

**MANDATORY MINIMUM  
PENALTIES  
FOR FIREARMS OFFENSES**  
*in the*  
**FEDERAL CRIMINAL  
JUSTICE SYSTEM**

UNITED STATES SENTENCING COMMISSION  
MARCH 2018





MANDATORY MINIMUM PENALTIES FOR FIREARMS OFFENSES  
IN THE FEDERAL CRIMINAL JUSTICE SYSTEM



WILLIAM H. PRYOR JR.  
*Acting Chair*

RACHEL E. BARKOW  
*Commissioner*

CHARLES R. BREYER  
*Commissioner*

DANNY C. REEVES  
*Commissioner*

J. PATRICIA WILSON SMOOT  
*Ex Officio*

ZACHARY C. BOLITHO  
*Ex Officio*

KENNETH P. COHEN  
*Staff Director*

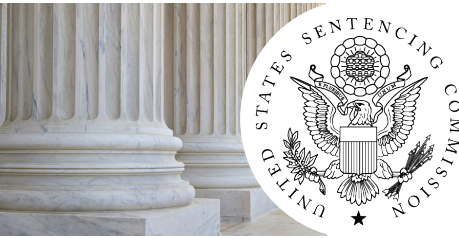
March 2018





## TABLE OF CONTENTS

1	SECTION ONE: INTRODUCTION
3	SECTION TWO: KEY FINDINGS
7	SECTION THREE: FIREARMS MANDATORY MINIMUMS
8	Statutory Mandatory Minimum Provisions Applicable to Federal Firearms Offenses
8	18 U.S.C. § 924(c)
9	The Armed Career Criminal Act, 18 U.S.C. § 924(e)
11	Statutory and Guideline Relief Provisions
13	SECTION FOUR: DATA ANALYSIS
14	The Commission's Updated Study of Firearms Mandatory Minimum Penalties
15	Recent Trends in Mandatory Minimum Penalties
16	Overall Prevalence of Firearms Offenses Carrying Mandatory Minimum Penalties
19	18 U.S.C. § 924(c)
19	<i>Prevalence of 18 U.S.C. § 924(c) Offenses</i>
23	<i>Other Counts of Conviction</i>
24	<i>Offender Demographics</i>
26	<i>Criminal History</i>
27	<i>Plea and Trial Rates</i>
27	<i>Relief from Mandatory Minimum Penalties</i>
31	<i>Sentencing of Offenders Convicted Under Section 924(c)</i>
36	Armed Career Criminal Act, 18 U.S.C. § 924(e)
36	<i>Prevalence of 18 U.S.C. § 924(e) Offenses</i>
37	<i>Plea and Trial Rates</i>
38	<i>Offender Demographics</i>
39	<i>Criminal History</i>
40	<i>Relief from Mandatory Minimum Penalties</i>
42	<i>Sentencing of Armed Career Criminals</i>
44	Impact of Firearms Mandatory Minimum Penalties on the Federal Prison Population
45	<i>Federal Firearms Offender Population Overall</i>
48	<i>Federal Firearms Offenders in the Federal Prison Population – By Race</i>
52	<i>Federal Firearms Offenders in the Federal Prison Population – By Gender</i>
56	<i>Federal Firearms Offenders in the Federal Prison Population – By Citizenship</i>
61	SECTION FIVE: CONCLUSION
63	ENDNOTES
71	APPENDICES



United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)





# 1 Introduction



## Introduction

This publication is the third in the Commission's series on mandatory minimum penalties. In 2017, the Commission published the first two publications in its series, *Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System (2017 Overview Publication)*<sup>1</sup> and *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System*.<sup>2</sup> These publications built on the Commission's 2011 *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (2011 Mandatory Minimum Report)*.<sup>3</sup> The 2011 report, which was submitted pursuant to a congressional directive,<sup>4</sup> provided detailed historical analyses of the evolution of federal mandatory minimum penalties, scientific literature on the topic, and extensive analysis of the Commission's own data, public comment, and expert testimony. The 2017 *Overview Publication* highlighted recent trends in the charging of offenses carrying mandatory minimum penalties and provided updated sentencing data demonstrating the impact of those penalties, supplementing the analysis presented in the 2011 *Mandatory Minimum Report*.

This publication focuses on the application of mandatory minimum penalties specific to firearms offenses,<sup>5</sup> which are the second most common offenses carrying mandatory minimum penalties in the federal system following drug offenses. Firearms offenses accounted for 16.8 percent of the offenses carrying a mandatory minimum penalty in fiscal year 2016.<sup>6</sup>

Using fiscal year 2016 data, this publication includes analyses of the two statutes carrying a firearms mandatory minimum penalty, 18 U.S.C. § 924(c) (relating to using or possessing firearms in furtherance of drug trafficking or crimes of violence) and the Armed Career Criminal Act, 18 U.S.C. § 924(e), as well as the impact of those provisions on the Federal Bureau of Prisons (BOP) population. Where appropriate, the publication highlights changes and trends since the Commission's 2011 *Mandatory Minimum Report*.





2 Key Findings



Building directly on its previous reports and the analyses set forth in the 2017 *Overview Publication*, this publication examines the use and impact of mandatory minimum penalties

for firearms offenses. As part of this analysis, the Commission makes the following key findings:

## Key Findings

### 1. Firearms mandatory minimum penalties continue to result in long sentences although they have decreased since fiscal year 2010.

- In fiscal year 2016, offenders convicted under section 924(c) received an average sentence of over 12 years (151 months) of imprisonment, which is 13 months less than in fiscal year 2010. The average sentence length depended on the applicable mandatory minimum penalty under section 924(c), increasing from 118 months for the five-year mandatory minimum penalty to 302 months where a 30-year mandatory minimum penalty applied.
- Similarly, in fiscal year 2016, offenders convicted of an offense carrying the 15-year mandatory minimum penalty under the Armed Career Criminal Act received an average sentence of over 15 years (182 months) of imprisonment, which is nine months less than in fiscal year 2010.
- As a result of these long sentences, offenders convicted of an offense carrying a firearms mandatory minimum penalty continued to significantly contribute to the size of the Federal Bureau of Prisons' population, constituting 24,905 (14.9%) of the 166,771 offenders in federal prison as of September 30, 2016.

### 2. Offenders charged with and convicted of multiple counts under section 924(c) received exceptionally long sentences as a result of the statutory requirement that the sentence for each count be served consecutively.

- While only 156 (7.9%) of the 1,976 offenders convicted under section 924(c) in fiscal year 2016 were convicted of multiple counts under that statute, they received exceptionally long sentences. The average sentence for offenders convicted of multiple counts under section 924(c) exceeded 27 years of imprisonment (327 months), nearly two-and-a-half times the average sentence for offenders convicted of a single count under section 924(c) (136 months).
- The average sentence for offenders who remained subject to the mandatory minimum penalty required by multiple counts under section 924(c) was even longer at almost 36 years (431 months).

## Key Findings

### **3. In addition, other charging and plea decisions also play a significant role in the application and impact of firearms mandatory minimum penalties.**

- The majority of section 924(c) offenders (85.5%) were also convicted of another offense, which is consistent with the statutory requirement that an offender must have used or possessed a firearm during and in relation to, or in furtherance of, an underlying federal offense in order to be convicted under section 924(c).
- Conversely, 14.5 percent of offenders were convicted of an offense under section 924(c) alone, although those cases necessarily involved another federal offense for which they were not charged and convicted.
- Those offenders convicted of an offense under section 924(c) alone received an average sentence that was five years shorter than offenders convicted under section 924(c) and another offense (99 months compared to 159 months).

### **4. Statutory relief under 18 U.S.C. § 3553(e) for providing substantial assistance to the government plays a significant role in the application and impact of firearms mandatory minimum penalties.**

- The 21.6 percent of offenders who received relief from the mandatory minimum penalty under section 924(c) for providing substantial assistance received average sentences of 95 months, compared to 166 months for offenders who remained subject to the mandatory minimum penalty at sentencing.
- The impact of receiving relief is even more pronounced for offenders convicted of multiple counts under section 924(c). Such offenders received average sentences that were less than one-third as long as offenders who remained subject to the mandatory minimum penalty required under section 924(c)—136 months compared to 431 months.
- Similarly, almost one-fifth (19.7%) of offenders convicted of an offense carrying the mandatory minimum penalty under the Armed Career Criminal Act received relief for providing substantial assistance, and their average sentence was 112 months compared to 200 months for offenders who remained subject to the mandatory minimum penalty at sentencing.



## Key Findings

### **5. While the rate at which firearms offenders were convicted of an offense carrying a mandatory minimum has been stable, the number of offenders convicted of offenses carrying such penalties has decreased significantly since fiscal year 2010.**

- Less than one-third (30.8%) of all firearms offenders in fiscal year 2016 were convicted of an offense carrying a mandatory minimum penalty, which is almost identical to fiscal year 2010 (30.6%).
- However, between fiscal years 2010 and 2016, the number of offenders convicted under section 924(c) decreased from 2,360 to 1,976, a 16.2 percent decrease. The number of offenders convicted of an offense carrying a mandatory minimum penalty under the Armed Career Criminal Act decreased 51.4 percent from 626 to 304, which is the lowest number of such offenders since fiscal year 2002 (n=292).
- Firearms offenses accounted for 16.8 percent of all offenses carrying a mandatory minimum penalty in fiscal year 2016 compared to 14.4 percent in fiscal year 2010.

### **6. Firearms mandatory minimum penalties continue to impact Black offenders more than any other racial group.**

- Black offenders were convicted of a firearms offense carrying a mandatory minimum more often than any other racial group. In fiscal year 2016, Black offenders accounted for 52.6 percent of offenders convicted under section 924(c), followed by Hispanic offenders (29.5%), White offenders (15.7%) and Other Race offenders (2.2%).
- The impact on Black offenders was even more pronounced for offenders convicted either of multiple counts under section 924(c) or offenses carrying a mandatory minimum penalty under the Armed Career Criminal Act. Black offenders accounted for more than two-thirds of such offenders (70.5% and 70.4%, respectively).
- Black offenders also generally received longer average sentences for firearms offenses carrying a mandatory minimum penalty than any other racial group. In fiscal year 2016, Black offenders convicted under section 924(c) received an average sentence of 165 months, compared to 140 months for White offenders and 130 months for Hispanic offenders. Only Other Race offenders received longer average sentences (170 months), but they accounted for only 2.2 percent of section 924(c) offenders.
- Similarly, Black offenders convicted of an offense carrying a mandatory minimum penalty under the Armed Career Criminal Act received longer average sentences than any other racial group at 185 months, compared to 178 months for White offenders, 173 months for Hispanic offenders, and 147 months for Other Race offenders.





**3** Firearms  
Mandatory  
Minimums



## Statutory Mandatory Minimum Provisions Applicable to Federal Firearms Offenses

Federal firearms offenders are almost exclusively convicted of offenses carrying mandatory minimums under two subsections of 18 U.S.C. § 924: 18 U.S.C. § 924(c) and 18 U.S.C. § 924(e). This section provides a brief overview of each of these two provisions, including recent case law interpreting them.

### 18 U.S.C. § 924(c)

#### Statutory Provisions

Section 924(c) of title 18, United States Code, prohibits using or carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a “crime of violence” or “drug trafficking crime.”<sup>7</sup> The statute prescribes a mandatory minimum penalty of at least five years of imprisonment, with increasingly longer penalties based on how the firearm was used (seven years if the firearm was brandished and ten years if the firearm was discharged)<sup>8</sup> and the type of firearm involved in the crime (ten years if the firearm was a short-barreled rifle, a short-barreled shotgun, or a semiautomatic assault weapon and 30 years if the weapon was a machinegun, a destructive device or was equipped with a silencer or muffler).<sup>9</sup> Section 924(c) further requires that these mandatory minimum penalties must be imposed in addition to and must run consecutively to “any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the” underlying crime of violence or drug trafficking crime.<sup>10</sup> The statutory maximum penalty under each of these provisions is life imprisonment.

Both the manner in which the weapon was used and the type of weapon involved are elements of the offense that must be submitted to a jury. In 2013, in *Alleyne v. United States*,<sup>11</sup> the Supreme Court held that any fact that increases a mandatory minimum sentence is an “element” of the crime that must be submitted to a jury and proven beyond a reasonable doubt.<sup>12</sup> In particular, *Alleyne* held that the determination of whether a defendant “brandished” a firearm rather than merely carried it was an element of the offense, rather than a sentencing factor, overruling *Harris v. United States*.<sup>13</sup> Prior to *Alleyne*, some provisions of section 924(c) had been treated as elements of the offense that had to be proven beyond a reasonable doubt, while others were treated as sentencing factors that could be determined by the court at sentencing.<sup>14</sup>

Section 924(c) also establishes longer mandatory minimum penalties of 25 years for each “second or subsequent conviction” of an offense under section 924(c).<sup>15</sup> The Supreme Court has held that when a defendant is convicted of multiple counts under section 924(c) in the same proceeding, the mandatory minimum penalty of 25 years applies, reasoning that any additional convictions of an offense under section 924(c) are “second or subsequent” to the first conviction.<sup>16</sup> Thus, the longer recidivist mandatory minimum penalty must be served consecutively to any sentences imposed for the underlying offenses *and* other section 924(c) offenses, even when all the offenses were charged in a single indictment. This practice of charging multiple violations of section 924(c) within the same proceeding is commonly referred to as “stacking” mandatory minimum penalties.



Although the sentence for a section 924(c) conviction must be imposed consecutive to any other term of imprisonment, the Supreme Court recently held, in *Dean v. United States*,<sup>17</sup> that section 924(c) does not prevent a sentencing court from considering a mandatory minimum sentence that will be imposed pursuant to it when calculating a guidelines sentence for the underlying predicate offense. The Court explained that a sentencing court generally is permitted to consider the sentence imposed for one count of conviction when determining the sentence for other counts of conviction and that nothing in the text of section 924(c) prohibits such consideration.<sup>18</sup> The Court further noted that, in other sections of the criminal code, Congress has explicitly prohibited consideration of a mandatory minimum penalty in determining the sentence for other counts of conviction. For example, 18 U.S.C. § 1028A, which relates to identify theft, provides that a court cannot reduce the term imposed for a predicate offense to compensate for the mandatory term of imprisonment required by section 1028A.<sup>19</sup> Prior to the *Dean* decision, many sentencing courts interpreted section 924(c) to bar consideration of the mandatory minimum penalty when calculating a sentence for an underlying predicate offense.<sup>20</sup>

#### Guideline Provision

USSG §2K2.4(b) provides that the guideline sentence for an offender convicted of an offense under section 924(c) “is the minimum term of imprisonment required by statute.”<sup>21</sup> When the offender is convicted of offenses in addition to an offense under section 924(c), the applicable guideline range for the additional offenses is

determined using the guideline provisions and grouping rules applicable to those crimes.<sup>22</sup> The resulting range guides the sentence for the additional offenses, to which the court must add a consecutive sentence for the section 924(c) offense.<sup>23</sup> The guidelines establish a separate sentencing table with higher penalties for offenders convicted of an offense under section 924(c) and who qualify as a “career offender.”<sup>24</sup>

#### The Armed Career Criminal Act, 18 U.S.C. § 924(e)

##### Statutory Provision

The Armed Career Criminal Act (ACCA) requires a mandatory minimum of 15 years of imprisonment if the defendant violates 18 U.S.C. § 922(g) and has three or more convictions for offenses that qualify as either a “violent felony” or “serious drug offense.”<sup>25</sup> Section 922(g) makes it unlawful for certain prohibited persons, including convicted felons, fugitives from justice, persons dishonorably discharged from the armed forces, and aliens who are illegally or unlawfully in the United States, to possess a firearm or ammunition that is in or affecting commerce; to ship or transport a firearm or ammunition in interstate or foreign commerce; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.<sup>26</sup> The determination of whether a predicate conviction qualifies as a “violent felony” or “drug trafficking offense” is a question of law.<sup>27</sup>

Section 924(e) provides for a sentencing enhancement for offenses under section 922(g) and does not establish its own separate





criminal offense.<sup>28</sup> As a result, application of the enhancement does not infringe on the defendant's Sixth Amendment rights because the prior conviction need not be proven to a jury beyond a reasonable doubt.<sup>29</sup> The statute does not prescribe a formal procedure the government must follow when it intends to seek an enhancement pursuant to section 924(e), though due process requires that the defendant be afforded some notice that the enhancement may apply.<sup>30</sup>

In *Johnson v. United States*,<sup>31</sup> the Supreme Court considered the constitutionality of the statutory definition of "violent felony" in ACCA. At the time, the definition of a violent felony included three clauses, commonly referred to as the "force clause" (the crime "has an element the use, attempted use, or threatened use of force against the person of another"), the "enumerated clause" (that the crime is "burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another"), and the "residual clause" (any offense that "otherwise involves conduct that presents a serious potential risk of physical injury to another"). The Court held that classifying an offense as a "violent felony" on the basis of the residual clause violates due process because the clause is unconstitutionally vague.<sup>32</sup> As a result, an offender qualifies as an armed career criminal only if their predicate convictions qualify under either the force clause or the enumerated clause; an offender no longer qualifies as armed career criminal on the basis of a prior conviction that would qualify under only the residual clause.

Nearly a year later, in *Welch v. United States*,<sup>33</sup> the Supreme Court held that *Johnson's* holding invalidating ACCA's residual clause applies retroactively when a defendant seeks review of a previously imposed sentence. Thus, any offender previously sentenced as an armed career criminal on the basis of a conviction qualifying under ACCA's residual clause can challenge their status as armed career criminal and the resulting enhanced penalty. A reviewing court must then consider whether any conviction that had been found to qualify as a predicate conviction under the residual clause also qualifies under a valid clause of ACCA. If a conviction is found to qualify under a valid clause of ACCA (the force clause or the enumerated clause), the offender's ACCA sentence survives review. However, if on review, the court determines that a predicate conviction would qualify *only* under the residual clause, or the court is unable to determine from available documentation whether a predicate conviction would qualify under a valid clause, the defendant must be resentenced without the ACCA enhancement.

### Guideline Provision

The guideline implementing this statutory provision is §4B1.4 (Armed Career Criminal).<sup>34</sup> Section 4B1.4 instructs the court to apply the greater of

1. the offense level applicable from Chapters Two and Three of the *Guidelines Manual*; or
2. the offense level from the career offender guideline at §4B1.1 if applicable; or
3. an offense level 34 if the defendant used or possessed a firearm in connection with a crime of violence or a controlled substance offense, or if the firearm was a particularly dangerous type; or
4. an offense level of 33, otherwise.<sup>35</sup>

Similarly, it directs that the criminal history category for an armed career criminal is the greatest of

1. the criminal history category from Chapter Four, Part A of the *Guidelines Manual*; or
2. the criminal history category from the career offender guideline at §4B1.1 if applicable; or
3. Category VI if the defendant used or possessed a firearm in connection with either a crime of violence, a controlled substance offense, or if the firearm was a particularly dangerous type, or
4. Category IV.<sup>36</sup>

### Statutory and Guideline Relief Provisions

Offenders may receive relief from a firearm mandatory minimum penalty if the prosecution files a motion based on the defendant's "substantial assistance" pursuant to 18 U.S.C. § 3553(e).<sup>37</sup> When such motion is filed, section 3553(e) authorizes the court to impose a sentence below the mandatory minimum penalty.

As directed by Congress, the Commission incorporated this statutory mechanism for relief from mandatory minimum penalties into the guidelines. USSG §5K1.1 authorizes a departure from the guideline range if the offender provided substantial assistance to law enforcement and the government files a motion to that effect.<sup>38</sup> Even where §5K1.1 applies, however, the court can only sentence below the mandatory minimum penalty when the government also files a motion pursuant to 18 U.S.C. § 3553(e).<sup>39</sup>





United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)



4 Data Analysis





## The Commission's Updated Study of Firearms Mandatory Minimum Penalties

In its 2011 *Mandatory Minimum Report*, the Commission made several recommendations to Congress regarding the use of, and improvement to, mandatory minimum penalties generally and with respect to the four major offense types. The Commission made three specific recommendations regarding the use of mandatory minimum penalties in firearms offenses. These were that Congress: (1) amend 18 U.S.C. § 924(c) to make the enhanced mandatory minimum penalty for “second or subsequent” offenses apply only to prior final convictions, rather than to multiple section 924(c) counts in the same proceedings; (2) consider decreasing the length of section 924(c) penalties, particularly for “second or subsequent” violations; and (3) provide the sentencing court discretion to impose sentences for multiple violations of section 924(c) concurrently, rather than only consecutively.<sup>40</sup>

### 2011 RECOMMENDATIONS

In its 2011 *Mandatory Minimum Report*, the Commission recommended that Congress consider (1) amending 18 U.S.C. § 924(c) to make the enhanced mandatory minimum penalty for “second or subsequent” offenses apply only to prior convictions, rather than to multiple section 924(c) counts in the same proceeding; (2) decreasing the length of section 924(c) penalties, particularly for “second or subsequent” violations; and (3) providing the sentencing court discretion to impose sentences for multiple violations of section 924(c) concurrently, rather than only consecutively.

Since the 2011 *Mandatory Minimum Report*, the Commission has continued its study of the scope, use, and impact of mandatory minimum penalties in the federal system, providing regular updates through the issuance of Quick Facts publications, as well as in testimony before Congress. The Commission provides this publication to update the information and analyses in its 2011 *Mandatory Minimum Report* and to further inform discussion of the Commission’s recommendations regarding the use of mandatory minimum penalties for firearms offenses.

Focusing on offenses carrying a firearms mandatory minimum penalty,<sup>41</sup> this publication analyzes 62,251 cases from the Commission’s fiscal year 2016 datafile, identifying relevant offender and offense characteristics, including demographic data and basic criminal history information.<sup>42</sup> After noting trends in firearms offenses carrying mandatory minimum penalties overall, this publication addresses separately the two statutes that carry a firearms mandatory minimum penalty. First, this publication discusses section 924(c), providing comparisons between offenders convicted of an offense carrying any mandatory minimum penalty, offenders convicted under section 924(c), and offenders convicted of multiple offenses under section 924(c). Second, it discusses the Armed Career Criminal Act, 18 U.S.C. § 924(e). For each of these two statutory provisions, the Commission provides data about sentencing outcomes involving the application of the mandatory minimum penalty. Where appropriate, this publication highlights key changes between the data set forth in the



Commission’s 2011 *Mandatory Minimum Report* and the fiscal year 2016 sentencing data.

The Commission intends that the data in this publication will further inform the ongoing discussion regarding mandatory minimum penalties among Congress, the Department of Justice, and others.

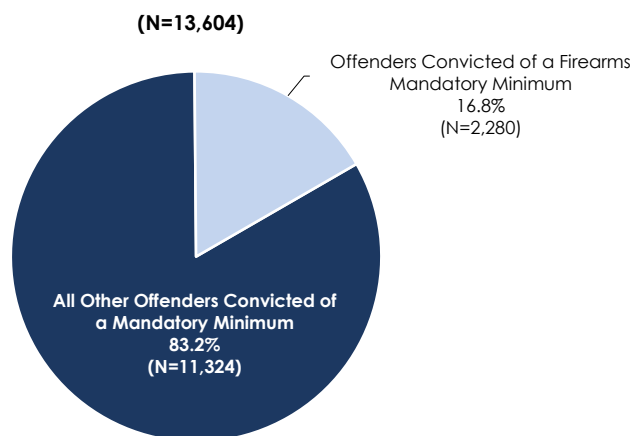
### Recent Trends in Mandatory Minimum Penalties

As discussed in the 2017 *Overview Publication*, the prevalence of convictions for an offense carrying any mandatory minimum among all federal offenders decreased in fiscal year 2016. From fiscal years 1991 to 2014, the percentage of federal offenders convicted of an offense carrying a mandatory minimum penalty fluctuated between 26.0 percent and 31.9 percent. Over the past three years, however,

the percentage has decreased, to 21.9 percent in fiscal year 2016.

While the percentage of offenders convicted of an offense carrying a mandatory minimum penalty steadily decreased, the percentage of offenders subject to a mandatory minimum at sentencing remained relatively stable during the same time period, falling only slightly from 14.5 percent in fiscal year 2010 to 13.4 percent in fiscal year 2016. This is because offenders in recent years have been increasingly less likely to receive relief from a mandatory minimum penalty through a substantial assistance motion or application of the statutory safety valve. In fiscal year 2016, 38.7 percent offenders convicted of an offense carrying a mandatory minimum penalty received relief, down from 46.7 percent in 2010.<sup>43</sup>

**Figure 1.** Offenders Convicted of a Firearms Offense Carrying a Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





## Overall Prevalence of Firearms Offenses Carrying Mandatory Minimum Penalties

Although the use of mandatory minimum penalties decreased overall, trends differed depending on the type of offense. Firearms offenses accounted for 16.8 percent of offenses carrying a mandatory minimum penalty in fiscal year 2016—the second largest category following drug offenses—increasing from 14.4 percent in fiscal year 2010.<sup>44</sup>

Firearms offenses, following drug offenses, also continued to top the list of the most frequently used mandatory minimum penalty statutes. The fourth and fifth most commonly used statutes carrying mandatory minimum penalties were subsections of section 924(c)—section 924(c)(1)(A)(i), which provides a five-year mandatory minimum penalty for using or carrying, or possessing a firearm in furtherance

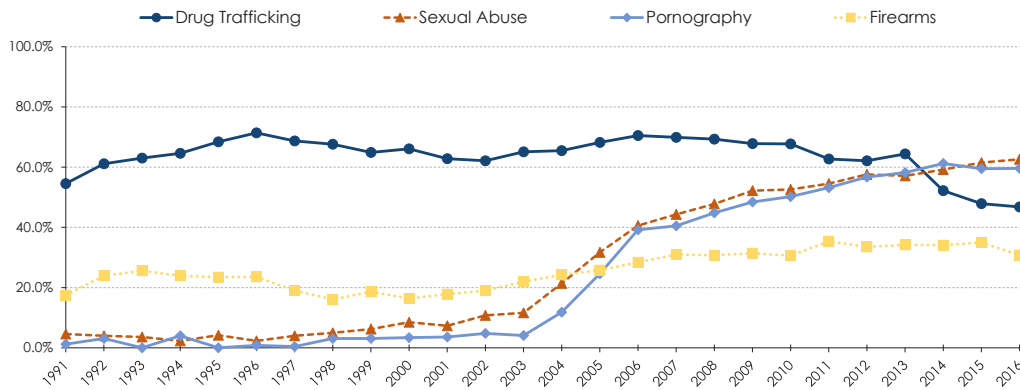
**Table 1.** Number of Convictions for Most Frequently Used Statutes Carrying a Mandatory Minimum Penalty Fiscal Year 2016

STATUTE	Total Number of Counts of Convictions	Percentage of Counts of Conviction
21 U.S.C. § 846	5,982	24.9%
21 U.S.C. § 841(b)(1)(B)	2,478	10.3%
21 U.S.C. § 841(b)(1)(A)	2,224	9.3%
18 U.S.C. § 924(c)(1)(A)(i)	1,974	8.2%
18 U.S.C. § 924(c)(1)(A)(ii)	1,019	4.2%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

of, a crime of violence or drug trafficking crime, and section 924(c)(1)(A)(ii), which provides a seven-year mandatory minimum penalty for brandishing a firearm during and in relation to a crime of violence or drug trafficking crime.

**Figure 2.** Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty By Selected Offense Types Fiscal Years 1991 – 2016



SOURCE: U.S. Sentencing Commission, 1991 through 2016 Datafiles, USSCFY91 – USSCFY16.

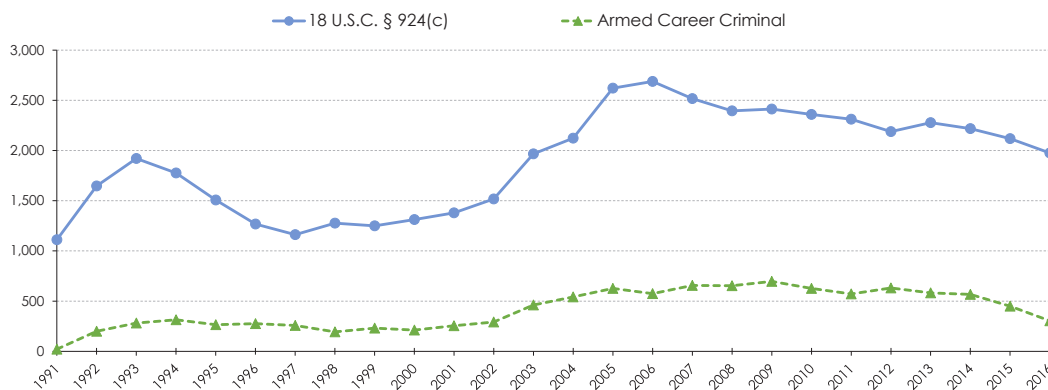
In fiscal year 2016, subsections 924(c)(1)(A)(i) and (ii) accounted for 8.2 and 4.2 percent of convictions for offenses carrying a mandatory minimum penalty, respectively. This represents a slight shift from fiscal year 2010—subsection 924(c)(1)(A)(ii) replaced the two-year mandatory minimum for aggravated identity theft found at 18 U.S.C. § 1028A as the fifth entry on the list, and the percentage of convictions under subsection 924(c)(1)(A)(i) increased slightly, from 5.5 percent to 8.2 percent.<sup>45</sup>

Of the major offense types carrying a mandatory minimum penalty, firearms offenses are the only category in which the percentage of offenders convicted of an offense carrying a mandatory minimum penalty has remained relatively stable in recent years, ranging from 33.5 percent in fiscal year 2012 to 35.4 percent in fiscal year 2011. The rate did notably decrease, however, from 35.0 percent in fiscal year 2015 to 30.8 percent in fiscal year 2016,

approximately the same percentage it had been in fiscal year 2010 (30.6%). In contrast, the percentage of offenders convicted of an offense carrying a drug mandatory minimum penalty decreased significantly and the percentage of offenders convicted of other offenses carrying a mandatory minimum penalty—violent, sexual abuse, pornography and “other” offenses—all steadily increased.<sup>46</sup>

Though the prevalence of firearms offenders increased as a percentage of all offenders sentenced to an offense carrying a mandatory minimum penalty, the number of offenders convicted of an offense carrying a firearms mandatory minimum penalty (under 18 U.S.C. § 924(c) or ACCA) has decreased. As reflected by Figure 3, between 2013 and 2016, the number of offenders convicted under section 924(c) decreased from 2,278 to 1,976, and the number of offenders convicted under ACCA decreased from 582 to 304.

**Figure 3.** Number of Offenders Convicted Under 18 U.S.C. § 924(c) and the Armed Career Criminal Act  
Fiscal Years 1991 – 2016



SOURCE: U.S. Sentencing Commission, 1991 through 2016 Datafiles, USSCFY91 – USSCFY16.





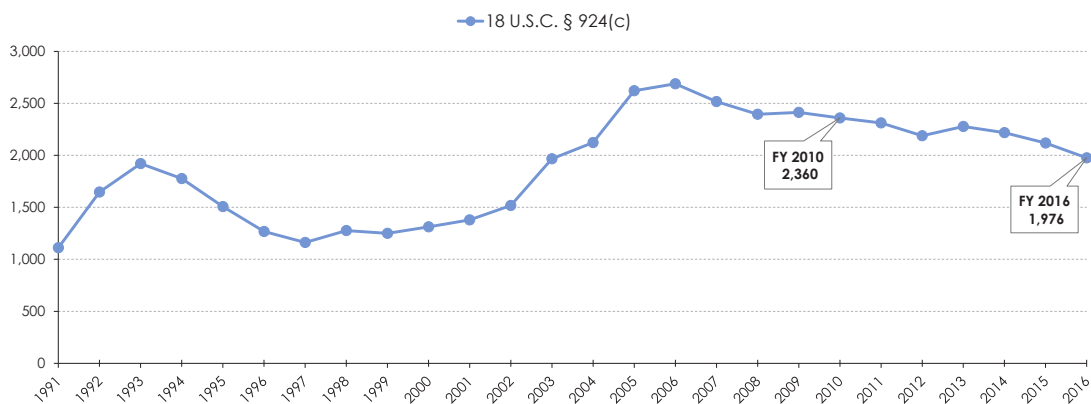
United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

This recent downward trend is likely a result of changes in Department of Justice charging practices and the Supreme Court’s decision in *Johnson v. United States*.<sup>47</sup> As discussed in the 2017 *Overview Publication*, guidance issued to federal prosecutors directed a more targeted charging of offenses carrying mandatory minimum penalties. In 2010, then-Attorney General Eric Holder issued a memorandum instructing that while a prosecutor “should ordinarily charge” the most serious offense, the charging decision requires an individual assessment of the facts of the case, considering the purpose of federal criminal laws and the best use of federal resources. The “Holder Memorandum,” as it has come to be called, required the same individualized assessment in plea bargaining and sentencing.<sup>48</sup> Subsequently, in 2015, in *United States v. Johnson*, the Supreme Court invalidated the residual clause of ACCA, eliminating this clause as a basis

under which a prior conviction can qualify as a predicate conviction.<sup>49</sup>

It is likely that these policy and legal changes have in some way impacted the data discussed in this publication, including the current population of the Federal Bureau of Prisons (BOP). Different trends, however, may emerge because of changed policies with respect to mandatory minimum penalties. Attorney General Jefferson Sessions recently issued guidance reverting to the previous policy that “prosecutors should charge and pursue the most serious, readily provable offense” and stating that “the most serious offenses are those that carry the most substantial guideline sentence, including mandatory minimum sentences.”<sup>50</sup> Therefore, any recent data trends reported in this publication, particularly those related to changes in charging practices, may not be permanent. Further, because the data

**Figure 4.** Number of Offenders Convicted Under 18 U.S.C. § 924(c)  
Fiscal Years 1991 – 2016



SOURCE: U.S. Sentencing Commission, 1991 through 2016 Datafiles, USSCFY91 – USSCFY16.

in this report includes offenders sentenced through the end of fiscal year 2016, prior to the Supreme Court’s decision in *Dean v. United States*, the impact of the *Dean* decision, as well as the continuing impact of *Johnson v. United States*, remains to be seen.

### 18 U.S.C. § 924(c)

#### Prevalence of 18 U.S.C. § 924(c) Offenses

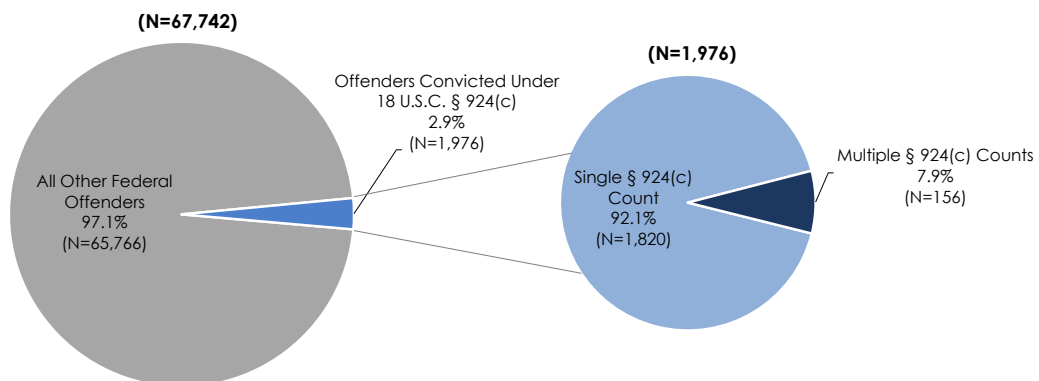
#### How Often Are Offenders Convicted of an Offense Under 18 U.S.C. § 924(c)?

As reflected in Figure 4, the number of offenders convicted under section 924(c) has steadily decreased since 2006 (n=2,689). In fiscal year 2016, 1,976 offenders were convicted of at least one offense under section 924(c), which compares to 2,360 in fiscal year 2010.

The 1,976 offenders represented just under three percent (2.9%) of federal offenders sentenced in fiscal year 2016.

Of the 1,976 offenders convicted under section 924(c), 1,820 (92.1%) were convicted of a single count and 156 (7.9%) were convicted of multiple counts under the statute. Of the 156 offenders convicted of multiple counts, only ten had previously been convicted and sentenced for a violation of section 924(c) prior to the instant offense.<sup>51</sup> The remaining 146 offenders who received consecutive sentences under the statute were convicted of and sentenced for multiple counts of section 924(c) in the same proceeding, which was their first conviction for any violation of section 924(c). The Criminal History Category distribution of these 146 offenders largely mirrors that of the offenders convicted of multiple counts overall, though a higher percentage are in CHC I (26.1%

**Figure 5.** Number of Offenders Convicted Under 18 U.S.C. § 924(c)  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



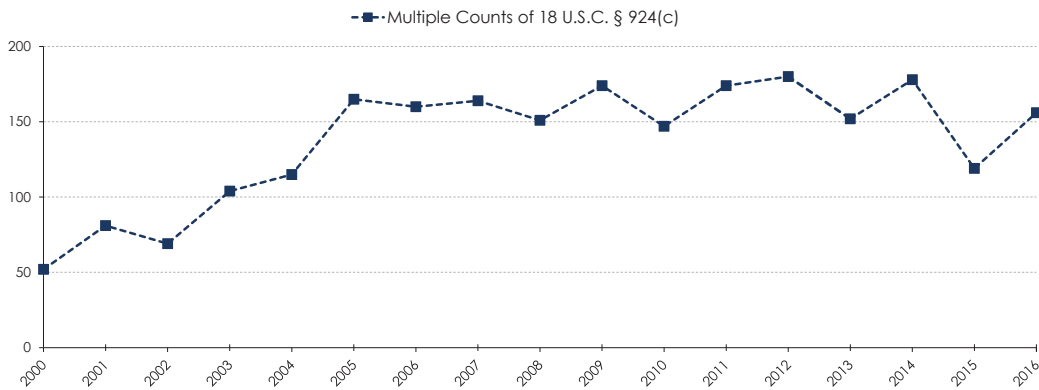
compared to 24.5%).<sup>52</sup> Of the offenders convicted of multiple counts under section 924(c), most were convicted of two such counts (84.6%), while 6.4 percent were convicted of three counts, and 9.0 percent were convicted of more than three counts (with a high of 11 counts for a single defendant).

As reflected in Figure 6, the number of offenders convicted of multiple counts under section 924(c) has varied over time, but has remained a relatively small percentage of all offenders convicted under the statute. The number has never exceeded 180 offenders in a given fiscal year, but has generally remained above 150 per year since fiscal year 2006, only falling below that number in fiscal year 2015 (n=119) before increasing again to 156 in fiscal year 2016.

*How Severe Were Mandatory Minimum Penalties for Section § 924(c) Offenders?*

As reflected in Figure 7, most offenders convicted under section 924(c) faced the statute’s five-year mandatory minimum penalty. The five-year mandatory minimum for use or possession of a firearm applied in 59.5 percent of cases; the seven-year mandatory minimum for brandishing a firearm applied in 22.0 percent of cases; and the ten-year mandatory minimum for discharging a firearm, or for an offense involving a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, applied in 10.3 percent of cases.

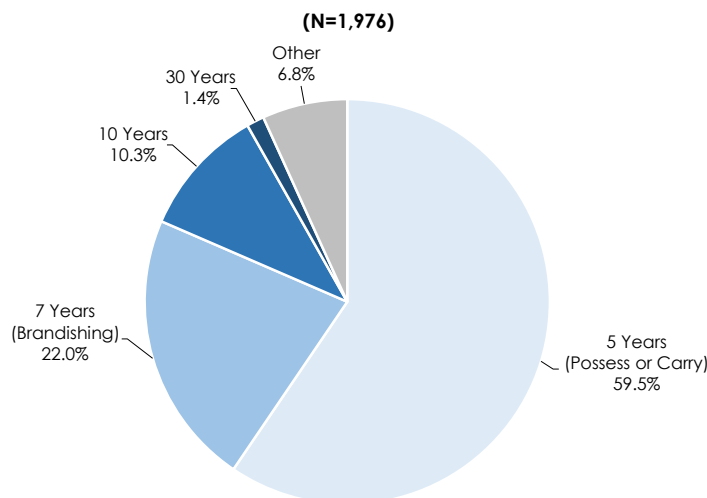
**Figure 6.** Offenders Convicted of Multiple Counts Under 18 U.S.C. § 924(c)  
Fiscal Years 2000 – 2016



SOURCE: U.S. Sentencing Commission, 2000 through 2016 Datafiles, USSCFY00 – USSCFY16.



**Figure 7.** Length of 18 U.S.C. § 924(c) Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

A 30-year mandatory minimum applied in 1.4 percent of cases. This includes cases in which an offender was subject to a 30-year mandatory minimum penalty for a single section 924(c) conviction for possessing a machinegun, destructive device, or a firearm equipped with a silencer or firearm muffler, in violation of subsection 924(c)(1)(B)(ii), and cases in which an offender was subject to two 924(c) convictions, the first carrying a five-year mandatory minimum penalty and the second carrying a consecutive 25-year mandatory minimum penalty for a “second or subsequent offense.”<sup>53</sup> This is similar to the distribution of mandatory minimum penalty lengths for section 924(c) penalties set forth in the Commission’s 2011 *Mandatory Minimum Report*, though the five-year mandatory minimum penalty applied slightly more frequently in fiscal year 2010 (62.3%).

#### *Where Were Offenders Convicted of Offenses Under 18 U.S.C. § 924(c)?*

Of the 1,976 cases in fiscal year 2016 involving a conviction of an offense under section 924(c), 291 (14.7%) were from the district courts in the Fourth Circuit, 266 (13.5%) were from the district courts in the Eleventh Circuit, 231 (11.7%) were from the district courts in the Second Circuit, 204 (10.3%) were from the district courts in the First Circuit, and 182 (9.2%) were from the district courts in the Fifth Circuit. The other 802 (40.6%) cases were from the district courts of the Third, Sixth, Seventh, Eighth, Ninth, Tenth and District of Columbia circuits. Cases were more geographically dispersed than in fiscal year 2010, when nearly half (48.9%, n=1,121) of the cases involving a conviction under section 924(c) came from the district courts of three circuits, the Fourth (22.7%, n=520), Eleventh (14.7%, n=338), and Sixth (11.5%, n=263).

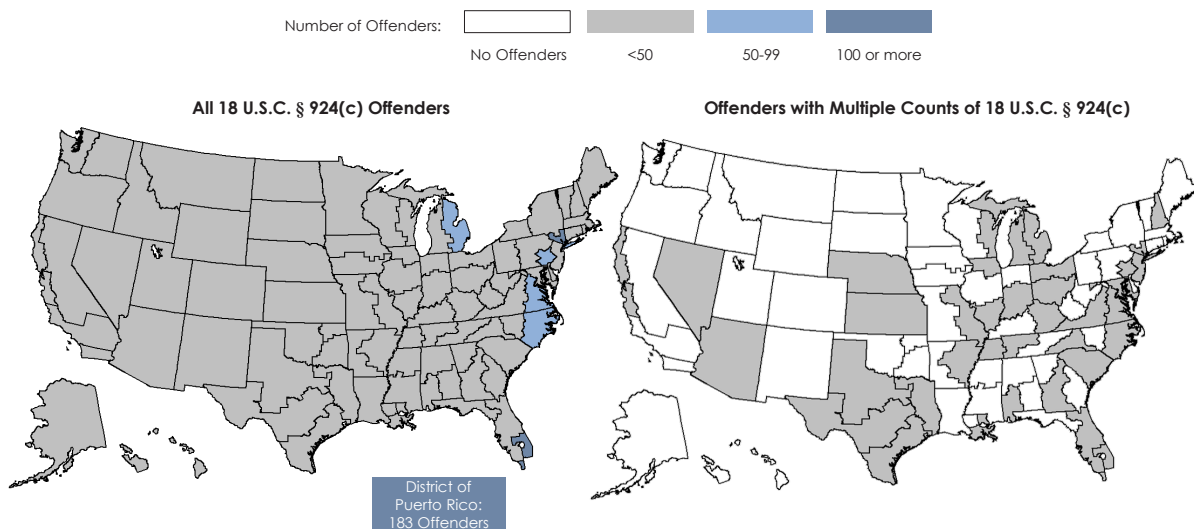




Cases involving a conviction under section 924(c) were more geographically concentrated when viewed at the district level. In fiscal year 2016, eight districts reported over one-third (36.1%) of the cases involving a conviction of an offense under section 924(c): Puerto Rico (9.3% of all 924(c) cases, n=183); Southern New York (5.6%, n=111); Southern Florida (5.1%, n=100); Eastern Virginia (4.1%, n=80); Eastern New York (3.5%, n=69); Eastern North Carolina (3.3%, n=65); Eastern Michigan (2.7%, n=54); and Eastern Pennsylvania (2.6%, n=51). Thirty-five districts reported having ten or fewer cases involving a conviction of an offense under section 924(c).

The Commission further analyzed the geographic distribution of cases involving multiple convictions under section 924(c). This analysis showed that cases involving convictions for multiple counts under section 924(c) were more geographically concentrated. Of the 156 cases involving multiple counts under section 924(c) in fiscal year 2016, eight districts accounted for 65.4 percent of all such cases: Southern New York (15.4%, n=24); Eastern Virginia (12.8%, n=20); Eastern Pennsylvania (8.3%, n=13); Eastern Michigan (8.3%, n=13); Eastern New York (5.8%, n=9); Northern Texas (5.1%, n=8); Southern Florida (5.1%, n=8); and Southern Texas (4.5%, n=7). By contrast, 55 districts reported no such multiple count cases, and 15 districts reported only one.<sup>54</sup>

**Figure 8.** Geographic Distribution of Offenders Convicted Under 18 U.S.C. § 924(c)  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

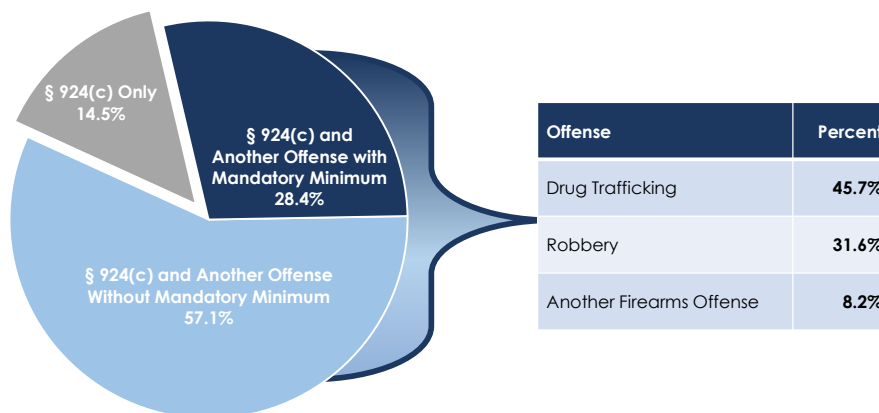
### Other Counts of Conviction

As noted above, in order to be convicted under section 924(c), an offender must have used or possessed a firearm *during and in relation to an underlying offense* or *in furtherance of a “crime of violence” or “drug trafficking crime”* for which the person may be federally prosecuted.<sup>55</sup> As such, most offenders—85.5 percent—convicted of an offense under section 924(c) in fiscal year 2016 were also convicted of at least one other offense. Specifically, 57.1 percent were convicted of at least one other offense not carrying a mandatory minimum penalty, and 28.4 percent were convicted of at least one other offense also carrying a mandatory minimum penalty.

As shown in Figure 9, of section 924(c) offenders convicted of at least one other offense, nearly half were convicted of a drug trafficking offense (45.7%), while one-third were convicted of robbery (31.6%). Just over eight percent (8.2%) were convicted of another firearms offense, such as being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g).

Although 14.5 percent (n=287) of offenders were convicted of an offense under section 924(c) alone, those cases necessarily involved another federal offense for which they were not prosecuted. The majority of the 287 offenders—194 offenders (67.6%)—could have also been charged with a drug trafficking crime, with the most common drug type being marijuana (27.3%; n=53).<sup>56</sup> In 83 (28.9%) of these cases, the offenders could have also

**Figure 9.** Offenders Convicted Under 18 U.S.C. § 924(c) by Additional Offenses of Conviction Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



been charged with a violent offense, with the most common offense being robbery (81.9%; n=68). Other uncharged underlying violent offenses included attempted murder (8.4%, n=7), assault (6.0%, n=5), and murder (3.6%, n=3). The remaining ten offenders could have been charged with both a drug trafficking crime and a violent offense in addition to the section 924(c) count.<sup>57</sup>

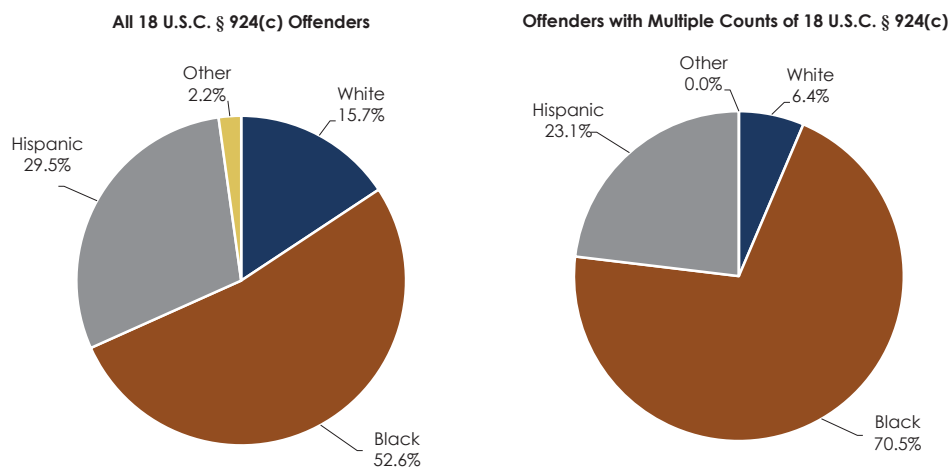
## Offender Demographics

### Race, Gender, and Citizenship

In fiscal year 2016, Black offenders continued to represent a majority of offenders (52.6%) convicted of an offense under section 924(c), as they did in fiscal year 2010 (55.9%). Hispanic offenders (29.5%), White offenders (15.7%), and Other Race offenders<sup>58</sup> (2.2%) accounted for the remaining offenders convicted of an offense under section 924(c).

The prevalence of Black offenders is even more pronounced for offenders convicted of multiple counts under section 924(c). Black offenders accounted for more than two-thirds of offenders convicted of multiple counts under section 924(c) (70.5%) compared to just over half (52.6%) for section 924(c) offenders overall. In contrast, the percentage of White offenders convicted of multiple counts under section 924(c) was considerably smaller than 924(c) offenders overall (6.4% compared to 15.7%). Hispanic offenders had a relatively similar representation regardless of whether multiple counts of section 924(c) were involved (23.1% of multiple counts compared to 29.5% of section 924(c) offenders overall). No Other Race offenders were convicted of multiple counts under section 924(c).

**Figure 10.** Comparison of Race of Offenders Convicted Under 18 U.S.C. § 924(c)  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Table 2.** Gender and Citizenship of Offenders Convicted Under 18 U.S.C. § 924(c)  
Fiscal Year 2016

	Convicted Under 18 U.S.C. § 924(c)	Subject to 18 U.S.C. § 924(c) at Sentencing	Convicted of Multiple Counts Under 18 U.S.C. § 924(c)
<b>Total (# of offenders)</b>	<b>1,976</b>	<b>1,548</b>	<b>156</b>
<b>GENDER</b>			
<b>Male</b>	97.4%	98.1%	97.4%
<b>Female</b>	2.6%	1.9%	2.6%
<b>CITIZENSHIP</b>			
<b>U.S. Citizen</b>	91.3%	92.8%	85.3%
<b>Non-U.S. Citizen</b>	8.7%	7.2%	14.7%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

Black offenders also constituted a substantially larger portion of offenders convicted under section 924(c) than they did of offenders convicted of offenses carrying mandatory minimum penalties overall. In fiscal year 2016, Black offenders accounted for 52.6 percent of section 924(c) offenders compared to 29.7 percent of offenders convicted of any offense carrying a mandatory minimum penalty. The opposite was true for White offenders (15.7% of 924(c) offenders compared to 27.2% of offenders convicted of any offense carrying a mandatory minimum penalty) and Hispanic offenders (29.5% of 924(c) offenders compared to 40.4% of offenders convicted of any offense carrying a mandatory minimum penalty).

The overwhelming majority (91.3%) of offenders convicted under section 924(c) were United States Citizens.<sup>59</sup> However, they were a smaller percentage—85.3 percent—of offenders convicted of multiple offenses under section 924(c).

Male offenders were convicted under section 924(c) far more frequently than female offenders, accounting for 97.4 percent of both offenders convicted under section 924(c) and of offenders convicted of multiple counts under section 924(c).<sup>60</sup>





United States Sentencing Commission  
 MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

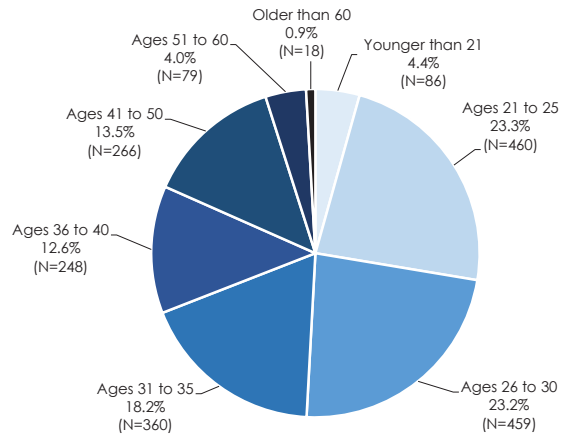
Age

Offenders convicted under section 924(c) were fairly evenly distributed throughout age brackets 21 through 35, with fewer younger than 21 or older than 35, and virtually the same number of offenders in age bracket 21 through 25 (n=460), and age bracket 26 through 30 (n=459). Offenders younger than 21 (4.4%, n=86), ages 51 to 60 (4.0%, n=79), and older than 60 (0.9%; n=18) combined accounted for less than ten percent of all offenders convicted under section 924(c).

Criminal History

Nearly one-third (30.1%) of offenders convicted under section 924(c) were in Criminal History Category (CHC) I. The next largest portion of offenders were in CHC VI (19.1%), with the remainder of offenders distributed throughout criminal history categories.

Figure 11. Age of Offenders Convicted Under 18 U.S.C. § 924(c) Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

Of offenders convicted of multiple counts under section 924(c), fewer were in CHC I (24.5%) and more were in CHC VI (22.5%).

Table 3. Criminal History of Offenders Convicted Under 18 U.S.C. § 924(c) Fiscal Year 2016

	Convicted Under 18 U.S.C. § 924(c)	Subject to 18 U.S.C. § 924(c) at Sentencing	Convicted of Multiple Counts Under 18 U.S.C. § 924(c)
<b>Total (# of offenders)</b>	<b>1,976</b>	<b>1,548</b>	<b>156</b>
<b>CRIMINAL HISTORY CATEGORY</b>			
I	30.1%	29.6%	24.5%
II	13.0%	12.3%	13.9%
III	17.8%	17.4%	19.9%
IV	13.0%	13.8%	13.9%
V	7.0%	6.8%	5.3%
VI	19.1%	20.1%	22.5%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



The proportion of offenders convicted under section 924(c) who were in CHC I is considerably smaller than the proportion of offenders convicted of any offense carrying a mandatory minimum penalty who were in CHC I (30.1% compared to 45.7%). The opposite relationship exists with respect to offenders in CHC VI (19.1% compared to 14.1%). The difference is even greater for offenders convicted of multiple section 924(c) counts, of which 22.5 percent were in CHC VI.

### Plea and Trial Rates

Offenders convicted under section 924(c) were generally more likely to proceed to trial than offenders convicted of offenses carrying other mandatory minimum penalties. In fiscal year 2016, 9.8 percent (n=193) of offenders convicted under section 924(c) proceeded to trial, compared to only 5.2 percent (n=712) of

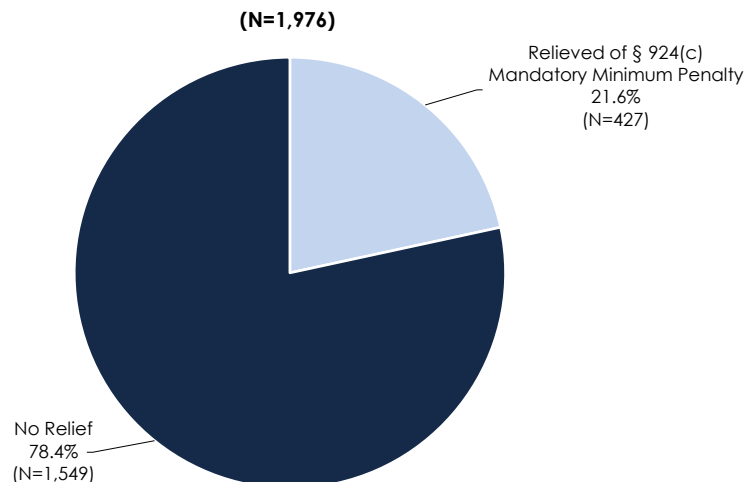
all offenders convicted of an offense carrying any mandatory minimum penalty. By contrast, only 2.7 percent of all federal offenders proceed to trial.

Furthermore, offenders convicted of multiple counts under section 924(c) were even more likely to proceed to trial (34.6%).

### Relief from Mandatory Minimum Penalties

As shown in Figure 12, just over one-fifth (21.6%, n=427) of offenders convicted under section 924(c) were relieved of the mandatory minimum penalty at sentencing pursuant to 18 U.S.C. § 3553(e) for rendering substantial assistance to the government. A higher percentage (35.5%) of offenders convicted of multiple counts under section 924(c) received relief.

**Figure 12.** Offenders Convicted Under 18 U.S.C. § 924(c)  
By Status of Relief from the Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





## Demographics

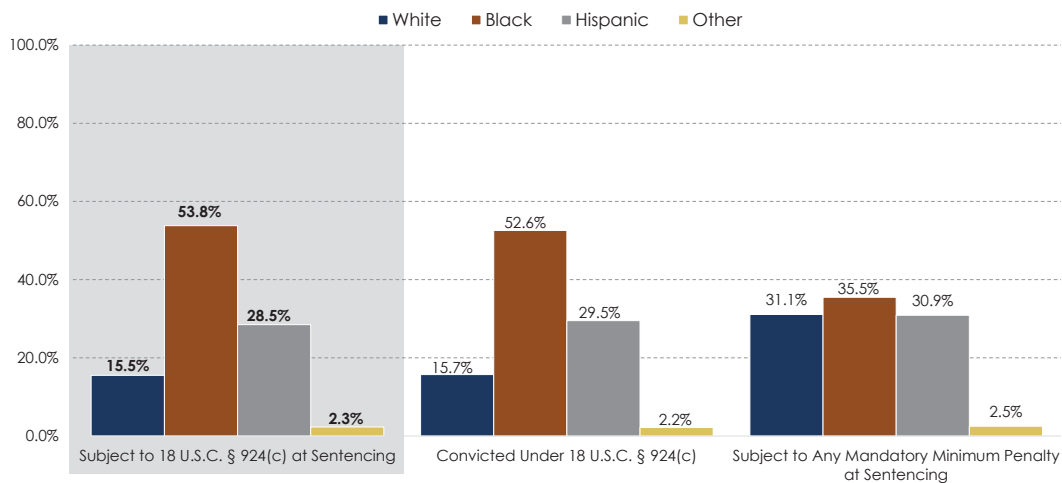
Black offenders represented the largest proportion of offenders who remained subject to a mandatory minimum penalty under section 924(c) at sentencing (53.8%), followed by Hispanic offenders (28.5%), White offenders (15.5%), and Other Race offenders (2.3%).<sup>61</sup>

Although Black offenders made up the majority of offenders subject to the mandatory minimum penalty under section 924(c), this appears to be a function of the frequency with which Black offenders were convicted of these offenses. As seen in Figure 13, the percentage of offenders subject to the section 924(c) mandatory minimum penalty was consistent with the conviction rates for each demographic group.

There were, however, differences in demographics for section 924(c) offenders compared with offenders convicted of an offense carrying any mandatory minimum penalty. Black offenders represented a significantly higher percentage of offenders subject to the section 924(c) mandatory minimum penalty than offenders convicted of an offense carrying any mandatory minimum penalty (53.8% compared to 35.5%). The opposite was true for White offenders (15.5% compared to 31.1%).

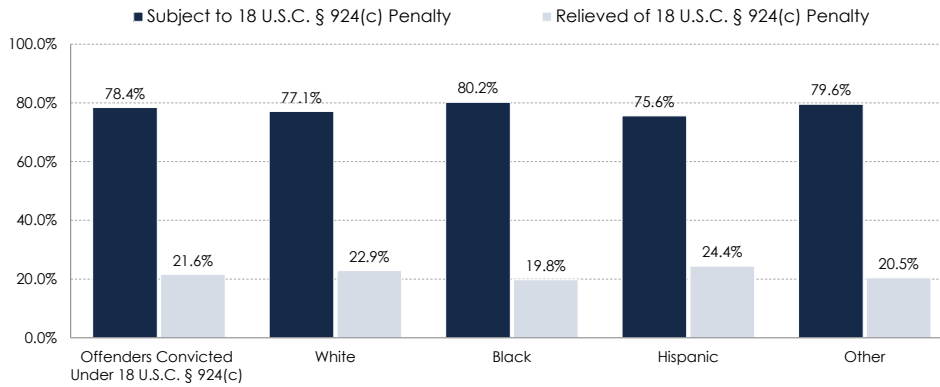
The similarity between the demographic distribution of offenders convicted under section 924(c) and offenders subject to its mandatory minimum penalties at sentencing is explained by Figure 14, which shows little difference in relief rates between different races. The relief rates vary by less than five percentage points between the highest relief

**Figure 13.** Race of Offenders Subject to the 18 U.S.C. § 924(c) at Sentencing Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 14.** Race of Offenders Convicted Under 18 U.S.C. § 924(c)  
By Status of Relief from the Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

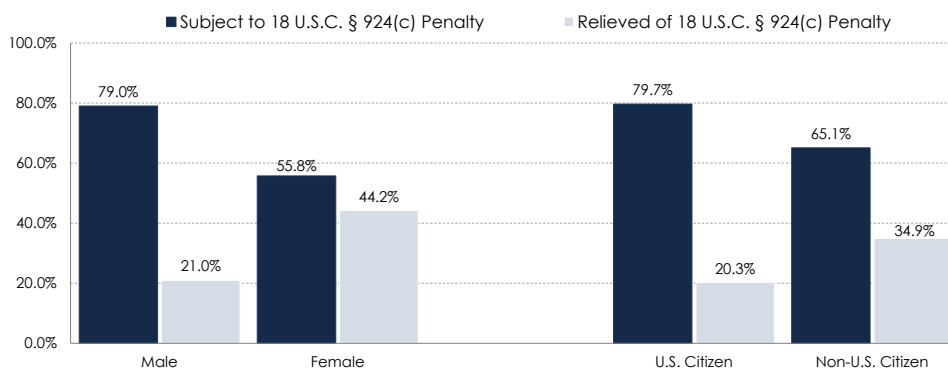
rate, held by Hispanic offenders (24.4%), and the lowest relief rate held by Black offenders (19.8%).

minimum penalty more than twice as often as male offenders (44.2% compared to 21.0%).

Female offenders convicted under section 924(c) obtained relief from the mandatory

Non-United States citizens obtained relief from the mandatory minimum more often than United States citizens (34.9% compared 20.3%).

**Figure 15.** Gender and Citizenship of Offenders Convicted Under 18 U.S.C. § 924(c)  
By Status of Relief from the Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



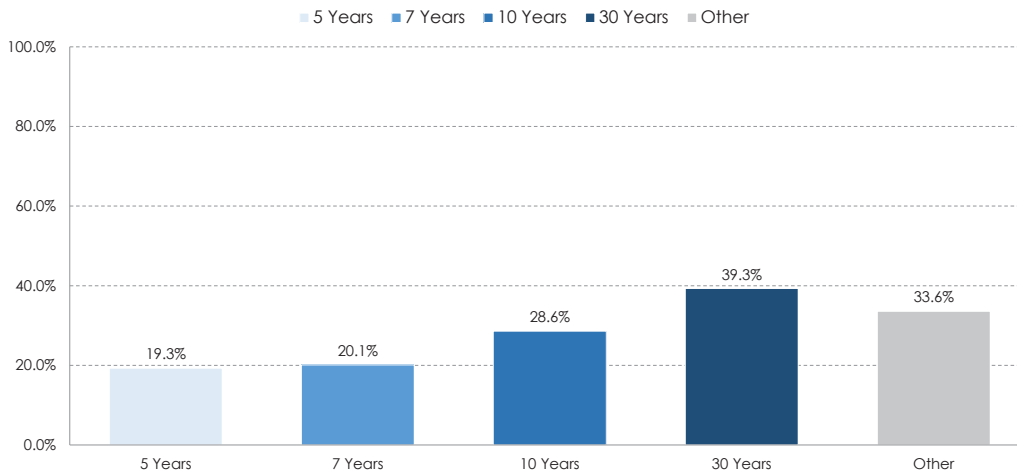


### Substantial Assistance

Offenders convicted of an offense carrying a firearms mandatory minimum penalty are provided an incentive to plead guilty and cooperate with law enforcement officials. Namely, when the government files a motion indicating that the defendant has substantially cooperated, 18 U.S.C. § 3553(e) grants the court authority to impose a sentence below a mandatory minimum penalty.

Commission data indicates that the rate of substantial assistance increased as the length of the firearms mandatory minimum penalty increased. Approximately one-fifth of offenders facing a five-year (19.3%) and offenders facing a seven-year mandatory minimum penalty (20.1%) received substantial assistance, while 28.6 percent of offenders facing a ten-year mandatory minimum penalty, and 39.3 percent of offenders facing a 30-year mandatory minimum penalty. Of offenders in the “Other” category (which includes life imprisonment), 33.6 percent received substantial assistance.

**Figure 16.** Substantial Assistance Rates for Offenders Convicted Under 18 U.S.C. § 924(c)  
By Length of Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

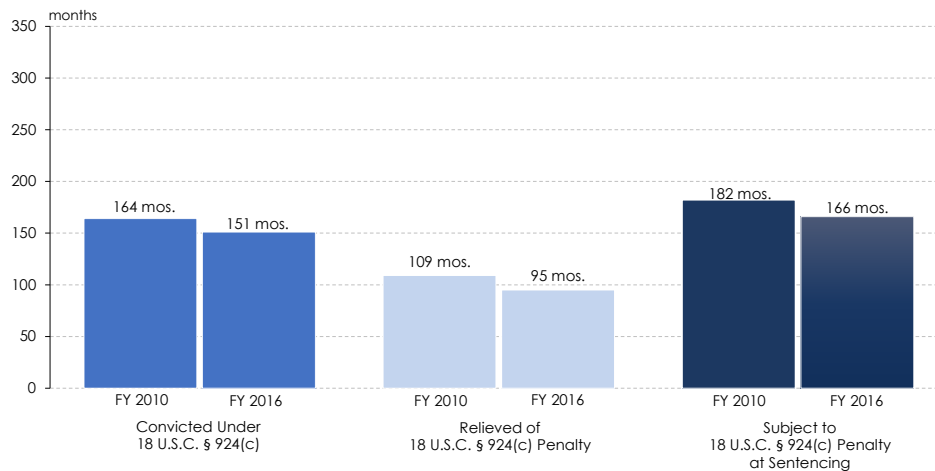
## Sentencing of Offenders Convicted Under 18 U.S.C. § 924(c)

### Average Sentence Length

The Commission compared the average sentence length for all offenders convicted under section 924(c), offenders convicted of a single count under section 924(c), and offenders convicted of multiple counts under section 924(c). Within these categories, the Commission further compared offenders relieved from application of the mandatory minimum penalty under section 924(c) and offenders who remained subject to the section 924(c) mandatory minimum penalty at sentencing.

Average sentences have generally decreased for offenders convicted of an offense under section 924(c) since the Commission's last *Mandatory Minimum Report*. In fiscal year 2016, the average sentence for offenders convicted under section 924(c) and relieved of the mandatory minimum penalty at sentencing was 95 months, which is nearly five years shorter than the average sentence for all offenders convicted of an offense under section 924(c) (151 months), and nearly six years shorter than the average sentence for 924(c) offenders who remained subject to the mandatory minimum penalty at sentencing (166 months).<sup>62</sup>

**Figure 17.** Average Sentence Length for Offenders Convicted Under 18 U.S.C. § 924(c) By Status of Relief from the Mandatory Minimum Penalty Fiscal Years 2010 & 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

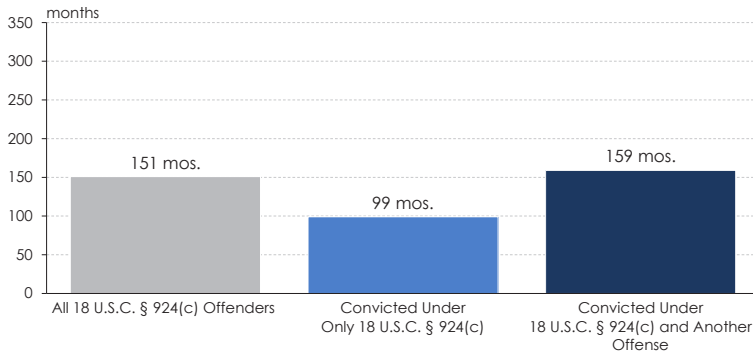






United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

**Figure 18.** Average Sentence Length for Offenders Convicted Under 18 U.S.C. § 924(c) and Additional Offenses of Conviction Fiscal Year 2016



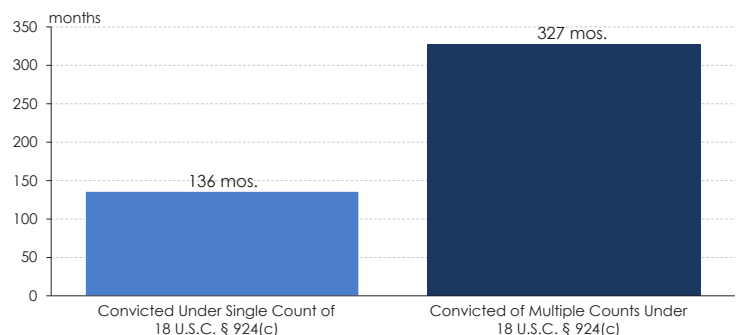
SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

As noted above, 14.5 percent of offenders were convicted under section 924(c) *only*, while 85.5 percent were convicted of both an offense under section 924(c) and another offense. As set forth in Figure 18, the average sentence was significantly shorter for offenders who were convicted under section 924(c) *only* compared to offenders convicted under section 924(c) and another statute (99 months compared to 159 months).<sup>63</sup> This difference reflects the statutory requirement that the penalty for section 924(c) be imposed consecutive to any other term of imprisonment imposed on the offender.

As shown in Figure 19, offenders convicted of multiple counts under section 924(c) had considerably longer sentences than any other category. In fiscal year 2016, the average sentence for offenders convicted of multiple counts under section 924(c) was 327 months, nearly two and half times the average sentence for offenders convicted of a single count under section 924(c) (136 months).

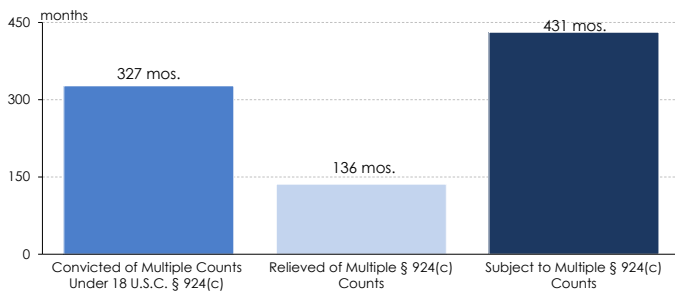
Even when they qualified for relief, multiple count 924(c) offenders received average sentences considerably longer than the average sentence for offenders relieved of a single count under section 924(c) (136 months compared to 89 months). It is notable, however, that the average extent of reduction to an offender's sentence as a result of relief was greater for offenders convicted of multiple counts under section 924(c). The average sentence for offenders relieved of a single count under section 924(c) was 39.8 percent shorter than for those who remained subject to the mandatory minimum penalty at sentencing (89 months compared to 148 months). In contrast, sentences for multiple count section 924(c) offenders who received relief were 68.4 percent shorter than for offenders who remained subject to the mandatory minimum penalty for multiple counts of section 924(c) (136 months compared to 431 months).

**Figure 19.** Average Sentence Length for Offenders Convicted of Single and Multiple Counts Under 18 U.S.C. § 924(c) Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 20.** Average Sentence Length for Offenders Convicted of Multiple Counts Under 18 U.S.C. § 924(c) By Status of Relief from the Mandatory Minimum Penalty Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

Finally, the average sentence for offenders convicted of multiple counts under section 924(c) and subject to the mandatory minimum penalty was 431 months, more than three times the length of the average sentence for those relieved of the mandatory minimum penalty for multiple counts of section 924(c).

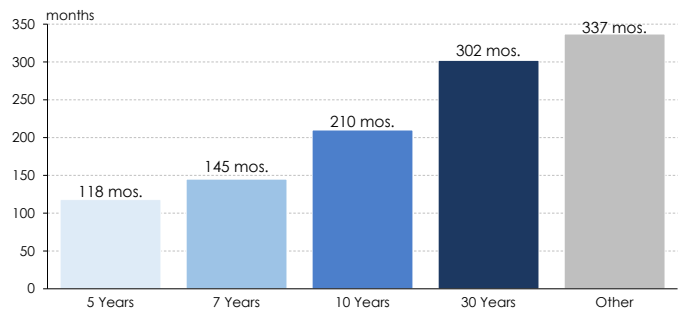
Average sentences have decreased in each of these categories since the Commission’s last *Mandatory Minimum Report*. In fiscal year 2010, average sentences were 151 months, 182 months, and 109 months for offenders convicted of, subject to, and relieved of the mandatory minimum penalty, respectively. The average sentence for those convicted of multiple counts under section 924(c) in fiscal year 2010 was 351 months.

The Commission next compared the average length of sentences imposed by the length of the mandatory minimum penalty the offender faced. As expected, average sentence lengths increased as the mandatory minimum penalty increased. For offenders facing a five-year mandatory minimum penalty, the average

sentence was 118 months. The average sentence increased to 145 months for those facing a seven-year mandatory minimum, 210 months for those facing a ten-year mandatory minimum, 302 months for those facing a 30-year mandatory minimum, and 337 months for those facing a mandatory minimum penalty of a length other than five, seven, ten, or 30 years (including life imprisonment).

Finally, the Commission compared the average length of sentences imposed by race, citizenship, and gender. As shown in Figure 22, when considering all offenders convicted under section 924(c), Other Race offenders (170 months) and Black offenders (165 months) had the longest average sentences, followed by White offenders (140 months) and Hispanic offenders (130 months). Although Other Race offenders had the longest average sentences, they accounted for only 2.2 percent of all offenders convicted of an offense under section 924(c), while Black offenders made up 52.6 percent.

**Figure 21.** Average Sentence Length for Offenders Convicted Under 18 U.S.C. § 924(c) By Length of Mandatory Minimum Penalty Fiscal Year 2016

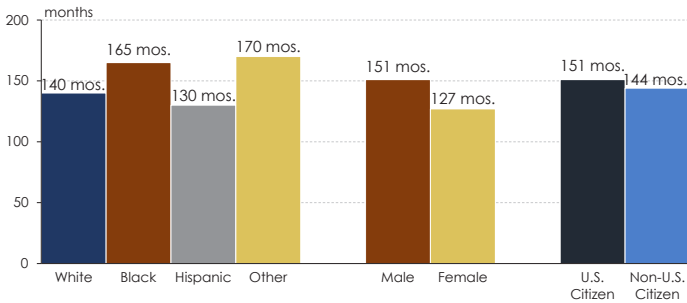


SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





**Figure 22.** Average Sentence Length for Offenders Convicted Under 18 U.S.C. § 924(c) By Selected Demographic Characteristics Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

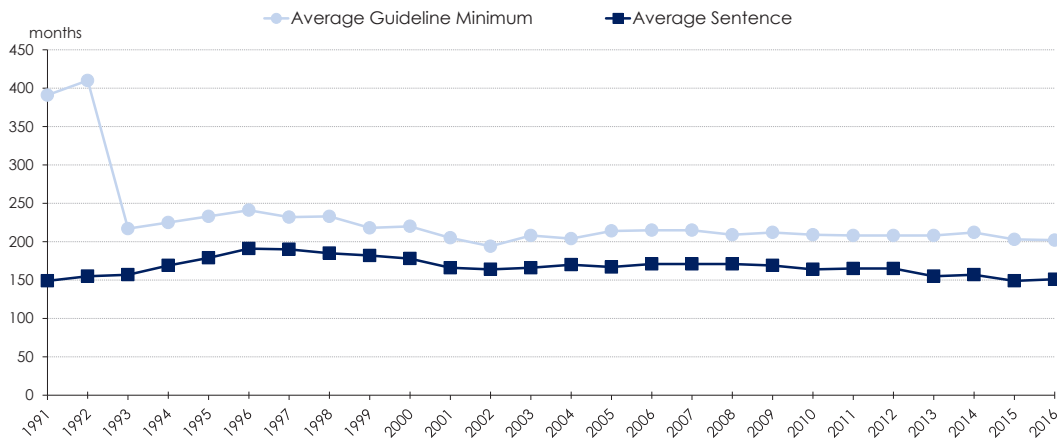
The average sentence for male offenders convicted of an offense under section 924(c) was two years longer than for female offenders (151 months compared to 127 months), while the average sentence for United States Citizen offenders was slightly longer than for non-United States Citizen offenders (151 months compared to 144 months).

### Sentences Relative to the Guideline Range

As demonstrated in Figure 23, both the average guideline minimum and the average sentence for offenders convicted of an offense under section 924(c) have remained relatively stable over the past three decades. Throughout this time, the average guideline minimum has exceeded the average sentence by, on average, approximately 46 months.

The rate at which the sentence imposed compares to the applicable guideline range varies by whether the offender was convicted of a single count or multiple counts under section 924(c), and whether the offender was subject to the mandatory minimum penalty at sentencing.

**Figure 23.** Average Guideline Minimum and Average Sentence for Offenders Convicted Under 18 U.S.C. § 924(c) Fiscal Years 1991 – 2016



SOURCE: U.S. Sentencing Commission, 1991 through 2016 Datafiles, USSCFY91 – USSCFY16.

**Table 4.** Sentences Relative to the Guideline Range for Offenders Convicted Under 18 U.S.C. § 924(c)  
Fiscal Year 2016

	Convicted Under 18 U.S.C. § 924(c)	Subject to 18 U.S.C. § 924(c) at Sentencing	Convicted of Multiple Counts Under 18 U.S.C. § 924(c)
Total (# of offenders)	1,976	1,548	156
<b>SENTENCES RELATIVE TO THE GUIDELINE RANGE</b>			
Within Range	45.0%	57.4%	46.5%
Above Range	6.4%	8.2%	1.3%
Substantial Assistance §5K1.1	21.7%	0.0%	35.5%
Other Government Sponsored (no §5K1.1)	10.4%	13.3%	5.2%
Non-Government Sponsored Below Range	16.6%	21.1%	11.6%

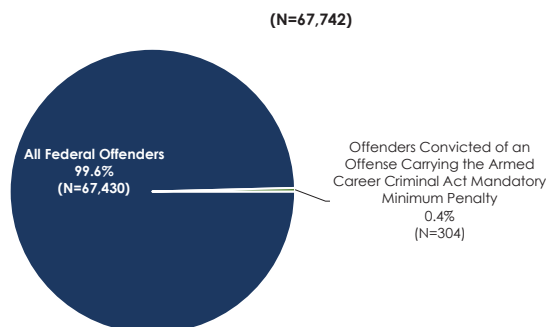
SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

As shown in Table 4, the subset of offenders convicted of multiple counts under section 924(c) was sentenced within the guideline range (46.5%) at a slightly higher rate than all offenders convicted under section 924(c) (45.0%). While that subset of multiple count offenders was more likely to have received a downward departure for providing substantial

assistance to the government (35.5% compared to 21.7%), they were also less likely to receive an other government sponsored departure (5.2% compared to 10.4%) or a non-government departure (11.6% compared to 16.6%).

Although a court could not sentence offenders who remained subject to a mandatory minimum penalty below the applicable mandatory minimum penalty, such offenders were most likely to receive an other government sponsored (13.3%) or a non-government sponsored below range sentence (21.1%). These higher rates are likely due, in part, to the fact that courts often depart from guideline minima that fall above the applicable mandatory minimum penalty and many of these section 924(c) offenders were convicted of another offense for which the court is separately determining the applicable guideline range.<sup>64</sup>

**Figure 24.** Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





Offenders convicted under section 924(c) (6.4%) and offenders convicted under section 924(c) and subject to the mandatory minimum penalty (8.2%) are sentenced above the guideline range at a higher rate than all federal offenders (2.4%), while the opposite is true for offenders convicted of multiple counts under section 924(c) (1.3%).

**Armed Career Criminal Act,  
 18 U.S.C. § 924(e)**

Prevalence of 18 U.S.C. § 924(e) Offenses

*How Often Are Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty?*

Of the 67,742 offenders included in this analysis, 304 (0.4%) were armed career criminals under ACCA.<sup>65</sup> Of those, 23 offenders were also convicted of an offense under section 924(c).

The number of offenders who have qualified as armed career criminals under ACCA has decreased in recent years. In fiscal year 2016, 304 offenders qualified for the ACCA penalty, a decrease from fiscal year 2010 (n=626) and the lowest number since fiscal year 2002 (n=292). The decrease accelerated in the most recent two fiscal years, with a 20.6 percent reduction in fiscal year 2015 and a 30.7 percent reduction in fiscal year 2016.

*Where Were Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty?*

ACCA cases were geographically concentrated in a few circuits. Of the 304 ACCA cases in fiscal year 2016, 81 (26.6%) were from the district courts in the Eleventh Circuit, 54 (17.8%) were from the district courts in the Sixth Circuit, 54 were from district courts in the Eighth Circuit; and 44 (14.5%) were from the district courts in the

**Figure 25.** Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty Fiscal Years 1991 – 2016



SOURCE: U.S. Sentencing Commission, 1991 through 2016 Datafiles, USSCFY91 – USSCFY16.



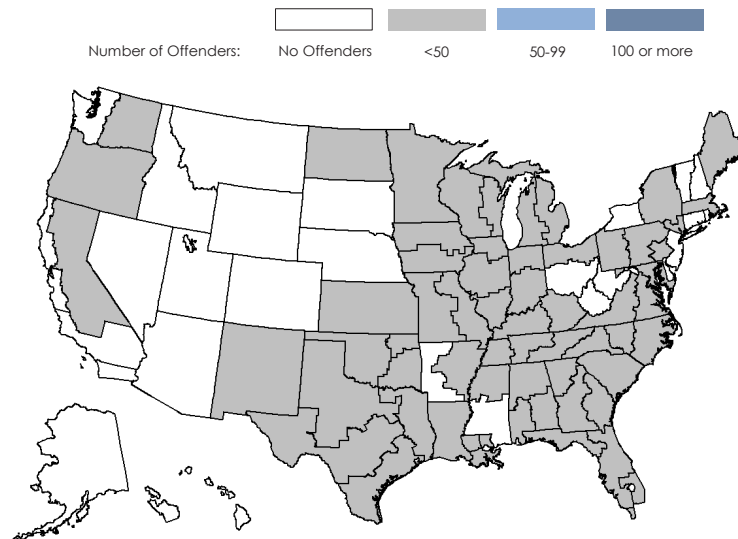
Fourth Circuit. Thus, district courts in four circuits accounted for three-quarters of the cases that involved an offender sentenced as an armed career criminal. This, however, is less concentrated than in fiscal year 2010, when the Fourth (27.0%) and Eleventh (19.8%) circuits alone accounted for nearly half of the cases.

In fiscal year 2016, nine districts reported almost half (48.0%) of the ACCA cases: Middle Florida (10.9%, n=33); Southern Florida (8.2%, n=25); Eastern Missouri (6.3%, n=19); Eastern Tennessee (5.3%, n=16); Northern Ohio (3.6%, n=11); Minnesota (3.6%, n=11); Western North Carolina (3.6%, n=11); Western Missouri (3.3%, n=10); and South Carolina (3.3%, n=10). Thirty-one districts reported no ACCA cases, while 19 districts reported one.

### Plea and Trial Rates

Offenders who qualified as armed career criminals were more likely to proceed to trial than offenders convicted under 18 U.S.C. § 924(c) or offenders convicted of an offense carrying any mandatory minimum penalty. In fiscal year 2016, 13.5 percent (n=41) of offenders convicted of an offense carrying the ACCA penalty proceeded to trial, compared to 9.8 percent (n=193) of offenders convicted under section 924(c), 5.2 percent (n=712) of all offenders convicted of an offense carrying any mandatory minimum penalty, and only 2.7 percent of all federal offenders.

**Figure 26.** Geographic Distribution of Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



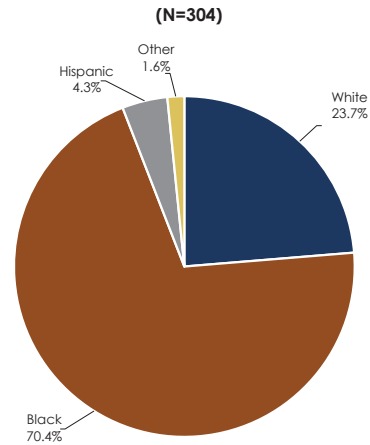


## Offender Demographics

### Race, Gender, and Citizenship

In fiscal year 2016, Black offenders continued to represent the majority of offenders (70.4%) who qualified as armed career criminals, while nearly a quarter were White offenders (23.7%). Few were Hispanic offenders (4.3%) or Other Race offenders (1.6%). The percentage of Black offenders convicted of an offense carrying the ACCA mandatory minimum penalty increased 6.7 percentage points from 63.7 percent in fiscal year 2010 to 70.4 percent in fiscal year 2016. The proportion of Black offenders convicted of an offense carrying the ACCA mandatory minimum penalty is much larger than the percentage of Black offenders convicted of an offense carrying any mandatory minimum penalty (29.7%). The reverse is true for Hispanic offenders (4.3% convicted of an offense carrying the ACCA penalty compared to 40.4% convicted of an offense carrying any mandatory minimum penalty).

**Figure 27.** Race of Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

All offenders convicted of an offense carrying the ACCA penalty were United States citizens (100%), which is consistent with the requirement that an offender must have three qualifying predicate convictions for the ACCA penalty to apply.

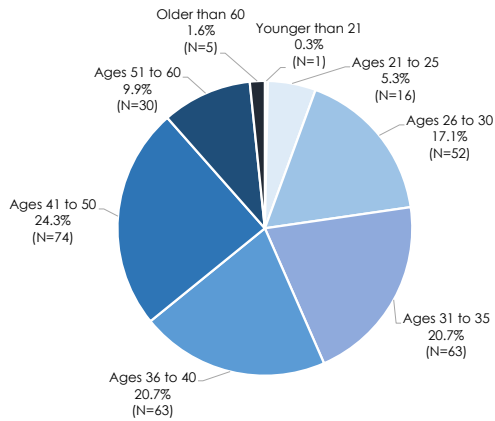
In fiscal year 2016, all but one offender convicted of an offense carrying the ACCA penalty was male (99.7%, n=303); there was only one female ACCA offender (0.3%).

**Table 5.** Gender and Citizenship of Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty Fiscal Year 2016

	All Offenders Convicted of an Offense Carrying the Armed Career Criminal Mandatory Minimum Penalty	Subject to Armed Career Criminal Mandatory Minimum Penalty
<b>Total (# of offenders)</b>	<b>304</b>	<b>244</b>
<b>GENDER</b>		
Male	99.7%	99.6%
Female	0.3%	0.4%
<b>CITIZENSHIP</b>		
U.S. Citizen	100.0%	100.0%
Non-U.S. Citizen	0.0%	0.0%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 28.** Age of Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

### Age

Armed career criminals were evenly distributed throughout age brackets 26 through 50, with fewer younger than 26 or older than 50, and the same number of offenders in age bracket 31 through 35 (n=63), and age bracket

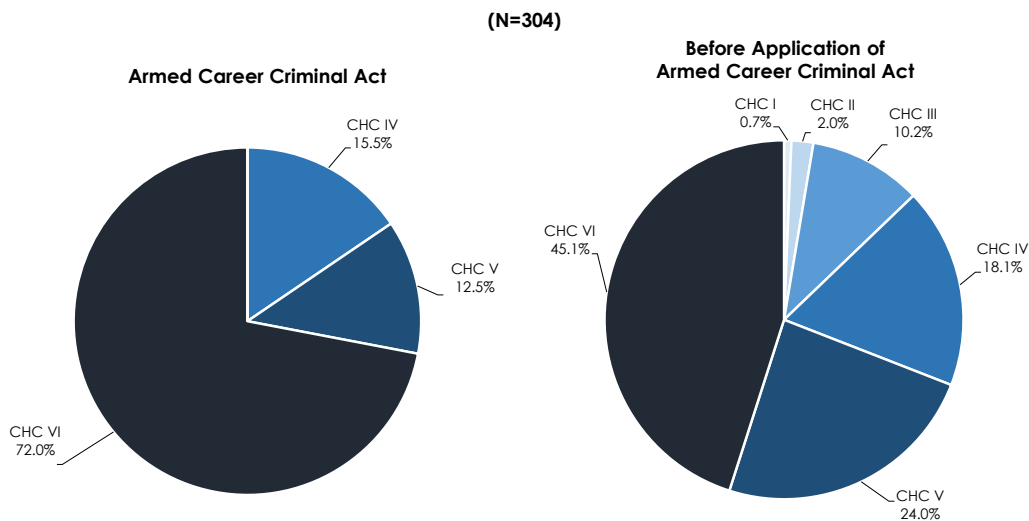
36 through 40 (n=63). The largest group of offenders was in age bracket 41 to 50 (n=74).

### Criminal History

The ACCA guideline, at §4B1.4, requires that all offenders subject to the ACCA mandatory minimum penalty have a CHC of IV or higher.<sup>66</sup> Consistent with this requirement, nearly three-quarters of offenders subject to the ACCA mandatory minimum penalty fell into CHC VI (72.0%), while the remaining offenders fell into CHC IV (15.5%) and V (12.5%).

Even prior to application of the ACCA guideline, most armed career criminals would have still fallen into categories IV, V, or VI. The largest proportion of offenders would have been CHC VI (45.1%), while 18.1 and 24.0 percent would have fallen in categories IV and V, respectively. Nevertheless, without application

**Figure 29.** Criminal History Category of Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





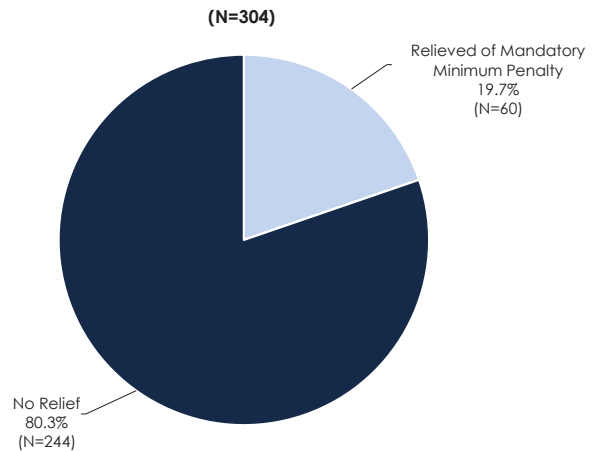
of the armed career criminal guideline, 12.8 percent of ACCA offenders would have been in CHC I (0.7%), II (2.0%), or III (10.2%).<sup>67</sup>

### Relief from Mandatory Minimum Penalties

Of the 304 offenders convicted of an offense carrying the ACCA mandatory minimum penalty, 60 (19.7%) received relief, while more than three-quarters (80.3%, n=244) did not receive relief.

As with section 924(c) offenses, Black offenders represented the largest proportion of offenders who remained subject to the ACCA mandatory minimum penalty at sentencing (71.7%), followed by White offenders (23.8%), Hispanic offenders (3.7%), and Other Race offenders (0.8%).

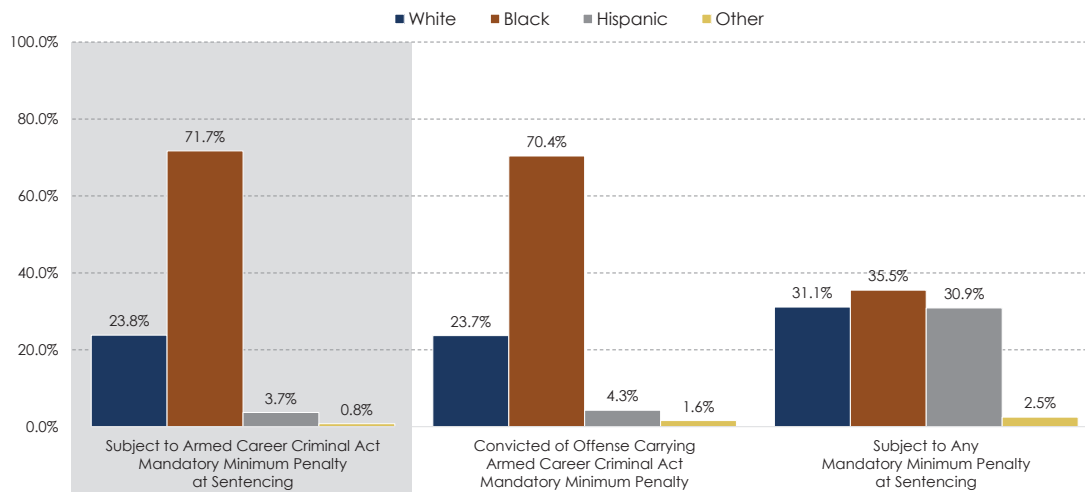
**Figure 30.** Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty By Status of Relief Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

Although Black offenders made up the majority of offenders subject to the ACCA mandatory minimum penalty, this appears to be a function of the frequency with which Black

**Figure 31.** Race of Offenders Subject to the Armed Career Criminal Act Mandatory Minimum Penalty at Sentencing Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

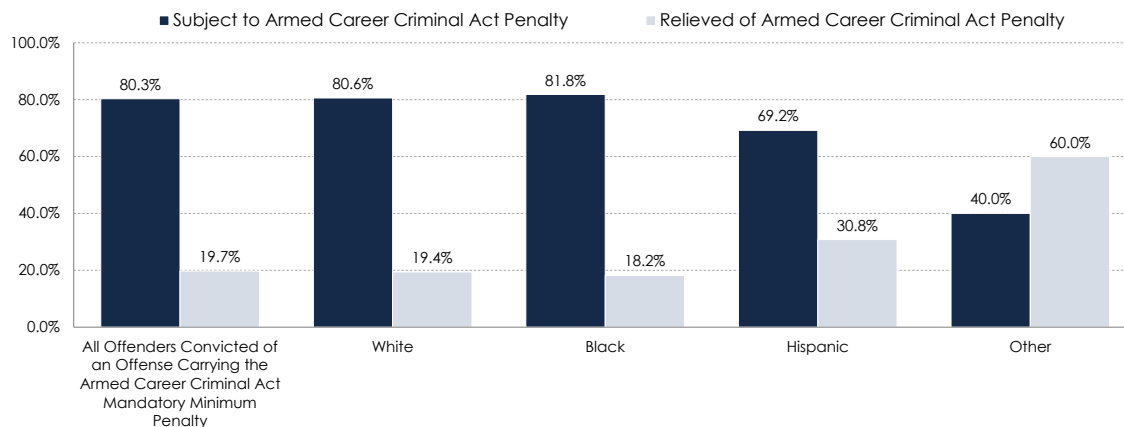
offenders were convicted of these offenses. As seen in Figure 31, the percentage of offenders subject to the mandatory minimum penalty was consistent with the conviction rates for each demographic group.

There were, however, differences in demographics for ACCA offenders compared with offenders convicted of an offense carrying any mandatory minimum penalty. Black offenders represented a significantly higher percentage of offenders subject to the ACCA penalty than they did of offenders convicted of an offense carrying any mandatory minimum penalty (71.7% compared to 35.5%). The opposite was true for White offenders (23.8% compared to 31.1%).

The similarity between the demographic distribution of offenders convicted of an offense carrying the ACCA penalty and subject to the penalty at sentencing is explained by Figure 32, which shows that there was little difference in relief rates between White and Black offenders (19.4% and 18.2%, respectively). Both Hispanic and Other Race offenders had higher relief rates (30.8% and 60.0%, respectively), but they represent a very small percentage of offenders who qualified as armed career criminals (4.3% and 1.6%, respectively).

Only one female offender was convicted of an offense carrying the ACCA mandatory minimum penalty in fiscal year 2016, and she did not receive relief. About one-fifth of male offenders (19.7%) received relief.

**Figure 32.** Percentage of Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.







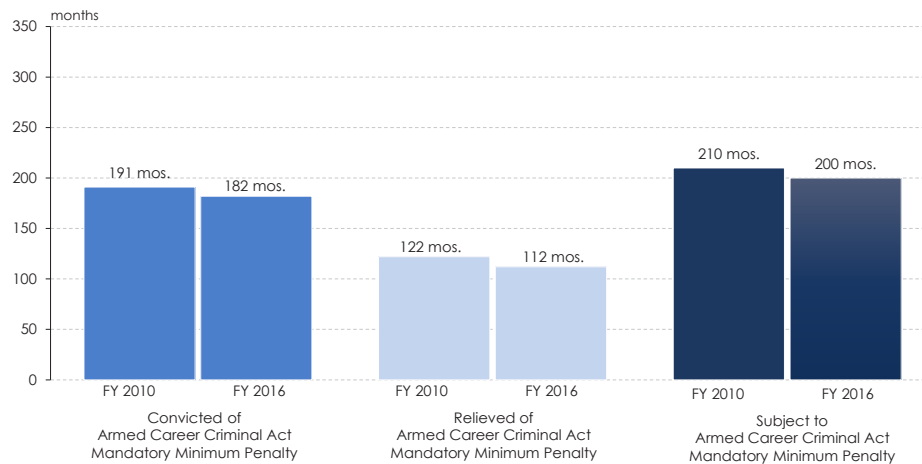
## Sentencing of Armed Career Criminals

### Average Sentence Length

As was the case with section 924(c) offenders, average sentences have generally decreased for offenders convicted of an offense carrying the ACCA mandatory minimum penalty since the Commission’s last *Mandatory Minimum Report*. As reflected in Figure 33, offenders convicted of an offense carrying the ACCA penalty received average sentences of 182 months in fiscal year 2016. By comparison, offenders in fiscal year 2010 received average sentences of 191 months.

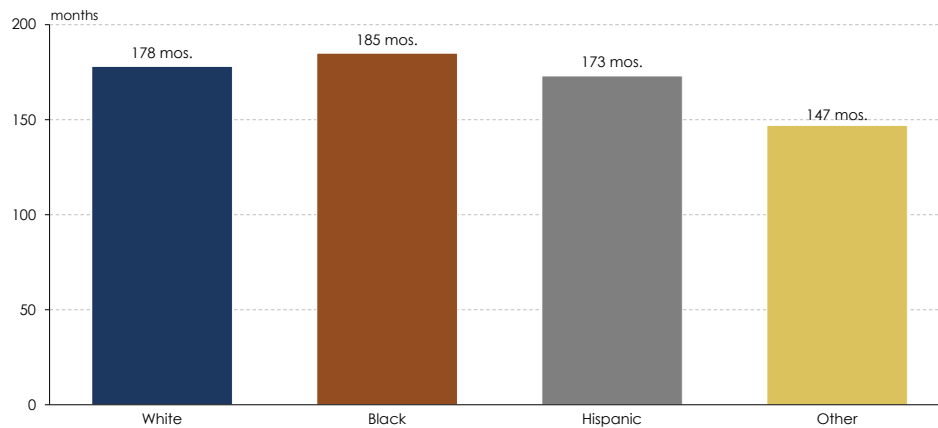
In fiscal year 2016, the average sentence for offenders who remained subject to the mandatory minimum penalty at sentencing was 200 months, significantly longer than the average sentence for offenders relieved of this mandatory minimum penalty (112 months). The average sentences for both of these categories—offenders who were relieved of and those who remained subject to the mandatory minimum penalty—were shorter than the average sentences in fiscal year 2010. In fiscal year 2010, the average sentence for offenders subject to the mandatory minimum penalty was 210 months; and for those relieved of the mandatory minimum penalty was 122 months.

**Figure 33.** Average Sentence Length for Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty By Status of Relief Fiscal Years 2010 & 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 34.** Average Sentence Length for Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty by Race  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

The Commission also compared average sentence lengths by race. Black offenders received the longest sentences (185 months), followed by White offenders (178 months), Hispanic offenders (173 months), and Other Race offenders (147 months).

### Sentences Relative to the Guideline Range

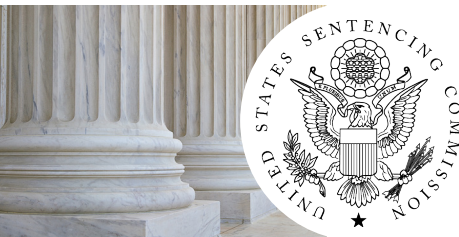
As shown in Table 6, offenders who were subject to the mandatory minimum penalty at sentencing were more likely (64.8%) to receive a sentence within the guideline range than all offenders convicted of an offense carrying

**Table 6.** Sentences Relative to the Guideline Range of Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty  
Fiscal Year 2016

	All Offenders Convicted of an Offense Carrying the Armed Career Criminal Mandatory Minimum Penalty	Subject to Armed Career Criminal Mandatory Minimum Penalty
<b>Total (# of offenders)</b>	<b>304</b>	<b>244</b>
<b>SENTENCES RELATIVE TO THE GUIDELINE RANGE</b>		
<b>Within Range</b>	52.0%	64.8%
<b>Above Range</b>	1.3%	1.6%
<b>Substantial Assistance §5K1.1</b>	19.7%	0.0%
<b>Other Government Sponsored (no §5K1.1)</b>	8.6%	10.7%
<b>Non-Government Sponsored Below Range</b>	18.4%	23.0%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





the ACCA penalty (52.0%). Offenders who remained subject to the ACCA mandatory minimum penalty at sentencing, however, were more likely to receive a government sponsored or non-government sponsored below range sentence than the larger group of offenders convicted of an offense carrying the ACCA mandatory minimum penalty.

These higher rates are likely due, in part, to the fact that courts often depart from guideline minima that fall above the applicable mandatory minimum penalty even where they are unable to go below the applicable mandatory minimum penalty.

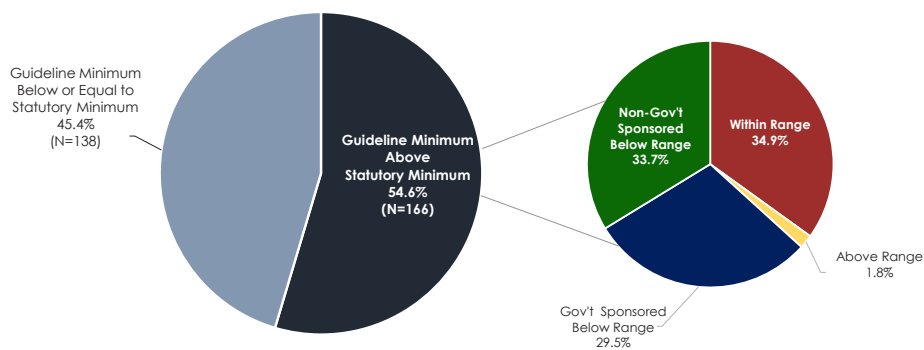
As reflected in Figure 35, the majority of offenders who were convicted of an offense carrying the ACCA mandatory minimum penalty (54.6%) had a guideline minimum above the statutory minimum sentence. In these cases, while courts were bound by the minimum penalty, they were free to sentence below the otherwise applicable guideline range.

In such instances, the within guideline range rate fell to 34.9 percent, lower than the overall rate in fiscal year 2016 (46.4%). Conversely, both the non-government sponsored and government sponsored below range increased to 33.7 percent and 29.5 percent, respectively.

### Impact of Firearms Mandatory Minimum Penalties on the Federal Prison Population

This section explores the continuing impact of firearms mandatory minimum penalties on the overall prison population, including analysis regarding the size and composition of the federal prison population convicted of an offense carrying a firearms mandatory minimum penalty by race, gender, and citizenship. For this analysis, the Commission obtained prisoner data from the Bureau of Prisons to compare to Commission data. By merging the two datasets, the Commission created snapshots of the federal prison population at different points in time, including what percentage of prisoners were convicted of violating a statute

**Figure 35.** Sentences Relative to the Guideline Range for Offenders Convicted of an Offense Carrying the Armed Career Criminal Act Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

containing a mandatory minimum penalty, and what percentage of prisoners were subject to a mandatory minimum penalty at sentencing.

As discussed in the 2017 *Overview Publication*, many of the changes in the prison population were likely the result of changes in charging practices discussed above, as well as an overall decrease in the federal caseload.<sup>68</sup> In addition, the reduction in the population of offenders convicted of an offense carrying the ACCA penalty between fiscal years 2015 and 2016 is also likely a result of the Supreme Court's decisions in *Johnson v. United States*<sup>69</sup> and *Welch v. United States*.<sup>70</sup> The full impact of these changes—particularly those resulting from the change in charging policies—will not be seen for many years, as offenders sentenced between 2010 and 2016 serve out their sentences.<sup>71</sup> Some of these offenders received shorter sentences than they would have under different policies, and therefore their release could continue to impact the makeup of the prison population in future years. However, the extent to which the Department of Justice's recent decision to refocus its efforts on prosecuting the most serious, readily provable offense will reverse the trends seen in the data below remains unclear.

## Federal Firearms Offender Population Overall

There have been significant changes to the federal prison population over the past 25 years. There was a steady increase in the total number of offenders in the federal prison population from 1995 through 2012,<sup>72</sup> which was the result of several factors, including the scope and use of mandatory minimum penalties.<sup>73</sup> However, in recent years, this trend has reversed. Since the high point at the end of 2012, the number of federal inmates fell to 196,455 on December 31, 2015.<sup>74</sup>

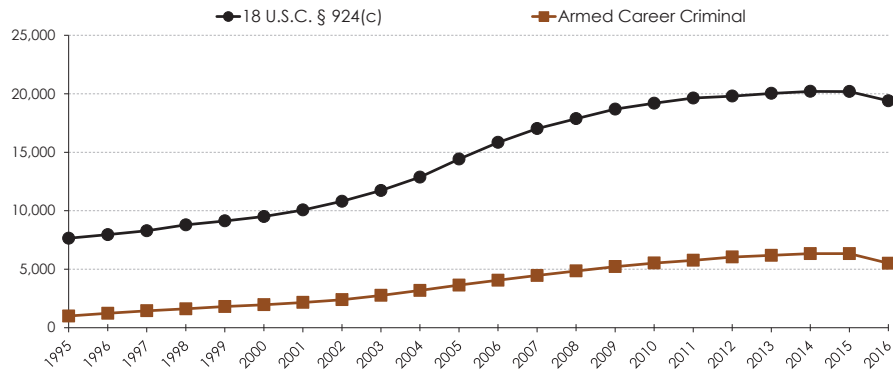
While the number of firearms offenders has decreased over time, firearms offenders continued to contribute significantly to the federal prison population. As of September 30, 2016, there were 166,771 offenders in the total BOP population. Of these, 24,905 (14.9%) were firearms offenders.<sup>75</sup> The number of firearms offenders has decreased in the past two years, from a high of 26,537 as of September 30, 2014 to 24,905 as of September 30, 2016. Prior to that it had steadily increased from 8,636 as of September 30, 1995.





United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

**Figure 36.** Number of 18 U.S.C. § 924(c) and Armed Career Criminal Act Offenders in Federal Prison At the End of Fiscal Years 1995 – 2016

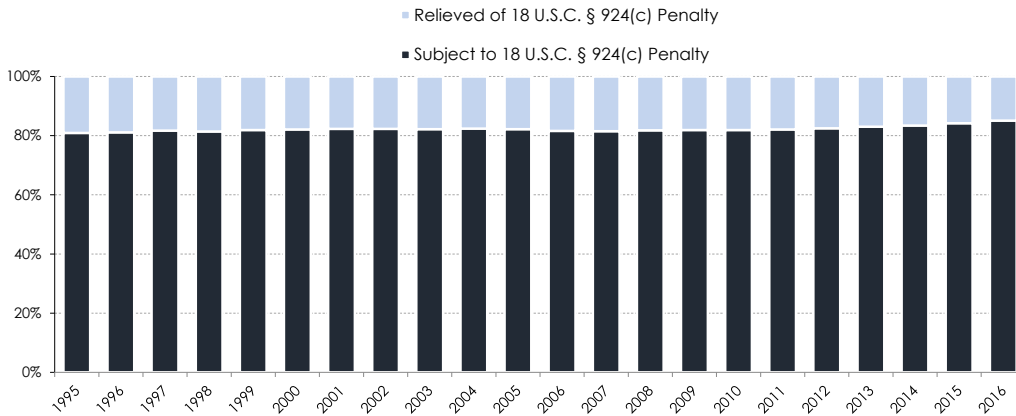


SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.

In particular, as depicted in Figure 36, the number of federal inmates convicted of an offense under section 924(c) gradually increased between fiscal years 2010 and 2015 (from 19,193 as of September 30, 2010, to 20,197 as of September 30, 2015). In fiscal year 2016, that number decreased to 19,399. Likewise, during the same time period, the number of offenders who qualified as armed career criminals increased from 5,524 at the end of fiscal year 2010, to 6,333 at the end of fiscal year 2015, before decreasing to 5,506 as of September 30, 2016, the lowest number since 2008 (n=4,458). Changes related to the charging and sentencing of mandatory minimum penalties, as well as the retroactive application of *Johnson v. United States*<sup>76</sup> likely explain this trend.

The rate of relief for firearms offenders, though relatively stable throughout most of the study period, has decreased in recent years. As reflected in Figure 37, 18.1 percent of section 924(c) offenders in prison had been relieved of the mandatory minimum penalty at sentencing in fiscal year 2010. This percentage decreased each year, reaching a low of 14.9 percent in fiscal year 2016.

**Figure 37.** Percentage of 18 U.S.C. § 924(c) Offenders in Federal Prison  
By Status of Relief from the Mandatory Minimum Penalty  
At the End of Fiscal Years 1995 – 2016

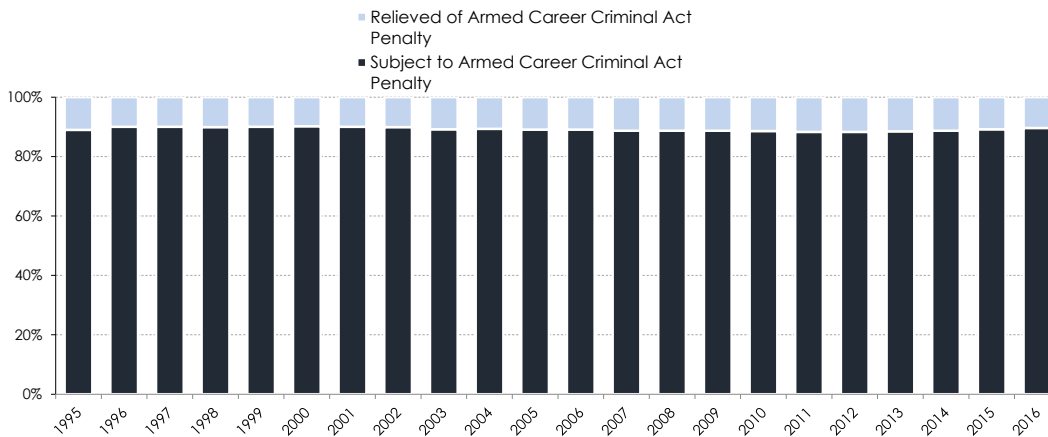


SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.

Similarly, the rate of relief for offenders who qualified as armed career criminals remained relatively stable for the past two decades, though it has decreased slightly in recent years. As of September 30, 2010, 11.4 percent of offenders in prison who qualified as

armed career criminals received relief from the mandatory minimum penalty, which compares to 10.4 percent as of September 30, 2016.

**Figure 38.** Percentage of Armed Career Criminal Act Offenders in Federal Prison  
By Status of Relief from the Mandatory Minimum Penalty  
At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.







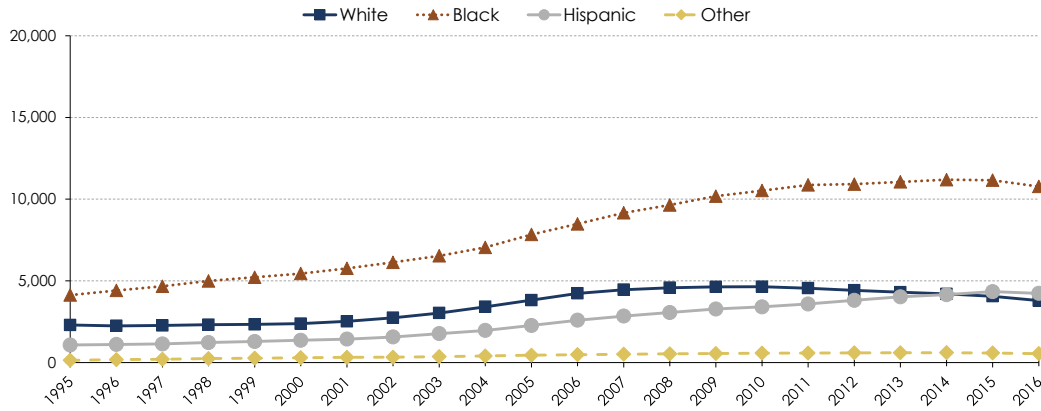
## Federal Firearms Population – By Race

### 18 U.S.C. § 924(c)

In fiscal year 2016, the populations of section 924(c) offenders in prison in each racial group experienced decreases, following nearly two decades of growth for each group except White offenders. Black offenders made up the largest group of section 924(c) offenders in prison. The number of Black section 924(c) offenders in prison steadily increased between the end of fiscal years 1995 (n=4,132) and 2014 (n=11,191), before decreasing to 10,777 as of September 30, 2016. White offenders had been the second largest group, but were surpassed by Hispanic offenders in fiscal year 2015. The number of White offenders in prison convicted under section 924(c) increased from 2,294 at the end of fiscal year 1995 to a high of 4,638 at the end of fiscal year 2010. It then steadily decreased to 3,791 at the end of fiscal year 2016. Meanwhile, the number of Hispanic section 924(c) offenders increased to a high of 4,341 at the end of fiscal 2015, before decreasing to 4,232 at the end of fiscal year 2016. The number of Other Race section 924(c) offenders in prison, while always relatively small, gradually increased from 134 offenders as of September 30, 1995, to a high of 601 offenders as of September 30, 2014, before decreasing during fiscal year 2016 (n=548).

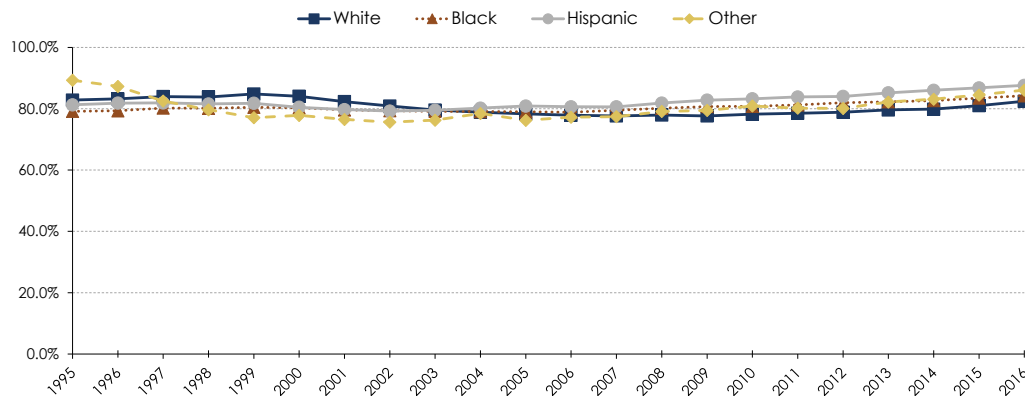
The percentage of offenders in prison subject to a mandatory minimum penalty under section 924(c) has remained between 75.6 and 89.3 percent over the past two decades for all racial groups—significantly higher rates than those for offenders in prison who were subject to any mandatory minimum penalty (42.7% as of September 30, 2016).<sup>77</sup> At the end of fiscal year 2016, 87.6 percent of Hispanic section 924(c) offenders in prison were subject to the mandatory minimum penalty at sentencing, followed by Other Race offenders (86.1%), Black offenders (84.2%), and White offenders (82.4%).

**Figure 39.** Number of 18 U.S.C. § 924(c) Offenders in Federal Prison by Race  
At the End of Fiscal Years 1995 – 2016



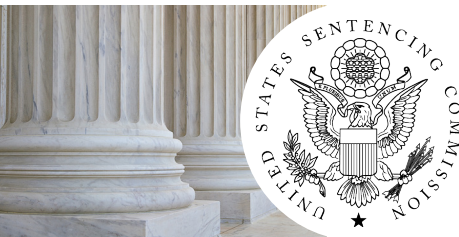
SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.

**Figure 40.** Percentage of 18 U.S.C. § 924(c) Offenders in Federal Prison Subject to the Mandatory Minimum Penalty at Sentencing by Race  
At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.



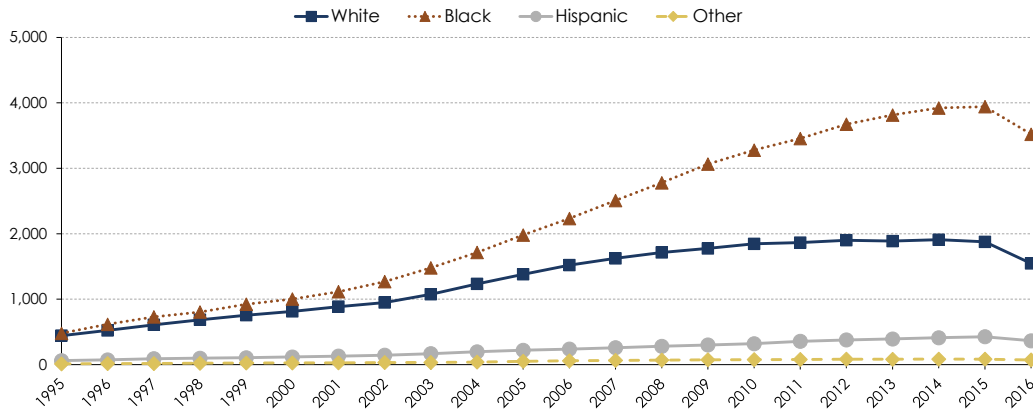


### Armed Career Criminal Act, 18 U.S.C. § 924(e)

At the end of fiscal year 2016, the populations of ACCA offenders in prison in each racial group experienced decreases, following almost two decades of increases. Black offenders continued to be the largest group of ACCA offenders in prison. The number of Black offenders who qualified as armed career criminals steadily increased between the end of fiscal year 1995 (n=478) and the end of fiscal year 2015 (3,942). That number decreased to 3,521 at the end of fiscal year 2016. The population of White offenders in prison who qualified as an armed career criminal followed a similar pattern, though it grew less substantially from 442 at the end of fiscal year 1995, to a high of 1,908 at the end of fiscal year 2014. It then decreased to 1,546 at the end of fiscal year 2016. Hispanic and Other Race offenders also followed a similar pattern but with much smaller populations.<sup>78</sup>

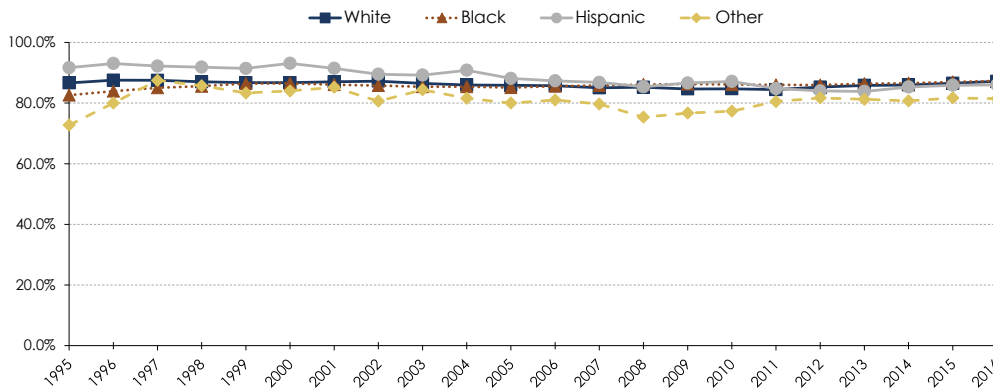
The percentage of ACCA offenders in prison subject to a mandatory minimum penalty has remained between 77.3 and 87.3 percent since the end of fiscal year 2010 for all racial groups—significantly higher rates than those for offenders in prison who were subject to any mandatory minimum penalty (42.7% as of September 30, 2016).<sup>79</sup> At the end of fiscal year 2016, 87.3 percent of Black offenders who qualified as an armed career criminal were subject to the mandatory minimum penalty at sentencing, followed by White offenders (87.2%), Hispanic offenders (86.0%), and Other Race offenders (81.4%).

**Figure 41.** Number of Armed Career Criminal Act Offenders in Federal Prison by Race At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.

**Figure 42.** Percentage of Armed Career Criminal Act Offenders in Federal Prison Subject to the Mandatory Minimum Penalty at Sentencing by Race At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.





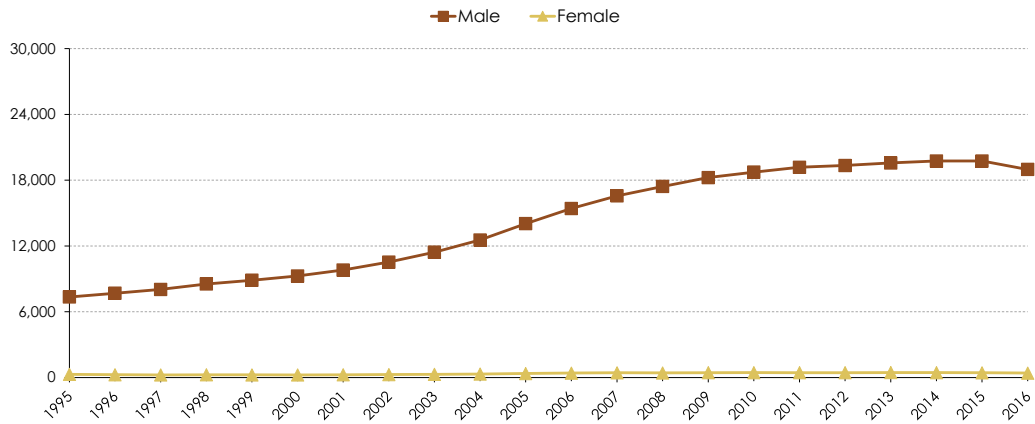
## Federal Firearms Population – By Gender

### 18 U.S.C. § 924(c)

As reflected in Figure 43, the number of male offenders convicted under section 924(c) in federal prison decreased from a high of 19,752 at the end of fiscal year 2015, to 18,981 at the end of fiscal year 2016. This decrease followed a steady increase from 7,350 at the end of fiscal year 1995. The population of female offenders convicted under section 924(c) in prison was significantly smaller and has decreased slightly in recent years. As of September 30, 2016, there were 413 female section 924(c) offenders in prison, a decrease from fiscal year 2010 (n=451).

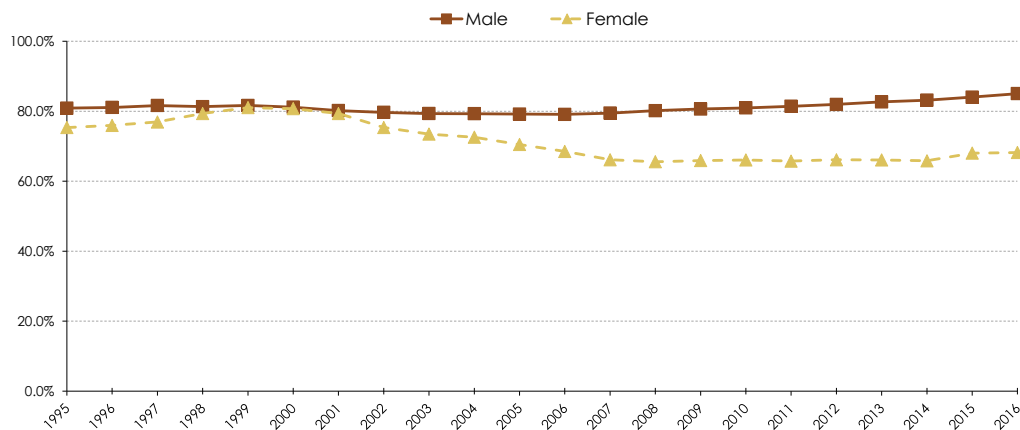
The percentage of male section 924(c) offenders in prison who remained subject to the mandatory minimum penalty remained steady from fiscal year 1995 (80.9%) through fiscal year 2007 (79.5%) and has gradually increased since. At the end of fiscal year 2016, 85.0 percent of male offenders in prison convicted under section 924(c) were subject to the mandatory minimum penalty at sentencing. This is 41.1 percentage points higher than male offenders subject to any mandatory minimum penalty at sentencing (43.9%).<sup>80</sup> The percentage of female section 924(c) offenders in prison subject to the section 924(c) mandatory minimum penalty, though always lower than the percentage of male offenders, has slightly increased since fiscal year 2008 (65.6%). As of the end of fiscal year 2016, 68.2 percent of female offenders in prison remained subject to the section 924(c) mandatory minimum penalty at sentencing, which is significantly higher than female offenders subject to any mandatory minimum penalty at sentencing (27.0%).<sup>81</sup>

**Figure 43.** Number of 18 U.S.C. § 924(c) Offenders in Federal Prison by Gender  
At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.

**Figure 44.** Percentage of 18 U.S.C. § 924(c) Offenders in Federal Prison Subject to the Mandatory Minimum Penalty at Sentencing by Gender  
At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.





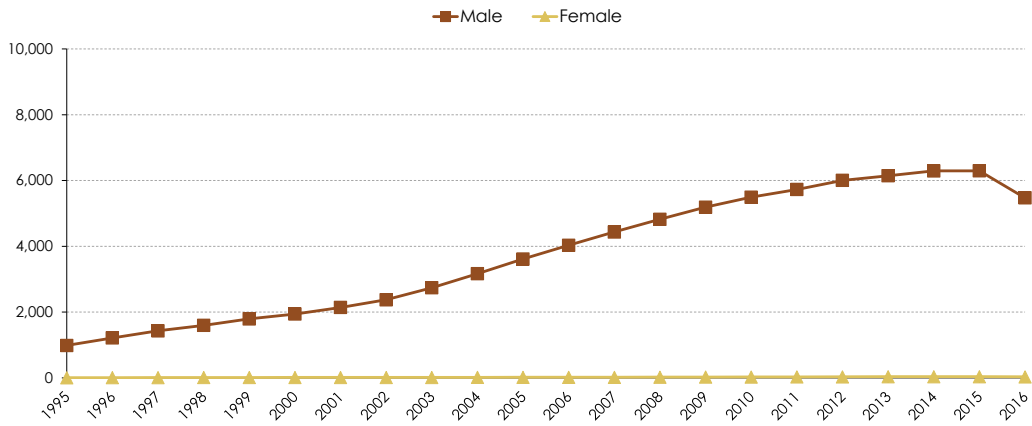


#### Armed Career Criminal Act, 18 U.S.C. § 924(e)

The number of male offenders in prison who were convicted of an offense carrying the ACCA penalty steadily increased from 986 as of September 30, 1995, to a high of 6,296 as of September 30, 2015, before decreasing to 5,474 as of September 30, 2016. By comparison, there were five female offenders at the end of fiscal year 1995, 37 at the end of fiscal year 2013, and 32 as of September 30, 2016.

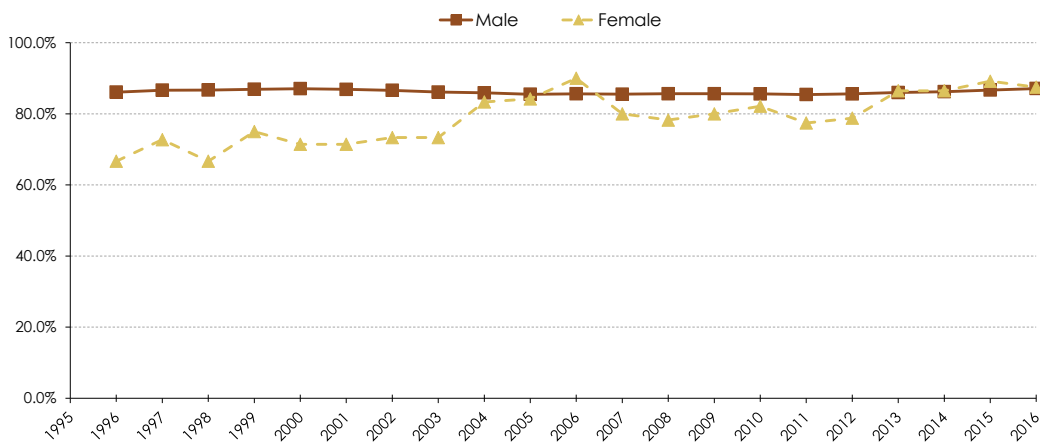
The rate of relief for male offenders in prison who were convicted of an offense carrying the ACCA penalty remained stable throughout the study period, while it has fluctuated for female offenders. From the end of fiscal year 1995, through the end of fiscal year 2016, between 84.9 and 87.1 percent of male ACCA offenders in prison remained subject to the mandatory minimum penalty. At the end of fiscal year 2016, 87.1 percent of male ACCA offenders in prison remained subject to the mandatory minimum penalty; only 12.9 percent of male ACCA offenders in prison received relief. The variation in the relief rates for female offenders in prison was much wider, ranging from a high of 33.3 percent at the end of fiscal years 1996 and 1998, to a low of ten percent at the end of 2006. In fiscal year 2016, 12.5 percent of female ACCA inmates received relief, nearly the same percentage as male ACCA offenders.

**Figure 45.** Number of Armed Career Criminal Act Offenders in Federal Prison by Gender  
At the End of Fiscal Years 1995 – 2016



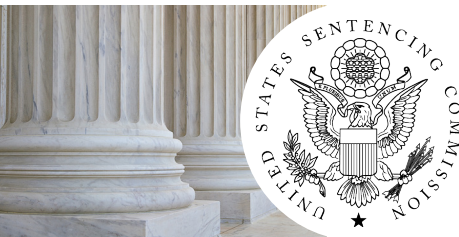
SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.

**Figure 46.** Percentage of Armed Career Criminal Act Offenders in Federal Prison Subject to the Mandatory Minimum Penalty at Sentencing by Gender  
At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.





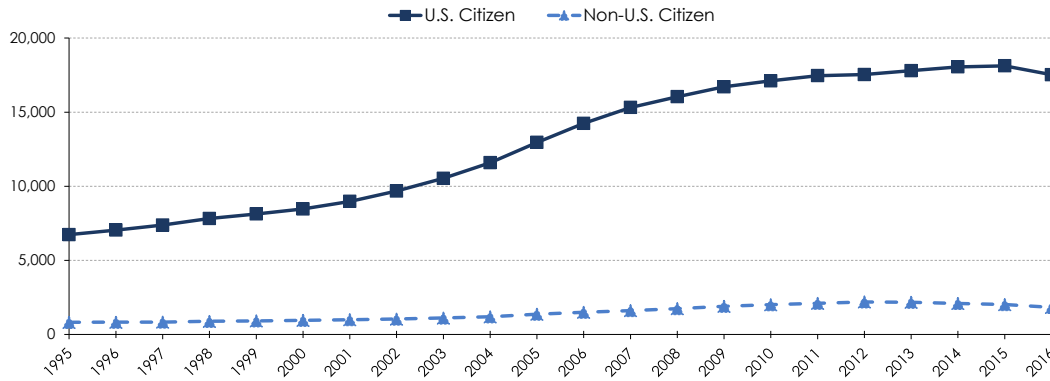
## Federal Firearms Population – By Citizenship

### 18 U.S.C. § 924(c)

The number of United States Citizen offenders convicted under section 924(c) in federal prison steadily increased during most of the study period, reaching a high of 18,127 at the end of fiscal year 2015. In fiscal year 2016, this number decreased to 17,530. The number of non-United States Citizen 924(c) offenders, though always substantially lower in number, followed a similar pattern, increasing from 816 at the end of fiscal year 1995, to a high of 2,193 at the end of fiscal year 2012, before decreasing to 1,827 as of September 30, 2016.

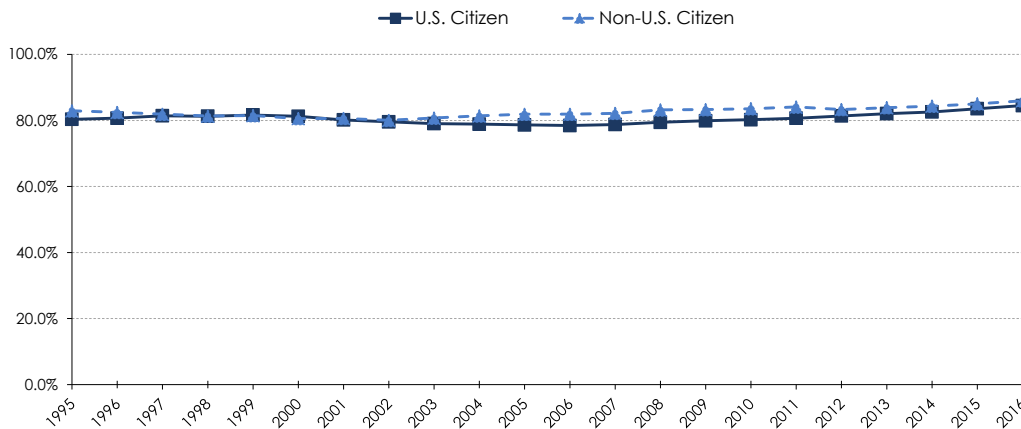
The percentages of both United States and non-United States Citizen section 924(c) offenders who remained subject to the mandatory minimum penalty has remained stable throughout the study period, between 78.5 percent and 86.0 percent. However, the rates of relief for both United States Citizen and non-United States Citizen inmates convicted under section 924(c) reached its lowest point at the end of fiscal year 2016, (15.5% and 14.0% receiving relief, respectively).

**Figure 47.** Number of 18 U.S.C. § 924(c) Offenders in Federal Prison by Citizenship  
At the End of Fiscal Years 1995 – 2016



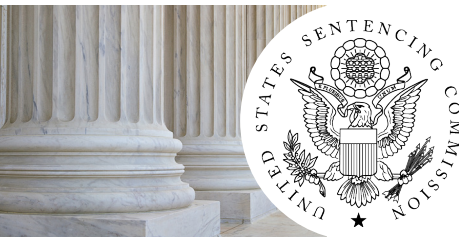
SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.

**Figure 48.** Percentage of 18 U.S.C. § 924(c) Offenders in Federal Prison Subject to the Mandatory Minimum  
Penalty at Sentencing by Citizenship  
At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.





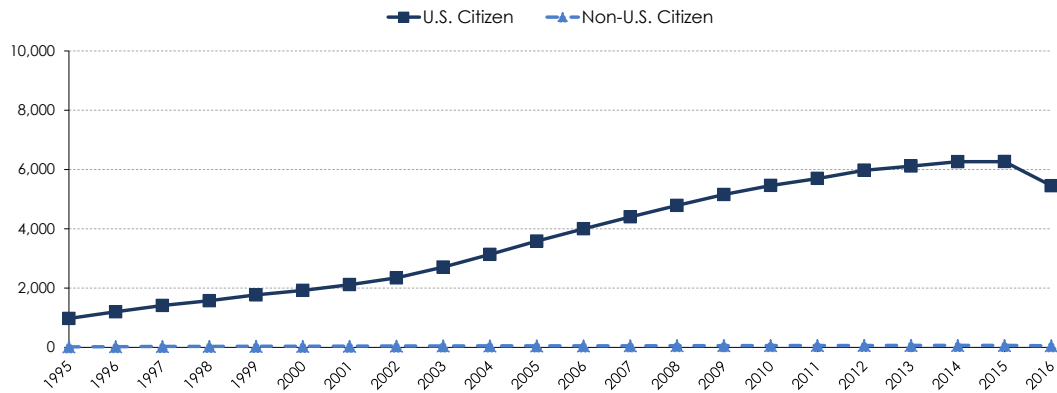
United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

[Armed Career Criminal Act, 18 U.S.C. § 924\(e\)](#)

The number of United States Citizen offenders who were convicted of an offense carrying the ACCA penalty in federal prison steadily increased during most of the study period, reaching a high of 6,266 at the end of fiscal year 2015. In fiscal year 2016, this number decreased to 5,452. The number of non-United States Citizen armed career criminals, though always substantially lower in number, followed a similar pattern, increasing from 18 at the end of fiscal year 1995, to a high of 66 at the end of fiscal year 2013, before decreasing to 52 as of September 30, 2016.

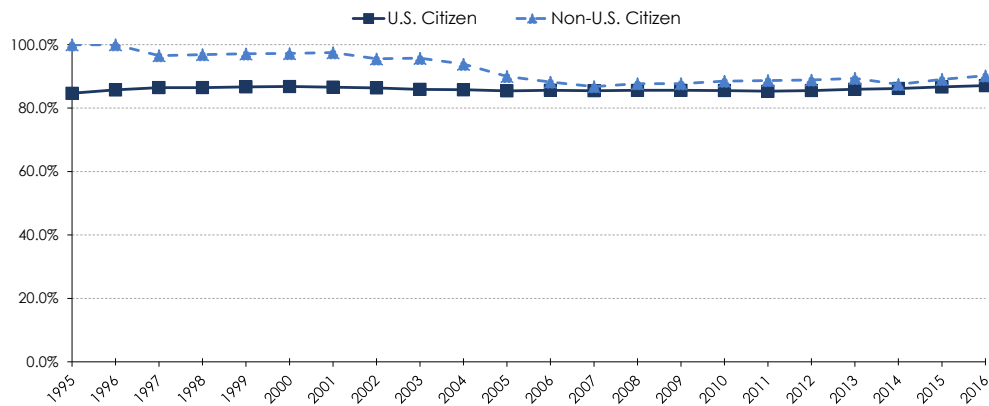
The percentage of United States Citizen ACCA offenders who remained subject to the mandatory minimum penalty has remained stable throughout the study period, between 84.7 percent and 87.1 percent. The rates for non-United States Citizen were consistently higher during the study period, approaching 100.0 percent in the early part of the study period before settling around 90.0 percent in recent years.

**Figure 49.** Number of Armed Career Criminal Act Offenders in Federal Prison by Citizenship  
At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.

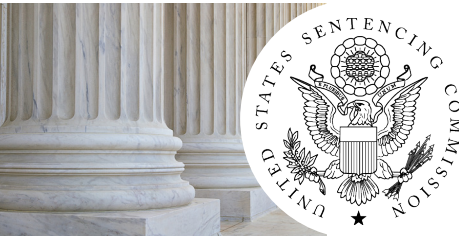
**Figure 50.** Percentage of Armed Career Criminal Act Offenders in Federal Prison Subject to the Mandatory Minimum Penalty at Sentencing by Citizenship  
At the End of Fiscal Years 1995 – 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafiles, USSCBOP.







United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)



5 Conclusion



## Conclusion

Since the Commission’s 2011 *Mandatory Minimum Report*, there have been significant prosecutorial changes, as well as judicial opinions affecting the use of mandatory minimum penalties in general, and firearms mandatory minimum penalties in particular.

In 2010, the Department of Justice issued guidance instructing that while a prosecutor “should ordinarily charge” the most serious offense, the charging decision requires an individual assessment of the facts of the case, considering the purpose of federal criminal laws and the best use of federal resources. This memorandum instructed prosecutors to make the same individualized assessment in plea bargaining and sentencing. Then, in 2015, in *United States v. Johnson*, the Supreme Court invalidated the “residual clause” of the Armed Career Criminal Act, eliminating this clause as a basis under which a prior conviction can qualify as predicate conviction. These changes are reflected in the data trends reported in this publication, including a significant decrease in the number of offenders convicted of an offense carrying a firearms mandatory minimum since fiscal year 2010.

At the same time, firearms mandatory minimum penalties continue to have a significant impact on the sentencing of firearms offenders. Offenders convicted under the two statutes carrying firearms mandatory minimum penalties—18 U.S.C. § 924(c) and the Armed Career Criminal Act, 18 U.S.C. § 924(e)—receive considerably longer sentences than offenders convicted of an offense carrying any mandatory minimum penalty. Offenders who are convicted of multiple offenses under section 924(c) receive even longer sentences, nearly three times as long as offenders convicted of an offense carrying any mandatory minimum penalty. As a result of these long sentences, offenders convicted of firearms mandatory minimum penalties continued to represent a sizable portion of the federal prison population as of September 30, 2016.



Endnotes





United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

1 U.S. SENTENCING COMM’N, OVERVIEW OF MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL  
JUSTICE SYSTEM (July 2017) [hereinafter 2017 OVERVIEW PUBLICATION], *available at* [https://www.uscc.gov/sites/  
default/files/pdf/research-and-publications/research-publications/2017/20170711\\_Mand-Min.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf).

2 U.S. SENTENCING COMM’N, MANDATORY MINIMUM PENALTIES FOR DRUG OFFENSES IN THE FEDERAL  
CRIMINAL JUSTICE SYSTEM (Oct. 2017), *available at* [https://www.uscc.gov/sites/default/files/pdf/research-and-  
publications/research-publications/2017/20171025\\_Drug-Mand-Min.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf).

3 U.S. SENTENCING COMM’N, 2011 REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL  
CRIMINAL JUSTICE SYSTEM [hereinafter 2011 MANDATORY MINIMUM REPORT], *available at* [https://www.uscc.gov/  
research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-  
system](https://www.uscc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system).

4 The Commission submitted the 2011 MANDATORY MINIMUM REPORT pursuant to the statutory directive  
contained in section 4713 of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009. *See*  
Division E of the National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, 123 Stat. 2190,  
2843 (enacted October 28, 2009). The Commission also submitted its 2011 *Mandatory Minimum Report* pursuant  
to its general authority under 28 U.S.C. §§ 994–995, and its specific authority under 28 U.S.C. § 995(a)(20) which  
provides that the Commission shall have authority to “make recommendations to Congress concerning modification  
or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be  
necessary and advisable to carry out an effective, humane, and rational sentencing policy.”

5 A detailed historical discussion of statutory mandatory minimum penalties for firearms offenses is  
presented in the Commission’s 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 25–26.

6 In fiscal year 2016, 16.8% (n=2,280) of all offenders convicted of an offense carrying a mandatory minimum  
penalty (n=13,604) were specifically convicted of a firearms mandatory minimum. *See infra*. Figure 1. While offenses  
that involved *only* a firearms mandatory minimum penalty (and no other offense carrying a mandatory minimum  
penalty) accounted for 5.7% of all offenses carrying a mandatory minimum penalty, the total number of offenses  
that involved a firearms mandatory minimum penalty, including those offenses that also involved another offense  
carrying a mandatory minimum penalty other than a firearms mandatory minimum penalty (*e.g.*, drug offenses), was  
larger. *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 34 & Figure 7.

7 The statute defines a “crime of violence” as any felony that “has as an element the use, attempted use, or  
threatened use of physical force against the person or property of another,” or “that by its nature involves a substantial  
risk that physical force against the person or property of another may be used in the course of committing the  
offense.” A “drug trafficking crime” is defined as any felony that is punishable under the Controlled Substances Act,  
codified at 21 U.S.C. 801 et seq., or the Controlled Substances Import and Export Act, codified at 21 U.S.C. 951, *et*  
*seq.*, or Chapter 705 of title 46 of the United States Code. 18 U.S.C. § 924(c)(2)–(3).

8 18 U.S.C. § 924(c)(1)(A).

9 *Id.* § 924(c)(1)(B).

10 *Id.* § 924(c)(1)(D).

11 570 U.S. 99 (2013).

12 *Id.*

13 536 U.S. 545 (2002) (determination of whether defendant “brandished” the firearm rather than merely carried it was a sentencing factor properly determined by the court), *overruled by* *Alleyne v. United States*, 570 U.S. 99 (2013).

14 *Compare, e.g.,* *Harris v. United States*, 536 U.S. 545 (2002) (whether the defendant brandished the firearm, triggering a seven-year mandatory minimum sentence is a sentencing factor) *with* *United States v. O’Brien*, 130 S. Ct. 2169 (2010) (whether the offense involved a machinegun, triggering the 30-year mandatory minimum penalty, is an element of the offense).

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

16 *See* *Deal v. United States*, 508 U.S. 129 (1993).

17 137 S. Ct. 1170 (Apr. 3, 2017).

18 *Id.* at 1176–77.

19 *Id.* at 1177–78.

20 *See, e.g.,* *United States v. Dean*, 810 F.3d 521 (8th Cir. 2015) (affirming district court’s determination that it could not vary from the guidelines range in calculating defendant’s sentence for offenses based on the mandatory minimum he would receive under section 924(c)), *overruled by* *Dean v. United States* 130 S. Ct. 1170 (2017); *United States v. Chavez*, 549 F.3d 119, 135 (2d Cir. 2008); *United States v. Franklin*, 499 F.3d 578, 583 (6th Cir. 2007); *United States v. Roberson*, 474 F.3d 432, 436 (7th Cir. 2007); *United States v. Powell*, 444 F. App’x 517, 522 (3d Cir. 2011) (unpublished); *United States v. McCullers*, 395 F. App’x 975, 978 (4th Cir. 2010) (unpublished). *But see* *United States v. Smith*, 756 F.3d 1179, 1190 (10th Cir. 2014) (“Nothing in current law prohibits a district court’s considering a § 924(c) conviction and sentence when seeking to assign a just punishment for a related crime of violence.”); *United States v. Webster*, 54 F.3d 1, 4 (1st Cir. 1995) (“[I]n departing from a guideline sentence the district court is free to exercise its own judgment as to the pertinence, if any, of a related mandatory consecutive sentence.”).

21 USSG §2K2.4(b).

22 USSG §5G1.2(b) (Sentencing on Multiple Counts of Conviction).

23 USSG §5G1.2(a) & (b); *see also* §3D1.1(b)(1) (Procedure for Determining Offense Level on Multiple Counts).

24 *See* USSG §2K2.4(c). Under §4B1.1, a defendant qualifies as a career offender if the defendant was at least 18 years old at the time he or she committed the instant offense, the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense, and the defendant has two such prior convictions. *See*







United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

USSG §4B1.1(a). Offenders convicted of an offense under section 924(c) and who qualify as career criminals receive a guideline range of 360 months to life imprisonment, with lower ranges for offenders who also receive a reduction for acceptance (262–327 months for a 3-level reduction, and 292–365 months for a 2-level reduction). *See* USSG §4B1.1(c). For career offenders convicted of multiple counts of an offense under section 924(c), §4B1.1 provides that the guideline range is the greater of the range determined by the separate career offender sentencing table, or the range that results by adding the mandatory minimum penalties “to the minimum and maximum of the otherwise applicable guideline range” determined for the non-section 924(c) counts. *See* USSG §4B1.1(c).

25 18 U.S.C. § 924(e)(1). The statute defines “violent felony” as any crime punishable by imprisonment for more than one year that: (1) has as an element the use, attempted use, or threatened use of physical force against another; or (2) is burglary, arson, or extortion, involves the use of explosives, or involves other conduct that presents a serious potential risk of physical injury to another. A “serious drug offense” is defined as either a certain federal drug offense with a statutory maximum of at least ten years, or state offenses with a statutory maximum of at least ten years involving distributing, manufacturing, or possessing with intent to distribute or manufacture. 18 U.S.C. § 924(e)(A)(i)–(ii).

26 18 U.S.C. § 922(g).

27 *See* Taylor v. United States, 495 U.S. 575 (1990).

28 *See* Custis v. United States, 511 U.S. 485, 490 (1994).

29 *See* United States v. Stone, 306 F.3d 241, 243 & n.2 (5th Cir. 2002) (collecting cases); *see also* Apprendi v. United States, 530 U.S. 466, 490 (2000) (“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”). In order to comply with the Sixth Amendment, in determining whether a prior conviction qualifies as a predicate conviction, the court must apply what is commonly referred to as the “categorical approach,” in which it considers the fact of conviction alone, and not the underlying facts involved in an offense. *See, e.g.,* Taylor v. United States, 495 U.S. 575 (1990); Shepard v. United States, 544 U.S. 13 (2005).

30 *See, e.g.,* United States v. Mack, 229 F.3d 226, 231 (3d Cir. 2000) (“[T]he ACCA does not require formal, pretrial notice. Thus, only notice necessary to satisfy constitutional due process requirements need be given.” (internal citations omitted)).

31 135 S. Ct. 2551 (2015).

32 *Id.* at 2563.

33 136 S. Ct. 1257 (2016).

34 *See* USSG §4B1.4.

35 *See* USSG §4B1.4(b).

36 *See* USSG §4B1.4(c).

37        *See* 18 U.S.C. § 3553(e) (“Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant’s substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.”).

38        *See* USSG §5K1.1.

39        *See* *Melendez v. United States*, 518 U.S. 120 (1996).

40        2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 364–65.

41        For purposes of this publication, the phrase “offense carrying a firearms mandatory minimum penalty” refers to firearms offenses involving mandatory minimum penalties under sections 924(c) and 924(e) of United States Code, title 18. As such, unless otherwise expressly noted, all analysis in this section is limited to offenders whose primary Chapter Two guideline is found in Chapter Two, Part K (Firearms) of the *Guidelines Manual*. An offender convicted of an offense carrying a firearms mandatory minimum penalty may also have a conviction for a drug offense that also carries a mandatory minimum penalty. Those “drug offenders” were the subject of the Commission’s second publication in this series.

42        In fiscal year 2016, the Commission’s datafile included 67,742 cases and, of those cases, the Commission received complete guideline application information and sufficient documentation for analysis in the 62,251 cases considered for this publication. *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 28. The methodology used in this publication, with respect to records collection and data analysis, is described in detail in the 2017 OVERVIEW PUBLICATION *supra* note 1, at 28.

43        *Id.*

44        In fiscal year 2016, firearms offenses constituted 16.8% (n=2,280) of all offenses carrying mandatory minimum penalties (n=13,604). While offenses that involved *only* a firearms mandatory minimum penalty (and no other offense carrying a mandatory minimum penalty) accounted for 5.7% of all offenses carrying a mandatory minimum penalty, the total number of offenses that involved a firearms mandatory minimum penalty, including those offenses that also involved another offense carrying a mandatory minimum penalty other than a firearms mandatory minimum penalty (*e.g.*, drug offenses), was larger. *See* 2017 OVERVIEW PUBLICATION, *supra* note, 1, at 34 & Figure 7.

45        *See id.* at 35 and Table 1.

46        *Id.* at 34–36 & Figures 7 & 8.

47        135 S. Ct. 2551 (2015).

48        *See* U.S. Dep’t of Justice, Attorney General Eric Holder, Memorandum: Department Policy on Charging and Sentencing (May 19, 2010), *available at* <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/holder-memo-charging-sentencing.pdf>.





United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

49 135 S. Ct. at 2563.

50 *See* U.S. Dep’t of Justice, Attorney General Jefferson Sessions, Memorandum: Department Charging and Sentencing Policy (May 10, 2017), *available at* <https://www.justice.gov/opa/press-release/file/965896/download>.

51 Of these ten offenders with a prior section 924(c) conviction, five offenders were convicted of a single count in the instant case and five were convicted of multiple counts.

52 *Compare with infra* Table 3. The 146 offenders convicted of multiple counts under section 924(c) for the first time in the instant proceeding were distributed throughout Criminal History Categories as follows: CHC I – 26.1%; CHC II – 12.7%; CHC III – 19.0%; CHC IV – 13.4%; CHC V – 5.6%; and CHC VI – 23.2%. The five offenders previously convicted under section 924(c) and convicted of a single count in the instant case, were distributed as follows: CHC II – 25.0%; CHC III – 50.0%; CHC V – 25.0%; Missing CHC (N=1). The five offenders previously convicted under section 924(c) and convicted of multiple counts under section 924(c) in the instant case, were distributed as follows: CHC II – 40.0%; CHC III – 20.0%; CHC IV – 20.0%; and CHC VI – 20.0%.

53 The final 6.8% of offenders were subject to a mandatory minimum penalty of another length, including offenders who were subject to a sentence of life imprisonment for a second or subsequent conviction for an offense involving a machinegun, destructive device, or a firearm equipped with a silencer or muffler, in violation of subsection 924(c)(1)(C)(ii), as well as offenders who were subject to a mandatory minimum penalty of a length not provided for in the statute, as a result of the manner in which the sentencing court imposed a firearms mandatory minimum penalty or penalties in conjunction with sentences for other offenses.

54 A complete distribution of offenders convicted under section 924(c) is provided for each circuit and district in Appendix A.

55 *See* 18 U.S.C. § 924(c)(1)(A).

56 The other cases involved cocaine (21.6%, n=42), methamphetamine (18.6%, n=36), crack cocaine (18.0%, n=35), heroin (9.3%, n=18), and “other” (5.2%, n=10).

57 Of these ten cases, four involved cocaine, four involved cocaine base, and one involved marijuana. The final case involved another drug type. The underlying violent offense in these cases was most commonly attempted murder (4), while murder, robbery and assault were each involved in two cases.

58 The “Other Race” category includes offenders of Native American, Alaskan Native, and Asian or Pacific Islander origin. Of the offenders analyzed for this study, there were 2,484 offenders identified as “Other Race” offenders: 1,085 (43.7%) were of Asian/Pacific Islander origin, 1,186 (47.8%) were Native-American/Alaskan Native, and 213 (8.5%) were of other origin. For firearms offenders in fiscal year 2016, the “Other Race” category consists of 50% Native-American/Alaskan Native (n=22); 45.4% Asian/Pacific Islander (n=20), and 4.6% of other origin (n=2).

59 This is, in large part, because non-United States citizens are often convicted of immigration offenses, which do not carry mandatory minimum penalties.

60 *See id.*

61 This reflects the same trend shown in fiscal year 2010, however Hispanic offenders (28.5%) were a larger percentage of the offenders subject to the mandatory minimum penalty at sentencing than in fiscal year 2010, when they were 21.0 percent of offenders subject to the mandatory minimum penalty.

62 These trends are consistent with the average sentences in fiscal year 2010 when the average sentence for offenders who remained subject to the mandatory minimum penalty was 182 months and for those relieved was 109 months.

63 The category of offenders convicted of both a section 924(c) offense and another offense includes offenders whose other offense carried a mandatory minimum penalty and those whose other offense did not carry a mandatory minimum penalty.

64 See *supra* Figure 10.

65 The term “qualified as an armed career criminal under ACCA” means that the court found that the 15-year mandatory minimum penalty established at 18 U.S.C. § 924(e) applied to the offender, but does not denote whether the offender obtained relief from the mandatory minimum penalty for rendering substantial assistance pursuant to 18 U.S.C. § 3553(e). Offenders who qualified as an armed career criminal under ACCA but did not obtain relief are referred to as “subject to” the mandatory minimum penalty.

66 See USSG §4B1.4(c) & app. note backg’d. (n.2).

67 Where an offender would have been in CHC I, II, or III prior to application of the armed career criminal guideline at USSG §4B1.4, it is likely because one or more predicate convictions were outside of the applicable time period provided at USSG §4A1.2(e). USSG §4A1.2(e) instructs that certain prior convictions which occurred outside the provided window of time are not considered for purposes of scoring criminal history. ACCA, however, has no such limitation for prior convictions.

68 2017 OVERVIEW PUBLICATION, *supra* note 1, at 48–49.

69 135 S. Ct. 2551 (2015).

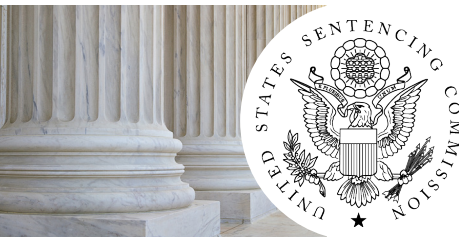
70 136 S. Ct. 1257 (2016).

71 The impact the Supreme Court’s recent decision in *Dean v. United States*, 137 S. Ct. 1170 (2017), which allows a sentencing court to consider a mandatory minimum penalty under section 924(c) when calculating a sentence for an underlying predicate conviction, also remains to be seen.

72 These population figures were obtained from the Bureau of Prisons data and reflect complete population figures. The remaining federal prison population analysis in this section is based on matching the BOP data with Commission data and therefore may reflect fewer offenders.

73 See 2011 MANDATORY MINIMUM REPORT, at Ch.4. In the 2011 *Mandatory Minimum Report*, the Commission noted that these factors have included changes to mandatory minimum penalties themselves, both in terms of number and scope, as well as other systemic changes to the federal criminal justice system, such as the expanded federalization of criminal law, increased size and changes in the composition of the federal criminal





United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

docket, and higher rates of imposition of sentences of imprisonment. *See id.*

74 *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 48–49.

75 This represents the percentage of offenders in prison who were convicted of an offense under section 924(c) or section 924(e). Some of these offenders were also convicted under a statute carrying another mandatory minimum penalty (e.g., drugs). Thus, this percentage may be overlapping with other populations of the BOP population.

76 135 S. Ct. 2551.

77 *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 50 & Figure 21.

78 There were 60 Hispanic offenders at the end of fiscal year 1995, which steadily increased to 426 at the end of fiscal year 2015, before decreasing to 364 at the end of fiscal year 2016. There were 11 Other Race offenders at the end of fiscal year 1995, which increased to a high of 84 at the end of fiscal year 2014, before decreasing to 71 at the end of fiscal year 2016.

79 *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 49.

80 *See id.* at 53.

81 *See id.* at 55.





Appendix





United States Sentencing Commission  
 MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

**Table A-1.** Mandatory Minimum Status for Firearms Offenders  
 in Each Circuit and District<sup>1</sup>  
*Fiscal Year 2016*

CIRCUIT District	18 U.S.C. § 924(c)		Multiple 18 U.S.C. § 924(c)		Armed Career Criminal Act	
	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>1,976</b>	<b>100.0</b>	<b>156</b>	<b>100.0</b>	<b>304</b>	<b>100.0</b>
<b>D.C. CIRCUIT</b>	<b>6</b>	<b>0.3</b>	<b>0</b>	<b>0.0</b>	<b>1</b>	<b>0.3</b>
District of Columbia	6	0.3	0	0.0	1	0.3
<b>FIRST CIRCUIT</b>	<b>204</b>	<b>10.3</b>	<b>5</b>	<b>3.2</b>	<b>11</b>	<b>3.6</b>
Maine	9	0.5	0	0.0	1	0.3
Massachusetts	1	0.1	0	0.0	8	2.6
New Hampshire	7	0.4	1	0.6	0	0.0
Puerto Rico	183	9.3	4	2.6	2	0.7
Rhode Island	4	0.2	0	0.0	0	0.0
<b>SECOND CIRCUIT</b>	<b>231</b>	<b>11.7</b>	<b>33</b>	<b>21.2</b>	<b>2</b>	<b>0.7</b>
Connecticut	16	0.8	0	0.0	0	0.0
New York						
Eastern	69	3.5	9	5.8	0	0.0
Northern	10	0.5	0	0.0	1	0.3
Southern	111	5.6	24	15.4	1	0.3
Western	24	1.2	0	0.0	0	0.0
Vermont	1	0.1	0	0.0	0	0.0
<b>THIRD CIRCUIT</b>	<b>98</b>	<b>5.0</b>	<b>14</b>	<b>9.0</b>	<b>9</b>	<b>3.0</b>
Delaware	5	0.3	0	0.0	0	0.0
New Jersey	14	0.7	1	0.6	0	0.0
Pennsylvania						
Eastern	51	2.6	13	8.3	4	1.3
Middle	11	0.6	0	0.0	1	0.3
Western	12	0.6	0	0.0	4	1.3
Virgin Islands	5	0.3	0	0.0	0	0.0
<b>FOURTH CIRCUIT</b>	<b>291</b>	<b>14.7</b>	<b>32</b>	<b>20.5</b>	<b>44</b>	<b>14.5</b>
Maryland	37	1.9	2	1.3	7	2.3
North Carolina						
Eastern	65	3.3	3	1.9	6	2.0
Middle	32	1.6	0	0.0	4	1.3
Western	27	1.4	1	0.6	11	3.6
South Carolina	21	1.1	2	1.3	10	3.3
Virginia						
Eastern	80	4.1	20	12.8	2	0.7
Western	24	1.2	4	2.6	4	1.3
West Virginia						
Northern	1	0.1	0	0.0	0	0.0
Southern	4	0.2	0	0.0	0	0.0

CIRCUIT District	18 U.S.C. § 924(c)		Multiple 18 U.S.C. § 924(c)		Armed Career Criminal Act	
	Number	Percent	Number	Percent	Number	Percent
<b>FIFTH CIRCUIT</b>	<b>182</b>	<b>9.2</b>	<b>21</b>	<b>13.5</b>	<b>17</b>	<b>5.6</b>
Louisiana						
Eastern	22	1.1	2	1.3	1	0.3
Middle	4	0.2	0	0.0	1	0.3
Western	8	0.4	0	0.0	1	0.3
Mississippi						
Northern	5	0.3	0	0.0	1	0.3
Southern	4	0.2	0	0.0	0	0.0
Texas						
Eastern	20	1.0	2	1.3	1	0.3
Northern	48	2.4	8	5.1	9	3.0
Southern	30	1.5	7	4.5	2	0.7
Western	41	2.1	2	1.3	1	0.3
<b>SIXTH CIRCUIT</b>	<b>174</b>	<b>8.8</b>	<b>21</b>	<b>13.5</b>	<b>54</b>	<b>17.8</b>
Kentucky						
Eastern	16	0.8	1	0.6	3	1.0
Western	7	0.4	0	0.0	3	1.0
Michigan						
Eastern	54	2.7	13	8.3	5	1.6
Western	5	0.3	1	0.6	6	2.0
Ohio						
Northern	11	0.6	2	1.3	11	3.6
Southern	19	1.0	2	1.3	0	0.0
Tennessee						
Eastern	24	1.2	0	0.0	16	5.3
Middle	14	0.7	1	0.6	3	1.0
Western	24	1.2	1	0.6	7	2.3
<b>SEVENTH CIRCUIT</b>	<b>112</b>	<b>5.7</b>	<b>6</b>	<b>3.8</b>	<b>16</b>	<b>5.3</b>
Illinois						
Central	18	0.9	0	0.0	3	1.0
Northern	26	1.3	1	0.6	1	0.3
Southern	12	0.6	2	1.3	2	0.7
Indiana						
Northern	12	0.6	0	0.0	1	0.3
Southern	7	0.4	1	0.6	4	1.3
Wisconsin						
Eastern	32	1.6	2	1.3	2	0.7
Western	5	0.3	0	0.0	3	1.0
<b>EIGHTH CIRCUIT</b>	<b>155</b>	<b>0.8</b>	<b>3</b>	<b>1.9</b>	<b>54</b>	<b>17.8</b>
Arkansas						
Eastern	7	0.4	1	0.6	5	1.6
Western	5	0.3	0	0.0	0	0.0
Iowa						
Northern	7	0.4	0	0.0	2	0.7
Southern	4	0.2	0	0.0	2	0.7
Minnesota	13	0.7	0	0.0	11	3.6
Missouri						
Eastern	35	1.8	1	0.6	19	6.3
Western	49	2.5	0	0.0	10	3.3
Nebraska	25	1.3	1	0.6	0	0.0
North Dakota	7	0.4	0	0.0	5	1.6
South Dakota	3	0.2	0	0.0	0	0.0





United States Sentencing Commission  
 MANDATORY MINIMUM PENALTIES FOR FEDERAL FIREARMS OFFENSES (2018)

CIRCUIT District	18 U.S.C. § 924(c)		Multiple 18 U.S.C. § 924(c)		Armed Career Criminal Act	
	Number	Percent	Number	Percent	Number	Percent
<b>NINTH CIRCUIT</b>	<b>142</b>	<b>7.2</b>	<b>6</b>	<b>3.8</b>	<b>3</b>	<b>1.0</b>
Alaska	8	0.4	0	0.0	0	0.0
Arizona	12	0.6	1	0.6	0	0.0
California						
Central	13	0.7	0	0.0	0	0.0
Eastern	20	1.0	0	0.0	1	0.3
Northern	24	1.2	2	1.3	0	0.0
Southern	1	0.1	0	0.0	0	0.0
Guam	0	0.0	0	0.0	0	0.0
Hawaii	1	0.1	0	0.0	0	0.0
Idaho	7	0.4	0	0.0	0	0.0
Montana	5	0.3	0	0.0	0	0.0
Nevada	23	1.2	3	1.9	0	0.0
Northern Mariana Islands	0	0.0	0	0.0	0	0.0
Oregon	3	0.2	0	0.0	1	0.3
Washington						
Eastern	4	0.2	0	0.0	1	0.3
Western	21	1.1	0	0.0	0	0.0
<b>TENTH CIRCUIT</b>	<b>115</b>	<b>5.8</b>	<b>2</b>	<b>1.3</b>	<b>12</b>	<b>4.0</b>
Colorado	17	0.9	0	0.0	0	0.0
Kansas	23	1.2	2	1.3	1	0.3
New Mexico	30	1.5	0	0.0	2	0.7
Oklahoma						
Eastern	2	0.1	0	0.0	1	0.3
Northern	4	0.2	0	0.0	2	0.7
Western	10	0.5	0	0.0	6	2.0
Utah	17	0.9	0	0.0	0	0.0
Wyoming	12	0.6	0	0.0	0	0.0
<b>ELEVENTH CIRCUIT</b>	<b>266</b>	<b>13.5</b>	<b>13</b>	<b>8.3</b>	<b>81</b>	<b>26.7</b>
Alabama						
Middle	18	0.9	0	0.0	2	0.7
Northern	18	0.9	0	0.0	1	0.3
Southern	25	1.3	1	0.6	4	1.3
Florida						
Middle	38	1.9	3	1.9	33	10.9
Northern	13	0.7	0	0.0	3	1.0
Southern	100	5.1	8	5.1	25	8.2
Georgia						
Middle	18	0.9	1	0.6	2	0.7
Northern	20	1.0	0	0.0	4	1.3
Southern	16	0.8	0	0.0	7	2.3

<sup>1</sup> Of the 67,742 cases sentenced in fiscal year 2016, the Commission received complete guideline information in 61,958 cases. The Commission did not receive complete guideline information for another 287 cases in which the only statute of conviction was 18 U.S.C. § 924(c) and 111 cases in which an offender was sentenced under 18 U.S.C. § 1028A and the guidelines were not applied, but these cases are included in the analysis. Of the remaining 63,357 cases, 105 were excluded due to missing statutory information.

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

