

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.⁵¹

Document Submission

Section 994(w) of title 28, United States Code, requires the chief judge of each district to ensure that within 30 days after entry of judgment in a criminal case, the sentencing court submits a report of sentence to the Commission which includes (1) the judgment and commitment order ("J&C"); (2) the written statement of reasons ("SOR"); (3) any plea agreement; (4) the indictment or other charging document; (5) the presentence report ("PSR"); and (6) any other information the Commission requests. That section also requires that the reasons for the sentence imposed be "stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission." On May 15, 2006, the Commission approved AO Form 245B/C, Rev. 0605 for individual defendants, and the sentencing courts are now required to use this form. The Commission is required to submit to Congress at least annually an analysis of these documents, as well as any recommendations for legislation thought to be warranted, and to report to Congress if any districts

have not submitted the required information and documents.

For fiscal year 2009, the Commission received 374,922 documents related to 81,372 individual offender cases received. See Table 1, *2009 Sourcebook of Federal Sentencing Statistics*. The vast majority of districts sent in complete documentation related to the cases. The Commission continues to work with the courts to facilitate document submission. See Table 1, *2009 Sourcebook of Federal Sentencing Statistics*. The Commission also received documents in 177 cases in which an organization was sentenced. Additionally, the Commission received documents in 7,420 cases in which a resentencing or other modification of sentence occurred.

Data Collection

All tables and figures referenced in this chapter can be found in the companion volume to this annual report, the *2009 Sourcebook of Federal Sentencing Statistics*. Data for the figures that appear in this text can be found in the *2009 Sourcebook of Federal Sentencing Statistics*. The year 2009, as used in this report, refers to the fiscal year 2009 (October 1, 2008, through September 30, 2009).

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 sentencing information. In addition, when particular research questions arise, the Commission collects additional 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

⁵¹ 28 U.S.C. § 995 (a)(12) and (14) through (16).

information on organizations sentenced under Chapter Eight of the *Guidelines Manual*. 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.⁵²

The Resentencing Dataset, begun in fiscal year 2008, tracks information on the number and type of resentencings and other modifications of sentence.

The Commission's computerized datasets, without individual identifiers, are available via the Internet through the Inter-University Consortium for Political and Social Research at the University of Michigan ("ICPSR").⁵³ Commission data also 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.⁵⁴ In addition to the 2009 *Sourcebook of Federal Sentencing Statistics*, the

Commission provides federal sentencing data organized by circuit, district, and state on its website. See <http://www.ussc.gov/linktojp.htm>.

Data Collection Issues

The Commission received documentation on 81,372 individual offender cases sentenced under the Sentencing Reform Act ("SRA") between October 1, 2008, and September 30, 2009. This represents an increase of 4,894 cases over the number of cases for which the Commission received documentation for fiscal year 2008. Note, however, that all data collected and analyzed by the Commission reflect only cases for which appropriate documentation was forwarded to the Commission by February 3, 2010. As part of its ongoing activities, the Commission occasionally receives case documentation for a case sentenced in a prior fiscal year after the date on which the data was compiled for the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* corresponding to that year.⁵⁵ In some cases, this documentation is received months or even years after the case was concluded. This data is analyzed and maintained in the Commission's comprehensive database and used in the Commission's work, although it is not reflected in the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* prepared for the year in which the offenders were sentenced, nor is it contained in the publically available datasets released each fiscal year, as they are based on the data in the corresponding *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.

Reporting problems specific to individual districts or offices may make analysis at the district

⁵² In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. Each fiscal year, data collection for appellate review is compiled from three sources. First, many appellate courts submit to the Commission slip opinions of both published and unpublished opinions and orders. The Commission creates a master list of these opinions as they are received. Second, the Commission performs a supplemental computer search for all published and unpublished opinions and orders using commercially available legal databases and adds any available decisions not received directly from the courts to the master list. Third, because courts do not submit all relevant opinions and orders to commercially available legal databases, the Commission checks individual court websites and adds any available appeals from the fiscal year. These sources may not provide the Commission with every appellate sentencing decision rendered in a fiscal year. The Commission's Appeals Database, therefore, may not report all appellate decisions rendered in that fiscal year.

⁵³ The Consortium's website address is <http://www.ICPSR.umich.edu/>.

⁵⁴ The data can be found at <http://fisrc.urban.org/index.cfm>.

⁵⁵ For example, after the date on which the data was compiled to prepare the fiscal year 2008 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*, the Commission received documentation on 561 additional cases sentenced in that fiscal year. Since 1991, the Commission has received documentation on 12,547 cases after the respective dates on which the data was prepared for the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* for each of those fiscal years. This represents 1.3% of all cases reported to the Commission during that period.

level problematic due to missing or incomplete information. Analyses of smaller datasets (*e.g.*, the organizational guidelines) may also prove problematic due to the limited number of cases involved. The Commission continues to work with the federal judiciary and other federal agencies to collect comprehensive statistical information for the federal criminal justice system and to reconcile differences across agencies in the number of cases reported, offense category definitions, and other relevant and commonly used variables.

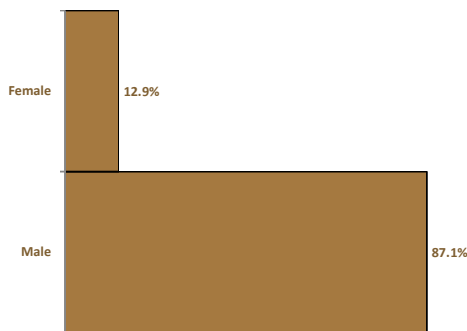
Summary of 2009 Findings

The 2009 *Sourcebook of Federal Sentencing Statistics* presents detailed tables and figures displaying information from the Commission’s Offender Dataset concerning offender characteristics, guideline cases, guideline applications, departure figures, and special sections highlighting drug and immigration cases. The *Sourcebook* also provides statistics on organizational sentencing practices from the Organizational Dataset, data on appellate review of sentencing decisions from the Appeals Dataset, and information on the number and type of resentencings and other modifications of sentence from the Resentencing Dataset.

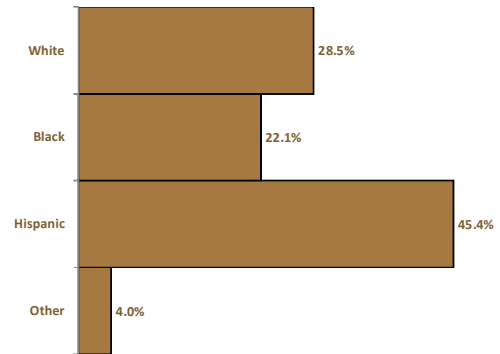
Sentencing Individual Offenders

Offender Characteristics

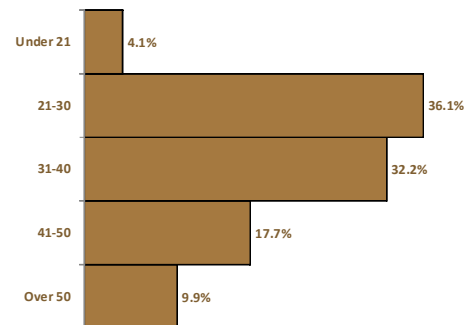
Historically, male offenders have accounted for approximately 85 percent of federal criminal cases. As seen in Table 5, men make up 87.1 percent of offenders sentenced in 2009, down slightly from 87.2 percent the previous year. The racial/ethnic composition is shown in Table 4. During 2009, the



racial/ethnic composition was Hispanic 45.4 percent, White 28.5 percent, and Black 22.1 percent.



The average age of federal offenders sentenced as shown in Table 6, was 35.1 years with a median of 33 years. More than half (50.8%) of the offenders sentenced did not graduate from high school (Table 8), and only 5.4 percent graduated from college.

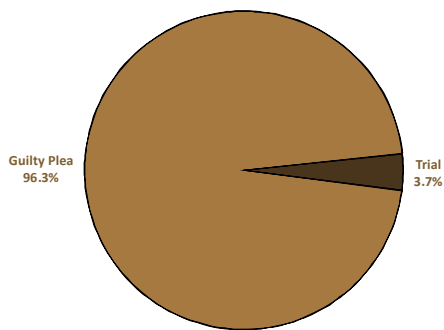


The proportion of offenders who are not United States citizens increased markedly between 2008 and 2009. As Table 9 shows, non-citizens made up 44.7 percent of all offenders sentenced in 2009, up 4.2 percentage points from the previous year. Table 9 also shows that, for offenses with 100 or more offenders, the offense categories with the largest percentages of non-citizens were the following: immigration (93.2%); money laundering (31.1%); fraud (28.9%); drug trafficking (28.7%); drug simple possession (27.0%); and administration of justice

(19.5%). For additional demographic information about the federal offender population, see Tables 4 through 9 in the Commission's 2009 *Sourcebook of Federal Sentencing Statistics*.

Guideline Cases

As seen in Figure C and Table 10 of the *Sourcebook*, 3.7 percent of all cases sentenced in 2009 went to trial. However, these trial rates have varied historically by both district and offense type. 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 12.6 percent for sexual abuse cases.

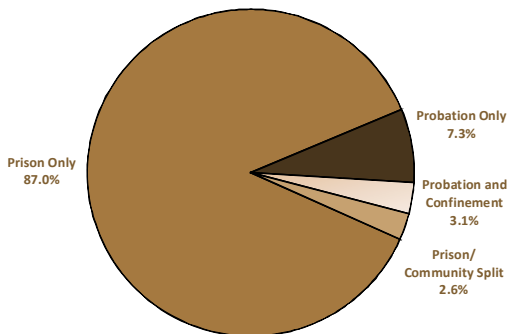


Table 12 shows that the vast majority of offenders (89.6%) were sentenced to imprisonment. More than 90 percent of all offenders in each of the following offense categories received a prison sentence: murder, manslaughter, kidnapping, sexual abuse, robbery, arson, drug trafficking, firearms offenses, burglary, racketeering/extortion, immigration

offenses, pornography/prostitution, and prison offenses. In contrast, more than half of the offenders sentenced for larceny, embezzlement, gambling/lottery, environmental/wildlife 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.

Table 13 shows that the average sentence for all offenders sentenced in 2009, 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 56.4 months (median 33 months). As seen in Figure F, the majority of offenders who were in zones of the Sentencing Table for which a non-prison sentence may be imposed received alternative confinement, with the exception of immigration and drug trafficking offenders.

Table 15 shows that no fine or restitution was ordered in 78.5 percent of all cases. For a detailed statistical description of the mode of disposition and sentences imposed, see Tables 10 through 16 and Figures D through F of the 2009 *Sourcebook of Federal Sentencing Statistics*.

Guideline Application

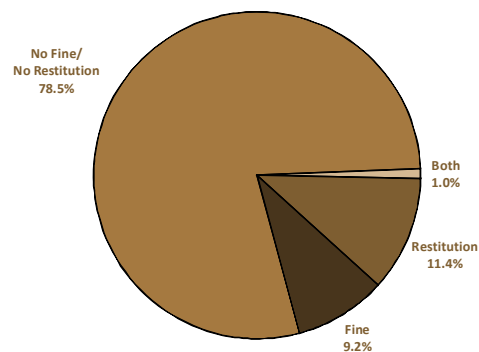


Table 17 of the *Sourcebook* shows that the most frequently applied primary guidelines in 2009 were

Drug Trafficking (32.9%),⁵⁶ Unlawful Entry into U.S. (23.6%),⁵⁷ Theft/Fraud (11.0%),⁵⁸ Firearms (8.7%),⁵⁹ and Smuggling Unlawful Alien (4.5%).⁶⁰

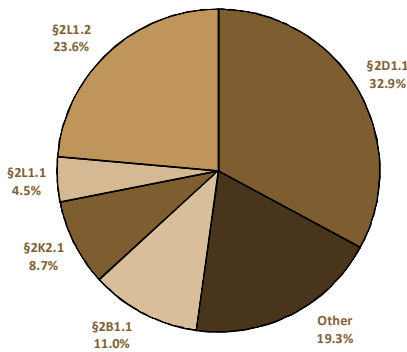
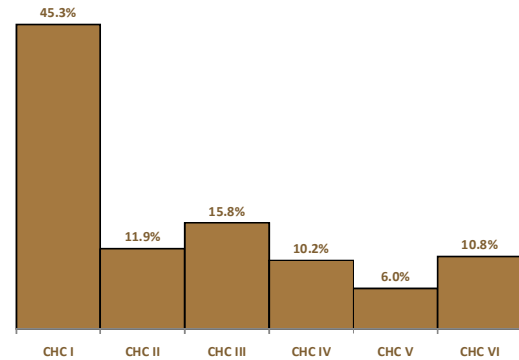


Table 18 shows that 4.2 percent of all offenders received an aggravating role adjustment, 8.3 percent received a mitigating role adjustment, 2.2 percent received an abuse of position of trust adjustment, and 0.3 percent received an adjustment for use of a minor in the commission of an offense. Table 18 also shows the application rates of the adjustments for obstruction of justice (2.3%) and reckless endangerment (0.7%). The rate of those receiving the acceptance of responsibility adjustment was 94.4 percent, as shown in Table 18. Table 18 shows that none of the four victim-related adjustments (part of Chapter Three of the *Guidelines Manual*) were applied in more than one percent of cases.

As seen in Table 20, 37.0 percent of offenders did not receive criminal history points under the guidelines' criminal history computations. Conversely, more than half of all offenders (63.0%) received points for prior criminal convictions (Chapter Four of the guidelines). Table 21 shows that in 2009 almost half (45.3%) of the offenders were

placed in Criminal History Category I and 10.8 percent were placed in Category VI. Table 22 shows that 2,392 offenders received a career offender adjustment, and 697 received an armed career criminal adjustment. For further details of the guideline application components, see Tables 17 through 23 of the 2009 *Sourcebook of Federal Sentencing Statistics*.



Sentences Within the Guideline Range and Outside the Range

On January 12, 2005, the Supreme Court decided *United States v. Booker*,⁶¹ applying *Blakely v. Washington*⁶² to the federal guideline system and holding that the mandatory application of the federal sentencing guidelines violated the right to trial by jury under the Sixth Amendment. The Court remedied the Sixth Amendment violation by excising the provisions in the Sentencing Reform Act that made the federal sentencing guidelines mandatory, thereby converting the mandatory system that had existed for almost 20 years into an advisory one. In *Booker*, the Supreme Court instructed courts to consider the guidelines, but "tailor the sentence in light of other statutory concerns."⁶³ This instruction necessitated changes in the methodology used by the Commission in the collection and analysis of the data.

⁵⁶ §2D1.1
⁵⁷ §2L1.2
⁵⁸ §2B1.1
⁵⁹ §2K2.1
⁶⁰ §2L1.1

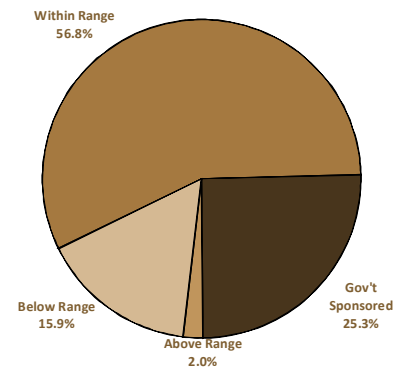
⁶¹ 543 U.S. 220 (2005).
⁶² 542 U.S. 296 (2004).
⁶³ 543 U.S. at 245.

The *Sourcebook* includes a number of tables, differing from those presented in *Sourcebooks* for fiscal years prior to 2005, presenting data on cases sentenced outside the guideline range and sorted into a number of categories created in response to the *Booker* decision. Before the decision in *Booker*, non-government sponsored outside the range sentences were classified as upward departures or downward departures. Subsequent to the *Booker* decision, the Commission began coding outside the range cases, separately for above and below: Departure; Departure w/*Booker*; *Booker*; and Remaining. In place of the two categories, the Commission now codes non-government sponsored outside the range cases into a total of eight categories (the four categories described above for above range and those same categories for below range sentences). For expanded definitions of these categories, see Appendix A.

Tables N through N-11 present national and circuit data on sentences within the guideline range and those outside the range. Nationally, 56.8 percent of cases sentenced in 2009 were sentenced within the applicable guideline range. Above range cases accounted for a total of 2.0 percent of all cases, with approximately one-third citing a guideline departure reason and two-thirds not citing a departure reason. Of all cases sentenced in 2009, 25.3 percent were sentenced below the guideline range based upon a reason sponsored by the government. About one-half of these cases (12.5% of all cases) were sentenced pursuant to a motion by the government for a reduction because the defendant provided substantial assistance to the government (§5K1.1). Finally, an additional 15.9 percent of the cases otherwise were sentenced below the guideline range. Of these 15.9 percent, guideline departure provisions were cited in 3.0 percent of the cases, and 12.9 percent did not cite a departure reason. See Table N.

Table 26 shows, by district, both the number and percent of cases sentenced within the guideline range, or receiving a sentence outside the applicable guideline range. Nationally, the percentage of within-guideline sentences was 56.8 percent and ranged by district from 27.8 percent to 92.3 percent. Government sponsored below range sentences

account for 25.3 percent of all cases sentenced during this period and are classified into three categories: USSG §5K1.1 Substantial Assistance; USSG §5K3.1 Early Disposition; and Other Government Sponsored. The national rate of substantial assistance was 12.5 percent and ranged by district from 1.9 percent to 37.6 percent. The rate of below range sentences based upon the Early Disposition Program (§5K3.1) was 9.1 percent nationally and ranged from 0.0 percent (in 75 districts) to 54.9 percent. The rate of other government sponsored below range sentences was 3.7 percent nationally and ranged from 0.0 percent (in six districts) to 21.5 percent. See Table 26.



Nationally, an additional 15.9 percent of cases were sentenced below the guideline range classified into four categories. The national rate of below range departures was 1.9 percent. Below range departures also citing *Booker* were 1.1 percent nationally. The national rate of below range cases that were not departures but which cited *Booker* was 11.8 percent. The rate in the category of remaining below range cases was 1.1 percent nationally.

Table 27 shows, by offense type, the number and percent of sentences within the guideline range and outside of the range. The offense type with the highest within-guideline rate was simple drug possession (90.0%). The offense type with the highest above range departure rates was manslaughter (6.8%). Manslaughter also had the highest rate of above range with *Booker* cases (11.9%). The offense type with the highest rate of substantial assistance departures was antitrust (85.0%). The offense type

with the highest rate of early disposition was immigration (22.7%). The highest rate of application of other government sponsored below range sentences was kidnapping (17.1%). See Table 27. The offense type with the highest rate of below range departures was manslaughter (11.9%). The offense type with the highest rate of below range departures with *Booker* was gambling/lottery (4.8%). The offense type with the highest rate of below range with *Booker* was pornography/prostitution (32.5%). The highest rate of the remaining below range cases was civil rights (4.8%). See Table 27.

For sentences within the applicable guideline range, as shown in Table 29, the sentence most often given was at the minimum point of the guideline range (52.1% of all within-guideline sentences). The sentence was at the maximum of the guideline range in 10.8 percent of all within-guideline cases.

Tables 30–32 show the sentencing effects of the 11 categories of outside the range sentences. Overall, offenders receiving a substantial assistance departure experienced the largest reduction among all types of below range sentences. Sentences for offenders receiving substantial assistance reductions, as shown in Table 30, had a median 30-month sentence reduction from the minimum of the applicable guideline range. This results in a 48.9 percent median decrease in the otherwise applicable guideline minimum. Cases receiving a reduction for early disposition (§5K3.1) had a median decrease of seven months from the guideline range, which is a 33.2 percent median decrease. See Table 30A. Those cases receiving another government sponsored reduction had a median decrease of 12 months from the applicable guideline minimum (a median decrease of 33.3%). See Table 31.

Table 31A shows that the median decrease in cases receiving a below range departure was ten months below the guideline minimum, a median decrease of 28.5 percent. Cases receiving a departure below range with *Booker* saw a median decrease of 18 months from the guideline minimum (44.4% median decrease). See Table 31B. Table 31C presents data on below range cases with *Booker*. The median reduction

from the guideline minimum was 13 months (34.8% median decrease). The median reduction from the guideline minimum for all remaining below range cases is presented in Table 31D. The median sentence reduction was six months (38.5% median decrease).

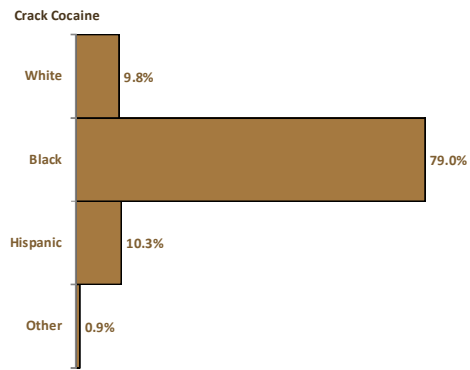
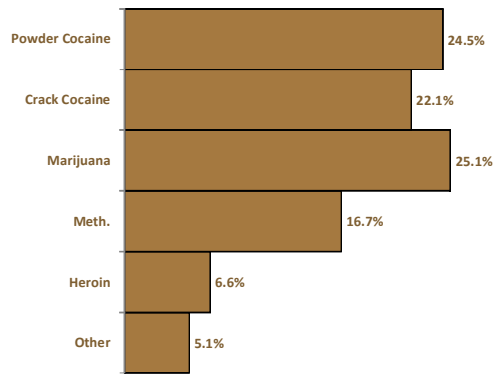
The relative increase above the applicable guideline maximum is presented in Tables 32 through 32C. Departures above the guideline range were a median 14 months above the guideline maximum. This is a 33.3 percent median increase above the guideline maximum. See Table 32. Table 32A shows that the median increase for cases receiving an above range departure with *Booker* was 18 months above the guideline maximum (46.3% median increase). Cases with a sentence above range with *Booker* had a median increase of 12 months (37.5% median increase). See Table 32B. The category with the lowest median increase, ten months above the guideline maximum, occurred in all remaining cases above the range (29.4% median percent increase). See Table 32C.

For further departure statistics, see Tables 24 through 32C and Figures G and H of the 2009 *Sourcebook of Federal Sentencing Statistics*.

Drug Cases

In 2009, immigration offenses replaced drug offenses as the largest single category of federal convictions, making up 32.2 percent of all offenders sentenced in 2009 (Figure A). Among drug cases, 46.6 percent involved cocaine (24.5% powder cocaine and 22.1% crack cocaine), followed by marijuana (25.1%), methamphetamine (16.7%), and heroin (6.6%). See Figure A. Table 33 of the *Sourcebook* shows that nearly all drug offenses (96.7%) were sentenced under the primary drug trafficking guideline (§2D1.1).

Among crack cocaine defendants, the distribution was 79.0 percent Black, 10.3 percent Hispanic origin, and 9.8 percent White. The race/ethnicity distribution of drug defendants



involved with methamphetamine was 52.4 percent White, 38.3 percent Hispanic origin, and 2.9 percent Black. Among drug defendants overall, 87.9 percent were male and 27.7 percent were non-United States citizens. Except for crack cocaine and methamphetamine offenders, the majority of drug offenders were in Criminal History Category I. See Tables 34–37.

Slightly more than 93 percent (93.7%, Table 41) of drug offenders received an adjustment for acceptance of responsibility.

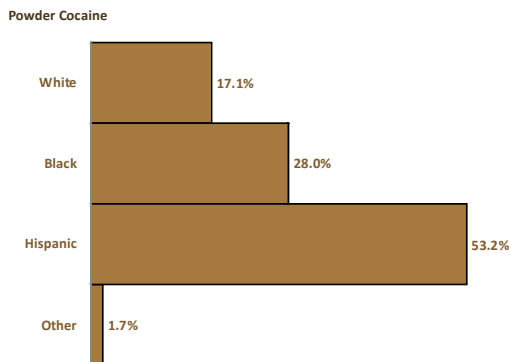
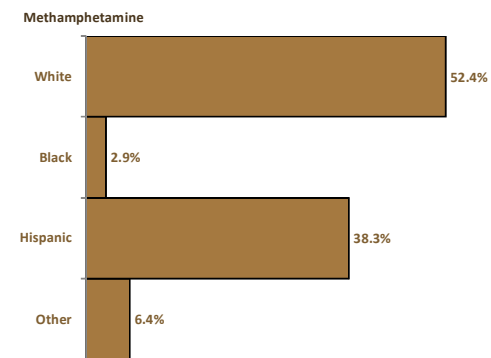


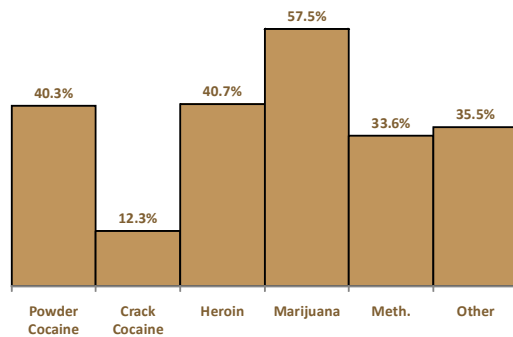
Table 43 of the *Sourcebook* shows that 64.4 percent of drug offenders were convicted under statutes carrying a mandatory minimum penalty (27.2% a five-year and 37.2% a ten-year or longer mandatory minimum penalty). The highest percentages of offenders receiving a mandatory minimum penalty were crack cocaine offenders (80.3%), methamphetamine offenders (78.6%), and powder cocaine offenders (76.5%). A ten-year or longer mandatory minimum penalty was applicable in more than half of both powder cocaine cases (51.6%) and methamphetamine cases (52.3%).



Drug offenders received sentence increases for possession or use of weapons in 16.8 percent of all the drug cases (Table 39). A sentence adjustment for role in the offense (Table 40) was imposed in 25.6 percent of drug cases; 19.7 percent received a mitigating role adjustment, and 5.9 percent received an aggravating role adjustment. Wide variation was observed in application of the mitigating role adjustment across drug types, with 38.8 percent of marijuana offenders and 23.1 percent of heroin offenders receiving a mitigating role adjustment compared to 5.3 percent for crack cocaine offenders.

The “safety valve” provision, enacted in 1994 and incorporated into the guidelines at USSG §5C1.2, provides nonviolent, low-level, first-time drug offenders relief from mandatory minimum sentences.

Table 44 shows that 36.9 percent of drug offenders received the benefit of the two-level reduction for meeting the “safety valve” criteria, including 14.0 percent who were not subject to a drug mandatory minimum penalty and 22.9 percent who were subject to a drug mandatory minimum penalty. Marijuana offenders (57.5%) were the most likely to receive the reduction for meeting the safety valve criteria, while crack cocaine offenders (12.3%) were the least likely.



As displayed in Figure J, the average overall prison term for drug offenders varied widely by drug type, from a mean of 114.8 months for crack cocaine offenders (median of 96 months) to 36.2 months for marijuana offenders (median of 24 months). See Tables 33 through 45 and Figures I through L of the *2009 Sourcebook of Federal Sentencing Statistics* for additional statistics and trends on drug cases.

Immigration Cases

As seen in Table 46, most immigration offenders were male (93.4%), of Hispanic origin (86.3%), and had less than a high school education (81.3%). A large percentage of immigration convictions involved non-United States citizens (92.1%, Table 48) and were the result of a guilty plea (99.2%, Table 46). For detailed statistics on immigration violations, see Tables 46 through 50 of the *2009 Sourcebook of Federal Sentencing Statistics*.

Death Penalty Cases

In fiscal year 2009, the Commission received information on four cases in which the offender was sentenced to a punishment of death. Each offender

was convicted after a jury trial. One offender was sentenced to death for murder, and two offenders were sentenced to death for firearms offenses. These two offenders were both also convicted of drug trafficking offenses and a robbery offense (carjacking). In the fourth case, the court did not specify the count or counts for which the death penalty was imposed; however, the offender was convicted of four counts, each of which may result in the imposition of the death penalty: two firearms offenses, kidnapping, and robbery (carjacking). Three of the four offenders had prior criminal history. All four offenders sentenced in these cases were men. Two offenders were between the ages of 21 and 25, and two were between the ages of 26 and 30. Information regarding the race and ethnicity of these offenders was not provided because the court waived the preparation of a presentence investigation report in each case. Because the sentencing guidelines are not used when a jury imposes a sentence of death, these cases have been excluded from the *2009 Sourcebook of Annual Sentencing Statistics*.⁶⁴

Organizational Sentencing Practices

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.⁶⁵ 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.⁶⁶ The fine provisions of Chapter Eight are

⁶⁴ These cases are also excluded from the Commission’s datasets made available to the public. See n. 53, *supra*.

⁶⁵ See *Guidelines Manual*, Chapter Eight—Sentencing of Organizations.

⁶⁶ See USSG §8A1.1.

limited to offenses for which pecuniary loss or harm can be more readily quantified, such as fraud, theft, and tax offenses.⁶⁷ In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.⁶⁸

The organizational guidelines do not contain fine provisions for most offenses involving environmental pollution, food, drugs, agricultural and consumer products, civil/individual rights, administration of justice (e.g., contempt, obstruction of justice, and perjury), and national defense.⁶⁹ In those cases in which the Chapter Eight fine guidelines do not apply, the statutory provisions of sections 3553 and 3572 of title 18, United States Code, govern the determination of an appropriate fine.

In 2009, the Commission received information on 177 organizations that were sentenced under Chapter Eight, a 10.6 percent decrease from 2008 (198) and a 9.7 percent decrease from 2007 (196).⁷⁰ The sentenced organizations pled guilty in 170 (96.0%) of the cases; seven (4.0%) were convicted after a jury trial. See Table 53 of the *2009 Sourcebook of Federal Sentencing Statistics*.

Changes from Prior Annual Reports

The organizational sentencing data reported in the *2000 Sourcebook* 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 make compliance and ethics-related improvements as a condition of probation. Also beginning with the *2000 Sourcebook*, the Commission instituted new designations for some offense types, which continue to be refined to more accurately report the data

captured. Consequently, some direct comparisons of the *2009 Annual Report* to prior annual reports may not be possible.

Offense Characteristics

As in 2008, fraud was the most frequent type of offense committed by an organization sentenced in federal court, accounting for 65 (36.7%) of the 177 cases sentenced. Other significant offense categories included environmental pollution (19.2%),⁷¹ money laundering (7.3%), import and export (5.6%), and antitrust (5.1%). See Table 51 of the *2009 Sourcebook of Federal Sentencing Statistics*.

Offender Characteristics

In those cases in which the fine provisions of USSG §8C2.1 apply to the offense and the offender organization has the ability to pay, the court calculates a culpability score that may decrease or increase the applicable offense level. Culpability score calculation data is obtained from the sentencing court's judgment and commitment order and/or the probation officer's presentence report. Of the 177 cases sentenced in 2009, the court ordered a fine in 131 cases (74.0%) and applied the fine provisions of USSG §8C2.1 to calculate the fine in at least 96 cases (54.2%) for which the Commission received detailed culpability score information.⁷² See Tables 53 and 54 of the *2009 Sourcebook of Federal Sentencing Statistics*. In numerous cases, the organization's culpability score was reduced based on the presence of certain mitigating culpability factors. Of the 96 cases with detailed culpability score information on self-reporting, cooperation, and acceptance of responsibility, 88 organizations (91.7%) received reductions in their culpability scores, pursuant to USSG §8C2.5(g), for either self-reporting, cooperating, or accepting responsibility. Fifty-eight organizations (60.4%) received reductions in their

⁶⁷ See USSG §8C2.1.

⁶⁸ See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d).

⁶⁹ See USSG §8C2.1.

⁷⁰ 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.

⁷¹ Environmental pollution offenses refer to the aggregate of "Environmental-Water," "Environmental-Air," and "Environmental-Hazardous/Toxic Pollutants."

⁷² 81 cases had fine guidelines application data missing or inapplicable due to guideline provisions such as a "preliminary determination of inability to pay a fine" (USSG §8C2.2), which applied to 54 cases in 2009.

culpability scores for cooperating with the government's investigation⁷³ and another 29 organizations (30.2%) received reductions for accepting responsibility for their wrongdoing.⁷⁴

One organization received the full five-point reduction in its culpability score for reporting the offense to governmental authorities,⁷⁵ cooperating with the investigation, and accepting responsibility for the offense (1.0%). No organization received a reduction in its culpability score for having in place an "effective compliance and ethics program."⁷⁶ Eight organizations (8.3%) received no culpability score reductions inasmuch as they did not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the *2009 Sourcebook of Federal Sentencing Statistics*.

In a number of cases, the organization's culpability score was increased based on the presence of aggravating culpability factors. Among those 96 cases with complete detailed culpability score calculations, five organizations (5.2%) received an increase pursuant to USSG §8C2.5(e) for having obstructed justice, which resulted in an increased culpability score for sentencing purposes. One organization (1.0%) received an increase under USSG §8C2.5(c) (for a history of prior criminal or administrative offenses within five years), and two organizations (2.1%) received an increase under USSG §8C2.5(d) (for violation of a judicial order, injunction, or condition of probation). See Table 54 of the *2009 Sourcebook of Federal Sentencing Statistics*.

Sanctions Imposed

Of the 177 cases sentenced in fiscal year 2009, restitution was ordered in 52 cases (29.4%), and a fine was imposed in 131 cases (74.0%). See Table 52. The

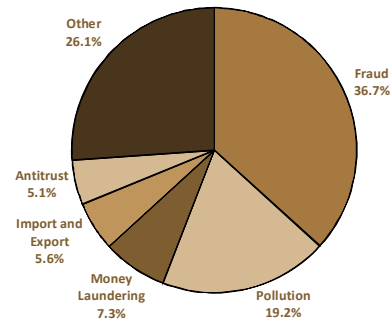
⁷³ See USSG §8C2.5(g)(2).

⁷⁴ See USSG §8C2.5(g)(3).

⁷⁵ See USSG §8C2.5(g)(1).

⁷⁶ See USSG §8C2.5(f).

median restitution ordered was \$310,053 and the median fine imposed was \$119,000. See Table 52 of the *2009 Sourcebook of Federal Sentencing Statistics*. The highest fine in 2009 was \$515 million imposed on



a pharmaceutical corporation for violations of food and drug laws. The second and third highest fines, of \$448.5 million and \$402 million, were imposed on construction and manufacturing corporations for bribery violations. The largest restitution order in 2009, \$15.5 million, was imposed on an organization for fraud violations.

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 177 cases sentenced pursuant to Chapter Eight, 131 (74.0%) received one month or more of probation, and nine (5.1%) were ordered to make compliance or ethics-related improvements. See Table 53 of the *2009 Sourcebook of Federal Sentencing Statistics*.

Appeals Data

The Sentencing Reform Act authorized appellate review of guideline sentences if the sentence (1) was imposed in violation of law; (2) was imposed as a result of an incorrect application of the sentencing guidelines; (3) is greater (appeal by the defendant) or less (appeal by the government) than the sentence specified in the applicable guideline range; or (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.⁷⁷

⁷⁷ 18 U.S.C. § 3742(a), (b).

In *Booker*, the Supreme Court excised 18 U.S.C. § 3742(e), which provided a *de novo* standard of review for departures from the guidelines, and replaced it with reasonableness review.

The following is a summary of fiscal year 2009 information from the Commission’s Appeals Database.⁷⁸

Summary of Information Received

In fiscal year 2009, the Commission collected information on 8,774 appellate court cases. See Table 55 of the *2009 Sourcebook of Federal Sentencing Statistics*. Of the 8,774 appellate court cases, the defendant was the appellant in 8,628 (98.3%), the government was the appellant in 109 (1.2%), and 37 (0.4%) were cross appeals. Of the 8,774 appellate court cases collected for 2009, 6,507 (74.2%) were sentencing appeals, which represents an increase of 175 (2.8%) sentencing appeals compared to 2008 (n=6,332), and 2,267 (25.8%) were “conviction only” appeals.⁷⁹ See Figure M of the *2009 Sourcebook of Federal Sentencing Statistics*.

Defendants were the appellants in 6,470 (99.4%) of the 6,507 sentencing appeals analyzed for 2009. Four circuits (the Fourth, Fifth, Ninth, and Eleventh) accounted for 3,764 (58.2%) of sentencing appeals brought by the defendant. The government was the appellant in 64 (1.0%) of the 6,507 sentencing appeals analyzed for 2009. Three circuits (the Second, Ninth, and Eleventh) accounted for 32 (50.0%) of the 64 sentencing appeals brought by the government. See Tables 56 and 56A of the *2009 Sourcebook of Federal Sentencing Statistics*.

The overall disposition rates for sentencing appeals in 2009 were –

	Number	Percent
Affirmed	5,395	82.9
Dismissed	377	5.8
Reversed⁸⁰	425	6.5
Affirmed in part/Reversed in part⁸¹	181	2.8
Remanded only⁸²	129	2.0
Totals	6,507	100.0

The circuit courts affirmed 83.2 percent of the sentencing appeals brought by the defendant in fiscal year 2009, an increase of 1.7 percent from fiscal year 2008 (81.5%). The Fourth and Eleventh Circuits affirmed the highest percentage of such appeals (91.1% and 91.0%, respectively); the D.C. Circuit affirmed the lowest percentage (48.4%)(n=15).

The circuit courts affirmed 29.7 percent of sentencing appeals brought by the government in fiscal year 2009, a decrease of 0.3 percent from fiscal year 2008 (30.0%). The Fifth Circuit affirmed the highest percent of such cases (100%)(n=2); the D.C., First, Fourth, and Seventh Circuits affirmed the lowest percentage (0.0%)(n=9).

Issues and Guidelines Appealed

In the 6,470 sentencing appeals brought by the defendant in 2009, defendants appealed 14,414 discrete sentencing issues. The sentencing issue most frequently appealed by defendants involved application of the drug trafficking guideline (§2D1.1), at 17.4 percent (n=2,507). See Table 57 of the *2009*

⁷⁸ See n. 52, *supra*.

⁷⁹ Although the Commission is interested primarily in information on appellate court cases that involve sentencing issues, it initially collects information on all criminal appeals. The database then retains only information involving sentencing issues. 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 an appeal.

⁸⁰ Of the 425 sentencing appeals reversed, the appellate courts remanded 405 (95.3%) to the district courts for further action.

⁸¹ Of the 181 sentencing appeals affirmed in part/reversed in part, the appellate courts remanded 158 (87.3%) to the district courts for further action.

⁸² Prior to fiscal year 2005, the Commission did not report separately the numbers of appeals remanded to the lower courts without vacating the original sentence. These data are now included as “remanded” in Tables 56 and 56A of the *2009 Sourcebook of Federal Sentencing Statistics*.

Sourcebook of Federal Sentencing Statistics. The specific USSG §2D1.1 issues most often appealed (by either party) in fiscal year 2009 concerned the two-level reduction for crack cocaine (46.7%); challenges based on *Booker* (17.2%); challenges to the weight/amount of drugs involved in the offense (7.2%); and crack/powder sentencing disparity arguments based on *Kimbrough* (6.6%). See Table 59 of the 2009 *Sourcebook of Federal Sentencing Statistics*.

In fiscal year 2009, defendants also frequently appealed sentences relating to the 18 U.S.C. § 3553(a) factors, at 12.1 percent (n=1,751), followed by challenges to: USSG §1B1.10 (Retroactivity of Amended Guideline Ranges)(10.2%); USSG §2L1.2 (Unlawfully Entering or Remaining in the United States)(3.5%); USSG §2K2.1 (Firearms)(2.7%); and USSG §2B1.1 (Larceny, Embezzlement, and Theft)(2.2%). See Table 57 of the 2009 *Sourcebook of Federal Sentencing Statistics*.

The affirmance rate for the 14,414 discrete sentencing issues appealed by defendants in fiscal year 2009 increased 1.5 percent from 92.1 percent in fiscal year 2008 to 93.6 percent. The following tables show the changes in affirmance rate for the top frequently appealed sentencing issues.⁸³

Guideline	Number	Affirmance Rate (%)	Percent Change from 2008 (+/-)
§2D1.1	2,507	94.5	+ 8.6
§1B1.10	1,477	96.8	+ 9.0
§2L1.2	502	93.4	- 1.0
§2K2.1	394	87.1	- 4.7
§2B1.1	320	93.1	+ 2.2

⁸³ See Table 57 of the 2009 *Sourcebook of Federal Sentencing Statistics*.

Non-Guideline Sentencing Issues	Number	Affirmance Rate (%)	Percent Change from 2008 (+/-)
18 U.S.C. § 3553(a) Factors	1,751	95.4	+ 1.0
Constitutional Issues	2,440	96.6	+ 2.1
Other Non-Guideline Issues	1,229	89.6	- 3.7

In the 64 sentencing appeals brought by the government in fiscal year 2009, the government appealed 102 discrete sentencing issues. The sentencing issue appealed most frequently by the government related to the 18 U.S.C. § 3553(a) factors, at 17.6 percent (n=18). See Table 58 of the 2009 *Sourcebook of Federal Sentencing Statistics*. The government also frequently appealed sentences involving application of the drug trafficking guideline (§2D1.1), at 15.7 percent (n= 16), followed by application of USSG §1B1.10 (Retroactivity of Amended Guideline Ranges)(8.8%); USSG §2G2.2 (Trafficking in Material Involving Sexual Exploitation of a Minor)(2.9%); USSG §4B1.2 (Definitions for Career Offender)(2.9%); USSG §5E1.1 (Restitution)(2.9%); and USSG §5K1.1 (Substantial Assistance to Authorities)(2.9%).

The affirmance rate for the 102 discrete sentencing issues appealed by the government decreased from 39.2 percent in 2008 to 27.4 percent in fiscal year 2009. The affirmance rate of Constitutional Issues appealed by the government decreased from 56.1 percent in 2008 to 43.8 percent in 2009, and the affirmance rate of government initiated appeals involving Other Non-guideline Issues decreased from 52.6 percent in 2008 to 12.5 percent in 2009. See Table 58 of the 2009 *Sourcebook of Federal Sentencing Statistics*.

Reasonableness

Of the 6,507 sentencing appeals analyzed for fiscal year 2009, the appellate courts reviewed the sentencing issues for reasonableness in 1,952 appeals. Of the 1,952 reasonableness appeals, defendants were the appellants in 1,935 (99.1%), the government was the appellant in nine (0.5%), and eight (0.4%) were

cross appeals. Of the 1,935 reasonableness appeals brought by defendants, the circuit courts determined the sentence to be reasonable in 1,876 (97.0%) and unreasonable in 59 (3.0%). Of the nine reasonableness appeals brought by the government, the circuit courts determined the sentence to be reasonable in five (55.6%) and unreasonable in four (44.4%). Of the eight cross appeals, the circuit courts determined the sentence to be reasonable in three (37.5%) and unreasonable in five (62.5%).

Overall Offense and Offender Characteristics

In the 6,507 sentencing appeals in fiscal year 2009, 48.0 percent of the defendants were Black, 24.6 percent White, 24.3 percent Hispanic, and 3.0 percent Other. Blacks comprised a larger proportion of the defendants in cases that were decided in the courts of appeals than they did in cases in which defendants were sentenced in the district courts in fiscal year 2009. Of the defendants sentenced in the district courts, 45.4 percent were Hispanic, 28.5 percent were White, and 22.1 percent were Black. Just over three-quarters (77.5%) of the defendants in the appellate court cases analyzed were United States citizens (compared to 55.3 percent of defendants sentenced in district court), an increase from 67.1 percent in 2008.

In the 6,507 sentencing appeals analyzed for fiscal year 2009, 2,347 (37.3%) involved defendants sentenced under mandatory drug sentencing statutes, 451 (7.2%) sentenced under mandatory gun sentencing statutes, and 370 (5.9%) sentenced under both drug and gun mandatory sentencing statutes. Mandatory minimum penalties applied in 50.3 percent (n=3,168) of the cases that were decided in the courts of appeals, compared to 22.3 percent (n=18,164) of the cases in which defendants were sentenced in the district courts in fiscal year 2009. See Table 60 of the *2009 Sourcebook of Federal Sentencing Statistics*.

The sentences imposed on defendants involved in an appeal were considerably longer than those imposed on all offenders generally. The mean sentence imposed in a case that was appealed was 167 months (median=121 months) compared to a mean sentence of 47 months (median=24 months) for

all defendants sentenced in fiscal year 2009. This compares to a mean sentence of 143 months (median=100) in cases that were appealed in 2008, and a mean sentence of 50 months (median=26 months) for all defendants sentenced in fiscal year 2008. Of the 6,507 sentencing appeals analyzed for fiscal year 2009, 3,096 (49.3%) involved defendants whose primary offense of conviction was drug trafficking, an increase from 2,395 (38.7%) in fiscal year 2008. By comparison, drug trafficking was the primary offense in 29.7 percent of all cases in which defendants were sentenced in the district courts in fiscal year 2009, a decrease from 32.1 percent in fiscal year 2008. See Table 61 of the *2009 Sourcebook of Federal Sentencing Statistics*.

Data on Resentencings and Other Modifications of Sentence

In 2008, the Commission implemented a data collection system to track resentencings and other modifications of sentence. The information collected includes judicial district, reason for resentencing, new sentence, and guideline application information if available. Information is collected on eight⁸⁴ types of resentencings and other modifications of sentence: (1) reduction of sentence for substantial assistance (Fed. R. Crim. Pro. 35(b));⁸⁵ (2) modification of restitution order (18 U.S.C. § 3664); (3) correction of sentence on remand from the circuit court (18 U.S.C. § 3742(f)(1) and (2)); (4) direct motion to the district court (18 U.S.C. § 3559(c)(7));⁸⁶ (5) direct motion to

⁸⁴ There is an additional type of resentencing, Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e). This type of resentencing is generally not reported to the Commission.

⁸⁵ More commonly referred to as Rule 35(b). This type of resentencing occurs when the government files a substantial assistance motion after the original sentencing.

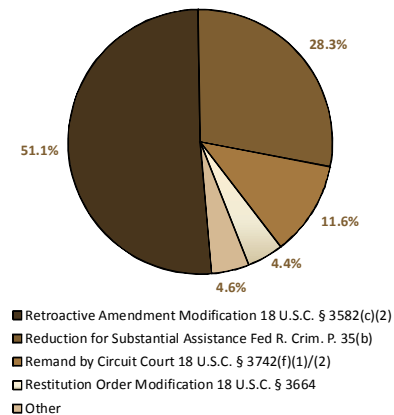
⁸⁶ This type of resentencing occurs after a prior conviction for a serious violent felony or serious drug offense that triggered any aggravated penalty under 18 U.S.C. § 3559(c)(7) is overturned.

the district court (28 U.S.C. § 2255);⁸⁷ (6) modification of imposed term of imprisonment for extraordinary and compelling reasons (18 U.S.C. § 3582(c)(1));⁸⁸ (7) modification of imposed term of imprisonment for retroactive amendment to the sentencing guidelines (18 U.S.C. § 3582(c)(2))⁸⁹; and (8) unknown type of resentencing.⁹⁰ The following is a summary of resentencings occurring during fiscal year 2009 from the Commission's Resentencing Database.⁹¹

Summary of Information Received

In 2009, the Commission received documentation on 7,420 resentencings and other modifications of sentence. The most frequently reported reason was modification of a term of imprisonment for retroactive amendment to the sentencing guidelines

(3,790 or 51.1% of all cases). Almost all⁹² cases citing this reason were the result of the retroactive application of the 2007 amendment to the drug guideline for cases involving crack cocaine.⁹³ The district courts in the Fourth Circuit account for 38.1 percent (1,445) of these cases.



⁸⁷ This type of resentencing occurs after a court determines that: (1) the original sentence was imposed in violation of the Constitution or the law; (2) the court lacked jurisdiction to impose the sentence; (3) the sentence was greater than the maximum sentence allowed by the law; or (4) the sentence is otherwise subject to collateral attack.

⁸⁸ This type of resentencing occurs following a successful motion by the director of the Federal Bureau of Prisons to reduce the sentence for extraordinary and compelling reasons, or the defendant is at least 70, has served at least 30 years for the offense for which the defendant is currently imprisoned, and the Federal Bureau of Prisons has determined that the defendant is not a danger to the safety of any person or the community.

⁸⁹ Courts may modify the sentence for a defendant who was sentenced based on a sentencing range that later was lowered by the United States Sentencing Commission and where the Commission voted to apply the lowered penalty retroactively. This reduction can occur through a motion from the defendant, the director of the Federal Bureau of Prisons, or on the court's own motion.

⁹⁰ This category includes resentencings in which the documentation received by the Commission was sufficient to determine that a resentencing occurred, but the exact type was not able to be determined.

⁹¹ The Commission's Resentencing Database may not represent all resentencings decided in the fiscal year. Only those resentencings submitted to the Commission are reported.

The second most common type of resentencing or modification of sentence was a reduction for substantial assistance to the government after sentencing pursuant to Federal Rule of Criminal Procedure 35(b). Of the 2,098 cases (28.3% of the total) citing this reason, five districts resentenced offenders under the rule in more than 100 cases: Eastern Virginia (266), Southern Florida (193), South Carolina (172), Southern Illinois (148), and Nebraska (134).

The third most common type of resentencing is remands from the circuit court, comprising 861 resentencings (11.6%). The districts with the highest number of resentencings after remand are Southern California (36), Eastern New York (33), Southern New York (32), and Southern Texas (30).

⁹² Three cases were resentenced pursuant to other retroactive amendments to the United States Sentencing Guidelines.

⁹³ Amendment 713 to the United States Sentencing Commission's guidelines, approved December 11, 2007, and effective on March 3, 2008.

Modification of a restitution order was the reason for resentencing in 329 cases (4.4%),⁹⁴ and modification due to a direct motion to the district court pursuant to 28 U.S.C. § 2255 was the reason for 153 cases (2.1%). Five cases (0.1%) were resentenced due to a direct motion to the district court pursuant to 18 U.S.C. § 3559(c)(7). See Table 62 of the 2009 *Sourcebook of Federal Sentencing Statistics*.

Data Analyses for the Courts and Congress

Using the Commission's 2009 dataset, the Commission will compile detailed information on sentencing activities for each federal circuit, district, and state (by combining data for all districts in that state). These data will 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 will be organized by circuit and district and provide comparisons to national figures. These informational packets will also be used in the guidelines orientation of new chief circuit and district court judges by Commission staff. Additionally, these packets will be used by the Commission in several training programs for court personnel.

The statistical informational packets will be provided to the members of the Senate and House Committees on the Judiciary. Distribution of these packets will allow the Commission to better inform the members of these oversight committees about what types of information were collected and are available in the Commission's 2009 dataset and will allow members to see what types of cases were sentenced at the federal level, both nationally and in individual districts and states. The Commission will also make these statistical informational packets available to the general public at the Commission's

website, <http://www.ussc.gov>. The website also includes statistical informational packets for several earlier years.

In addition to the informational packets, Commission staff responded in the past year to numerous data requests from individual members of Congress, the Congressional Budget Service, the Congressional Research Office, and the courts. Responses to court requests 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. Last year staff responded to 61 such requests.

⁹⁴ This number under-counts the total number of cases citing this reason. There are instances in which a remand from the circuit court was ordered, and the restitution amount was also changed. For these instances, the type of resentencing was considered a remand, not a modification of restitution order.