

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 data contained in this report pertain solely to cases sentenced under the federal sentencing guidelines PRIOR to the enactment of the PROTECT Act, Pub. L. 108-21.

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

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

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

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

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

The Commission's computerized datasets, without individual identifiers, are available via tape and the Internet through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR). The Consortium's website address is <http://www.ICPSR.umich.edu/NACJD>. Sentencing Commission data that have been incorporated into the datasets of the Federal Justice Statistics Resource Center, which is sponsored by the Bureau of Justice Statistics and developed by the Urban Institute, is available at <http://ffsrc.urban.org>. In addition to the *2002 Sourcebook of Federal Sentencing Statistics*, the Commission provides on its website federal sentencing data organized by district and circuit. See <http://www.ussc.gov/linktojp.htm>.

Data Collection Issues

The Commission received documentation on 64,366 cases sentenced under the Sentencing Reform Act (SRA) between October 1, 2001, and September 30, 2002. 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 the federal judiciary and other federal agencies to collect comprehensive statistical information for the federal criminal justice system and to reconcile differences among agencies in the number of cases reported, offense category definitions, and other relevant and commonly used variables.

Summary of 2002 Findings

The *2002 Sourcebook of Federal Sentencing Statistics* presents detailed tables and figures displaying information from the Commission's **Offender Dataset** concerning offender characteristics, guideline cases, guideline application, departure figures, and special sections highlighting drug and immigration cases. The *Sourcebook* also provides statistics on organizational sentencing practices from the **Organizational Dataset** and data on appellate review of sentencing decisions from the **Appeals Dataset**.

Numbers cited in this Chapter may be found in tables or figures from the *2002 Sourcebook of Federal Sentencing Statistics*.

Sentencing Individual Offenders

Offender Characteristics

Historically, females have accounted for approximately 15 percent of federal criminal cases. As seen in Table 5, this remained true in 2002 with females making up 14.0 percent of those sentenced. The racial/ethnic composition held steady between 2001 and 2002. As shown in

Table 4, during 2002, the racial/ethnic composition was – White 30.8 percent; Black 24.6 percent; and Hispanic 41.0 percent. The average age of federal offenders sentenced, as shown in Table 6, remained largely unchanged from 2001 to 2002, with a mean age of 34 years and a median of 32 years. Nearly half (45.9%) of the offenders sentenced did not graduate from high school (Table 8), while only 6.3 percent graduated from college.

The proportion of offenders who are not U.S. citizens remained constant between 2001 and 2002. As Table 9 shows, non-citizens made up 33.6 percent of all offenders sentenced in 2002. Table 9 also shows that, for offenses with 50 or more offenders, the offense categories with large percentages of non-citizens were the following: immigration (90.9%); kidnapping (37.5%); drug trafficking (30.3%); money laundering (27.2%); administration of justice (25.2%); and bribery (21.9%). For additional demographic information about the federal offender population, see Table 4 through Table 9 in the Commission's *2002 Sourcebook of Federal Sentencing Statistics*.

Guideline Cases

As seen in Figure C, trial rates under the guidelines have declined from 6.4 percent of all cases in 1998 to 2.9 percent in 2002, dropping half a percentage point in the last year alone. However, these rates have varied historically by both district and offense type. As Table 10 shows, the national trial rate was 2.9 percent. Table 11 shows that among offense types with more than 100 cases, trial rates ranged from 0.0 percent for gambling/lottery cases to 8.5 percent for assault cases.

Table 12 shows that the vast majority of offenders (82.3%) were sentenced to imprisonment without provision for any period of alternative confinement. More than 90 percent of all offenders in each of the following offense categories received a prison sentence: murder, manslaughter, kidnapping, robbery, arson, drug trafficking, firearms offenses, racketeering, immigration offenses, pornography and prison offenses. In contrast, more than half of the offenders sentenced for simple drug possession, larceny, bribery, gambling, environmental offenses, food and drug offenses, or other miscellaneous offenses received a probationary sentence alone or a sentence of probation with a condition of alternative confinement.

In Table 13 we see that the average sentence for all offenders sentenced in 2002, counting probation-only sentences as zero months imprisonment, was 46.9 months (median of 24 months). For those offenders sentenced to imprisonment, Table 14 shows the average prison term was 55.4 months (median 33 months), continuing a decline in the length of prison sentences that began in 1993. As seen in Figure F, the majority of offenders who were in zones of the Sentencing Table that made them eligible for non-prison sentences, with the exception of immigration offenders, received alternative confinement. Table 15 shows that 73.8 percent of the offenders had no fine or restitution ordered; and therefore, 26.2 percent of the offenders were ordered to pay a fine, restitution, or both, in addition to a term of prison or probation. For a detailed statistical description of the mode of disposition and sentences imposed, see Table 10 through Table 16 and Figure D through Figure F of the *2002 Sourcebook of Federal Sentencing Statistics*.

Guideline Application

In Table 17 we see that in 2002 the most frequently applied primary guidelines were – Drug Trafficking (§2D1.1), Unlawful Entry into U.S. (§2L1.2), Theft (§2B1.1), Firearms (§2K2.1), Fraud (§2F1.1), Robbery (§2B3.1), and Smuggling Unlawful Alien (§2L1.1). Table 18 shows that the four victim-related enhancements (part of Chapter Three of the guidelines) each were applied in less than one percent of all cases. Regarding role adjustments, Table 18 shows that 5.5 percent of all offenders received an aggravating role adjustment, 13.7 percent received a mitigating role adjustment, 2.2 percent received an abuse of position of trust adjustment, and 0.5 percent received an adjustment for use of a minor in the commission of an offense. The adjustments for obstruction of justice (3.6%) and reckless endangerment (0.3%), shown in Table 18, were applied infrequently. The rate of those receiving the acceptance of responsibility adjustment (92.5%), as shown in Table 18, continued a consistent annual increase (since 1991).

As seen in Table 20, 41.5 percent did not receive criminal history points under the guideline’s criminal history computations. Conversely, more than half of all offenders (58.5%) received points for prior criminal convictions (Chapter Four of the guidelines). Table 21 shows that more than half (50.2%) of the year 2002 offenders were placed in Criminal History Category I, and 9.5 percent were placed in Category VI. Table 22 shows that 1,536 offenders received a career offender adjustment and 292 received an armed career criminal adjustment. For further details of the guideline application components, see Table 17 through Table 23 of the 2002 *Sourcebook of Federal Sentencing Statistics*.

The data contained in this report pertain solely to cases sentenced under the federal sentencing guidelines PRIOR to the enactment of the PROTECT Act, Pub. L. 108–21.

Departures and Sentences Within the Guideline Range

Table 26 shows, by district, both the number and percent of cases sentenced within the guideline range or receiving a departure (either substantial assistance, other downward, or an upward departure). Almost two-thirds (65.0%) of 2002 sentences were within their applicable guideline ranges. The percentage of within-guideline sentences was lowest in the District of Arizona (30.9%), with only two additional districts with more than 100 cases having rates lower than 50 percent: Southern California (37.4%) and Middle Alabama (47.7%). The highest within-guideline sentencing rate was in Eastern Virginia (89.9%).

Rates of Within-Range and Departure Sentences

65.0%	Sentences Within Guideline Range
17.4%	Sentences Below Guideline Range for Substantial Assistance on Motion of Government
16.8%	Sentences Below Guideline Range
0.8%	Sentences Above Guideline Range

As seen in Figure G, substantial assistance departures remained constant at 17.4 percent of all the cases in 2002. Table 26 shows that among districts with more than 100 cases, the rates of substantial assistance departures ranged from a low of 4.6 percent in Utah to a high of 46.3 percent in Middle Alabama.

We see in Figure G that the percentage of other downward departures (16.8%) decreased by 1.3 percent between 2001 and 2002. In Table 26, we see that among districts with more than 100 cases, the percentage of downward departures ranged from a low of 1.6 percent in Guam to a high of 61.1 percent in the District of Arizona. The Ninth Circuit had the highest downward departure rate (38.7%), while the Fourth Circuit had the lowest (4.2%).

We see in Figure G that the rate of upward departures increased slightly to 0.8 percent in 2002. In Table 26 we see that three districts reported a rate of upward departures greater than four percent (North Dakota (4.3%), Middle Louisiana (5.4%), and South Dakota (6.2%)), while 11 districts reported no upward departures.

Table 27 shows, by offense type, the number and percent of sentences within the guideline range, and with downward or upward departures. We see that antitrust (31.3%) was the only offense with a percentage of within-guideline sentences less than 50 percent. The offense type with the highest within-guideline rate was simple drug possession (95.2%). For substantial assistance departures, the offense type with the lowest rate was sexual abuse (1.0%); the offense type with the highest rate of substantial assistance departures was antitrust offenses (56.3%). Among offense types with more than 100 cases, money laundering (28.8%), gambling/lottery (28.4%), bribery (27.7%), drug trafficking (27.4%), and auto theft (27.2%) had the highest percentages receiving substantial assistance departures. For upward departures, the offense types with the highest rates were manslaughter (22.8%), murder (17.1%), kidnapping/hostage taking (14.0%), sexual abuse (7.2%), and burglary (7.1%).

For sentences within the applicable guideline range, as shown in Table 29, the sentence most often given (59.8% 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 simple drug possession (73.1%), drug trafficking (70.1%), other miscellaneous offenses (68.8%), tax offenses (66.7%), and larceny (65.8%). The sentence was at the maximum of the guideline range in 10.1 percent of within-guideline cases. The offense with the highest proportion of cases at the guideline maximum was manslaughter (45.9%).

Tables 30, 31, and 32 show the sentencing effects for substantial assistance departures, downward departures, and upward departures, respectively. Overall, offenders receiving a substantial assistance departure experienced a larger sentence reduction than did offenders receiving a downward departure. Sentences for offenders receiving substantial assistance, shown in Table 30, had a median 27-month sentence reduction from the minimum of the applicable guideline range. This results in a 50-percent median decrease in the otherwise applicable guideline minimum. Sentences for offenders receiving a downward departure, as shown in Table 31, had a median 10 months' sentence reduction from the minimum of the applicable guideline range. This results in a 34.8 percent median decrease in the otherwise applicable guideline minimum. Offenders receiving an upward departure, as shown in Table 32, experienced a median 14-month sentence increase above the guideline maximum, amounting to a 37.7 percent median sentence increase. For further departure statistics, see Table 24 through Table 32 and Figure G through Figure H in the *2002 Sourcebook of Federal Sentencing Statistics*.

Drug Cases

As in previous years, drug offenses were the largest single category of federal convictions, making up 40.5 percent of all those sentenced in 2002 (Figure A). As Figure A shows, 42.7 percent of all drug cases involved cocaine (22.9% powder cocaine and 19.8% crack cocaine), followed by marijuana (28.9%), methamphetamine (15.5%), and heroin (7.1%). Table 33 shows that nearly all drug offenses (96.8%) were sentenced under the primary drug trafficking guideline (§2D1.1).

For drug offenders, Tables 34 through 37 show the following: 42.7 percent were of Hispanic origin, 28.2 percent were Black, and 26.9 percent were White; 86.7 percent were male; and 29.3 percent were non-U.S. citizens. Except for crack cocaine and methamphetamine traffickers, the majority of drug offenders were in Criminal History Category I.

Drug offenders received sentence increases for possession or use of weapons in 13.0 percent of all the drug cases (Table 39). Slightly more than 32 percent of drug offenders received a sentence adjustment for their role in the offense (Table 40); 26.0 percent were given a sentence reduction for mitigating role and 6.1 percent received an aggravating role adjustment. Wide variation was observed in application of the mitigating role adjustment across drug types, from 45.3 percent for marijuana offenses to 6.7 percent for crack cocaine offenses. Slightly more than 92 percent (92.5%, Table 41) of drug offenders received a reduction for acceptance of responsibility.

Table 43 shows that 58.1 percent of drug offenders were convicted under statutes carrying a mandatory minimum penalty provision (27.3% a five-year and 30.8% a ten-year or longer mandatory minimum). The highest percentage receiving a mandatory minimum were crack cocaine cases (76.5%). A ten-year or longer mandatory minimum was applicable in nearly half of both crack cocaine cases (47.0%) and methamphetamine cases (49.3%).

In 1994, Congress enacted the “safety valve” provision (§5C1.2) to provide nonviolent, low-level, first-time drug offenders relief from mandatory minimum sentences.¹¹⁸ In Table 44 we see that 37.4 percent of drug offenders received the benefit of the “safety valve,” including 15.2 percent who were not subject to a drug mandatory minimum and 22.2 percent who were subject to a drug mandatory minimum. Heroin and marijuana offenders were the most likely to receive a reduction under the “safety valve” provision, while crack cocaine and methamphetamine offenders were the least likely.

As seen in Table 45, almost 27 percent of drug offenders received substantial assistance departures (26.9%), with another 15.7 percent being granted other downward departures. As displayed in Figure J, we see that the average overall prison term for drug offenders varied widely by drug type, from a mean of 119 months for crack cocaine cases (median=97 months) to 33 months for marijuana cases (median=21 months). See Table 33 through Table 45 and Figure I through

¹¹⁸ Under this provision, certain nonviolent drug offenders with little or no criminal history can receive the full benefit of applicable mitigating adjustments under the guidelines and receive sentences below mandatory minimum penalty levels. Effective November 1, 1995, a guideline amendment was passed that provided an additional two-level reduction for qualified offenders whose offense level is 26 or greater. Effective November 1, 2001, the Commission amended this provision, allowing offenders with offense levels less than 26 to receive the “safety valve.”

Figure L of the 2002 *Sourcebook of Federal Sentencing Statistics* for additional statistics and trends on drug cases.

Immigration Cases

As seen in Table 3 and in Figure B, the number of immigration cases increased from 10,458 in 2001 to 11,736 in 2002. In total, 18.6 percent (Figure A) of all cases in 2002 were sentenced under one of the immigration guidelines. As seen in Table 46, most immigration offenders were male (94.4%), of Hispanic origin (88.5%), and had less than a high school education (78.0%). A large percentage of immigration convictions involved non-U.S. citizens (89.5%, Table 48) and were the result of a guilty plea (98.9%, Table 46). For detailed statistics on immigration violations, see Table 46 through Table 50 in the Commission's 2002 *Sourcebook of Federal Sentencing Statistics*.

Summary

The number of guideline cases reported to the Commission increased between 2001 and 2002, with 59,897 cases in 2001 and 64,366 in 2002. Federal offenders were sentenced to an average term of 55.4 months in prison (46.9 months when counting sentences of probation as zero months of incarceration). Nearly two-thirds of all offenders were sentenced within their applicable guideline range. The rate of departures for substantial assistance remained relatively constant at 17.4 percent, but the percentage of other downward departures decreased to 16.8 percent.

The preceding pages highlight federal sentencing practices on a national level. More detailed individual district profiles are presented in the Commission's 2002 *Sourcebook of Federal Sentencing Statistics* and on the Commission's website at: www.ussc.gov/linktojp.

Organizational Sentencing Practices

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.¹¹⁹ 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.¹²⁰ The fine provisions of Chapter Eight are limited to offenses for which pecuniary loss or harm can be more readily quantified, such as fraud,

¹¹⁹ See *Guidelines Manual*, Chapter Eight—Sentencing of Organizations.

¹²⁰ See USSG §8A1.1.

theft, and tax offenses.¹²¹ In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.¹²²

The organizational guidelines do not presently 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.¹²³ 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 2002, the Commission received information on 252 organizations that were sentenced under Chapter Eight, a 5.9 percent increase from 2001 and a 17.1 percent decrease from 2000.¹²⁴ Fines were imposed on 166 organizations. The sentenced organizations pled guilty in 94 percent of the cases; 6 percent were convicted after trial. See Tables 51 and 53 of the *2002 Sourcebook of Federal Sentencing Statistics*.

Changes from Prior Annual Reports

The organizational sentencing data reported in the *2000 Annual Report* marked the beginning of a new system for recording organizational sentencing data, including the capturing of new data, such as the frequency with which courts ordered organizations to implement effective compliance programs as a term of probation. Also, beginning with that report, the Commission instituted new designations for some offense types. The offense type designations continue to be refined to more accurately report the data captured. Consequently, some direct comparisons of the *2002 Annual Report* to prior annual reports may not be possible.

Offense Characteristics

As in 2001, fraud remained the most frequent offense committed by an organization, accounting for 102 of the 252 cases sentenced (40.5%). Other significant offense categories included – environmental pollution (17.9%),¹²⁵ antitrust (9.1%), money laundering (7.5%), and food, drugs, agricultural and consumer products (7.5%). See Table 51 of the *2002 Sourcebook of Federal Sentencing Statistics*.

Offender Characteristics

¹²¹ See USSG §8C2.1.

¹²² See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d).

¹²³ See USSG §8C2.1.

¹²⁴ As with individual defendants, the Commission datafile describing organizational defendants is available through the Inter-University Consortium for Political and Social Research at the University of Michigan. See page 42.

¹²⁵ Environmental pollution offenses refer to the aggregate of “Environmental-Water,” “Environmental-Air,” and “Environmental-Hazardous/Toxic Pollutants.”

In those cases in which the offender organization both has the ability to pay, and the fine provisions of section 8C2.1 apply to the offense, the court calculates a culpability score that may reduce or increase the applicable offense level. Culpability score calculation data is obtained from the sentencing court's Judgment of Conviction and/or the probation office's Presentence Report. Of the 252 cases sentenced in 2002, the court applied the fine provisions of section 8C2.1 to calculate the fine in 162 cases. The Commission received detailed culpability score information for 143 of those cases. See Table 54 of the *2002 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 143 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."¹²⁶ In contrast, once under investigation by the authorities, 73 organizations (51.0%) were given credit at sentencing for cooperating with the government's investigation,¹²⁷ and another 49 organizations (34.3%) were given credit for accepting responsibility for their wrongdoing.¹²⁸ One organization received full credit for reporting the offense to governmental authorities,¹²⁹ cooperating with the investigation, and accepting responsibility for the offense. Additionally, 20 organizations (14.0%) received no mitigating credit inasmuch as they did not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the *2002 Sourcebook of Federal Sentencing Statistics*.

In several cases, the organization's culpability score also was increased based on the presence of culpability factors. Specifically, the culpability score of one organization was increased, pursuant to section 8C2.5(c) of the sentencing guidelines, because it had a history of prior criminal or administrative offenses. No organization received an increase under 8C2.5(d) for having violated a judicial order, injunction, or condition of probation; and 15 organizations (10.5%) received an increase pursuant to section 8C2.5(e) for having obstructed justice, which resulted in increased culpability scores for sentencing purposes. See Table 54 of the *2002 Sourcebook of Federal Sentencing Statistics*.

Sanctions Imposed

The largest fine in 2002, \$290 million, was imposed on a pharmaceutical company for conspiracy to violate the Prescription Drug Marketing Act. The second highest fine in 2002, \$54 million, was imposed for bid-rigging in violation of the Sherman Act. The third highest was \$27.5 million in a consumer wire fraud case. In addition, the largest restitution order imposed in 2002, \$569,000,000, was imposed in a securities fraud case. For the 252 cases overall, restitution was ordered in 112 cases, and a fine was imposed in 166 cases. The mean restitution ordered was \$6,292,650, and the mean fine imposed was \$2,815,154. See Tables 51 and 52 of the *2002 Sourcebook of Federal Sentencing Statistics*.

¹²⁶ USSG §8C2.5(f).

¹²⁷ See USSG pursuant to §8C2.5(g)(2).

¹²⁸ See USSG §8C2.5(g)(3).

¹²⁹ See USSG §8C2.5(g)(1).

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 252 cases sentenced pursuant to Chapter Eight, 187 (74.2%) received one month or more of probation. Of the 251 cases with court-ordered compliance program information available, 38 (15.1%) were ordered to make some sort of “ethics”-related or “compliance”-related improvement. See Table 53 of the *2002 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 2002 information from this database.

Summary of Information Received

In 2002, the Commission gathered information on 6,834 appellate court cases of which 1,816 were “conviction only” cases. See Figure M of the *2002 Sourcebook of Federal Sentencing Statistics*. The defendant was the appellant in 97.3 percent of the cases, and the United States was the appellant in 2.0 percent of the cases.¹³⁰ The remaining cases (0.7 %) involved a cross appeal by one of the parties. The total number of sentencing cases analyzed was 4,530.¹³¹ See Figure M of the *2002 Sourcebook of Federal Sentencing Statistics*. Seven percent of the sentencing cases were reversed in full.

¹³⁰ 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.

¹³¹ Of the 6,834 cases, 1,816 were “conviction only” cases. Of the 5,018 remaining cases, 488 were missing the type of appeal information, resulting in 4,530 known sentencing cases. Some cases were also missing the district information, and could not be included in Table 56. Three circuits (the Fourth, Fifth, and Ninth) accounted for approximately 52.6 percent of these cases (n=2,385). See Table 56 of the *2002 Sourcebook of Federal Sentencing Statistics*.

The overall disposition rate for cases appealed in 2002 was –

Affirmed	79.1 percent
Dismissed	7.2 percent
Reversed	7.0 percent
Affirmed in part/Reversed in part	6.6 percent

The affirmance rate of sentencing cases remained relatively unchanged from fiscal year 2001. The Eleventh Circuit had the highest rate of affirmed cases (92.3%); the Seventh Circuit had the lowest (59.2%). See Table 56 of the *2002 Sourcebook of Federal Sentencing Statistics*. Of the 317 cases reversed, the appellate courts remanded 298 (94.0%) to the district courts for further action. Of the 299 cases that were affirmed in part and reversed in part, the appellate courts remanded 279 (93.3%) to the district courts for further action. See Figure M of the *2002 Sourcebook of Federal Sentencing Statistics*. Thus, in 2002, the appellate courts remanded to the district court about 12.7 percent (n=577) of the 4,530 sentencing cases reviewed that year. This represents a 21 case decrease in the number of cases remanded compared to 2001.

Issues and Guidelines Appealed

The Commission collects data on the guidelines for appellate cases involving sentencing issues only as well as those cases involving both sentencing and conviction issues. Defendants appealed the drug trafficking guideline (§2D1.1) more than any other guideline, at 14.1 percent (1,287 appeals). Other guidelines that frequently formed the bases for appeals by defendants were section 2L1.2 (Unlawfully Entering or Remaining in the United States)(5.9%), section 5K2.0 (Departures)(4.1%), section 3B1.1 (Aggravating Role)(2.9%), section 3B1.2 (Mitigating Role)(2.9%), section 3E1.1 (Acceptance of Responsibility)(2.8%), and section 3C1.1 (Obstruction of Justice)(2.4%). See Table 57 of the *2002 Sourcebook of Federal Sentencing Statistics*. Appeals of issues involving section 2L1.2 decreased by approximately 33.6 percent, decreasing from 803 in 2001 to 533 in 2002. However, this number still represents an increase of 205 percent from 2000. More than 66.5 percent of the section 2L1.2 appeals referenced a challenge based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), down from 83.4 percent in 2001. For cases in which the government was the appellant, section 5K2.0 (Departures)(14.2%), and section 2D1.1 (Drug Trafficking)(13.1%) were the guidelines most frequently appealed. See Table 58 of the *2002 Sourcebook of Federal Sentencing Statistics*.

Offense and Offender Characteristics

The data reveal that 27.7 percent of defendants in appellate court cases¹³² were White, 35.3 percent Black, 33.9 percent Hispanic, and 3.1 percent Other. Blacks comprise a larger proportion of the appeals population than they do of the district court population (of the defendants

¹³² These data include *all* appellate criminal cases gathered by the Commission, not merely cases involving a sentencing issue.

sentenced in district court, 30.7% were White, 24.6% were Black, and 41.1% were Hispanic). Almost sixty-nine percent (68.9%) of the defendants in appellate court cases were United States citizens, up from 64 percent in 2001. In 35.4 percent of the appellate court cases, the defendants were sentenced under mandatory drug sentencing statutes, 4.3 percent were sentenced under mandatory gun sentencing statutes, and 2.7 percent were sentenced under both drug and gun mandatory sentencing statutes. Mandatory minimum penalties applied to 42.4 percent of the appellate court cases, as compared to 25.6 percent of the district court cases. See Table 60 of the *2002 Sourcebook of Federal Sentencing Statistics*.

As might be expected, appealed cases had considerably longer sentences. The mean sentence of appealed cases was 132 months (median = 84 months) compared to 46.6 months (median = 24 months) for all district court cases. The mean sentence of appealed cases is up from 125.5 months (median = 78 months) in 2001, and the mean sentence of district court cases is slightly up from 46.3 months (median = 24 months) in 2001. Forty-seven percent of the appellate court cases involved defendants whose primary offense of conviction was drug trafficking, up from 43.1 percent in 2001, and 39.8 percent of all cases sentenced in district court involved a primary offense of drug trafficking, down from 40.7 percent in 2001. See Table 61 of the *2001 Sourcebook of Federal Sentencing Statistics*.

Data Analyses for the Courts and Congress

Using the Commission's 2001 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.

The statistical informational packets are also designed for members of the House and Senate Judiciary Committees. Distribution of these packets allowed the Commission to better inform the members of the oversight committees about what types of information were collected and available in the Commission's 2001 dataset and allowed members to see what types of cases were being sentenced at the federal level, both nationally and in their individual districts and states. The Commission also responded to individual members of Congress, the Congressional Budget Office, and the Congressional Research Office regarding numerous data requests about the frequency of statute and guideline application, average sentence lengths for specific offenses, and prison and sentencing impact projections. The Commission makes all of the statistical informational packets for each federal district and circuit (as well as each state) available to the general public at the Commission's website, <http://www.ussc.gov/linktojp.htm>. The website also includes statistical informational packets for several earlier years of data.

In addition to the informational packets, Commission staff responded to data requests from the courts in 2002. 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 point of contact about a particular data analysis to performing substantial, sophisticated data analyses.