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INTER-DISTRICT DIFFERENCES IN FEDERAL SENTENCING PRACTICES

Sentencing Practices Across Districts from 2005 - 2017





REPORT OF THE UNITED STATES SENTENCING COMMISSION

INTER-DISTRICT DIFFERENCES IN FEDERAL SENTENCING PRACTICES

Sentencing Practices Across Districts from 2005 - 2017



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Table of Contents



INTRODUCTION & KEY FINDINGS

- 5 Introduction
- 7 Key Findings



METHODOLOGY

- 9 The Commission's 2012 Study
- 13 Refining the 2012 Study
- 14 Case Exclusions
- 16 Analysis by Primary Guideline
- 18 Measuring Judicial Discretion
- 19 Graphical Presentation of the Results



FINDINGS

- 21 Cumulative Findings
- 22 USSG §2B1.1
- 24 USSG §2D1.1
- 28 USSG §2K2.1
- 30 USSG §2L1.2
- 33 Inter-District Consistency
- 39 Matched Analysis

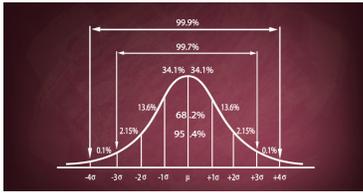


CONCLUSIONS

- 41 Conclusion

APPENDICES

Table of Contents



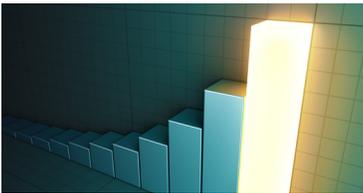
APPENDIX A

43 Standard Deviation Analysis



APPENDIX B

45 District Lists by Period
46 USSG §2B1.1
50 USSG §2D1.1
54 USSG §2K2.1
58 USSG §2L1.2



APPENDIX C

63 Statistical Outliers
64 USSG §2B1.1
65 USSG §2D1.1
66 USSG §2K2.1
67 USSG §2L1.2



APPENDIX D

69	USSG §2D1.1 Analysis by Drug Type			
70	<i>Powder Cocaine</i>	73	<i>Marijuana</i>	
71	<i>Crack Cocaine</i>	74	<i>Methamphetamine</i>	
72	<i>Heroin</i>	75	<i>All Other Drugs</i>	



APPENDIX E

77	<i>Matched Analysis</i>
78	<i>Methodology</i>
80	<i>Results</i>

Having analyzed sentencing differences within the same courthouse in the last report, this report now turns to examining regional differences post-Booker.



INTRODUCTION

Sentencing Practices Across Districts 2005 - 2017



The United States Sentencing Commission provides timely and objective sentencing data, information, and analysis to inform the ongoing discussion regarding sentencing practices in the federal system.¹ This report continues the Commission's work analyzing variations in sentencing practices—and corresponding variations in sentencing outcomes—in the federal courts since the Supreme Court's 2005 decision in *United States v. Booker*,² which struck the mandatory provision of 18 U.S.C. § 3553(a), making the guidelines effectively advisory.

In 2012, the Commission released its report to Congress, titled *Report on the Continuing Impact of United States v. Booker on Federal Sentencing*,³ which analyzed sentencing data over a broad period from October 1995 through September 2011. In its 2012 *Booker Report*, the Commission's analysis of sentencing data showed increasing differences among the 94 federal judicial districts. The analysis focused on judges' rates of non-government sponsored below range sentences. Such sentences result from downward "departures" pursuant to commentary or policy statements in the

Guidelines Manual or downward "variances" that are outside of the guidelines framework pursuant to the courts' consideration of the factors in 18 U.S.C. § 3553(a), without a motion by the government.⁴ In the 2012 report, the Commission concluded that "the rates of non-government sponsored below range sentences have increased in most districts ..., indicating that sentencing outcomes increasingly depend[ed] upon the district in which the defendant [was] sentenced."⁵

The Commission has since continued its study of the impact of *Booker* on federal sentencing in a series of reports updating the analyses and findings of the Commission's 2012 report. The first such update, issued in 2017, focused on demographic differences at the national level in federal sentencing.⁶ Using a multivariate regression analysis, the Commission concluded that the increases in demographic differences in sentencing that had occurred during the first seven years after *Booker*—including a higher average sentence for Black males compared to White males—persisted in the subsequent five-year period.⁷ The second update focused on judges' sentencing practices, comparing



judges' individual sentencing practices within the same city.⁸ In that publication, the Commission concluded that the increasing differences in sentencing practices first reported at the district level in the Commission's 2012 *Booker Report* generally persist to this day, even within the same courthouse.

This report, the third in the series, builds directly upon the Commission's *Intra-City Report*. As noted in that publication, the Commission's ongoing analysis in this area directly relates to a key goal of the Sentencing Reform Act of 1984: reducing unwarranted sentencing disparities that existed in the federal judicial system.⁹ In particular, the Act was the result of a widespread bipartisan concern that such disparities existed both regionally (e.g., differences among the districts) and within the same courthouse.¹⁰ Having analyzed the differences within the same courthouse in its *Intra-City Report*, this report now turns to examining regional differences since *Booker*.

For purposes of this analysis, the Commission relied upon the same methodological principles utilized in its study on intra-city sentencing practices. However, instead of analyzing individual judges' practices, this report studies sentencing practices across districts, comparing each district's sentencing practices to the average sentencing practices of all districts in the analysis. Recognizing the potential impact of regional differences in caseload (i.e., some districts may have more of one type of offense than others), the analysis is conducted separately for each of the four major offense types—fraud, drug trafficking, firearms, and immigration—and only includes those districts with a minimum of 50 cases sentenced based on the relevant guideline during the period being studied. Using this updated methodology, the Commission finds that the increased differences in sentencing practices first reported at the district level in the Commission's 2012 *Booker Report* generally persist to this day.

KEY FINDINGS

The Commission's Inter-District Analysis

Building on its Intra-City study, the Commission's current analysis measured districts' average percent differences from the guideline minimums in relation to other districts during three periods between 2005 and 2017.¹¹ While the extent of those differences vary depending on the specific primary guideline, the overarching trends indicate that, consistent with the findings of the Commission's 2012 *Booker Report*, sentencing outcomes continue to depend at least in part upon the district in which the defendant is sentenced.

- Variations in sentencing practices across districts increased in the wake of the Supreme Court's 2005 decision in *Booker*. These inter-district sentencing differences have persisted in the 13 years after *Booker* and six years after the Commission's 2012 analysis.

- Sentencing differences increased for each of the four major offense types analyzed (fraud, drug trafficking, firearms related offenses, and illegal reentry) during the *Gall* Period. This trend continued for some, but not all, of the four offense types in the six years following the last period analyzed in the Commission's 2012 *Booker Report*.

- Guideline amendments intended to promote uniformity by addressing judicial concerns regarding severity have had an inconsistent impact on inter-district disparity. Specifically, despite multiple significant revisions to the drug trafficking guideline, including the two-level reduction of the base offense level for all drugs, districts increasingly diverged in their sentencing practices for drug trafficking offenders. However, the comprehensive amendment to the illegal reentry guideline contributed to increasing uniformity in sentencing practices in the Post-Report Period.

- Certain districts have consistently sentenced more—or less—severely in relation to the guideline minimums than other districts, both over time and across offense type. For each primary guideline analyzed over time, some districts were consistently among the districts furthest above the average percent difference, while others were consistently among the furthest below. Furthermore, in this most recent Post-Report Period, some districts were consistently among those furthest above the average for each of the four guidelines analyzed.

Congress included three provisions of the Sentencing Reform Act in response to its concerns about unwarranted sentencing disparities.



METHODOLOGY

The Commission's 2012 Study of Inter-District Sentencing Differences



In response to its concern about unwarranted sentencing disparities, Congress included three provisions in the Sentencing Reform Act intended to reduce the extent of disparities.¹² As part of those provisions, Congress instructed the Commission to pay “particular attention” to avoiding unwarranted sentencing disparities in creating guidelines.¹³ Although the Supreme Court’s decision in *Booker* rendered the guidelines advisory—thereby providing courts with more discretion in sentencing than under the pre-*Booker* guidelines—the Court did not invalidate those three provisions. Indeed, the Court specifically stated that it believed the post-*Booker* advisory guideline system would “promote uniformity in the sentencing process” and thus help avoid unwarranted sentencing disparities.¹⁴

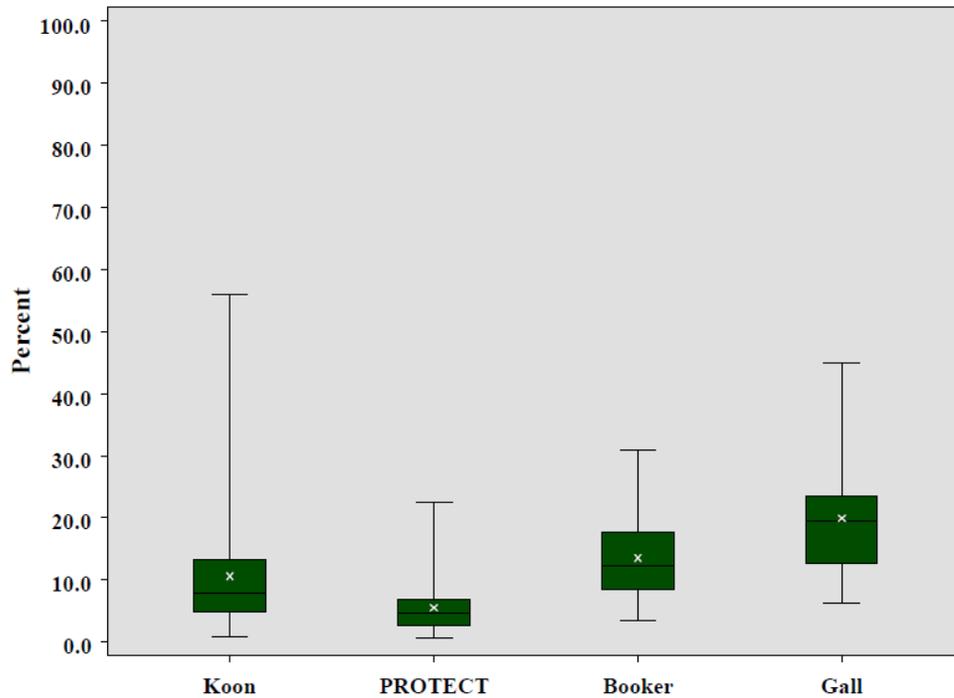
In furtherance of those directives, the Commission has long studied variations in sentencing practices, including regional differences among districts. In 2012, the Commission examined sentencing differences both among districts and among judges within each of the 94 federal judicial districts.

The analysis covered four time periods:

- the *Koon* period (the Supreme Court’s 1996 decision in *Koon v. United States*¹⁵ until the enactment of the PROTECT Act on April 30, 2003);
- the PROTECT Act period (April 30, 2003 through the Supreme Court’s 2004 decision in *Blakely v. Washington*,¹⁶ which foreshadowed the Supreme Court’s 2005 decision in *United States v. Booker*¹⁷);
- the *Booker* period (January 12, 2005, through December 9, 2007); and
- the *Gall* period (the date of the *Gall* and *Kimrough* decisions¹⁸ through the end of fiscal year 2011).



**Spread of Rates of Non-Government Sponsored Below Range Sentences
All Offenses
Koon Period through Gall Period**



	Koon	PROTECT	Booker	Gall
N	94.0	91.0	94.0	94.0
Min	0.8	0.5	3.4	6.1
Max	55.9	22.5	30.8	44.9
Q1	4.8	2.6	8.3	12.6
Q3	13.2	6.7	17.6	23.5
Q2	8.0	4.6	12.3	19.6
Mean	10.6	5.5	13.5	19.9

SOURCE: U.S. Sentencing Commission, 2011 Booker Report Datafiles.

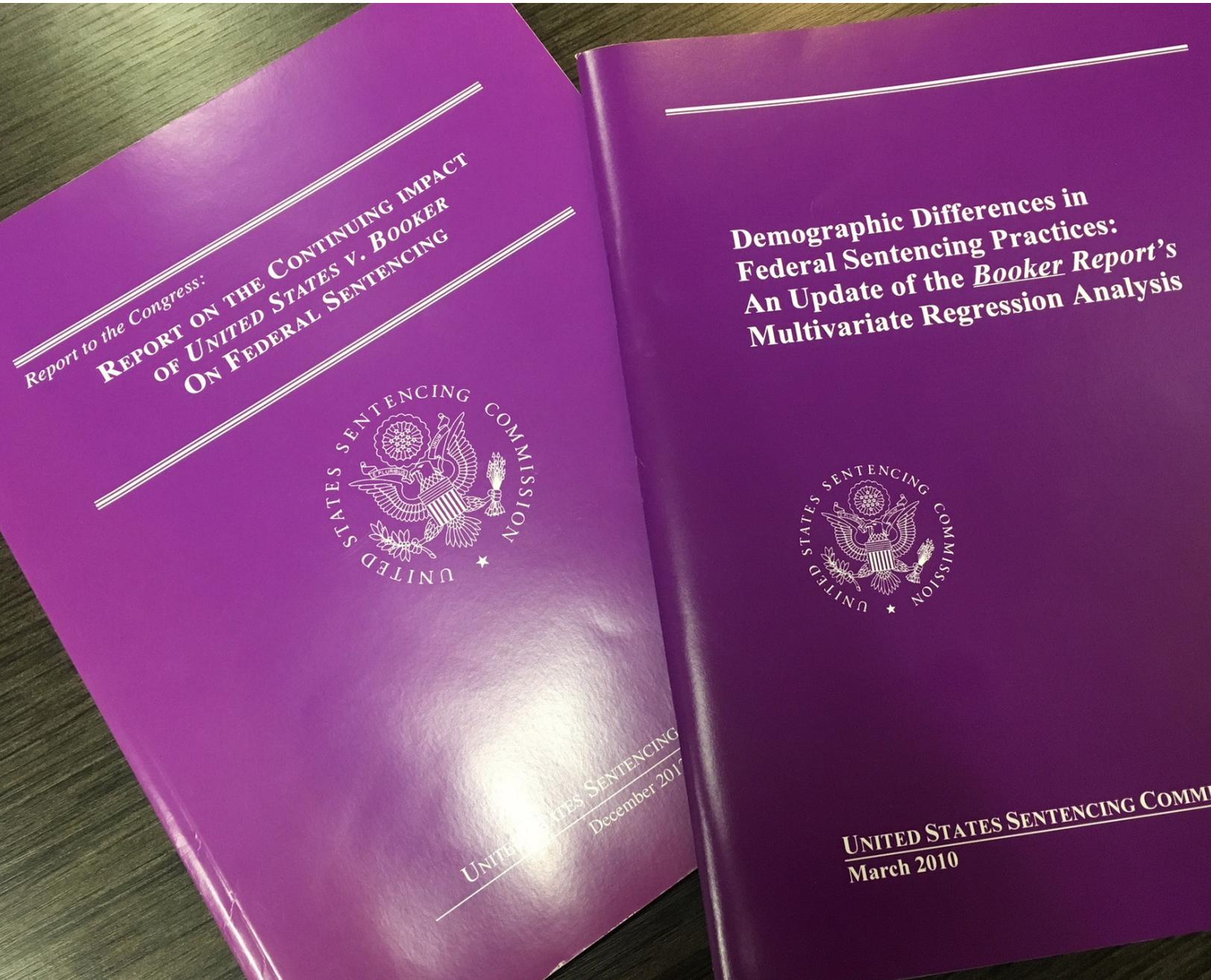
The 2012 report utilized a common statistical tool known as a “box plot” to depict the spread in rates of below range sentences as a means of analyzing whether, and to what extent, districts differed in how often they imposed sentences below the guideline

range without a request from the government.¹⁹ An example of a box plot, taken from the 2012 *Booker Report*, appears above.

The main value of the box plot, as used in the 2012 *Booker Report*, was its depiction of the size and position of the box over time to explore the question of whether districts differed in their imposition of non-government sponsored below range sentences, and whether any such differences had increased over time. In the graph, the top and bottom of the vertical lines (whiskers) showed the district with the highest (top) and lowest (bottom) rate of non-government sponsored below range sentences. The boxes, which provided the primary value of the graph, depicted the rates and variation within the middle 50 percent of districts that imposed such sentences. Changes in the height of the box's position along the vertical axis over the four periods depict at a glance whether the rates are increasing or decreasing among the middle 50 percent of districts, and the size of the box depicts the spread in rates among those districts.

A higher box signifies that the sentencing practice occurred more often among the middle 50 percent of districts that engaged in the practice, a lower box signifies that the sentencing practice occurred less often. A smaller box means there is less spread (greater uniformity) among the middle 50 percent of districts that engaged in the practice, and a larger box means there is a greater spread (less uniformity).

Using the box plots, the 2012 report analyzed whether districts differed in their imposition of non-government sponsored below range sentences, and whether any such differences had increased over time, for all offenses, as well as for several of the primary offense types. The study demonstrated that "the rates of non-government sponsored below range sentences [] increased in most districts."²⁰ Additionally, as demonstrated by the increasing size of the boxes on the box plots, the variation among the districts relating to the frequency of their use of such sentences also increased over time, resulting in the widest spread appearing in the *Gall* period. This trend indicated "that sentencing outcomes [namely, the use of non-government sponsored below range sentences] increasingly depend[ed] upon the district in which the defendant [was] sentenced."²¹



METHODOLOGY

Refining the 2012 Study



This report updates the 2012 district-level analysis both in terms of the time period studied and refinements in methodology. Specifically, this report adopts the methodology used in the Commission's recent *Intra-City Report*.

First, the Commission again analyzes differences in sentencing practices in the three periods since the guidelines became advisory—the *Booker* Period, *Gall* Period, and the six-year period following the publication of the 2012 *Booker Report* (called the “Post-Report Period,” using data from fiscal years 2012–17).²² Second, this publication expands the

scope of cases considered in the analysis to include those most reflective of judicial decision-making, while also establishing a minimum number of cases as a threshold for inclusion in the study. Lastly, this report adopts a graphical depiction of the district-level analysis utilizing the same bar graph visualizations set forth in the Commission's intra-city analysis.



METHODOLOGY

Case Exclusions

Focusing on Cases in Which Meaningful Sentencing Discretion Can Be Measured

As discussed in the Commission's *Intra-City Report*, one of the primary refinements from the 2012 study was the inclusion of all types of cases in which judicial sentencing discretion can be measured. In the 2012 study, the Commission focused on cases in which courts sentenced defendants below the guideline range without a motion from the government by looking at the rate and extent of only non-government sponsored below range sentences. Although the rate of such sentences has steadily increased after *Booker*, they still only constitute approximately one-fifth of all sentences today.

The current study analyzes those same cases, but also adds cases in which the court imposed sentences outside of the guideline range based on a government motion (with two exceptions discussed below). In addition, the Commission's current analysis includes cases in which judges imposed sentences *within* or *above* the guideline range, which together constitute more than half of all sentences.²³ The Commission's consideration of these additional categories of cases allows for a more robust study of sentencing discretion. The Commission also narrowed the dataset in certain aspects to focus on sentencing discretion.

The Commission excluded two categories of cases because they do not allow for a meaningful assessment of judges' sentencing discretion:

EXCLUSION 1

Cases in which a statutory mandatory minimum penalty equaled or exceeded the otherwise applicable guideline minimum ("mandatory minimum trumps");²⁴ and

EXCLUSION 2

Cases in which a court departed downwardly based on a defendant's "substantial assistance" to the government or as part of a "fast-track" program (insofar as such departures require the government to file motions requesting them and, when filed, the motions are almost always granted).²⁵ These exclusions reduced the effect that prosecutorial charging practices could have on the Commission's analyses in this report.²⁶

SUMMARY OF ANALYSIS

4

PRIMARY GUIDELINES

13

YEARS

340,188

CASES

The 2019 analysis refines the dataset to allow for a fuller study of sentencing discretion.

The Commission excluded three additional types of cases because of difficulties in accurately measuring the percent difference from the guideline minimum in such cases:

EXCLUSION 3

Cases with one or more counts of conviction under a statute requiring a mandatory sentence of imprisonment to run *consecutively* to any sentence imposed under the guidelines (e.g., 18 U.S.C. § 924(c));²⁷

EXCLUSION 4

Cases in which the guideline minimum was life imprisonment or cases in which a court varied or departed upwardly from a guideline range of a term of months to a life imprisonment sentence (as there is no meaningful way to measure the extent of a departure or variance below a life term or the extent of an upward departure or variance to a life term, as a life term is not a fixed term of months); and

EXCLUSION 5

Cases in which the guideline minimum was less than 10 months (which, after 2010, necessarily fell in Zones A or B of the Sentencing Table).²⁸



METHODOLOGY

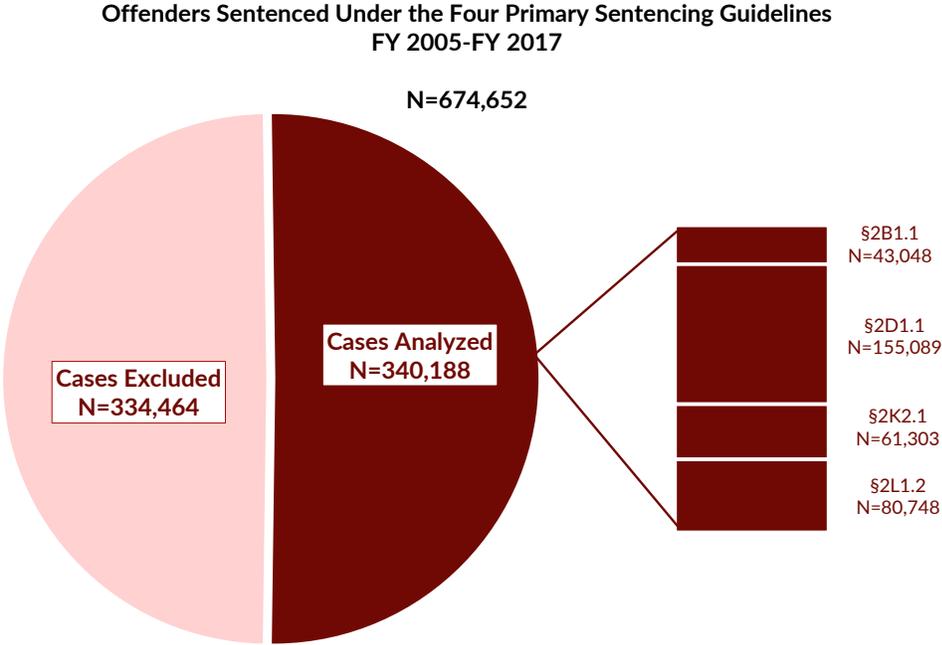
Analysis By Primary Guideline

Much like its 2012 district-level analysis, the Commission conducted separate analyses by primary guideline to compare sentencing practices across districts. As reflected in the Commission's annual datasets, caseload composition can widely vary across districts.²⁹ The variation in caseload could result in findings of differences in sentencing practices and sentencing outcomes that could be explained in part by differences in offense types or different prosecutorial practices associated with different districts. For example, differences in sentencing practices when comparing a district with a caseload composed of a disproportionately high number of illegal reentry cases (which tend to have the highest within-range rates of all major guideline types) to a district with a disproportionately high number of drug offenses (which tend to have lower within range rates) may be more indicative of generally held judicial views about certain offense types or guidelines than it is of varied use of judicial sentencing discretion.³⁰

Recognizing the potential impact of these regional differences in caseload (*i.e.*, some districts may have more of one type of offense than others), the analysis is conducted separately for each of the major offense types. As a result, this publication separately examines

sentencing differences among districts for cases sentenced under one of the four most commonly applied guidelines: §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States); §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses; Attempt or Conspiracy)); §2K2.1 (Unlawful Receipt, Possession or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition); and §2L1.2 (Unlawfully Entering or Remaining in the United States). Together these case types account for nearly 70 percent of the total federal caseload during the time periods studied.³¹

In creating the datasets, the Commission identified 972,783 cases across the nation during fiscal years 2005 to 2017. The Commission then isolated the relevant cases for each guideline-specific analysis by limiting cases based on their primary guideline—that is, the guideline with the highest adjusted offense level, which therefore controlled the guideline calculation.³² For example, the §2B1.1 analysis includes only those



cases in which §2B1.1 was the primary guideline. Focusing on the four primary guidelines mentioned above resulted in a dataset of 674,652 cases for this study. After excluding the five categories of cases identified above, along with cases for which incomplete sentencing documentation was submitted to the Commission, 345,741 of the 674,652 cases during fiscal years 2005 to 2017 remained for analysis.³³

Finally, for each guideline-specific analysis, the Commission included only those districts with a minimum of 50 cases sentenced under the relevant guideline (e.g., a district must have had at least 50 cases in which §2L1.2 was the primary guideline to be included in the §2L1.2 analysis). The 50-case per period threshold was incorporated to make it more likely that the cases were representative of the district’s overall sentencing practices.³⁴ An additional 5,553 cases were excluded as a result of this requirement—bringing the total number of cases in the Commission’s dataset to 340,188 (50.4% of the 674,652 cases sentenced under the four guidelines identified above).

METHODOLOGY

Measuring Judicial Discretion

Like the Commission’s city-level analysis, this district-level analysis focuses on the **average percent difference** between the guideline minimums and the sentences imposed in each case. For each case, the guideline minimum and the actual sentence imposed were determined, and a percent difference between the two was calculated. For example, if the guideline minimum in a case was 63 months and the judge imposed a sentence of 39 months (24 months below the guideline minimum), the percent difference in that case was -38.1 percent. Conversely, if the judge imposed a sentence of 87 months in a case with a guideline minimum of 63 months (24 months above the guideline minimum), the percent difference was 38.1 percent. The percent differences for all cases within the district for that particular offense type were then added together and divided by the total number of cases in that district, which yielded an average, district-level percent difference. For some districts, the average percent difference was a positive percentage (meaning that, on average, sentences were above the guideline minimums), while for others it was a negative percentage (meaning that, on average, sentences were below the guideline minimums).

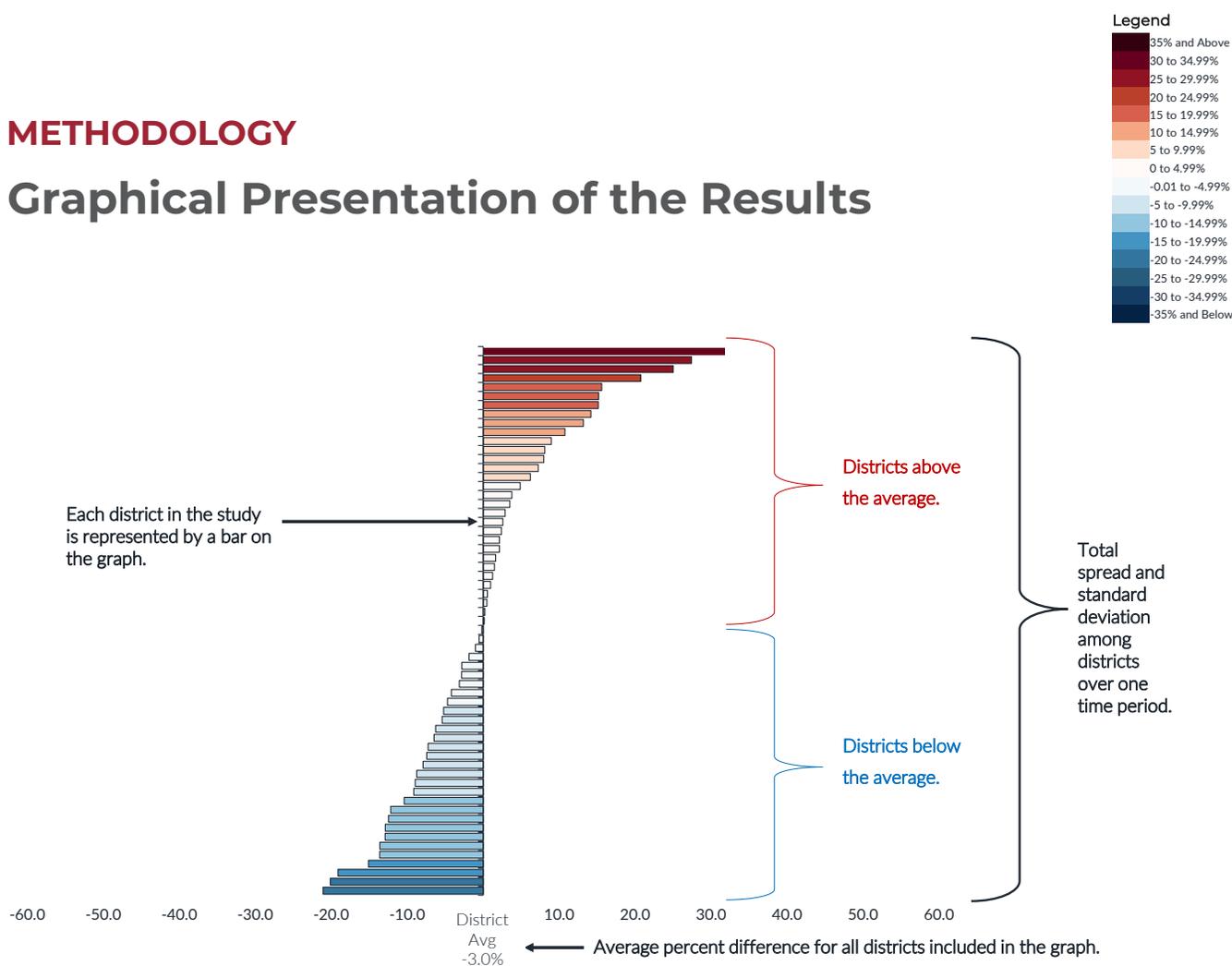
The guideline minimum was chosen as the baseline for analysis because of the gravitational pull it tends to have on sentences. The Supreme Court has directed



district courts to consider the guideline range as the “benchmark” and “starting point” in the post-*Booker* federal sentencing process and to “remain cognizant” of it during all three steps of the “*Booker* three-step process” used at federal sentencing.³⁵ In a majority of cases in which judges impose sentences within the applicable guideline range, they impose the guideline minimum (58.4% of cases from fiscal years 2005 through 2017). Furthermore, in the cases analyzed for this report, when judges imposed a sentence outside of the guideline range, they departed or varied *below* the range nearly 21 times as often as they departed or varied *above* the range.³⁶ In those cases with below range sentences, judges often use the guideline minimum as the starting point in deciding how far to depart or vary below the minimum. The guideline minimum is thus a focal point in the advisory guidelines system and, for that reason, the baseline for the Commission’s analysis.

METHODOLOGY

Graphical Presentation of the Results



The results of the Commission’s district-level analyses adopt the graphical depiction used in the Commission’s intra-city analysis. As shown in the figure above, a bar graph is used to analyze and compare differences in sentencing practices among each district studied (for each of the three periods). Each district with the 50-case minimum for a period is represented by a horizontal bar on the graph. The bars show the sentencing practices of each district in relation to the average of all districts in that particular analysis. The overall average for all analyzed districts is depicted by the vertical line in the middle of the bar graph. In

this example, the average percent difference from the guideline minimum for all 61 districts in the study was -3.0 percent. This means, on average, judges in the 61 districts collectively imposed sentences 3.0 percent below the guideline minimum for cases in this analysis.

Each individual district is then represented by bars that are either in the positive or negative halves of the graph depending on the districts’ average percent differences in relation to the overall average. Red-colored bars represent districts whose average percent differences are above the overall average in



the period, while blue-colored bars represent districts whose average percent differences are below the overall average. Darker shades of each color represent percentages further away from the average, positive or negative. Each color represents a range of percentage differences in five percent bands (e.g., “-25.00 to -29.99”).

Each graph also contains two important datapoints relevant to differences in sentencing practices among the districts for each time period: (1) the total spread (also called the range)³⁷ between the district with the largest positive average percent difference in relation to the overall average and the district with the largest negative average percent difference in relation to the average in a given time period; and (2) the standard deviation for all districts’ average percent differences in relation to the overall average for the same time period.

The total spread or range measures the absolute percentage difference between the two districts at opposite ends of the bar graphs. The district represented by the bar with the darkest red shade was the farthest above the overall average, while the district represented by the bar with the darkest blue shade was the farthest below the overall average.

The standard deviation is a separate “measure

of spread, dispersion or variability of a group of” datapoints,³⁸ measuring the overall extent of *all* the districts’ differences in sentencing practices. In the graphs in this publication, the standard deviation is the measure of the dispersion of all districts in the analysis from the overall average. The larger the standard deviation, the greater the dispersion or variability among the datapoints in the dataset. Appendix A contains a discussion of the relevance of the standard deviation to the Commission’s analysis.

Bar graphs for each primary guideline are shown for all three time periods so that changes in the total spread and standard deviation from one period to the next can be seen.

FINDINGS

Results of the Cumulative Analysis

Consistent with 2012 findings, the updated analysis demonstrates an overall increase in sentencing differences among districts post-Booker.

Comparing Periods for All Offense Types			
	<i>Booker</i>	<i>Gall</i>	Post-Report
Total Spread	36.0	49.1	48.9
Standard Deviation	7.6	9.1	10.4

Consistent with the findings of the 2012 *Booker Report*, the Commission's updated analysis demonstrates an overall increase in differences in sentencing practices among districts since the Supreme Court's decision in *Booker*. Using the methodology described above,³⁹ there was an increase in total spread from 36.0 in the *Booker* Period to 49.1 in the *Gall* Period, as well as an increase in the variation (as reflected in the standard deviation) among all districts in the study. While sentencing differences persisted when comparing the *Gall* Period to the Post-Report Period, the trend appears to have somewhat stabilized when considering all cases cumulatively. As reflected in the table above, the total spread decreased slightly from 49.1 to 48.9, while the variation among all of the districts nevertheless continued to increase, with standard deviation increasing from 9.1 to 10.4.

While this cumulative analysis is informative, it does not account for variation in caseload composition across districts, which could influence differences in sentencing practices. Recognizing the potential impact of these regional caseload differences, the Commission's analyses are presented below in a series of graphs separately analyzing sentencing differences among districts for offenders sentenced under one of the four most commonly applied guidelines: USSG §§2B1.1, 2D1.1, 2K2.1, and 2L1.2.⁴⁰ For each primary guideline, bar charts are provided for each of the three periods with information about the total spreads and standard deviations. Additionally, a complete list of districts included in the analyses for each period is provided in Appendix B.⁴¹

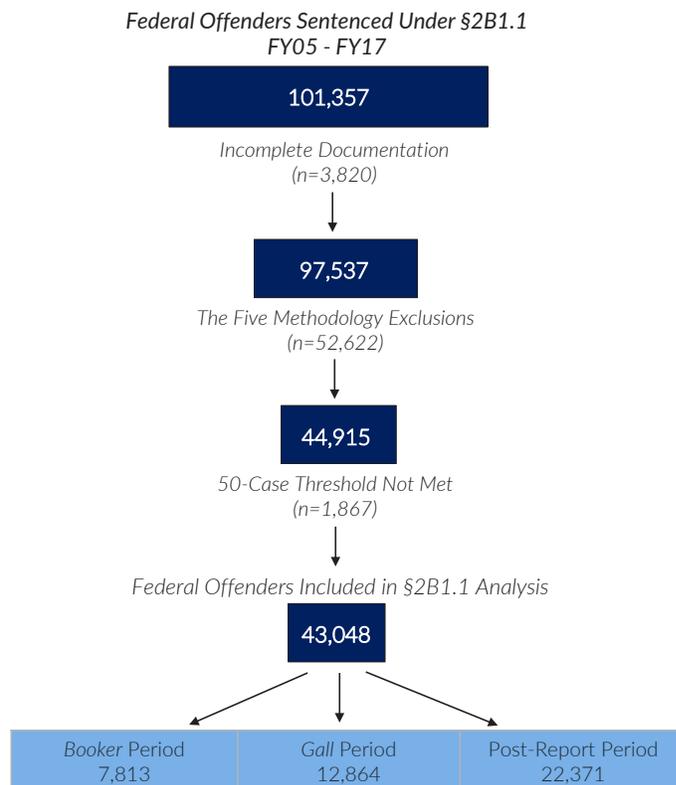


OVERVIEW

Offenders Sentenced Under §2B1.1

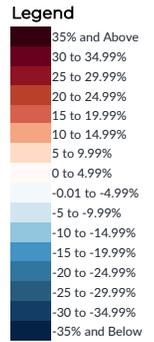
Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

The Commission's §2B1.1 analysis demonstrates a **slow but consistent increase** in differences in sentencing practices among districts.



Of the 101,357 cases in which §2B1.1 was the primary guideline, 3,820 were excluded due to incomplete sentencing documentation, and 52,622 cases sentenced were excluded under one or more of the five exclusionary criteria.⁴² An additional 1,867 cases were excluded because they were handled in districts that did not meet the minimum 50-case per

period requirement for inclusion in the Commission's analysis—bringing the total number of cases in the §2B1.1 analysis to 43,048 (7,813 in the *Booker* Period; 12,864 in the *Gall* Period; and 22,371 in the Post-Report Period).



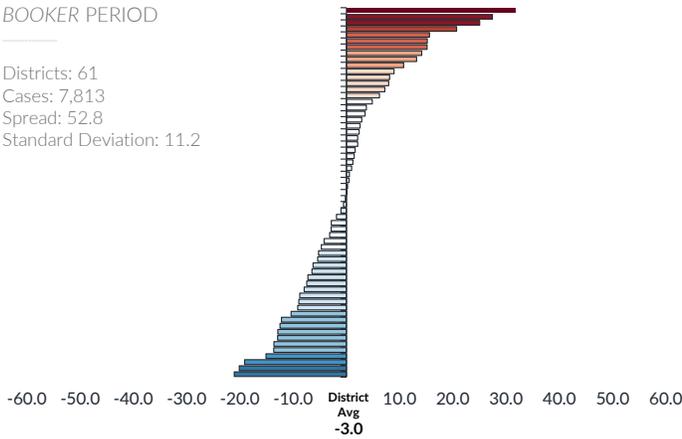
FINDINGS

Results of the §2B1.1 Analysis

The Commission’s §2B1.1 analysis shows an increase in both the spread and standard deviation among the districts over time. From the *Booker* Period to the *Gall* Period, the spread among districts increased from 52.8 to 56.4, and the standard deviation increased from 11.2 to 11.8. Likely influenced by the growing number of districts included in the analysis (and accompanying increase in cases) during this time, these figures demonstrate that districts became increasingly different in how they sentenced §2B1.1 offenders. The trend continued at a relatively steady rate from the *Gall* Period to the Post-Report Period, with the total spread increasing from 56.4 to 58.4, and the standard deviation increasing from 11.8 to 12.5.

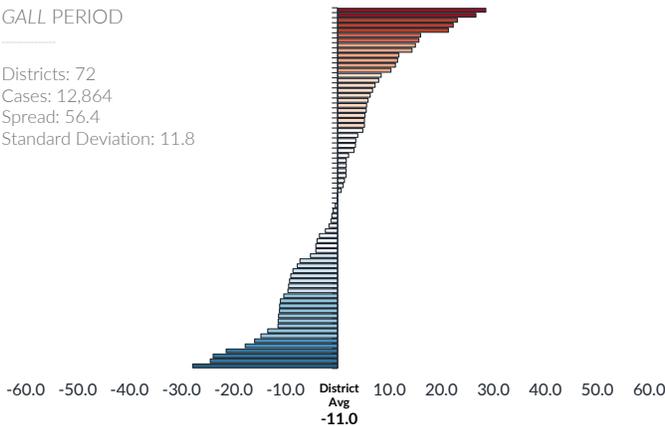
BOOKER PERIOD

Districts: 61
 Cases: 7,813
 Spread: 52.8
 Standard Deviation: 11.2



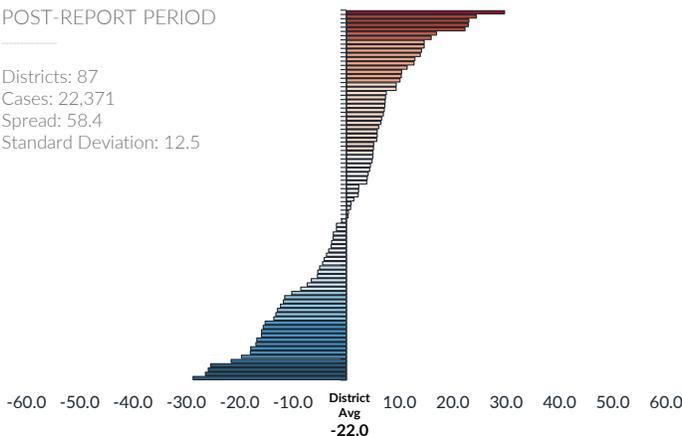
GALL PERIOD

Districts: 72
 Cases: 12,864
 Spread: 56.4
 Standard Deviation: 11.8



POST-REPORT PERIOD

Districts: 87
 Cases: 22,371
 Spread: 58.4
 Standard Deviation: 12.5



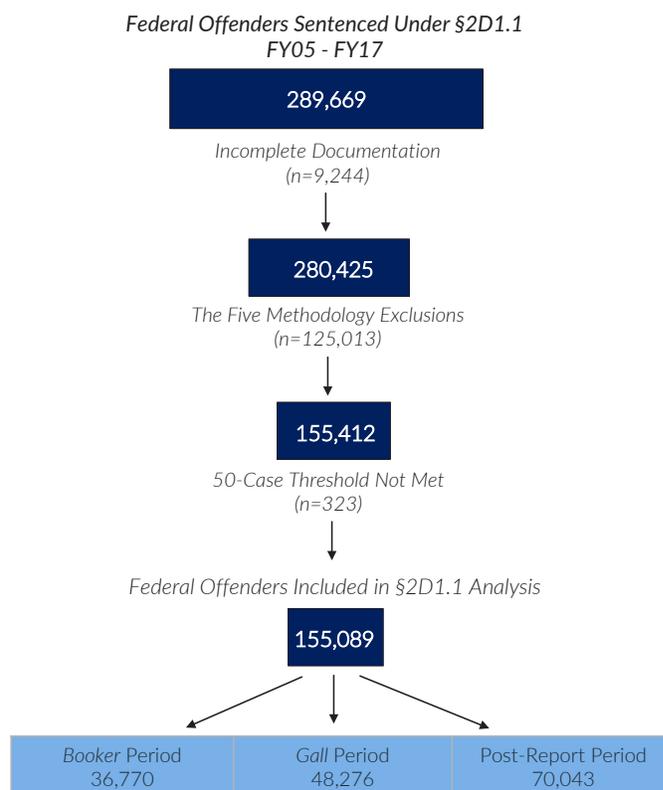


OVERVIEW

Offenders Sentenced Under §2D1.1

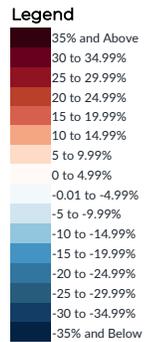
Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses; Attempt or Conspiracy)

The Commission's §2D1.1 analysis demonstrates a **slow but consistent increase** in differences in sentencing practices among districts. The same general trend is also seen when individually considering drug type.



Of the 289,669 cases in which §2D1.1 was the primary guideline, 9,244 were excluded due to incomplete sentencing documentation, and 125,013 cases were excluded under one or more of the five exclusionary criteria.⁴³ An additional 323 cases were excluded because they

were handled in districts that did not meet the minimum 50-case per period requirement for inclusion in the Commission's analysis—bringing the total number of cases in the §2D1.1 analysis to 155,089 (36,770 in the Booker Period; 48,276 in the Gall Period; and 70,043 in the Post-Report Period).⁴⁴



FINDINGS

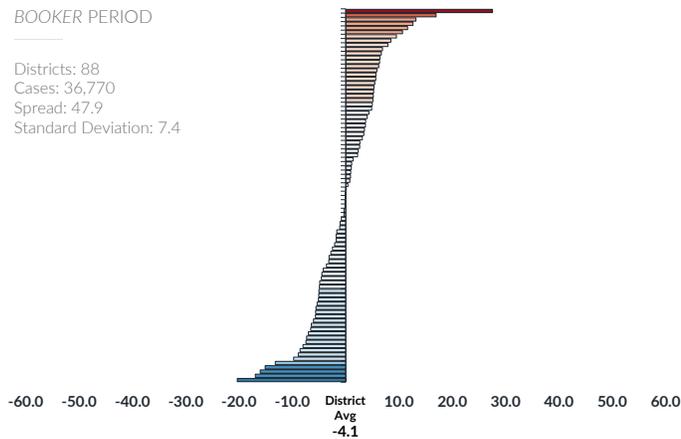
Results of the §2D1.1 Analysis

The Commission's §2D1.1 analysis shows an increase in both the spread and standard deviation among the districts. From the *Booker* Period to the *Gall* Period, the spread among districts increased from 47.9 to 51.3, and the standard deviation increased from 7.4 to 9.3. Accompanied by a growing number of cases during this time, these figures demonstrate that districts became increasingly different in how they sentenced §2D1.1 offenders. The trend continued from the *Gall* Period to the Post-Report Period, with the total spread increasing from 51.3 to 57.3, and the standard deviation increasing from 9.3 to 11.2.

This overall trend of increasing sentencing differences has continued despite several significant revisions to the drug trafficking guidelines intended to promote uniformity by addressing judicial concerns regarding severity. First, in 2007, due to its ongoing concern about the 100-to-1 crack-to-powder drug quantity ratio, the Commission lowered the guideline for crack cocaine offenses.⁴⁵ This reduction resulted in base offense levels for crack cocaine corresponding to guideline ranges that included, rather than exceeded, the statutory mandatory minimum penalties.⁴⁶ Subsequently, the Commission made the reduction retroactive, allowing courts to reduce the sentences of incarcerated offenders whose sentences had been based on the higher guideline.⁴⁷

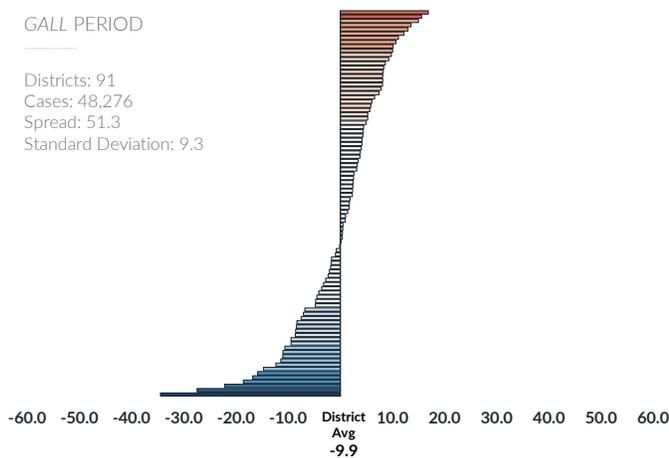
BOOKER PERIOD

Districts: 88
Cases: 36,770
Spread: 47.9
Standard Deviation: 7.4



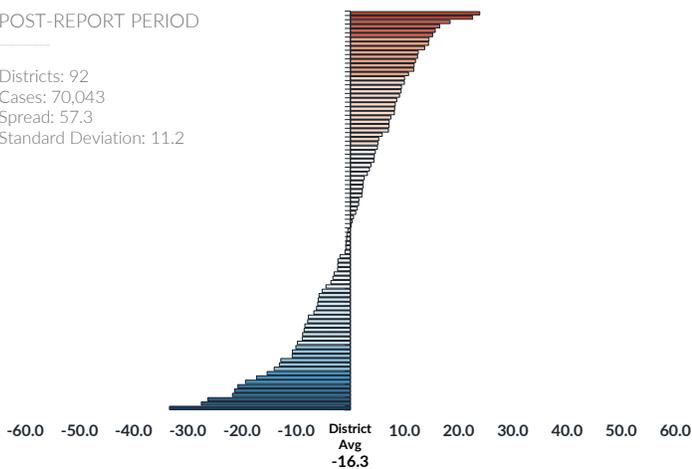
GALL PERIOD

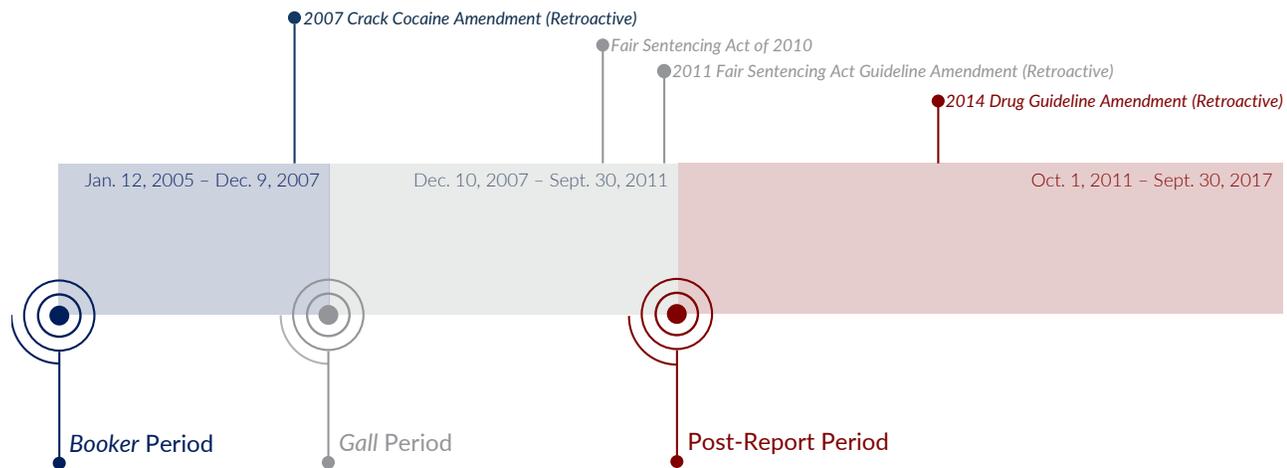
Districts: 91
Cases: 48,276
Spread: 51.3
Standard Deviation: 9.3



POST-REPORT PERIOD

Districts: 92
Cases: 70,043
Spread: 57.3
Standard Deviation: 11.2





Consistent with previous Commission recommendations, the Fair Sentencing Act of 2010 reduced the statutory penalties for crack cocaine offenses to produce an 18-to-1 crack-to-powder drug quantity ratio and eliminated the mandatory minimum sentence for simple possession of crack cocaine.⁴⁸ Although the statutory changes were not made retroactive by Congress until after the periods studied in this report,⁴⁹ the Commission did implement the Fair Sentencing Act's new penalties in the guidelines and subsequently made the guideline changes retroactive.⁵⁰

Most recently, in 2014, after the Fair Sentencing Act was fully implemented, the Commission separately reduced the drug guidelines for all drugs, including crack cocaine, by two levels, and made this change

retroactive.⁵¹ In promulgating this amendment, the Commission determined that “changes in the law and recent experience with similar reductions in base offense levels for crack cocaine offenses indicate that setting the base offense levels above the mandatory minimum penalties is no longer necessary to provide adequate incentives to plead guilty or otherwise cooperate with authorities.”⁵² The Commission also conducted significant data analyses, including analysis that showed that the 2-level change in the guidelines resulted in average guideline minimums that were more closely aligned with the average sentence imposed and therefore were reflective of judicial sentencing practices before the amendment.⁵³

Drug-Specific Analysis

	<i>Booker</i>		<i>Gall</i>		Post-Report	
	Total Spread	Standard Deviation	Total Spread	Standard Deviation	Total Spread	Standard Deviation
Powder Cocaine	32.9	6.2	47.6	9.4	61.1	12.4
Crack Cocaine	34.1	7.6	37.6	9.9	55.1	12.9
Heroin	32.3	8.4	47.2	11.0	80.9	18.3
Marijuana	41.9	9.8	57.4	13.2	59.9	15.0
Methamphetamine	35.6	6.0	54.8	9.1	52.4	10.3
All Other Drugs	27.9	11.4	33.3	10.6	59.6	15.0

These significant changes have not reversed the slow increase in variations among the districts in relation to sentencing practices for drug trafficking offenders. Additionally, the same trends appear when considering individual drug type. As reflected in the table above, the variation among districts (as depicted by the standard deviation) steadily increased from *Booker* to *Gall* and then again in the Post-Report Period. The same trend is also seen when considering total spread, with the single exception of a slight decrease in the spread from *Gall* to Post-Report in cases in which methamphetamine was the primary drug. Appendix D contains a graphical presentation of the analysis for each primary drug type.

Heroin cases saw the largest increase in both spread and standard deviation from the *Gall* Period to the Post-Report Period, which is unsurprising given the significant increase in the number of districts that met the 50-case threshold for inclusion in the analysis (jumping from 20 in the *Gall* Period to 48 in the Post-Report Period). Also notable is the continued trend in crack cocaine cases. While many of the guideline revisions discussed above were specifically addressed toward crack offenders, differences in sentencing practices relating to sentencing of those offenders has increased in each period, with the total spread increasing from 34.1 to 37.6 and then to 55.1 and standard deviation increasing from 7.6 to 9.9 to 12.9.

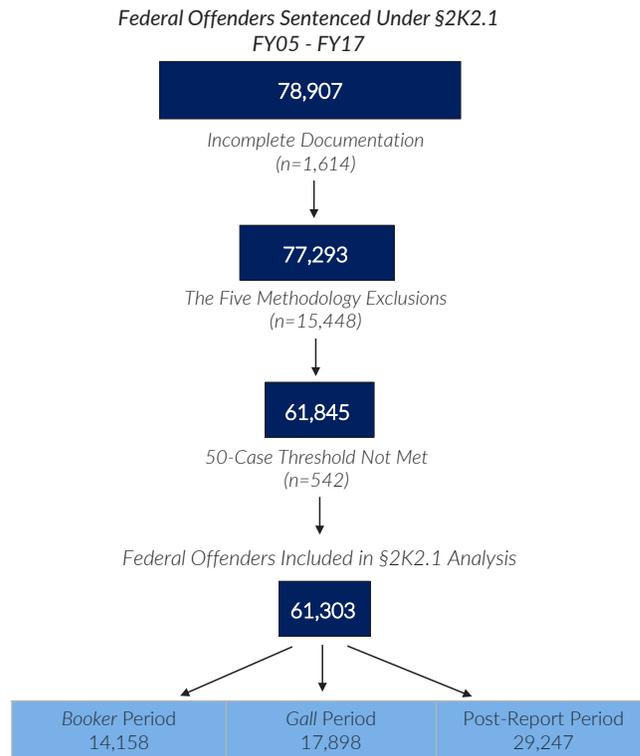


OVERVIEW

Offenders Sentenced Under §2K2.1

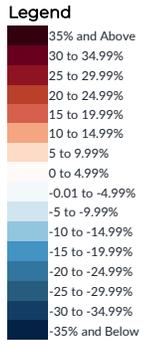
Unlawful Receipt, Possession or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

The Commission’s §2K2.1 analysis demonstrates **increasing variation** in sentencing practices among districts from the **Gall to the Post-Report** periods, even though the difference between the two districts furthest from the average decreased during that same time.



Of the 78,907 cases in which §2K2.1 was the primary guideline, 1,614 were excluded due to incomplete sentencing documentation, and 15,448 cases were excluded under one or more of the five exclusionary criteria.⁵⁴ An additional 542 cases were excluded because they were handled in districts that did not meet the minimum 50-case per period requirement

for inclusion in the Commission’s analysis—bringing the total number of cases in the §2K2.1 analysis to 61,303 (14,158 in the Booker Period; 17,898 in the Gall Period; and 29,247 in the Post-Report Period).⁵⁵



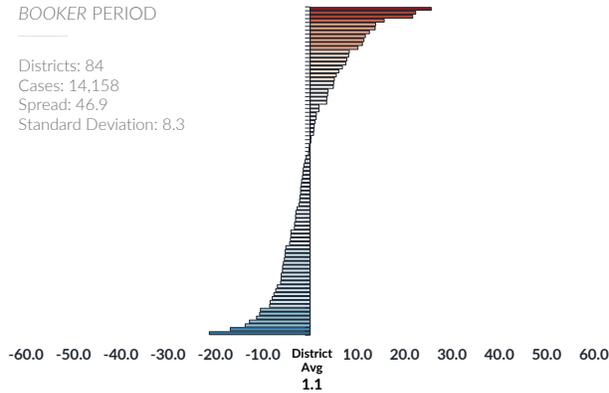
FINDINGS

Results of the §2K2.1 Analysis

The Commission’s §2K2.1 analysis shows an overall increase in both the spread and standard deviation among the districts. From the *Booker* Period to the *Gall* Period, the spread among districts increased from 46.9 to 57.5, and the standard deviation increased from 8.3 to 9.6. Accompanied by a growing number of cases during this time, these figures demonstrate that districts became increasingly different in how they sentence in §2K2.1 offenders. The total spread, however, did decrease in the most recent period, from 57.5 in the *Gall* Period to 55.2 in the *Post-Report* Period. Nevertheless, the variation among all of the districts in the study grew, as represented by the increased standard deviation (9.6 to 10.0).

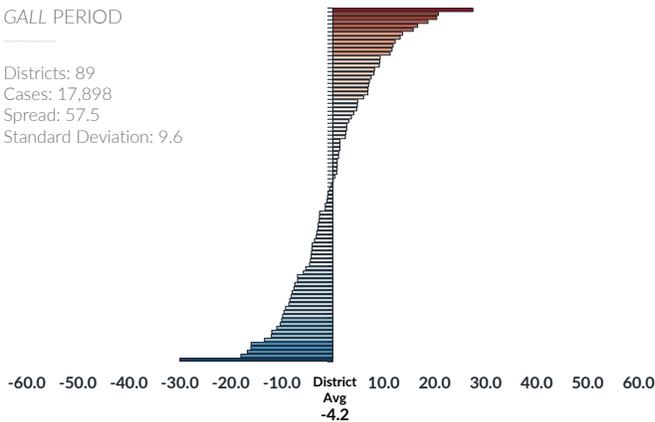
BOOKER PERIOD

Districts: 84
Cases: 14,158
Spread: 46.9
Standard Deviation: 8.3



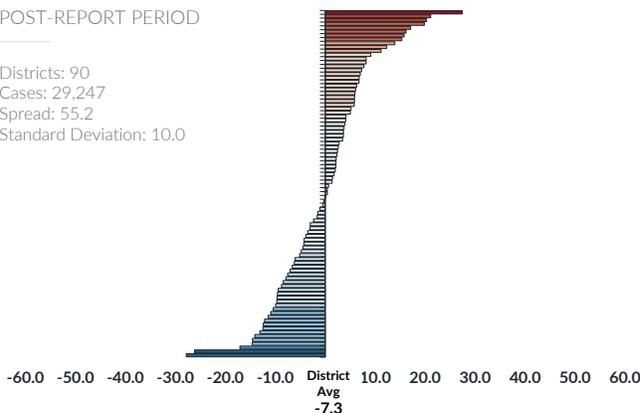
GALL PERIOD

Districts: 89
Cases: 17,898
Spread: 57.5
Standard Deviation: 9.6



POST-REPORT PERIOD

Districts: 90
Cases: 29,247
Spread: 55.2
Standard Deviation: 10.0



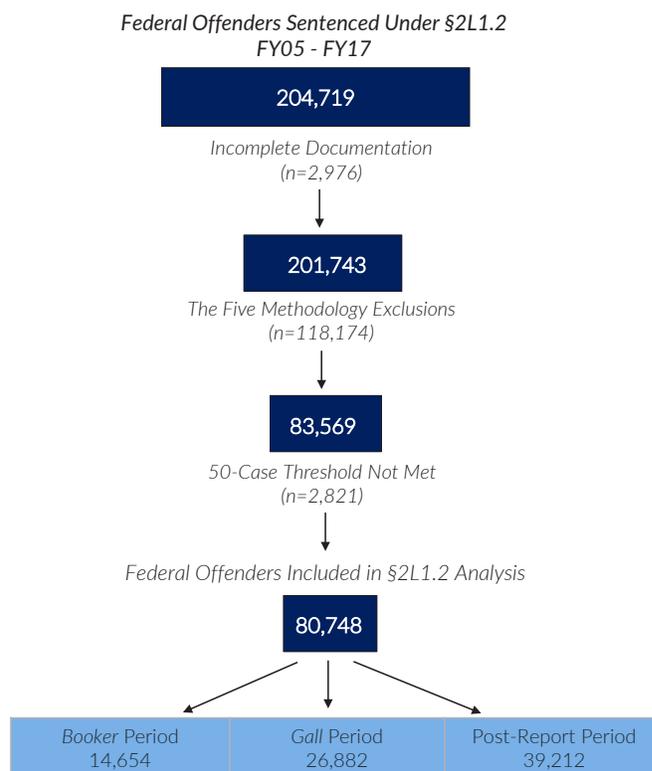


OVERVIEW

Offenders Sentenced Under §2L1.2

Unlawfully Entering or Remaining in the United States

The Commission's §2L1.2 analysis demonstrates that, **following substantial increases** in sentencing practices among districts in the earlier periods, **sentencing practices have become more uniform** in the Post-Report period.

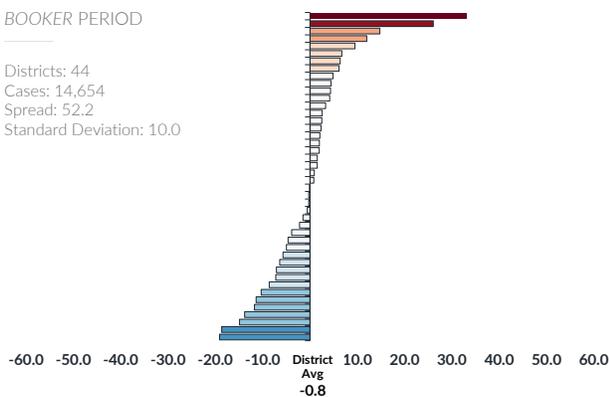


Of the 204,719 cases in which §2L1.2 was the primary guideline, 2,976 were excluded due to incomplete sentencing documentation, and 118,174 cases were excluded under one or more of the five exclusionary criteria.⁵⁶ An additional 2,821 cases were excluded because they were handled in districts that did not

meet the minimum 50-case per period requirement for inclusion in the Commission's analysis—bringing the total number of cases in the §2L1.2 analysis to 80,748 (14,654 in the *Booker* Period; 26,882 in the *Gall* Period; and 39,212 in the Post-Report Period).

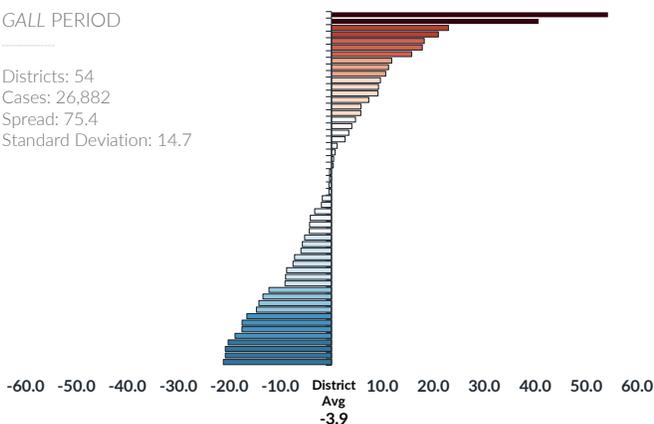
BOOKER PERIOD

Districts: 44
Cases: 14,654
Spread: 52.2
Standard Deviation: 10.0



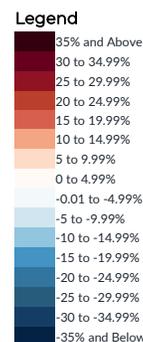
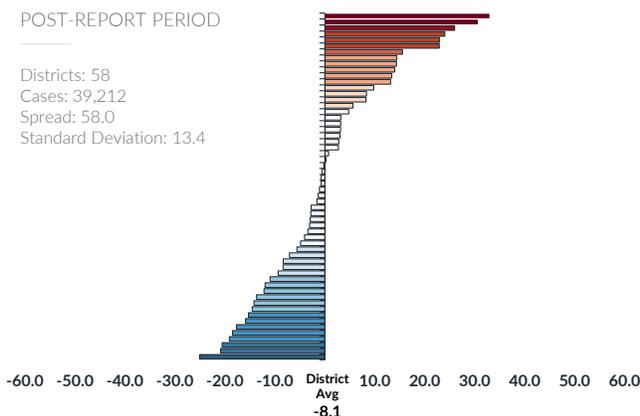
GALL PERIOD

Districts: 54
Cases: 26,882
Spread: 75.4
Standard Deviation: 14.7



POST-REPORT PERIOD

Districts: 58
Cases: 39,212
Spread: 58.0
Standard Deviation: 13.4



FINDINGS

Results of the §2L1.2 Analysis

When considering the various primary guidelines, some of the most notable trends were in the context of §2L1.2 cases. After a sizable increase in both the spread and the standard deviation in the *Gall* Period, the trend reversed when comparing district sentencing practices in the Post-Report Period. Following a 23.2-point increase in the total spread and 4.7-point increase in the standard deviation from the *Booker* Period to the *Gall* Period, both the spread and the standard deviation decreased in the Post-Report Period, indicating that sentencing practices among districts have become more uniform since the *Gall* Period. While this shift may be attributable to several factors, the comprehensive revision of the illegal reentry guideline in 2016,⁵⁷ which was intended to promote uniformity and address judicial concerns regarding severity, clearly had a substantial impact on inter-district disparity in the Post-Report Period.

Leading up to the 2016 amendment, the Commission received comment and reviewed sentencing data indicating that certain aspects of the illegal reentry guideline were seen as overly severe—particularly the then-existing 16- and 12-level enhancements for certain prior felonies committed before a defendant's deportation.⁵⁸ The amendment addressed these



concerns by comprehensively restructuring the illegal reentry guideline to account for prior criminal conduct in a broader and more proportionate manner. Specifically, the amendment added tiered enhancements based on criminal conduct occurring before and after the defendant's first order of deportation. The tiered enhancements provide for incremental punishment to account for the varying levels of culpability and risk of recidivism reflected in illegal reentry defendants' prior convictions.

In the wake of the 2016 amendment, the within guideline range rate in illegal reentry cases has steadily increased to nearly 70 percent in fiscal year 2018.⁵⁹ The amendment appears to have had an equal impact on the variation in sentencing practices in the Post-

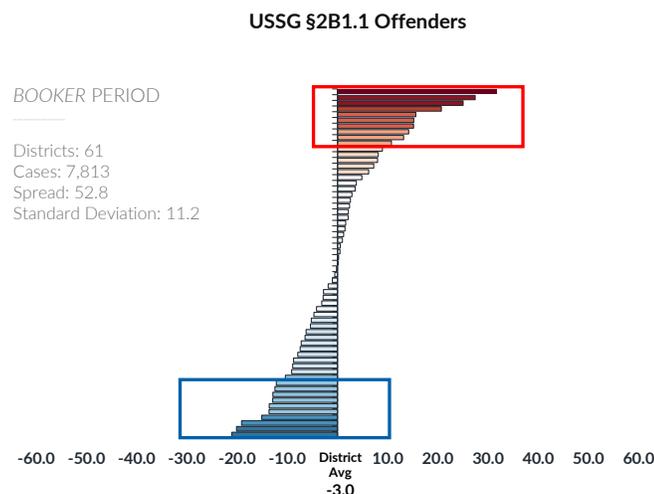
Report Period. When looking only at the §2L1.2 offenders sentenced using the post-2016 amendment version of the guideline (4,233 offenders of the 39,212 §2L1.2 offenders (10.8%) in the Post-Report Period), there was significantly less variation among the districts, with a total spread of 28.8 percent and a standard deviation of 8.7. In fact, this represented the most uniform sentencing practices among all Post-Report Period analyses completed for this publication. On the other hand, excluding the offenders sentenced under the revised guideline (and thus analyzing only those offenders sentenced under the old guideline) results in even greater variation among the districts, as reflected by increases in both total spread (from 58.0% to 62.0%) and standard deviation (from 13.4 to 13.7).

OVERVIEW

Inter-District Consistency

Certain districts have consistently sentenced more—or less—severely in relation to the guideline minimums than other districts, both over time and across offense type.

Example of Districts Furthest Above and Below Average Percent Difference



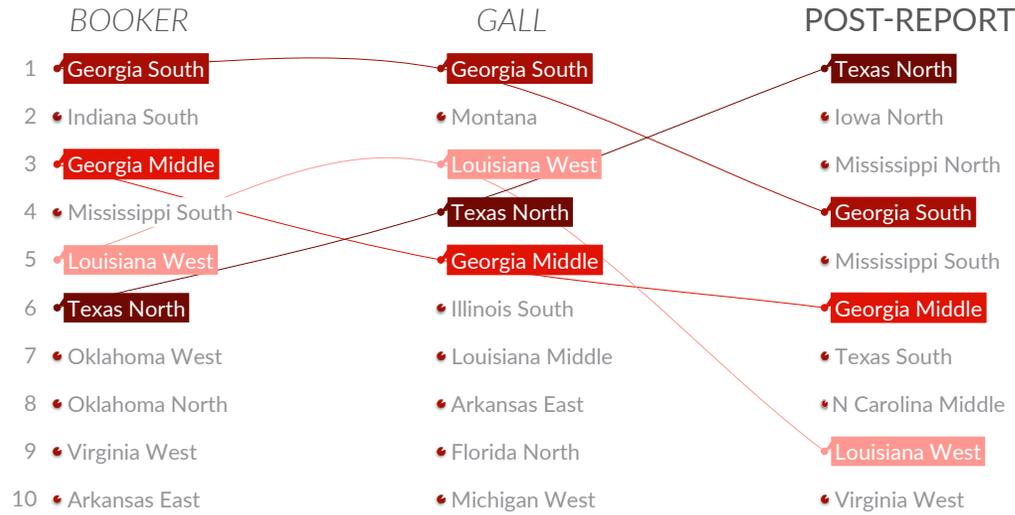
The Commission completed further analyses to study whether there was consistency over time in which districts were furthest above or below the overall average percent differences for each primary guideline studied. In other words, were some districts consistently sentencing above the overall average percent difference over time, and, conversely, were other districts consistently sentencing below the average percent difference over time. To conduct this analysis, the Commission examined the ten districts furthest above and furthest below the overall average percent difference for each major offense guideline in each time period. In the example provided above,

the ten districts furthest above the overall average percent difference in the study's analysis of §2B1.1 offenders are depicted by the red box, while the ten furthest below the overall average are depicted by the blue box.

Those districts furthest above and below the average were then plotted and compared over time. For example, as reflected in the figure below, plotting the ten districts that were furthest above the average in sentencing §2B1.1 offenders demonstrates that four of the ten districts furthest above the average remained consistently at the top of the graph across all three



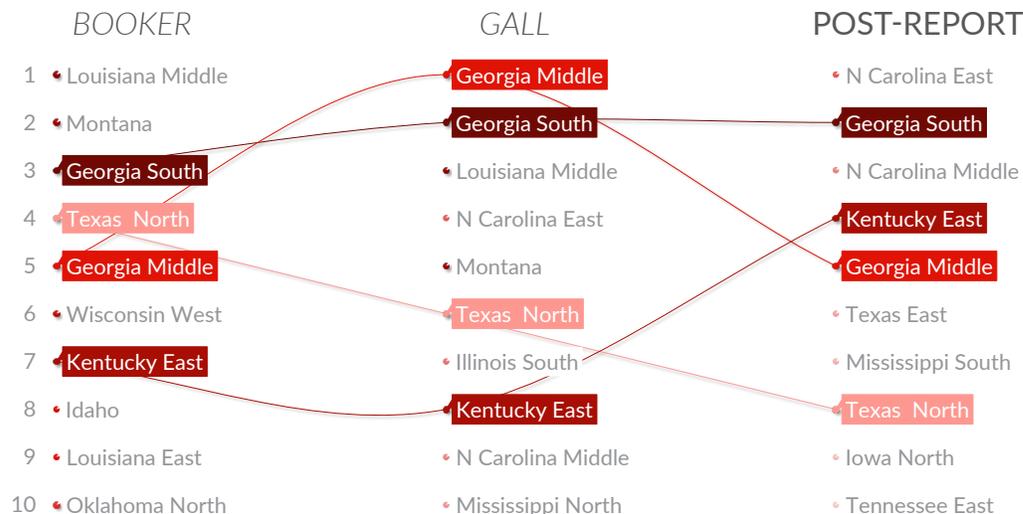
§2B1.1 - Furthest Above the Overall Average



periods. In addition, while not in all three periods, several other districts were consistent across at least two of the periods. In the graph above, the Southern District of Mississippi and the Western District of Virginia were among the top ten districts furthest above the average percent difference for §2B1.1 offenders in the *Booker* and *Post-Report* Periods, while the Eastern District of Arkansas was among the top ten districts in both the *Booker* and *Gall* Periods.

Similar consistency is seen in the other primary guidelines, with 40 percent of districts in both the §2D1.1 and §2L1.2 analyses remaining consistent across the periods, and 30 percent consistent across time in the §2K2.1 analysis. Similarly, even while not in all three periods, several districts were consistent across at least two of the periods for each of these primary guidelines.

§2D1.1 - Furthest Above the Overall Average



§2K2.1 - Furthest Above the Overall Average

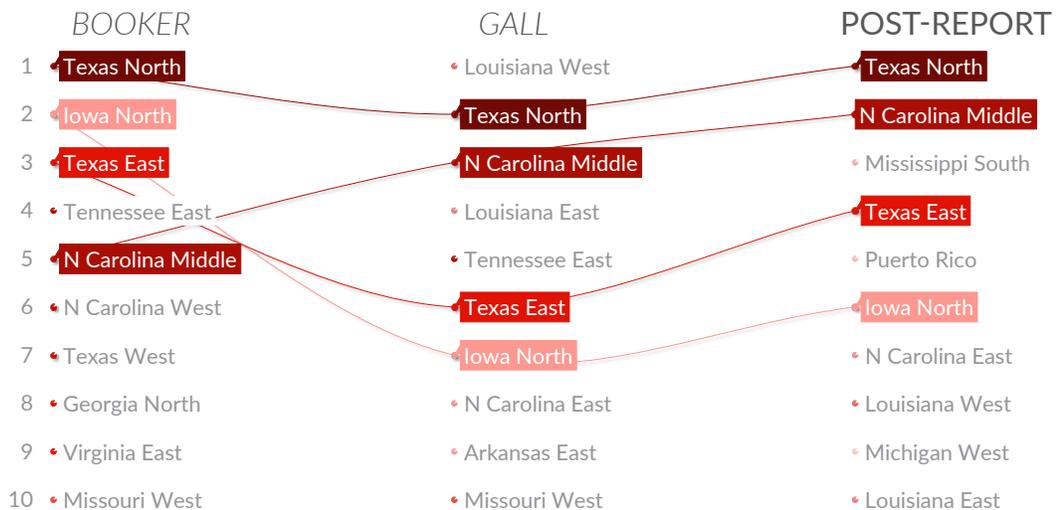


There is often also consistency within a single time period across the different guidelines. When looking at the ten districts furthest above the average percent difference only within the Post-Report Period, the same districts often appear in several, if not all, of the different guideline analyses. For example, the Northern District of Texas, Northern District of Iowa, Southern District of Mississippi, and Middle District of North Carolina appear in the ten highest districts for §§2B1.1, 2D1.1,

2K2.1 and 2L1.2. Several other districts are consistent in at least three primary guidelines—Southern District of Georgia appears in all but §2L1.2; Eastern District of North Carolina and Eastern District of Texas are in all but §2B1.1.

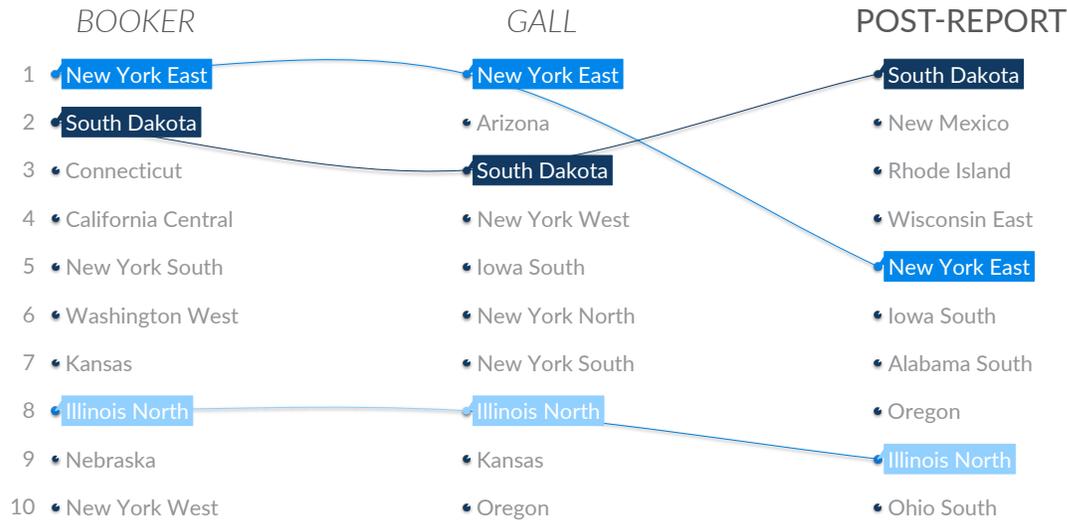
While there is less uniformity across time, there were also similar trends when looking at those districts that were furthest below the average percent difference.

§2L1.2 - Furthest Above the Overall Average





§2B1.1 - Furthest Below the Overall Average

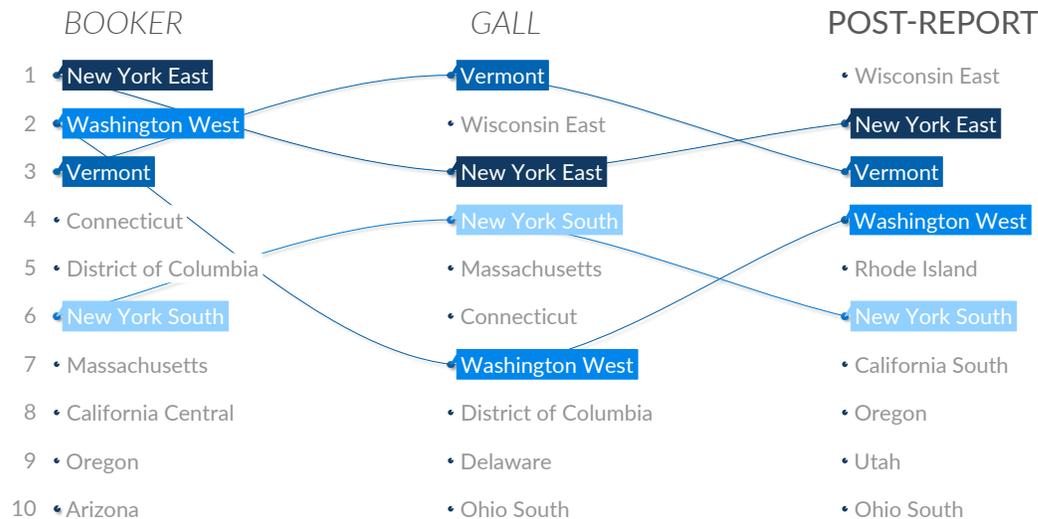


As shown below, when considering the ten districts furthest below the average across time, 40 percent of districts in both the §2D1.1 and §2L1.2 analyses remained consistent across the periods, while 30 percent in the §2B1.1 analysis and 20 percent in the §2K2.1 analysis remained consistent. When looking within only the Post-Report Period, only one district (District of Oregon) was consistently in the ten districts furthest below the average for all the primary

guidelines analyzed. The Eastern District of Wisconsin, District of Rhode Island, and Southern District of Ohio appear in all but §2L1.2; the District of Utah is in all but §2B1.1.

Like the analysis of the top ten districts, several districts appear among those furthest below the average for multiple guidelines in the Post-Report Period. In fact, four appear for all but §2L1.2 (District of Rhode

§2D1.1 - Furthest Below the Overall Average



§2K2.1 - Furthest *Below* the Overall Average

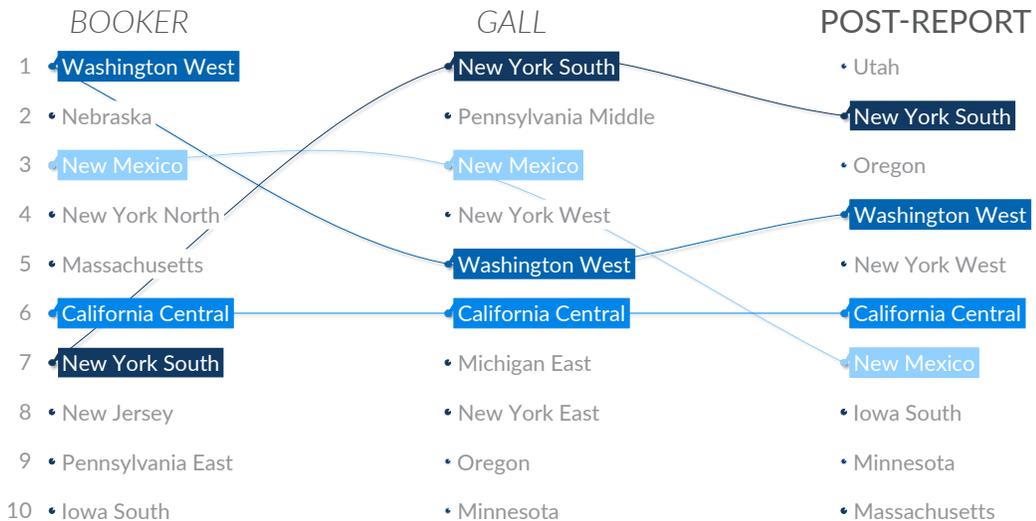


Island; District of Utah; Eastern District of Wisconsin; Southern District of Ohio), and one (District of Oregon) appears for each of the four guidelines.

The analyses in this section suggest that certain districts have consistently sentenced more—or less—severely in relation to the average guideline minimums than other districts, both over time and across offense type. Such consistency (again both over time and across

offense type) is further demonstrative of underlying differences in sentencing practices and, therefore, at least partially explains the continued variation among districts. Such variation (particularly in the observation of total spread within each time period) is inherent when some districts were consistently among the districts furthest above the average percent difference, while others were consistently furthest below.

§2L1.2 - Furthest *Below* the Overall Average



When analyzing a smaller and even more comparable set of cases, the overall trends observed in the primary analysis generally remained consistent.



MATCHED ANALYSIS

Testing the Impact of Intra-Guideline Variations

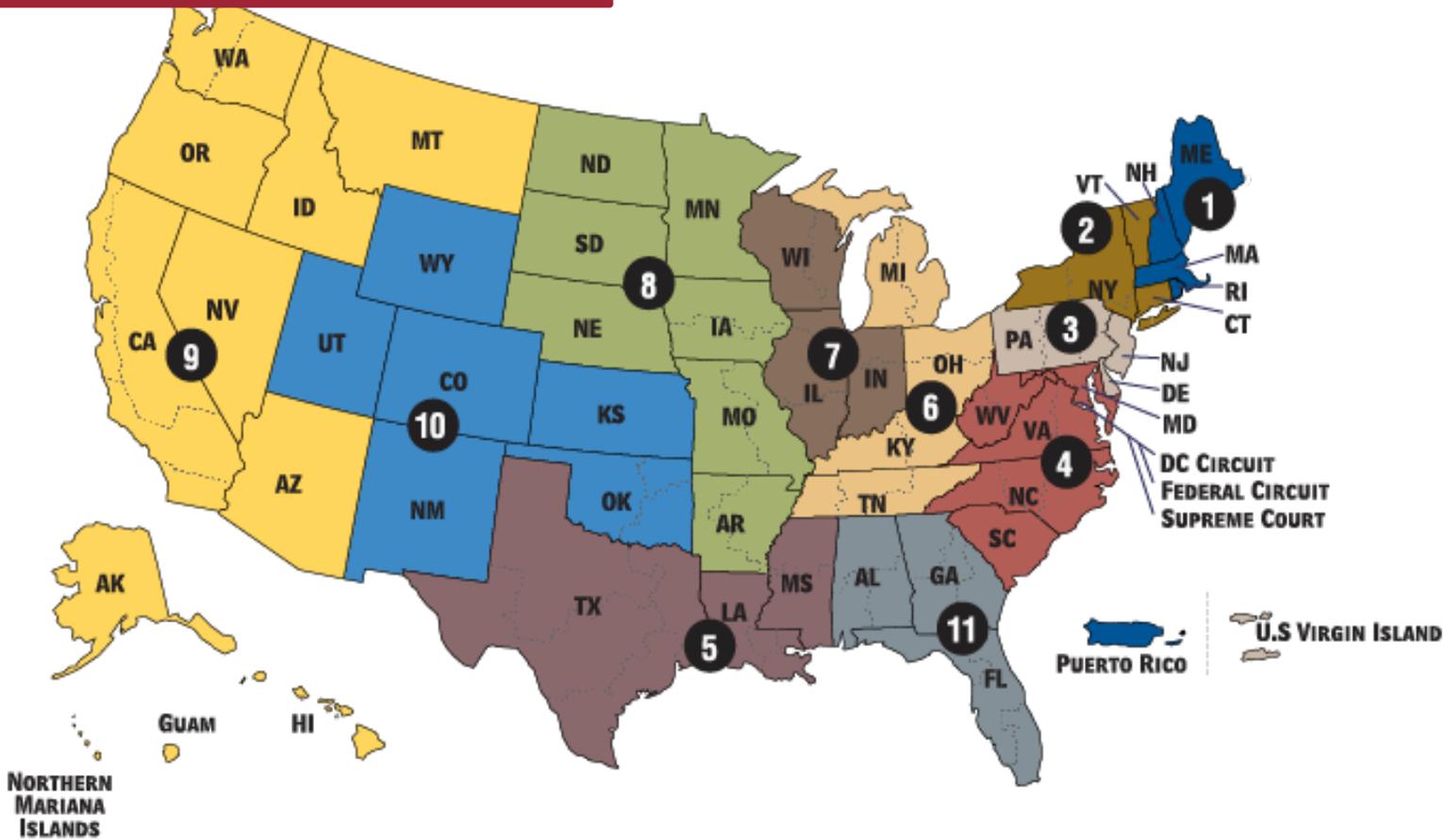


As explained above, the Commission attempted to limit the impact of regional variations in caseload by separating this inter-district study into separate guideline-specific analyses. However, the nature of the offense can vary even within the same guideline. For example, some districts may historically have fraud cases with a higher average loss or that are more likely to involve multiple victims. Similarly, drug type may vary across districts.

Recognizing these intra-offense variations, the Commission also completed a matched analysis to test the sensitivity of sentencing differences to the nature of the underlying offense. As discussed in more detail in Appendix E, the Commission's matched analysis further limits the guideline-specific datasets to compare similar cases over time. Specifically, the Commission identified the most common guideline outcomes (based on Criminal History Category and Final Offense Level) for each primary guideline in each

of the time periods. The analysis then matched those common guideline outcomes from one period to the next to create a refined dataset, and then compared variation in the sentencing practices. Even when analyzing a smaller and even more comparable set of cases, the overall trends observed in the primary analysis generally remained consistent.

Consistent with the Commission's 2012 report, sentencing outcomes continue to depend at least in part upon the district in which the defendant is sentenced.



CONCLUSIONS

Differences in Sentencing Practices Across Districts

Building on its recent Intra-City study, the analyses in this report demonstrate increasing variations in sentencing practices across districts in the wake of the Supreme Court's 2005 decision in *Booker*. While the extent of those differences vary depending on the specific primary guideline, the overarching trends in this analysis indicate that, consistent with the Commission's findings in its 2012 *Booker Report*, sentencing outcomes continue to depend at least in part upon the district in which the defendant is sentenced.

Booker to Gall Periods

Sentencing differences increased (as reflected in both total spread and standard deviation) uniformly across each of the primary guidelines analyzed in this publication when comparing the *Booker* to *Gall* Periods, demonstrating that sentencing outcomes increasingly depended upon the district in which the defendant was sentenced.

Gall to Post-Report Periods

This trend continued in the analyses of some, but not all primary guidelines from the *Gall* to the Post-Report Periods. The total spread and standard deviation continued a slow increase for both §2B1.1 and §2D1.1 cases, while the trends were more mixed for the other primary guidelines studied.

While the variation in sentencing §2K2.1 offenders grew slightly among the districts as represented by the increased standard deviation (9.6 to 10.0), the difference between the two districts furthest from the overall average decreased (total spread went from 57.5 in the *Gall* Period to 55.2 in the Post-Report Period).



CONCLUSIONS

Differences in Sentencing Practices Across Districts

Call to Post-Report Periods (cont.)

The most notable trend in the Post-Report Period appears in the study of §2L1.2 cases. Following a 23.2-point increase in the total spread and 4.7-point increase in standard deviation from *Booker* to *Gall*, both the spread and the standard deviation decreased in the Post-Report Period, indicating that sentencing practices among districts have become more uniform since *Gall*. This shift is likely attributable to a number of factors, the most significant of which was the comprehensive revisions to the illegal reentry guideline in the 2016 *Guidelines Manual*.⁶⁰

Next Steps

While this publication examines sentencing differences within particular guidelines, its focus remains on how districts compared both to each other and to overall average sentencing practices around the country. A remaining piece of the Commission's ongoing series is an updated review of the continuing influence the guidelines have on sentences imposed as the starting point for all federal sentences. In its 2012 *Booker Report*, the Commission found that "the guidelines have remained the essential starting point for all federal sentences and have continued to influence sentences significantly,"⁶¹ consistent with the requirement that courts begin the sentencing process by properly determining the applicable guideline range.⁶² The report further found, however, that while "the influence of the guidelines [] generally remained stable in drug trafficking, firearms, and immigration offenses,"⁶³ "the influence of the guidelines [] diminished in fraud and child pornography offenses."⁶⁴ In furtherance of these studies, the Commission anticipates future work updating these findings using the refined methodologies discussed in this and its other recent publications.

APPENDIX A

Standard Deviation Analysis



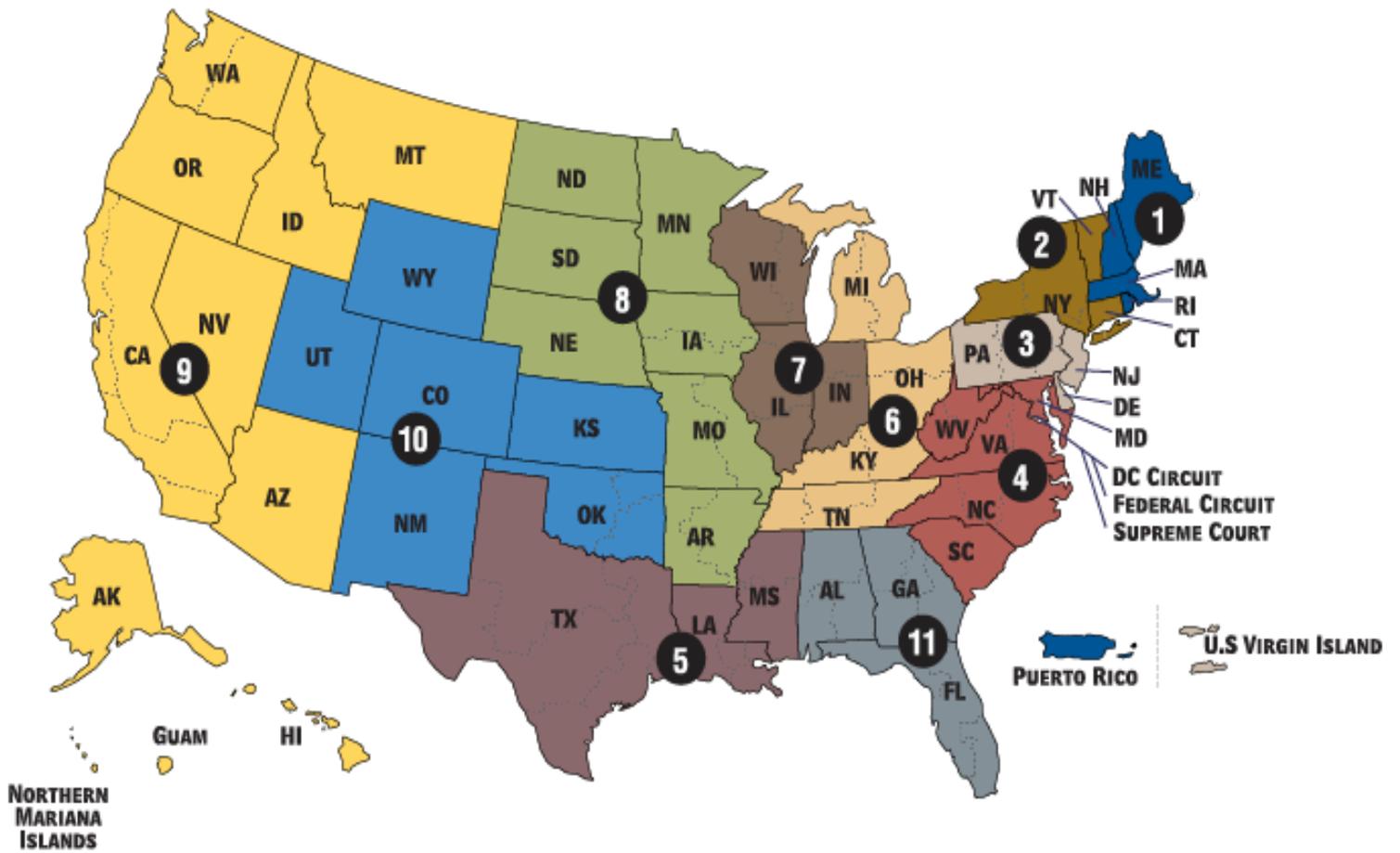
In addition to reporting the total spread—*i.e.*, the absolute percentage difference between the two districts furthest from the average, positively and negatively—the Commission also has reported the standard deviation for each of the primary guidelines in each time period. Standard deviation is the primary measure of dispersion or variability of datapoints compared to the mean⁶⁵—in the case of the inter-district dataset, the dispersion of the districts' average percent differences from the guideline minimums in relation to the overall average percent difference. The standard deviation “can be appropriately understood as the typical distance of a randomly selected [datapoint] from the mean of the distribution.”⁶⁶

The standard deviation for each time period was calculated as follows. First, the variance—the statistical term, not the term referring to sentences outside of the guideline range after *Booker*—was calculated by summing the squared deviation from the mean for each district (*i.e.*, the squared difference between each district's average percent difference and the overall average percent difference). The total sum was divided by the number of districts in the particular guideline analysis minus one, which yielded the statistical variance. The standard deviation was then calculated by taking the square root of that variance.⁶⁷



Inter-District Differences in Federal Sentencing Practices

January 2020



APPENDIX B

District Lists



As explained in the report, the results of the Commission's district-level analyses are set forth in bar graphs used to analyze and compare differences in sentencing practices among each district studied (for each of the three periods). On the graphs, each bar represents a single district and shows the sentencing practice of that district in relation to the average of all districts in that particular analysis. Red-colored bars represent districts whose average percent differences are above the overall average in the period, while blue-colored bars represent districts whose average percent differences are below the overall average.

A complete list of the districts included in each of the analyses is provided below. The overall average for the particular guideline and period is provided in the title box at the top of the page. The accompanying table then lists each district included in the analysis and how the district's average percent difference from the guideline minimum compares to the overall

average. Specifically, the difference in percentage points between the overall average and the district's average percent difference from the guideline minimum is provided as a positive or negative number. Like the bar graphs, the comparisons for districts below the overall average are depicted in blue, while those above the overall average are depicted in red.

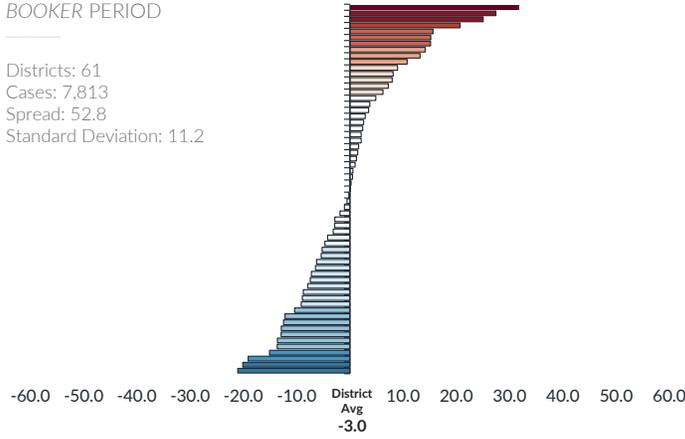
For example, districts included in the *Booker* Period analysis collectively imposed sentences **3.0 percent below the guideline minimum** for §2B1.1 offenders during that time period. An individual district that imposed sentences **2.0 percent below the guideline minimum** for §2B1.1 offenders in the *Booker* Period would, on average, fall one percentage point above the overall average. That district would be depicted in red with a percent difference of +1.0 in the table.



§2B1.1 - INTER-DISTRICT ANALYSIS

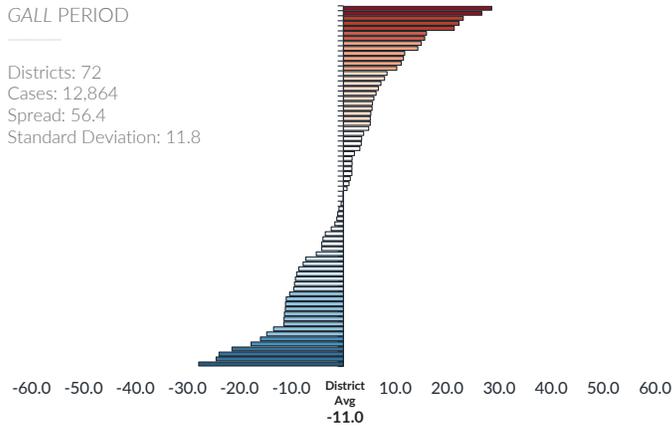
BOOKER PERIOD

Districts: 61
Cases: 7,813
Spread: 52.8
Standard Deviation: 11.2



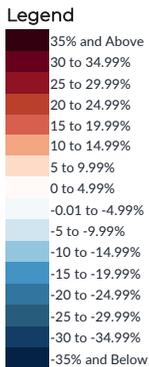
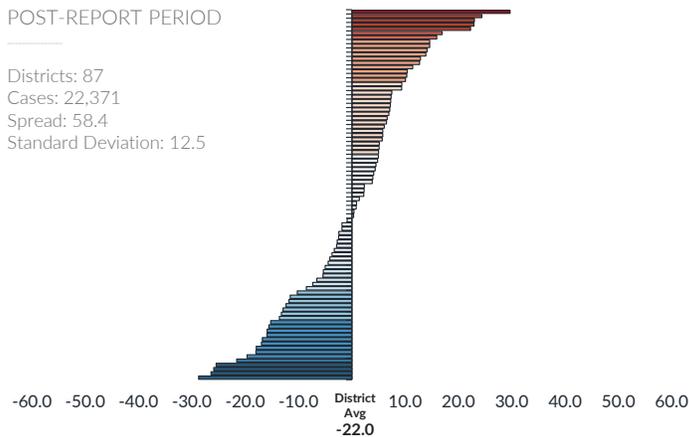
GALL PERIOD

Districts: 72
Cases: 12,864
Spread: 56.4
Standard Deviation: 11.8



POST-REPORT PERIOD

Districts: 87
Cases: 22,371
Spread: 58.4
Standard Deviation: 12.5



§2B1.1 - BOOKER PERIOD

On average, districts included in the *Booker* Period analysis collectively imposed sentences **3.0 percent below the guideline minimum** for §2B1.1 offenders during that time period.
District averages are provided in relation to that overall average.

Districts Above	Number of Cases		% Difference from Overall Avg.	Districts Below	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions			Pre-Exclusions	Post-Exclusions	
Georgia South	151	70	+31.7	Alabama North	263	82	-0.2
Indiana South	120	66	+27.4	New Jersey	420	198	-0.6
Georgia Middle	251	59	+25.0	Maryland	234	102	-1.0
Mississippi South	263	96	+20.7	Indiana North	191	58	-1.9
Louisiana West	379	91	+15.6	Missouri East	458	215	-2.8
Texas North	510	274	+15.2	Florida Middle	499	199	-2.9
Oklahoma West	200	94	+15.1	Tennessee Middle	110	55	-3.2
Oklahoma North	155	76	+14.2	Michigan East	403	198	-4.2
Virginia West	138	60	+13.2	California North	237	113	-4.7
Arkansas East	167	79	+10.7	California East	509	194	-5.2
Virginia East	564	253	+9.0	Wisconsin East	159	74	-5.4
N Carolina West	184	68	+8.1	Minnesota	192	114	-6.3
N Carolina East	221	79	+8.0	Pennsylvania East	416	173	-6.5
Pennsylvania West	233	110	+7.2	District of Columbia	194	82	-7.3
Illinois Central	143	79	+6.2	Arizona	343	92	-7.4
Michigan West	160	75	+4.8	Colorado	235	62	-7.9
South Carolina	594	212	+3.8	Ohio South	329	105	-8.8
Florida South	933	475	+3.5	New York North	135	50	-9.0
Georgia North	345	201	+2.9	Oregon	242	108	-9.2
Utah	237	90	+2.6	Massachusetts	162	85	-10.4
Nevada	251	125	+2.4	New York West	254	58	-12.2
Pennsylvania Middle	257	91	+2.1	Nebraska	127	55	-12.5
Tennessee West	326	136	+2.1	Illinois North	581	296	-12.9
Missouri West	229	103	+1.6	Kansas	187	68	-12.9
Tennessee East	151	65	+1.5	Washington West	331	157	-13.6
Texas South	280	125	+1.2	New York South	791	391	-13.6
Texas West	518	193	+1.0	California Central	430	201	-15.1
Texas East	260	151	+0.6	Connecticut	166	68	-19.1
Kentucky East	172	69	+0.5	South Dakota	260	85	-20.1
Ohio North	511	197	+0.2	New York East	379	157	-21.1
Illinois South	119	56	+0.1				



§2B1.1 - GALL PERIOD

On average, districts included in the *Gall* Period analysis collectively imposed sentences **11.0 percent below the guideline minimum** for §2B1.1 offenders during that time period.

District averages are provided in relation to that overall average.

Districts Above	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions	
Georgia South	256	153	+28.5
Montana	215	77	+26.6
Louisiana West	301	91	+23.0
Texas North	702	397	+22.3
Georgia Middle	263	65	+21.3
Illinois South	126	63	+16.0
Louisiana Middle	199	60	+15.6
Arkansas East	208	94	+15.0
Florida North	208	76	+14.3
Michigan West	222	105	+11.8
Texas West	784	283	+11.5
New Hampshire	139	60	+11.1
Mississippi South	452	147	+10.3
Texas South	575	248	+8.4
Indiana North	267	100	+7.9
Florida South	1,858	1,094	+7.2
N Carolina Middle	158	57	+6.7
Tennessee West	378	181	+6.3
Louisiana East	360	118	+5.9
Tennessee East	220	81	+5.6
Indiana South	143	91	+5.5
Illinois Central	127	63	+5.3
Kentucky East	302	116	+5.2
California South	267	114	+5.2
Oklahoma West	293	142	+4.9
N Carolina East	285	120	+3.9
Pennsylvania West	292	140	+3.5
New Jersey	700	296	+3.4
Ohio North	615	216	+3.2
Texas East	459	240	+2.1
Virginia West	185	72	+1.7
Alabama North	331	96	+1.7
Virginia East	801	374	+1.6
N Carolina West	283	131	+1.6
South Carolina	884	356	+1.3
Alabama South	284	81	+1.1
Maryland	397	157	+0.7

Districts Below	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions	
Colorado	250	83	-0.1
California East	410	209	-0.1
Florida Middle	826	366	-0.5
W Virginia South	131	69	-0.9
Wisconsin West	120	54	-1.1
Pennsylvania Middle	381	137	-1.3
California North	401	182	-1.7
Missouri East	586	314	-2.3
Georgia North	447	227	-3.5
District of Columbia	314	143	-3.9
Utah	307	103	-4.2
Nevada	301	125	-4.2
Missouri West	367	183	-5.2
Minnesota	265	144	-7.2
Michigan East	511	270	-7.7
Nebraska	177	69	-8.6
California Central	1,129	544	-9.0
Kentucky West	275	81	-9.3
Pennsylvania East	521	213	-9.4
Connecticut	226	133	-9.5
Ohio South	390	169	-10.3
Massachusetts	279	172	-11.0
Washington West	474	205	-11.2
Tennessee Middle	148	75	-11.2
Wisconsin East	247	127	-11.4
Oregon	259	113	-11.4
Kansas	258	113	-11.5
Illinois North	738	453	-13.4
New York South	1,119	622	-14.8
New York North	157	63	-16.0
Iowa South	169	81	-17.8
New York West	403	129	-21.4
South Dakota	308	115	-23.9
Arizona	516	134	-24.5
New York East	583	289	-27.8

§2B1.1 - POST-REPORT PERIOD

On average, districts included in the Post-Report Period analysis collectively imposed sentences **22.0 percent below the guideline minimum** for §2B1.1 offenders during that time period.

District averages are provided in relation to that overall average.

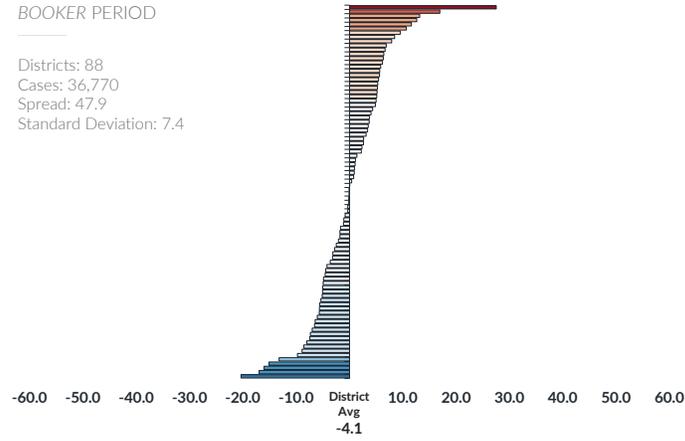
Districts Above	Number of Cases		% Difference from Overall Avg.	Districts Below	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions			Pre-Exclusions	Post-Exclusions	
Texas North	996	597	+29.7	California North	557	306	-0.9
Iowa North	148	58	+24.4	Connecticut	374	232	-1.9
Mississippi North	186	84	+23.0	Missouri West	653	383	-1.9
Georgia South	422	222	+22.9	California Central	1,665	933	-2.5
Mississippi South	364	183	+22.3	New York North	244	97	-2.5
Georgia Middle	351	128	+16.9	District of Columbia	310	160	-2.7
Texas South	899	470	+15.9	Florida Middle	1,636	773	-2.9
N Carolina Middle	224	88	+14.6	Vermont	120	76	-3.3
Louisiana West	375	179	+14.6	Missouri East	883	508	-3.7
Virginia West	375	146	+14.1	Nevada	506	260	-4.1
Arkansas West	164	81	+13.9	Montana	232	105	-4.5
W Virginia South	110	53	+12.9	Oklahoma West	336	222	-5.0
Illinois South	318	143	+12.7	Indiana South	391	224	-5.3
Florida South	3,138	1,632	+11.4	Minnesota	473	208	-5.4
New Hampshire	147	77	+10.4	New York West	452	170	-6.6
Arkansas East	262	133	+10.3	California South	498	198	-7.3
Kentucky East	379	195	+10.1	Nebraska	428	148	-8.5
Hawaii	191	86	+9.4	Puerto Rico	489	101	-10.3
Michigan West	408	199	+9.3	Michigan East	944	535	-11.6
Maine	177	76	+7.5	Washington West	536	288	-11.8
N Carolina East	377	181	+7.4	Kansas	410	166	-12.4
Tennessee East	319	115	+7.3	Wisconsin West	142	86	-12.9
Colorado	330	138	+7.2	Louisiana Middle	276	117	-13.2
Alabama North	478	149	+7.1	New York South	1,930	1,152	-13.6
Alaska	117	60	+6.9	Tennessee Middle	206	138	-15.2
California East	711	399	+6.6	Arizona	531	255	-15.6
South Carolina	943	440	+6.5	Massachusetts	481	294	-15.9
Ohio North	891	340	+6.1	Utah	278	152	-15.9
Georgia North	703	398	+5.8	Ohio South	485	264	-16.8
Virginia East	1,030	594	+5.8	Illinois North	1,315	885	-17.0
Pennsylvania Middle	381	159	+5.7	Oregon	351	149	-17.9
Washington East	306	76	+5.2	Alabama South	460	150	-18.0
Illinois Central	222	130	+5.1	Iowa South	193	127	-19.7
N Carolina West	453	234	+5.0	New York East	760	435	-21.6
Texas East	645	372	+4.9	Wisconsin East	235	149	-25.5
Tennessee West	429	236	+4.8	Rhode Island	124	68	-25.9
Idaho	203	71	+4.5	New Mexico	238	99	-26.4
Kentucky West	280	125	+4.4	South Dakota	464	169	-28.7
Florida North	386	143	+4.1				
Indiana North	334	153	+3.9				
Texas West	1,169	432	+3.8				
Pennsylvania West	434	220	+2.3				
New Jersey	983	478	+2.3				
Oklahoma North	217	86	+2.2				
W Virginia North	137	66	+1.4				
Alabama Middle	324	100	+0.9				
Maryland	793	298	+0.8				
Louisiana East	414	192	+0.4				
Pennsylvania East	958	374	+0.3				



§2D1.1 - INTER-DISTRICT ANALYSIS

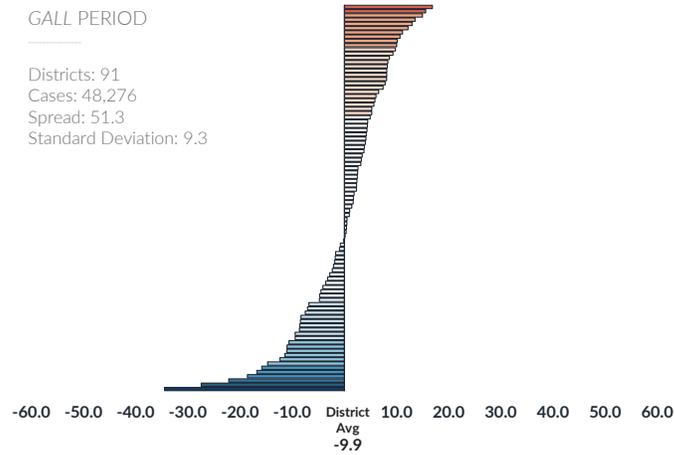
BOOKER PERIOD

Districts: 88
Cases: 36,770
Spread: 47.9
Standard Deviation: 7.4



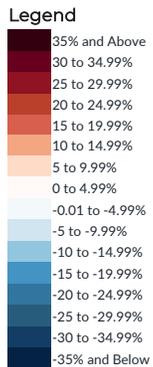
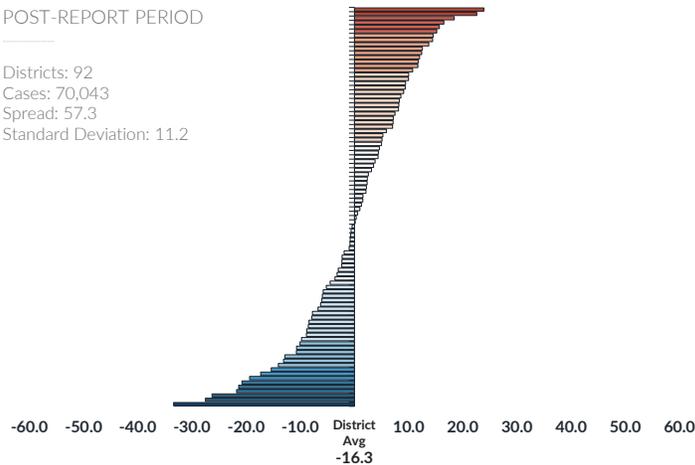
GALL PERIOD

Districts: 91
Cases: 48,276
Spread: 51.3
Standard Deviation: 9.3



POST-REPORT PERIOD

Districts: 92
Cases: 70,043
Spread: 57.3
Standard Deviation: 11.2



§2D1.1 - BOOKER PERIOD

On average, districts included in the *Booker* Period analysis collectively imposed sentences

4.1 percent below the guideline minimum for §2D1.1 offenders during that time period.

District averages are provided in relation to that overall average.

Districts Above	Number of Cases			Districts Below	Number of Cases		
	Pre-Exclusions	Post-Exclusions	% Difference from Overall Avg.		Pre-Exclusions	Post-Exclusions	% Difference from Overall Avg.
Louisiana Middle	136	52	+27.5	Indiana South	446	232	-0.1
Montana	342	142	+16.9	Tennessee West	432	202	-0.1
Georgia South	300	217	+13.2	Ohio North	1,004	458	-0.1
Texas North	865	542	+12.6	Missouri West	876	433	-0.2
Georgia Middle	447	236	+11.6	California East	723	434	-0.3
Wisconsin West	258	222	+10.6	Nebraska	1,161	839	-0.4
Kentucky East	699	184	+9.5	Nevada	360	265	-0.8
Idaho	197	52	+8.4	Arkansas East	317	183	-1.1
Louisiana East	418	230	+7.9	Colorado	421	147	-1.1
Oklahoma North	153	55	+6.9	Pennsylvania Middle	727	289	-1.7
Puerto Rico	793	480	+6.7	Kentucky West	377	157	-1.8
Virginia East	1,572	1,047	+6.4	Alabama South	464	218	-1.8
Maine	196	88	+6.3	New Jersey	889	426	-2.1
W Virginia South	453	329	+6.2	Tennessee Middle	252	127	-2.5
Mississippi South	336	240	+5.8	Michigan East	799	349	-2.8
Oklahoma East	96	56	+5.6	Alaska	141	78	-3.1
Florida North	536	185	+5.6	Washington East	291	177	-3.2
Virginia West	1,080	483	+5.4	Illinois North	913	525	-3.6
N Carolina East	646	201	+5.3	Minnesota	762	387	-4.2
Tennessee East	772	301	+5.2	New York North	466	177	-4.5
N Carolina Middle	494	249	+5.1	Maryland	701	289	-4.6
Illinois South	527	330	+5.1	New Hampshire	268	147	-4.9
Texas East	1,197	819	+5.0	New Mexico	1,779	958	-4.9
Texas West	5,906	4,371	+4.9	Illinois Central	465	203	-5.0
Michigan West	431	228	+4.3	Utah	539	352	-5.1
Arkansas West	135	61	+4.0	Ohio South	705	209	-5.2
N Carolina West	978	377	+3.7	Iowa South	491	198	-5.4
South Dakota	389	237	+3.7	Wisconsin East	469	259	-5.6
Iowa North	395	206	+3.5	Hawaii	610	223	-5.7
W Virginia North	496	391	+3.4	Rhode Island	136	91	-5.7
Louisiana West	449	225	+3.1	California North	398	250	-6.1
South Carolina	1,184	564	+2.6	Mississippi North	225	98	-6.5
Indiana North	376	188	+2.6	Oklahoma West	180	131	-6.6
Texas South	4,160	2,902	+2.3	California South	2,501	618	-7.0
New York West	711	220	+2.2	Pennsylvania East	609	210	-7.4
Florida Middle	2,432	1,269	+1.4	Arizona	2,990	871	-7.5
Missouri East	1,238	725	+1.1	Oregon	411	236	-8.0
Wyoming	405	239	+1.0	California Central	621	389	-8.6
Georgia North	541	313	+0.9	Massachusetts	549	346	-8.9
Alabama North	433	109	+0.9	New York South	1,817	1,120	-9.8
Pennsylvania West	429	251	+0.8	District of Columbia	499	221	-13.2
Florida South	2,244	1,518	+0.4	Connecticut	507	288	-15.1
Kansas	709	398	+0.0	Vermont	238	101	-16.1
				Washington West	812	503	-17.0
				New York East	1,329	824	-20.4



§2D1.1 - GALL PERIOD

On average, districts included in the *Gall* Period analysis collectively imposed sentences **9.9 percent below the guideline minimum** for §2D1.1 offenders during that time period.

District averages are provided in relation to that overall average.

Districts Above	Number of Cases		% Difference from Overall Avg.	Districts Below	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions			Pre-Exclusions	Post-Exclusions	
Georgia Middle	403	227	+16.9	Illinois Central	660	240	-0.1
Georgia South	609	405	+15.6	Wisconsin West	281	221	-0.8
Louisiana Middle	176	65	+15.0	New Jersey	921	466	-0.9
N Carolina East	1,060	303	+13.5	Kentucky West	584	261	-1.7
Montana	401	182	+13.0	Colorado	421	173	-1.7
Texas North	1,035	637	+12.2	Oklahoma West	300	190	-1.9
Illinois South	561	362	+11.1	Alaska	242	136	-2.1
Kentucky East	1,120	278	+10.7	New York West	968	261	-2.3
N Carolina Middle	630	253	+10.1	Missouri East	1,231	687	-2.8
Mississippi North	211	82	+10.0	Maryland	861	422	-3.2
Mississippi South	318	233	+9.8	Utah	549	383	-3.6
N Carolina West	906	344	+9.3	Michigan East	989	537	-4.1
Texas East	1,662	1,120	+8.6	New Mexico	2,188	1,053	-4.5
Arkansas West	264	137	+8.3	Washington East	421	294	-4.7
Texas West	8,614	6,122	+8.3	Pennsylvania West	602	321	-4.8
Indiana South	536	279	+8.1	Hawaii	398	173	-6.8
Florida North	527	214	+8.1	Pennsylvania East	986	342	-7.1
Louisiana West	351	160	+8.1	California North	653	456	-7.5
Texas South	5,597	3,984	+7.8	California Central	1,582	1,042	-8.3
South Dakota	381	264	+7.4	Oregon	604	328	-8.4
Alabama Middle	296	98	+6.6	Minnesota	985	493	-8.6
Louisiana East	558	270	+6.1	Illinois North	1,113	691	-8.6
Puerto Rico	656	387	+5.9	New York North	665	297	-9.4
Arizona	4,733	2,424	+5.7	California South	4,090	1,021	-9.5
Tennessee East	1,454	603	+5.3	New Hampshire	357	196	-10.6
Virginia East	1,704	1,094	+5.3	Rhode Island	206	141	-11.0
Nevada	355	267	+4.9	Ohio South	935	322	-11.0
Ohio North	751	301	+4.5	Delaware	119	54	-11.4
Oklahoma North	205	85	+4.4	District of Columbia	583	276	-12.4
South Carolina	1,694	710	+4.3	Washington West	894	610	-14.7
California East	1,096	639	+4.2	Connecticut	716	478	-15.8
Oklahoma East	99	58	+4.1	Massachusetts	694	476	-16.8
Iowa North	491	208	+4.0	New York South	2,015	1,308	-18.6
Maine	277	98	+3.8	New York East	1,753	1,060	-22.2
Idaho	387	122	+3.8	Wisconsin East	833	416	-27.4
Arkansas East	522	322	+3.4	Vermont	289	177	-34.5
Iowa South	728	298	+3.3				
Florida South	2,505	1,753	+3.2				
Georgia North	700	406	+2.6				
Tennessee West	732	327	+2.5				
Michigan West	523	274	+2.5				
Alabama North	425	131	+2.4				
Nebraska	1,098	774	+2.4				
Alabama South	689	310	+2.3				
Florida Middle	2,442	1,211	+1.9				
Indiana North	591	285	+1.7				
Virginia West	872	423	+1.7				
Pennsylvania Middle	817	429	+1.4				
Missouri West	861	391	+1.0				
Tennessee Middle	299	149	+0.9				
North Dakota	277	55	+0.5				
Kansas	1,003	518	+0.5				
Wyoming	586	326	+0.4				
W Virginia North	631	454	+0.3				
W Virginia South	554	423	+0.1				

§2D1.1 - POST-REPORT PERIOD

On average, districts included in the Post-Report Period analysis collectively imposed sentences **16.3 percent below the guideline minimum** for §2D1.1 offenders during that time period.

District averages are provided in relation to that overall average.

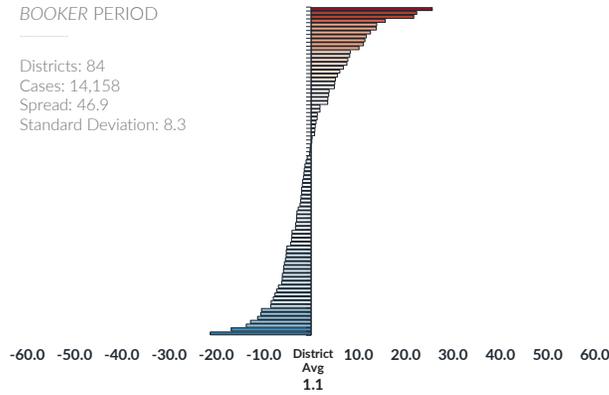
Districts Above	Number of Cases			Districts Below	Number of Cases		
	Pre-Exclusions	Post-Exclusions	% Difference from Overall Avg.		Pre-Exclusions	Post-Exclusions	% Difference from Overall Avg.
N Carolina East	1,399	526	+23.9	Arizona	7,806	4,018	-0.4
Georgia South	670	455	+22.6	Pennsylvania West	1,054	585	-0.6
N Carolina Middle	638	358	+18.4	Montana	753	402	-0.7
Kentucky East	1,646	1,007	+16.5	New Jersey	1,112	624	-0.8
Georgia Middle	736	473	+15.6	Tennessee West	1,137	628	-0.8
Texas East	2,553	1,878	+15.2	Florida North	517	211	-1.0
Mississippi South	568	429	+14.5	Iowa South	853	492	-1.9
Texas North	3,032	1,954	+14.4	Alaska	409	236	-2.3
Iowa North	746	333	+13.7	Wyoming	435	263	-2.3
Tennessee East	2,248	961	+12.5	New York West	1,147	466	-2.4
Illinois South	749	591	+12.4	Hawaii	576	256	-3.0
Puerto Rico	1,548	880	+12.0	Maryland	1,644	873	-3.2
Virgin Islands	110	55	+11.7	Louisiana Middle	266	144	-3.6
Virginia West	1,141	641	+11.7	Kansas	1,214	672	-4.5
Alabama North	589	218	+10.7	Michigan East	1,250	679	-5.2
Mississippi North	290	122	+10.0	Georgia North	797	600	-5.8
N Carolina West	1,166	558	+10.0	New York North	962	448	-5.9
Texas South	6,920	4,600	+9.4	Kentucky West	630	301	-6.1
W Virginia North	812	611	+9.4	Pennsylvania East	1,102	368	-6.3
Louisiana East	711	350	+9.1	Alabama South	673	331	-6.8
New Hampshire	257	176	+8.6	Minnesota	740	490	-7.8
W Virginia South	925	712	+8.3	Delaware	172	111	-7.9
Alabama Middle	228	73	+8.2	Oklahoma North	375	175	-8.4
Texas West	9,776	6,291	+8.1	District of Columbia	703	365	-8.5
Florida Middle	3,266	1,768	+7.5	Illinois North	1,311	922	-8.8
Oklahoma East	193	103	+7.2	California North	890	627	-8.9
Arkansas West	667	410	+7.1	Oklahoma West	506	374	-9.8
Indiana North	578	283	+7.0	New Mexico	3,504	1,928	-10.1
Michigan West	677	383	+5.9	Connecticut	1,013	765	-10.7
South Dakota	523	326	+5.2	California Central	2,107	1,449	-10.7
Nevada	657	470	+5.1	Wisconsin West	270	219	-12.9
Ohio North	1,323	595	+5.0	Massachusetts	943	693	-13.1
Colorado	659	244	+4.6	Ohio South	1,238	596	-14.1
Louisiana West	528	272	+4.4	Utah	695	505	-15.4
Virginia East	1,693	1,214	+4.3	Oregon	801	480	-17.3
Florida South	3,355	2,436	+3.8	California South	7,408	1,745	-19.4
Pennsylvania Middle	906	476	+3.5	New York South	3,574	2,471	-20.8
North Dakota	641	130	+3.1	Rhode Island	263	202	-21.4
Maine	513	269	+2.6	Washington West	989	753	-21.8
Nebraska	1,333	990	+2.4	Vermont	649	417	-26.3
Tennessee Middle	445	218	+2.3	New York East	1,913	1,133	-27.5
Indiana South	819	451	+2.2	Wisconsin East	880	570	-33.4
South Carolina	1,431	740	+2.1				
California East	1,667	1,082	+1.6				
Missouri West	1,599	830	+1.5				
Missouri East	1,125	698	+1.3				
Idaho	617	240	+1.0				
Illinois Central	869	393	+0.6				
Arkansas East	1,134	762	+0.3				
Washington East	629	421	+0.1				



§2K2.1 - INTER-DISTRICT ANALYSIS

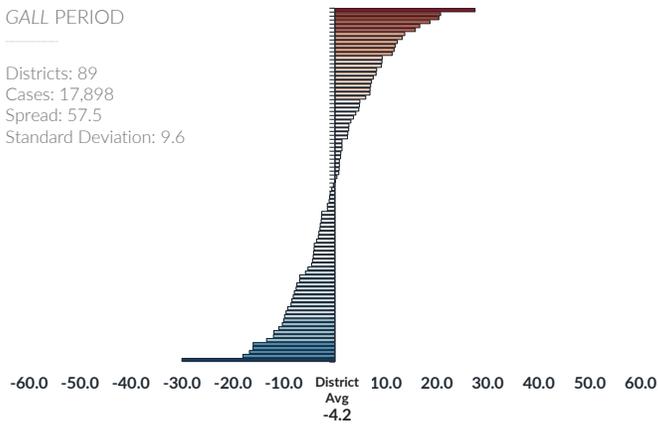
BOOKER PERIOD

Districts: 84
Cases: 14,158
Spread: 46.9
Standard Deviation: 8.3



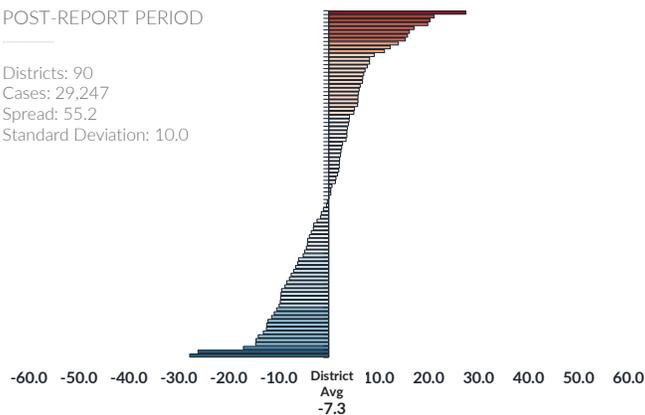
GALL PERIOD

Districts: 89
Cases: 17,898
Spread: 57.5
Standard Deviation: 9.6

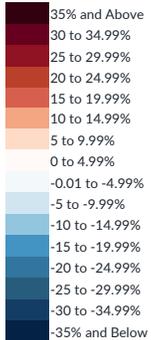


POST-REPORT PERIOD

Districts: 90
Cases: 29,247
Spread: 55.2
Standard Deviation: 10.0



Legend



§2K2.1 - BOOKER PERIOD

On average, districts included in the *Booker* Period analysis collectively imposed sentences **1.1 percent above the guideline minimum** for §2K2.1 offenders during that time period. District averages are provided in relation to that overall average.

Districts Above	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions	
Louisiana East	145	133	+25.6
Louisiana Middle	111	100	+22.3
Iowa North	172	131	+21.7
Texas North	283	238	+15.7
Louisiana West	162	148	+13.8
Florida North	122	72	+13.7
Puerto Rico	93	77	+12.5
Montana	175	153	+11.7
Oklahoma North	146	108	+11.4
Virginia East	302	232	+11.1
Mississippi South	173	156	+10.1
Georgia South	210	171	+8.3
Texas East	328	279	+8.2
Wisconsin West	77	67	+7.8
N Carolina Middle	270	210	+7.5
N Carolina West	347	271	+6.8
W Virginia South	82	63	+6.0
Tennessee East	296	206	+5.5
Texas South	552	464	+5.1
Mississippi North	79	57	+5.0
Indiana South	88	62	+4.9
Alabama North	394	297	+3.8
Hawaii	144	124	+3.7
Nevada	244	221	+3.5
Michigan West	178	139	+3.5
Illinois South	112	85	+1.9
Alabama Middle	161	121	+1.9
N Carolina East	448	273	+1.3
Maryland	271	189	+1.3
New Jersey	241	207	+1.0
Texas West	546	471	+0.9
New Hampshire	74	50	+0.8
Missouri East	488	397	+0.7
Missouri West	698	571	+0.2
Pennsylvania West	199	149	+0.1

Districts Below	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions	
Illinois North	162	110	-0.2
Virginia West	187	117	-0.3
Maine	145	96	-0.3
Arkansas East	141	108	-0.8
Kansas	257	221	-1.1
South Carolina	534	350	-1.3
Illinois Central	135	101	-1.4
Idaho	84	62	-1.5
W Virginia North	115	96	-1.6
Pennsylvania East	347	191	-1.8
Michigan East	242	179	-1.9
Indiana North	324	244	-2.0
Tennessee Middle	176	146	-2.0
Alabama South	160	135	-2.1
Washington East	154	125	-2.2
Georgia North	248	174	-2.4
Georgia Middle	138	107	-2.7
Ohio North	325	265	-3.0
Florida South	311	196	-3.1
Alaska	55	50	-3.1
New York East	171	148	-3.3
California East	160	142	-3.3
Wyoming	162	128	-4.1
Tennessee West	363	264	-4.1
California North	185	162	-4.2
District of Columbia	179	149	-4.3
Minnesota	131	82	-5.1
New York South	291	258	-5.3
New York West	210	151	-5.3
Massachusetts	134	94	-5.4
Arizona	491	345	-5.6
New Mexico	231	189	-5.8
Ohio South	214	158	-5.8
Florida Middle	313	184	-6.1
Kentucky East	210	131	-6.1
Utah	416	358	-6.2
Nebraska	285	267	-6.9
New York North	116	72	-7.3
Oregon	196	161	-7.7
Colorado	215	168	-8.0
Pennsylvania Middle	107	58	-8.5
Connecticut	107	80	-8.6
Iowa South	138	111	-10.5
Delaware	66	55	-10.7
Washington West	147	112	-11.3
Wisconsin East	154	120	-12.8
Kentucky West	99	72	-13.7
Vermont	74	52	-16.9
California Central	132	122	-21.3



§2K2.1 - GALL PERIOD

On average, districts included in the *Gall* Period analysis collectively imposed sentences **4.2 percent below the guideline minimum** for §2K2.1 offenders during that time period.

District averages are provided in relation to that overall average.

Districts Above	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions	
Louisiana East	146	124	+27.5
Louisiana Middle	122	105	+20.7
Louisiana West	140	115	+20.4
Puerto Rico	116	95	+18.6
Texas North	342	295	+16.6
Mississippi South	138	124	+15.8
N Carolina East	550	363	+13.7
Mississippi North	100	73	+13.2
Montana	182	156	+12.2
Georgia South	358	307	+11.8
Alabama North	407	330	+11.6
N Carolina Middle	526	379	+11.2
Illinois South	151	132	+9.3
N Carolina West	274	205	+9.2
Iowa North	214	175	+9.1
Maryland	387	253	+8.2
Oklahoma East	67	52	+8.1
Illinois North	147	104	+7.5
Oklahoma West	167	132	+7.2
Texas East	353	317	+7.0
Virginia East	391	319	+6.9
New Jersey	395	326	+6.9
Tennessee East	455	345	+6.0
Michigan West	221	162	+4.9
Alabama Middle	145	105	+4.8
Ohio North	432	347	+4.7
Missouri West	693	574	+4.1
Texas South	685	565	+3.6
Texas West	775	648	+3.1
Florida North	151	107	+2.7
California North	212	204	+2.7
Connecticut	160	134	+2.5
New York East	194	173	+2.5
Michigan East	357	276	+1.4
W Virginia South	132	121	+1.4
Florida South	448	305	+1.4
Washington East	159	136	+1.1
Wisconsin West	72	56	+1.1
New York North	110	73	+0.9
Colorado	262	221	+0.9
Indiana South	80	53	+0.8
Alaska	62	57	+0.7
Oklahoma North	164	132	+0.4
Florida Middle	495	304	+0.1

Districts Below	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions	
California East	202	182	-0.3
Missouri East	614	500	-0.6
Georgia Middle	141	115	-0.9
Idaho	132	101	-1.1
Minnesota	135	81	-1.1
Nevada	222	206	-1.5
Illinois Central	188	148	-1.5
South Carolina	702	479	-2.6
W Virginia North	166	136	-2.6
Alabama South	221	185	-2.7
Indiana North	427	335	-2.9
Virginia West	139	76	-3.0
Georgia North	282	199	-3.2
Pennsylvania East	429	236	-3.3
Tennessee Middle	291	240	-3.6
Pennsylvania West	192	149	-4.1
Tennessee West	609	457	-4.1
Pennsylvania Middle	101	65	-4.2
Washington West	202	175	-4.3
Wyoming	156	116	-4.4
Arkansas West	86	78	-4.6
Kansas	365	304	-5.3
Kentucky East	273	167	-5.8
Nebraska	273	244	-6.9
New Mexico	305	252	-6.9
California Central	210	195	-7.5
Rhode Island	69	58	-7.6
Delaware	142	130	-8.0
Arkansas East	168	132	-8.2
Massachusetts	198	145	-8.5
Kentucky West	111	73	-8.6
Arizona	454	368	-9.3
Ohio South	240	179	-9.6
California South	137	111	-9.9
South Dakota	105	78	-10.0
Maine	143	86	-10.3
Utah	390	360	-11.0
North Dakota	81	57	-12.0
New Hampshire	77	53	-12.1
New York West	158	114	-13.4
New York South	286	246	-16.0
Wisconsin East	276	231	-16.1
Iowa South	261	212	-16.8
Oregon	236	190	-18.0
Vermont	99	75	-30.0

§2K2.1 - POST-REPORT PERIOD

On average, districts included in the Post-Report Period analysis collectively imposed sentences **7.3 percent below the guideline minimum** for §2K2.1 offenders during that time period.

District averages are provided in relation to that overall average.

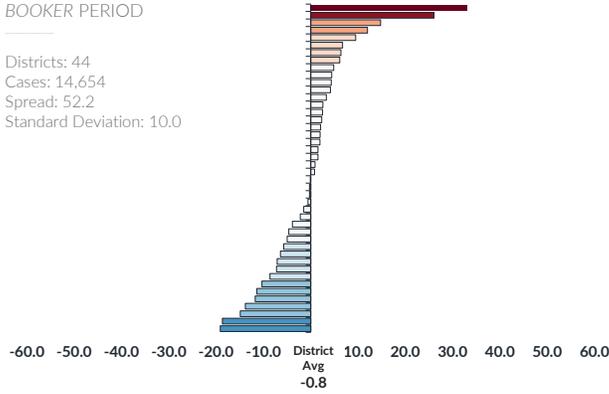
Districts Above	Number of Cases		% Difference from Overall Avg.	Districts Below	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions			Pre-Exclusions	Post-Exclusions	
Puerto Rico	1,035	963	+27.4	Colorado	462	402	-0.3
Iowa North	355	299	+21.1	W Virginia North	242	212	-0.5
Louisiana East	136	108	+20.3	Louisiana West	108	88	-1.1
Texas North	887	766	+19.8	Pennsylvania West	231	157	-1.5
N Carolina East	684	533	+17.1	Michigan East	880	741	-1.6
Mississippi South	183	170	+16.1	Indiana North	564	473	-2.4
Texas East	497	456	+15.7	Idaho	188	140	-3.0
Georgia South	468	378	+15.3	Alabama South	475	419	-3.1
N Carolina Middle	736	634	+13.9	Montana	281	257	-3.5
Oklahoma East	130	108	+12.3	Pennsylvania East	392	218	-3.9
Missouri West	1,119	963	+11.1	Oklahoma West	219	169	-4.3
Louisiana Middle	172	144	+9.1	Alaska	141	126	-4.3
Alabama North	637	526	+8.2	Florida Middle	946	589	-4.5
Tennessee East	796	649	+8.2	Tennessee Middle	245	189	-4.8
Virginia East	444	384	+7.7	Connecticut	225	176	-5.1
Illinois Central	266	221	+7.3	Massachusetts	301	225	-6.0
Washington East	242	215	+7.0	Oklahoma North	168	133	-6.2
California East	402	352	+6.8	Maine	155	102	-6.6
Illinois South	359	320	+6.7	North Dakota	153	104	-7.0
Maryland	534	398	+6.3	Delaware	91	78	-7.5
N Carolina West	496	420	+6.1	New Mexico	567	482	-7.9
Kentucky East	216	183	+6.0	Pennsylvania Middle	110	77	-8.4
South Carolina	559	435	+5.9	Washington West	364	322	-8.8
Georgia Middle	214	178	+5.8	Kansas	624	558	-9.4
Mississippi North	140	111	+5.8	Nebraska	271	245	-9.6
Michigan West	246	189	+5.2	New York South	492	449	-9.6
W Virginia South	160	149	+5.0	California Central	295	261	-9.7
Minnesota	278	185	+4.2	Wisconsin West	98	80	-10.0
Texas South	1,169	968	+4.1	Kentucky West	195	149	-10.4
New Jersey	451	392	+3.9	Iowa South	374	322	-10.9
Illinois North	319	262	+3.7	Wyoming	173	154	-11.4
Florida South	906	624	+3.6	New Hampshire	106	71	-12.2
Florida North	287	194	+3.6	Arizona	805	652	-12.4
Missouri East	918	778	+3.5	Utah	460	422	-12.5
New York West	191	137	+2.8	Rhode Island	121	111	-13.1
Arkansas West	170	141	+2.6	California South	203	163	-14.1
Ohio North	714	562	+2.4	South Dakota	196	169	-14.6
District of Columbia	80	66	+2.4	Ohio South	343	297	-14.7
Nevada	498	464	+2.2	Oregon	484	404	-17.1
Arkansas East	257	213	+2.1	Vermont	86	64	-26.2
New York East	171	151	+2.1	Wisconsin East	334	288	-27.9
California North	485	462	+2.0				
Alabama Middle	151	131	+1.8				
New York North	142	107	+1.4				
Texas West	1,333	1,148	+1.3				
Virginia West	150	102	+0.7				
Georgia North	371	311	+0.4				
Indiana South	331	259	+0.4				
Tennessee West	756	600	+0.0				



\$2L1.2 - INTER-DISTRICT ANALYSIS

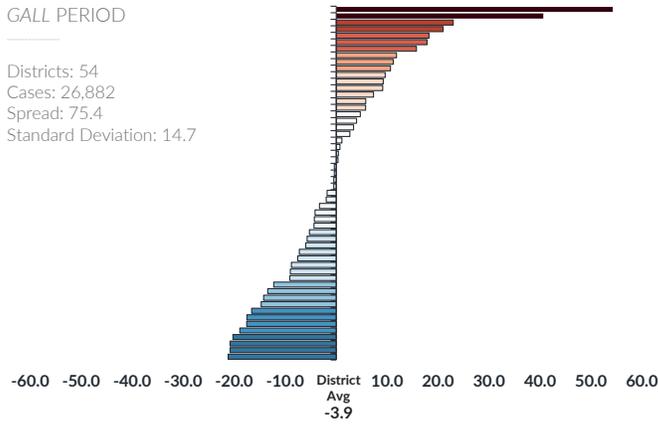
BOOKER PERIOD

Districts: 44
Cases: 14,654
Spread: 52.2
Standard Deviation: 10.0

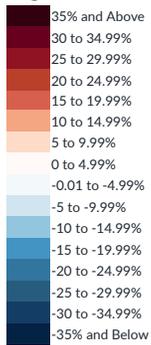


GALL PERIOD

Districts: 54
Cases: 26,882
Spread: 75.4
Standard Deviation: 14.7

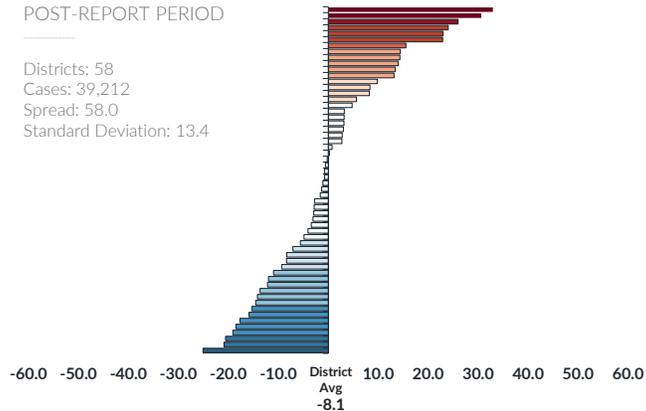


Legend



POST-REPORT PERIOD

Districts: 58
Cases: 39,212
Spread: 58.0
Standard Deviation: 13.4



§2L1.2 - BOOKER PERIOD

On average, districts included in the *Booker* Period analysis collectively imposed sentences **0.8 percent below the guideline minimum** for §2L1.2 offenders during that time period.

District averages are provided in relation to that overall average.

Districts Above	Number of Cases			Districts Below	Number of Cases		
	Pre-Exclusions	Post-Exclusions	% Difference from Overall Avg.		Pre-Exclusions	Post-Exclusions	% Difference from Overall Avg.
Texas North	361	318	+33.1	New York East	141	130	-0.1
Iowa North	139	67	+26.1	Arkansas West	94	74	-0.3
Texas East	173	125	+14.8	California South	736	714	-0.3
Tennessee East	60	55	+12.0	Michigan East	69	57	-0.6
N Carolina Middle	103	99	+9.5	Utah	592	288	-1.5
N Carolina West	106	75	+6.7	Colorado	324	283	-2.2
Texas West	4,446	3,107	+6.4	Washington East	276	156	-3.9
Georgia North	113	103	+6.1	New York West	92	55	-4.6
Virginia East	114	78	+4.8	California North	142	113	-5.0
Missouri West	99	79	+4.4	Illinois North	133	129	-5.7
Nevada	178	161	+4.3	Oregon	117	81	-6.4
Idaho	173	59	+4.1	Iowa South	102	80	-7.1
Florida Middle	512	242	+3.3	Pennsylvania East	102	88	-7.3
Puerto Rico	142	107	+2.5	New Jersey	88	83	-8.6
Arizona	4,832	679	+2.5	New York South	375	352	-10.3
Tennessee Middle	57	52	+2.3	California Central	305	160	-11.4
Texas South	8,280	3,954	+2.1	Massachusetts	73	68	-11.8
Kansas	201	158	+2.0	New York North	111	53	-13.8
Florida South	309	245	+1.9	New Mexico	4,499	1,469	-14.9
Maryland	84	78	+1.5	Nebraska	169	55	-18.7
Michigan West	107	79	+1.5	Washington West	184	130	-19.1
Ohio North	66	51	+0.9				
Missouri East	99	65	+0.8				



§2L1.2 - GALL PERIOD

On average, districts included in the *Gall* Period analysis collectively imposed sentences **3.9 percent below the guideline minimum** for §2L1.2 offenders during that time period. District averages are provided in relation to that overall average.

Districts Above	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions	
Louisiana West	73	51	+54.2
Texas North	590	470	+40.6
N Carolina Middle	149	123	+22.9
Louisiana East	136	61	+21.0
Tennessee East	87	52	+18.2
Texas East	264	201	+17.8
Iowa North	224	76	+15.7
N Carolina East	108	83	+11.8
Arkansas East	125	56	+11.2
Missouri West	154	79	+10.6
Texas West	10,719	5,376	+9.6
Florida Middle	1,011	448	+9.2
Michigan West	292	117	+9.1
Virginia East	576	276	+7.3
Ohio South	189	79	+5.8
N Carolina West	156	119	+5.8
Arkansas West	278	162	+4.7
Texas South	16,831	8,396	+4.0
Arizona	10,558	1,598	+3.4
Kansas	226	177	+2.7
Oklahoma West	118	96	+1.1
California East	1,189	78	+0.7
Georgia North	384	313	+0.4
Maryland	158	137	+0.4

Districts Below	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions	
Florida South	559	358	-0.4
Nevada	458	380	-0.4
California South	3,599	1,940	-0.5
New York North	278	58	-0.5
Idaho	329	122	-1.8
Colorado	582	525	-2.0
Washington East	486	187	-3.3
Ohio North	98	72	-4.2
South Carolina	148	74	-4.3
California North	541	279	-4.4
Pennsylvania East	230	152	-5.3
Illinois North	331	316	-5.7
Tennessee Middle	99	96	-6.0
Wyoming	287	56	-7.2
New Jersey	124	118	-7.6
Utah	1,243	115	-8.8
Nebraska	246	68	-9.0
Iowa South	117	88	-9.1
Wisconsin East	71	61	-12.2
Massachusetts	110	95	-13.4
Minnesota	118	111	-14.2
Oregon	290	202	-14.7
New York East	335	278	-16.6
Michigan East	177	79	-17.5
California Central	1,726	203	-17.6
Washington West	373	234	-18.9
New York West	194	58	-20.3
New Mexico	7,968	1,352	-20.8
Pennsylvania Middle	146	55	-20.8
New York South	611	526	-21.2

§2L1.2 - POST-REPORT PERIOD

On average, districts included in the Post-Report Period analysis collectively imposed sentences **8.1 percent below the guideline minimum** for §2L1.2 offenders during that time period.

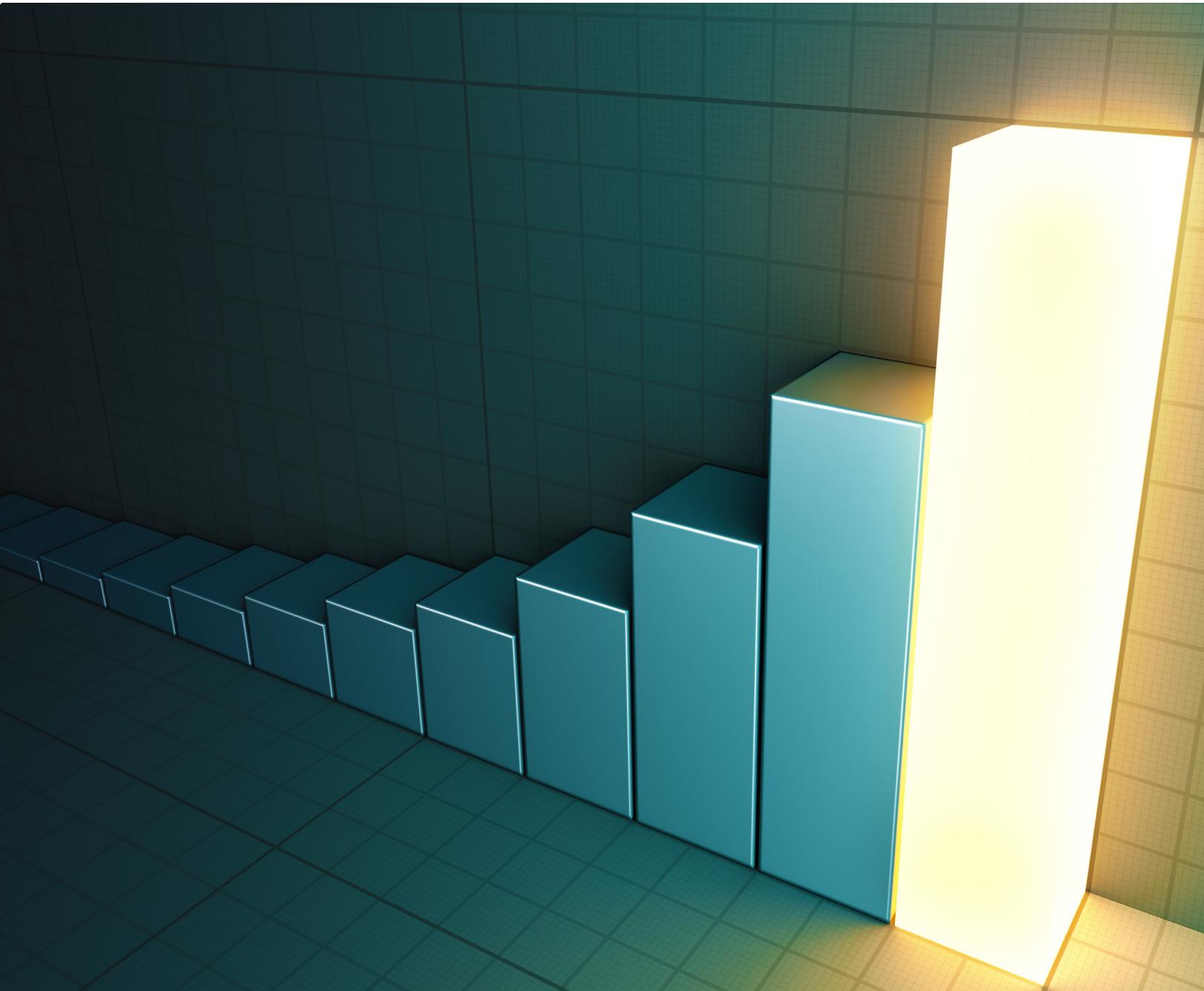
District averages are provided in relation to that overall average.

Districts Above	Number of Cases		% Difference from Overall Avg.	Districts Below	Number of Cases		% Difference from Overall Avg.
	Pre-Exclusions	Post-Exclusions			Pre-Exclusions	Post-Exclusions	
Texas North	1,178	882	+32.9	California South	5,838	1,085	-0.2
N Carolina Middle	229	129	+30.6	Kansas	257	136	-0.6
Mississippi South	94	52	+26.0	Pennsylvania East	308	198	-0.7
Texas East	374	218	+24.0	Georgia North	422	364	-0.8
Puerto Rico	419	86	+22.9	Florida Middle	1,121	415	-1.1
Iowa North	381	113	+22.9	Washington East	318	99	-1.3
N Carolina East	204	143	+15.5	Pennsylvania Middle	205	59	-1.6
Louisiana West	102	54	+14.4	Indiana South	103	84	-2.8
Michigan West	344	157	+14.3	Virginia East	533	259	-2.8
Louisiana East	224	71	+14.0	Illinois North	400	349	-2.9
Tennessee East	135	85	+13.4	New Jersey	143	110	-3.1
Texas West	18,370	8,933	+13.1	Illinois Central	162	72	-3.4
Missouri West	101	65	+9.8	South Carolina	415	115	-4.1
California East	883	88	+8.3	Arkansas East	93	68	-4.9
Ohio South	316	113	+8.2	Alabama North	143	90	-5.6
Texas South	20,520	16,240	+5.6	New York East	315	219	-7.1
Arizona	14,932	3,224	+4.8	Colorado	765	436	-8.3
N Carolina West	389	204	+3.2	Michigan East	560	146	-8.4
Georgia Middle	227	51	+3.1	Idaho	366	118	-9.4
Arkansas West	209	96	+3.1	California North	348	201	-11.0
New York North	179	55	+3.0	Oklahoma North	197	113	-12.0
Maryland	234	149	+2.8	Tennessee Middle	99	90	-12.2
Nevada	538	262	+2.7	Ohio North	117	66	-13.7
Florida South	1,573	556	+0.7	Massachusetts	247	169	-14.2
Oklahoma West	304	234	+0.2	Minnesota	126	106	-14.6
				Iowa South	213	131	-15.3
				New Mexico	17,929	656	-15.9
				California Central	1,262	279	-17.7
				New York West	302	78	-18.5
				Washington West	398	134	-19.1
				Oregon	231	191	-20.6
				New York South	372	226	-20.9
				Utah	1,501	90	-25.1



Inter-District Differences in Federal Sentencing Practices

January 2020



APPENDIX C

Statistical Outliers



A statistical outlier is an “[o]bservation [in the dataset] that is far removed from the bulk of the data.”⁶⁸ Outliers “may indicate faulty measurements and they may exert undue influence on summary statistics, such as the mean”⁶⁹ Although the Commission has no concerns that any datapoints in the inter-district dataset are products of faulty measurements of any district’s sentencing practices, the Commission nonetheless has identified districts that qualify as outliers using the most common test for such identification—the 1.5 x Interquartile Range (IQR) test.⁷⁰

Using that test, the Commission identified 21 districts as statistical outliers out of a total 910 district-level sentencing practices analyzed for the four primary guidelines over the three periods.⁷¹ During the *Booker* Period, there were 11 outlier districts; during the *Gall* Period, there were seven outlier districts; and during the Post-Report Period, there were three outlier districts.

To show the effect of statistical outliers on both the total spread and standard deviation measures, the Commission has re-calculated those two measures excluding the outlier districts. The results—both with and without the outlier district in the analysis—are set forth below, using a modification of the graphical presentation discussed earlier in this report. Outlier districts appear above or below a red line superimposed on the graph. The total spread and standard deviation after excluding the outliers are reported in parentheses following the total spread and standard deviation before excluding the outliers.

The Commission has identified the statistical outliers to allow the reader to compare the graphical presentations of sentencing differences among districts with and without the outlier districts. Nevertheless, judges in outlier districts imposed real sentences on real defendants and their sentencing practices contribute to the extent of differences in sentencing practices among districts. The Commission’s exclusion of outlier districts from the alternative analyses in this Appendix is not intended to suggest otherwise.

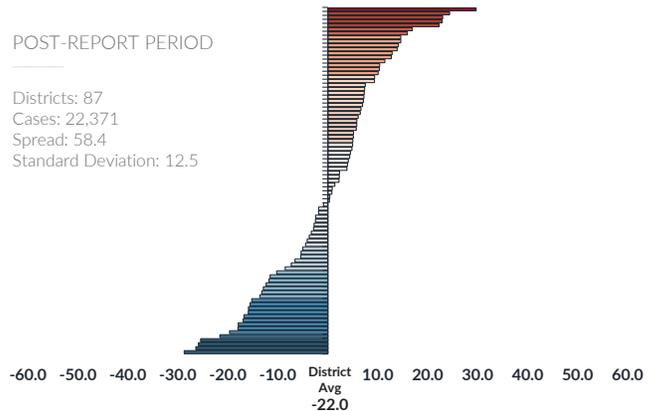
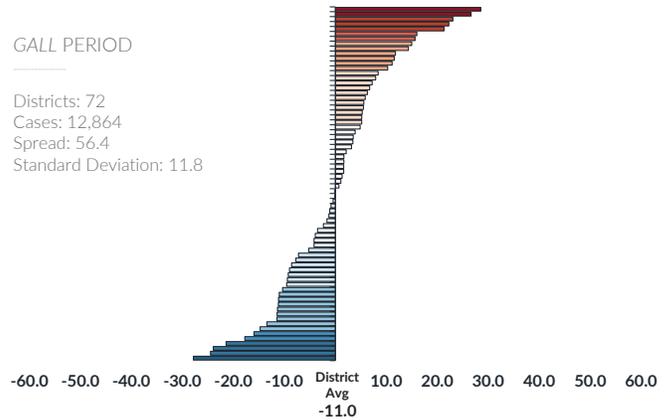
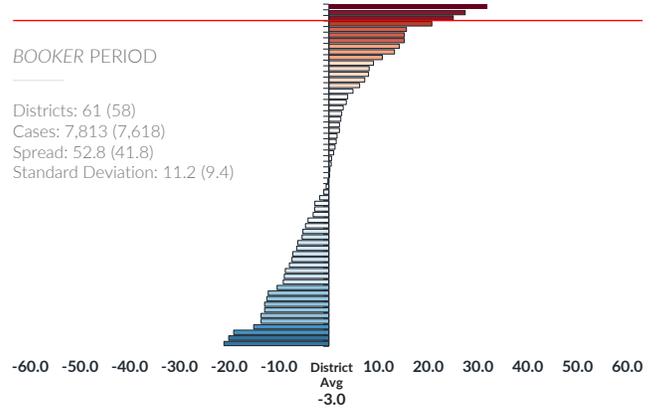
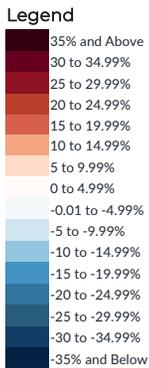


OUTLIERS

USSG §2B1.1 OFFENDERS

To show the effect of statistical outliers on both the total spread and standard deviation measures, the Commission re-calculated those measures excluding outlier districts.

In the analysis of §2B1.1 offenders, there were three statistical outlier districts over the three periods. Outlier districts appear above or below a red line on the graphs. The total spread and standard deviation after excluding the outliers are reported in parentheses following the total spread and standard deviation before excluding the outliers.



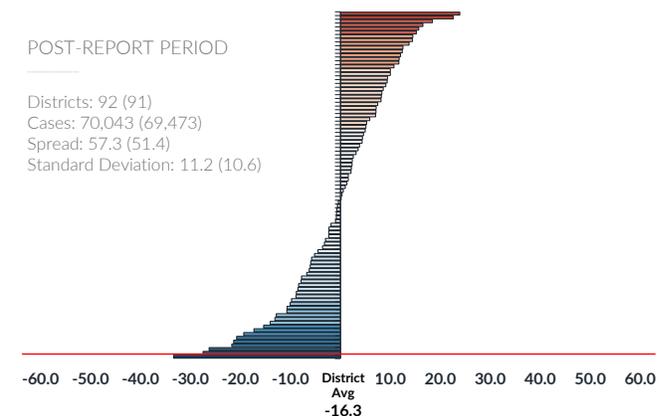
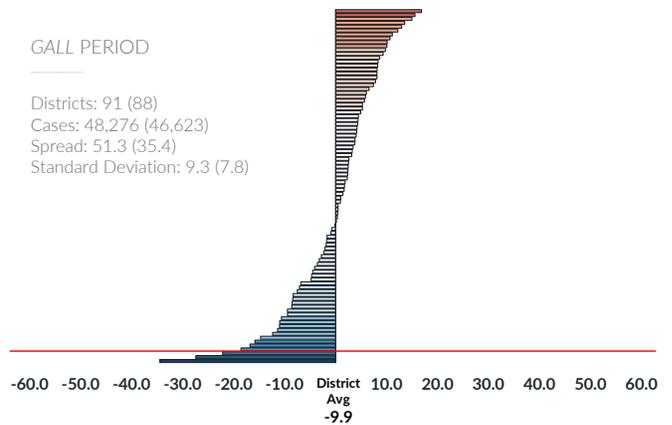
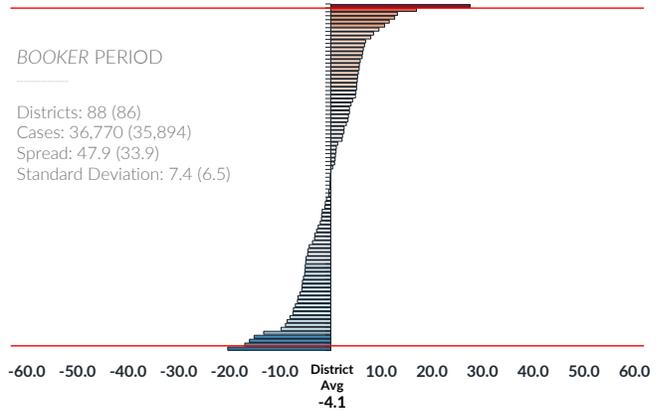
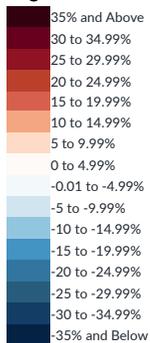
OUTLIERS

USSG §2D1.1 OFFENDERS

To show the effect of statistical outliers on both the total spread and standard deviation measures, the Commission re-calculated those measures excluding outlier districts.

In the analysis of §2D1.1 offenders, there were six statistical outlier districts over the three periods. Outlier districts appear above or below a red line on the graphs. The total spread and standard deviation after excluding the outliers are reported in parentheses following the total spread and standard deviation before excluding the outliers.

Legend



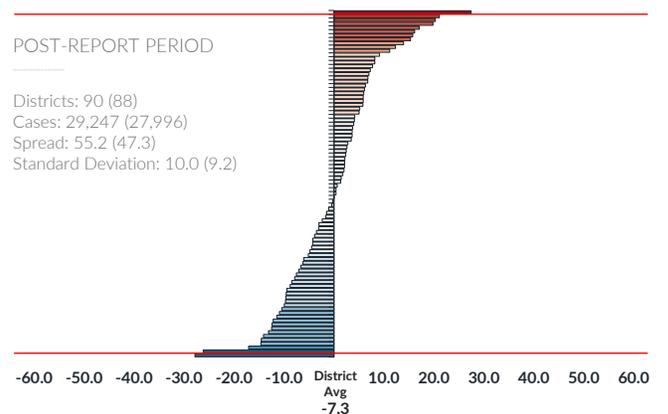
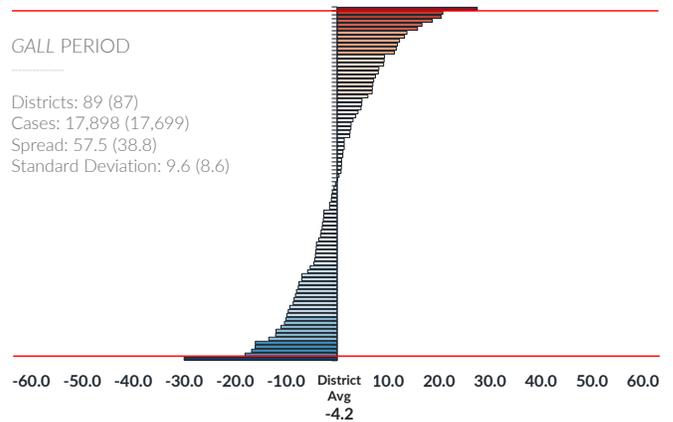
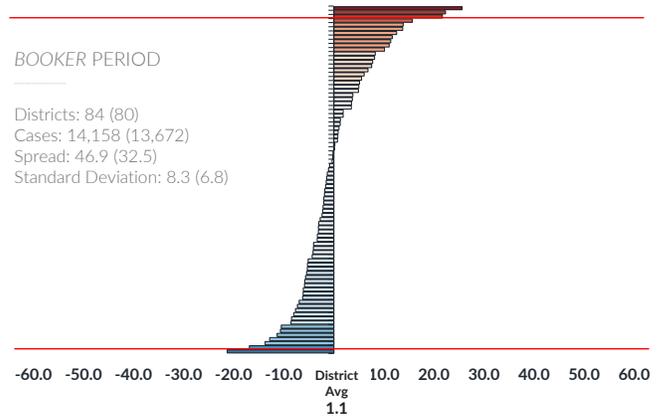
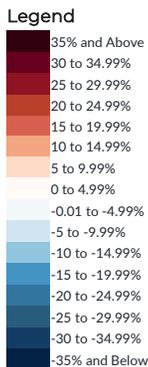


OUTLIERS

USSG §2K2.1 OFFENDERS

To show the effect of statistical outliers on both the total spread and standard deviation measures, the Commission re-calculated those measures excluding outlier districts.

In the analysis of §2K2.1 offenders, there were eight statistical outlier districts over the three periods. Outlier districts appear above or below a red line on the graphs. The total spread and standard deviation after excluding the outliers are reported in parentheses following the total spread and standard deviation before excluding the outliers.

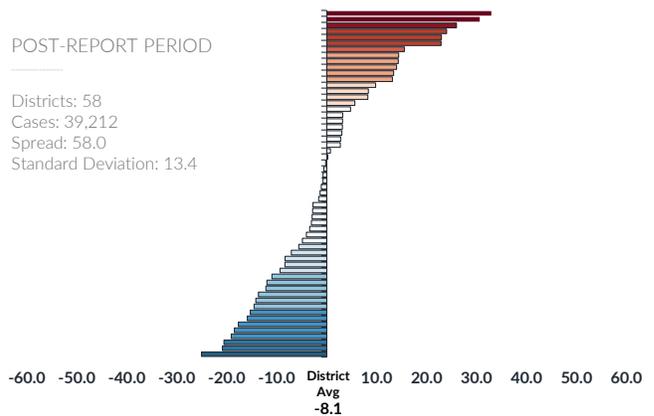
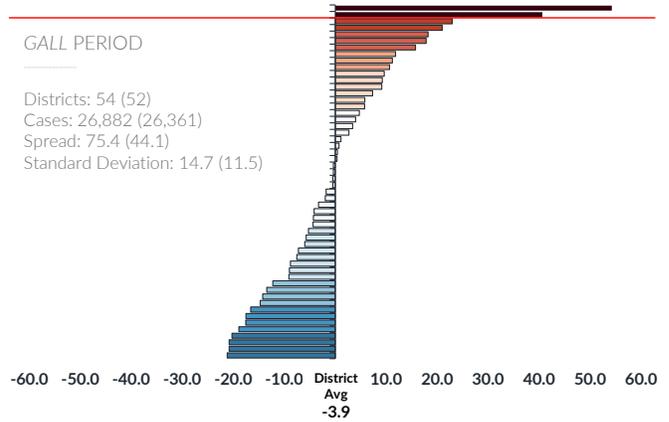
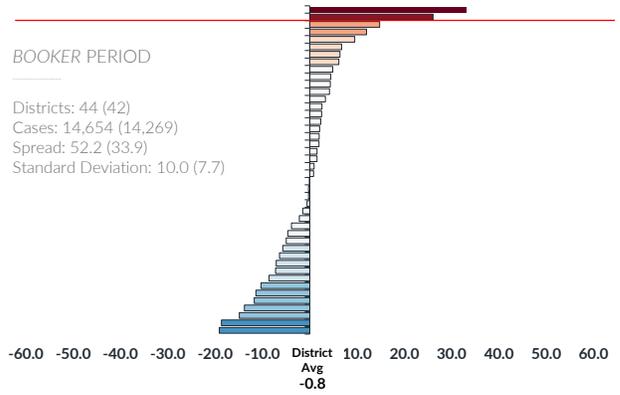


OUTLIERS

USSG §2L1.2 OFFENDERS

To show the effect of statistical outliers on both the total spread and standard deviation measures, the Commission re-calculated those measures excluding outlier districts.

In the analysis of §2L1.2 offenders, there were four statistical outlier districts over the three periods. Outlier districts appear above or below a red line on the graphs. The total spread and standard deviation after excluding the outliers are reported in parentheses following the total spread and standard deviation before excluding the outliers.





APPENDIX D

USSG §2D1.1 Analysis by Drug Type



As discussed in the main text of this report, the Commission's §2D1.1 analysis shows an increase in both the spread and standard deviation among the districts when cumulatively considering all drug cases. Specifically, both measures increased from the *Booker* Period to the *Gall* Period, and then again from the *Gall* Period to the Post-Report Period.

For purposes of further comparison, the Commission has also calculated the total spread and standard deviation of offenders sentenced under §2D1.1 by individual drug type. Like the cumulative analysis, the drug-specific analyses are provided across each of the three time periods to allow readers to analyze trends by drug type and over time. The results of these

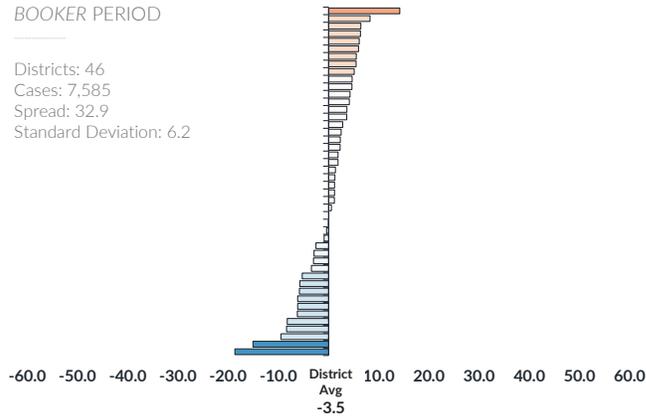
analyses are set forth below, using the same graphical presentation discussed earlier in this report. As noted in the report, the same general increase in sentencing variation among the districts is seen for nearly all drug types, as reflected by increasing spread and standard deviation over time.



POWDER COCAINE DRUG ANALYSIS

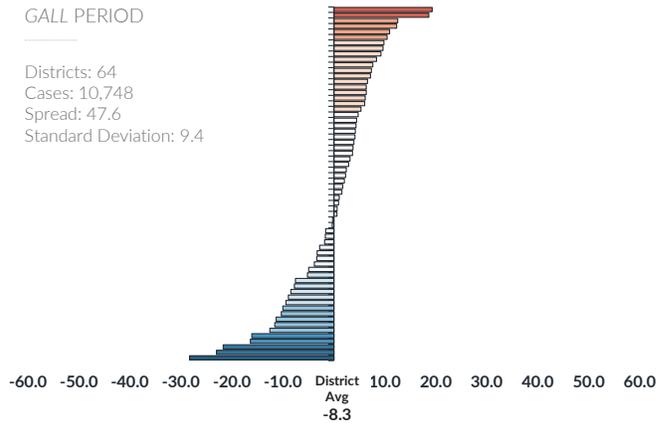
BOOKER PERIOD

Districts: 46
Cases: 7,585
Spread: 32.9
Standard Deviation: 6.2

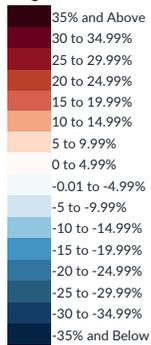


GALL PERIOD

Districts: 64
Cases: 10,748
Spread: 47.6
Standard Deviation: 9.4

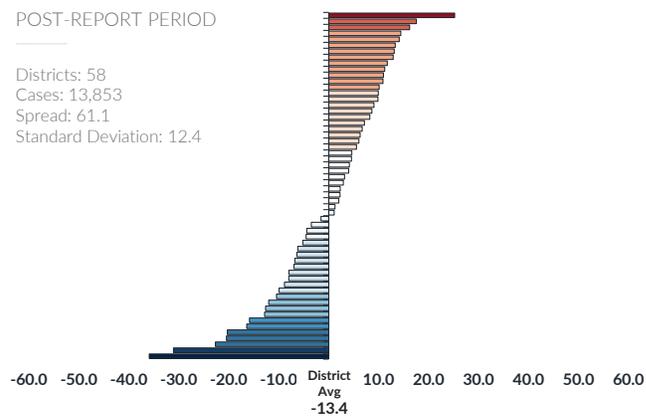


Legend



POST-REPORT PERIOD

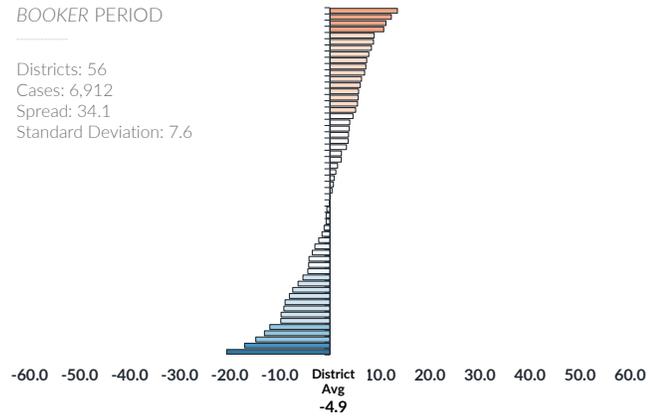
Districts: 58
Cases: 13,853
Spread: 61.1
Standard Deviation: 12.4



CRACK COCAINE DRUG ANALYSIS

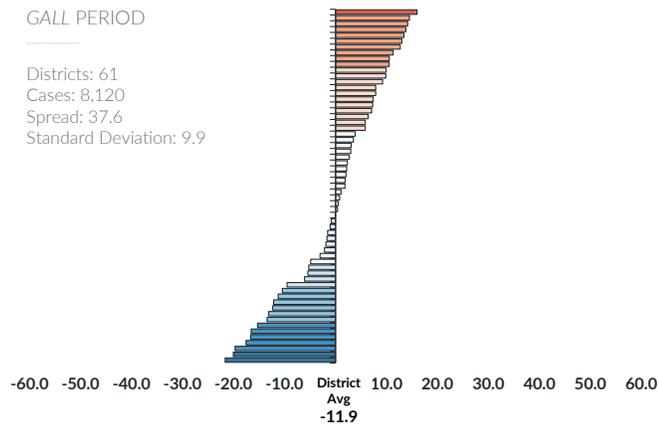
BOOKER PERIOD

Districts: 56
 Cases: 6,912
 Spread: 34.1
 Standard Deviation: 7.6

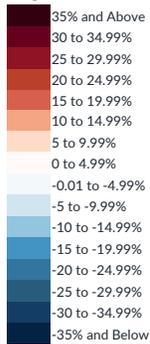


GALL PERIOD

Districts: 61
 Cases: 8,120
 Spread: 37.6
 Standard Deviation: 9.9

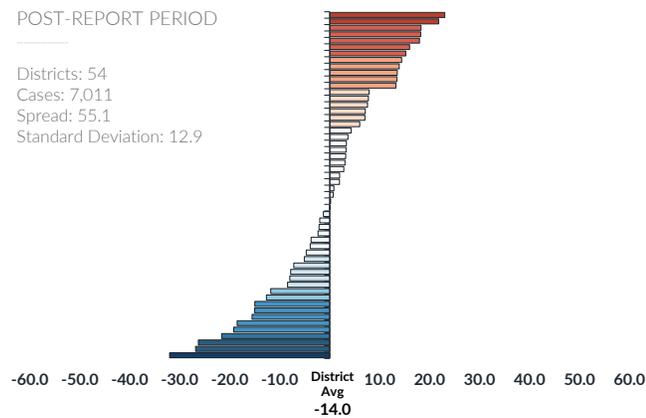


Legend



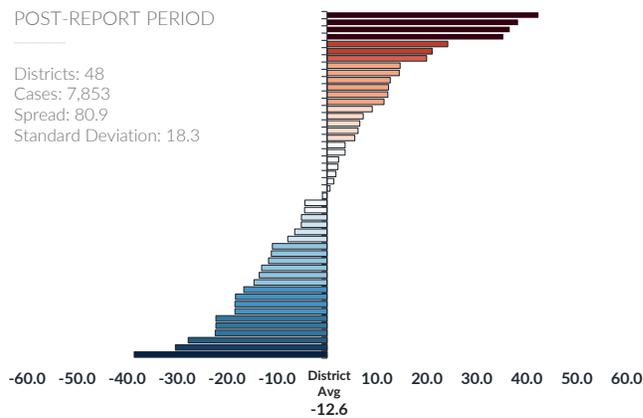
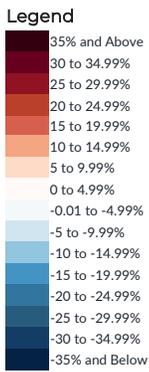
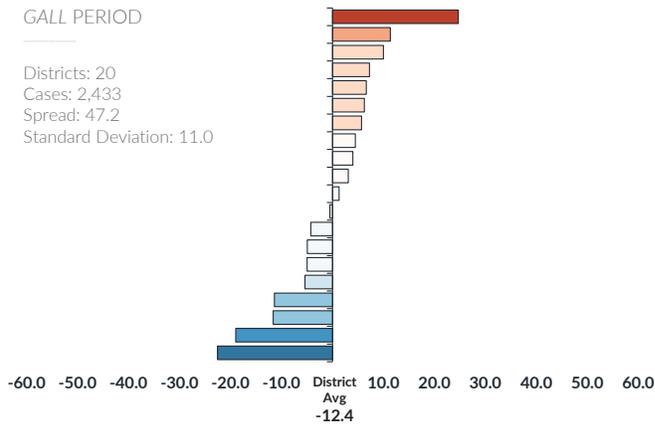
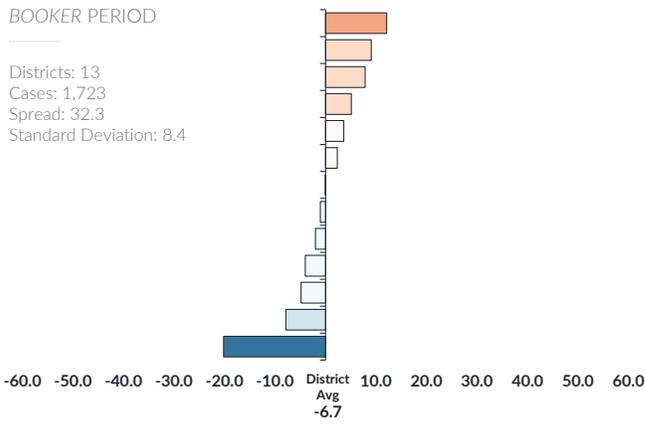
POST-REPORT PERIOD

Districts: 54
 Cases: 7,011
 Spread: 55.1
 Standard Deviation: 12.9

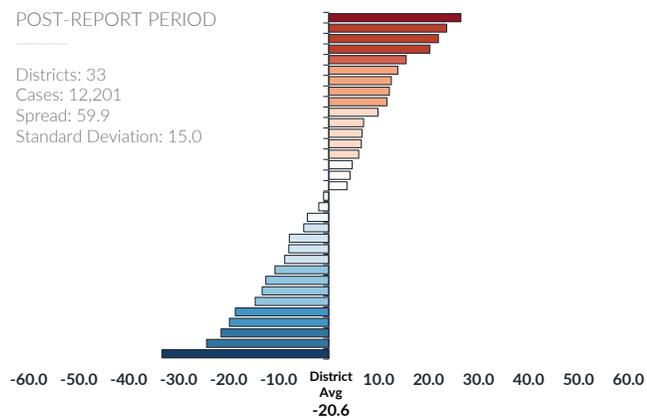
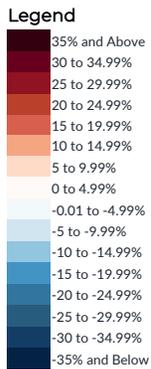
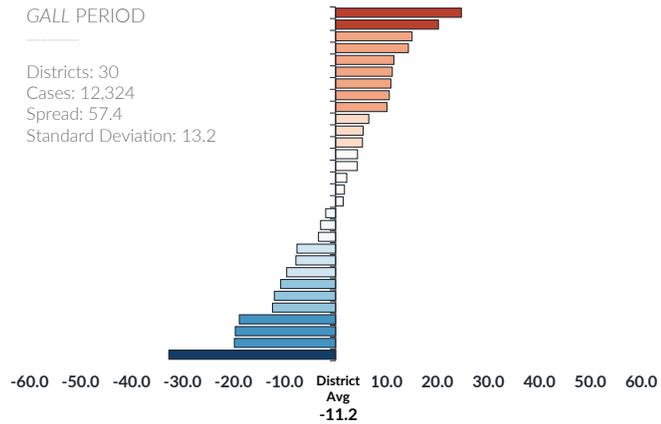
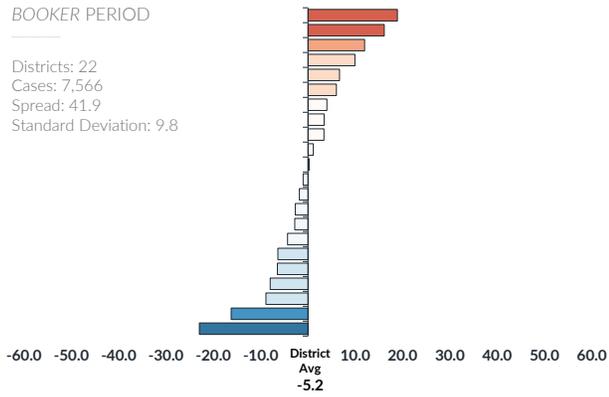




HEROIN DRUG ANALYSIS



MARIJUANA DRUG ANALYSIS

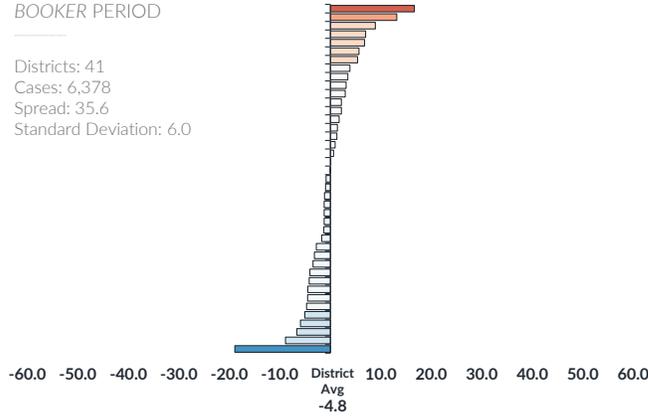




METHAMPHETAMINE DRUG ANALYSIS

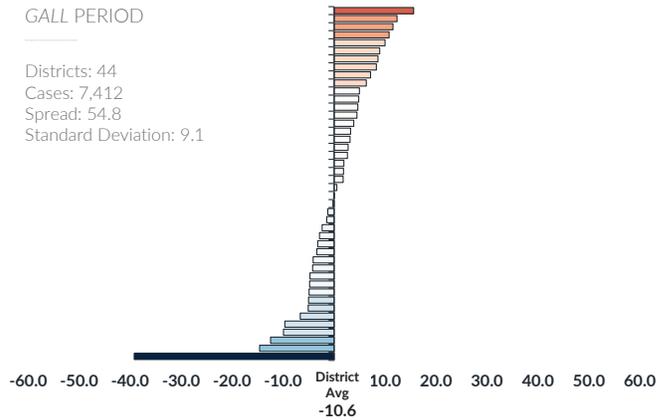
BOOKER PERIOD

Districts: 41
Cases: 6,378
Spread: 35.6
Standard Deviation: 6.0

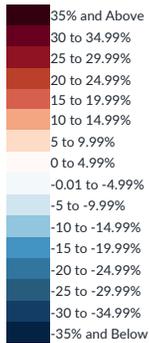


GALL PERIOD

Districts: 44
Cases: 7,412
Spread: 54.8
Standard Deviation: 9.1

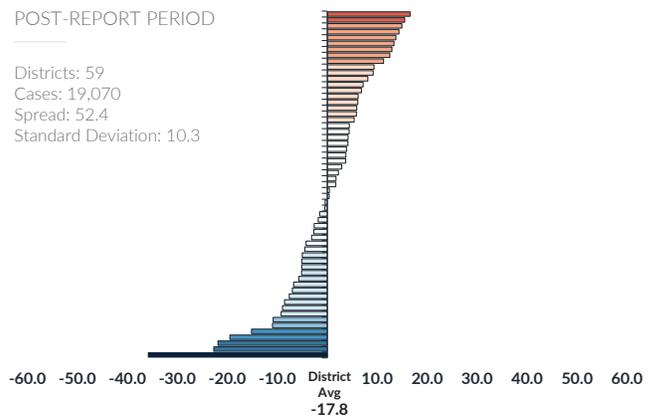


Legend

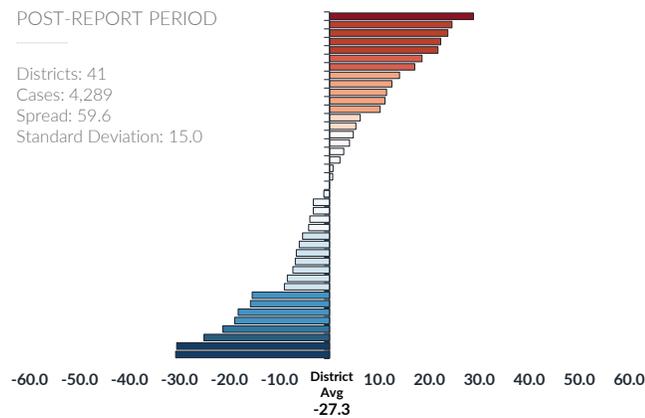
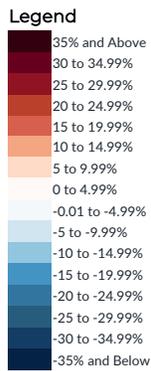
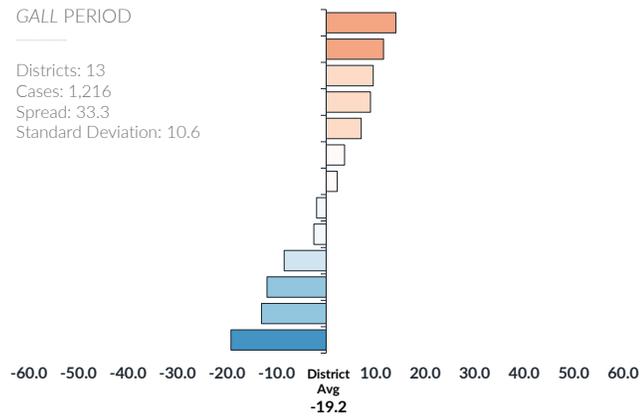
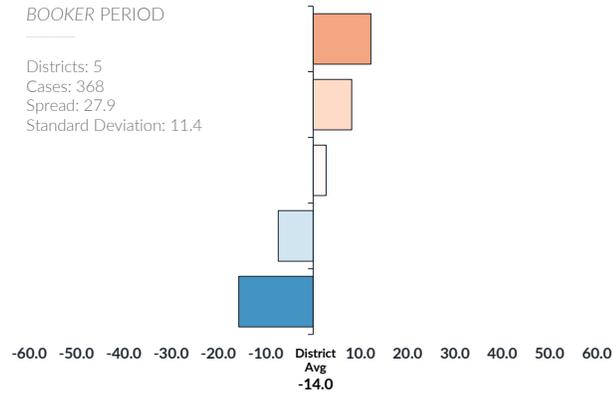


POST-REPORT PERIOD

Districts: 59
Cases: 19,070
Spread: 52.4
Standard Deviation: 10.3



OTHER DRUG ANALYSIS





Matched analyses were prepared for each primary guideline and across all time periods, demonstrating that the overall trends observed in the primary analysis generally remained consistent.



APPENDIX E

Matched Analysis



The Commission measured differences in districts' sentencing practices by comparing the average percent differences from the guideline minimums of cases sentenced within the district. As discussed in the text (p. 16), a guideline-specific analysis is conducted to limit the impact of regional variations in caseload. Therefore, the primary analyses focus on all offenders sentenced under a particular guideline (after the relevant exclusions discussed above) to explore sentencing differences. By utilizing the guideline minimum as the baseline in the analysis in its guideline-specific analyses, district sentencing practices are evaluated and compared based on offenses that were similar in nature and where the offenders were sentenced under the same structure (*i.e.*, the court considered the applicable guideline, and all relevant guideline factors, to determine the starting point of the sentence as required by law).

The Commission recognizes, however, that the nature of the offense can also vary even within the same guideline. For example, some districts may historically have fraud cases with a higher average loss or that are more likely to involve victims. Because of these intra-offense variations, the Commission also completed a matched analysis to test the results of the primary analysis when comparing district-level sentencing practices relating to a more precisely matched subset of cases across time periods. That is, does an analysis of a smaller, more comparable set of cases (matched on key sentencing factors) confirm the trends observed in the primary analyses?



METHODOLOGY

Matched Analysis

To answer this question, the Commission utilized matching techniques⁷² to identify clusters of cases with the identical *Criminal History Category (CHC)* and *Final Offense Level (FOL)* for each of the primary guideline types analyzed. Matching cases on these criteria allows for comparison of offenders with the same primary guideline and guideline range for each of the most common guideline outcomes for each primary guideline across the time periods.

To be included in the analysis, each cluster had to have at least five districts, with each included district having at least 15 cases. As depicted in the example below,

the matching program utilized by the Commission identified §2K2.1 cases with a CHC of I and FOL of 12, CHC III and FOL 17, and CHC IV and FOL 17, as the common clusters of cases (*i.e.*, the most common guideline outcomes) across districts in the *Booker* Period.

Common clusters were identified for each primary guideline in each period. In the below example, the matching program identified §2K2.1 cases with the following guideline calculations as the common clusters of cases (*i.e.*, the most common guideline outcomes) across districts in the *Gall* Period:

§2K2.1 Matched Analysis <i>Booker</i> Period			
CHC	FOL	N. Districts	N. Cases
I	12	15	393
III	17	11	239
IV	17	10	227

§2K2.1 Matched Analysis <i>Gall</i> Period			
CHC	FOL	N. Districts	N. Cases
I	12	22	552
III	17	20	455
IV	17	15	319
IV	21	10	208
VI	21	14	345

§2K2.1 Matched Analysis Booker Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	15	393	+13.8
III	17	11	239	+7.3
IV	17	10	227	+7.3
Mean Standard Deviation =				+9.5

§2K2.1 Matched Analysis Gall Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	22	552	+19.4
III	17	20	455	+10.7
IV	17	15	319	+9.6
Mean Standard Deviation =				+13.2

Once clusters were identified for each time period, the standard deviation was then calculated only for those common clusters that appeared in both periods, while unmatched clusters were discarded.

In the example above, the common sentencing outcomes across §2K2.1 cases were identified for both the *Booker* and *Gall* Periods. Therefore, when comparing the clusters in the *Booker* Period to those in the *Gall* Period, there were three matched outcomes that appeared in both—§2K2.1 cases with a CHC of I and FOL of 12, CHC III and FOL 17, and CHC IV and FOL 17. For each matched cluster of cases, the standard deviation was calculated. Using the individual calculations for each cluster, the overall average standard deviation across all clusters within a specific time period was calculated and compared. In the example, averaging those individual standard deviations results in an overall average standard deviation of 9.5 for the *Booker* Period as compared

to 13.2 for the *Gall* Period, demonstrating increasing variation among the districts in sentencing §2K2.1 offenders after the *Booker* Period.

The trends observed in the more limited, matched analysis were then compared with the results of the primary analysis. In the above example, the matched analysis demonstrated an increasing standard deviation from the *Booker* to *Gall* Periods. This trend is consistent with the primary analysis, which also showed increasing variation among the districts in sentencing practices for §2K2.1 offenders, as reflected in an increased standard deviation from 8.3 in the *Booker* Period to 9.6 in the *Gall* Period (see page 29).

As shown in the table below, the Commission's matched analysis demonstrates that the trends seen in the primary analysis for §2K2.1 offenders remained consistent (both showing an increase in standard deviation) when further limiting the guideline-specific datasets to more precisely matched cases.

Comparison of Primary and Matched Analyses			
Guideline	Methodology	Change in Standard Deviation	
		<i>Booker</i> to <i>Gall</i>	<i>Gall</i> to Post-Report
§2K2.1	Primary Analysis	+ 1.3	
	Matched Analysis	+ 3.7	



RESULTS

USSG §2B1.1 Matched Analysis

§2B1.1 Matched Analysis <i>Booker</i> Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	20	503	+13.6
I	13	18	404	+11.7
Mean Standard Deviation =				+12.7

§2B1.1 Matched Analysis <i>Gall</i> Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	32	747	+19.1
I	13	31	785	+16.0
Mean Standard Deviation =				+17.6

When comparing the clusters of common outcomes for §2B1.1 cases, there were two matched outcomes that appeared in both the *Booker* and *Gall* Periods—CHC of I and FOL of 12, and CHC I and FOL 13.

Averaging the individual standard deviations for each common outcome results in an overall average standard deviation of 12.7 for the *Booker* Period compared to 17.6 for the *Gall* Period, demonstrating increasing variation among the districts in sentencing §2B1.1 offenders after the *Booker* Period.

§2B1.1 Matched Analysis Gall Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	32	747	+19.1
I	13	31	785	+16.0
I	15	10	233	+17.7
I	16	8	189	+12.8
I	18	7	160	+9.2
Mean Standard Deviation =				+15.0

§2B1.1 Matched Analysis Post-Report Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	45	1,293	+16.2
I	13	47	1,594	+17.3
I	15	22	577	+14.9
I	16	16	391	+13.7
I	18	22	567	+11.2
Mean Standard Deviation =				+14.7

When comparing the latter two periods, five matched outcomes appeared in both the *Gall* and Post-Report Periods.

Averaging the individual standard deviations for each common outcome results in an overall average standard deviation of 15.0 for the *Gall* Period compared to 14.7 for the Post-Report Period, demonstrating relative stability in variation among the districts in sentencing §2B1.1 offenders from the *Gall* Period to the Post-Report Period.

When compared with the results of the primary analysis, the trends remain largely the same. Both the primary and the matched analysis demonstrated an increasing standard deviation from the *Booker* to *Gall* Periods. The trends diverged slightly when considering the change from the *Gall* Period compared to the Post-Report Period, with the primary analysis showing a slight increase and the matched analysis showing a slight decrease in variation (as measured by standard deviation). Nevertheless, as reflected in the table below, the change in both the primary and matched analyses was relatively small and therefore both show general stability in the trend since *Gall*.

Comparison of Primary and Matched Analyses			
Guideline	Methodology	Change in Standard Deviation	
		<i>Booker</i> to <i>Gall</i>	<i>Gall</i> to Post-Report
§2B1.1	Primary Analysis	+ 0.6	+ 0.7
	Matched Analysis	+ 4.9	- 0.3



RESULTS

USSG §2D1.1 Matched Analysis

§2D1.1 Matched Analysis <i>Booker</i> Period						§2D1.1 Matched Analysis <i>Gall</i> Period					
Drug	CHC	FOL	N. Districts	N. Cases	SD	Drug	CHC	FOL	N. Districts	N. Cases	SD
Cocaine	I	11-20	15	567	+9.8	Cocaine	I	11-20	26	945	+16.8
Cocaine	I	21-30	56	3,792	+8.2	Cocaine	I	21-30	67	4,836	+9.9
Crack	I	21-30	34	995	+9.4	Crack	I	21-30	39	1,236	+12.2
Crack	IV	21-30	15	330	+4.6	Crack	IV	21-30	16	349	+5.8
Crack	VI	31-40	34	1,155	+11.3	Crack	VI	31-40	47	1,633	+12.9
Heroin	I	21-30	15	1,066	+8.2	Heroin	I	21-30	24	1,274	+8.9
Marijuana	I	11-20	20	4,004	+9.3	Marijuana	I	11-20	22	6,333	+21.4
Marijuana	I	21-30	29	1,666	+8.5	Marijuana	I	21-30	34	2,392	+12.7
Meth	I	21-30	29	968	+8.0	Meth	I	21-30	30	966	+11.4
					Mean Standard Deviation =						+8.6
											+12.4

Like the other primary guidelines, drug offenders were matched based on Final Offense Level and Criminal History Category. Offenders were also matched based on the specific drug type. When comparing the clusters of common outcomes for §2D1.1 cases based on these factors, there were nine matched outcomes that appeared in both the *Booker* and *Gall* Periods.

Averaging the individual standard deviations for each common outcome results in an overall average standard deviation of 8.6 for the *Booker* Period compared to 12.4 for the *Gall* Period, demonstrating increasing variation among the districts in sentencing §2D1.1 offenders after the *Booker* Period.

§2D1.1 Matched Analysis Gall Period					
Drug	CHC	FOL	N. Districts	N. Cases	SD
Cocaine	I	11-20	26	945	+16.8
Cocaine	I	21-30	67	4,836	+9.9
Cocaine	I	31-40	24	1,454	+8.4
Crack	I	21-30	39	1,236	+12.2
Crack	VI	21-30	27	840	+11.5
Crack	VI	31-40	47	1,633	+12.9
Heroin	I	21-30	24	1,274	+8.9
Marijuana	I	11-20	22	6,333	+21.4
Marijuana	I	21-30	34	2,392	+12.7
Meth	I	21-30	30	966	+11.4
Mean Standard Deviation =					+12.6

§2D1.1 Matched Analysis Post-Report Period					
Drug	CHC	FOL	N. Districts	N. Cases	SD
Cocaine	I	11-20	36	1,801	+16.2
Cocaine	I	21-30	57	5,749	+13.1
Cocaine	I	31-40	22	2,068	+11.4
Crack	I	21-30	26	673	+15.8
Crack	VI	21-30	38	1,101	+13.6
Crack	VI	31-40	34	905	+16.0
Heroin	I	21-30	43	2,392	+14.4
Marijuana	I	11-20	28	5,501	+20.0
Marijuana	I	21-30	24	2,095	+16.2
Meth	I	21-30	38	1,952	+12.7
Mean Standard Deviation =					+14.9

Comparing the latter two periods, ten matched outcomes appeared in both the *Gall* and Post-Report Periods.

Averaging the individual standard deviations for each common outcome results in an overall average standard deviation of 12.6 for the *Gall* Period compared to 14.9 for the Post-Report Period, demonstrating a continuing increase in variation among the districts in sentencing §2D1.1 offenders from the *Gall* Period to the Post-Report Period.

When compared with the results of the primary analysis, the trends are the same. Both the primary and the matched analysis demonstrated an increasing standard deviation from the *Booker* to *Gall* Periods, and then again from the *Gall* to the Post-Report Periods.

Comparison of Primary and Matched Analyses			
Guideline	Methodology	Change in Standard Deviation	
		<i>Booker to Gall</i>	<i>Gall to Post-Report</i>
§2D1.1	Primary Analysis	+ 1.9	+ 1.9
	Matched Analysis	+ 3.8	+ 2.3



RESULTS

USSG §2K2.1 Matched Analysis

§2K2.1 Matched Analysis <i>Booker</i> Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	15	393	+13.8
III	17	11	239	+7.3
IV	17	10	227	+7.3
Mean Standard Deviation =				+9.5

§2K2.1 Matched Analysis <i>Gall</i> Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	22	552	+19.4
III	17	20	455	+10.7
IV	17	15	319	+9.6
Mean Standard Deviation =				+13.2

When comparing the clusters of common outcomes for §2K2.1 cases, there were three matched outcomes that appeared in both the *Booker* and *Gall* Periods.

Averaging the individual standard deviations for each common outcome results in an overall average standard deviation of 9.5 for the *Booker* Period compared to 13.2 for the *Gall* Period, demonstrating increasing variation among the districts in sentencing §2K2.1 offenders after the *Booker* Period.

§2K2.1 Matched Analysis Gall Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	22	552	+19.4
III	17	20	455	+10.7
IV	17	15	319	+9.6
IV	21	10	208	+6.1
VI	21	14	345	+6.7
Mean Standard Deviation =				+10.5

§2K2.1 Matched Analysis Post-Report Period				
CHC	FOL	N. Districts	N. Cases	SD
I	12	18	623	+25.5
III	17	33	1,055	+14.2
IV	17	32	799	+10.9
IV	21	26	599	+11.4
VI	21	24	651	+11.6
Mean Standard Deviation =				+14.7

Comparing the latter two periods, five matched outcomes appeared in both the *Gall* and Post-Report Periods.

Averaging the individual standard deviations for each common outcome results in an overall average standard deviation of 10.5 for the *Gall* Period compared to 14.7 for the Post-Report Period, demonstrating a continuing increase in variation among the districts in sentencing §2K2.1 offenders from the *Gall* Period to the Post-Report Period.

When compared with the results of the primary analysis, the same trends remain. Both the primary and the matched analysis demonstrated an increasing standard deviation from the *Booker* to *Gall* Periods, and then again from the *Gall* to the Post-Report Periods.

Comparison of Primary and Matched Analyses			
Guideline	Methodology	Change in Standard Deviation	
		<i>Booker</i> to <i>Gall</i>	<i>Gall</i> to Post-Report
§2K2.1	Primary Analysis	+ 1.3	+ 0.4
	Matched Analysis	+ 3.7	+ 4.2



RESULTS

USSG §2L1.2 Matched Analysis

§2L1.2 Matched Analysis <i>Booker</i> Period				
CHC	FOL	N. Districts	N. Cases	SD
II	21	15	969	+8.6
III	21	26	1,767	+9.2
IV	21	17	1,173	+9.4
V	21	10	593	+9.4
VI	21	13	668	+10.7
Mean Standard Deviation =				+9.5

§2L1.2 Matched Analysis <i>Gall</i> Period				
CHC	FOL	N. Districts	N. Cases	SD
II	21	24	1,720	+13.9
III	21	35	3,043	+9.9
IV	21	26	1,985	+12.5
V	21	15	956	+11.1
VI	21	13	830	+12.0
Mean Standard Deviation =				+11.9

When comparing the clusters of common outcomes for §2L1.2 cases based on these factors, there were five matched outcomes that appeared in both the *Booker* and *Gall* Periods.

Averaging the individual standard deviations for each common outcome results in an overall average standard deviation of 9.5 for the *Booker* Period compared to 11.9 for the *Gall* Period, demonstrating increasing variation among the districts in sentencing §2L1.2 offenders after the *Booker* Period.

§2L1.2 Matched Analysis Gall Period				
CHC	FOL	N. Districts	N. Cases	SD
II	21	24	1,720	+13.9
III	10	21	3,908	+22.3
III	21	35	3,043	+9.9
IV	10	15	2,916	+19.9
IV	21	26	1,985	+12.5
V	10	10	1,448	+25.8
Mean Standard Deviation =				+17.4

§2L1.2 Matched Analysis Post-Report Period				
CHC	FOL	N. Districts	N. Cases	SD
II	21	22	2,796	+12.9
III	10	36	6,774	+14.7
III	21	33	4,148	+11.6
IV	10	19	3,747	+19.2
IV	21	20	2,189	+11.9
V	10	12	2,034	+15.1
Mean Standard Deviation =				+14.2

Comparing the latter two periods, six matched outcomes appeared in both the *Gall* and Post-Report Periods.

Averaging the individual standard deviations for each common outcome results in an overall average standard deviation of 17.4 for the *Gall* Period compared to 14.2 for the Post-Report Period, which was a reversal of the trend and indicates decreased variation among the districts in sentencing §2L1.2 offenders from the *Gall* Period to the Post-Report Period.

When compared with the results of the primary analysis, the trends are again consistent. Both the primary and the matched analysis demonstrated an increasing standard deviation from the *Booker* to *Gall* Periods, with a reversal of the trend from the *Gall* to the Post-Report Periods.

Comparison of Primary and Matched Analyses			
Guideline	Methodology	Change in Standard Deviation	
		<i>Booker</i> to <i>Gall</i>	<i>Gall</i> to Post-Report
§2L1.2	Primary Analysis	+ 4.7	- 1.3
	Matched Analysis	+ 2.4	- 3.2



RESULTS

Summary of Matched Analysis

Comparison of Primary and Matched Analyses			
Guideline	Methodology	Change in Standard Deviation	
		<i>Booker to Gall</i>	<i>Gall to Post-Report</i>
§2B1.1	Primary Analysis	+ 0.6	+ 0.7
	Matched Analysis	+ 4.9	- 0.3
§2D1.1	Primary Analysis	+ 1.9	+ 1.9
	Matched Analysis	+ 3.8	+ 2.3
§2K2.1	Primary Analysis	+ 1.3	+ 0.4
	Matched Analysis	+ 3.7	+ 4.2
§2L1.2	Primary Analysis	+ 4.7	- 1.3
	Matched Analysis	+ 2.4	- 3.2

This matched analysis tests whether the findings of the primary analysis set forth in the text of this publication remained consistent when further limiting the guideline-specific datasets to more precisely matched cases. That is, does an analysis of a smaller, more comparable set of cases (matched on key sentencing factors) confirm the trends observed in the primary analyses?

As reflected in the summary table above, the overall trends observed in the primary analysis remained consistent when analyzing a smaller and more comparable set of cases within each offense type.

This secondary analysis also demonstrates that sentencing differences increased uniformly across each of the primary guidelines analyzed in this publication when comparing the *Booker to Gall* Periods, which, in

turn, indicates that sentencing outcomes increasingly depended upon the district in which the defendant was sentenced. Also, like the primary analysis, this trend continued in the secondary analyses of some, but not all, primary guidelines from the *Gall* to the *Post-Report* Periods. Most notably, the analysis demonstrated stability or increased variation from the *Gall* to *Post-Report* Periods, with the notable exception of sentencing in §2L1.2 cases. In that analysis, the secondary analysis confirmed the primary analysis's conclusion that sentencing practices among districts in §2L1.2 cases have become more similar since *Gall*, and more specifically, since the Commission made substantial changes to the guideline effective in 2016.

As a result, the generally consistent trends seen in the matched analysis serve as a confirmation of the primary analyses.

- 1 The Commission's data collection and dissemination efforts are consistent with its statutory mission as established in the Sentencing Reform Act of 1984. The 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. §§ 995(a)(14)–(16), (20).
- 2 543 U.S. 220 (2005).
- 3 U.S. SENTENCING COMM'N, REPORT ON THE CONTINUING IMPACT OF *UNITED STATES V. BOOKER* ON FEDERAL SENTENCING (2012), <https://www.ussc.gov/research/congressional-reports/2012-report-congress-continuing-impact-united-states-v-booker-federal-sentencing> (“2012 *BOOKER* REPORT”).
- 4 *See* USSG §1B1.1, comment. (backg'd) (“Subsections (a), (b), and (c) [of §1B1.1] are structured to reflect the three-step process used in determining the particular sentence to be imposed. If, after step (c), the court imposes a sentence that is outside the guidelines framework, such a sentence is considered a ‘variance.’); *see also* *United States v. Rangel*, 697 F.3d 795, 801 (9th Cir. 2012), cert. denied, 133 S. Ct. 1294 (2013) (“A ‘departure’ is typically a change from the final sentencing range computed by examining the provisions of the Guidelines themselves. . . . A ‘variance,’ by contrast, occurs when a judge imposes a sentence above or below the otherwise properly calculated final sentencing range based on application of the other statutory factors in 18 U.S.C. § 3553(a).”).
- 5 2012 *BOOKER* REPORT, *supra* note 3, at 89.
- 6 *See* U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT (2017) (“DEMOGRAPHIC DIFFERENCES REPORT”).
- 7 *Id.* at 2 (analysis of data from fiscal years 2012 to 2016 found that Black males received a 19.1% higher sentence on average than White males).
- 8 U.S. SENTENCING COMM'N, INTRA-CITY DIFFERENCES IN FEDERAL SENTENCING PRACTICES (2019) (“INTRA-CITY REPORT”).
- 9 *Mistretta v. United States*, 488 U.S. 361, 366 (1989); *see also* William W. Wilkins, Phyllis J. Newton & John R. Steer, *The Sentencing Reform Act of 1984: A Bold Approach to the Unwarranted Sentencing Disparity Problem*, 2 CRIM. L. F. 355 (1991). Senator Kennedy, the leading sponsor of the SRA, referred to Congress's concern over sentencing disparities as being “the major impetus for sentencing reform.” Edward M. Kennedy, *Toward a New System of Criminal Sentencing: Law with Order*, 16 AM. CRIM. L. REV. 353, 357 (1979).
- 10 REPORT OF THE COMMITTEE OF THE JUDICIARY, UNITED STATES SENATE, S. REP. No. 98-225, 98th Cong. (1st Sess.), at 41–42 (Sept. 14, 1983) (discussing sentencing disparities studies considered by Congress in enacting the SRA); *see also* MARVIN E. FRANKEL, CRIMINAL SENTENCES: LAW WITHOUT ORDER 6–7 (1973) (criticizing the “wild array of sentencing judgments [in federal court] without any semblance of the consistency demanded by our ideal of equal justice” and observing that the type and length of federal sentences for similar situated offenders “depend[ed] on the judge” drawn by the defendants).
- 11 The *Booker* Period (January 12, 2005–December 9, 2007); the *Gall* Period (December 10, 2007–September 30, 2011); and the Post-Report Period (October 1, 2011–September 30, 2017).
- 12 Two provisions were directed to the Commission, while the third was directed to sentencing judges. *See* 18 U.S.C. § 3553(a)(6); 28 U.S.C. §§ 991(b)(1)(B), 994(f).
- 13 28 U.S.C. §§ 991(b)(1)(B), 994(f).
- 14 *Booker*, 543 U.S. at 263; *see also id.* at 264 (“The system remaining . . . , while lacking the mandatory features that Congress enacted, retains other features that help to further these objectives [including avoiding unwarranted sentencing disparities].”).
- 15 518 U.S. 81 (1996).
- 16 542 U.S. 296 (2004).



17 543 U.S. 220 (2005).

18 *Gall v. United States*, 552 U.S. 38 (2007); *Kimbrough v. United States*, 552 U.S. 85 (2007).

19 See 2012 *BOOKER REPORT*, *supra* note 3, at 54–55.

20 *Id.* at 89.

21 *Id.*

22 The “post-report period” discussed in the Commission’s 2017 report on demographic differences spanned fiscal years 2012 through 2016. See *DEMOGRAPHIC DIFFERENCES REPORT*, *supra* note 6, at 6. The updated data analyses described in this report do not include the *Koon* and PROTECT Act periods that were part of the 2012 and 2017 data analyses.

23 See, e.g., U.S. SENTENCING COMM’N, 2018 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 84 (2019) (Table 29) (51.0% of all cases had within range sentences, and 2.6% of cases had above range sentences).

24 See USSG §§5G1.1(b) (“Where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence.”) & 5G1.1(c)(2) (“[T]he sentence may be imposed at any point within the applicable guideline range, provided that the sentence . . . is not less than any statutorily required minimum sentence.”). For example, if a defendant’s guideline range before application of a 120-month statutory mandatory minimum sentence was 78–97 months—resulting in a guideline range of 120–120 months under USSG §5G1.1(b)—that case was excluded because the court had no sentencing discretion to impose a sentence less than 120 months.

The Commission also excluded all cases with sentences imposed under the Armed Career Criminal Act (18 U.S.C. § 924(e)) even if those cases did not involve a mandatory minimum trump. Section 924(e) requires a 180-month mandatory minimum sentence, which is above the otherwise applicable guideline minimums for many armed career criminals and only eight months below the guideline minimums for the most serious offenders sentenced under §4B1.4 (after full credit for acceptance of responsibility under USSG §3E1.1). See USSG §4B1.4 (Armed Career Criminal) & Ch.5, Pt.A (Sentencing Table) (guideline range, after a 3-level reduction for acceptance of responsibility, for defendants with highest offense level and highest Criminal History Category, *i.e.*, offense level 31 and CHC VI, is 188–235 months). For these reasons, judges’ discretion to sentence below the statutory minimum is so circumscribed that the Commission has excluded all section 924(e) cases from the current study’s analysis.

25 See 18 U.S.C. § 3553(e); USSG §§5K1.1, 5K.3.1; see also U.S. Sentencing Commission Staff Working Group, *Federal Sentencing Practices: Sentence Reductions Based on Defendants’ Substantial Assistance to the Government*, 11 FED. SENT’G REP. 18, 23 (1998) (noting that substantial assistance motions “were almost always granted” once filed by the prosecution); L. Felipe Restrepo, *To Be Or Not To Be A Cooperating Defendant*, 7 CRIM. JUST. 25 (Winter 1993) (“Practically speaking, judges rarely deny the [substantial assistance] motion outright . . .”).

26 *INTRA-CITY REPORT*, *supra* note 8, at 14–15.

27 Until the Supreme Court decided *Dean v. United States*, 137 S. Ct. 1170 (2017), it was unclear whether district courts in such cases had the authority to vary below the guideline range for another count of conviction (e.g., robbery, sentenced under USSG §2B3.1) to account for a perceived excessive total penalty level resulting from a consecutive statutory mandatory minimum sentence such as that required by section 924(c). Before *Dean*, some judges varied on that ground (see, e.g., *United States v. Roberson*, 573 F. Supp.2d 1040 (N.D. Ill. 2008) (varying from the guideline minimum of 46 months for a bank robbery conviction to one month to account for a 84-month consecutive sentence under § 924(c)), while others believed that they had no such authority to vary on that ground. The percent difference from the guideline minimum in cases where courts did vary on that ground was usually very substantial. Because the extent of a below range sentence was often extremely large when a judge varied—and thereby could skew those judges’ average percent differences from the guideline minimums compared to the average percent difference of judges who did not believe they could vary on that ground—all cases with a count of conviction under 18 U.S.C. §§ 924(c) or 1028A or other statutes requiring a consecutive mandatory sentence of imprisonment were excluded from the Commission’s analysis. In addition, the Commission excluded cases with a single count of conviction under such a statute because a court lacked authority to depart or vary downwardly in such cases.

28 Since 2010, when the Commission amended the Sentencing Table to expand Zone B by one offense level, a case

with a guideline minimum of less than ten months necessarily has fallen in Zones A or B of the Sentencing Table. Before 2010, cases with guideline minimums of eight or nine months fell within Zone C. To ensure consistency in the Commission's analysis of cases from fiscal year 2005 through fiscal year 2017, the Commission has excluded all cases with guideline minimums less than ten months for that entire time period rather than exclude cases based on their zone designation. The Commission excluded such cases for two reasons. First, because all cases in Zone A have guideline minimums of zero months, judges cannot depart or vary below the minimum and, in addition, there is no mathematical way to calculate the percent difference from the guideline minimum when a court imposes a sentence above the minimum in such cases. Second, because all ranges with guideline minimums below ten months are narrow and their minimums are low (e.g., 0–6 months, 6–12 months), sentences imposed above or below the guideline minimums have a much greater or much lesser percent difference than typical sentences above or below the guideline minimums in Zones C and D. The latter ranges have higher and broader ranges of months (e.g., 12–18 months, 46–57 months, and 121–151 months). Including cases with guideline minimums below ten months would thus skew the average percent difference analysis.

29 See U.S. SENTENCING COMM'N, 2018 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Appendix B (2019) ("SOURCEBOOK").

30 Of all major guideline types, illegal reentry (§2L1.2) had the highest within-range rate from fiscal year 2005 to fiscal year 2017 (after the case exclusions discussed below), while drug trafficking (§2D1.1) had one of the lowest within-range rates:

Average Within-Range Rates (Fiscal Years 2005–2017)

§2B1.1: 46.0%

§2D1.1: 46.1%

§2K2.1: 60.8%

§2L1.2: 61.1%

Other: 49.6%

31 Collectively, offenders sentenced under these four guidelines comprised 71.5% of the federal caseload in fiscal year 2018, and 69.4% of the caseload in the 13 years covered in this study.

32 See SOURCEBOOK, *supra* note 29, at 207.

33 Of the 674,652 cases, 17,654 were excluded because of incomplete sentencing information in those cases. Such cases were excluded because they did not allow the Commission to make determinations such as the guideline minimum in a case or whether a statutory mandatory minimum penalty applied.

An additional 311,257 cases were subsequently excluded under one or more of the five exclusionary criteria. Of the 311,257 cases, 35.7% had their guideline minimums trumped by a statutory mandatory minimum or were subject to a mandatory minimum sentence under the Armed Career Criminal Act; 51.3% had a substantial assistance or fast-track departure; 7.4% had at least one mandatory consecutive statutory minimum sentence under a statute such as section 924(c); 17.1% had a guideline minimum of life imprisonment or involved an upward departure or variance to life imprisonment; and 37.6% had guideline minimums of less than ten months. Some cases fell within more than one of these groups, which explains why these percentages exceed the total of excluded cases mentioned above.

34 Even if a district had at least 50 cases in a given period, it may not have been included in the analysis of one or both of the other periods studied depending on the size of the district's caseloads in those periods.

35 See *Gall*, 552 U.S. at 49, 50 n.6; see also *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1903-04, 1908 (2018); *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1349 (2016); *Peugh v. United States*, 569 U.S. 530, 535, 542, 545 (2013). The three-step *Booker* process is discussed at USSG §1B1.1, comment. (backg'd).

36 Of the cases in which judges imposed sentences outside of the guideline ranges, judges departed or varied downwardly in 95.4% of cases and departed or varied upwardly in 4.6% of cases (a nearly 21:1 ratio between downward and upward departures and variances).

37 See MICHAEL O. FINKELSTEIN & BRUCE LEVIN, STATISTICS FOR LAWYERS 22 (2d ed. 2000).



38 Ottavania v. State University of New York at New Paltz, 875 F.2d 365, 371 (2d Cir. 1989) (citation and internal quotation marks omitted).

39 After excluding the five categories of cases identified above, along with cases for which incomplete sentencing documentation was submitted to the Commission, 460,930 of the total 972,783 cases (47.4%) during fiscal years 2005 to 2017 remained for analysis. The cases from one district (Northern Mariana Islands) were also excluded because that district sentenced fewer than 50 offenders in each period. As a result, the Commission's combined analysis presented on page 21 compares 93 districts in each of the periods and a total of 460,826 cases (100,563 cases in the Booker Period; 142,960 in the Gall Period; and 217,303 in the Post-Report Period).

40 Collectively, offenders sentenced under these four guidelines comprised 71.5% of the federal caseload in fiscal year 2018, and 69.4% of the caseload in the 13 years covered in this study.

41 In addition to the primary analysis set forth in the text below, Appendix C discusses statistical outliers in the analysis, including a re-calculation of spread and standard deviation excluding the outlier districts.

42 Of the 52,622 cases, 13.8% had their guideline minimums trumped by a statutory mandatory minimum or were subject to a mandatory minimum sentence under the Armed Career Criminal Act; 26.2% had a substantial assistance or fast-track departure; 14.0% had at least one mandatory consecutive statutory minimum sentence under a statute such as section 924(c); 34.2% had a guideline minimum of life imprisonment or involved an upward departure or variance to life imprisonment; and 66.6% had guideline minimums of less than ten months. Some cases fell within more than one of these groups, which explains why these percentages exceed the total percentage of excluded cases mentioned above.

43 Of the 125,013 cases, 37.2% had their guideline minimums trumped by a statutory mandatory minimum or were subject to a mandatory minimum sentence under the Armed Career Criminal Act; 68.8% had a substantial assistance or fast-track departure; 11.0% had at least one mandatory consecutive statutory minimum sentence under a statute such as section 924(c); 3.8% had a guideline minimum of life imprisonment or involved an upward departure or variance to life imprisonment; and 6.4% had guideline minimums of less than ten months. Some cases fell within more than one of these groups, which explains why these percentages exceed the total percentage of excluded cases mentioned above.

44 Of these remaining §2D1.1 cases, only 28.5% (44,249 of 155,089 cases) involved offenders who were subject to statutory mandatory minimum sentences. In all those cases, however, judges retained discretion to sentence below the guideline minimums (down to the statutory minimums) because none involved mandatory minimum "trumps." In most of those cases, courts sentenced well above the statutory mandatory minimum sentence even as they departed or varied below the guideline range, suggesting that prosecutorial charging decisions did not constrain the courts' sentencing discretion in such cases. In over 95% of the 44,249 cases subject to mandatory minimum penalties (42,862 or 96.9%), defendants were subject to either 60- or 120-month mandatory minimum sentences. The remaining 3.1% of cases had a wide variety of statutes requiring mandatory minimum sentences ranging from one month to 300 months. Of the remaining §2D1.1 cases with 60-month mandatory minimum sentences, the average guideline minimum was 113 months and the average sentence imposed was 100 months (40 months above the statutory mandatory minimum). Of the remaining §2D1.1 cases with 120-month mandatory minimum sentences, the average guideline minimum was 197 months and the average sentence imposed was 176 months (56 months above the mandatory minimum).

45 USSG App. C, amend. 706 (effective Nov. 1, 2007), as amended by amend. 711 (effective Nov. 1, 2007); Spears v. United States, 555 U.S. 261 (2009).

46 *Id.*

47 USSG App. C, amend. 713 (effective Mar. 3, 2008). Under 28 U.S.C. § 994(u), when the Commission reduces a guideline range, it is directed to specify whether, and in what circumstances, the reduction should apply to offenders who had been sentenced under the previous, higher version of the guideline.

48 See Fair Sentencing Act of 2010, Pub. L. No. 111-220, §§ 2-3, 124 Stat. 2372 (Aug. 3, 2010).

49 Congress recently made the Fair Sentence Act statutory changes retroactive as part of the First Step Act of 2018. See First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194 (Dec. 21, 2018).

50 USSG App. C, amend. 750 (effective Nov. 1, 2011) (implementing as permanent the temporary, emergency

amendment (USSG App. C, amend. 748 (effective Nov. 1, 2010)) that implemented the Fair Sentencing Act of 2010); USSG App. C, amend. 759 (effective Nov. 1, 2011).

51 USSG App. C, amend. 782 (effective Nov. 1, 2014) (reducing drug trafficking offense penalties across all drug types); USSG App. C, amend. 788 (effective Nov. 1, 2014) (making the 2-level reduction for all drug types retroactive with the proviso that no offender may be released before November 1, 2015).

52 USSG App. C, amend. 782, Reason for Amendment.

53 See Webcast: Analysis of Drug Trafficking Offenders and Guidelines, Fig. 6, U.S. SENTENCING COMM'N (Jan. 9, 2014), <https://www.ussc.gov/education/videos/webcast-analysis-drug-trafficking-offenders-and-guidelines>.

54 Of the 15,448 cases, 55.0% had their guideline minimums trumped by a statutory mandatory minimum or were subject to a mandatory minimum sentence under the Armed Career Criminal Act; 43.6% had a substantial assistance or fast-track departure; 12.2% had at least one mandatory consecutive statutory minimum sentence under a statute such as section 924(c); 4.9% had a guideline minimum of life imprisonment or involved an upward departure or variance to life imprisonment; and 13.1% had guideline minimums of less than ten months. Some cases fell within more than one of these groups, which explains why these percentages exceed the total percentage of excluded cases mentioned above.

55 Of these remaining §2K2.1 cases, only 0.5% (331 of 61,303 cases) involved offenders who were subject to statutory mandatory minimum sentences. In all of those cases, however, judges retained discretion to sentence below the guideline minimums (down to the statutory minimums) because none involved mandatory minimum “trumps.” In most of those cases, courts sentenced well above the statutory mandatory minimum sentence even as they departed or varied below the guideline range, suggesting that prosecutorial charging decisions did not constrain the courts’ sentencing discretion in such cases. In over half of the 331 cases subject to mandatory minimum penalties (176, or 53.2%), defendants were subject to a 60-month mandatory minimum sentence. Of these §2K2.1 cases with 60-month mandatory minimum sentences, the average guideline minimum was 133 months and the average sentence imposed was 120 months (60 months above the statutory mandatory minimum). The remaining 48.8% of cases had a wide variety of statutes requiring mandatory minimum sentences ranging from one month to 240 months, but demonstrated the same trend. For example, of those §2K2.1 cases with 120-month mandatory minimum sentences, the average guideline minimum was 236 months and the average sentence imposed was 191 months (71 months above the mandatory minimum); those offenders subject to a one-year mandatory minimum penalty had an average guideline minimum of 88 months and an average sentence imposed of 79 months (67 months above the mandatory minimum).

56 Of the 118,174 cases, 0.1% had their guideline minimums trumped by a statutory mandatory minimum or were subject to a mandatory minimum sentence under the Armed Career Criminal Act; 45.1% had a substantial assistance or fast-track departure; 0.1% had at least one mandatory consecutive statutory minimum sentence under a statute such as section 924(c); 25.2% had a guideline minimum of life imprisonment or involved an upward departure or variance to life imprisonment; and 61.0% had guideline minimums of less than ten months. Some cases fell within more than one of these groups, which explains why these percentages exceed the total percentage of excluded cases mentioned above.

57 See USSG App. C, amend. 802 (effective Nov. 1, 2016).

58 See *id.* (noting that, “[i]n fiscal year 2015, only 29.7% of defendants who received the 16-level enhancement were sentenced within the applicable sentencing guideline range, and only 32.4% of defendants who received the 12-level enhancement were sentenced within the applicable sentencing guideline range”).

59 While the within guideline range rate was historically high in illegal reentry cases (55.4% in fiscal year 2013; 56.0% in fiscal year 2014; 58.1% in fiscal year 2015; 59.2% in fiscal year 2016), it has increased by more than ten percentage points in fiscal year 2018 to 69.3% in the wake of the 2016 amendment. See SOURCEBOOK, *supra* note 29, at Table I-7.

60 See USSG App. C, amend. 802 (effective Nov. 1, 2016).

61 See 2012 BOOKER REPORT, *supra* note 3, at 60–61.

62 See *Gall*, 552 U.S. at 50 n.6; see also *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1903–04, 1908 (2018);



Molina-Martinez v. United States, 136 S. Ct. 1338, 1349 (2016); Peugh v. United States, 569 U.S. 530, 535, 542, 545 (2013). The three-step *Booker* process is discussed at USSG §1B1.1, comment. (backg'd).

63 See 2012 *BOOKER* REPORT, *supra* note 3, at 62–66.

64 *Id.*, at 67–68.

65 See FINKELSTEIN & LEVIN, *supra* note 37, at 18–19; see also FEDERAL JUDICIAL CENTER, REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 298 (3d ed. 2011).

66 REBECCA M. WARNER, APPLIED STATISTICS: FROM BIVARIATE THROUGH MULTIVARIATE TECHNIQUES 1114 (2d ed. 2013).

67 See FINKELSTEIN & LEVIN, *supra* note 37, at 18–19 (discussing the manner in which the standard deviation is calculated); WARNER, *supra* note 66, at 59 (same). Reporting the standard deviation is preferable to reporting the variance. The variance, which is the standard deviation squared, is more sensitive to outliers than the standard deviation because the influence of an outlier is magnified (insofar as the outlier's average percent difference from the guideline minimum is squared in calculating the variance).

68 FEDERAL JUDICIAL CENTER, REFERENCE MANUAL ON SCIENTIFIC EVIDENCE, *supra* note 65, at 291.

69 *Id.*

70 See, e.g., NANCY PFENNING, ELEMENTARY STATISTICS 96–97 (2011) (discussing the 1.5 x IQR test).

71 Although there were 92 different districts analyzed, districts were often included in more than one period and for more than one of the different primary guideline analyses. Therefore, the outlier analysis includes a total of 910 unique analyses of district-level sentencing practices in the dataset during the three periods. Note that a district could be an outlier in one period but not an outlier in a different period.

72 Matching is a commonly utilized technique in research to ensure study groups have similar characteristics. See ELIZABETH A. STUART & DONALD B. RUBIN, *Best Practices in Quasi-Experimental Designs: Matching Methods for Causal Inference*, BEST PRACTICES IN QUANTITATIVE METHODS 155-176 (2008) (noting that “preexisting differences between the groups must be controlled to obtain approximately unbiased estimates of the effects of interest” and that matching is one method utilized to assist with reducing differences, or bias, between groups). There are numerous matching techniques that allow researchers to specify a desired level of precision ranging from exact matching between groups (*i.e.*, the groups are identical on specified characteristics) to non-exact matching between groups (*i.e.*, the groups are similar but not identical on specified characteristics). All matching techniques have an objective of creating comparable groups that are similar on key characteristics. The Commission used a method of matching case factors controlling the guideline range (*i.e.*, Final Offense Level and Criminal History Category) to control for differences in the nature of the offense within the analyses of a primary guideline.



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