

CHAPTER FIVE

Research

Statutory Requirements

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

Data Collection

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

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

Data from these documents are extracted and coded for input into computerized databases. For each case in its **Offender Dataset**, the Commission routinely collects case identifiers, demographic variables, statutory information, the guideline provisions applied to the case, and departure information. In addition, when extraordinary research questions arise, the Commission collects new information from the documents provided by the courts. In 2000, the Commission conducted additional data collection on money laundering, immigration offenses, and sex offenses.

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

sentencing guidelines. The **Appeals Dataset** tracks appellate review of sentencing decisions. Information captured includes district, circuit, dates of appeal and opinion, legal issues, and the court's disposition.

The Commission's computerized datasets, without individual identifiers, are available via tape and the Internet through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR). The Consortium's web site address is <http://www.ICPSR.umich.edu/NACJD>. Sentencing Commission data that has been incorporated into the datasets of the Federal Justice Statistics Resource Center, which is sponsored by the Bureau of Justice Statistics and developed by the Urban Institute, is available at <http://fjsrc.urban.org>. In addition to the 2000 *Sourcebook of Federal Sentencing Statistics*, the Commission provides on its web site federal sentencing data organized by district and circuit. See <http://www.ussc.gov/linktojp.htm>.

Data Collection Issues

The Commission received documentation on 59,846 cases sentenced under the Sentencing Reform Act (SRA) between October 1, 1999, and September 30, 2000. Note, however, that all data collected and analyzed by the Commission reflect only cases for which appropriate documentation was forwarded to the Commission. Reporting problems specific to individual districts or offices may make analysis at the district level problematic. Analyses of smaller datasets (e.g., the organizational guidelines) may also prove problematic.

The Commission continues to work with other federal agencies to collect comprehensive statistical information for the federal criminal justice system and to reconcile differences among agencies in the number of cases reported, offense category definitions, and other relevant and commonly used variables. An Interagency Working Group on Criminal Case Processing Statistics (composed of the Commission, the Administrative Office of the U.S. Courts, the Executive Office for U.S. Attorneys, the Federal Bureau of Prisons, the Department of Justice's Criminal Division, and the Bureau of Justice Statistics) seeks to improve data collection across the entire system and to produce a more comprehensive and user-friendly profile of all cases under federal jurisdiction.

Summary of 2000 Findings

The 2000 *Sourcebook of Federal Sentencing Statistics* presents detailed tables and figures displaying information from the Commission's **Offender Dataset** concerning offender characteristics, guideline cases, guideline application, departure figures, and special sections highlighting drug and immigration cases. The *Sourcebook* also provides statistics on organizational sentencing practices from the **Organizational Dataset**, and data on appellate review of sentencing decisions from the **Appeals Dataset**.

Most numbers cited in this Chapter may be found in tables or figures from the 2000 *Sourcebook of Federal Sentencing Statistics*.

Sentencing Individual Offenders

Offender Characteristics

Historically, females have accounted for approximately 15 percent of federal criminal cases. This remained true in 2000 (14.3%). The racial/ethnic composition of the offender population continued a shift that began several years ago. The proportions of White and Black offenders have been decreasing, and the proportion of Hispanic offenders has been steadily increasing. During 2000, the percentage of White (30.1%) and Black (25.0%) offenders each decreased from 1999 levels, while the percentage of offenders of Hispanic origin increased by two percentage points to 41.0 percent. The average age of federal offenders remained largely unchanged, with a mean of 34.2 years and a median of 32 years. The percentage of offenders who did not graduate from high school has been increasing, reaching 45.7 percent in 2000, while the percentage of those who graduated from college decreased slightly (6.4%).

The proportion of offenders who are not U.S. citizens increased by almost two percentage points to 35.8 percent, continuing a nine-year upward trend. Non-citizens comprised approximately one-half of kidnapping (47.9%), one-third of both drug trafficking (31.5%) and money laundering (31.8%) offenses; and 93.1 percent of immigration offenses. For additional demographic information about the federal offender population, see Table 4 through Table 9 in the Commission's 2000 *Sourcebook of Federal Sentencing Statistics*.

Guideline Cases

Trial rates under the guidelines have declined from a high of approximately 12 percent of cases in 1993 to 4.5 percent in 2000, and have dropped nearly a full percentage point in the last year alone. However, these rates have varied historically by both district and offense type. In 2000, district trial rates ranged from 1.0 percent in Arizona to 13.6 percent in the Northern District of Florida. Among offense types with more than 100 cases in 2000, the range was from 0.5 percent in drugs-communication facility cases to 10.9 percent each for assault, auto theft, and money laundering cases.

The vast majority of offenders (81.3%) were sentenced to imprisonment without a provision for any period of alternative confinement. More than 90 percent of offenders sentenced for murder, manslaughter, kidnapping, sexual abuse, robbery, arson, drug trafficking, firearms offenses, burglary, racketeering, immigration offenses, pornography, or prison offenses received a sentence that included imprisonment. In contrast, more than half of the offenders sentenced for simple drug possession, larceny, gambling, environmental offenses, antitrust offenses, food and drug offenses, or other miscellaneous offenses received a probationary sentence alone or a sentence of probation with a condition of alternative confinement.

The average sentence (either imprisonment or alternative confinement) for all offenders in 2000 was 46.9 months (median of 24 months), counting probation-only sentences as zero months imprisonment. Of those offenders sentenced to some form of imprisonment, the average term was 55.9 months (median= 33 months), continuing a small but steady decline in the length of prison sentences that began in 1993. With the exception of immigration offenders, the majority of offenders who were in zones of the Sentencing Table that made them eligible for non-prison sentences did, in fact, receive alternative confinement. In addition to a term of prison or probation,

29.1 percent of the offenders were also ordered to pay a fine, restitution, or both. For a detailed statistical description of the mode of disposition and sentences imposed, see Table 10 through Table 16 and Figure D through Figure F of the 2000 *Sourcebook of Federal Sentencing Statistics*.

Guideline Application

In 2000, the most frequently applied primary guidelines were (in order) – Drug Trafficking (§2D1.1), Unlawful Entry into U.S. (§2L1.2), Fraud (§2F1.1), Theft (§2B1.1), Firearms (§2K2.1), Smuggling Unlawful Alien (§2L1.1), and Robbery (§2B3.1). The three victim-related enhancements (part of Chapter Three of the guidelines) each were applied in less than one percent of all cases. Regarding role adjustments, 6.2 percent of all offenders received an aggravating role adjustment, 12.7 percent received a mitigating role adjustment, 2.2 percent received an abuse of position of trust adjustment, and 0.4 percent received an adjustment for use of a minor in the commission of an offense. The adjustments for obstruction of justice (3.7%) and reckless endangerment (0.3%) were also applied infrequently. The rate of those receiving the acceptance of responsibility adjustment (90.8%) continued the consistent upward trend (since 1991) of an annual increase, but at a slower pace than in previous years. The percentage of offenders receiving the three-level reduction increased by 1.7 percentage points from 1999 to 2000, a slight slowing in the rate of between a two-to-four percentage point increase in previous years, reaching 61.0 percent in 2000.

Slightly more than half of all offenders (56.7%) received points under the guideline's criminal history computations (Chapter Four of the guidelines). More than half (52.1%) of the year 2000 offenders were placed in Category I, and 9.2 percent were placed in Category VI. During 2000, three percent of offenders qualified for career offender or armed career criminal status, a proportion that has remained steady over the past several years. For further details of the guideline application components, see Table 17 through Table 23 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

Departures and Sentences Within the Guideline Range

Almost two-thirds (64.5%) of 2000 sentences were within their applicable guideline ranges. The percentage of within-guideline sentences was lowest in the District of Arizona (28.6%), with five additional districts having rates lower than 50 percent: Eastern New York (47.8%), Northern New York (35.7%), Vermont (49.7%), Southern California (41.5%), and Eastern Washington (49.8%). The highest within-guideline sentencing rate was in Eastern Virginia (89.0%). Only two offense types had a percentage of within-guideline sentences less than 50 percent: national defense (40.0%) and antitrust offenses (44.7%), both of which had small numbers of cases. The offense type with the highest within-guideline rate was again simple drug possession (93.0%).

Rates of Within-Range and Departure Sentences
64.5% Sentences Within Guideline Range
17.9% Sentences Below Guideline Range for Substantial Assistance on Motion of Government
17.0% Sentences Below Guideline Range
0.7% Sentences Above Guideline Range

Substantial assistance departures, for the sixth straight year, remained below 20 percent (17.9% in 2000). The rates of substantial assistance departures ranged from a low of 3.1 percent in Eastern Oklahoma to a high of 50.9 percent in Northern New York. The offense type with the lowest rate of substantial assistance departures was sexual abuse (1.3%); the offense type with the highest rate was antitrust offenses (47.4%). Among offense types with more than 100 cases, racketeering (30.6%), money laundering (28.2%), and drug trafficking (27.8%) had the highest rates.

Downward departures (other than substantial assistance departures under §5K1.1) continued a nine-year trend, increasing to 17.0 percent. Among districts with more than 100 cases, the rates of downward departures ranged from a low of 0.8 percent in Guam and Western Arkansas to a high of 63.5 percent in the District of Arizona. The Ninth Circuit had the highest downward departure rate (37.9%), while the Fourth Circuit had the lowest (5.0%).

The rate of upward departures rose very slightly to approximately three quarters of one percent (0.7%) in 2000. One district reported a rate of greater than four percent (South Dakota (4.3%)), while seven districts reported no upward departures. The offense types with the highest rates of upward departure were manslaughter (12.8%), murder (9.5%), sexual abuse (5.3%), and pornography/prostitution (4.5%).

Overall, offenders receiving a substantial assistance departure experienced a larger sentence reduction than did offenders receiving a downward departure. Sentences for offenders receiving substantial assistance were a median of 27 months below the applicable guideline range, resulting in a median sentence reduction of 50.3 percent. Sentences for offenders receiving a downward departure were a median of 12 months below the guideline range, resulting in a median sentence reduction of 40.0 percent. Offenders receiving an upward departure experienced a median 16-month sentence increase above the guideline maximum, amounting to a 36.7 percent median sentence increase.

For sentences within the applicable guideline range, the sentence most often given (62.7 percent of all within-guideline sentences) was at the minimum point of the guideline range. Among offenses with more than 100 cases, those with the highest proportion of cases at the guideline minimum were bribery (76.7%), tax offenses (76.1%), and drug trafficking (72.9%). The sentence was at the maximum of the guideline range in 13.2 percent of within-guideline cases. The offense with the highest proportion of cases at the guideline maximum was the use of communication facility for drug trafficking (69.1%). For further departure statistics, see Table 24 through Table 32 and Figure G through Figure H in the 2000 *Sourcebook of Federal Sentencing Statistics*.

Drug Cases

As in previous years, drug offenses were the largest single category of federal convictions in 2000 (39.3%). Less than half (44.3%) of these cases involved cocaine (22.9% powder cocaine and 21.4% crack cocaine), followed by marijuana (31.2%), methamphetamine (14.4%), and heroin (7.7%). Nearly all drug offenses (96.7%) were sentenced under the primary drug trafficking guideline (§2D1.1). Of all drug offenders, 43.4 percent were of Hispanic origin, 30.0 percent were Black, and 24.8 percent were White; 86.6 percent were male; and 30.7 percent were non-U.S. citizens. Except for crack cocaine traffickers, the majority of drug offenders were in Criminal History Category I.

Offenders received sentence increases for possession or use of weapons in 12.2 percent of all the drug cases, but for crack cocaine and methamphetamine cases, this figure rises to approximately 20 percent (21.3% and 18.7%, respectively). Slightly more than 30 percent of drug offenders received a sentence adjustment for their role in the offense; 24.3 percent were given a sentence reduction for mitigating role and 6.5 percent received an aggravating role adjustment. There was wide variation in the application of the mitigating role adjustment across drug types (39.8 percent for marijuana offenses, compared to 8.1 percent for crack cocaine cases). Slightly more than 90 percent (90.1%) of drug offenders received a reduction for acceptance of responsibility.

Nearly two-thirds of drug offenders were convicted under statutes carrying a mandatory minimum penalty provision, with the highest proportion occurring in crack cocaine cases (80.7%). A ten-year mandatory minimum was applicable in more than half of both crack cocaine cases (53.0%) and methamphetamine cases (51.6%). The “safety valve” provision (§5C1.2) was enacted to give nonviolent, low-level, first-time drug offenders an opportunity for a lower sentence.⁶⁷ The 26.1 percent of drug offenders receiving the benefit of the “safety valve” included both 23.2 percent of drug offenders who were subject to a drug mandatory minimum, and 2.9 percent who were not. Heroin and powder cocaine offenders were the most likely to receive a reduction under the “safety valve” provision, while crack cocaine and marijuana offenders were the least likely.

Almost 30 percent of drug offenders received substantial assistance departures (27.1%), with another 14.7 percent being granted other downward departures. The average overall prison term for drug offenders varied widely by drug type, from a mean of 119.5 months for crack cocaine cases (median= 97 months) to 36.4 months for marijuana cases (median= 24 months). See Table 33 through Table 45 and Figure I through Figure L of the 2000 *Sourcebook of Federal Sentencing Statistics* for additional statistics and trends on drug cases.

Immigration Cases

In 2000, there was another increase in the number of immigration offenses, from 9,669 cases in 1999 to 11,689 in 2000. In total, 17.4 percent of all cases in 2000 were sentenced under one of the immigration guidelines. Most immigration offenders were male (94.0%), of Hispanic origin (89.3%), and had less than a high school education (77.9%). Almost all immigration convictions involved non-U.S. citizens (91.6%) and were the result of a guilty plea (98.4%). Compared to other offenders, non-citizen immigration offenders had somewhat higher criminal history scores. For detailed statistics on immigration violations, see Table 46 through Table 50 in the Commission’s 2000 *Sourcebook of Federal Sentencing Statistics*.

Summary

The number of guideline cases reported to the Commission rose almost eight percent from 55,557 in 1999 to 59,846 in 2000. Federal offenders were sentenced to an average term of 55.9 months in prison (46.9 months when counting sentences of probation as zero months of incarceration). Almost two-thirds of all offenders were sentenced within their applicable guideline

⁶⁷ Under this provision, certain non-violent drug offenders with little or no criminal history can receive the full benefit of applicable mitigating adjustments under the guidelines and receive sentences below mandatory minimum penalty levels. Effective November 1, 1995, a guideline amendment was passed that provided an additional 2-level reduction for qualified offenders whose offense level is 26 or greater.

range. The rate of departures for substantial assistance declined slightly to 17.9 percent, but other downward departures increased.

The preceding pages highlight federal sentencing practices on a national level. Individual district profiles are presented in the Commission's 2000 *Sourcebook of Federal Sentencing Statistics*.

Organizational Sentencing Practices

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.⁶⁸ 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.⁶⁹ 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. In addition, the sentencing guidelines for antitrust violations, money laundering offenses, and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.⁷⁰

The organizational guidelines do not presently contain fine provisions for most offenses involving the environment, food, drug, agricultural and consumer products, individual rights, administration of justice, and national defense.⁷¹ In those cases in which the Chapter Eight fine guidelines do not apply, courts must look to the statutory provisions of title 18, sections 3553 and 3572, to determine an appropriate fine.

In 2000, the Commission received information on 304 organizations that were sentenced under Chapter Eight, a 19.2 percent increase from 1999 and a 38.2 percent increase from 1998.⁷² Fines were imposed on 219 organizations. The sentenced organizations pled guilty in 87.5 percent of the cases; 12.2 percent were convicted after trial. There was one case in which the organization pled *nolo contendere*. See Table 53 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

Changes from Prior Annual Reports

⁶⁸ See *Guidelines Manual*, Chapter Eight—Sentencing of Organizations.

⁶⁹ See USSG §8A1.1.

⁷⁰ See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d); 2S1.1(c); and 2S1.2(c).

⁷¹ See USSG §8C2.1.

⁷² As with individual defendants, the Commission datafile describing organizational defendants is available through the Inter-University Consortium for Political and Social Research at the University of Michigan. See page 40.

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

Offense Characteristics

As in 1999, fraud remained the most frequent offense committed by an organization, accounting for 34.5 percent of the cases sentenced. Other significant offense categories included: environmental pollution (23.0%),⁷³ import/export violations (7.6%), and antitrust violations (6.3%). See Table 52 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

Offender Characteristics

In those cases in which the offender organization both has the ability to pay, and the fine provisions of section 8C2.5 apply to the offense, the court calculates a culpability score that may reduce or increase the applicable offense level. Culpability score calculations are contained in either the sentencing court's Judgment of Conviction or the probation office's Presentence Report. Of the 304 cases sentenced in 2000, 201 cases involved offenses covered by the fine provisions of section 8C2.5. The Commission received detailed culpability score information for 133 of those cases. See Tables 52 and 54 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

In numerous cases, the organization's culpability score was reduced based on the presence of certain culpability factors. Of the 133 cases with detailed culpability score calculations, none of the organizations received a reduction in its culpability score for having in place an "effective program to prevent and detect violations of law."⁷⁴ Only six organizations were reported to have made any effort in the way of "compliance" or "ethics." In contrast, once under investigation by the authorities, 74 organizations (55.6%) were given credit at sentencing for cooperating with the government's investigation,⁷⁵ and another 40 organizations (30.1%) were given credit for accepting responsibility for their wrongdoing.⁷⁶ One organization received full credit for reporting the offense to governmental authorities,⁷⁷ cooperating with the investigation, and accepting responsibility for the offense. However, 18 organizations (13.5%) received no mitigating credit inasmuch as they did

⁷³ Environmental pollution offenses refer to the aggregate of "Environmental-Water offenses," "Environmental-Air offenses," and "Environmental-Hazardous/Toxic Pollutants."

⁷⁴ USSG §8C2.5(f).

⁷⁵ See USSG pursuant to section 8C2.5(g)(2).

⁷⁶ See USSG §8C2.5(g)(3).

⁷⁷ See USSG §8C2.5(g)(1).

not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

In numerous cases, the organization's culpability score also was increased based on the presence of culpability factors. Specifically, the culpability score of six organizations was increased, pursuant to section 8C2.5(c) of the sentencing guidelines, because they had a history of prior criminal or administrative offenses. One organization violated a judicial order, injunction, or condition of probation pursuant to section 8C2.5(d), and ten organizations obstructed justice pursuant to section 8C2.5(e), which resulted in increased culpability scores for sentencing purposes. See Table 54 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

Sanctions Imposed

The highest fine in 2000 (\$53 million) was imposed on a corporation convicted of antitrust violations. For those offenses covered by the fine provisions of section 8C2.5, the Commission received restitution information for 73 cases and fine information for 131 cases. In those cases, the mean restitution ordered was \$846,102 and the mean fine was \$2,316,732. Of those offenses not covered by the fine provisions of section 8C2.5, the Commission received restitution information for 25 cases, and fine information for 88 cases. In those cases, the mean amount of restitution ordered was \$570,695, and the mean fine ordered was \$522,684. See Table 52 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 304 cases sentenced pursuant to Chapter Eight, the Commission received probation information for 293 cases, of which 205 (70.0%) received probation. Of 300 cases with compliance program information, 42 (14.0%) were ordered to make some sort of "ethics"-related or "compliance"-related improvement. See Table 53 of the 2000 *Sourcebook of Federal Sentencing Statistics*.

Appeals Data

The Sentencing Reform Act authorized appellate review of guideline sentences imposed (1) in violation of law; (2) as a result of an incorrect application of the sentencing guidelines; (3) as a departure from the applicable guideline range or from a plea agreement; or (4) for an offense that is plainly unreasonable and for which there is no sentencing guideline.

In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. The courts of appeals send appellate opinions to the Commission, and the Commission supplements these cases with a computer search of relevant databases. What follows is a summary of 2000 information from this database.

Summary of Information Received

In 2000, the Commission gathered information on 6,381 appellate court cases of which 2,341 were "conviction only" cases. The defendant was the appellant in 98.5 percent of the cases,

and the United States was the appellant in 0.9 percent of the cases.⁷⁸ The remaining cases (0.7%) involved a cross appeal by one of the parties. The total number of sentencing cases analyzed was 3,800.⁷⁹ Less than eight percent of the sentencing cases were reversed in full. The overall disposition rate for 2000 sentencing cases was:

Affirmed	78.8 percent
Dismissed	7.5 percent
Reversed	7.9 percent
Affirmed in part/Reversed in part	5.9 percent

The affirmance rate of sentencing cases remained relatively unchanged from fiscal year 1999. The Eighth Circuit had the highest rate of affirmed cases (94.5%); the Seventh Circuit had the lowest (66.8%). Of the 296 cases reversed, the appellate courts remanded 290 (98.0%) to the district courts for further action. Of the 221 cases that were affirmed in part and reversed in part, the appellate courts remanded 174 (78.7%) to the district courts for further action. Thus, in 2000, the appellate courts remanded to the district court about 12.3 percent (n= 464) of the 3,762 sentencing cases reviewed that year. This represents a 102 case (18%) decrease in the number of cases remanded compared to 1999.

Issues and Guidelines Appealed

The Commission collects data on the guidelines for appellate cases involving sentencing issues only and those cases involving both sentencing and conviction issues. Defendants appealed the drug trafficking guideline (§2D1.1) 14.0 percent of the time (817 times). Other guidelines that frequently formed the bases for appeals by defendants were section 5K2.0 (Departures) (6.9%), section 3B1.1 (Aggravating Role) (4.8%), section 3B1.2 (Mitigating Role) (4.8%), section 3E1.1 (Acceptance of Responsibility) (4.6%), section 3C1.1 (Obstruction of Justice) (3.6%), and section 2L1.2 (Unlawfully Entering or Remaining in the United States) (3.0%). Appeals of issues involving section 2L1.2 more than doubled in number, going from 85 in 1999 to 175 in 2000. This section moved from the nineteenth most frequently appealed section in 1999 to the seventh most frequently appealed section in 2000. For cases in which the government was the appellant, section 2D1.1 (Drug Trafficking) (31.2%), section 5K2.0 (Departures) (16.9%), and section 2F1.1 (Fraud) (11.7%) were the guidelines most frequently appealed.

Offense and Offender Characteristics

⁷⁸ Although the Commission is interested primarily in information on appellate court cases that involve sentencing issues, it requests that the circuit courts of appeals provide information on all criminal appeals, including appeals of convictions. The statistics used in this report are from the defendant-based files of the appeals database. Each defendant-based file will be referred to as a case.

⁷⁹ Five circuits, the Fourth, Fifth, Sixth, Ninth, and Eleventh, accounted for approximately 68 percent of these cases (n= 2,545).

The data reveal that 31.6 percent of defendants in appellate court cases⁸⁰ were White, 37.0 percent Black, 28.2 percent Hispanic, and 3.2 percent other. Whites and Blacks comprise a larger proportion of the appeals population than of the district court population (of the defendants sentenced in district court, 30.1% were White, 25.0% were Black, and 41.0% were Hispanic). Seventy-four percent of the defendants in appellate court cases were United States citizens. In 40.1 percent of the appellate court cases, the defendants were sentenced under mandatory drug sentencing statutes, 4.9 percent were sentenced under mandatory gun sentencing statutes, and 2.5 percent sentenced under both drug and gun mandatory sentencing statutes. Mandatory minimum penalties applied to 47.5 percent of the appellate court cases, as compared to 26.9 percent of the district court cases.

As might be expected, appealed cases had considerably longer sentences. The mean sentence of appealed cases was 134.3 months (median= 92 months) compared to 46.5 months (median= 24 months) for all district court cases. Fifty percent of the appellate court cases involved defendants whose primary offense of conviction was drug trafficking, which comprised 39.2 percent of all cases sentenced in district court.

Staff Papers

The following papers were prepared by Sentencing Commission staff during 2000. The information and opinions contained in these works do not necessarily represent the official position of the Commission or the views of any individual commissioner.

Impact of Sentence Increases on Punishment Levels for Unlawful Alien Smuggling. The illegal Immigration Reform and Immigrant Responsibility Act of 1996 required that sentences be increased for several immigration offenses, including offenses that involve the smuggling, transporting, and harboring of unlawful aliens in the United States. This paper compares the sentences of unlawful alien smugglers convicted prior to, and following, the sentencing guideline changes that emanated from the 1996 law. The analysis seeks to determine whether the observed sentencing patterns result from changes in the type of offenders being sentenced or from differing decisions and practices of the court and the prosecution in the federal districts. The analysis uses Commission data for fiscal years 1996 and 1998. (*Impact of Sentence Increases on Punishment Levels for Unlawful Alien Smuggling* by Linda Drazga Maxfield and Jocelyn Lewis.)

Sentencing Federal Sex Offenders: Degrees of Depravity and Danger. Federal courts sentence a wide range of sex offenders. In previous years, many have been Native Americans who are subject to federal jurisdiction because they reside on tribal lands. In the past two years, increasing numbers of sex offenders have been prosecuted under the FBI's "Innocent Images" program, which targets inter-state crimes committed over the Internet. All offenders are sentenced under the federal sentencing guidelines, which are designed to rationalize punishment and establish uniform penalties for similar offenders. The variety of offenders now in federal court highlights the need for careful differentiation among offenders in light of the purposes of punishment. This paper describes efforts by Congress and the Sentencing Commission to improve the sentencing of federal

⁸⁰ These data include *all* appellate criminal cases gathered by the Commission, not merely cases involving a sentencing issue.

sex offenders. (*Sentencing Federal Sex Offenders: Degrees of Depravity and Danger* by Kevin Blackwell and Paul Hofer.)

Data Analyses for the Courts

Using the Commission's 1999 dataset, the Commission compiled detailed information on sentencing activities for each federal district and circuit. The Commission distributed these data to the courts and made them available to the general public via the Commission's Internet web site. These data present the distribution of cases, mode of conviction, type of sentence imposed, incarceration rate, length of imprisonment, and departure rate by primary offense type. The data are organized by circuit and district and provide comparisons to national figures. These informational packets were also used in the guidelines orientation of new chief circuit and district court judges by Commission staff. Additionally, these packets were used by the Commission in several training programs for court personnel.

In addition to these informational packets, Commission staff responded to data requests from the courts in 2000. Responses included providing information for district- or circuit-based annual reports, supplying the courts with Commission data on specific types of offenses or guideline applications (*e.g.*, drug offenses, departure rates), and examining relationships between guideline application characteristics and offender demographic characteristics (*e.g.*, gender and role in the offense). Commission staff involvement in the various requests ranged from serving as a consultant about a particular data analysis to performing substantial, sophisticated data analyses.