



Overview of Federal Criminal Cases Fiscal Year 2017



UNITED STATES SENTENCING COMMISSION



United States Sentencing Commission

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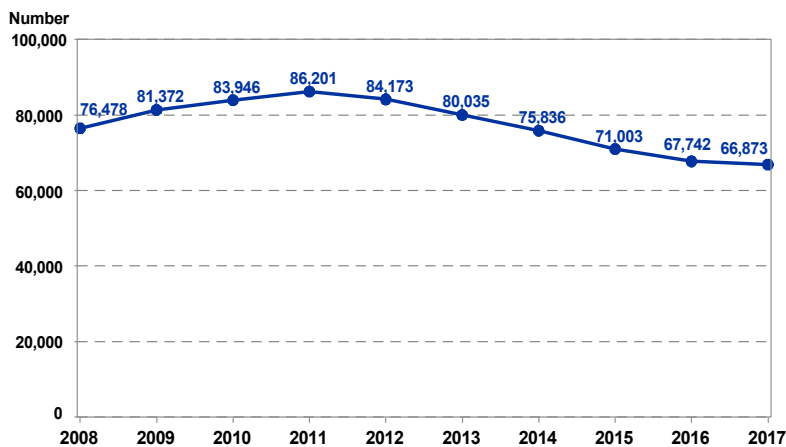
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The United States Sentencing Commission¹ received information on 67,004 federal criminal cases in which the offender was sentenced in fiscal year 2017.² Among these cases, 66,873 involved an individual offender and 131 involved a corporation or other “organizational” offender. Most of these cases were felony offenses.³ The Commission also received information on 5,243 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 Caseload at a Glance

The 66,873 individual original cases reported to the Commission in fiscal year 2017 represent a decrease of 869 cases, or 1.3 percent, from the previous year. Between fiscal year 2011, the year in which the largest number of offenders were sentenced,⁴ and fiscal year 2017, the number of offenders sentenced in the federal courts has fallen each year, for a total decrease of 22.4 percent. However, the decrease last year was the smallest of any of the previous six years.

Figure 1. Number of Offenders Over Time
 Fiscal Years 2008-2017

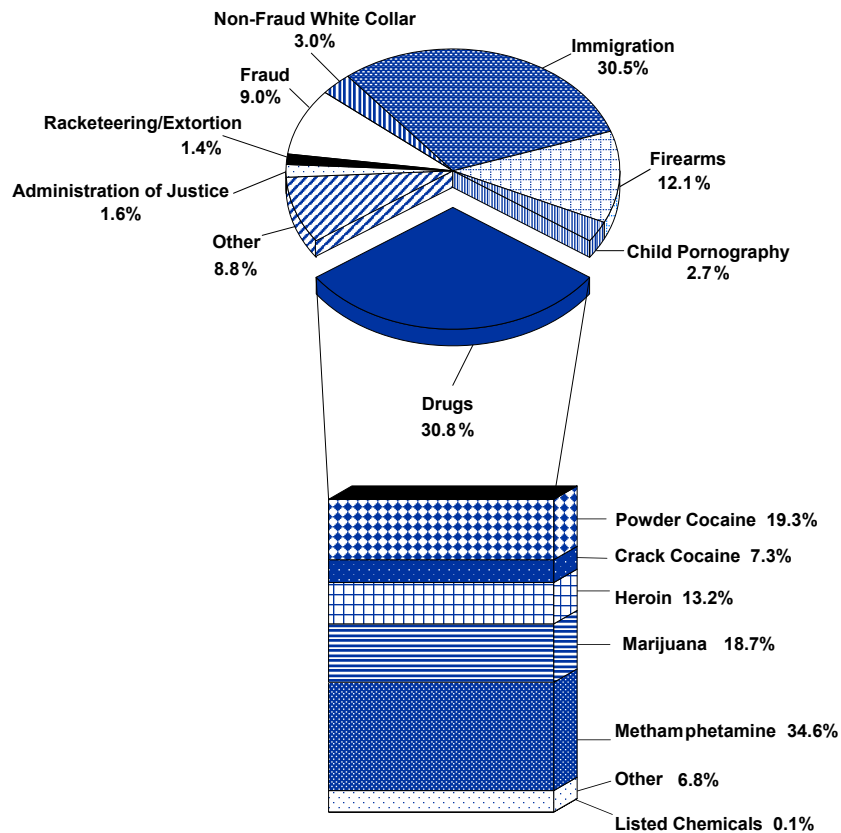


Fewer cases were reported for most offense types in fiscal year 2017 than in the prior fiscal year. The largest decreases occurred in drug possession cases and fraud cases. However, the number of cases involving kidnapping/hostage taking, sexual abuse, firearms, embezzlement, racketeering/extortion, immigration, prison offenses, and administration of justice offenses increased. Most notable was the increase in firearms cases, an increase of 759 cases, or 10.4 percent, from the preceding year.

Five judicial districts accounted for more than one-third (37.9%) of all individual offenders. The Southern District of Texas and the Western District of Texas each reported almost ten percent (9.9%) of the total number of individual offenders sentenced in fiscal year 2017. The next highest districts were the District of Arizona (8.1%), the District of New Mexico (5.7%), and the Southern District of California (4.3%).

For more than a decade, four offenses—drugs, immigration, fraud, and firearms cases—have constituted the vast majority of federal felonies and Class A misdemeanors. This trend continued in fiscal year 2017, as these crimes accounted for 82.4 percent of all cases reported to the Commission.

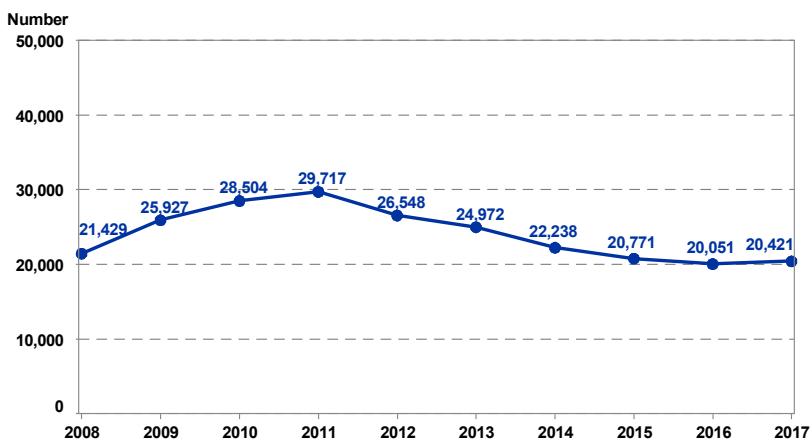
**Figure 2. Offenders in Each Primary Offense Category
Fiscal Year 2017**



Drug cases continued to be the most common type of federal case. The 20,607 drug cases in fiscal year 2017 accounted for 30.8 percent of all cases reported to the Commission that year, almost the same percentage as their portion of the caseload the preceding year. Most of those cases (92.4%) involved drug trafficking.

Immigration cases were the next most common offense type, accounting for 30.5 percent of the total federal caseload. Most of those cases (81.5%) involved illegal reentry offenders. From fiscal year 2011, when immigration cases were the most common federal crime, to fiscal year 2016, the number of immigration cases steadily declined. However, that trend ended in fiscal year 2017, when the 20,421 immigration cases reported to the Commission represented a 1.8 percent increase from fiscal year 2016. Even with this increase, the number of immigration cases was 31.3 percent less than it was in fiscal year 2011.

**Figure 3. Immigration Offenders Over Time
Fiscal Years 2008-2017**



There were 8,064 firearms cases in fiscal year 2017. These cases accounted for 12.1 percent of the caseload, about the same portion of the overall caseload that they represented in fiscal year 2005 (11.9%). The 8,648 firearms cases that year were the most reported to the Commission in

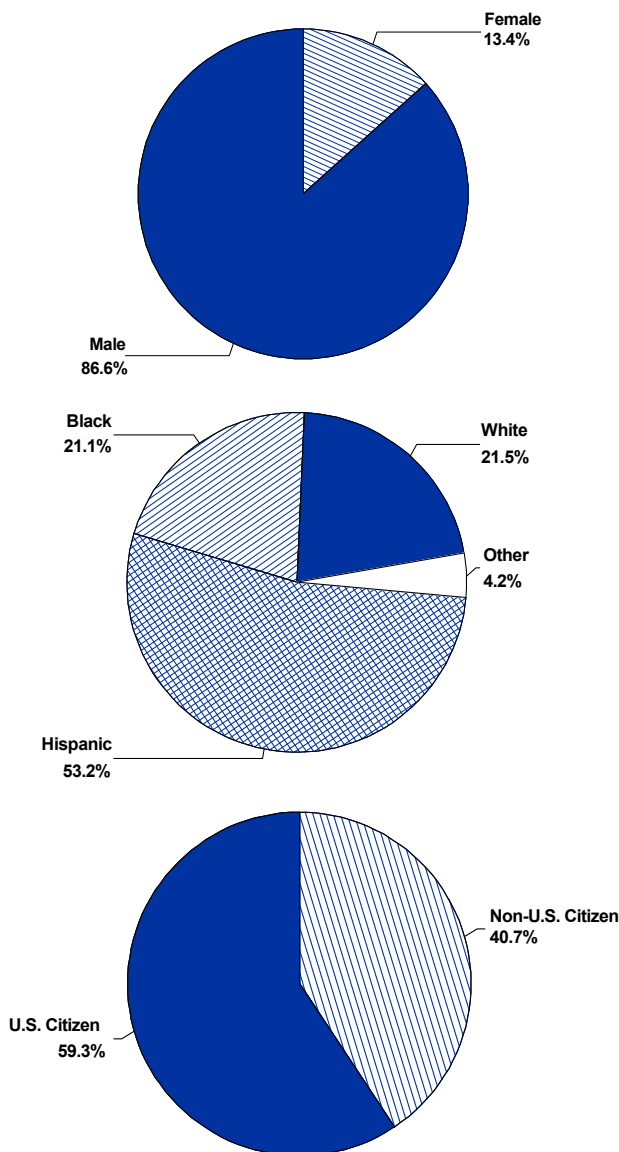
any one year. However, the 8,064 cases reported in fiscal year 2017 were a 10.4 percent increase from the number of those cases reported in fiscal year 2016 (7,305 cases).

Finally, there were 6,029 fraud cases in fiscal year 2017, which accounted for 9.0 percent of the total federal caseload. This number represents a 7.5 percent reduction from the year before. Fraud cases have fallen by 30.2 percent from the high of 8,634 cases in fiscal year 2012, when they accounted for 10.3 percent of the overall caseload.

Individual Offender Characteristics

Most offenders were men, and their proportion of the total offender population has remained constant for more than a decade. In fiscal year 2017, 86.6 percent of all offenders were men, compared with 86.5 percent in fiscal year 2013, and 87.2 percent in fiscal year 2008. Among female offenders, the most common crime was drug trafficking (committed by 34.7% of all women offenders sentenced in fiscal year 2017).

Figure 4. Gender, Race, & Citizenship of Offenders Fiscal Year 2017



Embezzlement continued to be the only crime for which female offenders outnumbered male offenders (51.9% to 48.1%), although the number of these cases (395) was small when compared to other offense types.

In fiscal year 2017, 53.2 percent of all federal offenders were Hispanic, while 21.5 percent were White, and 21.1 percent were Black.⁵ The race of offenders varied widely across offense types and in different ways. For example, most Hispanic offenders (82.4%) were sentenced for one of two types of offenses—immigration or drug trafficking crimes. Among immigration offenders, most were Hispanic, while among drug offenders, racial and ethnic background varied depending on the type of drug involved in the crime.

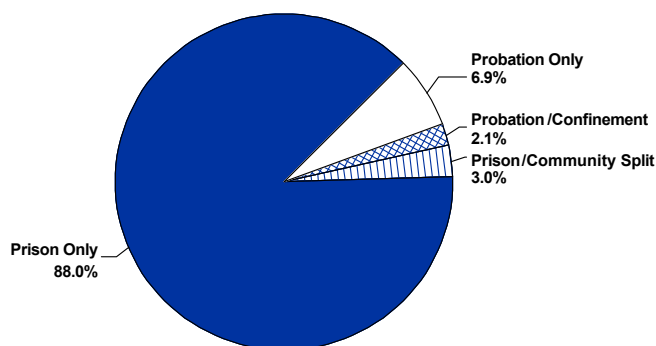
A majority of federal offenders were United States citizens (59.3%). The majority of non-citizen offenders were sentenced for an immigration offense (68.6%). The next most common offense type among non-citizen offenders was drug trafficking (18.7%).

The average age of offenders in fiscal year 2017 was 37 years, a slight increase from the average age of 36 for offenders sentenced in fiscal year in 2013 and the average age of 35 in fiscal year 2008. Almost half of all federal offenders sentenced in fiscal year 2017 (46.2%) had not completed high school, and only 6.1 percent of offenders had completed college.

Case Disposition

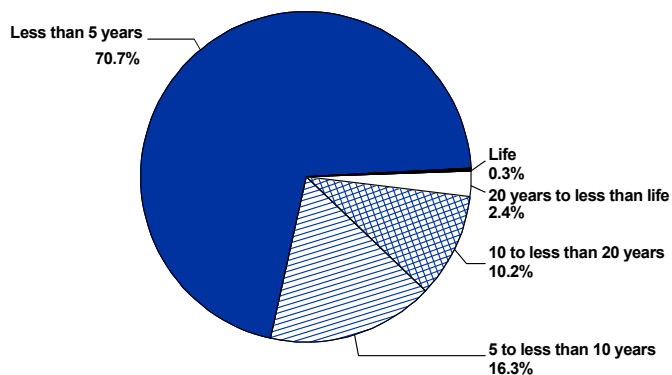
In fiscal year 2017, the vast majority of offenders (97.2%) pleaded guilty. This high rate has been consistent for more than 15 years. Among those offenders who pleaded guilty, 47.9 percent received a sentence below the applicable sentencing guideline range. Almost 60 percent (59.4%) of these below range 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 (EDP).⁶ In comparison, in the 2.8 percent of cases where the offender did not plead guilty, 48.0 percent received a sentence below the guideline range, although only 11.3 percent of those below range sentences were requested by the government.

Figure 5. Type of Sentence Imposed Fiscal Year 2017



Most federal offenders convicted of a felony or Class A misdemeanor received a sentence of incarceration. In fiscal year 2017, an imprisonment sentence was imposed on 88.0 percent of all offenders. Another 3.0 percent were sentenced to a combination of imprisonment and community confinement, such as in a half-way house or home confinement.⁷ The remaining nine percent of offenders received some type of probation sentence. Of them, 6.9 percent received a sentence of “straight” probation (*i.e.*, where no type of confinement was imposed), a rate that has decreased over time from a high of 15.3 percent in 1990.⁸ The remaining 2.1 percent of offenders were sentenced to probation that was conditioned on the offender also serving some type of confinement (*e.g.*, intermittent confinement, community confinement, or home detention).

Figure 6. Average Length of Imprisonment Fiscal Year 2017



The sentences imposed in federal cases vary greatly depending on the type of the offense and the criminal history of the offender. Offenders committing kidnapping/ hostage taking received the longest terms of confinement in fiscal year 2017, at 230 months on average. Environmental and wildlife offenses were punished least severely, with offenders receiving confinement sentences of three months, on average.⁹

Overall, 70.7 percent of offenders received a sentence of less than five years, 16.3 percent of offenders received a sentence of five years or longer but less than ten years, and 12.9 percent received a sentence of ten years or longer. In fiscal year 2017, 156 federal offenders (0.3%) were sentenced to life imprisonment and one offender was sentenced to death.

Fines were most commonly imposed in antitrust and environmental cases.

Fines were imposed in 7.9 percent of all cases in which an individual offender was sentenced in fiscal year 2017, either as the sole punishment or combined with some other sanction. This was a slight decrease over the 8.3 percent of cases in fiscal year 2016 in which a fine was imposed.

Fines were most commonly imposed in antitrust (67.7%) and environmental (55.0%) cases. When the offender was an organization, courts imposed a fine in a majority of the cases (74.8%).

Courts ordered restitution to be paid to the victim of the crime in 14.9 percent of all cases in which an individual was the offender, similar to the rate of 15.3 percent in fiscal year 2016. Restitution was most commonly ordered in cases involving embezzlement (85.4%), tax (84.1%), arson (77.5%), robbery (77.1%), fraud (76.3%), and burglary (75.8%). Restitution was ordered in 29.0 percent of the cases where the offender was an organization.

Most offenders sentenced to imprisonment also were sentenced to serve a period of supervised release following the completion of that confinement. In fiscal year 2017, 83.8 percent of offenders sentenced to incarceration also were sentenced to serve a period of supervised release. However, in immigration cases, supervised release was not imposed in 37.8 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 94.1 percent of cases not involving an immigration offense. The average length of supervised release imposed for all cases was 46 months, and the median length was 36 months.

The Most Common Crimes

Drugs

Drug offenses were the most common federal crimes in fiscal year 2017. Most of the 20,607 drug cases involved the manufacture, sale, or transportation of a drug,¹⁰ while 1,301 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 fifth consecutive year, a decrease of 3.6 percent from fiscal year 2016. However, this overall trend did not extend to all drug types. Cases involving methamphetamines increased by 8.5 percent and cases involving powder cocaine increased by 3.3 percent over the number of those cases reported in fiscal year 2016.

Methamphetamine offenses continued to be the most common drug cases. The 7,136 methamphetamine cases represented 34.6 percent of all drug crimes. The number of methamphetamine cases has increased substantially since 1994, when the 1,063 cases that year 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 crime. The 3,972 powder cocaine cases accounted for 19.3 percent of all drug cases while the 1,503 crack cocaine cases accounted for 7.3 percent. The number of crack cocaine cases has fallen by 74.3 percent since fiscal year 2008, the year in which the largest number of those cases were reported to the Commission. That year, the 5,856 crack cocaine cases represented 23.7 percent of all drug cases.

Federal marijuana cases have declined 45.8% since fiscal year 2013.

Of the remaining drug cases, marijuana cases accounted for 18.7 percent of the cases, heroin for 13.2 percent, and cases involving “other” drugs (mostly prescription drugs such as oxycodone) accounted for 6.9 percent of all drug offenses. The number of marijuana cases (N=3,854) represents a 25.3 percent decline from the year before. Marijuana cases have declined by 45.8 percent since fiscal year 2013.

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, 97.8 percent of crack cocaine offenders were United States citizens, while only 51.3 percent of marijuana offenders were citizens.

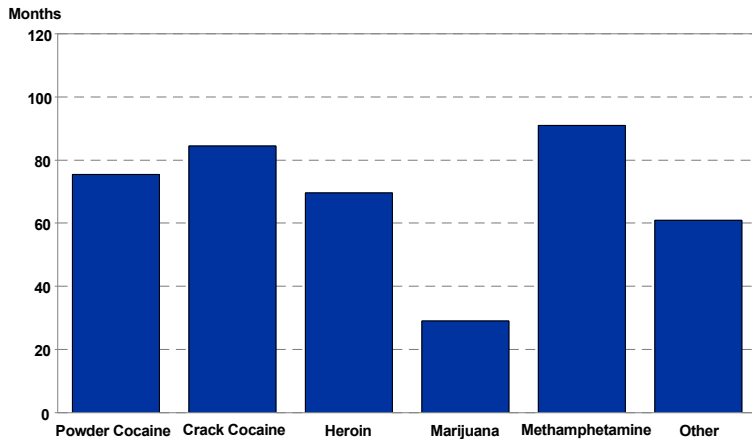
The race of drug offenders varied even more widely by the type of drug involved in the offense. About half (49.8%) of all drug offenders convicted in federal court were Hispanic, while Black offenders constituted 24.6 percent of all drug offenders, and White offenders were 22.4 percent of all drug offenders. Yet, in crack cocaine cases, 79.7 percent of those convicted were Black, and in “other” drug cases 48.6 percent of the offenders were White. In marijuana cases, 74.4 percent of those convicted were Hispanic.

Weapons were involved in 19.4 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 34.0 percent in crack cocaine cases to 9.2 percent in marijuana cases.

The length of sentences imposed in drug cases remained relatively steady from fiscal year 2016, with varying increases depending on each drug type.

The largest increase in average sentence length occurred in cases involving “other” drugs, where the average length of imprisonment increased from 56 months to 61 months (with a median sentence of 41 months), an 8.9 percent increase from fiscal year 2016.

**Figure 7. Average Prison Sentence by Primary Drug Type
Fiscal Year 2017**



For the third year in a row, methamphetamine offenses were the most severely punished drug crime, with an average length of imprisonment of 91 months (and a median sentence of 72 months). Marijuana offenders had the lowest average imprisonment in fiscal year 2017 at 29 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 or prosecution of another person. Mandatory minimum sentences enacted by Congress¹¹ 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.¹² In fiscal year 2017, just under half (44.2%) of all drug offenders were convicted of an offense carrying a mandatory minimum penalty; however, this proportion was the lowest 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 2013.¹³ That policy was revised again in May 2017, with the effect of undoing the change made in 2013.¹⁴

In fiscal year 2017, 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 among all types of drug offenders

—57.9 percent in powder cocaine cases and 51.9 percent in methamphetamine cases.¹⁵ Mandatory minimum penalties were least common in drug cases involving “other” drugs (which were mostly prescription drugs) and marijuana, accounting for 7.6 percent and 24.7 percent, respectively, of those cases.

Many offenders convicted of an offense carrying a mandatory minimum penalty were 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.¹⁶ Marijuana offenders obtained relief from a mandatory minimum sentence through the use of the safety valve most often, in 53.0 percent of all marijuana cases in which a mandatory minimum penalty applied. In contrast, only 5.5 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 2017, 63.8 percent of powder cocaine offenders were assigned to Criminal History Category (CHC) I (offenders with a criminal history score under the sentencing guidelines of zero or one) while just 17.7 percent of crack cocaine offenders were assigned to that category. Only offenders assigned to CHC 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 type of drug offender.¹⁷ More than one-quarter (27.3%) of all crack cocaine offenders were assigned to the most serious Criminal History Category (CHC VI). In contrast, just 6.3 percent of powder cocaine offenders were assigned to CHC VI. By comparison, 17.2 percent of heroin offenders were assigned to CHC VI, and 14.6 percent of methamphetamine offenders were assigned to CHC VI. Offenders convicted of marijuana offenses generally had the least serious criminal histories, with 63.3 percent assigned to CHC I and only 3.7 percent to CHC VI.

An offender’s role in the offense also can affect the guideline range the judge considers when imposing a sentence.¹⁸ In fiscal year 2017, the otherwise applicable guideline range was reduced in 21.0 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 in 39.9 percent of the cases, a 2.2 percent increase from fiscal year 2016. In contrast, such an adjustment applied in only 4.5 percent of crack cocaine cases. In 7.2 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 offenses¹⁹ were the second most common federal crime in fiscal year 2017, representing 30.5 percent of the cases reported to the Commission. This number represents a 1.8 percent increase from fiscal year 2016. The majority of these offenses (81.5%) involved the illegal reentry into the United States. Another 14.2 percent were alien smuggling offenses. The average sentence in immigration cases in fiscal year 2017 was 12 months imprisonment, a decrease of one month from fiscal year 2016.

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 (59.3%) in fiscal year 2017, the overwhelming majority (90.4%) of immigration offenses were committed by non-citizens.²⁰ Similarly, while Hispanics accounted for only 33.5 percent of non-immigration offenders, they accounted for 96.0 percent of immigration offenders. Also, immigration offenders had significantly less education than other offenders. Almost 80 percent (79.7%) of immigration offenders had less than a high school education, compared with 32.5 percent of offenders convicted of other crimes. While men committed most federal crimes other than immigration (83.9%), men committed an even higher proportion of immigration crimes (93.3%).

Firearms and other weapons

Crimes involving firearms²¹ accounted for 12.1 percent of the total number of federal criminal convictions in fiscal year 2017. The 8,064 firearms cases reported to the Commission represent an increase of 10.4 percent from the prior year. Of all firearms cases, 22.4 percent involved the possession or use of a firearm in connection with a crime of violence or drug trafficking crime.²²

Firearms cases increased 10.4% from fiscal year 2016.

More than half of firearms cases (57.1%) involved the illegal possession of a firearm by a prohibited person, usually a convicted felon.²³ The average sentence imposed in firearms cases was 71 months imprisonment, a decrease of four months from the average sentence of 75 months in fiscal year 2016.

In certain other types of cases, the court may consider the possession or use of a dangerous weapon when determining the sentence, even when the underlying crime (*e.g.*, drug trafficking) does not specifically involve the use of a weapon. In fiscal year 2017, the sentences imposed in 9.5 percent of the cases were enhanced (either through application of a specific offense characteristic under the sentencing guidelines 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 (19.4%) more than twice that of all cases generally. Among drug cases, weapons were present most often in crack cocaine cases (34.0%) and least often in marijuana cases (9.2%).

Fraud

Fraud crimes²⁴ accounted for the fourth largest portion (9.0%) of the total federal criminal convictions for fiscal year 2017. The 6,029 fraud cases reported to the Commission were a decrease of 7.5 percent from the number of fraud cases reported the prior year. Fraud cases have fallen by 30.2 percent from the high of 8,634 cases in fiscal year 2012.

The losses in these cases ranged from no loss (in 170 cases) to more than \$8 billion (one case), with an average loss amount of \$6,100,603 and a median loss amount of \$246,553. Identity theft crimes²⁵ accounted for 15 percent of these cases in fiscal year 2017. The average sentence imposed in fraud cases in fiscal year 2017 was 26 months imprisonment, an increase of one month from the average sentence in fiscal year 2016.

Organizational Cases

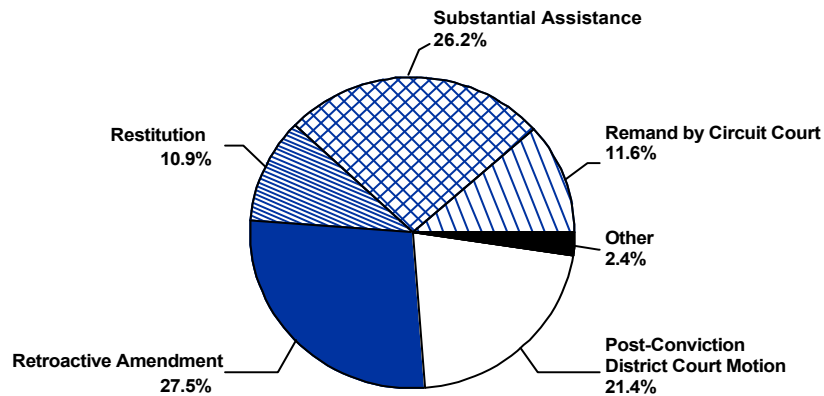
Organizations such as corporations can be prosecuted for violating federal criminal law, and 131 organizations were sentenced in fiscal year 2017. This number is slightly below the 132 cases reported in fiscal year 2016. It is the lowest number of organizational defendants reported since fiscal year 2004 and continues the decrease in the number of these cases over the past 15 years. By comparison, in fiscal year 2008, there were 198 offenders and in fiscal year 2003, there were 200 organizational offenders.

Of the 131 organizational offenders, 91.6 percent pled guilty to one or more charges in fiscal year 2017. The most common crimes for which organizational offenders were convicted were fraud and environmental crimes. In 76 cases, a fine was the sole component of the sentence imposed. In an additional 22 cases, the organization was sentenced to pay restitution to the victim of the crime as well as to pay a fine. In 16 cases, the sole component of the sentence was the payment of restitution. No fine or restitution was imposed in 17 cases, although other sanctions were ordered in some of these cases. Additionally, of the 131 organizational offenders, 82 were sentenced to some term of probation. In 29 cases the offender was also ordered to implement a compliance or ethics program.

Resentencings and Other Modifications of Sentence

In 2017, the Commission received documentation on 5,243 resentencings and other modifications of sentence. This represents a 56.3 percent decline from fiscal year 2016. The most frequently reported reason given for these types of cases was the modification of a term of imprisonment through the retroactive application of an amendment to the sentencing guidelines (1,442 cases; 27.5% 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.²⁶

**Figure 8. Resentencings & Other Modifications of Sentence
Fiscal Year 2017**



The second most common type of resentencing was a reduction in sentence for substantial assistance²⁷ to the government in investigating or prosecuting another person after the offender was sentenced (1,375 cases; 26.2% of all cases). The third most common type of resentencing or modification of sentence was through a post-conviction motion in the district court (1,122 cases; 21.4% of all cases).²⁸ Most of the cases in this last group were resentencings of offenders required by the Supreme Court’s decision in *Johnson v. United States*.²⁹

For More Information

More information on federal sentencing data can be found in the Commission’s 2017 *Sourcebook of Federal Sentencing Statistics* and *Guideline Application Frequencies for Fiscal Year 2017*. 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 on the Commission’s website at www.ussc.gov. Additional statistical analyses of these cases can be found through the Commission’s “Interactive Sourcebook of Federal Sentencing Statistics” at isb.ussc.gov.

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, as the guidelines do not apply to petty misdemeanors. 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 Of the 66,873 individual original cases reported to the Commission, 96.6 percent involved one or more felony offenses.

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

5 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 analyses in this report regardless of racial background.

6 For more information on these programs, see generally U.S. SENTENCING COMM'N, *Guidelines Manual*, §5K3.1 (Nov. 2016) [hereinafter USSG].

7 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).

8 See U.S. SENTENCING COMM'N, 1990 ANNUAL REPORT 53 (1991).

9 Probation sentences are included in the calculation of average sentence as zero months. Over half (61.8%) of environmental and wildlife offenders received a sentence of probation with no type of confinement, and 55.0 percent of these offenders were fined as part of their sentence.

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

11 For more information on the use of mandatory minimum penalties generally, see U.S. SENTENCING COMM'N, OVERVIEW OF MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2017). For information on the use of mandatory minimum penalties in drug cases, see U.S. SENTENCING COMM'N, MANDATORY MINIMUM PENALTIES FOR DRUG OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2017).

12 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* USSG, *supra* note 6, at App. C, amend. 782.

13 *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* (Aug. 12, 2013). In fiscal year 2013, the fiscal year that concluded just after the Attorney General's memorandum was issued, 62.1 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.

14 *See* Memorandum to All Federal Prosecutors from Attorney General Jeff Sessions, *Department Charging and Sentencing Policy* (May 10, 2017). This new policy specifically reversed the policy change announced in the Department's 2013 memo, *supra*.

15 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.

16 *See* 18 U.S.C. § 3553(f).

17 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, *supra* note 6, at Ch.4. The CHC, along with the final offense level, determines the sentencing range under the guidelines.

18 *See* USSG, *supra* note 6, at §§3B1.1, 3B1.2.

19 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 entry or reentry into the United States; or fraudulently acquiring entry documents.

20 Non-citizens primarily are convicted of immigration crimes. Non-citizens were the offenders in only 20.0 percent of all other federal crimes in fiscal year 2017.

21 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 of violence or drug trafficking crime.

22 *See* 18 U.S.C. § 924(c).

23 *See* 18 U.S.C. § 922(g)(1).

24 Fraud crime includes theft, embezzlement, receipt of stolen property, property destruction, and offenses involving fraud or deceit.

25 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.

26 *See* USSG, *supra* note 6. *See also* 18 U.S.C. § 3582(c)(2) (authorizing courts to reduce the term of imprisonment of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission).

27 *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).

28 *See* 28 U.S.C. § 2255.

29 *Johnson v. United States*, 135 S.Ct. 2551 (2015) (holding that part of the Armed Career Criminal Act was unconstitutional).