

Disarming Data: An Empirical Take on the Loaded Debate About Felon-in-Possession of a Firearm

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This Article answers a crucial empirical question at the heart of the scholarly and judicial debates about the laws governing felon-in-possession of a firearm: How often do defendants charged with this offense have violent felony convictions? Using a comprehensive dataset of over 27,000 defendants charged in California from 2021 through 2024, the study provides a novel, large-scale analysis of how prosecutors deploy this most-common gun charge. The findings substantiate longstanding concerns that felon-in-possession is overbroad in its application to nonviolent felons—only 8.5% of defendants had a “violent felony” conviction as defined by California law, rising to just 28.8% under a broader definition of violent felony. The data also confirm critics’ fears about racial disparities in prosecutions, showing that Black and Latino defendants are overrepresented not only compared to population demographics but also compared to their proportion among all felony defendants. At the same time, however, the findings challenge the traditional critiques of felon-in-possession, primarily by shifting the focus away from drug felons and white-collar felons. Instead, the data show that a plurality of defendants has neither a violent felony conviction nor a drug-related felony conviction, but instead has convictions for crimes on the border of violence—“violent-adjacent” offenses like burglary or fleeing from the police. The study also reveals that prosecutors file the enhanced violent-felon-in-possession charge in only 27.3% of eligible cases, suggesting an unexpected underuse of penalties for defendants with violent histories. These empirical insights arrive at a critical moment as courts evaluate Second Amendment challenges to felon-in-possession laws, particularly regarding their application to nonviolent felons, and as policymakers consider reforms to this controversial gun crime.

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INTRODUCTION

Felon-in-possession of a firearm, the most common gun charge in America, is the subject of an intense debate with grave policy and Second Amendment implications. Is it a “common sense” safety measure aimed at keeping guns out of the hands of violent criminals or is it an overbroad, racially discriminatory infringement of the constitutional right to bear arms? Commentators and courts have long debated this question. Unfortunately, they have done so without essential data. There is a broad consensus that felon-in-possession is more legitimate when it targets violent felons, and less legitimate when it targets nonviolent ones. The law, on its face, allows for either group to be prosecuted and relies on prosecutorial discretion to channel enforcement in the appropriate way.

But no one seems to know how often prosecutors bring this charge against defendants with violent felony convictions compared to how often they bring the charge against felons without violent felony convictions. This Article steps into the gap with a comprehensive dataset that contains every arrest, charge, and case disposition in every California county over a fifteen-year period from 2010 through 2024. Using this dataset, the Article builds a criminal history summary for each individual and then examines the 27,202 defendants who (1) were charged with felon-in-possession from January 2021 through October 2024 and (2) have a prior felony conviction that registers in the dataset.

What do the criminal histories of these felon-in-possession defendants tell us about the way prosecutors use this gun charge in the nation’s largest state? The study makes the following key findings:

- *Finding 1.* 8.5 percent of felon-in-possession defendants had a conviction for a “violent felony,” as that term is defined in the California Penal Code. Even under a broader definition of violent felony, which includes felony convictions for assault, battery, and certain sex crimes, just 28.8 percent of felon-in-possession defendants had a violent felony conviction. This finding provides the first quantitative estimate of the violent histories of felon-in-possession defendants, and it provides support for the longstanding claim that prosecutors use this offense to target largely nonviolent defendants.
- *Finding 2.* 34.8 percent of felon-in-possession defendants had a felony drug conviction (drug use, sale, manufacturing, or related crimes), 27.9 percent had a felony drug conviction but no violent felony conviction (using the broader definition of violence). This finding quantifies and substantiates the link between felon-in-possession and the War on Drugs. This connection is one of the most controversial aspects of felon-in-possession. More than a quarter of felon-in-possession defendants had a drug, but not a violent, felony conviction that qualified them for prosecution.
- *Finding 3.* Black and Latino defendants are overrepresented among felon-in-possession defendants not only compared to their proportion of the

state's population but also compared to their proportion of all felons in the state who were charged with a new felony from 2021 through 2024. This finding supports claims of felon-in-possession's racially discriminatory application and shows that felon-in-possession defendants actually have less violent criminal histories than felony defendants as a whole. Notably, the data cannot account for the potential that there are different levels of gun possession across racial categories or other factors, aside from prosecutorial discretion, that lead to these disparities.

- *Finding 4.* 43.3 percent of felon-in-possession defendants have neither a violent felony nor a drug felony conviction. This finding cuts against the traditional story about felon-in-possession, a story that characterizes felon-in-possession as an offense predominantly pursued against nonviolent drug offenders. This traditional story is incomplete at best, and incorrect at worst. Among the most common felony convictions in this nonviolent/non-drug category are burglary, gun possession, and fleeing from the police with reckless disregard for safety. Treating these felonies as “violent-adjacent,” a contested term to be sure, the data indicate that 70.3 percent of all felon-in-possession defendants had either a violent or a violent-adjacent felony conviction. This finding suggests that limiting felon-in-possession to “violent” felony convictions, as many reformers suggest, would raise difficult questions about a great deal of today's current felon-in-possession defendants—defendants who occupy this “violent-adjacent” category. Should someone with a burglary conviction, for example, or a felony conviction for fleeing the police with disregard for safety, be permitted to bear arms? These are the types of hard questions that arise from examining the data.
- *Finding 5.* Like many jurisdictions, California has a separate and more severe offense for felon-in-possession when the defendant has a “violent” felony conviction.¹ The data show that this separate charge, violent-felon-in-possession, was filed in only 27.3 percent of the cases where the defendant could have been so charged. For all the concern about felon-in-possession's overuse and abuse, this finding suggests that prosecutors are underusing this more-serious charge, counterintuitively ignoring those felon-posestors with the strongest connection to violence. This finding raises further questions about prosecutorial discretion and, of course, the importance of a violent felony conviction in the first place.

The implications of these findings are timely and valuable, not only to policy reformers but also to courts evaluating Second Amendment challenges. Recent changes in Second Amendment doctrine have brought renewed scrutiny to felon-in-possession laws throughout the country. In the federal system, the Third Circuit and Tenth Circuit recently split on whether federal felon-in-possession violated the Second Amendment as applied to nonviolent felons.²

1. CAL. PENAL CODE § 29900.

2. *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2708 (2024); *Range v. Att'y Gen. of the U.S.*, 53 F.4th 262, 284 (3d Cir. 2022), *vacated sub nom.*, *Garland v.*

The Supreme Court vacated and remanded those decisions in light of its recent decision in *United States v. Rahimi*.³ Similarly, a Ninth Circuit panel found the federal law unconstitutional, as-applied to a nonviolent felon, and that panel decision is now pending en banc review.⁴ Numerous petitions for certiorari are pending on this same Second Amendment issue, and state courts are similarly wrestling with the basic question of felon-in-possession's application to nonviolent felons.⁵ It is only a matter of time before the Supreme Court must decide the issue. And, in evaluating the constitutionality of felon-in-possession laws, it will be essential to understand how these laws are applied in actual cases. How often do prosecutors pursue felon-in-possession cases against those without violent felony convictions? When they do, what types of criminal convictions do these defendants have in their histories? The findings of this study provide much-needed empirical context for the doctrinal analysis.

Beyond the doctrinal implications, this study contributes to the academic debate about felon-in-possession by anchoring anecdotal and theoretical claims in large-scale empirics. For those who assail felon-in-possession as “wildly overinclusive,”⁶ illogical, and racially discriminatory in the way prosecutors apply it, the data provides validation that did not previously exist. But the study also provides validation for supporters of felon-in-possession, insofar as it shows the inadequacy of the current narrative that prosecutors primarily use this charge to target those with nonviolent drug felonies and other crimes that lack a nexus to violence. For example, a common line of criticism highlights the role of drug felonies and then identifies some absurdly nonviolent crime, like “opening a bottle of ketchup at the supermarket and putting it back on the shelf,”⁷ that *could* lead to felon-in-possession charges. As this study shows, however, the plurality of defendants—43.3 percent—have neither a violent felony conviction nor a drug felony conviction. And their felony convictions have nothing to do with reshelving condiments. Rather, they have criminal histories that contain crimes on the border of violence: burglary, gun possession, and fleeing from the police with reckless disregard for safety. Reasonable minds can differ on whether these

Range, 144 S. Ct. 2706 (2023) (mem.); CONG. RSCH. SERV., LSB11170, COURTS DISAGREE AS TO WHETHER THE FEDERAL FELON-IN-POSSESSION FIREARM PROHIBITION VIOLATES THE SECOND AMENDMENT 2–4 (2024) (collecting circuit split citations).

3. 602 U.S. 680 (2024); CONG. RSCH. SERV., LSB11170, COURTS DISAGREE AS TO WHETHER THE FEDERAL FELON-IN-POSSESSION FIREARM PROHIBITION VIOLATES THE SECOND AMENDMENT 5 (2024).

4. *United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024), *reh'g en banc granted*, 137 F.4th 743 (9th Cir. 2024).

5. Andrew Willinger, *SCOTUS Gun Watch—Week of 1/6/25*, DUKE CTR. FOR FIREARMS L. (Jan. 6, 2025), <https://firearmslaw.duke.edu/2025/01/scotus-gun-watch-week-of-1-6-25> (tracking cert petitions challenging deferral and state felon-in-possession laws as applied to nonviolent felons, including challenges to Florida's state ban and to the federal ban in the Fourth, Fifth, Ninth, Tenth, and Eleventh Circuits); Sadler McKeen, *New York State Rifle & Pistol Ass'n v. Bruen: Something Is “Bruen” in Felon-in-Possession Laws*, 47 AM. J. TRIAL ADVOC. 435, 447 (2024).

6. See, e.g., Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH. L. REV. 683, 721 (2007).

7. *Folajtar v. Att'y Gen. of the U.S.*, 980 F.3d 897, 921 (3d Cir. 2020) (Bibas, J., dissenting) (referencing PAUL H. ROBINSON ET AL., REPORT ON OFFENSE GRADING IN NEW JERSEY 3 (2011)).

crimes are violent and, certainly, on whether even violent felony convictions are predictors of dangerousness. This Article does not attempt to decide the normative desirability of felon-in-possession laws. Rather, it aims to show the complexity of how prosecutors actually use the charge. Only by analyzing the data on how this crime is charged can the debate move beyond its current stasis.

The Article proceeds in three Parts. Part I presents the scholarly and doctrinal debate about felon-in-possession, with a focus on the crime's application to nonviolent felons. Part II describes the data, the methods, the limitations, and the results. Part III considers the Second Amendment and policy implications for felon-in-possession.

I. THE DEBATE ABOUT FELON-IN-POSSESSION

Felon-in-possession of a firearm is “the center of the gun-regulation universe,”⁸ according to one scholar. It accounts for nearly 13 percent of all convictions in the federal system,⁹ and is the most common gun charge in the state system, too.¹⁰ The federal system and nearly every state maintains criminal laws prohibiting the possession of firearms by those convicted of felonies.¹¹ Proponents describe felon-in-possession as a common-sense safety measure. The criminal system has no better way to keep guns out of the hands of dangerous people, they argue, than to use a felony conviction as a proxy for dangerousness.¹² While they acknowledge that felon-in-possession sweeps in nonviolent felony convictions, defenders of these laws say that limiting the crime to only violent felonies would undermine the “bright-line” nature of the prohibition and lead to an “unworkable and convoluted” debate about which

8. Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 CARDOZO L. REV. 1573, 1574 (2022).

9. U.S. SENT'G COMM'N, QUICK FACTS: FELON IN POSSESSION OF A FIREARM (2021) (noting that federal felon-in-possession convictions account for 13% of all federal cases).

10. Jonathan Abel, *Going Federal, Staying Stateside: Felons, Firearms, and the “Federalization” of Crime*, 73 AM. U. L. REV. 585 (2024).

11. *United States v. Yancey*, 621 F.3d 681, 685 (7th Cir. 2010) (“[M]ost felons are nonviolent, but someone with a felony conviction on his record is more likely than a nonfelon to engage in illegal and violent gun use. . . . [E]very state court in the modern era to consider the propriety of disarming felons under analogous state constitutional provisions has concluded that step to be permissible.”).

12. *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2708 (2024) (“[W]e have no basis to draw constitutional distinctions based on the type of felony involved.”); *Folajtar*, 980 F.3d at 906 (“[A]dministrative difficulties [] would result from applying a dangerousness standard to felonies. . . . [D]istrict courts would face the unenviable task of weighing the relative dangerousness of hundreds of offenses already deemed sufficiently serious to be classified as felonies.”); *Range v. Att’y Gen. of the U.S.*, 69 F.4th 96, 112 (3d Cir. 2023) (en banc) (Ambro, J., concurring) (“Most felons have broken laws deemed to underpin society’s orderly functioning, be their crimes violent or not. Section 922(g)(1) thus disarms them for the same reason we prohibited British loyalists from being armed.”); *id.* at 115 (Schwartz, J., dissenting) (“The felon designation similarly serves as a proxy for disloyalty and disrespect for the sovereign and its laws.”); MARKUS DIRK DUBBER, *Policing Possession, in VICTIMS IN THE WAR ON CRIME: THE USE AND ABUSE OF VICTIMS’ RIGHTS* 85 (2002) (“The justification for inclusion of the [category ‘felon’] is explicitly based on dangerousness considerations: convicted felons are [quoting legislative history] ‘persons who, by their actions, have demonstrated that they are dangerous, or that they may become dangerous. Stated simply, they may not be trusted to possess a firearm without becoming a threat to society.’”).

convictions should count as violent.¹³ This support for felon-in-possession seems to have sympathy at the U.S. Supreme Court. Even as the Supreme Court has dramatically expanded the sweep of the Second Amendment and struck down other gun laws, the Court has repeatedly recognized the validity of felon-in-possession laws, affirming them in dicta in *District of Columbia v. Heller*, *McDonald v. City of Chicago*, and *New York State Rifle and Pistol Ass'n v. Bruen*.¹⁴ For supporters of felon-in-possession, the crime is a bedrock and common-sense way to limit the danger of firearms.

On the other side of the debate, opponents have attacked felon-in-possession with withering criticism. A wide range of critics describe felon-in-possession as an “incredibly overinclusive”¹⁵ assault on the constitutional right to bear arms and an assault with discriminatory impact, to boot.¹⁶ Felon-in-possession, like the wider “War on Guns,” has been deemed “predatory policing,”¹⁷ and “pathological” for its aggressiveness and racism.¹⁸ This gun crime has been directly connected to the overenforcement of drug offenses. “[T]o the extent that the War on Drugs has led to more people of color with felony convictions,” writes one scholar, “a system of gun control that requires mandatory minimum prison terms for felons risks sending the same individuals to prison for extended sentences.”¹⁹ Another faults felon-in-possession prosecutions for “perpetuating the harms of mass incarceration and racialized over-policing.”²⁰ Still other scholars have cited “the stark racial disparities among gun offenders in federal prisons today,” predominantly a function of felon-in-possession prosecutions.²¹ Indeed, the commentary casts felon-in-

13. Stevenson, *supra* note 8, at 1577; Dru Stevenson, *State v. Curry—Defining a ‘Crime of Violence’ for Unlawful Firearm Possession*, DUKE CTR. FOR FIREARMS L. (Jan. 31, 2025), <https://firearmslaw.duke.edu/2025/01/state-v-curry-defining-a-crime-of-violence-for-unlawful-firearm-possession> (“[A] new decision from the Tennessee Supreme Court, provides a good illustration of how complicated it can be to determine whether a felon’s prior conviction was for a ‘crime of violence.’”).

14. *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008) (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.”); *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (quoting above passage from *Heller*); *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 81 (2022) (Kavanaugh, J., concurring) (quoting above passage from *Heller* and *McDonald*).

15. Winkler, *supra* note 6, at 720.

16. *Range*, 69 F.4th at 102 (“[T]oday, felonies include a wide swath of crimes, some of which seem minor. And some misdemeanors seem serious.”); *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (“Neither Wisconsin nor the United States has introduced data sufficient to show that disarming all nonviolent felons substantially advances its interest in keeping the public safe.”).

17. Anders Walker, *The New Jim Crow? Recovering the Progressive Origins of Mass Incarceration*, 41 HASTINGS CONST. L.Q. 845, 873–74 (2014) (“[F]ederal gun laws tend to target the very same minorities netted in drug prosecutions, even eliciting complaints of predatory policing and entrapment.”).

18. See Benjamin Levin, *Guns and Drugs*, 84 FORDHAM L. REV. 2173, 2221 (2016) (quoting William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505 (2001)).

19. *Id.* at 2197.

20. Laura G. Abelson, *Reevaluating Felon-in-Possession Laws After Bruen and the War on Drugs*, 15 UC IRVINE L. REV. 871, 874–75 (2025).

21. See Jacob D. Charles & Brandon L. Garrett, *The Trajectory of Federal Gun Crimes*, 170 U. PA. L. REV. 637, 639 (2022).

possession as a simple and severe instantiation of the New Jim Crow: The felony conviction today does the work that racial labels did in an earlier era.²²

Other criticisms of felon-in-possession focus on its overbreadth, as distinct from its racial impact. “[M]any felonies are not violent in the least, raising no particular suspicion that the convict is a threat to public safety,” explains one oft-cited article.²³ The article continues: “It is hard to imagine how banning Martha Stewart or Enron’s Andrew Fastow from possessing a gun furthers public safety.”²⁴ The basic argument is that although label “felony” might once have denoted a serious crime, the category of felonies has now expanded to include numerous crimes that are not serious, and much less violent.

In Second Amendment opinions and scholarly works, it has become a parlor game to cite the most innocuous and nonviolent predicate offenses that could lead to felon-in-possession charges. There is the reshelving of ketchup, mentioned in the Introduction, which caught the eye of Judge Stephanos Bibas in a Third Circuit dissent.²⁵ Justice Amy Coney Barrett, then on the Seventh Circuit, noted that predicate felonies and other qualifying crimes could include “selling pigs without a license . . . , redeeming large quantities of out-of-state bottle deposits . . . , and countless other state and federal offenses.”²⁶ The basic critique: A felony conviction bears no connection to dangerousness, so it cannot be the basis for disarming felons.

On both sides of the debate, there is a consensus that felon-in-possession is most legitimate when applied to those with violent convictions and least legitimate when applied to those with nonviolent ones. There is also a consensus, as there must be, that prosecutors can use the same statute to prosecute either violent or nonviolent felons. The open question is *how* prosecutors are using this discretion. Are those with violent felony convictions the bulk of the defendants prosecuted for felon-in-possession, or is it the opposite? The legitimacy and

22. See Emma Luttrell Shreefter, *Federal Felon-in-Possession Gun Laws: Criminalizing a Status, Disparately Affecting Black Defendants, and Continuing the Nation’s Century-Old Methods to Disarm Black Communities*, 21 CUNY L. REV. 143, 159 (2018) (“The pre-existing disproportionate numbers of Blacks who have been convicted of a felony translates into similarly disproportionate numbers of Blacks who are convicted under the federal ‘felon in possession’ law.”); Stevenson, *supra* note 8, at 1589 (“The most valid criticism of the felon-in-possession laws, though not exactly a constitutional argument, is their contribution to the mass incarceration and its concomitant racial inequalities.”).

23. Winkler, *supra* note 6.

24. *Id.*

25. Folajtar v. Att’y Gen. of the U.S., 980 F.3d 897, 921 (3d Cir. 2020) (Bibas, J., dissenting).

26. Kanter v. Barr, 919 F.3d 437, 466 (7th Cir. 2019) (Barrett, J., dissenting); see, e.g., United States v. Cunningham, 70 F.4th 502, 506 (8th Cir. 2023), *vacated*, 144 S. Ct. 2713 (2024) (“Cunningham asserts that the Second Amendment guaranteed his right to possess a firearm, despite his status as a twice-convicted felon, because neither of his prior offenses qualified as a ‘violent’ offense based on the elements of the crime. This contention is foreclosed by *United States v. Jackson*, No. 22-2870, 69 F.4th 495, 501–02 (8th Cir. June 2, 2023), where we concluded that there is no need for felony-by-felony determinations regarding the constitutionality of § 922(g)(1) as applied to a particular defendant.”); State v. Roundtree, 952 N.W.2d 765, 805 (2021) (Hagedorn, J., dissenting) (“Roundtree’s conviction for possession of a firearm, a criminal prohibition triggered because he was convicted of failure to pay child support for 120 days, violates the Second Amendment and is unconstitutional.”).

desirability of this offense hinge on the answer to that question. And yet no one can answer this question about felon-in-possession's use, because the answer requires access to criminal history information that is exceedingly difficult to obtain.

In the absence of data, commentators²⁷ and courts²⁸ have turned to hypotheticals, anecdotes, and individual cases to discuss felon-in-possession's overbreadth. Some opinions emphasize the nonviolent history of the particular defendants in the cases before them. Others use statistics about the annual number of convictions for violent felonies to make inferences about how often violent felons are prosecuted for this gun crime. But anecdotes cannot answer the macro question of how felon-in-possession is prosecuted at scale. Nor can data on annual convictions track how many defendants have ever been convicted of a violent felony, the question at the center of this debate.²⁹

Only two studies touch on the criminal histories of felon-in-possession defendants. Neither study, however, addresses the critical question about the frequency of violent *felony* convictions among felon-in-possession defendants. In the first study, the United States Sentencing Commission examined the criminal history of every federal defendant convicted of a federal felon-in-possession charge in Fiscal Year 2021, some 7,373 defendants.³⁰ The study found:

- 60.6 percent of those defendants had at least one violent conviction (felony or misdemeanor),

27. Levin, *supra* note 18, at 2177 (“[D]rug convictions often serve as predicates for a range of felon-in-possession gun crimes.”). The Sentencing Commission data shows that 60.6% of the felon-in-possession defendants had a prior violent conviction, but the Commission’s report does not distinguish between felony and misdemeanor violent conviction. MATTHEW J. IACONETTI, TRACEY KYCKELHAHN & AMANDA KERBEL, U.S. SENT’G COMM’N, WHAT DO FEDERAL FIREARMS OFFENSES REALLY LOOK LIKE? 20–21 (2022); *see infra* notes 30–32 and accompanying text (discussing how the U.S. Sentencing Commission study’s finding that 58% of defendants had a drug conviction, does not indicate how many had a violent conviction and that the categories are not mutually exclusive).

28. *E.g.*, United States v. Jackson, 110 F.4th 1120, 1125 n.2 (8th Cir. 2024) (“According to published data, a rule declaring the statute unconstitutional as applied to all but those who have committed ‘violent’ felonies would substantially invalidate the provision enacted by Congress. The most recent available annual data show that only 18.2 percent of felony convictions in state courts and 4.2 percent of federal felony convictions were for ‘violent offenses.’”); Range v. Att’y Gen. of the U.S., 69 F.4th 96, 113 (3d Cir. 2023) (en banc) (Ambro, J., concurring) (“Others conclude that a historical basis only exists for disarming violent felons . . . who represent but a small fraction of the felon population, thus leaving out, for example, those who leak national security information, disrupt markets with their fraud, and possess child porn.” (citing BRIAN A. REAVES, U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, VIOLENT FELONS IN LARGE URBAN COUNTIES 1 (2006) (“From 1990 to 2002, 18% of felony convictions in the 75 largest counties were for violent offenses.”))).

29. *Jackson*, 110 F.4th at 1125 n.2. The footnote was subsequently rewritten to discuss annual rates of convictions: “The most recent available annual data show that only 18.2 percent of felony convictions in state courts and 4.2 percent of federal felony convictions were for ‘violent offenses.’” *Id.* at 1125–26 n.2. But looking at how many defendants suffer a violent conviction each year does not tell us about the cumulative effect over the years. A defendant who is convicted in 2017 of a violent felony is still considered a violent felon, even if he is never again convicted.

30. IACONETTI ET AL., *supra* note 27, at 18.

- 58.4 percent had at least one drug-possession conviction (felony or misdemeanor),
- 29.6 percent had at least one drug-trafficking conviction (felony or misdemeanor), and
- 18.2 percent had at least one violent *and* at least one drug-trafficking conviction (felony or misdemeanor).³¹

These statistics are informative, but they do not distinguish between felony and misdemeanor convictions, so they cannot address the question of how often a violent felony conviction renders a defendant eligible for felon-in-possession charges.³² Notably, misdemeanor assault convictions make up the greatest number of “violent” convictions under the Sentencing Commission’s rubric, but these misdemeanors would not qualify a defendant to be charged with felon-in-possession. Thus, the Sentencing Commission’s study, comprehensive though it is, cannot address the central question of the debate.

A second important set of studies was conducted by the Loyola Center for Criminal Justice in Illinois. Researchers examined data on every person in Illinois arrested for “illegal possession of a firearm” from 2010 through 2019, a category that is much broader than felon-in-possession, and includes:

[T]he possession of firearms by persons prohibited from having firearms due to their age, criminal record, or failure to obtain the required Firearm Owner’s Identification (FOID) card or Concealed Carry License (CCL). These offenses also include possessing a firearm in prohibited places, or possessing prohibited firearms (e.g., stolen firearms, firearms with their serial numbers obliterated),³³

Their research found that:

- 31 percent of illegal firearms possession arrestees had a prior conviction for a violent felony,
- 22 percent had no violent felony convictions but did have at least one felony gun possession conviction, and
- 26 percent had a felony drug conviction but no felony violent or felony gun possession convictions.³⁴

31. *Id.* at 20–21.

32. The sentencing commission refers to a 2018 sentencing commission report for the definition of “violence”: TRACEY KYCKELHAHN & EMILY HERBST, U.S. SENT’G COMM’N, THE CRIMINAL HISTORY OF FEDERAL OFFENDERS 7 (2018) (“In general, three-point convictions almost always represent a state or federal felony conviction and are generally more serious than two-point offenses, which are likewise more serious than one-point offenses.”); *id.* at 16–18 (showing 3-, 2-, and 1-point violent convictions and explaining that 3-point convictions are generally felonies and others are not).

33. DAVID E. OLSON, DON STEMEN, KAITLYN FOUST, CYNTHIA GUZMAN, LISA JACOBS, SOPHIA JUAREZ, HOLLY MICHALAK, AVERY PANKRATZ & AMANDA WARD, CTR. FOR CRIM. JUST. RSCH., POL’Y, & PRAC., SENTENCES IMPOSED ON THOSE CONVICTED OF FELONY ILLEGAL POSSESSION OF A FIREARM IN ILLINOIS 4 (2021) (describing in the 2021 study the precise definitions used in the 2020 study); *id.* at 22, fig. 10.

34. DAVID E. OLSON, DON STEMEN, HOLLY MICHALAK, SOPHIA JUAREZ, AMANDA WARD & LISA JACOBS, CTR. FOR CRIM. JUST. RSCH., POL’Y, & PRAC., ARRESTS IN ILLINOIS FOR ILLEGAL POSSESSION OF A FIREARM 12 fig. 10 (2020). When this research team analyzed the criminal histories of those who were *convicted* of felon-in-

At first glance, these numbers on violence resemble my own findings, at least with respect to the “broad” definition of violence.³⁵ But the insurmountable problem with using this study to answer our question is that the cases examined were predominantly *not* felon-in-possession cases. In the category of “illegal possession of a firearm,” only 47 percent of the cases involved felon-in-possession; the rest came from all the other categories of “illegal possession of a firearm.”³⁶ Many of those other offenses do not need a predicate conviction, much less a felony one. For example, possessing a stolen firearm does not require any prior conviction. Thus, the inclusion of all cases of “illegal firearm possession” severely skews the Illinois study’s analysis of the frequency with which felon-in-possession defendants possess violent felony convictions.³⁷ In short, the Illinois study cannot answer the critical question about felon-in-possession because it did not exclusively study felon-in-possession charges.

II. DATA, METHODS, LIMITATIONS, AND RESULTS

What proportion of felon-in-possession defendants have previous convictions for violent felonies? That is the central question of this Article. Part II describes the data, methods, limitations, and results of the study.

A. DATA, METHODS, LIMITATIONS

The data for this Article comes from the California Department of Justice. That agency maintains the Automated Criminal History System (ACHS) database, which contains a record of every arrest, charge, and disposition for every trial court in every California county. I received access to this data after a seven-month application process, which included an Institutional Review Board exemption, a criminal background check, fingerprinting, and the development of a data security protocol. I requested and received fifteen years of data: January 2010 through October 2024.

Each row of data describes a specific criminal event. The row contains a unique (and anonymized) identifier for the defendant. The row indicates the provision of the California Penal Code that was allegedly violated. Other fields indicate the county where the event took place, the type of event—arrest, charge,

possession in Illinois, rather than those *arrested*, the researchers grouped together gun, drug, and violent offenses in discussing criminal history, so we cannot know how many of those convicted of felon-in-possession had violent felony convictions on their records. See OLSON et al., *supra* note 33 (“Just under one-third (32%) involved Class 2 felony offenses of ‘a felon in possession of a firearm,’ used to categorize offenses involving the possession of a firearm by individuals with at least one prior conviction for a forcible felony, a felony firearm possession offense, stalking, or a Class 2 or greater felony drug-law violation. Class 3 felony offenses accounted for 15% of convictions; these offenses include the possession of a firearm by individuals with prior felony convictions for all crimes not delineated above for the Class 2 offenses. Combined, Class 2 and 3 offenses accounted for almost one-half (47%) of convictions for a firearm possession offense.”).

35. See *infra* Subpart.II.B.1.

36. OLSON ET AL., *supra* note 33, at 4 fig. 1 (providing breakdown of different types of illegal firearm possession convictions).

37. A second problem with using this study is its focus on arrests rather than charges.

disposition—and the demographics of the defendant. If a person is charged with multiple offenses at the same time, each offense will occupy a different row and be linked together through a “cycle” field. The first time a defendant comes in contact with the criminal system, all events—arrest, charge, disposition—are identified as part of that first cycle. The second time the defendant encounters the system, those events are all identified as part of the second cycle. And so forth. The cycle identifier allows researchers to connect multiples counts filed at the same time and to know what the defendant’s criminal history looked like at any point in time.

Critical to my study was the ability to track each individual defendant’s convictions over the years. While the data is completely de-identified, each defendant is represented by a unique “subject identification” number. Over the years, each time an individual is arrested or charged, all data associated with that individual is tagged with the same subject identification number. Following in the footsteps of other researchers, I reconstructed each defendant’s criminal history by grouping together rows of data that shared a common subject identification number.³⁸ To do so, I created a series of codes in Python script. First, I used a code to go year-by-year through the data, identifying every person in the state who was charged with felon-in-possession during the years 2021, 2022, 2023, and 2024.³⁹ Second, I employed the code to isolate those defendants’ identification numbers and then retrieve every felony conviction that was associated with those numbers and that occurred in a cycle previous to the felon-in-possession charge.⁴⁰ This netted me the felony convictions of every felon-in-possession defendant.

I then classified every one of those felony convictions into one or more of the below categories. The Appendix contains a list of every offense in each of the below categories. I summarize them below for convenience:

1. **Violent Felony (California Penal Code Section 667.5).** The list includes felony convictions for murder; voluntary manslaughter; mayhem; rape, sodomy, oral copulation, and lewd or lascivious acts with minors under certain conditions; robbery; arson; sexual penetration under specified conditions;

38. See Colleen V. Chien, W. David Ball & William A. Sundstrom, *Proving Actionable Racial Disparity Under the California Racial Justice Act*, 75 U.C. L.J. 1, 53 (2023) (describing criminal history controls).

39. CAL. PENAL CODE § 29800(a)(1). I received the data in October 2024, and do not have any charging data after that.

40. The dataset carefully tracks each “cycle” where the defendant enters the criminal system. This cycle data allowed me to ensure that the criminal convictions I was counting had been incurred prior to the felon-in-possession charge. For example, a cycle starts when the defendant is arrested. If that defendant is then charged with a crime, the charge is listed as the same cycle as the arrest. When the case is disposed of, whether by conviction or dismissal, that disposition is numbered as part of the same cycle. In the fifteen years’ worth of data that I have access to, a defendant might cycle through the system numerous times. When I ask about a defendant’s criminal history, I’ve sorted for convictions that have occurred in cycles prior to the one in which they were charged as a felon-in-possession.

attempted murder; explosives and destructive device violations; kidnapping; assault with intent to commit specified felonies.⁴¹

2. **Violent (Broad Definition).** I included everything in the above group and added felony convictions for assault, battery, and certain sex crimes, like sexual battery. Assault and battery occur in such large numbers that adding these two categories greatly increased the number of felony convictions. In defining “violent” both here and above, I am fully aware of how constructed and disputed this label is. There is an important and substantial body of scholarship that problematizes the very definition of violent crime.⁴² And yet, the term “violent felony” is at the very center of the debate about felon-in-possession. That made it necessary to define categories of violence, so that I could engage with the debate on its terms. I provide two definitions of violence—and, really, three definitions, if one counts the “violent-adjacent” crimes—below, so that readers can see for themselves how the definition of violence matters to the assessment of whether felon-in-possession hits its target.

3. **Drug.** I included all felony convictions for drug possession, drug sale, drug manufacturing, drug trafficking, and any other drug-related offense. One recurring critique of felon-in-possession is that it disproportionately targets for criminal punishment those same people who were disproportionately made felons by the War on Drugs.⁴³ As a result, it was important to track these drug convictions.

4. **Burglary.** The offense of burglary sits on the contested borderline between violent and nonviolent crime. California’s statutory definition of “violent felony” includes “[a]ny burglary of the first degree . . . wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.”⁴⁴ A first-degree burglary is one in which the dwelling or vessel is inhabited.⁴⁵ I did not include any burglaries in the definition of violence, however, because I did not have data on whether the structure was occupied at the time of the burglary—a requirement for a “violent felony” under Penal Code Section 667.5.⁴⁶ (The data describes the charge filed, not the facts of the case.) I, therefore, created a separate category for burglary. And, as I studied the criminal histories of felon-in-possession defendants further, I saw that second-degree burglaries made up one of the most common categories of felony convictions. This bolstered my interest in tracking

41. CAL. PENAL CODE § 667.5. Although burglary is listed in Penal Code Section 667.5, I did not include it in this list or the broader definition of violence. On the next page, I describe the category of “Burglary,” and explain why I did not list it here.

42. See DAVID ALAN SKLANSKY, A PATTERN OF VIOLENCE: HOW THE LAW CLASSIFIES CRIMES AND WHAT IT MEANS FOR JUSTICE 5 (2021); Alice Ristroph, *Criminal Law in the Shadow of Violence*, 62 ALA. L. REV. 571, 575 (2011).

43. See *supra* text accompanying note 19.

44. CAL. PENAL CODE § 667.5.

45. *Id.* § 460.

46. See *supra* text accompanying note 41.

all types of felony burglary convictions, not just first-degree ones. Significantly, burglary is the first crime I use in my category of “violent-adjacent” offenses, a category that includes “gun possession” and “fleeing/evading the police,” as described below.

5. **Gun Possession.** Just as with burglary, I found that gun felonies were among the most common types of felony convictions in the criminal histories of felon-in-possession defendants. In this category that I label “gun possession,” I include any felony conviction for a gun-related offense. I do not include crimes that require shooting, brandishing, or use the gun, such as murder or assault. Rather, I define this category of “gun possession” to include crimes that concern who may possess a gun, what type of gun may be possessed, where it may be possessed, how it can be carried, and criminal laws relating to the manufacture, sale, and transfer of guns.⁴⁷ As discussed above, I put “gun possession” in the category of “violent-adjacent” crime. It is not inherently violent, but it has a nexus to violence that makes it of interest in tracking.

6. **Fleeing/Evading the Police with Reckless Disregard for Safety.** As with burglary and gun possession, the felony of evading a police officer with reckless disregard for safety was a common conviction in the criminal histories of felon-in-possession defendants.⁴⁸ This conviction, too, is on the borderline of violence. I use it as my third example of “violent-adjacent” crimes.⁴⁹

With the categories defined, I created a Python program to read through the criminal histories of the 27,202 defendants who (1) were charged with felon-in-possession from 2021 through 2024 and (2) had prior felony convictions in my dataset. The program counted how many had convictions from each category. The results are discussed in Part II.B.

A few limitations are important to foreground. The dataset used in this study is comprehensive, detailed, and reliable. But it contains data from just one single state. The dynamics observed in California could be different in other jurisdictions. Site selection is a challenge inherent in studying our decentralized system of criminal adjudication. There is no nationwide dataset on prosecutions. Nor is criminal history data available to researchers in most states.

Though the data comes entirely from California, this jurisdiction is worth studying for a variety of reasons. Not least because California is the most populous state with the largest court system in the country. It is also quite varied

47. These categories are adopted from the work of other gun-law researchers. See Eugene Volokh, *Implementing the Right To Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. REV. 1443, 1475–1545 (2009); Eric Ruben & Joseph Blocher, *From Theory to Doctrine: An Empirical Analysis of the Right to Keep and Bear Arms After Heller*, 67 DUKE L.J. 1433, 1463 (2018); Jacob D. Charles, *Constructing a Constitutional Right: Borrowing and Second Amendment Design Choices*, 99 N.C.L. REV. 333, 371–72 (2021).

48. CAL. VEH. CODE §§ 2800.2–2800.4.

49. Certainly, offenses could be added or subtracted from the categories of above. Some offenses become violent based on facts of the case that would not be present in the charging document. For example, the Penal Code’s definition of “violent felony” includes “[a]ny felony in which the defendant inflicts great bodily injury on a person other than an accomplice.” CAL. PENAL CODE § 667.5(c)(8).

across its fifty-eight urban, suburban, and rural counties. While state politics are decidedly Democratic, county politics run the full spectrum.⁵⁰ And county officials, after all, are the ones making the prosecutorial decisions. Moreover, California is an important state to study because it has long been a leader in criminal law. As one prominent scholar explained in her own work on gun laws, since the 1990s, California “has carved out the frontlines of the War on Crime.”⁵¹ In this study, I discuss California in aggregate. In future research, I hope to explore the differences in felon-in-possession prosecutions at the county level.

A second limitation is the geographical and temporal scope of the criminal history data. In the first batch of data I received, the California Department of Justice provided fifteen years’ worth of records, going back to the beginning of 2010. That is a lot, to be sure. But some felon-in-possession defendants have convictions that occurred outside of this dataset, either because they are from other states or because the convictions occurred before 2010. As Table 1 shows, roughly one in five felon-in-possession defendants in my study did not register any felony convictions in my dataset.

Table 1

Year	% Felon-in-Possession Cases Missing a Felony Conviction
2021	20.6
2022	19.4
2023	19.3
2024	18.7

I note this limitation because when I report data on the proportion of defendants with various types of felony convictions, I am excluding from the numerator and denominator all these defendants who lack felony convictions in my dataset. Certainly, there are other defendants in my study for whom I have captured some, but not all, of their felony convictions. This “missingness” of data is important to address in a forthright manner. There is little I can do to fix the missingness caused by out-of-state convictions. The California Department of Justice has shared data with me, but I have not had success in obtaining criminal history data from other neighboring states.

While it makes sense to worry about felony convictions that have gone missing, there is no reason to think that violent felony convictions are likely to go missing at a different rate than other types of felony convictions. And, more importantly, the catch period I already have in my study is substantial. For a

50. CAL. SEC’Y OF STATE, REPORT OF REGISTRATION AS OF FEBRUARY 10, 2025: REGISTRATION BY COUNTY (2025), <https://elections.cdn.sos.ca.gov/ror/ror-odd-year-2025/county.pdf> (reporting county-level registration by political party).

51. Jennifer Carlson, *Merely Regulation? How Gun Law Matters for Public Law Enforcement*, in GUNS IN LAW 135, 142 (Austin Sarat, Lawrence Douglas & Martha Merrill Umphrey eds., 2019).

defendant charged in 2024, I can find any felony conviction in the previous fifteen years; for a defendant charged in 2021, I have twelve years of data to catch those convictions. This is a lengthy period. In comparison, when the United States Sentencing Commission calculates felony convictions for its studies, it does not even consider convictions that occurred more than fifteen years prior.⁵² These factors give me confidence that the criminal history data I have assembled are substantial and representative.

B. RESULTS

In this Subpart, I report my results for the analysis of the criminal histories of felon-in-possession defendants. I then report the breakdown by racial categories, and I compare felon-in-possession criminal histories with those of all felons who were prosecuted for a new felony in the study period. Finally, I examine the charging frequency of the more serious form of felon-in-possession: violent-felon-in-possession. In Part III, I explore the implications of the data.

1. Criminal History Results

The key question in the debate is how often felon-in-possession defendants have violent felony convictions. The first four columns of Table 2 show the number of defendants charged each year with felon-in-possession. The fifth column aggregates the data from those four years. Each row counts the number of defendants whose criminal history satisfied various criteria. The final column calculates the percentage of all felon-in-possession defendants whose conviction histories fall into each group. For example, the second row of data calculates the number of defendants with at least one violent felony conviction, as defined by California Penal Code Section 667.5. The final column shows that 8.5 percent of all felon-in-possession defendants have at least one violent felony conviction, as defined by Penal Code Section 667.5. Note that all convictions are *felony* convictions.

Table 2 answers the question of how often felon-in-possession defendants have violent felony convictions, under either definition of violence. It provides data on how often they have drug convictions. It further analyzes how often defendants have “violent-adjacent” convictions. The table provides relevant permutations of these categories, too.

52. KYCKELHAHN & HERBST, *supra* note 32, at 7.

Table 2

Category of Felony Convictions	2021	2022	2023	2024	2021–24	% of Total
Total Cases	7,703	8,474	7,541	3,484	27,202	
At least one violent (§ 667.5)	548	705	727	326	2,306	8.5
At least one violent (broad definition)	1,998	2,435	2,315	1,075	7,823	28.8
At least one drug	2,749	2,940	2,547	1,220	9,456	34.8
At least one burglary	1,219	1,397	1,260	589	4,465	16.4
At least one gun possess	2,620	3,076	2,818	1,352	9,866	36.3
At least one evading the police	986	1,057	992	444	3,479	12.8
At least one violent (broad), at least one drug	481	578	544	253	1,856	6.8
At least one drug, and no violent (broad)	2,268	2,362	2,003	967	7,600	27.9
No violent (broad), and no drug	3,437	3,677	3,223	1,442	11,779	43.3
No violent (broad), no drug, but at least one burglary or gun possess, or evading the police	2,075	2,304	2,038	947	7,364	27.1
At least one violent (broad) or burglary or gun possess, or evading the police	5,235	5,939	5,428	2,534	19,136	70.3

2. Racial Breakdown of Felon-in-Possession and Felony Defendants.

Table 3 reports the number of felon-in-possession defendants by race, with a focus on Black, Latino, and white defendants. Table 3 also compares felon-in-possession defendants by race against all felony defendants by race. The comparison period is 2021 through 2024.

The first column of data reports how many felon-in-possession defendants of each race there were. The second column reports this information as a percentage of all felon-in-possession defendants.⁵³ The third column reports the number of felony cases in this period filed against people with at least one

53. The percentages are in terms of all felon-in-possession cases, which includes those filed against defendants of races other than Black, Latino, and white.

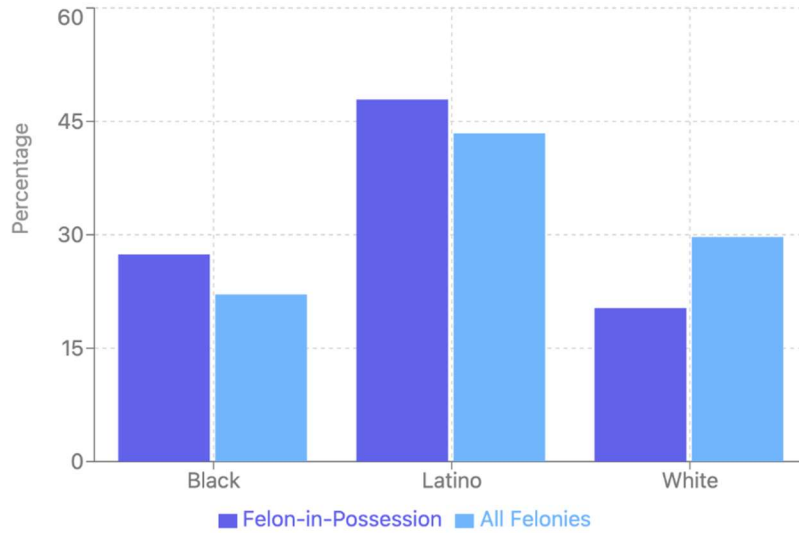
existing felony conviction. The fourth column breaks down this information by race.

Most importantly, the fifth column of data—" Δ (FIP - Felony)"—compares the felon-in-possession percentages against the percentages for all felons. For example, Black defendants make up 27.4 percent of all felon-in-possession defendants, compared with 22.1 percent of all felony defendants. This amounts to a difference of +5.3 percent. Positive numbers indicate that defendants of this race are overrepresented among felon-in-possession cases compared to all felons generally. This data helps assess whether felon-in-possession is leading to disparate impacts on its own or whether it is simply reflecting the existing disparate impacts among the population of those felons who are charged with new felonies. As the numbers show, and as will be explored in Part III in more depth, Black and Latino defendants make up a larger proportion of felon-in-possession cases than of felony cases, generally. Meanwhile, white defendants make up a smaller proportion of felon-in-possession defendants than of felony defendants, generally. This difference is statistically significant, as measured by a two-proportion Z-test.

Table 3

Race	Felon-in-Possession		All Felonies		Δ (FIP - Felony)	p-value
	Count	%	Count	%		
Black	7,443	27.4	42,459	22.1	+5.3	p < 0.001
Latino	13,027	47.9	83,327	43.4	+4.5	p < 0.001
White	5,520	20.3	56,994	29.7	-9.4	p < 0.001
Total	27,202	100	192,113	100	--	--

Racial Distribution Comparison (2021-24)



Total cases: Felon-in-Possession: 27,202 | All Felonies: 192,113

Table 4 presents the proportion of all California residents who are Black, Latino, or white.⁵⁴ This provides a basis for comparing charging data against population statistics. As can be seen by comparing Table 3 with Table 4, Black defendants make up a much larger proportion of felon-in-possession defendants than of the general population. For Latino defendants, the difference is present but smaller. White defendants, again, are underrepresented among felon-in-possession defendants, when compared to the state’s population.

Table 4

	Black	Latino	White
California Population (2023)	6.5%	40.4%	34.3%

Table 5a examines the criminal histories of felon-in-possession defendants, this time grouping results by race. The rows are organized by criminal history type. Take the second row of data, for example. It shows that there were 959 Black felon-in-possession defendants with at least one violent conviction, as defined by Penal Code Section 667.5. These 959 defendants made up 12.9 percent of all Black felon-in-possession defendants. For Latino felon-in-possession defendants, there were 1,028 with at least one violent conviction,

54. Data characterizes people as either Black or Hispanic or white. *QuickFacts: California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/CA/PST045223> (last visited Jan. 12, 2026).

amounting to 7.9 percent of all Latino felon-in-possession defendants. For white defendants, there were 253 with at least one violent conviction, amounting to 4.6 percent of all white felon-in-possession defendants. Reading the data across rows permits for detailed comparisons of the profiles of these defendants, as distinguished from each other by race.

Table 5a: Felon-in-Possession (FIP) Defendant Criminal History (By Type and Race)

FIP Defendants with Felony Convictions For . . .	Black	% of All Black	Latino	% of All Latino	White	% of All White
Any felony	7,443		13,027		5,520	
At least one violent (§ 667.5)	959	12.9	1,028	7.9	253	4.6
At least one violent (broad definition)	2,458	33.0	3,817	29.3	1,270	23.0
At least one drug	1,791	24.1	4,629	35.5	2,590	46.9
At least one drug, and no violent (broad)	1,433	19.3	3,630	27.9	2,161	39.1
At least one violent (broad) or burglary or gun possess, or evading the police	5,537	74.4	9,288	71.3	3,496	63.3

Table 5b carries out the same analysis as Table 5A, except that it examines the criminal histories of *all felons* who were charged with a new felony in the study period, from 2021 through 2024. Looking at the row for violent felonies, as defined by Penal Code section 667.5, the data show that 14.7 percent of all Black felons have at least one violent felony conviction, 9.2 percent of all Latino defendants have at least one violent felony conviction, and 6.0 percent of all white felons have at least one violent felony conviction. This table allows for a detailed examination of differences in the criminal histories by race of those felons charged with new felonies in the study period.

Table 5b: All Felonies Criminal History (By Type and Race)

Felony Defendants with Felony Convictions For ...	Black	% of All Black	Latino	% of All Latino	White	% of All White
Any felony	42,459		83,327		56,994	
At least one violent (§ 667.5)	6,226	14.7	7,663	9.2	3,418	6.0
At least one violent (broad definition)	16,410	38.6	26,428	31.7	14,135	24.8
At least one drug	8,886	20.9	23,920	28.7	20,273	35.6
At least one drug, and no violent (broad)	6,605	15.6	18,657	22.4	17,070	30.0
At least one violent (broad) or burglary or gun possess, or evading the police	28,330	66.7	51,469	61.8	31,053	54.5

Tables 6a, 6b, and 6c compare conviction type, by race, for felon-in-possession defendants with conviction type, by race, for all felony defendants. This allows us to see whether the criminal histories of those charged with felon-in-possession differ from those charged with any felony. Across the three racial categories studied here, felon-in-possession defendants were less likely to have a violent felony conviction than those charged with felonies generally. For example, in Table 6a, 12.9 percent of all Black felon-in-possession defendants had at least one violent felony conviction, compared with 14.7 percent of all Black felony defendants. The negative number in the third column of data shows that a smaller proportion of felon-in-possession defendants have violent convictions than of felons generally. In all these tables, the differences are statistically significant, as measured by a two-proportion Z-test. The accompanying charts illustrate the results.

Table 6a: Black Felon-in-Possession v. Black All Felonies

Type of Conviction	% of All Black FIP Defs.	% of All Black Felony Defs	Δ (FIP % - Felony)	p-value
At least one violent (§ 667.5)	12.9	14.7	-1.8	p < 0.001
At least one violent (broad definition)	33.0	38.6	-5.6	p < 0.001
At least one drug	24.1	20.9	+3.1	p < 0.001
At least one drug, and no violent (broad)	19.3	15.6	+3.7	p < 0.001
At least one violent (broad) or burglary or gun possess. or evading the police	74.4	66.7	+7.7	p < 0.001

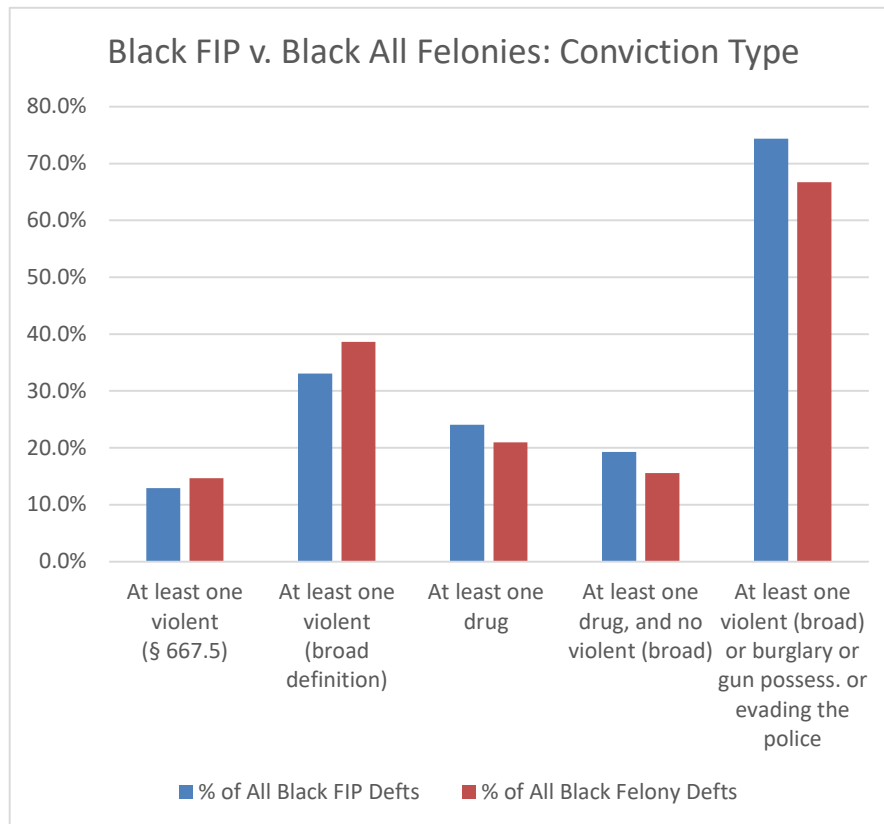


Table 6b: Latino Felon-in-Possession v. Latino All Felonies

Type of Conviction	% of All Latino FIP Defts	% of All Latino Felony Defts	Δ (FIP % - Felony)	p-value
At least one violent (§ 667.5)	7.9	9.2	-1.3	p < 0.001
At least one violent (broad definition)	29.3	31.7	-2.4	p < 0.001
At least one drug	35.5	28.7	+6.8	p < 0.001
At least one drug, and no violent (broad)	27.9	22.4	+5.5	p < 0.001
At least one violent (broad) or burglary or gun possess, or evading the police	71.3	61.8	+9.5	p < 0.001

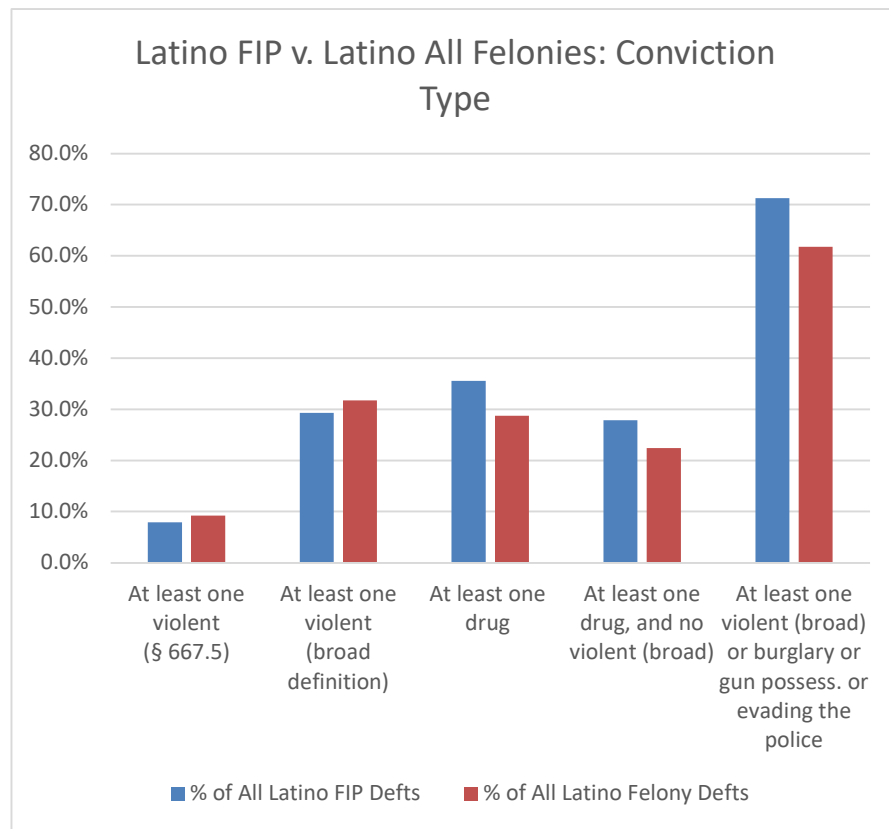
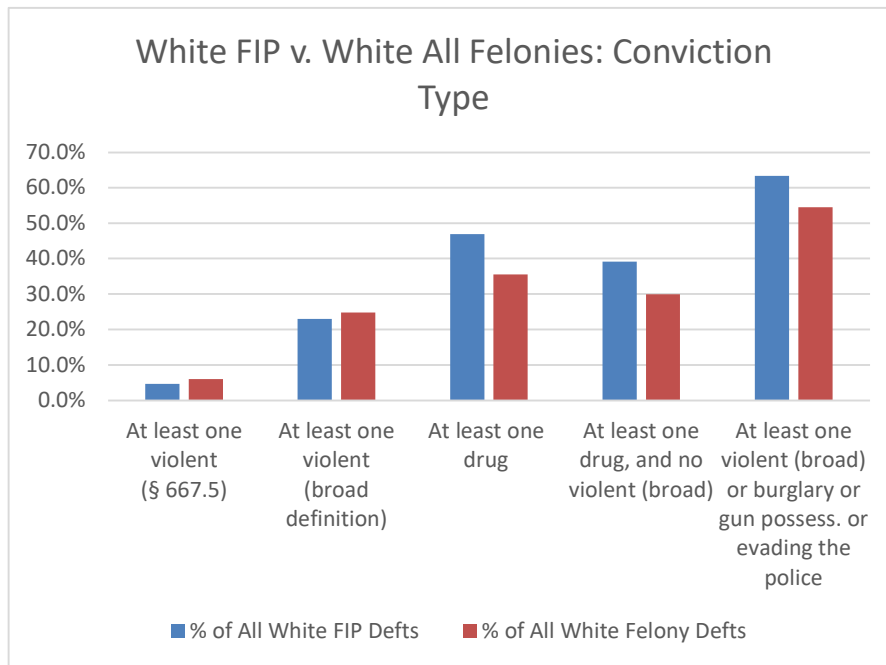


Table 6c: White Felon-in-Possession v. White All Felonies

Type of Conviction	% of All White FIP Defts	% of All White Felony Defts	Δ (FIP % - Felony %)	p-value
At least one violent (§ 667.5)	4.6	6.0	-1.4	p < 0.001
At least one violent (broad definition)	23.0	24.8	-1.8	p = .003
At least one drug	46.9	35.6	+11.3	p < 0.001
At least one drug, and no violent (broad)	39.1	30.0	+9.2	p < 0.001
At least one violent (broad) or burglary or gun possess, or evading the police	63.3	54.5	+8.8	p < 0.001



3. Violent-Felon-in-Possession

California has a specific crime targeting possession by those convicted of violent felonies: Penal Code Section 29900. This crime is separate and more severe than the “regular” felon-in-possession provision. For the period 2021 through 2024, 721 people were charged with the violent-felon-in-possession

statute. Meanwhile, 31,052 people were charged with the regular felon-in-possession statute during that period.⁵⁵ The data show the relative frequency of regular and violent felon-in-possession charges. The data suggest that violent-felon-in-possession is significantly undercharged. Recall from Table 2 that 8.5 percent of felon-in-possession defendants had a felony that qualified as a “violent felony” under Penal Code Section 667.5. Each of those convictions would qualify the defendant to be charged with the more serious crime of violent-felon-in-possession. If every felon-in-possession defendant with a violent felony conviction were charged with the more serious crime, we would expect to see 2,639 people charged as violent-felon-in-possession. (This number is calculated by multiplying the total number of felon-in-possession defendants by the percentage of those defendants who had at least one violent felony conviction under Penal Code Section 667.5, that is, 31,052 x 8.5 percent.) Instead, we see 721 people—just 27.3 percent of what we would expect.

The implications of these results are discussed in the next Part.

III. IMPLICATIONS

The results of this study have significant implications for the debate about felon-in-possession. This final Part of the Article describes the ways in which the results both validate and challenge the existing narrative about this crime’s enforcement. The findings of this study promise to inform the Second Amendment and policy debates about felon-in-possession and gun crimes, more generally.

A. VALIDATING TRADITIONAL CRITIQUES

In many ways, the data support the traditional critique of felon-in-possession. I split the analysis into three strains: (1) violent versus nonviolent, (2) drugs, and (3) race.

1. Violent Versus Nonviolent

For critics who complain that felon-in-possession rarely targets those with violent convictions, the data provide validation. Only 8.5 percent of felon-in-possession defendants have a violent felony conviction under the statutory definition of violence.⁵⁶ Even if one defines violent felonies according to the broader definition, only 28.8 percent have a violent felony conviction.⁵⁷ This is strong support for the frequent, but unsubstantiated, claim that the disarmament

55. There is a discrepancy between 31,052 and 27,202. The first number is all those charged with felon-in-possession in 2021 through 2024. The second number, which I use throughout the paper, represents those who were charged with felon-in-possession *and* who had at least one felony conviction in the dataset. A defendant whose predicate felony was from out-of-state or from before 2010 would not appear in the 27,202 figure.

56. *See supra* Table 2.

57. *Id.*

of felons in possession has no connection to violence. Clearly, only a small fraction of those prosecuted for this crime have violent felony convictions. While there is no precise benchmark for how much overbreadth makes a statute unconstitutionally broad (or, really, unconstitutionally vague), the fact that felon-in-possession targets so many people who do not have violent felony convictions would seem to set off alarms under any test of overbreadth or vagueness.⁵⁸ This is an important finding that should inform judges and policymakers. To put it simply, a randomly selected felon-in-possession defendant is very unlikely to have any violent felony conviction on his record. At least as far as the nation's largest state is concerned, the data answer the question at the heart of the felon-in-possession debate: How often do felon-in-possession defendants have violent felony convictions?

Some readers may not be surprised at all by this finding. Critics have long claimed that felon-in-possession was being wielded against nonviolent felons. But this study substantiates that claim across the largest swath of prosecutions to date. Similarly, some readers might be unimpressed by the finding because anyone who reads the text of the felon-in-possession statutes can see the potential to apply this crime to nonviolent felons.⁵⁹ In a way, I agree with those readers. Of course, prosecutors can use this charge against anyone who has a prior felony conviction (and who possesses a gun). That possibility has never been in dispute. But the question is how prosecutors are *actually* wielding this charge. Do prosecutors use their discretion to steer felon-in-possession charges towards defendants with violent criminal records? Do they hold back on charging when the defendant has a nonviolent criminal history? In an age of immense prosecutorial discretion, it is critical to know the answer to these questions, and no one has had the data, up to this point.⁶⁰ The results of this study show that prosecutors are *not* using their discretion to focus felon-in-possession prosecutions on those with violent criminal histories. Quite the opposite: Those charged with felon-in-possession are overwhelmingly nonviolent, at least under the two categories of violence defined in this study.

As courts and policymakers examine the governmental interests in the felon-in-possession prohibitions, it should inform their analysis to see that those being prosecuted are predominantly nonviolent. These empirical findings are of less Second Amendment significance under the *Bruen* test than they were under

58. See, e.g., *Papachristou v. City of Jacksonville*, 405 U.S. 156, 165 (1972); John F. Decker, *Overbreadth Outside the First Amendment*, 34 N.M. L. REV. 53, 54 (2004) (“There are a limited number of cases in which various courts, including the Supreme Court, have explicitly used the overbreadth doctrine, or an analysis that parallels overbreadth, to strike down statutes that were infringing on fundamental rights other than the First Amendment.”).

59. See 18 U.S.C. § 922(g).

60. Jeffrey Bellin, *The Power of Prosecutors*, 94 N.Y.U. L. REV. 171, 181 (2019); Stephanos Bibas, *The Need for Prosecutorial Discretion*, 19 TEMP. POL. & C.R. L. REV. 369, 373 (2010).

previous interest-balancing frameworks.⁶¹ But there are already indications that the Supreme Court is walking back the *Bruen* test, at least within criminal law, refocusing Second Amendment analysis on assessments of “dangerousness”—a high-level takeaway from its recent decision in *Rahimi*.⁶² As Second Amendment jurisprudence continues to evolve, courts will benefit from understanding the context of felon-in-possession’s application. Specifically, they will need to know the extent to which felon-in-possession targets those with violent felony convictions.

Building on the above disconnect between felon-in-possession and violence, it is interesting to note the under-prosecution of the more serious crime, violent-felon-in-possession.⁶³ This undercharging confirms that lack of connection between the offense and violence. As noted in Subpart II.B.3, based on the number of “regular” felon-in-possession defendants who had convictions for violent felonies, we would expect to see as many as 2,639 people charged with violent-felon-in-possession. Yet only 721 people were charged with this more-serious offense.⁶⁴ In other words, just 27.3 percent of those eligible for the more serious offense were actually charged with it.⁶⁵ Here, again, we see that prosecutors are using their charging discretion in a manner that does not align with defendants’ violent felony convictions.

It is notable that prosecutors undercharge violent-felon-in-possession cases, filing them against only a sliver of those felons-in-possession who have violent felony convictions, while simultaneously charging so many “regular” felon-in-possession cases against those with *no* violent felony convictions.⁶⁶ This is counterintuitive, and it provides further proof that violent criminal histories are *not* driving felon-in-possession charging decisions. If prosecutors were interested in using these laws to keep guns away from violent felons, we would expect them to be particularly vigorous in charging the more serious crime—violent-felon-in-possession—whenever they could. This finding raises a strong inference that factors other than violent convictions dominate the prosecutorial calculus.

Looking at prosecutorial decision-making from these two different directions—felon-in-possession and violent-felon-in-possession—clarifies the

61. The *Bruen* test focuses on whether there is a historical analogue to the law, rather than focusing on the balancing interests through the tiers of scrutiny.

62. *United States v. Rahimi*, 602 U.S. 680, 741 (2024) (Jackson, J., concurring) (“[W]e now have two years’ worth of post-*Bruen* cases under our belts, and the experiences of courts applying its history-and-tradition test should bear on our assessment of the workability of that legal standard. This case highlights the apparent difficulty faced by judges on the ground. Make no mistake: Today’s effort to clear up ‘misunderst[andings],’ is a tacit admission that lower courts are struggling. In my view, the blame may lie with us, not with them.”); Lawrence Rosenthal, *Litigating Original Meaning from Heller to Rahimi: The Role of Lawyering in the Confused Path of Second Amendment Jurisprudence*, 73 AM. UNIV. L. REV. 1857, 1939 (2024).

63. *See supra* Subpart.II.B.3 (discussing “Violent-Felon-in-Possession”).

64. *Id.*

65. *Id.*

66. *See supra* Table 2.

irrelevance of violent felony convictions. For the former group, “regular” felon-in-possession defendants, only 8.5 percent (or 28.8 percent) have violent convictions.⁶⁷ And for the more serious crime of violent-felon-in-possession, where all the defendants have violent felony convictions, only 27.3 percent of those who could be charged actually were charged.⁶⁸ Evidently, violence is not what is driving the prosecution of felon-in-possession. Felon-in-possession has become unmoored from its purported nexus to violence. Under this reading, the law loses legitimacy.

An important disclaimer is needed here. A person might be violent even if they do not have a violent felony conviction. And a person with a violent felony conviction might not be violent. My analysis does not attempt to validate an association between violent felony convictions and future dangerousness. And there is much research to suggest the futility of any predictive work on dangerousness.⁶⁹ It could well be that any conviction, even a misdemeanor conviction, is some predictor of future violence; or it could be that no type of conviction serves as a useful predictor. The primary point of my study, however, is to intervene in the felon-in-possession debate on the debate’s own terms. The key issue of dispute is whether felon-in-possession should include all felony convictions or be limited to violent ones. And upstream of that issue is the question of how the current felon-in-possession laws are actually applied. My findings show that very few felons-in-possession have the violent felony convictions that are supposedly markers of violence. Rather, the bulk of defendants have other felonies that make them eligible for the felon-in-possession prosecution. This is what critics have long been saying. The data in this Article substantiate that claim for the largest court system in the country.

2. Drugs

The data validate longstanding concerns about the impact of the War on Drugs. Critics have theorized that the aggressive and discriminatory prosecution of drug crimes created a caste of people who became felons by virtue of drug convictions.⁷⁰ These drug-related felony convictions, in turn, made this population eligible for felon-in-possession prosecutions whenever they possessed guns. In short, critics observe, the War on Drugs made people into felons, and felon-in-possession punished them for exercising what would otherwise be their Second Amendment right to bear arms.

The data lend support to this critique. The results show that 34.8 percent of felon-in-possession defendants had at least one felony drug conviction.⁷¹ That is

67. *Id.*

68. *See supra* Subpart.II.B.3.

69. *E.g.*, Michael Tonry, *Predictions of Dangerousness in Sentencing: Déjà Vu All Over Again*, 48 CRIME & JUST. 439, 440 (2019).

70. *See supra* notes 18–21.

71. *See supra* Table 2.

significantly larger than the 8.5 percent who had violent felony convictions and is bigger than even the 28.8 percent who had violent felony convictions under the broader definition of violence.⁷² Clearly, felony drug convictions play a significant role in making people eligible for felon-in-possession prosecutions.

The data also show that relatively few defendants—just 6.8 percent—have a drug conviction *and* a violent conviction (under even the broader definition).⁷³ Put another way, 28 percent of all felon-in-possession defendants had a felony drug conviction and no felony violent conviction. For this large swath, it was a felony drug conviction, not a felony violent conviction, that made them eligible for prosecution. These numbers show felon-in-possession's connection to the War on Drugs. In light of the well-documented understanding of the drug war's pathologies, felon-in-possession's association with the War on Drugs undermines the offense's legitimacy.

3. Race

Throughout the literature on felon-in-possession, critics have assailed its discriminatory application. The data in this study substantiates those concerns. While most critiques compare the proportion of felon-in-possession defendants by race against each racial group's proportion of the general population, this study goes further. It compares the racial breakdown of felon-in-possession defendants against the racial breakdown of all felons who are charged with new felonies. The benefit of this analysis is in focusing attention specifically on felon-in-possession's application. Is there something particular to the way felon-in-possession is applied that leads to racial disparities? Or is felon-in-possession just recreating the existing disparities in the felon population? The data in my study show that felon-in-possession is exacerbating the overrepresentation of Black and Latino defendants.

As Table 3 shows, Black and Latino defendants make up bigger proportions of the felon-in-possession population than they do of the population of felons facing new felony charges. Black defendants make up 27.4 percent of felon-in-possession cases and 22.1 percent of all new felony cases (where the person has previously been convicted of a felony).⁷⁴ This means that there is an overrepresentation of 5.3 percentage points among Black felon-in-possession defendants compared to all Black repeat-felony defendants.⁷⁵ For Latino defendants, they make up 47.9 percent of felon-in-possession defendants compared to 43.4 percent of all repeat-felony defendants—an overrepresentation of 4.5 percentage points.⁷⁶ The data in Table 3 suggests that

72. *Id.*

73. *See supra* Table 2.

74. *See supra* Table 3.

75. I use the term "repeat" to indicate that these are people who have been convicted of one felony and are charged with a new felony. They are innocent until proven guilty. Repeat just indicates a second (or subsequent) round of felony charging.

76. *See supra* Table 3.

there is something particular to felon-in-possession that is causing these racial differences.

Whenever one sees disparate impacts by race, it is important to articulate the possible causes. One inference is that Black and Latino defendants are subjected to explicit or implicit discrimination in charging decisions. This could be an equal protection violation under federal law.⁷⁷ In California, explicit or implicit discrimination also transgresses the recently enacted Racial Justice Act, which invalidates any conviction that resulted from racial discrimination, even if the discrimination was not intentional.⁷⁸ For the tens of thousands of felon-in-possession defendants, and for the system as a whole, a finding of discrimination in the way this crime is charged would be a matter of profound importance.

But other inferences are also possible. And they raise their own complicated questions. It could be that felon-in-possession is pursued more aggressively in urban areas than in rural areas, and this difference in location—rather than anything about prosecutorial decision-making—leads to the racial disparities. It could also be that Black and Latino felons carry guns at higher rates than white felons. Or it could be that they get stopped and frisked at higher rates, thus leading to more detection and more charges. Or the combination of these possibilities could account for the disparities. My dataset cannot rule out those alternative explanations. But the results in Table 3 heighten the need for careful scrutiny of how felon-in-possession is applied. Though this data cannot prove racial discrimination, it is consistent with the longstanding claims that felon-in-possession is discriminatorily deployed.

Tables 6a, 6b, and 6c track race and conviction type and raise more questions about racial discrimination. Table 6a shows that Black felon-in-possession defendants are 1.8 percentage points *less* likely to have a violent felony conviction than Black felons generally. Tables 6b and 6c show that, for Latino and white defendants, felon-in-possession defendants are 1.3 and 1.4 percentage points less likely to have violent felony convictions than felons generally. The data reinforce the theme from above that violent felony convictions are not motivating felon-in-possession prosecutions and that the gap between felons-in-possession and felons generally is widest for Black defendants. This is, again, consistent with racial discrimination.

At the same time, however, these tables and accompanying charts show that, across all races, felon-in-possession defendants are less likely to have violent felony convictions than felons generally, are more likely to have drug convictions, and are more likely to have either a violent or “violent-adjacent” conviction. In some ways, this is not surprising. The class of felons-charged-with-new-felonies would include those accused of murder, robbery, rape, and other violent crimes. Perhaps we should expect that people accused of these crimes would have more-violent criminal histories than people accused of gun

77. See *Strauder v. West Virginia*, 100 U.S. 303 (1880).

78. CAL. PENAL CODE § 745(c)(2) (“The defendant does not need to prove intentional discrimination.”).

possession. And the findings about a greater likelihood of “violent-adjacent” felony convictions for felon-in-possession defendants is a function of the fact that prior gun possession felonies count, in this methodology, as violent-adjacent convictions. It might be expected that that felon-in-possession defendants are more likely to have prior gun-possession felony convictions than the average felon.

In sum, the felon-in-possession data show statistically significant racial disparities in the proportions of who gets charged. The data also show racial disparities in how frequently felon-in-possession defendants have violent felony convictions, compared with felons generally. The data are consistent with longstanding claims that felon-in-possession is enforced in a racially discriminatory way, but cannot rule out the possibility that other factors account for the racial breakdown of the charges. More study is needed to address this substantial area of concern.

B. CHALLENGING TRADITIONAL CRITIQUES

The data in this study substantiates some of the most damning and long-running critiques of felon-in-possession. But, for all that is correct about the traditional story about felon-in-possession, there is also a good amount that needs to be revised. The most important revision concerns those defendants who have neither violent felony convictions nor drug felony convictions. The traditional critique of felon-in-possession emphasizes the targeting of nonviolent felons without giving very much information on what felony convictions these defendants do have. Opinions and commentary either talk about the War on Drugs or they provide examples of defendants—or hypothetical defendants—whose convictions are absurdly nonviolent. There is the person whose felony is opening a bottle of ketchup and reshelving it.⁷⁹ There is the person whose felony is lying on an application for food stamps.⁸⁰ Martha Stewart and other white-collar felons are frequently invoked to show the senselessness of the firearm prohibition when applied to financial criminals.⁸¹

But digging into the data, I came across a different story. For all felon-in-possession defendants, the data show that 43.3 percent have neither a violent felony conviction nor a drug felony conviction.⁸² Whatever explanatory power the War on Drugs has, it cannot account for the felonies of this group of defendants. I became curious about what felonies this nonviolent/nondrug group had. The answer is essential to evaluating felon-in-possession. If they are all accused of reshelving ketchup or carrying out financial crimes, then felon-in-possession’s overbreadth would be particularly offensive. If their crimes,

79. *Folajtar v. Att’y Gen. of the U.S.*, 980 F.3d 897, 921 (3d Cir. 2020) (Bibas, J., dissenting).

80. *Range v. Att’y Gen. of the U.S.*, 69 F.4th 96, 105 (3d Cir. 2023) (en banc).

81. Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH. L. REV. 683, 721 (2007); C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?*, 32 HARV. J.L. & PUB. POL’Y 695, 735 (2009).

82. See *supra* Table 2.

however, have a connection to violence, even an attenuated one, it would make felon-in-possession more defensible.

As noted in my methods section, I used Python code to count the frequency of felony convictions in this group of nonviolent/nondrug defendants. There were, not surprisingly, a great deal of theft or fraud convictions, including the receipt of stolen property. These crimes have no apparent connection to violence, so I did not analyze their frequency. But there were also many felony convictions for burglary, gun possession (including illegal sale, carrying, and transfer), and evading the police with a reckless disregard for safety. Because these convictions have an articulable nexus to violence, I decided to track the numbers of defendants who had convictions for these “violent-adjacent” crimes. When I created this “violent-adjacent” category and looked across the entire felon-in-possession population, I came to see the critical importance of these crimes.

As Table 2 shows, 16.4 percent of all felon-in-possession defendants have a felony burglary conviction, 36.3 percent have a felony gun-possession conviction, and 12.8 percent have a felony conviction for evading the police. I lumped these three crimes together under “violent-adjacent” and then asked how many of all felon-in-possession defendants had either a violent felony conviction (broad definition) or a “violent-adjacent” conviction. The result, as seen in the last row and final column of Table 2, is that 70.3 percent of defendants have either a violent felony conviction or a “violent-adjacent” conviction. This amounts to the “best case” for supporters of felon-in-possession. While only 28.8 percent of defendants have a violent felony conviction, 41.5 percent of all defendants have no violent felony conviction but do have at least one “violent-adjacent” conviction. Supporters of felon-in-possession will point to this statistic to rehabilitate the law’s legitimacy. If prosecutors are using felon-in-possession to target violent or violent-adjacent defendants in 70.3 percent of cases, that sounds like a much stronger claim that the charge properly serves its public-safety purpose.

The creation of a violent-or-violent-adjacent category also shows the stakes of what it would mean to limit felon-in-possession to strictly violent felonies. A large chunk of current defendants—those convicted of burglary, gun-possession, and fleeing from the police with disregard for safety—would no longer face criminal penalties for possessing firearms. The desirability of allowing such defendants to carry weapons is much more difficult to assess, doctrinally or policy-wise, than the desirability of allowing ketchup reshelvers, white-collar felons, or those convicted of drug crimes to bear arms. Considering the large number of defendants with violent-adjacent felony convictions, the case against felon-in-possession becomes much more difficult. After all, if “violent-adjacent” convictions merit disarmament, the law—and prosecutors’ application of that law—seem much more in line with the stated public safety purpose behind felon-in-possession.

I am not claiming that people with “violent-adjacent” convictions are dangerous or that they should be prosecuted for possessing guns. Rather, I have created this category to identify an analytical challenge. The existing debate about felon-in-possession has fixated on easy cases and binaries. Are violent felons being targeted for prosecution? Is it instead drug felons or white-collar criminals or those convicted of absurdly benign felonies? The truth is that the plurality of felon-in-possession defendants do not fall into these neat and tidy categories. The data show that 41.5 percent of defendants have no violent felony conviction but do have at least one “violent-adjacent” conviction. The debate about felon-in-possession must acknowledge the presence of these borderline cases that raise difficult normative questions.

Granted, this category of “violent-adjacent” could be contracted and, thus, its significance shrunken. But so, too, could the category be expanded. As so much recent work has shown, there is no clear and principled definition of what counts as a violent crime. And it is highly contestable whether these violent-adjacent crimes capture anything violent in the felony criminal histories of these defendants.⁸³ But whatever definition of violence one ultimately adopts, it is inevitable that there will be difficult edge cases that may or may not merit disarmament. The current debate about felon-in-possession does not capture the numerical or normative significance of these nonviolent/nondrug cases. Indeed, given the numbers of defendants with “violent-adjacent” felony convictions, it is not even correct to call them “edge” cases at all. They are at the very center of the debate about felon-in-possession, or at least they would be if the debate were anchored to data on how the crime is actually prosecuted. Without the data, we cannot answer, or even ask, the question whether people with “violent-adjacent” convictions should be permitted to bear arms.

C. BRIDGING THE EMPIRICAL AND NORMATIVE DIVIDE

This Article’s findings reveal a disconnect between felon-in-possession’s doctrinal and policy justifications and its practical implementation. The data show that while supporters frame the law in terms of preventing violent felons from accessing firearms, the felon-in-possession laws catch defendants with a diverse array of felony convictions and minimal connection to violence. This disconnect raises deeper questions about how empirical realities should inform normative debates over gun rights and public safety.

The findings suggest the need to move beyond simplistic binaries of violent/nonviolent or drug/nondrug defendants. That the plurality of defendants falls outside these categories points to the need for a more complex discussion, where many predicate felonies exist in an ambiguous space that includes crimes with indirect connections to violence. This empirical nuance challenges both

83. See Ristroph, *supra* note 42, at 573–74 (“Relatively few jurisdictions—and even fewer scholars, perhaps—have offered a clear account of what makes a crime *violent*. Often, the meaning of ‘violent crime’ varies depending on the purpose for which the category is deployed.”).

critics who paint the law as an overbroad, discriminatory assault on constitutional rights and defenders who frame it as a targeted public safety measure.

Ultimately, the data do not resolve the fundamental normative debates about felon-in-possession. But the findings of this Article do suggest the need for a more informed discussion that acknowledges the law's application in the criminal system. As courts continue to wrestle with Second Amendment challenges and legislatures consider reforms, all who engage with felon-in-possession should strive to ground their analyses in the complex empirical realities of how this crime is charged.

CONCLUSION

Without data on felon-in-possession prosecutions, decisionmakers around the country—legislators, judges, and advocates—have been left to their own devices to navigate through a doctrinal and policy morass. This Article has sought to aid in those efforts by examining the way this offense is charged in practice.

The Article provides novel documentation, drawn from the largest court system in the country, about how felon-in-possession is actually prosecuted. The data support the longstanding claims that felon-in-possession targets a much broader swath of felons than just those convicted of violent crimes. The data also support the claims that felon-in-possession prosecutions are inextricably linked to the War on Drugs and that the racial disparities observed in felon-in-possession prosecutions go beyond even those disparities observed in the prosecution of felons, generally. Put simply, felon-in-possession prosecutions exacerbate existing racial disparities in the criminal justice system. These findings support the urgent need for careful reforms in this area of the law.

At the same time, the data show that the simple story about felon-in-possession targeting nonviolent, drug offenders is incomplete. The biggest group of felon-in-possession defendants have neither felony violent convictions nor felony drug convictions. Defendants in this nonviolent/non-drug group have been convicted of crimes that are “violent-adjacent”: burglary, gun possession, and evading the police. Defenders of felon-in-possession will see this as vindication of the law's legitimacy. Critics of felon-in-possession will see only an attenuated connection to violence and, therefore, no justification for criminal disarmament at all. Whatever one's position, all must agree on the need to move the debate beyond simple binaries and to engage with the data on actual prosecutions—and the difficult problems that these actual cases raise for doctrine, for policy, and for justice.

The data on felon-in-possession cannot resolve the debate. Even with this data, advocates on both sides can legitimately disagree about whether felon-in-possession is an overbroad and discriminatory infringement of the constitutional right to bear arms or a common-sense safety measure, appropriately targeted at

reducing gun violence. The goal of this Article is not to declare an end to this important debate. Rather, it is to anchor the debate in reality—in how the felon-in-possession charge is used in practice. Only with reference to data can the debate move past its current stasis and toward a true understanding of felon-in-possession's use and misuse.

APPENDIX

For reference, I have included the specific definitions I used for my categories of crimes: Violent (P.C. 667.5), Violent (All), Drug, Gun, Burglary, and Evading/Fleeing Police.

Violent Felonies (P.C. § 667.5)**I. Homicide Offenses Murder (Cal. Penal Code § 187)**

- First Degree Murder (§ 187(a))
- Second Degree Murder (§ 187(a))
- Murder During Attempted Rape (§ 187)
- Murder by Shooting from Vehicle (§ 187(a))
- Attempted Murder (§ 664/187(a))
- Federal Facility Murder Attempt (18 U.S.C. § 930)

II. Sexual Offenses**A. Rape and Related Offenses**

- Rape (section 261)
- Rape by Force or Fear (§ 261(a)(2))
- Rape in Concert With Force or Violence (§ 264.1)

B. Sexual Assault

- Sexual Penetration With Foreign Object by Force (§ 289(a))
- Sexual Penetration With Force (§ 289(a)(1))
- Sexual Penetration With Force Against Minor Under 14 (§ 289(a)(1)(b))

C. Crimes Against Minors

- Lewd or Lascivious Acts With Child Under 14 (§ 288(a))
- Lewd or Lascivious Acts With Child Under 14 by Force (§ 288(b))
- Lewd or Lascivious Acts With Child 14 or 15 Years Old (§ 288(c))
- Continuous Sexual Abuse of Child (§ 288.5)
- Sexual Penetration With Foreign Object: Victim Under 14 (§ 289(j))

D. Other Sexual Offenses

- Sodomy by Force or Violence (§ 286(c)(2)(a))
- Sodomy in Concert With Force (§ 286(d))

- Sodomy With Person Under 14 (§ 286(c)(1))
- Oral Copulation With Person Under 14 (§ 287(c)(1))
- Oral Copulation by Force or Injury (§ 287(c)(2)(a))
- Oral Copulation Under 14 With Force or Injury (§ 287(c)(2)(b))

III. Kidnapping Offenses

- Kidnapping (§ 207)
- Kidnapping Under Specific Circumstances (§ 207(b), (c))
- Kidnapping for Ransom (§ 209(a))
- Kidnapping to Commit Robbery or Rape (§ 209(b)(1))
- Kidnapping During Carjacking (§ 209.5(a))

IV. Robbery and Related Offenses

- Robbery (§ 211)
- First Degree Robbery (§ 212.5(a))
- Second Degree Robbery (§ 212.5(b), (c))
- Bank Robbery (18 U.S.C. § 2113(a))
- Carjacking (§ 215(a))

V. Assault Offenses

- Assault With Intent to Commit Rape (§ 220)
- Assault With Intent to Commit Rape Against Minor Under 18 (§ 220(a)(2))
- Assault to Commit Mayhem (§ 220)

VI. Mayhem

- Mayhem (§ 203)
- Aggravated Mayhem (§ 205)

VII. Arson

- Arson Causing Great Bodily Injury (§ 451(a))
- Arson of Inhabited Structure or Property (§ 451(b))
- Arson of Structure or Forest Land (§ 451(c))
- Arson of Property (§ 451(d))
- Attempted Arson (§ 455(a))

Violent Felonies (Broad)

I. Homicide and Related Offenses

- Murder (Cal. Penal Code § 187)
 - First Degree Murder (§ 187(a))
 - Second Degree Murder (§ 187(a))
 - Murder During Attempted Rape (§ 187)
 - Murder by Shooting from Vehicle (§ 187(a))
- Manslaughter (§ 192)
 - Voluntary Manslaughter (§ 192(a))
- Attempted Murder (§ 664/187(a))
- Federal Facility Murder Attempt (18 U.S.C. § 930)

II. Sexual Offenses

A. Rape and Related Offenses

- Rape (§ 261)
 - Rape by Force or Fear (§ 261(a)(2))
 - Rape of Victim Incapable of Consent (§ 261(a)(1))
 - Rape of Drugged Victim (§ 261(a)(3))
- Spousal Rape by Force or Fear (§ 262(a)(1))
- Rape in Concert With Force or Violence (§ 264.1)
- Sexual Battery (§ 243.4)
 - Sexual Battery by Restraint (§ 243.4(a))

B. Sexual Assault

- Sexual Penetration With Foreign Object by Force (§ 289(a))
- Sexual Penetration With Force (§ 289(a)(1))
- Sexual Penetration With Force Against Minor Under 14 (§ 289(a)(1)(b))

C. Crimes Against Minors

- Lewd or Lascivious Acts With Child Under 14 (§ 288(a))
- Lewd or Lascivious Acts With Child Under 14 by Force (§ 288(b))
- Lewd or Lascivious Acts With Child 14 or 15 Years Old (§ 288(c))
- Continuous Sexual Abuse of Child (§ 288.5)
- Sexual Penetration With Foreign Object: Victim Under 14 (§ 289(j))
- Oral Copulation With Person Under 18 (§ 288a(b)(1))

D. Other Sexual Offenses

- Sodomy by Force or Violence (§ 286(c)(2)(a))
- Sodomy in Concert With Force (§ 286(d))
- Sodomy With Person Under 14 (§ 286(c)(1))
- Oral Copulation With Person Under 14 (§ 287(c)(1))
- Oral Copulation by Force or Injury (§ 287(c)(2)(a))
- Oral Copulation Under 14 With Force or Injury (§ 287(c)(2)(b))

III. Assault and Battery Offenses

A. General Assault and Battery

- Assault (§ 240)
- Battery (§ 242)
- Assault With Deadly Weapon (§ 245)
- Battery With Serious Bodily Injury (§ 243(d))
- Assault With Caustic Chemical (§ 244)
- Assault With Stun Gun/Taser (§ 244.5(b))
- Assault With Machine Gun (§ 245(a)(3))
- Assault With Force Likely to Produce Great Bodily Injury (§ 245(a)(4))

B. Assaults Against Peace Officers/Protected Persons

- Assault on Peace Officer/Firefighter (§ 241(b))
- Battery on Peace Officer/Emergency Personnel (§ 243(b))
- Assault With Firearm on Peace Officer (§ 245(c))
- Battery on Custodial Officer (§ 243.1)
- Battery on School Employee (§ 243.6)
- Assault by Public Officer (§ 149)

C. Prison-Related Assaults

- Assault by Life Prisoner (§ 4500)
- Assault by Prisoner (§ 4501)
- Battery by Prisoner (§ 4501.5)
- Battery on Noninmate by Jail Inmate (§ 4131.5)

IV. Domestic Violence and Child Abuse

- Inflict Corporal Injury on Spouse/Cohabitant (§ 273.5)
- Child Abuse With Possible Great Bodily Injury/Death (§ 273a(a))

- Willful Cruelty to Child (§ 273a)
- Inflict Injury Upon Child (§ 273d)
- Custodian Assault on Child Under 8 With GBI (§ 273ab)

V. Weapons and Shooting Offenses

- Discharge Firearm from Vehicle (§ 26100(c), (d))
- Shoot at Inhabited Dwelling/Vehicle (§ 246)
- Shoot at Unoccupied Dwelling/Vehicle (§ 247(b))
- Throw Substance at Vehicle With GBI Intent (Veh. Code § 23110(b))

VI. Other Violent Offenses

- Kidnapping (§ 207)
 - Kidnapping Under Specific Circumstances (§ 207(b), (c))
 - Kidnapping for Ransom (§ 209(a))
 - Kidnapping to Commit Robbery or Rape (§ 209(b)(1))
 - Kidnapping During Carjacking (§ 209.5(a))
- Robbery (§ 211)
 - First Degree Robbery (§ 212.5(a))
 - Second Degree Robbery (§ 212.5(b), (c))
 - Bank Robbery (18 U.S.C. § 2113(a))
- Mayhem (§ 203)
- Aggravated Mayhem (§ 205)
- Carjacking (§ 215(a))
- Arson
 - Arson Causing Great Bodily Injury (§ 451(a))
 - Arson of Inhabited Structure (§ 451(b))
 - Arson of Structure or Forest Land (§ 451(c))
 - Arson of Property (§ 451(d))
 - Attempted Arson (§ 455(a))

Drug Felonies

I. Possession Offenses

A. Simple Possession

- Possess Controlled Substance (Cal. Health & Safety Code § 11350)
- Possess Narcotic Controlled Substance (§ 11350(a))
- Possess Controlled Substance (§ 11377(a))
- Possess Concentrated Cannabis (§ 11357(a))

B. Possession With Special Circumstances

- Possess Controlled Substance While Armed (§ 11370.1(a))
- Possess Specific Controlled Substance & Loaded Firearm (§ 11370.1)
- Possess Controlled Substance in Prison/Jail (Penal Code § 4573.6)
- Possess Drugs/Paraphernalia in Prison/Jail (Penal Code § 4573.8)

II. Sales and Transportation Offenses

A. Possession for Sale

- Possess Controlled Substance for Sale (§ 11351)
- Possess Narcotic Controlled Substance for Sale (§ 11351(a))
- Possess Controlled Substance for Sale (§ 11378)
- Possess Marijuana for Sale (§ 11359)
 - Possess Marijuana for Sale With Priors (§ 11359(c))
- Possess Phencyclidine for Sale (§ 11378.5)
- Possess Cocaine Base for Sale (§ 11351.5)

B. Transportation and Sale

- Transport/Sell Controlled Substance (§ 11352)
- Transport/Sell Narcotic Controlled Substance (§ 11352(a))
- Transport/Sell Controlled Substance (§ 11379)
- Transport Controlled Substance Between Counties (§ 11379(b))
- Transport/Sell Phencyclidine (§ 11379.5(a))
- Sell/Transport Marijuana/Hash (§ 11360)
 - Sell/Furnish Marijuana Over 1 oz/28.5g (§ 11360(a))

III. Manufacturing and Cultivation

- Manufacture Controlled Substances (§ 11379.6(a))

- Offer to Manufacture Controlled Substances (§ 11379.6(b))
- Plant/Cultivate Marijuana/Hash (§ 11358)
 - Cultivate Marijuana 6+ Plants With Priors (§ 11358(d))
- Possess Substances With Intent to Manufacture PCP (§ 11383(b))
- Possess Ephedrine With Intent to Manufacture Methamphetamine (§ 11383(c)(1))

IV. Offenses Involving Minors

- Solicit Minor: Controlled Substance/Narcotic (§ 11353(a))
- Use/Induce/Sell Minor Marijuana (§ 11361(a))
- Furnish Minor With Marijuana (§ 11361(b))
- Use Minor to Violate Controlled Substance Act (§ 11380(a))
- Adult Supply Minor Under 18 Controlled Substance at School (§ 11353.5)
- Employ Individual Under 21 to Sell Marijuana (§ 11359(d))

V. Facility and Property Related

- Keep Place to Sell Controlled Substance (§ 11366)
- Rent Property for Storage/Sale of Controlled Substance (§ 11366.5)
- Use Fake Compartment for Controlled Substance (§ 11366.8(a))
- Bring Controlled Substance into Prison/Jail (Penal Code § 4573)
- Bring Drugs/Alcohol into Prison/Jail (Penal Code § 4573.5)

VI. Fraud and Financial

- Obtain Controlled Substance by Fraud (§ 11173(a))
- Represent as Doctor to Obtain Controlled Substance (§ 11173(c))
- Secure Drugs by Forged Prescription (Bus. & Prof. Code § 4324(b))
- Possess Money from Sale of Controlled Substance (§ 11370.6(a))
- Transfer/Hide Gains from Controlled Substance (§ 11370.9(c))

VII. Federal Offenses

- Manufacture/Distribute Controlled Substance (21 U.S.C. § 841(a)(1))
- Import Controlled Substance (21 U.S.C. § 952)

Gun Possession Felonies

I. Prohibited Possession

A. Possession by Prohibited Persons

- Felon/Addict Possess Firearm (Cal. Penal Code § 29800(a)(1))
- Convicted Person Possess Firearm (§ 29800(b))
- Convicted Juvenile Possess Firearm (§ 29800(b))
- Possession With Prior Violent Offense (§ 29900(a)(1))
- Possession by Person Under 30 With Specified Convictions (§ 29820(b))
- Possession With Specific Prior Misdemeanors (§ 29805)
- Possession With Domestic Violence Conviction (§ 29805(b))
- Federal Felon in Possession (18 U.S.C. § 922(g))

B. Possession of Prohibited Weapons

- Possess Assault Weapon (§ 30605(a))
- Possess Machine Gun (§ 32625(a))
- Possess Silencer (§ 33410)
- Possess Undetectable Firearm (§ 24610)
- Possess Large Capacity Magazine (§ 32310)
- Possess Short-Barreled Rifle/Shotgun (§ 33210)

II. Carrying Offenses

A. Concealed Weapons

- Carry Concealed Weapon in Vehicle (§ 25400(a)(1))
- Carry Concealed Weapon on Person (§ 25400(a)(2))
- Occupant Carry Concealed Weapon in Vehicle (§ 25400(a)(3))
- Minor Illegally Possess Concealed Weapon (§ 29610)

B. Loaded Firearms

- Carry Loaded Firearm in Public (§ 25850(a))
- Carry Loaded Firearm With Prior Felony (§ 25850(c)(1))
- Carry Stolen Loaded Firearm (§ 25850(c)(2))
- Gang Member Carry Loaded Firearm (§ 25850(c)(3))
- Carry Loaded Handgun Not Registered to Owner (§ 25850(c)(6))
- Carry Loaded Firearm to Commit Felony (§ 25800(a))

III. Location-Specific Offenses

- Possess Firearm at Public/School (§ 626.9(b))
- Weapon/Tear Gas Offense in Prison (§ 4574(a))

IV. Manufacturing and Sales

- Manufacture/Sell/Transfer Assault Weapon (§ 30600(a))
- Manufacture/Import Short-Barreled Rifle (§ 33215)
- Manufacture Explosive Bullets (§ 30210(b))
- Manufacture/Sell Large Capacity Magazine (§ 32310)
- Sell/Convert Machine Gun (§ 32625(b))
- Sell Firearm to Prohibited Person (§ 27500(a))

V. Registration and Identification

- Alter/Remove Firearm Identification Mark (§ 23900)
- Carry Concealed Weapon Not Registered With DOJ (§ 25400(c)(6)(b))

VI. Ammunition Offenses

- Prohibited Person Own/Possess Ammunition (§ 30305(a)(1))
- Manufacture/Possess Explosive Ammunition (§ 30210(b))

VII. Court Order Violations

- Possess Firearm in Violation of Court Order (§ 29825(a))
- Possess Firearm With Active Warrant (§ 29800(a)(3))

Burglary Felonies

I. Basic Burglary

- Burglary and Breaking & Entering (Cal. Penal Code § 459)

II. Degrees of Burglary

A. First Degree Burglary

- First Degree Burglary (§ 459)
- First Degree Burglary (§ 460(a))

B. Second Degree Burglary

- Second Degree Burglary (§ 459)
- Second Degree Burglary (§ 460(b))

III. Special Circumstances

- Burglary During State of Emergency (§ 463(a))

Evading the Police Felonies**I. Basic Evasion**

- Evading Peace Officer With Disregard for Safety (Cal. Vehicle Code § 2800.2)
- Evading Peace Officer With Disregard for Safety (§ 2800.2(a))

II. Aggravated Evasion**A. Evasion Causing Injury or Death**

- Evading Peace Officer Causing Injury or Death (§ 2800.2)
- Evading Peace Officer Causing Serious Bodily Injury or Death (§ 2800.3)

B. Dangerous Evasion Methods

- Evading Peace Officer: Wrong Way Driving (§ 2800.4)
