Retroactivity & Recidivism:
The Drugs Minus Two Amendment

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TABLE OF CONTENTS

INTRODUCTION

On April 10, 2014, the United States Sentencing Commission voted unanimously to reduce the applicable sentencing guideline range for most federal drug trafficking offenses.[1] The amendment, often referred to as the "Drugs Minus Two Amendment,"[2] reduced by two levels the base offense levels assigned by the Drug Quantity Table for each drug quantity, across all drug types.[3] The amendment became effective November 1, 2014.

Separately, on July 18, 2014, the Commission unanimously voted to give retroactive effect to the Drugs Minus Two Amendment,[4] thereby allowing eligible offenders serving a previously imposed term of imprisonment to file a motion under 18 U.S.C. § 3582(c)(2) for a sentence reduction.[5] The Commission's action allowed courts to begin considering such motions on November 1, 2014, but delayed the effective date of any sentence reduction orders until a year later, November 1, 2015.[6] Since then, courts have granted 30,852 retroactivity motions, resulting in an estimated average sentence reduction of 17.2 percent, from 146 to 121 months.[7]

The Drugs Minus Two Amendment was the third significant reduction in drug penalties made by the Commission in seven years. The previous two pertained solely to crack cocaine offenses. First, in 2007, the Commission reduced by two levels the base offense levels assigned by the Drug Quantity Table for each quantity of crack cocaine (the "Crack Minus Two Amendment"). Then, in 2010, the Commission incorporated the statutory penalty reductions provided by the Fair Sentencing Act of 2010 (the "FSA") into the Drug Quantity Table (the "FSA Guideline Amendment"). The Commission voted to give retroactive effect to the guideline amendment in both instances and followed each with a study on the effect of retroactivity on recidivism. Both times the Commission found no statistically significant difference between the recidivism rates for offenders who received a sentence reduction and offenders who had served their full sentences before the guideline reductions took effect.

Consistent with its recent past practice, the Commission has performed an analysis of the impact that the retroactive application of the Drugs Minus Two Amendment had on recidivism. Specifically, this publication compares the recidivism rate of offenders released pursuant to the retroactive application of the Drugs Minus Two Amendment with the recidivism rate of similar offenders who completed their full sentences and were released prior to the effective date of the Drugs Minus Two Amendment.

FINDING:

There was no statistically significant difference in the recidivism rates of offenders released early pursuant to retroactive application of the Drugs Minus Two Amendment and a comparable group of offenders who served their full sentences. This outcome may be attributed, at least in part, to the eligibility criteria required by the Commission, and the careful consideration of those criteria by judges – particularly public safety considerations – in exercising their discretion to grant or deny retroactivity motions.

THE DRUGS MINUS TWO AMENDMENT

Guideline Changes Made by the Drugs Minus Two Amendment

On November 1, 2014, the Drugs Minus Two Amendment took effect and reduced the guidelines applicable to most drug trafficking offenses by lowering the base offense levels assigned by the Drug Quantity Table in §2D1.1(c).[8] For the great majority of drug trafficking offenders sentenced under §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), the quantity of drugs for which the defendant is held responsible is the most important factor in determining an offender's sentencing guideline range.[9] Based on an analysis of the 24,968 offenders sentenced under the drug trafficking guideline in fiscal year 2012, the Commission estimated that going forward the amendment would affect the sentences of 69.9 percent of drug trafficking offenders, and their average sentence would be reduced by 11 months—or 17.7 percent—from 62 months to 51 months.

Specifically, the Drugs Minus Two Amendment changed how the Drug Quantity Table incorporates the statutory mandatory minimum penalties for drug trafficking offenses. Prior to the amendment, the Drug Quantity Table provided base offense levels corresponding to guideline ranges that were slightly *above* the statutory mandatory minimum penalties "to permit some downward adjustment for defendants who plead guilty or otherwise cooperate with authorities."[10] Accordingly, offenses involving drug quantities that triggered a five-year (60 month) statutory mandatory minimum were assigned a base offense level of 26, which corresponds to a guideline range of 63 to 78 months for a defendant in Criminal History Category I.[11] Similarly, offenses that trigger a ten-year (120 month) statutory mandatory minimum were assigned a base offense level of 32, which corresponds to a guideline range of 121 to 151 months for a defendant in Criminal History Category I.[12] The base offense levels for drug quantities above and below the mandatory minimum threshold quantities were extrapolated upward and downward, respectively, to set guideline ranges for all drug quantities,[13] with a minimum base offense level of six and a maximum base offense level of 38 for most drug types.[14]

The Drugs Minus Two Amendment reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties, resulting in corresponding guideline ranges that *include* the mandatory minimum penalties. Accordingly, offenses involving drug quantities that trigger a five-year (60 month) statutory mandatory minimum

were assigned a base offense level of 24, which corresponds to a guideline range of 51 to 63 months for a defendant in Criminal History Category I, and offenses involving drug quantities that trigger a ten-year (120 month) statutory mandatory minimum were assigned a base offense level of 30, which corresponds to a guideline range of 97 to 121 months for a defendant in Criminal History Category I. The base offense levels for drug quantities above and below the mandatory minimum threshold quantities were again extrapolated upward and downward, respectively, to set guideline ranges for all drug quantities.[15]

The Commission's decision was informed in significant part by its experience with the Crack Minus Two Amendment, which was similar in nature to the Drugs Minus Two Amendment. First, recent experience with the Crack Minus Two Amendment persuaded the Commission that it was no longer necessary to set the base offense levels above the mandatory minimum penalties to provide adequate incentives to plead guilty or otherwise cooperate with authorities. The Commission cited the stable rates at which crack cocaine defendants pled guilty or provided substantial assistance to the government after the Crack Minus Two Amendment took effect in support of this conclusion.[16]

Second, the Commission relied on its recidivism study of the Crack Minus Two Amendment to predict that modest reductions in drug trafficking penalties such as those provided by the Drugs Minus Two Amendment would not increase recidivism and jeopardize public safety.[17] The Commission noted that it had compared the recidivism rates of offenders who were released early as a result of retroactive application of the Crack Minus Two Amendment with a control group of offenders who had served their full terms of imprisonment and detected no statistically significant difference in the rates of recidivism for the two groups after two years, and again after five years.[18]

Retroactive Application of the Drugs Minus Two Amendment

The Commission was statutorily required to consider whether, and to what extent, to give retroactive effect to the Drugs Minus Two Amendment. Whenever the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense, the Commission is directed in 28 U.S.C. § 994(u) to determine in what circumstances, and by what amount, the sentences of offenders serving terms of imprisonment may

be reduced.[19] Furthermore, courts are statutorily bound by the Commission's decision regarding retroactivity.[20] Under 18 U.S.C. § 3582(c)(2), courts may not apply a guideline amendment retroactively unless the Commission has designated that amendment for retroactive application, and any such reduction must be "consistent with applicable policy statements issued by the Sentencing Commission."[21]

The applicable policy statement governing retroactivity is found in the *Guidelines Manual* at USSG §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)).[22] Section 1B1.10 lists the amendments that courts may apply retroactively, places certain prohibitions and limitations on the extent of any reduction granted, and sets forth factors courts must consider in determining whether, and to what extent, a reduction in sentence is warranted. One notable limitation on eligibility found in §1B1.10 is the requirement that the retroactive amendment must have had the effect of lowering the defendant's applicable guideline range.[23] This limitation effectively excluded career offenders,[24] among others,[25] from retroactive application of the Drugs Minus Two Amendment. As reflected in other Commission studies, career offenders tend to recidivate at higher rates than non-career offenders.[26]

Another requirement in §1B1.10 particularly relevant to the study of recidivism is the requirement that the sentencing judge individually assess the risk to public safety in every case before granting a sentence reduction. The commentary to the policy statement expressly provides that "the court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment in determining: (I) whether such a reduction is warranted, and (II) the extent of such reduction."[27]

In making the Drugs Minus Two Amendment retroactive, the Commission also added an enhanced public safety precaution by delaying the effective date of any sentence reduction orders by one year, until November 1, 2015. At the time it was considering retroactivity, the Commission estimated that approximately 46,000 offenders could potentially benefit from retroactive application of the Drugs Minus Two Amendment, with an average sentence reduction of almost 19 percent. In light of the large number of cases potentially involved, the Commission concluded that a one-year delay in the effective date of any sentence reduction orders was needed for three reasons, each related to public safety.[28] First, the delay would give courts "adequate time to obtain and review the information necessary to make an

individualized determination in each case of whether a sentence reduction is appropriate."[29] Second, the delay would "ensure that, to the extent practicable, all offenders who are to be released have the opportunity to participate in reentry programs and transitional services, such as placement in halfway houses, while still in the custody of the Bureau of Prisons, which increases their likelihood of successful reentry to society and thereby promotes public safety."[30] Third, the delay would "permit those agencies that will be responsible for offenders after their release to prepare for the increased responsibility."[31]

Sentencing data indicates that courts followed the dictates of 18 U.S.C. § 3582(c)(2) and §1B1.10 to consider public safety in exercising their discretion regarding retroactivity. Of the 50,676 motions for retroactive application of the Drugs Minus Two Amendment that have been decided, 18,913 have been denied, representing over one-third (37.3%) of the motions filed. Courts denied 4,649 motions based on the merits of the petition after considering the factors set forth in §1B1.10.[32] Particularly noteworthy is that courts expressly cited protection of the public in 552 denials, and post-sentencing or post-conviction conduct in 362 denials.

This report focuses on 30,852 drug trafficking offenders who received a reduction in their term of imprisonment due to retroactive application of the Drugs Minus Two Amendment, resulting in an estimated average sentence reduction of 25 months (17.2%), from 146 months to 121 months. For this report, the Commission studied the recidivism of two groups of offenders. First, the Commission examined the recidivism of offenders who received sentence reductions through retroactive application of the Drugs Minus Two Amendment (the "Retroactivity Group"). Because of these sentence reductions, the offenders in the Retroactivity Group were released prior to the expiration of their original sentence. Second, the Commission studied the recidivism of offenders who would have been eligible for sentence reductions under the Drugs Minus Two Amendment but were released before retroactivity of the Drug Minus Two Amendment took effect (the "Comparison Group").

The Retroactivity Group and the Comparison Group were matched on offense and offender characteristics to produce two groups which are very similar on important factors related to the likelihood of recidivism. Once these groups were matched and offense and offender characteristics were accounted for, the Commission found there was no statistically significant difference in the recidivism rates of the two groups, as discussed below.

> **There was no statistically significant difference in the recidivism rates of the Retroactivity Group and the Comparison Group.**

KEY FINDINGS

- There was no statistically significant difference in the recidivism rates of the Retroactivity Group (offenders who were released on average 37 months early through retroactive application of the Drugs Minus Two Amendment) and the Comparison Group (offenders who would have been eligible for retroactivity but had served their sentences before retroactivity took effect). Over a three-year period following their release from prison, the Retroactivity Group had a recidivism rate of 27.9 percent compared to 30.5 percent for the Comparison Group. This outcome may be attributed, at least in part, to the eligibility criteria required by the Commission, and the careful consideration of those criteria by judges – particularly public safety considerations – in exercising their discretion to grant or deny retroactivity motions.

- The similarity in the recidivism rates of the Retroactivity Group and the Comparison Group held true across all drug types. Among offenders convicted of offenses with the same primary drug type—Powder Cocaine, Crack Cocaine, Heroin, Marijuana, Methamphetamine, and Other Drugs—offenders in the Retroactivity Group had similar recidivism rates to offenders in the Comparison Group, although the recidivism levels varied by drug type. The highest rates were observed among Crack Cocaine offenders (35.1% in the Retroactivity Group and 37.5% in the Comparison Group) and the lowest rates among Powder Cocaine offenders (19.5% in the Retroactivity Group and 22.3% in the Comparison Group).

- For both the Retroactivity and Comparison Groups, approximately one-third of offenders who did recidivate (34.4% and 33.1%, respectively) had a *court or supervision violation* as their most serious recidivism event.[33]

- Among offenders who did recidivate, the median time to recidivism was approximately 15 months for both groups.

METHODOLOGY

This study examines 7,121 federal offenders who received a reduced sentence through retroactive application of the Drugs Minus Two Amendment and a comparable group of 7,132 offenders who were released from federal prison during the 18 months prior to November 1, 2015, when the reduction orders could first take effect, and:

- who are United States citizens;
- who were not reported dead, escaped, or detained;
- whose pre-sentence investigation report was submitted to the Commission; and
- who have valid FBI numbers.

The data was supplemented with Federal Bureau of Investigation criminal history records information to measure offenders' recidivism rates.[34]

Recidivism

For purposes of this study, and consistent with the Commission's recidivism studies of the Crack Minus Two Amendment and the FSA Guideline Amendment, recidivism is defined as any of the following criminal record events occurring within a three-year period following release from incarceration:

- a re-conviction for a new offense;
- a re-arrest with no case disposition information available; or
- a violation or revocation of an offender's supervised release.

Thus, recidivism events include all reports of both arrests for new crimes that did not result in acquittal or dismissal of all charges, and court or supervision violations that resulted in court action reported on criminal history records. All recidivism events within a three-year period after release were counted, including felonies, misdemeanors, and court and supervision violations, but

minor traffic offenses were excluded.[35]

In addition to reporting recidivism rates, this report analyzed the time from release until the first recidivism event for offenders who did recidivate within three years. Studying the timing of recidivism can help in understanding the process of desistance, as some offenders may be able to remain in the community for a considerable time before recidivating, while others recidivate very quickly.

For offenders who did recidivate following their release, the Commission also examined the type of recidivism event and ranked those recidivism events in order from most to least serious. The ranking generally begins with the most serious violent crimes, proceeds to less serious violent crimes, and then ranks property, drug trafficking, non-trafficking drug offenses, court or supervision violations, and public order crimes. Next, the "most serious" recidivism events were compiled to indicate which events appeared most frequently as the "most serious" recidivism event committed during the three-year period after release. Reporting offense types in this manner is intended to allow the reader to assess the relative threat to public safety posed by offenders who did recidivate.

Finally, the report analyzes the association between recidivism rates and offender characteristics (such as age) and other factors (such as the involvement of a weapon in the offense) and notes how those factors relate to differences in recidivism rates between the Retroactivity and Comparison Groups.

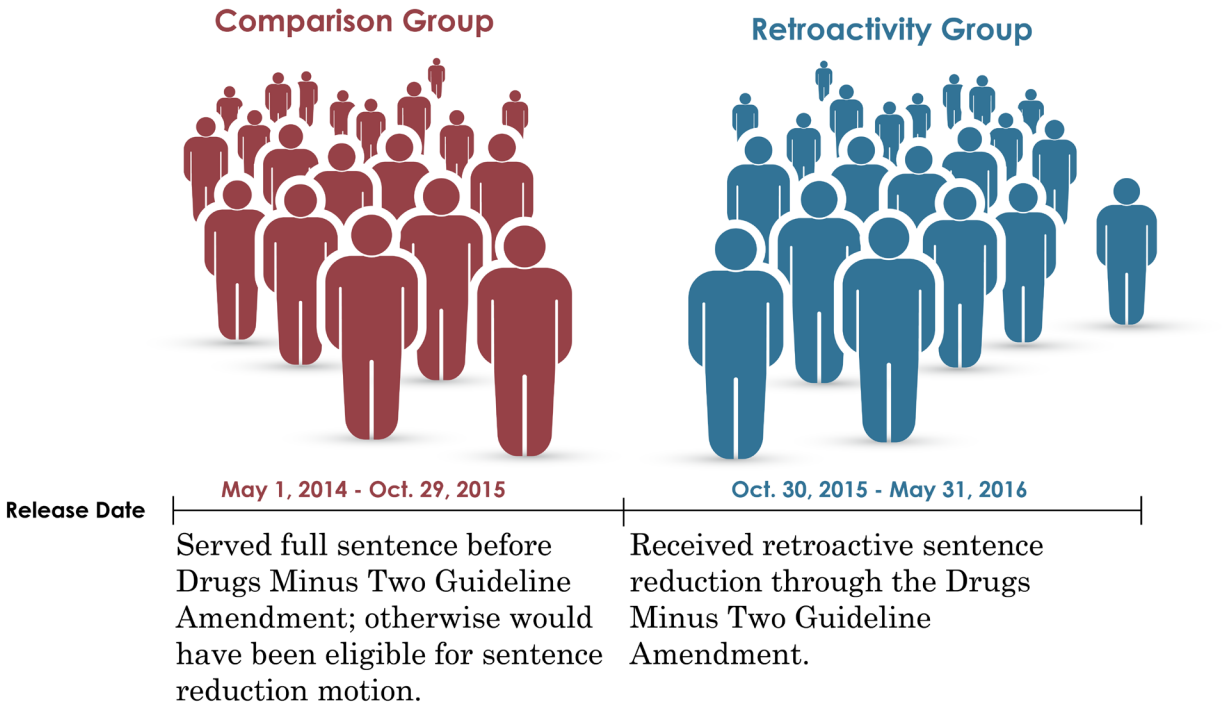
Study Group

The 14,253 federal offenders studied were divided into two groups:

- The Retroactivity Group: 7,121 offenders who received sentence reductions through retroactive application of the Drugs Minus Two Amendment and who were released early from October 30, 2015, to May 31, 2016; and

- The Comparison Group: 7,132 offenders who would have been eligible for sentence reductions through retroactive application of the Drugs Minus Two Amendment but were released between May 1, 2014, and October 29, 2015, having served their full sentences before the Drugs Minus Two Amendment could be retroactively applied.

Figure 1. Study Groups



In this study, the Commission used a research design combining *matching* to create the Comparison Group and logistic regression to analyze the effect of a reduction in sentence pursuant to a retroactive application of the Drugs Minus Two Amendment on recidivism. Matching creates a comparison group by identifying individuals who share similar key attributes determined by the researcher.

For this study, each member of the Retroactivity Group was matched one-to-one to a group of drug offenders who were released between May 1, 2014, and October 29, 2015, which was before the Drugs Minus Two Amendment became retroactive. These offenders served their full sentences but would have been eligible for sentence reductions through retroactive application of the Drugs Minus Two Amendment had it been retroactive before the offenders were released. Each Retroactivity Group offender was matched to a member of this larger group of offenders who most closely resembled him or her with respect to the following characteristics: drug type involved in the offense, Criminal History Category (CHC), education level, gender, race/ethnicity, and age at release.[36] The 7,132 offenders matched through this process became the Comparison Group for this study.

As demonstrated in Appendix A, after matching, the composition of the Retroactivity Group and Comparison Group are extremely similar with respect to the matching characteristics. This is particularly true of age and criminal history, both of which have been previously shown to be associated with recidivism rates.[37] The average age at release of both the Retroactivity and Comparison Groups is 41 years old. The proportion of offenders in each Criminal History Category in the two groups are within fractions of a percentage. For example, the proportion of offenders in the lowest category, CHC I, is 29.6 percent in the Retroactivity Group and 30.4 percent in the Comparison Group. The proportion of offenders in the highest category, CHC VI, is 10.2 percent in the Retroactivity Group and 9.6 percent in the Comparison Group. The groups are also closely matched in terms of drug type involved in the offense, education level, gender, and race/ethnicity, differing by less than one percent across every category. This similarity between Retroactivity and Comparison Group means that any difference in recidivism rates between groups cannot be attributed to any of the matched characteristics.

The Retroactivity Group was released early after serving an average of 37 fewer months of imprisonment than their original sentence.[38] While the matching of the two groups on offense and offender characteristics produced two groups which are very similar on important factors related to the likelihood of recidivism, there were differences related to the length of the original term of imprisonment. The Comparison Group had an average sentence of 89 months, while the Retroactivity Group had an average original sentence of 128 months, which after resentencing resulted in an average sentence of 91 months. Relatedly, the Retroactivity Group had a higher proportion of offenders with original sentences longer than ten years (43.7%) than the Comparison Group (27.9%). This difference is likely the result of the early release of many offenders with long sentences in the Retroactivity Group.[39]

In conjunction with the matching techniques described above, the publication also utilized a logistic regression model to account for the difference in offender's original sentence length. As demonstrated in Appendix B, the logistic regression model controlled for original sentence length in addition to all the characteristics used in matching. Specifically, the logistic regression controls for drug type involved in the offense, age, gender, race/ethnicity, Criminal History Category, education level, and length of original sentence.[40]

Data Analysis

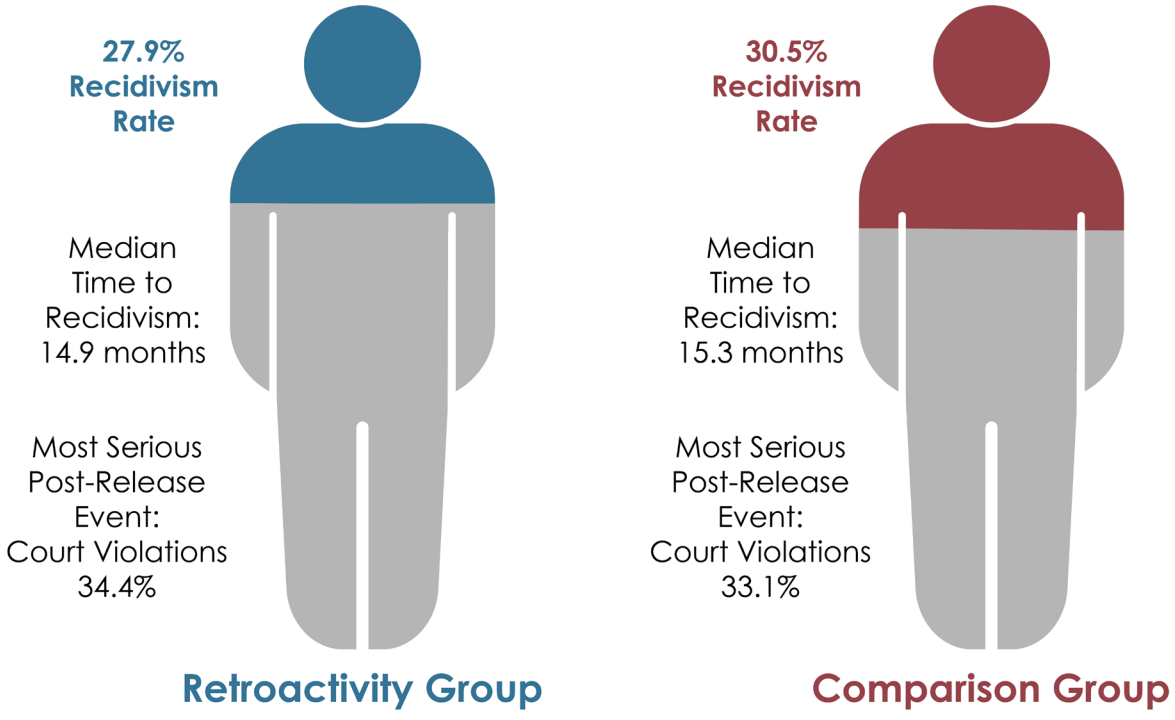
The Commission analyzed the recidivism rates of the Retroactivity Group and the Comparison Group across several factors, including race/ethnicity, gender, education, age at release, criminal history, type of drug in the offense, and weapon involvement in the offense. The Commission also analyzed the Retroactivity Group and the Comparison Group using multiple logistic regression analysis to estimate the relationship between a reduction in sentence after retroactive application of the Drugs Minus Two Amendment and recidivism. Logistic regression is a modeling technique used to analyze the relationship between attributes (*e.g.*, received a sentence reduction, age, gender, etc.) and a binary response variable (*e.g.*, recidivism).[41] In this study, logistic regression was used to analyze the relationship between receiving a reduced sentence after retroactive application of the Drugs Minus Two Amendment and recidivism while controlling for the attributes listed in Appendix A.

DETAILED RECIDIVISM FINDINGS[42]

Overview of Recidivism Study Findings

There was no statistically significant difference in the recidivism rates for the Retroactivity Group and the Comparison Group even though the Retroactivity Group was released early after serving an average of 37 fewer months of imprisonment than their original sentence.[43] The recidivism rates for the Retroactivity and Comparison Groups were 27.9 percent and 30.5 percent, respectively (*See* Figure 2).

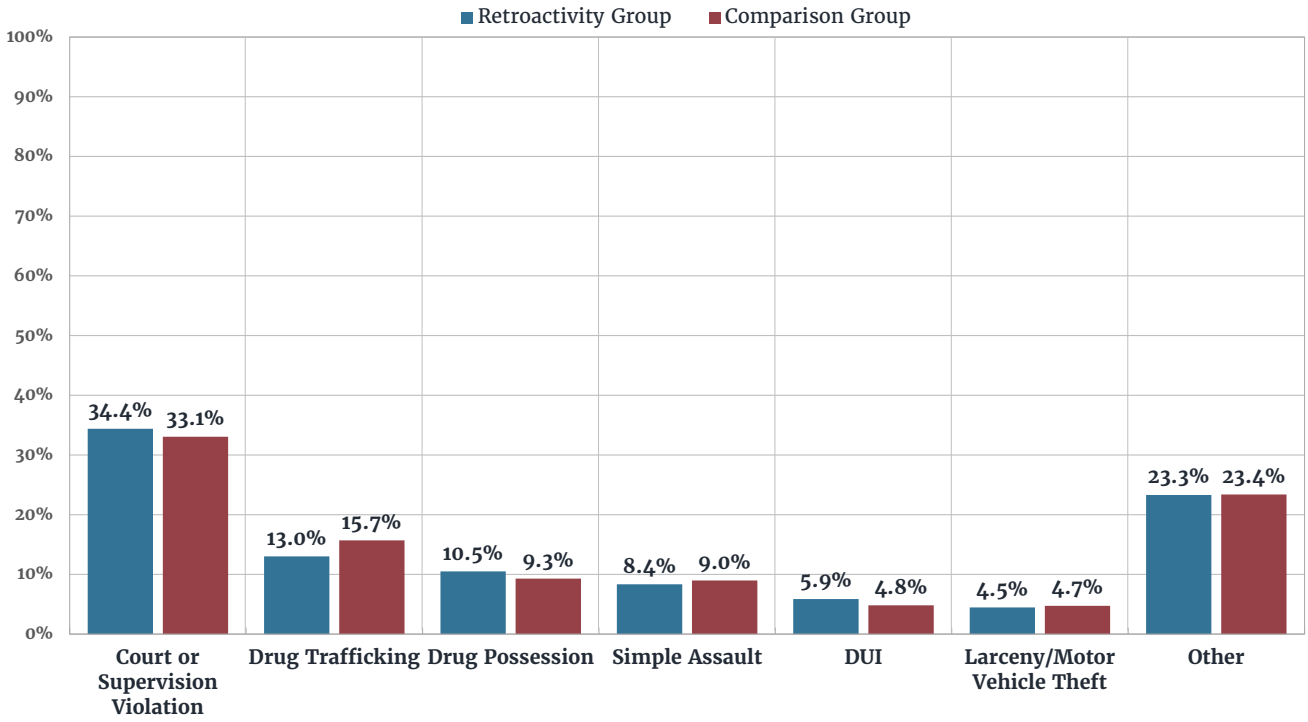
Figure 2. Overview of Recidivism Study Findings



Court or supervision violations, which can include a wide range of conduct, were the "most serious" post-release recidivism event for both the Retroactivity Group and the Comparison Group among the offenders who did recidivate.[44] Approximately one-third of offenders who did recidivate in both groups—34.4 percent for the Retroactivity Group and 33.1 percent for the Comparison Group—had such a violation as their most serious post-release recidivism event during the three-year period. *Drug trafficking, drug possession*, and *simple assault* were the next most frequently occurring "most serious" recidivism events for both groups (*See* Figure 3).

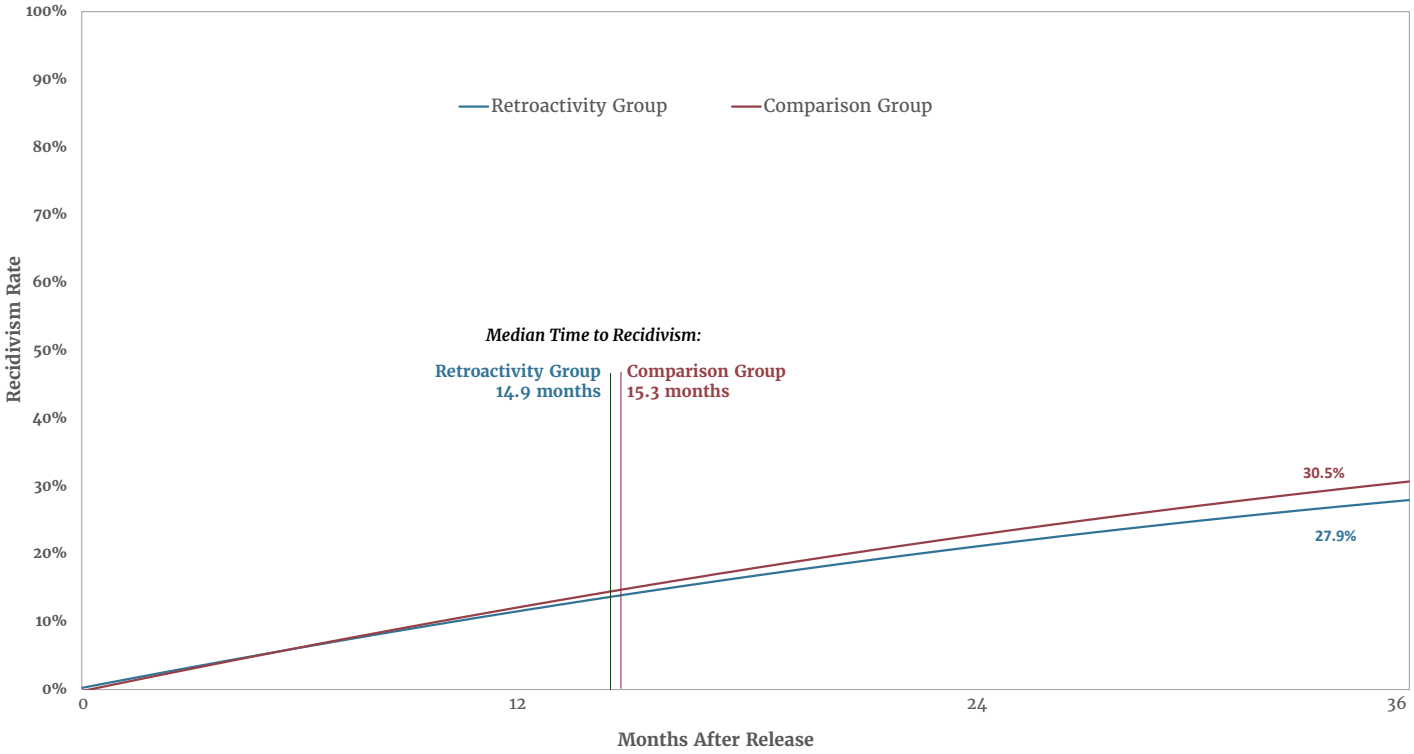
A violent offense was the most serious post-release recidivism event for 20.7 percent of the Retroactivity Group offenders and for 21.5 percent of the Comparison Group offenders. Appendix D provides the types of violent offenses committed by both groups.

Figure 3. Most Serious Post-Release Recidivism Event



For the offenders in both groups who did recidivate, the median time to recidivism was very similar, 14.9 months for the Retroactivity Group and 15.3 months for the Comparison Group (*See* Figure 4).

Figure 4. Median Time to Recidivism

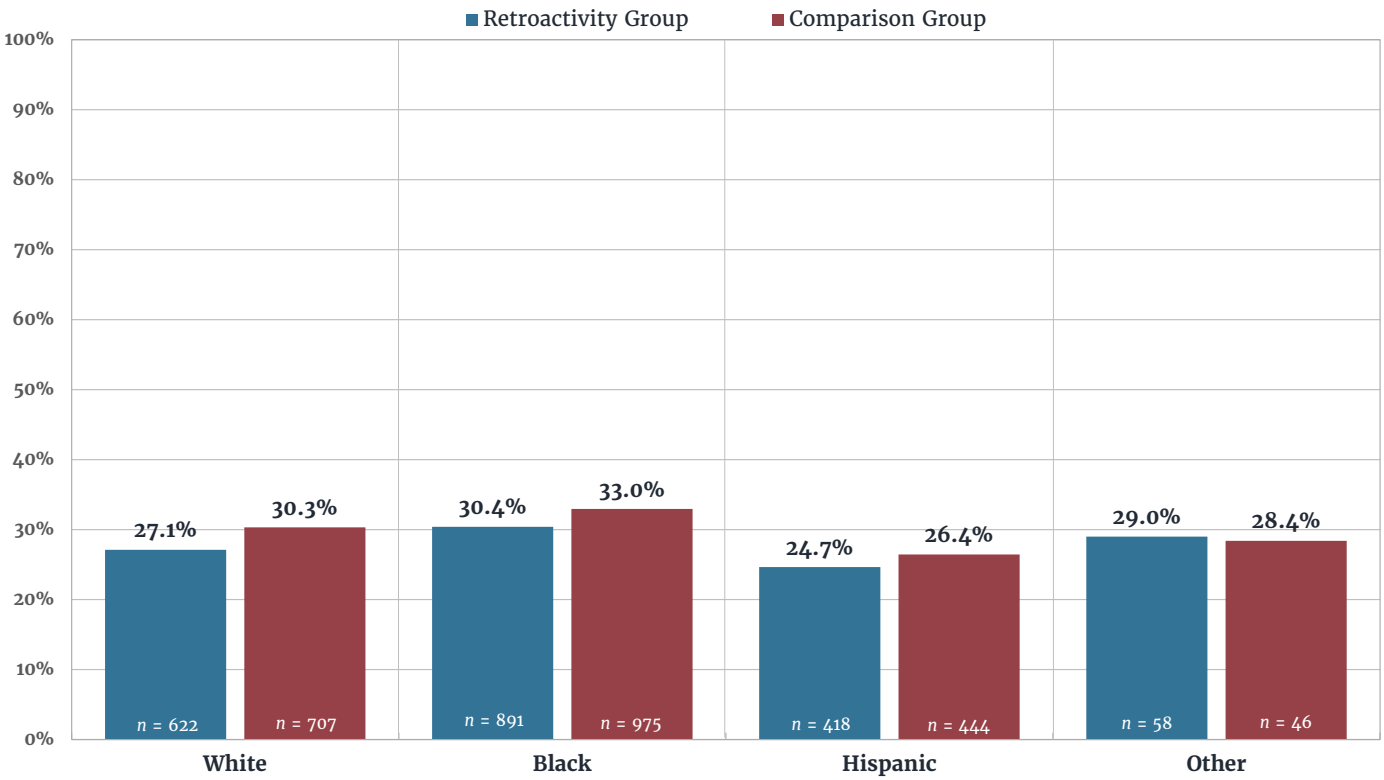


Recidivism by Offender Characteristics

The Commission analyzed the relationship between recidivism rates and various offender characteristics, including race/ethnicity, gender, educational attainment, age at release, and Criminal History Category. Notably, recidivism rates between the Retroactivity and Comparison Groups remain close when disaggregated across many offense and offender subgroups.

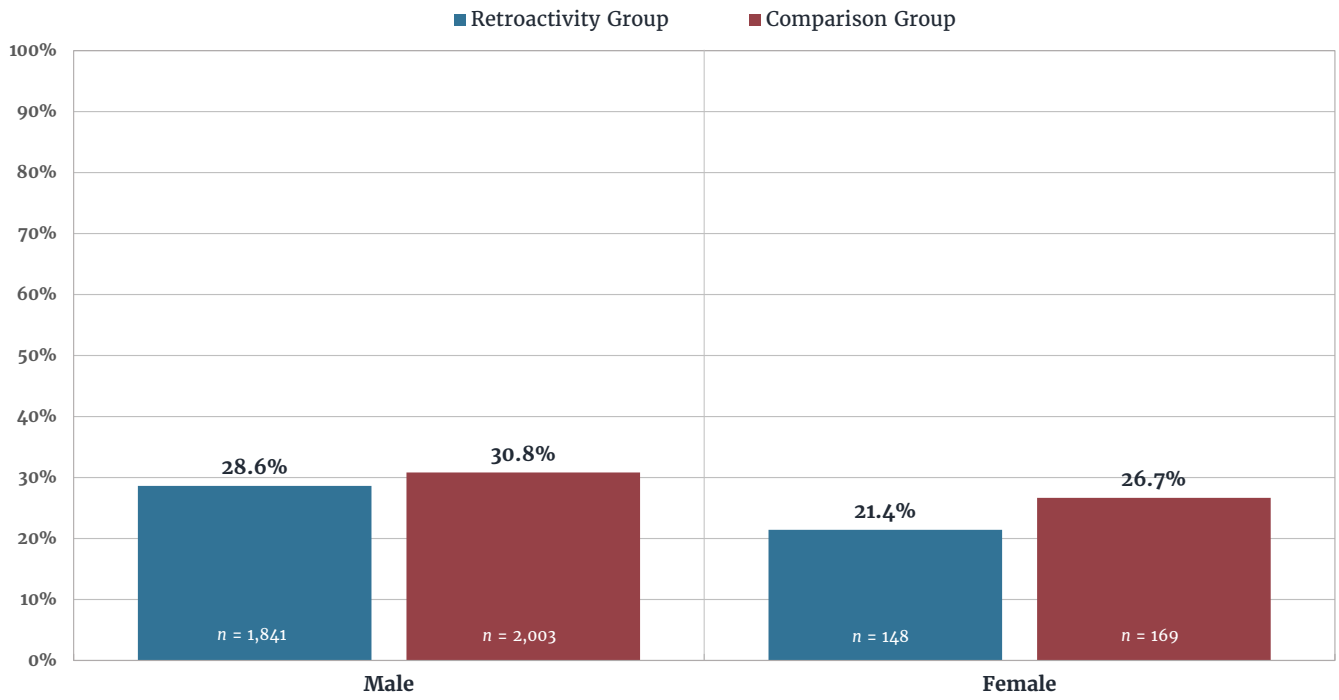
For example, the recidivism rate for each racial/ethnic category was similar across the Retroactivity and Comparison Groups. Specifically, White offenders had recidivism rates of 27.1 percent in the Retroactivity Group and 30.3 percent in the Comparison Group; Black offenders had recidivism rates of 30.4 percent and 33.0 percent respectively; Hispanic offenders had recidivism rates of 24.7 percent and 26.4 percent respectively, and offenders of other racial/ethnic backgrounds had recidivism rates of 29.0 percent and 28.4 percent respectively (*See* Figure 5).

Figure 5. Recidivism Rates by Race/Ethnicity



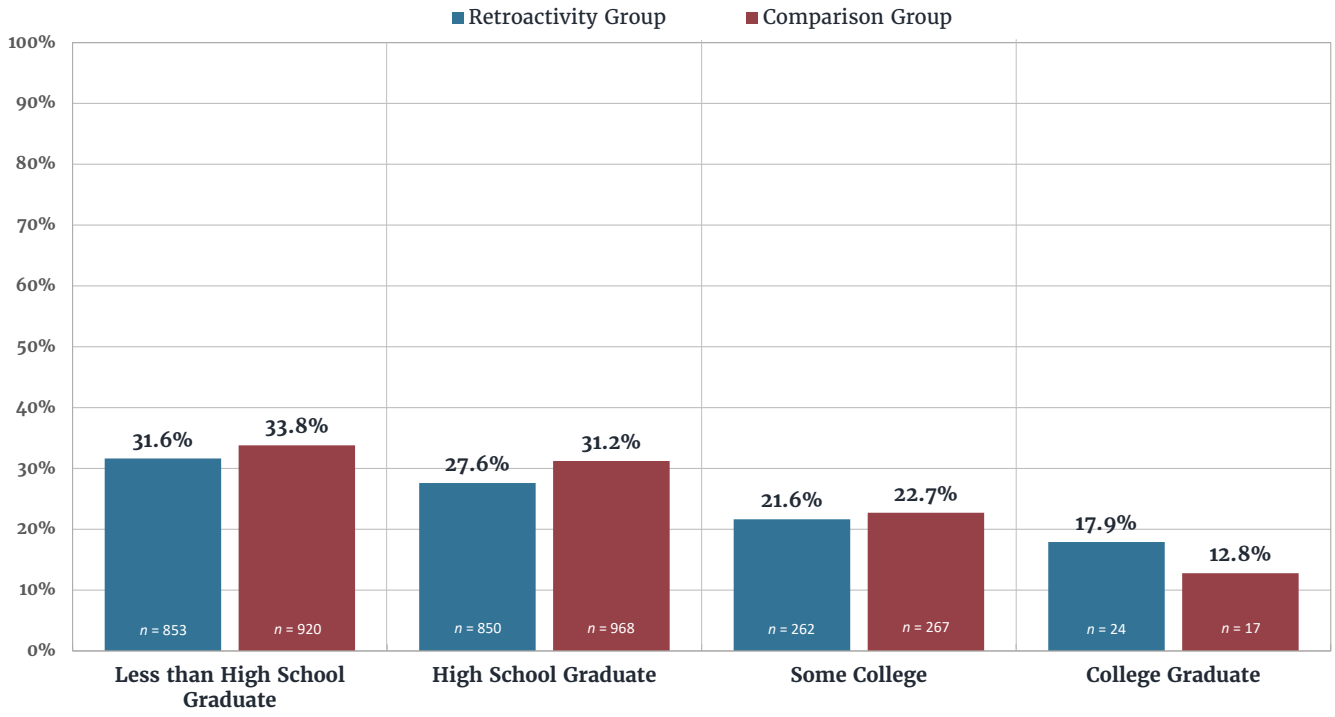
Recidivism rates in both groups were similar for male offenders, who comprised more than 90 percent of the offenders in the study. Male offenders had recidivism rates of 28.6 percent in the Retroactivity Group and 30.8 percent in the Comparison Group. While the recidivism rates for female offenders differed somewhat—21.4 percent in the Retroactivity Group and 26.7 percent in the Comparison Group—females accounted for less than ten percent of the offenders in the study (*See* Figure 6).

Figure 6. Recidivism Rates by Gender



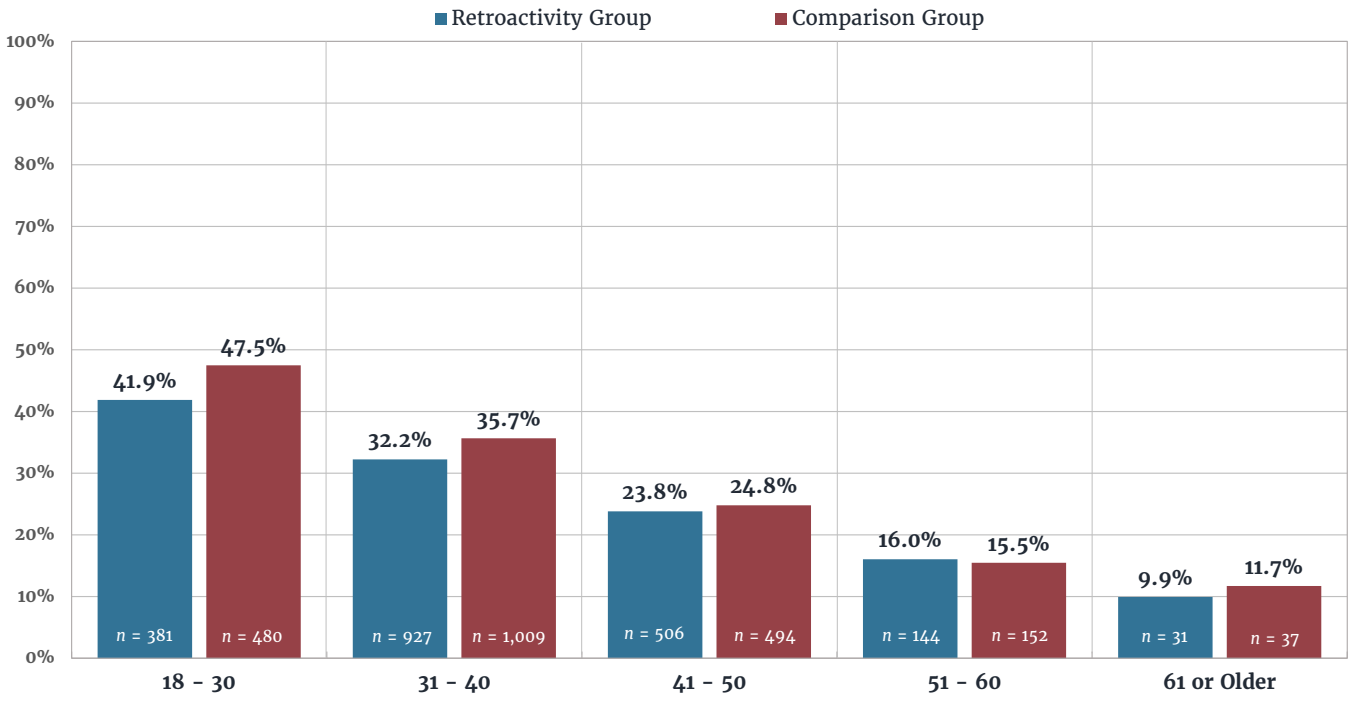
Among offenders who had completed less than a high school education at the time they were sentenced, the recidivism rates were 31.6 percent in the Retroactivity Group and 33.8 percent in the Comparison Group. Among offenders who had completed high school but did not attend college, the recidivism rates were 27.6 percent in the Retroactivity Group and 31.2 percent in the Comparison Group. For those offenders who had attended some college but had not graduated, the recidivism rates were 21.6 percent in the Retroactivity Group and 22.7 percent in the Comparison Group (*See* Figure 7).

Figure 7. Recidivism Rates by Educational Attainment



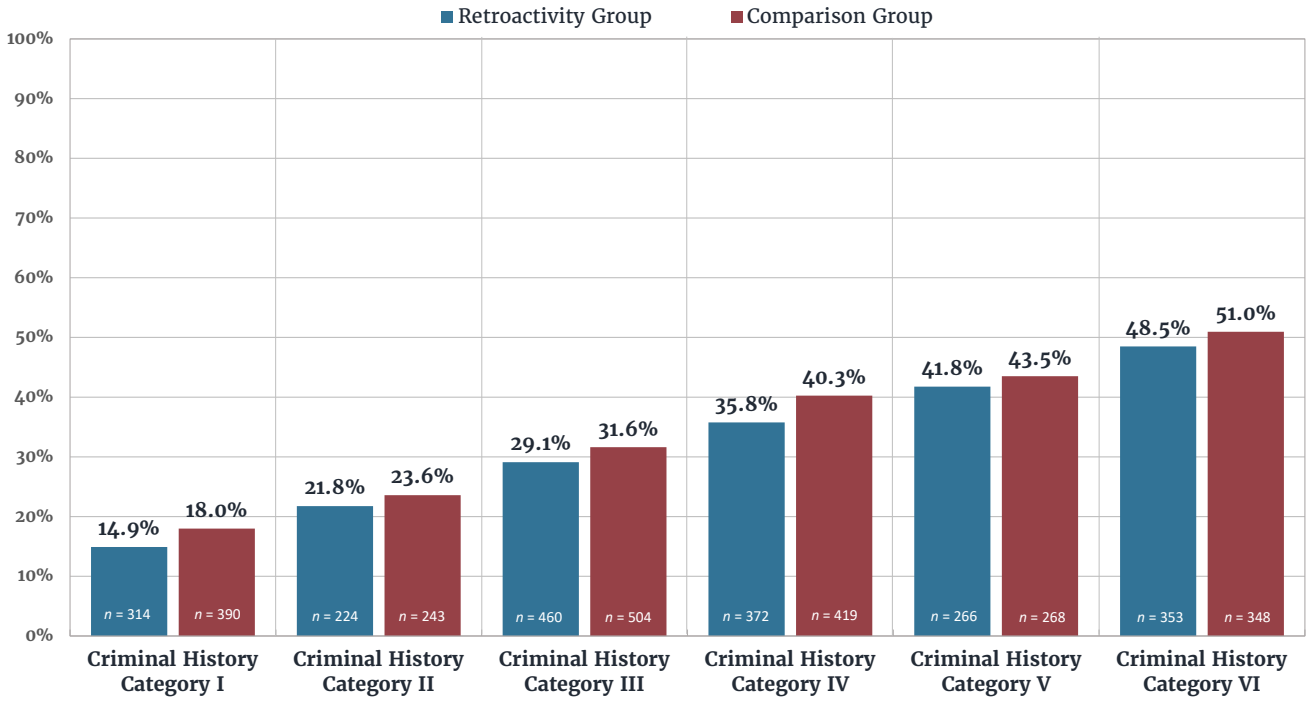
The Commission has previously found offender age to be an important factor influencing recidivism.[45] Among offenders released from age 18 to age 30, the recidivism rates were 41.9 percent in the Retroactivity Group and 47.5 percent in the Comparison Group. Among offenders released after reaching age 61 or older the recidivism rates were 9.9 percent and 11.7 percent, respectively (*See* Figure 8).

Figure 8. Recidivism Rates by Age at Release



The Commission has previously found that the seriousness of an offender's criminal record is an important factor influencing recidivism.[46] Prior to sentencing, courts determine an offender's Criminal History Category based on the number and sentence length of their prior convictions.[47] Among offenders in the lowest category, CHC I, the recidivism rate was 14.9 percent for the Retroactivity Group and 18.0 percent for the Comparison Group. In contrast, among offenders in CHC VI, the recidivism rate was 48.5 percent for the Retroactivity Group and 51.0 percent for the Comparison Group (*See* Figure 9).

Figure 9. Recidivism Rates by Criminal History Category

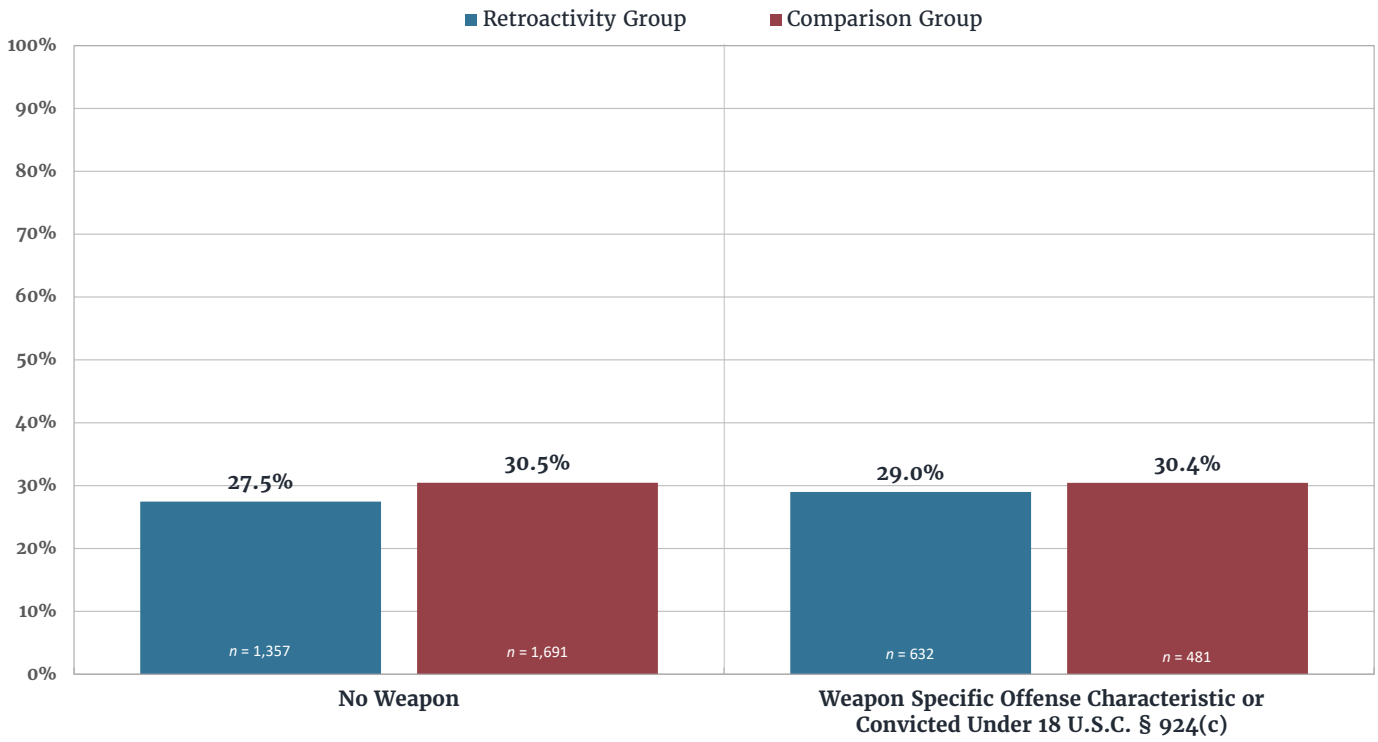


Recidivism by Other Characteristics

In addition to analyzing the relationship between offender characteristics and recidivism, this study examined the relationship between recidivism and other characteristics, including whether the offense involved a weapon, the length of the sentence relative to the applicable guideline range, and the length of the original sentence imposed.

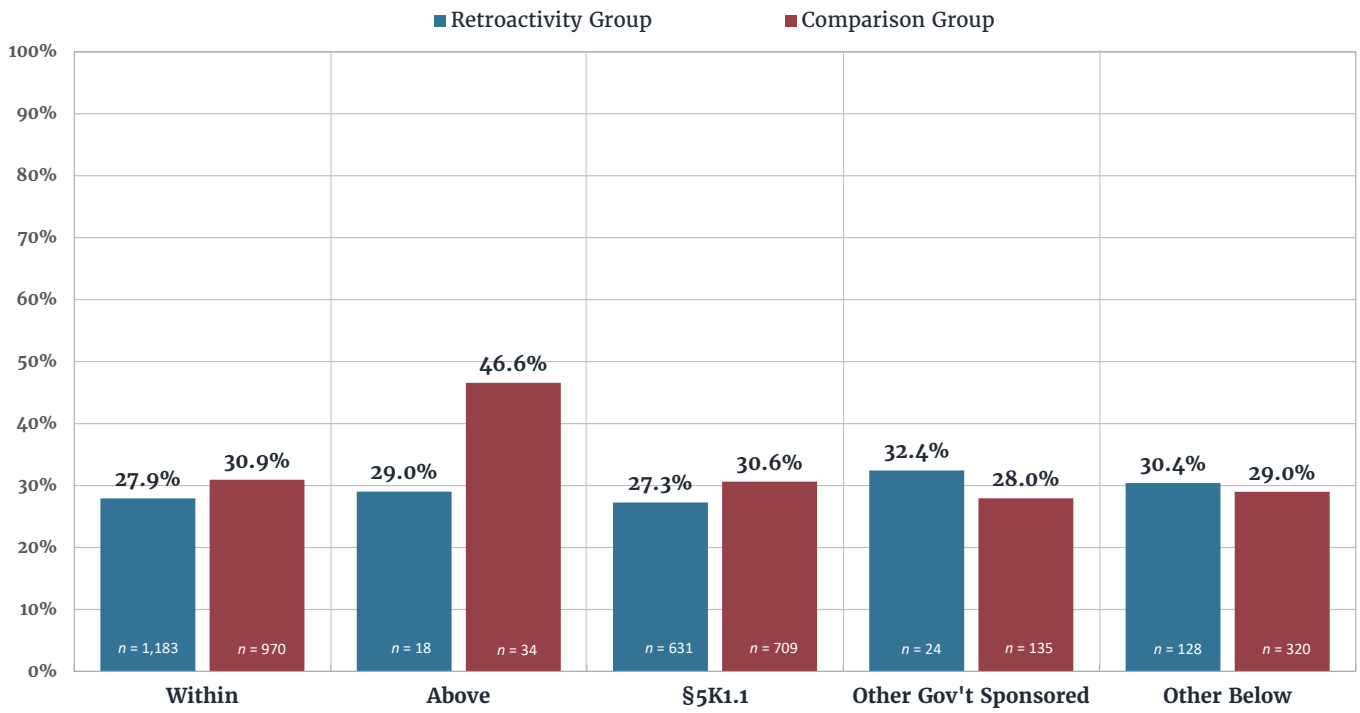
Offenders in the Retroactivity and Comparison Groups whose drug offense involved a weapon had recidivism rates of 29.0 percent and 30.4 percent, respectively.[48] For offenders who committed an offense that did not involve a weapon, the recidivism rates were 27.5 percent and 30.5 percent respectively (*See* Figure 10).

Figure 10. Recidivism Rates by Weapon Involvement



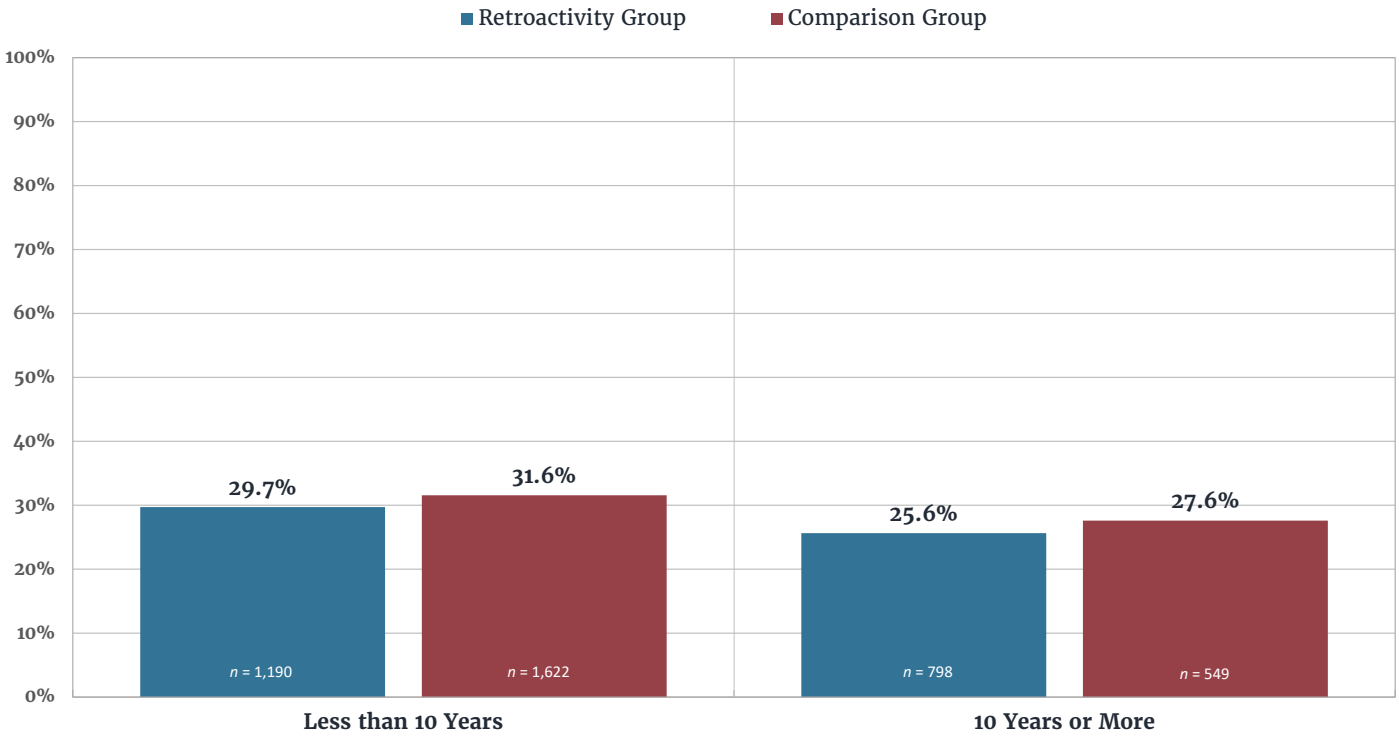
The study also analyzed whether the length of the original sentence imposed relative to the applicable guideline range affected recidivism rates. For offenders sentenced within the guideline range, the recidivism rates were 27.9 percent in the Retroactivity Group and 30.9 percent in the Comparison Group. For offenders sentenced below the guideline range for providing substantial assistance to the government under §5K1.1, the recidivism rates were 27.3 percent in the Retroactivity Group and 30.6 percent in the Comparison Group. The recidivism rates for offenders sentenced below the guideline range for a reason not sponsored by the government were 30.4 percent in the Retroactivity Group and 29.0 percent in the Comparison Group (*See* Figure 11). Although the recidivism rate for offenders sentenced above the guideline range and for offenders sentenced below the guideline range for a reason sponsored by the government (other than under §5K1.1) show a difference between the groups, the number of cases in these categories is too low to support meaningful analysis.

Figure 11. Recidivism Rates by Sentence Relative to the Guideline Range



The analysis examined the relationship between the length of the sentence originally imposed and recidivism. For offenders with original sentences of ten years or more, the recidivism rates were 25.6 percent in the Retroactivity Group and 27.6 percent in the Comparison Group. For offenders with original sentences of less than ten years, the recidivism rates were 29.7 percent in the Retroactivity Group and 31.6 percent in the Comparison Group (*See* Figure 12).

Figure 12. Recidivism Rates by Sentence Length



DETAILED RECIDIVISM FINDINGS FOR SPECIFIC DRUG TYPES

Approximately three-quarters of all drug offenders in the Retroactivity and Comparison Groups were convicted of drug offenses involving one of three primary drug types: Powder Cocaine (23.9%), Crack Cocaine (25.4%), and Methamphetamine (28.4%). The remaining offenders committed offenses involving Heroin (6.5%), Marijuana (10.3%), or Other Drugs (5.4%) (*See* Table 1).

Table 1. Distribution of Primary Drug Type for All Offenders

	Number (%)
Total Cases	14,253 (100%)
Primary Drug Type	
Powder Cocaine	3,412 (23.9%)
Crack Cocaine	3,619 (25.4%)
Heroin	928 (6.5%)
Marijuana	1,467 (10.3%)
Methamphetamine	4,053 (28.4%)
Other Drugs	774 (5.4%)

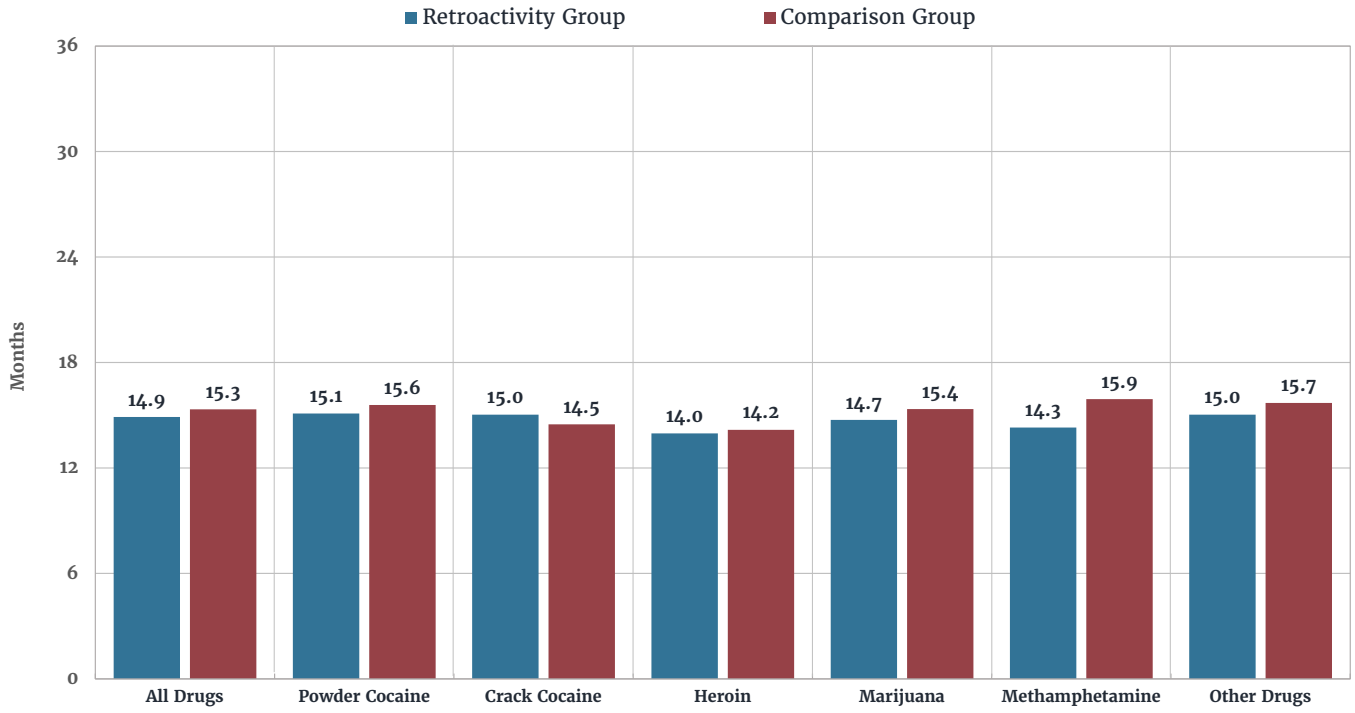
As reflected in Table 2, recidivism rates did vary among drug types, which is consistent with the Commission's findings in other publications.[49] Crack Cocaine offenders had the highest recidivism rates (35.1% for the Retroactivity Group and 37.5% for the Comparison Group). Powder Cocaine offenders had the lowest recidivism rates (19.5% for the Retroactivity Group and 22.3% for the Comparison Group). The recidivism rates were nonetheless consistent between both the Retroactivity and Comparison Groups. That is, the recidivism rates for offenders in each drug type in the Retroactivity Group did not differ in a statistically significant way from the rates of offenders in the Comparison Group for that drug type.[50] In fact, the recidivism rates for each drug type in the Retroactivity Group were below that of the corresponding Comparison Group.

Table 2. Recidivism Rates by Primary Drug Type

	Retroactivity Group	Comparison Group
All Drugs	27.9%	30.5%
Primary Drug Type		
Powder Cocaine	19.5%	22.3%
Crack Cocaine	35.1%	37.5%
Heroin	30.4%	35.6%
Marijuana	25.4%	29.2%
Methamphetamine	29.1%	29.7%
Other Drugs	27.1%	33.9%

There was no clear difference in the time to recidivism or the most serious recidivism event by drug type. All groups had relatively similar times to recidivism for those offenders who did recidivate. While the median time to recidivism for all offenders was 14.9 months for the Retroactivity Group and 15.3 months for the Comparison Group, Heroin offenders were the fastest to recidivate (14.0 months for the Retroactivity Group and 14.2 months for the Comparison Group) (*See* Figure 13).

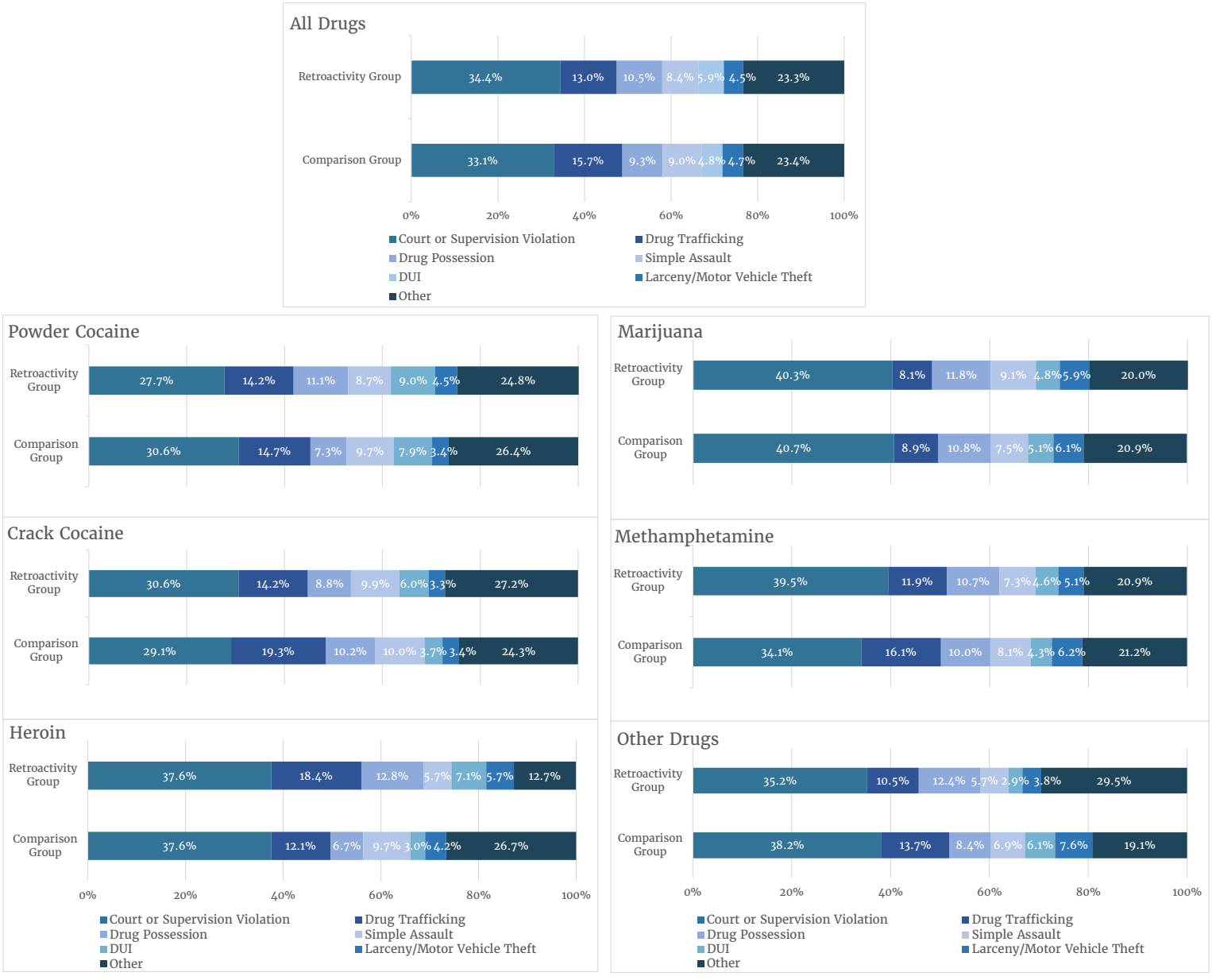
Figure 13. Median Time to Recidivism by Primary Drug Type



Court or supervision violations were the "most serious" post-release recidivism event for both the Retroactivity Group and the Comparison Group among the offenders who did recidivate.[51] Marijuana offenders had the highest percentage of court violations as the most serious recidivism event (40.3% for the Retroactivity Group and 40.7% for the Comparison Group). Although a smaller proportion of Crack Cocaine offenders had a *court or supervision violation* as their most serious recidivism event, it was still the most frequent event for offenders in that drug type, at 30.6 percent for the Retroactivity Group and 29.1 percent for the Comparison Group (*See* Figure 14).

Appendix C provides further analysis of the most serious post-release recidivism event by drug type, including further disaggregating offense grouped in the Other category of Figure 14.

Figure 14. Most Serious Post-Release Recidivism Event by Primary Drug Type



The Commission also analyzed the relationship between recidivism rates and various offense and offender characteristics by the six drug types. Notably, recidivism rates between the Retroactivity and Comparison Groups remain close when disaggregated across many offense and offender subgroups for each drug type. Appendix E presents the results for each factor for each drug type.

CONCLUSION

The Commission found no statistically significant difference in the recidivism rates of offenders who were released an estimated average of 37 months early through the retroactive application of the Drugs Minus Two Amendment and similar offenders who served their full sentences and were released before the Drugs Minus Two Amendment could be retroactively applied. The recidivism rates for the Retroactivity and Comparison Groups were similar within three years of release from incarceration, 27.9 percent and 30.5 percent, respectively. This finding held true across all major drug types, although the recidivism rates varied by drug type. The Commission's findings in this study are consistent with those of the Commission's recidivism studies of drug offenders impacted by other recent retroactive amendments.

APPENDIX A

Table A-1. Offense and Offender Characteristics by Study Group

	Retroactivity Group	Comparison Group
Total Offenders	7,121 (50.0%)	7,132 (50.0%)
Primary Drug Type		
Powder Cocaine	1,702 (23.9%)	1,710 (24.0%)
Crack Cocaine	1,809 (25.4%)	1,810 (25.4%)
Heroin	464 (6.5%)	464 (6.5%)
Marijuana	733 (10.3%)	734 (10.3%)
Methamphetamine	2,026 (28.5%)	2,027 (28.4%)
Other Drugs	387 (5.4%)	387 (5.4%)
Race/Ethnicity		
White	2,294 (32.2%)	2,332 (32.7%)
Black	2,931 (41.2%)	2,959 (41.5%)
Hispanic	1,696 (23.8%)	1,679 (23.5%)
Other	200 (2.8%)	162 (2.3%)
Gender		
Male	6,430 (90.3%)	6,498 (91.1%)
Female	691 (9.7%)	634 (8.9%)
Age at Release *(Years)*		
Average Age	41	41
Educational Attainment		
Less than High School	2,697 (37.9%)	2,723 (38.2%)
High School Graduate	3,079 (43.2%)	3,101 (43.5%)
Some College	1,211 (17.0%)	1,175 (16.5%)
College Graduate	134 (1.9%)	133 (1.9%)
Criminal History Category		
CHC I	2,106 (29.6%)	2,168 (30.4%)
CHC II	1,030 (14.5%)	1,030 (14.4%)
CHC III	1,580 (22.2%)	1,594 (22.4%)
CHC IV	1,040 (14.6%)	1,041 (14.6%)
CHC V	637 (9.0%)	616 (8.6%)
CHC VI	728 (10.2%)	683 (9.6%)

APPENDIX B

Table B-1
SUMMARY OF DRUGS MINUS TWO RETROACTIVITY PREDICTING RECIDIVISM
ALL DRUGS

Term	Estimate	Standard Error	Wald Chi-Square	p-value	Odds Ratio	95% CI Lower	95% CI Upper
(Intercept)	1.0864	0.1264	73.8564	<.0001			
Research Group							
Retroactivity Group vs. Comparison	-0.0586	0.0408	2.0670	0.1505	0.943	0.871	1.022
Primary Drug Type							
Cocaine vs. Marijuana	-0.3325	0.0787	17.8230	<.0001	0.717	0.615	0.837
Crack vs. Marijuana	0.0462	0.0840	0.3021	0.5826	1.047	0.888	1.235
Heroin vs. Marijuana	0.0596	0.0988	0.3637	0.5465	1.061	0.875	1.288
Methamphetamine vs. Marijuana	-0.0176	0.0755	0.0542	0.8159	0.983	0.847	1.139
Other Drugs vs. Marijuana	-0.00491	0.1056	0.0022	0.9629	0.995	0.809	1.224
Age-at-Release							
Age	-0.0549	0.00242	515.1966	<.0001	0.947	0.942	0.951
Gender							
Female vs. Male	-0.2016	0.0736	7.4983	0.0062	0.817	0.708	0.944
Race							
Black vs. White	-0.1515	0.0647	5.4790	0.0192	0.859	0.757	0.976
Hispanic vs. White	-0.2045	0.0608	11.3082	0.0008	0.815	0.723	0.918
Other vs. White	0.0401	0.1286	0.0975	0.7549	1.041	0.809	1.339
Educational Attainment							
High School Graduate vs. < High School	-0.1442	0.0436	10.9142	0.0010	0.866	0.795	0.943
Some College vs. < High School	-0.2896	0.0615	22.1907	<.0001	0.749	0.664	0.844
College Graduate vs. < High School	-0.3987	0.1806	4.8724	0.0273	0.671	0.471	0.956
Criminal History Category							
CHC II vs. CHC I	0.4104	0.0698	34.5885	<.0001	1.507	1.315	1.728
CHC III vs. CHC I	0.8207	0.0602	186.1337	<.0001	2.272	2.019	2.557
CHC IV vs. CHC I	1.1866	0.0661	322.7262	<.0001	3.276	2.878	3.729
CHC V vs. CHC I	1.4025	0.0761	340.0592	<.0001	4.065	3.502	4.719
CHC VI vs. CHC I	1.8023	0.0749	579.0152	<.0001	6.063	5.235	7.022
Sentence							
Original Sentence	-0.00227	0.000311	53.0517	<.0001	0.998	0.997	0.998
-2 Log Likelihood		- 15393.695 (df = 20)					
Hosmer and Lemeshow GOF Test		0.84					
N		14,247					

Response Variable: recidivism

Table B-2
SUMMARY OF DRUGS MINUS TWO RETROACTIVITY PREDICTING RECIDIVISM POWDER COCAINE OFFENDERS

Term	Estimate	Standard Error	Wald Chi-Square	p-value	Odds Ratio	95% CI Lower	95% CI Upper
(Intercept)	0.5279	0.2686	3.8633	0.0494			
Research Group							
Retroactivity Group vs. Comparison	-0.1700	0.0915	3.4528	0.0631	0.844	0.705	1.009
Age-at-Release							
Age	-0.0509	0.00577	77.7264	<.0001	0.950	0.940	0.961
Gender							
Female vs. Male	0.0959	0.2094	0.2096	0.6471	1.101	0.730	1.659
Race							
Black vs. White	-0.1787	0.1386	1.6624	0.1973	0.836	0.637	1.097
Hispanic vs. White	-0.2074	0.1467	1.9985	0.1575	0.813	0.610	1.083
Other vs. White	0.2409	0.3754	0.4118	0.5211	1.272	0.610	2.656
Educational Attainment							
High School Graduate vs. < High School	-0.1952	0.1003	3.7826	0.0518	0.823	0.676	1.002
Some College vs. < High School	-0.1873	0.1266	2.1904	0.1389	0.829	0.647	1.063
College Graduate vs. < High School	-0.0590	0.3450	0.0293	0.8642	0.943	0.479	1.854
Criminal History Category							
CHC II vs. CHC I	0.3722	0.1486	6.2714	0.0123	1.451	1.084	1.941
CHC III vs. CHC I	0.8331	0.1272	42.9128	<.0001	2.300	1.793	2.952
CHC IV vs. CHC I	1.1813	0.1412	69.9585	<.0001	3.259	2.471	4.298
CHC V vs. CHC I	1.5067	0.1828	67.9750	<.0001	4.512	3.154	6.456
CHC VI vs. CHC I	1.8434	0.1769	108.6011	<.0001	6.318	4.467	8.936
Sentence							
Original Sentence	-0.00111	0.000712	2.4200	0.1198	0.999	0.997	1.000
-2 Log Likelihood		- 3204.317 (df = 15)					
Hosmer and Lemeshow GOF Test		0.64					
N		3,410					

Response Variable: recidivism

Table B-3
SUMMARY OF DRUGS MINUS TWO RETROACTIVITY PREDICTING RECIDIVISM CRACK COCAINE OFFENDERS

Term	Estimate	Standard Error	Wald Chi-Square	p-value	Odds Ratio	95% CI Lower	95% CI Upper
(Intercept)	1.8230	0.2684	46.1169	<.0001			
Research Group							
Retroactivity Group vs. Comparison	-0.0268	0.0750	0.1274	0.7211	0.974	0.840	1.128
Age-at-Release							
Age	-0.0665	0.00517	165.6402	<.0001	0.936	0.926	0.945
Gender							
Female vs. Male	-0.7542	0.2245	11.2893	0.0008	0.470	0.303	0.730
Race							
Black vs. White	-0.1759	0.1754	1.0060	0.3159	0.839	0.595	1.183
Hispanic vs. White	-0.2920	0.2341	1.5567	0.2122	0.747	0.472	1.181
Other vs. White	-0.0363	0.5528	0.0043	0.9477	0.964	0.326	2.850
Educational Attainment							
High School Graduate vs. < High School	0.00746	0.0790	0.0089	0.9247	1.007	0.863	1.176
Some College vs. < High School	-0.1989	0.1220	2.6598	0.1029	0.820	0.645	1.041
College Graduate vs. < High School	-0.4502	0.5129	0.7704	0.3801	0.638	0.233	1.742
Criminal History Category							
CHC II vs. CHC I	0.3529	0.1501	5.5283	0.0187	1.423	1.060	1.910
CHC III vs. CHC I	0.5427	0.1313	17.0712	<.0001	1.721	1.330	2.226
CHC IV vs. CHC I	0.6981	0.1340	27.1478	<.0001	2.010	1.546	2.614
CHC V vs. CHC I	0.8812	0.1427	38.1236	<.0001	2.414	1.825	3.193
CHC VI vs. CHC I	1.4300	0.1421	101.3130	<.0001	4.179	3.163	5.520
Sentence							
Original Sentence	-0.00208	0.000455	20.9094	<.0001	0.998	0.997	0.999
-2 Log Likelihood		- 4328.964 (df = 15)					
Hosmer and Lemeshow GOF Test		0.39					
N		3,617					

Response Variable: recidivism

Table B-4
SUMMARY OF DRUGS MINUS TWO RETROACTIVITY PREDICTING RECIDIVISM HEROIN OFFENDERS

Term	Estimate	Standard Error	Wald Chi-Square	p-value	Odds Ratio	95% CI Lower	95% CI Upper
(Intercept)	1.6110	0.4025	16.0208	<.0001			
Research Group							
Retroactivity Group vs. Comparison	-0.2196	0.1615	1.8487	0.1739	0.803	0.585	1.102
Age-at-Release							
Age	-0.0489	0.00848	33.2927	<.0001	0.952	0.937	0.968
Gender							
Female vs. Male	-0.7181	0.2983	5.7949	0.0161	0.488	0.272	0.875
Race							
Black vs. White	-0.6053	0.2240	7.2979	0.0069	0.546	0.352	0.847
Hispanic vs. White	-0.9722	0.2394	16.4991	<.0001	0.378	0.237	0.605
Other vs. White	-13.4881	641.6	0.0004	0.9832	0.000	<0.001	>999.999
Educational Attainment							
High School Graduate vs. < High School	-0.5448	0.1739	9.8177	0.0017	0.580	0.412	0.815
Some College vs. < High School	-0.4503	0.2343	3.6938	0.0546	0.637	0.403	1.009
College Graduate vs. < High School	-1.8947	0.8086	5.4905	0.0191	0.150	0.031	0.734
Criminal History Category							
CHC II vs. CHC I	0.3466	0.2761	1.5761	0.2093	1.414	0.823	2.429
CHC III vs. CHC I	1.1377	0.2366	23.1245	<.0001	3.120	1.962	4.960
CHC IV vs. CHC I	1.5137	0.2612	33.5950	<.0001	4.544	2.723	7.581
CHC V vs. CHC I	1.8240	0.3072	35.2634	<.0001	6.196	3.394	11.313
CHC VI vs. CHC I	1.9009	0.2964	41.1413	<.0001	6.692	3.743	11.962
Sentence							
Original Sentence	-0.00313	0.00160	3.8061	0.0511	0.997	0.994	1.000
-2 Log Likelihood		- 998.928 (df = 15)					
Hosmer and Lemeshow GOF Test		0.48					
N		928					

Response Variable: recidivism

Table B-5
SUMMARY OF DRUGS MINUS TWO RETROACTIVITY PREDICTING RECIDIVISM MARIJUANA OFFENDERS

Term	Estimate	Standard Error	Wald Chi-Square	p-value	Odds Ratio	95% CI Lower	95% CI Upper
(Intercept)	0.7422	0.3362	4.8724	0.0273			
Research Group							
Retroactivity Group vs. Comparison	-0.1383	0.1394	0.9837	0.3213	0.871	0.663	1.145
Age-at-Release							
Age	-0.0558	0.00721	60.0393	<.0001	0.946	0.932	0.959
Gender							
Female vs. Male	0.2555	0.2577	0.9836	0.3213	1.291	0.779	2.139
Race							
Black vs. White	-0.2776	0.1956	2.0139	0.1559	0.758	0.516	1.112
Hispanic vs. White	0.3904	0.1525	6.5534	0.0105	1.478	1.096	1.992
Other vs. White	-0.2136	0.4266	0.2508	0.6165	0.808	0.350	1.863
Educational Attainment							
High School Graduate vs. < High School	-0.2935	0.1458	4.0497	0.0442	0.746	0.560	0.992
Some College vs. < High School	-0.1428	0.1937	0.5439	0.4608	0.867	0.593	1.267
College Graduate vs. < High School	-0.3266	0.3983	0.6722	0.4123	0.721	0.330	1.575
Criminal History Category							
CHC II vs. CHC I	0.2985	0.2054	2.1128	0.1461	1.348	0.901	2.016
CHC III vs. CHC I	0.8788	0.1800	23.8290	<.0001	2.408	1.692	3.427
CHC IV vs. CHC I	1.5331	0.2038	56.6045	<.0001	4.632	3.107	6.906
CHC V vs. CHC I	1.9787	0.2600	57.9153	<.0001	7.234	4.345	12.041
CHC VI vs. CHC I	2.2350	0.2877	60.3534	<.0001	9.347	5.318	16.427
Sentence							
Original Sentence	-0.00141	0.00117	1.4628	0.2265	0.999	0.996	1.001
-2 Log Likelihood		- 1488.537 (df = 15)					
Hosmer and Lemeshow GOF Test		0.92					
N		1,467					

Response Variable: recidivism

Table B-6
SUMMARY OF DRUGS MINUS TWO RETROACTIVITY PREDICTING RECIDIVISM METHAMPHETAMINE OFFENDERS

Term	Estimate	Standard Error	Wald Chi-Square	p-value	Odds Ratio	95% CI Lower	95% CI Upper
(Intercept)	0.8923	0.2013	19.6441	<.0001			
Research Group							
Retroactivity Group vs. Comparison	0.0662	0.0771	0.7372	0.3906	1.068	0.919	1.243
Age-at-Release							
Age	-0.0519	0.00433	143.7831	<.0001	0.949	0.941	0.957
Gender							
Female vs. Male	-0.1683	0.1048	2.5796	0.1082	0.845	0.688	1.038
Race							
Black vs. White	0.1289	0.1919	0.4517	0.5015	1.138	0.781	1.657
Hispanic vs. White	-0.3385	0.0961	12.4171	0.0004	0.713	0.590	0.861
Other vs. White	0.2527	0.1672	2.2849	0.1306	1.287	0.928	1.787
Educational Attainment							
High School Graduate vs. < High School	-0.1417	0.0819	2.9920	0.0837	0.868	0.739	1.019
Some College vs. < High School	-0.4920	0.1213	16.4498	<.0001	0.611	0.482	0.775
College Graduate vs. < High School	-0.5329	0.4661	1.3073	0.2529	0.587	0.235	1.463
Criminal History Category							
CHC II vs. CHC I	0.4732	0.1328	12.6926	0.0004	1.605	1.237	2.082
CHC III vs. CHC I	0.9011	0.1126	63.9970	<.0001	2.462	1.975	3.071
CHC IV vs. CHC I	1.3992	0.1281	119.3403	<.0001	4.052	3.152	5.208
CHC V vs. CHC I	1.5455	0.1435	115.9672	<.0001	4.690	3.540	6.214
CHC VI vs. CHC I	1.9203	0.1370	196.3461	<.0001	6.823	5.216	8.926
Sentence							
Original Sentence	-0.00295	0.000697	17.8795	<.0001	0.997	0.996	0.998
-2 Log Likelihood		- 4379.090 (df = 15)					
Hosmer and Lemeshow GOF Test		0.37					
N		4,051					

Response Variable: recidivism

Table B-7
SUMMARY OF DRUGS MINUS TWO RETROACTIVITY PREDICTING RECIDIVISM
OTHER DRUGS OFFENDERS

Term	Estimate	Standard Error	Wald Chi-Square	p-value	Odds Ratio	95% CI Lower	95% CI Upper
(Intercept)	1.0306	0.4303	5.7373	0.0166			
Research Group							
Retroactivity Group vs. Comparison	-0.1769	0.1832	0.9321	0.3343	0.838	0.585	1.200
Age-at-Release							
Age	-0.0511	0.00916	31.1672	<.0001	0.950	0.933	0.967
Gender							
Female vs. Male	0.0772	0.2495	0.0958	0.7570	1.080	0.662	1.762
Race							
Black vs. White	-0.2094	0.2003	1.0929	0.2958	0.811	0.548	1.201
Hispanic vs. White	0.00307	0.3342	0.0001	0.9927	1.003	0.521	1.931
Other vs. White	-0.5414	0.3959	1.8699	0.1715	0.582	0.268	1.264
Educational Attainment							
High School Graduate vs. < High School	0.0212	0.2008	0.0112	0.9159	1.021	0.689	1.514
Some College vs. < High School	-0.0955	0.2684	0.1267	0.7219	0.909	0.537	1.538
College Graduate vs. < High School	0.1560	0.4519	0.1193	0.7298	1.169	0.482	2.834
Criminal History Category							
CHC II vs. CHC I	0.3724	0.2587	2.0717	0.1501	1.451	0.874	2.410
CHC III vs. CHC I	0.7715	0.2313	11.1292	0.0008	2.163	1.375	3.403
CHC IV vs. CHC I	1.2448	0.2731	20.7699	<.0001	3.472	2.033	5.930
CHC V vs. CHC I	1.9187	0.3729	26.4771	<.0001	6.812	3.280	14.147
CHC VI vs. CHC I	2.1947	0.4199	27.3123	<.0001	8.977	3.942	20.446
Sentence							
Original Sentence	-0.00589	0.00277	4.5379	0.0332	0.994	0.989	1.000
-2 Log Likelihood		- 845.281 (df = 15)					
Hosmer and Lemeshow GOF Test		0.83					
N		774					

Response Variable: recidivism

APPENDIX C

Table C-1. Most Serious Post-Release Recidivism Event by Primary Drug Type

	Retroactivity Group	Comparison Group
All Drugs		
Court or Supervision Violation	34.4%	33.1%
Drug Trafficking	13.0%	15.7%
Drug Possession	10.5%	9.3%
Simple Assault	8.4%	9.0%
DUI	5.9%	4.8%
Larceny/Motor Vehicle Theft	4.5%	4.7%
Aggravated Assault	3.4%	5.2%
Weapons Offenses	2.9%	1.7%
Unspecified Drug Offense	2.6%	2.3%
Fraud	2.5%	2.7%
Other Property	2.0%	2.5%
Robbery	1.4%	1.2%
Other	8.7%	7.9%
Powder Cocaine		
Court or Supervision Violation	27.7%	30.6%
Drug Trafficking	14.2%	14.7%
Drug Possession	11.1%	7.3%
DUI	9.0%	7.9%
Simple Assault	8.7%	9.7%
Larceny/Motor Vehicle Theft	4.5%	3.4%
Aggravated Assault	3.3%	6.0%
Unspecified Drug Offense	3.0%	2.9%
Weapons Offenses	2.4%	1.8%
Murder	2.1%	1.1%
Other Property	2.1%	1.8%
Public Order	1.8%	1.3%
Other	9.9%	11.5%

Table C-1. Most Serious Post-Release Recidivism Event by Primary Drug Type, Continued

	Retroactivity Group	Comparison Group
Crack Cocaine		
Court or Supervision Violation	30.6%	29.1%
Drug Trafficking	14.2%	19.3%
Simple Assault	9.9%	10.0%
Drug Possession	8.8%	10.2%
DUI	6.0%	3.7%
Weapons Offenses	4.7%	2.2%
Unspecified Drug Offense	4.3%	2.7%
Aggravated Assault	3.3%	5.2%
Larceny/Motor Vehicle Theft	3.3%	3.4%
Fraud	2.7%	2.1%
Robbery	2.4%	1.8%
Other Property	1.6%	2.2%
Other	8.4%	8.3%
Heroin		
Court or Supervision Violation	37.6%	37.6%
Drug Trafficking	18.4%	12.1%
Drug Possession	12.8%	6.7%
DUI	7.1%	3.0%
Larceny/Motor Vehicle Theft	5.7%	4.2%
Simple Assault	5.7%	9.7%
Aggravated Assault	2.1%	3.6%
Unspecified Drug Offense	2.1%	2.4%
Robbery	1.4%	1.8%
Unspecified Manslaughter	1.4%	0.6%
Weapons Offenses	1.4%	3.0%
Burglary	0.7%	0.0%
Other	3.5%	15.1%

Table C-1. Most Serious Post-Release Recidivism Event by Primary Drug Type, Continued

	Retroactivity Group	Comparison Group
Marijuana		
Court or Supervision Violation	40.3%	40.7%
Drug Possession	11.8%	10.8%
Simple Assault	9.1%	7.5%
Drug Trafficking	8.1%	8.9%
Larceny/Motor Vehicle Theft	5.9%	6.1%
Aggravated Assault	4.8%	6.5%
DUI	4.8%	5.1%
Other Property	3.8%	3.7%
Fraud	2.7%	1.4%
Burglary	2.2%	0.9%
Kidnapping	1.1%	0.5%
Murder	1.1%	0.0%
Other	4.3%	8.0%
Methamphetamine		
Court or Supervision Violation	39.5%	34.1%
Drug Trafficking	11.9%	16.1%
Drug Possession	10.7%	10.0%
Simple Assault	7.3%	8.1%
Larceny/Motor Vehicle Theft	5.1%	6.2%
DUI	4.6%	4.3%
Aggravated Assault	3.7%	4.8%
Fraud	3.1%	3.0%
Weapons Offenses	2.0%	1.5%
Burglary	1.9%	2.3%
Other Property	1.7%	2.5%
Escape/Flight	1.2%	0.2%
Other	7.5%	7.0%

Table C-1. Most Serious Post-Release Recidivism Event by Primary Drug Type, Continued

	Retroactivity Group	Comparison Group
Other Drugs		
Court or Supervision Violation	35.2%	38.2%
Drug Possession	12.4%	8.4%
Drug Trafficking	10.5%	13.7%
Fraud	5.7%	5.3%
Other Property	5.7%	1.5%
Simple Assault	5.7%	6.9%
Larceny/Motor Vehicle Theft	3.8%	7.6%
Unspecified Drug Offense	3.8%	2.3%
Weapons Offenses	3.8%	0.0%
DUI	2.9%	6.1%
Aggravated Assault	1.9%	3.8%
Murder	1.9%	0.8%
Other	6.7%	5.3%

APPENDIX D

Table D-1. Most Serious Post-Release Recidivism Event: Violent Offenses Only

Retroactivity Group		Comparison Group	
All Drugs			
Total Violent	**20.7%**	**Total Violent**	**21.5%**
Simple Assault	8.4%	Simple Assault	9.0%
Aggravated Assault	3.4%	Aggravated Assault	5.2%
Weapons Offenses	2.9%	Weapons Offenses	1.7%
Robbery	1.4%	Robbery	1.2%
Murder	1.3%	Murder	1.0%
Kidnapping	0.6%	Forcible Sex Offense	0.6%
Forcible Sex Offense	0.6%	Kidnapping	0.5%
Child Abuse	0.6%	Hit and Run with Bodily Injury	0.4%
Intimidation (Not Witness)	0.3%	Child Abuse	0.3%
Other Violent	1.6%	Other Violent	1.8%

Retroactivity Group		Comparison Group	
Powder Cocaine			
Total Violent	**22.6%**	**Total Violent**	**23.6%**
Simple Assault	8.7%	Simple Assault	9.7%
Aggravated Assault	3.3%	Aggravated Assault	6.0%
Weapons Offenses	2.4%	Weapons Offenses	1.8%
Murder	2.1%	Murder	1.1%
Robbery	1.2%	Forcible Sex Offense	1.1%
Forcible Sex Offense	0.9%	Robbery	1.1%
Child Abuse	0.9%	Kidnapping	0.8%
Intimidation (Not Witness)	0.6%	Intimidation (Not Witness)	0.3%
Non-Negligent Manslaughter	0.3%	Child Abuse	0.3%
Other Violent	2.1%	Other Violent	1.6%

**The sum of the individual offense rates in this Appendix may not equal the total due to rounding.*

Crack Cocaine	Retroactivity Group		Comparison Group	
	Total Violent	**25.0%**	**Total Violent**	**24.6%**
	Simple Assault	9.9%	Simple Assault	10.0%
	Weapons Offenses	4.7%	Aggravated Assault	5.2%
	Aggravated Assault	3.3%	Weapons Offenses	2.2%
	Robbery	2.4%	Robbery	1.8%
	Murder	1.3%	Murder	1.5%
	Kidnapping	0.8%	Forcible Sex Offense	0.6%
	Child Abuse	0.6%	Kidnapping	0.4%
	Forcible Sex Offense	0.3%	Intimidation (Not Witness)	0.4%
	Intimidation (Not Witness)	0.3%	Hit and Run with Bodily Injury	0.4%
	Other Violent	1.4%	Other Violent	2.1%

Heroin	Retroactivity Group		Comparison Group	
	Total Violent	**14.2%**	**Total Violent**	**23.7%**
	Simple Assault	5.7%	Simple Assault	9.7%
	Aggravated Assault	2.1%	Aggravated Assault	3.6%
	Unspecified Manslaughter	1.4%	Weapons Offenses	3.0%
	Robbery	1.4%	Robbery	1.8%
	Weapons Offenses	1.4%	Murder	1.2%
	Intimidation (Not Witness)	0.7%	Unspecified Manslaughter	0.6%
	Hit and Run with Bodily Injury	0.7%	Kidnapping	0.6%
	Other Violent	0.7%	Forcible Sex Offense	0.6%
			Intimidation (Not Witness)	0.6%
			Other Violent	1.8%

**The sum of the individual offense rates in this Appendix may not equal the total due to rounding.*

Retroactivity Group		Comparison Group	
Marijuana			
Total Violent	**18.3%**	**Total Violent**	**19.2%**
Simple Assault	9.1%	Simple Assault	7.5%
Aggravated Assault	4.8%	Aggravated Assault	6.5%
Murder	1.1%	Robbery	1.9%
Kidnapping	1.1%	Kidnapping	0.5%
Statutory Rape	0.5%	Forcible Sex Offense	0.5%
Forcible Sex Offense	0.5%	Intimidation (Not Witness)	0.5%
Robbery	0.5%	Hit and Run with Bodily Injury	0.5%
Weapons Offenses	0.5%	Weapons Offenses	0.5%
		Other Violent	0.9%

Retroactivity Group		Comparison Group	
Methamphetamine			
Total Violent	**18.0%**	**Total Violent**	**18.3%**
Simple Assault	7.3%	Simple Assault	8.1%
Aggravated Assault	3.7%	Aggravated Assault	4.8%
Weapons Offenses	2.0%	Weapons Offenses	1.5%
Murder	1.0%	Murder	0.7%
Forcible Sex Offense	0.7%	Hit and Run with Bodily Injury	0.5%
Child Abuse	0.7%	Kidnapping	0.3%
Kidnapping	0.5%	Child Abuse	0.3%
Robbery	0.5%	Unspecified Manslaughter	0.2%
Hit and Run with Bodily Injury	0.3%	Forcible Sex Offense	0.2%
Other Violent	1.2%	Other Violent	1.7%

**The sum of the individual offense rates in this Appendix may not equal the total due to rounding.*

Retroactivity Group		Comparison Group	
Other Drugs			
Total Violent	**17.1%**	**Total Violent**	**15.3%**
Simple Assault	5.7%	Simple Assault	6.9%
Weapons Offenses	3.8%	Aggravated Assault	3.8%
Murder	1.9%	Murder	0.8%
Robbery	1.9%	Kidnapping	0.8%
Aggravated Assault	1.9%	Forcible Sex Offense	0.8%
Forcible Sex Offense	1.0%	Robbery	0.8%
Other Violent	1.0%	Hit and Run with Bodily Injury	0.8%
		Other Violent	0.8%

**The sum of the individual offense rates in this Appendix may not equal the total due to rounding.*

Appendix E

Figure E-1. Recidivism Rates by Primary Drug Type and Race/Ethnicity

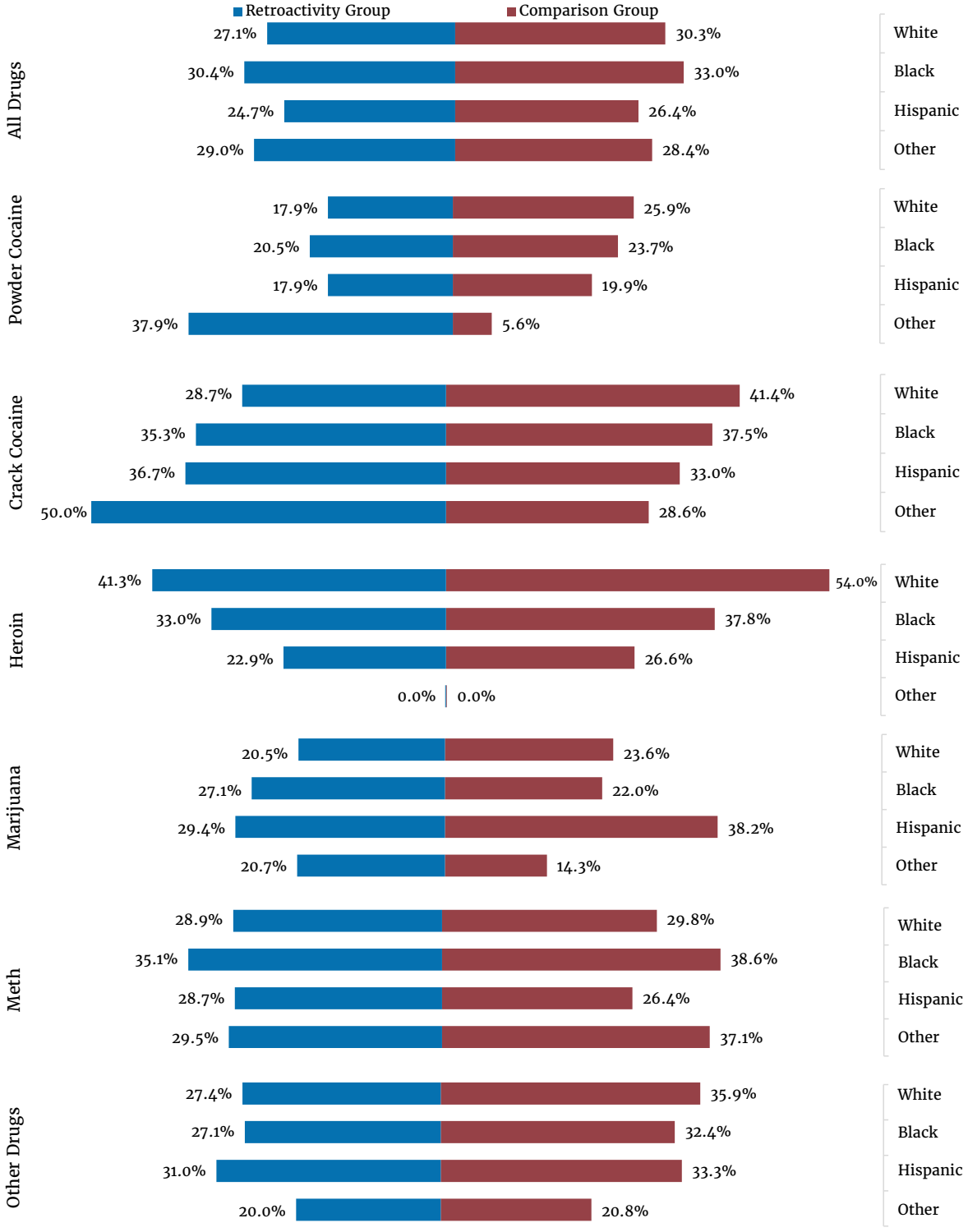


Figure E-2. Recidivism Rates by Primary Drug Type and Gender

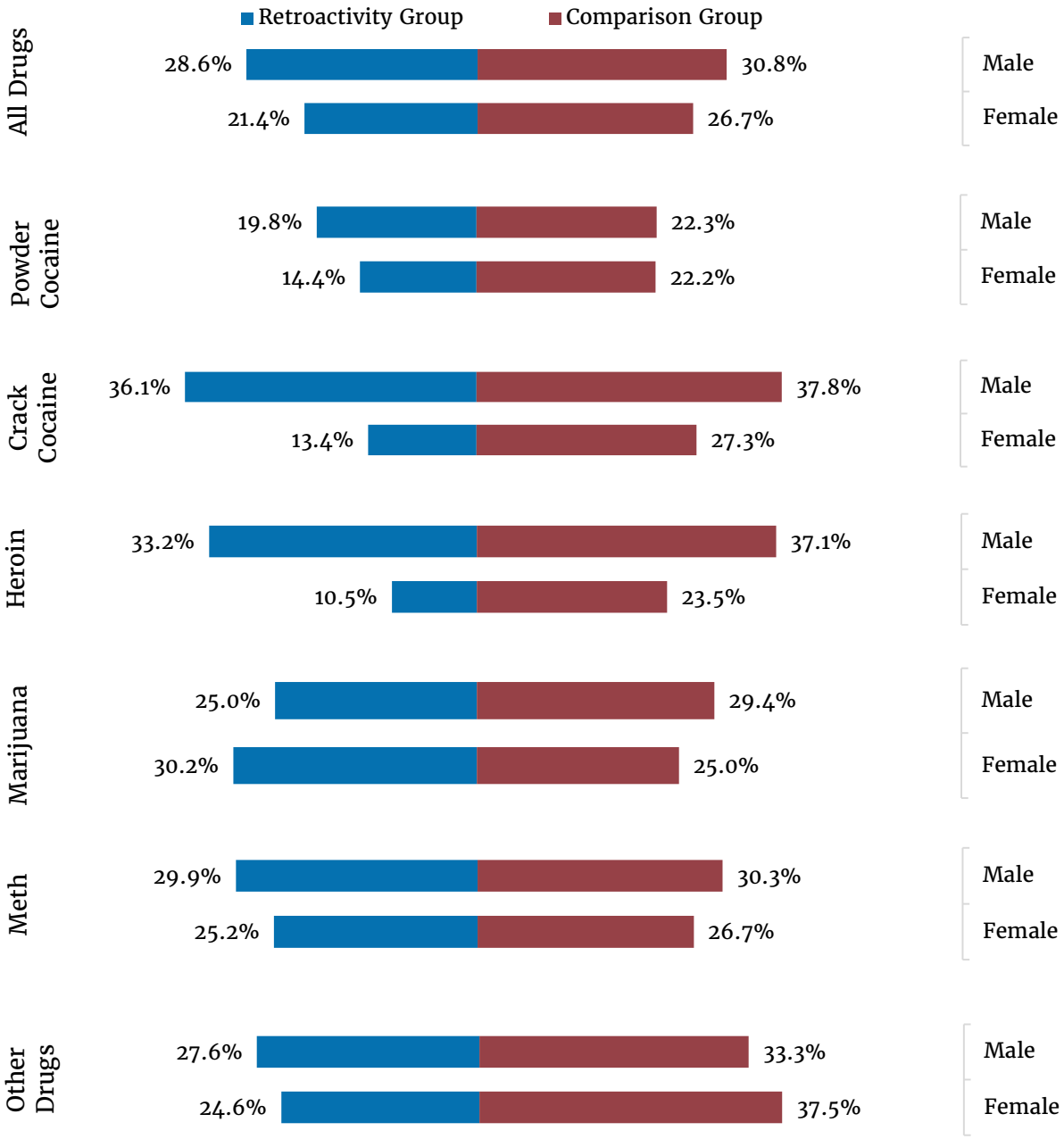


Figure E-3. Recidivism Rates by Primary Drug Type and Educational Attainment

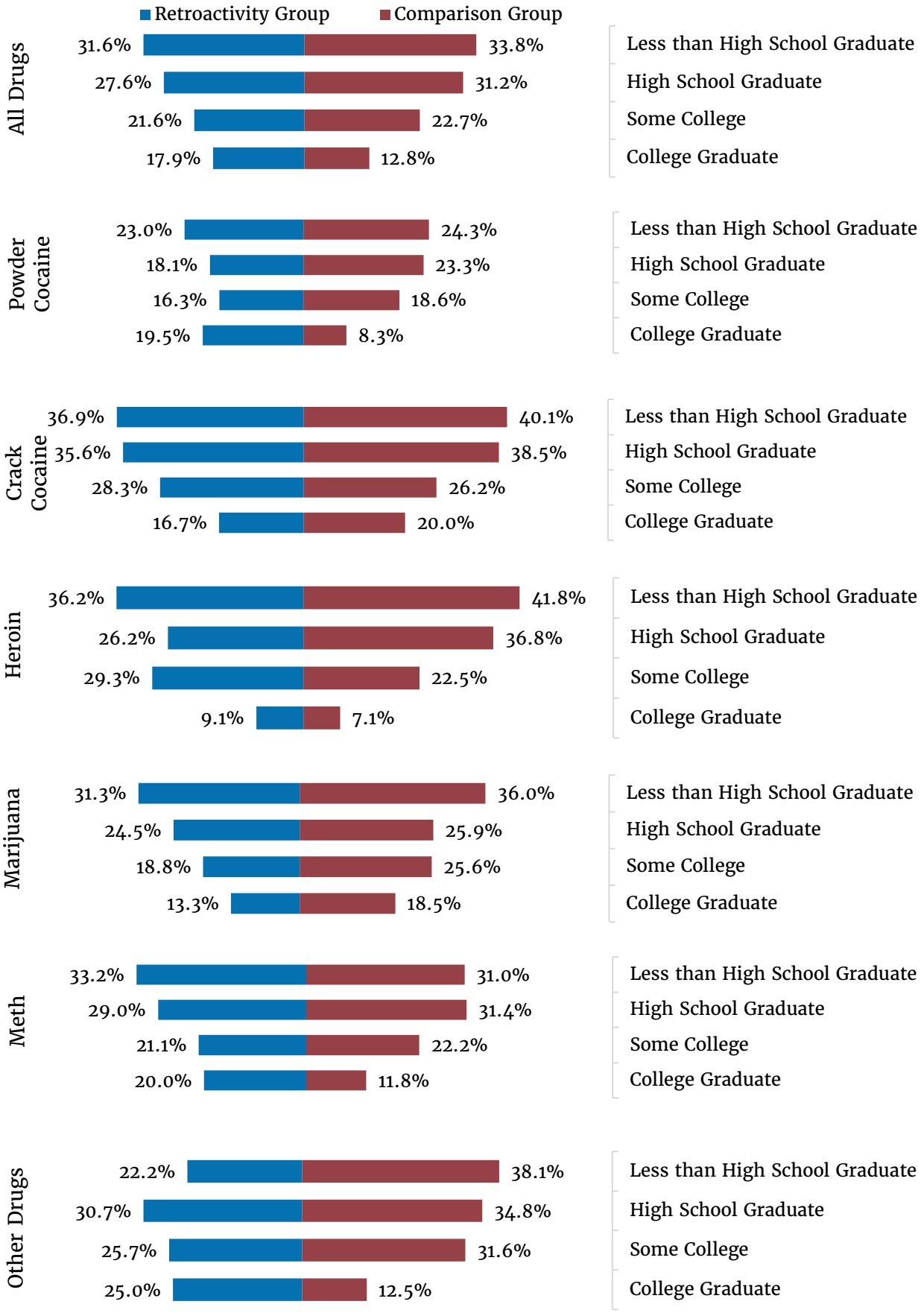


Figure E-4. Recidivism Rates by Primary Drug Type and Age at Release

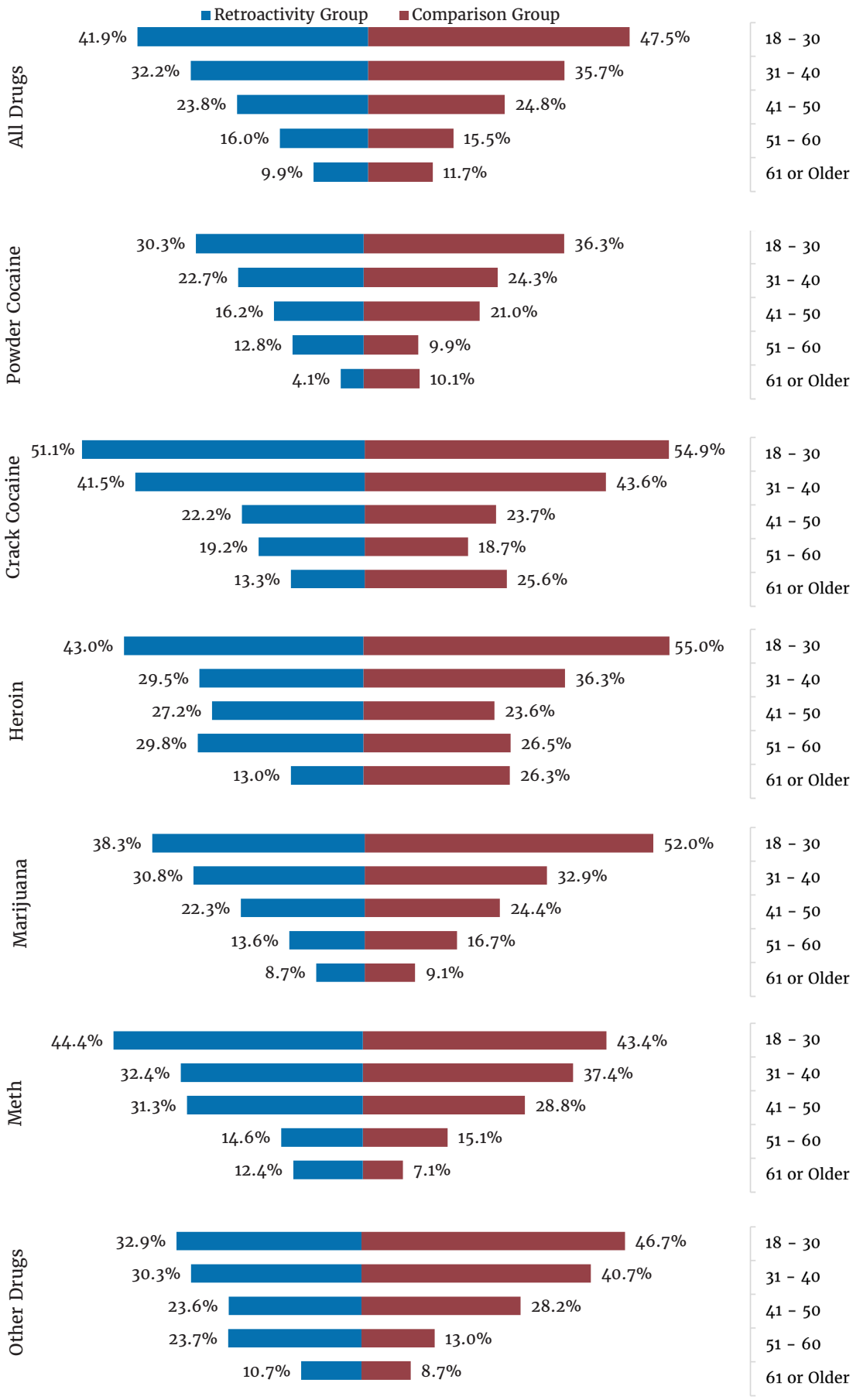


Figure E-5. Recidivism Rates by Primary Drug Type and Criminal History Category

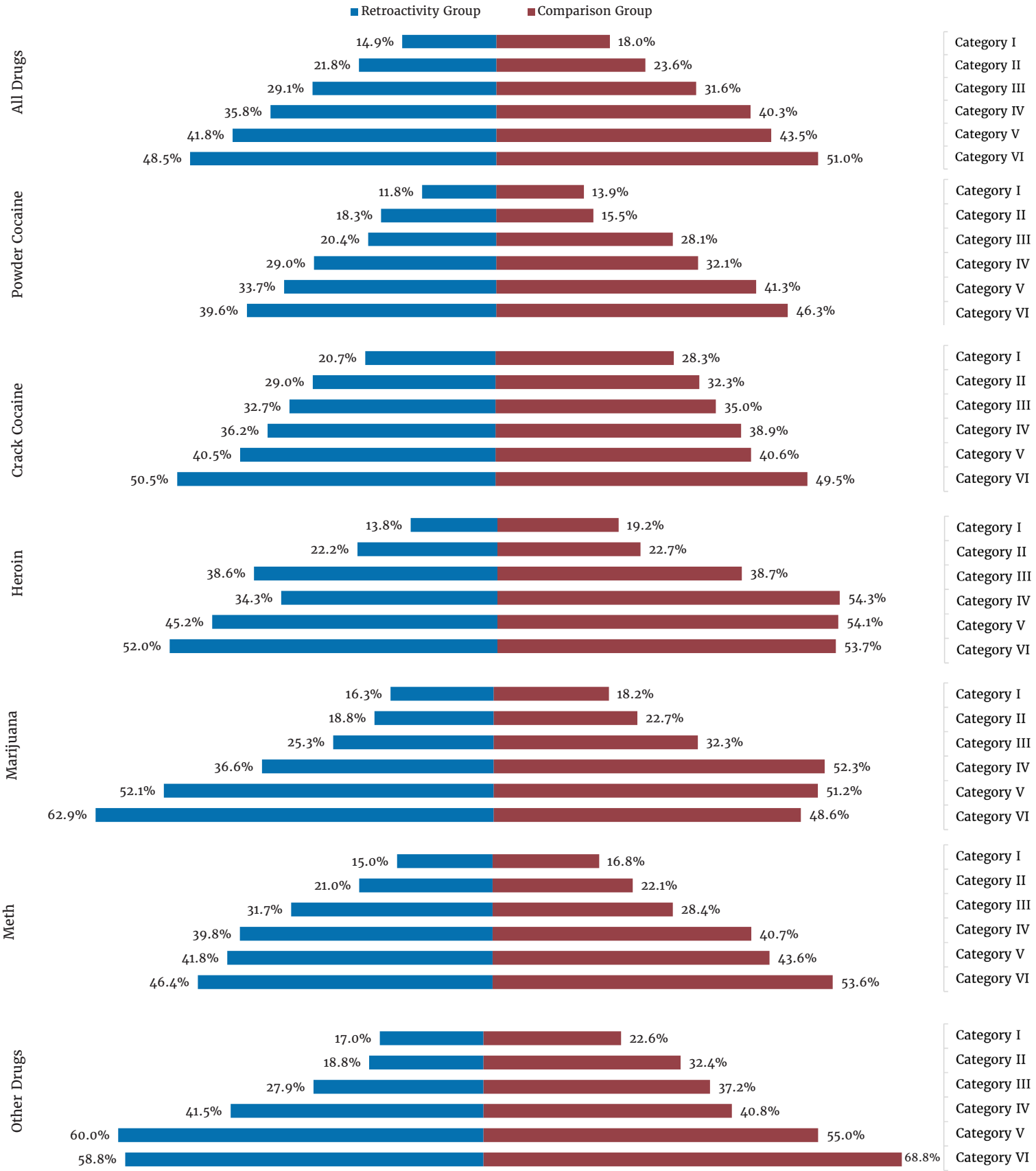


Figure E-6. Recidivism Rates by Primary Drug Type and Weapon Involvement

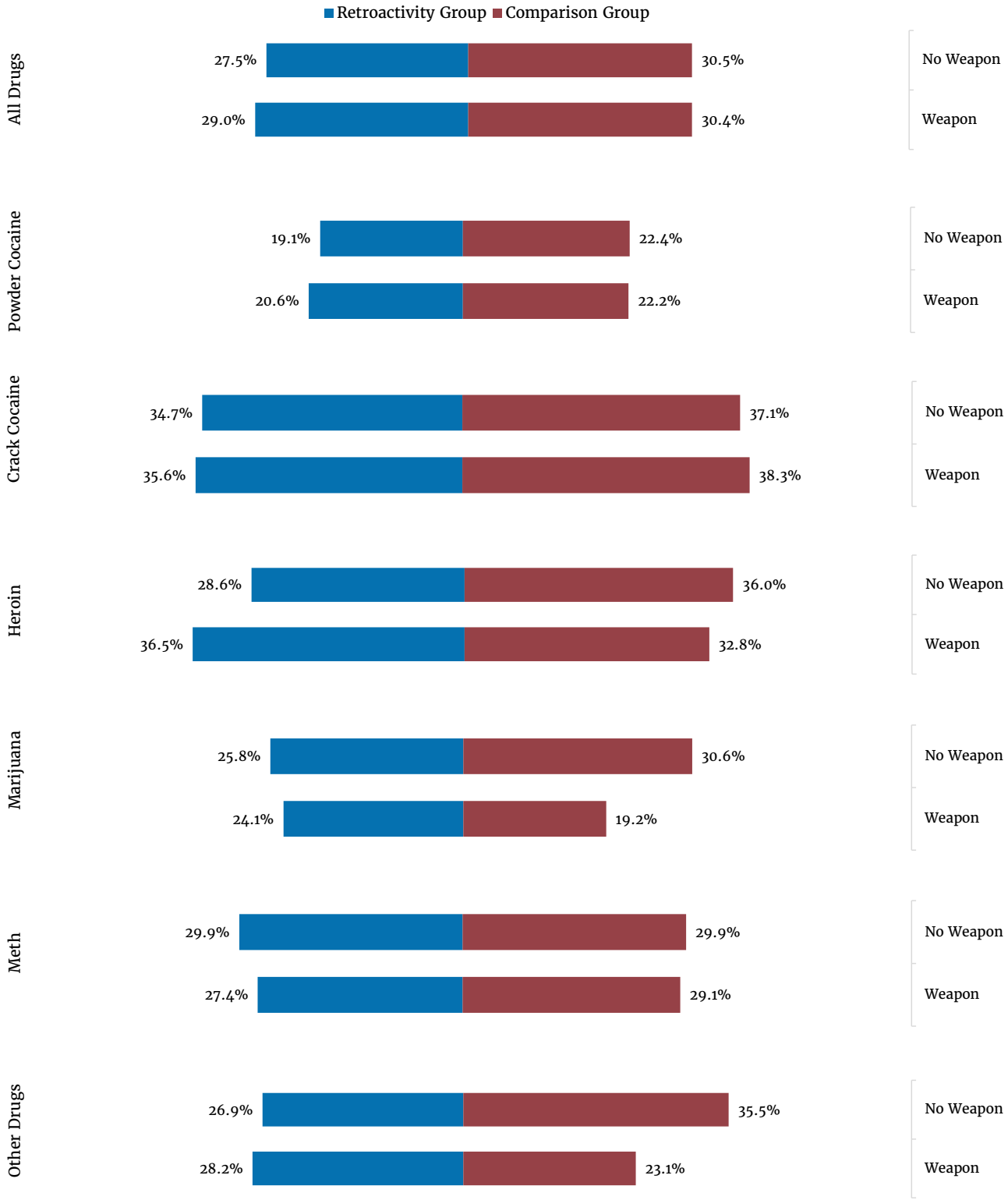


Figure E-7. Recidivism Rates by Primary Drug Type and Sentence Relative to the Guideline Range

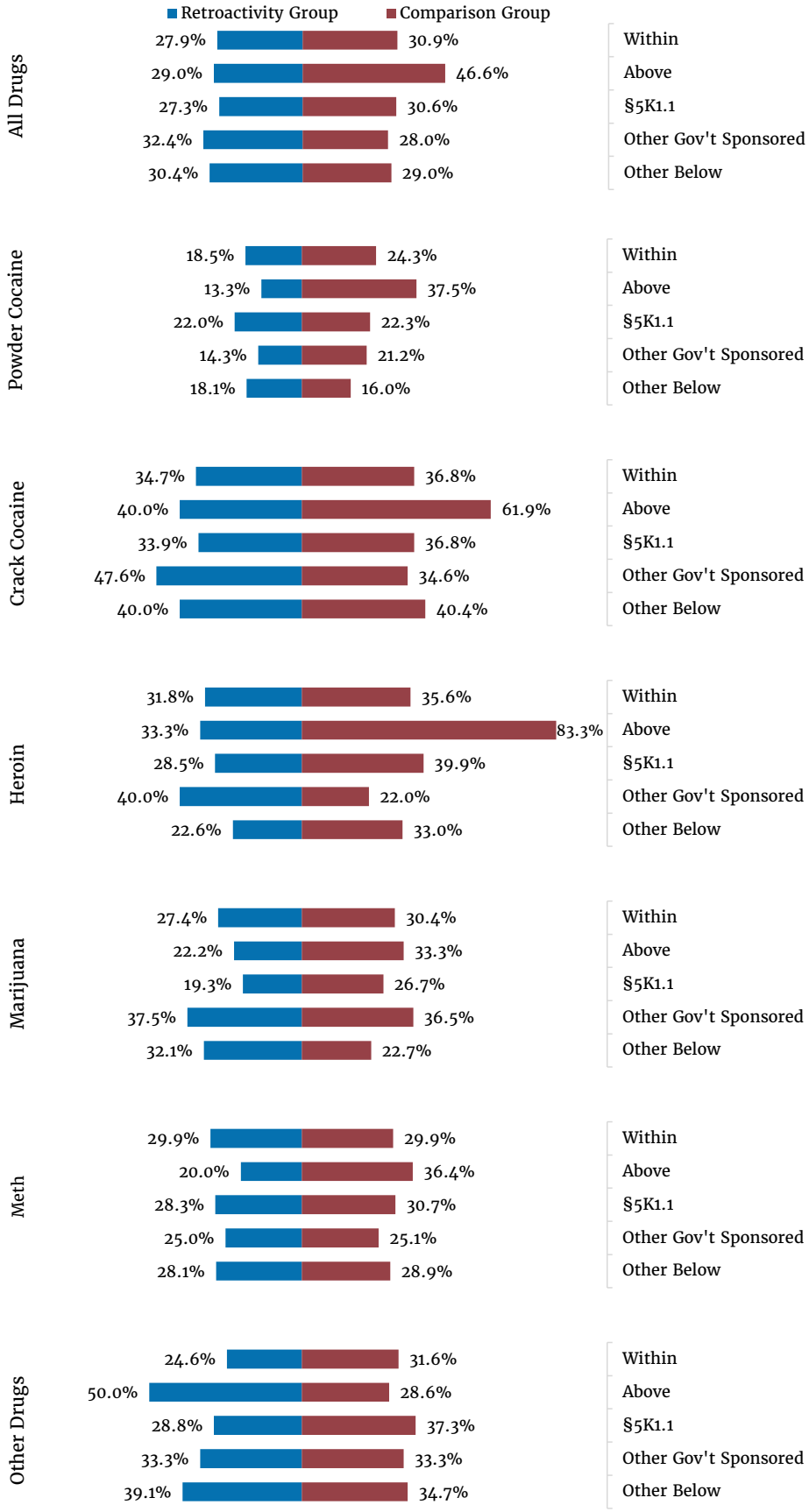
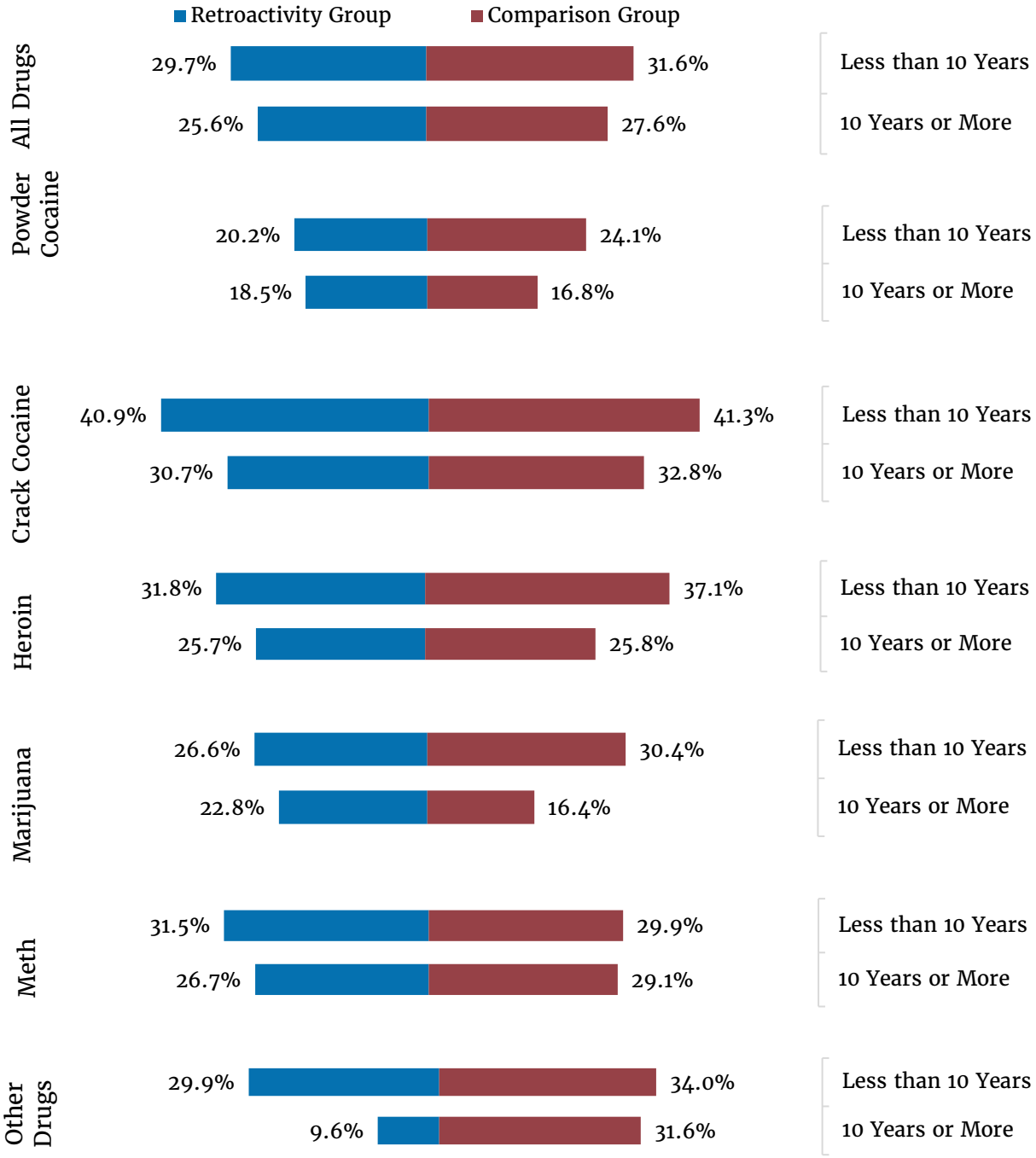


Figure E-8. Recidivism Rates by Primary Drug Type and Sentence Length



ENDNOTES

1 U.S. Sentencing Comm'n, *Guidelines Manual*, App. C, amend. 782 (effective Nov. 1, 2014) [hereinafter USSG].

2 USSG, App. C, amend. 782 (effective Nov. 1, 2014).

3 USSG §2D1.1(c).

4 USSG App. C, amend. 788 (effective Nov. 1, 2014).

5 In order to be eligible for a sentence reduction, an offender must have been serving a term of imprisonment, the guideline range applicable to the offender must have been lowered as a result of the Drugs Minus Two Amendment, and the offender's release date had to be scheduled later than November 1, 2015. USSG App. C, amend. 788 (effective Nov. 1, 2014).

6 USSG App. C, amend. 782 (effective Nov. 1, 2014); USSG App. C, amend. 788 (effective Nov. 1, 2014).

7 U.S. Sentencing Comm'n, 2014 Drug Guiuelines Amendment Retroactivity Data Report 10 tbl.7 (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20200324-Drug-Retro-Analysis.pdf.

8 USSG App. C, amend. 782 (effective Nov. 1, 2014).

9 USSG §2D1.1. Exceptions include cases where the offense of conviction establishes that death or serious bodily injury resulted.

10 USSG App. C, amend. 782 (effective Nov. 1, 2014).

11 *Id.*

12 *Id.*

13 USSG §2D1.1, comment. (backg'd.).

14 USSG App. C, amend. 782 (effective Nov. 1, 2014).

15 *Id.*

16 *Id.*

17 *See* U.S. Sentencing Comm'n, Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment (2014), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf [hereinafter Crack Minus Two Recidivism Study].

18 *Id.* at 3.

19 28 U.S.C. § 994(u).

20 18 U.S.C. § 3582(c)(2).

21 *Id.*

22 USSG §1B1.10.

23 USSG §1B1.10(a)(2)(B).

24 The guideline range for career offenders is determined under USSG §4B1.1 (Career Offender) and is not impacted by the Drug Quantity Table. *See* USSG §4B1.1(b). Therefore, the applicable guideline range for drug trafficking offenders who were also career offenders was not lowered by the Drugs Minus Two Amendment, and therefore those career offenders were not eligible for a retroactive sentence reduction.

25 Offenders may also be ineligible because their drug quantity was so high that the offense level did not change, or because the type and quantity of drug they possessed triggered an offense level "floor" in the drug quantity table. In either of those situations, the guideline range would not be affected by the Drugs Minus Two Amendment and thus they would not be eligible for retroactive reduction in their term

of imprisonment. *See* USSG §2D1.1.

26 *See* U.S. Sentencing Comm'n, Report to Congress: Career Offender Sentencing Enhancements 39 (2016), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/criminal-history/201607_RtC-Career-Offenders.pdf ; U.S. Sentencing Comm'n, Recidivism Among Federal Offenders: A Comprehensive Overview 19 (2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf [hereinafter 2016 Comprehensive Overview].

27 USSG §1B1.10, comment. (n.1(B)(ii)).

28 USSG App. C, amend. 788 (effective Nov. 1, 2014).

29 *Id.*

30 *Id.*

31 *Id.*

32 Most of the denials were due, at least in part, to a finding that the offender was ineligible under §1B1.10 (11,925 denials) or because the offense did not involve drugs (1,029 denials).

33 This category includes supervision violations, contempt of court, failure to appear, violation of a restraining order, and sex offender registration violations.

34 The dataset utilized in the course of conducting analyses included in this publication includes information obtained pursuant to an interagency agreement with the Federal Bureau of Investigation and therefore cannot be publicly released.

35 A three-year follow-up period was used in the two previous recidivism reports and has been shown to be sufficient. The National Advisory Commission on Criminal Justice Standards and Goals recommends a follow-up time of three years. *See* Michael D. Maltz, Recidivism 22 (2001). The eight-year follow-up period used in recent publications, such as U.S. Sentencing Comm'n, Recidivism Among Federal Offenders: A Comprehensive Overview, while providing a more complete analysis, would delay the reporting of recidivism rates for the two groups an additional five years. *See* 2016 Comprehensive Overview, *supra* note 26, at 7.

36 After matching, a small number of offenders were discovered to be non-citizens and were removed from the study, resulting in 11 fewer offenders in the Retroactivity Group.

37 *See* 2016 Comprehensive Overview, *supra* 26, at 27.

38 Offenders generally serve their full sentences, less reductions for earned credit.

39 The original sentence differences between the two groups are largely the result of the sudden release of many of those receiving the retroactive application of the Drugs Minus Two Amendment. Most notably, the groups differ with respect to average original sentence. The Retroactivity Group had an average original sentence, before the retroactive reduction, which was substantially longer (128 months) than that of the Comparison Group's sentence (89 months). This difference is related to the flow of offenders through a prison population. Daily counts of a prison population show a larger percentage of offenders with longer sentences than those entering prison on that day (the admission count). The current prison population at any given time tends to overrepresent more offenders with longer sentences because these offenders accumulate in prison over time while those with shorter sentences are released relatively quickly. *See* James P. Lynch, *A Comparison of Prison Use in England, Canada,West Germany, and the United States: A Limited Test of the Punitive Hypothesis*, 79 J. Crim. Law & Criminology 180, 184 (1988).

Retroactive releases of the Drugs Minus Two Retroactivity Group show many offenders being released quickly within the initial days of the effective date of retroactivity. Retroactive releases of the Drugs Minus Two Retroactivity Group resulted in 2,973 offenders released on the first weekend of implementation, including a disproportionate number of offenders with longer sentences. The daily release of the Comparison Group never exceeded 100 offenders. Therefore, it is likely that the longer original sentence length of the Retroactivity Group is due to the large numbers of offenders with longer sentences being released in unusually high numbers.

40 *See* Appendix B-1.

41 *See* Fed. Judicial Ctr., Reference Manual on Scientific Evidence 303 (2011) (Reference Guide on Multiple Regression) for an overview of regression modeling.

42 All charts were generated using U.S. Sentencing Commission's 2014-16 Drugs -2 Retroactive Recidivism Release Cohort Datafile, USSC_DM2_RECID1416. The Commission excluded cases from this analysis that were missing information necessary to perform the analysis.

43 A binary logit model with control variables was used to test the effect of the Retroactivity Group on a recidivism outcome compared to the Comparison Group. The effect was not statistically significant at the $p < .05$ level ($p=.15$). *See* Appendix B.

44 Recidivism events categorized as "court or supervision violations" may involve a wide range of conduct. This publication is not intended to comment on the seriousness of any such violation committed by an offender in the study group.

45 *See* U.S. Sentencing Comm'n, The Effects of Aging on Recidivism Among Federal Offenders (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

46 *See* U.S. Sentencing Comm'n, The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170309_Recidivism-CH.pdf.

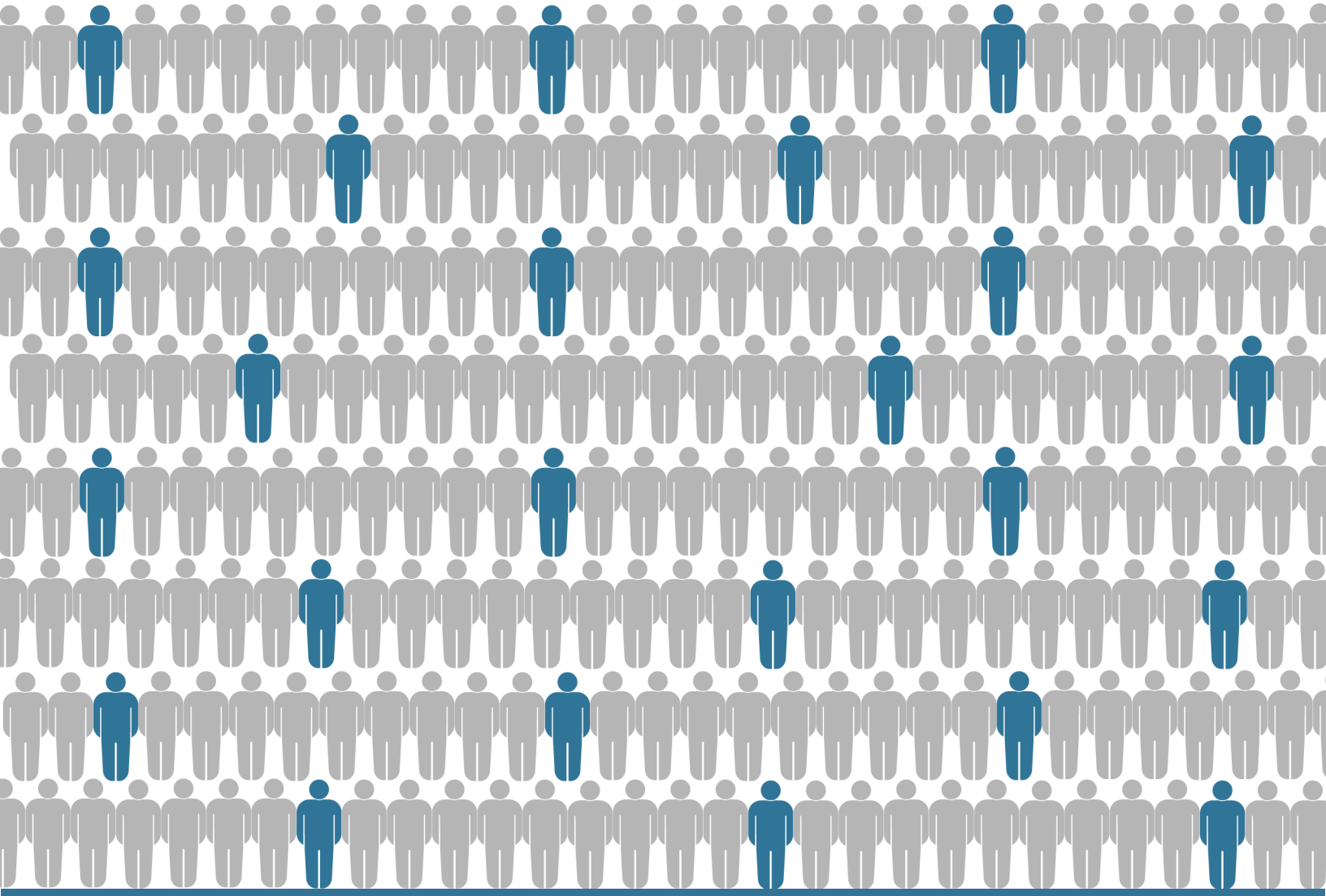
47 USSG §4A1.1.

48 For this report, an offense involving a weapon includes only a conviction under 18 U.S.C. § 924(c) or the application of a Specific Offense Characteristic (SOC) indicating the involvement of a weapon in the offense.

49 *See* U.S. Sentencing Comm'n, Recidivism Among Federal Drug Trafficking Offenders (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170221_Recidivism-Drugs.pdf.

50 *See* Tables B-2 through B-7 for the logistic regression tables. For each specific drug type, there was no statistically significant difference in the likelihood of recidivism for the Retroactivity Group relative to the Comparison Group.

51 As noted above (*supra* note 44), this publication is not intended to comment on the seriousness of any such violation committed by an offender in the study group.



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