

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

Document Submission

Section 994(w) of title 28, United States Code, requires the chief judge of each district to ensure that within 30 days after entry of judgment in a criminal case, the sentencing court submits a report of sentence to the Commission which includes (1) the judgment and commitment order (J&C); (2) the written statement of reasons (SOR); (3) any plea agreement; (4) the indictment or other charging document; (5) the presentence report (PSR); and (6) any other information the Commission requests. That section also requires that the reasons for the sentence imposed be "stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission." On May 15, 2006, the Commission approved AO Form 245B/C, Rev. 0605 for individual defendants, and the sentencing courts are now required to use this form. The Commission is required to submit to Congress at least annually an analysis of these documents, as well as any recommendations for legislation thought to be warranted, and to report to Congress if any districts have not submitted the required information and documents.

For fiscal year 2008, the Commission received 355,849 documents related to 76,478 cases received. See Table 1, *2008 Sourcebook of Federal Sentencing Statistics*. The vast majority of districts sent in complete documentation related to the cases. The Commission continues to work with the courts to facilitate document submission. See Table 1, *2008 Sourcebook of Federal Sentencing Statistics*.

Data Collection

All tables and figures referenced in this chapter can be found in the companion volume to this annual report, the *2008 Sourcebook of Federal Sentencing Statistics*. Data for the figures that appear in this text can be found in the *2008 Sourcebook of Federal Sentencing Statistics*. The year 2008, as used in this report, refers to the fiscal year 2008 (October 1, 2007, through September 30, 2008).

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

The Commission also maintains additional datasets to study a variety of sentencing-related issues. The Organizational Dataset captures 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.⁵⁹ The Resentencing Dataset, begun in fiscal year 2008, tracks information on the number and type of resentencings and other modifications of sentence.

The Commission's computerized datasets, without individual identifiers, are available via 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://fisrc.urban.org/index.cfm>. In addition to the *2008 Sourcebook of Federal Sentencing Statistics*, the Commission provides federal sentencing data organized by district and circuit on its website. See <http://www.ussc.gov/linktojp.htm>.

Data Collection Issues

The Commission received documentation on 76,478 cases sentenced under the Sentencing Reform Act ("SRA") between October 1, 2007, and September 30, 2008. This represents an increase of 3,613

⁵⁹ In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. Each fiscal year, data collection for appellate review is compiled from three sources. First, many appellate courts submit to the Commission slip opinions of both published and unpublished opinions and orders. The Commission creates a master list of these opinions as they are received. Second, the Commission performs a supplemental computer search for all published and unpublished opinions and orders using commercially available legal databases and adds any available decisions not received directly from the courts to the master list. Third, because courts do not submit all relevant opinions and orders to commercially available legal databases, the Commission checks individual court websites and adds any available appeals from the fiscal year. These sources may not provide the Commission with every appellate sentencing decision rendered in a fiscal year. The Commission's Appeals Database, therefore, may not report all appellate decisions rendered in that fiscal year.

cases over the number of cases for which the Commission received documentation for fiscal year 2007. Note, however, that all data collected and analyzed by the Commission reflect only cases for which appropriate documentation was forwarded to the Commission by February 2, 2009. As part of its ongoing activities, the Commission occasionally receives case documentation for a case sentenced in a prior fiscal year after the date on which the data was compiled for the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* corresponding to that year.⁶⁰ In some cases, this documentation is received months or even years after the cases was concluded. This data is analyzed and maintained in the Commission's comprehensive database and used in the Commission's work, although it is not reflected in the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* prepared for the year in which the offenders were sentenced, nor is it contained in the publically available datasets released each fiscal year, as they are based on the data in the corresponding *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.

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

⁶⁰ For example, after the date on which the data was compiled to prepare the fiscal year 2007 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*, the Commission received documentation on 841 additional cases sentenced in that fiscal year. Since 1991, the Commission has received documentation on 11,795 cases after the respective dates on which the data was prepared for the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* for each of those fiscal years. This represents 1.3% of all cases reported to the Commission during that period.

differences among agencies in the number of cases reported, offense category definitions, and other relevant and commonly used variables.

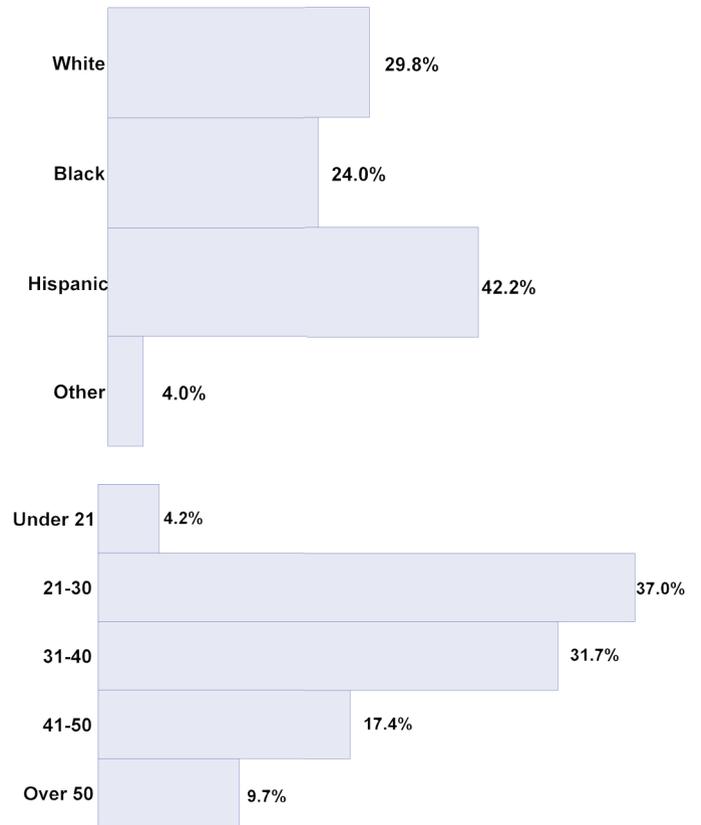
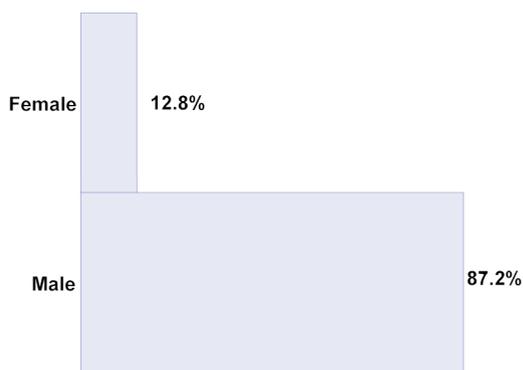
Summary of 2008 Findings

The 2008 *Sourcebook of Federal Sentencing Statistics* presents detailed tables and figures displaying information from the Commission’s Offender Dataset concerning offender characteristics, guideline cases, guideline applications, departure figures, and special sections highlighting drug and immigration cases. The *Sourcebook* also provides statistics on organizational sentencing practices from the Organizational Dataset, data on appellate review of sentencing decisions from the Appeals Dataset, and information on the number and type of resentencings and other modifications of sentence.

Sentencing Individual Offenders

Offender Characteristics

Historically, male offenders have accounted for approximately 85 percent of federal criminal cases. As seen in Table 5, males make up 87.2 percent of offenders sentenced in 2008, up slightly from 86.5 percent the previous year. The racial/ethnic composition is shown in Table 4. During 2008, the racial/ethnic composition was White 29.8 percent, Black 24.0 percent, and Hispanic 42.2 percent. The average age of federal offenders sentenced as shown in Table 6, was 34.9 years with a median of 33 years. Nearly half (49.4%) of the offenders sentenced did not graduate from high school (Table 8), and only 5.4 percent graduated from college.



The proportion of offenders who are not United States citizens increased between 2007 and 2008. As Table 9 shows, non-citizens made up 40.5 percent of all offenders sentenced in 2008, up 3.1 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 (91.1%); money laundering (35.8%); drug trafficking (29.1%); drug communication facility (24.4%); fraud (22.3%); administration of justice (19.5%); and racketeering/extortion (18.5%). For additional demographic information about the federal offender population, see Tables 4 through 9 in the Commission’s 2008 *Sourcebook of Federal Sentencing Statistics*.

Guideline Cases

As seen in Figure C and Table 10 of the *Sourcebook*, 3.7 percent of all cases sentenced in 2008 went to trial. However, these trial rates have varied historically by both district and offense type.

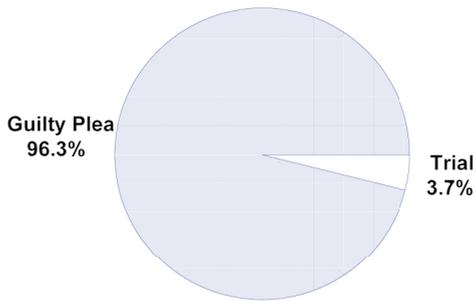


Table 11 shows that among offense types with more than 100 cases, trial rates ranged from 0.7 percent for immigration cases to 11.7 percent for sexual abuse cases.

Table 12 shows that the vast majority of offenders (89.0%) 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/extortion, immigration offenses, pornography/prostitution, and prison offenses. 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.

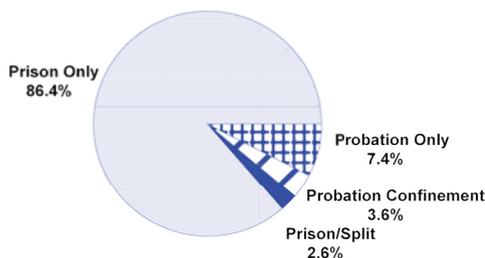
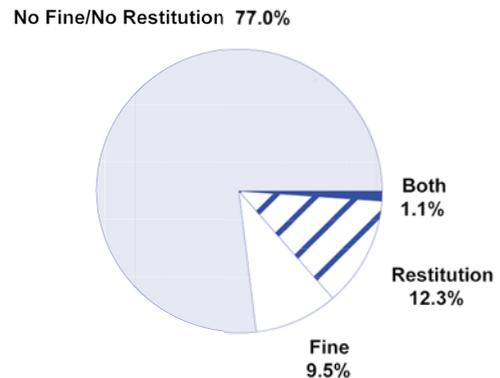


Table 13 shows that the average sentence for all offenders sentenced in 2008, counting probation-only

sentences as zero months' imprisonment, was 49.6 months (median of 24 months). For those offenders sentenced to imprisonment, Table 14 shows the average prison term was 57.2 months (median 33 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.

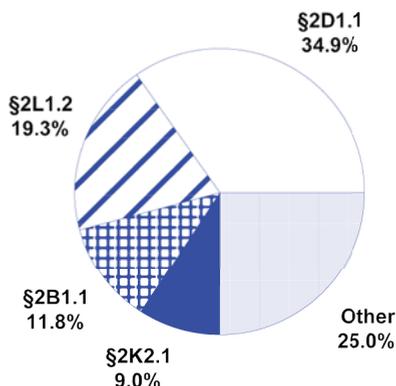
Table 15 shows that 77.0 percent of the offenders had no fine or restitution ordered; and therefore, the remaining offenders were ordered to pay a fine, restitution, or both, in addition to a prison term or probation. For a detailed statistical description of the mode of disposition and sentences imposed, see Tables 10 through 16 and Figures D through F of the 2008 *Sourcebook of Federal Sentencing Statistics*.



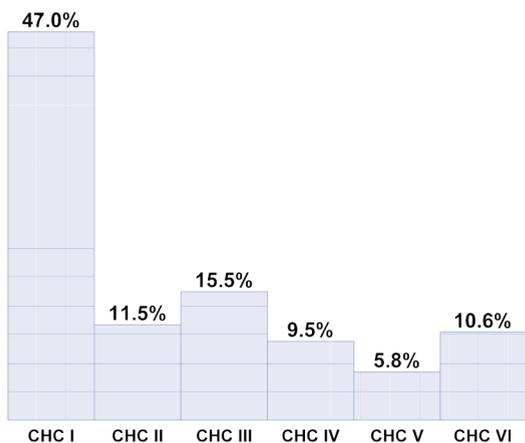
Guideline Application

Table 17 of the *Sourcebook* shows that in 2008 the most frequently applied primary guidelines were Drug Trafficking (§2D1.1); Unlawful Entry into U.S. (§2L1.2); Theft (§2B1.1); Firearms (§2K2.1); and Smuggling Unlawful Alien (§2L1.1).

Table 18 shows that none of the four victim-related adjustments (part of Chapter Three of the guidelines) were applied in more than one percent of cases. Table 18 shows that 4.4 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



0.3 percent received an adjustment for use of a minor in the commission of an offense. Table 18 also shows the application rates of the adjustments for obstruction of justice (2.4%) and reckless endangerment (0.7%). The rate of those receiving the acceptance of responsibility adjustment was 93.9 percent, as shown in Table 18.



As seen in Table 20, 38.7 percent of offenders did not receive criminal history points under the guidelines' criminal history computations. Conversely, more than half of all offenders (61.3%) received points for prior criminal convictions (Chapter Four of the guidelines). Table 21 shows that in 2008 almost half (47.0%) of the offenders were placed in Criminal History Category I and 10.6 percent were placed in Category VI. Table 22 shows that 2,321 offenders received a career offender adjustment, and 653 received an armed career criminal adjustment. For further details of the

guideline application components, see Tables 17 through 23 of the 2008 *Sourcebook of Federal Sentencing Statistics*.

Sentences Within the Guideline Range and Outside the Range

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

The *Sourcebook* includes a number of tables, differing from those presented in *Sourcebooks* for fiscal years prior to 2005, presenting data on cases sentenced outside the guideline range and sorted into a number of categories created in response to the *Booker* decision. Before the decision in *Booker*, non-government sponsored outside the range sentences were classified as upward departures or downward departures. Subsequent to the *Booker* decision, the Commission began coding outside the range cases, separately for above and below, 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.

⁶¹ 543 U.S. 220 (2005).

⁶² 542 U.S. 296 (2004).

⁶³ 543 U.S. at 245.

In fiscal year 2006, 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, 59.4 percent of cases sentenced in 2008 were sentenced within the applicable guideline range. Above range cases accounted for a total of 1.5 percent of all cases, with approximately 40 percent citing a guideline departure reason and 60 percent not citing a departure reason. Of all cases sentenced in 2008, 25.6 percent were sentenced below the guideline range based upon a reason sponsored by the government. Most of these cases (13.5%) were sentenced pursuant to a motion by the government for a reduction because the defendant provided substantial assistance (§5K1.1). Finally, an additional 13.4 percent of the cases were sentenced below the guideline range. Of these 13.4 percent, guideline departure provisions were cited in 3.3 percent of the cases, and 10.1 percent did not cite a departure reason. See Table N.

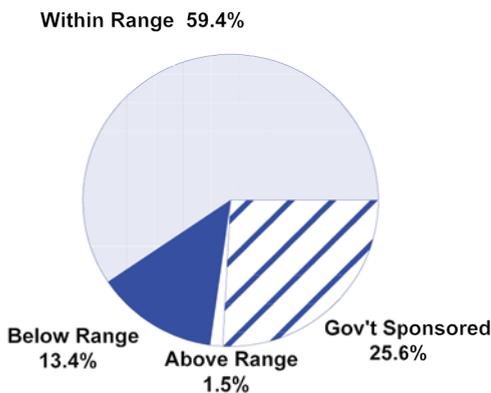
a number of categories created in response to the *Booker* decision. See Appendix A. Nationally, the percentage of within-guideline sentences was 59.4 percent and ranged by district from 32.3 percent to 93.3 percent.

Government sponsored below range sentences account for 25.6 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 13.5 percent and ranged by district from 1.1 percent to 42.6 percent. The rate of below range sentences based upon the Early Disposition Program (§5K3.1) was 7.9 percent nationally and ranged from 0.0 percent (in 71 districts) to 51.9 percent. The rate of other government sponsored below range sentences was 4.2 percent nationally and ranged from 0.0 percent (in 12 districts) to 14.8 percent. See Table 26.

Nationally, an additional 13.4 percent of cases were sentenced below the guideline range classified into four categories. The rate of below range departures was 2.1 percent, ranging from 0.0 percent (in six districts) to 12.9 percent. Below range departures also citing *Booker* were 1.2 percent nationally and ranged from 0.0 percent (in 15 districts) to 8.8 percent. The national rate of below range cases that were not departures but which cited *Booker* was 9.0 percent with a range by district from 0.0 percent (one district) to 28.1 percent. The rate in the category of remaining below range cases was 1.1 percent nationally and ranged from 0.0 percent (in ten districts) to 18.6 percent.

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 fiscal year 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

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 (89.6%). Above range departure rates ranged from 0.0 percent (eight offense types) to 9.1 percent (murder). The rates for above range departure with *Booker* cases ranged from 0.0 percent (13 offense types) to 3.0 percent (murder). The above range with *Booker* rate ranged from 0.0 percent (four offense types) to 4.5 percent (murder). The rates of



the remaining above range cases ranged from 0.0 percent (18 offense types) to 1.7 percent (arson).

The rate of substantial assistance departures ranged by offense type from 0.0 percent (manslaughter) to 79.2 percent (antitrust). Early disposition rates ranged from 0.0 percent (17 offense types) to 21.8 percent (immigration). The rate of application of other government sponsored below range sentences ranged from 0.0 percent (two offense types) to 9.8 percent (racketeering/extortion). See Table 27.

The rate of below range departures ranged by offense type from 0.0 percent (three offense types) to 9.6 percent (national defense). Rates of below range departures with *Booker* ranged from 0.0 percent (two offense types) to 3.8 percent (national defense). Below range with *Booker* had rates by offense type ranging from 1.5 percent (simple possession of drugs) to 25.3 percent (pornography). The rates for the remaining below range cases ranged from 0.0 percent (seven offense types) to 7.1 percent (gambling/lottery). See Table 27.

For sentences within the applicable guideline range, as shown in Table 29, the sentence most often given (55.0% 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 11.1 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 for early disposition (§5K3.1) had a median decrease of seven months from the guideline range, which is a 28.6 percent median decrease. See Table 30A. Those cases receiving an other government sponsored

reduction had a median decrease of ten months from the applicable guideline minimum (a median decrease of 27.4%). See Table 31.

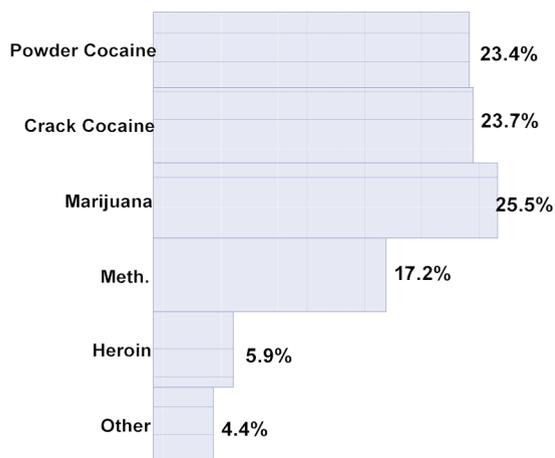
Table 31A shows that the median decrease in cases receiving a below range departure was 10.0 months below the guideline minimum, a median decrease of 28.6 percent. Cases receiving a departure below range with *Booker* saw a median decrease of 15 months from the guideline minimum (40.5% median decrease). See Table 31B. Table 31C presents data on below range cases with *Booker*. The median reduction from the guideline minimum was 12 months (33.3 % 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 six months (39.2% median decrease).

The relative increase above the applicable guideline maximum is presented in Tables 32 through 32C. Departures above the guideline range were a median 14 months above the guideline maximum. This is a 33.3 percent median increase above the guideline maximum. See Table 32. Table 32A shows that the median increase for cases receiving an above range departure with *Booker* was 23 months above the guideline maximum (54.1% 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 ten months above the guideline maximum (25.0% median percent increase). See Table 32C.

For further departure statistics, see Tables 24 through 32C and Figures G and H of the 2008 *Sourcebook of Federal Sentencing Statistics*.

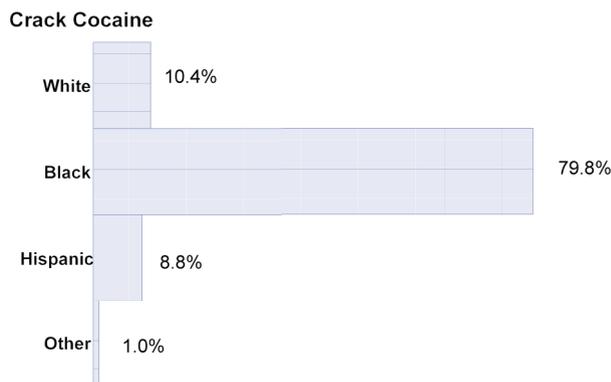
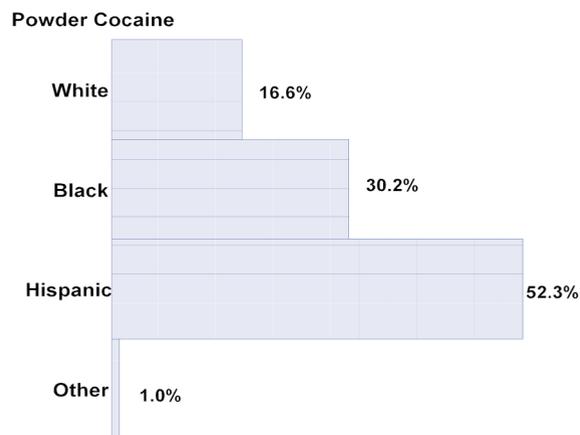
Drug Cases

As in previous years, drug offenses were the largest single category of federal convictions, making



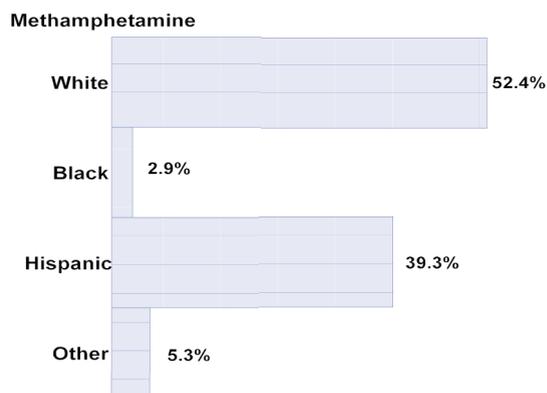
up 32.6 percent of all offenders sentenced in 2008 (Figure A). Among drug cases, 47.1 percent involved cocaine (23.4% powder cocaine and 23.7% crack cocaine), followed by marijuana (25.5%), methamphetamine (17.2%), and heroin (5.9%). See Figure A. Table 33 of the *Sourcebook* shows that nearly all drug offenses (97.1%) were sentenced under the primary drug trafficking guideline (§2D1.1).

Among crack cocaine defendants, the distribution was 8.8 percent Hispanic origin, 79.8 percent Black, and 10.4 percent White. The race/ethnicity distribution of drug defendants involved with methamphetamine was 39.3 percent Hispanic origin, 2.9 percent Black, and 52.4 percent White. Among drug defendants overall, 87.7 percent



were male; and 28.3 percent were non-United States citizens. Except for crack cocaine offenders, the majority of drug offenders were in Criminal History Category I. See Tables 34–37.

Drug offenders received sentence increases for possession or use of weapons in 17.2 percent of all the drug cases (Table 39). A sentence adjustment for role in the offense (Table 40) was imposed in 26.4 percent of drug cases; 20.7 percent received a mitigating role adjustment and 5.7 percent received an aggravating role adjustment. Wide variation was observed in application of the mitigating role adjustment across drug types, with 41.8 percent of marijuana offenders and 22.5 percent of heroin offenders receiving a mitigating role adjustment



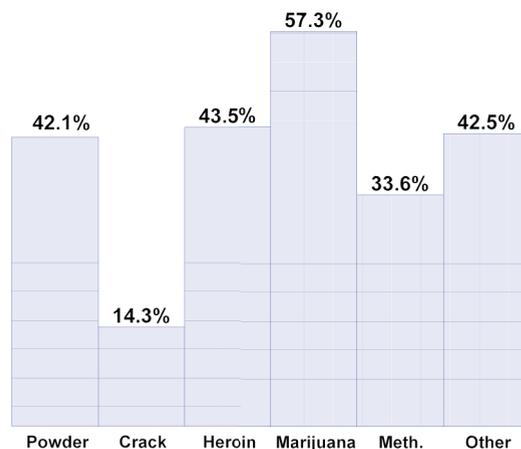
compared to 5.2 percent for crack cocaine offenders. Slightly more than 93 percent (93.6%, Table 41) of drug offenders received an adjustment for acceptance of responsibility.

Table 43 of the *Sourcebook* shows that 66.3 percent of drug offenders were convicted under statutes carrying a mandatory minimum penalty (27.3% a five-year and 39.0% a ten-year or longer mandatory minimum). The highest percentages of offenders receiving a mandatory minimum were methamphetamine offenders (81.3%), crack cocaine offenders (79.3%), and powder cocaine offenders (79.2%). A ten-year or longer mandatory minimum was applicable in more than half of both powder cocaine cases (55.0%) and methamphetamine cases (56.5%).

In 1994, Congress enacted the “safety valve” provision to provide nonviolent, low-level, first-time drug offenders relief from mandatory minimum sentences. Under this provision, incorporated into the guidelines at §5C1.2, 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 37.9 percent of drug offenders received the benefit of the two-level reduction for meeting the “safety valve” criteria, including 13.9 percent who were not subject to a drug mandatory minimum and 24.0 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 offenders (14.3%) were the least likely. As displayed in Figure J, the average overall prison term for drug offenders varied widely by drug type, from a mean of 114.5 months for crack cocaine offenders (median of 97 months) to 36.8 months for marijuana offenders (median of 24 months). See Tables 33 through 45 and Figures I through L of the *2008 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 (92.7%), of Hispanic origin (84.2%), and had less than a high school education (80.5%). A large percentage of immigration convictions involved non-United States citizens (90.1%, Table 48) and were the result of a guilty plea (99.2%, Table 46). For detailed statistics on immigration violations, see Tables 46 through 50 of the *2008 Sourcebook of Federal Sentencing Statistics*.

Organizational Sentencing Practices

Sentencing guidelines for organizations convicted of federal offenses became effective November 1, 1991.⁶⁴ 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

⁶⁴ See *Guidelines Manual*, Chapter Eight—Sentencing of Organizations.

offenders.⁶⁵ 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.⁶⁶ In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.⁶⁷

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.⁶⁸ 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 2008, the Commission received information on 198 organizations⁶⁹ that were sentenced under Chapter Eight, a 1.0 percent increase from 2007 and an 8.8 percent decrease from 2006.⁷⁰ The sentenced organizations pled guilty in 181 (91.0%) of the cases; 18 (9.0%) were convicted after a jury trial. See Table 53 of the 2008 *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

⁶⁵ See USSG §8A1.1.

⁶⁶ See USSG §8C2.1.

⁶⁷ See USSG §§2B4.1(c); 2C1.1(d); 2R1.1(d).

⁶⁸ See USSG §8C2.1.

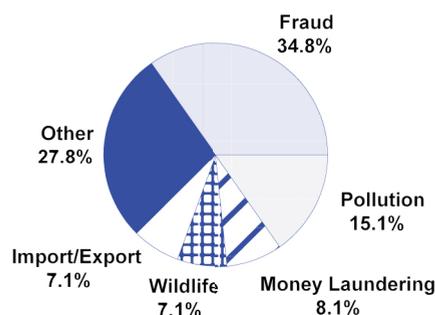
⁶⁹ One additional case was excluded from this analysis for missing information on the type of economic sanction (if any).

⁷⁰ As with individual defendants, the Commission datafile describing organizational defendants is available through the Inter-University Consortium for Political and Social Research at the University of Michigan. See page 32.

to make compliance and ethics-related improvements as a condition of probation. Also beginning with the 2000 *Sourcebook*, the Commission instituted new designations for some offense types, which continue to be refined to more accurately report the data captured. Consequently, some direct comparisons of the 2008 *Annual Report* to prior annual reports may not be possible.

Offense Characteristics

As in 2007, fraud was the most frequent type of offense committed by an organization sentenced in federal court, accounting for 69 (34.8%) of the 198 cases sentenced. Other significant offense categories included environmental pollution (15.1%),⁷¹ money laundering (8.1%), environmental/wildlife (7.1%), and import and export (7.1%). See Table 51 of the 2008 *Sourcebook of Federal Sentencing Statistics*.



Offender Characteristics

In those cases in which the fine provisions of §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 198 cases sentenced in 2008, the court ordered a fine in 135 cases (68.2%) and applied the fine provisions of

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

§8C2.1 to calculate the fine in at least 98 cases (49.2%) for which the Commission received detailed culpability score information.⁷² See Tables 52–54 of the *2008 Sourcebook of Federal Sentencing Statistics*.

In numerous cases, the organization's culpability score was reduced based on the presence of certain mitigating culpability factors. Of the 95 cases with detailed culpability score information on self-reporting, cooperation, and acceptance of responsibility, 77 organizations (81.1%) received reductions in their culpability scores, pursuant to §8C2.5(g), for either self-reporting, cooperating, or accepting responsibility. Fifty-six organizations (58.9%) received reductions in their culpability scores for cooperating with the government's investigation⁷³ and another 20 organizations (21.1%) received reductions for accepting responsibility for their wrongdoing.⁷⁴ One organization received the full five-point reduction in its culpability score for reporting the offense to governmental authorities,⁷⁵ cooperating with the investigation, and accepting responsibility for the offense (1.1%).

No organizations received a reduction in their culpability score for having in place an "effective compliance and ethics program."⁷⁶ Eighteen organizations (18.9%) received no culpability score reductions inasmuch as they did not self-report, cooperate with the authorities, or accept responsibility. See Table 54 of the *2008 Sourcebook of Federal Sentencing Statistics*.

In a number of cases, the organization's culpability score was increased based on the presence of aggravating culpability factors. Among those 93 cases with complete detailed culpability score

calculations, three organizations (3.2%) received an increase pursuant to §8C2.5(e) for having obstructed justice, which resulted in an increased culpability score for sentencing purposes. One organization (1.1%) received an increase under §8C2.5(c) (for a history of prior criminal or administrative offenses within five years), and one organization (1.1%) received an increase under §8C2.5(d) (for violation of a judicial order, injunction, or condition of probation). See Table 54 of the *2008 Sourcebook of Federal Sentencing Statistics*.

Sanctions Imposed

Of the 198 cases sentenced in fiscal year 2008, restitution was ordered in 65 cases (32.8%), and a fine was imposed in 135 cases (68.2%). See Table 52. The median restitution ordered was \$175,000 and the median fine imposed was \$60,000. See Table 52 of the *2008 Sourcebook of Federal Sentencing Statistics*.

The highest two fines in 2008 were imposed on commercial carriers for violations of antitrust provisions. The organizations were fined \$210 million and \$140 million each for a scheme to fix prices. The third highest fine, \$110 million, was also imposed on a commercial carrier for restraint of trade violations. The largest restitution order in 2008, \$99 million, was imposed on an organization for health care fraud violations.

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 198 cases sentenced pursuant to Chapter Eight, 130 (65.7%) received one month or more of probation, and 12 (6.2%) were ordered to make compliance- or ethics-related improvements. See Table 53 of the *2008 Sourcebook of Federal Sentencing Statistics*.

Appeals data

The Sentencing Reform Act authorized appellate review of guideline sentences if the sentence (1) was imposed in violation of law; (2) was imposed as a result of an incorrect application of the sentencing guidelines; (3) is greater (appeal by the defendant) or less (appeal by the government) than the sentence specified in the applicable guideline range; or (4) was

⁷² 101 cases had fine guidelines application data missing or inapplicable due to guideline provisions such as a "preliminary determination of inability to pay a fine" (§8C2.2), which applied to 48 cases in 2008.

⁷³ See USSG §8C2.5(g)(2).

⁷⁴ See USSG §8C2.5(g)(3).

⁷⁵ See USSG §8C2.5(g)(1).

⁷⁶ See USSG §8C2.5(f).

imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.⁷⁷ In *Booker*,⁷⁸ the Supreme Court excised 18 U.S.C. § 3742(e), which provided a *de novo* standard of review for departures from the guidelines, and replaced it with reasonableness review. The following is a summary of fiscal year 2008 information from the Commission’s Appeals Database.⁷⁹

Summary of Information Received

In fiscal year 2008, the Commission collected information on 8,688 appellate court cases. See Figure M of the 2008 *Sourcebook of Federal Sentencing Statistics*. Of the 8,688 appellate court cases, the defendant was the appellant in 8,462 (97.4%), the government was the appellant in 147 (1.7%), and 70 (0.9%) were cross appeals. Of the 8,688 appellate court cases collected for 2008, 6,332 (72.9%) were sentencing appeals, which represents a decrease of 307 (4.8%) sentencing appeals compared to 2007 (n=6,639), and 2,356 (27.1%) were “conviction only”

appeals.⁸⁰ See Figure M of the 2008 *Sourcebook of Federal Sentencing Statistics*.

Defendants were the appellants in 6,246 (98.6%) of the 6,332 sentencing appeals analyzed for 2008. Four circuits (the Fourth, Fifth, Ninth, and Eleventh) accounted for 3,614 (57.1%) of sentencing appeals brought by the defendant. The government was the appellant in 150 (2.4%) of the 6,332 sentencing appeals analyzed for 2008. Four circuits (the Sixth, Eighth, Ninth, and Eleventh) accounted for 86 (57.3%) of the 147 sentencing appeals brought by the government. See Tables 56 and 56A of the 2008 *Sourcebook of Federal Sentencing Statistics*.

The overall disposition rates for sentencing appeals in 2008 were –

	Number	Percent
Affirmed	5,113	80.8
Dismissed	339	5.4
Reversed⁸¹	544	8.6
Affirmed in part/ Reversed in part⁸²	261	4.1
Remanded only⁸³	75	1.2
Totals	6,332	100.0

⁷⁷ 18 U.S.C. § 3742(a), (b).

⁷⁸ *U.S. v. Booker*, 543 U.S. 220 (2005).

⁷⁹ In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. Each fiscal year, data collection for appellate review is compiled from three sources. First, many appellate courts submit to the Commission slip opinions of both published and unpublished opinions and orders. The Commission creates a master list of these opinions as they are received. Second, the Commission performs a supplemental computer search for all published and unpublished opinions and orders using commercially available legal databases and adds any available decisions not received directly from the courts to the master list. Third, because courts do not submit all relevant opinions and orders to commercially available legal databases, the Commission checks individual court websites and adds any available appeals from the fiscal year. These sources may not provide the Commission with every appellate sentencing decision rendered in a fiscal year. The Commission’s Appeals Database, therefore, may not report all appellate decisions rendered in that fiscal year.

⁸⁰ Although the Commission is interested primarily in information on appellate court cases that involve sentencing issues, it initially collects information on all criminal appeals. The database then retains only information involving sentencing issues. The statistics used in this report are from the defendant-based files of the appeals database. Each defendant-based file will be referred to as an appeal.

⁸¹ Of the 544 sentencing appeals reversed, the appellate courts remanded 530 (98.1%) to the district courts for further action.

⁸² Of the 261 sentencing appeals affirmed in part/reversed in part, the appellate courts remanded 250 (95.8%) to the district courts for further action.

⁸³ Prior to fiscal year 2005, the Commission did not report separately the number of appeals remanded to the lower courts without vacating the original sentence. These data are now included as “remanded” in Tables 56 and 56A of the 2008 *Sourcebook of Federal Sentencing Statistics*.

The circuit courts affirmed 81.5 percent of the sentencing appeals brought by the defendant in fiscal year 2008, an increase of 1.5 percent from fiscal year 2007 (80.0%). The Fifth Circuit affirmed the highest percentage of such appeals (88.8%); the Seventh and the Tenth Circuit affirmed the lowest percentage (63.4%).

The circuit courts affirmed 30.0 percent of sentencing appeals brought by the government in fiscal year 2008, an increase of 6.8 percent from fiscal year 2007 (23.2%). The Fifth Circuit affirmed the highest percent of such cases (41.7%); the Third Circuit affirmed the lowest percentage (0.0%).

Issues and Guidelines Appealed

In the 6,246 sentencing appeals brought by the defendant in 2008, defendants appealed 13,839 discrete sentencing issues. The sentencing issue most frequently appealed by defendants related to the 18 U.S.C. § 3553(a) factors, at 12.1 percent (n=1,676). See Table 57 of the *2008 Sourcebook of Federal Sentencing Statistics*. The specific section 3553 issues most often appealed by defendants in fiscal year 2008 concern the history and characteristics of the defendant (11.2%); adequacy of the statement of reasons (9.4%); and avoiding unwarranted disparity with co-defendants (9.2%). See Table 59 of the *2008 Sourcebook of Federal Sentencing Statistics*.

In fiscal year 2008, defendants most frequently appealed sentences involving application of the drug trafficking guideline (§2D1.1), at 11.6 percent (n=1,603), followed by application of §2L1.2 (Unlawfully Entering or Remaining in the United States)(7.5%); §2K2.1 (Firearms)(2.6%); §2B1.1 (Larceny, Embezzlement and Theft)(2.6%); §3E1.1 (Acceptance of Responsibility)(1.6%); §3B1.1 (Aggravating Role)(1.6%), and §3B1.2 (Mitigating Role)(1.6%). See Table 57 of the *2008 Sourcebook of Federal Sentencing Statistics*.

The affirmance rate for the 13,839 discrete sentencing issues appealed by defendants decreased 0.9 percent from 93.0 percent in fiscal year 2007 to 92.1 percent in fiscal year 2008. The affirmance rate of appeals involving §2D1.1 decreased 9.1 percent,

from 95.0 percent in 2007 to 85.9 percent in 2008; those involving §2L1.2 increased 5.5 percent, from 88.9 percent to 94.4 percent; those involving §2K2.1 decreased 2.6 percent, from 94.4 percent to 91.8 percent; those involving §2B1.1 increased 1.5 percent, from 89.4 percent to 90.9 percent; those involving §3E1.1 decreased 1.2 percent, from 97.2 percent to 96.0 percent; those involving §3B1.1 decreased 2.2 percent, from 94.6 percent to 92.4 percent; and those involving §3B1.2 decreased 1.0 percent, from 99.1 percent in 2007 to 98.1 percent in 2008.

The affirmance rate of appeals brought by a defendant involving the factors at 18 U.S.C. § 3553(a) decreased 2.5 percent from 96.9 percent in 2007 to 94.4 percent in fiscal year 2008. The affirmance rate of Constitutional Issues appealed by defendants increased 2.9 percent from 91.6 percent in 2007 to 94.5 percent in 2008, and the affirmance rate of defendant-based appeals involving Other Non-guideline Issues increased 0.9 percent from 92.4 percent in 2007 to 93.3 percent in 2008. See Table 57 of the *2008 Sourcebook of Federal Sentencing Statistics*.

In the 147 sentencing appeals brought by the government in 2008, the government appealed 291 discrete sentencing issues. The sentencing issue appealed most frequently by the government related to the 18 U.S.C. § 3553(a) factors, at 16.8 percent (n=49). See Table 58 of the *2008 Sourcebook of Federal Sentencing Statistics*. The government most frequently appealed sentences involving application of the drug trafficking guideline (§2D1.1), at 9.3 percent (n=27), followed by application of §2B1.1 (Larceny, Embezzlement and Theft)(5.2%); §5K2.0 (Departures)(4.1%); and §2G2.2 (Trafficking in Material Involving Sexual Exploitation of a Minor)(2.7%).

The affirmance rate for the 291 discrete sentencing issues appealed by the government in fiscal year 2008 increased 9.2 percent from 30.0 percent in 2007 to 39.2 percent. The affirmance rate of Constitutional Issues appealed by the government increased 19.1 percent from 37.0 percent in 2007 to 56.1 percent in 2008, and the affirmance rate of government-based appeals involving Other Non-

guideline Issues increased 16.2 percent from 36.4 percent in 2007 to 52.6 percent in 2008. See Table 58 of the *2008 Sourcebook of Federal Sentencing Statistics*.

Reasonableness

Of the 6,332 sentencing appeals analyzed for fiscal year 2008, the appellate courts reviewed the sentencing issues for reasonableness in 1,982 appeals. Of the 1,982 reasonableness appeals, defendants were the appellants in 1,937 (97.7%), the government was the appellant in 34 (1.7%), and 11 (0.6%) were cross appeals. Of the 1,937 reasonableness appeals brought by defendants, the circuit courts determined the sentence to be reasonable in 1,898 (98.0%) and unreasonable in 39 (2.0%). Of the 34 reasonableness appeals brought by the government, the circuit courts determined the sentence to be reasonable in 18 (52.9%) and unreasonable in 16 (47.1%). Of the 11 cross appeals, the circuit courts determined the sentence to be reasonable in eight (72.7%) and unreasonable in three (27.3%).

Overall Offense and Offender Characteristics

Of the 6,246 sentencing appeals brought by defendants in fiscal year 2008, 26.4 percent of the defendants were White, 33.5 percent Black, 36.9 percent Hispanic, and 3.2 percent Other. Blacks make up a larger proportion of the appeals population than they do of the district court population (of the defendants sentenced in district court, 29.8% were White, 24.0% were Black, and 42.2% were Hispanic). Just over two-thirds (67.1%) of the defendants in the appellate court cases analyzed were United States citizens, a decrease of 3.3 percent from 70.4 percent in 2007.

Of the 6,332 sentencing appeals analyzed for fiscal year 2008, 1,737 (28.0%) of the defendants were sentenced under mandatory drug sentencing statutes, 487 (7.8%) were sentenced under mandatory gun sentencing statutes, and 254 (4.1%) were sentenced under both drug and gun mandatory sentencing statutes. Mandatory minimum penalties applied to 39.9 percent (n=2,478) of the appellate cases analyzed, compared to 24.5 percent (n=18,756) of the district court cases. See Table 60 of the *2008 Sourcebook of Federal Sentencing Statistics*.

Appealed cases had considerably longer sentences than the typical sentence issued by a district court. The mean sentence of appealed cases was 143 months (median=100 months) compared to 50 months (median=26 months) for all district court cases sentenced in fiscal year 2008. The mean sentence of appealed cases did not change from 143 months (median=108) in 2007, and the mean sentence of district court cases decreased from 52 months (median=30 months) in fiscal year 2007. Of the 6,332 sentencing appeals analyzed for fiscal year 2008, 2,395 (38.7%) involved defendants whose primary offense of conviction was drug trafficking, a decrease from 2,664 (41.4%) in fiscal year 2007. Drug trafficking was the primary offense in 32.1 percent of all cases sentenced in district court, a decrease of 1.6 percent from 33.7 percent in fiscal year 2007. See Table 61 of the *2008 Sourcebook of Federal Sentencing Statistics*.

Data on Resentencing and Other Modifications of Sentence

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

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

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

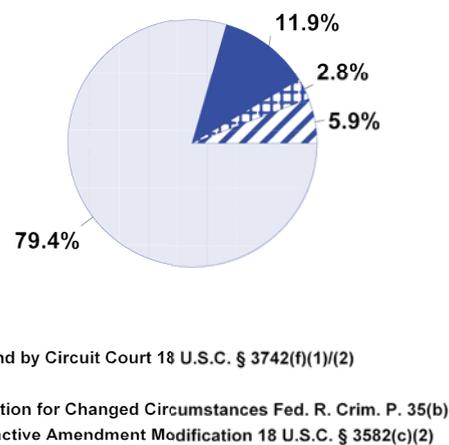
⁸⁶ This type of resentencing occurs after a prior conviction for a serious violent felony or serious drug offense that triggered any aggravated penalty under 18

court (28 U.S.C. § 2255);⁸⁷ (6) modification of imposed term of imprisonment for extraordinary and compelling reasons (18 U.S.C. § 3582(c)(1));⁸⁸ (7) modification of imposed term of imprisonment for retroactive amendment to the sentencing guidelines (18 U.S.C. § 3582(c)(2))⁸⁹; and (8) unknown type of resentencing.⁹⁰ The following is a summary of resentencings occurring during fiscal year 2008 from the Commission’s Resentencing Database.⁹¹

Summary of Information Received

In 2008, the Commission received documentation on 14,371 resentencings and other modifications of sentence. The most frequently reported reason was modification of a term of imprisonment for

retroactive amendment to the sentencing guidelines (11,412 or 79.4% of all cases). Almost all⁹² cases citing this reason were the result of the retroactive application of the 2007 amendment to the drug guideline for cases involving crack cocaine.⁹³ The district courts in four circuits (the Fourth, Eleventh, Fifth, and Eighth) account for 65.1 percent (n=7,809) of these cases. The districts with the highest number of these cases are Eastern Virginia (n=679), Middle Florida (n=620), and South Carolina (n=601).



The second most common type of resentencing or modification of sentence was a reduction for substantial assistance to the government after sentencing pursuant to Federal Rule of Criminal Procedure 35(b). Of the 1,709 cases (11.9% of the total) citing this reason, four districts resentenced offenders under the rule in more than 100 cases: Southern Florida (n=188), Eastern Virginia (n=180), Nebraska (n=116), and Southern Illinois (n=106).

The third most common type of resentencing is remands from the circuit court, comprising 851 resentencings (5.9%). The districts with the highest

U.S.C. § 3559(c)(7) is overturned.

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

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

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

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

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

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

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

number of resentencings after remand are Southern Texas (n=59), Southern California (n=37), Northern Illinois (n=31), Southern Florida (n=30), and Western Texas (n=30).

Modification of a restitution order was the reason for resentencing in 223 cases (1.6%),⁹⁴ and modification due to a direct motion to the district court pursuant to 28 U.S.C. § 2255 was the reason for 90 cases (0.6%). One case was resentenced due to a direct motion to the district court pursuant to 18 U.S.C. § 3559(c)(7). See Table 62 of the 2008 *Sourcebook of Federal Sentencing Statistics*.

Data Analyses for the Courts and Congress

Using the Commission's 2008 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 be provided to the members of the Senate and House Committees on the Judiciary. Distribution of these packets will allow the Commission to better inform the members of these oversight committees about what types of information were collected and are available in the Commission's 2008 dataset and will allow members to see what types of cases were sentenced at the federal level, both nationally and in individual districts and states. The Commission will

also make these statistical informational packets available to the general public at the Commission's website, <http://www.ussc.gov/linktojp.htm>. The website also includes statistical informational packets for several earlier years.

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

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