

Chapter Five

Research

Statutory Requirements

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.¹⁰²

Document Submission

The chief judge of each district is required to ensure that within 30 days after entry of judgment in a criminal case, the sentencing court submits a report of the 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.¹⁰³ The Commission is required to submit to Congress at least annually an analysis of these documents and to report to Congress if any districts have not submitted the required information and documents.¹⁰⁴

For fiscal year 2012, the Commission received 389,372 documents related to 84,173 individual offender cases.¹⁰⁵ The Commission works continually with the courts to facilitate document submission. The overall case submission rate by the district courts was 98.5 percent. The overall rate of submission of

the required documents in those cases was 99.6 percent. The Commission also received documents in 187 cases in which an organization was sentenced. Additionally, the Commission received documents in 10,240 cases in which a resentencing or other modification of sentence occurred.

There were six districts that submitted documents in more than 2,000 cases. These districts were —

	Number of Cases	Total Documents Received
Western Texas	9,329	37,615
Arizona	8,919	42,126
Southern Texas	6,586	30,250
Southern California	5,309	25,021
New Mexico	3,052	13,922
Southern Florida	2,175	10,098

Data Collection

Data from the documents submitted to the Commission 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 information on organizations sentenced under Chapter Eight of the *Guidelines Manual*. The data include 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

¹⁰² 28 U.S.C. §§ 995 (a)(12) and (14)-(16).

¹⁰³ 28 U.S.C. § 994(w)(1).

¹⁰⁴ 28 U.S.C. § 994(w)(3).

¹⁰⁵ See 2012 *Sourcebook of Federal Sentencing Statistics*, Table 1.

review of sentencing decisions. The data include district; circuit; dates of appeal and opinion; legal issues; and the disposition of the case.¹⁰⁶ 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 offender or judge identifiers, are made available to the public through the Commission's website and through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR).¹⁰⁷ Commission data also is 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.¹⁰⁸

The Commission provides an analysis of this data at the national level in its annual *Sourcebook of Federal Sentencing Statistics*. The Commission also provides this data together with federal sentencing data organized by circuit, district, and state on its website. See http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/State_District_Circuit/index.cfm.

Data Collection Issues

The Commission received documentation on 84,173 individual offender cases sentenced under the

Sentencing Reform Act (SRA) between October 1, 2011, and September 30, 2012.¹⁰⁹ This represents a decrease of 2,028 cases from the number of cases for which the Commission received documentation for fiscal year 2011.¹¹⁰ 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.¹¹¹ 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*.

Summary of 2012 Findings

The 2012 *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

¹⁰⁶ 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 Dataset, therefore, may not report all appellate decisions rendered in that fiscal year.

¹⁰⁷ The Commission website address is www.ussc.gov. The ICPSR website address is <http://www.ICPSR.umich.edu/>.

¹⁰⁸ The data can be found at <http://fjsrc.urban.org>.

¹⁰⁹ The Commission receives a report of the sentence imposed in all cases to which the sentencing guidelines relate, which are all felony offenses and all Class A misdemeanors in the United States courts. See generally 28 U.S.C. § 994(w); USSG §1B1.9.

¹¹⁰ The data reported in this annual report and in the 2012 *Sourcebook of Federal Sentencing Statistics* represents all data collected and analyzed by the Commission for which appropriate documentation was forwarded to the Commission by March 5, 2013.

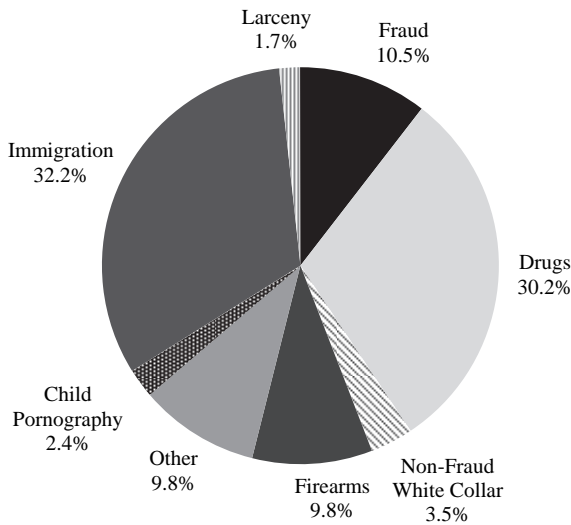
¹¹¹ For example, after the date on which the data were compiled to prepare the fiscal year 2011 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*, the Commission received documentation on 278 additional cases in which the offender was sentenced in that fiscal year. Since 1991, the Commission has received documentation on 13,599 cases after the respective dates on which the data were prepared for the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* for each of those fiscal years. This represents 1.1% of all cases reported to the Commission during that period.

sections highlighting drug and immigration cases.¹¹² 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

Offenders in Each Primary Offense Category

Immigration was the largest category of federal convictions (32.2%) for the fourth consecutive year, followed by drug crimes (30.2%). Immigration, drugs, fraud, and firearms cases continue to comprise more than 80 percent of all federal felony and Class A misdemeanor convictions. However, immigration convictions decreased almost three percentage points from 2011, while drug convictions increased just over one percentage point from 2011.

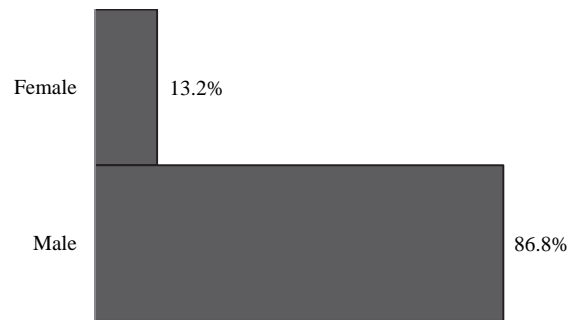


Offender Characteristics

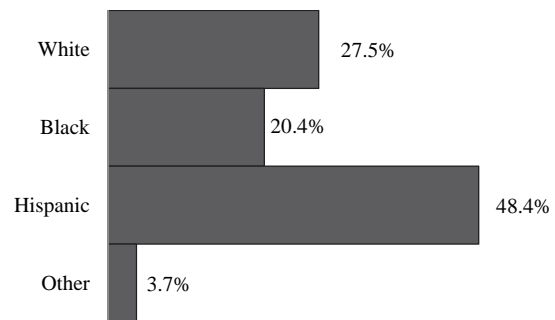
The proportion of offenders who are not United States citizens has increased significantly over the last decade. In 2012, non-citizens made up 46.1 percent of all offenders, although this proportion represents a

decrease of two percentage points from the previous year. For offenses with 100 or more offenders, the offense categories with the largest percentages of non-citizens were: immigration (95.1%); drug simple possession (72.4%); drug trafficking (31.1%); money laundering (30.7%); fraud (23.7%); and other miscellaneous offenses (18.6%).

Historically, male offenders have accounted for approximately 85 percent of all federal offenders. In 2012, 86.8 percent of all offenders were men, up slightly from 86.5 percent the previous year.

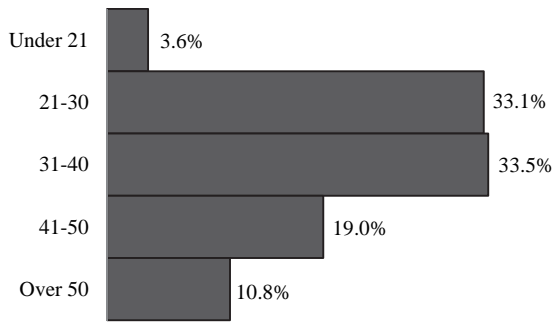


The racial/ethnic composition of offenders in 2012 was Hispanic 48.4 percent, White 27.5 percent, Black 20.4 percent, and Other 3.7 percent.



The average age of federal offenders sentenced in 2012 was 36 years with a median of 34 years. Almost half (49.9%) of the offenders sentenced did not graduate from high school, and only 5.5 percent graduated from college.

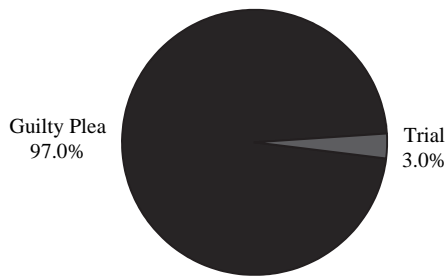
¹¹² All tables and figures referenced in this chapter can be found in the companion volume to this annual report, the *2012 Sourcebook of Federal Sentencing Statistics*. The year 2012, as used in this report, refers to the fiscal year 2012 (October 1, 2011, through September 30, 2012).



For additional demographic information about the federal offender population, see Tables 4 through 9 in the *2012 Sourcebook of Federal Sentencing Statistics*.

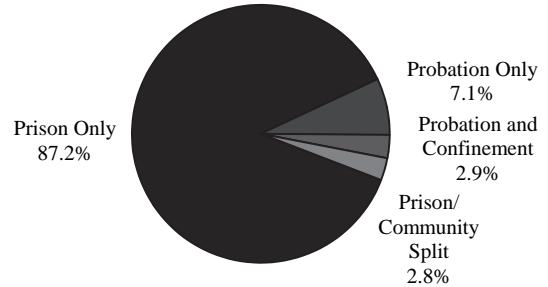
How Offenders Were Sentenced

In 2012, 97.0 percent of all offenders plead guilty, however the rate at which offenders were convicted after trial varied by both district and offense type. Among offense types with more than 100 cases, trial rates ranged from a low of 0.0 percent for cases involving a drug communication facility up to 13.1 percent for sexual abuse cases.

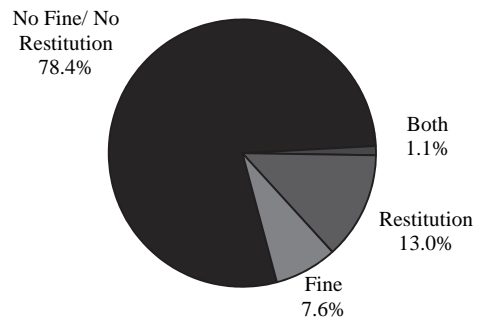


The vast majority of offenders (87.2%) were sentenced to prison only. Conversely, 7.1 percent of offenders were sentenced to probation only. The remaining offenders were sentenced to both probation and some other form of confinement (2.9%) or to imprisonment with some additional form of community confinement (2.8%). The type of sentence imposed varies depending on the type of crime involved. For example, more than 90 percent of all offenders convicted of the following offenses were sentenced to some type of imprisonment: murder, manslaughter, kidnapping, sexual abuse, robbery, arson, drug trafficking, firearms offenses, burglary/breaking and entering, racketeering/extortion, immigration offenses, child pornography,

prison offenses, national defense, and antitrust 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 sentence including probation.



The average sentence varies widely by the type of crime involved. For all offenders sentenced in 2012, the average sentence was 44 months, counting probation-only sentences as zero months' imprisonment. The highest sentences on average were imposed for murder, kidnapping/hostage taking, sexual abuse, and child pornography offenses. Among offenders sentenced to imprisonment, the average prison term was 53 months. A fine or restitution was ordered in 21.7 percent of all cases.



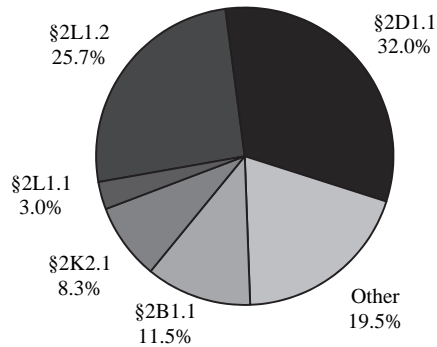
For a detailed statistical description of the mode of disposition and sentences imposed, see Tables 10 through 16 and Figures D through F of the *2012 Sourcebook of Federal Sentencing Statistics*.

Guideline Application

In 2012, the most frequently applied primary guidelines from the *Guidelines Manual* were Drug Trafficking (32.0%),¹¹³ Unlawful Entry into U.S.

¹¹³ USSG §2D1.1.

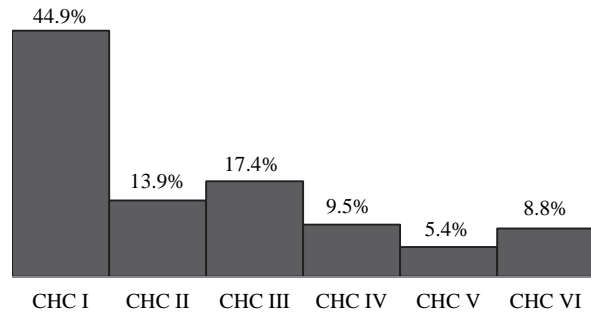
(25.7%),¹¹⁴ Theft/Fraud (11.5%),¹¹⁵ Firearms (8.3%),¹¹⁶ and Smuggling an Unlawful Alien (3.0%).¹¹⁷



Of all offenders, 4.5 percent received an upward adjustment to their sentence due to an aggravating role in the offense while 7.7 percent received a downward adjustment as the result of a mitigating role in the offense. More than 95 percent of all offenders received an adjustment to their sentence for accepting responsibility for their crime. Just over two percent (2.3%) received an upward adjustment for abuse of position of trust, and 0.3 percent received an upward adjustment for use of a minor in the commission of an offense. A list of all adjustments provided for in the *Guidelines Manual* and the rate of application of those adjustments can be found in Table 18 of the *2012 Sourcebook of Federal Sentencing Statistics*.

In determining the applicable guideline range, the courts found that 64 percent of offenders had a criminal history sufficient to be assessed points for prior criminal convictions. Almost 45 percent (44.9%) of the offenders were placed in Criminal History Category I, the least severe category, and 8.8 percent were placed in Criminal History Category VI, the most severe category. Courts determined that 3.0 percent of all offenders were career offenders,¹¹⁸ and 0.8 percent were armed career criminals.¹¹⁹ In contrast, in just over one-third of all cases (36.0%) the court did not assess any criminal history points, either because those offenders had never been

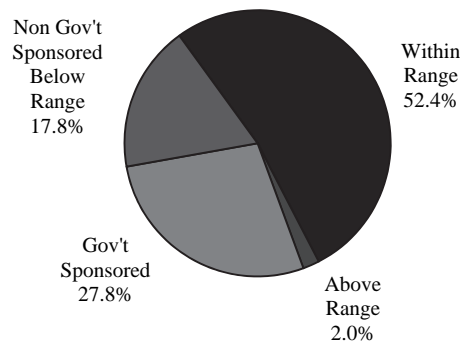
convicted of an offense or had been convicted of an offense for which points are not assessed under the guidelines.¹²⁰



For further details of the guideline application components, see Tables 20 through 22 of the *2012 Sourcebook of Federal Sentencing Statistics*.

Sentences Within the Guideline Range and Outside the Guideline Range

Nationally in 2012, the courts imposed sentences that were within the applicable guideline range in 52.4 percent of all cases. Sentences above the guideline range accounted for 2.0 percent of all cases. Approximately one quarter (27.8%) of sentences were imposed below the guideline range at the request of the government. In about one-half of these cases (11.7% of all cases) the government filed a motion seeking a reduction in sentence because the defendant provided substantial assistance to the government in the investigation or prosecution of another person who had committed an offense. In 11.2 percent of these cases, the government sought the below range sentence because the offender agreed to abide by the provisions of an Early Disposition Program.



¹¹⁴ USSG §2L1.2.

¹¹⁵ USSG §2B1.1.

¹¹⁶ USSG §2K2.1.

¹¹⁷ USSG §2L1.1.

¹¹⁸ See USSG §4B1.1.

¹¹⁹ See USSG §4B1.4.

¹²⁰ See generally Chapter 4 of the *Guidelines Manual*.

In 17.8 percent of all cases, the sentence imposed was below the guideline range and not at the request of the government. Of all cases, the courts cited one or more guideline departure provision as a reason for a sentence below the guideline range in 3.3 percent of the cases. Tables N through N-11 in the *Sourcebook* present national and circuit data on sentences within the guideline range and those outside the range.

The rate at which the sentence imposed was within the applicable guideline range varied by the type of offense involved and the district in which the offender was sentenced.¹²¹ Nationally, the percentage of within-guideline range sentences was 52.4 percent and varied by district from a high of 81.0 percent to a low of 22.8 percent. The offense type with the highest within guideline range rate was simple drug possession (97.4%). For sentences imposed within the guideline range, the sentence was most often at the minimum point of the guideline range (in 51.9% of all within-guideline sentences). The sentence was at the maximum of the guideline range in 10.5 percent of all within-guideline cases.

A sentence above the guideline range was imposed in 2.0 percent of all cases. The offense type with the highest above range rate was manslaughter (24.0%).

Government sponsored below range sentences accounted for 27.8 percent of all cases reported for fiscal year 2012 and are classified into three categories: Substantial Assistance (USSG §5K1.1); Early Disposition Program (USSG §5K3.1); and Other Government Sponsored. The national rate of substantial assistance was 11.7 percent and varied by district from 32.8 percent to 1.7 percent. The rate of below range sentences based upon the Early Disposition Program (EDP) was 11.2 percent nationally and ranged from 55.6 percent to 0.0 percent (as EDP sentences were authorized for specific offenses in all 94 districts for the first time beginning in fiscal year 2012). The rate of other government sponsored below range sentences was 4.9 percent nationally and varied from 32.7 percent to 0.0 percent (two districts). The offense type with the

highest rate of substantial assistance departures was antitrust (80.0%). The offense type with the highest rate of EDP departures was immigration (27.5%). The highest rate of application of other government sponsored below range sentences was kidnapping/hostage taking (18.4 %).

In 2012, a sentence below the guideline range not sponsored by the government was imposed in 17.8 percent of all cases. These types of sentences are further classified into four categories. The national rate of below range departures was 2.3 percent. Below range departures also citing *Booker* were 1.0 percent nationally. The national rate of below range cases that were not departures but which cited *Booker* was 13.9 percent. The rate of the remaining below range cases was 0.6 percent nationally. The offense type with the highest rate of non-government sponsored below range sentences was child pornography (45.2%).

Tables 30–32 in the 2012 *Sourcebook of Federal Sentencing Statistics* 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 imposed on offenders receiving a substantial assistance reduction had a median reduction of 30 months from the minimum of the applicable guideline range. This represents a 49.6 percent median decrease in sentence from the otherwise applicable guideline minimum. EDP cases had a median decrease of eight months from the minimum guideline range, which is a 34.1 percent median decrease. Cases receiving an other government sponsored reduction had a median decrease of 18 months from the applicable guideline minimum, a median decrease of 38.3 percent.

The median decrease in cases receiving a below range departure was 12 months below the guideline minimum, a median decrease of 33.3 percent. Cases receiving a departure below range with *Booker* saw a median decrease of 18 months from the guideline minimum, a median decrease of 41.5 percent. The median reduction from the guideline minimum for below range cases with *Booker* was 14 months, a median decrease of 35.1 percent. The median reduction from the guideline minimum for all

¹²¹ Tables 27 and 27A show, by offense type, the number and percent of sentences within the guideline range and outside of the range.

remaining below range cases was six months, a median decrease of 75.0 percent.

The median extent of departures above the guideline range was 12 months above the guideline maximum, a 33.3 percent median increase above the guideline maximum. The median increase for cases receiving an above range departure with *Booker* was 23 months above the guideline maximum, a 52.2 percent median increase. Cases with a sentence above range with *Booker* had a median increase of 13 months, a 40.0 percent median increase. The category with the lowest median increase, 11 months above the guideline maximum, occurred in all remaining cases above the range, a 28.6 percent median increase.

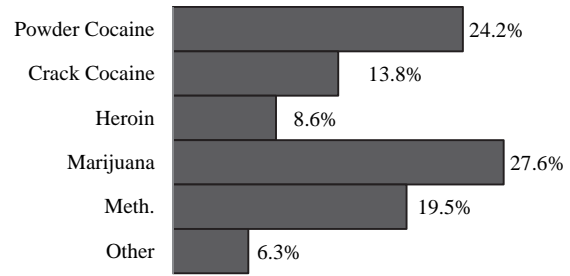
For more information concerning departures and other sentences outside the applicable guideline range, see Tables 24 through 32C and Figures G and H of the 2012 *Sourcebook of Federal Sentencing Statistics*.

Immigration Cases

In 2012, immigration cases were the single largest category of federal convictions for the fourth consecutive year, comprising 32.2 percent of all offenders sentenced. Most of these offenses (83.7%) involved illegally entering or remaining in the United States, a 8.4 percentage point increase from 2011. Another 9.8 percent involved alien smuggling. Immigration offenders were largely male (93.6%), of Hispanic origin (88.2%), and had less than a high school education (81.7%). Most immigration guidelines convictions involved non-United States citizens (94.4%) and were the result of a guilty plea (99.4%). For more information on immigration cases, see Tables 46 through 50 of the 2012 *Sourcebook of Federal Sentencing Statistics*.

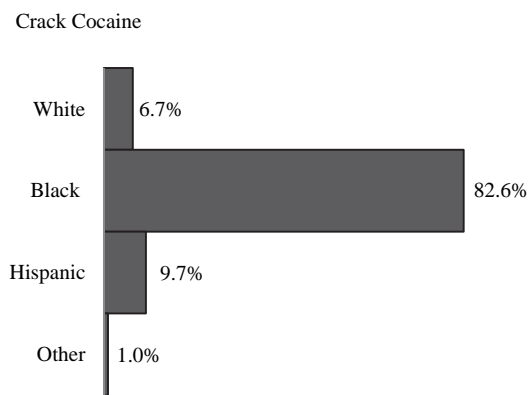
Drug Cases

Drug offenses were the second largest category of federal convictions in 2012. Among all drug cases, 38.0 percent involved some form of cocaine (24.2% powder cocaine and 13.8% crack cocaine), followed by cases involving marijuana (27.6%), methamphetamine (19.5%), and heroin (8.6%).

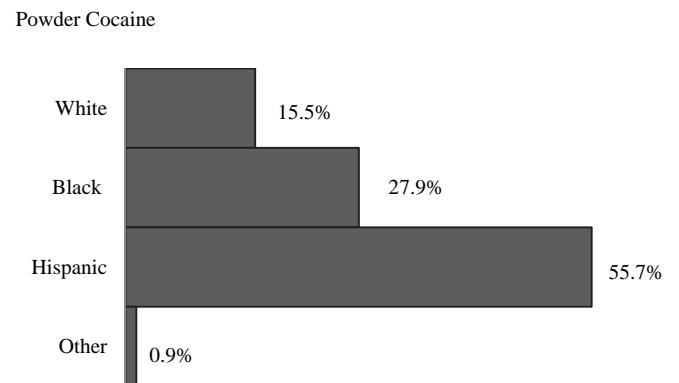


The average prison term for drug offenders varied widely by drug type, from an average of 97 months for crack cocaine offenders (median of 78 months) to 36 months for marijuana offenders (median of 24 months).¹²²

Most crack cocaine defendants were Black (82.6%) while 9.7 percent were Hispanic, and 6.7 percent were White.

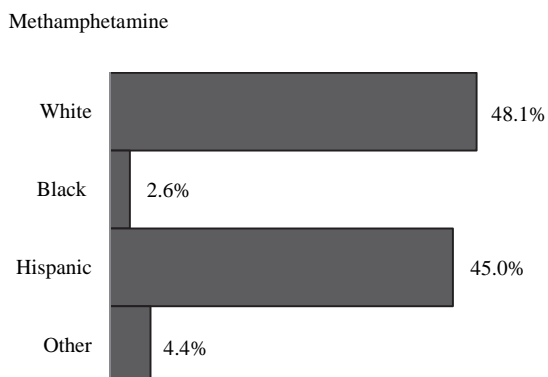


In contrast, the race/ethnicity distribution of powder cocaine defendants was 55.7 percent Hispanic, 27.9 percent Black, and 15.5 percent White.



¹²² See 2012 *Sourcebook of Federal Sentencing Statistics*, Figure K.

The race/ethnicity distribution of drug defendants involved with methamphetamine was 48.1 percent White, 45.0 percent Hispanic, and 2.6 percent Black.



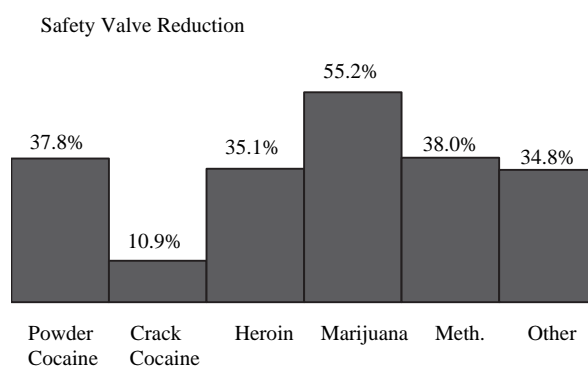
Among drug defendants overall, 87.0 percent were male and 69.6 percent were United States citizens. With the exception of crack cocaine offenders, the majority of drug offenders were in Criminal History Category I.¹²³

Drug offenders received sentence increases for possession or use of weapons in 15.0 percent of all drug cases. A sentence adjustment for role in the offense was imposed in 24.8 percent of drug cases: 18.2 percent received a mitigating role adjustment, and 6.6 percent received an aggravating role adjustment. Wide variation was observed in application of the mitigating role adjustment across drug types, with 23.4 percent of methamphetamine and 23.0 percent of marijuana offenders receiving a mitigating role adjustment compared to 5.0 percent of crack cocaine offenders. Approximately 95 percent (95.1%) of drug offenders received an adjustment for acceptance of responsibility.¹²⁴

Approximately sixty percent (60.4%) of drug offenders were convicted under statutes carrying a mandatory minimum penalty. The highest percentages of offenders receiving a mandatory minimum penalty were methamphetamine offenders (83.3%), powder cocaine offenders (76.4%), and crack cocaine offenders (64.0%). A ten-year or longer mandatory minimum penalty was applicable in

almost two-third of all methamphetamine cases (60.5%) and just under half of all powder cocaine cases (46.2%).

The “safety valve” provision provides nonviolent, low-level, first-time drug offenders relief from mandatory minimum sentences.¹²⁵ In 2012, 38.5 percent of drug offenders received the benefit of the two-level reduction in offense level for meeting the “safety valve” criteria, including 23.8 percent who were subject to a drug mandatory minimum penalty and 14.7 percent who were not subject to a drug mandatory minimum penalty. Marijuana offenders (55.2%) were the most likely to receive the reduction for meeting the safety valve criteria, while crack cocaine offenders (10.9%) were the least likely.



For more information on drug cases, see Tables 33 through 45 and Figures I through L of the 2012 *Sourcebook of Federal Sentencing Statistics*.

Death Penalty Cases

In fiscal year 2012, the Commission received information on no cases in which the offender was sentenced to a punishment of death. The sentencing guidelines are not used when a jury imposes a sentence of death; therefore, death penalty cases are not included in the *Sourcebook of Federal Sentencing Statistics*.¹²⁶

¹²³ See 2012 *Sourcebook of Federal Sentencing Statistics*, Tables 34–37.

¹²⁴ See 2012 *Sourcebook of Federal Sentencing Statistics*, Tables 39–41.

¹²⁵ See 18 U.S.C. § 3553(f), which is incorporated into the guidelines at USSG §5C1.2.

¹²⁶ These cases are also excluded from the Commission’s datasets made available to the public.

Organizational Sentencing Practices

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.¹²⁷ 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.¹²⁸ In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.¹²⁹

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.¹³⁰ 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 2012, the Commission received information on 187 organizations that were sentenced under Chapter Eight, a 16.9 percent increase from 2011 (160) and a 25.5 percent increase from 2010 (149).¹³¹ The sentenced organizations pled guilty in 174 (93.5%) of the cases; twelve (6.4%) were convicted after a trial.¹³²

¹²⁷ See USSG §8A1.1.

¹²⁸ See USSG §8C2.1.

¹²⁹ See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d).

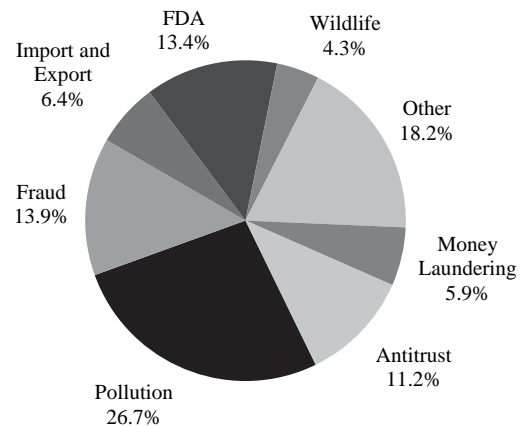
¹³⁰ See USSG §8C2.1.

¹³¹ 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.

¹³² 2012 Sourcebook of Federal Sentencing Statistics, Table 53.

Offense Characteristics

Environmental pollution¹³³ was the most frequent type of offense committed by an organization sentenced in federal court, accounting for 50 (26.7%) of the 187 cases for which the Commission received complete sentencing information. Other significant offense categories included fraud (13.9%), food, drugs, agricultural and consumer products (13.4%), antitrust (11.2%), import and export (6.4%), and money laundering (5.9%).¹³⁴



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. The Commission obtains culpability score calculation data from the sentencing court's judgment and commitment order and/or the probation officer's presentence report. Of the 187 cases for which the Commission received complete sentencing information in 2012, the court ordered a fine in 144 cases (77.0%) and applied the fine provisions of USSG §8C2.1 to calculate the fine in at least 63 cases (33.7%) for which the Commission received detailed culpability score information.¹³⁵

¹³³ Environmental pollution offenses refer to the aggregate of "Environmental-Water," "Environmental-Air," and "Environmental-Hazardous/Toxic Pollutants."

¹³⁴ 2012 Sourcebook of Federal Sentencing Statistics, Table 51.

¹³⁵ In the remaining 124 cases, the fine guideline was not applied, or data on the application of the fine guideline was missing.

In many cases, the sentencing court reduced the organization's culpability score based on the presence of certain mitigating culpability factors. Of the 63 cases with detailed culpability score information on self-reporting, cooperation, and acceptance of responsibility, a total of 52 organizations (82.5%) received reductions in their culpability scores pursuant to USSG §8C2.5(g) for either self-reporting, cooperating, or accepting responsibility. Over half of the organizations (50.8%) received reductions in their culpability scores for cooperating with the government's investigation (32 organizations).¹³⁶ An additional 18 organizations (28.6%) received reductions for accepting responsibility for their wrongdoing.¹³⁷

In a number of cases, the presence of aggravating culpability factors increased the organization's culpability score. Among those 63 cases with complete detailed culpability score calculations, six organizations (9.5%) received an increase pursuant to USSG §8C2.5(e) for having obstructed justice, which resulted in an increased culpability score for sentencing purposes. Thirty-eight organizations (60.3%) received an increase under USSG §8C2.5(b) (for involvement in or tolerance of criminal activity by authority).

Sanctions Imposed on Organizational Offenders

Of the 187 cases for which the Commission received complete sentencing information in fiscal year 2012, sentencing courts ordered restitution in 40 cases (21.4%), and imposed a fine in 144 cases (77.0%). The average restitution amount ordered was \$447,440 (median \$138,802), and the average fine imposed was \$11,207,081 (median \$200,000). The highest fine in 2012 was \$956,814,400 imposed on a pharmaceutical corporation for violations of food and drug laws. The largest restitution order in 2012, \$6,712,500 was imposed on a wholesale beverage establishment for larceny violations.

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 187 organizational offenders sentenced pursuant to Chapter Eight, 72.2 percent received one month or

more of probation, and the courts ordered compliance or ethics-related improvements in 35.5 percent of the cases. For more information on the sanctions imposed on organizational offenders see Tables 51–54 of the *2012 Sourcebook of Federal Sentencing Statistics*.

Appeals Data

The Sentencing Reform Act authorized appellate review of a sentence 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 (in appeals by the defendant) or less (in appeals 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.¹³⁸ In *Booker*, the Supreme Court excised 18 U.S.C. § 3742(e), which had provided a *de novo* standard of review for departures from the guidelines,¹³⁹ and determined that the standard of review for all sentences on appeal is reasonableness.¹⁴⁰

Summary of Information Received

In fiscal year 2012, the Commission collected¹⁴¹ information on 9,634 appellate court cases in which

¹³⁸ 18 U.S.C. § 3742(a), (b).

¹³⁹ *Booker*, 543 U.S. at 259.

¹⁴⁰ *Booker*, 543 U.S. at 260–62. *See also Gall v. United States*, 552 U.S. 38, 51 (2007) (Regardless of whether the sentence imposed is within or outside the guideline range, the appellate court must review the sentence under an abuse-of-discretion standard).

¹⁴¹ In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. Each fiscal year, appeals decisions are collected from various sources. The Commission relies on slip opinions received directly from some circuits, electronic legal databases, individual circuit court websites, and from the federal judiciary public access electronic records system (PACER) to generate the universe of appellate criminal decisions. Some appellate courts transmit published and unpublished slip opinions to the Commission. The Commission performs an electronic search for all published and unpublished criminal decisions using commercially available legal databases. Additionally, since not all relevant decisions appear in commercially available legal databases, the Commission checks individual court websites and PACER for additional decisions. These sources may not provide the Commission with every

¹³⁶ *See* USSG §8C2.5(g)(2).

¹³⁷ *See* USSG §8C2.5(g)(3).

the type of appeal was known.¹⁴² Of those cases, 5,967 (61.9%) were sentencing appeals; “conviction only” appeals accounted for 2,031 (21.1%) of appeals, and 1,636 (17.0%) were *Anders* briefs.¹⁴³ Of the 9,634 appellate court cases, the defendant was the appellant in 9,538 (99.0%), the government was the appellant in 73 (0.8%), and 23 (0.2%) were cross appeals. Five courts of appeals, the Fifth (1,682), Fourth (1,569), Ninth (1,224), Sixth (1,094), and Eleventh Circuits (1,088), together accounted for 69.1 percent of these cases.

Defendants were the appellants in 5,928 (99.3%) of the 5,967 sentencing appeals analyzed for 2012. The government was the appellant in 60 (1.0%) of the 5,967 sentencing appeals analyzed for 2012. See Tables 56 and 56A of the *2012 Sourcebook of Federal Sentencing Statistics*.

criminal appellate sentencing decision rendered in a fiscal year. The Commission’s Appeals Dataset, therefore, may not report all criminal appellate decisions rendered during that fiscal year.

¹⁴² Although the Commission is interested primarily in information on appellate court cases that involve sentencing issues, it collects limited information on all direct criminal appeals. The Commission then collects more detailed information on cases involving sentencing issues. The Commission collected information on 9,755 appeals cases, however, in 121 appeals cases the type of appeal was “unknown.” These 121 cases were excluded from the analysis reported in this *Annual Report* and the analysis reported in the *2012 Sourcebook of Federal Sentencing Statistics*.

¹⁴³ *Anders* brief cases are those where the counsel for the appellant has advised the court of appeals that he or she has conscientiously examined the case but finds the appeal to be wholly frivolous and has requested permission to withdraw. See *Anders v. California*, 386 U.S. 738 (1967). This appeal type was added in fiscal year 2010.

The overall disposition rates for sentencing appeals in 2012 were –

	Number	Percent
Affirmed	4,365	73.2
Dismissed	568	9.5
Reversed	654	11.0
Affirmed in part/Reversed in part¹⁴⁴	227	3.8
Remanded only¹⁴⁵	153	2.6
Totals	5,967	100.0

The circuit courts affirmed 73.5 percent of the sentencing appeals brought by the defendant in fiscal year 2012, compared to 74.5 percent in fiscal year 2011. The circuit courts affirmed 28.3 percent of the 60 sentencing appeals brought by the government in fiscal year 2012, compared to 22.6 percent in fiscal year 2011.

Issues and Guidelines Appealed

In the 5,928 sentencing appeals brought by defendants that were decided in 2012, there were 11,922 discrete sentencing issues appealed. The issue most frequently appealed involved reasonableness, at 25.3 percent of all issues appealed (n=3,021). The specific reasonableness issues most often appealed by defendants in fiscal year 2012 concerned substantive reasonableness regarding the court's weighing of those factors (33.0%); general substantive reasonableness (13.8%); procedural reasonableness in that the district court failed to address or improperly considered the 18 U.S.C. § 3553(a) factors (13.4%); and procedural reasonableness in that the district court did not adequately explain the reasons for the sentence imposed (11.5%).

In fiscal year 2012, defendants also frequently appealed their sentences for reasons relating to the

¹⁴⁴ Of the 227 sentencing appeals affirmed in part/reversed in part, the appellate courts remanded 196 (86.3%) to the district courts for further action.

¹⁴⁵ Prior to fiscal year 2005, the Commission did not report separately the number of cases the courts of appeals remanded to the lower courts without vacating the original sentence. These data are now included as “remanded.” See *2012 Sourcebook of Federal Sentencing Statistics*, Tables 56 and 56A.

sentencing factors at 18 U.S.C. § 3553(a) (12.4% of issues raised), followed by challenges to: USSG §1B1.10 (Retroactivity of Amended Guideline Ranges) (6.1% of issues raised); USSG §2D1.1 (Drug Trafficking) (5.7% of issues raised); USSG §2L1.2 (Unlawfully Entering or Remaining in the United States) (2.6% of issues raised); and USSG §2B1.1 (Larceny, Embezzlement, and Theft) (2.1% of issues raised). The affirmance rate for the 11,922 discrete sentencing issues in defendant appeals decided in fiscal year 2012 was 91.2 percent, compared to 92.9 percent in fiscal year 2011.

In the 60 sentencing appeals brought by the government that were decided in fiscal year 2012, there were 107 discrete sentencing issues appealed. The issue appealed most frequently by the government related to sentences involving the factors at 18 U.S.C. § 3553(a) (19.6% of issues raised); the government also frequently appealed sentences involving reasonableness (17.8%); followed by the Armed Career Criminal Act (USSG §4B1.4) (7.5% of issues raised); application of the drug trafficking guideline (USSG §2D1.1) (6.5% of issues raised); and Retroactivity of Amended Guideline Ranges (USSG §1B1.10) (4.7% of issues raised). The affirmance rate for the 107 discrete sentencing issues appealed by the government in fiscal year 2012 increased 20.1 percentage points from 29.4 percent in 2011 to 49.5 percent.

Reasonableness

Of the 5,967 sentencing appeals analyzed for fiscal year 2012, the appellate courts reviewed the sentences for reasonableness in 1,949 appeals. Of the 1,949 reasonableness appeals, defendants were the appellants in 1,936 cases (99.3%), the government was the appellant in eight cases (0.4%), and five cases (0.2%) involved cross appeals. Of the 1,936 reasonableness appeals brought by defendants, the circuit courts determined the sentence to be reasonable in 1,840 cases (95.0%) and unreasonable in 96 cases (5.0%). Of the eight reasonableness appeals brought by the government, the circuit courts determined the sentence to be reasonable in three cases (37.5%) and unreasonable in five cases (62.5%). Of the five cross appeals, the circuit courts determined the sentence to be reasonable in all five cases (100%).

Overall Offense and Offender Characteristics

United States citizens comprised a larger portion of the appellant population than they did of the federal offender population generally. Almost three-quarters (73.9%) of defendants in the appellate court cases analyzed were United States citizens while just over half (53.9%) of the defendants initially sentenced in 2012 were citizens.

Blacks comprised a larger proportion of the appellant population than they did of the federal offender population generally. Although Blacks accounted for 41.0 percent of the 5,464 sentencing appeals brought by defendants that were decided in fiscal year 2012, only 27.5 percent of the defendants initially sentenced in fiscal year 2012 were Black. In comparison, Hispanic offenders brought 29.8 percent of the defendant sentencing appeals decided that year, but accounted for 48.4 percent of all offenders initially sentenced. Whites brought 26.3 percent of sentencing appeals and were 20.4 percent of the defendants initially sentenced.

Of the 5,496 sentencing appeals (for which the Commission received complete information), 1,631 cases (29.7%) the defendant was sentenced pursuant to a mandatory drug sentencing statute, in 442 cases (8.0%) the defendant was sentenced pursuant to a mandatory firearm sentencing statute, and in 226 cases (4.1%) the defendant was sentenced pursuant to both drug and firearm mandatory sentencing statutes. Mandatory minimum penalties applied in 41.8 percent (n=2,299) of the appellate cases, compared to 20.9 percent (n=17,556) of the cases in which the offender was sentenced in district court cases in 2012.

The sentences imposed in appealed cases decided in 2012 were considerably longer, on average, than the sentences imposed in cases in which the offender was sentenced that year. The average sentence in appealed cases was 144 months (median=120 months) compared to an average sentence of 43 months (median=24 months) for all cases in which the offender was initially sentenced.

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 eight types¹⁴⁶ of resentencings and other modifications of sentence: (1) reduction of sentence for substantial assistance (Fed. R. Crim. P. 35(b));¹⁴⁷ (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));¹⁴⁸ (5) direct motion to the district court (28 U.S.C. § 2255);¹⁴⁹ (6) modification of imposed term of imprisonment for extraordinary and compelling reasons (18 U.S.C. § 3582(c)(1));¹⁵⁰ (7) modification of imposed term of imprisonment for retroactive amendment to the sentencing guidelines (18 U.S.C. § 3582(c)(2));¹⁵¹ and (8)

¹⁴⁶ 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.

¹⁴⁷ Commonly referred to as a “Rule 35(b) resentencing.” This type of resentencing occurs when the government files a substantial assistance motion after the offender was sentenced.

¹⁴⁸ 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.

¹⁴⁹ 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.

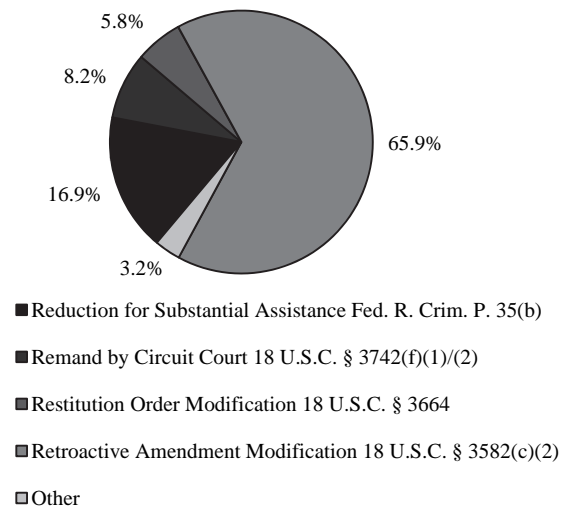
¹⁵⁰ This type of resentencing occurs following a successful motion by the director of the Federal Bureau of Prisons to reduce the sentence for extraordinary and compelling reasons, or the defendant is at least 70, has served at least 30 years for the offense for which the defendant is currently imprisoned, and the Federal Bureau of Prisons has determined that the defendant is not a danger to the safety of any person or the community.

¹⁵¹ Courts may modify the sentence for a defendant who was sentenced based on a sentencing range that later was lowered by the Commission and where the Commission

unknown type of resentencing.¹⁵² The following is a summary of resentencings occurring during fiscal year 2012 from the Commission’s Resentencing Dataset.¹⁵³

Summary of Information Received

In 2012, the Commission received documentation on 10,240 resentencings and other modifications of sentence. The most frequently reported reason was a modification of a term of imprisonment for retroactive amendment to the sentencing guidelines (6,746 or 65.9% of all cases). Almost all cases citing this reason were the result of the retroactive application of the 2011 amendments to the drug guideline for cases involving crack cocaine that implemented provisions of the Fair Sentencing Act of 2010.¹⁵⁴



The second most common type of resentencing reason was a reduction for substantial assistance to the government after sentencing pursuant to Federal

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.

¹⁵² 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.

¹⁵³ The Commission’s Resentencing Dataset may not represent all resentencings decided in the fiscal year. Only those resentencings submitted to the Commission are reported.

¹⁵⁴ See USSG, App. C, Amendments 750 and 759.

Rule of Criminal Procedure 35(b). Of the 1,733 resentencings (16.9% of the total) citing this reason, three districts resentenced offenders pursuant to the rule in more than 100 cases: Southern Florida (239), Eastern Virginia (194), and South Carolina (116).

The third most common type of resentencing or modification of sentence was a remand by the court of appeals (835 or 8.2% of all cases). The districts with the highest number of resentencing after remand are Eastern North Carolina (64), Middle North Carolina (64), Southern Texas (47), and Western North Carolina (44).

Data Analyses for the Courts, Congress, and Others

Each year, the Commission compiles detailed information on sentencing activities for each federal circuit, federal district, and state (by combining data for all federal districts in that state). The information presented includes 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 by circuit and district and provide comparisons to national figures.

The informational packets are used in guidelines orientation sessions for new chief circuit and district court judges by Commission staff and in other training programs for court personnel. The statistical informational packets are also provided to the members of the Senate and House Committees on the Judiciary. The Commission makes these statistical informational packets available to the general public on the Commission's website.¹⁵⁵ The website also includes similar statistical informational packets from 1995 to 2011.

Commission staff also regularly respond to data requests from other government entities, including the courts, individual members of Congress and congressional committees, the Congressional Budget Office, and the Congressional Research Service.

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 these requests ranges from serving as a consultant about a particular data analysis to performing substantial, sophisticated data analyses. Last year staff responded to 167 such requests.

¹⁵⁵ www.ussc.gov.

The year 2012, as used in this report, refers to the fiscal year 2012 (October 1, 2011, through September 30, 2012).