing outcomes. See U.S. SENT'G COMM'N, REPORT ON THE CONTINUING IMPACT OF *UNITED STATES V. BOOKER* ON FEDERAL SENTENCING (2012); U.S. SENT'G COMM'N, DEMOGRAPHIC DIFFERENCES IN FEDERAL SENTENCING PRACTICES: AN UPDATE ON THE *BOOKER* REPORT'S MULTIVARIATE REGRESSION ANALYSIS (2010); U.S. SENT'G COMM'N, FINAL REPORT ON THE IMPACT OF *UNITED STATES V. BOOKER* ON FEDERAL SENTENCING (2006) [hereinafter 2006 *BOOKER* IMPACT REPORT].

59 See, e.g., *Whren v. United States*, 517 U.S. 806 (1996); C.R. DIV., U.S. DEP'T OF JUST., GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES (2003) (President Bush directed the Attorney General to review the use by Federal law enforcement authorities of race as a factor in conducting stops, searches, and other law enforcement investigative procedures. The Attorney General, in turn, instructed the Civil Rights Division to develop guidance for Federal officials to ensure an end to racial profiling in law enforcement); Nat'l Inst. of Just., U.S. Dep't of Just., *Racial Profiling and Traffic Stops* (Jan. 9, 2013), <https://nij.ojp.gov/topics/articles/racial-profiling-and-traffic-stops>; U.S. GOV'T ACCOUNTABILITY OFF., GAO/GGD-00-41, RACIAL PROFILING: LIMITED DATA AVAILABLE ON MOTORIST STOPS (2000).

60 See *Racial Profiling and Traffic Stops*, *supra* note 59.

61 See, e.g., 2006 *BOOKER* IMPACT REPORT, *supra* note 58, at 105–08 (explaining that a multivariate analysis measuring demographic variables and sentencing outcomes cannot account for all of the factors that may affect the sentence).

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