

Overview of Federal Criminal Cases Fiscal Year 2016



UNITED STATES SENTENCING COMMISSION

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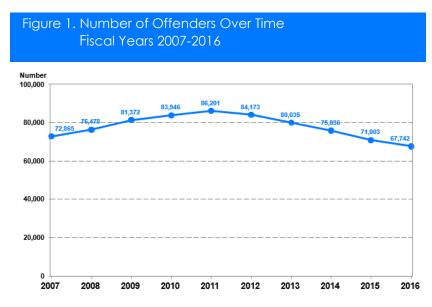
Glenn R. Schmitt, J.D., M.P.P. Director Office of Research & Data

Elizabeth Jones, **M.A.** Research Associate Office of Research & Data The United States Sentencing Commission¹ received information on 67,874 federal criminal cases in which the offender was sentenced in fiscal year 2016.² Among these cases, 67,742 involved an individual offender and 132 involved a corporation or other "organizational" offender. The Commission also received information on 11,991 cases in which the court resentenced the offender or modified the sentence that had been previously imposed. This publication provides an overview of those cases.

The Case Load at a Glance

The 67,742 individual original cases reported to the Commission in fiscal year 2016 represent a decrease of 3,261 (4.6%) cases from fiscal year 2015. Since fiscal year 2011, the year in which the largest number of offenders were sentenced,³ the number of offenders sentenced in the federal courts has fallen steadily, for a total decrease of 21.4 percent. In fiscal year 2016, fewer cases were reported for most offenses than in the prior fiscal year. However, the number of cases involving sexual abuse, assault, firearms, and money laundering increased.

For more than a decade, drugs, immigration, fraud, and firearms cases constituted the vast majority of federal felonies and Class A misdemeanors. This trend continued in fiscal year 2016, as these crimes accounted for 81.6 percent of all cases reported to the Commission.



Drugs

Drug cases continued to be the most common type of federal case. In fiscal year 2016, 21,387 drug cases reported to the Commission accounted for 31.6 percent of all cases. Most of those cases (89.9%) were drug trafficking offenses.

Immigration

Immigration cases were the next most common, accounting for 29.6 percent of the total federal caseload. In fiscal year 2011, immigration cases were the most common federal crime—however, since that year the number of these cases has steadily declined. The 20,051 immigration cases reported to the Commission in 2016 represent a 3.5 percent decrease from 2015, and a 32.5 percent decrease from 2011.

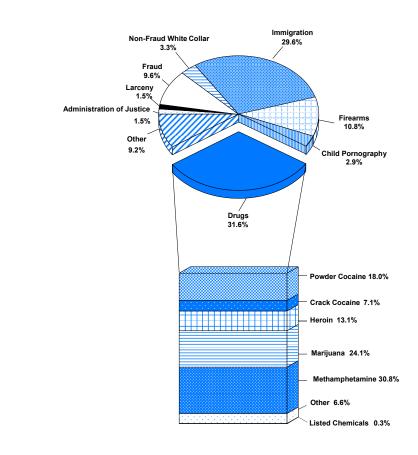
Fraud

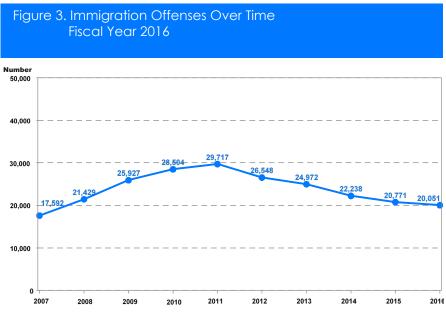
There were 6,517 fraud cases in fiscal year 2016, accounting for 9.6 percent of the total federal caseload; however, this number represents a 12.2 percent reduction from the year before.

Firearms

Finally, there were 7,305 firearms cases reported to the Commission in fiscal year 2016. These cases accounted for 10.8 percent of the caseload, about the same portion of the overall caseload that they represented in fiscal year 2008. This number also represents a 3.3 percent increase in firearms cases from fiscal year 2015.







Individual Offender Characteristics

Gender

Most offenders are men, and their proportion of the total offender population has remained constant for more than a decade. In fiscal year 2016, 86.2 percent of all offenders were men, compared with 86.8 percent in fiscal year 2012, and 86.5 percent in fiscal year 2007. Among female offenders, the most common crime was drug trafficking (committed by 31.6% of all women offenders). Embezzlement continues to be the only crime for which female offenders outnumber male offenders (56.3% to 43.7%), although the number of these cases (318) is small when compared to other offense types.

Race

In fiscal year 2016, 53.3 percent of all federal offenders were Hispanic, while 22.3 percent were White, and 20.4 percent were Black.⁴ The racial composition of offenders varied widely across offense types. For example, most Hispanic offenders (81.0%) 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.

Citizenship

A majority of federal offenders are United States citizens (58.3%). Most non-citizen offenders committed an immigration offense (65.5%). The next most common offense type among non-citizen offenders was drug trafficking (19.8%).

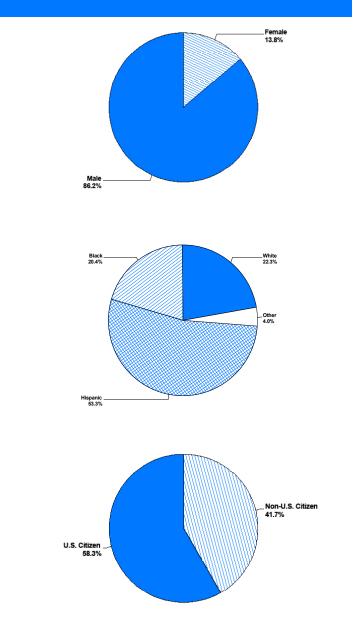


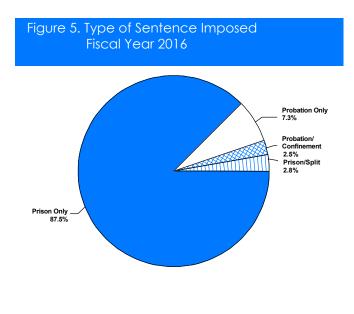
Figure 4. Gender, Race, and Citizenship of Offenders Fiscal Year 2016

Age

The average age of offenders in fiscal year 2016 was 37 years old, only a slight increase from the average age of 36 for offenders sentenced in fiscal year in 2012 and the average age of 35 in 2007. Almost half of all federal offenders sentenced in fiscal year 2016 (46.7%) had not completed high school, and only 6.2 percent of offenders had completed college.

Case Disposition

In fiscal year 2016 the vast majority of offenders (97.3%) pleaded guilty. This rate has been consistent for more than 15 years. Among those offenders who pleaded guilty, 49.1 percent received a sentence below the applicable sentencing guideline range. Almost sixty percent (58.8%) 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 comparison, in the 2.7 percent of cases where the offender did not plead guilty, 46.2 percent received a sentence below the guideline range, although only 8.7 percent of those 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 2016, an imprisonment sentence was imposed on 87.5 percent of all offenders. Another 7.3 percent of offenders received a sentence of probation only (*i.e.*, where no type of confinement was imposed), a rate that has decreased over time from a high of 15.3 percent in 1990.⁵ Among the remaining offenders receiving a sentence, 2.5 percent were given periods of 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 home confinement.⁶

The length of imprisonment imposed in federal cases varies greatly depending on the seriousness of the offense and the criminal history of the offender. Offenders committing murder received the longest terms of confinement in fiscal year 2016, at 241 months on average. Environment and wildlife offenses were punished least severely, with offenders receiving confinement sentences of three months, on average.⁷

Overall, 71.3 percent of offenders received a sentence of less than five years, 16.5 percent of offenders received a sentence of five years or longer but less than ten years, and 12.2 percent received a sentence of ten years or longer. In fiscal year 2016, 125 federal offenders were sentenced to life imprisonment and no death sentences were imposed.

Fines were imposed in 8.3 percent of all cases in which an individual offender was sentenced in fiscal year 2016, either as the sole punishment or combined with some other sanction. Fines were most commonly imposed in antitrust (85.7%) and environmental (72.4%) cases. When the offender was an organization, courts imposed a fine in the majority of cases (78.0%).

Courts ordered restitution to be paid to the victim of the crime in 15.3 percent of all cases in which an individual was the offender. Restitution was most commonly ordered in cases involving embezzlement (86.6%), robbery (83.9%), tax (78.5%), arson (78.2%), fraud (75.2%), and larceny (70.1%). Restitution was ordered in 28.0 percent of the cases where the offender was an organization.

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 2016, 81.3 percent of offenders sentenced to incarceration also were sentenced to serve a period of supervised release. In immigration cases, however, supervised release was imposed in 58.2 percent of the cases, reflecting the fact that many immigration offenders are ordered deported from the United States once they complete their incarceration sentence. In contrast, supervised release was ordered in 92.0 percent of cases not involving immigration. The average length of supervised release imposed for all cases was 47 months, and the median length was 36 months.

The Most Common Crimes

Drugs

Drug offenses were the most common federal crimes in fiscal year 2016. Most of the

21,387 drug cases involved the manufacture, sale, or transportation of a drug,⁸ while 1,884 of those cases involved a conviction for the simple possession of a drug.

The total number of drug cases reported to the Commission fell for the fourth consecutive year, a The proportion of drug offenses involving methamphetamine has increased substantially since 1994, from 6.4% to 30.8%.

decrease of 5.5 percent from fiscal year 2015. However, cases involving methamphetamine and heroin increased, by 2.0 percent and 1.6 percent respectively, over the number of such cases reported in fiscal year 2015.

Methamphetamine offenses continued to be the most common drug cases, representing 30.8 percent of all drug crimes. The number of methamphetamine cases has increased substantially since 1994, when those cases accounted for only 6.4 percent of all drug cases.

Offenses involving cocaine, in either powder form or base (crack) form, were the second most common drug crimes, accounting for 25.1 percent of all drug offenders sentenced. Powder cocaine cases accounted for 18.0 percent of all drug cases while crack cocaine cases

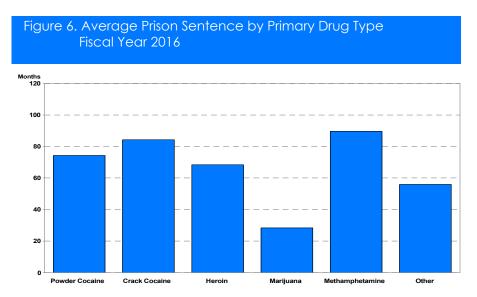
accounted for 7.1 percent. The number of crack cocaine cases has fallen 73.9 percent since fiscal year 2008, the year in which the largest number of those cases were reported to the Commission and represented 23.7 percent of all drug cases.

Of the remaining drug cases, marijuana cases accounted for 24.1 percent of the cases, heroin for 13.1 percent, and cases involving "other" drugs, mostly prescription drugs such as oxycodone, accounted for 6.9 percent of all drug offenses.

Most drug offenders were United States citizens, although the citizenship of drug offenders varied widely depending on the type of drug involved in the offense. For example, 97.4 percent of crack cocaine offenders were United States citizens, while only 43.7 percent of marijuana offenders were citizens.

The race of drug offenders varied even more widely by the type of drug involved in the offense. Over half (50.8%) of all drug offenders convicted in federal court were Hispanic, while Black offenders constituted 23.6 percent of all drug offenders, and White offenders were 22.8 percent of all drug offenders. Yet, in crack cocaine cases, 82.6 percent of those convicted were Black, and in "other" drug cases 54.3 percent of the offenders were White. In marijuana cases, 77.0 percent off those convicted were Hispanic.

Weapons were involved in 17.6 percent of all drug offenses. As with the other aspects of these cases, the rate of weapon involvement varied depending on the type of drug involved, ranging from 31.8 percent in crack cocaine cases to 6.6 percent in marijuana cases.



The length of sentences imposed in drug cases remained relatively steady from fiscal year 2015 with slight increases and decreases depending on each drug type. The largest reduction in average sentence occurred in cases involving marijuana, where the average length of imprisonment decreased from 32 months to 28 months (with a median sentence of 18 months), a 12.5 percent decline from fiscal year 2015.

For the second year in a row methamphetamine offenses were the most severely punished drug crime, with an average length of imprisonment of 90 months (and a median sentence of 70 months). Marijuana offenders had the lowest average imprisonment in fiscal year 2016 at 28 months (with a median sentence of 18 months).

Several factors can affect the sentence imposed in drug offenses, 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. Mandatory minimum sentences enacted by Congress play a large part in determining the sentence for drug offenders, either outright or through the impact of these statutes on the structure of the guidelines.⁹

In fiscal year 2016, just under half (44.5%) of all drug offenders were convicted of an offense carrying a mandatory minimum penalty; however, this proportion was the lowest it has been since 1993, the year in which the Commission began reporting data on the rate at which mandatory minimum penalties were applied in federal cases. This significant reduction was due, in large part, to a change in the policy of the Department of Justice as to how to charge drug cases, which took effect in 2013.¹⁰

In FY16, the proportion of drug offenders convicted of a mandatory minimum was the lowest it has been since 1993.

In fiscal year 2016, powder cocaine offenders and methamphetamine offenders were convicted of an offense that provided for the imposition of a mandatory minimum sentence at the highest rates—59.6 percent in powder cocaine cases and 54.1 percent in methamphetamine cases.¹¹ Mandatory minimum penalties were least common in drug cases involving "other" drugs (which are mostly prescription drugs) and marijuana, accounting for 5.3 percent and 26.1 percent, respectively, of those cases.

Many offenders convicted of an offense carrying a mandatory minimum penalty are able to obtain relief from that penalty through the "safety valve" exception to such sentences, which requires courts to sentence the offender without regard to any otherwise applicable mandatory minimum punishment when certain conditions are met.¹² Powder cocaine offenders obtained relief from a mandatory minimum sentence through the use of the safety valve most often, in 25.9 percent of all powder cocaine cases in which a mandatory minimum penalty applied. In contrast, only 3.2 percent of crack cocaine offenders obtained this relief.

This difference is due largely to the differing criminal histories of powder cocaine and crack cocaine offenders. In fiscal year 2016, 62.3 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 just 18.3 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 group of drug offender.¹³ Crack cocaine offenders were assigned to the most serious criminal history category (CHC VI) in 28.7 percent of all crack cocaine cases. In contrast, powder cocaine offenders were assigned to CHC VI in only 8.3 percent of cases. By comparison, 16.3 percent of heroin offenders were assigned to CHC VI and 14.3 percent of methamphetamine offenders were assigned to CHC VI. Offenders convicted of marijuana offenses generally had the least serious criminal histories, with 66.0 percent assigned to CHC I and only 3.2 percent to CHC VI.

An offender's role in the offense also can affect the guideline range the judge considers when imposing a sentence. In fiscal year 2016, the applicable guideline range was lowered in 20.6 percent of all drug cases because of the offender's minor or minimal role in the offense. In marijuana cases, this adjustment to the guideline range occurred 37.7 percent of the time, a 10 percent increase from fiscal year 2015. In contrast, such an adjustment applied in only 5.5 percent of crack cocaine cases. In 7.5 percent of all drug cases, the applicable guideline range was increased because of the offender's role as an organizer, leader, manager, or supervisor.

Immigration

Immigration offenses¹⁴ were the second most common federal crime in fiscal year 2016, representing 29.6 percent of the cases reported to the Commission. This number represents a 0.3 percent increase from fiscal year 2015. The majority of these offenses involved either the unlawful reentry into the United States or unlawfully remaining in the United States without authority (82.7%). Another 12.7 percent were alien smuggling offenses. The average sentence in immigration cases in fiscal year 2016 was 13 months, a decrease of one month from fiscal year 2015.

Offenders sentenced under the immigration guidelines differ from other federal offenders in several ways. For example, although United States citizens committed the majority of all federal crimes (58.3%) in fiscal year 2016, the overwhelming majority (91.2%) of immigration offenses were committed by non-citizens.¹⁵ Similarly, while Hispanics accounted for only 33.3 percent of non-immigration offenders, they account for 96.2 percent of immigration offenders. Also, immigration offenders had significantly less education than other offenders. Over 80 percent (80.8%) of immigration offenders had less than a high school education, compared with 33.0 percent of offenders convicted of other crimes. While men committed most federal crimes other than immigration (83.6%), men committed an even higher proportion of immigration crimes (92.6%).

Firearms and other weapons

Crimes involving firearms¹⁶ accounted for 10.8 percent of the total number of federal criminal convictions in fiscal year 2016. The 7,305 firearms cases reported to the Commission represent an increase of 3.3 percent from the prior year. Of all firearms cases, 23.6 percent involved the possession or use of a firearm in connection with a crime of violence or drug trafficking crime.¹⁷ More than half of firearms cases (55.7%) involved

the illegal possession of a firearm, usually by a convicted felon.¹⁸ The average sentence imposed in firearms cases was 75 months, a decrease of four months from the average sentence of 79 months in fiscal year 2015.

In certain other types of cases, the court may consider the possession or use of a dangerous weapon when determining the sentence. In the cases with complete guideline application information reported to the Commission in fiscal year 2016, the sentences imposed in 8.9 percent of the cases were enhanced (either through application of specific offense characteristics under the guidelines when available or by statute) because a firearm or other dangerous weapon (*e.g.*, knife) was involved in the offense. In drug cases, a weapon was involved at a rate (17.6%) more than twice that of all cases generally. Among drug cases, weapons were present most often in crack cocaine cases (31.8%) and least often in marijuana cases (6.6%).

Fraud

Fraud crimes accounted for the fourth largest portion (9.6%) of the total federal criminal convictions for fiscal year 2016. The 6,517 fraud cases reported to the Commission were a decrease of 12.2 percent from the number of fraud cases reported the prior year. The losses in these cases ranged from no loss (153 cases) to more than \$800 million (one case), with an average loss amount of \$2,376,516 and a median loss amount of \$211,969. Identity theft crimes¹⁹ accounted for a relatively small number (862) of these cases in fiscal year 2016. The average sentence imposed in fraud cases in fiscal year 2016 was 25 months, a decrease of two months from the average sentence in fiscal year 2015.

Organizational Cases

Organizations such as corporations and partnerships can be prosecuted for violating federal criminal law, and 132 organizations were sentenced in fiscal year 2016. This number is a 27.1 percent decrease from the 181 cases reported in fiscal year 2015. It is the

The number of organizational cases has decreased over the last 15 years.

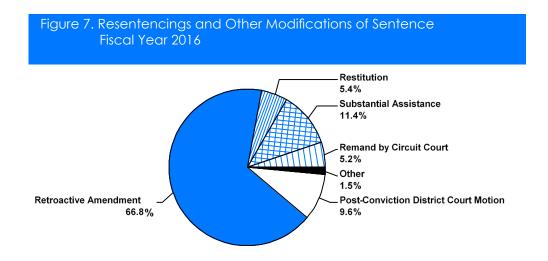
lowest number of organizational defendants reported since fiscal year 2004 (130) and is a continuation of the decrease in the number of these cases over the past 15 years. By comparison, in fiscal year 2007, there were 196 defendants and in fiscal year 2002, there were 252 organizational defendants.

Of the 132 organizational offenders, 97.7 percent pled guilty to one or more charges in fiscal year 2016. The most common crimes for which organizational defendants were convicted were fraud and environmental crimes. In 74 cases, a fine was the sole component of the sentence imposed. In an additional 29 cases the organization was sentenced to pay restitution to the victim of the crime as well as to pay a fine. In eight cases, the sole component of the sentence was the payment of restitution. No fine or restitution was imposed in 21 cases, although other sanctions were ordered in some of these cases. Additionally, of the 132 organizational offenders, 80 were sentenced to some term of probation, and 27 were ordered to make improvements in compliance or ethics programs.

Resentencings and Other Modifications of Sentence

In 2016, the Commission received documentation on 11,991 resentencings and other modifications of sentence. This represents a 51.5 percent decline from last year. The most frequently reported reason was the modification of a term of imprisonment due to the retroactive application of an amendment to the sentencing guidelines (8,015 cases; 66.8% of all cases). Almost all cases in which this reason was cited involved the retroactive application of the Commission's 2014 amendment to the drug guidelines.²⁰

The second most common type of resentencing was a reduction in sentence for substantial assistance²¹ to the government in investigating or prosecuting another person after the offender was sentenced (1,371 cases; 11.4% of all cases). The third most common type of resentencing or modification of sentence was through a post-conviction motion in the district court (1,152 cases; 9.6% of all cases).²² Most of the cases in this last group were resentencings of offenders required by the Supreme Court's decision in *Johnson v. United* States.²³



For More Information

More information on federal sentencing data can be found in the Commission's 2016 Sourcebook of Federal Sentencing Statistics and Guideline Application Frequencies for Fiscal Year 2016. The Sourcebook is available in hard copy format through the Commission. Both documents, together with other reports on sentencing data, are also available in electronic format at the Commission's website at <u>www.ussc.gov</u>. Additional statistical analyses of these cases can be found through the Commission's "Interactive Sourcebook of Federal Sentencing Statistics" at <u>http://isb.ussc.gov</u>.

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; (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues; and (4) to devise and conduct seminars and workshops providing continuing studies for persons engaged in the sentencing field.

² The Commission receives information from the courts on cases in which the defendant has been convicted of a felony or a Class A misdemeanor. The fiscal year for the federal government begins on October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends.

³ In fiscal year 2011, 86,201 individual offenders were sentenced. U.S. SENTENCING COMM'N, 2011 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS iv (2012).

⁴ Information on race of the offender is obtained from the Presentence Investigation Report and recorded in separate categories of race and ethnicity. Race data indicate whether the offender is White, Black, Native American or Alaskan Native, Asian or Pacific Islander, Multiracial, or "Other." Ethnicity data indicate whether an offender is of Hispanic origin. Offenders whose ethnic background is designated as Hispanic are represented as Hispanic in all analysis in this report regardless of racial background.

⁵ See U.S. Sentencing Comm'n, 1990 Annual Report 53 (1991).

⁶ For more information concerning the use of alternative sentences in the federal system, *see* Courtney Semisch, U.S. Sentencing Comm'n, Alternative Sentences in the Federal System (2015).

 7 Probation sentences are included in the calculation of average sentence as zero months. Almost two-thirds (65.9%) of environment and wildlife offenders received a sentence of probation with no type of confinement, and 72.4% of these offenders were fined as part of their sentence.

⁸ This number also includes persons convicted of one or more crimes in addition to a drug offense.

⁹ The Commission's general practice has been to incorporate statutory minimum penalties into the structure of the guidelines. For example, in drug trafficking cases, the offense levels that correspond to the drug quantities that trigger the statutory mandatory minimum penalties provide for a sentencing range for an offender with no prior criminal history that includes the statutory penalty. The remaining sentencing ranges are extrapolated upward and downward from the guideline ranges that include the mandatory minimum penalties. *See generally* U.S. SENTENCING COMM'N, GUIDELINES MANUAL, APPENDIX C, AMMENDMENT 782 (effective November 1, 2014).

¹⁰ See Memorandum to United States Attorneys and Assistant Attorney General for the Criminal Division from Attorney General Eric Holder, *Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases* (August 12, 2013). In fiscal year 2013, the fiscal year that concluded just after the Attorney General's memorandum was issued, 62.2 percent of drug offenders were convicted of an offense carrying a mandatory minimum penalty. The portion of drug cases carrying a mandatory minimum penalty in fiscal year 2014 was 50.1 percent.

¹¹ 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.

¹² See 18 U.S.C. § 3553(f).

¹³ 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* U.S. SENTENCING COMM'N GUIDELINES MANUAL, Ch.4 (2016). The CHC, along with the final offense level, determines the sentencing range under the guidelines.

¹⁴ 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.

¹⁵ Non-citizens primarily are convicted of immigration crimes. Non-citizens were the offenders in only 22.0 percent of all other federal crimes in fiscal year 2016.

¹⁶ 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.

¹⁷ I.e., a case in which 18 U.S.C. § 924(c) was the statute of conviction.

¹⁸ *I.e.*, a case in which 18 U.S.C. § 922(g)(1) was the statute of conviction.

¹⁹ 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.

²⁰ See U.S. SENTENCING COMM'N, GUIDELINES MANUAL, APPENDIX C, AMMENDMENT 782 (effective November 1, 2014).

²¹ See Fed R. Crim. P. 35(b). For more information about cases involving a resentencing for substantial assistance to the government after sentencing, see Kevin Blackwell and Jill Baisinger, U.S. SENTENCING COMM'N, THE USE OF FEDERAL RULE OF CRIMINAL PROCEDURE 35(b) (2016).

²² See 28 U.S.C. § 2255.

²³ Johnson v. United States, 135 S.Ct. 2552 (2015) (holding that part of the Armed Career Criminal Act was unconstitutional).

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