



The Criminal History of Federal Offenders

UNITED STATES SENTENCING COMMISSION



United States Sentencing Commission

One Columbus Circle, N.E.

Washington, DC 20002

www.ussc.gov

William H. Pryor Jr.

Acting Chair

Rachel E. Barkow

Commissioner

Charles R. Breyer

Commissioner

Danny C. Reeves

Commissioner

Zachary C. Bolitho

Ex Officio

J. Patricia Wilson Smoot

Ex Officio



Kenneth P. Cohen

Director

Glenn R. Schmitt

Director

Office of Research and Data

May 2018

Tracey Kyckelhahn, Ph.D., *Senior Research Associate, Office of Research and Data*

Emily Herbst, M.A., *Research Associate, Office of Research and Data*

TABLE OF CONTENTS

Part I. Introduction.....	1
Key Findings.....	2
Part II. Overview of the Criminal History of Federal Offenders.....	3
Instant Offense and Criminal History.....	4
The Use of Criminal History in the Sentencing Guidelines.....	7
Relationship Between Criminal History Points and Past Offenses.....	8
Relationship Between Criminal History Category and Past Offenses.....	9
Comparing Convictions for Three-, Two-, One-, and Zero-Point Offenders.....	10
Convictions Not Counted Under the Guidelines.....	12
Part III. Conclusion.....	13
Part IV. Appendix.....	14
Methodology.....	14
Tables and Figures.....	15
Endnotes.....	27

Part I. Introduction

The number and nature of a federal offender's prior convictions are important considerations in deciding a federal sentence. Congress codified this approach with the passage of the Sentencing Reform Act of 1984 (SRA).¹ In addition to requiring federal courts to consider the history and characteristics of the defendant as a factor to consider in imposing a sentence,² the SRA contains numerous provisions directing the United States Sentencing Commission (the "Commission")³ to account for an offender's criminal history in establishing the federal sentencing guidelines.⁴ Accordingly, Chapter Four of the *Guidelines Manual* provides detailed criminal history calculations to be used in determining an offender's sentencing guidelines range.

While the Commission has collected the criminal history points and Criminal History Category (CHC) as determined under the guidelines, it has not collected complete information on the number of convictions or the types of offenses in the criminal histories of federal offenders until now. The Commission is now able to utilize recent technological improvements to expand the scope of information it collects on an offender's criminal history and provide a more complete assessment of the criminal history of federal offenders.

For the first time, this report provides complete information on the number of convictions⁵ and types of offenses in the criminal histories of federal offenders sentenced in a fiscal year. In completing this report, the Commission collected additional details about the criminal histories for 61,946 of the 67,742 federal offenders sentenced in fiscal year 2016 for whom complete documentation was submitted to the Commission. These prior offenses were grouped into 35 broad categories for analytical purposes, and then collapsed further into 18 categories for reporting purposes. The report provides analyses of these offenders' criminal histories by the type of federal offense they committed. The report also provides information on the types of offenses these offenders committed, the points assigned to those convictions under the federal sentencing guidelines, and the types of offenses that did not receive points.

Key Findings

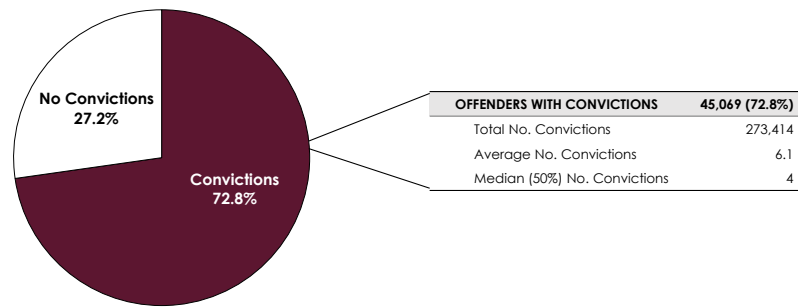
- Almost three-quarters (72.8%) of federal offenders sentenced in fiscal year 2016 had been convicted of a prior offense. The average number of previous convictions was 6.1 among offenders with criminal history.
- Public order⁶ was the most common prior offense, as 43.7 percent of offenders with prior criminal history had at least one conviction for a public order offense.
- A conviction for a prior violent offense was almost as common as prior public order offenses, as 39.5 percent of offenders with criminal history had at least one prior violent offense. Assault was the most common violent offense (29.5%), followed by robbery (8.1%), and rape (4.4%). Just under two percent of offenders with criminal history had a prior homicide offense.
- The nature of offenders' criminal histories varied considerably by their federal instant offense. The substantial majority (91.7%) of firearms offenders had at least one previous conviction⁷ compared to about half of fraud (52.4%) and child pornography (48.2%) offenders. Firearms offenders were also most likely to have violence in their criminal histories, as 62.0 percent of firearms offenders with a previous conviction had a violent previous conviction. Fraud offenders were the least likely of offenders with criminal history to have a violent previous conviction (26.2%).
- Most (86.6%) federal offenders with criminal history had convictions that were assigned criminal history points under the guidelines. Offenders who had at least one three-point conviction were the most likely of all offenders with convictions to have a murder (3.8%) or rape/sexual assault (7.0%) offense in their criminal histories.
- A criminal history score of zero does not necessarily mean an offender had no prior criminal history. Almost one in ten offenders (9.8 percent) in fiscal year 2016 had a criminal history score of zero but had at least one prior conviction.⁸

Part II. Overview of the Criminal History of Federal Offenders

In fiscal year 2016, there were 67,742 offenders sentenced in the federal courts for a felony or Class A misdemeanor.⁹ Of these, 5,796 are excluded from this report due to incomplete information that precluded analysis. This report will focus on the 61,946 federal offenders sentenced in fiscal year 2016 with complete documentation for their cases. Almost three-quarters (72.8%) of those offenders had been convicted of a prior offense (Figure 1).

The average number of prior convictions among those offenders was 6.1, with a median of four convictions (Figure 1). Among the 45,069 federal offenders with a prior conviction, 8,598 offenders had only one prior conviction while one offender had 116 convictions in his criminal history.

Figure 1.
Overview of Criminal History Findings



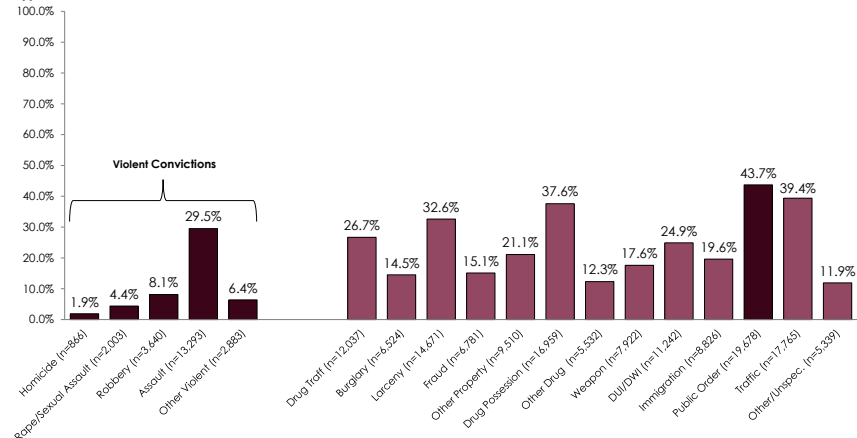
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

An offender’s criminal history is an important consideration when courts determine the sentence to be imposed for a federal conviction. Under the federal sentencing guidelines, an offender’s criminal history is one of two principal factors that determines the sentencing guidelines range—the other being the seriousness of the federal conviction the offender committed.¹⁰ In general, among offenders who commit similar federal crimes, the sentencing guidelines will prescribe a longer sentence for an offender with a prior conviction. Also, under federal law, offenders

who have committed at least two prior felony crimes of violence or controlled substance offenses are to be deemed “career offenders” and sentenced to higher penalties.¹¹ Further, certain federal statutes require that offenders who commit certain offenses after having been convicted of similar offenses in the past be punished with longer sentences.¹²

The federal offenders sentenced in fiscal year 2016 who had at least one prior conviction accounted for 273,414 total prior crimes. The most common of these were convictions for public order offenses, as 43.7 percent of offenders with prior criminal history had at least one conviction for a public order offense. Almost the same share, 39.5 percent of federal offenders, had one or more prior convictions for a violent offense. Assault was the most common prior violent offense, with 29.5 percent of offenders having a conviction for that offense. Robbery offenses were the next most common prior violent offense, at 8.1 percent, followed by rape (4.4%), and homicide (1.9%). Figure 2 shows the distribution of those offenses.

Figure 2.
Type of Prior Convictions—Offenders With Convictions*



*This analysis includes offenders with at least one prior conviction in that offense category.
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Instant Offense and Criminal History

The Commission uses the term “instant offense” to refer to the federal conviction for which an offender is sentenced. In fiscal year 2016, the four most common instant offenses were immigration, drugs, firearms, and fraud. Together these offenses accounted for 81.6 percent of all cases reported to the Commission.¹³ For this report, the Commission separately analyzed the criminal histories of offenders sentenced for these four offense types along with those convicted of child pornography offenses. The Commission found substantial differences in the criminal histories of these groups of offenders, both in the likelihood of having prior convictions and in the nature of their past offenses (Table 1).

Table 1.
Number of Prior Convictions by Type of Instant Offense

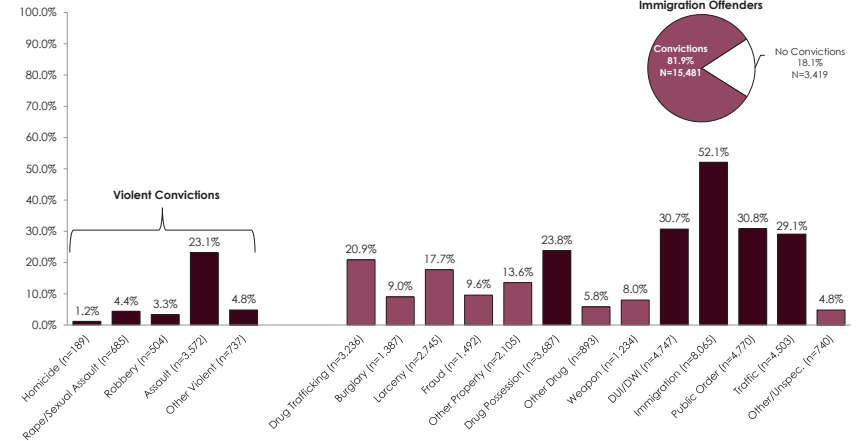
	Instant Offense for Offenders with At Least One Prior Conviction					
	All Offenders	Immigration Offenders	Drug Trafficking Offenders	Firearms Offenders	Fraud Offenders	Child Pornography Offenders
TOTAL OFFENDERS with conviction/s 273,414 Total Convictions	45,069 (72.8%)	15,481 (81.9%)	13,049 (69.3%)	6,309 (91.7%)	3,128 (52.4%)	919 (48.2%)
Average No. Convictions	6.1	4.4	6.7	8.9	5.4	3.6
Median (50%) No. Convictions	4	3	5	7	3	2

SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Immigration offenders

A total of 18,900 offenders were convicted of an immigration offense in fiscal year 2016. The substantial majority (81.9%) of immigration offenders had at least one conviction in their criminal histories. Over half (52.1%) had at least one previous conviction for an immigration offense. The next most common offenses for immigration offenders were public order (30.8%), DUI (30.7%), traffic (29.1%), and drug possession (23.8%). About a third (31.7%) of immigration offenders with at least one prior conviction had a violent offense in their criminal histories. Assault was the most common prior violent offense (23.1%) followed by rape (4.4%), robbery (3.3%), and homicide (1.2%). Figure 3 shows the distribution of those offenses.

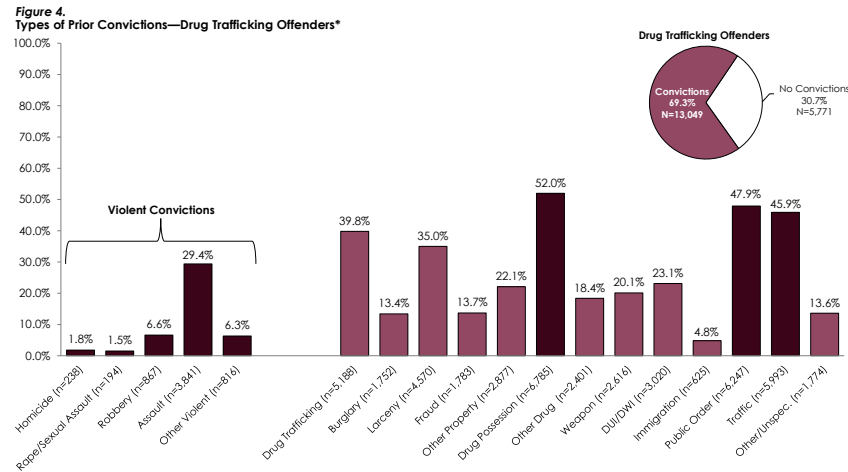
Figure 3.
Types of Prior Convictions—Immigration Offenders*



*This analysis includes offenders with at least one prior conviction in that offense category.
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Drug Trafficking offenders

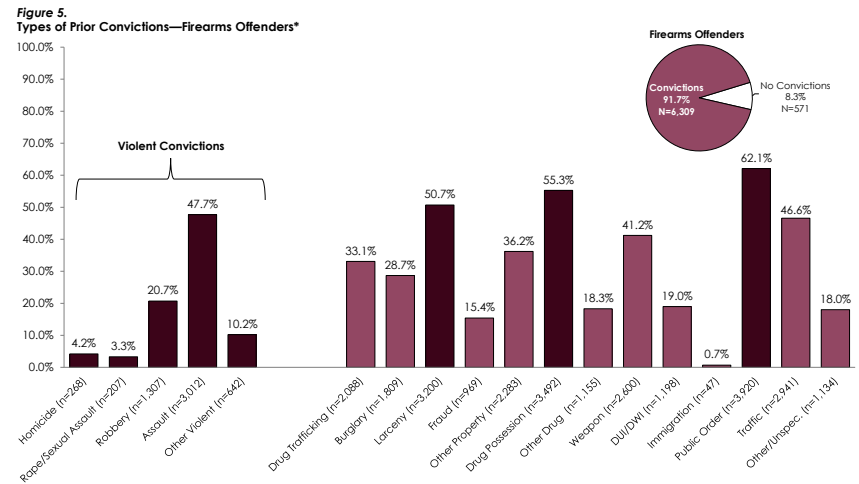
There were 18,820 drug trafficking offenders in fiscal year 2016. Over two-thirds of these offenders (69.3%) had at least one previous conviction. Half of those offenders (52.0%) had at least one drug possession offense in their criminal histories. The other top offenses for drug trafficking offenders were public order (47.9%), traffic (45.9%), drug trafficking (39.8%), and larceny (35.0%). Over a third (36.7%) of drug trafficking offenders had a violent offense in their criminal history. Assault was the most common prior violent offense (29.4%) followed by robbery (6.6%), homicide (1.8%), and rape (1.5%). Figure 4 shows the distribution of those offenses.



*This analysis includes offenders with at least one prior conviction in that offense category.
 SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Database. Of the 67,742 cases reported to the Commission, 5,776 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Firearms offenders

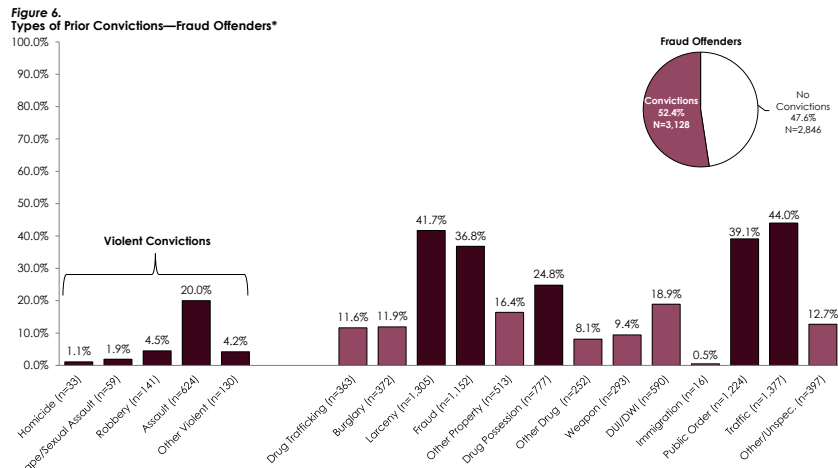
There were 6,309 firearms offenders in fiscal year 2016. Firearms offenders were the group of federal offenders most likely to have previous convictions in their criminal histories. Over ninety-percent (91.7%) of firearms offenders sentenced in fiscal year 2016 had a prior conviction. The most common offense types of prior convictions for firearms offenders was public order (62.1%), followed by drug possession (55.3%), and larceny (50.7%). Firearms offenders were also the most likely to have violence in their criminal histories. A majority (62.0%) of firearms offenders had at least one violent offense. Assault was the most common violent offense (47.7%), followed by robbery (20.7%), homicide (4.2%), and rape (3.3%). These offenders were substantially more likely to have a homicide or robbery conviction than other offenders.¹⁴ Figure 5 shows the distribution of those offenses.



*This analysis includes offenders with at least one prior conviction in that offense category.
 SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Database. Of the 67,742 cases reported to the Commission, 5,776 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Fraud offenders

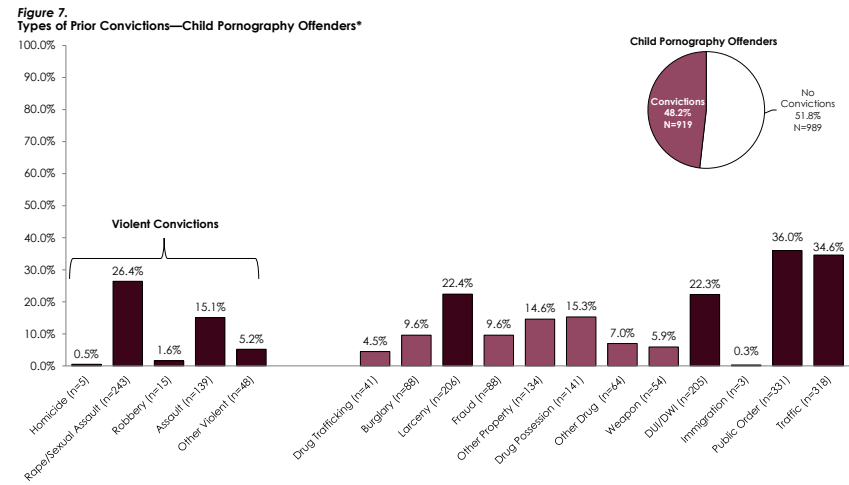
A total of 5,974 offenders were sentenced for a fraud offense in fiscal year 2016. Just over half of these offenders (52.4%) had at least one previous conviction. Traffic offenses were the most common offense for these offenders (44.0%), followed by larceny (41.7%), public order (39.1%), fraud (36.8%), and drug possession (24.8%). Fraud offenders were the least likely to have a violent offense in their criminal history (26.2%). Assault was the most common prior violent offense (20.0%) followed by robbery (4.5%), rape (1.9%), and homicide (1.1%). Figure 6 shows the distribution of those offenses.



*This analysis includes offenders with at least one prior conviction in that offense category. SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Child Pornography offenders

Child pornography offenders¹⁵ were the least likely of any major group of federal offenders to have had a previous conviction. Of the 1,908 child pornography offenders sentenced in fiscal year 2016, just under half (48.2%) had a conviction in their criminal histories. Public order (36.0%) was the most common past offense for child pornography offenders followed by traffic offenses (34.6%), rape (26.4%), larceny (22.4%), and DUI (22.3%). Overall, 40.8 percent of child pornography offenders with at least one past conviction had been convicted of a violent offense. Rape or sexual assault was the most common violent offense among child pornography offenders, with one-quarter (26.4%) of all child pornography offenders with a prior conviction having been convicted of one of those offenses, followed by assault (15.1%), robbery (1.6%), and homicide (0.5%). Figure 7 shows the distribution of those offenses.



*This analysis includes offenders with at least one prior conviction in that offense category. SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

The Use of Criminal History in the Sentencing Guidelines

The guidelines establish a method for evaluating an offender's criminal history by assigning points to some prior criminal convictions and adjudications of juvenile delinquency based on the length of the sentence imposed for those offenses. Through this process the court calculates an offender's "criminal history score," which is then assigned to one of six Criminal History Categories (CHCs). The combination of the "offense level" of an offender's instant offense and the offender's CHC determines a range of confinement, expressed in months, for the offense.

In this report, the Commission uses the offender's criminal history score as the basis for analyses, and so a basic understanding of the rules that govern the criminal history calculation is necessary.¹⁶ An offender's past convictions are assigned one, two, or three points based on the nature of the offense and the type and length of the sentence imposed. These point assignments are designed to reflect the seriousness of the crime of conviction. Criminal history points are assigned as follows:

- (a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.
- (b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).
- (c) Add 1 point for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection.
- (d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.
- (e) Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was treated as a single sentence, up to a total of 3 points for this subsection.¹⁷

In general, three-point convictions almost always represent a state or federal felony conviction¹⁸ and are generally more serious than two-point offenses, which are likewise more serious than one-point offenses.

Not all prior convictions are counted. Prior convictions for many petty and other minor convictions are never assigned points under the guidelines. Other petty or minor convictions are not assigned points unless the sentence was a term of probation of more than one year or a term of imprisonment of at least 30 days.¹⁹ Sentences imposed by foreign courts or tribal courts, and sentences imposed for military offenses by non-judicial officers also are not counted.²⁰ Also, sentences imposed for expunged convictions are not counted.²¹

Additionally, some prior sentences are deemed "stale" and are not counted. For example, prior sentences of greater than thirteen months are assigned criminal history points only if the sentence was imposed or served within fifteen years of the instant offense. Sentences of thirteen months or less are assigned criminal history points only if the sentence was imposed within ten years of the instant offense. Finally, offenses committed prior to age 18 are counted only if the sentence was imposed within five years of the federal instant offense, unless the defendant was convicted as an adult and sentenced to a term of more than thirteen months, in which case the standard fifteen-year period applies.²²

In addition to the points assigned for prior sentences, two additional considerations affect the criminal history score assigned at the time the federal offenders discussed in this report were sentenced. First, an offender is assigned two additional criminal history points if the instant offense of conviction occurred while the offender was serving a criminal justice sentence, to include when the offender was on parole or supervised release from a period of incarceration for a prior offense.²³ These points are called "status points." Second, prior to 2010, an offender could receive one or two additional points if the instant offense occurred less than two years after release from imprisonment on a sentence that already counted in the criminal history score.²⁴ These points are called "recency points." Recency points were no longer applied starting with federal cases in which the 2010 *Guidelines Manual* was applied.²⁵

The total number of criminal history points determines the offender’s CHC for the purpose of determining the sentencing guideline range that applies under the guidelines. The total criminal history points correspond to CHCs on the Sentencing Table as follows:

Criminal History Category (CHC)	I	II	III	IV	V	VI
Total Criminal History Points	(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)

Relationship Between Criminal History Points and Past Offenses

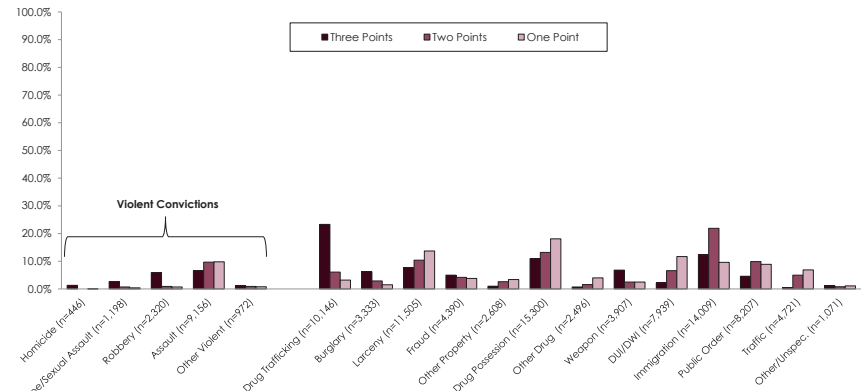
The rules for assigning points under the sentencing guidelines are designed to reflect the seriousness of the conviction in an offender’s criminal history. For this report, the Commission compared the types of offenses in offenders’ criminal histories with the points assessed for those convictions to determine the most common three-point, two-point, and one-point offenses in their criminal records. Only convictions with one type of offense were included in this analysis (“single type convictions”). Those convictions that had offenses in two or more of the 18 categories used in this report were excluded (*e.g.*, a single conviction for both a burglary and a traffic offense).

As noted above, convictions that are not stale and receive a sentence of imprisonment longer than 13 months receive three points, the highest point score, and are considered the most serious convictions under the sentencing guidelines. Convictions for drug trafficking offenses were the most common single type three-point convictions in federal offenders’ criminal histories. Almost a quarter (23.3%) of three-point convictions were for drug trafficking. Immigration offenses (12.3%) were the second most common three-point convictions. Another drug offense, drug possession (10.9%), was the third most common three-point convictions. Figure 8 shows the distribution of those offenses.

Two-point convictions receive sentences of imprisonment of at least 60 days and not more than 13 months. Convictions for immigration offenses (21.9%) were the most common two-point convictions. Drug possession (13.2%) was the second most common, followed by larceny (10.4%). Figure 8 shows the distribution of those offenses.

One-point convictions are considered the least serious convictions that receive points. Convictions for drug possession offenses (18.1%) were the most common one-point convictions among federal offenders. Larceny (13.7%) was the second most common, followed by DUI (11.7%). Figure 8 shows the distribution of those offenses.

Figure 8. Types of Prior Convictions for 3-, 2-, and 1-Point Offenses*



*For exact percentages of the types of convictions by criminal history points, see Appendix Figures 2 through 4. SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Database. Of the 67,742 cases reported to the Commission, 5,776 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Relationship Between Criminal History Category and Past Offenses

This section of the report analyzes the criminal history of offenders in relation to the CHC to which they were assigned for sentencing purposes in fiscal year 2016. The substantial majority (86.6%) of offenders who had convictions in their criminal histories received points under the guidelines for at least one of those convictions. The average number of points for the offenders who received points was 6.5 points, with a median of five points (Table 2).

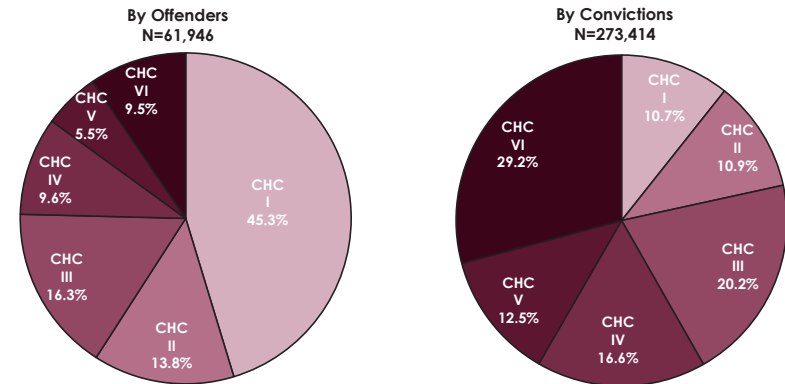
Table 2.
Criminal History Scores for Offenders w/Criminal History Points*

TOTAL OFFENDERS with point/s	39,014
Average No. Points	6.5
Median (50%) No. Points	5

*This analysis includes offenders with at least one prior conviction that received points.
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Offenders with criminal history scores assigned to the higher Criminal History Categories had more prior convictions than offenders in lower CHCs. Offenders in CHCs III, IV, V, and VI each accounted for a disproportionate share of the prior criminal history of federal offenders sentenced in fiscal year 2016. Offenders in CHC VI comprised 9.5 percent of federal offenders in fiscal year 2016 population but 29.2 percent of the convictions. Offenders in CHC V comprised 5.5 percent of federal offenders in fiscal year 2016 but 12.5 percent of the convictions. CHC IV and CHC III were 9.6 percent and 16.3 percent of offenders in fiscal year 2016 but 16.6 percent and 20.2 percent of the criminal history, respectively (Figure 9).

Figure 9.
Percent of Offenders and Convictions by Criminal History Category*



SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

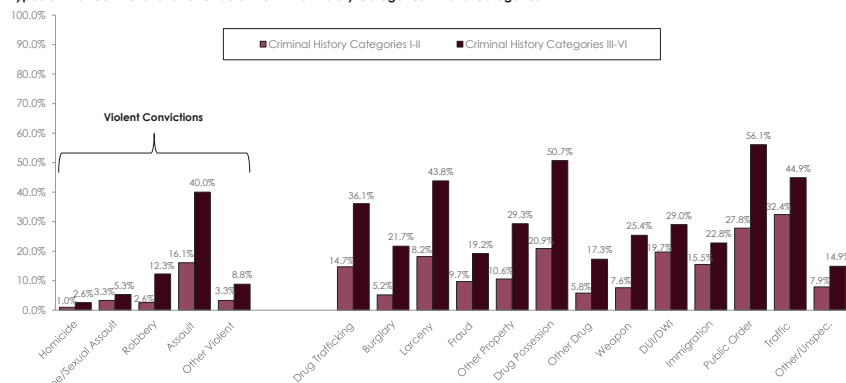
The average number of convictions for offenders in CHCs III through VI was 8.5, and the median was seven. The most common type of prior offense was public order, with 56.1 percent of all offenders in this group having one or more convictions for that offense. The next most common offenses were drug possession (50.7%), traffic (44.9%), and larceny (43.8%). Figure 10 (p. 10) shows the distribution of those offenses.

Over half (52.3%) of offenders in the highest CHCs had violent offenses in their criminal history. As with federal offenders overall, assault was their most common prior violent offense (40.0%) for offenders in CHCs III, IV, V, and VI, followed by robbery (12.3%), rape (5.3%), and homicide (2.6%).

Offenders with criminal history scores assigned to CHCs I or II had less criminal history than their share of the federal offender population. Offenders in CHC II comprised 13.8 percent of offenders sentenced in fiscal year 2016 but 10.9 percent of the convictions. The largest group of federal offenders sentenced in fiscal year 2016 was assigned to CHC I, the lowest category. In fiscal year 2016, 45.3 percent of offenders had a criminal history score assigned to CHC I. However, their criminal histories comprised only 10.7 percent of previous convictions of federal offenders. The average number of convictions for offenders in CHCs I and II was 3.0, and the median was two. The most common type of prior offense for offenders in these CHCs was traffic (32.4%). The next most common offenses were public order (27.8%), drug possession (20.9%), and DUI (19.7%). Figure 10 shows the distribution of those offenses.²⁶

Offenders in CHC I and II also were less likely to have a prior conviction for a violent offense than offenders in higher CHCs. Slightly less than a quarter (23.0%) of offenders in CHC I and II had a prior violent offense. Assault was their most common prior violent conviction (16.1%), followed by rape (3.3%), robbery (2.6%), and homicide (1.0%).

Figure 10.
Types of Prior Convictions for Offenders in Criminal History Categories I-II and Categories III-VI*



*This analysis includes offenders with at least one prior conviction. SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Comparing Convictions for Three-, Two-, One-, and Zero-Point Offenders

As discussed above, most (86.6%) offenders sentenced in fiscal year 2016 who had convictions in their criminal history received points under the guidelines for at least one of those convictions. Of the 39,014 offenders who received points for at least one of their convictions, half (49.9%) had at least one three-point conviction in their criminal history. The average number of three-point convictions was 1.9, and the median number was two (Table 3).

Table 3.
Number of Prior Convictions for Offenders With At Least One 3-Point Conviction*

Metric	Value
TOTAL OFFENDERS with conviction/s	19,462
Average No. 3-Point Convictions	1.9
Median (50%)	2

*This analysis includes only offenders with at least one prior 3-point conviction. SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

For the 43.7 percent of offenders with points who had at least one two-point conviction, the average number of two-point convictions was 1.8 and the median was one (Table 4).

Table 4.
Number of Prior Convictions for Offenders With At Least One 2-Point Conviction*

Metric	Value
TOTAL OFFENDERS with conviction/s	17,058
Average No. 2-Point Convictions	1.8
Median (50%)	1

*This analysis includes only offenders with at least one prior 2-point conviction. SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Over two-thirds (68.3%) of all offenders with points had at least one conviction that received one point. The average number of one-point convictions was 2.1 and the median was one (Table 5).

Table 5.
Number of Prior Convictions for Offenders With At Least One 1-Point Conviction*

TOTAL OFFENDERS with conviction/s	26,666
Average No. 1-Point Convictions	2.1
Median (50%)	1

*This analysis includes only offenders with at least one prior 1-point conviction. SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

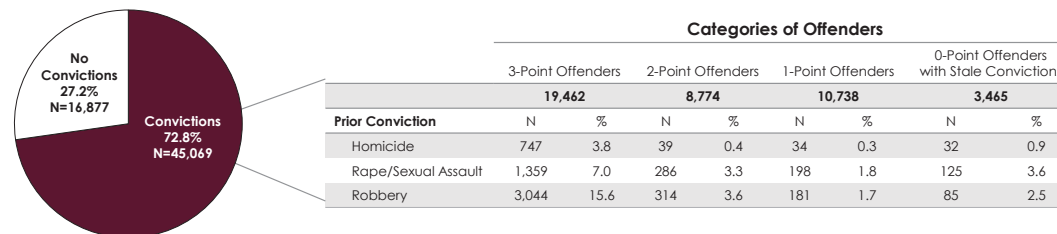
The Commission performed additional analyses of the offenses in federal offenders' criminal histories to determine if the presence of a three-point offense indicated a more violent criminal history. Specifically, the Commission grouped offenders by the highest number of criminal history points assigned to any single prior conviction and examined the offender's criminal history for the presence of a conviction for homicide, rape/sexual assault, or robbery. Four categories were created for comparison: (1) offenders with at least one three-point conviction ("three-point offenders");²⁷ (2) offenders with at least one two-point conviction but no three-point convictions ("two-point offenders");²⁸ (3) offenders with one-point convictions but no two or three-point convictions ("one-point offenders"); and (4) offenders with a total criminal history score of zero but at least one stale conviction ("zero-point stale offenders").²⁹

Three-point offenders were substantially more likely to have convictions for homicide, rape/sexual assault, and robbery offenses than offenders in the other three categories. At least one conviction for homicide was in the criminal histories of 3.8 percent of three-point offenders. Rape/sexual assault offenses were present in 7.0 percent of the criminal histories of these offenders. Convictions for a robbery offense was in 15.6 percent of their criminal histories (Figure 11).

In contrast to three-point offenders, homicide offenses were present in the criminal history of 0.4 percent of two-point offenders and 0.3 percent of one-point offenders. Rape/sexual assault offenses were present in the criminal histories of 3.3 percent of two-point offenders and 1.8 percent of one-point offenders (Figure 11).

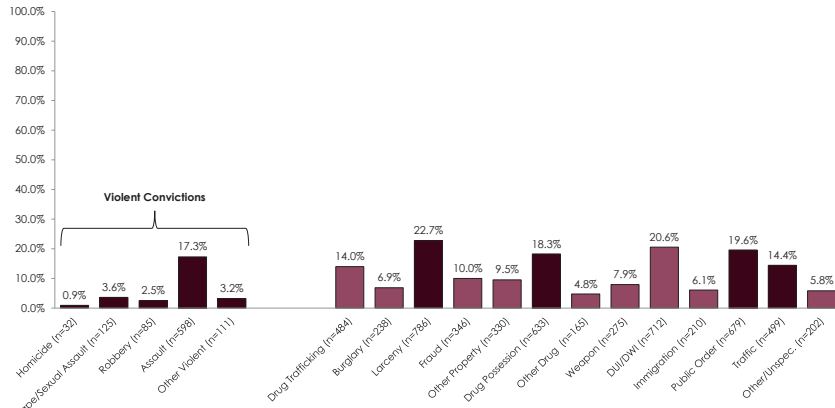
A total of 6,054 offenders had a criminal history score of zero but had one or more prior convictions that did not receive points under the guidelines. Most of these offenders (57.2%) had at least one stale conviction. Stale convictions can be any type of offense, including serious violent offenses. These offenders were more likely to have convictions for homicide and rape/sexual assault than both two-point and one-point offenders. Among the subset of zero-point offenders with stale convictions, 0.9 percent had at least one stale conviction for a homicide offense, 3.6 percent had at least one stale rape/sexual assault, and 2.5 percent had at least one stale robbery (Figure 11). Zero-point offenders with a stale conviction were also more likely to have a robbery offense than one-point offenders (2.5% as compared to 1.7%). Figure 12 (p. 12) provides the full distribution of stale offenses for these zero-point offenders.

Figure 11.
Types of Prior Convictions by Categories of Offenders*



*This analysis includes only offenders with at least one prior non-petty conviction. SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Figure 12.
Type of Prior State Convictions For Offenders With Zero Criminal History Points*



*This analysis includes offenders with at least one state prior conviction.
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Convictions Not Counted Under the Guidelines

As discussed above, some convictions are not assigned criminal history points under the federal sentencing guidelines. Most petty and other minor offenses are never assigned points under the guidelines.³⁰ Although these offenses do not receive points under the sentencing guidelines, the Commission collected information on the number of offenders with these offenses in their criminal histories for this report.

Petty and Other Minor Crimes

Just under half (43.5%) of federal offenders had at least one conviction for a petty or otherwise minor offense that was not assigned points under the sentencing guidelines. In total, there were 57,748 petty or minor convictions excluded from the criminal histories of offenders in fiscal year 2016. Among the 19,626 offenders with convictions for a petty or other

minor crime, the average number of these convictions was 2.9 and the median was two (Table 6).

Table 6.
Offenders with Minor Prior Convictions*

	Minor Convictions (USSG §4A1.2(c)(1) or (2))
TOTAL OFFENDERS	19,626
Average No. Minor Convictions	2.9
Median (50%)	2

*This analysis includes offenders with at least one minor prior conviction.
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Stale Convictions

Convictions in offenders' criminal history also may not be counted due to the time that has elapsed from the sentence for that conviction and the earliest date of relevant conduct to the offender's instant federal offense.³¹ Just over half (51.4%) of offenders with convictions had at least one stale conviction that was not assigned criminal history points when the offender was sentenced. In total, there were 84,678 stale convictions excluded from offenders' criminal histories in fiscal year 2016. Among the 23,170 offenders with at least one stale conviction, the average number of stale convictions was 3.7 and the median was two (Table 7).

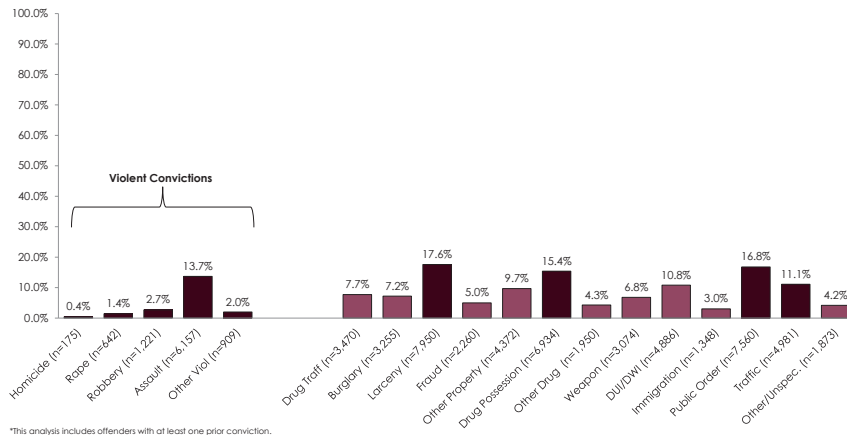
Table 7.
Offenders with Stale Prior Convictions*

	Stale Convictions (USSG §4A1.2(e)(3) or (4))
TOTAL OFFENDERS	23,170
Average No. Stale Convictions	3.7
Median (50%)	2

*This analysis includes offenders with at least one stale prior conviction.
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Figure 13 shows the distribution of stale offenses among all offenders with at least one conviction, including those without stale convictions. Among all offenders with any criminal history, the most common stale convictions were larceny (17.6%), public order offenses (16.8%), and drug possession (15.4%). However, 17.4 percent of all offenders with any criminal history had at least one stale violent offense. Assault was the most common prior violent stale offense, with 13.7 percent of offenders with any criminal history having at least one stale assault in their criminal history. The next most common stale violent offenses were robbery (2.7%), rape (1.4%), and homicide (0.4%).

Figure 13.
Types of Stale Convictions—Offenders With Prior Convictions*



*This analysis includes offenders with at least one prior conviction. SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Database. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Part III. Conclusion

Historically, the Commission has regularly collected data only on the points assigned to previous offenses under the federal sentencing guidelines. This is the first report that provides complete criminal history information for federal offenders, including the types of offenses in offenders' criminal histories. It also provides information on previous convictions that did not receive points.

The total number of previous convictions among federal offenders sentenced in fiscal year 2016 was 273,414. Most offenders (72.8%) had at least one conviction in their criminal histories and the average number of convictions was 6.1. The most common prior offenses were public order offenses, as 43.7 percent of offenders with prior criminal history had at least one conviction for a public order offense. Almost as many offenders had prior violent offenses (39.5%). Assault was the most common violent offense (29.5%) followed by robbery (8.1%), rape (4.4%), and homicide (1.9%).

Part IV. Appendix

Methodology

As part of its mission, the Commission collects, analyzes, and disseminates a broad array of information on federal crime and sentencing practices. To conduct its research and data activities, the Commission relies on sentencing documents submitted by the courts. Within 30 days after entry of judgment in a federal criminal case the chief judge of the district is required by statute to ensure the Commission is provided copies of (1) the judgment and commitment order; (2) a written statement of reasons for the sentence imposed; (3) any plea agreement; (4) the indictment or other charging document; (5) the presentence investigation report (PSR); and (6) any other information the Commission finds appropriate.³² The Commission uses these documents to create its annual individual offender datafiles and other specialized data for its work.

Historically, the data on an offender’s criminal history collected and reported by the Commission was limited to the number of points assigned under Chapter Four of the federal sentencing guidelines. For the research discussed in this report, the Commission used optical

recognition software to extract criminal history information from the Juvenile Adjudication and Adult Conviction sections of an offender’s PSR. Data gathered on conviction information through this software for each juvenile adjudication or adult conviction includes: whether it was a juvenile adjudication or adult conviction, Chapter Four guideline(s) cited, jurisdiction of adjudication/conviction, date of arrest, and date of sentence. The conviction charge(s) were also scanned and categorized into 35 standardized offense types. Staff then reviewed the information scanned by the software and corrected any errors.

For the analysis in this report Commission staff used the criminal history data along with the data in the Commission’s individual offender datasets. Pursuant to 28 U.S.C. § 994(w), a district court is directed to submit to the Commission five sentencing documents in each felony or Class A misdemeanor case. These documents are then analyzed to extract demographic, conviction, sentencing, and guideline application information for each case. In fiscal year 2016 the Commission’s individual datafile included 67,742 cases.³³ Criminal history and complete documentation information was available for 61,946 of these cases.

The 35 offense categories were as follows:		
• Murder	• Intimidation (Not Witness)	• Drug Possession
• Unspecified Manslaughter	• Hit and Run with Bodily Injury	• Unspecified Drug Offense
• Non-Negligent Manslaughter	• Extortion	• Escape/Flight
• Vehicular Manslaughter	• Child Abuse	• Weapons Offenses
• Negligent Manslaughter	• Other Violent Offense	• Court Violation
• Kidnapping	• Burglary	• Rioting
• Statutory Rape	• Arson	• Traffic
• Forcible Sex Offense	• Fraud	• DUI
• Robbery	• Larceny/Motor Vehicle Theft	• Public Order
• Aggravated Assault	• Embezzlement	• Immigration
• Simple Assault	• Other Property	• All Other Offenses
• Intimidating a Witness	• Drug Trafficking	

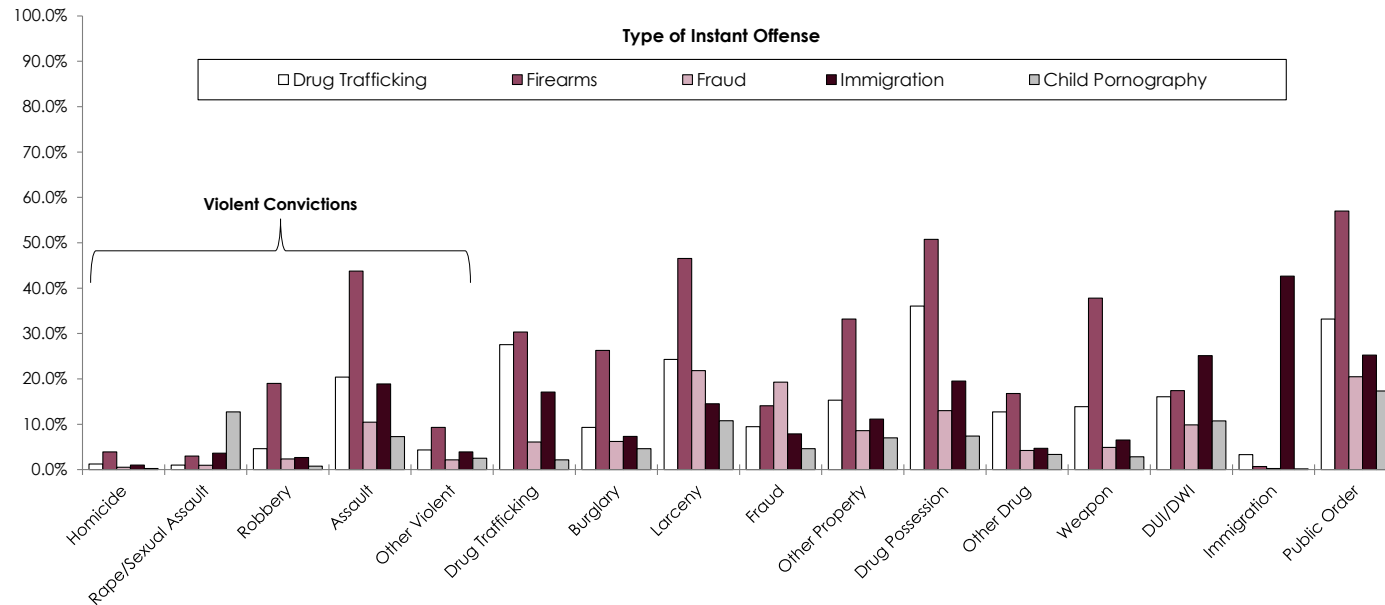
The 35 categories were further consolidated into 18 broader offense categories for analysis purposes:		
• Homicide	• Burglary	• Weapons Offense
• Rape	• Larceny	• DUI
• Robbery	• Fraud	• Immigration
• Assault	• Other Property	• Public Order
• Other Violent	• Drug Possession	• Traffic
• Drug Trafficking	• Other Drug Offense	• All Other Offenses

Appendix Tables and Figures

The Appendix tables and figures provide additional information. The figures in the report comparing immigration, drug trafficking, firearms, fraud, and child pornography offenders provide data only on offenders with prior convictions.

Appendix Figure 1 and Appendix Table 1 include all offenders in those five categories, and provide the distribution of prior offenses in offenders' criminal history. The figures in the report body only included offenders with convictions. Appendix Figures 2 through 4 provide the distribution of offenses for three-, two-, and one-point convictions. Appendix Figures 5 through 10 provide the distribution of offenses for offenders in each CHC. For these figures only offenders with criminal history are included.

Appendix Figure 1.
Types of Prior Convictions by Offenders' Instant Offense*



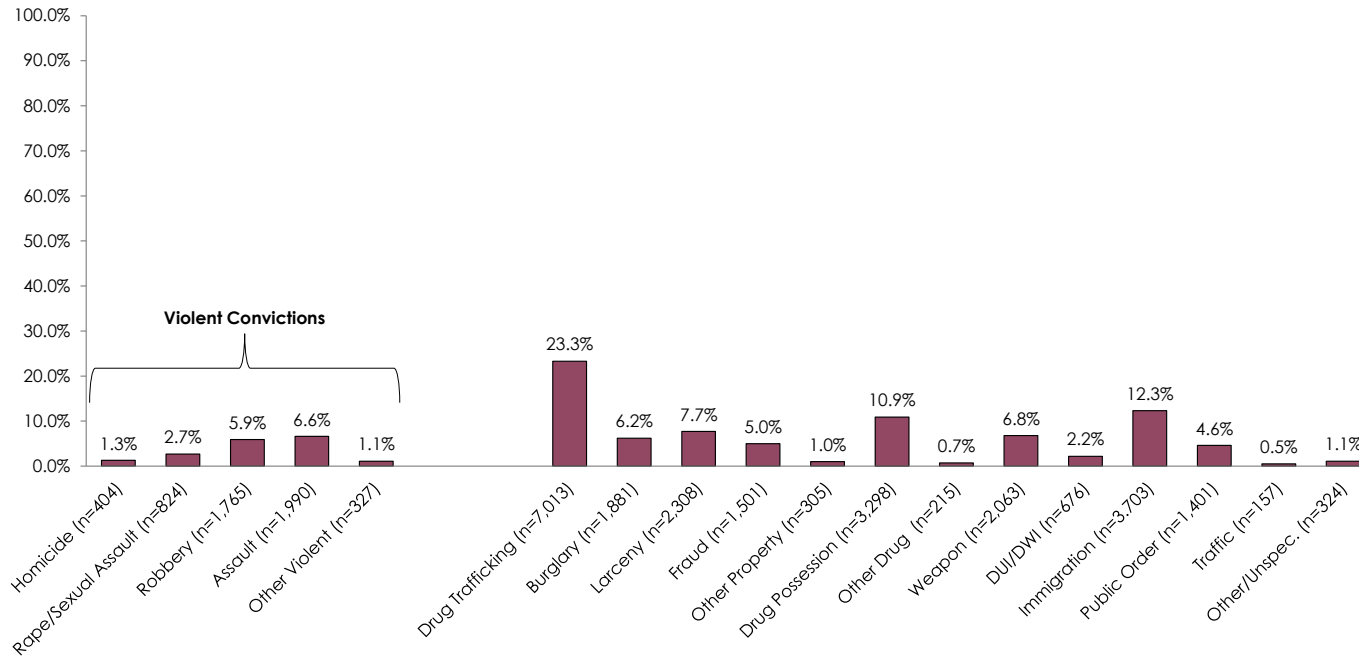
*Denominator includes offenders without convictions.
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Table 1.
Types of Prior Convictions by Offenders' Instant Offense*

		Type of Instant Offense				
		Drug Trafficking	Firearms	Fraud	Immigration	Child Pornography
TOTAL OFFENDERS		18,820	6,880	5,974	18,900	1,908
Type of Prior Conviction	Homicide	1.3%	3.9%	0.6%	1.0%	0.3%
	Rape/Sexual Assault	1.0%	3.0%	1.0%	3.6%	12.7%
	Robbery	4.6%	19.0%	2.4%	2.7%	0.8%
	Assault	20.4%	43.8%	10.5%	18.9%	7.3%
	Other Violent	4.3%	9.3%	2.2%	3.9%	2.5%
	Drug Trafficking	27.6%	30.4%	6.1%	17.1%	2.2%
	Burglary	9.3%	26.3%	6.2%	7.3%	4.6%
	Larceny	24.3%	46.5%	21.8%	14.5%	10.8%
	Fraud	9.5%	14.1%	19.3%	7.9%	4.6%
	Other Property	15.3%	33.2%	8.6%	11.1%	7.0%
	Drug Possession	36.1%	50.8%	13.0%	19.5%	7.4%
	Other Drug	12.8%	16.8%	4.2%	4.7%	3.4%
	Weapon	13.9%	37.8%	4.9%	6.5%	2.8%
	DUI/DWI	16.1%	17.4%	9.9%	25.1%	10.7%
	Immigration	3.3%	0.7%	0.3%	42.7%	0.2%
Public Order	33.2%	57.0%	20.5%	25.2%	17.4%	

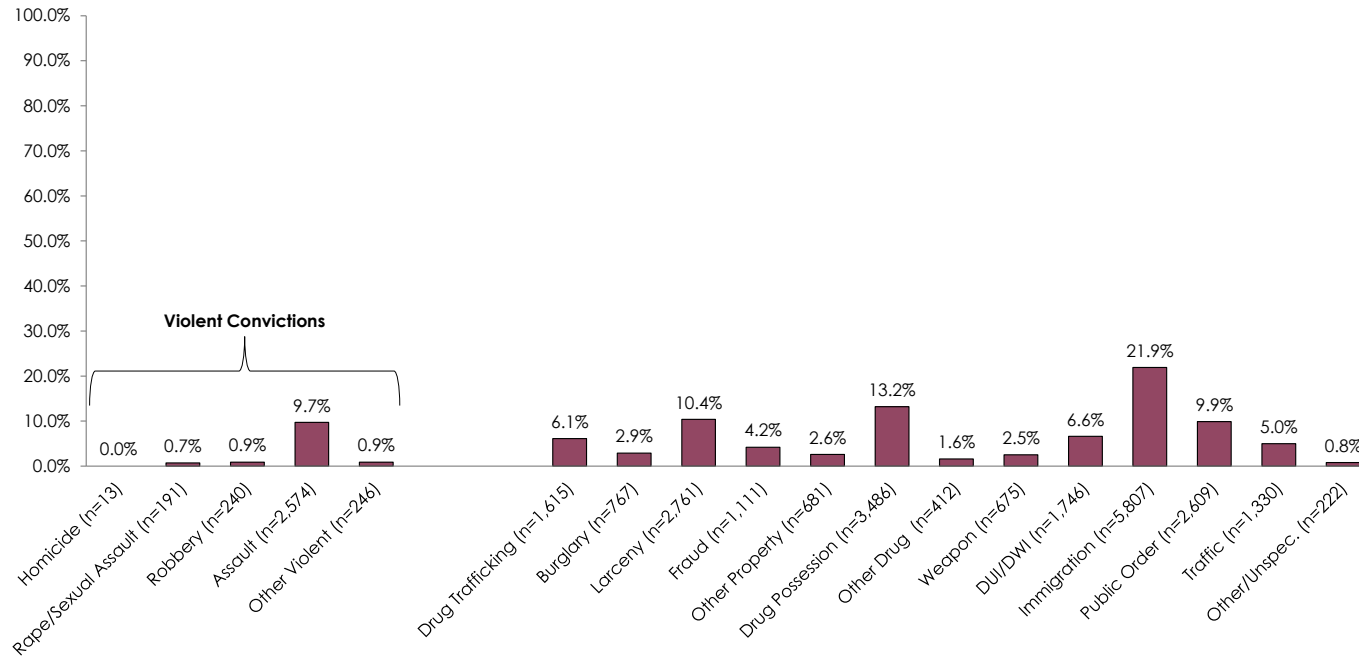
*Denominator includes offenders without convictions.
 SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Figure 2.
Types of Prior Convictions for 3-Point Offenses



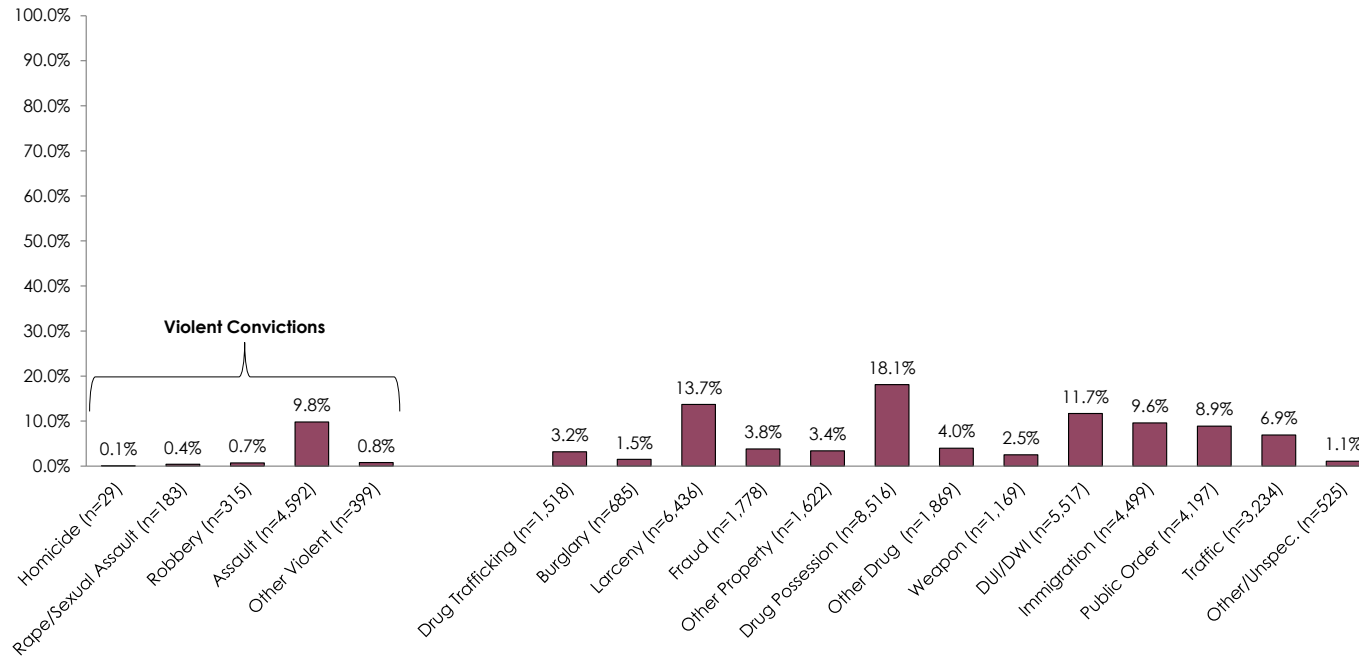
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Figure 3.
Types of Prior Convictions for 2-Point Offenses



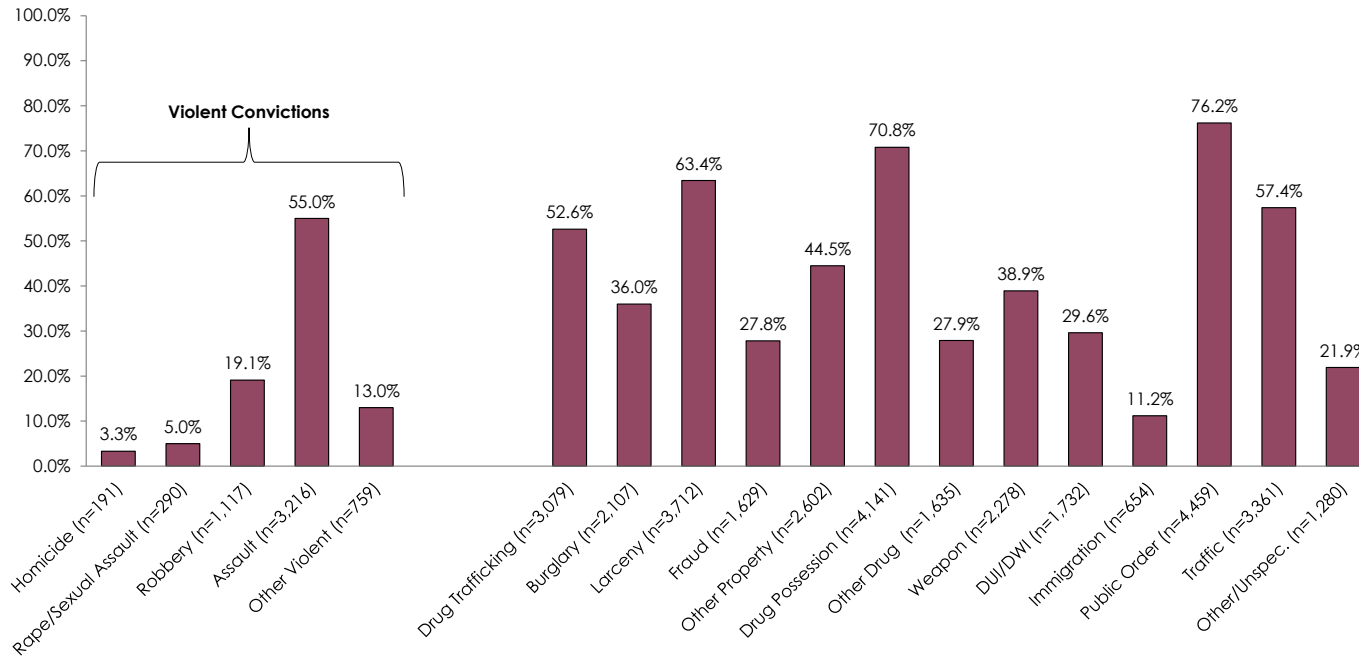
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Figure 4.
Types of Prior Convictions for 1-Point Offenses



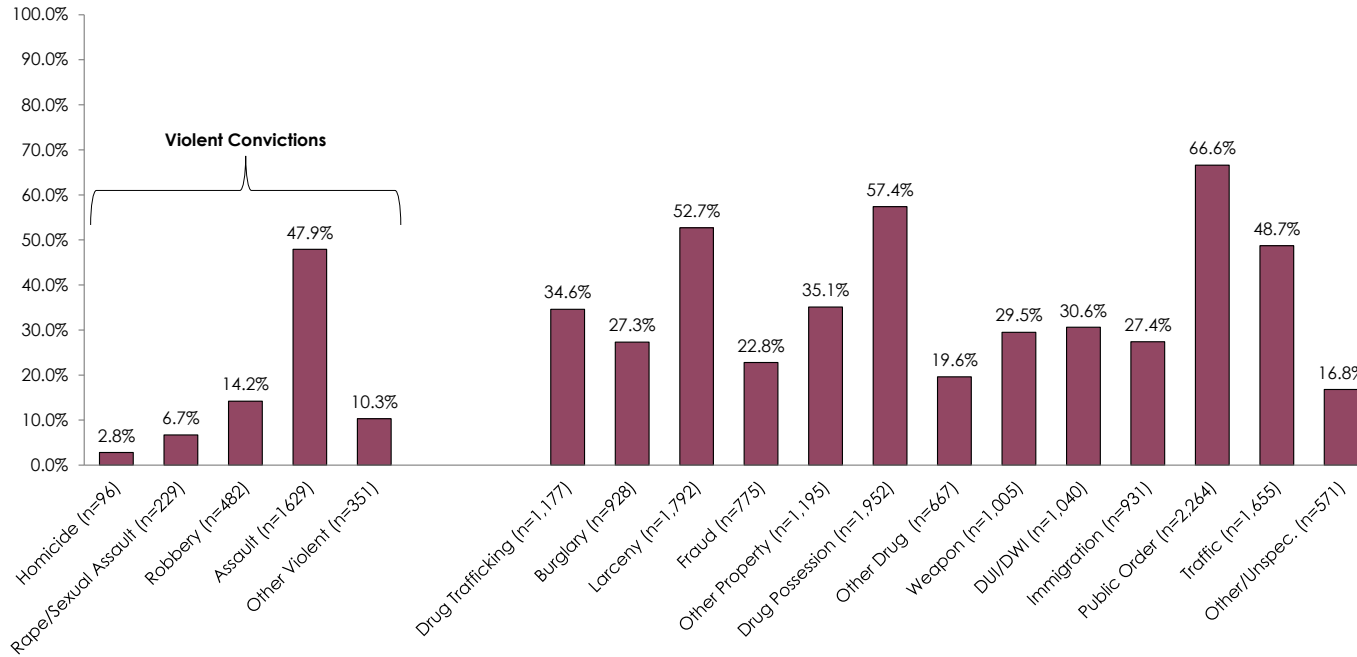
SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Figure 5.
Types of Prior Convictions for Offenders in Criminal History Category VI*



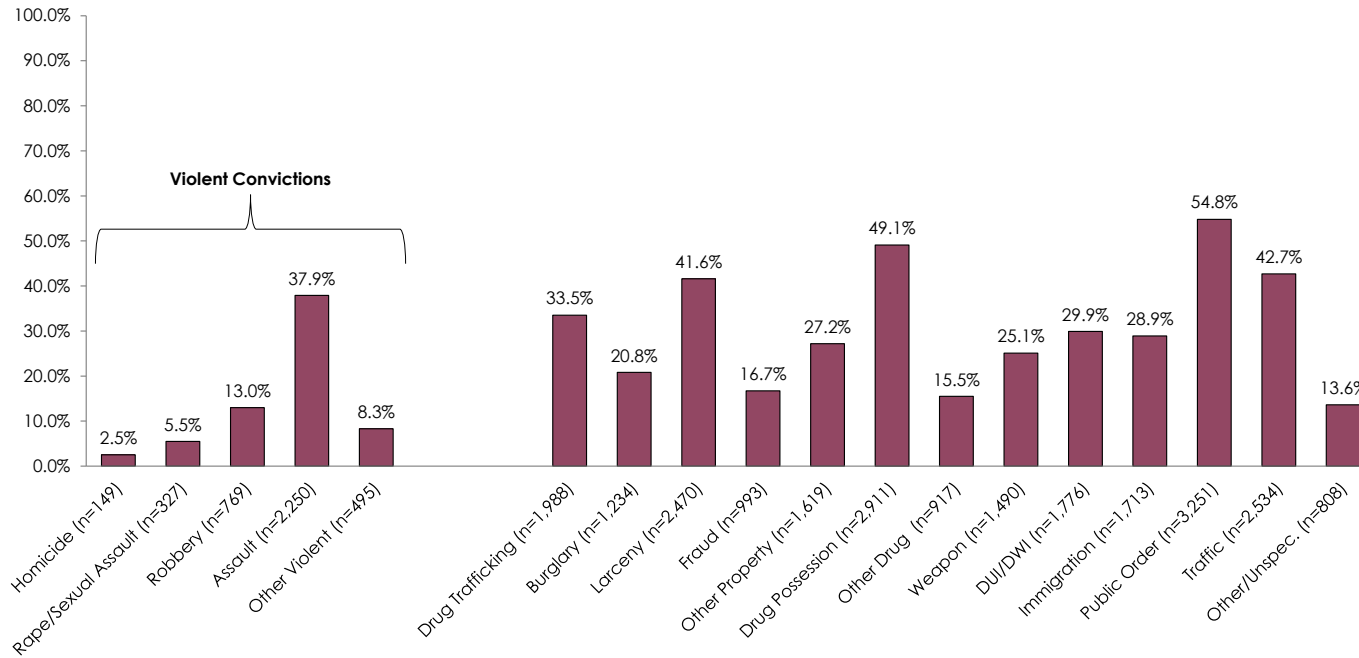
*This analysis includes offenders with at least one prior conviction in that offense category.
 SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Figure 6.
Types of Prior Convictions for Offenders in Criminal History Category V*



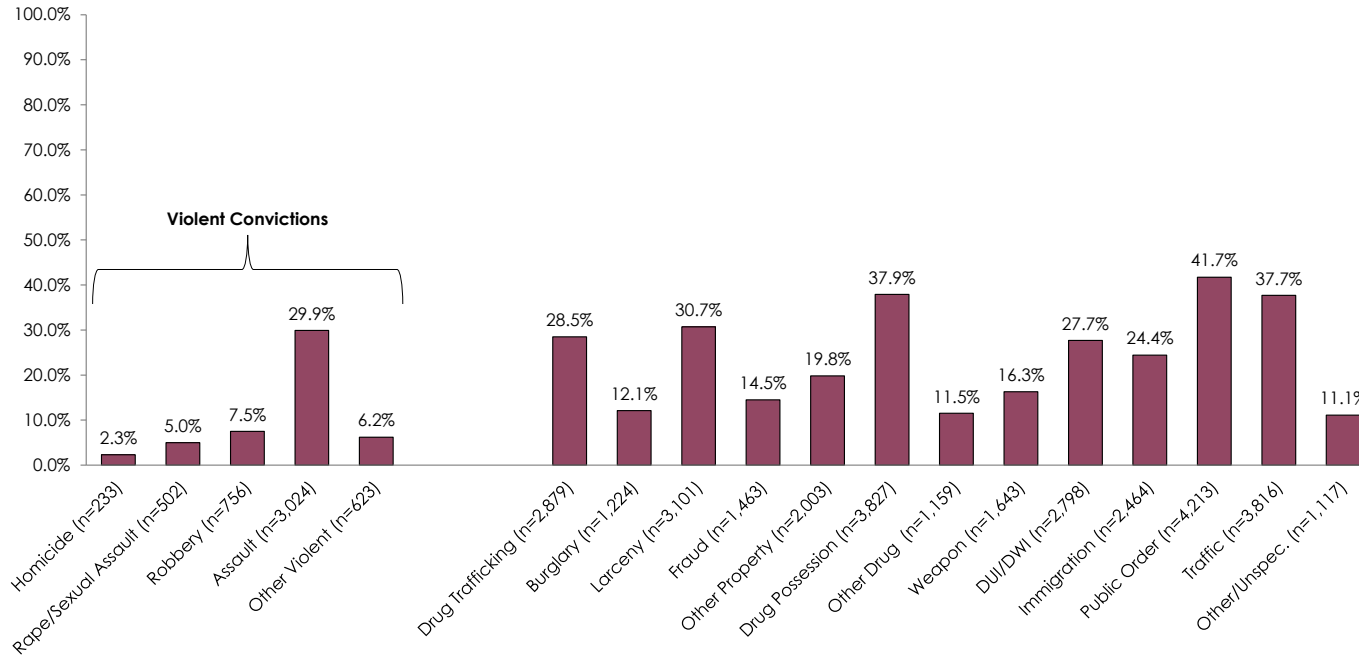
*This analysis includes offenders with at least one prior conviction in that offense category.
 SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Figure 7.
Types of Prior Convictions for Offenders in Criminal History Category IV*



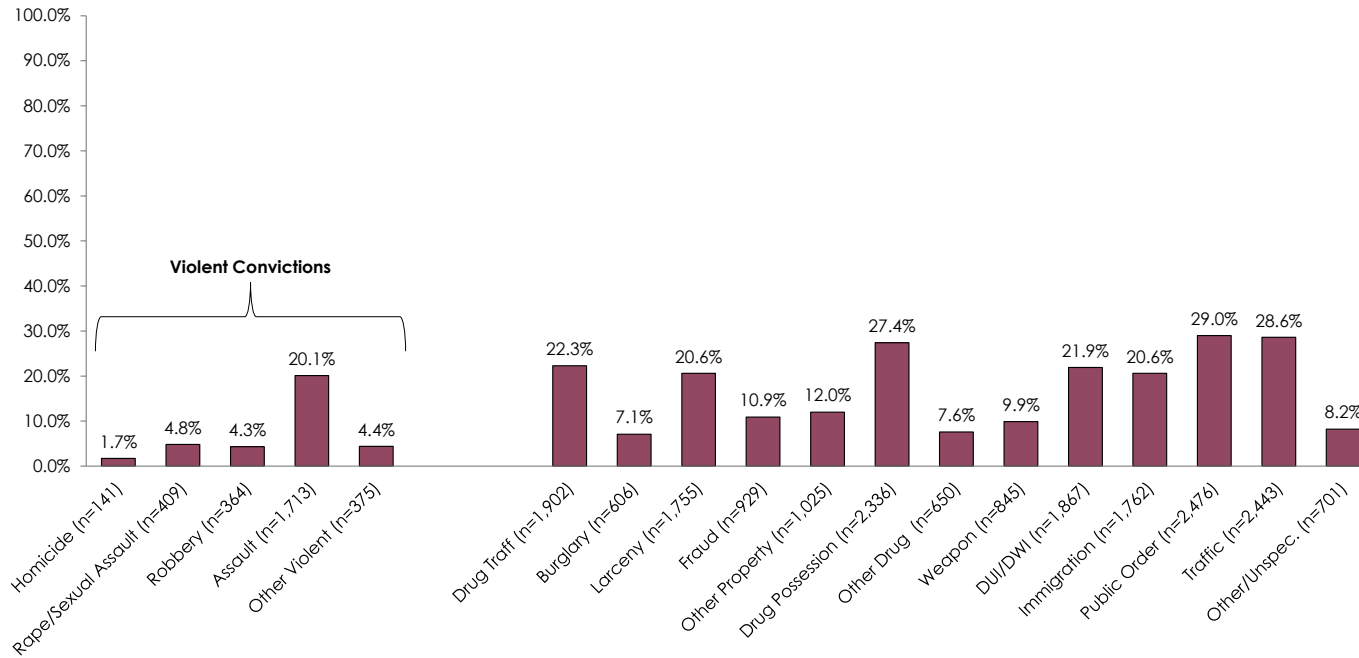
*This analysis includes offenders with at least one prior conviction in that offense category.
 SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Figure 8.
Types of Prior Convictions for Offenders in Criminal History Category III*



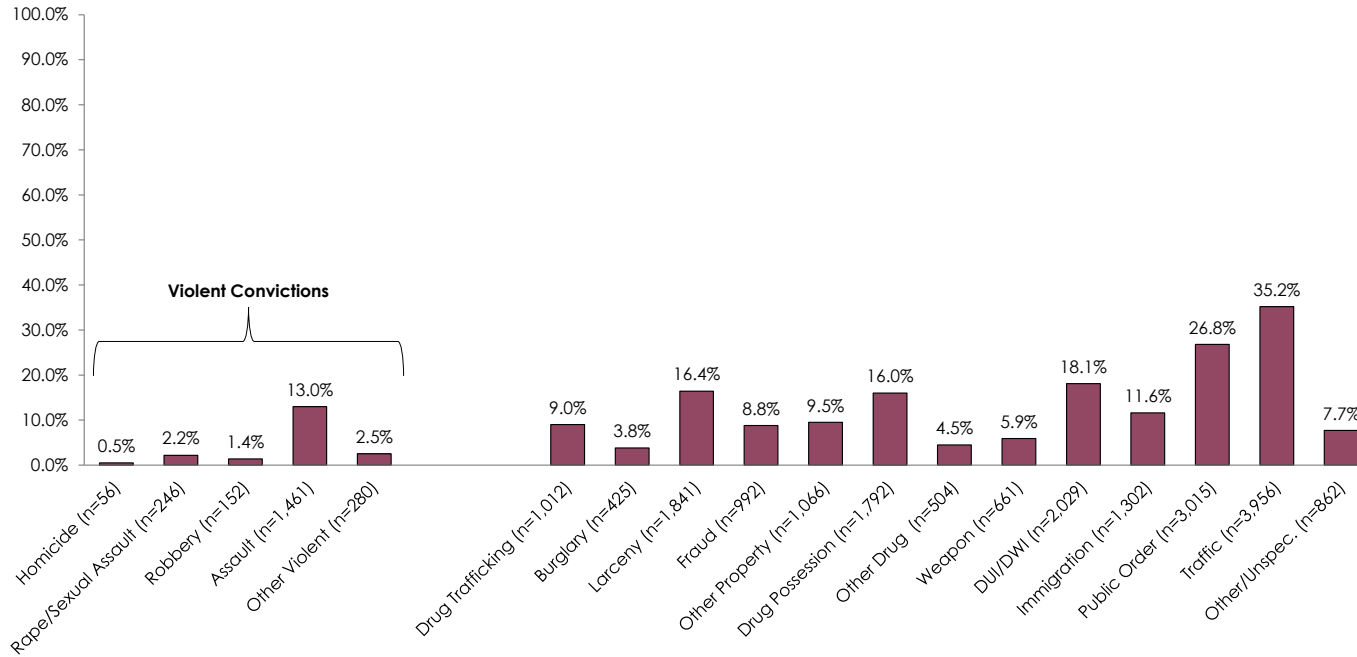
*This analysis includes offenders with at least one prior conviction in that offense category.
 SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Figure 9.
Types of Prior Convictions for Offenders in Criminal History Category II*



*This analysis includes offenders with at least one prior conviction in that offense category.
 SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Appendix Figure 10.
Types of Prior Convictions for Offenders in Criminal History Category I*



*This analysis includes offenders with at least one prior conviction in that offense category.
 SOURCE: U.S. Sentencing Commission FY 2016 Criminal History Datafile. Of the 67,742 cases reported to the Commission, 5,796 were excluded from this analysis due to incomplete information. Cases missing information necessary for analysis were excluded from that analysis.

Endnotes

1 Title II, Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473 (1984).

2 18 U.S.C. § 3553(a)(1)

3 The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues; and (4) to devise and conduct seminars and workshops providing continuing studies for persons engaged in the sentencing field.

4 28 U.S.C. §§ 991(b)(1)(B), 994(d)(1), 994(h), 994(i), and 994(j).

5 “Conviction” includes criminal convictions, juvenile adjudications, and diversionary or deferred dispositions resulting from a finding or admission of guilt or a plea of *nolo contendere*.

6 Public order includes offenses such as disorderly conduct, obstruction of justice, prostitution, gambling, and contributing to the delinquency of a minor.

7 18 U.S.C. § 922(g) criminalizes possession of a firearm for specified groups of people, including those who have a previous qualifying conviction. Therefore, criminal history is a required element for many federal firearms offenders.

8 Convictions may not receive points under the guidelines due to the minor nature of the offense or due to the amount of time that has passed.

9 *See generally* U.S. SENTENCING COMM’N, 2017 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2018). The Commission receives information from the courts on cases in which the defendant has been convicted of a felony or a Class A misdemeanor. The fiscal year for the federal government begins on October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends.

10 For more information about the operation of the federal sentencing guidelines, see U.S. SENTENCING COMM’N, FEDERAL SENTENCING: THE BASICS 18 (2015).

11 This section provides a simplified summary of the criminal history calculation for those sentences which resulted in points, for purposes of understanding the data set forth in this report. Several criminal history rules, including those that apply to stale convictions and revocation sentences, are not discussed here. For a complete understanding of the rules that govern criminal history, see U.S. SENTENCING COMM’N, *Guidelines Manual*, Ch. 4 (Nov. 2016) [hereinafter USSG].

12 *See, e.g.*, 21 U.S.C. § 841, 18 U.S.C. § 3559, 18 U.S.C. § 924(e).

13 For more than a decade, drugs, immigration, fraud, and firearms cases constituted the vast majority of federal felonies and Class A misdemeanors. For more information about the cases reported to the Commission see generally, U.S. SENTENCING COMM’N., OVERVIEW OF FEDERAL CRIMINAL CASES FISCAL YEAR 2016 (2017) [hereinafter 2016 OVERVIEW].

14 For comparisons across all five instant offenses that include both offenders with and without convictions in the denominator, see Appendix Table 1 and Appendix Figure 1.

15 This categorization of child pornography includes both production and possession.

16 USSG, *supra* note 11, at Ch. 4.

17 *Id.* at §4A1.1.

18 In a few states, some misdemeanors are punishable by an incarceration sentence of 13 months or longer. Under the sentencing guidelines these misdemeanors would receive three points.

19 USSG, *supra* note 11, at § 4A1.2(c).

20 *Id.* at § 4A1.2(g), (h), (i).

21 USSG, *supra* note 11, at § 4A1.2(j).

22 *Id.* at §§4A1.2(d) and (e).

23 USSG *supra* note 11, at § 4A1.1(d).

24 If an offender also received status points, only one point was assigned for recency. If an offender did not receive status points, two points were assigned for recency.

25 *See* USSG, *supra* note 11, at App. C, amend. 742 (eff. Nov. 1, 2010).

26 For information on offenses for each individual CHC, see Appendix

Figures 5 through 10.

27 Some of these offenders also had two-point and one-point convictions
in their criminal history in addition to their three-point convictions.

28 Some of these offenders also had one-point convictions in their
criminal history in addition to their two-point convictions.

29 All categories of offenders included some with stale convictions in
addition to convictions that were assigned criminal history points.

30 USSG, *supra* note 11, at §4A1.2(c).

31 A conviction may be excluded under both the petty and staleness
provisions.

32 28 U.S.C. § 994(w)(1).

33 Each case represents an individual offender.

