

Chapter Five

Research

Statutory Requirements

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.⁸⁷

Document Submission

The chief judge of each district is required to ensure that within 30 days after entry of judgment in a criminal case, the sentencing court submits a report of the 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.⁸⁸ The Commission is required to submit to Congress at least annually an analysis of these documents and to report to Congress if any districts have not submitted the required information and documents.⁸⁹

For fiscal year 2013, the Commission received 370,822 documents related to 80,035 individual offender cases.⁹⁰ The Commission works continually with the courts to facilitate document submission. The overall case submission rate by the district courts was 99.7 percent. The overall rate of submission of the required documents in those cases was

99.6 percent. The Commission also received documents in 172 cases in which an organization was sentenced. Additionally, the Commission received documents in 4,429 cases in which a resentencing or other modification of sentence occurred.

There were six districts that submitted documents in more than 2,000 cases. These districts were —

	Number of Cases	Total Documents Received
Western Texas	7,792	31,999
Arizona	6,903	31,318
Southern Texas	6,992	31,565
Southern California	4,905	23,388
New Mexico	3,822	17,120
Southern Florida	2,407	11,113

Data Collection

Data from the documents submitted to the Commission 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 Manual*. The data include 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. The data include

⁸⁷ 28 U.S.C. §§ 995 (a)(12) and (14)-(16).

⁸⁸ 28 U.S.C. § 994(w)(1).

⁸⁹ 28 U.S.C. § 994(w)(3).

⁹⁰ See 2013 *Sourcebook of Federal Sentencing Statistics*, Table 1.

district; circuit; dates of appeal and opinion; legal issues; and the disposition of the case.⁹¹ 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 offender or judge identifiers, are made available to the public through the Commission's website and through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR).⁹² Commission data also is incorporated into the datasets of the Federal Justice Statistics Resource Center, which is sponsored by the Bureau of Justice Statistics.⁹³

The Commission provides an analysis of this data at the national level in its annual *Sourcebook of Federal Sentencing Statistics* and in its online "Interactive Sourcebook of Federal Sentencing Statistics" available at <http://isb.ussc.gov>. The Commission also provides this data together with federal sentencing data organized by circuit, district, and state on its website. See http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/State_District_Circuit/index.cfm.

Data Collection Issues

The Commission received documentation on 80,035 individual offender cases in which the offender was sentenced under the Sentencing Reform Act (SRA) between October 1, 2012, and September 30, 2013.⁹⁴ This represents a decrease of 4,138 cases from the number of cases for which the Commission received documentation for fiscal year 2012.⁹⁵

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.⁹⁶ In some cases, this documentation is received months or even years after the case 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*.

⁹¹ 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 Dataset, therefore, may not include data on all appellate decisions rendered in a fiscal year.

⁹² The Commission website address is www.ussc.gov. The ICPSR website address is <http://www.ICPSR.umich.edu/>.

⁹³ The data can be found at <http://www.bjs.gov/fjsrc/>.

⁹⁴ The Commission receives a report of the sentence imposed in all cases to which the sentencing guidelines relate, which are all felony offenses and all Class A misdemeanors in the United States courts. See generally 28 U.S.C. § 994(w); USSG §1B1.9.

⁹⁵ The data reported in this annual report and in the 2013 *Sourcebook of Federal Sentencing Statistics* represents all data collected and analyzed by the Commission for which appropriate documentation was forwarded to the Commission by February 10, 2014.

⁹⁶ For example, after the date on which the data were compiled to prepare the fiscal year 2012 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*, the Commission received documentation on ten additional cases in which the offender was sentenced in that fiscal year. Since 1991, the Commission has received documentation on 13,607 cases after the respective dates on which the data were prepared for the *Annual Report* and *Sourcebook of Federal Sentencing Statistics* for each of those fiscal years. This represents 1.0% of all cases reported to the Commission during that period.

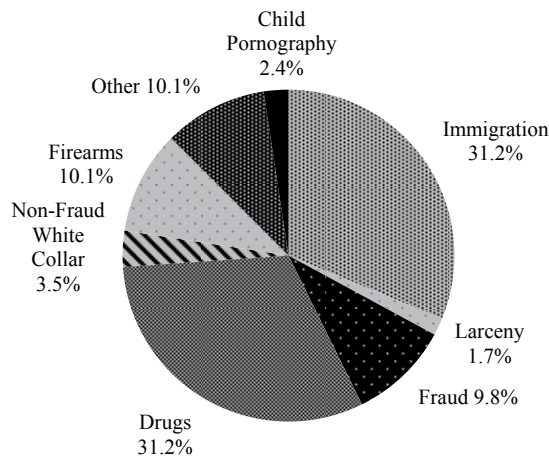
Summary of 2013 Findings

The 2013 *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.⁹⁷ 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 from the Resentencing Dataset.

Sentencing Individual Offenders

Offenders in Each Primary Offense Category

Drugs and Immigration were the largest categories of federal convictions (31.2% each). Drugs, immigration, firearms, and fraud cases continue to comprise more than 80 percent of all federal felony and Class A misdemeanor convictions. Drug and immigration convictions each decreased in 2013 by almost 6 percent from the number of such cases in 2012. Fraud cases decreased by 9.2 percent.

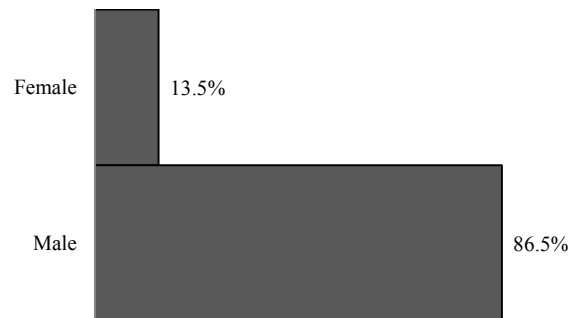


Offender Characteristics

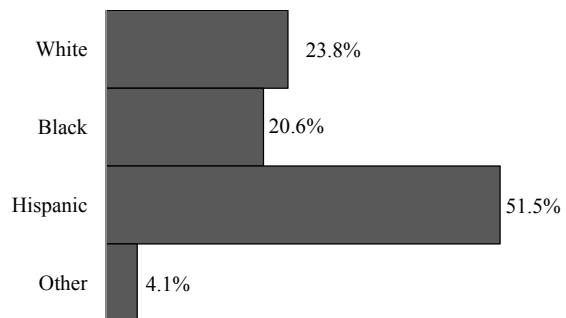
⁹⁷ All tables and figures referenced in this chapter can be found in the 2013 *Sourcebook of Federal Sentencing Statistics*. The year 2013, as used in this report, refers to the fiscal year 2013 (October 1, 2012, through September 30, 2013).

The proportion of offenders who are not United States citizens has increased significantly over the last decade. However, in 2013, non-citizens made up 44.9 percent of all offenders, a decrease of a little more than one percentage point from the previous year. For offenses with 100 or more offenders, the offense categories with the largest percentages of non-citizens were: immigration (94.8%); drug possession (85.7%); money laundering (31.8%); drug trafficking (26.9%); fraud (21.6%); and other miscellaneous offenses (17.1%).

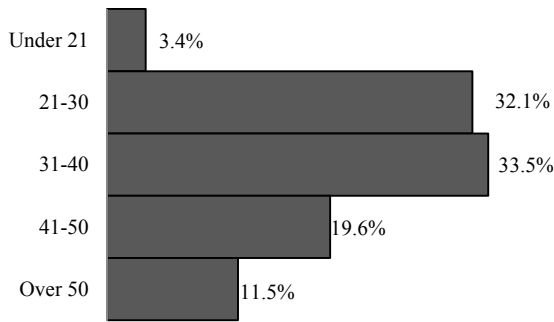
Historically, male offenders have accounted for approximately 85 percent of all federal offenders. In 2013, 86.5 percent of all offenders were men, down slightly from 86.8 percent the previous year.



The racial/ethnic composition of offenders in 2013 was Hispanic 51.5 percent, White 23.8 percent, Black 20.6 percent, and Other 4.1 percent.



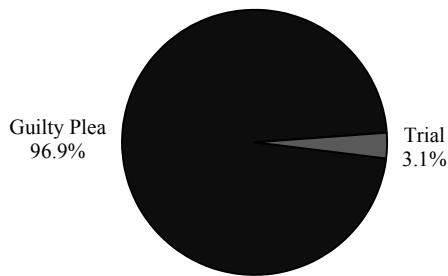
The average age of federal offenders sentenced in 2013 was 36 years with a median of 34 years. About half (47.2%) of the offenders sentenced did not graduate from high school, and only 5.7 percent graduated from college.



For additional demographic information about the federal offender population, see Tables 4 through 9 in the *2013 Sourcebook of Federal Sentencing Statistics*.

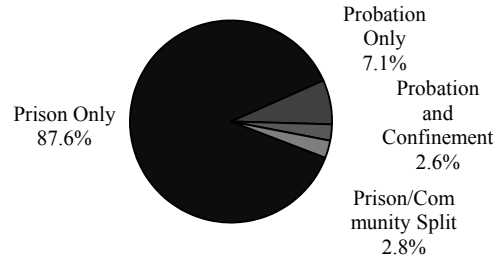
How Offenders Were Sentenced

In 2013, 96.9 percent of all offenders pled guilty. However, the rate at which offenders were convicted after trial varied by both district and offense type. Among offense types with more than 100 cases, trial rates ranged from a low of 0.1 percent for cases involving drug possession up to 13.5 percent for sexual abuse cases.

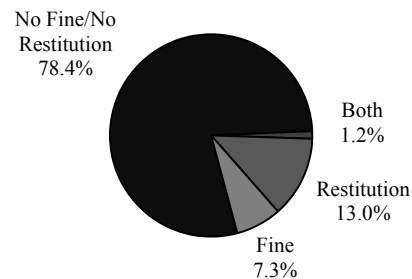


The vast majority of offenders (87.6%) were sentenced to prison only. Conversely, 7.1 percent of offenders were sentenced to probation only. The remaining offenders were sentenced to both probation and some other form of confinement (2.6%) or to imprisonment with some additional form of community confinement (2.8%). The type of sentence imposed varies depending on the type of crime involved. For example, more than 90 percent of all offenders convicted of the following offenses were sentenced to some type of imprisonment: murder, manslaughter, kidnapping, sexual abuse, robbery, arson, drug trafficking, firearms offenses, auto theft, racketeering/extortion, immigration offenses, child pornography, prison offenses, and

national defense offenses. In contrast, more than half of the offenders sentenced for larceny, gambling/lottery, environmental/wildlife offenses, food and drug offenses, or other miscellaneous offenses received a sentence including probation.



The average sentence varies widely by the type of crime involved. For all offenders sentenced in 2013, the average sentence was 45 months, counting probation-only sentences as zero months' imprisonment. The highest sentences on average were imposed for murder, kidnapping/hostage taking, sexual abuse, and child pornography offenses. Among offenders sentenced to imprisonment, the average prison term was 54 months. A fine or restitution was ordered in 21.6 percent of all cases.

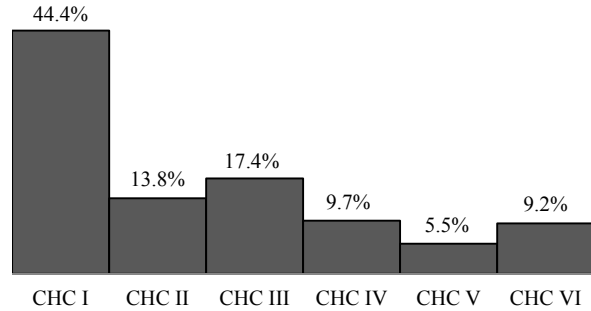
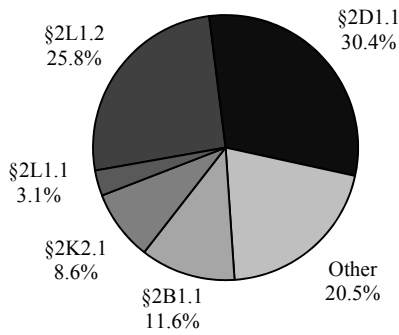


For a detailed statistical description of the mode of disposition and sentences imposed, see Tables 10 through 16 and Figures D through F of the *2013 Sourcebook of Federal Sentencing Statistics*.

Guideline Application

In 2013, the most frequently applied primary guidelines from the *Guidelines Manual* were Drug Trafficking (30.4%),⁹⁸ Unlawful Entry into U.S. (25.8%),⁹⁹ Theft/Fraud (11.6%),¹⁰⁰ Firearms (8.6%),¹⁰¹ and Smuggling an Unlawful Alien (3.1%).¹⁰²

⁹⁸ USSG §2D1.1.
⁹⁹ USSG §2L1.2.



Of all offenders, 4.7 percent received an upward adjustment due to an aggravating role in the offense while 7.3 percent received a downward adjustment as the result of a mitigating role in the offense. More than 95 percent of all offenders received an adjustment for accepting responsibility for their crime. Just over two percent (2.3%) received an upward adjustment for abuse of position of trust, and 0.3 percent received an upward adjustment for use of a minor in the commission of an offense. A list of all adjustments provided for in the *Guidelines Manual* and the rate of application of those adjustments can be found in Table 18 of the 2013 *Sourcebook of Federal Sentencing Statistics*.

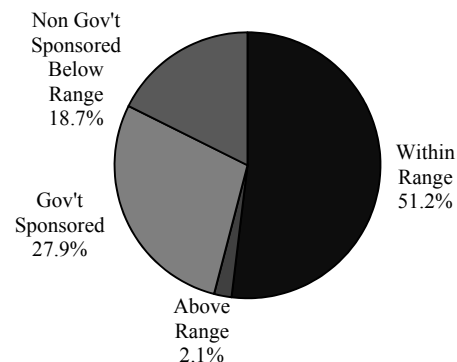
For further details of the guideline application components, see Tables 20 through 22 of the 2013 *Sourcebook of Federal Sentencing Statistics*.

Sentences Within the Guideline Range and Outside the Guideline Range

Nationally in 2013, the courts imposed sentences that were within the applicable guideline range in 51.2 percent of all cases. Sentences above the guideline range accounted for 2.1 percent of all cases.

Approximately one quarter (27.9%) of sentences were imposed below the guideline range at the request of the government. In about one-half of these cases (12.1% of all cases) the government filed a motion seeking a reduction in sentence because the defendant provided substantial assistance to the government in the investigation or prosecution of another person who had committed an offense. In another 10.6 percent of all cases, the government sought the below range sentence because the offender agreed to abide by the provisions of an Early Disposition Program.

In determining the applicable guideline range, the courts found that 64.2 percent of offenders had a criminal history sufficient to be assessed points for prior criminal convictions. Over 44 percent (44.4%) of the offenders were placed in Criminal History Category I, the lowest category, and 9.2 percent were placed in Criminal History Category VI, the highest category. Courts determined that 3.2 percent of all offenders were career offenders,¹⁰³ and 0.8 percent were armed career criminals.¹⁰⁴ In contrast, in just over one-third of all cases (35.8%) the court did not assess any criminal history points, either because those offenders had never been convicted of an offense or had been convicted of an offense for which points are not assessed under the guidelines.¹⁰⁵



In 18.7 percent of all cases the sentence imposed was below the guideline range and not at the request of the government. Tables N through N-11 in the *Sourcebook* present national and circuit data on

¹⁰⁰ USSG §2B1.1.
¹⁰¹ USSG §2K2.1.
¹⁰² USSG §2L1.1.
¹⁰³ See USSG §4B1.1.
¹⁰⁴ See USSG §4B1.4.
¹⁰⁵ See generally Chapter Four of the *Guidelines Manual*.

sentences within the guideline range and those outside the range.

The rate at which the sentence imposed was within the applicable guideline range varied by the type of offense involved and the district in which the offender was sentenced.¹⁰⁶ Nationally, the percentage of within-guideline range sentences was 51.2 percent and varied by district from a high of 82.4 percent to a low of 18.2 percent. The offense type with the highest within guideline range rate was simple drug possession (93.5%). For sentences imposed within the guideline range, the sentence was most often at the minimum point of the guideline range (in 51.5% of all within-guideline sentences). The sentence was at the maximum of the guideline range in 10.5 percent of all within-guideline range cases.

A sentence above the guideline range was imposed in 2.1 percent of all cases. The offense type with the highest above range rate was manslaughter (20.6%).

Government sponsored below range sentences accounted for 27.9 percent of all cases reported for fiscal year 2013 and are classified into three categories: Substantial Assistance (USSG §5K1.1); Early Disposition Program (USSG §5K3.1); and Other Government Sponsored. The national rate of substantial assistance sentences was 12.1 percent and varied by district from 33.7 percent to 1.6 percent. The rate of below range sentences based upon the Early Disposition Program (EDP) was 10.6 percent nationally and ranged from 59.0 percent to 0.0 percent (as EDP sentences were authorized for specific offenses in all 94 districts for the first time beginning in fiscal year 2012). The rate of other government sponsored below range sentences was 5.2 percent nationally and varied from 27.4 percent to 0.0 percent (three districts). The offense type with the highest rate of substantial assistance departures was antitrust (56.3%). The offense type with the highest rate of EDP departures was immigration (27.5%). The highest rate of application of other government sponsored below range sentences was for child pornography (15.5 %).

¹⁰⁶ Tables 27 and 27A show, by offense type, the number and percent of sentences within the guideline range and outside of the range.

In 2013, a sentence below the guideline range not sponsored by the government was imposed in 18.7 percent of all cases. These types of sentences are further classified into four categories. The national rate of below range departures was 2.6 percent. Below range departures also citing *Booker* were 0.9 percent nationally. The national rate of below range cases that were not departures but which cited *Booker* was 14.6 percent. The rate of the remaining below range cases was 0.6 percent nationally. The offense type with the highest rate of non-government sponsored below range sentences was civil rights (47.4%).

Tables 30–32 in the 2013 *Sourcebook of Federal Sentencing Statistics* show the sentencing effects of the 11 categories of outside the range sentences. Sentences imposed on offenders receiving a substantial assistance reduction had a median reduction of 30 months from the minimum of the applicable guideline range. This represents a median decrease of 50.0 percent in sentence from the otherwise applicable guideline minimum. EDP cases had a median decrease of eight months from the minimum guideline range, which represents a median decrease of 35.3 percent. Cases with an other government sponsored departure had a median decrease of 20 months from the applicable guideline minimum, a median decrease of 37.8 percent.

The median decrease in cases with a below range departure was 13 months below the guideline minimum, a median decrease of 34.8 percent. Cases with a departure below range with a citation to *Booker* saw a median decrease of 20 months from the guideline minimum, a median decrease of 42.7 percent. The median reduction from the guideline minimum for below range cases with a citation to *Booker* was 15 months, a median decrease of 36.8 percent. The median reduction from the guideline minimum for all remaining below range cases was six months, a median decrease of 75.5 percent.

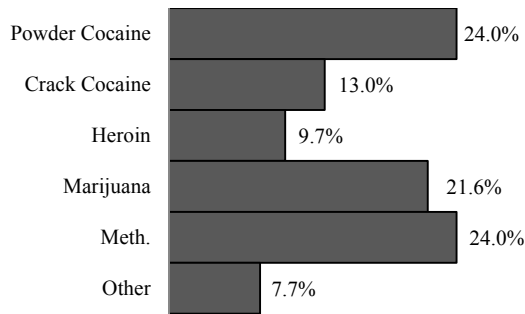
The median extent of departures above the guideline range was 11 months above the guideline maximum, a 33.3 percent median increase above the guideline maximum. The median increase for cases with an above range departure with a citation to *Booker* was 18 months above the guideline maximum, a 47.4 percent median increase. Cases with a

sentence above range with a citation to *Booker* had a median increase of 14 months, a 42.9 percent median increase. The category with the lowest median increase, nine months above the guideline maximum, occurred in all remaining cases above the range, a 25.0 percent median increase.

For more information concerning departures and other sentences outside the applicable guideline range, see Tables 24 through 32C and Figures G and H of the 2013 *Sourcebook of Federal Sentencing Statistics*.

Drug Cases

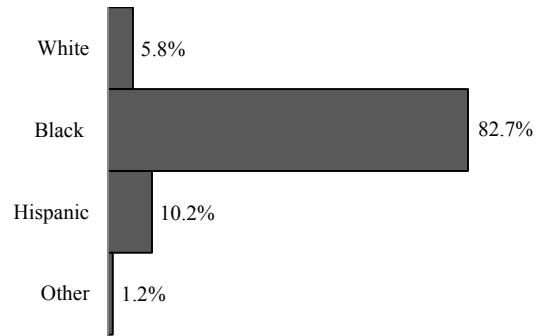
Drug offenses were one of the two largest category of federal convictions in 2013, although the number of all drug cases decreased by 5.9 percent from 2012. Among drug cases, 37.0 percent involved some form of cocaine (24.0% powder cocaine and 13.0% crack cocaine), followed by cases involving methamphetamine (24.0%), marijuana (21.6%), and heroin (9.7%).



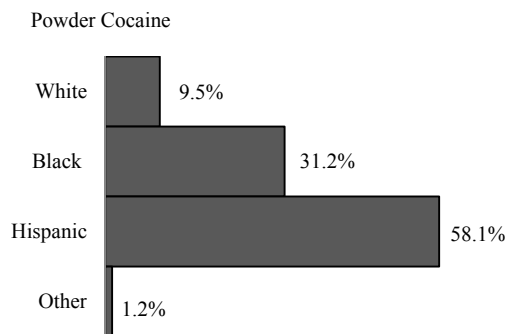
The average prison term for drug offenders varied widely by drug type, from an average of 100 months for crack cocaine offenders (median of 78 months) to 41 months for marijuana offenders (median of 30 months).¹⁰⁷

Most crack cocaine defendants were Black (82.7%) while 10.2 percent were Hispanic, and 5.8 percent were White.

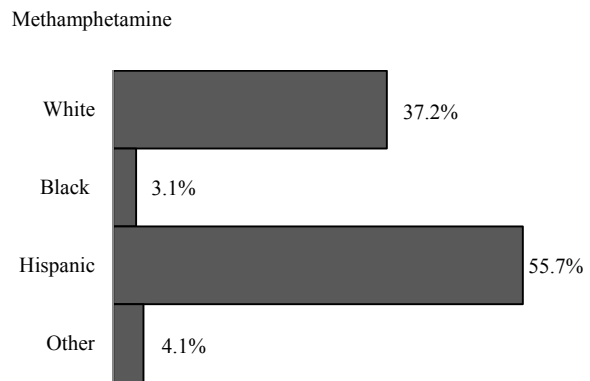
Crack Cocaine



In contrast, the race/ethnicity distribution of powder cocaine defendants was 58.1 percent Hispanic, 31.2 percent Black, and 9.5 percent White.



The race/ethnicity distribution of drug defendants involved with methamphetamine was 55.7 percent Hispanic, 37.2 percent White, and 3.1 percent Black.



Among drug defendants overall, 85.6 percent were male and 73.7 percent were United States citizens. With the exception of crack cocaine and heroin offenders, at least one-half of drug offenders were in Criminal History Category I.¹⁰⁸

¹⁰⁷ See 2013 *Sourcebook of Federal Sentencing Statistics*, Figure K.

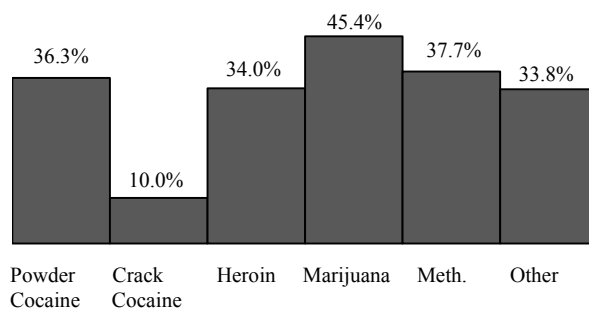
¹⁰⁸ See 2013 *Sourcebook of Federal Sentencing Statistics*, Tables 34–37.

Drug offenders received an upward adjustment for possession or use of weapons in 16.2 percent of all drug cases. An adjustment for role in the offense was imposed in 24.8 percent of drug cases: 17.9 percent received a mitigating role adjustment, and 7.0 percent received an aggravating role adjustment. Wide variation was observed in application of the mitigating role adjustment across drug types, with 25.0 percent of marijuana and 23.0 percent of methamphetamine offenders receiving a mitigating role adjustment compared to 4.1 percent of crack cocaine offenders. Approximately 95 percent (95.1%) of drug offenders received an adjustment for acceptance of responsibility.¹⁰⁹

Approximately sixty percent (62.1%) of drug offenders were convicted under statutes carrying a mandatory minimum penalty. The offenders on whom a mandatory minimum penalty was imposed most often were methamphetamine offenders (82.6%), powder cocaine offenders (73.1%), and heroin offenders (66.7%). A ten-year or longer mandatory minimum penalty was applicable in well over one-half of all methamphetamine cases (59.6%) and just under half of all powder cocaine cases (43.7%).

The “safety valve” provision provides nonviolent, low-level, first-time drug offenders relief from mandatory minimum sentences as well as a reduction in the guideline sentencing range.¹¹⁰ In 2013, 34.7 percent of drug offenders received the benefit of the two-level reduction in offense level for meeting the “safety valve” criteria, including 24.5 percent who were subject to a drug mandatory minimum penalty and 10.2 percent who were not subject to a drug mandatory minimum penalty. Marijuana offenders (45.4%) were the most likely to receive the reduction for meeting the safety valve criteria, while crack cocaine offenders (10.0%) were the least likely.

Safety Valve Reduction



For more information on drug cases, see Tables 33 through 45 and Figures I through L of the 2013 *Sourcebook of Federal Sentencing Statistics*.

Immigration Cases

In 2013, immigration cases were the second of the two largest categories of federal convictions. The number of immigration cases decreased by 5.9 percent from the number reported in 2012. Most immigration offenses (83.2%) involved illegally entering or remaining in the United States. Another 10.1 percent involved alien smuggling. Immigration offenders were largely male (93.5%), of Hispanic origin (95.1%), and had less than a high school education (79.7%). Most immigration guidelines convictions involved non-United States citizens (94.1%) and were the result of a guilty plea (99.3%). For more information on immigration cases, see Tables 46 through 50 of the 2013 *Sourcebook of Federal Sentencing Statistics*.

Death Penalty Cases

In fiscal year 2013, the Commission received information on one case in which the offender was sentenced to a punishment of death. The sentencing guidelines are not used in cases where a jury imposes a sentence of death; therefore, death penalty cases are not included in the *Sourcebook of Federal Sentencing Statistics*.¹¹¹

¹⁰⁹ See 2013 *Sourcebook of Federal Sentencing Statistics*, Tables 39–41.

¹¹⁰ See 18 U.S.C. § 3553(f), which is incorporated into the guidelines at USSG §5C1.2. See also USSG §§2D1.1(b)(16), 2D1.11(b)(6).

¹¹¹ These cases are also excluded from the Commission datasets made available to the public.

Organizational Sentencing Practices

The organizational guidelines establish fine ranges to deter and punish illegal conduct, require full payment of remedial costs to compensate victims for any harm and the disgorgement of illegal gains, regulate probationary sentences, and implement other statutory penalties such as forfeiture and the assessment of prosecution costs.

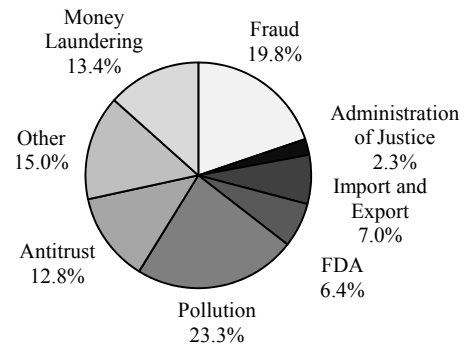
The Chapter Eight organizational guidelines apply to all federal felonies and Class A misdemeanors committed by organizational offenders.¹¹² The fine provisions of Chapter Eight are limited to offenses for which pecuniary loss or harm can be more readily quantified, such as fraud, theft, and tax offenses.¹¹³ In addition, the sentencing guidelines for antitrust violations and most bribery and kickback offenses contain specific formulations for calculating fines for organizations.¹¹⁴

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.¹¹⁵ 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 2013, the Commission received complete sentencing information on 172 organizations that were sentenced under Chapter Eight, an 8.0 percent decrease from 2012 (187) and a 7.5 percent increase from 2011 (160).¹¹⁶ The sentenced organizations pled guilty in 163 (94.8%) of the cases; nine (5.2%) were convicted after a trial.¹¹⁷

Offense Characteristics

Environmental pollution¹¹⁸ was the most frequent type of offense committed by an organization sentenced in federal court, accounting for 40 (23.3%) of the 172 cases for which the Commission received complete sentencing information. Other significant offense categories included fraud¹¹⁹ (19.8%), money laundering (13.4%), antitrust (12.8%), import and export (7.0%), and food, drugs, agricultural and consumer products (6.4%).¹²⁰



Offender Characteristics

In those cases in which the fine provisions of USSG §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 fine range. The Commission obtains culpability score calculation data from the sentencing court's judgment and commitment order and/or the probation officer's presentence report. Of the 172 cases for which the Commission received complete sentencing information in 2013, the court ordered a fine in 115 cases (66.9%) and applied the fine provisions of USSG Ch.8, Pt.C, Subpt.2 to calculate the fine in at least 66 cases (38.4%) for which

¹¹² See USSG §8A1.1.

¹¹³ See USSG §8C2.1.

¹¹⁴ See USSG §§2B4.1(c); 2C1.1(d) 2C1.2(c); 2R1.1(d).

¹¹⁵ See USSG §8C2.1.

¹¹⁶ As with individual defendants, the Commission datafiles describing organizational defendants are available through the Inter-University Consortium for Political and Social Research at the University of Michigan.

¹¹⁷ 2013 Sourcebook of Federal Sentencing Statistics, Table 53.

¹¹⁸ Environmental pollution offenses refer to the aggregate of "Environmental-Water," "Environmental-Air," and "Environmental-Hazardous/Toxic Pollutants."

¹¹⁹ Fraud offenses include convictions for mail and wire fraud, healthcare fraud, false statements, false claims, bank fraud, identity theft, and other.

¹²⁰ 2013 Sourcebook of Federal Sentencing Statistics, Table 51.

the Commission received detailed culpability score information.¹²¹

In many cases, the sentencing court reduced the organization's culpability score based on the presence of certain mitigating culpability factors. Of the 66 cases with detailed culpability score information on self-reporting, cooperation, and acceptance of responsibility, a total of 58 organizations (87.9%) received reductions in their culpability scores pursuant to USSG §8C2.5(g) for either self-reporting, cooperating, or accepting responsibility. Over half of the organizations (62.1%) received reductions in their culpability scores for cooperating with the government's investigation (41 organizations).¹²² An additional 16 organizations (24.2%) received reductions for accepting responsibility for their wrongdoing.¹²³

In a number of cases, the presence of aggravating culpability factors increased the organization's culpability score. Among those 66 cases with complete detailed culpability score calculations, two organizations (3.0%) received an increase pursuant to USSG §8C2.5(e) for having obstructed justice, which resulted in an increased culpability score for sentencing purposes. Thirty-one organizations (47.0%) received an increase under USSG §8C2.5(b) (for involvement in or tolerance of criminal activity by authority).

Sanctions Imposed on Organizational Offenders

Of the 172 cases for which the Commission received complete sentencing information in fiscal year 2013, sentencing courts ordered restitution in 49 cases (28.5%), and imposed a fine in 115 cases (66.9%). The average restitution amount ordered was \$3,236,012 (median \$494,268), and the average fine imposed was \$21,057,499 (median \$200,000).

In addition to restitution and monetary penalties, offenders sentenced under the organizational guidelines were subject to other sanctions. Of the 172 organizational offenders sentenced pursuant to

Chapter Eight, 77.9 percent received one month or more of probation, and the courts ordered compliance or ethics-related improvements in 23.8 percent of the cases. For more information on the sanctions imposed on organizational offenders see Tables 51–54 of the *2013 Sourcebook of Federal Sentencing Statistics*.

Appeals Data

The Sentencing Reform Act authorized appellate review of a sentence 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 (in appeals by the defendant) or less (in appeals by the government) than the sentence specified in the applicable guideline range; or (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.¹²⁴ In *Booker*, the Supreme Court excised 18 U.S.C. § 3742(e), which had provided a *de novo* standard of review for departures from the guidelines,¹²⁵ and determined that the standard of review for all sentences on appeal is reasonableness.¹²⁶

Summary of Information Received

In fiscal year 2013, the Commission collected¹²⁷ information on 9,169 appellate court cases in which

¹²⁴ 18 U.S.C. § 3742(a), (b).

¹²⁵ *Booker*, 543 U.S. at 259.

¹²⁶ *Booker*, 543 U.S. at 260-62. See also *Gall v. United States*, 552 U.S. 38, 51 (2007) (Regardless of whether the sentence imposed is within or outside the guideline range, the appellate court must review the sentence under an abuse-of-discretion standard).

¹²⁷ In 1992, the Commission implemented a data collection system to track appellate review of sentencing decisions. Each fiscal year, appeals decisions are collected from various sources. Some appellate courts transmit published and unpublished slip opinions to the Commission. The Commission performs an electronic search for all published and unpublished criminal decisions using commercially available legal databases. Additionally, since not all relevant decisions appear in commercially available legal databases, the Commission checks the federal judiciary public access electronic records system (PACER) for additional decisions. These sources may not provide the Commission with every criminal appellate sentencing decision rendered in a fiscal year. The Commission's Appeals Dataset, therefore, may not report all criminal appellate decisions rendered during that fiscal year.

¹²¹ In the remaining 106 cases, the fine guideline was not applied, or data on the application of the fine guideline was missing.

¹²² See USSG §8C2.5(g)(2).

¹²³ See USSG §8C2.5(g)(3).

the type of appeal was known.¹²⁸ Of the 9,169 appellate court cases in which the type of appeal was known, the defendant was the sole appellant in 9,077 cases (99.0%), the government was the sole appellant in 57 cases (0.6%). In 35 cases (0.4%), both parties appealed. Of the 9,169 cases, 5,686 (62.0%) involved at least one sentencing issue. “Conviction only” appeals accounted for 1,849 (20.2%) of all appeals, and *Anders* briefs accounted for 1,634 (17.8%) appeals.¹²⁹ Five courts of appeals, the Fifth (1,767), Fourth (1,257), Eleventh (1,196), Ninth (1,115), and Sixth Circuits (919), together accounted for 68.2 percent of these cases.

Defendants were the appellants in 5,668 (99.7%) of the 5,686 sentencing appeals analyzed for 2013. The government was the appellant in 41 (0.7%) of the 5,686 sentencing appeals analyzed for 2013. See Tables 56 and 56A of the 2013 *Sourcebook of Federal Sentencing Statistics*.

¹²⁸ Although the Commission is interested primarily in information on appellate court cases that involve sentencing issues, it collects limited information on all direct criminal appeals. The Commission then collects more detailed information on cases involving sentencing issues. The Commission collected information on 9,258 appeals cases, however, in 89 appeals cases the type of appeal was “unknown.” These 89 cases were excluded from the analysis reported in this *Annual Report* and the analysis reported in the 2013 *Sourcebook of Federal Sentencing Statistics*.

¹²⁹ *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 appeal type was added in fiscal year 2010.

The overall disposition rates for sentencing appeals in 2013 were –

	Number	Percent
Affirmed	4,382	77.1
Dismissed	608	10.7
Reversed	490	8.6
Affirmed in part/Reversed in part ¹³⁰	138	2.4
Remanded only ¹³¹	68	1.2
Totals	5,686	100.0

The circuit courts affirmed 77.2 percent of the sentencing appeals brought by the defendant in fiscal year 2013, compared to 73.5 percent in fiscal year 2012. The circuit courts affirmed 26.8 percent of the 41 sentencing appeals brought by the government in fiscal year 2013, compared to 28.3 percent in fiscal year 2012.

Issues and Guidelines Appealed

Of the 5,686 sentencing appeals decided in fiscal year 2013, appeals to the reasonableness of the sentence were the most common. This issue was raised a total of 4,753 times in these cases, and in some appeals the issue of reasonableness was raised more than once. The affirmance rate for appeals of reasonableness issues was 92.1 percent, compared to 96.6 percent in fiscal year 2012. In those cases, the most frequently appealed issue concerned procedural reasonableness; specifically, whether court properly calculated the applicable sentencing guideline range (50.4% of all reasonableness appeals). The other most common reasonableness issues appealed were the substantive reasonableness of the court's weighing of guideline factors (13.2% of reasonableness appeals); other general substantive reasonableness issues (12.6% of reasonableness appeals); and the procedural reasonableness of the court's

¹³⁰ Of the 138 sentencing appeals affirmed in part/reversed in part, the appellate courts remanded 128 (92.8%) to the district courts for further action.

¹³¹ Prior to fiscal year 2005, the Commission did not report separately the number of cases the courts of appeals remanded to the lower courts without vacating the original sentence. These cases are now included as “remanded.” See 2013 *Sourcebook of Federal Sentencing Statistics*, Tables 56 and 56A.

consideration of the sentencing factors listed at 18 U.S.C. § 3553(a) (8.5% of reasonableness appeals).

Reasonableness issues were involved in 56.6 percent of all sentencing appeals brought by the defendant (n=3,210). The guidelines most commonly appealed by Defendants were: USSG §1B1.10 (Retroactivity of Amended Guideline Ranges) (14.9% of appeals brought); USSG §2D1.1 (Drug Trafficking) (4.6% of appeals brought); USSG §2B1.1 (Larceny, Embezzlement, and Theft) (3.9% of appeals brought); and USSG §2L1.2 (Unlawfully Entering or Remaining in the United States) (3.8% of appeals brought). These have been among the most frequently appealed guidelines in Defendant-initiated appeals over the past five fiscal years.

Reasonableness issues were involved in 78.0% of the 41 sentencing appeals brought by the government and decided in fiscal year 2013. The most common guidelines issues appealed by the government involved USSG §2B1.1 (Larceny, Embezzlement, and Theft) (14.6% of appeals brought); USSG §1B1.10 (Retroactivity of Amended Guideline Ranges) (12.2% of appeals brought); USSG §5E1.1 (Restitution) (12.2% of appeals brought); and USSG §3B1.1 (Aggravating Role) (7.3% of appeals brought).

In fiscal year 2013, appeals of issues involving the criminal history guidelines (Chapter Four) were among the most common in the appeals cases decided. Chapter Four issues were involved in 458 appeals and the affirmance rate in those cases was 89.3 percent, compared to 86.9 percent in fiscal year 2012. The next most common appeals were those involving the drug trafficking guideline (§2D1.1). The affirmance rate in those 323 appeals was 74.8 percent, compared to 91.4 percent in fiscal year 2012. Appeals to the immigration and naturalization offenses guidelines (Chapter Two, Part L) were involved in 225 appeals with an affirmance rate of 88.4 percent. This compares with an affirmance rate of 85.2 percent in those cases in fiscal year 2012.

Overall Offense and Offender Characteristics

United States citizens comprised a larger portion of the appellant population than they did of the federal offender population generally. Almost three-quarters (73.6%) of defendants in the appellate court cases analyzed were United States citizens while just

over half (55.1%) of the defendants initially sentenced in 2013 were citizens.

Blacks comprised a larger proportion of the appellant population than they did of the federal offender population generally. Although Blacks accounted for 41.2 percent of the 5,016 sentencing appeals brought by defendants that were decided in fiscal year 2013, only 20.6 percent of the defendants initially sentenced in fiscal year 2013 were Black. In comparison, Hispanic offenders brought 30.6 percent of the defendant sentencing appeals decided that year, but accounted for 51.5 percent of all offenders initially sentenced. Whites brought 25.1 percent of sentencing appeals and were 23.8 percent of the defendants initially sentenced.

Of the 5,048 sentencing appeals (for which the Commission received complete information), in 1,439 cases (28.5%) the defendant was sentenced pursuant to a mandatory drug sentencing statute, in 391 cases (7.7%) the defendant was sentenced pursuant to a mandatory firearm sentencing statute, and in 205 cases (4.1%) the defendant was sentenced pursuant to both drug and firearm mandatory sentencing statutes. Mandatory minimum penalties applied in 48.9 percent (n=2,467) of the appellate cases, compared to 24.7 percent (n=19,733) of the cases in which the offender was sentenced in district court cases in 2013.

The sentences imposed in appealed cases decided in 2013 were considerably longer, on average, than the sentences imposed in cases in which the offender was sentenced that year. The average sentence in appealed cases was 142 months (median=110 months) compared to an average sentence of 44 months (median=24 months) for all cases in which the offender was initially sentenced.

Data on Resentencings 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 eight

types¹³² of resentencings and other modifications of sentence: (1) reduction of sentence for substantial assistance (Fed. R. Crim. P. 35(b));¹³³ (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));¹³⁴ (5) direct motion to the district court (28 U.S.C. § 2255);¹³⁵ (6) modification of imposed term of imprisonment for extraordinary and compelling reasons (18 U.S.C. § 3582(c)(1));¹³⁶ (7) modification of imposed term of imprisonment for retroactive amendment to the sentencing guidelines (18 U.S.C. § 3582(c)(2));¹³⁷ and (8) unknown type of resentencing.¹³⁸

¹³² 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.

¹³³ Commonly referred to as a “Rule 35(b) resentencing.” This type of resentencing occurs when the government files a substantial assistance motion after the offender was sentenced.

¹³⁴ 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 U.S.C. § 3559(c)(7) is overturned.

¹³⁵ 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.

¹³⁶ This 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 if 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.

¹³⁷ Courts may modify the sentence for a defendant who was sentenced based on a sentencing range that later was lowered by the 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.

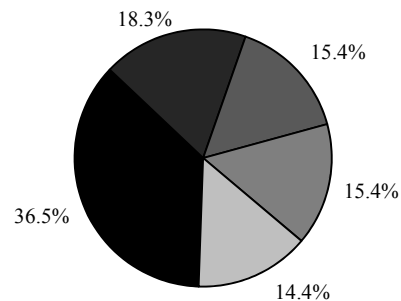
¹³⁸ This category includes resentencings in which the documentation received by the Commission was sufficient to determine that a resentencing occurred, but the exact type was not able to be determined.

Summary of Information Received

In 2013, the Commission received documentation on 4,429 resentencings and other modifications of sentence.¹³⁹ The most frequently reported reason was a reduction for substantial assistance to the government after sentencing pursuant to Federal Rule of Criminal Procedure 35(b) (1,618 or 36.5% of all cases). Of the 1,618 resentencings citing this reason, four districts resentenced offenders pursuant to the rule in more than 100 cases: Eastern Virginia (254), Southern Florida (192), Middle Florida (128), and South Carolina (113).

The second most common type of resentencing reason or modification of sentence was a remand by the court of appeals (809 or 18.3% of all cases). The districts with the highest number of resentencing after remand are Central Illinois (44), Central California (35), Southern Texas (31), and Northern Illinois (30).

The third most common type of resentencing or modification of sentence was a modification of restitution order (683 or 15.4% of all cases). The districts with the highest number of modifications to restitution orders are Southern Florida (126), Western Virginia (49), Western Washington (45), and Oregon (39).



- Reduction for Substantial Assistance Fed. R. Crim. P. 35(b)
- Remand by Circuit Court 18 U.S.C. § 3742(f)(1)/(2)
- Restitution Order Modification 18 U.S.C. § 3664
- Retroactive Amendment Modification 18 U.S.C. § 3582(c)(2)
- Other

¹³⁹ The Commission’s Resentencing Dataset may not represent all resentencings decided in the fiscal year. Only those resentencings submitted to the Commission are reported.

Data Analyses for the Courts, Congress, and Others

Each year, the Commission compiles detailed information on sentencing activities for each federal circuit, federal district, and state (by combining data for all federal districts in that state). The information presented includes the distribution of cases, mode of conviction, type of sentence imposed, incarceration rate, length of imprisonment, and departure rate by primary offense type. The data are by circuit and district and provide comparisons to national figures.

The informational packets are used in guidelines orientation sessions for new chief circuit and district court judges by Commission staff and in other training programs for court personnel. The statistical informational packets are also provided to the members of the Senate and House Committees on the Judiciary. The Commission makes these statistical informational packets available to the general public on the Commission's website.¹⁴⁰ The website also includes similar statistical informational packets from 1995 to 2013.

Commission staff also regularly respond to data requests from other government entities, including the courts, individual members of Congress and congressional committees, the Congressional Budget Office, the Government Accountability Office, and the Congressional Research Service.

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 these requests ranges from serving as a consultant about a particular data analysis to performing substantial, sophisticated data analyses. Last year staff responded to 109 such requests.

¹⁴⁰ www.ussc.gov.

The year 2013, as used in this report, refers to the fiscal year 2013 (October 1, 2012, through September 30, 2013).