



Fiscal Year 2019

Overview of Federal Criminal Cases

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Fiscal Year 2019

Overview of Federal Criminal Cases

By

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The United States Sentencing Commission¹ received information on 76,656 federal criminal cases in which the offender was sentenced in fiscal year 2019.² Among these cases, 76,538 involved an individual offender and 118 involved a corporation or other “organizational” offender. The Commission also received information on 5,139 cases in which the court resentenced the offender or otherwise modified the sentence that had been previously imposed. This publication provides an overview of these cases.



Federal Caseload at a Glance

The 76,538 individual original cases reported to the Commission in fiscal year 2019 represent an increase of 7,113 (10.2%) cases from fiscal year 2018, the second consecutive annual increase. The number of offenders sentenced in the federal courts reached a peak in fiscal year 2011³ and had declined each year afterward until fiscal year 2018. Although the increase from fiscal years 2018 to 2019 is the largest percentage change in 15 years, the number of cases reported is still almost 10,000 cases below those reported in fiscal year 2011.

The increase in the number of cases in fiscal year 2019 was not distributed evenly across all crime types. Immigration cases increased the most, rising by 5,471 (or 22.9%) from the previous year. Firearms cases grew by 969, representing a 12.9 percent increase and continuing a four-year upward trend. Finally, the number of drug trafficking cases increased by 1,083 cases—a 5.8 percent increase over the previous year—although the number of cases has hovered around 20,000 for each of the past five years.

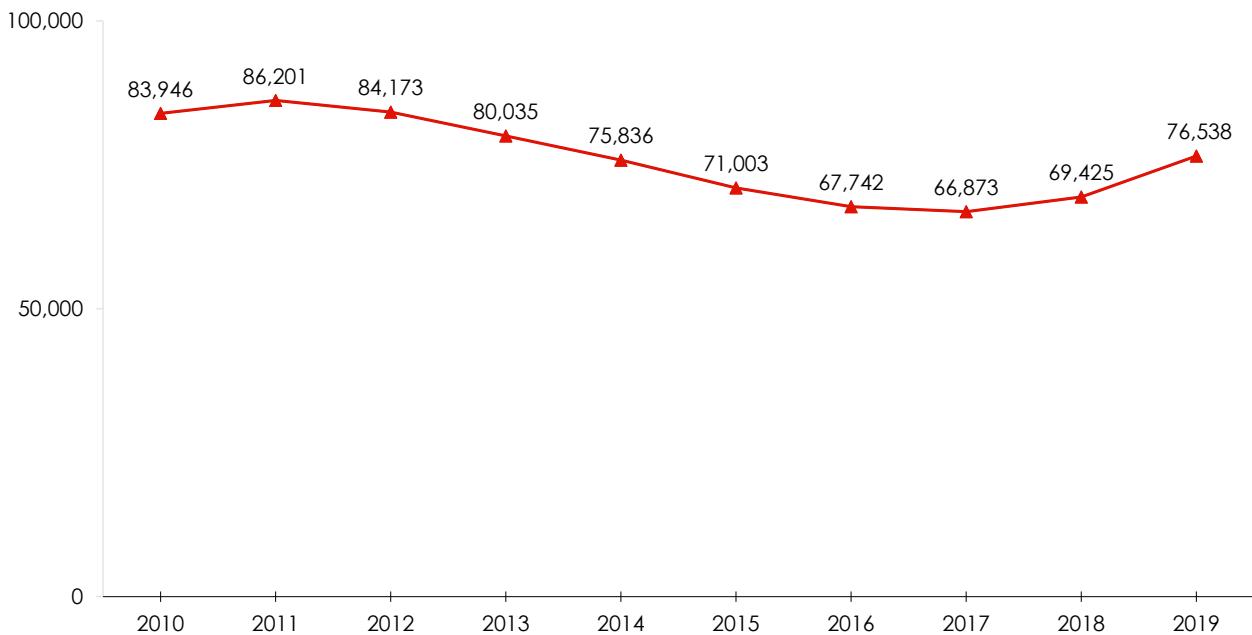
Despite the increase in the overall caseload, the number of offenders sentenced for some case types decreased in fiscal year 2019. While drug trafficking cases increased slightly, the number of drug possession cases decreased to 563—27.5 percent fewer than the year before and a 75.2 percent decrease from fiscal year 2015. The number of fraud, theft, or embezzlement cases also continued to fall, decreasing by 3.5 percent from the year before.

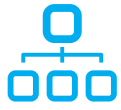
The 10% increase in FY19 marked the second consecutive uptick in the number of federal offenders sentenced annually.

Five judicial districts accounted for 40.8 percent of all individual offenders sentenced in fiscal year 2019. The Western District of Texas reported 12.8 percent of the total number of individual offenders sentenced, followed by the Southern District of Texas at 10.2 percent. The next highest districts were

the District of Arizona (7.3%), the Southern District of California (5.3%), and the District of New Mexico (5.2%). The higher numbers of offenders in these five districts were driven largely by immigration cases; between 59.9 percent (Southern California) and 81.7 percent (New Mexico) of the cases in each of these districts were related to immigration.

Number of Federal Offenders Over Time



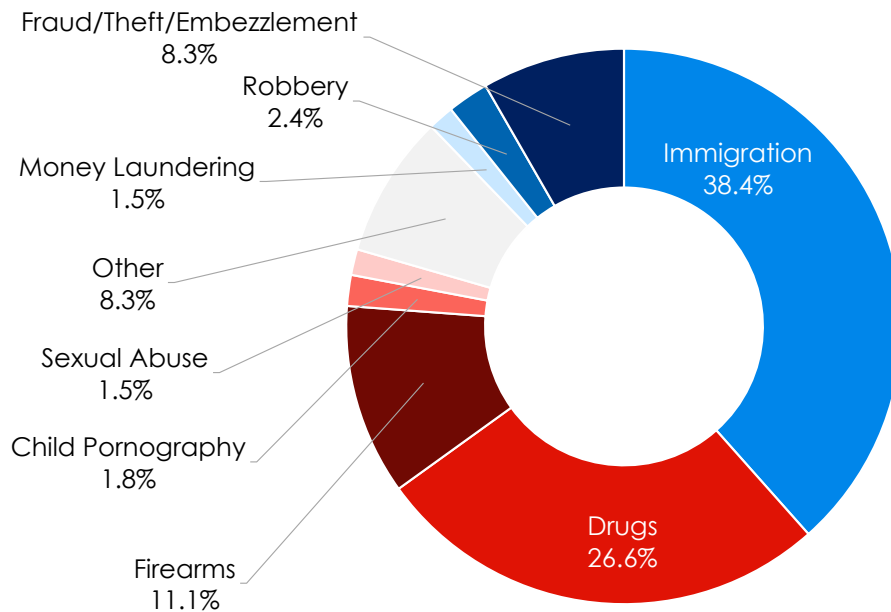


Federal Offenders by Type of Crime



For more than a decade, four crime types have comprised the majority of federal felonies and Class A misdemeanors: drugs, immigration, firearms, and fraud, theft, or embezzlement. This trend continued in fiscal year 2019, as these crime types accounted for 84.4 percent of all cases reported to the Commission. Of all cases reported in the last fiscal year, 96.4 percent were felony offenses.

Federal Offenders by Type of Crime



› Immigration

Immigration offenses continued to be the most common federal crime in fiscal year 2019, accounting for 38.4 percent of the total caseload. The 29,354 immigration cases represented a 22.9 percent increase from the 23,883 cases reported in fiscal year 2018.

› Drugs

Drug offenses of all types were the second most common federal crime in fiscal year 2019. The 20,393 total drug cases reported to the Commission accounted for 26.6 percent of all cases, an increase of 869 cases from the year before.

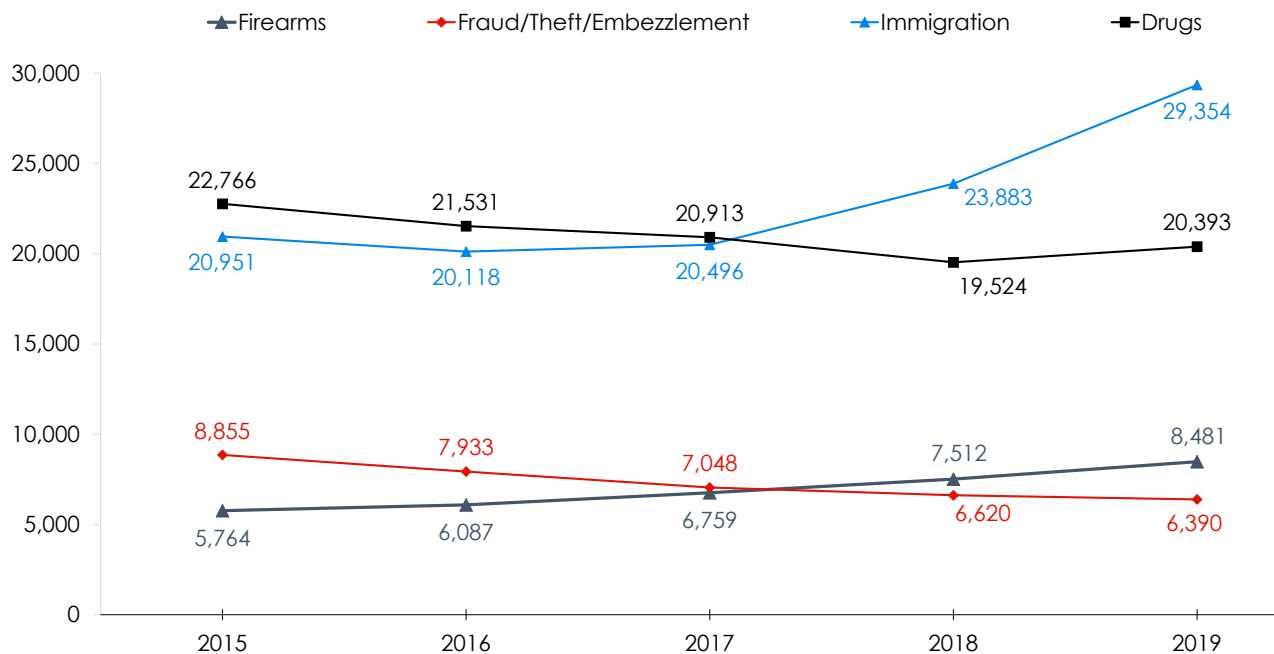
› Firearms

Firearms cases represented the third most common federal offense again in fiscal year 2019. There were 8,481 firearms cases reported to the Commission, accounting for 11.1 percent of the caseload. Firearms offenses have continued to increase not only in number but also as a percentage of the total.

› Fraud, Theft, or Embezzlement

Finally, 6,390 cases involving fraud, theft, or embezzlement were reported to the Commission in fiscal year 2019, accounting for 8.3 percent of the total federal caseload. The number of these cases fell by 3.5 percent from the year before and are 27.8 percent below the number reported in fiscal year 2015.⁴

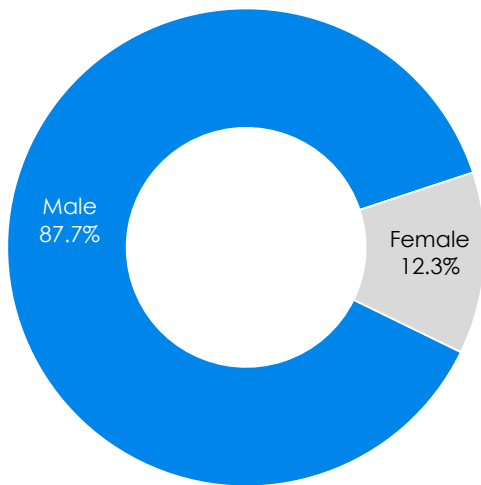
Federal Offenders Over Time by Type of Crime





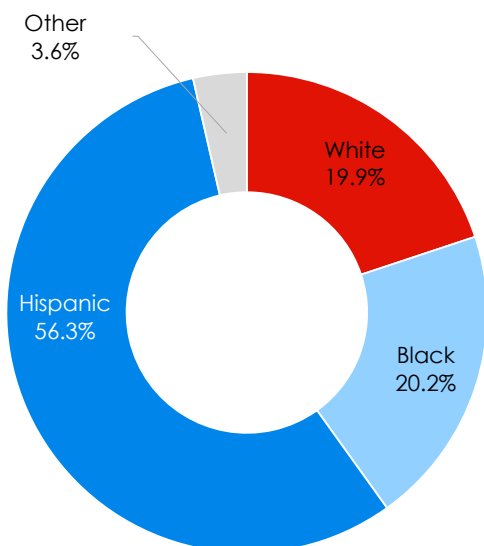
Individual Offender Characteristics

Gender



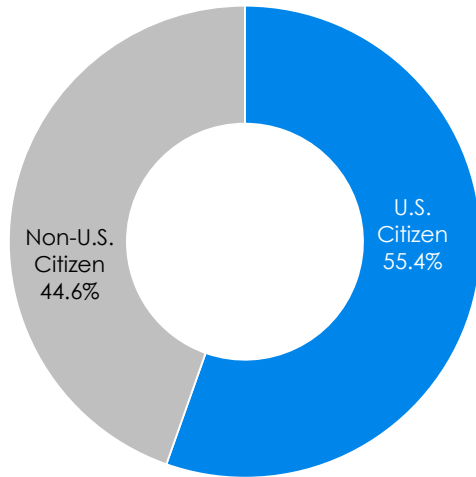
Men continued to outnumber women in the federal offender population in fiscal year 2019, comprising 87.7 percent of offenders. Male offenders were most commonly sentenced for an immigration offense (40.6% of all men sentenced), while female offenders were most commonly involved in drug trafficking offenses (35.4% of all women sentenced).

Race



In fiscal year 2019, 56.3 percent of all federal offenders were Hispanic, while 20.2 percent were Black, and 19.9 percent were White.⁵ The racial distribution of offenders varied widely across offense types. For example, Hispanic offenders made up 96.4 percent of immigration offenders, while White offenders accounted for the majority of child pornography cases (80.3%). Hispanic offenders were most commonly sentenced for immigration offenses (65.8% of all Hispanics), while White and Black offenders were most commonly sentenced for drug trafficking (33.1% and 35.4%, respectively).

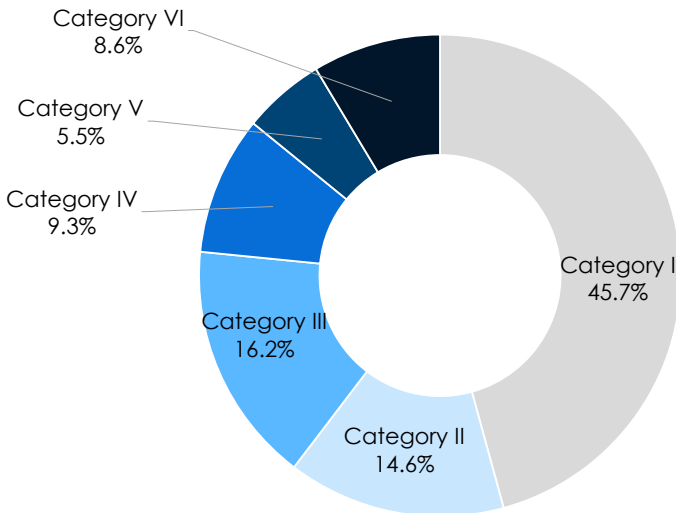
Citizenship



Just over half of all federal offenders were United States citizens (55.4%). Most non-citizen offenders committed an immigration offense (78.8% of non-citizens), while citizens most commonly committed a drug trafficking offense (37.0% of citizens). Non-citizens receive prison-only sentences 96.3 percent of the time, more often than citizens (83.8%).

The average age of offenders in fiscal year 2019 was 36, similar to that of prior years. Offenders in all age groups, except those over 60, were most likely to commit an immigration offense, followed by drug trafficking. Offenders over the age of 60 were most likely to commit a fraud, theft, or embezzlement offense, followed by drug trafficking and immigration offenses. Nearly half of all federal offenders sentenced in fiscal year 2019 (48.5%) had not completed high school, and only 5.5 percent of offenders had completed college.

Criminal History Category



Most federal offenders were assigned to Criminal History Category (CHC) I (45.7%), the lowest category. About one-third of fiscal year 2019 offenders were assigned to CHC II (14.6%) or CHC III (16.2%). The remaining 23.4 percent fell into CHC IV (9.3%), CHC V (5.5%) and CHC VI (8.6%). In fiscal year 2019, 1,737 offenders were deemed to be “career offenders” and 315 offenders were sentenced as “armed career criminals.”

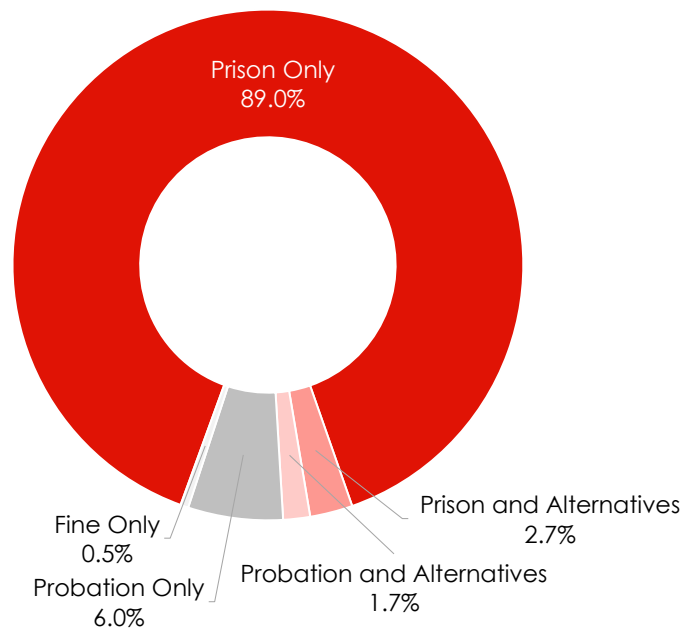


Case Disposition and Sentence Imposed

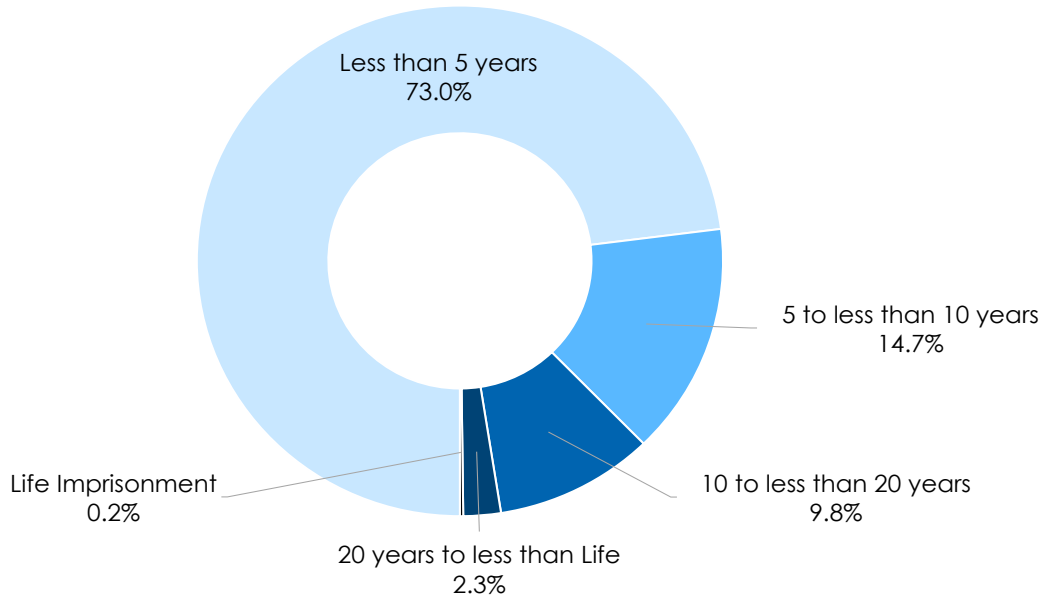
In fiscal year 2019, the vast majority of offenders (97.6%) pleaded guilty. This rate has been consistent for more than 15 years. Defendants charged with more serious crimes pleaded guilty less often; offenders who were convicted of murder, individual rights violations, kidnapping, and arson went to trial in more than 10 percent of those cases.

Most federal offenders convicted of a felony or Class A misdemeanor received a sentence of incarceration. In fiscal year 2019, a prison-only sentence was imposed on 89.0 percent of all offenders. Another 6.0 percent of offenders received a sentence of probation only (*i.e.*, where no type of confinement was imposed), a rate that has decreased over

Sentence Imposed



Average Length of Imprisonment




time from a high of 15.3 percent in 1990.⁶ An additional 1.7 percent of offenders were sentenced to periods of probation and some type of alternative confinement, and 2.7 percent were sentenced to a combination of imprisonment and alternative confinement, such as in a half-way house or home confinement.⁷ Only 0.5 percent of offenders received a fine-only sentence.

The length of sentence imposed in federal cases varied greatly depending on the seriousness of the offense.⁸ Though the average sentence in 2019 was 42 months, offenders convicted of murder received the longest terms of confinement at 255 months on average. Drug possession was punished least severely, with offenders receiving sentences of two months, on average.

The average sentence imposed has increased for some offenses. Drug trafficking offenders, for example, received an average sentence of

76 months in 2019—10 months longer than the average sentence in fiscal year 2015 for that offense. Sexual abuse offenders averaged 205 months' confinement, an increase of 20 months over their average sentence five years ago. However, the average sentence for many offense types continued a five-year downward trend. Drug possession sentences fell three months from 2015 to an average of two months, firearms sentences fell eight months to an average of 50, and immigration sentences fell five months to an average of nine months.⁹

Overall, 73.0 percent of offenders received a sentence of less than five years, 14.7 percent of offenders received a sentence of five years or longer but less than ten years, and 12.2 percent received a sentence of ten years or longer, excluding life imprisonment. In fiscal year 2019, 133 federal offenders were sentenced to life imprisonment and no offenders were sentenced to death.



Courts imposed fines in 6.6 percent of all cases in which an individual offender was sentenced in fiscal year 2019, either as the sole punishment or combined with some other sanction. Fines were most commonly imposed in antitrust (90.0%), environmental (49.7%), and food and drug (41.7%) cases. When the offender was an organization, courts imposed a fine in more than three-quarters of the cases (76.3%).

Courts ordered restitution to be paid to the victim of the crime in 12.5 percent of all cases in which an individual was the offender. Restitution was most commonly ordered in cases involving tax (88.8%), fraud, theft, or embezzlement (75.1%), arson (75.0%), robbery (69.1%), and forgery, counterfeit, or copyright (62.3%). The total amount of restitution ordered was \$7,732,272,449. Restitution was ordered in 28.0 percent of the cases where the offender was an organization for a total of \$158,397,822.

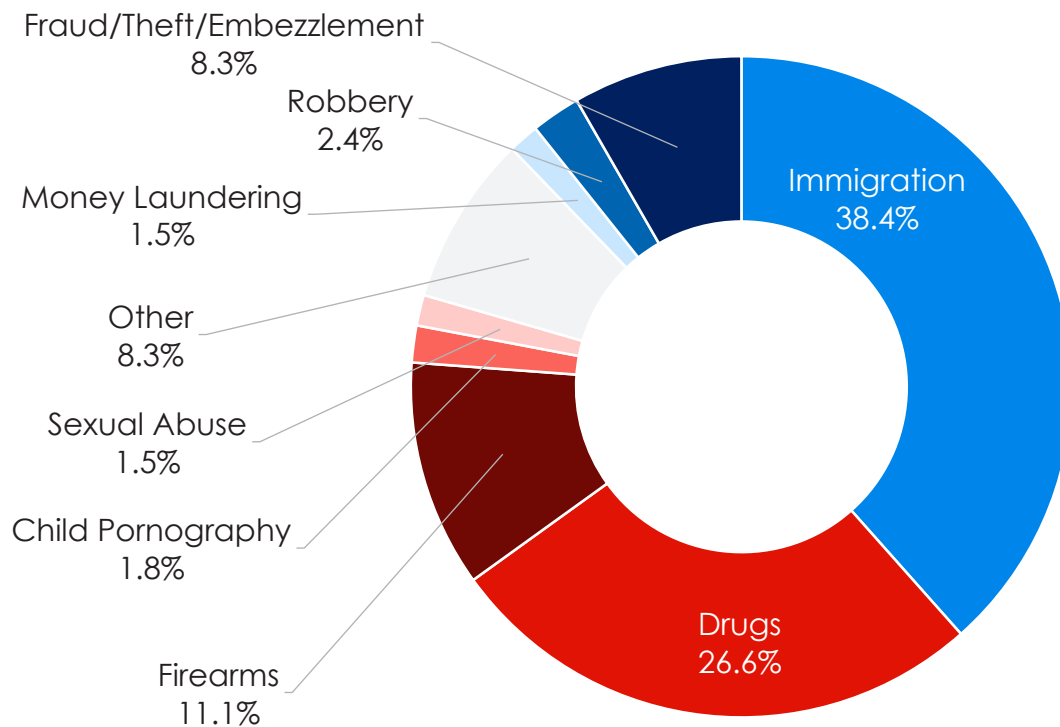
Most offenders were sentenced to serve a period of supervised release—in fiscal year 2019, that figure was 74.8 percent of all offenders. In immigration cases, however, supervised release was imposed in 57.7 percent of the cases, reflecting the fact that many immigration offenders are ordered deported from the United States once they complete their incarceration sentence. Supervised release was imposed in 85.5 percent of all cases not involving immigration.

The average length of supervised release imposed was 44 months, and the median length was 36 months. Sexual abuse and child pornography offenders were sentenced to substantially longer periods of supervised release than other offenders. The average length of supervised release imposed in sexual abuse cases was 211 months and was 194 months for child pornography cases. The median supervised release sentence for both offenses was 120 months.



The Most Common Crimes

Federal Offenders by Type of Crime





Immigration Offenses

As discussed above, immigration cases were the most common felony and Class A misdemeanor federal crimes in fiscal year 2019. The 29,354 immigration offenses represented 38.4 percent of the cases reported to the Commission. This number is a 22.9 percent increase from fiscal year 2018.

Offenders sentenced under the immigration guidelines differ from other federal offenders in several ways: more often they were non-citizens, Hispanic, less educated, and male than non-immigration offenders. Non-citizens accounted for 91.3 percent of immigration offenses. Similarly, while Hispanics accounted for only 31.2 percent of non-immigration offenders, they made up 96.4 percent of immigration offenders. Immigration offenders more often had less than a high school education (80.5%), compared with offenders convicted of other crimes (32.1%). Finally, while men committed a majority (84.5%) of non-immigration offenses, they committed an even higher proportion of immigration crimes (92.9%).

Of the 29,354 immigration offenders, 26,630 offenders (90.7%) were sentenced under one of the four primary immigration guidelines.¹⁰ Most of these offenses involved either the unlawful reentry into the United States or unlawfully remaining in the United States without authority (82.9%). Another 13.1 percent were alien smuggling offenses.



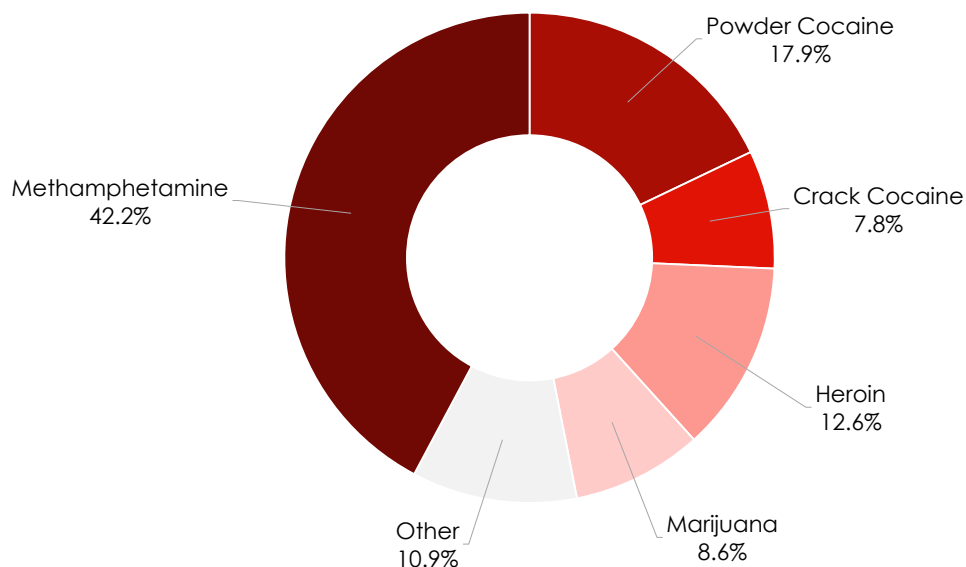
Drug Offenses

Drug offenses were the second most common federal crimes in fiscal year 2019. Most of the 20,393 drug cases reported to the Commission involved the manufacture, sale, or transportation of a drug,¹¹ although 563 involved a conviction for drug possession.¹² While drug possession cases continued a five-year downward trend, decreasing 27.5 percent from fiscal year 2018, the number of drug trafficking cases increased for the first time in the past five years—rising 5.8 percent.¹³

Methamphetamine was the most prevalent drug type in these cases. The 8,467 methamphetamine cases represented 42.2 percent of all drug crimes. The number of methamphetamine cases has increased substantially since fiscal year 1994, when those cases accounted for only 6.4 percent of all drug cases.

Offenses involving cocaine, in either powder form or base (crack) form, were the second most common drug crimes. The 3,592 powder cocaine cases accounted for 17.9 percent of all drug cases while the 1,573 crack cocaine cases accounted for 7.8 percent. The number of crack cocaine cases has fallen by 74.5 percent since fiscal year 2008, the year in which the largest number of those cases was reported to the Commission.¹⁴ That year, the 6,168 crack cocaine cases represented 24.3 percent of all drug cases.

Primary Drug Type in Federal Drug Cases

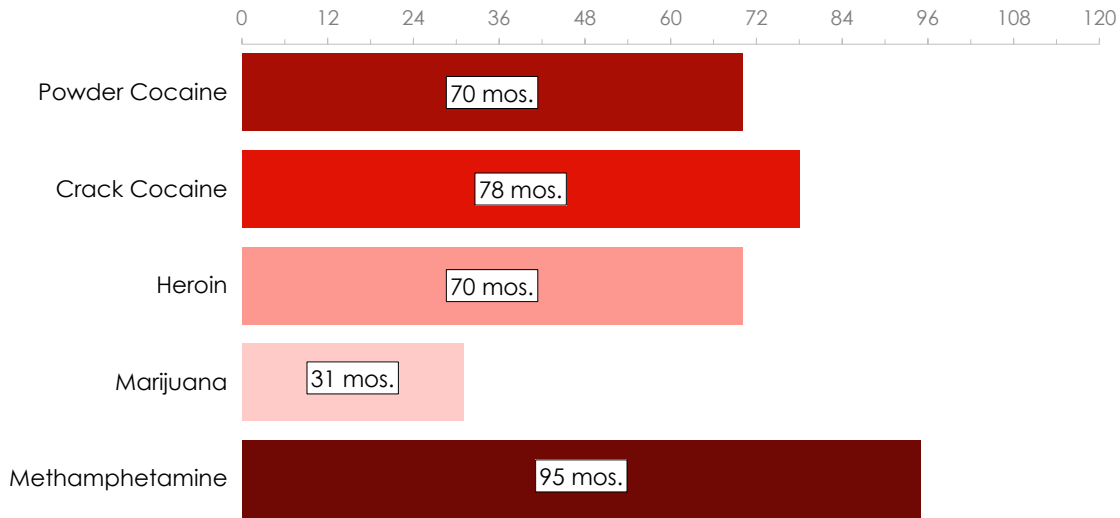


Of the remaining drug cases, heroin cases accounted for 12.6 percent of the cases, marijuana for 8.6 percent, and cases involving “other” drugs, mostly prescription drugs such as oxycodone, accounted for 10.9 percent of all drug offenses. The number of heroin cases has increased by 55.9 percent since fiscal year 2010. Conversely, marijuana cases have declined by 72.6 percent in the same time period.¹⁵

Of the 20,393 drug offenders, 19,765 were sentenced under the seven primary drug trafficking guidelines.¹⁶ Most drug trafficking offenders were United States citizens (78.8%), although citizenship varied depending on the type of drug involved in the offense. For example, United States citizens were responsible for 98.2 percent of drug trafficking offenses involving crack cocaine, but only 56.7 percent of those involving marijuana.

The race of drug trafficking offenders varied even more widely by the type of drug involved in the offense. The largest racial group of drug trafficking offenders convicted in federal court were Hispanic (44.3%), while Black offenders constituted 27.4 percent and White offenders made up 25.2 percent. The higher percentage of Hispanic offenders was driven largely by powder cocaine and marijuana trafficking offenses, of which they accounted for 65.6 and 67.6 percent, respectively, of cases involving those drugs. In contrast, Black offenders were the most common racial group in crack cocaine and heroin trafficking offenses—81.1 percent and 42.6 percent, respectively. Methamphetamine trafficking offenses were split almost evenly between Hispanic (42.5%) and White (39.7%) offenders.

Average Sentence Length of Drug Trafficking Offenders (in months)



Most drug trafficking offenders (83.2%) were male. Men outnumbered women most often in convictions for trafficking crack cocaine (91.9% compared to 8.1%). Of the 3,315 female drug traffickers, over half (56.1%) were involved in trafficking methamphetamine.

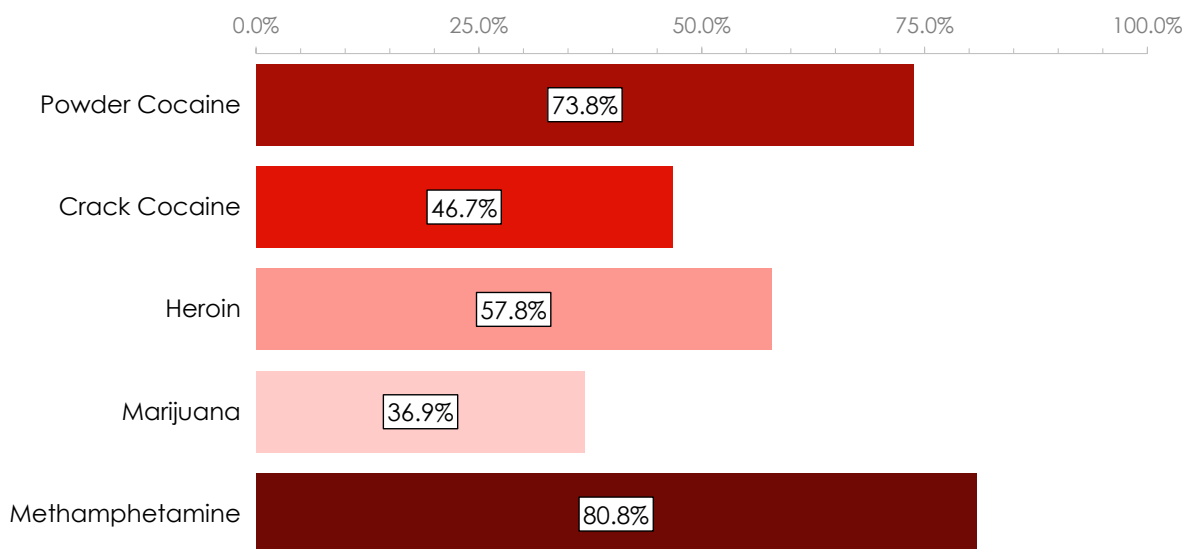
Weapons were involved in 23.6 percent of all drug trafficking offenses. As with the other aspects of these cases, the rate of weapon involvement varied depending on the type of drug involved, ranging from 38.2 percent in crack cocaine cases to 16.1 percent in marijuana cases.

Sentences were highest for trafficking offenses involving methamphetamine (95 months on average) and lowest for those involving marijuana (31 months on average). The average length of drug trafficking sentences overall continued to increase from fiscal year 2015, though this was not true for all drug types. The largest increase in the last

five years among the major drug types was in methamphetamine trafficking cases, where the average sentence length increased by 11.8 percent.

Several factors can affect the sentence imposed in drug offenses, including statutory mandatory minimum penalties, the quantity of the drugs involved in the case, the prior criminal history of the offender, and whether the offender assisted the government in the investigation of his or her crime and other crimes. Mandatory minimum penalties enacted by Congress¹⁷ play a large part in determining the sentence for drug offenders, either outright or through the impact of these statutes on the structure of the guidelines.¹⁸ In fiscal year 2019, over half (65.7%) of all drug trafficking offenders were convicted of an offense carrying a mandatory minimum penalty.

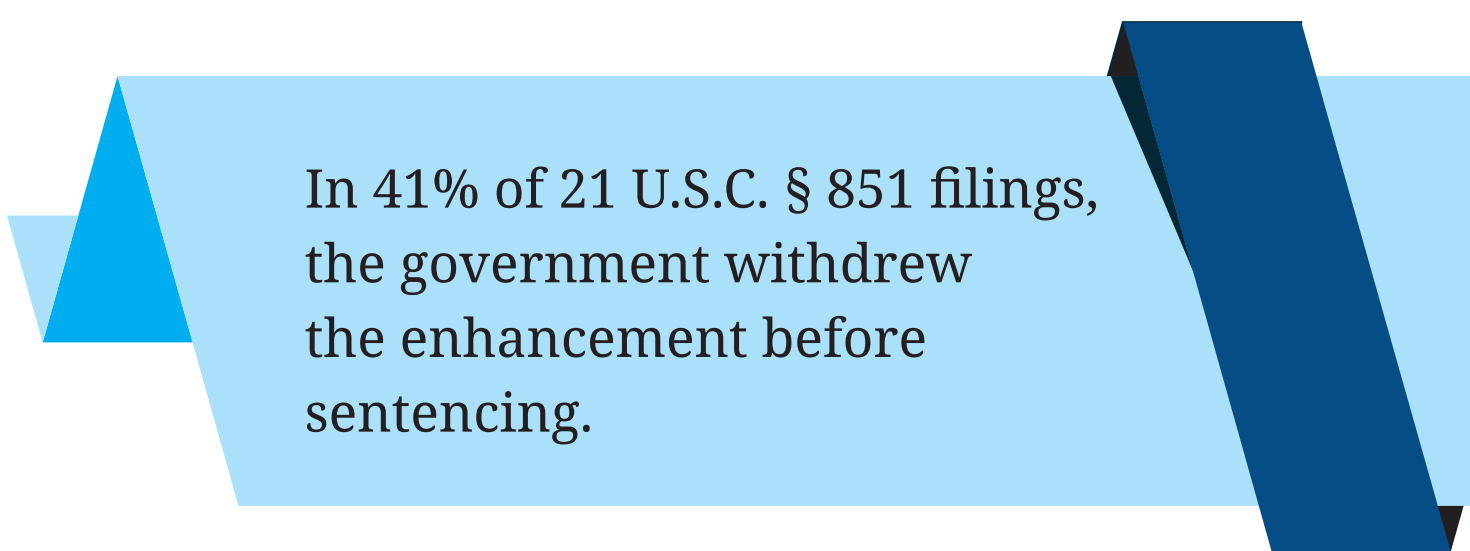
Application of Mandatory Minimum Penalties in Drug Trafficking Cases



In fiscal year 2019, methamphetamine drug trafficking offenders and powder cocaine drug trafficking offenders were convicted of an offense that carried a mandatory minimum penalty at the highest rates—80.7 percent in methamphetamine cases and 74.0 percent in powder cocaine cases.¹⁹ Mandatory minimum penalties were least common in drug trafficking cases involving “other” drugs, applying to 30.2 percent of those cases.

In fiscal year 2019, enhanced penalties under 21 U.S.C. § 851 were sought by the government in 1,705 drug trafficking cases where the offender had been convicted previously of one or more predicate offenses. However, in 41.2 percent of those cases the government eventually withdrew the enhancement prior to sentencing.²⁰

Many offenders convicted of an offense carrying a mandatory minimum penalty are able to obtain relief from that penalty through the “safety valve” exception to such sentences, which requires courts to sentence the offender without regard to any otherwise applicable mandatory minimum punishment when certain conditions are met.²¹ Among all drug trafficking offenders convicted under a statute carrying a mandatory minimum penalty, 57.8 percent received relief from that penalty in fiscal year 2019. Marijuana drug trafficking offenders obtained relief from a mandatory minimum sentence through the safety valve exception most often, in 63.9 percent of all marijuana trafficking cases in which the offender was convicted under a statute carrying a mandatory minimum penalty. In contrast, only 10.9 percent of crack cocaine drug trafficking offenders obtained this relief.



In 41% of 21 U.S.C. § 851 filings, the government withdrew the enhancement before sentencing.

This difference is due largely to the differing criminal histories of marijuana and crack cocaine drug trafficking offenders. To be eligible for the statutory safety valve, offenders must meet specific limits on the extent and nature of their past criminal history.²² In fiscal year 2019, 88.2 percent of all marijuana drug trafficking offenders were assigned to one of the three lowest criminal history categories (with 65.2% of all marijuana drug trafficking offenders assigned to CHC I). This compares with 52.4 percent of crack cocaine drug trafficking offenders assigned to the three lowest CHCs, and just 18.8 percent of crack cocaine offenders assigned to CHC I.

Overall, crack cocaine offenders have a more serious criminal history than any other group of drug traffickers.²³ Of crack cocaine drug trafficking offenders, 25.8 percent were assigned to the most serious criminal

history category (CHC VI). In contrast, marijuana drug trafficking offenders were assigned to CHC VI in only 4.5 percent of cases. By comparison, 16.1 percent of methamphetamine drug trafficking offenders and 16.0 percent of heroin drug trafficking offenders were assigned to CHC VI.

An offender's role in the offense also can affect the guideline range the judge considers when imposing a sentence. In fiscal year 2019, the applicable guideline range was lowered in 19.3 percent of all drug trafficking cases because of the offender's minor or minimal role in the offense.²⁴ This adjustment applied in 38.3 percent of marijuana cases compared to only 3.8 percent of crack cocaine cases. In 7.3 percent of all drug trafficking cases, the applicable guideline range was increased because of the offender's role as an organizer, leader, manager, or supervisor.²⁵

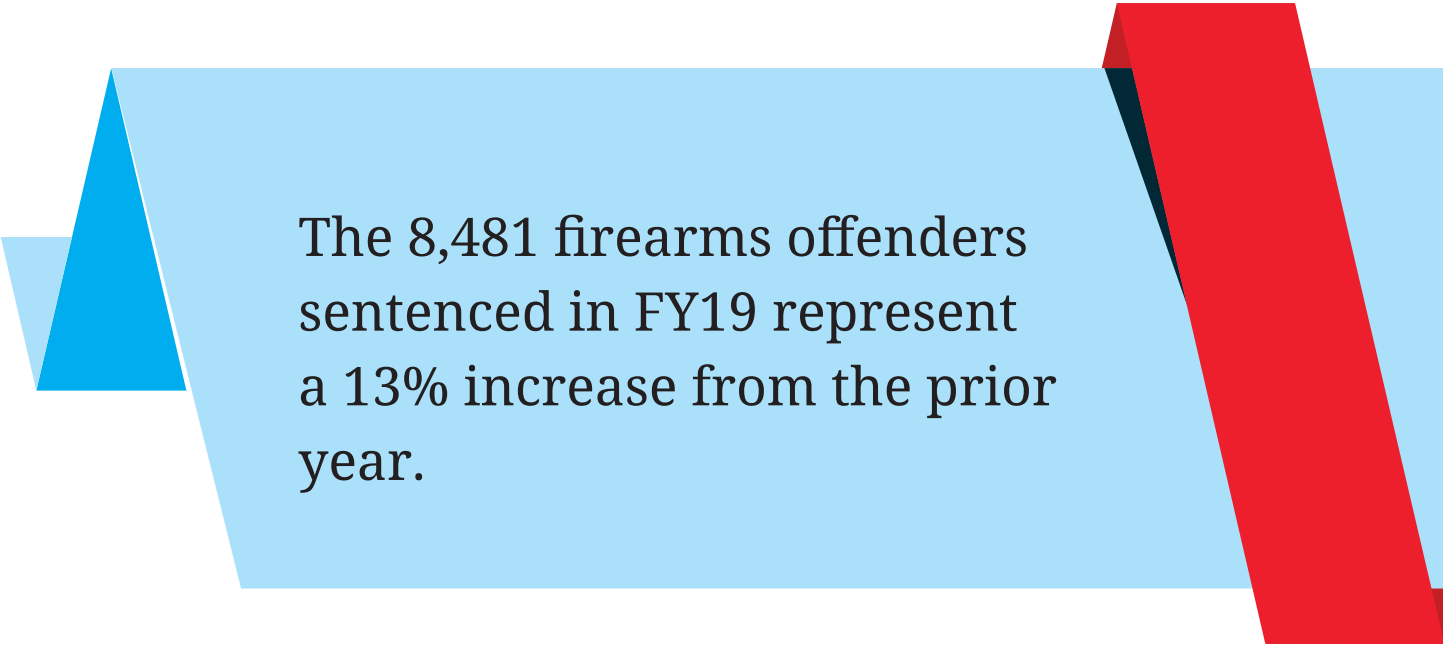


Firearms Offenses

Crimes involving firearms²⁶ accounted for 11.1 percent of the total number of federal criminal convictions in fiscal year 2019. The 8,481 firearms cases reported to the Commission represent an increase of 12.9 percent from the prior year. Of the 8,481 firearms cases, most (8,475) were sentenced under one of the five primary firearms guidelines.²⁷

Most firearms offenses involved the unlawful receipt, possession, or transportation of firearms or ammunition, or were prohibited transactions involving firearms or ammunition (93.8%). More than two-thirds of firearms cases (67.6%) involved the illegal possession of a firearm, usually by a convicted felon.²⁸ Of all firearms cases, 7.6 percent involved the possession or use of a firearm in connection with a crime of violence or drug trafficking crime,²⁹ and in 4.9 percent of firearms cases this was the only count of conviction.

Firearms offenders were primarily United States citizens (95.3%) and male (95.8%). Over half (53.0%) were Black, 25.5 percent were White, and 18.7 percent were Hispanic. In fiscal year 2019, almost half (43.5%) of firearms offenders were age 30 or younger. Over one-third (37.1%) did not complete high school while 44.9 percent completed high school and 18.0 percent attended or completed college.



The 8,481 firearms offenders sentenced in FY19 represent a 13% increase from the prior year.

In fiscal year 2019, 10.7 percent of firearms offenders were convicted of a firearm offense carrying a mandatory minimum penalty.³⁰ Among those firearm offenders convicted of possession or use of a firearm in connection with a crime of violence or drug trafficking crime, almost two-thirds (66.5%) were convicted of an offense carrying a five-year mandatory minimum penalty. An additional 19.1 percent of the cases involving these offenders carried a seven-year minimum penalty, and 14.5 percent carried a minimum penalty of ten years or longer.

In certain other types of cases, the court may also consider the possession or use of a dangerous weapon when determining the sentence. In the cases with complete guideline application information reported to the Commission in fiscal year 2019, the sentences imposed in 10.1 percent of the cases were enhanced (either through application of a specific offense characteristic under the sentencing guidelines or by statute) because a firearm or other dangerous weapon (e.g., knife) was involved in the offense.



Economic Offenses

A total of 8,006 offenders were sentenced under one of the basic economic crime guidelines in fiscal year 2019.³¹ Cases involving theft, property destruction, or fraud were the largest portion of these cases (71.3%). The 6,390 fraud, theft, or embezzlement cases reported to the Commission accounted for the fourth largest portion (8.3%) of all federal criminal convictions for fiscal year 2019, a decrease of 3.5 percent from the prior year.

About forty percent (38.4%) of economic crime offenders were White, 35.8 percent were Black, and 19.8 percent were Hispanic. Most were United States citizens (87.4%) and about three-fourths (75.3%) of economic crime offenders were male. These offenders were, on average, older and more educated than other offenders. Almost half of economic crime offenders were age 41 and older (44.7%) and 46.0 percent completed at least some college.

The losses in these cases ranged from no loss (364 cases) to \$20 billion (one case), with an average loss amount of \$6,211,930 and a median loss amount of \$59,027.



Organizational Offenses

Organizations such as corporations and partnerships can be prosecuted for violating federal criminal law, and 118 organizations were sentenced in fiscal year 2019. Among these defendants, 72.9 percent were corporations, 20.8 percent were limited liability companies, and 6.3 percent were sole proprietorships. The number of organizational offenders has continued to trend downward from a peak of 304 in 2000, and while 118 represents an increase over the 99 organizational offenders sentenced in 2018, it is still lower than the number sentenced in any other year since the Commission began reporting this data in 1996.

Most organizational offenders (65.8%) had fewer than 50 employees. Only 10.1 percent had 1,000 or more employees. Almost twenty percent (18.6%) of organizations were in the business of manufacturing, production, design, inspection, sales and distribution and about fifteen percent (16.9%) were in health care services and supplies.

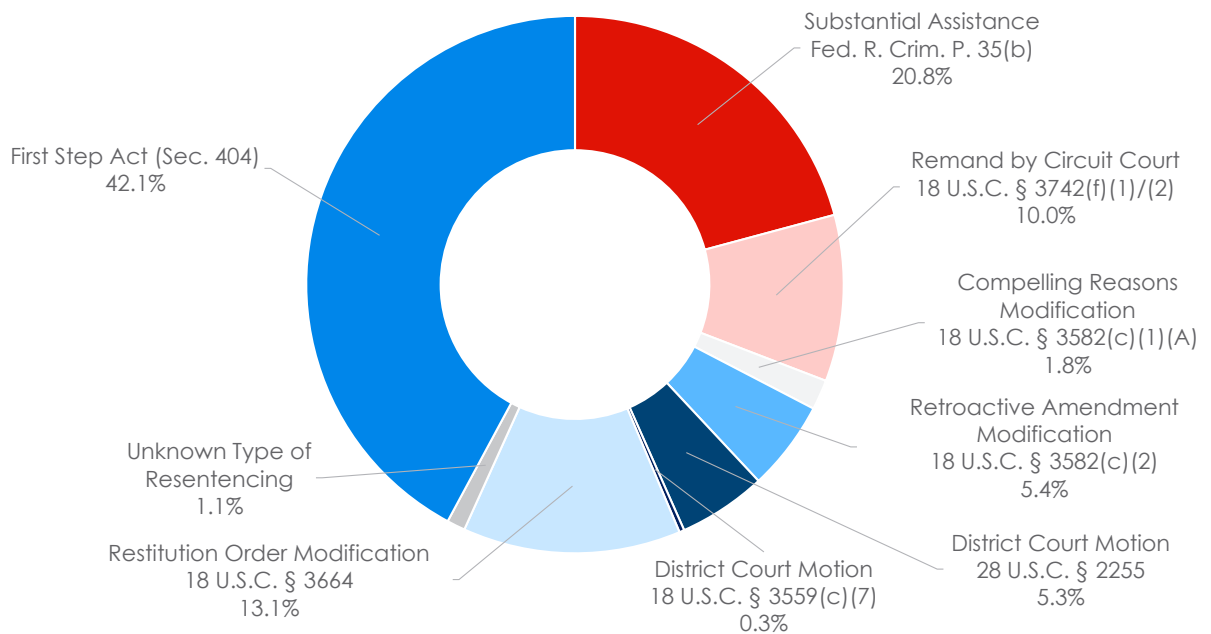
Of the 118 organizational offenders, 94.1 percent pleaded guilty to one or more charges in fiscal year 2019. The most common crimes for which organizational defendants were convicted were fraud and environmental crimes. In 74 cases, a fine was the sole financial component of the sentence imposed. In an additional 16 cases, the organization was sentenced to pay restitution to the victim of the crime as well as to pay a fine. In 17 cases, the sole financial component of the sentence was the payment of restitution. Organizations were ordered to pay \$158,397,822 in restitution and \$947,558,533 in fines, for a total of \$1,105,956,355. No fine or restitution was imposed in 11 cases, although other sanctions were ordered in some of these cases. Additionally, of the 118 organizational offenders, 80 were sentenced to some term of probation, and 22 were ordered to institute, or make improvements to, a compliance or ethics program.



Resentencings and Other Modifications of Sentence

In fiscal year 2019, the Commission received documentation on 5,139 resentencings and other modifications of sentence. This represents a 58.6 percent increase from last year. Modifications of sentence under one section of the First Step Act of 2018³² accounted for 42.1 percent of all resentencings or sentence modifications. The next most common reason, in 20.8 of these cases, was substantial assistance to the government in investigating or prosecuting another person after the offender was sentenced.

Resentencings and Other Modifications of Sentence



Endnotes

1 The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues; and (4) to devise and conduct seminars and workshops providing continuing studies for persons engaged in the sentencing field.

2 The Commission receives information from the courts on cases in which the defendant has been convicted of a felony or a Class A misdemeanor. See U.S. SENTENCING COMM'N, *Guidelines Manual*, §1B1.9 (Nov. 2018) [hereinafter USSG]. The fiscal year for the federal government begins on October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends.

3 In fiscal year 2011, 86,201 individual offenders were sentenced. U.S. SENTENCING COMM'N, 2011 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS iv (2012) [hereinafter SOURCEBOOK], <https://www.ussc.gov/research/sourcebook/archive/sourcebook-2011>.

4 Due to methodological changes, direct comparisons between data from fiscal year 2019 cannot always be made to data reported in the Sourcebook of Federal Sentencing Statistics for years before fiscal year 2018. For more information on these methodological changes, see the 2018 SOURCEBOOK, *supra*, at 29, <https://www.ussc.gov/research/sourcebook/archive/sourcebook-2018>.

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

6 See U.S. SENTENCING COMM'N, 1990 ANNUAL REPORT 53 (1991), <https://www.ussc.gov/about/annual-report/archive/annual-report-1990>. Fiscal year 1990 was the first year for which the Commission reported sentencing data. The types of offenses reported that year were very different than those reported in fiscal year 2019. See *id.* at 43

7 For more information concerning the use of alternative sentences in the federal system, see generally COURTNEY SEMISCH, U.S. SENTENCING COMM'N, ALTERNATIVE SENTENCES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2015), <https://www.ussc.gov/research/research-publications/2015-report-alternative-sentencing-federal-criminal-justice-system>.

8 Probation sentences are included in the calculation of average sentence as zero months. Over half (68.8%) of food and drug offenders and 46.9 percent of environmental offenders received a sentence of probation with no type of confinement. More than 40 percent (41.7%) of food and drug offenders and 49.7 percent of environmental offenders were fined as part of their sentence.

9 See 2019 SOURCEBOOK, *supra* note 3, <https://www.ussc.gov/research/sourcebook-2019>.

10 The immigration guidelines are USSG §§2L1.1 (Alien Smuggling), 2L1.2 (Unlawful Entering or Remaining in the United States), 2L2.1 (Trafficking in Immigration Documents, or Making False or Fraudulent Immigration Statements), and 2L2.2 (Acquiring Fraudulent Immigration Documents). Complete guideline information was not available for the remaining immigration offenders.

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

12 *But see* MELISSA K. REIMER, U.S. SENTENCING COMM’N, SIMPLE POSSESSION OF DRUGS IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2016) (finding that much of the 400 percent increase in the number of simple possession cases between fiscal years 2008 and 2013 was attributable to marijuana cases in one district that involved qualities of the drug usually associated with drug trafficking).

13 *See* 2019 SOURCEBOOK, *supra* note 9.

14 *Id.*

15 *Id.*

16 The drug trafficking guidelines are USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life While Manufacturing), or 2D1.14 (Narco-Terrorism).

17 For more information on the use of mandatory minimum penalties generally, *see* U.S. SENTENCING COMM’N, OVERVIEW OF MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2017), <https://www.ussc.gov/research/research-reports/2017-overview-mandatory-minimum-penalties-federal-criminal-justice-system>. For information on the use of mandatory minimum penalties in drug cases, *see* U.S. SENTENCING COMM’N, MANDATORY MINIMUM PENALTIES FOR DRUG OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2017), <https://www.ussc.gov/research/research-reports/mandatory-minimum-penalties-drug-offenses-federal-system>.

18 The Commission’s general practice has been to incorporate statutory minimum penalties into the structure of the guidelines. For example, in drug trafficking cases, the offense levels that correspond to the drug quantities that trigger the statutory mandatory minimum penalties provide for a sentencing range for an offender with no prior criminal history that includes the statutory penalty. The remaining sentencing ranges are extrapolated upward and downward from the guideline ranges that include the mandatory minimum penalties. *See generally* USSG, App. C, amend. 782 (effective Nov. 1, 2014).

19 Some of these offenders received a sentence that was lower than the applicable statutory mandatory minimum punishment due to the operation of 18 U.S.C. §§ 3553(e) or (f). Subsection (e) authorizes courts to impose a sentence that is below a statutory mandatory minimum when the offender has provided substantial assistance to the government in investigating or prosecuting another offender. Subsection (f) requires courts to impose a sentence on a non-violent offender with no or limited criminal background without regard to a statutory mandatory minimum punishment when certain other conditions are met.

20 For more information about the use of enhanced penalties in drug trafficking cases, *see* U.S. SENTENCING COMM’N, APPLICATION AND IMPACT OF 21 U.S.C. § 851: ENHANCED PENALTIES FOR FEDERAL DRUG TRAFFICKING OFFENDERS (2018), <https://www.ussc.gov/research/research-reports/application-and-impact-section-851-enhancements>.

21 See 18 U.S.C. § 3553(f).

22 For most of the first quarter of fiscal year 2019, only offenders assigned to CHC I were eligible to receive the benefit of the statutory safety valve. Congress relaxed this criminal history limitation in the First Step Act of 2018 (Pub. L. No. 115–391, § 402, 132 Stat. 5194). However, to be eligible, offenders must have no more than four criminal history points (as offenses are scored under the *Guidelines Manual*) not counting points resulting from 1-point prior offenses, have no 3-point prior offenses, and have no 2-point violent prior offenses. These changes applied to cases in which the conviction was entered on or after the date of enactment of the act (December 21, 2018).

23 Under the guidelines, offenders are assigned to one of six criminal history categories based on their prior criminal history. The criminal history score establishes the CHC for an offender. See generally USSG, Ch.4. The CHC, along with the final offense level, determines the sentencing range under the guidelines.

24 See USSG at §3B1.2.

25 See USSG at §3B1.1.

26 Firearms crime includes unlawful possession or transportation of firearms or ammunition; unlawful trafficking in explosives; possession of guns or explosives in a federal facility, a school, or on an aircraft; the use of fire or explosives to commit a felony; and the use of firearms or ammunition during a crime.

27 The primary firearms guidelines are USSG §§2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials), 2K1.4 (Arson or Property Damage by Use of Explosives), 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition), 2K2.4 (Use of Firearm During or in Relation to Certain Crimes), and 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility or in School Zone).

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

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

30 Mandatory minimum penalties apply to violations of 18 U.S.C. § 924(c) and 18 U.S.C. § 924(e).

31 The basic economic offense guidelines include USSG §§2B1.1 (Theft, Property Destruction, and Fraud Offenses), 2B1.4 (Insider Trading), 2B1.5 (Cultural Heritage Resources), 2B2.1 (Burglary), 2B3.1 (Robbery), 2B3.2 (Extortion), 2B4.1 (Bribery), 2B5.1 (Counterfeiting), and 2B5.3 (Copyright).

32 The First Step Act of 2018 (Pub. L. No. 115-391 (2018)) went into effect on December 21, 2018. Section 404 of that Act provides that any defendant sentenced before the effective date of the Fair Sentencing Act of 2010 (Pub L. No. 111-220 (2010)), which was August 3, 2010, who did not receive the benefit of the statutory penalty changes made by that Act is eligible for a sentence reduction “as if Sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the offender was sentenced.” Section 2 of the Fair Sentencing Act increased the quantity of crack cocaine that triggered mandatory minimum penalties. Section 3 of the Fair Sentencing Act eliminated the statutory mandatory minimum sentence for simple possession of crack cocaine. The First Step Act authorizes the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court to make a motion to reduce an offender’s sentence.



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More information on federal sentencing data can be found in the Commission's *2019 Sourcebook of Federal Sentencing Statistics*, its *Guideline Application Frequencies for Fiscal Year 2019*, and the publications in its *Research Notes* series. The *Sourcebook* is available in hard copy format through the Commission. These documents, together with other reports on sentencing data, are also available in electronic format at the Commission's website at www.ussc.gov.

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