

# **Appendix A**

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## **Descriptions of Datafiles, Variables, and Endnotes**

## Introduction

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Federal courts are required to forward to the Commission sentencing documentation on all defendants sentenced under the Sentencing Reform Act of 1984 (SRA), except in cases that solely involve petty offenses. Standard information on each case is extracted from sentencing documents received and computerized for analysis.

Tables in this report use the Commission's datafile, USSCFY10, which includes information on the 83,946 defendants sentenced under the SRA between October 1, 2009, through September 30, 2010, for whom sentencing documents were received as of February 14, 2011.

Given the nature of the datafile and reporting requirements, the following are not included: cases initiated but for which no convictions were obtained, offenders convicted for whom no sentences were yet issued, and offenders sentenced but for whom no sentencing documents were submitted to the Commission. Because the Commission collects information only on cases sentenced under the guidelines, information on cases sentenced under prior law (pre-guidelines) during the current fiscal year is not available in this dataset. When cases are sentenced under both prior law and the guidelines, only the guideline relevant information is coded in the dataset. Cases in which a sentence of death was imposed also are not available in this dataset for this same reason.

Note that for all tables, total percentages may not add up to exactly 100 percent due to rounding.

## Variables

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The following section describes the variables used in this report.

### **Above Guideline Range with *Booker*/18 U.S.C. § 3553**

*Above Guideline Range with Booker/18 U.S.C. § 3553* consists of cases with a sentence above the guideline range with no departure indicated and that cite *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

### **Age**

The *Age* of the offender on the day of sentencing is calculated using the offender's date of birth as reported in the presentence report and the date of sentencing as reported in the Judgment and Commitment Order.

### **All Remaining Cases Above Guideline Range**

*All Remaining Cases Above Guideline Range* consists of cases sentenced above the guideline range that cannot be classified into any of the other three above the range categories. This category includes, for example, cases in which no reason is provided for a sentence above the guideline range.

### **All Remaining Cases Below Guideline Range**

*All Remaining Cases Below Guideline Range* consists of cases sentenced below the guideline range that cannot be classified into any of the other three below the range categories. This category

includes, for example, cases in which no reason is provided for a sentence below the guideline range.

### **Appeals**

*Appeals* data are derived from analyses of opinions and orders from the courts of appeals. For purposes of the appeals data, an appeals case is one in which a federal court of appeals has issued an opinion or order. Opinions and orders submitted by the courts are collected and coded. All appeals cases are coded for identifying data, such as parties, disposition, date, and circuit. In cases in which the appellant is appealing a sentencing issue, the sentencing issue is coded. Conviction issues are not coded.

### **Length of Imprisonment**

Using sentencing information obtained from the Judgment and Commitment Order, *Length of Imprisonment* is reported as the mean and median terms of imprisonment (not including any months of alternative confinement as defined in USSG §5C1.1) ordered for cases committed to the Bureau of Prisons. Cases that receive no term of imprisonment are not included. Cases for which a term of imprisonment is ordered, but the length is indeterminable, also are excluded. In most cases for which the exact term is unknown, the Judgment and Commitment Order merely specifies a sentence of time served. Prior to fiscal year 1993, the Commission defined life sentences as 360 months. However, to reflect life expectancy of federal criminal defendants more precisely and to provide more accurate length of imprisonment information, life sentences and all sentences above 470 months are now capped at 470 months.

### **Sentence Length**

Using sentencing information obtained from the Judgment and Commitment Order, *Sentence Length* is reported as the mean and median terms of imprisonment ordered for cases (including any months of alternative confinement as defined in USSG §5C1.1). Cases that receive no term of imprisonment (*i.e.*, probation) are included. Cases for which a term of imprisonment is ordered, but the length is indeterminable, are excluded. In most cases for which the exact term is unknown, the Judgment and Commitment Order merely specifies a sentence of time served. Prior to fiscal year 1993, the Commission defined life sentences as 360 months. However, to reflect life expectancy of federal criminal offenders more precisely and to provide more accurate length of imprisonment information, life sentences and all sentences above 470 months are now capped at 470 months.

### **Below Guideline Range with *Booker*/18 U.S.C. § 3553**

*Below Guideline Range with Booker/18 U.S.C. § 3553* consists of cases with a sentence below the guideline range with no departure indicated and that cite *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

### **Chapter Two Guideline Applied**

*Chapter Two Guideline Applied* represents the offense specific guideline applied from that chapter. For cases in which a cross reference is used, the guideline that most fully explains the sentence is shown. The *guideline applied* is the last guideline referenced and may be equivalent to either the guideline referenced by statute or the cross-referenced guideline.

### **Circuit**

Information on judicial *Circuit* is generated by computer using the location of the judicial district in which the offender was sentenced.

## **Citizenship Status**

Information on the *Citizenship Status* of offenders is obtained from the presentence report. Offenders are categorized as one of the following: “U.S. citizen,” “resident alien,” “illegal alien,” and “non-U.S. citizen, alien status unknown.” The latter three categories are collapsed into the category of “non-U.S. citizen.”

## **Country of Citizenship**

Information on the *Country of Citizenship* for non-U.S. citizen defendants is obtained from the presentence report and includes the most frequently occurring countries of origin for non-U.S. citizens. Countries appearing fewer than 50 times are collapsed into the “other” category.

## **Criminal History Category**

*Criminal History Category* is derived from the Statement of Reasons provided by the sentencing court. Tables involving the Statement of Reasons are based on the cases for which the Commission has received such documents.

Criminal history category is taken from the presentence report when the Statement of Reasons is not available. While the court may disagree with presentence report information, the criminal history category is the same in the vast majority of cases for which both documents were received.

## **Degree of Decrease**

*Degree of Decrease* is calculated based on the difference between the length of imprisonment (not including any months of alternative confinement as defined in USSG §5C1.1) and the guideline minimum for the following categories of below range cases: downward departure from guideline range, downward departure with *Booker/18* U.S.C. § 3553, below guideline range with *Booker/18* U.S.C. § 3553, all remaining cases below guideline range, USSG §5K1.1 substantial assistance cases, and USSG §5K3.1 early disposition program cases, and other government sponsored cases. Life sentences and cases where the guideline minimum is zero months or life are all excluded from all degree of decrease calculations due to the logical difficulty in calculating a decrease from these values.

## **Degree of Increase**

*Degree of Increase* is calculated based on the difference between the guideline maximum and the length of imprisonment (not including any months of alternative confinement as defined in USSG §5C1.1) for the following categories of above range cases: upward departure from guideline range, upward departure with *Booker/18* U.S.C. § 3553, above guideline range with *Booker/18* U.S.C. § 3553, all remaining cases above guideline range. Life sentences, sentences of probation, and cases where the guideline minimum is life are all excluded from all degree of increase calculations due to the logical difficulty in calculating an increase from these values.

## **District**

Information on the judicial *District* in which sentencing occurred is obtained from the Judgment and Commitment Order.

## **Document Submission Rates**

Five documents are represented in the document submission rate table: Judgment and Commitment Order (J&C), presentence report (PSR), Statement of Reasons (SOR), Indictment/Information (Ind), and Plea Agreements (Plea). The J&C and PSR generally are submitted in a standardized format. PSRs waived by the court are indicated in a separate

column. Standardized forms for the Statement of Reasons are most frequently submitted; however, transcripts or partial transcripts from the sentencing hearing are also included as *Statement of Reasons Received*. Cases in which the Commission was unable to determine definitively whether the offender's guilty plea was entered pursuant to a written agreement are excluded from the Plea Agreement totals. The total requested documents received column is derived from adding the total number of received documents from the Judgment and Commitment Order (J&C), Presentence Report (PSR), Statement of Reasons (SOR), Indictment/Information (Ind), and Plea Agreements (Plea). The total requested documents not received column is derived from adding the total number of not received documents from the Judgment and Commitment Order (J&C), Presentence Report (PSR), Statement of Reasons (SOR), Indictment/Information (Ind), and Plea Agreements (Plea). Cases where the PSR is waived, there is no written plea agreement/trial, and where the Commission was unable to definitively determine whether the offender's guilty plea was entered pursuant to a written plea agreement are all excluded from the calculations for the total requested documents column.

### **Downward Departure From Guideline Range**

*Downward Departure From Guideline Range* consists of cases with departures below the guideline range that do not cite as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or factors or reasons specifically prohibited in the provisions, policy statements, or commentary of the federal guidelines manual.

### **Downward Departures with Booker/18 U.S.C. § 3553**

*Downward Departures with Booker/18 U.S.C. § 3553* consists of cases with a sentence below the guideline range that include both a departure (see Downward Departure From Guideline Range) as well as a sentence outside the guideline system mentioning either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing below the guideline system.

### **Drug Amount**

In a drug case, the amount of the controlled substance is obtained from the Judgment and Commitment Order or the presentence report and included in the USSC datafile. It is used to apply the base offense level from USSG §2D1.1. Table 42 shows the number of cases, mean drug weight, and median drug weight for cases involving specific drug types that were sentenced under USSG §2D1.1 and received one of four relevant base offense levels. The category *Methamphetamine* includes pure (actual) methamphetamine, "ICE," methamphetamine mixture, and methamphetamine precursors (specifically including ephedrine and pseudoephedrine). ("ICE" has been included in the methamphetamine category since FY1996). All methamphetamine weights are converted to methamphetamine actual.

### **Drug Offense Guideline**

*Drug Offense Guideline* information is obtained from the presentence report and is based on the guidelines in USSG Chapter Two, Part D. The six guidelines featured in the tables (USSG §2D1.1, §2D1.2, §2D1.5, §2D1.6, §2D1.8, and §2D2.1) represent the vast majority of drug cases.

### **Drug Type**

Information on *Drug Type* is obtained from the Judgment and Commitment Order or the Presentence Report. It is recorded only if at least one of the statutes of conviction recorded by the Commission is a title 21 U.S. Code offense or a non-title 21 offense when the underlying conduct involves a controlled substance. Information about type of drug in the text and tables is derived from the primary drug type (*i.e.*, the type that produces the highest base offense

level). The category *Marijuana* includes Hashish and Hashish oil. The category *Methamphetamine* includes pure (actual) methamphetamine, “ICE,” methamphetamine mixture, and methamphetamine precursors (specifically including ephedrine and pseudoephedrine). (“ICE” has been included in the methamphetamine category since FY1996). All drug types not listed separately in this report are collapsed into the “other” drug category.

### **Education**

Information on education of the offender is obtained from the presentence report and is collapsed into general categories. Technical, military, and vocational training as well as course work at community colleges is included in the *Some College* category. A general equivalency degree (GED) is included in the *High School Graduate* category.

### **Fines and Restitution**

*Fines and Restitution* information is obtained from the Judgment and Commitment Order. The *Total Receiving Fines and Restitution* category includes the number of cases ordered to pay a fine, make restitution, or both. Fine information may also include cost of supervision. Cases involving fines and restitution overlap with other sentencing categories because fines and restitution may be ordered in conjunction with the imposition of other sanctions.

The average dollar *Amount of Payment Ordered*, presented both in *Mean* and *Median* values, is the dollar amount of the fine and the restitution ordered for cases involving economic sanctions. Cases that receive no fine or restitution are not included in the calculation of the average. The number of cases upon which the average is based may not equal the *Total Receiving Fines and Restitution*; this is due to the failure of some Judgment and Commitment Orders to specify the dollar amount ordered. The *Sum* of payment ordered reflects the total dollar amount of fines and restitution ordered, excluding cases in which the amount is indeterminable. The median of payments ordered reflects the amount located at the fiftieth percentile of all amounts ordered, excluding cases in which the amount was indeterminable or zero.

### **Gender**

*Gender* of the defendant is obtained from the presentence report or probation office.

### **Government Sponsored Below Range**

Government sponsorship of a departure is determined by a yearly case review by USSC staff of both the reasons for departure and the coding by USSC staff of any indication of government sponsorship as indicated on the Statement of Reasons for below range cases. The SOR form AO245B version 12/03, 06/05, and 09/08 have specific check-boxes to indicate the origins of the departure, but cases that do not use this form may also indicate in writing the origins of the departure. Additionally, all cases with one or more of the following reasons were classified as being sponsored by the government regardless of whether the SOR indicated sponsorship: pursuant to a plea agreement (binding, non-binding, or unknown), fast track, savings to the government, early plea, deportation, waiver of indictment and/or appeal, other government motion, global disposition, due to stipulations, facilitated early release of a material witness, joint recommendation, and large number of immigration cases. Note that because the USSC reviews the reasons on a yearly basis, this list might be modified slightly from year to year. Unless otherwise broken out in the table or chart, this category also includes cases with USSG §5K3.1 Early Disposition Program (EDP) departures.

### **Guideline Offenders Sentenced**

Each *Guideline Offender Sentenced* or case, as recorded by the USSC, involves a single sentencing event for a single offender. Multiple counts, and even multiple indictments, are considered a single sentencing event if sentenced at the same time by the same judge. A single offender may appear in more than one case if involved in more than one sentencing event during the fiscal year. Co-offenders in the same sentencing will each appear as separate cases.

### **Guideline Sentencing Range**

The *Guideline Sentencing Range* is taken from the Statement of Reasons provided by the sentencing court. Alternatively, if the Statement of Reasons is missing, then the information is taken from the presentence report.

For tables in this report, unless otherwise indicated, the guideline sentencing range does not take into account applicable statutory restrictions on either the maximum or the minimum of the range; therefore, it may differ from the available range, which does take into account the statutory restrictions.

### **Mandatory Minimum**

Information on *Mandatory Minimum* penalties is obtained from the presentence report and represents the assessment of the probation officer. The sentencing court may alter this mandatory minimum information; occasionally such changes are not reflected in the documents received by the Commission.

The majority of cases reported in the *Mandatory Minimum* category involve drug cases in which the amount of controlled substance triggers a mandatory minimum penalty. However, drug cases in which the amount of controlled substance is insufficient to trigger a mandatory minimum may still be reported in the *Mandatory Minimum* category due to convictions under 18 U.S.C. § 924(c) – use of a firearm in a crime of violence or controlled substance offense. Occasionally, drug cases may involve mandatory minimum penalties for both drug amount and firearm use. A mandatory minimum of 12 months or less is included in the *No Mandatory Minimum* category.

### **Mode of Conviction**

Information on *Mode of Conviction* is obtained from the Judgment and Commitment Order. Offenders sentenced subsequent to a plea of guilty or *nolo contendere* are included in the *Plea* category. Offenders sentenced subsequent to a trial by judge or jury are included in the *Trial* category. Rare cases involving both a plea and a trial are included in the *Plea* category.

### **Offense Level**

The final *Offense Level* used in these tables is taken from the Statement of Reasons provided by the sentencing court. Alternatively, if the Statement of Reasons is missing, but the court indicates that it accepts the values contained in the presentence report, the guideline factors are taken from the presentence report.

### **Organizations**

*Organization* is a “person other than an individual,” according to 18 U.S.C. § 18. The term includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and non-profit organizations.

### **Outside of the Range Attribution Categories**

All categories replicate the list of checkboxes available on the SOR Form AO245B (12/03, 06/05, and 09/08 versions). Not all checkbox categories are available in both the departure section and sentences outside the guideline system section on this form and multiple checkboxes may be indicated in a single case so that totals in a table may exceed the total number of cases. USSC uses these checkboxes in determining government sponsorship: all cases in which one of the pursuant to a plea agreement boxes is indicated are attributed to the government. Additionally cases where a USSG §5K1.1, USSG §5K3.1, or other government motion checkbox was indicated in the pursuant to a motion not in a plea agreement section are also attributed to one of the government sponsored categories. Additionally, other types of SOR forms may indicate sponsorship in writing, and these attributions are also included in the appropriate category.

### **Position of Sentence**

The *Position of Sentence* describes within-range guideline sentences in terms of their relative positions within their applicable guideline ranges. Only cases with complete information from the Statement of Reasons are used for this table. The *Position of Sentence* is determined by dividing the available range in half. This allows a sentence to fall into one of five distinct categories: the guideline minimum; the exact midpoint of the range; the guideline maximum; the lower-half of the range (when not at the guideline minimum); and the upper-half of the range (when not at the guideline maximum). The “available range” is the guideline range with applicable statutory restrictions on either the maximum or the minimum of the range taken into account. (For cases in which guideline USSG §5C1.2 was applied, in accordance with the provisions of the guideline, the statutory restrictions on the range are those from 18 U.S.C. § 3553(f).) In cases in which the sentence is located outside the available sentencing range, departure information is provided as reported by the sentencing court. Differences in the number and percentage of cases in each range quarter may differ from other tables presented in this report; this is due to the exclusion of any case missing both complete information from the Statement of Reasons and information on statutory minima and maxima.

### **Primary Offense Category**

Information on *Primary Offense Category* is obtained from the Judgment and Commitment Order. The “primary” offense code for the case is determined to be the offense code applicable to the count of conviction with the highest statutory maximum. If two or more counts are found to have the same statutory maximum, “primary” offense is selected according to which count of conviction has the highest statutory minimum. Finally, in the event of a small number of cases still tied, the offense type that best represented the nature of the criminal behavior is chosen.

For convenience in analysis, a summary variable describing “primary offense category” is derived. This code is generated by grouping similar primary offense codes into a smaller set of categories. Note that the primary offense categories differ between the individual and organizational offender datafiles. Listed below are the offense types that are grouped into each of the primary offense categories used in the individual datafile tables for this report:

*Murder* includes first degree murder, felony with death resulting, second degree murder, and conspiracy to murder (with death resulting).

*Manslaughter* includes both involuntary and voluntary manslaughter.

*Kidnapping/Hostage Taking* includes ransom taking and hostage/kidnapping. *Sexual Abuse* includes sexual abuse of a minor, transportation of minor for sex, sexual abuse of a ward, criminal sexual abuse, and abusive sexual contact.

*Assault* includes attempt to commit murder, assault with intent to murder, threatening communication, aggravated assault, conspiracy with attempt to murder, obstructing or impeding officers, minor assault, and conspiracy that includes assault with attempt to murder.

*Robbery* includes bank robbery, aggravated bank robbery, Hobbs Act robbery, mail robbery, other robbery, and carjacking.

*Arson* also includes damage by explosives.

*Drugs - Trafficking* includes drug distribution/manufacture, drug distribution/manufacture – conspiracy, continuing criminal enterprise, drug distribution – employee under 21, drug distribution near school, drug import/export, drug distribution to person under 21, and establish/rent drug operation.

*Drugs - Communication Facility* includes use of a communication facility in a drug trafficking offense.

*Drugs - Simple Possession* includes distribution of a small amount of marijuana and simple possession.

*Firearms* includes unlawful possession/transportation of firearms or ammunition; possession of guns/explosives on aircraft; unlawful trafficking, etc. in explosives; possession of guns/explosives in federal facility/schools; use of fire or explosives to commit felony; and use of firearms or ammunition during crime.

*Burglary/Breaking & Entering* includes post office burglary, burglary of DEA premises (pharmacy), burglary of other structure, bank burglary, and burglary of a residence.

*Auto Theft* includes auto theft (including parts), receipt/possession of stolen auto or parts, and altered identification numbers/trafficking in altered (auto).

*Larceny* includes bank larceny, theft from benefit plans, other theft – mail/post office, receipt/possession of stolen property (not auto), other theft – property, larceny/theft-mail/post office, larceny/theft – property (not auto), and theft from labor union.

*Fraud* includes odometer laws and regulations, insider trading, and fraud and deceit.

*Embezzlement* includes embezzlement – property, embezzlement from labor unions, embezzlement – mail/post office, embezzlement from benefit plans, and bank embezzlement.

*Forgery/Counterfeiting* includes counterfeit bearer obligations and forgery/counterfeit (non-bearer obligations).

*Bribery* includes payment to obtain office, bribe involving officials, bribery – bank loan/commercial, loan or gratuity to bank examiner, etc., gratuity involving officials, and bribe or gratuity affecting employee plan.

*Tax* includes receipt/trafficking in smuggled property, aid, etc., in tax fraud; fraud – tax returns, statements, etc.; fraud, false statement – perjury; failure to file or pay; tax evasion; evading import duties (smuggle); failure to collect or account for taxes; regulatory offenses – taxes; failure to deposit taxes in trust account; non-payment of taxes; conspiracy to avoid taxes; and offenses relating to withholding statements.

*Money Laundering* includes laundering of monetary instruments, monetary transaction from unlawful activity, failure to file currency report, and failure to report monetary transactions.

*Racketeering/Extortion* includes extortionate extension of credit, blackmail, extortion by force or treat, Hobbs Act extortion, travel in aid of racketeering, crime relating to racketeering, and violent crimes in aid of racketeering.

*Gambling/Lottery* includes engaging in a gambling business, transmission of wagering information, obstruction to facilitate gambling, and interstate transportation of wagering paraphernalia.

*Civil Rights* includes interference with rights under color of law; force or threats to deny benefits or rights; obstructing an election or registration; manufacture, etc. – eavesdropping device; other deprivations/discrimination; obstructing correspondence; peonage, servitude, and slave trade; intercept communication or eavesdropping; and conspiracy to deprive individual of civil rights.

*Immigration* includes trafficking in U.S. passports; trafficking in entry documents; failure to surrender naturalization certificate; fraudulently acquiring U.S. passports; smuggling, etc.; unlawful alien; fraudulently acquiring entry documents; and unlawfully entering U.S.

*Pornography/Prostitution* includes dealing in obscene matter, transportation of minor for prostitution, transportation for prostitution/sex (adult), sexual exploitation of minors, materials involving sexual exploitation of minors, obscene telephone or broadcasting, and selling or buying children for pornography. This primary offense category was discontinued in fiscal year 2010. Some of the offenses that were grouped into this primary offense category in prior fiscal years are grouped into the *Child Pornography* primary offense type. All other offenses that were grouped into this primary offense category in prior fiscal years are included in the *Other Miscellaneous Offenses* primary offense category.

*Child Pornography* includes the sale, distribution, transportation, shipment, receipt, or possession of materials involving the sexual exploitation of minors. This primary offense category was created in fiscal year 2010.

*Prison Offenses* includes contraband in prisons, riots in federal facilities, and escape.

*Administration of Justice Offenses* includes commission of offense while on release, bribery of a witness, failure to appear by offender, contempt, failure to appear by material witness, obstruction of justice, payment of witness, perjury or subornation of perjury, misprision of a felony, and accessory after the fact.

*Environmental/Wildlife* includes waste discharge, specially protected fish, wildlife, and plants (waste discharge is presented as a separate offense category in Tables 51 and 52).

*National Defense* includes evasion of export controls and exportation of arms, etc., without license.

*Antitrust* includes bid-rigging, price-fixing, and market allocation agreement.

*Food & Drug* includes false information or tampering with products, tampering to injure business, tampering with risk of death or injury, and violation of regulations involving food, drugs, etc.

*Other Miscellaneous Offenses* includes illegal use of regulatory number – drugs; illegal transfer of drugs; illegal regulatory number to get drugs; drug paraphernalia; forgery/fraud for drugs; dangerous devices to protect drugs; manufacture drugs against quota; endangering life while manufacturing drugs; operate carrier under drugs; endangerment from hazardous/toxic substances; mishandling substances, records, etc.; threat of tampering with public water system; hazardous devices of federal lands; mishandling other pollutants, records, etc.; improper storage of explosives; recordkeeping violation – explosives; possession of other weapon – on aircraft, in federal facility; failure to report theft of explosives; feloniously mailing injurious articles; transport of hazardous material in commerce; interference with flight crew, other offense – aboard aircraft; criminal infringement of copyright/trademark; conflict of interest; unauthorized payment; non-drug forfeiture; impersonation; false statement to Employee Act; reporting offenses – labor related; criminal infringement of trademark; unlawful conduct relating to control/cigarettes; trespass; destruction of property; destruction of mail; aircraft piracy; conspiracy to murder (no death, assault, or attempt); conspiracy to commit murder; and all other miscellaneous offenses not previously listed in any of the other categories.

## **Race**

Information on *Race* of the offender is obtained from the presentence report in separate categories of race and ethnicity (*White, Black, Native American or Alaskan Native, and Asian or Pacific Islander*). Ethnicity data indicate whether an offender is of Hispanic origin. (For purposes of this report, offenders whose ethnic background is designated as Hispanic are

represented as Hispanic in all tables regardless of racial background.) The *Other* category includes offenders of Native American, Alaskan Native, and Asian or Pacific Islander origin.

### **Reasons for Sentences Outside the Guideline Range**

*Reasons for Sentences Outside the Guideline Range* are obtained from the Statement of Reasons when available. Because courts often provide more than one reason for sentencing outside the guideline range, the frequencies on the reasons tables may add up to more than the number of cases.

### **Resentencing Type**

Using information submitted by the district courts, resentencings are classified into eight different categories:

*Reduction of Sentence for Changed Circumstances (Federal Rule of Criminal Procedure 35(b)):* Consists of cases in which the government files a motion after the original sentence is imposed requesting the court to reduce that sentence because the defendant provided substantial assistance to the government;

*Modification of restitution order (18 U.S.C. § 3664):* Consists of cases in which the court modifies any part of a judgment ordering restitution be paid to victims;

*Remand by circuit court (18 U.S.C. § 3742(f)(1) and (2)):* Consists of cases in which the original sentence is remanded to the district court by a court of appeals. The possible grounds for this include (1) the sentence violated the law, (2) the guidelines were incorrectly applied, (3) the sentence is outside the applicable guideline range and the court failed to adequately explain why, (4) the sentence is outside the applicable guideline range and the court relied upon an impermissible reason, (5) the sentence is outside the applicable guideline range and the court departed to an unreasonable degree, or (6) there was no applicable guideline and the sentence is plainly unreasonable;

*Direct motion to district court pursuant to 18 U.S.C. § 3559(c)(7):* Consists of cases in which a defendant received an aggravated penalty imposed under 18 U.S.C § 3559(c)(7) at the time of original sentence and where a prior conviction for a serious violent felony or serious drug offense that triggered the aggravated penalty was overturned because it was (1) unconstitutional, (2) the defendant was actually innocent, or (3) the defendant was pardoned because of innocence;

*Direct motion to district court pursuant to 28 U.S.C. § 2255:* Consists of cases in which a district 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;

*Modification of imposed term of imprisonment for extraordinary and compelling reasons (18 U.S.C. § 3582 (c)(1)):* Consists of cases in which the district court reduces an original sentence upon the motion of the director of the Federal Bureau of Prisons requesting the reduction for extraordinary and compelling reasons or because the defendant is at least 70 years old, has served at least 30 years for the offense for which

the defendant is currently imprisoned, and the BOP has determined that the defendant is not a danger to the safety or any person or the community;

*Modification of imposed term of imprisonment for retroactive amendments (18 U.S.C. § 3582 (c)(2)):* Consists of cases in which a district court reduces 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 filed by the defendant, the director of the Federal Bureau of Prisons, or upon the court's own motion; and

*Unknown type of resentencing:* Consists of cases in which a resentencing has occurred but where the type of resentencing cannot be determined.

### **Safety Valve**

*Safety Valve* cases were identified based upon the application of this adjustment within USSG §2D1.1. Because of the continuing refinement of the guidelines, the position of this specific offense characteristic notation within USSG §2D1.1 may vary from year to year. For example, in the 2007 *Guidelines Manual*, the most recent manual used on the fiscal year 2008 datafile, this adjustment was identified at USSG §2D1.1(b)(11). The application of this specific offense characteristic requires that the defendant meet the criteria set forth in subdivisions (1)-(5) of subsection (a) of USSG §5C1.2 which are the same criteria as in 18 U.S.C. § 3553(f). Section 3553(f) of title 18, United States Code, removes the statutory minimum penalties, if relevant, associated with drug distribution of certain amounts. Also, the defendant receives a two-offense-level reduction, pursuant to USSG §2D1.1(b)(11).

### **Sentence Appeals Disposition**

Data is derived from analysis of opinions and orders from the courts of appeals. The appeals disposition code indicates the disposition of the case. *Affirmed* cases are cases in which an appellate court holds that the judgment of the court below is correct and should stand. *Reversed* cases are those in which an appellate court sets aside, annuls, vacates, or changes to the contrary the decision of a lower court. *Affirmed and Reversed* cases are cases in which an appellate court affirms one or more, and reverses one or more of the issues that were appealed. *Dismissed* cases are those an appellate court terminates without a complete trial and without issuing a holding. A dismissal of an appeal places the parties in the same condition as if no appeal had been taken or allowed, and thus acts as a confirmation of the judgment of the court below.

### **Sentencing Issues Appealed**

Data are derived from analyses of opinions and orders from the courts of appeals. Each sentencing issue raised by the appellant is coded by the guideline involved and description of the particular issue addressed within that guideline. Challenges related to sentencing, but not to guideline application, are coded under categories reserved for "constitutional issues" or "other general sentencing issues."

### **Types of Appeal**

Data are derived from analyses of opinions and orders from the courts of appeals. The type of appeals code indicates the types of issues that are raised in the case. The types of appeals codes are (1) sentencing issues only, (2) sentencing and conviction issues, (3) conviction issues only, (4) *Anders* Brief, and (5) unknown.

For coding purposes, an appeal involves sentencing issues when the appellant either argues that the district court erred during the sentencing phase or raises issues concerning the applicability of the guidelines to the case at hand. In some cases, the appellant is challenging some part of the plea agreement involving sentencing. These issues are also considered sentencing issues. An appeal involves conviction issues when the appellant claims some sort of error occurred during the investigation, trial, or jury deliberations that did not involve sentencing or the sentencing guidelines. *Anders* Brief cases are those where the counsel for the appellant has advised the court of appeals that he or she has conscientiously examined the case but finds the appeal to be wholly frivolous and has requested permission to withdraw. See *Anders v. California*, 386 U.S. 738 (1967). This disposition code was added in fiscal year 2010.

### **Type of Guideline Sentence Imposed**

Using sentencing information obtained from the Judgment and Commitment Order, the *Total Receiving Prison* column includes the number of offenders sentenced (and percent of *Total Cases*) who received a commitment to the Bureau of Prisons. This column is the sum of cases in *Prison* and the *Prison/Community Split Sentence* categories.

The *Prison* category includes offenders sentenced to a term of imprisonment only, with no additional conditions of community confinement, home detention or intermittent confinement.

The *Prison/Community Split Sentence* category includes all cases in which offenders received prison and conditions of alternative confinement as defined in USSG §5C1.1. This category includes, but is not limited to, Zone A, Zone B, or Zone C cases receiving prison with additional conditions of a term of community confinement, home detention, or intermittent confinement.

The *Total Receiving Probation* column includes the number of offenders sentenced (and the percent of *Total Cases*) who received a term of probation with or without a condition of community confinement, intermittent confinement, or home detention. This column also represents the total of the *Probation Only* and *Probation and Confinement* categories.

The *Probation Only* column includes the number of offenders who received a term of probation without a condition of community confinement, intermittent confinement, or home detention.

*Probation and Confinement* includes the number of offenders who received a term of probation with a condition of community confinement, intermittent confinement, or home detention.

### **Upward Departure From Guideline Range**

*Upward Departure From Guideline Range* consists of cases with departures above the guideline range which do not cite as a reason either *U.S. v. Booker*, 18 U.S.C. § 3553, or factors or reasons specifically prohibited in the provisions, policy statements, or commentary of the federal guidelines manual.

### **Upward Departure with *Booker*/18 U.S.C. § 3553**

*Upward Departure with Booker/18 U.S.C. § 3553* consists of cases with a sentence above the guideline range that includes both a departure (see Upward Departure From Guideline Range) as well as a sentence outside the guideline system mentioning either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing above the guideline system.

### **Weapon Involvement**

Weapon involvement in a case is identified either by the application of a guideline enhancement for weapon involvement or a conviction under 18 § U.S.C. 924(c), or both. This variable does not identify cases in which a weapon is present in the offense but the defendant was not convicted of 18 § U.S.C. 924(c) or did not receive a weapon-related sentencing enhancement. It does not identify cases in which the specific enhancement can be applied for multiple reasons; for example, the specific enhancement can be applied if the offense involved either physical contact or if a dangerous weapon was possessed. Finally, this variable does not identify cases sentenced as weapon offenses under USSG Chapter Two, Part K, unless they were convicted of 18 § U.S.C. 924(c).

### **Year**

Information on Year is obtained from the Judgment and Commitment Order. Unless otherwise indicated, the sentencing year is defined as the fiscal year in which the defendant was sentenced.

### **Zone**

The *Sentencing Table* is categorized into sentencing *Zones*. Courts may impose various types of punishment as alternatives to imprisonment. Alternative types of punishment include probation, home detention, community confinement, and intermittent confinement. Imposition of alternative types of punishment is restricted to defendants within specific sentencing zones.

*Zone A:* a guideline range is in Zone A when the minimum term of imprisonment specified is zero months;

*Zone B:* a guideline range is in Zone B when the minimum term of imprisonment specified is at least one but not more than six months;

*Zone C:* a guideline range is in Zone C when the minimum term of imprisonment specified is eight months when criminal history category is four or less, and nine months if the criminal history category is greater than four;

*Zone D:* a guideline range is in Zone D when the minimum term of imprisonment specified is 12 months or more.

See Chapter 5 of the *Guidelines Manual* for a description of alternatives to imprisonment and the conditions under which they are applicable.

## Endnotes

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The following endnotes pertain to the “Fiscal Year 2010 Guidelines Sentences” tables provided in Appendix B. Actual figures provided in these endnotes apply only to the national data table. Additional information describing variables and data used are provided earlier in this appendix.

- <sup>1</sup> Cases with missing or indeterminable information on gender or race are excluded. Nationally, this involves the exclusion of 8,589 cases because of missing information on gender (2,341) or race (8,568).
- <sup>2</sup> Cases with missing or inapplicable departure information are excluded. Nationally, this involves the exclusion of 2,087 cases.
- <sup>3</sup> Cases with missing or indeterminable information on the age or gender of the defendant are excluded. Nationally, this involves the exclusion of 2,743 cases because of missing information on age (496) or gender (2,341).
- <sup>4</sup> Five cases with missing or indeterminable information on mode of conviction are excluded.
- <sup>5</sup> Of the 83,946 guideline cases, 826 are excluded due to one or more of the following reasons: missing information on type of sentence (12) or cases in which no prison or probation was imposed (814).
- <sup>6</sup> Cases in the *Total Receiving Prison* and *Total Receiving Probation* categories total 100 percent of all cases; however, *Cases Involving Fines and Restitution* overlap with the other categories because fines and restitution may be ordered in conjunction with the imposition of other sanctions.

Cases involving no term of imprisonment and cases with indeterminable terms are excluded from the calculation of the *Average Months Prison* category. Any sentence of days with at least one month of prison is rounded up to the nearest month. Any sentence of days of less than a month is expressed as a fraction of the month. Life sentences are included in these calculations as 470 months. The 83,946 cases included in the *Total Cases* column reflect that no cases are excluded due to missing information on primary offense type.

Cases involving no term of imprisonment and cases with indeterminable terms are excluded from the category *Length of Prison Term*. Any sentence of days with at least one month of prison is rounded up to the nearest month. Any sentence of days of less than a month is expressed as a fraction of the month. Life sentences are included in the category *Over 60 Months*.

- <sup>7</sup> Cases receiving no order of fine or restitution are excluded from the calculation of the *Total Receiving Fines and Restitution*. The number of cases upon which the average is based may not equal the *Total Receiving Fines and Restitution* due to the failure of some Judgment and Commitment Orders to specify the dollar amount ordered. Of the 83,946 guideline cases, 29 cases missing fine and restitution information are excluded from these calculations. Of the remaining 83,917 cases with such information, 66,014 cases with no order of fine or restitution ordered are excluded from these calculations.