

Executive Summary

A. OVERVIEW AND RECOMMENDATIONS

1. Introduction

This report assesses the impact of mandatory minimum penalties on federal sentencing, particularly in light of the Supreme Court’s decision in *Booker v. United States*, which rendered the federal sentencing guidelines advisory. The United States Sentencing Commission [hereinafter the Commission] prepared this report pursuant to a congressional directive contained in section 4713 of the Matthew Shepherd and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Pub L. No. 111–84, and the Commission’s general authority under 28 U.S.C. §§ 994–995, as well as its specific authority under 28 U.S.C. § 995(a)(20) to “make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane, and rational sentencing policy.”

Chapter 1 explains the methodology and definitions used by the Commission to prepare this report. For purposes of this report, the Commission considered an offender to have been “convicted of” an offense carrying a mandatory minimum penalty if the court so indicated on a statement of reasons form or other sentencing documentation received by the Commission. This report refers to an offender convicted of an offense carrying a mandatory minimum penalty who received a lower sentence due to operation of one of two relief mechanisms (commonly known as “substantial assistance” and the “safety valve”) as having been “relieved from application of” a mandatory minimum penalty. If neither of these two mechanisms apply to an offender convicted of an offense carrying a mandatory minimum penalty, this report refers to that offender as having been “subject to” a mandatory minimum penalty at the time of sentencing.

The Commission reviewed legislation, analyzed sentencing data, and studied scholarly literature to prepare this report. The Commission sought the views of stakeholders in the criminal justice system in a variety of ways. The Commission consulted with its advisory groups and representatives from all three branches of the federal government, and heard from social scientists, scholars, and others who apply or study mandatory minimum sentencing provisions.

2. History of Mandatory Minimum Penalties and Statutory Relief Mechanisms

As detailed in Chapter 2 of this report, mandatory minimum penalties have historically been prescribed for a core set of serious offenses, such as murder and treason, and also have been enacted to address immediate problems and exigencies. Beginning in the mid-twentieth century, however, Congress changed how it used mandatory minimum penalties in three significant ways. First, Congress enacted more mandatory minimum penalties. Second, Congress expanded its use of mandatory minimum penalties to offenses not traditionally covered by such penalties. Today, the majority of convictions under statutes carrying mandatory minimum penalties relate to controlled substances, firearms, identity theft, and child sex offenses. Third, Congress enacted mandatory minimum penalties that are generally lengthier than mandatory minimum penalties in earlier eras.

Congress has provided mechanisms by which a district court may impose a term of imprisonment lower than an otherwise applicable mandatory minimum penalty prescribed by statute in certain cases. Chapter 2 discusses two related provisions that allow a district court to impose a term of imprisonment lower than a mandatory minimum penalty in cases where a defendant provides substantial assistance in the investigation or prosecution of another person. The chapter also discusses the historical development of the safety valve provision, which provides relief from the applicable mandatory minimum penalty for certain low-level drug offenders.

3. *The Interaction Between Mandatory Minimum Penalties and the Sentencing guidelines*

The statutory directive requires the Commission to assess the compatibility of mandatory minimum penalties with the federal guideline system established under the Sentencing Reform Act and as modified by *Booker*. As part of that assessment, Chapter 3 presents an overview of the interaction between mandatory minimum penalties and the sentencing guidelines. First, the chapter provides a history of the Sentencing Reform Act, its directives to the Commission, the operation of the guidelines, and an overview of how the Commission promulgates amendments to the guidelines. Next, the chapter describes how the guidelines incorporate mandatory minimum penalties in formulating sentencing ranges for various offenses. Finally, the chapter discusses the significant structural differences in how the guidelines and mandatory minimum penalties determine sentences. In sum, the chapter concludes that the guidelines' flexibility increases the likelihood that offenders with similar criminal histories convicted of similar offenses will receive similar sentences and that dissimilar offenders will receive different sentences. The guidelines measure offense severity using a variety of facts and, as a result, draw more precise distinctions among offenders.

4. *Changes in the Federal Criminal Justice System, Mandatory Minimum Penalties, and the Federal Prison Population*

Chapter 4 addresses the requirement in the statutory directive to assess the impact of mandatory minimum penalties on the federal prison population. The chapter describes how statutes carrying mandatory minimum penalties have increased in number, apply to more offense conduct, require longer terms, and are used more often than they were 20 years ago. The chapter also discusses other systemic changes to the federal criminal justice system, including expanded federalization of criminal law, increased size and changes in the composition of the federal criminal docket, high rates of imposition of sentences of imprisonment, and increasing average sentence lengths. The changes to mandatory minimum penalties and these co-occurring systemic changes have combined to increase the federal prison population significantly.

5. *Policy Views About Mandatory Minimum Penalties*

Chapter 5 presents the range of policy positions supporting and opposing mandatory minimum sentencing provisions expressed by stakeholders in the federal criminal justice system. In particular, disagreements concerning mandatory minimum penalties center on whether such

penalties establish appropriate sentences, reduce unwarranted sentencing disparities, and serve as effective as investigative and resource-preserving tools.

6. *The Use of Mandatory Minimum Penalties in Selected Districts*

Chapter 6 summarizes the results of the Commission staff interviews of prosecutors and defense attorneys in 13 selected districts. The Commission conducted the interviews to aid the Commission in responding to those provisions of the statutory directive requiring “an assessment of the effect of mandatory minimum sentencing provisions under Federal law on the goal of eliminating unwarranted sentencing disparity and other goals of sentencing,” and “a description of the interaction between mandatory minimum sentencing provisions under Federal law and plea agreements.” During these interviews, the Commission learned that inconsistencies in application of mandatory minimum penalties exist between districts, and often within districts, where individual prosecutors exercise their discretion differently. In part, these differences may have developed to avoid the overly severe consequences that result from certain mandatory minimum penalties applying in individual cases.

7. *Overview of Data Analyses*

The statutory directive requires the Commission to provide a detailed empirical research study of the effect of mandatory minimum penalties under federal law. Chapter 7 details the results of the Commission’s data analyses of the application of mandatory minimum penalties for all offenses. The statutory directive also directs the Commission to provide an assessment of the impact of mandatory minimum sentencing provisions on the federal prison population. Chapter 7 provides an overall assessment of the prison impact of statutes carrying mandatory minimum penalties.

Chapter 7 describes the dataset used for the analyses in this report. In fiscal year 2010, the Commission received sentencing information on 83,946 individual offenders. The Commission excluded 11,068 cases because those cases lacked the complete documentation needed for all the analyses performed in this report. Accordingly, the total number of cases used in the analyses in this report was 73,239 (87.2% of all cases reported to the Commission in fiscal year 2010). Because the analyses for this report were limited to these cases, the numbers reported in this report differ from those reported in the Commission’s *2010 Sourcebook of Federal Sentencing Statistics*, which uses a larger dataset.

The analyses presented in Chapter 7 demonstrate the following:

- More than one-quarter of the 73,239 offenders sentenced in the federal courts in fiscal year 2010 (27.2%, n=19,896) included in this analysis were convicted of an offense carrying a mandatory minimum penalty.
- Over three-quarters (77.4%) of convictions of an offense carrying a mandatory minimum penalty were for drug trafficking offenses.

- Hispanic offenders accounted for the largest group (38.3%) of offenders convicted of an offense carrying a mandatory minimum penalty, followed by Black offenders at 31.5 percent, White offenders at 27.4 percent and Other Race offenders at 2.7 percent.
- More than 90 percent (90.3%) of the offenders convicted of an offense carrying a mandatory minimum penalty were men.
- United States citizens accounted for 73.6 percent of all offenders convicted of an offense carrying a mandatory minimum penalty.
- Seven out of 94 districts accounted for 27.0 percent (n=5,367) of the 19,896 cases involving a conviction of an offense carrying a mandatory minimum penalty in fiscal year 2010.
- Offenders convicted of an offense carrying a mandatory minimum penalty pled guilty at a slightly lower rate (94.1%) than offenders who were not convicted of an offense carrying a mandatory minimum penalty (97.5%). Furthermore, offenders facing longer mandatory minimum penalties were less likely to plead guilty.
- Offenders convicted of an offense carrying a mandatory minimum penalty but who were eligible for the statutory safety valve relief pled guilty at a rate (99.4%) higher than for both offenders convicted of an offense not carrying a mandatory minimum penalty (97.5%) and offenders who were not eligible for safety valve relief (94.6%).
- Almost half (46.7%) of offenders convicted of an offense carrying a mandatory minimum penalty were relieved from the application of such a penalty at sentencing because they provided substantial assistance to the government or qualified for the safety valve provision, or both.
 - Black offenders received relief from a mandatory minimum penalty least often (in 34.9% of their cases), compared to White (46.5%), Hispanic (55.7%) and Other Race (58.9%) offenders. Black offenders qualified for relief under the safety valve at the lowest rate of any other racial group (11.1%), compared to White (26.7%), Hispanic (42.8%) and Other Race (36.6%), either because of their criminal history or the involvement of a dangerous weapon in connection with the offense.
 - Prior to the enactment of the safety valve (in fiscal year 1994), Black and Hispanic offenders received relief from the mandatory minimum penalty at comparable rates (34.3% and 34.2%, respectively), although lower than Other Race (46.4%) and White (44.2%) offenders. After enactment of the safety valve provision, the rate at which Hispanic, White, and Other Race offenders obtained relief from a mandatory minimum penalty increased appreciably, while the rate for Black offenders did not.

- o Female offenders obtained relief from a mandatory minimum penalty at sentencing more often than male offenders (65.5% compared to 44.7%). Not only did female offenders qualify for the safety valve at a higher rate than male offenders (46.4% compared to 26.3%), but female offenders also received relief by providing substantial assistance to the government at a higher rate (36.0%) than male offenders (24.7%).
 - o Non-citizens received relief from mandatory minimum penalties at sentencing more often than United States citizens (64.6% compared to 40.3%). Although United States citizen offenders provided substantial assistance to the government at a higher rate (28.0%) than non-citizen offenders (19.8%), the majority of non-citizen offenders (54.4%) qualified for relief from the mandatory minimum penalty under the safety valve, compared to United States citizens at 18.9 percent.
- Only 14.5 percent of all federal offenders were subject to a mandatory minimum penalty at sentencing.
 - o Black offenders convicted of an offense carrying a mandatory minimum penalty remained subject to a mandatory minimum penalty at sentencing at the highest rate of any racial group, in 65.1 percent of their cases, followed by White (53.5%), Hispanic (44.3%), and Other Race (41.1%).
 - o Male offenders convicted of an offense carrying a mandatory minimum penalty remained subject to the mandatory minimum penalty at sentencing more often than female offenders (55.3% compared to 34.5%).
 - o United States citizens convicted of an offense carrying a mandatory minimum penalty remained subject to the mandatory minimum penalty at sentencing more often than non-citizens (59.7% compared to 35.4%).
- Receiving relief from an applicable mandatory minimum sentence made a significant difference in the sentence ultimately imposed. Offenders who were convicted of an offense carrying a mandatory minimum penalty and remained subject to that penalty at sentencing received an average sentence of 139 months, compared to 63 months for those offenders who received relief from a mandatory penalty.
 - o Offenders who received relief from a mandatory minimum penalty by providing substantial assistance to the government received longer average sentences than offenders who received relief under the safety valve provision.
- 75,579 (39.4%) of the 191,757 offenders in BOP custody as of September 30, 2010, were subject to a mandatory minimum penalty at sentencing.
- Although the number of offenders in BOP custody who were subject to a mandatory minimum penalty at sentencing has grown steadily over the past 20 years, the proportion of such offenders in BOP custody has remained relatively stable.

Chapters 8 through 11 of this report present the results of the data analyses performed for specified offenses types. The results of the analyses in those chapters are set forth in Part B, *infra*.

8. *General Conclusions and Recommendations*

The statutory directive requires the Commission to assess the compatibility of mandatory minimum penalties with the federal guideline system established under the Sentencing Reform Act and as modified by the Supreme Court’s decision in *Booker v. United States* and to discuss mechanisms other than mandatory minimum sentencing laws by which Congress may take action with respect to sentencing policy. To fulfill this part of the statutory directive, Chapter 12 first provides general findings and conclusions regarding mandatory minimum penalties and the federal sentencing guidelines and then provides specific recommendations regarding the four major offense types studied in this report.

a. Recommendations

The Commission makes the following specific recommendations for congressional consideration:

- A strong and effective sentencing guidelines system best serves the purposes of the Sentencing Reform Act. Although the continued importance and influence of the guidelines on sentencing decisions is evident from both Supreme Court decisions and sentencing data, the Commission has observed increasing inconsistencies in sentencing practices since *Booker*. The Commission is concerned about these developments and stands ready to work with Congress on possible legislative reforms to strengthen and improve the sentencing guidelines system.
- If Congress decides to exercise its power to direct sentencing policy by enacting mandatory minimum penalties, the Commission believes that such penalties should (1) not be excessively severe, (2) be narrowly tailored to apply only to those offenders who warrant such punishment, and (3) be applied consistently. Sentencing data and interviews with prosecutors and defense attorneys indicate that mandatory minimum penalties that are considered excessively severe tend to be applied inconsistently.
- Congress should consider whether a statutory “safety valve” mechanism similar to the one available for certain drug trafficking offenders at 18 U.S.C. § 3553(f) may be appropriately tailored for low-level, non-violent offenders convicted of other offenses carrying mandatory minimum penalties.
- Congress should request prison impact analyses from the Commission as early as possible in its legislative process whenever it considers enacting or amending mandatory minimum penalties. The Commission believes that early analyses of prison impact may assist Congress in focusing increasingly strained federal prison resources on offenders who commit the most serious offenses.

- Congress should consider marginally expanding the safety valve at 18 U.S.C. § 3553(f) to include certain non-violent offenders who receive two, or perhaps three, criminal history points under the federal sentencing guidelines.
- Congress should reassess both the severity and scope of the recidivist provisions at 21 U.S.C. §§ 841 and 960.
- Congress should consider amending 18 U.S.C. § 924(c) so that the enhanced mandatory minimum penalties for a “second or subsequent” offense apply only to prior convictions, and should consider amending the penalties for such offenses to lesser terms.
- Congress should eliminate the “stacking” requirement and amend 18 U.S.C. § 924(c) to give the sentencing court discretion to impose sentences for multiple violations of section 924(c) concurrently with each other.
- Congress should consider clarifying the statutory definitions of the underlying and predicate offenses that trigger mandatory penalties under 18 U.S.C § 924(c) and the Armed Career Criminal Act to reduce the risk of inconsistent application and litigation that those definitions have fostered. To further reduce the risk of inconsistent application, Congress should also consider more finely tailoring the definitions of the predicate offenses that trigger the Armed Career Criminal Act’s mandatory minimum penalty.
- The Commission’s preliminary review of the available sentencing data suggests that the mandatory minimum penalties for certain non-contact child pornography offenses may be excessively severe and as a result are being applied inconsistently. The Commission is undertaking a more comprehensive study of child pornography offenses and expects to issue a report in the near future.
- The problems associated with certain mandatory minimum penalties are not observed, or are not as pronounced, in identity theft offenses. The Commission believes this is due, in part, to 18 U.S.C. § 1028A requiring a relatively short mandatory penalty and not requiring stacking of penalties for multiple counts. The statute is relatively new and is used in only a handful of districts, however, so specific findings are difficult to make at this time.

b. Conclusion

The Commission intends for the information contained in this report to contribute to the ongoing assessment of mandatory minimum penalties by Congress and others in the federal criminal justice system. While there is a spectrum of views among members of the Commission regarding mandatory minimum penalties, the Commission continues to believe that a strong and effective sentencing guidelines system best serves the purposes of the Sentencing Reform Act. The Commission stands ready to work with Congress on measures that can be taken to enhance the strength and effectiveness of the current guidelines system and address the problems with

certain mandatory minimum penalties identified in this report. To that end, as required by the Sentencing Reform Act, the Commission will continue providing timely and objective sentencing data, information, and analysis to assist the efficient and effective exercise of congressional power to direct sentencing policy.

B. SUMMARY OF DATA ANALYSES BY OFFENSE TYPE

Chapters 8 through 11 of this report present the results of the data analyses by specified offense types carrying mandatory minimum penalties. These chapters also discuss the prison impact of those offenses.

1. Drug Offenses

Chapter 8 details the results of the Commission's data analyses of the application of mandatory minimum penalties for drug offenses in fiscal year 2010. Some degree of caution should be exercised in drawing conclusions from the crack cocaine data analyzed in this report because the majority of the crack cocaine offenders sentenced in fiscal year 2010 were sentenced before August 3, 2010, the date of enactment of the Fair Sentencing Act.

In sum, these analyses demonstrate the following:

- In fiscal year 2010, two of every three offenders convicted of an offense carrying a mandatory minimum penalty were drug offenders. Almost half of all drug offenders (48.7%) who were convicted of an offense carrying a mandatory minimum penalty were convicted of an offense carrying a 10-year penalty.
- The type of drug involved in drug cases significantly impacts the application of mandatory minimum penalties. In fiscal year 2010, the highest rate of conviction of such penalties was in methamphetamine cases (83.2%) while the lowest rate for the major drug types was in marijuana cases (44.3%).
- The demographic and offense characteristics of drug offenders vary widely by the type of drug involved in the offense.
- In fiscal year 2010, five of the 94 judicial districts reported more than 500 drug cases involving a mandatory minimum penalty.
- The Commission's analysis of a 15-percent sample of fiscal year 2009 cases indicates that the mandatory minimum penalties for drug offenses sweep more broadly than Congress may have intended.
 - Among all drug cases, Courier was the most common function, representing 23.0 percent of all offenders, followed by Wholesaler (21.2%), Street-Level Dealer (17.2%), and High-Level Supplier/Importer (10.9%).

- o The majority of offenders in nearly every function, including low-level Secondary and Miscellaneous functions, were convicted of an offense carrying a mandatory minimum penalty, although higher level functions tended to be convicted of such statutes at higher rates.
 - o The Commission's analysis found that, for every function, the quantity of drugs involved in the offense resulted in a base offense level that included or exceeded the five-year mandatory minimum penalty.
 - o Furthermore, the Commission's analysis revealed that the quantity of drugs involved in an offense was not closely related to the offender's function in the offense.
 - o As a result of the combined effect of the safety valve and applicable guideline adjustments, offenders performing lower-level functions received significantly shorter sentences overall than offenders performing higher-level functions. For example, Mules (29 months) and Couriers (39 months) received significantly shorter average sentences than High Level Suppliers/Importers (101 months), Organizer/Leaders (154 months), Wholesalers (103 months), and Managers (147 months).
- In fiscal year 2010, drug offenders convicted of a statute carrying a mandatory minimum penalty went to trial more than twice (4.5%) as often as drug offenders who were not convicted of an offense carrying a mandatory minimum penalty (1.6%). Furthermore, on average, the longer the mandatory minimum penalty an offender was facing, the less likely the offender was to plead guilty.
- In fiscal year 2010, more than half (54.4%) of drug offenders convicted of an offense carrying a mandatory minimum penalty received relief from the mandatory minimum penalty. One-quarter (26.1%) of these offenders received relief through operation of the safety valve alone; 19.3 percent by providing substantial assistance to the government; and 9.0 percent through both the safety valve and substantial assistance provisions.
- The analysis of the 15-percent sample of fiscal year 2009 cases revealed that the rate at which offenders received relief from a mandatory minimum penalty varied by function, but did so differently depending on the type of relief. Offenders who performed high-level functions generally obtained relief for substantial assistance at higher rates than offenders who performed low-level functions. Offenders who performed low-level functions were more likely to obtain relief through the safety valve provision than were offenders who performed high-level functions.
- In fiscal year 2010, the rate at which offenders received relief from the mandatory minimum penalty through these provisions varied by race, gender, and citizenship.
 - o Other Race offenders qualified for some form of relief from a mandatory minimum penalty most often, in 72.3 percent of the cases in which they were

convicted of an offense carrying such a penalty, followed by White (63.7%) and Hispanic (59.0%) offenders. Black offenders qualified for relief from mandatory minimum penalties least often, in 39.4 percent of the cases in which they were convicted of an offense carrying such a penalty.

- Black offenders received substantial assistance relief alone from a mandatory minimum penalty most often, in 25.0 percent of their offenses carrying such a penalty, followed by White (24.2%) and Other Race (23.9%) offenders. Hispanic offenders received relief from mandatory minimum penalties through substantial assistance the least often, in 12.6 percent of their cases.
- Hispanic offenders received safety valve relief alone most often, in 36.8 percent of their cases, followed by Other Race (29.5%) and White (26.9%) and offenders. Black offenders received relief from mandatory minimum penalties through the safety valve the least often, in 9.8 percent of their cases.
- Other Race offenders received relief from a mandatory minimum penalty through a combination of substantial assistance and safety valve relief most often, in 18.9 percent of their cases, followed by White (12.6%), Hispanic (9.5%) and Black (4.6%) offenders
- Female offenders qualified for some form of relief from a mandatory minimum penalty in 73.0 percent of the cases in which they were convicted of an offense carrying such a penalty.
 - Male offenders received substantial assistance relief alone from a mandatory minimum penalty more often, in 19.5 percent of their cases, compared to female offenders (18.2%).
 - Female offenders received safety valve relief alone more often, in 35.0 percent of their cases, compared to male offenders (25.1%).
 - Female offenders also received relief from a mandatory minimum penalty through a combination of substantial assistance and safety valve relief more often in 19.7 percent of their cases, compared to 7.8 percent of cases involving male offenders.
- Non-citizen drug offenders received relief from the mandatory minimum penalty at a higher rate (69.5%) than United States citizen drug offenders (48.0%).
 - United States citizen drug offenders received substantial assistance relief alone from a mandatory minimum penalty more often, in 23.4 percent of their cases, compared to non-citizen offenders (9.8%).

- Non-citizen offenders received safety valve relief alone more often, in 49.3 percent of their cases, compared to United States citizens (16.2%).
 - Non-citizen offenders also received relief from a mandatory minimum penalty through a combination of substantial assistance and safety valve relief more often, in 10.4 percent of their cases, compared to 8.4 percent of cases involving United States citizens.
- In fiscal year 2010, courts imposed a sentence within the applicable guideline range in fewer than half (43.7%) of all cases involving an offense carrying a mandatory minimum penalty. In 28.3 percent of such cases, the sentence was below the applicable guidelines range at the request of the government because the offender had provided substantial assistance to the government in the investigation of another offense.
- In fiscal year 2010, the average extent of substantial assistance departures in drug offenses was 48.8 percent (67 months) from the minimum of the otherwise applicable guideline range. However, the average extent of substantial assistance departures varied by major drug type.
 - The average extent of substantial assistance departures in powder cocaine cases was 48.6 percent (66 months).
 - The average extent of substantial assistance departures in crack cocaine cases was 49.7 percent (87 months). This was the highest in number of months for any major drug type.
 - In fiscal year 2010, the average extent of substantial assistance departures in marijuana cases was 52.5 percent (40 months) from the bottom of the otherwise applicable guideline range. This was lowest in number of months for any major drug type.
 - The average extent of substantial assistance departures in methamphetamine cases was 45.2 percent (66 months).
 - In fiscal year 2010, the average extent of substantial assistance departures in heroin cases was 52.8 percent (61 months) from the bottom of the otherwise applicable guideline range. This was the highest percentage for any major drug type.
- In fiscal year 2010, the average extent of non-government sponsored below range sentences in drug offenses that carried a mandatory minimum penalty was 29.8 percent (34 months) from the minimum of the otherwise applicable guideline range.
 - The average extent of non-government sponsored below range sentences in powder cocaine cases that carried a mandatory minimum penalty was 29.0 percent (31 months).

- o The average extent of non-government sponsored below range sentences in crack cocaine cases was 30.3 percent (45 months). This was the highest in number of months for any major drug type.
- o The average extent of non-government sponsored below range sentences in marijuana cases was 35.5 percent (21 months). This was the highest percentage for any major drug type, but the lowest in number of months.
- o The average extent of non-government sponsored below range sentences in methamphetamine cases was 26.1 percent (32 months) from the bottom of the otherwise applicable guideline range. This was the lowest percentage for any major drug type.
- o The average extent of non-government sponsored below range sentences in heroin cases was 31.3 percent (27 months).
- In fiscal year 2010, 45.6 percent of drug offenders convicted of an offense carrying a mandatory minimum penalty were subject to the mandatory minimum penalty at sentencing.
- In fiscal year 2010, the rate at which drug offenders convicted of an offense carrying a mandatory minimum penalty were subject to the mandatory minimum penalty at sentencing varied by race, gender and citizenship.
 - o Black offenders were subject to the mandatory minimum penalty at sentencing most often, in 60.6 percent of their offenses carrying such a penalty, followed by Hispanic (41.0%) and White (36.3%) offenders. Other Race offenders were subject to the mandatory minimum penalty at sentencing the least often, in 27.7 percent of their cases.
 - o Male offenders were subject to the mandatory minimum penalty at sentencing more often than female offenders (47.7% of their cases, compared to 27.0% of cases involving female offenders).
 - o United States citizens were subject to the mandatory minimum penalty at sentencing more often than non-citizens offenders (52.0% of their cases, compared to 30.5% of cases involving non-citizen offenders).
- The average sentence for drug offenders convicted of an offense carrying a mandatory minimum varied, and was largely dependent upon the type of drug involved in the offense and whether the offender obtained relief from the mandatory minimum penalty.
 - o The average sentence for powder cocaine offenders who remained subject to the mandatory minimum penalty was 138 months and the average sentence for those

offenders who obtained relief from the mandatory minimum penalty was 62 months.

- o The average sentence for crack cocaine offenders who remained subject to a mandatory minimum penalty was 139 months. The average sentence for crack cocaine offenders who obtained relief from a mandatory minimum penalty was 80 months, which was the highest for any major drug type.
 - o Marijuana offenders received the lowest sentences of any major drug type. The average sentence for marijuana offenders who remained subject to a mandatory minimum penalty was 93 months and the average sentence for marijuana offenders who obtained relief from a mandatory minimum penalty was 34 months.
 - o Methamphetamine offenders who remained subject to a mandatory minimum penalty received the highest sentences of any major drug type. The average sentence for methamphetamine offenders who remained subject to a mandatory minimum penalty was 144 months. The average sentence for methamphetamine offenders who obtained relief from a mandatory minimum penalty was 72 months.
 - o The average sentence for heroin offenders who remained subject to a mandatory minimum penalty at the time of sentencing was 119 months. The average sentence for heroin offenders who obtained relief from a mandatory minimum penalty was 51 months.
- The Commission's analyses of a sample of cases from fiscal years 2006, 2008, and 2009 indicates that in the majority of the districts, at least one quarter of all drug offenders were eligible for enhancement under section 851.
 - o In 62 of 94 judicial districts (66.0%), the rates of drug offenders eligible for enhancement under section 851 were between 25 and 49 percent.
 - o In 29 districts (30.8%), the rates of eligible drug offenders were between 50 and 74 percent.
 - o There were only three districts (3.2%) in which less than 25 percent of drug offenders were eligible for enhancement.
 - The Commission's analysis of a sample of cases from fiscal years 2006, 2008, and 2009 revealed significant variation in the manner in which the enhancement provision was applied.
 - o In six districts, more than 75 percent of eligible defendants received the increased mandatory minimum penalty as an enhancement.

- o In contrast, in eight districts, none of the eligible drug offenders received the enhanced penalty.
- More than half (58.0%) of Black offenders were eligible for the enhancement, but only 17.3 percent received it. More than one-third (36.5%) of White offenders were eligible for the enhancement while 9.1 percent received it. Hispanic offenders were eligible in 30.5 percent of their cases, but 6.0 percent received the enhancement. Finally, 24.1 percent of Other Race offenders were eligible for the enhancement, while 6.0 percent received it.
- Black offenders who were eligible to receive the enhanced penalty received it in 29.9 percent of the cases. This rate was only slightly higher than the rates for White offenders (25.0%) and Other Race offenders (24.8%). Eligible Hispanic offenders received the enhanced penalty at the lowest rate of any racial group (19.9%).
- Within each drug type the number of offenders who were eligible for the enhancement was higher than the number of offenders who received the enhancement.
- Crack cocaine offenders had the highest application rate (29.9%) of the enhancement, followed by powder cocaine offenders (26.9%) and methamphetamine offenders (25.2%). heroin drug offenders received the enhancement least often (20.0%).
- At the end of fiscal year 2010, slightly more than half (53.8%, n=103,194) of the 191,757 offenders incarcerated in the BOP were drug offenders.
 - o 13.4 percent (n=25,767) were powder cocaine offenders.
 - o 17.0 percent (n=32,694) were crack cocaine offenders.
 - o 6.5 percent (n=12,473) were marijuana offenders.
 - o 12.0 percent (n=22,935) were methamphetamine offenders.
 - o 3.0 percent (n=5,817) were heroin offenders.
- Slightly more than half (52.9%, n=54,635) of these drug offenders were subject to a mandatory minimum penalty at sentencing.

2. *Firearms Offenses*

Chapter 9 details the results of the Commission's data analyses of the application of mandatory minimum penalties for firearm offenses. In sum, these analyses indicate the following:

- In fiscal year 2010, 2,294 (3.1%) offenders were convicted of an offense under section 924(c). Of the 2,294 offenders convicted of an offense under section 924(c), 2,147

(93.6%) were convicted of a single count of an offense under section 924(c) and 147 (6.4%) were convicted of multiple counts of an offense under section 924(c).

- o Over two-thirds of offenders convicted of a single count of an offense under section 924(c) were convicted of offenses carrying a five- or seven-year mandatory minimum penalty (64.8% and 22.7%, respectively). Only 3.7% of offenders convicted of a single count of an offense under section 924(c) were convicted of offenses carrying a mandatory minimum penalty of more than ten years of imprisonment.
- o More than half of all offenders convicted of an offense under section 924(c) were Black (55.9%). Less than one-quarter (21.0%) were Hispanic, followed by White (20.1%) and Other Race (3.1%) offenders. Among offenders convicted of multiple counts of an offense under section 924(c), 61.0 percent were Black, 21.2 percent were Hispanic, 15.1 percent were White, and 2.7 percent were Other Race.
- o The overwhelming majority of all offenders convicted of an offense under section 924(c) (97.1%) and those offenders convicted of multiple counts of an offense under section 924(c) (99.3%) were male.
- o United States citizens accounted for over 80 percent of all offenders convicted of an offense under section 924(c) (86.7%) and those offenders convicted of multiple counts of an offense under section 924(c) (84.4%).
- In fiscal year 2010, 592 (0.8%) offenders qualified as an armed career criminal under ACCA.
 - o More than 60 percent of the offenders who qualified as an armed career criminal under ACCA were Black (63.7%), followed by White (29.5%), Hispanic (5.2%), and Other Race (1.5%) offenders.
 - o The overwhelming majority of offenders who qualified as an armed career criminal under ACCA were male (99.3%).
 - o United States citizens accounted for 98.6 percent of offenders who qualified as an armed career criminal under ACCA.
- Cases involving a conviction of an offense under section 924(c) or involving offenders who qualified as armed career criminal under ACCA were geographically concentrated.
 - o In fiscal year 2010, 12 districts reported 43.7 percent of the cases involving a conviction of an offense under section 924(c) (and only five of those districts reported having at least 100 such cases).

- o Cases involving convictions of multiple section 924(c) counts were more geographically concentrated than cases involving a conviction of an offense under section 924(c) as a whole. In fiscal year 2010, the ten districts that reported the highest number of cases involving multiple convictions of section 924(c) accounted for 62.7 percent of all such cases.
- o In fiscal year 2010, the ten districts with the highest number of cases involving offenders who qualified as armed career criminals under ACCA reported 47.9 percent of all such cases.
- In fiscal year 2010, offenders convicted of an offense under section 924(c) and offenders who qualified as armed career criminals under ACCA proceeded to trial at a higher rate than all offenders convicted of an offense carrying a mandatory minimum penalty (5.9%).
 - o Of the 2,294 offenders convicted of an offense under section 924(c), 12.8 percent (n=293) proceeded to trial.
 - o Of the 147 offenders convicted of multiple counts of an offense under section 924(c) in fiscal year 2010, 34.7 percent (n=51) proceeded to trial. Of the 2,147 offenders convicted of a single count of an offense under section 924(c), 11.3 percent (n=242) proceeded to trial.
 - o Of the 592 offenders who qualified as armed career criminals under ACCA, 17.4 percent (n=103) proceeded to trial.
- In fiscal year 2010, 24.3 percent of offenders convicted of an offense under section 924(c) were relieved of the mandatory minimum penalty at sentencing pursuant to 18 U.S.C. § 3553(e) because they rendered substantial assistance to the government.
 - o Black, White, and Hispanic offenders convicted of an offense under section 924(c) obtained relief at comparable rates (24.7%, 24.4%, and 24.4%, respectively), followed by Other Race offenders (17.1%).
 - o Female offenders constituted only a small percentage of offenders convicted of an offense under section 924(c), but obtained relief from the mandatory minimum penalty at a higher rate (45.4%) than male offenders convicted of such an offense (23.6%).
 - o Non-citizen offenders convicted of an offense under section 924(c) obtained relief from the mandatory minimum penalty at a higher rate (27.3%) than United States citizens convicted of such an offense (23.8%).
 - o Offenders convicted of multiple counts of an offense under section 924(c) were relieved of the mandatory minimum penalty in 36.7% of the cases.

- In fiscal year 2010, 17.4 percent of offenders who qualified as an armed career criminal under ACCA were relieved of the mandatory minimum penalty at sentencing pursuant to 18 U.S.C. § 3553(e) because they rendered substantial assistance to the government.
- In fiscal year 2010, the rate at which offenders received substantial assistance relief varied by race, gender and citizenship
 - Other Race offenders who qualified as armed career criminals under ACCA obtained relief at the highest rate of any racial group (22.2%), followed by White (18.4%), Black (17.0%), and Hispanic (12.9%) offenders.
 - Male offenders who qualified as armed career criminals under ACCA obtained relief from the mandatory minimum penalty at a higher rate (17.5%) than qualifying female offenders (0.0%).
 - United States citizen offenders who qualified as armed career criminals under ACCA obtained relief from the mandatory minimum penalty at a higher rate (17.5%) than qualifying non-citizen offenders (12.5%).
- Less than half (48.2%) of all offenders convicted of an offense under section 924(c) were sentenced within the applicable guideline range.
 - More than one-quarter (28.2%) of offenders convicted of an offense under section 924(c) received a government sponsored below range sentence, and 18.8 percent received a non-government sponsored below range sentence.
- Over 60 percent (62.8%) of offenders who qualified as armed career criminals under ACCA were sentenced within the applicable guideline range.
 - Nearly one-quarter (22.6%) of offenders who qualified as armed career criminals under ACCA received a government sponsored below range sentence, and 13.0 percent received a non-government sponsored below range sentence.
- In fiscal year 2010, 75.5 percent of offenders convicted of an offense under section 924(c) were subject to the mandatory minimum penalty at sentencing.
- In fiscal year 2010, the rate at which offenders convicted of an offense under section 924(c) were subject to the mandatory minimum penalty at sentencing varied by race, gender and citizenship.
 - Other Race offenders were subject to the mandatory minimum penalty at sentencing most often, in 82.9 percent of their offenses carrying such a penalty, followed by Hispanic (75.6%) and White (75.6%) offenders. Black offenders were subject to the mandatory minimum penalty at sentencing the least often, in 75.3 percent of their cases.

- o Male offenders were subject to the mandatory minimum penalty at sentencing more often than female offenders (76.4% of their cases, compared to 54.6% of cases involving female offenders).
 - o United States citizens were subject to the mandatory minimum penalty at sentencing more often than non-citizens offenders (76.1% of their cases, compared to 72.7% of cases involving non-citizen offenders).
- The average sentence for offenders convicted of an offense under section 924(c) who remained subject to the mandatory minimum penalty (*i.e.*, who did not receive relief for rendering substantial assistance) was 182 months. The average sentence for offenders convicted of an offense under section 924(c) but who were relieved of the mandatory minimum penalty was 109 months. These sentences include the sentence imposed on the underlying offenses and other counts of conviction, if any, in addition to the mandatory minimum penalty under section 924(c).
 - o The average sentence for offenders convicted of a single count of an offense under section 924(c) was 151 months. The average sentence for offenders convicted of a single count of an offense under section 924(c) who were relieved of the mandatory minimum penalty was 100 months.
 - o The average sentence for offenders convicted of multiple counts of an offense under section 924(c) was 351 months. The average sentence for offenders convicted of multiple counts of an offense under section 924(c) who were relieved for the mandatory minimum penalties was 198 months.
- In fiscal year 2010, 82.6 percent of offenders who qualified as armed career criminals under ACCA were subject to the mandatory minimum penalty at sentencing.
- In fiscal year 2010, the rate at which offenders who qualified as armed career criminals under ACCA were subject to the mandatory minimum penalty at sentencing varied by race, gender and citizenship.
 - o Hispanic offenders were subject to the mandatory minimum penalty at sentencing most often, in 87.1 percent of their offenses carrying such a penalty, followed by Black (83.0%) and White (81.6%) offenders. Other Race offenders were subject to the mandatory minimum penalty at sentencing the least often, in 77.8 percent of their cases.
 - o Female offenders were subject to the mandatory minimum penalty at sentencing more often than male offenders (100.0% of their cases, compared to 82.5% of cases involving male offenders).
 - o Non-citizens were subject to the mandatory minimum penalty at sentencing more often than United States citizen offenders (87.5% of their cases, compared to 82.5% of cases involving United States citizen offenders).

- The average sentence for offenders who qualified as armed career criminals under ACCA and who were subject to the mandatory minimum penalty (*i.e.*, who did not receive relief for rendering substantial assistance) was 210 months. The average sentence for offenders who qualified as armed career criminals under ACCA but who were relieved of the mandatory minimum penalty was 122 months.
- At the end of fiscal year 2010, 10.5 percent of the offenders in the custody of the Bureau of Prisons were convicted of an offense under section 924(c). The percentage of prisoners convicted of an offense under section 924(c) has remained relatively steady over time, constituting 10.3 percent of the federal prison population at the end of fiscal year 1995.
- At the end of fiscal year 2010, 2.9 percent of the offenders in the custody of the Bureau of Prisons qualified as armed career criminals under ACCA. The percentage of prisoners who so qualified has slowly increased over time, rising from 1.4 percent of the federal prison population at the end of fiscal year 1995.

3. *Sex Offenses*

Chapter 10 details the results of the Commission's data analyses of the application of mandatory minimum penalties for sex offenses. In sum, these analyses demonstrate the following:

- In fiscal year 2010, 2,317 (3.2%) offenders were convicted of a sex offense. Of the 2,317 offenders convicted of a sex offense, 640 (27.6%) were convicted of a sexual abuse offense and 1,677 (72.4%) were convicted of a child pornography offense.
- Of the 2,317 offenders convicted of a sex offense, 1,176 (50.8%) were convicted of an offense carrying a mandatory minimum penalty.
- Of the 640 offenders convicted of a sexual abuse offense, 336 (52.5%) were convicted of an offense carrying a mandatory minimum penalty.
 - Among sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty, over three-quarters (76.4%) of the offenders were White, followed by Black (11.9%), Hispanic (8.7%), and Other Race (3.0%) offenders. By comparison, among all offenders convicted of a sexual abuse offense, 55.2 percent were White, followed by Other Race (22.5%), Black (12.5%), and Hispanic (9.7%) offenders.
 - The overwhelming majority of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty (97.9%) were male.
 - United States citizens accounted for 94.9 percent of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty.

- Of the 1,677 offenders convicted of a child pornography offense, 840 (50.1%) were convicted of an offense carrying a mandatory minimum penalty.
 - Among child pornography offenders convicted of an offense carrying a mandatory minimum penalty, 88.2 percent were White, followed by Hispanic (6.4%), Black (3.2%), and Other Race (2.2%) offenders.
 - The overwhelming majority of offenders convicted of a child pornography offense carrying a mandatory minimum penalty (99.4%) were male.
 - United States citizens accounted for 97.9 percent of offenders convicted of a child pornography offense carrying a mandatory minimum penalty.

- No district had more than 50 convictions for sexual abuse offenses. Convictions occurred most often in the Districts of Southern Georgia (n=16, 0.7% of all cases sentenced in the district), Northern New York (n=11, 2.5%), Eastern California (n=10, 1.0%), and Northern Georgia (n=10, 1.5%). These four districts together accounted for 14.0 percent of all federal sexual abuse cases.

- No district had more than 50 convictions for child pornography offenses. Convictions occurred most often in Eastern Virginia (n=39, 3.2% of all cases sentenced in the district), Middle Florida (n=34, 2.0%), Southern Florida (n=30, 1.4%), Southern Indiana (n=28, 8.6%), and Western Texas (n=27, 0.4%). These districts together accounted for 18.8 percent of all child pornography cases.

- The vast majority of sexual abuse and child pornography offenders had no prior criminal record at the time they were sentenced and only a very small percentage were in Criminal History Categories IV through VI.

- In fiscal year 2010, the trial rate for sexual abuse offenders was 15.2 percent – more than twice the rate for sexual abuse offenders not convicted of an offense carrying a mandatory minimum penalty (6.9%). The trial rate for child pornography offenders convicted of an offense carrying a mandatory minimum penalty was 6.4 percent – four times the rate for child pornography offenders not convicted of an offense carrying a mandatory minimum penalty (1.6%).

- In fiscal year 2010, 4.2 percent of offenders convicted of a sexual abuse or child pornography offense carrying a mandatory minimum penalty were relieved of the mandatory minimum penalty at sentencing pursuant to 18 U.S.C. § 3553(e) because they rendered substantial assistance to the government.
 - The number of cases is too small to draw any meaningful conclusions about the role of race, gender, or citizenship as it relates to substantial assistance relief in sexual abuse cases.

- Over 60 percent (63.7%) of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty and 42.5 percent of offenders convicted of a child pornography offense carrying a mandatory minimum penalty were sentenced within the applicable guideline range.
 - Approximately 13 percent of offenders convicted of a sexual abuse or child pornography offense carrying a mandatory minimum penalty received a government sponsored below range sentence (13.1% and 13.4%, respectively).
 - Offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty received a non-government sponsored below range sentence in 17.3 percent of the cases, compared to 41.9 percent of offenders convicted of a child pornography offense carrying a mandatory minimum penalty.
- The average extent of substantial assistance departures in sexual abuse cases was 35.9 percent (70 months) from the bottom of the otherwise applicable guideline range; the average extent of substantial assistance departures in child pornography cases was 31.9 percent (45 months) from the bottom of the otherwise applicable guideline range.
- The average extent of non-government sponsored below range sentences in sexual abuse cases that carried a mandatory minimum penalty was 19.2 percent (59 months) from the bottom of the otherwise applicable guideline range; the average extent of non-government sponsored below range sentences in child pornography cases that carried a mandatory minimum penalty was 36.0 percent (64 months) below the otherwise applicable guideline range.
- In fiscal year 2010, 95.8 percent of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty were subject to the mandatory minimum penalty at sentencing.
- In fiscal year 2010, the rate at which offenders convicted of a sexual abuse offense who were subject to the mandatory minimum penalty at sentencing varied by race, gender and citizenship.
 - White offenders were subject to the mandatory minimum penalty at sentencing most often, in 97.3 percent of their offenses carrying such a penalty, followed by Hispanic (96.6%) and Other Race (90.0%) offenders. Black offenders were subject to the mandatory minimum penalty at sentencing the least often, in 87.5 percent of their cases.
 - Male offenders were subject to the mandatory minimum penalty at sentencing more often than female offenders (96.4% of their cases, compared to 71.4% of cases involving female offenders).

- o Non-citizens were subject to the mandatory minimum penalty at sentencing more often than United States citizen offenders (100.0% of their cases, compared to 95.6% of cases involving United States citizen offenders).
- The average sentence for offenders convicted of a sexual abuse offense who were subject to the mandatory minimum penalty (*i.e.*, who did not receive relief for rendering substantial assistance) was 235 months. The average sentence for those offenders who obtained relief from the mandatory minimum penalty was 139 months. The average sentence for offenders convicted of a sexual abuse offense not carrying a mandatory minimum penalty was 73 months.
- In fiscal year 2010, 95.8 percent of offenders convicted of a child pornography offense carrying a mandatory minimum penalty were subject to the mandatory minimum penalty at sentencing.
- In fiscal year 2010, the rate at which offenders convicted of a child pornography offense who were subject to the mandatory minimum penalty at sentencing varied by race, gender and citizenship.

Black offenders were subject to the mandatory minimum penalty at sentencing most often, in 100.0 percent of their offenses carrying such a penalty, followed by Hispanic (96.3%) and White (95.7%) offenders. Other Race offenders were subject to the mandatory minimum penalty at sentencing the least often, in 94.4 percent of their cases.

Female offenders were subject to the mandatory minimum penalty at sentencing more often than male offenders (100.0% of their cases, compared to 95.8% of cases involving male offenders).

Non-citizens were subject to the mandatory minimum penalty at sentencing more often than United States citizen offenders (100.0% of their cases, compared to 95.7% of cases involving United States citizen offenders).

- The average sentence for offenders convicted of a child pornography offense who remained subject to the mandatory minimum penalty (*i.e.*, who did not receive relief for rendering substantial assistance) was 132 months. The average sentence for those offenders who obtained relief from the mandatory minimum penalty was 121 months. The average sentence for offenders convicted of a child pornography offense not carrying a mandatory minimum penalty was 54 months.
- At the end of fiscal year 2010, 4.6 percent of the offenders in the custody of the Bureau of Prisons were convicted of a sex offense. Of those offenders, 52.2 percent were convicted of an offense carrying a mandatory minimum penalty. The percentage of prisoners convicted of a sex offense has slowly increased over time, rising from less than one percent in 1995 (of those prisoners, only 6.5 were convicted of an offense carrying a mandatory minimum penalty).

- The Commission’s special coding project of a 20-percent random sample of child pornography cases indicates that approximately half of offenders convicted of possession (who did not face a mandatory minimum penalty) could have been prosecuted and sentenced for distribution of child pornography, an offense carrying a mandatory minimum penalty.
- The preliminary analysis of data concerning child pornography offenses contained in this report will be followed up by a more comprehensive analysis of child pornography offenses and offenders in a future report issued by the Commission.

4. *Identity Theft Offenses*

Chapter 11 details the results of the Commission’s data analyses of the application of mandatory minimum penalties for identity theft offenses. In sum, these analyses demonstrate the following:

- In fiscal year 2010, 1,870 offenders (2.6%) were convicted of an identity theft offense. Of those 1,870 offenders, 797 (42.6%) were convicted of an offense under section 1028A.
- Over 40 percent of offenders convicted of an offense under section 1028A were Black (40.2%), followed by White (32.8%), Hispanic (22.3%), and Other Race (4.7%) offenders.
- The majority of offenders convicted of an offense under section 1028A (71.8%) were male.
- United States citizens accounted for 74.4 percent of offenders convicted of an offense under section 1028A.
- A disproportionately large number of cases involving a conviction of an offense under section 1028A came from only three judicial districts in fiscal year 2010.
- Of the 797 offenders convicted of an offense under section 1028A in fiscal year 2010, 6.8 percent (n=54) proceeded to trial. By contrast, of the 1,072 identity theft offenders not convicted of an offense under section 1028A, 2.1 percent (n=22) proceeded to trial.
- Identity theft offenders who committed more severe identity theft offenses or who had more significant criminal histories were generally more likely to be convicted of an offense under section 1028A.
 - Identity theft cases involving a conviction of an offense under section 1028A had a 28.2 percent higher median loss amount and were more likely to involve ten or more victims than identity theft cases that did not involve such a conviction.

- o A higher percentage of identity theft offenders convicted of an offense under section 1028A were in Criminal History Category VI, and a lower percentage were in Criminal History Category I, than identity theft offenders not convicted of an offense under section 1028A.
- In fiscal year 2010, 15.4 percent of offenders convicted of an offense under section 1028A were relieved of the mandatory penalty at sentencing because they rendered substantial assistance to the government.
 - o Other Race offenders convicted of an offense under section 1028A obtained relief from the mandatory penalty at the highest rate (18.9%), followed by Black (17.2%), Hispanic (14.7%), and White (13.1%) offenders.
 - o Female offenders convicted of an offense under section 1028A obtained relief from the mandatory penalty at a higher rate (20.0%) than male offenders convicted of such an offense (13.6%).
 - o United States citizen offenders convicted of an offense under section 1028A obtained relief from the mandatory penalty at a higher rate (17.3%) than non-citizens convicted of such an offense (10.3%).
- Of the 797 cases in fiscal year 2010 that involved a conviction of an offense under section 1028A, 10.2 percent (n=82) involved convictions of multiple counts of an offense under section 1028A. In 69 of those 82 cases, the court exercised its discretion to impose the mandatory penalties for violating section 1028A concurrently.
- In fiscal year 2010, 84.6 percent of offenders convicted of an offense under section 1028A were subject to the mandatory minimum penalty at sentencing.
- In fiscal year 2010, the rate at which offenders convicted of an offense under section 1028A were subject to the mandatory minimum penalty at sentencing varied by race, gender and citizenship.
 - o White offenders were subject to the mandatory minimum penalty at sentencing most often, in 86.9 percent of their offenses carrying such a penalty, followed by Hispanic (85.3%) and Black (82.8%) offenders. Other Race offenders were subject to the mandatory minimum penalty at sentencing the least often, in 81.1 percent of their cases.
 - o Male offenders were subject to the mandatory minimum penalty at sentencing more often than female offenders (86.4% of their cases, compared to 80.0% of cases involving female offenders).
 - o Non-citizens were subject to the mandatory minimum penalty at sentencing more often than United States citizens (89.7% of their cases, compared to 82.7% of cases involving non-citizen offenders).

- The average sentence for offenders convicted of an offense under section 1028A who were subject to the mandatory penalty (*i.e.*, who did not receive relief for rendering substantial assistance) was 50 months. The average sentence for offenders convicted of an offense under section 1028A but who were relieved of the mandatory penalty was 32 months. By contrast, identity theft offenders not convicted of an offense under section 1028A received an average sentence of 22 months.
- Among offenders convicted of an offense under section 1028A, Other Race and Black offenders received higher average sentences (53 and 54 months, respectively) than White and Hispanic offenders (45 and 40 months, respectively).
- The higher average sentences for Other Race and Black offenders convicted of an offense under section 1028A may be attributable to the fact that those offenders tended to be convicted of more severe offenses than White and Hispanic offenders, as measured by the amount of loss and number of victims involved in the offense.
- At the end of fiscal year 2010, 0.9 percent of the offenders in the custody of the Bureau of Prisons were convicted of an offense under section 1028A. The percentage of prisoners convicted of an offense under section 1028A has slowly increased over time, rising from 0.2% of the federal prison population at the end of fiscal year 2006.