



# Federal Identity Theft Penalties

*Mandatory Minimum Penalties for Identity Theft Offenses in the Federal Criminal Justice System*

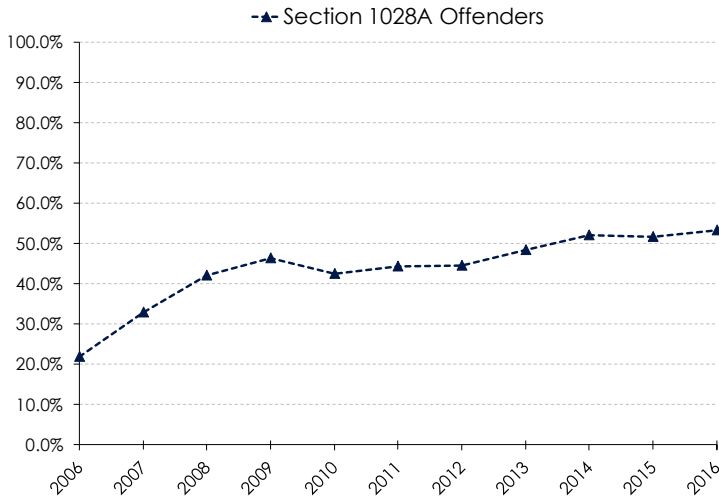
## Overview

In September 2018, the Commission issued a report, *Mandatory Minimum Penalties for Identity Theft Offenses in the Federal Criminal Justice System*, highlighting recent trends in the charging of identity theft offenses pursuant to 18 U.S.C. § 1028 (general identity theft) and 18 U.S.C. § 1028A<sup>1</sup> (aggravated identity theft). Only the aggravated identity theft statute carries a mandatory minimum penalty.<sup>2</sup> This publication is the fifth in a series of new reports building on the Commission's 2011 report to the Congress.<sup>3</sup> Below are some key findings of the report.

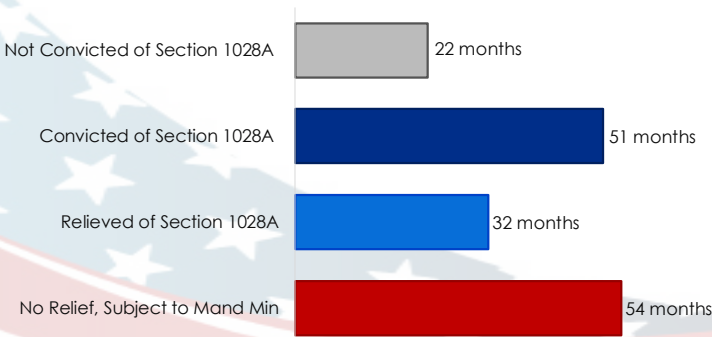
## Highlights

- Just 1.6% of all federal offenders were convicted under 18 U.S.C. § 1028A, the aggravated identity theft statute carrying a two-year mandatory minimum penalty. However, these offenders comprised slightly more than half of all federal identity theft offenders (53.4%, N=978).
- Aggravated identity theft offenders accounted for a small (7.2%) but growing proportion of all offenders facing a mandatory minimum penalty. The percentage of federal identity theft offenders convicted of aggravated identity theft has more than doubled over the last decade (from 21.9% in fiscal year 2006 to 53.4% in fiscal year 2016).
- The Eleventh Circuit accounted for about one-third of all aggravated identity theft cases in fiscal year 2016 (34.7%), with the Southern District of Florida alone accounting for 20.8% of such cases.

**Proportion of Federal Identity Theft Offenders Convicted of Aggravated Identity Theft Fiscal Years 2006 through 2016**



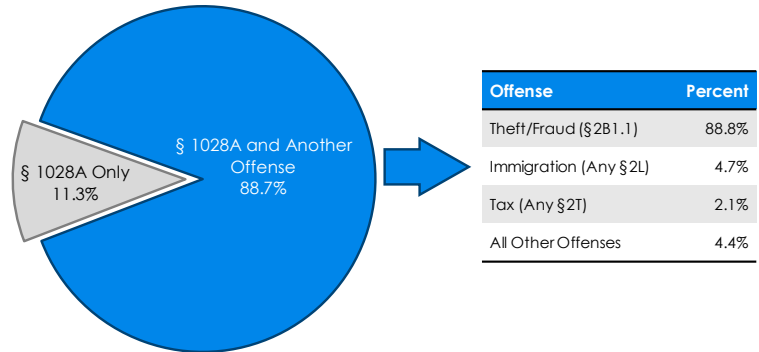
**Average Sentence for Identity Theft Offenders By Conviction & Relief Status Fiscal Year 2016**



- In fiscal year 2016, the average sentence length for aggravated identity theft (51 months) was longer than sentences imposed for identity theft offenses not carrying a mandatory minimum penalty (22 months), even when the offender received relief from the mandatory minimum penalty (32 months).
- Few section 1028A offenders are convicted of multiple counts under the statute (10.8%, N=106). When they are, courts frequently exercise their discretion to impose concurrent sentences (89.6% of cases), in whole or in part, for additional counts under the statute.

- Consistent with the statutory requirements of section 1028A (that the offense was committed during and in relation to any enumerated felony violation), the majority of offenders (88.7%) convicted under this statute were also convicted of another offense.
- In the remaining 11.3% of section 1028A offenses, charging and plea decisions appeared to result in less than half the average sentence length imposed on other section 1028A offenders facing more than one count of conviction (22 months as compared to 54 months).

### Additional Offenses of Conviction for Aggravated Identity Theft Offenders Fiscal Year 2016



### Race of Identity Theft Offenders Fiscal Year 2016

■ Black ■ White □ Hispanic ■ Other

All Identity Theft Offenders



Convicted Under 18 U.S.C. § 1028A



Convicted of Multiple Counts Under 18 U.S.C. § 1028A



- Section 1028A penalties affect Black offenders more than any other racial group. In fiscal year 2016, Black offenders represented 49.8% of all identity theft offenders, yet accounted for 58.7% of offenders convicted under section 1028A.

### U.S. Sentencing Commission's 2011 Recommendations

The Commission's recent reports build on the Commission's previous reports and publications—particularly, its 2011 report. In the 2011 report, the Commission explained that it "stands ready to work with Congress on measures that can be taken to enhance the strength and effectiveness of the current guidelines system and address the problems with certain mandatory minimum penalties." The Commission also made the following recommendations:

- A strong and effective federal sentencing guidelines system best serves the purposes of the Sentencing Reform Act.<sup>4</sup>
- If Congress decides to exercise its power to direct federal sentencing policy by enacting mandatory minimum penalties, such penalties should (1) not be excessively severe, (2) be narrowly tailored to apply only to those offenders who warrant such punishment, and (3) be applied consistently.
- Congress should request prison impact analyses from the Commission as early as possible in its legislative process whenever it considers enacting or amending mandatory minimum penalties.

#### Endnotes

- This provision prohibits knowingly transferring, possessing, or using, a "means of identification" of another person during and in relation to any enumerated felony violation.
  - Section 1028A requires that the two-year mandatory minimum be imposed consecutively to "any other term of imprisonment imposed on the person under any other provision of law, including any term of imprisonment imposed for the felony during which the means of identification was transferred, possessed, or used." The statute allows the court discretion to sentence a defendant convicted of multiple counts under section 1028A to terms that run consecutively or concurrently.
  - See U.S. SENTENCING COMM'N, REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM, (OCT. 2011).
  - Title II, Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473 (1984).
- SOURCE: U.S. Sentencing Commission 2016 Datafile, USSCFY2016.

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