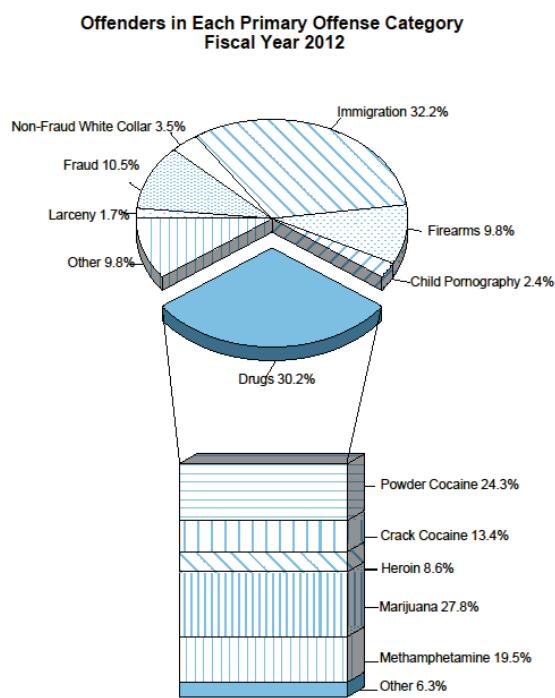


Overview of Federal Criminal Cases

Fiscal Year 2012

Glenn R. Schmitt
Jennifer Dukes
Office of Research and Data

The United States Sentencing Commission¹ received information on 84,360 federal criminal cases in which the offender was sentenced in fiscal year 2012.² Among these cases, 84,173 involved an individual offender and 187 involved a corporation or other “organizational” offender. This publication provides a brief overview of those cases.



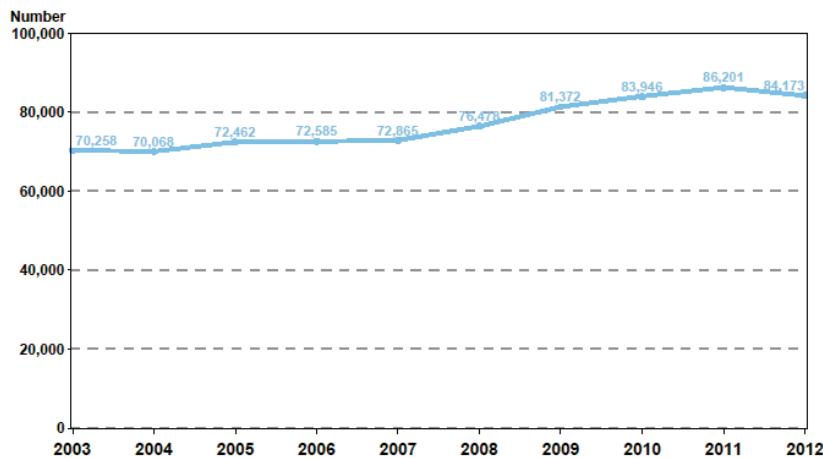
The Case Load at a Glance

The vast majority of federal cases involve an individual defendant. Over the last decade, the number of these cases has generally increased each year; however, in fiscal year 2012 the number of cases reported to the Commission fell by 2,028. This represents a decrease of 2.4 percent from fiscal year 2011.

For the last decade, cases involving immigration, drugs, fraud, or firearms have been the most common federal criminal cases and make up the vast majority of federal felonies and Class A misdemeanors. In fiscal year 2012, these crimes accounted for 82.7 percent of all cases reported to the Commission.

Of the 26,560 drug cases, 1,637 were excluded from the analysis due to one of the following reasons: 255 cases sentenced under §2D1.11 involving a listed chemical and 1,382 cases missing drug type. The Drug category includes the following offense types: trafficking, use of a communication facility, and simple possession. The Non-Fraud White Collar category includes the following offense types: embezzlement, forgery/counterfeiting, bribery, money laundering, and tax. Descriptions of variables used in this figure are provided in Appendix A of the *2012 Sourcebook of Federal Sentencing Statistics*. SOURCE: U.S. Sentencing Commission, 2012 Datafile, USSCFY12.

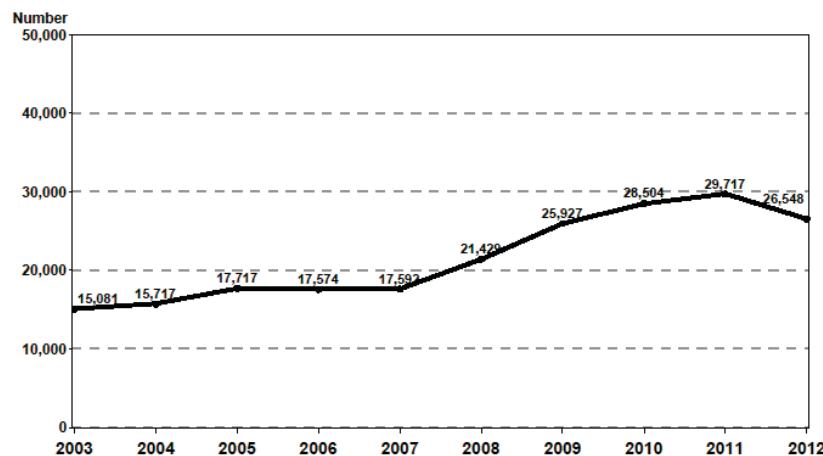
Number of Offenders Over Time
Fiscal Years 2003-2012



The number of immigration cases has increased by 97 percent over the past decade.

For the last four years, immigration cases have been the largest single type of federal offenses. This trend continued in fiscal year 2012, where immigration cases accounted for 32.2 percent of all federal cases, despite a decrease of 3,169 cases in the total number of immigration cases reported to the Commission. This decrease is the first since fiscal year 2006 and represents a 10.7 percent decrease in this type of case from the prior fiscal year. Even with this decrease, the number of immigration cases has increased by 97.0 percent over the past decade, and represents a

Immigration Offenses Over Time
Fiscal Years 2003-2012



much larger portion of the overall federal case load in fiscal year 2012.

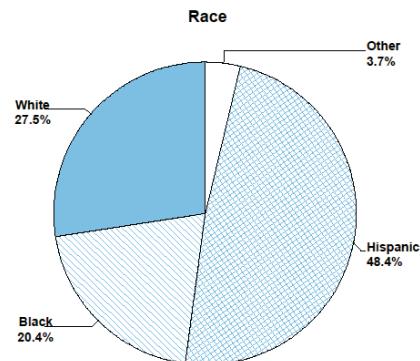
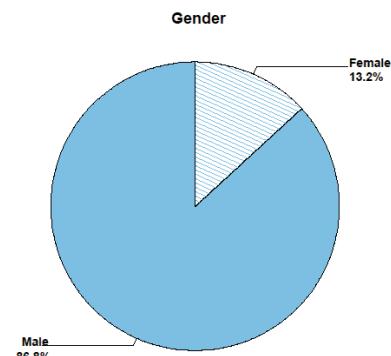
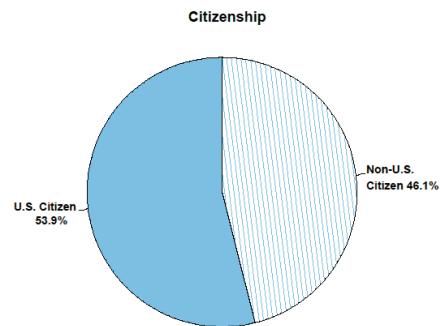
The number of drug cases has been relatively stable over the last five fiscal years. In fiscal year 2012, drug cases accounted for 30.2 percent of all cases. Firearms cases were 9.8 percent of the caseload in fiscal year 2012, a slight increase from the year before but less than the 10.9 percent of the caseload that these cases represented in fiscal year 2008. The proportion of fraud cases over that period also was relatively stable at 10.5 percent in fiscal year 2012, but has increased slightly from 9.8 percent in fiscal year 2008.

Individual Offender Characteristics

In fiscal year 2012, 46.1 percent of all offenders were non-citizens, representing a slight increase from five years ago (40.5% in fiscal year 2008). Most non-citizen offenders committed either an immigration offense (66.3%) or a drug trafficking offense (20.4%).

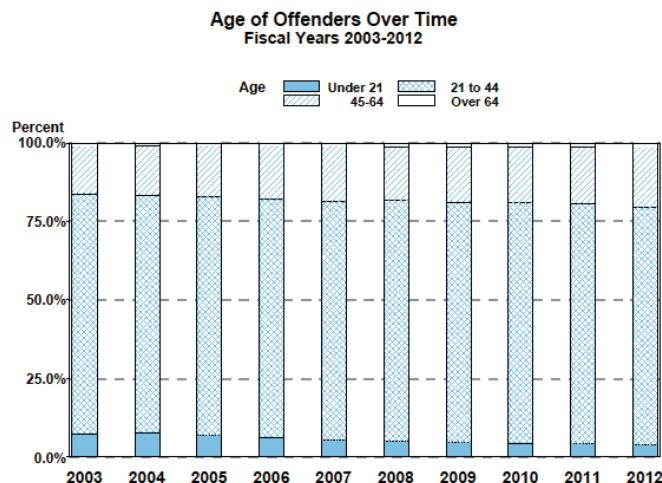
The vast majority of offenders are men, and their proportion of the total offender population has remained constant for more than a decade. In fiscal year 2012, 86.8 percent of all offenders were men, compared with 87.2 percent in fiscal year 2008, and 86.9 percent in fiscal year 2003. Among female offenders, the most common crime was drug trafficking (30.7% of all women offenders). Embezzlement was the only crime for which female offenders outnumber male offenders (60.5% to 39.5%).

In fiscal year 2012, 48.4 percent of all federal offenders were Hispanic, while 27.5 percent were White and 20.4 percent were Black. However, the racial composition of offenders varied widely across offense types, and most Hispanic offenders (85.6%) were sentenced for one of two types of offenses — immigration or drug trafficking crimes. Among drug offenders, racial and ethnic background varied depending on the type of drug involved in the crime.



Nearly half of the federal offenders sentenced in fiscal year 2012 had not completed high school.

The average age of offenders in fiscal year 2012 was 36 years old, representing a gradual increase over the past decade (34 years old in fiscal year 2003 and 35 years old in fiscal year 2008). Offenders 44 years or younger steadily decreased over the past decade while offenders aged 45 and over steadily increased.



Nearly half of the federal offenders sentenced in fiscal year 2012 (49.9%) had not completed high school, and only 5.5 percent of offenders had completed college.

Case Disposition

The vast majority of convicted defendants plead guilty. In fiscal year 2012, 97.0 percent of all offenders did so, the highest rate since fiscal year 2002.

When offenders pleaded guilty, 45.9 percent received a sentence below the applicable sentencing guideline range, either at the request of the government, at their own request, or initiated by the court. Approximately 62 percent (62.4%) of these below range sentences were requested by the government, usually because the defendant had provided substantial assistance to the government or had agreed to have his or her case handled as part of an early disposition program.

In the 3.0 percent of cases in which the offender did not plead guilty, 37.1 percent received a sentence below the guideline range.

Only 6.1 percent of these below range sentences were requested by the government.

Most federal offenders convicted of a felony or Class A misdemeanor received a sentence of incarceration. In fiscal year 2012, 7.1 percent of offenders received a sentence of probation (*i.e.*, where no type of confinement was imposed), a rate that over time has decreased from a high of 14.8 percent in 1993. Another 2.9 percent were sentenced to periods of both probation and some type of confinement, and 2.8 percent were sentenced to a combination of imprisonment and community confinement, such as in a half-way house or through home confinement.

The length of imprisonment imposed on offenders varies greatly depending on the seriousness of the offense and the criminal history of the offender. Offenders committing murder crimes received the longest terms of confinement, at 252 months on average. Crimes involving violations of environment and wildlife statutes were punished least severely, with offenders receiving confinement sentences of two months on average.

Overall, 71.6 percent of imprisoned offenders received a sentence of less than five years, 16.5 percent of offenders received a sentence five or more but less than ten years, and 12.0 percent received a sentence of ten or more years, excluding life imprisonment. In fiscal year 2012, 188 offenders were sentenced to life imprisonment while no offenders were sentenced to death in the federal courts.

Monetary fines were imposed in 8.7 percent of all cases in which an individual was sentenced in fiscal year 2012, either as the sole punishment or combined with some other sanction. Fines were most commonly imposed in antitrust cases (95.0%), environmental cases (66.7%), and food/drug cases (46.7%). When the offender was an organization, courts imposed a fine in nearly eight out of every ten cases (77.0%).

Courts ordered restitution to be paid to the victim of the crime in 14.1 percent of all cases in which the offender was an individual. Restitution was most commonly ordered in cases involving embezzlement (87.1%), arson (81.3%), robbery (80.7%), larceny (70.1%), and fraud (68.0%). Restitution was ordered in 21.4 percent of the cases with an organizational offender.

Most offenders who were sentenced to imprisonment also were sentenced to serve a period of supervised release following the completion of their confinement. In fiscal year 2012, 82.3 percent of offenders sentenced to incarceration also were sentenced to serve a period of supervised release. The average length of

Most federal offenders convicted of a felony or Class A misdemeanor received a sentence of incarceration. More than 70 percent of federal offenders receive a sentence of less than five years.

Most offenders who were sentenced to imprisonment also were sentenced to serve a period of supervised release following the completion of their confinement.

supervised release imposed was 48 months; however, the median length of supervised release was 36 months.

The Most Common Crimes

Immigration

Immigration offenses³ were the most common serious federal crime again in fiscal year 2012, representing 32.2 percent of the federal criminal case load. The majority of these offenses involved either the unlawful entry into the United States or remaining in the United States without authority (83.7%). Another 9.8 percent involved alien smuggling activities.

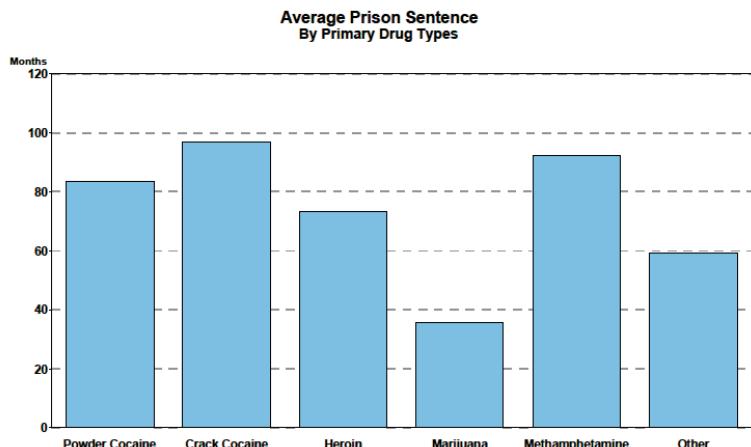
Immigration offenses were the most common serious federal crime again in fiscal year 2012. Drug offenses were the second most common federal crime.

Offenders sentenced under the immigration guidelines are different from other federal offenders in several ways. For example, although United States citizens committed the majority of all federal crimes (53.9%), the overwhelming majority (94.4%) of immigration offenses were committed by non-citizens.⁴ Similarly, while Hispanics accounted for only 31.3 percent of non-immigration offenders, they accounted for 88.2 percent of immigration offenders. Also, immigration offenders had significantly less education than other offenders. More than 80 percent of immigration offenders had less than a high school education, compared with less than 40 percent of offenders convicted of other crimes. Additionally, while men committed most federal crimes not involving an immigration offense (84.6%), men committed an even higher proportion of immigration crimes (93.6%).

Drugs

Drug offenses were the second most common federal crime. In fiscal year 2012, 26,560 offenders were convicted of a drug crime, the majority involving the manufacture, sale, or transportation of a drug.⁵ Of these, 1,451 offenders were convicted of an offense involving simple possession of a drug.

Offenses involving cocaine, in either powder form or base (crack) form, were the most common drug crimes, accounting for 38.0 percent of the offenders sentenced under the drug guidelines. These cases were almost evenly split between the two forms of the drug until fiscal year 2008. After that year, crack cocaine cases began decreasing steadily from 24.4 percent in fiscal year 2008 to 13.8 percent in fiscal year 2012. After cocaine cases (powder and crack cases combined), marijuana offenses were the next most common, representing 27.6 percent of all drug crimes. In fact, marijuana cases were more prevalent than either crack cocaine or



powder cocaine cases individually. Drug offenses involving methamphetamine represented 19.5 percent of all drug crimes. Heroin cases were the least common of the major drug offenses, accounting for 8.6 percent of all drug crimes.

Most drug offenders were United States citizens, but the percentage of drug offenders who are citizens varied widely depending on the type of drug involved in the offense. For example, 97.8 percent of crack cocaine offenders were United States citizens, while only 51.1 percent of marijuana offenders were United States citizens.

The race of drug offenders varied even more widely by the type of drug involved in the offense. More than 45 percent (46.2%) of all drug offenders convicted in federal court were Hispanic, while Black offenders comprised 25.9 percent of all drug offenders and White offenders 25.3 percent of all drug offenders. Yet, in crack cocaine cases, 82.6 percent of those convicted were Black, and in methamphetamine cases 48.1 percent of the offenders were White.

Weapons were involved in drug crimes 15.0 percent of the time. As above, the rate of weapon involvement varied depending on the type of drug involved, ranging from 26.7 percent in crack cocaine cases to 7.8 percent in marijuana cases.

In fiscal year 2012, the average punishment for drug crimes ranged from a high of 97 months of imprisonment for crack cocaine offenders (with a median sentence of 78 months) to 36

The race of drug offenders varied widely by the type of drug involved in the offense.

The average punishment for drug crimes ranged from a high of 97 months of imprisonment for crack cocaine offenders to 36 months for marijuana offenders.

months for marijuana offenders (with a median sentence of 24 months). Several factors affect the average prison sentence for drug offenders, including statutory mandatory minimum punishments, the quantity of the drugs involved in the case, the prior criminal history of the offender, and whether the offender assisted the government in the investigation of his or her crime and other crimes. Because of this, comparisons of the average sentence length in the different types of drug cases should be made cautiously.

An offender's role in the offense also can affect the guideline range that judges consider when imposing punishment. In fiscal year 2012, judges in 18.2 percent of all drug cases determined that the applicable guideline range should be lowered because of the offender's minor or minimal role in the offense. In marijuana cases, this adjustment to the guideline range occurred 23.0 percent of the time. In contrast, courts found such an adjustment warranted in only 5.0 percent of crack cocaine cases. In another 6.6 percent of drug cases, the court determined that the applicable guideline range should be increased because of the offender's role in the offense as an organizer, leader, manager, or supervisor.

Mandatory minimum sentences enacted by Congress played a large part in determining the sentence for these offenders, either outright or through the impact of these statutes on the structure of the guidelines. In fiscal year 2012, crack cocaine offenders and powder cocaine offenders were convicted of an offense that provided for the imposition of a mandatory minimum sentence at rates of 64.0 and 76.4 percent, respectively.⁶ Powder cocaine offenders obtained relief from a mandatory minimum sentence at a higher rate (32.3%) through the statutory "safety valve" exception to such sentences, which requires courts to sentence an offender without regard to any otherwise applicable mandatory minimum punishment when certain conditions are met.⁷ In contrast, 7.6 percent of crack cocaine offenders obtained this relief.

This difference is largely due to the differing criminal histories of powder cocaine and crack cocaine trafficking offenders. In fiscal year 2012, 58.3 percent of powder cocaine offenders were assigned to Criminal History Category I (offenders with a criminal

history score under the sentencing guidelines of zero or one) while only 21.5 percent of crack cocaine offenders were assigned to that category. Only offenders assigned to Criminal History Category I are eligible to receive the benefit of the safety valve.

Overall, crack cocaine offenders continue to have, on average, a more serious criminal history than any other category of drug offender.⁸ Crack cocaine offenders were assigned to the most serious criminal history category (CHC VI) in 26.8 percent of all crack cocaine cases. In contrast, powder cocaine offenders were assigned to CHC VI in only 8.8 percent of cases. By comparison, 14.7 percent of heroin offenders were assigned to CHC VI and 10.3 percent of methamphetamine offenders were assigned to CHC VI. Offenders convicted of marijuana offenses generally had the least serious criminal histories, with 66.2 percent assigned to CHC I and only 3.4 percent to CHC VI.⁹

Fraud

Crimes involving fraud accounted for the third largest portion (10.5%) of federal criminal cases in fiscal year 2012. The losses in these cases ranged from \$0 (there were 531 cases in which the court found that no loss had occurred) to \$6,746,399,008, with an average loss amount of \$5,340,498 and a median loss amount of \$150,546. Identity theft crimes¹⁰ accounted for a relatively small number (751) of these cases in fiscal year 2012. While this is an increase from the 657 such crimes reported in fiscal year 2008, it is a reduction from last fiscal year when there were 775 such cases.

The median loss amount in fraud cases was \$150,546.

Firearms and other weapons

Firearms crimes¹¹ were 9.8 percent of the total federal criminal convictions for fiscal year 2012. Of the 8,105 firearms cases reported to the Commission, 23.2 percent (1,884) involved the possession or use of a firearm in connection with a crime of violence or drug trafficking crime.¹² More than half of the cases (4,190) involved a convicted felon who illegally possessed a firearm.¹³

Of all cases with complete guideline application information reported to the Commission in fiscal year 2012, in 7.8 percent of

Half of all firearms cases involved a convicted felon who illegally possessed a firearm.

cases (5,772 cases) a sentence was enhanced (either through application of a guideline provision or by statute) because a firearm or other dangerous weapon (e.g., knife) was involved in the offense. However, a weapon was involved twice as often in drug cases (15.0%). Weapons were present most often in crack cocaine cases (26.7%) and least often in marijuana cases (7.8%).

Organizational Cases

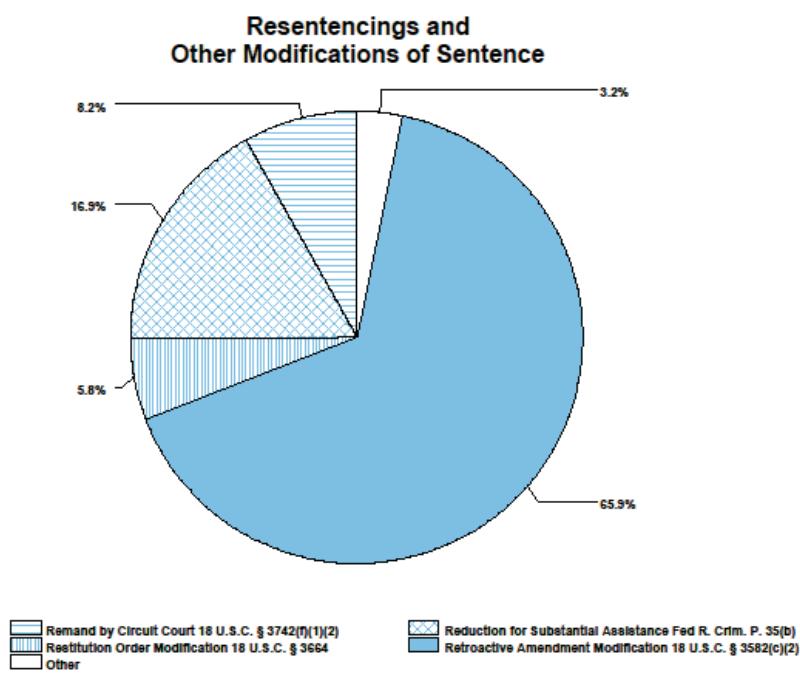
Organizations such as corporations and partnerships can be prosecuted for violating federal criminal law, and 187 organizations were sentenced for at least one federal criminal offense in fiscal year 2012. This number is a 16.9 percent increase from the 160 cases reported in fiscal year 2011; however the number of organizational defendants convicted continued to remain lower than in earlier years. For example, 200 organizational defendants were sentenced in fiscal year 2003, and 255 organizational defendants were sentenced in fiscal year 1999.

More than 93 percent of the organizational offenders sentenced in fiscal year 2012 pleaded guilty to one or more charges. The most common crimes for which organizational defendants were convicted were environmental and fraud crimes. Organizational offenders were sentenced to pay only a fine in 118 cases. In an additional 26 cases the offender was sentenced to pay restitution to the victim of the crime as well as to pay a fine. In 14 cases, the organization was sentenced to pay restitution only. No fine or restitution was imposed in 29 cases, although other sanctions were imposed in some of these cases. Additionally, of the 187 organizational offenders, 135 received some term of probation, and 66 were ordered to make improvements in compliance or ethics procedures.

Resentencings and Other Modifications of Sentence

In 2012, the Commission received documentation on 10,240 resentencings and other modifications of sentence. The most frequently reported reason was a modification of a term of imprisonment for retroactive amendment to the sentencing guidelines (6,746 or 65.9% of all cases). Almost all cases citing this reason were the result of the retroactive application of the 2011 amendments to the drug guideline for cases involving crack cocaine that implemented provisions of the Fair Sentencing Act of 2010.¹⁴

The next most common type of resentencing was for reduction in sentence for substantial assistance to the government after sentencing (16.9%).¹⁵ The third most common type of resentencing occurred after remand of a case that had been appealed to a circuit court (8.2%).



For More Information

More information on these cases can be found in the Commission's *2012 Annual Report*, *2012 Sourcebook of Federal Sentencing Statistics*, and *Guideline Application Frequencies for Fiscal Year 2012*. The *Annual Report* and *Sourcebook* are available in hard copy format through the Commission. All three documents, together with other reports on sentencing data, are available in electronic format at the Commission's website at www.ussc.gov and through the Commission's "Interactive Sourcebook" at <http://isb.ussc.gov/Login>.

Endnotes

1. The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress 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.
2. The Commission receives information from the courts on cases in which the defendant has been convicted of a felony or Class A misdemeanor.
3. Immigration offense means, in general, a case in which at least one of the statutes of conviction involved trafficking in passports or entry documents; failure to surrender naturalization certificates; fraudulently acquiring passports; alien smuggling; unlawful presence in the United States; or fraudulently acquiring entry documents.
4. Non-citizens primarily are convicted of immigration crimes. Non-citizens were the offenders in only 15.5 percent of federal crimes other than immigration crimes in fiscal year 2012.
5. This number also includes persons convicted of one or more crimes in addition to a drug offense.
6. Some of these offenders received a sentence that was lower than the applicable statutory mandatory minimum punishment due to the operation of 18 U.S.C. §§ 3553(e) or (f). Subsection (e) authorizes courts to impose a sentence that is below a statutory mandatory minimum when the offender has provided substantial assistance to the government in investigating or prosecuting another offender. Subsection (f) requires courts to impose a sentence on a non-violent offender with no or limited criminal background without regard to a statutory mandatory minimum punishment when certain other conditions are met.
7. See 18 U.S.C. § 3553(f).
8. Under the guidelines, offenders are assigned to one of six criminal history categories (CHCs) based on their prior criminal history. The criminal history score establishes the CHC for an offender. See USSG, Ch.4. The CHC, along with the final offense level, determines the sentencing range under the guidelines.
9. For more information on sentencing issues involving cocaine drug cases, see United States Sentencing Commission, Report to Congress: Cocaine and Federal Sentencing Policy (2007).
10. Identity theft crimes are those fraud cases in which one or more of the offenses of conviction was 18 U.S.C. § 1028(a)(7) or 18 U.S.C. § 1028A. The Commission includes these cases with other fraud cases when it reports sentencing statistics.
11. Firearms crime includes unlawful possession or transportation of firearms or ammunition; unlawful trafficking in explosives; possession of guns or explosives in a federal facility, a school, or on an aircraft; the use of fire or explosives to commit a felony; and the use of firearms or ammunition during a crime.
12. *I.e.*, a case in which 18 U.S.C. § 924(c) was the statute of conviction.
13. *I.e.*, a case in which 18 U.S.C. § 922(g) was the statute of conviction.
14. See USSG App. C amend. 750, 759.
15. See Fed R. Crim. P. 35(b).