



Bureau of Justice Statistics Special Report

With Preliminary Data for 1999

June 2000, NCJ 180795

Federal Firearm Offenders, 1992-98

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Between 1992 and 1999, an annual average of 6,700 defendants were charged with a firearm offense in U.S. district courts. The Federal criminal code regulates who may lawfully receive or possess firearms, regulates the manufacture and distribution of firearms, and penalizes the criminal use of firearms. A person may be disqualified from lawfully purchasing or possessing a firearm if, among other reasons, the person has been convicted of a felony, is an unlawful user of controlled substances, or is subject to a domestic violence restraining order.

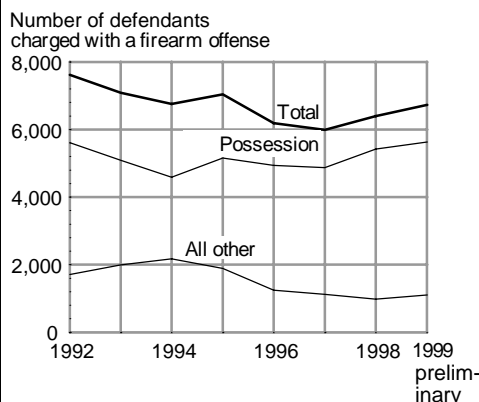
While data describing defendants charged were incomplete prior to 1992, available data suggest that firearm investigations and prosecutions by U.S. attorneys peaked during 1992.

After 1992 the number of defendants charged with a firearm offense in U.S. district courts – either alone or with another offense – decreased. During 1994, 11% fewer defendants were charged with a firearm offense than during 1992. Despite an increase during 1995, the number of defendants charged continued to decrease through 1997. During 1998 and 1999 the number charged increased to 6,728.

Most defendants (85%) charged with a firearm offense during 1998 were charged with unlawful possession.

Highlights

The number of defendants charged with a firearm offense decreased, 1992-97, and increased, 1997-99



- A reason for the decline in firearm prosecutions was the Supreme Court's *Bailey* decision that limited prosecutors' ability to charge defendants with using a firearm during a violent or drug offense.
- Following *Bailey*, the number of defendants receiving a guideline enhancement for weapon use increased 31%.
- 41% of defendants charged with a firearm offense were prosecuted in the 20 most populous Federal judicial districts; these districts accounted for about half of all State or local arrests for violent and drug offenses.

Imposed sentences for a Federal firearm offense increased from 79 months, on average, to 100 months



- 85% of firearm defendants were charged during 1998 with unlawful possession. Seven percent were charged with unlawfully receiving or transferring a firearm.
- 8% of defendants were convicted of a transfer offense during 1998. Of these, 47% were prohibited from possessing a firearm; 19% were straw purchasers; 6%, retail dealers; and 28%, others unlawfully selling firearms.
- Defendants convicted of using a firearm during a crime were sentenced to serve 92 months, on average, in addition to the 111 months imposed for the predicate offense.

Number of suspects investigated for a firearm offense and number U.S. attorneys declined to prosecute

Number of suspects investigated for a firearm offense, when that offense was the most serious one investigated

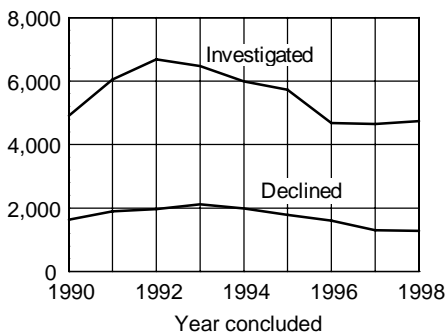


Figure 1

Of these defendants, 61% were also charged with a substantive offense such as drug trafficking or bank robbery; 39% were charged with only the firearm offense. About 40% of those charged with a possession offense were disqualified from possessing a firearm based on their status as a prohibited person.

Seven percent of those charged with a firearm offense during 1998 were charged with unlawfully receiving or transferring a firearm. Of the 341 defendants convicted of a transfer offense during 1998, 135 were identified as prohibited persons attempting to acquire a firearm, and 56 were identified as “straw purchasers.” Straw purchasers are persons who buy firearms on behalf of others without disclosing that fact on the forms required by the Bureau of Alcohol, Tobacco and Firearms.

This report includes trends from fiscal year 1992 through 1999. Statistics for 1999 are preliminary, as complete data for 1999 were not provided in time for inclusion; final 1999 data are expected to include additional firearm prosecutions. Detailed analyses are based on fiscal year 1998 data.

Prosecutorial decisions by U.S. attorneys

Declinations

Not all suspects in matters reviewed by U.S. attorneys are prosecuted in Federal courts. Between 1990 and

Table 1. Firearm suspects declined for prosecution by U.S. attorneys, by reason for declination, 1998

Reason for declination	Percent
Total	100.0%
No crime	18.1%
Referred or handled in other prosecution	36.1%
Prosecuted —	
By other authorities	29.5
On other charges/plea bargain	6.6
Alternative resolution	2.1%
Suspect-related reason	3.5%
Other reasons	40.3%
Minimal Federal interest	4.6
DOJ/U.S. attorney policy	4.1
Agency request	6.5
Lack of resources	3.1
Weak evidence	17.3
Other	4.7
Number of suspects	1,279

Data source: Executive Office for U.S. Attorneys, central system data file, FY 1998

1998 U.S. attorneys declined to prosecute about 31% of those initially investigated for a firearm offense (figure 1).

Suspects whom the U.S. attorneys did not prosecute, however, may have been prosecuted by State authorities or on other charges. During 1998 approximately 30% of those declined for prosecution were referred to other authorities for prosecution, and 2% entered a pretrial diversion program (table 1). For an additional 35%, the U.S. attorneys determined that either no crime had been committed (18.1%) or the evidence was too weak to support a conviction (17.3%).

Table 2. Defendants charged in U.S. district courts with a firearm offense, by type of offense, 1992-99

	Total	Type of firearm offense			
		Possession	Transfer	Regulatory	Other ^a
1992	7,621	5,911	488	54	1,168
1993	7,086	5,093	639	83	1,271
1994	6,756	4,585	743	81	1,347
1995	7,044	5,157	746	82	1,059
1996	6,191	4,943	467	62	719
1997	5,993	4,872	475	67	579
1998	6,397	5,419	453	64	461
1999 ^b	6,728	5,626	461	51	590

Note: Statistics represent any offense charged. In other BJS reports, some of these defendants may have been categorized differently based on the most serious offense charged, as determined by potential sentence length.

^a“Other” violations are primarily State offenses prosecuted in U.S. district courts pursuant to the Assimilated Crimes Act (18 U.S.C. §13). Court records contain no information describing the nature of these offenses.

^bStatistics for 1999 are preliminary only. See *Methodology*.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal years 1992-99

Prosecutions by U.S. attorneys

Types of firearm offenses charged

Based on statutes (appendix table 3, page 13), Federal firearm offenses can be grouped into three broad categories:

- (1) unlawful possession,
- (2) receipt and transfer, and
- (3) regulatory offenses.

Between 1992 and 1999 approximately 77% of Federal firearm defendants were charged with unlawfully possessing a firearm; 8% were charged with unlawfully receiving or transferring a firearm; and 1% were charged with regulatory offenses associated with the distribution of firearms (table 2). In addition, 12% of defendants were charged with other firearms-related offenses — primarily State-level offenses adopted pursuant to the Assimilated Crimes Act (18 U.S.C. § 13) and prosecuted in Federal courts.

Unlawful possession of firearms

The Federal criminal code includes more than a dozen statutory provisions that regulate the lawful possession or use of firearms (appendix table 3). A person is prohibited from purchasing or possessing a firearm if the person —

- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than 1 year
- is a fugitive from justice

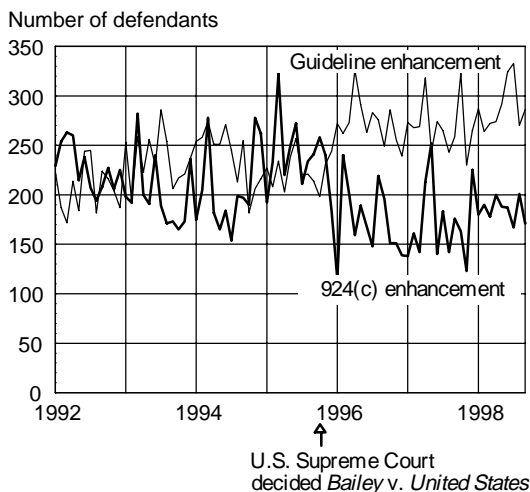
Bailey v. United States: Supreme Court standards for charging a firearm offense in relation to an underlying offense

The decrease in prosecutions for using a firearm in relation to a violent or drug trafficking offense (18 U.S.C. § 924(c)) primarily resulted from the Supreme Court’s decision in *Bailey v. United States* (516 U.S. 137, 116 S.Ct. 501). In December 1995 the Supreme Court ruled that to support a conviction, prosecutors must establish that the defendant actively used the firearm during the offense. The standard set forth required that the defendant have fired, attempted to fire, brandished, displayed, or otherwise used the firearm during the underlying offense. The court concluded that mere possession of a firearm during the commission of the offense was not sufficient for conviction.*

Because *Bailey* originated in the U.S. Court of Appeals for the District of Columbia, the case had little impact on charging practices in the other 11 judicial circuits until the Supreme Court issued its decision. Consequently, the effect of *Bailey* throughout the Federal system was immediate.

During January 1996, 50% fewer defendants were charged with a § 924(c) offense than during November 1995, the month preceding the decision (figure). The decreased use of § 924(c) continued at a generally lower level through the end of the study period (September

*Responding to *Bailey*, Congress in 1998 amended 18 U.S.C. § 924(c) to apply to defendants *possessing*, as well as actively using, a firearm in furtherance of a violent crime or a drug trafficking offense. See, P.L. 105-386, 112 Stat. 3469 (1998).



1998). Between 1995 and 1998 the number annually charged with a § 924(c) offense decreased from 2,958 to 2,385 (not shown in a table).

The *Bailey* decision came when U.S. attorneys were prosecuting more defendants in U.S. district court for violent and drug offenses than during previous years. Between 1995 and 1998 the number of defendants charged with a violent or drug offense in U.S. district courts increased 25% – from 23,979 to 30,081 (*Compendium of Federal Justice Statistics*, BJS report, annual, table 3.1). Without the limitations imposed by *Bailey*, the number of defendants charged with a § 924(c) offense should have increased rather than have decreased. Allowing for a 25% increase in the number of defendants charged with predicate offenses, an estimated 2,500 more defendants would have been charged with § 924(c) during the 33 months following the decision, had the Supreme Court ruled otherwise in *Bailey*. (For the source of the estimate, see page 11, *Methodology*.)

Federal sentencing guidelines provide for sentence enhancements when the defendant used *or* possessed a weapon during the commission of the offense. Application of the guideline enhancement is not dependent on charging decisions by the prosecutor and is not limited by the Supreme Court’s ruling in *Bailey*. The enhancement applies when a weapon is present unless it is clearly improbable that the weapon was connected to the offense (U.S.S.G. § 2D1.1, comment (n.3)). However, when a defendant is convicted of a § 924(c) offense, to avoid imposition of a double penalty, the guideline enhancement is not applied (U.S.S.G. § 2K2.4, comment (n.2)).

Following *Bailey*, the number of defendants receiving a guideline enhancement for weapon use or possession increased. During January 1996, 17% more defendants received a guideline enhancement for weapon use than during November 1995. Between 1995 and 1998 the number of defendants annually receiving a guideline enhancement for weapon use increased 31% – from 2,598 to 3,393 (table 8).

Because prosecutors often dismiss the § 924(c) charge in exchange for a guilty plea, the increased use of the sentencing guideline enhancement offsets the decreased use of § 924(c) (table 8). However, penalties applicable following a § 924(c) conviction differ substantially from those applicable under the sentencing guidelines. (See page 9.)

- is an unlawful user of, or is addicted to, any controlled substance
- has been adjudicated as a mental defective or has been committed to a mental institution
- is an illegal alien or has been admitted to the United States under a nonimmigrant visa
- has been discharged from the U.S. Armed Forces under dishonorable conditions
- has renounced U.S. citizenship
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child
- has been convicted in any court of a misdemeanor crime of domestic violence.

Additionally, juveniles – persons under age 18 – are prohibited from possessing handguns (18 U.S.C. § 922(x)). Federal firearm licensees are prohibited from transferring a handgun to a person younger than 21 or a long gun to a person younger than 18 (18 U.S.C. § 922(b)(1)).

A detailed description of disqualifying characteristics and of Federal and State procedures relating to firearm sales is provided in *Survey of State Procedures Related to Firearm Sales, Midyear 1999* (BJS report, NCJ 179022).

From the inception of the Brady Act on February 29, 1994, to December 31, 1999, more than 536,000 (2.4%) of the 22 million applications for firearm purchase or pawn transactions were rejected because the applicant was prohibited by Federal, State, or local law from possessing a firearm (*Background Checks for Firearm Transfers, 1999*, BJS Bulletin, NCJ 180882, June 2000). Nearly three-quarters of the rejections were due to the finding of a felony conviction or indictment.

Other statutory provisions prohibit the possession of certain types of firearms, stolen firearms, firearms with obliterated or altered serial numbers, and possession of firearms in certain places. In addition, 26 U.S.C. § 5861(d) prohibits the possession of certain firearms not registered on the *National Firearms Registration and Transfer Record*. Firearms required to be registered include machine guns, short-barreled shotguns and rifles, and silencers.

Trend in firearm prosecutions

In 1991 the Department of Justice initiated *Project Triggerlock*, a policy to use Federal firearm statutes to prosecute violent offenders in U.S. district courts. Between 1990 and 1992 the number of suspects investigated for a firearm offense increased 36% (figure 1).

After a period of increased firearm prosecutions, prosecutions generally

declined through 1997 before increasing again in 1998 and 1999. More than half the total decrease can be attributed to fewer prosecutions of State-level firearm offenses in Federal courts pursuant to the Assimilated Crimes Act (18 U.S.C. § 13). The number of defendants charged with a State-level offense fell from 1,168 to 590.

An additional 30% of the total decrease can be attributed to fewer prosecutions of Federal possession offenses. The number of defendants charged with a Federal firearm possession offense decreased from 5,911 (during 1992) to 5,626 (during 1999).

Between 1992 and 1998 the decrease in the prosecution of possession offenses primarily resulted from decreases in the charging of two offenses –

- using a firearm in relation to a violent or drug trafficking offense (18 U.S.C. § 924(c)), down 23%, from 2,884 to 2,222
- possession of an unregistered firearm (26 U.S.C. § 5861(d)), down 62%, from 714 to 271.

The number of defendants prosecuted for being a felon in possession a

firearm, 1992-99, increased 13% nationally, compared to a 12% decrease in all firearm offenses. In 35 judicial districts, U.S. attorneys prosecuted more defendants for a § 922(g) offense (prohibited person) during 1998 than 1992 (not shown in a table).

Almost half the defendants charged with a possession offense between 1992 and 1999 were charged with using a firearm during the commission of a violent or drug trafficking offense (18 U.S.C. § 924(c)). Of those charged with a possession offense between 1992 and 1999 –

- 44% were charged with unlawfully possessing a firearm based on their status as a *prohibited person* (18 U.S.C. § 922(g))
- 8%, receiving or possessing an unregistered firearm (26 U.S.C. § 5861(d))
- 3%, possessing firearms with altered or obliterated serial numbers (18 U.S.C. § 922(k) and 26 U.S.C. § 5861(h))
- 3%, possessing stolen firearms (18 U.S.C. § 922(j)) (appendix table 3).

Table 3. Defendants charged in U.S. district courts with a firearm possession offense, 1998

	Percent of defendants charged with a firearm possession offense	
	Possession offense only	Plus substantive offense
Firearm offense*		
Possession of a firearm by a prohibited person	71.4%	30.3%
Possession of stolen firearms	7.4	2.0
Transportation, shipment, or receipt of firearms with obliterated or altered serial numbers	4.0	1.9
Shipment, transportation, or receipt of a firearm by a person under indictment for a felony offense	8.3	3.2
Possession of a machine gun	4.3	1.6
Possession of a firearm in a school zone	2.7	0.7
Use or possession of a firearm during the commission of a violent or drug trafficking offense	4.2	69.5
Receipt or possession of an unregistered firearm	9.6	3.0
Substantive offense		
Drug trafficking	--	53.6%
Bank robbery	--	20.8
Racketeering	--	8.8
Other	--	16.8
Number of defendants	2,117	3,302

--Not applicable.

*Includes only the most frequently charged offenses. Because defendants may have been charged with more than one firearm offense, percentages add to more than 100%.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

Federal prosecutors often charge statutes pertaining to the lawful possession of firearms in conjunction with a substantive offense such as drug trafficking or bank robbery. During 1998, 61% of defendants charged with firearm possession offenses were also charged with another offense: 54% were charged with drug trafficking; 21%, bank robbery; and 25%, other offenses including racketeering (9%) (table 3).

For more than two-thirds of defendants charged with both a substantive offense and a firearm possession offense, the defendant was charged with 18 U.S.C. § 924(c) — use during a violent or drug trafficking offense. A third of those charged with both a firearm and substantive offense were charged as prohibited persons unlawfully possessing a firearm pursuant to 18 U.S.C. § 922(g) or (n).

For 39% of defendants charged with a Federal firearm offense, the firearm possession offense was the only offense charged. More than three-quarters of these defendants were

charged with unlawfully possessing a firearm based on their status as a prohibited person: 71% pursuant to 18 U.S.C. § 922(g) and 8% pursuant to 18 U.S.C. § 922(n). Other offenses for which these defendants were charged included receipt of an unregistered firearm (10%) pursuant to 26 U.S.C. § 5861(d), possession of stolen firearms (7%) pursuant to 18 U.S.C. § 922(j), and using a firearm in relation to a violent or drug trafficking offense (4%) pursuant to 18 U.S.C. § 924(c).

Unlawful receipt or transfer of firearms

During 1998, 341 defendants were convicted of a firearm receipt or transfer offense. Detailed information was collected on 85% (288) of those convicted. (See *Methodology*.) Of these 288 defendants, 47% were not permitted to lawfully possess or receive a firearm because of their status as a prohibited person; 19% were identified as straw purchasers; 28% involved other individuals unlawfully receiving or transferring firearms; and 6% involved retail dealers unlawfully transferring firearms (table 4).

A “straw purchase” occurs when the actual buyer uses another person to make the purchase from a licensed dealer. While buying a firearm for someone else is not itself illegal, Federal forms require that this information be disclosed at the time of the purchase. (See *ATF Form 4473*.) Knowingly making false or fictitious statements — including false statements relating to prior felony convictions — on the required application form is an offense prosecutable under 18 U.S.C. § 922(a)(6).

Other transfer violations include knowingly distributing or transferring firearms to prohibited persons, distributing firearms to persons not present in a business establishment, distributing handguns to persons under the age of 21 and long guns to persons under the age of 18, and unlawfully shipping firearms (appendix table 3).

Almost half of the transfer offenses involved nonretail sales — sales through private transactions. In about two-thirds of the cases, the firearm transferred was a handgun. About 30% of the cases involved shotguns or rifles, and 13% involved assault weapons. (Defendants may have purchased or attempted to purchase several types of firearms, so that percentages add to more than 100%.) On average, each transfer offense involved 24 firearms; however, half the cases involved 4 or fewer.

Prohibited persons

In 41% of the 135 cases in which the defendant was identified as a prohibited person, the defendant purchased or attempted to purchase a firearm from a licensed firearm dealer and in 36%, from sources other than dealers. In 24% of these cases the defendant participated in other unlawful activities.

While half of all transfer cases involving prohibited persons concerned 3 or fewer firearms, prohibited persons acquired, or attempted to acquire, an average of 18 firearms each. Sixty-two percent of these cases involved handguns; 44%, shotguns or rifles; and 10%, assault weapons.

Table 4. Defendants convicted in U.S. district court of firearm receipt and transfer offenses, 1998

Characteristic	Total	Type of defendant			Retail dealer ^a
		Prohibited person	Straw purchaser	Other	
Type of transaction					
Retail sale	114	55	40	7	12
Nonretail sale	127	48	15	61	3
Other transaction	47	32	1	10	1
Location of transaction					
Retail store	109	58	34	7	10
Pawnshop	22	11	8	0	3
Gun show	13	2	2	8	1
Private transaction	102	35	10	55	2
Other	2	0	1	1	0
Type of firearms involved^b					
Handgun	197	84	42	57	14
Shotgun/rifle	100	59	10	26	5
Assault weapon	38	13	6	18	1
Number of firearms involved					
Mean	24	18	34	28	23
Median	4	3	12	6	14
Number of defendants	288	135	56	81	16

^aRepresents Federally licensed individuals who operated retail stores, including pawnshops.

^bBecause multiple types of firearms may have been involved in the commission of the offense, categories add to more than the total number of defendants.

Data source: Special data collection from Federal presentence investigation reports of defendants convicted during fiscal year 1998. See *Methodology*.

For most (84%), the disqualifying characteristic that prevented lawful possession was a prior felony conviction (not shown in a table).

In addition —

- 10% purchased the firearm with the intent to commit a felony offense
- 9% had a history of drug abuse
- 4% were illegal aliens
- 3% were subject to a domestic restraining order. (Because a person may be disqualified for multiple reasons, percentages sum to more than 100%.)

Straw purchasers

In more than two-thirds of the 56 cases where the defendant was identified as a straw purchaser, the firearm was purchased from a licensed firearm dealer. In 62% of the cases, the firearm was purchased from a retail store; in 15% from a pawnshop; and in 4% from a gun show. An additional 18% of the cases involved private transactions.

While half of the straw purchasers purchased 12 or fewer firearms, this type of case involved an average of 34 firearms. (Available data do not indicate the time frame during which the purchases were made.) Seventy-two percent of the cases involved handguns; 18% involved shotguns or rifles; and 11% involved assault weapons.

Persons dealing without a license or transferring a firearm unlawfully

Two-thirds of the 81 receipt and transfer offenses involving individuals other than prohibited persons and straw purchasers were private sales of firearms. Of these 81 defendants, 49% were charged with dealing in firearms without the required Federal license (18 U.S.C. § 922(a)(1)(A)), and 19% were charged with unlawfully transferring a firearm (26 U.S.C. § 5861(e)) (not shown in a table). In 10% of cases, the transaction underlying the Federal offense occurred at a gun show.

On average, these cases involved 28 firearms; half involved 6 or fewer. While more than two-thirds of the cases concerned the transfer of handguns, these cases were more likely than those with prohibited persons or straw purchasers to involve shotguns or rifles (32%) and assault weapons (22%).

Regulatory offenses

Between 1992 and 1998 an average of 70 defendants were charged each year with a regulatory offense associated with the sale or distribution of firearms (table 2). Regulatory offenses include transportation by a common carrier; record keeping violations; and offenses relating to the licensing, taxation, and registration of firearms (appendix table 3).

Charge bargaining by U.S. attorneys

The *Principles of Federal Prosecution* state that Federal prosecutors “should charge . . . the most serious offense that is consistent with the nature of the defendant’s conduct that is likely to result in a sustainable conviction (U.S. Department of Justice, *U.S. Attorneys Manual*, Title 9, § 27.300(A)).” (See http://www.usdoj.gov/usao/eousa/foia_reading_room/usam) According to the *Principles*, prosecutors are not, absent mitigating circumstances, to bargain away or drop charges.

An October 1993 memorandum by Attorney General Janet Reno clarified

the *Principles*, seemingly to provide prosecutors with more flexibility to select charges or enter into plea agreements when the charges selected “fit the specific circumstances of the case, are consistent with the purposes of the Federal criminal code, and maximize the impact of Federal resources on crime . . . [and the] sentencing range (or potential mandatory minimum charge, if applicable) is proportional to the seriousness of the defendant’s conduct and whether the charge achieves [the purposes of sentencing set forth by 18 U.S.C. § 3553].” (See “Memorandum from Attorney General Janet Reno to United States Attorneys and Department of Justice Litigating Divisions,” October 12, 1993.)

Prior to the Attorney General’s memorandum, 76% of defendants who were originally charged with a § 924(c) offense and who were convicted pleaded guilty to one of the offenses charged (table 5). Following the Attorney General’s memorandum, U.S. attorneys appeared more likely to accept guilty pleas to substantive offenses such as drug trafficking and bank robbery in exchange for dismissing the § 924(c) counts. For example, during 1994-95, guilty pleas in cases where the defendant was charged with § 924(c) increased to 79% of convictions. The increase coincided with an increase in the percentage of cases in which U.S. attorneys dismissed the § 924(c) charge. During 1992-93 prosecutors dismissed the § 924(c) charge in less than a quarter of the

Table 5. Defendants in cases concluded in U.S. district courts who were charged with using a firearm in relation to a violent or drug trafficking offense (18 U.S.C. § 924(c)), 1992-98

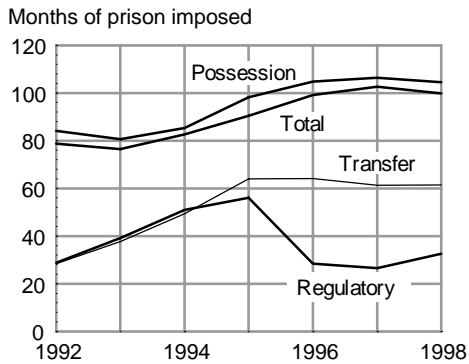
Year	Number charged ^a	Convicted ^b		Pleaded guilty	
		Number	Percent	Percent of convictions	Proportion with § 924(c) dismissed
1992	2,356	2,051	87.1%	74.4%	24.4%
1993	2,545	2,222	87.3	76.9	25.9
1994	2,409	2,162	89.7	77.6	37.5
1995	2,247	1,972	87.8	80.8	50.3
1996	2,558	2,336	91.3	82.1	65.7
1997	2,110	1,916	90.8	82.3	56.1
1998	2,132	1,926	90.3	83.1	54.3

^aStatistics identify whether the defendant was charged with a firearm offense regardless of whether it was the primary or a secondary offense.

^bConvicted of any offense.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

Average prison term imposed for Federal firearm offenses, 1992-98



Note: Includes only convictions in which the firearm offense was the most serious offense.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

Figure 2

cases in which the defendant pleaded guilty to a substantive charge. During 1994-95 dismissals rose to 37.5% and 50.3% of the cases.

While § 924(c) counts were dismissed at greater rates from 1996 through 1998, these increases were at least partially attributable to evidentiary factors resulting from the Supreme Court's *Bailey* decision. For instance, during 1996, the first year following *Bailey*, in nearly two-thirds of the cases involving guilty pleas, the § 924(c) count was dismissed.

Defendants convicted of Federal firearm offenses

During 1998, 91% of defendants convicted of a firearm offense were sentenced to prison. The average prison term imposed was 100 months. Half of those convicted received a prison term of 60 months or more. Defendants convicted of a possession offense were sentenced to prison at the highest rate (94%) and received the longest sentences (105 months), on average. By contrast, about 75% of defendants convicted of receipt or transfer and regulatory offenses were sentenced to prison; the average term imposed was 62 months.

Between 1992 and 1998 an increasing proportion of defendants convicted of a firearm offense was sentenced to prison. During 1992, 85% of those convicted were sentenced to prison compared to 91% during 1998 (not shown in a table). Prison sentences have also increased — increasing from 79 months, on average, during 1992 to 100 months during 1998 (figure 2).

The increase in prison sentences can be attributed to an increase in the proportion of defendants receiving sentences of 3 years or more. Between 1992 and 1998 the number of defendants sentenced to a prison term of 3 years or more increased from 51% to 71% of those sentenced to prison (not shown in a table). The proportion sentenced to 5 years or more increased from 41% to 53% of those sentenced to prison.

Sentences imposed for firearm transfer offenses more than doubled during this period from an average of 28.4 months to 61.5 months. Sentences for possession offenses increased from 84.2 months to 104.5 months.

Armed career offenders

The Firearms Owners' Protection Act of 1986 increased penalties for recidivist violent and drug offenders who unlawfully possess firearms (P.L. No. 99-308, 100 Stat. 449 (1986)).

Table 6. Sentence imposed on defendants convicted of a firearm offense in U.S. district courts, by type of firearm offense, 1998

Type of violation	Number convicted	Sentenced to prison	
		Percent	Average term of imprisonment*
Total	2,959	90.9%	99.9 mo
Possession	2,547	94.0	104.5
Transfer	233	74.7	61.5
Regulatory	42	61.9	32.5
Other	137	69.3	72.8

Note: Represents only those observations in which the firearm offense was the most serious offense.
*Does not include sentences of community confinement imposed in conjunction with a term of imprisonment; excludes sentences of life imprisonment.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

Table 7. Defendants sentenced as armed career offenders in U.S. district courts, 1992-98

Year sentenced	Number	Sentenced to prison	
		Percent	Average term of imprisonment*
Total	1,897	99.8%	216.4 mo
1992	229	100.0	217.7
1993	305	100.0	221.5
1995	329	99.7	213.9
1995	281	99.6	217.9
1996	289	99.7	218.4
1997	266	100.0	209.6
1998	198	100.0	214.6

*Does not include sentences of community confinement imposed in conjunction with a term of imprisonment.

Data source: U.S. Sentencing Commission, monitoring data file, fiscal year.

Pursuant to 18 U.S.C. § 924(e), a person convicted of unlawfully possessing a firearm based on his or her status as a prohibited person and who has three prior convictions for violent felonies or serious drug offenses is subject to a mandatory prison term of at least 15 years. Between 1992 and 1998, 1,897 defendants were sentenced in U.S. district courts as armed career offenders (table 7). Almost all these defendants were sentenced to a term of imprisonment; the average prison term imposed was 216 months.

Receipt and transfer offenses

During 1998, 75% of defendants convicted of a receipt or transfer offense were sentenced to a term of imprisonment. The average prison

Defendants charged with firearm offenses in U.S. district courts in the 20 most populous districts, 1997

District	Population	Defendants prosecuted in U.S. district courts		Part 1 violent crimes		Arrests reported by police	
		Total	Firearms	Reported	Per 1000 population	Part 1 violent crimes	Drug trafficking
National	270,273,805	76,746	5,849	1,508,203	5.6	649,668	367,337
20 most populous districts	132,759,357	33,496	2,393	880,534	6.6	357,296	244,325
California, Central	16,405,141	2,198	153	145,667	8.9	77,280	26,086
Illinois, Northern	8,589,431	764	69	65,029	7.6	12,712	61,654
Florida, Middle	8,172,381	1,844	161	75,008	9.2	**	**
New Jersey	8,115,011	1,306	60	39,676	4.9	19,132	17,369
New York, Eastern	7,347,407	1,646	123	63,514	8.6	32,414	30,188
California, Northern	7,141,154	910	78	48,072	6.7	29,135	14,263
Michigan, Eastern	6,598,853	949	168	45,683	6.9	17,183	12,962
Texas, Southern	6,575,965	4,047	90	46,264	7.0	10,779	1,159
California, Eastern	6,195,612	1,240	85	44,827	7.2	34,447	9,300
Massachusetts	6,147,132	610	67	38,908	6.3	18,565	7,715
Ohio, Northern	5,857,785	933	72	18,606	3.2	10,679	3,456
Texas, Northern	5,559,469	1,401	117	36,322	6.5	11,758	2,695
Ohio, Southern	5,351,708	778	26	16,668	3.1	12,847	3,020
Florida, Southern	5,270,309	2,234	204	25,220	4.8	**	**
Pennsylvania, Eastern	5,226,882	994	138	30,430	5.8	15,151	10,319
Maryland	5,134,808	728	146	43,106	8.4	13,381	12,657
Texas, Western	4,897,586	4,737	110	22,566	4.6	7,913	3,648
Virginia, Eastern	4,764,792	3,467	278	18,415	3.9	8,754	4,045
Minnesota	4,725,419	505	59	15,825	3.3	4,098	6,037
New York, Southern	4,682,512	2,205	189	40,728	8.7	21,068	17,752
All other districts	137,514,448	43,250	3,456	627,669	4.6	292,372	123,012

Note: Statistics represent actual counts reported to the FBI by State and local law enforcement agencies. Excluded from this analysis are the Federal judicial districts comprising the outlying U.S. Territories or Commonwealths of Guam, Northern Marianas Islands, Puerto Rico, and the Virgin Islands. These areas are not included in the FBI's Uniform Crime Reports Program.

**Arrest statistics were not reported to the FBI by law enforcement agencies within the judicial districts of the District of Columbia, Florida (Middle, Northern, and Southern), Indiana (Northern), Kansas, and Vermont.

Data sources: Administrative Office of the U.S. Courts, criminal master file, FBI Uniform Crime Reports, U.S. Census Bureau.

Firearms prosecutions in the 20 most populous districts

The number of defendants charged with Federal firearm offenses varies substantially across Federal judicial districts. Generally U.S. attorneys in the most populous districts prosecuted the greatest number of defendants in U.S. district courts. For example, during 1997 U.S. attorneys in the 20 most populous judicial districts prosecuted 44% of all defendants charged with a Federal offense (table above). Similarly, 41% of all defendants charged with a Federal firearm offense were prosecuted in these 20 districts.

Higher crimes rates in heavily populated districts

These larger judicial districts accounted for a disproportionate

amount of violent crime reported to local law enforcement during 1997. While these 20 districts account for about 49% of the U.S. population, approximately 58% of all violent crime, or 6.6 violent crimes for every 1,000 residents, occurred in these districts. By contrast, the violent crime rate in the other 70 judicial districts included in this analysis was approximately 30% lower — 4.6 violent crimes for every 1,000 residents.

Targeted prosecutions

Project Triggerlock and subsequent district-level initiatives such as *Operation Ceasefire* in the District of Massachusetts and *Project Exile* in the Eastern District of Virginia have targeted violent offenders for Federal prosecution. Consistent with the goals of those efforts, the number of defendants charged with a Federal firearm

offense correlated with arrests made by local law enforcement agencies for violent and drug offenses. In districts where local law enforcement agencies made more arrests for violent crime or drug trafficking, U.S. attorneys generally charged more defendants with a Federal firearm offense.

For example in the 20 most populous judicial districts, local law enforcement agencies reported making approximately 33,000 arrests on average for violent crimes and drug trafficking offenses during 1997. U.S. attorneys in these districts charged 119 defendants on average with a Federal firearm offense. By contrast, local agencies in the 70 other judicial districts reported making approximately 6,400 arrests on average. U.S. attorneys in these districts charged 49 defendants on average.

term imposed for these offenses was 62 months. Ninety percent of prohibited persons who unlawfully acquired or attempted to acquire a firearm were sentenced to prison; the average prison term imposed was 65 months (not shown in a table).

Almost three-quarters of straw purchasers and others unlawfully receiving or transferring firearms were sentenced to a term of imprisonment. For straw purchasers, the average prison term imposed was 26 months; for other individuals, the average prison term imposed was 35 months.

Sentence enhancements for using or possessing a firearm

Although the Supreme Court limited the applicability of 18 U.S.C. § 924(c) to offenders actively using a firearm during an offense, the Federal sentencing guidelines retained enhancements for simple possession or active use during certain crimes such as bank robbery and drug trafficking. Consequently, while prosecutors could no longer obtain sentence enhancements pursuant to § 924(c) for simple possession, enhancements could still be applied under the Federal sentencing guidelines.

Prior to *Bailey*, approximately 60% of defendants who received an enhanced sentence for using a weapon, received the enhancement provided for by the Federal sentencing guidelines; 40% received the enhancement provided for by 18 U.S.C. § 924(c) (table 8). Following *Bailey*, the proportion receiving the guideline enhancement increased to 70%.

The enhancements from the Federal sentencing guidelines are not equivalent to those through § 924(c). Pursuant to the sentencing guidelines, defendants may receive a 2-to-7 offense level enhancement – equivalent to a 25%-120% increase in the sentence imposed – for using or possessing a weapon. This estimation of the potential increase assumes a 12% increase in the imposed sentence

Table 8. Defendants receiving a sentence enhancement for possessing or using a firearm and additional prison term imposed, by type of enhancement, 1992-98

Year	Type of enhancement					
	Total number of defendants	Statutory ^a			Sentencing guideline	
		Number of defendants	Average enhancement (in months) ^b		Number of defendants	Average enhancement (in months) ^c
1992	4,316	1,323	82.5 mo	2,993	--	
1993	5,119	2,350	81.0	2,769	17.4 mo	
1994	4,932	1,985	86.8	2,947	16.9	
1995	4,311	1,685	89.5	2,626	17.5	
1996	4,560	1,392	101.9	3,168	16.0	
1997	4,425	1,231	94.2	3,194	18.1	
1998	4,730	1,337	109.7	3,393	12.7	

^aPursuant to 18 U.S.C. § 924(c).

^bRepresents the mandatory sentence to be imposed pursuant to 18 U.S.C. § 924(c); excludes sentences to life imprisonment.

^cEstimated, See *Methodology*.

Data source: U.S. Sentencing Commission, monitoring data file, fiscal year.

for each additional guideline offense level.

The actual amount of the increase varies according to other conduct relating to the underlying offense and how the defendant used the firearm. Greater enhancements are applicable under the guidelines if the defendant discharged the firearm than if he or she brandished or merely possessed it. (See, for example, U.S.S.G. §§ 2D1.1 and 2B3.1.)

For example, a defendant convicted of bank robbery receives a sentence of 41 to 51 months under the sentencing guidelines if no weapon was present; a sentence of 57 to 71 months if a weapon was brandished, displayed, or possessed; and a sentence of 87 to 108 months if he or she discharged a firearm. By contrast, a defendant convicted of using a firearm during a drug trafficking offense would receive the same 2-level enhancement for brandishing a firearm as for discharging it.

Between 1993 and 1998 the average guidelines enhancement for weapon use or possession was approximately 16 months (table 8). The average

sentence imposed for the underlying offense was 103 months (not shown in a table). The total prison term imposed on these defendants was 119 months, on average.

By contrast, 18 U.S.C. § 924(c) provides for a sentence of 5 years to be served consecutive to any sentence imposed for the underlying offense. Higher enhancements may be applicable if the defendant has previously been convicted of such an offense or if the defendant used an assault weapon, short-barreled shotgun, or a machine gun.*

Between 1993 and 1998 defendants convicted of a § 924(c) offense had their sentences enhanced by approximately 92 months, on average (table 8). The average prison sentence imposed for the underlying offense was 111 months (not shown in a table). (This average excludes sentences to life imprisonment and prison sentences in excess of 989 months.) The total prison term imposed on these defendants was 203 months, on average.

*P.L. 105-386, 112 Stat. 3469 (1998) amended § 924(c) to provide higher enhancements if the defendant brandished the firearm (7 years) or if the defendant discharged the firearm (10 years).

Firearm use reported by Federal prison inmates

During 1997, 14%, or 12,619, of the Federal prison population reported that they used, carried, or possessed a firearm while committing the offense for which they were imprisoned (not shown in a table). Most of these inmates (86%) reported using a handgun.

Of those who possessed a firearm during the offense, 52% reported that they did not actively use the firearm; 46% reported that they displayed or brandished the firearm to intimidate someone (29%), in self-defense (25%), or to "get away" (12%); and 13% reported that they discharged the firearm.

The majority of firearms used by Federal prison inmates were not purchased directly from Federal firearm licensees: 68% of inmates reported obtaining the firearm either from a source like a burglary, a drug dealer, a fence, or the black market (33%) or from a friend or family member (35%). About a quarter (23%) reported that they purchased or traded for the firearm directly from a retail store (15%), pawnshop (4%), flea market (2%), or gun show (2%). An additional 9% reported obtaining the firearm through all other means.

Available data suggest that the majority (83%) of Federal inmates who reported possessing a firearm may have been disqualified from lawfully possessing or purchasing a firearm for at least one statutory reason:

- About half indicated that they had a prior sentence to incarceration; a third were on probation or parole at the time of their current offense; about half indicated illicit drug use within a month of the current offense.
- Some inmates reported being treated overnight in a mental health facility (7%), being dishonorably discharged from the U.S. Armed Forces (1%), or being a noncitizen (7%).

Extent of firearm use by Federal prison inmates, 1997

Use of firearm during offense	Percent of Federal inmates using firearm	95%-confidence interval
Discharged	12.8%	+/- 3.8%
Killed victim	3.0	2.0
Injured victim	3.5	2.1
Other	7.7	3.1
Brandished/displayed	45.8%	+/- 5.7%
To scare someone	29.3	5.2
To defend self	24.8	5.0
To "get away"	11.6	3.7
To injure	0.9*	1.1
Other	2.1	1.6
Did not actively use	51.2%	+/- 5.7%

Number of prison inmates reporting firearm use 11,250

Source of firearms possessed by Federal prison inmates, 1997

Characteristic	Percent of Federal inmates who had possessed firearm	95%-confidence interval
Theft or burglary	9.1	+/- 3.3%
Drug dealer	15.0	4.5
Fence/black market	8.7	3.2
Purchased or traded –	22.5%	+/- 4.7%
Retail store	15.0	4.0
Pawnshop	4.2	2.3
Flea market	1.7*	1.5
Gun show	1.7*	1.5
Family or friend	35.4%	+/- 5.4%
Borrowed or given	3.4%	+/- 2.1%
Other	5.9%	+/- 2.7%

Number of prison inmates reporting firearm source 11,604

Selected characteristics of Federal inmates reporting firearm possession during current offense, 1997

Any potentially disqualifying characteristic	Percent of Federal inmates reporting firearm possession during current offense	95%-confidence interval
Any potentially disqualifying characteristic	82.8%	+/- 4.1%
Prior jail/prison sentence	55.4	5.4
On probation/parole	32.0	5.1
Fugitive/escapee	0.6*	0.8
Illicit drug use within 1 month before offense or at time of offense	55.6	5.4
Overnight treatment in mental health facility	6.8	2.7
Not a U.S. citizen	6.9	2.0
Dishonorably discharged from U.S. military	0.7*	0.9

Note: Inmates may have used the firearm for more than one purpose. No information is available on the legality of the transfers. An inmate may have reported more than one disqualifying characteristic.

*Based on 10 or fewer sample cases.

Data source: BJS, Survey of Inmates in Federal Correctional Facilities, 1997

Methodology

Data sources

The primary source of the data for tables in this report is the BJS Federal Justice Statistics Program (FJSP) database. The FJSP is presently constructed from source files provided by the Executive Office for United States Attorneys (EOUSA), the Administrative Office of the United States Courts (AOUSC), the United States Sentencing Commission (USSC), and the Federal Bureau of Prisons (BOP). The EOUSA provides data on suspects investigated by U.S. attorneys for violations of Federal law and the U.S. attorney's decision to prosecute; the AOUSC provides data on the statutory offenses charged by the U.S. attorney, the outcome of the criminal proceeding, and the sentence imposed; the USSC provides detailed data describing the sentence imposed on convicted defendants; and the BOP provides data on defendants under its jurisdiction. Data are reported for the Federal fiscal years beginning October 1.

Beginning in 1992 both the EOUSA and the AOUSC began collecting data on multiple offenses: the U.S. attorneys collect data on every statutory offense charged, while the courts collect data on up to five statutory offenses for which the defendant was charged and adjudicated. Consequently, because this report examines charging practices and is not limited to an analysis of the most serious offense charged, the data series begins with 1992.

Statistics describing defendants processed during 1999 reflect data obtained from the AOUSC during December 1999. (Other agencies providing data were unable to supply 1999 data at the time of report preparation.) BJS has observed that information for fewer than 1,000 defendants is not recorded in the AOUSC database during the fiscal year reporting period. BJS uses data describing subsequent reporting periods to augment and update the AOUSC fiscal year database. Because the 1999 statistics

contained in this report are subject to change, these statistics are identified as *preliminary*.

When multiple types of firearm offenses were charged, the offense reported was determined by rank ordering the various offenses charged. Possession offenses took precedence over transfer offenses and transfer offenses took precedence over regulatory offenses. In addition to data routinely compiled as part of the FJSP, data describing defendants convicted of firearm receipt and transfer violations were specially collected by BJS staff from presentence investigation reports archived by the USSC. Data elements collected include the following: (1) the number of firearms involved in the offense conduct, (2) the types of firearms, (3) the type of transaction, (4) the location of the transaction, (5) whether the purchaser was a “straw purchaser,” and (6) whether the defendant was a prohibited person and the basis for the disqualification.

Statistics describing the use and source of firearms used by Federal prison inmates were derived from BJS’s 1997 Survey of Inmates in Federal Correctional Facilities (ICPSR 2598). Inmates were interviewed about the current offense and sentence, criminal history, social background, weapon use, drug use and treatment, and other issues. Data were collected from a sample of 4,041 Federal inmates selected from 135 Federal prisons to be representative of the 89,072 sentenced inmates held in BOP owned and operated facilities on June 30, 1997.

The accuracy of estimates derived from the survey depends on sample and nonsampling error. While the extent of nonsampling error in any survey is unknown, estimates of the sampling error associated with the 1997 survey of inmates can be obtained by using the formula —

$$S_{x,p} = \sqrt{\frac{38,776}{x} p(100 - p)}$$

where: p is the percentage of inmates with a particular characteristic
 x is the estimated population corresponding to p

Appendix table 1. ARIMA parameter estimates: Defendants charged with 18 U.S.C. § 924(c), 1992-98

Parameter	$y_t = \mu + \omega_1 \text{Bailey}_t + \omega_2 \text{Violent}_t + \omega_3 \text{Drug}_t + (\phi_1(Y_t - Y_{t-1}))$		
	Estimate	Standard error	t-value
μ	0.314	2.68	0.12
$\omega_1 \text{Bailey}_t$	-73.771	31.43	-2.35*
$\omega_2 \text{Violent}_t$	0.120	0.09	1.30
$\omega_3 \text{Drug}_t$	0.104	0.02	5.75*
ϕ_1	-0.425	0.10	-4.08*

*Intervention significant at 0.05 or less.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

Statistics describing arrests made by local law enforcement agencies were obtained from the FBI’s Uniform Crime Reports data series for 1992 through 1997 (ICPSR 6316, 6545, 6669, 6850, 2389, 2764).

Defendants

A defendant, offender, or suspect is a person or organization against whom specific action has been taken by Federal law enforcement, U.S. attorneys, or the Federal judiciary. Defendants identified in multiple proceedings or cases are counted multiple times. A defendant charged with multiple firearm offenses was counted only once unless the defendant was charged in separate cases. For more information on general data analysis procedures, see *Reconciling Federal Criminal Case Processing Statistics*, BJS report, September 1999, NCJ 171680.

Offense selection

For Federal offenders, the firearm offense, unless otherwise indicated, was selected from all offenses investigated by U.S. attorneys, charged by U.S. attorneys in U.S. district courts, or for which the defendant was convicted. In other BJS reports describing Federal offenses and offenders, such as the *Compendium of Federal Justice Statistics*, the offense selected was the most serious offense. Seriousness is based on the applicable statutory penalties.

Time-series models

Estimates of the impact of *Bailey v. United States* on the number of defendants charged with 18 U.S.C. § 924(c)

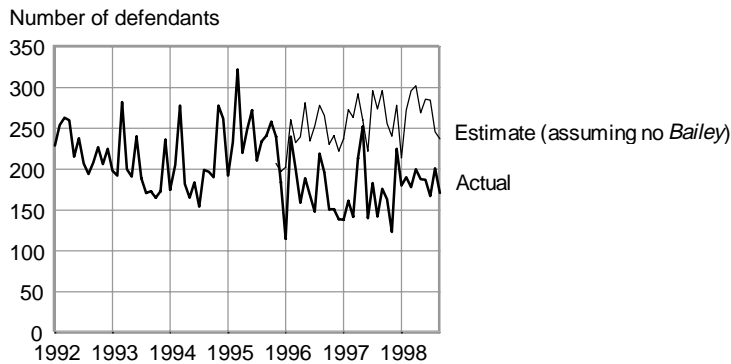
were derived using ARIMA models. ARIMA models are built empirically from available data and test for changes in the underlying process of a time series due to some intervention such a policy change, new legislation, or a court decision. (See Richard McCleary and Richard A. Hay, Jr., *Applied Time Series Analysis for the Social Sciences* (1980).) For other applications of ARIMA describing the impact of changes in Federal criminal justice policy on case processing events, see United States Sentencing Commission, *Federal Sentencing Guidelines: A Report on the Operation of the Guidelines System and Short-term Impacts on Disparity in Sentencing, use of Incarceration, and Prosecutorial Discretion and Plea Bargaining* (December 1991).

As part of the time series analysis, data describing the number of defendants charged with a § 924(c) offense are aggregated into monthly observations and plotted over time — both before and after the relevant policy change. In the context of ARIMA, the *Bailey* decision is an intervention, or “shock,” that causes a change in the number of defendants charged with a § 924(c) offense.

Other factors incorporated into the ARIMA model that could affect the number of defendants charged with a § 924(c) include the number of defendants charged with violent or drug trafficking offenses — offenses that predicate a § 924(c) charge.

After declining from a peak of 25,033 defendants charged during 1992 to 21,905 during 1994, the number of defendants charged with a drug

Impact of *Bailey v. United States* on the number of defendants charged with using a firearm during the commission of an offense, pursuant to 18 U.S.C. § 924(c), 1992-98



Note: Counts are monthly. The Supreme Court announced its decision in *Bailey v. United States* on December 5, 1995. The estimate reflects the number of defendants who would have been charged with § 924(c) absent the *Bailey* decision but other factors remaining the same.

Data source: Administrative Office of the U.S. Courts, criminal master file.

Appendix figure 1

offense increased from 22,929 to 29,472 between 1995 and 1998. The number charged with violent offenses, particularly robbery, while lower than the 1992 level, remained stable between 1994 and 1998 (Administrative Office of the U.S. Courts, *Judicial Business of the United States Courts*, annual.)

The ARIMA model derived suggests that the *Bailey* decision had a statistically significant impact on the number of defendants charged with a § 924(c) offense (appendix table 1). The number of defendants charged with a drug trafficking offense was also a statistically significant determinant.

The estimate of the number of defendants that ought to have been charged with a § 924(c) offense absent the *Bailey* decision was derived by applying the parameters estimated from the ARIMA model (appendix figure 1 and appendix table 1). The estimate was derived by excluding the $\omega_{01}Bailey_t$ parameter from the model. During the observation period, 16,028 defendants were actually charged with a § 924(c) offense. The total number of defendants that would have been charged with a § 924(c) offense during this period — absent *Bailey* — was estimated at 18,554, or 2,526 more than the actual number.

Estimating the impact of guideline sentence enhancements

The impact of guideline sentence enhancements for weapon use or possession (table 8) was estimated using the methodology originally developed for estimating the impact of amendments to the Federal sentencing guidelines on the Federal prison population. As part of the U.S. Sentencing Commission's prison impact

methodology, defendants are theoretically "re-sentenced," assuming changes in the application of relevant sections of the Federal sentencing guidelines. For instance, in this exercise actual sentences imposed were compared to sentences that would have been imposed had the defendant not received the guideline enhancement for weapons use. Twelve sections of the Federal sentencing guideline include enhancements for weapons use: U.S.S.G. §§ 2A2.2, 2A2.3, 2A2.4, 2B2.4, 2B2.3, 2B3.1, 2B3.2, 2B5.1, 2D1.1, 2D1.11, 2E2.1, 2L1.1. The weapons enhancement for § 2B5.1 became effective November 1, 1994; the weapons enhancement for § 2L1.1 became effective November 1, 1996.

Appendix table 2. Base populations for table and figures, 1998

Table or figure	Description of base	Number of suspects or defendants with firearm offense as —		
		Any offense	Most serious offense	
Highlights	Defendants charged with a firearm offense	Total	6,397	4,315
		Possession	5,419	3,758
		All other	978	555
Table 1	Defendants for whom U.S. attorneys declined to prosecute a firearm offense prior to charging the suspect in U.S. district court		1,319	1,279
Table 2	Defendants charged with a firearm offense		6,397	4,313
Table 3	Defendants charged with a firearm possession offense		5,419	3,758
Table 4	Defendants convicted of a receipt of transfer offense		341	262
Table 5	Defendants charged with an 18 U.S.C. § 924(c) offense		2,132	not applicable
Table 6	Defendants convicted of a firearm offense		4,180	2,959
Table 7	Defendants receiving a sentencing guideline enhancement pursuant to U.S.S.G. § 4B1.4 for being an "armed career offender"		198	not applicable
Table 8	Defendants receiving a sentence enhancement pursuant to 18 U.S.C. § 924(c) or the Federal sentencing guidelines for firearm use	924(c)	1,337	not applicable
Figure 1	Defendants investigated by U.S. attorneys for a firearm violation	Guideline	3,393	not applicable
		Investigated	7,721	4,742
Figure 2	Defendants sentenced to Federal prison for a firearm offense	Declined	1,319	1,279
			3,856	2,689
Bailey figure	Defendants charged with 18 U.S.C. § 924(c) or who received a sentence enhancement for firearm use pursuant to the Federal sentencing guidelines	924(c)	2,385	not applicable
		Guideline	3,393	not applicable
Appendix table 3	Defendants charged with a firearm offense		6,397	4,313

Note: The bold font indicates the base population for the table or figure in the report; the other counts are provided for informational purposes.

Once a guideline parameter has been adjusted, the defendant is generally re-sentenced in the new guideline range at the same relative position as the actual sentence in the actual guideline range. Exceptions exist when the defendant was sentenced outside of

the guideline range, when the defendant is moving in or out of a range that does not prescribe a sentence of imprisonment, or when the defendant is moving in or out of a range that includes or prescribes a sentence of life imprisonment. For example, in the

general re-sentencing model, if a defendant actually received a sentence at the midpoint of the guideline sentencing range, he would be re-sentenced to the midpoint of the new guideline range.

Appendix table 3. Charges of Federal firearm offenses against defendants, by type of violation, 1992-99

Statutory provision	Type of violation	Number of defendants charged with a firearm offense in the year the offense was charged (multiple counts against a defendant for a single statute counting as a single charge)							
		1992	1993	1994	1995	1996	1997	1998	Preliminary 1999
Total of defendants charged with a firearm offense (Defendants receiving multiple charges for different, specific statutory offenses are counted once in the total but are represented multiple times in the detail.)		7,621	7,086	6,756	7,044	6,191	5,993	6,397	6,728
18 U.S.C. § 922									
(a), Unlawful importation, manufacture, distribution, shipment, or receipt of firearms, including making false statement to obtain firearms	Transfer	604	633	580	545	314	279	300	391
(b), Distribution of firearms to underage persons, nonresidents, or in violation of State law	Transfer	88	157	175	229	86	54	54	56
(c), Distribution of firearms to a person not present in business establishment	Transfer	12	18	19	15	60	101	73	61
(d), Distribution of firearms to prohibited persons	Transfer	91	122	190	164	100	89	103	97
(e), Unlawful shipment of firearms	Transfer	24	29	22	24	42	31	33	27
(f), Unlawful transportation by common carrier	Regulatory	7	8	11	8	3	1	5	4
(g), Possession of a firearm by a prohibited person	Possession	2,603	2,211	1,880	2,018	2,068	2,208	2,513	2,950
(h), Receipt of firearms by a person employed by a prohibited person	Possession	7	5	5	8	9	10	1	1
(i), Shipment of stolen firearms	Possession	36	14	10	30	54	57	31	40
(j), Possession of stolen firearms	Possession	121	122	112	126	241	233	222	219
(k), Transportation, shipment, or receipt of firearms with obliterated or altered serial numbers	Possession	165	193	164	160	158	157	148	127
(l), Unlawful importation of firearms	Regulatory	5	10	2	1	16	7	6	8
(m), Record keeping violation	Regulatory	41	49	49	26	26	21	27	23
(n), Shipment, transportation, or receipt of firearms by a person under indictment for a felony offense	Possession	47	54	89	73	161	169	280	276
(o), Possession of a machine gun	Possession	70	66	70	135	145	146	144	138
(p) Manufacture, transfer, possess any firearm not detectable by walk-through metal detectors or x-ray machines	Possession	0	0	0	0	0	0	0	0
(q), Possession of a firearm in a school zone	Possession	55	28	4	9	59	64	80	105
(r), Assembly of a firearm identical to a banned firearm	Possession	0	0	0	0	0	0	0	0
(s), Distribution of firearms by retailer in violation of 5-day waiting period	Regulatory	0	0	0	0	0	0	0	0
(t), Failure to comply with Brady Handgun Prevention Act	Regulatory	Effective following the implementation of the National Instant Check System on November 30, 1998							
(u), Theft of firearm from retailer	Possession	0	0	0	0	0	0	0	7
(v), Unlawful manufacture, transfer, or possession of a semi-automatic weapon	Possession	0	0	0	0	0	0	0	0
(w), Unlawful transfer or possession of a large capacity feeding device	Possession	0	0	0	0	0	0	0	0
(x), Unlawful transfer to, or possession of a handgun by a juvenile	Transfer	0	0	0	0	0	0	3	9
18 U.S.C. § 923, Licensing for firearm sales	Regulatory	1	0	1	10	3	3	2	0
18 U.S.C. § 924									
(a), False statements relating to the importation, manufacture, distribution, shipment or receipt of firearms	Penalty provision only								
(b), Shipment, transportation, or receipt of a firearm with the intent to commit a felony or with reasonable knowledge that a felony will be committed	Transfer	74	74	98	70	105	104	97	90
(c), Use or possession of a firearm during the commission of a violent or drug trafficking offense	Possession	2,884	2,541	2,450	2,958	2,313	2,136	2,385	2,222

Continued on page 14

Appendix table 3. Continued

Statutory provision	Type of violation	Number of defendants charged with a firearm offense in the year the offense was charged (multiple counts against a defendant for a single statute counting as a single charge)							Preliminary 1999
		1992	1993	1994	1995	1996	1997	1998	
18 U.S.C. § 924 continued									
(d), Seizure and forfeiture of firearms involved or used in knowing firearm violations	Not applicable								
(e), Possession of a firearm by a person with three prior convictions for a violent felony or serious drug trafficking offense	Penalty provision only, substantive offense 18 U.S.C. § 922(g)								
(f), Possession of a gun not detectable by walk-through metal detectors or airport x-ray machines	Possession	0	0	1	26	60	34	22	39
(g), Interstate or foreign acquisition of a firearm by a prohibited person	Possession	5	2	1	24	39	17	13	21
(h), Transfer of a firearm with reasonable knowledge that the firearm will be used to commit a crime of violence or drug trafficking offense	Transfer	0	0	0	25	54	71	60	34
(i), Use of a firearm during the commission of a felony offense resulting in death	Penalty provision only, substantive offense 18 U.S.C. §§ 922(u) and 924(c)								
(j), Smuggling firearms with the intent to commit a violent crime or a controlled substance offense	Possession	0	0	0	0	0	0	0	5
(k), Theft of a firearm moved in interstate or foreign commerce	Possession	0	0	0	0	0	0	0	0
(l), Theft of a firearm from a licensed importer, manufacturer, dealer, or collector	Possession	0	0	0	0	0	0	0	0
(m), Interstate or foreign travel to obtain firearms	Possession	0	0	0	0	0	0	0	0
(n), Conspiracy to commit 18 U.S.C. § 924(c)	Possession	0	0	0	0	0	0	0	0
18 U.S.C. § 929 , Use of restricted ammunition during the commission of a violent or drug trafficking offense	Possession	2	2	1	7	1	0	0	0
18 U.S.C. § 930 , Possession of a firearm or dangerous weapons in Federal facilities	Possession	82	51	34	17	24	22	31	34
26 U.S.C. § 5812 , Transfer of firearms (registration and taxation)	Regulatory	12	28	24	14	3	5	8	3
26 U.S.C. § 5822 , Manufacture of firearms (registration and taxation)	Regulatory	13	10	13	13	44	17	15	9
26 U.S.C. § 5841 , Registration of Firearms	Regulatory	46	75	70	91	79	83	72	62
26 U.S.C. § 5842 , Identification of Firearms	Regulatory	6	13	8	7	7	8	7	4
26 U.S.C. § 5861 ,									
(a), Engage in a firearm business without registering or paying occupancy tax	Regulatory	13	11	6	24	10	13	4	6
(b), Receive or possess a firearm unlawfully transferred	Possession	14	21	18	1	0	2	0	0
(c), Receipt or possession of an unlawfully manufactured firearm	Possession	28	30	19	20	40	40	25	25
(d), Receipt or possession of certain firearms for which registration is required	Possession	714	501	377	402	378	330	302	271
(e), Unlawful transfer	Transfer	71	60	61	56	40	20	19	20
(f), Making firearms	Possession	56	40	36	35	48	21	25	33
(g), Obliterating, removing, or changing the serial number on a firearm	Possession	0	2	1	2	0	5	0	0
(h), Receiving or possessing a firearm with an obliterated serial number	Possession	27	13	11	9	18	15	10	11
(i), Receiving or possessing a firearm without a serial number	Possession	79	37	39	29	41	30	19	14
(j), Delivering or receiving an unregistered firearm	Transfer	8	4	0	12	11	16	2	2
(k), Receiving or possessing a firearm unlawfully imported into the U.S.	Possession	12	8	22	16	4	3	2	2
(l), Making a false entry on any required application	Regulatory	0	0	1	1	1	0	1	0

Note: The type of violation category is for statistical reporting purposes and implies no legal basis. The available data preclude the reporting of statistics below the first major subsection level. Data for 1999 are preliminary. See *Methodology*, page 10.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is director.

BJS Special Reports address a specific topic in depth from one or more data sets that cover many topics.

John Scalia, BJS Statistician, wrote the report. Urban Institute staff, under the supervision of William J. Sabol, and Greg Steadman of BJS provided a statistical review. David Rauma of the Federal Judicial Center provided methodological guidance. Caroline Wolf Harlow, BJS, provided tables describing data from the Survey of Federal Inmates. Dr. Harlow, David Levin of BJS, and Pierre St. Hilaire, DOJ Criminal Division, assisted in the collection of data from presentence reports. The staff of the Administrative Office of the U.S. Courts, under the supervision of Steven Schlesinger, Ph.D., provided a substantive review, as did Steve Shandy of the DOJ Criminal Division. U.S. Sentencing Commission staff, under the supervision of Louis Reedt, selected presentence investigation reports for review by BJS and provided substantive comments. Tom Hester produced and edited the report. Jayne Robinson prepared the report for final publication.

June 2000, NCJ 180795

Data from the Federal Justice Statistics Program are compiled by the Bureau of Justice Statistics from the source files of several Federal agencies. Data can be obtained on CD-ROM from the Bureau of Justice Statistics Clearinghouse, 1-800-732-3277, or from the Federal Justice Statistics Resource Center located on the Internet:

<http://fjsrc.urban.org>

The resource center, as well as the report and supporting documentation, are also accessible through the BJS website:

<http://www.ojp.usdoj.gov/bjs/>

Data from the FBI's Uniform Crime Report program can be obtained from the National Archive of Criminal Justice Data at the University of Michigan. The National Archive is accessible through the BJS web site. Recent editions of the FBI's annual report *Crime in the United States* are accessible through the FBI's website:

<http://www.fbi.gov/ucr.htm>



In this report, released on June 4, 2000, BJS published preliminary statistics describing the number of defendants charged with a firearm offense during fiscal year 1999. Most of the analyses dealt with data from 1992 through 1998. Before the report was sent to final print, this addendum was added to update the preliminary statistics with the final statistics for 1999.

During 1999, 7,146 defendants were charged with a firearm offense in U.S. district courts (table 2). Of these, 84% were charged with a possession offense, 7% with a receipt or transfer offense, 1% with a regulatory offense, and 8% with other firearms-related offenses.

Although the number of defendants charged with a Federal firearm offense has not returned to the 1992 level, the number of prosecutions during 1999 was greater than the number charged during each of the years 1993-98. Despite the 6% overall decrease between 1992 and 1999, the number of defendants charged during 1999 represents a 20% increase over the low attained during 1997.

The increase between 1997 and 1999 is primarily attributable to increases in the number of defendants charged with possession of a firearm by a prohibited person (18 U.S.C. § 922(g)) and use of a firearm during a violent or drug

trafficking offense (18 U.S.C. § 924(c)) (appendix table 3). After 1997 the number of defendants charged with 922(g) increased 41% from 2,208 to 3,114. The number charged with § 924(c) increased 10% from 2,136 to 2,347.

While the number of defendants charged with § 924(c) generally increased between 1997 and 1999, on a monthly basis, the number of defendants charged during 1999 remained below the pre-Bailey level (figure). The number of defendants receiving a guideline enhancement for weapon use remained at the higher level attained following Bailey.

Table 2. Defendants charged in U.S. district courts with a firearm offense, by type of offense, 1992-99

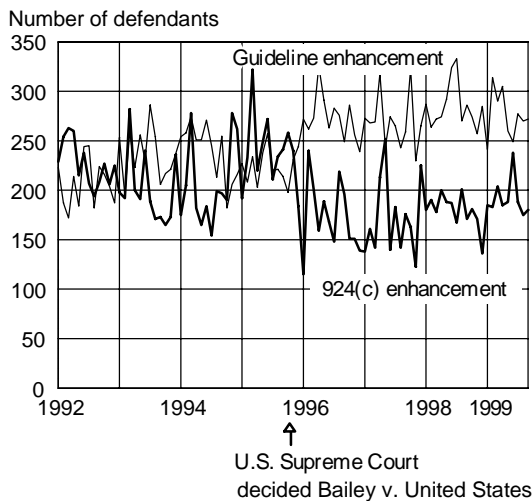
	Total	Type of firearm offense			
		Possession	Transfer	Regulatory	Other ^a
1992	7,621	5,911	488	54	1,168
1993	7,086	5,093	639	83	1,271
1994	6,756	4,585	743	81	1,347
1995	7,044	5,157	746	82	1,059
1996	6,191	4,943	467	62	719
1997	5,993	4,872	475	67	579
1998	6,397	5,419	453	64	461
1999 ^b	7,146	6,019	476	53	598

Note: Statistics represent any offense charged. In other BJS reports, some of these defendants may have been categorized differently based on the most serious offense charged, as determined by potential sentence length.

^a"Other" violations are primarily State offenses prosecuted in U.S. district courts pursuant to the Assimilated Crimes Act (18 U.S.C. § 13). Court records contain no information describing the nature of these offenses.

^bStatistics for 1999 are final, made available after the release of the report.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal years 1992-99.



Appendix table 3. Charges of Federal firearm offenses against defendants, by type of violation, 1992-99

Statutory provision	Type of violation	Number of defendants charged with a firearm offense in the year the offense was charged (multiple counts against a defendant for a single statute counting as a single charge)							
		1992	1993	1994	1995	1996	1997	1998	1999
Total of defendants charged with a firearm offense (Defendants receiving multiple charges for different, specific statutory offenses are counted once in the total but are represented multiple times in the detail.)		7,621	7,086	6,756	7,044	6,191	5,993	6,397	7,146
18 U.S.C. § 922									
(a), Unlawful importation, manufacture, distribution, shipment, or receipt of firearms, including making false statement to obtain firearms	Transfer	604	633	580	545	314	279	300	405
(b), Distribution of firearms to underage persons, nonresidents, or in violation of State law	Transfer	88	157	175	229	86	54	54	57
(c), Distribution of firearms to a person not present in business establishment	Transfer	12	18	19	15	60	101	73	62
(d), Distribution of firearms to prohibited persons	Transfer	91	122	190	164	100	89	103	102
(e), Unlawful shipment of firearms	Transfer	24	29	22	24	42	31	33	27
(f), Unlawful transportation by common carrier	Regulatory	7	8	11	8	3	1	5	4
(g), Possession of a firearm by a prohibited person	Possession	2,603	2,211	1,880	2,018	2,068	2,208	2,513	3,114
(h), Receipt of firearms by a person employed by a prohibited person	Possession	7	5	5	8	9	10	1	2
(i), Shipment of stolen firearms	Possession	36	14	10	30	54	57	31	42
(j), Possession of stolen firearms	Possession	121	122	112	126	241	233	222	252
(k), Transportation, shipment, or receipt of firearms with obliterated or altered serial numbers	Possession	165	193	164	160	158	157	148	130
(l), Unlawful importation of firearms	Regulatory	5	10	2	1	16	7	6	9
(m), Record keeping violation	Regulatory	41	49	49	26	26	21	27	24
(n), Shipment, transportation, or receipt of firearms by a person under indictment for a felony offense	Possession	47	54	89	73	161	169	280	288
(o), Possession of a machine gun	Possession	70	66	70	135	145	146	144	145
(p) Manufacture, transfer, possess any firearm not detectable by walk-through metal detectors or x-ray machines	Possession	0	0	0	0	0	0	0	0
(q), Possession of a firearm in a school zone	Possession	55	28	4	9	59	64	80	108
(r), Assembly of a firearm identical to a banned firearm	Possession	0	0	0	0	0	0	0	0
(s), Distribution of firearms by retailer in violation of 5-day waiting period	Regulatory	0	0	0	0	0	0	0	0
(t), Failure to comply with Brady Handgun Prevention Act	Regulatory	Effective following the implementation of the National Instant Check System on November 30, 1998							
(u), Theft of firearm from retailer	Possession	0	0	0	0	0	0	0	7
(v), Unlawful manufacture, transfer, or possession of a semi-automatic weapon	Possession	0	0	0	0	0	0	0	0
(w), Unlawful transfer or possession of a large capacity feeding device	Possession	0	0	0	0	0	0	0	0
(x), Unlawful transfer to, or possession of a handgun by a juvenile	Transfer	0	0	0	0	0	0	3	9
18 U.S.C. § 923, Licensing for firearm sales	Regulatory	1	0	1	10	3	3	2	0
18 U.S.C. § 924									
(a), False statements relating to the importation, manufacture, distribution, shipment or receipt of firearms	Penalty provision only								
(b), Shipment, transportation, or receipt of a firearm with the intent to commit a felony or with reasonable knowledge that a felony will be committed	Transfer	74	74	98	70	105	104	97	90
(c), Use or possession of a firearm during the commission of a violent or drug trafficking offense	Possession	2,884	2,541	2,450	2,958	2,313	2,136	2,385	2,347

Continued on page 19

Appendix table 3. Continued

Statutory provision	Type of violation	Number of defendants charged with a firearm offense in the year the offense was charged (multiple counts against a defendant for a single statute counting as a single charge)							
		1992	1993	1994	1995	1996	1997	1998	1999
18 U.S.C. § 924 continued									
(d), Seizure and forfeiture of firearms involved or used in knowing firearm violations	Not applicable								
(e), Possession of a firearm by a person with three prior convictions for a violent felony or serious drug trafficking offense	Penalty provision only, substantive offense 18 U.S.C. § 922(g)								
(f), Possession of a gun not detectable by walk-through metal detectors or airport x-ray machines	Possession	0	0	1	26	60	34	22	39
(g), Interstate or foreign acquisition of a firearm by a prohibited person	Possession	5	2	1	24	39	17	13	23
(h), Transfer of a firearm with reasonable knowledge that the firearm will be used to commit a crime of violence or drug trafficking offense	Transfer	0	0	0	25	54	71	60	40
(i), Use of a firearm during the commission of a felony offense resulting in death	Penalty provision only, substantive offense 18 U.S.C. §§ 922(u) and 924(c)								
(j), Smuggling firearms with the intent to commit a violent crime or a controlled substance offense	Possession	0	0	0	0	0	0	0	6
(k), Theft of a firearm moved in interstate or foreign commerce	Possession	0	0	0	0	0	0	0	0
(l), Theft of a firearm from a licensed importer, manufacturer, dealer, or collector	Possession	0	0	0	0	0	0	0	0
(m), Interstate or foreign travel to obtain firearms	Possession	0	0	0	0	0	0	0	0
(n), Conspiracy to commit 18 U.S.C. § 924(c)	Possession	0	0	0	0	0	0	0	0
18 U.S.C. § 929 , Use of restricted ammunition during the commission of a violent or drug trafficking offense	Possession	2	2	1	7	1	0	0	0
18 U.S.C. § 930 , Possession of a firearm or dangerous weapons in Federal facilities	Possession	82	51	34	17	24	22	31	45
26 U.S.C. § 5812 , Transfer of firearms (registration and taxation)	Regulatory	12	28	24	14	3	5	8	3
26 U.S.C. § 5822 , Manufacture of firearms (registration and taxation)	Regulatory	13	10	13	13	44	17	15	9
26 U.S.C. § 5841 , Registration of Firearms	Regulatory	46	75	70	91	79	83	72	64
26 U.S.C. § 5842 , Identification of Firearms	Regulatory	6	13	8	7	7	8	7	4
26 U.S.C. § 5861,									
(a), Engage in a firearm business without registering or paying occupancy tax	Regulatory	13	11	6	24	10	13	4	6
(b), Receive or possess a firearm unlawfully transferred	Possession	14	21	18	1	0	2	0	0
(c), Receipt or possession of an unlawfully manufactured firearm	Possession	28	30	19	20	40	40	25	28
(d), Receipt or possession of certain firearms for which registration is required	Possession	714	501	377	402	378	330	302	281
(e), Unlawful transfer	Transfer	71	60	61	56	40	20	19	21
(f), Making firearms	Possession	56	40	36	35	48	21	25	33
(g), Obliterating, removing, or changing the serial number on a firearm	Possession	0	2	1	2	0	5	0	1
(h), Receiving or possessing a firearm with an obliterated serial number	Possession	27	13	11	9	18	15	10	11
(i), Receiving or possessing a firearm without a serial number	Possession	79	37	39	29	41	30	19	15
(j), Delivering or receiving an unregistered firearm	Transfer	8	4	0	12	11	16	2	2
(k), Receiving or possessing a firearm unlawfully imported into the U.S.	Possession	12	8	22	16	4	3	2	2
(l), Making a false entry on any required application	Regulatory	0	0	1	1	1	0	1	0

Note: The type of violation category is for statistical reporting purposes and implies no legal basis. The available data preclude the reporting of statistics below the first major subsection level. Data for 1999 are final, made available after the release of the report.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.