



Research **NOTES**

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Statute and Mandatory Minimum Penalty Variables

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This paper explains how the United States Sentencing Commission collects and reports federal sentencing data in its individual offender datafile, specifically regarding information about each count of conviction, the statutes associated with each count of conviction, and the corresponding statutory penalty ranges for each count of conviction.¹ In addition, it provides a discussion of analytical issues that may arise when using the Commission's data.² The key variables in the Commission's individual offender datafile are noted in all capital letters inside of brackets throughout the text.


The United States Sentencing Commission is an independent agency in the judicial branch of the federal government. The Commission's primary responsibility is to promulgate and amend the federal sentencing guidelines. The Commission's other responsibilities include: (1) establishing a data collection, analysis, and research 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 18 U.S.C. § 3553(a); and (4) collecting and disseminating information regarding the effectiveness of sentences imposed.³


Office of Research and Data

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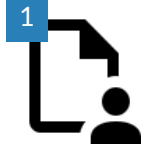
Research Notes give background information on the technical details of the Commission's data collection and analysis process. They are designed to help researchers use the Commission's datafiles by providing answers to common data analysis questions.

Documents Received and Data Collected

To meet its responsibilities, the Commission receives and collects data from sentencing documents sent directly from the federal courts. Within 30 days of the entry of judgment in a criminal case, the chief judge of each sentencing court must ensure that documents about the sentencing are submitted to the Commission.

The Commission collects data using both optical character recognition (OCR) technology and Commission staff who interpret and collect data manually to transfer information from the submitted documents into several datafiles, including the individual offender datafile.⁵

Documents Received



1

An **Indictment** is a written statement of the essential facts constituting the offenses charged by a grand jury.



2

A **Plea Agreement (Plea)** is a written agreement between the government and the defendant in which the defendant agrees to plead guilty to one or more of the charged offenses, often in return for the government's agreement to dismiss other charges or to support a specific sentence.



3

A **Presentence Report (PSR)** is prepared by a probation officer and contains information about the offense and offender, the statutory range of punishment, the guideline calculation, and any bases for imposing a sentence above or below the guideline range.



4

The **Judgment and Commitment Order (J&C)** is a written record of the defendant's conviction(s) and the sentence the court imposes.



5

The **Statement of Reasons (SOR)** is a form on which judges explain the reasons for imposing a sentence outside the guidelines range.



6

Any other information the Commission finds appropriate.⁴



The Commission collects data using optical character recognition technology and Commission staff.



Statutes of Conviction

The Commission collects information on each count of conviction listed on the J&C.⁶ Court documents will often list multiple statutes for a single count of conviction, therefore, the Commission's datafile records up to three statutes, including the title number, section number, and subsection designation for each count of conviction.⁷ Commission staff enters the counts and statutes in the same order that they are listed on the J&C. The counts of conviction and the statutes for each count are not hierarchical, therefore, count one may not be the "most" serious count (*i.e.*, may not have the highest maximum penalty). In some instances, the first statute in a count may be a "conspiracy" or "definitional" statute and the second count may be the "substantive" statute.

The Commission reports out the statutes in a series of "count-based" variables, [STA1_1] through [STA1_XXX], [STA2_1] through [STA2_XXX], and [STA3_1] through [STA3_XXX]. After the "STA" portion of the variable name, the "1", "2", and "3" designations denote that it is the first, second, or third statute listed in a count of conviction. The numeric value (1 through XXX) after the underscore in the variable name denotes the first through XXX count of conviction. For an example, the variable STA2_3 is the second statute listed for the third count of conviction. The maximum number of counts of conviction ("XXX") varies from year-to-year based on the offender with the most counts of conviction sentenced during that fiscal year. The variable [NOCOUNTS] reports out the total number of counts of conviction for each offender; reviewing the largest frequency reported for this variable will provide the maximum number of counts of conviction recorded in any single case for that fiscal year of data (*i.e.*, the value of "XXX").

The Commission's statute variables, [STA1_1] through [STA1_XXX], [STA2_1] through [STA2_XXX], and [STA3_1] through [STA3_XXX] are reported as the entire statute (i.e., the title, section, and subsection) in a single character string. All the letters in the section and subsection are capitalized, without parentheses or statute symbols. For example, the drug trafficking statute, 21 U.S.C. § 841(b)(1)(A), is coded as the character string, "21841B1A." If an offender only has one count of conviction, then the remaining statute fields for each count [STA1_2 through STA1_XXX], [STA2_2 through STA2_XXX], and [STA3_2 through STA3_XXX], will be blank. Similarly, if an offender only has one statute for a count of conviction, then the second and third statute fields for that count will be blank.

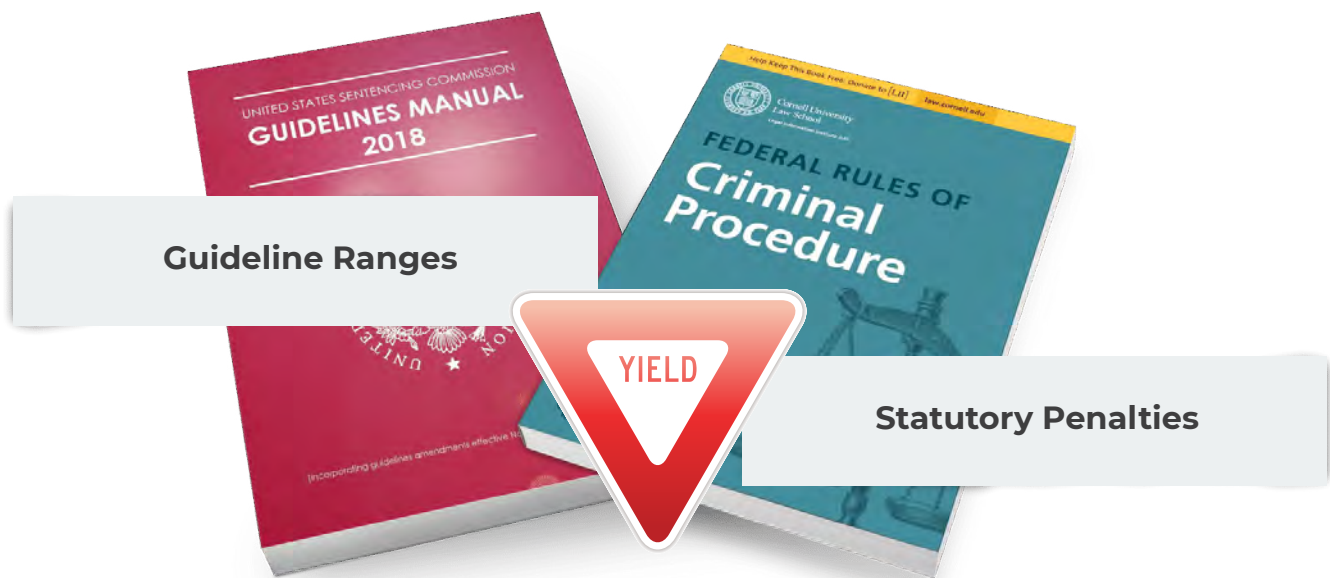
The drug trafficking statute
21 U.S.C. § 841(b)(1)(A)
is coded as the character string
21841B1A.

Statutory Maximum and Minimum Penalties



In addition to the statutes, the Commission datafile contains the maximum statutory penalty for each individual count of conviction and, when applicable, the minimum statutory penalty.⁸ The variables [SMAX1] through [SMAXXXX] report the statutory maximum associated with each individual count of conviction, in months; the variables [SMIN1] through [SMINXXX] report the statutory minimum associated with each individual count of conviction, in months. When the statutory minimum or maximum is life imprisonment, the variables are coded as "9996." The value of "1" through "XXX" in the variable name corresponds with the count of conviction. For example, [SMAX3] is the statutory maximum associated with the third count of conviction. Therefore, for each count of conviction, there are three statute fields and two statutory range fields recorded on the Commission's datafile.

The Commission's datafile also contains the overall statutory minimum [STATMIN] and maximum [STATMAX] prison term, in months, for all the counts for which the offender was convicted. These variables are coded as "9996" when an offender's statutory minimum and/or maximum is life imprisonment. The statutory maximum [STATMAX] adds together all the individual statutory maximum values [SMAX1] through [SMAXXXX].⁹ The statutory minimum [STATMIN] is the largest of the individual statutory minimums [SMIN1] through [SMINXXX], after accounting for any statutory mandatory minimum penalties which are consecutive to other counts of conviction. For example, in a case where the offender was convicted of both drug trafficking and possessing a firearm in connection with the offenses, the first count recorded would be for drug trafficking under 21 U.S.C. § 841(b)(1)(A)(i). For that count the statutory range would be 120 months to life imprisonment (i.e., [SMIN1] is recorded as "120" and [SMAX1] is recorded as "9996" (the Commission's value for life imprisonment for this



variable)). The second count would be for the possession of a firearm in connection with a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A), in which the statutory range would be 60 months to life imprisonment (*i.e.*, [SMIN2] is recorded as “60” and [SMAX2] is recorded as “9996” (the Commission’s value for life imprisonment for this variable)). Under this statute, the punishment must be imposed consecutively to any other count of conviction. The overall statutory minimum [STATMIN] would be “180” months and the overall statutory maximum would be “9996.” If the second statute had been one that did not mandate it be applied consecutively, the overall statutory minimum would have been “120” months, the largest statutory minimum value for any of the counts of conviction.

As an offender may have multiple counts of conviction, and each count of conviction may have multiple statutes recorded, it is necessary to “loop through” all of the statute variables, [STA1_1] through [STA1_XXX], [STA2_1] through [STA2_XXX], and [STA3_1] through [STA3_XXX] in order to “count” the total number of convictions an offender has for a particular statute. For example, if the researcher wants to find offenders with multiple counts of conviction under 18 U.S.C. § 924(c)(1) (A) (which would be coded as “18924C1A”), then each of the three statute fields for each of the XXX counts would need to be analyzed to find and tally all the instances in which that statute was applied for each offender. To answer the research question, “How many offenders have at least one drug trafficking count of conviction that carries a 60-month mandatory minimum penalty?,” it is necessary to search the three statute fields for each count for all of the drug trafficking statutes of interest that have a corresponding individual statutory minimum [SMIN1 through SMINXXX] value of “60.”

Not all research questions require a count-based analysis. In those instances, using the Commission’s unique statute variables [NWSTAT1-NWSTATXX] may be easier. These variables [NWSTAT1-NWSTATXX] contain a character string of the title, section, and subsection of only the unique statutes for each case generated from all the statute fields (and therefore are not count based). The variables [NWSTAT1-NWSTATXX] have no hierarchy. Rather, each occurrence of a unique statute (title section and subsection) is represented within the variables [NWSTAT1-NWSTATXX] for each offender. For example, if an offender was convicted under the statutes 21 U.S.C. § 846 and 21 U.S.C. § 841(b) (1)(B) on the first count of conviction and 21 U.S.C. § 846 and 21 U.S.C. § 841 (b)(1)(C) on the second count of conviction, then [NWSTAT1] = “21846,” [NWSTAT2] = “21841B1B,” and [NWSTAT3] = “21841B1C.” All other unique statute variables, [NWSTAT4-NWSTATXX], would be blank because the offender only had three *unique* statutes of conviction. Note that each unique statute field [NWSTAT1-NWSTATXX] is generated from any of the counts of conviction, therefore, the individual statutory minimum [SMIN1-SMINXXX] and maximum [SMAX1-SMAXXXX] variables cannot be used in conjunction with these variables. Like the count-based statute variables, the maximum number of unique statutes (the “XX”) will vary from year-to-year based on the offender with the most unique statutes. The variable [NOUSTAT] is numeric and signifies the number of unique statutes in a case. Running a frequency on [NOUSTAT] and reviewing the largest value reported will give you the maximum number of unique statutes in a given fiscal year.

Mandatory Minimum Penalties



Some researchers are especially interested in statutory mandatory minimum penalties, due to the impact they often have on the final sentencing guideline range and the judge's sentencing discretion.¹⁰

For ease of research, the Commission creates a variety of mandatory minimum penalty variables to record the total amount of the penalties documented in the case materials sent to the Commission. All the mandatory minimum penalty variables record the numeric value that indicates the amount of the mandatory minimum penalty, in months, that is associated with a specific statute.¹¹ These variables record the penalties and should not be used as indicator variables¹² to identify if the offender has a count of conviction under the associated statutes of conviction. For some of the statutes associated with the mandatory minimum penalties, the Commission also creates an indicator variable to easily identify all offenders who were convicted of at least one count of a specific statute (regardless of whether the offender's case documentation indicated the presence of a mandatory minimum penalty). If an indicator variable does not exist on the Commission's datafile for the statute(s) of interest, then researchers must search through the statute fields to determine if an offender was convicted of a specific statute.



Several of the most frequently occurring mandatory minimum penalties transpire in drug trafficking cases.

Drug Trafficking Offenses

Several of the most frequently occurring mandatory minimum penalties transpire in drug trafficking cases. Penalty ranges for drug trafficking cases are outlined under the primary drug trafficking statute, 21 U.S.C. § 841.¹³ The Commission collects the length of the drug mandatory minimum penalty in [DRUGMIN]. For offenders who are convicted under more than one drug trafficking count of conviction that carries a mandatory minimum penalty, the highest penalty is recorded in [DRUGMIN].¹⁴

NOTE

Methamphetamine Penalties



There are special consecutive drug penalties that only apply in methamphetamine cases:

21 U.S.C. § 860a - Consecutive sentence for manufacturing, or distributing, or possessing with intent to manufacture or distribute, methamphetamine on premises where children are present or reside

21 U.S.C. § 865 - Smuggling methamphetamine or methamphetamine precursor chemicals into the United States while using facilitated entry programs

The length of penalty is recorded in the variable [METHMIN]. It is important to note that the total penalties in [METHMIN] are consecutive and are added to any other drug mandatory minimum penalties recorded in [DRUGMIN].¹⁵ The indicator variable [ISMETHMIN] identifies offenders with either 21 U.S.C. § 860a or 21 U.S.C. § 865 as one of the statutes of conviction. Researchers can exclude cases where the indicator variable [ISMETHMIN] is recorded as "1" if they do not want to include cases with these statutes in their analyses.¹⁶

Firearms Offenses

Mandatory minimum penalties are also frequently found in firearms cases. There are three variables for identifying the mandatory minimum penalties associated with statutes for weapon use and possession. The first variable, [GUNMIN1], records the total value (in months) of all consecutive penalties associated with counts of conviction under 18 U.S.C. § 924(c) (Possession of a weapon during a crime of violence or drug trafficking crime). The indicator variable [IS924C] identifies any offender who was convicted of at least one count of 18 U.S.C. § 924(c).¹⁷ The Commission creates an indicator variable, [ONLY924C], which identifies cases in which the only substantive counts of conviction are under 18 U.S.C. § 924(c).¹⁸ The second weapon variable, [GUNMIN2], records the highest months associated with offenders convicted under 18 U.S.C. § 922(g) (Possession of a firearm by a prohibited person) and the associated mandatory minimum penalties under 18 U.S.C. § 924(e). Note that this variable is associated with the application of Armed Career Criminal status.¹⁹ Generally the mandatory minimum penalty value for [GUNMIN2] is 180 (months). The final mandatory minimum penalty variable for weapons is [GUNMIN3]. The variable [GUNMIN3] records the total consecutive penalties associated with convictions under 18 U.S.C. § 929 (Use of restricted ammunition).

Arson and Explosive Materials Offenses

Mandatory minimum penalties cited under 18 U.S.C. § 844 (Penalties for arson and explosive materials) offenses are documented in the variables [FIREMIN1] and [FIREMIN2]. The variable [FIREMIN1] records the total consecutive penalties associated with 18 U.S.C. § 844(h) (Use of fire or explosives to commit a felony). The field [FIREMIN2] records the non-consecutive penalties associated with any subsection of 18 U.S.C. § 844 other than (h).

Aggravated Identity Theft Offenses

Aggravated identity theft offenders are subject to a two-year mandatory minimum penalty under 18 U.S.C. § 1028A.²⁰ That statute specifies that the penalties for this offense are consecutive to counts of conviction under any other statute. If the offender has multiple counts of conviction under 18 U.S.C. § 1028A, the judge may run the penalties concurrently or consecutively to the other count(s) of aggravated identity theft. The indicator variable [IS1028A] identifies whether an offender has 18 U.S.C. § 1028A as one of the statutes of conviction. In addition, another indicator variable, [ONLY1028A], identifies cases where the only substantive statute of conviction was 18 U.S.C. § 1028A.²¹ The total associated consecutive penalties for offenders convicted under this statute is recorded in [IDMIN].²²

Immigration Offenses

There are mandatory minimum penalties for immigration offenders convicted under 8 U.S.C. § 1324 (Bringing-in or harboring certain aliens). The variable [IMMIMIN] records the highest mandatory minimum penalty applied for offenders convicted under 8 U.S.C. § 1324.

Sex Offenses

There are a variety of mandatory minimum penalties associated with certain offenses involving child pornography, sexual assault offenses, and failure to register as a sex offender. The variable [PORNMIN] reports the total mandatory minimum penalties associated with counts of conviction under 18 U.S.C. §§ 2251, 2251A, 2252, 2252A, or 1466A. The variable [SEXMIN] reports the highest mandatory minimum penalties associated with counts of conviction under 18 U.S.C. §§ 1591, 2241(c), 2422, or 2423. The statute 18 U.S.C. § 2260A establishes mandatory minimum penalties for offenses involving minors and repeat sex offenders.²³ The variable [REPSXMIN] reports the total value for mandatory minimum penalties associated with 18 U.S.C. § 2260A. The penalty recorded in [REPSXMIN] is consecutive to any other penalties for counts of conviction related to sex offenses enumerated in 18 U.S.C. § 2260A. Failure to register as a sex offender plus committing a crime of violence is penalized with mandatory minimum penalties under 18 U.S.C. § 2250(d).²⁴ The variable [REGSXMIN] reports the highest value for mandatory minimum penalties associated with this statute of conviction.

Release and Detention Offenses

There are also mandatory minimum penalties associated with release and detention offenses. The statute 18 U.S.C. § 3146 provides for consecutive mandatory minimum penalties for offenders who fail to appear for the service of a sentence.²⁵ The variable [FAILMIN] is the total consecutive mandatory minimum penalties associated with this statute. Offenders who commit new offenses while on release may be punished with consecutive mandatory minimum penalties under 18 U.S.C. § 3147.²⁶ The variable [RELMIN] reports the total consecutive mandatory minimum penalties associated with this statute.

All other mandatory minimums that are associated with statutes not detailed in the variables described previously in this paper do not have a specific mandatory minimum penalty variable on the Commission’s individual offender datafile. These remaining mandatory minimum penalties are reported in the variable [OTHRMIN] such that [OTHRMIN] will include any mandatory minimum penalties reported in the overall statutory minimum [STATMIN] that have not already been accounted for in [DRUGMIN], [GUNMIN1], [GUNMIN2], [GUNMIN3], [FIREMIN1], [FIREMIN2], [IDMIN], [IMMIMIN], [PORNMIN], [SEXMEN], [REPSXMIN], [REGSXMIN], [FAILMIN], or [RELMIN].²⁷

Relief from Mandatory Minimum Penalties

Offenders who are convicted of an offense carrying a mandatory minimum penalty²⁸ must receive a sentence of at least that amount unless the offender receives relief from the mandatory penalty at sentencing via one of two methods.

If an offender provides the government with substantial assistance in the investigation or prosecution of another person who has committed an offense, then the government can recommend that the court impose a sentence below the mandatory minimum penalty by filing a motion under 18 U.S.C. § 3553(e). The guidelines account for this assistance in §5K1.1 of the *Guidelines Manual*.²⁹

The only other way that an offender may be sentenced below the mandatory minimum penalty is limited to drug trafficking offenders and involves the “Safety Valve” provision.³⁰ Congress enacted this provision in 1994 to allow non-violent drug offenders with little or no criminal history to obtain relief from the drug trafficking mandatory minimum penalties. The safety valve statutory provision is found in 18 U.S.C. § 3553(f).

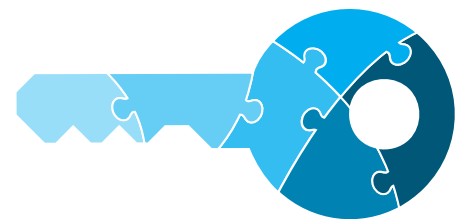
Offenders who meet the qualifications for the safety valve, as defined in §5C1.2 of the *Guidelines Manual*, are also eligible for a two-level reduction in the offense level computation in their case, as detailed in §2D1.1 and §2D1.11.³¹ All drug trafficking offenders who meet the conditions of the safety valve in §5C1.2 are eligible for the two-level “guideline” safety valve reduction, regardless of whether they were convicted of an offense that carries a drug mandatory minimum penalty.

Some offenders receive relief from mandatory minimum penalties through both provisions discussed above. Researchers can identify offenders who receive relief under both the substantial assistance and safety valve provisions by reviewing specific variables in the Commission’s individual offender datafile. Offenders who received a reduction under §5K1.1 (substantial assistance) can be identified using the variable [SENTRNGE].³² Offenders who received the safety valve can be identified by either [SAFETY] or [SAFE]. The appropriate variable to use will depend on the exact research question that is being answered.³³

Substantial Assistance



Safety Valve



+



For More Information

The Commission’s annual individual offender datafiles are available for download in SAS or SPSS formats along with the corresponding codebook describing the variables and values at:

<https://www.ussc.gov/research/datafiles/commission-datafiles>.³⁴

Appendix

The following is an example of the counts of conviction, statutes, and statutory penalties for an offender as they would be listed on the J&C and PSR. There is a table following the example text of the counts of conviction which details the names of the variables in the USSC individual offender datafile, the type of variable (character or numeric), the value each of the variables would have based on the example, and a brief description of each variable. The table is arranged in alphabetical order of the variable names in a similar way to the USSC codebook (see https://www.ussc.gov/sites/default/files/pdf/research-and-publications/datafiles/USSC_Public_Release_Codebook_FY99_FY19.pdf).

Count 1: Possession with Intent to Distribute Methamphetamine
21 U.S.C. § 841 (b)(1)(C) and 18 U.S.C. § 2
Not more than 20 years imprisonment

Count 2: Possession with Intent to Distribute Methamphetamine
21 U.S.C. § 841 (a), (b)(1)(A)(viii), 846
10 years to life imprisonment

Counts 3 & 4: Felon in Possession of a Firearm
18 U.S.C. § 922(g)(1), 924(a)(2)
Not more than 10 years imprisonment

Variable Name	Type	Example Value	Description
NOCOUNTS	Num	4	Number of Counts of Conviction
NWSTAT1	Char	21841B1C	1 st Unique Statute
NWSTAT2	Char	182	2 nd Unique Statute
NWSTAT3	Char	21841A	3 rd Unique Statute
NWSTAT4	Char	21841B1AVIII	4 th Unique Statute
NWSTAT5	Char	21846	5 th Unique Statute
NWSTAT6	Char	18922G1	6 th Unique Statute
NWSTAT7	Char	18924A2	7 th Unique Statute
NWSTAT8 thru NWSTATXX*	Char		8 th thru XX th Unique Statute
SMAX1	Num	240	Statutory Maximum for Count 1
SMAX2	Num	9996	Statutory Maximum for Count 2
SMAX3	Num	120	Statutory Maximum for Count 3
SMAX4	Num	120	Statutory Maximum for Count 4
SMAX5 thru SMAXXXX*	Num		Statutory Maximum for Count 5 thru XXX th
SMIN1	Num	0	Statutory Minimum for Count 1
SMIN2	Num	120	Statutory Minimum for Count 2
SMIN3	Num	0	Statutory Minimum for Count 3
SMIN4	Num	0	Statutory Minimum for Count 4
SMIN5 thru SMINXXX*	Num		Statutory Minimum for Count 5 thru XXX th
STA1_1	Char	21841B1C	1 st Statute for 1 st Count
STA2_1	Char	182	2 nd Statute for 1 st Count
STA3_1	Char		3 rd Statute for 1 st Count
STA1_2	Char	21841A	1 st Statute for 2 nd Count
STA2_2	Char	21841B1AVIII	2 nd Statute for 2 nd Count
STA3_2	Char	21846	3 rd Statute for 2 nd Count
STA1_3	Char	18922G1	1 st Statute for 3 rd Count
STA2_3	Char	18924A2	2 nd Statute for 3 rd Count
STA3_3	Char		3 rd Statute for 3 rd Count
STA1_4	Char	18922G1	1 st Statute for 4 th Count
STA2_4	Char	18924A2	2 nd Statute for 4 th Count
STA3_4	Char		3 rd Statute for 4 th Count
STA1_5 thru STA3_XXX*	Char		1 st – 3 rd Statutes for 5 th thru Count XXX
STATMAX	Num	9996	Statutory Maximum for All Counts
STATMIN	Num	120	Statutory Minimum for All Counts

*These values are coded as blank (missing) when not applicable due to an offender having a smaller number of counts of conviction and statutes. In the example, there are only 7 unique statutes in the example, so the values of NWSTAT8, NWSTAT9, NWSTAT10...NWSTATXX will all be blank. In a similar manner, there are only 4 counts of conviction, so the variables that would capture statutes as well as minimum and maximum statutory range values will all be blank for the 5th thru XXXth counts of conviction.

Endnotes

1 The United States Sentencing Commission is an independent agency in the judicial branch of government. Established by the Sentencing Reform Act of 1984, its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress, the federal judiciary, and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues. See 28 U.S.C. §§ 991–994.

2 The Commission's individual offender datafiles from FY 2002–present are available for download in either SPSS or SAS formats (the datafiles are too large to be made available in EXCEL for “viewing”) at <https://www.ussc.gov/research/datafiles/commission-datafiles>, along with the codebook describing all of the available variables and values. Note that not all variables mentioned in this paper will exist for all years of data collected by the Commission. Please consult the codebook for information about variable and value changes over time.

3 The Commission's research and data duties are described in 28 U.S.C. §§ 995(a)(12) – (16).

4 28 U.S.C. § 994(w)(1).

5 For more information about the Commission's data collection and datafile creation, see the Research Notes publication, COMMISSION COLLECTION OF INDIVIDUAL OFFENDER DATA (2019) at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-notes/20190719_Research-Notes-Issue1.pdf.

6 The Commission only collects and reports information on the counts where the offender was convicted. Any information about charges (and the corresponding statutes) for which the offender was not indicted, charges which were dropped after indictment, or charges for which the offender was acquitted are not recorded on the Commission's datafiles.

7 In rare instances more than three statutes are listed for a count of conviction. Commission staff try to ensure that the more “substantive” or “punitive” statutes are coded in these instances. If there are multiple counts where the same four or more statutes are listed, then staff will enter the first three in one count and the last three in another count to ensure that all the statutes listed were captured for the offender. Note that the Commission datafile only records information about felony or Class A misdemeanor counts of conviction (i.e., if an offender has a “petty” or Class B/C misdemeanor count of conviction, then no information about this count is recorded on the Commission's datafile). The variable [NOCOUNTS] would only report out the total counts of felony or Class A misdemeanor convictions. The total special assessment value [SPECASSM] also only includes the values from the counts of felony or Class A misdemeanor convictions.

The Commission datafile reflects the Federal Criminal Code statutes of conviction and Code of Federal Regulations (C.F.R.) rules listed on the J&C. Forfeiture statutes are not recorded on the Commission's datafile. Additionally, procedural statutes such as 21 U.S.C. § 851 (Proceedings to Establish Prior Convictions) are often not listed on the J&C because it is not considered a statute of conviction. Most federal statutes contain a title and section as well as subsections that delineate different conduct or penalties within the same title and section. If the statute on the J&C only contains the title and section, then the subsection will not be recorded on the Commission's datafile. For this reason, some caution should be used in statute searches at the subsection level. If, for example, the question was how many offenders had at least one statute of conviction under 21 U.S.C. § 841(b)(1)(A), users should be aware that if the J&C did not list out the full subsection (or any part of the subsection), then any search results may possibly be an undercount of the total offenders convicted of that subsection. Researchers may want to check if the subsection of interest has a unique statutory range (e.g., there is a mandatory minimum penalty associated with only that subsection of the statute). If so, after completing a statute search for the exact match of the title, section, and subsection, then additionally search the data to see if there are any additional offenders who have the same title and section, but with either a partial or no subsection, and have that unique statutory range recorded for that count. Some federal statutes (often attempt and conspiracy charges) will refer to penalties in a different statute. For example, an offender's J&C may list one count of 21 U.S.C. § 846 (Attempt and Conspiracy) and not the “underlying” statute (such as 21 U.S.C. § 841(b)(1)(A)), but the PSR will stipulate that the count has a mandatory minimum statutory penalty range of 120 months to life imprisonment, which is the penalty associated with 21 U.S.C. § 841(b)(1)(A). Researchers need to be knowledgeable about “referring statutes” or statute searches will not produce the full population of desired offenders. Note that all the Commission's statute variables are character instead of numeric due to the letter designations in many of the section and subsection fields.

8 The statutory penalty ranges for each count of conviction are not listed on the J&C, so this information is recorded from the PSR instead. If the statutes listed for the count of conviction are different on the PSR as compared to the J&C, the plea agreement is reviewed, and the statutory ranges are coded from that document if they match the J&C. Otherwise the statutory range information will be reported as missing. If the statute only has a maximum penalty but no mandatory minimum penalty, then the statutory minimum value is recorded as zero.

9 The overall statutory maximum is always the sum of all the individual statutory maximum counts of conviction because the judge has the option to run the penalties for each of the individual counts either concurrently or consecutively in order to provide adequate punishment. See U.S. SENTENCING COMM'N, *Guidelines Manual*, §5G1.2 (Nov. 2018) [hereinafter USSG] for further information about sentencing with multiple counts of conviction.

10 For more information about how statutory penalties interact with the guideline range, see USSG Ch.5, Pt.G. For more information about the basics of federal sentencing, see https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/201811_fed-sentencing-basics.pdf. In general, the statutory range can “trump” or truncate the guideline range. For example, if an offender has a drug mandatory minimum penalty [DRUGMIN] of five years (not consecutive to other counts of conviction), and the guideline range [XMINSOR and XMAXSOR] is 51 to 63 months, then the sentencing guideline range [GLMIN and GLMAX] becomes 60 to 63 months, and the judge must sentence the offender to a minimum of 60 months absent relief from the mandatory minimum penalty.

11 Although statutory penalties are generally expressed in years, the Commission records all the statutory penalty variable values in months. This decision was made because sentence values are generally expressed in months and this way there is no conversion needed when comparing the sentence to the statutory penalty values.

12 An indicator variable is also referred to as a yes/no variable or a dummy variable.

13 Note that other statutes reference the penalties cited in these statutes, so offenders may only have the other statutes listed in the case documentation but still have a drug mandatory minimum penalty recorded.

14 While some statutes have mandatory minimum penalties that are always consecutive to one another, the drug mandatory minimum penalties under 21 U.S.C. § 841 are not specified as consecutive. Therefore, if an offender has one count of 21 U.S.C. § 841(b)(1)(A) in which the mandatory minimum penalty is 120 months and a second count of conviction under 21 U.S.C. § 841(b)(1)(B) in which the mandatory minimum penalty is 60 months, then the total value for [DRUGMIN] would be 120 (months). For more detailed information about the Drug Trafficking guidelines, see USSG Ch.2, Pt.D, as well as <https://www.usc.gov/guidelines/primers/drugs>. Note that prior to the enactment of the First Step Act of 2018 on December 21, 2018, some of the enhanced drug mandatory minimum penalties were different.

15 For example, if an offender had a 12-month mandatory minimum for [METHMIN] and was also convicted under 21 U.S.C. § 841(b)(1)(B) on a separate count of conviction with a 60-month mandatory minimum penalty, then the variable [DRUGMIN] would have a value of 72.

16 Note that [ISMETHMIN] is “yes” regardless of whether any consecutive penalties were documented in the case. The Commission excludes cases which have these consecutive methamphetamine penalties in some of its analyses. See U.S. SENTENCING COMM'N, 2018 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 119, 122 (2019), <https://www.usc.gov/research/sourcebook-2018> [hereinafter SOURCEBOOK].

17 In addition to [GUNMIN1] and [IS924C], there is also [ONLY924C] which identifies offenders who only have counts of conviction with 18 U.S.C. § 924(c) as the substantive statutes of conviction—note the offender may have other conspiracy or non-substantive statutes as well. If researchers are interested in the application of both 18 U.S.C. § 924(c) and the weapons SOC under various guidelines, then use [WEAPON]. If only the guideline weapon SOC is of interest, then use [WEAPSOC] or [WEAPCHI]. Note that offenders who have count(s) of conviction for other offenses, in addition to 18 U.S.C. § 924(c), will have the mandatory minimum penalty recorded in [GUNMIN1] added to their guideline range to determine the final sentencing range [GLMIN and GLMAX] unless the Career Offender sentencing table provision (see [CO924TAB] for more info) is applied.

18 In some cases, the offender pleads guilty only to one count of section 924(c). The variable [ONLY924C] identifies those cases where the only substantive counts of conviction are under 18 U.S.C. § 924(c). However, the offender may have other conspiracy or non-substantive statutes. For example, if the offender had one count of conviction that had two statutes: 18 U.S.C. § 924(c)(1)(B) and 18 U.S.C. § 2 (Principals), then the variable [ONLY924C] would have a value of “1” even though there were two statutes of conviction.

19 See USSG §4B1.4 for more information about the application of the Armed Career Criminal guideline. The application of the Armed Career Criminal guideline may increase both the offender’s Final Offense Level and Criminal History Category, significantly increasing the guideline range. Generally, these offenders are also subject to a 180-month mandatory minimum penalty under 18 U.S.C. § 924(e), which may “trump” the guideline range but is not consecutive to the guideline range.

20 For more information and data about Aggravated Identity Theft cases, see U.S. SENTENCING COMM'N, MANDATORY MINIMUM PENALTIES FOR FEDERAL IDENTITY THEFT OFFENSES (2018), <https://www.usc.gov/research/research-reports/mandatory-minimum-penalties-federal-identity-theft-offenses>.

21 [ONLY1028A] identifies offenders who only have counts of conviction with 18 U.S.C. § 1028A as the substantive statutes of conviction—note the offender may have other conspiracy or non-substantive statutes as well.

22 The penalties under 18 U.S.C. § 1028A are always consecutive to other counts of conviction for other offenses, but the sentencing judge has the option of making multiple counts of the identity theft statute run either partially or wholly consecutive or concurrent to one another. For example, if an offender was convicted of two counts of identity theft and the judge sentenced the offender to 24 months on the first count and then 24 months on the second count, of which 12 months was consecutive to the first count, then the variable [IDMIN] would reflect the total consecutive penalty under 18 U.S.C. § 1028A of 36 months in that scenario.

23 In addition to potentially being subject to mandatory minimum penalties if convicted under 18 U.S.C. § 2260A, the *Guidelines Manual* also enhances penalties for Repeat and Dangerous Sex offenders under USSG §4B1.5.

24 Note that the subsection associated with mandatory minimum penalty previously was subsection (c)—this was changed in 2016 to subsection (d).

25 The *Guidelines Manual* incorporates penalties for failure to appear (FTA) convictions at USSG §§2J1.6 and 3C1.1, so see these guidelines for more information about when penalties under 18 U.S.C. § 3146 are applied consecutively to the guideline range. If 18 U.S.C. § 3146 is the only count of conviction, then [FAILMIN] will be zero. [FAILMIN] reports the amount of punishment that is consecutive to other counts. For example, if an offender was convicted of a bank robbery and of failure to appear, and the judge sentenced the offender to 48 months for the bank robbery and zero months for the failure to appear count, then the value for [FAILMIN] will be zero.

26 The penalties for offenses committed while on release [RELMIN] are recorded in a similar way to the penalties for counts of failure to appear (see above end note). If 18 U.S.C. § 3147 is the only count of conviction, then [RELMIN] will be zero. [RELMIN] reports the amount of punishment that is consecutive to other counts.

27 [OTHERMIN] represents the highest “other” mandatory minimum penalty which is not already accounted for in other Commission mandatory minimum variables. If there is more than one count with these “other” penalties, [OTHERMIN] reports the highest (i.e., [OTHERMIN] does not account for potentially consecutive penalties of these miscellaneous statutes that have mandatory minimum penalties).

28 For additional information and data about the application of mandatory minimum penalties, see U.S. SENTENCING COMM’N, 2017 OVERVIEW OF MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2017), <https://www.ussc.gov/research/research-reports/2017-overview-mandatory-minimum-penalties-federal-criminal-justice-system>.

29 Application of USSG §5K1.1 does not always mean that the government applied for statutory relief under 18 U.S.C. § 3553(e)—the government may only be seeking a reduction in the sentence, but not below the mandatory minimum penalty. However, in most cases a departure from the guideline range under §5K1.1 and relief from the statutory mandatory minimum penalty under 18 U.S.C. § 3553(e) occur together. The Commission generally uses the variable [SENTRNGE] (or [BOOKERCD]/[DEPART] in earlier data years) to report the number of offenders who have provided substantial assistance to authorities. This variable utilizes several fields on the J&C and SOR to determine if the sentence is within the final sentencing guideline range or outside of the range (and if so why). In addition, the current J&C/SOR form AO245B (see <https://www.uscourts.gov/forms/criminal-judgment-forms/judgment-criminal-case>) has checkboxes for the court to document whether the sentence is at or below (and if so why) the mandatory minimum penalties. The Commission collects the information from these checkboxes in the fields [MAND1] through [MAND6]—note that the court may check multiple boxes, so researchers need to look through all the [MAND1] through [MAND6] fields. The Commission also collects checkbox information from the SOR on whether the origin of the outside range sentence was from the plea or a motion not in a plea as well as the reasons for the departure or variance. All this information is combined to create [SENTRNGE] so it is considered a more complete reporting of substantial assistance departures than simply using the [MAND1] through [MAND6] variables, but it may include some offenders for whom the documents received by the Commission do not indicate that the government made a motion for the offender to be sentenced below the mandatory minimum under 18 U.S.C. § 3553(e) along with the §5K1.1 motion.

30 At sentencing the judge may make certain findings of fact or the government may withdraw certain enhanced penalties. If these decisions are sufficiently detailed on the SOR, Commission staff will make changes to the statutory ranges originally coded based on the values reported in the PSR. Additionally, there is a checkbox on the SOR that allows the court to document that the mandatory minimum is not being applied due to findings of fact. This situation is uncommon. Therefore “relief” from a mandatory minimum penalty is usually achieved through either substantial assistance or the safety valve provision.

31 Congress enacted the Safety Valve provision at 18 U.S.C. § 3553(f) and the Commission incorporated the statutory qualifications when creating USSG §5C1.2 (effective September 23, 1994). The Commission expanded the benefit of the provision in the 1995 *Guidelines Manual* to allow offenders sentenced under §2D1.1 (Drug Trafficking) who met the qualifications in USSG §5C1.2 to receive an additional two-level reduction in their offense level. Over the years, the Commission expanded the safety valve provision in §2D1.1 to offenders with lower Base Offense Levels as well as to offenders sentenced under USSG §2D1.11 (Trafficking or Possessing Listed Chemicals). On December 21, 2018, the First Step Act of 2018 was signed into law. It expanded the offenders

eligible for the statutory safety valve provision, which authorizes courts to sentence an offender without regard to any statutory minimum sentence. As of the publication of this Research Note (September 2020), the Commission has not yet considered whether to expand the eligibility for the two-level reduction in both USSG §§2D1.1 and 2D1.11. For more information about the First Step Act, see U.S. SENTENCING COMM'N, *THE FIRST STEP ACT OF 2018, ONE YEAR OF IMPLEMENTATION (2020)*, <https://www.ussc.gov/research/research-reports/first-step-act-2018-one-year-implementation>. Note that in FY 2019 data the Commission recorded information about offenders who received a variance because they were not eligible to receive the existing 2-level benefit under the guideline computation. The variance reason was recorded as value “875” for the “First Step Act Safety Valve.”

32 The variable [SENTRNGE] did not exist on Commission datafiles prior to FY 2018. In order to ease trend analysis, the Commission posted supplemental datafiles from FY 2014 through FY 2017 on its website (<https://www.ussc.gov/research/datafiles/commission-datafiles>) that can be merged with the original offender datafiles from those years in order to add [SENTRNGE] along with some other new methodological variables used in the SOURCEBOOK. Prior to the creation of the variable [SENTRNG], the Commission reported out sentences relative to the guideline range using the variable [BOOKERCD]. The variable [BOOKERCD] was created as a result of the *Booker* Supreme Court decision on January 12, 2005. Prior to the *Booker* decision, the Commission reported out sentences relative to the guideline range using the variable [DEPART].

33 The variable [SAFETY] is an indicator variable which is “yes” if either the offender received relief under 18 U.S.C. § 3553(f) or if the offender received the two-level reduction under USSG §§2D1.1/2D1.11. The variable [SAFE] specifically tells the researcher if the offender received the two-levels ([SAFE]=1) or if the offender received the benefit of 18 U.S.C. § 3553(f) without the two-level guideline reduction ([SAFE]=2). Note that researchers should limit their case pool to offenders for whom the Commission received complete guideline application information ([SOURCES]=1) for any analysis which centers on offenders receiving the two-level guideline reduction in order to be certain that all of the offenders in the case pool actually got that benefit at sentencing (by limiting the case pool to [SOURCES]=1, researchers only keep offenders whose FOL and CHC matched between the PSR and SOR or in which the SOR fully explained all differences such that the guideline application (such as SOCs) could be changed to match the court’s findings at sentencing). For more information about the variable [SOURCES], see the Research Notes publication, *THE SIGNIFICANCE OF [SOURCES]: RESOLVING GUIDELINE APPLICATION DISCREPANCIES IN FEDERAL SENTENCING DOCUMENTS (2020)* at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-notes/20200331_Research-Notes-Issue4.pdf. Also note that when the safety valve has been applied the final sentencing guideline range [GLMIN] and [GLMAX] will not have the statutory trumps incorporated into them because the mandatory minimum does not apply at sentencing. For example, if an offender has a guideline range of 51 to 63 months (*i.e.*, [XMINSOR]=51 and [XMAXSOR]=63), and a 60-month drug mandatory minimum (*i.e.*, [DRUGMIN]=60), then normally [GLMIN] would be 60 and [GLMAX] would be 63. However, if the safety valve provision is applied, then the final sentencing range would be reported out to be the same as the “untrumped” range (*i.e.*, [GLMIN]=51 and [GLMAX]=63).


34 The datafiles provided on the Commission’s website are very large datasets (70,000–80,000 records and 10,000+ columns) meant to be analyzed by statistical analysis software programs (they are too large to be “viewed” in EXCEL). The Commission does not provide the statistical analysis programs (SAS or SPSS). The statistical analysis programs need to be purchased by the user. The datafiles provided on the Commission’s website are mainly intended to be used by outside researchers who are knowledgeable/learning about the federal sentencing guidelines as well as analyzing large data sources using the specialty software. The Commission provides the datafiles and various resources about the datafiles (including the Research Notes publication series), the federal sentencing guidelines, etc. on its website. However, researchers should recognize that it will take an investment of both time and money if the researcher does not already have a statistical analysis program and is unfamiliar with the federal sentencing guidelines/the Commission’s datafiles.



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