

offenders and elderly prisoners and a fuller explanation of the scientific and statistical conclusions that served as the basis for the proposed amendments. Questions were raised regarding the impact of the provisions dealing with hearings on hearing provisions in Rules governing other requests for the modification of criminal sentences. The purpose of this Supplement is to address those questions and concerns.

Youthful Offenders

The basis for the Committee's proposals with respect to youthful offenders was the growing empirical evidence, documented both statistically and in medical, psychological, and criminological journals and accepted by the United States Supreme Court, that (1) younger people have "a lack of maturity and an underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking" and "lack the ability to extricate themselves from horrific, crime-producing settings" (*Miller v. Alabama*, 567 U.S. 460, 471 (2012)) and (2) that is due, at least in part, to the fact that the parts of the human brain that can ameliorate those attributes are not fully developed during the teenage years and do not become fully developed until an individual is into his or her 20's. Although there appears to remain some debate about what to call this transitional period beyond the age of 18 – young adulthood, emerging adulthood, late adolescence – the literature and, more important perhaps, actual arrest data, clearly support the view stated in *Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems*, Council of State Governments Justice Center (2015) at 2, that:

Contrary to conventional belief, age 18 is not a fixed point when adolescents become fully mature adults. Rather, young adulthood is a transitional period that can range from 18 to 24 and even beyond, during which significant brain development is still occurring and decision-making abilities are not fully mature. During this period of substantial growth and change, young adults exhibit clear developmental differences from both youth and older adults.¹

See also Selen Siringil Perker and Lael Chester, *Emerging Adults: A Distinct Population that Calls for an Age-appropriate Approach by the Justice System*, at p. 3 (June 2017); Jeffrey J.

¹ The article cites as authority for that statement Ashley R. Smith, Jason Chein, and Laurence Steinberg, "Peers Increase Adolescent Risk Taking Even When the Probabilities of Negative Outcomes are Known," *Developmental Psychology*, 50, no. 5, pp. 1564-1568 (May 2014); Kathryn Monahan, Laurence Steinberg, Elizabeth Cauffman, and Edward Mulvey, "Psychosocial Immaturity from Adolescence to Early Adulthood: Distinguishing Between Adolescence-Limited and Persistent Antisocial Behavior," *Development and Psychopathology*, 25, n. 4, pp. 1093-1105 (November 2013); Elizabeth Shulman, Kathryn Paige Harden, Jason Chein, and Laurence Steinberg, "The Development of Impulse Control and Sensation-Seeking In Adolescence: Independent or Interdependent Processes?" *Journal of Research on Adolescence*, 26, n. 1 (October 2014); and Laurence Steinberg, "Should the Science of Adolescent Brain Development Inform Public Policy?" 50 Ct. Rev. 70 (2014).

Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens through the Twenties*, *American Psychologist* (May 2000); Elizabeth S. Scott, Richard J. Bonnie, and Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 *Fordham L. Rev.* 641, 642 (2016); Tirza A. Mullin, *Eighteen Is Not a Magic Number; Why the Eighth Amendment Requires Protection for Youth Aged Eighteen to Twenty-Five*, 53 *U. Mich. J.L. Reform* 807 (2020); Rolf Loeber and David Farrington, *Study Group on the Transitions Between Juvenile Delinquency and Adult Crime*, Research Report submitted to U.S. Department of Justice (2013); Laurence Steinberg, Elizabeth Cauffman, and Kathryn V. Monahan, *Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, March 2015.

The conclusions reached in those articles are documented empirically by actual arrest records. Attached to this Supplement as Appendix A is a December 2017 Report by the United States Sentencing Commission, *The Effects of Aging on Recidivism Among Federal Offenders*, which illuminates several facts in support of the Committee's recommendations. Figure 1, on page 11, is a bar graph that measures, by age, all arrests in the United States in 2016. It shows a high rate of arrests of people throughout their twenties that begins to drop off significantly thereafter.

The Committee acknowledges, of course, that all youngsters go through that brain developmental process and that only a very small percentage of them allow their impulses to lead them into criminal behavior. The Committee does not believe that the lack of a fully mature frontal cortex is the cause of criminal behavior but does accept the conclusions cited that it can explain some of the bad choices youngsters can make that cause harm to others and get themselves in trouble. The paper published by the Justice Center of the Council of State Governments (*Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems*, *supra*, at 3), recognizes that, for both youth and adults, criminal thinking and antisocial tendencies are often the primary causes of criminal behavior, but that "young adults' immaturity and susceptibility to peer influences makes them even more prone to engage in this type of behavior."

The findings and conclusions in these publications support the Committee's choice of 25, rather than 18, as the appropriate qualifying age. It was not just an arbitrary pick.

Senate Bill 494

When developing its proposals, with the assistance of the Attorney General's Office and the Public Defender's Office, the Committee was aware that SB 494 was then pending in the State Senate with an uncertain future. The Committee also was aware of this Court's Opinion in *Carter, Bowie, McCullough v. State*, 461 Md. 295 (2018) in which, after discussing *Miller* and *Graham v. Florida*, 560 U.S. 48 (2010), regarding those attributes of the "emerging adult," the Court noted that, although the State is not required to "guarantee eventual freedom" to youthful offenders who commit horrifying crimes and may turn out to be irredeemable, it must give juvenile offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 311, quoting from *Graham*.

Although that statement was in the context of an initial sentence, the Committee suggests, as a policy matter, that it is relevant to the opportunity for subsequent sentence review as well. This Court has recognized on several occasions the generally accepted principle that one of the objectives of sentencing is rehabilitation (*Jackson v. State*, 364 Md. 192, 199 (2001) and cases cited therein), which is far more ascertainable when considering a revision of the sentence under Rule 4-345 than when initially imposing it, at which point possible rehabilitation is usually speculative at best.

The fate of SB 494 was not determined until after the Criminal Rules Subcommittee had approved proposed amendments to the Rule. The subcommittee saw a need to address not just the juvenile offender but the issue of the ageing prisoner as well, which the statute does not address. That was based on data showing that many of those prisoners, who had served substantial periods of long sentences, were no longer a danger to public safety and ought to have the opportunity to seek release, free from the five-year and 90-day impediments, which they could do nothing about. *See infra*.

The enactment of SB 494 did not change the Committee's views. As enacted, it provided no prospect of relief to the ageing prisoner and provided no relief to any youngster sentenced on or after October 1, 2021. The Committee believed that the Court has the authority to amend its own Rule to provide a broader opportunity for relief and that there was a solid basis for doing so.

In light of the Court's comments, the Committee has revised the proposed amendments to gratify completely the text of the statute by incorporating it by reference into the Rule as a new subsection (f)(3). That would give inmates who committed their crime before reaching 18 and were sentenced before October 1, 2021 the opportunity to seek relief **under the statute as it is written**. Subsection (f)(4) would afford the prospect of relief to those who satisfy the criteria of that subsection but who are excluded from the statute or who choose not to file under the statute.²

The argument has been made that there is an indirect conflict based on the assumption that, by limiting the statute as it did, the Legislature did not want anyone else to be eligible for sentence modification. Even if that were so, the Legislature has no Constitutional authority to preclude the Court from amending its own Rule to limit impediments the Court itself imposed, as a matter of Judicial policy and administration.

The Court asked as well about the service requirements of 15 years and 60 percent and the qualifying age of 60 years. Any number would be arbitrary in a sense, but, using the charts prepared by the Attorney General's Office, those numbers avoided some anomalous "cliffs,"

² The Committee did add two provisions to a proceeding under the statute that are not expressly provided for in the statute. One, which would be required under the Rule on motions, is to require that the inmate's motion be served on the State's Attorney. The other is to require the clerk to forward a copy of the motion to the local county or district office of the Public Defender. That is consistent with the practice under Rule 4-705 (b), dealing with motions for DNA testing. It is likely that most of the petitioning inmates will be indigent.

seemed best to match what the Committee thought was fair, and provided the best opportunity for a successful life upon release.

Hearing Requirements

There are several Rules dealing with motions for post-conviction relief. Rule 4-331 permits motions for a new trial based on some defect in the trial or on newly discovered evidence. Section (f) of that Rule permits a hearing on such a motion and requires a hearing if the motion is based on newly discovered evidence, was timely filed, and a hearing was requested. Rule 4-709, which deals with motions for new trial based on DNA evidence, requires a hearing in some circumstances, precludes one in others, and makes a hearing discretionary in yet others. Rule 4-332, dealing with a writ of innocence, also involves a request for a new trial or a new sentence. It requires a hearing if the motion complies with the requirements of the Rule and a hearing was requested. Rule 4-406 requires a hearing on a petition for relief under the Post Conviction Procedure Act if there is a dispute of fact. Current Rule 4-345, dealing with the revisory power over sentences, precludes the court from modifying a sentence without a hearing in open court but precludes a hearing from taking place unless the required notices to victims were sent. SB 494 requires a hearing on a motion to reduce a sentence filed pursuant to the statute.

As noted, the proposed amendments to Rule 4-345 would incorporate by reference the provisions of SB 494 into the Rule as a new subsection (f)(3). Accordingly, an inmate who files a motion for modification under the statute would be entitled to a hearing on that motion in conformance with the statute. If a petition is filed pursuant to proposed subsection (f)(4), the current provision of the Rule precluding the court from modifying, reducing, correcting, or vacating a sentence without a hearing would remain subject to two exceptions: the court must dismiss the petition without a hearing if it finds that the petitioner does not qualify as an eligible petitioner, and the court may deny the petition without a hearing if it finds that, during the preceding six years, a motion under subsection (f)(3) or a petition under subsection (f)(4) was denied after a hearing. That provision would not apply to any of the other Rules noted above.

In order to preclude an inmate from bouncing back and forth with motions under the statute and then petitions under the Rule, the Committee further proposes permitting a motion to be denied without a hearing if a previous motion or petition was denied after a hearing within the preceding three years. Permitting that to occur would constitute a vexatious burden on both the court and on victims.

The Ageing Population

The latest data regarding inmate characteristics published by the Maryland Department of Public Safety and Correctional Services (July 1, 2018) show that there were 902 prisoners over 60 years of age (4.8% of the total inmate population). The problems endemic to that population, in terms of general health, dementia, depression, geriatric incontinence, mobility, and safety, have been widely reported and are not seriously contested. See R. Aday, *Ageing Prisoners: Crisis in American Corrections* (2003); Jalila Jefferson Bullock, *A Little Child Shall Lead Them: Juvenile Justice, Ageing Out, and the First Step Act*, 87 Tenn. L. Rev. 569 (Spring 2020); Jalila

Jefferson Bullock, *Quelling the Silver Tsunami: Compassionate Release of Elderly Offenders*, 79 Ohio St. L. J. 937 (2018). Given the two current impediments to the exercise of the court's revisory power, the only current prospect of early release for those ageing prisoners, other than institutional credits for good behavior or special projects, is either parole or some form of compassionate leave, neither of which, so far, has assisted them.

Exercising revisory power under Rule 4-345 is not intended as traditional compassionate leave or to relieve the Division of Correction from having to deal with the elderly prisoner, but rather to release prisoners who no longer are a danger to public safety, who no longer need to be in prison, and who can lead productive lives and become an asset rather than a detriment to society. The criteria set forth in the proposed amendments, some taken from SB 494, make that clear. The Ohio State Law Journal article notes the acceptance of the "aging out phenomenon" even by the Federal Bureau of Prisons: "By their own admission," the article reports, "'age is one of the biggest predictors of misconduct' in prison and 'inmates tend to 'age out' of misconduct' as they grow older. Older inmates 'generally try to avoid conflict and 'do their time' as quietly and easily as possible,' and utilize 'passive precautionary behaviors such as keeping more to oneself, avoiding certain areas of the prison, spending more time in one's cell, and avoiding activities' to remain free from danger." *Quelling the Silver Tsunami, supra*, 79 Ohio St.L. J. at 974.

One of the "Key Findings" of the United States Sentencing Commission in its 2017 Report (Appendix A) is that:

Older offenders were substantially less likely than younger offenders to recidivate following release. Over an eight-year follow-up period, 13.4 percent of offenders age 65 or older at the time of release were rearrested compared to 67.5 percent of offenders younger than age 21 at the time of release. The pattern was consistent across age groupings, and recidivism measured by rearrest, reconviction, and incarceration declined as age increased.

Id. at 3. The Commission added that "[a]ge exerted a strong influence on recidivism across all sentence length categories" and that "[o]lder offenders were less likely to recidivate after release than younger offenders who had served similar sentences, regardless of the length of sentence imposed." *Id.*

Data from the DOJ Bureau of Justice Statistics reported in *Quelling the Silver Tsunami, supra*, at 974-75 showed that the recidivism rate for all offenders released between 2005 and 2010 was 77% (re-arrest within five years after release). Data from 2015 showed a re-arrest rate for inmates 50 and older released between 2006 and 2010 was 15% (re-arrest within three years after release), none of whom were 70 or older. The conclusion was that "[e]lderly offenders comprise an incredibly small percentage of recidivists."

It is important to note that the recidivism data in those studies was based on **all** prisoners released without regard to whether the release was a discretionary one, such as parole or judicial action, or simply from serving the sentence. The modifications proposed in the amendments to Rule 4-345 would be discretionary after consideration of the factors set forth in subsection (h)(4)

and the evidence bearing on those factors. It is reasonable to expect that, in deciding whether to exercise their revisory power, judges will pay close attention to whether the petitioner is a good candidate for modification, and that the recidivism rates would likely be lower than the ones revealed in those studies.

A Maryland experience is consistent with what all of that data shows. In 1980, the Court, in *Stevenson v. State*, 289 Md. 167 (1980), held invalid a jury instruction that had been almost routine in criminal cases. Thirty-two years later, in *Unger v. State*, 427 Md. 383 (2012), the Court held that the failure of defendants to object to that instruction in cases tried prior to 1981 did not constitute a waiver. As a result of that decision, 235 prisoners tried before 1981 became entitled to a new trial. Most of those prisoners had been convicted of very serious crimes, were serving life sentences, and were still incarcerated. Due to practical difficulties in being able to retry them, agreements were reached that resulted in the release of 188 of those inmates. Those released were between 51 and 85 years old. In a 2018 publication by the Justice Policy Institute, it was reported that there was a “a very low recidivism rate.” *The Ungers, 5 years and Counting*, Justice Policy Institute (2018) at 10, 11.

Other States

Finally, the Court inquired as to whether other States had adopted a similar opportunity for relief. The Public Defender has identified the District of Columbia, Delaware, and Florida, and a recommendation in the Model Penal Code. Their statutes are attached to this Supplement as Appendix B.

Respectfully Submitted,

/s/

Alan M. Wilner
Chair

AMW:sdm

Enclosures

cc: Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 by adding an exception to the five-year limitation on the court's revisory power set forth in section (e); by transferring language from a Committee note following section (e) to new subsection (f) (2) and a cross reference following subsection (f) (2); by adding new subsection (f) (1) generally regarding modification in special circumstances; by adding a Committee note following subsection (f) (1); by adding new subsection (f) (3) governing modification of a sentence pursuant to a certain statute; by adding a Committee note following subsection (f) (3); by adding new subsection (f) (4) permitting a court, under certain circumstances, to modify a sentence by reason of length of confinement and age; by adding new subsection (g) (1), providing for where a motion or petition is to be filed; by adding new subsection (g) (2) requiring a certain attachment to a petition filed pursuant to subsection (f) (4); by adding new subsection (g) (3) requiring the clerk to forward a copy of a motion or petition by a self-represented individual filed under subsection (f) (3) or (f) (4) to be forwarded to the local Office of the Public Defender; by adding new subsection (g) (4) providing for service of a motion or

petition filed under the Rule and permitting the State's Attorney to file a response within a certain time; by re-lettering current subsections (e) (2) and (e) (3) as subsections (g) (5) and (g) (6), respectively, and adding clarifying language to the subsections; by transferring the language of current section (f) to new subsections (h) (1) (A), (h) (2), and (h) (5) and adding clarifying language to the subsections; by adding new subsections (h) (1) (B) and (C) regarding the conduct of a hearing and the defendant's presence at the hearing; by adding new subsection (h) (3) governing dismissals and denials of motions and petitions without a hearing; by adding a Committee note following subsection (h) (3); by adding new subsection (h) (4) listing factors for the court to consider in determining whether to grant relief under subsection (f) (4); and by making stylistic changes, as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Cross reference: See State v. Brown, 464 Md. 237 (2019), concerning an evident mistake in the announcement of a sentence.

(d) Desertion and Non-Support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

(e) Modification Upon Motion - Generally

~~(1) Generally~~

Upon a motion filed within 90 days after imposition of a sentence ~~(A)~~(1) in the District Court, if an appeal has not been perfected or has been dismissed, and ~~(B)~~(2) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not increase the sentence and, unless the court finds the special circumstances set forth in subsection (f) (2), (f) (3), or (f) (4) of the Rule, it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant ~~and it may not increase the sentence.~~

Cross reference: Rule 7-112 (b).

~~Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health--General Article, § 8-507.~~

(f) Modification in Special Circumstances

(1) Generally

Failure to have filed a timely motion under section (e) of this Rule, or a previous grant or denial of a motion under that section, shall not bar relief under any of the special circumstances set forth in section (f) of this Rule. A modification of a sentence pursuant to section (f) may not include an increase in the length of the sentence.

Committee Note: Although the court's authority to revise a sentence on a motion filed pursuant to section (e) of this Rule is limited to five years from the date the sentence originally was imposed, no such limitation applies to the court's revisory power under section (f).

(2) Commitment for Drug or Alcohol Dependency Treatment

The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment.

Committee note: In order to implement a commitment under subsection (f)(2), the court must suspend all of the sentence except the time served and place the defendant on supervised probation, a condition of which is the successful completion of the commitment.

Cross Reference: See Code, Health-General Article, § 8-507.

(3) Modification Pursuant to Code, Criminal Procedure Article, §8-110

The court may modify a sentence imposed prior to October 1, 2021 on an individual who was convicted as an adult for an offense committed when the individual was a minor in accordance with the provisions of Code, Criminal Procedure Article, §8-110.

Committee Note: Code, Criminal Procedure Article, § 8-110 permits certain inmates to file a motion to reduce the duration of their sentence and provides certain requirements, conditions, and procedures for the processing of such a motion. The eligibility requirements for filing such a motion and some of the requirements, conditions, and procedures for the processing of that motion differ from those required for a petition filed under subsection (f) (4) of this Rule. It is the intent that a motion filed under subsection (f) (3) and a petition filed under subsection (f) (4) be treated as completely separate and independent proceedings, that a motion under subsection (f) (3) be dealt with as required by the statute, and that a petition filed under subsection (f) (4) be dealt with in accordance with that subsection and sections (g) and (h) of this Rule.

(4) Modification by Reason of Length of Confinement and Age

(A) Subsection (f) (4) of this Rule applies to a defendant who was sentenced to an aggregate unsuspended term of imprisonment of more than 15 years and (i) committed the last offense for which that sentence or any part of it was imposed before reaching the age of 25 and has served the greater of 15 years or sixty percent of that sentence, or (ii) has served at least 15 years of that sentence and has reached 60 years of age. For purposes of this subsection only, a life sentence or an

aggregate unsuspended sentence of more than 40 years shall be regarded as a sentence for 40 years. A defendant who meets the criteria of this paragraph is an eligible petitioner under subsection (f) (4).

(B) Upon a petition filed by an eligible petitioner and compliance with the requirements of sections (g) and (h) of this Rule, the court may modify or reduce the sentence or place the defendant on probation under the terms and conditions the court imposes.

(g) Procedure

(1) Where Filed

A motion or petition filed under this Rule shall be filed in the court that entered the sentence sought to be modified. If an aggregate sentence consists of two or more sentences imposed by different courts, and relief from the aggregate sentence is sought, a separate motion or petition shall be filed with each court. A court has revisory power under this Rule only with respect to a sentence that it imposed.

(2) Attachment

A petition seeking relief under subsection (f) (4) of this Rule shall be accompanied by a certified copy of the petitioner's Institutional Adjustment Record.

(3) Notice to Public Defender

If an individual seeking relief under subsection (f) (3) or (f) (4) of this Rule is self-represented, the clerk promptly shall forward a copy of the motion or petition to the local county or district Office of the Public Defender.

(4) Service; Response

A motion or petition filed under this Rule shall be served on the State's Attorney for the county. The State's Attorney may file a response within 30 days after service of the motion or petition.

~~(2)~~(5) Notice to Victims

Whether or not the State's Attorney files a response,
~~The~~ the State's Attorney shall give notice of a motion or petition filed under this Rule to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (A) that a motion or petition to modify, vacate, or reduce a sentence has been filed; (B) that the motion or petition has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

~~(3)~~(6) Inquiry by Court

Except as provided in subsection (h) (1), ~~Before~~ before considering a motion or petition under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

~~(f)~~ (h) ~~Open Court~~ Hearing

(1) When required

(A) The court may modify, reduce, correct, or vacate a sentence under this Rule only on the record ~~in open court, and~~ after ~~hearing from the defendant~~ movant or petitioner, the State's Attorney, and ~~from~~ each victim or victim's representative who requests present have been afforded an opportunity to be heard. ~~The defendant may waive the right to be present at the hearing.~~

(B) The hearing may be held in open court or remotely in accordance with procedures set forth in Rules 2-804 through 2-806.

(C) A petitioner seeking relief under subsection (f) (4) of this Rule has a right to be present at the hearing. The petitioner may not waive that right unless (i) the petitioner is not capable of appearing and effectively participating at the hearing, or (ii) the court permits the waiver. An individual seeking relief under any other section of this Rule may waive the right to be present at the hearing.

(2) Condition

No hearing shall be held on a motion or petition to modify or reduce the sentence until the court determines that the notice requirements in subsection ~~(e) (2)~~ (g) (5) of this Rule have been satisfied.

(3) When not required

(A) A motion seeking relief under section (a), (b), (c), (d), or (e) of this Rule may be denied without a hearing.

(B) The court shall deny a motion filed under subsection (f) (3) without a hearing if the court finds in a written order filed in the record that:

(i) the motion was filed less than three years after the court denied or granted in part a motion or petition filed under subsection (f) (3) or (f) (4); or

(ii) the court has previously denied or granted in part an aggregate total of three motions or petitions filed under subsection (f) (3) or (f) (4).

(C) The court shall dismiss a petition filed under subsection (f) (4) without a hearing if the court finds in a written order filed in the record that the petitioner does not qualify as an eligible petitioner.

Committee note: The court may hold a hearing on a petition filed under subsection (f) (4) if there is insufficient information to allow the court to determine whether the petitioner qualifies as an eligible petitioner.

(D) The court may deny a petition filed under subsection (f) (4) without a hearing if, during the preceding six years, a motion under subsection (f) (3) or a petition under subsection (f) (4) of this Rule was denied after a hearing.

(4) Factors Relevant to Granting Relief on a Petition

The court may grant relief under subsection (f) (4) if it determines that the individual is not a danger to the public and the interests of justice will be better served by a reduced or modified sentence. In determining whether to grant relief under subsection (f) (4) of this Rule, the court shall consider (A) the Institutional Adjustment Record of the petitioner filed with the petition; (B) the petitioner's plans for housing, education, and employment if released; (C) whether, if the petitioner is released, there is a reasonable likelihood that the petitioner will be a danger to a victim, another person, or the community; (D) if the petitioner is to be released on probation, any conditions recommended by the Division of Parole and Probation,

the State's Attorney, or a victim; and (E) any other factor the court deems relevant.

(5) Decision; Reasons

If the court grants the motion or petition, the court ~~ordinarily~~ shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based. When the court rules on the merits of a petition filed pursuant to subsection (f) (4) of this Rule, it shall issue a written decision addressing the factors in subsection (h) (4) of this Rule.

Cross reference: See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

APPENDIX A



The Effects of Aging on Recidivism Among Federal Offenders

UNITED STATES SENTENCING COMMISSION



APPENDIX A

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
Staff Director

Glenn R. Schmitt
Director
Office of Research and Data

December 2017

Kim Steven Hunt, Ph.D., *Senior Research Associate, Office of Research and Data*
Billy Easley II, J.D., *Legislative Affairs Specialist, Office of Legislative and Public Affairs*

TABLE OF CONTENTS

| | | | |
|---|---|--|---|
| Part One EXECUTIVE SUMMARY 1 | Part Two DEFINING AND MEASURING RECIDIVISM 5 | Part Three INTRODUCTION TO AGE AND RECIDIVISM AMONG FEDERAL OFFENDERS 9 | Part Four CHARACTERISTICS OF RECIDIVISM STUDY GROUP 13 |
|---|---|--|---|

Part Five

**RECIDIVISM RATES AMONG
FEDERAL OFFENDERS BY AGE**

21

Part Six

CONCLUSION

29

Part Seven

ENDNOTES

33

Part Eight

APPENDIX

37

Part One

Executive Summary

Introduction

The United States Sentencing Commission¹ began studying recidivism shortly after the enactment of the Sentencing Reform Act of 1984 (“SRA”), and has issued several recent publications examining recidivism rates among federal offenders released in 2005. The Commission’s first report in this series, *Recidivism Among Federal Offenders: A Comprehensive Overview* (“*Recidivism Overview Report*”), was released in March 2016 and discussed this research project in greater detail. As noted in the previous reports in this series,² recidivism information is central to three of the primary purposes of punishment described in the SRA—specific deterrence, incapacitation, and rehabilitation—all of which focus on prevention of future crimes through correctional intervention. Information about recidivism is also relevant to the Commission’s obligation to formulate sentencing policy that “reflect[s], to the extent practicable, advancements in knowledge of human behavior as it relates to the sentencing process.”³ Considerations of recidivism by federal offenders were also central to the Commission’s initial work in developing the *Guidelines Manual’s* criminal history provisions⁴ as well as its ongoing work.⁵

The Commission’s current recidivism research substantially expands on the scope of previous Commission recidivism projects. In addition to a different set of offenders—U.S. citizen federal offenders released in 2005—the current study group (25,431 offenders) is much larger than those in previous Commission studies. A larger study group allows for data analysis across many different subgroups of federal offenders, including those sentenced under different provisions in the guidelines.

This report is the fourth in this series and focuses on the relationship between age at release and recidivism. This report examines the impact of the aging process on federal offender recidivism and, once age is accounted for, the impact of other offense and offender characteristics.

Key Findings

The key findings of the Commission's study of federal offenders' recidivism by age at release are that:

- Older offenders were substantially less likely than younger offenders to recidivate following release. Over an eight-year follow-up period, 13.4 percent of offenders age 65 or older at the time of release were rearrested compared to 67.6 percent of offenders younger than age 21 at the time of release. The pattern was consistent across age groupings, and recidivism measured by rearrest, reconviction, and reincarceration declined as age increased.
- For federal offenders under age 30 at the time of release, over one-fourth (26.6%) who recidivated had assault as their most common new charge. By comparison, for offenders 60 years old or older at the time of release, almost one quarter (23.7%) who recidivated had a public order offense⁶ as their most serious new charge.
- Age and criminal history exerted a strong influence on recidivism. For offenders in Criminal History Category I, the rearrest rate ranged from 53.0 percent for offenders younger than age 30 at the time of release to 11.3 percent for offenders age 60 or older. For offenders in Criminal History Category VI, the rearrest rate ranged from 89.7 percent for offenders younger than age 30 at the time of release to 37.7 percent for offenders age 60 or older.
- Education level influenced recidivism across almost all categories. For example, among offenders under age 30 at the time of release, college graduates had a substantially lower rearrest rate (27.0%) than offenders who did not complete high school (74.4%). Similarly, among offenders age 60 or older at the time of release, college graduates had a somewhat lower rearrest rate (11.6%) than offenders who did not complete high school (17.2%).
- Age exerted a strong influence on recidivism across all sentence length categories. Older offenders were less likely to recidivate after release than younger offenders who had served similar sentences, regardless of the length of sentence imposed. In addition, for younger offenders there was some association between the length of the original federal sentence and the rearrest rates, as younger offenders with sentences of up to six months generally had lower rearrest rates than younger offenders with longer sentences. However, among all offenders sentenced to one year or more of imprisonment, there was no clear association between the length of sentence and the rearrest rate.
- For certain major offense types, the type of federal offense that offenders had committed also had an effect on recidivism across age groups. For example, firearms offenders had a substantially higher rearrest rate across all age categories than drug trafficking offenders, who in turn had a higher rearrest rate across all age categories than fraud offenders. For example, for offenders under age 30 at the time of release, the rearrest rates were 79.3 percent (firearms), 62.5 percent (drug trafficking), and 53.6 percent (fraud). Similarly, for offenders age 60 and older at the time of release, the rearrest rates were 30.2 percent (firearms), 17.5 percent (drug trafficking), and 12.5 percent (fraud).
- At every age group, federal prisoners had a substantially lower recidivism rate than state prisoners who also were released in 2005 and tracked by the Bureau of Justice Statistics. For example, for offenders age 24 or younger at the time of release, 63.2 percent of federal prisoners were rearrested within five years compared to over four-fifths (84.1%) of state prisoners. Like federal prisoners, older state prisoners were less likely to recidivate than younger state prisoners.

Part Two

Defining and Measuring Recidivism

Defining and Measuring Recidivism

Recidivism “refers to a person’s relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.”⁷ Measuring recidivism informs decision making about issues such as pretrial detention, appropriate sentence type and length, prisoner classification, prison programming, and offender supervision in the community. It also allows policymakers to evaluate the performance of the criminal justice system as a whole.⁸ Recidivism is typically measured by criminal acts that resulted in the rearrest, reconviction, and/or reincarceration of the offender over a specified period of time. These are the three recidivism measures used in this report, but the report primarily relies on the first—rearrest—with additional data regarding reconviction and reincarceration reported in the Appendix. Providing data about multiple measures of recidivism allows users to select the performance measure best suited to their outcome of interest.

Rearrest classifies a person as a recidivist if he or she has been arrested for a new crime after being released into the community directly on probation or after serving a term of imprisonment. Rearrest also includes arrests for alleged violations of conditions of federal probation, federal supervised release, or state parole. The number of rearrests in the Commission’s analysis is based on the number of unique arrest dates, regardless of the number of individual charges arising from a single arrest event. Thus, if an offender was arrested on a single occasion for both driving under the influence and possession of cocaine, that arrest date would constitute a single rearrest event.

Reconviction classifies a person as a recidivist if an arrest resulted in a subsequent judicial conviction.⁹ Violations and revocations of supervision are not included in reconvictions since no formal prosecution occurred. While states have improved the completeness of their criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest.¹⁰ Such gaps occurred in the criminal records used in this report, and lead to an undercounting of reconvictions, because missing dispositions for rearrests are treated as if reconviction and reincarceration did not occur.

Reincarceration classifies a person as a recidivist if a conviction or revocation resulted in a prison or jail sentence as punishment. The reincarceration measure counts offenders who were reported as being incarcerated by the Federal Bureau of Prisons, state prison, or local jail for any term of incarceration based on their recidivism events. Incomplete criminal records also create missing information about reincarceration.¹¹

Many rearrests do not ultimately result in a reconviction or reincarceration for reasons relating to procedural safeguards (*e.g.*, the suppression of evidence for an unconstitutional search or seizure), lack of sufficient evidence to convict or revoke, and prosecutorial or judicial resource limitations. To the extent that the rearrest event is an accurate indicator of relapse into criminal behavior, excluding non-conviction or non-incarceration events will result in underestimation of recidivism. Even using the least restrictive measure, rearrest, does not count the full extent of offender recidivism, as many crimes go unreported to police or, if reported, do not result in an arrest. For these reasons, no measure is perfect, and reporting several measures provides a more complete and nuanced picture of recidivism. The three measures overlap in some areas—meaning all offenders who were reconvicted or reincarcerated also were necessarily rearrested. Some offenders who were reconvicted, however, were not reincarcerated. Generally speaking, however, the measure of rearrest is larger than the measure of reconviction, which in turn is larger than the measure of reincarceration.

In undertaking its current recidivism research, the Commission selected a follow-up period of eight years. It considered all recidivism events (including felonies, misdemeanors, and “technical” violations of the conditions of supervision), except minor traffic offenses, which occurred over that eight-year period. While this report includes summary findings using all three measures (rearrest, reconviction, and reincarceration), it primarily relies on rearrest data in providing more detailed information about the recidivism of federal offenders.



Part Three

Introduction to Age and Recidivism Among Federal Offenders

Age and Recidivism Among Federal Offenders

This report examines the impact of the aging process on recidivism by federal offenders. First, recidivism rates are presented by age at release. Next, the time to the first recidivism event is shown by age at release for those offenders who recidivated. Studying the timing of recidivism can help in understanding the process of desistance across various age cohorts. The number of recidivism events and most serious type of post-release offense among those who recidivated by age at release are also discussed. Contrasting the number and nature of crimes committed across age groups may reveal more information about the threat to public safety posed by various age groups as well as the process of desisting from crime across the aging process.

The report then investigates the association between recidivism and factors such as criminal history, demographic factors, offense characteristics, and sentence length. This information is reported by age group in order to better distinguish the impact of these factors while controlling for age at release.

As first noted in the *Recidivism Overview Report*, numerous recidivism studies document well that older offenders are at lower risk for reoffending,¹² and the Commission's own research has confirmed this finding for federal offender populations.¹³ The Commission's study found that among all federal offenders released into the community in 2005, those who were below age 21 at release had the highest rearrest rate at over two-thirds (67.6%). Conversely, those oldest at age of release, over 60 years old, had the lowest recidivism rate (16.0%). For each age grouping shown in the previous report, the older the age group, the lower the rearrest rate. The same pattern held for reconviction and reincarceration rates.

According to the National Institute of Justice, "the prevalence of offending tends to increase from late childhood, peak in the teenage years (from 15 to 19) and then decline in the early 20s."¹⁴ Scholars have used official arrest data collected by the Federal Bureau of Investigation (FBI) to construct an age-crime curve¹⁵ which demonstrates graphically the relationship between age and arrests. National arrest data collected by the FBI in the Uniform Crime Report (UCR) since 1930¹⁶ and compiled in the FBI's *Crimes in the United States* report since 1995¹⁷ has consistently supported this conclusion concerning age and crime.

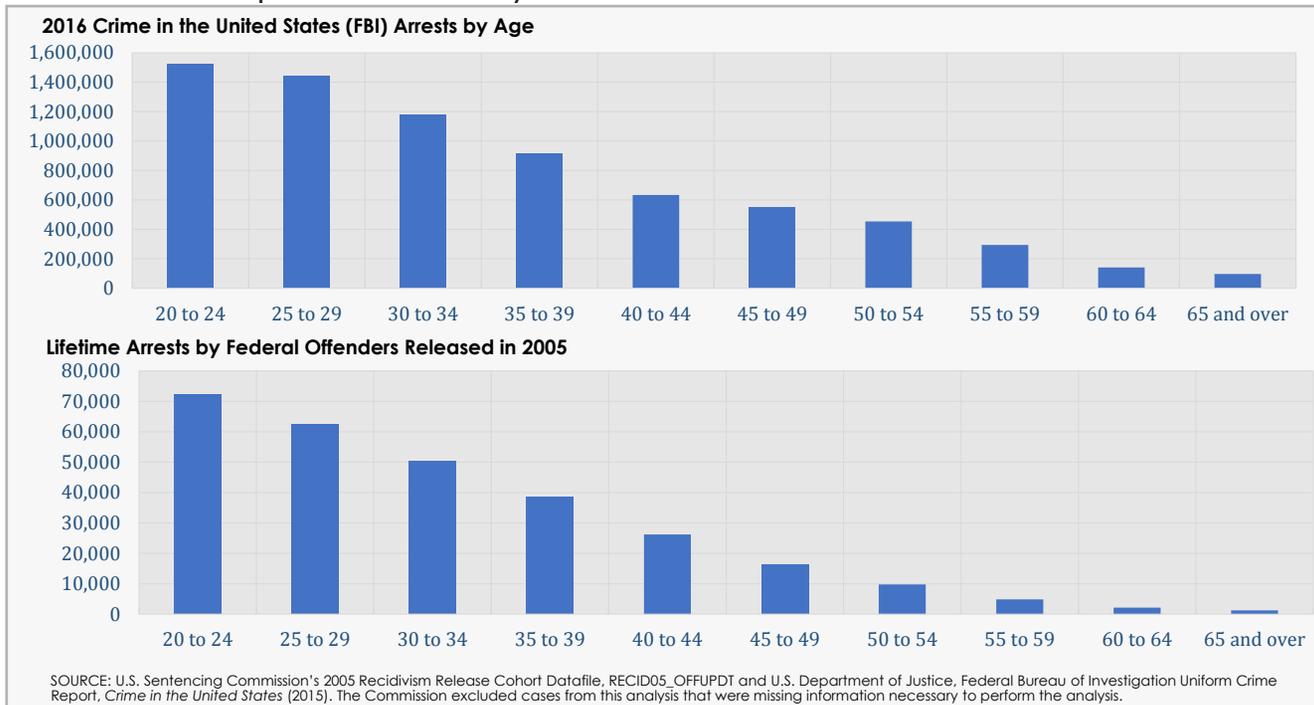
Figure 1 shows a comparison of arrests by five-year age intervals beginning at age 20 for all 2016 U.S. arrests reported to the FBI and all adult arrests reported in criminal history records provided by the FBI for federal offenders released in 2005, by identical age groupings.¹⁸ To construct the federal offender data, the Commission aggregated all arrest incidents from the federal offenders' entire criminal history as reported on state and federal records.¹⁹ That is, each arrest charge is collected and grouped by the age of the offender at the time of that arrest, in the same manner as set forth in Table 20 of the *2016 Crimes in the United States* report.

Figure 1 demonstrates the close tie between older age and declining arrests, in both the FBI's UCR²⁰ and prior arrest data obtained on federal offenders from the FBI's Interstate Identification Index (III) system, which is a national index of criminal histories. In general, the Commission found that total adult arrests for federal offenders were highest in the 20-24 age group, and declined sharply thereafter. The national FBI adult arrests in 2016 display the same pattern.

For both federal offenders' prior arrest history and national 2016 arrests as reported by the FBI, older age groups had fewer arrests. While there are vast differences among individuals which are not explained by age, age is generally a strong factor influencing the likelihood of committing crime, although the reasons for this are complex.²¹

Since arrests are closely associated with age, it is not surprising that federal offenders who enter and exit the federal system at younger ages are more prone to recidivate. In the following sections, this report examines the age and recidivism connection in greater detail. Then this report analyzes age in combination with other offense and offender characteristics. This combination in effect statistically controls for age and reveals the influence, or absence of influence, of other factors which may be thought to impact recidivism over and above the influence of aging.

Fig. 1 Total Arrests by Age
All 2016 U.S. Arrests Compared to Recidivism Study Offenders' Arrest Records



Part Four

Characteristics of Recidivism Study Group

Characteristics of Recidivism Study Group

This report examines 25,431 offenders who were released into the community (either from federal prison or on to probation) in calendar year 2005 and, as discussed in the *Recidivism Overview Report*, were federal offenders:

- who are citizens;
- who re-entered the community after discharging their sentences of incarceration or by commencing a term of probation in 2005;
- whose pre-sentence investigation report was submitted to the Commission;
- who have valid FBI numbers which could be located in criminal history repositories (in at least one of the 50 states, DC, or federal records);
- who were not reported dead, escaped, or detained; and
- whose federal sentence was not vacated.

The advantages of this large study group are substantial. Having several thousand offenders allows more precise estimates of recidivism rates across different subgroups. For example, there are 1,048 released offenders who were older than 60 years of age.

Offender Demographics

The largest age cohort in this study was those offenders aged 30 to 34 (18.3% of the total) at the time they were released from federal custody into the community (Figure 2). The next largest cohorts at time of release were offenders aged 25 to 29 (16.4%) and 35 to 39 (15.3%).

Among the racial and ethnic groups analyzed, most White offenders were 40 years or older (51.6%) at the time of their release (Figure 3). This is the only racial group in the study with more than half of offenders over the age of 40. Black and Hispanic offenders were concentrated in the younger than 40 age cohorts, with Hispanic offenders the youngest of all racial groups (70.9% were younger than 40 at the time of release). The Other race category, which includes American Indians, Alaskan Natives and Asians were also mostly below age 40 (62.9%).

Fig. 2 Age at Release for Recidivism Study Offenders

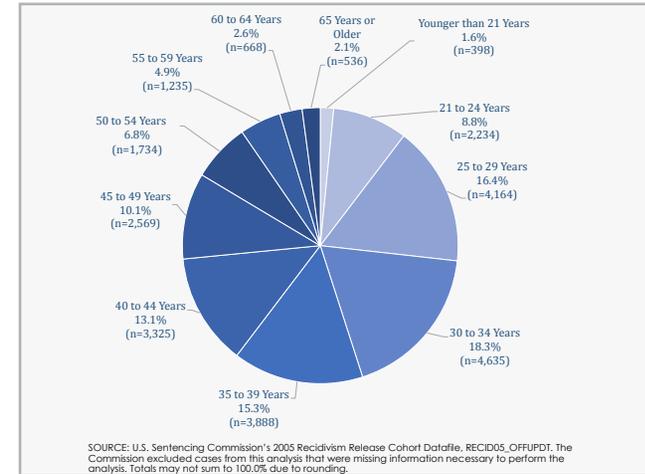
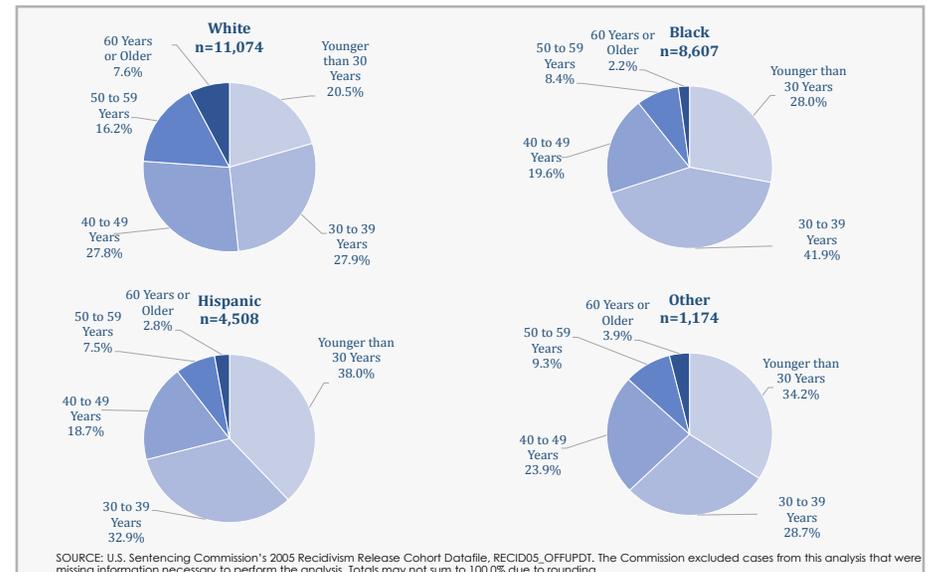
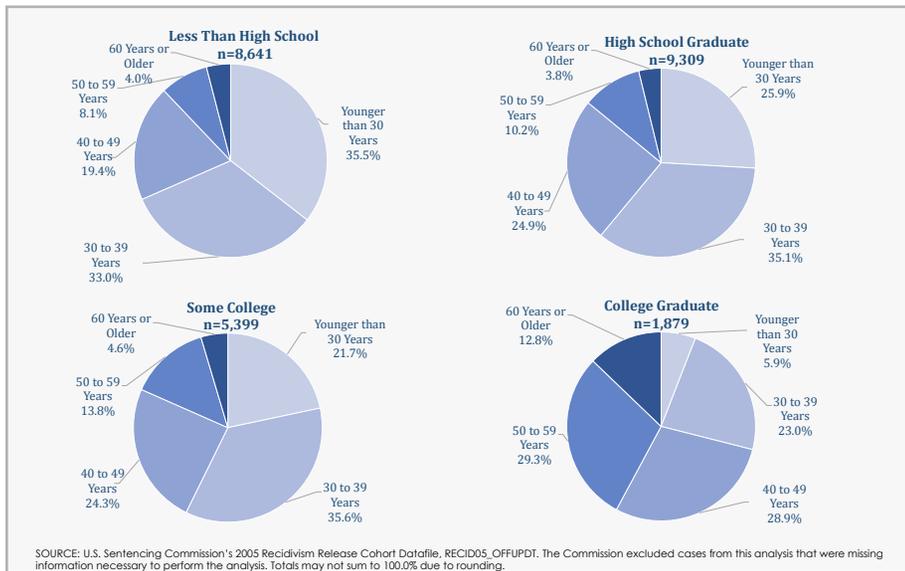


Fig. 3 Race of Recidivism Study Offenders by Age at Release



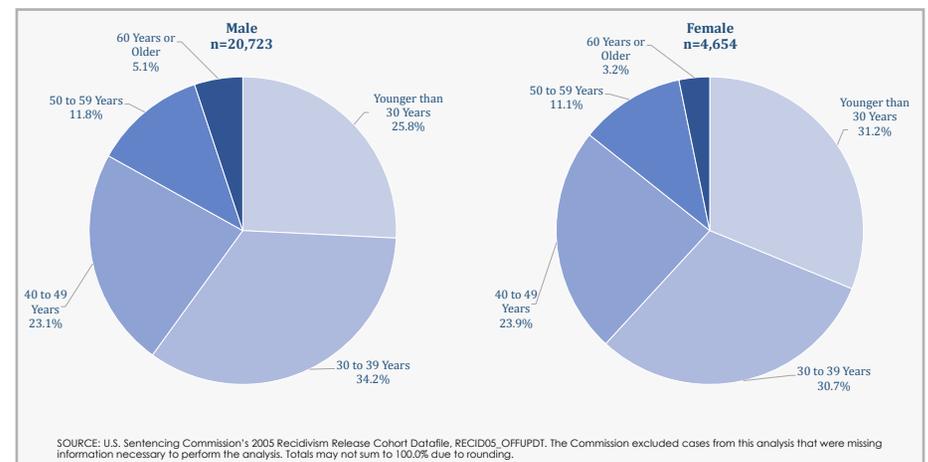
The average age of offenders at the time of release increased as educational level increased (Figure 4). Offenders who did not complete high school were the youngest group at the age of release, with 68.5 percent below the age of 40. College graduates were significantly older on average than offenders in other educational cohorts, with around 71.0 percent of college graduates age 40 or older.

Fig. 4 Education of Recidivism Study Offenders by Age at Release



Female offenders were slightly younger on average than male offenders at the time of release (Figure 5). Specifically, a greater proportion of female offenders were younger than 30 at the time of release, 31.2 percent, compared to 25.8 percent of male offenders.

Fig. 5 Gender of Recidivism Study Offenders by Age at Release

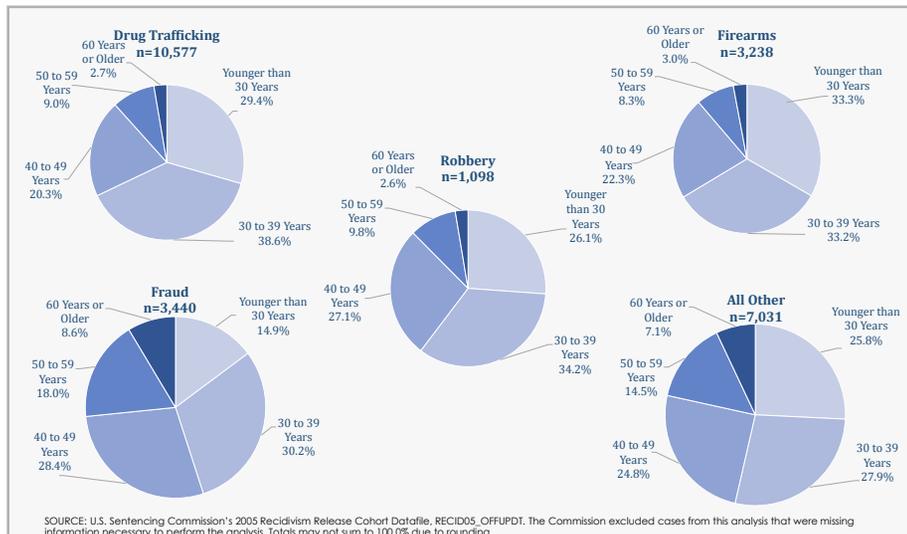


Part Four:
CHARACTERISTICS OF RECIDIVISM STUDY GROUP

Federal Offense Type and Criminal History

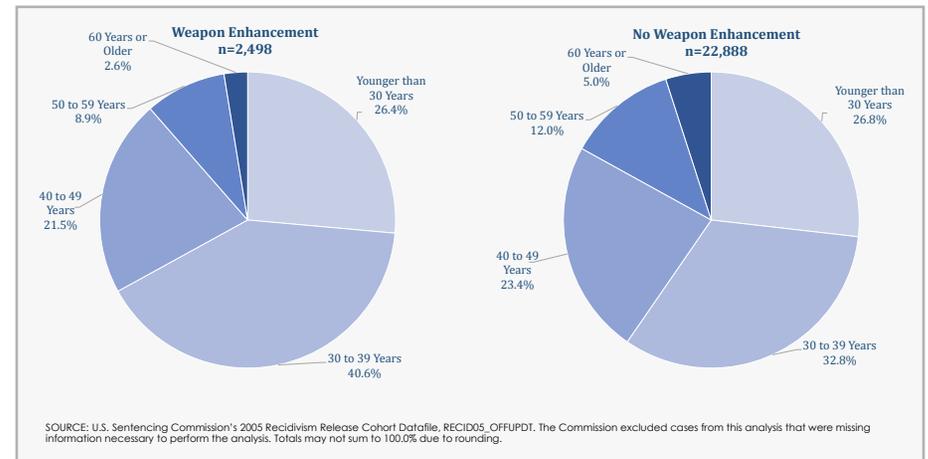
Drug trafficking offenders were generally the youngest group of offenders at the time of release (Figure 6). Of all drug trafficking offenders, 68.0 percent were below the age of 40. By comparison, 66.5 percent of firearms offenders and 60.3 percent of robbery offenders were below the age of 40. Fraud offenders were the oldest group with 55.0 percent age 40 or older at the time of release.

Fig. 6 Primary Offense Type of Recidivism Study Offenders by Age at Release



Over two-thirds (67.0%) of offenders subject to weapons enhancements were younger than age 40 at the time of release compared to 59.6 percent of offenders who were not subject to such enhancements (Figure 7).

Fig. 7 Weapon Enhancement of Recidivism Study Offenders by Age at Release



Overall, the age of offenders increased as the offenders' prior criminal history increased (Figure 8). A federal offender's prior criminal history score is calculated under Chapter Four of the *Guidelines Manual* and assigned one of six Criminal History Categories (CHC), CHC I through VI, with CHC VI being the highest prior record category.²² Category I had a larger proportion of offenders younger than 30 years (27.8%) than Category VI (11.1%).²³ Conversely, Category VI had the largest group of offenders age 40 or older (47.1%).

The offender's base offense level is determined by applying the Chapter Two guideline level associated with the conviction offense (Figure 9). A high base offense level, defined as a base offense level of 32 or higher, was associated with a high percentage of offenders between the ages of 30 to 39. Offenders between the ages of 30 to 39 were the only age group to increase consistently across all three categories as shown in Figure 9, from 29.8 percent to 45.4 percent. Offenders younger than 30 reached a high of 31.2 percent in the base offense level 26 to 31 category but decreased to 18.1 percent among the most serious category of offenders with a base offense level between 32 and 43.

Fig. 8 Criminal History Category of Recidivism Study Offenders by Age at Release

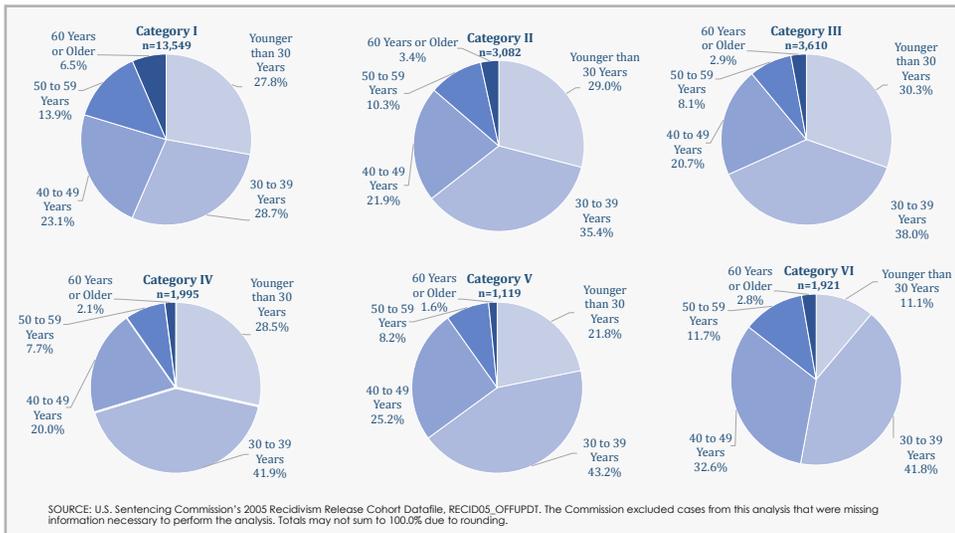
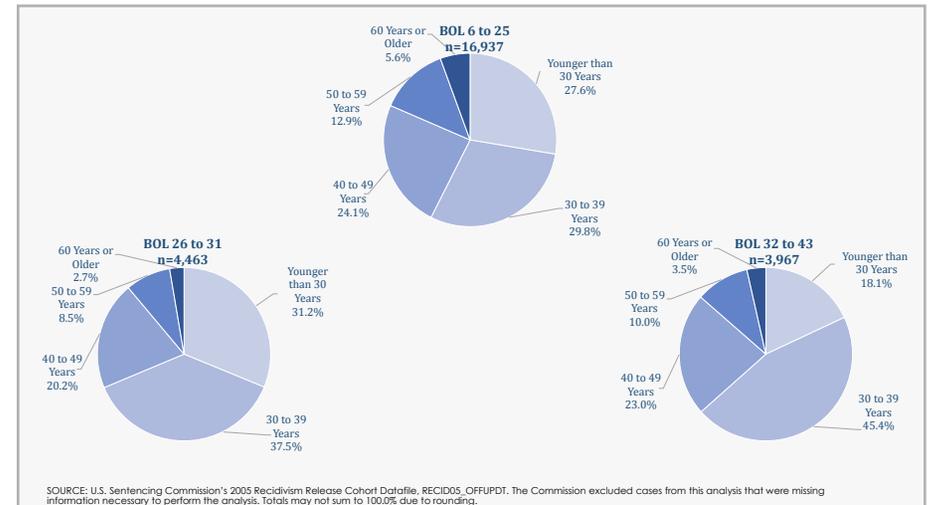


Fig. 9 Base Offense Level of Recidivism Study Offenders by Age at Release



Part Four:
CHARACTERISTICS OF RECIDIVISM STUDY GROUP

Sentences Imposed

For statistical purposes, the Commission groups the type of federal sentence originally imposed into four categories: prison only, prison and community confinement, probation and confinement, and probation or fine only.²⁴ Prison only offenders were the youngest group at release in the Commission’s study, with 61.9 percent of the offenders who received a prison only sentence under the age of 40 (Figure 10). Offenders who served prison and community confinement sentences were the oldest, with 48.1 percent age 40 or older.

The Commission also considered the length of the federal sentence imposed on those in the study group. Offenders serving the longest sentences were the oldest at time of release (Figure 11). For offenders who served a sentence of 120 months or more, the proportion of offenders who were age 40 or older at the time they were released was 48.6 percent, higher than any other group. In contrast, among offenders who served a sentence of 60 to 119 months, the proportion age 40 or older was 36.3 percent, the same proportion as offenders who served a sentence of 24 to 59 months.

Fig. 10 Sentence Type of Recidivism Study Offenders by Age at Release

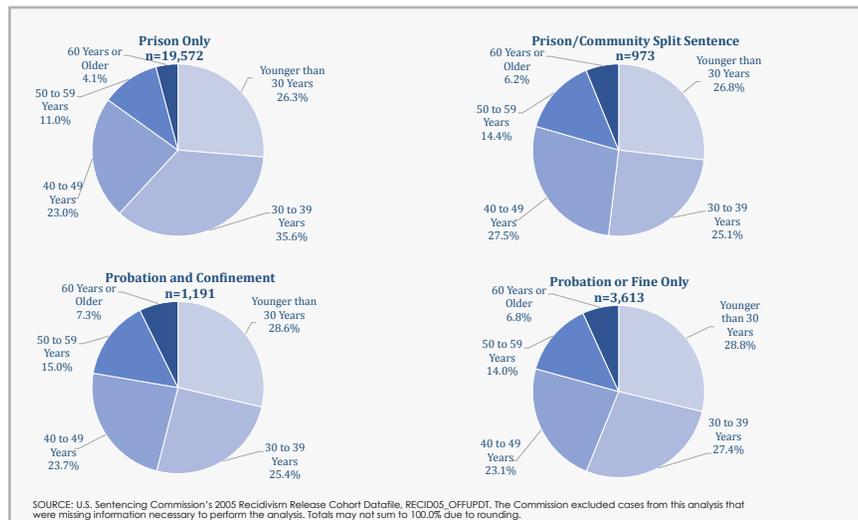
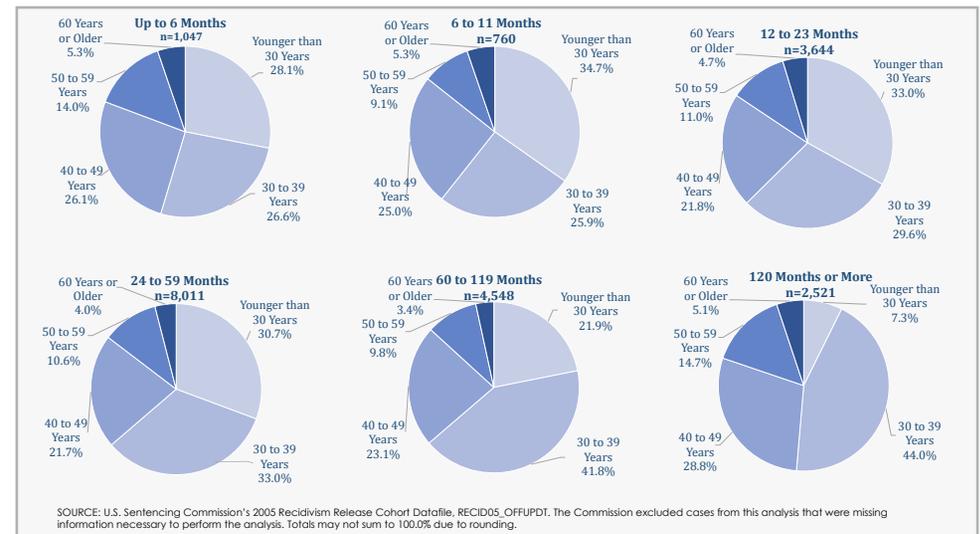


Fig. 11 Length of Federal Sentence of Recidivism Study Offenders by Age at Release





Part Five

Recidivism Rates Among Federal Offenders by Age

Recidivism Rates Among Federal Offenders by Age

The Commission found that younger offenders were more likely to be rearrested than older offenders, were rearrested faster than older offenders, and committed more serious offenses after they were released than older offenders. As shown in Table 1, the Commission’s research shows that the younger than 30 age group had the highest rearrest rate (64.8%) and the rate declined with each age group that follows to a low of 16.4 percent. Younger cohorts had more arrest events during the eight-year follow-up period, a median of three arrest events for the younger than 30 age group compared to one event for those age 50 and older.

The Commission ranked new offenses in order of seriousness for those who reoffended. The most serious type of offense likely to cause rearrest also varied by age, from assault (for all age groups under the age of 50) to public order offenses (for age groups 50 and older).

Table 1 Overview of Age and Recidivism Study Findings
Rearrest Recidivism Measure

| | Younger than 30 Years n=6,796 | 30 to 39 Years n=8,523 | 40 to 49 Years n=5,894 | 50 to 59 Years n=2,969 | 60 Years or Older n=1,204 |
|---|----------------------------------|-----------------------------|---------------------------|--|---|
| Percent | 64.8% | 53.6% | 43.2% | 26.8% | 16.4% |
| Median Time to Recidivism Event | 17 Months | 22 Months | 22 Months | 25 Months | 28 Months |
| Median Number of Recidivism Events | 3 | 2 | 2 | 1 | 1 |
| Most Serious Post-Release Event | Assault (26.6%, n=1,170) | Assault (24.1%, n=1,102) | Assault (20.3%, n=517) | Other Public Order Offense (22.5%, n=179) | Other Public Order Offense (23.7%, n=47) |

SOURCE: U.S. Sentencing Commission’s 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDT. The Commission excluded cases from this analysis that were missing information necessary to perform the analysis.

Figure 12 identifies the median time of rearrest for each age cohort. The measure of time to first recidivism event can be useful in distinguishing offenders who recidivate early from those who eventually recidivate, but are apparently crime-free for a longer interval. The Commission found that the median amount of time between an offender’s release and his or her rearrest, which is highlighted on each timeline, reflected the greater tendency for younger cohorts to recidivate. Offenders who were younger than 30 when they were released had the shortest median time to rearrest (17 months). Conversely, the oldest offenders in the study, those 60 years and older, had the longest time to rearrest (28 months).

Fig. 12 Time to First Rearrest of Recidivism Study Offenders

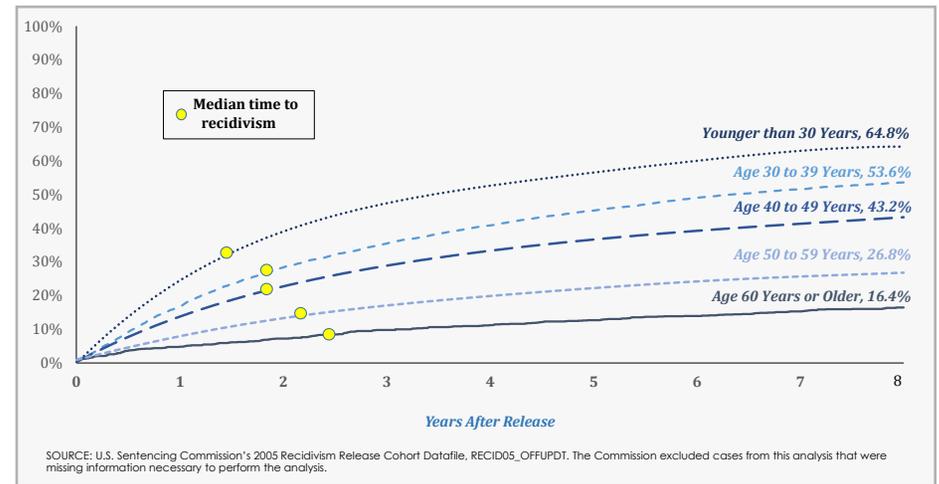
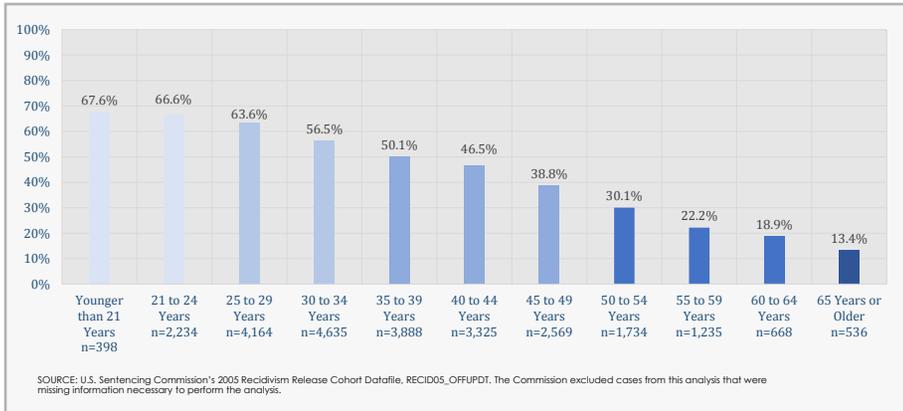


Figure 13 presents a more detailed breakdown of rearrest rate by 11 age groups. The Commission’s study revealed that the rearrest rate was highest among offenders younger than 21 (67.6%) and those between the ages of 21 to 24 years old (66.6%) and declined in each subsequent age group.

Fig. 13 Rearrest Rates for Recidivism Study Offenders by Age at Release



The reconviction rate is highest among offenders younger than 21 (48.5%) and those between the ages of 21 to 24 years old (48.4%) and declined in each subsequent age group. Time to reconviction expanded with age and severity of reconviction offense declined with age, in a pattern like that shown with rearrest in Figure 14.²⁵

Fig. 14 Reconviction Rates for Recidivism Study Offenders by Age at Release

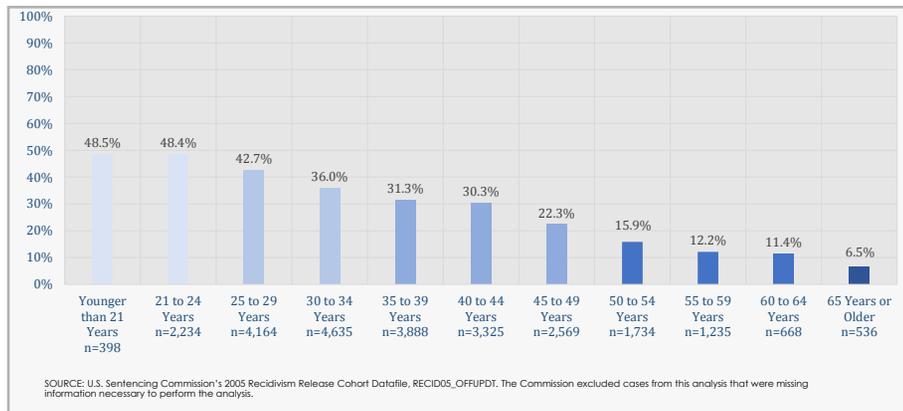
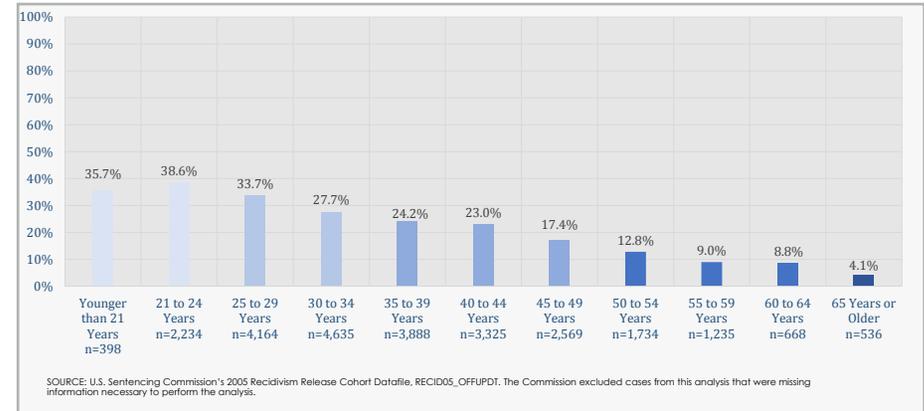


Fig. 15 Reincarceration Rates for Recidivism Study Offenders by Age at Release



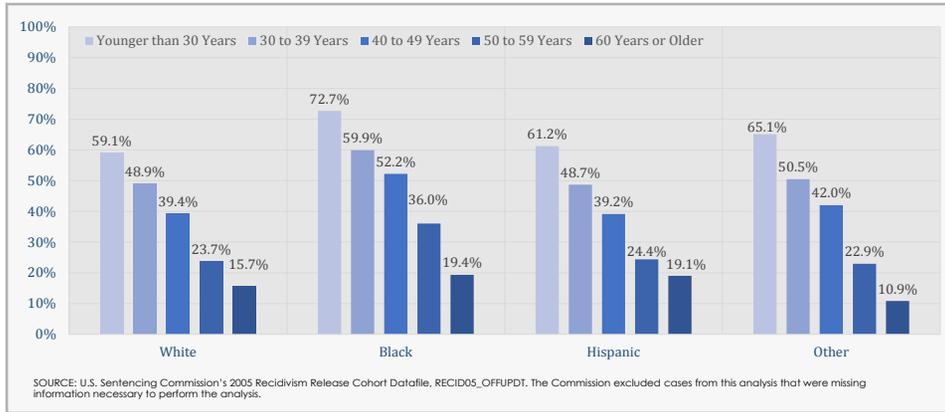
The reincarceration rate was highest among those between the ages of 21 to 24 years old (38.6%) and declined in each subsequent age group.²⁶ Time to reincarceration expands with age and severity of reincarceration offense declined with age, in a pattern like that shown with rearrest in Figure 15.²⁷

Demographics

White offenders had the lowest rearrest rate overall, starting with 59.1 percent for the youngest age group and declining to a low of 15.7 percent in the 60 years or older age cohort (Figure 16 on the next page). Black offenders had the highest rearrest rate overall, starting with 72.7 percent in the youngest age cohort, which is the highest recidivism rate among all age categories. The other racial category, which includes American Indians, Alaskan Natives and Asians, had the second highest overall rearrest rate, starting with a 65.1 percent rearrest rate in the youngest age cohort before declining.

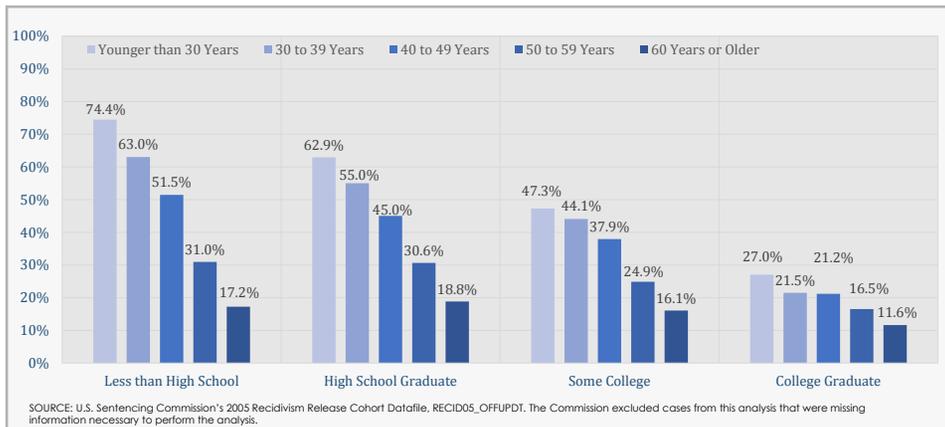
Part Five:
RECIDIVISM RATES AMONG FEDERAL OFFENDERS BY AGE

Fig. 16 Rearrest Rate of Recidivism Study Offenders by Race and Age at Release



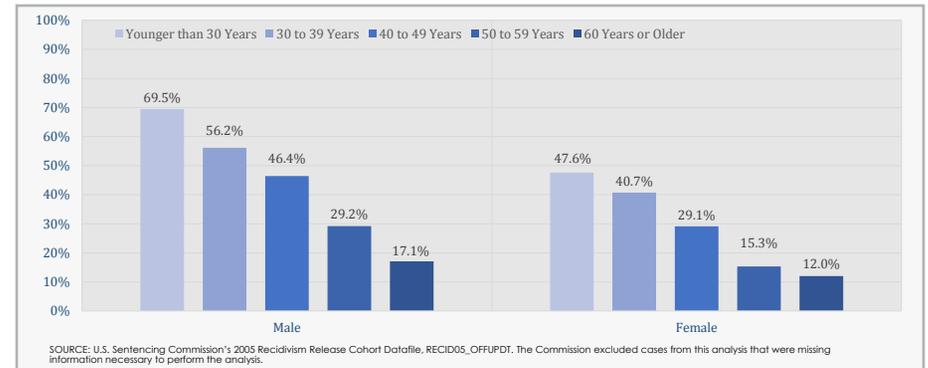
The overall rearrest rate decreased with every step of educational achievement (Figure 17). Every education group experienced a decline in rearrest rates as age increases. Offenders who did not complete high school generally had the highest rearrest rates in all age categories compared to other educational cohorts, starting with a 74.4 percent rearrest rate in the youngest age cohort. College graduates had the lowest rearrest rates among the educational groups.

Fig. 17 Rearrest Rate of Recidivism Study Offenders by Education and Age at Release



Male offenders had a higher rearrest rate than female offenders in every age category (Figure 18). In the younger than 30 age cohort, men had a 69.5 percent rearrest rate compared to 47.6 percent for women. The rearrest rate declined for both male and female offenders with each subsequent age group.

Fig. 18 Rearrest Rate of Recidivism Study Offenders by Gender and Age at Release



Federal Offense Type and Criminal History

Offenders whose primary offense involved robbery or firearms had higher rearrest rates in all age categories (Figure 19). The Commission found that firearm offenders had a rearrest rate of 79.3 percent in the younger than 30 cohort, the highest rearrest rate among all sentencing types. Robbery offenders, unlike all other offense types, did not experience a continuous decline in rearrest rates as they aged. Instead, rearrest rates *increased* from the younger than 30 age cohort (66.2%) to the 40 to 49 age cohort (71.5%) before experiencing a sharp decline.

Rearrest rates decline with age across every base offense level group analyzed (Figure 20). Comparing similar age groups across base offense levels, the Commission found that the lowest base offense level group had a modestly higher recidivism rate across most age categories than those with higher base offense levels. For example, in the younger than 30 age cohort, those with base offense levels of 25 or lower had a 66.3 percent rearrest rate, somewhat higher than those offenders with base offense levels of 32 or higher (60.2%).

Fig. 19 Rearrest Rate of Recidivism Study Offenders by Primary Offense Type at Sentencing and Age at Release

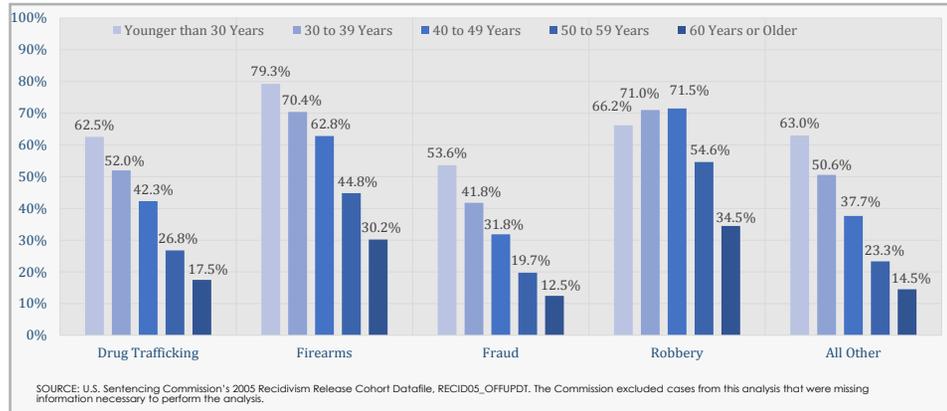
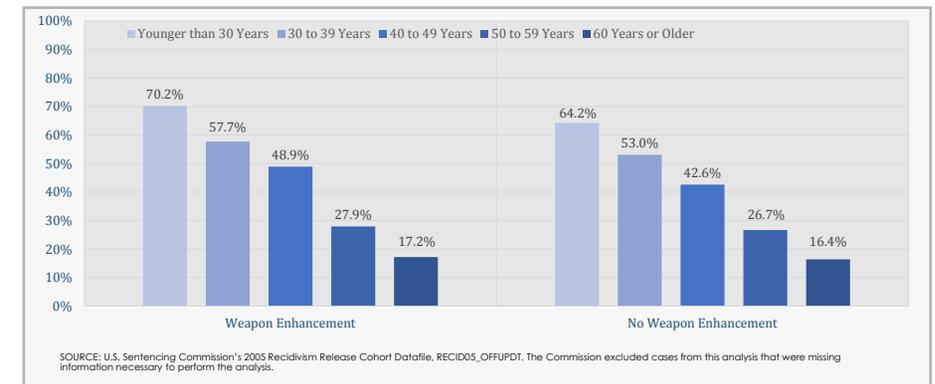


Fig. 21 Rearrest Rate of Recidivism Study Offenders by Weapon Enhancement and Age at Release



Offenders with a weapon enhancement had a higher rearrest rate than offenders who did not across all age groups (Figure 21). For example, federal offenders who were younger than 30 and had a weapon enhancement had a rearrest rate of 70.2 percent compared to 64.2 percent for those younger than 30 without a weapon enhancement.

Rearrest rates increased with the Criminal History Category (CHC) of offenders across all age groups (Figure 22). For instance, offenders who were younger than 30 and in CHC I had a 53 percent rearrest rate, compared to 79.5 percent for that same age group in CHC III, and 89.7 percent for that same age group in CHC VI.

Fig. 20 Rearrest Rate of Recidivism Study Offenders by Base Offense Level and Age at Release

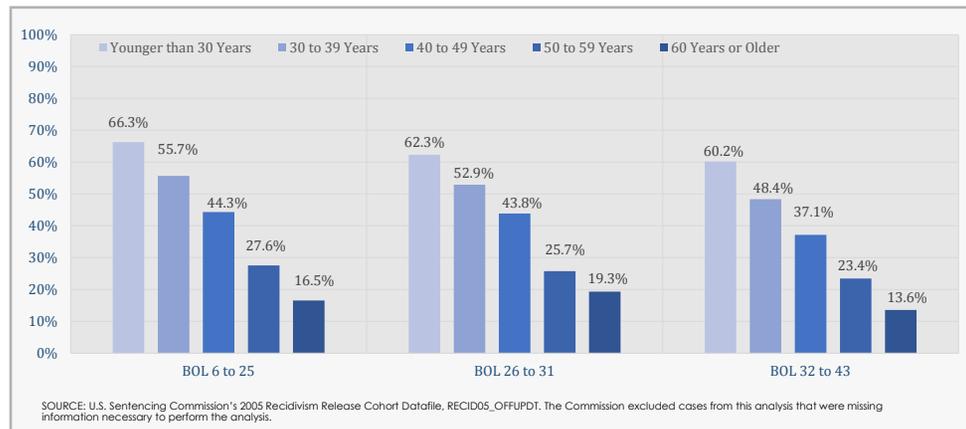
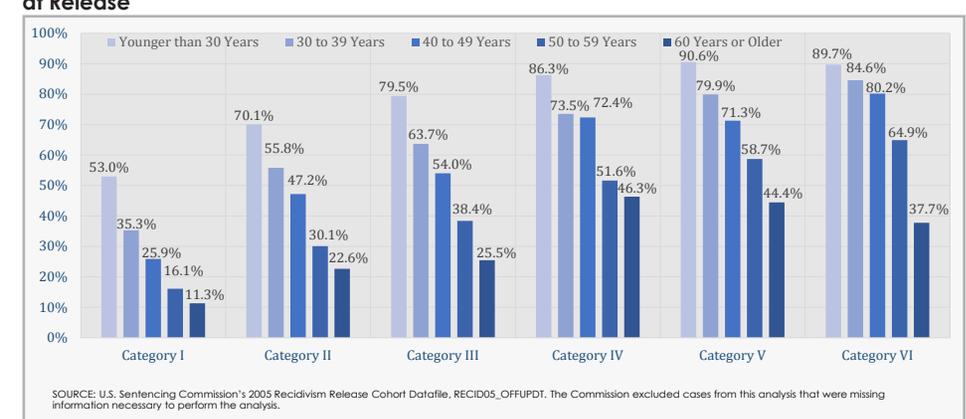


Fig. 22 Rearrest Rate of Recidivism Study Offenders by Criminal History Category and Age at Release



Part Five:
RECIDIVISM RATES AMONG FEDERAL OFFENDERS BY AGE

Federal Sentence Imposed

Offenders who received a prison only sentence had a higher rearrest rate than offenders who received a different form of sentence (Figure 23). For instance, offenders who received sentences of prison only and who were younger than 30 years of age had a rearrest rate of 68.6 percent compared to 53.6 percent for offenders in the same age group who received split sentences and 55.4 percent for offenders in the same age group who were sentenced to probation and confinement. Offenders younger than 30 who were sentenced to probation or fine only had a rearrest rate of 51.5 percent.

Rearrest rates declined with the age at release across all sentence lengths (Figure 24). For example, among offenders with imprisonment sentences up to six months, those younger than age 30 at release had the highest rearrest rate (52.7%) while offenders 60 years and older at release had the lowest rearrest rate (20.0%). In general, there was some association between the length of the original federal sentence and rearrest rates. Offenders with the shortest imprisonment sentences, of up to six months, had the lowest rearrest rates for four of the five age groups studied. Offenders with sentences of 120 months or longer had the highest rearrest rates for two of the age groups studied and among the highest rearrest rates for the remaining three age groups. Among all offenders sentenced to one year of imprisonment or longer, the association between sentence length and rearrest rates was less clear. For example, for offenders younger than 30 at release, the rearrest rate was approximately 70 percent regardless of the length of sentence imposed, ranging from 69.2 percent for offenders sentenced from 12 to 23 months of imprisonment to 68.1 percent for offenders sentenced to 120 months or longer, with the highest rearrest rate of 71.4 percent for offenders sentenced to 60 to 119 months.

Fig. 23 Rearrest Rate of Recidivism Study Offenders by Type of Federal Sentence Imposed and Age at Release

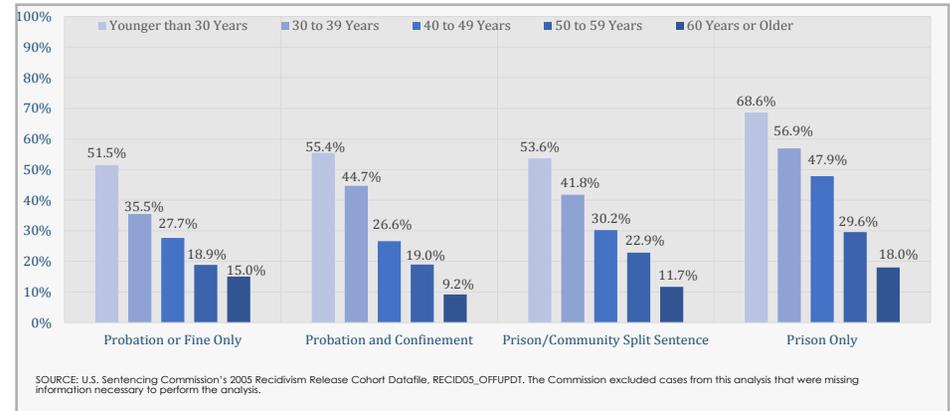
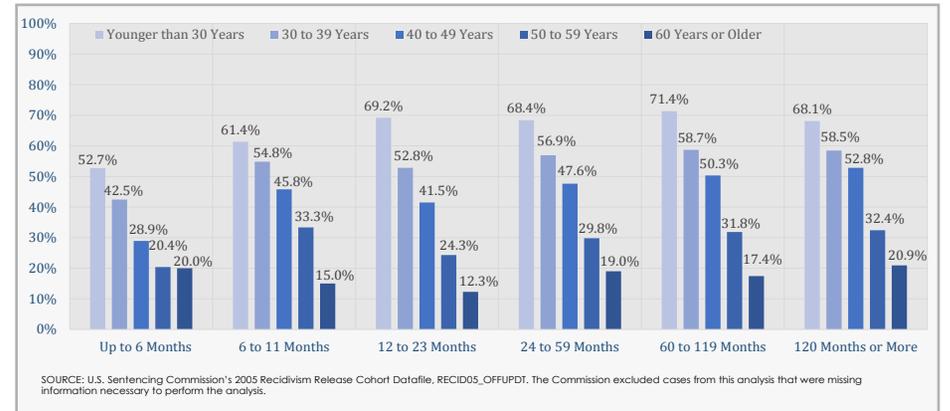
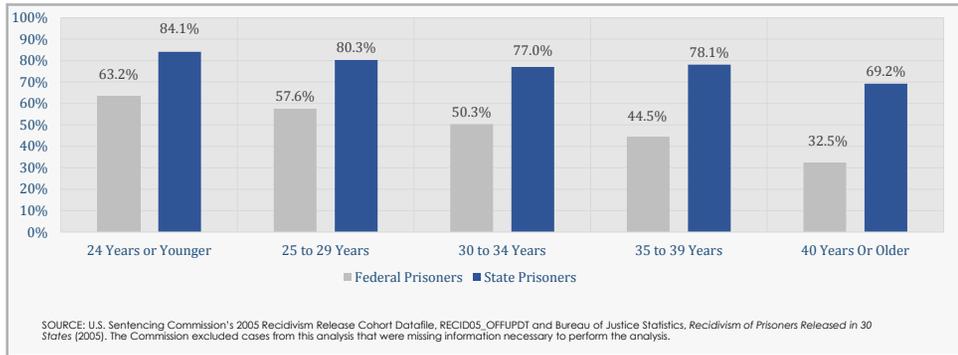


Fig. 24 Rearrest Rate of Recidivism Study Offenders by Length of Federal Sentence and Age at Release



To compare the federal offenders in this study to offenders released from state custody, the Commission compared the recidivism rates for prisoners in the Commission’s recidivism cohort to a cohort of state prisoners released into the community in 2005 using a five-year follow-up period (Figure 25).²⁸ As reflected in Figure 25, state prisoners had a higher rearrest rate than federal prisoners in every age category. Also, the gap in the rearrest rate between state and federal prisoners increased with each age group. Federal prisoners in the youngest age group had a 63.2 percent rearrest rate compared to 84.1 percent for state prisoners. In the oldest age group, the rearrest rate declined to 32.5 percent for federal offenders compared to 69.2 percent for state prisoners.

Fig. 25 Rearrest Rate of Recidivism Study Offenders for Federal and State Prisoners by Age at Release: Five Year Post Release



Part Six

Conclusion

Conclusion

This is the fourth report in the Commission's ongoing recidivism study. This report examined the impact of the aging process on federal offender recidivism and the impact of other offense and offender factors once age is accounted for. The Commission found that older offenders are substantially less likely to recidivate following release compared to younger cohorts. Among offenders released younger than age 21, 67.6 percent were rearrested compared to 13.4 percent of those released age 65 or older. The pattern is consistent across age groups, as age increases recidivism by any measure declined. Older offenders who do recidivate do so later in the follow-up period, do so less frequently, and had less serious recidivism offenses on average.

The Commission found that age is not the only factor associated with recidivism. After accounting for age, criminal history as measured by the offenders' Criminal History Category was closely correlated with recidivism rates. Demographic factors including gender (males had higher rates), race and ethnicity (minorities had higher rates), and education levels (those with lower education levels had higher rates) also stood out. Other factors found to be associated with recidivism rates after accounting for age include sentence length for offenders less than age 50: the shortest lengths are associated with less recidivism up to sentences of one year, beyond which recidivism rates level off. Some offense characteristics, in particular primary federal offense (firearms and robbery, for example) and weapon enhancement, are associated with higher recidivism rates.

The Commission will issue additional reports in this recidivism study series in the coming months.

Part Seven

Endnotes

Endnotes

1 The United States Sentencing Commission is an independent agency in the judicial branch of government. Established by the Sentencing Reform Act of 1984, its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress, the federal judiciary, and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues. *See* 28 U.S.C. §§ 995(a)(14), (15), (20).

2 *See* U.S. SENTENCING COMM’N, RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW (2016) [hereinafter RECIDIVISM OVERVIEW REPORT], https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf; U.S. SENTENCING COMM’N, RECIDIVISM AMONG FEDERAL DRUG TRAFFICKING OFFENDERS (2017), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170221_Recidivism-Drugs.pdf; and U.S. SENTENCING COMM’N, THE PAST PREDICTS THE FUTURE: CRIMINAL HISTORY AND RECIDIVISM OF FEDERAL OFFENDERS (2017), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170309_Recidivism-CH.pdf.

3 28 U.S.C. § 991(b)(2).

4 *See* U.S. SENTENCING COMM’N, SUPPLEMENTARY REPORT ON THE INITIAL SENTENCING GUIDELINES AND POLICY STATEMENTS 41–44 (1987), https://www.uscc.gov/sites/default/files/pdf/guidelines-manual/1987/manual-pdf/1987_Supplementary_Report_Initial_Sentencing_Guidelines.pdf [hereinafter “Supplementary Report”].

5 *See, e.g.*, U.S. SENTENCING COMM’N, RECIDIVISM AMONG OFFENDERS RECEIVING RETROACTIVE SENTENCING REDUCTIONS: THE 2007 CRACK COCAINE AMENDMENT (2014), <https://www.uscc.gov/research/research-publications/recidivism-among-offenders-receiving-retroactive-sentencereductions-2007-crack-cocaine-amendment> [hereinafter “Crack Cocaine Recidivism Report”] and U.S. SENTENCING COMM’N, 2016 REPORT TO THE CONGRESS: CAREER OFFENDER ENHANCEMENTS (2016), <https://www.uscc.gov/research/congressional-reports/2016-report-congress-career-offender-enhancements>.

6 Public order offenses include violations of conditions of federal probation, federal supervised release, or state parole and crimes such as obstruction of justice and failure to appear.

7 *See* Nat’l Institute of Justice, U.S. Dept. of Justice, Recidivism, <https://web.archive.org/web/20160120175242/http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx> (Jan. 20, 2016).

8 *See* RECIDIVISM OVERVIEW REPORT, *supra* note 2, at 7-8.

9 Revocations were not counted as reconviictions because the offenders were not convicted of a new offense (even if the basis for revocation was a “new law violation”). Offenders whose terms of supervision were revoked and who were sentenced to imprisonment were treated as having been reincarcerated.

10 *See* U.S. GOV’T ACCOUNTABILITY OFFICE, CRIMINAL HISTORY RECORDS: ADDITIONAL ACTIONS COULD ENHANCE THE COMPLETENESS OF RECORDS USED FOR EMPLOYMENT-RELATED BACKGROUND CHECKS (2015), <http://www.gao.gov/products/GAO-15-162>.

11 *Id.*

12 *See* RECIDIVISM OVERVIEW REPORT, *supra* note 2, at n.56. The relationship between age and propensity to commit crime was first documented in 1842. *See* ADOLPHE QUIETELET, A TREATISE ON MAN AND THE DEVELOPMENT OF HIS FACULTIES (1842). *See also*, <https://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx>. For more recent discussion of the development of offending behavior, age-related risk factors, and the effects of life events on offending see D. P. Farrington, *Developmental and life-course criminology: Key theoretical and empirical issues. The 2002 Sutherland Award Address*, 41 CRIMINOLOGY 221–55 (2003).

13 *See* RECIDIVISM OVERVIEW REPORT, *supra* note 2, at 23 (Figure 11).

14 <https://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx>. However, different types of offenses peak at different ages, and individual propensities differ from aggregate totals. *See* David P. Farrington, “Age and Crime,” in 7 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH 189 (Michael Tonry & Norval Morris, eds., 1986).

15 Farrington, *supra*, at 191.

16 Federal Bureau of Investigation, Uniform Crime Report, (2017), https://ucr.fbi.gov/?came_from=https%3A//ucr.fbi.gov/word.

17 *See* Federal Bureau of Investigation, Crimes in the United States, <https://ucr.fbi.gov/crime-in-the-u.s>.

18 Prior record data on federal offenders includes arrests reported prior to their 2005 release as well as any arrests that may be reported post-2005, in other words the entire criminal record for federal offenders available at the time of Interstate Identification Index (III) data collection. In contrast, all the 2016 U.S. arrests are a snapshot of a single year for all offenses in the United States cleared through an arrest. The comparison is therefore covering widely different time intervals, and is presented merely to suggest that the same general relationship of age and arrests holds true for federal offenders as for all offenders arrested in 2016. While 2016 U.S. arrest data is available for juvenile arrests, state reporting in III on juveniles is often unavailable, requiring this comparison to adults only. To put the comparison on the same scale, five-year intervals were chosen, beginning with the interval from age 20 through 24.

19 For example, if an offender is reported arrested for two charges at age 20 and one charge at age 25, that offender adds two incidents to the age 20-24 group and one to the age 25-29 group.

20 *See* Federal Bureau of Investigation, Crimes in the United States 2016, at Table 20, Arrests by Age 2016, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-20>.

21 There are many theories attempting to explain this aggregate pattern of rising crime through teenage years followed by steady decline at some point after age 20. The age-crime curve

captures both the prevalence of offending (the number of people committing a criminal act) and the incidence (number of criminal acts those people commit). There is no single well-established cause of offending, and contributing factors may be both biological (*e.g.*, brain functioning changes in transition from child to adult – *see* G. Sweeten, Alex Piquero, and L. Steinberg, *Age and the Explanation of Crime, Revisited*, 42 J. YOUTH AND ADOLESCENCE 921–38 (2013)) and sociological (*e.g.*, informal and formal bonds with others and with the community which may aggravate or deter offending). Travis Hirschi and Michael Gottfredson argued that the shape of the age-crime curve was similar across time and place, and largely unaffected by life events after childhood. Travis Hirschi and Michael Gottfredson, *Age and the Explanation of Crime*, 89 AM. J. SOCIOLOGY 552-84 (1983). They argue that individual differences are primarily explained by level of self-control and assert that the decline in adulthood is due primarily to reduced incidents of crime. On the other hand, Blumstein, Cohen, and Farrington assert that the decline in the aggregate age-crime curve is explained at least in part by the termination of criminal careers for most offenders by early adulthood. Alfred Blumstein, Jacqueline Cohen, and David P. Farrington, *Criminal Career Research: Its Value for Criminology*, 26 Criminology 1 (1988). That is, the rapid decline in the age-crime curve reflects desistance from crime. Sampson and Laub document termination in criminal careers for a sample of offenders and the mechanisms which foster the turn away from crime. *See* ROBERT SAMPSON AND JOHN H. LAUB, CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE (1993) (expanding on adult choice making, arguing that different choices taken over the adult life course, especially good marriages and other positive turning points over the life course help explain desistance from crime.) Therefore, the decline in the aggregate age-crime curve may be attributable to former offenders who have made the necessary life course changes. *See* Ray Paternoster and Shawn Bushway, *Desistance and the Feared Self: Toward an Identity Theory of Criminal Desistance*, 99 J. CRIM. L. & CRIMINOLOGY (2006) (that desistance from crime is a choice, that offenders who previously identified with a criminal lifestyle and criminal associates may begin to find the costs of this commitment exceeded by the benefits, providing a motivation to change their lives and associates and desist from crime).

22 For more information on how an offender’s criminal history is addressed under the sentencing guidelines, see U.S. SENTENCING COMM’N, *Guidelines Manual*, Ch. 4 (Nov. 2016) [hereinafter USSG].

23 For more information on the relationship between CHC and recidivism see U.S. SENTENCING COMM’N, THE PAST PREDICTS THE FUTURE: CRIMINAL HISTORY AND RECIDIVISM OF FEDERAL OFFENDERS, *supra* note 2.

24 These four different sentence types correspond to the four “Zones” (A-D) in the Sentencing Table in the *Guidelines Manual*. *See* USSG, *supra* note 22, at Ch. 5, Pt. A (Sentencing Table); *see also* USSG §§5B1.1 & 5C1.1 (setting forth the sentencing options for Zones A-D). Zone A authorizes probation only; Zone B authorizes probation with a condition of confinement; Zone C authorizes a “split” sentence of imprisonment and community confinement (*e.g.*, home detention or a halfway house); and Zone D authorizes sentences of imprisonment only. *See* USSG §§5B1.1 & 5C1.1.

25 The shortest time to arrest leading to a reconviction (29 months) is attributed to the younger than 30 cohort and increases to 39 months in the last age group. The most serious type of offense most likely to cause reconviction also shifts with age from assault (for all age groups under the age of 50) to public order offenses (for age 50 to 59) or drug trafficking (for age 60 or older).

26 One exception occurs with reincarceration. Those under age 21, a small group, have a slightly lower rate of reincarceration (35.7%) compared to those between ages 21 and 24 (38.6%).

27 The shortest time to arrest leading to reincarceration (29 months) is attributed to the younger than 30 cohort and increases to 51 months in the last age group. The most serious type of offense most likely to cause reincarceration also shifts with age from assault (for all age groups under the age of 50) to public order offenses (for age 50 to 59) or drug trafficking (for age 60 or older).

28 MATTHEW DUROSE, ALEXIA COOPER, AND HOWARD SNYDER, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 (2014), <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

Part Eight

Appendix

Recidivism Rates of Recidivism Study Offenders by Race and Age at Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|---------------------------------|--------|---------------|-------------------|----------------------|
| Total | 25,386 | 49.3% | 31.7% | 24.7% |
| Under 30 Years of Age | | | | |
| Race | | | | |
| White | 2,265 | 59.1% | 40.8% | 31.1% |
| Black | 2,410 | 72.7% | 51.4% | 40.7% |
| Hispanic | 1,714 | 61.2% | 40.2% | 31.9% |
| Other | 401 | 65.1% | 49.1% | 44.1% |
| 30-39 Years of Age | | | | |
| Race | | | | |
| White | 3,090 | 48.9% | 31.9% | 24.2% |
| Black | 3,604 | 59.9% | 36.4% | 28.0% |
| Hispanic | 1,485 | 48.7% | 31.3% | 24.7% |
| Other | 337 | 50.5% | 35.0% | 27.9% |
| 40-49 Years of Age | | | | |
| Race | | | | |
| White | 3,076 | 39.4% | 25.7% | 19.1% |
| Black | 1,688 | 52.2% | 30.9% | 24.2% |
| Hispanic | 843 | 39.2% | 22.5% | 17.4% |
| Other | 281 | 42.0% | 27.1% | 23.8% |
| 50-59 Years of Age | | | | |
| Race | | | | |
| White | 1,797 | 23.7% | 12.7% | 9.9% |
| Black | 719 | 36.0% | 18.8% | 14.7% |
| Hispanic | 340 | 24.4% | 14.4% | 11.5% |
| Other | 109 | 22.9% | 11.9% | 9.2% |
| 60 Years of Age or Older | | | | |
| Race | | | | |
| White | 846 | 15.7% | 7.8% | 5.2% |
| Black | 186 | 19.4% | 15.6% | 12.9% |
| Hispanic | 126 | 19.1% | 10.3% | 7.9% |
| Other | 46 | 10.9% | 6.5% | 6.5% |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of reconvictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDT. The numbers in the table represent the total number of offenders in each grouping, not the total number of offenders that recidivated. The total number of offenders in each grouping may not add to the total study group because of missing information.

Recidivism Rates of Recidivism Study Offenders by Education and Age at Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|---------------------------------|--------|---------------|-------------------|----------------------|
| Total | 25,386 | 49.3% | 31.7% | 24.7% |
| Under 30 Years of Age | | | | |
| Education | | | | |
| Less Than High School | 3,067 | 74.4% | 53.2% | 43.6% |
| High School Graduate | 2,412 | 62.9% | 43.0% | 33.1% |
| Some College | 1,170 | 47.3% | 29.7% | 21.1% |
| College Graduate | 111 | 27.0% | 16.2% | 11.7% |
| 30-39 Years of Age | | % | % | % |
| Education | | | | |
| Less Than High School | 2,849 | 63.0% | 40.9% | 32.8% |
| High School Graduate | 3,269 | 55.0% | 35.0% | 27.0% |
| Some College | 1,923 | 44.1% | 26.1% | 18.5% |
| College Graduate | 433 | 21.5% | 11.8% | 7.4% |
| 40-49 Years of Age | | % | % | % |
| Education | | | | |
| Less Than High School | 1,679 | 51.5% | 30.9% | 24.0% |
| High School Graduate | 2,319 | 45.0% | 28.6% | 22.2% |
| Some College | 1,313 | 37.9% | 24.1% | 18.1% |
| College Graduate | 543 | 21.2% | 12.5% | 8.7% |
| 50-59 Years of Age | | % | % | % |
| Education | | | | |
| Less Than High School | 698 | 31.0% | 18.2% | 14.6% |
| High School Graduate | 953 | 30.6% | 16.2% | 12.5% |
| Some College | 744 | 24.9% | 12.2% | 9.8% |
| College Graduate | 551 | 16.5% | 8.2% | 5.8% |
| 60 Years of Age or Older | | % | % | % |
| Education | | | | |
| Less Than High School | 348 | 17.2% | 9.5% | 7.2% |
| High School Graduate | 356 | 18.8% | 11.2% | 7.9% |
| Some College | 249 | 16.1% | 8.4% | 6.0% |
| College Graduate | 241 | 11.6% | 5.8% | 4.2% |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of convictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDT. The numbers in the table represent the total number of offenders in each grouping, not the total number of offenders that recidivated. The total number of offenders in each grouping may not add to the total study group because of missing information.

Recidivism Rates of Recidivism Study Offenders by Gender and Age at Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|---------------------------------|--------|---------------|-------------------|----------------------|
| Total | 25,386 | 49.3% | 31.7% | 24.7% |
| Under 30 Years of Age | | | | |
| Gender | | | | |
| Male | 5,342 | 69.5% | 48.6% | 39.2% |
| Female | 1,451 | 47.6% | 31.2% | 21.7% |
| 30-39 Years of Age | | | | |
| Gender | | | | |
| Male | 7,092 | 56.2% | 35.9% | 28.1% |
| Female | 1,427 | 40.7% | 23.7% | 15.8% |
| 40-49 Years of Age | | | | |
| Gender | | | | |
| Male | 4,783 | 46.4% | 29.1% | 22.8% |
| Female | 1,110 | 29.1% | 16.8% | 10.7% |
| 50-59 Years of Age | | | | |
| Gender | | | | |
| Male | 2,453 | 29.2% | 15.5% | 12.2% |
| Female | 516 | 15.3% | 8.7% | 6.4% |
| 60 Years of Age or Older | | | | |
| Gender | | | | |
| Male | 1,053 | 17.1% | 9.4% | 6.8% |
| Female | 150 | 12.0% | 8.0% | 6.0% |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of reconvictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDT. The numbers in the table represent the total number of offenders in each grouping, not the total number of offenders that recidivated. The total number of offenders in each grouping may not add to the total study group because of missing information.

Recidivism Rates of Recidivism Study Offenders by Primary Offense Type and Age at Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|---------------------------------|--------|---------------|-------------------|----------------------|
| Total | 25,386 | 49.3% | 31.7% | 24.7% |
| Under 30 Years of Age | | | | |
| Primary Offense Type | | | | |
| Drug Trafficking | 3,110 | 62.5% | 41.2% | 31.7% |
| Firearms | 1,077 | 79.3% | 60.2% | 49.4% |
| Fraud | 511 | 53.6% | 36.4% | 25.1% |
| Robbery | 287 | 66.2% | 43.2% | 37.6% |
| All Other | 1,811 | 63.0% | 44.8% | 36.2% |
| 30-39 Years of Age | | | | |
| Primary Offense Type | | | | |
| Drug Trafficking | 4,078 | 52.0% | 31.5% | 23.7% |
| Firearms | 1,074 | 70.4% | 47.8% | 39.8% |
| Fraud | 1,037 | 41.8% | 26.1% | 18.4% |
| Robbery | 376 | 71.0% | 47.9% | 42.8% |
| All Other | 1,958 | 50.6% | 32.5% | 24.4% |
| 40-49 Years of Age | | | | |
| Primary Offense Type | | | | |
| Drug Trafficking | 2,151 | 42.3% | 24.5% | 18.4% |
| Firearms | 721 | 62.8% | 40.4% | 31.8% |
| Fraud | 977 | 31.8% | 19.2% | 13.4% |
| Robbery | 298 | 71.5% | 51.7% | 46.6% |
| All Other | 1,745 | 37.7% | 24.0% | 18.2% |
| 50-59 Years of Age | | | | |
| Primary Offense Type | | | | |
| Drug Trafficking | 952 | 26.8% | 14.1% | 11.5% |
| Firearms | 270 | 44.8% | 24.4% | 19.3% |
| Fraud | 618 | 19.7% | 10.4% | 7.8% |
| Robbery | 108 | 54.6% | 35.2% | 27.8% |
| All Other | 1,021 | 23.3% | 12.1% | 9.2% |
| 60 Years of Age or Older | | | | |
| Primary Offense Type | | | | |
| Drug Trafficking | 286 | 17.5% | 10.1% | 6.6% |
| Firearms | 96 | 30.2% | 20.8% | 15.6% |
| Fraud | 297 | 12.5% | 6.7% | 4.7% |
| Robbery | 29 | 34.5% | 13.8% | 13.8% |
| All Other | 496 | 14.5% | 7.7% | 5.9% |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of reconvictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDT. The numbers in the table represent the total number of offenders in each grouping, not the total number of offenders that recidivated. The total number of offenders in each grouping may not add to the total study group because of missing information.

Recidivism Rates of Recidivism Study Offenders by Base Offense Level and Age at Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|---------------------------------|--------|---------------|-------------------|----------------------|
| Total | 25,386 | 49.3% | 31.7% | 24.7% |
| Under 30 Years of Age | | | | |
| Base Offense Level | | | | |
| 6 to 25 | 4,682 | 66.3% | 46.9% | 37.4% |
| 26 to 31 | 1,393 | 62.3% | 41.4% | 31.2% |
| 32 to 43 | 716 | 60.2% | 38.7% | 31.2% |
| 30-39 Years of Age | | | | |
| Base Offense Level | | | | |
| 6 to 25 | 5,046 | 55.7% | 36.6% | 28.8% |
| 26 to 31 | 1,673 | 52.9% | 32.1% | 23.6% |
| 32 to 43 | 1,801 | 48.4% | 27.8% | 20.8% |
| 40-49 Years of Age | | | | |
| Base Offense Level | | | | |
| 6 to 25 | 4,073 | 44.3% | 28.0% | 21.8% |
| 26 to 31 | 901 | 43.8% | 26.1% | 19.8% |
| 32 to 43 | 913 | 37.1% | 21.9% | 15.8% |
| 50-59 Years of Age | | | | |
| Base Offense Level | | | | |
| 6 to 25 | 2,192 | 27.6% | 15.1% | 11.6% |
| 26 to 31 | 377 | 25.7% | 11.7% | 10.1% |
| 32 to 43 | 397 | 23.4% | 12.9% | 10.3% |
| 60 Years of Age or Older | | | | |
| Base Offense Level | | | | |
| 6 to 25 | 944 | 16.5% | 9.2% | 6.9% |
| 26 to 31 | 119 | 19.3% | 10.9% | 7.6% |
| 32 to 43 | 140 | 13.6% | 7.9% | 5.0% |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of reconvictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDT. The numbers in the table represent the total number of offenders in each grouping, not the total number of offenders that recidivated. The total number of offenders in each grouping may not add to the total study group because of missing information.

Recidivism Rates of Recidivism Study Offenders by Weapon Enhancement and Age at Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|---------------------------------|--------|---------------|-------------------|----------------------|
| Total | 25,386 | 49.3% | 31.7% | 24.7% |
| Under 30 Years of Age | | | | |
| Weapon Enhancement | | | | |
| No Weapon Enhancement | 6,136 | 64.2% | 44.4% | 34.9% |
| Weapon Enhancement | 660 | 70.2% | 48.9% | 40.6% |
| 30-39 Years of Age | | | | |
| Weapon Enhancement | | | | |
| No Weapon Enhancement | 7,509 | 53.0% | 33.7% | 25.8% |
| Weapon Enhancement | 1,014 | 57.7% | 35.2% | 27.8% |
| 40-49 Years of Age | | | | |
| Weapon Enhancement | | | | |
| No Weapon Enhancement | 5,356 | 42.6% | 26.4% | 20.2% |
| Weapon Enhancement | 538 | 48.9% | 30.5% | 24.7% |
| 50-59 Years of Age | | | | |
| Weapon Enhancement | | | | |
| No Weapon Enhancement | 2,747 | 26.7% | 14.2% | 11.1% |
| Weapon Enhancement | 222 | 27.9% | 15.8% | 12.2% |
| 60 Years of Age or Older | | | | |
| Weapon Enhancement | | | | |
| No Weapon Enhancement | 1,140 | 16.4% | 9.2% | 6.6% |
| Weapon Enhancement | 64 | 17.2% | 9.4% | 9.4% |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of reconvictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDT. The numbers in the table represent the total number of offenders in each grouping, not the total number of offenders that recidivated. The total number of offenders in each grouping may not add to the total study group because of missing information.

Recidivism Rates of Recidivism Study Offenders by Criminal History Category and Age at Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|----------------------------------|--------|---------------|-------------------|----------------------|
| Total | 25,386 | 49.3% | 31.7% | 24.7% |
| Under 30 Years of Age | | | | |
| Criminal History Category | | | | |
| CHC I | 3,771 | 53.0% | 34.1% | 25.4% |
| CHC II | 895 | 70.1% | 47.2% | 35.5% |
| CHC III | 1,095 | 79.5% | 56.7% | 46.5% |
| CHC IV | 568 | 86.3% | 66.9% | 57.4% |
| CHC V | 244 | 90.6% | 73.8% | 66.0% |
| CHC VI | 214 | 89.7% | 72.9% | 61.7% |
| 30-39 Years of Age | | | | |
| Criminal History Category | | | | |
| CHC I | 3,890 | 35.3% | 19.6% | 12.9% |
| CHC II | 1,091 | 55.8% | 32.9% | 23.1% |
| CHC III | 1,371 | 63.7% | 40.2% | 31.5% |
| CHC IV | 835 | 73.5% | 47.1% | 39.8% |
| CHC V | 483 | 79.9% | 59.2% | 51.6% |
| CHC VI | 803 | 84.6% | 63.5% | 54.8% |
| 40-49 Years of Age | | | | |
| Criminal History Category | | | | |
| CHC I | 3,135 | 25.9% | 14.0% | 9.4% |
| CHC II | 674 | 47.2% | 26.9% | 18.7% |
| CHC III | 746 | 54.0% | 33.0% | 24.5% |
| CHC IV | 398 | 72.4% | 49.0% | 40.0% |
| CHC V | 282 | 71.3% | 46.5% | 39.4% |
| CHC VI | 626 | 80.2% | 59.1% | 51.9% |
| 50-59 Years of Age | | | | |
| Criminal History Category | | | | |
| CHC I | 1,877 | 16.1% | 8.1% | 5.5% |
| CHC II | 316 | 30.1% | 13.6% | 9.5% |
| CHC III | 292 | 38.4% | 19.9% | 17.8% |
| CHC IV | 153 | 51.6% | 32.7% | 28.1% |
| CHC V | 92 | 58.7% | 32.6% | 29.4% |
| CHC VI | 225 | 64.9% | 40.0% | 33.8% |
| 60 Years of Age or Older | | | | |
| Criminal History Category | | | | |
| CHC I | 876 | 11.3% | 5.9% | 4.1% |
| CHC II | 106 | 22.6% | 12.3% | 9.4% |
| CHC III | 106 | 25.5% | 16.0% | 11.3% |
| CHC IV | 41 | 46.3% | 29.3% | 19.5% |
| CHC V | 18 | 44.4% | 27.8% | 22.2% |
| CHC VI | 53 | 37.7% | 22.6% | 20.8% |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of reconvictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDPT. The numbers in the table represent the total number of offenders in each grouping, not the total number of offenders that recidivated. The total number of offenders in each grouping may not add to the total study group because of missing information.

Recidivism Rates of Recidivism Study Offenders by Sentence Type and Age at Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|---------------------------------|--------|---------------|-------------------|----------------------|
| Total | 25,386 | 49.3% | 31.7% | 24.7% |
| Under 30 Years of Age | | | | |
| Sentence Type | | | | |
| Probation or Fine Only | 1,039 | 51.5% | 34.2% | 21.6% |
| Probation and Confinement | 341 | 55.4% | 34.6% | 23.8% |
| Prison/Confinement Split | 261 | 53.6% | 34.1% | 25.3% |
| Prison Only | 5,144 | 68.6% | 48.3% | 39.5% |
| 30-39 Years of Age | | % | % | % |
| Sentence Type | | | | |
| Probation or Fine Only | 989 | 35.5% | 20.7% | 11.8% |
| Probation and Confinement | 302 | 44.7% | 27.8% | 14.9% |
| Prison/Confinement Split | 244 | 41.8% | 25.4% | 16.0% |
| Prison Only | 6,971 | 56.9% | 36.3% | 28.9% |
| 40-49 Years of Age | | % | % | % |
| Sentence Type | | | | |
| Probation or Fine Only | 835 | 27.7% | 16.9% | 9.1% |
| Probation and Confinement | 282 | 26.6% | 14.9% | 11.0% |
| Prison/Confinement Split | 268 | 30.2% | 17.2% | 11.2% |
| Prison Only | 4,501 | 47.9% | 29.9% | 23.8% |
| 50-59 Years of Age | | % | % | % |
| Sentence Type | | | | |
| Probation or Fine Only | 504 | 18.9% | 8.9% | 5.2% |
| Probation and Confinement | 179 | 19.0% | 10.6% | 7.3% |
| Prison/Confinement Split | 140 | 22.9% | 13.6% | 7.1% |
| Prison Only | 2,145 | 29.6% | 15.9% | 13.2% |
| 60 Years of Age or Older | | % | % | % |
| Sentence Type | | | | |
| Probation or Fine Only | 246 | 15.0% | 10.2% | 6.5% |
| Probation and Confinement | 87 | 9.2% | 4.6% | 3.5% |
| Prison/Confinement Split | 60 | 11.7% | 5.0% | 3.3% |
| Prison Only | 811 | 18.0% | 9.7% | 7.4% |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of reconvictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDT. The numbers in the table represent the total number of offenders in each grouping, not the total number of offenders that recidivated. The total number of offenders in each grouping may not add to the total study group because of missing information.

Recidivism Rates of Recidivism Study Offenders by Length of Federal Sentence and Age at Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|-----------------------------------|--------|---------------|-------------------|----------------------|
| Total | 25,386 | 49.3% | 31.7% | 24.7% |
| Under 30 Years of Age | | | | |
| Length of Federal Sentence | | | | |
| Up to 6 Months | 294 | 52.7% | 34.7% | 26.2% |
| 6 to 11 Months | 264 | 61.4% | 43.9% | 31.8% |
| 12 to 23 Months | 1,204 | 69.2% | 48.6% | 40.3% |
| 24 to 59 Months | 2,457 | 68.4% | 48.8% | 40.3% |
| 60 to 119 Months | 995 | 71.4% | 47.8% | 38.9% |
| 120 Months or More | 185 | 68.1% | 48.1% | 39.5% |
| 30-39 Years of Age | | | | |
| Length of Federal Sentence | | | | |
| Up to 6 Months | 278 | 42.5% | 25.5% | 16.2% |
| 6 to 11 Months | 197 | 54.8% | 32.0% | 26.9% |
| 12 to 23 Months | 1,077 | 52.8% | 34.6% | 27.1% |
| 24 to 59 Months | 2,647 | 56.9% | 36.8% | 29.5% |
| 60 to 119 Months | 1,903 | 58.7% | 37.2% | 29.4% |
| 120 Months or More | 1,110 | 58.5% | 36.0% | 29.4% |
| 40-49 Years of Age | | | | |
| Length of Federal Sentence | | | | |
| Up to 6 Months | 273 | 28.9% | 17.6% | 11.4% |
| 6 to 11 Months | 190 | 45.8% | 23.7% | 16.8% |
| 12 to 23 Months | 793 | 41.5% | 25.5% | 21.8% |
| 24 to 59 Months | 1,734 | 47.6% | 29.1% | 22.4% |
| 60 to 119 Months | 1,049 | 50.3% | 32.6% | 25.6% |
| 120 Months or More | 727 | 52.8% | 34.4% | 28.6% |
| 50-59 Years of Age | | | | |
| Length of Federal Sentence | | | | |
| Up to 6 Months | 147 | 20.4% | 12.2% | 7.5% |
| 6 to 11 Months | 69 | 33.3% | 17.4% | 11.6% |
| 12 to 23 Months | 399 | 24.3% | 16.0% | 13.0% |
| 24 to 59 Months | 852 | 29.8% | 15.1% | 12.6% |
| 60 to 119 Months | 446 | 31.8% | 16.1% | 13.0% |
| 120 Months or More | 370 | 32.4% | 17.8% | 15.7% |
| 60 Years of Age or Older | | | | |
| Length of Federal Sentence | | | | |
| Up to 6 Months | 55 | 20.0% | 12.7% | 9.1% |
| 6 to 11 Months | 40 | 15.0% | 15.0% | 7.5% |
| 12 to 23 Months | 171 | 12.3% | 6.4% | 5.3% |
| 24 to 59 Months | 321 | 19.0% | 9.4% | 7.5% |
| 60 to 119 Months | 155 | 17.4% | 9.0% | 6.5% |
| 120 Months or More | 129 | 20.9% | 10.9% | 8.5% |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of reconvictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDPT. The numbers in the table represent the total number of offenders in each grouping, not the total number of offenders that recidivated. The total number of offenders in each grouping may not add to the total study group because of missing information.

Recidivism Rates for Federal and State Prisoners by Age at Release: Five Year Post-Release

| | N | Rearrest % | Reconviction % | Reincarceration % |
|-----------------------------------|-------|---------------|-------------------|----------------------|
| 24 Years or Younger | | | | |
| Federal or State Prisoners | | | | |
| Federal Prisoners | 1,916 | 63.2% | 42.9% | 35.1% |
| State Prisoners | N/A | 84.1% | N/A | N/A |
| 25 to 29 Years | | | | |
| % | | | | |
| Federal or State Prisoners | | | | |
| Federal Prisoners | 3,489 | 57.6% | 34.9% | 28.2% |
| State Prisoners | N/A | 80.3% | N/A | N/A |
| 30 to 34 Years | | | | |
| % | | | | |
| Federal or State Prisoners | | | | |
| Federal Prisoners | 3,966 | 50.3% | 28.5% | 22.2% |
| State Prisoners | N/A | 77.0% | N/A | N/A |
| 35 to 39 Years | | | | |
| % | | | | |
| Federal or State Prisoners | | | | |
| Federal Prisoners | 3,249 | 44.5% | 24.4% | 19.7% |
| State Prisoners | N/A | 78.1% | N/A | N/A |
| 40 Years or Older | | | | |
| % | | | | |
| Federal or State Prisoners | | | | |
| Federal Prisoners | 7,925 | 32.5% | 17.3% | 13.6% |
| State Prisoners | N/A | 69.2% | N/A | N/A |

While states have improved the completeness of criminal history records, a recent federal study found significant gaps in reporting of dispositions following an arrest. Such gaps occur in the criminal records used in this report, and lead to an undercounting of reconvictions, since missing dispositions are treated herein as the absence of reconviction and reincarceration. See U.S. Government Accountability Office, Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks (February 2015), <http://www.gao.gov/products/GAO-15-162>.

SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05_OFFUPDT and Bureau of Justice Statistics, *Recidivism of Prisoners Released in 30 States* (2005).

APPENDIX B

D.C. Code, Section 24-403.03:

DC ST § 24-403.03

§ 24-403.03. Modification of an imposed term of imprisonment for violations of law committed before 25 years of age.

(a) Notwithstanding any other provision of law, the court shall reduce a term of imprisonment imposed upon a defendant for an offense committed before the defendant's 25th birthday if:

(1) The defendant was sentenced pursuant to § 24-403 or § 24-403.01, or was committed pursuant to § 24-903, and has served at least 15 years in prison; and

(2) The court finds, after considering the factors set forth in subsection (c) of this section, that the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.

(b) (1) A defendant convicted as an adult of an offense committed before the defendant's 25th birthday may file an application for a sentence modification under this section. The application shall be in the form of a motion to reduce the sentence. The application may include affidavits or other written material. The application shall be filed with the sentencing court and a copy shall be served on the United States Attorney.

(2) The court may direct the parties to expand the record by submitting additional testimony, examinations, or written materials related to the motion. The court shall hold a hearing on the motion at which the defendant and the defendant's counsel shall be given an opportunity to speak on the defendant's behalf. The court may permit the parties to introduce evidence. The court may consider any records related to the underlying offense.

(3) (A) Except as provided in subparagraph (B) of this paragraph, the defendant shall be present at any hearing conducted under this section unless the defendant waives the right to be present. Any proceeding under this section may occur by video conferencing, and the requirement of a defendant's presence is satisfied by participation in the video teleconference.

(B) During a period of time for which the Mayor has declared a public health emergency pursuant to § 7-2304.01, a defendant in the custody of the Bureau of Prisons who committed the offense for which the defendant has filed the application for sentence modification after the defendant's 18th birthday but before the defendant's 25th birthday may not petition the court to return to the Department of Corrections for a proceeding under this section.

(4) The court shall issue an opinion in writing stating the reasons for granting or denying the application under this section, but the court may proceed to sentencing immediately after granting the application.

(c) The court, in determining whether to reduce a term of imprisonment pursuant to subsection (a) of this section, shall consider:

(1) The defendant's age at the time of the offense;

(2) The history and characteristics of the defendant;

(3) Whether the defendant has substantially complied with the rules of the institution to which the defendant has been confined, and whether the defendant has completed any educational, vocational, or other program, where available;

(4) Any report or recommendation received from the United States Attorney;

(5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;

(6) Any statement, provided orally or in writing, provided pursuant to § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense for which the defendant is imprisoned, or by a family member of the victim if the victim is deceased;

(7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals;

(8) The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;

(9) The extent of the defendant's role in the offense and whether and to what extent another person was involved in the offense;

(10) The diminished culpability of juveniles and persons under age 25, as compared to that of older adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to lengthy terms in prison, despite the brutality or cold-blooded nature of any particular crime, and the defendant's personal circumstances that support an aging out of crime; and

(11) Any other information the court deems relevant to its decision.

(d) If the court denies or grants only in part the defendant's 1st application under this section, a court shall entertain a 2nd application under this section no sooner

than 3 years after the date that the order on the initial application becomes final. If the court denies or grants only in part the defendant's 2nd application under this section, a court shall entertain a 3rd and final application under this section no sooner than 3 years following the date that the order on the 2nd application becomes final. No court shall entertain a 4th or successive application under this section.

(e) (1) Any defendant whose sentence is reduced under this section shall be resentenced pursuant to § 24-403, § 24-403.01, or § 24-903, as applicable.

(2) Notwithstanding any other provision of law, when resentencing a defendant under this section, the court:

(A) May issue a sentence less than the minimum term otherwise required by law; and

(B) Shall not impose a sentence of life imprisonment without the possibility of parole or release.

(f) The version of this section that was effective from May 10, 2019, to April 27, 2021, shall apply to all proceedings initiated under this section in any District of Columbia court, including any appeals thereof, by defendants who were eligible under this section prior to May 10, 2021, and shall apply to all proceedings under this section in any District of Columbia court, including any appeals thereof, that were pending prior to April 27, 2021.

(g) In considering applications filed by defendants for offenses committed after the defendant's 18th birthday, the court shall endeavor to prioritize consideration of the applications of defendants who have been incarcerated the longest; except, that the inability to identify those defendants shall not delay the court acting on other applications under this section.

(h) Notwithstanding any other law, if a District government workforce development program requires District residency as a condition of program eligibility, the residency requirement shall be waived for defendants resentenced pursuant to this section.

<Text of subsec. (i) applicable upon the date of inclusion of the fiscal effect of D.C. Law 23-274 in an approved budget and financial plan>

(i) Beginning in Fiscal Year 2022, the Office of Victim Services and Justice Grants shall, on an annual basis, issue a grant of \$200,000 to an organization that provides advocacy, case, management, and legal services, for the purpose of developing and offering restorative justice practices for survivors of violent crimes who seek such practices, such as for survivors impacted by post-conviction litigation.

D.C. Code, Section 24-403.04:

§ 24-403.04. Motions for compassionate release for individuals convicted of felony offenses.

(a) Notwithstanding any other provision of law, the court shall modify a term of imprisonment imposed upon a defendant if it determines the defendant is not a danger to the safety of any other person or the community, pursuant to the factors to be considered in 18 U.S.C. §§ 3142(g) and 3553(a) and evidence of the defendant's rehabilitation while incarcerated, and:

(1) The defendant has a terminal illness, which means a disease or condition with an end-of-life trajectory;

(2) The defendant is 60 years of age or older and has served at least 20 years in prison; or

(3) Other extraordinary and compelling reasons warrant such a modification, including:

(A) A debilitating medical condition involving an incurable illness, or a debilitating injury from which the defendant will not recover;

(B) Elderly age, defined as a defendant who:

(i) Is 60 years of age or older;

(ii) Has served the lesser of 15 years or 75% of the defendant's sentence; and

(iii) Suffers from a chronic or serious medical condition related to the aging process or that causes an acute vulnerability to severe medical complications or death as a result of COVID-19;

(C) Death or incapacitation of the family member caregiver of the defendant's children; or

(D) Incapacitation of a spouse or a domestic partner when the defendant would be the only available caregiver for the spouse or domestic partner.

(b) Motions brought pursuant to this section may be brought by the United States Attorney's Office for the District of Columbia, the Bureau of Prisons, the United States Parole Commission, or the defendant.

(c) Although a hearing is not required, to provide for timely review of a motion made pursuant to this section and at the request of counsel for the defendant, the court may waive the appearance of a defendant currently held in the custody of the Bureau of Prisons.

(d) For the purposes of this section, the term “COVID-19” means the disease caused by the novel 2019 coronavirus SARS-CoV-2.

D.C. Code Ann. § 24-403.04 (2021).

Delaware Code, Title 11, Section 4-204A:

11 Del. C. § 4204A

§ 4204A. Confinement of youth convicted in Superior Court

...

(d) (1) Notwithstanding any provision of this title to the contrary, any offender sentenced to an aggregate term of incarceration in excess of 20 years for any offense or offenses other than murder first degree that were committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 20 years of the originally imposed Level V sentence.

(2) Notwithstanding any provision of this title to the contrary, any offender sentenced to a term of incarceration for murder first degree when said offense was committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 30 years of the originally imposed Level V sentence.

(3) Notwithstanding any provision of this subsection or title to the contrary, any offender who has petitioned the Superior Court for sentence modification pursuant to this subsection shall not be eligible to submit a second or subsequent petition until at least 5 years have elapsed since the date on which the Court ruled upon the offender's most recent petition. Further, the Superior Court shall have the discretion at the time of each sentence modification hearing to prohibit a subsequent sentence modification petition for a period of time in excess of 5 years if the Superior Court finds there to be no reasonable likelihood that the interests of justice will require another hearing within 5 years.

(4) Notwithstanding the provisions of § 4205 or § 4217 of this title, any court rule or any other provision of law to the contrary, a Superior Court Judge upon consideration of a petition filed pursuant to this subsection (d), may modify, reduce

or suspend such petitioner's sentence, including any minimum or mandatory sentence, or a portion thereof, in the discretion of the Court. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section.

(5) The Superior Court shall have the authority to promulgate appropriate rules to regulate the filing and litigation of sentence modification petitions pursuant to this paragraph.

Del. Code Ann. tit. 11, § 4204A (2021), *amended in other part by* 83 Laws 2021, ch. 40, § 2, eff. Jan. 1, 2022.

Florida Statutes Annotated, Section 921.1402:

921.1402. Review of sentences for persons convicted of specified offenses committed while under the age of 18 years

(1) For purposes of this section, the term “juvenile offender” means a person sentenced to imprisonment in the custody of the Department of Corrections for an offense committed on or after July 1, 2014, and committed before he or she attained 18 years of age.

(2) (a) A juvenile offender sentenced under s. 775.082(1)(b)1 is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(1)(b)1.:

1. Murder;
2. Manslaughter;
3. Sexual battery;
4. Armed burglary;
5. Armed robbery;
6. Armed carjacking;
7. Home-invasion robbery;
8. Human trafficking for commercial sexual activity with a child under 18 years of age;

9. False imprisonment under s. 787.02(3)(a); or

10. Kidnapping.

(b) A juvenile offender sentenced to a term of more than 25 years under s. 775.082(3)(a)5.a. or s. 775.082(3)(b)2.a. is entitled to a review of his or her sentence after 25 years.

(c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b) 2., s. 775.082(3)(a)5.b., or s. 775.082(3)(b)2.b. is entitled to a review of his or her sentence after 15 years.

(d) A juvenile offender sentenced to a term of 20 years or more under s. 775.082(3)(c) is entitled to a review of his or her sentence after 20 years. If the juvenile offender is not resentenced at the initial review hearing, he or she is eligible for one subsequent review hearing 10 years after the initial review hearing.

(3) The Department of Corrections shall notify a juvenile offender of his or her eligibility to request a sentence review hearing 18 months before the juvenile offender is entitled to a sentence review hearing under this section.

(4) A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

(5) A juvenile offender who is eligible for a sentence review hearing under this section is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

(6) Upon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider any factor it deems appropriate, including all of the following:

(a) Whether the juvenile offender demonstrates maturity and rehabilitation.

(b) Whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

(c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a

factor in the determination of the court under this section. The court shall permit the victim or victim's next of kin to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.

(d) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.

(e) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.

(g) Whether the juvenile offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.

(7) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

Fla. Stat. Ann. § 921.1402 (2015).

United States Code, Title 18, Section 3582:

§ 3582. Imposition of a sentence of imprisonment

(a) Factors to be considered in imposing a term of imprisonment.--The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction

and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of finality of judgment.--Notwithstanding the fact that a sentence to imprisonment can subsequently be--

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) Modification of an imposed term of imprisonment.--The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) Notification requirements.--

(1) Terminal illness defined.--In this subsection, the term “terminal illness” means a disease or condition with an end-of-life trajectory.

(2) Notification.--The Bureau of Prisons shall, subject to any applicable confidentiality requirements--

(A) in the case of a defendant diagnosed with a terminal illness--

(i) not later than 72 hours after the diagnosis notify the defendant's attorney, partner, and family members of the defendant's condition and inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) not later than 7 days after the date of the diagnosis, provide the defendant's partner and family members (including extended family) with an opportunity to visit the defendant in person;

(iii) upon request from the defendant or his attorney, partner, or a family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(iv) not later than 14 days of receipt of a request for a sentence reduction submitted on the defendant's behalf by the defendant or the defendant's attorney, partner, or family member, process the request;

(B) in the case of a defendant who is physically or mentally unable to submit a request for a sentence reduction pursuant to subsection (c)(1)(A)--

(i) inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) accept and process a request for sentence reduction that has been prepared and submitted on the defendant's behalf by the defendant's attorney, partner, or family member under clause (i); and

(iii) upon request from the defendant or his attorney, partner, or family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(C) ensure that all Bureau of Prisons facilities regularly and visibly post, including in prisoner handbooks, staff training materials, and facility law libraries and medical and hospice facilities, and make available to prisoners upon demand, notice of--

(i) a defendant's ability to request a sentence reduction pursuant to subsection (c)(1)(A);

(ii) the procedures and timelines for initiating and resolving requests described in clause (i); and

(iii) the right to appeal a denial of a request described in clause (i) after all administrative rights to appeal within the Bureau of Prisons have been exhausted.

(3) Annual report.--Not later than 1 year after the date of enactment of this subsection, and once every year thereafter, the Director of the Bureau of Prisons shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on requests for sentence reductions pursuant to subsection (c)(1)(A), which shall include a description of, for the previous year--

(A) the number of prisoners granted and denied sentence reductions, categorized by the criteria relied on as the grounds for a reduction in sentence;

(B) the number of requests initiated by or on behalf of prisoners, categorized by the criteria relied on as the grounds for a reduction in sentence;

(C) the number of requests that Bureau of Prisons employees assisted prisoners in drafting, preparing, or submitting, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(D) the number of requests that attorneys, partners, or family members submitted on a defendant's behalf, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(E) the number of requests approved by the Director of the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(F) the number of requests denied by the Director of the Bureau of Prisons and the reasons given for each denial, categorized by the criteria relied on as the grounds for a reduction in sentence;

(G) for each request, the time elapsed between the date the request was received by the warden and the final decision, categorized by the criteria relied on as the grounds for a reduction in sentence;

(H) for each request, the number of prisoners who died while their request was pending and, for each, the amount of time that had elapsed between the date the request was received by the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(I) the number of Bureau of Prisons notifications to attorneys, partners, and family members of their right to visit a terminally ill defendant as required under paragraph (2)(A)(ii) and, for each, whether a visit occurred and how much time elapsed between the notification and the visit;

(J) the number of visits to terminally ill prisoners that were denied by the Bureau of Prisons due to security or other concerns, and the reasons given for each denial; and

(K) the number of motions filed by defendants with the court after all administrative rights to appeal a denial of a sentence reduction had been exhausted, the outcome of each motion, and the time that had elapsed between the date the request was first received by the Bureau of Prisons and the date the defendant filed the motion with the court.

(e) Inclusion of an order to limit criminal association of organized crime and drug offenders.--The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association

or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

18 U.S.C.A. § 3582 (2018).

Model Penal Code:

§ 305.6. Modification of Long-Term Prison Sentences; Principles for Legislation.

The Institute does not recommend a specific legislative scheme for carrying out the sentence-modification authority recommended in this provision, nor is the provision drafted in the form of model legislation. Instead, the language below sets out principles that a legislature should seek to effectuate through enactment of such a provision.

1. The legislature shall authorize a judicial panel or other judicial decisionmaker to hear and rule upon applications for modification of sentence from prisoners who have served 15 years of any sentence of imprisonment.

2. After first eligibility, a prisoner's right to apply for sentence modification shall recur at intervals not to exceed 10 years.

3. The department of corrections shall ensure that prisoners are notified of their rights under this provision, and have adequate assistance for the preparation of applications, which may be provided by nonlawyers. The judicial panel or other judicial decisionmaker shall have discretion to appoint counsel to represent applicant prisoners who are indigent.

4. Sentence modification under this provision should be viewed as analogous to a resentencing in light of present circumstances. The inquiry shall be whether the purposes of sentencing in § 1.02(2) would better be served by a modified sentence than the prisoner's completion of the original sentence. The judicial panel or other judicial decisionmaker may adopt procedures for the screening and dismissal of applications that are unmeritorious on their face under this standard.

5. The judicial panel or other judicial decisionmaker shall be empowered to modify any aspect of the original sentence, so long as the portion of the modified sentence to be served is no more severe than the remainder of the original sentence. The sentence-modification authority under this provision shall not be limited by any mandatory-minimum term of imprisonment under state law.

6. Notice of the sentence-modification proceedings should be given to victims, if they can be located with reasonable efforts, and to the relevant prosecuting authorities. Any victim's impact statement from the original sentencing shall be

considered by the judicial panel or other judicial decisionmaker. Victims shall be afforded an opportunity to submit a supplemental impact statement, limited to changed circumstances since the original sentencing.

7. An adequate record of proceedings under this provision shall be maintained, and the judicial panel or other judicial decisionmaker shall be required to provide a statement of reasons for its decisions on the record.

8. There shall be a mechanism for review of decisions under this provision, which may be discretionary rather than mandatory.

9. The sentencing commission shall promulgate and periodically amend sentencing guidelines, consistent with Article 6B of the Code, to be used by the judicial panel or other judicial decisionmaker when considering applications under this provision.

10. The legislature should instruct the sentencing commission to recommend procedures for the retroactive application of this provision to prisoners who were sentenced before its effective date, and should authorize retroactivity procedures in light of the commission's advice.

Proposed Final Draft of Model Penal Code: Sentencing § 305.6 (approved at 2017 Annual Mtg.).