



Overview of Federal Criminal Cases Fiscal Year 2010



UNITED STATES SENTENCING COMMISSION



United States Sentencing Commission

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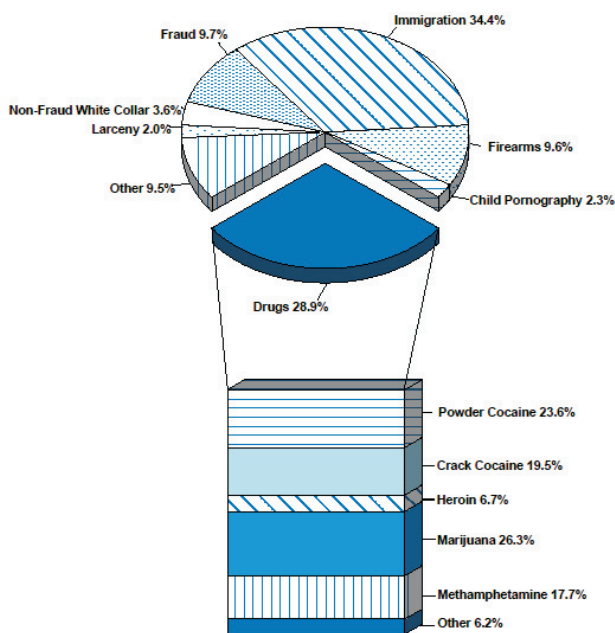
Overview of Federal Criminal Cases

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The United States Sentencing Commission¹ received information on 84,095 new federal criminal cases in which the offender was sentenced in fiscal year 2010.² Among these cases, 83,946 involved an individual defendant and 149 involved a corporation or other “organizational” defendant. This publication provides a brief overview of those cases.

OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2010



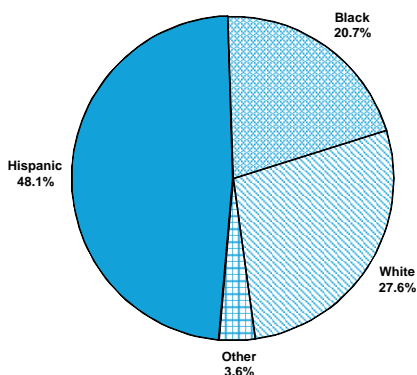
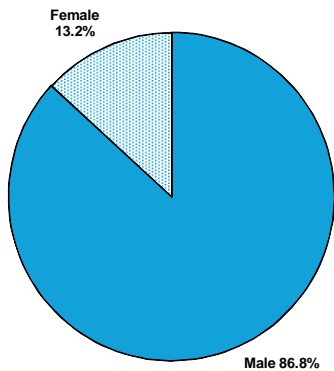
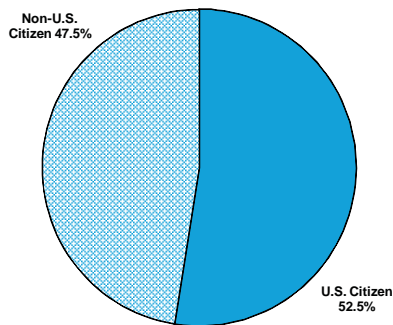
The Case Load at a Glance

The vast majority of the cases reported to the Commission involve an individual defendant. Over the last decade, the number of these cases has increased every year except one.³ In fiscal year 2010, the increase was 3.2 percent over the number of such cases in fiscal year 2009. Cases involving immigration, drugs, fraud, or firearms continue to be the most common federal criminal cases and make up the vast majority of federal felonies and Class A misdemeanors. These four crime types have been the most common for the last decade. In fiscal year 2010, these crimes accounted for more than 82 percent of all cases reported to the Commission.

Immigration cases continued to be the fastest growing segment of cases in the federal system. In fiscal year 2010, there were 28,504 immigration cases reported to the Commission, an increase of 2,577 cases from the prior fiscal year. In the last ten fiscal years, the number of cases of this type has increased by 172.6 percent, while the total federal caseload has grown by just over 40 percent (40.2%). As a result, the portion of the annual caseload attributable to immigration cases has increased from 17.8 percent in fiscal year 2001 to 34.4 percent in fiscal year 2010. Immigration cases have been the most common serious federal crime since fiscal year 2009.

¹Of the 83,946 guideline cases, 25,043 were drug cases. Of these, 1,149 were excluded due to missing drug type. The Drug category includes the following offense types: drug trafficking, use of a communication facility, and simple possession. The Non-Fraud White Collar category includes the following offense types: embezzlement, forgery/counterfeiting, bribery, money laundering, and tax. For definitions of these categories, see Appendix A of the 2010 Sourcebook of Federal Sentencing Statistics.

SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.



The number of drug offenses has declined slightly over the last five fiscal years, and the portion of the criminal caseload attributable to those cases decreased to 28.9 percent in fiscal year 2010 compared with 35.5 percent in fiscal year 2006. Firearms offenses were 9.6 percent of the caseload in fiscal year 2010, a decrease of 2.1 percentage points from five years ago. The proportion of fraud cases over that period was relatively stable at 9.7 percent in both fiscal year 2006 and 2010.

Offender Characteristics

In fiscal year 2010, 52.5 percent of all offenders were United States citizens. However, the percentage of non-citizen offenders has risen substantially over the last ten years, up 10.4 percentage points from fiscal year 2006 and up 13.9 percentage points from fiscal year 2001. Most non-citizens who were convicted of a federal crime committed an immigration offense (69.4%). Drug trafficking was the next most common type of offense committed by non-citizens (18.6%).

The vast majority of criminal offenders are men, and their proportion of the total offender population has remained constant for more than a decade. In fiscal year 2010, 86.8 percent of all offenders were men, compared with 86.7 percent in fiscal year 2006 and 85.5 percent in fiscal year 2001. Among female offenders, the most common crime was drug trafficking (27.4% of all women offenders). Embezzlement was the only crime where female offenders outnumber male offenders (58.7% to 41.3%). In fiscal year 2010, 48.1 percent of all offenders were Hispanic, while 27.6 percent of offenders were White and 20.7 percent were Black. However, the racial composition of offenders varied widely across offense types and most Hispanic offenders (86.5%) were sentenced for one of two types of offenses — drug trafficking or immigration crimes. However, even among drug offenders, racial and ethnic background varied depending on the type of drug involved in the crime.

More than half of the federal offenders sentenced in fiscal year 2010 (51.4%) had not completed high school and only 5.4 percent of offenders had completed college. The average age of

offenders in fiscal year 2010 was 35 years; this average has remained relatively unchanged over time.

Case Disposition

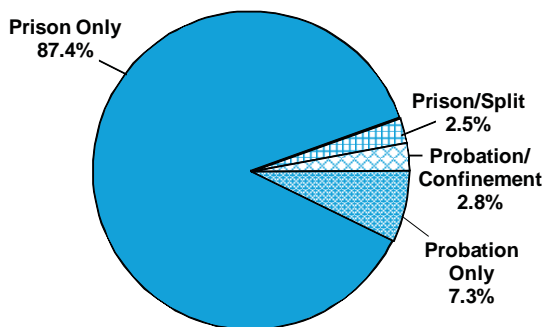
The vast majority of convicted defendants plead guilty. In fiscal year 2010, more than 96 percent of all offenders did so, a rate that has been largely the same for ten years. When offenders pled guilty, 43.4 percent received a sentence below the applicable sentencing guideline range, either at the request of the government, at their own request, or initiated by the court. Approximately 60 percent (60.3%) of the below range sentences were requested by the government, usually because the defendant had provided substantial assistance to the government or had agreed to have his or her case handled as part of an early disposition program.

In the 3.2 percent of cases in which offenders did not plead guilty, 35.7 percent received a sentence below the guideline range. Less than five percent (4.8%) of the below range sentences were requested by the government.

Most federal offenders convicted of a felony or Class A misdemeanor receive a sentence of incarceration. In fiscal year 2010, 7.3 percent of offenders received a sentence of probation (*i.e.*, where no type of confinement was imposed), a rate that over time has decreased from a high of 14.8 percent in 1993. Another 2.8 percent were sentenced to periods of both probation and some type of confinement, and 2.5 percent were sentenced to a combination of imprisonment and community confinement, such as in a half-way house or through home confinement.

For the past decade, the average plea rate has remained constant at about 96%.

The number of federal offenders receiving a sentence of probation only has decreased over time.



Offenders in antitrust and environmental cases are most likely to receive monetary fines.

The length of imprisonment imposed on offenders varies greatly depending on the seriousness of the offense and the criminal history of the offender. In fiscal year 2010, 71.3 percent of offenders received a sentence of less than five years, 16.2 percent of offenders received a sentence of more than five but less than ten years, and 12.5 percent received a sentence of ten or more years, excluding life imprisonment. In addition, 197 offenders were sentenced to life imprisonment and four offenders were sentenced to death.

Monetary fines were imposed as punishment in 9.3 percent of all cases in which an individual was sentenced in fiscal year 2010, either as the sole punishment or combined with some other sanction. Fines were most commonly imposed in antitrust cases (75.0%), environmental cases (64.3%), and gambling/lottery cases (43.4%). When the offender was an organization, courts imposed a fine in three out of every four cases (76.4%).

Courts ordered restitution to be paid to the victim of the crime in 13.2 percent of all cases in which the offender was an individual. Restitution was most commonly ordered in cases involving embezzlement (84.3%), robbery (81.5%), burglary (77.8%), arson (73.4%), and larceny (67.0%). Restitution was ordered in 23.7 percent of the cases with an organizational offender.

Virtually all offenders who were sentenced to imprisonment also were sentenced to serve a period of supervised release following the completion of their confinement. In fiscal year 2010, 91.9 percent of offenders sentenced to incarceration also were sentenced to serve a period of supervised release. The average length of supervised release imposed was 47 months. The median length of supervised release was 36 months.

The Most Common Crimes

Immigration

Immigration offenses⁴ were the most common serious federal crime, representing 34.4 percent of the federal criminal case load for fiscal year 2010. The majority of these offenses involved either the unlawful reentry into the United States or remaining in the

United States without authority (81.7%). Another 10.8 percent involved alien smuggling activities.

The offenders sentenced pursuant to immigration guidelines are very different from other offenders. For example, although citizens committed the majority of federal crimes (52.5%), the overwhelming majority (93.9%) of immigration offenses were committed by non-citizens.⁵ Similarly, Hispanics accounted for only 29.7 percent of non-immigration offenders, but 86.9 percent of immigration offenders. Immigration offenders also had significantly less education than other offenders. More than 80 percent of immigration offenders had less than a high school education, compared with less than 40 percent of offenders convicted of other crimes. While men committed most (85.0%) federal crimes not involving an immigration offense, men committed an even higher proportion of immigration crimes (93.6%).

Most immigration offenders were male non-citizens who had less than a high-school education.

Drugs

Until fiscal year 2009, drug offenses⁶ had been the most common federal crime during the 20 years for which the Commission has released sentencing data. In fiscal year 2010, 25,043 offenders were convicted of a drug crime, the majority involving the manufacture, sale, or transportation of a drug.⁷ Of these, 1,025 offenders were convicted of an offense involving simple possession of a drug.

The majority of drug offenses involved the manufacture, sale, or transportation of a drug.

Offenses involving cocaine, in either powder form or base (crack) form, were the most common drug crimes, accounting for 43.6 percent of the offenders sentenced under the Chapter Two drug guidelines. These cases were almost evenly split between offenses involving crack cocaine (20.1%) and offenses involving powder cocaine (23.5%).

Marijuana cases were the next most common, representing 26.0 percent of all drug crimes. In fact, marijuana cases were more prevalent than either crack cocaine or powder cocaine cases. Drug offenses involving methamphetamine represented 17.7 percent of all drug crimes. Heroin cases were the least common

of the major drug offenses, accounting for 6.7 percent of all drug crimes.

Most drug offenders were citizens, but the percentage of drug offenders who are citizens varied widely depending on the type of drug involved in the offense. For example, 97.2 percent of crack cocaine offenders were citizens, while only 53.9 percent of marijuana offenders were citizens. Non-citizens were most often convicted of an offense involving marijuana. In fiscal year 2010, 40.2 percent of all non-citizen drug offenders committed an offense involving marijuana.

The race of drug offenders varied even more widely. More than 40 percent (43.8%) of all drug offenders convicted in federal court

DRUG TYPE	TOTAL	U.S. CITIZEN		NON-U.S. CITIZEN	
		Number	Percent	Number	Percent
TOTAL	24,349	17,083	70.2	7,266	29.8
Powder Cocaine	5,716	3,583	62.7	2,133	37.3
Crack Cocaine	4,896	4,757	97.2	139	2.8
Heroin	1,626	1,084	66.7	542	33.3
Marijuana	6,332	3,411	53.9	2,921	46.1
Methamphetamine	4,309	2,968	68.9	1,341	31.1
Other	1,470	1,280	87.1	190	12.9

DRUG TYPE	TOTAL	WHITE		BLACK		HISPANIC		OTHER	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	24,319	6,194	25.5	6,721	27.6	10,648	43.8	756	3.1
Powder Cocaine	5,708	959	16.8	1,532	26.8	3,124	54.7	93	1.6
Crack Cocaine	4,887	359	7.3	3,838	78.5	638	13.1	52	1.1
Heroin	1,625	262	16.1	449	27.6	898	55.3	16	1.0
Marijuana	6,328	1,552	24.5	484	7.6	4,078	64.4	214	3.4
Methamphetamine	4,303	2,243	52.1	102	2.4	1,784	41.5	174	4.0
Other	1,468	819	55.8	316	21.5	126	8.6	207	14.1

were Hispanic, with Black offenders accounting for 27.6 percent of all drug offenders and White offenders representing 25.5 percent of all drug offenders. In cases involving methamphetamine, 52.1 percent of the offenders were White. In crack cocaine cases, 78.5 percent of those convicted were Black.

Weapons were involved in drug crimes 16.4 percent of the time. As above, the rate of weapon involvement varied depending on the type of drug involved, ranging from 27.6 percent of crack cocaine cases to 7.8 percent of marijuana cases.

Several factors affect the average prison sentence for drug offenders, including statutory mandatory minimum punishments, the quantity of the drugs involved in the case, the prior criminal history of the offender, and whether the offender assisted the government in the investigation of his or her crime and other crimes. Because of these factors, comparisons of the average sentence length in the different types of drug cases should be made cautiously. In fiscal year 2010, the average punishment for drug crimes ranged from a high of 111 months of imprisonment for crack cocaine offenders (with a median sentence of 96 months) to 37 months for marijuana offenders (with a median sentence of 25 months).

An offender's role in the offense also can affect the guideline range that judges consider when imposing punishment. In fiscal year 2010, judges in 18.5 percent of all drug cases determined that the applicable guideline range should be lowered because of the offender's minor or minimal role in the offense. In marijuana cases, this adjustment to the guideline range occurred 31.4 percent of the time. In contrast, courts found such an adjustment warranted in only 4.0 percent of crack cocaine cases. In another 6.0 percent of drug cases, the court determined that the applicable guideline range should be increased because of the offender's role in the offense as an organizer, leader, manager, or supervisor.

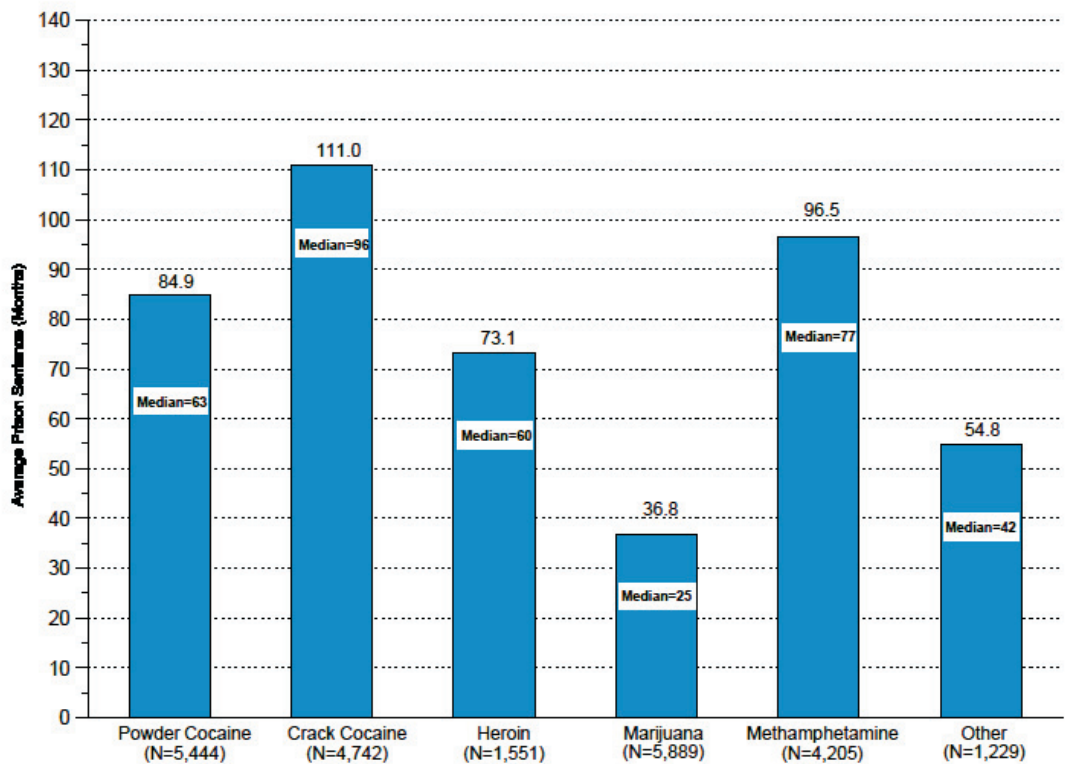
Mandatory minimum sentences enacted by Congress played a large part in determining the sentence for these offenders, either outright or through the impact of these statutes on the structure of the guidelines. In fiscal year 2010, crack cocaine offenders and

Marijuana cases were more prevalent than either crack cocaine or powder cocaine cases.

Both crack cocaine and powder cocaine offenders were convicted under mandatory minimum statutes at nearly the same rate.

powder cocaine offenders were convicted of an offense that provided for the imposition of a mandatory minimum sentence at virtually the same rate (78.8% for crack cocaine offenders and 77.6% for powder cocaine offenders).⁸

However, 34.3 percent of powder cocaine offenders obtained relief from a mandatory minimum sentence through the “safety valve” exception to such sentences, which requires courts to sentence an offender without regard to any otherwise applicable mandatory minimum punishment when certain conditions are met.⁹ In contrast, less than ten percent of crack cocaine offenders obtained this relief.



The differing criminal histories of these two categories of offenders account for much of this result. Only offenders assigned to Criminal History Category I (offenders with a criminal history score of zero or one) are eligible to receive the benefit of the safety valve. In fiscal year 2010, 59.1 percent of powder cocaine offenders were assigned to CHC I while only 22.2 percent of crack cocaine offenders were assigned to that category.

As discussed above, the offender's prior criminal history is a key factor in determining the guideline range. In fiscal year 2010, crack cocaine offenders had, on average, a more serious criminal history than any other category of drug offender, including powder cocaine offenders. Under the guidelines, offenders are assigned to one of six criminal history categories (CHCs) based on their prior criminal history.¹⁰ Powder cocaine offenders were assigned to the most serious criminal history category (CHC VI) in 8.0 percent of powder cocaine cases, whereas crack cocaine offenders were assigned to that category in 28.3 percent of all crack cocaine cases. In contrast, 54.5 percent of heroin offenders were assigned to CHC I and 13.1 percent assigned to CHC VI. In methamphetamine cases, 48.7 percent of offenders were assigned to CHC I and 11.5 percent to CHC VI. Offenders convicted of marijuana offenses generally had the least serious criminal histories, with 67.7 percent assigned to CHC I and 3.4 percent to CHC VI.¹¹

Fraud

Crimes involving fraud accounted for the third largest portion (9.7%) of federal criminal cases in fiscal year 2010. The losses in these cases ranged from \$0 (no loss, 977 cases) to \$3 billion, with an average loss amount of \$4,312,382 and a median loss amount of \$68,076. Identity theft crimes¹² accounted for a relatively small number (727) of these cases in fiscal year 2010. This is down from 901 such cases sentenced in fiscal year 2009.

Firearms and Other Weapons

Firearms crimes¹³ were 9.6 percent of the total federal criminal convictions for fiscal year 2010. Of the 7,986 firearms cases reported to the Commission, 23.2 percent (1,856) involved the possession or use of a firearm in connection with a crime of

Offenders convicted of marijuana offenses had the lowest criminal history scores.

The median loss amount in fraud cases was \$68,076.

Drug offenses were more than twice as likely to involve a dangerous weapon compared to other offenses.

violence or drug trafficking crime.¹⁴ More than half of the cases (4,198) involved a convicted felon who illegally possessed a firearm.¹⁵

Of all cases with complete guideline application information reported to the Commission in fiscal year 2010, a firearm or other dangerous weapon (e.g., knife) was involved in the offense in some way 8.0 percent of the time (5,860 cases). However, a weapon was involved twice as often in drug cases (16.4%). Weapons were present most often in crack cocaine cases (27.6%) and least often in marijuana cases (7.8%).

Organizational Cases

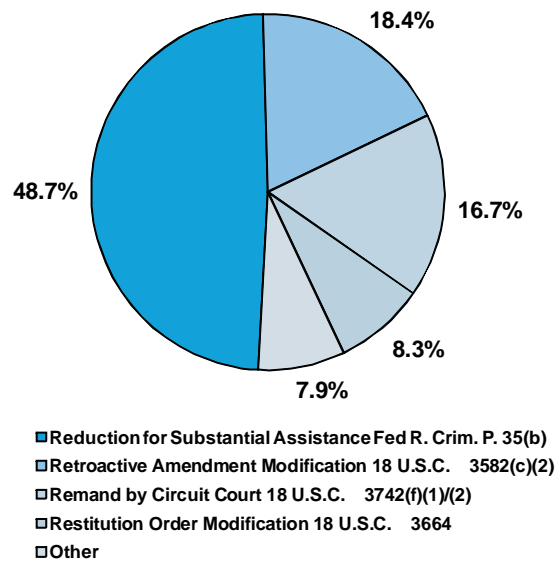
Organizations such as corporations and partnerships can be prosecuted for violating federal criminal law, and 149 organizations were sentenced for at least one federal criminal offense in fiscal year 2010. This number is a 15.8 percent decrease from the 177 cases reported in fiscal year 2009. The number of organizational defendants convicted continued to remain lower than in earlier years. For example, 200 organizational defendants were sentenced in fiscal year 2003, and 255 organizational defendants were sentenced in fiscal year 1999.

Organizational cases decreased by almost 16 percent in fiscal year 2010.

Nearly 94 percent of the organizational offenders sentenced in fiscal year 2010 pled guilty to one or more charges. The most common crimes for which organizational defendants were convicted were fraud and environmental crimes. Organizational offenders were sentenced to pay only a fine to the government in 96 cases. In an additional 17 cases the offender was sentenced to pay restitution to the victim of the crime as well as to pay a fine. In 18 cases, the organization was sentenced to pay restitution only. No fine or restitution was imposed in 17 cases, although other sanctions were imposed in some of these cases. Additionally, of the 149 organizational offenders, 105 received some term of probation, and 42 were ordered to make improvements in compliance or ethics procedures.¹⁶

Resentencings and Other Modifications of Sentence

In fiscal year 2010, the Commission received documentation on 4,120 resentencings or other modifications of sentence. Almost half of these were a reduction in sentence for substantial assistance to the government after sentencing (48.7%).¹⁷ The next most common type of resentencing, at 18.4 percent, involved modifications of the term of imprisonment due to retroactive application of an amendment to the sentencing guidelines.¹⁸ The third most common type of resentencing occurred after remand of a case that had been appealed to a circuit court (16.7%).



For More Information

More information on these cases can be found in the Commission's *2010 Annual Report*, *2010 Sourcebook of Federal Sentencing Statistics*, and *Guideline Application Frequencies for Fiscal Year 2010*. The *Annual Report* and *Sourcebook* are available in hard copy format through the Commission and all three documents, together with other reports of sentencing data, are available in electronic format at the Commission's website at www.ussc.gov.

Endnotes

1. The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues.
2. The Commission receives information from the courts on cases in which the defendant has been convicted of a felony or Class A misdemeanor.
3. In FY 2004, the number of cases reported to the Commission fell by 0.3%. For more information about changes in the federal criminal caseload over the last decade, see LOUIS REEDT & JESSICA WIDICO-STROOP, UNITED STATES SENTENCING COMMISSION, CHANGING FACE OF FEDERAL CRIMINAL SENTENCING (2009).
4. Immigration offense means, in general, a case in which at least one of the statutes of conviction involved trafficking in passports or entry documents; failure to surrender naturalization certificates; fraudulently acquiring passports; alien smuggling; unlawful presence in the United States; or fraudulently acquiring entry documents.
5. Non-citizens primarily are convicted of immigration crimes. Non-citizens were the offenders in only 22.3 percent of federal crimes other than immigration crimes in fiscal year 2010.
6. Drug offense means, in general, a case in which at least one of the statutes of conviction recorded by the Commission was an offense under title 21 of the United States Code.
7. This number also includes persons convicted of one or more crimes in addition to a drug offense.
8. 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.
9. See 18 U.S.C. § 3553(f).
10. The criminal history score establishes the criminal history category (CHC) for an offender. See USSG, Ch.4. The CHC, along with the final offense level, determines the sentencing range under the guidelines.
11. For more information on sentencing issues involving cocaine drug cases, see UNITED STATES SENTENCING COMMISSION, REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (2007).
12. Identity theft crimes are those fraud cases in which one or more of the offenses of conviction was 18 U.S.C. § 1028(a)(7) or 18 U.S.C. § 1028A. The Commission includes these cases with other fraud cases when it reports sentencing statistics.
13. 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.
14. *I.e.*, a case in which 18 U.S.C. § 924(c) was the statute of conviction.
15. *I.e.*, a case in which 18 U.S.C. § 922(g) was the statute of conviction.
16. Of the 149 organizational cases sentenced pursuant to Chapter Eight, one case was missing information on type of economic sanction.
17. See Fed R. Crim. P. 35(b).
18. See USSG §1B1.10; see also 18 U.S.C. § 3582(c)(2).