

# CHAPTER FIVE

## Research

### **Statutory Requirements**

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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)(12) and (14) through (16)).

### **Document Submission**

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Section 401(h) of the PROTECT Act, which became effective April 30, 2003, amended 28 U.S.C. § 994(w) to require the chief judge of each district to ensure that within 30 days after entry of judgment in a criminal case, the sentencing court submits a report of sentence to the Commission which includes (1) the judgment and commitment order (J&C); (2) the 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. The Commission is required to submit to Congress at least annually an analysis of these documents, as well as any recommendations for legislation thought to be warranted, and to report to Congress if any districts have not submitted the required information and documents.

Prior to the PROTECT Act, the Commission and the Administrative Office of the United States Courts, in consultation with the Committee on Criminal Law of the Judicial Conference of the United States, had requested that the sentencing court submit these documents to the Commission. Section 994(w) of title 28, United States Code, as amended, mandates their timely submission. On March 9, 2006, the President signed into law the USA PATRIOT Improvement and Reauthorization Act, Pub. L. No. 109-177, which amended section 994(w) with a provision that requires that the statement of reasons for the sentence imposed be "stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission." On May 15, 2006, the Sentencing Commission approved AO Form 245B/C, Rev. 0605 for individual defendants, and sentencing courts are now required to use this form.

For fiscal year 2006, the Commission received 336,376 documents related to 72,585 cases sentenced. See Table 1, *2006 Sourcebook of Federal Sentencing Statistics*. The vast majority of districts sent in complete documentation related to the cases. The J&C was received in more than 99 percent of cases in all but three districts. In only one district was the PSR not received in more than five percent of cases. The SOR form was submitted in more than 95 percent of cases in all but 15 districts. The rate of missing documents was more than five percent in only two districts (for charging documents) and two districts (for written plea agreements). The Commission continues to

work with the courts to facilitate document submission. See Table 1, *2006 Sourcebook of Federal Sentencing Statistics*.

## **Data Collection**

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

All tables and figures referenced in this chapter can be found in the companion volume to this annual report, the *2006 Sourcebook of Federal Sentencing Statistics*. Data for the figures that appear in this text also can be found in the *2006 Sourcebook of Federal Sentencing Statistics*. The year 2006, as used in this report, refers to the fiscal year 2006 (October 1, 2005, through September 30, 2006).

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.<sup>47</sup>

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/>. 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/index.cfm>. In addition to the *2006 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>.

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<sup>47</sup> In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. Each fiscal year, data collection for appellate review is accomplished by a three-step method. First, many appellate courts submit slip opinions of both published and unpublished opinions and orders directly to the Commission. 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. Last, 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 cases from the fiscal year. This three-step method may not provide the Commission with every appellate sentencing decision rendered in a fiscal year. The Commission's Appeals Database, therefore, may not report the universe of appellate decisions rendered in that fiscal year.

*Data Collection Issues*

The Commission received documentation on 72,585 cases sentenced under the Sentencing Reform Act (SRA) between October 1, 2005, and September 30, 2006. 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 due to missing or incomplete information. Analyses of smaller datasets (*e.g.*, the organizational guidelines) may also prove problematic due to the limited number of cases involved. The Commission continues to work with the federal judiciary and other federal agencies to collect comprehensive statistical information for the federal criminal justice system and to reconcile differences among agencies in the number of cases reported, offense category definitions, and other relevant and commonly used variables.

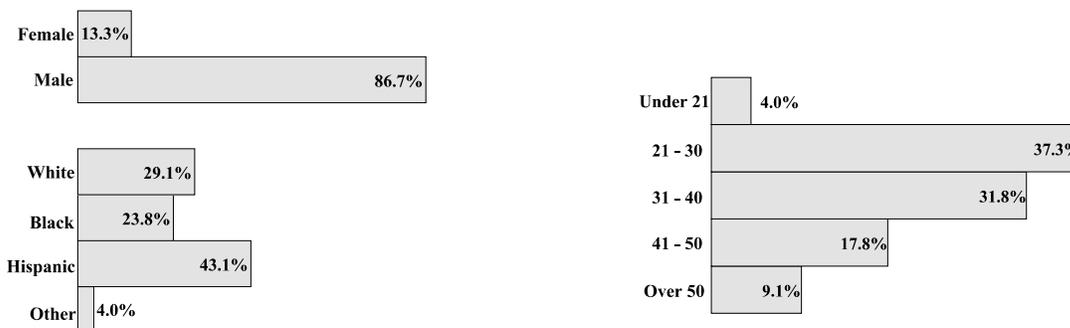
**Summary of 2006 Findings**

The *2006 Sourcebook of Federal Sentencing Statistics* presents detailed tables and figures displaying information from the Commission’s **Offender Dataset** concerning offender characteristics, guideline cases, guideline applications, departure figures, and special sections highlighting drug and immigration cases. The *Sourcebook* also provides statistics on organizational sentencing practices from the **Organizational Dataset** and data on appellate review of sentencing decisions from the **Appeals Dataset**.

*Sentencing Individual Offenders*

**Offender Characteristics**

Historically, females have accounted for approximately 15 percent of federal criminal cases. As seen in Table 5, females make up 13.3 percent of offenders sentenced in 2006, down slightly from 13.6 percent the previous year. The racial/ethnic composition is shown in Table 4. During 2006, the racial/ethnic composition was – White 29.1 percent; Black 23.8 percent; and Hispanic 43.1 percent. The average age of federal offenders sentenced, as shown in Table 6, was 34.8 years and a median of 33 years. Nearly half (48.7%) of the offenders sentenced did not graduate from high school (Table 8), and only 5.7 percent graduated from college.



The proportion of offenders who are not United States citizens increased slightly between 2005 and 2006. As Table 9 shows, non-citizens made up 37.1 percent of all offenders sentenced in 2006, up 0.3 percent from the previous year. Table 9 also shows that, for offenses with 100 or more offenders, the offense categories with the largest percentages of non-citizens were the following: immigration (89.5%); money laundering (36.3%); drug trafficking (29.3%); drug communication facility (21.0%); administration of justice (20.8%); racketeering/extortion (18.6%); and fraud (16.3%). For additional demographic information about the federal offender population, see Tables 4 through 9 in the Commission's *2006 Sourcebook of Federal Sentencing Statistics*.

### Guideline Cases

As seen in Figure C and Table 10, trial rates were 4.3 percent of all cases sentenced in 2006. However, these rates have varied historically by both district and offense type. Table 11 shows that among offense types with more than 100 cases, trial rates ranged from zero trials for gambling cases to 11.4 percent for racketeering/extortion cases.

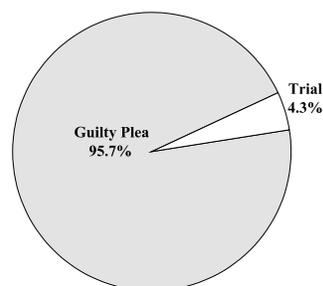
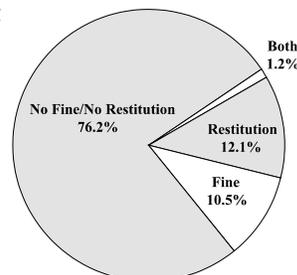


Table 12 shows that the vast majority of offenders (88.6%) were sentenced to imprisonment. More than 90 percent of all offenders in each of the following offense categories received a prison sentence: murder, manslaughter, kidnapping, sexual abuse, robbery, arson, drug trafficking, firearms offenses, racketeering, immigration offenses, pornography, prison offenses, and offenses involving national defense. In contrast, more than half of the offenders sentenced for simple drug possession, larceny, 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.

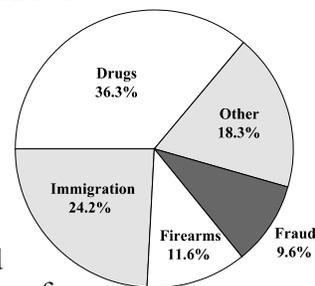


Table 13 shows that the average sentence for all offenders sentenced in 2006, counting probation-only sentences as zero months' imprisonment, was 51.8 months (median of 30 months). For those offenders sentenced to imprisonment, Table 14 shows the average prison term was 59.7 months (median 37 months). 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, received alternative confinement. Table 15 shows that 76.2 percent of the offenders had no fine or restitution ordered; and therefore, 23.8 percent of the offenders were ordered to pay a fine, restitution, or both, in addition to a prison term or probation. 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 *2006 Sourcebook of Federal Sentencing Statistics*.

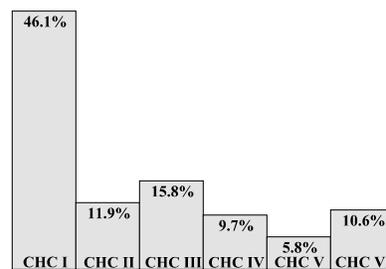


**Guideline Application**

Table 17 shows that in 2006 the most frequently applied primary guidelines were – Drug Trafficking (§2D1.1), Unlawful Entry into U.S. (§2L1.2), Theft (§2B1.1), Firearms (§2K2.1), Smuggling Unlawful Alien (§2L1.1), and Robbery (§2B3.1). Table 18 shows that the four victim-related adjustments (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 4.5 percent of all offenders received an aggravating role adjustment, 9.2 percent received a mitigating role adjustment, 2.1 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. Table 18 also shows the application rates of the adjustments for obstruction of justice (2.8%) and reckless endangerment (0.5%). The rate of those receiving the acceptance of responsibility adjustment was 93.1 percent, as shown in Table 18.



As seen in Table 20, 37.6 percent of offenders did not receive criminal history points under the guidelines’ criminal history computations. Conversely, more than half of all offenders (62.4%) received points for prior criminal convictions (Chapter Four of the guidelines). Table 21 shows that in 2006 fewer than half (46.1%) of the offenders were placed in Criminal History Category I and 10.6 percent were placed in Category VI. Table 22 shows that 2,124 offenders received a career offender adjustment, and 575 received an armed career criminal adjustment. For further details of the guideline application components, see Tables 17 through 23 of the 2006 *Sourcebook of Federal Sentencing Statistics*.



**Sentences Within the Guideline Range and Outside the Range**

On January 12, 2005, the Supreme Court decided *United States v. Booker*,<sup>48</sup> applying *Blakely v. Washington*<sup>49</sup> to the federal guideline system and holding that the mandatory application of the federal sentencing guidelines violated the right to trial by jury under the Sixth Amendment. The Court remedied the Sixth Amendment violation by excising the provisions in the Sentencing Reform Act that made the federal sentencing guidelines mandatory, thereby converting the mandatory system that had existed for almost 20 years into an advisory one. In *Booker*, the Supreme Court instructed courts to consider the guidelines, but “tailor the sentence in light of other statutory concerns.”<sup>50</sup> This instruction necessitated changes in the methodology used by the Commission in the collection and analysis of the data.

The *Sourcebook* includes a number of tables, differing from those presented in pre FY2005 *Sourcebooks*, presenting data on cases sentenced outside the guideline range and sorted into a number

<sup>48</sup> 543 U.S. 220 (2005).

<sup>49</sup> 542 U.S. 296 (2004).

<sup>50</sup> 543 U.S. at 245.

of categories created in response to the *Booker* decision. Before the decision in *Booker*, non-government sponsored outside the range sentences were classified as upward departures or downward departures. Subsequent to the *Booker* decision, the Commission began coding outside the range cases, separately for above and below, into four categories: Departure; Departure w/*Booker*; *Booker*; and Remaining. In place of the two categories, the Commission now codes non-government sponsored outside the range cases into a total of eight categories (the four categories described above for above range and those same categories for below range sentences). For expanded definitions of these categories, see Appendix A.

This year the Commission added 13 tables, labeled N through N-11, presenting national and circuit data on sentences within the guideline range and those outside the range. Nationally, 61.7 percent of cases sentenced in 2006 were sentenced within the applicable guideline range. Above range cases accounted for a total of 1.6 percent of all cases, with half citing a guideline departure reason and half not citing a departure reason. Of all cases sentenced in 2006, 24.6 percent were sentenced below the guideline range based upon a reason sponsored by the government. Most of these cases (14.4%) were sentenced pursuant to a motion by the government for a reduction because the defendant provided substantial assistance (§5K1.1). An additional 7.4 percent received a reduction based upon an Early Disposition Program (§5K3.1). The remaining below range sentences sponsored by the government accounted for 2.8 percent of the cases. Finally, an additional 12.1 percent of the cases were sentenced below the guideline range. Guideline departure provisions were cited in 4.8 percent of the cases, and 7.3 percent did not cite a departure reason. (See Table N).

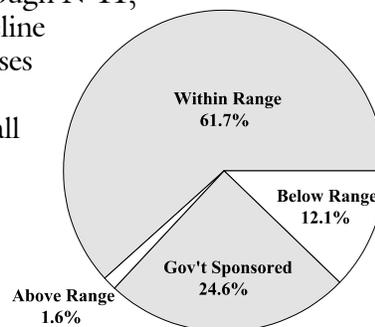


Table 26 shows, by district, both the number and percent of cases sentenced within the guideline range, or receiving a sentence outside the applicable guideline range. Beginning with 2003, the Commission augmented its data coding procedures to determine the proportion of non-substantial assistance downward departures that were sponsored by the government. Reasons identifying government sponsored downward departures are listed in Appendix A. The *Sourcebook* includes a number of modified tables presenting data on cases sentenced outside the guideline range and sorted into a number of categories created in response to the *Booker* decision. See Appendix A. Nationally, the percentage of within-guideline sentences was 61.7 percent and ranged by district from 29.4 percent to 91.2 percent. The total proportion of sentences above the guideline range totaled 1.6 percent. See Table 26.

|       |  |
|-------|--|
| 61.7% | Sentences Within Guideline Range       |
| 0.6%  | Above Range Departure                  |
| 0.3%  | Above Range Departure w/ <i>Booker</i> |
| 0.6%  | Above Range w/ <i>Booker</i>           |
| 0.1%  | Remaining Above Range                  |
| 14.4% | §5K1.1 Substantial Assistance          |
| 7.4%  | §5K3.1 Early Disposition               |
| 2.8%  | Other Government Sponsored             |
| 2.7%  | Below Range Departure                  |
| 2.0%  | Below Range Departure w/ <i>Booker</i> |
| 6.0%  | Below Range w/ <i>Booker</i>           |
| 1.3%  | Remaining Below Range                  |

Government sponsored below range sentences account for 24.6 percent of all cases sentenced during this period and are classified into three categories: §5K1.1 Substantial Assistance; §5K3.1 Early

Disposition; and Other Government Sponsored. The national rate of substantial assistance was 14.4 percent and ranged by district from 0.9 percent to 40.0 percent. The rate of below range sentences for early disposition was 7.4 percent nationally and ranged from 0.0 percent (in 76 districts) to 52.8 percent. The rate of other government sponsored below range sentences was 2.8 percent nationally and ranged from 0.0 percent (in eight districts) to 12.2 percent. See Table 26. Nationally, an additional 12.1 percent of cases were sentenced below the guideline range classified into four categories. Nationally, the rate of below range departures was 2.7 percent, ranging from 0.0 percent (in three districts) to 13.1 percent. Below range departures also citing *Booker* were 2.0 percent nationally and ranged from 0.0 percent (in seven districts) to 20.2 percent. The national rate of below range cases that were not departures but which cited *Booker* was 6.0 percent with a range by district of 0.0 percent to 21.8 percent. The rate in the category of remaining below range cases was 1.3 percent nationally and ranged from 0.0 percent (in 14 districts) to 5.2 percent. See Table 26.

Table 27 shows, by offense type, the number and percent of sentences within the guideline range and outside of the range. The offense type with the highest within-guideline rate was simple drug possession (93.2%). Above range departure rates ranged from 0.0 percent (eight offense types) to 10.0 percent (murder). The rates for above range departure with *Booker* cases ranged from 0.0 percent (10 offense types) to 4.2 percent (burglary). The above range with *Booker* rate ranged from 0.0 percent (five offense types) to 10.2 percent (manslaughter). The rates of the remaining above range cases was between 0.0 percent (15 offense types) and 1.7 percent (manslaughter).

The rate of substantial assistance departures ranged by offense type from 0.0 percent (manslaughter) to 75.0 percent (antitrust). Early disposition rates ranged from 0.0 percent (17 offense types) to 21.6 percent (immigration). The rate of application of other government sponsored below range sentences was 0.0 percent (two offense types) to 8.4 percent (sexual abuse). See Table 27.

The rate of below range departures ranged by offense type from 0.0 percent (four offense types) to 8.3 percent (antitrust). Rates of below range departures with *Booker* ranged from 0.0 percent (four offense types) to 8.3 percent (national defense). Below range with *Booker* had rates by offense type ranging from 1.3 percent (murder) to 15.1 percent (tax). The range of rates for the remaining below range cases was 0.0 percent (six offense types) to 6.6 percent (kidnapping). See Table 27.

For sentences within the applicable guideline range, as shown in Table 29, the sentence most often given (58.7% of all within-guideline sentences) was at the minimum point of the guideline range. The sentence was at the maximum of the guideline range in 10.0 percent of all within-guideline cases.

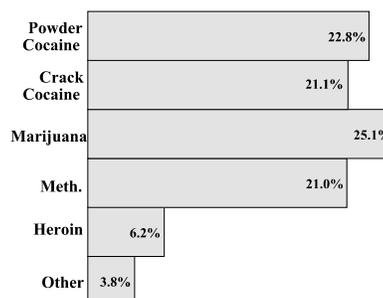
Tables 30-32 show the sentencing effects of the 11 categories of outside the range sentences. Overall, offenders receiving a substantial assistance departure experienced the largest reduction among all types of below range sentences. Sentences for offenders receiving substantial assistance reductions, as shown in Table 30, had a median 30-month sentence reduction from the minimum of the applicable guideline range. This results in a 47.8 percent median decrease in the otherwise applicable guideline minimum. Cases receiving a reduction under USSG §5K3.1 (early disposition) had a median decrease of eight months from the guideline range, which is a 28.3 percent median decrease. See Table 30A. Those cases receiving an other government sponsored reduction had a median decrease of 12 months from the applicable guideline minimum (a median decrease of 33.2%). See Table 31.

Table 31A shows that the median decrease in cases receiving a below range departure was 10.0 months below the guideline minimum; a median decrease of 29.8 percent. Cases receiving a departure below range with *Booker* saw a median decrease of 15 months from the guideline minimum (40.3% median decrease). See Table 31B. Table 31C presents data on below range cases with *Booker*. The median reduction from the guideline minimum was 12 months (34.3 % median decrease). The median reduction from the guideline minimum for all remaining below range cases is presented in Table 31D. The median sentence reduction was eight months (39.3% median decrease).

The relative increase above the applicable guideline maximum is presented in Tables 32 through 32C. Departures above the guideline range were a median 12 months above the guideline maximum. This is a 33.3 percent median increase above the guideline maximum. See Table 32. Table 32A shows that the median increase for cases receiving a departure above range with *Booker* was 15 months above the guideline maximum (37.8% median increase). Cases with a sentence above range with *Booker* had a median increase of 14 months (50.0% median increase). See Table 32B. The category of all remaining cases above the range had a median increase of eight months above the guideline maximum (35.5% median percent increase). See Table 32C. For further departure statistics, see Tables 24 through 32C and Figures G and H of the 2006 *Sourcebook of Federal Sentencing Statistics*.

### Drug Cases

As in previous years, drug offenses were the largest single category of federal convictions, making up 35.5 percent of all offenders sentenced in 2006 (Figure A). Among drug cases, 43.9 percent involved cocaine (22.8% powder cocaine and 21.1% crack cocaine), followed by marijuana (25.1%), methamphetamine (21.0%), and heroin (6.2%). See Figure A. Table 33 shows that nearly all drug offenses (96.9%) were sentenced under the primary drug trafficking guideline (§2D1.1).

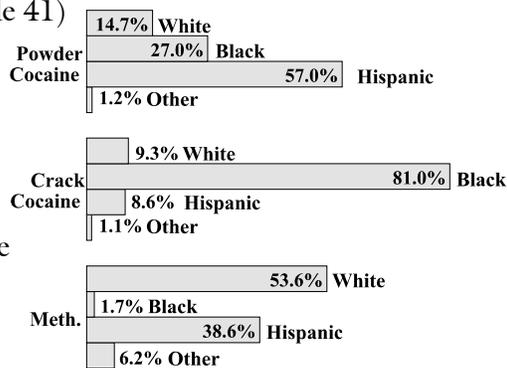


For drug offenders, Tables 34 through 37 show that, overall, 41.7 percent were of Hispanic origin, 29.2 percent were Black, and 25.8 percent were White. For powder cocaine, the race/ethnicity distribution was 57.0 percent Hispanic origin, 27.0 percent Black, and 14.7 percent White. Among crack cocaine defendants, the distribution was 8.6 percent Hispanic origin, 81.0 percent Black, and 9.3 percent White. The race/ethnicity distribution of drug defendants involved with methamphetamine was 38.6 percent Hispanic origin, 1.7 percent Black, and 53.6 percent White. Among drug defendants overall, 87.8 percent were male; and 28.4 percent were non-United States citizens. Except for crack cocaine and methamphetamine traffickers, the majority of drug offenders were in Criminal History Category I.

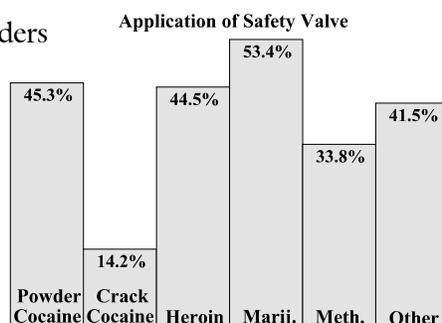
Drug offenders received sentence increases for possession or use of weapons in 16.3 percent of all the drug cases (Table 39). A sentence adjustment for role in the offense (Table 40) was imposed in 24.6 percent of drug cases; 19.3 percent received a mitigating role adjustment and 5.3 percent received an aggravating role adjustment. Wide variation was observed in application of the mitigating role adjustment across drug types, with 32.9 percent of marijuana and 27.0 percent of heroin offenders receiving a mitigating role adjustment compared to 6.2 percent for crack cocaine

offenders. Slightly more than 92 percent (92.7%, Table 41) of drug offenders received an adjustment for acceptance of responsibility.

Table 43 shows that 66.5 percent of drug offenders were convicted under statutes carrying a mandatory minimum penalty (27.8% a five-year and 38.7% a ten-year or longer mandatory minimum). The highest percentages of offenders receiving a mandatory minimum were methamphetamine cases (79.7%), powder cocaine cases (78.5%), and crack cocaine cases (78.2%). A ten-year or longer mandatory minimum was applicable in more than half of both powder cocaine cases (51.3%) and methamphetamine cases (56.3%).



In 1994, Congress enacted the “safety valve” provision (§5C1.2) to provide nonviolent, low-level, first-time drug offenders relief from mandatory minimum sentences. 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 a two-level reduction for offenders who meet the safety valve criteria and 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 also receive this two-level reduction. Table 44 shows that 37.8 percent of drug offenders received the benefit of the two-level reduction for meeting the “safety valve” criteria, including 12.6 percent who were not subject to a drug mandatory minimum and 25.2 percent who were subject to a drug mandatory minimum. Powder cocaine, heroin, and marijuana offenders and offenders trafficking in “other” drugs were the most likely to receive the reduction for meeting the safety valve criteria, while crack cocaine (14.2%) offenders were the least likely.



As displayed in Figure J, the average overall prison term for drug offenders varied widely by drug type, from a mean of 121.5 months for crack cocaine cases (median of 101 months) to 41.8 months for marijuana cases (median of 26 months). See Tables 33 through 45 and Figures I through L of the 2006 *Sourcebook of Federal Sentencing Statistics* for additional statistics and trends on drug cases.

### Immigration Cases

As seen in Table 46, most immigration offenders were male (92.1%), of Hispanic origin (89.3%), and had less than a high school education (79.6%). A large percentage of immigration convictions involved non-United States citizens (88.6%, Table 48) and were the result of a guilty plea (98.7%, Table 46). For detailed statistics on immigration violations, see Tables 46 through 50 of the 2006 *Sourcebook of Federal Sentencing Statistics*.

### ***Organizational Sentencing Practices***

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup> In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.<sup>54</sup>

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.<sup>55</sup> 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 2006, the Commission received information on 217 organizations that were sentenced under Chapter Eight, a 16 percent increase from 2005 and a 67 percent increase from 2004.<sup>56</sup> The sentenced organizations pled guilty in 197 (90.8%) of the cases; nineteen (8.8%) were convicted after a jury trial. See Table 53 of the *2006 Sourcebook of Federal Sentencing Statistics*.

### **Changes from Prior Annual Reports**

The organizational sentencing data reported in the *2000 Sourcebook* marked the beginning of a new system for recording organizational sentencing data, including the capturing of new data, such as the frequency with which courts ordered organizations to make compliance and ethics-related improvements as a condition of probation. Also beginning with the *2000 Sourcebook*, the Commission instituted new designations for some offense types, which continue to be refined to

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<sup>51</sup> See *Guidelines Manual*, Chapter Eight—Sentencing of Organizations.

<sup>52</sup> See USSG §8A1.1.

<sup>53</sup> See USSG §8C2.1.

<sup>54</sup> See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d).

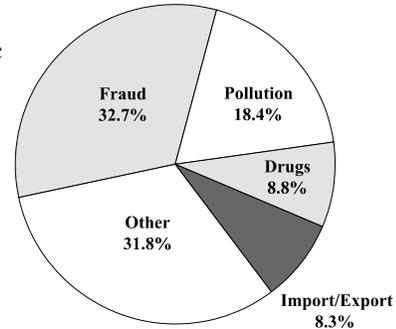
<sup>55</sup> See USSG §8C2.1.

<sup>56</sup> 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 32.

more accurately report the data captured. Consequently, some direct comparisons of the 2006 *Annual Report* to prior annual reports may not be possible.

### Offense Characteristics

As in 2005, fraud was the most frequent type of offense committed by an organization sentenced in federal court, accounting for 71 (32.7%) of the 217 cases sentenced. Other significant offense categories included environmental pollution (18.4%)<sup>57</sup>, drugs (8.8%), import and export (8.3%), and antitrust (7.4%). See Table 51 of the 2006 *Sourcebook of Federal Sentencing Statistics*.



### Offender Characteristics

In those cases in which the fine provisions of section 8C2.1 apply to the offense and the offender organization has the ability to pay, the court calculates a culpability score that may decrease or increase the applicable offense level. Culpability score calculation data is obtained from the sentencing court’s Judgment and Commitment Order and/or the probation officer’s Presentence Report. Of the 217 cases sentenced in 2006, the court applied the fine provisions of section 8C2.1 to calculate the fine in at least 122 cases (56.2%). The Commission received detailed culpability score information for 111 of those cases.<sup>58</sup> See Table 54 of the 2006 *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 108 cases with complete detailed culpability score calculations, no organization received a reduction in its culpability score for having in place an “effective compliance and ethics program.”<sup>59</sup> Of the 111 cases with detailed culpability score information on self-reporting, cooperation and acceptance of responsibility, 87 organizations (78.3%) received reductions in their culpability scores, pursuant to section 8C2.5(g), for either self-reporting, cooperating, or accepting responsibility. Fifty-four organizations (48.6%) received reductions in their culpability scores for cooperating with the government’s investigation<sup>60</sup> and another 32 organizations (28.8%) received reductions for accepting responsibility for their wrongdoing.<sup>61</sup> One organization received the full five-point reduction in its culpability score for reporting the offense to

<sup>57</sup> Environmental pollution offenses refer to the aggregate of “Environmental-Water,” “Environmental-Air,” and “Environmental-Hazardous/Toxic Pollutants.”

<sup>58</sup> In three of the 111 cases, detailed information was reported for the acceptance of responsibility but not the other culpability factors.

<sup>59</sup> See USSG §8C2.5(f).

<sup>60</sup> See USSG §8C2.5(g)(2).

<sup>61</sup> See USSG §8C2.5(g)(3).

governmental authorities,<sup>62</sup> cooperating with the investigation, and accepting responsibility for the offense (0.9%). Twenty-four organizations (21.6%) received no culpability score reductions inasmuch as they did not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the *2006 Sourcebook of Federal Sentencing Statistics*.

In a number of cases, the organization's culpability score was increased based on the presence of culpability factors. Among those 108 cases with complete detailed culpability score calculations, nine organizations (8.3%) received an increase pursuant to section 8C2.5(e) for having obstructed justice, which resulted in an increased culpability score for sentencing purposes. One organization (0.9%) received an increase under section 8C2.5(c) (for a history of prior criminal or administrative offenses within five years), and two organizations (1.8%) received an increase under section 8C2.5(d) (for violation of a judicial order, injunction, or condition of probation). See Table 54 of the *2006 Sourcebook of Federal Sentencing Statistics*.

### **Sanctions Imposed**

Of the 217 cases sentenced in Fiscal Year 2006, restitution was ordered in 61 cases (28.1%), and a fine was imposed in 162 cases (74.7%). See Table 52. The mean restitution ordered was \$1,976,593 and the mean fine imposed was \$5,890,259<sup>63</sup>. See Table 52 of the *2006 Sourcebook of Federal Sentencing Statistics*.

The highest fine in 2006 was imposed on two related corporations to jointly and severally pay a \$300 million fine for violation of the Sherman Antitrust Act. The corporations were convicted of fixing the prices of a product that they produced and sold. The second highest fine, \$136.9 million, was imposed on a corporation for conspiracy to violate provisions of the Food Drug and Cosmetic Act and the Anti-Kickback Act. The third highest fine, \$136.9 million, was imposed on a corporation for price-fixing and bid-rigging. The largest restitution order in 2006, \$39.8 million, was imposed on a nonprofit organization for money laundering and aiding and abetting mail fraud.

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 217 cases sentenced pursuant to Chapter Eight, 162 (74.7%) received one month or more of probation, and 41 (19.8%) were ordered to make compliance or ethics-related improvements. See Table 53 of the *2006 Sourcebook of Federal Sentencing Statistics*.

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<sup>62</sup> See USSG §8C2.5(g)(1).

<sup>63</sup> In cases of joint and several fines or restitution orders, the full amount of each fine or restitution order is attributed to each offender, which may result in overinflation of the total amount of fines or restitution reported for all offenders. An example of such a case is the Sherman Antitrust Act fine discussed directly below.

## Appeals Data

The Sentencing Reform Act authorized appellate review of guideline sentences if the sentence (1) was imposed in violation of law; (2) was imposed as a result of an incorrect application of the sentencing guidelines; (3) is greater (appeal by the defendant) or less (appeal by the government) than the sentence specified in the applicable guideline range; or (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.<sup>64</sup> In *Booker*,<sup>65</sup> the Supreme Court excised 18 U.S.C. § 3742(e), which provided for a *de novo* standard of review for departures from the guidelines, and replaced it with reasonableness review. The following is a summary of 2006 information from the Commission's Appeals Database.<sup>66</sup>

### Summary of Information Received

In fiscal year 2006, the Commission collected information on 10,052 appellate court cases. See Figure M of the *2006 Sourcebook of Federal Sentencing Statistics*. The defendant was the appellant in 97.11 percent of the appeals collected, and the United States was the appellant in 2.05 percent of the appeals. The remaining appeals (0.85%) involved a cross appeal. Of the total number of appellate court cases collected for 2006, 1,625 were "conviction only" appeals.<sup>67</sup> See Figure M of the *2006 Sourcebook of Federal Sentencing Statistics*. The total number of sentencing appeals analyzed for 2006 was 8,283,<sup>68</sup> which represents a 2,075 case (33.4%) increase in the number of sentencing appeals compared to 2005.

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<sup>64</sup> 18 U.S.C. § 3742(a), (b).

<sup>65</sup> *U.S. v. Booker*, 543 U.S. 220 (2005).

<sup>66</sup> In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. Each fiscal year, data collection for appellate review is accomplished by a three-step method. First, many appellate courts submit slip opinions of both published and unpublished opinions and orders directly to the Commission. 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. Last, 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. This three-step method may not provide the Commission with every appellate sentencing decision rendered in a fiscal year. The Commission's Appeals Database, therefore, may not report the universe of appellate decisions rendered in that fiscal year.

<sup>67</sup> Although the Commission is interested primarily in information on appellate court cases that involve sentencing issues, it requests the circuit courts of appeals provide information on all criminal appeals, and its supplemental computer search of commercially available legal databases includes both sentencing appeals and conviction appeals. The statistics used in this report are from the defendant-based files of the appeals database. Each defendant-based file will be referred to as an appeal.

<sup>68</sup> Of the 10,052 appeals, 1,625 were "conviction only" appeals. Of the 8,427 remaining appeals, 144 were missing the type of appeal information, resulting in 8,283 known sentencing appeals. See Table 57 (n. 1) of the *2006 Sourcebook of Federal Sentencing Statistics*.

Defendants were the appellants in 8,145 of the total number of sentencing appeals analyzed for 2006. Three circuits (the Fourth, Fifth, and Ninth) accounted for 50 percent of these defendant sentencing appeals. The United States was the appellant in 212 of the total number of sentencing appeals analyzed for 2006. Four circuits (the Fourth, Eighth, Ninth, and Eleventh) accounted for 68.4 percent of these government sentencing appeals (145 appeals). See Table 56.

The overall disposition rates for sentencing appeals in 2006 was –

|  |              |
|--|--------------|
| <b>Affirmed</b>                          | 67.8 percent |
| <b>Dismissed</b>                         | 7.6 percent  |
| <b>Reversed</b>                          | 12.6 percent |
| <b>Affirmed in part/Reversed in part</b> | 2.7 percent  |
| <b>Remanded</b>                          | 9.3 percent  |

The affirmance rate for defendant sentencing appeals increased in 2006, from 54.7 percent in fiscal year 2005 to 68.5 percent. The Eleventh Circuit had the highest affirmance rate in such appeals (85.1%), the D.C. Circuit had the lowest (49.3%).

The affirmance rate for government sentencing appeals decreased in 2006, from 36.2 percent in fiscal year 2005 to 22.6 percent. The D.C. Circuit had the highest affirmance rate (100.0%); the First and Third Circuits had the lowest (0.0% each).

The appellate courts remanded 24.1 percent of the 8,283 sentencing appeals analyzed for fiscal year 2006, which represents a 19.7 percent increase in the number of appeals remanded compared to 2005 (1,669 appeals). Of the 1,044 sentencing appeals reversed, the appellate courts remanded 1,020 (97.7%) to the district courts for further action. Of the 226 sentencing appeals that were affirmed in part and reversed in part, the appellate courts remanded 208 (92.0%) to the district courts for further action. An additional 770 sentencing appeals were remanded to the district courts without having been reversed. For defendant sentencing appeals that were remanded without a reversal, the D.C. Circuit had the highest rate (31.9%); the Eleventh Circuit had the lowest (2.3%)<sup>69</sup> See Table 56. For government sentencing appeals that were remanded without a reversal, the Ninth Circuit had the highest rate (23.5%), the D.C., First, Second, and Third Circuits, the lowest (0.0% each).<sup>70</sup> See Table 56A.

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<sup>69</sup> Prior to fiscal year 2005, the Commission did not report separately the number of appeals remanded to the lower court. Post-*Booker*, all of the circuit courts remanded a statistically significant number of appeals without vacating the original sentence. These data are now included as “remanded” in Tables 56 and 56A of the *2006 Sourcebook of Federal Sentencing Statistics*.

<sup>70</sup> Results may be skewed in a circuit in which the appellate court reviewed a statistically small number of appeals. For example, in fiscal year 2006, the D.C. Circuit reviewed only one sentencing appeal by the government. See Tables 56 and 56A of the *2006 Sourcebook of Federal Sentencing Statistics*.

## Issues and Guidelines Appealed

In the 8,283 sentencing appeals analyzed for 2006, defendants appealed 21,178 discrete sentencing issues. This represents a 39.9 percent (7,948 appeals) increase in the number of individual sentencing issues raised on appeal by defendants compared to 2005 (13,230 appeals). The increase is partly attributable to an increase in the number of times a guideline application issue formed the basis of a defendant appeal and by an increase in the number of times the defendant included the factors at 18 U.S.C. § 3553(a) (1,772 appeals), Constitutional Issues (including the Sixth Amendment right to a trial by jury) (5,595 appeals), and Other Non-guideline Issues (including *Apprendi* and *Blakely*) (3,248 appeals) as an additional basis for the appeal. See Table 57 of the 2006 *Sourcebook of Federal Sentencing Statistics*.

In fiscal year 2006, defendants most frequently appealed sentences under the drug trafficking guideline (§2D1.1), at 10.5 percent (n=2,229 appeals), followed by sentences under section 2L1.2 (Unlawfully Entering or Remaining in the United States)(9.6%), section 2K2.1 (Firearms)(3.7%), section 2B1.1 (Larceny, Embezzlement and Theft)(2.5%), section 4B1.4 (Armed Career Criminal)(1.4%), and section 4B1.1 (Career Offender)(1.3%). See Table 57 of the 2006 *Sourcebook of Federal Sentencing Statistics*.

The affirmance rate for all sentencing issues appealed by defendants in fiscal year 2006 increased from 69.6 percent in fiscal year 2005 to 82.6 percent. The affirmance rate of appeals involving section 2D1.1 increased 12.7 percent, from 66.9 percent in 2005 to 79.6 percent in 2006; those involving section 2L1.2 decreased 0.4 percent, from 87.0 percent to 86.6 percent; those involving section 2K2.1 increased 7.6 percent, from 69.8 percent to 77.4 percent; those involving section 2B1.1 increased 16.5 percent, from 58.1 percent to 74.6 percent; those involving section 4B1.4 increased 6.8 percent, from 83.5 percent to 90.3 percent; and those involving section 4B1.1 increased 4.7 percent, from 84.0 percent in 2005 to 88.7 percent in 2006.

The affirmance rate of appeals by a defendant involving the factors at 18 U.S.C. § 3553(a) was 94.9 percent. Constitutional Issues appealed by defendants increased from 53.0 percent in 2005 to 73.7 percent in 2006, and defendant based appeals involving Other Non-guideline Issues increased, from 82.9 percent in 2005 to 92.4 percent in 2006. See Table 57 of the 2006 *Sourcebook of Federal Sentencing Statistics*.

The government most frequently appealed sentences under section 2D1.1 (Drug Trafficking)(10.8%), section 2K2.1 (Firearms)(4.0%), section 2B1.1 (Larceny, Embezzlement, and Theft)(3.6%), and section 5K2.0 (Departures)(3.6%).

The affirmance rate for all sentencing issues appealed by the government in fiscal year 2006 decreased from 37.9 percent in 2005 to 28.5 percent. Government appeals involving Constitutional Issues decreased from 31.6 percent in 2005 to 24.6 percent in 2006, and government based appeals involving Other Non-guideline Issues decreased from 58.3 percent to 50.0 percent. See Table 58 of the 2006 *Sourcebook of Federal Sentencing Statistics*.

## Reasonableness

Of the 8,283 sentencing appeals analyzed for 2006, the appellate courts reviewed the sentencing issues for reasonableness in 1,792 appeals. Defendants were the appellants in 1,723 of

the appeals, the government was the appellant in 69 appeals, and there were 13 cross appeals. Of the appeals by defendants, the circuit courts determined the sentence to be reasonable in 1,699 appeals and not reasonable in 19 appeals. Of the appeals by the government, the circuit courts determined the sentence to be reasonable in 18 appeals and not reasonable in 43 appeals. Of the cross appeals, the circuit courts determined the sentence to be reasonable in six appeals and not reasonable in seven appeals.

### **Overall Offense and Offender Characteristics**

The data indicate that 26.3 percent of defendants who appealed sentencing issues in the appellate court cases analyzed for fiscal year 2006 were White, 32.7 percent Black, and 37.5 percent Hispanic. Blacks comprise a larger proportion of the appeals population than they do of the district court population (of the defendants sentenced in district court, 29.1 percent were White, 23.8 percent were Black, and 43.1 percent were Hispanic). Just over 65 percent (65.6%) of the defendants in the appellate court cases analyzed were United States citizens, down from 71.5 percent in 2005.

In 27.7 percent of the appellate court cases analyzed, the defendants were sentenced under mandatory drug sentencing statutes, 4.1 percent were sentenced under mandatory gun sentencing statutes, and 3.3 percent were sentenced under both drug and gun mandatory sentencing statutes. Mandatory minimum penalties applied to 35.1 percent of the appellate cases analyzed, as compared to 26.7 percent of the district court cases. See Table 60 of the *2006 Sourcebook of Federal Sentencing Statistics*.

As might be expected, appealed cases had considerably longer sentences than the typical sentence issued by a district court. The mean sentence of appealed cases was 132 months (median = 87 months) compared to 52 months (median = 30 months) for all district court cases. The mean sentence of appealed cases decreased from 137 months (median = 96 months) in 2005, and the mean sentence of district court cases increased slightly from 50 months (median = 27 months) in fiscal year 2005. Slightly more than thirty-eight percent (38.1%) of the appellate court cases involved defendants whose primary offense of conviction was drug trafficking, a decrease from 40.7 percent in 2005. Drug trafficking was the primary offense in 34.9 percent of all cases sentenced in district court, an increase from 33.8 percent in fiscal year 2005. See Table 61 of the *2006 Sourcebook of Federal Sentencing Statistics*.

### ***Data Analyses for the Courts and Congress***

Using the Commission's 2006 dataset, the Commission will compile detailed information on sentencing activities for each federal district and circuit. These data will present the distribution of cases, mode of conviction, type of sentence imposed, incarceration rate, length of imprisonment, and departure rate by primary offense type. The data will be organized by circuit and district and provide comparisons to national figures. These informational packets will also be used in the guidelines orientation of new chief circuit and district court judges by Commission staff. Additionally, these packets will be used by the Commission in several training programs for court personnel.

The statistical informational packets will also be designed for members of the House and Senate Judiciary Committees. Distribution of these packets will allow the Commission to better inform the members of the oversight committees about what types of information were collected and are available in the Commission's 2006 dataset and will allow members to see what types of cases were sentenced at the federal level, both nationally and in their individual districts and states. The Commission will make these statistical informational packets 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 numerous data requests from individual members of Congress, the Congressional Budget Office, the Congressional Research Office, and the courts in the past year. Responses to court requests included providing information for district- or circuit-based annual reports, supplying the courts with Commission data on specific types of offenses or guideline applications (*e.g.*, drug offenses, departure rates), and examining relationships between guideline application characteristics and offender demographic characteristics (*e.g.*, gender and role in the offense). Commission staff involvement in the various requests ranged from serving as a point of contact about a particular data analysis to performing substantial, sophisticated data analyses.