

CHAPTER FIVE

Research

Statutory Requirements

As authorized by Congress, the Commission's numerous research responsibilities include: (1) establishing a research and development program to serve as a clearinghouse and information center for the collection, preparation and dissemination of information on federal sentencing practices; (2) publishing data concerning the sentencing process; (3) collecting and disseminating information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States Code; and (4) collecting and disseminating information regarding the effectiveness of sentences imposed (28 U.S.C. § 995(a)).

Data Collection

The Sentencing Commission maintains a comprehensive data collection system. These data provide the basis for the Commission's role as clearinghouse of federal sentencing information and support the agency's research mission. Pursuant to its authority under 28 U.S.C. §§ 994(w) and 995(a)(8), and after discussions with the Judicial Conference Committee on Criminal Law and the Administrative Office of the U.S. Courts (AO), the Commission requested that the probation office in each judicial district submit the following documents on every offender sentenced under the guidelines:

- Indictment
- Presentence Report (PSR)
- Report on the Sentencing Hearing (statement of reasons for imposing sentence as required by 18 U.S.C. § 3553(c))
- Written Plea Agreement (if applicable)
- Judgment of Conviction

Data from these documents are extracted and coded for input into computerized databases. For each case in its **Offender Dataset**, the Commission routinely collects case identifiers, demographic variables, statutory information, the guideline provisions applied to the case, and departure information. In addition, when extraordinary research questions arise, the Commission collects new information from the documents provided by the courts.

The Commission also maintains additional datasets to study a variety of sentencing-related issues. The **Organizational Dataset** captures information on organizations sentenced under Chapter Eight of the guidelines. The data describe organizational structure, size, and economic viability; offense of conviction; mode of adjudication; sanctions imposed; and application of the sentencing guidelines. The **Appeals Dataset** tracks appellate review of sentencing decisions.

Information captured includes district, circuit, dates of appeal and opinion, legal issues, and the court's disposition.

The Commission's computerized datasets, without individual identifiers, are available via tape and the Internet through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR). The Consortium's web site address is <http://www.ICPSR.umich.edu/NACJD>. Sentencing Commission data that have been incorporated into the datasets of the Federal Justice Statistics Resource Center, which is sponsored by the Bureau of Justice Statistics and developed by the Urban Institute, is available at <http://fjsrc.urban.org>. In addition to the *2001 Sourcebook of Federal Sentencing Statistics*, the Commission provides on its web site federal sentencing data organized by district and circuit. See <http://www.ussc.gov/linktojp.htm>.

Data Collection Issues

The Commission received documentation on 59,897 cases sentenced under the Sentencing Reform Act (SRA) between October 1, 2000, and September 30, 2001. Note, however, that all data collected and analyzed by the Commission reflect only cases for which appropriate documentation was forwarded to the Commission. Reporting problems specific to individual districts or offices may make analysis at the district level problematic. Analyses of smaller datasets (*e.g.*, the organizational guidelines) may also prove problematic.

The Commission continues to work with other federal agencies to collect comprehensive statistical information for the federal criminal justice system and to reconcile differences among agencies in the number of cases reported, offense category definitions, and other relevant and commonly used variables.

Summary of 2001 Findings

The *2001 Sourcebook of Federal Sentencing Statistics* presents detailed tables and figures displaying information from the Commission's **Offender Dataset** concerning offender characteristics, guideline cases, guideline application, departure figures, and special sections highlighting drug and immigration cases. The *Sourcebook* also provides statistics on organizational sentencing practices from the **Organizational Dataset** and data on appellate review of sentencing decisions from the **Appeals Dataset**.

Numbers cited in this Chapter may be found in tables or figures from the *2001 Sourcebook of Federal Sentencing Statistics*.

Sentencing Individual Offenders

Offender Characteristics

Historically, females have accounted for approximately 15 percent of federal criminal cases. As seen in Table 5, this remained true in 2001 with females making up 14.5 percent of those sentenced. The racial/ethnic composition held steady between 2000 and 2001, ending a multi-year increase in the percentage of Hispanic offenders. As shown in Table 4, during 2001, the

racial/ethnic composition was – White 30.4 percent; Black 25.3 percent; and Hispanic 40.6 percent. The average age of federal offenders sentenced, as shown in Table 6, remained largely unchanged from 2000 to 2001, with a mean age of 34 years and a median of 32 years. Nearly half (45.1%) of the offenders sentenced did not graduate from high school (Table 8), while only 6.3 percent graduated from college.

The proportion of offenders who are not U.S. citizens declined slightly more than two percentage points between 2000 and 2001. As Table 9 shows, non-citizens made up 33.6 percent of all offenders sentenced in 2001, declining from 35.8 percent non-citizens in 2000. Table 9 also shows that, for offenses with 50 or more offenders, the offense categories with large percentages of non-citizens were the following: immigration (90.2%); kidnapping (63.0%); bribery (33.6%); drug trafficking (31.4%); and money laundering (27.5%). For additional demographic information about the federal offender population, see Table 4 through Table 9 in the Commission's *2001 Sourcebook of Federal Sentencing Statistics*.

Guideline Cases

As seen in Figure C, trial rates under the guidelines have declined from 6.8 percent of all cases in 1997 to 3.4 percent in 2001, dropping more than a full percentage point in the last year alone. However, these rates have varied historically by both district and offense type. As Table 10 shows, district trial rates ranged from 0.8 percent in Arizona to 11.5 percent in both the Northern District of Oklahoma and Northern District of Florida. Table 11 shows that among offense types with more than 100 cases, trial rates ranged from 0.4 percent for drugs-communication facility cases to 9.6 percent for racketeering/extortion cases.

Table 12 shows that the vast majority of offenders (81.8%) were sentenced to imprisonment without provision for any period of alternative confinement. More than 90 percent of all offenders in each of the following offense categories received a prison sentence: murder, manslaughter, kidnapping, sexual abuse, robbery, drug trafficking, firearms offenses, burglary, racketeering, immigration offenses, and prison offenses. In contrast, more than half of the offenders sentenced for simple drug possession, larceny, bribery, gambling, civil rights, environmental offenses, antitrust offenses, food and drug offenses, or other miscellaneous offenses received a probationary sentence alone or a sentence of probation with a condition of alternative confinement.

In Table 13 we see that the average sentence for all offenders sentenced in 2001, counting probation-only sentences as zero months imprisonment, was 46.8 months (median of 24 months). For those offenders sentenced to imprisonment, Table 14 shows the average prison term was 55.6 months (median 34 months), continuing a decline in the length of prison sentences that began in 1993. As seen in Figure F, the majority of offenders who were in zones of the Sentencing Table that made them eligible for non-prison sentences, with the exception of immigration offenders, received alternative confinement. Table 15 shows that 71.6 percent of the offenders had no fine or restitution ordered; and therefore, 28.4 percent of the offenders were ordered to pay a fine, restitution, or both, in addition to a term of prison or probation. For a detailed statistical description of the mode of disposition and sentences imposed, see Table 10 through Table 16 and Figure D through Figure F of the *2001 Sourcebook of Federal Sentencing Statistics*.

Guideline Application

In Table 17 we see that in 2001 the most frequently applied primary guidelines were – Drug Trafficking (§2D1.1), Fraud (§2F1.1), Unlawful Entry into U.S. (§2L1.2), Firearms (§2K2.1),

Theft (§2B1.1), Robbery (§2B3.1), and Smuggling Unlawful Alien (§2L1.1). Table 18 shows that the three victim-related enhancements (part of Chapter Three of the guidelines) each were applied in less than one percent of all cases. Regarding role adjustments, Table 18 shows that 5.9 percent of all offenders received an aggravating role adjustment, 13.3 percent received a mitigating role adjustment, 2.2 percent received an abuse of position of trust adjustment, and 0.5 percent received an adjustment for use of a minor in the commission of an offense. The adjustments for obstruction of justice (3.4%) and reckless endangerment (0.3%), shown in Table 18, were applied infrequently. The rate of those receiving the acceptance of responsibility adjustment (91.3%), as shown in Table 18, continued a consistent annual increase (since 1991).

As seen in Table 20, 42.2 percent did not receive criminal history points under the guideline's criminal history computations. Conversely, more than half of all offenders (57.8%) received points for prior criminal convictions (Chapter Four of the guidelines). Table 21 shows that more than half (50.8%) of the year 2001 offenders were placed in Criminal History Category I, and 9.2 percent were placed in Category VI. Table 22 shows that 1,279 offenders received a career offender adjustment and 254 received an armed career criminal adjustment. For further details of the guideline application components, see Table 17 through Table 23 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Departures and Sentences Within the Guideline Range

Table 26 shows, by district, both the number and percent of cases sentenced within the guideline range or receiving a departure (either substantial assistance, other downward, or an upward departure). Almost two-thirds (64.0%) of 2001 sentences were within their applicable guideline ranges. The percentage of within-guideline sentences was lowest in the District of Arizona (29.7%), with three additional districts having rates lower than 50 percent: Northern New York (45.3%), Southern California (41.3%), and Eastern Washington (41.1%). The highest within-guideline sentencing rate was in Utah (90.9%).

Rates of Within-Range and Departure Sentences	
64.0%	Sentences Within Guideline Range
17.1%	Sentences Below Guideline Range for Substantial Assistance on Motion of Government
18.3%	Sentences Below Guideline Range
0.6%	Sentences Above Guideline Range

As seen in Figure G, substantial assistance departures decreased to 17.1 percent of all cases in 2001. Table 26 shows that among districts with more than 100 cases, the rates of substantial assistance departures ranged from a low of 0.5 percent in Utah to a high of 40.5 percent in Central Illinois.

We see in Figure G that, for the first time, the percentage of other downward departures (18.3%) exceeded the percentage of substantial assistance departures. In Table 26, we see that among districts with more than 100 cases, the percentage of downward departures ranged from a low of 1.4 percent in Eastern Kentucky to a high of 62.8 percent in the District of Arizona. The Ninth Circuit had the highest downward departure rate (38.7%), while the Fourth Circuit had the lowest (5.2%).

We see in Figure G that the rate of upward departures declined slightly to 0.6 percent in 2001. In Table 26 we see that one district reported a rate of upward departures greater than four percent (Western Wisconsin (4.2%)), while 24 districts reported no upward departures.

Table 27 shows, by offense type, the number and percent of sentences within the guideline range, and with downward or upward departures. We see that bribery (42.8%) was the only offense with a percentage of within-guideline sentences less than 50 percent. The offense type with the highest within-guideline rate was simple drug possession (92.9%). For substantial assistance departures, the offense type with the lowest rate was sexual abuse (1.0%); the offense type with the highest rate of substantial assistance departures was antitrust offenses (42.1%). Among offense types with more than 100 cases, gambling/lottery (28.2%), drug trafficking (26.3%), money laundering (26.2%), and racketeering (26.0%) had the highest percentages receiving substantial assistance departures. For upward departures, the offense types with the highest rates were manslaughter (8.3%), kidnapping/hostage taking (3.9%), sexual abuse (3.9%), auto theft (3.9%), and murder (3.8%).

For sentences within the applicable guideline range, as shown in Table 29, the sentence most often given (62.3% of all within-guideline sentences) was at the minimum point of the guideline range. Among offenses with more than 100 cases, those with the highest proportion of cases at the guideline minimum were drug trafficking (73.2%), embezzlement (71.7%), and tax offenses (70.1%). The sentence was at the maximum of the guideline range in 13.8 percent of within-guideline cases. The offense with the highest proportion of cases at the guideline maximum was the use of communication facility for drug trafficking (67.8%).

Tables 30, 31, and 32 show the sentencing effects for substantial assistance departures, downward departures, and upward departures, respectively. Overall, offenders receiving a substantial assistance departure experienced a larger sentence reduction than did offenders receiving a downward departure. Sentences for offenders receiving substantial assistance, shown in Table 30, had a median 25-month sentence reduction from the minimum of the applicable guideline range. This results in a 50-percent median decrease in the otherwise applicable guideline minimum. Sentences for offenders receiving a downward departure, as shown in Table 31, had a median 12 months' sentence reduction from the minimum of the applicable guideline range. This results in a 40.0 percent median decrease in the otherwise applicable guideline minimum. Offenders receiving an upward departure, as shown in Table 32, experienced a median 17-month sentence increase above the guideline maximum, amounting to a 33.3 percent median sentence increase. For further departure statistics, see Table 24 through Table 32 and Figure G through Figure H in the *2001 Sourcebook of Federal Sentencing Statistics*.

Drug Cases

As in previous years, drug offenses were the largest single category of federal convictions, making up 41.2 percent of all those sentenced in 2001 (Figure A). As Table 33 shows, 42.7 percent of all drug cases involved cocaine (22.1% powder cocaine and 20.6% crack cocaine), followed by marijuana (32.9%), methamphetamine (14.0%), and heroin (7.2%). Nearly all drug offenses (96.6%) were sentenced under the primary drug trafficking guideline (§2D1.1).

For drug offenders, Tables 34 through 37 show the following: 43.1 percent were of Hispanic origin, 29.1 percent were Black, and 26.0 percent were White; 86.4 percent were male;

and 30.5 percent were non-U.S. citizens. Except for crack cocaine and methamphetamine traffickers, the majority of drug offenders were in Criminal History Category I.

Drug offenders received sentence increases for possession or use of weapons in 12.4 percent of all the drug cases (Table 39). Slightly more than 31 percent of drug offenders received a sentence adjustment for their role in the offense (Table 40); 25.3 percent were given a sentence reduction for mitigating role and 6.5 percent received an aggravating role adjustment. Wide variation was observed in application of the mitigating role adjustment across drug types, from 42.0 percent for marijuana offenses to 6.6 percent for crack cocaine offenses. Slightly more than 91 percent (91.3%, Table 41) of drug offenders received a reduction for acceptance of responsibility.

Table 43 shows that 59.4 percent of drug offenders were convicted under statutes carrying a mandatory minimum penalty provision (29.1% a five-year and 30.3% a ten-year or longer mandatory minimum). The highest percentage receiving a mandatory minimum were crack cocaine cases (76.0%). A ten-year or longer mandatory minimum was applicable in nearly half of both crack cocaine cases (46.6%) and methamphetamine cases (49.7%).

In 1994, Congress enacted the “safety valve” provision (§5C1.2) to provide nonviolent, low-level, first-time drug offenders relief from mandatory minimum sentences.⁵⁴ In Table 44 we see that 25.5 percent of drug offenders received the benefit of the “safety valve,” including 3.7 percent who were not subject to a drug mandatory minimum and 21.8 percent who were subject to a drug mandatory minimum. Heroin and powder cocaine offenders were the most likely to receive a reduction under the “safety valve” provision, while crack cocaine and marijuana offenders were the least likely.

As seen in Table 45, almost 26 percent of drug offenders received substantial assistance departures (25.7%), with another 16.9 percent being granted other downward departures. As displayed in Figure J, we see that the average overall prison term for drug offenders varied widely by drug type, from a mean of 115 months for crack cocaine cases (median= 95 months) to 38 months for marijuana cases (median= 24 months). See Table 33 through Table 45 and Figure I through Figure L of the *2001 Sourcebook of Federal Sentencing Statistics* for additional statistics and trends on drug cases.

Immigration Cases

As seen in Table 3 and in Figure B, the number of immigration cases declined from 11,689 in 2000 to 10,458 in 2001. In total, 17.8 percent (Figure A) of all cases in 2001 were sentenced under one of the immigration guidelines. As seen in Table 46, most immigration offenders were male (93.6%), of Hispanic origin (88.2%), and had less than a high school education (77.0%). A

⁵⁴ Under this provision, certain nonviolent drug offenders with little or no criminal history can receive the full benefit of applicable mitigating adjustments under the guidelines and receive sentences below mandatory minimum penalty levels. Effective November 1, 1995, a guideline amendment was passed that provided an additional two-level reduction for qualified offenders whose offense level is 26 or greater. In 2001, the Commission amended this provision, allowing offenders in offense levels less than 26 to receive the safety valve. This amendment became effective on November 1, 2001, and is not reflected in these data; however, an increase in the number and percentage of drug offenders receiving the “safety valve” in fiscal year 2002 is anticipated.

large percentage of immigration convictions involved non-U.S. citizens (88.9%, Table 48) and were the result of a guilty plea (99.0%, Table 11). For detailed statistics on immigration violations, see Table 46 through Table 50 in the Commission's *2001 Sourcebook of Federal Sentencing Statistics*.

Summary

The number of guideline cases reported to the Commission stayed nearly constant between 2000 and 2001, with 59,846 cases in 2000 and 59,897 in 2001. Federal offenders were sentenced to an average term of 55.6 months in prison (46.8 months when counting sentences of probation as zero months of incarceration). Nearly two-thirds of all offenders were sentenced within their applicable guideline range. The rate of departures for substantial assistance declined very slightly to 17.1 percent, but the percentage of other downward departures increased to 18.3 percent.

The preceding pages highlight federal sentencing practices on a national level. More detailed individual district profiles are presented in the Commission's *2001 Sourcebook of Federal Sentencing Statistics* and on the Commission's website at: www.ussc.gov/linktojp.

Organizational Sentencing Practices

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.⁵⁵ The organizational guidelines establish fine ranges to deter and punish illegal conduct; require full payment of remedial costs to compensate victims for any harm and the disgorgement of illegal gains; regulate probationary sentences; and implement other statutory penalties such as forfeiture and the assessment of prosecution costs.

The Chapter Eight organizational guidelines apply to all federal felonies and Class A misdemeanors committed by organizational offenders.⁵⁶ The fine provisions of Chapter Eight are limited to offenses for which pecuniary loss or harm can be more readily quantified, such as fraud, theft, and tax offenses.⁵⁷ In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.⁵⁸

The organizational guidelines do not presently contain fine provisions for most offenses involving the environment, food, drug, agricultural and consumer products, individual rights, administration of justice, and national defense.⁵⁹ In those cases in which the Chapter Eight fine guidelines do not apply, courts must look to the statutory provisions of title 18, sections 3553 and 3572, to determine an appropriate fine.

⁵⁵ See *Guidelines Manual*, Chapter Eight—Sentencing of Organizations.

⁵⁶ See USSG §8A1.1.

⁵⁷ See USSG §8C2.1.

⁵⁸ See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d).

⁵⁹ See USSG §8C2.1.

In 2001, the Commission received information on 238 organizations that were sentenced under Chapter Eight, a 21.7 percent decrease from 2000 and a 6.7 percent decrease from 1999.⁶⁰ Fines were imposed on 186 organizations. The sentenced organizations pled guilty in 92.4 percent of the cases; 7.1 percent were convicted after trial. There was one case in which the organization pled *nolo contendere*. See Tables 52 and 53 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Changes from Prior Annual Reports

The organizational sentencing data reported in the *2000 Annual Report* marked the beginning of a new system for recording organizational sentencing data, including the capturing of new data, such as the frequency with which courts ordered organizations to implement effective compliance programs as a term of probation. Also beginning with that report, the Commission instituted new designations for some offense types. Consequently, some direct comparisons of the *2000* and *2001 Annual Reports* to prior annual reports may not be possible.

Offense Characteristics

As in 2000, fraud remained the most frequent offense committed by an organization, accounting for 72 of the 238 of the cases sentenced (30.3%). Other significant offense categories included – environmental pollution (21.8%),⁶¹ import/export (6.7%), food and drugs (6.7%), and antitrust (6.7%). See Table 52 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Offender Characteristics

In those cases in which the offender organization both has the ability to pay, and the fine provisions of section 8C2.1 apply to the offense, the court calculates a culpability score that may reduce or increase the applicable offense level. Culpability score calculations are contained in either the sentencing court's Judgment of Conviction or the probation office's Presentence Report. Of the 238 cases sentenced in 2001, 150 cases involved offenses covered by the fine provisions of section 8C2.1. The Commission received detailed culpability score information for 94 of those cases. See Tables 52 and 54 of the *2001 Sourcebook of Federal Sentencing Statistics*.

In numerous cases, the organization's culpability score was reduced based on the presence of certain culpability factors. Of the 94 cases with detailed culpability score calculations, none of the organizations received a reduction in its culpability score for having in place an "effective program to prevent and detect violations of law."⁶² Only two organizations were reported to have made any

⁶⁰ As with individual defendants, the Commission datafile describing organizational defendants is available through the Inter-University Consortium for Political and Social Research at the University of Michigan. See page 42.

⁶¹ Environmental pollution offenses refer to the aggregate of "Environmental-Water," "Environmental-Air," and "Environmental-Hazardous/Toxic Pollutants."

⁶² USSG §8C2.5(f).

effort in the way of “compliance” or “ethics.” In contrast, once under investigation by the authorities, 47 organizations (50.0%) were given credit at sentencing for cooperating with the government’s investigation,⁶³ and another 34 organizations (36.2%) were given credit for accepting responsibility for their wrongdoing.⁶⁴ No organization received full credit for reporting the offense to governmental authorities,⁶⁵ cooperating with the investigation, and accepting responsibility for the offense. Additionally, 13 organizations (13.8%) received no mitigating credit inasmuch as they did not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the *2001 Sourcebook of Federal Sentencing Statistics*.

In several cases, the organization’s culpability score also was increased based on the presence of culpability factors. Specifically, the culpability score of two organizations was increased, pursuant to section 8C2.5(c) of the sentencing guidelines, because they had a history of prior criminal or administrative offenses. No organization received an increase under 8C2.5(e) for having violated a judicial order, injunction, or condition of probation; and three organizations received an increase pursuant to section 8C2.5(e) for having obstructed justice, which resulted in increased culpability scores for sentencing purposes. See Table 54 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Sanctions Imposed

The two largest fines in 2001 were imposed for antitrust offenses, with fines of \$134 million and \$53 million respectively. The third largest fine imposed during 2001 was \$50.1 million in a fraud case. For the 238 cases overall, restitution was ordered in 78 cases, and a fine was imposed in 186 cases. The mean restitution ordered was \$4,081,994, and the mean fine imposed was \$2,154,929. See Table 52 of the *2001 Sourcebook of Federal Sentencing Statistics*.

For those offenses covered by the fine provisions of section 8C2.1, restitution was ordered in 54 cases and a fine was imposed in 106 cases. In those cases, the mean restitution ordered was \$5,507,914 and the mean fine imposed was \$3,399,151. Of those offenses not covered by the fine provisions of section 8C2.1, restitution was ordered in 24 cases, and a fine was imposed in 80 cases. In those cases, the mean amount of restitution ordered was \$873,673, and the mean fine ordered was \$506,335. See Table 52 of the *2001 Sourcebook of Federal Sentencing Statistics*.

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 238 cases sentenced pursuant to Chapter Eight, 169 (71.0%) received one month or more of probation. Of the 238 cases with compliance program information, 40 (16.8%) were ordered to make some sort of “ethics”-related or “compliance”-related improvement. See Table 53 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Appeals Data

⁶³ See USSG pursuant to §8C2.5(g)(2).

⁶⁴ See USSG §8C2.5(g)(3).

⁶⁵ See USSG §8C2.5(g)(1).

The Sentencing Reform Act authorized appellate review of guideline sentences imposed (1) in violation of law; (2) as a result of an incorrect application of the sentencing guidelines; (3) as a departure from the applicable guideline range or from a plea agreement; or (4) for an offense that is plainly unreasonable and for which there is no sentencing guideline. In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. The courts of appeals send appellate opinions to the Commission, and the Commission supplements these cases with a computer search of relevant databases. What follows is a summary of 2001 information from this database.

Summary of Information Received

In 2001, the Commission gathered information on 6,230 appellate court cases of which 1,609 were “conviction only” cases. See Figure M of the *2001 Sourcebook of Federal Sentencing Statistics*. The defendant was the appellant in 98.1 percent of the cases, and the United States was the appellant in 1.4 percent of the cases.⁶⁶ The remaining cases (0.5%) involved a cross appeal by one of the parties. The total number of sentencing cases analyzed was 4,275.⁶⁷ Less than eight percent of the sentencing cases were reversed in full. The overall disposition rate for 2001 sentencing cases was

Affirmed	78.1 percent
Dismissed	6.8 percent
Reversed	7.6 percent
Affirmed in part/Reversed in part	7.6 percent

The affirmance rate of sentencing cases remained relatively unchanged from fiscal year 2000. The Second Circuit had the highest rate of affirmed cases (88.6%); the District of Columbia Circuit had the lowest (48.7%). See Table 56 of the *2001 Sourcebook of Federal Sentencing Statistics*. Of the 325 cases reversed, the appellate courts remanded 304 (93.5%) to the district courts for further action. Of the 324 cases that were affirmed in part and reversed in part, the appellate courts remanded 294 (90.7%) to the district courts for further action. See Figure M of the *2001 Sourcebook of Federal Sentencing Statistics*. Thus, in 2001, the appellate courts remanded to the district court about 14.0 percent (n= 598) of the 4,275 sentencing cases reviewed that year. This represents a 134-case (28.9%) increase in the number of cases remanded compared to 2000.

Issues and Guidelines Appealed

⁶⁶ Although the Commission is interested primarily in information on appellate court cases that involve sentencing issues, it requests that the circuit courts of appeals provide information on all criminal appeals, including appeals of convictions. The statistics used in this report are from the defendant-based files of the appeals database. Each defendant-based file will be referred to as a case.

⁶⁷ Five circuits (the Fourth, Fifth, Eighth, Ninth, and Eleventh) accounted for approximately 74.3 percent of these cases (n= 3,176). See Table 56 of the *2001 Sourcebook of Federal Sentencing Statistics*.

The Commission collects data on the guidelines for appellate cases involving sentencing issues only and those cases involving both sentencing and conviction issues. Defendants appealed the drug trafficking guideline (§2D1.1) more than any other guideline, at 10.9 percent (823 appeals). Other guidelines that frequently formed the bases for appeals by defendants were section 2L1.2 (Unlawfully Entering or Remaining in the United States) (10.6%), section 5K2.0 (Departures) (4.5%), section 3E1.1 (Acceptance of Responsibility) (3.3%), section 3B1.2 (Mitigating Role) (2.9%), section 3B1.1 (Aggravating Role) (2.5%), and section 3C1.1 (Obstruction of Justice) (2.4%). See Table 57 of the *2001 Sourcebook of Federal Sentencing Statistics*. Appeals of issues involving section 2L1.2 increased by 360 percent, from 175 appeals in 2000 to 803 appeals in 2001. Of those 803 appeals, 670 referenced a challenge based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Section 2L1.2 moved from the seventh most frequently appealed section in 2000 to the second most frequently appealed section in 2001. For cases in which the government was the appellant, section 5K2.0 (Departures) (20.2%), section 3E1.1 (Acceptance of Responsibility) (6.4%), and section 2D1.1 (Drug Trafficking) (5.3%) were the guidelines most frequently appealed. See Table 58 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Offense and Offender Characteristics

The data reveal that 27.7 percent of defendants in appellate court cases⁶⁸ were White, 32.9 percent Black, 36.3 percent Hispanic, and 3.0 percent Other. Blacks comprised a larger proportion of the appeals population than they did of the district court population (of the defendants sentenced in district court, 30.4% were White, 25.2% were Black, and 40.6% were Hispanic). Sixty-four percent of the defendants in appellate court cases were United States citizens, a ten-percent decrease from 2000. In 32.8 percent of the appellate court cases, the defendants were sentenced under mandatory drug sentencing statutes, 4.1 percent were sentenced under mandatory gun sentencing statutes, and 2.9 percent sentenced under both drug and gun mandatory sentencing statutes. Mandatory minimum penalties applied to 39.8 percent of the appellate court cases, as compared to 26.5 percent of the district court cases. See Table 60 of the *2001 Sourcebook of Federal Sentencing Statistics*.

As might be expected, appealed cases had considerably longer sentences. The mean sentence of appealed cases was 125.5 months (median= 78 months) compared to 46.3 months (median= 24 months) for all district court cases. While drug trafficking cases comprised 40.7 percent of all cases sentenced in district court, 43 percent of the appellate court cases involved defendants whose primary offense of conviction was drug trafficking. See Table 61 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Data Analyses for the Courts and Congress

Using the Commission's 2000 dataset, the Commission compiled detailed information on sentencing activities for each federal district and circuit. The Commission distributed these data to the courts and made them available to the general public via the Commission's Internet web site. These data present the distribution of cases, mode of conviction, type of sentence imposed, incarceration rate, length of imprisonment, and departure rate by primary offense type. The data are

⁶⁸ These data include *all* appellate criminal cases gathered by the Commission, not merely cases involving a sentencing issue.

organized by circuit and district and provide comparisons to national figures. These informational packets were also used in the guidelines orientation of new chief circuit and district court judges by Commission staff. Additionally, these packets were used by the Commission in several training programs for court personnel.

The statistical informational packets are also designed for members of the House and Senate Judiciary Committees. Distribution of these packets allowed the Commission to better inform the members of the oversight committees about what types of information were collected and available in the Commission's 2000 dataset and allowed members to see what types of cases were being sentenced at the federal level, both nationally and in their individual districts and states. The Commission also responded to individual members of Congress, the Congressional Budget Office, and the Congressional Research Office regarding numerous data requests about the frequency of statute and guideline application, average sentence lengths for specific offenses, and prison and sentencing impact projections. The Commission makes all of the statistical informational packets for each federal district and circuit (as well as each state) available to the general public at the Commission's web site, <http://www.ussc.gov/linktojp.htm>. The website also includes statistical informational packets for several earlier years of data.

In addition to the informational packets, Commission staff responded to data requests from the courts in 2001. Responses included providing information for district- or circuit-based annual reports, supplying the courts with Commission data on specific types of offenses or guideline applications (*e.g.*, drug offenses, departure rates), and examining relationships between guideline application characteristics and offender demographic characteristics (*e.g.*, gender and role in the offense). Commission staff involvement in the various requests ranged from serving as a consultant about a particular data analysis to performing substantial, sophisticated data analyses.